

# TOWN OF ELIOT, MAINE

## PLANNING BOARD AGENDA

TYPE OF MEETING: IN PERSON WITH REMOTE OPTION

DATE:

Tuesday, March 1, 2022

PLACE: TOWN HALL/ZOOM

TIME:

7:00 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) January 18, 2022 – if available
- 6) **NOTICE OF DECISION**
  - a) 0 Odiorne Lane – if available
  - b) 2135 State Road – if available
  - c) 72 Harold L Dow Highway – if available
- 7) **NEW BUSINESS**
  - a) 64 Harold L Dow Highway (Map 23/Lot 16), PID # 023-016-000, PB22-03: Site Plan Amendment and Change of Use – Addition of swim lessons in above ground pool to an existing daycare business
- 8) **OLD BUSINESS**
  - a) 25 Alden Lane (Map 1/Lot 36), PID # 001-036-000, PB22-02: Shoreland Zoning Permit App. – Garage Replacement
  - b) Ordinance Amendments
    1. Stormwater – Erosion & Sedimentation Control Ordinance; Update on Stormwater Permit; Low-Impact Design (LID)
    2. Solar Energy Systems
    3. Updates on Feb. 15 review drafts: Signs; Site Plan Content; Marijuana Performance Standards (**discussion as time allows**)
    4. Event Centers
- 9) **CORRESPONDENCE**
  - a) Town Planner Memo (information only, includes various updates)
- 10) **SET AGENDA AND DATE FOR NEXT MEETING**
  - a) March 15<sup>th</sup>, 2022
- 11) **ADJOURN**

**NOTE:** Residents/Interested parties may join via Zoom or in-person at the Town Hall. 1333 State Road Eliot, ME 03903

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

- a) Go to [www.eliotme.org](http://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: **816 7117 1635 #**
  2. When prompted to enter Attendee ID **press #**
  3. When prompted enter meeting password: **610362 #**
- 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 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:** Per Covid-19 policy, all attendees are required 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](http://eliotmaine.org/planning-board). Town Hall is accessible for persons with disabilities.

# TOWN OF ELIOT, MAINE

## PLANNING BOARD NOTICE OF DECISION

CASE #: <b>PB21-16 - SITE PLAN REVIEW</b>	MAP/LOT: <b>83/2</b>	DATE OF DECISION:
<b>APPLICATION/CHANGE OF USE – PUBLIC</b>	<b>0 ODIORNE LANE</b>	<b>10-12-2021 (DENIAL)</b>
<b>UTILITY FACILITY GROUND-MOUNTED SOLAR</b>		<b>11-9-2021 (RECONSIDERATION)</b>
<b>ARRAY</b>		<b>01-18-2022 (FINAL APPROVAL)</b>

2/21/2022

### DRAFT

Crowell, Lillian H. HRS or DEV  
c/o Debra Berthiaume  
432 Goodwin Road  
Eliot, ME 03903

NH Solar Garden  
ATTN: Andrew Kellar  
43 Holmes Court  
Portsmouth, NH 03801

Attar Engineering, Inc.  
ATTN: Michael Sudak, E.I.T.  
1284 State Road  
Eliot, ME 03903

To: Debra Berthiaume  
Andrew Kellar  
Michael Sudak

This letter is to inform you that the Planning Board has acted on your **application for site plan review and change of use to Public Utility Facility (Ground-mounted Solar Array)** as follows:

#### APPLICATION DOCUMENTS AND SUPPORTING MATERIAL SUBMITTED:

##### Submitted for June 22, 2021:

1. Site Plan Review application (sketch) to prepare for site plan review and change of use, received May 4, 2021:
  - a) Cover letter from Michael Sudak, E.I.T., of Attar Engineering, Inc.
  - b) Engineer of Record: Michael Sudak, E.I.T., Attar Engineering, Inc.
  - c) Photos showing an example of the proposed project.
  - d) Letter of Authorization from Andrew Kellar to allow Ken Wood, P.E. and Michael Sudak, E.I.T. of Attar Engineering to act as his agents for this project, dated May 4, 2021.
  - e) Sheet 1 - Sketch Plan, drawn by Attar Engineering, Inc., dated May 3, 2021.
  - f) Abutters List Report, dated May 4, 2021.
  - g) USGS Location Map dated May 3, 2021.
  - h) Mortgage Deed, Book 11419, Page 560, registered at the York County Registry of Deeds, August 23, 1960.
2. Memo from Jeff Brubaker, Town Planner, dated June 16, 2021.
3. Location map showing district overlays, dated June 16, 2021.
4. Agreement for Purchase & Sale between S.O.W. Solar, Inc. and Deborah Berthiaume, Personal Representative of the Estate of Lillian H. Crowell, dated May 13, 2021.

5. Letter from Andrew Kellar stating that NH Solar Garden is the developer of record that owns the project-level LLC – Odiorne Lane Solar, LLC - 100%, and has a land lease with Kevin Hill, dated June 15, 2021.
6. Review Letter 1 from the Town Planner to Michael Sudak, dated May 25, 2021.
7. Project narrative response from Michael Sudak to Review Letter 1, dated May 27, 2021.
8. Follow-up comments from the Town Planner to Michael Sudak, dated June 1, 2021.

#### **Submitted for August 3, 2021:**

1. Site Plan Application documents, dated July 21, 2021:
  - a) Cover letter from Michael Sudak, E.I.T., Attar Engineering, Inc.
  - b) Application for Site Plan Review.
  - c) Site Plan Review Submissions Checklist.
  - d) Letter of Authorization from Andrew Kellar to allow Ken Wood, P.E. and Michael Sudak, E.I.T. of Attar Engineering to act as his agents for this project, dated May 4, 2021.
  - e) Warranty Deed, Book 11419, Page 560, registered at the York County Registry of Deeds, dated August 23, 1960.
  - f) Agreement for Purchase & Sale between S.O.W. Solar, Inc. and Deborah Berthiaume, Personal Representative of the Estate of Lillian H. Crowell, dated May 13, 2021.
  - g) USGS Location Map.
  - h) Abutters List Report.
2. Site Plan Sheets Set, revised August 3, 2021:
  - a) Sheet 1 of 3 – Standard Boundary Survey, drawn by Easterly Surveying, Inc., dated April 18, 2008.
  - b) Sheet 2 of 3 – Standard Boundary Survey, drawn by Easterly Surveying, Inc., dated April 18, 2008.
  - c) Sheet 3 of 3 – Standard Boundary Survey, drawn by Easterly Surveying, Inc., dated April 18, 2008.
  - d) Sheet 1 of 6 – Overall Site Plan, drawn by Attar Engineering, Inc., dated July 7, 2021.
  - e) Sheet 2 of 6 – Grading and Utilities Plan, drawn by Attar Engineering, Inc., dated July 7, 2021.
  - f) Sheet 3 of 6 – Erosion & Sedimentation Control Plan, drawn by Attar Engineering, Inc., dated July 7, 2021.
  - g) Sheet 4 of 6 – Solar Development Details, drawn by Attar Engineering, Inc., dated July 7, 2021.
  - h) Sheet 5 of 6 – Stormwater: Existing Conditions, drawn by Attar Engineering, Inc., dated July 7, 2021.
  - i) Sheet 6 of 6 – Stormwater: Developed Conditions, drawn by Attar Engineering, Inc., dated July 7, 2021.
3. Letter from Joseph Noel, Certified Soil Scientist, re: vernal pool survey and wetland delineation, dated June 14, 2021.
4. FAA Notice Criteria Tool results.
5. Stormwater modeling results (HydroCAD), dated July 21, 2021.
6. Stormwater Management Plan, dated July 21, 2021.
7. Operation and Maintenance Program for Stormwater BMPs, dated July 21, 2021.
8. Memo from Jeff Brubaker, Town Planner, dated July 29, 2021.

#### **Submitted for August 24, 2021:**

1. Memo from Jeff Brubaker, Town Planner, dated August 18, 2021.
2. Site Walk Notice to the Town of Eliot, dated August 12, 2021
3. Response letter to ECC comment letter from Mr. Sudak, dated August 24, 2021.
4. 500-foot Abutters List Report, dated August 10, 2021.
5. Copies of Sheets 1-3, Boundary Surveys.

#### **Submitted for September 21, 2021:**

1. Memo from Jeff Brubaker, Town Planner, dated September 15, 2021.
2. Notice of Site Walk, published in The Weekly Sentinel, dated September 10, 2021.
3. Site Walk Notice to the Town of Eliot, dated September 10, 2021.
4. 500-foot Abutters List Report.

5. Letter from Mr. Sudak to Town Planner, re: Completeness Revisions, dated September 15, 2021.
6. USGS Map showing off-site vernal pool location, dated September 14, 2021.
7. Email correspondence between Mr. Sudak and Mr. Noel, dated September 7, 2021.
8. RBI Solar Fixed Tilt Pull Testing Procedure Document.
9. Planning Board Frequently Asked Questions document, 2021, from NH Solar Garden.
10. EPA Greenhouse Gas Equivalencies Calculator document, dated March 2021.
11. Revised Sheet 2 - Grading & Utilities Plan (New Notes #16 - #19).

**Submitted for October 5, 2021:**

1. Supplemental Memo from Jeff Brubaker, Town Planner, regarding Review Considerations, dated October 1, 2021.
2. Memo from Mr. Sudak regarding Approval Workshop #1, Site Plan Review, dated September 29, 2021.

**Submitted for October 12, 2021:**

1. Memo from Jeff Brubaker, Town Planner, dated October 6, 2021.
2. Public Hearing Notice to the Town of Eliot, dated October 1, 2021.
3. Public Hearing Notice, published in The Weekly Sentinel on October 1, 2021.
4. 500-foot Abutters List Report, dated October 5, 2021.
5. Test Pit Data from Michael Cuomo, Soil Scientist, dated October 1, 2021.
6. Revised Sheet 2 – Grading & Utilities Plan.
7. Eliot Planning Board Memo from NH Solar Garden, Solar Ordinance & Moratorium Analysis.
8. Following documents submitted by Mr. and Mrs. Meyer, abutters of 0 Odiorne Lane:
  - Maine State Vernal Pool Assessment Form, dated October 1, 2021.
  - Letter from Maine Inland Fisheries & Wildlife (IF&W) to Mr. Sudak regarding Endangered, Threatened Species, and Habitat Determination, dated January 21, 2021.
  - General Resource Guidance & Recommendations document from Maine Inland Fisheries & Wildlife to Mr. Sudak, updated March 5, 2020.
  - Letter (preliminary overview) from Maine Inland Fisheries & Wildlife to Mr. Sudak responding to Mr. Sudak's inquiry re: information regarding known locations of endangered species and protected habitats, dated February 22, 2021.
  - Maine Department of Agriculture, Conservation, & Forestry Technical Guidance for Utility-scale Solar Installation & Development on Agricultural, Forested & Natural Lands, updated January 8, 2021.
  - Copy of L.D. 936 to Amend State Laws Relating to Net Energy Billing and the Procurement of Distributed Generation (Committee Amendment), passed into law July 1, 2021.
  - Copy of South Berwick Ordinance Establishing an Emergency Moratorium on Commercial Solar Energy Facilities.

**SUPPLEMENTAL DOCUMENTS FROM RECONSIDERATION/APPROVAL AND CONTINUED REVIEW:**

**Submitted for November 9, 2021:**

1. Memo from Jeff Brubaker, dated November 2, 2021.
2. Reconsideration Letter from Attorney Leah Rachin, DrummondWoodsum, dated October 22, 2021.
3. Amended Sketch Plan Application, dated October 26, 2021. (Stay of review requested by applicant until Reconsideration decision.)
4. Public Hearing Notice to the Town of Eliot, dated October 30, 2021.
5. Public Hearing Notice, published in the Portsmouth Herald on October 30, 2021.
6. Abutter's List.
7. Draft Notice of Decision re: Denial of Application on October 12, 2021. (Not reviewed pending Reconsideration decision.)



8. Reconsideration Motion template.

**Submitted for December 14, 2021:**

1. Memo from Jeff Brubaker, dated December 13, 2021.
2. Revised Site Plan and Cover Letter, dated December 8, 2021.
  - a. Land Lease Option/Lease Agreement between Mr. Kevin Hill and Odiorne Lane Solar, LLC, dated March 31, 2021.
  - b. Sheet 1 – Amended Overall Site Plan, revision date November 30, 2021.
  - c. Sheet 2 – Amended Grading & Utilities Plan, revision date November 30, 2021.
  - d. Sheet 3 – Erosion & Sediment Control Details, revision date November 30, 2021.
  - e. Sheet 4 – Solar Development Details, revision date November 30, 2021.

**Submitted for January 4, 2022:**

1. Memo from Jeff Brubaker, Town Planner, dated December 29, 2022.
2. Documented Proof of Site Control with attached location map showing both parcels.
3. Memorandum from SMPDC (Southern Maine Planning & Development Commission), third-party reviewer, with preliminary comments, dated December 14, 2021.
4. Letter from NH Solar Garden (Andrew Kellar) re: Extension Agreement between S.O.W. Solar, Inc. and Estate of Lillian H. Crowell and copy of email exchange regarding conservation plans between IF&W and NH Solar Garden, dated December 17, 2021.
5. Email Correspondence between the Town Planner and Attorney Saucier (BernsteinShur), dated March 2021.
6. Letter from the Maine DEP to Mr. Jay Meyer re: vernal pool significance determination, dated October 5, 2021.

**Submitted for January 18, 2022:**

1. Memo from Jeff Brubaker, Town Planner, dated January 14, 2022.
2. Public Hearing Notice to the Town of Eliot, dated January 8, 2022.
3. Legal Notice of Public Hearing published in the Portsmouth Herald, dated January 8, 2022.
4. 500-foot Abutters List Report, dated January 12, 2022.
5. Memo from David Galbraith: Municipal Planning Consultant from Southern Maine Planning and Development Commission (SMPDC), Third-party Municipal Consultant, dated January 5, 2022.
6. Memo from David Galbraith: Municipal Planning Consultant from SMPDC; Third-party Municipal Consultant, dated January 15, 2022.
7. Letter from Ms. (Kari) Moore, Eliot Conservation Commission Chair, dated January 18, 2022.
8. Letter of Intent from Mr. (Kevin) Hill (**pending** property owner) regarding putting the remaining land around the solar facility and leased premises into conservation, either to place the balance of this land into the Great Thicket National Refuge or to sell and/or convey to another conservation resource, dated January 13, 2022.
9. Cover Letter/Master Comment – Response Document from Michael Sudak, E.I.T., Attar Engineering, Inc., dated January 11, 2022.
10. Project Review Memo from Fire Chief Muzeroll, dated January 10, 2022.
11. Email Chain Document between Derek York, Maine Department of Inland Fisheries & Wildlife (MDIF&W) and Michael Sudak, Attar Engineering, Inc. and Cory Stearns (Small Mammal Biologist, MDIF&W) and Michael Sudak, Attar Engineering, inc., dated January 4 to January 6, 2022.
12. Updated Stormwater Modeling Results, dated January 12, 2022.
13. Sheet 5 – Stormwater Existing Conditions, revised January 11, 2022.
14. Sheet 6 – Stormwater Developed Conditions, revised January 11, 2022.
15. Sheet 1 – Sketch Conservation Plan, dated January 13, 2022.

**Supplemental Documentation Submitted:**

1. Letter of Findings from Maine Historic Preservation Commission, dated January 19, 2022.

#### FINDINGS OF FACT:

1. The owner of the property is: Estate of Lillian H. Crowell (c/o Debra Berthiaume, Personal Representative) (mailing address: 423 Goodwin Road, Eliot, Maine 03903).
2. The applicants are: NH Solar Garden, LLC and Odiorne Lane Solar, LLC (Andrew Kellar, Owner) (mailing address: 43 Holmes Street, Portsmouth, NH 03801).
3. Engineer of Record: Michael Sudak, E.I.T. (Attar Engineering, Inc.) (mailing address: 1284 State Road, Eliot, Maine 03903).
4. The property is located at 0 Odiorne Lane, Eliot, ME and is 69.62 acres.
5. Warranty Deed, Book 1419, P 560, registered at York County Registry of Deeds, dated August 23, 1960.
6. Purchase & Sales Agreement between S.O.W. Solar, Inc. (Kevin Hill, President) and Deborah Berthiaume, Personal Representative of the Estate of Lillian H. Crowell, dated May 13, 2021.
  - Purchase & Sales Agreement between S.O.W. Solar (Kevin Hill) and Estate of Lillian H. Crowell was submitted for the December 14, 2021 Planning Board meeting.
7. Letter from Andrew Kellar, (owner/developer, NH Solar Garden Solar, LLC) stating Odiorne Lane Solar, LLC (Andrew Kellar, owner/applicant) has a land lease with S.O.W. Solar, LLC (Kevin Hill, prospective buyer), dated June 15, 2021.
  - Land Lease Option/Lease Agreement, dated March 31, 2021.
  - Redacted Signed Purchase & Sales Agreement extension to June 2022, dated March 31, 2021 with an 18-month extension option period and leased primary term for 20 years with tenant option for extension.
8. Property can be identified as Assessor's Map 83/ Lot 2 and is located in the Rural Zoning District and Shoreland Overlay – Resource Protection, Stream Protection, Protected Resource: Freshwater Wetland >10 acres.
9. The applicant submitted a stamped boundary survey (Sheets 1-3), done by Raymond A. Bisson, PLS, Easterly Surveying, Inc, dated August 12, 2021.
10. The applicant proposes to construct a large array of ground-mounted solar panels (19+/- acres/5 megawatts, original; 16.08 acres/2 megawatts, current). Array shall be serviced by a gravel access drive and overhead electric utility corridor.
11. Copies of the application and supporting materials were provided to the Code Enforcement, Public Works, Town Manager, Police and Fire Departments, and Conservation Commission. Comments submitted by Fire Chief and Conservation Commission. Attached.
12. The Planning Board reviewed the application at the following regular meetings:
  - June 22, 2021 (Sketch Plan Review).
  - August 3, 2021 (Site Plan Review).
  - August 24, 2021 (Continued Site Plan Review).
  - September 21, 2021 (Continued Site Plan Review/Application Completeness).
  - October 5, 2021 (Site Plan Review Considerations).
  - October 12, 2021 (Public Hearing/Denial).
  - November 9, 2021 (Public Hearing for Reconsideration of prior Denial Action)
    - a. Denial Decision Vacated/Hiring of Third-party Technical Consultant Approved.
  - December 14, 2021 (Continued Site Plan Review).
  - January 4, 2022 (Review Considerations – Updated).
  - January 18, 2022 (Public Hearing/Approval)
13. The following application fee(s) have been paid by the applicant, in accordance with §1-25:
  - Site Plan Review Application Fee: \$3,750 (8/3/21).
  - Public Hearing Fee: \$175 (paid 8/3/21).
  - Third-Party Review Escrow: \$1,540 (paid 11/2021)
14. A site walk was scheduled August 23, 2021 but cancelled due to weather. Rescheduled site walk was held September 20, 2021. In attendance were four members of the Planning Board, Ms. Moore and Ms. Castellan from the Eliot

Conservation Commission, abutters Mr. & Mrs. Meyer, Jeff Brubaker (Town Planner), Shelly Bishop (Code Enforcement Officer), Brent Martin (Eliot Assessor), Mr. Sudak (engineer), and the Kellars (applicant).

15. In accordance with §§33-129 & 33-130, a public hearing was advertised in The Weekly Sentinel on October 1, 2021 and held on October 12, 2021. Town of Eliot was noticed on October 1, 2021 of the Public Hearing to be held on October 12, 2021. **Public comments/concerns:** Why company chose this site location that is a commercial structure in the Rural District that is also part of the York River Watershed, the Great Thicket National Wildlife Refuge, and has pending designation as a National Wild & Scenic River System. Need for much more input from Eliot residents. No commercial solar ordinances in place. Desire to wait for completion of guidance being developed at the State level. Desire for moratorium for development of ordinances. Impact to sighted deer, moose, wolves, wood ducks, crow rookery, turtles, eagles, hawks, aviary migration. Impact to off-site vernal pool. Impact to potential archeological/historic value. Fragmentation of large forested wetland. Visual eyesore. Emergency vehicle access. Impact on bee pollination. Wildlife traffic corridors negatively impacted. Negative impact to historic hunting practices. Life expectancy of solar panels. Hazardous materials in panels that may leak and impact surface/ground water. Permanency of land conservation. Health impact to wildlife. Possible inadequacy of stormwater plan. Appearance of less than full disclosure of information. Birds mistaking panels for water bodies. Construction impact to neighbors/Odiorne Lane. Is there a decommissioning plan and is it bonded. Need better understanding of new plan presented. Loss of climate protection. Lack of updated environmental surveys. Appearance of lack of due diligence in preserving landscape, minimizing of tree-clearing, and protecting pollinator habitat. Impact of potential fires within perimeter fence. Belief of irretrievable loss of environmental resources and incompatible use in this area. Active conservation of this area for 20+ years. Already have a large-scale municipal solar array in place. Potential impact from inadequate infrastructure on future growth. Applicant and engineers of record responded to concerns.
16. In accordance with §§33-129 & 33-130, a public hearing (reconsideration) was advertised in The Portsmouth Herald on October 30, 2021 and held on November 9, 2021.
17. Public Hearing for Reconsideration of Planning Board Denial held November 9, 2021: Ms. (Leah) Rachin (Attorney for applicant) presented her argument in support of overturning the denial, based on §33-151 "Compliance with applicable provisions". One member of the public suggested the use of the Board of Appeals for denials.
  - Motion to Reconsider: Ms. Braun moved, second by Ms. Crichton, that the Planning Board reconsider the Planning Board denial of October 12, 2021 for PB21-16 - Site Plan Review and Change of Use for a Public Utility Facility (Ground-Mounted Solar Array), per §2-104(L) of the Town Code. Roll Call Vote: Ms. Braun – Yes, Mr. Leathe – Yes, Ms. Crichton – Yes, Mr. Latter – No. Motion was approved.
  - Additional Motions:
    - Ms. Braun moved, second by Ms. Crichton, that the Planning Board vacate their denial, on October 12, 2021, of PB21-16 – Site Plan Review and Change of Use for a Public Utility Facility (Ground-Mounted Solar Array) as that denial was not based on the specific requirements of the Ordinance as required by law. Roll Call Vote: Ms. Braun – Yes, Mr. Leathe – Yes, Ms. Crichton – Yes, Mr. Latter – No. Motion was approved.
    - Ms. Braun moved, second by Ms. Crichton, that the Planning Board is not deciding on the merits of the Application this evening and hereby moves to hire a technical consultant to serve as a third-party reviewer of the Application, taking into account the applicant's October 26 submittal. The scope of the review shall cover:
      1. Review of proposed stormwater features and HydroCAD modeling results.
      2. Qualitative review of the potential impacts of the project in relation to the preservation of landscape standard (§45-413), including habitat and forest corridors.
      3. Qualitative review of potential significant vernal pool impacts in relation to the preservation of landscape standard (§45-413) and DEP regulations (see §45-7 regarding compliance with other regulations). Applicant has already addressed the 75% habitat protection standard. Another standard states: "Maintain or restore forest corridors connecting wetlands and significant vernal pools."

4. **Third-party reviewing team should have at least one member with biology expertise and one member with experience assessing ecological impacts of utility-scale solar arrays and to review all supporting submissions and supporting evidence. Roll Call Vote: Ms. Braun – Yes, Mr. Leathe – Yes, Ms. Crichton – Yes, Mr. Latter – Yes. Motion was approved.**

18. Attorney Rachin agreed, on behalf of the applicant, to extend the original 75-day review deadline to add an additional 30-day extension to allow for sufficient third-party review at the November 9, 2021 meeting. A motion was made and approved at the December 14, 2021 meeting that the 30-day deadline extension be moved to January 18, 2022.
19. In accordance with §§33-129 & 33-130, a public hearing was advertised in The Portsmouth Herald on January 8, 2022 and held on January 18, 2022. Public comments/concerns: concern for unintended negative impacts; difficulty of passage along Odiorne Lane; negative impact to wildlife; desire to settle Crowell estate; conservation protection measures; concern for tree shading impacts to panels; CMP pole stability; number of parcels included in project; certain elements missing from plan; potential gray title area; fee title for conservation holders; possibility of tree removal for early-succession habitat; restoration post-construction to right-of-way; concrete assurances that critical natural resources are not impacted; no adverse impacts to archeological resources; visual impact; ability of emergency response vehicles traversing Odiorne Lane; more suitable sites; site plan appears to address primary issues; length of construction time and types of vehicles traversing Odiorne Lane.
20. **Waiver request action:** The Planning Board waived the following waiver request: §33-127(12) High Intensity Soils Report on September 21, 2021. There is no septic, no water, no large-scale impervious proposed for this development. Based on §45-415 Soil Suitability for Construction, applicant will satisfy test pits/pull tests and engineer will sign off that project is constructable, with a report being issued to the Planning Department prior to start of construction.
21. **Application completeness:** After lengthy discussion re: starting the timetable for final determination, the application was found complete on September 21, 2021.
22. Proposed use is “Public Utility Facility”, which is SPR (site plan review) and allowed in all zoning districts per §45-290.
23. **Original proposal (with subsequent revisions/additions):**
- (6/22/2021) is to cover approximately 19 acres to include the fixed-tilt array (approximately 40 rows) of solar panels on 9 acres, itself, the gravel access drive, overhead electric utility corridor, perimeter fencing, and necessary clearing for exposure and maintenance.
  - (8/3/2021) panel design revision from fixed tilt to panels on trackers to follow the sun; capacity is reduced to 2.0 megawatts (MW), based on State legislative changes; overall development will occupy 15.1 acres; solar array, itself, will be on 9 acres.
  - (8/24/2021) Pull Testing Procedure from RBI Solar submitted re: determining how solar table pole supports would be effectively installed for varied soil conditions/depths.
  - (9/21/2021) Acreage update: total development area – 16.08 acres; area inside perimeter fencing: 7.31 acres; area covered by panels – 3.19 acres; shade management area – 4.63 acres. Written commitment submitted to utilize the Bartlett’s land for access for vehicles performing logging activities related to proposed development. Vernal Pool Plan submitted showing the 250-foot critical terrestrial setback and includes a vernal pool calculation (see Note #14, Sheet 2).
  - (10/12/2021) Applicant presented a major site plan revision that avoids all wetlands and was briefly viewed by the Planning Board. This design goes back to fixed tilt panels system.
  - (01/18/2022) Revised Final Site Plan shows the development area (access drive, solar panels, utility corridors, and perimeter fencing) at 8.16 acres and the occupied area (development area plus shade management area, stormwater management areas, and overhead electrical extension) reduced to 10.97 acres.
    - Reconfigured solar array removes all forested wetland impacts.
    - Included are separate stormwater facilities for each solar array area plus the proposed driveway.
24. **Affidavit of Ownership (standing): Applicant submitted the following:**
- 1960 Warranty Deed conveying the lot to Samuel Crowell, 3<sup>rd</sup> and Lillian Crowell
  - S.O.W. Solar, LLC has a Purchase & Sales Agreement with Debra Berthiaume, Personal Representative for the Estate of Lillian H. Crowell, contingent on obtaining all local and State permits and approvals.



