

***Unified Development Review  
Ordinance for the Town of  
Newry, Maine***

***Adopted June 15, 1992  
Amended September 25, 2000  
Amended July 5, 2005  
Amended December 7, 2009  
Amended December 19, 2011  
Amended March 4, 2013  
Amended March 3, 2015  
Amended March 5, 2019  
Amended November 2, 2021  
Amended June 14, 2022  
Amended May 14, 2024***

Attested Date: 5-14-2024

Clerk: 

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## Global Annotations

***User's Guide: Amendments which occur multiple times throughout to this Ordinance are listed here and not at each occurrence.***

*Board of Selectmen* changed to read *Select Board*. [(AMD), TM-05.14.2024, WA-36]

*Selectmen* changed to read *Select Board*. [(AMD), TM-05.14.2024, WA-36]

*Infrastructure improvements* change to read *Required Improvements*. [(AMD), TM-05.14.2024, WA-36]

## SECTION 1: GENERAL PROVISIONS

**SECTION USER'S GUIDE:** *This section contains general information related to the title of the Ordinance, the statutory authority under which it was prepared and adopted, the municipal officials charged with its administration, the area of jurisdiction, the date of its adoption, and the procedure for its amendment.*

### A. TITLE

This Ordinance shall be known and be cited as the "Unified Development Review Ordinance for the Town of Newry, Maine."

### B. AUTHORITY

This Ordinance is adopted pursuant to the Home Rule Powers as provided for in Article VIII-A of the Maine Constitution and Title 30-A, M.R.S.A. Sec. 3001.

### C. APPLICABILITY

The provisions of this Ordinance shall apply to the following land uses and buildings within the boundaries of the Town of Newry (Additional requirements and restrictions may be imposed by the Town of Newry Shoreland Zoning Ordinance):

1. Subdivisions as defined by Title 30-A, M.R.S.A. Section 4401.
2. Site Uses: Building(s), structure(s) and use(s) of land for commercial, industrial, office, multiple dwelling residential that is not a subdivision as defined, municipal, institutional, utility, fraternal, and recreational purposes, including:
  - a. New buildings and structures;
  - b. New uses of existing buildings, structures and land;
  - c. Resumption of uses which have been discontinued for at least two years;
  - d. Existing uses which seek to expand by either 1000 square feet or 25% in area, whichever is lesser, within any 10 year period, in floor space, parking area, or outdoor storage area.

[(AMD), RF-11.02.21, ART. 2]

### D. EXEMPTIONS

This Ordinance does not apply to the following:

1. Existing uses or uses which were legally established prior to the adoption of this Ordinance;
2. Subdivision lots exempted by Title 30-A, M.R.S.A. Section 4401;



3. Detached single family and two family dwelling units, when not part of a new subdivision or new development proposal except that detached single family and two family dwelling units and lots shall comply with Section 23, Growth Management Districts and Nonconformance, and with Section 15.B, Parking. [(AMD), RF-11.02.21, ART. 2]
4. Agricultural land management practices, forest management activities, timber harvesting activities and timber harvesting; and
5. Home occupations which meet the following conditions do not need Site Plan approval
  - a. The home occupation is incidental and secondary to the primary residential use of the premises;
  - b. Do not employ any persons who do not make the residence their permanent home;
  - c. Do not display any exterior sign larger than eight (8) square feet, exterior exhibits, exterior storage of materials or any other exterior indications of the home occupation or variation from the residential character of the principal dwelling or accessory structure;
  - d. Do not generate any nuisance, waste discharge, noise, vibration, smoke, dust, odors, heat, glare, radiation, fumes, or electrical interference detectable to the normal senses or which interferes with normal radio or television reception, data transmission or causes other nuisances which extend beyond the limits of the subject property; and
  - e. Are not likely to generate regular daily or seasonal traffic not associated with residential uses.
  - f. Home Occupations which do not meet the criteria in Section D.5.a-e above shall comply with Section 13.AB. [(AMD), TM-05.14.2024, WA-36]

## **E. CONFLICT WITH OTHER ORDINANCES**

Whenever the requirements of this Ordinance are in conflict with the requirements of any other lawfully adopted rule, regulation, ordinance, the more restrictive standards shall govern.

## **F. SEPARABILITY**

In the event that any section, subsection or any provision of this Ordinance shall be declared by any court of the competent jurisdiction to be invalid for any reason, such decision shall not be deemed to affect the validity of any other section, subsection or other portion

of this Ordinance, to this end, the provisions of this Ordinance are hereby declared to be severable.

## **G. AMENDMENTS**

This Ordinance may be amended by a majority vote of a regular or special town meeting. Amendments may be initiated by a majority vote of the Select Board, by request of the Planning Board, or by a petition signed by a number of registered voters greater than 10% of the votes cast in the last gubernatorial election in the Town. The Select Board shall conduct a public hearing on the amendments.

## **H. EFFECTIVE DATE**

The provisions of this Ordinance shall become effective on June 15, 1992 and as amended on:

September 25, 2000  
July 5, 2005  
December 7, 2009  
December 19, 2011  
March 4, 2013  
March 3, 2015  
March 5, 2019  
November 2, 2021  
June 14, 2022  
May 14, 2024

[(AMD), TM-05.14.2024, WA 36]

## SECTION 2: PURPOSES

**SECTION USER'S GUIDE:** *This section presents the broad goals of this Ordinance. These goals are not intended to be specific standards used by the Planning Board in its consideration of applications but rather as a guide for provisions contained herein.*

The purposes of this Ordinance are as follows:

### **A. PROTECT GENERAL WELFARE**

To assure the comfort, convenience, safety, health and welfare of the citizens of Newry;

### **B. PROTECT ENVIRONMENT**

To protect the natural resources from unacceptable adverse impacts and to integrate new development harmoniously into the Town's natural environment;

### **C. PROMOTE COMMUNITY DEVELOPMENT**

To promote the development of an economically sound and stable community;

### **D. BALANCE PROPERTY RIGHTS**

To protect property rights and values by balancing the rights of landowners to use their land for the purposes regulated by this Ordinance with the corresponding rights of abutting and neighboring landowners to enjoy their property without undue disturbance from noise, smoke, dust, fumes, odor, glare, traffic, storm water run-off or the pollution of ground or surface water resources;

### **E. REDUCE FISCAL IMPACT**

To provide the means for assessing development proposals for their fiscal impacts on the municipality's ability to provide and improve necessary public facilities and services;

### **F. IMPLEMENT THE COMPREHENSIVE PLAN**

To implement the goals and policies of Newry's comprehensive plan

### **G. ESTABLISH PROCEDURES AND STANDARDS**

To establish procedures whereby the Town Officials may review the developments regulated by this Ordinance by providing fair and reasonable standards for evaluating such developments, to provide a public hearing process through which Town residents may raise questions and receive answers regarding how such developments may affect them and to provide procedures whereby aggrieved parties may appeal decisions made under this Ordinance to the Appeals Board.

To establish standards that:

1. Encourage orderly growth and development in appropriate areas of the community, while protecting the Town's rural character, making efficient use of public services and preventing development sprawl;
2. Plan for, finance and develop an efficient system for public facilities and services to accommodate anticipated growth and economic developments;
3. Promote economic climate which increases job opportunities;
4. Encourage and promote affordable, decent housing opportunities;
5. Protect the quality and manage the quantity of the Town's water resources, including ground water extraction from aquifers and rivers;
6. Protect the other critical natural resources, including, without limitations, wetlands, wildlife, and fisheries habitat, shorelands, scenic vistas, and unique natural areas;
7. Safeguard agricultural and forest resources from development which threatens those resources;
8. Preserve historic and archaeological resources;
9. Promote and protect the availability of outdoor recreation opportunities, including access to surface waters.
10. Seek to retain landowner permission for use of traditional trail systems and back county recreation opportunities from development which would reduce such opportunities.

## SECTION 3: ADMINISTRATION

**SECTION USER'S GUIDE:** *This section contains provisions for the administration of this Ordinance including specific provisions for certificates of compliance, conditions of approval, and public hearings.*

### A. ADMINISTERING BODY

The Planning Board of the Town of Newry shall administer this Ordinance. No building permit or plumbing permit shall be issued by the Select Board or Code Enforcement Officer for any use or development within the scope of this Ordinance until an application required by this Ordinance has been reviewed and approved by the Planning Board.

[(AMD), TM-05.14.2024, WA-36]

### B. APPROVAL REQUIRED

After the effective date of this Ordinance or amendment thereto, no person shall engage in any activity requiring a permit under this Ordinance without first obtaining the approval of the Planning Board or Code Enforcement Officer as required.

### C. APPLICATION REQUIRED

Applications for approval shall be submitted in writing to the Planning Board, on forms provided by it. The Planning Board has the right to require the submission of whatever additional information is necessary to determine compliance with the provisions of this Ordinance.

### D. OTHER PERMITS REQUIRED

Applications for approval under this Ordinance will be considered separately and concurrently with all other required local, state, and federal permits which have been applied for. Evidence that they have been applied for and/or acquired must be provided to the Planning Board at the time of application. These may include but not be limited to the following:

1. Maine Department of Environmental Protection, under the Site Location of Development Act, Natural Resources Protection Act, or if a waste water discharge license is needed.
2. Maine Department of Human Services, if the applicant proposes to provide a public water system.
3. Maine Department of Human Services, if an engineered subsurface waste water disposal system(s) is to be utilized.

4. U.S. Army Corps of Engineers, if a permit under Section 404 of the Clean Water Act is required.
5. An approved Driveway or Entrance permit issued by the Maine Department of Transportation if a driveway or entrance will enter onto Routes 2 and 26 or the Sunday River Road to the Ski Way Road.

No building or use permits for a development approved under this Ordinance shall be granted until proof is provided that any and all state and federal permit have been obtained.

## **E. START AND COMPLETION OF CONSTRUCTION**

Construction and alteration activities for which approval has been granted under this Ordinance shall commence within twenty-four (24) months of the date of issuance of Planning Board approval for projects under Local review or shall commence within thirty-six (36) months of the date of issuance for projects under State or Federal review and shall be substantially complete within eighteen (18) months of the date of commencement.

At the time the Planning Board grants Final Plan approval, it may permit the Plan to be divided into two or more phases subject to any conditions the Planning Board deems necessary in order to ensure the orderly development of the Plan. If any municipal, quasi-municipal department head, or superintendent of schools notified of the proposed Plan informs the Planning Board that their department or district does not have adequate capital facilities to service the proposed Plan, the Planning Board may require the Plan to be divided into two or more phases subject to any conditions the Planning Board deems necessary in order to allow the orderly planning, financing and provision of public services to the proposed Plan.

If a project is subject to phasing, a phasing time line for commencement and completion of each phase shall be negotiated between the Planning Board and developer. The Planning Board may agree on a phasing time line which lasts for no more than ten (10) years after the date of approval at which time all project activities must be substantially completed.

[(AMD), TM-05.14.2024, WA-36]

Activities which are not commenced or substantially completed within the time limits provided above shall be subject to new application and the original approval issued under this ordinance shall be considered void. The new application shall be accompanied by a re-application fee of \$25 or 1/50 of 1% of the remaining cost of the project, whichever is larger. In the event the new application differs substantially from the original submission, the Planning Board, at its discretion, may require the applicant to pay an additional fee to aid the Planning Board in its review of the new submission. Said additional fee shall be either 50% of the application fee or \$10,000, whichever is greater and shall be held in a non-interest bearing escrow account ("The Account"). If the balance of The Account is drawn

down by 75%, the Board shall require 50% of the original additional fee to be paid by the applicant. Any unused portion of escrow account will be returned to the Applicant. [(AMD), RF-11.02.21, ART. 2], [(AMD), TM-05.14.2024, WA-36]

Activities may be extended for up to one (1) year by the Planning Board if the application for extension is submitted not later than thirty (30) days prior to expiration. Activities may be approved in phases of longer periods of time if preapproved by the Planning Board. When future phases do commence, those phases must meet life safety town ordinances in effect at that time, including the Building Code Ordinance sections that address chimneys, fireplaces, vents and fuel burning appliances, electrical wiring, means of egress, safety detection and suppression systems (e.g. detection systems for smoke, radon, carbon monoxide, sprinklers, etc.) and portions of this ordinance which address Life Safety and Fire Suppression, and as amended or combined. [(AMD), TM-03.05.19, ART. 41]

## **F. CONDITIONS OF APPROVAL**

The Planning Board may in approving applications attach such conditions of approval, in addition to those required elsewhere in this Ordinance, that it finds necessary to further the purposes of this Ordinance. Such conditions of approval may include, but are not limited to, specifications for:

1. Type of vegetative cover;
2. Increased setbacks or dimensional requirements;
3. Specific sewage or other waste disposal facilities;
4. Specific water supply facilities;
5. Landscaping and planting screen;
6. Periods of operation;
7. Operational controls;
8. Professional inspection and maintenance;
9. Specific storage and display requirements;
10. Sureties and bonds;
11. Restrictive covenants;
12. Location of piers, docks, parking areas and signs;
13. Type of construction; and
14. Any other term or condition of approval necessary to fulfill the purposes of this Ordinance.

The Planning Board may, as a term or condition of approval, establish any reasonable requirement to ensure that the Applicant has made adequate provision for the control of noise from the facility and to reduce the impact of noise on Protected Locations. Such conditions may include, but are not limited to, enclosing equipment or operations, imposing limits on hours of operation, or requiring the employment of specific design technologies, site design, modes of operation, or traffic patterns.

The sound level limits prescribed in this ordinance shall not preclude the Planning Board from requiring an Applicant to demonstrate that sound levels from a facility will not unreasonably disturb wildlife or adversely affect wildlife populations. In addition, the sound level limits shall not preclude the Planning Board as a term or condition of approval, from requiring that lower sound level limits be met to ensure that the Applicant has made adequate provision for the protection of wildlife.

Violation of any conditions of approval shall be considered a violation of this Ordinance.

## **G. PUBLIC HEARINGS**

In scheduling public hearings under this ordinance, the Planning Board shall publish notice of the hearing at least seven (7) days in advance of the hearing in a newspaper of general circulation in the area at least two (2) times and shall post such notice in at least two (2) conspicuous public places at least seven (7) days in advance of the hearing.

The Applicant shall notify, by mail, and provide the board with certified mail receipts, all property owners within one thousand feet (1,000') of the project site, including owners of property on the opposite side of the road, at least ten (10) days in advance of the hearing, of the nature of the application and of the time and place of the public hearing. The owners of property shall be considered to be those against whom taxes are assessed. For the purpose of this section when an abutter is a condominium, the President of the Condominium Association shall be notified. [(AMD), TM-03.05.19, ART. 41], [(AMD), RF-11.02.21, ART. 2]

At any hearing, a party may be represented by agent or attorney. Hearings shall not be continued to other times except for good cause. The applicant's case shall be heard first. To maintain orderly procedure, each side shall proceed without interruption.

Questions may be asked through the Chair. All persons at the hearing shall abide by the order of the Chairman of the Planning Board or designated public officer. Within thirty (30) days of the public hearing, or within any other time limit that is otherwise mutually agreed to, the Planning Board shall reach a decision on the proposed development plan and shall inform the applicant and the Select Board in writing within seven (7) days of its decision stating its reasons. The Planning Board shall prepare detailed, written findings of fact, based on; sufficient evidence presented at the public hearing, as well as its conclusions and the reasons or basis thereof; and said findings shall not be based on feelings or unsubstantiated allegations, but upon all reasonable evidence. [(AMD), TM-05.14.2024, WA-36]



## **H. PERMIT TRANSFERS**

A permit received pursuant this Ordinance is freely transferable provided that:

1. If the project was subject to the Site Location of Development Law, 38 M.R.S.A. Sec.481, the transferee has satisfied the Department of Environmental Protection that the financial and technical criteria to undertake the project has been met; and
2. The transferee has submitted information to the Planning Board which demonstrates adequate technical and financial capacity to complete the proposed project.

## SECTION 4: RESERVED

## **SECTION 5: CRITERIA OF APPROVAL**

***SECTION USER'S GUIDE: This section contains the criteria by which the Planning Board will judge all applications submitted pursuant to this Ordinance.***

In approving applications submitted pursuant to this Ordinance, the Planning Board shall consider the following criteria, and find that the proposed development:

### **A. POLLUTION**

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

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

### **B. EROSION**

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

### **C. TRAFFIC**

The proposed development will not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed. If the proposed development requires driveways or entrances onto a state or state aid highway (Route 2, Route 26 and the Sunday River Road to the Ski Way Road) the Maine Department of Transportation has provided documentation indicating that the driveways or entrances conform to Title 23 section 704 and any rules adopted under that section. If the proposed development requires driveways or entrances onto a town road, the town has approved the driveway or entrance and confirmed that it conforms to town requirements for driveways; [(AMD), TM-03.05.19, ART. 41]

### **D. SEWAGE DISPOSAL**

The proposed development will provide for adequate sewage waste disposal and will not cause an unreasonable burden on municipal services if they are utilized;

## **E. MUNICIPAL SOLID WASTE DISPOSAL**

The proposed development will not cause an unreasonable burden on the Town's ability to dispose of solid waste. Use of Town services for the disposal of construction and demolition debris is not allowed except under Section 13.R. [(AMD), TM-05.14.2024]

## **F. AESTHETIC, CULTURAL AND NATURAL VALUES**

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

## **G. FINANCIAL AND TECHNICAL CAPACITY**

The applicant has adequate financial and technical capacity to meet the standards of this Ordinance;

## **H. SUFFICIENT WATER**

The proposed development has sufficient water available for its reasonably foreseeable needs;

## **I. PUBLIC WATER SUPPLY**

The proposed development will not cause an unreasonable burden on an existing public water supply, if one is to be used;

## **J. SURFACE WATERS**

Whenever situated entirely or partially within the watershed of any pond or lake or within 250 feet of any wetland, great pond or river as defined in Title 38, chapter 3, subchapter I, article 2-B1, the proposed development will not adversely affect the quality of that body of water or unreasonably affect the shoreline of that body of water;

## **K. GROUND WATER**

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

## **L. FLOOD AREAS**

Based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps and information presented by the applicant whether the development is in a flood-prone area. If the development, or any part of it, is in such an area, the developer shall determine the 100-year flood elevation and flood hazard boundaries within the development. The proposed development plan must include a con-

dition of plan approval requiring that principal structures in the development will be constructed with their lowest floor, including the basement, at least one foot above the 100-year flood elevation;

#### **M. FRESHWATER WETLANDS**

All freshwater wetlands within the proposed development have been identified on any maps submitted as part of the application, regardless of the size of these wetlands. Any mapping of freshwater wetlands may be done with the help of the local soil and water conservation district;

#### **N. RIVER, STREAM OR BROOK**

Any river, stream or brook within or abutting the proposed development has been identified on any maps submitted as part of the application. For purposes of this section, "river, stream or brook" has the same meaning as in Title 38, Section 480-B, subsection 9;

#### **O. STORM WATER**

The proposed development will provide for adequate storm water management;

#### **P. SPAGHETTI-LOTS PROHIBITED**

If any lots in the proposed development have shore frontage on a river, stream, or brook as these features are defined in Title 38, section 480-B, none of the lots created within the development have a lot depth to shore frontage ratio greater than 5 to 1 (i.e. to create a lot 1,000-feet deep, the lot must have a minimum of 200-feet of shore frontage, for a deeper lot the shore frontage would need to be greater); [(AMD), TM-03.05.19, ART. 41]

#### **Q. MUNICIPAL SERVICES**

The proposed development will not place unreasonable burden on the town's municipal services including but not limited to the Newry Fire Department or the local school system;

#### **R. LAKE PHOSPHORUS CONCENTRATION**

The long term cumulative effects of the proposed development will not unreasonably increase Howard Pond phosphorus concentration during the construction phase and life of the proposed development;

#### **S. IMPACT ON ADJOINING MUNICIPALITY**

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

## **T. LANDS SUBJECT TO LIQUIDATION HARVESTING**

Timber on the parcel being developed has not been harvested in violation of rules adopted pursuant to Title 12, section 8869, subsection 14. If a violation of rules adopted by the Maine Forest Service to substantially eliminate liquidation harvesting has occurred, the planning board must determine prior to granting approval for the development that 5 years have elapsed from the date the landowner under whose ownership the harvest occurred acquired the parcel; and

## **U. CONFORMITY WITH LOCAL ORDINANCES AND PLANS**

The proposed development conforms with a duly adopted subdivision regulation or ordinance, comprehensive plan, development plan or land use plan, if any. In making this determination, the Planning Board may interpret these ordinances and plans.

## SECTION 6: INSPECTION, VIOLATION AND ENFORCEMENT

***SECTION USER'S GUIDE: This section contains specific provisions outlining the inspection of Required Improvements and those actions which shall be considered violations of this Ordinance and provisions for enforcement. It also provides that contractors and property owners shall be held liable for their actions which are in violation of this Ordinance.***

### A. INSPECTION

1. Notification of Construction: At least five (5) days prior to commencing construction of Required Improvements, the applicant shall.
  - a. Notify the Code Enforcement Officer and/or Inspecting Official in writing of the time when (s)he proposes to commence construction so that the Municipal Officers can arrange for inspection to be made. The Inspecting Official shall assure that all municipal specifications, requirements and conditions of approval shall be met during the construction and shall assure the satisfactory completion of. Required Improvements required by the Planning Board. [(AMD), TM-05.14.2024, WA-36]
  - b. Deposit with the Municipal Officers a check for the amount of 2% of the estimated costs of Required Improvements or \$10,000, which ever is greater, to pay for the costs of inspection. This deposit shall not be required should the Code Enforcement Officer be the Inspecting Official. If upon satisfactory completion of construction and cleanup there are funds remaining, the surplus funds shall be refunded to the applicant within 30 days. If the inspection account shall be drawn down by 90%, the applicant shall deposit an additional 1% of the estimated costs of construction and improvements or \$10,000, whichever is greater. [(AMD), TM-05.14.2024, WA-36]
2. The Inspecting Official shall be responsible for observing all on-site and off-site construction of. Required Improvements. The Inspecting Official shall prepare periodic reports and provide the same to the Select Board, Planning Board and Code Enforcement Officer. The Inspecting Official shall have no enforcement authority but is authorized to request the Code Enforcement Officer to take enforcement actions as necessary to ensure compliance including "Stop Work" orders.
3. Noncompliance With Final Plan: Upon finding that the Required Improvements have not been constructed in accordance with the Final Plan and specifications, the Inspecting Official shall so report in writing to the Municipal Officers, Planning Board, Code Enforcement Officer and Applicant. The Municipal Offi-

cers shall take any steps necessary to assure compliance with Final Plans.  
[(AMD), TM-05.14.2024, WA-36]

4. **Modification During Construction:** If at any time it appears necessary or desirable to modify the Required Improvements before or during construction, the Inspecting Official is authorized to approve minor modifications due to unforeseen circumstances such as encountering hidden outcrops of bedrock, natural springs, etc. The Inspecting Official shall issue any approval under this section in writing and shall transmit a copy of the approval to the Municipal Officers, Planning Board and Code Enforcement Officer. Revised plans shall be filed with the Planning Board for the record. For major modifications, such as relocation of rights-of-way, changes in grade by more than 1%, etc., the applicant shall submit to the Planning Board an amended application for review and approval.  
[(AMD), TM-05.14.2024, WA-36]

#### **B. RECORDING OF SUBDIVISION PLAN WITHOUT APPROVAL PROHIBITED**

No plan of a division of land or structure within the municipality which would constitute a subdivision shall be recorded in the Registry of Deeds until a Final Plan has been approved by the Planning Board in accordance with this Ordinance.

#### **C. CONVEYANCE WITHOUT APPROVAL PROHIBITED**

No person may convey any land or dwelling in a subdivision which has not been approved as required by this Ordinance.

#### **D. CONVEYANCE WITHOUT RECORDING PROHIBITED**

No person may convey any land or dwelling unit in a subdivision which has not been approved by the Planning Board and recorded in the Registry of Deeds.

#### **E. CONVEYANCE OF LOTS or DWELLING UNITS NOT SHOWN ON FINAL PLAN PROHIBITED**

No person may convey any land or dwelling units in an approved subdivision which is not shown on the Final Plan as a separate lot or dwelling.

#### **F. UTILITY HOOKUPS PRIOR TO APPROVAL PROHIBITED**

No public utility, water district, sanitary district or any utility company of any kind shall serve any lot or dwelling unit in a subdivision or building in a development for which a Final Plan has not been approved by the Planning Board, except for utilities needed for testing and exploration.



**G. ROAD COMPLETION PRIOR TO CONVEYANCE REQUIRED**

No lot or dwelling in a subdivision may be sold, leased, occupied or otherwise conveyed before the road upon which the lot fronts and access is gained is completed for the entire frontage of the lot in accordance with this Ordinance and Final Plan as determined by the Inspecting Official. This provision shall not apply when a performance guarantee has been issued and accepted by the Municipality, except that the requirements of Section 21 must be met. [(AMD), TM-05.14.2024, WA-36]

**H. LIFE SAFETY AND FIRE SUPPRESSION PRIOR TO CONVEYANCE REQUIRED**

No lot or unit in a subdivision may be conveyed prior to proof is provided to the Town that Life and Fire Suppression standards, as required by the Final Plan and Section 13.AC., has been satisfied. [(NEW), TM-05.14.2024, WA-36]

**I. FAILURE TO COMPLY WITH CONDITIONS OF APPROVAL**

Failure to comply with any conditions of approval shall be construed to be a violation of this Ordinance and may be grounds for revoking the approved development plan, initiating legal proceedings to enjoin construction development or any specific activity violating the conditions of permit approval or applying the legal penalties provided herein.

**J. OWNER RESPONSIBLE FOR OFF-SITE SEDIMENTATION**

Whenever sedimentation is caused by stripping vegetation, re-grading or other development, it shall be the responsibility of the owner to remove sediment from all adjoining surfaces, intermittent drainage systems and to repair any drainage, at his expense. Failure to do so within two (2) weeks after official notification by the Planning Board or the Code Enforcement Officer shall be considered a violation of this Ordinance.

**K. NUISANCES**

Any violation of this Ordinance shall be deemed a nuisance.

**L. CODE ENFORCEMENT OFFICER**

1. It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Ordinance. If the Code Enforcement Officer shall find that any provision of this Ordinance is being violated, he or she shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it, including discontinuance of illegal use of land, buildings or structures, or work being done, removal of illegal buildings or

structures, and abatement of nuisance conditions. A copy of such notices shall be submitted to the municipal officers and be maintained as a permanent record.

2. The Code Enforcement Officer shall conduct on-site inspections to insure compliance with all applicable laws and conditions attached to permit approvals. The Code Enforcement Officer shall also investigate all complaints of alleged violations of this Ordinance.
3. The Code Enforcement Officer shall keep a complete record of all essential transactions of the office, including applications submitted, permits granted or denied, variances granted or denied, revocation actions, revocation of permits, appeals, court actions, violations investigated, violations found, and fees collected.

## **M. LEGAL ACTIONS**

When the above action does not result in the correction or abatement of the violation or nuisance condition, the Municipal Officers, upon notice from the Code Enforcement Officer, are hereby directed to institute any and all actions and proceedings, either legal or equitable, including seeking injunctions of violations and the imposition of fines, that may be appropriate or necessary to enforce the provisions of this Ordinance in the name of the municipality. The municipal officers, or their authorized agent, are hereby authorized to enter into administrative consent agreements for the purpose of eliminating violations of this Ordinance and recovering fines without Court action. Such agreements shall not allow an illegal structure or use to continue unless there is clear and convincing evidence that the illegal structure or use was constructed or conducted as a direct result of erroneous advice given by an authorized municipal official and there is no evidence that the owner acted in bad faith, or unless the removal of the structure or use will result in a threat or hazard to public health and safety or will result in substantial environmental damage.

## **N. FINES**

Any person who continues to violate any provision of this Ordinance after receiving written notice of such violations shall be guilty of a Civil Violation and subject to a minimum fine of one hundred dollars (\$100.00) up to a maximum fine to five thousand dollars (\$5,000.00) for each violation, except that the maximum penalty for starting construction or commencing a land use activity without a required permit is two thousand five hundred dollars (2,500.00). Each day such violation is continued is a separate offense. All such fines shall accrue to the Town. If remedial action has commenced within two (2) weeks of receiving such written notice, there shall be no fine. [(AMD), TM-05.14.2024, WA-36]

## **O. CONTRACTOR LIABILITY**

Any contractor involved in any activity regulated by the provisions of this Ordinance may be held liable for violating this Ordinance if the necessary permits for such activity have not been obtained by himself or his employer.

## **SECTION 7: APPEALS**

***SECTION USER'S GUIDE: This section contains specific provisions regarding variance and administrative appeals to the Board of Appeals and appeals to Superior Court.***

### **A. POWERS AND DUTIES OF THE BOARD OF APPEALS**

The Board of Appeals shall have the following powers:

1. Administrative Appeals - To hear and decide administrative appeals, on an appellate basis, where it is alleged by an aggrieved party that there is an error in any order, requirement, decision, or determination made by, or failure to act by, the Planning Board in the administration of this Ordinance; and to hear and decide administrative appeals on a de novo basis where it is alleged by an aggrieved party that there is an error in any order, requirement, decision or determination made by, or failure to act by, the Code Enforcement Officer in his or her review of and action on a permit application under this Ordinance. Any order, requirement, decision or determination made, or failure to act, in the enforcement of this ordinance is not appealable to the Board of Appeals.
2. Variance Appeals - To authorize variances upon appeal, within the limitations set forth in this Ordinance.

### **B. VARIANCE APPEALS**

Variances may be granted only under the following conditions:

1. Variances may be granted from the restrictions imposed by this Ordinance.
2. Variances shall not be granted for establishment of any uses otherwise prohibited by this Ordinance.
3. The Board of Appeals shall not grant a variance unless it finds that the strict application of the terms of this Ordinance would result in undue hardship. The term "undue hardship" shall mean:
  - a. That the land in question cannot yield a reasonable return unless a variance is granted;
  - b. That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
  - c. That the granting of a variance will not alter the essential character of the locality; and

- d. That the hardship is not the result of action taken by the applicant or a prior owner.
4. Notwithstanding Section 7.B.3.above, the Board of Appeals may grant a variance to an owner of a residential dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. The board shall restrict any variance granted under this subsection solely to the installation of equipment or the construction of structures necessary for access to or egress from the dwelling by the person with the disability. The board may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the person with the disability lives in the dwelling. The term “structures necessary for access to or egress from the dwelling” shall include railing, wall or roof systems necessary for the safety or effectiveness of the structure.
5. The Board of Appeals shall limit any variances granted as strictly as possible in order to ensure conformance with the purposes and provisions of this Ordinance to the greatest extent possible, and in doing so may impose such conditions to a variance as it deems necessary. The party receiving the variance shall comply with any conditions imposed.

### **C. Administrative Appeals**

When the Board of Appeals reviews a decision of the Code Enforcement Officer the Board of Appeals shall hold a “de novo” hearing. Any order, requirement, decision or determination made, or failure to act, in the enforcement of this ordinance is not appealable to the Board of Appeals. At this time the Board may receive and consider new evidence and testimony, be it oral or written. When acting in a “de novo” capacity the Board of Appeals shall hear and decide the matter afresh, undertaking its own independent analysis of evidence and the law, and reaching its own decision.

When the Board of Appeals hears a decision of the Planning Board, it shall hold an appellate hearing, and may reverse the decision of the Planning Board only upon finding that the decision was contrary to specific provisions of the Ordinance or contrary to the facts presented to the Planning Board. The Board of Appeals may only review the record of the proceedings before the Planning Board. The Board Appeals shall not receive or consider any evidence which was not presented to the Planning Board, but the Board of Appeals may receive and consider written or oral arguments. If the Board of Appeals determines that the record of the Planning Board proceedings are inadequate, the Board of Appeals may remand the matter to the Planning Board for additional fact finding.

### **D. Appeal Procedure**

1. Making an Appeal

- a. An administrative or variance appeal may be taken to the Board of Appeals by an aggrieved party from any decision of the Code Enforcement Officer or the Planning Board, except for enforcement-related matters as described in Section 6.J and K above. Such an appeal shall be taken within thirty (30) days of the date of the official, written decision appealed from, and not otherwise, except that the Board, upon a showing of good cause, may waive the thirty (30) day requirement.
  - b. Applications for appeals shall be made by filing with the Board of Appeals a written notice of appeal which includes:
    - i. A concise written statement indicating what relief is requested and why the appeal or variance should be granted.
    - ii. A sketch drawn to scale showing lot lines, location of existing buildings and structures and other physical features of the lot pertinent to the relief sought.
  - c. Upon receiving an application for an administrative appeal or a variance, the Code Enforcement Officer or Planning Board, as appropriate, shall transmit to the Board of Appeals all of the papers constituting the record of the decision appealed from.
  - d. The Board of Appeals shall hold a public hearing on an administrative appeal or a request for a variance within thirty-five (35) days of its receipt of a complete written application, unless this time period is extended by the parties. Hearings shall be conducted in accordance with Section 3.G
2. Decision by Board of Appeals
- a. A majority of the full voting membership of the Board shall constitute a quorum for a meeting.
  - b. A majority of the membership of the Board present and voting shall be required for the purpose of deciding an appeal.
  - c. The person filing the appeal shall have the burden of proof.
  - d. The Board shall decide all administrative appeals and variance appeals within thirty five (35) days after the close of the hearing, and shall issue a written decision on all appeals.
  - e. The Board of Appeals shall state the reasons and basis for its decision, including a statement of the facts found and conclusions reached by the Board.

## **E. APPEAL TO SUPERIOR COURT**

Except as provided by 30-A M.R.S.A. section 2691(3)(F), any aggrieved party who participated as a party during the proceedings before the Board of Appeals may take an appeal to Superior Court in accordance with State laws within forty-five (45) days from the date of any decision of the Board of Appeals

## **SECTION 8: ADMINISTRATIVE PROCEDURES**

***SECTION USER'S GUIDE: This section contains provisions related to the procedure required to have applications placed on the Planning Board's agenda.***

### **A. PURPOSE**

The purpose of this Section is to establish an orderly, equitable and expeditious procedure for reviewing applications for developments requiring Planning Board approval under this Ordinance.

### **B. AGENDA**

In order to avoid unnecessary delays in processing applications, the Planning Board prepares an agenda for each regularly scheduled meeting.

1. To be considered for placement on the agenda, notification of such must be communicated by the applicant to the Chairperson, Vice-Chairperson or Secretary a minimum of two (2) weeks prior to a Planning Board meeting.
2. However, if the Planning Board's agenda is already full for the next meeting, the Secretary shall place the application on the agenda for the next available meeting. [(AMD), RF-11.02.21, ART. 2]



## **SECTION 9: PRE-APPLICATION CONFERENCE (OPTIONAL)**

***SECTION USER'S GUIDE: This section contains specific information related to the procedures to be followed during a pre-application conference, the required submissions, the setting of the contour intervals required on subsequent plans, the scheduling of required on-site inspections, and establishes that rights are not vested by the pre-application review: Both Subdivision and site review.***

### **A. PROCEDURE**

The procedures to be followed for a pre-application conference are as follows:

1. Applicant submission of sketch plan.
2. Question and answer period. Planning Board makes specific suggestions to be incorporated by the applicant into subsequent submissions.
3. Scheduling of on-site inspection.

