



**Town of Windham  
Planning Department**

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**MEMO**

DATE: September 9, 2021

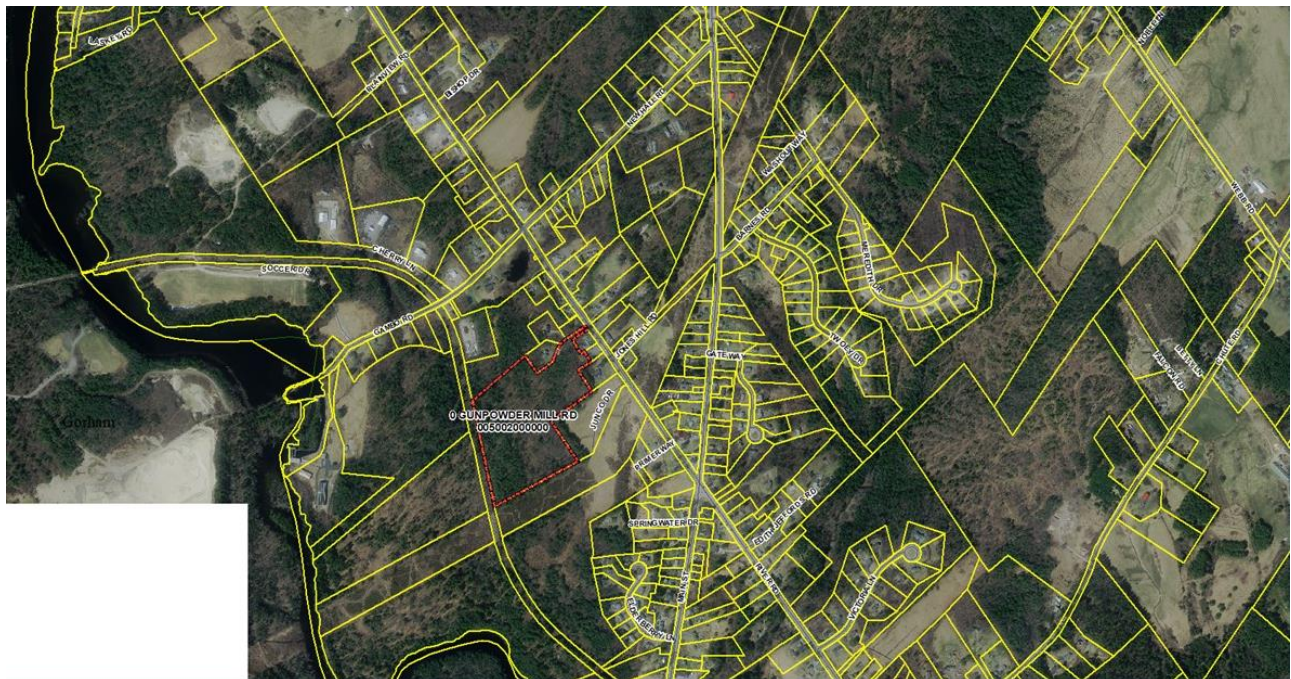
TO: Windham Planning Board  
FROM: Steve Puleo, Town Planner  
cc: Dustin Roma, DM Roma Consulting Engineers  
Robie Holdings, LLC, Applicant  
Development Review Team

RE: 21-16 Gunpowder Mill Road Subdivision. Major Subdivision Sketch Plan Review  
Planning Board Meeting: September 13, 2021

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The application is for a major subdivision sketch plan review for a proposed 15-lot Conservation Subdivision with a private road. The location of the property is on Gunpowder Mill Road. *Note: Public comment during the sketch plan review is not allowed unless requested by the Planning Board.*

A Development Review Team held a meeting on August 27, 2021. Comments received during the meeting are reflected in the memo below.



An aerial view of the subject parcel relative to surrounding properties and the street network.

