



KITTERY TOWN PLANNING BOARD MEETING

Council Chambers – Kittery Town Hall 200 Rogers Road, Kittery, Maine 03904

Phone: 207-475-1323 - Fax: 207-439-6806 - www.kittery.org

**AGENDA for Thursday, May 22, 2014
6:00 P.M. to 10:00 P.M.**

CALL TO ORDER – ROLL CALL – PLEDGE OF ALLEGIANCE – APPROVAL OF MINUTES – 4/10 & 5/8/2014

PUBLIC COMMENTS - Public comment and opinion are welcome during this open session. However, comments and opinions related to development projects currently being reviewed by the Planning Board will be heard only during a scheduled public hearing when all interested parties have the opportunity to participate. Those providing comment must state clearly their name and address and record it in writing at the podium.

PUBLIC HEARING/OLD BUSINESS

ITEM 1 – (15 minutes) – Town Code Amendment - Title 16.10.9.1.4. Approved Plan Expiration, Title 16.10.9.1.5 Requests for Extension and Title 16.9.3.8 Expiration of Wetlands Alteration Approval.

Action: hold public hearing, review amendment and make recommendation to Town Council for adoption. Proposed amendment reduces the period of time in which extensions can be granted and modifies the process for extension requests.

ITEM 2 – (30 minutes) – Town Code Amendment - Title 16.8.10.1 Signs – Propose and Title 16.8.10.2 Signs – General Requirements. Action: hold public hearing, review amendment and make recommendation to Town Council for adoption.

Proposed amendment requires adherence to Kittery Design Handbook.

ITEM 3 – (20 min.)– Quality Improvement Plan for Kittery Shore and Harbors

Action: review and make recommendation to Town Council for adoption. Town advisory committee is transmitting draft plan for Town Planning Board review, hearings and recommendation to Town Council for adoption. The QIP Plan is a specific plan that includes goals/policies and implementation strategies for improving/protecting the Town's shores and harbors. Town Planner, Gerald R. Mylroie, ACIP will make a presentation.

OLD BUSINESS

ITEM 4 – (15 minutes) – Town Code Amendment – Chapter 2, Definitions, Chapter 3, Article 2, Section 17 Shoreland Overlay Zone, Chapter 7, Article 3 Nonconformance and Chapter 8, Article 28 Single and Duplex Family Dwellings in the Shoreland Overlay Zones in Title 16 Land Use Development Code. Action: review amendment and make recommendation to Town Council for adoption. Amendment includes changes to the town's Shoreland zoning to comply with the Maine Department of Environmental Protection 2000 and 2010 conditional approvals.

ITEM 5 – (15 minutes) - Board Member Items / Discussion

- A. Action List;
- B. Committee Updates;
- C. Other.

ITEM 6 – (15 minutes) - Town Planner Items:

- A. Town Code amendment related to Quality Improvement Overlay Zone.
- B. Town Council/Planning Board joint workshop scheduled for June 2nd at 6PM.
- C. Other

NEW BUSINESS

ITEM 7 – (15 minutes) – Town of Kittery MS-4 / Stormwater Discharges General Permit

Information regarding the Town's General Permit for Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS-4 permit) will be presented by the Town's Shoreland/Environmental Resource Officer, Jessa Kellogg.

ADJOURNMENT - (by 10:00 PM unless extended by motion and vote)

NOTE: ACTION LISTED IN ABOVE AGENDA ITEMS IS FOR REFERENCE ONLY AND THE BOARD MAY DETERMINE A DIFFERENT ACTION.
DISCLAIMER: ALL AGENDAS ARE SUBJECT TO REVISION ONE WEEK PRIOR TO THE SCHEDULED TOWN PLANNING BOARD MEETING.
TO REQUEST A REASONABLE ACCOMMODATION FOR THIS MEETING PLEASE CONTACT STAFF AT (207) 475-1323 OR (207) 475-1307.

1 TOWN OF KITTERY, MAINE
2 PLANNING BOARD MEETING
3 Council Chambers
4

UNAPPROVED
April 10, 2014

5 Meeting called to order at 6:05 p.m.
6 Board Members Present: Tom Emerson, Karen Kalmar, Deborah Driscoll Davis, Ann Grinnell, Susan
7 Tuveson, Mark Alesse
8 Members absent: Bob Melanson
9 Staff: Gerald R. Mylroie, AICP, Town Planner; Chris DiMatteo, Assistant Town Planner
10

11 Pledge of Allegiance
12

13 Ms. Tuveson noted Item 5 has been postponed and interested parties may provide contact information for
14 this item.
15

16 Minutes:

17 Ms. Kalmar moved to approve the minutes of March 27, 2014 as submitted

18 Ms. Grinnell seconded

19 Motion carried with 4 in favor; 1 abstention (Tuveson)
20

21 Public Comment:

22 There was no public comment.
23

24 **ITEM 1 – Estes Bulk Propane Storage/U.S. Route 1 –Preliminary Site Plan Review**

25 Action: grant or deny preliminary plan approval. Owner M&T Reality, Applicant Estes Oil & Propane
26 Company, propose a 60,000 gallon bulk propane storage facility at their property south of 506 U.S. Route
27 1, Tax Map 67, Lot 4, Mixed Use, Residential Rural and Shoreland and Resource Protection Overlay
28 zones. Agent is Edward Brake, ATTAR Engineering.

29 Mr. Brake introduced Ken Woods, ATTAR Engineering; Mike Estes, applicant and Jody Ameden,
30 Ameden Energy Consulting. Changes to the plan were highlighted: wetlands re-delineated and propane
31 tanks moved to center of property, away from abutting property lines; road has been shortened to just over
32 1,000 feet due to tank relocation; significant wildlife habitat area verified and mapped; wetland fill
33 increased to 14,455 sf; Tier 1 NRPA permit received; ACOE permit received, to be amended with new
34 information; increased undisturbed buffer zone to screen site from Route 1; total impervious area under
35 35,000 sf, with total disturbance area of 93,400 sf; open space meets 35% requirement, including 25%
36 open space at Route 1; stormwater calculations included, indicating no increased peak flow or adverse
37 impacts on downstream properties.

38 Ken Woods stated he walked the site on May 9, 2013 and April 4, 2014. He did not find any vernal pools
39 on the site. He explained the site investigation, noting if there is no vernal pool there will not be egg
40 masses. He provided the state definition of a significant vernal pool habitat:

41 *A vernal pool, also referred to as a seasonal forest pool, is a natural, temporary to semi-permanent body*
42 *of water occurring in a shallow depression that typically fills during the spring or fall and may dry during*
43 *the summer. Vernal pools have no permanent inlet or outlet and no viable populations of predatory fish.*
44 *A vernal pool may provide the primary breeding habitat for wood frogs (*Rana sylvatica*), spotted*
45 *salamanders (*Ambystoma maculatum*), blue-spotted salamanders (*Ambystoma laterale*), and fairy*
46 *shrimp (*Eubranchipus sp.*), as well as valuable habitat for other plants and wildlife, including several rare,*
47 *threatened, and endangered species. A vernal pool intentionally created for the purposes of*
48 *compensatory mitigation is included in this definition.*

49 None of these pools exist on this site, and he believes the wetland scientist, Mike Cuomo, would concur.
50 Neither the ACOE or DEP requires an applicant to go off-site to identify vernal pools. However, if a

51 significant vernal pool has been identified and mapped off-site, this could be taken into consideration by
52 the DEP. He explained the buffers required by the DEP and ACOE if a vernal pool is on-site. Spring
53 Peepers are tree frogs and not an indicator of vernal pools, as are wood frogs.

54 Issues that need Board decision are:

- 55 - additional vernal pool survey, including off-site;
- 56 - special exception use;
- 57 - additional site walk;

58 Mr. Woods noted an off-site study with a 750 foot buffer radius would cover over 89 acres and would be
59 a significant cost to the applicant, where the DEP does not require this.

60

61 Mr. Emerson noted the Board has received emails and public comment and concerns regarding this
62 proposal. The definition of special exception includes 'promoting public good' and asked how this project
63 meets that criteria.

64 Mr. Brake summarized the Special Exception Use Narrative and explained the proposal will provide an
65 opportunity for increased employment through business expansion due to a reliable supply of propane,
66 resulting in better pricing for all customers in Kittery and southern Maine. In addition, lot development
67 generates tax revenue for the Town of Kittery.

68 Matt Howell, attorney, Estes Oil, the business investment will provide a significant increase in tax
69 assessments on this property and business. Taxes generated and used by the Town benefit the health,
70 safety and welfare of residents.

71 Discussion followed regarding nearby populations (within 250 feet and 50 people or more per NFPA
72 Guidelines); safety measures and requirements; whether the project meets the approval criteria for special
73 exception uses. Ms. Tuveson questioned whether any of the special exception uses permitted would meet
74 the approval criteria. Discussion followed regarding impact on adjacent property values.

75 Mr. Howell suggested if the primary concern of the Board is safety, the applicant would like to return at a
76 future time with the Fire Chief to address these concerns.

77 Ms. Tuveson recommended the Board decide on the Special Exception Use.

78

79 Ms. Kalmar moved to approve the Special Exception Use [in the matter of Estes Bulk Propane Storage].

80 Ms. Grinnell seconded

81 Mr. Howell noted if there is to be a denial, he needed to know what the basis for the denial is to base the
82 appeal. Ms. Driscoll noted it is not listed as a special exception use within the code, and it does not meet
83 the Factors for Consideration items B, E, G, I, L and P. Mr. DiMatteo suggested each item be addressed.

84

85 Title 16.6.6.1 Basis for Decision; Conditions: [the following items were discussed by Board members]

86 1. Proposed use will not prevent the orderly and reasonable use of adjacent properties or of properties in
87 adjacent use zones.

88 Mr. Emerson, Ms. Kalmar, Ms. Grinnell and Ms. Driscoll agreed the proposed project does not
89 support this criteria, especially with regard to the adjacent recreation area. Ms. Tuveson asked if the
90 Board is voting on each item. Ms. Driscoll stated no, this was discussion only.

91 2. Use will not prevent the orderly and reasonable use of permitted or legally established uses in the
92 zone wherein the proposed use is to be located, or of permitted or legally established uses in adjacent
93 use zones. Mr. Emerson: The proposed use does not appear to limit adjacent zone uses. Ms.
94 Grinnell disagreed. Ms. Driscoll and Mr. Alesse: Appears close to item 1.

95 3. Safety, the health, and the welfare of the Town will not be adversely affected by the proposed use or
96 its location. Ms. Driscoll: Remains to be determined. Mr. Emerson: Extension discussion has been
97 held regarding the safety of this use.

98 4. Use will be in harmony with and promote the general purposes and intent of this Code.

99 Ms. Kalmar noted this criteria applies to the impact on land values and the environment impact, etc.
100 as discussed and as noted in the Code (i.e. 16.6.6.2).

101

- 102 16.6.6.2 Factors for Consideration [the following items were discussed by Board members]]
103 A. The character of the existing and probable development of uses in the zone and the peculiar suitability
104 of such zone for the location of any of such uses; Mr. Emerson: this proposed industrial use could
105 potentially change the character of the area.
106
107 B. The conservation of property values and the encouragement of the most appropriate uses of land; Mr.
108 Emerson: The neighbors feel their properties will be affected.
109
110 C. The effect that the location of the proposed use may have upon the congestion or undue increase of
111 vehicular traffic congestion on public streets or highways; Mr. Emerson: It will change the nature, but
112 may or may not increase congestion. Ms. Driscoll: There has been concern about the way the sun hits
113 you when driving in this area, but would not increase traffic congestion.
114
115 D. The availability of adequate and proper public or private facilities for the treatment, removal or
116 discharge of sewage, refuse or other effluent (whether liquid, solid, gaseous or otherwise) that may be
117 caused or created by or as a result of the use); Mr. Emerson: This is not a high intensity use.
118
119 E. Whether the use, or materials incidental thereto, or produced thereby, may give off obnoxious gases,
120 odors, smoke or soot; Ms. Driscoll: These tanks vent each time they are filled or gas is removed. Ms.
121 Ameden stated storage tanks do not vent unless overfilled, and are never filled beyond 85% without prior
122 authorization. Domestic tanks can be overfilled. There is a small amount of discharge through the hose
123 nozzle at disconnection. Any odors would not be ongoing.
124
125 F. Whether the use will cause disturbing emission of electrical discharges, dust, light, vibration or noise;
126 Mr. Emerson: This does not appear to be an issue.
127
128 G. Whether the operations in pursuance of the use will cause undue interference with the orderly
129 enjoyment by the public of parking or of recreational facilities, if existing, or if proposed by the Town or
130 by other competent governmental agency; Mr. Emerson: A recreational facility is existing next door,
131 though it is not a Town facility. Mr. Alesse and Ms. Grinnell stated it did not matter. Take-Flight
132 operates for 9 months.
133
134 H. The necessity for paved off-street parking; Mr. Emerson: Not an issue.
135
136 I. Whether a hazard to life, limb or property because of fire, flood, erosion or panic may be created by
137 reason or as a result of the use, or by the structures to be used, or by the inaccessibility of the property or
138 structures thereon for the convenient entry and operation of fire and other emergency apparatus, or by the
139 undue concentration or assemblage of person upon such plot; Mr. Emerson: Not an issue.
140
141 J. Whether the use, or the structures to be used, will cause an overcrowding of land or undue
142 concentration of population; or, unsightly storage of equipment, vehicles, or other materials; Mr.
143 Emerson: Not an issue, other than view of storage tanks.
144
145 K. Whether the plot area is sufficient, appropriate and adequate for the use and the reasonably anticipated
146 operation and expansion thereof; Mr. Emerson: Cannot speak to expansion, but the area appears
147 sufficient for the proposed use.
148
149 L. Whether the proposed use will be adequately screened and buffered from contiguous properties;
150 Mr. Emerson: Difficult to buffer from the zip line. Mr. Woods: Is it the Board's position that any special
151 exception use on this property must be screened from the 35-foot zip line towers next door? He read the
152 definition of screening: **Screening** means either, (1) a strip of at least ten (10) feet wide, densely planted

153 (or having equivalent natural growth) shrubs or trees at least four feet high at the time of planting, of an
154 evergreen type that will grow to a year-round dense screen at least six feet high in three years; or (2) an
155 opaque wall or barrier of uniformly colored fence at least six feet in height. Screening of either type
156 must be maintained in good condition at all times. There is probably not an existing special exception
157 use that would meet this definition for screening next to a 35-foot tower. Ms. Driscoll: The Board has
158 latitude under special exception use to request additional requirements, re: buffering.
159

160 M. The assurance of adequate landscaping, grading, and provision for natural drainage; Mr. Emerson:
161 Don't know if this is an issue.
162

163 N. Whether the proposed use will provide for adequate pedestrian circulation; Mr. Emerson: Not an
164 issue.
165

166 O. Whether the proposed use anticipates and eliminates potential nuisances created by its location; Mr.
167 Emerson: What is considered a nuisance?
168

169 P. The satisfactory compliance with all applicable performance standard criteria contained in Chapter
170 16.8 and 16.9. Mr. DiMatteo: This is essentially the Findings.
171

172 Mr. Mylroie: It would be beneficial if the staff could present this discussion to you in a Findings so the
173 applicant understands the action of the Board. Discussion followed regarding screening.

174 Mr. Emerson asked if the motion should be withdrawn pending receipt of Findings from staff. Mr.
175 Mylroie stated the Board vote is usually based on Findings. Mr. DiMatteo: Conclusions can be added to
176 each criteria and voted upon. Mr. Howell: If there is criteria the applicant may address to the Board's
177 satisfaction, they will do so, but if a denial is evident, they would like to know to begin the appeal
178 process. Ms. Driscoll: What is fixable and what is not? Ms. Grinnell: The application does not meet the
179 definition for special exception use as it does not *promote the public health, safety, welfare, morals,*
180 *order, comfort, convenience, appearance, prosperity, or general welfare.* Ms. Driscoll: It does not meet
181 all the Factors for Consideration in 16.6.6.2. Mr. Mylroie: If appealed, the courts will look for the basis
182 of the decision, which should be clearly articulated in a set of Findings.
183

184 Motion fails; 1 in favor (Tuveson); 5 opposed; 0 abstentions
185

186 Mr. Howell asked what the specific reasons for denial were. Mr. Emerson stated this will be provided by
187 staff. Mr. Mylroie: Suggested a motion may be in order to deny the preliminary plan.
188

189 Ms. Grinnell moved to approve the preliminary plan for Estes Bulk Propane Storage facility, a 60,000
190 gallon bulk propane storage facility at their property south of 506 U.S. Route 1, Tax Map 67, Lot 4,
191 Mixed Use, Residential Rural and Shoreland and Resource Protection Overlay zones.

192 Ms. Kalmar seconded

193 Motion fails; 0 in favor; 6 opposed; 0 abstentions.
194

195 Mr. Emerson advised the Board to not discuss this item further outside of meetings.
196

197 Break
198
199
200

201 **ITEM 2 – Beatrice Way – Right-Of-Way Plan – Preliminary Plan Review**

202 Action: review plan application, approve site walk minutes. Owner Operation Blessing LP, and applicant
203 Richard Sparkowich, propose a new Right-Of-Way to allow the division of remaining land from the
204 previously approved 3-lot subdivision located between Highpoint Circle and Kittree Lane. The site
205 identified as Tax Map 61 Lot 08, ±65 acres, in the Residential - Rural (R-RL) Zone. Agent is Ken Markley,
206 Easterly Survey Inc.

207 Ms. Kalmar moved to approve the site walk minutes of April 1, 2014 for the Beatrice Way ROW Plan

208 Ms. Grinnell seconded

209 Motion carried unanimously

210

211 Mr. Mylroie summarized issues before the Board:

212 1. How many lots are being created and what are anticipated future divisions?

213 2. Where is the 'front door' of the lot?

214 3. What is the access road for units; secondary access; road maintenance

215

216 Members discussed use of access roads, extension of Highpoint Circle, start of Kittree Lane; private vs.
217 public road access; pavement of Kittree Lane; gating of Kittree Lane from Highpoint Circle; cessation of
218 logging activities in the area; level of road construction to accommodate potential build out; waivers for
219 road construction standards and length; secondary accesses; completion of roadway to Class 2 standards
220 at time of building permit; cul de sac vs. hammerhead construction.

221 Mr. Sparkowich: Not prepared to shoulder cost of Class 2 road without some break; need waiver for road
222 length.

223 Mr. Emerson summarized the Board would like the Beatrice Way ROW designed as a Class 2 road.
224 Further discussions with the Fire Chief and Public Works are warranted regarding the extension of
225 Highpoint Circle and whether there can be a gate at Kittree Lane.

226

227 Ms. Kalmar moved to continue the application not to exceed 90 days.

228 Ms. Grinnell seconded

229 Motion carried unanimously

230

231

232 **OLD BUSINESS**

233

234 **ITEM 3 – Board Member Items / Discussion**

235 A. Kittery Town Planning & Development Briefing Book discussion

236 Items prioritized will be included in the Briefing Book. Briefing Book workshop at next meeting.

237 B. Action plan review and prioritization discussion

238 List will be clarified and discussed at the next meeting. Review Public Works CIP certification
239 procedure.

240 C. Comprehensive Plan Update Status

241 Plan is being updated by the Comp Plan Committee Chairman with a 30-day completion goal. Ms.
242 Tuveson noted her concern regarding the Plan being updated by one individual. Mr. Emerson stated other
243 groups (Conservation Commission; Economic Development Committee, etc.) should have first review of
244 the Plan prior to submittal to the Planning Board. Mr. Emerson will contact the Chairman requesting the
245 Plan be provided to the other groups, and following individual group input, the Update Committee will
246 review any subsequent changes prior to submittal to the Board.

247 D. Quality Improvement Plan for Kittery Shore and Harbors

248 E. Other

249 - Monthly updates from Board Members, re: committee (e.g. Economic Development, Comp Plan
250 Update).

251 - Request updates from other groups that do not have Board member representation;

- 252 - These reports will be discussed at the second monthly meeting.
- 253 - Other Board updates as needed, including website posting.
- 254 - Ordinance Revision format (Mark Alesse).
- 255 - Shoreland ordinance amendments are ready to forward for Council review.

256

257 **ITEM 4 – Town Planner Items**

258 A. Destination Marketing Program - Route 1BP to Kittery Gateway

259 Will provide status at next meeting; Chair of Route 1 BP group out of town. Board requested group
260 consider alternative names.

261 B. Quality Improvement Overlay Zone

262 Provision of flexibility for development in identified areas of town (in lieu of Contract Zoning). Ms.
263 Tuveson asked to be included in future discussions.

264 C. Sign Standards and Compliance - Not Discussed

265 D. Other

266 For discussion at April 24 Board meeting:

- 267 - Shore and Harbor Plan presentation
- 268 - Sarah Long bridge designs
- 269 - Memorial Circle design and recommendations

270

271

272 **ITEM 5 – Kittery Performing Arts Outdoor Concert Area — 76 Dennett Rd—Sketch Plan Review**

273 Action: review and accept or deny application and schedule a public hearing. Owner William Cullen, and
274 applicant Lee Consavage, Kittery Performing Arts Center, L3C, propose an outdoor recreation and
275 concert area off Dennett Road. The site identified as Tax Map 6 Lots 15B & 16A and Map 13 Lot 4, ±24
276 acres, in the Business Park - (B-PK) Zone.

277 Item postponed per applicant's request.

278

279

280 Ms. Tuveson moved to adjourn

281 Mr. Emerson seconded

282 Motion carried by all members present

283

284

285

286 The Kittery Planning Board meeting of April 10, 2014 adjourned at 9:24 p.m.

287 Submitted by Jan Fisk, Recorder, April 15, 2014

1 TOWN OF KITTEERY, MAINE
2 PLANNING BOARD MEETING
3 Council Chambers

UNAPPROVED
May 8, 2014

4
5 Meeting called to order at 6:03 p.m.

6 Board Members Present: Tom Emerson, Karen Kalmar, Deborah Driscoll Davis Davis, Susan Tuveson,
7 Mark Alesse, Bob Melanson, Ann Grinnell

8 Members absent: none

9 Staff: Gerald R. Mylroie, AICP, Town Planner; Chris DiMatteo, Assistant Planner

10
11 Pledge of Allegiance

12
13 Minutes:

14 April 24, 2014

15 Mr. Melanson moved to accept the minutes of April 24, 2014 as amended

16 Ms. Kalmar seconded

17 Motion carried with 6 in favor; 0 opposed; 1 abstention(Grinnell)

18
19 Public Comment: None

20
21 **ITEM 1 – Watts Cluster Subdivision – Brave Boat Harbor Road — Sketch Plan Review**

22 Action: Review, schedule site walk if warranted, approve concept if in compliance with Town Code and
23 provide direction to Applicant Owner and Applicant Jonathon & Kathleen Watts is requesting
24 consideration of their plans for a 4-lot cluster subdivision at 143 Brave Boat Harbor Road, Tax Map 63,
25 Lot 19, Residential Rural Zone, with a portion in the Shoreland Overlay Zone. Agents are Ken Markley,
26 Easterly Surveying, Inc., and Scott Anderson, Verrill Dana, LLP.

27 Scott Anderson, Attorney, discussed the application of the Soils Guide for this proposal and the allowance
28 for dimensional modifications in a cluster subdivision application.

29 Ken Markley, Easterly Surveying: A High Intensity Soil Survey was used to calculate useable soils to
30 determine lot numbers, with enough buildable area to create 6 lots. Using the Soils Guide and following
31 the ordinance, including the removal of roads, flood plain areas, scantic soils and Lyman rock outcrop
32 outside of the floodplain area, etc., the total buildable lot area allowed would be 4.17 lots. They are
33 proposing 4 lots, total.

34 Ms. Kalmar: Are any of the test pits in soils area listed in the Soils Guide? Ordinance references the
35 guide in the septic code.

36 Mr. Markley: Lot 2. The state allows septic design if the soils are deep enough and of certain texture. A
37 common system can be designed for this lot.

38 Ms. Driscoll: Is the 1984 flood plain boundary shown current? If new maps impact the area, is
39 concerned about impact following construction.

40 Mr. Markley: Yes. The proposed flood zone boundaries do not affect inland flood plains. Proposed
41 location of homes are 15-20' higher than the road, and only reason the flood area is noted is because of the
42 road.

43 Ms. Grinnell: What standard is used for the shoreland zone? Are waivers required?

44 Mr. Markley: Development must be located 250' from upper edge of freshwater wetland adjacent to a
45 protected stream. Entire lot is in shoreland overlay zone; resource protection zone in flood area. The
46 town's overlay maps are incorrect. Proposal is based on 40,000 sf per lot, as required in shoreland zone.
47 No waivers are requested, unless the proposed hammerhead is not acceptable.

48 Mr. DiMatteo: Because new flood maps will not be adopted until mid-2015, the Board can only focus on
49 existing maps.

50 Ms. Kalmar: Asked about shoreland overlay standards / shore frontage.

51 Mr. DiMatteo: Non-forested wetlands of 10 acres or more places them in shoreland zone per minimum
52 state standards. Town code states if there is a protected stream associated with the fresh water FRESH
53 wetlands as per Kittery's Zoning Map, the area is located in the shoreland overlay zone. State standards
54 require minimum lot area of 40,000 sf, but the town already requires a base zone of 40,000 sf. Under
55 cluster development, they are proposing a minimum of 20,000 sf per lot. The Board may need to consider
56 whether the applicant has provided an additional 20,000 sf per lot in open space, as required by the state
57 in cluster development in the shoreland zone. Septic systems also require a minimum lot size of 20,000
58 sf. There does not appear to be any issues regarding lot size in the shoreland zone.
59 Discussion followed regarding use of the Soils Survey guide and its application on current proposals
60 before the Board pending ordinance amendments.

61
62 Ms. Wells: Referenced letter from Gabriele Burke, abutter (attached), regarding flooding issues and
63 buffers.

64 Mr. Markley: Ms. Burke's lot is a quite small, nonconforming. A fence and vegetated buffer is proposed.
65 The grading of lot 2 will be graded to prevent additional water runoff onto her lot. Because they are at the
66 maximum area for lots, they cannot provide her with additional land area.

67 Mr. Alesse: Asked for a deeper vegetated buffer and a list of materials proposed for the buffer.

68
69 Mr. Melanson moved to accept the sketch plan of the Watts cluster subdivision and schedule a site walk.

70 Ms. Tuveson seconded

71 Ms. Grinnell asked about the attorney's reference to potential bias or conflict of interest regarding recusal
72 of Board members.

73 Ms. Kalmar: Stated she has no bias, and has not prejudged this plan. She will review and apply the code
74 fairly to all proposals in front of Board.

75 Mr. Alesse: Stated he has no bias against managed development, and will follow the spirit of the Comp
76 Plan. He has no objection if the proposal fits within the parameters of the law.

77 Mr. DiMatteo suggested the motion be modified to 'accept the application'.

78
79 Mr. Melanson modified his motion to accept the application.

80 Ms. Tuveson seconded

81 Motion carried unanimously

82

83 A Site walk was scheduled for Wednesday, June 4 at 6:00 p.m.

84

85 **ITEM 2 – Board Member Items / Discussion**

86 Ms. Grinnell: Discussion regarding Council workshop scheduling and discussion items; review of
87 shoreland amendments would need to be reviewed as a whole at the second meeting in May before
88 Council workshop on June 2. The Board agreed to follow a process for taking amendments to Council;
89 referencing the outdoor seating amendment, this item needs to follow the agreed upon decision to review
90 amendments by the process;

91 Ms. Kalmar: Agrees a process needs to be followed; this is Title 5, not Title 16, and suggests removing
92 the Planning Board name to send to Council now. Ms. Driscoll suggested the Foreside groups return to
93 the Board in the fall to resolve any issues that may have arisen with this amendment over the summer.

94 Mr. Emerson will present to Council. The Board agreed to recommend the amendment not be extended
95 the amendment beyond 12/31/14.

96 Mr. Emerson: The outdoor seating issue is a temporary issue, with a sunset period. Similarly, the
97 Dennett Road proposal appears temporary, but believes it is a Planning Board, not Council, issue.

98 Mr. Mylroie: A neighborhood meeting was held on April 30, with an upcoming meeting on 5/13 at Traip
99 Academy. The ball is in the applicant's court. Discussion followed regarding one-time events and who is
100 responsible for permitting.

101

102 **ITEM 3 –Town Planner Items:**

- 103 A. MS4 Stormwater; Board asked to complete and return survey and requested Jessa Kellog present on
104 this topic at the May 22, 2014 meeting.
- 105 B. Town Code Quality Improvement Overlay Zone;
- 106 C. Memorial Circle Plan – Status; MDOT design work is continuing, and will return with final plan for
107 Board review; signage remains an issue.
- 108 D. Kittery Foreside;
- 109 E. Signs / Seapoint / Crescent Beach Signs; too many signs; working on an information sign at locations.
110 Ms. Wells noted the sign would like the sign not be located in the salt marsh.
- 111 F. FEMA – Flood Insurance Risk Maps Status: updates ongoing; Council will decide whether to appeal.
- 112 G. Library Location: discussion regarding moving of library to the Community Center; discussions are
113 ongoing.
- 114 H. Capital Improvement Program Projects: List of projects in packet.
- 115 I. Town Code Outdoor Seating Program Extension:
- 116 J. Other: June 2 @ 6:00 workshop w/ Council to discuss ordinance amendments; further discussion of
117 amendment items proposed for Council discussion at 5/22 meeting; update Council on Board's action
118 list;
- 119 K. Kittery By-Pass: Committee wishes to continue with Kittery Gateway brand name. Ms. Grinnell:
120 This should be discussed further in Council workshop.
- 121 L. Sign ordinance: Ms. Grinnell asked about the group working on the sign ordinance, and wishes to
122 hear from the CEO; Mr. Mylroie: proposed ordinance amendments will be presented to the Board
123 regarding nonconforming signage; Public Hearing will be held regarding sign design; Mr. Emerson:
124 will want input from the CEO on the ordinance proposal;
- 125
126

127 **NEW BUSINESS**

128

129 **ITEM 4 – Pearson Meadow Cluster Subdivision – Completeness Review of Final Plan Application.**

- 130 Action: Accept or Deny Final Plan Application, Owner Gail Beverly Burns and applicant Chinburg
131 Builders, Inc, is requesting consideration of their plans for a cluster subdivision to include nine new lots
132 and one reserved lot on a 24.5 acre parcel located at 60 Wilson Road., Tax Map 54, Lot 14, within the
133 Residential-Rural Zone and Resource Protection Overlay Zone. Agent is Jeff Clifford, P.E., Altus
134 Engineering, Inc.
- 135 Ms. Kalmar recused herself as she had not participated in any prior deliberations, the Public Hearing, or
136 attended the site walk.
- 137 Board members agreed
- 138 Ms. Kalmar stepped down
- 139
- 140 Jeff Clifford, Altus Engineering, introduced Paul Kerrigan, Chinburg Builders; Scott Gove; Ron Beal,
141 Altus; Jason Howe, Attorney.
- 142 Application history summarized. Owner has a purchase and sale agreement with Chinburg Builders.
143 Preliminary approval received on 9/12/13. DEP review process followed; Tier 1 wetland crossing permit
144 received. Summary of plan:
- 145 – Stormwater management: Including buffer easements for lots 1-4, underdrain soils filters (2) placed
146 along southern lots (5-9) for lot and cul-de-sac/road drainage; landscaped buffers along the roadway
147 collect runoff; berms located along easterly development.
- 148 – Buffer widened along easterly property line; fencing and additional landscaping proposed at curve of
149 road abutting Devons Woods development.
- 150 – NRA calculations: upland soils identified not suitable (Elmwood) were eliminated from net
151 residential area calculations, yielding a possible 14-lot development.

- 152 – Sufficient reserve septic areas were shown on a prior plan; reserve septic areas not identified on each
153 lot will be illustrated on final plans.
- 154 – Modifications: 50' ROW proposed instead of 60'.
- 155 – Common open space removed from DEP stormwater buffer per the DEP; buffer restrictions included
156 in covenants.
- 157 – Roadway: 20' paved road has an additional 6'-wide shoulder for pedestrian access to Wilson Road;
158 owner's driveway is existing, historical, and part of a scenic roadway (Wilson Road); a no-cut
159 wooded buffer is proposed along Wilson Road, between owner's driveway and proposed cluster
160 minor street; a waiver will be needed for the road access to Wilson Road.
- 161 – Wetland crossing totals 4,208 sf; box culvert proposed for wildlife access to adjacent wetlands to the
162 north and south. Mr. Emerson requested identification of crossing on Sheet C-3.
- 163 – The Army Corps of Engineers (ACOE) requires a 100' vernal pool buffer; the DEP did not classify
164 the area as a significant vernal pool, but as a wetland; ACOE required road be located north of the
165 vernal pool, abutting Devons Woods.
- 166 – Kittery Fire Department had no issues; DPW had no issues with road, re: site lines; CMA noted
167 requested modifications were appropriate for a cluster subdivision; additional modification for cul-de-
168 sac radius needs to be submitted.
- 169 – Plant species and sizes will be provided prior to final plan approval.
- 170 – Mitigation: Not a large wetlands crossing, proposal provides a large buffer and box culvert; identified
171 as a wooded wetland, not a highly classified wetland; \$16,800 fee for crossing; ordinance targets fees
172 be used on lot; in lieu of using fees on site, proposes use of fees by the town;
- 173 – Wells located in woodland buffer; DEP stated this can be done, with restrictions (information will be
174 provided to the town);
- 175 – Miscellaneous housekeeping issues per staff comments; Performance Guarantee will be provided
176 when needed; proposed road name application provided;
- 177

178 Earledean Wells: Identification of all proposed landscaping be included in plan; mitigation should be
179 provided on site, not the fees.

180 Mr. Emerson: Extend no-cut easement closer to barn area along Wilson Road.

181 Discussion followed regarding common areas/open space, potential trail network in open areas;
182 pedestrian access to Wilson Road; determination of net residential acreage; fence and buffer location; site
183 distances along Wilson Road; removal of hemlock per request of abutter (McNeil; attached).

184 Mr. DiMatteo: Location of underdrain filters in no-cut buffer area.

185 Mr. Clifford: This is a meadow area with no trees; the MDEP has reviewed and approved the proposed
186 locations, based on the overall stormwater management plan.

187

188 Waivers:

189 1685.1.3 (a. b.) - Scale: Drawing scale 1"=60 feet for existing conditions and topographic plan; 1"-50'
190 horizontal and 1"=10' vertical for subdivision and lot, and plan and profile plan. The larger scale reduces
191 the numbers of sheets and coincides with the subdivision and lot plans while having a scale that is easily
192 readable.

193 6 in favor; 0 abstained; 0 opposed

194

195 16.8.44.6.G - Cluster subdivision access onto a public road: The proposed 9 cluster lots will have access
196 only onto the proposed roadway. The current property owner is retaining a 5+ acre lot for their existing
197 dwelling and seeks to retain their existing gravel driveway onto Wilson Road providing access to the
198 historic barn and their dwelling on the property. Reference is made to Exhibit 1 Driveway to Wilson
199 Road, a historical narrative prepared by Gale Burns included in the application. Retaining the unique
200 character of the barn and driveway is in harmony with the intent of the cluster objectives of 16.811.1.H,
201 preservation of historic, archaeological and cultural features. Retention of the existing driveway will not

202 present a safety hazard. Since the owner has ample room for turning vehicles within the property,
203 vehicles do not need to back into the public road.
204 6 in favor; 0 abstained; 0 opposed

205
206 168.1.6.L5 - Disturbance within 100-foot wetlands buffer. Grassed swales and grassed underdrained soil
207 filters are proposed within existing meadowlands. There will be no cutting of trees to construct
208 stormwater practices. The runoff sheet flows to the grassed swales and is directed to the soil filter. The
209 soil filter treats, cools and detains runoff before exiting to the wetlands. The location of the stormwater
210 practices were chosen to preserve natural features to the extent possible and to meet MDEP Stormwater
211 Law requirements.

212 5 in favor; 1 abstained (Grinnell); 0 opposed

213 Ms. Tuveson moved to continue review of the Pearson Meadows Cluster Subdivision for a period not to
214 exceed 90 days, in order to finalize documents for final approval.

215 Ms. Grinnell seconded

216 Motion carried; 6 in favor; 0 opposed; 0 abstained

217

218 Break

219

220 **ITEM 5 – Old Armory Way Mixed Use Development — Sketch Plan Review**

221 Action: Review, schedule site walk if warranted, approve concept if in compliance with Town Code and
222 provide direction to Applicant Owner and Applicant Ken McDavitt is requesting consideration for plans
223 to construct a 3-unit residential condominium with 12 commercial boat slips at the shorefront located at
224 15 Old Armory Way, Tax Map 4, Lot 51, and within the Mixed Use Kittery Foreside Zone and the
225 Shoreland and Commercial Fisheries/Maritime Activities Overlay Zones. Agent is Edward Brake, Attar
226 Engineering, Inc., Eliot, Maine.

227 Ken McDavitt summarized the existing property use and the proposed development; identified parking
228 requirements and locations for residential and slip use; parcel is 31,000 sf, where 25,000 is required in the
229 MU-KF zone; parking for the slips are permitted within 75' of mean high water, but no closer than 25'.

230 Ms. Grinnell: Will condominium owner's be able to lease their personal slips? If so, parking could be an
231 issue, with additional parking needed for leased slips. Will there be any waiver requests?

232 Mr. McDavitt: The slips could be leased if the owner's defined parking is used for those slips. No waiver
233 requests, at this time. Municipal sewer is available.

234 Mr. Melanson: KPA review is needed and should be conducted concurrently.

235 Ms. Kalmar: Will MDEP shoreland changes to the ordinance impact this proposal?

236 Mr. DiMatteo: Shoreland zone requires 10,000 sf per dwelling unit which the parcel has; there are no
237 MDEP changes to this.

238 Mr. Mylroie: The application is complete

239

240 Mr. Melanson moved to accept the sketch application for 15 Old Armory Way and schedule a site walk.

241 Ms. Grinnell seconded

242 Motion carried unanimously

243

244 Mr. Melanson explained KPA submittal requirements to the applicant.

245

246 Site Walk scheduled: June 5, 2014 at 5:00 p.m.

247

248

249

250 **ITEM 6 – Shepard’s Cove Subdivision – Modification to an Approved Plan – Completeness Review.**

251 Action: Accept or Deny Plan Application, schedule a Public Hearing. Owner and applicant DLJ Corp., is
252 requesting consideration of their plans to amend the previously approved 2004 subdivision plan, replacing
253 a proposed 24 unit building with detached 5 single unit buildings at their Elderly Housing Facility located
254 off Rogers Road, Tax Map 22, Lot 21, Residential-Urban Zone and Shoreland Overlay Zone. Agent is
255 Lewis Chamberlain, P.E., Attar Engineering, Inc.

256 Mr. Chamberlain summarized the modification to the previously approved plan;

257 Ms. Driscoll: Was this project phased; will proposed development meet wetland setbacks; will the
258 secondary road be used by this new housing area? Asked that staff confirm prior approval period for
259 modification consideration.

260 Mr. Chamberlain: The project was phased and all other areas have been built except this last area; 100'
261 setbacks have been met; two driveways access the secondary road, but feed into Shepard's Cove Road to
262 exit onto Rogers Road; emergency exit would be used only in an emergency, through a break-through
263 gate; the gate has been open when he has been on site; no waivers anticipated at this time; three
264 underdrain, grassed soil filters will be used for stormwater management BMPs; there is a reduction of
265 11,000 sf in paved area from the previously approved plan.

266 Ms. Kalmar: Would like to see site archaeological information submitted at next review.

267

268 Mr. Melanson moved to accept the application modification as complete and schedule a site walk

269 Ms. Tuveson seconded

270 Motion carried unanimously

271

272 Discussion followed regarding the use of the emergency access road. Members agreed a site walk was
273 not needed, at this time.

274

275 Mr. Melanson moved to schedule a public hearing on the modification to the Shepard's Cove subdivision
276 approved plan.

