

Subdivision Ordinance
for the
Town of Mount Desert

October 12, 2023 DRAFT

ENACTED: _____
Date

EFFECTIVE: _____
Date

CERTIFIED BY: _____
Name

Title

Subdivision Ordinance for the Town of Mount Desert (10/12/2023 Draft)

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Section 1 Purposes and Applicability

1.1 Purposes

The purposes of this Ordinance are as follows: to assure the comfort, convenience, safety, health, and welfare of the people of the Town of Mount Desert; to protect the environment; to promote the development of an economically sound and stable community; to assure that a sufficient level of services and facilities is available to the residents of new subdivisions and that lots in subdivisions are capable of supporting the proposed uses and structures; to minimize potential negative impacts from new subdivisions on neighboring properties and on the Town; to provide for the expeditious and efficient process for the review of proposed subdivisions; and to comply with M.R.S. § 4401 *et. seq.*, and all amendments thereto.

1.2 Applicability

The provisions of this Ordinance shall pertain to all land proposed for subdivision as defined in Title 30-A, M.R.S. § 4401 *et. seq.*, as amended. A lot of 40 or more acres shall be counted as a subdivision lot for the purposes of this Ordinance.

Section 2 Authority and Administration

2.1 Authority

- A. This Ordinance is adopted pursuant to Home Rule Powers as provided for in Article VIII-A Part 2, Section 1 of the Maine Constitution and 30-A M.R.S. § 3001. These standards have been prepared in accordance with M.R.S. § 4401 *et seq.*, and all amendments thereto.
- B. This Ordinance shall be known and may be cited as "Subdivision Ordinance for the Town of Mount Desert, Maine", adopted and effective by vote of the Town on [REDACTED]. This Ordinance repeals and replaces any municipal ordinance previously enacted to control the development of subdivisions in the Town of Mount Desert.
- C. The Town of Mount Desert Planning Board shall administer this Ordinance.

2.2 Amendments to this Ordinance

This Ordinance may be amended by the legislative body of the Town of Mount Desert. A public hearing shall be held prior to the adoption of any amendment. **Notice of the hearing shall be provided at least fourteen (14) days in advance of the hearing.**

2.3 Interpretation, Conflict and Severability

- A. The provisions of this Ordinance shall be construed as minimum requirements. More stringent provisions may be required if it is demonstrated they are necessary to promote the public health, safety and welfare. Where the conditions imposed by any provisions of this Ordinance are either more restrictive or less restrictive than comparable conditions imposed by any other provisions of this Ordinance or any other applicable law, ordinance, or regulation of any kind, the regulations which are more restrictive and impose higher standards or requirements shall govern.

Commented [NM1]: Check with Town Attorney on applicability. Could be something like:

This Ordinance governs the Planning Board's review of proposed subdivisions, except that it does not apply to:

- A. Subdivisions approved by the Planning Board or the Municipal Officers before September 23, 1971 in accordance with laws then in effect;
- B. Subdivisions in actual existence on September 23, 1971 that did not require approval under prior law;
- C. A subdivision, a plan of which has been legally recorded in the Hancock County Registry of Deeds before September 23, 1971;
- D. Any airport with an airport layout plan that has received final approval from the airport sponsor, DOT, and the Federal Aviation Administration; or,
- E. A subdivision in violation of this Chapter VI (Subdivision Regulations) or 30-A M.R.S.A. §§ 4401 *et seq.* that has been in existence for 20 years or more, except as provided in 30-A M.R.S.A. § 4402(5)

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- B. The provisions of this Ordinance are separable. If any portion of this Ordinance is declared by the courts to be invalid, the decision shall not affect the validity of the remaining portions of this Ordinance.
- C. This Ordinance shall not in any way impair or remove the necessity of compliance with any other applicable rule, ordinance, regulation, bylaw, permit, or provision of law. Where this Ordinance imposes a greater restriction upon the use of land or structures, the provisions of this Ordinance shall control.

Section 3 Definitions

Commented [NM2]: May move this section to the back. Need to review for consistency and applicability

3.1 Construction of Language

In the interpretation and enforcement of this Ordinance, all words other than those specifically defined in the Ordinance shall have the meaning implied by their context in the Ordinance or their ordinarily accepted meaning.

The present tense includes the future tense, the singular number includes the plural, and plural numbers include the singular.

The words "shall," "will" and "must" are mandatory; the word "may" and "should" are permissive.

The word "lot" includes the word "parcel".

The word "structure" includes the word "building".

The word "Town" or "municipality" means the Town of Mount Desert, Maine.

The term "Planning Board" means the Town of Mount Desert Planning Board.

The terms "Code Enforcement Officer" means the Town of Mount Desert Code Enforcement Officer

The term "Board of Selectmen" means the Town of Mount Desert Board of Selectmen.

The term "Board of Appeals" means the Town of Mount Desert Board of Appeals.

3.2 Definition of Terms

In this Ordinance the following terms shall have the following meanings:

Abutter means the owner of any property with one or more common boundaries, or across the road or stream from, the property involved in an application or appeal.

Abutting Property means any lot which is physically contiguous with the subject lot even if only at a point and any lot which is located directly across a road or right-of-way from the subject lot such that the extension of the side lot lines of the subject lot would touch or enclose the abutting property.

Agriculture means the production, keeping or maintenance for sale or lease, of plants and/or animals including but not limited to: forages and sod crops; grains and seed crops; dairy animals and dairy products; poultry and poultry products; livestock; fruits and vegetables; and ornamental and greenhouse products. "Agriculture" does not include forest management and timber harvesting activities.

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 similar 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.

Applicant means the person or persons applying for subdivision approval under this Ordinance.

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Basement means any portion of a structure with a floor-to-ceiling height of 6 feet or more and having more than 50% of its volume below the existing ground level.

Certified Soil Scientist means as registered, licensed and/or certified by the appropriate licensing and registration boards in the State of Maine.

Common Open Space means land within or related to a subdivision, not individually owned or within an individual lot, which is designed and intended for the common use or enjoyment by the residents of the development or general public. It may include complementary structures and improvements, typically used for maintenance and operation of the open space, such as for outdoor recreation.

Complete Application means an application shall be considered complete upon submission of the required fee and all information required by this Ordinance unless waived, after the applicant's written request, by a vote by the Planning Board.

Complete Substantial Construction means the completion of a portion of the improvements which represents no less than 30% of the costs of the proposed improvements within a subdivision. If the subdivision is to consist of individual lots to be sold or leased by the subdivider, the cost of construction of buildings on those lots shall not be included. If the subdivision is a multifamily development, or if the applicant proposes to construct the buildings within the subdivision, the cost of building construction shall be included in the total costs of proposed improvements.

Conservation Easement means a nonpossessory interest in real property imposing limitations or affirmative obligations, the purposes of which include retaining or protecting natural, scenic or open space values of real property; assuring its availability for agricultural, forest, recreational or open space use; protecting natural resources; or maintaining air or water quality.

Density means the number of dwelling units per acre of land.

Development means a change in land use involving alteration of the land, water or vegetation, or the addition or alteration of structures or other man-made construction.

Drinking Water Standards means thresholds for contaminants set by the Maine Department of Health and Human Services. Standards have been established for contaminants which pose a health threat ("primary drinking water standards") and those which pose an aesthetic concern ("secondary drinking water standards").

Driveway means a vehicular accessway serving two lots or less.

Dwelling Unit means a room or suite of rooms used as a habitation which is separate from other such rooms or suites of rooms, and which contains independent living, cooking, and sleeping facilities; includes single family houses, and the units in a duplex, apartment house, multifamily dwellings, and residential condominiums and time-share units.

Engineered Subsurface Waste Water Disposal System means a subsurface waste water disposal system designed, installed, and operated as a single unit to treat and dispose of 2,000 gallons of waste water per day or more; or any system designed to be capable of treating waste water with higher BODs and total suspended solids concentrations than domestic waste water. Any engineered system must be approved by the Maine Department of Health and Human Services.

Farmland means a parcel consisting of 5 or more acres of land that is either: 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 7 M.R.S. §152, sub-§2.

Final Plan means the final drawings on which the applicant's plan of subdivision are presented to the Board for approval and which, if approved, must be recorded at the Registry of Deeds.

