

# TOWN OF WESTPORT ISLAND

## SUBDIVISION REGULATION

(Adopted 27 March 2004)

(Replacement for Subdivision Standards and Procedures adopted June 11, 1988)

### SECTION I – PURPOSE

- I.A.** In order to assure the comfort, convenience, safety, health and welfare of the people of the Town of Westport Island, to protect the town's water supply and ground water, to protect the environment, to promote the development of an economically sound and stable community, to assure that a minimal level of services and facilities are available to the residents of new subdivisions and that lots in subdivisions are capable of supporting the proposed uses and structures, to minimize the potential negative impacts from new subdivisions on neighboring properties and on the municipality; and to insure new development in the Town of Westport Island meets the goals and conforms to the policies of the Westport Comprehensive Plan, the following subdivision regulations, criteria and standards are adopted pursuant to Art. VIII, Pt. 2, Sec.1 of the Maine Constitution, 30-A M.R.S.A. § 3001 et seq. and 30-A M.R.S.A. § 4401-4407.

### SECTION II – ADMINISTRATION AND AMENDMENTS

- II.A.** The provisions of these regulations shall pertain to all land and buildings proposed for subdivision within the boundaries of the Town of Westport Island. All Town of Westport Island Ordinances apply, as appropriate and relevant, to any project covered by this Subdivision Regulation. Whenever a provision of this Regulation conflicts with or is inconsistent with another provision of this Regulation or any other ordinance, regulation or statute, the more restrictive provision shall control.
- II.B.** This Regulation shall be enforced by the Board of Selectmen. The Board of Selectmen may delegate enforcement responsibilities to an appointed agent including, but not limited to, a Code Enforcement Officer and/or Plumbing Inspector.
- II.C.** The Planning Board shall be responsible for administering the provisions of this Regulation.
- II.D.** The Town of Westport Island Planning Board, hereinafter called the Board, is authorized to review and act on all Subdivision Applications in a manner outlined within this Regulation.
- II.E.** This Regulation may be amended by majority vote of the Legislative Body of the Town of Westport Island after a public hearing held by the Planning Board and the Board of Selectmen. Notice of the hearing shall be posted at least fourteen (14) days prior to such hearing and advertised in a newspaper of general circulation in the municipality at least two (2) times with the date of first publication being at least fourteen (14) days prior to the hearing and the second at least seven (7) days prior to the hearing.

### SECTION III – DEFINITIONS

Definitions for this Regulation are found in 30-A M.R.S.A. Section 4401 and more specifically, any word or term defined in the Town of Westport Island Shoreland Zoning Ordinance or the Town of Westport Island Building Code Ordinance shall have the definition contained in those Ordinances, unless defined differently below. If a conflict in definitions exists among the three above-cited town Ordinances and the State Statute, the

State definitions shall apply. Other words and terms used in these regulations, and not found in the above cited statute and Ordinances, shall have their customary dictionary meanings as found in the latest Webster New Collegiate Dictionary. Other words and terms used herein are defined as follows:

**Abutter:** Owners of record of immediately adjacent property; owners of record of property located immediately across a public road or right-of-way

**Applicant:** The person submitting any application under the provisions of this Regulation including a firm, association, organization, partnership, trust, estate, governmental agency, municipality, company, corporation, two or more individuals having a joint or common interest, or other legal entity, as well as an individual.

**Average Daily Traffic (ADT):** The predicted number of vehicles that enter and exit the premises during the peak hour based on the trip generation rates in the latest edition of "Trip Generation", published by Institute of Transportation Engineers for a single family detached residence, this rate is 1 peak hour trip.

**Buffer Area:** A part of a property or an entire property, which is not built upon and is specifically intended to separate and thus minimize the effects of a land use activity (e.g. noise, dust, visibility, glare, etc.) on adjacent properties or on sensitive natural resources.

**Central Water Supply System:** A system using a single source of water and supplying 3 or more dwelling units.

**Cluster Subdivision:** A subdivision in which the lot sizes are reduced below those normally required in the zoning district in which the development is located in return for the provision of permanent open space, if allowed under current zoning ordinances.

**Coastal Wetlands:** all tidal and subtidal lands; all lands below any identifiable debris line left by tidal action; all lands with vegetation present that is tolerant of salt water and occurs primarily in a salt water or estuarine habitat; and any swamp, marsh, bog, beach, flat or other contiguous low land which is subject to tidal action during the maximum spring tide level as identified in tide tables published by the National Ocean Service. Coastal wetlands may include portions of coastal sand dunes.

**Common Open Space:** Land within or related to a subdivision, not individually owned or within an individual lot, which is designed and intended for the common use or enjoyment of the residents of the development or the general public. It may include complementary structures and improvements, typically used for maintenance and operation of the open space, such as for outdoor recreation.

**Complete Application:** An application shall be considered complete upon submission of the required fee and all information required by these regulations, or by a vote by the Board to waive the submission of required information pursuant to Section IV.B.2. The Board shall issue a written statement to the applicant upon its determination that an application is complete.

**Comprehensive Plan:** A document or interrelated documents adopted by the Legislative Body of the Town of Westport Island, containing an inventory and analysis of

existing conditions, a compilation of goals for the development of the community, an expression of policies for achieving these goals, and a strategy for implementation of the policies.

**Conservation Easement:** A nonpossessory interest in real property imposing limitations or affirmative obligations, the purposes of which include retaining or protecting natural, scenic or open space values of real property; assuring its availability for agricultural, forest, recreational or open space use; protecting natural resources; or maintaining air or water quality.

**Conventional Subdivision:** A subdivision in which all buildable lots meet or exceed minimum lot size requirements in existing zoning Ordinances.

**Density:** The number of dwelling units per acre of land.

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

**Driveway:** A private vehicular access way serving two lots or less.

**Dwelling Unit:** Any part of a structure which, through sale or lease, is intended for human habitation, including single family and multifamily housing, condominiums, apartments and time-share units. [Title 30-A M.R.S.A. §4401, #2}

**Final Plan:** The complete set of items required in Section V.B and Section VI.A (Major Subdivisions, only) describing the proposed subdivision, which are to be submitted to the Board for its review and decision.

**Final Plat:** The drawing(s) included in the Final Plan which are described in Section V.B.5. and which are signed by the Board upon Final Plan approval and filed with other recordable documents at the Registry of Deeds.

**Final Plat Approval:** the last administrative step in the review and approval process before filing at the Registry of Deeds, where the Board reviews all recordable documents to insure consistency with agreements/conditions/covenants set for at the Final Plan approval, and signs the Final Plat.

**Final Plat Filing:** The final drawings (Final Plat) representing the approved subdivision, including any modifications or conditions agreed to as part of the Board's approval of the Final Plan, and all other recordable documents required for filing at the Registry of Deeds.

**Freshwater Wetland:** Freshwater swamps, marshes, bogs and similar areas which are: inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils; and not considered a part of a coastal wetland, river, brook or stream..

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

**Multifamily Development:** A subdivision which contains three or more dwelling units on land in common ownership, such as apartment buildings, condominiums or mobile home parks.

**Municipal Engineer:** Any registered professional engineer hired or retained by the municipality, either as staff or on a consulting basis, with the authority to act for the municipality.

**Net Residential Area or Acreage** – The area of a parcel, which is suitable for development as determined by the Board, shall be calculated by subtracting the following from the total or gross acreage of a parcel:

1. Total acreage that is used for street and sidewalk rights-of-way.
2. Portions of the parcel containing slopes over thirty-five (35) percent.
3. Portions of the parcel shown to be within the 100-year flood plain and floodway as designated on Federal Emergency Management Agency (FEMA) maps.
4. Portions of the parcel located in the Resource Protection District.
5. Portions of the parcel which are unsuitable for development in their natural state due to drainage or subsoil conditions, including, but not limited to:
  - A. Water table at or near the surface for all or part of the year.
  - B. Unstable soils such as Sebago Mucky Peat.

