

TOWN OF ELIOT, MAINE

PLANNING BOARD AGENDA

TYPE OF MEETING: IN PERSON WITH REMOTE OPTION

DATE:

Tuesday, August 9th, 2022

PLACE: TOWN HALL/ZOOM

TIME:

6:00 P.M.

All in-person attendees are asked to wear face masks

PLEASE NOTE: IT IS THE POLICY OF THE PLANNING BOARD THAT THE APPLICANT OR AN AGENT OF THE APPLICANT MUST BE PRESENT IN ORDER FOR REVIEW OF THE APPLICATION TO TAKE PLACE.

- 1) ROLL CALL
 - a) Quorum, Alternate Members, Conflicts of Interest
- 2) PLEDGE OF ALLEGIANCE
- 3) MOMENT OF SILENCE
- 4) 10-MINUTE PUBLIC INPUT SESSION
- 5) REVIEW AND APPROVE MINUTES
 - a) June 7th, 2022 ~ August 2nd, 2022 – if available
- 6) NOTICE OF DECISION
 - a) 155 Harold L. Dow Highway – if available
 - b) 768 Main Street – if available
 - c) 244 Pleasant Street – if available
- 7) PUBLIC HEARING
- 8) NEW BUSINESS
 - a) Stormwater/Low Impact Design (LID) – presentation by Kristie Rabasca, Integrated Environmental Engineering, Inc.
- 9) OLD BUSINESS
 - a) November 2022 Ordinance Amendments – updates as needed
 1. Ordinance Subcommittee update
 2. Site Plan Review, Subdivision, and Performance Guarantee updates
 3. Solar Energy Systems
 4. Event Centers
 5. Maximum Number of Licenses for Marijuana Establishments and Medical Marijuana Establishments
 6. Erosion and Sedimentation Control
 7. Fees
- 10) OTHER BUSINESS / CORRESPONDENCE
 - a) Town Planner update – written or verbal – if available
- 11) SET AGENDA AND DATE FOR NEXT MEETING
 - a) August 16th, 2022
- 12) ADJOURN

POSTED 8/2/22
SSB

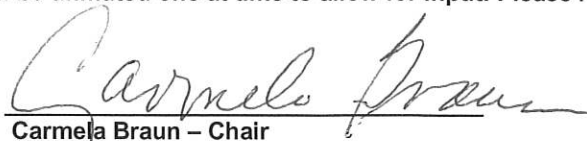
NOTE: All Planning Board Agenda Materials are available on the Planning Board/Planning Department webpages for viewing.

To view a live remote meeting: (Instructions can also be found on the Planning Board webpage)

- a) Go to www.eliotme.org
- b) Click on "Meeting Videos" – Located in the second column, on the left-hand side of the screen.
- c) Click on the meeting under "Live Events" – The broadcasting of the meeting will start at 7:00 (Please note: streaming a remote meeting can be delayed up to a minute)

Instructions to join remote meeting:

- a) To participate please call into meeting 5 minutes in advance of meeting start time. Please note that Zoom does state that for some carriers this can be a toll call. You can verify by contacting your carrier.
- b) Please call **1-646-558-8656**
 1. When prompted enter meeting number: **857-6113-0555 #** 824 9444 7571 #
 2. When prompted to enter Attendee ID **press #**
 3. When prompted enter meeting password: **907568 #** 733286 #
- c) Members of the Public calling in, will be first automatically be placed in a virtual waiting room until admitted by one of the members of the Planning Board. Members of the public will be unmuted one at a time to allow for input. Please remember to state your name and address for the record.
- d) Press *9 to raise your virtual hand to speak


Carmela Braun – Chair

NOTE: All attendees are asked to wear facial protective masks. No more than 50 attendees in the meeting room at any one time. The meeting agenda and information on how to join the remote Zoom meeting will be posted on the web page at eliotmaine.org/planning-board. Town Hall is accessible for persons with disabilities.

1 **ITEM 1 - ROLL CALL**

2
3 Present: Carmela Braun – Chair, Jeff Leathe – Vice Chair, Christine Bennett – Secretary,
4 Lissa Crichton, and Jim Latter.

5
6 Also Present: Jeff Brubaker, Town Planner.

7
8 Voting members: Carmela Braun, Jeff Leathe, Christine Bennett, Jim Latter, and Lissa
9 Crichton.

10
11 Note: Ms. Braun said that I am aware of one of the gentlemen involved in the Main Street
12 project. I do not know him personally and I feel I can still be fair. Is that acceptable to
13 everyone. All were fine with Ms. Braun hearing the application.

14
15 **ITEM 2 – PLEDGE OF ALLEGIANCE**

16
17 **ITEM 3 – MOMENT OF SILENCE**

18
19 **ITEM 4 – 10-MINUTE PUBLIC INPUT SESSION**

20
21 There was no public input.

22
23 **ITEM 5 – REVIEW AND APPROVE MINUTES**

24
25 **Mr. Latter moved, second by Ms. Crichton, to approve the minutes of April 5, 2022,**
26 **as amended.**

27 **VOTE**
28 **5-0**
29 **Motion approved**

30
31 **ITEM 6 – NOTICE OF DECISION**

32
33 There were no Notices of Decision.

34
35 **ITEM 7 – ELECTION OF OFFICERS**

36
37 **Chair:**

38
39 **Mr. Latter nominated Carmela Braun for Chair. Second by Lissa Crichton.**

40
41 **Ms. Braun asked if there were any other nominations.**

42
43 **There were none. Ms. Braun closed nominations and asked for a roll-call vote.**

44
45 **VOTE**
46 **5-0**

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Motion approved

Carmela Braun is elected Chair.

Vice Chair:

Ms. Braun nominated Jeff Leathe as Vice Chair. Second by Ms. Crichton.

Ms. Braun asked if there were any other nominations.

There were none. Ms. Braun closed nominations and asked for a roll-call vote.

VOTE

5-0

Motion approved

Jeff Leathe is elected Vice Chair.

Secretary:

Ms. Crichton nominated Christine Bennett. Second by Mr. Latter.

Ms. Braun asked if there were any other nominations.

Ms. Bennett nominated Lissa Crichton. Second by Ms. Braun.

Ms. Lemire said that, in the case of two nominations, there should be a secret ballot vote.

Mr. Brubaker brought in paper ballots and a container to place them in. PB members wrote in their choice and placed it in the container.

Ms. Lemire counted the ballots.

Christine Bennett – 3

Lissa Crichton – 2

Christine Bennett is elected Secretary.

ITEM 8 – PUBLIC HEARING

There were no public hearings.

93 **ITEM 9 – NEW BUSINESS**

94
95 **A. 155 Harold L. Dow Highway (Map 29/Lots 24 & 25), PB22-10: Site Plan Review**
96 **and Change of Use – Marijuana Products Manufacturing Facility – Sketch Plan**
97 **Review.**

98
99 **Received: May 19, 2022**

100 **1st Heard: June 21, 2022 (site plan amendment/sketch plan review/completeness)**

101 **2nd Heard: _____, 2022 (continued review/public hearing)**

102 **Public Hearing: _____, 2022**

103 **Site Walk: _____**

104 **Approval: _____, 2022**

105
106 Ms. Julie Cutting-Kelley (owner), Jeff Cutting (Project Manager), AG Architecture, and
107 Dan Kelley (husband) were present for this application.

108
109 Ms. Cutting-Kelley said that we are here seeking a manufacturing license for the 155
110 Dow property. We are both chefs and have been in the culinary industry individually for
111 20+ years. I do own and operate a restaurant in Portsmouth and we have one in South
112 Berwick since 2009. This project is something we've been working on for about 2½
113 years. We did seek out different locations but this seemed to be a perfect fit for our use.
114 We have no interest in retail. We just want to go in and use our culinary skills to produce
115 our product. We don't want to manufacture any kind of flower or any manufacture of the
116 plant itself. We want to keep it very low-key. We don't want to have any signage off the
117 side of the road, just a small decal on the window so that deliveries can come in and out
118 and we won't allow any deliveries to come past the double door that you can see in the
119 site plan. We want to run a 9-5 kind of business, get a better life structure for our family,
120 and go forward that way. Hopefully, we can answer any questions you have in regard to
121 the site plan.

122
123 Ms. Braun said that you said 9-5 and asked how many days a week.

124
125 Ms. Cutting-Kelley said 5 days a week, with a maximum of 5 employees but, in the
126 beginning, it will just be my husband and myself.

127
128 Ms. Braun asked if they have applied for the commercial kitchen license.

129
130 Ms. Cutting-Kelley said that we are almost to that step. We talked with them and we have
131 to get through local authorization before she will come down.

132
133 Mr. Cutting said that we are in the process of applying right now. We are looking for one
134 piece of paperwork to submit for the commercial kitchen license. When I talked to the
135 State, they said that needs to be put in 90 days before opening and then they need to
136 schedule an inspection in order to come down to do the inspection. The form is very
137 straightforward and I don't see any problems with that at all.

139 Ms. Braun said that they won't give you anything that lets us know that you are in the
140 process of applying for this.

141
142 Mr. Cutting said that our OMP is already done, which is the next piece of this. As you,
143 know, the Town has to sign off on this, then it goes to OMP. You can't do anything with
144 the commercial kitchen until we get our final permit from the Office of Marijuana Policy
145 (OMP).

146
147 Ms. Braun clarified by asking if they would give you anything that you are in the process
148 so we have something for our file.

149
150 Mr. Cutting said that one small hold-up right now is that I need a piece of paper from the
151 Town and I don't have that piece of paper, yet, so I haven't submitted the permit yet.

152
153 Mr. Leathe asked Mr. Brubaker if he has any information on the permitting of that
154 system.

155
156 Mr. Brubaker said that I haven't but I plan to before the next agenda reading of this.

157
158 Mr. Leathe said that the only question I had and one I think you addressed really well in
159 your application is that odor has become more and more an issue. I wonder if, with your
160 experience at any of the locations of your restaurants you think there will be any odor
161 complaints from the kitchens of your restaurants.

162
163 Ms. Cutting-Kelley said no. What I will be bringing in is called a distillate and is actually
164 an extraction of the plant. We buy in liter form and it's literally stickier than honey.
165 When we make something, such as a chocolate bar gummy, you literally drop it in from a
166 syringe.

167
168 Mr. Latter said that the application says restaurant. I'm assuming that means a
169 commercial kitchen, not an open-to-the-public restaurant.

170
171 Ms. Cutting-Kelley said absolutely not. I own a restaurant and I don't want another one.
172 I'm not sure why restaurant is on the site plan.

173
174 Mr. Brubaker said that that might represent the other unit, which is Dunkin' Donuts.

175
176 Ms. Cutting-Kelley said that this has just been a vacant space for at least 20 years, I think.

177
178 Ms. Braun said that I have an issue with the actual site plan. This site plan is old and is
179 someone else's.

180
181 Ms. Cutting-Kelley said that that was a discussion we just had with Mr. Brubaker. Before
182 the next meeting, our architect will draw up and create a new outdoor site plan.

183

184 Ms. Bennett asked if you could describe a little more about the ventilation system you
185 want to use in this building.

186
187 Mr. (James) Gibbons, AG Architects, said that there doesn't need to be any filters for
188 odor as the exhaust is literally just ventilation air for the _____ to distill any odors.

189
190 Ms. Bennett said that I want to take you at your word about the odor bit I guess I'm a bit
191 skeptical about it. Can you explain to us why a marijuana distillate does not have any
192 odor.

193
194 Ms. Cutting-Kelley said that it is a hard sticky resin and is a concentrated small amount.
195 A liter, itself, is like a \$1,000 and that one liter will produce 100's of quantities of
196 products. You can mix it into anything. So, to be inside the building and the return-air
197 and all of that. If you open a jar and put your nose into it, you would smell a cannabis
198 smell but there is no way that, from where you're standing, it's going to go from here to
199 there and outside. The odor that you're getting would be like that of a Yankee Candle or
200 something of a similar structure.

201
202 Ms. Bennett said that I'm assuming that you'll be doing cooking and baking. You'll not
203 only have a whole space (office/kitchen) ventilation going on but you'll also have a hood
204 fan.

205
206 Ms. Cutting-Kelley said that we are going to apply to be a commercial kitchen where we
207 want to be pro-active. Gas is flame-burning and not actually great for the environment.
208 I'm actually trying to switch my restaurant over to induction and things like that. That's
209 what we are planning to purchase, Turtle Chef Induction burners, with no btu's and we
210 don't want any kind of overhead exhaust system, and all of that.

211
212 Ms. Bennett said that whatever odor there is will be contained within the kitchen space
213 and then filtered through an air ventilation system – air exchange.

214
215 Ms. Cutting-Kelley said yes.

216
217 Ms. Bennett said that, as I look at the site plan, which you've said will be updated, there
218 appears to be a building that will be removed.

219
220 Mr. Brubaker said that that is part of the old site plan, which has been removed. If you
221 look at the plan, you can see that there were two lots there and a note on the old plan talk
222 about the lots being combined.

223
224 Ms. Bennett said that we will see the updated plan at your next meeting.

225
226 Ms. Crichton asked about the buffers and screening. Do they have an area there where
227 they could put vegetative screening.

228

229 Mr. Brubaker said that I think in my staff report I kind of hedged on vegetative screening
230 because, typical, you would want to see some screening. But, in this case, the frontage
231 has two driveway cuts plus the septic field is right there. And you have the free-standing
232 sign for Dunkin' Donuts, which does have some plants around it so it does seem like a lot
233 of area in that frontage where it isn't feasible to plant. You don't want large trees over the
234 septic field or block site distance from the driveway. It does speak to the fact that the site
235 does, on the side, have some vegetative buffering but, with the way the frontage is
236 designed, it is difficult to plant that screening there. Also, this marijuana use is far more
237 discrete than other marijuana uses.

238
239 Ms. Crichton asked for clarification of the location of deliveries.

240
241 Mr. Cutting said that there is a dedicated delivery area there now. We'll be using that
242 same delivery area that Dunkin' Donuts uses now. There will be no change to that.

243
244 The applicant will submit a more detailed, written odor management plan and an updated
245 site plan.

246
247 Mr. Latter asked if the change of use is specific to this licensee.

248
249 Mr. Brubaker said that part of the application would be a change of use to add 'marijuana
250 establishment' to the approved uses on the site.

251
252 Mr. Latter asked if this use would be in place if the current project did not occur.

253
254 Mr. Brubaker said yes. But a new applicant would still have to go through PB review. I
255 think we're all on the same page, now, on the up-to-date site plan. So, thanks to the
256 applicant for that. I did want to say that, at a pre-application meeting, I let them know that
257 the pdf mark-up was acceptable so that is partially on me. Then, I thought about it more,
258 and especially after Mr. Ken Wood's contact, it made sense to just require that up-to-date
259 site plan. The Office of Marijuana Policy (OMP) has changed their name and it's now
260 Office of Cannabis Policy (OCP) but their OMP conditional license is in the packet. And
261 you do see there is a short odor and dust control written narrative in the packet, as well.
262 The only other thing is that I cover all the standards in my staff report but, obviously we
263 focus on marijuana products manufacturing, it's not subject to the 500-foot rule. This is
264 initial sketch plan review but I believe the applicant may be seeking a completeness
265 motion tonight given that the data included in the site plan application, marking that for
266 which they feel to be not applicable. So, my recommendation would be that you could
267 entertain a completeness motion tonight subject to those caveats of getting a new site plan
268 before us for the next meeting.

269
270 Ms. Bennett said that, in my mind, what we are asking for is not that much. Yes, this is a
271 mock-up of the previous site but nothing is really going to change except that they will
272 provide us more detail. So, I feel we could move forward on the completeness.

273

274 Mr. Brubaker said that, basically, they have submitted a full site plan review application,
275 marking the items they feel are not applicable, given the fact that they are primarily
276 moving into an existing building with no exterior site changes. So, I do think that overall
277 completeness may be something the applicant is seeking at this meeting and that would
278 be something I would recommend, as well, subject to those additions that you gave them.

279
280 The PB agreed.

281
282 **Mr. Latter moved, second by Ms. Crichton, that the Planning Board find PB22-10**
283 **for 155 Harold L. Dow Highway site plan complete for the purpose of moving**
284 **forward, with the following conditions that the applicant provide an updated site**
285 **plan and an updated odor control plan.**

286 **VOTE**
287 **5-0**
288 **Motion approved**

289
290 The public hearing is scheduled for July 26, 2022.

291
292 **B. Review Election Results**

293
294 This will be discussed under the Town Planner Update (Correspondence).

295
296 **ITEM 10 – OLD BUSINESS**

297
298 **A. 771/787 Main Street (Map 6/Lots 43, 44, 154), PB22-09: Clover Farm**
299 **Subdivision (8 lots) – Sketch Plan Review.**

300
301 **Received: April 12, 2022**
302 **1st Heard: May 17, 2022 (subdivision site plan review/sketch plan)**
303 **2nd Heard: June 21, 2022 (continued sketch plan review)**
304 **Public Hearing: _____, 2022**
305 **Site Walk: May 31, 2022**
306 **Approval: _____, 2022**

307
308 Mr. (Michael) Sudak, E.I.T. (Attar Engineering, Inc.), was present for this application.

309
310 Ms. Braun said that, before we begin, we have correspondence from abutters and I am
311 going to ask Mr. Brubaker to read that into the record.

312
313 Mr. Brubaker read:

314
315 "Hello Jeff,
316 Thank you for listening to our many concerns about the proposed development at Clover Farm.
317 During the site walk on May 17th we were even more discouraged to learn that the two men who own
318 the property to the rear of us were the people who cleaned up the front of the property near us and it
319 probably would never have been done if it were not for them.

320 It shows more signs that the owners of the front parcel are not responsible for their own property and
321 could care less.
322 This is one of our major concerns: the owners , of the front property, have not demonstrated in any way
323 that they are responsible for the maintaining of the site and show total disrespect for those us who must
324 see this mess every single day ,month after month. We have tried to be patient with our comments but
325 we are getting fed up having to still look at plastic “fences” blowing down and no-one seems to care at all.
326 This is in addition to looking at trash and debris for many months. I spoke with the site manager on the
327 walk and expressed our frustration at this continuing eyesore but really felt that he gave weak excuses for
328 his poor management.

329 We were glad to see that the arborvitae trees were proposed along our property line but will
330 they actually maintain them or in fact plant them at all? We were pleased to see that moving the road
331 further to the north is a possibility: it is very close to our property line and it is going to have a dramatic
332 effect on our privacy if that does not occur.

333 This development would be much easier to deal with if it were 3 or 4 houses rather than 8. We will have
334 to contend with street lights, traffic and potentially a sidewalk which hopefully will be on the side
335 opposite our property line. That sidewalk brings more disruption to our quiet backyard space.
336 My husband and I have seen a lot that has gone on since this property has been torn apart; trees smashed
337 down with bucket loaders, dumpsters overflowing with trash, small buildings and debris set ablaze with
338 gasoline 100 ft from our house on a windy, rainy day. We have picked up and disposed of various pieces
339 of trash. We certainly cannot be expected to be thrilled about what these individuals are planning next.

340 We are not happy about this development but are not opposed to having some houses next to us. We
341 went accountability and attention paid to us as abutters; we are tired of the irresponsible way this front
342 property has been run. We hope that some consideration will be paid for developers to keep a certain
343 standard. Unfortunately it seems to be all about the money people can make and the heck with the
344 neighbors.

345 We appreciate your time and the work that you and all of the planning board members do : your work is
346 difficult. We are grateful to you all.

347 Respectfully,
348 Alison and Ted (Wardwell) Ratcliff
349 767 Main St.”

350
351 Ms. Braun thanked Mr. Brubaker and asked Mr. Sudak to give the PB a brief
352 presentation.

353
354 Mr. Sudak said that we’ve been before you a couple times, now, for this sketch
355 residential subdivision. We’ve had quite a bit go on since our last meeting on the 17th so
356 I’d just like to go through chronologically. We had a site walk on May 31st. Changes are
357 reflected in the plan. For the section up front, closest to the southerly abutter, we did end
358 up widening the ROW from 50 feet to 75 feet there, moving the road north both to get
359 away from that southerly abutter and to get around the existing utility pole out there that
360 you all took a look at. There is a sidewalk that is proposed for the entire development. It
361 is on the south side at present but, based on that comment, I will probably be moving it to
362 the north side if there’s adequate ROW there for it. To support that sidewalk, the ROW
363 radius around the cul-de-sac had to be bumped up from 70 to 75 but that present no issues
364 to any of the lots. One of the other items that was brought up at the site walk, and then in
365 the subsequent meeting I’m going to get into, was access to the Remick Family Cemetery

366 that is out between Lots 4 & 5 I did some records research with the help of the Historic
367 Commission and the access to that does indeed come from our development. So, we're
368 proposing an access easement along the sideline between Lots 4 & 5. Coming from Mr.
369 Brubaker's staff review, if this road does end up moving forward and it's being private,
370 that access would have to be extended out to Main Street just to maintain continuous
371 egress to the cemetery. That's everything from the site walk. Since then, Mr. Brubaker,
372 myself, and Michelle Duval had a virtual meeting on the 14th regarding the Clover Farm
373 barn, which is on proposed Lot 1. Moving forward, the two remaining sections of the
374 barn, the piece closest to Main Street, is proposed to be tagged, disassembled, transported to
375 Ms. Duval's property on Brixham Road, and reassembled, in kind, as an addition to her
376 pole barn. The section further away from Main Street, which is slightly newer, is going to
377 some of its pieces salvaged and reused in that construction on Brixham Road. There is a
378 Demolition Delay permit that has begun for that one and I believe it's scheduled for a
379 public hearing next week. From comments from Mr. Brubaker's staff memo, a couple
380 things that aren't going to be included in the plan set in your packets but items that are
381 addressed on the sheet, and behind the sheet, are very easy for me to add and that's what I
382 wanted to demonstrate tonight. Compliance with the total shore frontage for Lots 5&6:
383 there's 188 feet, I believe, and 100 is the minimum requirement. Clarification on the
384 Shoreland Zone calculation: There is a maximum 20% impact. That is all impervious and
385 I didn't have to change it at all. I just didn't specify that the calculation included
386 driveways, buildings, appurtenances. There are a couple notes that got taken off in a
387 previous iteration of this sketch plan that were restored. I've added some snow storage
388 locations. That just kind of goes along with the process of proposed grading and
389 absolutely no problem with that. I think that's all I've got. I would be happy to entertain
390 any questions.

391
392 Mr. Brubaker said that we will talk more about the open space development idea. There
393 was some discussion of vegetation and buffering and there's more to be discussed there.
394 Waterfront land preservation: that is in my staff report and I think that's for discussion
395 prior to an overall action on this sketch plan. We're all aware of the two waiver requests.
396 And then I think this pretty much summarizes what Mr. Sudak just told you. So, with
397 that, I will close my presentation.

398
399 Ms. Crichton said that, when you were talking about the cemetery access, you said
400 something about the access has to meet the street, meaning the cul-de-sac street or Main
401 Street.

402
403 Mr. Sudak said that, if this development were to have its proposed roadway projected to
404 be offered for Town acceptance, it would just need to go to the cul-de-sac. But, since the
405 intent here is to have this be maintained as a private road moving forward, that access
406 would need to extend all the way out to Main Street, since that's the closest point to
407 public access.

408
409 Mr. Brubaker added that that is to ensure that whoever has legal access to go and
410 maintain the cemetery, or visit the cemetery, not only get from the cul-de-sac to the

411 cemetery but also has the legal ability to travel down a private street as a visitor from
412 Main Street to get to the cemetery.

413
414 Ms. Crichton said that you would actually have two roads. Would that be something that
415 is paved at the cul-de-sac.

416
417 Mr. Brubaker said that I think the suggestion is more an easement on top of the existing
418 road so that people who can access the Remick Cemetery would have a legal right to
419 travel down that private road. Then, here's the proposed access to get from the cul-de-sac
420 to the cemetery. It wouldn't be a parallel second road.

421
422 Mr. Sudak said it's more just creating a right to access the infrastructure that's being
423 proposed as opposed to something being added, if that makes sense.

