

**PLANNING BOARD MEMO • MAJOR SUBDIVISION • SKETCH PLAN REVIEW**

DATE: May 7, 2025

TO: Windham Planning Board  
FROM: Amanda Lessard, Senior Planner/Project Manager

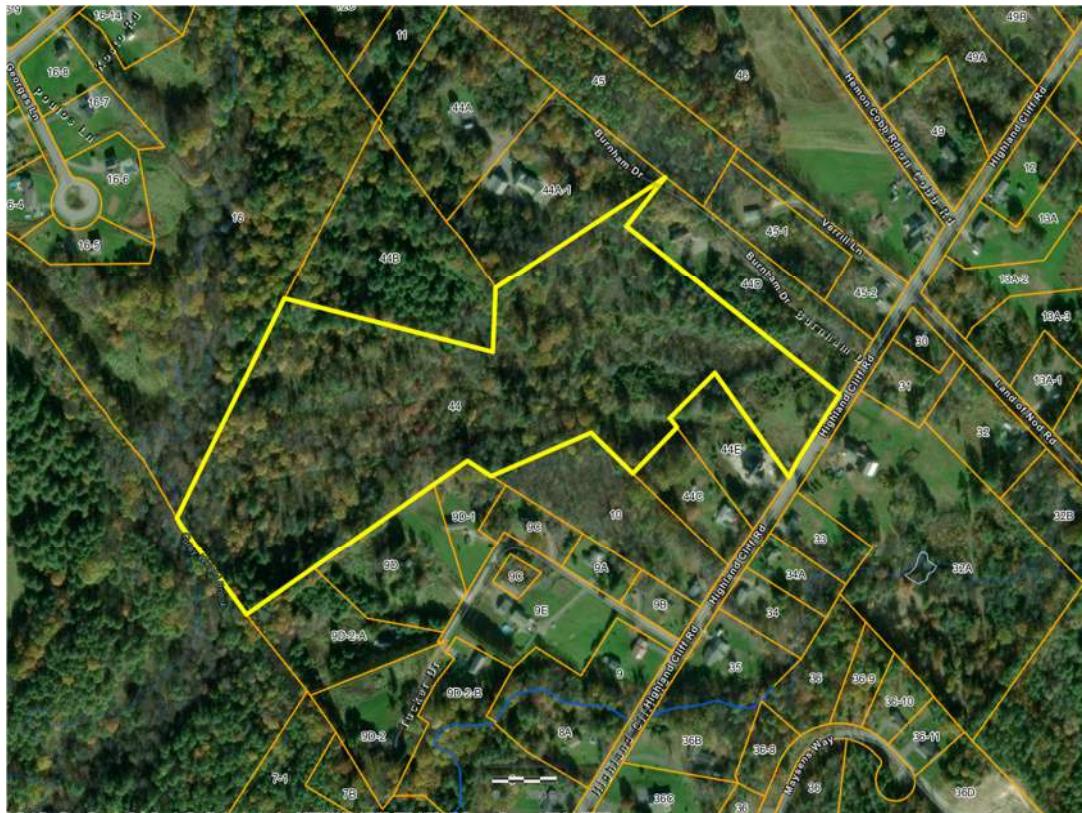
Cc: Steve Puleo, Planning Director  
Andy Morrell, PE, BH2M  
Kurt Christensen, Kurt Christensen Custom Homes Inc

RE: 25-04 – Major Subdivision – Highland Cliff Conservation Subdivision – Highland Cliff Road –  
Sketch Plan Review – Kurt Christensen Custom Homes, Inc  
Planning Board Meeting: May 12, 2025

**Overview:**

The application is to develop a 10-lot conservation subdivision with a minor private road 1,292 feet in length. Lots will range in size from 35,195 SF to 63,925 SF, with the remaining 13.5 acres as open space. Lots will be served by private subsurface wastewater disposal systems, drilled wells and underground utilities. Subject property is identified as Tax Map: 7; Lot: 44; Zone: Farm (F) and Stream Protection (SP) in the Colley Wright Brook watershed.

Tax Map: 7; Lot: 44; Zone: Farm (F), Stream Protection (SP) in the Colley Wright Brook watershed.



*Figure 1: Aerial View of the subject parcel relative to surrounding properties and street network.*

Review History:

A Development Review Team meeting was held on February 11, 2025. The Planning Board reviewed the sketch plan on February 24, 2025. At that meeting the Board discussed the wetland impacts and the need to specify the buildable area on each lot. The Board held a site walk on April 12, 2025.

