



Town of Lincolnville Subdivision Ordinance

November 8, 2005

Amended:

06-10-2008---Article 4, Section 4.4.1 Conceptual Plan

06-11-2015---Article 5, Section 5.2.3.i., Article 6.2.3.l., Article 8 & 12 – Access Management

06-16-2016---Article 21, Article 3 – Administrative Procedure 3.7

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Lincolnvile Subdivision Ordinance

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ARTICLE 1 – PURPOSE AND INTENT

1.1 The purpose of this ordinance is to:

- a) Provide for an expeditious and efficient process for the review of proposed Subdivisions.
- b) Adopt the approval criteria of the State Subdivision Law found in Title 30-A M.R.S.A § 4404.
- c) Assure new development in the Town of Lincolnville meets the goals and conforms to the policies of the Lincolnville Comprehensive Plan.
- d) Allow land owners to responsibly and appropriately develop their land.

1.2 The provisions set forth in this subdivision Ordinance are intended to protect the public health and safety, promote the general welfare of the community and conserve and protect the environment by assuring that subdivisions are designed and developed in a manner which assures that adequate provisions are made for traffic safety; emergency access; water supply; sewage disposal; management of storm water, erosion, and sedimentation; protection of the groundwater; wildlife habitat, fisheries, and unique natural areas; protecting historic and archaeological resources; conserving the Town’s natural beauty and visual character, minimizing the adverse impacts on adjacent properties; and fitting the project harmoniously into the fabric of the community.

ARTICLE 2 – AUTHORITY AND ADMINISTRATION

2.1 Authority

2.1.1 This Subdivision Ordinance has been prepared in accordance with the provisions of Title 30A-M.R.S.A., §4404 under the Home Rule authority granted to the Town of Lincolnville by the statutes of the State of Maine.

2.1.2 This ordinance shall be known and may be cited as “ Subdivision Ordinance of the Town of Lincolnville.”

2.2 Administration

2.2.1 The Planning Board of the Town of Lincolnville, hereinafter called the Board, shall administer this ordinance.

2.2.2 The provisions of this ordinance shall pertain to all land and buildings proposed for subdivision as defined in Title 30-A, M.R.S.A. 4401 within the boundaries of the Town of Lincolnville.

2.2.3 All requests to the Board and all required fee payments made by subdivision applicants shall be processed by the Lincolnville town office through the Code Enforcement Officer, hereinafter called the CEO, within the required time period specified in this ordinance.

2.2.4 Each year the Board of Selectmen shall act to approve the fee schedule for this ordinance as recommended by the Planning Board.

2.3 Amendments

2.3.1 Amendments to this ordinance must be approved by the municipal legislative body of the Town of Lincolnville.

2.3.2 Public hearings shall be held prior to the adoption of any amendment. Notice of all hearings shall be provided at least seven days in advance of the hearing.

2.4 Effective date

2.4.1 This Subdivision Ordinance herein shall be enacted and be in full force and effect on the day following the date of approval of this Ordinance by the voters of the Town of Lincolnville at a Town Meeting, and any previously-enacted Subdivision Ordinance of

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the Town of Lincolnville in effect prior to the date of enactment of this ordinance shall be repealed as of that date.

2.4.2 Applicants for subdivision approval or permit who have filed applications prior to the effective date of this Subdivision Ordinance shall be governed by the terms of the previously-enacted Subdivision Ordinance only in the event that the Planning Board had determined, by a majority vote, that the application for preliminary plan approval was complete, as set forth in Section IV (A) (4) of the previously-enacted Subdivision Ordinance, unless the Applicant elects, in writing, to the Planning Board to be governed by the terms of this Subdivision Ordinance.

ARTICLE 3 – ADMINISTRATIVE PROCEDURE

- 3.1 The CEO shall prepare a written agenda for each regularly scheduled meeting no less than one week in advance of the meeting. The agenda shall be distributed to Board members, applicants, and posted at the Town Office.
- 3.2 Prior to submitting a formal application for a minor project (four lots or less) or major project, or a phased development as outlined in Sections 7.3.6 and 7.3.7 of this Ordinance, the applicant or their representative shall request from the CEO a pre-application conference with the Board to discuss the proposed subdivision. When the required fee for a pre-application meeting has been submitted, the applicant shall be issued a current Lincolnville subdivision Ordinance if the applicant does not have a copy of the latest revision.
- 3.3 At the pre-application stage for minor and major subdivision application and final plan review stage for major subdivision review, the applicant shall submit all applicable documentation, along with any required fees, with a request to the CEO to be placed on the Board’s agenda at least fourteen (14) days prior to the regularly scheduled meeting in order to be heard.
- 3.4 For the final stage of a minor subdivision review or the preliminary stage of a major subdivision review, the applicant shall submit all applicable documentation, along with any required fees, and request to the CEO to be placed on the Board’s agenda, at least twenty one (21) days prior to the regularly scheduled meeting in order to be heard.
- 3.5 For final plan approval of a major subdivision, the applicant shall provide the amount of the Performance Guarantee or request a Conditional Agreement in writing at Final Plan submission, as required in Article 13.
- 3.6 The applicant, or his duly authorized representative, shall attend the meeting of the Board to present the final plan for a minor subdivision and to present the preliminary and final plans for a major subdivision. Failure to attend the meeting shall postpone any

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action by the Board until the next meeting for which the applicant is placed on the agenda and attends.

- 3.7 Upon the Board finding the application to be complete as set forth in Section 5.1.4 as to a minor subdivision and Section 6.1.4 as to a major subdivision, the CEO shall notify in writing the Road Commissioner, School Superintendent, and Fire Chief of the proposed subdivision, the number of dwelling units proposed, the length of roadways, and any other major characteristics of the site. The CEO shall request that these officials comment upon the adequacy of their department's existing capital facilities to service the proposed subdivision.
- 3.8 Failure to comply with these provisions shall mean that the Board shall not consider that stage of the application process until the applicant has complied with the applicable provision.
- 3.9 As described in 7.3.1, a plan may be considered, but no plan shall be approved by the Board as long as the applicant is in violation of the provisions of a previously approved Plan within the Town or as long as the applicant is in violation of the Town's Subdivision Ordinance and/or the Land Use Ordinance.

ARTICLE 4 – PREAPPLICATION MEETING, SITE INSPECTION AND DESIGN DESIGNATION

4.1 Preapplication Meeting

Fourteen (14) days prior to a meeting of the Board the Applicants or their representative shall request a pre-application conference. Such review shall not cause the plan to be a pending application or proceeding under Title 1 M.R.S.A. Sec 302. No decision on the substance of the plan shall be made at a pre-application conference. When the required fee for a pre-application meeting has been submitted, the applicant shall be issued a current Lincolnville Subdivision Ordinance, if the applicant does not already have one.

4.2 Purpose

The purposes of the pre-application conference and on-site inspection are to:

- Allow the Board to understand the nature of the proposed use and required submissions.
- Allow the applicant to understand the development review process and required submissions.
- Identify issues and potential conflicts (e.g. technical, procedural, environmental, etc.) that need to be addressed in future submissions.
- Make the applicant aware of any opportunities for coordinating the development with community policies, programs, or facilities.
- Identify potential conflicts with abutters, neighbors, and community members.

4.3 Procedure

4.3.1 The applicant shall present the conceptual plan and make a verbal presentation regarding the proposed subdivision and the site on which it will be developed.

4.3.2 The Board at the initial pre-application meeting shall schedule an on-site inspection of the land to be subdivided within thirty (30) days of the pre-application meeting and shall inform the applicant in writing of the required contour interval for use on the preliminary plan application, or final plan in the case of a minor subdivision. The Board and the

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applicant, or applicant’s representative, shall jointly attend the site inspection. The applicant shall place “flagging” at the centerline of any proposed streets, and at the approximate intersections of the street centerlines and lot corners, prior to the on-site inspection. The Board shall not conduct on-site inspections when there is more than one foot of snow on the ground.

4.3.3 For major subdivisions, a public input and discussion meeting shall be entered on the agenda of the next scheduled Board meeting prior to formal acceptance of a subdivision application. For minor subdivisions, a public input and discussion meeting may be held at the board’s discretion if there has been significant expressed public interest or if there has been a specific request for a hearing from the public. The purpose and intent of this meeting shall be the same as those of a pre-application meeting with the addition of public input and shall have the same informal status. This forum could provide the Board or the applicant with information that could prove important in future conflict resolutions.

4.3.4 Notice of the Public Input and Discussion Meeting

- (a) Twelve days prior to the Public Input and Discussion Meeting, notice shall be sent by the Town via certified mail, return receipt requested, to all abutters and interested parties, notifying them of the date, time, and place of the Public Input and Discussion Meeting at which the subdivision will be discussed.
- (b) At least two weeks prior to the scheduled Public Input and Discussion Meeting, a sign or signs shall be posted along all frontage roads notifying passers-by of the proposed development. Under the heading “PROPOSED SUBDIVISION ON THIS SITE”, the sign shall contain the tax map and lot numbers and the proposed number of lots. Signs shall be prominently displayed and easily readable from the road, using contrasting colors. When a subdivision is to be on a private road, a similar sign shall be placed at the nearest intersection with a public way, with an arrow pointing the direction to the property, which shall also be posted as above. These signs shall remain in place throughout the review process.

4.4 Submissions

4.4.1 Conceptual plan. The conceptual plan is not intended to be an engineered plan, but should be a simple illustration that accurately portrays the layout of the subdivision shown in context with specific site conditions. The outline of the proposed subdivision shall be drawn upon a copy of a town tax map, enlarged to a workable and legible size, showing the following resources on, or adjacent to, the site: streams, significant wetlands, 100-year floodplains, ridge lines, public roads and trails, public land(s), conserved land(s), existing driveways or access roads and skidder roads, the general location of any easements or encumbrances, existing wells, and the boundaries of any scenic viewshed(s) identified on the Scenic View map available at the Town Office. The proposed layout of the subdivision shall show the layout of lots, building envelopes and/or house sites, and probable access roads to the lots.

4.4.2 Location Map: the outline of the proposed subdivision shall be drawn on a copy of a USGS topographical map of Lincolnville, enlarged to a workable and legible size. The copy shall, where possible, show one or more numbered contour lines and a named feature for orientation purposes.

4.4.3 Information on any historically significant sites including graves and stone boundary walls shall either be indicated on the conceptual plan or provided separately.

4.5 Classification of Subdivision Design

4.5.1 At their next meeting following the site visit the Board shall make a determination regarding the classification of the application as either traditional design or conservation design. If, in the opinion of the Board, evidence presented on the conceptual plan, on the site visit, and from other available documentation indicates that any of the following criteria have been met, the Board shall require the applicant to submit a plan for conservation design:

- a) The parcel is in a view-shed identified in the Comprehensive Plan.
- b) The parcel contains open fields suitable for agricultural production.

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- c) The parcel has critical wildlife habitat as defined by the Maine Department of Conservation or Comprehensive Plan, or is of historic significance as identified by the Lincolnville Historical Society in the Comprehensive Plan, or is on the National Register of Historic Places.

4.5.2 Request for modification. Prior to submission of the preliminary plan (or the plan for minor subdivisions), an applicant may request that the Board reconsider their decision to require a conservation design. Evidence to support the Applicant’s request to submit a modified conservation design or a traditional subdivision design must be submitted giving specific reasons that the proposed design will conserve the natural resource.

4.5.3 Voluntary election to submit a conservation design. Prior to submission of a preliminary plan, an applicant may request of the Board that they be allowed to submit a Conservation Design for a parcel that would not otherwise qualify. In return for concessions made in the design, the Applicant may be able to take advantage of provisions allowing smaller lots sizes and decreased infrastructure costs to decrease development costs.

4.6 Establishment of File

Following the pre-application meeting the Board shall establish a file for the proposed subdivision. All correspondence and submissions regarding the pre-application meeting and application shall be maintained in the file.

4.7 Prohibition of site activity during review.

Developers should note that the following construction activities related to site preparation and development are prohibited on the site of a proposed major subdivision until final plan approval has been received: construction of streets; cutting of trees for development purposes on the proposed site (other than minor thinning), and grading of land.

ARTICLE 5 - MINOR SUBDIVISIONS

5.1 Procedure

5.1.1 Within six months after the on-site inspection by the Board and twenty-one days prior to a scheduled meeting of the Board, the applicant shall submit an application for plan approval. Applications, along with any required fees, shall be submitted to the Lincolnville CEO. The CEO shall schedule the application on the agenda for review by the Board. In addition, the CEO shall:

- a) Notify in writing all owners of property within 500 ft of the proposed subdivision boundaries as shown on most recent tax records and parties who have filed for notice of interest, specifying the location of the proposed subdivision and including a general description of the project.
- b) Notify the clerk and the review authority of the neighboring municipalities if any portion of the subdivision abuts or crosses the Town boundary.

The plan shall approximate the layout shown on the conceptual plan, plus any recommendations made by the Board. Failure to submit the application within six months shall require re-submission of the conceptual plan to the Board.

5.1.2 The applicant, or his duly authorized representative, shall attend the meeting of the Board to present the plan. Failure to attend the meeting shall postpone any action by the Board until the next meeting for which the applicant is placed on the agenda and attends.

5.1.3 Within three days after the meeting at which an application for plan approval of a minor subdivision is initially presented, the CEO shall issue a dated receipt to the applicant.

5.1.4 Within thirty days of the receipt of the plan application, the Board shall determine whether the application is complete and notify the applicant in writing of its determination. If the application is not complete, the Board shall notify the applicant of the specific additional material needed to complete the application.

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- 5.1.5 Upon determining that a complete application has been submitted for review, the Board shall determine whether to hold a public hearing on the plan application. The Board may hold a public hearing if there has been significant expressed public interest or there has been a specific request for a hearing from the public.
- 5.1.6 If the Board decides to hold a public hearing, it shall hold the hearing within thirty days of determining that it has received a complete application, and shall publish a notice of the date, time and place of the hearing in a newspaper of general circulation in the town at least two times, the date of the first publication to be at least seven days prior to the hearing. A copy of the notice shall be mailed to the applicant and abutters. In addition, the Town shall post the date, location and time of the public hearing on its web site as well as on the available event notification space afforded the Town as a community service by any local internet news service.
- 5.1.7 Within thirty days from the public hearing or within sixty days of determining a complete application has been received, if no hearing is held, or within another time limit as may be otherwise mutually agreed to by the Board and the applicant, the Board shall make findings of fact, and conclusions relative to the criteria contained in Article 10 and Title 30-A M.R.S.A., §4404, and the standards of Articles 11 and 12. If the Board finds that all the criteria of Article 10 and the Statute and the standards of Articles 11 and 12 have been met, the Board shall approve the plan. If the Board finds that any of the criteria of Article 10 or the statute or the standards of Articles 11 and 12 have not been met, the Board shall either deny the application or approve the application with conditions to ensure all of the criteria and standards will be met by the subdivision. The Board shall issue a written notice of its decision to the applicant, including its findings, conclusions and any reasons for denial or conditions of approval.

5.2 Submissions

The Board may require that a minor subdivision comply with some or all of the submission requirements and/or plat plan of a major subdivision. Upon review of the supporting documentation outlined below, the Board may determine that the Application does not

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appear to have met all of the criteria for approval in Article 10 or Title 30-A M.R.S.A., §4404 and/or the standards from Articles 11 and 12 of these regulations. In that case, the Board may require additional documentation on specific criteria, or it may require full compliance with all requirements for submissions as outlined under the provisions for major subdivisions.

The plan application submissions shall consist of the following items: the Application Form, the Location Map, the Plan Submissions, and the Plat Plan.

5.2.1 Application Form.

These forms are supplied by the Town Office and are also available at the Town web site (<http://www.town.lincolntown.me.us/>).

5.2.2 Location Map

A tax map or maps showing the relationship of the proposed subdivision to:

- a) Properties within 500 feet
- b) An outline of the proposed subdivision and any remaining portion of the owner's property, if the plan submitted covers only a portion of the owner's entire contiguous holding.
- c) Existing subdivisions within 1,000 feet of the proposed subdivision.