Tax Map: 5 Lot: 2, Zone: Farm Residential (FR) district

The Board shall review the submission to determine if the information provides a clear understanding of the site and identifies opportunities and constraints that help determine how it should be used and developed. Ordinance procedure requires the applicant to use the design process summarized below, which is described in detail in Section 911.K.3.(a):

- First, the Open Space areas shall be delineated on the sketch plan. It should include all primary conservation areas and some secondary conservation areas with the highest resource significance. The applicant has not yet delineated secondary conservation areas.
- Then, open space design considerations should include setbacks, the inclusion of the highest value natural resources, the context of the resources concerning neighboring properties, connectivity, size, and potential boundary markings
- Then, building sites shall be tentatively located, considering all prescribed setbacks, such as 100 feet from primary and 50 feet from secondary conservation areas; 100 feet from existing streets, and 50 feet from the external property perimeter.
- Then, the alignment of the streets and the creation of a trail system to complement the Open Space areas should promote connectivity of the open space and building sites.
- Then, based on the tentative building locations, the lot lines shall be drawn.

## SUBDIVISION REVIEW

### Staff Comments:

1. Waivers Requested: *The applicant requested the following waivers of submission requirements. Per Section 907.A.3.(f) The Board shall act on any requests for waivers from the Preliminary Subdivision Plan submission requirements during Sketch Plan review. Per Section 908.B.2. The Board is not required to use any criteria in making its determination on the granting of a waiver of the submission requirements.*

#### **a) Section 910.C.1.C.1 – High Intensity Soil Survey.**

The applicant states that the soils on the property are all relatively poorly drained with a hydrologic soil rating of C or D and each lot will have a test pit performed by a licensed site evaluator to determine site suitability that will aid in the classification of soils. A high intensity soils map would not provide significant additional information.

#### **b) Section 910.C.1.C.3 – Hydrogeologic Assessment.**

The applicant states that the proposed lots will be served by public water and there are no existing adjacent properties that they identified that would potentially have a negative impact as a result of installing a septic system on any of the proposed lots.

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

**~~MOTION:~~** ~~The major subdivision sketch plan application for project Gunpowder Mill Road conservation subdivision is found complete regarding the submission requirements based on the application checklist. The Planning Board retains the right to request more information where review criteria are not fully addressed.~~

- c) Public Hearing: A public hearing has been scheduled for this project. The Board must determine whether to hold a public hearing on the Preliminary Plan.

- d) Site Walk: A site walk has not been scheduled for this project. *Staff propose scheduling it in the next few weeks so that feedback can be incorporated into the Preliminary Plan submission.*

Findings of Fact and conclusions for the

**Windham Planning Board,**

**MOTION:** ~~The major subdivision plan application for project Gunpowder Mill Road conservation subdivision on Tax Map: 18, Lot 52 is to be (approved with conditions/denied) with the following findings of fact and conclusions.~~

FINDINGS OF FACT

**911. - SUBDIVISION REVIEW**

**911.A. – Basic Subdivision layout**

**1. Lots:**

- The total land area of the conservation subdivision is 678,814 SF, and the road area right-of-way (ROW) (was not provided with the sketch plan application. The application shall provide an updated Net Residential calculation for the subdivision for the Preliminary Plan submission, per Section 540.B.1.). The sketch plan net residential calculation included steep-slope areas of 8,731 SF, wetlands or very poorly drained areas of 26,278 SF, and mapped FEMA 100-Year Floodplain areas of 13,498 SF.
- According to the applicant's net residential area (**excluding the road ROW area**), the total net area is 630,307 SF. The net residential density in the Farm Residential (FR) District is 40,000 SF per dwelling unit allowing a maximum number of dwelling units of 15.75, per Section 406.B.5.(b), the net density calculations should be based on 60,000 SF (see above). The applicant shall provide the corrected net residential for the Planning Board for the Preliminary Plan application review.
- The applicant's sketch plan shows a 15-lot subdivision with lot sizes approximately 0.5 areas in size (20,000 SF), meeting the minimum lots found in Section 406.B.5.(a)(2)(i).
- Deed restrictions or a note on the recording plan shall be provide prohibiting future divisions on the final plan for review.
- Lot numbers and addresses should appear on the final plan for review.