### **B. SUBMISSION**

The pre-application submission shall show, in simple sketch form, the proposed layout of roads, lots, structures and other features in relation to existing conditions. The Sketch Plan, which may be a freehand penciled sketch, should be supplemented with general information to describe or outline the existing conditions of the site and the proposed subdivision or development. It is recommended that the sketch plan be superimposed on or accompanied by a copy of the Assessor's Map(s) on which the land is located. The Sketch Plan shall be accompanied by a copy of a portion of the U.S.G.S. topographic map of the area showing the outline of the proposed subdivision or development.

### **C. CONTOUR INTERVAL AND ON-SITE INSPECTION**

Within thirty days, the Planning Board may hold an on-site inspection of the property and shall determine and inform the applicant in writing of the required contour interval on subsequent plans.

### **D. RIGHTS NOT VESTED**

The submittal or review of the pre-application sketch plan shall not be considered the initiation of the review process for the purposes of bringing the plan under the protection of Title 1, M.R.S.A., Section 302.

## SECTION 10: APPLICATION PROCEDURE AND SUBMISSION REQUIREMENTS

**SECTION USER'S GUIDE:** *This section outlines the procedures and submissions required for the review and approval of Applications submitted to the Planning Board.*

### A. GENERAL

The Planning Board may require, where it deems it necessary for the protection of public health, safety, and welfare, that a Minor Subdivision (less than 10 lots and/or dwelling units) comply with all or any of the submission requirements for a Major Subdivision (10 or more lots and/or dwelling units).

### B. PROCEDURE

1. Pre-application conference: The applicant may request a pre-application conference. The Planning Board may request a pre-application conference.
2. Application: The applicant shall submit an application for approval two weeks prior to the scheduled meeting of the Planning Board.
3. Documenting the date of submission: All documents submitted to the Planning Board shall include the date of submission.
4. Receipt: When the application is received, a dated receipt shall be provided to the applicant.
5. On-Site Visits: The Planning Board may schedule on-site visits at their discretion. The Planning Board shall give public notice of on-site visits.
6. Fees: All applications shall be accompanied by an application fee as established by the Select Board payable to the Town of Newry. Such fee shall not be refundable. The Planning Board, at its discretion, may require the applicant to pay an additional fee to aid the Planning Board in its review of the applicant's submissions. Said additional fee shall be either 50% of the application fee or \$10,000, whichever is greater and shall be held in a non-interest bearing escrow account ("The Account"). If the balance of The Account is drawn down by 75%, the Board shall require 50% of the original additional fee to be paid by the applicant. [(AMD), TM-05.14.2024, WA-36]
7. Representation: The Applicant, or his duly authorized representative, shall attend all meetings of the Planning Board to discuss the application.

8. Abutter notification: The Applicant, when preparing an application shall notify by mail and provide the board with certified mail receipts all abutting property owners within 1,000 feet of the project site. For the purpose of this section when an abutter is a condominium, the President of the Condominium Association also shall be notified. [(AMD), TM-05.14.2024, WA-36]
9. Notification 30 days from application: Within thirty (30) days of receiving an application and fee, the Applicant will be notified in writing that either that the application is complete or, if it is incomplete, the specific material needed to complete it.
10. When application is determined Complete: Upon determination by the Planning Board that a complete application has been submitted for review, the Planning Board shall issue a dated receipt to the Applicant and determine whether to hold a public hearing on the application.
11. Public hearings: Public hearings are required for Major Subdivisions. For other applications, the Planning Board may require a public hearing at its discretion. Public hearings shall be held within thirty (30) days from the date of the vote that a complete application has been received. The Planning Board shall give public notice of such hearing.
12. Approval/Denial: Criteria:
  - a. Applicant shall meet the performance guarantee requirements contained in this Ordinance.
  - b. Applicant shall prove receipt of all applicable State, Federal and other required permits.
  - c. Within thirty (30) days of a public hearing, or within sixty (60) days of receipt of a complete application, if no hearing is held, or within another time limit as may be otherwise mutually agreed to, in writing, by the Planning Board and the Applicant, the Planning Board shall approve, approve with conditions, or deny the Final Plan.
  - d. The Planning Board shall specify the party (Code Enforcement Office and/or a third party Inspecting Official) responsible for the inspection of Required Improvements and the nature and level of the inspection required when applicable.
  - e. Planning Board shall ensure all Conditions of Approval are documented on the Final Plan.
13. Findings of Fact and Conclusions:

The Planning Board, within thirty (30) days of voting to approve, approve with conditions, or deny, shall make written findings of fact, and conclusions relative to:

- a. for subdivisions, the standards contained in Title 30-A M.R.S.A. Section 4404
- b. for all applications, the provisions of this Ordinance.

[(AMD), RF-11.02.21, ART. 2]

## **C. SUBMISSIONS**

### 1. Plan(s)

#### a. Initial Submission and Interim Submissions

- i. Eight (8) copies shall be submitted.
- ii. One (1) electronic copy shall be submitted.
- iii. Plans shall be drawn to a scale of one hundred (100) feet to the inch. Plans containing more than one hundred (100) acres may be drawn at a scale of two hundred (200) feet to the inch provided all necessary detail can easily be read.
- iv. Plans shall be no larger than 24 by 36 inches in size, and shall have a margin of two (2) inches outside of the border along the remaining sides.
- v. Plans may be submitted at a reduced legible sized scale, if the applicant also provides three (3) full scale sets of drawings.

[(AMD), RF-11.02.21, ART. 2]

#### b. Final Submission

- i. Two (2) reproducible, minimum weight 20 pound white paper originals, of each sheet of the Final Plan required, one to be recorded at the Registry of Deeds, and the other to be filed at the Town Office.
- ii. One (1) paper copy of each sheet required of the Final Plan, to be forwarded to the Code Enforcement Officer.
- iii. The Plan(s) shall be provided in a digital format as specified by the Planning Board.
- iv. Space shall be provided for endorsement by the Planning Board, see Exhibit C for the format. [(AMD), TM-03.05.19, ART. 41]

- v. Shall include a listing of all the plans and documents which comprise the Final Plan. [(NEW), TM-05.14.2024, WA-36]

[(AMD), RF-11.02.21, ART. 2]

2. The application shall include the following information. An Application Form is available at the Town Office and online.

- a. Eight (8) copies shall be submitted. [(AMD), RF-11.02.21, ART. 2]
- b. Proposed name(s) of roads within the project approved by the E-911 Addressing Officer. [(AMD), RF-11.02.21, ART. 2]
- c. Information about the Applicant
  - i. Name, address and telephone number of Applicant.
  - ii. Name address and telephone number of property owner (if other than applicant).
  - iii. If Applicant is a corporation, state whether the corporation is licensed to do business in Maine, and attach a copy of Secretary of State's registration.
  - iv. Name, address and telephone number of the applicant's authorized representative.
  - v. If applicable, letter(s) from all appropriate parties authorizing the representative must be submitted with the application.
  - vi. Address to which all correspondence from the Planning Board should be sent.
  - vii. A statement describing the interest the applicant has in the parcel to be developed (option, land purchase contract, record ownership, etc.)
  - viii. A statement describing the interest the applicant has in any property abutting the parcel to be developed
- d. Information about the Parcel of land
  - i. Location of property: Address
  - ii. Location of property: Book and page (from Registry of Deeds).
  - iii. Location of property: Map and lot (from Town Office).
  - iv. Zoning/Land Management District(s).

- v. A statement describing whether the parcel covers the entire contiguous holdings of the applicant.
- vi. Total acreage of parcel to be developed.
- vii. For Subdivisions, the number of lots or dwelling units
- viii. For Site Plan review, the total floor area and ground coverage of each proposed building and structure and percentage of lot covered by each building or structure.
- ix. A statement indicating if the parcel or structure is part of a prior approved subdivision, or any other division of land within the past five years.
- x. A copy of the deed or deeds from which the survey was based.
- xi. A copy of all covenants, deed restrictions, easements, rights-of-way, or other encumbrances currently affecting the property, including book and page of abutter deed(s).
- xii. Proposed deed restrictions or covenants.
- xiii. Names and addresses of property owners and Condominium Associations within one thousand (1000) feet of the property boundaries involved, including owners of the property on the opposite side of the road. The owners of the property shall be considered to be those against whom taxes are assessed. In the case of condominium ownership, the names and addresses of the President(s) of condominium association(s).
- xiv. A written statement indicating if the parcel to be developed has changed ownership within the past five years, if timber has been harvested within the past five years and if such harvesting resulted in a violation of the applicable State of Maine laws.
- xv. A copy of the approved Driveway or Entrance permit issued by the Maine Department of Transportation if a driveway or entrance will enter onto Route 2 or 26 or the Sunday River Road (from its intersection with Route 2 to the Ski Way Road) and letter showing town approval for subdivision entrance road onto the town road.
- xvi. RESERVED [(AMD), TM-05.14.2024, WA-36]
- xvii. A description of the type of sewage disposal to be used.

- (1) When sewage disposal is to be accomplished by subsurface wastewater disposal systems, test pit analyses, prepared by a Licensed Site Evaluator, shall be provided. A map showing the location of all test pits dug on the site shall be submitted. There shall be a minimum of one (1) test pit per lot.
  - (2) When sewage disposal is to be accomplished by connection to a multi-user system, provide a written statement that plans have been submitted to the Department of Human Services, Division of Health Engineers or the Department of Environmental Protection. A multi-user water system may be required, see C.2.d.xix.(3) of this section.
- xviii. A class A high intensity soil map covering the parcel to be developed and a written soils report, both prepared by a Maine Registered Soils Scientist. The Board may waive or modify this requirement for lots greater than two (2) acres in size or for Minor Subdivisions. [(AMD), TM-05.14.2024, WA-36]
- xix. Description of the type of water supply system(s) to be used.
- (1) Any multi-user supply systems shall be mapped and described.
  - (2) When water is to be supplied by private wells, evidence of adequate ground water supply and quality shall be submitted by a well driller or a hydro-geologist familiar with the area.
  - (3) On lots under one (1) acre in size when a multi-user sewage system is used, a multi-user water system shall be required unless it can be proven that wells will be accommodated within state subsurface waste water rules by using a nitrate impact model or other methods acceptable to the town.
- xx. Description of method of fire protection proposed.
- xxi. Description of method of solid waste disposal.
- xxii. If the applicant proposes to dedicate recreation or common land to the public, provide a written description of proposal.

xxiii. Provide a list and proof of application of required State and Federal permits.

xxiv. Traffic Data (the Board may waive this requirement for Minor Subdivisions). Traffic data shall include the following:

- (1) The estimated peak-hour traffic to be generated by the proposal.
- (2) Traffic accident data covering the most recent three-year period for which such data is available.
- (3) The capacity of surrounding roads and any improvements which may be necessary on such roads to accommodate anticipated traffic generation.
- (4) When a Maine Department of Transportation Traffic Movement Permit is required, existing traffic counts and volumes on surrounding roads must be submitted.

xxv. RESERVED [(AMD), TM-05.14.2024, WA-36]

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e. Information on the Development Plan

- i. Name, address and number of licensed professional engineer, Professional Land Surveyor, or planner who prepared the plan.
- ii. Proposed name of Development or identifying title; and the name of the Town.
- iii. Date, magnetic north point, graphic map scale.
- iv. A field survey of the boundary lines of the parcel, giving complete descriptive data bearings and distances, made and certified with the embossed seal of the Professional Land Surveyor. The corners of the tract shall be located on the ground and marked by monuments. The plan shall indicate the type of monument set or found at each lot corner.
- v. For Subdivisions:
  - (1) Lot or unit numbers.
  - (2) Lot lines with dimensions and areas.



- vi. Suggested locations of subsurface sewage disposal systems, and wells.
- vii. Contour lines at 5' intervals or other intervals as specified by the Board, showing elevation in relation to Mean Sea Level (NGVD).
- viii. If any portion of the parcel is in a flood-prone area, the boundaries of any flood hazard areas and the 100-year flood elevation.
- ix. The title and boundary lines of any zoning or Land Management District boundaries.
- x. Setback lines of all applicable building setbacks.
- xi. Location, ground floor area and height of buildings and other structures within 500 feet of the site.
- xii. Location and dimensions of on-site pedestrian and vehicular access ways, parking areas, loading and unloading facilities, design of ingress and egress of vehicles to and from the site on to public roads and curb and sidewalk lines.
- xiii. Landscape plan showing location, type and approximate size of plantings and location and dimensions of all fencing and screening.
- xiv. Location and size of existing sewers and water mains, and culverts and drains.
- xv. The location of freshwater wetlands.
- xvi. The location of all Farmland within the proposed project. Farmland is defined as a parcel consisting of five (5) or more acres of land that is:
  - (1) Classified as prime farmland, unique farmland or farmland of statewide or local importance by the Natural Resources Conservation Service within the United States Department of Agriculture; or
  - (2) Used for the production of agricultural products as defined in Title 7, section 152, subsection 2. ("Agricultural products" means those plants and animals and their products that are useful to humans and includes, but is not limited to, forages and sod crops, grains and feed crops, dairy and dairy products, poultry and poultry products, bees and bees' products, livestock and livestock products and fruits, berries, vegetables, flowers, seeds, grasses and other simi-

lar products, or any other plant, animal or plant or animal products that supply humans with food, feed, fiber or fur. "Agricultural products" does not include trees grown and harvested for forest products.)

- xvii. The location of all rivers, streams and brooks within the parcel or within 250 feet of the parcel to be developed.
- xviii. Areas within the parcel or within 250 feet of the parcel which have been identified as significant wildlife habitat by the Maine Department of Inland Fisheries and Wildlife. If any portion of the proposed project is located within an area designated as a unique natural area by the Maine Natural Areas Program, the plan shall indicate appropriate measures for the preservation of the values which qualify the site for such designation.
- xix. The location of all parcels of land proposed to be dedicated to public use and the conditions of such dedication.
- xx. The location of any open space to be preserved and a description of proposed ownership, improvement and management.
- xxi. The location of open drainage courses, wetlands, significant wildlife habitat, known or potential archaeological resource, historic buildings and sites, significant scenic areas, mapped sand and gravel aquifers, rare and endangered, other important natural features with a description of how such features will be maintained or impacts upon them minimized.
- xxii. The location, names, and present right of way widths of existing roads, highways, easements, building lines, parks and other open spaces on or adjacent to the parcel to be developed.
- xxiii. Location and names of proposed streets
- xxiv. The location of all existing and proposed overhead and underground utilities.
- xxv. For Site Plan review, the location, dimensions, design and exterior materials of all proposed buildings and structures.
- xxvi. The location and dimensions of existing and proposed signs.
- xxvii. The size, location and direction and intensity of illumination and method of installation of all major outdoor lighting apparatus.

- xxviii. The type, size and location of all incineration devices.
- xxix. The type, size and location of all machinery likely to generate appreciable noise at the lot lines. Technical Information required pertaining to Noise (sound level analysis): Technical information shall be submitted describing the Applicant's plan and intent to make adequate provision for the control of noise. The applicant's plan shall contain information such as the following, when appropriate:
- (1) Maps and descriptions of the land uses, local zoning and comprehensive plans for the area potentially affected by sounds from the facility.
  - (2) Preconstruction Ambient sound levels
  - (3) A description of major sound sources, including tonal sound sources and sources of short duration repetitive sounds, associated with the construction, operation and maintenance of the proposed facility, including their locations within the proposed facility.
  - (4) A description of the daytime and nighttime hourly sound levels and, for short duration repetitive sounds, the maximum sound levels expected to be produced by these sound sources at Protected Locations.
  - (5) A description of proposed major sound control measures, including their locations and expected performance.
  - (6) A comparison of the expected sound levels from the proposed facility with the sound level limits of this regulation.
- xxx. Suitable space to record on the approved plan, the date and conditions of approval if any. [(AMD), RF-11.02.21, ART. 2]
- xxxi. Plans to be recorded at the County Registry of Deeds must be rolled, not folded, and shall have a dimension in inches of a minimum 11x17 and a maximum of 24x36 and be printed on white paper with a minimum weight of 20 pounds. They must include a registrar's block no smaller than 3x3 inches for the register's purposes, and include a title block with the name of the plan, the record owner's name and address, the location by street and town and the date of the plan. They must be embossed, sealed or both with the seal of an architect, professional engineer, or professional land surveyor, and contain the signature and address of the plan preparer. [(AMD), RF-11.02.21, ART. 2]

- f. Accompanying Documents
- i. Eight (8) copies shall be submitted. [(AMD), RF-11.02.21, ART. 2]
  - ii. Copies of letters to the Newry Fire Chief, Newry Road Commissioner and Oxford County Sheriff's Department notifying them of the proposed development project and requesting their comments.
  - iii. A list of construction items including but not limited to the Required Improvements, with cost estimates, that will be completed by the applicant. [(AMD), TM-05.14.2024, WA-36]
  - iv. Written evidence from financial institutions that the applicant has financial commitments or resources to cover these costs.
  - v. A separate list of construction and maintenance items, with both capital and annual operating cost estimates, that must be financed by the Town, or construction and maintenance items, with both capital and annual operating cost estimates, that must be financed by the Town, or quasi-municipal districts. These lists shall include but not be limited to:
    - (1) Schools, including bussing.
    - (2) Recreation facilities.
    - (3) Road maintenance and snow removal.
    - (4) Storm water drainage.
    - (5) Police and fire protection.
    - (6) Solid waste disposal.
    - (7) The applicant shall provide the Planning Board with an assessment of the financial impacts of the proposed development on the above public facilities and services.
  - vi. A storm water management plan, prepared by a registered professional engineer in accordance with the most recent edition of Storm Water Management for Maine: BMPS Technical Design Manual, published by the Maine Department of Environmental Protection. [Note: The applicant need only to submit one copy of storm water calculations] [(AMD), TM-05.14.2024, WA-36]

- vii. An erosion and sedimentation control plan prepared in accordance with the Maine Erosion and Sedimentation Control Handbook for Construction: Best Management Practices.
  - viii. If the proposed Development is in the direct watershed of Howards Pond, a phosphorus control plan shall be submitted.
  - ix. Road and roadway plan and profile drawings drawn to a scale 1" = 100' horizontal and 1" = 1' vertical, prepared by Licensed Professional Engineer. The Planning Board may allow for a variation of scale based on readability.
  - x. Typical cross section views of all proposed roads.
  - xi. Other information not indicated above, as specified by the Planning Board on the application.
- g. Submission Waivers - See Section 22.A. [(AMD), TM-05.14.2024, WA-36]
  - h. Easements - The Planning board may require easements for sewage, drainage, or other utilities.
  - i. Additional information for Commercial Wind Energy Facilities
    - i. Location map showing the boundaries of the proposed facility site and all contiguous property under total or partial control of the Applicant or Participating Landowner(s) and any Scenic Resource or Historic Site within one (1) mile of the proposed development.
    - ii. Description of the proposed Wind Energy Facility that includes the number and aggregate generating capacity of all Wind Turbines, the Turbine Height and manufacturer's specifications for each Wind Turbine (including but not limited to the make, model, maximum generating capacity, sound emission levels and types of overspeed controls) and a description of Associated Facilities.
    - iii. Site plan showing the proposed location of each Wind Turbine, its flicker sector, Associated Facilities and any of the following features located within 1,000 feet of any Wind Turbine: parcel boundaries, required setbacks, topographic contour lines (maximum 20-foot interval), roads, rights-of-way, overhead utility lines, buildings (identified by use), land cover, wetlands, streams, water bodies and areas proposed to be re-graded or cleared of vegetation.

- iv. Written evidence that the provider of electrical service to the property has been notified of the intent to connect an electric generator to the electricity grid.
- v. Description of emergency and normal shutdown procedures.
- vi. Photographs of existing conditions at the site.
- vii. Site line, photographic and, if applicable any screening information.
  - (1) Sight Line Representations of each Wind Turbine from the nearest Occupied Building, Planned Residence, or other approved but not yet developed facility and from at least one other representative location within 1,000 feet of the Wind Turbine, such as a Scenic Resource or another Occupied Building. Each Site Line Representation shall be drawn at a scale sufficiently large to make it legible. If screening is proposed, the proposed screening device, such as trees, shrubs or fencing, shall be depicted on the drawing along with the sight line as altered by the screening.
  - (2) A current four-inch by six-inch color photograph of the proposed site of the Wind Turbine(s) taken from viewpoints corresponding to each of the Site Line Representations.
  - (3) One copy of each of the photographs described in b), above, onto which is superimposed an accurately-scaled and sited presentation of the Wind Turbine(s).
- viii. Certificates of design compliance obtained by the equipment manufacturers from Underwriters Laboratories, *Det Norske Veritas*, or other similar certifying organizations.
- ix. Decommissioning plan.
- x. Written summary of operation and maintenance procedures for the Wind Energy Facility and a maintenance plan for access roads.
- xi. Visual impact assessment.
- xii. Sound level analysis, prepared by a qualified engineer.
- xiii. Shadow Flicker analysis based on WindPro or other modeling software approved by the Department of Environmental Protection. The Flicker Sector will be shown on maps.

- xiv. Foundation and anchoring system drawings that are stamped by a Maine-licensed professional engineer.
  - xv. A Public Utility Grid Impact Statement documenting all anticipated changes to the public utility grid within the Town due to the Wind Energy Facility. The Statement shall be signed and approved by the Maine Public Utilities Commission and shall include proof of leases or rights of way for transmission lines, and an analysis of the residual capacity in the grid that will be available to other local generating projects after the construction of the Wind Energy Facility.
  - xvi. Other relevant studies, reports, certifications and approvals as may be reasonably requested by the Planning Board to ensure compliance with this Ordinance.
- j. Additional Information for Wireless Telecommunications Facilities
- i. A copy of the FCC license for the Wireless Telecommunications Facility or a signed statement from the owner or operator of the Wireless Telecommunications Facility attesting that the Wireless Telecommunications Facility complies with current FCC regulations.
  - ii. For a proposed expansion of a facility, a signed statement that commits the owner of the facility, and its successors or assigns, to:
    - (1) Respond in a timely, comprehensive manner to a request for information from a potential colocation applicant, in exchange for a reasonable fee not in excess of the actual cost of preparing a response;
    - (2) Negotiate in good faith for shared use by third parties;
    - (3) Allow shared use if colocation applicant agrees in writing to pay reasonable charges for colocation;
    - (4) Require no more than a reasonable charge for shared use, based on community rates and generally accepted accounting principles. This charge may include but is not limited to a pro rata share of the cost of site selection, planning project administration, land costs, site design, construction and maintenance, financing, return on equity, depreciation, and all of the costs of adopting the tower or equipment to accommodate a shared user without causing electromagnetic interference.

- iii. Applicants for a Wireless Telecommunications Facility permit must be a telecommunications provider or must provide a copy of its lease/contract with an existing telecommunications provider. Alternatively, applicants may provide letters of intent from carriers to place antennas on the tower once all necessary permits and authorizations have been obtained, including approval by the Planning Board. A permit issued under this ordinance shall not be granted for a wireless communications facility to be built on speculation.
- iv. A USGS 7.5 minute topographic map showing the location of all structures and Wireless Telecommunication Facilities above 150 feet in height above ground level, except antennas located on roof tops, within a five (5) mile radius of the proposed Wireless Telecommunications Facility. This requirement may be met by submitting current information (within thirty days of the date the application is filed) from the FCC Tower Registration Database.
- v. Certification by a registered electrical or electronics engineer that the proposed facility complies with all FCC standards for radio emissions.
- vi. A scenic assessment, consisting of the following:
  - (1) Elevation drawings of the proposed Wireless Telecommunications Facility, and any other proposed structures, showing Height above ground level;
  - (2) A landscaping plan indicating the proposed placement of the Wireless Telecommunications Facility on the site; location of existing structures, trees, and other significant site features; the type and location of plants proposed to screen the Wireless Telecommunications Facility; the method of fencing, the color of the structure, and the proposed lighting method.
  - (3) Photo or video simulations of the proposed Wireless Telecommunications Facility taken from perspectives determined by the Planning Board, or their designee. Each photo and video must be labeled with the Line of Sight, elevation, and with the date taken imprinted on the photograph. The photos and videos must show the color of the Wireless Telecommunications Facility and method of screening.



- vii. A narrative discussing:
  - (1) the extent to which the proposed Wireless Telecommunications Facility would be visible from or within a Designated Scenic Resource,
  - (2) the tree line elevation of vegetation within 100 feet of the Wireless Telecommunications Facility, and
  - (3) the distance to the proposed Wireless Telecommunications Facility from the Designated Scenic Resource's noted Viewpoints.
- viii. A written description of how the proposed Facility fits into the service provider's telecommunications network. This submission requirement does not require disclosure of confidential business information.
- ix. Evidence demonstrating that no existing building, site, or structure can accommodate the applicant's proposed Wireless Telecommunications Facility, the evidence for which may consist of any one or more of the following:
  - (1) Evidence that no existing Facilities are located within the Targeted Market Coverage Area as required to meet the applicant's engineering requirements,
  - (2) Evidence that existing Wireless Telecommunications Facilities do not have sufficient Height or cannot be increased in Height at a reasonable cost to meet the applicant's engineering requirements,
  - (3) Evidence that existing Wireless Telecommunications Facilities do not have sufficient structural strength to support applicant's proposed antenna and related equipment. Specifically:
    - (a) Planned, necessary equipment would exceed the structural capacity of the existing Wireless Telecommunications Facility, considering the existing and planned use of those Facilities, and these existing Facilities cannot be reinforced to accommodate the new equipment.
    - (b) The applicant's proposed antenna or equipment would cause electromagnetic interference with the antenna

on the existing towers or structures, or the antenna or equipment on the existing Wireless Telecommunications Facility would cause interference with the applicant's proposed antenna.

(c) Existing or approved Wireless Telecommunications Facilities do not have space on which planned equipment can be placed so it can function effectively.

(4) For Wireless Telecommunications Facilities existing prior to the effective date of this Ordinance, the fees, costs, or contractual provisions required by the owner in order to share or adapt an existing Wireless Telecommunication Facility are unreasonable. Costs exceeding the pro rata share of a new Wireless Telecommunication Facility development are presumed to be unreasonable. This evidence shall also be satisfactory for a tower built after the passage of this ordinance;

(5) Evidence that the applicant has made diligent good faith efforts to negotiate Colocation on an existing Wireless Telecommunication Facility, building, or structure, and has been denied access.

- x. A form of surety approved by the Select Board to pay for the costs of removing the Wireless Telecommunication Facility if it is abandoned.
- xi. Evidence that a notice of the application has been published in a local newspaper of general circulation in the community.

[(NEW), TM-05.14.2024, WA-36]

k. Additional Information for Solar Energy Systems

- i. A description of the owner of the Solar Energy System, the operator if different, and detail of qualifications and track record to run the facility.
- ii. If the operator will be leasing the land, a copy of the agreement (minus financial compensation) clearly outlining the relationship inclusive of the rights and responsibilities of the operator, landowner and any other responsible party with regard to the Solar Energy System and the life of the agreement.
- iii. A description of how and to whom the energy produced will be sold.

- iv. A copy of the agreement and schematic details of the connection arrangement with the transmission system (most likely Central Maine Power), clearly indicating which party is responsible for various requirements and how they will be operated and maintained.
- v. A description of the panels to be installed, including make and model, and associated major system components.
- vi. A construction plan and timeline, identifying known contractors, site control and anticipated on-line date.
- vii. An emergency management plan for all anticipated hazards.
- viii. A stormwater management plan, certified by a licensed Maine engineer, that demonstrates stormwater from the Solar Energy System will infiltrate into the ground beneath the Solar Energy System at a rate equal to that of the infiltration rate prior to the placement of the system.
- ix. A background noise measurement for the site location as per Section 13.Z, Noise.
- x. Proof of financial capacity to construct and operate the proposed Solar Energy System.
- xi. A decommissioning plan, including:
  - (1) A description of the trigger for implementing the decommissioning plan. There is a rebuttable presumption that decommissioning is required if 10% or less permitted capacity of electricity is generated for a continuous period of twelve (12) months. The Applicant may rebut the presumption by providing evidence, such as a *force majeure* event that interrupts the generation of electricity, that although the project has not generated electricity for a continuous period of twelve (12) months, the project has not been abandoned and should not be decommissioned.
  - (2) A description of the work required to physically remove all Solar Energy System and solar related components, including associated foundations, buildings, cabling, electrical components, and any other associated facilities to the extent they are not otherwise in or proposed to be placed into productive use. All earth disturbed during decommissioning must be graded and re-seeded, unless the landowner of the

affected land requests otherwise in writing and subject to Planning Board approval.

- (3) An estimate of the total cost of decommissioning value of the equipment and itemization of the estimated major expenses, including the projected costs of measures taken to minimize or prevent adverse effects on the environment during implementation of the decommissioning plan. The itemization of major costs may include, but is not limited to, the cost of the following activities: panel removal, panel foundation removal and permanent stabilization, building removal and permanent stabilization, transmission corridor removal and permanent stabilization and road infrastructure removal and permanent stabilization.
- (4) Demonstration in the form of a performance bond, surety bond, letter of credit, or other form of financial assurance as may be acceptable to the Select Board that upon the end of the useful life of the Solar Energy System the Applicant will have the necessary financial assurance in place for 150% of the estimated total cost of decommissioning, subject to a review of such cost by the Code Enforcement Officer. The financial assurance shall include a provision granting the Town the ability to access the funds and property and perform the decommissioning if the facility is abandoned or the Applicant or subsequent responsible party fails to meet their obligations after reasonable notice, to be defined in the agreement and approved by the Planning Board. For a Medium Scale Solar Energy System, the Applicant may propose securing the necessary financial assurance in phases, as long as the total required financial assurance is in place a minimum of five (5) years prior to the expected end of the useful life of the Solar Energy System.

[(NEW), TM-05.14.2024, WA-36]

#### **D. FINAL APPROVAL AND FILING**

1. No plan shall be approved by the Planning Board if the applicant has outstanding violations of this Ordinance.
2. The Planning Board shall confirm all Conditions of Approval are documented on Final Plans submitted for signature.

3. Once the board has determined the facts of the application and has determined that all standards in Title 30-A, M.R.S.A., Section 4404, and this Ordinance have been met, and upon voting to approve or amend the Application, the Planning Board shall sign the Final Plan.
  - a. The Applicant shall provide and the Planning Board shall sign:
    - i. Two (2) reproducible, minimum weight 20 pound white paper originals, of each sheet of the Final Plan required, one to be recorded at the Registry of Deeds, and the other to be filed at the Town Office. [(AMD), RF-11.02.21, ART. 2]
    - ii. One (1) paper copy of each sheet required of the Final Plan to be forwarded to the Code Enforcement Officer.
    - iii. The Plan(s) shall be provided in digital format as specified by the Planning Board.
    - iv. Space shall be provided for endorsement by the Planning Board in a format specified by the Planning Board.
  - b. Plans to be recorded with the County Registrar shall meet the following:
    - i. Be rolled, not folded, and shall have a dimension in inches of a minimum 11x17 and a maximum of 24x36 and be printed on white paper with a minimum weight of 20 pounds.
    - ii. Include a registrar's block no smaller than 3x3 inches for the register's purposes, and include a title block with the name of the plan, the record owner's name and address, the location by street and town and the date of the plan. They must be embossed, sealed or both with the seal of an architect, professional engineer, or professional land surveyor, and contain the signature and address of the plan preparer.

[(AMD), RF-11.02.21, ART. 2]
  - c. Any Final Plan not recorded in the Registry of Deeds within ninety (90) days of the date upon which the plan is approved and signed by the Planning Board shall be considered unapproved and shall require resubmission, review and approval.
4. Within thirty (30) days from the date of granting final approval, the applicant shall provide the Code Enforcement Officer with one complete set of all plans, specifications and documents as approved by the Planning Board.

5. No changes, erasures, modification, or revisions shall be made on the Final Plan presented for Planning Board signatures. The Planning Board shall make sure findings of the plan meet the standards of Title 30-A, M.R.S.A., Section 4404, and this Ordinance. In the event that a Plan is recorded without complying with this requirement, it shall be considered null and void, and the Planning Board shall have a notice placed in the Registry of Deeds to that effect.
6. The approval by the Planning Board of a proposed plan shall not be deemed to constitute or be evidence of any acceptance by the Town of any easement, or other open space shown on such plan. When a park, playground, or other recreation area shall have been shown on the plan to be dedicated to the Town, approval of the Plan shall not constitute an acceptance by the municipality of such areas. The Planning Board shall require the plan to contain appropriate notes to this effect. The Planning Board may also require the filing of a written agreement between the applicant and the Select Board covering future deed and title, dedication, and provision for the cost of grading, development, equipment, and maintenance of any such dedicated area. [(AMD), TM-03.05.19, ART-41]

**SECTION 11: RESERVED**

**SECTION 12: RESERVED**



## SECTION 13: GENERAL PERFORMANCE STANDARDS

**SECTION USER'S GUIDE:** *This section contains general performance standards with which all development proposals submitted for approval pursuant to this Ordinance must comply. In reviewing applications submitted pursuant to this Ordinance, the Planning Board shall consider the following performance standards.*

### A. CONFORMANCE WITH COMPREHENSIVE PLAN

All proposed developments regulated by this Ordinance shall be in conformity with the Comprehensive Plan and Policy Statements of the Town and with the provisions of all pertinent local ordinances and regulations, and State and Federal laws and regulations.

### B. MUNICIPAL SERVICES

The proposed development shall not have an unreasonable adverse impact on the municipal services including municipal road systems, fire department, police department, solid waste program, schools, recreational programs and facilities, and other municipal services and facilities. When the Planning Board finds, based on a recommendation of the Select Board and other departments and the results of any municipal impact analysis, that includes future tax payments that will support municipal services, that municipal services do not have the capacity to provide services to the proposed development, the Planning Board will require one or more of the following.

1. A voluntary payment to the Town of Newry to mitigate the direct impact to municipal services that has been identified as the consequence of the proposed subdivision. Any such payment shall be subject to the following provisions.
  - a. The Planning Board, with advice from the Select Board, shall find that the money offered will mitigate the identified direct impact of the development. [(AMD), TM-05.14.2024, WA-36]
  - b. The payment shall be held in a reserve account and may only be expended to fund capital improvements agreed to by the applicant and Planning Board to mitigate the identified direct impacts. [(AMD), TM-05.14.2024, WA-36]
  - c. The payment in all cases shall be expended within five years of collection, unless otherwise agreed upon the Planning Board and applicant.
  - d. Any payment not expended shall be refunded to the property owner(s) of record at the time of the refund with interest as earned by the Town of Newry for the period the payment was held by the Town.
2. The applicant will construct or pay to construct his proportional share of the required improvements necessitated by the development.

3. Require phasing of the subdivision or limiting the number of lots that can be developed at any one time to allow the expansion of municipal services over time.
4. Deny the development.