5.2.3 Plan Submissions Requirements

- a) The names and addresses of the record owner, applicant and the name of the municipality in which it is located, plus the assessor's map and lot numbers.
- b) Verification of right, title, or interest in the property and a copy of the most recently recorded deed for the parcel including all deed restrictions, rights-of-way, or other encumbrances currently affecting the property. When access is over a private road outside the subdivision, documented proof of right of access and right to improve the road to, at minimum, Private Way standards.
- c) A list of property owners within 500' including names, addresses, and phone numbers.
- d) Test pit analysis by a licensed site evaluator or a certified soil scientist, referenced by numbers relating to the numbered test pits shown on the Plan.

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- e) Information on the type of water supply system(s) to be used in the subdivision and recent information (when available) on wells in the immediate area.
- f) If any portion of the proposed subdivision is located in the direct watershed of a great pond, the application shall indicate which great pond as shown in the watershed boundary maps available at the Town Office.
- g) If open space is proposed for dedication to the town, the applicant shall provide a written offer to convey title to the municipality of all public open spaces shown on the plan, as described in Section 7.2.1 (d). Dedication of land to the Town requires an affirmative vote of the voters at a Town Meeting.
- h) Written approval from the Board of Appeals for variances or special exceptions, if required, and any conditions imposed.
- i) Copies of applicable State approvals and permits provided, however, the Board may approve development plans subject to the issuance of specified State approvals and permits where it determines that it is not feasible for the applicant to obtain them at the time of development review.

5.2.4 Plat Plan Requirements

The subdivision plan for a minor subdivision shall consist of one reproducible transparency and one black and white paper copy of the plan to be recorded at the Registry of Deeds, and two paper copies to be filed at the Town Office, three copies of one or more maps or drawings drawn to a scale of not more than one hundred feet to the inch (1":100') and three copies of all information accompanying the plan. As required by Title 33 M.R.S.A, §652, the reproducible transparencies shall be embossed with the seal of the architect, professional engineer and/or registered land surveyor responsible for preparation of the plan. Plans shall have a margin of two inches outside of the border lines on the left side for binding and a one inch margin outside the border along the remaining sides. Space shall be provided for notes and endorsements by the Board and a signature block shall be provided for the Board. In addition, one copy of the Plan(s) reduced to a size of 8-1/2 by 11 inches or 11 by 17 inches, and all accompanying information shall be provided to the Town office for distribution to each Board member no less than seven days prior to the meeting.

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The subdivision plan shall show the following information:

- a) A standard boundary survey of the parcel, giving complete descriptive data by bearings and distances, made and certified by a registered land surveyor. The corners of the parcel shall be located on the ground and marked by monuments. The plan shall indicate the type of monument found or to be set in the future at each lot corner.
- b) Proposed name of the subdivision, or identifying title, and individual or company who prepared the plan.
- c) The date the plan was prepared, north point, and graphic map scale.
- d) Adjoining property owners names, addresses and Map and Lot Numbers.
- e) The location of all test pits dug on the site for evaluation of the subsurface wastewater disposal systems. The pits shall be numbered to correspond to the test pit analysis required in 5.2.3 (d).
- f) Location of any existing wells.
- g) The total number of acres within the proposed subdivision, location of property lines, location of all existing buildings, vegetative cover type, the location of any trees larger than 30 inches in diameter at 48” above ground level within areas the developer proposes to clear and other essential existing physical features. A plan note detailing any restrictions placed on clearing existing vegetation on lots abutting any town or state road.
- h) The location of rivers, streams and brooks within or adjacent to the proposed subdivision
- i) Contour lines at the interval specified by the Board, showing elevations in relation to mean sea level.
- j) The land use district in which the proposed subdivision is located and the delineation of any land use boundaries affecting the subdivision.
- k) The location and size of existing and proposed sewers, water mains, culverts, and drainage ways on or adjacent to the property to be subdivided.
- l) The location, names, and present widths of existing streets and parks and other open spaces within or adjacent to the subdivision.

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- m) Sufficient data to allow the location, bearing and length of every street 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.
- n) The location of any open space to be preserved and a Plan Note that describes any covenants or restrictions which apply.
- o) All parcels of land proposed to be dedicated to public use and the conditions of such dedication.
- p) The outline of sensitive areas listed in 11.3.2, 11.4, and 11.5.
- q) If any portion of the subdivision is in a flood-prone area, the boundaries of any flood hazard areas and the 100-year flood elevation, as depicted on the municipality's Flood Insurance Rate Map, shall be delineated on the plan.
- r) If the Board finds that one or more of the following conditions is present, the Board may require a storm water management plan or an erosion and sedimentation control plan, as specified in 7.2.1 (b) and (c):
 - The proposed subdivision is in the direct watershed of a great pond and is within 1,000 feet of the high water mark of that pond.
 - The proposed subdivision has recently undergone or will involve grading and/or timber harvesting which changes drainage patterns.
 - The addition of impervious surfaces such as roofs and driveways is more than 5% of the area of the subdivision.
- s) Areas within or adjacent to the proposed subdivision which have been identified as high or moderate value wildlife habitat by the Maine Department of Inland Fisheries and Wildlife or within the Comprehensive Plan. If any portion of the subdivision is located within a area designated as a critical natural area by the comprehensive plan or the Maine Natural Areas Program, a plan note shall indicate appropriate measures for the preservation of the values which qualify the site for such designation.
- t) If the proposed subdivision is in the direct watershed of a great pond, a phosphorus control plan prepared following the standards of Art 11.17.3 for minor subdivisions.

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- u) All areas within or adjacent to the proposed subdivision which are either listed on or eligible to be listed on the National Register of Historic Places, or have been identified in the comprehensive plan as sensitive or likely to contain such sites.
- v) Plan note referring to written approval from the Board of Appeals for variances or special exceptions, if required in 5.2.3 (h), and any conditions imposed.

5.2.5 Homeowners' or Road Association. If there is property held in common or private roads or private ways to be maintained, the applicant shall form and incorporate a homeowners' or a road association. As evidence of the creation of such an association the submission shall include copies of the by-laws developed by the applicant. The document shall clearly establish:

- a) The association's responsibility to properly and routinely maintain and repair private roads, and private ways serving the subdivision after the applicant has legally relinquished that responsibility.
- b) Covenants for mandatory membership to be included in the deed for each lot.
- c) The association's responsibility for maintaining any common open space.
- d) The establishment of annual charges for all property owners to maintain roads and common open space.

ARTICLE 6 - PRELIMINARY PLAN FOR MAJOR SUBDIVISION

6.1 Procedure

6.1.1 Within six months after the on-site inspection by the Board, the applicant shall submit an application for approval of a preliminary plan at least twenty one days prior to a scheduled meeting of the Board. Applications and any required fees shall be submitted to the Lincolnville CEO. The CEO shall schedule the application on the agenda for review by the Board. In addition, the CEO shall:

- a) Notify in writing all owners of property within 500 ft of the proposed subdivision boundaries as shown on most recent tax records and parties who have filed for notice of interest, specifying the location of the proposed subdivision and including a general description of the project.
- b) Notify the clerk and the review authority of the neighboring municipalities if any portion of the subdivision abuts or crosses the Town boundary.

Failure to submit an application within six months shall require rescheduling of a pre-application meeting with the Board and resubmission of a conceptual plan and fee. The preliminary plan shall approximate the layout shown on the conceptual plan, plus any recommendations made by the Board.

6.1.2 All applications for preliminary plan approval of a major subdivision shall be accompanied by a non-refundable application fee per lot, payable by check to the Town of Lincolnville. The application fee per lot for a major subdivision shall be approved annually by the Board of Selectmen at a Selectmen's meeting as recommended by the Planning Board. In addition, the Board upon reviewing the application and finding the need for outside professional assistance, may, at its sole discretion and at the full expense of the applicant, hire its own civil engineer, soil scientist, geologist or other experts to review the plan submitted by the applicant. The applicant shall deposit an amount determined by the Board in an account with the Town of Lincolnville in advance of hiring such experts to cover this expense. Any balance in the account remaining after the decision on the final plan by the Board shall be returned to the applicant.

Article 6 – Major Subdivision Preliminary Plan

- 6.1.3 Within three days after the meeting at which an application for preliminary plan approval of a major subdivision is initially presented, the CEO shall issue a dated receipt to the applicant.
- 6.1.4 Within thirty days of receiving the preliminary plan application, the Board shall determine whether the application is complete and notify the applicant in writing of its determination. If the application is not complete, the Board shall notify the applicant of the specific additional material needed to complete the application.
- 6.1.5 A public hearing shall be held within thirty days of the Board's determination that it has received a completed preliminary plan application. The Board shall send notice of the date, time, and place of the hearing. The applicant shall be notified and the notice shall be published in a newspaper of general circulation in Lincolnville at least two times, the date of the first publication to be at least seven days prior to the hearing. In addition, the Town shall post the date, location and time of the public hearing on its web site as well as on the available event notification space afforded the Town as a community service by any local internet news service.
- 6.1.6 Within thirty days from the public hearing, or within another time limit as may be otherwise mutually agreed to by the Board and the applicant, the Board shall make findings of fact on the application, and approve, approve with conditions, or deny the preliminary plan application. The Board shall specify in writing its findings of facts and conclusions relative to the criteria contained in Article 10 and Title 30-A M.R.S.A., §4404 and the standards of Articles 11 and 12. If the Board finds that all the criteria of Article 10 and the Statute and the standards of Articles 11 and 12 have been met, the Board shall approve the preliminary plan. If the Board finds that any of the criteria of Article 10 and the statute or the standards of Articles 11 and 12 have not been met, the Board may: 1) approve the preliminary plan with condition(s); or 2) require that the applicant return with additional documentation and/or a revised preliminary plan; or 3) deny the preliminary plan.

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6.1.7 When granting approval to a preliminary plan, the Board shall state the conditions of such approval, if any, with respect to:

- a) The specific changes which it will require in the final plan;
- b) The character and extent of the required improvements for which waivers may have been requested and which the Board finds may be waived without jeopardy to the public health, safety, and general welfare; and
- c) The construction items for which cost estimates and performance guarantees will be required as prerequisite to the approval of the final plan.

6.1.8 Approval of a preliminary plan shall not constitute approval of the final plan or intent to approve the final plan, but rather it shall be deemed an expression of approval of the design of the preliminary plan as a guide to the preparation of the final plan. The final plan shall be submitted for approval by the Board upon fulfillment of the requirements of these regulations and the conditions of preliminary approval, if any. Prior to the approval of the final plan, the Board may require that additional information be submitted and changes in the plan be made as a result of further study of the proposed subdivision or as a result of new information received.

6.2 Submissions

The preliminary plan application shall consist of the following items.

6.2.1 Application Form.

These forms are supplied by the Town Office and are also available at the Town web site (<http://www.town.lincolntown.me.us/>).

6.2.2 Location Map.

The location map shall be drawn at a size adequate to show the relationship of the proposed subdivision to properties within 500 feet, and to allow the Board to locate the subdivision within the municipality. The map should not be greater than one thousand feet to the inch (1":1000') in scale and shall show:

- a) Existing subdivisions in the proximity of the proposed subdivision.
- b) Locations and names of existing and proposed streets.

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- c) Boundaries and designations of land use districts.
- d) An outline of the proposed subdivision and any remaining portion of the owner's property if the final plan submitted covers only a portion of the owner's entire contiguous holding.

6.2.3 Preliminary Plan Submissions Requirements.

The submissions presented for approval of a major subdivision shall include the following information.

- a) The names and addresses of the record owner, applicant and the name of the municipality in which it is located, plus the assessor's map and lot numbers.
- b) Verification of right, title, or interest in the property and a copy of the most recently recorded deed for the parcel.
- c) A copy of all deed restrictions, easements, rights-of-way, or other encumbrances currently affecting the property. When access is over a private road outside the subdivision, documented proof of right of access and right to improve the road to, at minimum, Private Way standards.
- d) A copy of any deed restrictions intended to cover all or part of the lots or dwellings in the subdivision.
- e) A list of property owners within 500 feet, including names, addresses, and phone numbers.
- f) Test pit analysis shall be provided by a licensed site evaluator or a certified soil scientist. This information shall be referenced by numbers relating to the numbered test pits shown on the Plan.
- g) Information on of the type of water supply system(s) to be used in the subdivision and recent information (when available) on wells in the immediate area.
- h) If any portion of the proposed subdivision is located in the direct watershed of a great pond, the application shall indicate which great pond and the source of that information.
- i) If applicable, written offers to convey title to the municipality of all public open spaces shown on the plan, and/or copies of agreements or other documents showing the manner in which open spaces to be retained by the applicant or lot owners are to

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- be maintained shall be submitted. If open space or other land is to be offered to the municipality, written evidence that the municipal officers are satisfied with the legal sufficiency of the written offer to convey title shall be included. Dedication of land to the Town requires an affirmative vote of the voters at a Town Meeting.
- j) The location and method of disposal for land clearing and construction debris and/or the quantity and type of fill to be brought in.
 - k) Written approval from the Board of Appeals for variances or special exceptions, if required, and any conditions imposed.
 - l) Copies of applicable State approvals and permits provided, however, the Board may approve development plans subject to the issuance of specified State approvals and permits where it determines that it is not feasible for the applicant to obtain them at the time of development review.

6.2.4 Preliminary Plat Plan Requirements

The Subdivision Preliminary Plat Plan shall be submitted in five (5) copies which may be printed or reproduced on paper drawn to a scale of not more than one hundred (100) feet to the inch. Where practical, the sheet size of the drawings shall be 24” by 36”. In addition, seven (7) copies of the plan reduced to a size of 8 ½” x 11” shall be submitted. The following information shall be shown on the preliminary plan.

- a) A standard boundary survey of the parcel, giving complete descriptive data by bearings and distances, made and certified by a registered land surveyor. The corners of the parcel shall be located on the ground and marked by monuments. The plan shall indicate the type of monument found or to be set in the future at each lot corner.
- b) Proposed name of the subdivision, or identifying title, and individual or company who prepared the plan.
- c) The date the plan was prepared, north point, and graphic map scale.
- d) Adjoining property owners names, addresses and map and lot numbers.
- e) The location of all test pits dug on the site for evaluation of the subsurface wastewater disposal systems. The pits shall be numbered to correspond to the test pit analysis required above.
- f) Location of any existing wells.

