

Town of Cushing

Subdivision Regulations

Date: April 3rd. 2024

**Town of Cushing, Maine
Subdivision Regulations**

SUBDIVISION REGULATIONS

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SECTION I: PURPOSES.

These regulations provide an orderly process for review of proposed subdivisions as defined in Title 30-A, M.R.S.A. § 4401. They are intended to promote the safety, health and welfare of the people of the Town of Cushing and to protect natural and cultural resources. To this end, in approving subdivisions, the Planning Board shall consider the following criteria and before granting approval shall make findings of fact that the provisions of these Regulations have been met and that the proposed subdivision will meet the following criteria of Title 30-A, M.R.S.A. § 4404; namely, that the subdivision:

1. **Pollution.** Will not result in undue water or air pollution. In making this determination, the Board shall at least consider the elevation of the land above sea level and its relation to the flood plains; the nature of soils and subsoils and their ability to adequately support waste disposal; the slope of the land and its effect on effluents; the availability of streams for the disposal of effluents and the applicable state and local health and waste resource regulations.
2. **Sufficient water.** Has sufficient water available for the reasonably foreseeable needs of the subdivision.
3. **Municipal water supply.** Will not cause an unreasonable burden on an existing water supply, if one is to be utilized.
4. **Erosion.** Will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result.
5. **Traffic.** Will not cause unreasonable highway or public road congestion or unsafe conditions with respect to use of the highways or public roads existing or proposed.
6. **Sewage disposal.** Will provide for adequate solid and sewage waste disposal.
7. **Municipal solid waste disposal.** Will not cause an unreasonable burden on the ability of a municipality to dispose of solid waste and sewage if municipal services are to be utilized.
8. **Aesthetic, cultural and natural values.** Will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the Department of Inland Fisheries and Wildlife, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline.
9. **Conformity with local ordinances and plans.** Complies with a duly adopted Subdivision Regulation or Ordinance, Comprehensive Plan, Development Plan or Land Use Plan, if any. In making this determination, the Planning Board may interpret these ordinances and plans.
10. **Financial and technical capacity.** The applicant has adequate financial and technical capacity to meet the standards of this regulation.
11. **Surface waters.** Whenever situated, in whole or in part, within the watershed of any pond or lake or within 250 feet of any wetland, great pond, river or tidal waters, will not adversely affect the quality of that body of water or unreasonably affect the shoreline of that body of water.
12. **Groundwater.** The proposed subdivision will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of groundwater.

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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 the applicant 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.

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.

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 M.R.S.A. § 480(B)(9).

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

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 M.R.S.A § 480(B), none of the lots created within the subdivision have a lot depth to shore frontage ratio greater than 5 to 1.

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.

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.

20. **Land subject to liquidation harvesting.** Timber on the parcel being subdivided has not been harvested in violation of rules adopted pursuant to Title 12 M.R.S.A. 8869, § 14.

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SECTION II: AUTHORITY & ADMINISTRATION

1. **Authority**

These regulations are enacted under the authority granted to the Town by the statutes of the State Maine, and in accordance with the provisions of Title 30-A M.R.S.A. § 4403.

2. **Administration**

- A. The provisions of these Regulations shall apply to all of the land and buildings proposed for subdivision within the boundaries of the Town of Cushing and shall be administered by the Town of Cushing Planning Board.
- B. Fees and escrow deposits for reviews under this regulation shall be set by the Cushing Board of Selectmen.

3. **Procedure**

- A. In order to establish an orderly, equitable and expeditious procedure for reviewing subdivisions and to avoid unnecessary delays in processing applications for subdivision review, the Chairman shall prepare a written agenda for each meeting. The agenda shall be prepared no less than one week in advance of the meeting, distributed to the Board members and any applicants appearing on the agenda, and posted at the municipal offices, Town web site, and Post Office. At each stage of the process of subdivision review, applicants shall request to be placed on the Board's agenda at least fourteen (14) days by 12 noon in advance of a regularly scheduled meeting by contacting the Code Enforcement Officer. Applicants who attend a meeting but who are not on the Board's agenda may be heard only after all agenda items have been completed, and then only if a majority of the Board so votes. However, the Board shall take no action on any application not appearing on the Board's written agenda.
- B. At each stage of the process of subdivision review, applicants shall submit documents required for review, together with the prescribed fee, at least fourteen (14) calendar days by 12 noon prior to the regularly scheduled meeting at which the applicant wishes to be heard. Deadlines for submittal of materials subsequently requested shall be set by the Board.
- C. For all applications, the Code Enforcement Officer shall maintain a file of digital photographs of the application site, from before it is placed on the Board agenda, during any approved development as advisable, and after its completion.

Areas likely to be impacted by the application shall be brought to the Board's attention by the Code Enforcement Officer at the Pre-Application meeting.

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SECTION III: PRE-APPLICATION (STEP ONE)

1. **Purpose.** The purpose of the pre-application process is to identify the scope of the application and its submittal needs. The sketch plan meeting enables the applicant to present general information regarding the proposed subdivision to the Board. The meeting and site visit enable the Board to comment prior to the expenditure by the applicant of substantial sums of money on surveying, soils identification, and engineering.

2. **Procedure**
 - A. The applicant shall meet with the Code Enforcement Officer to review the approval process and to determine submittal requirements.

 - B. At a scheduled meeting with the Board, the applicant or the applicant's representative shall present a pre-application sketch plan and make a verbal presentation regarding the site and the proposed subdivision.

 - C. Following the applicant's presentation, the Board may ask questions, point out potential problems or issues for future discussions, and make suggestions to be incorporated by the applicant into the subsequent application. Substantive, lengthy discussions about compliance with review standards or waiver requests shall be postponed until the application is submitted.

 - D. At the discretion of the Board, the Planning Board Chairman shall schedule an on-site meeting to observe conditions at the site to be subdivided. The date set shall be scheduled so that at least a majority of the Planning Board members and the applicant will be in attendance. The Chairman may also request the Code Enforcement Officer to attend.

 - E. For an application of six (6) lots or fewer, the Board may at its discretion
 - 1) waive requirements for specific submittals and the application of specific standards subject to the limitations of Section VIII;
 - 2) may reduce administrative escrow; and
 - 3) may choose to accept an application as both a preliminary and final plan.

3. **Sketch plan (Pre-application Documents) submittal.**

In order to be placed on the Board's agenda, eight copies of the sketch plan and all supporting materials must be submitted fourteen (14) days by 12 noon prior to a regularly scheduled Planning Board meeting. The sketch plan may be a freehand penciled drawing. It shall show, in a general manner, the proposed layout of streets, lots, buildings and other features in relation to site conditions such as steep slopes, wet areas and woods. It is recommended that the sketch plan be superimposed on or accompanied by a copy of the Assessor's Map(s) on which the land is located. The sketch plan shall be accompanied by:

- A. A sketch plan application fee.

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- B. A copy of the deeds to the property. A copy of all covenants or deed restrictions, easements, rights-of-way, or other encumbrances currently affecting the property and all property within 500 feet of the application in which the applicant or owner has an interest, which shall
 - a) include procedures for turnover to a homeowner association of road property, road rights of way, common property, and responsibility for their maintenance; and
 - b) identify additional areas intended to be served by extension of its road or roads, and
 - c) define the basis for allocation of maintenance costs where development on private roads must occur by road extension.
- C. A copy of part of the U.S.G.S. topographic map of the area showing the outline of the proposed subdivision.
- D. A written description of the proposed development, existing conditions of the site, and how infrastructure and any common areas will be owned and maintained.

4. Site visit and contour interval

- A. Prior to the site visit, flagging shall be placed showing the approximate centerline of any proposed roads, intersections, and lot corners. If buildings are proposed, their approximate corners shall be flagged. The Board may choose not to conduct a visit when there is severe weather or snow or ice that would impede access or obscure conditions on the ground. Site visits shall be noticed as required by Title 1 M.R.S.A. § 401-410, and the public may accompany the Board. Minutes shall be taken in the same manner as for regular meetings.
- B. Within thirty days of the sketch plan meeting, the Board may hold a site visit of the property and inform the applicant in writing of the required contour interval for the Preliminary Plan.