**New Structure or Structures:** Includes any structure for which construction begins on or after September 23, 1988. The area included in the expansion of an existing structure is deemed to be a new structure.

**Normal High-water Line:** - That line which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or changes in vegetation, and which distinguishes between predominantly aquatic and predominantly terrestrial land. In the case of wetlands adjacent to rivers and great ponds, the normal high water line is the upland edge of the wetland.

**Party:** Owners of record of immediately adjacent property; owners of record of property located immediately across a public road or right-of-way; other property owners who, having shown the Board that their property may be affected by the proposed development under a specific criterion, shall be admitted by the Board with participation limited to that criterion.

**Person:** Includes a firm, association, organization, partnership, estate, trust, governmental agency, municipality, company, or corporation, two or more individuals having a joint or common interest, or other legal entity as well as an individual.

**Planning Board (or Board):** The Planning Board of the Town of Westport Island.

**Professional Engineer:** A professional engineer, registered in the State of Maine.

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

**Sight Distance:** The length of an unobstructed view from a particular access point to the farthest visible point of reference on a roadway. Used in these regulations as a reference for unobstructed road visibility.

**Sketch Plan:** Conceptual maps, renderings, and supportive data describing the project proposed by the applicant prior to submitting an application for subdivision approval.

**Street:** Public and private ways such as alleys, avenues, highways, roads, and other rights-of-way, as well as areas on subdivision Final Plat designated as rights-of-way for vehicular access other than driveways.

**Street Classification:**

**Arterial Street:** A major thoroughfare which serves as a major traffic way for travel between and through the municipality. Route 144 to the north end of West Shore Road shall be considered an arterial street.

**Subdivision:** The division of a tract or parcel of land as defined in Title 30-A, M.R.S.A. §4401 .et. seq., as amended

**Subdivision, Major:** Any subdivision containing more than four lots or dwelling units, or any subdivision containing a proposed street.

**Subdivision, Minor:** Any subdivision containing four lots or dwelling units or less, and in which no street is proposed to be constructed.

**Tract or Parcel of Land:** All contiguous land in the same ownership, provided that lands located on opposite sides of a public or private road shall be considered each a separate tract or parcel of land unless such road was established by the owner of land on both sides thereof.

**SECTION IV – ADMINISTRATIVE PROCEDURE – APPLICATION PROPOSAL PROCEDURE**

**IV.A. Preapplication Meeting, Sketch Plan And On-site Inspection**

IV.A.1. Purpose

The purpose of the preapplication meeting and On-site Inspection is for the applicant to present general information regarding the proposed subdivision to the Board and receive the Board's comments prior to the expenditure of substantial sums of money on surveying, soils identification, and engineering by the applicant.

IV.A.2. Procedure

IV.A.2.a. The applicant shall present a Preapplication Sketch Plan.

IV.A.2.b. The Board may ask questions and make suggestions which may be incorporated by the applicant into the application.

IV.A.2.c. Following discussions on the Sketch Plan, the Board, on its own motion, or the applicant may request that the Board conduct a site visit.

IV.A.3. Submission

IV.A.3.a. The Preapplication Sketch Plan shall show in simple sketch form the proposed layout of streets, lots, buildings and other features in relation to existing conditions. The Sketch Plan, which does not have to be engineered and may be a free-hand penciled sketch, shall be supplemented with general information to describe or outline the existing conditions of the site and the proposed development. Topographical site conditions such as steep slopes, wet areas and vegetative cover shall be identified in a general manner. The Sketch Plan shall be superimposed on or accompanied by a copy of the assessor's map(s) on which the land is located. The Sketch Plan shall be accompanied by:

IV.A.3.a.(1). A copy of a portion of the U.S.G.S. topographic map of the area showing the outline of the proposed subdivision.

IV.A.3.a.(2). Copies of those portions of the county or any town soil surveys and/or hydrogeological studies covering the proposed subdivision, showing the outline of the proposed subdivision.

IV.A.3.a.(3). Areas to be contoured at greater than a 5' contour interval on the plan to be submitted in the final application shall be discussed and approved at the preapplication meeting.

IV.A.3.b. Any lot clearing or temporary road construction necessary to conduct any assessments or tests as necessary to support the application are subject to normal town Ordinances and standards including but not limited to building permits, written plans for temporary erosion and sedimentation control as well as permanent stabilization measures following testing. The applicant may include a list of any such efforts and a tentative schedule as to when they will commence especially if they deem it useful to the review process to have representatives of the Board or other potential parties present during the testing phase.

IV.A.4. On Site Inspection.

The purpose of the preapplication site visit is purely informational, as an aid to all involved in a future review to understand more fully the Final Plans when submitted.

Prior to the on site inspection, the applicant shall place "flagging" at fifty foot intervals along the approximate centerline of any proposed streets, and locate the approximate frontage center of proposed lots with road frontage, or the approximate entrance location of any driveways proposed to provide access to non-frontage lots. The Board shall not conduct On-site Inspections when there is more than one foot of snow on the ground.

IV.A.5. Rights Not Vested.

The preapplication meeting, the submittal or review of the sketch plan or the On-site Inspection shall not be considered the initiation of the substantive review process for the purposes of bringing the proposed subdivision under the protection of Title 1 M.R.S.A., §302.

#### **IV.B. Final Plan Application**

IV.B.1. Within six months after the Preapplication Meeting, the applicant shall submit an application for approval of a Final Plan (see Sections V.B and VI.A for a list of items required).

If an applicant cannot submit the Final Plan within six months, the applicant may request an extension. Such a request for an extension to the filing deadline shall be filed, in writing, with the Board prior to the expiration of the filing period. In considering the request for an extension the Board shall make findings that the applicant has made due progress in preparation of

Final Plans and in pursuing approval of those Final Plans before other agencies, and that municipal ordinances or regulations which may impact on the proposed development have not been amended.

- IV.B.2. At the meeting where the Final Plan is presented, the applicant shall note 1) any requirements of the application which are not applicable or for which a waiver is requested, and 2) any criterion which is not applicable and therefore not addressed. The Board may vote to grant waivers of submission requirements that it finds are not applicable to the proposed subdivision. The Board shall prepare written findings in support of any waiver it approves. Cost of providing a required submission shall not be grounds for granting a waiver.

Based on all materials presented, the Board shall vote as to whether the application is complete. The Board shall notify the applicant in writing within 30 days of the Board's determination that the application is complete. If the application is deemed not complete, the Board shall notify the applicant in writing within 30 days of the receipt of the specific additional material needed to complete the application.

- IV.B.3. The Board may consult experts as they deem necessary in their deliberations, providing that the Board only select such experts that have been previously discussed with the parties. The Board may require the owner or the owner's authorized agent to deposit in escrow an amount of money sufficient to cover the costs of any professional review of the subdivision application, which the board may feel, is reasonably necessary to protect the general welfare of the Town. Maximum amounts for this escrow payment are established by the Board of Selectmen. This escrow payment shall be made to the Town Treasurer before the Board engages any outside party to undertake this review and to make recommendations to the Board. Payments made from this escrow account shall be requested by the Planning Board and authorized by the Board of Selectmen. Any part of this escrow payment in excess of the final costs for review shall be returned to the owner or the owner's agent.

#### **SECTION V – APPLICATION REQUIREMENTS - MINOR SUBDIVISIONS**

- V.A. The Board may require, where it deems necessary for protection of public health, safety and welfare, that a minor subdivision comply with any or all of the requirements of a major subdivision.