- First Addendum to Purchase & Sale Agreement “to extend the closing to a date on or before June 30, 2022.”
  - In a letter dated June 15, 2021, the applicant (Andrew Kellar, NH Solar Garden, LLC) stated that Odiorne Lane, LLC (applicant/owner, Andrew Kellar) has a land lease with S.O.W. Solar, LLC (Kevin Hill, sole owner) to develop the proposed solar array project on this parcel.
  - A redacted copy of the Land Lease Option and Lease Agreement between Kevin Hill (S.O.W. Solar, LLC) and Odiorne Lane Solar, LLC (Andrew Kellar), dated March 31, 2021, that includes an 18-month extension period and a primary 20-year lease, with tenant options for extensions, for approximately 30 acres of the property.
25. **Lot Coverage (\$45-405):** Overall lot area – 69.61 acres/Lot Coverage – 4.80% where 10% is the maximum allowed in the Rural District. Lot coverage when removing western claimed area from plan reference 1 – 57.09 acres/Lot coverage – 5.85% where 10% maximum is allowed in the Rural District.
- Overall project area: Development Area (access drive, solar panels, utility corridors, and perimeter fencing) is 9.5 Acres. Occupied Area (additional clearing for shade management, stormwater management areas, overhead electric extension) is 15.1 Acres.
  - Acreage calculations: Developed area – 8.16 acres; Occupied areas – 10.97 acres.
  - Lot coverage reduced to 4.29% (amended Grading & Utilities Plan Note #8).
26. **DEP permits:** This proposal is subject to Natural Resources Protection Act (NRPA) Permit for Freshwater Wetland Impact, Tier 1; Stormwater Management Law, Individual Stormwater Permit. Both are currently under review. A separate NRPA Permit – (off-site) significant vernal pool impact was filed, based on Wetland Scientist Joseph Noel’s survey of the off-site area in question. Applicant will submit copies to the Planning Department once received.
- Based on revisions to the project, the Tier I NRPA Permit is not applicable.
27. **Stormwater management:** Proposed level spreaders sized and designed in accordance with the State of Maine’s Volume 111 “Best Management Practices Technical Design Manual”, Chapter 8.3 (Sheet 2 of 6). In addition, Erosion Control Mix Berms will be used to filter runoff containing sediment (NTS) (Sheet 3 of 6) as well as swales. Stormwater Management Plan models existing/developed runoff, generally showing a decrease in peak stormwater flow relative to existing conditions, which would result in no anticipated adverse effects on abutters or existing downstream systems due to water quality. Level lip spreaders outlet to existing on-site forested buffers eventually discharge the stored and treated stormwater to the on-site wetland. The prevalence of the entirety of the site is to drain from west to east.
28. **Vernal pool:** Wetland Scientist Joseph Noel found there is no significant vernal pool on the proposed site or any “State-listed rare, endangered or threatened species that would use vernal pools”. There is a significant vernal pool just off-site and adjacent to Odiorne Lane on the Meyer’s parcel. This has been documented by Joseph Noel in a letter (April/2021) where he also confirmed that “his original wetland delineation from 2007 should remain current.” Applicant has filed a NRPA Permit-by-Rule for Activities that take place in, on, or over a significant vernal pool habitat. The off-site vernal pool drains to the Sturgeon Creek Watershed not the York River Watershed where the development is proposed.
29. **Grading/construction of site:** No significant land grading or soil disturbance (excluding driven support poles) will occur. Work to be completed when ground conditions support equipment without damage (extensive rutting or soil disturbance) to existing ground surface.
- Proposed shade management areas to be logged but not stumped or grubbed. Egress and access for logging vehicles will be via the Bartlett’s property to avoid damage to Odiorne Lane and turning radii issues. There is a proposed agreement with Mr. John Bartlett and Mr. David Bartlett for this purpose.
  - Solar Array construction will include monopole driven or augured supports (earth screws).
  - Cut and fill for other site features limited to between 0 and 2 feet.
  - Aisles between panels will be 12 feet.
  - Aisle encircling array will be 15 feet wide with grass for maintenance vehicle access.
  - Perimeter fence will be ~~six (6)~~ seven (7) feet tall, with a 6-inch opening at ground level to enable small animal passage.
  - All areas within perimeter fence shall be logged, stumped, grubbed, and reseeded with native mixture of low-growing grasses and wildflowers.

- All areas within perimeter fencing are navigable on its existing slopes.
  - Perimeter surrounded by shade management area of variable width (as much as 100 feet), which will be logged but not stumped or grubbed.
  - Access to site is through a 16-foot gravel access drive from Odiorne Lane.
  - Vehicles used to place monopoles will be small, one-person track systems, using a skid steer.
  - Pull tests for placement of monopoles are done by racking engineers to be able to stamp/certify what is being proposed will be structurally sound.
  - Applicant has submitted a soils report that includes results of all test pits done for soil suitability.
  - Panels and other equipment will be scheduled to come in in one to two days. Applicant will coordinate with abutters as to timing.
  - Hours of construction are from 7 AM to 8 PM.
30. **Electric Utility Infrastructure:** Available capacity is critical. Upgrades associated with this development will occur in circuitry and on existing poles, per CMP requirements, unless CMP finds it necessary to replace them. Replacement poles would be the same as has been replaced recently on Goodwin Road. There will be no work on the substation.
31. **Habitat:** Fencing is pulled up six (6) inches from the ground to allow small animal movement freely underneath. This type of fencing will meet the national electric code. Pollinator plantings of native low-growing grasses/wildflowers will be utilized around the solar array/shade management areas. State-endangered or-threatened species identified by IF&W in their January 21, 2021 letter “that have been documented in the vicinity and the project site may contain suitable habitat” for them, including Blanding’s turtles, spotted turtles, and New England Cottontails.
- IF&W has no concerns for potential turtle habitat on the parcel. The New England Cottontail survey is not completed but results will be submitted to the Planning Department once received. The Maine Natural Areas Program did not find any rare plant species on the parcel.
  - Larger animal corridor is incorporated in the final design, per the request of the Conservation Commission.
32. **Environmental Resources:** The parcel includes, generally from west to east ends, shoreland zoning, freshwater wetlands >10 acres, other mapped wetlands and some swampland, major watercourses, slope areas greater than 2 acres, and a FEMA flood plain.
33. **Conservation easement:** The applicant’s intent is to dedicate a conservation easement of the undeveloped area, the size and location of which is based on the project area that “results from comments received from the State or from the Public Hearing.”, which may impact positioning of array and areas of clearing.
- Three options for conservation were discussed and agreed to: Great Thicket National Wildlife Refuge Program, a non-profit corporation or charitable trust, or a fee conservation (permanent) purchase.
34. **Eliot Conservation Commission:** Memos from ECC Chair Kari Moore discussed the Commission’s concerns for forest fragmentation, potentially significant wildlife habitat impacts (ex: wading bird & waterfowl habitat), potential use of non-native plants, and a significant vernal pool (off-site) along Odiorne Lane. It is a large wildlife corridor within the York River watershed, near the York River, itself, and the York River is being pursued to be designated as a Partnership Wild & Scenic River, including its tributaries.
- Applicant is agreeable to all suggestions made by the Conservation Commission.
35. **Preservation of Landscape (§45-413):** “The landscape shall be preserved in its natural state, insofar as practicable, by minimizing tree removal”. The purpose statement/general goal of Chapter 45 – Zoning (45-2) is to “conserve natural resources”. The current approved Comprehensive Plan Critical Natural Resources Policy #1, Strategy #2 encourages the use of “Beginning with Habitat” data for consideration during the Planning Board review process.
36. **Performance Guarantee (§33-132):** Written statement and financial assurance from applicant regarding the restoration of Odiorne Lane surface to its pre-construction state. The applicant is agreeable.
37. **Decommissioning Plan (35-A M.R.S.A. §3491):** The applicant will prepare a Decommissioning Plan, developed under the supervision of a professional engineer, prior to construction. The DEP is the enforcement agency for projects over 3 acres, per 35-A M.R.S.A. §3491. The applicant will provide financial assurance prior to construction.
38. **Third-party consultation (§33-128):** “During review of an application, the planning board may make the determination to hire technical consultant(s) if the scope is beyond the capability of town staff to verify or review any aspect of an applicant's application. Such technical consultant fees shall be paid by the applicant”. Applicant is agreeable. Planner

recommended due to a deficit of DEP review information. Motion was made and seconded to hire a technical consulting assistant and was denied October 12, 2021.

- At the Reconsideration Public Hearing meeting, dated November 9, 2021, the Planning Board approved the hiring of a third-party consultant as part of its continued review.
  - January 4, 2022: A site walk was done with the applicant team, David Galbraith (third-party reviewer), and Jeff Brubaker (Planner) prior to the Planning Board meeting.
  - Third-party reviewer submitted preliminary comments December 14, 2021 and January 5, 2022.
  - Third-party final review was submitted January 15, 2022. Attached.
39. **Maintenance:** Required vegetation management in the shade management areas will be mechanical and no chemicals will be used, with a traditional lawnmower brought in on a trailer attached to a non-CDL truck. Annually, an electrician goes out to check on equipment. All snow maintenance will be mechanical (snowblower) and no chemicals will be used for snow management. Grading & Utilities Plan Notes 16 & 17.
40. **Traffic (§45-406):** Post-construction trips will be minimal: biannual management of mowing, snow removal, and maintenance/repair of solar array.
41. **History of Board of Appeals/Code Enforcement reviews/denials:** Denials from the CEO and BOA re: back lot/road length for this property. 4/6/2015 CEO denial as it does not meet the dimensional street frontage requirement. BOA denied the applicant's appeal of the CEO decision in June 2015. 6/20/2013 Decision by BOA to deny a variance appeal to allow for a reduction in the required right-of-way width and an increase in the length of a dead-end road. 12/20/1996 BOA variance denial in the width of the access road to a back lot or lots on Odiorne Lane. As a legally non-conforming lot of record, the lot has potential developability based on §45-194.
42. Applicant has provided a FAA Notice Criteria Tool results document regarding Federal Aviation Administrative review.
43. All CMP permit requirements have been met and approved to move toward construction once all other permitting is in place.
44. Applicant has added the stream channel identified on the USGS Map. It is a tributary to the York River.
45. The development area avoids shoreland zoning and special flood hazard areas.
46. Proposed gravel access drive off the end of Odiorne Lane is approximately 380 feet, within Town Code limitation of 500 feet.
- The 1960 Warranty Deed conveys the right to pass and repass over Odiorne Lane to Goodwin Road both by vehicle and on foot.
  - A 'T' turn-around is proposed for safe access for emergency vehicles for egress.
  - Transformer pad and inverter pad, with equipment, are to be located outside of the 'T' so as not to impede emergency vehicle access.
47. Continuous Remote Security monitoring will be in place and is covered under the Asset Management Procedure.
48. There will be no lighting at the site.
49. There is no well or septic with this proposal.
50. The applicant developed a website for Eliot residents that describes the different aspects of this particular development, with links to various State websites that describe limitations and requirements at the State level.

#### **CONCLUSIONS (FOR DENIAL):**

1. There are no ordinances in place for commercial solar arrays that would allow the level of technical review criteria the Planning Board requires.
2. There are no rules to follow at the level of environmental impact and natural resource protection and conservation that would be indicated in our Comprehensive Plan and rules and purposes of the Town of Eliot's Rural District.
3. There is a need to review and put in place ordinances that would allow the Planning Board to effectively manage, monitor, research, understand, and approve these types of installations in the future.

#### **Revised Conclusions (For Approval):**

1. As required by §33-131(c) Determination, before the planning board approves any site plan application, the board shall make written findings certifying compliance with this article and other policies, ordinances or statutes. In addition, the planning board may make other conditions for approval that will ensure such compliance and would mitigate any adverse effects on adjoining or neighboring properties, which might otherwise result from any proposed use.
2. The Ground-mounted Solar Array project falls under the definition of “Public Utility Facility” in §1.2, which states “any person, firm, corporation, municipal department, board or commission authorized to furnish gas, steam, electricity, waste disposal, transportation or water to the public.”
3. Under Article III, §33-58 Application, The provisions of this article shall apply to all land uses identified as SPR in sections 44-34, 45-290 and 45-402.
4. Under Article VIII, §45-402 Land Use Review (b) Site plan review uses—Planning board: “Where the table of land uses in sections 44-34 or 45-290 lists a use as SPR, the use is a site plan review use which must be reviewed and approved by the planning board under chapter 33, article III, Site plan review. The use must also conform with the basic requirements in chapter 45, article VIII (Performance standards) and any applicable standards for specific activities in chapter 45, article IX”. **The Planning Board finds** that this project, as described above, meets the definition of “Public Utility Facility”. This project is designed to furnish electricity to the public. Site Plan Review from Chapters 33 and 45 criteria were applied in review of this application.
5. The Planning Board also finds that this project does not meet the current definition in §1.2: “Solar energy system means a system designed and used to obtain energy from the sun in order to supply energy to a principal use or structure located on the same lot as the system, or on an abutting lot in the case of a common system serving more than one principal use or structure, for the purpose of reducing the consumption of fuel for heating or electricity. A solar energy system may include solar hot water or air heating or photovoltaic systems. Solar energy systems are allowed only as accessory uses or structures” and articulated in §45-462 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).”.
6. Article VI, Division III, §45-290 Table of Permitted and Prohibited Uses allows Public Utility Facilities as SPR (Site Plan Review) in all districts.

**Additional Findings and Conditions:**

Among other findings of fact to be included in the Notice of Decision, with citation of land use regulations, the Planning Board specifically finds:

1. The applicant submitted a Sketch Plan application package received by the Town on May 5, 2021, and meeting all applicable content requirements of Section 33-105. The Planning Board provided Sketch Plan review on June 22, 2021.
2. A site walk was held on September 20, 2021, including members of the Planning Board and Conservation Commission, Town staff, and the applicant. Public notice and abutter mailings were provided for the site walk.
3. The applicant has provided the following information sufficient to demonstrate affidavit of ownership or valid option (Section 33-106):
  - a. 1960 warranty deed conveying the lot to Samuel Crowell, 3<sup>rd</sup>., and Lillian H. Crowell
  - b. Agreement for Purchase and Sale between Deborah Berthiaume, solely in her capacity as Personal Representative of the Estate of Lillian H. Crowell, and SOW Solar, Inc., dated May 13, 2021
  - c. First Addendum to Purchase & Sale Agreement, dated December 16, 2021
  - a. Letter dated June 15, 2021, reporting that the applicant, Odiorne Lane Solar, LLC, has a land lease with SOW Solar, Inc.
  - b. Redacted copy of Land Lease Option and Lease Agreement (Solar Farm) between Kevin Hill and Odiorne Lane Solar, LLC, signed March 31, 2021
  - c. Related information during various Planning Board review meetings
4. The applicant submitted a Site Plan Review application package received by the Town on July 21, 2021. The Planning Board provided Site Plan Review on August 3, August 24, September 21, October 5, and October 12,



2021.

5. Per Section 33-127, the Planning Board waived the requirement to provide a high-intensity soils report.
6. Per Section 33-127, the Planning Board found the application complete on September 21, 2021. Related to the required information in that section, the applicant provided, in summary:
  - a. Development name or identifying title and the name of the town – yes
  - b. Name and address of record owners, developer and designer – yes
  - c. Names and address of all abutters and their present land use – yes, submitted May 4, July 21, and October 26, 2021
  - d. 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 – yes. A stamped boundary survey, sealed and signed by Raymond A. Bisson, PLS on August 12, 2021, was submitted by the applicant's representative on the same date and included in the August 24, 2021, Planning Board packet.
  - e. The location of temporary markers adequate to enable the planning board to locate readily and appraise the basic layout in the field – yes, provided during site walk
  - f. 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 – yes, 2-ft. intervals
  - g. Provisions of chapter 45 of this Code applicable to the area to be developed and any zoning district boundaries affecting the development – yes, in various plan notes, cover letters, attachments, and verbal representations to the Board
  - h. Provisions for collecting and discharging storm drainage, in the form of a drainage plan – yes:
    - i. Stormwater Management Plan – provided July 21, 2021
    - ii. Stormwater Management BMP Operation and Maintenance Program – provided July 21, 2021
    - iii. Stormwater management facilities shown on various site plan sheets and details
    - iv. Stormwater existing conditions and post-construction plan sheets with medium-intensity soil survey, subcatchment areas, contours, and stormwater management features – provided July 21, 2021, and updated January 11, 2022
    - v. HydroCAD existing conditions and post-construction model results – provided July 21, 2021, and updated January 11, 2022
    - vi. Various supplemental information provided in written submittals and during Planning Board meetings
  - i. Preliminary designs of any bridges or culverts which may be required – yes, referenced in access drive detail on detail sheet; no bridges proposed
  - j. The location of all natural features or site elements to be preserved – yes, delineated wetlands, forested buffers, shoreland zoning, watercourses, and floodplains shown on plan submittals
  - k. A soil erosion and sediment control plan – yes, provided as a plan sheet in various plan submittals
  - l. [Related to a high-intensity soils report] – requirement waived by the Planning Board
  - m. The location and size of any existing sewers and water mains, culverts and drains on the property to be developed – no existing or proposed sewer or water service on the property; culverts for access drive referenced in detail sheet; stormwater submittals include drainage information
  - n. Connection with existing water supply or alternative means of providing water supply to the proposed development – not applicable
  - o. Connection with existing sanitary sewerage system or alternative means of treatment and disposal proposed – not applicable
  - p. [Regarding private sewage disposal system] – not applicable
  - q. An estimated progress schedule – construction sequencing information provided in various plan notes,

- cover letters (including the January 11, 2022, cover letter), other documents, and verbal representations at Planning Board meetings
- r. Construction drawings sufficient to enable the code enforcement officer to verify the following information:
    - i. Total floor area, ground coverage and location of each proposed building, structure or addition – provided in site plan sets
    - ii. All existing and proposed setback dimensions – provided on site plan sets and notes
    - iii. The size, location and direction and intensity of illumination of all major outdoor lighting apparatus and signs – FAQ provided by the applicant on August 24, 2021: “No lighting is proposed”
  - s. The type, size and location of all incineration devices – not applicable
  - t. The type, size and location of all machinery likely to generate appreciable noise beyond the lot lines – no such machinery proposed
  - u. 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 – not applicable
  - v. The location, type and size of all curbs, sidewalks, driveways, fences, retaining walls, parking space areas, and the layouts together with all dimensions – fence and driveway locations shown in site plan sets; other items not applicable
  - w. All landscaped areas, fencing and size and type of plant material proposed to be retained or planted – fencing, forested buffer, wetland delineation, and replanting information, including meadow and pollinator plantings among panels, provided in site plan sets and-or in other written submittals or verbal representations by applicant
  - x. [Regarding telecommunication structures] – not applicable
  - y. [Regarding subdivisions] – not applicable
  - z. 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 – Fire Chief has reviewed and provided comments dated January 10, 2022

(Some aforementioned dates may be approximate with regard to when documents were dated and-or received.)

7. Per Section 33-128, the applicant has paid an application fee totaling \$3,925 for Site Plan Review and a Public Hearing, and a \$1,540 escrow fee to cover third-party review.
8. Public hearings have been noticed and held for the project on October 12, 2021; November 9, 2021 (reconsideration); and January 18, 2022.
9. Per Section 33-132, a performance guarantee may be necessary for restoration of Odiorne Lane after construction of the development.
10. Per State law (35-A MRSA 3491 et seq.), a decommissioning plan and financial assurance is necessary for the project, and the Maine Department of Environmental Protection (DEP) is the environmental permitting entity for this law.
11. A traffic engineering study, under Section 33-153, is not necessary for this application.
12. Per Section 33-175, the site plan set shows a continuous landscaped, forested buffer of at least 10 ft. in width along lot lines near the solar array that abut residential use.
13. Section 33-176, regarding vibration, is not applicable.
14. Per Section 33-178 and the June 22, 2021, minutes, the applicant represented that there would be no electromagnetic hazards associated with the site. According to the U.S. Department of the Navy Renewable Energy Program Office document entitled, “Electro-Magnetic Interference from Solar Arrays”, “the risk of electro-magnetic and/or radar interference [EMI] from [photovoltaic] systems is very low... Photovoltaic inverters are inherently low-frequency devices that are not prone to radiating EMI.”
15. Per Section 33-179, traffic generation is expected to be infrequent. Among other documents, the applicant’s July 21, 2021, and January 11, 2022, cover letters indicate routine maintenance vehicles to travel to the site 2 to 3 times per year. No designated parking spaces are needed.

16. Per Section 33-180, documentation provided by the applicant suggests that the solar array will not cause direct or indirect light illumination in excess of 0.5 footcandles when measured from any residential use due to the provision of a 10 to 30 ft. forested buffer, the revision of the site plan to place the solar tables further away from lot lines, and the provision of anti-glare glass on the panels.
17. Per Section 33-181, regarding earth material removal, Note #9 on the Amended Grading & Utilities Plan states: "Solar array construction to include monopole driven or augured supports. No land grading or soil disturbance (excluding driven support poles) to occur. Work to be completed when ground conditions support equipment without damage (extensive rutting or soil disturbance) to existing ground surface."
18. Sections 33-182 to -190 are not applicable.
19. The lot (Map 83, Lot 2) is a nonconforming lot of record and has development privileges and requirements subject to Section 45-194.
20. The proposed use is "Public Utility Facility", which is a Site Plan Review (SPR) use in all zoning districts (per Section 45-290). As defined in Section 1-2: "*Public utility* means any person, firm, corporation, municipal department, board or commission authorized to furnish gas, steam, electricity, waste disposal, transportation or water to the public." This application involves a firm or corporation proposing to furnish electricity to the public.
21. Per Section 45-376, no new roads are being constructed as part of the development.
22. The application meets the dimensional standards in Section 45-405:
  - a. The lot size is approximately 69.6 acres, greater than the minimum lot size of 3 acres.
  - b. The site plan set shows no structures within lot line setbacks.
  - c. As apparent from the site details, the panels will be less than the maximum building height of 35 ft.
  - d. According to Note 8 on the Amended Grading & Utilities Plan, the lot coverage calculation is 4.29%, under the 10% maximum.
  - e. Regarding the 200 ft. minimum street frontage standard, the lot is a non-conforming lot of record.
  - f. No sign is proposed that exceeds the maximum sign area of 12 sf.
23. Regarding Section 45-406 – Traffic:
  - a. The 1960 deed provides for the "right to pass and repass over Odiorne Lane, so-called a private way, from the within granted premises to the Goodwin Road, both on foot and by vehicle".
  - a. Some construction vehicle access is proposed via an access through the neighboring Bartlett parcels, as described further in Note 15 of the Amended Grading & Utilities Plan. Per the January 11, 2022, cover letter, maintenance vehicles would travel to the developed site 2 to 3 times per year, including 1-ton or smaller trucks or vans and non- CDL trucks and utility trailers.
  - b. The site includes a T-turnaround at the end of a driveway, as well as maintenance access aisles, that allow for safe interior circulation within the site.
24. Regarding Section 45-407 – Noise:
  - a. The applicant has documented (August 24, 2021, FAQ) that "the only sound [from the project would be] a light hum of the transformer, which cannot be heard from more than 20-30ft away".
  - b. The window of construction activity referenced in this Town Code section is 7:00 a.m. to 8:00 p.m.
  - c. The applicant has previously committed to limiting the time window of construction activity relating to noise mitigation (see August 3, 2021, minutes).
25. Regarding Section 45-408 – Dust, fumes, vapors, gases: Based on the information provided, including erosion & sedimentation control notes, and given the nature of the proposed use, the project as proposed will not emit dust, dirt, fly ash, fumes, vapors or gases which could damage human health, animals, vegetation or property or which could soil or stain persons or property at any point beyond the lot line.
26. Regarding Section 45-409 – Odor: Per the August 24, 2021, FAQ, "The panels, inverters and transformers do not emit any smell..."
27. Regarding Section 45-410 – Glare: See the above finding regarding Section 33-180.
28. Regarding Section 45-411 – Stormwater runoff:
  - a. The proposed development includes a meadow environment between panel rows and stormwater level

- spreaders to re-introduce sheet flow from stormwater running off from panel areas
  - b. The applicant's stormwater modeling shows a reduction in peak runoff during a 50- year storm event
  - c. The application includes a stormwater BMP operation and maintenance program
  - d. The application is subject to a NRPA Stormwater Law Individual Stormwater Permit
  - e. Avoidance of forested wetlands, permanent conservation of approximately 55 acres (subject to the below condition), retention of forested buffers, and retention of meadow areas between panels contribute to meeting this standard for the property.
29. Regarding Section 45-412 – Erosion Control: The site plan set includes Erosion & Sedimentation Control details that are consistent with all provisions of this section, and the project will be subject to State erosion and sedimentation control standards.
  30. Regarding Section 45-413 – Preservation of Landscape:
    - a. Lot coverage is less than the maximum 10%
    - b. Shoreland zoning and forested wetlands will be avoided
    - c. Note 14 on the Amended Grading & Utilities Plan shows that the total area of the significant vernal pool terrestrial habitat buffer impacted within the on-site portion of this radius by the gravel access drive and overhead power poles is 3,442 sf, or 16.7% of the on-site total, less than the 25% maximum established by DEP (i.e., 75% of the critical terrestrial habitat must remain as unfragmented forest).
    - d. Communications received from Maine IF&W staff to date have not indicated any expected significant impacts to state endangered or threatened species, or species of concern, from the project as proposed in its current form.
    - e. Provision has been made in the design and layout of fencing to promote wildlife movement and passage.
    - f. The remainder of the parcel (approximately 55 acres) not part of the occupied area would be permanently conserved subject to the below condition regarding a conservation easement. The Planning Board finds that without a condition to this effect, this standard would not have been met because it would be uncertain whether or not sensitive natural resources documented throughout the review of this project would be negatively impacted in the future by additional development of the parcel.
  31. Section 45-414 – Relation of buildings to environment is not applicable to the Rural zoning district.
  32. Regarding Section 45-415 – Soil suitability for construction:
    - a. The applicant has provided medium-intensity soil information, additional soil test pit results, and a pull testing procedure showing how 3 tests to determine how the solar table pole supports would be effectively installed in the ground for different soil conditions and depths.
    - b. The applicant has provided erosion and sedimentation control notes and details.
    - c. An approval condition regarding pull testing helps to meet this standard.
  33. Section 45-416 – Sanitary standards for sewerage is not applicable.
  34. Regarding Section 45-417 – Buffers and screening: see finding above regarding Section 33- 175.
  35. Regarding Section 45-418 – Explosive materials: No such liquids, solids, or gases are proposed
  36. Regarding Section 45-419 – Water quality: No such discharges or chemical storage facilities proposed. Grass and snow maintenance are shown in site plan notes to be mechanical and free of chemical agents.
  37. Regarding Sections 45-420 to -22: No treated wastewater discharge, refuse disposal, or waste containers are proposed
  38. Regarding Section 45-423 – Fences: The proposed fencing complies with this section
  39. Based on the above findings, accounting for additional information provided during the course of Site Plan Review, and subject to the below conditions of approval, the Planning Board finds that the application has met, or will meet, applicable standards in Chapter 33 – Site Plan Review, and Chapter 45 – Zoning. Ch. 44 – Shoreland Zoning is not applicable because no development is proposed in shoreland districts on the property.
  40. The above information is not necessarily a comprehensive set of findings. The whole of Planning Board review and information submitted by the applicant is cited by reference in these findings. Some dates cited may be approximate.