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- Flood, 100-Year** means the highest level of flood that, on the average, has a 1% chance of occurring in any given year.
- Floodway** means the channel of a river or other watercourse and adjacent land areas that must be reserved in order to discharge the 100-year flood without cumulatively increasing the water surface elevation by more than one foot in height.
- Flood-prone Area** means those land areas which are susceptible to inundation during a 100-year flood (a flood with a one percent probability of occurring in any given year). Flood-prone areas shall include mapped areas of floodplain and floodway (zones A or AE). Where maps are unavailable or of insufficient accuracy, a determination may be made by a professional land surveyor.
- Great Pond** means any inland body of water which in a natural state has a surface area in excess of ten acres, and any inland body of water artificially formed or increased which has a surface area in excess of thirty (30) acres except for the purposes of this Ordinance, where the artificially formed or increased inland body of water is completely surrounded by land held by a single owner.
- Groundwater** means the water that is found beneath the earth's surface recharged from rain infiltration. Groundwater moves slowly, finding its way from pore space to pore space in the subsurface soils and rocks; but it may surface as seeps and springs when intercepted by an excavation or slope cut.
- Frontage** means that portion of a lot boundary which abuts a road or shoreline. A frontage measurement consists of the horizontal distance between the points where side lot lines intersect the street or shoreline. On lots with more than one frontage, such as corner lots, a requirement for street frontage shall apply to only one frontage.
- High Intensity Soil Survey** means a map prepared by a certified soil scientist, identifying the soil types down to 1/8 acre or less at a scale equivalent to the subdivision plan submitted. The soils shall be identified in accordance with the National Cooperative Soil Survey. The map shall show the location of all test pits used to identify the soils, and shall be accompanied by a log of each sample point identifying the textural classification and the depth to a limiting factor such as seasonal high water table or bedrock at that location.
- Hydrogeologic Assessment** means an assessment of groundwater quantity, quality, availability, and movement, for the purpose of determining whether adequate water supply exists for development needs without significant negative impact to neighboring properties.
- Lot Area** means the area of land enclosed within the boundary lines of a lot, minus land below the normal high-water line of a water body or upland edge of a wetland and areas beneath roads serving more than two lots.
- Lot Length (Lot Width)** means the horizontal distance between front and rear (length) or side (width) lot lines. Where lots are not rectangular, length and width shall be calculated as the average distance between the most-parallel lines of the lot.
- Liquidation Harvesting** means the purchase of timberland followed by a harvest that removes most or all commercial value in standing timber, without regard for long-term forest management principles, and the subsequent sale or attempted resale of the harvested land within 5 years.
- Medium Intensity Soil Survey** means the *Soil Survey of Washington County, Maine*, published by the USDA, Soil Conservation Service, is recognized as a medium intensity soil survey.
- Multifamily Development** means a subdivision that contains three or more dwelling units on land in common ownership, such as apartment buildings, condominiums or mobile home parks.
- New Structure or Structures** means any structure for which construction began on or after September 23, 1988. The area included in the expansion of an existing structure is deemed to be a new structure.

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Outstanding River Segments means as identified in Title 38, section 480-P, as amended.

Person means a firm, association, organization, partnership, trust, company, or corporation, as well as an individual.

Performance Guarantee means any surety or commitment that may be accepted by the Town of Mount Desert to assure that infrastructure improvements required as part of the subdivision approval will be satisfactorily completed.

Principal Structure means any building or structure in which the main use of the premises takes place.

Professional Engineer means a professional engineer registered in the State of Maine.

Professional Land Surveyor means as registered licensed and/or certified by the appropriate licensing and registration boards in the State of Maine.

Public Improvements means the term shall include all roads; fire protection structures and ponds; any structure or land proposed to be dedicated to the Town; any land or structure which is offered as an easement to the Town; and, all stormwater drainage structures designed to allow water to flow outside the property or the subdivision.

Public Water System means two basic types: 1) a "community water system" which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents; and 2) a "non-community water system" that is not a "community water system", but that serves at least 25 of the same persons for 6 months or more per year and may include, but is not limited to, a school, factory, industrial park or office building, or a water system that serves at least 25 persons, but not necessarily the same persons, for at least 60 days per year and may include, but is not limited to, a highway rest stop, seasonal restaurant, seasonal motel, golf course, park or campground. A bottled water company is a non-community water system.

Recording Plan means an original of the Final Plan, suitable for recording at the Registry of Deeds and which needs to show only information relevant to the transfer of an interest in the property, and which does not show other information presented on the plan such as sewer and water line locations and sizes, culverts, and building lines.

River, Stream or Brook means a channel between defined banks that is created by the action of surface water and has two 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 topographic map or, if that is not available, a 15-minute series topographic map.
2. It contains or is known to contain flowing water continuously for a period of at least 6 months of the year in most years.
3. The channel bed is primarily composed of mineral 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, within the stream bed.
5. The channel contains aquatic vegetation and is essentially devoid of upland vegetation.

"River, stream or brook" does not mean a ditch or other drainage way constructed, or constructed and maintained, solely for the purpose of draining stormwater or a grassy swale.

Runoff means the part of precipitation excluding evaporation and infiltration that becomes a discharge of stormwater.

Significant Wildlife Habitat means:

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1. The following areas to the extent that they have been mapped by the Maine Department of Inland Fisheries and Wildlife (MDIFW) or are within any other protected natural resource: habitat, as defined by the MDIFW, for species appearing on the official state or federal list of endangered or threatened animal species; high and moderate value deer wintering areas and travel corridors as defined by the MDIFW; seabird nesting islands as defined by the MDIFW; and critical spawning and nursery areas for Atlantic salmon as defined by the Maine Department of Marine Resources; and
2. Except for solely forest management activities, for which "significant wildlife habitat" is as defined and mapped in accordance with section 480-I by the MDIFW, the following areas that are defined by the MDIFW and are in conformance with criteria adopted by the Maine Department of Environmental Protection or are within any other protected natural resource: a) Significant vernal pool habitat; b) High and moderate value waterfowl and wading bird habitat, including nesting and feeding areas; and c) Shorebird nesting, feeding and staging areas.

Sketch Plan means conceptual maps, renderings, and supportive data describing the project proposed by the applicant for initial review prior to submitting an application for subdivision approval.

Street or Road means public and private ways such as alleys, avenues, highways, roads, and other rights-of-way, as well as areas on subdivision plans designated as rights-of-way for vehicular access other than driveways.

Subdivision means the term shall be defined as in 30-A, M.R.S. § 4401, sub-§4, as amended, with the modifications as described in Section 1.2 Applicability of this Ordinance.

Substantial Construction (See "Complete Substantial Construction")

Tract or Parcel of Land means 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 thereof.

Traffic Impact Analysis means a study and report assessing road and traffic conditions with and without the addition of traffic from a proposed development, and which includes an analysis of mitigation measures necessary to address congestion or unsafe conditions on public roads.

Vegetation means all live trees, shrubs, and other plants.

Vernal pool means an area exhibiting pooling, vegetation and even small creatures for a limited time of year, usually during the spring flooding, and drying up over the course of the summer.

Wetland means a freshwater wetland or a coastal wetland.

Wetlands, freshwater means freshwater 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 adopted for life in saturated soils; and 2) not considered part of a great pond, coastal wetland, river, stream or brook. These areas may contain small stream channels or inclusions of land that do not conform to these criteria. This also includes forested wetlands.

Wetlands, coastal means all tidal and subtidal lands; all areas with vegetation present that is tolerant of salt water and occurs primarily in a salt water or estuarine habitat; and any swamp, marsh, bog, beach, flat or other contiguous lowland that is subject to tidal action during the highest tide level for the year in which an activity is proposed as identified in tide tables published by the National Ocean Service. Coastal wetlands may include portions of coastal sand dunes.

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Waiver means a modification of one or more submission requirements for subdivision review, granted by the Planning Board upon a finding that the submission requirement is not necessary to proper review of the application.

Section 4 Administrative Procedures and Fees

4.1 Agenda, Submission Deadlines, Applicant Attendance Required

4.1.1 The Planning Board Chairperson shall prepare a written agenda for each regularly scheduled meeting, special meeting or hearing. Applicants shall request to be placed on the Planning Board's agenda at least fourteen (14) days in advance of a scheduled meeting. A file shall be established for every proposed subdivision.

Commented [NM3]: Is this ok Kim?

4.1.2 All applications shall be submitted to the Planning Board Chairperson at least 14 days prior to the meeting at which the applicant wishes to be heard by the Planning Board. The applicant, or a representative, shall present the application to the Planning Board. Failure to attend the meeting may result in a delay of the Planning Board's review until the next meeting the applicant attends.

4.2 Joint Meetings with Adjacent Municipalities

If any portion of a subdivision crosses town boundaries, all meetings and hearings to review a subdivision application must be held jointly by the reviewing authorities from each town. The reviewing authorities in each town, upon written agreement, may waive the requirement under this subsection for any joint meeting or hearing.

4.3 Application Fee and Escrow Account for Review by Outside Experts

4.3.1 Application Fee. An application for subdivision approval shall include payment of a non-refundable permit fee as set the Board of Selectmen's permit fee schedule. The application shall not be considered complete until this fee is paid.