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- g) The total number of acres within the proposed subdivision, location of property lines, location of all existing buildings, vegetative cover type, the location of any trees larger than 24 inches in diameter at 48” above ground level within areas the developer proposes to clear and other essential existing physical features. On wooded sites, the plan shall indicate the area where clearing for lawns and structures shall be permitted, and shall include a plan note detailing any restrictions placed on clearing existing vegetation, on those lots abutting any Town or State road.
- h) The location of rivers, streams and brooks within or adjacent to the proposed subdivision
- i) Contour lines at the interval specified by the Board, showing elevations in relation to mean sea level.
- j) The land use district in which the proposed subdivision is located and the delineation of any land use boundaries affecting the subdivision.
- k) The location and size of existing and proposed sewers, water mains, culverts, and drainage ways on or adjacent to the property to be subdivided.
- l) The location, names, and present widths of existing streets, and the location and names of parks and other open spaces within or adjacent to the subdivision.
- m) Sufficient data to allow the location, bearing and length of every street 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.
- n) The location of any open space to be preserved and a plan note that describes any covenants or restrictions which apply.
- o) All parcels of land proposed to be dedicated to public use and the conditions of such dedication.
- p) The outline of sensitive areas listed in 11.3.2, 11.4, and 11.5.
- q) If any portion of the subdivision is in a flood-prone area, the boundaries of any flood hazard areas and the 100-year flood elevation, as depicted on the municipality’s Flood Insurance Rate Map, shall be delineated on the plan.
- r) The Board may require a storm water management plan, prepared in accordance with the *Stormwater Management for Maine: Best Management Practices*, published by the Maine Department of Environmental Protection (1995), if the subdivision is in the

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- direct watershed of a great pond, if the proposed subdivision has recently undergone or will involve grading and/or timber harvesting which changes drainage patterns, or if the addition of impervious surfaces such as roofs and driveways is more than 5% of the area of the subdivision.
- s) An erosion and sedimentation control plan prepared in accordance with the *Maine Erosion and Sedimentation Control Handbook for Construction: Best Management Practices*, published by the Cumberland County Soil and Water Conservation District and the Maine Department of Environmental Protection, current edition. The Board may waive submission of the erosion and sedimentation control plan if the subdivision is not in the direct watershed of a great pond, the proposed subdivision will not involve grading and/or timber harvesting which changes drainage patterns, and the addition of impervious surfaces such as roofs and driveways is less than 5% of the area of the subdivision.
 - t) Areas within or adjacent to the proposed subdivision which have been identified as high or moderate value wildlife habitat by the Maine Department of Inland Fisheries and Wildlife or within the comprehensive plan. If any portion of the subdivision is located within a area designated as a critical natural area by the comprehensive plan or the Maine Natural Areas Program, a plan note shall indicate appropriate measures for the preservation of the values which qualify the site for such designation.
 - u) If the proposed subdivision is in the direct watershed of a great pond, a phosphorus control plan prepared following the standards of Art 11.17.3 for major subdivisions.
 - v) All areas within or adjacent to the proposed subdivision which are either listed on or eligible to be listed on the National Register of Historic Places, or have been identified in the comprehensive plan as sensitive or likely to contain such sites.
 - w) A plan note referring to the written approval from the Board of Appeals for variances or special exceptions in 6.2.3 (k), if required, and any conditions imposed.

6.2.5 Homeowners' or Road Association. If there is property held in common, or private roads or private ways to be maintained, the applicant shall form and incorporate a homeowners' or road association. As evidence of the creation of such an association the

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submission shall include copies of the by-laws developed by the applicant. The document shall clearly establish:

- a) The association's responsibility to properly and routinely maintain and repair private roads, and private ways serving the subdivision after the applicant has legally relinquished that responsibility. Maintenance for gravel roads shall include grading, including grading in the spring when the road has dried out to the point that it is able to support heavy equipment.
- b) Covenants for mandatory membership to be included in the deed for each lot.
- c) The association's responsibility for maintaining any common open space.
- d) The establishment of annual charges for all property owners to maintain roads and common open space.

ARTICLE 7 - FINAL PLAN FOR MAJOR SUBDIVISION

7.1 Procedure

7.1.1 Within six months after the approval of the preliminary plan, the applicant shall submit an application for approval of the final plan at least fourteen days prior to a scheduled meeting of the Board. Applications shall be submitted by mail to the Board in care of the Town Office or delivered by hand to the Town Office. If the application for the final plan is not submitted within six months after preliminary plan approval, the Board shall require resubmission of the preliminary plan, unless the applicant requests an extension, as stipulated below. The final plan shall approximate the layout shown on the preliminary plan, plus any changes required by the Board.

If an applicant cannot submit the final plan within six months, due to delays caused by other regulatory bodies, or other reasons, the applicant may request an extension. Such a request for an extension to the filing deadline shall be filed, in writing, with the Board prior to the expiration of the filing period. In considering the request for an extension, the Board shall request that the applicant show the status of the Final Plan at the time of the request, along with any requests for approval from other agencies. The Board shall also assure that Town of Lincolnville ordinances or regulations which may impact on the proposed development have not been amended since the date the application was filed.

7.1.2 All applications for final approval of a major subdivision shall be accompanied by a non-refundable application fee per lot or dwelling unit, payable by check to the Town of Lincolnville. The non-refundable application fee per lot for final approval of major subdivisions shall be approved annually by the Board of Selectmen at a Selectmen's meeting, as recommended by the Board.

7.1.3 Final plan submission shall include copies of all necessary approvals for compliance with any State or Federal requirements pertaining to the project including Maine Department of Environmental Protection review under the Site Location of Development Act, if applicable.

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- 7.1.4 The applicant, or the applicant's duly authorized representative, shall attend the meeting of the Board to discuss the final plan. Failure to attend the meeting to present the final plan application shall result in a delay of the Board's receipt of the plan until the next meeting which the applicant attends.
- 7.1.5 At the meeting at which an application for final plan approval of a major subdivision is initially presented, the Board shall issue a dated receipt to the applicant.
- 7.1.6 Within thirty days of the receipt of the final plan application, the Board shall determine whether the application is complete and notify the applicant in writing of its determination. If the application is not complete, the Board shall notify the applicant of the specific additional material needed to complete the application.
- 7.1.7 The Board may hold a public hearing on the final plan if: the preliminary plan has been approved with a condition that is of public concern, there has been significant expressed public interest, or there has been a specific request for a hearing.
- 7.1.8 If the Board decides to hold a public hearing, it shall hold the hearing within thirty days of determining that it has received a complete application, and shall publish a notice of the date, time and place of the hearing in a newspaper of general circulation in the town at least two times, the date of the first publication to be at least seven days prior to the hearing. A copy of the notice shall be mailed to the applicant and abutters. In addition, the Town shall post the date, location and time of the public hearing on its web site as well as on the available event notification space afforded the Town as a community service by any local internet news service.
- 7.1.9 Before the Board grants approval of the final plan, the applicant shall meet the performance guarantee requirements contained in Article 13.
- 7.1.10 Within thirty days from the public hearing or within sixty days of determining a complete application has been received, if no hearing is held, or within another time limit

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as may be otherwise mutually agreed to by the Board and the applicant, the Board shall make findings of fact, and conclusions relative to the criteria contained in Article 10, Title 30-A M.R.S.A., §4404 and the standards of Article 11 and 12 of this ordinance. If the Board finds that all the criteria in Article 10, the statute, or the standards of Articles 11 and 12 have been met, the Board shall approve the final plan. If the Board finds that any of the criteria of Article 10, the statute, or the standards of Articles 11 and 12 have not been met, the Board shall either deny the application or approve the application with conditions to ensure all of the criteria and standards will be met by the subdivision. The Board shall issue a written notice of its decision to the applicant, including findings of fact, conclusions, and any reasons for denial or conditions of approval.

7.2 Submissions

The subdivision final plan for a major subdivision shall consist of one reproducible transparency and one black and white paper copy of the plan to be recorded at the Waldo County Registry of Deeds, and two paper copies to be filed at the town office, three copies of one or more maps or drawings drawn to a scale of not more than one hundred feet to the inch (1":100') and three copies of all information accompanying the plan. As required by Title 33 M.R.S.A, §652, the reproducible transparencies shall be embossed with the seal of the architect, professional engineer and/or registered land surveyor responsible for preparation of the plan. Plans shall have a margin of two inches outside of the border lines on the left side for binding and a one inch margin outside the border along the remaining sides. Space shall be provided for notes and endorsements by the Board. In addition, one copy of the Plan(s) reduced to a size of 8-1/2 by 11 inches or 11 by 17 inches, and all accompanying information shall be provided to the Town office for distribution to each Board member no less than seven days prior to the meeting.

The final plan shall consist of all information contained on the approved preliminary plat plan with revisions made only to address any conditions of approval of that plan, and all accompanying information including any additional documentation required of the applicant at the time of preliminary plan approval. The plan must meet the same requirements described at 6.2.4 and shall be submitted to the CEO for distribution to the Board. If substantial changes have been made to the final plan, the Board may choose to

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again review the plan against the submission requirements of 6.2.4 to assure that all required information has been submitted.

7.2.1 In addition, the following submission requirements may apply:

- a) Evidence satisfactory to the Board that the applicant has the financial and technical capability to complete the public improvements of the subdivision and to meet all of the requirements of the Board concerning the subdivision.
- b) A performance bond or guarantee in a form and amount meeting the requirements in Article 13 to secure the completion of all improvements required by the Board.
- c) The location and method of disposal for land clearing and construction debris and/or the quantity and type of fill to be brought in.
- d) If different than those submitted with the preliminary plan, a copy of any proposed deed restrictions intended to cover all or part of the lots or dwellings in the subdivision.
- e) If required under conditions stated in 6.2.4 (r), a storm water management plan, prepared by a registered professional engineer in accordance with the *Stormwater Management for Maine: Best Management Practices*, published by the Maine Department of Environmental Protection (1995).
- f) Unless waived under conditions stated in 6.2.4 (s), an erosion and sedimentation control plan prepared in accordance with the *Maine Erosion and Sedimentation Control Handbook for Construction: Best Management Practices*, published by the Cumberland County Soil and Water Conservation District and the Maine Department of Environmental Protection (current edition).
- g) If applicable, any written offers to convey title to the Town of all public ways and open spaces shown on the Plan for dedication, 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 maintained shall be submitted. If proposed streets and/or open spaces 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 shall be included. The approval of the Board shall require as a condition that any public ways or open spaces dedicated to the Town must be accepted by a vote of the Town at a Town Meeting.

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- h) If it was determined the proposed subdivision is in the direct watershed of a great pond, the phosphorus export control plan submitted for compliance with Art 11.17.4.

7.3 Final Approval and Filing

- 7.3.1 No plan shall be approved by the Board as long as the applicant is in violation of the provisions of a previously approved plan within the Town or as long as the applicant is in violation of the Town's Subdivision Ordinance and/or Land Use Ordinance.
- 7.3.2 Final plan submission shall include copies of all necessary approvals for compliance with any State or Federal requirement pertaining to the project including Maine Department of Environmental Protection review under the Site Location of Development Act, if applicable.
- 7.3.3 Upon findings of fact and determination that all criteria in Title 30-A M.R.S.A., §4404 and criteria of Article 10 and standards of Articles 11 and 12 of this ordinance have been met, and upon voting to approve the subdivision, the Board shall sign the final plan. The Board shall specify in writing its findings of facts and reasons for any conditions or denial. Any subdivision not recorded in the Waldo County Registry of Deeds within ninety days of the date upon which the plan is approved and signed by the Board shall become null and void.
- 7.3.4 No changes, erasures, modifications, or revisions shall be made in any final plan after approval has been given by the Board and endorsed in writing on the Plan, unless the revised Final Plan is first submitted and the Board approves any modifications, except in accordance with Article 9. The Board shall make findings that the revised Plan meets the criteria of Title 30-A M.R.S.A., §4404, and the standards of this ordinance. In the event that a plan is recorded without complying with this requirement, it shall be considered null and void, and the Board shall institute proceedings to have the Plan stricken from the records of the Registry of Deeds.

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- 7.3.5 The approval by the Board of a subdivision plan shall not be deemed to constitute or be evidence of any acceptance by the Town of any street, easement, or other open space shown on such plan. When a park, playground, or other recreation area shall have been shown on the plan to be dedicated to the Town, approval of the plan shall not constitute an acceptance by the Town of such areas. The Board shall require the plan to contain appropriate notes to this effect. The 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.
- 7.3.6 The Board may approve plans to develop a major subdivision in separate and distinct phases. This may be accomplished by limiting final approval to those lots abutting that section of the proposed subdivision street which is covered by a performance guarantee. When development is phased, road construction shall commence from an existing public way. Final approval of lots in subsequent phases shall be given only upon satisfactory completion of all requirements pertaining to previous phases.
- 7.3.7 Except in the case of a phased development plan, failure to complete substantial construction of the subdivision within five years of the date of approval and signing of the plan shall render the plan null and void. In the case of phased subdivisions, the first phase shall be substantially completed within five years and subsequent phases will be completed within five years of approval. Upon determining that a subdivision's approval has expired under this paragraph, the Board shall have a notice placed in the Waldo County Registry of Deeds to that effect.

ARTICLE 8 – CONSERVATION SUBDIVISIONS

Explanatory Statement

Conservation subdivision designs promote the goals of Lincolnville’s residents, as expressed in the Comprehensive Plan, to retain the rural nature of the Town by retaining open space and by buffering the views of development. Conservation developments encourage innovative approaches to layout and design of a proposed subdivision that preserves the most recognized significant features of the landscape.

Incentives for this type of development include reduced development costs resulting from smaller minimum lot sizes and a reduction in road frontage requirements. Retaining land for agriculture and forestry, protecting significant wildlife habitat, and maintaining the tradition of allowing public access to hunting and fishing grounds and recreational trails are but a few of the benefits of this type of development.

8.1 Purpose and Intent

- To promote development that preserves Lincolnville’s rural character including agricultural lands, forests, wildlife habitat, open space, scenic views, historic and archeological sites, and natural features.
- To preserve access to recreational trails, forest, pastureland, and hunting grounds, and to foster an integrated system of preserved open spaces.
- To promote flexibility in the pattern of development of dwelling units within the subdivision, and to promote shared septic, potable water and storm water systems that prevent the degradation of water quality.
- To promote flexibility in road design and reduce the amount of required roadway.

8.2 Application procedure

Conservation subdivision applications shall follow the applicable provisions for submission requirements stated in Article 5 or Articles 6 & 7 of this ordinance, depending on the number of lots in the proposal.

8.3 Conservation subdivision requirements

Conservation Subdivisions shall meet all requirements of these provisions and must meet all the standards of this and other Lincolnville ordinances except those standards dealing with lot size, density and set backs.

8.3.1 A minimum of 30% of the parcel shall be conserved as open space or in its natural state; provided, however, that the Planning Board may require, in its discretion, to allocate all or a portion of such open space to common open space or contiguous open space, as defined in this ordinance. This conserved area shall contain as much of the protected resource identified in 4.5.1 (a), (b) and/or (c) as is practicable. In determining the practicability of a design, the Board shall consider the following criteria:

- a) Excessive cost
- b) Undue impact on the environment
- c) Circumstances of the site
- d) Surrounding area characteristics
- e) Impact on other significant resources such as historical or archaeologically significant sites or wildlife habitat.

In exchange for the allocation of a minimum of 30% of buildable land area to the open space set forth within the land proposed for subdivision, the Board may allow lots within a proposed subdivision to be reduced in lot area and in road frontage as set forth below:

- a) The Board may allow lots within a proposed subdivision to be reduced in lot area to a minimum lot area of not less than 20,000 square feet for each individual dwelling unit or other principal use.
- b) The Board may allow lots within a proposed subdivision to meet a minimum road frontage requirement of 60 feet, subject to the limitations on the reduction on road frontage as set forth in paragraph c, below.
- (c) The Board may allow a reduction in the road frontage requirement to a minimum of 60 feet per lot for each individual dwelling unit or other use, provided that on Route 1, 52, 173 and 235, the State access management standards have been met.

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- 8.3.2 Designated building envelopes shall be one element of an overall plan for site development. Only developments having a site plan that includes the proposed building envelopes of structures will be considered. The application shall also illustrate the treatment of spaces, paths, roads, service and parking and in so doing shall take into consideration all requirements of this section and of other relevant sections of this ordinance.
- 8.3.3 In order to determine the maximum number of lots permitted on the subdivision tract of land, the net residential acreage shall be divided by the minimum lot area required in the land use district. The net residential area of a conservation subdivision shall be calculated by taking the total area of the subdivision tract of land and subtracting, in order, the following:
- a) The area proposed for roads and parking.
 - b) Portions that are unsuitable for development in their natural state due to topographical, drainage or subsoil conditions such as, but not limited to any of the conditions listed in section 11.5.
- 8.3.4 Each buildable lot in the conservation subdivision shall have an area suitable for subsurface wastewater disposal according to the Maine Subsurface Wastewater Disposal Rules.
- 8.3.5 The total area of reserved open space within the development shall equal or exceed the sum of the area by which any building lots are reduced below the minimum lot area normally required by ordinance. No less than 30% of the reserved open space shall be land which is classified under 8.3.3 (a)-(b).
- 8.3.6 Every building lot that is reduced in area below the amount normally required shall be within 1,000 feet of the common open space where practical.
- 8.3.7 Up to two dwelling units are allowed on any lot, provided that the lot is 40,000 square feet or greater in size.