V.B. Procedure – Final Plan

The Final Plan shall include or be accompanied by the following information:

- V.B.1. Proposed name of the subdivision, or identifying title, plus the assessor's map and lot numbers.
- V.B.2. Purpose, nature, and projected cost of project.
- V.B.3. A list of all abutters to the properties proposed for subdivision.
- V.B.4. Right, title, or interest in the property.
- V.B.5. A Final Plat consisting of one or more maps or drawings drawn to a scale of not more than one hundred feet to the inch. Final Plats for subdivisions containing more than one hundred acres may be drawn at a scale of not more than two hundred feet to the inch provided all necessary detail can

easily be read. Final Plats shall be no larger than 24 by 36 inches in size, and shall have a margin of two inches outside of the border line on the left side for binding and a one inch margin outside the border along the remaining sides. Space shall be reserved on the Final Plat for endorsement by the Board. The Final Plat should contain the following information:

- V.B.5.a. A standard boundary survey of the parcel, giving complete descriptive data by bearings and distances, made and certified by a professional land surveyor. The Final Plat shall indicate the type of monument found or to be set at each lot corner.
- V.B.5.b. The number of acres within the proposed subdivision, location of property lines, existing buildings, vegetative cover type, watercourses and other essential existing physical features.
- V.B.5.c. The location of all rivers, streams, brooks and wetlands within or adjacent to the proposed subdivision.
- V.B.5.d. Contour lines at not more than 5 foot intervals, or at the interval specified by the Board, showing elevations in relation to mean sea level.
- V.B.5.e. The location and size of existing and proposed sewers, water mains, culverts, and drainage ways on or adjacent to the property to be subdivided.
- V.B.5.f. The dimensions and location of any streets, public improvements or open space shown upon the official map and the Comprehensive Plan, if any, within the subdivision.
- V.B.5.g. The location of any open space to be preserved and a description of proposed improvements and its management.
- V.B.5.h. If any portion of the subdivision is in a flood-prone area, the boundaries of any flood hazard areas and the 100-year flood elevation, shall be delineated on the Final Plat.
- V.B.5.i. The zoning district in which the proposed subdivision is located and the location of any zoning boundaries affecting the subdivision
- V.B.5.j. The date the Final Plat was prepared and by whom prepared, the north point, and graphic map scale.
- V.B.5.k. The location of any test sites, proposed water supply and sewage disposal sites and related structures.
- V.B.6. If a private sewage disposal system is proposed, location and results of tests to ascertain subsurface soil ground water conditions and depths to maximum ground water level. A completed HHE 200 form must be submitted with the application for multi-family subdivisions.
- V.B.7. A description of the type of water supply system(s) to be used in the subdivision.
- V.B.8. The names and addresses of the record owner, applicant, and individual or company who prepared the Final Plat.
- V.B.9. Any analyses, reports, etc. required to support adherence to a standard or to demonstrate compliance with a criterion and the names and address of any individuals or companies who prepared and or certified them.
- V.B.10. An erosion and sedimentation control plan in conformance with section XI.C.

- V.B.11. An estimate of the amount and type of vehicular traffic to be generated on a daily basis.
- V.B.12. Location Map. The location map shall be drawn at a size adequate to show the relationship of the proposed subdivision to the adjacent properties, and to allow the Board to locate the subdivision within the municipality. The location map shall show:
- V.B.12.a. Existing subdivisions in the proximity of the proposed subdivision.
  - V.B.12.b. Locations and names of streets.
  - V.B.12.c. Boundaries and designations of zoning districts.
  - V.B.12.d. An outline of the proposed subdivision and any remaining portion of the owner's property if the Final Plat submitted covers only a portion of the owner's entire contiguous holding.
- V.B.13. The location of significant resources including important deer wintering areas, other important plant or wildlife habitat and areas with visual significance.
- V.B.14. The location of any trail, trail system or greenbelt that crosses the property.
- V.B.15. The applicant shall submit information on the location of the development to the following address:

State Historic Preservation Officer  
Maine Historic Preservation Commission  
55 Capitol Street  
State House Station 55  
Augusta, Maine 04333

The information submitted above shall include a request that the Westport Island Planning Board be notified of any comments. The applicant shall submit to the Board proof of such notification, including a copy of the letter to the State Historic Preservation Officer.

#### **SECTION VI – APPLICATION REQUIREMENTS - MAJOR SUBDIVISIONS**

- VI.A.** An applicant for major subdivision approval shall file a Final Plan application containing all information required under Section V above for a Minor Subdivision, and in addition shall provide the following information:
- VI.A.1. Street Plans including detailed construction drawings shall be submitted showing a plan view, profile and typical cross-section of the proposed streets and existing streets within 300 feet of any proposed intersection. The plans shall include the following information:
    - VI.A.1.a. Date, scale and magnetic or true north point.
    - VI.A.1.b. Intersections of the proposed street with existing streets.

- VI.A.1.c. Roadway and right-of-way limits including edge of pavement, edge of shoulder, sidewalks and curbs.
- VI.A.1.d. Kind, size, location, material, profile and cross-section of all existing and proposed drainage structures and their location with respect to the existing natural waterways and proposed drainage ways. Such structures shall be designed and sized in accordance with a stormwater management plan prepared by a registered professional engineer and shall meet the minimum stormwater design and construction standards of Section X.F.
- VI.A.1.e. Complete curve data shall be indicated for all horizontal and vertical curves.
- VI.A.1.f. Turning radii at all intersections.
- VI.A.1.g. Centerline gradients.
- VI.A.1.h. Locations of all existing and proposed overhead and underground utilities including, but not limited to, water, sewer, electricity, telephone, lighting and cable television.
- VI.A.1.i. Kind, size, location, profile and cross-section of all existing and proposed drainage ways and structures and their relationship to existing structures.
- VI.A.1.j. A soil erosion and sedimentation control plan in conformance with the requirements of the Section XI.C.
- VI.A.1.k. For a street that is to remain private, the application shall include a plan setting forth how the street and associated drainage structures are to be maintained. Responsibility for street maintenance may be assigned to a lot owners association or to lot owners in common through provisions included in the deeds for all lots that utilize the private street for access. The applicant shall submit appropriate legal documentation such as proposed homeowners association documents or proposed deed covenants for Board review. This documentation must address specific maintenance activities such as summer and winter maintenance, long-term improvements and emergency repairs and include a mechanism to generate funds to pay for such work.
- VI.A.1.l. An estimate of the amount and type of vehicular traffic to be generated on a daily basis and at peak hours and the sight distances for each proposed driveway that intersects an existing or proposed public or private road.

For subdivisions with more than 30 parking spaces or that will generate more than 25 peak hour vehicle trips per day, a traffic impact analysis prepared by a registered professional engineer with experience in traffic engineering. The analysis shall indicate the expected average daily vehicular trips, peak-hour volumes, access

conditions at the site, distribution of traffic, types of vehicles expected, effect upon the level of service on the road giving access to the subdivision and neighboring roads that may be affected, and recommended improvements to maintain the desired level of service on the affected roads. Trip generation rates shall be obtained from the latest edition of “Trip Generation”, published by the Institute of Transportation Engineers.

- VI.A.2. The Final Plat shall include final designs of any bridges or culverts and drainage ways which may be required on, or adjacent to the property to be subdivided.
- VI.A.3. A list of facilities and construction items proposed and to be completed by the applicant prior to the sale of lots with the proposed date for completion of each facility or item. Also evidence that the applicant has financial instruments or resources to complete the items within the timeframe proposed.
- VI.A.4. For major subdivisions that are not served by public sewer and which have a density of more than 1 dwelling unit per 5 acres or if possible future subdivision of the property could result in a density of more than 1 dwelling unit per 5 acres, a hydrogeologic assessment prepared in accordance with Section XI.A.2 by a certified geologist or registered professional engineer experienced in hydrogeology.
- VI.A.5. A Stormwater Management Plan in accordance with the requirements of section XI.F.

