

**Town of Kittery  
 Planning Board Meeting  
 June 23, 2016**

**9 Pocahontas Road – Major Modification to an approved Shoreland Development Plan**

Action: Accept or deny application; Approve or deny plan. Owner Brian Seaward and Applicant Gary Hall requests to amend a Shoreland Development Plan approved on March 10, 2016 for a property located at 9 Pocahontas Road (Tax Map 52 Lot 3) in the Residential–Rural Conservation (R-RLC) and Shoreland Overlay (OZ-SL-250) Zones. Agent is Ken Markley, North Easterly Surveying.

**PROJECT TRACKING**

REQ'D	ACTION	COMMENTS	STATUS
NO	Sketch Plan	N/A	
NO	Site Visit	At the Board's discretion	
YES	Preliminary Plan Review Completeness/Acceptance	3/10/2016	HELD
NO	Public Hearing	At the Board's discretion	
YES	Final Plan Review and Decision	3/10/2016	HELD

Applicant: Prior to the signing of the approved Plan any **Conditions of Approval** related to the Findings of Fact along with waivers and variances (by the BOA) must be placed on the Final Plan and, when applicable, recorded at the York County Registry of Deeds. **PLACE THE MAP AND LOT NUMBER IN 1/4" HIGH LETTERS AT LOWER RIGHT BORDER OF ALL PLAN SHEETS.** As per Section 16.4.4.13 - Grading/Construction Final Plan Required. - Grading or construction of roads, grading of land or lots, or construction of buildings is prohibited until the original copy of the approved final plan endorsed has been duly recorded in the York County registry of deeds when applicable.

**Background**

Planning Board review of this project is required by Title 16.10.3.2 *Other Development Review* and Title 16.9.3 *Conservation of Wetlands including Vernal Pools* because a portion of the proposed development is located in the Shoreland Overlay Zone and the proposed development is a new structure/activity within a wetland greater than 501 square feet in size. The existing property is an undeveloped, 6.47-acre conforming lot with 3 potential vernal pools and a wetland that crosses the lot from East to West. A flood zone crosses the rear end of the lot.

The proposed development is a 12-foot gravel driveway leading from Pocahontas road to the buildable area, located mid-lot. Approximately 110-feet of the lot is in the Shoreland Overlay Zone, therefore a portion of the driveway will be subject to the regulatory standards of the Shoreland Overlay Zone. No portion of the lot or driveway is within the 100-foot buffer. The proposed driveway will also cross a wetland, not within the Shoreland Overlay Zone, creating a disturbance of 350 square feet.

Applicant is a prospective buyer, and has submitted a purchase and sale agreement for the property with the application.

**UPDATE:** Following the 3/10/2016 approval from the Planning Board, the Department of Environmental Protection revised the classification of the vernal pool located at the northeasterly corner of the property to a wetland and requested the proposed driveway be located further from the two verified vernal pools on the property. The applicant has submitted modified plans to locate the driveway as far as practically possible from the vernal pools, while still maintaining the required wetland setbacks. The modified plans do not increase the proposed devegetated or cleared area.

In addition, the applicant has proposed a bridge over the wetland as opposed to the previously approved wetland alteration. The applicant is no longer requesting to use fill and a culvert, lessening the overall impact to the wetland.

**Staff Review is from March 10<sup>th</sup> 2016 with updates in yellow.**

**Staff Review**

1. *The intent of the driveway is to access a single-family dwelling, which is a permitted use in the R-RLC and OZ-SL-250 zone. Driveways are a permitted activity within regulated wetlands, pending Planning Board approval.*
2. *A portion of the proposed driveway is within 250-feet of Chauncey Creek and will be subject to the devegetated coverage limits of the Shoreland Overlay Zone. At the time of review, devegetated area calculations have not been submitted to staff for review, however, staff estimates the proposed devegetated area calculations to be well under the 20% limit. **UPDATE:** Proposed devegetated area is still missing from the plan, however it appears the proposed devegetated area is well under the 20% limit.*
3. *The proposed development requires tree clearing, limited to what is necessary for development. No clearing is proposed within the 100-foot buffer. Shoreland Overlay Zone regulations permit clearing a maximum of 25% of the regulated lot area, or ten thousand square feet, whichever is greater. Exact clearing totals are missing from the plan, however staff estimates the proposed clearing to be approximately 2,200 square feet, 5.7% of the lot located in the Shoreland Overlay Zone. This conforms to zone standards. **UPDATE:** Actual proposed clearing is still missing from the plan, however staff estimates the amended plans have a proposed cleared area of approximately 1,500 square feet, 4.4% of the lot located in the Shoreland Overlay Zone.*
4. *Plan references “note #9” to the right of the wetland crossing, however plan note #9 does not exist. **UPDATE:** This has been removed from the plan.*
5. *The Plan depicts only the size of the wetland located within the lot. The total size of the wetland is missing from the plan. Joseph Noel informed Staff the total size of the wetland is less than .5 acre.*
  - a. *The required setback for principal and accessory dwellings for a wetland greater than 501 square feet but less than 1 acre is 50-feet. The location of proposed principal dwelling is outside of the 50-foot buffer.*
  - b. *Per Title 16.9.3.2 Wetland Boundaries, Planning Board approval to alter a wetland area one acre or larger in size is contingent upon the submission of a wetlands delineation map and summary. The wetland does not meet the one-acre threshold. This requirement is not applicable*
6. *The three vernal pools are greater than 501 square feet and less than 1 acre in size and therefore require a 10-foot setback for a driveway 18-feet or less in width. The proposed development meets this standard. **UPDATE:** MDEP has revised the classification of the previously depicted vernal pool on the northeasterly side of the property to a wetland. Title 16 requires a 10-foot setback to both the vernal pools and wetlands, however, per approval from MDEP the driveway must be positioned as far from the vernal pools as possible in order to maintain unfragmented critical habitat surrounding the vernal pools.*
7. *Title 16.9.3.9 requires a mitigation plan to offset potential adverse environmental impact. A mitigation plan for development that impacts less than 501 square feet of regulated wetlands includes the preservation of an undisturbed upland buffer zone adjacent to the wetland boundary equal in size to the area of the wetland to be altered. The Board may consider the addition of an undisturbed upland buffer zone to the final plan as a condition of approval. **UPDATE:** The applicant is no longer proposing a wetland alteration. This standard is not applicable.*

8. *A wetland mitigation report is required for activities that, in total, affect or fill more than five hundred (500) square feet of wetlands. The proposed development creates a total impact less than 500 square feet to the wetland. Therefore, a wetland mitigation report is not required.*

*The Wetland Alteration and Shoreland Development application appear to meet the standards of Title 16 with the following minor adjustments. **UPDATE:** Staff recommends the following revisions to the final plan with the exception of 5 (addressed) and 7 (no longer applicable).*

1. Submit a Shoreland Development Application and fee
2. Add Shoreland Overlay Zone standards, including existing and proposed devegetated area calculations, to final plan
3. Include a plan note addressing proposed tree clearing in the Shoreland Overlay Zone
4. Update plan to indicate “driveway” instead of “drive”
5. ~~Either include the intended Note #9 with the plan notes, or remove reference from the building envelope.~~
6. Depict the size of wetland, in its entirety, on final plan
7. ~~Designate an undisturbed buffer zone to equal in size the area of the wetland to be altered.~~
8. Remove “Wetland Alteration” from the plan title.
9. Remove all color from final plan

#### **Action**

The proposed modifications appear to meet the requirements of Title 16, as described with the conditions included in draft amended Findings of Fact. Staff recommends the Board first accept the application (suggested motions provided below).