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8.3.8 No proposed building lot shall have direct vehicular access onto a public road existing at the time of development unless the Board grants a waiver as set forth in 12.2.4.

8.3.9 Shore frontage shall not be reduced below the minimum required by the Shoreland Zoning standards of the Lincolnville Land Use Ordinance.

8.3.10 Where a conservation subdivision abuts a body of water, a usable portion of the shoreline, as well as reasonable access to it, shall be a part of the common open space.

8.3.11 Where practical, open space shall go up to the property line to provide for the opportunity of contiguous open space. Land that is identified in the comprehensive plan as of “significant value” should be included as open space.

8.4 Ownership of common open space and facilities

All common open space and facilities shall be owned by one of the following:

8.4.1 The owners of the lots or dwelling units by means of an owners’ association;

8.4.2 An association or trust which has as its principal purpose the conservation or preservation of land in essentially its natural condition;

8.4.3 The Town, if the voters at a Town Meeting have voted to affirm dedication of land to the Town

8.4.4 The subdivider, who may retain the land for the purpose of agriculture or forestry but in so doing shall relinquish development rights to the designated common open space.

8.5 Further Subdivision

Further subdivision of the common open space and its use for other than conservation, agriculture, or non-commercial recreational purposes, except for easements for underground utilities, shall be prohibited. Structures and buildings accessory to non-commercial recreational or conservation uses may be erected on the common land with Board approval. When open space is to be owned by an entity other than the municipality, there shall be a deeded conservation easement prohibiting future development recorded in the Waldo County Registry of Deeds.

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8.6 The common open space shall be shown on the final plan with appropriate notations on the plan to indicate:

8.6.1 Further subdivision is prohibited.

8.6.2 Common open space approved for acceptance by the municipality, if any, and the purpose for which it is intended, if any.

8.7 Requirements for owners' association

The plan submitted by the applicant shall include:

8.7.1 Covenants creating mandatory membership in an owners' association setting forth the owners' rights, interests, responsibilities, and privileges in the association and the common property and facilities and in the private roads and ways, as specified in sections 5.2.5 and 6.2.5

8.7.2 Provision shall be made in the bylaws to create funding for cost coverage of major repairs, maintenance and/or replacement of facilities on or related to the common open space land as well as tax assessments.

8.7.3 The developer or subdivider shall submit a plan for transfer of financial and maintenance responsibilities of the common open space land and any associated facilities to the owners' association. The plan should provide for proper maintenance and support of the common land until sufficient development has occurred to support the association.

ARTICLE 9 – REVISIONS TO APPROVED PLANS

9.1 Procedure

An applicant for a revision to a previously approved plan shall, at least fourteen days prior to a scheduled meeting of the Board, request to be placed on the Board’s agenda.

9.1.1 Minor Subdivision: If the revision involves the creation of additional lots, such that the resulting subdivision would have been initially reviewed as a major subdivision, those procedures, beginning with preliminary plan approval, shall be followed. If the revision involves only modifications of the approved plan, without the creation of additional lots that increase the number of lots so that the subdivision includes more than four lots, the procedures for minor subdivision final plan approval shall be followed. If the Board determines that the revision or amendment in the previously approved plan involves only a minor adjustment of boundary lines for a lot or lots, then the Board may, at its discretion, decide to approve the revision or amendment without requiring the procedures for final plan approval.

9.1.2 Major Subdivision: If the revision involves the creation of additional lots, the procedures for preliminary plan approval shall be followed. 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. If the Board determines that the revision or amendment in the previously approved plan involves only a minor adjustment of boundary lines for a lot or lots, then the Board may, at its discretion, decide to approve the revision or amendment without requiring the procedures for preliminary plan approval or final plan approval.

9.2 Submissions.

The applicant shall submit a copy of the approved plan as well as seven copies of the proposed revisions. The revised plan shall indicate that it is the revision of a previously approved 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 Waldo County Registry of

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Deeds. Upon approval by the Board, the revised plan shall be recorded in the Waldo County Registry of Deeds at the expense of the applicant.

9.3 Scope of Review.

The Board's scope of review shall be limited to those portions of the plan which are proposed to be changed.

ARTICLE 10 REVIEW CRITERIA

In approving subdivisions in the Town of Lincolnville, the Board shall consider the following criteria in this ordinance, and the criteria set forth in Title 30-A M.R.S.A. §4404 (and other related provisions in state law concerning subdivisions). Any amendments in the state subdivision law (Title 30-A M.R.S.A. §4404) shall supplement or amend the review criteria set forth below, as appropriate, and all such amendments in the state subdivision law shall be incorporated into the provisions of Article 10 of this Ordinance. In addition, the Board shall consider the development standards set forth in Article 11 and the road and street standards set forth in Article 12 of this Ordinance. All such standards applicable to the subdivision under review shall be met by the applicant as criteria for approval by the Board.

Before granting approval the Board shall make written findings of fact that the provisions of this ordinance and the statutory review criteria have been met.

When reviewing any subdivision for approval, the Board shall consider the following criteria and, before granting approval, must determine that:

10.1 Pollution

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

10.1.1 The elevation of the land above sea level and its relation to the flood plains;

10.1.2 The nature of soils and subsoils and their ability to adequately support waste disposal;

10.1.3 The slope of the land and its effect on effluents;

10.1.4 The availability of streams for disposal of effluents; and

10.1 .5 The applicable state and local health and water resource rules and regulations

10.2 Sufficient water

The proposed subdivision has sufficient water available for the reasonably foreseeable needs of the subdivision.

10.3 Municipal water supply

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

10.4 Erosion

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

10.5 Traffic

The proposed subdivision will not cause unreasonable highway or public road congestion or unsafe conditions on existing or proposed roads. If the proposed subdivision requires entrance onto a state or state aid highway the applicant is required to provide documentation indicating that the driveways or entrances conform to Title 23, section 704 and any rules adopted under that section.

10.6 Sewage disposal

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

10.7 Municipal solid waste disposal

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

10.8 Aesthetic, cultural and natural values

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

10.9 Conformity with local ordinances and plans

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

10.10 Financial and technical capacity

The subdivider has adequate financial and technical capacity to meet the standards of this section.

10.11 Surface waters; outstanding river segments

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

- A. 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 mark of 500 feet.
 - (1) To avoid circumventing the intent of this provision, whenever a proposed subdivision adjoins a shoreland strip narrower than 250 feet on which lots have not been created, the proposed subdivision shall be reviewed as if lot lines extended to the shore
 - (2) The frontage and set-back provisions of this paragraph do not apply either within areas zoned as general development or its equivalent under shoreland zoning, Title 38, chapter 3, subchapter I, article 2-B, or within areas designated by ordinance 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 section 4401, subsection 1, on September 23, 1983.

10.12 Ground water

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

10.13 Flood areas

Based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, and information presented by the applicant whether the subdivision is in a flood-prone area. If the subdivision, or any part of it, is in such an area,

Article 10 – Review Criteria

the subdivider shall determine the 100-year flood elevation and flood hazard boundaries within the subdivision. The proposed 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.

10.14 Freshwater wetlands

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 soil and water conservation district.

10.15 River, stream or brook

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 section, "river, stream or brook" has the same meaning as in Title 38, section 480-B, subsection 9.

10.16 Storm water

The proposed subdivision will provide for adequate storm water management.

10.17 Spaghetti lots prohibited

If any lots in the proposed subdivision have shore frontage on a river, stream, brook, great pond or coastal wetland as these features are defined in Title 38, section 480-B, none of the lots created within the subdivision have a lot depth to shore frontage ratio greater than 5 to 1.

10.18 Lake phosphorus concentration.

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

10.19 Impact on adjoining municipality

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

10.20 Lands subject to liquidation harvesting

Timber on the parcel being subdivided has not been harvested in violation of rules adopted pursuant to Title 12, section 8869 (14). In reviewing this criteria, the Board shall consider the provisions of Title 30-A, M.R.S.A. §4404 (20).

ARTICLE 11 – DEVELOPMENT STANDARDS

11.1 Purpose

The performance standards of Articles 11 and 12 are intended to clarify and expand upon the criteria for approval found in Article 10 of this Ordinance. In reviewing a proposed subdivision, the Board shall review the application for conformance with the performance standards of Articles 11 and 12 and make written findings that the submitted design meets the review criteria set forth in Article 10. In all instances, the burden of proof shall be upon the applicant to present adequate information in a clear and convincing manner to indicate that all statutory review criteria and the development standards below have been met.

11.2 Compliance

Any proposed subdivision shall be in conformity with the Lincolnville Comprehensive Plan as well as all pertinent State laws and local ordinances and regulations.

11.3 Utilization of the site

11.3.1 The plan for the development must reflect the natural capabilities of the site to support development. Using the natural contours of the site, building envelopes and roads shall be located to minimize the appearance of buildings and roads to the maximum extent practicable. Diversity and originality of lot layout shall be encouraged.

11.3.2 Natural drainage ways and environmentally sensitive areas, including but not limited to, wetlands, steep slopes, floodplain-plains, significant wildlife habitats, fisheries, scenic areas, habitat for rare and endangered plants and animals, unique natural communities and natural areas, and sand and gravel aquifers must be maintained and preserved to the maximum extent. The development must include appropriate measures for protecting these resources, including but not limited to, modification of the proposed design of the site, timing of construction, and limiting the extent of excavation.

11.3.3 The Board may require that the proposed subdivision include a landscape plan that will show the preservation of the scenic, historic or environmentally sensitive areas listed in 11.3.2.

11.4 Preservation of natural, scenic and historic features

The landscape must be preserved in its natural state insofar as practical by minimizing tree removal, disturbance and compaction of soil, and by retaining existing vegetation insofar as practical during construction. Extensive grading and filling must be avoided as far as possible. Except for surplus topsoil from roads, parking areas and building excavations, topsoil shall not be removed from the site.

11.4.1 Natural resources:

In predominantly natural environments and undeveloped areas, site clearing must be minimized, and vegetation retained (or provided) to lessen the visual impact of the development. Natural vegetation must be maintained adjacent to any shoreline to soften the appearance of the development.

11.4.2 Buffering

- a) A subdivision in which the natural land cover type is forested shall maintain a wooded buffer strip no less than fifty feet in width or 25 feet in width for a subdivision in a Comprehensive Plan designated growth area along all existing public roads. The buffer may be broken only for driveways and streets.
- b) A subdivision in which land cover type is not forested shall preserve the scenic visual corridors along town toads by providing natural landscape buffers to minimize their adverse visual impacts when topographical or other barriers do not provide reasonable screening. Such buffering shall not encroach on a view as described in 11.4.3.
- c) Buffering shall be designed and maintained to provide a year-round visual screen in order to minimize adverse impacts. The species specified for buffers shall be selected from tree and shrub species found in existing hedgerows and along wooded roadside edges in the vicinity of the development proposal.

11.4.3 Scenic Resources

When a proposed development contains prominent features such as hillsides, ridgelines, or shoreland, or is located within a significant viewshed that is identified in the Scenic

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View Map approved by the voters and on file in the Lincolnville Town Office, the development must be designed to minimize the encroachment of all buildings, structures, landscaping, and other site features on the identified view. Design modifications to minimize encroachment shall include, but are not limited to, orientation of the building envelope and roads on the site, siting the building envelope to the maximum extent practicable within the natural contours, and maintaining open space areas in their natural state.

(a) Hillsides and ridgelines. All hillside development must be designed to blend into the surrounding landscape to the maximum extent practicable to minimize the visibility of any roads or construction on the site. The plan shall closely control tree removal to only those trees essential to construction of the development.. The plan shall restrict tree removal and prohibit the siting of building envelopes on sites at or above the elevations listed below:

1. Moody Mountain Ridgeline: 600ft.
2. Levenseller Mountain Ridgeline: 600ft.
3. Bald Rock / Garey Mountain Ridgeline: 600ft.
4. Gould Hill Ridgeline: 500ft.
5. Ducktrap Mountain Ridgeline: 500ft.
6. Cameron Mountain / Maiden's Cliff Ridgeline: 500ft.
7. Highlands east of Moody Pond and West of Routes 105/52: 450 ft.

The appropriate contour line of a USGS Topographical map of Lincolnville shall be used to delineate these areas. These restrictions shall appear as notes on the plan and as covenants in the deed.

(b) Shoreland. When a proposed development is visible from a great pond, river, stream, or from Penobscot Bay, the development must be designed so that it blends into the surrounding landscape when viewed from the opposite shoreline of the water body. In developed shoreland environments, the appearance of the new development

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when viewed from the water must be compatible with the existing visual character to the maximum extent practicable.

11.4.4 Slopes

- a) All grading and earthmoving on slopes exceeding 15 percent shall be minimized, and no site disturbance shall be allowed on slopes exceeding 25 percent except as specified in subsection (b) below. There shall be no site disturbance to slopes in excess of 40 per cent.
- b) If access to building sites is prohibited because segments of the access road or driveway traverse slopes greater than 25%, such access shall be allowed if the following criteria are met:
 - The building sites to be accessed are on slopes of 15% or less
 - The access road or driveway segments that traverse slopes in excess of 25 % do not exceed 300 feet, or within a few feet of 300 feet, in length.
 - The applicant's engineered road plan is acceptable to the Board.
 - The applicant's engineered road plan shows that the access road or driveway meets all other standards of this ordinance.
- c) In subdivisions containing slopes of fifteen per cent or greater, removal of living trees for the purpose of development shall be limited to the proposed building envelopes and roadways except when done under the supervision of a licensed forester as part of a forest management plan reviewed and accepted by the Planning Board. Vegetation remaining outside the building envelopes and roadways shall be considered buffering and shall be subject to the standards in 11.4, 11.4.1, and 11.4.2 (a)-(c).
- d) On slopes of 15 to 25 percent, the only permitted grading shall be in conjunction with the siting of a single family dwelling, its access driveway and the septic system which should be designed with a long, narrow drainage field following the land contours.
- e) Grading or earthmoving on all sloping lands of 15 percent or greater shall not result in earth cuts or fills whose highest vertical dimension exceeds six feet, except where in the judgment of the Board no reasonable alternatives exist for

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construction of roads, drainage structures and other public improvements, in which case such vertical dimensions shall not exceed 12 feet. Vertical surfaces should be terraced at 6-foot intervals and planted to reduce the visual impact and eliminate problems associated with runoff. Roads and driveways shall follow the line of existing topography to minimize the required cut and fill. Finished slopes of all cuts and fills shall be as required to minimize disturbance of natural grades.

11.4.5 Historic and Archaeological Resources

- a) If any portion of the site is or has been identified as containing historic or archaeological resources, or has been designated a site of historic or prehistoric importance by the Comprehensive Plan or the Maine Historic Preservation Commission, the site shall be designed in such a manner as to minimize the impacts on the historic features. Measures shall be taken for protecting these resources, including, but not limited to, modification of the proposed design of the site, timing of construction, and limiting the extent of excavation, and shall be included by a note on the plan.
- b) The protection of an existing historic resource shall include the conservation of the landscape immediately associated with and significant to that resource, to preserve its historic context. Where, in the opinion of the Board, a plan will have an impact upon an historic resource, the developer shall mitigate that impact to the satisfaction of the Board by modifying the design, relocating proposed lot lines, providing landscape buffers, or other approved means.
- c) When the historic features to be protected include buildings, the placement and the architectural design of new structures in the subdivision shall be similar to the historic structures. The Board shall seek the advice of the Maine Historic Preservation Commission in reviewing such plans.

11.4.6 Exterior Lighting

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All road or driveway lighting shall be of shielded or hooded design so that it does not directly or indirectly produce deleterious effects on abutting properties or impair the vision of a vehicle operator on adjacent roadways.

11.5 Land not suitable for development

11.5.1 The following lands shall be excluded in calculations of buildable lot area:

- a) Portions of land shown to be in a floodway or a coastal high hazard zone as designated in the Flood Boundary and Floodway Map prepared by the Federal Insurance Administration, unless the applicant shows proof through the submission of material prepared by a registered land surveyor which shows that the land is outside the flood zone.
- b) Land located within a Resource Protection District and or as significant wildlife habitat as identified in the comprehensive plan.
- c) Land shown as freshwater or coastal wetlands on freshwater or coastal wetlands maps.
- d) Land which is part of a right of way, easement, open space, or green way.
- e) Portions of land covered by surface waters.
- f) Portions of land utilized for storm water management facilities.
- g) Any land identified in Article 11.4 as excluded from development.