## **SECTION VII –FINAL PLAN REVIEW AND APPROVAL**

### **VII.A. Final Plan**

#### **VII.A.1. Subdivisions Subject to State Review**

If the proposed subdivision requires a permit under the Site Location of Development Act, the Stormwater Management Law or the Natural Resources Protection Act or is otherwise under the jurisdiction of the Maine Departments of Environmental Protection or Transportation, the final plat shall not be executed until all such approvals are obtained. See Section VII.B. The applicant shall submit any conclusions of law and findings of fact to the Board and all recognized parties, and the Board may consider them in formulating its own findings of fact and conclusions of law.

#### **VII.A.2. Final Plan Review Procedure**

##### **VII.A.2.a. All public hearings for subdivisions brought before the Planning Board shall be recorded by electronic means and filed with the town clerk of Westport Island.**

Any party with the consent of the Chair may arrange for a court reporter to be present at a hearing. All costs incurred are the responsibility of the requesting party. If a written transcript is produced a single copy is to be provided to the Board. Rights to the transcript remain the property of the party producing it. Copies may only be obtained from that party following agreement of the payment of a reasonable proportionate share of the cost of producing it.

- VII.A.2.b. When an application is filed with the reviewing authority, the applicant shall file a notice of application by first class mail with all abutting landowners. The filed application shall include certification that the above notice has been made. The reviewing authority shall give the applicant a dated receipt for the filing of the application.

Within 30 days of the receipt of the application the applicant shall be notified if the application is deemed complete or not complete. A hearing, which may include a site inspection, shall be held within 30 days of the determination that the application is complete. Notice of this hearing shall be given to the applicant and published two times in local newspapers. The date of the second publication must be at least seven days before the hearing.

The Board may request that the fire chief, road commissioner or plumbing inspector comment (either at the public hearing or in writing to all statutory parties prior to the hearing) upon the adequacy of their department's existing capital facilities to service the proposed subdivision. The applicant shall appear at any hearings held by the Board for the purposes of answering any questions about and providing information relative to the application.

VII.A.2.c. At the public hearing the Chairman of the hearing shall review requests for party status, granting status for those who meet the standards for party status under governing law. Non-statutory parties may be granted full or selective status for certain criteria, based solely upon a demonstration of potential impacts upon their properties under specific criteria. All decisions on non-statutory party status to be by vote of the Board.

All testimony shall be sworn and the Chair shall administer the oath individually to each person who wishes to present testimony.

The Chair shall request testimony upon each criterion contained in the State of Maine Title 30-A M.R.S.A., §4404 and each criterion and standard contained in this Regulation. The applicant has the burden of proof and will present information as required to show that the requirements of the criterion and all Town of Westport Island standards are met, or offer an alternative and provide evidence that the proposed alternative meets the spirit and requirements of the criterion or standard. Following the applicant's presentation of evidence intended to show that the proposed subdivision will conform with each specific criterion and each specific standard associated with that criterion, if any, the burden of proof with regard to that criterion shifts to the other parties present. An admitted party may then present evidence as to whether the applicant has in fact satisfied the criterion or standard.

After all testimony and evidence, arguments and rebuttals have been heard, the Board shall decide by vote whether the applicant has met the burden of proof and has satisfied the criterion and Town of Westport Island standards.

VII.A.2.d. Within 30 days from the date of completion of the public hearing, the Board shall issue an order denying, approving, or approving with conditions the application. If the Board finds that all the criteria cited above have been met, it shall vote to approve the subdivision. If the Board finds that any of the criteria cited above have not been met, the Board shall either deny the application or approve the application with conditions to ensure all of the criteria will be met by the subdivision. The Board shall issue conclusions, findings of fact and conditions in writing specifying its reasons for approval, conditional approval or disapproval, which shall be

provided to the applicant and all admitted parties. The Board shall require the applicant to record all conclusions of law, findings of fact and conditions in the Registry of Deeds simultaneously with the filing of the approved Final Plat at the Registry of Deeds.

The decision of the Board relative to the Final Plan shall be considered the appealable decision of the Board.

## **VII.B. Final Plat Approval**

Within six months of Final Plan Approval, at a regular meeting of the Board, the applicant shall submit the Final Plat and all other required recordable documents (including but not limited to findings of fact, conclusions of law and conditions) to be filed at the Registry of Deeds.

The Final Plat submission shall consist of two reproducible, stable-based transparencies, one to be recorded at the Registry of Deeds, the other to be filed at the municipal office, and three copies of the Final Plat shall be submitted to the Board. The applicant may instead submit one reproducible stable-based transparent original of the Final Plat and one recording plat with three copies of the Final Plat.

VII.B.1. The Final Plat shall include the following:

VII.B.1.a. All of the information presented on the Plan, Location Map and any amendments thereto suggested or required by the Board.

VII.B.1.b. The name, registration number and seal of the land surveyor or engineer or planning consultant who prepared the plan.

VII.B.1.c. Street names and lines, pedestrian ways, lots, easements and areas to be reserved for or dedicated to public use.

VII.B.1.d. Sufficient data to determine readily the location, bearing and length of every street line, lot line, boundary line, and to reproduce such lines upon the ground. Parting lines of all lands adjoining the subdivision shall be shown.

VII.B.1.e. The length of all straight lines, the deflection angles, radii, length of curves and central angles of all curves, tangent distances and tangent bearing for each street.

VII.B.1.f. Lots within the subdivision numbered as prescribed by the Board.

VII.B.1.g. By proper designation, all public open space for which offers of cession are made by the subdivider and those spaces to which title is reserved by the subdivider.

VII.B.1.h. Permanent reference monuments shown thus: "X". They shall be constructed and placed in accordance with Section XI.K, and their location noted and referenced upon the Final Plan.

VII.B.1.i. The Plan shall indicate the proposed landscaping program of the subdivider.

VII.B.1.j. Any conditions of approval required by the Board

VII.B.1.k. A statement indicating that any change or modification to any aspect of the approved plan shall be considered an amendment to the plan and shall require approval of the Board.

VII.B.1.l. All necessary state approvals have been obtained.

VII.B.2. The Board shall review the Final Plat, and all recordable documents solely to insure consistency with agreements/conditions/covenants set forth at the Final Plan approval, and if they are complete and consistent, the Board shall sign the Final Plat.

If the Board determines that changes have been made beyond those agreed to or required by conditions of the Final Plan Approval, they will follow the procedure described in Section IX “Revisions to Approved Final Plan”

VII.B.3. No changes, erasures, modifications, or revisions shall be made in any Final Plat after approval has been given by the Board and endorsed by signing the Final Plat.

VII.B.4. The approval by the Board of a subdivision Final Plat shall not be deemed to constitute or be evidence of any acceptance by the municipality of any street, easement, or other open space included in such Final Plat.

#### **SECTION VIII - APPLICATION FEES**

VIII.A. All applications for Final Plan of a Subdivision shall be accompanied by a fee to be determined by the Board of Selectmen. In addition, as provided for in Section IV.B.3, the applicant shall pay reasonable review costs incurred by the municipality, including but not limited to review of the application by subject experts or by legal counsel. A tentative budget for such review and counsel, if required, will be discussed and agreed to by the applicant prior to the filing of the application.

#### **SECTION IX – REVISIONS TO APPROVED FINAL PLAN**

##### **IX.A. Procedure.**

IX.A.1. An applicant for a revision to a previously approved Final Plan shall, at least ten days prior to a scheduled meeting of the Board, request to be placed on the Board’s agenda. If the revision involves the creation of additional lots or dwelling units, the procedures for Final Plan approval shall be followed. If the revision involves only minor modifications of the approved Final Plan, without the creation of additional lots or dwelling units, the Board may vote to approve the Revised Final Plan at that meeting, or may, because of the nature of the revisions, vote to use some or all the procedures for Final Plan approval. For all approved revisions, the Board shall make findings that the revised Final Plan meets the criteria of Title 30-A M.R.S.A., §4404, and the criteria and standards of these regulations. The Board will issue new findings of fact, conclusions of law, and conditions, if applicable, in no more than 30 days regarding the approved revisions. The applicant must then repeat the procedure for Final Plat Approval of the approved revised Final Plan as outlined in Section VII.B.