***Move to accept the Major Modification to an Approved Plan application dated June 2, 2016 for the previously approved Shoreland Development Plan dated February 17, 2016 from Brian Seward and Gary Hall for 9 Pocahontas Road (Tax Map 52 Lot 3) in the Residential–Rural Conservation (R-RLC) and Shoreland Overlay (OZ-SL-250) Zones...***

After accepting the application, the Board may move to grant conditional approval and proceed to the reading and reviewing of the amended Findings of Fact...

***Move to approve with conditions the Major Modification to an Approved Plan application dated June 2, 2016 for the previously approved Shoreland Development Plan dated February 17, 2016 from Brian Seward and Gary Hall for 9 Pocahontas Road (Tax Map 52 Lot 3) in the Residential-Rural Conservation and Shoreland Overlay Zones, upon the review and voting, in the affirmative, to amend the Findings of Fact dated March 10, 2016.***

*<After an affirmative vote, proceed to reading and voting on Findings of Fact>*

Kittery Planning Board

**UNAPPROVED**

**Findings of Fact – Amended  
For 9 Pocahontas Road  
Wetland Alteration Plan Review  
Shoreland Development Plan Review**

**WHEREAS:** Owner Brian Seaward and Applicant Gary Hall requests consideration of a 12-foot gravel driveway located at 9 Pocahontas Road (Tax Map 52 Lot 3) in the Residential–Rural Conservation (R-RLC) and Shoreland Overlay (OZ-SL-250) Zones, hereinafter the “Development” and

Pursuant to the Plan Review meetings conducted by the Town Planning Board as noted {in the plan review notes prepared for 6/23/2016}

Wetland Alteration and Shoreland Development Plan Review	3/10/2016
Approval	3/10/2016

And pursuant to the application and plan and other documents considered to be a part of a plan review decision by the Planning Board in this Finding of Fact consisting of the following (hereinafter the “Plan”): {as noted in the plan review notes prepared for 6/23/2016}

1. Wetland Alteration Application, received 2/17/2016
2. Shoreland Development Review Application, received TBD
3. Major Modification to an Approved Plan application, received 6/2/2016
4. Shoreland Development and Wetland Alteration Plan, North Easterly Surveying, Inc., received 2/16/2016
5. Revised Shoreland Development Plan, North Easterly Surveying, Inc., received 6/2/2016
6. Purchase and Sale Agreement, received 2/17/2016
7. Department of Environmental Protection land use permit, dated May 25, 2016.

**NOW THEREFORE**, based on the entire record before the Planning Board and pursuant to the applicable standards in the Land Use and Development Code, the Planning Board makes the following factual findings and conclusions:

**FINDINGS OF FACT**

**Chapter 16.3 LAND USE ZONE REGULATIONS**

<p><b>16.3.2.17.D Shoreland Overlay Zone</b></p> <p><i>1.d The total footprints of the areas devegetated for structures, parking lots and other impervious surfaces, must not exceed twenty (20) percent of the lot area, including existing development, except in the following zones...</i></p> <p><u>Findings:</u> Maximum devegetated area in the Shoreland Overlay Zone is 20%. The proposed development does not exceed devegetated coverage amounts</p> <p><u>Conclusion:</u> The requirement appears to be met.</p> <p style="text-align: center;"><b>Vote: <u>6</u> in favor <u>0</u> against <u>0</u> abstaining (3/10/2016)</b></p>
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## Chapter 9 DESIGN AND PERFORMANCE STANDARDS – NATURAL ENVIRONMENT

### Article III Conservation of Wetlands Including Vernal Pools

#### ***16.9.3.7 Wetlands Alteration Approval Criteria***

***A. In making the final determination as to whether a wetland application should be approved, the Planning Board will consider existing wetland destruction and the cumulative effect of reasonably anticipated future uses similar to the one proposed. Preference will be given to activities that meet wetland setbacks, have a reasonable stormwater management plan (subject to Planning Board review and approval), and that dedicate easements for the purposes of maintaining the wetland and the associated drainage system. Approval to alter a wetland will not be granted for dredging or ditching solely for the purpose of draining wetlands and creating dry buildable land areas. An application for a wetlands alteration will not be approved for the purpose of creating a sedimentation or retention basin in the wetland. Increased peak runoff rates resulting from an increase in impermeable surfaces from development activities are not allowed.***

***Findings:*** The 350 square foot wetland impact does not appear to have an adverse impact on the remaining wetland. Revised 6/23/2016: The application does not include any alterations to any of the wetlands or vernal pools located on the property.

***Conclusion:*** This requirement appears to be met. (6/23/2016) This requirement is not applicable

Vote of 6 in favor 0 against 0 abstaining (3/10/2016)

Vote of     in favor     against     abstaining

***B. It is the responsibility and burden of the applicant to show that the proposed use meets the purposes of this Code and the specific standards listed below to gain Planning Board approval to alter a wetland. The Planning Board will not approve a wetlands alteration unless the applicant provides clear and convincing evidence of compliance with the Code.***

***Findings:*** The intent of the driveway is to access a single-family dwelling, which is a permitted use in the R-RLC and OZ-SL-250 zones. Driveways are a permitted activity within regulated wetlands. Revised 6/23/2016: The proposed driveway crosses the wetland by way of bridge. No fill or culverts will be used to avoid wetland alteration.

***Conclusion:*** This requirement appears to be met. (6/23/2016) This requirement is not applicable

Vote of 6 in favor 0 against 0 abstaining (3/10/2016)

Vote of     in favor     against     abstaining

***C. In evaluating the proposed activity, the Planning Board may need to acquire expert advisory opinions. The applicant must be notified in writing, by the Town Planner at the Planning Board's request, that the applicant will bear the expenses incurred for the expert persons or agencies. The Planning Board will consider the advisory opinion, including any recommendations and conditions, provided by the Conservation Commission.***

***Findings:*** The proposed development has a total wetland impact of less than 500 square feet and does not require a wetland mitigation report.