11.5.2. Any existing public rights of access to the shoreline of a water body shall be maintained by means of easements or rights-of-way, or shall be included in the open space with provisions made for continued public access

11.6 Lots

11.6.1 Except as set forth for purposes of conservation subdivisions in Article 8, all lots shall meet the minimum requirements of the Land Use Ordinance for the district in which they are located

11.6.2 Where a tract is subdivided into lots substantially larger than the minimum size required by the Land Use Ordinance, the Board in its review may consider the potential effect of future re-subdivision.

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11.6.3 Odd-shaped lots in which narrow strips are joined to other parcels to meet minimum lot size requirements are prohibited. On lots of less than two acres the ratio of lot length to width shall be no more than 3:1, except that the ratio of lot depth to shore frontage for lots in the proposed subdivision which have shore frontage, as defined in Section 10.17 of this ordinance, shall have a lot depth to shore frontage ratio no greater than 5:1.

11.6.4 Any proposed subdivision shall be so designed so that every lot has a minimum of one hundred feet of frontage or the minimum required road frontage for that district, whichever is greater. This minimum frontage dimension shall be maintained as far back as the setback requirement for a structure except as allowed in 8.3.1.

11.7 Utilities

Utilities shall be installed underground by the developer in accordance with the recorded itemized listing of utilities on the subdivision plan except as otherwise approved by the Board. In approving a plan proposing other than underground utilities, the Board shall use a criteria based upon the following:

11.7.1 View impact

11.7.2 Circumstances of the site

11.7.3 Main road frontage lots

11.7.4 Surrounding area characteristics

11.7.5 Impact on historical or archaeological significant site

The Board may also approve overhead utilities when the applicant proposes reserved affordable housing and provides evidence that the costs of underground utilities will raise the costs of the housing above the State determined mean affordable house in the area.

11.8 Monuments

Permanent monuments shall be set at all corners and angle points of the subdivision. Monuments shall be 5/8 inch or larger rebar. Permanent monuments shall be referenced on the final plan and shall comply with the standards of the Maine Board of Land Surveyors.

11.9 Sewage Disposal

11.9.1 Private Systems

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- a) The applicant shall submit evidence of site suitability for subsurface sewage disposal prepared by a Maine Licensed Site Evaluator in full compliance with the requirements of the State of Maine *Subsurface Wastewater Disposal Rules*.

11.9.2 On lots in which the limiting factor has been identified as being within 24 inches of the surface, a second site with suitable soils shall be shown as a reserve area for future replacement of the disposal area. The reserve area shall be shown on the plan and restricted so as not to be built upon.

11.10 Soil erosion

11.10.1 The proposed subdivision shall prevent soil erosion from entering water bodies, wetlands, intermittent streams and adjacent properties by following best management practices as outlined in *Maine Erosion and Sedimentation Control Handbook for Construction: Best Management Practices* as revised.

11.10.2 The plan submitted for erosion and sedimentation control shall be implemented during the site preparation, construction, and clean-up stages.

11.10.3 Topsoil shall be considered part of the subdivision. Except for surplus topsoil from roads, parking areas and building excavations, topsoil shall not be removed from the site.

11.11 Solid Waste

All solid waste from the proposed subdivision shall be disposed of in a manner which complies with all state and town laws and ordinances. During the construction phase of the subdivision, the applicant or his agent shall be responsible for proper disposal of solid waste.

11.12 Water Pollution

11.12.1 The proposed subdivision shall not discharge wastewater to a water body without a license from the Maine Department of Environmental Protection.

11.12.2 The development plan must fully adhere to those sections of the Land Use Ordinance applicable to Shoreland Zoning. The development must not adversely affect the water quality or shoreline of any adjacent water body.

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11.13 Impact on Ground Water Quantity and Quality

The proposed development shall be served by an adequate supply of water for domestic use and fire protection purposes.

11.13.1 Wells

Lot design shall permit placement of wells, subsurface wastewater disposal areas, and reserve sites for subsurface wastewater disposal areas in compliance with the *Maine Subsurface Wastewater Disposal Rules* and the *Well Drillers and Pump Installers Rules*.

11.13.2 Fire Protection

- a) Roadways and landscaping or other obstacles around improvements in the subdivision shall be designed so as not to impair or impede accessibility for Fire Department operations.
- b) Where deemed necessary, fire ponds are encouraged and are subject to review and approval by the Fire Chief. Minimum pipe size for dry hydrant connections shall be six inches.
- c) Where dry hydrant or other water source is not within the right-of-way of a proposed or existing street, an easement to the Town of Lincolnville shall be provided to allow access. A suitable access way to the hydrant or water source shall be constructed.
- d) Fire Department personnel shall have ready access to locking mechanisms on any gates that access the subdivision.

11.14 Floodplain Management

Within the flood plain area of the Town, the plan shall include a statement that structures in the subdivision shall be constructed with their lowest floor, including the basement, as least one foot above the 100-year flood elevation. Such restriction shall be included in any deed, lease, purchase and sale agreement, or document transferring or expressing intent to transfer any interest in real estate or structure, including but not limited to a time-share interest. The statement shall clearly articulate that the Town may enforce any violation of the construction requirement and that provision shall also be included in the deed or any other document previously described. The construction requirement shall also be clearly stated on the plan.

11.15 Storm Water Management

11.15.1 Adequate provision shall be made for the management of the quality and quantity of all storm water generated within the subdivision, and any drained ground water through a management system of swales, culverts, underdrains, storm drains and best management practices equivalent to those described in the policies of the *Comprehensive Plan* and in *Stormwater Management for Maine: Best Management Practices*, published by the Maine Department of Environmental Protection (1995), as revised.

11.15.2 Quantity

- a) The storm water management system shall be designed to accommodate upstream drainage, taking into account existing conditions and approved or planned developments not yet built, and shall include a surplus design capacity factor of 25% for potential increases in upstream runoff.
- b) Downstream drainage requirements shall be studied to determine the effect of the proposed development. The storm drainage shall not overload existing or future planned storm drainage systems downstream from the development. The applicant shall be responsible for financing any improvement to existing drainage systems required to handle the increased storm flows.
- c) The storm water management system shall be designed to conduct storm water flows to existing watercourses. The natural state of watercourses, swales, floodways, or rights-of-way shall be preserved at their natural gradient.
- d) The storm water drainage system will not adversely affect neighboring properties, downstream water quality, or cause soil erosion. Whenever possible, onsite absorption of runoff waters shall be utilized to detain or retain water such that the rate of flow from the site after development does not exceed the predevelopment rate. Where appropriate, storm water may be collected to provide for on site fire protection.
- e) The minimum pipe size for any storm drainage pipe shall be 12 inches. Maximum trench width at the pipe crown shall be the outside diameter of the pipe plus 2 feet. Pipe shall be bedded in a fine granular material, containing no stones or clay lumps

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- larger than 3 inches, or organic matter, reaching a minimum of 6 inches below the bottom of the pipe and extending to 6 inches above the top of the pipe.
- f) Catch basins shall be installed where necessary and located at the curb line.
 - g) Inlets and outlets shall be stabilized against soil erosion by stone riprap or other suitable materials to reduce storm water velocity.
 - h) Where soils require a subsurface drainage system, the drains shall be installed and maintained separately from the storm water drainage system

11.15.3 Where necessary to achieve the above standards, there shall be provided easements or drainage rights-of-way with swales, culverts, catch basins or other means of channeling surface water within the subdivision and over other properties. Wherever the storm drainage system is not within the right- of- way of a public street, perpetual easements, at a minimum of 30 feet, shall be provided to the municipality allowing for maintenance and improvement of the system.

11.16 Identification of Freshwater Wetlands

Freshwater wetlands shall be identified in accordance with the 1987 *Corps of Engineers Wetland Delineation Manual*, published by the US Army Corps of Engineers.

11.17 Phosphorus Impact

Explanatory Statement

The primary source of new and increasing phosphorus levels in lakes, ponds and rivers today is land development - residential, commercial and industrial. Phosphorus, which is a nutrient, stimulates growth of algae that can create a significant and noticeable decline in water quality, and has an effect on fish and waterfowl habitat. Its impact on water quality is permanent, and has been so significant that the State of Maine now requires the issue be addressed for all proposed subdivision developments within the watersheds of great ponds. Because much of the land within Lincolnville is in the direct watershed of a great pond or the rivers, streams and brooks that feed them, this issue takes on great importance for the Town. However, controls to limit phosphorus impact are common-sense in nature. Limiting changes or damage to the

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natural growth on a site proposed for development is the simplest way to ensure there will not be a significant change in phosphorus export from a subdivision site. A developer would be well advised to address this review criterion before undertaking any clearing or cutting for development of a proposed subdivision.

11.17.1 Purpose and Intent

The goal of these standards is to prevent phosphorus over - enrichment of Lincolnville's great ponds, as well as great ponds in neighboring towns that share these watersheds, by ensuring that residential development does not generate more phosphorus than a water body can handle.

11.17.2 Any subdivision within the watershed of a great pond shall limit its post-development phosphorus export to specific standards dependent on the water quality of the great pond in whose watershed the development is located. Upon determination of the applicable watershed, the allowable phosphorus export figure (in pounds per acre) shall be used to determine whether the proposed development meets its allocation. The Department of Environmental Protection has provided pond-by-pond statistics to use in calculating the necessary information, and current figures used to determine per acre phosphorus allocation are available in the Lincolnville Town Office. Calculation procedures and design criteria used shall be from *Phosphorus Control in Lake Watersheds: a Technical Guide for Evaluating New Development* published by the Maine Department of Environmental Protection (DEP) as currently revised.

11.17.3 Minor subdivisions shall be reviewed using the following standards for restricting phosphorus export. NOTE: Applicants should refer to the Ordinance definition of "buffer" in developing landscaping plans or deed restrictions.

- a) Natural growth buffers must be left or established down-gradient of developed areas and must be protected by deed restrictions. The following buffer widths are required to the maximum extent reasonably feasible given lot layout restrictions:
 - If the watersheds area allocation is 0.05 lb/acre or less, 75 ft wooded or 125 ft non-wooded.

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- If the watershed's area allocation is greater than 0.05 lb/acre, 50 ft wooded or 100 ft non-wooded.
- b) Driveways and parking areas must be designed and constructed so that runoff is quickly shed from driveway to buffer areas and distribution of natural drainage patterns is minimized.
- c) Roof runoff may not be channeled to the lake but must be distributed over stable, well-vegetated areas or infiltrated into the soil.
- d) Use of fertilizers containing phosphorus are prohibited except when establishing new turf.
- e) Septic system must meet current requirements - plumbing code with loam liner where appropriate.
- f) A proposed subdivision which could be further divided such that five or more lots may result shall be subject to the standard review procedure for major subdivision unless there are conditions of approval or covenants that prohibit more than five lots in total.

11.17.4 Major subdivisions shall be reviewed using the applicant's submitted plan for phosphorus export control measures designed to meet the pounds per acre phosphorus export allocation for the watershed area in which the development is planned. The plan shall be prepared according to procedures set forth in Section 11.17.2. This plan must, in the judgment of the Board, meet the review criterion for limitation of phosphorus export.

11.17.5 Deed restrictions shall be created, and responsibility for their coverage assigned, for maintaining whatever means the proposed plan has put in place to assure the long term restriction of phosphorus export.

ARTICLE 12 –ROADS AND STREETS

12.1 Purpose

Provision shall be made for vehicular access to the subdivision and circulation within the subdivision in such a manner as to:

- 12.1.1 Safeguard against hazards to traffic and pedestrians in existing streets and within the subdivision.
- 12.1.2 Avoid traffic congestion on any street
- 12.1.3 Provide safe and convenient circulation on public streets and within the subdivision.
- 12.1.4 Provide adequate and reasonable access for municipal services and emergency vehicle movement.

12.2 Access.

- 12.2.1 The proposed subdivision road shall provide for safe access to and from public and private roads and must be located to avoid hazardous conflict with existing turning movements and traffic flows. The following criteria shall be used by the Board in reviewing applications for a subdivision. If a development is on any roadway covered by the State Access Management Law, 23 M.R.S.A. § 704 as may be amended, the provisions of that statute apply and, in addition, the provisions below apply if more restrictive than the statute.
- 12.2.2 A proposed subdivision of less than twenty (20) lots shall have no more than one two-way access onto a single roadway.
- 12.2.3 Any subdivision containing twenty (20) or more lots shall have at least two (2) road connections with existing public roads or roads on a previously-approved subdivision plan for which performance guarantees have been filed and accepted, provided that where such roads intersect with state or state aid roads, all such roads shall be designed in accordance with the applicable access management standard(s).

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12.2.4 Direct access to an arterial, collector, or Town road from any individual lot within a proposed subdivision is not permitted. This requirement shall be noted on the plan and in the deed of any lot with frontage on an arterial, collector or Town road. The Board may grant a waiver to this requirement after finding that the shape or physical condition of the parcel does not permit access to the proposed subdivision street or road, and provided the applicant has obtained a permit from Maine Department of Transportation where applicable. In approving a plan that otherwise allows direct access, the Board shall use criteria based on one or more of the following:

- (a) The road is a dead end or a seasonal through road.
- (b) Driveways or driveway entrances are shared by at least two lots.
and/or
- (c) The shallowness of the lot or topography of the parcel makes an internal subdivision road impractical in the opinion of the Board.

12.2.5 Where a lot has frontage on two or more streets, the access to the lot shall be provided across the frontage and to the street where there is lesser potential for traffic congestion and for hazards to traffic and pedestrians. This restriction shall appear as a note on the Plan and as a deed restriction to the affected lots.

12.2.6 Sight Distances. Accesses shall be located and designed in profile and grading to provide the required sight distance measured in each direction. A minimum sight distance shall be maintained or provided as shown in Table 12-2 under 2.4.3.

12.2.7 Vertical Alignment. Access shall be flat enough to prevent the dragging of any vehicle undercarriage. The grade of any proposed access where practical must be not more than +/- 3% for a minimum of forty feet from the intersection of the access and the road, measured from the near edge of the traveled way of the existing road.

12.2.8 Location and spacing.

- a) The access must be located no less than 75 feet from the closest intersection of two public roads. The distance shall be measured from the point of tangency of the

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- intersection to the point of tangency of the access. The Board may reduce this requirement if the shape of the site does not allow conformity with this standard.
- b) The minimum distance between the proposed access and adjoining accesses or driveways must be 75 feet measured from the center lines of the access points at the right-of-way line. The Board may reduce this requirement when it can not be met because of driveway location on adjacent lots or because of topographic or other compelling on-site conditions.

12.2.9 Provisions shall be made for providing and maintaining adequate and safe emergency vehicle access to the proposed subdivision and each proposed lot.

12.2.10 Where the applicant proposes improvements to existing public streets, the proposed design and construction details shall be approved in writing by the Road Commissioner or the Maine Department of Transportation, as appropriate.

12.3 Street Design Standards

12.3.1 The Board shall not approve any subdivision unless proposed streets are designed in accordance with any local ordinance or the specifications contained in this Ordinance. These design guidelines shall control the roadway, shoulders, curbs, sidewalks, drainage systems, culverts, and other features associated with the street, and shall be met by all streets within a subdivision, unless the applicant can provide clear and convincing evidence that an alternate design will meet good engineering practice and will meet the performance standards of Title 30-A MRSA §4404 (5) and this Article. Approval of the final plan by the Board shall not be deemed to constitute or be evidence of acceptance by the municipality of any street or easement.