424
425 Ms. Crichton said that it's not on the opposite side of the cemetery where those people
426 have a private road because they said they had an easement. So, it's all within this
427 property.

428
429 Mr. Sudak said correct.

430
431 Mr. Latter said that 'this' is the access to the cemetery. I don't think you actually have to
432 define it. I think it exists.

433
434 Mr. Sudak said yes, it does. I believe I misspoke at the site walk. There was a deed from
435 the York County Registry of Deeds that I was misrepresenting in the field. There was a
436 lot condition that occurred that created these two gentlemen's lots and the access for that
437 cemetery was deemed to be part of the prior owner of one of those parcels, and I thought
438 it was the northerly abutter.

439
440 Mr. Brubaker explained that there is already a presumed legal right to access the
441 cemetery and that additional easement wouldn't be needed. At worst, it's superfluous.

442
443 Mr. Sudak said that, since the subdivision is occurring, I think it might behoove us to be
444 prudent and more specifically define where that egress is going to be coming from as
445 opposed to someone walking across five people's back yard.

446
447 Mr. Latter said that that is because it's the closest direct line to a public way, as it was
448 defined to me. I can't imagine somebody would want to walk through somebody's back
449 yard instead of down this private road.

450
451 Ms. Braun asked if we were going to get any more information on the traffic study that is
452 more up-to-date back. You're basing it on old information.

453
454 Mr. Sudak said that I had a conversation with Diane Morabito (Sewall), who prepared our
455 TIA, and she informed me, because I believe this comment is coming from the average
456 daily traffic data prospectively being out of date relative to like Amazon deliveries and

457 everything that's kicked up in the past few years, her response to me, just antidotally, was
458 that the 2019 data is something they would use for residential development that, as far as
459 her profession is concerned, would still govern. If you would like me to formally have a
460 note regarding whether more up-to-date data exists, I can certainly have that request be
461 formally made. That's the extent of my outreach to her.

462
463 Ms. Braun said that I'm just not comfortable with the amount of traffic, bearing in mind
464 deliveries and all that. In addition to Aqua Avenue and Park Street, on the other side of
465 the road you have other little streets that are also feeding in to Main Street, which would
466 add to traffic. That's where my uncomfortableness comes from.

467
468 Mr. Sudak asked relative to the safety of this intersection or relative to the separation.

469
470 Ms. Braun asked how safe is it, bearing in mind that people do walk, jog, and bicycle on
471 that road. People who travel that road don't always follow the speed limit, as I can attest
472 to. I don't want to have an unsafe location for members of the community. That's why
473 I'm trying to get more information and that would help me get passed that.

474
475 Mr. Sudak said that the avenue to make you more comfortable is the TIA so, if I have to
476 follow up with her and ask those questions and have a formal response, the seal of a
477 transportation engineer is the best thing I can provide on that.

478
479 Ms. Braun said, if you would please, Mr. Sudak. That would help me and other members
480 of the PB, as well.

481
482 Mr. Sudak agreed.

483
484 Ms. Crichton asked if there is any way to incorporate what sort of traffic would be
485 coming out of that Dennett Landing project that's going on in Kittery.

486
487 Mr. Sudak said that I can ask the question.

488
489 Ms. Braun said that, conceivably, that could bring more traffic up.

490
491 Mr. Sudak said that, conceivably, that is strange precedent to set, if it would hinder any
492 proposed development anywhere else in Town. But I will ask the question.

493
494 Ms. Bennett said that it's actually two developments. One has already been permitted and
495 has 328 units; I believe. (The other 900). They are adjacent to each other on Dennett
496 Road in Kittery. Housing, a brewery, child care, a laboratory, a restaurant. It's slated to
497 add 20% population to the Town of Kittery. So, we are more keenly attuned to traffic
498 issues now and what may be coming.

499
500 Mr. Sudak said that, with something that size, I would assume they has their own traffic
501 impact analysis that I can reference.

502

503 Ms. Braun said yes. Anything for more information that might help us understand what
504 we might expect. I'm not saying it's going to happen but the possibility is there.

505
506 Mr. Sudak said okay.

507
508 Ms. Bennett said that I like that you moved the entrance north. I'm still not seeing on the
509 plan how this lines up with the driveway across the street. If you could put that on the
510 plan so that I don't have to try to figure it out myself.

511
512 Mr. Sudak said yes.

513
514 Mr. Latter said that my one concern with the waiver, and I don't know if anyone else saw
515 this while we were out on the site walk, is there was someone coming from the north to
516 the south on a bike. We have a fair amount of activity there ourselves, probably more
517 than you'd ever see coming and going out of that road. It just seemed to be suddenly
518 congested. Is there anything, especially on that first lot, along the roadway that can be
519 done to just make that less bad.

520
521 Mr. Sudak said that the prescriptive answer to that is what your site distance is. That's a
522 very regimented measurement. It's 10 feet per mile speed and I forget off-hand what my
523 measurement was there. I went out and took them myself. It's a very specific place that
524 you have to stand at specific levels looking down the road. Compliance with that is the
525 accepted engineering way of saying that it's an acceptable level of 'not bad'.

526
527 Mr. Latter said that that was antidotal in that point in time. I ride my bike up and down
528 that road every now and then. I was just more cognizant of what was going on. It's just a
529 nagging concern.

530
531 Ms. Braun said that we seem to be at a stop-gap as far as the waiver is concerned until we
532 get some more information. At least that's my feeling. How does everyone else feel about
533 the waiver.

534
535 Ms. Bennett said that I would like to see an updated traffic study for this but I'm not hung
536 up on it at this stage in sketch plan. Primarily because the traffic issue in the Village and
537 on Main Street I feel are an existing condition. It's not a great condition. People, runners
538 and bikers and walkers, are at it every single day on this road and there are no shoulders.
539 I feel like the applicant has found the best entrance to their property that exists. I don't
540 think moving this entrance even further north is going to achieve because it is equidistant,
541 as close as it can be, between Aqua and Park.

542
543 Mr. Latter said that I agree. I think they've done as good as they can do with this. I think
544 the question before us is – is that good enough.

545
546 Ms. Crichton said that I don't think this should be based on traffic that might come from
547 another development and this has only 8 lots. Two cars per lot, that's 16 cars.

548

549 Mr. Sudak said that all that information is summarized in the TIA, including an assertion
550 that none of the adjacent, existing intersections are high-crash locations. Like I said,
551 that's the avenue I have for making you comfortable. It's up to you to decide if you are.
552

553 Ms. Braun said that I'm still not ready to move on the waiver. Is everyone else ready to
554 move on the waiver.
555

556 Ms. Bennett said that I'm ready to vote on the waiver but I'll defer to the group.
557

558 Ms. Braun said that I would just as soon wait until we get more information on the TIA,
559 if you wouldn't mind Mr. Sudak.
560

561 Mr. Latter said that I am ambiguous, at best, so anything you could provide that would
562 help the comfort would get me closer to a yes than a no.
563

564 The full PB agreed.
565

566 Mr. Sudak asked if the PB would like to discuss the other item.
567

568 Ms. Bennett said that she would like to entertain a discussion, if we could.
569

570 Ms. Braun said that the actual decision is up to the applicant.
571

572 Mr. Sudak said that I understand that the discretion is ours. I would merely have a
573 conversation about it since it is something that's included in your packet. But, I'm kind of
574 in that nebulous purgatory of the project can't exist without these waivers.
575

576 Ms. Bennett said that, with an open space development, you wouldn't need the frontage
577 waiver. There are no frontage requirements with an open space development. You have
578 setback requirements but no frontage requirements. You're **not** allowed to have frontage
579 on a public way and it is my understanding that you will not be held to frontage. It allows
580 for irregular shape-lots and smaller lots.
581

582 Mr. Sudak said that lots I absolutely agree with. We're still creating an entrance on an
583 arterial way and that's the pivotal waiver that's before you.
584

585 Mr. Brubaker said that I think she means the lots **with** street frontage reduction.
586

587 Ms. Bennett said that Lots 5&6 would not need a waiver. I was suggesting the second
588 waiver.
589

590 Mr. Sudak said that I understand. That one is the least of my concerns.
591

592 Ms. Bennett said that I just wanted to note that should you choose to pursue or explore an
593 open space development scenario. You would not be required to seek that waiver.
594 Because it's sketch plan and, when I was reviewing these things, I felt this was a time

595 when we could look at all of the tools that Eliot has in our toolbox when it comes to
596 subdivisions. After walking on the site, it felt to me that there was an opportunity,
597 perhaps, to look at open space development. You would get the same number of lots.
598 They could be smaller lots. The road could be shorter and your costs would be less. And
599 you could provide an open space area. You would have some form of homeowner's
600 association or a road agreement between all of these lots to maintain this road. In addition
601 to that, if you were to consider an open space development, there would be an open space
602 area that would be held in common where you could have a vegetable garden or a place
603 to pay ball. You could do a lot of different things. It could also provide the opportunity to
604 retain more of the existing vegetation, at this time, because you would be building
605 smaller lots and not have to clear them all. I just think you have some opportunity at this
606 time, I think, to maybe sit down with your drawing and software and consider some
607 different layouts. I live in the Village and one of the things I like about where I live in the
608 Village is that I have a nice chunk of old trees adjacent to my property. I feel that
609 especially the waterfront properties are going to be your most valuable pieces. If they
610 didn't have a lot right next to them in the upland, there is an opportunity...ways to weave
611 in some nature into this 8-unit subdivision and it could become a more desirable and
612 marketable subdivision. This is just my opinion but I've seen these done before. I've seen
613 them done poorly in some places and I've seen them done really well. I think you've got
614 an excellent opportunity, here, to do that as well.

615
616 Mr. Sudak said thank you for the input. For the record, I thank you for sharing
617 everything. I just want for the record that everything you just stated, every sentence is
618 'could'. We 'could' have the same amount of lots. We 'could' have more preserved trees.
619 We 'could' have less costs. I just want that in there. As far as the shorefront lots being
620 more desirable, they are spoken for.

621
622 Ms. Bennett said that, if you didn't have to make all the remaining lots one acre, you
623 could move those neighbors away from the shorefront lots. Would they have a little more
624 privacy.

625
626 Mr. Sudak said that it's something I'll look into and I'll provide a formal response to. I
627 did have a couple things tonight in response to your memo that I got this morning I'll
628 defer for a later date.

629
630 Mr. (Tom) Howarth said that I have one of the lots down there. I was just listening to
631 what you were saying. I actually have three kids. I live in South Berwick, now, and my
632 kids all live near me. I bought that lot because I may want my kids to come down to be
633 near me. Chris wants his father to move into one of the lots next to him. I think that one
634 of the neighbors said that we're trying to do this for the money. That's the front lot. Our
635 lots are in the back. I'm not sure my kids will want to move there but I don't really think
636 that I would want a bunch of different people down there where we live enjoying this
637 outdoor area you're talking about. I'd like to live near my kids. That's my look on it. I'm
638 not in this for the money. I bought that piece of land for a lot of money because I want to
639 live there and have it be my final destination. I know Chris does, too, and his father. And
640 possibly my kids if I can get them to move there. The guy up front that's caused some

641 problems with what he's done with the neighbors and we're trying to clean it up, me and
642 Chris. We're building Chris's house now. We have the footings going in. My father is 94
643 and, when he passes away, I'm going to build mine there. That's basically my plan. I
644 know you're talking about a community of people coming down there by the sound of it.
645 Wouldn't that invite more people to come down there and more traffic.

646
647 Ms. Bennett said that I think I was misunderstood as sort of painting as a picture. It
648 would be for this subdivision that there could be some open space. It's not open-to-the-
649 public open space as I read the ordinance. I would encourage you to review the section on
650 the open space development. The requirement is that you would provide an access down
651 to the water so that someone who lives in this subdivision could actually walk down to
652 the water.

653
654 Mr. Latter clarified that it would only be open space for the people who own property
655 'here'. It's not open space for anybody.

656
657 Mr. Sudak said that, just in context for you guys, what they are describing is what other
658 towns define as a cluster development. So, there's an area of open space outside of all the
659 proposed lots in this development that enter into an association, usually along with the
660 road stormwater appurtenances. So that's a common open space for everyone within the
661 development that has right to access through the road into the development. Additional
662 context: those types of developments, what we call open space development, is a
663 requirement only in what's called the critical rural overlay, which is everything north of
664 Goodwin Road. Everywhere else it's at the discretion of the applicant to consider and
665 propose. There's a whole subsection on it, if we choose to consider what that entails. It's
666 similar to what South Berwick's ordinance does where you have to show the
667 conventional subdivision like this and effectively a cluster subdivision. You have to show
668 one to prove the other. There are limitations there and it's the board's discretion which
669 one they would prefer. That is something to take a look at and decide if it makes sense for
670 this parcel and that is something I am more than happy to provide comment on.

671
672 Ms. Bennett said that it is your choice. I just thought that, at this early stage where you're
673 kind of starting from scratch and you haven't laid out where the **lots** are, commenting you
674 don't know where the stormwater is going, all of those things. I just wanted to put it out
675 there and make you aware of this other type of subdivision so that you are aware of it so
676 then, if you wanted to consider it, you can. That's all.

677
678 Ms. Braun said that, when you have the other information, get in touch with Mr.
679 Brubaker so we can get you on the schedule, bearing in mind that we will be on vacation
680 the first three weeks in July.

681
682 Mr. Sudak said that I know there's a public hearing for the demolition. What is the
683 structure of that meeting. Say I was to get on the phone with Diane tomorrow morning
684 and get you the information you need. Something to think about.

685

686 Mr. Brubaker said that I do want to clarify that, obviously it being a week from next
687 Tuesday, Ms. Metz and I worked to get the draft agenda to the Chair, so I think it's too
688 tight.

689
690 Ms. Braun agreed. I don't know how long the public hearing is going to take as this is our
691 first demolition public hearing. That could take some time and we have a couple of other
692 things. I know this is dragging this out and I do apologize for that. As Mr. Latter pointed
693 out, the more information you have that brings us closer to a 'yes' than a 'no' would be
694 helpful.

695
696 Mr. Brubaker said that next Tuesday is the public hearing for the demolition and
697 reconstruction permit for 771 Main Street. Just remember that's not technically a review
698 of this subdivision, so just keep that in mind.

699
700 *****

701
702 Mr. Brubaker asked the gentleman present if he wanted to make a comment on the
703 subdivision item.

704
705 Mr. (Jason) Rowe said no. I was supposed to come back with some things for you guys
706 for 150 Dow Highway.

707
708 Ms. Braun said that that was supposed to be given to the Land Use Administrator for
709 review of the information and get you on the agenda.

710
711 Mr. Brubaker asked if Mr. Rowe would like to leave the information with us.

712
713 Mr. Rowe said that 'these' are the pictures and a copy of the lease agreement. The lease
714 agreement specifically says for the gravel area that I am using. The owner of the property
715 said that it's already in here. I'm not signing another piece of paper.

716
717 Mr. Brubaker said that you have a plan for vegetation buffer.

718
719 Mr. Rowe discussed his concern for the type of vegetation as he didn't want the deer
720 destroying it and would have find something that would work.

721
722 Mr. Brubaker said to provide a sketch of what you want to do and we could review. We
723 can then talk about when we can get you on the PB agenda, as well as getting the fee
724 payment.

725
726 *****

727
728 Ms. Braun said that I just wanted to remind everybody of Attorney Saucier's training,
729 that he did advise us against doing our own research when getting into an application
730 process. That was one of the points and, as we could see tonight, it did create a lot of
731 confusion for the applicant.

732
733 Ms. Bennett said that I would like to respond to that. I didn't do any research on that, I
734 just read our code. And I read our code in terms of looking at this site plan. So, my memo
735 just contained what I had planned on discussing in detail, but he didn't have to, about
736 what I found; that it could be feasible on this property and wanted to present it as a
737 consideration for the applicant in sketch plan. I wouldn't categorize it as research. I didn't
738 go out and find new information. I found information already available to this Board and
739 the public within our ordinance. I appreciate the concern and I think we all agree
740 . I marked up half the minutes we just reviewed because they were so valuable
741 with that but I don't think I crossed a line.

742
743 Ms. Braun said that I'm not saying that you crossed a line. I'm just saying that it's up to
744 the applicant to do their own research and decide how they want to present the
745 subdivision. That's all I'm saying. And as you can see, it created a lot of confusion this
746 evening for the applicant.

747
748 Ms. Bennett said that I also think that it is our job to illuminate and explain our code to
749 the applicants, oftentimes. We're supposed to be the arbitrators and the interpreters of our
750 codes, not the applicant. And that is what I was trying to do in my desire to discuss this
751 and make them aware that there was another avenue that could be useful.

752
753 **ITEM 11 – CORRESPONDENCE**

754
755 **A. Town Planner Update – written or verbal, if available.**

756
757 **B. Review Election Results**

758
759 Mr. Brubaker said that all of our ordinance amendments passed so thank you all for your
760 efforts on those. We now have an official definition of 'solar energy system' and a
761 comprehensive set of regulations that you helped craft. That definition is separated from
762 'public utility'. By the way, per our Charter I think, if there's not a different effective
763 date listed in the ordinance amendment, then it usually becomes effective a week after the
764 election is held. So, effective tomorrow are all of these ordinance amendments. There is
765 that section already in Chapter 1 of our code but any applications currently before you are
766 not really vested unless they've had substantive review, really a public hearing. So,
767 moving forward, all of the applications will be subject to these ordinances, I think.
768 Regarding marijuana, just a reminder that there are additional odor management
769 performance standards and adult use marijuana retail stores have a great parking
770 requirement, now, as well as the need to automatically do a traffic impact assessment.
771 Also, no more waivers or variances allowed for the 500-foot rule. Regarding signs, with
772 signs on Route 236 there is no longer a gray area about whether they need to be 8 feet
773 from the property line, or not. There's basically a zero setback as long as they are on the
774 property line. That's acceptable as long as they are generally at least 20 feet off the
775 pavement edge. What we really want is to avoid non-breakaway signs too close to the
776 road for safety reasons. In terms of site plan review content, recall that that's an
777 additional requirement for showing right, title, and interest – deeds, lease documents,

778 options, purchase agreements, etc., as well as applicants now being required to provide
779 elevation drawings of their proposed buildings so the PB can get a better look at what
780 buildings look like.

781
782 Ms. Braun asked if he had any updates on the walking/biking project and the TIF
783 water/sewer lines project.

784
785 Mr. Brubaker said that, on Thursday, is the proposal deadline for design surfaces for
786 walking and biking facilities on State Road and Beech Road. We're hoping to get some
787 good proposals from _____ and then we have some work to do because voters approved
788 the lower Capital Improvement budget recommendation recommended by the Budget
789 Committee, so, we have a little bit more of a challenge in order to identify what kind of
790 investment we can make in the construction of these facilities. There's a huge momentum
791 from the community that I have heard for moving forward with these so, hopefully, that
792 can be addressed down the road in future budgetary decisions. We're excited to at least
793 get the design process started for those couple of corridors; making them more available,
794 making them complete streets that allow for different choices for ways to get around
795 Town. And I know it's also something that the Aging-in-Place Committee has prioritized.
796 One of their major goals is increasing walkability and bike ability in Town so we're
797 excited to build on the one sidewalk and minimal bicycle facilities that we currently have
798 in Town. But it will be a local investment in order to actually build it.

799
800 Mr. Latter said that we have advocated for this kind of improvement. Do we have any
801 kind of role in advocating to see that this kind of improvement is funded. Or is that
802 beyond our purview.

803
804 Mr. Brubaker said that, as part of a future agenda item, there's no reason to say that the
805 PB can't have some kind of advisory motion on that.

806
807 Ms. Braun said that that sounds like a good idea, an excellent suggestion, Mr. Latter.

808
809 Ms. Lemire said that a discussion around it and the impact a vote has on the ability of
810 people who want this stuff in an advisory capacity I think would be good.

811
812 Ms. Braun said that I think any support we could give would be beneficial.

813
814 Mr. Brubaker said that, with regard to the **water and sewer project**, we are tentatively
815 looking to finalize the contract with the contractor who bid. That would probably come
816 sometime in July so you probably won't see mobilization of that contractor until the later
817 half of July. What is going on right now on Route 236 is the Unitil gas line construction.
818 Then, actually further up, right now it's mostly in South Berwick, we'll start to see
819 MaineDOT's resurfacing contractor doing the work and they'll stop just short of
820 [inaudible] (Depot Road?).

821
822 Mr. Latter asked if they are going to run that gas line down State Road.

823

824 Mr. Brubaker said that they are running a gas line, mainly **Dennett** Road, but that little
825 portion of State Road from Bolt Hill.
826
827 Ms. Lemire asked if people are going to be able to hook into that gas line.
828
829 Mr. Brubaker said that, on Route 236, I believe so. They are building it primarily to serve
830 Sweet Dirt's co-generation facility but I believe they would be open to other laterals.
831
832 Ms. Braun said that they've already come up Bolt Hill to State Road. So, they will go to
833 just short of Depot Road and next year they will go further down.
834
835 Mr. Brubaker said that that's to be determined.
836
837 Ms. Braun asked, as part of that, are they going to do the improvements to the Goodwin
838 Road/Route 236 intersection.
839
840 Mr. Brubaker said that my understanding is that they will generally restore what was
841 previously there.
842
843 Ms. Braun asked, if they want to do that, they will have to dig it all up again.
844
845 Mr. Brubaker said that, when DOT resurfaces a road, they'll put a moratorium on
846 improvements for three years unless the sponsor of the improvements by a municipality
847 wants to resurface a great distance on either side. The thinking is that they don't want this
848 fresh pavement to be torn up.
849
850 Ms. Lemire said that that would delay any intersection upgrades.
851
852 Mr. Brubaker said that it would unless the Town would like to overcome the moratorium
853 through additional costs.
854
855 Mr. Latter asked if it was too late to dovetail improvements to that intersection with the
856 gas line getting done.
857
858 Mr. Brubaker said that, if we're talking about the Route 236/Route 101/ Dover/Goodwin
859 Road intersection, my understanding is that the gas line won't go that far up.
860
861 Mr. Latter said that it's just the re-paving.
862
863 Mr. Brubaker said yes, just the resurfacing. We had engaged DOT reasonably to try and
864 get them to make certain improvements as part of their resurfacing project, including
865 center turn lanes and some access management improvements but they've since indicated
866 that they would not. They are not doing a full reconstruction of the road
867
868 Ms. Braun asked if Mr. Brubaker would go over **submission deadlines**.
869

870 Mr. Brubaker said that we have our meeting next week and then we have our break. Then
871 we will pick it up on July 26th. In August, I think we will focus on ordinance
872 development for November. I think the Conservation Commission may want to join us
873 for a joint workshop
874

875

876

ITEM 12 – SET AGENDA AND DATE FOR NEXT MEETING

877

878 The next regular Planning Board Meeting is scheduled for June 28, 2022 at 7PM.
879

880

ITEM 13 – ADJOURN

881

882 The meeting adjourned at 7:44 PM.
883

884

885

886

887

888

889

890

891

Respectfully submitted,

892

893

Ellen Lemire, Recording Secretary

894

895

896

Christine Bennett, Secretary

Date approved: _____



Mr. Jeff Brubaker
Eliot Planner
1333 State Road
Eliot, ME 03903

August 3, 2022

Subject: Low Impact Development Ordinance Changes Required by General Permit for Stormwater Discharges from Municipal Separate Storm Sewer Systems – For 8/9/2022 Planning Board meeting.

Dear Mr. Brubaker:

As you know, the 2022 Permit became effective 7/1/2022 and we have several ordinances that need updating over the next two years.

The following is a summary of the required ordinance changes that are already underway or completed for Eliot:

- 7/1/2023 - Erosion and Sedimentation Control (ESC) standards must be incorporated into the Town's code. – The Town has already drafted these changes and they are anticipated to be on the November Warrant as a new Chapter 34.
- 7/1/2023 – Chapter 35 Post-Construction Stormwater Management was required to be updated to ensure any corrective measures were implemented within 60 days of identification. The Town adopted these revisions proactively in 2021.