277 Ms. Grinnell seconded

278 Motion carried unanimously

279

280 Public Hearing will be held on June 12, 2014 if the applicant is ready.

281

282 **ITEM 7 –Pine Tree Plaza Site Plan – Modification to an Approved Plan – Completeness Review.**

283 Action: Accept or Deny Plan Application, schedule a Public Hearing. Kenneth Lemont, owner and
284 applicant (for Harrison E. Lemont Management Co., Inc.), requests approval to amend a previously
285 approved Site Plan in order to replace an existing building (Curtis House) and attached ell with a new
286 2,450 sf building and increase the existing garage (by 364 sf). The property is located at 435 US Route 1
287 in the Mixed Use zone, Tax Map 50, Lot 8.

288 Ken Lemont, owner: Property has been in Lamont family since 1973 ; proposes to remove dilapidated
289 building, build a new retail building in its place, and add 14 feet to an existing garage; this will enhance
290 the property and Route 1 corridor; parking will be to the side of the building; landscaping will be
291 provided; has addressed grading, existing lighting, sewer and water locations, etc.

292 Ms. Kalmar: Square foot calculations need to be included on the final plan; is a boundary survey
293 required? The Board needs to direct the applicant.

294 Mr. DiMatteo: The Board can request any directions prior to the next review and public hearing.

295 Mr. Mylroie: The applicant can provide water runoff information prior to the public hearing.

296

297 Mr. Emerson moved to accept the application conditioned on the submittal of requirements noted in the
298 plan review notes prior to the scheduling of a public hearing, and schedule a site walk.

299 Ms. Tuveson seconded

300 Motion carried: 6 in favor; 1 opposed (Grinnell); 0 abstentions

301 Site walk scheduled: June 10 at 6:00 p.m.

302

303

304 **ITEM 8 – State Road Mixed Use Development — Sketch Plan Review**

305 Action: Review, schedule site walk if warranted, approve Sketch Plan concept if in compliance with
306 Town Code and provide direction to Applicant Owner HGL, LLC and Applicant Doug Greene, Building
307 Works Company are requesting consideration of their plans for a mixed residential and commercial
308 development at 42 State Road, Tax Map 3, Lots 5, 6 & 7 in the Business Local 1 Zone.

309 Doug Green

310 Mr. Emerson: In the BL-1 zone parking in front of a business is not permitted and the Board needs to
311 determine if this requirement can be waived as there is ledge at the rear of the property where parking is
312 directed.

313 Doug Greene: Offered additional submittals to the Board.

314 Mr. Emerson: Additional submittals are not permitted at the night of the meeting, and requested he
315 present the information through testimony.

316 Mr. Greene: Summarized development request: demolish existing structures on the three parcels and
317 construct a new building of approximately 47'x125', utilizing existing entrances and exits, with 6
318 residential units and commercial space. Requests Board feedback on the parking and building
319 configuration on the site.

320 Ms. Driscoll: Love Lane accesses are of concern because of the traffic on Love Lane.

321 Ms. Tuveson: Concurs; concerned about site visibility from these exits onto Love Lane because of
322 vegetation and Navy traffic. Ms. Grinnell concurred.

323 Mr. Emerson: Can the building be moved forward with parking in rear? The code requires new
324 construction with parking in the rear.

325 Mr. Greene: There is a 10-12 foot rise where lots 6 and 7 converge, allowing for residential privacy.

326 Mr. Mylroie: The Board needs to provide guidance and a site walk would help members observe the
327 conditions which are forcing this design.

328 Mr. Emerson: The application is not complete, but in order to provide direction to the applicant, a site
329 walk is warranted though the application cannot be accepted at this time.

330

331 Site Walk scheduled: May 21, 2014 at 6:00 p.m.

332

333

334 Mr. Emerson moved to adjourn

335 Ms. Grinnell seconded

336 Motion carried by all members present

337

338

339

340 The Kittery Planning Board meeting of May 8, 2014 adjourned at 9:53 p.m.

341 Submitted by Jan Fisk, Recorder,

342

343
344
345
346

ATTACHMENT 1

Chris DiMatteo

From: Burke, Gabrielle [REDACTED]
Sent: Thursday, December 12, 2013 5:14 PM
To: Chris DiMatteo
Cc: v_trickett@ymail.com; dmorin17@maine.rr.com; Gmylroie; Jan Fisk
Subject: Re: Concerns/Questions Regarding Development Behind My House

Chris

I have a few initial concerns regarding the plans for the land behind 139 Brave Boat Harbor.

- 1) Has the council done a site visit. There is a lot of wetlands and wildlife in the area. Also a lot of ledge. It seems like it should be viewed before granting permission to erode it.
- 2) My house already has flooding issues. I am downhill from the adjacent land and I am concerned that I will experience an increase in flooding if the land is developed.
- 3) I worry that there is not enough of a buffer between the existing houses (3 abutting properties including mine). I feel like there will be a house right in my backyard.

I hope the planning board and Mr Watts will take these concerns into consideration.

Thank you,
Gabrielle Burke

347

ATTACHMENT 2

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Chris DiMatteo

From: McNeill, Susan <Susan.McNeill@willis.com>
Sent: Thursday, May 08, 2014 3:12 PM
To: Chris DiMatteo
Subject: Proposed Pearson Meadow Cluster Subdivision

Dear Mr. DiMatteo:

I am an abutter of the above proposed subdivision which is on the agenda for tonight's planning board meeting. My neighbor, who is also an abutter, spoke to me this past weekend to let me know that her husband had spoken to a realtor and a couple that were looking at the land of the proposed subdivision and when asked about it, the realtor indicated that the subdivision was about a month from being passed. As I had not received notification of the planning board meeting I was concerned and came into the Town Hall. I read a copy of the plan review notes. There are changes to the applicant's submittal and one of them is *"the addition of a fence and trees along proposed Right-Of-Way to mitigate proximity of proposed roadway and existing abutting properties along Kings Court"*. As I expressed before, my house is only 27 ft from the rear boundary line of my lot and the proposed road is directly behind that with a curve that will cause headlights at night to shine directly into my house.

I am unable to attend the meeting tonight but have a question. What will the height of the fence be and will mature trees be planted?

Another concern – there is a large hemlock on the stonewall that is 50-60 ft in height. I am worried that the construction of the road and development will damage the hemlock's root system and make the tree unsafe. Can an arborist be consulted and if the tree needs to be taken down, the cost will be the responsibility of the applicant? Since moving into my home I have had to remove quite a few trees which died as a result of damage done to them during the construction of my house.

Respectively,
Susan McNeill
2 Kings Court
Kittery ME

**Town of Kittery Maine
 Town Planning Board Meeting
 May 22, 2014**

Town Code Amendment - Title 16.10.9.1.4. Approved Plan Expiration, Title 16.10.9.1.5 Requests for Extension and Title 16.9.3.8 Expiration of Wetlands Alteration Approval. Proposed amendment reduces the period of time in which extensions can be granted and modifies the process for extension requests.

PROJECT TRACKING

| REQ'D | ACTION | COMMENTS | STATUS |
|-------|---------------------------------------|---|--------|
| YES | Discussion | 1/23/14, Continued to 3/13/2014 | |
| YES | Schedule Public Hearing | Scheduled 5/22; ran in legal section in the Portsmouth Herald for Sat.5/10 and again for Wednesday 5/14 | |
| YES | Public Hearing | | |
| YES | Review/Recommendation to Town Council | 1/23/14/Pending | |

Background

The prior amendment was not approved by Town Council, see packet info from 1/23/14. This amendment review was continued by the Board for input by staff and a member of the Code Subcommittee, and continued again, 3/13/14, for input by subcommittee. The attached amendment reflects those changes. *16.9.3.8 Expiration of Wetlands Alteration Approval* was added to the amendment since it has similar language and issues. With the addition of 16.9.3.8 another public hearing is warranted.

Recommendation

Staff recommends the Board, identifying no issues at the public hearing, move to recommend adoption by the Town Council and schedule the proposed amendment to be discussed at the June 2nd joint workshop with the Town Council.

1
2 The following amendments are recommended by Staff and PBCS review:

3
4 **Chapter 16.10 DEVELOPMENT PLAN APPLICATION AND REVIEW**

5
6 **Article IX. Post Approval**

7 **16.10.9.1 Post Approval Actions Required.**

8
9 **16.10.9.1.4 Approved Plan Expiration.**

10
11 A. ~~An approved subdivision plan's approval by the Planning Board will expire if work on the development~~
12 ~~has not commenced within one (1) year from Planning Board date of approval. or Where work has~~
13 ~~commenced within one (1) year of approval, is not substantially such approval will expire unless work is~~
14 ~~complete within three (3) years from of the original date of Planning Board approval. The Planning Board~~
15 ~~may, by formal action, grant extensions for an inclusive period from original approval date not to exceed~~
16 ~~ten (10) years.~~

17
18 B. ~~A non-subdivision~~ For all other development plans, plan's approval by the Planning Board approval
19 will expire if work on the development has not commenced within one (1) year from date of approval. or
20 Where work has commenced within one year of approval, such approval will expire if work is not
21 substantially complete within two (2) years from of the original date of Planning Board approval. The
22 Planning Board may, by formal action, grant extensions for an inclusive period from original approval
23 date not to exceed three years.

24
25 C. The Planning Board may, on a case-by-case basis, grant extensions to an approved plan expiration
26 date upon written request by the developer for an inclusive period from the original approval date, not to
27 exceed five (5) years for a subdivision plan and three (3) years for all other development plans.

28
29 D. When a plan expires the applicant may re-apply subject to the current Town Code

30
31 **16.10.9.1.5 Requests for Extension.**

32 ~~The Planning Board may grant extensions to expiration dates upon written request by the developer, on a~~
33 ~~case-by-case basis. {Modified and moved to C. above}~~

34
35 **Chapter 16.9 DESIGN AND PERFORMANCE STANDARDS - NATURAL ENVIRONMENT**

36 **Article III. Conservation of Wetlands Including Vernal Pools**

37
38 **16.9.3.8 Expiration of Wetlands Alteration Approval.**

39 Wetlands Alteration Approval will expire if work on the development has not commenced within one (1)
40 year of Planning Board date of approval. or is not substantially Where work has commenced within one
41 (1) year of approval, such approval will expire unless work is complete within (2) two years of the original
42 approval date., the approval for work in the wetlands will expire. The Board may, by formal action, grant
43 extensions to the approval, not to exceed period specified in 16.10.9.1.4.C, provided the request is
44 submitted to the Board prior to the expiration of approval.

Town of Kittery Maine Town Planning Board Meeting May 22, 2014

Town Code Amendment - Title 16.8.10.1 Signs – Propose and Title 16.8.10.2 Signs – General Requirements. Action: hold public hearing, review amendment and make recommendation to Town Council for adoption. Proposed amendment requires adherence to Kittery Design Handbook.

PROJECT TRACKING

| REQ'D | ACTION | COMMENTS | STATUS |
|-------|---------------------------------------|---|--------|
| YES | Discussion | 4/24/2014 | |
| YES | Schedule Public Hearing | Scheduled 5/22; ran in legal section in the Portsmouth Herald for Sat.5/10 and again for Wednesday 5/14 | |
| YES | Public Hearing | Pending | |
| YES | Review/Recommendation to Town Council | Pending | |

See attached RTC

REPORT TO KITTERY TOWN PLANNING BOARD – Meeting Date May 22, 2015
TOWN CODE TITLE 16 AMENDMENT –
SIGN STANDARDS – CHARACTER AND APPEARANCE

1 **To: Town Planning Board**
2

3 **Subject: Town Code Title 16 Amendment - Sign Standards – Character and Appearance**
4

5 **From: Gerry Mylroie, AICP, Town Planner/Director of Town Planning and Development**
6

7 **Summary:**

- 8 • Amendment clarifies that signs are subject to the same design standards as commercial
9 buildings.
10

11 **Background:**

- 12 • Town’s can plan, design and achieve a unique character and appearance to increase overall
13 property value. Kittery does this in part via its sign standards which also increases public safety.
14 • Kittery’s Town Code Title 16 Land Use and Development Code:
15 ○ “is designed for all the purposes of zoning embraced in Maine Revised Statutes, and
16 created as an integral part of a growth management program, comprehensive planning
17 and implementation process for the Town to promote the health, safety and general
18 welfare of its residents.”
19 • This includes implementation of the adopted Comprehensive Plan vision:
20 ○ “to preserve and enhance Kittery’s New England small, seacoast and historic town
21 character and appearance.”
22 • Per Town Code Sections 16.3.2.11.3, 4, and 5 all development and the use of land within the
23 commercial zones must meet standards such as b. Building Design Standards, including exterior
24 building materials and details, roofs, and landscaping/site improvements.

25 For example

- 26 •

27 **3. C-1 Zone Standards.**

28 All development and the use of land within the C-1 zone must meet the following standards:

29 a. Parking.

30 All new or revised parking must be visually screened by landscaping, earthen berms, and/or fencing
31 from adjacent public streets or residential properties (See the Design Handbook for appropriate
32 examples).

33 (Ordained 9/26/11; effective 10/27/11)

34 b. Building Design Standards.

35 Kittery’s characteristic buildings reflect its historic seacoast past. The primary architectural styles are
36 New England Colonial (such as Cape Cod and saltbox), Georgian, Federal, and Classical Revival.
37 New buildings must be compatible with Kittery’s characteristic styles in form, scale, material, and
38 color. In general, buildings should be oriented to the street with the front of the building facing the
39 street. The front or street facade must be designed as the front of the building. The front elevation
40 must contain one or more of the following elements: (1) a “front door” although other provisions for
41 access to the building may be provided, (2) windows, or (3) display cases (See Design Handbook for
42 examples of acceptable materials and designs). Strict imitation is not required. Design techniques can
43 be used to maintain compatibility with characteristic styles and still leave enough flexibility for
44 architectural variety. To achieve this purpose, the following design standards apply to new and
45 modified existing building projects:

46 i. Exterior Building Materials and Details.

REPORT TO KITTERY TOWN PLANNING BOARD – Meeting Date May 22, 2015
TOWN CODE TITLE 16 AMENDMENT –
SIGN STANDARDS – CHARACTER AND APPEARANCE

1 Building materials and details strongly define a project’s architectural style and overall character (See
2 Design Handbook for examples of acceptable materials, building scale, and designs). “One-sided”
3 schemes are prohibited; similar materials and details must be used on all sides of a building to
4 achieve continuity and completeness of design. Predominant exterior building materials must be of
5 good quality and characteristic of Kittery, such as horizontal wood board siding, vertical wood boards,
6 wood shakes, brick, stone or simulated stone, glass and vinyl, or metal clapboard. “

- 7 • (Ordained 9/26/11; effective 10/27/11)

- 8
- 9 • While signs are part of the exterior of a building and subject to exterior standards noted above,
10 the amendment is necessary to clarify the same design standards apply to signs including their
11 frames and/or supporting structures.

12
13 **Current Status Before Town Planning Board:**

- 14
- 15 • Town Council must approve the Town Code Amendments.
- 16 • Town Planning Board accepted the amendment and scheduled a public hearing.
- 17 • Town Planning Board may recommend approval to Town Council.
- 18 • Purpose, findings, and intent are described in purpose section (See Encl 1).
- 19 • Amendment is in the proper form and format for passage.

20
21 **Recommendation:**

- 22 • Town Planning Board open and close the public hearing.
- 23 • If ok, move to transmit the Town Code amendments to Title 16. Article X, Signs with a
24 recommendation to adopt as presented.
- 25 • If, desire additional amendments, move to amend the amendments and transmit the
26 Town Code amendments to Title 16, Article X, Signs with a recommendation to adopt as
27 presented.

28
29 **Enclosures:**

- 30 1. Title 16 Amendments

31

REPORT TO KITTERY TOWN PLANNING BOARD – Meeting Date May 22, 2015
TOWN CODE TITLE 16 AMENDMENT –
SIGN STANDARDS – CHARACTER AND APPEARANCE

1 Enclosure 1 DRAFT FOR TOWN PLANNING BOARD REVIEW

2
3 **Kittery Town Code Title 16 Land Use and Development Code**
4 **Chapter 16.8 DESIGN AND PERFORMANCE STANDARDS – BUILT ENVIRONMENT**

5
6 **Article X. Signs**

7 **16.8.10.1 Purpose.**

8 The purpose of this ~~article section~~ is to implement the adopted Town Comprehensive Plan. This includes
9 the vision to preserve and enhance Kittery’s New England small, seacoast and historic town character
10 and appearance. Also, the purpose is to balance the need for adequate identification and advertising for
11 land uses to promote the economic well-being of the Town with the need to protect the public safety and
12 maintain and enhance the physical appearance of the community. This objective is to be achieved by:

13 A. Establishing and enforcing sign and graphic design standards described in the Kittery Design
14 Handbook that includes examples of acceptable materials and designs.

15 B. Allowing adequate signage for the effective use of signs as a means of identifying, advertising and
16 communication of land uses;

17 C. Establishing the appropriate bounds for location, size, number, type and use of signs to protect traffic
18 safety, preserve property values and to promote visual order and clarity; and

19 D. Establishing procedures and regulations for the fair and consistent administration and enforcement of
20 these sign restrictions.

21 **16.8.10.2 General Requirements.**

22 A.-I. Any sign not expressly permitted herein is prohibited.

23 B. All signs including their frames and supports must comply with Kittery’s characteristic styles in form,
24 scale, material and color per the Kittery Design Handbook, hereby adopted as part of this Town Code.
25 The primary architectural styles are New England Colonial (such as Cape Cod and saltbox) Georgian,
26 Federal and Classical Revival.

27
28 RECODIFICATION - ORDAINMENT – 07/26/2010 (With amendments Ordained 9/26/11; 1/23/12; 5/30/12 and 9/24/12)

29 Page | 194

30

**Town of Kittery
Town Planning Board Meeting
May 22, 2014**

Quality Improvement Plan for Kittery Shore and Harbors

Town advisory committee is transmitting draft plan for Town Planning Board review, hearings and recommendation to Town Council for adoption. The QIP Plan is a specific plan that includes goals/policies and implementation strategies for improving/protecting the Town's shores and harbors. Town Planner, Gerald R. Mylroie, ACIP will make a presentation.

PROJECT TRACKING

| REQ'D | DESCRIPTION | COMMENTS | STATUS |
|--------------|--------------------------------|--|----------------------------------|
| Yes | Public Forums | | June 5, 2013 November 7, 2013 |
| | Draft Document | Provided at the April 24, 2014 meeting | 4/14/14 |
| | Public Hearing | Scheduled for May 22, 2014 | |
| | Recommendation to Town Council | | |
| | | | |

Following numerous meetings of the Shore & Harbor Committee, the 2013 Shore and Harbor Plan is presented in draft format (4/14/14) for your review and consideration.

Hold Public Hearing and make recommendation to the Town Council for adoption.

**PLEASE BRING DRAFT REPORT PROVIDED AT THE
4/24 MEETING**

DRAFT 04-14-14



2014 Quality Improvement Plan for Kittery's Shore and Harbors

WRIGHT-PIERCE 
Engineering a Better Environment



TABLE OF CONTENTS

Acknowledgements

Part 1 – Plan Purpose and Process

- 1.1 Summary of Plan Purpose
- 1.2 The Planning Process
- 1.3 Implementation

Part 2 – Kittery’s Shore and Harbor Assets, Goals and Implementation Strategies

- 2.1 Introduction and History
- 2.2 Shore and Harbor Assets
 - A. Kittery Point Village/Town Dock/Frisbee Pier
 - B. Kittery Foreside (including Government Street Pier and Adjacent Areas)
 - C. Traip Boat Launch
 - D. Rice Avenue Neighborhood
 - E. Eagle Point
 - F. Fort McClary
 - G. Fort Foster
 - H. Seapoint Beach
 - I. Crescent Beach
 - J. Rachel Carson Refuge
 - K. Braveboat Harbor
 - L. Isle of Shoals
 - M. Wood Island
 - N. Spinney Creek
 - O. Spruce Creek
 - P. Chauncey Creek

Part 3 – Policy-Related Enhancements

- 3.1 Introduction
- 3.2 Desired Policy Updates
 - A. Public Access
 - B. Navigational Considerations
 - C. Clean Beaches
 - D. Clam Flats and Aquaculture
 - E. Funding for Capital Improvements and Maintenance
 - F. Coordination between the Municipal Government, Navy Yard and Kittery Port Authority

- G. Mitigation of Shoreline Erosion
- H. Mitigation of Water Pollution
- I. Planning for Long Term Sea Level Rise/Climate Change

Part 4 – Implementation Program Summary

- 4.1 General
- 4.2 Implementation Program
- 4.3 Community Priorities
- 4.4 Project Funding

Part 5 - Appendices

- A – Kittery Shore & Harbor Maps
- B – First Public Forum
- C – Second Public Forum
- D – Coordination with Kittery’s Comprehensive Plan/Growth Management Program



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- Nancy Colbert Puff – Town Manager
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- Bob Melanson – Kittery Port Authority, Town Planning Board
- Mike Blake – Town Harbormaster
- Tom Allen – Owner, Kittery Point Yacht Yard
- Dave Kaselauskas – Owner, *Jersey Girl*
- Richard Demarco, Jr. – Kittery Parks Commission
- Debbie Driscoll – Town Planning Board

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All oblique aerial photographs © Pictometry International Corporation

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Part 1 – Plan Purpose and Process

1.1 Plan Purpose

The Quality Improvement Plan for Kittery’s Shore and Harbors is a specific plan to implement the adopted Town of Kittery Comprehensive Plan and recommend updates and projects to the year 2020. The Plan is intended to identify community needs with respect to both physical and policy-related enhancements to shore and harbor-related facilities within the community. In addition, the Plan should include prioritization for implementation of the identified enhancements, and provide guidance with respect to the implementation. The Plan builds off earlier planning efforts, much of which was tied to the last update of the community’s Comprehensive Plan. Information relative to coordination with the Comprehensive Plan is included in the Appendices.

1.2 The Planning Process

The planning process was developed to incorporate input from a variety of interests, including business and natural resource oriented organizations, boating interests, tenants, commercial fishermen, tourists, the Kittery Port Authority, the Kittery Planning Board, the Town Council, and others.

Meetings were held monthly between the Planning Consultant and the Plan’s Steering Committee.

Town Public Forums were conducted on June 5, and November 7, 2013, and each drew in excess of 40 attendees. In addition, representatives from Wright-Pierce and committee members engaged in a number of discussions with other members of the community, business people and regulators to ensure that the all stakeholder groups had provided input into the process.

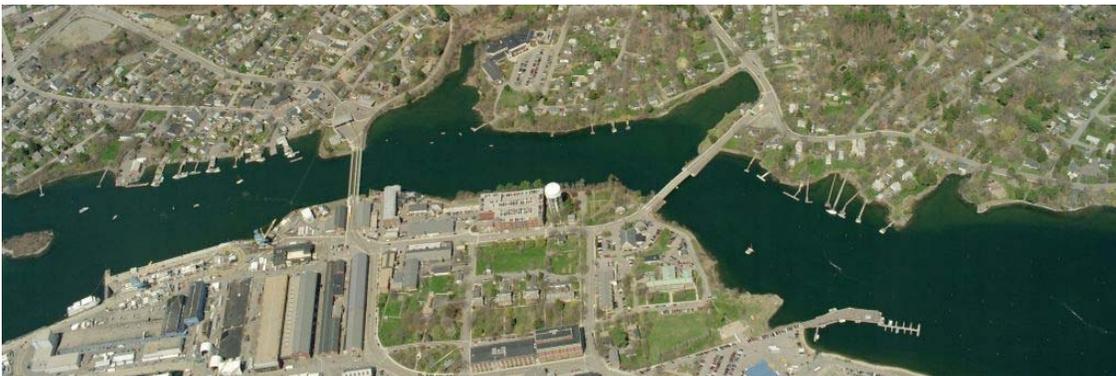
We are confident that this community participation process has resulted in a Shore and Harbor Plan that identifies key physical and policy-related improvements and includes appropriate strategies to encourage sustainable, ecologically-oriented, tourist opportunities and active harbor facilities capable of accommodating commercial and recreational uses, and that the goals identified enjoy support from the residents of the community.

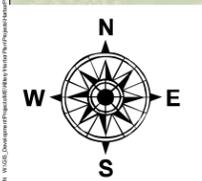
1.3 Implementation

The sections of this Shore and Harbor Plan discuss the specific goals that were identified by the Community as well as the range of implementation strategies that have been developed in response to those Goals. Section 5 of the Plan discusses the implementation strategies in the context of responsibility for implementation as well as financial considerations.

To achieve the goals that have been identified through the performance of this public planning process, citizens, Town officials and local business owners have a number of implementation strategies to consider. Each could act independently to try to accomplish their goal, however, working together offers greater opportunities for success. In summary, implementation strategies involve working together to adopt town ordinances and implement programs and projects. The various implementation strategies include:

1. Implementing the projects identified in the Plan for the various shore and harbor locations within the community.
2. Including projects within the appropriate sections of the Town's Capital Improvement Program.
3. Continuing to fund capital maintenance and improvements.
4. Seeking additional federal, state, and private funding and investment.
5. Updating land use development ordinances where appropriate for resource protection and / land use improvement.
6. Coordinating with Federal and State agencies relative to planned improvements.
7. Where appropriate, encouraging private development and conservation organizations to implement the plan.





| | | |
|----------------------------------|-------|-----------------|
| KITTERY HARBOR PLAN | | |
| Public Workshop | | |
| PROJ. NO: | 12681 | DATE: 11/6/2013 |
| WRIGHT-PIERCE | | FIGURE: |
| Engineering a Better Environment | | N/A |

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Part 2 – Kittery’s Shore and Harbor Assets, Goals and Implementation Strategies

2.1 Introduction and History

To proceed with a Planning effort associated with Kittery’s Shore and Harbors, it was necessary to inventory and assess the community to understand the nature and extent of what currently exists. The assessment included a review of:

- Municipally Owned Shoreline Areas;
- Town Piers, Wharves and Floats;
- Mooring Areas;
- Commercial Fishing, Shellfish and Aquaculture Resources; and
- Ecologically Sensitive Areas.

The inventory and assessment was completed through a review of past plans, reports and maps, discussions with Committee members, and visits to the various sites.

In undertaking a Planning effort associated with Kittery’s Shore and Harbors, one cannot fail to develop an appreciation for the extensive history of maritime activities that exists in this area, as well as a grasp of how the early development of the community was integrally tied to Shore and Harbor issues.

Settlement around the natural harbor of the Piscataqua River estuary began as early as 1623. The Town of Kittery was incorporated in 1647, hence it is generally considered the earliest incorporated Town in Maine. Fishing, shipbuilding and shipping of cargoes were the mainstays of the early economy Land and water-based routes connecting into the interior provided access to lumber, furs and other products that were the foundation of much of the export trade of colonial times.

From the very beginning, the mouth of the Piscataqua was a key location for shipbuilding. Badger’s Island was home to several early shipyards and saw the launching of the USS *Ranger* which was commanded by John Paul Jones during the Revolution. The nation’s first naval shipyard, Portsmouth Naval Shipyard, was established in 1800 and continues to be one of the area’s major employers to this day.

Development patterns and transportation networks that we see today are the result of the influences of Kittery’s past role as a maritime community.



2.2 Shore and Harbor Assets

The map preceding this section (as well as more detailed mapping included in Appendix A) provides an overview of the community as a whole, and identifies the locations of a number of the following locations, which have been determined to be key shore and harbor resources and which are the subject of this Plan.



A. Kittery Point Village/Town Dock/Frisbee Pier

This area comprises one of the community's key anchorages and provides access for recreational and commercial boaters via two separate municipally-owned piers and systems of floats. One of the two piers was recently reconstructed and the other is slated for reconstruction in 2014, utilizing funding from the state and federal governments under a Boating Infrastructure Grant (BIG). The Town's harbormaster maintains an office at this location, and there is a public boat launch located at the site. Note that the conditions of the grant funding dictate that the facility must be available to transient recreational vessels. It is hoped that the project will include addressing limitations in the utility service to the pier facilities.

Identified limitations of the existing facilities include: wave protection for the anchorage, utility service, parking and storage space for dinghies.

Based upon the work of the Committee and through outreach efforts that included public meetings, the following goals and implementation strategies/projects were identified:

1. Town Goal(s)

Enhance facilities and services to meet the needs of residents and visitors without negatively impacting the adjacent neighborhood.

2. Implementation Strategies/Projects

- a. Implement pier improvements contemplated under the Boating Infrastructure Grant (“BIG”) Project
- b. Explore means to expand parking.
- c. Investigate the potential for wave attenuation for Pepperrell Cove.
- d. Expand space available for dinghies.
- e. Consider launch services for access to moored vessels.
- f. Increase potable water & pumpout facilities for vessels.
- g. Assess the need for future federal dredging in support of long-term viability of the mooring basin.



- B. Kittery Foreside (Including the Government Street Pier and Adjacent Areas)
Kittery Foreside appears to offer a number of opportunities, and significant interest was expressed during the public input process with respect to the potential development of additional facilities due to its location adjacent to the most developed part of the community. At the same time, the nature and extent of the existing development, together with the proximity of the Naval Shipyard, seem to offer some of the greatest constraints.

After review of the nature and intensity of uses within the area, it was determined that the public access point in the vicinity of Warren’s offers a better opportunity for increased access by recreational boaters than the Government Street pier.



The Government Street Pier is used primarily by commercial fishermen for loading and unloading their vessels. A review of anecdotal information did not provide a date for the original construction of the pier, although photographic evidence suggests that there has been a municipal pier at this location since at least 1936. The condition of the piles and pile caps seems consistent with reports that the facility was substantially reconstructed following the two major coastal storms in the winter of 1978. The decking, railings and curbing were replaced in 2009 with pressure treated materials.

The current configuration of the pier is generally rectangular, extending to a length of about 36 feet from shore, approximately 32 feet wide. The geometry is slightly skewed. No floating docks (“floats”) are present, hence access to vessels is via the face of the pier, with use of a fixed ladder depending on the tide.

The pier is of timber construction, supported primarily on driven timber piles with 12x12 pile caps, 3 x10 cross bracing, 6 x12 stringers (joists), 3 x 12 decking. The pier is connected to a stone masonry abutment/retaining wall.



Based the work of the Committee and through outreach efforts that included public meetings, the following goals and implementation strategies/projects were identified:

1. Town Goal(s)

Enhance facilities and services to meet the needs of both residents and visitors to the community, in a way that is sensitive to the needs of commercial fishermen.

2. Implementation Strategies / Projects

- a. Implement capital maintenance improvements to the Government Street pier in support of commercial fishing uses (hoist, safety railings, potable water, etc.)
- b. Explore means to create public outdoor seating/viewing.
- c. Explore the feasibility of water taxi service with Portsmouth.
- d. Look for opportunities to expand public parking.
- e. Explore means to expand recreational boat access without adverse impact to commercial fishing interests.
- f. Explore the feasibility of constructing a new dock in conjunction with Warren's.
- g. Explore the feasibility of water taxi service with Portsmouth.

- h. Explore means to create public outdoor seating/viewing.

C. Traip Boat Launch

The Town maintains a public boat launch adjacent to Traip Academy. The launch is heavily used during the summer, and on weekends during the late spring and early autumn. The school and boat launch utilize the same parking areas, which is possible due to the relative timing. Approximately 15 moorings exist within the area.



The two potential areas of enhancements were those of the floats along the boat launch itself and parking. The KPA is currently working to expand the floats and hopes to be able to implement this in 2014 or 2015. There was some debate with respect to the issue of expanded parking. The facility is co-located with the Traip school and parking for the boat launch is available during periods when school is not in session (not surprisingly, the boat launch sees most of its use during the summer and on spring/fall weekends when school is not in session). There does not appear to be justification for construction of additional parking at this time, but the situation should be monitored.

The Kittery Port Authority is currently engaged in a project to extend the floats available for loading and unloading of boats at this site, using funding from the Small Harbor Improvement Program (SHIP) administered by the Maine Department of Transportation.

Based the work of the Committee and through outreach efforts that included public meetings, the following goals and implementation strategies/projects were identified:

1. Town Goal(s)

Enhance facilities and services to meet the needs of residents and visitors.

2. Implementation Strategies / Projects

- a. Proceed with implementation of the planned expansion of the floats.
- b. Continue to monitor potential parking issues at this location.



D. Rice Avenue Neighborhood

The Town owns an undeveloped shorefront parcel of about 1.25 acres with access onto Rice Avenue which was identified as offering opportunities for enhanced public access. The site possesses frontage on the Piscataqua River across from the upper end of Badger's Island, as well as a tidal channel that extends into an open saltmarsh just north of the site. There is visible erosion of the shoreline along the riverfront.



The Rice Avenue site appears to offer significant opportunity as a public point of access to the community's waterfront, although significant concern was expressed relative to the substantial currents that exist nearby that constitute a risk for boaters (especially those in kayaks) that may be unfamiliar with boating hazards in the area. The site also abuts residential properties. Given those concerns, it appears that a waterfront park with limited hours of use and passive recreation opportunities may be the best fit.

Based the work of the Committee and through outreach efforts that included public meetings, the following goals and implementation strategies/projects were identified:

1. Town Goal(s)

Creation of facilities to serve residents and visitors without negatively impacting the existing residents.

2. Implementation Strategies

Consider potential use of the site for passive recreational uses that are sensitive to the adjacent residences.

E. Eagle Point

Eagle Point is a sizeable municipally-owned parcel (approximately twenty acres) with substantial shoreline frontage on the Spruce Creek estuary. The site is the former home of the community's wastewater treatment facilities, which were relocated a number of years ago to take advantage of more appropriate receiving waters.



The site appears to offer significant opportunity for enhanced public access due to its size, accessibility and scenic nature. Anecdotal evidence suggests

that the community had explored use of the site, from a public recreational standpoint, some years ago. Planning for the site will need to consider the potential for impacts to the abutting residential neighborhoods.



Based the work of the Committee and through outreach efforts that included public meetings, the following goals and implementation strategies/projects were identified:

1. Town Goal(s)

Creation of facilities to serve residents and visitors, without negatively impacting the existing residents.

2. Implementation Strategies

Undertake a public process to develop a plan for tapping into this sites potential in a way that balances impacts to adjacent neighborhoods and addresses the ecological sensitivity of the area.

F. Fort McClary

Fort McClary is a 27 acre state park on the site of several former fortifications, dating back into the 1680's. A permanent fort was constructed in 1715 including redoubts with several cannon. The fort was upgraded again and given its current name shortly before the War of 1812, and was manned to defend the harbor and Naval Shipyard during subsequent conflicts, including the American Civil War. The current blockhouse and several other features were renovated in 1987.



Based the work of the Committee and through outreach efforts that included public meetings, the following goals and implementation strategies/projects were identified:

1. Town Goal(s)

Enhanced capacity for accommodating transient boaters to the community, through proving an anchorage area for large transient vessels (i.e. over 75').

2. Implementation Strategies

Review bathymetry and navigational charts and assess impacts to current commercial fishing interests in the event the community was to designate an anchorage area for large transient vessels.

G. Fort Foster Park

Fort Foster is one of the community's most significant waterfront properties. As its name suggests, the facility once served as a military installation offering protection to the mouth of the Piscataqua River, Portsmouth Harbor and the Portsmouth Naval Shipyard. While initial planning for a fort to provide coastal defense at the mouth of the estuary was planned in the 1870's, the fort was constructed starting in 1899, following the Spanish American War. Additional modifications and addition of batteries continued into the Second World War, and remnants of many of the structures remain to this day.



The Park consists of approximately 89 acres of mixed terrain with extensive shoreline, varying from gravelly beaches to ledges and rocky promontories. A number of valuable habitats are present, including coastal wetlands.

The facility offers parking and public restrooms, as well as a pier, and has a pavilion that can be reserved for functions and events for up to 100 people. The Fort Foster pier has been determined to be a popular destination for visitors to the park, but it has deteriorated over the years and has been damaged by storms in recent years. The Town has considered restoration of the pier, but the cost would be significant. Further studies may be warranted to establish future uses for the pier in order to confirm the necessary level of reconstruction and justify the investment.

The facility is open primarily during the summer months and is jointly managed by the Parks Commission, Recreation Department and Public Works Department. The facility is a key recreational amenity for the community.

Based on the work of the Committee and through outreach efforts that included public meetings, the following goals and implementation strategies/projects were identified:



1. Town Goal(s)

Maintain, modify and enhance the current facilities and services to meet the needs of residents and visitors alike.

2. Implementation Strategies

Evaluate demand and uses of the pier to confirm the nature and extent of rehabilitation to allow for continued use and accessibility.

Enable public access for recreational use; especially kayaks.

Further assess interest in the potential for extending public access during periods in the spring and fall.

Monitor the wetlands with respect to the occurrence of invasive plant species.

Initiatives should be coordinated closely with the Town's Parks commission.



H. Seapoint Beach

Seapoint Beach is located on the community's Atlantic shoreline. Parking and amenities at Seapoint Beach are currently very limited, which results in a low intensity of usage. The area provides valuable habitat in the form of extensive salt marshes.

Based the work of the Committee and through outreach efforts that included public meetings, the following goals and implementation strategies/projects were identified:

1. Town Goal(s)

Enhance the cleanliness of the beach, but recognize that the relative isolation and limited use are key to the quality of place.

2. Implementation Strategies

Implement measures to enhance the cleanliness of the beach, such as signage, and enforcement of the existing "carry-in / carry-out" policy for waste. Seaweed removal will be limited to infrequent occasions when storm conditions result in unusually large depositions that become a nuisance.

Limit the number of parking spaces to restrict the number of visitors.

Avoid construction of significant amenities (such as public restrooms).

I. Crescent Beach

Crescent Beach, like Seapoint Beach, is located on the community's Atlantic shoreline, and parking and amenities are currently very limited, resulting in a low intensity of usage. In years past, the Beaches possessed more parking and a public restroom facility, but these were destroyed in the winter storms of 1978 and not replaced.



Based the work of the Committee and through outreach efforts that included public meetings, the following goals and implementation strategies/projects were identified:

1. Town Goal(s)

Enhance the cleanliness of the beach, but recognize that the relative isolation and limited use are key to the quality of place.

2. Implementation Strategies

Implement measures to enhance the cleanliness of the beach, such as signage, and enforcement of the existing "carry-in / carry-out" policy for waste. Seaweed removal will be limited to infrequent occasions when storm conditions result in unusually large depositions that become a nuisance.

Limit the number of parking spaces to restrict the number of visitors.

Avoid construction of significant amenities (such as public restrooms).

J. Rachel Carson Refuge

The Rachel Carson Refuge is a larger federal preservation area, owned and maintained by the US Fish and Wildlife Service. The refuge consists of a number of parcels located in several communities (Kittery, York and Wells) and is intended to provide both protection of habitat for a number of species of flora and fauna, as well as public access for hiking, birdwatching and related "low impact" recreational activities.



Based the work of the Committee and through outreach efforts that included public meetings, the following goals and implementation strategies/projects were identified:

1. Town Goal(s)

Explore means to enhance access/parking, but recognize that the relative isolation and limited use are key to the quality of place.

2. Implementation Strategies

Initiate discussions with the Refuge Management (US Fish and Wildlife Service) with respect to the above-stated goals. Jointly assess potential improvements.

K. Braveboat Harbor

Braveboat Harbor is located along the Atlantic shore on the boundary between Kittery and the adjacent community of York. While the Harbor provided a useful navigational refuge in times past, it presents a number of navigational hazards (including breaking surf) which can render it unsafe for unfamiliar boaters. It is primarily used by residents of the area who possess private piers and access points. The area is known for its scenic beauty, but offers little in the way of convenient public access from the landside.

Based the work of the Committee and through outreach efforts that included public meetings, the following goals and implementation strategies/projects were identified:

1. Town Goal(s)

Explore means to enhance access/parking, but recognize that the relative isolation and limited use are key to the quality of place and that expanded use would need to be considered in the context of potential impacts to the adjacent residents.

2. Implementation Strategies / Projects

Review Town-owned property within and adjacent to the area, including rights-of-access associated with the old trolley right of way that extended through the area. Consider potential impacts to adjacent residential properties.

