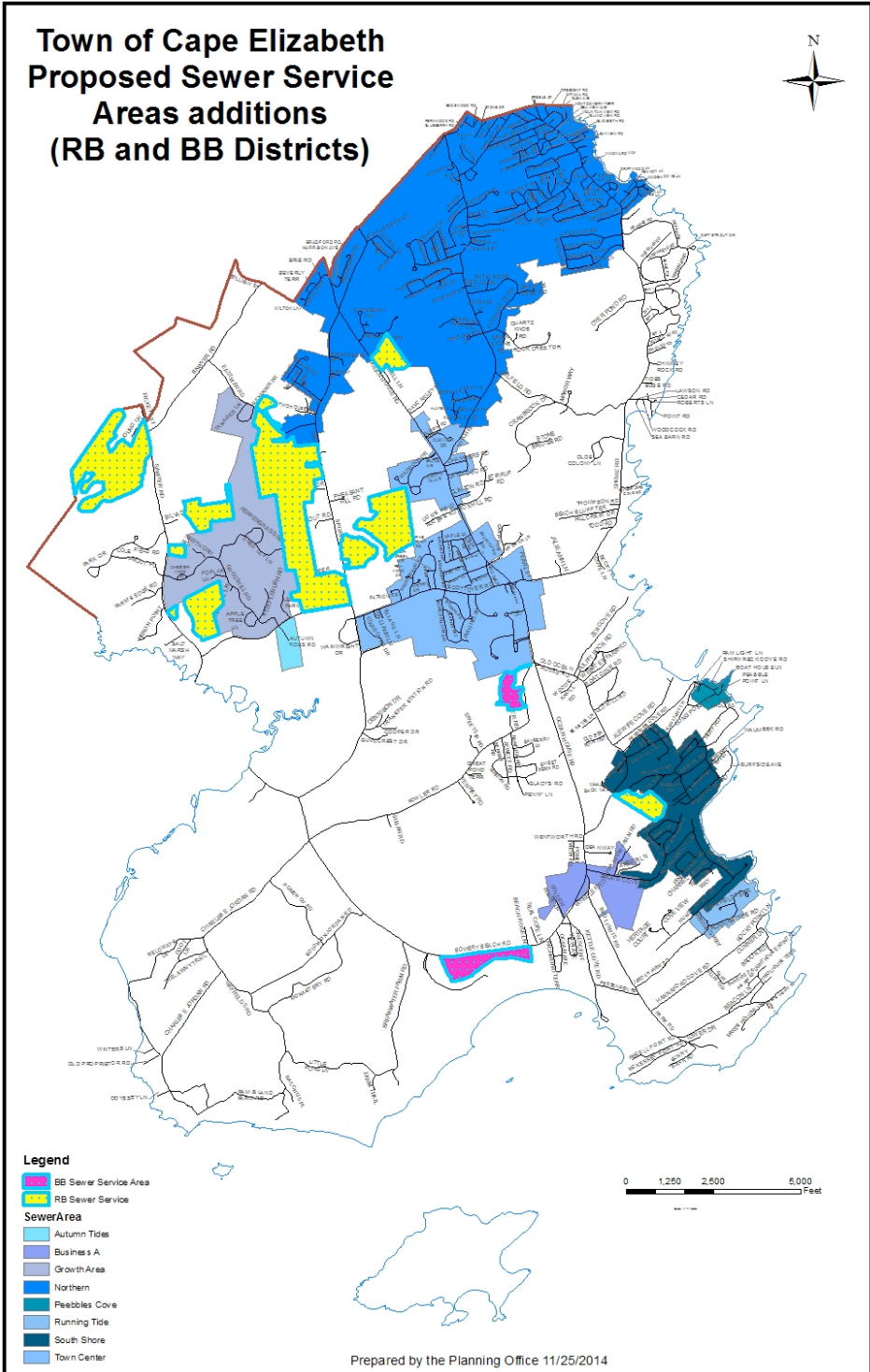


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# Land Use Amendments Sewer Service Area Map, Subdivision Ordinance, Zoning Ordinance



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**CHAPTER 16  
SUBDIVISION ORDINANCE**

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**Sec. 16-3-1. Subdivision Review Standards.** A subdivision shall meet all of the following standards of review, as determined by the Planning Board.

**(t) Open Space Impact Fee**

- 1. Purpose. In order to accommodate the expected needs of the subdivision for open space and recreational areas without diminishing the community standard of public open space, the applicant shall be required to donate land with legal public access or otherwise conserved with a public benefit or a cash contribution in lieu of actual land dedication, or a combination of the above, at the option of the Planning Board and with the advice of the Conservation Commission. When a subdivision is designed in compliance with Sec. 19-7-2, Open Space Zoning, the open space conserved shall be deemed to satisfy the Open Space Impact Fee.

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**CHAPTER 19**

**ZONING ORDINANCE**

**SEC. 19-1-3. DEFINITIONS**

**Multifamily:** A building containing 2 or more dwelling units (excepting accessory dwelling units), or a mixed use building containing 1 or more dwelling units. **(Effective February 12, 2005)**

**Multiplex Housing:** Multiplex housing is housing containing two (2) or more attached dwelling units, ~~each of which has independent outside access. Multiple units may be arranged in a variety of configurations including side by side and/or back to back. A multiplex should have the look of large, closely spaced, single family detached units with the essential feature being the small number of units attached in one building. Each individual building may contain no more than five (5) units with an average of not more than four (4) units per building for the entire project, except that the maximum and average number of units per building shall not apply in the Town Center District.~~ **(Revised effective December 10, 2003)**

**SEC. 19-4-3. NONCONFORMANCE OUTSIDE OF SHORELAND AND RESOURCE PROTECTION DISTRICTS**

The following provisions shall govern the use and modification of nonconforming lots, structures, and uses in all areas of the Town that are not located within a Shoreland Performance Overlay District or a Resource Protection District. Nonconformities within the Shoreland Performance Overlay District shall be governed by the provisions of Sec. 19-4-4, Nonconformance Within the Shoreland Protection Overlay District, and nonconformities in the Resource Protection Districts (RP1-CW, RP1-CW Buffer Overlay, RP2-WP, and RP3-F) shall be governed by the provisions of Sec. 19-4-5, Nonconformance Within the Resource Protection Districts.

**A. Nonconforming Lots**

The following provisions shall govern the development of lots that are nonconforming because they do not meet the minimum lot area, net lot area per dwelling unit, minimum street frontage, or similar requirement of the district within which they are located. Lots which do not meet the minimum street frontage requirement shall comply with Sec. 19-7-9, Private Access Provisions.