The applicant has submitted a revised sketch plan application that incorporates the required 50-foot perimeter buffer into the subdivision lots, thus increasing the size of the proposed lots and reducing the overall subdivision open space while maintaining compliance with the ordinance requirements. The revised sketch plan also proposes 25-foot buffers from wetlands. The applicant is requesting guidance from the Board on what will be required for a building setback on the lots. §120-911K(3)(c)[1] states that “Building envelopes **should generally be located** at least 100 feet from primary conservation areas and at least 50 feet from secondary conservation areas, taking into consideration the potential negative impacts of development on such areas as well as the potential positive benefits of such locations to provide attractive views and visual settings for residences and other uses.”

**SUBDIVISION REVIEW**

PLEASE NOTE: The staff memo is a reference guidance document, and suggested topics for board discussion are listed; ~~the strikethrough text is items for the final review; bold and italic text represent unaddressed existing and/or new staff comments; or plain underlined text are items that have been addressed by the applicant; and italic text is for information or previously reviewed and/or approved items.~~

Staff Comments:

1. Complete Application: *N/A with Sketch Plan*

**MOTION:** ~~[I move] the Major Subdivision application for project #25-04 Highland Cliff Conservation Subdivision is found complete in regard to the submission requirements based on the application checklist, but the Planning Board retains the right to request more information where review criteria are not fully addressed.~~

2. Waivers:

*Limitation of Waivers. The granting of a submission requirement waiver or site waiver may not conflict with, nor negate, any State Statutory requirements for the subdivision of land.*

**SUBMISSION REQUIREMENTS**

*The Planning Director, or designee, may waive any of the submission requirements of §120-910 based upon a written request by the applicant that includes the reasons for which a waiver is sought. A waiver of any submission requirement may be granted only if the Planning Director, or designee, finds that the information is not required to determine compliance with the standards and criteria of the Land Use Ordinance or that the information relates to a standard that is not*

applicable to the application. Per [§120-908B\(1\)](#) the Planning Director is not required to use any criteria in making its determination on the granting of a waiver of the submission requirements.

**a) No waivers of submission requirements have been requested.**

**PERFORMANCE STANDARDS**

Per [§120-908C](#) the Planning Board may waive the requirements of [§120-911](#) Performance and Design Standards when the applicant demonstrates that the performance standards of these regulations and the criteria of the subdivision statute have been or will be met, and the public health, safety, and welfare are protected and provided the waivers do not have the effect of nullifying the intent and purpose of the land use ordinance. In granting site waivers, the Planning Board shall utilize the criteria in [§120-908C\(2\)](#).

**a) [§120-911M\(5\)\(b\)\(5\)\(a\)\(ii\)](#): Hammerhead turnarounds installed every 1,000 linear feet.**

The Land Use Ordinance (LUO) requires that dead-end streets not supplied with fire hydrants served by the Portland Water District have a maximum length of 1,000 linear feet unless all the dwellings have a sprinkler system installed, and hammerhead turnarounds are installed every 1,000 linear feet. The applicant proposes only a hammerhead turnaround at the end of the 1,292-foot-long private road. The applicant must submit a completed “Performance and Design Standards Waiver Request” form.

*STAFF SUPPORT FOR WAIVER: At the Development Team meeting on February 11, 2025 Deputy Fire Chief and Fire Chief support the waiver as all dwellings will be served by sprinkler systems and the proposed road length is approximately 1,300 feet and will have a hammerhead turnaround on the end of the road.*

**MOTION:** ~~[I move] to approve the waiver requests of [§120-911M\(5\)\(b\)\(5\)\(a\)\(ii\)](#): Streets and roads not served by public water, to waive the requirement for a hammerhead turnaround every 1,000 linear feet. The Planning Board cannot act on waivers or potential waiver requests at the Sketch/Preapplication review phase. It is appropriate to discuss potential waiver requests to give the applicant guidance.~~

3. Public Hearing: A public hearing has not been scheduled for this project. A public hearing will be schedule for the review of the Preliminary Plan.
4. Site Walk: A site walk was held on Saturday April 12, 2025.

**Findings of Fact, Conclusions, and Conditions of Approval for the Windham Planning Board:**

**MOTION:** ~~[I move] the Major Subdivision application for project #25-04 Highland Cliff Conservation Subdivision development identified on Tax Map: 7 ; Lot: 44; Zone: Farm (F) zoning district and Stream Protection (SP) shoreland zoning district and located in the Colley Wright Brook watershed is to be (approved with conditions/denied) with the following Findings of Fact, Conclusions, and Conditions of Approval.~~

## **FINDINGS OF FACT**

**Jurisdiction:** The Highland Cliff Conservation Subdivision project is classified as a Major Subdivision, which the Planning Board is authorized to review and act on by [§120-903](#) of the Town of Windham Land Use Ordinance.