5. Rights not vested.

The sketch plan meeting, the submittal or review of the sketch plan, and the on-site inspection shall not be considered the initiation of the review process for the purposes of bringing the plan under the protection of Title 1 M.R.S.A. § 302.

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SECTION IV: PRELIMINARY PLAN (STEP TWO)

1. Procedure

- A. Prior to submitting a preliminary plan, the applicant is encouraged to meet with the Code Enforcement Officer to discuss
- 1) waiver of both submittal requirements and standards, based on site conditions, and
 - 2) the presence on the site of any soils listed in Appendix B.

Within six months after the pre-application meeting, the applicant shall request to be placed on the Planning Board agenda, and shall submit documents required by the Planning Board for review, together with the prescribed fee and escrow deposit, to the Town Clerk at least fourteen (14) calendar days by 12 noon prior to the next regularly scheduled meeting at which the applicant wishes to be heard.

- B. Upon receiving an application for preliminary plan approval at a regularly scheduled Planning Board meeting, the Town Clerk on behalf of the Planning Board shall:
- 1) Issue the applicant a dated receipt; and
 - 2) Require the applicant to notify property owners abutting or within 500 feet of the proposed subdivision by registered return-receipt-requested mail on a form provided by the Board that an application for subdivision review has been submitted, specifying its location and a general description of the project, and to provide the Board with the receipts; and
 - 3) Notify the reviewing authority of a neighboring municipality if the proposed subdivision abuts or crosses a municipal boundary.
- C. Within forty five (45) days of receipt of an application, the Planning Board shall determine whether the application is complete, and whether to waive a submittal requirement. If the application is incomplete, the Planning Board shall notify the applicant, in writing, of the specific deficiencies. Until a complete application has been received, the Planning Board shall not begin its review of the application.
- D. The Planning Board Chairman may schedule a site visit. This meeting shall be jointly attended by the Planning Board and the applicant.
- E. Upon finding an application for preliminary plan approval complete, the Planning Board:
- 1) shall schedule a public hearing within thirty (30) days. The Planning Board shall give notice of the date, time and place, to be published twice in a local newspaper with the date of the first publication at least eight (7) days prior to the hearing.

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- 2) If any part of the subdivision is located within the Shoreland Zone, the hearing shall include simultaneous review of the application's compliance with the requirements of the Shoreland Zoning Ordinance; and
 - 3) shall notify the Code Enforcement Officer, Road Commissioner, Addressing Officer, Fire Chief and Rescue Squad Director of the proposed subdivision including the number of lots proposed, length of roadways, and proposed fire protection plan. The Planning Board shall
 - 4) request these officials to provide the Planning Board with written comment regarding the subdivision plan fourteen (14) days by 12 noon before the final plan review.
 - 5) may require independent review of submittals.
- F. The Planning Board shall, within thirty (30) days, or such interval mutually agreed to by both parties, after the public hearing, either approve, approve with conditions, or disapprove the preliminary plan.
- 1) Preliminary plan approval shall be based on compliance of the application with the standards and criteria of these Regulations, and with any conditions imposed by the Board to assure compliance. The Board shall specify its reasons for preliminary approval or denial of the application, for approval or denial of any request for a waiver of the need to comply with any standard, and for any condition imposed.

Approval of a preliminary plan shall not constitute approval of a final plan. Rather, it shall be viewed as a guide in the preparation of the final plan. The final application shall be consistent with all aspects of the preliminary approval.

- 2) In issuing its decision the Planning Board shall state in writing any conditions of approval, specifically:
 - a) The changes it will require in the final plan.
 - b) Any requirements associated with approval of waivers.
 - c) The kind of performance guarantee that the Planning Board will require.
- 3) Prior to the approval of a final plan the Planning Board may require additional changes in the final plan as the result of new information, and may request an additional site visit.

2. **Submittal requirements.**

A complete submittal for preliminary plan approval shall consist of the following information:

- A. **Subdivision application.** The applicant shall complete and sign eight (8) copies of the subdivision application, and submit it to the Town Clerk.
 - 1) All applications for plan approval shall be accompanied by an application fee and escrow deposit to be placed in a special account designated for that subdivision application, to cover the cost of independent consulting services required by the Board to review technical or legal aspects of the application. If the balance in this special account shall be drawn down by 75%, the Board shall notify the applicant and require that the original amount be restored. The Board shall continue to notify the applicant and require the original amount to be restored whenever the balance of the account goes below 25% of the original deposit. Any balance in the account

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remaining after a final decision on the subdivision application by the Board shall be returned to the applicant. The Board shall furnish to the applicant a record of the nature and amount of any expenditure made from the account. Unused funds shall be returned to the applicant within thirty (30) days after approval or denial of an application, provided current obligations have been satisfied. The fee and deposit shall be made payable to the Town of Cushing.

2) The application shall include the following in eight (8) copies:

- a) The names and addresses of the owner of record, any contract purchaser of the subject property, the applicant, and the person preparing the Plan. If any of the above is a corporation, its principals and officers shall be named; if a partnership, the general and limited partners shall be named. Also, the names of any of the above holding a property interest in abutting property.
- b) The names, and addresses of all owners of property abutting or directly across a road from the proposed subdivision; and of all property owners within five hundred (500) feet of the proposed subdivision, and the receipts of notices sent to them.
- c) A written justification for any waiver requested.

B. Location map. Eight (8) copies of a location map showing the relationship of the proposed subdivision to adjacent properties and the surrounding area. The location map shall show all area within five hundred (500) feet of property lines of the proposed subdivision. The location map shall show:

- 1) Locations of existing and proposed roads, and names of existing roads.
- 2) Boundaries of land use districts.
- 3) The outline of the proposed subdivision together with its proposed access and road layout, all property within 500 feet of the application in which the applicant or owner has an interest, and abutting properties requiring access through the subdivision.

C. Preliminary plan. The preliminary plan shall be submitted in eight (8) copies drawn to a scale of not more than one hundred (100) feet to the inch. Where practical the sheet size of drawings shall be 24" x 36" inches. Materials prepared by professionals shall bear their Maine seal and signature. The following information shall either be shown on the preliminary plan or accompany the application for preliminary approval.

- 1) the date the plan was prepared, magnetic north arrow, and graphic map scale.
- 2) Proposed name of the subdivision, and the Tax Assessor's Map and lot number(s).
- 3) An actual field survey of the boundary lines of the tract, giving complete descriptive data by bearings and distances, made and certified by a licensed land surveyor. The corners of the land to be subdivided shall be located on the ground and

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marked by monuments. The plan shall indicate the type of permanent monument to be set or found at each lot corner.

- 4) A copy of the deeds to the property. A copy of all covenants or deed restrictions, easements, rights-of-way, or other encumbrances currently affecting the property and all property within 500 feet of the application in which the applicant or owner has an interest, which shall
 - a) include procedures for turnover to a homeowner association of road property, road rights of way, common property, and responsibility for their maintenance; and
 - b) identify additional areas intended to be served by extension of its road or roads, and
 - c) define the basis for allocation of maintenance costs where development on private roads must occur by road extension.
- 5) Proposed uses. The number of acres within the proposed subdivision. The boundary of any land use or Resource Protection District affecting the subdivision, and their acreages. The location and ownership of any retained land. In the Shoreland Zone: area, dimensions, setbacks and lot coverage for proposed land uses.
- 6) The location of existing buildings, rock outcrops, graves, historic or archaeological features, and the outline of existing and retained tree canopy. The location of ponds, streams or wetlands on or adjacent to the proposed subdivision. Locations adjacent to the site shall be based on existing data.
- 7) Delineation of the upland edge of protected waters and wetlands. Acreages of wetlands. Lines of required setback from protected waters. Defined drainage channels.
- 8) If any portion of the subdivision is in a flood prone area, the contour boundaries of any flood hazard areas and the one hundred (100) year flood elevation; a note on the final plat shall state: "The lowest floor elevation shall be not less than one foot above the 100 year flood elevation".
- 9) Existing contour lines at the interval specified by the Planning Board, showing elevations in relation to National Geodetic Vertical Datum, 1929; limits of proposed site disturbance, including disposal sites for road debris and stumps.
- 10) Verification of the presence or absence, on or abutting the site, of historic or archaeological features identified by the Maine Historic Preservation Commission; of any significant wildlife habitat identified by the Maine Department of Inland Fisheries and Wildlife; and of any rare and irreplaceable natural areas identified by the Maine Department of Environmental Protection.
- 11) The location and size of existing and proposed culverts, ditches and drainage ways on or adjacent to the property to be subdivided.
- 12) The location, width and right-of-way of existing and proposed roads, including proposed future extensions to serve abutting property, with enough preliminary elevation data to evaluate the fit of the road to the terrain. Names for new roads

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approved by the Town Addressing Officer. Road access permit. The location of proposed common areas and easements containing roads, utilities, drainage channels, erosion and sediment control and fire protection improvements.