**1. Vacant Nonconforming Lots**

- a. Vacant nonconforming lots may be built upon in conformance with the provisions of the district in which they are located even though the lots do not meet the minimum lot area, net lot area per dwelling unit, street frontage, or similar requirements as long as the requirements of the chart below are met. (Effective August 11, 1999 and revised effective July 4, 2001)

One Owner	One Owner	One Owner	<b>Individual Lots May Be built On</b>
Non-Conforming Lot	Non- Conforming Lot	Non- Conforming Lot	

One Owner			<b>Proposed undersized lot is NOT buildable</b>
One Owner	Conforming Lot		
Non- Conforming Lot	Proposed Undersized Lot		

The Code Enforcement Officer may issue a building permit and related permits and approvals for a principal structure and related accessory buildings and structures that do not comply with the setbacks and other Space and Bulk Standards that would otherwise be required in the district in which it is located as long as the following standards are met: (Effective August 11, 1999)

**SEC.19-5-3. PROCEDURES**

**A. Establishment and Notice of Meeting Date**

Upon receipt of any notice of administrative, variance, or sewer appeal, application for conditional use, or application for a setback reduction, the Code Enforcement Officer shall forthwith notify the Chair of the Board, who shall establish the date of the meeting at which the application will be considered based upon the submission deadlines for the regular meetings of the Board. The Code Enforcement Officer shall give notice of such



public hearing in accordance with Sec. ~~16-2-1(b) 16-2-4(a)(7)~~ of the Subdivision Ordinance, except that a legal notice shall be published once in a newspaper. (Effective August 11, 1999)

**SEC. 19-6-1. RESIDENCE A DISTRICT (RA)**

**A. Purpose**

The Residence A District includes lands that are outside of the built-up areas of Cape Elizabeth, lands to which public sewer lines are not expected to be extended in the near future, and large tracts suitable for farming, woodland production, and wildlife habitat. The purpose of this district is to allow residential development that is compatible with the character, scenic value, and traditional uses of rural lands and that does not impose an undue burden on the provision of municipal services.

**B. Permitted Uses**

**2. The following residential uses:**

- a. Single family dwelling
- b. Manufactured housing on an individual lot
- c. Multiplex housing
- d. Eldercare facility, subject to the provisions of Sec. 19-7-6, Eldercare Facility Standards

<b>MINIMUM LOT AREA</b>	
<i>(1) Boat repair facility for commercial purposes</i>	200,000 sq. ft. (4.6 acres)
<i>(2) Multiplex housing</i>	<del>10</del> 5 acres
<i>(3) Eldercare facilities</i>	10 acres
<i>(4) Golf Course (Effective February 12, 2003)</i>	150 acres <i>(Effective February 12, 2003)</i>
<i>(5) Wind energy systems (Effective. October 8, 2008)</i>	20,000sq. ft.
<i>(6) Other uses</i>	80,000 sq. ft.
<b>MAXIMUM NUMBER OF DWELLING UNITS PER AREA</b>	
<i>(1) Multiplex housing</i>	1 unit per 66,000 sq. ft. of net residential area

<i>(2) In subdivisions</i>	1 unit per 80,000 sq. ft. of net residential area
<i>(3) In subdivisions that conform to Sec. 19-7-2, Open Space Zoning</i>	1 unit per 66,000 sq. ft. of net residential area
<i>(4) In eldercare facilities</i>	1 unit per 6,000 sq. ft. or 1 bed per 3,500 sq. ft. of net residential area, whichever is less
<i>(5) Other housing</i>	1 unit per 80,000 sq. ft. of gross lot area
<b>MINIMUM SETBACKS</b>	
<i>(1) All uses unless otherwise specified</i>	
(a) Side yard setback	30 ft.  The side yard setback may be reduced in accordance with Sec. 19-4-3.A.2, Developed Nonconforming Lots. <b>(Effective August 11, 1999)</b>
(b) Rear yard setback	30 ft.  The rear yard setback may be reduced in accordance with Sec. 19-4-3.A.2, Developed Nonconforming Lots. <b>(Effective August 11, 1999)</b>
© Front yard setback	The front yard setbacks set forth below may be reduced, only on roads which are not classified arterial, to the average setback of the two principal structures fronting on the same road in closest proximity to the site of the proposed structure, but any structure must be at least 20 feet from the right-of-way.
- Arterial street	50 ft.
- Collector, rural connector, and feeder streets	40 ft.
- Local and private streets	30 ft.
<i>(2) <del>Multiplex housing and</del> <u>E</u>ldercare facilities</i>	
(a) From property line	75 ft.

1 **(5) Open Space Zoning Subdivisions**  
2 **(See Sec. 19-7-2)**

- 3
- 4 (a) Side yard setback 20 ft.
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- 6 (b) Rear yard setback 20 ft.
- 7
- 8 (c) Front yard setback 20 ft.
- 9

10 **F. Site Plan Review**

11  
12 The following uses and activities shall be subject to site plan review by the Planning  
13 Board, according to the terms of Article IX, Site Plan Review, prior to issuance of any  
14 building permit, plumbing permit, or other permit:

- 15
- 16 1. Multiplex housing and eldercare facilities. As part of Site Plan Review, the  
17 standards in Sec. 19-7-2 (E), Multiplex Housing Standards, shall also apply.
- 18

19 **SEC. 19-6-2. RESIDENCE B DISTRICT (RB)**

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21 **A. Purpose**

22  
23 The Residence B District is differentiated from the Residence A District in that  
24 subdivisions and multiplex housing -in Residence B are required to be laid out according  
25 to the principles of open space zoning, as described in Sec. 19-7-2, Open Space Zoning.  
26 The Residence B District includes lands outside of the built-up parts of Town where the  
27 Comprehensive Plan indicates growth can and should be accommodated as a result of  
28 soils suitable for individual or common septic systems or the extension of public sewer  
29 lines. The purpose of this district is to allow a significant portion of the Town’s  
30 anticipated residential growth to occur in these areas, in a manner that preserves the  
31 character of rural lands, promotes healthy neighborhoods, offers flexibility in design, and  
32 minimizes the costs of municipal services.  
33

34 **B. Permitted Uses**

35  
36 **2. The following residential uses:**

- 37
- 38 a. Single family dwelling
- 39 b. Manufactured housing on an individual lot
- 40 c. Multiplex housing
- 41 d. Eldercare facility, subject to the provisions of Sec. 19-7-6, Eldercare Facility
- 42 Standards
- 43

44 **E. Standards**

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46 **2. The following Space and Bulk Standards shall apply:**

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a. Lots that are part of residential subdivisions approved by the Planning Board after June 4, 1997, shall comply with the terms of Sec. 19-7-2, Open Space Zoning, except that subdivisions for which completed applications have been submitted to the Planning Board prior to June 4, 1997, shall be subject to the regulations in effect at the time of their submission.