L. Isles of Shoals

The Isles of Shoals are a cluster of small islands located approximately 6 miles southeast of the mouth of the Piscataqua River. The state boundary between Maine and New Hampshire bisects the archipelago, leaving Appledore, Duck, Smuttynose, Malaga and Cedar within the state of Maine and the Town of Kittery. The islands constitute a recreational destination and several moorings are maintained within Gosport Harbor, which is formed by

the stone breakwaters which connect Cedar, Smuttynose, Malaga and Star Islands.

According to the US Army Corps of Engineers “Work in the Isles of Shoals began as early as 1821, when private interests constructed a stone breakwater between Malaga and Smuttynose islands. In 1904, the Corps repaired and strengthened the breakwater to a length of 240 feet and constructed a second stone breakwater, 700 feet long, between Smuttynose and Cedar Islands. In 1913, the Corps repaired and strengthened the existing breakwaters and constructed a third stone breakwater, 530 feet long, between Cedar and Star islands. The breakwaters provide vessels with a safe refuge in Gosport Harbor.”

It was noted that the existing breakwater that provides shelter for the anchorage is in need of repairs.

It was also noted that demand for moorings at this location often exceeds the supply. It does not appear, however, that the harbor can accommodate additional sheltered moorings.

Based the work of the Committee and through outreach efforts that included public meetings, the following goals and implementation strategies/projects were identified:

1. Town Goal(s)

Enhanced potential for use by community residents and maintenance of existing facilities.

2. Implementation Strategies / Projects

Conduct an engineering assessment of the breakwater to determine an appropriate scope of work and budget for the rehabilitation effort, and, as appropriate, initiate discussions with the Corps of Engineers.

M. Wood Island

Wood Island is a small (1.25 acre) island located a short distance from the mainland adjacent to Fort Foster. The Island is the site of the former Wood Island Lifesaving Station.

Based the work of the Committee and through outreach efforts that included public meetings, the following goals and implementation strategies/projects were identified:



It was acknowledged that ongoing initiatives to restore the former Coast Guard lifesaving station have been politically divisive within the community, based primarily on the potential fiscal impacts. In general, stakeholders approval of the restoration in concept, but there was less than uniform support for use of municipal revenues for the project.

It was determined that the community should support restoration of the exterior of the Wood Island lifesaving station to the extent this can be accomplished without burdening the Town's finances, and in a way that is appropriate given consideration of long-term sea level rise and other environmental factors.

N. Spinney Creek

Spinney Creek is an estuary/embayment located along the municipal boundary with the community of Eliot, located at the extreme northern side of the Town's frontage along the Piscataqua River. The Creek is the site of aquaculture leases.



Based the work of the Committee and through outreach efforts that included public meetings, the following goals and implementation strategies/projects were identified:

1. Town Goal(s)

Ensure that water quality is maintained in a way to support both commercial aquaculture and recreational uses.

2. Implementation Strategies / Projects

Continue to support enforcement of land use ordinances and municipal initiatives aimed at addressing non-point source water pollution.

O. Chauncey Creek

Chauncey Creek is a narrow embayment that provides a sheltered harbor for a number of small recreational and fishing vessels toward the southern end of the Creek. The Creek has provided a valuable locale for safe mooring of vessels during severe storms. The presence of a bridge and overhead power lines limit navigation by certain craft.

Based the work of the Committee and through outreach efforts that included public meetings, the following goals and implementation strategies/projects were identified:



1. Town Goal(s)

Ensure that any future development is implemented in a way that promotes continued use by both commercial and recreational boaters.

2. Implementation Strategies / Projects

Continue to support enforcement of land use ordinances that balance landside desires with marine interests.

P. Spruce Creek

Spruce Creek is the community's largest estuary/embayment, providing frontage for a number of residential properties, but with extended areas of undeveloped shoreline. The Town has been working for some time on a variety of initiatives aimed at addressing non-point source water pollution within the estuary and its tributaries. The creek was once home to many acres of productive shellfishing areas.



Based the work of the Committee and through outreach efforts that included public meetings, the following goals and implementation strategies/projects were identified:

1. Town Goal(s)

Ensure that water quality is maintained in a way to support both commercial aquaculture and recreational uses.

2. Implementation Strategies / Projects

Continue to support enforcement of land use ordinances and municipal initiatives aimed at addressing non-point source water pollution.



Part 3 – Policy-Related Enhancements

3.1 Introduction

As noted earlier in this Plan, the identified goals and strategies included action items that could be categorized as either policy-related enhancements, or physical improvements that are connected to a specific location. This section discusses those quality improvement goals that may relate more to policy topic than a specific location within the community.



3.2 Desired Policy Updates

A. Enhanced Public Access

Through both public forums and discussion within the committee, there was much discussion relative to the issue of increased public access. It was determined that initiatives to enhance access should be focused on specific locations where the impacts of such increased access could be effectively managed. Locations where it was determined that enhancements to public access could best be accommodated are discussed in Section 4 of this Plan.

1. Town Goal(s)

Increased public access to the water, but specific projects to be considered in the context of potential impacts to other existing uses and adjacent landowners, particularly residential uses.

2. Implementation Strategies

Support implementation of related initiatives identified elsewhere within this Plan.

B. Navigational Considerations

A key component of the Shore and Harbor Planning process includes consideration of marine traffic, hence it is important that the Planning effort be informed with regard to navigational considerations.

The Piscataqua estuary, as a whole, is home to a number of navigational challenges, in many cases to the combination of rocky shoals with strong currents as tidal flow to and from the Great Bay passes through the area. The main navigational channel is a federally designated dredge project with

depths on the order of 30 to 35 feet, at mean low water. The channel extends to an upstream turning basin approximately 3.5 miles above the Memorial Bridge. Mean tidal range in Kittery Harbor is on the order of 8.7 feet.

There are numerous of ledges present, to which the reader is referred to navigational charts. Some are marked with buoys, while others are not.

In the development of this Plan, a number of locations were identified with respect to the potential for new or enhanced public access for kayaks. The Committee and consultant team endeavored to balance the desire for enhanced access with the potential safety issues associated with currents and other hazards at the locations under consideration.



1. Town Goal(s)

Improved navigational safety.

2. Implementation Strategies / Projects

Work with federal agencies to replace/upgrade the current navigational markers at the north and south ends of Badgers Island.

C. Clean Beaches

Given the overwhelming desire to maintain the Community's beaches as more natural areas, it was determined that seaweed will generally be left *in situ*, but that manmade debris will be periodically removed by municipal forces. The Town's Public Works Department may remove seaweed periodically if it accumulates to the point where it is found to be a nuisance.

The strategies commonly available for addressing dog waste include the placement of signs and the installation of dispensers for "dog waste bags" and trash receptacles for their disposal. After considerable discussion, which included review of past experience with placement of waste receptacles at these locations it was determined that the best course to pursue is increased education and enforcement of the current "carry-in / carry-out" policy for waste.

1. Town Goal(s)

Enhance the cleanliness of municipal beach areas. Public comment relative to cleanliness issues focused primarily on dog waste and man-made debris, with some requests for improved management of seaweed.

2. Implementation Strategies

Increase education and enforcement of the current “carry-in / carry-out” policy for waste.

Continue coordinating with the state Clean Beaches initiative administered by the Maine Department of Environmental Protection.

Remove seaweed only when it is determined to constitute a nuisance.

D. Clam flats and Aquaculture

The two primary factors limiting the productivity of the community’s clam flats are the presence of invasive green crabs and issues associated with water quality (primarily non-point source pollution).

State and local officials throughout the state’s southern coastal areas are working collaboratively to pilot and test the effectiveness of a range of alternative mechanisms to combat the green crab menace. The crabs have few natural predators and cost-effective solutions thus far have not been identified. Increased seeding of the flats by the community is likely to be a part of the answer.

The community, through its public works department, has been engaged in several initiatives aimed at addressing non-point source water pollution, particularly within the Spruce Creek area.

1. Town Goal(s)

Enhance the productivity of clam flats and areas suitable for aquaculture, primarily in the context of their role as a component of the local economy.

2. Implementation Strategies

Continue to monitor, and where possible, support efforts to manage depredation of juvenile clams by green crabs.

Continue to implement initiatives aimed at protecting and enhancing water quality along the community’s shorelines and within its estuaries.

E. Funding for Waterfront Improvements and Maintenance

1. Town Goal(s)

Provide adequate funding to allow for timely maintenance and capital



improvements to waterfront facilities in Kittery Foreside and other locations of municipal Shore and Harbor facilities.

2. Implementation Strategies

Assess the revenue potential associated with: marketing opportunities to transient boaters, commercial sponsorships, events (such as “Blessing of the Fleet”, etc.), business improvement district, tax increment financing district, user fees, grants, etc.

Keep abreast of available grant funding programs administered by state and federal agencies and relevant to shore and harbor facilities.

F. Coordination between the Municipal Government, Portsmouth Naval Shipyard and Kittery Port Authority.

1. Town Goal(s)

Continue to seek opportunities for enhanced communication between Kittery’s municipal government, the Portsmouth Naval Shipyard and Kittery Port Authority

2. Implementation Strategies

Consider creating a standing community task force or liaison committee to discuss Shore and Harbor issues with Shipyard management.

G. Mitigation of Shoreline Erosion

The primary mechanism for achieving this goal relates to reduction in the erosive action of boat wakes in areas with erodible shorelines. This is best done through better education and enforcement of boat speeds.



1. Town Goal(s)

Take steps to address erosion of shoreline areas within the community.

2. Implementation Strategies

Increase efforts aimed at education and enforcement of speed limits in areas with erodible shorelines.

H. Mitigation of Water Pollution

The primary sources of coastal water pollution typically include both point (wastewater and storm drain outfalls) and non-point (runoff from lawns and

agricultural areas) sources. The community is regulated by the Maine DEP as a municipal small separate storm sewer (MS4) community, and through that mechanism has been required to implement a number of measures to address water pollution.

1. Town Goal(s)

The mitigation of water pollution within coastal waters.

2. Implementation Strategies

Continue support of the MS4 program, and consider support for future related opportunities as they are identified.

I. Planning for Long Term Sea Level Rise/Climate Change

Many people within the community have some level of awareness regarding the potential for impacts associated with Long-Term Sea Level Rise and Climate Change.

The community is seeking advice with respect to confirming the accuracy of the latest version of Flood Insurance Rate Maps for coastal areas as issued by the Federal Emergency Management Agency (FEMA).

1. Town Goal(s)

Anticipate long-term sea level rise and take steps in the planning for existing and new shoreline facilities (both publicly and privately-owned) to mitigate anticipated impacts.



2. Implementation Strategies

Integrate consideration of Long Term Sea Level Rise and Climate Change into town planning and development processes, especially within shoreland areas and as related to marine facilities.

Support efforts to evaluate and, as appropriate, implement wave protection measures for the port and harbor facilities at Pepperrell Cove.

Part 4 – Implementation Program

4.1 Introduction

This section discusses actions to be taken in order to implement the identified projects established in Parts 3 and 4 of this Planning document, and likely entity(ies) having responsibility for leading the implementation effort.



4.2 Implementation Program

Town Policy – Related Implementation Strategies:

1. Continue coordinating with the state Clean Beaches initiative administered by the Maine Department of Environmental Protection.
Primary Responsibility: Kittery Public Works, Kittery Planning Office
2. Stay abreast of State and Regional initiatives to pilot and test the effectiveness of mechanisms to combat the green crab menace.
Primary Responsibility: Kittery Planning Office, Conservation Commission
3. Continue to support, through the Public Works Department, initiatives aimed at addressing non-point source water pollution.
Primary Responsibility: Kittery Public Works
4. Assess the revenue potential associated with: marketing opportunities to transient boaters, commercial sponsorships, events (such as “Blessing of the Fleet”, etc.), business improvement district, tax increment financing district, user fees, grants, etc. as mechanisms to support capital maintenance and enhancements to municipal shore and harbor facilities.
Primary Responsibility: Kittery Port Authority
5. Keep abreast of available grant funding programs administered by state and federal agencies to support capital maintenance and enhancements to municipal shore and harbor facilities.
Primary Responsibility: Kittery Port Authority
6. Consider creating a standing community task force or liaison committee to discuss community Shore and Harbor issues with Portsmouth Naval Shipyard management.
Primary Responsibility: Kittery Port Authority, Kittery Planning Office

7. Implement education and better enforcement of boat speeds as a mechanism to address the erosion issues stemming from boat wakes in “high risk” areas of the community.

Primary Responsibility: Kittery Port Authority

8. Integrate consideration of long term sea level rise into town planning and development processes especially in shoreland areas and as related to marine facilities.

Primary Responsibility: Kittery Port Authority, Kittery Public Works, Kittery Planning Office

9. Support efforts to evaluate and, if appropriate, implement wave protection measures for the port and harbor facilities at Pepperell Cove.

Primary Responsibility: Kittery Port Authority

Implementation Strategies for Specific Locations:

Kittery Point Village/Town Dock/Frisbee Pier

- Implement pier improvements contemplated under the Boating Infrastructure Grant (“BIG”) Project
Primary Responsibility: Kittery Port Authority, Kittery Public Works
- Explore means to expand parking.
Primary Responsibility: Kittery Port Authority, Kittery Public Works
- Investigate the potential for wave attenuation for Pepperrell Cove.
Primary Responsibility: Kittery Port Authority (see above)
- Expand space available for dinghies.
Primary Responsibility: Kittery Port Authority
- Consider launch services for access to moored vessels.
Primary Responsibility: Kittery Port Authority
- Increase potable water & pumpout facilities for vessels.
Primary Responsibility: Kittery Port Authority, Kittery Public Works
- Assess the need for future federal dredging in support of long-term viability of the mooring basin.
Primary Responsibility: Kittery Port Authority



Kittery Foreside – Including Government Street Pier and Adjacent Areas

- Implement capital maintenance improvements to the Government Street pier in support of commercial fishing uses (hoist, safety railings, potable water, etc.)
Primary Responsibility: Kittery Port Authority

- Explore means to create increased water access and public outdoor seating/viewing.
[Primary Responsibility: Kittery Planning Office](#)
- Explore the feasibility of water taxi service with Portsmouth.
[Primary Responsibility: Kittery Planning Office, Kittery Port Authority](#)
- Look for opportunities to expand public parking.
[Primary Responsibility: Kittery Planning Office](#)
- Explore means to expand recreational boat access without adverse impact to commercial fishing interests.
[Primary Responsibility: Kittery Planning Office, Kittery Port Authority](#)



Traip Boat Launch

- Expand the floats along the boat launch ramp.
[Primary Responsibility: Kittery Port Authority](#)
Monitor the need for construction of additional parking or implementation of parking management protocols.
[Primary Responsibility: Kittery Port Authority](#)

Rice Avenue Neighborhood

- Explore opportunities for a waterfront park with limited hours of use and passive recreation opportunities. Include consideration of potential impacts to adjacent residential uses.
[Primary Responsibility: Kittery Planning Department](#)

Eagle Point

- Undertake a public process to develop a plan for tapping into this sites potential in a way that balances impacts to adjacent neighborhoods and addresses the ecological sensitivity of the area.
[Primary Responsibility: Kittery Planning Department, Kittery Port Authority, Conservation Commission](#)

Fort McClary Area

- Review bathymetry and navigational charts and assess impacts to current commercial fishing interests in the event the community were to designate a anchorage area for large transient vessels.
[Primary Responsibility: Kittery Port Authority](#)
[Funding requirement: None for initial assessment](#)



Fort Foster Park and Pier

- Rehabilitate/modify the pier to allow for continued use and accessibility.
[Primary Responsibility: Kittery Parks Commission, Kittery Port Authority, Kittery Public Works](#)
- Enable public access for recreational use; especially kayaks.
[Primary Responsibility: Kittery Parks Commission](#)
- Assess the economics and other factors to determine the potential for extending public access to Park facilities during periods in the spring and fall.
[Primary Responsibility: Kittery Parks Commission, Kittery Public Works](#)



Seapoint Beach

- Implement measures to enhance the cleanliness of the beach, such as signage, “dog waste bags” and trash receptacles.
[Primary Responsibility: Kittery Parks Commission, Kittery Public Works](#)
- Limit the number of parking spaces to restrict the number of visitors.
[Primary Responsibility: Kittery Parks Commission](#)

Crescent Beach

- Implement measures to enhance the cleanliness of the beach, such as signage, “dog waste bags” and trash receptacles.
[Primary Responsibility: Kittery Parks Commission, Kittery Public Works](#)
- Limit the number of parking spaces to restrict the number of visitors.
[Primary Responsibility: Kittery Parks Commission](#)

Rachel Carson Refuge

- Initiate discussions with the Refuge Management (US Fish and Wildlife Service) with respect to increased access. Jointly assess potential improvements.
[Primary Responsibility: Kittery Parks Commission, Kittery Planning Office](#)

Braveboat Harbor

- Review Town-owned property within and adjacent to the area, including rights-of-access associated with the old trolley right of way that extended through the area. Consider potential impacts to adjacent residential properties.
[Primary Responsibility: Kittery Parks Commission, Kittery Planning Office](#)

Isles of Shoals

- Conduct a more in-depth assessment of current mooring areas and consideration of the potential for their expansion.
[Primary Responsibility: Kittery Port Authority](#)
- Conduct an engineering assessment of the existing breakwater to establish capital maintenance needs.
[Primary Responsibility: Kittery Port Authority](#)

Wood Island

- Support restoration of the exterior of the Wood Island lifesaving station without burdening the Town's finances.
[Primary Responsibility: Kittery Parks Commission, Kittery Planning Office](#)

Channel at Badgers Island

- Work with federal agencies to replace/upgrade the current navigational markers at the north and south ends of Badgers Island.
[Primary Responsibility: Kittery Port Authority](#)
- Request that the federal government/Corps of Engineers conduct a survey of the Back Channel with respect to the potential for future dredging.
[Primary Responsibility: Kittery Port Authority](#)



4.3 Community Priorities

As with most Plans of this nature, the number and magnitude of the desired initiatives are greater than the community can undertake within the immediate future. In order to provide some guidance to those entities tasked with implementation of the Plan, the November 7, Public Forum included elements aimed at soliciting input from community members as to their idea of priorities. The priority-setting exercises included components based both on specific locations/facilities within the community and areas of policy. The results of the exercises are as follows, with the numbers preceding the location or policy initiative representing the “votes” received for that item.

Locations:

- 15 Fort Foster
- 9 Kittery Point Village / Frisbee Pier
- 9 Seapoint Beach

- 8 Traip Boat Launch
- 7 Commercial Center / Rogers Park
- 7 Kittery Foreside / Government Street Pier
- 1 John Paul Jones



Policy Topics:

- 26 Maintain What We Have / Maintain or Increase CIP Funds
- 8 Increased Funding for Waterfront Maintenance
- 8 Storm Planning / Climate Change
- 5 Address Cleanliness of Beaches
- 5 Address Non-point Source Water Pollution
- 3 Enhanced Coordination with the Navy Yard
- 3 Maintain/Improve the Working Waterfront
- 3 Maintain/Enhance Productivity and Health of Clam Flats
- 2 Increase Public Access to Shoreline/Water

4.4 Project Funding

While a number of the identified initiatives consist of policy decisions which can be implemented with little or no fiscal impact, it is clear that many of the desired elements will require funding in order to proceed. As with most communities, The Town of Kittery and its Port Authority are subject to a number of fiscal constraints, and it is reasonable to expect that timely implementation of many of these initiatives will be depending on the availability of funding sources other than local property tax revenue. The following is an overview of potential funding sources which may be considered to support the implementation of Kittery’s shore and harbor improvement efforts. Included in this overview are:

- Shore and Harbor Grants
- Community Development Block Grants
- User Fees
- Tax Increment Financing
- MaineDEP Pump Out Grant Program
- MaineDMR Working Waterfront Access Protection Program
- Public/Private Collaboration
- Other Miscellaneous State Funding Programs



Shore and Harbor Grants

Shore and Harbor Grants are administered by the Maine Department of Agriculture, Conservation and Forestry, through the Maine Coastal Program. The Town is familiar with this funding program, having applied for and received planning grant funds through this program in support of this study effort. These funds are available by grant application on an annual basis. The Town should continue to seek funding through this program for in those cases where the grant selection criteria are consistent with the initiative. It is important to note that these funds are not eligible for any local, state or federal regulatory permitting efforts. Further information is available at: <https://www.maine.gov/dacf/mcp/grants/shore-and-harbor-planning-grants.html> or by calling the Coastal Program at (207) 287-1419

Community Development Block Grants (CDBG)

This program is a federally-funded initiative administered by the Maine Department of Economic and Community Development (MaineDECD). The purpose of the program is to provide grants to local communities to support economic and community development that primarily benefits low and moderate income persons. Federal funding to underwrite the program is provided through the U.S. Department of Housing and Urban Development (HUD).

The CDBG program consists of several grant programs that support initiative aimed at economic and community development. For the improvements identified above, the community may wish to consider applying for a Public Facilities Grant. These funds are available on an annual basis. Each year the program statement is evaluated and adjusted. Current information regarding Maine's CDBG program is available at: <http://www.maine.gov/decd/meocd/cdbg/categories.shtml>

User Fees

User fees for public facilities are not unusual and are currently in place at a number of municipal facilities within the community. They often provide a “pay as you go” source of funding to continue to fund the operations and maintenance of these facilities. It may be worth evaluating the current fee structures to ensure that they are appropriate given the benefits received by users.



Tax Increment Financing Districts (TIF's)

Tax Increment Financing is a commonly used funding mechanism in Maine in which certain designated improvements can be funded through the dedication of increased local property tax revenues resulting from private investment within a designated district. TIFs are further supported by sheltering new property valuation within the

“TIF district” from a community’s state valuation so that the community avoids losses in state aid to education and state municipal revenues sharing as well as increases in its county tax. Revenues captured within a designated TIF district can be used to fund both local costs for infrastructure and economic development efforts as well as private costs for building construction and improvements as well as site related costs. Kittery currently has three TIF districts.

More information regarding the use of TIF’s can be found at the following link:
<http://www.maine.gov/decd/start-grow/tax-incentives/tax-increment-financing.shtml>

Pumpout Grants

Pumpout Grants are administered by MaineDEP and are managed under the Maine Pumpout Grant Program funded by the United States Fish and Wildlife Service with additional funding from the Clean Vessel Act Grant Program (CVA). These CVA funds are provided annually through Maine’s Pumpout Grant Program, providing 75% of project funding for installation, operation and maintenance of boat holding tank pump out and dumping equipment to marinas, boatyards and municipalities. The Town has been in recent conversation with MaineDEP regarding these funds and should continue to do so as they are currently the most direct source of funds for such boat waste handling facilities. Applications and grant administration information is available at:

<http://www.maine.gov/dep/water/grants/pumpout/index.html>

Working Waterfront Access Protection Program

The Maine Department of Marine Resources administers the Working Waterfront Access Protection Program in cooperation with the Maine Coastal Program, Coastal Enterprises, Inc. and the Land for Maine’s Future Program.

The process involves a competitive application process and provides matching funds “to assist commercial fisheries businesses, co-ops, municipalities and other interested parties in securing strategically significant working waterfront properties. Funds can be used to purchase property, or for the purchase of access easements, rights of way, or development rights to preserve walk-in or small boat access, properties entirely dedicated to commercial fisheries uses, or mixed use properties.” Information relative to applications and grant administration is available at:

<http://www.maine.gov/dmr/council/WWAP/WorkingWaterfrontAccessProgram.shtml>

Public / Private Partnerships

The Town and Port Authority should continue discussions with key stakeholders to assess opportunities to assist in cost sharing to benefit both owner interests.

Other Miscellaneous State Funding Programs

The State of Maine periodically enacts “special” grant funding programs using revenue from state bond issues. Examples of such initiative include Riverfront Community Development Bond program and the Municipal Investment Trust Fund, both of which were administered by the Maine Department of Economic and Community Development (DECD). While this is an inconsistent funding source and may not be available to meet Kittery’s near-term project goals, the community should continue to monitor the potential for future funding sources of this nature and be prepared to be opportunistic in terms of filing applications based on eligibility of Plan initiatives.



Part 5 – Appendices

Appendix A – Relevant Maps and Plans

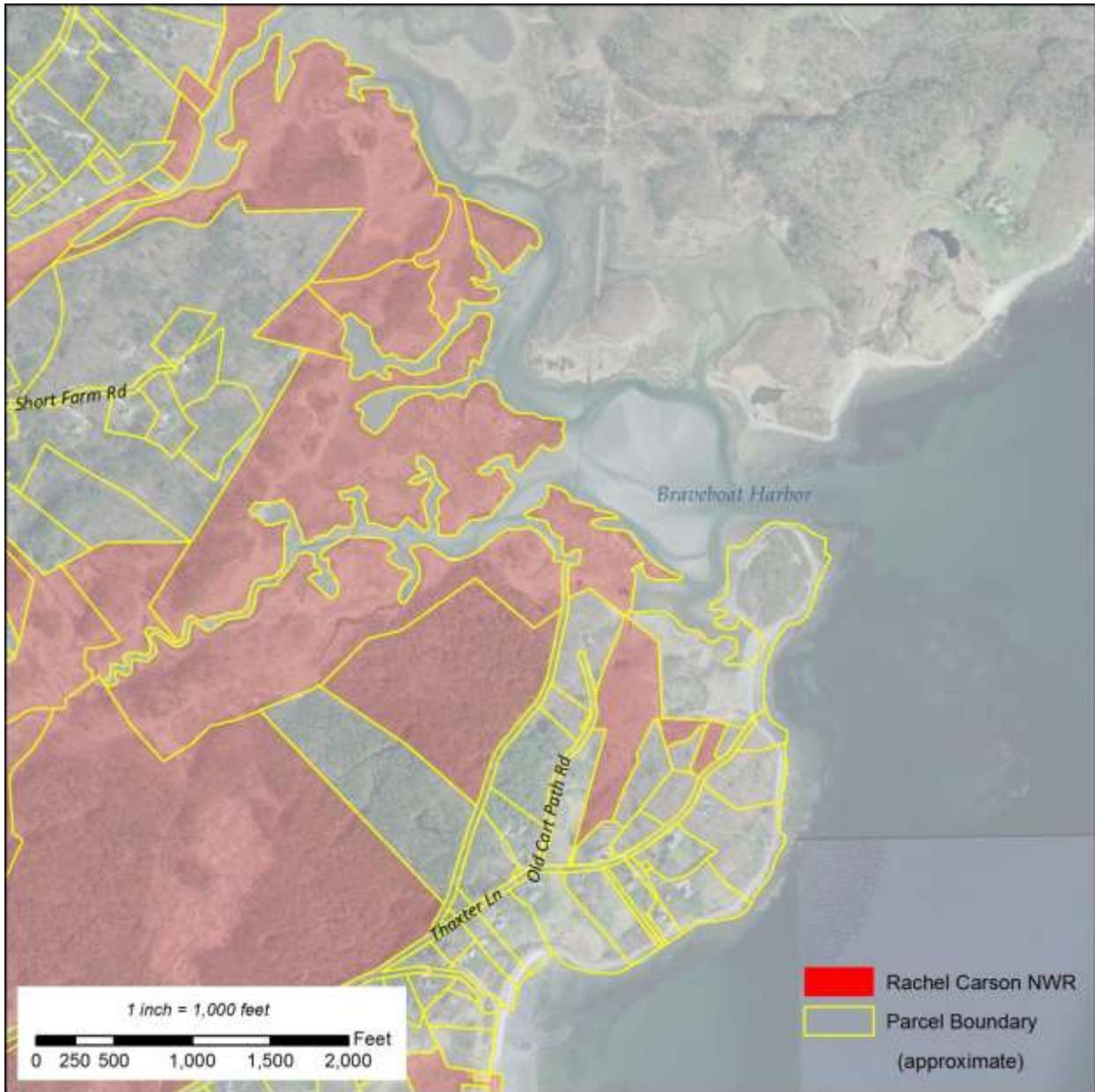
Appendix B – Materials from First Public Forum

Appendix C – Materials from Second Public Forum

Appendix D – Coordination with Kittery’s Comprehensive Plan/Growth Management Program

Appendix A

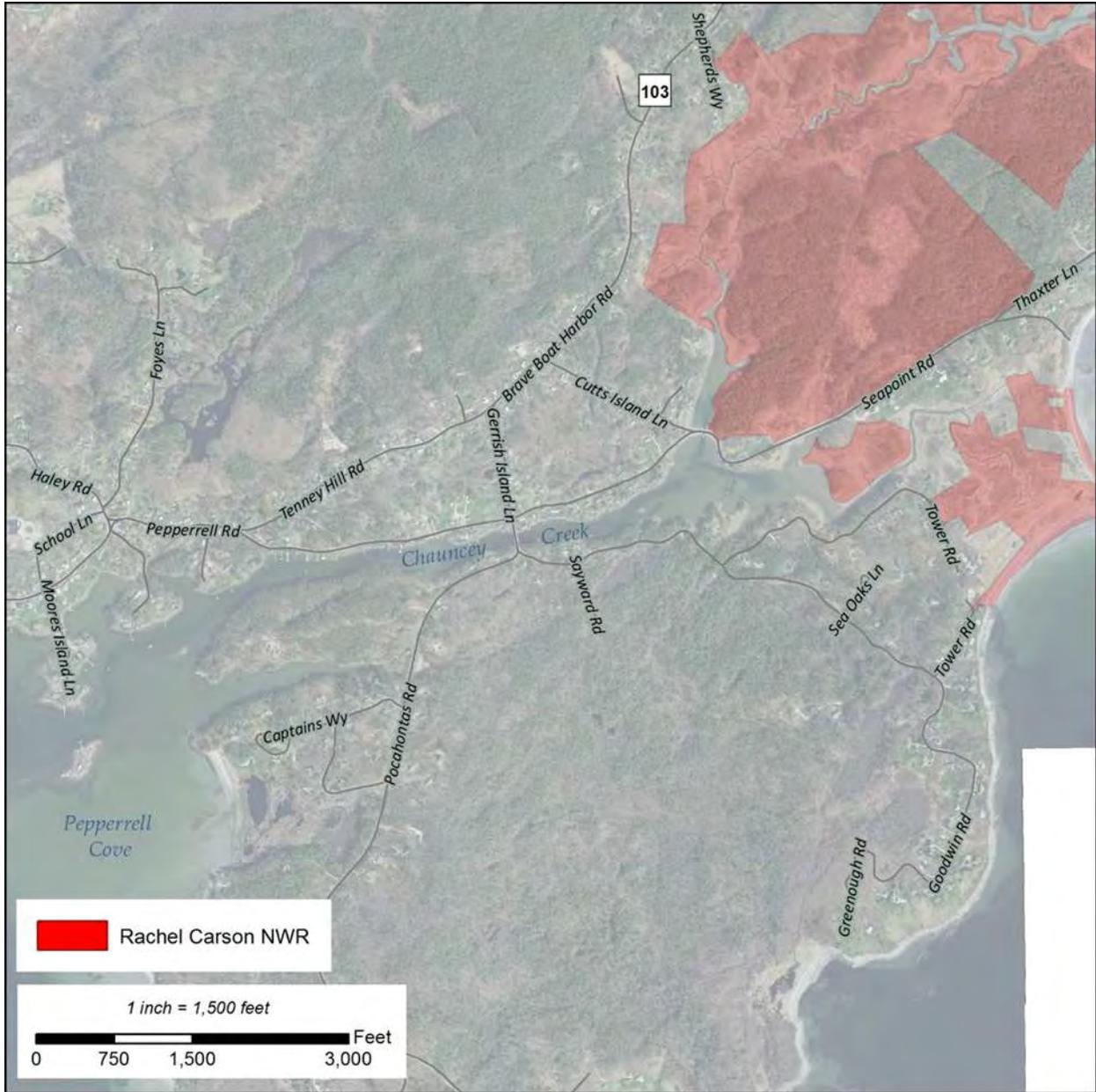
Kittery Shore and Harbor Maps



Braveboat Harbor Area Parcel Boundaries (approximate, from tax mapping)



Eagle Point Area Parcel Boundaries (approximate, from tax mapping)



**Rachel Carson Area Parcel Boundaries – See Also Map for Braveboat Harbor
(approximate, from tax mapping)**



Rice Avenue Area Parcel Boundaries (approximate, from tax mapping)



Spinney Creek Area Mapping



Government Street and Traip Area Parcel Boundaries
(approximate, from tax mapping)



**Seapoint and Crescent Beaches Area Parcel Boundaries
(approximate, from tax mapping)**

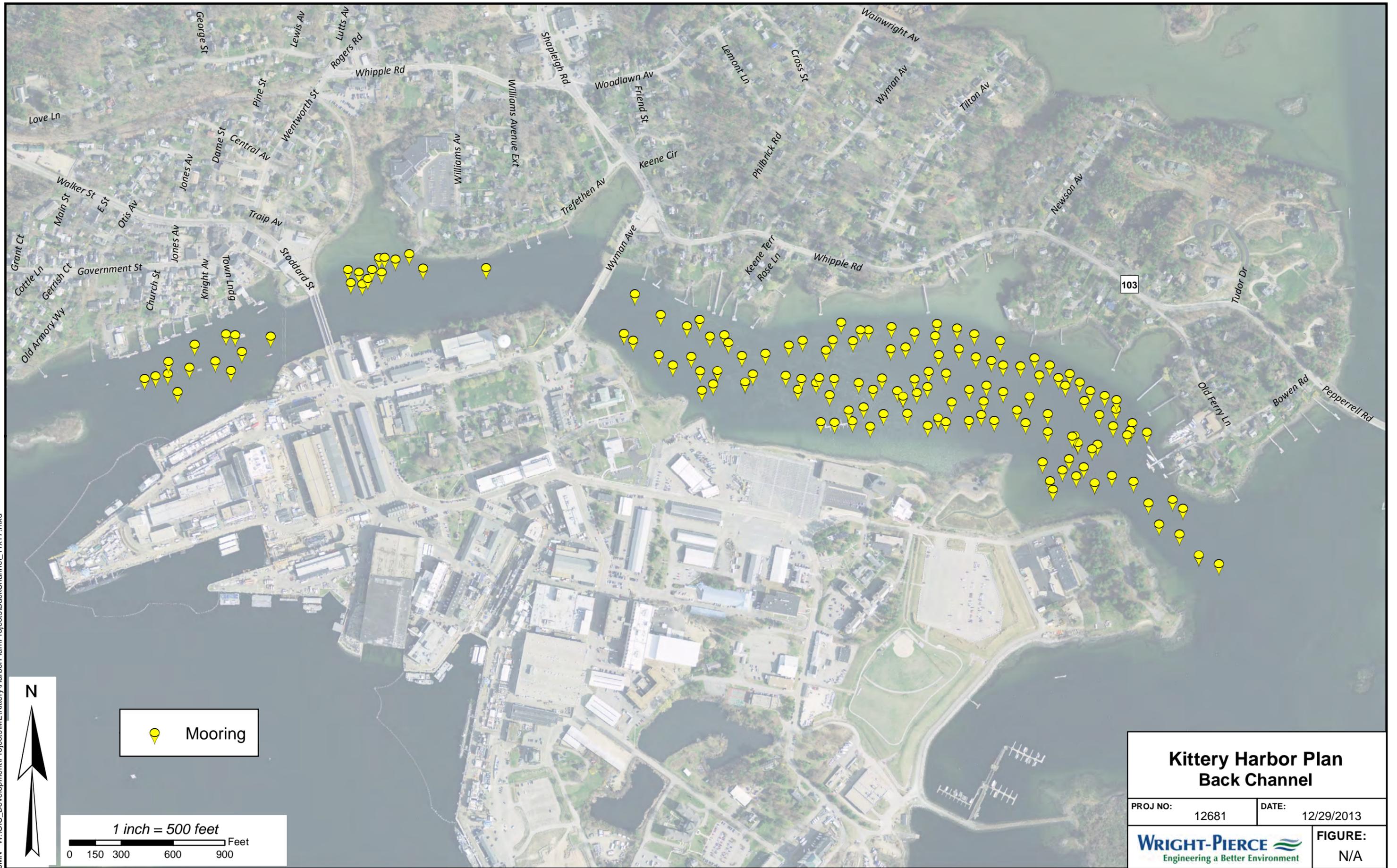


 Mooring

1 inch = 300 feet
0 150 300 600 Feet



| | |
|--|------------------|
| Kittery Harbor Plan Pepperrell Cove | |
| PROJ NO: 12681 | DATE: 12/29/2013 |
| WRIGHT-PIERCE Engineering a Better Environment | FIGURE: N/A |



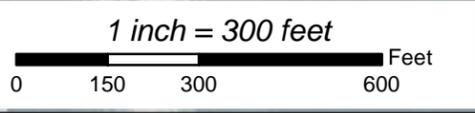
 Mooring

1 inch = 500 feet
0 150 300 600 900 Feet

| | |
|--|------------------|
| Kittery Harbor Plan Back Channel | |
| PROJ NO: 12681 | DATE: 12/29/2013 |
| WRIGHT-PIERCE Engineering a Better Environment | FIGURE: N/A |

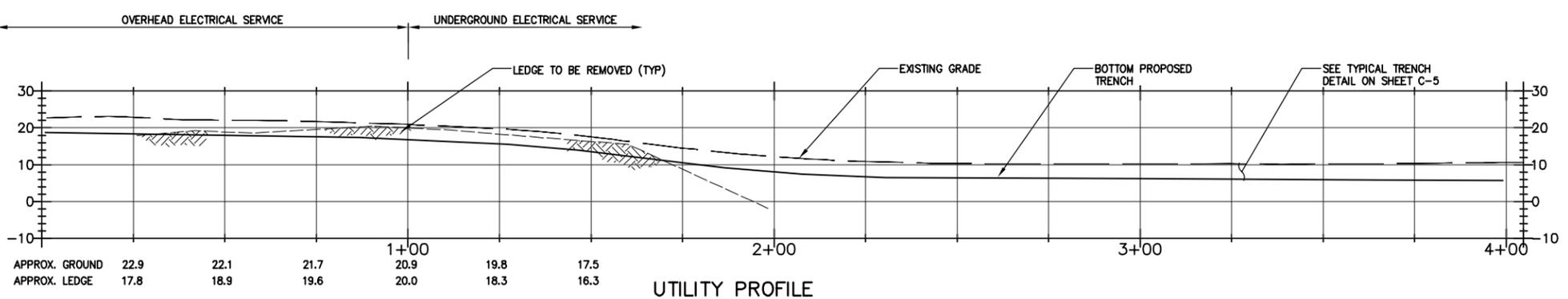
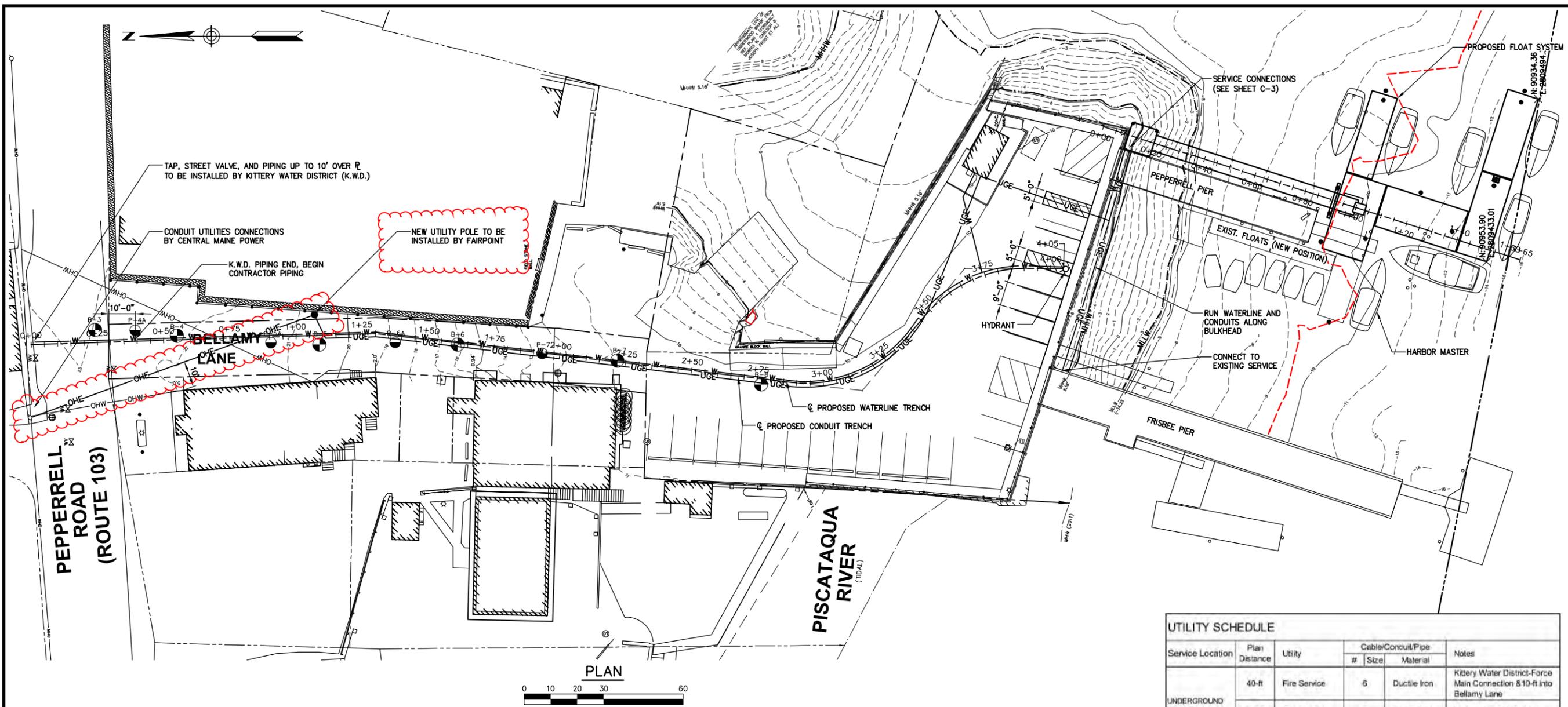