IX.A.2 If at any time during the construction of the required improvements it is demonstrated to the satisfaction of the Code Enforcement Officer that unforeseen conditions make it necessary or preferable to modify the location or design of

any required improvement, the Code Enforcement Officer may, authorize minor modifications, provided these modifications are within the spirit and intent of the Board's approval and do not extend to the waiver or substantial alteration of the function of any improvements required by the Board. The Code Enforcement Officer shall issue any authorization under this section in writing and shall transmit a copy of such authorization to the Board. The Board may require the filing of a revised Final Plan depending on the extent of the modification.

#### IX.B. Scope of Review

- IX.B.1. The Board's scope of review under Section IX.A.1 shall be limited to those portions of the Final Plan which are proposed to be changed.

### **SECTION X – CRITERIA**

- X.A.** When reviewing any proposed subdivision for approval, the Board shall determine whether the proposed subdivision meets all applicable state subdivision criteria (as currently specified in 30-A M.R.S.A Section 4404 at the time of approval of this Regulation) and amendments thereto, as well as the following criteria:

- X.A.1. The proposed subdivision will not result in undue water or air pollution. In making this determination it shall consider: the elevation of land above sea level and its relation to the flood plains; the nature of the soils and subsoils and their ability to adequately support waste disposal; the slope of the land and its effect on effluents; the availability of streams for disposal of effluents; and the applicable state and local health and water resources rules and regulations.
- X.A.2. The proposed subdivision has sufficient water available for the reasonably foreseeable needs of the subdivision.
- X.A.3. Will not cause an unreasonable burden on an existing water supply, if one is to be used.
- X.A.4. The proposed subdivision will not cause unreasonable soil erosion or reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results.
- X.A.5. The proposed subdivision will not cause unreasonable highway or public road congestion or unsafe conditions with respect to use of the highways, public roads or roads necessary for access to or within the proposed subdivision.
- X.A.6. The proposed subdivision will provide for adequate solid and sewage waste disposal.
- X.A.7. Will not cause an unreasonable burden on the ability of the Town of Westport Island to dispose of solid waste and sewage with respect to the use of municipal facilities existing or proposed;
- X.A.8. Will not place an unreasonable burden on the ability of the Town of Westport Island to provide municipal or governmental services;
- X.A.9. The proposed subdivision will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline.
- X.A.10.** The proposed subdivision conforms with the subdivision regulations, comprehensive plan, floodplain management ordinance, shoreland zoning ordinance, street ordinance or other duly adopted town ordinance or regulation. In making this determination, the municipal review authority may interpret these ordinances and plans;
- X.A.11. The subdivider has the adequate financial and technical capacity to meet the criteria of Title 30-A M.R.S.A. §4404 and the criteria and standards of this regulation to completion of project.

- X.A.12. Whenever situated entirely or partially within the watershed of any pond or lake or within 250 feet of any wetland, pond, lake, river or tidal waters as defined in the Mandatory Shoreland Zoning, Act Title 38, chapter 3, subchapter 1, article 2-B, the proposed subdivision will not adversely affect the quality of such body of water or unreasonably affect the shoreline of such body of water.
- X.A.12.a. To avoid circumventing the intent of this provision, if a proposed subdivision adjoins a shoreland strip narrower than 250 feet which is not lotted, the proposed subdivision shall be reviewed as if lot lines extend to the shore.
- X.A.12.b. The frontage and set-back provisions of this paragraph do not apply either within areas zoned as general development or its equivalent under shoreland zoning, Title 38, chapter 3, subchapter I, article 2-B, or within areas designated by ordinance as densely developed. The determination of which areas are densely developed must be based on a finding that existing development met the definitional requirements of section 4401, subsection 1, on September 23, 1983;
- X.A.13. The proposed subdivision will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water.
- X.A.14. If any part of the proposed subdivision is in a flood-prone area, the subdivider shall determine the 100-year flood elevation and flood hazard boundaries within the subdivision and include a condition of Final Plan approval requiring that the principal structures in the subdivision will be constructed with their lowest floor, including the basement, at least one foot above the 100-year flood elevation.
- X.A.15. All freshwater wetlands have been identified on any maps submitted as part of the application, regardless of the size of these wetlands.
- X.A.16. Any river, stream or brook as defined in the Natural Resources Protection Act. Title 38, Section 480-B, within or abutting the proposed subdivision has been identified on any maps submitted as part of the application.
- X.A.17. The proposed subdivision will provide for adequate storm water management.
- X.A.18. If any lots in the proposed subdivision have shore frontage on a river, stream, brook, great pond, or coastal wetland as defined in Title 38, section 480-B , none of the lots created within the subdivision shall have a lot depth to shore frontage ratio greater than 5 to 1.
- X.A.19. The proposed subdivision will not cause an unreasonable burden on the ability of a municipality to provide emergency services.

## **SECTION XI – STANDARDS**

The following Standards are in addition to the requirements of the state statute judgmental criteria, and Town of Westport Island judgmental criterion #X.A.19. Compliance with these Standards may be used to show partial or full compliance with the requirements of the associated judgmental criteria.

### **XI.A. Water Supply and Groundwater Quality and Quantity**

#### **XI.A.1. Water Supply**

- XI.A.1.a. When a proposed subdivision's water supply shall be from individual wells:

- (1). Individual wells shall be sited on the Final Plat and shall be sited at the approved location; alternative locations may be approved by the Board upon request.
- (2). Lot design shall permit placement of wells, subsurface waste water disposal areas, and where necessary, reserve sites for subsurface waste water disposal areas in full compliance with the Maine Subsurface Wastewater Disposal Rules and the Well Drillers and Pump Installers Rules.

XI.A.1.b. If a central water supply system is provided by the applicant, the location and protection of the source, the design, construction and operation of the system shall conform to all pertinent Maine standards including the Maine Rules Relating to Drinking Water (10-144A C.M.R. 231). An assessment detailing the design, operation and location of the proposed central water supply system, including the long-term capacity of the source of the water supply, must be provided and certified by a registered professional engineer.

#### XI.A.2. Hydrogeological Assessment

XI.A.2.a. If the density of the whole parcel being proposed for subdivision is more than one unit per five acres, or if possible future subdivisions of the parcel in question are permitted in any of the deeds of the proposed lots and such further subdivision could result in a density of greater than 1/5, a hydrogeological assessment, prepared by a Certified Geologist or Registered Professional Engineer, is required.

#### XI.A.2.b. Hydrogeological Assessment Components

Unless applicant requests in writing and receives a waiver from the Board to not require certain components of the assessment, a Hydrogeological assessment requires all of the following information:

- (1). Detail of the overall design and layout of the water supplies and sewage disposal systems and showing compliance, as appropriate, with XI.A.1.a. and b. above, and also the Maine Rules Relating to Drinking Water (10-144A C.M.R. 231).
- (2). An analysis and evaluation by the certifying agent assessing the adequacy of the proposed overall water management system design (water supply, sewage disposal, ground water preservation, and storm water management), as compared to the State of Maine standards and to currently prevailing good practices for islands similar to Westport Island. In addition the analysis and evaluation shall include the following:
  - (a). Impact of the proposed subdivision on the quality and quantity of ground water resources available on the parcel in question and on properties abutting the parcel.
  - (b). Impact of any future subdivision that may be permitted on the parcel on the quantity of ground water resources available on the

parcel in question and on properties abutting the parcel.

If future subdivision could significantly decrease the quantity of groundwater resources available within the parcel and on properties abutting the parcel, an estimate of the practical limit to the density achievable without such adverse impact shall be included in the hydrological assessment. This assessment is not necessary if the person doing the assessment concludes that the potential level of development will not lower the water table more than ten feet at any point of the property lines of the proposed development. Also, covenants requiring Board Approval for any future subdivision of any lot in the parcel shall be placed on the deeds of all lots within the parcel.