## CONDITIONS OF APPROVAL:

The applicant must comply with all requirements of the Town of Eliot Land Use Ordinances. In addition, to further promote the purposes of the (Eliot Zoning Ordinances), the Planning Board has voted to impose the following conditions on the approval of this application:

1. The property may be developed and used only in accordance with the plans, documents, material submitted, and representations of the applicant made to the Planning Board. All elements and features of the use as presented to the Planning Board are conditions of approval and no changes in any of those elements or features are permitted unless such changes are first submitted to and approved by the Eliot Planning Board.
2. The permit is approved on the basis of information provided by the applicant in the record regarding the ownership of the property and boundary location. The applicant has the burden of ensuring that they have the legal right to use the property and that they are measuring required setbacks from the legal boundary lines of the lot. The approval of this permit in no way relieves the applicant of this burden. Nor does this permit approval constitute a resolution in favor of the applicant of any issues regarding the property boundaries, ownership, or similar title issues. The permit holder would be well-advised to resolve any such title problems before expending money in reliance on this permit.
3. The applicant authorizes inspection of premises by the Code Enforcement Officer during the term of the permit for the purposes of permit compliance.
4. Prior to, or along with, their building permit application, the applicant shall provide:
  - a. The approved Maine Department of Environmental Protection (DEP) Stormwater Individual Permit and Natural Resources Protection Act (NRPA) permit-by-rule (PBR) permit
  - b. A written approval, statement of no concerns or no significant impacts, or a similar determination from Maine Department of Inland Fisheries & Wildlife (IF&W) regarding New England Cottontail habitat
5. Before beginning construction:
  - a. The applicant shall provide to the Town a copy of their decommissioning plan approved by the Maine Department of Environmental Protection (DEP), and documentation of the associated financial assurance held, or to be held, by DEP, as required by State law (35-A M.R.S.A § 3491 et seq.). The applicant shall notify the Town of any changes in the decommissioning plan or financial assurance. To the extent allowed by State law, DEP, and-or the surety, the Town shall be given the option of being named an additional obligee of the financial assurance, and sign-off from the Town shall be required prior to the release of the financial assurance.
  - b. The applicant shall enter into a written agreement with the Select Board to provide a performance guarantee in accordance with Section 33-132. The guarantee shall provide for the restoration of the surface of Odiorne Lane, where altered by project construction vehicles compared to the pre-construction condition, if permission to do so is granted by respective property owners. Any restoration shall comply with the terms of applicable conservation easements and shall retain Odiorne Lane as unpaved.
  - c. **A written approval, statement of no concerns or no significant findings, or a similar determination from Maine Historic Preservation Commission regarding sensitive archeological resources or potential National Register eligible properties on or adjacent to the project parcel.**
6. As part of meeting the Preservation of Landscape (45-413) standard:
  - a. The applicant shall provide Planning Staff with a copy of a Conservation Easement, recorded in the York County Registry of Deeds, that shall permanently conserve the remainder land (approximately Fifty-Five (55.0) acres), identified on the Site Plan as the "Conservation Land" [to be provided by applicant], subject to the requirements of 33 M.R.S. § 476, et seq., (as amended), including that the Holder shall be either: (a) A governmental body empowered to hold an interest in real property under the laws of this State or the United States; or, (b) A nonprofit corporation or charitable trust, the purposes or powers of which include retaining or protecting the natural, scenic or open space values of real property; assuring the availability of real property for agricultural, forest, recreational or open space use; protecting natural resources; or maintaining or enhancing air or water quality or preserving the historical, architectural, archaeological or cultural aspects of real property. At a minimum, the Conservation

Easement shall protect the Conservation Land from any new development including, but not limited to, new roads, buildings or other structures; shall not alter the surface of the land; shall not use, place or dispose of any products or by-products that could adversely protect the waters or wildlife habitat; and, shall not remove any trees or other vegetation without the express approval of the Holder of the **Conservation Easement unless required for specific habitat management reference to the Conservation Commission comment**. These conditions shall also be maintained prior to the recording of the Conservation Easement and shall be noted on the Site plan.

- b. Said Conservation Easement shall be recorded within 2.5 years of the date of approval if the Holder is a governmental agency or within 3.5 years if the Holder is a nonprofit agency or charitable trust, EXCEPT THAT, the applicant shall provide the Planning Department with an update at least every six months on the status of the Conservation Easement and if it is determined prior to 2.5 years that the Holder will not be a governmental agency, the Conservation Easement shall be recorded within one year from the date of that determination. **In lieu of the applicant entering into a conservation easement, the fee and the conservation land may be granted to the Fish & Wildlife Service, which will hold the conservation land in permanent conservation subject to the same minimum conditions provided above. Said conservation easement or a deed conveying the fee shall be recorded.**
  - c. The Code Enforcement Officer may reasonably extend this deadline for a delay that is beyond the control of the applicant. Failure to record a Conservation Easement within the timeframe provided, unless an extension has been issued in writing by the Code Enforcement Officer, shall be considered a per se violation of the approval, subject to Article 3, Division 2 of the Land Use Regulations.
7. As part of meeting the Soil Suitability for Construction (45-415) standard, prior to permanent installation of racking equipment, the applicant shall perform a Pull Test (series of pile load tests) consistent with the "RBI Solar Fixed Tilt Pull Testing Procedure" document included with the applicant's September 15, 2021, submittal, and provide documentation and site photos of the Pull Test to the Code Enforcement Officer.
  8. NFPA 1 allows the Authority Having Jurisdiction (Fire Chief) to reduce the access road (driveway) to less than 20 ft. The Fire Chief has approved the access road (driveway) to be 16 ft. of unobstructed width since it is limited use. Any future Site Plan Amendment or Change of Use proposal for the property, or any other proposal or circumstance that does, or may reasonably lead to, sustained additional vehicular use or increased vehicular traffic using the access road (driveway), shall seek Fire Chief review and may be required to increase the width of the access road (driveway).

**DECISION (ORIGINAL):**

Based on the above facts and conclusions, on **October 12, 2021**, the Planning Board voted to **deny** your application for site plan review and change of use to Public Utility Facility (Ground-mounted Solar Array).

**DECISION (FINAL):**

Based on the above facts and conclusions, on **January 18, 2022**, the Planning Board voted to **approve** your application for site plan review and change of use to Public Utility Facility (Ground-mounted Solar Array).

**APPEALS:**

This decision can be appealed to the Board of Appeals within 30 days after **January 18, 2022** by an aggrieved person or party as defined in Sec. 1-2 and Sec. 45-50(b) of the Eliot Zoning Ordinance. Computation of time shall be in accordance with general provisions of the Town of Eliot Municipal Code of Ordinances, section 1-2.

Sincerely,

-----  
Carmela Braun, Chair

*This letter reviewed and approved by the Planning Board on \_\_\_\_\_, 2022.*

CC: Steve Robinson, Public Works Director  
Elliott Moya, Police Chief  
Jay Muzeroll, Fire Chief  
Brent Martin, Tax Assessor  
Shelly Bishop, Code Enforcement Officer  
Michael Sullivan, Town Manager

DRAFT



# Eliot Fire Department

Chief Jay P. Muzeroll

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January 10, 2022

Town of Eliot Planning Board

Ref: Odiorne Solar Project

Dear Board Members,

I have reviewed the project application and plans. The following are my recommendations and requirements.

- NFPA 1 allows the Authority Having Jurisdiction, (Fire Chief), to reduce the access road to less than 20'. I approve the access road to be 16" of unobstructed width since it is limited use. If future development of any property utilizing the access road is in consideration for approval, I request that a condition of approval for this project and any future projects re-address the road-width.
- Any access to the array that is secured with gates be provided with an approved access device.
- Recommend that any vegetation under the array and inside the fencing be low growth and maintained in a reasonable manner.
- Roadway turnaround as presented will meet the distance and design requirements of the attached approved method of Tee Turnarounds for Emergency Apparatus.
- Follow all NEC requirements for the type of system and provide training to key fire department personnel in the use of securing methods and project safety precautions.

As always, I'm available .....

Sincerely,

Jay Muzeroll  
Fire Chief



January 18, 2022

Dear Mr. Brubaker and the Eliot Planning Board,

The Eliot Conservation Commission (Commission) respectfully submits the following comments and recommendations on the revised Site Plan Review Application for Odiorne Lane Solar dated January 11, 2022 (Project No. C223-21). The purpose of the commission is to ensure the proper utilization and protection of natural resources, ecosystems, scenic vistas and open spaces; to protect the watershed and wetland resources of Eliot; and further an awareness and understanding of conservation and practices and policies throughout the town and region.

Furthermore, in accordance with the commission bylaws, the Commission should whenever possible, review current and proposed development projects in the Town to determine potential impacts on natural resources and make recommendations to the Planning Board accordingly.

In regards to the proposed Odiorne Lane Solar Array, the Commission cannot wholeheartedly endorse the siting of a commercial industrial facility within a focus area of statewide ecological significance. The proposed array will be sited within an area identified by the US Fish and Wildlife Service as high priority for the Great Thicket National Wildlife Refuge because of its ecological value. Construction of the Solar Array will fragment forest, disrupt wildlife and result in indirect impacts to sensitive natural resources connected to the fragile York River. However, throughout the site review process, the developer has incorporated many recommendations from the Commission, and has revised the site plan to avoid direct impact to wetlands and minimize some impacts to wildlife. Recent correspondence provided by Mr. Sudak from natural resource agencies indicates that additional survey work is not required and a final letter will be issued upon receipt of comments from the biologist regarding New England Cottontail (see discussion below regarding New England Cottontail). Lastly, in a letter dated January 13, 2022, the landowner stated that he is committed to placing the remainder of the land (approximately 57 acres) into the Great Thicket National Wildlife Service. Given the above, should the Planning Board decide to approve this application, the Commission recommends that the following measures be considered and/or included as conditions of approval:

1. Native plant seed mixes should be used for pollinator habitat. Site plans currently do not provide details on plantings aside from erosion control mixes. The plans should include a detail regarding final planting plans.
2. Boundaries of sensitive natural resources should be flagged in the field to avoid direct disturbance of these resources. This includes wetlands, the 250-foot critical vernal pool setback, streams and the resource protection area.
3. The commission is still concerned about work adjacent to the vernal pool and within the 250-foot critical setback to the vernal pool. Best management practices for work around the vernal pool should be implemented including but not limited to:
  - a. Avoid creating ruts and other artificial depressions that pond water; if ruts are created, refill to grade before leaving the site.
  - b. Consider use of erosion control berms instead of silt fencing near the vernal pools to allow for wildlife movement.
  - c. Avoid work within the critical vernal pool step back during peak amphibian migration to the maximum extent practicable.
4. Minimize potential for the spread or introduction of invasive plant species by implementing

measures such as the use of seed free hay and cleaning construction equipment of plant material and soil before entering and leaving the site.

5. At the January 14 Commission Meeting, Karl Stromayer from the US Fish and Wildlife Service enthusiastically expressed interest in acquisition of the approximately 57-acres of undeveloped land for inclusion in the Great Thicket National Wildlife Refuge. He indicated that the US Fish and Wildlife Service is ready to act and has funding available to support this effort. They would still need to complete their due diligence prior to acquisition. Mr. Stromayer indicated that the Service would prefer in-fee title but could also work with a conservation easement. In regards to the concern expressed by Ms. Bennett that habitat management for early successional species not being consistent with landscape preservation standard, Mr. Stromayer stated that he thinks the Service could still meet its objectives. The Commission recommends that the land be set aside for conservation either through a conservation easement or conveyance to the US Fish and Wildlife Service.
6. The Commission recommends that Mr. Brubaker's staff notes (pages 21-22) regarding the conservation easement be amended to allow for tree removal for early successional wildlife habitat management within the bounds of the preservation standard. Any such tree removal should be conducted in accordance with a management plan prepared by a qualified biologist and approved by state and federal wildlife agencies.
7. The boundaries of the conservation area should be depicted on a site plan and should include all parcels considered as part of the total acreage for conservation, not just the one parcel.
8. The developer is waiting for an official letter from the Maine Department of Inland Fisheries and Wildlife that includes its recommendations, including those for the New England cottontail. Any new recommendations included in the letter should be i.e., incorporated into the final plan prior to construction
9. Lastly, it is still not clear if the potential for archaeological resources exists on site. We recommend that the developer finalize consultation with the Maine Historic Preservation Commission (HPC) to ensure that archaeological resources are not impacted. Any recommendations from the Maine HPC should be incorporated into site plans prior to construction.

Thank you for consideration of our recommendations. Please reach out if you have any questions or concerns,

Respectfully,

Kari Moore, Eliot Conservation Commission Chair

CC: Lynn Bublely, Peter Egelston, Lisa Wise, Cyndy Camp, Carol Castellan, Michael Sullivan



MAINE HISTORIC PRESERVATION COMMISSION  
55 CAPITOL STREET  
65 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333

JANET T. MILLS  
GOVERNOR

KIRK F. MOHNEY  
DIRECTOR

January 19, 2022

Mr. Michael J. Sudak  
ATTAR Engineering, Inc.  
1284 State Road  
Eliot, ME 03903

Project: MHPC #0103-21      New England Solar Garden; Odiorne Lane  
Solar Project  
Town: Eliot, ME

Dear Mr. Sudak:

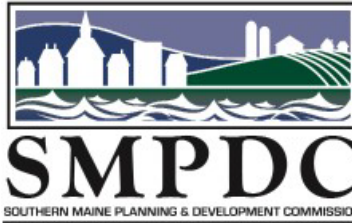
In response to your recent request, I have reviewed the information received January 13, 2022 to continue consultation on the above referenced project in accordance with the requirements of Maine Department of Environmental Protection.

Based on the information provided, I have concluded that there are no National Register eligible properties on or adjacent to the parcels. In addition, the project area is not considered sensitive for archaeological resources.

Please contact Megan M. Rideout of our staff, at [megan.m.rideout@maine.gov](mailto:megan.m.rideout@maine.gov) or 207-287-2992, if we can be of further assistance in this matter.

Sincerely,

Kirk F. Mohney  
State Historic Preservation Officer



Serving the Municipalities of Southwestern Maine For Over 50 years

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## Memorandum

**-Distributed Via Email-**

To: Jeff Brubaker, AICP – Town Planner  
Kearsten Metz – Land Use Administrative Assistant  
Kenneth Wood, P.E. - Attar Engineering, Inc., Applicant's Representative  
Michael Sudak, E.I.T. - Attar Engineering, Inc. Applicant's Representative  
[Sandra L. Guay, Archipelago Law – Town Attorney](#)

From: David C.M. Galbraith, Municipal Planning Consultant  
Southern Maine Planning and Development Commission (SMPDC)

Date: January 15, 2022

Re: **SMPDC Application Review - Planning Board Memorandum #2: PB21-16: Odiorne Lane Solar (Map# 83 – Lot# 02) / Site Plan Review and Change in Use – Public Utility (Ground-Mounted Solar Array aka “Solar Farm”) / Applicants: S.O.W Solar, Inc., NH Solar Garden, & Odiorne Lane Solar, LLC.**

### Project Overview:

The Planning Board last reviewed the request of the Applicant, Odiorne Lane Solar, LLC. (Planning Board case # PB21-16), was at the December 14, 2021 Planning Board meeting. The Applicant is seeking *Site Plan Review and Change in Use* to construct / establish a locate a Ground-Mounted Solar Array aka “Solar Farm” to be located on Odiorne Lane (Map# 83 – Lot# 02). The Town’s Code Enforcement Officer determined that the proposed solar farm is classified as a “Public Utility”, in the Town’s Codes and Ordinances, Chapter 25 (Zoning) which is defined in Sec. 1-2. (Definitions and rules of construction) which reads:

#### *Public Utility:*

*Public utility means any person, firm, corporation, municipal department, board or commission authorized to furnish gas, steam, electricity, waste disposal, transportation or water to the public.*

### Post December 14, 2021 Planning Board Review:

Since the last discussion before the Board, the Applicant has been revising plans and providing additional information in response to the Planning Board / project discussion points and the following correspondence (included in your Planning Board Packets):

- A. SMPDC Planning Board Memorandum: Dated December 14, 2022 from David Galbraith (Municipal Planning Consultant – SMPDC).
- SMPDC Meeting Follow-up Memorandum: Dated January 5, 2022 from David Galbraith (Municipal Planning Consultant – SMPDC) to Town Staff & Applicant regarding issues raised at the Planning Board meeting and internal discussions with Applicant’s consultants, Attar Engineering.
- B. Planning Consultant – SMPDC to Town Staff & Applicant regarding issues raised at the Planning Board meeting and internal discussions with Applicant’s consultants, Attar Engineering.
- C. Town Planner Review Letter # 3: Jeffery Brubaker, Town Planner letter dated January 6, 2022 to Michael J. Sudak, EIT, Attar Engineering, and Applicant's Representative Andrew Kellar, NH Solar Garden and multiple individuals copied.
- D. Eliot Fire Chief: Email prepared by Jeffery Brubaker, Town Planner, dated January 5, 2022.
- E. Eliot Fire Chief: Memorandum prepared by Chief Muzeroll (EFD), dated January 10, 2022.

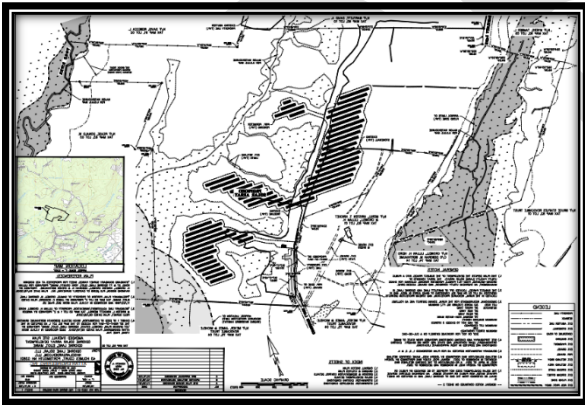
In response to the above discussions the Applicant's consultant (Michael J. Sudak, Attar Engineering) prepared “Master Comment-Response Document”\_dated January 11, 2022 to Jeffery Brubaker, Town Planner. This document provides a detailed response to questions and / or plan design modifications. The Applicant has amended revised / defined the site design. The Applicant has submitted the following revised development plans:

- A. Attar Engineering - Amended Overall Site Plan: Sheet - 1, dated 10/26/21, most recently revised 01/11/22.
- B. Attar Engineering - Amended Grading & Utilities Plan: Sheet - 2, dated 10/26/21, most recently revised 01/11/22.
- C. Attar Engineering – Erosion & Sedimentation Control Details Plan: Sheet - 3, dated 10/26/21, most recently revised 01/11/22.
- D. Attar Engineering – Stormwater: Existing Conditions Plan: Sheet - 5, dated 10/26/21, most recently revised 01/11/22.
- E. Attar Engineering – Stormwater: Developed Conditions Plan: Sheet - 6, dated 10/26/21, most recently revised 01/11/22.

The above listed documents provide, in addition to all elements submitted as part of the Application, provide a great deal of information regarding the redesign, and the reasons for modifications. However, during the last Board meeting a number of specific elements of the design were discussed in detail and are outlined below by topic.

**1. Site Re-Design:**

Most importantly, since the first submittal, environmentally sensitive areas and endangered species have been

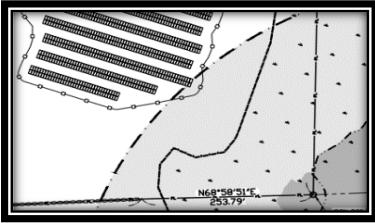


further located, and as such the site has been completely redesigned to avoid any impacts to the wetlands. All elements of the design have been redesigned around the wetlands so all land clearing required for the project will be done outside of required setbacks. The “Amended Overall Site Plan Sheet #1” of the revised plans (shown left) illustrates the stream thread and associated “fingers” of wetlands on the east side of the site.

The proposed solar panels (heavy black lines) illustrate the location of the panels between the wetlands and their associated setbacks.

**2. Site Re-Design: Amended Overall Site Plan - Sheet 1 - Resource Setback - Encroachment**

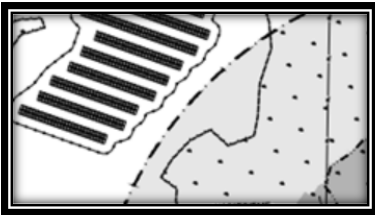




A. Resource Setback - Encroachment:

In the *last* SMPDC Planning Board memo, a setback encroachment (shown left), located in the southeast corner of the site was identified which illustrated the proposed fencing and some of the solar panels were located within the required resource setback.

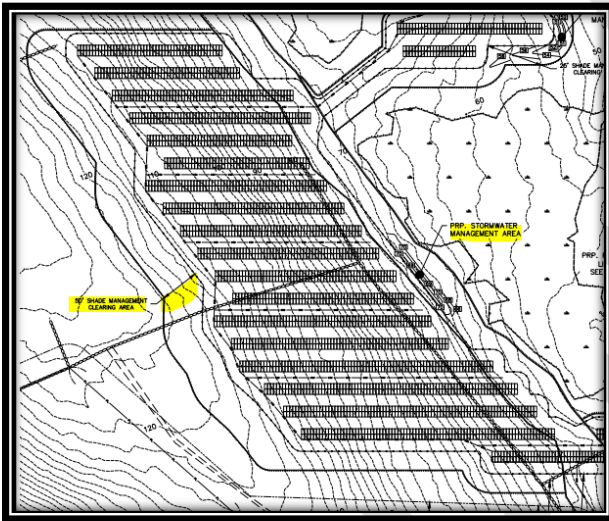
**Setback Encroachment**



B. Resource Setback – No Encroachment:

The revised plans have relocated the fencing and panels outside the required resource setback bringing the proposed design into full conformance.

**3. Amended Grading & Utilities Plan - Sheet 2:**



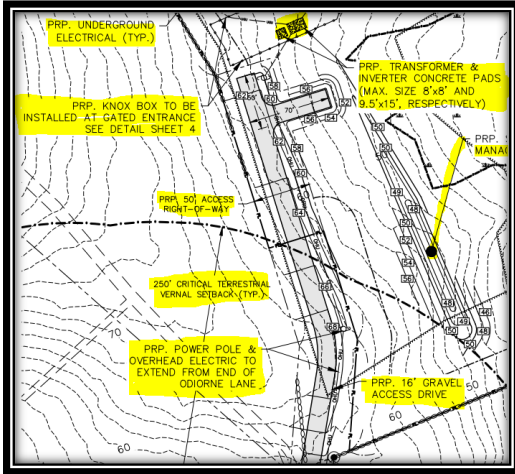
The Applicant submitted an amended grading and utility plan which shows control lines for the entire proposed development area. Four items from this plan should be called in particular, the first three (3) being located the upper northwest quadrant of the plan (and shown left) and the fourth regarding site access at the south of the site:

A. Grading: The NW quadrant of the plan is where slopes are the greatest and approximately 1/2 of the proposed solar panels will be located in this area.

B. Shade Management: Shown far left of the plan detail is a highlighted “50’ Shade Management Area” beyond the proposed fence line.

C. Stormwater Management Area: Located opposite the discussed highlighted “shade management area” a stormwater management area (also highlighted) is a proposed stormwater management area.

D. Site Entrance Details: Located at the southern property line is where the site is proposed to be accessed. The proposed “site access area” is also discussed in numerous sections of this memorandum (vernal pools, emergency access, utility designs etc.). However, the proposed entry grading is shown on this plan show a number of elements which are also “peppered” within this report. These elements are highlighted in yellow, and discussed from top to bottom, in the Site Entrance Detail provided:



1) Electrical Power:

The topmost plan highlight is “proposed underground electrical” which exists and will remain overhead powerlines to the site with the power going underground and into the site.

2) Power Line Height:

At the last Board meeting an abutter noted that he didn't want any changes to the pole heights along the access road and expressed concerns with Central Maine Power (CMP) of utility poles from existing to taller / heavier duty lines.

**Entrance Plan Detail (from Sheet #2)**

Attar's “Master Comment-Response Document”, provided the below comment regarding future CMP line upgrades:

The proposed overhead utility extension for this development shall come from the pole on the easterly side of Odiorne Lane, which aligns with the comments of avoiding potential blowdown or interference with the adjacent off-site vernal pool. Concerning all other comments relating to CMP power lines, per the land legal rights to the parcel the applicant has no control over what poles or lines are maintained or upgraded before, during, or after construction of the solar array. The applicant will work in good faith with CMP to minimize any impacts to the rural feel of Odiorne Lane, and if possible, suggest the pole be moved into the R.O.W. as suggested by the project Third Party Reviewer. The applicant is concerned about adding a line under the road because it would require an easement from the private landowner, and as such the applicant feels it is best to maintain the status quo and follow CMP guidance during the construction planning stages.

- 3) Transformer & Inverter Concrete pads: As you may recall these transformer and inverter precast concrete pads had previously located at the end of the vehicle turn-around. As required, these pads have been relocated inside the security fence line.
- 4) Knox Key Box / Fencing: As requested the Applicant will provide a Knox Key box enabling emergency access to and within the site.
- 5) Stormwater Management: Located to right side middle of the project detail is a stormwater management pond with grading details.
- 6) 50' Wide Easement: is proposed entering the site from the end of the existing Odiorne Lane gravel / dirt access way (See Note #8).
- 7) 250' Critical Terrestrial Vernal Pool Setback: As discussed during the Planning Board meeting and site walks there is a designated vernal pool adjacent to the existing dirt drive. This issue is discussed in various locations within this report.
- 8) Proposed Power Poles: As discussed above in Item #1, power is provided via overhead powerlines. The Applicant is proposing to install two (2) “power poles & overhead electric to extend from the end of Odiorne

Lane” and then electrical power going underground and into the site.

9) Proposed 16' Gravel Access Drive: See note #5 above, as the property is accessed via a 20 foot wide right-of-way and with a 16' wide dirt / stone vehicle access.

4. **Erosion & Sedimentation Control Details Plan (Sheet – 3)**: The Applicant has included Sheet 3 of the development plan set which outlines all of erosion and sedimentation control standards and details during pre-construction activities through post construction site stabilization.

5. **Stormwater Management**:

- 1) Stormwater: Existing Conditions Plan (Sheet – 5): This Plan provides existing conditions of the site including existing topography, soils mapping and legend, and existing streams and wetlands.
- 2) Stormwater: Developed Conditions Plan (Sheet – 6): This Plan provides proposed post construction conditions which also illustrates the existing / proposed topography, soils mapping, and existing streams and wetlands which are not being reduced / altered.

6. **Wetlands and Endangered Species**: Since the last review before the Board the Applicant has field identified environmentally sensitive areas (wetlands, stream, etc.) and as such the site has been completely redesigned to avoid impacts to the wetlands.

A. Endangered Species: As discussed at the beginning of this report the site layout was redesigned around the wetlands so all land clearing required for the project will be done outside of required setbacks. The “Amended Overall Site Plan Sheet #1” illustrates the stream thread and associated “fingers” of wetlands on the east side of the site. As outlined in Attar’s “*Master Comment-Response Document*”, provided detailed updates regarding the endangered species surveys on the subject development property which states:

Correspondence with Derek Yorks (Reptile Expert for Blandings & Spotted Turtle), as well as with Cory Stearns (Small Mammal Expert for New England Cottontail) is attached. This correspondence shows that MDIFW has no concerns about potential turtle habitats on the subject parcel, and that while the first cottontail survey produced no findings, a second survey will be accomplished. The applicant will keep the Town up-to-date on the progress of this second cottontail survey, after which time a joint signoff letter will be provided for the project.

The updated flagging and linework from the re-delineation of the existing wetlands by Joe Noel has been incorporated into the plan set. General Note #6 on Sheet 1 has been revised to include this update. This development shall continue to propose no wetland impacts, and as such there have been some minor revisions to the panel locations at the north end of the development with the increase in size of one of the nearby wetland complexes. This revision represents a 10% change in table amounts moved out of this area and into the uplands to the north.

B. Landscape Preservation: The Applicant has made considerable amendments to the proposed development plans for the preservation of the natural landscape, without impacting any of the on-site wetlands and being environmentally sensitive to the property and area. The Applicant’s “*Master Comment-Response Document*” includes the below statement which furthers their position regarding the natural environment and natural landscape preservation.

An excerpted section of §45-413 'Preservation of Landscape' from the Town of Eliot Code of Ordinances for Performance Standards reads as follows:

*"The landscape shall be preserved in its natural state, insofar as practicable, by minimizing tree removal. Any grade changes shall be in keeping with the general appearance of neighboring developed areas."*

The applicant feels that both of these statements are fully realized with the proposed development. The applicant has listened to the comments and concerns from all interested parties regarding the sensitive surrounding natural areas, and has produced revisions to the proposed development that, among other things, removes all wetland impacts, provides a wildlife corridor between the array perimeter fencing for wildlife passage, and proposed stormwater management measures that utilize the existing meadowed and forested buffers on the subject parcel. These revisions, in addition to the inclusion of raised-gap fencing and the continued correspondence with MDIFW and MNAP for rare and endangered plant and animal species, gives the applicant confidence that the Town and Board will find that this standard has been met.