4.3.2 Escrow Account. The Planning Board may require that the applicant deposit with the Town, funds sufficient to reimburse the Town for all reasonable costs for hiring independent consulting services to review engineering and other technical submissions associated with the application and to ensure compliance with this Ordinance. If the Planning Board requires an escrow account, the applicant shall pay an escrow fee as specified in the Board of Selectmen's permit fee schedule to be deposited in a special escrow account designated for that subdivision application. If the balance in this special account is drawn down by 75%, the Planning Board shall notify the applicant, and require that the balance be brought back up to the original deposit amount. The Planning Board shall continue to notify the applicant and require a deposit as necessary whenever the balance of the escrow account is drawn down by 75% of the original deposit. In the event that the amount held in escrow is more than the amount of actual invoicing at the conclusion of the project, the remaining balance shall be promptly refunded to the applicant.

Section 5 Application Review Process

5.1 Sketch Plan Review

Commented [NM4]: Should this be required or optional

5.1.1 The purpose of Sketch Plan Review is for the applicant to present general information regarding the proposed subdivision, and to receive Planning Board comments prior to undertaking the costs

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associated with further development of the proposal. Sketch Plan Review shall not be considered the initiation of the review process for the purposes of bringing the plan under protection of 1 M.R.S. § 302.

- 5.1.2 The applicant shall submit to the Planning Board an application for Sketch Plan Review as required in Section 6.1 of this Ordinance.
- 5.1.3 At the Sketch Plan Review meeting, the Planning Board will provide guidance as follows:
- A. A determination of the scope of the application, the required review process, and other information such as to whether the subdivision contains roads or other utilities which may require detailed information, or whether the proposed subdivision may need permits or review by state or federal agencies.
 - B. A determination of a suitable contour interval to be utilized on the Final Plan, and whether additional submittals, such as a traffic study, an erosion control plan, or an analysis of special historic or ecological resources, should be included.
 - C. A preliminary opinion concerning any waivers to submission requirements. Formal acceptance of waivers shall not occur until the Planning Board has an opportunity to review the Final Plan.
 - D. An opinion on the requirement for and amount of a technical review fee.
- 5.1.4 The Planning Board may hold an on-site inspection of the property. The applicant shall, if requested by the Planning Board, place “flagging” at the center of any proposed streets and at the approximate intersections of the street center lines and lot corners prior to the on-site inspection.
- 5.1.5 The Planning Board shall authorize the submission of the Final Plan application, as applicable, when the Sketch Plan Review is complete.
- 5.1.6 Upon receipt of the formal application of the Final Plan the Planning Board shall determine if the classification is still correct and may reclassify the application if the scope has changed.

5.2 Final Plan Review

- 5.2.1 The applicant shall submit a Final Plan as specified in Section 6.2 of this Ordinance within six months after the Planning Board has authorized the submission. The Planning Board may, upon failure to meet the six month deadline, require the application to return to the Sketch Plan Review phase, and that the applicant pays required application fees.
- 5.2.2 The Final Plan shall approximate the layout shown on the Sketch Plan, plus any recommendations made by the Planning Board.
- 5.2.3 Within one week of receipt of a Final Plan application, the Town shall issue a dated receipt to the applicant, and: 1) notify the clerk and the review authority of any neighboring towns if any portion of the subdivision abuts or crosses the municipal boundary; and 2) notify any supplier of a “public water system” when the subdivision is located on parcels wholly or partially within the “source water protection area” as mapped by the Maine Drinking Water Program.
- 5.2.4 Within 30 days of the receipt of a Final Plan application, the Planning Board shall determine if the submission is complete and shall notify the applicant in writing of this finding. If the Planning Board determines the application is incomplete, the notice shall specify the additional materials required, and shall advise the applicant that the application will not be considered by the Planning Board until the additional information is submitted. A determination of completeness

Commented [NM5]: Required or optional

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under this section does not preclude the Planning Board from requiring additional materials necessary for the review of the project.

- 5.2.5 Upon a determination that the application is complete, the Planning Board may notify other town officials and entities, such as the Board of Selectmen, Public Works, and Fire Chief.
- 5.2.6 Planning Board Meeting to Review the Final Plan
- A. Upon a determination that the application is complete, the Planning Board shall schedule, and provide public notice for, a meeting of the Planning Board to review the application. The applicant or his/her authorized agent must be present at all Planning Board meetings and hearings where the application is to be considered.
- B. All Final Plan submission requirements shall be submitted to the Board Chairperson at least **14 days prior** to the meeting at which the applicant wishes to be heard by the Planning Board.
- C. All abutting landowners and landowners within 1,000 feet of the subdivision property boundaries as shown on the Mount Desert Property Tax Assessor's records shall be notified by first-class mail, that an application has been accepted. This notice shall contain a description of the proposal, the applicant's name, the availability of the application for public inspection, and the date, time, and place of the Planning Board meeting and/or at which the application will be considered. Failure on the part of any abutter to receive such notice shall not be grounds for delay of any consideration of the application nor denial of the project. Public notice to the abutters and public water suppliers shall be provided by the applicant, with Planning Board approval of the contents of the notice. The Planning Board may waive this requirement.
- 5.2.7 A public hearing must be held within 30 days after the determination that a complete application has been submitted or within any other time limit that is mutually agreed upon by the Planning Board and the applicant. The purpose of the hearing is to allow the applicant and affected property owners to provide information as part of the record the Planning Board will use in considering its action on the application. The Planning Board Chairperson shall notify the applicant and publish the time, date, and place of the hearing at least two times; the date of the first publication to be at least **seven days** prior to the hearing in a newspaper of area-wide circulation.
- 5.2.8 Planning Board Decision on the Final Plan
- A. The Planning Board shall, within 30 days of the public hearing or within 60 days of determining a complete application has been received, if no hearing is held, or within another time limit as may be otherwise mutually agreed to by the Planning Board and the applicant, approve, approve with conditions, or deny the Final Plan application.
- B. The Planning Board shall notify the applicant of the Planning Board's action including the findings of fact and any conditions of approval or reasons for denial. This requirement can be met through the distribution of minutes of the meeting or an approval letter.

5.3 Final Approval and Filing

- 5.3.1 No plan shall be approved by the Planning Board as long as the applicant is in violation of the provisions of a previously approved subdivision plan within the Town.
- 5.3.2 Upon findings of fact and a determination that all standards in 30-A, M.R.S. § 4404, as amended, and this Ordinance have been met, the Planning Board shall vote to approve the subdivision and

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sign the Final Plan. The Planning Board shall specify in writing its findings of fact and conclusions, and reasons for any conditions or denial. One copy of the signed plan shall be retained by the Planning Board for its permanent records. Copies shall be forwarded to the Mount Desert Property Tax Assessors and the Code Enforcement Officer. Any subdivision not recorded in the Registry of Deeds within 90 days of the date upon which the plan is approved and signed by the Board shall become null and void.

- 5.3.3 No changes, erasures, modifications, or revisions shall be made to any Final Plan after Planning Board approval, unless the Planning Board approves the revised plan in accordance with Section 9. The Planning Board shall make findings and conclusions of law that the revised plan meets the criteria of 30-A, M.R.S. § 4404, as amended, and the standards of this Ordinance. If a plan is recorded without complying with this requirement, it shall be considered null and void, and the Planning Board shall institute proceedings to have the plan stricken from the records of the Registry of Deeds.
- 5.3.4 Planning Board approval of a subdivision plan shall not constitute or be evidence of any acceptance by the Town of any road, recreation area, easement, or other open space shown on such plan. The Planning Board shall require the Final 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 Board of Selectmen covering future deed and title dedication, and provision for the cost of grading, development, equipment, and maintenance of any such dedicated area.
- 5.3.5 Failure to complete substantial construction (see definitions) of the subdivision within 3 years of the date of approval and signing of the Final Plan shall render the plan null and void. Upon determining that a subdivision approval has expired under this paragraph, the Planning Board shall have a notice placed in the Registry of Deeds to that effect.
- 5.3.6 When an approved subdivision permit is transferred to a new owner or lessee of the property for which the permit was granted, the new owner or lessee must appear before the Planning Board with a signed statement that he/she will adhere to all of the conditions and specifications of the approved Final Plan. This provision shall not supersede the expiration of approved subdivision permits (Section 5.3.5 Subdivision Approval Expiration).