**Title, Right, or Interest:** The applicant has submitted a copy of a Warranty Deed between Judith E. Butts and Kurt Christensen Custom Homes, Inc dated March 8, 2021, and recorded on March 9, 2021, at the Cumberland County Registry of Deeds in Book 37907 and Page 320.

## **ARTICLE 4 ZONING DISTRICTS**

- As shown on the Town of Windham [Land Use Map](#) approved by the Town Council, date April 9, 2024, Tax Map: 7; Lot: 44 is located in Farm (F) zoning district and Stream Protection (SP) shoreland zoning district governed by the provisions of [Chapter 185](#), Shoreland Zoning. **For the preliminary plan review, the applicant shall show the Stream Protection district on the plan.**
- The applicant's sketch plan shows a 10-lot subdivision with lots ranging in size from [35,195 SF to 63,925 SF, 31,190 SF to 51,080 SF](#), exceeding the minimum lot size for conservation subdivisions served by wells or a private system in the Farm (F) zoning district, per [§120-406E\(1\)\(b\)](#).

## **ARTICLE 5 PERFORMANCE STANDARDS**

### **§120-511 – Buffer yards**

[C\(3\)\(f\)](#) Buffers along streets. Farm and Farm Residential Districts: agriculture and forestry uses and lots created as part of a residential subdivision approved after July 9, 2020 are not subject to this standard.

### **§120-541 – Net residential area of acreage**

- B.** The net residential area or acreage of a lot proposed for subdivision, as defined, shall be calculated by subtracting the eight (8) items listed in the subsection from the gross acreage of a lot and dividing the resulting net residential area of the parcel by the net residential density standard of the appropriate zoning district (see [Article 4](#), Zoning Districts).

## **§120-911 - SUBDIVISION PERFORMANCE STANDARDS**

### **§120-911A – Basic Subdivision layout**

[\(1\)](#) The property has 25.45 acres or 1,108,481 SF exceeding the minimum lot size in the Farm (F) zoning district, per [§120-406E\(1\)](#).

[\(a\)](#) The applicant provided a net residential density calculation by deducting 70,759 SF of road R/W, 138,841 SF of steep slopes, 138,504 SF within the 100-year floodplain and 133,751 SF of wetlands for the net area of 626,626 SF. The net residential density is 60,000 SF, equaling 10.44 dwelling units. **(Note that the applicant's**

***mapped FEMA floodplain is not the current adopted FEMA floodplain, so these calculations must be revised).***

- (b)** The ten (10) proposed single-family lots side lot lines are perpendicular to the proposed roadway.
- (e)** For the final plan review, the applicant shall consult with the E-911 Addressing Officer to assign lot numbers and a street name.
- (2)** For the preliminary plan review, the applicant shall show where the proposed utilities will be located and shall be installed underground.
- (3)** For the preliminary plan review, the applicant shall show the location of the proposed subdivision monuments.

#### **§120-911B – Sufficient water; water supply.**

- (3)** For the preliminary plan review, the applicant shall show private drinking well location in each individual lot.
  - Per **§120-911B(3)(a)(3)**, “[W]ells shall not be constructed within 100 feet of the traveled way of any street if located downhill from the street, or within 50 feet of the traveled way of any street if located uphill of the street. This restriction shall be included as a deed restriction to the affected lots.” For the preliminary review, the applicant shall provide the locations of the private wells.
- (b)** The residential subdivision shall provide adequate water storage facilities either in the form of a residential sprinkler system for each dwelling or a minimum 30,000-gallon cistern system.

#### **§120-911C - Erosion Control and sedimentation control**

- For the preliminary plan review, the application shall submit a high-intensity soil survey by a certified soil scientist.
- For the Preliminary Plan review, a wetland delineation report showing the location of total amount wetland areas on the site and total amount of wetlands altered for the development. The sketch plan shows four areas of wetland impacts totaling 11,163 SF.
- For the final plan review, the applicant shall submit a Natural Resource Protection Act (NRPA) Tier 1 permit for any wetland alteration up to 14,999 SF in size.