7. **Environmental Impacts – Off-site Vernal Pool:** One of the issues raised was the safe access to the proposed solar farm property. AS has been discussed a number of times the Applicant, as requested, provided an overview of the off-site vernal pool which is immediately adjacent to the 16' wide gravel / dirt access road.

The off-site vernal pool abuts an existing section of the Odiorne Lane gravel drive. The extent of disturbances for which the applicant is pursuing a NRPA PBR for "Activities Adjacent to a Significant Vernal Pool" is for the 16' gravel drive that extends from existing Odiorne Lane onto the subject parcel. This development shall not widen or improve any existing portion of Odiorne Lane. As for temporary impacts, General Note #18 on Sheet 2 has been added, which speaks to the proposed management of erosion and sedimentation practices in the vicinity of protected resources (both on-site wetlands and this vernal pool). This language and these E&S measures are typical recommendations from the Maine DEP when protecting wetland bufferyards.

8. **Emergency Access / Public Safety:**

- A. As you may recall, at the last Board review a number of issues remained as the Board hadn't received an Emergency Services review. On January 10, 2022 Jay Muzeroll, Eliot Fire Chief sent the Planning Board Members in which he stated:

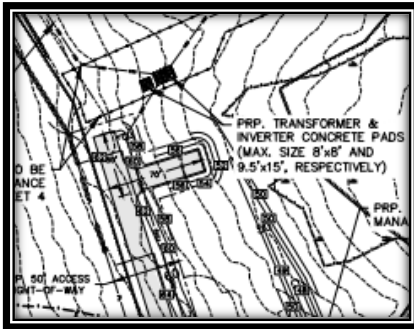
I have reviewed the project application and plans. The following are my recommendations and requirements.

- NFPA 1 allows the Authority Having Jurisdiction, (Fire Chief), to reduce the access road to less than 20'. I approve the access road to be 16" (*Type correction - 16' not 16"*) of unobstructed width since it is limited use. If future development of any property utilizing the access road is in consideration for approval, I request that a condition of approval for this project and any future projects re-address the road-width.
- Any access to the array that is secured with gates be provided with an approved access device.
- Recommend that any vegetation under the array and inside the fencing be low growth and maintained in a reasonable manner.
- Roadway turnaround as presented will meet the distance and design requirements of the attached approved method of Tee Turnarounds for Emergency Apparatus.



- Follow all NEC requirements for the type of system and provide training to key fire department personnel in the use of securing methods and project safety precautions.

B. Emergency Vehicle Turn Around:



During the last Board review, unimpeded emergency vehicle turnaround area was discussed. The original proposal, at the left, illustrated and transformer / inverter equipment and concrete pads in the proposed turn-around location. The revised plans, at left, include grading plans and a lengthened (70') emergency vehicle turnaround. The transformer and inverter precast concrete pads have been removed from this area and relocated inside the security fence line.

- C. Knox Key Box / Fencing: As requested the Applicant will provide a Knox Key box enabling emergency access to and within the site.
- D. Security Fencing: All proposed equipment / activities should be located within the enclosed fencing. Fencing should be installed with a six inch (6") gap at the bottom to allow wildlife to utilize the site while not being trapped inside the site. All fencing shall have warning signage as required by law.
- E. E-911 Addressing: Prior to the start of construction activities, Odiorne Lane Solar must obtain an address from the Town's e-911 officer (currently the Town's CEO) for the access road to the solar farm.
- F. Emergency Contact: Odiorne Lane Solar shall provide the Town direct contact information for the site construction manager (during construction to operational) and the facilities manager (operational onward) who may be contacted by the Town, as needed, regarding the facilities operation, safety, public inquiries, learning or training opportunities. The direct contact information shall be reviewed for correctness and maintained throughout the life of the installation. Odiorne Lane Solar LLC. will promptly notify the Town of contact information changes. Best efforts will be made by this contact to respond to inquiries from the town within three (3) business days.
- G. Roadway Maintenance: The access road to the site shall be maintained unobstructed and passible year round for access by Emergency Responders. The roadway should also be maintained free of ruts, potholes and the like to prevent obstruction or damage to Town vehicles.

9. Site Preparation, Construction Activities and Schedule:

As requested at the last Board meeting the Applicant has provided a detailed overview regarding construction activities related to project. This outline begins on at the bottom of page 3 and continues on page 4 of the "Master Comment-Response Document". As requested by the Board, the Applicant also included the type and size of construction vehicles and maintenance vehicle.

10. Long Term Property Conservation: Long term property conservation has been discussed / proposed since this matter first came before the Board. Attached below is a letter from the Applicant discussing their commitment to the long term preservation of the natural landscape.



Jeff Brubaker, AICP  
Town Planner  
Town of Eliot  
1333 State Road  
Eliot, ME 03909

January 13, 2021

Dear Mr. Brubaker:

I am writing in regard to Odiorne Lane Solar's conservation plans regarding the solar project.

I consented to Andrew Kellar of NH SolarGarden making the appropriate introductions to the US Fish & Wildlife agency in December 2021 so that I can evaluate the best course of action to conserve the land around the solar facility & leased premises.

I also agree to the planning board including a condition of the approval that I will exhaust all resources within three (3) years to place the balance of this land into the Great Thicket National Refuge. Please find the attached email letter of support received on 1/13/22. If that is not successful, then within one (1) year I will sell and/or convey the land to another conservation resource. All of the options stated in this letter are contingent upon the local, State and Utility approvals of the solar project.

Thank you for your consideration.

Sincerely,

SOW Solar, Inc.



Kevin Hill

In addition to above preservation commitment the Applicant also included the following comment at the conclusion of their response letter concludes:

During the productive conversation at the Conservation Commission meeting on 05 January 2022, a request was made to consider removing a section of fence that connects the southern and northern portions of the solar development. This requested change has been reflected in the Plan Set, with approximately 200 linear feet of fenceline being removed and creating two separate contained pockets of development. This opened up area is across an existing stretch of field and open canopy, with no clearing or regrading being proposed in this area, allowing it to be preserved as a wildlife corridor for larger species to maneuver more easily around the development. All callouts and calculations related to proposed fencing and the provision of Knox Box entry for emergency response services have been updated accordingly.

### Conclusion:

The Applicant and their development team have made remarkable progress on the development application over the past two weeks and the revised plans and documents would indicate that the Board could determine the "application complete" unless the Board has any unanswered questions.

I will be in attendance (remotely) at the January 18, 2022 Planning Board meeting and would be happy to help answer any questions you might have regarding the Application.

Respectfully submitted,

*David C. M. Galbraith*

David C.M. Galbraith

Town of South Berwick - Municipal Planning Consultant

Southern Maine Planning and Development Commission (SMPDC)

DRAFT

# TOWN OF ELIOT, MAINE

## PLANNING BOARD NOTICE OF DECISION

CASE #: <b>PB21-36 - REQUEST FOR PLANNING BOARD ACTION/MINOR CHANGE TO HOME BUSINESS DAYCARE</b>	MAP/LOT: <b>94/1</b>	DATE OF DECISION: <b>01/18/22</b>
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2/1/2022

Brooke Raitt  
2135 State Road  
Eliot, ME 03903

To: Brooke Raitt,

This letter is to inform you that the Planning Board has acted on your application for a Home Business amendment, as follows:

### APPLICATION DOCUMENTS AND SUPPORTING MATERIAL SUBMITTED BY THE APPLICANT AND/OR THEIR REPRESENTATIVES:

#### Submitted for January 18, 2022:

1. Request for Planning Board Action Application, received December 14, 2022.
2. Drawing of property showing house, garage, and parking area.
3. Drawing of parking spaces and their location.
4. Drawing of area within garage to be used as day nursery.
5. Drawing of floor plan.
6. Compliance with local zoning and building ordinances form.
7. Warranty Deed, Book 17005/Page 421-423, registered at the York County Registry of Deeds, dated April 23, 2015.
8. Memo from Jeff Brubaker, Town Planner, dated January 11, 2022.

#### FINDINGS OF FACT:

1. The owners of the property are: Adam Raitt and Richard Raitt (mailing address: 2135 State Road Eliot, ME 03903).
2. The applicant is: Brooke Raitt (mailing address: 2135 State Road, Eliot, ME 03903).
3. The property is located at 2135 State Road, is 2.83 acres, and is a legal non-conforming lot of record.
4. Property can be as identified as Map 94, Lot 1, and is located in the Rural Zoning District.
5. The applicant proposes to amend a previously-approved Home Business/site plan (PB20-13) to relocate the home business (day care) from the house to the renovated detached garage, increase the number of children from ten (10) to twelve (12), and expand hours of operation from 7:00AM to 4:30PM to 6:30AM to 5:30PM.
6. Applicant is seeking Planning Board approval before beginning the renovation process and seeking building permits.
7. The Planning Board reviewed the application at the following regular meetings:
  - January 18, 2022
8. The applicant submitted a letter from the owners of the property giving consent for the applicant to operate a day nursery from the home, dated and signed January 11, 2022.
9. The applicant will occupy the single-family dwelling located at 2135 State Road (12) months per year.
10. This is a legal, non-conforming lot and no lot line changes are being proposed.
11. The applicant proposes using 679 sq. ft. of the existing detached garage, which is less than the maximum area of 1,500 square feet allowed per §45-456.1(c), and is clearly secondary to the residential use of the property.
12. The first floor of the existing detached garage will be renovated to accommodate the Home Business, with the official opening to be September 2022.

13. The structure in which the home business will be located (detached garage) meets or exceeds all minimum setback requirements for principal structures per Sec. 45-456.1(d).
14. The property is served by a well and septic. Septic is designed for two families.
  - There will be no impact to the septic as a result of this amendment.
15. The proposed use is listed in Section 45-290 (Table of land uses) as 'day nursery.'
16. The applicant proposes to have two employees starting in September 2022.
17. There will be no selling of merchandise or products as part of the home business.
18. Up to twelve (12) client parking spaces are proposed for drop-off and pick-up. Each parking space shall be a minimum of 180 sq. ft.
19. The applicant is currently licensed by the State to have ten (10) children in her home and has been inspected by the State Fire Marshall's Office. The applicant has passed that inspection.
  - State license will be approved for twelve (12) children once approval is granted by the Planning Board.
20. A replacement sign is proposed to be mounted on the renovated garage, per §45-456.1(j).
21. The name of the home business will change from Little House Child Care, LLC to True Colors Childcare, LLC.
22. The applicant does not propose using or storing any potentially hazardous or flammable solids, liquids used or stored in the operation of the home business.
23. Copies of the application and supporting materials were provided to staff for review. There were no comments submitted.
24. There was no site walk.
25. The following application fee(s) have been paid by the applicant, in accordance with §1-25:
  - Home Business/Site Review Amendment Application Fee: \$25.00 (paid 1/11/2022)
26. The Planning Board authorizes the Town Planner and Planning Board Chair to execute the form the applicant needs to send to the State of Maine acknowledging the Planning Board approval of this application.

#### **CONCLUSIONS:**

1. Per Sec. 45-290 (Table of permitted and prohibited land uses), a Home Business ("day nursery") is a permissible use in the Rural Zoning District with Site Plan Review and approval by the Planning Board.
2. Performance criteria and/or ordinance requirements have been addressed by the Planning Board in accordance with Section 45-456.1 (Home business) during review of this application.
3. Performance criteria and/or ordinance requirements have been addressed by the Planning Board in accordance with Chapter 33, Article III (Site Plan Review) during review of this application.
4. Revisions to previously approved Site Plans are allowed with Planning Board approval under Section 33-140 (Revisions to final Site Plans after Planning Board approval).
5. Proposed revisions are minor and do not result in any substantial changes to the approved development or further impact abutters.
6. The Code Enforcement Officer may approve minor deviations to the layout and room dimensions in the floor plan, relative to that included in the application, as long as adequate usable space and features are retained in accordance with the State of Maine Child Care Facility Licensing Rule.

#### **DECISION:**

Based on the above facts and conclusions, on **January 18, 2022** the Planning Board voted to approve your application to amend a previously-approved Home Business/site plan (PB20-13) to relocate the home business from the house to the renovated detached garage, increase the number of children from ten (10) to twelve (12), and expand hours of operation from 7:00AM to 4:30PM to 6:30AM to 5:30PM.

#### **CONDITIONS OF APPROVAL:**

The applicant must comply with all of the requirements of the Town of Eliot Land Use Ordinances. In order to further promote the purposes of the Eliot Zoning Ordinance, the Planning Board has voted to impose the following conditions on the approval of this application:

1. The property may be developed and used only in accordance with the plans, documents, materials submitted, and representations of the applicant made to the Planning Board. All elements and features of the use as presented to the Planning Board are conditions of approval and no changes in any of those elements or features are permitted unless such changes are first submitted to and approved by the Eliot Planning Board.
2. This permit is approved on the basis of information provided by the applicant in the record regarding his ownership of the property and boundary location. The applicant has the burden of ensuring that he has a legal right to use the property and that he is measuring required setbacks from the legal boundary lines of the lot. The approval of this permit in no way relieves the applicant of this burden. Nor does this permit approval constitute a resolution in favor of the applicant of any issues regarding the property boundaries, ownership, or similar title issues. The permit holder would be well advised to resolve any such title problems before expending money in reliance on this permit.
3. The applicant authorizes inspection of premises by the Code Enforcement Officer during the term of the permit for the purposes of permit compliance.
4. Applicant shall provide the Town a copy of their approved, updated child care licensing information when it is received from the State.

**PERMITS:**

The Planning Board has approved your application and the Code Enforcement Officer is authorized to grant you the necessary Permits or Certificates of Occupancy, as appropriate. It is your responsibility to apply for these permits. In exercising this approval, you must remain in compliance with all the conditions of approval set forth by the Planning Board, as well as all other Eliot, State, and Federal regulations and laws. Be aware, however, that Site Plan approvals (including home businesses) that are granted by the Eliot Planning Board have expiration provisions specified in Section 33-59 of the Town of Eliot Code of Ordinances, which states:

*The approval of a site plan review under chapter 33, article III shall expire if the work or change involved does not commence within two years of the date the planning board makes its determination of approval under section 33-131, or if the work or change is not substantially completed within three years after such date.*

The holder of an approved permit should take care to ensure that the approval granted **January 18, 2022** does not expire prior to commencement of work or change.

**APPEALS:**

This decision can be appealed to the Board of Appeals within 30 days after **January 18, 2022** by an aggrieved person or party as defined in Sec. 1-2 and Sec. 45-50(b) of the Eliot Zoning Ordinance. Computation of time shall be in accordance with general provisions of the Town of Eliot Municipal Code of Ordinances, section 1-2.

Sincerely,

---

Carmela Braun, Chair  
Eliot Planning Board

*This letter reviewed and approved by the Planning Board on \_\_\_\_\_, 2022.*

CC: Jay Muzeroll, Eliot Fire Chief  
Elliott Moya, Eliot Police Chief  
Steve Robinson, Public Works Director  
Brent Martin, Assessor  
Shelly Bishop, Code Enforcement Officer



# TOWN OF ELIOT, MAINE

## PLANNING BOARD NOTICE OF DECISION

CASE #: <b>PB22-04 - REQUEST FOR PLANNING BOARD ACTION/MINOR CHANGE TO ADD RETAIL STORE IN EXISTING BUILDING</b>	MAP/LOT: <b>23/15</b> <b>74 HAROLD L. DOW HIGHWAY</b>	DATE OF DECISION: <b>02-15-2022</b>
--	--	-------------------------------------

2/23/2022

### DRAFT

Ms. Aly Eardley  
41 Russell Road  
Eliot, Maine 03903

Mr. Paul Randolph  
165 Hanscom Road  
Eliot, Maine 03903

To: Ms. Eardley  
Mr. Randolph

This letter is to inform you that the Planning Board has acted on your **Request for Planning Board Action to amend a previously approved site plan (Randolph's Upholstery) to have a Retail Store within an existing building.**

#### APPLICATION DOCUMENTS AND SUPPORTING MATERIAL SUBMITTED:

##### SUBMITTED FOR FEBRUARY 15, 2022:

1. Request for Planning Board Action Application, received January 26, 2022.
2. Floor plan and detail sketches of proposed retail store.
3. Lease Contract between Paul Randolph (owner) and Aly Eardley (applicant), signed January 27, 2022.
4. Memo from Jeff Brubaker, Town Planner, dated February 10, 2022.

#### FINDINGS OF FACT:

1. The owner of the property is: Mr. Paul Randolph (mailing address: 165 Hanscom Road, Eliot, ME 03903).
2. The applicant is: Ms. Aly Eardley (mailing address: 41 Russell Road, Eliot, Maine 03903).
3. The property is located at: 72 Harold L. Dow highway and is 1.00 acre.
4. Property can be identified as: Assessor's Map 23/ Lot 15 and is located in the Commercial/Industrial Zoning District.
5. Intent to Lease contract between Paul Randolph (owner) and Aly Eardley (applicant), signed January 27, 2022
6. The applicant proposes to amend a previously approved Site Plan (Randolph's Upholstery) to have a retail store within the existing building, to include furniture, home décor, and gifts.
7. Retail store will be located in the front portion (522 square feet) of the existing building.
8. Retail store will be open **at least** two (2) days a week.
9. Four (4) parking spaces are proposed. One will be ADA compliant. Curb bumpers are proposed to indicate spaces.
10. Use is allowed under "Retail stores, local, other" and is a SPR use in the Commercial/Industrial District.
11. There will be no impact to the exterior of the building or the site, itself.
12. Site is served by private septic and well
13. There will be no additional bathrooms.
14. Applicant is proposing a sign that will be placed within the existing sign for the property.
15. The on-site dumpster will be screened and/or relocated from view of Route 236.

16. The Planning Board reviewed the application at the following regular meeting:
  - February 15, 2022.
17. On February 15, 2022, the Planning Board agreed by consensus that the proposed revisions to the previously approved Site Plan were minor, did not result in any substantial changes to the approved development, or further impact abutters and, therefore, did not require full site plan review.
18. There was no site walk or public hearing held.
19. The following fees have been paid by the applicant:
  - Site Plan Amendment Fee: \$100.00 paid
  - Change of Use Fee: \$25.00 paid
20. Copies of the application and supporting materials were sent to the Code Enforcement Office, Public Works, Town Manager, Police Department and Fire Department. There were no comments.

#### CONCLUSIONS:

1. Revisions to previously approved Site Plans are allowed with Planning Board approval under Section 33-140 (Revisions to final Site Plans after Planning Board approval).
2. All applicable criteria and/or ordinance requirements of Chapter 45 and Chapter 33 have been addressed by the Planning Board during review of this application.
3. The Planning Board determined that the proposed revision to the approved site plan was minor and did not result in any substantial changes to the approved development or further impact abutters and, therefore, did not require full site plan review.

#### DECISION:

Based on the above facts and conclusions, on **February 15, 2022**, the Planning Board voted to approve your application to amend a previously approved site plan (Randolph's Upholstery) to have a retail store within the existing building, to include furniture, home décor, and gifts.

#### CONDITIONS OF APPROVAL:

The applicant must comply with all requirements of the Town of Eliot Land Use Ordinances. In addition, to further promote the purposes of the (Eliot Zoning Ordinances), the Planning Board has voted to impose the following conditions on the approval of this application:

1. **The property may be developed and used only in accordance with the plans, documents, material submitted, and representations of the applicant made to the Planning Board. All elements and features of the use as presented to the Planning Board are conditions of approval and no changes in any of those elements or features are permitted unless such changes are first submitted to and approved by the Eliot Planning Board.**
2. **The permit is approved on the basis of information provided by the applicant in the record regarding the ownership of the property and boundary location. The applicant has the burden of ensuring that they have the legal right to use the property and that they are measuring required setbacks from the legal boundary lines of the lot. The approval of this permit in no way relieves the applicant of this burden. Nor does this permit approval constitute a resolution in favor of the applicant of any issues regarding the property boundaries, ownership, or similar title issues. The permit holder would be well-advised to resolve any such title problems before expending money in reliance on this permit.**
3. **The applicant authorizes inspection of premises by the Code Enforcement Officer during the term of the permit for the purposes of permit compliance.**
4. **Applicant shall pay the Planning Board application fee prior to, or along with, submitting a building permit application.**
5. **At least one parking space shall be ADA accessible.**
6. **If feasible, the large waste container for the building shall be relocated within the parking lot and/or screened from Route 236 in accordance with §45-422.**
7. **The Code Enforcement Officer may approve minor changes in the sketch plan if they are not substantially contrary to the Planning Board's approval.**

**APPEALS:**

This decision can be appealed to the Board of Appeals within 30 days after **February 15, 2022** by an aggrieved person or party as defined in Sec. 1-2 and Sec. 45-50(b) of the Eliot Zoning Ordinance. Computation of time shall be in accordance with general provisions of the Town of Eliot Municipal Code of Ordinances, section 1-2.

Sincerely,

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Carmela Braun, Chair

*This letter reviewed and approved by the Planning Board on \_\_\_\_\_, 2022.*

CC: Brent Martin, Tax Assessor  
Shelly Bishop, Code Enforcement Officer  
Jay Muzeroll, Fire Chief  
Elliott Moya, Police Chief  
Steve Robinson, Public Works Director

DRAFT

PB22-3: 64 Harold L. Dow Hwy. (Map 23/Lot 16): Site Plan Amendment and Change of Use – Addition of swim lessons in above ground pool to an existing daycare business



# TOWN OF ELIOT MAINE

PLANNING OFFICE

1333 State Road

Eliot ME, 03903

To: Planning Board  
 From: Jeff Brubaker, AICP, Town Planner  
 Cc: Amanda Gunter, Applicant  
 Shelly Bishop, Code Enforcement Officer  
 Date: February 24, 2022 (report date)  
 March 1, 2022 (meeting date)  
 Re: PB22-3: 64 Harold L. Dow Hwy. (Map 23/Lot 16): Site Plan Amendment and Change of Use – Addition of swim lessons in above ground pool to an existing daycare business

Application Details/Checklist Documentation	
✓ Address:	64 Harold L. Dow Highway
✓ Map/Lot:	23/16
✓ PB Case#:	22-3
✓ Zoning:	Commercial/Industrial (C/I) District
✓ Shoreland Zoning:	None
✓ Owner Name:	Tide Pools Learning Center LLC (in application: Tegan Teske)
✓ Applicant Name:	Amanda Gunter
✓ Proposed Project:	Retail store in existing building
✓ Application Received by Staff:	1/31/22
Application Fee Paid and Date:	\$125 (\$100 Site Plan Amendment; \$25 Change of Use) Not yet paid, will update the PB at meeting.
Application Sent to Staff Reviewers:	Not sent
Application Heard by PB	March 1, 2022 (scheduled)
Found Complete by PB	Not needed if PB deems a minor amendment
Site Walk	TBD
Site Walk Publication	TBD
Public Hearing	Not needed if PB deems a minor amendment
Public Hearing Publication	Not needed if PB deems a minor amendment
Deliberation	TBD
✓ Reason for PB Review:	Site Plan Amendment, Change of Use

PB22-3: 64 Harold L. Dow Hwy. (Map 23/Lot 16): Site Plan Amendment and Change of Use – Addition of swim lessons in above ground pool to an existing daycare business

## **Overview**

Applicant Amanda Gunter (property owner: Tide Pools Learning Center LLC, application reports as Tegan Teske) seeks Site Plan Amendment and a Change of Use at 64 Harold L. Dow Hwy. (Map 23, Lot 16) to “amend commercial property use for a 12 week season of children’s swim lessons. A fenced in pool would be utilized from mid June until late August to offer swim lessons to the community’s children.”. Three certified lifeguards would facilitate the program.

The 0.85-acre property (presumptively legally nonconforming lot of record) includes a 2-story daycare building along with parking area. As shown on the sketch plan, the pool would be about in the middle of the property set back from the southeast property line.

## **Application contents**

- Request for Planning Board Action, signed 1/22/22
- Sketch Plan

## **Type of review needed**

Applicant seeking minor amendment. See motion templates.

## **Zoning**

Commercial-Industrial (C/I). No shoreland zoning.

## **Use**

“Day nursery” – current use – SPR in C/I district. Proposed use involves instruction. Similar use: “school” – SPR. Pool will not be open for use by the general public, only for those signed up for swim lessons. PB review needed to amend last approval (2017) for Day Nursery, to clarify approval for pool and swim lessons.

## **Affidavit of ownership (33-106)**

Deed provided from Registry of Deeds

## **Dimensional requirements (45-405)**

Pool will need to meet side setback. 50% lot coverage presumptively met with visual analysis of sketch plan.

## **Traffic (45-406)**

The added use is not expected to generate a significant amount of traffic and will only be active during summer months.

## **Parking**

No significant impact on parking is expected.

## **Recommendation**

Approval, as long as fee is paid prior to meeting and side setback compliance is confirmed. Otherwise, continuance to allow these to be addressed.



PB22-3: 64 Harold L. Dow Hwy. (Map 23/Lot 16): Site Plan Amendment and Change of Use – Addition of swim lessons in above ground pool to an existing daycare business

**Motion templates**

*Approval as a minor site plan amendment, with conditions*

Motion to approve PB22-3 as a Minor Site Plan Amendment and Change of Use for a to add swim lessons in an above ground pool to existing day nursery use.

The Planning Board finds that the proposed revisions are minor and do not result in any substantial changes to the approved development or further impact abutters. The following are conditions of approval:

1. [Standard conditions]
2. [Other conditions if desired]

*Major Site Plan Amendment needing to go through the Site Plan Review process*

Motion to find that the revisions proposed in PB22-3 are substantial. The applicant must seek approval through a site plan review process, beginning with submittal of a Site Plan Review application.

*Disapproval*

Motion to disapprove PB22-3 for the following reasons:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

\* \* \*

Respectfully submitted,

Jeff Brubaker, AICP  
Town Planner



# TOWN OF ELIOT

1333 STATE RD. , ELIOT, ME 03903

## REQUEST FOR PLANNING BOARD ACTION

(FOR MISCELLANEOUS USES OR CHANGES)

Applicant Amanda Gunter  
 Mailing Address PO Box 275 City Cape Neddick State ME Zip 03902  
 Telephone # 207-604-6799 Email address amanda.n.gunter11@gmail.com  
(TO RECEIVE MEETING NOTICES)

Property Owner Tegan Teske  
 Mailing Address 94 Beech Ridge Rd City Eliot State ME Zip 03902

Property address 144 Harold L Dow Hwy Tax Map # \_\_\_\_\_ Lot # 23-16  
 Size (acres) 0.85 Zoning District Commercial Zone Shoreland Overlay District? NO

Conforming Lot?  YES/NO Conforming Use? YES/NO Conforming Structure? YES/NO

- Legal interest in property identified by applicant by:
- Owner (copy of deed &/or tax records)
  - Pending Owner (copy of purchase & sale agreement)
  - Lease (copy of lease agreement with owners & applicants signature)
  - Corporate Officer (letter from corporation)
  - Other (identify: property business Director)

Nature of action requested:  
 (Example: Request to amend a previously approved site plan by adding a 10' x 20' addition)  
Request to amend commercial property use for a 12 week  
season of children's swim lessons. A fenced in above ground pool  
would be utilized from mid June until late August to offer swim  
lessons to the community's children 3 certified lifeguards, including  
the lead swim instructor & assistant instructor will facilitate the program.