***Conclusion:*** This requirement is not applicable.

Vote of 6 in favor 0 against 0 abstaining (3/10/2016)

**D. When the Planning Board finds the demonstrated public benefits of the project as proposed, or modified, clearly outweigh the detrimental environmental impacts, the Planning Board may approve such development, but not prior to granting approval of a reasonable and practicable mitigation plan, (see Section 16.9.3.9) and not prior to the completion of all performance guaranties for the project, (see Section 16.10.8.2.2).**

Findings: The final plan depicts the preservation of an undisturbed upland buffer zone adjacent to the wetland boundary equal in size to the wetland alteration. A wetland mitigation fee is also required. Revised (6/23/2016) The application does not include any alterations to any of the wetlands or vernal pools located on the property.

Conclusion: This requirement appears to be met (6/23/2016) This requirement is not applicable.

Vote of 6 in favor 0 against 0 abstaining (3/10/2016)

Vote of     in favor     against     abstaining

**E. The applicant must submit applicable documentation that demonstrates there is no practicable alternative to the proposed alteration of the wetland. In determining if no practicable alternative exists, the Board will consider the following:**

*The proposed use:*

1. Uses, manages or expands one or more other areas of the site that will avoid or reduce the wetland impact;
2. Reduces the size, scope, configuration or density of the project as proposed, thereby avoiding or reducing the wetland impact;
3. Provides alternative project designs, such as cluster development, roof gardens, bridges, etc., that avoid or lessen the wetland impact; and
4. Demonstrates that the proposed development meets or exceeds best management practices for stormwater management in the wetland areas.

Finding: The proposed development crosses at the wetland's narrowest point so as to minimize the impact, to the greatest possible extent. (6/23/2016) The application does not include any alterations to any of the wetlands or vernal pools located on the property.

Conclusion: This requirement appears to be met. (6/23/2016) This requirement is not applicable.

Vote of 6 in favor 0 against 0 abstaining (3/10/2016)

Vote of     in favor     against     abstaining

**F. In determining if the proposed development plan affects no more wetland than is necessary the Planning Board will consider if the alternatives discussed above in subsection A of this section accomplish the following project objectives {described in 16.9.3.7.F}:**

*The proposed use will not:*

1. Unreasonably impair or diminish the wetland's existing capacity to absorb, store, and slowly release stormwater and surface water runoff;
2. Unreasonably increase the flow of surface waters through the wetland;
3. Result in a measurable increase in the discharge of surface waters from the wetland;
4. Unreasonably impair or diminish the wetland's capacity for retention and absorption of silt, organic matter, and nutrients;
5. Result in an unreasonable loss of important feeding, nesting, breeding or wintering habitat for wildlife or aquatic life; all crossings must be designed to provide a moist soil bed in culvert inverts and to not significantly impede the natural migration of wildlife across the filled area;
6. Result in a measurable increase of the existing seasonal temperature of surface waters in the wetland or surface waters discharged from the wetlands.

7. *Result in a measurable alteration or destruction of a vernal pool.*

Findings: The 350 square foot wetland impact does not appear to have an adverse impact on the remaining wetland. (6/23/2016) The application does not include any alterations to any of the wetlands or vernal pools located on the property.

Conclusion: This requirement appears to be met. (6/23/2016) This requirement is not applicable.

Vote of 6 in favor 0 against 0 abstaining (3/10/2016)

Vote of     in favor     against     abstaining

## Chapter 10 DEVELOPMENT PLAN APPLICATION AND REVIEW

### Article 10 Shoreland Development Review

#### 16.10.10.2 Procedure for Administering Permits

*D. An application will be approved or approved with conditions if the reviewing authority makes a positive finding based on the information presented. It must be demonstrated the proposed use will:*

1. *Maintain safe and healthful conditions;*

Finding: The proposed development does not appear to have an adverse impact.

2. *Not result in water pollution, erosion or sedimentation to surface waters;*

Finding: Maine DEP Best Management Practices will be followed for erosion and sedimentation control during site preparation and building construction (see conditions #2 and #3) to avoid impact on adjacent surface waters.

3. *Adequately provide for the disposal of all wastewater;*

Finding: The proposed development does not require a connection to an existing septic system.

Conclusion: Requirements 1 & 2 appear to be met. Requirement 3 is not applicable.

Vote of 6 in favor 0 against 0 abstaining (3/10/2016)

4. *Not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;*

Finding: Maine DEP Best Management Practices will be followed for erosion and sedimentation control during site preparation and building construction (see conditions #2 and #3) to avoid impact on adjacent surface waters. These conditions should be added to the plan.

Conclusion: The proposed development does not appear to have an adverse impact. With the suggested conditions #2 and #3, this standard appears to be met.

Vote of 6 in favor 0 against 0 abstaining (3/10/2016)

5. *Conserve shore cover and visual, as well as actual points of access to inland and coastal waters;*

Finding: Shore cover is not adversely impacted

*6. Protect archaeological and historic resources;*

Finding: There does not appear to be any resources impacted.

*7. Not adversely affect existing commercial fishing or maritime activities in a commercial fisheries/maritime activities district;*

Finding: The proposed development is not in the Commercial Fisheries / Maritime Uses Zone

*8. Avoid problems associated with floodplain development and use;*

Finding: The proposed development is not located in a flood zone.

*9. Is in conformance with the provisions of this code;*

Finding: The proposed development complies with the standards of Title 16.

Conclusion: Requirements 5, 6 and 9 appear to be met. Requirements 7 and 8 are not applicable.

**Vote of 6 in favor 0 against 0 abstaining (3/10/2016)**

*10. Be recorded with the York county Registry of Deeds.*

Finding: A plan suitable for recording has been prepared.

Conclusion: As stated in the Notices to Applicant contained herein, shoreland Development plans must be recorded with the York County Registry of Deeds prior to the issuance of a building permit.

**Vote of 6 in favor 0 against 0 abstaining (3/10/2016)**

Based on the foregoing Findings, the Planning Board finds the applicant has satisfied each of the review standards for approval and, therefore, the Planning Board approves the Shoreland Development Plan for owner Brian Seaward and applicant Gary Hall for a 18-foot gravel driveway located at 9 Pocahontas Road (Tax Map 52 Lot 3) in the Residential–Rural Conservation and Shoreland Overlay Zones subject to any conditions or waivers, as follows:

**Waivers:** None

**Conditions of Approval** (to be depicted on final plan to be recorded):

1. No changes, erasures, modifications or revisions may be made to any Planning Board approved final plan. (Title 16.10.9.1.2)
2. Applicant/contractor will follow Maine DEP *Best Management Practices* for all work associated with site and building construction to ensure adequate erosion control and slope stabilization.

3. An upland buffer zone adjacent to the wetland boundary equal in size to the wetland alteration must remain preserved and undisturbed.
4. Prior to the commencement of grading and/or construction within a building envelope, as shown on the Plan, the owner and/or developer must stake all corners of the envelope. These markers must remain in place until the Code Enforcement Officer determines construction is completed and there is no danger of damage to areas that are, per Planning Board approval, to remain undisturbed.
5. No trees are to be removed without prior approval by the Code Enforcement Officer or the Shoreland Resource Officer. Efforts to protect existing trees must be in place prior to construction.
6. All Notices to Applicant contained herein (Findings of Fact dated 3/10/2016 and amended 6/23/2016).