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Section 6 Submission Requirements

6.1 Sketch Plan Review Submissions

The Sketch Plan, which may be a free-hand penciled sketch, shall show the proposed layout of the subdivision, and should be supplemented with general information to describe the existing conditions of the site and the proposed development as required in Table 6.1. The Sketch Plan shall contain, at a minimum, 8 copies of the following:

Table 6.1 Required Sketch Plan Submissions (Checklist)
1. Completed Sketch Plan application form and application fee
2. A description of existing conditions - the number and size of lots, constraints and opportunities
3. Name, addresses, and contact information of record owner, applicant, preparer, and consultants
4. Evidence of right, title, or interest in the property
5. Copy of the property tax map showing the map and lot number of the parcel to be subdivided
6. A copy of a portion of the U.S.G.S. topographic map (7.5 min. quad.) of the area showing the boundaries of the proposed subdivision
7. A copy of that portion of the Somerset County Medium Intensity Soil Survey covering the proposed subdivision with the boundaries of the proposed subdivision shown
8. A plan of the parcel, with an accurate scale, showing at a minimum the information listed below: <ol style="list-style-type: none">Name(s) of the applicant and owner of the parcelNorth arrow, date and map scaleBoundary and lot lines of the subdivisionApproximate location, width and purpose of easements or restrictionsRoads on and adjacent to the tractApproximate location and size of existing utilities on/adjacent to the tractExisting buildings, structures, or other improvements on the siteThe major natural features of the site, approximated by the applicant, including wetlands, rivers, streams, ponds, floodplains, groundwater aquifers, tree lines, significant wildlife habitat and fisheries, and other important natural features
9. Any anticipated requests for waivers from the submission requirements (See Sec.9 Waivers)
10. Listing of any traffic studies, utility studies, market studies or other applicable work to be conducted for the plan

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6.2 Final Plan Submissions

Final Plan submissions shall approximate the layout shown on the Sketch Plan, plus any recommendations made by the Planning Board, and shall include the submissions listed in Table 6.2, unless the applicant is granted a waiver in accordance with Section 8 Waivers. The Planning Board may require additional information, as necessary, to determine if the criteria of this Ordinance are met (See Section 7 Review Criteria and Standards). Eight copies of the following shall be submitted:

Table 6.2 Required Final Plan Submissions (Checklist)
A. Completed application, the application fee, establishment of escrow account (if applicable)
B. Location Map drawn at a size adequate to show the relationship of the subdivision to adjacent properties, and to allow the Planning Board to locate the subdivision within the Town. The map shall show:
1. Existing land uses and subdivisions in the proximity of the proposed subdivision
2. Locations and names of existing and proposed roads
3. Boundaries and designations of shoreland zoning districts
4. An outline of the subdivision and any remaining portion of the owner's property if the Plan covers only a portion of the owner's entire contiguous holdings
C. Final Plan that consists of one or more maps or drawings drawn to a scale of not more than 100 feet to the inch. Plans for subdivisions containing more than 100 acres may be drawn at a scale of not more than 200 feet to the inch provided all necessary detail can be easily read. Plans shall be no larger than 24 inches 36 inches in size, and shall have a margin of 2 inches outside of the borderline on the left side for binding and a one-inch margin outside the border along the remaining sides. Space shall be reserved on the Plan for endorsement by the Planning Board. One reproducible, stable-based transparency of the recording plan to be recorded at the Registry of Deeds, and 3 full sized paper copies of all the Final Plan sheets and any supporting documents shall be submitted. The original reproducible plan shall be embossed with the seal of the professional land surveyor and be signed by that individual. In addition, one copy of the plan shall be reduced to a size of 8½ inches by 11 inches or 11 inches by 17 inches for Planning Board members. The following information shall be on the plan:
1. Name of subdivision or identifying title, and name of the town(s) in which it is located, plus property tax assessor's map and lot numbers
2. Date plan was prepared, magnetic and true north point, graphic map scale
3. Names and addresses of record owner, applicant, and all involved in preparing plan
4. Deed references, existing and proposed deed restrictions, covenants, easements, rights-of-way, or other encumbrances or conditions affecting the property. Include any public rights for physical or visual access to the shoreline of a water body.
5. Names and addresses of all abutters, including property owners across any existing road from the subdivision. Include property lines, tax map and lot numbers, and deed references
6. Standard boundary survey and internal development survey with complete descriptive data by bearings and distances, made by a professional land surveyor. The entire parcel shall be shown, including all contiguous land in common ownership within the last 5 years (Title 30-A M.R.S. § 4401).

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The plan shall contain sufficient data to allow the location, bearing and length of every road line, lot line, and boundary line to be readily determined and be reproduced upon the ground. These lines shall be tied to reference points previously established. (Table continues on next page)
7. Location of all monuments to be placed at the corners of the parcel and each lot, and the type of monument (granite, concrete, iron pin, or drilled hole in ledge)
8. Number of acres in the subdivision; proposed lot numbers and acreages for each lot
9. Contour lines at interval specified by Planning Board, showing elevations relative to mean sea level
10. Location and boundaries of all water bodies and wetlands, including vernal pools, and the location of any shoreland zoning affecting the tract
11. Location and type of vegetative cover, unusually large trees, other essential features
12. Proposed building locations that meet the requirements of the Building Ordinance for the Town of Mount Desert and the Maine Subsurface Wastewater Disposal Rules For proposed subsurface wastewater disposal systems, the location of at least one test pit per lot, performed by a Maine licensed site evaluator or certified soil scientists
13. Emergency 911 lot addresses, approved by Town's addressing agent, shown on plan
14. The location, names, and dimensions of existing and proposed roads, utilities, easements, building lines, parks, open spaces or other improvements on or adjacent to the subdivision. The plan shall contain sufficient data to allow the location, bearing and length of every road line, lot line, and boundary line to be readily determined and be reproduced upon the ground. These lines shall be tied to reference points previously established.
15. Proposed locations of private, shared, and/or community wells
16. Location and size of existing and proposed water lines, culverts, and drainage ways on or adjacent to the property to be subdivided
17. Detailed design and construction plans for the infrastructure, including, but not limited to, roads, parking lots, sidewalks, and utilities in accordance with the Town's Ordinances, including, but not limited to, the Road and Utility Structures Ordinance for the Town of Mount Desert.
18. If roads are to remain privately owned, the following shall be noted on the Final Plan: "All roads shall remain private roads to be maintained by the developer or lot owners, and shall not be accepted or maintained by the Town."
19. Location of any proposed open spaces to be preserved including vegetative buffers, common areas, significant wildlife habitat, unique natural areas, historic or prehistoric sites, shoreland zone resource protection zones, and farmland. (See Sections 8.7 and 8.8)
20. Delineation of any flood hazard areas and the 100-year flood elevation, as depicted on the Town's Flood Insurance Rate Map. If any portion of the subdivision is within the flood hazard area, the following note shall be on the final recording plan: "If any portion of this subdivision is within a flood hazard area, all principal structures hereafter constructed or placed herein shall be so located that their lowest floor, including basement, is at least one foot above the 100-year flood elevation"
21. Any waiver(s) approved by the Board in accordance with Section 9 Waivers
D. Other Required Information
1. Verification of right, title, and interest to the property by deed, purchase and sales agreement, option to purchase, or some other proof of interest

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2. Copy of most recently recorded deed, deed restrictions, easements, rights-of-way, or other encumbrances affecting the property
3. Copy of any proposed deed restrictions intended to cover all or part of the lots or dwellings in the subdivision (Table continues on next page)

4. For private subsurface sewage disposal systems, a copy of the test pit analysis for each lot performed by a Maine licensed site evaluator or certified soil scientist
5. When water is to be supplied by an on-site well(s), a letter from a local well-driller or hydrogeologist familiar with the area indicating it is likely the water supply will be adequate
6. When water is to be from an existing public water supply, a written statement from the servicing water district indicating the district’s approval of the water system design. A written statement from the Fire Chief approving all hydrant locations or other fire protection
7. For projects located wholly or partially within the wellhead protection area of a public water supply as mapped by the Maine Drinking Water Program, a written statement from the water provider indicating the proposed development will not negatively impact essential operations
8. When a private community water supply system is proposed, evidence that the system shall conform to the Maine Rules Relating to Drinking Water (10-144A CMR 231)
9. Location of any sand and gravel aquifers as mapped by the Maine Geologic Survey (MGS). The Planning Board may require a hydrogeologic assessment prepared by a certified geologist or professional engineer, experienced in hydrogeology, when any part of the subdivision is located over a significant sand and gravel aquifer, or where site considerations or development design indicate greater potential of adverse impacts on groundwater quality.
10. Medium intensity soils map that encompasses the area to be subdivided. Wetlands shall be identified on the survey, regardless of size. The Planning Board may require a high intensity soils map in instances where poor soils are evident and/or if the subdivision proposes high-density development
11. Description of the measures to be taken to control erosion and sedimentation onto adjacent properties including roads, and into water bodies in accordance with Section 7.3. Subdivision applicants must submit an erosion and sedimentation control plan prepared by a qualified professional that details control structures to be installed along with ongoing maintenance procedures and practices to be followed during site preparation, construction and clean-up stages.
12. Description of solid waste and demolition waste disposal
13. Landscape plan showing the preservation of any existing trees, replacement of trees and vegetation, graded contours, streams, and preservation of scenic, historic, or environmentally significant areas
14. Description of measures to assure no undue adverse effect to identified significant wildlife habitat and unique natural areas based on attached letters from public agency(ies) (Maine Department of Inland Fisheries and Wildlife, Maine Natural Areas Program, Maine Department of Marine Resources) and/or other experts approved by the Board.
15. Description of measures to assure no undue adverse effect to any historic or prehistoric sites within or adjacent to the proposed subdivision that are either listed on or eligible to be listed on the National Register of Historic Places based on attached letter(s) from the Maine Historic Preservation Commission and/or other experts approved by the Planning Board.