12.3.2 Applicants shall submit to the Board, as part of the final plan, detailed construction drawings showing a plan view, profile, and typical cross-section of the proposed streets. Existing streets within 300 feet of any proposed intersections shall be shown. The plan view shall be at a scale of one inch equals no more than fifty feet. The vertical scale of

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the profile shall be one inch equals no more than five feet. The plans shall include the following information:

- a) Date, scale, and north point, indicating magnetic or true.
- b) Intersections of the proposed street with existing streets.
- c) Roadway and right-of-way limits including edge of pavement, edge of shoulder, sidewalks, and curbs, if applicable.
- d) Kind, size, location, material, profile and cross-section of all existing and proposed drainage structures and their location with respect to the existing natural waterways and proposed drainage ways.
- e) Complete curve data shall be indicated for all horizontal and vertical curves.
- f) Turning radii at all intersections.
- g) Centerline gradients.
- h) Size, type and locations of all existing and proposed overhead and underground utilities, to include but not be limited to water, sewer, electricity, telephone, lighting, and cable television
- i) Arrows at intersections showing sight distances
- j) Where street lighting is proposed, the locations and specifications of the lights.

12.3.3 Private Roads or Ways: Where the subdivision streets are to remain private roads or private ways, the following words shall appear on the recorded plan. “All roads in this subdivision shall remain private to be maintained by the developer or the lot owners and shall not be accepted or maintained by the Town, until they meet the municipal street design and construction standards at the time of the request to become public streets. The cost of such improvements shall not be borne by the Town.”

12.3.4 Where a subdivision borders an existing narrow street (not meeting the width requirements of the standards for streets in these regulations), or when the Comprehensive Plan indicates plans for realignment or widening of a road that would require use of some of the land in the subdivision, the plan shall indicate reserved areas for widening or realigning the road marked “Reserved for Road Realignment (Widening) Purposes.” Land reserved for such purposes may not be included in computing lot area

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or setback requirements of the Land Use Ordinance. When such widening or realignment is included in the municipality's capital investment plan, the reserve area shall not be included in any lot, but shall be reserved to be deeded to the municipality or State.

12.3.5 The design standards of Table 12-1 shall apply according to street classification.

Table 12-1 Street Design Guidelines

Description	Type of Street		
	Public Road	Private Road	Private Way
Minimum Right-of-Way Width	50 ft.	50 ft.	30 ft.
Minimum Traveled Way Width	18 ft.	18 ft.	16 ft.
Minimum Width of Shoulders (each side)	3 ft.	3 ft.	N/A
Sidewalk Width	4 ft.	N/A	N/A
Minimum Grade	N/A	N/A	N/A
Maximum Grade ¹	10%	10%	10%
Minimum Centerline Radius	150 ft.	150 ft.	150 ft.
Roadway Crown ²	¼ in./ ft.	¼ in. / ft. paved	¼ in. / ft. paved
		¾ in. / ft. gravel ³	¾ in. / ft. gravel ³
Minimum Angle of Street Intersections ⁴	80°	80°	80°
Maximum Grade within 40 ft. of Intersection	3%	3%	3%
Minimum Curb Radii at Intersections	15 ft.	N/A	N/A
Minimum R/O/W Radii at Intersections	10 ft	10 ft.	10 ft.
Minimum vertical clearance	14 ft	14 ft	14 ft

¹ Maximum grade of up to 10% may be allowed for a length of no more than 100 feet.

² Roadway crown is per foot of lane width.

³ Paving is not required in a minor subdivision and may not be required in a major subdivision under the conditions stated in Section 12.5.5 and 12.9.5.

⁴ Street intersection angles shall be as close to 90° as feasible, but no less than the listed angle.

12.4 Grades, Intersections, and Sight Distances.

12.4.1 Grades of all streets shall conform in general to the terrain, so that cut and fill are minimized while maintaining the grade standards above.

12.4.2 All changes in a grade shall be connected by vertical curves in order to provide minimum stopping sight distance of 150 feet. Stopping sight distance shall be calculated with a height of eye at 3 ½ feet and the height of object at ½ (.5) foot.

12.4.3 Where new street intersections or driveway curb-cuts are proposed, sight distances, as measured along the road onto which traffic will be turning, shall be based upon the posted speed limit and conform to Table 12-2 below.

Table 12-2 Sight Distance Table

Posted Speed Limit (mph)	20	25	30	35	40	45	50	55
Sight Distance (ft.)	155	200	250	305	360	425	495	570

Sight distance is measured from the driver’s seat of a vehicle that is ten feet behind the curb line (or edge of shoulder) with the height of the driver’s eye 3.5 feet above the pavement, and the height of an object 4.25 feet above the pavement, as seen by the driver. For example, an object may be an oncoming car, a bicycle, or a jogger.

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

12.4.4 Cross (four-cornered) street intersections shall be avoided insofar as possible, except as shown on the comprehensive plan or at other important traffic intersections. A minimum distance of 125 feet shall be maintained between centerlines of minor streets and 200 feet between collectors or a collector and minor street.

12.5 Private Ways.

12.5.1 Private ways shall be limited to minor subdivisions only, except under conditions stated in Section 12.5.5. Further lot divisions causing the private way to serve more than four residences within the subdivision are prohibited without the review and approval of

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the Board. Applicants seeking approval for private ways should be aware that further subdivision of any abutting remainder land that causes the private way to serve more than four residences is not permitted. The developer will be required to upgrade the private way to private road or public road standards.

12.5.2 The applicant shall submit such further information as the Board may require in circumstances in which it determines that, due to the scale, nature of the proposed private way, or the impact of the private way on safety considerations, such information is necessary to insure compliance with the intent and purposes of this section of the ordinance.

12.5.3 If the Board determines the need, a turnout shall be provided measuring five feet wide by fifty feet long for every five hundred feet of private way, to provide for larger vehicular passage.

12.5.4 Dead ends in a private way shall have a vehicle turn around area with a minimum radius of forty feet, or a turn around that is a minimum of eighteen feet wide and fifty feet deep. This turnaround shall be a continuation of and contiguous with the private way and constructed to the same material and design standards of Section 12-3 and Table 12-1.

12.5.5 Private ways off a subdivision road that serve groupings of up to four lots are permitted in a major subdivision. There shall be no interconnecting roads between these groupings that result in the private way serving more than four lots.

12.6 Dead End Streets

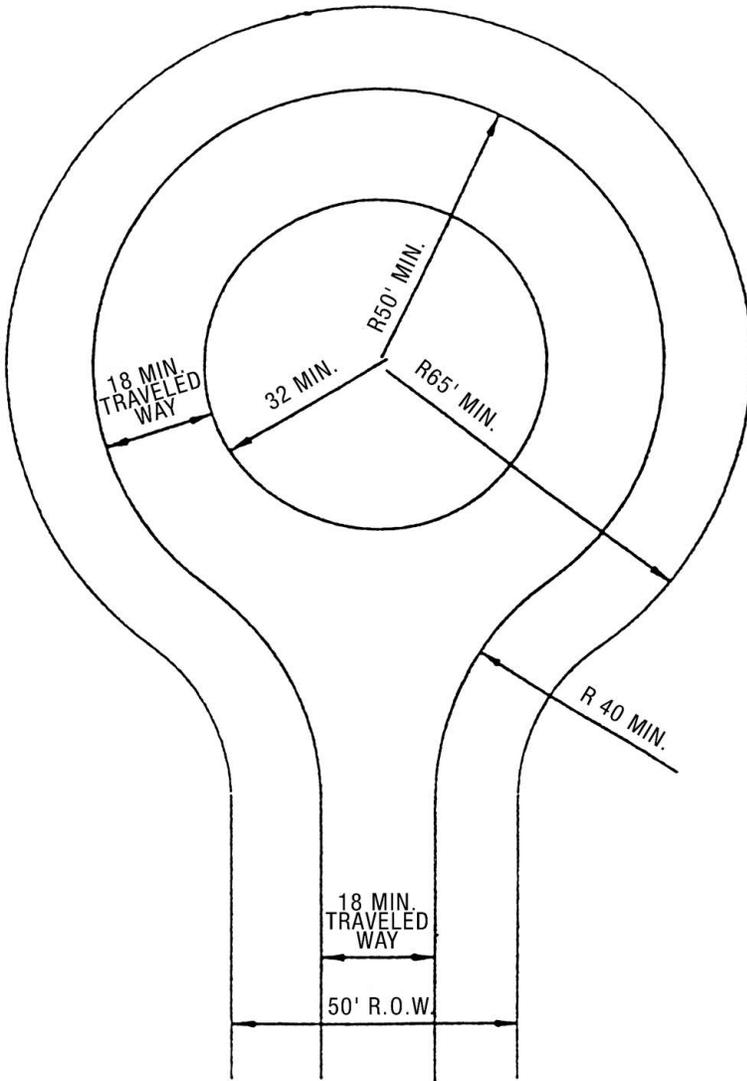
In addition to the design standards in Table 12-1, dead-end streets shall be constructed to provide a cul-de-sac or large vehicle turn-around with the following requirements for radii: adjacent lot lines: 80 feet; outer edge of pavement: 60 feet; inner edge of pavement: 30 feet. [See Figures 1 & 2, following pages].

Where the cul-de-sac is in a wooded area prior to development, a stand of trees shall be maintained in the center of the cul-de-sac. If not wooded, it shall remain in a natural state.

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The Board may require the reservation of an eighteen- foot easement in line with the street to provide continuation of pedestrian traffic or utilities to the next street. The Board may also require the reservation of a fifty foot easement in line with the street to provide continuation of the road where future subdivision is possible.

Figure 12-1. Cul-de-Sac

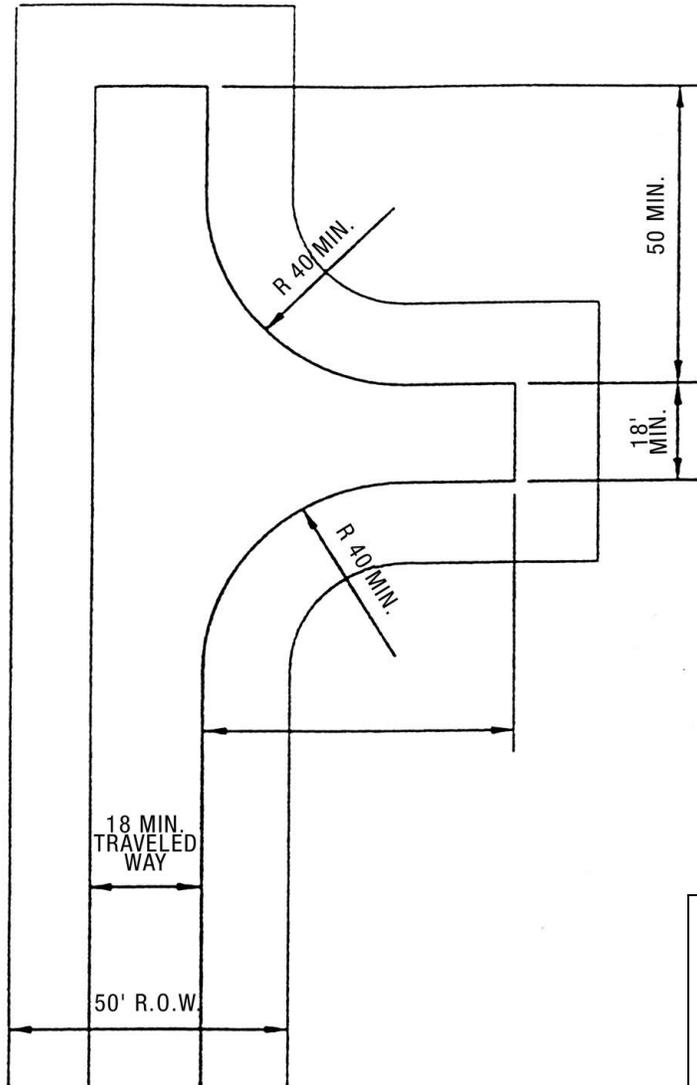


CUL DE SAC

Note:

Figures shall also pertain to a private way. The minimum traveled way width of a private way may be maintained to within 50 feet of the entrance to the cul-de-sac.

Figure 12.2 Vehicle Turnaround



LARGE VEHICLE TURN AROUND

Notes:

1. Figures shall also pertain to a private way. The minimum traveled way width of a private way may be maintained to within 50 feet of the beginning of initial radius to the turn around.
2. Private way right-of-way of 30 feet may be maintained for this kind of turn around.

12.7 Sidewalks and Curbs

Sidewalks and curbs will be installed by the subdivider at the discretion of the Board, and at such locations as the Board deems necessary. In making its determination, the Board shall consider the number and density of lots and any planned or existing town sidewalks. Where installed, sidewalks shall meet these minimum requirements.

12.7.1 Location. Sidewalks may be located adjacent to the curb or shoulder but sidewalks shall be located a minimum of two (2) feet from the curb facing or the edge of shoulder if the street is not curbed.

12.7.2 Bituminous Sidewalks.

- a) The “subbase” aggregate course shall be no less than twelve inches thick after compaction.
- b) The hot bituminous pavement surface course shall be MDOT plant Mix Grade D constructed in two lifts, each no less than one inch after compaction.

12.7.3 Portland Cement Concrete Sidewalks.

- a) The “subbase” aggregate shall be no less than twelve inches thick after compaction.
- b) The Portland cement concrete shall be reinforced with six inch square, number 10 wire mesh and shall be no less than four inches thick.

12.7.4 Where installed, curbs shall meet these minimum requirements: If granite curbing is used, it shall be installed on a thoroughly compacted gravel base of six inches minimum thickness. Bituminous curbing shall be installed on the base course of the pavement. Other materials may be considered by the Board, provided they meet standard engineering practices. The specified traveled way width above shall be measured between the curbs as specified in Table 12.1.

12.8 Street Construction Standards.

12.8.1 The minimum thickness of material after compaction shall meet the specifications in Table 12-3 below.

Table 12-3. Minimum Pavement Materials Thicknesses

Street Materials	Public Road	Private Road ¹	Private Way ¹
Aggregate Subbase Course (maximum size stone 8")	18 in.	18 in.	18 in.
Base Gravel	12 in.	12 in.	12 in.
Aggregate Base Course - 1 1/2" minus	6 in.	6 in.	6 in.
Bituminous/Asphalt Pavement ¹	Required	May be Required for Major	Not Required
Total compacted thickness	3 in.	3 in.	3 in.
Surface Course	1 in.	1 in.	1 in.
Base Course	2 in.	2 in.	2 in.

¹ Paving is not required in a minor subdivision and may not be required in a major subdivision under the conditions stated in Section 12.5.5 and section 12.9.5

12.8.2 Any approved minor subdivision shall comply, at a minimum, with the Subbase course, Base Course and Surface Gravel standards in Table 12-3. Any major subdivision shall comply with the Subbase and Base Gravel Course and Bituminous/Asphalt pavement Standards (when required) of Table 12.3.

12.8.3 Preparation.

- a) Before any clearing has started on the right-of-way, the center line and side lines of the new road shall be staked or flagged at fifty foot intervals.
- b) Before grading is started, the entire area within the right-of-way that is necessary for construction of the traveled way, shoulders, sidewalks, drainage-ways, and utilities

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shall be cleared of all stumps, roots, brush, and other objectionable material. All shallow ledge, large boulders and tree stumps shall be removed from the cleared area.

- c) All organic materials or other deleterious material shall be removed to a depth of two feet from below the sub-grade of the roadway. Rocks and boulders shall also be removed to a depth of two feet below the sub-grade of the roadway. On soils which have been identified as not suitable for roadways, either the subsoil shall be removed from the street site to a depth of two feet below the subgrade and replaced with material meeting the specifications for gravel aggregate sub-base below, or a Maine Department of Transportation approved stabilization geotextile may be used.
- d) Except in a ledge cut, side slopes shall be no steeper than a slope of three feet horizontal to one foot vertical, and shall be graded, loamed, limed, fertilized, and seeded according to the specifications of the erosion and sedimentation control plan. Where a cut results in exposed ledge a side slope no steeper than one foot horizontal to four feet vertical is permitted.
- e) All underground utilities shall be installed prior to paving to avoid cuts in the pavement. Building sewers and water service connections, if available, shall be installed to the edge of the right-of-way prior to paving.