- (3). A map showing the basic soils types.
- (4). The depth to the water table at relevant points throughout the subdivision.
- (5). Drainage conditions throughout area to be developed in the subdivision.
- (6). Known data on the existing ground water quality and quantity in the area.
- (7). A map showing the location of any subsurface waste water disposal systems and drinking water wells within the subdivision and within 200 feet of the subdivision boundaries.
- (8). An analysis and evaluation of the effect of the subdivision on ground water resources. In the case of residential developments, the evaluation shall, at a minimum, include a projection of post development nitrate-nitrogen concentrations at any wells within the subdivision and at the subdivision boundaries.
- (9). Projections of ground water quality and quantity shall be based on the assumption of drought conditions (assuming 60% of annual average precipitation).
- (10). No subdivision shall increase any contaminant concentration in the ground water at any on-site well or at the subdivision boundary to more than the Primary Drinking Water Standards. No subdivision shall increase any contaminant concentration in the ground water at any on-site well or at the subdivision boundary to more than the Secondary Drinking Water Standards.
- (11). If ground water contains contaminants in excess of the primary standards, and the subdivision is to be served by on-site ground water supplies, the applicant shall demonstrate how water quality will be improved or treated.

- (12). If ground water contains contaminants in excess of the secondary standards, the subdivision shall not cause the concentration of the parameters in question to exceed 150% of the ambient concentration.
- (13). Any waiver granted by the Board must be based on clear evidence provided by the applicant that circumstances unique to the parcel proposed to be subdivided justify the waiver of a component of the assessment.
- (14). Subsurface waste water disposal systems and drinking water wells shall be constructed as shown on the map submitted with the assessment. If construction standards for drinking water wells or other measures to reduce ground water contamination and protect drinking water supplies are recommended in the assessment, those standards shall be included as a note on the Final Plat, and as restrictions in the deeds to the affected lots.

#### **XI.B. Sewage Disposal**

- XI.B.1. Sewage disposal shall be private subsurface wastewater disposal systems or a private treatment facility.
- XI.B.2. The applicant shall submit evidence of site suitability for subsurface sewage disposal prepared by a Maine Licensed Site Evaluator/Soil Scientist or registered Civil Engineer to be in full compliance with the requirements of the State of Maine Subsurface Wastewater Disposal Rules.
  - XI.B.2.a. This evidence may include a test pit log showing the results of a lot-by-lot analysis demonstrating each lot's suitability for subsurface sewage disposal or a high intensity soil survey by identifying soils boundaries within the subdivision and naming soils types, including a lot by lot determination of soils suitability for the intended uses. Wetland areas shall be identified on the survey. The site evaluator shall certify in writing that test pits within the proposed sewage disposal areas meet the requirements for a new system and are located in an area with enough acceptable soils to meet the Disposal Rules and accommodate the proposed waste volume, including a suitable safety factor.
  - XI.B.2.b. Variances from the Subsurface Wastewater Disposal Rules promulgated by the State of Maine Department of Health, including but not limited to holding tanks and sewage systems, are not allowed. Experimental wastewater disposal systems allowed by the Maine Department of Health may be approved by the Board if sufficient evidence is presented by the applicant that said system satisfies the criterion and relevant Town of Westport Island standard(s).
- XI.B.3. The design of any private sewage treatment facility must be certified by a licensed professional engineer to meet all applicable State of Maine standards.

#### **XI.C. Soil Erosion and Sedimentation**

An erosion and sediment control plan shall be prepared in accordance with the Maine Erosion and Sediment Control Handbook for Construction: Best Management Practices, latest revision, prepared by the Cumberland County Soil and Water Conservation District and the Maine Department of Environmental Protection, which is incorporated herein by reference and made a part thereof. The plan shall be prepared either by a professional civil engineer or by a Certified Professional in Erosion and Sediment Control (CPESC). At a minimum, the following items shall be discussed and provided:

- XI.C.1. A vicinity map showing the location of waterbodies that may be affected by erosion and sedimentation from the project.
- XI.C.2. Existing and proposed drainage patterns, including drainage channels that drain to surrounding waterbodies.
- XI.C.3. A sequence of work that outlines how the project will be constructed and specifically addressing how soil disturbance will be minimized during the construction process.
- XI.C.4. Clear definition of the limits of work and any buffer areas that will remain undisturbed and a statement of how these areas will be protected during construction.
- XI.C.5. Description of temporary and permanent erosion control practices that will be used.
- XI.C.6. Identification of the locations of the temporary and permanent erosion control practices.
- XI.C.7. Identification of how and where collected sediment will be disposed.
- XI.C.8. Dust control measures.
- XI.C.9. Inspection and maintenance procedures, including schedule and frequency.

The Board may request the review and endorsement of this plan by the Knox-Lincoln Soil and Water Conservation District. The applicant shall agree as a part of the application that the procedures outlined in the Soil Erosion and Sedimentation Control Plan shall be implemented during the site preparation, construction, and clean-up stages.

The name, address, and telephone number of the person responsible for implementation of the plan shall be provided to the Code Enforcement Officer prior to the commencement of any construction.

#### **XI.D Roads and Streets**

##### **XI.D.1. Sight Distances**

- XI.D.1.a. All points of access from the subdivision onto existing or proposed public or private roads shall be so designed in profile and grading and so located as to provide a minimum sight distance in each direction of 10 feet per each mile per hour of street design speed. The measurements shall be from the driver's seat of a vehicle standing on the exit driveway 10 feet behind the curb line or edge of traveled way, with the height of eye 3.5 feet to the top of an object 4.25 feet above the pavement.

XI.D.1.b.All curves and changes in grade shall provide the following minimum sight distances based on the street design speed.

|                     |     |     |     |     |     |
|---------------------|-----|-----|-----|-----|-----|
| Design Speed (mph)  | 15  | 20  | 25  | 30  | 35  |
| Sight Distance (ft) | 120 | 145 | 180 | 220 | 275 |

Sight distance shall be measured at the center of the road with a height of eye at 3 feet above the road surface and the height of object at 4 feet above the road surface.

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

Where street design speeds are less than 35 mph, the applicant will propose methods to warn drivers of oncoming road features and the recommended safe speed associated with that feature to insure that public welfare and safety are reasonably protected.

## XI.D.2. Street Design Standards

All proposed subdivision roads shall be private and the final plan shall include the following condition:

“The proposed roads shown on this plan and plat are private roads to be maintained by the developer or the lot owners.”

XI.D.2.a. Any road or driveway that intersects a state or state-aid highway shall conform to the requirements of the Maine Department of Transportation’s Highway Driveway and Entrance Rules.

XI.D.2.b. All streets in the subdivision shall be so designed that, in the opinion of the Board, they shall provide safe vehicular travel while discouraging movement of through traffic.

XI.D.2.c. The arrangement, character, extent, width, grade and location of all streets shall be considered in their relation to existing or planned streets, to topographical conditions, to public convenience and safety, and their appropriate relation to the proposed use of the land to be served by such streets. Grades of streets shall conform as closely as possible to the original topography within the limits of these Standards.

XI.D.2.d. Adequate off-street parking, suitably surfaced, shall be provided in connection with lots designed for commercial and industrial uses.

XI.D.2.e. All major subdivisions shall be designed to provide access to individual lots only by interior subdivision roads. Direct access from any public road to any lot in a proposed subdivision shall be prohibited unless the Board determines that physical conditions unique to the parcel justify the granting of a waiver from this requirement. A waiver may be granted only if one of the following conditions is met:

XI.D.2.e.1. There is too little road frontage to reasonably allow creation of a new way;

XI.D.2.e.2. The shape or physical condition of the parcel does not permit access to or creation of a street other than the existing public way; or

XI.D.2.e.3. Common access will be utilized which will allow all proposed lots to be serviced by common curb cuts

XI.D.2.f. A turning cul de sac, or loop, suitable for town emergency vehicles to make a 360 degree turn, shall be provided at the terminal point of any road unless the Board specifically authorizes a turning 'T' which can satisfy the same need.