- 13) The number of dwelling units. In a commercial subdivision or subdivision of a building, proposed square footage of building areas. Proposed lot lines with approximate dimensions and lot areas of land suitable for development.
- 14) Description of the proposed water supply system, and any application for a required permit. A permissible well location on each one-family dwelling lot.
- 15) For subsurface sewage disposal systems: test pit analyses, prepared by a Licensed Site Evaluator, with the HHE-200 form for each lot, and test pits located on the preliminary plan. For a private treatment facility licensed by the Department of Environmental Protection, location of the facility on the preliminary plan.
- 16) A preliminary storm water management plan showing all drainage patterns and the type and location of all structures.
- 17) An erosion and sediment control plan.
- 18) Preliminary fire protection plan information. Type and location of any structures.
- 19) The location of any open space to be preserved within the subdivision and a copy of the proposed legal document to accomplish this end. All parcels of land proposed to be dedicated to public use and a copy of the proposed deed description.
- 20) A preliminary landscape plan if required by Section VI.F, VI.N, or VI.O.
- 21) All State and Federal approved permits that are required, including but not limited to permits under the Site Location Development Act, the Natural Resource Protection Act, or the Stormwater Management Law, from the Manufactured Housing Board, or from the Department of Human Services for a water or sewer permit.
- 22) Building footprints, elevations and landscape plan for cluster development.
- 23) Building footprints, elevations, parking and landscape plan for commercial subdivisions and buildings containing multiple dwellings.
- 24) A report by a Professional Engineer supporting proposed development on or regrading of soils shown on the site in the Knox & Lincoln County Soils Survey if listed in Appendix B.

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SECTION V: FINAL PLAN (STEP THREE)

1. Procedure

- A. Within nine (9) months after approval of a preliminary plan, the applicant shall request to be placed on the Planning Board agenda and shall submit eight copies of all documents required by the Planning Board for review, together with the prescribed fee and escrow deposit. The request and submittal shall be made to the Town Clerk at least fourteen (14) calendar days by 12 noon prior to the next regularly scheduled meeting at which the applicant wishes to be heard.
- B. Upon finding an application complete at a regularly scheduled Planning Board meeting, the Planning Board:
 - 1) may review the application without a public hearing, provided the application for final approval is determined to be consistent with the preliminary approval; or
 - 2) may continue a hearing without notice, if the hearing had previously been scheduled to a date certain; or
 - 3) on finding substantial variation from an approved preliminary plan, may schedule a public hearing within thirty (30) days. The Planning Board shall give notice of its date, time and place, to be published twice in a local newspaper with the date of the first publication at least seven (7) days prior to the hearing. If any part of the subdivision is located within the Shoreland Zone, the hearing shall include review of the application's compliance with the requirements of the Shoreland Zoning Ordinance; and
 - 4) shall review any submissions of the Road Commissioner, Addressing Officer, Fire Chief and Rescue Squad Director.
 - 5) may require independent review of submittals.
- C. The Planning Board shall, within forty five (45) days after a public hearing, either approve, approve with conditions, or deny the final plan.

Final plan approval shall be based on compliance of the application with the standards and criteria of these Regulations and with any conditions imposed by the Board to assure compliance. The Board shall specify its findings of fact and reasons for approval of the application, for any condition of approval, or for denial in writing to the applicant.

2. Submittal requirements.

The application for final plan approval shall include the following, in eight (8) copies unless otherwise noted. Materials prepared by professionals shall bear their Maine seal and signature.

- A. All information submitted with the application for preliminary plan approval, and any modifications, whether needed to comply with conditions of approval required by the Board, or initiated by the applicant, together with a written description of all modifications.

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- B. Construction drawings bearing the signature and seal of a licensed Professional Engineer showing all road, storm water management, and site-based fire protection system improvements, at a scale of not more than 100 feet to the inch, on 24" x 36" sheets where practical. Drawings shall include the following:
- 1) Date, scale, and magnetic or true north point.
 - 2) Plan, profile and typical and critical cross-sections of roads
 - 3) Road right-of-way, edge of travel lanes, edge of shoulder.
 - 4) Road intersections and turning radii, and centerline gradients.
 - 5) Complete road curve data.
 - 6) Storm water drainage and treatment structures.
 - 7) Site-based fire protection system components or sprinkler specifications and covenant requirement.
 - 8) All existing and proposed utility components.
 - 9) Erosion and sediment control plan details.
- C. A final plat at a scale of not more than 100 feet to the inch, on 24" x 36" sheets where practical, two (2) on reproducible, stable-based transparent originals, and eight (8) copies. The plat shall include:
- 1) Date, scale, and magnetic or true north point.
 - 2) Meets and bounds of the boundary of the subdivision, its right-of-way lines, lot lines, common area lines, and easements. Where practical these shall be tied to established reference points.
 - 3) Lot numbers and square footage, road names, identification of the use of easements and common areas.
 - 4) Wetland lines, Shoreland Zone boundaries and applicable setback lines, Resource Protection District lines, line of any 100-year flood elevation.
 - 5) Written conditions of approval and waivers of standards, if applicable.
 - 6) Space for endorsement by the Planning Board.
- D. Written offers of cession, in a form certified as satisfactory by the Town Attorney, of any land proposed to be dedicated to the Town.
- E. For construction of roads, storm water management and fire suppression improvements, a performance guarantee in a form and amount approved by the Planning Board shall be required.
- F. A copy of the Maine Department of Human Services permit(s), if the applicant proposes to provide a central water supply system or shared subsurface sewage disposal system(s).
- G. Copies of required State or Federal permits.
- H. Any report required by the Board to evaluate the suitability of soils for development on a property located on a Coastal Bluffs or Coastal Landslides Hazards map.

3. Approval and filing

- A. No final plan shall be approved by the Planning Board as long as the applicant is in violation on a previously approved plan.

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- B. At the time the Planning Board grants final plan approval:
 - 1) The Board may permit the Plan to be divided into two or more phases of construction, subject to any conditions the Planning Board deems necessary in order to insure the orderly development of the Plan.
 - 2) Any conditions of approval, and any waiver and the date it was granted, shall be noted on the final plan.
 - 3) All State and Federal permits and all other application approvals must have been submitted.
 - 4) Upon making findings of fact and determining that the application complies with all State and local Subdivision Regulations and criteria and all local regulations, and voting to approve the subdivision, the Planning Board shall sign the final plat. Two signed paper copy and one reproducible copy shall be filed at the Town Office.
- C. Any subdivision not recorded in the Knox County Registry of Deeds by the applicant within ninety (90) days of the date upon which the plan is approved and signed by the Planning Board shall be considered null and void.
- D. Changes, erasures, modifications, or revisions made in any final plan after the Planning Board has endorsed its approval in writing on it, and before it is recorded, shall render the approval null and void.
- E. The approval by the Planning Board of a subdivision plan shall not be deemed to constitute or be evidence of any acceptance by the Town of any road, easement, or other open space shown on such plan. When a park, playground, or other recreation area is proposed to be dedicated to the Town, approval of the Plan shall not constitute an acceptance of such areas by the municipality. The Planning Board shall require the Plan to contain appropriate notes to this effect. The Planning Board may also require the filing of a written agreement between the applicant and the Municipal Officers covering future deed and title, dedication, and provision for the cost of grading, developing, equipping, and maintaining any such area.
- F. Failure to commence substantial construction of the subdivision within two (2) years of the date of approval and signing of the Plan shall render the Plan null and void. The developer may apply for a two-year extension to commence construction. The performance guarantee or conditional agreement shall also be extended by two years if an extension is granted.
- G. If an application is denied, a subsequent application shall not be accepted for processing by the Board for three (3) months.