<b>MINIMUM LOT AREA</b>	
<i>(1) Eldercare facilities</i>	5 acres
<i>(2) Wind energy systems</i>	20,000 sq. ft. <b>(Effective October 8, 2008)</b>
<i>(3) Other uses</i>	80,000 sq. ft.
<b>MAXIMUM NUMBER OF DWELLING UNITS PER AREA</b>	
<i>(1) In eldercare facilities</i>	1 unit per 3,500 sq. ft. or 1 bed per 2,500 sq. ft. of net residential area, whichever is less
<i>(2) Other uses</i>	1 unit per 80,000 sq. ft. of gross lot area
<b>MINIMUM STREET FRONTAGE</b>	
<i>(1) All uses</i>	125 ft.
<b>MINIMUM SETBACKS</b>	
<i>(1) All uses unless otherwise specified</i>	
(a) Side yard setback	30 ft.  The side yard setback may be reduced in accordance with Sec. 19-4-3.A.2, Developed Nonconforming Lots. <b>(Effective August 11, 1999)</b>
(b) Rear yard setback	30 ft.  The rear yard setback may be reduced in accordance with Sec. 19-4-3.A.2, Developed Nonconforming Lots. <b>(Effective August 11, 1999)</b>
(c) Front yard setback	The front yard setbacks set forth below may be reduced, only on roads which are not classified arterial, to the average setback of the two principal structures fronting on the same road in closest

	proximity to the site of the proposed structure, but any structure must be at least 20 feet from the right-of-way.
- Arterial street	50 ft.
- Collector, rural connector, and feeder streets	40 ft.
- Local and private streets	30 ft.
(d) Limit on parking within the front yard	A nonresidential use shall not locate its required off-street parking within the front yard setback
<b>(2) <del>Multiplex housing and Eldercare facilities</del></b>	
(a) From property line	75 ft.

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**SEC. 19-6-3. RESIDENCE C DISTRICT (RC)**

**A. Purpose**

The Residence C District includes lands that are within the built-up areas of Cape Elizabeth, are sewerred or can be easily served by public sewer, are identified in the Comprehensive Plan as part of the Town’s growth areas, are not presently in agricultural or woodland uses, and are not considered to be valuable, large-scale open space with valued scenery or wildlife habitat. The purpose of the district is to provide for areas of compact development that can foster cohesive neighborhoods that are close to community services.

**B. Permitted Uses**

**2. The following residential uses:**

- a. Single family dwelling
- b. Manufactured housing on an individual lot
- c. Manufactured housing park, subject to the provisions of Sec. 19-7-7, Manufactured Housing Parks
- d. Multiplex housing
- e. Eldercare facility, subject to the provisions of Sec. 19-7-6, Eldercare Facility Standards
- f. Rooming or boarding home

**E. Standards**

**2. The following Space and Bulk Standards shall apply:**

<b>MINIMUM LOT AREA</b>
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<i>(1) Boat repair facility for commercial purposes</i>	200,000 sq. ft. (4.6 acres)
<i>(2) Multiplex housing</i>	<del>5</del> 3 acres
<i>(3) Eldercare facilities</i>	5 acres
<i>(4) Wind energy systems</i>	20,000 sq. ft. <b>(Effective October 8, 2008)</b>
<i>(5) Others</i>	20,000 sq. ft.
<b>MAXIMUM NUMBER OF DWELLING UNITS PER AREA</b>	
<i>(1) Multiplex housing</i>	1 unit per 15,000 sq. ft. of net residential area
<i>(2) In subdivisions</i>	1 unit per 20,000 sq. ft. of net residential area
<i>(3) In subdivisions that conform to Sec. 19-7-2, Open Space Zoning</i>	1 unit per 15,000 sq. ft. of net residential area
<i>(4) A single-family home on a lot that is not part of a subdivision</i>	1 unit per 20,000 sq. ft. of gross lot area
<i>(5) In eldercare facilities</i>	1 unit per 2,500 sq. ft. or 1 bed per 2,100 sq. ft. of net residential area <b>(Effective May 9, 2007)</b>
<i>(6) Rooming or boarding home</i>	1 bed per 5,000 sq. ft. of gross lot area
<i>(7) Other housing</i>	1 unit per 20,000 sq. ft. of gross lot area
<b>MAXIMUM NUMBER OF BED AND BREAKFAST ROOMS</b>	
<i>Bed and Breakfast Guest Room</i>	1 room per 5,000 sq. ft. of gross lot area
<b>MINIMUM STREET FRONTAGE</b>	
<i>(1) Bed and Breakfast</i>	100 ft. on Shore Road or Route 77
<i>(2) All uses</i>	100 ft.
<b>MINIMUM SETBACKS</b>	
<i>(1) All uses unless otherwise specified</i>	
(a) Side yard setback	20 ft.  The side yard setback may be reduced in accordance with Sec. 19-4-3.A.2,

	<b>Developed Nonconforming Lots. (Effective August 11, 1999)</b>
(b) Rear yard setback	20 ft. The rear yard setback may be reduced in accordance with Sec. 19-4-3.A.2, Developed Nonconforming Lots. <b>(Effective August 11, 1999)</b>
(c) Front yard setback	The front yard setbacks set forth below may be reduced, only on roads which are not classified arterial, to the average setback of the two principal structures fronting on the same road in closest proximity to the site of the proposed structure, but any structure must be at least 20 feet from the right-of-way.
- Arterial street	40 ft.
- Collector and rural connector streets	40 ft.
- Feeder street	30 ft.
- Local and private streets	20 ft.
<b><i>(2) <del>Multiplex housing and e</del>Eldercare facilities</i></b>	
(a) From property line	75 ft.

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**(5) Open Space Zoning Subdivisions**  
*(See Sec. 19-7-2)*

- (a) Side yard setback 15 ft.
- (b) Rear yard setback 15 ft.
- (c) Front yard setback 20 ft.

**F. Site Plan Review**

The following uses and activities shall be subject to site plan review by the Planning Board, according to the terms of Article IX, Site Plan Review, prior to issuance of any building permit, plumbing permit, or other permit:

1 | 1. Multiplex housing and eldercare facilities. As part of Site Plan Review, the  
2 | standards in Sec. 19-7-2 (E), Multiplex Housing Standards, shall also apply.

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4 | **SEC. 19-6-9. RESOURCE PROTECTION DISTRICTS**

5 | (RP1-CW, RP1-CW Buffer Overlay, RP2-WP, and RP3-F)

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7 | **D. Prohibited Uses**

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9 | Uses shown as prohibited uses on Table 19-6-9 and any other use not specifically listed  
10 | as a permitted use or a use permitted with a resource protection permit shall be prohibited  
11 | in the RP1-CW, RP1-CW Buffer Overlay, RP2-WP, and RP3-F Districts.