The following ordinance changes need to be initiated to conform to the MS4 General Permit:

- Low Impact Development (LID) Strategies:
 - 9/1/2022 – the Town must submit to the Maine DEP a list of performance standards they intend to incorporate into code addressing 10 LID Measures. This letter provides a recommended submittal to the Maine DEP based on a Model Ordinance created under a Maine Coastal Program Grant specifically to address this requirement.
 - Fall 2022 – the Maine DEP will issue the list for 30-day public comment
 - 11/1/2022 – the Maine DEP will inform the Town if the list is acceptable, or if additional performance standards are needed.
 - 7/1/2024 The performance standards must be incorporated into the Town's code.
- Chapter 31 Non-Stormwater Discharges
 - 7/1/2023 The Town must update the chapter to ensure that the source of an illicit discharge into the storm drain system is eliminated within 60 days of discovery.

To address the LID Strategies, we recommend creating a new chapter 36 Low Impact Development Strategies and updating the Land Use Chapters to point to this new chapter just as the Town did for the ESC standards.

We have attached a proposed submittal to address LID Strategies to meet our 9/1/2022 Maine DEP deadline. This submittal is based on the Model Ordinance for LID Strategies, which was developed over the past year using Grant Funding. The Model Ordinance was reviewed by Jim Katsiaficas, an attorney with Perkins Thompson who specializes in municipal law.

I believe the submittal reflects Performance Standards that are consistent with the existing code, but the Planning Board may wish to change or remove some of the Performance Standards for the 9/1/2022 submittal to Maine DEP. I will attend the August 9, 2022 Planning Board meeting to review this with the Board and answer any questions they may have. Some notes for the Board to direct their review:

- a. Items that are underlined in the draft submittal are generally items that reference other elements of the Eliot Code
- b. The Technical Appendix contains the details of the performance standards that will be implemented.
- c. In addition to the Technical Appendix, other items that are highlighted yellow are items we will likely discuss at the 8/9/2022 meeting, or will decide upon at a later time (will the Board apply this Town-wide or Urbanized Area only).

We will provide redline strikeout changes for Chapter 31 Non-Stormwater Discharges at a future Planning Board Meeting for their consideration.

If you have any questions about this information or need changes in advance of the Planning Board meeting, please let me know. I can be reached at 207-415-5830 or via email krabasca@integratedenv.com.

Sincerely,

Integrated Environmental Engineering, Inc.



Kristie L. Rabasca, P.E., LEED AP BD + C

Attachment: Proposed LID Performance Standards Submittal for Planning Board Consideration.

Eliot Proposed Ordinance Content for Low Impact Development Strategies

Prepared for submittal to Maine Department of Environmental
Protection as required by the Maine General Permit for Stormwater
Discharges from Municipal Separate Storm Sewer Systems
Date of Revisions: 8/4/2022 – Draft for Planning Board Review

Eliot intends to create a new chapter in their Code of Ordinances and will update other chapters to reference the Submittals and Performance Standards of this new chapter.

Numbering is provided assuming this will be Chapter 36 for clarity, but numbering may change.

This document is based on the Maine Model Ordinance for Low Impact Development Strategies (see credits this page).

The Town process for ordinance changes requires review and approval by Planning Board, a Public Hearing, and approval by Town residents on a Town Warrant as part of either a special or standard election.

Items shown in Blue Italics were listed as optional in the Model Ordinance.



CUMBERLAND COUNTY
SOIL & WATER
CONSERVATION DISTRICT

Credits: The Eliot Proposed LID Strategies are based on the model ordinance prepared by SMPDC, CCSWCD, and Integrated Environmental Engineering, Inc. under award CZM NA21NOS4190082 to the Maine Coastal Program from the National Oceanic and Atmospheric Administration, U.S. Department of Commerce. The statements, findings, conclusions, and recommendations are those of the author(s) and do not necessarily reflect the views of NOAA or the Department of Commerce.

**DRAFT
CHAPTER 36**

LOW IMPACT DEVELOPMENT STRATEGIES ORDINANCE

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ARTICLE I GENERAL

A. Purpose

The Purpose of this “Low Impact Development Strategies Ordinance” (the Ordinance) is to provide for the health, safety, and general welfare of the citizens of the Town of Eliot through review and approval of Low Impact Development Strategies as required by federal and State law.

This Ordinance establishes methods for implementing Low Impact Development Strategies to comply with minimum control measure requirements of the federal Clean Water Act, of federal regulations and of Maine’s Small Municipal Separate Storm Sewer Systems General Permit.

B. Objectives

The Objective of this Ordinance is to minimize the adverse effects of new development and redevelopment on the environment specifically through protecting sensitive areas, providing on-site stormwater volume control, providing treatment of stormwater, and minimizing impervious areas.

C. Applicability

This ordinance applies to any development in the Town’s Urbanized Area listed as SPR (Site Plan Review) in the Zoning Table of permitted and prohibited uses in Section 45-290 including subdivisions subject to Chapter 41 that creates:

- a. Disturbed Area of one or more acres of land, or
- b. Disturbed Area that is less than one acre of land if the Construction Activity creating Disturbed Area is less than one acre of land and is part of a larger Common Plan of Development or Sale that as approved or amended would create Disturbed Area of one acre or more.

D. Definitions

Note to Maine DEP: Definitions may change slightly based on detailed cross comparison to existing definitions in Town Ordinances.

Buffers – Means all three kinds of buffers listed below unless a subset of the three is specifically called out:

- **Stormwater Vegetative Buffer** – a buffer constructed in accordance with Appendix F in Chapter 500 for the purposes of providing pollutant removal.
- **Shoreland Zoning Setback Buffer** – A buffer required by Chapter 44 Shoreland Zoning Ordinance to protect a water of the State.
- **Buffer** – a buffer area as described in Chapter 41 Subdivisions Section 41-280 Buffering and storage and Chapter 45-417 Zoning Performance Standards Buffers and Screening (provisions that apply to all districts).

Chapter 500 – Means Chapter 500 of the Maine Department of Environmental Protection’s Rules (“Stormwater Management Rules”).

Chapter 502 - Means Chapter 502 of the Maine Department of Environmental Protection’s Rules (“Direct Watersheds of Lakes Most at Risk from New Development, and Urban Impaired Streams”).

Climate Resilient Northeast Native Vegetation – Means plants identified as native to the Northeast as identified by the Northeast Regional Invasive Species & Climate Change (RISCC) Network or a Maine Licensed Landscape Architect.

Common Plan of Development or Sale - Means a “subdivision” as defined in Title 30-A M.R.S. §§ 4401 *et seq.* (the Maine Subdivision statute) and in Chapter 41 Subdivisions of the Municipality’s code of ordinances.

Note: Common Plan of Dev. or Sale a term required to be used by the MS4 General Permit. §§ 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.

Construction Activity – Means any activity on a Site that results in Disturbed Area.

Discharge - Means any spilling, leaking, pumping, pouring, emptying, dumping, disposing or other addition of pollutants to the Waters of the State, other than groundwater.

Disturbed Area - Means all land areas of a Site that are stripped, graded, grubbed, filled, or excavated at any time during the site preparation or removing vegetation for, or construction of, a Project. Cutting of trees, without grubbing, stump removal, disturbance, or exposure of soil is not considered Disturbed Area. Disturbed Area does not include routine maintenance but does include Redevelopment and new Impervious Areas. “Routine maintenance” is maintenance performed to maintain the original line and grade, hydraulic capacity, and original purpose of the facility. Paving impervious gravel surfaces provided that an applicant or permittee can prove the original line and grade and hydraulic capacity shall be maintained and original purpose of the gravel surface remains the same is considered routine maintenance. Replacement of a building is not considered routine maintenance of the building and is therefore considered Disturbed Area.

Note: Disturbed Area definition is from the MS4 General Permit plus addition of the last sentence to ensure that Redevelopment Projects removing buildings take into account that area as Disturbed Area.

Drainageway – Means the same as “Drainageway” defined in Chapter 500

General Permit – Means the General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems (MS4) approved October 15, 2020, and modified November 23, 2021, and any amendment or renewal thereof.

High Intensity Soil Survey – Means a Class A survey defined by the March 2009 Guidelines for Maine Certified Soil Scientist for Soil Identification and Mapping, prepared by the Maine Association of Professional Soil Scientists.

High Permeability Soils – Means hydrologic soil groups A or B as determined by on-site soil testing by a certified soil scientist using a High Intensity Soil Survey.

Impervious Area - Means the total area of a Parcel covered with a low-permeability material that is highly resistant to infiltration by water, such as asphalt, concrete, or rooftop, and areas such as gravel roads and unpaved parking areas that will be compacted through design or use to reduce their permeability. Common Impervious Areas include, but are not limited to, rooftops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and macadam or other surfaces which similarly impede the natural infiltration of stormwater. Pervious pavement, pervious pavers, pervious concrete, and under drained artificial turf fields are all considered impervious.

Note: this definition is the same as Chapter 500 definition of Impervious Area except Chapter 500 has a sentence at the end was removed, saying that the DEP can exclude Pervious pavement from calculation of Impervious Area was modified.

Lot – Means the same as it is defined under the Municipality’s zoning ordinance.

Low Impact Development (LID) - Means a broad approach to site planning that preserves natural resources, processes, and habitat, defines what portions of the Site are suitable for development and then utilizes Stormwater Treatment Measures to manage Runoff from the proposed developed impervious areas. In LID, Stormwater Treatment Measures using natural processes such as vegetated buffers are given preference over constructed treatment Stormwater Treatment Measures. The goals of LID are to minimize the environmental impacts of the development.

Maine Licensed Landscape Architect – Means a person who has an active Landscape Architect license from the Maine Board of Licensure for Architects, Landscape Architects, and Interior Designers.

Maine Native Vegetation – Means vegetation including grass seed mixtures, identified as native to Maine from lists maintained by: US Department of Agriculture Hardiness Zones by the Maine Cooperative Extension, Wild Seed Project, Regional Soil and Water Conservation District, Maine YardScaping Program, or a Maine Licensed Landscape Architect.

Municipal Separate Storm Sewer Systems (MS4) - Means a conveyance or system of conveyances designed or used for collecting or conveying Stormwater (other than a publicly owned treatment works (POTW), as defined at 40 CFR 122.2, or a combined sewer), including, but not limited to, roads with drainage systems, municipal roads, catch basins, curbs, gutters, ditches, human-made channels or storm drains owned or operated by any municipality, sewer or sewage district, Maine Department of Transportation (MDOT), Maine Turnpike Authority (MTA), State agency or Federal agency or other public entity that Discharges to Waters of the State other than groundwater.

Municipality – Means the City/Town of Eliot.

New Development – Means the same as “New Development or Construction” defined in the General Permit.

The General Permit defines “New Development or Construction” as follows: “New Development or Construction” means activity undertaken to develop property, including but not limited to: the construction of buildings, parking lots, roads and other new impervious surfaces; landscaping; and other activities that disturb land areas. New Development or Construction does not include Redevelopment or maintenance. Permitted municipalities may define New Development more stringently.)

Parcel – Means the same as "Tract or parcel of land" as defined at 30 M.R.S. §4401.6 *et seq.* (or alternately, the municipality may reference their own definition of parcel).

§4401.6 Tract or Parcel of land means all contiguous land in the same ownership, except 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 after September 22, 1971.

Permitting Authority - Means the Code Enforcement Officer, Building Inspector, Planning Board, or other official or body authorized by State law or the Municipality’s ordinances to approve Development or Redevelopment of Sites.

Project – Means Construction Activity undertaken for Major Development, Minor Development or Subdivisions, both as defined in the General Permit, located on a Site that will Discharge Stormwater to a Small MS4 located partially or entirely within the Urbanized Area.

Protected Natural Resource - Means coastal sand dunes, coastal wetlands, significant wildlife habitat, fragile mountain areas, freshwater wetlands, community public water system primary protection areas, great ponds, or rivers, streams or brooks as defined in the *Natural Resources Protection Act* at 38 M.R.S. §480-B.

Redevelopment – Means the same as “Redevelopment” defined in the General Permit.

The General Permit defines “Redevelopment” as follows: “Redevelopment” means an activity, not including maintenance, undertaken to redevelop or otherwise improve property in which the newly developed area is located within the same footprint as the existing developed area.

Regulated Small MS4 - Means any Small MS4 authorized by the most recent, in-force General Permit or the general permits for the Discharge of Stormwater from MDOT and MTA Small MS4s or state or federally owned or operated Small MS4s including all those located partially or entirely within the Urbanized Area.

Runoff – Means the part of precipitation from rain or melting ice and snow that flows across a surface as sheet flow, shallow concentrated flow or in Drainageways.

Small MS4 - Means any MS4 that is not already covered by the Phase I MS4 stormwater program including municipally owned or operated storm sewer systems, state, or federally owned systems, such

as colleges, universities, prisons, military bases and facilities, and transportation entities such as MDOT and MTA road systems and facilities. See also 40 CFR 122.26(b)(16).

Significant and Essential Wildlife Habitats – Means the areas identified as Significant or Essential Habitats of endangered or threatened species as identified by the Maine Department of Inland Fisheries and Wildlife either on the Beginning with Habitat viewer or in consultation with the Maine Department of Inland Fisheries and Wildlife.

Site - Means the portion of a Lot, Parcel, or Common Plan of Development which is proposed for Construction Activity, including open space, Stormwater Treatment Measures, and Disturbed Area, subject to this Ordinance.

Stormwater- Means the part of precipitation including Runoff from rain or melting ice and snow that flows across the surface as sheet flow, shallow concentrated flow, or in Drainageways. “Stormwater” has the same meaning as “storm water”.

Stream Crossing - Means the mechanism by which any road, sidewalk, or other structural feature of a Site will cross or pass over or through a Water of the State which has a stream bank full width of 6 feet or less.

Stream Crossing designed in accordance with Maine Stream Smart Principles – Means a Stream Crossing designed by a Maine Professional Engineer who has completed the Maine Audubon Society Stream Smart Workshops (Parts I and II), which includes the standards recommended by that program’s stream span, elevation, slope and skew and substrate to promote passage of fish and other organisms and to limit road-damaging flows from extreme weather.

Stormwater Treatment Measure – Means a Stormwater management system or innovative treatment measure as described in Chapter 500 4.c.(3) Types of treatment measures allowed. These measures include wet ponds, vegetated soil filters, infiltration, buffers, or innovative treatment measures. For purposes of this Ordinance these are cumulatively referred to as Stormwater Treatment Measures, or individually referred to as Stormwater Treatment Wet Pond, Stormwater Treatment Vegetated Soil Filter, Stormwater Treatment Infiltration Measure, Stormwater Treatment Buffer, or Stormwater Treatment Innovative Measure.

Time of Concentration – Means the same as “Time of concentration” defined in Chapter 500.

Urbanized Area - Means the area of the Municipality so defined by the inclusive sum of the 2000 decennial census and the 2010 decennial census by the U.S. Census Bureau.

Waters of the State – See 38 M.R.S. §361-A (7).

E. Procedure

Review and approval of projects subject to this Ordinance will be conducted concurrently with their Site Plan Review or Subdivision review.

F. Submission Requirements

The following submission items are required to be submitted with any Subdivision Final Plan application, or any Application for Site Plan:

1 Project Narrative

The applicant shall provide a Project narrative describing:

- *the overall approach to Stormwater management at the Project Site,*
- *a listing of Stormwater Treatment Measures that will be in use, stating which will be maintained privately and which will be offered to the Municipality for acceptance and operation,*
- *how they have prioritized protection of the sensitive areas from disturbance as required in Technical Appendix A and*
- *a rationale for any waivers from performance standards in Technical Appendix A.*

2 Project Contacts and Qualifications

The applicant shall provide contact information (i.e., name, company if applicable, phone number, physical address, and email address) as described below:

- Maine Licensed Landscape Architect
- Maine Certified Soil Scientist
- Maine Professional Engineer

3 Project Plans Contents

The applicants Project Plans shall consist of a graphic representation of the Site at a scale no smaller than 1 inch = 100 feet showing:

- Waters of the State and their associated Shoreland Protection areas
- Protected Natural Resources
- Predevelopment drainage areas, Drainageways and associated Time of Concentration
- High Permeability Soils
- Maine Native and Climate-Resilient Northeastern Native Vegetation in General Buffer areas and Shoreland Zoning Buffer areas
- Significant and Essential Wildlife Habitats
- Limits of disturbance
- Post-development drainage areas, Drainageways and associated Time of Concentration
- Locations of snow storage areas
- Stormwater Treatment Measures to be used

4 Submittals related to Infiltration Performance Standard

The applicant shall submit the following to permit review of the Project application under the LID Performance Standards for infiltration:

- Information required by Chapter 500 Section (7)(D)(5)(c) Infiltration Submittals including a plan for use of de-icing materials, pesticides and fertilizers within the drainage area of any infiltration Stormwater Treatment Measures.
- Locations of any Maine Uncontrolled Hazardous Substance Sites, Maine Voluntary Response Action Program sites, federal Resource Conservation and Recovery Act ("RCRA") Corrective Action sites, or Petroleum Remediation sites on or adjacent to the Site.

G. Performance Standards

The applicant shall incorporate the performance standards contained in Technical Appendix A into their site design, shall implement them during construction and shall maintain and inspect them in accordance with Chapter 35 Post Construction Stormwater Management.

H. Enforcement – to be developed as part of final ordinance

I. Severability and Conflicts - to be developed as part of final ordinance

J. Waivers - to be developed as part of final ordinance

K. Authority

The Municipality enacts the Ordinance for Low Impact Development Strategies provisions pursuant to Maine Constitution Art. VIII, Part Second, §1 and 30-A M.R.S. §§3001 et seq. (municipal home rule authority), 38 M.R.S. §413 (the Wastewater Discharge Law), 33 USC §§1251 et seq. (the Clean Water Act), and 40 CFR Part 122 (US Environmental Protection Agency’s regulations governing the National Pollution Discharge Elimination System (NPDES)). The Maine Department of Environmental Protection, through its promulgation of the General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems has listed the Municipality as having a Regulated Small MS4; under this General Permit, listing as a Regulated Small MS4 necessitates enactment of elements of this Ordinance as part of the Municipality’s Stormwater management program in order to satisfy the minimum control measures for Post Construction Stormwater Management in New Development and Redevelopment.

Technical Appendices

These Technical Appendices detail the required LID Performance Standards. The appendices shall be updated from time to time by the Town Engineer to reflect the most current information, and shall become effective upon public hearing and approval by the Planning Board.

Technical Appendix A - LID Performance Standards

Note to Maine DEP:

The following table shows the Performance Standards the Town will adopt, which LID Measures are addressed by the Performance Standard as well as notes for future adoption by the Town. This information is provided to facilitate review by Maine DEP and for public comment.

The last two columns of the table will not be included in the Town’s Ordinances and Regulations.

Regarding Maintenance of Stormwater Treatment Measures, MS4 communities maintain a Post-Construction Runoff Control Ordinance which automatically covers any Stormwater Treatment Measures required under the LID performance standards. Therefore, no Maintenance requirements are contained here. Non-MS4 communities implementing these LID strategies should also adopt the Post Construction Maintenance Ordinance.

Performance Standard	LID Measure(s) addressed (shown only for informational purposes)	Additional Notes for Eliot Adoption
Prioritize the protection of the following sensitive areas as listed below (highest priority listed first) by not disturbing land in these areas: <ul style="list-style-type: none"> i. Waters of the State and associated shoreland protection areas. ii. Protected Natural Resources iii. Predevelopment Drainageways iv. High Permeability Soils 	<ol style="list-style-type: none"> 1. Minimize Site Clearing 2. Protect Natural Drainage System 4. Minimize Impervious Area 5. Minimize Effect of Impervious Area 	The Town intends to adopt this Performance Standard.

<p>v. Maine Native Vegetation and Climate Resilient Northeastern Native Vegetation in General Buffer areas and Shoreland Zoning Setback Buffer areas</p> <p>vi. Significant and Essential Wildlife Habitats</p> <p>Note that the applicant will need to provide a description in their narrative of how they have prioritized these areas for protection from disturbance. These areas may be counted toward the open space requirements.</p> <p>Exception: Removal of Maine Native Vegetation and Climate Resilient Northeastern Native Vegetation that is diseased or in poor condition is allowed.</p>	<p>6. Minimize Soil Compaction</p>	
<p>Project Plans shall depict limits of disturbance. Limits of disturbance shall be established on-site prior to disturbance using flagging, fencing, signs or other means to provide a clear indication.</p>	<p>1. Minimize Site Clearing 6. Minimize Soil Compaction</p>	<p>The Town intends to adopt this Performance Standard.</p>
<p><i>Optional: Rural New Developments shall preserve at least 40% of the Site as open space and Suburban New Developments shall preserve 25% of the Site as open space.</i></p> <p><i>Exception: Municipalities may allow exceptions per their municipal ordinances. For example, applicants may be allowed to pay a fee-in-lieu which is dedicated to open space or may provide open space in an alternate locations within the same watershed.</i></p>	<p>1. Minimize Site Clearing 4. Minimize Impervious Area 7. Minimize Lawns and Maximize Landscaping that Encourages Runoff Retention.</p>	<p>Eliot Chapter 41 contains open space requirements for subdivisions as follows: <i>The planning board may require the subdivider to provide up to ten percent of the total area for open space and other public sites. It is desirable that areas reserved for recreation be at least two acres in size and easily accessible from all lots within the subdivision.</i></p> <p>The Town intends to adopt this Performance Standard in the following districts: Suburban, Rural and Village Districts as identified on the Eliot Zoning Map.</p>

<p>Stream Crossings for Waters of the State shall be designed in accordance with Maine Stream Smart Principles to preserve natural pre-development Drainageways.</p> <p>Exception: Stream Crossings over portions of streams that are artificially channelized are not subject to this standard.</p>	<ol style="list-style-type: none"> 2. Protect natural Drainage System 3. Minimize Decrease in Time of Concentration 	<p>The Town intends to adopt this Performance Standard.</p>
<p>Rural and Suburban Projects shall preserve the natural pre-development Drainageways on the Site by using the natural flow patterns and pathways for the post-construction drainage system.</p> <p>Exceptions are allowed if the Time of Concentration for a predevelopment Drainageway is the same as or shorter than the post-development Drainageway. Exception: The applicant may submit an “alternative analysis” which demonstrates that this performance standard is impracticable.</p>	<ol style="list-style-type: none"> 2. Protect Natural Drainage System 3. Minimize Decrease in Time of Concentration 	<p>The Town intends to adopt this Performance Standard.</p>
<p>Projects that have a Disturbed Area of one acre of land or more shall include Stormwater Treatment Measures in accordance with Chapter 500 Section 4.C General Standards, 4.C.(2) Treatment requirements, 4.C.(3) Types of treatment measures allowed, and 4.D Phosphorus standard (for lake watersheds only) and additionally:</p> <ul style="list-style-type: none"> • Individual Stormwater Treatment Measure may not treat more than one acre of Impervious Area • Vegetation used in Buffer Areas and/or Stormwater Treatment Measures shall be Maine Native Vegetation or Climate Resilient Northeastern Native Vegetation 	<ol style="list-style-type: none"> 2. Protect Natural Drainage System 5. Minimize Effect of Impervious Area 7. Minimize Lawns and Maximize Landscaping that Encourages Runoff Retention. 10. Stormwater Quality Treatment and Retention Requirements 	<p>The Town intends to adopt this Performance Standard.</p>

<p>Note that although Chapter 500 General Standards and Phosphorus standard have higher thresholds for developed and Impervious Area, these standards apply to sites within the Urbanized Area of the Municipality at a lower threshold.</p> <p>Exception: Notwithstanding other provisions in municipal ordinances or state law, requirements to plant “Maine Native Vegetation” or “Climate Resilient Northeast Native Vegetation” shall not be construed as a restriction on the rights of individuals to engage in agricultural practices that are legally protected by the Maine Agriculture Protection Act and the “Right to Food” provision in the Maine Constitution (Constitution, Art. I, §25).</p>		
<p>Infiltration Standard: Provide volume control on-site (through infiltration or storage) in accordance with the following:</p> <ul style="list-style-type: none"> • Volume to be controlled = (total area of Impervious Area after New Development and Redevelopment – total area that existed before New Development and Redevelopment) x Rd • Where Rd is the groundwater recharge depth based on the USDA/NRCDS hydrologic soil group as follows: Rd = 0.40 inches or rain for type A soils, 0.25 inches of rain for type B soils, 0.10 inches of rain for type C soils and 0 for type D soils • Stormwater Treatment Measures with liners may not be used to meet the volume requirement via storage. • Restrictions and requirements identified in Sections D(2) through D(4) of Appendix D 	<ol style="list-style-type: none"> 2. Protect the Natural Drainage System 3. Minimize the Decrease in Time of Concentration 5. Minimize Effect of Impervious Area 	<p>The Town intends to adopt this Performance Standard.</p>