XI.D.2.g. All disturbed areas must be stabilized.

XI.D.3. Road Construction Standards

XI.D.3.a. Minimum Subdivision Road Construction Standard

|  |                |
|--|----------------|
| Minimum Right of Way                         | 50 ft.         |
| Minimum Road Width                           |                |
| Access for 1-4 lots                          | 14 ft.         |
| Access for 5-9 lots                          | 16 ft.         |
| Access for > 10 lots                         | 18 ft.         |
| Maximum Grade (100 ft. between measurements) | 12 percent     |
| Roadway Crown                                | ¼ in./ft.      |
| Minimum Angle of Street Intersections        | 75 degrees     |
| Minimum Shoulder Width                       | 3 ft.          |
| Maximum Grade 75 feet to Intersection        | 2 percent      |
| Minimum Centerline Radius                    | 120 ft.        |
| Minimum Aggregate Sub Base Course            | 12 in.         |
| Minimum Aggregate Intermediate Course        | 6 in.          |
| Top Cover Course                             | 2 ½ in. Gravel |

XI.D.3.b Bases and Pavements

XI.D.3.b.1. Self-contained road construction methods are preferred such that movement of materials on and off site is minimized.

XI.D.3.b.2. The aggregate sub-base course shall be of crushed rock from a jaw crusher set between 4 and 6 inches, or from sand or gravel of hard durable particles free from vegetative matter, lumps, balls of clay and other deleterious substances. The gradation of the part that passes a 4-inch square sieve shall meet the following grading requirements:

| Sieve              | Percentage by Weight Passing |
|--------------------|------------------------------|
| <u>Designation</u> | <u>Square Mesh Sieves</u>    |
| ¼ inch             | 25-70%                       |
| No. 40             | 0-30%                        |
| No. 200            | 0-7%                         |

XI.D.3.b.3. The intermediate base course shall be crushed rock from a jaw crusher set between 2 and 3 inches, or sand or gravel of hard durable particles free from vegetative matter, lumps, balls

of clay and other deleterious substances. The gradation of the part that passes a 3-inch square mesh sieve shall meet the following grading requirements:

| <u>Sieve Designation</u> | <u>Percentage by Weight Passing Square Mesh Sieves</u> |
|--------------------------|--|
| ½ inch                   | 45-70%   |
| ¼ inch                   | 30-55%   |
| No. 40                   | 0-20%  |
| No. 200                  | 0-5%   |

XI.D.3.b.4. Top Cover Courses

The gravel top cover course shall be crushed rock from a cone crusher set at 3/4 inch or gravel which shall meet the Department of Transportation Standard Specifications for top cover courses which prevail at the time.

XI.D.4. Drainage

- XI.D.4.a. A new driveway shall be constructed and maintained to prevent water or runoff from reaching the paved or traveled portion of any street.
- XI.D.4.b. All ditches and drainage ways associated with the proposed street and their intersection with existing streets or roads shall meet the requirements set forth in the Stormwater Management Section XI.F., and their design shall be considered and approved by the professional engineer as part of that analysis.

### **XI.E. Site Clearing and Open Space or Common Land**

- XI.E.1. The Final Plan shall, by notes on the Final Plat and deed restrictions, limit the clear cutting of trees to those areas designated on the Final Plat.
- XI.E.2. Reservation or Dedication and Maintenance of Open Space and Common Land, Facilities and Services.
  - XI.E.2.a. All open space common land, facilities and property shall be controlled by:
    - (1). The owners of the lots or dwelling units by means of a lot owners' association;
    - (2). An association which has as its principal purpose the conservation or preservation of land in essentially its natural condition; or
    - (3). The municipality.
  - XI.E.2.b. Further subdivision of the common land or open space and its use for other than non-commercial recreation, or conservation purposes, except for easements for utilities, shall be prohibited. Structures and buildings accessory to non-commercial recreational or conservation uses may be erected on the common land.
  - XI.E.2.c. The common land or open space shall be shown on the Final Plat with appropriate notations on the Final Plat to indicate that it shall not be used for future building lots.
  - XI.E.2.d. The Final Plat approval shall only be given if applicant agrees to adopt and record:

- (1). Covenants for mandatory membership in the lot owners' association setting forth the owners' rights, interests, and privileges in the association and the common property and facilities, to be included in the deed for each lot or dwelling.
- (2). By-laws of the proposed lot owners' association when necessary, specifying the responsibilities and authority of the association, the operating procedures of the association and providing for proper capitalization of the association to cover the costs of major repairs, maintenance and replacement of common facilities.

XI.E.2.e. In combination, the documents referenced in paragraph XI.E.2.d. above shall provide the following:

- (1). A homeowners' association or similar approved legal entity shall have the responsibility of maintaining the common property or facilities.
- (2). The association may levy annual charges against all owners of lots or dwelling units to defray the expenses connected with the maintenance, repair and replacement of common property and facilities and tax assessments.
- (3). The association shall have the power to place a lien on the property of members who fail to pay dues or assessments.
- (4). The developer or subdivider shall maintain control of the common property and be responsible for its maintenance until the association accepts full responsibility for control and maintenance.

**XI.F. Storm Water Management**

A Storm Water Management Plan prepared by a registered professional engineer, shall be designed so that the post-development storm water runoff does not exceed the pre-development storm water runoff for the 24-hour duration, 2-year, 10-year, and 25-year frequency storm events. The storm water plan shall be prepared in accordance with *Stormwater Management for Maine: Best Management Practices*, latest edition, prepared by the Maine Department of Environmental Protection, which is incorporated herein by reference and made a part thereof. The storm water plan shall include the following information for the pre- and post-development conditions: drainage area boundaries, hydrologic soils groups, ground cover type, time of concentration flow paths, modeling methodology, calculations, and background data. The Board may require review and endorsement of the stormwater plan and calculations by the Knox-Lincoln Soil and Water Conservation District.

**XI.G. Emergency Municipal Services**

XI.G.1. Roads, Streets and Driveways

XI.G.1.a. Any road, street or driveway, public or private, within the subdivision shall provide turnaround capability for emergency vehicles within 300' (feet) of all primary structures serviced by said road, street or driveway.

XI.G.1.b. Any road, street or driveway, public or private, within the subdivision shall be constructed such that emergency vehicles shall have unimpeded access and egress between all primary structures within the subdivision and the nearest turnaround position.

XI.G.2. Emergency Provisions

Any proposal for a new major subdivision shall include a site fire protection plan. The plan shall provide adequate ingress and egress for emergency vehicles and identify a source[s] of water supply for firefighting as outlined by the National Fire Protection Association standards (NFPA 1142, Standard on Water Supplies for Suburban and Rural Fire Fighting), and/or other provisions for any additional elements as mutually agreed to with the Town's Fire Chief as needed to ensure adequate fire protection. The plan shall be reviewed by the Town's Fire Chief prior to the public hearing.

#### **XI.H. Financial and Technical Capacity**

##### **XI.H.1. Financial Capacity**

- XI.H.1.a. The applicant may show Financial Capacity through a demonstration that the property to be developed is owned in fee simple, with no outstanding economic encumbrances and has an assessed value large enough to cover cost of proposed public and quasi-public improvement or the cost, reasonably, to restore the project site to its original condition, whichever is greater or,
- XI.H.1.b. Make the offer of a budget for the construction of all necessary facilities, accompanied by a clear statement by a contractor who has worked recently in the local area that the proposed developments can be constructed for the budgeted amount. This offer must be accompanied by an irrevocable letter of credit, or a bond furnished by an insurance carrier insured to do business in Maine, sufficient to cover the budgeted amount.