**2. Utilities:**

3. All lots will be served by public water from an existing Portland Water District (PWD) 8-inch water main extended from the Gunpowder Mill Road.
- All lots will be served by private septic systems and test pits information shall be shown on the final plan for review.
- The size, type, and location of public utilities, such as storm drains, streetlights, electric lines, telephones lines, fire hydrants, etc. shall be provided on the final plan for review.
- All utilities shall be installed underground.

**4. Monuments:**

- Street line monuments shall be shown on the final plan for review.

**911.B. – Sufficient Water**

**1. Water supply:**

- An “Ability to Serve” letter from the PWD approving the public water service to the subdivision must be submitted with the Final Plan.
- Deputy Fire Chief John Wescott recommended a new hydrant be placed in the subdivision near the existing Hammerhead turnaround, at about 800’. Existing and proposed hydrants should be shown on the plan. The final plan needs to demonstrate conformance to fire code, Chapter 95 of Windham Land Use Ordinance, specifically at 95.4.1.
- A hydrogeologic assessment must be submitted as part of the Preliminary Plan submission 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 square feet. The Planning Board may waive this requirement, see above in the Wavier section for more details.
- This subdivision is not located over a significant sand and gravel aquifer or in a "Direct Watershed of a Lake Most Risk," as defined by the DEP.
- If applicable, the Maine DEP rules on Significant Wildlife Habitat at Chapter 335 state that: "Significant vernal pool habitat consists of a vernal pool depression and that portion of the critical terrestrial habitat within 250 feet of the spring or fall high watermark of the depression. An activity that takes place in, on, or over a significant vernal pool habitat must meet the standards of this chapter." The applicant should show the 250' significant vernal pool habitat setback on the Plan.

**911.C. - Erosion Control and Impact on Water Bodies**

- Soil erosion and sediment control plan must be submitted as part of the Preliminary Plan.
- Show double soil erosion control measures installed upland from the wetland areas during the construction of the private road upland of the wetland areas and on the development of the single-family building lots. A note shall be added to the subdivision plan for the final plan review.
- For the Preliminary Plan review, a wetland delineation report and vernal pool assessment showing the location of total amount wetland areas on the site and total amount of wetlands altered for the development of the road.
- The applicant shall submit with the final plan a Natural Resource Protection Act (NRPA) Permit-by-Rule (PBR) for any wetland alteration less than 4,300 SF in size.
- The applicant should demonstrate that the project will not adversely impact any river, stream, or brook.
- At the Development Review Team meeting on August 27, 2021, Amanda Lessard, Planning Director, added that the building envelopes should include the 100’ setback Primary Conservation areas, as found in Section 911.K. 3.(3) of the Conservation Subdivision ordinance.



**911.D. – Sewage Disposal**

**2. Private Systems:**

- The proposed lots will be served as private septic systems.
- The Preliminary Plan submission shall include the location and results of test pits performed by a Maine Licensed Site Evaluator or Certified Soil Scientist. At least one test pit per lot.

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

**1. Preservation of Natural Beauty and Aesthetics:**

- Limits of tree clearing should be shown on the plan. A note should be added to the plan stating that clearing of trees is not allowed in areas where tree cover is depicted on the plan for at least five (5) years from the date of Planning Board approval, per Section 903.E.1.(a).
- Street trees must be planted at least every 50-feet along the length of the new subdivision street, per Section 903.E.1.(b).
- Aerial images indicate that the area proposed to be developed is mostly vegetated with trees. The applicant must show the existing tree line for review in the Preliminary Plan submittal.

**2. Reservation or Dedication and Maintenance of Open Space and Common Land, Facilities and Services:**

- All open space common land, facilities, and properties shall be owned by the owners of the lots by means of [Home]owners' Association (HOA). An association's principal purpose is for conservation or preservation of in "essentially" its natural state.
- A draft HOA documentation, such as Bylaws and Declaration of Convents for the Preliminary Plan for review.

**911.F. – Conformance with Land Use Ordinances**

Comprehensive Plan:

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

Land Use Ordinances:

- The minimum lot size of 20,000 SF for conservation subdivision lots in the FR zoning district.
- Lots meet the lot frontage requirement of 150 feet for the FR Zone.
- The net residential density requirement is 40,000 SF.
- The net residential density calculations are shown on the final subdivision recording plan.
- The applicant should indicate how solid waste will be handled as part of the Preliminary Plan review.