Wood Island



| | |
|--|------------------|
| Kittery Harbor Plan Fort Foster | |
| PROJ NO: 12681 | DATE: 12/29/2013 |
| WRIGHT-PIERCE Engineering a Better Environment | FIGURE: N/A |

\\ds413\projects\12-40 pepperrell cove kittery marina civil design.dwg



| PLAN REFERENCE | GROUND ELEV (FT) | AUGER REFUSAL (FT) | ASSUMED LEDGE ELEV (FT) |
|----------------|------------------|--------------------|-------------------------|
| B-3 | 22.9 | 5.0 | 17.9 |
| P-4A | 22.2 | 3.0 | 19.2 |
| B-4 | 22.1 | 3.5 | 18.6 |
| P-5A | 21.2 | 0.8 | 20.4 |
| B-5 | 20.4 | 1.0 | 19.4 |
| P-6A | 18.7 | 1.5 | 17.2 |
| B-6 | 15.9 | 0.7 | 15.2 |

NOTES:
 1. SUBSURFACE BORING AND PROBE INFORMATION TAKEN FROM BORING LOGS PROVIDED BY ATTAR ENGINEERING. LOCATIONS PICKED UP BY CIVIL CONSULTANTS FIELD SURVEY.

| Service Location | Plan Distance | Utility | Cable/Conduit/Pipe | | | Notes |
|--|---------------|--|----------------------|------|--------------------------|--|
| | | | # | Size | Material | |
| UNDERGROUND Water Service | 40-ft | Fire Service | 6 | | Ductile Iron | Kittery Water District-Force Main Connection & 10-ft into Bellamy Lane |
| | 360-ft | Fire Service | 6 | | Ductile Iron | Underground to Hydrant |
| OVERHEAD Service | 113-ft | Water Supply | 2 | | HDPE (200 PSI) | Underground thr Hbr Masters Office |
| | | Phone Communication Power Power/Spare | | | | Cable Size by Utility |
| UNDERGROUND Service | 300 | Phone Communication Power Power/Spare | 2 2 4 4 | | Galvanized Steel Conduit | Ledge Removal required |
| UNDERGROUND/SURFACE MOUNTED Harbor Master to Frisbee Pier Box | 125-ft | Phone Communication Power | 2 2 2.5 | | Galvanized Steel Conduit | Install messenger in Spare |
| BELOW GRADE/SURFACE MOUNTED Harbor Master to Pepperrell Pier Box | 90-ft | Water Supply | 1 | | HDPE (200 psi) | |
| | | Phone Communication Electrical-Marina Electrical- Spare | 2 1 2.5 2.5 | | Galvanized Steel Conduit | Install messenger in Spare |
| PEPPERRELL PIER BOX to DOCK PANEL via gangway | 125-ft | Water Supply | 1 | | HDPE (200 psi) | |
| | | Phone Communication Electrical | 2 1 2 | | Marine Cable | Provide chafing gear and strain relief and seasonal disconnects |
| | | PUMP OUT | | | | See Schedule this sheet |
| DOCK PANEL to PEDESTALS | 125-ft max | Water Supply | 3/4 | | HDPE (200 psi) | |
| | | Phone Communication Electrical | | | Marine Cable | Refer to Pedestal Schedule this sheet. |
| DOCK WATER | 225-ft | Water Supply | 3/4 | | HDPE (200 psi) | |

BAKER DESIGN CONSULTANTS
 Civil, Marine, and Structural Engineering
 11 Stony Brook Lane Yarmouth, Maine 04096 Tel: (207) 846-9724 Fax: (207) 846-3620

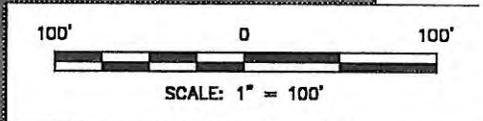
DESIGNED BY: BJB
 DRAWN BY: JUC
 CHECKED BY: BJB
 SCALE: AS SHOWN

SITE PLAN
 KITTERY, MAINE
BOATING INFRASTRUCTURE GRANT
 PEPPERRELL COVE TOWN LANDING

SHEET TITLE:

| | | |
|-----|---------|------|
| NO. | DATE | INT. |
| B | 3-28-13 | BUB |
| B | 4-08-13 | BUB |
| C | 5-02-13 | BUB |

DATE: JAN 2012
 CONTRACT NO. 12-40
 SHEET NO. C-2 REV. C



Pine Tree Engineering
 53 Front Street
 Bath, Maine 04530
 Tel: (207) 443-1508
 Fax: (207) 442-7029

Civil/Environmental Engineering • Surveying

TRAP ACADEMY BOAT RAMP IMPROVEMENTS
AERIAL PHOTOGRAPH

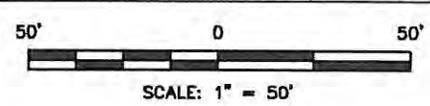
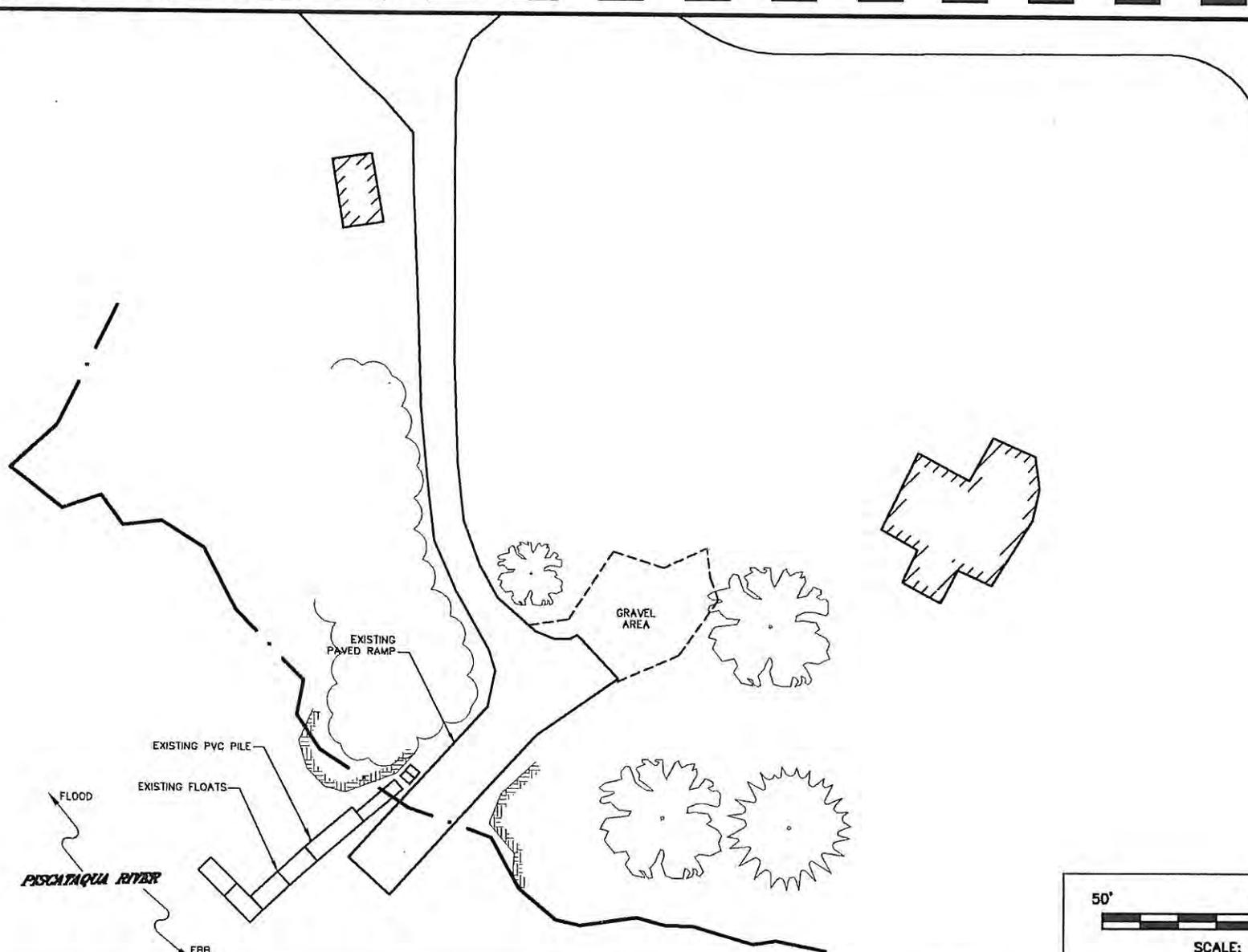
PLACE: BACK CHANNEL - PISCATAQUA RIVER
 TOWN: KITTERY
 COUNTY: YORK
 STATE: MAINE

APPLICATION BY:
TOWN OF KITTERY

DATE
MARCH 28, 2006

EXHIBIT 2

WILLIAMS AVENUE



Pine Tree Engineering

53 Front Street
Bath, Maine 04530
Tel: (207) 443-1508
Fax: (207) 442-7029

Civil/Environmental Engineering • Surveying

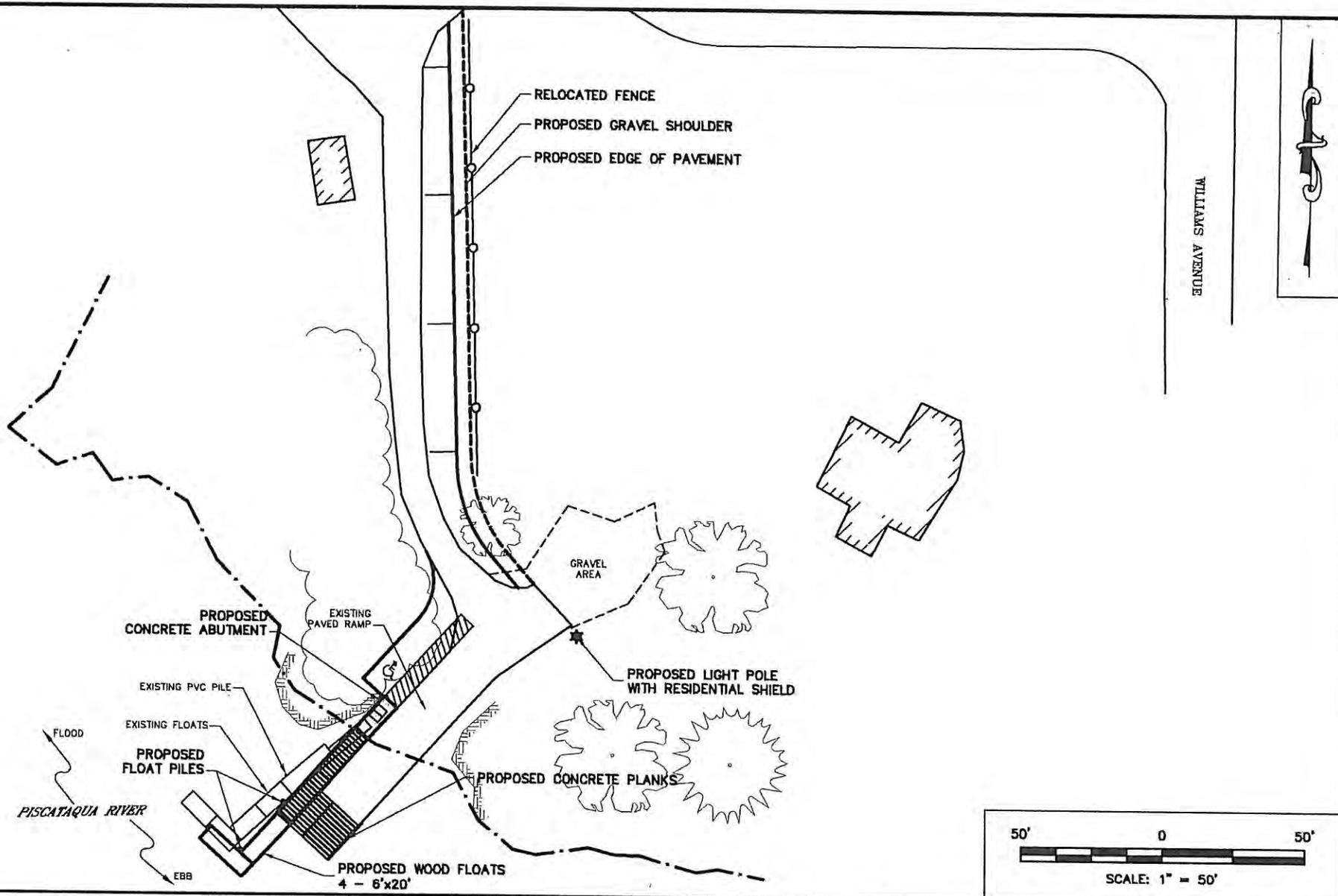
TRAP ACADEMY BOAT RAMP IMPROVEMENTS
EXISTING CONDITIONS

PLACE: BACK CHANNEL - PISCATAQUA RIVER
TOWN: KITTERY
COUNTY: YORK
STATE: MAINE

APPLICATION BY:
TOWN OF KITTERY

DATE
MARCH 28, 2006

EXHIBIT 3



Pine Tree Engineering

53 Front Street
 Bath, Maine 04530
 Tel: (207) 443-1508
 Fax: (207) 442-7029

Civil/Environmental Engineering • Surveying

TRAIPI ACADEMY BOAT RAMP IMPROVEMENTS
 PROPOSED CONDITIONS

PLACE: BACK CHANNEL - PISCATAQUA RIVER
 TOWN: KITTERY
 COUNTY: YORK
 STATE: MAINE

APPLICATION BY:
 TOWN OF KITTERY

DATE
 APRIL 4, 2006

EXHIBIT 4



NOTES:

1. (-4.0') REFERENCE APPROXIMATE WATER DEPTH AS PROVIDED BY WATERFRONT ENGINEERS LLC. IN REPORT DATED JULY 3, 2012 BASED ON MLLW.
2. LOW TIDE LINE AS REPORTED BY WATERFRONT ENGINEERS LLC. LOW TIDE LINE IDENTIFIED AS 240' OFF CONCRETE ABUTMENT.
3. CONTRACTOR SHALL FIELD VERIFY LOCATION OF LADDERS, SAFETY RINGS, AND BENCHES WITH OWNER.

PARCEL INFORMATION:
TAX MAP 51, LOT 9
(SEE COVER SHEET FOR
FULL LAYOUT OF PARCEL)

ADD A SIGN "NO
VEHICLES ALLOWED,
PEDESTRIANS ONLY"

SEE STRUCTURAL
DRAWING FOR LIMITS OF
ABUTMENT REPAIR

EXISTING CONCRETE
ABUTMENT AND WING WALLS

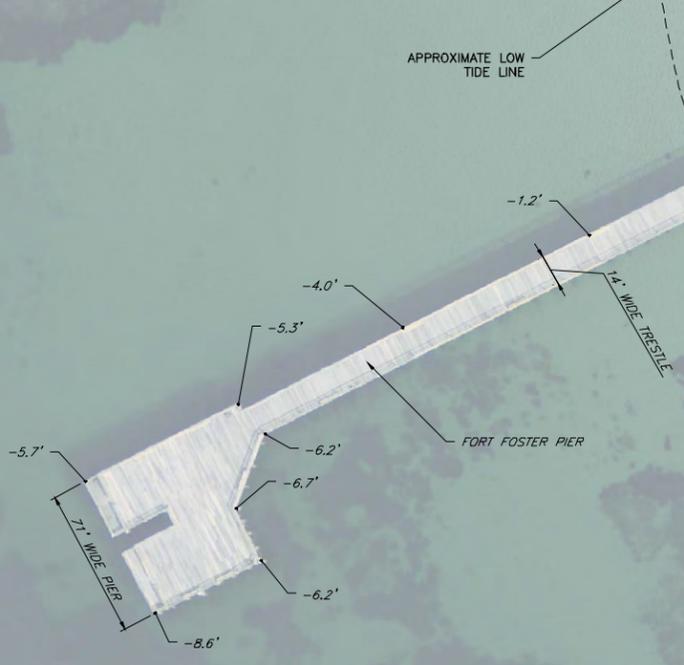
CONTRACTOR SHALL
PROVIDE SITE SECURITY
DURING PROJECT TO
LIMIT PEDESTRIANS AND
VEHICLES FROM
ENTERING WORK ZONE

PROPOSED TEMPORARY
CONSTRUCTION STAGING AREA

EXISTING SITE ACCESS

PIER RAILING AND DECKING
SHALL BE REPLACED IN
THEIR ENTIRETY. SEE
STRUCTURAL DRAWING FOR
DETAILS

APPROXIMATE LOW
TIDE LINE



SITE PLAN

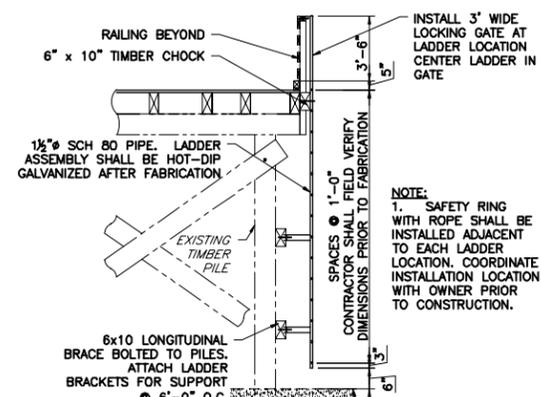
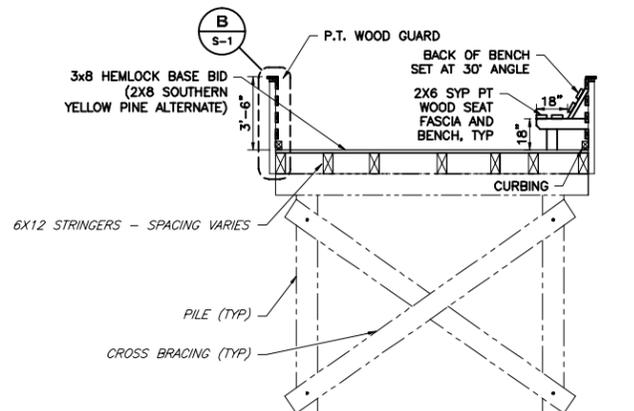
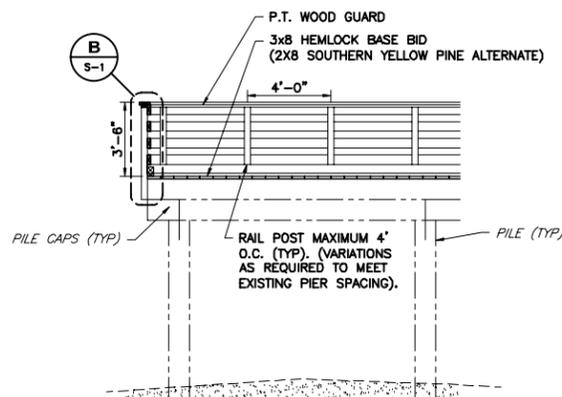
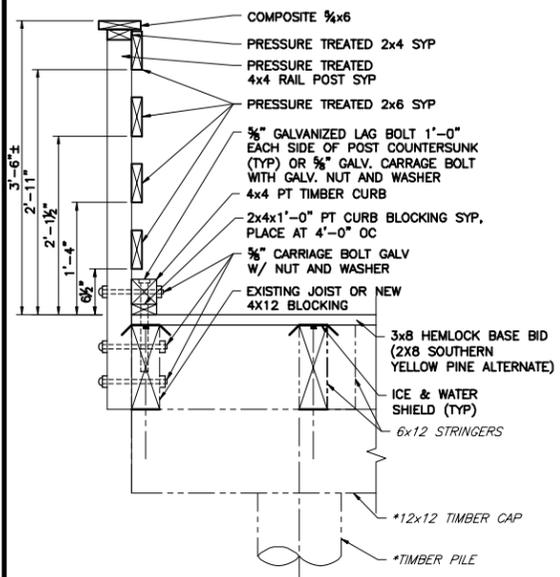
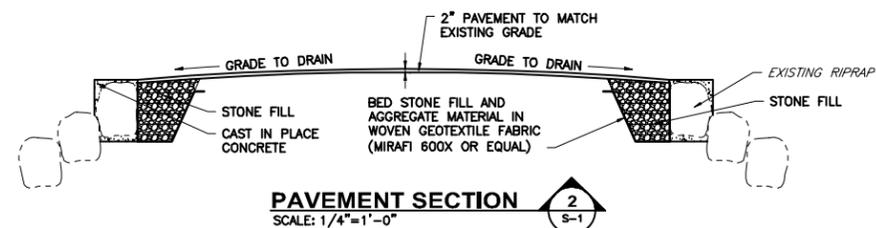
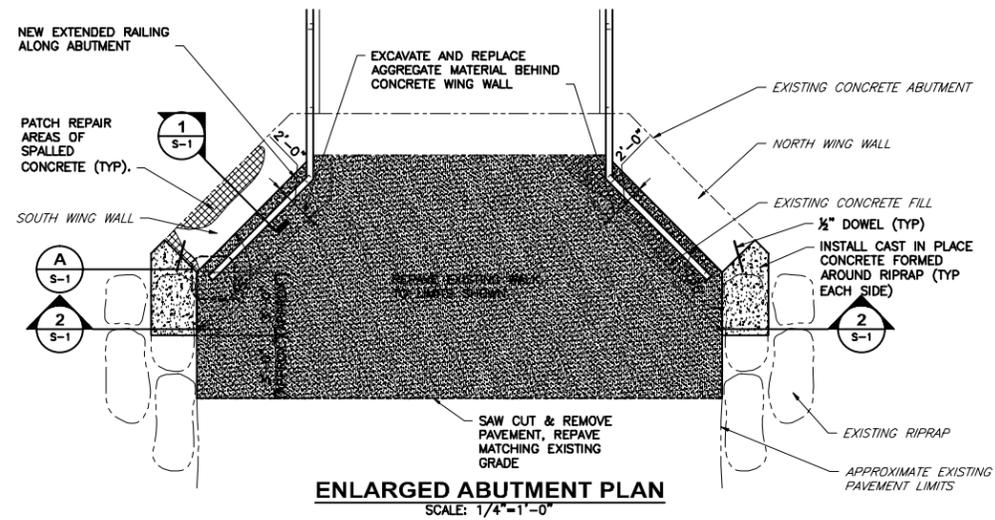
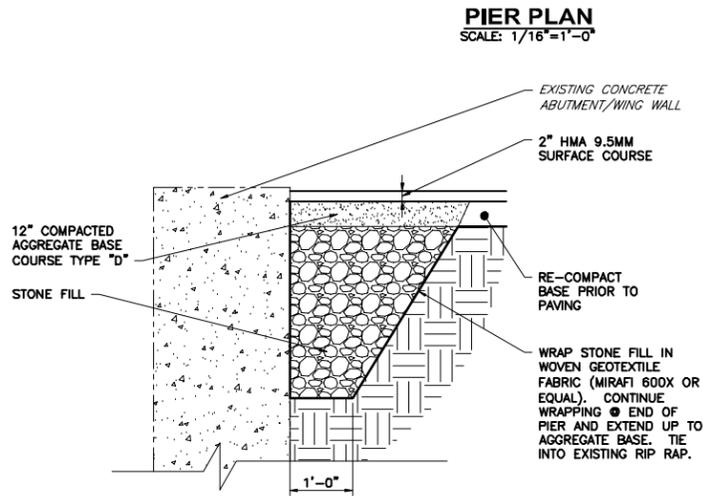
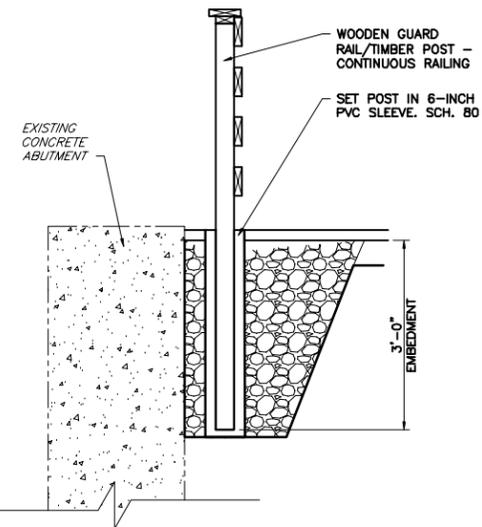
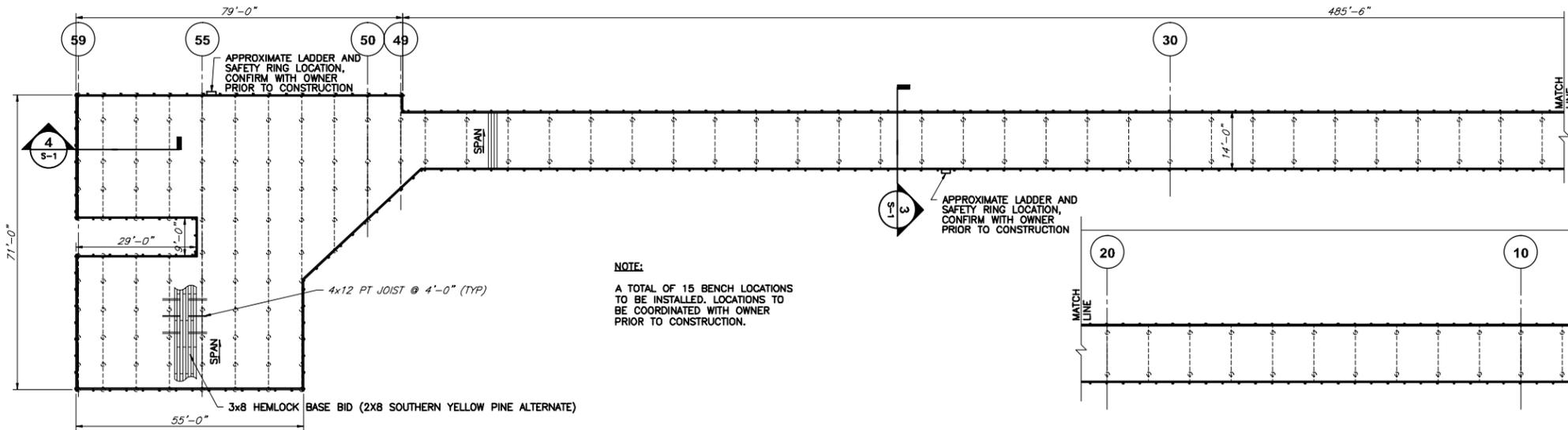
SCALE: 1"=40'

| NO | REVISIONS | DATE |
|----|-----------------------|------|
| 1 | ISSUED FOR PERMITTING | 4/13 |
| 2 | ISSUED FOR BIDDING | 4/13 |

DESIGNED BY: SAH
 CAD CORR: JMB2
 CAD: JMB2
 CHECKED BY: JCE
 DATE: 4/12/13
 APPROVED BY: JCE
 DATE: 4/12/13
 PROJECT NO: 12740A

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| | |
|--|-----------|
| TOWN OF KITTELY, ME. FORT FOSTER PIER REHABILITATION PROJECT | SITE PLAN |
| DRAWING | C-1 |



| NO. | REVISIONS | DATE |
|-----|-----------------------|------|
| 1 | ISSUED FOR PERMITTING | 4/13 |
| 2 | ISSUED FOR BIDDING | 4/13 |

| | |
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| DESIGNED BY: SAH | PROJECT NO: 12740A |
| CAD CORO: JMBZ | |
| CHECKED BY: JCE | |
| DATE: 4/12/13 | |
| APPROVED BY: JCE | |
| DATE: 4/12/13 | |

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TOWN OF KITTEY, ME.
 FORT FOSTER PIER
 REHABILITATION PROJECT
 PIER LAYOUT PLAN,
 SECTIONS, AND DETAILS
 DRAWING
 S-1

Appendix B

Materials from First Public Forum

Kittery Harbor Plan Public Workshop

**Wednesday, June 5, 2015
6:00 pm at the Kittery Town Office
located at 200 Rogers Road**



Residents, property owners business owners and other harbor users are invited to attend this public workshop regarding development of an update to the existing Kittery Harbor Plan.

This is the first of several open meetings where input will be solicited to help shape the Plan.

YOUR INPUT IS NEEDED for this important planning process which will help shape the enhancements and public improvements, economic development and strategic planning for the Community's harbor facilities.

LIGHT REFRESHMENTS WILL BE PROVIDED

For more information, contact Peter Walsh, Deputy Harbormaster, at 475-XXXX, or at Pwalsh@kitteryme.org

Town of Kittery
Shore and Harbor Planning Initiative
Initial Public Forum

June 5, 2013, 6:00 to 8:00 PM
Town Office / Council Chambers

1. Welcome (*10 minutes*)
Peter Walsh - Grant Administrator (?)
 - Introductions
 - Project Purpose and Scope
 - Agenda for the Evening
 - Logistics (restrooms, refreshments, etc.)

2. Summarize Inventory of Shore and Harbor Resources (*15 minutes*)
Jonathan Edgerton – Wright-Pierce
 - History
 - Environment
 - Boating Facilities
 - Commercial Fishing/Aquaculture
 - Dredging
 - Recreational Uses

3. Brainstorming (*20 minutes*)
Jennifer Claster – Wright-Pierce
 - Issues
 - Needs
 - Opportunities

4. Questions and Answers (*5 minutes*)
Jon Edgerton and Jennifer Claster – Wright-Pierce

5. Break for Refreshments and to get into Small Groups (*10 minutes*)

6. Small Group Activity/Discussion (*40 minutes*)
Committee members dispersed among groups

7. Small Group Report Out (*15 minutes*)
Facilitated by Jennifer Claster – Wright-Pierce

8. Next Steps / Closing (*5 minutes*)
Jonathan Edgerton – Wright-Pierce

FORUM RESULTS

KITTERY SHORE AND HARBOR PLANNING JUNE 5, 2013 PUBLIC FORUM

I. Small Group Questions (20 minutes)

| | Strongly Agree | Agree | Disagree | Strongly Disagree | Unsure |
|---|----------------|-------|----------|-------------------|--------|
| PUBLIC ACCESSIBILITY | | | | | |
| 1. The Town should seek to create additional public access points for <i>trailered boats</i> within the community. | 3 | 15 | 7 | 1 | 6 |
| 2. The Town should seek to create additional public access points for <i>kayaks</i> within the community. | 8 | 20 | | 1 | |
| 3. Parking should be expanded at one or more existing access points. | 15 | 15 | 1 | | |
| 4. The community should seek opportunities to expand public "open space" adjacent to the shoreline. | 9 | 16 | 4 | | 1 |
| Additional comments regarding public access to the shore within the community: | | | | | |
| <ul style="list-style-type: none"> • Resident priority • Moorings out in Gosport Harbor • Rogers Park trolley • Train ROW @ Spruce Creek, BBH • Parking too limited • #2 – "The Town should seek to create dedicated public access points..." • Fee – include parking space & routes • #2 – Designated access point for kayaks • Communicating availability and access needs to be important • #1 - Availability of areas • I support public access for residents, no increase to accommodate no residents • Public information program...w/o neon lights (create an app for that!) • Didn't think kayaks could be launched at Eagle Pt. – parking is limited. You can! Not obvious. Not ideal. • The town is really small – who are we giving access to – residents or non-residents? • Fee system addressed excessive demand from NH • Parking at train is already full during school year. Not a lot of opp. for expansion. Where do we put it, if we have it? • What is the cost impact to residents to open access that non-residents can use? | | | | | |
| ROLE IN LOCAL ECONOMY | | | | | |
| 5. Maintaining facilities for commercial fishing is important to the community's economy. | 17 | 10 | 3 | | |
| 6. Recreational boating is important to the local economy. | 13 | 15 | 1 | | |

FORUM RESULTS

KITTERY SHORE AND HARBOR PLANNING JUNE 5, 2013 PUBLIC FORUM

| | | | | | |
|---|----|----|---|---|---|
| 7. Expansion of opportunities for shellfishing is desirable for the local economy. | 8 | 10 | 4 | 1 | 6 |
| 8. Expansion of opportunities for aquaculture is desirable for the local economy. | 6 | 11 | 5 | 1 | 6 |
| Additional comments regarding the role of marine activities within the community: | | | | | |
| <ul style="list-style-type: none"> • <i>Restrict commercial fishing to Kittery neck, <u>not</u> Pepperrell Cove – Frisbee dock.</i> • <i>Mussel/clam/oyster aquaculture</i> • <i>Start programs for local children to learn about the sea, sailing, fishing, boating</i> • <i>Explore rental of Frisbee's Pier & Float from D'Amico for dinghies & also rack storage</i> • <i>Strong need to access Kittery Foreside by boat (services & rest.'s)</i> • <i>Preserve commercial fishing/designate areas</i> • <i>Programs need to be developed to build/attract development</i> • <i>Rec/boat to feed existing biz</i> • <i>#6 – More recreation = more cost & expense</i> • <i>#5 – Catch is limited by NOAA but not a lot of groundfishing here – not affected as much. Most fishermen are lobstermen. Some people gill net. We need to preserve as much as poss.</i> • <i>#6 – Tourist \$ does not support local businesses & working waterfront</i> • <i>#8 – Explore it – need to understand impacts</i> • <i>Part of community character is built on commercial fishing – need to preserve an area for commercial fishing. Community is transitioning to a bedroom community. Not interested in it.</i> | | | | | |
| INFRASTRUCTURE | | | | | |
| 9. The Town should continue to make strategic investments in marine infrastructure (piers, floats, etc.) | 15 | 11 | 2 | | 1 |
| 10. The Town should look for opportunities to increase public mooring space. | 8 | 11 | 7 | 2 | 2 |
| 11. Dredging of Pepperrell Cove should be pursued by the Town. | 5 | 13 | 4 | 1 | 7 |
| 12. The current fee system for use of Town facilities is appropriate (fees should be higher/lower). | 7 | 17 | 1 | | 4 |
| 13. I would support a Water Taxi to enhance access across the harbor to Portsmouth. | 3 | 14 | 5 | 2 | 6 |
| 14. The Town should consider long-term sea level rise in planning all future marine facilities. | 13 | 14 | 1 | | 3 |
| Additional comments: | | | | | |
| <ul style="list-style-type: none"> • <i>Fees should be lower.</i> • <i>Fees should be lower.</i> • <i>Dredging – Unintended consequences</i> • <i>Fort Foster fee structure reasonable</i> • <i>Fees for dinghy for residents/mooring holders should be free or included with mooring fee</i> • <i># 9 - The town should explore renting pier & float at Frisbee's owned by D'Amico.</i> | | | | | |

FORUM RESULTS

KITTERY SHORE AND HARBOR PLANNING JUNE 5, 2013 PUBLIC FORUM

- #10 – Considering complete renumbering of all Kittery mooring, especially Pepperrell Cove!
- Fees should be higher.
- #11 – First ascertain if it needs it.
- Fees are OK
- #9 – It depends where
- #11 – As needed
- #12 – Need to be eval. by resource
- #13 – Agree, provided right access point established
- #12 – Selectively
- #10 – No space for more moorings
- #11 – Only if necessary for local fisherman
- #12 – Fees should be higher
- #9 - We are and we have been, and port authority does a pretty good job of managing it
- There are 2 ramps on the transient pier project. Lobstermen should still have access.
- #11 – Harbormaster is tracking down people who don't use moorings.
- #8 – Spinney Creek is doing aquaculture now
- #13 – Interesting concept – maybe at Gov't Street dock
- #14 – YES.

15. Based on your response to the items above, feel free to suggest an alternative scenario, or provide your rationale.

- ROW places are not properly marked.
- More spaces required for kayaks to ease up ramps.
- Moorings are over-saturated already – Navy yard has over-saturated.
- Fees should consider shore front owners, + age.
- Shoals harbor needs to be left open from moorings so transient boaters have a place to anchor.
- Keep fees low. Do not expand the mooring field
- 14. Town ROW should be investigated for use as small boat access & parking for residents
- Item 13. – I feel a water taxi will drive the boating expense up, limit access (can't use late at night), also be inconvenient in that you can't get to your boat when you want.
- Consider an area reserved for anchoring
- Study of global warming
- Dinghy access should be available 24 hrs/day 7 days/week, with no penalty of time.
- Dinghy space could be increased by having racks on a dock for out-of-water storage
- A voluntary launch could allow people who don't want to keep a dinghy at the dock and free up some space.
- Perhaps we could arrange an extended dock arrangement with Al D'Amico
- An anchoring area should be established
- It would be good to improve the protection against weather in Pepperrell Cove, to protect against hurricanes; and to attract transient boaters

FORUM RESULTS

KITTERY SHORE AND HARBOR PLANNING JUNE 5, 2013 PUBLIC FORUM

15. Based on your response to the items above, feel free to suggest an alternative scenario, or provide your rationale.

- *Create marina with slips*
- *Kittery has approx. 15 miles of shoreline which can be a revenue source and tourist attraction*
- *Do not dredge Pepperrell Cove unless lobstermen need it.*
- *Fort Foster fees are too low across the board. Is it covering its expenses? Is it making money?*
- *Public works & org. of waterfront need to be separated. Need a separated manager for waterfront management.*

FORUM RESULTS

KITTERY SHORE AND HARBOR PLANNING JUNE 5, 2013 PUBLIC FORUM

II. Map Exercise (10 minutes)

1. Indicate on the map where additional facilities should be considered.
2. Indicate on the map where existing facilities should be enhanced/expanded.
3. Indicate on the map any public access location/facilities that you believe to be underutilized.