### **C. PRESERVATION AND ENHANCEMENT OF THE LANDSCAPE**

The landscape shall be preserved in its natural state insofar as practicable by minimizing tree removal, disturbance of soil, and retaining existing vegetation during construction. After construction is completed, landscaping shall be implemented that will define, soften or screen the appearance of off-street parking areas, buildings and other structures from the public right-of-way and abutting properties in order to enhance the physical design of the proposed development, and to minimize the encroachment of the proposed uses on neighboring land uses.

### **D. RELATION OF PROPOSED BUILDINGS TO ENVIRONMENT**

Proposed structures shall have a minimal adverse effect on the environmental and aesthetic qualities of the developed and neighboring areas. Special attention shall be paid to the bulk, location and height of the building(s) and such natural features as slope, soil type and drainage ways. For non residential structures the Planning Board shall consider the following criteria.

1. Architectural style is not restricted. Evaluation of the appearance of a project shall be based on the quality of its design and relationship to surroundings.
2. Buildings shall have good scale and be in harmonious conformance with permanent neighboring development.
3. Materials shall have good architectural character and shall be selected for harmony of the building with adjoining buildings.
4. Materials shall be selected for suitability to the type of buildings and the design in which they are used. Buildings shall have the same materials, or those that are architecturally harmonious, used for all building walls and other exterior building components wholly or partly visible from public roads.
5. Materials shall be of durable quality.
6. Building components, such as windows, doors and eaves, shall have good proportions and relationships to one another.
7. Colors shall be harmonious and shall use compatible accents.
8. Mechanical equipment or other utility hardware on roof, ground or buildings shall be screened from public view with materials harmonious with the building, or

they shall be located so visibility from any public road is minimized. System for wind and solar power and for telecommunications need not meet this standard.

9. Exterior lighting shall be part of the architectural concept. Fixtures, standards and all exposed accessories shall be harmonious with building design. All exterior lighting shall be shielded or hooded
10. Refuse and waste removal areas, service yards, storage yards, and exterior work areas shall be screened from view from public roads, using materials as stated in criteria for equipment screening.
11. Monotony of design in single or multiple building projects shall be avoided. Variation of detail, form and siting shall be used to provide visual interest. In multiple building projects, viable siting or individual buildings may be used to prevent a monotonous appearance.

#### **E. LAND NOT SUITABLE FOR BUILDING**

The following areas shall not be built on excluding road and driveway construction.

1. Land which is situated below the normal high water mark of any water body.
2. Land which is located within the one hundred (100) year floodplain, other than roads and driveways which shall be constructed to meet standards contained in the Shoreland Zoning Ordinance and/or Floodplain Management Ordinance where applicable, as identified by the Federal Emergency Management Agency, Flood Insurance Administration, unless the applicant shows proof through the submittal of materials prepared by a Professional Land Survey that the property in question lies at least one (1) foot above the one hundred (100) year flood level. The elevation of filled or made land shall not be considered.
3. Land which is part of a permanent road right-of-way or permanent road easement.
4. Land that has been created by filling or draining a pond or wetland that has not received approval for such filling and draining by the Army Corps of Engineers and/or the Maine Department of Environmental Protection.
5. Land that has been identified as significant wildlife habitat by the Maine Department of Inland Fisheries and Wildlife when a mitigation plan has not been approved by the Maine Department of Inland Fisheries and Wildlife.

## **F. TOPSOIL AND VEGETATION REMOVAL**

1. Topsoil shall be considered part of the development and shall not be removed from the site except for surplus topsoil from roads, parking areas, and building excavations, unless otherwise indicated on an approved site plan.
2. Sufficient residual vegetation shall be left intact to prevent soil erosion following forest practices, landscaping, and cutting of trees to provide access to direct sunlight. The Planning Board shall require a developer to take measures to correct and prevent soil erosion in the proposed development. [(AMD), TM-05.14.2024, WA-36]
3. To prevent soil erosion of shoreline areas (as defined), timber harvesting and clearing or removal of vegetation for development shall comply with the regulations set forth in the Shoreland Zoning Ordinance.

## **G. EROSION AND SEDIMENTATION CONTROL**

The following measures relating to conservation, erosion and sediment control shall be included where applicable as part of all projects submitted for review and approval under this Ordinance.

1. All excavation shall be undertaken by contractors Certified in Erosion and Sediment Control by the Maine Department of Environmental Protection.
2. The Code Enforcement Officer shall require the developer and/or owners to prevent soil erosion and sediment transport on the site and onto adjacent and downstream properties. Erosion control practices shall conform to the Maine Erosion and Sediment Control Best Management Practices (BMPs), Manual for Designers and Engineers. [(AMD), TM-05.14.2024, WA-36]
3. Erosion of soil and sedimentation of watercourses and water bodies shall be minimized by employing the following best-management practices:
  - a. Stripping of vegetation, soil removal and re-grading or other development shall be done in such a way as to minimize erosion;
  - b. Development shall keep cut-fill operations to a minimum and ensure conformity with topography so as to create the least erosion potential and adequately handle the volume and velocity of surface water run-off;
  - c. Whenever feasible, natural vegetation shall be retained, protected and supplemented;
  - d. The disturbed area and the duration of exposure shall be kept to a practical minimum;

- e. Disturbed soils shall be stabilized as quickly as practicable;
- f. Temporary vegetation or mulching shall be used to protect disturbed areas during development;
- g. Until the disturbed area is stabilized, sediment in the run-off water shall be trapped by the use of debris basins, sediment basins, silt traps or other acceptable methods;
- h. The top of a cut or the bottom of a fill section shall not be closer than ten (10) feet to an adjoining property, unless otherwise specified by the Code Enforcement Officer. [(AMD), TM-05.14.2024, WA-36]
- i. During grading operations, methods of dust control shall be employed wherever practicable.
- j. Whenever sedimentation is caused by stripping vegetation, re-grading or other development, it shall be the responsibility of the developer causing such sedimentation to remove it from all adjoining surfaces, drainage systems and watercourses and to repair any damage at his expense as quickly as possible.

## **H. STORMWATER MANAGEMENT**

1. For projects that require a Department of Environmental Protection (DEP) review under the Site Location of Development Act (SLODA), a stormwater management plan shall be submitted which complies with the SLODA permit and the requirements of DEP Chapter 500 Stormwater Regulations.
2. For projects that do not require a SLODA permit, but require a DEP permit under the Stormwater Law, a stormwater management plan shall be submitted which complies with the requirements of DEP Chapter 500 Stormwater Regulations.
3. For projects that neither require a SLODA permit, nor a DEP permit under the Stormwater Law, a stormwater management plan shall be submitted which incorporates adequate provision for the management of the quantity and quality of all storm water generated within the subdivision, and any drained ground water through a management system of swales, culverts, underdrains, storm drains and best management practices equivalent to those in the most recent edition of Stormwater Management for Maine: BMPS Technical Design Manual, published by the Maine Department of Environmental Protection.
4. Where necessary to achieve the above standards, there shall be provided easements or drainage rights-of-way with swales, culverts, catch basins or

other means of channeling surface water within the subdivision and over other properties.

5. The storm drainage system will not adversely affect neighboring properties, downstream water quality, or cause soil erosion. Whenever possible, on-site absorption of run-off waters shall be utilized to minimize discharges from the site.
6. Maintenance of drainage facilities or watercourses originating and completely on private property is the responsibility of the owner to the point of open discharge at the property line or at a communal watercourse within the property.

## **I. BORROW PITS**

This Ordinance applies to all borrow pits less than five (5) acres in size in the Town of Newry. Any pit less than one (1) acre in size needs only a permit by the Code Enforcement Officer. Any pit of between one (1) and of less than five (5) shall require a permit issued by the Planning Board. In issuing a permit for a borrow permit the Code Enforcement Officer or the Planning Board shall find the requirement in Sections 1 and 2 below will be met. When a pit is reviewed by the Planning Board Site Plan Review approval in accordance with this ordinance is required. For pits of five or more acres will require a permit issued by the Maine Department of Environmental Protection. The application and permit shall be filed with the Code Enforcement Officer. This includes gravel, sand, clay and pits used in the removal of other minerals.

1. General Restrictions
  - a. No borrow pit shall be excavated to a depth of any less than two (2) feet above the normal high water level of an identified aquifer.
  - b. No borrow pit shall have bank slopes of greater than 2 horizontal to 1 vertical.
  - c. No borrow pit shall be overhanging sod, earth or material which could present a dangerous condition.
  - d. No borrow pit shall be located closer to the nearest property line from the top of the 2 to 1 slope than twenty-five (25) feet for a pit less than one (1) acre; fifty (50) feet for pits of one (1) to five (5) acres.
  - e. No borrow pit shall be closer than sixty (60) feet to a public road or be excavated to a depth that may cause an unsafe condition with respect to the roadbed or utilities located within the right-of-way.
  - f. No borrow pit shall be located closer than one-hundred (100) feet from existing or an approved disposal system.

## 2. General Standards

- a. All borrow pits covered by this Ordinance shall have a visual buffer located between the pit and any public road.
- b. When conducting mineral exploration activities and creating and maintaining access ways, provisions shall be made to effectively stabilize all areas of disturbed soil of the borrow pit to avoid erosion and sedimentation of surface waters. These measures shall include seeding, mulching and fertilizing to insure effective stabilization.
- c. All borrow pits excavated below road level shall have a safety berm constructed between the pit and any public or private road. This shall be of sufficient height and thickness to prevent vehicles from accidentally entering the pit.
- d. All borrow pits between one (1) and five (5) acres shall be regraded, mulched and seeded within ninety (90) days from the date that the pit is determined by the Code Enforcement Officer to be played out.

## J. SITE CONDITIONS

1. During construction, the site shall be maintained and left each day in a safe and sanitary manner and any condition which could lead to personal injury or property damage shall be immediately corrected by the developer upon an order by the Code Enforcement Officer or other authorized personnel. The developer shall make provision for disposal of oil and grease from equipment and the site area should be regularly treated to control dust from construction activity.
2. Developed areas shall be cleared of all stumps, litter, rubbish, brush, weeds, dead and dying trees, roots and debris, and excess or scrap building materials shall be removed or destroyed immediately upon the request of and to the satisfaction of the Code Enforcement Officer.
3. No change shall be made in the elevation or contour of any lot or site other than as shown on the Final Plan. This includes the removal or addition of earth to or from another lot or site. Minimal changes in elevations or contours necessitated by the field conditions may be made as long as the change does not substantially or negatively impact the site. [(AMD), TM-05.14.2024, WA-36]

## K. PLUMBING

All plumbing and sewage disposal shall be in conformance with the State of Maine Law and the State Plumbing Code and Subsurface Waste Water Disposal Rules.

## **L. WATER SUPPLY**

1. The Planning Board may allow the use of individual wells or a private multi-user water supply system.
2. When a development is to be served by a multi-user water supply system, the complete supply system, including any required fire ponds and dry hydrants, shall be installed at the expense of the developer.
3. If a multi-user water supply system is provided by the developer, the location and protection of the source as well as the design, construction, and operation of the system shall conform to the standards of the Maine Rules Relating to Drinking Water (10144 A.C.M.R 231).

[(AMD), TM-03.05.19, ART. 41]

## **M. UTILITIES**

1. Any utility installations above ground shall be located so as to have a harmonious relation to neighboring properties and the site.
2. The size, type, and location of street lights and underground utilities shall be shown on the Final Plan and approved by the Planning Board.

## **N. SIGN STANDARDS**

Sign shall comply with the Town of Newry Sign Ordinance.

## **O. LIGHTING DESIGN STANDARDS**

1. In connection with each site plan, the applicant shall submit plans for all proposed exterior lighting. These plans shall include the location, type of light, radius of light, manufacturer's specification sheet and the intensity in foot-candles.
2. All exterior lighting shall be designed, shielded or hooded and located and maintained to avoid undue glare, adverse impacts on neighboring properties and rights-of-ways, and the unnecessary lighting of night sky.
3. All exterior lighting shall be designed to minimize adverse impact on neighboring properties.

## **P. DUST, FUMES, VAPORS, GASES, ODORS, GLARE, AND EXPLOSIVE MATERIALS**

1. Emission of dust, dirt, fly ash, fumes, vapors or gases which unreasonably affect human health, animals, vegetation or property or which could soil or stain persons or property, at any point beyond the lot line of the commercial or industrial establishment creating that emission, shall be prohibited.



2. No land use or establishment shall be permitted to produce unreasonable offensive or harmful odors perceptible beyond their lot lines, measured either at ground or habitable elevation, excepting normal agricultural practices.
3. No land use or establishment shall be permitted to produce a strong, dazzling light or reflection of that light beyond its lot lines onto neighboring properties or onto any private or public road so as to impair the vision of the driver of any vehicle upon that private or public road.
4. No highly flammable or explosive liquids, solids or gases shall be stored in bulk above ground, unless they are stored in compliance with the current requirements of the National Fire Protection Association (NFPA) and the State of Maine.

#### **Q. RESERVED**

#### **R. REFUSE DISPOSAL**

Construction and demolition debris disposal shall be paid for by the owner/applicant through the use of a roll-off and private disposal company. If, in the future, the town establishes a way to assess a fee for the town's waste disposal system, then disposal through the town may become an option. [(AMD), RF-11.02.21, ART. 2]

The applicant shall provide for the disposal of all hazardous, solid and liquid wastes on a timely basis and in an environmentally safe manner. The Planning Board shall consider the impact of particular industrial or chemical wastes or by-products upon the town's waste disposal system (in terms of volume, flammability or toxicity) and may require the applicant to dispose of such wastes elsewhere, in conformance with all applicable state and federal regulations. The Planning Board may require the applicant to specify the amount and exact nature of all industrial or chemical and hazardous wastes to be generated by the proposed operation.

#### **S. PROTECTION OF SIGNIFICANT FISHERIES AND WILDLIFE HABITAT**

Applicants proposing to develop land in or within 75 feet of fish or wildlife resources identified in the Newry Comprehensive Plan or by the Maine Department of Inland Fisheries and Wildlife shall consult with a recognized wildlife or fisheries consultant or the Maine Department of Inland Fisheries and Wildlife and provide their written comments to the Planning Board. The Planning Board may consult with the Maine Department of Inland Fisheries and Wildlife and may impose any recommendations by the Maine Department or consultant as conditions of approval.

## **T. SCENIC LOCATIONS**

The Planning Board shall consider the existence of a scenic site or view location as identified in the Newry Comprehensive Plan and the impact of the proposed development on such a site or view. The Planning Board may require the placement or visual qualities of structures on lots in such locations as to minimize the negative impacts of the development on such sites and views.

## **U. ARCHAEOLOGICAL SITES**

Any development activity involving structural development or soil disturbance on or adjacent to sites listed on, or eligible to be listed on the National Register of Historic Places, as determined by the Planning Board shall be submitted by the applicant to the Maine Historic Preservation Commission for review and comment, at least 20 days prior to action being taken by the permitting authority. The Planning Board shall consider comments received from the Commission prior to rendering any decision on the application.

## **V. HISTORIC LOCATIONS**

The Planning Board shall consider the proposed subdivision's impacts on historic buildings and sites as identified in the Newry Comprehensive Plan. When a proposed development will include a historic building or site the applicant will design the development to minimize the impacts on the historic building or site.

## **W. AGRICULTURAL PROTECTION BUFFER STRIPS**

The Planning Board may require buffer strips to separate new uses and agricultural uses. The purpose of the buffer strips is to separate new development that could conflict with active agricultural uses. In determining the width of the buffer strips and the uses allowed in the buffer strips, including wells, the Nutrient Management Law and Nutrient Management Rules shall be considered by the Planning Board.

## **X. VEHICULAR AND PEDESTRIAN TRAFFIC**

When conflicts exist between this Section and a Driveway Permit or Entrance Permit onto Routes 2 and 26 or the Sunday River Road to the Ski Way Road issued by the Maine Department of Transportation, the most stringent or restrictive shall apply.

1. Roads shall be designed and constructed to meet the minimum standards as provided for in Section 14, Road Design and Construction Standards. [(AMD), TM-05.14.2024, WA-36]
2. In general, provision shall be made for vehicular access to the development and circulation within the development in such a manner as to:

- a. Safeguard against hazards to traffic and pedestrians on existing roads and within the development.;
  - b. Minimize traffic congestion on any road;
  - c. Provide safe and convenient circulation on public roads and within the development;
  - d. Discourage through traffic in residential subdivisions; and
  - e. Should street lighting be required by the Planning Board it shall be installed by the developer as approved by the Planning Board. The cost of installation shall be the responsibility of the developer and comply with municipal specifications. [(AMD), TM-05.14.2024, WA-36]
3. Access Control.
- a. Where a lot has frontage on two or more roads, the access to the lot shall be provided to the lot across the frontage and to the road where there is lesser potential for traffic congestion and for hazards to traffic and pedestrians. This restriction shall be a condition of plan approval and as a deed restriction to the affected lots.
  - b. The Planning Board may require, based upon site distances and volume of traffic, the use of shared or common driveways, where such lots will be accessed by off-site public roads.
  - c. Where new road intersections or driveway curb cuts are proposed, site distances, as measured along the road onto which traffic will be turning, shall be in accordance with Section 14, Road Design and Construction Standards. [(AMD), TM-05.14.2024, WA-36]
4. Sidewalks or pedestrian easements may be required by the Planning Board to provide safe and convenient access to common areas, existing roads, playgrounds, or other public/private facilities.

## **Y. GROUND WATER PROTECTION**

The following standards shall be utilized by the Planning Board for reviewing development applications located on a mapped sand and gravel aquifer

1. The boundaries of sand and gravel aquifers shall be as delineated on the most recent Sand and Gravel Aquifer Maps prepared by the Maine Geological Survey.

2. When the boundaries of the sand and gravel aquifer are disputed due to lack of sufficient detail on available maps, the applicant or agent may submit hydro geologic evidence prepared by a geologist certified in the State of Maine which identifies actual field locations of the aquifer boundaries within the project area. The Planning Board may require actual field identification if they believe the Maine Geological Survey Maps are incorrect.
3. Based on the size, location, surrounding uses or other characteristics of the proposed use or site to determine compliance with the requirements of this section, the Planning Board may require submittal by the applicant of a hydro geologic impact study. The impact study shall be prepared by a State of Maine Certified Geologist with experience in hydro geology. The study shall contain the following components unless waived by a specific vote of the Planning Board. [(AMD), TM-05.14.2024, WA-36]
  - a. A map showing: (1) soil types; (2) surficial geology on the property; (3) the recommended sites for individual subsurface waste water disposal systems and wells in the development; and (4) direction of ground water flow. (The Planning Board expects the detail of this study to vary with the intensity of the development.)
  - b. The relationship of surface drainage conditions to ground water conditions.
  - c. Documentation of existing ground water quality for the site.
  - d. A nitrate nitrogen analysis or other contaminant analysis as applicable including calculation of levels at the property line(s) and well(s) on the property.
  - e. A statement indicating the potential sources of contamination to ground water from the proposed use and recommendations on the best technologies to reduce the risks.
  - f. For water intensive uses, analysis of the effects of aquifer drawdown on the quantity and quality of water available for other water supplies or potential water supplies.
  - g. The Planning Board may require installation and regular sampling of water quality monitoring wells for any use or proposed use deemed to be a significant actual or potential source of pollutants or excessive drawdown. The number, location and depth of monitoring wells shall be determined as part of the hydro geologic study, and wells shall be installed and sampled in accordance with "Guidelines for Monitoring Well Installation and Sampling" (Tolman, Maine Geologic Survey, 1983). Water quality sample results from monitoring wells shall be submitted to the Code Enforcement Officer with

evidence showing that contaminant concentrations meet the performance standard for pollution levels.

h. A list of assumptions made to produce the required information.

4. Conditions/Standards

a. No use including home occupations shall dispose of other than normal domestic waste water on-site without approval of the permit granting authority. Disposal of waste water shall be in strict compliance with the Maine Subsurface Wastewater Disposal Rules and other relevant State and local laws, rules and ordinances.

b. Indoor use or storage facilities where hazardous materials, wastes or other liquids with the potential to threatened ground water quality are used or stored shall be provided with containment which is impervious to the material being stored and have the capacity to contain 10 percent of total volume of the containers, or 110 percent of the volume of the largest container, whichever is larger.

c. Petroleum and Other Hazardous Material or Waste Transfer. A Spill Control and Countermeasure Plan shall be submitted and approved by the Planning Board.

d. In those areas identified as sand and gravel aquifers the following land uses are prohibited unless the Planning Board finds that no discharges will occur such that water quality at the property line will fall below State Drinking Water Standards and all provisions of this ordinance are met.

i. dry cleaners,

ii. photo processors,

iii. printers,

iv. auto washes,

v. laundromats,

vi. salt piles, sand-salt piles,

vii. wood preservers,

viii. industrial waste disposal/impoundment areas,

ix. landfills, dumps, transfer stations,

x. junk and salvage yards graveyards,

- xi. concrete/asphalt/tar/coal companies.

## Z. NOISE

The proposed development shall not raise noise levels to the extent that abutting or nearby residents are adversely affected.

### 1. Sound Level Limits

#### a. Sound from Routine Operation of Facility.

The hourly sound levels resulting from routine operation of the facility and measured in accordance with the measurement procedures described in subsection 4 (Measurement Procedures) shall not exceed the following limits:

The hourly sound levels resulting from routine operation of the Facility shall not exceed the following limits at that Protected Location:

- i. 55 dBA between 7:00 a.m. and 10:00 p.m. (the "daytime hourly limit"), and
- ii. 45 dBA between 10:00 p.m. and 7:00 a.m. (the "nighttime hourly limit").

For the purposes of determining compliance with the above sound level limits, 5 dBA shall be added to the measured levels of any tonal sounds that result from routine operation of the facility.

#### b. When routine operation of a facility produces short duration repetitive sound, that due to their character and/or duration, are particularly annoying or pose a threat to the health and welfare of nearby neighbors, 5 dBA shall be added to the observed levels of the short duration repetitive sounds that result from routine operation of the facility . The maximum sound level of the short duration repetitive sounds shall not exceed the following limits:

- i. 65 dBA between 7:00 a.m. and 10:00 p.m., and
- ii. 55 dBA between 10:00 p.m. and 7:00 a.m.

### 2. Sound from Construction and Maintenance of a Facility

#### a. The sound from construction activities between 7:00 p.m. and 7:00 a.m. is subject to the following limits:

- i. Sound from nighttime construction activities shall be subject to the nighttime routine operation sound level limits contained in subsections 1.a.

- ii. If construction activities are conducted concurrently with routine operation of the facility, then the combined total of construction and routine operation sound shall be subject to the nighttime routine operation sound level limits contained in subsections 1.a.
  - iii. Higher levels of nighttime construction sound are permitted when a duly issued permit authorizing nighttime construction sound in excess of these limits has been granted by the Codes Enforcement Officer.
- b. Sound from construction activities between 7:00 a.m. and 7:00 p.m. shall not exceed the following limits at any Protected Location:

Duration of Activity	Hourly Sound Level Limit
12 hours	87 dBA
8 hours	90 dBA
6 hours	92 dBA
4 hours	95 dBA
3 hours	97 dBA
2 hours	100 dBA
1 hour or less	105 dBA

- c. All equipment used in construction on the facility site shall comply with applicable federal noise regulations and shall include environmental noise control devices in proper working condition, as originally provided with the equipment by its manufacturer.
- d. Sound from routine, ongoing maintenance activities shall be considered part of the routine operation of the facility and the combined total of the routine maintenance and operation sound shall be subject to the routine operation sound level limits contained in section 1.
- e. Sound from occasional, major, scheduled overhaul activities shall be subject to the construction sound level limits contained in section 2.b. If overhaul activities are conducted concurrently with routine operation and/or construction activities, the combined total of the overhaul, routine operation and construction sound shall be subject to the construction sound level limits contained in section 2.b

3. The following uses and activities shall be exempt from the sound pressure level regulations:
  - a. The noises of safety signals, warning devices and emergency reassurance relief valves and any other emergency activity.
  - b. Traffic noise on roads.
  - c. Noise associated with snowmaking.
  - d. Noise associated with competitive, demonstration or exhibition snow events.

4. Measurement Procedures

- a. Scope. These procedures specify measurement criteria and methodology for use, with applications, compliance testing and enforcement. They provide methods for measuring the ambient sound and the sound from routine operation of the facility, and define the information to be reported. The same methods shall be used for measuring the sound of construction and maintenance activities.

- b. Measurement Criteria

- i. Measurement Personnel

Measurements shall be by personnel who hold professional qualifications in measurement and evaluation of environmental sound.

- ii. Measurement Instrumentation

- (1) A sound level meter or alternative sound level measurement system used shall meet all of the Type 1 or 2 performance requirements of American National Standard Specifications for Sound Level Meters, ANSI S1.4-1983.
    - (2) An integrating sound level meter (or measurement system) shall also meet the Type 1 or 2 performance requirements for integrating/averaging in the International Electrotechnical Commission Standard on Integrating-Averaging Sound Level Meters, IEC Publication 804 (1985).
    - (3) A filter for determining the existence of tonal sounds shall meet all the requirements of American National Standard Specification for Octave-Band and Fractional Octave-Band Analog and Digital Filters, ANSI S1.11-1986 for Order 3, Type 3-D performance.



- (4) An acoustical calibrator shall be used of a type recommended by the manufacturer of the sound level meter and that meets the requirements of American National Standard Specification for Acoustical Calibrators, ANSI S1.40-1984.
- (5) A microphone windscreen shall be used of a type recommended by the manufacturer of the sound level meter.

iii. Calibration

- (1) The sound level meter shall have been calibrated by a laboratory within 12 months of the measurement, and the microphone's response shall be traceable to the National Bureau of Standards.
- (2) Field calibrations shall be recorded before and after each measurement period and at shorter intervals if recommended by the manufacturer.

iv. Measurement Location, Configuration and Environment

- (1) Except as noted in subsection (ii) below, measurement locations shall be at nearby Protected Locations that are most likely affected by the sound from routine operation of the facility.
- (2) For determining compliance with the 75 dBA Protected Location hourly sound level limit described in subsection 1.a.i, measurement locations shall be selected at the Protected Locations of the proposed facility or contiguous property owned by the Applicant, as appropriate. [(AMD), TM-05.14.2024, WA-36)
- (3) The microphone shall be positioned at a height of approximately 4 to 5 feet above the ground, and oriented in accordance with the manufacturer's recommendations.
- (4) Measurement locations should be selected so that no vertical reflective surface exceeding the microphone height is located within 30 feet. When this is not possible, the measurement location may be closer than 30 feet to the reflective surface, but under no circumstances shall it be closer than 6 feet.

- (5) When possible, measurement locations should be at least 50 feet from any regulated sound source on the facility.
- (6) Measurement periods shall be avoided when the local wind speed exceeds 12 mph and/or precipitation would affect the measurement results.

c. Measurement of Ambient Sound

i. Pre-development Ambient Sound

- (1) Measurements shall be made at representative Protected Locations for periods of time sufficient to adequately characterize the ambient sound. At a minimum, measurements shall be made on three different weekdays (Monday through Friday) during all hours that the facility will operate. If the proposed facility will operate on Saturdays and/or Sundays, measurements shall also be made during all hours that the facility will operate.
- (2) Measurement periods with particularly high ambient sounds, such as significant insect activity should generally be avoided.
- (3) At any measurement location the daytime and nighttime ambient hourly sound level shall be computed by arithmetically averaging the daytime and nighttime values of the measured one hour equivalent sound levels. Multiple values, if they exist, for any specific hour on any specific day shall first be averaged before the computation described above.

ii. Post-Facility Ambient Sound

- (1) Measurements of the post-facility ambient one hour equivalent sound levels and, if short duration repetitive sounds are produced by the facility, the maximum sound levels made at nearby Protected Locations and during representative routine operation of the facility that are not greater than the applicable limits of section 3 clearly indicate compliance with those limits.
- (2) Compliance with the limits of subsection 1.a may also be demonstrated by showing that the post-facility ambient hourly sound level, measured in accordance with the proce-

dures of subsection c.i above during routine operation of the facility, does not exceed the pre-development ambient hourly sound level by more than one decibel, and that the sound from routine operation of the facility is not characterized by either tonal sounds or short duration repetitive sounds.

- (3) Compliance with the limits of section 1.a.i.(b) may also be demonstrated by showing that the post facility maximum sound level of any short duration repetitive sound, measured in accordance with the procedures of subsection c.i above, during routine operation of the facility, does not exceed the pre-development ambient hourly sound level by more than five decibels.

- iii. If any of the conditions in (a), (b) or (c) above are not met, compliance with respect to the applicable limits must be determined by measuring the sound from routine operation of the facility in accordance with the procedures described in section 4.

d. Measurement of the Sound from Routine Operation of Facility.

i. General

- (1) Measurements of the sound from routine operation of facilities are generally necessary only for specific compliance testing purposes in the event that community complaints result from operation of the facility, for validation of an Applicant's calculated sound levels when requested by the planning board, for determination of existing hourly sound levels for an existing facility or for enforcement by the Codes Enforcement Officer.
- (2) Measurements shall be obtained during representative weather conditions when the facility sound is most clearly noticeable. Preferable weather conditions for sound measurements at distances greater than about 500 feet from the sound source include overcast days when the measurement location is downwind of the facility and inversion periods (which most commonly occur at night).
- (3) Measurements of the facility sound shall be made so as to exclude the contribution of sound from facility equipment that is exempt from this regulation.

## ii. Measurement

- (1) When the ambient sound levels are greater than the sound level limits, additional measurements can be used to determine the hourly sound level that results from routine operation of the facility. These additional measurements may include diagnostic measurements such as measurements made close to the facility and extrapolated to the Protected Location, special check mark measurement techniques that include the separate identification of audible sound sources, or the use of sound level meters with pause capabilities that allow the operator to exclude non-facility sounds.
- (2) For the purposes of computing the hourly sound level resulting from routine operation of the facility, sample diagnostic measurements may be made to obtain the one hour equivalent sound levels for each sound component.
- (3) Identification of tonal sounds produced by the routine operation of a facility for the purpose of adding the 5 dBA penalty in accordance with section 1.a.i.(a) requires aural perception by the measurer, followed by use of one-third octave band spectrum analysis instrumentation. If one or more of the sounds of routine operation of the facility are found to be tonal sounds, the hourly sound level component for tonal sounds shall be computed by adding 5 dBA to the one hour equivalent sound level for those sounds.
- (4) Identification of short duration repetitive sounds produced by routine operation of a facility requires careful observations. For the sound to be classified as short duration repetitive sound, the source(s) must be inherent to the process or operation of the facility and not the result of an unforeseeable occurrence. If one or more of the sounds of routine operation of the facility are found to be short duration repetitive sounds, the hourly sound level component for short duration repetitive sounds shall be computed by adding 5 dBA to the one hour equivalent sound level for those sounds. If required, the maximum sound levels of short duration repetitive sounds shall be measured using the fast response [LAFmax]. The duration and the frequency of occurrence of the events shall also be measured.

In some cases, the sound exposure levels of the events may be measured. The one hour equivalent sound level of a short duration repetitive sound may be determined from measurements of the maximum sound level during the events, the duration and frequency of occurrence of the events, and their sound exposure levels.

- (5) The daytime or nighttime hourly sound level resulting from routine operation of a facility is the energy sum of the hourly sound level components from the facility, including appropriate penalties, (see (c) and (d) above). If the energy sum does not exceed the appropriate daytime or nighttime sound level limit, then the facility is in compliance with that sound level limit at that Protected Location.
- e. Reporting Sound Measurement Data. The sound measurement data report should include the following:
- i. The dates, days of the week and hours of the day when measurements were made.
  - ii. The wind direction and speed, temperature, humidity and sky condition.
  - iii. Identification of all measurement equipment by make, model and serial number.
  - iv. The most recent dates of laboratory calibration of sound level measuring equipment.
  - v. The dates, times and results of all field calibrations during the measurements.
  - vi. The applicable sound level limits, together with the appropriate hourly sound levels and the measurement data from which they were computed, including data relevant to either tonal or short duration repetitive sounds.
  - vii. A sketch of the site, not necessarily to scale, orienting the facility, the measurement locations, topographic features and relevant distances, and containing sufficient information for another investigator to repeat the measurements under similar conditions.
  - viii. A description of the sound from the facility and the existing environment by character and location.

## AA. BUFFERS AND SCREENING STANDARDS

Buffers may be considered in or for the following areas and purposes:

1. Along property lines to shield incompatible uses from each other;
2. Along interior roads running parallel to roads exterior to the site, to prevent confusion, particularly at night;
  - a. Parking areas, garbage collection areas, and loading and unloading areas; and
  - b. To block prevailing wind patterns and to stop wind-borne debris from leaving the site.
3. Buffers in the form of fences, landscaping, berms and mounds may be required to minimize any adverse impacts or nuisance on the site or on adjacent properties.
4. All plantings shall be of a type and species appropriate for the soil types and climatic conditions in the Town of Newry.
5. Buffers shall be sufficient to shield structures and uses from the view of incompatible abutting properties and public road ways, and to otherwise prevent any nuisances.
6. Exposed storage areas, service areas, exposed machinery installation, sand and gravel extraction operations, truck-loading areas, utility buildings and structures, and areas used for the storage or collection of discarded automobiles, auto parts, metals or any other articles of salvage or refuse, and similar accessory areas and structures, shall have sufficient setbacks and screening to provide an audio/visual buffer sufficient to minimize their adverse impact on other land uses within the development site and surrounding properties, such as a stockade fence or a dense evergreen hedge six (6) feet or more in height.
7. Where a potential safety hazard to children would be likely to arise, physical screening sufficient to deter small children from entering the premises shall be provided and shall be maintained in good condition.
8. Natural features shall be maintained wherever possible to provide a buffer between the proposed development and incompatible abutting properties and public roadways. When natural features such as topography, gullies, stands of trees, shrubbery, rock outcrops do not exist or are insufficient to provide a buffer, other kinds of buffers shall be considered.

9. Evergreens can be used as buffers, provided they are planted properly. An evergreen buffer requires two (2) or more rows of staggered plantings. The rows should be a maximum of five (5) feet apart and the evergreens planted a maximum distance of four (4) feet on center, or an alternative spacing as approved by the Planning Board based on the approved plant species. Evergreens shall be a minimum of six (6) feet high at the time of planting. [(AMD), RF-11.02.21, ART. 2]
10. Fencing and screening shall be durable and properly maintained at all time by the owner. Fencing and screening shall be so located within the property line to allow access for maintenance on both sides without intruding upon abutting properties.
11. All buffer areas shall be maintained in a neat, sanitary, and vigorous condition by the owner. [(AMD), RF-11.02.21, ART. 2]

## **AB. HOME OCCUPATIONS**

Home Occupations which do not meet the criteria contained in Section 1.D.5 a-e shall obtain a permit from the Planning Board and comply with the following conditions:

1. The business must be incidental and secondary to the primary residential use of the premises;
2. At least one member of the residential household must own the business and be actively involved in the business and have control over the business activities. There will be not more than two full or part-time employees working on the premises, other than immediate family members residing on the premises;
3. The appearance of the structure or accessory structure may not be altered, except as provided under subsection 4 below and the occupation within the residence must be conducted in a manner that would not cause the residence to differ from its residential character by means of colors, lights or sounds;
4. Additions to the residence or accessory structure for the express purpose of a home occupation shall be constructed and finished in the same manner as the original structure such that the character and appearance of the principal structure is maintained.
5. Retail sales shall be limited to the sale of products or goods produced, fabricated or substantially altered on the premises as a result of the home occupation. This may include products that are not manufactured on the premises as defined above, but which are customarily incidental to the product created by the home occupation.
6. There is adequate off-street parking on the premises for customer or client use.