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16. Description of any measures to conserve productive farmland
17. Description of any measures to provide solar energy access (Table continues on next page)
18. Affidavit signed by the applicant indicating no timber harvest occurred on the tract within the preceding 5 years, or if it has, an affidavit signed by a licensed forester or an agent of the Maine Forest Service indicating the timber harvest was not violation of rules adopted pursuant to 12 M.R.S. § 8869(14), as amended
19. Evidence of adequate financial and technical capability to complete the project in the form of a letter(s) from certified financial institution(s) and/or a letter of credit.
20. Copy of driveway entrance permit(s) from Town and Maine Department of Transportation
21. An estimate of the amount and type of vehicular traffic to be generated on a daily basis and at peak hours, with trip generation rates from the most recent available edition of the Trip Generation Manual (Institute of Transportation Engineers). Trip generation rates from other sources may be used if these sources better reflect local conditions.
22. Description of proposed ownership, management and any improvements for all parcels proposed to be dedicated to public use and the conditions of such dedication. Written offers to convey title to the Town of all public ways and open spaces shown on the Plan, and copies of agreements or other documents showing the manner in which open spaces to be retained by the developer or lot owners are to be managed and maintained. These may include homeowners' association bylaws and condominium declarations. The applicant shall provide evidence that a legal entity has been established for common multi-user systems and ownership vested by deed reference for future potential owners for such items as roads, wells, septic systems, stormwater facilities, etc.
23. If proposed roads or other land is to be offered to the Town, written evidence that the Board of Selectmen are satisfied with the legal sufficiency of the written offer to convey title. All roads and other public improvements not dedicated to the Town during such time prior to the actual acceptance by the Town shall be maintained by the subdivision owners or developer. A legal agreement indicating how the infrastructure will be maintained shall be submitted. The Planning Board shall review the maintenance plan to ensure sufficient provisions have been incorporated to maintain all improvements for the applicable time period.
24. The construction items for which cost estimates and performance guarantees will be required to include a construction schedule, cost estimates taking into account inflation, provisions for inspections, and a completion date after which the developer will be in default and the Town will have access to the funds to finish the construction. Planning Board approval of a subdivision plan shall not constitute or be evidence of any acceptance by the Town of any road, easement, open space, or other land shown on the plan. 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 Board of Selectmen covering future deed and title dedication, and provision for the cost of grading, development, equipment, and maintenance of any such dedicated area.
25. All submissions required by the Shoreland Zoning Ordinance of the Town of Mount Desert and any other Town Ordinance, as applicable.

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26. Letters from the Mount Desert Board of Selectmen, Public Works Director and/or Fire Chief indicating their review and any concerns regarding the subdivision, as required by the Planning Board
27. Written evidence that all required federal and state permits have been obtained. Where there is uncertainty, the Planning Board may the applicant to obtain a written opinion from the agency.

Section 7 Statutory Review Criteria

A proposed preliminary subdivision plan application and a final subdivision plan application must comply with the following statutory review criteria:

7.1 *Pollution*

- 7.1.1 The proposed subdivision will not result in undue water or air pollution. In making this determination, the Planning Board must at least consider:
- A. The elevation of the land above sea level and its relation to floodplains;
 - B. The nature of soils and subsoils and their ability to adequately support waste disposal;
 - C. The slope of the land and its effect on effluents;
 - D. The availability of streams for disposal of effluents; and
 - E. The applicable State and local health and water resource regulations.

7.2 *Sufficient Water*

- 7.2.1 The proposed subdivision has sufficient water available for the reasonably foreseeable need of the subdivision.

7.3 *Municipal Water Supply*

- 7.3.1 The proposed subdivision will not cause an unreasonable burden on an existing water supply, if one is to be utilized.

7.4 *Erosion*

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

7.5 *Traffic*

- 7.5.1 The proposed subdivision will not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of highways or public roads existing or proposed and, if the proposed subdivision requires driveways or entrances onto a state or state aid highway located outside of the urban compact area of an urban compact municipality as defined by 23 M.R.S.A. § 754, DOT has provided documentation indicating that the driveways or entrances comply with the requirements of 23 M.R.S.A. § 704 and any rules adopted under that section.

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7.6 Sewage Disposal

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

7.7 Municipal Solid Waste Disposal

7.7.1 The proposed subdivision will not cause an unreasonable burden on the Town's ability to dispose of solid waste, if municipal services are to be utilized.

7.8 Aesthetic, Cultural, and Natural Values

7.8.1 The proposed subdivision will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetic, historic sites, significant wildlife habitat identified by MDIFW or the Town, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline.

7.9 Comprehensive Plan

7.9.1 The proposed subdivision complies with the Comprehensive Plan, and all applicable state and local rules and regulations, including this Code and other Town ordinances.

7.10 Financial and Technical Capacity

7.10.1 The applicant has adequate financial and technical capacity to comply with the standards of this Section 7.

7.11 Surface Waters; Outstanding River Segments

7.11.1 Whenever situated, entirely or partially, within the watershed of any pond or lake or within 250 feet of any wetland, great pond, or river, the proposed subdivision will not adversely affect the quality of that body of water or unreasonably affect the shoreline of that body of water. When lots in a subdivision have frontage on an outstanding river segment, the proposed subdivision plan must require principal structures to have a combined lot shore frontage and setback from the normal high-water line of 500 feet.

- A. To avoid circumventing the intent of this subsection 7.11, whenever a proposed subdivision adjoins a shoreland strip narrower than 250 feet which is not lotted, the proposed subdivision must be reviewed as if lot lines extended to the shore.
- B. The frontage and setback provisions of this subsection 7.11 do not apply within the GD district, or within areas designated by this Code as densely developed. The determination of which areas are densely developed must be based on a finding that existing development met the definitional requirements of 30 A M.R.S.A. § 4401(1) on September 23, 1983.

7.12 Groundwater

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

7.13 Floodplains

7.13.1 If the subdivision, or any part of it, is in a floodplain, the applicant must determine the 100-year flood elevation and flood hazard boundaries within the subdivision. The preliminary and final

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subdivision plan must include a condition of plan approval requiring that principal structures in the subdivision will be constructed with their lowest floor, including the basement, at least one foot above the 100-year flood elevation.

7.14 Freshwater Wetlands

7.14.1 All freshwater wetlands within the proposed subdivision 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 soils and water conservation district.

7.15 Farmland

7.15.1 All farmland within the proposed subdivision has been identified on maps submitted as part of the application. Any mapping of farmland may be done with the help of the local soil and water conservation district.

7.16 River, Stream, or Brook

7.16.1 Any river, stream or brook within or abutting the proposed subdivision has been identified on any maps submitted as part of the application. For purposes of this subsection 7.16, "river, stream or brook" has the same meaning as in 38 M.R.S.A. § 480-B(9).

7.17 Stormwater

7.17.1 The proposed subdivision will provide for adequate stormwater management.

7.18 Spaghetti-lots Prohibited

7.18.1 If any lots in the proposed subdivision have shore frontage on a river, stream, brook, or great pond, none of the lots created within the subdivision have a lot depth to shore frontage ratio greater than five to one.

7.19 Lake Phosphorus Concentration

7.19.1 The long-term cumulative effects of the proposed subdivision will not unreasonably increase a great pond's phosphorus concentration during the construction phase and life of the proposed subdivision.

7.20 Impact on Adjoining Municipality

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

7.21 Lands Subject to Liquidation Harvesting

7.21.1 Timber on the parcel being subdivided has not been harvested in violation of rules adopted pursuant to 12 M.R.S.A. § 8869(14). If a violation of rules adopted by the DACF Bureau of Forestry to substantially eliminate liquidation harvesting has occurred, the Planning Board must determine prior to granting approval for the subdivision that five years have elapsed from the date the landowner under whose ownership the harvest occurred acquired the parcel. The Planning Board may request technical assistance from DACF Bureau of Forestry to determine whether a rule violation has occurred, or the Planning Board may accept a determination certified

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by a forester licensed pursuant to 32 M.R.S.A. Ch. 76. If the Planning Board requests technical assistance from the DACF Bureau of Forestry, the Bureau must respond within five working days regarding its ability to provide assistance. If the Bureau notifies the Planning Board that the Bureau will not provide assistance, the Planning Board may require the applicant to provide a determination certified by a licensed forester. For the purposes of this subsection, “liquidation harvesting” has the same meaning as in 12 M.R.S.A. § 8868(6) and “parcel” means a contiguous area within one municipality, township, or plantation owned by one person or a group of persons in common or joint ownership.

