



## Lexington County Planning Commission

County Administration Building (803) 785-1454  
212 South Lake Drive, Suite 302 Lexington, South Carolina 29072

### Private Road Policy

[November 30, 2021]

#### **PRIVATE ROAD SUBDIVISIONS - NEW CONSTRUCTION:**

“Private road subdivisions” shall follow the same submission and platting procedures as outlined in the Lexington County Subdivision Ordinance for standard subdivisions. The Lexington County Planning Commission is authorized by those regulations to approve such a project only upon its satisfaction as to the physical and legal provisions for maintenance of the roads in the subdivision. The Commission requires a review of the **PRELIMINARY PLAT**, engineering plans, and documents by the staff of Lexington County to determine compliance with all applicable County Ordinances. The road layout, road design, and storm drainage design shall conform to the requirements in the Lexington County Land Development Manual implemented by the Director of Community Development, or his/her designee. A Land Disturbance Permit is required for this construction. Alternative designs utilizing narrower roads and reduced rights-of-ways can be found within the publication called *Road Section Criteria for Private Roads*.

A new private road accessing an unpaved County road or unpaved private road may be unpaved but shall be constructed to the same standard as a paved County road. The maximum number of lots accessing any unpaved private road(s) is determined by provisions of the Land Development Manual but in no case shall be more than 10 lots.

**ROAD AGREEMENT:** A road maintenance agreement draft must be approved before a “Preliminary Plat Approval” can be given to a project. The attached sample agreement should be modified to suit the particular needs of a project, such as basing the costs in paragraph 3 on acreage or front-foot dimensions instead of lots. If these provisions are incorporated into a master deed or other document containing covenants and restrictions for the subdivision, that document may be submitted in addition to a road agreement. The developer should also note that this sample agreement contains certain provisions, which are considered essential by the Planning Commission.

**BONDED PLAT:** A developer may request a Bonded Plat Approval prior to Final Plat Approval by following the bonding requirements in the Subdivision Ordinance and the Lexington County Land Development Manual. The approved Road Maintenance Agreement shall be executed and recorded with the approved Bonded Plat.

**FINAL PLAT:** “Final Plat Approval” is granted on the same basis as a standard subdivision with the addition of the Road Maintenance Agreement (if not previously recorded with the Bonded Plat).

## **NEW PRIVATE ROAD SUBDIVISIONS – EXISTING SURFACES PROPOSED:**

The following are the minimum standards for private roads utilizing existing unpaved or paved (but not to County standard) surfaces:

- a. For unpaved roads, access must be from an existing publicly or privately maintained unpaved road unless the subdivision is being proposed to settle family affairs, or a hardship situation, and the road is existing with less than 10 lots using it. If the access is from another existing unpaved private road, the total lots on both roads combined must be 10 or less.
- b. Maximum road length shall be 2000 feet.
- c. Minimum road right-of-way or easement width shall be based on the following: three lots, 20 feet minimum; 4 to 10 lots, 30 feet to 50 feet minimum. In all instances when accessing a State maintained paved road, the right-of-way or easement at the intersection of the State right-of-way must conform to SC Department of Transportation requirements.
- d. There shall be a maximum of 10 lots using the roadway for access in familial subdivisions only; other subdivisions must comply with the ADT requirements of the Land Development Manual but in no case shall be more than 10 lots.
- e. The following road criteria must be met:
  - \* The geometric layout shall be considered safe by the Director of Public Works, or his/her designee.
  - \* The road surface shall be smooth and compacted, free from holes and/or ponding water.
  - \* The road area shall be sloped or graded in such a manner that surface stormwater will be directed away from the roadway.
  - \* A sufficient area for turning around near the end of the road if available should be included.
  - \* The appropriate signage shall be installed at the expense of the subdivider.
  - \* Non-paved “through roads,” which connect existing roads, are not allowed.
- f. A Road Maintenance Agreement shall be required. It must be initiated and signed by the property owner wishing to subdivide and any other property owners willing to sign.

If these standards are met, the project can proceed without Planning Commission review. Projects proposed with other than the above standards must receive a variance from the Commission. The existing surfaces must demonstrate the ability to ensure road, utility, and storm drainage maintenance, and to accommodate access by service vehicles, school buses, and emergency vehicles. Special considerations may be given if the subdividing is being ordered by a Probate Judge to settle an estate.

Plat review and approval procedures for newly established private roads using existing surfaces are the same as those for new construction of private roads. The Road Maintenance Agreement should be modified to suit the particular needs of the project. For instance, in family situations the collection of escrow, annual dues, and association formation may be omitted.