- (1)** For the preliminary plan review, the applicant shall provide a soil erosion and sediment control plan showing the use of erosion and sediment control best management practices (BMPs) at the construction site consistent with the minimum standards outlined in the Maine DEP Stormwater Rule Chapter 500 Appendix A – Erosion and Sediment Control, Appendix B – Inspections and Maintenance, Appendix C – Housekeeping. Erosion and Sedimentation Control. BMPs shall be designed, installed, and maintained in accordance with the standards contained in the latest revisions of the following Maine DEP documents.
- (2)** For the preliminary plan review, the developer shall provide a statement for the Maine licensed professional civil engineer preventing soil erosion and sedimentation from entering water bodies, wetlands, and adjacent properties.
- (3)** For the preliminary plan review, the applicant or developer shall consider the topsoil as part of the subdivision is not to be removed from the site.

(4) Except for normal thinning and landscaping, existing vegetation shall be left intact to prevent soil erosion. *The Board may require a developer to take measures to correct and prevent soil erosion in the proposed subdivision.*

#### **§120-911D – Sewage disposal**

(2) The preliminary plan review, the applicant shall submit evidence of site suitability for subsurface sewage disposal prepared State of Maine Subsurface Waste Disposal Rules. The applicant shall provide evidence that the septic disposal field will meet the State's drinking water standards.

#### **§120-911E – Impact Natural Beauty, Aesthetics, Historic Sites, Wildlife Habit, Rare Natural Areas, or Public Access to the Shoreline**

(1) The applicant is developing access from Highland Cliff Road. Excepting for the development of the road R/W, the remaining frontage will remain intact, included in the subdivision open space, preserving the natural beauty and aesthetics.

(a) For preliminary plan review, the applicant shall provide a note not allowing the clearing of trees where tree cover is depicted on the plan for at least five years. Mandatory buffer for stormwater or other reasons shown on the plan shall not be cleared of vegetation unless the Planning Board grants an amendment to the subdivision or maintenance that does not alter the purpose for which the buffer was required.

(b) For preliminary plan review, the applicant must provide a landscape plan including a list of proposed plant species and their size at the time of installation and maturity, including the street tree plantings no more than 50 feet apart.

(2) For final plan review, the applicant shall provide reservation or dedication and maintenance of open space, common land, facilities such as the stormwater management system, among others, and service in the form of homeowner's association documentation.

#### **§120-911F – Conformance with Land Use Ordinances**

Comprehensive Plan:

- The plan does meet the goals of the 2017 Comprehensive Plan.

Land Use Ordinance, Chapter 120:

- There is a net residential density in the Farm zoning district of 60,000 SF.

Subdivision Ordinance, Chapter 120 Article 9:

- Standard notes, the standard conditions of approval, and approved waiver must be shown on the plans.
- For the final plan review, a digital transfer of the subdivision plan data must be submitted for inclusion with the Town's GIS.

Growth Management, Chapter 101:

- Growth permits are required for the creation of each new single-family dwelling. Growth permit applications are submitted with building permit applications.

#### **§120-911G – Financial and Technical Capacity**

- (1) For preliminary plan review the applicant shall provide evidence of financial capacity and estimated cost of development.
- (2) For preliminary plan review the applicant shall provide evidence of technical ability and qualifications of contractors and consultants to supervise, construct and inspect the required improvements in the proposed subdivision.

#### **§120-911H – Impact on Ground Water Quality or Quantity**

- (1) For preliminary plan review, the applicant shall provide evidence that the subdivision shall not increase any contaminant concentration in the groundwater and shall meet the State's drinking water standards. A hydrogeological evaluation prepared by a certified geologist or Maine licensed professional engineer, experienced in hydrogeology, shall be required when the subdivision is not served by public sewer and the subdivision has an average density of more than one dwelling unit per 100,000 SF to demonstrate nitrates as nitrogen meet the maximum contaminant level at the project boundaries. This subdivision is not located over a significant sand and gravel aquifer. This subdivision is not located over a significant sand and gravel aquifer. This subdivision is not located over a significant sand and gravel aquifer.
- (2) For preliminary plan review, the applicant shall provide evidence the proposed subdivision shall not result in water table drawdowns beyond the subdivision boundaries.

#### **§120-911I – Floodplain Management**

- The subject property is within a mapped FEMA Floodplain boundary. The sketch plan shows the former floodplain boundary. For the preliminary plan review, the applicant should show the floodplain boundary that became effective on 6/20/2024. The mapped floodplain is located adjacent to Colley Wright Brook and is in the designated open space. No development in proposed within the floodplain.