Section 8 Additional Review Criteria

In addition to the statutory review criteria in Section 7, a proposed preliminary subdivision plan application and a final subdivision plan applications must comply with the following review criteria:

8.1 Phosphorus Export

8.1.1 The preliminary subdivision plan application must include a nutrient (phosphorous) loading study conducted using the methodology contained in the Maine Stormwater Management Design Manual: Phosphorus Control Manual, Vol. II (DEP, Mar. 2016).

8.2 Relationship to Community Services

8.2.1 The proposed subdivision must not unreasonably adversely affect existing services and facilities. The preliminary subdivision plan must include a list of the construction items that will be completed by the applicant prior to the sale of lots, and the list of construction and maintenance items that must be borne by the applicant and by the Town, which must include:

- A. Road maintenance and snow removal;
- B. Police and fire protection;
- C. Solid waste disposal;
- D. Recreational facilities; and
- E. On-site and off-site drainage facilities.

8.2.2 The Planning Board may require the applicant to provide a community impact statement to the Town for the above services, including reasonable cost estimates to the Town.

8.3 Retention of Proposed Public Sites and Open Spaces

8.3.1 Areas reserved for park or recreational purposes must be at least one acre in size, easily accessible from all lots within the subdivision, and of a character, configuration and location suitable for the particular use intended. A site to be used for active recreation purposes, such as a playground or playfield must be reasonably level and dry, have a total frontage on one or more roads of at least 200 feet, and have no major dimensions of less than 200 feet. Sites selected primarily for scenic or passive

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recreation purposes must have suitable access and must have no less than 50 feet of road frontage. The configuration of such sites must be deemed adequate by the Planning Board with regard to scenic attributes to be preserved, together with sufficient areas for trails, lookouts, and similar features where necessary and appropriate.

8.3.2 The final subdivision plan must clearly indicate the owner of all reserved recreational land. In cases where the applicant intends to convey the recreational land to the lot owners, or to an association, or other organization, the terms of such conveyance, and the organizational documents of such association or organization are subject to review and approval by the Planning Board to ensure that the association or organization will have the necessary powers and the authority to raise the funds necessary to maintain the reserved recreational land.

8.4 Preservation of Natural and Historic Features

8.4.1 The proposed subdivision plan must include a landscaping plan that will show the preservation of existing trees, the replacement of trees and vegetation, graded contours, streams and the preservation of scenic, historic or environmentally desirable areas. The road and lot layout must be adapted to the topography. Extensive grading and filling must be avoided as far as possible and a buffer strip may be provided where the proposed subdivision abuts an existing road.

8.5 Traffic Impact

8.5.1 The proposed subdivision must not have an unreasonable adverse impact on existing traffic patterns. In making this determination, the Planning Board may require that a traffic study or a fiscal impact study be prepared for a proposed subdivision at the applicant's expense.

8.6 Shoreland Zoning

8.6.1 Wherever situated, in whole or in part, within the shoreland zone, the proposed subdivision must comply with the requirements of Chapter IV (Shoreland Zoning), including Section IV-U.6.

8.7 Easement for Drainage Ways

8.7.1 There must be provided a stormwater easement or drainage right-of-way conforming substantially with the lines of such watercourse and such further width or construction, or both, as will ensure that no flooding occurs and all stormwater can be disposed of properly. Such easement or right-of-way must be not less than 30 feet in width.

8.8 Utilities

8.8.1 The size, type, and location of public utilities, such as road lights, electricity, telephones, fire hydrants, other fire protection mechanisms, must be installed in accordance with the requirements of this Code and applicable state law.

8.8.2 All public utilities and facilities, including sewer, gas, electrical and water systems must be located and constructed to minimize or avoid flood damage.

8.8.3 When a tract is subdivided into lots larger than the minimum size required in the district in which a subdivision is located, the Planning Board may require that roads and lots be laid out so as to permit re-subdivision in accordance with the requirements of this Code, unless restrictive covenants are placed at the time of the original subdivision.

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8.9 Required Improvements

8.9.1 The following are required improvements: monuments, road signs, roads, landscaping, sewage disposal, and storm drainage.

8.10 Road or Homeowner's Association

8.10.1 The applicant must provide evidence upon submitting an application to the Planning Board that the infrastructure will be maintained by the lot owners or a homeowner's association. Proof may consist of a declaration of covenants that will be recorded and become part of each deed and specifies how the costs associated with maintenance will be apportioned among the lot owners or appropriate homeowner's association documents. In the event that a homeowner's association is formed, each lot deed must refer to the homeowner's association and must require the lot owner to be a member of the homeowner's association.

8.11 Reserved

8.12 Monuments

8.12.1 Permanent monuments must be set at all corners and angle points of the subdivision lots and boundaries and at all intersections and points of curvature.

8.12.2 All monuments must be constructed of a reasonably permanent material solidly embedded in the ground and capable of being detected by commonly used magnetic or electronic equipment. Reinforced concrete or stone cairns may be used. The monument must clearly show the registration number or temporary certificate number of the land surveyor responsible for the survey. When the placement of a required monument at its proper location is impractical, it is permissible to set a reference monument as close as is practical to that point.

8.13 Road Signs

8.13.1 All new developments must comply with the **Town of Mount Desert Road Naming, Addressing and Driveway/Entrance Opening Ordinance**.

8.13.2 The purchase and installation of signs are the responsibility of the Road Commissioner.

8.14 Reserved

8.15 Nonconforming Roads

8.15.1 Roads that do not conform to the design and construction standards in Section 8.15, may be permitted within a subdivision, upon approval of the Planning Board after review and comment by the Road Commissioner, as long as the applicant stipulates on the final subdivision plan and in each deed issued to a lot owner that the lot is served by a nonconforming road and that it is not intended that the road, now or at any future date, will become a Town road.

8.15.2 All nonconforming roads must be designed and constructed to facilitate the safe and convenient movement of motor vehicles, emergency vehicles, and pedestrian traffic.

8.15.3 Adequate provision must be made for the disposal of all surface waters and underground water through ditches, culverts, underdrains, or stormwater drainage systems. Provision must be made for

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natural water courses. The design must comply with the DOT Best Management Practices for Erosion and Sedimentation Control (DOT, Feb. 2008), as certified by an engineer.

8.15.4 The applicant must submit a road maintenance plan, which must, at minimum (i) show the intended ownership of the road system and (ii) describe how the road maintenance plan will be implemented.

8.15.5 The Planning Board will not approve a road with less than 18 feet of travel width with all other specifications remaining the same.

8.16 Sidewalks

8.16.1 Sidewalks may be required to be installed at the expense of the applicant where the subdivision abuts or fronts onto a major road, and at such other locations as the Planning Board may deem necessary.

8.17 Water Supply

8.17.1 The water supply system must be designed, approved, and installed in accordance with requirements of DHHS.

8.18 Fire Protection

8.18.1 Fire Protection measures must comply with requirements set forth in the **Town of Mount Desert Fire Protection Ordinance for Subdivisions**, as annotated on the approved subdivision plan

8.19 Sewage Disposal

8.19.1 A soils evaluation for a subsurface wastewater disposal system must be completed by a licensed site evaluator in full compliance with the requirements of the state wastewater disposal rules.

8.19.2 Plans for engineered subsurface wastewater disposal systems, as defined in the state wastewater disposal rules, must be designed by an engineer and approved by DHHS.

8.20 Surface Drainage

8.20.1 Where a subdivision is traversed by a watercourse, drainage way, or future sewer line, or where the Planning Board determines that surface water drainage to be created by the subdivision must be controlled for the protection of the subdivision and owners of property abutting it, there must be provided an easement or drainage right-of-way and culverts, catch basins, or other means of channeling surface water within such subdivision and over the property of owners abutting upon it, of such nature, width and locations as the Planning Board deems adequate.

8.20.2 The applicant must provide a statement from an engineer that the proposed subdivision will not create erosion, drainage, or runoff problems either in the subdivision or in adjacent properties. The applicant's surface drainage plan must show ditching, culverts, easements, and other proposed improvements.

8.20.3 Topsoil must be considered to be part of the subdivision. Except for topsoil required to be removed for the construction of roads, parking areas, and building excavations, topsoil must not be removed from the site.

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8.20.4 The applicant must take measures to correct and prevent soil erosion in the proposed subdivision as detailed in any required sedimentation and erosion plan.

8.21 Long-Term Maintenance Plan

8.21.1 For any subdivision requiring a performance guarantee, the applicant must present the Planning Board with a legally binding long-term maintenance plan to be administered by a homeowner's association or an alternative legally binding instrument for accomplishing long-term maintenance necessary to protect environmental quality and the general welfare of the Town as required by the Planning Board.

8.21.2 The long-term maintenance plan must provide for ongoing monitoring and inspections of all required site improvements. The plan must provide a process for maintaining sufficient financial resources for performing ongoing maintenance and repair of site improvements. The plan must also provide for a process that authorizes the Town to take any enforcement action deemed necessary by the Planning Board. No building permits will be issued for any project and no work may begin on any project until the plan has been reviewed and approved by the Planning Board.