4. Amendment of approved plans

- A. An applicant for an amendment to a previously approved plan shall ask to be placed on the Planning Board agenda at least fourteen (14) calendar days by 12 noon before a regularly scheduled Planning Board meeting. If the amendment involves the creation of additional lots, the applicant shall follow the procedure for preliminary and final plan approval.

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Documents required for review, together with the prescribed fee and escrow deposit, shall be submitted at least fourteen (14) calendar days by 12 noon prior to the regularly scheduled meeting at which the applicant wishes to be heard.

If the amendment consists primarily of lot line and lot area changes, the Planning Board may at its discretion waive requirements for a complete application, except for notice to the owners of the lots being modified, and a survey of the lots being modified bearing the professional seal of the preparer. The Board shall act to approve, approve with conditions, or deny the application within fortyfive (45) days of finding an application complete.

- B. The applicant shall submit one (1) copy of the approved plan, and eight (8) copies of the proposed amendment.
- C. The scope of review shall be limited to those portions of the plan which are proposed to be changed, except that when the design or construction of an existing subdivision road does not meet the standards of this regulation for the traffic to be placed on it by the proposed subdivision, any approval shall be conditional on improving the road to the standards of this regulation.
- D. The amended plan shall comply with Title 30A M.R.S.A. § 4407 and be recorded in the Knox County Registry of Deeds as set forth in Subsection V.2.C. with reference to the plan previously recorded. Two signed paper copies and one reproducible copy shall be filed at the Town Office.

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SECTION VI: PERFORMANCE STANDARDS

In reviewing applications for the subdivision of land, the Planning Board shall consider the following general requirements, with such professional assistance as the Board deems warranted by the submittal. In all instances the burden of proof shall be upon the applicant that the proposed subdivision is eligible for approval and complies with all requirements of these Regulations and the criteria set out in Section I.

1. Required improvements

- A. All required common subdivision elements, including but not limited to, roads, storm water drainage and treatment systems, utilities, fire protection facilities, open space improvements, open water access and any required centralized water supply and sanitary sewage system, together with the cost of such review and certification of completion as the Board may require, shall be provided at the expense of the developer.
- B. Deed covenants satisfactory to the Board shall establish in layman's language all responsibilities for maintenance of all common subdivision elements.
- C. Deed covenants satisfactory to the Board shall establish in layman's language the conditions and timing for turnover of subdivision roads to an association of the owners of lots served by the roads.
- D. For any subdivision proposed, a homeowners' association shall be formed under Title 13B MRSA §101 et sec. to manage and make assessments for ongoing maintenance and repairs of common subdivision elements, particularly including but not limited to roads and fire protection.

2. Conformity

Any proposed subdivision shall be in conformity with the provisions of pertinent state laws and local ordinances and regulations.

3. Natural, cultural and aesthetic values

- A. Recognizing scenic, natural and cultural values,
 - 1) Road and lot layouts shall be adapted to the topography. Extensive grading and filling shall be avoided as far as reasonably possible.
- B. To preserve the decision to remove or retain trees for the ultimate lot owner,
 - 1) Prior to the sale of a lot with an existing tree canopy of 10,000 square feet or less, only trees essential to its reasonable development may be removed.
 - 2) Prior to the sale of a lot with a larger tree canopy, not more than 30,000 square feet of tree canopy may be removed, provided that the tree canopy is not reduced below 10,000 square feet.

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- 3) Except for surplus topsoil from roads, parking areas and building excavations, topsoil shall not be removed from the site.
- 4) Where the Maine Department of Inland Fisheries and Wildlife has designated an area on or adjoining the proposed subdivision as significant wildlife habitat, the plan shall incorporate measures required by the Department to protect an essential habitat.
- 5) Where the Department of Conservation has designated a natural area on or adjoining the site rare and irreplaceable, the plan shall incorporate measures required by the Department to protect certain designations.
- 6) Where the Maine Historic Preservation Commission has designated an historic or prehistoric resource on or adjoining the proposed subdivision for protection, the plan shall incorporate measures required by the Department.

C. Land in the subdivision to be reserved as common area shall be labeled "Common area" on the plan.

4. Land suitable for development

A. The Planning Board shall not approve for development such portions of any proposed subdivisions that:

- 1) Are located within the one hundred (100) year flood zone.
- 2) Do not comply with the uses permitted in a Resource Protection District.
- 3) Are in a right-of-way; or in an easement for transmission of electricity or electrical signals; or in an easement or common area containing fire ponds or storm water management improvements such as ponds and defined drainage ways.
- 4) Are within delineated wetlands, except as permitted by the Natural Resources Protection Act (NRPA) and shown on an approved wetlands survey.
- 5) Are created by filling or draining a pond or wetland, except by NRPA permit.
- 6) Are in an easement or common area in which development is prohibited by order of the Maine Department of Inland Fisheries and Wildlife for protection of significant wildlife habitat, by order of the Department of Conservation for the protection of a rare or unique natural feature, or by order of the Maine Historic Preservation Commission for protection of a historic feature.
- 7) Have been cited for violation of the rules of timber harvesting set out in Title 12 M.R.S.A. 8869 § 14 within the previous five years, unless the citation has been overturned by the Superior Court.
- 8) Contain a violation of Section VI.3.B made within two years.

B. Where part of a property has been identified on the Maine Geological Survey maps of Coastal Landslide Hazards or Coastal Bluffs as having soils potentially unsuitable for

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development, evaluation of the site's suitability for development shall be provided by licensed professional with training and experience in land stability.

5. Lots

- A. No lot may be divided or subdivided without Planning Board approval.
- B. When any subdivision tract is further subdivided, a subdivision amendment application shall be submitted to the Board together with written approval of the Home Owners Association.
- C. Except in mobile home parks, cluster developments, and for non-residential uses in subdivisions, the following shall apply:
 - 1) Lots shall have a minimum of 40,000 square feet of land suitable for development for each dwelling unit as set out in Section VI.4.
 - 2) Lot shape shall permit a circle 150 feet in diameter to be completely contained within the lot.
 - 3) Each lot shall have a minimum road frontage of 150 feet measured as a straight line between the points of intersection of lot lines with the road right-of-way, except that on a cul-de-sac, frontage may be reduced to 75 feet, and at T or Y turns, each leg of the turn shall suffice for frontage for a single lot.
 - 4) Lots abutting a tidal water body shall have a minimum frontage of 150 feet measured as a straight line between the points of intersection of lot lines with the mean high water line. Lots abutting a non-tidal water body shall have a minimum frontage of 200 feet measured as a straight line between the points of intersection of lot lines with the normal high water line. If any proposed lots abut a river, stream, brook, great pond or coastal wetland as these features are defined in Title 38 M.R.S.A. § 480-B, none of the lots created within the subdivision shall have a lot depth to shore frontage ratio greater than 5 to 1.
 - 5) The Board may waive the road frontage requirement to permit up to 15% of the lots in a residential subdivision to be back lots, provided their access is from a subdivision road. The driveway accessway shall be part of the back lot, not an easement. It shall be at least twenty feet wide. Its area shall not be included in calculating the minimum size of the back lot.
- D. If a portion of the parcel being subdivided is proposed to be retained or reserved, such retained land shall be labeled "Retained land of _____, owner" on the plan. The Planning Board shall take the retained land into account in determining whether the proposed subdivision meets the subdivision review standards. The retained land shall not be divided or developed for a period of five years after approval of the subdivision plan unless an amended subdivision plan is first approved by the Planning Board.
- E. On each lot, a five-foot building setback line shall border property lines shared with other lots, to assure space on each lot for building maintenance.