**Conditions of Approval** (not to be depicted on final plan):

7. Incorporate any plan revisions on the final plan as recommended by Planning Board, Peer Review Engineer or in Staff notes dated 6/23/2016, and submit for Staff review prior to presentation on final Mylar.

The Planning Board authorizes the Planning Board Chair to sign the Final Plan and the Findings of Fact upon confirmation of required plan changes.

Vote of 6 in favor 0 against 0 abstaining (3/10/2016)

Vote of    in favor    against    abstaining

APPROVED BY THE KITTERY PLANNING BOARD ON March 10, 2016  
Amended June 23, 2016

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Ann Grinnell, Planning Board Chair

**Notices to Applicant:**

1. Incorporate any plan revisions on the final plan as recommended by Staff, Planning Board or Peer Review Engineer, and submit for Staff review prior to presentation of final mylar.
2. Prior to the release of the signed plans, the applicant must pay all outstanding fees associated with the permitting, including, but not limited to, Town Attorney fees, peer review, newspaper advertisements and abutter notification.
3. One (1) mylar copy of the final plan and any and all related state/federal permits or legal documents that may be required, must be submitted to the Town Planning Department for signing. Date of Planning Board approval shall be included on the final plan in the Signature Block. After the signed plan is recorded with the York County Registry of Deeds, a mylar copy of the signed original must be submitted to the Town Planning Department.

4. This approval by the Town Planning Board constitutes an agreement between the Town and the Developer, incorporating as elements the Development Plan and supporting documentation, the Findings of Fact, and any Conditions of Approval.

Per Title 16.6.2.A - An aggrieved party with legal standing may appeal a final decision of the Planning Board to the York County Superior Court in accordance with Maine Rules of Civil Procedures Section 80B, within forty-five (45) days from the date the decision by the Planning Board was rendered.

North  
W  Easterly  
SURVEYING, Inc.

191 State Road, Suite #1 • Kittery, Maine 03904 • (207) 439-6333 • Fax (207) 439-1354

JUN 22 2016 PM 4:04

June 2, 2016

Kittery Planning Board  
c/o Chris DeMatteo - Town Planner  
200 Rogers Road  
Kittery, ME 03904

Planning Board Review – Wetland Alteration Application Major Revision – Gary Hall  
9 Pocahontas Road, Kittery Point, ME - Tax Map 52 Lot 3 - Job# 14789

Dear Planner and Planning Board Members,

Attached you will find a revision to an already approved Shoreland Development & Wetland Alteration plan. The revision was necessary because during the review by the Maine Department of Environmental Protection (DEP) one of the presumed vernal pools was found to be just a regular wetland. Therefore, the DEP wanted the driveway moved further east away from the two vernal pools. It was also decided to cross the larger wetland with a bridge instead of using fill and a culvert. By spanning the wetland undisturbed with a bridge the total impact would be less and leave the wetland unfragmented. As always erosion control methods would be employed adjacent to any wetlands and sensitive areas. Attached you will find:

- 1.) A copy of the application for a major modification to an approved plan.
- 2.) A copy of the DEP land use permit.
- 3.) A plan showing the proposed revisions.
- 4.) A copy of the plan previously approved.

As you can see the objectives of the code are being met by the applicant and would like the planning board to approve this plan or provide them with the guidance they need to proceed.

Please feel free to contact me should you have any questions.

Sincerely:

  
Kenneth D. Markley R.L.S.  
President – North Easterly Surveying, Inc.

# TOWN OF KITTERY, MAINE

## TOWN PLANNING AND DEVELOPMENT DEPARTMENT

200 Rogers Road, Kittery, Maine 03904  
 PHONE: (207) 475-1323 FAX: (207) 439-6806

[www.kittery.org](http://www.kittery.org)

### APPLICATION: MAJOR MODIFICATION TO AN APPROVED PLAN- SITE PLAN



<b>FEE FOR SITE PLAN AMENDMENT REVIEW: (TITLE 16.10.9.3)</b>	<input type="checkbox"/> \$300.00 PLUS THE GREATER OF	<input type="checkbox"/> \$50/ADDITIONAL USE OF UNIT; OR	<input type="checkbox"/> \$5.00/100 SQ FT OF ADDITIONAL GROSS FLOOR AREA	<b>Application Fee Paid:</b> \$ _____ Date: _____
		<input type="checkbox"/> \$0.50/LINEAR FOOT OF ADDITIONAL DOCK, SLIP & FLOAT; OR	<input type="checkbox"/> \$20.00/ADDITIONAL UNIT INTENDED TO PROVIDE OVERNIGHT SLEEPING ACCOMODATIONS	<b>ASA Fee Paid:</b> (TITLE 3.3 TOWN CODE) \$ _____ Date: _____

<b>PROPERTY DESCRIPTION</b>	Parcel ID	Map	52	Lot	3	Zone(s):	R-RC	Total Land Area (Square Feet) 6.47 ACRES
	Physical Address	9 POCAHONTAS ROAD KITTERY POINT						
						Base:	<input checked="" type="checkbox"/> YES	
						Overlay:	<input type="checkbox"/> NO	
						MS4:		

<b>PROPERTY OWNER'S INFORMATION</b>	Name	GARY HALL		Mailing Address	PO BOX 511 PORTSMOUTH, NH 03802			
	Phone							
	Fax							
	Email	rgaryhall@verizon.net						

<b>APPLICANT'S AGENT INFORMATION</b>	Name	KEN MARKLEY		Mailing Address	NORTHEASTERLY SURVEYING, INC. 191 STATE ROAD KITTERY, ME 03904			
	Phone	439-6333						
	Fax							
	Email	KEN@EASTERLYSURVEYING.COM						

<b>PROJECT DESCRIPTION</b>	Project Name:	SHORELAND DEVELOPMENT & WETLAND ALTERATION							
	Existing Use:	VACANT LAND PROPOSED: SINGLE FAMILY RESIDENCE							
	Proposed Amendment Please describe how the approved plan is proposed to be amended. State any known areas of non-compliance to the Town Code and how this amendment will decrease or remove non-compliance, if applicable.								
	THE FIRST PLAN ASSUMED ALL THREE OF THE SMALL WETLANDS WERE VERNAL POOLS ONLY TWO ARE ACTUALLY VERNAL POOLS. THEREFORE, THE MAINE DEP ASKED THAT THE DRIVEWAY BE MOVED TO THE EAST. IT WAS ALSO DECIDED TO CROSS THE LARGE WETLAND WITH A BRIDGE INSTEAD OF USING FILL (LESS DISTURBANCE)								
	I certify, to the best of my knowledge, this application information is true and correct and I will not deviate from the plan submitted without notifying the Kittery Town Planning Department of any changes.								