7. There is no objectionable increase in vehicle traffic over that traffic normal for the neighborhood.
8. It does not adversely affect any natural resource or environmentally sensitive area including, but not limited to, a wetland, aquifer, watercourse, or water body.
9. The home occupation shall not generate any nuisance, waste discharge, offensive noise, vibration, smoke, dust, odors, heat, glare, radiation, fumes, or electrical interference detectable to the normal senses or which interferes with normal radio or television reception, or causes other nuisances which extend beyond the limits of the subject property. All waste material from the home occupation shall be removed promptly from the premises, according to state laws and local ordinances.

## **AC. LIFE SAFETY and FIRE SUPPRESSION**

### **1. Fire Protection Options**

All subdivisions (major or minor) created or amended on or after the effective date of this performance standard shall implement one of the following options to provide fire protection within the subdivision. [(AMD), TM-05.14.2024, WA-36]

- a. Install within each dwelling unit as defined by this ordinance the appropriate NFPA 13 sprinkler system.
- b. Install or provide proof of deeded access to a 60,000 gallon water storage facility with appropriate hydrant constructed as outlined in subsections 4, 5, and 6 below. [(AMD), RF-11.02.21, ART. 2], [(AMD), TM-05.14.2024, WA-36]

c. Deleted (AMD), TM-05.14.2024, WA-36]

### **2. Documentation of Approved Fire Protection Option**

Approved option, ownership and maintenance responsibility shall be depicted in detail on the Final Plan. [(AMD), TM-05.14.2024, WA-36]

### **3. Sprinkler Systems**

A fire sprinkler permit shall be obtained from the State Fire Marshall's Office. A copy of which, when obtained, shall be submitted to the Code Enforcement Officer. [(AMD), TM-05.14.2024, WA-36]

### **4. Location of-water storage facilities:**

The location of water storage facilities for fire fighting shall not exceed the following: [(AMD), TM-05.14.2024, WA-36]



- a. Not more than 1,500 linear road feet and 300 feet vertically measured from hydrant head to the mid point of the lot's road frontage on which lot the dwelling is located.
- b. Roads used to determine the distances in Section 4.a above must meet the standards of Section 14 of this Ordinance.

[(AMD), RF-11.02.21, ART. 2]

## 5. Water Storage Facilities

The purpose of water storage facilities for fire fighting shall be to meet a water supply requirement of five hundred (500) gallons per minute for the duration of two (2) hours. Water delivery may be through either dry or wet hydrants.

Water storage facilities:

- a. Must be engineered and certified compliant with requirements set forth in NFPA 22: Standard for Water Tanks for Private Fire Protection. Proof of engineering or tank compliance with these applicable standards are required to be submitted as part of the Final Plan.
- b. That were originally designed for purposes other than firefighting water supplies will not be accepted as an approved below-grade water supply.
- c. Shall be equipped with a visual gauge above ground to clearly display the tank water level.
- d. Shall be protected and maintained by owner, from disturbance of frost and other natural soil actions.
- e. Shall be graded smooth with a maintained surface, by owner, to be free of trees, shrubs, brush and grass fourteen (14) inches or higher.
- f. Shall be inspected at least monthly by the owner or designated representative. A written record of such inspections and all maintenance performed must be kept and provide to the Code Enforcement Officer upon request.
- g. Shall be kept filled to designed capacity by the owner. It is the owner's responsibility to notify the Town immediately upon the discovery if designed capacity can not be maintained.
- h. Shall provide a deeded right of way or easement to the Town to allow the inspection, testing, training and emergency use in perpetuity.

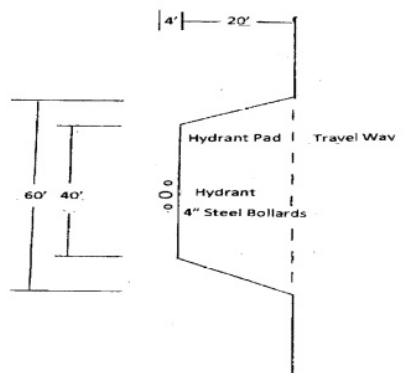
[(AMD), TM-05.14.2024, WA-36]

## 6. Hydrants

The applicant and the Code Enforcement Officer shall be in agreement of final hydrant placement before any hydrants are installed. All hydrants and their access, placement, associated piping and materials are to be installed as follows: [(AMD), TM-05.14.2024, WA-36]

- a. All hydrants must be maintained by owner and accessible for use at all times throughout the entire year. Snow will be removed from around any

Figure A.C. 1



Amendments Adopted March 3, 2015

hydrant, so that fire equipment can maneuver next to and around the hydrant area

- b. Access and location of hydrants shall comply with figure AC. 1. and hydrant pad area shall be no greater than two (2) percent slope.
- c. In cases where the hydrant cannot be located in compliance with Section 13.AC.4.b. an access road built to standards for a Neighborhood Road as specified in Section 14, Road Design and Construction Standards, shall be constructed accessing the hydrant. The owner will be responsible for maintaining the access road to the hydrant and around the hydrant itself. The hydrant pad area shall be no greater than two (2) percent slope. The access road shall be posted as No Parking Fire Lane. [(AMD), TM-05.14.2024, WA-36]

- d. A deeded right of way or easement shall be given to the Town of Newry to allow the inspection, testing and emergency use of all water storage facilities and hydrants in perpetuity. [(AMD), TM-05.14.2024, WA-36]
- e. Fencing is optional, however if a fence is provided it shall be maintained by owner and have a gated access point and a lock box shall be installed holding keys for the gate. Keys for the lock box shall be provided to the Newry Fire Department. The hydrant may be located outside the fence.
- f. All hydrants shall be primed and then painted with red fluorescent paint and protected by a minimum of two, four (4) inch steel bollards placed parallel in line to the pull up parking area three (3) feet on each side of hydrant. Bollards shall be primed and then painted with red fluorescent paint and white reflective tape affixed to the upper (3) inches of bollard.
- g. All Hydrants shall be installed and maintained by owner, to not have any trees, shrubs, brush or grass fourteen (14) inches or higher within ten (10) feet in front of hydrant and within 5 feet in back of hydrant.
- h. Dry hydrants are defined as a non pressurized water pipe installed in a water source where water is obtained by suction through a fire trucks on-board pump. Dry hydrants shall be installed in accordance with the following standards.
  - i. The maximum amount of lift permitted for a dry hydrant shall be fifteen (15) feet, as measured from the surface of the water to the center of the hydrant hose connection.
  - ii. A suction screen shall be formed in the end of the steel or PVC pipe so as not to impede or restrict any water flow by volume. The suction screen shall be raised off the bottom of any fire pond twenty-four (24) inches, and be twenty-four (24) inches away from any of the sides of the pond.
  - iii. A minimum of six (6) inch schedule (40) steel or PVC piping and fittings shall be utilized from the suction screen to one (1) ninety (90) degree elbow or two (2) forty five (45) degree elbows raising the hydrant above the graded surface.
  - iv. The piping from the suction screen to the ninety (90) degree elbow for the riser below ground shall be schedule forty (40) steel or PVC pipe with a distance of no more than 50 feet.
  - v. The riser piping and ninety (90) degree elbows shall be schedule forty (40) steel or PVC.

- vi. The riser piping shall be exposed above grade level thirty-six (36) inches as measured from the center of the hydrant opening to the grade level of the fire equipment's parking location.
- vii. The ninety (90) degree elbow below ground shall have six (6) feet of cover measured from elbow to finished grade.
- viii. The hydrant hose connection shall be aluminum or bronze with six (6) inch National Standard Thread (NST). Additional piping and fittings shall be a minimum of schedule forty (40) steel or PVC.
- ix. All pipe connections shall be cleaned and welded so as to provide air-tight connections.
- i. Wet hydrants are defined as hydrants, which under normal conditions have a positive water pressure.
- j. All Pressure Hydrants shall be NFPA Standard 24.
- k. Static Pressure at the hydrant shall be greater than zero (0) pounds per square inch and less than one hundred and fifty (150) pounds per square inch.
- l. Wet hydrants shall be placed not more than four (4) feet from the edge of the road shoulders.

7. Fire Ponds

All fire ponds that were placed in service prior to the latest amendment to this performance standard are deemed to be nonconforming structures and are subject to Section 23.I., Nonconforming Structures, Uses and Lots. In addition, these fire ponds:

- a. Shall be maintained by their owner to not have any trees, shrubs, brush or grass fourteen (14) inches or higher with ten (10) feet of the high water mark.
- b. Shall be dredged, by its owner, if it becomes affected by vegetation and or silt as determined by the Code Enforcement Officer.
- c. Shall maintain all installed hydrants so as to meet the standards for hydrants in this Performance Standard.

[(NEW), TM-05.14.2024, WA-36]

## **AD. COMMERCIAL WIND ENERGY FACILITIES**

In addition to other the standards contained in this Ordinance Commercial Wind Energy Facilities shall comply with the following. Where conflicts occur between these and other standards of this Ordinance the more restrictive shall apply. [(AMD), TM-05.14.2024, WA-36]

1. Design Safety Certification

Each Wind Turbine shall be certified that it conforms to all applicable industry standards including those of the American National Standards Institute (ANSI) and at least one of the following: Underwriters Laboratories, Det Norske Veritas, Germanischer Lloyd Wind Energies, or other similar certifying organization.

2. Structure Type

With the exception of Meteorological (MET) Towers, towers shall be monopoles with no guy wires.

3. Blade Clearance

The minimum distance between the ground and all blades of a Wind Turbine shall be 25 feet as measured at the lowest arc of the blades.

4. Signal Interference

The Wind Energy Facility shall not produce electromagnetic interference with radio, television, cellular service or internet reception.

5. Overspeed Controls and Brakes

Each Wind Turbine shall be equipped with an overspeed control system that includes both an aerodynamic control such as stall regulation, variable blade pitch, or other similar system, and a mechanical brake that operates in fail safe mode certified by the manufacturer.

6. Voltage Warnings

A clearly visible warning sign that conform to applicable ANSI and OSHA standards concerning voltage must be placed at the base of all pad-mounted transformers and substations.

7. Visual Appearance

a. A Wind Turbine shall have a non-obtrusive color such as white, off-white or gray, with a matte finish, or as may otherwise be required by another governmental agency with jurisdiction over the Wind Energy Facility.

- b. A Wind Turbine shall not be lighted artificially, except to the extent consistent with Federal Aviation Administration recommendations or other applicable authority that regulates air safety or as is otherwise required by another governmental agency with jurisdiction over the Wind Energy Facility.
  - c. A Wind Turbine shall not be used to support signs and shall not display advertising except for reasonable and incidental identification of the turbine manufacturer, facility owner and operator, and for warnings.
8. Shadow Flicker and Blade Reflection
- Shadow flicker and blade reflection shall not result in the following:
- a. More than 30 hours of flicker per year on any non-participating occupied building regardless in which municipality it may be located.
  - b. b. More than 10 hours of flicker per year on any public or private road that interferes with traffic movement safety.
  - c. Flicker at intersections of any public and/or private roads that interferes with traffic safety.
9. Use of Public Roads
- a. The Applicant shall identify all municipal maintained public roads to be used, to transport earthen materials, equipment and parts for construction, operation or maintenance of a Wind Energy Facility.
  - b. The Town Engineer or a qualified third-party engineer retained by the Planning Board and paid for by the Applicant shall document road and bridge conditions prior to construction. The Town Engineer or third-party engineer shall document road and bridge conditions again thirty (30) days after construction is complete or as weather permits and provide an assessment to the Planning Board of damage to roads and bridges attributable to the Wind Energy Facility construction.
  - c. The Applicant shall demonstrate, to the satisfaction of the Planning Board, that it has financial resources sufficient to comply with subsection d, below, and the Planning Board shall require the Applicant to post a bond or other security in order to ensure such compliance.
  - d. Road and/or bridge damage determined to have been caused by the Applicant or its contractors shall be repaired to the satisfaction of the Town Engineer or third-party engineer at the Applicant's expense in the time period specified by the Town Engineer or third-party engineer.

## 10. Safety Setbacks

Wind Turbines shall be set back, at a minimum, a horizontal distance equivalent to 150% of the Turbine Height from property boundaries, public and private rights-of-way and overhead utility lines that are not part of the proposed Generating Facility, regardless of the municipality in which located, except that the Planning Board may allow a reduced setback if the Applicant submits, in writing a legally binding waiver of the property boundary setback signed by the pertinent abutting landowner.

## 11. Local Emergency Services

- a. The Applicant shall provide a copy of the project summary and site plan to local emergency service providers, including paid or volunteer fire department(s).
- b. Upon request, the Applicant shall cooperate with emergency service providers to develop and coordinate implementation of an emergency response plan.
- c. A Wind Turbine shall be equipped with an appropriate fire suppression system to address fires within the Nacelle portion of the turbine or shall otherwise address the issue of fire safety to the satisfaction of the Planning Board.

## 12. Insurance

The Applicant, Owner/operator and Licensee, as applicable, shall maintain a current appropriate insurance policy for the Wind Energy Facility that covers bodily injury and property damage in an amount commensurate with the scope and scale of the Wind Energy Facility, and acceptable to the Planning Board, which acceptance shall not be unreasonably withheld. Certificates of insurance shall be provided to the Town annually.

The policy must include the requirement that the Town will be provided at least ten days notice by the policy provider in the case of cancellation or change to the policy.

## 13. Public Inquiries and Complaints

- a. The Applicant or its designee shall maintain a phone number and identify a responsible person for the public to contact with inquiries and complaints throughout the life of the Wind Energy Facility.
- b. The Applicant or its designee shall provide the Code Enforcement Officer with a written notice that a complaint has been received within 10 days of

its receipt. Then within 20 days of the date that the applicant or its designee received the complaint the applicant or its designee shall provide the Code Enforcement Officer with written notice of how the complaint was responded to.

#### 14. Decommissioning

The Wind Energy Facility shall be decommissioned within twelve months after it ceases to generate electricity, or after any permit has been revoked.

- a. Decommissioning shall include removal and disposal off-site of all parts of the Wind Energy Facility (including foundations) in accordance with local, state and federal laws and regulations. Areas of disturbed earth shall be graded, reseeded, or otherwise re-vegetated, unless the landowner of the affected land requests otherwise in writing.
- b. A Licensed Professional Engineer shall be retained by the Planning Board and paid for by the Applicant to estimate the total cost of decommissioning and itemization of the estimated major expenses, including the projected costs of measures taken to minimize or prevent adverse effects on the environment during implementation of the decommissioning plan. The itemization of major costs may include, but is not limited to, the cost of the following activities: turbine removal, turbine foundation removal and permanent stabilization, building removal and permanent stabilization, transmission corridor removal and permanent stabilization and road infrastructure removal and permanent stabilization
- c. No permit for a Wind Energy Facility shall be issued until Decommissioning Funds have been posted by the Applicant with a bonding company or a Federal or State-chartered lending institution (the Escrow Agent) authorized to conduct such business in the State of Maine and approved by the Select Board; provided, however that if the Applicant posts a guarantee for Decommissioning Funds with the State of Maine under an order by the Maine Department of Environmental Protection, then the Applicant shall not also provide Decommissioning Funds to the Town under this provision.  
[(AMD), TM-05.14.2024, WA-36]
- d. Every five (5) years subsequent to approval, the Wind Energy Facility Owner/Operator shall provide a current estimate of decommissioning costs to the Select Board on or by the date of the anniversary of the granting of a Wind Energy Facility Permit. Upon the Select Board's acceptance of the revised estimates, the Owner/Operator of the Wind Energy Facility shall adjust and maintain Decommissioning Funds that are at least equal to the most recent Town accepted estimate [(AMD), TM-05.14.2024, WA-36]



- e. Decommissioning funds may be in the form of a performance bond, surety bond or other form of financial assurance acceptable to the Select Board.
- f. If the Owner/Operator of the Wind Energy Facility does not complete decommissioning within the prescribed time period the Town may take such action as necessary (including court action, with all legal costs to be paid by applicant) to secure the posted Decommissioning Funds and to ensure completion of the decommissioning.
- g. The Escrow Agent shall not release the Decommissioning Funds except upon written approval of the Select Board.

## **AE. MINERAL EXPLORATION OR EXTRACTION**

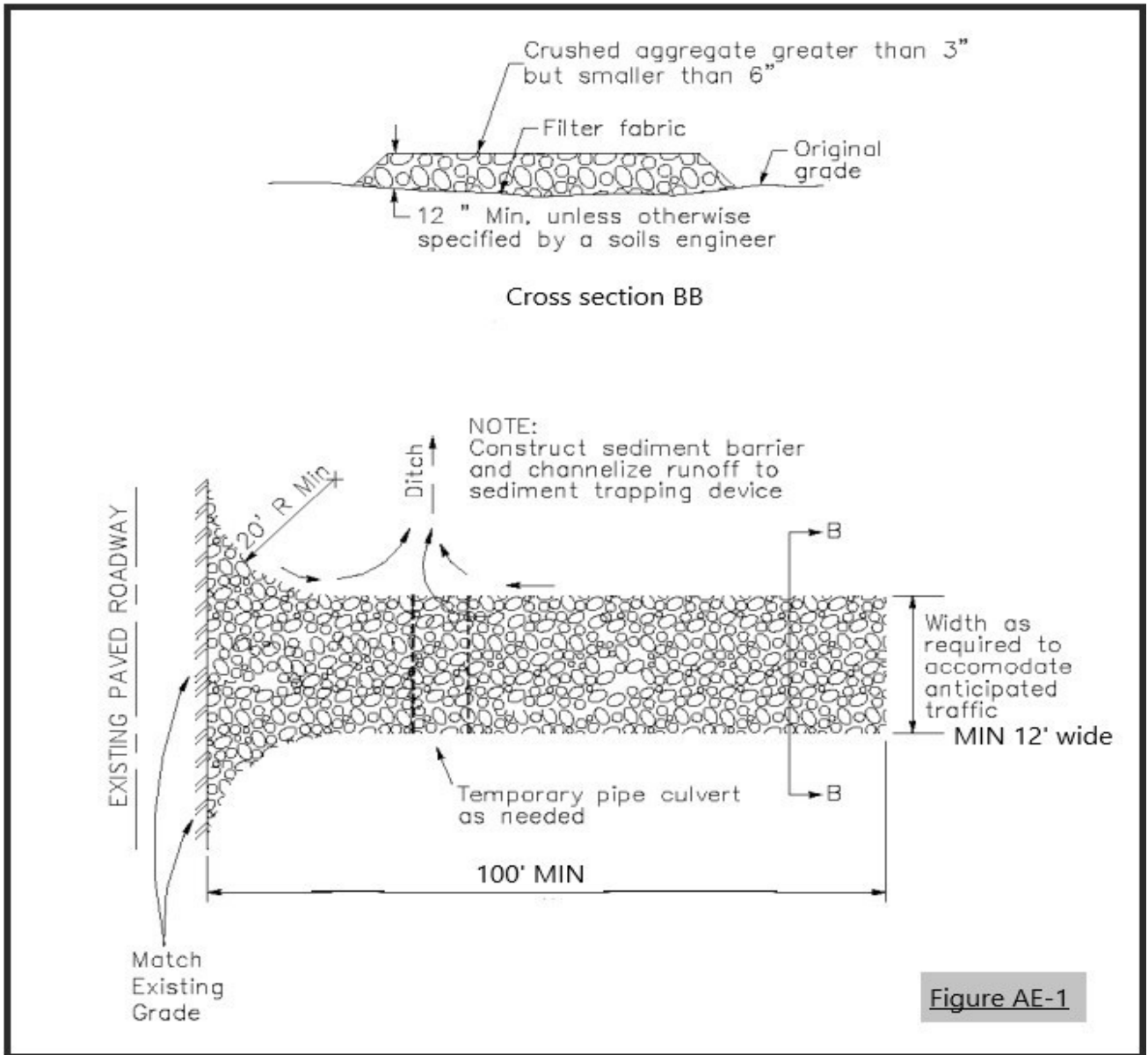
This section applies to all mining operations that do not meet the definition of a borrow pit and are being performed for commercial gain, or to extract materials being used off-site. Where mining takes place in Shoreland zoning districts, the provisions of the Shoreland Zoning Ordinance apply and the more restrictive of the two shall govern. Mineral extraction sites one-quarter ( $\frac{1}{4}$ ) of an acre in size to one (1) acre in size require a permit from the Code Enforcement Officer. Any operation with an aggregate area of greater than one (1) acre in size shall require a permit issued by the Planning Board. In issuing a permit for a mining operation the Code Enforcement Officer or the Planning Board shall find the requirement in Sections 1 through 3 below will be met. When an operation is reviewed by the Planning Board Site Plan Review approval in accordance with this ordinance is required.

- 1. General Restrictions
  - a. No operations shall be excavated to a depth of any less than two (2) feet above the normal high water level of an identified aquifer.
  - b. No part of any extraction operation, including drainage and runoff control features, shall be permitted within seventy-five (75) feet, horizontal distance, of the normal high-water line of any water body, tributary stream, or wetland.
  - c. Extraction operations shall not be permitted within one-hundred (100) feet, horizontal distance, of any property line without written permission of the owner of such adjacent property.
  - d. No mining activities will take place on sustained slopes steeper than 20% and sustained for an aggregate area of 10,890 square feet, unless the area is to be removed and regraded such that the slopes are made less steep.

- e. Extraction techniques that involve open ponds or fields with salt, chemicals or other solutions that harm the ability of on-site native soils to support healthy and diverse plant life, and could be harmful to invertebrates and fish in nearby waters, are prohibited.

## 2. General Standards

- a. Hours of Operation. The hours of operation for activities that generate noise, light, fumes, dust may be restricted by the Planning Board.
- b. Lighting. All exterior lights shall use hoods and lenses that cast light downward.
- c. Vibration and Blasting. Operations shall comply with all local, state, and federal law, rule or regulation pertaining to blasting activities. Upon request by the town, the operator shall provide access to blasting logs. Blasting may occur Monday through Friday from 7 a.m. to 5 p.m. Blasting is not allowed on Saturdays, Sundays, and Federal Holidays.
  - i. Log Details. An accurate blasting log shall be prepared and maintained for each blast fired. Each blasting log shall include, but not be restricted to the following information: time and date of blast, diagram of blast hole layout, number and dimensions of blast hole, pounds of explosives used, distance to closest habitable structure.
  - ii. Blasting shall be conducted in a manner designed to prevent injury to persons or damage to property.
- d. In keeping with the purposes of this Ordinance, the Planning Board may impose such conditions as are necessary to minimize the adverse impacts associated with mineral extraction operations on surrounding uses and resources.
- e. Where an access road joins a public or private road a stabilized construction entrance shall be installed and maintained to ensure that mud is not tracked onto roadways, in conformance with the MDEP's "Maine Erosion Control and Sediment Control Practices Field Guide for Contractors," 2014 or more current version.
- f. Access road design for a stabilized construction or a permanent entrance involves a pad of aggregate underlain with filter cloth located at any point where traffic will enter a public roadway. Figure AE-1 details the construction standard for the Town of Newry.



Inspections shall be made daily to ensure that mud and dirt are not tracked into the public roadway; top dressing may be required especially if the subgrade is soft or becomes saturated; daily cleaning of the public roadway of any residual mud and dirt. Do not wash excess mud and dirt into the storm water road drainage swales or nearby streams and rivers.

3. Additional Submittals for Site Plan Review

- a. A reclamation plan shall be filed with the Town. The plan shall include but not be limited to the following: [(AMD), TM-05.14.2024, WA-36]
  - i. All reclaimed slopes must be structurally stable and harmonious with the surrounding environment. Techniques shall be utilized to prevent

sliding, slumping and heaving, and slopes steeper than 3:1 (horizontal:vertical) will have engineered solutions, or be avoided.

- ii. Temporary erosion control methods shall be utilized and an erosion control plan provided showing what methods will be used, and specifications for methods and materials including seed mixes.
  - iii. Reclamation plan shall include a planting design and any topsoil or other additives required on site in order to grow vigorous vegetation.
  - iv. Planting shall result in evenly distributed vegetation such that 90% of the reclaimed area is covered with vigorous growth within 18 months of seeding and planting.
  - v. All structures, roads, staging areas and unvegetated surfaces that were part of the mining operations shall be removed, unless they are required for post-closure maintenance or care, as approved by the town.
  - vi. Soil which is stripped or removed must be stockpiled for use in reclaiming disturbed land areas unless the permittee demonstrates to the satisfaction of the Code Enforcement Officer that the soil is not needed for reclamation purposes. Stockpiled soils shall be seeded, mulched, and anchored or otherwise stabilized. [(AMD), TM-05.14.2024, WA-36]
- b. A cost estimate from a licensed engineer shall be provided for the cost of the reclamation plan. This estimate shall be used by the Select Board to determine the amount of a reclamation bond, that shall be not less than 100% of estimated costs, and that shall be held by the Town. [(AMD), TM-05.14.2024, WA-36]
  - c. Exterior lighting design and fixture specifications.
  - d. Erosion Control and Stormwater. A plan showing how changes to the runoff on site (runoff direction, speed and volume) will be handled to ensure that discharges from the site are similar to pre-construction runoff. Temporary erosion control methods shall be employed on site to reduce soil transport.
  - e. Existing conditions photos documenting any existing features including tailings or debris.
4. Reclamation Bond Update

A cost estimate for the reclamation plan for open areas shall be updated every five years and provided to the Select Board who may require increases to the reclamation bond.

[(NEW), JP-06.14.22]

## **AF. WIRELESS TELECOMMUNICATIONS FACILITIES**

### 1. Purpose

To provide a process and a set of standards for the construction of Wireless Telecommunication Facilities in order to:

- a. Preserve the character and appearance of the Town of Newry while allowing adequate development of wireless telecommunications services.
- b. Implement a municipal policy concerning the provision of wireless telecommunications services, and the siting of their Facilities;
- c. Establish clear guidelines, standards and time frames for the exercise of municipal authority to regulate Wireless Telecommunication Facilities;
- d. Allow competition in telecommunications service;
- e. Encourage the provision of advanced telecommunications services to the largest number of businesses, institutions and residents of Newry;
- f. Permit and manage reasonable access to the public rights of way of Newry for telecommunications purposes on a competitively neutral basis;
- g. Ensure that all telecommunications carriers providing Facilities or services within Newry comply with the ordinances of Newry;
- h. Ensure that Newry can continue to fairly and responsibly protect the public health, safety and welfare;
- i. Encourage the colocation of Wireless Telecommunication Facilities, thus helping to minimize adverse visual impacts on the community;
- j. Enable the Town to discharge its public trust consistent with rapidly evolving federal and state regulatory policies, industry competition and technological development; Further the goals and policies of the comprehensive plan, while promoting orderly development of the Town with minimal impacts on existing uses; and
- k. Protect the scenic and visual character of the community.

### 2. Applicability

This performance standard applies to all construction and expansion of wireless telecommunication facilities, except as provided in Section 13.AF.3

### 3. Exemptions

The following are exempt from the provisions of this sub-section:

- a. Emergency Wireless Telecommunications Facility. Temporary Wireless Communication Facilities for emergency communications.
- b. Amateur Radio Service. Amateur (ham) radio stations licensed by the Federal Communications Commission (FCC).
- c. General Mobile Radio Service (GMRS). GMRS stations licensed by the Federal Communications Commission (FCC).
- d. Maintenance or repair. Maintenance, repair or reconstruction of a wireless telecommunication facility and related equipment, provided that there is no change in the height or any other dimension of the facility.
- e. Temporary Wireless Telecommunication Facility. Temporary Wireless Telecommunication Facility, in operation for a maximum period of one hundred eighty (180) days.
- f. Antennas as accessory uses. An antenna that is an accessory use to a residential dwelling unit.

### 4. Review and Approval Authority

No person shall construct, make significant changes to, or expand a Wireless Telecommunication Facility without approval of the Code Enforcement Officer (CEO) or the Planning Board as follows:

- a. Expansion of or significant changes to an existing Wireless Telecommunications Facility and colocation.
  - i. Approval by the CEO is required for any of the following actions, provided the overall height of the Wireless Telecommunications Facility does not increase beyond the maximum heights set out elsewhere in this performance standard:
    - (1) Replacement of antennas with different kinds of antennas or relocating antennas to a new location on the Wireless Telecommunication Facility;
    - (2) Accessory use of an existing Wireless Telecommunication Facility; or

(3) Colocation on an existing Wireless Telecommunication Facility.

ii. Approval of the Planning Board is required for any increases in the Wireless Telecommunications Facility height.

b. New Construction

Approval of the Planning Board is required for construction of a new Wireless Telecommunication Facility, and any expansion of an existing Wireless Telecommunication Facility that increases the height of the Wireless Telecommunications Facility.

c. Approval Authority

The CEO or Planning Board as appropriate shall review applications for Wireless Telecommunication Facilities, and shall approve, approve with conditions, or deny such applications and make written findings on whether the proposed Wireless Telecommunications Facility complies with this Ordinance.

5. Application Procedures

All persons seeking approval of the CEO or the Planning Board under this performance standard shall submit an application as detailed in Section 10 of this ordinance.

6. Standard of Review

To obtain approval from the CEO or the Planning Board, an application must comply with the standards in this section.

a. CEO Approval Standards

i. The proposed Wireless Telecommunications Facility is an expansion, significant change, accessory use, or colocation to a structure existing at the time the application is submitted.

ii. The applicant has sufficient right, title, or interest to locate the proposed Wireless Telecommunications Facility on the existing structure.

iii. The proposed Wireless Telecommunications Facility will be constructed with materials and colors that match or blend with the surrounding natural or built environment, to the maximum extent practicable.

iv. The proposed Wireless Telecommunications Facility, to the maximum extent practicable, shall have no unreasonable adverse impact upon

districts, historic landmarks, sites, buildings, structures or objects, significant in American history, architecture, archaeology, engineering or culture, that are listed, or eligible for listing, in the National Register of Historic Places (see 16 U.S.C. 470w(5); 36 CFR 60 and 800).

b. Planning Board Approval Standards

i. New Wireless Telecommunication Facilities must be located according to the priorities below. The applicant shall demonstrate that a Wireless Telecommunications Facility of a higher priority cannot reasonably accommodate the applicant's proposed Facility.

(1) Colocation on an existing Wireless Telecommunication Facility or other existing structure as allowed in Section 23.H. of this ordinance.

(2) A new Wireless Telecommunications Facility on public or private property as allowed in Section 23.H. of this ordinance.

ii. If an applicant proposes to locate a new Wireless Telecommunication Facility, or expand an existing Facility on municipal property, the applicant must show the following:

(1) The proposed location complies with applicable municipal ordinances.

(2) The proposed Wireless Telecommunications Facility will not unreasonably interfere with the municipal purpose of the property.

(3) The applicant has adequate liability insurance and a lease agreement with the municipality that includes reasonable compensation for the use of the property and other provisions to safeguard the public rights and interests in the property.

iii. A new Wireless Telecommunication Facility and related equipment must be designed and constructed to accommodate expansion for future colocation of at least three additional Wireless Telecommunications Facilities or providers. However, the Planning Board may waive or modify this standard where the height limitation effectively prevents future colocation.



- iv. A new Wireless Telecommunication Facility shall not exceed a height of one hundred twenty-five (125) feet above ground level, except that where evidence of technical effectiveness as a Wireless Telecommunications Facility, acceptable design, and collocation is provided, the Planning Board may approve an additional twenty-five (25) feet of tower height per each additional wireless communication service provider, not to exceed a maximum tower height of one hundred and fifty (150) feet.
- v. A new or expanded Wireless Telecommunication Facility must comply with the set back requirements for the Growth Management District in which it is located, or be set back one hundred five percent (105%) of its height from all property lines, whichever is greater, including the areas outside the property boundaries if secured by an easement which may satisfy the setback. An antenna is exempt from the setback requirement if it extends no more than five (5) feet horizontally from the edge of the structure to which it is attached, and it does not encroach upon an abutting property.
- vi. A new Wireless Telecommunication Facility and related equipment must be screened with vegetation, such as shrubs and trees, from view by abutting properties, to the maximum extent practicable. Existing vegetation and natural land forms on the site shall also be preserved to the maximum extent practicable.
- vii. A new Wireless Telecommunication Facility must be fenced to discourage trespass on the Facility and to discourage climbing on any structure by trespassers.
- viii. A new Wireless Telecommunication Facility must be illuminated only as necessary to comply with FAA or other applicable state and federal requirements. However, security lighting may be used as long as it is shielded to be down directional to retain light within the boundaries of the site, to the maximum extent practicable.
- ix. A new Wireless Telecommunication Facility must be constructed with materials and colors that match or blend with the surrounding natural or built environment, to the maximum extent practicable. Unless otherwise required, muted colors, earth tones, and subdued hues shall be used.
- x. A new Wireless Telecommunication Facility must comply with the current Electronic Industries Association/Telecommunications Indus-

tries Association (EIA/TIA) 222 Revision Standard entitled "Structural Standards for Antenna Supporting Structures and Antennas and Small Wind Turbine Support Structures. Monopole or self-supported structures are preferred over structures with guy wires.

xi. The proposed Wireless Telecommunication Facility will have no unreasonable adverse impact upon Designated Scenic Resources within the Town, as identified either in the Town's adopted comprehensive plan, or by a State or federal agency. In determining the potential unreasonable adverse impact of the proposed Facility upon the Designated Scenic Resources, the Planning Board shall consider the following factors:

- (1) the extent to which the proposed Wireless Telecommunication Facility is visible above the tree line, from the Viewpoint(s) of the impacted Designated Scenic Resource;
- (2) the type, number, height, and proximity of existing structures and features, and background features within the same Line of Sight as the proposed Wireless Telecommunications Facility;
- (3) the extent to which the proposed Wireless Telecommunication Facility would be visible from the Viewpoint(s);
- (4) the amount of vegetative screening;
- (5) the distance of the proposed Wireless Telecommunications Facility from the Viewpoint and the Wireless Telecommunications Facility's location within the Designated Scenic Resource; and
- (6) the presence of reasonable alternatives that allow the Wireless Telecommunications Facility to function consistently with its purpose.

xii. The proposed Wireless Telecommunications Facility, to the maximum degree practicable, will have no unreasonable adverse impact upon a Historic District, site or structure that is currently listed on or eligible for listing on the National Register of Historic Places.