#### **§120-911J – Stormwater**

- The applicant proposes to manage stormwater runoff from the road via swales within the road R/W to two soil filters in the open space area, at the intersection of Betty Lane and Chute Road, in a clear area left after the removal of one of the mobile homes. The soil filter basins will return stormwater runoff to pre-development levels while also treating water quality. The development will require a Permit-by-Rule (PBR) issued under Chapter 500 of the Stormwater Management Law and a Maine Construction General Permit (MCGP) from Maine DEP.
- The responsibility of maintaining the stormwater management system will be assigned to the future Homeowner's Association, as per §120-911N.
- For final plan review, applicants must submit condominium documents such as a draft deed with covenants and restrictions, a bylaw, and a stormwater maintenance and inspection plan.

#### **§120-911K – Conservation Subdivision**

- (1) The applicant is proposing to develop the conservation subdivision to set aside a significant portion of the site as open space by grouping the dwelling units closer with access to a minor private road with 50-foot rights-of-way (ROW). The applicant is

proposing to reduce the lot size to approximately +30,000 SF with 100-feet of street frontage.

- Per §120-911K(3)(a)[2], the applicant has provided the site analysis plan as a base for an existing resource inventory of the primary conservation resource element on the site. The sketch plan application describes the primary conservation resource as the floodplain, steep slopes and wetland adjacent to Colley Wright Brook, but the area is not delineated on the site analysis plan. The applicant has preserved the highest-value natural resource.
- The applicant has not shown any secondary conservation resource on the site analysis plan, per §120-911K(6)(c)[2]. The sketch plan application describes that the wetlands on the eastern portion of the site are considered secondary as they are not connected to a natural resource. Staff noted during the Development Review Team meeting that wetlands not included as primary conservation areas are typically included as secondary conservation areas and that the wetland through the eastern portion of this property likely does connect to Colley Wright Brook through the abutting property.
- The plan **does not** show 100-foot building setbacks from primary conservation areas and 50-feet from secondary conservation areas, per §120-911K(3)(c). The revised sketch plan shows the building envelopes on the lots, identifying 25 foot setbacks from the wetlands.
- The applicant is providing ~~45.1413.5~~ acres, or ~~659,702588,019~~ SF, of total open space on the 25.45-acre site.
- The applicant proposes to the majority of the reserved open space at the end of the road, per §120-911K(3)(d).
- The applicant is also providing a smaller open space area~~s that includes~~ing a 100-foot buffer from Highland Cliff Road ~~and 50 feet from the external perimeter of the property line. The size of this area shall be labeled on the plan and may not be less than 10,000 square feet in area per §120-911K(3)(b)[4]~~.
- Per §120-911K(3)(c)[3] the 50 foot ~~perimeter~~buffer from the external perimeter of the property line is not ~~may only be~~ part of the open space ~~if the~~as the area is not a primary or secondary conservation area delineated in accordance with §120-911K(3)(a). For the final plan review, a note should be added to the plan requiring that the buffers shall be permanently marked prior to the start of construction. The applicant should also provide a draft of deed restrictions for buffer areas. See Condition of Approval #5.
- The use of the open space shall not be for commercial or private clubs, but to be used by the homeowner's association.
- For the preliminary plan review, a trail system shall be created within the open space, per §120-911K(3)(e).

#### §120-911L – Compliance with Timber Harvesting Rules

- For preliminary plan review, the application should address how the subdivision will comply with timber harvesting rules.

### **§120-911M – Traffic Conditions and Street**

- For the preliminary plan review, a traffic impact analysis is required for subdivisions projected to generate more than 140 vehicle trips per day.
- The applicant is proposing to meet the Town's "Minor Private Road" standards found in Appendix B.
  - The proposed plan is to build a 1,292-foot private road with a 50-foot-wide R/W and hammerhead turnaround at the end. The private road note of §120-911M(5)(a)[5][e] should be shown on the plan.
  - The town's road standards call for a 9-foot-wide road with 2-foot graveled shoulders on each side of it.
  - The applicant will be required to obtain a street opening permit from the Department of Public Works.
  - The homeowner's association will maintain the R/W road once the subdivision is completed.

### **§120-911N – Maintenance of common elements.**

- For the final plan review, the applicant shall provide draft homeowners association documents for the Town Attorney's review and comment.