12  
13 | **TABLE 19-6-9**

Use, Activity, Structure	RP1-CW and RP1-CW Buffer Overlay	RP2-WP	RP3-F
36. Multi-unit residential	No	RPP	No

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17 | **SEC. 19-7-2. OPEN SPACE ZONING**

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19 | **A. Applicability**

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21 | **1. Residence B District**

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23 | The provisions of this section shall be mandatory for residential subdivisions in  
24 | the Residence B District.

25  
26 | **2. Other Districts**

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28 | In the Residence A District and Residence C District, the provisions of this  
29 | section shall be optional. In such districts, notwithstanding other provisions of  
30 | this Ordinance, the Planning Board in reviewing and approving proposed  
31 | residential subdivisions may modify provisions relating to space and bulk,  
32 | including but not limited to increasing setbacks, to permit innovative approaches  
33 | to housing and environmental design in accordance with the standards of this  
34 | Article. Such modifications of Space and Bulk Standards shall not be construed  
35 | as granting variances to relieve hardship. **(Revised effective December 10, 2003)**

36  
37 | **C. Dimensional Standards**

38  
39 | The average size of the individual lots shall be smaller than that required in the district in  
40 | which the cluster development is located and the balance of the required area shall be



reserved as open space. The lots and open space shall conform to the following Space and Bulk Standards:

**1. Density**

The overall density of the subdivision shall not exceed the density requirements of the district in which it is located as shown in the chart below. In the event that a subdivision is located in more than one zoning district, the overall density of the subdivision shall not exceed the combination of the density requirements of the districts in which the subdivision is located. For example, if a subdivision has 660,000 square feet of net residential area in the RA District and 150,000 square feet in the RC District (with public sewerage) then the overall density shall not exceed 20 units. *(Effective February 12, 2003)*

District	Maximum Density of Residential Development	
	Single Family	Multiplex
RA	1 unit per 66,000 sq. ft. of net residential area	1 unit per 66,000 sq. ft. of net residential area
RB	1 unit per 60,000 sq. ft. of net residential area with on-site sewerage disposal	1 unit per 60,000 sq. ft. of net residential area with on-site sewerage disposal
	1 unit per <del>30,000</del> 20,000 sq. ft. of net residential area with public sewerage	1 unit per <del>30,000</del> 20,000 sq. ft. of net residential area with public sewerage
RC	1 unit per 15,000 sq. ft. of net residential area	1 unit per 15,000 sq. ft. of net residential area

**2. Minimum Lot Size**

Each lot within the subdivision shall contain at least the following area:

	Minimum Lot Size	
	With On-site Sewage Disposal	With Public Sewerage
RA	30,000 sq. ft. of net residential area	30,000 sq. ft. of net residential area
RB	20,000 sq. ft. of net residential area	10,000 sq. ft. of net residential area
RC	NA	7,500 sq. ft. of net residential area

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3. *Average Lot Size*

Lots and/or dwelling units shall be laid out so that the average lot size is not more than sixty percent (60%) of the maximum density set forth in Sec. 19-7-2.C.1 above in the RA and RC Districts and not more than fifty percent (50%) of the maximum density in the RB District.

4. *Open Space*

At least forty percent (40%) of the gross acreage shall remain as open space outside of the lots and not otherwise assigned to individual dwelling units. In the RB District, where the development will be served by public sewer, at least forty-five (45%) of the gross acreage shall remain as open space outside of the lots and not otherwise assigned to individual dwelling units. At least one third of this required open space shall be land that is usable as determined by applying the criteria of the net residential area definition. [For example, if a parcel consists of one hundred twenty (120) acres, at least forty-eight (48) acres shall be kept as open space. Of this forty-eight (48) acres, at least sixteen (16) acres shall be usable applying the criteria of the net residential area definition.]

D. Open Space Design Standards

In addition to other standards of this Ordinance and of the Town's Subdivision Ordinance, the following ~~design~~ standards shall apply. ~~to developments under this section.~~

.Ie. Land to be preserved as open space

The land within the subdivision to be preserved as open space shall be designed in accordance with the following standards.

a. Contiguous land. To the greatest extent possible, open space shall be conserved in large, contiguous blocks. Narrow strips of open space (for example, extended strips of open space of less than fifty (50) feet in width) shall not be included in the open space design unless they provide public access connectors to nearby public open space (which includes lands and/or greenbelt trails), wildlife corridors or links to neighborhoods that would benefit from use of the open space to be preserved.

b. Connectivity. Where public open space is located in close proximity to the subdivision, open space shall be laid out to concentrate land to be preserved adjacent to or near existing public open space. Access for lots/units in the development shall be provided to land to be preserved as open space. Greenbelt trail connections to existing public open space and land to be preserved shall also be provided where appropriate. ~~in a manner that maximizes the amount of~~

~~contiguous, usable area for agriculture or woodlot production, and outdoor recreation included as part of the required open space~~

~~f. in a manner that each house lot has direct access to the open space without having to cross another's house lot.~~

~~1. **Priorities for Location of Lots and Open Space**~~

~~c. Preservation priorities. Consistent with the standards set forth above, the land within the subdivision to be preserved as open space shall be determined using the following priorities, in the order that they appear. To the extent priorities that are higher on this list are met by the proposed open space provisions in a subdivision, the landowner shall have satisfied the requirements of this subsection even if the proposed open space design does not preserve lower priorities.The Planning Board shall find that individual building lots or building locations are laid out to achieve the following objectives, as applicable. Where the Planning Board finds that objectives conflict, the objectives shall be achieved in the order listed:~~

~~ia. on soils suitable for subsurface wastewater disposal where on-site wastewater disposal is to be used~~

~~b. Wetlands/environmentally sensitive areas/wildlife habitat. In a manner that preserves as part of the required open space environmentally sensitive areas, such as wetlands, steep slopes (as included in the computation of net residential area), flood plains, and wildlife habitat rated by the Maine Department of Inland Fisheries and Wildlife as high value, and unique natural features~~

~~ii. Agriculture. In a manner that preserves active agricultural fields for agricultural use. The agricultural land must meet the requirements of Farm Land under M.R.S.A. Sections 1101-1121, Farmland Tax Law, but does not need to be registered under this state program.~~

~~iii. Greenbelt and Recreation area. In a manner that preserves and promotes connectivity of the Cape Elizabeth greenbelt townwide.~~

~~ive. Scenic character. In a manner that preserves visual resources identified in An Assessment of the Visual Resources of Cape Elizabeth, Maine (February 19, 1989), a copy of which is on file with the Town Clerk.~~

~~d. in a manner that preserves or allows the establishment of a vegetated buffer to serve as an effective visual screen from adjacent properties~~

~~2. **Permanent ~~Common~~ Open Space Preservation**~~

1 The land in the subdivision to be preserved as open space shall be permanently  
2 preserved, and meet the following standards.  
3