Applicant's Signature:		Owner's Signature:	
Date:	6/3/16	Date:	



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



PAUL R. LEPAGE  
GOVERNOR

14789

PAUL MERCER  
COMMISSIONER

May 2016

Gary Hall  
P.O. Box 511  
Portsmouth, NH 03802-0511

RE: Natural Resources Protection Act Tier 1 Application, Kittery, DEP #L-26993-TA-A-N

Dear Mr. Hall:

Please find enclosed a signed copy of your Department of Environmental Protection land use permit. You will note that the permit includes a description of your project, findings of fact that relate to the approval criteria the Department used in evaluating your project, and conditions that are based on those findings and the particulars of your project. Please take several moments to read your permit carefully, paying particular attention to the conditions of the approval. The Department reviews every application thoroughly and strives to formulate reasonable conditions of approval within the context of the Department's environmental laws. You will also find attached some materials that describe the Department's appeal procedures for your information.

If you have any questions about the permit or thoughts on how the Department processed this application please get in touch with me directly. I can be reached at (207)615-2875 or by e-mail at [jennifer.h.harris@maine.gov](mailto:jennifer.h.harris@maine.gov).

Sincerely,

Jennifer Harris, Project Manager  
Bureau of Land Resources

pc: File



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
17 STATE HOUSE STATION AUGUSTA, MAINE 04333-0017

DEPARTMENT ORDER

IN THE MATTER OF

GARY HALL  
Kittery, York County  
BRIDGE  
L-26993-TA-A-N (approval)

) NATURAL RESOURCES PROTECTION ACT  
) FRESHWATER WETLAND ALTERATION  
) WATER QUALITY CERTIFICATION  
) FINDINGS OF FACT AND ORDER

**Project Description:** The applicant proposes to construct a timber bridge to span a freshwater wetland as part of an access way to the upland portion of his lot where a residential dwelling is proposed. This activity will indirectly alter 210 square feet of freshwater wetlands which are wetlands of special significance because they lie within the 250-foot critical terrestrial habitat surrounding two significant vernal pools. After reviewing the information in the file and conducting a site visit on March 8, 2016, the Department determined that the activity will not negatively affect the freshwater wetland of special significance or the significant vernal pools; therefore in accordance with the provisions set forth in Section 4(B) of the Department's Wetlands and Waterbodies Protection Rules, 06-096 CMR 310, the proposed project is eligible for Tier 1 review. The applicant submitted a Natural Resources Protection Act Permit by Rule Notification Form (PBR #61386) for activities in/on/over significant vernal pool habitat, which was accepted by the Department on April 14, 2016.

The 20-foot long by 14-foot wide timber bridge is shown on a plan titled "Shoreland Development and Wetland Alteration Plan," prepared by Easterly Surveying, Inc., with a revision date of April 14, 2016. The proposed project is located off Pocahontas Road in the Town of Kittery. The applicant has avoided and minimized wetland impacts to the greatest extent practicable by spanning the wetlands with a timber bridge that will rise almost two feet above the wetland, and by placing the two concrete abutments on each end of the bridge in the uplands. Only indirect impacts, caused by shading of wetland vegetation will be created by this timber bridge. According to the Department's Geographic Information System, there are no other mapped essential or significant wildlife habitats associated with the project site.

<b>Permit for:</b>	<input checked="" type="checkbox"/> Tier 1
<b>DEP Decision:</b>	<input checked="" type="checkbox"/> Approved <input type="checkbox"/> Denied (see attached letter)
<b>CORPS Action:</b>	<input checked="" type="checkbox"/> The Corps has been notified of your application. The following are subject to Federal screening: (1) projects with previously authorized or unauthorized work, in combination with a Tier 1 permit for a single and complete project, which total more than 15,000 square feet of altered area; (2) projects with multiple state permits and/or state exemptions which apply to a single and complete project that total more than 15,000 square feet of altered area; and (3) projects that may impact a vernal pool, as determined by the State of Maine or the Corps. If your activity is listed above, <i>Corps approval is required for your project.</i> For information regarding the status of your application contact the Corps' Maine Project Office at (207) 623-8367.

Special Conditions:

- 1) Further wetland alteration shall require Department approval prior to construction.

Standard Conditions:

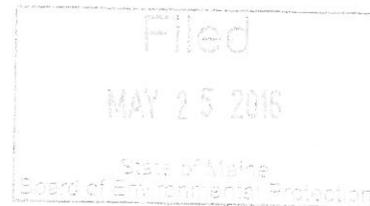
- 1) If construction or operation of the activity is not begun within four (4) years from the date signed, this permit shall lapse and the applicant shall reapply to the Department for a new permit. This permit is transferable only with prior approval from the Department. If the activity is associated with a larger project, starting any aspect of that project constitutes start of construction.
- 2) The project shall be completed according to the plans in the application. Any change in the project plans must be reviewed and approved by the Department.
- 3) Properly installed erosion control measures shall be installed prior to beginning the project, and all disturbed soil should be stabilized immediately upon project completion.
- 4) A copy of this approval will be sent to the Town of Kittery. Department approval of your activity does not supersede or substitute the need for any necessary local approvals.

THIS APPROVAL DOES NOT CONSTITUTE OR SUBSTITUTE FOR ANY OTHER REQUIRED STATE, FEDERAL OR LOCAL APPROVALS NOR DOES IT VERIFY COMPLIANCE WITH ANY APPLICABLE SHORELAND ZONING ORDINANCES.

DONE AND DATED IN AUGUSTA, MAINE, THIS 25<sup>TH</sup> DAY OF MAY, 2016.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: *Paul Mercer*  
For: Paul Mercer, Commissioner



PLEASE NOTE THE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES.

JH/L26993AN/ATS#80380

# TOWN OF KITTERY, MAINE

## TOWN PLANNING AND DEVELOPMENT DEPARTMENT

200 Rogers Road, Kittery, Maine 03904  
 PHONE: (207) 475-1323 FAX: (207) 439-6806

[www.kittery.org](http://www.kittery.org)

### APPLICATION: MAJOR MODIFICATION TO AN APPROVED PLAN- SITE PLAN



<b>FEE FOR SITE PLAN AMENDMENT REVIEW: (TITLE 16.10.9.3)</b>	<input type="checkbox"/> \$300.00 PLUS THE GREATER OF	<input type="checkbox"/> \$50/ADDITIONAL USE OF UNIT; OR	<input type="checkbox"/> \$5.00/100 SQ FT OF ADDITIONAL GROSS FLOOR AREA	Application Fee Paid: \$ _____ Date: _____  ASA Fee Paid: (TITLE 3.3 TOWN CODE) \$ _____ Date: _____
		<input type="checkbox"/> \$0.50/LINEAR FOOT OF ADDITIONAL DOCK, SLIP & FLOAT; OR	<input type="checkbox"/> \$20.00/ADDITIONAL UNIT INTENDED TO PROVIDE OVERNIGHT SLEEPING ACCOMODATIONS	