### **CONCLUSIONS (Final Plan Review)**

1. ~~The development plan reflects/does not reflect the natural capacities of the site to support development.~~
2. ~~Buildings, lots, and support facilities will/will not be clustered in those portions of the site that have the most suitable conditions for development.~~
3. ~~Environmentally sensitive areas, including but not limited to wetlands; steep slopes; flood plains; significant wildlife habitats, fisheries, and scenic areas; habitat for rare and endangered plants and animals; unique natural communities and natural areas; and sand and gravel aquifers will/will not be maintained and protected to the maximum extent.~~
4. ~~The proposed subdivision has/does not have sufficient water available for the reasonably foreseeable needs of the site plan.~~
5. ~~The proposed subdivision will/will not cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results.~~
6. ~~The proposed use and layout will/will not be of such a nature that it will make vehicular or pedestrian traffic no more hazardous than is normal for the area involved.~~
7. ~~The proposed subdivision will/will not provide adequate sewage waste disposal.~~
8. ~~The proposed subdivision conforms/does not conform to a duly adopted subdivision regulation or ordinance, comprehensive plan, development plan, or land use plan.~~
9. ~~The developer has/does not have the adequate financial capacity to meet the standards of this section.~~
10. ~~The proposed subdivision will/will not alone or in conjunction with existing activities, adversely affect the quality or quantity of groundwater.~~
11. ~~The proposed subdivision will/will not provide for adequate stormwater management.~~

12. ~~The proposed location and height of buildings or structure walls and fences, parking, loading, and landscaping shall be such that it will/will not interfere or discourage the appropriate development in the use of land adjacent to the proposed site or unreasonable affect its value.~~
13. ~~On site landscaping does/does not provide adequate protection to neighboring properties from detrimental features of the development that could be avoided by adequate landscaping.~~
14. ~~All freshwater wetlands within the proposed subdivision have/have not been identified on the plan.~~
15. ~~Any river, stream, or brook within or abutting the subdivision has/has not been identified on any maps submitted as part of the application.~~
16. ~~The proposed subdivision will/will not provide for adequate stormwater management.~~
17. ~~If any lots in the proposed subdivision have shore frontage on a river, stream, brook, or great pond as these features are defined in [Title 38, §480-B](#), none of the lots created within the subdivision has/does not have a lot depth to shore frontage ratio greater than 5 to 1.~~
18. ~~The long term cumulative effects of the proposed subdivision will/will not unreasonably increase a great pond's phosphorus concentration during the construction phase and life of the proposed subdivision.~~
19. ~~For any proposed subdivision that crosses municipal boundaries, the proposed subdivision will/will not cause unreasonable traffic congestion or unsafe conditions with respect to the use of existing public ways in an adjoining municipality in which part of the subdivision is located.~~
20. ~~The timber on the parcel being subdivided has/has not been harvested in violation of rules adopted pursuant to [Title 12, §8869, sub§14](#).~~

#### CONDITIONS OF APPROVAL

1. Approval is dependent upon and limited to the proposals and plans contained in the application dated January 29, 2025 as amended [*the date of the final plan approval*] and supporting documents and oral representations submitted and affirmed by the applicant, and conditions, if any, imposed by the Planning Board. Any variation from such plans, proposals, supporting documents, and representations is subject to review and approval by the Planning Board or the Town Planner in accordance with [§120-913](#) of the Land Use Ordinance.
2. In accordance with [§120-914B\(5\)](#) of the Land Use Ordinance, the Construction of improvements covered by any subdivision plan approval shall be completed within two years of the date upon which the performance guarantee is accepted by the Town Manager. The developer may request a one-year extension of the construction completion deadline prior to the expiration of the period. Such request shall be in writing and shall be made to the Planner. The Town Manager may require an update to the schedule of values and the amount of the guarantee when accepting an extension of the construction period. If construction has not been completed within the specified period, the Town shall, at the Town Manager's discretion, use the performance guarantee to either reclaim and stabilize or to complete the improvements as shown on the approved plan.

3. Recreation Impact Fee, Open Space Impact Fee, Public Safety Impact Fee; and Municipal Office Impact Fee. All fees will be determined and collected for any building, or any other permits necessary for the development, §120-1201C.
4. In accordance with §120-911N(5) of the Land Use Ordinance, the homeowners' association documents shall be recorded in the Cumberland County Registry of Deeds within 90 days of the date that the subdivision plan is recorded in the Cumberland County Registry of Deeds. Evidence of such recording shall be provided to the Planning Department. No lots shall be sold in the subdivision prior to recording and all deeds shall reference the declaration establishing the homeowners' association.
5. Before issuing building permits the applicant or builder must have the town engineer verify that the 50-foot conservation subdivision exterior boundary buffer line is pinned, staked, or fenced in the field.