Attach ten (10) copies of sketch plan of property showing in approximate dimensions, all zoning districts, existing/proposed structures, parking areas, streets, entrances, existing and proposed setbacks, proposed lot divisions, proposed open space to be preserved, common areas, site & public improvements and facilities, any areas of excavation and grading, and any other criteria needed to evaluate request. Sketch plan is not required if so advised by the Planning Assistant

Applicants signature [Signature] Date 1/22/22

Property owners signature [Signature] Date 1/26/22

### TO BE COMPLETED BY PLANNING ASSISTANT

Date application received by PA \_\_\_\_\_ PA signature \_\_\_\_\_

Sketch plan required? YES NO

FEE AMOUNT \$ \_\_\_\_\_ DATE PAID: \_\_\_\_\_ FORM OF PAYMENT: \_\_\_\_\_





23-15

23-30

23-27

23-16

23-17

23-18

Fiarold L. Dow Highway

POOL

258

260

121

259

120

107

119

## Warranty Deed

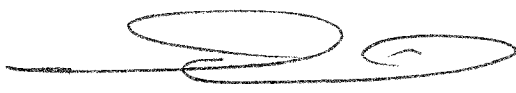
Know all men by these presents that we, **Russell P. McMullen and Janet C. McMullen, Trustees of the McMullen Revocable Trust**, with a mailing address of 371 Beech Road, Eliot, Maine 03903, by the power conferred by law and every other power, for consideration paid, grant to **TIDE POOLS LEARNING CENTER, LLC**, a Maine limited liability company with a mailing address of 94 Beech Ridge Road, York, Maine 03909, with **Warranty Covenants**, the real property in Eliot, County of York and State of Maine, together with the buildings located thereon, bounded and described as follows:


See **EXHIBIT A** attached hereto and incorporated herein by reference.

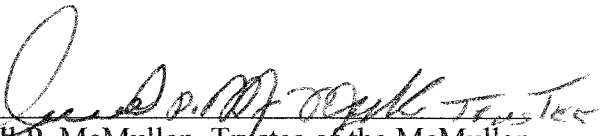
Being the same premises conveyed to McMullen Revocable Trust, Russell P. McMullen and Janet C. McMullen, Trustees, by deed of R&J Partnership dated October 3, 2011 and recorded in the York County Registry of Deeds in Book 16695, Page 316.

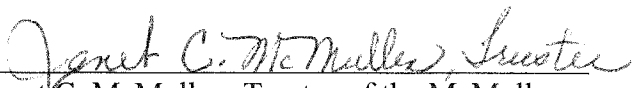
Dated this 20th day of November, 2017.

Signed, sealed and delivered in the presence of:

  
\_\_\_\_\_  
Witness

  
\_\_\_\_\_  
Witness

  
\_\_\_\_\_  
Russell P. McMullen, Trustee of the McMullen Revocable Trust


  
\_\_\_\_\_  
Janet C. McMullen, Trustee of the McMullen Revocable Trust

State of Maine  
County of York, ss.

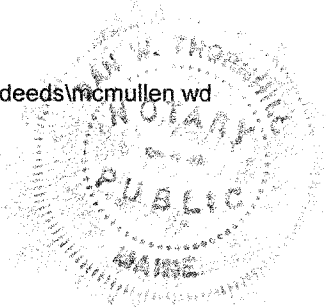
November 20, 2017

Then personally appeared the above named Russell P. McMullen and Janet C. McMullen, in their said capacity as Trustees of the McMullen Revocable Trust, and acknowledged the foregoing instrument to be their free act and deed in said capacity.

Before me,

  
\_\_\_\_\_  
Dan W. Thornhill  
Notary Public  
My Commission Expires: 7/25/19

K:\realest\deeds\mcmullen wd



Maine R.E. Transfer Tax Paid

**EXHIBIT A**

A certain lot or parcel of land, together with the buildings and improvements thereon, situated in the Town of Eliot, County of York and State of Maine, and bounded and described as follows:

Beginning at a hub set in the ground on the easterly side of U.S. Route 236 (also known as Dow Highway), at land now or formerly of Randolph and thence running easterly by land of said Randolph, three hundred (300) feet to a hub; thence turning and running southerly, by land now or formerly of Copeland, on a line parallel to said U.S. Route 236, one hundred twenty (120) feet to a hub at a corner of land now or formerly of one Kelliher; thence turning and running westerly by land of said Kelliher, three hundred (300) feet to said U.S. Route 236; thence turning and running northerly by said U.S. Route 236, one hundred twenty (120) feet, to the point of beginning.

SUBJECT TO the rights reserved by Pauline J. Copeland, for herself and her Heirs and assigns, in the deed dated September 28, 1960, recorded in the York County Registry of Deeds in Book 1432, Page 139, to take water from the spring located on the above described premises and to lay and maintain cold water lines on and over the above described premises to land now or formerly of said Copeland, together with the right to build and maintain a pump house on the above described premises over said spring, with pump and to enter upon the above described premises, to make necessary repairs to the same and to make and maintain such electrical connections as may be necessary to operate said pump.

SUBJECT TO the terms of an instrument recorded in said Registry of Deeds in Book 3406, Page 347, regarding the installation and maintenance of a subsurface sewage disposal system on the above described premises.

SUBJECT TO the terms of an Easement Deed dated December 11, 1984, granted by Russell P. McMullen and Janet C. McMullen to Central Maine Power Company and New England Telephone and Telegraph Co., and recorded in said Registry of Deeds in Book 3451, Page 284.

64 Harold L. Dow Highway  
Eliot 23/16

McEachern & Thornhill  
P.O. Box 360  
Kittery, ME 03904



**PB22-2: 25 Alden Lane (Map 1/Lot 36): Shoreland Zoning Permit Application – Garage Replacement**



**TOWN OF ELIOT MAINE**

PLANNING OFFICE  
1333 State Road  
Eliot ME, 03903

To: Planning Board  
 From: Jeff Brubaker, AICP, Town Planner  
 Cc: Nick Gray, Nick Gray Builders, LLC, Applicant’s Representative  
 Shelly Bishop, Code Enforcement Officer  
 Kearsten Metz, Land Use Administrative Assistant  
 Date: February 23, 2022 (report date)  
 March 1, 2022 (meeting date)  
 Re: PB22-2: 25 Alden Lane (Map 1/Lot 36): Shoreland Zoning Permit Application – Garage Replacement

<b>Application Details/Checklist Documentation</b>	
✓ Address:	25 Alden Lane
✓ Map/Lot:	1/36
✓ PB Case#:	22-2
✓ Zoning District:	Village
✓ Shoreland Zoning:	Resource Protection, Limited Residential
✓ Owner Name:	Davie Family Revocable Trust
✓ Applicant Name:	Nick Gray Builders, LLC
✓ Application Received by Staff:	January 18, 2022
Application Fee Paid and Date:	\$75 (Shoreland Zoning: Nonconforming structures, uses, & lots) Not yet paid, applicant has been notified of amount due, update to be provided at meeting
Application Sent to Staff Reviewers:	Not sent
Application Heard by PB	February 15, 2022; March 1, 2022 (scheduled)
Found Complete by PB	TBD
Site Walk	TBD
Site Walk Publication	TBD
Public Hearing	Not necessarily required
Public Hearing Publication	N/A

**Overview (3/1 update)**

Applicant Nick Gray Builders, LLC (property owner: Davie Family Revocable Trust) seeks a Shoreland Zoning Permit to remove an existing 18’x24’ garage and replace it with a new garage. The application mentions that the “existing foundation was done wrong and needs replacement”.

In my 2/15 staff report, I noted that the shoreland zoning permit application was not compliant with Chapter 44 – Shoreland Zoning, because the proposed new garage would exceed the height maximum established in Section 44-32(c)(1)c1 – the maximum height is “20 feet or the height of the existing

## PB22-2: 25 Alden Lane (Map 1/Lot 36): Shoreland Zoning Permit Application – Garage Replacement

structure, whichever is greater.” The application showed a proposed height of approximately 28 ft. and mentions that the new garage would “add [a] 2<sup>nd</sup> floor”.

**3/1 update:** The applicant has modified their proposal to show the new garage being built at least 75 ft. setback from the normal high-water line of the river. This changes the building height requirement from Section 44-32(c)(1)c1 to 44-35(b)(2) which establishes a taller, 35 ft. height maximum for allowable principal or accessory structures. The proposed 28 ft. height would be compliant.

### Application contents

#### Submitted for February 15 meeting

- Shoreland zoning permit application
- Supporting photos
- DEP permit-by-rule form previously submitted to DEP

#### Submitted for March 1 meeting

- Updated sketch plan

### Zoning

Village; Limited Residential and Resource Protection shoreland zoning

### Type of review needed and use

This review is somewhat different than previous shoreland zoning reviews. Often, these reviews involve site plan review (SPR) uses and therefore go through the “full” site plan review process, including a public hearing. This tends to occur if there is a proposed change affecting the Resource Protection (RP) portion of shoreland zoning. In the Limited Residential (LR) district, further from the river, generally, single-family residential principal and accessory structures (e.g. houses and garages) are “CEO” uses requiring only Code Enforcement Officer review related to required building permits.

Since the garage replacement would take place in the LR only, according to the zoning map, “full” SPR is not needed. However, since the proposal involves replacing a legally nonconforming garage, including its foundation, within 75 ft. of the river, Planning Board “greatest practical extent” review is still needed under See 44-32(c), paragraphs (2) through (4).

**3/1 update:** The previously proposed “replacement” is now a slight “relocation”. Planning Board “greatest practical extent” review is still needed under 44-32(c)(3).

### Dimensional standards (45-405)

Dimension	Standard	Met?
Min lot size (ac)	1	About 0.43 acres. Presumptively legally nonconforming
Lot line setbacks (ft)	30 front, 20 side, 30 rear; do not increase along legally nonconforming dimensions (45-495)	<b><u>3/1 update:</u></b> The garage structure is presumptively legally nonconforming with respect to the side (south) setback. The garage would continue to meet the side setback standard as long as it is not being extended or expanded along its nonconforming dimension. That appears to be the case as the side wall of the garage would stay the same length, per the sketch plan.

**PB22-2: 25 Alden Lane (Map 1/Lot 36): Shoreland Zoning Permit Application – Garage Replacement**

Max building height (ft)	35 [44-35(b)(2)]	<b><i>3/1 update:</i> Yes. With the garage now being located 75+ ft. from the river normal high water line, the taller height (up to 35 ft.) is allowable.</b>
Max lot coverage	Presumptively legally nonconforming structure – do not increase lot coverage over existing	No increase in lot coverage proposed
Min street frontage (ft)	100	N/A. Presumptively legally nonconforming lot.

**Shoreland zoning nonconformance check for replacement garage**

<b>Dimension</b>	<b>Standard</b>	<b>Met?</b>
Max building height (ft)	35 [44-35(b)(2)]	<b><i>3/1 update:</i> Yes. See above.</b>
Portion of structure within 25 ft. of river normal high-water line	Do not expand [44-32(c)(1)a	N/A. New structure would be 75+ ft. from the river
Overall footprint of all structures after replacement compared to 1989 footprint	Do not expand by more than 30%	Met – no change in footprint proposed
Non-vegetated surface coverage – presumptively legally nonconforming situation	Do not expand	<b>Presumptively met but need to confirm what the changes are to driveway configuration and planting in the space to be opened up by the removal of the old garage.</b>

*Greatest practical extent staff assessment*

The PB must determine that the replacement garage meets the setback requirement to the greatest practical extent. The garage is moving east about 10 ft. This will place it further from the river and allow the 75 ft. setback to be met. Further location east may interfere with driveway access for neighbors to the south.

**DEP PBR**

I have asked the applicant for an update on their DEP PBR since the plan has changed slightly.

**Recommendation**

- If all of the information above has been satisfactorily addressed by the meeting, approve with conditions.
- If there is still needed information not yet provided, or the fee has not yet been paid, continue to a future meeting to allow time for the applicant to provide the info or to pay the fee.

**PB22-2: 25 Alden Lane (Map 1/Lot 36): Shoreland Zoning Permit Application – Garage Replacement**

***Motion templates (3/1 update)***

*Approval with shoreland zoning findings (in addition to other findings of fact to be included in the NOD) and conditions*

Motion to approve the shoreland zoning permit application for PB22-2 – 25 Alden Ln. – with the following findings of fact (in addition to other applicable findings of fact to be included in the Notice of Decision):

1. All applicable sections of the Shoreland Zoning Ordinance (Chapter 44) and Shoreland Zoning Permit Application have or will be met.
2. Applicant has met §44-32 – Nonconformance. Without limiting the generality of this finding, the Planning Board also specifically finds that the applicant has demonstrated that:
  - a. The garage relocation is in compliance with the water body setback requirement to the greatest practical extent. The new garage is being moved back to at least 75 ft. from the river, and further relocation eastward would pose a challenge for maintaining driveway access for properties to the south.
3. Based on the information presented by the applicant and in accordance with Sec. 44-44, the Planning Board finds that the proposed use:
  - a. Will maintain safe and healthful conditions;
  - b. Will not result in water pollution, erosion, or sedimentation to surface waters;
  - c. Will adequately provide for the disposal of all wastewater;
  - d. Will not have an adverse impact on spawning grounds, fish, aquatic life, bird, or other wildlife habitat;
  - e. Will conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;
  - f. Will protect archaeological and historic resources as designated in the comprehensive plan;
  - g. Will avoid problems associated with floodplain development and use;
  - h. Is in conformance with the provisions of section 44-35, land use standards.

The approval includes the following conditions:

1. [Standard conditions]
2. The erosion and sediment control best management practices listed in Section 45-412 of the Town Code shall be implemented, as applicable, during any ground disturbance.
3. No later than 20 days after completion of the development, the applicant shall provide postconstruction photographs clearly showing shoreline vegetation on the property and the developed site.
4. If required by DEP, an updated NRPA permit-by-rule (PBR) shall be provided prior to beginning construction.
5. [Other conditions if needed]: \_\_\_\_\_

*Continuance*

Motion to continue the review of PB22-2 – 25 Alden Lane Shoreland Zoning Permit Application – to a future meeting.

- The application is incomplete as prepared. More information is needed on:
  - How the new garage location will change the driveway configuration while preserving access to neighboring properties.

**PB22-2: 25 Alden Lane (Map 1/Lot 36): Shoreland Zoning Permit Application – Garage Replacement**

- What will replace the newly-opened area from removal of the old garage (e.g. vegetation?)
- How the relocation will not result in additional percentage of the property being non-vegetated.
- [As of the time of this report, may change by meeting time.] The shoreland zoning permit application fee has not yet been paid.

*Denial*

Motion to deny PB22-2 – 25 Alden Lane Shoreland Zoning Permit Application – for the following reasons:

*[cite specific site plan review, shoreland zoning, or zoning standards not met]*

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_ [etc.]

\* \* \*

Respectfully submitted,

Jeff Brubaker, AICP  
Town Planner

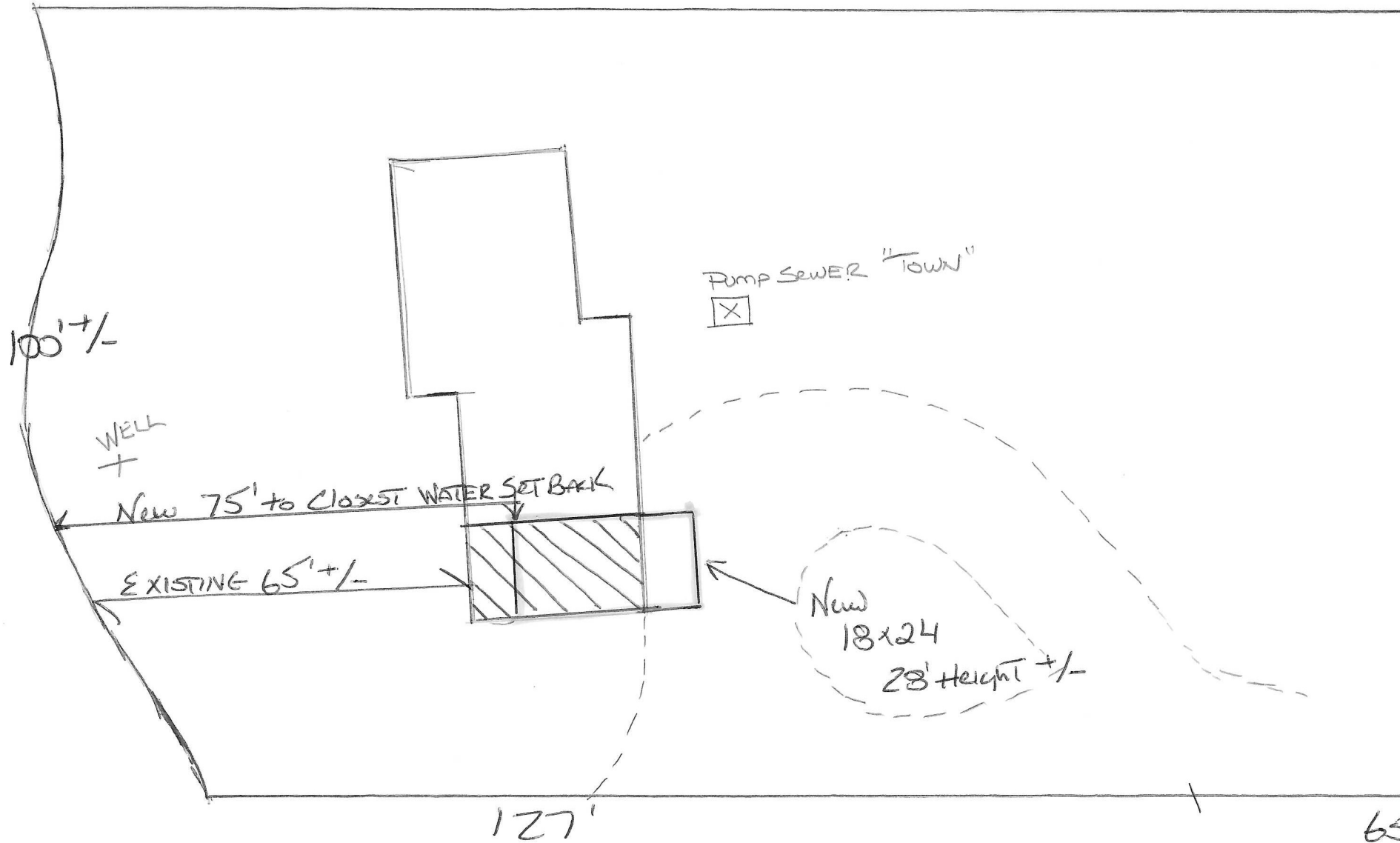


NOT TO SCALE

25 ALDEN LN  
JENNY POLLY DAVIE

Map I-36  
177'

DCQB-DNU-D





# TOWN OF ELIOT MAINE

PLANNING OFFICE

1333 State Road

Eliot ME, 03903

To: Planning Board  
From: Jeff Brubaker, AICP, Town Planner  
Cc: Steve Robinson, Public Works Director  
Shelly Bishop, Code Enforcement Officer  
Date: February 23, 2022 (report date)  
March 1, 2022 (meeting date)  
**Subject: Ordinance amendment update – Erosion & sedimentation control**

## **Erosion & sedimentation control**

Kristie Rabasca, PE, of Integrated Environmental Engineering, Inc. will present to the Planning Board on stormwater (MS4) permitting updates and on the new Erosion & Sedimentation Control (ESC) Model Ordinance, which has been finalized by the Southern Maine Stormwater Working Group (SMSWG) Ordinance Committee after undergoing review by SMSWG's legal counsel. The Model Ordinance is included in your packet. Also included is the ESC ordinance provisions checklist.

On December 7, you reviewed a rough draft of the Model Ordinance. I had previously thought about potential June warrant inclusion for this, but given the time needed to explore how best to integrate the Model Ordinance into the Town Code, the November Town Election is a more reasonable goal. Therefore, I recommend that the PB receive the information, ask questions as needed, but defer further development of the ordinance amendments and a public hearing to the November cycle.

In the interests of time, Kristie's presentation will focus primarily on ESC, with more information on HydroCAD modeling and Low-Impact Design (LID) expected for later this year.

DRAFT Proposed Town Code Amendments of Chapter 11 – Marijuana Establishments; Chapter 33 – Planning and Development; and Chapter 45 – Zoning, Related to Performance Standards for Marijuana Uses

*Draft for Planning Board review, March 1, 2022*

**Short title (DRAFT)**

DRAFT Proposed Town Code Amendments of Chapter 11 – Marijuana Establishments; Chapter 33 – Planning and Development; and Chapter 45 – Zoning, Related to Performance Standards for Marijuana Uses

**Ballot question (DRAFT)**

ARTICLE # \_\_: Shall an Ordinance entitled “Proposed Town Code Amendments of Chapter 11 – Marijuana Establishments; Chapter 33 – Planning and Development; and Chapter 45 – Zoning, Related to Performance Standards for Marijuana Uses” be enacted? This ordinance adds requirements for certain marijuana uses to have in place a wastewater disposal plan and dispose of wastewater in compliance with applicable laws. It rewrites the odor management standard and adds notification and complaint provisions. It requires adult use marijuana retail stores to include a traffic impact assessment in site plan review applications and provide 1 parking space per 100 square feet of retail floor area, which is greater than the standard of 1 parking space per 150 square feet for other retail uses.

**Background and rationale**

These ordinance amendments add new standards to the set of performance standards, in Section 33-190, that must be met by certain adult use and medical marijuana establishments.

If adopted, marijuana cultivation and manufacturing uses would be required to have in place a wastewater disposal plan and dispose of wastewater in compliance with all applicable local, state, and federal laws. These requirements are similar to requirements in state regulations (Adult Use Marijuana Program Rule; 18-691 C.M.R., paragraph 2.4.2(B) and Section 10); adding them to Section 33-190 will provide a more specific basis for local enforcement of improper wastewater discharges.

The amendments rewrite the odor management standard, making clear that marijuana-related odors shall not be perceptible beyond lot lines or by people on abutting properties or public ways. The amendments delete existing paragraph 33-190(4)b and replace it with new subsection 33-190(14). This has the effect of removing the “exterior of the building” as a receptor point for odors – with the property line seen as a more realistic and important receptor point for mitigating odor impacts – but also now requires the demonstration of specific odor management techniques for cultivation and manufacturing uses. (The latter is similar to a provision in Portland, Maine’s code.) The amendments also move existing paragraphs 33-190(4)c and d – regarding mitigation of noxious gases, fumes, and other substances – to new subsection 33-190(14) to keep related odor/emissions provisions in one place. Other related changes: Notification on the odor management standard is required for marijuana establishment license public hearings under Section 11-8, and odor complaints may be considered during license renewal.

DRAFT Proposed Town Code Amendments of Chapter 11 – Marijuana Establishments; Chapter 33 – Planning and Development; and Chapter 45 – Zoning, Related to Performance Standards for Marijuana Uses

The amendments also include a requirement for new marijuana retail stores (or existing marijuana retail stores seeking site plan amendments involving a potential change to trip generation or traffic circulation) to include a traffic impact assessment (TIA) with their site plan review applications. While Section 33-153 already authorizes the Planning Board to require a similar study for any application it believes may have a potentially significant traffic impact, the amendments make a TIA a default requirement for applications for marijuana retail stores, for which the trip generation and trip peaking characteristics are not well known. The amendments would also require that any approval motion include a condition (unless waived by the Planning Board) that the marijuana retail store conduct post-construction traffic counts.

The amendments increase the parking requirement for marijuana retail stores to 1 space per 100 square feet of retail floor area (with a minimum of 10 spaces), which is more spaces than required for other retail uses (1 space per 150 square feet). Since marijuana uses are only allowable in the Commercial-Industrial (C/I) zoning district, marijuana uses are, or could be, located either right on Route 236 or near it on a commercial side street. Inadequate on-site parking spaces could lead to spillover parking near or within the Route 236 right-of-way or side streets in the or informal satellite parking nearby, causing potential safety issues.

**New text in bold underline**

~~Deleted text in strikethrough~~

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

(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.

(b) Upon the filing of a completed application for a marijuana license, 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. **Notices to abutters for new or renewal license applications for marijuana cultivation facilities, medical marijuana cultivation facilities, marijuana products manufacturing facilities, and medical marijuana products manufacturing facilities shall include summary information on odor management standards in Section 33-190.**

(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:

a. An applicant is less than 21 years of age.



DRAFT Proposed Town Code Amendments of Chapter 11 – Marijuana Establishments; Chapter 33 – Planning and Development; and Chapter 45 – Zoning, Related to Performance Standards for Marijuana Uses

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. **This may include a version of the odor complaint log referenced in Section 45-409(b) that redacts the name and address of complainants.**

(T.M. of 11-5-2019(2); T.M. of 6-8-2021(4) , art. 31)

DRAFT Proposed Town Code Amendments of Chapter 11 – Marijuana Establishments; Chapter 33 – Planning and Development; and Chapter 45 – Zoning, Related to Performance Standards for Marijuana Uses

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 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~~ **Section** 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 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 plans;~~ 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.

*[see new subsection below]* ~~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 charecoal filtration systems.~~

*[see new subsection below]* ~~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.~~

*[moved to new subsection below]* ~~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.b.~~ Prior to planning board approval and for the duration of their operation:-

1. ~~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.
2. **All marijuana cultivation facilities, medical marijuana cultivation facilities, marijuana products manufacturing facilities, and medical marijuana products manufacturing facilities shall have in place a plan for disposal of**

**wastewater from the facility. Wastewater generated during the cultivation or manufacturing of marijuana or medical marijuana shall be disposed of in compliance with all applicable local, state, and federal laws.**

**f.c.** 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;
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.

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) Applications for new marijuana retail stores (or existing marijuana retail stores seeking site plan amendments involving a potential change to trip generation or traffic circulation) shall include a traffic impact assessment that addresses, at minimum, Sections 33-153 and 45-406. Unless waived by the Planning Board, any approval motion shall include a condition requiring the applicant to collect turning movement counts for all site driveways for, at minimum, one full weekday and one full weekend day that the marijuana retail store is open, and submit such data to the Town Planner. Such count data shall be disaggregated by the hour, or a shorter time period, to show peaking characteristics. Nothing in this paragraph is intended to prevent the Planning Board from requiring traffic information or otherwise exercising its review authority under the aforementioned sections when reviewing applications for other marijuana establishments or medical marijuana establishments.**

~~(10)~~**(11)** 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)~~**(12)** 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 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)~~**(13)** 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.

**(14) Management of odors and emissions.**

- a. **Marijuana establishments and medical marijuana establishments shall provide odor control measures so that marijuana-related odor generated on site is mitigated at the property line of the lot containing the marijuana-related use and not perceptible by people on abutting properties or traveling on streets, town ways, or public ways.**
- b. **Applications for marijuana cultivation facilities, medical marijuana cultivation facilities, marijuana products manufacturing facilities, and medical marijuana products manufacturing facilities must demonstrate appropriate measures, such as carbon filtration, ventilation and exhaust systems, facility plans, or other additional practices adequate to mitigate odors for the scale of operations for the uses proposed.**
- c. **Marijuana establishments and medical marijuana establishments not listed in subparagraph b. may either demonstrate compliance with subparagraph b. or demonstrate that the nature of their operation will not, under normal circumstances, cause marijuana-related odor to be perceptible by people on abutting properties or traveling on streets, town ways, or public ways.**
- d. **Noxious gases and fumes. Marijuana products manufacturing facilities, marijuana testing facilities, medical marijuana products 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 production or testing.**
- e. **Sufficient measures and means of preventing smoke, debris, dust, fluids and other substances from exiting a marijuana establishment or medical marijuana establishment must be provided at all times.**

(13)(15) 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)

DRAFT Proposed Town Code Amendments of Chapter 11 – Marijuana Establishments; Chapter 33 – Planning and Development; and Chapter 45 – Zoning, Related to Performance Standards for Marijuana Uses

Sec. 45-409. - Odor.

**(a)** No nonfarming land use or establishment shall be permitted to produce offensive or harmful odors perceptible beyond their lot lines, measured either at ground or habitable elevation.

**(b) In addition to subsection (a), marijuana establishments and medical marijuana establishments are subject to the odor management requirements in Section 33-190(14). For the purpose of this section, marijuana cultivation facilities and medical marijuana cultivation facilities shall be considered nonfarming land uses or establishments. Any substantiated complaints received by the Code Enforcement Officer pursuant to Section 33-190(14) and division 2 of article III of this chapter shall be logged, and such log may be presented to the Select Board in their review of a license renewal application pursuant to Section 11-8(e).**

DRAFT Proposed Town Code Amendments of Chapter 11 – Marijuana Establishments; Chapter 33 – Planning and Development; and Chapter 45 – Zoning, Related to Performance Standards for Marijuana Uses

Sec. 45-495. Schedule of minimum required offstreet parking spaces.