#### **XI.I. Lots**

- XI.I.1. The maximum number of lots in a major subdivision shall not exceed that number resulting from the division of the net residential area of the property to be subdivided by the applicable minimum lot size.
- XI.I.2. Lot configuration and area shall be designed to provide for adequate off-street parking and service facilities based upon the type of development proposed.
- XI.I.3. Lots with multiple frontages shall be avoided wherever possible. When lots do have frontage on two or more roads, the plat and deed restrictions shall indicate vehicular access shall be located only on the less traveled way.
- XI.I.4. Wherever possible, side lot lines shall be perpendicular to the street.
- XI.I.5. Each lot shall have developable area for the construction of buildings and other improvements identified without utilizing land unsuitable for development. The developable area shall have a minimum width of 100 feet and a minimum depth of 100 feet except that one dimension may be decreased by up to 25% as long as the other dimension is increased by an equivalent amount. The developable area shall be located outside of any setback areas and be free of wetlands, floodplains and slopes in excess of 35%. For the purposes of this paragraph, "wetlands" means those wetlands as identified on the National Wetland Inventory Map, "floodplains" are as presented on the Flood Insurance Rate Map, and "slopes in excess of 35%" are as illustrated on the U.S. Geological Survey Map.

#### **XI.K. Monuments**

Permanent monuments shall be set at all corners and angle points of the

subdivision lots and boundaries; and at all intersections and points of curvature. All road angle monuments shall be constructed of stone and shall be a minimum of four (4) inches by four (4) inches and four (4) feet long. All other monuments shall be constructed of a reasonably permanent material solidly embedded in the ground and capable of being detected by commonly used magnetic or electronic equipment. The monument shall clearly show the registration number or temporary certificate number of the registered land surveyor responsible for survey. Where the placement of a required monument at its proper location is impractical, it shall be permissible to set a reference monument close to that point.

**XI.L. Street Signs**

Streets, which join or are in alignment with streets of abutting or neighboring properties, shall bear the same name. Names of new streets shall not duplicate, nor bear phonetic resemblance to the names of existing streets within the municipality and shall be subject to the approval of the Board of Selectmen.

**XI.M. Surface Drainage**

- XI.M.1. All improvements recommended in the drainage plan submitted pursuant to Section XI.F shall be shown on the approved plan.
- XI.M.2. Topsoil shall be considered part of the subdivision. Except for "surplus" topsoil for roads, parking areas and building excavations, it is not to be removed from the site.
- XI.M.3. Except for normal thinning and landscaping, existing vegetation shall be left intact to prevent soil erosion. The Board shall require a developer to take measures to correct and prevent soil erosion in the proposed subdivision as detailed in the sedimentation and erosion plan submitted pursuant to Section XI.C.
- XI.M.4. To prevent soil erosion of shoreline areas, tree cutting on the shoreline shall conform to the Shoreland Zoning Ordinance of the Town of Westport Island, Maine.

**SECTION XII – INSPECTION AND ENFORCEMENT**

- XII.A.** Upon completion of each approved phase of construction and prior to the application for building permits for any lots, the applicant shall submit to the Board a signed and stamped statement by a registered professional engineer stating that the project has been constructed in accordance with the approved plans.
- XII.B.** It shall be the duty of the Board of Selectmen or their appointed agent, including, but not limited to, the Code Enforcement Officer and/or Plumbing Inspector, to enforce this Regulation. The Board of Selectmen or their appointed agent may conduct On-site Inspections to ensure compliance with all applicable laws and conditions attached to the approved application.
- XII.C.** If the Board of Selectmen or their appointed agent finds upon inspection of the improvements that any of the required improvements have not been constructed in accordance with the Final Plans, recordable documents and specifications filed by the subdivider at the Registry of Deeds, the inspecting official shall so report in writing to the Board of Selectmen, the Board, the subdivider and the builder. The Board of Selectmen shall take any steps necessary to assure compliance with the approved Final Plans.

**XII.D.** The applicant may request, following completion of all construction related to any phase of the subdivision, that the Board review the project and certify that the conditions relating to that construction have been met.

**XII.E.** Violations

XII.E.1. No Final Plan of a division of land within the municipality which would constitute a subdivision shall be recorded in the Registry of Deeds until a Final Plat has been approved by the Board in accordance with these regulations.

XII.E.2. A person shall not convey, offer or agree to convey any land in a subdivision which has not been approved by the Board and recorded in the Registry of Deeds.

XII.E.3. A person shall not sell, lease or otherwise convey in fee any land in an approved subdivision which is not shown on the Final Plat as a separate lot. The transfer of the entire subdivision is also allowable.

XII.E.4. No lots may be transferred or building permits applied for on an approved lot until construction of all improvements shown for that phase on the Final Plat are completed in accordance with section XII.A.

XII.E.5. No public utility or any utility company of any kind shall provide new service to any lot in a subdivision for which a Final Plat has not been approved by the Board.

XII.E.6. Development of a subdivision without Board approval shall be a violation of law.

XII.E.7. Violations of the above provisions of this section are a nuisance and shall be punished in accordance with the provisions of Title 30-A M.R.S.A., §4452. The Board of Selectmen, or their authorized agent, are hereby also authorized to enter into administrative consent agreements for the purpose of eliminating violations of this Regulation and recovering penalties without court action.

#### **SECTION XIII. – APPEALS OF PLANNING BOARD ACTIONS**

XIII.A. Appeal of any actions taken by the Planning Board with respect to this regulation shall be to the Board of Appeals. Any such appeal must be filed within thirty (30) days of the date upon which the Planning Board voted final action on the application. Any aggrieved party may appeal the action of the Board. If the Board of Appeals finds that the Planning Board erred in reviewing and/or acting on the application, it shall reverse the action accordingly. Appeal of decisions by the Board of Appeals shall be to Superior Court.

#### **SECTION XIV. – REVOCATION OF A PERMIT**

**XIV.A.** A permit may be revoked only because of administrative error or fraud during the original application process.

**XIV.B.** Procedures for Revocation of a Permit

Any party, the Board of Selectmen or their appointed agent may present information regarding administrative error or fraud to the Board.

XIV.B.1. Fraud

XIV.B.1.a. If the Board determines that a significant fraudulent testimony may have been submitted, it shall hold a noticed public hearing. Notice shall be sent to the applicant and all others to whom notice was required to be sent for the original approval. If, following the hearing the Board determines that there is credible information that the facts submitted in support of the application may be fraudulent, no matter the cause, the Board may forward the request to the Board of Appeals that the permit be revoked.

XIV.B.1.b. The Board of Appeals shall hold a noticed public hearing following the receipt of a request for revocation from the Board, providing that the Board's request was received within two years of the Board's final decision to approve the subdivision.

XIV.B.1.c. The Board's chair or a properly approved representative shall attend the Board of Appeals hearing and present appropriate evidence as to information submitted to it, its deliberations and subsequent decision. The burden of proof that fraud occurred shall however rest with the party claiming fraud.

XIV.B.1.d. The Board of Appeals may revoke a permit for a fraud upon finding that:

- (1). The facts presented by the applicant during the approval process were significantly and purposely in error, and
- (2). Such facts were material to the decision to approve the application, and
- (3). The availability of the true facts at the time of the application may have caused a denial of the application.

XIV.B.2 Administrative Errors

XIV.B.2.a. Appeal on the basis of administrative error shall be made only by admitted and statutory parties. It shall be made to the Board of Appeals and may only be entertained if the provisions and time frames that apply to an appeal of the decisions of the Board are maintained.

**SECTION XV. – SEVERABILITY**

**XV.A.** A finding of invalidity of any provision of this Regulation shall not invalidate any other part.