PROPERTY DESCRIPTION	Parcel ID	Map	52	Lot	3	Zone(s):	R-RC	Total Land Area (Square Feet)	6.47 ACRES
	Physical Address	9 POCAHONTAS ROAD KITTERY POINT							
						Base:	<input type="checkbox"/> YES		
						Overlay:	<input checked="" type="checkbox"/> YES		
						MS4:	<input type="checkbox"/> NO		

PROPERTY OWNER'S INFORMATION	Name	GARY HALL			Mailing Address	PO BOX 511		
	Phone					PORTSMOUTH, NH 03802		
	Fax							
	Email	rgaryhall@verizon.net						

APPLICANT'S AGENT INFORMATION	Name	KEN MARKLEY			Mailing Address	NORTHEASTERLY SURVEYING, INC.		
	Phone	439-6333				191 STATE ROAD		
	Fax					KITTERY, ME 03904		
	Email	KENEASTERLYSURVEYING.COM						

PROJECT DESCRIPTION	Project Name:	SHORELAND DEVELOPMENT & WETLAND ALTERATION							
	Existing Use:	VACANT LAND PROPOSED: SINGLE FAMILY RESIDENCE							
	Proposed Amendment Please describe how the approved plan is proposed to be amended. State any known areas of non-compliance to the Town Code and how this amendment will decrease or remove non-compliance, if applicable.								
	THE FIRST PLAN ASSUMED ALL THREE OF THE SMALL WETLANDS WERE VERNAL POOLS ONLY TWO ARE ACTUALLY VERNAL POOLS. THEREFORE, THE MAINE DEP ASKED THAT THE DRIVEWAY BE MOVED TO THE EAST. IT WAS ALSO DECIDED TO CROSS THE LARGER WETLAND WITH A BRIDGE INSTEAD OF USING FILL (LESS DISTURBANCE)								
	I certify, to the best of my knowledge, this application information is true and correct and I will not deviate from the plan submitted without notifying the Kittery Town Planning Department of any changes.								

Applicant's Signature:	<u>Kent B. Markley</u>	Owner's Signature:	_____
Date:	<u>6/2/16</u>	Date:	_____

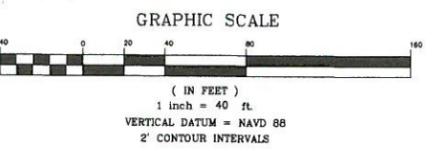
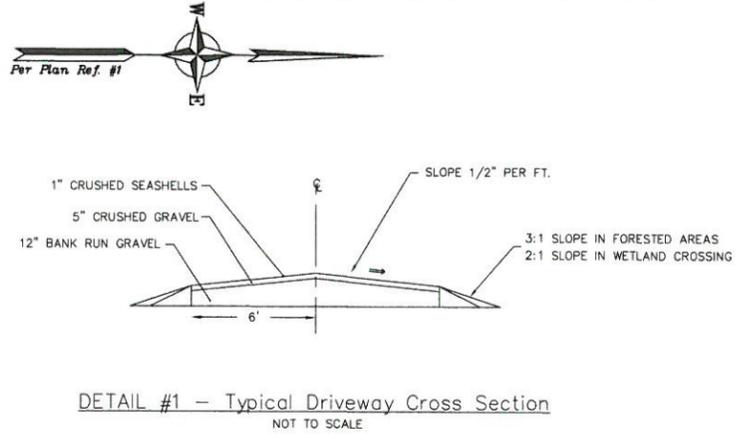
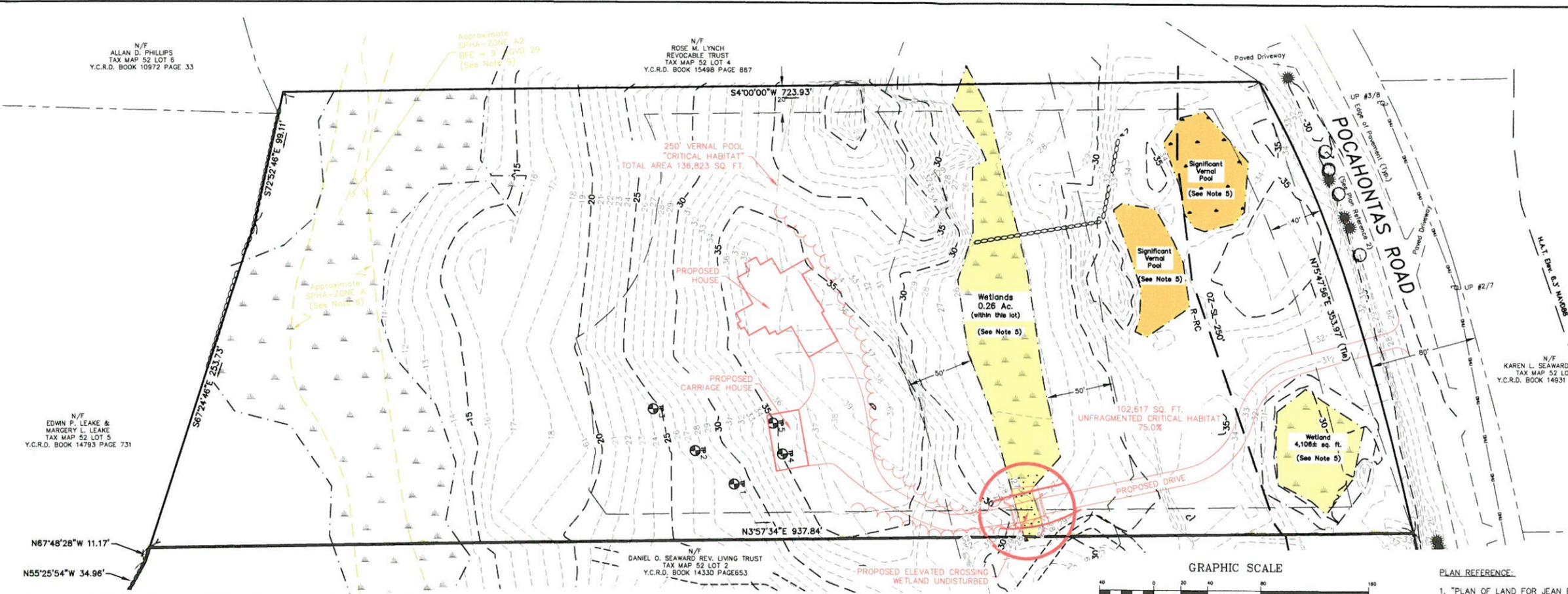
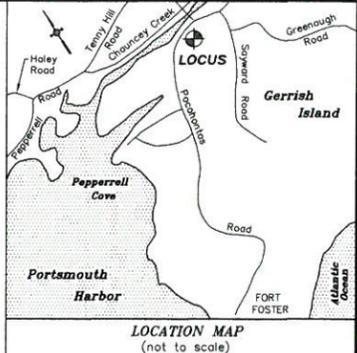
N/F  
ALLAN D. PHILLIPS  
TAX MAP 52 LOT 6  
Y.C.R.D. BOOK 10972 PAGE 33