	Use	Standards
(1)	Dwelling units	alternately, 2 for the first unit, 3 for the second unit, 2 for the third unit, and so on
(2)	Lodging business and motels	1 space for each sleeping room and for each person anticipated to be employed on the largest shift
(3)	Home occupation	1 for each employee and customer up to 10 maximum, not counting residential use
(4)	Camper park	1 space per site
(5)	Takeout restaurant	minimum 25 parking spaces plus 1 space for each 50 square feet (or fraction thereof) of floor space in excess of 900 square feet, and 1 space for every exterior table
(6)	Other restaurants or places serving food	1 space for each 3 seats, permanent or otherwise
(7)	Wholesale or retail sales, or service establishment	1 space for each 150 square feet of retail floor area; <b>1 space for each 100 square feet of retail floor area (minimum 10 spaces) for marijuana retail stores</b>
(8)	Automobile, truck and tractor repair and filling stations	1 parking space for each regular employee plus 1 space for each 50 square feet of floor area used for service work
(9)	Public building and professional offices (excluding medical and dental offices), nonprofit medical marijuana dispensaries	1 parking space for each 200 square feet, or major fraction thereof, of floor area exclusive of bulk storage areas
(10)	Medical and dental offices	7 parking spaces for each physician, dentist or other medical practitioner
(11)	Commercial and industrial uses not specifically enumerated	1 space for each person employed or anticipated to be employed on the largest shift
(12)	Schools	Day nursery—2 parking spaces for each nursery room plus 1 space for each adult instructor  Elementary and junior high schools—1 parking space for each adult employee plus 15 parking spaces for each 100 students, or major fraction thereof, of total enrollment
(13)	Theaters, auditoriums, churches, arenas, and libraries	1 parking space for every 4 seats, or for every 100 square feet of assemblage space if no fixed seats

DRAFT Proposed Town Code Amendments of Chapter 11 – Marijuana Establishments; Chapter 33 – Planning and Development; and Chapter 45 – Zoning, Related to Performance Standards for Marijuana Uses

(14)	Hospital, sanitariums or nursing homes	1 space for each 500 square feet (or major fraction thereof) of floor area, exclusive of basement
(15)	Adequate spaces shall be provided to accommodate customers, patrons, and employees for permitted uses not listed above	

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 333.3); T.M. of 6-18-2011(6))

DRAFT

**DRAFT amendments of Chapter 33 relating to site plan review content requirements and exempting home business Site Plan Review applications from certain content requirements**

*Draft for Planning Board review, March 1, 2022*

**Short title (DRAFT)**

Proposed Town Code Amendments of Chapter 33 – Planning and Development, Related to Site Plan Review Content Requirements

**Ballot question (DRAFT)**

ARTICLE #\_\_: Shall an Ordinance entitled “Proposed Town Code Amendments of Chapter 33 – Planning and Development, Related to Site Plan Review Content Requirements” be enacted? This ordinance adds specific content requirements and clarifications for Site Plan Review applications, relating to ability and standing to develop, and building elevation drawings and heights, and explicitly exempting home business applications from certain inapplicable content requirements.

**Background and rationale (DRAFT)**

This ordinance updates Section 33-106, renaming it from “Affidavit of ownership” to “Ability and standing to develop” and clarifying what documentation is needed from an applicant to show that they have the legal ability to make the improvements to a site as may be approved by the Planning Board. Clarification is added for the types of ownership/lease documents and options that may be necessary or sufficient. It clarifies the limits of the Planning Board’s ability to verify that standing. It adds a requirement for building elevation drawings and building heights to allow the Planning Board to better review proposals against dimensional standards and the aesthetic aspects of proposals. Finally, it offers more explicit flexibility for home business application content and what is or is not assumed to be needed from those applications.



**DRAFT amendments of Chapter 33 relating to site plan review content requirements and exempting home business Site Plan Review applications from certain content requirements**

Sec. 33-106. - ~~Affidavit of ownership.~~ **Ability and standing to develop**

~~The developer shall submit with the sketch plan application an affidavit of ownership or valid option of at least 90 days. The affidavit shall include the acquisition date of the property, book and page number of the recorded conveyance legal and contract owners of the property, and, if any corporations are involved, a complete list of all directors, officers and stockholders owning more than five percent of any class of stock in each corporation. The developer shall also provide the name, address and telephone number of an authorized agent who shall receive all notices required by this article.~~

**The applicant shall submit with the sketch plan application documents and information sufficient to show that, if their application is approved, they have the legal ability and standing to construct the development as approved, in compliance with the Town Code and any other applicable laws. As applicable, such documentation shall include, but shall not necessarily be limited to:**

1. **A deed, recorded in the York County Registry of Deeds, conveying the property to the current property owner (required)**
2. **A purchase and sale agreement, or similar purchase option, valid for at least 90 days from the date of receipt of the application, between the property owner and the applicant, or the applicant's lessor**
3. **A lease or rental agreement or valid lease option**
4. **Any easement or right-of-way agreements applicable to the development**
5. **If any corporations are involved (for example S, C, and non-profit corporations; Limited Liability Companies; sole proprietorships; and partnerships), a complete list of all directors, officers and stockholders owning more than five percent of any class of stock in each corporation.**
6. **If requested by the Planning Board, a chart summarizing ownership or lease agreements and connections between individuals and business entities involved**
7. **Similar documentation as listed above**

**The applicant shall also provide the name and contact information for an authorized agent who may represent them for Planning Board review and permitting.**

**The Planning Board shall conduct a prima facie review of these documents as a basic check of ability and standing to develop or implement an approved application. It is beyond the scope and qualifications of the Planning Board to conduct an exhaustive title search or legal research related to these documents. Applicants are advised to conduct due diligence in researching private restrictions or covenants that may affect their ability to develop or implement an approved application. The Planning Board's review may be neutral with**

**DRAFT amendments of Chapter 33 relating to site plan review content requirements and exempting home business Site Plan Review applications from certain content requirements**

**respect to such private restrictions or covenants, unless they relate to applicable requirements in the Town's land use regulations.**

Sec. 33-127. Contents; required information.

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) A soil erosion and sediment control plan.
- (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.

**DRAFT amendments of Chapter 33 relating to site plan review content requirements and exempting home business Site Plan Review applications from certain content requirements**

- (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. renumber after this Elevation drawings of each proposed building, structure, or addition including dimensions and architectural features**
  - b. All existing and proposed setback dimensions.
  - c. The size, location and direction and intensity of illumination of all major outdoor lighting apparatus and signs.
  - d. The type, size and location of all incineration devices.
  - e. The type, size and location of all machinery likely to generate appreciable noise beyond the lot lines.
  - f. 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.
  - g. The location, type and size of all curbs, sidewalks, driveways, fences, retaining walls, parking space areas, and the layouts together with all dimensions.
  - h. All landscaped areas, fencing and size and type of plant material proposed to be retained or planted.
  - i. 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.
  - j. 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.

**DRAFT amendments of Chapter 33 relating to site plan review content requirements and exempting home business Site Plan Review applications from certain content requirements**

**(20) For Site Plan Review of home business applications, the requirement for content clearly not applicable to the review is presumed waived, unless the Planning Board approves a motion to require such content. This paragraph shall not exempt the home business applicant from providing any information necessary for the Planning Board to determine compliance with Section 45-456.1.**

(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))

Cross reference(s)—Landscaping, § 33-175; landscape requirements under the zoning regulations, § 45-413.

<b>2022-27 MS4 General Permit Ordinance Change Checklist - Option 1 embed standards in your ordinance</b>	Date of Checklist: 6/6/2021	
<p><b>Purpose of Checklist:</b> This checklist was developed by the Southern Maine Stormwater Working Group and the Interlocal Stormwater Working Group to assist Planners and Planning Boards in updating ordinances to reflect the requirements of the 2022 General Permit (GP) for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems (MS4) dated 10/15/2020, and to consider related optional recommendations from the 2020 Maine Climate Council (MCC) and the 2017 Maine Municipal Climate Adaptation Series (MCAS).</p>		
<b>2022-27 MS4 General Permit - MCM 4 - Construction Site Stormwater Runoff Control Requirements for "ordinance or other regulatory mechanism"</b>	<b>Existing Municipal Ordinance or Policy Requirements (provide citation either summary or quote of existing requirement)</b>	<b>Recommended Changes or additions</b>
<p><b>MS4 Permittee must implement:</b> "An ordinance or other regulatory mechanism that requires the use of erosion and sediment control best management practices (BMPs) at construction sites consistent with the minimum standards outlined in Appendix C, Erosion and Sedimentation Control, Inspections and Maintenance and Housekeeping of this GP. Also see the Department's website for a guidance document entitled Maine Erosion and Sediment Control Practices Field Guide For Contractors to assist contractors and municipalities in developing BMPs for the ordinance or other regulatory mechanism. Permittees who have an existing ordinance must evaluate the ordinance and update it as needed within one (1) year of the effective date of this GP (7/1/2023) to provide the permittee with the necessary enforcement authority. Those permittee's without an existing ordinance must develop an ordinance within one (1) year (7/1/2023) of the effective date of this GP and have an approved ordinance in place with the necessary enforcement authority within two (2) years (7/1/2024) of the effective date of this GP."</p>		
<p><b>Threshold:</b> Erosion and Sediment Control BMPs must be used at construction sites which disturb one or more acres of land, and at smaller sites that are part of a larger common plan of development or sale that would disturb one acre or more.</p>		
<p><b>MCAS (Site Plan Review) Recommendation:</b> Include a smaller threshold: any site which results in ____ square feet of new impervious cover. (MCAS recommends using 2,000 square feet within a 3-year period).</p>		
<p><b>MCAS (Site Plan Review) Recommendation:</b> Require that the Erosion and Sediment Control Plan be prepared by a Maine-licensed professional engineer or CPESC and implemented in accordance with Maine Erosion and Sediment Control BMPs, Maine Department of Environmental Protection, (October 2016 or most current version), that describes and shows the locations, elevations, installation schedule and construction or planting details of all proposed pre- and post-construction erosion and sediment control measures. (Note municipalities may want to replace requirement to use a PE or CPESC with some standard BMPs for small sites).</p> <p>Design all BMPs in accordance with precipitation data from the Northeast Regional Climate Center website (<a href="http://precip.eas.cornell.edu">http://precip.eas.cornell.edu</a>), Extreme Precipitation Tables. Maine DEP Chapter 500 requires use of these data tables.</p> <p>OR</p> <p>Design all BMPs in accordance with precipitation data from the NOAA Atlas 14 tables (<a href="https://hdsc.nws.noaa.gov/hdsc/pfds/pfds_map_cont.html">https://hdsc.nws.noaa.gov/hdsc/pfds/pfds_map_cont.html</a>). MCAS recommends use of NOAA Atlas 14 precipitation data.</p>		

2022-27 MS4 General Permit - MCM 4 - Construction Site Stormwater Runoff Control Requirements for " <i>ordinance or other regulatory mechanism</i> "	Existing Municipal Ordinance or Policy Requirements (provide citation either summary or quote of existing requirement)	Recommended Changes or additions





2022-27 MS4 General Permit - MCM 4 - Construction Site Stormwater Runoff Control Requirements for "ordinance or other regulatory mechanism"	Existing Municipal Ordinance or Policy Requirements (provide citation either summary or quote of existing requirement)	Recommended Changes or additions
<b>MS4 REQUIRED APPENDIX C: EROSION &amp; SEDIMENT CONTROL</b>		
<p>Erosion and sediment control measures must be in place before construction activity begins. Measures must remain in place and functional until the site is permanently stabilized. Adequate and timely maintenance and temporary and permanent stabilization measures must be taken.</p> <p>Applicant shall request a pre-construction meeting 10 days before construction activity begins. (added 10/26/2021)</p> <p>Applicant shall provide notice of permanent stabilization to allow for final municipal inspection. (added 10/26/2021)</p>		
<p><b>1. Pollution Prevention:</b> Minimize disturbed areas and protect natural downgradient buffer areas, <b>and any areas where stormwater may flow off-site</b> to the extent practicable. Control stormwater volume and velocity within the site to minimize soil erosion. Minimize the disturbance of steep slopes. Control stormwater discharges, including both peak flow rates and volume, 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.</p> <p>Whenever practicable, no disturbance activities should take place within 50 feet of any protected natural resource. <del>If disturbance activities take place between 30 feet and 50 feet of any protected natural resource, and stormwater discharges through the disturbed areas toward the protected natural resource, perimeter erosion controls must be doubled. If disturbance activities take place less than 30 feet from any protected natural resource, and stormwater discharges through the disturbed areas toward the protected natural resource, perimeter erosion controls must be doubled and disturbed areas must be temporarily or permanently stabilized within 7 days, or before the next rain event, whichever comes sooner.</del></p> <p>If it is not practicable to maintain the 50-foot buffer of no disturbance, the ESC Plan must include redundant (at least two) perimeter control measures that are appropriate for the soil and slope.</p>		
<p><b>2. Sediment barriers:</b> 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 should be installed downgradient of soil or sediment stockpiles and stormwater <b>must be</b> prevented from running onto the stockpile. Maintain the sediment barriers 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, you must install and maintain protection measures that remove sediment from the discharge. <b>Storm drain inlet protection must include effective curb inlet or "back throat" protection, where applicable.</b></p>		
<p><b>3. Stabilized construction entrance:</b> Prior to construction, properly install a stabilized construction entrance (SCE) at all points of egress from the site. The SCE is <b>typically</b> a stabilized pad of aggregate, underlain by a geotextile filter fabric, <b>or an engineered track out control mat which has been approved by Maine DEP; which is</b> used to prevent traffic from tracking material away from the site onto public ROWs. Maintain the SCE until all disturbed areas are stabilized. <b>If an engineered track out control mat has been approved by Maine DEP, provide proof of this with the Plan or application.</b> (added 10/26/2021)</p>		
<p><b>4. Temporary stabilization:</b> Within 7 days of the cessation of construction activities in an area that will not be worked for more than 7 days, stabilize any exposed soil with mulch, or other non-erodible cover. Stabilize areas within 75 feet of a wetland or waterbody within 48 hours of the initial disturbance of the soil or prior to any storm event, whichever comes first.</p>		

2022-27 MS4 General Permit - MCM 4 - Construction Site Stormwater Runoff Control Requirements for "ordinance or other regulatory mechanism"	Existing Municipal Ordinance or Policy Requirements (provide citation either summary or quote of existing requirement)	Recommended Changes or additions
<p><b>5. Removal of temporary measures:</b> Remove any temporary control measures, such as silt fence, within 30 days after permanent stabilization is attained. Remove any accumulated sediments and stabilize.</p>		
<p><b>6. Permanent stabilization:</b> If the area will not be worked for more than one year or has been brought to final grade, then permanently stabilize the area 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, select the proper vegetation for the light, moisture, and soil conditions; amend areas of disturbed subsoils with topsoil, compost, or fertilizers; protect seeded areas with mulch or, if necessary, erosion control blankets; and schedule sodding, planting, and seeding so 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:</p> <p>a. 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.</p> <p>b. 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.</p> <p>c. Permanent mulch. For mulched areas, permanent mulching means total coverage of the exposed area with an approved mulch material. Erosion Control Mix may be used as mulch for permanent stabilization according to the approved application rates and limitations.</p> <p>d. 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.</p> <p>e. 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</p> <p>f. 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.</p>		
<p><b>7. Winter construction:</b> "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 additional measures and restrictions.</p> <p>a. Site stabilization: For winter stabilization, hay mulch is 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.</p> <p>b. Sediment barriers: All areas within 75 feet of a protected natural resource must be protected with a double row of sediment barriers.</p> <p>c. Ditch: All vegetated ditch lines that have not been stabilized by November 1, or will be worked during the winter construction period, must be stabilized with an appropriate stone lining backed by an appropriate gravel bed or geotextile unless specifically released from this standard by the Department. If release from Maine DEP has been granted, provide proof of this with the Plan or application.</p> <p>d. 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.</p>		

2022-27 MS4 General Permit - MCM 4 - Construction Site Stormwater Runoff Control Requirements for "ordinance or other regulatory mechanism"	Existing Municipal Ordinance or Policy Requirements (provide citation either summary or quote of existing requirement)	Recommended Changes or additions
<p><b>8. Stormwater channels:</b> Each channel should 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 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.</p>		
<p><b>9. Sediment basins:</b> 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 ½ of the design capacity of the basin. <i>Clearly visible staking must be installed with marks showing the elevation of 1/2 design capacity for easier inspection.</i></p> <p>The use of cationic treatment chemicals, 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 Department of Environmental Protection is provided.</p>		
<p>10. Phasing Plan requirements: No phasing plan is required if contractor will limit disturbance to a maximum of 5 acres of disturbance across the entire project at any time. If the site will result in more than 5 acres of disturbance at any one time, the contractor will provide a phasing plan showing:</p> <ul style="list-style-type: none"> <li>a. the initial 5 acre area to be disturbed</li> <li>b. which portions of the initial disturbance will be stabilized, and what temporary or permanent stabilization methods will be used</li> <li>c. which areas will be subsequently disturbed and what temporary or permanent stabilization methods will be used.</li> <li>d. each phase of disturbance and stabilization will clearly show the total areas in square feet or acres such that the 5-acre disturbance limit at any one time is met throughout the entire project.</li> </ul>		
<p><b>MS4 REQUIRED APPENDIX C: INSPECTION &amp; MAINTENANCE</b></p>		

2022-27 MS4 General Permit - MCM 4 - Construction Site Stormwater Runoff Control Requirements for "ordinance or other regulatory mechanism"	Existing Municipal Ordinance or Policy Requirements (provide citation either summary or quote of existing requirement)	Recommended Changes or additions
<p><b>1. During construction</b></p> <p><b>a. Inspection &amp; corrective action:</b> Inspect disturbed and impervious areas, erosion control measures, materials storage areas that are exposed to precipitation, and locations where vehicles enter or exit the site. Inspect these areas 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 person with knowledge of erosion and stormwater control, including the standards and conditions in the permit, shall conduct the inspections. (Submittal requirements shall include example inspection form to be used by applicant - added 10/26/2021).</p> <p><b>b. Maintenance:</b> If best management practices (BMPs) need to be repaired or enhanced, the repair work should be initiated upon discovery of the problem but no later than the end of the next workday. If additional BMPs or significant repair of BMPs are necessary, implementation must be completed within 7 calendar days and prior to any storm event (rainfall). All measures must be maintained in effective operating condition until areas are permanently stabilized.</p> <p><b>c. Documentation:</b> Keep a log (report) summarizing the inspections and any corrective action taken. 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 BMPs that need maintenance, BMPs that failed to operate as designed or proved inadequate for a particular location, and location(s) where additional BMPs are needed. For each BMP requiring maintenance, BMP needing replacement, and location needing additional BMPs, note in the log the corrective action taken and when it was taken. Maintain records for at least three years from the completion of permanent stabilization.</p>		
<p><b>MS4 REQUIRED APPENDIX C: HOUSEKEEPING</b></p>		
<p><b>1. Spill prevention:</b> Controls must be used to prevent pollutants from construction and waste materials stored on site to enter 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> <p><b>NOTE: any spill of toxics/HazMat's must be reported to DEP.</b></p>		
<p><b>2. Groundwater protection:</b> 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. Any project proposing infiltration of stormwater must provide adequate pre-treatment of stormwater prior to discharge of stormwater to the infiltration area, or provide for treatment within the infiltration area, in order to prevent the accumulation of fines, reduction in infiltration rate, and consequent flooding and destabilization.</p>		
<p><b>3. Fugitive sediment &amp; dust:</b> 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 (SCE) should be included to minimize tracking of mud and sediment. If off-site tracking occurs, public roads should 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, should wet down unpaved access roads once a week or more frequently as needed with a water additive to suppress fugitive sediment and dust.</p>		

2022-27 MS4 General Permit - MCM 4 - Construction Site Stormwater Runoff Control Requirements for "ordinance or other regulatory mechanism"	Existing Municipal Ordinance or Policy Requirements (provide citation either summary or quote of existing requirement)	Recommended Changes or additions
<p><b>4. Debris &amp; other materials:</b> 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. <a href="#">Sediment generated by concrete or mortar mixing, brick cutting &amp; 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 should be done on vegetated areas whenever possible and away from drainage structures and water resources.</a></p> <p><b>NOTE: may require compliance with other DEP provisions (hazmat, solid waste, oil conveyance, etc.)</b></p>		
<p><b>5. Excavation dewatering:</b> Excavation de-watering 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 cofferdam sedimentatin basin. Avoid allowing the water to flow over disturbed areas of the site. <a href="#">If the Maine DEP has approved equivalent measures, provide proof of approval. Note that discharge of excavation de-water fluids from the site must be visually clear (no visible suspended or settleable solids).</a></p> <p><b>NOTE: refer to dewatering controls in DEP ESC BMP guidance documents</b></p>		
<p><b>6. Authorized Non-SW discharges:</b> Identify and prevent contamination by non-stormwater discharges. Where allowed non-stormwater discharges exist, they must be identified and steps should 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:</p> <ul style="list-style-type: none"> <li>a. Discharges from firefighting activity;</li> <li>b. Hydrant flushing <a href="#">if dechlorinated to 0.05 mg/l or less</a></li> <li>c. Vehicle wash water if detergents are not used and washing is limited to the exterior of vehicles (engine, undercarriage and transmission washing is prohibited);</li> <li>d. Dust control runoff if it does not cause erosion</li> <li>e. Routine external building washdown, not including surface paint removal, that does not involve detergents;</li> <li>f. 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;</li> <li>g. Uncontaminated air conditioning or compressor condensate</li> <li>h. Uncontaminated groundwater or spring water</li> <li>i. Foundation or footer drain-water where flows are not contaminated</li> <li>j. Uncontaminated excavation dewatering per item 5 Excavation Dewatering</li> <li>k. Potable water including waterline flushings</li> <li>l. Landscape irrigation</li> </ul>		<p>There is some overlap with the Non-Stormwater Discharge Ordinance here, but that list needs to be updated to include the following missing items:</p> <ul style="list-style-type: none"> <li>c. Vehicle wash water w/out detergents and no engine/undercarriage</li> <li>d. Dust control per (C)(3)</li> <li>e. External building washdown w/out detergents</li> <li>j. Uncontaminated excavation dewatering per (C)(5)</li> </ul> <p>or the full list should be repeated for the construction standards with a reference to the Non-Stormwater Discharge Ordinance.</p>
<p><b>7. Unauthorized non-SW discharges:</b> following discharges are prohibited</p> <ul style="list-style-type: none"> <li>a. Wastewater from the washout or cleanout of concrete, stucco, paint, form release oils, curing compounds or other construction materials</li> <li>b. Fuels, oils or other pollutants used in vehicle and equipment operation and maintenance;</li> <li>c. Soaps, solvents, or detergents used in vehicle and equipment washing; and</li> <li>d. Toxic or hazardous substances from a spill or other release.</li> </ul>		<p>These items are covered by the NSDO, but may want to explicitly list these out as prohibited by construction operations.</p>

2022-27 MS4 General Permit - MCM 4 - Construction Site Stormwater Runoff Control Requirements for "ordinance or other regulatory mechanism"	Existing Municipal Ordinance or Policy Requirements (provide citation either summary or quote of existing requirement)	Recommended Changes or additions
<p><b>8. Washout from concrete, stucco, paint, curing compounds or other construction materials:</b> If washout/cleanout is to be completed on Site, a designated area(s) shall be established and marked on the Erosion and Sediment 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. (added 2/8/2022)</p>		
<p><b>9. Additional requirements:</b> may be required on site-specific basis</p>		
<p><b>Additional Ordinance related Requirements</b></p>		
<p><b>MS4 - MCM 4 4.a.iv:</b> Sediment and Erosion Control Plan must include waste control procedures for: discarded building materials, concrete washout, chemicals, litter &amp; sanitary waste</p>		<p>These items are already listed in items 1 and 7 above.</p>
<p><b>MS4 - MCM 5 Post Construction Stormwater Ordinance</b> must require that the owner or operator of a post construction BMP provide the permittee with an annual report completed by a qualified inspector documenting that all BMPs are adequately maintained and functioning as intended.</p>		
<p><b>MS4 - MCM 5 Post Construction Stormwater Ordinance</b> - must require that if a post construction BMP needs maintenance, the owner or operator must document the deficiency and either correct it within 60 days of discovery or establish an expeditious schedule to correct it.</p>		
<p><b>MS4 Common audit finding:</b> Urbanized Area Definition should reference the cumulative Urbanized Area defined by the 2000 and 2010 Census.</p>		
<p><b>Additional non-ordinance related MCM4 Requirements</b></p>		
<p><b>4.a.ii:</b> site plan review procedures incorporating WQ impacts, EC, waste storage and ability for public comment</p>		
<p><b>4.a.iii:</b> site developer/operator notification procedures for MCGP &amp; Ch500 registration</p>		
<p><b>4.a.v:</b> construction activity documentation for 1ac or more disturbance</p> <p>a. Written site inspection &amp; enforcement procedures of ESC BMPs with clearly defined responsibilities for inspection &amp; enforcement which must include imposition of sanctions to ensure compliance.</p> <p>b. Inspections:</p> <p>i. Min 3 inspections during active earth-moving construction phase</p> <p>ii. Min 1 inspection annually until project completion</p> <p>iii. 1 of 3 inspections must be at project completion to verify permanent stabilization &amp; removal of all temporary ESC BMPs</p> <p>iv. Documentation of inspections, enforcement actions &amp; corrective actions</p>		
<p>Credits: This checklist was prepared by SMPDC, CCSWCD, and Integrated Environmental Engineering, Inc. Under award CZM NA20NOS4190064 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.</p>		





# TOWN OF ELIOT MAINE

PLANNING OFFICE

1333 State Road

Eliot ME, 03903

To: Planning Board  
From: Jeff Brubaker, AICP, Town Planner  
Cc: Steve Robinson, Public Works Director  
Shelly Bishop, Code Enforcement Officer  
Date: February 23, 2022 (report date)  
March 1, 2022 (meeting date)  
**Subject: Ordinance amendment update – Erosion & sedimentation control**

## **Erosion & sedimentation control**

Kristie Rabasca, PE, of Integrated Environmental Engineering, Inc. will present to the Planning Board on stormwater (MS4) permitting updates and on the new Erosion & Sedimentation Control (ESC) Model Ordinance, which has been finalized by the Southern Maine Stormwater Working Group (SMSWG) Ordinance Committee after undergoing review by SMSWG's legal counsel. The Model Ordinance is included in your packet. Also included is the ESC ordinance provisions checklist.

On December 7, you reviewed a rough draft of the Model Ordinance. I had previously thought about potential June warrant inclusion for this, but given the time needed to explore how best to integrate the Model Ordinance into the Town Code, the November Town Election is a more reasonable goal. Therefore, I recommend that the PB receive the information, ask questions as needed, but defer further development of the ordinance amendments and a public hearing to the November cycle.

In the interests of time, Kristie's presentation will focus primarily on ESC, with more information on HydroCAD modeling and Low-Impact Design (LID) expected for later this year.

### Notes for Future Adopters

Elements required for MS4 compliance are in black text – this text should not be modified without careful consideration of 2022 MS4 General Permit.

*Optional elements incorporating Maine Climate Council Recommendations or items more stringent than Chapter 500 are shown in blue italicized text. Municipalities may or may not incorporate these elements as they wish.*

Much of the text is standard ordinance language and is shown in green. Municipalities may modify this to conform to their own ordinances and procedures.

Some sections of this model ordinance contain placeholders (underlined) for municipalities to fill in, such as municipal code references or the Enforcement Authority for the ordinance.

Comments are provided in the margins for better understanding (In the document ribbon, under the Review tab, select comments from the “Show Markup” pulldown menu).