III. Opportunities (10 minutes)

1. What marine services do you feel offer opportunities for expansion?

- *Pepperrell Cove needs more space for commercial fishermen.*
- *Develop public access points.*
- *Aquaculture*
- *Youth sailing/kayaking program at FF or Rogers Park*
- *Aquaculture*
- *Launch service*
- *More metered parking*
- *Moorings @ Isle of Shoals*
- *Parking*
- *Dredging Pepperrell Cove*
- *Rack storage for inflatables w/o motors, consider expanding dinghy dock by w/ D'Amico*
- *Improve parking at Pepperrell Cove*
- *Add dinghy dock and parking at Ft. McClary*
- *Add boat launch at Fort Foster*
- *Add marina at Fort Foster*
- *Breakwater from fishing island to*
- *Dry dinghy rack*
- *Additional kayak access at: Eagle Pt., Ft. McClary, Ft. Foster*
- *Better parking facilities: Pepperrell Cove, Gov't St.*
- *Portsmouth water taxi to Gov't St. pier?*
- *Expand/develop Gov't St. pier area*
- *Mooring management plan*
- *Dinghy management plan*
- *Seapoint & Crescent are private by design – that's the attraction.*
- *Should there be shuttle from Frisbee to the beach?*
- *Trolley at mall should add trips to the beach.*

FORUM RESULTS

KITTERY SHORE AND HARBOR PLANNING JUNE 5, 2013 PUBLIC FORUM

2. What added features should be considered for Town-owned facilities?

- *Develop government Town dock facilities.*
- *Resident priority*
- *Security cameras*
- *Consistent fee structures*
- *Signage*
- *Parking*
- *Aquaculture (mussels/oysters, etc.)*
- *Dry-storage for dinghies @ Frisbee's*
- *Mooring Mgt.*
- *Make them better/keep them up*
- *Set up separate administration (not under Pub Works) – transparent*
- *Bike racks*
- *More access to restrooms*
- *Golf cart/sm. bus shuttles*
- *Shuttle bus service to facilities*

Town of Kittery Shore & Harbor Planning

Purpose: To create a “shore and harbor” appendix to the Town’s growth management document.

Schedule: Needs to be complete by December 31st.



Town of Kittery Shore & Harbor Planning

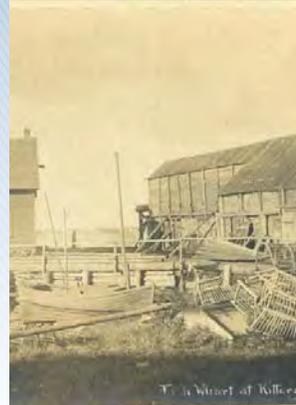
Project Funding: Funded in large part by the State of Maine, through a Shore and Harbor Planning Grant from the Maine Coastal Program



Town of Kittery Shore & Harbor Planning

Tonight's Public Forum

- Welcome and Introductions
- Inventory of Resources
- Brainstorming
- Break
- Small Group Activities
- Report Out
- Next Steps/Closing



Harbor History

Settlement around the natural harbor of the Piscataqua River estuary began about 1623. Kittery was incorporated in 1647, and is generally considered the oldest incorporated town in Maine. Fishing, shipbuilding and shipping of cargo were the mainstays of the early economy.



Shore & Harbor Facilities and Infrastructure

**Tonight's Focus will be on
Public Facilities – although
we acknowledge the role of
private facilities.**



Shore & Harbor Facilities and Infrastructure

Frisbee Pier / Pepperell Cove



Shore & Harbor Facilities and Infrastructure

Government Pier



Shore & Harbor Facilities and Infrastructure

Fort Foster Pier



Shore & Harbor Facilities and Infrastructure

Boat Launching Ramps – Traip, Pepperell Cove



Shore & Harbor Facilities and Infrastructure

Beaches: Fort Foster and Seapoint



Shore & Harbor Facilities and Infrastructure

**Braveboat Harbor, Spruce Creek, Rice
Avenue, Eagle Point, Isles of Shoals**



Commercial Fishing

20 to 30 lobstermen

2-3 scallopers

**Draggers and gilnetters
generally use
Portsmouth facilities**



Shellfish and Aquaculture

- Closed from Memorial Bridge to Fort Foster Pier, and at Isles of Shoals
- Aquaculture above Memorial Bridge



Dredging

- Corps of Engineers role
- Environmental Impacts
- Regulatory Approvals
- Disposal of Dredge Spoils
- Funding



Appendix C

Materials from Second Public Forum

Kittery Shore & Harbor Plan 2nd Public Workshop

**Thursday, November 7, 2013, 6:00 pm at
the Kittery Town Council Chamber
at 200 Rogers Road**



Residents, property owners, business owners and other harbor users are invited to attend this public workshop regarding development of a Shore & Harbor appendix to the Kittery Growth Management Program.

This is the second public meeting where input will be solicited to help shape the Plan.

YOUR INPUT IS NEEDED for this important planning process which will help shape the enhancements and public improvements, economic development and strategic planning for the Community's harbor facilities.

LIGHT REFRESHMENTS WILL BE PROVIDED

For more information, contact Peter Walsh, Grant Administrator, at 439-0333, or via email at Pwalsh@kitteryme.org

Community Forum II
Kittery Shore and Harbor Plan

November 7, 2013
6:30 – 8:15 PM

1. **Welcome and Introductions** (5 minutes)

[Bob Melanson, Chair, Kittery Port Authority and Tom Emerson, Chair, Town Planning Board](#)

Brief welcome and introduction to key players and the evening's events.

2. **Context for the Plan** (10 minutes)

[Gerry Mylroie](#)

Discussion relative to how the results of tonight's discussion (public input for use in refining goals and establishing priorities) will fit into the large context of community planning, such as the Comp Plan update

3. **Overview of the Planning Process** (5 minutes)

[Wright-Pierce](#)

- Discuss the process for development of the Plan, including timeline for wrapping it up
- Discuss how identified goals need to relate to strategies
- Discuss practical aspects of strategy development and implementation

4. **Presentation: Overview of Current Goals** (15 minutes)

[Wright-Pierce](#)

PowerPoint presentation

- Are we on the right track?
- Are we missing something?

5. **Small Group Activities:** (40 minutes)

[Facilitated by Wright-Pierce](#)

- Task 1 (20 minutes) – review the list of **areas of town** (16 total) to prioritize and come to consensus about:
 - Rank areas so that 1 is most important, 16 is least important
- Task 2 (15 minutes) – review the list of **policy topics** (10 total) to prioritize and come to consensus about:
 - Rank policy topics so that 1 is most important, 10 is least important

- Task 3 (5 minutes) – craft a one sentence statement that describes the Town’s Shore and Harbors as they will be in 20 years, when this Shore and Harbor plan has been successfully implemented

6. **Report Out:** (15 minutes)

Facilitated by Wright-Pierce

- Group spokespersons report out on top 3 items of tasks 1 & 2 and the result of task 3
- Discussion of themes / areas of dissonance

7. **Dot Voting:** (10 minutes)

Facilitated by Wright-Pierce

- Each participant can place a dot next to goals and strategies they think should be a priority for the next 2 years, as listed during the report out

8. **Next Steps & Thank You** (5 minutes)

Wright-Pierce

9. **Adjourn**

Community Forum II
Kittery Shore and Harbor Plan

November 7, 2013

6:30 pm – 8:15 pm

1. Small Group Activities: (40 minutes)

5 groups? Facilitator takes notes on the facilitator sheet.

- Task 1 (20 minutes) – review the list of **areas of town** (16 total) to prioritize and come to consensus about:
 - Rank areas so that 1 is most important, 16 is least important
- Task 2 (15 minutes) – review the list of **policy topics** (10 total) to prioritize and come to consensus about:
 - Rank policy topics so that 1 is most important, 10 is least important
- Task 3 (5 minutes) – craft a one sentence statement that describes the Town’s Shore and Harbors as they will be in 20 years, when this Shore and Harbor plan has been successfully implemented

2. Report Out: (15 minutes)

- Group spokespersons report out on top 3 items of tasks 1 & 2 and the result of task 3. Meeting facilitators take notes on large pads – only writing new items, and not noting ranking, for later dot exercise
- Discussion of themes / areas of dissonance

3. Dot Voting: (10 minutes)

- Each participant can place a dot next to areas of town, policy topic, and goals and strategies they think should be a priority for the next 2 years, as listed during the report out –1 dot per item maximum.

Task 1 – Areas of Town

Small Groups, Rank 1-16, where 1 is most important, 16 is least important:

20 min

- _____ Kittery Point Village/Town Dock/Frisbee Pier
- _____ Government Street Pier and Kittery Foreside/Wallingford Square/Town Dock
- _____ John Paul Jones Town Dock near Warren's (new)
- _____ Traip Boat Launch
- _____ Rice Avenue Neighborhood
- _____ Eagle Point
- _____ Fort McClary
- _____ Fort Foster
- _____ Seapoint Beach
- _____ Crescent Beach
- _____ Rachel Carson Refuge
- _____ Braveboat Harbor
- _____ Isles of Shoals
- _____ Wood Island
- _____ Spinney Creek
- _____ Badger's Island
- _____ Other?: _____

Top 3?

Task 2 – Policy Topics

Small Groups, Rank 1-10, where 1 is most important, 10 is least important:

15 min

- _____ Increase Public Access to the Water
- _____ Enhance Cleanliness of Beaches
- _____ Enhance Productivity and Health of Clam Flats
- _____ Increase Funding for Waterfront/Shoreline Improvements
- _____ Enhance Coordination between Town/Navy Yard/Kittery Port Authority
- _____ Reduce Shoreline Erosion
- _____ Mitigate Water Pollution (Non-Point)
- _____ Mitigate Impacts of Global Warming/Sea level Rise/Climate Change
- _____ Acknowledge and Take Steps to Preserve the Working Waterfront
- _____ Review the Town Plan for Storm Planning and Update as Appropriate
- _____ Other: _____

Top 3?

Task 3 – 20 Year Vision

Small Groups

5 min

Craft a one sentence statement that describes the Town's Shore and Harbors as they will be in 20 years, when this Shore and Harbor plan has been successfully implemented

Kittery Shore & Harbor Plan

November 7, Public Forum

Dot Exercise Results: Setting Priorities

Locations:

15 Fort Foster

9 Kittery Point Village / Frisbee Pier

9 Seapoint Beach

8 Traip Boat Launch

7 Commercial Center / Rogers Park

7 Kittery Foreside / Government Street Pier

1 John Paul Jones

0 Badgers Island

Policy Topics:

- 26 Maintain What We Have / CIP Funds
- 8 Increased Funding for Waterfront Maintenance
- 8 Storm Planning
- 5 Cleanliness of Beaches
- 5 Non-point Source Pollution
- 3 Enhanced Coordination with the Navy Yard
- 3 Working Waterfront
- 3 Clam Flats
- 2 Increase Public Access to Water

Town of Kittery Shore & Harbor Planning

Purpose: To create a “shore and harbor” appendix to the Town’s growth management document.

Schedule: Needs to be complete by December 31st.



Town of Kittery Shore & Harbor Planning

Project Funding: Funded in large part by the State of Maine, though a Shore and Harbor Planning Grant from the Maine Coastal Program



Town of Kittery Shore & Harbor Planning

Overview of the Process

- Inventory
- Initial Public Forum (June)
- Define Goals/Strategies
- Begin Drafting Plan
- **Second Public Forum (Nov)**
- Finish Draft Plan
- Finalize Plan



Goals (and Strategies)

- **Policy-Related Goals /Strategies**
 - Such as changes in ordinances
 - Not tied to a specific location
- **Area-Related Goals/Strategies**
 - Such as pier improvements, or new shorefront access
 - Generally tied to a specific location (or multiple locations)

Shore & Harbor Planning Policy-Related Goals

- **Enhanced access to the shoreline**
- **Enhanced cleanliness of public beaches**
- **Improved water quality and productivity of clam flats**
- **Increased funding for waterfront improvements**



Shore & Harbor Planning Policy-Related Goals

- **Enhanced coordination between the Town, KPA and Navy Yard**
- **Reduce shoreline erosion**
- **Mitigate water pollution**
- **Mitigate impacts of climate change/sea level rise**



Shore & Harbor Planning Policy-Related Goals

- **Acknowledge and take steps to preserve the working waterfront**
- **Review Town plans for storm planning and update as appropriate**



Shore & Harbor Planning Area-Specific Goals

Kittery Point/Town Dock/Frisbee Pier

- **Expand parking**
- **Wave attenuation**
- **Expanded space for dinghies**
- **Enhanced Potable Water/Pumpout facilities**



Shore & Harbor Planning Area-Specific Goals

Government Street Pier

- Public outdoor seating/viewing on waterfront
- Explore Water Taxi service
- Options for increased parking
- Boat access to area businesses



Shore & Harbor Planning Area-Specific Goals

John Paul Jones - Town Dock

- Construct new dock
- Create public access
- Explore water taxi service
- Public outdoor seating/viewing on waterfront



Shore & Harbor Planning Area-Specific Goals

Traip Boat Launch

- Expand Floats
- Expand Parking



Shore & Harbor Planning Area-Specific Goals

Rice Avenue Neighborhood

- Enhance public access for recreation, especially for kayaks (consider issues related to navigability at low water and currents)



Shore & Harbor Planning Area-Specific Goals

Eagle Point

- Enhance public access



Shore & Harbor Planning Area-Specific Goals

Fort McClary / Adjacent Bay

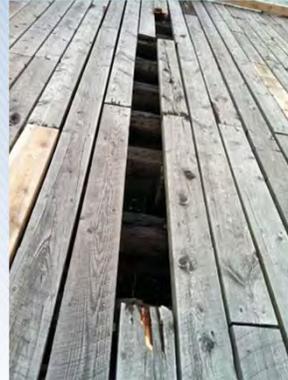
- Increase/create anchorage areas for large transient vessels (i.e. over 75')



Shore & Harbor Planning Area-Specific Goals

Fort Foster

- **Pier Improvements to provide access to park facilities from the water**
- **Enable public access for recreational use, especially for kayaks**
- **Extend access during the shoulder seasons**



Shore & Harbor Planning Area-Specific Goals

Seapoint Beach

- **Improve maintenance (dog waste cleanup/enforcement)**
- **Assess means to enhance or expand parking**



Shore & Harbor Planning Area-Specific Goals

Crescent Beach

- Improve maintenance (dog waste cleanup/enforcement)



Shore & Harbor Planning Area-Specific Goals

Rachel Carson Refuge

- Investigate the use of former trolley tracks/ROW for access
- Assess means to enhance or expand parking



Shore & Harbor Planning Area-Specific Goals

Braveboat Harbor

- Improve maintenance (dog waste cleanup/enforcement)
- Investigate the use of former trolley tracks/ROW for access
- Assess means to enhance or expand parking
- Assess future moorings



Shore & Harbor Planning Area-Specific Goals

Isles of Shoals

- Consider expanding mooring capacity



Shore & Harbor Planning Area-Specific Goals

Wood Island

- Investigate means to restore the exterior of the Rescue Facility if it can be done without burdening the Town's finances.



Shore & Harbor Planning Area-Specific Goals

Spinney Creek

- Consider expanded aquaculture opportunities
- Assess whether the rafts are in Kittery or Eliot



Shore & Harbor Planning Area-Specific Goals

Badger's Island

- Install new/updated markers for navigational hazards (Focus points include locations at both ends)



Next Steps

1. Compile Forum Results
2. Reconvene Steering Committee
3. Prepare Draft Plan
4. Review Draft with Staff/Committee
5. Finalize the Plan



Appendix D

Coordination with the Comprehensive Plan

Appendix D – Coordination with Kittery’s Comprehensive Plan/Growth Management Program

D.1 Kittery’s Growth Management Program



As a planning document it is important that the goals and recommendations identified herein be coordinated with other planning documents that the community will use as it charts its way through the coming years. Key among those is the Town’s Comprehensive Plan. Kittery last formally adopted an update to its Comprehensive Plan in 2002. The following pages are intended to form a connection between this Shore and Harbor Planning document and the Town’s current Comprehensive Plan.

It is important the Quality Improvement Plan for Kittery’s Shore and Harbors’ goals and implementation strategies identified herein be coordinated with other planning documents that the community will use as it charts its way through the coming ears. Key among those is the Town’s Comprehensive Plan. Kittery last adopted an update to its Comprehensive Plan in 2002. The following pages are intended to form a connection between this Shore and Harbor Planning document and the Town’s current Comprehensive Plan.

Maine State Law (Growth Management Act MRS 30-A Section 4321 et al) enables municipalities “to plan for its future development and growth”; and “adopt and amend local growth management programs, including a comprehensive plan and implementation program, consistent” with the Act.

Section §4326 states, “A growth management program must include at least a comprehensive plan and an implementation program.

Kittery Town Charter Article VIII Planning states “there shall be a town planning board and shall have such powers and perform such duties a provided by law.”

Section 8.02 states “ There shall be a comprehensive plan as provided by law.

Maine State Law, Title 30-A Section 4326 2.states, “A comprehensive plan must include a policy development section that relates the findings contained in the inventory and analysis section to the state goals. The policies must:

- A. Promote the state goals.
- B. Address any conflicts between state goals.
- C. Address any conflicts between regional and local issues.
- D. Address the State's coastal policies if any part of the municipality or multi-municipal region is a coastal area.

Per Maine State Law Title 30-A Section 3," the Legislature hereby establishes a set of state goals to provide overall direction and consistency to the planning and regulatory actions of all state and municipal agencies affecting natural resource management, land use and development. The Legislature declares that, in order to promote and protect the health, safety and welfare of the citizens of the State, it is in the best interests of the State to achieve the following goals:

- A. To encourage orderly growth and development in appropriate areas of each community and region while protecting the State's rural character, making efficient use of public services and preventing development sprawl.
- B. To plan for, finance and develop an efficient system of public facilities and services to accommodate anticipated growth and economic development;
- C. To promote an economic climate which increases job opportunities and overall economic well-being;
- D. To encourage and promote affordable, decent housing opportunities for all Maine citizens;
- E. To protect the quality and manage the quantity of the State's water resources, including lakes, aquifers, great ponds, estuaries, rivers and coastal areas;
- F. To protect the State's other critical natural resources, including without limitation, wetlands, wildlife and fisheries habitat, sand dunes, shorelands, scenic vistas and unique natural areas;
- G. To protect the State's marine resources industry, ports and harbors from incompatible development and to promote access to the shore for commercial fishermen and the public;
- H. To safeguard the State's agricultural and forest resources from development which threatens those resources;
- I. To preserve the State's historic and archeological resources; and
- J. To promote and protect the availability of outdoor recreation opportunities for all Maine citizens, including access to surface waters."

In short, a Growth Management Program's Comprehensive Plan is:

- A long range, description of what a municipality wants to be and how it will achieve it.
- A commitment to take action.
- Adopted, and thus a public policy.
- A decision-making tool for community development and preservation issues. The issues may range from water resource protection and residential development to transportation improvements and community facilities and services.
- The basis for land use and development ordinances (e.g. zoning ordinance, street and highways ordinance, growth management ordinance) or regulations (e.g. subdivision regulations, site plan review regulations), capital improvement programming, town center development and beautification, natural area or land conservation, and other programs and projects to improve the quality of life and place in the town and region.

D.2 Kittery's Comprehensive Town Planning and Development / Conservation Program

The Town of Kittery has a growth management program and an adopted Comprehensive Plan and Town Planning and Development / Conservation Program. This includes a Comprehensive Plan that is periodically updated. The Comprehensive Plan includes goals, policies and standards and Implementation Strategies aimed at defining and achieving quality, sustainable development within the Town and region. Policies and Implementation Strategies are defined as follows:

D.3 What We Want - Goals and Policies

What citizens want to achieve:

Goals

General statements of desired results expressing citizens' desires or what the citizens want to achieve relative to an issue.

(e.g., Start with a noun - Natural resources protected to ensure their sustainability to meet community needs.).

Policies

More specific statements of desired results expressing citizens' desires and a commitment to what they want to achieve.

(e.g., start with a noun - Water quantity and quality will be managed and protected.).

Standards

Specific quantitative or qualitative statements of results that express what the citizens want, and the legislative basis for zoning and ordinance requirements or regulations. (e.g., The density in the water protection area shall be one dwelling unit per ten acres, or, The standards in the document "*Buffers for Wetlands and Surface Waters: A Guidebook for Maine Citizens*" that establish surface water buffer widths aimed at minimizing water quality degradation and providing wildlife habitat).

D.4 How We Achieve It - Implementation Strategies

How citizens will achieve what they want. Actions to achieve results. (i.e., verbs)

(e.g., start with a verb - Amend the zoning ordinance to establish a water protection district and implement the Growth Management Program's Comprehensive Plan Policies.).

D.5 A Comprehensive Plan = A Plan to Improve Quality of Life and Place

Achieving a quality community, in part, means meeting current standards or setting new standards for development. If *quality* is defined as conformance to a standard, then continually improving quality means continually setting and achieving higher standards for excellence in planning, design, development, service, and operations.

Citizens drive the standards: their aspirations, expectations, goals and principles. Setting standards and monitoring progress will enable the region to:

- Facilitate sustainable development.
- Retain and improve the quality of life.
- Promote economic opportunity.
- Promote health and safety.
- Promote environmental conservation, protection and management.
- Promote educational opportunity.

The Comprehensive Plan describes these standards. Some exist in current local ordinances and regulations. Others will need to be prepared and adopted over time. Achieving these standards will result in attaining the vision of a quality, sustainable community.

D.6 A Quality Improvement Plan

To implement a general Comprehensive Plan more specific plans are required. This is not only to be more specific in detail, but a typical requirement of federal, state and even private agencies that provide funding, grants, loans or other financing. These more specific or detailed plans for a single property or multiple properties (e.g. a downtown area) may be called an “official” plan, development plan, construction plan, master plan, etc. However, ultimately they are all aimed at improving the quality of development; hence they are herein referred to as a “Quality Improvement Plan.”

In Kittery, a quality improvement plan is applicable to various town functional/operational issues as well as geographic areas. Functional Quality Improvement Plans are for Sewer System, Parks, etc. Geographic quality improvement plans may include multiple property business or mixed land use areas (e.g. Kittery Foreside, Kittery Center Village, Coastal Route 1 Kittery Mall Shopping District) or neighborhoods (e.g. Shapleigh School Neighborhood, Lewis Farm Neighborhood, etc.). The Quality Improvement Plan for Kittery’s Shore and Harbors is another example of a specific geographic quality improvement plan.

D.7 Shore and Harbor Aspects of the Comprehensive Plan

Citizen desired results and how they will be achieved for the conservation and development of their shore and harbor facilities is expressed in the Comprehensive Plan. These desired results expressed as goals (general) and policies (more specific) and how they will be achieved (implementation strategies) are spread across the many issues involved in town planning and development including, but not limited to land use, natural resource protection, economic development, transportation, etc.

However, to move from general desired results to actual results requires preparation and adoption of a more specific "Quality Improvement Plans." for Kittery's Shore and Harbors.

D.8 The Quality Improvement Plan for Kittery’s Shore and Harbors

The more specific Plan for Kittery's shore and harbor areas is the "Quality Improvement Plan for Kittery's Shore and Harbors." The following is a summary of this shore and harbor planning and implementation program.

Shore and Harbor Planning Program Summary:
(A Comprehensive Plan Update and Implementation Program)

Statewide Program Goals:

Ensure sustainable and vibrant coastal communities: help coastal communities support marine and coast-related economic growth, coastal resource conservation and maintenance of community character.

Promote sound waterfront planning, harbor management and balanced development of shore and harbor areas:

- Sound waterfront planning and harbor management.
- Balanced development of shore and harbor areas.
- Advanced planning for waterfront infrastructure improvements and access to the shore.

Kittery Program Purpose:

Support sustainable marine and coast-related economic growth, coastal resource conservation and maintenance of community character.

The Community is faced with significant operational and maintenance burdens and wishes to update the Comprehensive Plan and prepare a specific Shore and Harbor Plan to guide managing operational expenditures and capital maintenance needs.

Program Partners within the Community include:

- Kittery Town Planning Board
- Kittery Comprehensive Plan Update Committee
- Kittery Parks Commission
- Kittery Port Authority
- Kittery Conservation Commission
- Kittery Economic Development Committee

D.9 The Vision for Kittery and its Shore and Harbor Areas

The Kittery Comprehensive Plan's Vision describes what citizens want. The Vision describes the overall character in terms of its natural, social and built environment. This includes Kittery's shore and harbors.

The Vision 2020 - Kittery:

"A New England community committed to responsible growth and cooperative actions to improve our quality of life. We celebrate and enhance our enterprising spirit; our historic buildings and evolving patterns of development; our scenic landscape of rivers, lakes, forests, and farmlands; and our cultural values for the benefit of future generations.

- Community means working together to consider Kittery and local needs and meet them fairly and equitably.

- Responsible growth means economic and residential development that is sustainable and balanced with environmental and natural resource protection.
- An improved quality of life means a better living environment achieved by continually raising and meeting higher standards for individual and community physical, social, and economic well-being.

D.10 Kittery Comprehensive Plan Goals, Policies and Implementation Strategies Related to the Shore and Harbors

The most recent update to the community’s Comprehensive Plan included the following sections with relevance to Shore and harbor areas:

GOALS/POLICIES AND IMPLEMENTATION STRATEGIES

| <u>Comprehensive Plan Section</u> | <u>Page</u> |
|--|-------------|
| A. Population & Demographics | 18 |
| B. The Local Economy | 29-30 |
| C. Natural Resources | 59-62 |
| D. Scenic and Natural Areas Protection | 68-70 |
| E. Marine Resources..... | 89-90 |
| F. Water and Sewer Service | 100-102 |
| G. Land Use Patterns | 115-128 |
| H. Transportation | 143-147 |
| I. Housing | 163 |
| J. Public Facilities | 170 |
| K. Recreation and Open Space | 184 |
| L. Cultural Resources | 188 |
| M. Historic and Archaeological Resources | 198-199 |
| N. Fiscal Capacity | 211 |

SECTION A. POPULATION AND DEMOGRAPHICS

1.0 GOALS AND POLICIES (What citizens want)

2.0 STATE GOAL (What citizens want - general results)

Encourage orderly growth and development in appropriate areas of each community. (State of Maine Growth Management Act)

3.0 TOWN GOALS (What citizens want – general results)

Population and household growth managed in a manner consistent with the Town’s ability to absorb it.

4.0 TOWN POLICIES (What citizens want - specific results)

Given the goals, Town policy is to achieve:

1. Growth in suitable areas of the community.

“Suitable” means areas relatively free of natural resource constraints, with the public facilities to accommodate growth, and able to absorb growth without undue harm to the community.

5.0 TOWN IMPLEMENTATION STRATEGIES

To achieve the goals and policies, Town implementation strategies are:

1. The Town will direct growth to suitable areas of the community. “Suitable” means areas relatively free of natural resource constraints, with the public facilities to accommodate growth, and able to absorb growth without undue harm to the community.

2. The Town will review the cumulative effect of development on schools, roads, sewers, and other municipal facilities and services and explore assessing developers for the impact of development on municipal facilities in addition to the existing sewer impact fee.

SECTION B. THE LOCAL ECONOMY

1.0 GOALS AND POLICIES

2.0 STATE GOAL (What citizens want - general results)

Promote an economic climate that increases job opportunities and overall economic well-being. (Growth Management Act)

3.0 TOWN GOALS (What citizens want – general results)

3.1 Maintain the traditional marine industries as viable economic activities.

3.2 Assure that all economic growth is fiscally and environmentally sound and is in keeping with the character of the community.

4.0 TOWN POLICIES (What citizens want - specific results)

Given the goals, Town policy is to achieve:

4.1 The Shipyard open as a military facility.

4.2 Minimal impacts of possible growing private employment at the Shipyard on the community in general and the Kittery Foreside in particular.

4.3 The infrastructure needed to retain a viable marine industry remains in place.

4.4 Current marine and water dependent uses and activities maintained.

5.0 TOWN IMPLEMENTATION STRATEGIES

To achieve the goals and policies, Town implementation strategies are:

5.1 The Town should continue to work with Shipyard interests and other community groups to make the case for keeping the Shipyard open as a military facility.

5.2 The Town should continue to work with the Shipyard to plan for the leasing of Shipyard facilities to private firms to minimize the impacts of growing private employment on the community in general and the Foreside in particular.

5.3 The Town should actively work to assure that the infrastructure needed to retain a viable marine industry remains in place.

5.4 As part of the Town's land use regulations, preference should be given to marine and water dependent uses in those areas that are currently used by marine related activities or in other areas that are particularly suited for marine use.

SECTION C. NATURAL RESOURCES

1.0 GOALS AND POLICIES

2.0 STATE GOAL (What citizens want - general results)

2.1 Protect the quality and manage the quantity of the State's water resources, including lakes, aquifers, great ponds, estuaries, rivers and coastal areas. (State of Maine Growth Management Act)

2.2 Protect the State's other critical natural resources, including without limitation, wetlands, wildlife and fisheries habitat, sand dunes, shorelands, scenic vistas and unique natural areas. (State of Maine Growth Management Act)

3.0 TOWN GOALS (What citizens want – general results)

3.1 Protect and improve the quality of the surface waters within Kittery.

- 3.2 Protect and preserve the quality and supply of groundwater resources.
- 3.3 Protect wetlands that have significant functional value and adjacent uplands from encroachment and degradation.
- 3.4 Protect significant wildlife and fisheries habitat and critical and unique areas.
- 4.0 TOWN POLICIES (What citizens want - specific results)

Given the goals, Town Policies (What citizens want - specific results) are to achieve:

Inland Surface Waters

- 4.1 Wetlands including the upland fringe protected.
- 4.2 The water quality classification of a waterbody consistent with and not exceed any state standards so as not to have an unreasonably adverse impact on the waterbody or prevent the reopening of viable clam flats.
- 4.3 The quality of the stormwater discharges improved.
- 4.4 Infiltration and inflow into the sanitary sewer system reduced.

Fisheries And Wildlife Habitat

- 4.5 Water quality benefits, as well as habitat benefits protected.
- 5.0 TOWN IMPLEMENTATION STRATEGIES

To achieve the goals and policies, Town implementation strategies are:

Inland Surface Waters

- 5.1 The Town will continue to designate wetlands including the upland fringe as Resource Protection areas within which development and other intensive land use activities are restricted.
- 5.2 The Town will enact standards for the quality of stormwater runoff from new and expanded residential subdivisions and commercial developments. These standards shall be consistent with and not exceed any state standards for runoff quality. The standards should ensure that stormwater discharges do not have an unreasonably adverse impact on the water quality classification of the waterbody or prevent the reopening of viable clam flats. The standards should require that each situation where runoff needs to be managed be analyzed and “Best Management Practices” used. The selection of the appropriate BMP’s should be related to the soil

type since this will dictate which practices will be most effective in the particular situation.

5.3 The Town will work with owners of existing commercial and residential projects on a voluntary and cooperative basis to retrofit existing stormwater systems, where necessary, to improve the quality of the stormwater discharges. The Town may guide property owners in developing financing for these improvements.

5.4 The Town will continue efforts to eliminate the remaining combined sewer overflows (CSO's) through the separation of the combined sewer system and programs to reduce infiltration and inflow into the sanitary sewer system.

Fisheries And Wildlife Habitat

5.5 The riparian zone adjacent to rivers and streams plays an important role in the value of a water body as fishery and wildlife habitat. Retaining a natural buffer along these resources can have water quality benefits as well as habitat benefits. Therefore, the Town will work to maintain a naturally vegetated buffer along streams with high or moderate habitat value.

5.6 The Town, through the Conservation Commission, should develop and periodically update maps identifying the locations and value of wildlife habitats based upon an inventory of habitats.

SECTION D. SCENIC AND NATURAL AREAS PROTECTION

1.0 GOALS AND POLICIES

2.0 STATE GOAL (What citizens want - general results)

The State's Growth Management Law establishes goals that relate to the management of Scenic Resources. These include:

2.1 Protect the State's other critical natural resources, including without limitation, wetlands, wildlife and fisheries habitat, sand dunes, shorelands, scenic vistas, and unique natural areas.

2.2 In addition to the goals established in the Growth Management Law, the State's Coastal Management Policies require that State and local planning be consistent with the following objective:

Scenic and Natural Areas Protection. Protect and manage critical habitat and natural areas of State and national significance and maintain the scenic beauty and character of the coast even in areas where development occurs.

3.0 TOWN GOALS (What citizens want – general results)

3.1 Maintain the scenic quality of the Town’s visual environment while respecting private property rights.

3.2 Preserve the scenic quality of the Town’s shoreland areas.

3.3 Maintain and enhance high value scenic views and vistas from public viewing sites.

3.4 Maintain and enhance the visual character of identified scenic roads in a way that balances visual considerations with traffic movement and safety.

4.0 TOWN POLICIES (What citizens want - specific results)

4.1 Discussion on Policies that may be enacted to address scenic and aesthetic considerations of the community’s shoreline is included in section 3 of this Plan.

5.0 TOWN IMPLEMENTATION STRATEGIES

5.1 Discussion on Strategies that may be enacted to address scenic and aesthetic considerations of the community’s shoreline is included in sections 4 & 5 of this Plan.

SECTION E. MARINE RESOURCES

1.0 GOALS AND POLICIES

2.0 STATE GOAL (What citizens want - general results)

The State’s Growth Management Law establishes a number of goals that relate to the management of Marine Resources. These include:

2.1 Protect the State’s Marine Resources industry, ports and harbors from incompatible development and to promote access to the shore for commercial fishermen and the public.

2.2 Protect the quality and manage the quantity of the State’s water resources, including lakes, aquifers, great ponds, estuaries, rivers, and coastal areas.

2.3 Protect the State’s other critical natural resources, including without limitation, wetlands, wildlife and fisheries habitat, sand dunes, shorelands, scenic vistas, and unique natural areas.

2.4 Promote and protect the availability of outdoor recreation opportunities for all Maine citizens, including access to surface waters.

In addition to the goals established in the Growth Management Law, the State's Coastal Management Policies require that State and local planning be consistent with the following:

2.5 Port and Harbor Development. Promote the maintenance, development and revitalization of the State's ports and harbors for fishing, transportation and recreation;

2.6 Marine Resource Management. Manage the marine environment and its related resources to preserve and improve the ecological integrity and diversity of marine communities and habitats, to expand our understanding of the productivity of the Gulf of Maine and coastal waters and to enhance the economic value of the State's renewable marine resources;

2.7 Shoreline Management and Access. Support shoreline management that gives preference to water dependent uses over other uses, that promotes public access to the shoreline and that considers the cumulative effects of development on coastal resources;

2.8 Hazard Area Development. Discourage growth and new development in coastal areas where, because of coastal storms, flooding, landslides or sea-level rise, it is hazardous to human health and safety;

2.9 State and Local Cooperative Management. Encourage and support cooperative state and municipal management of coastal resources;

2.10 Scenic and Natural Areas Protection. Protect and manage critical habitat and natural areas of State and national significance and maintain the scenic beauty and character of the coast even in areas where development occurs;

2.11 Recreation and Tourism. Expand the opportunities for outdoor recreation and encourage appropriate coastal tourist activities and development;

2.12 Water Quality. Restore and maintain the quality of our fresh, marine and estuarine waters to allow for the broadest possible diversity of public and private uses; and

2.13 Air Quality. Restore and maintain coastal air quality to protect the health of citizens and visitors and to protect enjoyment of the natural beauty and marine characteristics of the Maine coast.

3.0 TOWN GOALS (What citizens want – general results)

- 3.1 Improve the quality of the Town's coastal waters.
- 3.2 Increase the extent and vitality of the community's shellfishing industry.
- 3.3 Provide for the growth of aquaculture in a way that is positive for the entire community.
- 3.4 Protect important wildlife and aquatic habitats.
- 3.5 Maintain and improve the community's navigable waters and designated mooring areas.
- 3.6 Assure continued access to waterfront sites by marine activities and water dependent uses.
- 3.7 Improve access to the Town's coastal waters for marine and recreational uses.
- 3.8 Protect private and public property from damage as a result of flooding and coastal storms.
- 3.9 Conserve the natural waterfront, seacoast character of Kittery by assuring that new development is aesthetically and environmentally compatible.

4.0 TOWN POLICIES (What citizens want - specific results)

Given these goals, Town policy is to achieve:

- 4.1 Areas that are tributary to flats opened for shellfish harvesting.
- 4.2 The water quality of the community's coastal waters improved.
- 4.3 Significant habitats protected in the following areas:
 - Seapoint and Crescent Beaches
 - Clark's Island
 - White Island
- 4.4 New shoreland development that is compatible with the visual environment.
- 4.5 The regulatory depths in navigation channels and designated mooring areas restored and maintained in accordance with the priorities listed above.
- 4.6 Where appropriate, the available supply of moorings in these areas increased through changes in the mooring patterns.

4.7 The speeds, noise, and wakes controlled to assure that inappropriate boating activity in the following areas:

- The Back Channel
- Spruce Creek
- Chauncey Creek
- Adjacent to the shoreline of Gerrish Island
- Adjacent to Seapoint Beach
- Brave Boat Harbor
- Isles of Shoals
- Adjacent to Wood Island

4.8 The existing private mooring areas that are regulated by the Port Authority be maintained and access to the existing moorings guaranteed if there is a change of ownership or use of the upland property unless a removal or reduction in the number of moorings is specifically approved by the Port Authority based upon the finding that there are adequate replacement moorings and access in other locations in the town.

4.9 The water-dependent and marine uses allowed as the only permitted uses in those areas that are designated as commercial fisheries and marine activities areas in the Land Use Plan. Within these areas, other non-marine uses should be permitted only with case-by-case review to determine that the site is not needed for water related use.

4.10 A long range management program for Wood Island Lifeboat Station that identifies appropriate uses of the island, the type of public facilities (if any) that should be provided, and a strategy for providing the desired facilities and oversight. If Whaleback Island comes under Town control, a similar plan should be developed for that location.

4.11 Limited overland access to Brave Boat Harbor for shellfishing and recreational use.

4.12 Less intensive use of Seapoint and Crescent Beaches.

4.13 A management plan for Fort Foster that balances the needs of competing interests.

4.14 A plan for managing access, use, and parking at the Government Street wharf and the Traip Academy boat ramp.

4.15 Increase the number of points of public access to coastal waters. This effort will include:

- improving access to existing Town owned waterfront parcels that are unused or underutilized
- working with developers to set aside and/or create public access as part of development and reuse proposals
- establishing a Kittery 21st Century Fund to improve existing Town owned waterfront parcels and to acquire additional shorefront property that is appropriate for public access. This will include establishing a mechanism to provide for the ongoing funding of the effort. Environmental considerations will be included in all public access projects.

4.16 Restricted development in areas that are subject to flooding and storm related inundation.

5.0 TOWN IMPLEMENTATION STRATEGIES

To achieve these goals and policies, Town implementation strategies are:

5.1 Initiate a program in conjunction with the Maine Department of Environmental Protection, to work cooperatively with property owners to voluntarily remove all existing, legally licensed, overboard discharge systems (OBD's), with a priority for areas that are tributary to flats that have the potential for being reopened to shellfish harvesting. As part of this effort, the Town will assist property owners in obtaining state financial assistance for replacing these systems with other approved sewage disposal systems or for connecting to the public sewerage system. In addition, the Town will work with property owners who cannot afford to replace legal OBD's to develop financing methods to allow replacement to occur.

5.2 Undertake a program to identify illegal overboard discharges and other unlicensed discharges into the Town's coastal waters on a systematic basis and to take action to have these discharges terminated. This effort will focus on both "straight pipes" and on failing or inadequate private sewage disposal systems. While the initial focus of this effort should be on areas that are tributary to flats, the long term objective should be to eliminate all illegal discharges. To this end, the Town will continue to provide support to the Shellfish Committee and the Conservation Commission to regularly conduct "shoreline surveys" in these areas.

5.3 Continue to support the ongoing efforts of the Conservation Commission to conduct water quality monitoring of the community's coastal waters.

5.4 Continue efforts to eliminate the remaining combined sewer overflows (CSO's) through the separation of the combined sewer system and programs to reduce infiltration and inflow into the sanitary sewer system.

5.5 Enact standards for the quality of stormwater runoff from new and expanded residential subdivisions and commercial developments. These standards shall be

consistent with any state standards for runoff quality. The standards should ensure that stormwater discharges do not have an unreasonably adverse impact on the water quality classification of the waterbody or prevent the reopening of viable clam flats. The standards should require that each situation where runoff needs to be managed be analyzed and “Best Management Practices” used. The selection of the appropriate BMP’s should be related to the soil type since this will dictate which practices will be most effective in the particular situation. The focus of these standards will initially be in the Spruce Creek watershed but will be expanded town-wide.