**SUBDIVIDING ON AN EXISTING PRIVATE ROAD:** The subdividing of a parcel on an existing private road, whether in a subdivision or not, shall be subject to the above minimum standards for existing surfaces and may be subject to a review of additional items by the staff and/or Planning Commission. Some of those issues are as follows:

1. If the existing private road or subdivision pre-dates any of the conditions of this Policy, there may be a need to address as many of these requirements as is feasible.
2. If there is no existing Road Maintenance Agreement, such a document will be proposed (and executed if approved) that involves as many of the existing property owners as possible. The Commission may decide that all property owners need to be involved in this decision.
3. If there is an existing Road Maintenance Agreement, that document must be amended if it contains such procedures or a separate RMA must be executed to include the subdivider's property. Such action shall be considered a pre-requisite to the implementation of any approvals granted by the staff or the Planning Commission.
4. The total number of allowed lots in the subdivision will be addressed at this time, if not previously considered.

**CONDITIONS OF APPROVAL:** Private road subdivision approval granted by the Commission or staff will remain valid for up to five (5) years from the date of issuance for the subdivider to begin the approval process. An approval is transferable to a subsequent landowner(s) within the 5 year period provided that all conditions of the approval are met.

Planning Commission's approval of the subdividing of a lot or lots does not exempt any private Covenants and Restrictions, which prohibit the subdividing of a lot or lots.



drawn upon as determined by the Board of Directors stipulated above to provide maintenance to the aforesaid roadway.

*NOTE: Escrowed funds are not mandatory on paved road projects, however, on unpaved roads the amount per lot shall not be less than \$100.*

6. There shall also be an annual assessment upon each lot owner, which shall be due on July 1st of each year. Initially this assessment shall be \_\_\_\_\_ dollars per lot per year. This amount may be changed at any time by a two-thirds vote of the members of the Association. The obligation of each lot owner to pay this assessment shall be a continuing lien upon the lot, subject only to the lien on a bona fide first mortgage upon such real property held by a reputable financial institution; and said lien may be enforced by the Association in all respects as though secured by a recorded mortgage as provided by the laws of the State of South Carolina.

*NOTE: For unpaved roads the escrow amount and annual assessment shall be equal to the annual maintenance cost divided by the number of lots. For paved roads the annual assessment shall be equal to the replacement cost of the roadway divided by the number of lots and also divided by 20, representing the life of the road.*

7. This instrument is to be recorded in the Lexington County Office of the Register of Deeds, and the undersigned,           (the owner/developer)          , and all future owners shall cause the following statement to be placed in every contract and deed conveying lots out of this subdivision. This statement shall be signed by the grantee(s) and shall be placed immediately below the grantor's signature and shall be binding on all parties thereof. Failure of any subsequent purchaser to comply with this provision shall in no way diminish or impair the terms of this agreement and the conditions, benefits, and obligations imposed and granted thereunder.

"I, the undersigned, as purchaser of the above lot described in this deed/contract, acknowledge the existence of the road maintenance agreement as recorded in the Office of the Register of Deeds for Lexington County in Deed Book \_\_\_\_\_ at Page \_\_\_\_\_, do hereby confirm by acceptance of this deed/contract all the terms and conditions thereof. I understand that since the road described in that agreement is not being engineered and constructed according to Lexington County standards, it will not be the responsibility of Lexington County to maintain that road. I further acknowledge that the lot owners subject to that agreement shall be responsible for the maintenance and upkeep of that road."

8. It is agreed that said road shall be kept free of all obstructions so as to be open for the passage of fire, police, and other emergency vehicles, personnel, or equipment at all times; and that such responsibility lies with the respective property owners, their agents, guests, and employees.
9. That said roadway shall be posted as a "privately maintained road" prior to the conveyance of properties, and shall remain posted in that manner at all times.
10. These covenants and restrictions are to run with and bind the land, and shall ensure to the benefit of and bind property owners subject to this agreement, their respective legal representatives, heirs, successors, and assigns, for a term of twenty (20) years from the date this agreement is recorded in the Office of the Register of Deeds for Lexington County; after which time said agreement shall be automatically extended for successive periods of ten (10) years unless an instrument has been recorded whereby the owners of the lots have agreed to a change in this agreement.
11. Changes in this agreement either in whole or in part may be executed at any time by the recording of an instrument signed by a majority of the members of the Association.

IN WITNESS WHEREOF, the undersigned has caused these presents to be executed this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ in Lexington, South Carolina.

WITNESSES:

BY: Property Owner(s)

\_\_\_\_\_  
(Witness #1 sign)

\_\_\_\_\_

\_\_\_\_\_  
(Witness #2 sign)

\_\_\_\_\_  
(Owner or owners sign)

STATE OF SOUTH CAROLINA )  
)  
COUNTY OF LEXINGTON )

PERSONALLY APPEARED before me the undersigned witness, who, being duly sworn, deposes and says that he/she saw the within named property owner(s) sign and seal the within Road Maintenance Agreement for the uses and purposes therein mentioned and that he/she with the other witness, witnessed the execution thereof.

SWORN TO BEFORE ME THIS )  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ )  
)  
)  
)  
\_\_\_\_\_ (L.S.) )  
Notary Public for South Carolina )  
My Commission Expires: \_\_\_\_\_ )

\_\_\_\_\_  
(Witness #1 or #2 sign)