Subdivision Ordinance:

- The Tax Map and Lot numbers are shown on the amended final plan.
- The data of the amended subdivision plan shall be compatible with the Town's GIS system in the a .DWG file format and provided to the Town prior to release or the signed recording plan.

- The building setback requirements are shown on the final plan submission for all lots.
- Homeowner association documents should be provided with the Final Plan submission and must specify the rights and responsibilities of each lot owner with respect to the maintenance, repair, and plowing of the subdivision streets, and stormwater infrastructure.
- The Preliminary Subdivision plan should show all parcels in common ownership within the last 5 years.
- The Final Plan shall include a boundary survey, certified by a Maine Licensed Professional Surveyor.

Others:

- Refer to Chapter 221 - Street Naming and Addressing: A street name approved by the Town Addressing Officer shall be shown on the Final Plan.

**911.G. – Financial and Technical Capacity**

- Evidence of financial capacity must be provided as part of the Final Plan submission.
- Evidence of technical capacity must be provided as part of the Final Plan submission.

**911.H. – Impact on Ground Water Quality or Quantity**

**1. Ground Water Quality:**

- A hydrogeologic assessment prepared by a Maine Licensed Site Evaluator or Certified Geologist must be submitted as part of the Preliminary Plan 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 square feet, per Section 910.C.1.(3).

**2. Ground Water Quantity:**

- Any water table drawdowns beyond the subdivision boundaries shall not adversely impact the groundwater supply availability to existing wells nor cause structural damage.
- The proposal shall not result in a lowering of the water at the subdivision boundaries by increasing runoff with a corresponding decrease in the infiltration of precipitation. The applicant shall meet one of the flowing standards; Sections 911.H.2.(b)(1), (2) or (3).

**911.I. – Floodplain Management**

- The applicant shall provide evidence that the subdivision is not located in a designated mapped FEMA Floodplain Boundary as part of the Preliminary Plan review.

**911.J. – Stormwater**

- The project shall be reviewed in compliance with the stormwater standards included in the Maine Department of Environmental Protection (DEP) Chapter 500 including basic, general, phosphorus, flooding, and other standards.
- If a stormwater permit is required, the applicant shall provide the permit in the final plan submission for review of the approved DEP stormwater permit for the project.
- During the Development Review Team, the Environmental & Sustainability Coordinator, Gretchen stated that for project disturbing more than 1-acre in the Urbanized Area must comply with the Town's Post-Construction Stormwater

Ordinance and shall submit a Stormwater Management Plan with a Post-Construction and maintenance and inspection plan for review with the Preliminary Plan submittal.

#### **911.K. – Conservation Subdivision**

##### **3. Procedure for Conservation Subdivisions:**

- The applicant should develop primary and secondary conservation areas in conformance per Section 911.K.3.a.iv.
- Open space design shall to the greatest extent possible protect the site features identified in the Existing Resources Inventory and Site Analysis sketch plan.
- If vernal pool habitat is identified, the applicant shall meet the Maine DEP Chapter 335: Significant Wildlife Habitat requirements. A plan shall be provided for review with the preliminary plan submittal.
- Per Section 911.K.3.(a)(2)e., the boundaries of Open Spaces shall be marked by natural features wherever possible, such as hedgerows, stone walls, edges of woodlands, streams, or individual large trees. Where no such existing demarcations are present, additional plantings, fences, or other landscape features shall be added to enable residents or the public, if applicable, to distinguish where the Open Space ends and private lot areas begin. These boundaries should be shown on the Preliminary Plan.
- Building envelopes should be shown on the plan that meets the requirements of Sections 911.K.3.(a)(3) and provided for the Preliminary Plan review.
- Road alignment and design shall meet the requirements at Section 911.K.3.(a)(4), for the Preliminary Plan review.
- Per Section 911.K.3.(a) the street layout shall bear a logical relationship to topographic conditions. Impacts of the street plan on proposed conservation lands shall be minimized, particularly with respect to crossing environmentally sensitive areas such as wetlands and minimizing cut and fill. Street connections shall generally be encouraged to minimize the number of new cul-de-sacs and to facilitate access to and from buildings in different parts of the subdivision.