5.6 Work with owners of existing commercial and residential projects on a voluntary and cooperative basis to retrofit existing stormwater systems, where necessary, to improve the quality of the stormwater discharges. The Town will work with property owners to develop financing for these improvements.

5.7 Undertake an educational program, in conjunction with the Harbor Master and Port Authority, to discourage the illegal overboard discharge of wastes by boaters operating or moored in the Town’s coastal waters and to work to assure that adequate pumpout facilities are available to meet the needs of the boating community.

5.8 Continue to support its Shellfish Ordinance that formalizes the role of the Shellfish Committee and provides for the management of the Town’s shellfish resources.

5.9 The Shellfish Committee will work with the Department of Marine Resources and other state agencies to identify those areas within which commercial aquaculture may occur, provide mechanisms for leases, and adopt appropriate safeguards to protect water quality and the interests of fishermen, boaters, and upland property owners.

5.10 Continue to protect coastal areas with significant wildlife and fisheries habitat value. These include the Isles of Shoals, identified by the Maine Department of Inland Fisheries and Wildlife as a Class A habitat under state control, and the shorelines of Spruce Creek and Brave Boat Harbor and the shorelines and near shore waters of Gerrish Island, all identified by DIFW as Class B habitats of regional significance. The Town should work with the Maine Department of Inland Fisheries and Wildlife to identify the extent of the significant habitats in the following areas:

- Seapoint and Crescent Beaches
- Clark’s Island
- White Island

The Town will continue to guide new development away from identified sensitive waterfront areas through Resource Protection and Shoreland Zoning. The Town will require that proposals for new residential subdivisions or nonresidential

developments in or adjacent to shoreland areas include an independent assessment of the impact of the proposal on wildlife and fisheries habitat and, if potential adverse impacts are identified, a proposal for mitigating such impacts.

5.11 Develop standards to ensure that new shoreland development is compatible with the visual environment.

5.12 The Port Authority will work with the appropriate state and federal agencies to develop a program to restore/maintain the regulatory depths in navigation channels and designated mooring areas in accordance with the priorities listed above.

5.13 The Port Authority and Harbor Master will continue to evaluate the usage of the designated mooring areas and attempt to increase the available supply of moorings in these areas through changes in the mooring patterns.

5.14 The Port Authority will review its regulations relating to speeds, noise, and wakes to assure that inappropriate boating activity is controlled in the following areas:

- The Back Channel
- Spruce Creek
- Chauncey Creek
- Adjacent to the shoreline of Gerrish Island
- Adjacent to Seapoint Beach
- Brave Boat Harbor
- Isles of Shoals
- Adjacent to Wood Island

5.15 Revise the community's land use and harbor management regulations to require existing private mooring areas that are regulated by the Port Authority be maintained and access to the existing moorings guaranteed if there is a change of ownership or use of the upland property unless a removal or reduction in the number of moorings is specifically approved by the Port Authority based upon the finding that there are adequate replacement moorings and access in other locations in the town.

5.16 Revise the Town's land use regulations to allow water-dependent and marine uses as the only permitted uses in those areas that are designated as commercial fisheries and marine activities areas in the Future Land Use Plan. Within these areas, other non-marine uses should be permitted only with case-by-case review to determine that the site is not needed for water related use. In conjunction with this change, the Town should explore ways to provide financial assistance for maintaining these areas in marine use.

5.17 Develop a long range management program for Wood Island Lifeboat Station that identifies appropriate uses of the island, the type of public facilities (if any) that

should be provided, and a strategy for providing the desired facilities and oversight. If Whaleback Island comes under Town control, a similar plan should be developed for that location.

5.18 Work with the management of the Rachel Carson sanctuary to try to develop limited overland access to Brave Boat Harbor for shellfishing and recreational use.

5.19 Work to discourage intense use of Seapoint Beach by increasing enforcement of parking restrictions near the beach.

5.20 Develop a management plan for Fort Foster that balances the needs of competing interests.

5.21 Develop a plan for managing access, use, and parking at the Government Street wharf and the Traip Academy boat ramp.

5.22 Work to increase the number of points of public access to coastal waters. This effort will include:

- Improving access to existing Town owned waterfront parcels that are unused or underutilized
- Working with developers to set aside and/or create public access as part of development and reuse proposals
- Establishing a Kittery 21st Century Fund to improve existing Town-owned waterfront parcels and to acquire additional shorefront property that is appropriate for public access. This will include establishing a mechanism to provide for the ongoing funding of the effort. Environmental considerations will be included in all public access projects.

5.23 Continue to restrict development in areas that are subject to flooding and storm related inundation.

SECTION F. WATER AND SEWER SERVICE

1.0 GOALS AND POLICIES

2.0 STATE GOAL (What citizens want - general results)

2.1 Encourage orderly growth and development in appropriate areas of each community, while protecting the State's rural character, making efficient use of public services and preventing development sprawl.
(State of Maine Growth Management Act)

2.2 Plan for, finance and develop an efficient system of public facilities and services to accommodate anticipated growth and economic development.

(State of Maine Growth Management Act)

3.0 TOWN GOALS (What citizens want – general results)

3.1 The quality of the Town’s drinking water maintained.

3.2 Adequate public water and sewer service in those areas of the community where higher intensity development is desired.

3.3 Rural areas protected from undesired development pressure.

4.0 TOWN POLICIES (What citizens want - specific results)

Given the goals, Town policy is to achieve:

4.1 Assure the quality of the Town’s drinking water is maintained.

4.2 Provide adequate public water and sewer service in those areas of the community where higher intensity development is desired.

4.3 Assure the provision of water and sewer service does not create undesired development pressure in rural areas.

5.0 TOWN IMPLEMENTATION STRATEGIES

To achieve the goals and policies, Town implementation strategies are:

SECTION G. LAND USE

1.0 GOALS AND POLICIES

2.0 STATE GOAL (What citizens want - general results)

2.1 Encourage orderly growth and development in appropriate areas of each community, while protecting the State’s rural character, making efficient use of public services and preventing development sprawl. (State of Maine Growth Management Act)

2.2 Safeguard the State’s agricultural and forest resources from development which threatens those resources. (State of Maine Growth Management Act)

3.0 TOWN GOALS (What citizens want – general results)

3.1 Foster a pattern of land use that respects and builds upon the present character of the established settlement pattern of village cores surrounded by open,

outlying rural areas created by undeveloped land, fields, wooded areas, farmland, wetlands, and roadways.

3.2 Preserve and enhance the dominant natural waterfront/seacoast character and to continue to guide development away from sensitive waterfront areas.

3.3 Protect environmentally and ecologically sensitive and scenic areas.

4.0 TOWN POLICIES (What citizens want - specific results)

Given the goals, Town policy seeks to achieve:

General Pattern of Development

4.1 The Portsmouth Naval Shipyard has had an enormous impact on the Town regarding traffic, parking, school enrollment, and environmental contamination. The Naval Shipyard is proceeding with the leasing of Shipyard facilities to private firms. This activity is not subject to the Town's regulations and review processes. It also is not subject to property taxes. To assure that this reuse of the Shipyard does not have undesirable consequences for the community, it is important that there be open communication between the Shipyard and Town officials. The Town should support the reuse of Shipyard buildings but take the position that private activities at the Shipyard should be subject to review by the Town with respect to the Town's ordinances.

4.2 Commercial development should not be permitted to occur in shorefront areas that are predominantly residential.

4.3 The Town should support the Foreside Committee and encourage it to continue to be active and promote the use of Wallingford Square and the surrounding neighborhood areas in a manner which creates a vital activity center and focal point for the community.

4.4 The Town will continue its local regulation of wetlands.

4.5 The Town should update its shoreland zoning to reflect the most recent floodplain designations. Undeveloped areas within identified flood hazard areas should be included in the Resource Protection Zone.

4.6 The Town should study the creation of a tax incentive program to encourage the preservation of wetlands and adjacent uplands.

4.7 Land Use Plan (Areas, Purposes and Desired Land Uses)

1. RURAL/NON-GROWTH AREAS

These are areas of the community where the Town desires to discourage growth and development.

a. Resource Protection

b. Resource Overlay

This area is essentially a restricted development designation. Within these areas, managed development should be allowed subject to performance standards to protect the resource value of important natural resources. This includes the entire shoreline as well as streams tributary to Spruce Creek. This designation is similar to the current Shoreline Overlay provisions.

c. Rural Conservation

2. NEIGHBORHOOD CONSERVATION AREAS

These are relatively fully developed residential neighborhoods in which the objective is to maintain the current development pattern and character while accommodating limited new residential construction.

d. Kittery Point Village

e. Admiralty Village Residential

In the watershed of Spruce Creek, all new construction should be designed to minimize stormwater impacts on Spruce Creek.

3. RESTRICTED GROWTH AREAS

These are areas of the community where the Town will accommodate a limited amount of the anticipated residential growth.

f. Low Density Residential

4. GROWTH AREAS

These are areas of the community where the Town will accommodate anticipated residential and non-residential growth.

i. Mixed Use - Kittery Foreside

This area is intended to allow reuse and development in the downtown area of Kittery Foreside. Within this area, the Town's land use regulations should allow a wide range of uses including residential, retail, service, and community uses. The land use regulations should encourage an urban pattern of development with buildings located close to the street with a strong pedestrian orientation. Flexibility should be provided in the parking requirements to allow reasonable reuse and redevelopment. This designation is similar to the current Foreside zoning district.

o. Industrial - Shipyard

This area is the shipyard area and its standards are intended to guide the reuse and redevelopment as it comes under the Town's land use regulations. The standards should provide areas for more intense non-residential uses such as manufacturing, warehousing and distribution, large scale offices, and research and development as well as the continued use of existing shipyard housing and preservation of historic structures. Within this area, retail uses should not be allowed.

p. Mixed Use - Badgers Island

This area includes most of Badgers Island area and its standards are intended to continue to allow the redevelopment and reuse of this area.

Within this area, the land use regulations should continue to allow a wide variety of uses including residential, marine related uses, offices, services, retail, and public and community uses. Special provisions should be provided to recognize the existing pattern of small lots. Residential uses should continue to be allowed at up to 7-8 units per acre. The regulations should continue to provide incentives to encourage appropriate waterfront activity. This designation reflects the current Badgers Island zone.

5.0 TOWN IMPLEMENTATION STRATEGIES

To achieve the goals and policies, implementation strategies are:

SECTION H. TRANSPORTATION

1.0 GOALS AND POLICIES

2.0 STATE GOAL (What citizens want - general results)

The State's Growth Management Law establishes the following goal that relates to transportation facilities and services:

2.1 Plan for, finance and develop an efficient system of public facilities and services to accommodate anticipated growth and economic development.

3.0 TOWN GOALS (What citizens want – general results)

3.1 Adequate parking to serve the Foreside area and public facilities.

4.0 TOWN POLICIES (What citizens want – specific results)

Transportation

4.1 Public input suggests that Parking as shore and harbor facilities is an issue and that the community should assess the feasibility of a water taxi, possibly with the City of Portsmouth.

Parking

4.2 A management plan that evaluates parking options at the Government Street wharf and at the Traip Academy boat ramp.

4.3 A plan for accommodating employee parking in conjunction with private reuse of the Shipyard facilities.

5.0 TOWN IMPLEMENTATION STRATEGIES

5.1 Discussion on Strategies that may be enacted to address scenic and aesthetic considerations of the community's shoreline is included in section 5 of this Plan.

Parking

5.1 Develop a management plan that evaluates parking options at the Government Street wharf and at the Traip Academy boat ramp.

5.2 Work with the Kittery Naval Shipyard to develop a plan for accommodating employee parking in conjunction with private reuse of the shipyard facilities.

SECTION I. HOUSING

1.0 GOALS AND POLICIES

2.0 STATE GOAL (What citizens want - general results)

2.1 Encourage and promote affordable, decent housing opportunities for all Maine citizens. (State of Maine Growth Management Act)

3.0 TOWN GOALS (What citizens want – general results)

3.1 A diversity of housing to meet the needs of a wide range of residents.

3.2 New housing that is built in Kittery so at least 10% of the new units are affordable to lower or moderate income households.

4.0 TOWN POLICIES (What citizens want – specific results)

4.1 Discussion on Policies that may be enacted to address scenic and aesthetic considerations of the community's shoreline is included in section 4 of this Plan.

5.0 TOWN IMPLEMENTATION STRATEGIES

5.1 Discussion on Strategies that may be enacted to address scenic and aesthetic considerations of the community's shoreline is included in section 5 of this Plan.

SECTION J. PUBLIC FACILITIES

1.0 GOALS AND POLICIES

2.0 STATE GOAL (What citizens want - general results)

2.1 Plan for, finance and develop an efficient system of public facilities and services to accommodate anticipated growth and economic development.
(State of Maine Growth Management Act)

3.0 TOWN GOALS (What citizens want – general results)

3.1 High quality but cost efficient public services and facilities to meet the needs of the residents of Kittery.

3.2 Adequate public services that are available in areas where growth and development are desired.

3.3 Limited or no development in those areas of Kittery where it is difficult or expensive to provide municipal services.

3.4 Increase the rate of recycling.

4.0 TOWN POLICIES (What citizens want – specific results)

Given the goals, Town policies are to achieve:

4.1 Provide high quality but cost efficient public services and facilities to meet the needs of the residents of Kittery.

4.2 To assure that adequate public services are available in areas where growth and development are desired.

4.3 To discourage development in those areas of Kittery where it is difficult or expensive to provide municipal services.

4.4 To continue to increase the rate of recycling.

5.0 TOWN IMPLEMENTATION STRATEGIES

To achieve the goals and policies, implementation strategies are:

5.1 Provide high quality but cost efficient public services and facilities to meet the needs of the residents of Kittery.

5.2 To assure that adequate public services are available in areas where growth and development are desired.

5.3 To discourage development in those areas of Kittery where it is difficult or expensive to provide municipal services.

5.4 To continue to increase the rate of recycling.

SECTION K. RECREATION AND OPEN SPACE

1.0 GOALS AND POLICIES

2.0 STATE GOAL (What citizens want - general results)

2.1 Promote and protect the availability of outdoor access to surface waters.
(State of Maine Growth Management Act)

3.0 TOWN GOALS (What citizens want to achieve – general results)

3.1 Recreational facilities provided to adequately meet the needs of the Town's current population and to provide facilities for the growing population.

3.2 The current level of public access to the Atlantic Ocean and Piscataqua River maintained and to expand and improve access as opportunities arise.

3.3 The rural, open landscape maintained in designated non-growth areas.

4.0 TOWN POLICIES (What citizens want - specific results)

Given the goals, Town policy is to achieve:

4.1 Interconnections between the existing trails and information about the nature trails within the Town and increased usage of them for recreational purposes.

4.2 Reduced intense use of Seapoint Beach.

4.3 A management plan for Fort Foster that balances the needs of competing interests. This plan should look at approaches for providing off-season parking.

4.4 A plan for managing access, use, and parking at the Government Street wharf and the Traip Academy boat ramp.

4.5 Increase in the number of points of public access to coastal waters. This effort should include:

- Improving access to existing Town owned waterfront parcels that are unused or underutilized
- Working with developers to set aside and/or create public access as part of development and reuse proposals

- Establishing a fund to improve existing Town owned waterfront parcels and to acquire additional shorefront property that is appropriate for public access. This will include establishing a mechanism to provide for the ongoing funding of the effort.

4.6 Environmental considerations should be included in all public access projects.

5.0 TOWN IMPLEMENTATION STRATEGIES

To achieve the goals and policies, implementation strategies are:

5.1. Develop interconnections between the existing trails and begin developing information about the nature trails within the Town and promoting usage of them for recreational purposes.

5.2 Discourage intense use of Seapoint Beach by increasing enforcement of parking restrictions near the beach.

5.3 Develop a management plan for Fort Foster that balances the needs of competing interests. This plan should look at approaches for providing off-season parking.

5.4 Develop a plan for managing access, use, and parking at the Government Street wharf and the Traip Academy boat ramp.

5.5 Increase the number of points of public access to coastal waters. This effort should include:

- Improving access to existing Town owned waterfront parcels that are unused or underutilized.
- Working with developers to set aside and/or create public access as part of development and reuse proposals.
- Establishing a fund to improve existing Town owned waterfront parcels and to acquire additional shorefront property that is appropriate for public access. This will include establishing a mechanism to provide for the ongoing funding of the effort. Environmental considerations should be included in all public access projects.

SECTION L. CULTURAL RESOURCES

1.0 GOALS AND POLICIES

2.0 STATE GOAL (What citizens want - general results)

2.1 Plan for, finance and develop an efficient system of public facilities and services to accommodate anticipated growth and economic development. (State of Maine Growth Management Act)

3.0 TOWN GOAL (What citizens want – general results)

3.1 Expand the range of cultural facilities and opportunities available within Kittery to meet the needs of Kittery’s residents.

4.0 TOWN POLICIES (What citizens want - specific results)

Given the goals, Town policy is to achieve:

5.0 TOWN IMPLEMENTATION STRATEGIES

5.1 Discussion on Strategies that may be enacted to address scenic and aesthetic considerations of the community’s shoreline is included in section 5 of this Plan.

SECTION M. HISTORIC AND ARCHAEOLOGICAL RESOURCES

1.0 GOALS AND POLICIES

2.0 STATE GOAL (What citizens want - general results)

2.1 Preserve the State’s historic and archaeological resources. (State of Maine Growth Management Act)

3.0 TOWN GOALS (What citizens want – general results)

3.1 The community’s historic buildings, sites, and neighborhoods preserved.

3.2 The community’s archaeological resources identified and protected from inadvertent damage or destruction.

3.3 Kittery’s historic and archaeological resources preserved and promoted.

4.0 TOWN POLICIES (What citizens want - specific results):

Given the goals, Town policy is to achieve:

4.1 The Town will continue to support efforts to investigate the restoration/preservation of the life boat station on Wood Island.

5.0 TOWN IMPLEMENTATION STRATEGIES

To achieve the goals and policies, implementation strategies are:

- 5.1 Continue to support efforts to investigate the restoration/preservation of the life boat station on Wood Island.

SECTION N. FISCAL CAPACITY

1.0 GOALS AND POLICIES

2.0 STATE GOAL (What citizens want - general results)

To plan for, finance and develop an efficient system of public facilities and services to accommodate anticipated growth and economic development. (Growth Management Act)

3.0 TOWN GOAL (What citizens want – general results)

3.1 Maintain a relatively stable property tax burden while providing a high level of community services and facilities.

4.0 TOWN POLICIES (What citizens want – specific results)

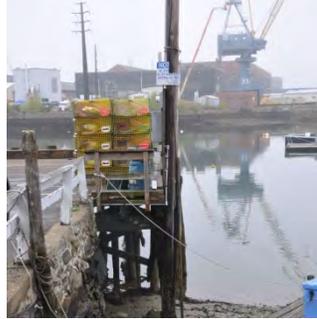
Given the goals, Town policy is to achieve:

4.1. The Town should continue to work with the Shipyard to plan for the leasing of Shipyard facilities to private firms to minimize the impacts of growing private employment on the community in general and the Foreside in particular. A focus of this effort should be traffic and parking issues and on developing a system for the payment fees or assessments to the Town to offset the non-taxable status of the real estate.

5.0 TOWN IMPLEMENTATION STRATEGIES

To achieve the goals and policies, implementation strategies are:

5.1. Work with the Shipyard to plan for the leasing of Shipyard facilities to private firms to minimize the impacts of growing private employment on the community in general and the Foreside in particular. A focus of this effort should be traffic and parking issues and on developing a system for the payment fees or assessments to the Town to offset the non-taxable status of the real estate.





**Town of Kittery Maine
 Town Planning Board Meeting
 April 24, 2014**

Town Code Amendment – Chapter 2, Definitions, Chapter 3, Article 2, Section 17 Shoreland Overlay Zone, Chapter 7, Article 3 Nonconformance and Chapter 8, Article 28 Single and Duplex Family Dwellings in the Shoreland Overlay Zones in Title 16 Land Use Development Code.

An Amendment includes changes to the town's Shoreland zoning to comply with the Maine Department of Environmental Protection 2000 and 2010 conditional approvals.

PROJECT TRACKING

| REQ'D | ACTION | COMMENTS | STATUS |
|-------|---------------------------------------|--|----------|
| YES | Discussion | Scheduled 3/27 | HELD |
| YES | Schedule Public Hearing | Scheduled 4/24; ran in legal section in the Portsmouth Herald for Friday 4/11 and again for Wednesday 4/16 | COMPLETE |
| YES | Public Hearing | Scheduled for 4/24/14 | HELD |
| YES | Review/Recommendation to Town Council | | |

Staff Comments

Background

It became evident while working with Michael Morse with the Maine Department of Environmental Protection (MDEP) on various Shoreland Zoning provisions that the Town is not fully in compliance with the State's *Mandatory Shoreland Zoning Act*, pertaining specifically to MDEP conditional approvals, orders #5-99 (dated 12/29/1999) and #23-10 (dated 9/2/2010), see ATT. A and B. A modification to order #5-99 (5-99-A) was issued 8/4/2000 allowing the less restrictive provisions for Badger Island, see ATT. C. The conditions of approval noted in the 1999 and 2010 orders were never fully complied.

Review

Staff has initiated a review process with the State and have provided MDEP a draft that includes the required amendments. MDEP has reviewed the draft amendment and Staff has incorporated their comments in the amendment before the Board. The more significant change includes the land area per dwelling unit/lot size for the Mixed-Use Kittery Foreside zone. The base zone is 5,000 Square feet and the 1999 MDEP approval stipulated this be changed to 10,000 within the Shoreland zone.

Planning Board raised an issue regarding the State's definition of dwelling unit, and requested the source. Attached is the source of the text, *Chapter 1000: Guidelines for Municipal Shoreland Zoning Ordinances*, see definitions. Staff also discussed with MDEP the inclusion of a specific date for 16.8.28.1.B and thought 1974 was the period, more research has to be made before identify the actual date the Town adopted the State's Mandatory Shoreland Zoning. Staff recommends revisiting this in a subsequent amendment.

Changes in response to the 4/24 meeting include:

- 1) Line 17: substituted 'dwelling' for "residential" to make it more consistent with the Town's ordinance.
- 2) Line 246: changed 'ii' to 'iii'. The 'i.' that follows since this line technically follows 'h.' above. All of the 'i' formatted text within section *D. Standards* was indented to help provide more clarity.
- 3) Line 452: corrected a pre-existing typo changing '17' to '16'

Recommendation

With the latest changes in place, and with no other issues raised, the Board can proceed with recommending adoption by the Town Council. If the Board has issues with these changes Staff recommends addressing those issues with a separate amendment proposal since this proposal includes changes that are effectively law because they are part of the MDEP conditional approvals.

1 **Chapter 16.2 DEFINITIONS**

2 **16.2.2 Definitions.**

3

4 **Dwelling** means a building designed or used as the living quarters for one or more families. The term
5 does not include motel, rooming house, hotel, inn, club, trailer, or structures solely used for transient or
6 overnight occupancy.

7

8 **Dwelling unit** means a room or group of rooms forming a habitable unit for one family with facilities used
9 or intended to be used for living, sleeping, cooking, eating, and sanitary facilities. It comprises at least six
10 hundred fifty (650) square feet of habitable floor space, except for elderly housing, an accessory dwelling
11 unit, or a temporary, intra-family dwelling unit. The term does not include a trailer.

12

13 Dwelling unit (in the Shoreland and Resource Protection Overlay Zones) means a room or group of
14 rooms designed and equipped exclusively for use as permanent, seasonal, or temporary living quarters
15 for only one family at a time, and containing cooking, sleeping and toilet facilities. The term shall include
16 mobile homes and rental units that contain cooking, sleeping, and toilet facilities regardless of the time-
17 period rented. Recreational vehicles are not dwelling units.

18

19 **Easement** means the authorization of a property owner for the use by another, and for a specified
20 purpose, of any designated part of the owner's property.

21

22

23 **Chapter 16.3 LAND USE ZONE REGULATIONS**
24 **Article II. Zone Definitions, Uses, Standards**
25 **16.3.2.13 Mixed Use MU.**

26

27 **D. Standards.**

28 1. All development and the use of land in the MU zone must meet the following standards. Kittery's
29 Design Handbook illustrates how these standards can be met. In addition, the design and performance
30 standards of Chapters 16.8 and 16.9 must be met.

31

32 2. Minimum Dimensional Standards.

33 The following apply:

34

35 Minimum lot size:

| | |
|-------------------------------------|---------------------|
| 36 lots with frontage on Route 1 | 200,000 square feet |
| 37 lots without frontage on Route 1 | 80,000 square feet |

38

| | |
|--|----------|
| 39 Minimum street frontage on road with access along | |
| 40 U.S. Route 1, Haley Road, Lewis Road, or Cutts Road | 250 feet |
| 41 other streets or approved ways | 150 feet |

42

| | |
|---|---------|
| 43 Minimum front yard | 60 feet |
| 44 Minimum rear and side yards | 30 feet |
| 45 Maximum building height | 40 feet |
| 46 Maximum height above grade of building-mounted signs | 40 feet |

47

| | |
|---|--------|
| 48 Minimum setback from water body and wetland water dependent uses | 0 feet |
|---|--------|

| | | |
|----|---|------------------------|
| 49 | | |
| 50 | Minimum setback from streams, water bodies and wetlands | in accordance with |
| 51 | | Table 16.9, Section |
| 52 | | 16.3.2.17 and Appendix |
| 53 | | A, Fee |
| 54 | | |
| 55 | Minimum land area per unit for eldercare facilities that are connected to the public sewerage system: | |
| 56 | dwelling unit with two or more bedrooms | 5,000 square feet |
| 57 | dwelling unit with less than two bedrooms | 4,000 square feet |
| 58 | residential care unit | 2,500 square feet |
| 59 | | |
| 60 | Minimum land area per bed for nursing care and convalescent | |
| 61 | care facilities that are connected to the public sewerage system | 2,000 square feet |
| 62 | | |
| 63 | Buffer to I-95 ROW | 40 feet |
| 64 | Buffer to neighboring lot with an existing residence | |
| 65 | within 100 feet of the lot line | 40 feet |
| 66 | Vegetated buffer to be maintained between the MU and R-RL zones | 40 feet |
| 67 | | |

68 **NOTE 1:** ~~For single-family dwellings, one dwelling unit is allowed for each two hundred thousand~~
69 ~~(200,000) square feet of land area. A lot of record having a land area of more than two hundred thousand~~
70 ~~(200,000) square feet that was improved with a single-family dwelling as of April 1, 2004 may be divided~~
71 ~~into two lots with a single-family dwelling on each lot provided that each of the lots contains at least forty~~
72 ~~thousand (40,000) square feet of land area and meets the other dimensional standards of the zone.~~
73 ~~Sections 16.3.2.1 D.1 and D.2 as set forth in the Residential - Rural zone apply and no further subdivision~~
74 ~~is allowed.~~

75 For dwelling units that are part of a mixed-use building and are connected to the public sewerage system,
76 one dwelling unit is allowed for each twenty thousand (20,000) square feet of buildable land area. Within
77 the Resource Protection and Shoreland Overlay zones, one dwelling unit is allowed for each forty
78 thousand (40,000) square feet of land area within these zones. Except in the Resource Protection and
79 Shoreland Overlay zones, if the parking for the residential units is integrated into the building, the
80 minimum required buildable land area per dwelling unit is reduced to fifteen thousand (15,000) square
81 feet.

82
83 **NOTE 2:** ~~For dwelling units that are part of a mixed-use building and are connected to the public~~
84 ~~sewerage system, one dwelling unit is allowed for each twenty thousand (20,000) square feet of buildable~~
85 ~~land area. If the parking for the residential units is integrated into the building, the minimum required~~
86 ~~buildable land area per dwelling unit is reduced to fifteen thousand (15,000) square feet.~~

87
88 **NOTE 3:** ~~For elderly housing dwelling units that are connected to the public sewerage system, one~~
89 ~~dwelling unit is allowed for each fifteen thousand (15,000) square feet of buildable land area. Within the~~
90 ~~Resource Protection and Shoreland Overlay zones, one dwelling unit is allowed for each forty thousand~~
91 ~~(40,000) square feet of land within these zones. Except in the resource Protection and shoreland Overlay~~
92 ~~zones, if the parking If the parking for the elderly units is integrated into the building, the minimum~~
93 ~~required buildable land area per dwelling unit is reduced to ten thousand (10,000) square feet.~~

94
95 3. Retail Use Limitation.

96 Retail use, including parking areas and other supporting unvegetated areas for retail use, is limited to not
 97 more than fifteen percent (15%) of the developable area of any lot or portion of a lot within the mixed use
 98 zone.
 99

100 **16.3.2.17 Shoreland Overlay Zone OZ-SL.**

101 **D. Standards.**

102 **1. Minimum lot standards**

103 **a. Minimum lot size by base zone, within the**

| | | |
|-----|---|---------------------------|
| 107 | Residential–Village (R-V) zone | 8,000 square feet |
| 108 | Residential–Urban (R-U) zone | 20,000 square feet |
| 109 | Residential–Rural (R-RL), Residential–Suburban (R-S) <u>and</u> | |
| 110 | Residential–Kittery Point Village (R-KPV) zones | 40,000 square feet |
| 111 | Commercial (C1), (C2), (C3), Industrial (IND), Business-Local (B-L) | |
| 112 | and Business-Local 1 (B-L1) zones | 60,000 square feet |
| 113 | Residential-Rural Conservation (R-RLC) zone | 80,000 square feet |
| 114 | Business-Park (B-PK) zone | 120,000 square feet |
| 115 | <u>Mixed-Use Badgers Island (MU-BI) zone</u> | <u>6,000 square feet</u> |
| 116 | <u>Mixed-Use Kittery Foreside (MU-KF) zone</u> | <u>10,000 square feet</u> |

117 **b. Minimum land area per dwelling unit by base zone, within the**

| | | |
|-----|---|---------------------------|
| 119 | Residential–Village (R-V) zone | 8,000 square feet |
| 120 | Business-Park (B-PK) zone | 10,000 square feet |
| 121 | Residential–Urban (R-U), Business-Local (B-L) and | |
| 122 | Business-Local 1 (B-L1) zones | 20,000 square feet |
| 123 | Mixed Use (M-U), Residential–Rural (R-RL), | |
| 124 | Residential–Suburban (R-S) and | |
| 125 | Residential–Kittery Point Village (R-KPV) zones | 40,000 square feet. |
| 126 | Residential-Rural Conservation (R-RLC) zone | 80,000 square feet. |
| 127 | <u>Mixed-Use Badgers Island (MU-BI) zone</u> | <u>6,000 square feet*</u> |
| 128 | <u>* 3,000 square feet for the first two dwelling units</u> | |
| 129 | <u>Mixed-Use Kittery Foreside (MU-KF) zone</u> | <u>10,000 square feet</u> |

130 **c. Minimum Shore frontage by base zone per lot and dwelling unit**

| | | |
|-----|--|----------------|
| 133 | <u>Mixed Use-Badgers Island (MU-BI)</u> | <u>25 feet</u> |
| 134 | Residential-Village (R-V) <u>and Residential Urban (R-U) zones</u> | |
| 135 | <u>and Mixed-Use Kittery Foreside (MU-KF) zones</u> | <u>50 feet</u> |
| 136 | Mixed Use (M-U), Commercial (C1), (C2), (C3), Industrial (IND), | |
| 137 | Business-Park (B-PK), Business-Local (B-L) and | |
| 138 | Business-Local 1 (B-L1) zones (shore frontage per lot) | 150 feet |
| 139 | (shore frontage per dwelling unit) | 50 feet |
| 140 | Residential-Rural (R-RL), Residential-Suburban (R-S), | |
| 141 | and Residential-Kittery Point Village (R-KPV) | |
| 142 | zones (shore frontage per lot) | 150 feet |
| 143 | (shore frontage per dwelling unit) | 100 feet |

144 Residential-Rural Conservation (R-RLC) zone (per lot and dwelling unit) 250 feet
145 The minimum shore frontage requirement for public and private recreational facilities shall be the same as
146 that for residential development in the respective zone.
147

148 d. The total footprint of areas devegetated for structures, parking lots and other impervious surfaces, must
149 not exceed twenty (20) percent of the lot area, including existing development, except in the following
150 zones:

- 151
- 152 i. Mixed Use -Badgers Island (MU-BI) and Mixed Use Kittery Foreside (MU-KF) Zones, where the
153 maximum lot coverage is sixty (60) percent. The Board of Appeals may approve a miscellaneous
154 appeal application to increase allowable lot coverage in the Mixed Use -Badgers Island (MU-BI) zone
155 to seventy (70) percent where it is clearly demonstrated that no practicable alternative exists to
156 accommodate a water-dependent use.
 - 157
 - 158 ii. Commercial (C1, C-2, C-3), Business – Local (B-L and B-L1), and Industrial (IND) Zones where the
159 maximum lot coverage is seventy (70) percent.
 - 160
 - 161 iii. Notwithstanding the above limits, vegetated surfaces must exceed fifty (50) percent of the lot area
162 when the lot, being no greater in size than ten thousand (10,000) square feet, is situated in both the
163 Residential - Urban Zone (R-U) and the Shoreland Overlay Zone.
 - 164
 - 165 iv. In the shoreland zone within the Mixed Use (M-U) zone, the maximum lot coverage shall be 20%.
 - 166

167

168 2. Principal and Accessory Structures – Setbacks and Development.

- 169
- 170 a. All new principal and accessory structures (except certain patios and decks per Section
171 16.3.2.17.D.2.b, must be set back as follows:
172
 - 173 i. At least one hundred (100) feet, horizontal distance, from the normal high water line of any water
174 bodies, tributary streams, the upland edge of a coastal wetland, or the upland edge of a freshwater
175 wetland, and seventy-five (75) feet, horizontal distance, from the normal high-water line of any water
176 bodies, or the upland edge of a wetland on the Mixed Use - Badgers Island and the Kittery Foreside
177 Zones, unless modified according to the terms of Sections 16.3.2.14.D & E and 16.3.2.15.D & E,,
178 except that in the Commercial Fisheries/Maritime Uses Overlay Zone there is no minimum setback
179 requirement. In the Resource Protection Overlay Zone the setback requirement is 250 feet, horizontal
180 distance, except for structures, roads, parking spaces or other regulated objects specifically allowed
181 in the zone, in which case the setback requirements specified above apply.
 - 182
 - 183 ii. The water body, tributary stream, or wetland setback provision does not apply to structures which
184 require direct access to the water body or wetland as an operational necessity, such as piers and
185 retaining walls, nor does it apply to other functionally water-dependent uses.
 - 186
 - 187 b. Accessory patios or decks no larger than five hundred (500) square feet in area must be set back at
188 least seventy-five (75) feet from the normal high water line of any water bodies, tributary streams, the
189 upland edge of a coastal wetland, or the upland edge of a freshwater wetland. Other patios and decks
190 must satisfy the normal setback required for principal structures in the Shoreland Overlay Zone.
 - 191

- 192 c. If there is a bluff, setback measurements for principal structures, water and wetland must be taken
193 from the top of a coastal bluff that has been identified on Coastal Bluff maps as being “highly unstable” or
194 “unstable” by the Maine Geological Survey pursuant to its “Classification of Coastal Bluffs” and published
195 on the most recent Coastal Bluff map. If the applicant and Code Enforcement Officer are in disagreement
196 as to the specific location of a “highly unstable” or “unstable” bluff, or where the top of the bluff is located,
197 the applicant is responsible for the employment a Maine Registered Professional Engineer, a Maine
198 Certified Soil Scientist, or a Maine State Geologist qualified to make a determination. If agreement is still
199 not reached, the applicant may appeal the matter to the Board of Appeals.
200
- 201 d. Public access to the waterfront must be discouraged through the use of visually compatible fencing
202 and/or landscape barriers where parking lots, driveways or pedestrian routes abut the protective buffer.
203 The planting or retention of thorny shrubs, such as wild rose or raspberry plants, or dense shrubbery
204 along the perimeter of the protective buffer is encouraged as a landscape barrier. If hedges are used as
205 an element of a landscape barrier, they must form a solid continuous visual screen of at least three feet in
206 height immediately upon planting.
207
- 208 e. On a nonconforming lot of record on which only a residential structure exists, and it is not possible to
209 place an accessory structure meeting the required water body, tributary stream or wetland setbacks, the
210 Code Enforcement Officer may issue a permit to place a single accessory structure, with no utilities, for
211 the storage of yard tools and similar equipment. Such accessory structure must not exceed eighty (80)
212 square feet in area nor eight (8) feet in height, and must be located as far from the shoreline or tributary
213 stream as practical and meet all other applicable standards, including lot coverage and vegetation
214 clearing limitations. In no case will the structure be allowed to be situated closer to the shoreline or
215 tributary stream than the existing principal structure.
216
- 217 f. The lowest floor elevation or openings of all buildings and structures, including basements, must be
218 elevated at least one foot above the elevation of the 100-year flood, the flood of record, or in the absence
219 of these, the flood as defined by soil types identified as recent flood-plain soils.
220
- 221 g. The total footprint of areas devegetated for structures, parking lots and other impervious surfaces,
222 must not exceed twenty (20) percent of the lot area, including existing development, except in the
223 following zones:
224
- 225 i. Badgers Island and Kittery Foreside Zones, where the maximum lot coverage is sixty (60) percent.
226 The Board of Appeals may approve a miscellaneous appeal application to increase allowable lot
227 coverage in the Badgers Island district to seventy (70) percent where it is clearly demonstrated that
228 no practicable alternative exists to accommodate a water-dependent use.
229
- 230 ii. Commercial (C-1, C-2, C3), Mixed Use (MU), Business – Local (B-L and B-L1), and Industrial (IND)
231 Zones where the maximum lot coverage is seventy (70) percent.
232
- 233 Notwithstanding the above limits, non-vegetated surfaces must not exceed fifty (50) percent of the lot
234 area when the lot, being no greater in size than ten thousand (10,000) square feet, is situated in both
235 the Residential - Urban Zone (R-U) and the Shoreland Overlay Zone
236
- 237 h. Stairways or similar structures may be allowed with a permit from the Code Enforcement Officer, to
238 provide shoreline access in areas of steep slopes or unstable soils provided the:
239

- 240 i. structure is limited to a maximum of four feet in width;
241
242 ii. structure does not extend below or over the normal high-water line of a water body or upland edge of
243 a wetland (unless permitted by the Department of Environmental Protection pursuant to the Natural
244 Resources Protection Act, 38 M.R.S. §480-C); and
245
246 iii. applicant demonstrates that no reasonable access alternative exists on the property.
247
248 i. If more than one dwelling unit, principal governmental, institutional, commercial or industrial structure
249 or use, or combination thereof, is constructed or established on a single parcel in the shoreland zone, all
250 dimensional requirements shall be met for each additional dwelling unit, principal structure, or use.
251
-

252
253 **Article III. Nonconformance** (Ordained 9-26-11; Effective 10-27-11)

254
255 **16.7.3.5.6 Nonconforming Structure Reconstruction.**

256
257 A. Any nonconforming structure which is located less than the required setback from a water body,
258 tributary stream, or wetland and which is removed, damaged or destroyed, ~~by any~~ regardless of the
259 cause, by more than 50% of the market value of the structure before such damage, destruction or
260 removal, may be reconstructed or replaced provided that a permit is obtained within eighteen (18) months
261 of the date of said damage, destruction, or removal, and provided that such reconstruction or replacement
262 is in compliance with the water body, tributary stream or wetland setback requirement to the greatest
263 practical extent as determined by the Planning Board (in cases where the structure is located in a
264 Shoreland Overlay of Resources Protection Overlay Zone) or Code Enforcement Officer, in accordance
265 with this Code.
266

267 B. In no case will a structure be reconstructed or replaced so as to increase its non-conformity. If the
268 reconstructed or replacement structure is less than the required setback it may not be any larger than the
269 original structure, except as allowed pursuant to Section 16.7.3.5.5, Nonconforming Structures Repair
270 and/or Expansion, as determined by the nonconforming floor area and volume of the reconstructed or
271 replaced structure at its new location.
272

273 C. If the total amount of floor area and volume of the original structure can be relocated or ~~reconstructed~~
274 beyond the required setback area, no portion of the relocated or reconstructed structure may be replaced
275 or constructed ~~reconstructed at~~ less than the setback requirement for a new structure. When it is
276 necessary to remove vegetation to reconstruct a structure, vegetation will be replanted in accordance with
277 Section 16.7.3.5.4.C, Nonconforming Structure Relocation. Application for a demolition permit for any
278 structure that has been partially damaged must be made to the Code Enforcement Officer.
279

280 D. Any nonconforming structure which is located less than the required setback from a water body,
281 tributary stream, or wetland and removed, damaged or destroyed by any cause ~~through no fault of action~~
282 ~~by the owner~~ by 50% or less of the market value of the structure before such damage, destruction or
283 removal, may be reconstructed in-place if a permit is obtained from the Code Enforcement Officer or the
284 Planning Board (in cases where the structure was located in the Shoreland Overlay or Resources
285 Protection Overlay Zone) within twelve (12) months of the established date of damage, ~~or~~ destruction.
286

287 E. In determining whether the structure reconstruction or replacement meets the setback to the greatest
288 practical extent the Planning Board or Code Enforcement Officer must consider, in addition to the criteria
289 in Section 16.7.3.5.4, Nonconforming Structure Relocation, the physical condition and type of foundation
290 present, if any.