# Maine Model Ordinance for Erosion and Sedimentation Control at Construction Sites

2/20/2022 Final



Credits: This model ordinance was prepared by SMPDC, CCSWCD, and Integrated Environmental Engineering, Inc. under award CZM NA20NOS4190064 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.

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## Section 1 Purpose

The purpose of this Ordinance 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 2 Definitions

**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, or property to biological productivity, diversity, or stability, or may unreasonably interfere with the enjoyment of life or property, including outdoor recreation.

**Erosion and Sedimentation Control Best Management Practices (Erosion and Sedimentation Control BMPs)** - 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 Site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

**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 \_\_\_\_\_ of the Municipality’s code of ordinances.

**Construction Activity** – Means any activity on a Parcel 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 located within the Municipality’s Urbanized Area and not including groundwater.

**Disturbed Area** - Means all land areas of a Parcel 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.

**Enforcement Authority** – The \_\_\_\_\_, and their designee, are authorized to enforce this Ordinance. The use of Enforcement Authority in this Ordinance 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.

**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.

**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 streets, 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 \_\_\_\_\_.

**Parcel** - 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 projects.

**Person** - 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 M.R.S. §480-B.

**Qualified 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 Engineer with at least two years' experience in designing Erosion and Sedimentation Control BMPs.

**Regulated Small MS4** - Means any Small MS4 authorized by the most recent, in-force MS4 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 an Urbanized Area.

**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).

**Site** - Means the portion(s) of a Parcel upon which Construction Activity subject to this Ordinance is located.

**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** – Means Waters of the State as defined in 38 M.R.S. §361-A (7).

## Section 3 Applicability

This Ordinance applies to Construction Activity on a Parcel or Common Plan of Development or Sale commencing after the effective date of this Ordinance, with stormwater Discharges to the Regulated Small MS4 within the Municipality's Urbanized Area, 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, or
- c. 2,000 square feet of new Impervious Area regardless of total Disturbed Area.

## Section 4 Procedure

### 4.1 Erosion and Sedimentation Control Plan Required

No Person shall commence Construction Activity subject to the Applicability Section of this Ordinance without first preparing and obtaining approval for an Erosion and Sedimentation Control Plan in accordance with this Ordinance.

### 4.2 Submission

When Construction Activity is subject to subdivision, site plan, or other review under the Municipality's planning, zoning, and land use ordinances which includes a review for erosion and



sedimentation control, an Erosion and Sedimentation Control Plan meeting these requirements shall be submitted to the 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.

#### 4.3 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 Municipality's planning, zoning, and land use ordinances by the Permitting Authority, in accordance with subsection 4.2 above. The Enforcement Authority and the 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 Permitting Authority, as appropriate, will review the Erosion and Sedimentation Control Plan for compliance with the standards of Section 5, Section 6, and Appendix 1 of this Ordinance 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 Permitting Authority finds is in compliance with the standards of Section 5, Section 6, and Appendix 1 of this Ordinance, the Enforcement Authority or Permitting Authority shall provide written confirmation to the applicant. The Enforcement Authority or 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 Municipality's Zoning Ordinance; appeals from decisions of the 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 the Municipality's subdivision or site plan ordinance, as appropriate.

#### 4.4 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 earth work contractor must also attend the pre-construction meeting. Meeting minutes must be prepared by the Municipality's representative and distributed to all attendees and the Municipality's Planner.

#### 4.5 Compliance with Requirements

The applicant shall implement and comply with the Erosion and Sedimentation Control Plan as approved throughout all phases of Construction Activity.

#### 4.6 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 7 of this Ordinance.

## Section 5 Submission Requirements

### 5.1 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:

- Applicant,
- Qualified Professional, and
- Contractor (if applicable)

### 5.2 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:

- Parcel boundaries,
- Locations of Protected Natural Resources,
- Locations of all potential sources of authorized and unauthorized non-stormwater discharges,
- Locations of all Erosion and Sedimentation Control BMPs to be used,
- Topography for Site pre-and post-construction conditions as 2-foot elevation contours,
- Details for all Erosion and Sedimentation Control BMPs to be used,
- 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),
- Erosion and Sedimentation Control BMPs Notes with construction standards,
- A narrative description of the timing, inspections, and Erosion and Sedimentation Control BMPs to be used,
- Example inspection form,
- Dewatering plan if necessary, and
- 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 6 Requirements and Standards

The Enforcement Authority shall determine if the following standards are met in accordance with Appendix 1.

- a. **Qualified Professional.** The Erosion and Sedimentation Control Plan has been prepared by a Qualified Professional.

- b. **Timing of Installation and Maintenance.** The Erosion and Sedimentation Control Plan requires that Erosion and Sedimentation Control BMPs shall be in place before construction begins, additional measures phased in if phasing is used, and shall be maintained until permanent stabilization is achieved.
- 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 must include 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 7 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.

## Section 8 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 Ordinance. Whenever the Enforcement Authority believes that a Person has violated this Ordinance, the Enforcement Authority may enforce this Ordinance in accordance with 30-A M.R.S. § 4452 and this Section.

### Section 8.1 Right of Entry

In order to determine compliance with this Ordinance, 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 Ordinance.

### Section 8.2 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:

- a. The abatement of violations and the cessation of practices or operations in violation of this Ordinance;
- b. 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;
- c. The payment of fines, of the Municipality's remediation costs and of the Municipality's reasonable administrative costs and attorneys' fees and costs;
- d. 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.

### Section 8.3 Stop Work Notice

The Enforcement Authority may issue a Stop Work Notice whenever:

- a. A Person has not acted on a notice of violation issued pursuant to this Ordinance within the time set forth in the notice, or
- b. A Person subject to the applicability section of this Ordinance 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.

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.

### Section 8.4 Penalties/Fines/Injunctive Relief

Any Person who violates this Ordinance, 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 Municipality'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 Ordinance 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 Municipality for enforcement of violation(s) of Federal and State environmental laws and regulations caused by or related to that Person's violation of this Ordinance; this responsibility shall be in addition to any penalties, fines, or injunctive relief imposed under this Section.

#### Section 8.5 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.

#### Section 8.6 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 Zoning Board of Appeals. 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.

#### Section 8.7 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 Municipality's attorney file an enforcement action in a Maine court of competent jurisdiction under Rule 80K of the Maine Rules of Civil Procedure.

### **Section 9 Severability and Conflicts**

The provisions of this Ordinance are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any Person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions, clauses, sentences, or paragraphs or application of this Ordinance.

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

### **Section 10 Waivers**

Where the Enforcement Authority 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 Ordinance. The applicant shall submit, in writing, the reason for the requested waiver. In

granting waivers or modifications, the Enforcement Authority may require such conditions that will substantially secure the objectives of the standards so waived or modified.

## **Section 11 Authority**

The Municipality enacts this Erosion and Sedimentation Control Ordinance 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 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 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 Ordinance. The Erosion and Sedimentation Control Plan required under this Ordinance 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.

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).

Erosion and Sedimentation Control BMPs that require design to accommodate specific storm events shall be designed using precipitation data from either the Northeast Regional Climate Center (<http://precip.eas.cornell.edu>), Extreme Precipitation Tables, or the NOAA Atlas 14 precipitation data ([https://hdsc.nws.noaa.gov/hdsc/pfds/pfds\\_map\\_cont.html](https://hdsc.nws.noaa.gov/hdsc/pfds/pfds_map_cont.html)).

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

### **General Timing of Installation and Maintenance until Permanent Stabilization**

Sedimentation Control BMPs must be in place before Construction Activity begins.

- Additional Erosion and Sedimentation Control BMPs must be phased in as appropriate.
  - Erosion and Sedimentation Control BMPs must remain in place and functional until the Site is permanently stabilized.
  - Adequate and timely maintenance of Erosion and Sedimentation Control BMPs must be conducted until permanent stabilization is achieved.
1. Pollution Prevention: Minimize Disturbed Area and protect natural downgradient buffer areas, and any areas where stormwater may flow off-Site to the extent practicable. Control stormwater volume and velocity within the Site to minimize soil erosion. Minimize the disturbance of steep slopes. Control stormwater Discharges, including both peak flow rates and volume, to minimize erosion at outlets. The Discharge shall 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.
    - a. Whenever practicable, no disturbance activities shall take place within 50 feet of any Protected Natural Resource.
    - b. 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.
  2. 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. Maintain the sediment barriers 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, you must install and maintain protection measures that remove sediment from the Discharge. [Storm drain inlet protection must include effective curb inlet or “back throat” protection, where applicable.](#)

3. Stabilized Construction Entrance: Prior to construction, properly install a stabilized construction entrance (SCE) at all points of 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 ROWs. Maintain the SCE 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.](#)
4. Temporary Stabilization:
  - a. Within 7 days of the cessation of Construction Activities in an area that will not be worked for more than 7 days, stabilize any exposed soil with mulch, or other non-erodible cover.
  - b. Stabilize areas within 75 feet of a wetland or waterbody within 48 hours of the initial disturbance of the soil or prior to any storm event, whichever comes first.
5. Removal of Temporary Measures: Remove any temporary control measures, such as silt fence, within 30 days after permanent stabilization is attained. Remove any accumulated sediments and stabilize.
6. 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 permanently stabilize the area 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, select the proper vegetation for the light, moisture, and soil conditions; amend the Disturbed Area subsoils with topsoil, compost, or fertilizers; protect seeded areas with mulch or, if necessary, erosion control blankets; and schedule sodding, planting, and seeding so 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:
  - a. 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.
  - b. 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.
  - c. Permanent Mulch: For mulched areas, permanent mulching means total coverage of the exposed area with an approved mulch material. Erosion control mix may be used as mulch for permanent stabilization according to the approved application rates and limitations.
  - d. 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.
  - e. 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.

- f. **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.
7. **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:
  - a. **Site Stabilization:** Hay mulch is 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.
  - b. **Sediment Barriers:** All areas within 75 feet of a Protected Natural Resource must be protected with a double row of sediment barriers.
  - c. **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, provide proof of this with the Plan or application.
  - d. **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.
8. **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 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.
9. **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.

10. [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:

- a. the initial 5-acre area to be disturbed;
- b. which portions of the initial disturbance will be stabilized, and what temporary or permanent stabilization methods will be used;
- c. which areas will be subsequently disturbed and what temporary or permanent stabilization methods will be used; and
- d. 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.

### **Inspection, Maintenance and Corrective Action by Applicant On-Site Personnel During Construction**

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

1. 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 Professional shall conduct the inspections.
2. 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 within 7 calendar days of identification. All measures must be maintained in effective operating condition until areas are permanently stabilized.
3. 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.

### **Housekeeping Requirements**

1. 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.

2. **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.
3. **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.
4. **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.](#)
5. **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 \(no visible suspended or settleable solids\).](#)
6. **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.

7. 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:
  - a. Discharges from firefighting activity
  - b. Hydrant flushing if dechlorinated to 0.05 mg/l or less
  - c. Vehicle wash water if detergents are not used and washing is limited to the exterior of vehicles (engine, undercarriage, and transmission washing is prohibited)
  - d. Dust control runoff if it does not cause erosion
  - e. Routine external building washdown, not including surface paint removal, that does not involve detergents
  - f. 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
  - g. Uncontaminated air conditioning or compressor condensate
  - h. Uncontaminated groundwater or spring water
  - i. Foundation or footer drain-water where flows are not contaminated
  - j. Uncontaminated excavation dewatering per item 5 Excavation Dewatering
  - k. Potable water including waterline flushings
  - l. Landscape irrigation
8. Unauthorized Non-stormwater Discharges: The following Discharges are prohibited:
  - a. Wastewater from the washout or cleanout of concrete, stucco, paint, form release oils, curing compounds, or other construction materials;
  - b. Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance;
  - c. Soaps, solvents, or detergents used in vehicle and equipment washing; and
  - d. Toxic or hazardous substances from a spill or other release.

## Alternate Appendix 1 – Erosion and Sedimentation Control Standards

The Erosion and Sedimentation Control Plan required under this Ordinance shall be developed and implemented to conform to the Maine Department of Environmental Protection's 06-096 CMR Chapter 500 Stormwater Management Rule Appendices A, B, and C as mandatory minimum standards with the following additional standards (shown as underlined text and deletions shown as strikethrough text).

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 developed by the Maine DEP (October 2016 or most current version).

Erosion and Sedimentation Control BMPs that require design to accommodate specific storm events shall be designed using precipitation data from either the Northeast Regional Climate Center (<http://precip.eas.cornell.edu>), Extreme Precipitation Tables, or the NOAA Atlas 14 precipitation data ([https://hdsc.nws.noaa.gov/hdsc/pfds/pfds\\_map\\_cont.html](https://hdsc.nws.noaa.gov/hdsc/pfds/pfds_map_cont.html)).

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

### **Chapter 500 Appendix A. Erosion and Sedimentation Control:**

Erosion and Sedimentation Control BMPs must be in place before Construction Activity begins.

- Additional Erosion and Sedimentation Control BMPs must be phased in as appropriate.
  - BMPs must remain in place and functional until the Site is permanently stabilized.
  - Adequate and timely maintenance of Erosion and Sedimentation Control BMPs must be conducted until permanent stabilization is achieved. ~~And temporary and permanent stabilization measures must be taken.~~
1. Pollution Prevention: Minimize Disturbed Areas and protect natural downgradient buffer areas, and any areas where stormwater may flow off-Site to the extent practicable. Control stormwater volume and velocity within the Site to minimize soil erosion. Minimize the disturbance of steep slopes. Control stormwater Discharges, including both peak flow rates and volume, 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.
    - a. Whenever practicable, no disturbance activities shall take place within 50 feet of any Protected Natural Resource.
    - ~~b. If disturbance activities take place between 30 feet and 50 feet of any protected natural resource, and stormwater discharges through the disturbed areas toward the protected natural resource, perimeter erosion controls must be doubled. If disturbance activities take place less than 30 feet from any protected natural resource, and stormwater discharges through the disturbed areas toward the protected natural resource, perimeter erosion controls must be doubled and disturbed areas must be temporarily or permanently stabilized within 7 days, or before the next rain event, whichever comes sooner.~~
    - c. 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.

2. 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...

And Add: Storm drain inlet protection must include effective curb inlet or "back throat" protection, where applicable.

3. Stabilized Construction Entrance: Prior to construction, properly install a stabilized construction entrance (SCE) at all points of 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 ROWs. Maintain the SCE 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.
7. Winter Construction: Add to item c. Ditch: If release from Maine DEP has been granted, provide proof of this with the Plan or application.
9. Sediment Basins: Add: Clearly visible staking must be installed with marks showing the elevation of half design capacity for easier inspection.
10. Add: Phasing Plan Requirements: No phasing plan is required if contractor shall limit disturbance to a maximum of 5 acres of Disturbed Area across the Site at any time. If the Site shall result in more than 5 acres of Disturbed Area at any one time, the contractor shall provide a phasing plan showing:
  - a. the initial 5-acre area to be disturbed
  - b. which portions of the initial disturbance shall be stabilized, and what temporary or permanent stabilization methods shall be used
  - c. which areas shall be subsequently disturbed and what temporary or permanent stabilization methods shall be used
  - d. each phase of disturbance and stabilization shall 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

#### **Chapter 500 Appendix B Inspection and Maintenance – no changes**

- a. Inspection and Corrective Action: Add: A Qualified Professional shall conduct the inspections.
- b. Maintenance: If Erosion or Sedimentation Control BMPs need to be repaired or enhanced, the repair work shall be initiated upon discovery of the problem but no later than the end of the next workday.

#### **Chapter 500 Appendix C Housekeeping**

4. Debris & 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.



5. 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 basin. 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).
6. Authorized Non-SW Discharges change only item b:
  - b. Hydrant flushing if dechlorinated to 0.05 mg/l or less
8. Add New item: Washout from concrete, stucco, paint, curing compounds, or other construction materials: If washout/cleanout is to be completed on-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.



# TOWN OF ELIOT MAINE

PLANNING OFFICE

1333 State Road

Eliot ME, 03903

## **Planning Board's Recommendation: 2023 Projected Growth**

*Draft for Planning Board review, 3/1/22*

### Overview

State law (30-A M.R.S.A. §4360) allows municipalities to enact rate of growth ordinances subject to conditions. Such ordinances allow municipalities to cap the number of annual building permits for new residential dwelling units. The municipality may issue growth permits for dwelling units up to the cap. Eliot's growth management provisions are included in Chapter 29 of the Land Use Regulations in the Town Code.

According to section 29-5, the Planning Board annually reviews the number of growth permits estimated to be issued for the following calendar year. Residents then vote on a warrant article to establish the maximum number of growth permits for that year (i.e. the growth permit allocation). Certain types of dwelling units – elderly, assisted living, and accessory – are exempt from the cap (section 29-3). For calendar year 2022, Eliot voters approved (on June 8, 2021) a maximum of twenty-seven (27) growth permits. For 2023, the proposed growth permit allocation was calculated using the formula in subsection 29-5(a), which reads:

In accordance with 30-A M.R.S.A. § 4360, the number of building permits allocated each calendar year for new residential dwelling units must be 105 percent or more of the mean number of permits issued for new residential dwellings, not including permits for affordable housing, during the ten years immediately prior to the year in which the number is calculated. The mean is determined by adding together the total number of building permits issued, excluding permits issued for affordable housing, for new dwelling units for each year in the prior ten years and then dividing by ten. In addition, the minimum number of building permits allocated annually for new dwelling units meeting the definition of affordable housing shall be no less than ten percent of the number set forth above. If either number is a decimal, it shall be rounded to the nearest whole number. For the purposes of this chapter, 105 percent of the ten-year mean shall be the floor, or minimum number of building permits which must be allocated annually.

### Factors Considered by the Planning Board – Review of Annual Growth

The Planning Board generally considers the following factors when making recommendations regarding the number of growth permits to allocate annually:

- Number of permits issued for the previous, completed ten calendar years
- Input received from Town staff via the annual growth rate survey
- Length of the wait list for growth permits
- Other factors, as appropriate

### Annual Growth Rate Survey

The Annual Growth Rate Survey was sent to the following positions in accordance with the provisions of Section 29-5(b)(1): Town Manager, Town Clerk, Police Chief, Fire Chief, Code Enforcement Officer, Assessor, Planner, Public Works Director, ECSD Director, and Chief Operations Officer of MSAD35.

Previous surveys have used different “benchmark” permit allocations to gauge these staff members' estimates of the impacts on service levels should that amount of growth occur. The question below was asked with the three benchmarks of 28, 60, and 90.

In 2023, do you believe your department could reasonably handle the impacts of [28,60,90] new dwelling units without a decrease of service quality? • Yes • No

If no, please describe what measurable/notable impacts will be attributed to your department with [28,60,90] new dwelling units:

The survey also asks about whether the rate of new construction significantly impacted the respective departments' services in any of the past 10 years, and whether the type of housing (e.g. single family vs. senior housing) has any bearing on the benchmark allocation responses. Finally, the survey allows staff members to write in additional comments.

Below is a compilation of the survey results **[to be completed when surveys have been received and results tabulated]**

1. The above chart indicates the number of new permitted dwelling units from 2012 to 2021. Over the last ten years do you recall any year(s) in which the rate of new construction significantly impacted or outpaced your department's ability to provide the necessary services and facilities to accommodate the increase in population?

	#	%
Yes		
No		
Total		

- a. If yes, please provide the years and describe any significant impacts to your department:

[no write-in answers received]

2. In 2023, do you believe your department could reasonably handle the impacts of 28 new dwelling units without a decrease of service quality?

	#	%
Yes		
No		
Total		

- a. If no, please describe what measurable/notable impacts will be attributed to your department with 28 new dwelling units:

[no write-in answers received]

3. In 2023, do you believe your department could reasonably handle the impacts of 60 new dwelling units without a decrease of service quality?

	#	%
Yes		
No		
Total		

a. If no, please describe what measurable/notable impacts will be attributed to your department with 60 new dwelling units:

...

4. In 2023, do you believe your department could reasonably handle the impacts of 90 new dwelling units without a decrease of service quality?

	#	%
Yes		
No		
Total		

a. If no, please describe what measurable/notable impacts will be attributed to your department with 90 new dwelling units:

...

5. Considering the above questions, does the type of housing (single family; elderly; affordable) have any effect on the answers provided? For example, if 60 new dwelling units were to be constructed, would the impact(s) to your department be different if all the units were elderly housing versus single family housing?

...

6. Please provide your additional comments about Eliot’s growth management program:

...

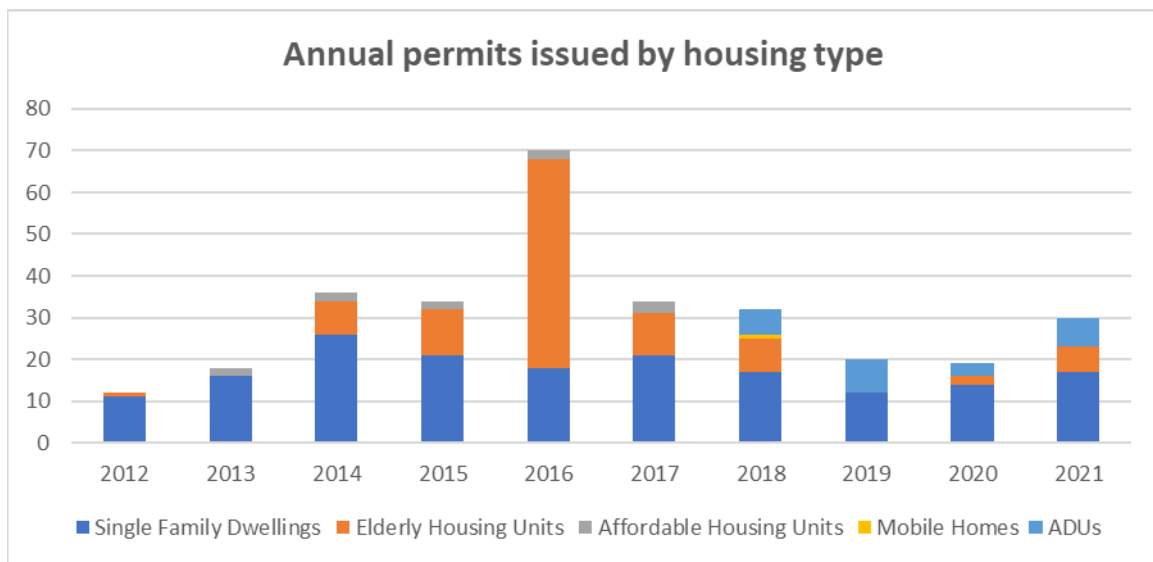
Review of Previous Permits Issued for the Past Ten Calendar Years

From 2012 to 2021, according to the Code Enforcement Officer's permit log, 173 permits were issued for single family dwelling units, 96 were issued for elderly housing units, 24 were issued for accessory dwelling units, 11 were issued for affordable housing units, and 1 was issued for a mobile home. (Note: we have not located complete records for mobile home and ADU permits prior to 2018.)

<b>Year</b>	<b>Single Family Dwellings</b>	<b>Elderly Housing Units</b>	<b>Affordable Housing Units</b>	<b>Mobile Homes</b>	<b>ADUs</b>
2012	11	1	0		
2013	16	0	2		
2014	26	8	2		
2015	21	11	2		
2016	18	50	2		
2017	21	10	3		
2018	17	8	0	1	6
2019	12	0	0	0	8
2020	14	2	0	0	3
2021	17	6	0	0	7
<b>10-year total (2012-21)</b>	<b>173</b>	<b>96</b>	<b>11</b>	<b>1</b>	<b>24</b>
<b>10-year average (2012-21)</b>	<b>17.3</b>	<b>9.6</b>	<b>1.1</b>	<b>0.1</b>	<b>2.4</b>

Subsection 29-5(a) exempts affordable housing from the formula described above. For the purpose of this report, mobile homes and ADUs are also considered affordable housing. The 10-year average of single-family dwelling units plus elderly housing units is 26.9. Multiplying by 105% and rounding to the nearest integer, we arrive at an allocation of 28 for calendar year 2023, which is the presumed number in the draft warrant article. Previous warrant articles have also included a contingency allocation should the article not pass. At least in recent years, this appears to be 105% of the 10-year mean for single family dwelling units alone. Therefore, the difference between the allocation put to voters and the "fallback" allocation is the fact that the former accounts for the 10-year mean of elderly dwelling units. For the sake of continuity, this approach is continued for 2023.

The following chart shows a visual representation of the number of permits issued from 2012 to 2021.



The highest number of permits issued was 2016, mainly due to elderly housing units. Elderly housing built between 2014 and 2021 likely mostly includes units coming on line in the Village at Great Brook.

#### Wait List

As of the date of this memo, there is currently no wait list to obtain a growth permit with the Town.

#### Statewide context: housing

The affordability and supply of housing has become an increasing concern in Maine. A commission was formed by the State Legislature to study how to increase housing opportunities through changes to land use regulations. The Commission to Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restrictions, after holding several publicly-accessible meetings in 2021, issued its report in December 2021. Some quotes and summary notes from the report:

- The report found that “The average house price in Maine is unaffordable to the average income household” in most Maine counties, including York
- “The median home price in Maine was \$256,000 in 2020, a 14% increase over 2019.”
- The report shows Homeownership Affordability Index for each county in Maine. This is defined as “the ratio of Home Price Affordable at Median Income to Median Home Price. An index of less than 1 means the area is generally unaffordable - i.e., a household earning area median income could not cover the payment on a median priced home (30 year mortgage, taxes and insurance) using no more than 28% of gross income.” York County has a Homeownership Affordability Index of 0.86. This is slightly below the statewide number of 0.91. Four counties have lower numbers (i.e. less affordable): Cumberland, Hancock, Knox, and Lincoln.
- 58.6% of York County households are unable to afford a home at the median home price, a higher percentage than all counties except Cumberland, Knox, and Lincoln.
- Eliot is in an area of Maine with the second most expensive Housing Wage: \$28.33 in the York-Kittery-South Berwick HMFA. Only the Portland HMFA is higher (\$30.62).
  - The Housing Wage is the total hourly wage a household needs to afford Fair Market Rent (FMR) for a two-bedroom apartment, such that FMR does not exceed 30% of the household income. The FMR includes the cost of actual rent plus basic utilities (excludes phone, TV, internet). (30% is a common affordability ceiling for comparing housing expenses to household income; another is 45% for housing + transportation expenses.) It is determined by looking at actual reported rent data and applying some statistical adjustments. The HMFA is the HUD Metro FMR Area, the metropolitan area that the US Department of Housing and Urban Development (HUD) uses to calculate area-specific FMR.

- The report includes 9 recommendations. Keep in mind these are only recommendations in a report and not yet enacted legislation. However, Maine Municipal Association (MMA) is tracking housing legislation in Augusta and there has been legislation introduced toward implementing the report's recommendations.
  - LD 2229: An Act To Implement the Recommendations of the Commission To Increase Housing Opportunities in Maine
  - LD 1673: An Act To Create a Comprehensive Permit Process for the Construction of Affordable Housing
- Eliot is already at the forefront in Maine of implementing Recommendation #1 regarding ADUs. ADUs are currently allowed by right (building permitting only) in all zones, and the Town significantly expanded ADU options/flexibility by ordinance amendment approved by voters last June, including a maximum size (1,000 sq. ft. ADU when the principal DU is 2,000 sq. ft. or more) that is larger than most communities in Maine. As shown above, 7 ADU permits were issued in 2021.