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6. Cluster development

A. **Purpose** The purpose of cluster development is to permit reduced lot sizes accompanied by common area.

B. Standards

- 1) Proposed uses must conform to the uses permitted in the district in which the land is located.
- 2) The property must contain at least 40,000 square feet of land area suitable for development as defined in Section VI.4 for each proposed dwelling unit.
- 3) Each lot and building in a cluster development must meet all the standards of this Regulation and other Town ordinances, except those standards dealing with lot size and configuration. The Board may modify the provisions of these Regulations relating to dimensional requirements as set forth below to permit flexibility in approaches to housing and environmental design in accordance with the following guidelines. This shall not be construed as variances granted to relieve hardship, and action of the Board of Appeals shall not be required.
- 4) The Planning Board may approve reduction of the size and frontage of a lot for a detached one-dwelling or two-dwelling building down to 25% of district requirements. Land not in lots or roads shall be owned by a dwelling unit owners' association, or the Town, or a land trust.
- 5) No building shall be located within twenty five (25) feet of another building or parcel property line. Building height as viewed from any other building shall not exceed two stories.
- 6) Schematic building plans shall define the dimensional limits of all buildings. Building appearance shall reflect traditional New England building forms and materials and shall be depicted in submittals.
- 7) The site plan shall be prepared under the direction of a landscape architect.
- 8) Common open space shall be defined by metes and bounds.
- 9) The plan shall meet all performance standards except as set out in Section VI.6.

7. Ground water

- A. Deed covenants for subdivisions with lots smaller than 60,000 square feet shall contain the following note: "Nitrates in excess of State Maximum Exposure Guidelines may occur in groundwater in subdivisions of this size. Periodic testing of well water is recommended to determine any need for water treatment."
- B. Deed covenants for subdivisions located in whole or in part in areas mapped on Plate A of the Emery & Garrett Hydrogeological Report for Cushing as likely to experience salt water intrusion shall contain the following note: "Wells in this area may experience salt water intrusion, requiring corrective treatment."

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8. Storm water management

A. General provisions

- 1) Adequate provision shall be made for disposal of all storm water generated within the development, and any drained ground water.
- 2) The storm drainage system shall not adversely affect neighboring properties, downstream water quality, or cause unreasonable soil erosion. Whenever possible, run-off waters shall be absorbed on-site to minimize discharges from the site.
- 3) The natural state of watercourses, swales, and floodways shall be preserved to the extent practicable.

B. Design standards

- 1) Management of storm water shall meet the applicable standards and practices set forth in the latest editions of *Chapter 500 Stormwater Management Rules* and *Stormwater Management for Maine* as amended, Maine Department of Environmental Protection publications, and the standards of professional engineering practice.
- 2) Storm water run-off shall be treated by the use of best management practices equivalent to those set forth in *Stormwater Management for Maine*.

C. Construction standards

- 1) The minimum pipe size for any storm drainage pipe shall be fifteen (15) inches. Pipe shall be installed in compliance with the pipe manufacturer's written specifications.
- 2) Inlets and outlets shall be stabilized against soil erosion by stone riprap or other suitable materials to reduce storm water velocity and to absorb energy from flowing waters.
- 3) All stormwater management measures shall be constructed in accordance with the design documents of *Chapter 500 Stormwater Management Rules* and *Stormwater Management for Maine* as amended.
- 4) Easements of sufficient width for maintenance shall be provided for existing and proposed drainage ways.
- 5) Storm water management improvements shall be certified to be in compliance with these standards before any lot in the subdivision may be sold.

9. Erosion & sediment control

- A. The erosion and sediment control plan shall comply with the latest edition of *Maine Erosion and Sediment Control Best Management Practices* (BMPs), available at the Town Office and on the Maine Department of Environmental Protection web site.

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- B. Subdivision documents shall specify measures to prevent unreasonable erosion of soil or sediment beyond the site or into a protected natural resource such as a river, stream, brook, lake, pond or wetland. Barriers to keep sediments from leaving the site or entering a protected natural resource shall be shown on plans.
- C. Within the Fresh Pond watershed, maximum annual post-development release of phosphorous from each parcel shall be its share of the allocation allowed in the Maine Stormwater Best Management Practices Manual, Vol. II, Appendix C, based on its percentage of developable acreage in relation to the total developable acreage in the watershed.

10. Roads

A. General requirements

- 1) The proposed subdivision shall provide for safe conditions on public and private roads and safe access to and from them, as set forth in standards below.
- 2) All subdivision roads shall be located in rights of way.
- 3) Roads shall provide access to each lot, fire pond, utility easement, and common area or easement within a subdivision.
- 4) Subject to Planning Board approval, a subdivision's private road may be extended to serve additional dwellings or an additional subdivision, provided
 - a) the road has been turned over to the initial subdivision's association, and
 - b) both the initial subdivision's application and its association documents informed the Planning Board and the buyers of the initial lots, respectively, of the possibility of adding lots by extending the road. .
- 5) The Board may, for good land planning purposes, require a right-of-way or easement extension to adjoining property.
- 6) Where a proposed subdivision borders an existing narrow road (not meeting the width requirements of a Road Ordinance), the Board may require a reserve area for widening or realigning the road.
- 7) An applicant proposing acceptance of any road for public ownership and maintenance shall provide the Town with certification by a Professional Engineer licensed in the State of Maine that the road meets all design and construction standards for public roads before a warrant for a vote of acceptance by the legislative body of the Town can be prepared.

B. Design standards

- 1) The following design standards apply to all subdivision roads:
 - Minimum right-of-way width serving over 5 lots.....50 feet
 - Minimum right-of-way width serving up to 5 lots.....40 feet
 - Minimum travel way widths

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Roads serving 20 or more lots.....	20 feet
Roads serving 6-to 19 lots.....	16 feet
Roads serving up to 5 lots.....	14 feet
Shoulder width.....	3 feet
Maximum grade.....	10%
Maximum grade within 75 feet of intersection.....	3%
Minimum centerline radius on curves.....	100 feet
Minimum tangent between reverse curves.....	50 feet
Unpaved roadway/shoulder crown.....	1/2 inch per foot
Paved roadway crown	1/4 inch per foot
Maximum angle of road intersections.....	70°

- 2) The centerline of the roadway shall be the centerline of the right-of-way.
- 3) Dead-end roads shall provide a turn-around in the shape of a T, Y or cul-de-sac.
 - a) Each leg of a T or Y turn shall have a fifty (50) foot wide right-of-way, a forty (40) foot long length outside the road right-of-way, and an eighteen (18) foot wide travel way. The travel way radius into each leg shall be not less than thirty five (35) feet.
 - b) A cul-de-sac shall have a sixty five (65) foot property line radius, fifty (50) foot outer edge of travel way radius, and a twenty-six (26) foot travel way. The entry and exit radius from the roadway into the cul-de-sac shall be not less than thirty five (35) feet.
 - c) Maximum grade in the turn area shall not exceed 5%.
- 4) Grades, intersections and sight distances:
 - a) Grades of all roads shall conform in general to the terrain, so that cut and fill are minimized while maintaining the grade standards above.
 - b) All changes in grade shall be connected by vertical curves to provide for the minimum sight distance below.
 - c) The design speed limit of all subdivision roads shall be 20 miles per hour, with a sight distance of 155 feet. Maximum speed shall be posted at all entrances from public roads.

Where new road intersections or driveway access points are proposed, sight distance, as measured along the road onto which traffic will be turning, shall be 155 feet. Where necessary, lots shall be cleared of all growth and sight obstructions, including ground excavation, to achieve the required visibility.

- 5) For the safe and efficient operation of emergency vehicles,
 - a) Driveways over 200 feet long shall provide a turn-around that meets the turn-around travel way requirements for roads.
 - b) Driveway grades shall not exceed 10%, and shall not exceed 5% in turn-around areas.

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- c) The design of driveway aprons and entrance aprons shall comply with the Town Road Design and Construction Ordinance.
- d) These requirements shall be incorporated in lot owner deed restrictions.

C. Construction standards

Paved road construction shall comply with the Town Road Design and Construction Ordinance. Unpaved roads shall comply with the following:

- 1) Minimum thickness of material after compaction:

Aggregate Sub-base course	15"
Aggregate base course	3"

- 2) Preparation
 - a) Prior to any disturbance of the

site, ditches along the frontage of the proposed subdivision on a public road shall be brought into compliance with MDOT standards for the post-development volume they are proposed to convey. This activity shall comply with any permit required by MDOT.