4 a. Permanent legal protection. Deeds or any other documents necessary to  
5 permanently protect the land within the subdivision to be preserved as  
6 open space shall be prepared and recorded. Documentation that reflects  
7 how the applicant intends to ensure legally that the land within the  
8 subdivision to be preserved as open space will be protected shall be  
9 submitted to the Planning Board as part of the application review. In  
10 particular, the documentation shall specify the ownership structure of the  
11 open space. For example, land within the subdivision to be preserved as  
12 open space (or an easement interest therein) may be dedicated or deeded to  
13 the Town of Cape Elizabeth, the land may be deeded to a subdivision  
14 homeowners association, the land may be deeded to a third party  
15 conservation organization, or the land may be retained by the applicant.  
16 The documentation shall specify, at a minimum, restricted activities and  
17 vegetation preservation. Access to the open space must be made available  
18 to the homeowners of the subdivision and is strongly encouraged to be  
19 made available to the public, and such access may be limited consistent  
20 with the open space priorities.  
21

22 b. Restricted activities. Activities on the open space shall be restricted to  
23 preserve the open space from future development. No principal residential,  
24 commercial or other buildings shall be constructed on the preserved open  
25 space. Structures related to the preservation priorities in Sec. 19-7-2 (D)  
26 (2) may be allowed. For example, open space preserved as a (i)  
27 wetlands/environmentally sensitive areas/wildlife habitat priority may  
28 include viewing platforms, nature observation shelters, or boardwalk and  
29 bridge structures; (ii) agriculture priority may include a barn or shed  
30 structure; (iii) greenbelt and recreation area may include boardwalk and  
31 bridge structures; and (iv) scenic character areas may include an overlook.  
32 The open space must be dedicated to the recreational amenity and  
33 environmental enhancement of the development, must protect natural  
34 resources, and must be recorded as such. For the purpose of these  
35 provisions, open space means an area that:  
36

37  
38 Existing vegetation shall be preserved, but vegetation management related  
39 to the preservation priorities may be allowed. For example, open space  
40 preserved as a (i) wetlands/environmentally sensitive areas/wildlife habitat  
41 priority may include limited clearing and vegetation trimming to install  
42 and maintain greenbelt trails; (ii) agriculture priority may include tilling of  
43 fields and animal grazing; (iii) greenbelt and recreation area may include  
44 construction and maintenance of athletic fields; and (iv) scenic character  
45 areas may include vegetation removal and management to create and  
46 maintain public views.

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- ~~(1) is not encumbered in any way by a principal structure;~~
- ~~(2) is not devoted to use as a roadway, road right-of-way, parking lot, or sidewalk;~~
- ~~(3) is left in its natural or undisturbed state, except for cutting of trails for walking or jogging, or is landscaped for ballfields, play fields, picnic areas, or similar activities, unless the land will be managed for forestry or used for agriculture;~~
- ~~(4) is capable of being used and enjoyed for the purpose of informal and unstructured recreation and relaxation; and~~
- ~~(5) is legally and practicably accessible to all residents of lots in the cluster development out of which the open space is taken.~~

~~b. The common open space shall be controlled by one (1) or more of the following methods:~~

- ~~(1) dedication to the Town as public open space subject to acceptance by the Town;~~
- ~~(2) common ownership by the owners of the units within the project with a conservation easement granted to the Town, subject to acceptance by the Town, or recognized conservation organization;~~
- ~~(3) common ownership by the owners of units within the project;~~
- ~~(4) transfer, with permanent restrictions, to a land trust or other recognized conservation organization; and/or~~
- ~~(5) ownership by a private party for agricultural or other natural resource use provided that permanent restrictions are in place to provide for its continued use for this purpose.~~

~~c. Maintenance. If the land in the subdivision to be preserved as open space is not deeded to the Town of Cape Elizabeth, documentation shall be submitted identifying the party responsible for maintaining the open space and describing the methods to be employed to maintain the open space. Any subdivision proposed under this section shall specify the ownership, use, management, and person responsible for maintenance of all common areas and facilities. The Planning Board shall approve the arrangements for the ownership, control, and maintenance of the common open space in accordance with the standards of subsections a. and b. above as part of the approval of a final subdivision plan. No changes in the use or management of common open space not owned by the Town shall be~~

~~made without Planning Board approval and a note shall be provided on the approved subdivision plan to this effect.~~

~~d. Any common open space or facility not retained by a private owner shall be maintained by a developer or homeowners' association unless and until it is transferred in its entirety to the Town or a recognized conservation organization, and until the transfer actually is completed. The formation and incorporation by the developer of a homeowners' association, if one is proposed, shall be accomplished prior to final subdivision approval. Covenants for mandatory membership in the association shall be approved by the Planning Board and included in the deed restrictions for each lot or unit. The association's documents shall specify that:~~

~~(1) The association shall have the responsibility of maintaining the common open space and other private facilities dedicated to the use in common by the development's residents;~~

~~(2) The association shall levy annual charges against all property owners to defray the expenses, if any, connected with maintenance of the common open spaces and facilities; and~~

~~(3) The developer shall maintain control of common open spaces and facilities and be responsible for their maintenance until at least fifty-one percent (51%) of the development's lots or units have been completed and sold, with evidence of such completion and sales submitted to and approved by the Planning Board.~~

**E. Multiplex Housing Standards**

Multiplex housing in the RA, RB and RC Districts must comply with the following provisions.

**1. Open Space**

At least forty-five percent (45%) of the gross acreage shall remain as open space outside of the building footprint(s), parking areas and other developed areas (excluding open space improvements), and any areas assigned to individual dwelling units. At least one third of this required open space shall be land that is usable as determined by applying the criteria of the net residential area definition.

**NOTE: The open space requirement of 45% is 5% higher than for subdivisions in the RA and RC district.**

**2. Building Size**

1 The maximum building footprint shall not exceed 7,500 sq. ft. The maximum  
2 height shall be limited to thirty-five (35) feet.

3  
4 **3. Public Water and Sewer**

5  
6 The multiplex housing must be served by public water and public sewerage.  
7 Where the most reasonable public sewer connection will require public sewer  
8 construction of more than one-quarter (1/4) mile from the existing public sewer to  
9 the development property line, or where the development density is less than 20  
10 multiplex units, the development may increase the base density by fifteen percent  
11 (15%).

12  
13 **4. Site Design Standards**

14  
15 a. Open Space. Open space shall be designed in accordance with Sec. 19-7-2  
16 (D), Open Space Design Standards.

17  
18 b. Building location. The building, parking areas and related development  
19 structures shall be located on the portion of the site most suited to  
20 development. The first impression of a building is from the side that faces  
21 the street. When the building is located within one-hundred feet (100') of a  
22 public right-of-way, the building shall be oriented toward the public right-  
23 of-way. Vehicular and pedestrian connections to the public right-of-way  
24 shall be incorporated into the site design.