291

292 **16.7.3.5.7 Nonconforming Use Expansion.**

293 Expansion of a nonconforming use of any structure or land area other than that occupied as such when
294 created is not permitted with the following exceptions:

295

296 A. uses in conformity with Chapter 16.7; and

297

298 B. nonconforming residential uses located within the Resource Protection Overlay, or Shoreland Overlay
299 Zone with Planning Board approval, may expand by thirty (30) percent or less of the structure, in floor
300 area or volume, during the lifetime of the structure if the applicant can prove the proposal is consistent
301 with the review standards in Section 16.3.2.17.D.2.

302

303 **C. 16.7.3.5.8 Nonconforming Use Change – Review Authority and Evaluations.**

304 The reviewing authority per subsections A B. and C below, may require evaluations be prepared by a
305 person certified and/or qualified to perform the required evaluation. It is the burden and responsibility of
306 the applicant to bear the costs for such evaluations. In the event there are existing official maps, data
307 and/or reports for general use, the applicant is encouraged to submit copies of these documents to the
308 reviewing authority. In determining that no greater adverse impact will occur, the applicant may be
309 required to submit an evaluation in writing regarding the probable effects on public health and safety,
310 erosion and sedimentation, water quality, fish and wildlife habitat, vegetative cover, visual and actual
311 points of public access to waters, natural beauty, floodplain management, archaeological and historic
312 resources, and commercial fishing and maritime activities, and other functionally water-dependent uses.

313

314 A. Administratively. The Town Planner and the Code Enforcement Officer may approve the change of
315 use of a nonconforming structure where it can be deemed the proposed use is a conforming use and the
316 proposed use does not impact a water body, tributary stream, or wetland. See Section 16.4.3.5.

317

318 B. By Board of Appeals. Outside the areas regulated by Shoreland Overlay Zone or Resource Protection
319 Overlay Zone, an existing nonconforming use may be changed to another nonconforming use with
320 approval of the Board of Appeals provided the proposed use is not more nonconforming.

321

322 C. By Planning Board. Within areas regulated by Shoreland Overlay Zone or Resource Protection
323 Overlay Zone, an existing nonconforming use may be changed to another nonconforming use with the
324 approval of the Planning Board per Section ~~16.7.3.5.2~~16.7.3.6.2.

325

326 **16.7.3.5.9 Nonconforming Lots of Record.** (Ordained 1-23-12; Effective 2-23-12)

327 A. Nonconforming Lots: In any district, notwithstanding limitations imposed by other sections of this
328 Code, single noncontiguous lots legally created when recorded may be built upon consistent with the
329 uses in the particular zone. These provisions apply even though such lots fail to meet the minimum
330 requirements for area or width, or both, which are applicable in the zone, provided that yard dimensions
331 and other requirements, not involving area or width, or both, of the lot conform to the regulation for the
332 zone in which such lot is located. Relaxation of yard and other requirements not involving area or width
333 may be obtained only through miscellaneous variation request to the Board of Appeals.

334

335 **16.7.3.5.10 Contiguous Non-Conforming Lots.** (Ordained 1-23-12; Effective 2-23-12)

336 A. Contiguous Nonconforming Lots. If two or more contiguous
337 nonconforming lots or portions thereof are in single or joint
338 ownership of record, and if all or part of the lots do not meet the
339 dimensional requirements of this Code, and if one or more of
340 the lots are vacant or contain no principal structure, the lots
341 shall be combined to the extent necessary to meet the
342 dimensional requirements, common ownership and if a
343 combination of such lots or a portion thereof constitutes a lot of
344 nearer conforming size, such combination is deemed to
345 constitute a single lot.



346

347 B. Contiguous Built Upon Nonconforming Lots. If two or
348 more contiguous lots or parcels are in a single or joint
349 ownership of record at the time of adoption of this Code, it all or
350 part of the lots do not meet the dimensional requirements of
351 this Code, and if a principal use or structure exists on each lot,
352 the non-conforming lots may be conveyed separately or
353 together, provided that the State Minimum Lot Size Law (12
354 MRSA §4807-A through 4807-D) and the State of Maine
355 Subsurface Wastewater Disposal Rules are complied with.



356 ~~If there exists a legally created principal structure on each of~~
357 ~~the contiguous nonconforming lots or portions thereof that~~
358 ~~would otherwise require the lots to be combined as provided~~
359 ~~herein, the contiguous lots need not be combined to create a~~
360 ~~single lot as required by Section A above.~~

361

362 C. Contiguous Partially Built Upon Lot. If two or more
363 contiguous lots or parcels are in a single or joint ownership of
364 record at the time of or since adoption or amendment of this
365 Code, if any of these lots do not individually meet the
366 dimensional requirements of this Code or subsequent
367 amendments, and if one or more of the lots are vacant or
368 contain no principal structure, the lots shall be combined to the
369 extent necessary to meet the dimensional requirements. If one
370 or more of the contiguous nonconforming lots is vacant or
371 contains no principal structure, the lots must be combined to
372 the extent necessary to meet the purposes of this Code as
373 required by Section A above.



374

375 This subsection does not apply:

376 1. to any Planning Board approved subdivision which was recorded in the York County Registry of
377 Deeds on, or before July 13, 1977;

378 2.. if one or more of the contiguous lots is served by a public sewer, or can accommodate a subsurface
379 sewage disposal system in conformance with this Code Section 16.8.7.1 – Septic Waste Disposal, and
380 the State of Maine Subsurface Wastewater Disposal Rules; and

381 i. if each lot contains at least 100 feet of shore frontage and at least 20,000 square feet of lot area; or

382 ii. if any lot(s) that do not meet the frontage and lot size requirements of Section 16.3.2.17.D.1 are
383 reconfigured or combined so each new lot contains at least 100 feet of shore frontage and 20,000 square
384 feet of lot area.

385

386 ~~D.C.~~ Single Lot Division.

387 If two principal structures existing on a single lot legally created when recorded, each may be sold on a
388 separate lot provided the Board of Appeals determines that each resulting lot is as conforming as
389 practicable to the dimensional requirements of this Code. If three or more principal structures existing on a
390 single lot legally created when recorded, each may be sold on a separate lot provided the Planning Board
391 determines that each resulting lot is as conforming as practicable to the dimensional requirements of this
392 Code.

393 (Ordained 1-23-12; Effective 2-23-12)

394

395 **16.7.3.5.11 Nonconforming Parking or Loading Space.** (Ordained 9-26-11; Effective 10-27-11)

396 A structure and/or use which is nonconforming as to the requirements for off-street loading and/or parking
397 spaces may not be enlarged or added to unless off-street space is provided sufficient to satisfy the
398 requirements of this Code for both the original and addition or enlargement of the structure or use.

399

400 **16.7.3.5.12 Nonconforming Steps.** (Ordained 9-26-11; Effective 10-27-11)

401 The addition of steps and landings, exterior to the structure does not constitute expansion. Such steps
402 are not to be considered part of the structure for such determination. Step landings may not exceed three
403 feet by three feet (3'x3') in size.

404

405 **16.7.3.6 Nonconforming Structures in Shoreland and Resource Protection Overlay Zones.**

406 (Ordained 9-26-11; Effective 10-27-11)

407

408 **16.7.3.6.1 Nonconforming Structure Expansion.**

409 A nonconforming structure may be added to, or expanded, after obtaining Planning Board approval and a
410 permit from the Code Enforcement Officer. Such addition or expansion must not increase the non-
411 conformity of the structure and must be in accordance with the subparagraphs below.

412

413 A. After January 1, 1989, if any portion of a structure is less than the required setback from the normal
414 high-water line of a water body or tributary stream or the upland edge of a wetland, that portion of the
415 structure will not be permitted to expand, as measured in floor area or volume, by thirty percent (30%) or
416 more during the lifetime of the structure.

417

418 B. If a replacement structure conforms to the requirements of Section ~~16.7.3.6.1.A~~16.7.3.5.4 and
419 Section 16.7.3.5.6 and is less than the required setback from a water body, tributary stream or wetland,
420 the replacement structure will not be permitted to expand if the original structure existing on January 1,
421 1989, has been expanded by 30% in floor area and volume since that date.

422

423 C. Whenever a new, expanded or replacement foundation is constructed under a nonconforming
424 structure, the structure and new foundation must be placed such that the setback requirement is met to
425 the greatest practical extent as determined by the Planning Board, basing its decision on the criteria
426 specified in Section 16.7.3.5.4 B, Nonconforming Structure Relocation. If the completed foundation does
427 not extend beyond the exterior dimensions of the structure, except for expansion in conformity with
428 Section 16.7.3.6.1.A, and the foundation does not cause the structure to be elevated by more than three
429 (3) additional feet, as measured from the uphill side of the structure (from original ground level to the
430 bottom of the first floor sill), it will not be considered to be an expansion of the structure.

431

432 **16.7.3.6.2 Nonconforming Use Change.**

433 An existing nonconforming use may be changed to another nonconforming use with the approval of the
434 Planning Board provided the proposed use has no greater adverse impact on any water body or wetland,
435 or on the subject and adjacent properties and resources, including water dependent uses in the
436 Commercial Fisheries/Maritime Uses Overlay Zone than the former use, as determined by the Planning
437 Board. Within the area regulated by Shoreland Overlay Zone or Resource Protection Overlay Zone, for
438 the determination of no greater adverse impact, the Planning Board may require written documentation
439 from the applicant, regarding the probable effects on public health and safety, erosion and sedimentation,
440 water quality, fish and wildlife habitat, vegetative cover, visual and actual points of public access to
441 waters, natural beauty, floodplain management, archaeological and historic resources, and commercial
442 fishing and maritime activities, and other functionally water-dependent uses.

443

444

445

446 **Chapter 16.8 DESIGN AND PERFORMANCE STANDARDS – BUILT ENVIRONMENT**

447 **Article XXVIII. Single and Duplex Family Dwellings**

448

449 **16.8.28.1 Single and Duplex Family Dwellings in Resource Protection and Shoreland Overlay** 450 **Zones.**

451

452 In addition to the criteria specified in Section 16.6.6 and 16.10.8.3.4, applicable to the granting of a
453 special exception use request, the Planning Board may approve an application for a single or duplex
454 family dwelling special exception use request, where applicable, provided the applicant demonstrates all
455 of the following conditions are met:

456

457 A. There is no location on the property, other than a location within the Shoreland Overlay or Resource
458 Protection Overlay Zones, where a single family dwelling the structure can be built, or similarly for a
459 duplex in the Shoreland Overlay zone.

460

461 B. The lot on which the structure is proposed is undeveloped and was established and recorded in the
462 York County Registry of Deeds before inclusion in the Shoreland or Resource Protection Overlay Zones.

463

Chapter 1000: GUIDELINES FOR MUNICIPAL SHORELAND ZONING ORDINANCES

PREFACE: The Mandatory Shoreland Zoning Act, 38 M.R.S.A. sections 435-449, requires all municipalities to adopt, administer, and enforce ordinances which regulate land use activities within 250 feet of great ponds, rivers, freshwater and coastal wetlands, including all tidal waters; and within 75 feet of streams as defined. The Act also requires the Board of Environmental Protection to establish minimum guidelines for such ordinances. This document, adopted by the Board on February 14, 1990 and amended July 14, 1992, August 7, 1994, February 6, 1999, February 13, 2000 and May 1, 2006 contains those guidelines for municipal shoreland ordinances. The Act requires that municipalities adopt shoreland zoning ordinances consistent with, or no less stringent than, those minimum guidelines.

Municipalities need not adopt this guideline ordinance word for word. In fact, the Department of Environmental Protection (Department) encourages municipalities to consider local planning documents and other special local considerations, and to modify this ordinance into one that meets the needs of the particular community. Municipalities may wish to adopt more stringent ordinances, or ordinances which are completely different from the guidelines, provided that such ordinances are equally or more effective in achieving the purposes of the Act. In addition, coastal communities must address the coastal management policies cited in 38 M.R.S.A. section 1801.

When a municipality determines that special local conditions within portions of the shoreland zone require a different set of standards from those in the minimum guidelines, the municipality shall document the special conditions and submit them, together with its proposed ordinance provisions, to the Commissioner of the Department for review and approval. No amendment to an ordinance which affects the shoreland zone is valid without the approval of the Commissioner.

Neither this "Preface" nor the "Notes" contained in this model ordinance are official parts of the ordinance and should not be incorporated into a municipality's locally adopted ordinance. The Preface and Notes are provided for explanatory purpose only.

Municipalities must be aware that in addition to the requirements of the Mandatory Shoreland Zoning Act, the requirements of the Comprehensive Planning and Land Use Regulation Act (30-A M.R.S.A. Chapter 1878, sections 4312-4349) will be an integral part of a municipality's overall strategy for managing future development. For example, parts of a municipality's shoreland area may be designated as an area for growth while others will be designated as rural or slow growth areas.

In many situations, the shoreland zoning ordinance will be an effective tool for implementing the goals and policies of a municipality's comprehensive plan. A municipality may choose to integrate the shoreland zoning requirements into a town-wide zoning ordinance or choose to have a separate shoreland zoning ordinance. Regardless, the shoreland zoning provisions should form an integrated approach to managing growth as well as fulfilling the requirements of the Mandatory Shoreland Zoning Act.

For more information on the Growth Management Program, please contact your regional council or the State Planning Office, 38 State House Station, Augusta, Maine 04333.

For more information on the shoreland zoning law, please contact the Department of Environmental Protection's Shoreland Zoning Unit, 17 State House Station, Augusta, Maine 04333.

CHAPTER 1000: GUIDELINES FOR MUNICIPAL SHORELAND ZONING ORDINANCES

TABLE OF CONTENTS

Page

| | |
|---|----|
| 1. Purposes | 1 |
| 2. Authority | 1 |
| 3. Applicability..... | 1 |
| 4. Effective Date..... | 2 |
| A. Effective Date of Ordinance and Ordinance Amendments | 2 |
| B. Sections 15(O) and 15(O-1) | 2 |
| 5. Availability..... | 2 |
| 6. Severability..... | 2 |
| 7. Conflicts with Other Ordinances..... | 2 |
| 8. Amendments..... | 2 |
| 9. Districts and Zoning Map..... | 3 |
| A. Official Shoreland Zoning Map..... | 3 |
| B. Scale of Map..... | 3 |
| C. Certification of Official Shoreland Zoning Map | 3 |
| D. Changes to the Official Shoreland Zoning Map | 3 |
| 10. Interpretation of District Boundaries | 4 |
| 11. Land Use Requirements | 4 |
| 12. Non-conformance..... | 4 |
| A. Purpose | 4 |
| B. General..... | 4 |
| C. Non-conforming Structures | 4 |
| D. Non-conforming Uses..... | 7 |
| E. Non-conforming Lots..... | 7 |
| 13. Establishment of Districts | 8 |
| A. Resource Protection District..... | 8 |
| B. Limited Residential District..... | 10 |
| C. Limited Commercial District..... | 10 |
| D. General Development I District..... | 10 |
| E. General Development II District..... | 10 |
| F. Commercial Fisheries/Maritime Activities District | 11 |
| G. Stream Protection District | 11 |
| 14. Table of Land Uses | 12 |
| 15. Land Use Standards..... | 14 |
| A. Minimum Lot Standards | 14 |
| B. Principal and Accessory Structures | 15 |
| C. Piers, Docks, Wharves, Bridges and Other Structures and Uses Extending Over or Beyond the Normal High-Water Line of a Water body or Within a Wetland..... | 18 |
| D. Campgrounds | 19 |
| E. Individual Private Campsites | 19 |
| F. Commercial and Industrial Uses..... | 20 |
| G. Parking Areas..... | 21 |

| | |
|--|----|
| H. Roads and Driveways | 21 |
| I. Signs..... | 23 |
| J. Storm Water Runoff | 24 |
| K. Septic Waste Disposal | 24 |
| L. Essential Services | 24 |
| M. Mineral Exploration and Extraction | 25 |
| N. Agriculture..... | 26 |
| O. Timber Harvesting | 29 |
| O-1 Timber Harvesting – Statewide Standards | 31 |
| P. Clearing or Removal of Vegetation for Activities Other than Timber Harvesting | 39 |
| Q. Erosion and Sedimentation Control..... | 41 |
| R. Soils | 42 |
| S. Water Quality..... | 42 |
| T. Archaeological Site..... | 42 |
| 16. Administration..... | 43 |
| A. Administering Bodies and Agents | 43 |
| B. Permits Required | 43 |
| C. Permit Application..... | 43 |
| D. Procedure for Administering Permits | 44 |
| E. Special Exceptions..... | 45 |
| F. Expiration of Permit | 46 |
| G. Installation of Public Utility Service | 46 |
| H. Appeals | 46 |
| J. Enforcement..... | 49 |
| 17. Definitions..... | 50 |
| Appendix A: | |
| Alternative to 30% Expansion Rule pursuant to 38 M.R.S.A. section 439-A, subsection 4-A..... | 61 |
| Appendix B: | |
| 38 M.R.S.A section 437. Significant rivers segments identified..... | 64 |

NOTE: The Board of Environmental Protection recognizes that many municipalities have developed and adopted comprehensive land use ordinances for all land areas within their respective communities. Those ordinances may or may not follow a similar format to this guideline ordinance. It is not the intent of the Board to impose this guideline ordinance on a municipality which, within its land use codes, has otherwise met the intent and purposes of the Mandatory Shoreland Zoning Act and this guideline ordinance.

Whether or not municipalities choose to integrate their shoreland zoning requirements into a town-wide zoning ordinance, it is important to develop a comprehensive and coordinated strategy for managing and guiding growth in the shoreland area.

Chapter 1000: GUIDELINES FOR MUNICIPAL SHORELAND ZONING ORDINANCES

Shoreland Zoning Ordinance for the Municipality of

-
1. **Purposes.** The purposes of this Ordinance are to further the maintenance of safe and healthful conditions; to prevent and control water pollution; to protect fish spawning grounds, aquatic life, bird and other wildlife habitat; to protect buildings and lands from flooding and accelerated erosion; to protect archaeological and historic resources; to protect commercial fishing and maritime industries; to protect freshwater and coastal wetlands; to control building sites, placement of structures and land uses; to conserve shore cover, and visual as well as actual points of access to inland and coastal waters; to conserve natural beauty and open space; and to anticipate and respond to the impacts of development in shoreland areas.
 2. **Authority.** This Ordinance has been prepared in accordance with the provisions of Title 38 sections 435-449 of the Maine Revised Statutes Annotated (M.R.S.A.).
 3. **Applicability.** This Ordinance applies to all land areas within 250 feet, horizontal distance, of the
 - normal high-water line of any great pond or river,
 - upland edge of a coastal wetland, including all areas affected by tidal action, or
 - upland edge of a freshwater wetland,

and all land areas within 75 feet, horizontal distance, of the normal high-water line of a stream.

This Ordinance also applies to any structure built on, over or abutting a dock, wharf or pier, or other structure extending or located below the normal high-water line of a water body or within a wetland.

NOTE: Municipalities may choose not to regulate structures built on, over or abutting a dock, wharf, pier or other structure extending beyond the normal high-water line of a water body or within a wetland. If so, the sentence “This Ordinance also applies to any structure built on, over or abutting a dock, wharf, pier, or other structure extending or located below the normal high-water line of a water body or within a wetland.”, in Section 3 above, must be stricken from the Ordinance. In addition: Item 17 pertaining to “Piers, docks, wharfs, bridges and other structures and uses extending over or below the normal high-water line or within a wetland” in Section 14, Table 1, Land Uses in the Shoreland Zone; Section 15 (C), Standards for Piers, docks, wharfs, bridges and other structures and uses extending over or below the normal high-water line or within a wetland; and the definition of “Piers, docks, wharfs, bridges and other structures and uses extending over or below the normal high-water line or within a wetland” in Section 17 should be deleted.

NOTE: Coastal wetlands, by definition, include all areas affected by tidal action, not just those areas where salt marshes and salt meadows exist. Cobble and sand beaches, mudflats, and rocky ledges, below the maximum spring tide are all considered to be coastal wetlands.

NOTE: Pursuant to 38 M.R.S.A. section 440, municipalities may extend or adopt zoning controls beyond the limits established in Section 3, above, in order to protect the public health, safety, and welfare and to avoid problems associated with floodplain development.

4. Effective Date

A. Effective Date of Ordinance and Ordinance Amendments. This Ordinance, which was adopted by the municipal legislative body on _____, shall not be effective unless approved by the Commissioner of the Department of Environmental Protection. A certified copy of the Ordinance, or Ordinance Amendment, attested and signed by the Municipal Clerk, shall be forwarded to the Commissioner for approval. If the Commissioner fails to act on this Ordinance or Ordinance Amendment, within forty-five (45) days of his/her receipt of the Ordinance, or Ordinance Amendment, it shall be automatically approved.

Any application for a permit submitted to the municipality within the forty-five (45) day period shall be governed by the terms of this Ordinance, or Ordinance Amendment, if the Ordinance, or Ordinance Amendment, is approved by the Commissioner.

B. Sections 15(O) and 15(O-1). Section 15(O) is repealed on the statutory date established under 38 M.R.S.A. section 438-A(5), at which time Section 15(O-1) shall become effective. Until such time as Section 15(O) is repealed, Section 15(O-1) is not in effect.

NOTE: The statutory date established under 38 M.R.S.A. section 438-A(5) is the effective date of state-wide timber harvesting standards. That date is “the first day of January of the 2nd year following the year in which the Commissioner of Conservation determines that at least 252 of the 336 municipalities identified by the Commissioner of Conservation as the municipalities with the highest acreage of timber harvesting activity on an annual basis for the period 1992-2003 have either accepted the state-wide standards or have adopted an ordinance identical to the state-wide standards.” 38 M.R.S.A. section 438-A(5) further provides that “the Commissioner of Conservation shall notify the Secretary of State in writing and advise the Secretary of the effective date of the state-wide standards.”

5. **Availability.** A certified copy of this Ordinance shall be filed with the Municipal Clerk and shall be accessible to any member of the public. Copies shall be made available to the public at reasonable cost at the expense of the person making the request. Notice of availability of this Ordinance shall be posted.
6. **Severability.** Should any section or provision of this Ordinance be declared by the courts to be invalid, such decision shall not invalidate any other section or provision of the Ordinance.
7. **Conflicts with Other Ordinances.** Whenever a provision of this Ordinance conflicts with or is inconsistent with another provision of this Ordinance or of any other ordinance, regulation or statute administered by the municipality, the more restrictive provision shall control.
8. **Amendments.** This Ordinance may be amended by majority vote of the legislative body. Copies of amendments, attested and signed by the Municipal Clerk, shall be submitted to the Commissioner of the Department of Environmental Protection following adoption by the municipal legislative body and shall not be effective unless approved by the Commissioner. If the Commissioner fails to act on

any amendment within forty-five (45) days of his/her receipt of the amendment, the amendment is automatically approved. Any application for a permit submitted to the municipality within the forty-five (45) day period shall be governed by the terms of the amendment, if such amendment is approved by the Commissioner.

9. Districts and Zoning Map

A. Official Shoreland Zoning Map. The areas to which this Ordinance is applicable are hereby divided into the following districts as shown on the Official Shoreland Zoning Map(s) which is (are) made a part of this Ordinance:

- (1) Resource Protection
- (2) Limited Residential
- (3) Limited Commercial
- (4) General Development I
- (5) General Development II
- (6) Commercial Fisheries/Maritime Activities
- (7) Stream Protection

NOTE: The development of a waterfront management strategy can be a complex process. There are many different techniques that can be used to tailor an ordinance to reflect local goals and resources. The Commercial Fisheries/Maritime Activities (CFMA) District included in these Guidelines is one approach which is based on allowing as permitted uses only those uses which are functionally water-dependent. But other zoning variations are also possible which may be much more specific about what types of functionally water-dependent uses should be permitted, make use of more than one type of waterfront district, may include standards for assessing the impact of proposed development on water dependent uses, and may include specific provisions to encourage certain types of public benefits.

The Department of Environmental Protection has developed one example of a more elaborate ordinance, which is available as a technical supplement to this model ordinance. There are many other sources of information available to assist with the design of this type of ordinance. The State Planning Office's Community Planning and Investment Program and your regional planning council should be consulted for additional assistance.

B. Scale of Map. The Official Shoreland Zoning Map shall be drawn at a scale of not less than: 1 inch = 2000 feet. District boundaries shall be clearly delineated and a legend indicating the symbols for each district shall be placed on the map.

NOTE: Because of map scale or other reason, a municipality may have a series of maps depicting its shoreland zone.

C. Certification of Official Shoreland Zoning Map. The Official Shoreland Zoning Map shall be certified by the attested signature of the Municipal Clerk and shall be located in the municipal office. In the event the municipality does not have a municipal office, the Municipal Clerk shall be the custodian of the map.

D. Changes to the Official Shoreland Zoning Map. If amendments, in accordance with Section 8, are made in the district boundaries or other matter portrayed on the Official Shoreland Zoning Map, such changes shall be made on the Official Shoreland Zoning Map within thirty (30) days after the amendment has been approved by the Commissioner of the Department of Environmental Protection.

10. Interpretation of District Boundaries. Unless otherwise set forth on the Official Shoreland Zoning Map, district boundary lines are property lines, the centerlines of streets, roads and rights of way, and the boundaries of the shoreland area as defined herein. Where uncertainty exists as to the exact location of district boundary lines, the Board of Appeals shall be the final authority as to location.

NOTE: Municipalities are encouraged to incorporate specific written descriptions of district boundaries into the Ordinance so that disputes over district boundaries are minimized. The Maine Supreme Judicial Court has held that the Official Shoreland Zoning Map is the primary tool to which to refer in determining district boundaries under ordinances that are not more explicit in their district descriptions than the language of the Guidelines, and that where there is inconsistency between the Map and these general text descriptions of the shoreland districts as provided in the minimum guidelines, the Map prevails.

11. Land Use Requirements. Except as hereinafter specified, no building, structure or land shall hereafter be used or occupied, and no building or structure or part thereof shall hereafter be erected, constructed, expanded, moved, or altered and no new lot shall be created except in conformity with all of the regulations herein specified for the district in which it is located, unless a variance is granted.

12. Non-conformance

A. Purpose. It is the intent of this Ordinance to promote land use conformities, except that non-conforming conditions that existed before the effective date of this Ordinance or amendments thereto shall be allowed to continue, subject to the requirements set forth in Section 12. Except as otherwise provided in this Ordinance, a non-conforming condition shall not be permitted to become more non-conforming.

B. General

- (1) **Transfer of Ownership.** Non-conforming structures, lots, and uses may be transferred, and the new owner may continue the non-conforming use or continue to use the non-conforming structure or lot, subject to the provisions of this Ordinance.
- (2) **Repair and Maintenance.** This Ordinance allows, without a permit, the normal upkeep and maintenance of non-conforming uses and structures including repairs or renovations that do not involve expansion of the non-conforming use or structure, and such other changes in a non-conforming use or structure as federal, state, or local building and safety codes may require.

NOTE: See Section 17 for the definitions of non-conforming structures, non-conforming uses and non-conforming lots.

C. Non-conforming Structures

- (1) **Expansions.** A non-conforming structure may be added to or expanded after obtaining a permit from the same permitting authority as that for a new structure, if such addition or expansion does not increase the non-conformity of the structure and is in accordance with subparagraphs (a) and (b) below.

[Alternatively, a municipality may, by local ordinance, regulate expansions of non-conforming structures in accordance with Appendix A, *Alternative to 30% Expansion Rule Pursuant to 38 M.R.S.A Section 439-A*. In adopting the alternative provisions contained in Appendix A, a municipality may choose not to include the "special expansion allowance" provision contained in paragraphs (1-A), (1-B), and (1-C) of Appendix A.]

NOTE: Municipalities that elect to adopt the alternative expansion limitation for nonconforming structures may not retain the 30% expansion limitation. However, regardless of the expansion limitation chosen, the provisions contained in Section 12(C) paragraphs (2), (3) and (4) below pertaining to Relocation, Reconstruction or Replacement, and Change of Use of a Non-conforming Structure must be retained.

- (a) After January 1, 1989 if any portion of a structure is less than the required setback from the normal high-water line of a water body or tributary stream or the upland edge of a wetland, that portion of the structure shall not be expanded, as measured in floor area or volume, by 30% or more, during the lifetime of the structure. If a replacement structure conforms with the requirements of Section 12(C)(3), and is less than the required setback from a water body, tributary stream or wetland, the replacement structure may not be expanded if the original structure existing on January 1, 1989 had been expanded by 30% in floor area and volume since that date.
- (b) Whenever a new, enlarged, or replacement foundation is constructed under a non-conforming structure, the structure and new foundation must be placed such that the setback requirement is met to the greatest practical extent as determined by the Planning Board or its designee, basing its decision on the criteria specified in Section 12(C)(2) Relocation, below. If the completed foundation does not extend beyond the exterior dimensions of the structure, except for expansion in conformity with Section 12(C)(1)(a) above, and the foundation does not cause the structure to be elevated by more than three (3) additional feet, as measured from the uphill side of the structure (from original ground level to the bottom of the first floor sill), it shall not be considered to be an expansion of the structure.
- (2) **Relocation.** A non-conforming structure may be relocated within the boundaries of the parcel on which the structure is located provided that the site of relocation conforms to all setback requirements to the greatest practical extent as determined by the Planning Board or its designee, and provided that the applicant demonstrates that the present subsurface sewage disposal system meets the requirements of State law and the State of Maine Subsurface Wastewater Disposal Rules (Rules), or that a new system can be installed in compliance with the law and said Rules. In no case shall a structure be relocated in a manner that causes the structure to be more non-conforming.

In determining whether the building relocation meets the setback to the greatest practical extent, the Planning Board or its designee shall consider the size of the lot, the slope of the

land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, the location of the septic system and other on-site soils suitable for septic systems, and the type and amount of vegetation to be removed to accomplish the relocation. When it is necessary to remove vegetation within the water or wetland setback area in order to relocate a structure, the Planning Board shall require replanting of native vegetation to compensate for the destroyed vegetation. In addition, the area from which the relocated structure was removed must be replanted with vegetation. Replanting shall be required as follows:

- (a) Trees removed in order to relocate a structure must be replanted with at least one native tree, three (3) feet in height, for every tree removed. If more than five trees are planted, no one species of tree shall make up more than 50% of the number of trees planted. Replaced trees must be planted no further from the water or wetland than the trees that were removed.

Other woody and herbaceous vegetation, and ground cover, that are removed or destroyed in order to relocate a structure must be re-established. An area at least the same size as the area where vegetation and/or ground cover was disturbed, damaged, or removed must be reestablished within the setback area. The vegetation and/or ground cover must consist of similar native vegetation and/or ground cover that was disturbed, destroyed or removed.

- (b) Where feasible, when a structure is relocated on a parcel the original location of the structure shall be replanted with vegetation which may consist of grasses, shrubs, trees, or a combination thereof.

- (3) **Reconstruction or Replacement.** Any non-conforming structure which is located less than the required setback from a water body, tributary stream, or wetland and which is removed, or damaged or destroyed, regardless of the cause, by more than 50% of the market value of the structure before such damage, destruction or removal, may be reconstructed or replaced provided that a permit is obtained within eighteen (18) months of the date of said damage, destruction, or removal, and provided that such reconstruction or replacement is in compliance with the water body, tributary stream or wetland setback requirement to the greatest practical extent as determined by the Planning Board or its designee in accordance with the purposes of this Ordinance. In no case shall a structure be reconstructed or replaced so as to increase its non-conformity. If the reconstructed or replacement structure is less than the required setback it shall not be any larger than the original structure, except as allowed pursuant to Section 12(C)(1) above, as determined by the non-conforming floor area and volume of the reconstructed or replaced structure at its new location. If the total amount of floor area and volume of the original structure can be relocated or reconstructed beyond the required setback area, no portion of the relocated or reconstructed structure shall be replaced or constructed at less than the setback requirement for a new structure. When it is necessary to remove vegetation in order to replace or reconstruct a structure, vegetation shall be replanted in accordance with Section 12(C)(2) above.

Any non-conforming structure which is located less than the required setback from a water body, tributary stream, or wetland and which is removed by 50% or less of the market value, or damaged or destroyed by 50% or less of the market value of the structure, excluding

normal maintenance and repair, may be reconstructed in place if a permit is obtained from the Code Enforcement Officer within one year of such damage, destruction, or removal.

In determining whether the building reconstruction or replacement meets the setback to the greatest practical extent the Planning Board or its designee shall consider, in addition to the criteria in Section 12(C)(2) above, the physical condition and type of foundation present, if any.

- (4) **Change of Use of a Non-conforming Structure.** The use of a non-conforming structure may not be changed to another use unless the Planning Board, after receiving a written application, determines that the new use will have no greater adverse impact on the water body, tributary stream, or wetland, or on the subject or adjacent properties and resources than the existing use.

In determining that no greater adverse impact will occur, the Planning Board shall require written documentation from the applicant, regarding the probable effects on public health and safety, erosion and sedimentation, water quality, fish and wildlife habitat, vegetative cover, visual and actual points of public access to waters, natural beauty, floodplain management, archaeological and historic resources, and commercial fishing and maritime activities, and other functionally water-dependent uses.

D. Non-conforming Uses

- (1) **Expansions.** Expansions of non-conforming uses are prohibited, except that non-conforming residential uses may, after obtaining a permit from the Planning Board, be expanded within existing residential structures or within expansions of such structures as allowed in Section 12(C)(1)(a) above.
- (2) **Resumption Prohibited.** A lot, building or structure in or on which a non-conforming use is discontinued for a period exceeding one year, or which is superseded by a conforming use, may not again be devoted to a non-conforming use except that the Planning Board may, for good cause shown by the applicant, grant up to a one year extension to that time period. This provision shall not apply to the resumption of a use of a residential structure provided that the structure has been used or maintained for residential purposes during the preceding five (5) year period.
- (3) **Change of Use.** An existing non-conforming use may be changed to another non-conforming use provided that the proposed use has no greater adverse impact on the subject and adjacent properties and resources, including water dependent uses in the CFMA district, than the former use, as determined by the Planning Board. The determination of no greater adverse impact shall be made according to criteria listed in Section 12(C)(4) above.

E. Non-conforming Lots

- (1) **Non-conforming Lots:** A non-conforming lot of record as of the effective date of this Ordinance or amendment thereto may be built upon, without the need for a variance, provided that such lot is in separate ownership and not contiguous with any other lot in the same ownership, and that all provisions of this Ordinance except lot area, lot width and shore

frontage can be met. Variances relating to setback or other requirements not involving lot area, lot width or shore frontage shall be obtained by action of the Board of Appeals.

- (2) **Contiguous Built Lots:** If two or more contiguous lots or parcels are in a single or joint ownership of record at the time of adoption of this Ordinance, if all or part of the lots do not meet the dimensional requirements of this Ordinance, and if a principal use or structure exists on each lot, the non-conforming lots may be conveyed separately or together, provided that the State Minimum Lot Size Law (12 M.R.S.A. sections 4807-A through 4807-D) and the State of Maine Subsurface Wastewater Disposal Rules are complied with.

If two or more principal uses or structures existed on a single lot of record on the effective date of this ordinance, each may be sold on a separate lot provided that the above referenced law and rules are complied with. When such lots are divided each lot thus created must be as conforming as possible to the dimensional requirements of this Ordinance.

- (3) **Contiguous Lots - Vacant or Partially Built:** If two or more contiguous lots or parcels are in single or joint ownership of record at the time of or since adoption or amendment of this Ordinance, if any of these lots do not individually meet the dimensional requirements of this Ordinance or subsequent amendments, and if one or more of the lots are vacant or contain no principal structure the lots shall be combined to the extent necessary to meet the dimensional requirements.

NOTE: Consistent with 38 M.R.S.A. section 438-A(1-A)(B), the immediately following exception may be adopted at the end of Section 12(E)(3) above if the municipality wishes to grandfather certain contiguous lots that were conforming and under the same ownership at the time lot size and shore frontage requirements were increased beyond those found in subparagraph E(3)(a).

This provision shall not apply to 2 or more contiguous lots, at least one of which is non-conforming, owned by the same person or persons on the effective date of this Ordinance and recorded in the registry of deeds if the lot is served by a public sewer or can accommodate a subsurface sewage disposal system in conformance with the State of Maine Subsurface Wastewater Disposal Rules; and

- (a) Each lot contains at least 100 feet of shore frontage and at least 20,000 square feet of lot area; or
- (b) Any lots that do not meet the frontage and lot size requirements of Section 12(E)(3)(a) are reconfigured or combined so that each new lot contains at least 100 feet of shore frontage and 20,000 square feet of lot area.

13. Establishment of Districts

- A. Resource Protection District.** The Resource Protection District includes areas in which development would adversely affect water quality, productive habitat, biological ecosystems, or scenic and natural values. This district shall include the following areas when they occur within the limits of the shoreland zone, exclusive of the Stream Protection District, except that areas which are currently developed and areas which meet the criteria for the Limited Commercial,

General Development I, or Commercial Fisheries/Maritime Activities Districts need not be included within the Resource Protection District.

- (1) Floodplains along rivers and floodplains along artificially formed great ponds along rivers, defined by the 100 year floodplain as designated on the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or Flood Hazard Boundary Maps, or the flood of record, or in the absence of these, by soil types identified as recent floodplain soils. This district shall also include 100 year floodplains adjacent to tidal waters as shown on FEMA's Flood Insurance Rate Maps or Flood Hazard Boundary Maps.
- (2) Areas of two or more contiguous acres with sustained slopes of 20% or greater.
- (3) Areas of two (2) or more contiguous acres supporting wetland vegetation and hydric soils, which are not part of a freshwater or coastal wetland as defined, and which are not surficially connected to a water body during the period of normal high water.

NOTE: These areas usually consist of forested wetlands abutting water bodies and non-forested wetlands.

- (4) Land areas along rivers subject to severe bank erosion, undercutting, or river bed movement, and lands adjacent to tidal waters which are subject to severe erosion or mass movement, such as steep coastal bluffs.

NOTE: Municipalities may also include the following other areas which have been recommended for protection in the comprehensive plan of the municipality, or as otherwise endorsed for protection by the municipal legislative body, such as:

- A. Other important wildlife habitat;
- B. Natural sites of significant scenic or esthetic value;
- C. Areas designated by federal, state or municipal governments as natural areas of significance to be protected from development; and
- D. Other significant areas which should be included in this district to fulfill the purposes of this Ordinance, such as, but not limited to, existing public access areas and certain significant archaeological and historic sites deserving of long-term protection as determined by the municipality after consultation with the Maine Historic Preservation Commission.
- E. Areas within 250 feet, horizontal distance, of the upland edge of freshwater and/or coastal wetlands, which are rated "moderate" or "high" value waterfowl and wading bird habitat, including nesting and feeding areas, by the Maine Department of Inland Fisheries and Wildlife (MDIF&W). These areas are generally depicted on a Geographic Information System (GIS) data layer.