#### 7. Standard Conditions of Approval

The following standard conditions of approval shall be a part of any approval or conditional approval issued by the CEO or Planning Board. Where necessary to

ensure that an approved project meets the criteria of this ordinance, the Planning Board can impose additional conditions of approval. Reference to the conditions of approval shall be clearly noted on the final approved site plan, and shall include:

- a. The owner of the Wireless Telecommunication Facility and his or her successors and assigns agree to:
  - i. respond in a timely, comprehensive manner to a request for information from a potential colocation applicant, in exchange for a reasonable fee not in excess of the actual cost of preparing a response;
  - ii. negotiate in good faith for shared use of the Wireless Telecommunication Facility by third parties;
  - iii. allow shared use of the Wireless Telecommunication Facility if an applicant agrees in writing to pay reasonable charges for colocation.
  - iv. allow shared use of the Wireless Telecommunication Facility with County and municipal departments or agencies with no charge for colocation.
  - v. require no more than a reasonable charge for shared use of the Wireless Telecommunication Facility, based on community rates and generally accepted accounting principles. This charge may include, but is not limited to, a pro rata share of the cost of site selection, planning project administration, land costs, site design, construction and maintenance, financing, return on equity, depreciation, and all of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference. The amortization of the above costs by the Wireless Telecommunications Facility owner shall be accomplished at a reasonable rate, over the life span of the useful life of the Wireless Telecommunication Facility.
- b. Upon request by the municipality, the applicant shall certify compliance with all applicable FCC radio frequency emissions regulations.
- c. The applicant shall obtain a form of surety approved by the Select Board as set forth in Section 10.C.2.j.xi. to pay for the cost of removal of the Wireless Telecommunications Facility by the Town if the Wireless Telecommunications Facility is abandoned or, in lieu of such surety bond, the Planning Board shall require the deposit of sufficient funds in an escrow account in the name of the Town for the Town to pay the cost of re-

removal of an abandoned Wireless Telecommunications Facility set forth in Section 13.AF.8. of this ordinance.

- d. During construction, repair, or replacement, operation of a back-up power generator at any time during a power failure, and testing of a back-up generator between 8 a.m. and 9 p.m. is exempt from existing municipal noise standards.

## 8. Abandonment

A Wireless Telecommunication Facility that is not operated for a continuous period of twelve (12) months shall be considered abandoned. The CEO shall notify the owner of an abandoned Wireless Telecommunications Facility in writing and order the removal of the Facility within ninety (90) days of receipt of the written notice. The owner of the Wireless Telecommunications Facility shall have thirty (30) days from the receipt of the notice to demonstrate to the CEO that the Wireless Telecommunications Facility has not been abandoned.

If the Owner fails to show that the Wireless Telecommunications Facility is in active operation, the owner shall have sixty (60) days to remove the Wireless Telecommunications Facility. If the Wireless Telecommunications Facility is not removed within this time period, the municipality may remove the Wireless Telecommunications Facility at the owner's expense. The owner of the Wireless Telecommunications Facility shall pay all site reclamation costs deemed necessary and reasonable to return the site to its pre-construction condition, including the removal of roads, and reestablishment of vegetation.

The owner of the Wireless Telecommunications Facility may apply to the Planning Board for release of the surety or return of any unexpended portion of the required escrow account as set forth in Section 13.AF.7.c. when the Facility and related equipment are removed to the satisfaction of the Planning Board.

[(NEW), TM-05.14.2024, WA-36]

## **AG. SOLAR ENERGY SYSTEMS**

### 1. Purpose

The purpose of this ordinance is to establish a municipal review procedure and performance standards for Solar Energy Systems (SES). These standards are intended to:

- a. Establish clear guidelines, standards and time frames for the Town to regulate Solar Energy Systems;

- b. Permit the Town to fairly and responsibly protect public health, safety and welfare;
- c. Minimize any potential adverse effect of solar development on surrounding land use;
- d. Provide for the decommissioning/removal of panels and associated utility structures that are no longer being used for energy generation and transmission purposes; and
- e. Support the goals and policies of the Comprehensive Plan, including orderly development, efficient use of infrastructure, and protection of natural, scenic, and agricultural resources.

## 2. Applicability

- a. Notwithstanding the provisions of 1 M.R.S.A section 302 or any other law to the contrary, the requirements of this performance standard shall apply to all Roof-Mounted and Ground-Mounted Solar Energy Systems modified or installed after the date of its enactment.
- b. All Solar Energy Systems shall be designed, erected, and installed in accordance with all applicable codes, regulations and standards.
- c. Any upgrade, modification or structural change that materially alters the size, placement or output of an existing Solar Energy System shall comply with the provisions of this performance standard.

## 3. Review and Approval Authority

No person shall construct, make significant changes to, or expand a Solar Energy System without approval of the Code Enforcement Officer (CEO) or the Planning Board as follows:

- a. Solar Energy Systems or devices shall be installed or operated in the Town in compliance with this performance standard and any other applicable local, state and federal regulations or codes.
- b. Review and approval shall be determined by the Growth Management District within the Town, type of solar system, and proposed size. The Town has designated the proper permitting process for each solar system in the following matrix:

**Review and Approval Authority for Solar Energy Systems**

	Resort Development District	General Development District	Rural District	Protection District
<b>Principal Use</b>				
Medium-scale, Ground-Mounted SES	PB	PB	no	no
Large-scale, Ground-Mounted SES	PB	PB	no	no
<b>Accessory Use</b>				
Rooftop SES	CEO	CEO	CEO	CEO
Small-scale, Ground-Mounted SES	CEO	CEO	CEO	PB
Medium-scale, Ground-Mounted SES	PB	PB	PB	no

4. Dimensional Requirements

- a. Roof-Mounted Solar Energy Systems shall be considered to be mechanical devices and, for purposes of height measurement, are restricted only to the extent consistent with other building-mounted mechanical devices.
- b. Ground-Mounted Solar Energy Systems shall not exceed twelve (12) feet in height when oriented at maximum tilt, except that the maximum height is twenty-two (22) feet for systems set back at least thirty (30) feet from any property line.
- c. Setbacks for Ground-Mounted Solar Energy Systems
  - i. Notwithstanding any other provision of this ordinance to the contrary, the setbacks for Ground-Mounted Solar Energy Systems shall be as follows:
    - (1) The minimum front setback in all Growth Management Districts is fifty (50) feet.

- (2) Minimum side and rear setbacks are per the dimensional requirements established in Section 23.F.
    - ii. Additional setbacks may be required to mitigate visual and functional impacts.
  - d. Solar Energy Systems shall not be included in calculations for lot coverage or impervious cover as defined in Section 23.F.
5. Standard for Approval

In addition to the site review standards and requirements established elsewhere in this ordinance the following standards must also be met:

- a. Standards Applicable to All Solar Energy Systems
  - i. The layout, design and installation shall conform to applicable industry standards, such as those of the American National Standards (ANSI), Underwriters Laboratories (UL), National Electric Code (NEC), the American Society for Testing and Materials (ASTM), Institute of Electrical and Electronics Engineers (IEEE), Solar Rating and Certification Corporation (SRCC), Electrical Testing Laboratory(ETL) or other similar certifying organizations, and shall comply with local ordinances, and with all other applicable fire and life safety requirements. The manufacturer specifications for the key components of the system shall be submitted as part of the application.
  - ii. An operations and maintenance plan, including site control and the projected operating life of the Solar Energy System. Such a plan shall include measures for maintaining safe access to the installation, stormwater controls, as well as general procedures for operational maintenance of the installation. Additionally, such plans shall include efforts to promote beneficial flora and fauna (e.g. honeybees, butterflies, etc.) as well as a commitment to not using pest-control substances (e.g. pesticides, herbicides, fungicides, and/or insecticides).
- b. Large and Medium- Scaled Ground-Mounted Solar Energy Systems
  - i. Lots - Solar Energy Systems shall not exceed 20% coverage of a lot area. Lot coverage shall be calculated based on the total Solar Energy System airspace projected over the ground. All Solar Energy Systems should be designed and located to ensure solar and physical access without reliance on and/or interference to/from adjacent properties.

- ii. Legal Responsibilities - The Applicant must provide proof that it has authorization to construct, use and maintain the property and any access drive for the life of the project and including the decommissioning of the project. The roles and responsibilities of the Solar Energy System owner, operator, landowner and any other party involved in the project must be clear and meet the satisfaction of the Planning Board that the public interest is protected. The owner or operator of a Ground-Mounted Solar Energy System shall build and maintain it in compliance with all relevant federal, state and local laws, regulations, and ordinances.
- iii. Prohibited Locations - Components of a Large and Medium Scaled-Ground-Mounted Solar Energy System shall not be placed within any legal easement or right-of-way location, or be placed within any stormwater conveyance system, or in any other manner that would alter or impede stormwater runoff from collecting in a constructed stormwater conveyance system.
- iv. Utility Notification - No grid-intertied photovoltaic system shall be installed until evidence has been given to the Code Enforcement Officer that the applicant has an agreement with the utility to accept the power. Off-grid systems are exempt from this requirement.
- v. Fence - Ground Mounted Solar Energy Systems shall be protected by a perimeter fence. Such fences shall allow for small wildlife passage and movement.
- vi. Buffers and Screening - Lots on which Ground-Mounted Solar Energy Systems are located shall be buffered and screened from roads and residences by plantings, berms, and natural topographical features. Ground-Mounted Solar Energy Systems shall be screened from view to the greatest extent practical of any adjacent property that is residential, as well as any public way. Buffers and Screening shall comply with Section 13.AA.
- vii. Glare – Solar Energy Systems shall be situated to eliminate concentrated glare onto nearby structures or roadways.
- viii. Noise – Solar Energy Systems or solar related equipment shall comply with Section 13.Z., Noise.
- ix. Lighting - Lighting shall be limited to that required for safety and operational purposes and shall be shielded from interference with abutting properties. Lighting of the Solar Energy System shall be directed



downward and shall incorporate full cut-off fixtures to reduce light pollution and shall otherwise comply with the provisions of Section 13.O., Lighting Design Standards. Other than required lighting, lighting shall not be used between 9pm and 7am.

- x. Impervious Assessment - The surface area of the arrays of a Ground-Mounted Solar Energy System, regardless of the mounted angle of any solar panels, may or may not be considered impervious contingent upon conformity with the stormwater management plan.
- xi. Utility Connections - Reasonable efforts, as determined by the Planning Board, shall be made to place all utility connections from the solar photovoltaic installation underground, depending on appropriate soil conditions, shape, and topography of the site and any requirements of the utility provider. Electrical transformers for utility interconnections may be above ground if required by the utility provider.
- xii. Emergency Services – Solar Energy System owners or operators shall provide a copy of the project summary, electrical schematic, and site plan to the Code Enforcement Officer. Upon request, the owner or operator shall coordinate with local emergency services in developing an emergency response plan. A “3200 Series KNOX-BOX”, or agreed equivalent, shall be provided and installed by the operator to be used to allow emergency service personnel continuous access. All means of shutting down the Solar Energy System shall be clearly marked. The owner or operator shall identify a responsible person for public inquiries throughout the life of the installation.
- xiii. Maintenance Conditions - The Solar Energy System owner or operator shall maintain the facility in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, vegetative screening, fences, landscaping and plantings, and integrity of security measures. The Solar Energy System must be properly maintained and be kept free from all hazards, including, but not limited to, faulty wiring, loose fastenings, being in an unsafe condition or detrimental to public health, safety or general welfare. Site access shall be maintained to a level acceptable to the Code Enforcement Officer. The owner or operator shall be responsible for the cost of maintaining the Solar Energy System and any access road(s), including regular plowing of snow to maintain road access.

- xiv. Satisfaction with All Aspects of Capacity and Plans Submitted -- The Planning Board must find that the Applicant has the capacity to finance, safely operate and decommission the Solar Energy System.
  - xv. Removal - When any portion of a Ground-Mounted Solar Energy System is removed, any earth disturbance must be graded and re-seeded, unless authorized for another developed use.
  - xvi. Alternatives Assessment - As determined by the Planning Board, if a proposed Ground-Mounted Solar Energy System does not meet the standards in this Ordinance, then other potential suitable alternative area(s), on the lot(s) included in the application, where a Solar Energy System can meet the Ordinance's standards, should be evaluated by the Applicant. Alternative lot areas should be evaluated against those same Ordinance standards.
  - xvii. Preservation of Town's Character - All reasonable efforts, as determined by the Planning Board, shall be made to ensure any Solar Energy System is consistent with the character of the community via visual consistency with local neighborhood area, maintenance of scenic views, maintenance of open space land and farms, and the Town Comprehensive Plan, and associated Town planning documents.
- c. Small-Scaled Ground-Mounted Solar Energy Systems
- i. Lots - Solar Energy Systems shall not exceed 10% coverage of a lot area. Lot coverage shall be calculated based on the total Solar Energy System airspace projected over the ground. All Solar Energy Systems should be designed and located to ensure solar and physical access without reliance on and/or interference to/from adjacent properties.
  - ii. Setback - Structures within a Solar Energy System shall be setback a minimum of fifty (50) feet from the side and rear property lines and meet the front setback requirements for structures within the growth management district. Any solar photovoltaic cells or arrays shall be subject to a maximum height of ten (10) feet above the ground surface. Associated Solar Energy System structures shall be subject to the maximum height regulations specified for principal and accessory buildings within the applicable growth management district.
  - iii. Prohibited Locations – Components of a Small Scaled Ground-Mounted Solar Energy System shall not be placed within any legal easement or right-of-way location, or be placed within any stormwater

conveyance system, or in any other manner that would alter or impede stormwater runoff from collecting in a constructed stormwater conveyance system.

- iv. Glare – All Solar Energy Systems shall be situated to eliminate concentrated glare onto nearby structures or roadways.
  - v. Lighting - Lighting shall be limited to that required for safety and operational purposes and shall be shielded from interference with abutting properties. Lighting of the Solar Energy System shall be directed downward and shall incorporate full cut-off fixtures to reduce light pollution and shall otherwise comply with the provisions of Section 13.O., Lighting Design Standards. Other than required lighting, lighting shall not be used between 9pm and 7am.
  - vi. Preservation of Town’s Character - All reasonable efforts, as determined by the Planning Board, shall be made to ensure any Solar Energy System is consistent with the character of the community via visual consistency with local neighborhood area, maintenance of scenic views, maintenance of open space land and farms, and the Town Comprehensive Plan, and associated Town planning documents.
- d. Roof Mounted Solar Energy Systems
- i. The owner shall provide evidence certified by an appropriately licensed professional that the roof is capable of supporting the collateral load of the Solar Energy System.
  - ii. Solar Energy Systems mounted on roofs of any building shall be subject to the maximum height regulations specified for principal and accessory buildings within the applicable growth management district.
  - iii. Glare – All Solar Energy Systems shall be situated to eliminate concentrated glare onto nearby structures or roadways.
  - iv. For firefighter access, a minimum three (3) foot buffer zone is required from the ridge and one (1) edge of the roof or parapet.
  - v. Preservation of Town’s Character - All reasonable efforts, as determined by the Code Enforcement Officer, shall be made to ensure any Solar Energy System is consistent with the character of the community via consistency with local neighborhood area, maintenance of scenic views, maintenance of open space land and farms, and the

Town Comprehensive Plan, and associated Town planning documents.

6. Decommissioning and Removal

- a. Any Ground Mounted Solar Energy System that has reached the end of its useful life, ceases to generate power or has been abandoned shall be removed pursuant to a plan approved by the Planning Board during the application process. The landowner, or Solar Energy System owner or operator shall physically remove the installation no more than 180 days after the date of discontinued operations. The owner or operator shall notify the Code Enforcement Officer by certified mail, return receipt requested, of the proposed date of the discontinued operations and plans for removal.
- b. Decommissioning shall consist of:
  - i. physical removal of all Solar Energy Systems, structures, equipment, security barriers and transmission lines from the site;
  - ii. disposal of all solid and hazardous waste in accordance with local, state and federal waste disposal regulations; and
  - iii. stabilize or re-vegetation of the site as necessary to minimize erosion. The Code Enforcement Officer may allow the owner or operator to leave landscaping or designated below-grade foundations to minimize erosion and disruptions to vegetation.
- c. Absent a notice of a proposed date of decommissioning or written notice of extenuating circumstances, a Ground Mounted Solar Energy System shall be considered abandoned when it fails to generate 10% or less permitted capacity of electricity for a continuous period of twelve (12) months without having first obtained the written consent of the Code Enforcement Officer. Determination of abandonment shall be made by the Code Enforcement Officer.
- d. If the owner or operator of a Ground Mounted Solar Energy System fails to remove the installation in accordance with the requirements of this section within 180 days of abandonment or the proposed date of decommissioning, the Town of Newry retains the right to use the performance guarantee and any and all legal or available means necessary to cause an abandoned, hazardous or decommissioned Solar Energy System to be removed.

7. Modifications

- a. Any physical modification to any existing Solar Energy System, whether or not existing prior to the effective date of this Ordinance, shall require review and approval under this performance standard.
- b. Any modifications to a Medium to Large Scaled Ground-Mounted Solar Energy System made after issuance of the required town permit(s) shall require approval by the Planning Board.
- c. Any modifications to a Small-Scaled Ground-Mounted Solar Energy System made after issuance of the required town permit(s) shall require approval by the Code Enforcement Officer.
- d. Application fees for modifications shall be consistent with the overall size of the Solar Energy System, not solely the modification.
- e. Permit fees for modifications shall be based on the modified portion of the Solar Energy System.

[(NEW), TM-05.14.2024, WA-36]

## **AH. RECREATIONAL LODGING FACILITIES**

### 1. Applicability

- a. Where a recreational lodging facility takes place in shoreland zoning districts, the provisions of the Shoreland Zoning Ordinance apply and the more restrictive of the two shall govern.
- b. When a recreational lodging facility is reviewed by the Planning Board Site Plan Review, approval in accordance with this Section is required.
- c. All new recreational lodging facilities must be developed in conformance with the standards of this Section. Non-conforming recreational lodging facilities must abide by Section 23 of this Ordinance.
- d. If two or more recreational lodging facilities are located on abutting parcels, and are under unified or affiliated ownership or control, they shall be deemed to be one recreational lodging facility for purposes of this Section.
- e. Recreational lodging facilities must conform to the minimum requirements imposed under State licensing procedures. The Planning Board's approval is conditional on the State license approval.

### 2. Operating Standards

- a. All recreational lodging facilities must be inspected annually by May 1 and if found to be in compliance with all applicable Newry Ordinances, issued a permit by the Code Enforcement Officer.
  - b. Each recreational lodging facility unit shall be provided with a trash receptacle thirty gallons or larger.
  - c. Each recreational lodging facility unit and/or any common area equipped with a fire pit shall be equipped with a smokeless fire pit, the construction of which must be approved by the the Code Enforcement Officer
  - d. A facility manager must be on the premises twenty-four (24) hours a day when the recreational lodging facility is in operation.
  - e. Sound level limits set in Section 13.Z.1., Noise, must be enforced.
  - f. A recreational vehicle or motor home may not be rented, leased or occupied for more than two (2) weeks consecutively from November 1<sup>st</sup> through April 30<sup>th</sup> unless the recreational vehicle or motor home is connected to a permanent sewage, water, electricity and heat that will meet State and local codes. From November 1<sup>st</sup> through April 30<sup>th</sup> renewal of any occupancy in a recreational vehicle or motor home may not occur unless there is a least one (1) week of non-occupancy.
  - g. Recreation vehicles or motor homes at individual recreational lodging facility units shall not have permanent foundations and shall not have the wheels removed.
  - h. A tent, trailer, camper, recreational vehicle, motor home or similar device used for camping may be stored within a storage area on the premises of the recreational lodging facility provided that the device is not utilized or inhabited while located within the storage area. Recreational lodging units may not be used as a storage facility.
  - i. Staff housing may not be used as a recreational lodging facility unit. See Section 13.Q.3.c.ii.
3. Land Use Standards
- a. Minimum Site Size – The minimum site size for a recreational lodging facility shall be ten (10) acres.
  - b. Density
    - i. The maximum density for a recreational lodging facility shall be one unit per five thousand (5,000) square feet of suitable land area except

- for primitive campsites which shall be ten thousand (10,000) square feet.
- ii. Land supporting wetland vegetation, land below the normal high-water line of a water body and land with a sustained slope of fifteen (15) percent or greater shall not be included in calculating land area per site.
- c. Maximum Number of Units
- i. The maximum number of units used as sleeping accommodations in a recreational lodging facility, excluding staff housing for the facility, shall be fifty (50) units.
  - ii. The Planning Board may permit reasonably necessary staff housing as an accessory use to a recreational lodging facility. Staff housing must be designated on the Site Plan Application and may not be used as a recreational lodging facility unit.
- d. Minimum Setbacks – A unit of a recreational lodging facility shall meet the following setback requirements:
- i. At least one hundred (100) feet from the center line of any public street or highway and twenty-five (25) feet from the edge of the right-of-way or a road providing access to the unit.
  - ii. At least fifty (50) feet from the property line of abutting properties.
  - iii. At least one hundred (100) feet from the normal high-water mark of a great pond, river, stream, brook or upland edge of a wetland.
  - iv. The areas intended for placement of utility and service buildings, and accessory uses associated with outdoor activities; such as fire pits, clothes lines, and picnic tables shall be set back a minimum of fifty (50) feet from the exterior lot lines, one hundred (100) feet horizontal distance, from the normal high-water line of a great pond, river, tributary streams, or the upland edge of a wetland
- e. Any recreational lodging facility unit that consist of temporary or permanent structure such as yurts, cabins, cottages and other types of shelter shall not be placed within a floodplain.
- f. Recreational lodging facilities shall be screened from all abutting areas according to the performance standards in Section 13.AA.

- g. Recreational lodging facilities must conform to the most recently adopted State of Maine Subsurface Wastewater Disposal Rules (10-144 CMR 241). This includes a pit or vault privy servicing primitive campsites.

[(NEW), TM-05.14.2024, WA-36]



## SECTION 14: ROAD DESIGN AND CONSTRUCTION STANDARDS

**SECTION USER'S GUIDE:** *This section contains specific road design and construction standards applicable to all developments requiring approval under this Ordinance, particularly subdivisions.*

### A. GENERAL REQUIREMENTS

1. The Planning Board shall not approve any development plan unless proposed roads are designed in accordance with the specifications contained in this Ordinance.

When existing roads or roads right-of-way are utilized as primary roads in a proposed subdivision or site plan review, a road or road right-of-way of three rods (49.5 feet) in width will be considered to be acceptable under these standards, however, any such preexisting road or road right-of-way of lesser width shall be evaluated based on conformance of the road design and construction standards for assurance of public safety and sound construction.

Approval of an application by the Planning Board shall not be deemed to constitute or be evidence of acceptance by the Town of any road or easement.

2. Applicants shall submit to the Planning Board, as part of their Final Plan, detailed construction drawings showing a plan view, profile, and typical cross-section of the proposed roads, parking areas, and utilities. The plans shall include the following information:
  - a. Date, scale, and magnetic or true north point.
  - b. Intersections of the proposed road with existing roads.
  - c. Roadway and right-of-way limits including edge of pavement, edge of shoulder, sidewalks, and curbs.
  - d. Complete curve data shall be indicated for all horizontal and vertical curves.
  - e. Turning radii at all intersections.
  - f. Center line gradients.
  - g. Locations of all existing and proposed overhead and underground utilities.
  - h. Cistern and fire pond design, sizing, and locations.

[(AMD), TM-03.05.19, ART. 41]

3. Upon receipt of plans for a proposed public road the Planning Board shall forward one copy to the Select Board and the Road Commissioner for review and comment. Plans for roads which are not proposed to be accepted by the Town shall be sent to the Road Commissioner for review and comment.

**B. ROAD DESIGN STANDARDS**

1. These design standards shall be met by all roads within developments reviewed under this Ordinance, and shall control the roadway, shoulders, curbs, sidewalks, drainage systems, culverts, and other appurtenances.
2. Where a development borders an existing narrow road (not meeting the width requirements of the standards for roads, in this Ordinance), or when the Comprehensive Plan indicates plans for realignment or widening of a road that would require use of some of the land in the development, the development plan shall indicate reserved areas for widening or realigning the road marked "Reserved for Road Realignment (Widening) purposes." Land reserved for such purposes may not be included in computing lot area of setback requirements of this Ordinance. [(AMD), TM-05.14.2024, WA-36]
3. Where a major subdivision or development abuts or contains an existing Town Road or State Highway, no residential lot may have vehicular access directly on to the Town Road or State Highway except where land use or topographic conditions warrant otherwise. This requirement shall be noted on the Plan and the deeds of any lot with frontage on the Town Road or State Highway.
4. The following design standards apply according to road classification:

<u>Description</u>	<u>Primary</u>	<u>Secondary</u>	<u>Neighborhood</u>
Number of Lanes	2	2	2
Right-of-Way Width	60 ft.	50 ft.	50 ft.
Traveled Way	22 ft.	20 ft.	18 ft.
Minimum Shoulder Width (each side)	4 ft.	2 ft.	2 ft.
Minimum Grade (for drainage)	0.5%	0.5%	0.5%
Maximum Grade	12%	15%	15%
Maximum Superelevation	0.08°/ft.	0.08°/ft.	0.08°/ft.
Minimum Center Line Radius on Curves	200 ft. <sup>2</sup>	150 ft. <sup>2</sup>	150 ft. <sup>2</sup>
Roadway Crown:			

<b><u>Description</u></b>	<b><u>Primary</u></b>	<b><u>Secondary</u></b>	<b><u>Neighborhood</u></b>
Paved Surface	1.5 – 3.0%	1.5 – 3.0%	1.5 – 3.0%
Gravel Surface	2.0 – 6.0%	2.0 – 6.0%	2.0 – 6.0%
Minimum Angle of Intersection	80°	80°	80°
Minimum Distance Between Road Intersections:			
Same Side	400 ft.	300 ft.	300 ft.
Opposite Side	200 ft.	150 ft.	150 ft.
Maximum Grade Within 75 ft. of Road Intersection <sup>3</sup>	3%	4%	5%
Maximum Hydrant Pad Slope	2%	2%	2%
Curb Radii:			
90° Intersections	25 ft.	25 ft.	25 ft.
80-90° Intersections	30 ft.	30 ft.	30 ft.
90-105° Intersections	30 ft.	30 ft.	30 ft.
Minimum Right-of-Way Radius at Intersections	20 ft.	20 ft.	20 ft.
Dead-End Road:			
Minimum Radius at Turn-Around	86 ft.	86 ft.	86 ft.
Outside Edge of Travel Way	70 ft.	70 ft.	70 ft.
Maximum Grade of Turn-Around <sup>4</sup>	3%	4%	4%
Sidewalk Width	5 ft.	5 ft.	5 ft.
Overhead Clearance	15 ft.	15 ft.	15 ft.
Bridge Clearance <sup>5</sup>	15 ft.	15 ft.	15 ft.
Vertical Curve (Minimum “K” Value)			
Crest	55 ft.	29 ft.	12 ft.
Sag	55 ft.	49 ft.	26 ft.

Notes:

1 Maximum grades on Primary and Secondary roads shall be as follows: For any 1/2 mile segment of road the average overall grade shall be 10%. A grade of 12% is permitted for 1000 feet. A grade of 15% is permitted for 150 feet.

- 2 If the road grade exceeds 5%, then the minimum center line radius on curves shall be increased by 50 feet for each additional 1% of grade.
  - 3 This standard applies to road intersections to any non-town maintained, primary, secondary and/or neighborhood road. The standard shall not exceed 3% for road intersections to any town maintained road or road proposed to be town maintained.
  - 4 The standard shall not exceed 3% for any road proposed to be town maintained.
  - 5 Minimum overhead clearance of bridges is 15 feet and if the bridge occurs over a sag vertical curve added clearance shall be given to allow for 60 foot axle separations.
5. The distance between the profile centerline and the right-of way centerline for an as built primary roadway shall be no more than 7.5 feet. The distance between the profile centerline and right-of-way centerline for an as-built secondary and neighborhood dead end roadway shall be no more than 5 feet.
  6. Dead End Roads
    - a. If a road is to be dead-end then a cul-de-sac or hammerhead turnaround must be built at the end of the dead-end. The cul-de-sac must have an eighty-six (86) foot property line radii and a seventy (70) foot outer edge of travel way radii as drawn in Exhibit A to the ordinance. A hammerhead turnaround must have a minimum traveled way and right-of-way as drawn in Exhibit B-1 or B-2 to the ordinance.

Cul-de-sacs shall only be used at the end of dead end roads.

All traveled ways of turnarounds shall be kept free and clear of snow and debris at the responsibility of the property owner.

[(AMD), RF-11.02.21, ART. 2]
    - b. The Planning Board may require the reservation of a twenty (20) foot easement in line with the dead-end road to provide continuation of pedestrian traffic or utilities to the next road. The Planning Board may also require the reservation of fifty (50) foot easement in line with the dead-end road to provide continuation of the road where future subdivision or development is possible.
7. Grades, Intersections and Sight Distances
    - a. Grades of all roads shall conform in general to the terrain, so that cut and fill are minimized while maintaining the grade standards above.
    - b. All changes in grade shall be connected by vertical curves to provide for the minimum sight distances below.

- c. Where new road intersections or curb-cuts are proposed, sight distances for all roads, shall be based upon the posted speed limit and conform to the table below:

POSTED SPEED LIMIT (MPH)	15	20	25	30	35	40	45
SIGHT DISTANCE (FEET)	150	155	200	250	305	360	425

Where necessary, corner lots shall be cleared of all growth and sight obstructions, including ground excavation, to achieve the required visibility.

- d. Cross (four-cornered) road intersections shall be avoided, except as shown on the Comprehensive Plan or at other important traffic intersections.
- e. All intersections shall have roads meeting at a minimum intersecting angle of 80 degrees except where an acceleration lane is designed.
- f. Guard rails shall be installed where a side slope of greater than 3 to 1 is designed or an area of special hazard exists. Guard rails shall be a minimum of 4 feet from the edge of pavement and built to Maine Department of Transportation standards.
- g. Above ground utilities shall be a minimum of 20 feet from the centerline of the road.
- h. Manhole covers shall be 1/2 inch below finished grade within the right of way and shown on the road plan.

[(AMD), TM-03.05.19, ART. 41]

- 8. Where installed, curbing shall be granite or bituminous concrete and shall be installed on a thoroughly compacted gravel base of six (6) inches minimum thickness, except bituminous curbing shall be installed on the base course of the pavement. The specified pavement's width above shall be measured between the curbs.

**C. ROAD CONSTRUCTION STANDARDS**

- 1. Minimum Thickness of Material After Compaction<sup>1</sup>

ROAD MATERIALS	Primary	Secondary	Neighborhood
Aggregate Sub-Base Course, Maximum sized stone is 4"	24 in.	18 in.	15 in.

Crushed Aggregate Base Course <sup>2</sup>	2 in.	2 in.	2 in.
Hot Bituminous Pavement:			
Total Thickness	2.5 in.	2 in.	2 in.
Surface Course	1 in.	0.5 in.	0.5 in.
Crushed Gravel Surface <sup>2</sup>	4 in.	4 in.	4 in.

Notes:

1 Compaction shall meet DOT Standards

2 Materials testing and compaction testing shall be completed by an independent testing company, as selected by the Town of Newry, at the developer's expense. Documentation shall be provided to the Town.

[(AMD), TM-03.05.19, ART. 41] [(AMD), RF-11.02.21, ART. 2]

2. Preparation:

- a. Before any clearing begins, the centerline and side lines of the new road shall be staked or flagged at 50-foot intervals.
- b. Before grading begins, the entire right of way, width necessary for travelway, shoulders, sidewalks, drainageways, and utilities, shall be cleared of all stumps, roots, brush or other objectionable material. All shallow ledge, large boulders, and stumps protruding above the natural profile of the land shall be removed from the travelway, shoulders, sidewalks, and drainage areas.
- c. All organic materials shall be removed to a depth as required by the above road construction standards, at a minimum. On soils which have been identified as not suitable for roadways, the subsoil and organic materials shall be removed from the travelway, shoulders, sidewalks and drainage areas to a depth of two feet below the subgrade, and replaced with material meeting the specifications for gravel aggregate sub-base, as identified above.
- d. Slope easements may be required to facilitate maintenance of Town roads. Slopes from shoulder to ditch bottom and ditch back slopes shall not be steeper than three feet horizontal to one foot vertical where possible. Roadside ditches shall be designed in accordance with MaineDOT design guidelines and BMPs.

- e. All underground utilities should be installed prior to paving to avoid cuts in the pavement. Building sewers and water service connections should be installed to the edge of the right-of-way prior to paving.
- f. Culverts shall not be less than fifteen (15) inches in diameter and shall be reinforced concrete, corrugated metal or plastic pipe. Culverts shall be sized to meet drainage conditions and shall be properly installed at both ends of the ditch. Additionally, culverts shall be placed so as not to cause erosion.

[(AMD), TM-03.05.19, ART. 41]

3. Bases, Pavements and Curbs:

- a. Pavement Joints - Where pavement joins an existing pavement, the existing pavement shall be cut along a smooth line and form a neat, even vertical joint.
- b. Curbs and Gutters - Road curbs and gutters shall be installed as required by the Planning Board. Curbs shall be vertical except when sloped curbs are specifically allowed by the Planning Board.
- c. Pavements - All road surfaces that are to be paved shall be given a bituminous surface treatment in accordance with the State of Maine, Department of Transportation Standard Specifications.

#### **D. CLEANUP**

Following road construction, the developer or contractor shall conduct a thorough clean-up of stumps and other debris from the entire road right-of-way. If on-site disposal of the stumps and debris is proposed, the site shall be indicated on the Plan, and be suitably covered with fill and topsoil, limed fertilized, and seeded.

#### **E. ROAD NAMES AND SIGNS**

Roads which join and are in alignment with roads of abutting or neighboring properties shall bear the same name. Names of new roads shall not duplicate, nor bear phonetic resemblance to the names of existing roads within the Town, and shall be subject to the approval of the E 911 Addressing Officer. All road name, traffic safety and control signs shall meet the specifications of the current Federal Highway Administration's Manual on Uniform Traffic Control Devices. The developer shall install all required road name, traffic safety and control signs or reimburse the Town for the costs of installing.

[(AMD), TM-03.05.19, ART. 41]

## **F. CERTIFICATION OF CONSTRUCTION OF ROADS**

Upon completion of road construction a written certification signed by a licensed professional engineer registered in the State of Maine shall be submitted to the Select Board at the expense of the applicant, certifying that the road meets or exceeds the design and construction requirements of these regulations. [(AMD), TM-03.05.19, ART. 41]

## **G. ACCEPTANCE OF A ROAD BY THE TOWN TO BECOME A TOWN ROAD**

Any owner or developer that wishes to have a road accepted as a town road must meet the following requirements, and make a written petition to the Select Board with copies sent to the Planning Board and Road Commissioner.