Section 9 Additional Review Criteria for Mobile Home Parks

Except as specified below, mobile home parks must comply with all requirements for a residential subdivision and all applicable state laws and local ordinances or regulations. Where the provisions of this Section VI-8 conflict with specific provisions contained elsewhere in this Code, including in Chapter VI (Subdivision Regulations), the provisions of this Section VI-8 control.

9.1 Minimum Lot Size and Road Frontage

9.1.1 Notwithstanding the dimensional standards in Section III-3.B, lots in a mobile home park must comply with the following minimum lot size and road frontage standards:

A. Lots served by individual subsurface wastewater disposal systems:

1. Minimum lot size: 20,000 square feet
2. Minimum road frontage: 100 feet

B. Lots served by an engineered subsurface wastewater disposal system approved by DHHS:

1. Minimum lot size: 12,000 square feet
2. Minimum road frontage: 75 feet

C. The overall density of a mobile home park served by a subsurface wastewater disposal system must not exceed one dwelling unit per 20,000 square feet of total park area.

D. Notwithstanding subsections A.1 to A.3, above, lots in a mobile home park in the shoreland zone must comply with the dimensional standards of Section III 3.B.

9.2 Change of Use

9.2.1 No approved mobile home park subdivision may be converted to another use without the prior approval of the Planning Board, and any such subdivision must comply with the applicable lot size, lot width, setback, and other dimensional standards for subdivisions. The final subdivision plan must include the following restrictions, as well as any other notes or conditions of approval:

A. The land within the mobile home park must remain in a unified ownership and the fee to lots or portions of lots must not be transferred.

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B. No dwelling unit other than a manufactured home, as that term is defined in 30 A M.R.S.A. §4358, must be located within the mobile home park. State law reference—30-A M.R.S.A. § 4358.

Section 10 Additional Review Criteria for Cluster Subdivisions

10.1 Purpose. The purpose of this Section is to accommodate cluster subdivisions by allowing greater flexibility and more innovative approaches to the development of residential housing than may be possible under strict application of the dimensional standards applicable to subdivisions, while the additional land that would have been allocated to individual lots is converted to common shared open space for the use and enjoyment of residents and property owners living within the cluster subdivision.

10.2 General Requirements.

10.2.1. Except as specifically provided in this Section, the provisions of this section apply to applications for cluster subdivisions.

10.2.2. The minimum lot size, **minimum shore frontage**, and maximum lot coverage set forth in Section 3.5 of the Land Use Ordinance may be reduced for some or all of the lots or dwelling units within a cluster subdivision as long as the cluster subdivision (including the common open space contained therein) complies, in the aggregate, with the minimum lot size, minimum shore frontage, and maximum lot coverage set forth in Section 3.5 of the Land Use Ordinance.

10.2.3. A cluster subdivision may be proposed for construction in phases, in which case the project must be designed so that each phase, when completed, is capable of standing on its own in terms of public or common services, facilities, utilities, and open space. Each phase must contain the necessary components to insure protection of natural resources and the health, safety, and welfare of the users and residents of the project.

A. For a project proposed to be done in phases, the applicant must submit with the initial application a conceptual plan for the overall parcel. If adjacent property is going to be included in the overall development it must also be included in the conceptual plan.

B. If a project is proposed to be presented in phases, a lot of 40 or more acres will be counted as a subdivision lot and will not be exempt.

10.2.4. Except for home occupations conducted in a dwelling unit, no commercial activity may be conducted on any lot or in any structure within a cluster subdivision.

10.3 Buffers.

10.3.1. A buffer strip of at least 25 feet in width is required along the perimeter of the land area within which the cluster subdivision is proposed.

10.3.2. The buffer strip must consist of undisturbed existing vegetation. If existing vegetation is inadequate to visually screen the cluster subdivision from view from adjoining properties and public roads, a mix of new landscaping including trees, shrubs and grasses must be planted.

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10.3.3. The buffer strip must be maintained in a natural vegetative state and must not be cut except for the creation of a pedestrian pathway up to six feet wide or the removal of dead, diseased, or storm-damaged trees.

10.3.4. No buildings or structures may be erected in the buffer strip.

10.3.5. The buffer strip must not be used to store trash, personal property, or vehicles (such as snowmobiles, boats, trailers, campers, recreational vehicles, motor homes, ATVs, satellite dishes) and must not be used to install septic systems or wells.

10.3.6. The buffer strip must be shown on the cluster subdivision plan and a note regarding maintenance must be included on the plan.

10.4 Vehicular and Pedestrian Systems.

10.4.1. The vehicular and pedestrian circulation system within each cluster subdivision must safely and conveniently accommodate the movement of vehicles, bicycles, and pedestrians throughout the proposed development and must provide a system of pedestrian ways within the development appropriate to the type and scale of development. Where practicable, circulation systems must link residential groupings, open space areas, schools, and local shopping areas. Circulation systems must connect major building entrances and exits with parking areas and existing sidewalks, if they exist or are planned in the vicinity of the project.

10.4.2. Roads.

- A. Access to all structures and lots within the cluster subdivision must be located on a new interior road system constructed as part of the development.
- B. Internal roads must be built to comply with the road design standards in Section XX.
- C. Internal roads must be built to provide connectivity to adjacent parcels, where applicable.

10.4.3. Sidewalks and Pedestrian Paths.

- A. Sidewalks must comply with the requirements of the Americans with Disabilities Act (ADA).
- B. Logical connections to and extensions of sidewalks and pedestrian paths outside of the development project must be provided where applicable.
- C. The Planning Board may approve alternative designs for sidewalks or pedestrian paths upon determining that such design would better serve the purpose of providing adequate pedestrian access and circulation.

10.5 Common Open Space.

10.5.1. The cluster subdivision must contain buildable area dedicated as one or more common open space areas that are, in the aggregate, equal or greater in size to any proposed reduction to the minimum lot size, minimum shore frontage, and maximum lot coverage set forth in Section 3.5 of the Land Use Ordinance.

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10.5.2. Common open space must be permanently maintained as open space for the purpose of providing low-intensity recreation or preserving natural features (such as large trees, tree groves, woods, ponds, streams, rock outcrops, natural plant life and wildlife habitat, including deer yards) or environmentally sensitive areas through a legally binding instrument such as a homeowner's association covenant, conservation easement, or the dedication of land to a nonprofit land trust for conservation or low-intensity recreation purposes.

10.5.3. Common open space must not serve as yard areas or stormwater retention or detention ponds.

10.5.4. If multiple common open space areas are proposed or the cluster subdivision is proposed to be phased in, the common open space areas must be designed and implemented to become unified for the use or enjoyment of residents of the cluster subdivision.

10.5.5. Common open space areas must be contiguous to the greatest extent possible.

10.5.6. Common open space areas must be identified on the cluster subdivision plan with appropriate notation on the face thereof to indicate that these areas must not be used for future development.

10.5.7. Any dedication of open space must be made through legal instruments approved by the Planning Board.

10.5.8. If any or all of the open space is to be reserved by the individual unit owners as common open space, each unit owner must own a fraction of interest in the common open space and the applicant must, prior to final subdivision plan approval, incorporate a homeowner's association that complies with the following requirements:

A. Deed covenants must be placed in each deed from the applicant to the individual unit owner, which require mandatory membership in the homeowner's association. The deed covenants must set forth the unit owner's rights, interest, privileges, and obligations in the homeowner's association and in the common open space, and the homeowner's association's responsibility and obligation to maintain the common open space and any improvements located thereon.

B. The homeowner's association must develop a system to levy and collect annual charges against all individual lot owners to defray any expense connected with the maintenance of common open space and any improvements located thereon, and this system must be described in the deed covenants or by some other legal instrument made binding upon the individual unit owner and running with the land.

C. The applicant must maintain control of the common open space and be responsible for its maintenance until 80% of the units in the development have been sold, at which time the homeowner's association must be responsible for such maintenance, and this obligation must be described in the deed covenants or by some other legal instrument made binding upon the individual dwelling unit owner and running with the land.

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D. All deed covenants and other legal instruments pertaining to common open space must be approved by the Planning Board, recorded in the Washington County Registry of Deeds, and included or referred to in the deed to each unit.

Section 11 Reserved

Section 12 Reserved

Section 13 Waivers

13.1 Waivers of Certain Submission Requirements

The Planning Board may waive certain submission requirements where there are special circumstances of the development, or where the application is simple and minor in nature, provided the public health, safety, and welfare are protected, and provided the waivers do not have the effect of nullifying the intent and purposes of this Ordinance.

13.2 Waivers of Certain Improvements

The Planning Board may waive certain required improvements where there are special circumstances of the development such that the required improvements are not requisite to providing for the public health, safety and welfare, or are inappropriate because of inadequate or lacking connecting facilities adjacent to or in proximity of the proposed development, provided the waivers do not have the effect of nullifying the intent and purposes of this Ordinance.