25  
26 c. Landscaping. Areas of significant existing vegetation that shall be  
27 preserved shall be shown on the site plan. The plan shall include a  
28 preservation plan for that landscaping during construction. Where suitable  
29 existing vegetation is not present or will not be preserved and where the  
30 building is located within one hundred feet (100') of a public right-of-way,  
31 the area between the building and the public right-of-way shall be  
32 landscaped. The landscape plan shall create a transition from the public  
33 right-of-way to the building and serve to enhance the perspective of the  
34 building.

35  
36 General site landscaping shall include transition areas from the building to  
37 parking areas and include a buffer between the developed portions of the  
38 site and abutting properties.

39  
40 **NOTE: The "general site landscaping" paragraph directly above duplicates the**  
41 **landscaping requirements under Site Plan Review.**

42  
43 d. Parking Areas. Parking shall be provided in accordance with Sec. 19-7-8,  
44 Off-Street Parking. Parking lots shall be landscaped to soften the  
45 perception of an expanse of hard surface. Landscaped islands may be  
46 required in parking lots exceeding 20 spaces.



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5. Architectural Standards

The multiplex building(s) must be designed to be compatible with the character of Cape Elizabeth, which ranges from compact neighborhoods to undeveloped open space, and from agricultural fields to limited commercial areas. Compatibility shall be determined using the following standards.

a. Massing. The perception of a building is influenced by its size, but more importantly by how the overall size is distributed throughout the building. Determination of compatibility shall be based on the degree of articulation on building surfaces, the magnitude of unbroken faces of a structure, the impact of the building mass upon view sheds and the integration of mechanical equipment within the structure.

NOTE: The following pictures are placeholders for illustrated drawings under development that will be added to these standards.



b. Roof. The height of a building and the type of roof design significantly influence the scale of a building. Roofs shall generally be of a gable or other sloping roof design. Roofs shall have a minimum pitch of 7:12. Roof lines shall be integrated into the facade and structure of the building and use of any kind of a parapet to simulate a roof line shall be prohibited.





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c. Entrance and windows. The relationship between doors and windows to exterior wall space of a building creates a rhythm or pattern. Doors and windows shall be consistent with the style of the building. The building shall have a distinctive front entrance. The front entrance shall be prominently located and articulated on the facade of the building. Individual outside entrances may be permitted. Windows shall be generously incorporated into the design, both in number and size.



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d. Exterior Materials. Color boards, which include an accurate representation of the building color palette, and exterior material samples shall be provided by the applicant. Facade materials give a structure character. Exterior materials shall be compatible with the design of the structure. Exterior materials shall be of high quality and durable. The use of wood shingles, wood clapboards, brick and stone is permitted. The Board may

approve high quality manufactured materials, for example concrete clapboards or siding, such as hardiplank, that mirrors the appearance of natural materials, however no other use of concrete block, sheet metal, vinyl or aluminum siding is permitted.



**6. Public Benefit Density Bonus**

In order to create an incentive for property owners to incorporate community goals into private development, density bonuses may be incorporated into multiplex housing development. When any combination of the following density bonuses are included in a development, the dimensional standards in paragraph a below shall apply to the development, notwithstanding the dimensional standards of the zoning district.

a. Dimensional standards. The total density bonus allowed, including subsection 19-7-2 (E)(3) above, shall not exceed thirty percent (30%) of the density otherwise allowed. In addition, the following shall apply:

<u>Unit density: 1-bedroom unit</u>	<u>.5 unit density</u>
<u>2-bedroom unit</u>	<u>.66 unit density</u>
<u>3-bedroom or more unit</u>	<u>1 unit density</u>
<u>Maximum building footprint</u>	<u>10,000 sq. ft.</u>
<u>Maximum height limit</u>	<u>50 feet</u>
<u>Side yard setback for buildings exceeding 35' in building height</u>	<u>Building height plus ten (10) feet.</u>
<u>Rear yard setback for buildings exceeding 35' in building height</u>	<u>Building height plus ten (10) feet</u>

1  
2 b. Agricultural land. When agricultural land is permanently preserved in  
3 compliance with Sec. 19-7-2 (D), Open Space Design Standards, a density  
4 bonus of one (1) unit per thirty-thousand (30,000) square feet of  
5 agricultural land preserved may be applied to the development. The  
6 agricultural land may be located on the development parcel or anywhere in  
7 the Town and must meet the requirements of Farm Land under M.R.S.A  
8 Sections 1101-1121, Farmland Tax Law, but does not need to be  
9 registered under this state program.

10  
11 c. Open Space. When more than forty-five percent (45%) of the gross  
12 acreage of the development parcel shall remain as open space outside of  
13 the building footprint(s), parking areas and other developed areas  
14 (excluding open space improvements), and any areas assigned to  
15 individual dwelling units, a density bonus of one (1) unit per forty-  
16 thousand (40,000) square feet of preserved open space above forty-five  
17 percent (45%) may be applied to the development. The open space must  
18 be permanently preserved in compliance with Sec. 19-7-2 (d), Open Space  
19 Design Standards, be located on the development parcel and include  
20 reasonable public access.

21  
22 d. Affordable Housing. When affordable housing is provided in excess of the  
23 minimum required in compliance with the 19-7-4 (B), Mandatory  
24 Affordable Housing Provisions, Applicability, the density bonus shall be  
25 subject to the dimensional standards in subsection 6, Public Benefit  
26 Density Bonuses.

27  
28  
29 **SEC. 19-7-3. TRANSFER OF DEVELOPMENT RIGHTS**

30  
31 **A. Applicability**

32  
33 The Planning Board may approve residential developments in the Residence A District  
34 that exceed the density standards of Sec. 19-6-1.E, Standards, due to the transfer of  
35 development rights, provided that the development conforms to all of the following  
36 criteria:

- 37  
38 1. The development is consistent with the comprehensive plan;  
39  
40 2. The development conforms to the requirements set forth in Sec. 19-7-3.B,  
41 Standards;  
42  
43 3. The parcel proposed for development is not designated as a TDR sending transfer  
44 zone on the Transfer of Development Rights map under the provisions of Sec. 19-  
45 7-3.C, Transfer Zone;  
46

- 1 4. Development rights equal to the increase in density will be transferred from a lot
- 2 or lots within the Transfer Zone through conservation easements on land meeting
- 3 the requirements of Sec. 19-7-3.D, Easement Reservation, that have been
- 4 approved by the Planning Board ~~and have received preliminary approval by the~~
- 5 ~~Town Council.~~
- 6
- 7 5. The proposed development will be a clustered development in accordance with
- 8 Sec. 19-7-2, Open Space Zoning.
- 9

10 **B. Standards**

11 The Planning Board may approve residential developments utilizing transferred

12 development rights that conform with the following requirements provided that the

13 applicant has transferred the appropriate number of development rights to support the

14 increased density from land located within a transfer zone in accordance with Sec. 19-7-

15 3.D., Easement Reservation.