1. Any new road must be paved and connect to an existing Town, County, or State Road to be considered for acceptance as a Town Road.
2. Prior to construction, the drawing of the proposed road showing that the owner plans to meet all of the above minimum requirements and what action is to be taken if any special conditions exist which are not included in the above minimum requirements shall be submitted to the Planning Board for review.
3. The minimum right-of-way, 60' for a primary road and 50' for a secondary and neighborhood road, will be deeded to the Town by warranty deed from the developer or quitclaim deed from each abutting land owner upon acceptance of the road as a Town Road. If the road is to be dead-end (does not connect to an existing Town, County, or State Road on each end or does not connect to itself), then either a cul-de-sac or a hammerhead turn around with right-of-ways is to be deeded to the Town as a turn-around. (See Exhibit A and B for minimum radius, traveled way, and right-of-way requirements for turnaround.)
4. A plan suitable for recording showing boundaries and their markers, drainage, traveled ways, all underground utilities, etc., shall accompany the owners' petition for a Town Road which is to be submitted to the Select Board.
5. The road shall winter one season before being considered for acceptance to insure proper construction.
6. Any new road must meet State of Maine Department of Transportation's compaction rates prior to acceptance of the road by the Town to become a Town Road and the owner or developer must submit a certification that meets Section 14.F above. [(AMD), TM-05.14.2024, WA-36]
7. Approval for acceptance of a new or existing road as a Town Road is given by majority vote of a duly called Town Meeting. Planning Board approval of a road



plan through either Site Plan Review or Subdivision Review does not constitute approval for acceptance of a road as a Town Road.

8. All road surfaces to be accepted as a Town Road shall be given a hot bituminous surface treatment conforming to the specification set forth in the current Standard Specification Highway and Bridges, State of Maine, Department of Transportation.
9. All striping and line work shall be painted by the developer and shall conform to the specification set forth in the current State of Maine, Department of Transportation Standard Specification.
10. A minimum of one granite monument to establish the right-of-way must be placed by a licensed surveyor hired by the developer.
11. "As built" plans shall be submitted to the Select Board for roads to be accepted as a town road. [(AMD), TM-03.05.19, ART. 41]

#### **H. PRIVATE ROADS**

1. Where the development roads are to remain private roads, the following words shall appear on the recorded plan and deed:

*"All roads in this development shall remain private roads to be maintained by the developer or the lot/home owners at their sole cost and expense unless accepted by the vote of the Town."* [(AMD), TM-05.14.2024, WA-36]

2. Certification as per Section 14.F. above apply to all roads within a development, whether they are to become public roads or remain as private roads. [(NEW), TM-05.14.2024, WA-36]

## SECTION 15: PARKING AND ENTRANCE DESIGN STANDARDS

**SECTION USER'S GUIDE:** *This section contains specific parking area and site entrance design and construction standards applicable to those development projects proposing and/or requiring on-site, off-street parking and road entrances.*

### A. GENERAL REQUIREMENTS

1. A use shall not be established or extended and no structure shall be constructed or enlarged unless sufficient off-street automobile parking space is provided.
2. All parking areas proposed to have greater than ten (10) spaces must be designed by a licensed professional engineer.
3. The proposed development layout shall provide for safe access and egress from public and private roads by providing adequate location, numbers and control of access points including sight distances, turning lanes, and traffic signalization when required by existing and projected traffic flow on the municipal road systems.
4. The layout and design of all means of vehicular and pedestrian circulation, including walkways, interior drives, and parking areas shall provide for safe general interior circulation, separation of pedestrian and vehicular traffic, service traffic, loading areas, and arrangement and use of parking areas. Areas used by thru traffic shall not be considered as parking areas.
5. In the design of parking areas, special attention shall be given to the separation of pedestrian and vehicular traffic and the arrangement of parking areas that are safe and convenient, and which have a minimum adverse affect on the design, appearance, and environmental and aesthetic qualities of proposed buildings and structures and neighboring properties.
6. Where the development will abut an existing or potential parking area provisions shall be made for internal vehicular connections that allow vehicles to move between parking areas/lots without having to enter the road.
7. Required off-street parking for all land uses shall be located on the same lot as the principal building or use. The Planning Board may allow the required or provided off-street parking to be located within 300 feet measured along lines of public access. Such off-lot parking areas shall be held in fee simple by the owner of the use served or in such other tenure as assures continued availability for parking as long as the particular land will be needed for such use provided that if tenure is other than ownership in fee simple, the form of tenure

shall be approved by the Select Board before the request is considered by the Board. Evidence of fee simple ownership or approved tenure shall be required.

8. The joint use of a parking facility by two or more principal buildings or uses may be approved by the Planning Board where it is clearly demonstrated that said parking facilities would substantially meet the intent of the requirements by reason of variation in the probable time of maximum use by patrons or employees of such establishments.
9. Off-street parking spaces shall comply with the following standards:
  - a. Except as provided below, each parking space shall contain a rectangular area at least eighteen (18) feet long and nine (9) feet wide. Lines demarcating parking spaces may be drawn at various angles in relation to curbs or aisles, so long as the parking spaces so created contain within them the rectangular area required by this section.
  - b. Up to twenty (20) percent of required parking spaces may contain a rectangular area of only eight (8) feet in width by fifteen (15) feet in length. If such spaces are provided, they shall be conspicuously designated as reserved for small or compact cars only.

**B. PARKING AREA DESIGN STANDARDS**

1. Access: There shall be adequate provisions for ingress and egress to all parking spaces. The width of access drives or driveways shall be determined as part of site plan review depending on use, topography and similar considerations.
2. Marking and delineation of parking areas: Parking lots, driveways and aisles shall be clearly marked and delineated. The Planning Board may require that certain areas be maintained for firefighting or other emergency purposes, handicapped access, and such areas shall be appropriately designated.
3. Minimum parking requirements: Off-street parking spaces shall be provided to conform with the number required in the following schedule:

<b>Residential</b>	<b>Minimum # Parking Spaces Required</b>
Single detached or attached dwelling including cooperative and condominium units	2 per dwelling unit
Duplex (units up to 400 sq. ft.)	1 per unit
Duplex (units larger than 400 sq. ft.)	2 per unit
Multi-unit (units up to 400 sq. ft.)	1 per unit
Multi-unit (units larger than 400 sq. ft.)	2 per unit

<b>Residential</b>	<b>Minimum # Parking Spaces Required</b>
Boarding House/Bed and Breakfast	2 per dwelling unit plus 1 per guest room

<b>Commercial</b>	<b>Minimum # Parking Spaces Required</b>
Nightclubs, Restaurants, Theaters	1 space for every 3 seats or participants plus 1 space for each person employed at peak times <sup>1</sup>
Motels, Hotels, Lodging Facilities	1 space for every guest room plus 1 space for each person employed at peak times
Retail Stores, Offices and Service Establishments	1 space for every 300 sq. ft. of gross floor area excluding storage; no less than 3 spaces
Wholesale Establishments	plus 1 space for each person employed at peak times

<b>Institutional/Public</b>	<b>Minimum # Parking Spaces Required</b>
Assembly Halls, Outdoor Places of Assembly or Public Recreation, Houses of Worship	1 space for every 3 seats or participants plus 1 space for each person employed at peak times

**NOTES:**

1. For public restaurants operated in conjunction with a lodging facility, a percent reduction in required parking spaces equal to the percent of restaurant patrons attributable to “in-house” lodging guests may be granted. Such reduction shall not exceed 50% of the total required for the restaurant. The burden of verification of the percent of “in-house” patrons is with the applicant.
2. Where the calculation of the aforementioned parking spaces results in a fractional part of a complete parking space, the parking spaces required shall be construed to be the next highest number.
3. The above are minimum standards, additional or fewer parking spaces may be required by the Planning Board.

[(AMD), RF-11.02.21, ART-2]

**SECTION 16: RESERVED**

## **SECTION 17: STORM DRAINAGE DESIGN AND CONSTRUCTION STANDARDS**

**SECTION USER'S GUIDE:** *This section contains specific standards relating to the design and construction of storm water management systems.*

### **A. GENERAL PROVISIONS**

1. The storm drainage system will not adversely affect neighboring properties, downstream water quality, or cause soil erosion. Whenever possible, on-site absorption of run-off waters shall be utilized to minimize discharges from the site.
2. Surface water run-off shall be minimized and detained on-site if possible or practicable. If it is not possible to detain water on site, downstream improvements to the channel may be required of the developer to prevent flooding caused by his project. The natural state of watercourses, swales, floodways or rights-of-way shall be maintained as nearly as possible.
3. The design basis is a twenty-five (25) year storm.

### **B. STORM WATER MANAGEMENT DESIGN STANDARDS**

1. Adequate provision shall be made for disposal of all storm water generated within the development and any drained ground water through a management system of swales, culverts, underdrain, and water courses. The storm water management system shall be designed to conduct storm water flows to existing watercourses.
2. All components of the storm water management system shall be designed to meet the criteria of a twenty-five (25) year storm based on rainfall data for the closest reporting station to Newry, Maine and comply with the standards contained in Section 13.H
3. The minimum pipe size for any storm drainage pipe shall be fifteen (15) inches. Maximum trench width at the pipe crown shall be the outside diameter of the pipe plus two (2) feet. Installation shall conform to the specification set forth in the current Standard Specification Highway and Bridges, State of Maine, Department of Transportation.
4. Catch basins shall be installed where necessary and located at the curb line.
5. Inlets and outlets shall be stabilized against soil erosion by stone riprap or other suitable materials to reduce storm water velocity.

### **C. STORM DRAINAGE CONSTRUCTION STANDARDS**

1. Reinforced concrete pipe:  
Reinforced concrete pipe shall conform to the Maine Department of Transportation Standards Specifications, Subsection 706. [(AMD), RF-11.02.21, ART. 2]
2. Corrugated metal pipe:  
Corrugated metal pipe and special fittings such as elbows, tees, and wyes shall conform to the Maine Department of Transportation Standard Specifications, Subsection 707, for the type of metal or coated pipe specified. Pipe gauge shall be as required to meet the soil and traffic loads with a deflection of not more than five (5) percent. [(AMD), RF-11.02.21, ART. 2]
3. PVC Pipe:  
PVC pipe shall conform to the requirements of Maine Department of Transportation Standard Specifications, Subsection 706. [(AMD), RF-11.02.21, ART. 2]
4. Corrugated plastic pipe:  
Pipe culverts and storm drains shall conform to the requirements of Maine Department of Transportation Standard Specifications, Subsection 603 and 706.06. [(AMD), RF-11.02.21, ART. 2]
5. Manholes and catch basins:  
Manholes and catch basins shall be constructed of precast concrete sections or Portland cement concrete blocks or a combination of both and be installed per the manufacture's specifications.
6. Metal frames and traps:  
Manholes, catch basins, and gratings shall conform to the requirements of Maine Department of Transportation Standard Specifications, Subsection 712. [(AMD), RF-11.02.21, ART. 2]
7. Drain inlet alignment:  
Drain inlet alignment shall be straight in both horizontal and vertical alignment unless specific approval of a curvilinear drain is obtained in writing from the Board.
8. Manhole placement:  
Manholes shall be provided at all changes in vertical or horizontal alignment and at all junctions. On straight runs, manholes shall be placed at a maximum of four hundred (400) foot intervals.

9. Catch basin, culvert and manhole maintenance:

Upon completion each catch basin, culvert, and manhole shall be cleaned of all accumulation of silt, debris or foreign matter and shall be kept clean until final acceptance of the road by the Town. [(AMD), TM-03.05.19, ART. 41]



## SECTION 18: PROVISION FOR CLUSTER DEVELOPMENT

***SECTION USER'S GUIDE: This section allows innovative approaches to housing and environmental design by authorizing the Planning Board to reduce certain requirements of this Ordinance for applicants proposing clustered development.***

### A. PURPOSE

It is the policy of the Town of Newry to encourage the development of cluster subdivisions in order to preserve a sense of space, provide for open meadow areas woodland tracts, recreational land uses, preserve other resources identified in the Town of Newry Comprehensive Plan, and blend new development with the traditional open and wooded landscapes of Newry.

These provisions are intended to implement that policy by providing incentives that afford flexibility in lot sizes/density, lot layout and design and road frontage requirements to the landowner. It also allows the Planning Board to waive or reduce certain otherwise applicable standards and provisions of this Ordinance and other Town of Newry Ordinances if landowners commit to the permanent preservation of important open space resources. These incentives are designed to encourage greater flexibility and more innovative approaches to development and environmental design which will promote the most appropriate use of land, preservation of permanent open space that include meadow areas, woodlands, important natural features, wildlife habitat, water resources, ecological systems and scenic areas for the benefit of present and future residents.

A cluster subdivision achieves the purposes of this Section by reducing the lot size, frontage and setback requirements. It locates structures and accompanying uses in those areas where they have the smallest impact on identified meadow areas, woodlands, environmental, wildlife and other open space resources. These resources are then permanently preserved by the use of covenants and restrictions or conservation easements.

### B. APPLICATION PROCEDURE

1. Any applicant for a cluster subdivision is encouraged, but not required, to have a pre-application conference with the Planning Board.
2. The submissions for a subdivision with open space shall include all plans and materials required for a conventional subdivision under this Ordinance.

### C. GENERAL REQUIREMENTS

In Planning Board review and approval of a cluster subdivision, the following requirements shall apply and shall supersede any inconsistent or more restrictive provisions of

this Ordinance and other Town of Newry Ordinances. Dimensional reductions shall not be considered as a variance as provided for in Title 30-A MRSA Section 4353. 4-C.

1. Allowable Density

The number of lots or dwelling units shall be based in the following manner: Determine the Buildable Land of the parcel by taking the total area of the parcel and subtracting in order the following: [(AMD), TM-05.14.2024, WA-36]

- a. area in proposed rights-of-way;
- b. area of two or more contiguous acres with sustained slopes of 20% and greater;
- c. area of the parcel covered by surface waters.

Then divide the Buildable Land by the minimum lot size required for the District. A minimum of 50% of the buildable area must be designated as open space. [(AMD), TM-05.14.2024, WA-36]

[(AMD), RF-11.02.21, ART. 2]

2. Layout and Siting Standards

In planning the location and siting of residential structures in a cluster, subdivision priority should be given to the preservation of the open space for its natural resource value. Structures and other disturbed areas shall be located and sited on the least valuable natural resource portion of a parcel, taking into account the contours of the land and the steepness of slopes.

The building lots on a parcel shall be laid out and the residential structures shall be sited according to the following principles. The Planning Board in its discretion shall resolve conflicts between these principles as applied to a particular site.

- a. In such manner that the boundaries between residential lots and open spaces are well-buffered by vegetation, topography, roads or other barriers in order to minimize potential conflict between residential and open space uses.
- b. Lots and/or structures will be oriented with respect to scenic vistas, natural landscape features, topography and natural drainage areas, in accordance with an overall plan for site development.

3. Space Standards

- a. In shoreland areas all dimensional requirements shall not be reduced below the minimum required in the Shoreland Zoning Ordinance.

- b. The required minimum land area per dwelling unit for the building envelope may be reduced to 20,000 square feet based on soil suitability for subsurface waste water disposal. The building envelope shall not include 100-year floodplains, areas of two or more acres of sustained slopes greater than 20 percent, or wetlands. The Planning Board may further reduce this standard when the development will be served by a sewage treatment system., so long as the reductions don't exceed 50% of the allowed lot width and 50% of the allowed lot area. [(AMD), RF-11.02.21, ART. 2]
- c. The acreage shall be contiguous, unless the Planning Board finds that noncontiguous acres are part of a common, overall scheme of development.
- d. If the lot area is reduced, the total open space in the development shall equal or exceed the sum of the areas by which the building lots are reduced below the minimum lot area normally required in the district.
- e. Minimum road frontage requirements may be waived or modified by the Planning Board provided that no individual lot or dwelling unit shall have direct vehicular access onto a public road existing at the time of development.
- f. The minimum distance between detached abutters' structures shall be twenty (20) feet. This shall be noted on the subdivision plan. [(AMD), RF-11.02.21, ART. 2]

#### 4. Open Space Requirements

In Planning Board review and approval of a cluster subdivision, the following requirements shall apply and shall supersede any inconsistent or more restrictive provision of this Ordinance.

- a. Open Space Uses. On all parcels, open space uses shall be appropriate to the site. Open space should include natural features located on the parcel(s) such as, but not limited to, open meadows, woodland and wildlife habitat. Open space shall be preserved and maintained subject to the following, as applicable:
  - i. On parcels that contain land that are suited to meadow uses, open space shall be preserved for such use, other compatible open space uses such as wildlife habitat, non-intensive recreation, or resource conservation.
  - ii. On parcels that contain land that are suited to woodland uses, open space shall be preserved for forestry, other compatible open space

uses such as wildlife habitat, non-intensive recreation (active or passive), or resource conservation.

- b. When the principal purpose of preserving portions of the open space is the protection of natural resources such as wetlands, steep slopes, wildlife habitats, and stream corridors, open space uses in those portions may be limited to those which are no more intensive than passive recreation.
- c. Notations on Plan. Open space, common lands, roads or facilities must be clearly labeled on the final plan as to its use or uses with respect to the portions of the open space that such use or uses apply, ownership, management, method of preservation, and the rights, if any, of the owners in the subdivision to such land or portions thereof. The plan shall clearly show that the open space land is permanently reserved for open space purposes, and shall contain a notation indicating the book and page of any conservation easements or deed restrictions required to be recorded to implement such reservations.
- d. Ownership of Open Space Land. Open space land may be held in private ownership; or owned in common by a Homeowners' Association (HOA); transferred to a nonprofit organization such as a conservation trust, or association, acceptable to the Planning Board; or held in such other form of ownership as the Planning Board finds adequate to achieve the purposes set forth in subparagraph 4.a and 4.b above and under the other requirements of this Section. The Planning Board shall, in its review, require as a condition of approval provisions for the ongoing maintenance and associated costs for such maintenance of the open space.

5. Homeowners' Associations or Agreements

Where any portion of a subdivision, including but not limited to common land or elements, open space, private roads, or stormwater management systems, basins, ditches, and appurtenances, is proposed or required to be held in common by owners of lots, or owned in common by a Homeowners' Association (HOA) or similar entities, covenants for mandatory membership in the association setting forth the owners' rights, interest, privileges, responsibilities for maintenance, and obligations in the association and the common land, road or open space shall be approved by the Planning Board and included in the deed for each lot. The Planning Board shall not waive this requirement. [(AMD), TM-05.14.2024, WA-36]

## SECTION 19: PROVISION FOR PLANNED UNIT DEVELOPMENT

**SECTION USER'S GUIDE:** *This section provides for developments that contain a mixture of land uses including, but not limited to, residential, commercial, recreational and open space that are preplanned and developed under unified management. It allows innovative approaches to large scaled mixed use developments and authorizes the Planning Board to reduce certain requirements of this Ordinance.*

### A. PURPOSE

The purpose of this section is to allow for large-scale, well planned developments that:

1. are in accordance with the Town's Comprehensive Plan;
2. are reasonably self-sufficient in the provision of necessary services, such as sewerage, water supply, off-street parking, recreational amenities, and long-term management of common facilities;
3. integrate a variety of residential, commercial, and/or recreational uses;
4. preserve open space;
5. incorporate a pattern of development that is in harmony with the natural features of the land; and
6. provide for efficient use of the land, minimizing the required networks of roads and utilities.

### B. PROCEDURE

1. Proposed planned unit developments shall be reviewed under Section 11, Major Subdivisions and Section 12, Site Plan Review when the applicant proposes to construct and/or develop non residential uses. The tract or parcel of land proposed for planned unit development must be in single ownership or the subject of an application filed jointly by the owners of all the property included. The applicant must demonstrate right, title, or interest in the land that is the subject of the application. The planned unit development review procedure shall consist of the following steps:
  - a. a preapplication conference;
  - b. preliminary development plan;
  - c. final development plan and subdivision and site plan review approval as applicable.

2. The preapplication conference shall serve the purpose of informally acquainting the Planning Board with the overall scope and intentions of the proposed planned unit development and of acquainting the developer with the requirements of this Section. At the preapplication conference, the developer shall submit to the Planning Board a sketch plan of the proposed planned unit development, which shows the bounds of the total development and the mix of land uses proposed and their general locations. No action shall be required on the sketch plan, which is presented for informational purposes only.
3. The preliminary development plan shall constitute a formal submission of a subdivision application and site plan review application to the Planning Board. In addition to the submission requirements for subdivision and site plan review applications the following items are required to be submitted as part of the preliminary development plan:
  - a. a legal description of the total planned unit development boundaries and of any divisions of the land, existing or proposed, within these boundaries.
  - b. a statement of present and proposed ownership of all lands within the proposed planned unit development.
  - c. Proposed development schedule that indicates when the project and stages thereof will begin and be completed.
  - d. a statement sufficient to satisfy the Planning Board that the project can be realistically financed and completed.
  - e. the subdivision and site plan shall include clear notations as to which facilities are proposed to be in public, private, or common ownership.
  - f. The Planning Board shall, as part of its review of the preliminary development plan, conduct a public hearing on the planned unit development.
4. The final development plan shall constitute a formal submission of a final subdivision application and site plan review application to the Planning Board, but only of such part of the planned unit development that has received approval of a preliminary development plan. In addition to the submission requirements for subdivision and site plan review applications the following items are required to be submitted as part of the final development plan:
  - a. drawings that include all the information required under the preliminary development plan.
  - b. copies of restrictive covenants or deed restrictions relating to the development.

- c. evidence of the formation and incorporation by the developer of any association that may be proposed to manage and maintain common spaces and facilities.
5. For any existing development that meets the definition of a planned unit development, lawfully existing or in progress as of the effective date of this Ordinance may submit an existing conditions plan to the Planning Board. The existing conditions plan shall indicate as built conditions and the management and maintenance of common spaces and facilities. After receipt of the existing conditions plan, the Planning Board, upon application by the developer for expansion of or additional development within the planned unit development, may at its sole discretion waive the requirement of a preapplication conference and such portions of the required preliminary development plan submissions as it believes have been satisfied or are unnecessary to make a reasoned decision on the proposed expansion or addition.

### **C. STANDARDS**

1. For the purpose of establishing space and bulk standards applicable to planned unit developments, notwithstanding district regulations to the contrary, the space and bulk standards for planned unit developments shall be as follows. Dimensional reductions shall not be considered as a variance as provided for in Title 30-A MRSA Section 4353. 4-C.
  - a. A planned unit development shall contain at least ten acres of buildable land area in single ownership.
  - b. The acreage shall be contiguous, unless the Planning Board finds that noncontiguous acres are part of a common, overall scheme of development. Land contained in planned unit that has provided the Planning Board with an existing conditions plan may be included within the minimum 10-acre requirement.
  - c. Allowable uses shall be those listed as permitted in the Growth Management District in which the Plan Unit Development is located.
  - d. The planned unit development shall be served by centralized multi-user sewerage and water supply facilities.
  - e. Lots which may be created for nonresidential uses shall include sufficient land area to support any proposed structures, the required off-street parking for the uses, whether or not the parking actually is located on the lots, and safe pedestrian circulation.

- f. Net lot area per dwelling unit shall be not less than required in the Growth Management District in which the Plan Unit Development is located.
  - g. No building or structure shall be located closer than 25 feet to the perimeter boundary line of the planned unit development. The minimum distance between detached abutters' structures shall be twenty (20) feet. This shall be noted on the development plan. [(AMD), RF-11.02.21, ART. 2]
  - h. In shoreland areas all dimensional requirements shall not be reduced below the minimum required in the Shoreland Zoning Ordinance.
  - i. Maximum impervious surface coverage in a planned unit development shall not exceed 60%.
  - j. Other space and bulk dimensions for planned unit developments shall be as shown and approved by the Planning Board on the final development plan.
2. It is encouraged that buildings be oriented with consideration for scenic vistas as view by others, natural landscape features, topography, and potential solar access.
  3. All utilities shall be installed underground, unless specifically waived by the Planning Board.
  4. A system of pedestrian circulation and amenities including sidewalks within and adjacent to the Planned Unit Development shall be provided. This system will connect with existing or planned sidewalks.
  5. The Planned Unit Development shall be designed to be transit-orientated and discourage the use of the private automobile.



## **SECTION 20: DEDICATION AND MAINTENANCE OF COMMON LAND AND SERVICES**

***SECTION USER'S GUIDE: This section contains specific provisions regarding the dedication and maintenance of common land and common services.***

### **A. DEDICATION**

1. All common land shall be owned jointly or in common by the owners of the dwelling units by means of a homeowners' association, by an association which has as its principal purpose the conservation or preservation of land in essentially its undeveloped condition as meadow, wood or agricultural land, or by an acceptable legal entity.
2. Further subdivision of the common land, except for easements for underground infrastructure improvements, shall be prohibited.
3. The common land shall be shown on the Final Plan with appropriate notation on the plan to indicate that:
  - a. It shall not be used for future building lots; and
  - b. A part or all of the common land may be dedicated for acceptance by the municipality or other organization acceptable to the Board.

### **B. MAINTENANCE**

1. If any or all of the common open space and services are to be reserved for use by the residents, the by-laws of the proposed homeowners' association shall specify maintenance responsibilities and shall be submitted to the Planning Board prior to Final Plan approval.
2. Covenants for mandatory membership in the homeowners' association setting forth the owners' right, interests, and privileges in the association and the common property, shall be reviewed by the Planning Board and shall be included in the deed for each lot or dwelling.
3. The homeowners' association shall have the responsibility of maintaining the common property unless or until dedication is accepted by the Town or other ownership organization acceptable to the Board.
4. The association shall levy annual charges against all owners of dwelling units to defray the expenses connected with the maintenance of common property and tax assessments.

5. The developer or subdivider shall maintain control of the common property, and be responsible for its maintenance until development sufficient to support the association has taken place.

## SECTION 21: PERFORMANCE GUARANTEES

**SECTION USER'S GUIDE:** *This section contains specific provisions relating to required performance guarantees and how they will be administered.*

### A. TYPES OF GUARANTEES

With submittal of the application for Final Plan approval, the applicant shall provide one of the following performance guarantees for an amount adequate to cover the total construction costs of all Required Improvements. The amount shall take into account the time-span of the construction schedule and the inflation rate for construction costs. The Planning Board shall not waive the requirement for a performance guarantee on an application for a subdivision (major or minor). The actual guarantee is not required to be tendered until five days prior to start of construction. [(AMD), TM-05.14.2024, WA-36]

1. Either a certified check payable to the Town or a savings account or certificate of deposit both naming the Town as owner, or the establishment of an escrow account, as provided for in Section C, below;
2. A performance bond payable to the Town issued by a surety company, approved by the Select Board, as provided for in Section D, below;
3. An irrevocable letter of credit from a financial institution establishing funding for the construction of the Required Improvements, from which the Town may draw if construction is inadequate, approved by the Select Board, as provided for in Section E, below; or
4. An offer of conditional approval limiting the number of units or lots sold until all Required Improvements have been constructed, as provided for in Section F, below.

### B. CONTENTS OF GUARANTEE

The performance guarantee shall contain a construction schedule, cost estimates for each major phase of construction taking into account inflation, provisions for inspections of each phase of construction, provisions for the release of part or all of the performance guarantee to the developer, and a date after which the developer will be in default allowing the Town access to the funds to finish construction, as provided for in Section I, below.

### C. ESCROW ACCOUNT

A cash contribution to the establishment of an escrow account shall be made by either a certified check made out to the Town, the direct deposit into a savings account, or the purchase of a certificate of deposit. For any account opened by the developer, the Town

shall be named as owner or co-owner, and the consent of the Town shall be required for a withdrawal. Any interest earned on the escrow account shall be returned to the developer.

#### **D. PERFORMANCE BOND**

A performance bond shall detail the conditions of the bond, the method for release of the bond or portions of the bond to the developer, and the procedures for collection by the Town. The bond documents shall specifically reference the Required Improvements for which approval is sought.

#### **E. LETTER OF CREDIT**

An irrevocable letter of credit from a bank or other lending institution shall indicate that funds have been set aside for the construction of the development and may not be used for any other project or loan.

#### **F. CONDITIONAL AGREEMENT**

The Planning Board, at its discretion may provide for the developer to enter into a binding agreement with the Town in lieu of the other financial performance guarantees. Such an agreement shall provide for approval of the Final Plan on the condition that no lot or unit may be conveyed until: [(AMD), TM-05.14.2024, WA-36]

1. It is certified by the Inspecting Official that all of the Required Improvements have been installed in accordance with the Final Plan; or [(AMD), TM-05.14.2024, WA-36]
2. A performance guarantee, acceptable to the Town is submitted in an amount necessary to cover the completion of the Required Improvements at an amount adjusted for inflation and prorated for the portions of the Required Improvements already installed. Notice of agreement and any conditions shall be on the Final Plan which is recorded at the Registry of Deeds. Release from the agreement shall follow the procedures for release of the performance guarantees for Required Improvements contained in Subsection I.

#### **G. PHASING OF DEVELOPMENT**

The Planning Board may approve plans in separate and distinct phases. Prior to construction of subsequent phases, the developer shall present again adequate performance guarantee for Required Improvements.

#### **H. EXTENSION**

The Planning Board may recommend a maximum extension of twelve (12) months to the guaranteed performance period when the applicant can demonstrate, to the satisfaction of the Planning Board good cause for such extension. Such recommendation shall be referred to the Select Board for official action.

## **I. RELEASE OF GUARANTEE**

Prior to the release of any part of the performance guarantee, the Planning Board shall determine to its satisfaction, in part upon the report of the Inspecting Official and whatever other agencies and departments may be involved, that the proposed Required Improvements meet or exceed the design and construction requirements for that portion of the Required Improvements for which the release is requested. [(AMD), TM-05.14.2024, WA-36]

## **J. DEFAULT**

If, upon inspection, the Inspecting Official finds that any of the Required Improvements have not been constructed as approved by the Planning Board in accordance with the plans and specifications filed as part of the application, except for modifications approved in accordance with Section 6.A.4, he shall so report in writing to the Code Enforcement Officer, the Select Board, the Planning Board, and the applicant or developer. The Select Board shall take any steps necessary to preserve the Town's rights.

## **K. IMPROVEMENTS GUARANTEED**

Performance guarantees shall be tendered for all Required Improvements.

## SECTION 22: WAIVERS

***SECTION USER'S GUIDE: This section authorizes the Planning Board, under special circumstances, to waive portions of the submission requirements, performance standards and improvements required by this Ordinance and provides that such waiver be granted only with conditions.***

### **A. WAIVER OF SUBMISSION REQUIREMENTS**

Where the Planning Board makes written findings of fact that there are special circumstances of a particular site proposed to be subdivided or developed, it may waive portions of the submission requirements, provided that the applicant has demonstrated that the standards of this Ordinance have been or will be met, the public health, safety and welfare are protected and provided the waivers do not have the effect of nullifying the intent and purpose of the Comprehensive Plan or any Ordinance. [(AMD), TM-05.14.2024, WA-36]

### **B. WAIVER OF PERFORMANCE STANDARDS**

Where the Planning Board makes written findings of fact that there are special circumstances of a particular site proposed to be subdivided or developed, it may waive portions of the performance standards, unless otherwise indicated in this Ordinance, to permit a more practical and economical development, provided the public health, safety and welfare are protected, and provided the waivers do not have the effect of nullifying the intent and purpose of the Comprehensive Plan or any Ordinance.

### **C. WAIVERS OF REQUIRED IMPROVEMENTS**

Where the Planning Board makes written findings of fact that due to special circumstances of a particular site proposed to be subdivided or developed, the provision of certain Required Improvements is not requisite to provide for the public health, safety or welfare, or are inappropriate because of inadequate or lacking connecting facilities adjacent to or in proximity to the proposed subdivision or development, it may waive the requirement for such improvements, subject to appropriate conditions.

### **D. WAIVERS CONDITIONALLY GRANTED**

In granting waivers to any of the provisions of this Ordinance in accordance with subsections A, B, and C, above, the Planning Board shall require such conditions as will assure the purposes and objectives of this Ordinance are met. [(AMD), TM-05.14.2024, WA-36]

## **SECTION 23: GROWTH MANAGEMENT DISTRICTS AND NONCONFORMANCE**

***SECTION USER'S GUIDE: This section establishes Growth Management Districts, dimensional requirements, Growth Management District uses and provisions regarding non-conforming structures, uses and lots.***

### **A. GROWTH MANAGEMENT DISTRICTS ESTABLISHED**

For the purposes of this Ordinance, the Town of Newry is hereby divided into the following Growth Management Districts:

1. Resort Development District (RDD);
2. General Development District (GDD);
3. Rural District (RD); and
4. Protection District (PD).

### **B. STANDARDS ESTABLISHING DISTRICTS AND DISTRICT DESCRIPTIONS**

1. Resort Development District

The purpose of the Resort Development District is to provide expansion areas for the Sunday River Ski Resort and associated development. Such development may include additional skiing terrain, lodging facilities in the form of hotels, town houses, single-family homes, employee housing, facilities to move the resort to a four-season destination and alpine commercial/village areas. Such development is largely dependent on terrain suitable for alpine ski trails and other recreation facilities including golf courses.

2. General Development District

The purpose of the General Development District (GDD) is to provide designated areas where orderly growth and development will be allowed during the next ten years as required by the Maine Comprehensive Planning and Land Use Regulation Act (Title 30-A, Section 4326). A wide range of development types are appropriate in this area including single-family residential, multi-family residential, public, governmental, commercial and recreational.

3. Rural District

The purpose of the Rural District is to maintain large blocks of forest land and open space and minimize public expenditures to provide municipal services to these remote areas. Appropriate uses for this area are low density residential, forestry, recreation and other land uses requiring rural and remote locations.

4. Protection District

The purpose of the Protection District (PD) is to provide protection for significant and vulnerable natural resources. These include areas above 2,700 feet in elevation from mean sea level and those areas within the Town of Newry used as municipal water supply.

**C. OFFICIAL GROWTH MANAGEMENT DISTRICT MAP**

Growth Management Districts established by this Ordinance are bounded and defined as provided in B. above and shown on the official "Growth Management District Map of Newry, Maine" which together with its notations and amendments, from time to time, is hereby made a part of this Ordinance.

The official copy of the map shall be that map which bears the certification that it is true and correct, signed by the Chairman of the Planning Board and attested by the Town Clerk, and on file in the office of the Town Clerk.

**D. INTERPRETATION OF DISTRICT BOUNDARIES**

Where uncertainty exists as to boundary lines of Districts as shown on the official "Growth Management District Map of Newry, Maine," the following rules of interpretation shall apply:

1. Boundaries indicated as approximately following the center lines of road, highways, public utilities or right-of-ways shall be construed as following such center lines;
2. Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines;
3. Boundaries indicated as being the extension of center lines of roads shall be construed to be the extension of such center lines as of the date of this ordinance;
4. Boundaries indicated as approximately following the center lines of streams, rivers or other continuously flowing water courses shall be construed as following the channel center line of such watercourses as of the date of this ordinance.
5. Boundaries indicated as being parallel or extension of features listed above shall be so construed. Distances not specifically indicated on the official map shall be determined by the scale of the map;
6. Where physical or cultural features existing on the ground are at variance with those shown on the official map, or in other circumstances where uncertainty ex-



ists with respect to the location of a boundary, the Planning Board shall interpret the district boundaries; and

7. Boundaries for 100 year floodplain areas are based upon the most current information available from the State or Federal agencies responsible and are subject to change as such information changes and/or the applicant shows proof through the submittal of materials prepared by a Professional Land Surveyor or which shows proof that the property in question lies at least one (1) foot above the one hundred (100) year flood level. The elevation of filled or made land shall not be considered.