<p>Infiltration basins, drywells, and subsurface fluid distribution systems; of Chapter 500 apply.</p> <p>Exception: For Sites in Rural and Suburban areas where infiltration will disrupt the preservation of the predevelopment Drainageways, an exception from the infiltration standard will be allowed.</p> <p>Exception: If any Uncontrolled Hazardous Substance Sites, Voluntary Response Action Program sites, RCRA Corrective Action sites, or Petroleum Remediation sites are on or adjacent to the Site, the Site does not need to meet the volume control standard.</p> <p>Exception: Municipalities may allow infiltration on an alternate site within the same watershed in-lieu of on-site infiltration.</p>		
<p>Minimize Impervious Area and the Effect of Impervious Area from road runoff:</p> <ul style="list-style-type: none"> • At least 70% of roadway Runoff shall be directed into a Stormwater Treatment Measure <p><i>Optional:</i></p> <ul style="list-style-type: none"> • <i>Dead-end streets shall be no longer than 1000 feet (Rural and Suburban Areas).</i> • <i>Dead-end roads shall be constructed to provide a hammerhead (when less than 200 feet), or a tear drop cul-de-sac turn-around with a center that is vegetated, used for open space, and/or a Stormwater Treatment Measure as described below (Rural and Suburban Areas).</i> • <i>Cul-de-sac roads shall be constructed with the center island used for Stormwater Treatment</i> 	<ol style="list-style-type: none"> 4. Minimize Impervious Area 5. Minimize Effect of Impervious Area 	<p>The Town intends to adopt this Performance Standard.</p>

<p><i>Measures or vegetation unless type A or B soils are present in the center, in which case this area should be used to promote natural infiltration on-site.</i></p>		
<p>Minimize Impervious Area from parking areas:</p> <ul style="list-style-type: none"> • Vehicle parking stall dimension standard: maximum of 9-foot x 18-foot stall <p>Exceptions for public safety</p> <p><i>Optional: (not fully developed as part of this ordinance) Establish "In-Lieu of" Parking programs with the following components:</i></p> <ul style="list-style-type: none"> • <i>Fee in-lieu of parking</i> • <i>Car-share in-lieu of parking</i> • <i>Transit in-lieu</i> • <i>Bike/pedestrian infrastructure improvements</i> <p><i>Note that the in-lieu program may optionally be tied to incentives, such as density or height bonuses.</i></p> <p><i>Establish shared parking provisions</i></p> <p><i>Minimum parking requirements shall be based on reasonable parking needs instead of peak use, and maximum parking limits should be established for appropriate areas. Establish maximum parking requirements at current minimum standards.</i></p> <p><i>Reductions in parking volume requirements should consider presence of transit routes within ¼ mile, existing on-road parking, and transportation/parking demand management plan for Sites over a certain size.</i></p>	<p>4. Minimize Impervious Area</p>	<p>The Town intends to adopt this Performance Standard.</p> <p>Eliot will not adopt the optional performance standards.</p>

<ul style="list-style-type: none"> Commercial parking space size shall be a maximum 9-foot width and an 18-foot length with an allowance for reduction in length at a 1 to 1 ratio for available overhang (1 foot reduction allowed if 1 foot overhang possible). Parking lot travel aisles shall be a maximum of 22 feet wide. <p>Require garages/under above building where appropriate, optionally tied to a density or height bonus</p>		
<p>Runoff from on-site roofs, sidewalks, and peak-use overflow parking Runoff shall be directed into Stormwater Treatment Buffers or Stormwater Treatment Infiltration Measures.</p>	<p>5. Minimize Effect of Impervious Area 8. Provide Vegetated Open-Channel Conveyance Systems</p>	<p>The Town intends to adopt this Performance Standard.</p>
<p>Construction equipment movement, laydown areas and parking shall be restricted to the Disturbed Area.</p> <p>Areas to be vegetated shall be tilled and the soils amended with organic matter as needed based on the results of soil tests.</p>	<p>6. Minimize Soil Compaction</p>	<p>The Town intends to adopt this Performance Standard.</p>
<p>Snow storage areas shall be depicted on site plans.</p> <p>The location of snow storage areas in Stormwater Treatment Measures and Shoreland Zoning Setback Buffers shall be prohibited.</p>	<p>5. Minimize Effect of Impervious Area</p>	<p>The Town intends to adopt this Performance Standard.</p>
<p><i>Optional Standard: Require the implementation of precipitation storage (e.g., cisterns or rain barrels) for later reuse for landscaping.</i></p>	<p>9. Rainwater Capture and Reuse</p>	<p>Eliot will not implement this optional performance standard.</p>

Proposed Town Code Amendments of Chapter 1 – General Provisions, Chapter 33 – Planning and Development, Chapter 44 – Shoreland Zoning, and Chapter 45 – Zoning, Related to Solar Energy Systems

DRAFT for August 9, 2022, Planning Board Review

Recommended motion template

Motion to set a public hearing for August 16, 2022, for the Draft Proposed Town Code Amendments Related to Solar Energy Systems.

Planning Board recommends _____ (#-#)

Select Board recommends _____ (#-#)

Short title

Proposed Town Code Amendments of Chapter 1 – General Provisions, Chapter 33 – Planning and Development, Chapter 44 – Shoreland Zoning, and Chapter 45 – Zoning, Related to Solar Energy Systems

Ballot question – Town Special Referendum Election, November 8, 2022

ARTICLE #__ : Shall an Ordinance entitled “Proposed Town Code Amendments of Chapter 1 – General Provisions, Chapter 33 – Planning and Development, Chapter 44 – Shoreland Zoning, and Chapter 45 – Zoning, Related to Solar Energy Systems” be enacted?

Background and rationale

In the June 14, 2022, Annual Town Election and Referendum, voters approved ordinance amendments establishing zoning, performance standards, and site plan review requirements for solar energy systems. The amendments established definitions for two types of systems based on size and location: smaller-scale, ground-mounted or roof-mounted systems (SES-SR) and larger-scale, ground-mounted systems (SES-LG).

The amendments proposed for this November 2022 Town Special Referendum Election make adjustments and clarifications to the solar energy system land use regulations. First, they make SES-LGs allowable, subject to Planning Board site plan review, in the Limited Commercial shoreland zoning district, as long as they are on appropriate soils. Other shoreland zoning districts would continue to prohibit them.

Subsection 45-462(d)(5)e generally prohibits SES-LGs in Focus Areas of Statewide Ecological Significance as defined by the Maine Natural Areas Program, with some exceptions. The amendments clarify these exceptions, which apply to land that has undergone development or significant grading, or is a brownfield site. Similar modifications are proposed for Subsection 33-191(d) to clarify which SES-LGs are exempt from providing environmental information otherwise required by Subsection 33-191(c) in site plan review applications. The amendments add a new definition of a brownfield site that is consistent with a commonly accepted definition at the state and federal level. Another proposed new definition is “impervious area”, which is also included in

Proposed Town Code Amendments of Chapter 1 – General Provisions, Chapter 33 – Planning and Development, Chapter 44 – Shoreland Zoning, and Chapter 45 – Zoning, Related to Solar Energy Systems

the Erosion and Sedimentation Control ordinance amendments also proposed for this same election.

The amendments also modify and clarify Section 45-462(d)(1), which generally requires a continuous vegetated buffer between SES-LGs and nearby residential uses or streets, town ways, or public ways. The amendments expand the residential lots from which the SES-LG must be so buffered from being merely “abutting” to being within 100 ft. of the lot to be developed. They also clarify that the Planning Board may allow limited openings in the vegetated buffer if necessary for transportation, emergency, and utility access, or otherwise as required by law or code. This is intended to balance the fact that the buffer should be as continuous as possible with the fact that the development of SES-LGs may need some openings for the functioning of the site, e.g. a new driveway for maintenance vehicle access.

The amendments further define wetland impact avoidance/minimization by placing a limit such that SES-LGs cannot be located on, or alter, 4,300 sq. ft. or greater of wetlands.

Finally, the amendments make other minor wording and editorial changes.

(New text underlined in bold)

~~Deleted text in strikethrough~~

Sec. 1-2. - Definitions and rules of construction.

[abridged to only show changes]

Brownfield (or a brownfield site) means real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.

[...]

Impervious area means the total area of a parcel covered with a low-permeability material that is highly resistant to infiltration by water, such as asphalt, concrete, or rooftop, and areas such as gravel roads and unpaved parking areas that will be compacted through design or use to reduce their permeability. Common impervious areas include, but are not limited to, rooftops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and macadam or other surfaces which similarly impede the natural infiltration of stormwater. Pervious pavement, pervious pavers, pervious concrete, and underdrained artificial turf fields are all considered impervious. *[Also proposed in the Erosion and Sedimentation Control ordinance amendments, which is based on a model ordinance. Any changes to this should be carefully considered and synced with the other amendments]*

[...]

Solar energy system means a system whose primary purpose is to harvest energy by transforming solar energy into another form of energy or transferring heat from a collector to another medium using mechanical, electrical, or chemical means. It may be roof-mounted or ground-mounted. Solar energy systems are categorized by a combination of area and location as follows:

1. A small-scale or roof-mounted solar energy system (SES-SR) is either:
 - (a) a ground-mounted solar energy system whose area, based on total airspace projected over the ground, is less than 15,000 square feet (approximately one-third of an acre); or
 - (b) a roof-mounted solar energy system
2. A larger-scale solar energy system (SES-LG) is a ground-mounted solar energy system whose area, based on total airspace projected over ~~a roof or~~ the ground, is equal to or greater than 15,000 square feet. Within any three-year period, construction of two or more ground-

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mounted solar energy systems on the same ~~property~~ lot, where the total combined area, based on total airspace projected over the ground, of those systems is equal to or greater than 15,000 square feet, shall be collectively considered **construction of** an SES-LG.

[...]

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Sec. 33-191. – Larger-scale solar energy systems

In addition to the required elements in Section 33-127, all larger-scale solar energy system (SES-LG) site plan review applications must include the following:

- (a) A decommissioning plan consistent with Section 45-462(d)(10). A decommissioning plan (or advanced draft of such plan) required by 35-A MRSA 3491 through 3496 may be provided as long as it is consistent with Section 45-462(d)(10).
- (b) Documentation of the financial guarantee required by 35-A MRSA 3491 through 3496. The Town shall have the option to be an obligee on a surety bond or otherwise hold a financial assurance.
- (c) Environmental information, as applicable:
 - (1) Summary of known occurrences of species or habitats of concern for the project site provided by the Maine Department of Inland Fisheries and Wildlife (MDIFW).
 - (2) Documentation regarding Endangered, Threatened, or Rare/Special Concern species or their habitat on the project site, pursuant to the Maine Endangered Species Act (MESA; 12 M.R.S.A. §12801 eq. seq.).
 - (3) Significant Wildlife Habitats (SWHs) defined and protected pursuant to the Natural Resources Protection Act (NRPA; 38 M.R.S.A §480-B (10)) and Maine Department of Environmental Protection (DEP) SWH rules (06-096 CMR 335; 09-137 CMR 10), including, but not necessarily limited to, Deer Wintering Areas (DWAs) or Travel Corridors.
 - (4) Mapped vernal pools on, or within 250 feet of the ~~property~~ **lot**, and the following related information: Maine State Vernal Pool Assessment Forms completed by a qualified wetland scientist; vernal pool significance determinations from MDIFW; mapped Critical Terrestrial Habitat (CTH) buffers, as required by NRPA (38 M.R.S.A. §480-BB) and DEP CTH rules (06-096 CMR 305 and 335); and associated CTH impact calculations. An applicant may omit the aforementioned assessment forms and/or vernal pool determinations if:
 - i. because of the time of year at which the application is submitted, conducting a seasonally valid vernal pool survey would delay application review by at least two months; and
 - ii. the applicant treats all vernal pools on the property as “potentially significant” and designs the project as if they were significant and DEP CTH rules apply.
 - (5) Delineated wetlands. Wetland delineation for wetlands shown on the site plan must have been completed by a qualified wetland scientist within the last five years.
 - (6) **A summary of documented or potential** ~~A~~ **archaeological and historical resources on, or in the vicinity of, the lot**, including but not limited to correspondence **to or** from the State Historic Preservation Commission.

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- (7) A summary of DEP NRPA permit requirements and the status of applications for said permits.
 - (8) An estimate of the location of prime farmland or soils of statewide importance.
 - (9) Environmental assessment and alternatives analysis. Applicants for SES-LGs shall submit an environmental assessment and alternatives analysis that documents how the siting decision was made; an assessment of different locations and sizes of solar array on the parcel to be developed; a narrative describing impacts to wildlife, documented significant natural areas, watersheds; and a discussion of how these impacts will be avoided, minimized, or mitigated.
- (d) *Environmental information exemptions.* Applications for SES-LG systems, **for which** at least 90 percent of **their total airspace projected over the ground** ~~which would cover~~ **the following land**, already impervious area (such as a parking lot), or which are entirely within documented brownfield sites, are exempt from providing the above information **required by subsection (c)**, unless the Planning Board makes a motion to require it:
- (1) **Land where significant grading has already been permitted and has occurred, such as a quarry;**
 - (2) **Land where development has already been permitted and has occurred, including, but not necessarily limited to, buildings, structures, parking lots, driveways, livestock corral areas, or other impervious areas to be redeveloped by the SES-LG; or,**
 - (3) **A brownfield site that existed as of June 22, 2022;**
- (e) Locations of proposed new power lines serving the site, information about anticipated upgrades to existing power distribution lines or poles, and a summary of the project’s status with power company/grid operator required approvals/documents.
 - (f) *Operations and Maintenance Plan.* The applicant shall submit a plan for the operation and maintenance of the SES-LG, which shall include measures for maintaining safe access to the installation as well as other general procedures for operational maintenance of the installation.
 - (g) *Emergency Services.* The applicant shall provide a copy of the project summary, electrical schematic, and site plan to the Fire Chief. The owner or operator shall cooperate with the Fire Department in developing an emergency response plan. All means of shutting down the system shall be clearly marked. The owner or operator shall provide to the Code Enforcement Officer the name and contact information of a responsible person for public inquiries throughout the life of the installation.

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Sec. 44-34. Table of land uses.

All land use activities, as indicated in table 1, Land Uses in the Shoreland Zone, shall conform with all of the applicable land use standards in section 44-33 and other applicable ordinances. The district designated for a particular site shall be determined from the official zoning map.

Key to table 1:

Yes	-	Allowed (no permit required but the use must comply with all applicable land use standards)
No	-	Prohibited
SPR	-	Allowed with site plan review and approval by the planning board
CEO	-	Allowed with permit issued by the code enforcement officer
LPI	-	Allowed with permit issued by the local plumbing inspector

Abbreviations:

RP	-	Resource protection
LR	-	Limited residential
LC	-	Limited commercial
GD	-	General development
SP	-	Stream protection

The following notes are applicable to the land uses table on the following page:

Note: The term "functionally water-dependent use" as defined, includes a very diverse group of uses ranging from large, industrial facilities that receive shipments by water or use water for cooling, to traditional commercial fishing enterprises, and public shorefront parks.

Table 1. Land Uses in the Shoreland Zone

Land Uses		Districts				
		SP	RP	LR	LC	GD
Uses or Activities Without Structures						
(1)	Clearing of vegetation for activities other than timber harvesting	CEO	CEO ¹	CEO	CEO	CEO
(2)	>Emergency operations	yes	yes	yes	yes	yes
(3)	Fire prevention activities	yes	yes	yes	yes	yes
(4)	Forest management activities, except for timber harvesting and land management roads	yes	yes	yes	yes	yes
(5)	Mineral exploration	no	no	no	yes ²	yes ²
(6)	Mineral extraction, including sand and gravel extraction	no	no	no	SPR	SPR

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(7)	Motorized vehicular traffic on existing roads and trails	yes	yes	yes	yes	yes
(8)	Nonintensive recreational uses not requiring structures such as hunting, fishing and hiking	yes	yes	yes	yes	yes
(9)	Soil and water conservation practices	yes	yes	yes	yes	yes
(10)	Surveying and resource analysis	yes	yes	yes	yes	yes
(11)	Wildlife management practices	yes	yes	yes	yes	yes
Principal Structures or Uses						
(12)	Principal structures and uses:					
	a. One- and two-family residential	SPR ⁴	SPR ⁹	CEO	CEO	CEO
	b. Multifamily dwelling	no	no	SPR	SPR	SPR
	c. Commercial (not listed elsewhere)	no ¹³	no ¹³	no ¹³	SPR	SPR ⁵
	d. Industrial	no	no	no	no	SPR
	e. Governmental and institutional	no	no	no	SPR	SPR
	f. Small nonresidential facilities for educational, scientific or nature interpretation purposes	SPR ⁴	SPR	CEO	CEO	CEO
(13)	Agriculture	CEO	SPR	CEO	CEO	CEO
(14)	Aquaculture	SPR ¹⁰	SPR ¹⁰	SPR ¹⁰	SPR	Yes
(15)	Auto graveyard	no	no	no	no	no
(16)	Auto hobbyist storage area	no	no	no	no	no
(17)	Auto junkyard	no	no	no	no	no
(18)	Auto recycling operation, limited	no	no	no	no	no
(19)	Auto recycling operation, principal	no	no	no	no	no
(20)	Bed and breakfast	no	no	SPR ¹⁰	SPR ¹⁰	SPR
(21)	Boardinghouse	no	no	SPR ¹⁰	SPR	SPR
(22)	Campgrounds	no	no ⁷	no	no	SPR
(23)	Conversions of seasonal residences to year-round residences	LPI	LPI	LPI	LPI	LPI
(24)	Fireworks sales	no ¹⁷	no ¹⁷	no ¹⁷	no ¹⁷	no ¹⁷
(25)	Gambling Casino	no	no	no	no	no
(26)	Marijuana establishment					
	a. Marijuana store	no	no	no	SPR	SPR

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	b.	Marijuana cultivation facility	no	no	no	SPR	SPR
	c.	Marijuana products manufacturing facility	no	no	no	no	SPR
	d.	Marijuana testing facility	no	no	no	SPR	SPR
(27)	Marinas						
	a.	Full service	no	no	no	no	SPR
	b.	Limited	no	no	no	SPR	SPR
(28)	Medical marijuana establishment						
	a.	Medical marijuana dispensary	no	no	no	SPR	SPR
	b.	Medical marijuana cultivation facility	no	no	no	SPR	SPR
	c.	Medical marijuana caregiver retail store	no	no	no	SPR	SPR
	d.	Medical marijuana products manufacturing facility	no	no	no	no	SPR
	e.	Medical marijuana testing facility	no	no	no	SPR	SPR
(29)	Off-site parking		no	no ⁷	no	no	no
(30)	Public and private recreational areas involving minimal structural development		SPR	SPR	SPR	SPR	CEO
(32)	Solar energy system, larger-scale (SES-LG)		no	no	no	no SPR¹⁵	no
Accessory Structures or Uses							
(31)	Structures accessory to allowed uses, not otherwise listed		SPR ⁴	SPR	CEO	CEO	CEO
(32)	Essential services		SPR ⁶	SPR ⁶	SPR	SPR	SPR
	a.	Roadside distribution lines (34.5kV and lower)	CEO ⁶	CEO ⁶	yes ¹²	yes ¹²	yes ¹²
	b.	Non-roadside or cross-country distribution lines involving ten poles or less in the shoreland zone	SPR ⁶	SPR ⁶	CEO	CEO	CEO
	c.	Non-roadside or cross-country distribution lines involving 11 or more poles in the shoreland zone	SPR ⁶	SPR ⁶	SPR	SPR	SPR
	d.	Other essential services	SPR ⁶	SPR ⁶	SPR	SPR	SPR

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(33)	Fences	yes ^{11A}	yes ^{11A}	yes ^{11A}	yes ^{11A}	yes ^{11A}
(34)	Filling and earthmoving of < 10 cubic yards	CEO	CEO	yes	yes	yes
(35)	Filling and earthmoving of > 10 cubic yards	SPR	SPR	CEO	CEO	CEO
(36)	Home business	no ^{12A}	no ^{12A}	SPR ^{10A}	SPR ^{10A}	no
(37)	Home occupations; regular and water-dependent	no	no	no	no	no
(38)	Home Office	CEO	no	CEO	CEO	CEO
(39)	Individual, private campsites	CEO	CEO	CEO	CEO	CEO
(40)	Piers, docks, wharves, bridges and other structures and uses and extending over or below the normal high-water line or within a wetland:					
	a. Temporary	CEO ¹¹	CEO ¹¹	CEO ¹¹	CEO ¹¹	CEO ¹¹
	b. Permanent residential	SPR	SPR	SPR	SPR	SPR
	c. Permanent commercial	SPR ¹⁴	SPR ¹⁴	SPR ¹⁴	SPR	SPR
	d. Limited commercial	SPR ⁵	SPR ⁵	SPR ⁵	SPR	no
(41)	Private sewage disposal systems for allowed uses	LPI	LPI	LPI	LPI	LPI
(42)	Road and driveway construction	SPR	no ⁸	SPR	SPR	SPR
(43)	Service drops, as defined, to allowed uses	yes	yes	yes	yes	yes
(44)	Signs.	yes ^{9A}	yes ^{9A}	yes ^{9A}	yes ^{9A}	yes ^{9A}
(45)	Solar energy system, small-scale ground-mounted or roof mounted (SES-SR)	CEO ¹⁵	CEO ¹⁵	CEO ¹⁵	CEO ¹⁵	CEO ¹⁵
(46)	Small wind energy system	SPR ¹⁶	SPR ¹⁶	SPR ¹⁶	SPR ¹⁶	SPR ¹⁶
(47)	Uses similar to allowed uses	CEO	CEO	CEO	CEO	CEO
(48)	Uses similar to uses requiring a CEO permit	CEO	CEO	CEO	CEO	CEO
(49)	Uses similar to uses requiring a SPR permit	SPR	SPR	SPR	SPR	SPR
(50)	Waste containers	CEO ^{5A}	CEO ^{5A}	CEO ^{5A}	CEO ^{5A}	CEO ^{5A}

Footnotes:

¹ In RP not allowed within 75 feet horizontal distance, of the normal high-water line of great ponds, except to remove safety hazards.

² Requires permit from the code enforcement officer if more than 100 square feet of surface area, in total, is disturbed.

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- ³ In RP not allowed in areas so designated because of wildlife value.
- ⁴ Provided that a variance from the setback requirement is obtained from the board of appeals.
- ⁵ Functionally water-dependent uses and uses accessory to such water dependent uses only (see note on previous page).
- ^{5A} Only as an accessory use to an allowed principal use on the lot. Must conform to the requirements of [section] 45-422, Waste containers.
- ⁶ See further restrictions in subsection 44-35(1)(2), essential services.
- ⁷ Except when area is zoned for resource protection due to floodplain criteria in which case a site plan review is required from the planning board.
- ⁸ Except as provided in subsection 44-35(h).
- ⁹ Single family residential structures may be allowed by special exception only according to the provisions of subsection 44-44(f), Special exceptions. Two-family residential structures are prohibited.
- ^{9A} See sign ordinance section.
- ¹⁰ Except for commercial uses otherwise listed in this table, such as marinas and campgrounds, that are allowed in the respective district.
- ^{10A} Must conform to the requirements of section 45-456.1, Home business.
- ¹¹ Excluding bridges and other crossings not involving earthwork, in which case no permit is required.
- ^{11A} Must conform to the requirements of section 45-423, Fences.
- ¹² Permit not required, but must file a written "notice of intent to construct" with CEO.
- ^{12A} "No" except in conjunction with aquaculture, small nonresidential facilities for educational, scientific or nature interpretation purposes or limited commercial piers, docks, wharves, bridges and other structures and uses extending over or below the normal high-water line or within a wetland.
- ¹³ Use is "No" except when permitted under another specific land use entry.
- ¹⁴ Only commercial aquaculture allowed on piers in this zone, with no other commercial pier uses. Pier must meet the requirements of a residential pier in these zones.