12.9 Bases and Pavement

12.9.1 Bases/Subbase.

The Aggregate Subbase course shall be sand or gravel of hard durable particles free from vegetative matter, lumps or balls of clay and other deleterious substances. The gradation of the part that passes a three inch square mesh sieve shall meet the grading requirements of Table 12-4 below.

Table 12-4 Aggregate Subbase Grading Requirements

Percentage by Weight Passing	
Sieve Designation	Square Mesh Sieves
1/4 inch	25-70%
No. 40	0-30%
No. 200	0-7%

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Aggregate for the subbase shall contain no particles of rock exceeding eight inches in any dimension.

12.9.2 If the Aggregate Subbase Course is found to be not fine-gradable because of larger stones, then a minimum of three inches of Aggregate Base Course shall be placed on top of the subbase course. The Aggregate Base Course shall be screened or crushed gravel of hard durable particles free from vegetative matter, lumps or balls of clay and other deleterious substances. The gradation of the part that passes a three inch square mesh sieve shall meet the grading requirements of Table 12.5, following page.

Aggregate for the base shall contain no particles of rock larger than 1 1/2 inches any dimension.

Table 12-5 Base Course Grading Requirements

Sieve Designation	Percentage by Weight Passing
	Square Mesh Sieves
1/2 inch	45-70%
1/4 inch	30-55%
No. 40	0-20%
No. 200	0-5%

12.9.3 Pavement Joints. Where pavement joins an existing pavement, the existing pavement shall be cut along a smooth line and form a neat, even, vertical joint.

12.9.4 Pavements.

- a) Minimum standards for the base layer of pavement shall be the Maine Department of Transportation specifications for plant mix grade B with an aggregate size no more than 1 inch maximum and a liquid asphalt content between 4.8% and 6.0% by weight depending on aggregate characteristics. The pavement may be placed between April 15 and November 15, provided the air temperature in the shade at the paving location is 35°F or higher and the surface to be paved is not frozen or unreasonably wet.

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- b) Minimum standards for the surface layer of pavement shall be the Maine Department of Transportation specifications for plant mix grade C or D with an aggregate size no more than 3/4 inch maximum and a liquid asphalt content between 5.8% and 7.0% by weight depending on aggregate characteristics. The pavement may be placed between April 15 and October 15, provided the air temperature in the shade at the paving location is 50°F or higher.

12.9.5 Gravel. Private Roads or Private Ways in minor subdivisions need not be paved and may have a gravel surface. Private Roads serving major subdivision need not be paved and may have a gravel surface if they meet the following criteria:

- (a) At least 20% of the lots are for affordable housing
- (b) The road will not serve more than 12 lots maximum.
- (c) The road grade will not be greater than 8%.

ARTICLE 13 - PERFORMANCE GUARANTEES

13.1 Types of Guarantees

With submittal of the application for final plan approval, the applicant shall provide one of the following performance guarantees for an amount adequate to cover the total construction costs of all required improvements, taking into account the time-span of the construction schedule and the inflation rate for construction costs:

- 13.1.1 An irrevocable letter of credit from a financial institution establishing funding for the construction of the subdivision, from which the Town of Lincolnville may draw if construction is inadequate, approved by the Board.
- 13.1.2 A performance bond payable to the Town of Lincolnville issued by a surety company, approved by the Board.
- 13.1.3 Either a certified check payable to the Town of Lincolnville or a savings account or certificate of deposit naming the Town of Lincolnville as owner, for the establishment of an escrow account;
- 13.1.4 An offer of conditional approval limiting the number of units built or lots sold until all required improvements have been constructed. The conditions and amount of the performance guarantee shall be determined by the Board with the advice of the Town Administrator, Selectmen, Road Commissioner, and/or Town Attorney.

13.2 Contents of Guarantee

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

13.3 Letter of Credit.

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

13.4 Performance Bond

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

13.5 Escrow Account.

A cash contribution to the establishment of an escrow account shall be made by either a certified check made out to the Town of Lincolnville, the direct deposit into a savings account, or the purchase of a certificate of deposit. For any account opened by the applicant, the Town shall be named as owner. Any interest earned on the escrow account shall be returned to the applicant unless the Town has found it necessary to draw on the account, in which case the interest earned shall be proportionately divided between the amount returned to the applicant and the amount withdrawn to complete the required improvements

13.6 Conditional Agreement

The Board at its discretion may provide for the applicant to enter into a binding agreement with the Town of Lincolnville in lieu of the other financial performance guarantees. Such an agreement shall be endorsed by the Board on the approved final plan, and shall provide that no lot or parcel of land may be conveyed, and that no permit may be issued by the CEO, for any building or other permanent structure within the subdivision until the completion of the road construction paving, storm drainage, utilities, and other similar improvements as specified in the approved final plan. The agreement shall be conditioned upon the completion of all such improvements within two (2) years from the date of the approval of the final plan, recorded on the subdivision plat. If an applicant cannot complete the improvements within two years due to delays caused by other regulatory bodies, or other reasons, the applicant may request an extension. In considering the request for an extension, the Board shall request that the applicant show the status of the final plan at the time of request.

Article 13 – Performance Guarantees

Notice of the agreement and any conditions shall be on the final plan that is recorded at the Waldo County Registry of Deeds. Release from the agreement shall follow the procedures for release of the performance guarantees contained in Section 13.7.

13.7 Release of Guarantee.

Prior to the release of any part of the performance guarantee, the Board shall determine to its satisfaction, based upon the report of the consultant for the Board or other qualified individual retained by the Board, and any other agencies and departments who may be involved, that the proposed improvements meet or exceed the design and construction requirements for that portion or phase of the subdivision for which the release is requested.

13.8 Default.

If upon inspection, the CEO finds that any of the required improvements have not been constructed in accordance with the plans and specifications filed as part of the application, the CEO shall further report in writing to the Board, the Board of Selectmen, and the applicant and/or builder. The Planning Board shall take any action necessary to enforce the rights of the Town in any performance guaranty provided by the applicant.

13.9 Improvements Guaranteed.

Performance guarantees shall be tendered for all improvements required to meet the standards of this ordinance and for the construction of the streets, storm water management facilities, public sewage collection or disposal facilities, public water systems, and erosion and sedimentation control measures.

ARTICLE 14 - WAIVERS

14.1 Waivers Authorized

Where the Board makes written findings of fact that there are special circumstances of a particular parcel proposed to be subdivided, the Board may waive submission requirements or portions of the submission requirements, unless this Ordinance otherwise prohibits such waiver, provided the applicant has demonstrated that the performance standards of this ordinance and the criteria of this Ordinance and of the state subdivision statutes have been met, provided the public health, safety, and welfare are protected, and provided the waivers do not nullify the intent and purpose of the Comprehensive Plan, the Land Use Ordinance, or this Ordinance.

14.2 Findings of Fact Required

Where the Board makes written findings of fact that due to special circumstances of a particular lot proposed to be subdivided, the provision of certain required improvements is not requisite to provide for the public health, safety or welfare, or are inappropriate because of inadequate or lacking connecting facilities adjacent to or in proximity of the proposed subdivision, the Board may waive the requirement for such improvements, subject to appropriate conditions, provided the waivers do not nullify the intent and purpose of the Comprehensive Plan, the Land Use Ordinance, or this ordinance, and further provided that the performance standards of this Ordinance and the criteria of this ordinance and the state subdivision statutes have been met by the proposed subdivision.

14.3 Conditions

Waivers may only be granted in accordance with Sections 14.1 and 14.2. When granting waivers, the Board shall set conditions so that the purposes of this ordinance are met.

14.4 Waivers to be shown on final plan

When the Board grants a waiver to any of the improvements required by these regulations, the final plan, to be recorded at the Registry of Deeds, shall indicate the waivers granted and the date on which they were granted.

ARTICLE 15 - INSPECTIONS AND ENFORCEMENT

15.1 Inspection of Required Improvements

15.1.1 At least five days prior to commencing construction of required improvements, the subdivider or builder shall if required by the Board:

- (a). Notify the CEO in writing of the time when construction will begin on the improvements required by the Board. The CEO will arrange for inspections to assure that all Town specifications, requirements, and conditions of approval are met during the construction of required improvements. These improvements shall include road construction, storm water management systems and erosion and sedimentation control measures among others.
- (b) For major subdivisions only, deposit with the Town Office a check for the amount of 2% of the estimated cost of the required improvements to pay for the cost of inspection, including the cost of hiring outside consultants when necessary. If the Planning Board determines that the Town Office account for inspections for the subdivision is insufficient, then the Planning Board may require that the subdivision developer pay additional funds to the Town as reasonably required for inspections. After the completion of inspections, any funds remaining in the account which are unexpended to pay for inspections shall be returned to the subdivision developer within sixty (60) days of the completion of inspections.

15.1.2 If the CEO finds upon inspection of the improvements that any of the required improvements have not been constructed in accordance with the plans and specifications filed by the subdivider, the CEO shall so report in writing to the Board and the applicant. This notification will include a description of the problems or noncompliance found and the steps that must be taken to correct them including a time frame for taking corrective actions. If this written request does not produce the necessary results, the Town shall take any steps, including legal action, reasonably necessary to assure compliance with the approved plans.

Article 15 – Inspections And Enforcement

- 15.1.3. 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 Board. Revised plans shall be filed with the Board. For major modifications, such as relocation of rights-of-way, property boundaries, changes of grade by more than 1%, etc., the subdivider shall obtain permission from the Board to modify the plans in accordance with Article 9.
- 15.1.4 By November 1 of each year during which construction was done on the site, the CEO shall report to the Board, addressing whether storm water 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.
- 15.1.5 Prior to the sale of any lot, the sub-divider shall provide the Board with a letter from a professional land surveyor, stating that all monuments shown on the plan have been installed.
- 15.1.6 Upon completion of street construction, the Applicant shall notify the Town in writing if his intention is to propose that the Town accept the road as a public way. Written certification signed by a professional engineer shall be submitted to the Town by the Applicant at his expense, certifying that the proposed public way meets or exceeds the design and construction requirements of this ordinance. If there are any underground utilities, the servicing utility shall certify in writing that the underground utilities have been installed in a manner acceptable to the utility. “As built” plans shall be submitted to the Town.
- 15.1.7 The subdivider shall be required to maintain all improvements in a safe and acceptable condition and provide for adequate snow removal on streets and sidewalks

Article 15 – Inspections And Enforcement

until acceptance of the improvements by the Town or control is placed with a lot owners' association as outlined in Sections 5.2.5, 6.2.5, and 8.7.

15.2 Violations and Enforcement

- 15.2.1 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 and signed by the Board in accordance with this ordinance.
- 15.2.2 A person shall not convey, offer or agree to convey any land in a subdivision which has not been approved by the Board and recorded in the Registry of Deeds. 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.
- 15.2.3 No public utility, water district, sanitary 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 Board.
- 15.2.4 Development of a subdivision without Board approval shall be a violation of state subdivision law and of this Ordinance. Development includes grading or construction of roads, grading of land or lots, or construction of buildings or any other activity as set forth in M.R.S.A. Title 30-A §4406 which require a plan approved as provided in this ordinance and recorded in the Registry of Deeds.
- 15.2.5 No lot in a subdivision may be sold, leased, or otherwise conveyed before the street upon which the lot fronts is completed in accordance with this ordinance, up to and including the entire frontage of the lot. No unit in a multi-family development shall be occupied before the street upon which the unit is accessed is completed in accordance with this ordinance.
- 15.2.6 Violations of the provisions of this Ordinance are a nuisance and shall be subject to the monetary penalties and remedies set forth in Title 30-A M.R.S.A. §4452.

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ARTICLE 16 - APPEALS

16.1 Appeals to Superior Court.

16.1.1 An aggrieved party may appeal any decision of the Board under this ordinance to Waldo County Superior Court, within thirty (30) days of the date the Board issues a written order of its decision.

16.1.2 In the event that an applicant is aggrieved by a decision of the Board to deny preliminary plan approval or to grant preliminary plan approval subject to conditions, the applicant may appeal that decision to the Waldo County Superior Court within thirty (30) days of the date the Board issued a written order of its decision.

16.1.3 In the event that an applicant is aggrieved by a decision of the Board to deny final plan approval or to grant final plan approval subject to conditions, the applicant may appeal that decision to the Waldo County Superior Court within thirty (30) days of the date the Board issued a written order of its decision.

ARTICLE 17 –SUBDIVISION ORDINANCE DEFINITIONS

17.1 Introduction

In general, words and terms used in this ordinance shall have their customary dictionary meanings. More specifically, any word or term defined in the Lincolnville Land Use Ordinance shall have the definition contained in that ordinance, unless defined differently below.

17.2 Relationship to Other Town Ordinances

Where there is a conflict between the language contained in this subdivision ordinance and any other Town ordinances the stricter language shall apply for purposes of this ordinance.

Other words and terms used herein are defined as follows:

17.3 Definitions

Affordable housing "Affordable housing" means decent, safe and sanitary dwellings, apartments or other living accommodations for low-income and moderate-income households. The Maine State Housing Authority may define "affordable housing" by rule. Affordable housing includes, but is not limited to:

- a) Government-assisted housing
- b) Housing for low-income and moderate-income families
- c) Manufactured housing
- d) Multifamily housing
- e) Group and foster care facilities

[M.R.S.A Title 30-A., Part 2, Chapter 202, § 5002, Definitions]

Applicant: The person applying for subdivision approval under this ordinance.

Areal Allocation: For purposes of this ordinance, the amount of phosphorus export allowed in the area of a given watershed, measured in pounds per acre.

Buffer: A continuously-maintained part of a property or an entire property, which is not built upon and is specifically intended to separate and thus minimize the effects of a land use activity (including but not limited to pollutant runoff, noise, dust, visibility, glare, etc.) on adjacent properties or on sensitive natural resources.

Building Envelope: An area designated on the plat plan, usually with a dashed line, that indicates where a home, barn, sheds and other improvements including parking, and improved facilities are to be located. Utilities and driveways may be located outside the envelope.. Building envelopes may be required for parcels with access issues, and parcels which involve prime farmland, critical natural resources or designated scenic views.

Article 17 –Definitions

Capital Investment Plan: The portion of the Comprehensive Plan that identifies the projects for consideration for inclusion within the capital improvements program, together with an estimate of the order of magnitude for the cost of each project

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

Clear-cut. "Clear-cut" means any timber harvesting on a forested site greater than 5 acres in size that results in a residual basal area of trees over 4 1/2 inches in diameter measured at 4 1/2 feet above the ground of less than 30 square feet per acre, unless, after harvesting, the site has a well-distributed stand of acceptable growing stock, as defined by rule, of at least 3 feet in height for softwood trees and 5 feet in height for hardwood trees that meets the regeneration standards defined under section 8869, subsection 1.

[Title 12 M.R.S.A. 8868, Definitions]

Coastal wetland : *See Coastal Wetland* in the *Land Use Ordinance* definitions

Common Open Space: *See Open Space*

Complete Application: An application shall be considered complete upon submission of the required fee and all information required by this ordinance, or by a vote by the Board to waive the submission of required information. The Board shall issue a written statement to the applicant upon its determination that an application is complete.

Completed Substantial Construction: The completion of a portion of the improvements which represents no less than thirty percent 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.

Comprehensive Plan: A document or interrelated documents adopted by the Town of Lincolnville, containing an inventory and analysis of existing conditions, a compilation of goals for the development of the community, an expression of policies for achieving these goals, and a strategy for implementation of the policies.

Conceptual Plan: A sketch containing all the information required in Section 4.4 that shows the features on the parcel and proposed subdivision in as simple an illustration as possible. The conceptual plan is not intended not to be an engineered or an expensive undertaking for the applicant but must be accurate enough to show what is required.

Conservation Easement: 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.