16

17

<b>MINIMUM <u>RECEIVING</u> LOT AREA</b>	
<b>(1) <del>All residential uses involving transfers of development rights</del></b>	<del>510</del> acres
<b>MAXIMUM DENSITY OF A SUBDIVISION UTILIZING TRANSFER OF DEVELOPMENT RIGHTS</b>	
<b>(1) <i>Developments in the RA District connected to the public sewerage system</i></b>	1 <u>lot</u> /unit per 20,000 sq. ft. of net residential area
<b>(2) <i>Developments in the RA District served by on-site sewage disposal when the development rights are transferred from an abutting parcel</i></b>	1 <u>lot</u> /unit per 40,000 sq. ft. of net residential area
<b>(3) <i>Developments in the RA District served by on-site sewage disposal when the development rights are transferred from a parcel in the same ownership as the development parcel</i></b>	1 <u>lot</u> /unit per 40,000 sq. ft. of net residential area
<b>(4) <i>Developments in the RA District served by on-site sewage disposal when the development rights are transferred from a parcel located within two thousand feet of the perimeter of the development parcel</i></b>	1 <u>lot</u> /unit per 50,000 sq. ft. of net residential area
<b>(5) <i>Developments in the RA District served by on-site sewage disposal when the development rights are transferred from a parcel located more than two thousand feet from the perimeter of the development parcel</i></b>	1 <u>lot</u> /unit per 60,000 sq. ft. of net residential area

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2 | **C. TDR Sending-Transfer Zone**

3  
4 | Development rights may be transferred from any parcel designated as a TDR sending  
5 | zone on the official Transfer of Development Rights map located within a transfer zone.  
6 | ~~The transfer zones shall be shown on the Transfer Zone-Transfer of Development Rights~~  
7 | ~~(TDR) Map which shall be part of the Ordinance. -The Map shall designate parcels or~~  
8 | ~~tracts of land within the RA District that are appropriate for conservation by reason of~~  
9 | ~~one or more of the following attributes:~~

- 10  
11 |     1. The land is used for agricultural purposes  
12 |     2. The land is identified as having greenbelt and/or recreation area value in the most  
13 | recent town Greenbelt Plan in the visual analysis as being of scenic value  
14 |     3. The land is identified as having significant wildlife habitat value~~has identified~~  
15 | ~~historic or archaeological significance~~  
16 |     4. The land is has significant scenic, cultural and/or unique properties identified by  
17 | the Town Council using a public process used for forestry purposes and is within  
18 | two hundred fifty (250) feet of public road.

19  
20 | **D. Easement Reservation**

21  
22 | The Planning Board may approve a development that exceeds the base density only if the  
23 | applicant provides a conservation easement(s) on land located within a TDR sending  
24 | zone as depicted on the Transfer of Development Rights (TDT) map transfer zone. For  
25 | each unit in the proposed development in excess of that allowed by the base RA density,  
26 | a conservation easement shall be provided on at least sixty-four thousand (64,000) square  
27 | feet of net residential area within a designated TDR sending transfer zone, except as  
28 | provided in subsection F, Agricultural Transfer of Development Bonus. The  
29 | conservation easement(s) shall be perpetual subject to the terms of Sec. 19-7-3.E,  
30 | Easement Provisions.

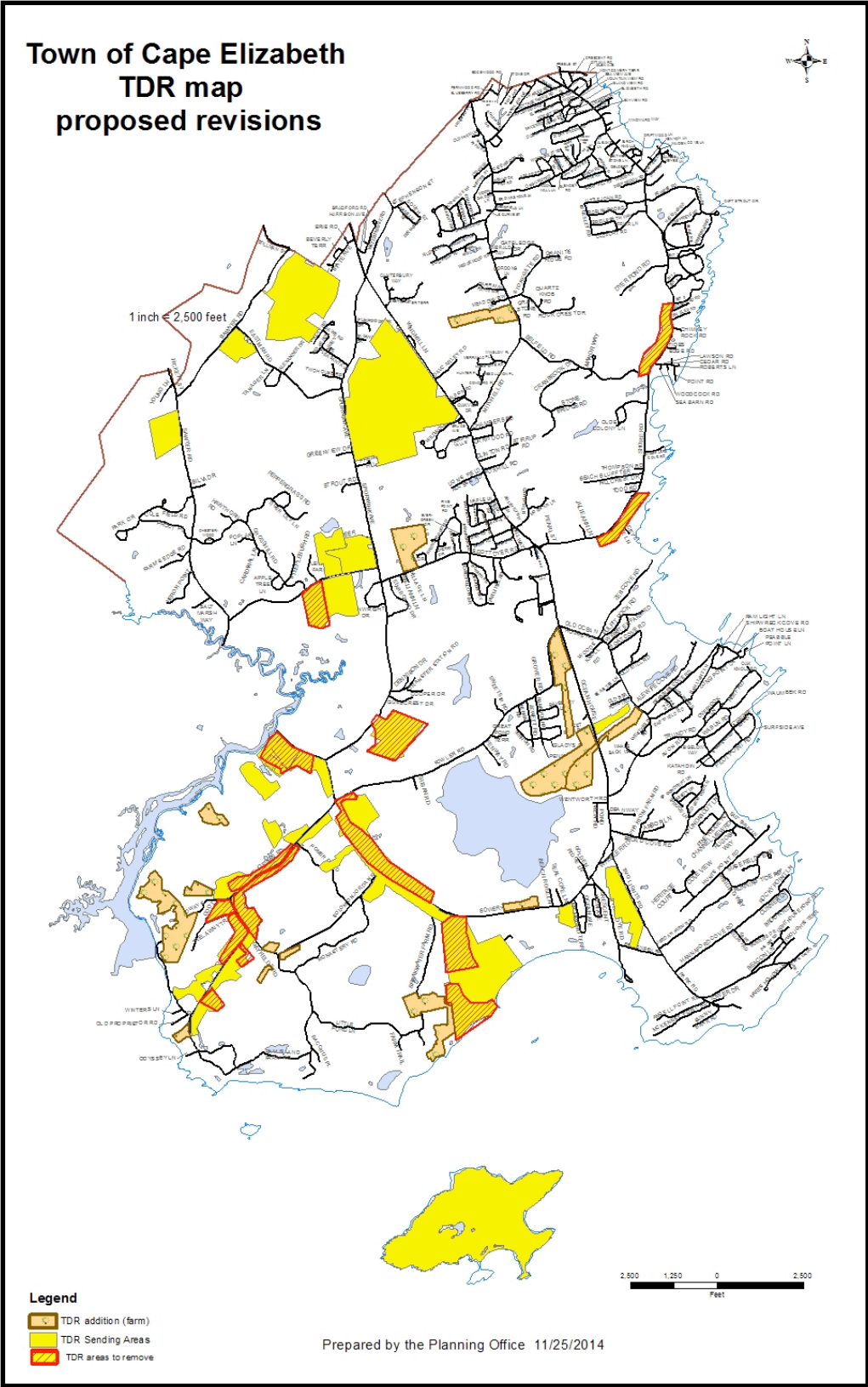
31  
32 | **E. Easement Provisions**

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34 | The form and conditions of each easement shall be determined by the Planning Board,  
35 | and approved by the Town Council. The easement shall be recorded in the Cumberland  
36 | County Registry of Deeds within ninety (90) days of the vote of approval of the  
37 | development by the Planning Board and a copy provided to the Town Planner.