Note: A person performing any of the following activities shall require a permit from the department of environmental protection, pursuant to title 38, M.R.S.A. section 480-C, if the activity occurs in, on, over or adjacent to any freshwater or coastal wetland, great pond, river, stream or brook and operates in such a manner that material or soil may be washed into them:

- a. Dredging, bulldozing, removing or displacing soil, sand, vegetation or other materials;
- b. Draining or otherwise dewatering;

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- c. Filling, including adding sand or other material to a sand dune; or
- d. Any construction or alteration of any permanent structure.

¹⁵ Must conform to the requirements of section 45-462. **SES-LGs in LC must be sited on soils that are non-hydric and are otherwise appropriate pursuant to subsection 44-35(r).**

¹⁶ Must conform to the requirements of section 45-461.

¹⁷ See chapter 12 for additional regulations pertaining to the sale and use of fireworks.

(T.M. of 11-06-2018(3); T.M. of 7-14-2020(4) ; T.M. of 6-8-2021(2) , art. 33; T.M. of 6-8-2021(3) , art. 36; T.M. of 6-8-2021(4) , art. 31)

Proposed Town Code Amendments of Chapter 1 – General Provisions, Chapter 33 – Planning and Development, Chapter 44 – Shoreland Zoning, and Chapter 45 – Zoning, Related to Solar Energy Systems

Sec. 45-462. – Solar energy systems.

- (a) *Purpose.* The purpose of this section is to establish performance standards for solar energy systems. This section is intended to achieve the following general objectives:
- (1) Support the goals of the 2009 Comprehensive Plan, such as Critical Natural Resource Policy 1: “Work to preserve rare and endangered plant and animal habitat and other important natural resource systems within Eliot and adjacent communities”;
 - (2) Avoid or minimize potential adverse impacts of solar energy systems on abutting properties and the environment, including rare plant populations; habitat for rare or exemplary natural communities; and large, undeveloped blocks of forestland;
 - (3) Encourage the siting of solar energy systems on land that has already been developed or disturbed, such as:
 - a. on top of buildings
 - b. in parking lots
 - c. on closed landfills
 - d. on significantly disturbed sites such as brownfields
 - e. on land where previous development was located or significant grading has taken place, and,
 - f. in regenerating wooded areas that are not comprised primarily of important farmland soils.
 - (4) Encourage the siting of solar energy systems on land that is not prime farmland or soils of statewide importance.
 - (5) Provide performance standards appropriate for the scale of the proposed solar energy system and its potential adverse impacts.
 - (6) Provide for the proper decommissioning and removal of panels and supporting structures when the panels have indefinitely stopped producing electricity.
- (b) *Objectives are not performance standards.* The general objectives in subsection (a) should not be interpreted as performance standards themselves. However, they are intended to relate to the performance standards, and applicants are encouraged to address the objectives to the extent practicable.
- (c) *Performance standards for all solar energy systems.* Solar energy systems must comply with all applicable building, plumbing and electrical codes and with all applicable dimensional requirements of this chapter (Zoning) and Chapter 44 (Shoreland Zoning).
- (d) *Performance standards for larger-scale ground-mounted solar energy systems.* The following standards shall apply to the development and maintenance of all larger-scale solar energy systems (SES-LGs). Planning Board site plan review applications shall provide adequate information to demonstrate how the proposed development will comply with these standards.
- (1) *Buffering and screening.* SES-LGs shall comply with buffering and screening requirements in Section 33-175 and Section 45-417. Without limiting the generality of the foregoing:
 - a. SES-LGs shall be visually screened from ~~abutting properties~~ **lots** that have existing residential use **and are within 100 feet of the lot(s) to be developed with the SES-LG and** ~~or~~ from streets, town ways, or public ways, by a ~~continuous~~ vegetated buffer that is at least 50 feet in depth. **Except as provided in paragraph b., the vegetated buffer shall be continuous.**

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- b. ~~An opening in the buffer along a street, public way, or town way is allowed only to the extent needed for vehicular access.~~ **The Planning Board may allow openings in the vegetated buffer required in paragraph a. only if they are necessary for transportation, emergency, or utility access to the site, or if they are otherwise required by law or building code requirements. Openings shall be minimized, and, to the extent practicable, one opening shall serve multiple purposes (e.g. a site driveway and power line).**
- (2) *Fencing*. SES-LGs shall comply with the fence requirements in Section 33-175 and Section 45-423. Without limiting the generality of the foregoing:
- Fencing for SES-LGs shall be provided if required by the National Electrical Code (NEC), and shall be designed, installed, and maintained in accordance with the NEC.
 - When used, fencing around the perimeter of an SES-LG shall be elevated by a minimum of 6 inches to allow for passage of small terrestrial animals.
 - Where there is a documented potential or need for passage of larger wildlife, the Planning Board may require that an SES-LG include fence or gate design features at reasonable intervals to allow for such passage while ensuring site security and NEC compliance, including, but not necessarily limited to game fences designed with larger openings at the bottom and progressively smaller openings moving to the top of the fence, or wooden escape poles of five-inch or larger diameter, and no more than 3 feet higher than the height of the fence, in at least two locations along the fence.
- (3) *Land Clearing*. Clearing of natural vegetation shall be limited to what is necessary for the construction, operation, and maintenance of SES-LGs or as otherwise prescribed by applicable laws, regulations, and ~~by laws~~/ordinances. Removal of mature trees shall be avoided to the extent possible. No prime agricultural soil or significant volume of topsoil shall be removed from the site for installation of the system.
- (4) *Wetlands*. Wetland alteration shall be avoided or minimized to the extent practicable. **In no case shall an SES-LG be sited on, or alter, 4,300 square feet or greater of wetlands.** If the project is subject to a Natural Resources Protection Act permit from the Maine Department of Environmental Protection and the applicant has not provided such approved permit as part of application review, the Planning Board may make the provision of such permit prior to, or along with, the building permit application a condition of approval.
- (5) *Habitat*. SES-LGs shall comply with the following performance standards regarding protection of sensitive wildlife habitat and corridors, as applicable:
- Significant, potentially significant, or assumed significant vernal pools, and their associated Critical Terrestrial Habitat (CTH), shall be protected to the extent required by DEP.
 - Documented habitats for State Endangered, Threatened, or Special Concern bat species shall be avoided, including but not necessarily limited to winter hibernacula and maternity roost trees.
 - Deer Wintering Areas, Deer Travel Corridors, Northern Black Racer habitat, and New England Cottontail habitat shall be protected to the extent required by MDIFW.

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- d. Unless otherwise required by DEP or MDIFW, SES-LGs shall not be located within 250 feet of:
 1. Known or discovered Great Blue Heron colonies;
 2. Wetlands with documented use by ribbon snakes, Blanding’s turtles, or spotted turtles; or
 3. Wetlands with confirmed or probable use by the ringed boghaunter dragonfly.
- e. SES-LGs shall not be allowed in Focus Areas of Statewide Ecological Significance as defined by the Maine Natural Areas Program, except **for SES-LGs for which at least 90 percent of their total airspace projected over the ground would cover the following land within such focus areas:** ~~for land within such focus areas where significant grading has already taken place, such as quarries, or where development has already occurred.~~
 - 1. Land where significant grading has already been permitted and has occurred, such as a quarry;**
 - 2. Land where development has already been permitted and has occurred, including, but not necessarily limited to, buildings, structures, parking lots, driveways, livestock corral areas, or other impervious areas to be redeveloped by the SES-LG; or,**
 - 3. A brownfield site that existed as of June 22, 2022.**
- f. Without limiting the foregoing, impacts to sensitive wildlife habitats shall be avoided or minimized to the extent practicable
 - (6) *Ecological site maintenance.* Native, pollinator-friendly seed mixtures shall be planted and maintained to the extent possible. Mowing shall be minimized to the extent practicable. Herbicide and pesticide use shall be prohibited. Only mechanical means of weed and pest control is allowed.
 - (7) *Archaeological Resources.* Sign-off by the State Historic Preservation Commission regarding archaeological and historical resources shall be provided with all applications.
 - (8) *Utility Connections.* Overhead or pole-mounted electrical wires shall be avoided to the extent possible within the facility.
 - (9) *Signage.* A sign identifying the owner of an SES-LG and providing a 24-hour emergency contact phone number shall be placed such that it is clearly visible at the entrance of the facility.
 - (10) *Fire safety.* Knox Box access and adequate vehicle turnaround areas for emergency vehicles shall be provided.
 - (11) *Decommissioning and removal.* All ground-mounted solar energy systems that have discontinued operation shall be removed. For the purpose of this paragraph, “discontinued operation” means that the system has operated at 10 percent or less of its rated nameplate capacity for a continuous period of at least twelve (12) months. The owner or operator shall physically remove the installation no more than 365 days after the date of discontinued operations. The owner or operator shall notify the Code Enforcement Officer by certified mail of the proposed date of discontinued operations and plans for removal. At minimum, decommissioning shall consist of:

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- a. Physical removal of all solar energy systems, structures, equipment, security barriers, and transmission lines from the site.
- b. Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations.
- c. Stabilization or re-vegetation of the site as necessary to minimize erosion. Native, pollinator-friendly seed mixtures shall be used to the maximum extent possible.
- d. For SES-LGs, in addition to the above requirements, decommissioning shall be consistent with the decommissioning plan required by Section 33-191. Where there is a conflict between two requirements, the stricter shall control.

Proposed Town Code Amendments of Chapter 11 – Marijuana Establishments; Chapter 33 – Planning and Development; and Chapter 45 – Zoning, Related to Limiting the Number of Marijuana Establishment and Medical Marijuana Establishment Licenses

DRAFT for August 9, 2022, Planning Board review

Planning Board recommends _____ (#-#)

Select Board recommends _____ (#-#)

Short title

Proposed Town Code Amendments of Chapter 11 – Marijuana Establishments; Chapter 33 – Planning and Development; and Chapter 45 – Zoning, Related to Limiting the Number of Marijuana Establishment and Medical Marijuana Establishment Licenses

Ballot question – Town Special Referendum Election, November 8, 2022

ARTICLE #26: Shall an Ordinance entitled “Proposed Town Code Amendments of Chapter 11 – Marijuana Establishments; Chapter 33 – Planning and Development; and Chapter 45 – Zoning, Related to Limiting the Number of Marijuana Establishment and Medical Marijuana Establishment Licenses” be enacted?

(A copy of this ordinance is available in the Town Clerk’s Office)

Background and rationale

The Town has opted in to a range of marijuana establishments and medical marijuana establishments, and a number of such establishments have been developed in the Commercial-Industrial (C/I) zoning district along parts of Route 236, the only zoning district where they are allowed. In addition to only being allowed in the C/I district, certain marijuana establishments and medical marijuana establishments may not be located within 500 ft. of a public facility, place of worship, residential property, or childcare facility. Also, based on State law or rulemaking, no marijuana establishment or medical marijuana establishment may be located within 500 ft. of a public or private school.

Within the confines of these limitations, an estimated 30 marijuana or medical marijuana establishments are active or proposed in town, insofar as having their local and State license (adult use), being otherwise in operation (medical), having been approved by the Planning Board, or having applied to the Planning Board as of the writing of these proposed amendments.

Concerns have been voiced by the community that relate to the collective scale and number of establishments that are in place or could potentially be built under current zoning and performance standards. These concerns include traffic impacts, odors, and indirect effects on the ability for other businesses to purchase suitable land and become established along Route 236, the Town’s primary commercial corridor. Economic Policy 1 in the 2009 Comprehensive Plan encourages continued support of “broad-based community economic development activity, reflecting community desires and the community’s role in the region”. The Comprehensive Plan also

Proposed Town Code Amendments of Chapter 11 – Marijuana Establishments; Chapter 33 – Planning and Development; and Chapter 45 – Zoning, Related to Limiting the Number of Marijuana Establishment and Medical Marijuana Establishment Licenses

recommends that the Town “continually seek ways to provide support to...small businesses and help them to grow”.

These amendments would limit the number of local marijuana licenses that can be active at any one time. Proposed new Section 11-6.1 would set the maximum number of licenses by establishment type, or group of establishment types, as follows:

- Marijuana store: Eight (8)
- Marijuana cultivation facility or marijuana products manufacturing facility (combined total): Thirteen (13)
- Medical marijuana caregiver retail store or medical marijuana dispensary: Four (4)
- Medical marijuana cultivation facility or medical marijuana products manufacturing facility (combined total): Three (3)

The Select Board would not be able to issue a local marijuana license when the maximum number of active licenses have been reached for a particular marijuana establishment type. In order to provide some flexibility, cultivation and manufacturing activities have been grouped, such that an overall cap would apply to the combined total of these activities. Testing facilities would also be exempt. The numbers above have been developed to account for adult use or medical marijuana establishments that are, as of the writing of these ordinance amendments, either in operation or are at some stage of the review process, from Planning Board application submittal to receipt of a State active license.

Section 11-6.1 would also establish rules for review of local marijuana license applications with respect to the maximum license numbers. This would be on a first-come, first-serve basis with regard to complete license applications.

New text underlined in bold

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[Text in brackets, bold, and italics introduces a large block of new text:]

[Text in brackets and italics is a temporary explanatory note]

[Add a new section:]

Sec. 11-6.1. – Maximum number of local marijuana licenses.

- (a) Except pursuant to subsection (d) of this section, for each type of marijuana establishment, the maximum number of local marijuana licenses issued by the local licensing authority that may be active at any one time are as follows:
 - (1) Marijuana store: Eight (8)
 - (2) Marijuana cultivation facility or marijuana products manufacturing facility (combined total): Thirteen (13)
- (b) Except pursuant to subsection (d) of this section, for each type of medical marijuana establishment, the maximum number of local marijuana licenses issued by the local licensing authority that may be active at any one time are as follows:
 - (1) Medical marijuana caregiver retail store or medical marijuana dispensary: Four (4)
 - (2) Medical marijuana cultivation facility or medical marijuana products manufacturing facility (combined total): Three (3)
- (c) Marijuana testing facilities and medical marijuana testing facilities are not subject to this section.
- (d) The maximum numbers of local marijuana licenses for an applicable establishment type, or group of establishment types, in subsections (a) and (b), shall be reduced based on the following occurrences:
 - (1) A local marijuana license is revoked pursuant to subsection 11-8(c), and, if appealed under Section 11-13, such revocation is upheld by court action.
 - (2) A local marijuana license has expired pursuant to Section 11-10 or has been otherwise voluntarily terminated by the licensee.
 - (3) An approved site plan for a marijuana establishment or medical marijuana establishment has expired pursuant to Section 33-59, or a shoreland zoning permit application for a marijuana establishment or medical marijuana establishment has expired pursuant to Section 44-45.
 - (4) A site plan review application that, as of (and including) August 16, 2022, is active before the Planning Board and has received at least one Planning Board review, is withdrawn by the applicant; is changed to omit one or more marijuana establishment types or medical marijuana establishment types; or is disapproved (denied) pursuant to Section 33-131, and, if

Proposed Town Code Amendments of Chapter 11 – Marijuana Establishments; Chapter 33 – Planning and Development; and Chapter 45 – Zoning, Related to Limiting the Number of Marijuana Establishment and Medical Marijuana Establishment Licenses

appealed, such disapproval/denial is upheld by the Board of Appeals and/or court action.

- (e) The following rules apply to review of local marijuana license applications with regard to this section:
- (1) The intent of the maximum numbers in subsections (a) and (b) is to account for the number of establishments (or proposed establishments) that are currently in operation, have their state license, have received Planning Board approval, and-or have, as of (and including) August 16, 2022, active applications before the Planning Board that have received at least one Planning Board review.
 - (2) Applications for new local marijuana licenses shall be reviewed on a first-come, first-served basis.
 - (3) Applications that are not complete, pursuant to Section 11-7, are not guaranteed any priority order of review. If a local license is granted pursuant to Section 11-8, but the applicant has not yet paid any or all fees pursuant to Section 11-9, the local license application is not considered active with respect to this section until said fees have been paid.
 - (4) The Town finds that the requirements for medical marijuana licenses were added to this section after some medical marijuana establishments had begun operation and that a grace period is warranted to allow medical marijuana establishments to obtain a local marijuana license pursuant to this chapter. Medical marijuana establishments that have been approved by the Planning Board, are in operation, and are in good standing with respect to the Maine Medical Use of Marijuana Program Rule (18-691 Code of Maine Rules, Chapter 2) and the Town Code shall be given until May 15, 2023, to apply for a local marijuana license for their existing operation and shall be given priority order with respect to subsection (b) of this section.

Proposed Town Code Amendments of Chapter 11 – Marijuana Establishments; Chapter 33 – Planning and Development; and Chapter 45 – Zoning, Related to Limiting the Number of Marijuana Establishment and Medical Marijuana Establishment Licenses

Sec. 11-8. - Issuance of local marijuana license.

[this section was updated in the June 14, 2022, Town Election, but has not yet been updated in Municode]

(a) Responsibilities and review authority.

- (1) The local licensing authority shall have the authority to impose any conditions on a license that may be necessary to ensure compliance with the requirements of this chapter or to address concerns about operations that may be resolved through the conditions. The failure to comply with such conditions shall be considered a violation of the license.
- (2) No local marijuana license shall be granted by the local licensing authority until the police chief, the fire chief, the code enforcement officer, and if applicable the health inspector have all made their recommendation upon the applicant's ability to comply with this article. Whenever inspections of the premises used for or in connection with the operation of a licensed business are provided for or required by ordinance or state law, or are reasonably necessary to secure compliance with any ordinance provision or state law, it shall be the duty of the applicant or licensee, or the person in charge of the premises to be inspected, to admit any officer, official, or employee of the town authorized to make the inspection at any reasonable time that admission is requested.

(3) No local marijuana license for a specific type of marijuana establishment or medical marijuana establishment shall be granted by the local licensing authority if the maximum number of local marijuana licenses for that type of marijuana establishment or medical marijuana establishment, pursuant to Section 11-6.1, is met.

(b) Upon the filing of a completed application for a marijuana license, **unless the maximum number of licenses has been met pursuant to subsection (a), paragraph (3) of this section,** the town manager shall immediately schedule a public hearing on the application before the town select board to occur within 30 days. The town manager shall provide written notice of the public hearing to the applicant and to the select board within five days of the filing of a completed application. At least ten days before such hearing, notices shall be posted in at least three prominent places, advertised in a newspaper with local circulation, and forwarded to the clerk of an adjacent municipality in the case where the premises for which the local marijuana license is sought is located within 500 feet of a municipal boundary. Abutters shall be notified by certified mail, return receipt requested.

- (1) At the public hearing on the local marijuana license application, the select board shall take testimony of the applicant and any interested members of the public. The hearing shall focus upon the criteria for issuance of a permit.
- (2) The select board shall issue to the applicant written notice of its decision to grant or deny the license. If the board denies the permit, the written notice shall set forth the board's reasons for the denial. The select board shall grant a marijuana license unless it finds that the issuance of the license would be detrimental to public health, safety or welfare, as demonstrated by the following criteria:

Proposed Town Code Amendments of Chapter 11 – Marijuana Establishments; Chapter 33 – Planning and Development; and Chapter 45 – Zoning, Related to Limiting the Number of Marijuana Establishment and Medical Marijuana Establishment Licenses

- a. An applicant is less than 21 years of age.
 - b. An applicant has failed to provide information required by this article for issuance of a license or has falsely answered a question or request for information on the application form.
 - c. The establishment is in a location where a marijuana establishment is not permitted.
 - d. Any establishment in which an applicant has had an influential interest, has, in the previous five years (and at a time during which the applicant had the influential interest):
 - 1. Been declared by a court of law to be a nuisance; or
 - 2. Been subject to an order of closure.
 - 3. Been convicted of or pled guilty or nolo contendere to a specified criminal activity.
 - e. A person who has had a license for a marijuana establishment and/or medical marijuana establishment revoked by the town or by the state.
 - f. An Applicant who has not acquired all necessary state approvals and licenses and other required local approvals prior to the issuance of a local marijuana license.
- (c) The town may suspend or revoke a license for any violation of this chapter, chapter 45 or any other applicable building and life safety code requirements. The town may suspend or revoke a license if the licensee has a state license for a marijuana establishment and/or medical marijuana establishment suspended or revoked by the state. The licensee shall be entitled to notice and a hearing prior to any suspension or revocation.
- (d) The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the number of the license issued to the licensee(s), the expiration date, and the address of the business. The license shall be posted in a conspicuous place at or near the entrance to the business so that it may be read at any time that the business is occupied by patrons or is open to the public.
- (e) A local marijuana license renewal application shall be subject to the same review standards as applied to the initial issuance of the license and the same notice requirement as a new application. As part of the renewal process, the select board shall consider compliance from prior years, and based upon that review, may add conditions to any future license to correct, abate or limit past problems.

Proposed Town Code Amendments of Chapter 11 – Marijuana Establishments; Chapter 33 – Planning and Development; and Chapter 45 – Zoning, Related to Limiting the Number of Marijuana Establishment and Medical Marijuana Establishment Licenses

Sec. 33-190. - Performance standards for marijuana establishments and medical marijuana establishments.

Notwithstanding anything to the contrary of 1 M.R.S.A. § 302 or any other law, to any application relating to the establishment or operation of a proposed marijuana establishment or medical marijuana establishment, whether or not such application had become "pending proceeding" as defined in 1 M.R.S.A. § 302 prior to the enactment of this section.

All marijuana establishments and medical marijuana establishments require site plan review and approval from the planning board prior to the issuance of any building permit or certificate of occupancy. The review of an application for a marijuana establishment shall not begin until the applicant has submitted to the town a valid state-issued conditional license to operate the marijuana establishment pursuant to 28-B M.R.S.A. § 205. **The review of an application for a marijuana establishment or medical marijuana establishment, where such type establishment has, at the time of said application, reached the maximum number of licenses pursuant to Chapter 11, shall not begin until the applicant submits a signed statement acknowledging that they are aware of the maximum having been reached and that they may not be able to obtain a local marijuana license until such time as one becomes available.** The following performance standards are to be used by the planning board in reviewing site plan applications and compliance with the same shall serve as requirements for approval of such site plans.

Reference section 11-3 for definitions related to this section.

(1) All marijuana establishments and medical marijuana establishments shall be screened in accordance with section 33-175.

(2) All marijuana establishments and medical marijuana establishments shall comply with applicable parking requirements of subsection 45-495(15).

(3) Signage and advertising.

a. All signage and advertising for any marijuana establishment or medical marijuana establishment shall comply with the signage, advertising, and marketing provisions in 22 M.R.S.A § 2429-B and 28-B M.R.S.A § 702, as may be amended, in addition to all applicable provisions of chapter 45 in this Code. No interior signage, advertising as described above shall be visible from the exterior of the building in which the marijuana establishment is located. Signage containing misleading or deceptive marketing or marketing towards individuals under the age of 21 is prohibited.

b. There is a compelling governmental interest to the town in marijuana establishments and medical marijuana establishments abiding by the signage, advertising, and marketing provisions in 22 M.R.S.A § 2429-B and 28-B M.R.S.A § 702, as may be amended, including, but not limited to, reducing the likelihood of reaching persons under 21 years of age, who may frequently ride in (or may be old enough to drive) vehicles upon streets, town ways, or public ways from which signage is visible and legible. Many persons in this age range may understand words such as "marijuana" and "cannabis", or any other word, phrase or symbol commonly understood to refer to marijuana. The use of these terms may increase the appeal or awareness of marijuana establishments, medical marijuana establishments, or marijuana use to these persons. To reduce the likelihood of this appeal and awareness, no signage visible from a street, town

Proposed Town Code Amendments of Chapter 11 – Marijuana Establishments; Chapter 33 – Planning and Development; and Chapter 45 – Zoning, Related to Limiting the Number of Marijuana Establishment and Medical Marijuana Establishment Licenses

way, or public way may use the word "marijuana" or "cannabis", or any other word, phrase or symbol commonly understood to refer to marijuana.