##### **4. Basic Standards for Conservation Subdivisions:**

- The applicant has provided building envelopes on the proposed lots and illustrated the placement of the building on the lot in the sketch plane review. The application will provide treatments of spaces, paths, roads, services, and parking areas as part of the Preliminary Plan review.
- A trail system shall be created within the Open Space to provide access from the subdivision homes to the open space network created by the subdivision, per Section 911.K.3.(4).

##### **5. Arrangement of Lots:**

- The Planning Board shall consider the diversity and originality of the lot layout and encourage the best possible relationship between the proposed development and the land under consideration.
- The applicant shall provide evidence, for the Preliminary Plan review, how the seven (7) factors were considered for the arrangement of lots, per Section 911.5.(b)1. through 7.

**6. Open Space Requirements for Conservation Subdivisions:**

- The applicant shall provide a note for review on the Preliminary Plan stating, “Open Space – Reserved for Recreation, Agricultural, and/or Conservation Purposes.” Per Section 911.6.(a).
- The applicant provided evidence, how the open space areas meet “Minimum Amount Required,” per Section 911.6.(b)1. and 2. The Open Areas include the total net residential area deduction of 1.11 acres and 50% of the net residential area of 7.24 acres for a total Open Space requirement of 8.35 acres. The applicant stated the Open Space areas total 8.67 acres, exceeding the minimum requirements.
- The applicant shall provide a “Priorities for Land Included in Open Space” analysis. for the Preliminary Plan review, per Section 911.6.(c)1. and 2.
- Open Space not retained by the subdivider shall provide one principal access point of a minimum width 20-feet from the road network and a secondary access point of a minimum of 10-feet. The Planning Board shall review and approve the size and location of the principal and secondary access points.
- The Planning Board shall consider the proposed location of the Open Space areas should consider the relation to and logical connection to other Open Space areas on abutting properties
- The applicant discussed a private trail connection to the Mountain Division Trail and signing the trail as “Private for Residents Only.” The applicant shall provide a typical sign detail for the Preliminary Plan review.

**911. L. – Compliance with Timber Harvesting Rules**

- Limits of tree clearing should be shown on the plan. A note should be added to the plan stating that clearing of trees is not allowed in areas where tree cover is depicted on the plan for a period of at least five (5) years from the date of Planning Board approval.

**911.M. – Traffic Conditions and Street**

**1. General Standards:**

- The applicant’s sketch plan shows the designed transportation system of the subdivision provides safeguards to hazards, avoids traffic congestion, safe and convenient circulation for vehicles, bicyclists, and pedestrians, is compatible with the estimated Average Annual Daily Traffic of the street, and has a positive relationship to the natural setting.

**2. General Access Standards:**

- Access to River Road shall meet access permitting requirements of the Town of Windham street opening requirement.
- The existing private Gunpowder Mill Road serves two (2) single-family houses and is currently gravel. The applicant will be improved and extended the private road to serve the proposed 15-lot subdivision and will meet the applicable Private Road Standard in Section 911.M.5.(5).

**3. General Internal Subdivision Street Standards:**

- No right-of-way to the abutting property is shown on the plan.



- All internal subdivision streets shall be designed to coordinate with existing, proposed, and planned streets. The proposed Gunpowder Mill Road subdivision abuts the existing Veery Estates cluster subdivision, the Central Maine Power transmission ROW, and the Mountain Trail. Street connections are impractical, and the steep-slopes and wetland make the connection to Mr. Donald Toms difficult, therefore the applicant is not showing any future ROW area to connect to abutting properties
- The applicant is proposing a dead-end street with a cul-de-sac terminus, per Section 911.M.5.(b)(5).
- Town-approved street names shall be shown on the Final Plan.
- A streetlight should be considered at the intersection of River Road and Gunpowder Mill Road.
- The Planning Board should determine if the property is within 1,000' to uses that would generate pedestrian trips, to determine if sidewalks are needed. When sidewalks are not required for local streets, §911.M.5.b.6.ii requires that the applicant construct a sidewalk or a street with a widened shoulder.
- The road must include a hammerhead, per §911.M.5.b.(5).(i)(a) There is no maximum length limit for streets served by the Portland Water District that have fire hydrants and hammerhead turnarounds installed every 1,000 linear feet.