N/F  
ROSE M. LYNCH  
REVOCABLE TRUST  
TAX MAP 52 LOT 4  
Y.C.R.D. BOOK 15498 PAGE 867

N/F  
EDWIN P. LEAKE &  
MARGERY L. LEAKE  
TAX MAP 52 LOT 5  
Y.C.R.D. BOOK 14793 PAGE 731

N/F  
DANIEL O. SEAWARD REV. LIVING TRUST  
TAX MAP 52 LOT 2  
Y.C.R.D. BOOK 14330 PAGE 653

N/F  
KAREN L. SEAWARD ET. AL.  
TAX MAP 52 LOT 12  
Y.C.R.D. BOOK 14931 PAGE 692



- PLAN REFERENCE:**
- "PLAN OF LAND FOR JEAN E. SEAWARD, POCAHONTAS ROAD, KITTERY POINT, MAINE", PREPARED BY FRANK EMERY, DATED OCTOBER 25, 1991.
- NOTES:**
- OWNERS OF RECORD:  
TAX MAP 52 LOT 3  
BRIAN L. SEAWARD  
Y.C.R.D. BOOK 14931 PAGE 690  
DATED JULY 24, 2006
  - BASIS OF BEARING IS PER PLAN REFERENCE #1.
  - APPROXIMATE ABUTTER'S LINES SHOWN HEREON ARE FOR REFERENCE PURPOSES ONLY AND SHALL NOT BE RELIED UPON AS BOUNDARY INFORMATION.
  - ZONING INFORMATION SHOWN HEREON ARE FOR REFERENCE PURPOSES ONLY. CONFIRM CURRENT ZONING REQUIREMENTS WITH THE TOWN OF KITTERY PRIOR TO DESIGN OR CONSTRUCTION.
  - WETLANDS WERE DETERMINED BY JOE NOEL, SOIL SCIENTIST, JANUARY 13, 2015. POTENTIAL VERNAL POOLS WERE VERIFIED IN APRIL, 2016.
  - A PORTION OF THIS PROPERTY IS WITHIN SPECIAL FLOOD HAZARD AREA (SFHA) ZONE A AND ZONE A2 OF THE NATIONAL FLOOD INSURANCE PROGRAM (NFIP) FLOOD INSURANCE RATE MAP (FIRM) TOWN OF KITTERY, MAINE YORK COUNTY, PANEL 6 OF 10, COMMUNITY-PANEL 230171 0006 C, EFFECTIVE DATE: JULY 5, 1984.
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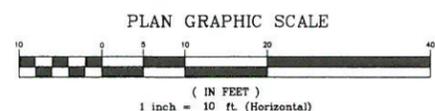
**ZONING DATA PER KITTERY ZONING ORDINANCE (LAST AMENDED 1/28/15):**

BASE ZONE: Residential-Rural Conservation (R-RC)  
OVERLAY ZONE: Shoreland (OZ-SL-250')

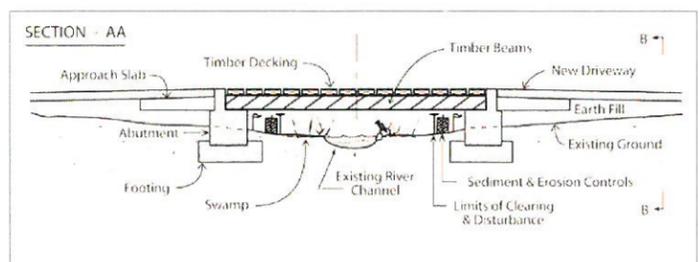
**REQUIREMENTS:**

MINIMUM LAND AREA PER DWELLING UNIT:	80,000 Sq Ft
MINIMUM LOT SIZE:	80,000 Sq Ft
MINIMUM STREET FRONTAGE:	200 Ft
MINIMUM FRONT YARD:	40 Ft
MAXIMUM BUILDING COVERAGE:	6%
MINIMUM REAR AND SIDE YARDS:	20 Ft*
MAXIMUM BUILDING HEIGHT:	35 Ft*

Per Town of Kittery Code Title 16 (Sec. 16.3.2.6)  
(See Sec 16.3.2.6, D.2)



**FINAL ELEVATED DESIGN T.B.D.**



**DETAIL #2 - Typical Elevated Wetland Crossing**  
NOT TO SCALE

Kittery, Maine - Planning Board Approval

Date of Approval \_\_\_\_\_

Chair \_\_\_\_\_ Date \_\_\_\_\_

**SHORELAND DEVELOPMENT & WETLAND ALTERATION PLAN**

FOR PROPERTY AT  
9 Pocahontas Road  
Kittery, York County, Maine

OWNED BY  
**Brian Seaward**  
475 Tolend Road, Dover, NH 03820

PREPARED FOR  
**Gary Hall**  
P.O. Box 511, Portsmouth, NH 03802

**EASTERLY SURVEYING, Inc.**  
SURVEYORS IN N.H. & MAINE 191 STATE ROAD, SUITE #1  
(207) 439-6333 KITTERY, MAINE 03904

REV.	DATE	STATUS	BY	CHKD	APPD.
B	4/14/16	REVISE DRIVEWAY / CONFIRM WETLANDS	A.M.P.	K.D.M.	K.D.M.
A	4/8/16	REVISE WETLAND CROSSING	A.M.P.	K.D.M.	K.D.M.

SCALE: 1" = 40'	PROJECT NO: 14789	DATE: 2/16/16	SHEET: 1 OF 1	DRAWN BY: A.M.P.	CHECKED BY: K.D.M.
DRAWING No: 14789 SITE PLAN					
FIELD BOOK No: "Kittery #11"					