(4) Area of activities for all marijuana establishments and medical marijuana establishments; control of odors and emissions; sealed walls; disposal plan; security.

a. All activities of marijuana including, without limitation, cultivating, growing, processing, displaying, selling and storage, shall be conducted indoors. Marijuana establishments and medical marijuana establishments are not permitted to conduct outdoor sales or services of any kind. Any common areas, including, but not limited to, storage areas and building facilities, shared with another marijuana establishment and/or medical marijuana establishment must be clearly identified as such on the site plan application.

b. Odor management. For all marijuana establishments and medical marijuana establishments, odor of marijuana must not be perceptible at the exterior of the building at the premises or at any adjoining use of the property. Marijuana stores, marijuana product manufacturing facilities, marijuana testing facilities, medical marijuana caregiver retail stores, medical marijuana product manufacturing facilities, and medical marijuana testing facilities are not required to install filtration equipment on the licensed premises but must satisfy the same odor standard contained herein. While the town does not mandate any particular equipment specifications with regard to filtration, all marijuana establishments are strongly encouraged to adopt best management practices with regard to implementing state-of-the-art technologies in mitigating marijuana odor, such as air scrubbers and charcoal filtration systems.

c. Noxious gases and fumes. Marijuana product manufacturing facilities, marijuana testing facilities, medical marijuana manufacturing facilities, and medical marijuana testing facilities shall include appropriate ventilation systems to mitigate noxious gases or other fumes used or created as part of the production.

d. Sufficient measures and means of preventing smoke, debris, dust, fluids and other substances from exiting a marijuana establishment must be provided at all times.

e. Prior to planning board approval and for the duration of their operation, all marijuana establishments shall have in place an operational plan for proper disposal of marijuana and related byproducts in a safe, sanitary and secure manner and in accordance with all applicable federal, state and local laws and regulations. Dumpsters and trash containers must not be overflowing, and the surrounding area must be kept free of litter and trash. All dumpsters and containers shall be screened from public view. All trash receptacles on the premises used to discard marijuana products must have a metal cover or lid that is locked at all times. Security cameras must be installed to record activities in the area of such trash receptacles.

f. Sufficient and appropriate security measures to deter and prevent unauthorized entrance into areas containing marijuana and the theft of marijuana must be provided at all times. Security measures shall include, at a minimum, the following:

1. Security surveillance cameras installed and operating 24 hours a day, seven days a week to monitor all entrances, along with the interior and exterior of the premises, to discourage and facilitate the reporting of criminal acts and nuisance activities occurring at the premises;

Proposed Town Code Amendments of Chapter 11 – Marijuana Establishments; Chapter 33 – Planning and Development; and Chapter 45 – Zoning, Related to Limiting the Number of Marijuana Establishment and Medical Marijuana Establishment Licenses

2. Door and window intrusion robbery and burglary alarm systems with audible and police department notification components that are professionally monitored and maintained in good working condition;
3. A locking safe or secure storage container permanently affixed to the premises that is suitable for storage of all adult use marijuana product and cash stored overnight on the premises;
4. Exterior lighting that illuminates the exterior walls of the premises and complies with applicable provisions of this Code;
5. Deadbolt locks on all exterior doors and locks or bars on any other access points (e.g. windows); and
6. Identification checks ensuring that areas within the premises where marijuana or marijuana product cultivation, storage, weighing, manufacturing, sampling, packaging, preparation for testing, transfer or retail sale take place are only accessed by authorized persons displaying individual identification cards or authorized contractors of the marijuana establishment or medical marijuana establishment who are aged 21 and older and who display a valid visitor identification badge.

All security recordings shall be preserved as the state requires. All marijuana establishments shall provide the police chief or their designee with the name and functioning telephone number of a 24-hour on-call staff person to whom the town may provide notice of any operating problems associated with the establishment.

(5) Separation (buffering) from sensitive uses.

- a. No marijuana establishment or medical marijuana establishment shall be sited within 500 feet of the lot lines of a public or private school. This standard may not be relaxed by variance or waiver.
- b. No marijuana store, medical marijuana caregiver retail store, or medical marijuana dispensary shall be sited within 500 feet of the lot lines of any public facility, place of worship, residential property, or childcare facility.

The planning board will not preclude a sensitive use listed in a. and b. above from opening at a location within the applicable buffer zones solely because the sensitive use is within such buffer zones.

A marijuana store, medical marijuana caregiver retail store, or medical marijuana dispensary may continue to operate in its present location as a pre-existing use if a sensitive use as listed in a. and b. above later locates within the applicable buffer zone; however, the marijuana store does so at its own risk, and town-issued licenses, permits or approvals provide no protection or indemnification against enforcement of federal or other applicable laws that may prohibit operation of a marijuana store, near a sensitive use listed in a. and b. above.

The distance cited in this subsection shall be measured as the aerial straight-line distance between the nearest point of the operating boundary of the marijuana establishment or medical marijuana establishment and the nearest point along a lot line of the site of the use listed in a. or b. above.

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For purposes of this measurement, if a marijuana establishment or medical marijuana establishment is in a freestanding building, the operating boundary shall consist of the outer walls of the building. If a marijuana establishment or medical marijuana establishment leases a room or suite of rooms within a building, including, without limitation, individual units within a shopping plaza or shopping mall, the operating boundary of such establishment shall be the outer wall of the room or suite of rooms being leased by the establishment.

(6) Hours of operation. Marijuana stores, medical marijuana caregiver retail stores and medical marijuana dispensaries are limited to the same hours of operation as those for establishments serving or selling alcoholic beverages or products in accordance with chapter 6 section 11 or as may be set forth in state statute. When there is a conflict between state statute and local zoning, the more restrictive hours of operation shall apply.

(7) Cultivation area limitation. The number of plants or area of the plant canopy in a marijuana cultivation facility shall not exceed the number of plants or area of the plant canopy allowed by the facility's cultivation facility license tier issued by the state in accordance with 28-B M.R.S.A. § 301. The number of plants or area of the plant canopy in a medical marijuana cultivation facility shall not exceed the number of plants or area of the plant canopy allowed by 22 M.R.S.A. § 2423-A, para. 2, as may be amended. The site plan shall include the facility's cultivation area allowance and show or list the square footage of the proposed cultivation area.

(8) Sale of edible products. No food products shall be sold, prepared, produced or assembled by a marijuana establishment except in compliance with all operating and other requirements of state, local law and regulation, and compliance with this Code including, without limitation, food establishment licensing requirements. Any goods containing marijuana for human consumption shall be stored in a secure area.

(9) Drive-through and home delivery. Marijuana establishments and medical marijuana establishments are prohibited from having drive-through pick-up facilities. Marijuana stores are prohibited from providing home delivery services. Adult use marijuana customers may only purchase and obtain adult use marijuana products from within a marijuana store.

(10) Pesticides. The only pesticides allowed to be used in marijuana establishments and medical marijuana establishments are non-synthetic substances, unless specifically listed as "prohibited" on the National List of Allowed and Prohibited Substances in 7 CFR Part 205, as may be amended from time to time, and pesticides determined to be "minimum risk pesticides" pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and listed in 40 C.F.R. § 152.25(f)(1) or (2), as may be amended from time to time. All marijuana establishments and medical marijuana establishments shall comply with all packaging and labeling requirements from the state.

(11) Inspections. The code enforcement officer or their designee will inspect all marijuana establishments and medical marijuana establishments prior to issuance of a certificate of occupancy, to verify that the facilities are constructed and can be operated in accordance with the application submitted, the land use approval(s) issued and the requirements of this section, local and state building codes and electrical codes. The fire chief or their designee will inspect all marijuana establishments prior to issuance of a certificate of occupancy, to verify that the facilities are constructed and can be operated in accordance with the requirements of all

Proposed Town Code Amendments of Chapter 11 – Marijuana Establishments; Chapter 33 – Planning and Development; and Chapter 45 – Zoning, Related to Limiting the Number of Marijuana Establishment and Medical Marijuana Establishment Licenses

applicable state and local fire codes. The initial inspection shall occur after the establishment is ready for operation, but no marijuana, marijuana products will be permitted on the premises until the inspection is complete and a certificate of occupancy is issued. Nothing herein shall prevent the fire chief or their designee from inspecting marijuana establishments at random intervals, but not to exceed four times a year, and without advance notice provided that the inspection is during normal business hours of the establishment.

(12) Change of use/addition of use. If any type of marijuana establishment or medical marijuana establishment is to change to another type of establishment or to add another type of marijuana establishment or medical marijuana establishment to its existing operations, such change of use or additional use must be reviewed and approved by the planning board for compliance with this section.

(13) Other laws remain applicable. A marijuana establishment or medical marijuana establishment shall meet all operating, local and state licensing and other requirements of state and local laws and regulations. To the extent the state has adopted or adopts in the future any stricter law or regulation governing adult use marijuana and/or medical marijuana establishments, the stricter law or regulation shall control.

(T.M. of 11-5-2019(4); T.M. of 6-8-2021(4) , art. 31)

Count of Establishment Type	Highest status achieved						
	Applied to PB	PB approved	Applied for building permits	Local license issued	State active license issued	In operation (medical)	Grand Total
Marijuana Cultivation Facility		2		2	2		6
Marijuana Products Manufacturing Facility	1	3	1		2		7
Marijuana Store	3	3			2		8
Marijuana Testing Facility					1		1
Medical Marijuana Caregiver Retail Store		1				1	2
Medical Marijuana Cultivation Facility						2	2
Medical Marijuana Dispensary	1					1	2
Medical Marijuana Products Manufacturing Facility			1				1
Medical Marijuana Testing Facility						1	1
Grand Total	5	9	2	2	7	5	30

Proposed Town Code Amendments of Chapter 1 – General Provisions, Chapter 33 – Planning and Development, Chapter 41 – Subdivisions, Chapter 44 – Shoreland Zoning, and Chapter 45 – Zoning, and the Creation of a New Chapter 34 – Erosion and Sedimentation Control, Related to Erosion and Sedimentation Control

DRAFT for Planning Board review, August 9, 2022

Planning Board recommends _____ (#-#)

Select Board recommends _____ (#-#)

Short title

Proposed Town Code Amendments of Chapter 1 – General Provisions, Chapter 33 – Planning and Development, Chapter 41 – Subdivisions, Chapter 44 – Shoreland Zoning, and Chapter 45 – Zoning, and the Creation of a New Chapter 34 – Erosion and Sedimentation Control, Related to Erosion and Sedimentation Control

Ballot question – Town Special Referendum Election, November 8, 2022

ARTICLE # __: Shall an Ordinance entitled “Proposed Town Code Amendments of Chapter 1 – General Provisions, Chapter 33 – Planning and Development, Chapter 41 – Subdivisions, Chapter 44 – Shoreland Zoning, and Chapter 45 – Zoning, and the Creation of a New Chapter 34 – Erosion and Sedimentation Control, Related to Erosion and Sedimentation Control” be enacted?

Background and rationale

The Town of Eliot is subject to a Clean Water Act permit designed to protect waters from stormwater pollution. The permit, called the General Permit for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems (“MS4 Permit”), is issued by Maine Department of Environmental Protection (DEP). DEP periodically issues updated versions of the permit, most recently in 2021. Through the Southern Maine Stormwater Working Group (SMSWG), the Town coordinates with other Southern Maine communities on stormwater-related issues and permit compliance. SMSWG helps these municipalities write and update stormwater management plans and ordinances to demonstrate permit compliance and progress on reducing stormwater pollution.

The new MS4 Permit requires that, by June 30, 2023, municipalities update their ordinances to require and regulate erosion and sedimentation control (ESC) on construction sites in a manner consistent with DEP’s Chapter 500 Stormwater Management Rules. The regulations would apply to construction sites that cause one or more acre of disturbance, or smaller sites if they are part of a larger common plan of development or sale that would disturb one acre or more.

If the ordinance amendments are adopted, these sites would have to implement ESC best management practices (BMPs), which DEP defines as “methods, techniques, designs, practices, and other means to control erosion and sedimentation”. The BMPs would have to be in place before construction begins and remain in place throughout construction. Adequate and timely maintenance would be required. The developer or contractor would be required to conduct regular inspections of the BMPs – on a weekly basis but also before and after rain events. They would

Proposed Town Code Amendments of Chapter 1 – General Provisions, Chapter 33 – Planning and Development, Chapter 41 – Subdivisions, Chapter 44 – Shoreland Zoning, and Chapter 45 – Zoning, and the Creation of a New Chapter 34 – Erosion and Sedimentation Control, Related to Erosion and Sedimentation Control

have to keep a log for inspection by the Town and DEP. If there is a repair need, the repair would need to be initiated upon discovery and completed in a timely manner.

SMSWG developed a Model Ordinance that can be incorporated into each municipality's code of ordinances. These ordinance amendments rely on the Model Ordinance, which will help the Town comply with the MS4 Permit and achieve uniformity with respect to other communities' ordinances and DEP requirements. Subsection 41-214(c) and Section 45-412 have erosion control standards for subdivisions and other land uses, respectively. However, these sections only include a limited number of BMPs and apparently have not been updated since 1989. Section 44-35(q) has ESC standards for Chapter 44 – Shoreland Zoning, and was updated in 2018. These ordinance amendments overhaul and update how the Town regulates ESC at construction sites that disturb one or more acres by adapting the Model Ordinance into a new Chapter 34.

If the amendments are adopted, applicable developments would need to submit an ESC plan consistent with Chapter 34. Section 33-127(11) already requires a "soil erosion and sediment control plan" for Planning Board site plan review (SPR) applications. This would be updated to reflect the existing erosion control sections as well as new Chapter 34. The ESC plan would then be reviewed by the Planning Board or Code Enforcement Officer, depending on the level of review needed for the development. Review, approval, and appeals procedures are outlined by Section 34-3. Section 34-4 and -5 include ESC plan basic requirements, including that the plan shall be prepared by a Qualified Erosion and Sedimentation Control Professional and that BMPs will be in place before construction begins. Section 34-6 specifies when the BMPs will be inspected during the course of construction. Section 34-7 specifies an enforcement procedure and the process for appealing enforcement actions. Section 34-8 contains severability and conflicting requirements clauses. Section 34-9 provides for potential waivers from the ESC requirements to be granted in special circumstances. Section 34-10 establishes the legal authority for enacting Chapter 34.

Appendix 1 then establishes particular design and procedural standards for implementing ESC measures during construction. These standards are based on DEP's Chapter 500 rules. The standards cover timing of installation and maintenance of BMPs, pollution prevention, sediment barriers to prevent sediment from entering drainage channels or drain inlets, stabilized construction entrances, temporary stabilization of exposed soils, removal of temporary ESC measures, permanent stabilization, winter construction, stormwater channel construction phasing, sediment basins to control sediment levels and runoff velocity, construction phasing, construction site and BMP inspection, maintenance and corrective action needing to be taken by the developer/contractor, documentation of inspections and corrective actions, spill prevention, groundwater protection, fugitive sediment and dust, minimizing the exposure of construction debris and certain other materials to precipitation and runoff, excavation dewatering, washout from certain construction materials, and authorized and unauthorized non-stormwater discharges.

Subsection 41-214(c), Subsection 44-35(q), and Section 45-412 are all updated by the proposed amendments to reference Chapter 34.

Proposed Town Code Amendments of Chapter 1 – General Provisions, Chapter 33 – Planning and Development, Chapter 41 – Subdivisions, Chapter 44 – Shoreland Zoning, and Chapter 45 – Zoning, and the Creation of a New Chapter 34 – Erosion and Sedimentation Control, Related to Erosion and Sedimentation Control

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[Text in brackets and italics is a temporary explanatory note]

Sec. 1-2. - Definitions and rules of construction.

[abridged to only show changes]

[...]

Adverse impact means any undue deleterious effect due to erosion or sedimentation from construction activity on waters of the state, protected natural resources, the infrastructure of the regulated small MS4, or off-site. Such undue deleterious effect is or may be potentially harmful or injurious to human health, welfare, safety, property, biological productivity, diversity, or stability, or may unreasonably interfere with the enjoyment of life or property, including outdoor recreation.

[...]

*Best management practices or “BMPs” **(stormwater)** ~~(chapter 35)~~ means schedules of activities, prohibitions of practices, maintenance procedures, and **other methods, techniques, designs, and** management practices to prevent or reduce the pollution of waters of the state. **and to control erosion (erosion control BMPs) and sedimentation (sedimentation control BMPs).** BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.*

[...]

Common plan of development or sale (chapter 34 and chapter 35) means a “subdivision” as defined in 30-A MRSA §§ 4401 et seq. (the Maine Subdivision statute) and in this section.

[...]

*Construction, **construction activity,** or construction activities means any and all activity **for the purpose of** ~~incidental to~~ the erection, demolition, assembling, altering, installing or equipping of buildings, structures, roads or appurtenances, including land clearing, grading,*

Proposed Town Code Amendments of Chapter 1 – General Provisions, Chapter 33 – Planning and Development, Chapter 41 – Subdivisions, Chapter 44 – Shoreland Zoning, and Chapter 45 – Zoning, and the Creation of a New Chapter 34 – Erosion and Sedimentation Control, Related to Erosion and Sedimentation Control

excavating and filling. **Related to stormwater management or erosion and sedimentation control, it also means any activity on a parcel that results in a disturbed area.**

[...]

Discharge (chapters 31 and 35) means any spilling, leaking, pumping, pouring, emptying, dumping, disposing, or other addition of pollutants to “waters of the state,” **not including groundwater.**

[...]

Disturbed area means ~~clearing, grading and excavation.~~ **all land areas of a parcel that are stripped, graded, grubbed, filled, or excavated at any time during the site preparation or removing of vegetation for, or construction of, a project.** Mere Ccutting of trees, without grubbing, stump removal, disturbance, or exposure of soil is not considered “disturbed area.” “Disturbed area” does not include routine maintenance but does include redevelopment. **and new impervious areas. Paving impervious gravel surfaces, provided that an applicant or permittee can prove the original line and grade and hydraulic capacity shall be maintained and original purpose of the gravel surface remains the same, is considered routine maintenance. Replacement of a building is not considered routine maintenance of the building and is therefore considered disturbed area.**

[...]

Enforcement authority ~~(chapter 31~~ means the person(s) or department, **and their designee,** authorized under **Chapters 31 and 34** ~~section 31-4 to administer and enforce the chapter. those chapters. The use of the term “Enforcement Authority” in these chapters is synonymous with “Enforcement Authority or their designee”.~~

[...]

General Permit means the General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems (MS4) approved October 15, 2020, and modified November 23, 2021, and any amendment or renewal thereof.

[...]

Proposed Town Code Amendments of Chapter 1 – General Provisions, Chapter 33 – Planning and Development, Chapter 41 – Subdivisions, Chapter 44 – Shoreland Zoning, and Chapter 45 – Zoning, and the Creation of a New Chapter 34 – Erosion and Sedimentation Control, Related to Erosion and Sedimentation Control

Impervious area means the total area of a parcel covered with a low-permeability material that is highly resistant to infiltration by water, such as asphalt, concrete, or rooftop, and areas such as gravel roads and unpaved parking areas that will be compacted through design or use to reduce their permeability. Common impervious areas include, but are not limited to, rooftops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and macadam or other surfaces which similarly impede the natural infiltration of stormwater. Pervious pavement, pervious pavers, pervious concrete, and underdrained artificial turf fields are all considered impervious. [Also proposed in the Solar Energy Systems ordinance amendments]

[...]

Parcel (Chapter 34) means all contiguous land in the same ownership, except 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 after September 22, 1971.

[...]

Person (Chapter 34) means an individual, firm, corporation, municipality, quasi-municipal corporation, state agency, federal agency, or other legal entity which creates, initiates, originates, or maintains a discharge authorized or regulated by the General Permit.

[...]

Protected natural resource means coastal sand dunes, coastal wetlands, significant wildlife habitat, fragile mountain areas, freshwater wetlands, community public water system primary protection areas, great ponds, or rivers, streams or brooks as defined in the Natural Resources Protection Act at 38 MRSA §480-B.

[...]

Qualified Erosion and Sedimentation Control Professional means a person who has been certified by Enviro-Cert International in erosion and sedimentation control practices or has been certified by completing the Maine Department of Environmental Protection Erosion and Sedimentation Control Practices Workshop, or is a Maine Professional

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Engineer with at least two years’ experience in designing Erosion and Sedimentation Control BMPs.

[...]

Regulated small MS4 (chapters 31, ~~34~~, and 35) means any small MS4 regulated by the State of Maine "General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems" ("General Permit"), including all those located partially or entirely within an urbanized area (UA) and those additional small MS4s located outside an UA that as of the issuance of the ~~G~~eneral ~~P~~ermit have been designated by the DEP as regulated small MS4s.

[...]

Site (Chapter 34) means the portion(s) of a parcel upon which construction activity subject to Chapter 34 is located.

Waters of the state means ~~any and all surface and subsurface waters that are contained within, flow through, or under or border upon this state or any portion of the state, including the marginal and high seas, except such waters as are confined and retained completely upon the property of one person and do not drain into or connect with any other waters of the state, but not excluding waters susceptible to use in interstate or foreign commerce, or whose use, degradation or destruction would affect interstate or foreign commerce.~~ **“waters of the state” as defined in 38 MRSA §361-A (7).**

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Sec. 33-127. Contents; required information.

[as updated by the June 14, 2022, Town Election – not yet updated in Municode]

The developer shall submit two originals of a site plan, drawn at a scale not smaller than one inch equals 20 feet, and ten copies reduced to 11 inches by 17 inches, and showing the following information unless the planning board waives these requirements, upon the written request of the applicant:

- (1) Development name or identifying title and the name of the town.
- (2) Name and address of record owners, developer and designer.
- (3) Names and address of all abutters and their present land use.
- (4) Perimeter survey of the parcel made and certified by a state-registered land surveyor, relating to reference points, showing true north point, graphic scale, corners of the parcel, date of survey, total acreage, existing easements, buildings, watercourses and other essential existing physical features.
- (5) The location of temporary markers adequate to enable the planning board to locate readily and appraise the basic layout in the field.
- (6) Contour lines at intervals of not more than five feet or at such intervals as the planning board may require, based on U.S. Geological Survey topographical map datum of existing grades where change of existing ground elevation will be five feet or more.
- (7) Provisions of chapter 45 of this Code applicable to the area to be developed and any zoning district boundaries affecting the development.
- (8) Provisions for collecting and discharging storm drainage, in the form of a drainage plan.
- (9) Preliminary designs of any bridges or culverts which may be required.
- (10) The location of all natural features or site elements to be preserved.
- (11) **An soil-erosion and sedimentation control plan- that complies with Chapter 34, if applicable, and-or Section 45-412 for all developments, Section 44-35(q) for shoreland zoning permit applications, and-or Subsection 41-214(c) for subdivisions.**
- (12) A high-intensity soils report by a state-certified soils scientist identifying the soils boundaries and names in the proposed development, with the soils information superimposed upon the plot plan. Such soils survey shall account for the water table in wet and dry seasons, slope, soil quality, etc.; and planning board approval will be conditioned upon compliance with any recommendations included in such report.
- (13) The location and size of any existing sewers and water mains, culverts and drains on the property to be developed.
- (14) Connection with existing water supply or alternative means of providing water supply to the proposed development.