Conservation Subdivision: A subdivision designed in a way that preserves productive land or land identified as valuable to the town as defined in 4.5, with the point of preserving the rural

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character of the town, a stated goal of the citizens in the Comprehensive Plan. Applicants may reduce lot size and frontage in return for the designation of open areas, but are not required to reduce size and frontage where larger lot sizes are desired. Design usually is a four-step process of (a) identifying land that is not buildable (such as wetlands), (2) identifying land that is desirable to preserve, (3) identifying the best house sites and (4), laying out necessary roads. All houses in a conservation subdivision are not required to be on the same roads; smaller feeder roads to clusters of lots may be created where appropriate.

Construction Drawings: Drawings showing the location, profile, grades, size and type of drains, sewers, water mains, underground power and telephone ducts, pavements, cross section of roads, miscellaneous structures, drainage and other easements, and similar items.

Contiguous Lots: Lots in the same ownership which adjoin at any line or point, except that lots on opposite sides of a public or private road shall be each considered a separate tract or parcel unless such road was established by the owner of land on both sides thereof.

Contiguous Open Space: *See* **Open Space**

Cul-de-sac: A street with only one outlet and having the other end for the reversal of traffic movement. See figure 1 in Article 12.

Density: The number of dwelling units allowed per acre of land. *See also* **Net residential density**

Densely developed area: Any commercial, industrial or compact residential area of 10 or more acres with an existing density of at least one principal structure per 2 acres. (Title 30-A §4401)

Designated Scenic Resource: *See* **Designated Scenic Resource** in the Lincolnville Land Use Ordinance definitions.

Developed Area or environment: Any area on which a site improvement or change is made, including buildings, landscaping, parking areas, and streets.

Developer: *See* **Subdivider**

Direct Watershed of a Great Pond: That portion of the watershed which drains directly to the great pond without first passing through an upstream great pond. For the purposes of this ordinance, the watershed boundaries shall be as delineated in the Comprehensive Plan. Due to the scale of the map in the Comprehensive Plan there may be small inaccuracies in the delineation of the watershed boundary. Where there is a dispute as to exact location of a watershed boundary, the Board or its designee and the applicant shall conduct an on-site investigation to determine where the drainage divide lies. If the Board and the applicant can not agree on the location of the drainage divide based on the on-site investigation, the burden of proof shall lie with the applicant to provide the Board with information from a registered land surveyor showing where the drainage divide lies. *See also the Land Use Ordinance definition of Great Pond.*

Driveway: A private vehicular entrance from a road or right-of-way. The driveway itself shall not constitute the means of legal access along which frontage may be measured.

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Dwelling Unit: A single unit providing complete independent permanent or temporary living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation, limited to only one (1) kitchen; includes single family houses and units in an attached apartment, detached apartment or cottage, duplex, apartment house, multifamily dwellings, and residential condominiums.

Easement: A right of use over the property of another created by grant, reservation, agreement, prescription, or necessary implication, either for the benefit of adjoining land, such as the right to cross, or for the benefit of a specific landowner, such as a public utility easement.

Final Subdivision Plan: The final drawings on which the subdivider's plan of subdivision is presented to the Board for approval and which, if approved, shall be filed for recording with the municipal officers and the Waldo County Registry of Deeds. *See also* Recording plan.

Freshwater Wetland. freshwater swamps, marshes, bogs and similar areas which are:

- A. Inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils; and
- B. 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 the criteria of this subsection. (Title 30-A §4401)

Frontage: The linear distance between the sidelines of a lot, measured along the line that borders upon whatever right-of-way serves as legal access to the lot. For the purposes of this ordinance, the following ways shall constitute legal access to a lot along which frontage may be measured:

1. A way accepted by or established as belonging to the Town of Lincolnville, or the State of Maine, provided access is not specifically prohibited;
2. A way, whether dedicated to public ownership or not, as shown on an approved subdivision plan.

Great Pond: See **Great Pond** in the *Land Use Ordinance* definitions

100-year Flood: The highest level of flood that, on the average, has a one percent chance of occurring in any given year.

High water mark:

Coastal waters: The elevation at which vegetation changes from predominantly salt tolerant to predominantly non-salt tolerant. By way of illustration, salt tolerant vegetation includes, but is not limited to: salt marsh grass, salt meadow hay, black arrow grass, seaside lavender, silverweed, salt marsh bulrush, seaside plantain, orach, salt marsh sedge, salt marsh aster. In places where vegetation is not present, the high water mark shall be the identifiable debris line left by non-storm tidal action. On a sand dune, the high water mark shall be the mean seaward limit of salt tolerant vegetation. *See also Coastal Wetlands* in the Land Use Ordinance definitions.

Inland waters: That line which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or changes in vegetation, and which

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distinguishes between predominantly aquatic and predominantly terrestrial land. In the case of wetlands adjacent to rivers, streams, brooks, or ponds, the normal high-water mark is the upland edge of the wetland, and not the edge of the open water.

Liquidation Harvesting. 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 five (5) years. (Title 12 M.R.S.A. § 8868)

Major Subdivision. Any subdivision containing more than four lots or dwelling units.

Minor Subdivision. Any subdivision containing four lots or less.

Net residential acreage: The total acreage available for the subdivision, as shown on the proposed subdivision plan, minus the area for streets or access and the areas that are unsuitable for development as outlined in Section 11.5.

New structure or structures: Any structure for which construction begins on or after the date of adoption of this Ordinance. The area included in the expansion of an existing structure is deemed to be a new structure for the purposes of this subchapter. (Title 30-A §4401)

Open space: For the purposes of this ordinance, undeveloped land areas that have important natural resources or cultural resources that are worthy of conservation and protection. Such areas may contain, but are not limited to, forests, farmland, old fields, floodplains, wetlands, and shorelands. Open space can also encompass scenic vistas, recreational areas, and historic sites; however, this ordinance has not attempted to identify such areas that do not already contain significant areas of open space.

Common open space: 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 of the residents of the development and/or the general public. It may include complementary structures and improvements, typically used for maintenance and operation of the open space, such as for outdoor recreation.

Contiguous open space: Open space that is contiguous to open space in other parcels of land, including park or conservation land, for the purpose of providing wildlife corridors and access to recreational opportunities such as trails, hunting and fishing, or to protect contiguous resources identified under **Open Space**.

Outstanding river segments. Refer to Title 30-A §4401, Chapter 187, Subchapter 4, definition 7, in accordance with Title 12, section 402, "outstanding river segments."

Parcel: All contiguous land in the same ownership, provided that lands located on opposite sides of a public or private road are considered each a separate tract or parcel of land unless the road was established by the owner of land on both sides of the road. (Title 30-A §4401).

Planning Board: The Planning Board of the Town of Lincolnville, as created by 30 4964.

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Preliminary Subdivision Plan: The preliminary drawing for a major subdivision indicating the proposed layout of the subdivision and such other information as may be required by this ordinance. Approval of a preliminary subdivision plan shall not constitute approval of the final subdivision plan.

Principal structure *See* **Principal structure** in the Land Use Ordinance definitions..

Professional Engineer: A professional engineer, registered in the State of Maine that may be hired by the Town or the applicant on a consulting basis.

Professional Forester: A person licensed pursuant to Title 32, Chapter 76 (Title 12 § 8868)

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

Public Water System: A water supply system that provides water to at least 15 service connections or services water to at least 25 individuals daily for at least 30 days a year.

Recording Plan: An original of the final plan, suitable for recording at the Waldo County Registry of Deeds.

Ridge or Ridgeline: A relatively narrow elevation which is prominent because of the steep angle at which it rises; an elongated crest, or series of crests, with or without individual peaks, significantly higher than the adjoining ground.

Road classification: *See* **Street and Road Classification.**

Scenic Resource: *See* **Designated Scenic Resource** in the Lincolnville Land Use Ordinance.

Shielded or Hooded Lighting: Lighting that is hooded or shielded to mask the direct horizontal surface of the light source. The light shall be aimed to insure that the illumination is pointing only downward onto the ground surface, with little or no escaping light permitted to contribute to sky glow by shining upward into the sky.

Sight distance: The length of an unobstructed view from a particular access point to the farthest visible point of reference on a roadway. Used in this ordinance as a reference for unobstructed road visibility.

Street: 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. *See also* **Road** in *Land Use Ordinance definitions.*

Street and Road Classification:

Arterial street: A major thoroughfare which serves as a major traffic way for travel between and through the municipality. The following roadways in Lincolnville shall be considered arterial streets: U.S. Route One

Collector street or road: A street with average daily traffic of 200 vehicles per day or greater, or streets which serve as feeders to arterial streets, and collectors of traffic from

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minor streets per day or greater, or streets which serve as feeders to arterial streets, and collectors of traffic from minor streets. The following roadways in Lincolnville shall be considered collector streets: Route 52, Route 173, and Route 235.

Minor street: A street that has an average daily traffic of less than 200 vehicles per day.

Private Road: A road that the general public has no right to pass over by foot or by vehicle, and for which the Town has no maintenance responsibility.

Private Way: A minor residential street servicing no more than four lots or dwelling units, which is not intended to be dedicated as a town road, and for which the Town has no maintenance responsibility

Public Road: An Arterial Street, Collector Street, or Town road.

Town Street or Road: A strip of land owned or held for use by the Town for the passage and use of the general public by motor vehicles, and for which the Town has maintenance responsibility. (As defined by 23 M.R.S.A. 3021) New town roads must be accepted by a vote of the Town.

Subsurface sewage disposal system: *see* the definition in the Land Use Ordinance..

Subdivision: As defined by 30A M.R.S.A. 4401 (4), as the same may be amended from time to time; a copy of that statute in effect on the date of enactment of this ordinance is set forth in Schedule A, attached to this ordinance and incorporated by reference herein. *See also Major Subdivision, Minor Subdivision, Resubdivision.*

Subdivider, also Developer: Assessed owner or owners of land to be subdivided, or person with documented title, right, or interest in the land to be subdivided.

Subdivider's representative or agent: That person who has written authorization to act for the subdivider.

Substantial Construction: *See Completed Substantial Construction.*

Vehicle Turnaround: Space provided on or at the end of a public or private way for large and emergency vehicles to turn around. See figure 2 in Article 12.

LAND USE ORDINANCE DEFINITIONS

The following definitions may be found in the Land Use Ordinance.

Coastal wetland
Designated scenic resource
Emergency operations
Essential services
Great Pond
Line of sight (of a scenic resource)

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Lot area
Multi-unit residential
Non-conforming lot
Market value
Minimum lot width
Normal high-water line
Person
River
Road
Salt marsh
Salt meadow
Service drop
Setback
Shore frontage
Stream
Structure
Subsurface sewage disposal system
Sustained slope
Tributary stream
Unreasonably adverse impact
Upland edge of a wetland
Vegetation
Viewpoint [of a scenic resource]
Water body
Wetlands associated with great ponds and rivers

SCHEDULE A 30-A M.R.S.A. §4401 Definition 2, Subdivisions

Subdivision. "Subdivision" means the division of a tract or parcel of land into 3 or more lots within any 5-year period that begins on or after September 23, 1971. This definition applies whether the division is accomplished by sale, lease, development, buildings or otherwise. The term "subdivision" also includes the division of a new structure or structures on a tract or parcel of land into 3 or more dwelling units within a 5-year period, the construction or placement of 3 or more dwelling units on a single tract or parcel of land and the division of an existing structure or structures previously used for commercial or industrial use into 3 or more dwelling units within a 5-year period.

A. In determining whether a tract or parcel of land is divided into 3 or more lots, the first dividing of the tract or parcel is considered to create the first 2 lots and the next dividing of either of these first 2 lots, by whomever accomplished, is considered to create a 3rd lot, unless:

(1) Both dividings are accomplished by a subdivider who has retained one of the lots for the subdivider's own use as a single-family residence that has been the subdivider's principal residence for a period of at least 5 years immediately preceding the 2nd division; or

(2) The division of the tract or parcel is otherwise exempt under this subchapter.
[2001, c. 359, §1 (amd).]

B. The dividing of a tract or parcel of land and the lot or lots so made, which dividing or lots when made are not subject to this subchapter, do not become subject to this subchapter by the subsequent dividing of that tract or parcel of land or any portion of that tract or parcel. The municipal reviewing authority shall consider the existence of the previously created lot or lots in reviewing a proposed subdivision created by a subsequent dividing.
[1989, c. 104, Pt. A, §45 and Pt. C, §10 (new).]

C. A lot of 40 or more acres must be counted as a lot, except:

(2) When a municipality has, by ordinance, or the municipal reviewing authority has, by regulation, elected not to count lots of 40 or more acres as lots for the purposes of this subchapter when the parcel of land being divided is located entirely outside any shoreland area as defined in Title 38, section 435 or a municipality's shoreland zoning ordinance.

[2001, c. 651, §1 (amd).]

D. [2001, c. 359, §2 (rp).]

D-1. A division accomplished by devise does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter. [2001, c. 359, §3 (new).]

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D-2. A division accomplished by condemnation does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter. [2001, c. 359, §3 (new).]

D-3. A division accomplished by order of court does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter. [2001, c. 359, §3 (new).]

D-4. A division accomplished by gift to a person related to the donor of an interest in property held by the donor for a continuous period of 5 years prior to the division by gift does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter. If the real estate exempt under this paragraph is transferred within 5 years to another person not related to the donor of the exempt real estate as provided in this paragraph, then the previously exempt division creates a lot or lots for the purposes of this subsection. "Person related to the donor" means a spouse, parent, grandparent, brother, sister, child or grandchild related by blood, marriage or adoption. A gift under this paragraph can not be given for consideration that is more than 1/2 the assessed value of the real estate. [2001, c. 359, §3 (new).]

D-5. A division accomplished by a gift to a municipality if that municipality accepts the gift does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter. [2001, c. 359, §3 (new).]

D-6. A division accomplished by the transfer of any interest in land to the owners of land abutting that land that does not create a separate lot does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter. If the real estate exempt under this paragraph is transferred within 5 years to another person without all of the merged land, then the previously exempt division creates a lot or lots for the purposes of this subsection. [2001, c. 359, §3 (new).]

E. The division of a tract or parcel of land into 3 or more lots and upon each of which lots permanent dwelling structures legally existed before September 23, 1971 is not a subdivision. [1989, c. 104, Pt. A, §45 and Pt. C, §10 (new).]

F. In determining the number of dwelling units in a structure, the provisions of this subsection regarding the determination of the number of lots apply, including exemptions from the definition of a subdivision of land. [1989, c. 104, Pt. A, §45 and Pt. C, §10 (new).]

G. Notwithstanding the provisions of this subsection, leased dwelling units are not subject to subdivision review if the municipal reviewing authority has determined that the units are otherwise subject to municipal review at least as stringent as that required under this subchapter. [1989, c. 104, Pt. A, §45 and Pt. C, §10 (new); c.

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497, §2 (amd) .]

H. [2001, c. 651, §2 (rp) .]

H-1. This subchapter may not be construed to prevent a municipality from enacting an ordinance under its home rule authority that:

- (1) Expands the definition of "subdivision" to include the division of a structure for commercial or industrial use; or
- (2) Otherwise regulates land use activities.

A municipality may not enact an ordinance that expands the definition of "subdivision" except as provided in this subchapter. A municipality that has a definition of "subdivision" that conflicts with the requirements of this subsection at the time this paragraph takes effect shall comply with this subsection no later than January 1, 2006. Such a municipality must file its conflicting definition at the county registry of deeds by June 30, 2003 for the definition to remain valid for the grace period ending January 1, 2006. A filing required under this paragraph must be collected and indexed in a separate book in the registry of deeds for the county in which the municipality is located. [2001, c. 651, §3 (new) .]

I. The grant of a bona fide security interest in an entire lot that has been exempted from the definition of subdivision under paragraphs D-1 to D-6, or subsequent transfer of that entire lot by the original holder of the security interest or that person's successor in interest, does not create a lot for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter. [2001, c. 359, §5 (amd) .]

[2001, c. 651, §§1-3 (amd) .]

Adopted: November 8 2005

Amended: June 10, 2008

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