**Tax Map 52 Lot 3**

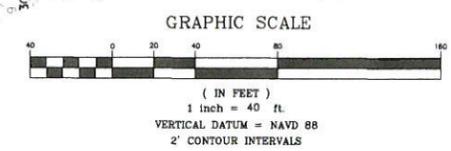
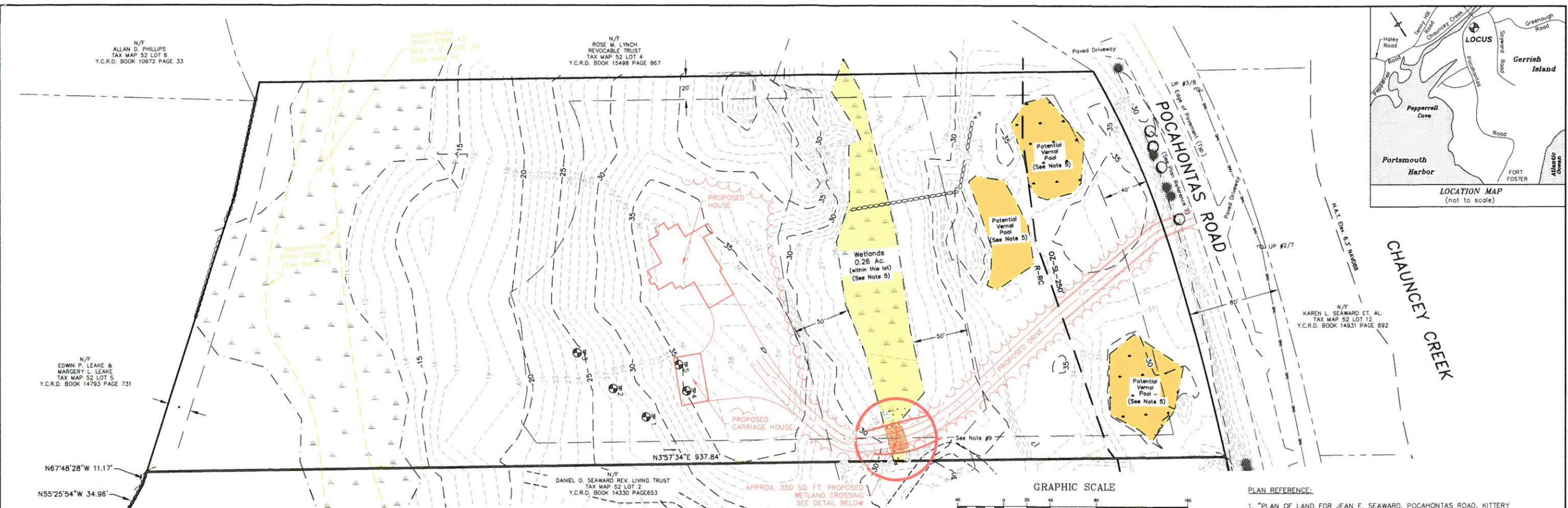
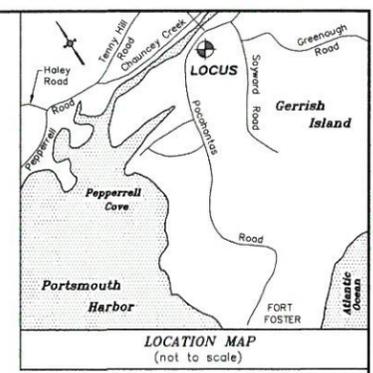
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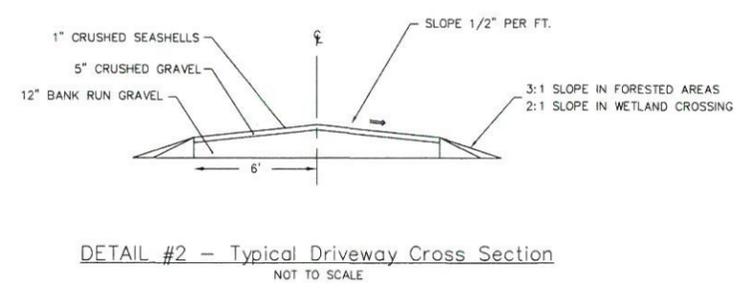
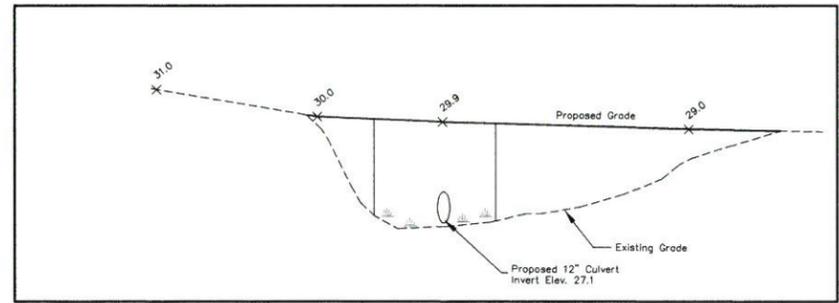
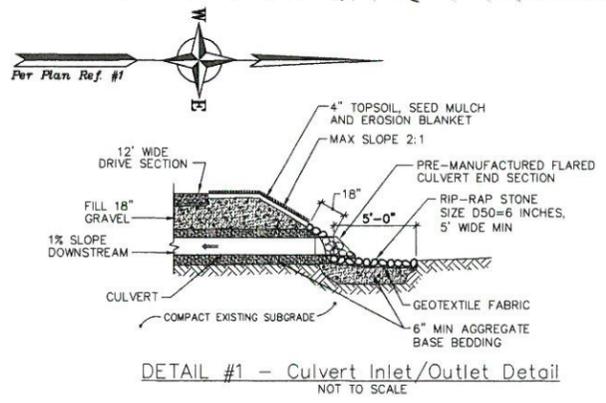
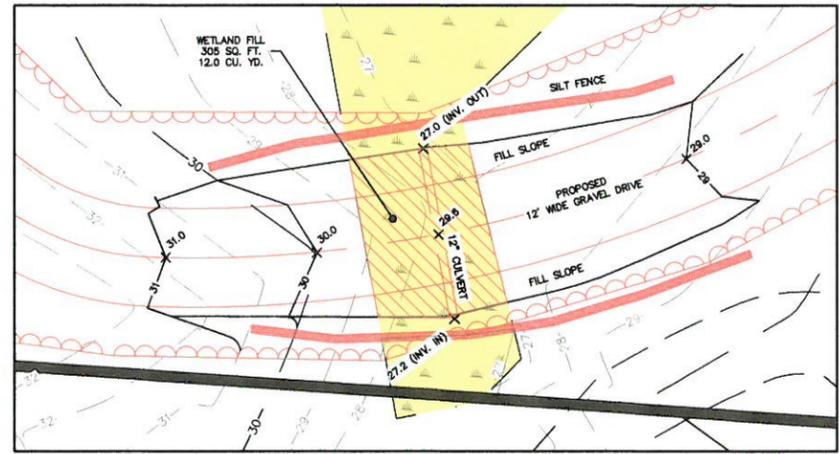
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(See Sec 16.3.2.6, D.2)



PREVIOUSLY  
APPROVED PLAN  
3/10/16

Kittery, Maine - Planning Board Approval

Date of Approval \_\_\_\_\_

Chair \_\_\_\_\_ Date \_\_\_\_\_

**SHORELAND DEVELOPMENT & WETLAND ALTERATION PLAN**  
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CHECKED BY: K.D.M.

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FIELD BOOK No: "Kittery #11"

**Tax Map 52 Lot 3**

REV.	DATE	STATUS	BY	CHKD	APPD.