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- (15) Connection with existing sanitary sewerage system or alternative means of treatment and disposal proposed.
- (16) If a private sewage disposal system is proposed, location and results of tests to ascertain subsurface soil and groundwater conditions, depth to maximum groundwater level, location and results of soils testing.
- (17) An estimated progress schedule.
- (18) Construction drawings sufficient to enable the code enforcement officer to verify the following information:
 - a. Total floor area, ground coverage, height, and location of each proposed building, structure or addition.
 - b. Elevation drawings of each proposed building, structure, or addition including dimensions and architectural features
 - c. All existing and proposed setback dimensions.
 - d. The size, location and direction and intensity of illumination of all major outdoor lighting apparatus and signs.
 - e. The type, size and location of all incineration devices.
 - f. The type, size and location of all machinery likely to generate appreciable noise beyond the lot lines.
 - g. The amount and type of any raw, finished, or waste materials to be stored outside of roofed buildings, including their physical and chemical properties, if appropriate.
 - h. The location, type and size of all curbs, sidewalks, driveways, fences, retaining walls, parking space areas, and the layouts together with all dimensions.
 - i. All landscaped areas, fencing and size and type of plant material proposed to be retained or planted.
 - j. A site plan for a telecommunication structure must provide a description and construction detail of the telecommunication structure, including plot plan identifying location of the structure on the property; dimensions of the structure; structural supports, if any; lighting; color; and equipment located on the structure, if any. This description shall also identify any accessory structures that are proposed in connection with the operation of the telecommunication structure.
 - k. Applications for subdivisions shall include all applicable submission requirements above, in addition to those required by chapter 41 of this Code. If these submission requirements conflict with the requirements of the chapter 41, the stricter standards shall apply.
- (19) Site plans and construction drawings for new and existing structures listed as "SPR" in section 45-290 shall be submitted to the Eliot Fire Chief for review and comment prior to final approval by the planning board.

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(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 204.4); T.M. of 3-27-99(1), § 8; T.M. of 6-12-2010(3); T.M. of 6-18-2011(5); *T.M. of 6-14-2022(4)*)

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[Add a new chapter to the Town Code:]

Chapter 34 – EROSION AND SEDIMENTATION CONTROL

Section 34-1. – Purpose

The purpose of this chapter is to protect, maintain, and enhance the public health, safety, and general welfare by establishing minimum requirements and procedures to control erosion at construction sites and prevent migration of sediment from construction sites so that erosion and sedimentation do not adversely impact off-site natural resources, properties, or the regulated small MS4.

Section 34-2. – Applicability

This chapter applies to construction activity on a parcel or common plan of development or sale commencing after the effective date of this chapter, that results in:

- (a) disturbed area of one or more acres of land, or
- (b) disturbed area that is less than one acre of land if the construction activity creating disturbed area less than one acre of land is part of a larger common plan of development or sale that, as approved or amended, would create disturbed area of one acre or more.

Section 34-2.1. – Enforcement Authority

Except as otherwise provided for in this chapter, the Code Enforcement Officer of the Town, or their designee, is the Enforcement Authority referenced in this chapter.

Section 34-3. – Procedure

- (a) *Erosion and Sedimentation Control Plan required.* No person shall commence construction activity subject to Section 34-2 without first preparing and obtaining approval for an Erosion and Sedimentation Control Plan in accordance with this ordinance.
- (b) *Submission.* When construction activity is subject to subdivision, site plan, or other review under the Town’s land use regulations, which includes a review for erosion and sedimentation control, an Erosion and Sedimentation Control Plan meeting these requirements shall be submitted to the Municipal Permitting Authority concurrently with that review. When a concurrent review is not otherwise required, an Erosion and Sedimentation Control Plan shall be submitted to the Enforcement Authority.
- (c) *Review.* The Erosion and Sedimentation Control Plan shall be reviewed by the Enforcement Authority or incorporated into the municipal review of a subdivision, site plan, or other review under the Town’s land use regulations by the Municipal Permitting Authority. In accordance with subsection (b) above,

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the Enforcement Authority and the Municipal Permitting Authority, as appropriate, will conduct the review under the standards of this ordinance, and will accept and consider public comment provided as part of that review.

The Enforcement Authority or Municipal Permitting Authority, as appropriate, will review the Erosion and Sedimentation Control Plan for compliance with the standards of Section 34-4, Section 34-5, and Appendix 1 of this chapter and may provide comments where standards have not been met. Once an applicant has submitted an Erosion and Sedimentation Control Plan that the Enforcement Authority or Municipal Permitting Authority finds is in compliance with the standards of Section 34-4, Section 34-5, and Appendix 1 of this chapter, the Enforcement Authority or Municipal Permitting Authority shall provide written confirmation to the applicant. The Enforcement Authority or Municipal Permitting Authority may approve the Erosion and Sedimentation Control Plan, approve it with conditions, or deny the Erosion and Sedimentation Control Plan, and that decision shall be in writing and supported by findings of fact and conclusions of law. Appeals from decisions of the Enforcement Authority regarding the Erosion and Sedimentation Control Plan may be taken within 30 days of the date of decision to the Board of Appeals as provided under the Town's land use regulations; appeals from decisions of the Municipal Permitting Authority regarding the Erosion and Sedimentation Control Plan may be taken within 30 days of the date of decision in the same manner as appeals are taken under Chapter 33 or Chapter 41, as appropriate.

- (d) *Pre-construction meeting.* At least ten (10) days prior to commencing construction activity, the applicant shall request a pre-construction meeting with the Enforcement Authority. At a minimum, attendance at the meeting is required by the Enforcement Authority and the applicant or their representative in charge of construction. If the representative in charge of construction is not the primary earthwork contractor, a representative of the primary earthwork contractor must also attend the pre-construction meeting. Meeting minutes must be prepared by the Town's representative and distributed to all attendees and the Town Planner.
- (e) *Compliance with requirements.* The applicant shall implement and comply with the Erosion and Sedimentation Control Plan as approved throughout all phases of construction activity.
- (f) *Notice of permanent stabilization.* The applicant shall provide notice to the Enforcement Authority when permanent stabilization of the site has been achieved to allow for final inspection per Section 34-6 of this chapter.

Section 34-4. – Submission requirements

- (a) *Project contacts and qualifications.* The applicant shall provide contact information (i.e., name, company if applicable, phone number, physical

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address, and email address) for the applicant, Qualified Erosion and Sedimentation Control Professional, and Contractor (if applicable).

(b) *Erosion and Sedimentation Control Plan content.* The Erosion and Sedimentation Control Plan shall be prepared in accordance with the performance standards contained in Appendix 1. The Erosion and Sedimentation Control Plan shall consist of a graphic representation of the site at a scale no smaller than 1 inch = 100 feet showing:

- (1) Parcel boundaries,
- (2) Locations of protected natural resources,
- (3) Locations of all potential sources of authorized and unauthorized non-stormwater discharges,
- (4) Locations of all erosion and sedimentation control BMPs to be used
- (5) Topography for site pre- and post-construction conditions at 2-foot elevation contours,
- (6) Details for all erosion and sedimentation control BMPs to be used,
- (7) Details and timing associated with phasing of construction activity in disturbed areas at the site, and phasing of installation and stabilization of erosion and sedimentation control BMPs (if applicable),
- (8) Erosion and sedimentation control BMP notes with construction standards,
- (9) A narrative description of the timing, inspections, and erosion and sedimentation control BMPs to be used,
- (10) Example inspection form,
- (11) Dewatering plan (if necessary), and
- (12) Locations of areas not to be disturbed by construction activity, including trees, vegetation, and areas intended for infiltration.

The Erosion and Sedimentation Control Plan shall also include documentation of any variances or releases provided by the Maine Department of Environmental Protection from Chapter 500 performance standards.

Section 34-5. – Requirements and standards

The Enforcement Authority or Municipal Permitting Authority, as appropriate, shall determine if the following standards are met in accordance with Appendix 1.

- (a) *Qualified Erosion and Sedimentation Control Professional.* The Erosion and Sedimentation Control Plan has been prepared by a Qualified Erosion and Sedimentation Control Professional.
- (b) *Timing of installation and maintenance.* The Erosion and Sedimentation Control Plan requires that sedimentation control BMPs shall be in place before construction begins; additional erosion and sedimentation control BMPs shall be installed as needed and shall be phased in if phasing is used, and shall be maintained until permanent stabilization is achieved.

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- (c) *Inspection.* The Erosion and Sedimentation Control Plan provides for inspection of the site by the applicant to confirm that erosion and sedimentation control BMPs are in place and functioning. The Erosion and Sedimentation Control Plan also provides for corrective action if erosion is occurring or there is a discharge of sediment or turbid water from the construction site.
- (d) *Spill prevention.* The Erosion and Sedimentation Control Plan includes measures that prevent construction site pollution and spills from entering stormwater.
- (e) *Groundwater protection.* The Erosion and Sedimentation Control Plan restricts the storage or handling of liquid petroleum products and other hazardous materials that may drain to an “infiltration area.”
- (f) *Fugitive sediment and dust.* The Erosion and Sedimentation Control Plan includes provisions to prevent erosion of soils, tracking or migration of soils into the right of way, discharge of sediment from the site, and fugitive dust emissions during or after construction.
- (g) *Debris.* The Erosion and Sedimentation Control Plan includes provisions to minimize the exposure of construction materials and waste to stormwater runoff and prevent them from migrating off-site.
- (h) *Excavation dewatering.* The Erosion and Sedimentation Control Plan includes provisions to remove or properly disperse the collected water in a manner that prevents sediment from entering stormwater.
- (i) *Non-stormwater discharges.* The Erosion and Sedimentation Control Plan minimizes non-stormwater discharges and, if non-stormwater discharges are allowed, they are identified in the Erosion and Sedimentation Control Plan with appropriate pollution measures for discharge.

Section 34-6. – Inspection

The Enforcement Authority will inspect the site as follows at a minimum:

- (a) Once before any disturbance begins and after all Erosion and Sedimentation Control BMPs specified in the Erosion and Sedimentation Control Plan are in place
- (b) Three times during the active earth moving phase of construction
- (c) Once at project completion to ensure the Site has reached permanent stabilization and all temporary erosion and sedimentation controls have been removed

Additional inspection requirements to be completed by the applicant during construction are contained in Appendix 1.

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Section 34-7. – Enforcement

It shall be unlawful for any person to violate any provision of or to fail to comply with any of the requirements of this chapter. Whenever the Enforcement Authority believes that a person has violated this chapter, the Enforcement Authority may enforce this chapter in accordance with 30-A M.R.S. § 4452 and this section.

- (a) *Right of entry.* In order to determine compliance with this chapter, the Enforcement Authority may enter upon the parcel at reasonable hours with the consent of the owner, occupant, agent, or contractor to inspect the parcel for compliance with this chapter.
- (b) *Notice of violation.* Whenever the Enforcement Authority finds that a person has violated this ordinance, the Enforcement Authority may order compliance with this ordinance by written notice of violation to that person indicating the nature of the violation(s), a statement of the ordinance provision(s) alleged to have been violated, including a statement of the penalties for violation, and ordering the action necessary to correct it, including, without limitation:
 - (1) The abatement of violations and the cessation of practices or operations in violation of this chapter;
 - (2) At the person's expense, compliance with or repair of the Erosion and Sedimentation Control BMPs required as a condition of approval of the Erosion and Sedimentation Control Plan, and/or the restoration of any affected portion(s) of the parcel;
 - (3) The payment of fines, of the Town's remediation costs, and of the Town's reasonable administrative costs and attorneys' fees and costs;
 - (4) If abatement of a violation, compliance with the Erosion and Sedimentation Control Plan, repair of Erosion and Sedimentation Control BMPs, and/or restoration of affected portions of the parcel is required, the notice shall set forth a deadline within which such abatement, compliance, repair, and/or restoration must be completed.
- (c) *Stop Work Notice.* The Enforcement Authority may issue a Stop Work Notice whenever:
 - (1) A person has not acted on a notice of violation issued pursuant to this chapter within the time set forth in the notice, or
 - (2) A person subject to the applicability section of this chapter undertakes Construction Activity without first submitting an application for and obtaining approval of an Erosion and Sedimentation Control Plan.

The Enforcement Authority will attempt to deliver the Stop Work Notice to the applicant, the person performing the construction activity, or the owner or occupant of the parcel, as appropriate, by any means reasonable calculated to effectuate delivery.

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Once the Stop Work Notice has been delivered, no further construction activity at the site may proceed other than as is necessary to correct the non-compliance. Construction activity may resume only when the Enforcement Authority provides written notice that the person may resume that construction activity.

- (d) *Penalties, fines, and injunctive relief.* Any person who violates this chapter, including, but not limited to the Erosion and Sedimentation Control Plan, shall be subject to fines, penalties, and orders for injunctive relief and shall be responsible for the Town's attorney's fees and costs, all in accordance with 30-A M.R.S. § 4452. Each day that such violation continues shall constitute a separate violation. Moreover, any person who violates this chapter also shall be responsible for any and all fines, penalties, damages, and costs, including, but not limited to attorneys' fees and costs, incurred by the Town for enforcement of violation(s) of federal and state environmental laws and regulations caused by or related to that person's violation of this chapter; this responsibility shall be in addition to any penalties, fines, or injunctive relief imposed under this section.
- (e) *Consent agreement.* The Enforcement Authority may, with the approval of the municipal officers, enter into a written consent agreement with the violator to address timely abatement of the violation(s) of this Ordinance for the purposes of eliminating violations of this Ordinance and of recovering fines, costs, and fees without court action.
- (f) *Appeal of Notice of Violation.* Any person receiving a Notice of Violation or Stop Work Notice may appeal the determination of the Enforcement Authority to the Board of Appeals per Section 45-49. The notice of appeal must be received within 30 days from the date of receipt of the Notice of Violation. The Board of Appeals shall hold a de novo hearing on the appeal within 30 days from the date of receipt of the notice of appeal. A party aggrieved by the decision of the Board of Appeals may appeal that decision to the Maine Superior Court within 45 days of that date of the Board of Appeals decision pursuant to Rule 80B of the Maine Rules of Civil Procedure.
- (g) *Enforcement measures.* If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal to the Board of Appeals, within 45 days of a decision of the Board of Appeals affirming or modifying the Enforcement Authority's decision, then the Enforcement Authority may recommend to the municipal officers that the Town's attorney file an enforcement action in a Maine court of competent jurisdiction under Rule 80K of the Maine Rules of Civil Procedure.

Section 34-8. – Severability and conflicts

The provisions of this chapter are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this chapter or the application thereof to any Person,

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establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions, clauses, sentences, or paragraphs or application of this chapter.

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

Section 34-9. – Waivers

Where the Enforcement Authority or Municipal Permitting Authority, as appropriate, finds that there are special circumstances of a particular Erosion and Sedimentation Control Plan that make a particular submission requirement or standard inapplicable, a waiver may be granted, provided that such waiver will not have the effect of nullifying the intent and purpose of this chapter. The applicant shall submit, in writing, the reason for the requested waiver. In granting waivers or modifications, the Enforcement Authority or Municipal Permitting Authority, as appropriate, may require such conditions that will substantially secure the objectives of the standards so waived or modified.

Section 34-10. – Authority

The Town enacts this Erosion and Sedimentation Control chapter pursuant to 30-A M.R.S. §§3001 et seq. (municipal home rule ordinance authority), 38 M.R.S. §413 (the Wastewater Discharge Law), 33 USC §§1251 et seq. (the Clean Water Act), and 40 CFR Part 122 (US Environmental Protection Agency’s regulations governing the National Pollution Discharge Elimination System (NPDES)). The Maine Department of Environmental Protection, through its promulgation of the General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems has listed the Town as having a Regulated Small MS4; under this General Permit, listing as a Regulated Small MS4 necessitates enactment of elements of this chapter as part of the Town’s stormwater management program in order to satisfy the minimum control measures for Construction Site Stormwater Runoff Control.

Appendix 1

Erosion and Sedimentation Control Standards

The following are the mandatory minimum standards for Construction Activity subject to this chapter. The Erosion and Sedimentation Control Plan required under this chapter shall be developed and implemented to include these mandatory minimum standards, which are based upon the Maine Department of Environmental Protection’s 06-096 CMR Chapter 500 Stormwater Management Rule Appendices A, B, and C.

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Where not otherwise specified in this Appendix, the Erosion and Sedimentation Control BMPs shall be designed using Performance Standards specified in the Maine Erosion and Sediment Control BMPs Manual for Designers and Engineers developed by the Maine Department of Environmental Protection (October 2016 or most current version).

The Erosion and Sedimentation Control Plan shall be prepared by a Qualified Erosion and Sedimentation Control Professional as defined in this chapter.

(a) *General timing of installation and maintenance until permanent stabilization*

- (1) Sedimentation Control BMPs must be in place before Construction Activity begins.
- (2) Additional Erosion and Sedimentation Control BMPs must be phased in as appropriate.
- (3) Erosion and Sedimentation Control BMPs must remain in place and functional until the Site is permanently stabilized.
- (4) Adequate and timely maintenance of Erosion and Sedimentation Control BMPs must be conducted until permanent stabilization is achieved.

(b) *Pollution prevention.* Disturbed areas shall be minimized. Natural downgradient buffer areas, as well as (to the extent practicable) any areas where stormwater may flow off-Site, shall be protected. Stormwater volume and velocity shall be controlled within the Site to minimize soil erosion. Disturbance of steep slopes shall be minimized. Stormwater discharges, including both peak flow rates and volume, shall be minimized to minimize erosion at outlets. The discharge may not result in erosion of any open drainage channels, swales, stream channels or stream banks, upland, or coastal or freshwater wetlands off the project Site. Whenever practicable, no disturbance activities shall take place within 50 feet of any Protected Natural Resource. If it is not practicable to maintain the 50-foot buffer of no disturbance, the Erosion and Sedimentation Control Plan must include redundant (at least two) perimeter control measures that are appropriate for the soil and slope.

(c) *Sediment barriers.* Prior to construction, properly install sediment barriers at the downgradient edge of any area to be disturbed and adjacent to any drainage channels within the Disturbed Area. Sediment barriers shall be installed downgradient of soil and sediment stockpiles, and stormwater must be prevented from running onto the stockpile. Sediment barriers shall be maintained by removing accumulated sediment, or removing and replacing the barrier, until the Disturbed Area is permanently stabilized. Where a discharge to a storm drain inlet occurs, protection measures that remove sediment from the discharge must be installed and maintained. Storm drain inlet protection must include effective curb inlet or “back throat” protection, where applicable.

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- (d) *Stabilized construction entrance.* Prior to construction, a stabilized construction entrance (SCE) shall be installed at all points of vehicular egress from the Site. The SCE is typically a stabilized pad of aggregate, underlain by a geotextile filter fabric, or an engineered track out control mat which has been approved by Maine DEP which is used to prevent traffic from tracking material away from the Site onto public rights-of-way. The SCE shall be maintained until all Disturbed Areas are stabilized. If an alternate SCE has been approved by Maine DEP, provide proof of this with the Plan or application.
- (e) *Temporary stabilization*
 - (1) Within 7 days of the cessation of Construction Activities in an area that will not be worked for more than 7 days, any exposed soil shall be stabilized with mulch or other non-erodible cover.
 - (2) Areas within 75 feet of a wetland or waterbody shall be stabilized within 48 hours of the initial disturbance of the soil or prior to any storm event, whichever comes first.
- (f) *Removal of temporary measures.* Any temporary control measures, such as silt fence, shall be removed within 30 days after permanent stabilization is attained. Any accumulated sediments shall be removed and the areas where those sediments were shall be stabilized.
- (g) *Permanent stabilization.* If the Site or a portion of the Site will not be worked for more than one year or has been brought to final grade, then the area shall be permanently stabilized within 7 days by planting vegetation, seeding, sod, or through the use of permanent mulch, or riprap, or road sub-base. If using vegetation for stabilization, proper vegetation shall be selected for the light, moisture, and soil conditions. Disturbed Area subsoils shall be amended with topsoil, compost, or fertilizers. Seeded areas shall be protected with mulch or, if necessary, erosion control blankets. Sodding, planting, and seeding shall be scheduled to avoid die-off from summer drought and fall frosts. Newly seeded or sodded areas must be protected from vehicle traffic, excessive pedestrian traffic, and concentrated runoff until the vegetation is well-established with 90% cover by healthy vegetation. If necessary, areas must be reworked and restabilized if germination is sparse, plant coverage is spotty, or topsoil erosion is evident. Permanent Stabilization Definitions are as follows:
 - (1) Seeded Areas: For seeded areas, permanent stabilization means a 90% cover of the Disturbed Area with mature, healthy plants with no evidence of washing or rilling of the topsoil.
 - (2) Sodded Areas: For sodded areas, permanent stabilization means the complete binding of the sod roots into the underlying soil with no slumping of the sod or die-off.
 - (3) Permanent Mulch: For mulched areas, permanent mulching means total coverage of the exposed area with an approved mulch material. Erosion

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control mix may be used as mulch for permanent stabilization according to the approved application rates and limitations.

- (4) Riprap: For areas stabilized with riprap, permanent stabilization means that slopes stabilized with riprap have an appropriate backing of a well-graded gravel or approved geotextile to prevent soil movement from behind the riprap. Stone must be sized appropriately. It is recommended that angular stone be used.
 - (5) Paved Areas: For paved areas, permanent stabilization means the placement of the compacted gravel subbase is completed, provided it is free of fine materials that may runoff with a rain event.
 - (6) Ditches, Channels, and Swales: For open channels, permanent stabilization means the channel is stabilized with a 90% cover of healthy vegetation, with a well-graded riprap lining, turf reinforcement mat, or with another non-erosive lining such as concrete or asphalt pavement. There must be no evidence of slumping of the channel lining, undercutting of the channel banks, or down-cutting of the channel.
- (h) *Winter Construction.* Winter construction is Construction Activity performed during the period from November 1 through April 15. If Disturbed Areas are not stabilized with permanent measures by November 1 or new soil disturbance occurs after November 1, but before April 15, then these areas must be protected and runoff from them must be controlled by the following additional winter construction measures and restrictions:
- (1) Site Stabilization: Hay mulch shall be applied at twice the standard temporary stabilization rate. At the end of each construction day, areas that have been brought to final grade must be stabilized. Mulch may not be spread on top of snow.
 - (2) Sediment Barriers: All areas within 75 feet of a Protected Natural Resource must be protected with a double row of sediment barriers.
 - (3) Ditch Lines: Ditch lines must be stabilized with an appropriate stone lining backed by an appropriate gravel bed or geotextile unless specifically released from this standard by the Maine DEP. If release from Maine DEP has been granted, proof of this release must be provided with the Plan or application.
 - (4) Slopes: Mulch netting must be used to anchor mulch on all slopes greater than 8% unless erosion control blankets or erosion control mix is being used on these slopes. Unvegetated slopes less than 8% must be protected with an erosion control blanket, erosion control mix, or riprap.
- (i) *Stormwater channels.* Each channel shall be constructed in sections so that the section's grading, shaping, and installation of the permanent lining can be completed the same day. If a channel's final grading or lining installation must be delayed, then diversion berms must be used to divert stormwater away from

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the channel, properly-spaced check dams must be installed in the channel to slow the water velocity, and a temporary lining installed along the channel to prevent scouring.

- (j) *Sediment basins.* Sediment basins that will be used to control sediment during Construction activities must be designed to provide storage for either the calculated runoff from a 2-year, 24-hour storm or provide for 3,600 cubic feet of capacity per acre draining to the basin. Outlet structures must discharge water from the surface of the basin whenever possible. Erosion controls and velocity dissipation devices must be used if the discharging waters are likely to create erosion. Accumulated sediment must be removed as needed from the basin to maintain at least half of the design capacity of the basin. Clearly visible staking must be installed with marks showing the elevation of half design capacity for easier inspection. The use of cationic treatment chemicals in Sediment Basins, such as polymers, flocculants, or other chemicals that contain an overall positive charge designed to reduce turbidity in stormwater may only be used if proof of approval by Maine DEP is provided.
- (k) *Phasing Plan Requirements.* No phasing plan is required if contractor will limit Disturbed Area to a maximum of 5 acres of disturbance across the Site at any time. If the Construction Activity will result in more than 5 acres of Disturbed Area at any one time, the Contractor shall provide a phasing plan showing:
 - (1) the initial 5-acre area to be disturbed;
 - (2) which portions of the initial disturbance will be stabilized, and what temporary or permanent stabilization methods will be used;
 - (3) which areas will be subsequently disturbed and what temporary or permanent stabilization methods will be used; and
 - (4) each phase of disturbance and stabilization must clearly show the total areas in square feet or acres such that the 5-acre Disturbed Area limit at any one time is met throughout the entire project.