**E. DIVISION OF LOTS BY DISTRICT BOUNDARIES**

In the event that a District boundary line divides a lot or parcel of land of the same ownership of record, at the time such line is established by adoption or subsequent amendment of this Ordinance, the Planning Board, after written findings of fact, that such extensions will not create unreasonable adverse impacts on the existing uses of the adjacent properties, may:

1. When that portion of the lot which is located in the more restrictive District is greater than 10 (ten) acres, extend the regulations applicable to the less restricted portion into no more than twenty percent (20%) of the more restrictive portion.
2. When the portion of the lot which is located in the more restrict District is less than 10 (ten) acres, extend the regulations applicable to the less restrictive portion into no more than fifty percent (50%) of the more restrictive portion.
3. When that portion of the lot which is located in the more restrictive District is equal to that which is located in the less restrict District, extend the regulations applicable to the less restrictive portion to all of the more restrictive portion.
4. Except that, no such extensions shall be granted by the Planning Board into any Resource Protection District.

**F. DIMENSIONAL REQUIREMENTS**

All lots, structures and uses shall meet or exceed the following dimensional requirements:

District	Minimum Lot Size/ Density	Minimum Road Frontage	Minimum Structure Front Setback <sup>1</sup>	Minimum Structure Side Setback	Minimum Structure Rear Setback	Maximum Impervious Surface Ratio <sup>2</sup> (percent)	Maximum Structure Height <sup>3</sup>
Resort	20,000 sq. ft. per	75 ft.	10 ft.	10 ft.	10 ft.	70	40 ft.

District	Minimum Lot Size/ Density	Minimum Road Frontage	Minimum Structure Front Setback <sup>1</sup>	Minimum Structure Side Setback	Minimum Structure Rear Setback	Maximum Impervious Surface Ratio <sup>2</sup> (percent)	Maximum Structure Height <sup>3</sup>
Development District	lot or unit, sewered  43,560 sq. ft. per lot or unit, nonsewered  Multi-unit housing per unit: 10,000 sq. ft. sewered  20,000 sq. ft. nonsewered	sewered  100 ft. nonsewered					
General Development District	20,000 sq. ft. per lot or unit, sewered  43,560 sq. ft. per lot or unit, nonsewered  Multi-unit housing per unit: 20,000 sq. ft. sewered  43,560 sq. ft. nonsewered	100 ft.	25ft.	10 ft.	10 ft.	50	40 ft.
Rural District	43,560 sq. ft. per lot or unit	150 ft.	50 ft.	25 ft.	25 ft.	25	40 ft.
Protection District	43,560 sq. ft. per lot or unit	150 ft.	50 ft.	25 ft.	25 ft.	25	40 ft.

NOTES:

1. Measured from the edge of the road right-of-way.
2. The total area of all structures, parking lots and other non-vegetated surfaces.
3. The vertical distance between the mean finish grade at the downhill side of the structure measured from the finished top floor level intended for human habitation.
4. Each lot must be able to completely contain within its boundaries an area as would be defined by a circle with a minimum diameter equal to the required minimum road frontage as required in the district.

5. Notwithstanding the space and bulk standards contained above, any allowable use located in and approved as a planned unit development in the Resort Development District shall instead comply with the terms of that approval.

[(AMD), TM-03.05.19, ART. 41] [(AMD), RF-11.02.21, ART. 2]

**G. RESERVED**

**H. DISTRICT USES**

All land use activities, as indicated in the Table of District Land Uses, shall conform with all applicable land use standards. The district designation for a particular site shall be determined from the Growth Management District Map.

Key to Table:

- Yes                    Allowed (no permit required under this Ordinance but must comply with all applicable performance standards.
- No                     Not allowed
- PB                     Required approval by the Planning Board
- PB<sup>SR</sup>                 Requires a Site Plan Review Approval.
- PB<sup>SD</sup>                 Requires subdivision approval.

Abbreviations:

- RDD                  Resort Development District
- GDD                  General Development District
- RD                    Rural District
- PD                    Protection District

**TABLE OF DISTRICT LAND USES**

LAND USES	DISTRICTS			
	RDD	GDD	RD	PD
1. Land Management Activities	yes	yes	yes	yes
2. Timber harvesting	yes	yes	yes	yes
3. Commercial Procurement, storage, transportation of potable water	PB <sup>SR</sup>	PB <sup>SR</sup>	PB <sup>SR</sup>	PB <sup>SR</sup>
4. Land Based Recreation Activities, Equipment & maintenance	PB <sup>SR</sup>	PB <sup>SR</sup>	PB <sup>SR</sup>	PB <sup>SR</sup>

LAND USES	DISTRICTS			
	RDD	GDD	RD	PD
5. Borrow Pit/Mineral extraction, including sand and gravel extraction	CEO/ PB	PB <sup>SR</sup>	PB <sup>SR</sup>	no
6. Single family home	yes	yes	yes	no
7. Two family home	yes	yes	yes	no
8. Multi-Unit housing	PB <sup>SD</sup>	PB <sup>SD</sup>	PB <sup>SD</sup>	no
9. Mobile home park	no	PB <sup>SD</sup>	no	no
10. Home Occupations <sup>1</sup>	yes	yes	yes	no
11. Agriculture/Forestry Sales & Service	PB <sup>SR</sup>	PB <sup>SR</sup>	PB <sup>SR</sup>	no
12. Government offices/facilities	PB <sup>SR</sup>	PB <sup>SR</sup>	no	no
13. Public/private schools	PB <sup>SR</sup>	PB <sup>SR</sup>	no	no
14. Museum/Library	PB <sup>SR</sup>	PB <sup>SR</sup>	PB <sup>SR</sup>	no
15. Public Utility Facility	PB <sup>SR</sup>	PB <sup>SR</sup>	PB <sup>SR</sup>	no
16. Automobile Graveyard/Recycling/ Junkyard	no	no	PB <sup>SR</sup>	no
17. Hotel/Motel	PB <sup>SR</sup>	PB <sup>SR</sup>	no	no
18. Resort Based Uses	PB <sup>SR</sup>	PB <sup>SR</sup>	no	no
19. Bed & Breakfast	PB <sup>SR</sup>	PB <sup>SR</sup>	PB <sup>SR</sup>	no
20. Restaurant	PB <sup>SR</sup>	PB <sup>SR</sup>	no	no
21. Retail Business	PB <sup>SR</sup>	PB <sup>SR</sup>	no	no
22. Service Business	PB <sup>SR</sup>	PB <sup>SR</sup>	no	no
23. Wholesale Business	PB <sup>SR</sup>	PB <sup>SR</sup>	no	no
24. Commercial Recreation	PB <sup>SR</sup>	PB <sup>SR</sup>	PB <sup>SR</sup>	no
25. Outdoor Recreation Based Sales & Service	PB <sup>SR</sup>	PB <sup>SR</sup>	PB <sup>SR</sup>	no
26. <u>Campground</u>	no	no	PB <sup>SR</sup>	no
27. Industrial	PB <sup>SR</sup>	PB <sup>SR</sup>	no	no
28. Demolition/Waste Disposal	no	no	PB <sup>SR</sup>	no

LAND USES	DISTRICTS			
	RDD	GDD	RD	PD
29. Sawmill	no	PB <sup>SR</sup>	PB <sup>SR</sup>	no
30. Commercial Communication Tower	PB <sup>SR</sup>	PB <sup>SR</sup>	PB <sup>SR</sup>	no
31. Commercial Wind Energy Facility	PB <sup>SR</sup>	no	no	no
32. Mineral Exploration or Extraction [(NEW), JP, 06/14/2022]	no	PB	PB	no
33. Recreational Lodging Facilities <sup>2</sup> [(NEW), TM-05.14.2024, WA-36]	PB	PB	PB	no
34. Uses similar to uses requiring a PB permit/approval	PB	PB	PB	PB

Notes to the Table of District Land Uses:

1. Home Occupation that do not meet the criteria contained in Section 1.C.5 require a permit from the Planning Board in accordance with Section 13.AB
2. Except campgrounds. [(NEW), TM-05.14.2024, WA-36]

## I. NONCONFORMING STRUCTURES, USES AND LOTS

### 1. Burden of Proof

The burden of establishing that any non-conforming structure, use or lot is a legal existing non-conforming use as defined in this Ordinance shall, in all instances, be upon the owner of such non-conforming structure, use or lot and not upon the Town of Newry.

### 2. Conversion to Conformance Encouraged

Owners of all existing non-conforming structures and uses shall be encouraged to convert such existing non-conforming structures and uses to conformance wherever possible and shall be required to convert to conforming status as required by the Ordinance.

### 3. Continuance

The use of any building, structure or land, which is made non conforming by reason of the enactment of this Ordinance, or which shall be made non-conforming by reason of a subsequent amendment, may be continued, subject to the following provisions:

- a. Existing Nonconforming Uses of Land. Continuance of non-conforming uses of land shall be subject to the following provisions:
  - i. No such existing non-conforming use shall be enlarged or increased, nor extended to occupy a greater area of land than that occupied at the effective date of this Ordinance, or any amendment thereto;
  - ii. If any such existing non-conforming use of land discontinued for any reason for a period of more than twelve (12) consecutive months, any subsequent use of land shall conform to the requirements specified by this Ordinance for the District in which such land is located;
  - iii. An existing non-conforming use may be moved within the boundaries of the lot provided that the Planning Board or its designee finds that the change in location on the lot is more appropriate as regards:
    - (1) Location and character;
    - (2) Fencing and screening;
    - (3) Landscaping, topography and natural features;
    - (4) Traffic and access;
    - (5) Signs and lighting; and/or
    - (6) Potential nuisance

b. Existing Nonconforming Structures

Continuance of existing non-conforming structures shall be subject to the following provisions:

- i. No such structure shall be enlarged or altered in any way that increases its non-conforming;
- ii. Should any structure, exclusive of the foundation, be destroyed or damaged by any means, or removed, said structure may be rebuilt on the existing foundation to the dimensions of the structure which was destroyed provided rebuilding is begun within one year; and
- iii. An existing non-conforming structure may be moved within a lot in a manner which would decrease its non-conformity in terms of setback requirements, provided that the Planning Board makes findings that the change in location is more appropriate as regards to:
  - (1) Location and character;

- (2) Fencing and screening;
- (3) Landscaping, topography and natural features;
- (4) Traffic and access;
- (5) Signs and lighting; and/or
- (6) Potential nuisance.

c. Existing Nonconforming Uses of Structures

Continuance of a legally existing non-conforming use of a structure shall be subject to the following provisions:

- i. No existing structure devoted to a non-conforming use shall be enlarged or extended;
- ii. Any existing non-conforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the time of adoption or amendment of this Ordinance, but no such uses shall be extended to occupy any land outside such building;
- iii. Any existing non-conforming use of a structure or premises may be changed to another non-conforming use provided that the Planning Board shall find that the proposed use is more appropriate to the District than the existing non-conforming use. The determination of more appropriate use shall be made according to:
  - (1) The proposed use is less noxious than the current nonconforming use;
  - (2) The proposed use will not create a traffic hazard nor increase an existing traffic hazard;
  - (3) The amount of parking required to meet the minimum requirements for the proposed use exists on the site or will be otherwise provided in accordance with this Ordinance;
  - (4) That the amount of noise, odors, vibrations, smoke, dust and air discharges of the proposed use shall be equal to or less than the present use;
  - (5) That the rate of surface water run-off from the site will not be increased;

- (6) That the hours of operation of the proposed use will be compatible with the existing, surrounding land uses; and
    - (7) That the proposed use will not increase the adverse impact on surrounding properties.
  - iv. If a non-conforming use of a structure or premises is superseded by a permitted use, the non-conforming use shall not thereafter be resumed;
  - v. If any such non-conforming use of a structure is discontinued for any reason for a period of more than twelve (12) months, any subsequent use of such structure shall conform to the regulation specified by this Ordinance for the District in which such structure is located; and
  - vi. A structure containing an existing non-conforming use may be moved, within the lot, in a manner which would be a more appropriate location, provided that the Planning Board finds that the change in location is more appropriate as regards to:
    - (1) Location and character;
    - (2) Fencing and screening;
    - (3) Landscaping, topography and natural features;
    - (4) Traffic and access;
    - (5) Signs and lighting; and
    - (6) Potential nuisance.
- d. Construction Begun Prior to Ordinance.

This Ordinance shall not require any change in the plans, construction, size or designated use for any building, structure or part thereof for which a completed application for a local permit has been made or a permit has been issued and upon which construction has been lawfully commenced prior to the adoption or amendment of the Ordinance. Such construction shall start within sixty (60) days after the issuance of such permit.

#### 4. Nonconforming Lots of Record

A single parcel of land, the legal description of which or the dimensions of which are recorded on a document or map on file with the Registry of Deeds which at the effective date of adoption or subsequent amendments of this Ordinance, does not meet the lot area or width requirements or both, of the District in which it is located, may be built upon as an existing non-conforming lot of record even



though such lot may be contiguous with any other lot in the same ownership, provided that all other provisions of this Ordinance shall be met.

5. Transfer of Ownership

Ownership of land and structures which remain lawful but become non-conforming by the adoption or amendment of the Ordinance may be transferred and the new owner may continue the non-conforming uses subject to the provisions of this Ordinance.

## SECTION 24: Definitions

**SECTION USER'S GUIDE:** *This section contains specific definitions for words and phrases used in this Ordinance.*

### A. CONSTRUCTION OF LANGUAGE

In this Ordinance, certain terms and words shall be interpreted as follows:

1. The words "persons" and "applicant" includes individuals, firms, associations, corporations, organizations, and similar entities;
2. Words used or defined in one tense or form shall include other tenses or derivative forms;
3. Words in the singular number shall include the plural number and words in the plural shall include the singular number;
4. The masculine gender shall include the feminine and the feminine shall include the masculine;
5. The word "shall" is mandatory;
6. The word "may" is permissive;
7. The words "used" or "occupied" include words "intended", "designed", or "arranged to be used or occupied";
8. The word "building" including the word "structure":
9. The word "dwelling" includes the word "residence";
10. The word "lot" includes the words "plot" or "parcel";
11. The word "town" or "municipality" means Town of Newry, Maine; and
12. The word "Board" refers to the "Planning Board" duly appointed by the Town of Newry, Maine.
13. The words "Municipal Officers" refers to the "Select Board" duly elected by the Town of Newry, Maine;
14. In case of difference of meaning or implication between the text of this Ordinance, any map, illustration, or table, the text shall control.

### B. DEFINITIONS

For the purpose for interpreting this Ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein.

**ABUTTERS:** Property owner within one thousand (1,000) feet of the property involved, including owners of the property on the opposite side of a road or right of way and in adjacent municipalities. The owners of the property shall be considered to be those against whom taxes are assessed.

**ACCESSORY USE OR STRUCTURE:** A subordinate use of a building, other structure or land, or a subordinate building or other structure:

1. Whose use is customary in connection with the principal building, other structure or use of land; and
2. Whose use is clearly incidental to the use of the principal building, other structure or use of land; and
3. Which is located on the same lot with the principal building, other structure or use of land, or on a lot adjacent to such lot if in the same ownership or part of the same establishment.

**AGRICULTURAL/FORESTRY SALES AND SERVICE:** Agriculture/Forestry Sales/Service: The use of buildings or land for the sale of equipment or products or services to those primarily engaged in agriculture or forestry and/or the sale of agricultural/forestry products to the public.

**AGRICULTURAL LAND MANAGEMENT PRACTICES:** Means those devices and procedures utilized in the cultivation of land in order to further crop and livestock production and conservation of related soil and water resources.

**ALTERATION:** Structural changes, rearrangement, change of location or addition to a building, or structure other than repairs and modification in building equipment, involving more than 25% increase in the overall floor space or bulk of the building or structure at any time or in total since the effective date of this ordinance.

**AMBIENT SOUND:** At a specified time, the all-encompassing sound associated with a given environment, being usually a composite of sounds from many sources at many directions, near and far, including the specific facility of interest.

**ANSI S1.1-1960:** American National Standard Acoustical Terminology.

**ANSI S12.9-1988:** American National Standard Quantities and Procedures for Description and Measurements of Environmental Sound, Part 1;

**ANSI S3.20-1973:** American National Standard Psychoacoustical Terminology.

**ANTENNA** Means any system of poles, panels, rods, reflecting discs or similar devices used for the transmission or reception of radio or electromagnetic frequency signals.

[(NEW), TM-05.14.2024, WA-36]

**APPROVED RESIDENTIAL SUBDIVISION:** A residential subdivision for which all applicable land use permits have been issued, provided that the time for beginning construction under such permits has not expired.

**AQUIFER (Significant ground water aquifer):** Significant ground water aquifer means a porous formation of ice - contact and glacial outwash sand and gravel or fractured bedrock that contains significant recoverable quantities of water which is likely to provide drinking water supplies.

**ASSOCIATED FACILITIES:** Elements of a Commercial Wind Energy Facility other than its Generating Facilities that are necessary to the proper operation and maintenance of the Commercial Wind Energy Facility, including but not limited to buildings, access roads, Generator Lead Lines and substations.

**AUTOMOBILE GRAVEYARD/RECYCLING/JUNKYARD:** As defined in Title 30-A MRSA section 3752.

**BED AND BREAKFAST:** A private home where the general public can stay overnight and are served a breakfast meal, for which a fee is charged. [(AMD), RF-11.02.21, ART. 2]

**BORROW PIT:** Borrow pit means an excavation for sand, fill or gravel that is moved off the parcel that it is excavated from.

**BUILDABLE LAND:** Land other than the following:

1. Land which is situated below the normal high water mark of any water body.
2. Land which is located within the one hundred (100) year floodplain, other than roads and driveways which shall be constructed to meet standards contained in the Shoreland Zoning Ordinance and/or Floodplain Management Ordinance where applicable, as identified by the Federal Emergency Management Agency, Flood Insurance Administration, unless the applicant shows proof through the submittal of materials prepared by a Professional Land Survey that the property in question lies at least one (1) foot above the one hundred (100) year flood level. The elevation of filled or made land shall not be considered.
3. Land which is part of a permanent road right-of-way or permanent road easement.
4. Land that has been created by filling or draining a pond or wetland that has not received approval for such filling and draining by the Army Corps of Engineers and/or the Maine Department of Environmental Protection.
5. Land that has been identified as significant wildlife habitat by the Maine Department of Inland Fisheries and Wildlife when a mitigation plan has not been approved by the Maine Department of Inland Fisheries and Wildlife.

**BUILDING:** Any structure having a roof or partial roof supported by columns or walls used for the shelter or enclosure of persons, animals, goods or property of any kind.

**CAMPGROUND:** A Recreational Lodging Facility which includes any area or tract of land to accommodate a user's recreational vehicle, motor home, tent or other form of temporary shelter and for which a fee is charged. The shelter must be provided by the user, arrives with the user at the commencement of their stay and departs with the user at the termination of their stay. [(AMD), TM-05.14.2024, WA-36]

**CEO:** See *Code Enforcement Officer*. [(NEW), TM-05.14.2024, WA-36]

**CLUSTER SUBDIVISION:** A subdivision in which the dimensional requirements are reduced below those normally required in return for permanently preserved open space.

**CODE ENFORCEMENT OFFICER:** Appointed by the Select Board, the Code Enforcement Officer shall enforce the town's ordinances, keep a complete record of all essential transaction of the office and investigate complaints of alleged violations of local land use laws.

**COLOCATION** When referring to a Wireless Telecommunications Facility means the use of such facility by more than one wireless telecommunications provider. [(NEW), TM-05.14.2024, WA-36]

**COMMERCIAL:** The use of lands, buildings, or structures, other than a "home occupation," defined below, the intent and result of which activity is the production of income from the buying and selling of goods and/or services, exclusive of rental of residential buildings and/or dwelling units.

**COMMERCIAL COMMUNICATION TOWER:** Any structure, antenna, tower, or other device which provides to the public for a fee radio/television transmission, commercial mobile wireless services, unlicensed wireless services, cellular phone services, specialized mobile radio communications (SMR), common carrier wireless exchange phone services and personal communications service (PCS) or pager services. This definition does not include ham radio towers/antenna, or towers/antenna used to provide communication for a single business.

**COMMERCIAL RECREATION:** Any commercial enterprise which receives a fee in return for the provision of some recreational activity including but not limited to: amusement facilities, racquet and tennis clubs, health facility, amusement parks, gymnasiums and swimming pools, shooting ranges, skiing, golf course, and the like.

**COMMERCIAL WIND ENERGY FACILITY:** A wind energy facility whose primary purpose is to sell electricity to be supplied to the regional electric power grid. A Commercial Wind Energy Facility includes Generating Facilities and Associated Facilities.

**COMMON LAND:** Land owned jointly or in common by the owners of the dwelling units by means of a homeowners' association, by an association which has as its principal purpose the conservation or preservation of land in essentially its undeveloped condition, or by an acceptable legal entity.

**COMPLETE APPLICATION:** An application shall be considered complete upon submission of the required fee and all information required by this Ordinance, or by a vote by the Board to waive the submission of required information. The Board shall issue a receipt to the applicant upon its determination that an application is complete.

**COMPREHENSIVE PLAN:** As defined in Title 30-A MRSA section 4301.

**CONTIGUOUS LOTS:** Lots which adjoin at any line or point, except that lots on opposite sides of a public or private road shall be each considered a separate tract or parcel unless such road was established by the owner of land on both sides thereof subsequent to September 22, 1971.

**CONSTRUCTION:** Activity and operations associated with the facility or expansion of the facility or its site.

**DEMOLITION/WASTE DISPOSAL:** A facility including a landfill operated by a public, quasi-public or private entity the purpose of which is to dispose of useless, unwanted or discarded solid material with insufficient liquid content to be free flowing, including by way of example, and not by limitation to, rubbish, garbage, scrap materials, junk, refuse, inert fill material, landscape refuse, and demolition debris. The definition does not, however, include commercial hazardous waste disposal facilities or recycling of products.

**DEP CERTIFICATION:** A certification issued by the Department of Environmental Protection pursuant to 35-A M.R.S. § 3456 for a Wind Energy Development.

**DESIGNATED SCENIC RESOURCE** Means that specific location, view, or corridor, as identified as a scenic resource in the Town's adopted comprehensive plan, an ordinance adopted by the Town or by a State or federal agency, that consists of:

1. a three-dimensional area extending out from a particular Viewpoint on a public way or within a public recreational area, focusing on a single object, such as a mountain, resulting in a narrow corridor, or a group of objects, such as a downtown skyline or mountain range or views of seascapes or offshore islands, resulting in a panoramic view corridor; or
2. lateral terrain features such as valley sides or woodland as observed to either side of the observer, constraining the view into a narrow or particular field, as seen from the Viewpoint on a public way or within a public recreational area.

[(NEW), TM-05.14.2024, WA-36]

**DETACHED SINGLE FAMILY DWELLING:** A dwelling unit that is not attached to any other dwelling unit by any means.

**DEVELOPMENT AREA:** Building(s), structure(s) and use(s) of land for commercial, industrial, office, multiple dwelling residential, municipal, institutional, utility, fraternal and recreational purposes, including new buildings and structures; new uses of existing buildings, structures, and land; resumption of uses which have been discontinued for at least two years; and existing uses which seek to expand by either 1000 square feet or 25% in area, whichever is lesser, within any 10 year period, in floor space, parking area, seating capacity or outdoor storage area.

**DEVELOPED AREA:** Any area on which a site improvement or change is made, including buildings, landscaping, parking areas, roads, and other areas not revegetated.

**DISABILITY:** Any disability, infirmity, malformation, disfigurement, congenital defect or mental condition caused by bodily injury, accident, disease, birth defect, environmental conditions or illness; and also includes the physical or mental condition of a person which constitutes a substantial handicap as determined by a physician or in the case of mental handicap, by a psychiatrist or psychologist, as well as any other health or sensory impairment which requires special education, vocational rehabilitation or related services.

**DRIVEWAY:** A vehicular access way serving two or less lots and/or dwelling units

**DWELLING UNIT:** A room or group of rooms designated and equipped exclusively for use as living quarters for one family including provisions for living, cooking and eating; includes single family houses and the units in a duplex, apartment houses, multi-family dwelling and residential condominiums. Access is not through another dwelling unit.  
[(AMD), RF-11.02.21, ART. 2]

**ELECTRICAL EQUIPMENT** When referring to a Solar Energy System means any device such as an outdoor electrical unit/control box, that transfers the energy from the solar energy system to the intended location. [(NEW), TM-05.14.2024, WA-36]

**ELECTRICITY GENERATION (PRODUCTION, OUTPUT)** The amount of electric energy produced by transforming other forms of energy, commonly expressed in kilowatt-hours (kWh) or megawatt-hours (MWh). [(NEW), TM-05.14.2024, WA-36]

**EMERGENCY:** An unforeseen combination of circumstances which calls for immediate action at a facility.

**EMERGENCY MAINTENANCE AND REPAIRS:** Work done in response to an emergency at a facility.

**ENERGY SUM OF A SERIES OF LEVELS:** Ten times the logarithm of the arithmetic sum of the antilogarithms of one-tenth of the levels.

**ENVIRONMENTAL SENSITIVE AREAS:** Those significantly natural; scenic, historic, and archaeological areas identified in the Town of Newry Comprehensive Plan.

**EQUIVALENT SOUND LEVEL:** The level of the mean-square A-weighted sound pressure during a stated time period, or equivalently the level of the sound exposure during a stated time period divided by the duration of the period. (NOTE: For convenience, a one hour equivalent sound level should begin approximately on the hour.)

**EXISTING FACILITY:** A Commercial Wind Energy Facility legally constructed before the effective date of this ordinance or a proposed Commercial Wind Energy Facility for which the Application is found complete on or before the effective date of this ordinance. Any facility with an approved permit application which has been remanded to planning board by a court of competent jurisdiction for further proceedings relating to noise limits or noise levels prior to the effective date of this ordinance shall not be deemed an existing facility and the ordinance shall apply to the existing noise sources at that facility.

**EXISTING HOURLY SOUND LEVEL:** The hourly sound level resulting from routine operation of an existing facility prior to the first expansion that is subject to this ordinance. For purposes of this definition:

1. a Residence is considered planned when the owner of the parcel of land on which the Residence is to be located has received all applicable building and land use permits and the time for beginning construction under such permits has not expired,
2. a residential subdivision is considered approved when the developer has received all applicable land use permits for the subdivision and the time for beginning construction under such permits has not expired.

**EXPANSION:** When referring to a Wireless Telecommunications Facility means the addition of antennas, towers, or other devices to an existing structure. [(NEW), TM-05.14.2024, WA-36]

**FAA:** Means the Federal Aviation Administration, or its lawful successor. [(NEW), TM-05.14.2024, WA-36]

**FCC:** Means the Federal Communications Commission, or its lawful successor. [(NEW), TM-05.14.2024, WA-36]

**FINAL PLAN:** The final drawings, on which the applicant's plan of subdivision or development is presented to the Board for approval and which, if approved, may be recorded at the Registry of Deeds.

**FLICKER:** The phenomenon of noticeable pulsating light produced by the Wind turbine blades passing between the sun and the observer and temporarily interrupting the sun's rays."



**FLICKER SECTOR:** A zone with the shape of a circular sector within which the observer may see the sun's rays interrupted by the Wind Turbine's blades in the phenomenon herein called Flicker. The radius of this circular sector shall be equal to the maximum width of the blade of each Wind Turbine times 100. The Flicker occurs mostly to the north of each Wind Turbine base and is limited by the radial line with an azimuth of 114 degrees going counter-clockwise through north to the radial line with an azimuth of 246 degrees". This zone represents the area north and south of the Wind Turbine within which the Flicker phenomenon throughout the year. This maximum area occurs on the day of the summer solace.

**FLOOD HAZARD AREAS:** See one hundred year flood.

**FRESH WATER WETLAND:** Means fresh water swamps, marshes, bogs and similar areas which are:

1. Inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances do support a prevalence of wetland vegetation typically adapted for life in saturated soils; and
2. Not considered part of great pond, river, stream or brook.

These areas may contain small stream channels or inclusions of land that do not conform to the above criteria.

**FOREST MANAGEMENT ACTIVITIES:** Includes timber cruising and other forest resource evaluation activities, pesticide application, timber stand improvement, pruning, timber harvesting and other forest harvesting, regeneration of forest stands, and activities associated with these forest practices.

**GENERATING FACILITIES:** Wind Turbines and electrical lines, not including Generator Lead Lines, that are immediately associated with the Wind Turbines.

**GENERATOR LEAD LINE:** A "generator interconnection transmission facility" as defined by 35-A M.R.S. § 3132 (1-B).

**GROSS FLOOR AREA:** All habitable area with headroom in excess of five (5) feet.

**GROUNDWATER:** Water found underground in the cracks and spaces in soil, sand and rock, especially that supplies wells and springs. [(NEW), TM-03.05.19, ART. 41]

**HEIGHT:** When referring to a Wireless Telecommunications Facility means the vertical distance measured from the base of the antenna support structure at grade to the highest point of the structure, even if said highest point is an antenna. Measurement of tower height shall include antenna, base pad, and other appurtenances and shall be measured from the finished grade of the facility site. If the support structure is on a sloped grade,

then the average between the highest and lowest grades shall be used in calculating the antenna height. [(NEW), TM-05.14.2024, WA-36]

**HEIGHT OF STRUCTURE:** The vertical distance between the mean finished grade at the downhill side of the structure measured from the finished top floor level intended for human habitation.

**HISTORIC AREAS:** Historic sites administered by the Bureau of Parks and Lands of the Maine Department of Conservation.

**HISTORIC OR ARCHAEOLOGICAL RESOURCES:** Means resources that are:

1. Listed individually in the National Register of Historic Places or eligible for listing on the National Register;
2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered Historic District or a district preliminarily determined by the Secretary of the Interior to qualify as a registered Historic District;
3. Individually listed on a state inventory of historic places in states with historic preservation programs approved by the Secretary of the Interior;
4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified by Secretary of the Interior through the Maine Historic Preservation Commission; or
5. Areas identified by a governmental agency such as the Maine Historic Preservation Commission as having significant value as an historic or archaeological resource and any areas identified in the municipality's comprehensive plan, which have been listed or are eligible to be listed on the National Register of Historic Places.

[(NEW), TM-05.14.2024, WA-36]

**HISTORIC DISTRICT:** Means a geographically definable area possessing a significant concentration, linkage or continuity of sites, buildings, structures or objects united by past events or aesthetically by plan or physical development and identified in the municipality's comprehensive plan, which is listed or is eligible to be listed on the National Register of Historic Places. Such Historic Districts may also comprise individual elements separated geographically, but linked by association or history. [(NEW), TM-05.14.2024, WA-36]

**HISTORIC LANDMARK:** See Historic Site. [(NEW), TM-05.14.2024, WA-36]

**HISTORIC SITE:** Any site, structure, district or archaeological site which has been officially included on the National Register of Historic Places and/or on the Maine Historic

Resource Inventory, or which is established by qualified testimony as being of historic significance.

**HOME OCCUPATION:** An occupation or profession which results in a product or service and is conducted in whole or in part in a residential structure, accessory structure to a residential use or property which is:

1. clearly incidental to and compatible with the residential use of the property and surrounding residential uses; and
2. which employs no more than two (2) persons other than family members residing in the home.

**HOTEL/MOTEL:** A commercial building or group of buildings built to accommodate for a fee travelers or other transit guests who are staying for a limited duration with sleeping rooms without kitchen facilities and each room or rooms having its own private bathroom and its own separate entrance leading either to the outdoors or a common corridor or hallway. A hotel may include restaurant facilities where food is prepared and meals served to guests and other customers.

**HOURLY SOUND LEVEL:** The equivalent sound level for one hour measured or computed in accordance with this ordinance.

**IMPERVIOUS SURFACE:** The area of land covered by buildings, structures and paved and gravel surfaces.

**INCREASE IN NON CONFORMITY OF A STRUCTURE:** Any change in a structure or property which causes further deviation from the dimensional standard(s) creating the non-conformity such as, but not limited to, reduction in water body, tributary stream or wetland setback distance, increase in lot coverage, or increase in height of a structure. Property changes or structure expansions which either meet the dimensional standard or which cause no further increase in the linear extent of nonconformance of the existing structure shall not be considered to increase nonconformity.

**INDUSTRIAL:** Connected with the assembling, fabrication, finishing, manufacturing, packaging, or processing of goods.

**INFRASTRUCTURE IMPROVEMENTS:** Deleted [(AMD), TM-05.14.2024, WA-36]

**INSPECTING OFFICIAL:** An individual or individuals appointed by the Select Board to oversee all aspects of Required Improvements including road construction, drainage and stormwater management. The Inspecting Official shall possess such education and training that the Select Board deem necessary to perform all aspects of inspection. [(AMD), TM-05.14.2024, WA-36]

**INSTITUTIONAL:** A building devoted to some public, governmental, educational, charitable, medical or similar purpose.

**LAND BASED RECREATIONAL ACTIVITIES:** It is the intention for these activities to include recreation trails and transport and to provide safety and maintenance access or equipment for these recreation trails or transport.

**LINE OF SIGHT:** When referring to a Wireless Telecommunications Facility means the direct view of the object from the Designated Scenic Resource. [(NEW), TM-05.14.2024, WA-36]

**LIQUIDATION HARVESTING:** The purchase or other acquisition of forestland followed by a timber harvest that does not comply with Section 6 of the Maine Forest Service Rule-Chapter 23 and the subsequent sale, offer for sale, or other conveyance of the harvested land, or any portion of it, within five years.

**LOCALLY-DESIGNATED PASSIVE RECREATION AREA:** Any site or area designated by a municipality for passive recreation that is open and maintained for public use and which:

1. has fixed boundaries,
2. is owned in fee simple by a municipality or is accessible by virtue of public easement,
3. is identified and described in a local comprehensive plan and,
4. has been identified and designated at least nine months prior to the submission of the Applicant's Commercial Wind Energy Facility permit application.

**LOT:** An area of land in one ownership, or one leasehold, with ascertainable boundaries established by deed or instrument of record, or a segment of land ownership defined by lot boundary lines on a subdivision plan approved by the Planning Board and recorded in the Registry of Deeds.

**MAJOR SUBDIVISION,** See "Subdivision, Major." [(NEW), TM-03.05.19, ART. 41]

**MANUFACTURED HOUSING:** As defined in Title 30-A M.R.S.A. § 4358 and as hereafter amended.

**MAXIMUM SOUND:** Largest A-weighted and fast exponential-time-weighted sound during a specified time interval. Unit: pascal (Pa).

**MAXIMUM SOUND LEVEL:** Ten times the common logarithm of the square of the ratio of the maximum sound to the reference sound of 20 micropascals. Symbol: LAFmax.

**METEOROLOGICAL TOWER (MET TOWER):** A Tower used for the measurement and collection of wind data that supports various types of equipment, including but not

limited to anemometers, data recorders, and solar power panels. MET Towers may also include wildlife related equipment such as ANABAT detectors, bird diverts and wildlife entanglement protectors.