For more info:

- Commission report available at: <https://legislature.maine.gov/legislative-studies-130th-legislature/commission-to-increase-housing-opportunities-in-maine>
- SMPDC Housing Affordability page: <https://smpdc.org/housing>
- MMA Legislative & Advocacy: <https://www.memun.org/Legislative-Advocacy>
  - MMA February 18, 2022 Legislative Bulletin has a summary of LD 1673 ("Housing Appeals Board: Is local control in danger?"): <https://www.memun.org/Training-Resources/MMA-Publications/Legislative-Bulletin>

### Discussion

[To be added when Growth Permit surveys and data are received and tabulated]

### Planning Board's Recommendation

[TBD]

### Select Board

[TBD]



DRAFT Proposed Town Code Amendments of Chapter 1 – General Provisions, Chapter 33 – Planning and Development, Chapter 44 – Shoreland Zoning, and Chapter 45 – Zoning, Related to Medium- and Large-Scale Solar Arrays

**DRAFT Proposed Town Code Amendments of Chapter 1 – General Provisions, Chapter 33 – Planning and Development, Chapter 44 – Shoreland Zoning, and Chapter 45 – Zoning, Related to Medium- and Large-Scale Solar Arrays**

*December 7, 2021 – Initial Planning Board review*

*January 4, February 1, March 1 2022 – Continued PB review*

**Background and rationale**

*[To be expanded]*

Currently, there are no land use regulations in the Town Code specific to utility-scale solar energy systems. The Town Code definition of “solar energy system” limits the applicability of such a system to “a principal use or structure located on the same lot as the system, or on an abutting lot in the case of a common system serving more than one principal use or structure”. The current definition therefore does not cover larger systems used or subscribed to by a greater number of users that are farther from the system than the same lot or abutting lot. This ordinance amendment establishes specific land use regulations for utility-scale solar energy systems.

**(New text underlined in bold)**

~~Deleted text in strikethrough~~

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

*[abridged to only show changes]*

*[...]*

**Distributed generation resource means an electric generating facility with a nameplate capacity of less than 5 megawatts that uses a renewable capacity resource and is located within the service territory of a transmission and distribution utility in the State.**

**State law reference – 35-A MRSA 3481(5)**

*[...]*

**Lot coverage (as applied to a lot with a solar energy system) means the percentage of the lot covered by all buildings plus the percentage of the lot whose airspace (vertical space above the ground) includes a solar panel or a solar panel support, rack, or mounting pole. Roof-mounted solar energy systems do not add to lot coverage in excess of the building to which they are mounted, except that any portion of a roof-mounted solar energy system that overhangs a roof above ground shall be counted toward lot coverage. Lot coverage for ground-mounted solar energy systems installed with tracking devices shall account for all airspace through which a panel passes in its tracking course.**

*[...]*

~~Public utility means any person, firm, corporation, municipal department, board or commission authorized to furnish gas, steam, electricity, waste disposal, transportation or water to the public.~~ **a “public utility” as defined by 35-A MRSA Section 102, as may be amended.**

*[...]*

**Rated nameplate capacity (of a photovoltaic solar energy system) means the maximum rated output of electric power production of the system in watts of direct current (DC).**

*[...]*

**Renewable capacity resource means a source of electrical generation:**

- (1) Whose total power production capacity does not exceed 100 megawatts and relies on one or more of the following:**
  - (a) Fuel cells;**
  - (b) Tidal power;**
  - (c) Geothermal installations;**
  - (d) Hydroelectric generators that meet all state and federal fish passage requirements applicable to the generator;**
  - (e) Biomass generators that are fueled by wood, wood waste or landfill gas; or**
  - (f) Anaerobic digestion of by-products of waste from animals or agricultural crops, food or vegetative material, algae or organic refuse; or**
- (2) That relies on wind power installations or solar power installations.**

**State law reference – 35-A MRSA 3481(5)**

[...]

~~*Solar energy system* means a system designed and used to obtain energy from the sun in order to supply energy to a principal use or structure located on the same lot as the system, or on an abutting lot in the case of a common system serving more than one principal use or structure, for the purpose of reducing the consumption of fuel for heating or electricity. A solar energy system may include solar hot water or air heating or photovoltaic systems. Solar energy systems are allowed only as accessory uses or structures.~~

***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;**

**Solar energy system, agrivoltaic means a solar energy system co-located on the same parcel of land as agricultural production, including crop production, grazing, apiaries, or other agricultural products or services.**

**Solar energy system, ground-mounted means a solar energy system that is structurally mounted to the ground and is not roof-mounted.**

**Solar energy system, photovoltaic means a solar energy system whose primary purpose is to generate electricity.**

**Solar energy system, roof-mounted means a solar energy system that is mounted on the roof of a building or structure.**

[...]

#### **Section 1-25. Fee schedule.**

*[Under Planning Board fees, add additional fee for Planning Board site plan review of solar energy systems, larger-scale]*

- \* \$500 – rated nameplate capacity <500kW
- \* \$1000 – rated nameplate capacity 500kW - 1MW
- \* \$1500 – rated nameplate capacity >1MW – 1.5MW
- \* \$2000 – rated nameplate capacity >1.5 MW

Sec. 33-175. Commercial and industrial establishments—Landscaping.

- (a) Where no vegetative buffering at least ten feet in width and eight feet in height exists or can be maintained, all side and rear yards abutting any other district or residential use shall be effectively screened from view by a continuous landscaped area not less than ten feet in width containing large trees, shrubs, fences, walls, berms, or similar condition forming a visual barrier not less than eight feet in height along such side and rear lot lines. Fences must conform to the requirements of section 45-423.
- (b) Front yards, especially those along Rte. 236, shall have an extensive vegetative cover, including large shade trees. Areas along Rte. 236 shall be 50 feet in width, beginning at the 50-foot setback line and extending to the rear of the front yard so as to screen the proposed use. Similarly, half of the front yard for commercial or industrial uses on other streets shall be landscaped.
- (c) A partial foundation planting shall be provided in front and side yard areas.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 404.1); T.M. of 3-20-04)

Cross reference(s)—Site plan requirements for commercial and industrial establishments, § 33-127; landscaping requirements under the zoning regulations, § 45-413-; **performance standards for solar energy systems, § 45-462.**

**Add a new section:**

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.

[wordsmith the following]

(c) Environmental information:

- (1) Maine Department of Inland Fisheries and Wildlife habitat determination letter
- (2) 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.
- (3) Vernal pool assessment forms and-or vernal pool determinations from Maine Department of Inland Fisheries and Wildlife.
- (4) Documented state endangered, threatened, or special concern species habitat.
- (5) Deer wintering areas or travel corridors.
- (6) Archaeological and historical resources, including but not limited to correspondence from the State Historic Preservation Commission
- (7) 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 that completely cover already impervious area (such as a parking lot) are exempt from providing the above information, unless the Planning Board makes a motion to require it.

(e) 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.

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- (f) Emergency Services: The large-scale ground-mounted solar energy system owner or operator 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
<b>Uses or Activities Without Structures</b>						
(1)	Clearing of vegetation for activities other than timber harvesting	CEO	CEO <sup>1</sup>	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

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(5)	Mineral exploration	no	no	no	yes <sup>2</sup>	yes <sup>2</sup>
(6)	Mineral extraction, including sand and gravel extraction	no	no	no	SPR	SPR
(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
<b>Principal Structures or Uses</b>						
(12)	Principal structures and uses:					
	a. One- and two-family residential	SPR <sup>4</sup>	SPR <sup>9</sup>	CEO	CEO	CEO
	b. Multifamily dwelling	no	no	SPR	SPR	SPR
	c. Commercial (not listed elsewhere)	no <sup>13</sup>	no <sup>13</sup>	no <sup>13</sup>	SPR	SPR <sup>5</sup>
	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 <sup>4</sup>	SPR	CEO	CEO	CEO
(13)	Agriculture	CEO	SPR	CEO	CEO	CEO
(14)	Aquaculture	SPR <sup>10</sup>	SPR <sup>10</sup>	SPR <sup>10</sup>	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 <sup>10</sup>	SPR <sup>10</sup>	SPR
(21)	Boardinghouse	no	no	SPR <sup>10</sup>	SPR	SPR
(22)	Campgrounds	no	no <sup>7</sup>	no	no	SPR
(23)	Conversions of seasonal residences to year-round residences	LPI	LPI	LPI	LPI	LPI
(24)	Fireworks sales	no <sup>17</sup>	no <sup>17</sup>	no <sup>17</sup>	no <sup>17</sup>	no <sup>17</sup>

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(25)	Gambling Casino	no	no	no	no	no
(26)	Marijuana establishment					
	a. Marijuana store	no	no	no	SPR	SPR
	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 <sup>7</sup>	no	no	no
(30)	Public and private recreational areas involving minimal structural development	SPR	SPR	SPR	SPR	CEO
<b>(32)</b>	<b><u>Solar energy system, larger-scale</u></b>	<b><u>no</u></b>	<b><u>no</u></b>	<b><u>no</u></b>	<b><u>no</u></b>	<b><u>no</u></b>
<b>Accessory Structures or Uses</b>						
(31)	Structures accessory to allowed uses, not otherwise listed	SPR <sup>4</sup>	SPR	CEO	CEO	CEO
(32)	Essential services	SPR <sup>6</sup>	SPR <sup>6</sup>	SPR	SPR	SPR
	a. Roadside distribution lines (34.5kV and lower)	CEO <sup>6</sup>	CEO <sup>6</sup>	yes <sup>12</sup>	yes <sup>12</sup>	yes <sup>12</sup>
	b. Non-roadside or cross-country distribution lines involving ten poles or less in the shoreland zone	SPR <sup>6</sup>	SPR <sup>6</sup>	CEO	CEO	CEO
	c. Non-roadside or cross-country distribution lines	SPR <sup>6</sup>	SPR <sup>6</sup>	SPR	SPR	SPR

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		involving 11 or more poles in the shoreland zone					
	d.	Other essential services	SPR <sup>6</sup>	SPR <sup>6</sup>	SPR	SPR	SPR
(33)		Fences	yes <sup>11A</sup>	yes <sup>11A</sup>	yes <sup>11A</sup>	yes <sup>11A</sup>	yes <sup>11A</sup>
(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 <sup>12A</sup>	no <sup>12A</sup>	SPR <sup>10A</sup>	SPR <sup>10A</sup>	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 <sup>11</sup>	CEO <sup>11</sup>	CEO <sup>11</sup>	CEO <sup>11</sup>	CEO <sup>11</sup>
	b.	Permanent residential	SPR	SPR	SPR	SPR	SPR
	c.	Permanent commercial	SPR <sup>14</sup>	SPR <sup>14</sup>	SPR <sup>14</sup>	SPR	SPR
	d.	Limited commercial	SPR <sup>5</sup>	SPR <sup>5</sup>	SPR <sup>5</sup>	SPR	no
(41)		Private sewage disposal systems for allowed uses	LPI	LPI	LPI	LPI	LPI
(42)		Road and driveway construction	SPR	no <sup>8</sup>	SPR	SPR	SPR
(43)		Service drops, as defined, to allowed uses	yes	yes	yes	yes	yes
(44)		Signs.	yes <sup>9A</sup>	yes <sup>9A</sup>	yes <sup>9A</sup>	yes <sup>9A</sup>	yes <sup>9A</sup>
(45)		Solar energy system, <b>small-scale ground-mounted or roof mounted</b>	CEO <sup>15</sup>	CEO <sup>15</sup>	CEO <sup>15</sup>	CEO <sup>15</sup>	CEO <sup>15</sup>
(46)		Small wind energy system	SPR <sup>16</sup>	SPR <sup>16</sup>	SPR <sup>16</sup>	SPR <sup>16</sup>	SPR <sup>16</sup>
(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 <sup>5A</sup>	CEO <sup>5A</sup>	CEO <sup>5A</sup>	CEO <sup>5A</sup>	CEO <sup>5A</sup>

Footnotes:

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- <sup>1</sup> In RP not allowed within 75 feet horizontal distance, of the normal high-water line of great ponds, except to remove safety hazards.
- <sup>2</sup> Requires permit from the code enforcement officer if more than 100 square feet of surface area, in total, is disturbed.
- <sup>3</sup> In RP not allowed in areas so designated because of wildlife value.
- <sup>4</sup> Provided that a variance from the setback requirement is obtained from the board of appeals.
- <sup>5</sup> Functionally water-dependent uses and uses accessory to such water dependent uses only (see note on previous page).
- <sup>5A</sup> Only as an accessory use to an allowed principal use on the lot. Must conform to the requirements of [section] 45-422, Waste containers.
- <sup>6</sup> See further restrictions in subsection 44-35(1)(2), essential services.
- <sup>7</sup> 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.
- <sup>8</sup> Except as provided in subsection 44-35(h).
- <sup>9</sup> 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.
- <sup>9A</sup> See sign ordinance section.
- <sup>10</sup> Except for commercial uses otherwise listed in this table, such as marinas and campgrounds, that are allowed in the respective district.
- <sup>10A</sup> Must conform to the requirements of section 45-456.1, Home business.
- <sup>11</sup> Excluding bridges and other crossings not involving earthwork, in which case no permit is required.
- <sup>11A</sup> Must conform to the requirements of section 45-423, Fences.
- <sup>12</sup> Permit not required, but must file a written "notice of intent to construct" with CEO.
- <sup>12A</sup> "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.
- <sup>13</sup> Use is "No" except when permitted under another specific land use entry.
- <sup>14</sup> 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,

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

<sup>15</sup> Must conform to the requirements of section 45-462.

<sup>16</sup> Must conform to the requirements of section 45-461.

<sup>17</sup> 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)

Sec. 45-290. Table of permitted and prohibited uses.

The following table of land uses designates permitted uses by a yes and prohibited uses by a no. Any use not listed is a prohibited use. The letters CEO, SPR, and SD are explained in section 45-402.

*Table of Land Uses*

Land uses	R	S	V	C/I
Accessory dwelling unit	CEO	CEO	CEO	CEO
Agriculture, except animal breeding and care	yes	yes	yes	no
Animal breeding	yes <sup>1</sup>	12	SPR <sup>1&amp;8</sup>	no
Animal husbandry	yes <sup>1</sup>	yes <sup>1</sup>	yes <sup>1</sup>	no
Apartment house, see multiple-family dwelling	—	—	—	—
Apartment, see single-family dwellings	—	—	—	—
Aquaculture	13	13	SPR <sup>8</sup>	no
Assisted living facility	no	SPR/SD	SPR/SD	SPR/SD
Auto graveyards	SPR	no	no	no
Auto hobbyist storage area	SPR	SPR	no	no
Auto junkyard	no	no	no	no
Auto recycling business	9	9	no	SPR
Auto recycling operation, principal	9	no	no	SPR
Auto recycling operation, limited	9	9	no	SPR
Auto repair garages	14	14	SPR <sup>8</sup>	SPR
Auto service stations	no	9	no	SPR
Banks	no	no	SPR	SPR

DRAFT Proposed Town Code Amendments of Chapter 1 – General Provisions, Chapter 33 – Planning and Development, Chapter 44 – Shoreland Zoning, and Chapter 45 – Zoning, Related to Medium- and Large-Scale Solar Arrays

Bathroom	11	11	no	no
Bathing beach	yes	yes	yes	no
Bed and breakfasts	14	14	SPR <sup>8</sup>	SPR
Boarding homes, see lodging businesses	—	—	—	—
Boarding kennel	no	no	no	SPR
Bulk oil fuel tanks	no	no	no	SPR <sup>2</sup>
Business office	14	14	SPR <sup>8</sup>	SPR
Campgrounds	SPR	no	no	no
Cemeteries	SPR	SPR	SPR	no
Clearing	yes	yes	yes	yes
Clinics	no	no	no	SPR
Clustered housing	SPR	no	no	no
Commercial adult enterprise	no	no	no	SPR
Commercial establishment, 2 or more where allowed	-	9	no	SPR
Day nurseries	SPR	16	SPR <sup>8</sup>	SPR
Earth material removal, less than 100 cubic yards	yes	yes	yes	yes
100 cubic yards or greater	SPR	SPR	SPR	SPR
Elderly housing	no	SPR/SD	SPR/SD	SPR/SD
Emergency operations	yes	yes	yes	yes
Equipment storage, trucks, 3 or more	no	no	no	yes
Essential services	yes	yes	yes	yes
Expansion of an existing telecommunication structure or collocation of antenna on a existing telecommunication structure or alternate tower structure	CEO	CEO	CEO	CEO
Farm equipment stores	SPR	10	no	SPR
Fences	yes <sup>5</sup>	yes <sup>5</sup>	yes <sup>5</sup>	yes <sup>5</sup>
Firewood sales	yes	13	SPR <sup>8</sup>	no
Fireworks sales	no <sup>19</sup>	no <sup>19</sup>	no <sup>19</sup>	no <sup>19</sup>
Forest management, except timber harvesting	yes	yes	yes	yes
Funeral establishment	no	no	SPR	SPR
Gambling casino	no	no	no	no
Gardening	yes	yes	yes	yes
Gasoline stations	no	9	no	SPR
Governmental buildings or uses	SPR	SPR	SPR	SPR
Grain or feed stores	SPR	10	no	SPR
Harvesting wild crops	yes	yes	yes	yes
Home business	SPR <sup>8</sup>	SPR <sup>8</sup>	SPR <sup>8</sup>	no
Home occupations	10	10	no	no
Home office	CEO	CEO	CEO	CEO
Hospitals	no	no	no	SPR



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Indoor commercial, recreational and amusement facilities	no	no	no	SPR
Industrial and business research laboratory	no	no	no	SPR
Industrial establishments and uses	no	no	no	SPR
Institutional buildings and uses, indoor	no	9	no	no
Junkyards	no	no	no	no
Landfill, dump	no	no	no	no
Libraries	SPR	SPR	SPR	SPR
Life care facility	no	SPR/SD	SPR/SD	SPR/SD
Lodging businesses, including bed and breakfasts, boarding homes or houses, hotels, inns, lodginghouses, rooming homes, and the like	14	14	SPR <sup>8</sup>	SPR
Manufacturing	SPR <sup>8</sup>	SPR <sup>8</sup>	SPR <sup>8</sup>	SPR
Marijuana establishment*	no	no	no	SPR <sup>20</sup>
Medical marijuana establishment*	no	no	no	SPR <sup>20</sup>
Mobile home parks	SPR/ SD <sup>7</sup>	SPR/SD <sup>7</sup>	SPR/SD <sup>7</sup>	no
Motel	no	no	no	SPR
Multiple-family dwelling	no	SPR	SPR	no
Museums	SPR	SPR	SPR	SPR
New construction of telecommunication structure 70 feet and higher	9	9	no	SPR
New construction of telecommunication structure less than 70 feet high	CEO	CEO	CEO	CEO
Nurseries, plants	CEO	17	SPR <sup>8</sup>	no
Nursing facility	no	SPR	SPR	SPR
Off-site parking	no	no	no	no
Parks	SPR	SPR	SPR	no
Places of worship	SPR	SPR	SPR	SPR
Playgrounds	SPR	SPR	SPR	no
Printing plant	14	14	SPR <sup>8</sup>	SPR
Produce and plants raised locally, seasonal sales	yes	yes	yes	no
Professional offices	14	14	SPR <sup>8</sup>	SPR
Public utility facilities	SPR	SPR	SPR	SPR
Recreational facilities, nonintensive	SPR	SPR	SPR	no
Recreational use not requiring structures	SPR	yes	yes	no
Restaurant	9	9	SPR <sup>8</sup>	SPR
Restaurant, takeout	no	no	no	SPR
Retail stores, local, other	18	18	SPR <sup>8</sup>	SPR
Road construction	CEO	CEO	CEO	SPR
Schools	SPR	SPR	SPR	SPR
Sewage disposal systems, private	CEO	CEO	CEO	CEO

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Signs, 6 square feet	CEO	CEO	CEO	CEO
Signs, other	CEO	CEO	CEO	CEO
Single-family dwellings	CEO	CEO	CEO	no <sup>6</sup>
Small wind energy system	SPR	SPR	SPR	SPR
Solar energy system, <b><u>small-scale ground mounted or roof-mounted</u></b>	CEO <sup>21</sup>	CEO <sup>21</sup>	CEO <sup>21</sup>	CEO <sup>21</sup>
<b>Solar energy system, larger-scale</b>	<b>SPR<sup>21</sup></b>	<b>SPR<sup>21</sup></b>	<b>No</b>	<b>SPR<sup>21</sup></b>
Surveying and resource analysis	yes	yes	yes	yes
Timber harvesting	yes	yes	yes	yes
Truck terminals and storage	no	no	no	SPR
Two-family dwellings	CEO	CEO	CEO	no <sup>6</sup>
Veterinary hospital	15	15	No	SPR
Warehouse	no	no	no	SPR
Waste containers	CEO <sup>3</sup>	CEO <sup>3</sup>	CEO <sup>3</sup>	CEO <sup>3</sup>
Wholesale	no	no	no	SPR
Wholesale business facilities	no	no	no	SPR
Uses similar to allowed uses	CEO	CEO	CEO	CEO
Uses similar to uses requiring a CEO permit	CEO	CEO	CEO	CEO
Uses similar to uses requiring a planning board permit	SPR	SPR	SPR	SPR

\*Marijuana establishment and medical marijuana establishment are defined in section 11-3 of this Code.

*Notes:*

1. Buildings housing animals shall be no less than 100 feet from property lines.
2. Each bulk oil fuel tank shall not exceed 50,000 gallons in size and use shall be limited to local use only.
3. Only as an accessory to an allowed principal use on the lot. Must conform to the requirements of 45-422, Waste containers.
4. Individual stores shall not have more than 2,500 square feet of gross floor area, except stores located on Route 236 may have up to 5,000 square feet. Customer sales areas shall be confined to one floor.
5. Must conform to the requirements of section 45-423.
6. See section 45-192(b) for an exception on accessory uses and structures.
7. See division 2 of article V of chapter 41 of this Code for specific areas where mobile home parks are allowed.
8. Must conform to the requirements of section 45-456.1 Home business.

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9. Use is prohibited unless property abuts Route 236. If property abuts Route 236, use is "SPR" and must be visually screened from abutting (same street side) non-commercial properties.
10. Use is prohibited unless property abuts Route 236. If property abuts Route 236, use is "SPR" and must be visually screened from abutting (same street side) non-commercial properties.
11. Use is prohibited unless property abuts Route 236. If property abuts Route 236, use is "CEO" and must be visually screened from abutting (same street side) non-commercial properties.
12. Use is "SPR 1 & 8" unless property abuts Route 236. If property abuts Route 236, use is "SPR 1" and must be visually screened from abutting (same street side) non-commercial properties.
13. Use is "SPR 8" unless property abuts Route 236. If property abuts Route 236, use is "yes" and must be visually screened from abutting (same street side) non-commercial properties.
14. Use is "SPR 8" unless property abuts Route 236. If property abuts Route 236, use is "SPR" and must be visually screened from abutting (same street side) non-commercial properties.
15. Use is prohibited unless property abuts Route 236. If property abuts Route 236, use is "SPR" and must be visually screened from abutting (same street side) non-commercial properties in accordance with Sec. 33-175(a). Overnight boarding and outdoor kenneling of animals is prohibited in the rural and suburban zoning districts.
16. Use is "SPR 8" unless property abuts Route 236. If property abuts Route 236, use is "SPR" and must be visually screened from abutting (same street side) noncommercial properties.
17. Use is "SPR 8" unless property abuts Route 236. If property abuts Route 236, use is "CEO" and must be visually screened from abutting (same street side) noncommercial properties.
18. Use is "SPR 8" unless property abuts Route 236. If property abuts Route 236, use is "SPR 4" and must be visually screened from abutting (same street side) noncommercial properties.
19. See chapter 12 for additional regulations pertaining to the sale and use of fireworks.
20. Must conform to the requirements of section 33-190. Marijuana establishments and medical marijuana establishments may only be authorized as principal uses, and not as accessory uses.

**21. Must conform to the requirements of Section 45-462.**

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 207); T.M. of 12-15-93; Amend. of 3-25-95; T.M. of 3-27-99(1), § 5; Ord. of 3-25-00(1); T.M. of 3-16-02, (art. 3), (art. 4); T.M. of 6-19-01, (art. 6), (art. 7); T.M. of 11-5-02; T.M. of 11-4-03; T.M. of 11-4-03; T.M. of 3-20-04; T.M. of 6-14-08; T.M. of 6-12-2010(3); T.M. of 6-18-2011(6); T.M. of 11-8-2011; T.M. of 6-16-2012(1); T.M. of 6-16-2012(2); T.M. of 11-5-2019(5); T.M. of 7-14-2020(5) ; T.M. of 6-8-2021(2) , art. 33; T.M. of 6-8-2021(4) , art. 31)

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Cross reference(s)—Review procedures and standards for site review requirements in the zoning table of uses, § 33-56 et seq.

DRAFT

*[edits existing section]*

Sec. 45-462. – 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).~~

**Add new language:**

- (a) *Purpose.* The purpose of this section is to establish performance standards for solar energy systems.
- (b) *Objectives.* This section is intended to achieve the following 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:
    - i. on top of buildings
    - ii. in parking lots
    - iii. on closed landfills
    - iv. on significantly disturbed sites such as brownfields
    - v. on land where previous development was located or significant grading has taken place, and,
    - vi. in regenerating wooded areas that are not comprised primarily of important farmland soils
  - (4) Encourage the siting of solar energy systems on non-agricultural lands
  - (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
- (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 medium- and large-scale ground-mounted solar energy systems.* The following standards shall apply to the development and maintenance of all medium- and large-scale ground-mounted solar energy systems. 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.* Medium and large-scale ground-mounted solar energy systems shall comply with buffering and screening requirements in Section 33-175 and Section 45-417. Without limiting the generality of the foregoing:
  - i. Medium-scale ground-mounted solar energy systems shall be visually screened from abutting properties that have existing residential use or from streets, town ways, or public ways, by a continuous vegetated buffer that is at least 50 feet in depth.
  - ii. Large-scale ground-mounted solar energy systems shall be visually screened from abutting properties that have existing residential use or from streets, town ways, or public ways, by a continuous vegetated buffer that is at least 100 feet in depth.
  - iii. The buffers required by this paragraph shall be achieved by preserving existing vegetation, new plantings, or a combination of the two.
  - iv. An opening in the buffer along a street, public way, or town way is allowed only to the extent needed for driveway or vehicular access.
- (2) *Fencing.* Medium and large-scale ground-mounted solar energy systems shall comply with the fence requirements in Section 33-175 and Section 45-423. Without limiting the generality of the foregoing:
  - i. Fencing for ground-mounted solar energy systems shall be provided if required by the National Electrical Code (NEC), and shall be designed, installed, and maintained in accordance with the NEC.
  - ii. When used, fencing around the perimeter of a ground-mounted solar energy system shall be elevated by a minimum of 5 inches to allow for passage of small terrestrial animals.
  - iii. Where there is a documented potential or need for passage of larger wildlife, the Planning Board may require that a large-scale ground-mounted solar energy system include fence or gate design features at reasonable intervals to allow for such passage while ensuring site security and NEC compliance.
- (3) *Land Clearing.* Clearing of natural vegetation shall be limited to what is necessary for the construction, operation, and maintenance of ground-mounted solar energy systems or as otherwise prescribed by applicable laws, regulations, and bylaws/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. 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.* Sensitive wildlife habitats should be avoided to the extent practicable. Sensitive wildlife may include, but are not necessarily limited to, areas of statewide ecological significance, large unfragmented forest blocks, or other habitat included under the State’s Beginning with Habitat program. 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.

- (6) *Archaeological Resources.* Sign-off by the State Historic Preservation Commission regarding archaeological and historical resources shall be provided with all applications.
- (7) *Utility Connections.* Overhead or pole-mounted electrical wires shall be avoided to the extent possible within the facility.
- (8) *Signage.* A sign identifying the owner of a ground-mounted medium- or large-scale solar energy system and providing a 24-hour emergency contact phone number shall be placed such that it is clearly visible at the entrance of the facility.
- (9) *Fire safety.* Knox Box access and adequate vehicle turnaround areas for emergency vehicles shall be provided.
- (10) *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:
  - i. Physical removal of all solar energy systems, structures, equipment, security barriers, and transmission lines from the site.
  - ii. Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations.
  - iii. 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.
  - iv. For medium- and large-scale ground-mounted solar energy systems, 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.