13.3 Requirements for Waivers

When granting waivers, the Planning Board may set conditions so that the purposes of this Ordinance are met. The Planning Board shall make a written record of waivers granted and the reasons for granting them to be made a part of the decision. When the Planning Board grants a waiver to any of the improvements required by this Ordinance, the Final Plan, to be recorded in the Registry of Deeds, shall indicate the waiver(s) granted and the date on which they were granted.

Section 14 Revisions to Approved Plans

14.1 Procedure and Scope of Review

14.1.1 If the revision involves only modifications of the approved plan, without the creation of additional lots or dwelling units, the procedures for Final Plan approval shall be followed.

14.1.2 If the revision involves the creation of additional lots or dwelling units, the procedures for Final Plan approval shall be followed.

14.1.4 The scope of review shall be limited to those portions of the plan proposed to be changed.

14.2 Submissions

The applicant shall submit a copy of the approved plan as well as 8 copies of the proposed revisions, with enough supporting information to allow the Planning Board to determine if the proposed revisions meet the standards of this Ordinance. The revised plan shall indicate it is the revision of a previously approved

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and recorded plan, and shall show the title of the subdivision and the book and page or cabinet and sheet on which the original plan is recorded at the Registry of Deeds.

Section 15 Performance Guarantees and Inspections of Improvements

15.1 Performance Guarantees

15.1.1 Application

- A. Improvement Guarantee. The Planning Board may require the posting of an improvement guarantee in such amount and form as specified in subsection 10.1.2 below as is reasonably necessary to ensure the proper installation of all improvements required as conditions of approval. The nature and duration of the guarantee shall be structured to achieve this goal without adding unnecessary costs to the applicant. The performance guarantee must be approved as to form and enforceability by the Planning Board or their appointed representative.
- B. Upon substantial completion of all required improvements, the developer must notify the Planning Board of the completion or substantial completion of improvements, and must send a copy of such notice to the Code Enforcement Officer (CEO). The CEO shall inspect all improvements and shall file a report indicating approval, partial approval, or rejection of such improvements with a statement of reasons for any rejection.
- C. The Planning Board shall approve, partially approve, or reject the improvements on the basis of the report of the CEO, the Road Commissioner, Board of Selectmen, or other designated individual or expert.
- D. If the improvements are approved, the guarantee shall be released. Where partial approval is granted, the developer shall be released from liability only for that portion of the improvements approved.

15.1.2 Types of Guarantees. The applicant shall provide one of the following types of performance guarantees with the application for Final Plan approval. The performance guarantee shall be for an amount adequate to cover up to 120% the total construction costs of all required improvements, taking into account the time-span of the construction schedule and the inflation rates for construction costs. Agreement on the amount of the guarantee shall be a condition of approval for the application.

- A. Cash Collateral Account. An account may be opened in the name of the Town of Mount Desert at any FDIC insured financial institution. The account may be a savings account, or certificate of deposit. The Town shall be named as owner of the account and the Town shall have the exclusive right to withdraw funds pursuant to the provisions of this Ordinance. Any interest earned on the account shall be returned to the applicant unless the Town has found it necessary to use such interest to complete the required improvements which the Town shall have the right to do under this Ordinance.
- B. Performance Bond. A performance bond issued by a surety company licensed to do business in the State of Maine shall be made payable to the Town and approved by the Board of Selectmen. The performance bond shall detail the conditions of the bond, the method for release of the bond or portions of the bond to the applicant, and the procedures for collection by the Town. The bond documents shall specifically reference the development for which approval is sought.

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- C. Letter of Credit. An irrevocable letter of credit from an FDIC insured financial institution from which the Town may draw if construction is inadequate as determined by the Board. The Letter of Credit shall detail the conditions of the Letter, the method for calling on the Letter or portions of the Letter to the applicant, and the procedures for collection by the Town. The Letter of Credit documents shall specifically reference the development for which approval is sought.

15.2 Inspection of Required Improvements

- 15.2.1 At least 5 days prior to commencing construction of required improvements, the developer shall:
 - A. Notify the CEO in writing of the time when (s)he proposes to commence construction of such improvements, so the Board of Selectmen can arrange for inspections to assure all Town specifications, requirements, and conditions of approval are met during the construction of required improvements, and to assure the satisfactory completion of improvements and utilities required by the Board.
 - B. Deposit with the Board of Selectmen a check for the amount of 2% of the estimated costs of the required improvements to pay for the costs of inspection. If upon satisfactory completion of construction and cleanup there are funds remaining, the surplus shall be refunded to the developer as appropriate. If the inspection account shall be drawn down by 90%, the developer shall deposit an additional 1% of the estimated costs of the required improvements.
- 15.2.2 If the CEO finds upon inspection of the improvements any of the required improvements have not been constructed in accordance with the plans and specifications filed by the developer, the CEO shall so report in writing to the Board of Selectmen, Planning Board, and the developer. The Board of Selectmen shall take any steps necessary to assure compliance with the approved plans.
- 15.2.3 If at any time it appears necessary or desirable to modify the required improvements before or during the construction of the required improvements, the CEO is authorized to approve minor modifications due to unforeseen circumstances such as encountering hidden outcrops of bedrock, natural springs, etc. The CEO shall issue any approval under this section in writing and shall transmit a copy of the approval to the Planning Board and Board of Selectmen. Revised plans shall be filed with the Planning Board and Board of Selectmen. For major modifications, such as relocation of rights-of-way, property boundaries, changes of grade by more than 1%, etc., the developer shall obtain permission from the Planning Board to modify the plans in accordance with Section 9 Revisions to Approved Plans.
- 15.2.4 At the close of each summer construction season the Town shall, at the expense of the developer, have the site inspected by the CEO. By October 1 of each year during which construction was done on the site, the CEO shall submit a report to the Planning Board and the Board of Selectmen based on that inspection, addressing whether stormwater and erosion control measures (both temporary and permanent) are in place, are properly installed, and appear adequate. The report shall also include a discussion and recommendations on any problems which were encountered.
- 15.2.5 Prior to the sale of any lot, the developer shall provide the Planning Board with a letter from a professional land surveyor, stating all monumentation shown on the plan has been installed.
- 15.2.6 Upon completion of road construction and prior to a vote by the Board of Selectmen to submit a proposed public way to a Town Meeting vote, a written certification signed by a professional engineer shall be submitted to the Board of Selectmen at the expense of the applicant, certifying the proposed public way meets or exceeds the design and construction requirements of these

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regulations and the Road and Utility Structures Ordinance for the Town of Mount Desert. If there are any underground utilities, the servicing utility shall certify in writing they have been installed in a manner acceptable to the utility. "As built" plans shall be submitted to the Board of Selectmen.

- 15.2.7 The developer shall be required to maintain all improvements and provide for snow removal on roads and sidewalks until acceptance of the improvements by the Town or control is placed with a lot owners' association.

Section 16 Violations and Enforcement

- 16.1 No plan of a division of land within the Town 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.
- 16.2 A person shall not convey, offer or agree to convey any land in a subdivision which has not been approved by the Planning Board and recorded in the Registry of Deeds.
- 16.3 A person shall not sell, lease or otherwise convey any land in an approved subdivision which is not shown on the plan as a separate lot.
- 16.4 No public utility, water district, or any utility company of any kind shall serve any lot in a subdivision for which a Final Plan has not been approved by the Planning Board.
- 16.5 Development of a subdivision without Planning Board approval shall be a violation of law. Development includes grading or construction of roads, grading of land or lots, or construction of buildings which require a plan approved as provided in this Ordinance and recorded in the Registry of Deeds.
- 16.6 Default. Any developer who 1) fails to perform any required improvements in accordance with any timetable established at the time of Final Plan approval, 2) completes required improvements in a manner which, although timely, is not acceptable to the Town, or 3) maintains a situation that is hazardous to the public health and safety, shall be deemed in default. In addition, a developer shall be deemed in default if any required improvement is not completed in accordance with the Final Plan and all applicable regulations before the expiration date of any performance guarantees tendered by the developer to the Town with respect to required improvements. The Town will not be required to initiate action to exercise its rights under any financial performance guarantee in order to declare a developer in default. For purposes of interpreting this paragraph, "hazards to public health and safety" shall include, but not be limited to, inadequate drainage, stormwater management, or erosion and sedimentation control measures.
- 16.7 No lot in a subdivision may be sold, leased, or otherwise conveyed before the road upon which the lot fronts is completed in accordance with Final Plan approval and this Ordinance, up to and including the entire frontage of the lot. No unit in a multifamily development shall be occupied before the road upon which the unit is accessed is completed in accordance with Final Plan approval and this Ordinance.
- 16.8 Violations of the above provisions of this section are a nuisance and shall be punished in accordance with the provisions of 30-A M.R.S. § 4452.

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Section 17 Appeals

- 17.1 An aggrieved party may appeal any decision of the Board under these regulations to Superior Court.