**MINERAL EXTRACTION ACTIVITY:** An excavation or removal, handling or storage of rock, minerals, or topsoil to include but not limited to quarries, mines, and rock removal. [(NEW), JP, 06/14/22]

**MINERAL EXTRACTION SITE OR AREA:** All of the land area disturbed or otherwise developed for the extraction, removal, processing, or storage of minerals, stone, or rock; including any access roads and cleared areas adjacent to a pit or excavated area. [(NEW), JP, 06/14/22]

**MINOR SUBDIVISION,** See “Subdivision, Minor.” [(NEW), TM-03.05.19, ART. 41]

**MOBILE HOME PARK:** A parcel of land under unified ownership approved as a subdivision for the placement of three or more manufacture homes.

**MOTOR HOME:** a motor vehicle that:

1. Is originally designed, reconstructed or permanently altered to provide facilities for human habitation; or
2. Has a camper permanently attached to it.

[(NEW), TM-05.14.2024, WA-36]

**MOUNTING** When referring to a Solar Energy System means the manner in which a solar photovoltaic system is affixed to the roof or ground (i.e., roof mount, or ground mount. [(NEW), TM-05.14.2024, WA-36]

**MULTI-UNIT HOUSING:** A building or group of buildings consisting of three or more attached dwelling units.

**MULTI-USER WATER SYSTEM:** A system of pipes or other constructed conveyances, structures and facilities through which water is obtained, furnished or distributed for human consumption. The term includes any collection, treatment, storage or distribution pipes or other constructed conveyances, structures or facilities under the control of the supplier of water and used primarily in connection with such a system, and any collection or pretreatment storage facilities not under that control that are used primarily in connection with such a system. The system does not include the portion of service pipe owned and maintained by user of the system. [(NEW), TM-03.05.19, ART. 41]

**NET RESIDENTIAL ACREAGE:** The total acreage available for the subdivision or development, and shown on a subdivision or development plan, minus the area for roads or access and the areas which are unsuitable for development.

**NET RESIDENTIAL DENSITY:** The average number of dwelling units per net residential acre.

**NACELLE:** The frame and housing at the top of the tower that encloses the gearbox and generator.

**NGVD:** National Geodetic Vertical Datum.

**NORMAL HIGH WATER LINE:** That line which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or changes in vegetation, and which distinguishes between predominantly aquatic and predominantly terrestrial land. Areas contiguous with rivers that support non-forested wetland vegetation and hydric soils and that are at the same or lower elevation as the water level of the river during the period of normal high-water are considered part of the river.

**NON-CONFORMING LOT:** A single lot of record which, at the effective date of adoption or amendment of this Ordinance, does not meet the area, frontage, or width requirements of the district in which it is located.

**NON-CONFORMING STRUCTURE:** A structure which does not meet any one or more of the following dimensional requirements; setback, height, or lot coverage, but which is allowed solely because it was in lawful existence at the time this Ordinance or subsequent amendments took effect.

**NON-CONFORMING USE:** A use of buildings, structures, premises, land or parts thereof which is not allowed in the district in which it is situated, but which is allowed to remain solely because it was in lawful existence at the time this Ordinance or subsequent amendments took effect.

**NON-PARTICIPATING LANDOWNER:** Any landowner, other than a Participating Landowner.

**OCCUPIED BUILDING:** A residence, school, hospital, house of worship, public library or other building that is occupied or in use as a primary residence or is customarily frequented by the public at the time when the permit application is submitted.

**OFFICIAL SUBMITTAL DATE:** The date on which the entire application, supporting materials, and application fee are provided to the town office. [(AMD), RF-11.02.21, ART. 2]

**OFF-SITE PUBLIC ROAD:** Public roads not to be constructed as part of a development.

**ONE-HUNDRED-YEAR FLOOD:** The flood having a one percent chance of being equaled or exceeded in any given year.

**OUTDOOR RECREATION BASED SALES AND SERVICES:** A business establishment engaged in the sale, rental or lease of goods or services related to outdoor recreation.

**PARTICIPATING LANDOWNER:** One or more Persons that hold title in fee or a leasehold interest with sublease rights to property on which Generating Facilities or Associated Facilities or Development are proposed to be located pursuant to an agreement with the Applicant or an entity that has entered into an appropriate agreement with the Applicant allowing the Applicant to demonstrate the requisite right, title and interest in such property.

**PERSON:** Includes an individual, firm, association, partnership, trust, company, corporation, municipal or other local government entity, quasi-municipal entity, state agency, educational or charitable organization or institution or other legal entity.

**PIT PRIVY:** An alternative toilet, consisting of a permanent structure placed over an excavation where human waste is deposited. [(NEW), TM-05.14.2024, WA-36]

**PLANNED RESIDENCE:** A Residence for which all applicable building and land use permits have been issued, provided that the time for beginning construction under such permits has not expired.

**PLANNED UNIT DEVELOPMENT:** A planned unit development is a residential or mixed-use land development which is developed under unified management; is planned as a whole according to comprehensive and detailed plans, including roads, utilities, lots or building sites, open space and preserved natural features, recreational facilities, and design principles for proposed buildings; is reviewed and approved as a subdivision by the Planning Board and in addition is subject to the requirements of this Section; may be developed in clearly identified stages; and provides for the operation and maintenance of common facilities.

**PLANNING BOARD:** The Planning Board of the Town of Newry, Maine, as created by the Planning Board Ordinance.

**POWER** The rate at which work is performed (the rate of producing, transferring, or using energy). Power is measured in Watts (W), kilowatts (kW), Megawatts (MW), etc. [(NEW), TM-05.14.2024, WA-36]

**PRE-DEVELOPMENT AMBIENT:** The ambient sound at a specified location in the vicinity of a facility site prior to the construction and operation of the proposed Commercial Wind Energy Facility, Development or expansion.

**PRIMITIVE CAMPSITE:** A Recreational Lodging Facility unit in an undeveloped section of the Recreational Lodging Facility with no facilities or amenities such as water, electricity or toilets/showers, where campers are expected to leave little or no evidence of human visitation. [(NEW), TM-05.14.2024, WA-36]

**PRINCIPAL STRUCTURE:** A building other than one which is used for purposes wholly incidental or accessory to the use of another building or use on the same premises.

**PRINCIPAL USE:** A use other than one which is wholly incidental or accessory to another use on the same premises.

**PRIVATE ROAD:** A primary, secondary or neighborhood road which meets town standards and specifications of the ordinance that is not maintained with public funds. A private road does not need to be paved

**PROTECTED LOCATION:** Any location that is beyond the property boundary of the applicant. In cases where Participating Landowner agreements exist, the property boundary of the applicant may be extended as described in such documents.

**PUBLIC RECREATIONAL FACILITY OR AREA:** Means a regionally or locally significant facility or area, as defined and identified either by State statute or in the Town's adopted comprehensive plan or a municipal ordinance adopted by the Town, designed to serve the recreational needs of municipal property owners. [(NEW), TM-05.14.2024, WA-36]

**PUBLIC ROAD:** A road maintained with public funds

**PUBLIC UTILITY FACILITIES:** Facilities needed to furnish electricity, waste disposal, communication, transportation or water to the public. Public utility facility shall not include commercial communication towers and related facilities.

**PUBLIC WATER SUPPLY:** Any publicly or privately-owned system of pipes or other constructed conveyances, structures and facilities through which water is obtained for or sold, furnished or distributed to the public for human consumption, if such system has at least 15 service connections or serves at least 25 individuals daily at least 60 days out of the year or bottles water for sale. The term "public water system" shall include any collection, treatment, storage or distribution pipes or other constructed conveyances, structures or facilities under the control of the supplier of water and used primarily in connection with such a system, and any collection or pretreatment storage facilities not under that control that are used primarily in connection with such a system. [(NEW), TM-03.05.19, ART. 41]

**RECLAMATION:** The restoration or continued maintenance of the area of land affected by mining under a reclamation plan. This may include but is not limited to, grading and shaping of the land, the creation of lakes, ponds, or wetlands, the planting of forests, the seeding of grasses, legumes, or crops for harvest, or the enhancement of wildlife and aquatic resources. [(NEW), JP, 06/14/22]

**RECLAMATION PLAN:** A plan which depicts how the project will be restored, or maintained, after excavation is complete. Such a plan usually includes final grading and re-vegetation plans, of any given phase. [(NEW), JP, 06/14/22]



**RECORDING PLAN:** A copy of the Final Plan which is recorded at the Registry of Deeds.

**RECREATIONAL LODGING FACILITY** – A facility which primarily caters to users who engage in recreation activities that are primarily natural resource based. The term includes, but is not limited to, commercial sporting camps, youth or group camps, back-country huts, rental cabins, outpost cabins, outdoor education institutions and campgrounds. These facilities contain campsites of temporary or permanent structures including, without limitation, tents, recreational vehicles, motor homes, cottages, cabins, yurts, tiny homes and other types of shelter which are used or rented for sleeping purpose by tourist, transients, students, staff, organization members or other visitors. Recreational Lodging Facility includes, but is not limited to:

1. any facility that is regulated by the State of Maine Department of Health and Human Services (DHHS) Rules Related to Campgrounds (10-144 CMR 205).
2. any facility that is regulated by the State of Maine Department of Health and Human Services (DHHS) Rules Relating To Youth Camps, Primitive, And Trip Camping (10-144 CMR 208).

Recreational Lodging Facility does not include hotel, motel, home occupation bed and breakfast, individual private campsites, recreational facilities, residential dwelling unit or the rental of a residential dwelling unit or of rooms in a residential dwelling unit.

**RECREATIONAL LODGING FACILITY UNIT:** Individual campsites within a Recreational Lodging Facility. [(NEW), TM-05.14.2024, WA-36]

**RECREATIONAL VEHICLE:** A vehicle or an attachment to a vehicle designed to be towed, and designed for temporary sleeping or living quarters for one or more persons, and which may include a pick-up camper, travel trailer, tent trailer, camp trailer, and motor home. In order to be considered as a vehicle and not as a structure, the unit must remain with its tires on the ground, and must be registered with the State Division of Motor Vehicles.

**REQUIRED IMPROVEMENTS:** Any and all infrastructure improvements shown on the Final Plan. It includes, but is not limited to, roads, street lights, potable water systems, fire protection, sewers and water treatment, stormwater management, utilities and structures. [(NEW), TM-05.14.2024, WA-36]

**RESIDENCE:** A building or structure, including manufactured housing, maintained for permanent or seasonal residential occupancy providing living, cooking and sleeping facilities and having permanent indoor or outdoor sanitary facilities, excluding recreational vehicles, tents and watercraft.

RESORT: A self contained complex developed as a single entity providing lodging facilities, recreation and services for transit quests.

RESORT BASED USES: Uses normally associated with an resort.

RESTAURANT: A commercial establishment where meals are prepared and served to the public.

RESUBDIVISION: The division of an existing subdivision or development or any change in the plan for an approved subdivision or development which affects the lot lines, including land transactions by the subdivider not indicated on the Final Plan. [(AMD), TM-05.14.2024, WA-36]

RETAIL: Connected with the sale of goods to the ultimate consumer for direct use and consumption and not for trade.

REVEGETATED: That surface area that has been returned to its natural state as grass, meadow, forest or agricultural use.

ROAD: Public and private ways such as Town ways, public right-of-ways and private right-of-ways other than driveways.

#### ROAD CLASSIFICATION:

1. NEIGHBORHOOD ROAD: A road having a minimum 50' right-of-way with a travel way width of at least 18 feet and 2' wide shoulder on each side. A neighborhood road shall serve small residential areas with a maximum speed of 25 mph. The road shall be within a subdivision, and is not intended to allow thru traffic. No more than 65 lots and/or individual dwelling units shall be served by a neighborhood road or roads.
2. PRIMARY ROAD: A road having a minimum 60' right-of-way with a travel way width of at least 22' and 4' wide shoulder on each side for a total width of 30' from outside to outside of the shoulders.
3. SECONDARY ROAD: A road having a minimum 50' right-of-way with a travel way width of at least 20' and 2' wide shoulder on each side with a maximum length of 15,000'. A secondary road will serve an area intended primarily for residential use, and serve as the means to access no more than 200 lots and/or individual dwelling units per connection with a Primary road. This number shall include lots and/or individual dwelling units on other roads whose only access is via this secondary road. A secondary road shall have a maximum speed limit of 35 mph.

**ROUTINE OPERATION:** Regular and recurrent operation of regulated sound sources associated with the purpose of the Commercial Wind Energy Facility and operating on the facility site.

**SAWMILL:** A commercial facility where logs or bolt wood are sawn, split, shaved, stripped, chipped or otherwise processed to produce wood products. The term saw mill does not include slashing or chipping at the harvest site.

**SCENIC RESOURCE:** Either a Scenic Resource of state or national significance, as defined in 35-A M.R.S § 3451(9) or a scenic resource of local significance located within the municipality and identified as such in a comprehensive plan, open space plan or scenic inventory adopted by the municipal legislative body.

**SERVICE BUSINESS:** Establishments engaged in providing services for individuals and businesses such as laundries, beauty shops, barbershop, advertising and equipment leasing.

**SEWAGE TREATMENT SYSTEM:** A municipal or private system for treating sewage which is an overboard discharge system. [(NEW), RF-11.02.21, ART. 2]

**SEWERED:** Serviced by an underground conduit that carries wastewater to an off-site sewage treatment system. [(NEW), RF-11.02.21, ART. 2]

**SHADOW FLICKER:** Alternating changes in light intensity caused by the movement of Wind Turbine blades casting shadows on the ground or a stationary object.

**SHORT DURATION REPETITIVE SOUNDS:** A sequence of repetitive sounds which occur more than once within an hour, each clearly discernible as an event and causing an increase in the sound level of at least 6 dBA on the fast meter response above the sound level observed immediately before and after the event, each typically less than ten seconds in duration, and which are inherent to the process or operation of the facility and are foreseeable.

**SIGHT LINE REPRESENTATION:** A profile drawing showing prominent features, including but not limited to topography, buildings, and trees, along and in relation to a line of sight extending from an observer's eye to the lowest point visible on a proposed Tower.

**SIGN:** An object, device or structure, or part thereof, situated outdoors, visible from a public road, free standing or attached, which is used to advertise, identify, display, direct or attract attention to an object, person, institution, organization, business, product, service, event or location, by any means including words, letters, figures, design, symbols, advertising flags, fixtures, colors, illuminations or projected images. Each substantially different face of a sign shall constitute a separate sign.

**SIGNIFICANT WILDLIFE HABITAT:** A Significant Wildlife Habitat as defined in 38 M.R.S. § 480-B(10).

**SITE PLAN:** A plan showing the proposed layout of lots, buildings, roads, parking, landscaping, and other site improvements.

**SOLAR ARRAY:** Multiple solar photovoltaic panels or thermal collector panels combined together to create one system. [(NEW), TM-05.14.2024, WA-36]

**SOLAR COLLECTOR:** A solar photovoltaic cell, panel, or array, or solar thermal collector device, that relies upon solar radiation as an energy source for the generation of electricity or transfer of heat. [(NEW), TM-05.14.2024, WA-36]

**SOLAR ENERGY SYSTEM (SES):** A system whose primary purpose is to harvest energy by transforming solar energy into another form of energy or transferring heat from a collector to another medium using mechanical, electrical, or chemical means. It may be roof-mounted or ground-mounted, and may be of any size as follows:

1. Small-scale Solar Energy System is one whose physical size based on total airspace projected over a roof or the ground is less than 15,000 square feet (approximately one-third of an acre);
2. Medium-scale Solar Energy System is one whose physical size based on total airspace projected over a roof or the ground is equal to or greater than 15,000 square feet but less than 87,120 square feet (two acres); and
3. Large-scale Solar Energy System is one whose physical size based on total airspace projected over a roof or the ground is equal to or greater than 87,120 square feet (two acres).

[(NEW), TM-05.14.2024, WA-36]

**SOLAR ENERGY SYSTEM, GROUND-MOUNTED:** A Solar Energy System that is structurally mounted to the ground and is not roof-mounted; may be of any size (small-, medium- or large-scale). [(NEW), TM-05.14.2024, WA-36]

**SOLAR ENERGY SYSTEM, ROOF-MOUNTED:** A Solar Energy System that is mounted on the roof of a building or structure; may be of any size (small-, medium- or large-scale). [(NEW), TM-05.14.2024, WA-36]

**SOUND COMPONENT:** The measurable sound from an audibly identifiable source or group of sources.

**SOUND LEVEL:** Ten times the common logarithm of the square of the ratio of the frequency-weighted and time-exponentially averaged sound pressure to the reference sound of 20 micropascals. For the purpose of this ordinance, sound level measurements

are obtained using the A-weighted frequency response and fast dynamic response of the measuring system, unless otherwise noted.

**SOUND PRESSURE:** Root-mean-square of the instantaneous sound pressures in a stated frequency band and during a specified time interval. Unit: pascal (Pa).

**SOUND PRESSURE LEVEL:** Ten times the common logarithm of the square of the ratio of the sound pressure to the reference sound pressure of 20 micropascals.

**STREAM:** Means a channel between defined banks. A channel is created by the action of surface water and has two (2) or more of the following characteristics.

1. It is depicted as a solid or broken blue line on the most recent edition of the U.S. Geological Survey 7.5-minute series topography map or if that is not available, a 15-minute series topography map.
2. It contains or is known to contain flowing water continuously for a period of at least 3 months of the year in most years.
3. The channel bed is primarily composed of material such as sand and gravel, parent material or bedrock that has been deposited or scoured by water.
4. The channel contains aquatic animals such as fish, aquatic insects or mollusks in the water or, if no surface water is present in the stream bed.

**STRUCTURE:** Anything temporarily or permanently located, placed, built or constructed. The term includes structures temporarily or permanently located, such as decks, patios, and satellite dishes. Structure does not include fences; poles and wiring and other aerial equipment normally associated with service drops, including guy wires and guy anchors; lift towers for skier transport; subsurface waste water disposal systems as defined in Title 30-A, section 4201, subsection 5; geothermal heat exchange wells as defined in Title 32, section 4700-E, subsection 3-C; or wells or water wells as defined in Title 32, section 4700-E, subsection 8. [(NEW), JP, 06-14-22]

**SUBDIVIDER:** The person, or persons proposing a subdivision as defined in this ordinance.

**SUBDIVISION:** A subdivision is defined by Title 30-A MRSA Section 4401.

**SUBDIVISION, MAJOR:** Any subdivision of 10 or more lots and/or dwelling units.

**SUBDIVISION, MINOR:** Any subdivision with less than 10 lots and/or dwelling units.  
[(AMD), TM-03.05.19, ART. 41]

**SUBSTANTIAL ENLARGEMENT:** Any expansion of the land area of the development site by more than 25% at any one time or in total since the effective date of this ordinance.

**SUBSTANTIALLY COMPLETED:** Completion of at least 80% of the Required Improvements measured as a percentage of total estimated cost of such improvements. [(AMD), TM-05.14.2024, WA-36]

**TARGETED MARKET COVERAGE AREA:** means the portion(s) of the Town of Newry that are targeted to be served by a proposed Wireless Telecommunications Facility. [(NEW), TM-05.14.2024, WA-36]

**TILT:** The angle of the solar panels and/or solar collector relative to horizontal. Tilt is often between 5 and 40 degrees. Solar energy systems can be manually or automatically adjusted throughout the year. Alternatively, fixed-tilt systems remain at a static tilt year-round. [(NEW), TM-05.14.2024, WA-36]

**TIMBER HARVESTING:** The cutting and removal of timber for the primary purpose of selling or processing forest products.

**TIMBER HARVESTING ACTIVITIES:** Timber harvesting, the construction and maintenance of roads used primarily for timber harvesting and other activities to facilitate timber harvesting.

**TINY HOME:** a living space permanently constructed on a frame or chassis and designed for use as temporary or permanent living quarters that:

1. Complies with American National Standards Institute standard A 119.5 on plumbing, propane, fire and life safety and construction or National Fire Protection Association standard 1192 on plumbing, propane and fire and life safety for recreational vehicles;
2. Does not exceed 400 square feet in size;
3. Does not exceed any dimension allowed for operation on a public way in the State of Maine; and
4. Is a vehicle without motive power.

[(NEW), TM-05.14.2024, WA-36]

Tiny Home does not include a trailer, semitrailer, camp trailer, recreational vehicle, motor home or manufactured housing. [(NEW), TM-05.14.2024, WA-36]

**TONAL SOUND:** A tonal sound exists if, at a Protected Location, the one-third octave band sound pressure level in the band containing the tonal sound exceeds the arithmetic average of the sound pressure levels of the two contiguous one-third octave bands by 5 dB for center frequencies at or between 500 Hz and 10,000 Hz, by 8 dB for center frequencies at or between 160 and 400 Hz, and by 15 dB for center frequencies at or between 25 Hz and 125 Hz.

**TOWER:** The free-standing structure on which a wind measuring or energy conversion system is mounted.

**TOWN:** Means the Town of Newry. [(NEW), TM-05.14.2024, WA-36]

**TOWN ROAD:** A road maintained by the Town of Newry.

**TRACT OR PARCEL OF LAND:** all contiguous land in the same ownership provided that lands located on opposite sides of a public or private road shall be considered each a separate tract or parcel of land unless such road was established by the owner of land on both sides after September 22, 1971.

**TURBINE HEIGHT:** The distance measured from the surface of the Tower foundation to the highest point of any turbine rotor blade measured at the highest arc of the blade.

**UNREASONABLE ADVERSE IMPACT UPON A DESIGNATED SCENIC RESOURCE:**

Means that the proposed project would produce an end result that is:

1. excessively out of character with the Designated Scenic Resources affected, including existing buildings, structures and features within the Designated Scenic Resource, and
2. would significantly diminish the scenic value of the Designated Scenic Resource.

[(NEW), TM-05.14.2024, WA-36]

**VAULT PRIVY:** An alternative toilet that retains human waste in a sealed vault. [(NEW), TM-05.14.2024, WA-36]

**VIEWPOINT:** Means that location which is identified either in the municipally adopted comprehensive plan or a municipal ordinance adopted by the Town or by a federal or State agency, and which serves as the basis for the location and determination of a particular Designated Scenic Resource. [(NEW), TM-05.14.2024, WA-36]

**VIGOROUS (Related to Buffer and Screening):** The capacity of a plant or tree to be healthy and to grow in a normal growth pattern over time for its species, such as foliage volume, height, girth, etc., while enduring environmental stress and strain. [(NEW), RF-11.02.21, ART. 2]

**VISIBLE:** Capable of being seen without visual aid by a person of normal visual acuity.

**WHOLESALE BUSINESS:** The use of land and/or buildings engaged in the selling of merchandise to retailers, industry, commercial, institutional or professional businesses or other wholesalers as distinguished from the sale to the general public.

**WIND ENERGY FACILITY:** A facility that uses one or more Wind Turbines to convert wind energy to electrical energy

**WIND TURBINE:** A system for the conversion of wind energy into electricity which is comprised of a Tower, generator, Nacelle, rotor and transformer.

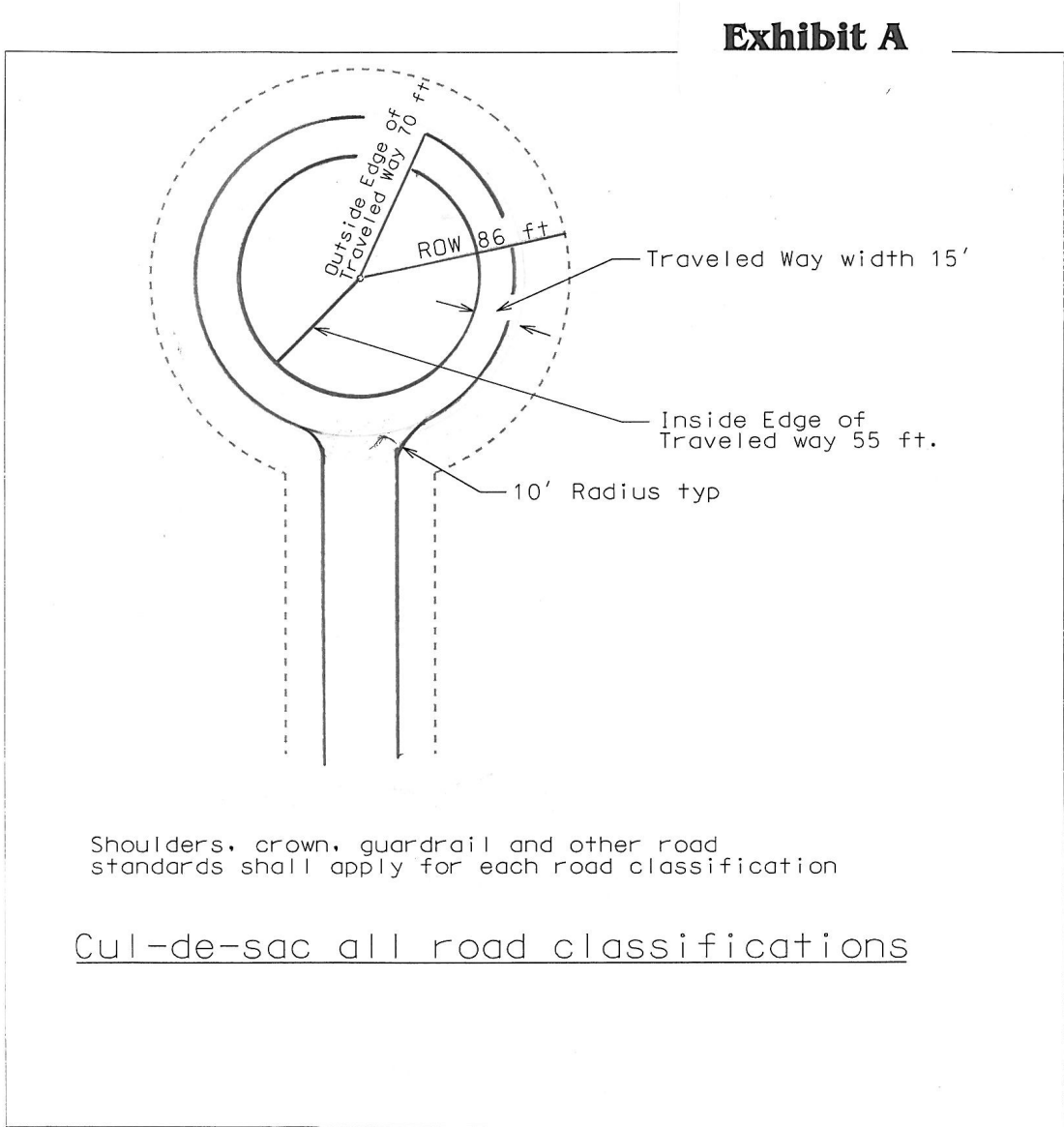
**WIRELESS TELECOMMUNICATION FACILITY:** Means any structure, antennas, tower, or other device which provides commercial mobile wireless services, cellular telephone services, specialized mobile radio communications (SMR), common carrier wireless exchange access services, personal communications service (PCS) or pager services, and internet services. [(NEW), TM-05.14.2024, WA-36]



**SECTION 25: EXHIBITS AND MAPS**

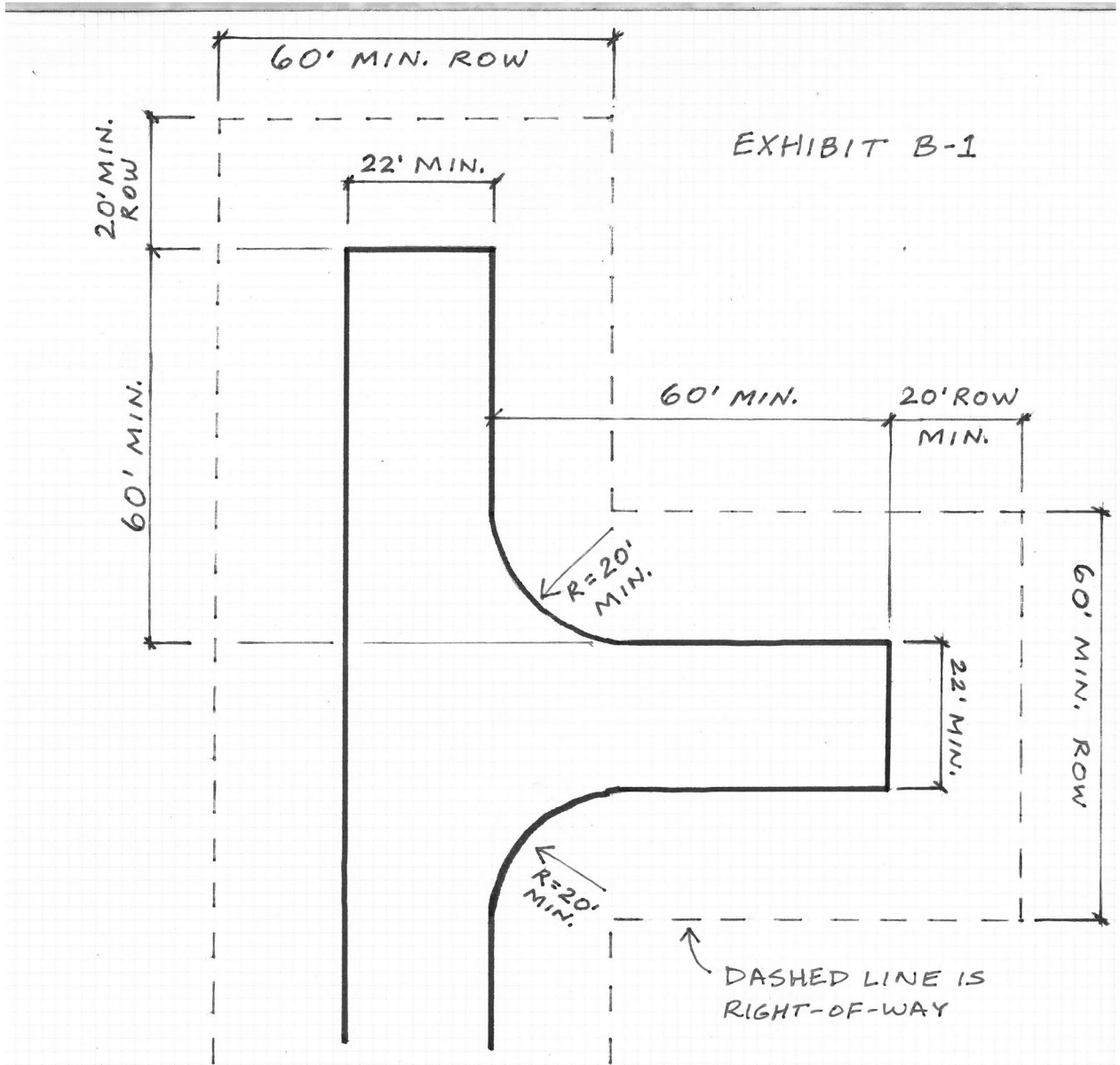
**SECTION USER'S GUIDE:** This section contains exhibits and maps referenced elsewhere in this Ordinance.

**A. EXHIBIT A.**



**B. EXHIBIT B**

1.

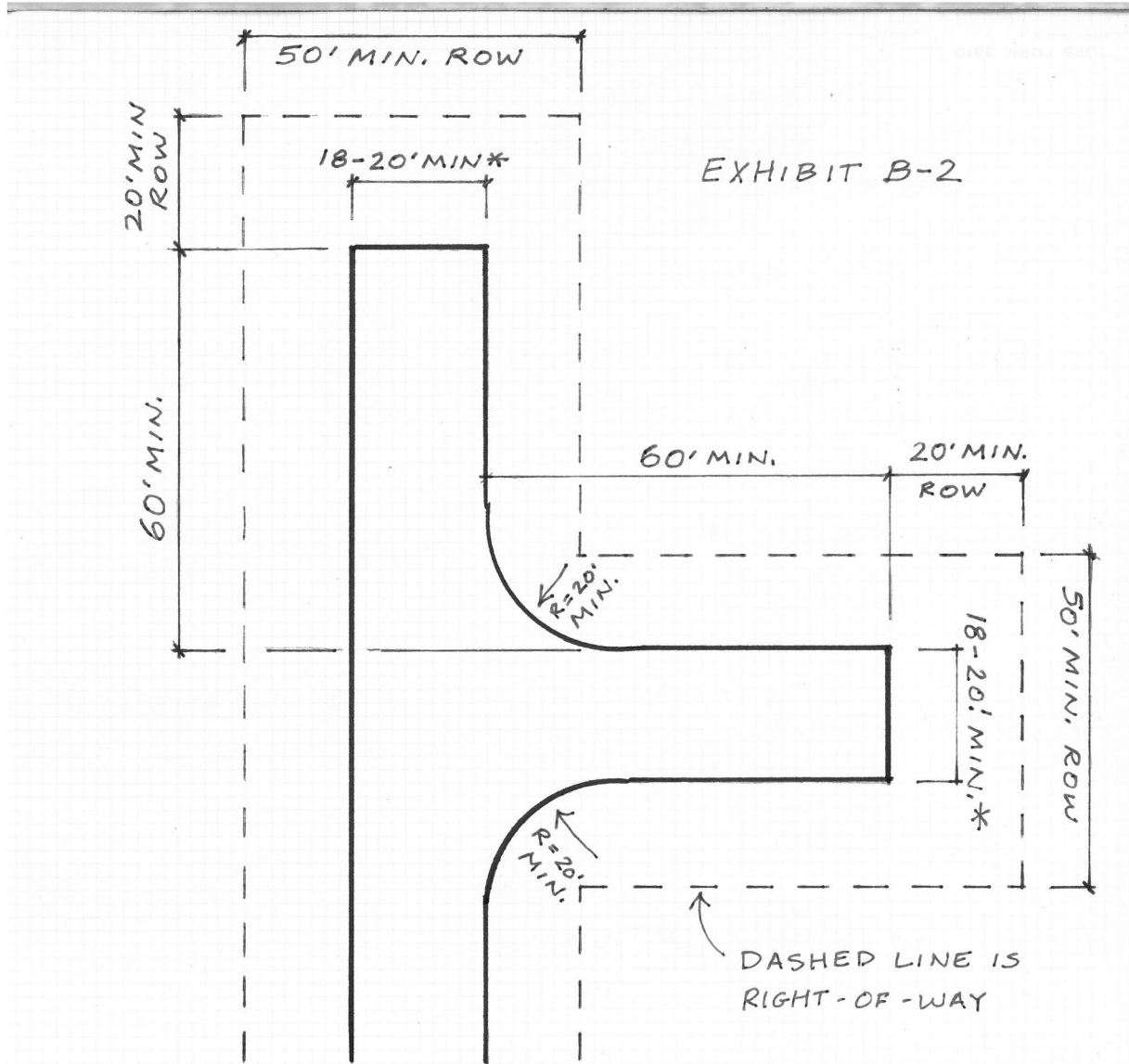


PRIMARY ROAD  
HAMMERHEAD TURN-AROUND

NOT TO SCALE

TOPS FORM 3310  
LITHO IN U.S.A.

2.



NEIGHBORHOOD & SECONDARY ROAD  
HAMMERHEAD TURNAROUND

NOT TO SCALE

\* 18' REQUIRED FOR NEIGHBORHOOD  
and 20' REQUIRED FOR SECONDARY ROAD

**C. EXHIBIT C**

<b>Approved by: Town of Newry Planning Board</b>	
Date:	_____
Signed:	_____ Chairperson
	_____ Board Members
	_____

# D. GROWTH MANAGEMENT DISTRICT MAP