During construction, the following are the inspection, maintenance, and corrective action requirements which must be implemented by the applicant or their on-Site representative:

- (l) *Inspection.* Disturbed and Impervious Areas, Erosion and Sedimentation Control BMPs, materials storage areas that are exposed to precipitation, and locations where vehicles enter or exit the Site are inspected at least once a week as well as before and within 24 hours after a storm event (rainfall), and prior to completing permanent stabilization measures. A Qualified Erosion and Sedimentation Control Professional shall conduct the inspections.
- (m) *Maintenance and Corrective Action.* If Erosion or Sedimentation Control BMPs need to be maintained, or repaired or enhanced (corrective action), the work shall be initiated upon discovery of the problem but no later than the end of the next workday. If additional Erosion or Sedimentation Control BMPs or significant repair of Erosion or Sedimentation Control BMPs are necessary, implementation must be completed prior to any storm event (rainfall) and

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within 7 calendar days of identification. All measures must be maintained in effective operating condition until areas are permanently stabilized.

- (n) *Documentation.* A log (report) summarizing the inspections and any repairs or enhancements (corrective actions) added must be maintained by the applicant. The log must include the name(s) and qualifications of the person making the inspections, the date(s) of the inspections, and major observations about the operation and maintenance of erosion and sedimentation controls, materials storage areas, and vehicles access points to the Parcel. Major observations must include Erosion and Sedimentation Control BMPs that need maintenance, Erosion and Sedimentation Control BMPs that failed to operate as designed or proved inadequate for a particular location, and location(s) where additional Erosion and Sedimentation Control BMPs are needed. The log must document each Erosion and Sedimentation Control BMP requiring maintenance, Erosion and Sedimentation Control BMP needing replacement, and location needing additional Erosion and Sedimentation Control BMPs, as well as the corrective action taken and when it was taken. The log shall be maintained for at least three years from the completion of permanent stabilization.

During construction, the following are housekeeping requirements which must be implemented by the applicant or their on-Site representative:

- (o) *Spill Prevention.* Controls must be used to prevent pollutants from construction and waste materials stored on-Site from entering stormwater, which includes storage practices to minimize exposure of the materials to stormwater. The Site contractor or operator must develop, and implement as necessary, appropriate spill prevention, containment, and response planning measures.
- (p) *Groundwater Protection.* During construction, liquid petroleum products and other hazardous materials with the potential to contaminate groundwater may not be stored or handled in areas of the Site draining to an infiltration area. An infiltration area is any area of the Site that by design or as a result of soils, topography, and other relevant factors accumulates runoff that infiltrates into the soil. Dikes, berms, sumps, and other forms of secondary containment that prevent discharge to groundwater may be used to isolate portions of the Site for the purposes of storage and handling of these materials.
- (q) *Fugitive Sediment and Dust.* Actions must be taken to ensure that activities do not result in noticeable erosion of soils or fugitive dust emissions during or after construction. Oil may not be used for dust control, but other water additives may be considered as needed. A stabilized construction entrance shall be included to minimize tracking of mud and sediment. If off-Site tracking occurs, public roads shall be swept immediately and no less than once a week and prior to significant storm events. Operations during dry months, that experience fugitive dust problems, shall wet down unpaved access roads once a week or more frequently as needed with a water additive to suppress fugitive sediment and dust.

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- (r) *Debris and Other Materials.* Minimize the exposure of construction debris, building and landscaping materials, trash, fertilizers, pesticides, herbicides, detergents, sanitary waste, and other materials to precipitation and stormwater runoff. These materials must be prevented from becoming a pollutant source. Sediment generated by concrete or mortar mixing, brick cutting & saw cutting activities must be contained (e.g., sausage boom, straw bales, etc.) and cleaned up using dry methods (i.e., sweeping or vacuuming) to prevent it from entering drainage structures or water resources. These activities shall be done on vegetated areas whenever possible and away from drainage structures and water resources.
- (s) *Excavation Dewatering.* Excavation dewatering is the removal of water from trenches, foundations, coffer dams, ponds, and other areas within the construction area that retain water after excavation. In most cases the collected water is heavily silted and hinders correct and safe construction practices. The collected water removed from the ponded area, either through gravity or pumping, must be spread through natural wooded buffers or otherwise treated to collect the maximum amount of sediment possible, like a coffer dam sedimentation or sediment filter bag. Avoid allowing the water to flow over Disturbed Areas of the Site. If the Maine DEP has approved equivalent measures, provide proof of approval. Note that discharge of excavation dewater fluids from the Site must be visually clear (no visible suspended or settleable solids).
- (t) *Washout from Concrete, Stucco, Paint, Curing Compounds, or Other Construction Materials.* If washout/cleanout is to be completed on the Site, a designated area(s) shall be established and marked on the Erosion and Sedimentation Control Plan. This area shall be a minimum of 50 feet from all drainage structures, ditches, waterbodies, and resource areas, as well as property boundaries. The area shall not have an outlet to discharge wastes or flows. No detergents shall be used or vehicles washed in this location. A leak-proof pit or container shall be established in the washout area(s), to which washings shall be directed. This area shall be used for washout containment and dewatering by evaporation only. The pit shall not allow infiltration to occur. To prevent clean water from entering the pit, the washout area shall be covered during precipitation events. Inspections of the pit shall be conducted daily to ensure no leaks are present and no discharge is occurring.
- (u) *Authorized Non-stormwater Discharges.* Identify and prevent contamination by non-stormwater Discharges. Where allowed non-stormwater Discharges exist, they must be identified, and steps shall be taken to ensure the implementation of appropriate pollution prevention measures for the non-stormwater component(s) of the Discharge. Authorized non-stormwater Discharges are:
 - (1) Discharges from firefighting activity
 - (2) Hydrant flushing if dechlorinated to 0.05 mg/l or less

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- (3) Vehicle wash water if detergents are not used and washing is limited to the exterior of vehicles (engine, undercarriage, and transmission washing is prohibited)
 - (4) Dust control runoff if it does not cause erosion
 - (5) Routine external building washdown, not including surface paint removal, that does not involve detergents
 - (6) Pavement wash water (where spills/leaks of toxic or hazardous materials have not occurred, unless all spilled material had been removed) if detergents are not used
 - (7) Uncontaminated air conditioning or compressor condensate
 - (8) Uncontaminated groundwater or spring water
 - (9) Foundation or footer drain-water where flows are not contaminated
 - (10) Uncontaminated excavation dewatering per subsection (s), Excavation Dewatering
 - (11) Potable water including waterline flushings
 - (12) Landscape irrigation
- (v) *Unauthorized Non-stormwater Discharges*. The following Discharges are prohibited:
- (1) Wastewater from the washout or cleanout of concrete, stucco, paint, form release oils, curing compounds, or other construction materials;
 - (2) Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance;
 - (3) Soaps, solvents, or detergents used in vehicle and equipment washing; and
 - (4) Toxic or hazardous substances from a spill or other release.

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Sec. 41-214. – Soil quality

- (a) *Soil suitability for construction.* In any instance where the code enforcement officer or the planning board doubts the capability of the soil to adequately accommodate proposed construction, they may require that a soil test be made, at the owner's expense, in order to identify the soil type, by a soil scientist. If the soil type which is identified is classified as having poor or very poor suitability for the proposed use, the code enforcement officer or planning board may require the subdivider to submit written evidence from the soil scientist or a professional civil engineer that the soil will be able to support all proposed pavement, structures and utilities. This report may include recommended engineering measures to ensure that cracking, subsidence, or other failure will not result.
- (b) *Reasons for disapproval.* The planning board shall not approve such portions of any proposed subdivision that:
- (1) Are situated below sea level.
 - (2) Are located on land which must be filled or drained or on land created by diverting a watercourse; except the planning board may grant approval if municipal sewage collection and treatment is provided. In no instance shall the planning board approve any part of a subdivision located on filled floodplains, as defined in the zoning chapter.
- (c) *Erosion control.* **Subdivisions subject to Chapter 34 shall follow the erosion and sedimentation control requirements in Chapter 34. For all construction activity subject to this chapter, erosion** Erosion of soil and sedimentation of watercourses and waterbodies shall be minimized by employing the following best-management practices:
- (1) Stripping of vegetation, and regrading or other development shall be minimized as far as is practical, and shall be done in such a way as to minimize erosion.
 - (2) The duration of exposure of the disturbed area shall be kept to a practical minimum.
 - (3) Temporary vegetation and/or mulching shall be used to protect exposed critical areas during development.
 - (4) Permanent (final) vegetation and mechanical erosion control measures shall be installed as soon as practical after construction ends.
 - (5) Until a disturbed area is stabilized, sediment in runoff water shall be trapped by the use of debris basins, sediment basins, silt traps, or other acceptable methods as determined by the planning board.
 - (6) The top of a cut or the bottom of a fill section shall not be closer than ten feet to an adjoining property, unless otherwise specified by the planning board.
 - (7) During grading operations, methods of dust control shall be employed.
 - (8) On slopes greater than 25 percent, there shall be no grading or filling within 100 feet of the normal high water mark except to protect the shorelines and prevent erosion.
 - (9) Topsoil shall be considered part of the subdivision. Except for surplus topsoil for roads, parking areas, and building excavations, it is not to be removed from the site.

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- (d) *Debris and waste.* The subdivider shall not deposit or bury trees, timber, debris, rocks, junk, rubbish, unsuitable soil, or other waste materials of any kind. The code enforcement officer shall withhold approval of permits or recommendation of release of any performance bonds or dedication of improvements until the subdivider removes such waste materials.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 803))

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Sec. 44-35. – Land use standards

[...]

(q) *Erosion and sedimentation control.*

- (1) All activities which involve filling, grading, excavation or other similar activities which result in unstabilized soil conditions and which require a permit shall also require a written soil Erosion and Sedimentation Control Plan. The plan shall be submitted to the Municipal Permitting Authority for approval and shall include, where applicable, provisions for:
 - a. Mulching and revegetation of disturbed soil.
 - b. Temporary runoff control features such as hay bales, silt fencing or diversion ditches.
 - c. Permanent stabilization structures such as retaining walls or riprap.
- (2) In order to create the least potential for erosion, development shall be designed to fit with the topography and soils of the site. Areas of steep slopes where high cuts and fills may be required shall be avoided wherever possible, and natural contours shall be followed as closely as possible.
- (3) Erosion and sedimentation control measures shall apply to all aspects of the proposed project involving land disturbance, and shall be in operation during all stages of the activity. The amount of exposed soil at every phase of construction shall be minimized to reduce the potential for erosion.
- (4) Any exposed ground area shall be temporarily or permanently stabilized within one week from the time it was last actively worked, by use of riprap, sod, seed, and mulch, or other effective measures. In all cases permanent stabilization shall occur within nine months of the initial date of exposure. In addition:
 - a. Where mulch is used, it shall be applied at a rate of at least one bale per 500 square feet and shall be maintained until a catch of vegetation is established.
 - b. Anchoring the mulch with netting, peg and twine or other suitable method may be required to maintain the mulch cover.
 - c. Additional measures shall be taken where necessary in order to avoid siltation into the water. Such measures may include the use of staked hay bales and/or silt fences.
- (5) Natural and manmade drainage ways and drainage outlets shall be protected from erosion from water flowing through them. Drainageways shall be designed and constructed in order to carry water from a 25-year storm or greater, and shall be stabilized with vegetation or lined with riprap.

(6) Without limiting the foregoing, all construction activity subject to Chapter 34 shall meet the requirements of that chapter. [...]

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Sec. 45-412. - Erosion control.

Construction activity subject to Chapter 34 shall follow the erosion and sedimentation control requirements in Chapter 34. For all construction activity subject to this chapter, erosion Erosion of soil and sedimentation of watercourses and waterbodies shall be minimized by employing the following best management practices:

- (1) Stripping of vegetation, and regrading or other development shall be done in such a way as to minimize erosion.
- (2) The duration of exposure of the disturbed area shall be kept to a practical minimum.
- (3) Temporary vegetation and/or mulching shall be used to protect exposed critical areas during development.
- (4) Permanent (final) vegetation and mechanical erosion control measures in accordance with the standards of the county soil and water conservation district or the state soil and water conservation commission shall be installed as soon as practical after construction ends.
- (5) Until a disturbed area is stabilized, sediment in runoff water shall be trapped by the use of debris basins, sediment basins, silt traps, or other acceptable methods as determined by the planning board.
- (6) The top of a cut or the bottom of a fill section shall not be closer than ten feet to an adjoining property, unless otherwise specified by the planning board.
- (7) During grading operations, methods of dust control shall be employed.

Proposed Town Code Amendments of Chapter 1 – General Provisions and Chapter 2 – Administration, Related to the Town Fee Schedule

DRAFT for August 9, 2022, Planning Board Review

Planning Board recommends _____ (#-#)

Select Board recommends _____ (#-#)

Short title

Proposed Town Code Amendments of Chapter 1 – General Provisions and Chapter 2 – Administration, Related to the Town Fee Schedule

Ballot question – Town Special Referendum Election, November 8, 2022

ARTICLE #__ : Shall an Ordinance entitled “Proposed Town Code Amendments of Chapter 1 – General Provisions and Chapter 2 – Administration, Related to the Town Fee Schedule” be enacted?

Background and rationale

These amendments remove listed fees from Section 1-25 and authorize the Select Board to establish and maintain a Town fee schedule, where fees may be occasionally be updated by a vote of the Select Board.

Several fees have not been changed in a long time and are no longer providing cost recovery, meaning that the service associated with the fee costs the Town more than the amount the fee is providing. If adopted, staff expect to develop a master fee schedule to be brought to the Select Board for review and approval. Until then, the fees in Section 1-25 would remain in effect.

Proposed Town Code Amendments of Chapter 1 – General Provisions and Chapter 2 – Administration, Related to the Town Fee Schedule

(New text underlined in bold)

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Sec. 1-25. Fee schedule.

(a) Purpose and Authority. The Select Board is hereby authorized to establish and maintain a fee schedule with fees for permitting, licensing, services, application, appeal, as permitted under the Code of Ordinances. Except as limited by this section or otherwise by law, the Select Board is authorized to modify the fee amounts in that fee schedule. For the purpose of this section, “fee schedule” may mean one master fee schedule or multiple individual fee schedules grouped by fee categories.

(b) The tables in this section shall remain effective until the Select Board adopts a fee schedule pursuant to subsection 1-25(a) above. The tables below shall be repealed and removed from this Ordinance upon the adoption of a fee schedule by the Select Board.

CODE ENFORCEMENT				
PURPOSE		FEE		
Building permits (Sec. 45-125)	Foundation/slab only	\$100.00		
	Accessory structures	\$0.20/sq. ft.		
	Principal structures (new construction or additional living area)	Finished area	\$0.50/sq. ft.	
		Unfinished area	\$0.25/sq. ft.	
	Alterations/renovations	\$8.00 per \$1,000.00 of est. construction cost		
	Demolition (of structures 8' × 8' or more)	\$25.00 - Accessory structures		
		\$50.00 - Principal structures		
	Fence permit - any height or length (Sec. 45-423)	\$25.00		
	Swimming pool permit - any size, any type (excluding temporary/inflatable pools)	\$75.00		
		Temporary	\$50.00	
Permanent - residential		\$100.00		

Proposed Town Code Amendments of Chapter 1 – General Provisions and Chapter 2 – Administration, Related to the Town Fee Schedule

	Piers, docks, wharves, bridges or other structure extending over or below the high water line (Sec. 44-35(c))	Permanent commercial -	\$150.00
Campsite license fees (Sec. 33-173)	New campsites	\$150.00 application fee + \$10.00/campsite	
	Annual renewals	\$25.00 application fee + \$10.00/campsite	
Electrical permits (Sec. 45-132)	New dwelling units (fee includes electrical permit and 2 inspections)	Single-family dwellings	\$100.00
		All other dwelling units (ADUs, modular, manufactured, etc.)	\$75.00 each
	AMP service (fee includes permit and 1 inspection)	Temporary service	\$30.00
		100 & 200 AMP (panel & service)	\$50.00
		Subpanels, underground service wire, other	\$30.00 each
	Wiring (fee includes electrical permit and 1 inspection)	\$50.00	
	Alternative energy systems (fee includes permit and 1 inspection) (Sec. 45-461 & 462)	Solar energy systems	\$50.00
		Small wind energy systems	\$75.00
	Swimming pools, hot tubs, saunas, spas, etc. (includes permit and 1 inspection)	\$30.00 each	
	Signs (any illuminated)	\$30.00 each	
	Generators (any size), transfer switches, transformers (permit + 1 inspection)	\$30.00 each	
Re-inspection fee (for any additional inspections)	\$50.00 each		
Flood hazard development permit (Sec. 25-58)		\$50.00	
Growth permit (Sec. 29-42(b))		\$500.00/dwelling unit (upon replacement with a building permit to construct a new dwelling unit,	

Proposed Town Code Amendments of Chapter 1 – General Provisions and Chapter 2 – Administration, Related to the Town Fee Schedule

		\$400.00/dwelling unit shall be credited toward building permit fees)	
Plumbing permits (Sec. 45-131)	External (subsurface wastewater disposal systems) plumbing	Engineered system	\$300.00
		Non-engineered system	\$250.00 + \$15.00 (state fee)
		Disposal field only	\$150.00
		Treatment tank only	\$125.00
		Holding tank	\$150.00
		Other components (complete pump station, piping, etc.)	\$50.00
		Primitive system (incl. 1 alternative toilet)	\$150.00
		Alternative toilet	\$50.00
		Seasonal conversion	\$50.00
		Separated laundry system	\$50.00
		1st time system variance	\$50.00
	Internal plumbing	\$40.00 min. (includes 1—4 fixtures) + \$10.00 per additional fixture	
	Re-inspection fee (for any additional inspections)	\$50.00 each	
Tele-communication structures (Sec. 45-460)	Expansion of existing telecommunication structure	\$350.00	
	Collocation of antenna on existing telecommunication structure	\$350.00	
	New telecommunication structure (any height)	\$500.00	
Auto graveyards, auto recycling operations, and auto hobbyist	Auto graveyard	\$175.00 application fee + \$50.00/permit	
	Auto recycling operation, principal	\$175.00 application fee + \$250.00/permit	

Proposed Town Code Amendments of Chapter 1 – General Provisions and Chapter 2 – Administration, Related to the Town Fee Schedule

storage area operating permits (select board)	Auto hobbyist storage area	\$175.00 application fee + \$25.00/permit
Sign permit (Sec. 45-130)	Exterior signs for commercial establishments (new, permanent signs only)	\$50.00
	Home business signs or replacement signs for commercial establishments	\$25.00
After-the-fact permits		Permit fees doubled

PUBLIC WORKS/ROAD COMMISSIONER	
PURPOSE	FEE
Stormwater management facilities - review of annual certifications and inspection reports for properties entered into a maintenance agreement with the town (Sec. 35-4(b)(6))	\$250.00 - annual base fee
Stormwater management facilities - annual town inspection (as needed) of properties entered into a maintenance agreement with the town (Sec. 35-4(b)(6); Sec. 35-5(b))	\$300.00 per town staff inspection \$900.00 per town-contracted third-party consultant inspection
Excavation permit - for excavation of town ways (Sec. 37-55)	\$100.00
Driveway construction permit	\$50.00

PLANNING BOARD			
PURPOSE			FEE
Site Plan Review (Sec. 33-128) <i>(Public</i>	Rural, Suburban, Commercial/Industrial Districts	Village, Zoning	General site plan review application (non Shoreland zone) \$100.00 per acre up to 5 acres; \$50.00 each additional acre

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<i>hearing fees not included)</i>			(minimum fee \$100.00)
		Change of use (no site changes or major structural changes or additional square footage)	\$25.00
		Home business; home occupation	\$25.00
		Lodging businesses (bed & breakfasts, hotels, motels, boarding homes, inns, etc.)	\$25.00 per room for lodging businesses in lieu of acreage-based fee
Shoreland Zoning Districts	General site plan review application	\$100.00/acre up to 5 acres. \$50.00 each additional acre (minimum fee \$100.00)	
	Piers, docks, wharves, bridges and other structures extending over or below the high-water line	\$50.00	
	Road & driveway construction permits	\$50.00	
	Non-conforming structures, uses and lots per Sec. 44-32	\$75.00	
	Revisions to final site plans after planning board approval (Sec. 33-140)	\$100.00	
Subdivision application fee	\$200.00 per lot or dwelling unit		
Mobile home park application fee	\$50.00 per unit		

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Subdivisions (Sec. 41-142)	Final plan fee for subdivisions and mobile home parks (Sec. 41-171)	\$50.00
	Revisions to final subdivision plans after approval (Sec. 41-182)	\$200.00 per lot or dwelling unit affected by change
Public hearing fees (includes abutter notification via certified mail and advertising in 2 local newspapers)		\$175.00

BOARD OF APPEALS	
PURPOSE	FEE
All Board of Appeals applications (variances, waivers, administrative appeals) (Sec. 45-50)	\$150.00 (includes application and all public hearing fees)

(T.M. of 11-4-03; T.M. of 3-20-04; T.M. of 6-11-2013(3); T.M. of 6-9-2015(2); T.M. of 6-8-2021(2) , art. 33; T.M. of 11-2-2021(1) , art. 2)

Proposed Town Code Amendments of Chapter 1 – General Provisions and Chapter 2 – Administration, Related to the Town Fee Schedule

Sec. 2-80. Select board's administrative authority.

The select board shall be authorized to act on the following administrative matters usually acted on annually at town meeting:

- (1) Taxes are due and payable at the time of the mailed demand. The select board is granted the authority to set dates in the months of November and the following May as the dates when interest on unpaid current tax amounts will begin to accrue.
- (2) To establish the rate of interest charged on each half of taxes after the November and May dates, such rate of interest not to exceed the maximum rate as established annually by the state treasurer.
- (3) To authorize the select board to set an interest rate to be paid on abated taxes for the fiscal year.
- (4) To authorize the tax collector to accept prepayments of taxes not yet committed, pursuant to 36 M.R.S.A. section 506.
- (5) To authorize the select board, when town meeting is delayed into the next fiscal year, to spend from unassigned fund balance an amount per month not more than 1/12 of the appropriated amount of the current fiscal year budget until the required town meeting can be held.
- (6) To authorize the select board to annually execute signatures as may be required to borrow funds through tax anticipation notes, if necessary for cashflow, and to pay interest on said tax anticipation notes from any general fund revenue.
- (7) To pay tax abatements and applicable interest granted during the fiscal year from the overlay account.
- (8) To authorize the select board to dispose of town-owned personal property under such terms and conditions as they deem to be in the best interest of the town.
- (9) To authorize the select board, on behalf of the town, to sell and dispose of any real estate acquired by the town for non-payment of taxes thereon, on such terms as they deem advisable and to execute quitclaim deeds for such property. The select board must first request the advice of the conservation commission.
- (10) To authorize the select board to receive insurance and/or other property damage restitution funds and to expend said receipts for materials and labor to correct said damages without further appropriations.
- (11) To authorize the select board to accept and appropriate or to reject any and all funds from grants, donations, and reimbursements during the year for any municipal department, committee, commission and/or project, to include but not limited to reimbursements from F.E.M.A. for any state declared emergencies, community development block grants, donations for the parks, and capital or program grants for community service department.
- (12) To authorize the select board and treasurer to borrow on notes or to appropriate money from unreserved fund balance for any further amount needed for snow removal.

Proposed Town Code Amendments of Chapter 1 – General Provisions and Chapter 2 – Administration, Related to the Town Fee Schedule

- (13) To make final determinations regarding the closing or opening of roads to winter maintenance, pursuant to 23 M.R.S.A. § 2953.
- (14) To authorize the select board to establish the rate of interest charged of delinquent sewer accounts.
- (15) To authorize the select board to make any budgetary changes, in their sole discretion, as a result of a LD1 override failure.
- (16) To authorize the select board to establish and maintain a fee schedule as further provided for in Section 1-25.**

(T.M. of 11-6-2018(1), (§ 10))