- b) Before any clearing has started on a new right of way, the centerline and sidelines of the new road shall be staked or flagged at fifty (50) foot intervals.
- c) Before subgrade construction is started, the entire right-of-way shall be cleared of all stumps, roots, brush, and other objectionable material. All ledge, large boulders, and tree stumps shall be removed from the right-of-way and disposed of as set forth in approved construction plans.
- d) All organic materials shall be removed to a depth of two (2) feet below the subgrade of the roadway. On subsoils not suitable for roadways, one of the following methods shall be employed prior to placement of sub-base material:
 - i. the subsoil shall be removed from the roadway to a width determined by projecting the roadway shoulder crown downward and outward at a slope of 1:1, and to a depth of two feet below the subgrade, and replaced with granular borrow, or
 - ii. a geotextile approved by Maine Department of Transportation shall be installed directly on the unsuitable material according to the manufacturer's instructions.
- e) Side slopes less than or equal to a slope of three (3) feet horizontal to one (1) foot vertical shall be graded, limed, fertilized, and seeded to produce a vigorous stand of vegetation. Side slopes greater than 3 to 1 shall be designed using best management practices.
- f) Compaction of roadway materials:

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- i. For materials located below subgrade, materials shall be compacted to 90% of compaction standard D-598 of the American Society of Testing Materials.
 - ii. For materials located above subgrade, materials shall be compacted to 95% of compaction standard D-1557 of the American Society of Testing Materials.
- g) All underground utilities shall be installed prior to paving to avoid cuts in the pavement.

3) Bases

- a) The Aggregate Sub-base 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 (3) inch square mesh sieve shall meet the following grading requirements:

Sieve designation	Percentage by weight passing square mesh sieve
1/4 inch	25-70%
No. 40	0-30%
No. 200	0-7%

Aggregate for the sub-base shall contain no particles of rock which will not pass the six (6) inch square mesh sieve.

- b) 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 two (2) inch square mesh sieve shall meet the following grading requirements:

Sieve designation	Percentage by weight passing square mesh sieve
1/2 inch	45-70%
1/4 inch	30-55%
No. 40	0-20%
No. 200	0-5%

Aggregate for the base shall contain no particles of rock which will not pass the two (2) inch square mesh sieve.

- D. **Cleanup** Following road construction, the applicant shall conduct a thorough clean-up of stumps and other debris resulting from road construction. If on-site deposit of the stumps and debris is proposed, deposit areas shall be covered with fill and topsoil, limed, fertilized, and seeded.
- E. **Road names and signs** Road names and name sign specifications shall conform to the requirements of the Town of Cushing Addressing Committee. Traffic control devices shall conform to the Manual of Uniform Traffic Control Devices to the satisfaction of the Town of Cushing Road Commissioners. The applicant shall furnish and install all required signs for road names, traffic safety, and speed limits.

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F. Ditches & culverts

- 1) Ditches and culverts shall be sized to carry anticipated runoff. Ditch depth shall be at or below the depth of the road sub-base. For new roads, ditch depth shall be not less than 24 inches below the surface of the travel way.
- 2) Culverts shall provide continuous drainage at intersections, driveways and entrances. Culverts shall be at least 15" in diameter. At driveways, culverts shall be 30 feet long. At intersections and entrances, culverts shall extend at least 5 feet beyond the edge of pavement.

G. Certification Certification of road construction shall be provided as set forth in Section VII.

11. Fire protection

A. General Requirements Fire protection shall be provided in the form of a site-based water supply system.

B. Site-based system

- 1) A fire pond system shall provide a minimum of 150,000 gallons of stored water available for the purpose of supplying the fire flow requirements of 1,000 gallons per minute. In the absence of a viable pond, one 10,000 gallon cistern shall be provided for every five lots, or portion thereof. The system shall be designed by a Professional Engineer acceptable to the Fire Chief or other Fire Department officer designated by the Chief. The minimum 150,000 gallons of water shall be calculated between the top side of the dry hydrant suction screen and the bottom of 18 inches of water ice.
- 2) Fire ponds shall be located in a common area or easement. The subdivision Plan shall depict the location of the pond and the means of access to the pond, including a turnout if one is required. The maximum distance from the dry hydrant or the drafting point of the pond to any lot within the subdivision shall be no greater than 2,000 feet by road.
- 3) Prior to approval of the preliminary plan, the applicant shall provide a detailed plan of the water supply system, including the pond, cistern, dry hydrant, piping, overflow, access road and turnout to the satisfaction of the Fire Chief. The detailed plan shall be consistent with the final subdivision plan.
- 4) Prior to any building within the subdivision being constructed or sold, the fire protection water supply system, including pond, cistern, dry hydrant, piping and access road and turnout shall be installed in good working order, tested to the satisfaction of the Fire Chief, and certified as set forth in Section VII.
- 5) The Town shall inspect all fire ponds, cisterns and dry hydrants on an ongoing basis. If such infrastructure are found to be inaccessible, inadequately maintained or non-functioning in order to provide fire protection, regardless of cause, the Fire Chief shall notify the owners of lots benefited by the fire protection elements of their obligation to repair or maintain them. If the work is not performed within the time

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period stated upon demand by the Fire Chief, he or she may authorize the work to be done by the Town, and shall bill owners of lots benefitted by the fire protection element on a pro-rata basis for the work. This subsection applies to all new or amended subdivisions.

C. Access

- 1) When a dry hydrant is located adjacent to a public road or a subdivision road, the fire department shall be provided with turnout space outside the traffic lane.
- 2) In case the dry hydrant cannot be placed next to a public road or a subdivision road, an access road and turnout to the dry hydrant area shall be provided. The access road and turnout shall allow a fire department pumper to connect to the dry hydrant connection with one 10 foot length of hard suction hose.
- 3) Any fencing of the dry hydrant access road area is subject to the written approval of the Fire Chief. Keys to the lock of any gate shall be under the control of the Fire Chief.

D. Fire pond design and construction

- 1) Fire ponds shall be designed with a 2 horizontal to 1 vertical sloped banking with a minimum water depth of 10 feet.
- 2) The water storage level shall be maintained at all times by one or a combination of the following: a spring, well point, pumping facility, rain or snow runoff, or other method approved by the Chief.
- 3) Construction, including overflow system, stabilization and maintenance of the pond and surrounding area shall be consistent with section G-2 of the Maine Erosion and Sediment Control BMP.
- 4) A strainer shall be placed into the pond with a depth over strainer sufficient to draw water at a rate of 1,000 gallons per minute without whirlpooling.
- 5) A dry hydrant shall be provided where the distance from the fire pond to the nearest fire truck access is more than 30 feet.

E. Dry hydrants

- 1) A minimum of 8-inch piping and fittings shall be utilized from the screen to the 90-degree elbow.
- 2) Piping and fittings shall be a minimum of schedule 40 rating. The steamer hose connection shall be 4 and 1/2 inch, National Standard thread.
- 3) The riser piping and 90-degree elbow shall be 8 inch.
- 4) The piping from the suction screen to the 90-degree elbow below the ground shall be schedule 40 steel or PVC.

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- 5) All pipe connections shall be made in compliance with the written specifications of the manufacturer of the pipe material.
 - 6) The 90-degree elbow below ground shall have 6 feet of cover from the finished grade.
 - 7) The maximum lift permitted shall be 15 feet as measured from the surface of the water to the center of the suction inlet of the pumper.
 - 8) The riser piping shall be exposed above grade level 24 inches as measured from the center of the dry hydrant opening to the grade level of the fire apparatus position.
- F. **Waivers** Waivers to this section may be granted by the Planning Board in accordance with Section VIII of these Regulations, after review and comment from the Fire Chief, and in accordance with the following additional conditions.
- 1) A waiver granting relief from construction of a fire pond within the subdivision may be granted only if permanently accessible water supplies, such as large streams, rivers, quarries, fire ponds etc. exist within the distance requirements set forth in Article VI.K.2.b above, and meet or exceed the fire flow and water reserve requirements set forth in Article VI.K.2.a above, or if the applicant demonstrates that due to soil conditions or other considerations, a pond cannot be supported. In case a pond cannot be supported, underground storage tanks or cisterns, the size and number of which shall be determined by the Fire Chief, will be required as an alternative source of fire protection.
 - 2) Waivers to the minimum gallonage requirements may be granted for subdivisions of less than 7 lots, if the fire load requirements (such as wildfire interface conditions) would enable a gallonage reduction. Waivers under this Section may be granted only with the written approval of the Chief.

12. Utilities

- A. Utilities shall be installed in a timely manner during road construction to prevent re-excavation of the finished road.
- B. Utility easements shall provide access from roads for installation and maintenance of electric, telephone, and cable services and any improvements made for storm water management, fire protection facilities, or erosion and sediment control.