38  
39 | **F. Agricultural Transfer of Development Bonus**

40  
41 | Land that has been designated a TDR sending area because it is used for agricultural  
42 | purposes may transfer up to 33% more development rights than the density allowed on  
43 | the agricultural land. For each 1.34 development right transferred, a conservation  
44 | easement shall be provided on at least sixty-four thousand (64,000) square feet of net  
45 | residential area within a designated TDR sending zone. The conservation easement(s)  
46 | shall be perpetual subject to the terms of Sec. 19-7-3.E, Easement Provisions.





**SEC. 19-7-8. OFF-STREET PARKING (Revised effective May 12, 2002)**

a. Residential

(1) Single Family Dwellings, 2 spaces per dwelling unit including manufactured housing

(2) Two-Family Dwellings 2 spaces per dwelling unit

(3) Multiplex housing or 1.5 spaces per dwelling unit with multifamily dwellings one bedroom, 1.75 spaces for unit with two bedrooms, and 2 spaces per unit with three or more bedrooms

**SEC. 19-7-11. MULTIPLE PRINCIPAL BUILDINGS ON A LOT**

If more than one (1) principal building is located on a lot, the lot size and location of each building shall be such that a separate lot conforming to the provisions of this Ordinance could be created for each building. The potential creation of a separate lot shall be demonstrated by submitting a plan to the Code Enforcement Officer showing how the land could be divided to create conforming lots.

**SEC. 19-8-3. RESOURCE PROTECTION PERFORMANCE STANDARDS**

All activities in the Resource Protection Districts shall comply with the following performance standards as applicable:

**A. Resource Protection Permit Procedures**

*1. Review*

c. The Planning Board in its review of an application may require a "peer review" by a professional engineer, a botanist or other relevant expert. The cost of all such reviews, including the cost of review by the Town Engineer, shall be taken from the application's Review Escrow Account. If a Review Escrow Account has not been established pursuant to the provisions of other ordinances governing an aspect of the applicant's proposed activity, the Planning Board shall be authorized to require an applicant for a Resource Protection permit to establish a Review Escrow Account under the terms of Sec. ~~16-2-1(c)~~ ~~16-2-4(a)(1)~~ of the Subdivision Ordinance. Any funds not disbursed from the Review Escrow

Account shall be promptly returned to the applicant upon final disposition of his or her application.

**SEC. 19-8-5. EARTH MATERIALS REMOVAL STANDARDS**

**C. Permit Procedures (Amended effective February 14, 2002)**

3. The Planning Board in its review of an application may require a “peer review” by a professional engineer or other relevant expert. The cost of all such review, including the cost of review by the Town Engineer, shall be taken from the application’s Review Escrow Account. If a Review Escrow Account has not been established pursuant to the provisions of other ordinances governing an aspect of the applicant’s proposed activity, the Planning Board shall be authorized to require an applicant for an earth materials permit to establish a Review Escrow Account under the terms of Sec. ~~16-2-4(a)(1)~~~~16-2-1(c)~~ of the Subdivision Ordinance. Any funds not disbursed from the Review Escrow Account shall be promptly returned to the applicant upon final disposition of his or her application.

4. Within thirty-five (35) days following the public hearing, or such longer period as may be mutually agreeable to the Planning Board and the applicant, the Planning Board shall render its decision to approve, to approve with conditions or to disapprove in writing, specifying the reasons therefore. Notwithstanding other provisions of this Ordinance, the applicant, or any property owner entitled to notice of the public hearing, who is aggrieved by a decision of the Planning Board under this ordinance, may appeal to the Superior Court as provided by the Maine Rules of Civil Procedure.

5. The Planning Board may require the applicant furnish to the Town, before the issuance of a permit, a performance guarantee in accordance with Section ~~16-2-6(c)~~~~16-2-4(e)(7)(A)~~ of the Subdivision Ordinance. The amount and the conditions shall be consistent with the purposes of this Ordinance and shall secure the proper performance of the alteration work. The amount shall be based upon the estimated cost of completing or correcting any work necessary to satisfy the conditions of the permit and the criteria of this Ordinance plus the estimated costs of preventing or correcting any damage to the subject or other property which the Planning Board considers probable or of sufficient gravity to justify the expected expense of such guarantee.

**SEC. 19-8-12. TOWER AND ANTENNA PERFORMANCE STANDARDS (Effective April 15, 2000)**

**2. Performance Standards**



j. Performance Guarantee. No building permit may be issued until the applicant has provided a performance guarantee to the town in accordance with Sec. ~~16-2-6(c)16-2-4(e)(7)(a)~~, Subdivision Ordinance.

**ARTICLE IX. SITE PLAN REVIEW**

**SEC. 19-9-4. REVIEW PROCEDURES**

**B. Application Review Procedures**

1. After an application has been submitted with the requisite fees, including establishment of a Review Escrow Account under the terms of Sec. ~~16-2-1(c)16-2-4(a)(1)~~ of the Subdivision Ordinance, and after any required Zoning Board of Appeals approval has been obtained, the Town Planner shall issue a dated receipt to the applicant.

2. Upon certification by the Planning Board that an application is complete, the Planning Board, at its discretion, may hold a public hearing. If the Planning Board determines to hold a public hearing, it shall hold the hearing within thirty-five (35) days of the date that the application is deemed complete and shall provide public notice in accordance with Sec. ~~16-2-1(b)16-2-4(a)(7)~~ of the Subdivision Ordinance.

3. The Planning Board, at its discretion, may require that a performance guarantee be established with the Town for the cost of site improvements. Each performance guarantee shall comply with Sec. ~~16-2-6(c)16-2-4(e)(6) and (7)(A) of the~~ Subdivision Ordinance. An inspection fee shall be paid in accordance with Sec. ~~16-2-6(d).16-2-6(a)~~.