**4. Specific Access Standards:**

- The applicant will construct the improvements of the existing Gunpowder Mill Road perpendicular to River Road.
- The applicant shall provide, for the Preliminary Plan review, evidence the Minimum Sight Distance standards are being met.
- The applicant shall provide for the Preliminary Plan review traffic volume estimate as defined by the latest edition of the Trip Generation Manual published by the Institute of Transportation Engineers.

**5. Specific Street Design and Construction Standards:**

- For Preliminary Plan review, the applicant shall submit to the Board a detailed construction drawing showing plan view, profile, and typical cross-section of the proposed private road.
- All private roads shall be designated and be signed indicating the road is private and not publicly maintained.
- Per Section 911.M.5.(a)(3)(i), "Plans for the street which are not proposed to be accepted by the town shall be to the Director of Public Works and Town's consulting engineer for review and comment."
- All properties served by the private, including the existing properties, shall have adequate access for emergency vehicles and shall conform to the approved local street numbering system.
- The final subdivision shall have a note stating the following:  
*"All roads in this subdivision shall remain private roads to be maintained by the developer, lot owners, or road association, and shall not be offered for acceptance, or maintained, by the Town of Windham until they meet all municipal street design and construction standards."*

- The applicant is proposing to extend the existing 900-foot gravel private road another 700-feet , terminating with a cul-de-sac. The road is to be built to the Major Private Road standards and will remain a private road and maintained by the HOA.
- The Major Private Street Standard requires 20' of paved travel way, with either both shoulders with 2' of pavement and 2' of gravel, or one shoulder that way and another shoulder that is 2' paved with curb and/or 5' minimum esplanade and 5' minimum sidewalk). The applicant should provide a proposed road profile with the Preliminary Plan Submission and request any necessary waivers from the applicable road standards.
- The applicant has shown on the sketch plan a proposed hammerhead turn of approximately 800-feet from River Road, per Section 911.M.5.(b)(5)b) and requested by Deputy Chief John Wescott at the Development Review Team meeting held on August 27, 2021. The road must include a hammerhead, per Section 911.M.5.b.(5).(i)(a), there is no maximum length limit for streets served by the PWD that have fire hydrants and hammerhead turnarounds installed every 1,000 linear feet.
- Per Section 911.M.5.(b)(5)b)2), the existing Gunpowder Mill Road shall meet the design and construction standards contained in Section 900 to the greatest practical. The applicant shall provide evidence for the Preliminary Plan review on how they will meet the private road standards.

#### CONCLUSIONS (N/A)

1. — The plan for development ~~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 subdivision.
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, section 480-B, none of the lots created within the subdivision has/do 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, section 8869, subsection 14.~~

#### CONDITIONS OF APPROVAL

1. Approval is dependent upon and limited to the proposals and plans contained in the application dated July 19, 2021, amended \_\_\_\_\_, and supporting documents and oral representations submitted and affirmed by the applicant and conditions. If any, imposed by the Planning Board and any variation from such plans, proposals and supporting documents, and representations are subject to review and approval by the Staff Review Committee or the Town Planner in with Section 913 of the Subdivision Ordinance.
2. Approval is subject to the requirements of the Post-Construction Stormwater Ordinance, Chapter 144. Any person owning, operating, leasing, or having control over stormwater management facilities required by the Post-Construction Stormwater Management Plan must annually engage the services of a Qualified Third-Party inspector who must certify compliance with the Post-Construction Stormwater Management Plan on or by May 1<sup>st</sup> of each year.
3. Homeowner's Association Bylaws, Convents, and Documentation for the care and maintenance of the private road and open space areas shall be recorded in Cumberland County Registry of Deed (CCRD) prior to the pre-construction meeting and a copy of the recorded documentation shall be submitted to the Planning Department for verification.