13. Monuments

- A. Permanent monuments shall be set at all corners and angle points of subdivision boundaries and of each lot.
- B. All monuments shall be referenced on the final plan. They shall be secured according to the standards of the Maine Board of Land Surveyors.

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- C. All corners of boundaries and wetlands shall be marked with capped iron rod not less than five eighths (5/8) inch in diameter. Such rods shall be driven securely so that removal or vandalism is discouraged. Rods shall extend at least 24" above the ground in wooded areas and be clearly painted or marked for ease of locating. In ledge or stone, all rods will be set in borings.

14. Buildings containing multiple dwellings

- A. Building height shall not exceed 35 feet.
- B. Buildings shall be located a distance from property lines equal to twice their height.
- C. Two off-street parking places shall be provided for each dwelling unit.
- D. A landscape plan shall show buildings, parking, buffer plantings and installations of lighting, signage and essential services.

15. Commercial subdivision

- A. Building height shall not exceed 35 feet.
- B. Buildings shall be located a distance from property lines equal to twice their height.
- C. Sufficient parking to serve the use shall be provided off-street.
- D. A landscape plan shall show buildings, parking, buffer plantings and installations of lighting and essential services.

16. Off-street parking

- A. Off-street parking lots shall be provided for multifamily housing, commercial and institutional uses. Lots shall be designed to permit each motor vehicle to proceed to and from parking spaces without having to move other motor vehicles.
- B. In parking lots, spaces shall be at least 9 feet by 18 feet on 24-foot wide aisles. Parking area surface slopes shall not exceed 5% gradient.
- C. All parking spaces and access drives shall be at least ten (10) feet from any side or rear lot line.

17. Buffers

- A. In commercial subdivisions, and in subdivisions with buildings containing multiple dwellings, a buffer shall separate areas disturbed by development from the street and from adjacent properties not containing multifamily housing or commercial uses.
- B. The buffer shall consist of existing or proposed vegetation or fencing, or a combination, and shall accomplish a visual screening and noise abatement satisfactory to the Board.
- C. New buffer material shall be maintained or replaced and maintained.

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SECTION VII: CAPACITY AND COMPLIANCE

1. Capacity

To determine financial capacity, the Planning Board may require the applicant to provide such documentation as a statement of assets and liabilities, one or more bank statements, a credit history report, and a funding commitment letter from a bank. To determine technical capacity, the Planning Board may require the applicant to provide references that support qualification to undertake the proposed development.

2. Performance guarantee

- A. For construction of road or storm water management improvements or on Town property, a performance guarantee is required in the form of an irrevocable letter of credit from a financial institution acceptable to the Planning Board.
- B. The amount of the guarantee shall be one hundred twenty five (125) percent of the cost of furnishing; installing, connecting and completing in good working condition any road grading, storm drainage, utilities, and other improvements, specified in the final plan. The performance guarantee may be reduced in proportion to the construction completed.

3. Compliance agreement

The following compliance agreement shall be stated as follows on the final plan and signed by the applicant:

“No lot or parcel of land may be conveyed for any building or other permanent structure within the subdivision until all improvements for road, stormwater management, erosion and sediment control, and site-based fire protection have been certified to the Board to be complete and in compliance with applicable submittals, standards, regulations and conditions of approval; and record drawings documenting variation from approved drawings have been submitted to the Board.

Compliance with all standards and conditions is ongoing and is subject to inspection at any time by the designated inspector. Maintaining all common subdivision elements shall be the responsibility of either the developer or the homeowners’ association.

4. Certification of required improvements

- A. A Professional Engineer hired by the Town shall inspect the construction of roads and facilities for storm water management, erosion and sediment control, and site-based fire protection, and shall certify their compliance with applicable requirements.
 - 1) At least five days before starting construction of any of these improvements, the applicant shall notify the Code Enforcement Officer in writing of the date construction is to begin, and deposit with the Town Clerk a check payable to the Town of Cushing in the amount of 2% of the total estimated cost of their construction.

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- 2) The deposit shall be placed in a special account designated for that subdivision, to be used by the Planning Board for expenses of inspection and certification. If the account becomes drawn down by 90%, the applicant shall deposit an additional 1% of the estimated costs of the required improvements.
 - 3) On completion of cleanup, and receipt by the Board of the Professional Engineer's certifications, surveyor's statement, any required record drawings, and payment of any outstanding expenses, unused funds shall be returned to the applicant within thirty (30) days.
- B. The Code Enforcement Officer shall inspect the construction of other required improvements and certify their compliance with applicable requirements.
 - C. If the designated inspector finds that any of the required improvements have not been constructed in accordance with the approval, the inspector shall report it in writing to the municipal officers, Planning Board, applicant and contractor. The municipal officers shall take any steps necessary to assure compliance with the approval.
 - D. The designated inspector may approve minor modifications to accommodate unforeseen circumstances such as hidden outcrops of bedrock, natural springs, etc. The inspector shall issue any approval under this section in writing and shall copy the Board. For major modifications, such as relocation of right-of-way, property boundaries, changes of grade by more than 1%, etc., the applicant shall obtain permission from the Board to amend the plans in accordance with Section V.4.
 - E. During construction, the designated inspector shall submit a report to the Board by each November 1st concerning the installation of adequate storm water and erosion control measures (both temporary and permanent), and any problems, with recommendations.
 - F. Prior to the sale of any lot, the applicant shall provide the Board with a statement from a Registered Surveyor that all required monuments have been installed.
 - G. On completion of construction, the designated inspectors shall submit a signed report to the Board certifying that the required improvements meet or exceed applicable design and construction requirements.
 - H. On receipt of all required certifications and, if applicable, record drawings, the Chairman of the Planning Board shall notify the applicant in writing that the compliance agreement and the performance guarantee have been satisfied, extinguishing prohibition on the sale of properties.

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SECTION VIII: WAIVERS

1. **Waiver of submittal requirements**

Where the Planning Board makes findings of facts that there are special circumstances of a particular site proposed to be subdivided, it may waive portions of the submittal requirements to permit a more practical development provided that the public health, safety and welfare are protected. The waivers should not have the effect of nullifying the intent and purpose of any comprehensive plan, ordinance or regulation.

2. **Waivers of standards conditionally granted**

Where the Planning Board makes findings of facts that there are special circumstances of a particular site proposed to be subdivided, it may waive portions of these regulations, provided that the public health, safety and welfare are protected. The Planning Board shall require such conditions as will assure that the objectives of these Regulations are met. When the Planning Board grants a waiver to the above standards it shall be noted on the final plan.

SECTION IX: APPEALS

Any aggrieved party having proper standing may appeal any decision of the Planning Board under these Regulations to the Board of Appeals within thirty days of the date the Board issues a written order of its decision.

SECTION X: VIOLATIONS AND ENFORCEMENT

1. No subdivision plan shall be recorded in the Registry of Deeds until a final plan has been approved and signed by the Planning Board in accordance with these regulations.
2. No person, corporation or other legal entity may sell or offer to sell any land in a subdivision which has not been approved by the Planning Board and recorded in the Knox County Registry of Deeds.
3. No public utility shall serve any lot in a subdivision for which a final plan has not been approved by the Planning Board.
4. No development of the infrastructure of a subdivision may begin until final plan approval by the Planning Board and recording in the Registry of Deeds. Development includes the grading and construction of roads, the grading of lots and construction of buildings.
5. No lot may be built upon before the road on which the lot fronts is completed in accordance with these regulations.
6. Violations of these Regulations are punishable in accordance with the provisions of Title 30-A M.R.S.A. § 4452. Violators shall be subject to a fine of a minimum of \$100.00 for each violation, up to a maximum of \$2500, or up to \$25,000 if the applicant has had a previous conviction within 2 years. Each day that a violation continues shall constitute a separate violation.

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SECTION XI: CONFLICT OF REGULATIONS.

Whenever a provision of these regulations conflicts with or is inconsistent with another provision of these Regulations, the more restrictive provision shall control. Whenever a provision of these Regulations conflicts with or is inconsistent with a provision of any other ordinance, regulation or statute administered by the Town or State, the more restrictive provision shall control.

SECTION XII: SEVERABILITY AND EFFECTIVE DATE.

1. **Severability.** The invalidity of any section, subsection, clause, phrase or word of these Regulations shall not be held to invalidate any other section, subsection, paragraph, sentence, clause, phrase or word of these Regulations.
2. **Effective date.** On the effective date of adoption of these regulations, all previous subdivision regulations promulgated by the Cushing Planning Board become null and void.

SECTION XIII: AMENDMENTS

1. **State law automatically adopted.** Changes in State law relevant to subdivision regulation are hereby deemed to amend these Regulations.
2. **Amendments permitted.** These regulations may be amended by the Planning Board following a duly publicized public hearing.
3. **Lots** No lot may be divided or subdivided without Planning Board approval.

SECTION XIV: DEFINITIONS

1. **Construction of language**

In general all words and terms used in these Regulations shall have their customary dictionary meanings. More specifically, certain words and terms are defined below.

2. **Definitions**

Applicant. The owner of the property proposed to be subdivided or the person, partnership or corporation with written authorization to represent the owner.

Building containing multiple dwellings. A structure containing three (3) or more dwelling units.

Building height. The vertical distance between the mean original grade at the downhill side of the structure and the highest point of the structure, excluding chimneys, steeples, antennas and similar appurtenances which have no floor area.

Cluster development. A subdivision in which lot sizes are reduced and the remaining land is undeveloped and owned by a lot owners' association, the Town or a land trust. Clustering shall not be used to increase the residential density of a subdivision.

Coastal wetland. All tidal and sub-tidal lands; all lands with vegetation present that is tolerant of salt water and occurs primarily in a salt water or estuarine habitat; and any

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swamp, marsh, bog, beach, flat or other contiguous low land which is subject to tidal action during the highest tide level for the year in which the activity is proposed as identified in tide tables published by the National Oceanic and Aeronautic Administration (NOAA). Coastal wetlands may include portions of coastal sand dunes.

Common area. Land held in common by lot owners for the use or enjoyment of the residents of a subdivision or the general public.

Common Subdivision Elements. Elements including but not limited to, roads, storm water drainage and treatment systems, utilities, fire protection facilities, open space improvements, open water access and any required centralized water supply and sanitary sewage system.

Complete final plan application. An application presented to the Planning Board that includes (1) required fee; (2) completed application form and associated drawings; (3) Planning Board notification stating that all submittals required for final plan approval have been received by the Planning Board.

Comprehensive Plan. Any part or element of an overall plan for development of a Town as defined in Title 30-A M.R.S.A. § 4326(1)-(4) as the same may be amended from time to time.

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

Contract purchaser. Person or entity contracting to purchase an interest in a property.

Driveway. A private vehicular entrance from a road or right-of-way serving two lots or fewer. A driveway serving one lot may be of unlimited length. A driveway serving two lots shall be no longer than 500 feet in length.

Dwelling unit. A room or suite of rooms designed and equipped exclusively for use by one family as a habitation and which contains independent living, cooking, sleeping, bathing and sanitary facilities. The term includes, but is not limited to, manufactured housing, mobile homes, multi-family housing, condominiums, apartments and time-share units. Housing that is not considered to be a dwelling unit includes, but is not limited to, recreational vehicles, motel units, and rental cabins serving a transient population.

Final subdivision plan. The final drawings on which the applicant's plan of subdivision is presented to the Planning Board for approval and which, if approved, shall be filed for recording with the municipal officers and the County Registry of Deeds.

Freshwater wetland. Freshwater swamps, marshes, bogs and similar areas other than forested wetlands which are 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 are not part of a great pond, coastal wetland, river, stream or brook. Freshwater wetlands may contain

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small stream channels or inclusions of land that do not conform to the criteria of this definition.

Mobile Home Parks. All mobile home parks shall comply with Title 30-A M.R.S.A. § 4558 pertaining to the Regulations of Manufactured Housing and to the rules for Mobile Home Parks promulgated by the Maine Manufactured Housing Board, and comply with all ordinances of Cushing.

Multifamily housing: A building or buildings containing three or more dwelling units.

Normal high water line: Federal regulations (33 CFR 328.3(e)) define the "ordinary high water mark" as "that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas".

Non-tidal bodies of water: That line which is apparent from visible markings, changes in the character of soils due to prolonged action of water or changes in vegetation, and which distinguishes between predominantly aquatic and predominantly terrestrial land. In the case of wetlands adjacent to rivers, streams, brooks or ponds, the normal high water line is the upland edge of the wetland, and not the edge of the open water.

Tidal waters: The identifiable debris line left by tidal action or the upland edge of land subject to tidal action during the maximum spring tide level as identified in tide tables published by the National Oceanographic and Aeronautic Administration.

Preliminary subdivision plan. The preliminary drawing for a subdivision indicating the proposed layout of the subdivision and such other information as may be required by these regulations.

Professional engineer. A professional engineer licensed in the State of Maine.

Principal structure. A building other than one used for purposes wholly incidental or accessory to the use of another building or use on the same premises.

Road. Public or private vehicular way including town roads and other public and private roads and rights-of-way, as well as areas on subdivision plans designated as rights-of-way for vehicular access other than driveways.

Town road. A roadway for which the right-of-way is held by the Town for use of the general public, and for which the Town has a maintenance responsibility.

Private road. Land and roadway located in a right-of-way that the general public has no right to use, and for which the Town has no maintenance responsibility.

River, stream or brook. As defined by Title 38 M.R.S.A. § 480(B) as the same may be amended from time to time, namely, a channel between defined banks. A channel is created by the action of surface water and has two or more of the following characteristics:

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

Setback. The horizontal distance between a structure or use and the feature of reference such as a water body, lot line or right-of-way.

Subdivision amendment: Any change in the plan for an approved subdivision which affects the lot lines, including land transactions by the applicant not indicated on the approved plan.

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

Substantial construction of a subdivision: The rough grading of at least one quarter of the length of approved subdivision roads.

Tract or Parcel. “Tract or parcel of land” means all continuous 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.

Variance. Decision by a Board of Appeals granting relief from certain requirements of a Zoning Ordinance, based on pre-defined criteria.

Waiver. A finding by a Planning Board relieving a subdivision applicant from certain requirements of a subdivision regulation, based on the circumstances of a particular site.

Wetland. A freshwater wetland or coastal wetland.

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APPENDIX A Title 30-A M.R.S.A. § 4401(4)

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.

1. 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:

- A. 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

- B. The division of the tract or parcel is otherwise exempt under this subchapter.

2. 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.

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

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 M.R.S.A. § 435 or a municipality's shoreland zoning ordinance.

- 4-1. 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.
 - 4-2. 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.
 - 4-3. 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.
 - 4-4. 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

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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.

- 4-5. 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.
- 4-6. 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.
1. 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.
2. 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.
3. 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.
- 8-1. This subchapter may not be construed to prevent a municipality from enacting an ordinance under its home rule authority that:
 - A. Expands the definition of "subdivision" to include the division of a structure for commercial or industrial use; or
 - B. 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.

9. 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.

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APPENDIX B: SOILS OF CONCERN

The following soils are not recommended by the Knox & Lincoln County Soils Survey for:

1. development due to flooding: Charles, Lovewell, Medomak.
2. development due to organic composition: Borosapristis
3. development due to high seasonal water table and poor drainage: Biddeford, Boothbay, Brayton, Buxton, Charles, Eldridge, Marlow, Naumburg, Scantic, Searsport, Sheepscot, Swanville.
4. development due to erosive soils: Biddeford, Boothbay, Buxton, Charles, Eldridge, Marlow, Naumburg, Scantic, Searsport, Sheepscot, Swanville.
5. stable slopes: Adams and Masardis 15-25% slopes, Allagash 8-15% slopes.
6. buildings with basements, due to unstable subsoils: Hermon, Madawaska, Masardis.

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Certificate of adoption

I hereby attest that this is a true copy of the Subdivision Regulations of the Town of Cushing, Maine, duly adopted by the Cushing Planning Board on May 5, 1993 and amended August 2, 1995; August 28, 2002; May 7, 2003; June 13, 2007; December 5, 2007, September 16, 2009, February 28, 2011, March 7, 2012, June 19, 2013, and April 3, 2024

Town Clerk

Date