B. Limited Residential District. The Limited Residential District includes those areas suitable for residential and recreational development. It includes areas other than those in the Resource

Protection District, or Stream Protection District, and areas which are used less intensively than those in the Limited Commercial District, the General Development Districts, or the Commercial Fisheries/Maritime Activities District.

- C. Limited Commercial District.** The Limited Commercial District includes areas of mixed, light commercial and residential uses, exclusive of the Stream Protection District, which should not be developed as intensively as the General Development Districts. This district includes areas of two or more contiguous acres in size devoted to a mix of residential and low intensity business and commercial uses. Industrial uses are prohibited.
- D. General Development I District.** The General Development I District includes the following types of existing, intensively developed areas:
- (1) Areas of two or more contiguous acres devoted to commercial, industrial or intensive recreational activities, or a mix of such activities, including but not limited to the following:
 - (a) Areas devoted to manufacturing, fabricating or other industrial activities;
 - (b) Areas devoted to wholesaling, warehousing, retail trade and service activities, or other commercial activities; and
 - (c) Areas devoted to intensive recreational development and activities, such as, but not limited to amusement parks, race tracks and fairgrounds.
 - (2) Areas otherwise discernible as having patterns of intensive commercial, industrial or recreational uses.
- E. General Development II District.** The General Development II District includes the same types of areas as those listed for the General Development I District. The General Development II District, however, shall be applied to newly established General Development Districts where the pattern of development at the time of adoption is undeveloped or not as intensively developed as that of the General Development I District.

Portions of the General Development District I or II may also include residential development. However, no area shall be designated as a General Development I or II District based solely on residential use.

In areas adjacent to great ponds classified GPA and adjacent to rivers flowing to great ponds classified GPA, the designation of an area as a General Development District shall be based upon uses existing at the time of adoption of this Ordinance. There shall be no newly established General Development Districts or expansions in area of existing General Development Districts adjacent to great ponds classified GPA, and adjacent to rivers that flow to great ponds classified GPA.

NOTE: See definition of "great pond classified GPA" in Section 17. In most municipalities all of the great ponds are classified GPA. In municipalities where all of the great ponds are classified GPA, the term "great ponds classified GPA" can be changed to "great ponds". It may also be helpful to list the names of the great ponds found in the municipality within the definition of "great pond" in Section 17.

F. Commercial Fisheries/Maritime Activities District. The Commercial Fisheries/Maritime Activities District includes areas where the existing predominant pattern of development is consistent with the allowed uses for this district as indicated in the Table of Land Uses, Section 14, and other areas which are suitable for functionally water-dependent uses, taking into consideration such factors as:

- (1) Shelter from prevailing winds and waves;
- (2) Slope of the land within 250 feet, horizontal distance, of the shoreline;
- (3) Depth of the water within 150 feet, horizontal distance, of the shoreline;
- (4) Available support facilities including utilities and transportation facilities; and
- (5) Compatibility with adjacent upland uses.

NOTE: A municipality may opt to identify one or more CFMA Districts, each of which may be as small as a single parcel, provided that the municipality includes in this district or combination of CFMA districts, all land currently occupied by or suitable for active water dependent uses, taking into consideration the above-listed factors.

G. Stream Protection District. The Stream Protection District includes all land areas within seventy-five (75) feet, horizontal distance, of the normal high-water line of a stream, exclusive of those areas within two-hundred and fifty (250) feet, horizontal distance, of the normal high-water line of a great pond, or river, or within two hundred and fifty (250) feet, horizontal distance, of the upland edge of a freshwater or coastal wetland. Where a stream and its associated shoreland area are located within two-hundred and fifty (250) feet, horizontal distance, of the above water bodies or wetlands, that land area shall be regulated under the terms of the shoreland district associated with that water body or wetland.

14. Table of Land Uses. All land use activities, as indicated in Table 1, Land Uses in the Shoreland Zone, shall conform with all of the applicable land use standards in Section 15. The district designation for a particular site shall be determined from the Official Shoreland Zoning Map.

Key to Table 1:

- Yes - Allowed (no permit required but the use must comply with all applicable land use standards.)
- No - Prohibited
- PB - Allowed with permit issued by the Planning Board.
- CEO - Allowed with permit issued by the Code Enforcement Officer
- LPI - Allowed with permit issued by the Local Plumbing Inspector

Abbreviations:

| | | | |
|------|---------------------|--------|--|
| RP - | Resource Protection | GD | General Development I and General Development II |
| LR - | Limited Residential | CFMA - | Commercial Fisheries/Maritime Activities |
| LC - | Limited Commercial | SP - | Stream Protection |

The following notes are applicable to the Land Uses Table on the following page:

NOTE: The term "functionally water-dependent use" as defined, includes a very diverse group of uses ranging from large, industrial facilities that receive shipments by water or use water for cooling, to traditional commercial fishing enterprises, and public shorefront parks. Communities are encouraged to define the functionally water-dependent uses which are to be allowed and which are prohibited in each CFMA district, based on considerations of prevailing existing uses, desired future uses, available support facilities, site suitability and compatibility with adjacent uses. A municipality can narrow the range of allowed uses by precluding certain functionally water-dependent uses, or by adopting conditional uses for certain functionally water-dependent uses that it determines would only be compatible with its plan for the waterfront under certain conditions.

NOTE: Recreational water-dependent uses such as marinas and excursion vessels may, in some communities, displace or threaten to displace traditional commercial fisheries and maritime activities. Therefore communities may wish to preclude or further limit these types of uses in this district in order to protect berthing space and onshore staging areas for commercial fishing enterprises.

TABLE 1. LAND USES IN THE SHORELAND ZONE

| <u>LAND USES</u> | <u>DISTRICT</u> | | | | | |
|--|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|
| | <u>SP</u> | <u>RP</u> | <u>LR</u> | <u>LC</u> | <u>GD</u> | <u>CFMA</u> |
| 1. Non-intensive recreational uses not requiring structures such as hunting, fishing and hiking | yes | yes | yes | yes | yes | yes |
| 2. Motorized vehicular traffic on existing roads and trails | yes | yes | yes | yes | yes | yes |
| 3. Forest management activities except for timber harvesting & land management roads | yes | yes | yes | yes | yes | yes |
| 4. Timber harvesting | yes | CEO | yes | yes | yes | yes |
| 5. Clearing or removal of vegetation for activities other than timber harvesting | CEO | CEO ¹ | yes | yes | yes | yes |
| 6. Fire prevention activities | yes | yes | yes | yes | yes | yes |
| 7. Wildlife management practices | yes | yes | yes | yes | yes | yes |
| 8. Soil and water conservation practices | yes | yes | yes | yes | yes | yes |
| 9. Mineral exploration | no | yes ² |
| 10. Mineral extraction including sand and gravel extraction | no | PB ³ | PB | PB | PB | PB |
| 11. Surveying and resource analysis | yes | yes | yes | yes | yes | yes |
| 12. Emergency operations | yes | yes | yes | yes | yes | yes |
| 13. Agriculture | yes | PB | yes | yes | yes | yes |
| 14. Aquaculture | PB | PB | PB | yes | yes | yes |
| 15. Principal structures and uses | | | | | | |
| A. One and two family residential, including driveways | PB ⁴ | PB ⁹ | CEO | CEO | CEO | no |
| B. Multi-unit residential | no | no | PB | PB | PB | no |
| C. Commercial | no | no ¹⁰ | no ¹⁰ | PB | PB | PB ⁵ |
| D. Industrial | no | no | no | no | PB | PB ⁵ |
| E. Governmental and institutional | no | no | PB | PB | PB | PB ⁵ |
| F. Small non-residential facilities for educational, scientific, or nature interpretation purposes | PB ⁴ | PB | CEO | CEO | CEO | PB ⁵ |
| 16. Structures accessory to allowed uses | PB ⁴ | PB | CEO | CEO | yes | yes |
| 17. Piers, docks, wharfs, bridges and other structures and uses extending over or below the normal high-water line or within a wetland | | | | | | |
| a. Temporary | CEO ¹¹ |
| b. Permanent | PB | PB | PB | PB | PB | PB ⁵ |
| 18. Conversions of seasonal residences to year-round residences | LPI | LPI | LPI | LPI | LPI | no |
| 19. Home occupations | PB | PB | PB | CEO | yes | yes |
| 20. Private sewage disposal systems for allowed uses | LPI | LPI | LPI | LPI | LPI | LPI |
| 21. Essential services | PB ⁶ | PB ⁶ | PB | PB | PB | PB |
| A. Roadside distribution lines (34.5kV and lower) | CEO ⁶ | CEO ⁶ | yes ¹² | yes ¹² | yes ¹² | yes ¹² |
| B. Non-roadside or cross-country distribution lines involving ten poles or less in the shoreland zone | PB ⁶ | PB ⁶ | CEO | CEO | CEO | CEO |
| C. Non-roadside or cross-country distribution lines involving eleven or more poles in the shoreland zone | PB ⁶ | PB ⁶ | PB | PB | PB | PB |
| D. Other essential services | PB ⁶ | PB ⁶ | PB | PB | PB | PB |
| 22. Service drops, as defined, to allowed uses | yes | yes | yes | yes | yes | yes |
| 23. Public and private recreational areas involving minimal structural development | PB | PB | PB | CEO | CEO | CEO ⁵ |
| 24. Individual, private campsites | CEO | CEO | CEO | CEO | CEO | CEO |
| 25. Campgrounds | no | no ⁷ | PB | PB | PB | no |
| 26. Road construction | PB | no ⁸ | PB | PB | PB | PB ⁹ |
| 27. Land management roads | yes | PB | yes | yes | yes | yes |
| 28. Parking facilities | no | no ⁷ | PB | PB | PB | PB ⁵ |
| 29. Marinas | PB | no | PB | PB | PB | PB |
| 30. Filling and earth moving of <10 cubic yards | CEO | CEO | yes | yes | yes | yes |
| 31. Filling and earth moving of >10 cubic yards | PB | PB | CEO | CEO | CEO | CEO |
| 32. Signs | yes | yes | yes | yes | yes | yes |
| 33. Uses similar to allowed uses | CEO | CEO | CEO | CEO | CEO | CEO |
| 34. Uses similar to uses requiring a CEO permit | CEO | CEO | CEO | CEO | CEO | CEO |
| 35. Uses similar to uses requiring a PB permit | PB | PB | PB | PB | PB | PB |

¹In RP not allowed within 75 feet horizontal distance, of the normal high-water line of great ponds, except to remove safety hazards.

²Requires permit from the Code Enforcement Officer if more than 100 square feet of surface area, in total, is disturbed.

³In RP not allowed in areas so designated because of wildlife value.

⁴Provided that a variance from the setback requirement is obtained from the Board of Appeals.

⁵Functionally water-dependent uses and uses accessory to such water dependent uses only (See note on previous page).

⁶See further restrictions in Section 15(L)(2).

⁷Except when area is zoned for resource protection due to floodplain criteria in which case a permit is required from the PB.

⁸Except as provided in Section 15(H)(4).

⁹Single family residential structures may be allowed by special exception only according to the provisions of Section 16(E), Special Exceptions. Two-family residential structures are prohibited.

¹⁰Except for commercial uses otherwise listed in this Table, such as marinas and campgrounds, that are allowed in the respective district.

¹¹Excluding bridges and other crossings not involving earthwork, in which case no permit is required.

¹²Permit not required but must file a written "notice of intent to construct" with CEO.

NOTE: Item 17, in its entirety, should be deleted from Table 1 if a municipality elects not to regulate “piers, docks, wharfs, bridges and other structures and uses extending over or below the normal high-water line or within a wetland”.

NOTE: A person performing any of the following activities shall require a permit from the Department of Environmental Protection, pursuant to 38 M.R.S.A. section 480-C, if the activity occurs in, on, over or adjacent to any freshwater or coastal wetland, great pond, river, stream or brook and operates in such a manner that material or soil may be washed into them:

- A. Dredging, bulldozing, removing or displacing soil, sand, vegetation or other materials;
- B. Draining or otherwise dewatering;
- C. Filling, including adding sand or other material to a sand dune; or
- D. Any construction or alteration of any permanent structure.

15. Land Use Standards. All land use activities within the shoreland zone shall conform with the following provisions, if applicable.

NOTE: Municipalities should review the land use standards contained herein to determine whether they will result in a scale of development that is compatible with existing development or with the future desired scale of development. If not, more restrictive land use standards may be adopted by the municipality.

A. Minimum Lot Standards

| | Minimum Lot Area (sq. ft.) | Minimum Shore Frontage (ft.) |
|--|-------------------------------|------------------------------------|
| (1) | | |
| (a) Residential per dwelling unit | | |
| (i) Within the Shoreland Zone Adjacent to Tidal Areas | 30,000 | 150 |
| (ii) Within the Shoreland Zone Adjacent to Non-Tidal Areas | 40,000 | 200 |
| (b) Governmental, Institutional, Commercial or Industrial per principal structure | | |
| (i) Within the Shoreland Zone Adjacent to Tidal Areas, Exclusive of Those Areas Zoned for Commercial Fisheries and Maritime Activities | 40,000 | 200 |
| (ii) Within the Shoreland Zone Adjacent to Tidal Areas Zoned for Commercial Fisheries and Maritime Activities | NONE | NONE |
| (iii) Within the Shoreland Zone Adjacent to Non-tidal Areas | 60,000 | 300 |

(c) Public and Private Recreational Facilities

| | | |
|---|--------|-----|
| (i) Within the Shoreland Zone Adjacent to Tidal and Non-Tidal Areas | 40,000 | 200 |
|---|--------|-----|

NOTE: In a district equivalent to a General Development District that is served by municipal water and sewer systems the Department may approve a municipal shoreland zoning ordinance that provides for greater residential densities than set forth in Section 15(A)(1) above.

- (2) Land below the normal high-water line of a water body or upland edge of a wetland and land beneath roads serving more than two (2) lots shall not be included toward calculating minimum lot area.
- (3) Lots located on opposite sides of a public or private road shall be considered each a separate tract or parcel of land unless such road was established by the owner of land on both sides thereof after September 22, 1971.
- (4) The minimum width of any portion of any lot within one hundred (100) feet, horizontal distance, of the normal high-water line of a water body or upland edge of a wetland shall be equal to or greater than the shore frontage requirement for a lot with the proposed use.
- (5) If more than one residential dwelling unit, principal governmental, institutional, commercial or industrial structure or use, or combination thereof, is constructed or established on a single parcel, all dimensional requirements shall be met for each additional dwelling unit, principal structure, or use.

NOTE: Municipalities may include provisions for clustered housing within the shoreland zone provided that the overall dimensional requirements, including frontage and lot area per dwelling unit, are met. When determining whether dimensional requirements are met, only land area within the shoreland zone shall be considered.

B. Principal and Accessory Structures

- (1) All new principal and accessory structures shall be set back at least one hundred (100) feet, horizontal distance, from the normal high-water line of great ponds classified GPA and rivers that flow to great ponds classified GPA, and seventy-five (75) feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland, except that in the General Development I District the setback from the normal high-water line shall be at least twenty five (25) feet, horizontal distance, and in the Commercial Fisheries/Maritime Activities District there shall be no minimum setback. In the Resource Protection District the setback requirement shall be 250 feet, horizontal distance, except for structures, roads, parking spaces or other regulated objects specifically allowed in that district in which case the setback requirements specified above shall apply.

NOTE: The Natural Resources Protection Act, 38 M.S.R.A. sections 480-A through 480-HH, requires the Department of Environmental Protection to designate areas of "significant wildlife habitat".

Permitting under the Natural Resources Protection Act for activities adjacent to significant wildlife habitat areas may require greater setbacks. Contact your local Department of Environmental Protection office to see if additional permitting is required.

In addition:

- (a) The water body, tributary stream, or wetland setback provision shall neither apply to structures which require direct access to the water body or wetland as an operational necessity, such as piers, docks and retaining walls, nor to other functionally water-dependent uses.
- (b) All principal structures along Significant River Segments as listed in 38 M.R.S.A. section 437 (see Appendix B), shall be set back a minimum of one hundred and twenty-five (125) feet, horizontal distance, from the normal high-water line and shall be screened from the river by existing vegetation. This provision does not apply to structures related to hydropower facilities.
- (c) For principal structures, water and wetland setback measurements shall be taken from the top of a coastal bluff that has been identified on Coastal Bluff maps as being “highly unstable” or “unstable” by the Maine Geological Survey pursuant to its “Classification of Coastal Bluffs” and published on the most recent Coastal Bluff map. If the applicant and the permitting official(s) are in disagreement as to the specific location of a “highly unstable” or “unstable” bluff, or where the top of the bluff is located, the applicant may at his or her expense, employ a Maine Registered Professional Engineer, a Maine Certified Soil Scientist, a Maine State Geologist, or other qualified individual to make a determination. If agreement is still not reached, the applicant may appeal the matter to the board of appeals.

NOTE: A municipality may choose not to adopt subparagraph B(1)(d) below. However, if a municipality elects to adopt a provision similar to that subparagraph, it must be no less restrictive.

- (d) On a non-conforming lot of record on which only a residential structure exists, and it is not possible to place an accessory structure meeting the required water body, tributary stream or wetland setbacks, the code enforcement officer may issue a permit to place a single accessory structure, with no utilities, for the storage of yard tools and similar equipment. Such accessory structure shall not exceed eighty (80) square feet in area nor eight (8) feet in height, and shall be located as far from the shoreline or tributary stream as practical and shall meet all other applicable standards, including lot coverage and vegetation clearing limitations. In no case shall the structure be located closer to the shoreline or tributary stream than the principal structure.

NOTE: All tidal land which is subject to tidal action during the maximum spring tide is coastal wetland.

NOTE: A municipality may within its ordinance, authorize the Planning Board to increase the required setback of a proposed structure, as a condition to permit approval, if necessary to accomplish the purposes of this ordinance. Instances where a greater setback may be appropriate include,

but are not limited to: areas of steep slope; shallow or erodible soils; or where an adequate vegetative buffer does not exist.

NOTE: A tributary stream may be perennial or intermittent. Where a tributary stream is present within the shoreland zone, setback standards from that tributary stream are applicable.

- (2) Principal or accessory structures and expansions of existing structures which are permitted in the Resource Protection, Limited Residential, Limited Commercial, and Stream Protection Districts, shall not exceed thirty-five (35) feet in height. This provision shall not apply to structures such as transmission towers, windmills, antennas, and similar structures having no floor area.
- (3) The lowest floor elevation or openings of all buildings and structures, including basements, shall be elevated at least one foot above the elevation of the 100 year flood, the flood of record, or in the absence of these, the flood as defined by soil types identified as recent flood-plain soils. In those municipalities that participate in the National Flood Insurance Program and have adopted the April 2005 version, or later version, of the Floodplain Management Ordinance, accessory structures may be placed in accordance with the standards of that ordinance and need not meet the elevation requirements of this paragraph.
- (4) The total footprint area of all structures, parking lots and other non-vegetated surfaces, within the shoreland zone shall not exceed twenty (20) percent of the lot or a portion thereof, located within the shoreland zone, including land area previously developed, except in the General Development District adjacent to tidal waters and rivers that do not flow to great ponds classified GPA, and in the Commercial Fisheries/Maritime Activities District, where lot coverage shall not exceed seventy (70) percent.

NOTE: A municipality may choose not to adopt subparagraph B(5) below. However, if a municipality elects to adopt a provision similar to that subparagraph, it must be no less restrictive.

- (5) Retaining walls that are not necessary for erosion control shall meet the structure setback requirement, except for low retaining walls and associated fill provided all of the following conditions are met:
 - (a) The site has been previously altered and an effective vegetated buffer does not exist;
 - (b) The wall(s) is(are) at least 25 feet, horizontal distance, from the normal high-water line of a water body, tributary stream, or upland edge of a wetland;
 - (c) The site where the retaining wall will be constructed is legally existing lawn or is a site eroding from lack of naturally occurring vegetation, and which cannot be stabilized with vegetative plantings;
 - (d) The total height of the wall(s), in the aggregate, are no more than 24 inches;
 - (e) Retaining walls are located outside of the 100-year floodplain on rivers, streams, coastal wetlands, and tributary streams, as designated on the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or Flood Hazard Boundary Maps, or the

flood of record, or in the absence of these, by soil types identified as recent flood plain soils.

- (f) The area behind the wall is revegetated with grass, shrubs, trees, or a combination thereof, and no further structural development will occur within the setback area, including patios and decks; and
- (g) A vegetated buffer area is established within 25 feet, horizontal distance, of the normal high-water line of a water body, tributary stream, or upland edge of a wetland when a natural buffer area does not exist. The buffer area must meet the following characteristics:
 - (i) The buffer must include shrubs and other woody and herbaceous vegetation. Where natural ground cover is lacking the area must be supplemented with leaf or bark mulch;
 - (ii) Vegetation plantings must be in quantities sufficient to retard erosion and provide for effective infiltration of stormwater runoff;
 - (iii) Only native species may be used to establish the buffer area;
 - (iv) A minimum buffer width of 15 feet, horizontal distance, is required, measured perpendicularly to the normal high-water line or upland edge of a wetland;
 - (v) A footpath not to exceed the standards in Section 15(P)(2)(a), may traverse the buffer;

NOTE: If the wall and associated soil disturbance occurs within 75 feet, horizontal distance, of a water body, tributary stream or coastal wetland, a permit pursuant to the Natural Resource Protection Act is required from the Department of Environmental Protection.

- (6) Notwithstanding the requirements stated above, stairways or similar structures may be allowed with a permit from the Code Enforcement Officer, to provide shoreline access in areas of steep slopes or unstable soils provided: that the structure is limited to a maximum of four (4) feet in width; that the structure does not extend below or over the normal high-water line of a water body or upland edge of a wetland, (unless permitted by the Department of Environmental Protection pursuant to the Natural Resources Protection Act, 38 M.R.S.A. section 480-C); and that the applicant demonstrates that no reasonable access alternative exists on the property.

NOTE: If a municipality elects not to regulate structures and uses extending over or below a water body or wetland, Section 15(C) should not be incorporated into the Ordinance.

C. Piers, Docks, Wharves, Bridges and Other Structures and Uses Extending Over or Below the Normal High-Water Line of a Water Body or Within a Wetland.

- (1) Access from shore shall be developed on soils appropriate for such use and constructed so as to control erosion.
- (2) The location shall not interfere with existing developed or natural beach areas.

- (3) The facility shall be located so as to minimize adverse effects on fisheries.
- (4) The facility shall be no larger in dimension than necessary to carry on the activity and be consistent with the surrounding character and uses of the area. A temporary pier, dock or wharf in non-tidal waters shall not be wider than six feet for non-commercial uses.
- (5) No new structure shall be built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland unless the structure requires direct access to the water body or wetland as an operational necessity.
- (6) New permanent piers and docks on non-tidal waters shall not be permitted unless it is clearly demonstrated to the Planning Board that a temporary pier or dock is not feasible, and a permit has been obtained from the Department of Environmental Protection, pursuant to the Natural Resources Protection Act.
- (7) No existing structures built on, over or abutting a pier, dock, wharf or other structure extending beyond the normal high-water line of a water body or within a wetland shall be converted to residential dwelling units in any district.
- (8) Except in the General Development Districts and Commercial Fisheries/Maritime Activities District, structures built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland shall not exceed twenty (20) feet in height above the pier, wharf, dock or other structure.

NOTE: New permanent structures, and expansions thereof, projecting into or over water bodies shall require a permit from the Department of Environmental Protection pursuant to the Natural Resources Protection Act, 38 M.R.S.A. section 480-C. Permits may also be required from the Army Corps of Engineers if located in navigable waters.

D. Campgrounds. Campgrounds shall conform to the minimum requirements imposed under State licensing procedures and the following:

- (1) Campgrounds shall contain a minimum of five thousand (5,000) square feet of land, not including roads and driveways, for each site. Land supporting wetland vegetation, and land below the normal high-water line of a water body shall not be included in calculating land area per site.
- (2) The areas intended for placement of a recreational vehicle, tent or shelter, and utility and service buildings shall be set back a minimum of one hundred (100) feet, horizontal distance, from the normal high-water line of a great pond classified GPA or a river flowing to a great pond classified GPA, and seventy-five (75) feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland.

E. Individual Private Campsites. Individual private campsites not associated with campgrounds are allowed provided the following conditions are met:

- (1) One campsite per lot existing on the effective date of this Ordinance, or thirty thousand (30,000) square feet of lot area within the shoreland zone, whichever is less, may be permitted.
- (2) Campsite placement on any lot, including the area intended for a recreational vehicle or tent platform, shall be set back one hundred (100) feet, horizontal distance, from the normal high-water line of a great pond classified GPA or river flowing to a great pond classified GPA, and seventy-five (75) feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland.
- (3) Only one recreational vehicle shall be allowed on a campsite. The recreational vehicle shall not be located on any type of permanent foundation except for a gravel pad, and no structure except a canopy shall be attached to the recreational vehicle.
- (4) The clearing of vegetation for the siting of the recreational vehicle, tent or similar shelter in a Resource Protection District shall be limited to one thousand (1000) square feet.
- (5) A written sewage disposal plan describing the proposed method and location of sewage disposal shall be required for each campsite and shall be approved by the Local Plumbing Inspector. Where disposal is off-site, written authorization from the receiving facility or land owner is required.
- (6) When a recreational vehicle, tent or similar shelter is placed on-site for more than one hundred and twenty (120) days per year, all requirements for residential structures shall be met, including the installation of a subsurface sewage disposal system in compliance with the State of Maine Subsurface Wastewater Disposal Rules unless served by public sewage facilities.

F. Commercial and Industrial Uses. The following new commercial and industrial uses are prohibited within the shoreland zone adjacent to great ponds classified GPA, and rivers and streams which flow to great ponds classified GPA:

- (1) Auto washing facilities
- (2) Auto or other vehicle service and/or repair operations, including body shops
- (3) Chemical and bacteriological laboratories
- (4) Storage of chemicals, including herbicides, pesticides or fertilizers, other than amounts normally associated with individual households or farms

NOTE: 22 M.R.S.A. section 1471-U requires municipal ordinances that apply to pesticide storage, distribution or use be filed with the Maine Board of Pesticides Control, 28 State House Station, Augusta, ME 04333. If a municipality's ordinance is more inclusive or restrictive than these Guidelines, as it pertains to pesticides, a copy of the ordinance must be filed with the Board of Pesticides Control.

- (5) Commercial painting, wood preserving, and furniture stripping

- (6) Dry cleaning establishments
- (7) Electronic circuit assembly
- (8) Laundromats, unless connected to a sanitary sewer
- (9) Metal plating, finishing, or polishing
- (10) Petroleum or petroleum product storage and/or sale except storage on same property as use occurs and except for storage and sales associated with marinas
- (11) Photographic processing
- (12) Printing

G. Parking Areas

- (1) Parking areas shall meet the shoreline and tributary stream setback requirements for structures for the district in which such areas are located, except that in the Commercial Fisheries/Maritime Activities District parking areas shall be set back at least twenty-five (25) feet, horizontal distance, from the shoreline. The setback requirement for parking areas serving public boat launching facilities in Districts other than the General Development I District and Commercial Fisheries/Maritime Activities District shall be no less than fifty (50) feet, horizontal distance, from the shoreline or tributary stream if the Planning Board finds that no other reasonable alternative exists further from the shoreline or tributary stream.
- (2) Parking areas shall be adequately sized for the proposed use and shall be designed to prevent stormwater runoff from flowing directly into a water body, tributary stream or wetland and where feasible, to retain all runoff on-site.
- (3) In determining the appropriate size of proposed parking facilities, the following shall apply:
 - (a) Typical parking space: Approximately ten (10) feet wide and twenty (20) feet long, except that parking spaces for a vehicle and boat trailer shall be forty (40) feet long.
 - (b) Internal travel aisles: Approximately twenty (20) feet wide.

H. Roads and Driveways. The following standards shall apply to the construction of roads and/or driveways and drainage systems, culverts and other related features.

- (1) Roads and driveways shall be set back at least one-hundred (100) feet, horizontal distance, from the normal high-water line of a great pond classified GPA or a river that flows to a great pond classified GPA, and seventy-five (75) feet, horizontal distance from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland unless no reasonable alternative exists as determined by the Planning Board. If no other reasonable alternative exists, the road and/or driveway setback requirement shall be no less than fifty (50) feet, horizontal distance, upon clear showing by the applicant that appropriate techniques will be used to prevent sedimentation of the water body, tributary stream, or wetland. Such techniques may include, but are not limited to, the installation of settling

basins, and/or the effective use of additional ditch relief culverts and turnouts placed so as to avoid sedimentation of the water body, tributary stream, or wetland.

On slopes of greater than twenty (20) percent the road and/or driveway setback shall be increased by ten (10) feet, horizontal distance, for each five (5) percent increase in slope above twenty (20) percent.

Section 15 (H)(1) does not apply to approaches to water crossings or to roads or driveways that provide access to permitted structures and facilities located nearer to the shoreline or tributary stream due to an operational necessity, excluding temporary docks for recreational uses. Roads and driveways providing access to permitted structures within the setback area shall comply fully with the requirements of Section 15(H)(1) except for that portion of the road or driveway necessary for direct access to the structure.

- (2) Existing public roads may be expanded within the legal road right of way regardless of their setback from a water body, tributary stream or wetland.
- (3) New permanent roads are not allowed within the shoreland zone along Significant River Segments except:
 - (a) To provide access to structures or facilities within the zone; or
 - (b) When the applicant demonstrates that no reasonable alternative route exists outside the shoreland zone. When roads must be located within the shoreland zone they shall be set back as far as practicable from the normal high-water line and screened from the river by existing vegetation.
- (4) New roads and driveways are prohibited in a Resource Protection District except that the Planning Board may grant a permit to construct a road or driveway to provide access to permitted uses within the district. A road or driveway may also be approved by the Planning Board in a Resource Protection District, upon a finding that no reasonable alternative route or location is available outside the district. When a road or driveway is permitted in a Resource Protection District the road and/or driveway shall be set back as far as practicable from the normal high-water line of a water body, tributary stream, or upland edge of a wetland.
- (5) Road and driveway banks shall be no steeper than a slope of two (2) horizontal to one (1) vertical, and shall be graded and stabilized in accordance with the provisions for erosion and sedimentation control contained in Section 15(Q).
- (6) Road and driveway grades shall be no greater than ten (10) percent except for segments of less than two hundred (200) feet.
- (7) In order to prevent road and driveway surface drainage from directly entering water bodies, tributary streams or wetlands, roads and driveways shall be designed, constructed, and maintained to empty onto an unscarified buffer strip at least (50) feet plus two times the average slope, in width between the outflow point of the ditch or culvert and the normal high-water line of a water body, tributary stream, or upland edge of a wetland. Surface drainage which is directed to an unscarified buffer strip shall be diffused or spread out to

promote infiltration of the runoff and to minimize channelized flow of the drainage through the buffer strip.

- (8) Ditch relief (cross drainage) culverts, drainage dips and water turnouts shall be installed in a manner effective in directing drainage onto unscarified buffer strips before the flow gains sufficient volume or head to erode the road, driveway, or ditch. To accomplish this, the following shall apply:

- (a) Ditch relief culverts, drainage dips and associated water turnouts shall be spaced along the road, or driveway at intervals no greater than indicated in the following table:

| Grade (Percent) | Spacing (Feet) |
|--------------------|-------------------|
| 0-2 | 250 |
| 3-5 | 200-135 |
| 6-10 | 100-80 |
| 11-15 | 80-60 |
| 16-20 | 60-45 |
| 21 + | 40 |

- (b) Drainage dips may be used in place of ditch relief culverts only where the grade is ten (10) percent or less.
- (c) On sections having slopes greater than ten (10) percent, ditch relief culverts shall be placed at approximately a thirty (30) degree angle downslope from a line perpendicular to the centerline of the road or driveway.
- (d) Ditch relief culverts shall be sufficiently sized and properly installed in order to allow for effective functioning, and their inlet and outlet ends shall be stabilized with appropriate materials.
- (9) Ditches, culverts, bridges, dips, water turnouts and other storm water runoff control installations associated with roads and driveways shall be maintained on a regular basis to assure effective functioning.

I Signs. The following provisions shall govern the use of signs in the Resource Protection, Stream Protection, Limited Residential and Limited Commercial Districts:

- (1) Signs relating to goods and services sold on the premises shall be allowed, provided that such signs shall not exceed six (6) square feet in area and shall not exceed two (2) signs per premises. In the Limited Commercial District, however, such signs shall not exceed sixteen (16) square feet in area. Signs relating to goods or services not sold or rendered on the premises shall be prohibited.
- (2) Name signs are allowed, provided such signs shall not exceed two (2) signs per premises, and shall not exceed twelve (12) square feet in the aggregate.

- (3) Residential users may display a single sign not over three (3) square feet in area relating to the sale, rental, or lease of the premises.
- (4) Signs relating to trespassing and hunting shall be allowed without restriction as to number provided that no such sign shall exceed two (2) square feet in area.
- (5) Signs relating to public safety shall be allowed without restriction.
- (6) No sign shall extend higher than twenty (20) feet above the ground.
- (7) Signs may be illuminated only by shielded, non-flashing lights.

J. Storm Water Runoff

- (1) All new construction and development shall be designed to minimize storm water runoff from the site in excess of the natural predevelopment conditions. Where possible, existing natural runoff control features, such as berms, swales, terraces and wooded areas, shall be retained in order to reduce runoff and encourage infiltration of stormwaters.
- (2) Storm water runoff control systems shall be maintained as necessary to ensure proper functioning.

NOTE: The Stormwater Management Law (38 M.R.S.A. section 420-D) requires a full permit to be obtained from the DEP prior to construction of a project consisting of 20,000 square feet or more of impervious area or 5 acres or more of a developed area in an urban impaired stream watershed or most-at-risk lake watershed, or a project with 1 acre or more of developed area in any other stream, coastal or wetland watershed. A permit-by-rule is necessary for a project with one acre or more of disturbed area but less than 1 acre impervious area (20,000 square feet for most-at-risk lakes and urban impaired streams) and less than 5 acres of developed area. Furthermore, a Maine Construction General Permit is required if the construction will result in one acre or more of disturbed area.

K. Septic Waste Disposal

- (1) All subsurface sewage disposal systems shall be installed in conformance with the State of Maine Subsurface Wastewater Disposal Rules, and the following: a) clearing or removal of woody vegetation necessary to site a new system and any associated fill extensions, shall not extend closer than seventy-five (75) feet, horizontal distance, from the normal high-water line of a water body or the upland edge of a wetland and b) a holding tank is not allowed for a first-time residential use in the shoreland zone.

NOTE: The Maine Subsurface Wastewater Disposal Rules require new systems, excluding fill extensions, to be constructed no less than one hundred (100) horizontal feet from the normal high-water line of a perennial water body. The minimum setback distance for a new subsurface disposal system may not be reduced by variance.

L. Essential Services

- (1) Where feasible, the installation of essential services shall be limited to existing public ways and existing service corridors.
- (2) The installation of essential services, other than road-side distribution lines, is not allowed in a Resource Protection or Stream Protection District, except to provide services to a permitted use within said district, or except where the applicant demonstrates that no reasonable alternative exists. Where allowed, such structures and facilities shall be located so as to minimize any adverse impacts on surrounding uses and resources, including visual impacts.
- (3) Damaged or destroyed public utility transmission and distribution lines, towers and related equipment may be replaced or reconstructed without a permit.

M. Mineral Exploration and Extraction. Mineral exploration to determine the nature or extent of mineral resources shall be accomplished by hand sampling, test boring, or other methods which create minimal disturbance of less than one hundred (100) square feet of ground surface. A permit from the Code Enforcement Officer shall be required for mineral exploration which exceeds the above limitation. All excavations, including test pits and holes, shall be immediately capped, filled or secured by other equally effective measures to restore disturbed areas and to protect the public health and safety.

Mineral extraction may be permitted under the following conditions:

- (1) A reclamation plan shall be filed with, and approved, by the Planning Board before a permit is granted. Such plan shall describe in detail procedures to be undertaken to fulfill the requirements of Section 15 (M)(4) below.
- (2) No part of any extraction operation, including drainage and runoff control features, shall be permitted within one hundred (100) feet, horizontal distance, of the normal high-water line of a great pond classified GPA or a river flowing to a great pond classified GPA, and within seventy-five (75) feet, horizontal distance, of the normal high-water line of any other water body, tributary stream, or the upland edge of a wetland. Extraction operations shall not be permitted within fifty (50) feet, horizontal distance, of any property line without written permission of the owner of such adjacent property.
- (3) Developers of new gravel pits along Significant River Segments shall demonstrate that no reasonable mining site outside the shoreland zone exists. When gravel pits must be located within the zone, they shall be set back as far as practicable from the normal high-water line and no less than seventy-five (75) feet and screened from the river by existing vegetation.
- (4) Within twelve (12) months following the completion of extraction operations at any extraction site, which operations shall be deemed complete when less than one hundred (100) cubic yards of materials are removed in any consecutive twelve (12) month period, ground levels and grades shall be established in accordance with the following:
 - (a) All debris, stumps, and similar material shall be removed for disposal in an approved location, or shall be buried on-site. Only materials generated on-site may be buried or covered on-site.

NOTE: The State of Maine Solid Waste Laws, 38 M.R.S.A., section 1301 and the solid waste management rules, Chapters 400-419 of the Department of Environmental Protection's regulations may contain other applicable provisions regarding disposal of such materials.

- (b) The final graded slope shall be two and one-half to one (2 1/2:1) slope or flatter.
 - (c) Top soil or loam shall be retained to cover all disturbed land areas, which shall be reseeded and stabilized with vegetation native to the area. Additional topsoil or loam shall be obtained from off-site sources if necessary to complete the stabilization project.
- (5) In keeping with the purposes of this Ordinance, the Planning Board may impose such conditions as are necessary to minimize the adverse impacts associated with mineral extraction operations on surrounding uses and resources.

N. Agriculture

- (1) All spreading of manure shall be accomplished in conformance with the *Manure Utilization Guidelines* published by the Maine Department of Agriculture on November 1, 2001, and the Nutrient Management Law (7 M.R.S.A. sections 4201-4209).
- (2) Manure shall not be stored or stockpiled within one hundred (100) feet, horizontal distance, of a great pond classified GPA or a river flowing to a great pond classified GPA, or within seventy-five (75) feet horizontal distance, of other water bodies, tributary streams, or wetlands. All manure storage areas within the shoreland zone must be constructed or modified such that the facility produces no discharge of effluent or contaminated storm water.
- (3) Agricultural activities involving tillage of soil greater than forty thousand (40,000) square feet in surface area, within the shoreland zone shall require a Conservation Plan to be filed with the Planning Board. Non-conformance with the provisions of said plan shall be considered to be a violation of this Ordinance.

NOTE: Assistance in preparing a Conservation Plan may be available through the local Soil and Water Conservation District office.

- (4) There shall be no new tilling of soil within one-hundred (100) feet, horizontal distance, of the normal high-water line of a great pond classified GPA; within seventy-five (75) feet, horizontal distance, from other water bodies and coastal wetlands; nor within twenty-five (25) feet, horizontal distance, of tributary streams and freshwater wetlands. Operations in existence on the effective date of this ordinance and not in conformance with this provision may be maintained.
- (5) Newly established livestock grazing areas shall not be permitted within one hundred (100) feet, horizontal distance, of the normal high-water line of a great pond classified GPA; within seventy-five (75) feet, horizontal distance, of other water bodies and coastal wetlands, nor; within twenty-five (25) feet, horizontal distance, of tributary streams and freshwater wetlands. Livestock grazing associated with ongoing farm activities, and which are not in

conformance with the above setback provisions may continue, provided that such grazing is conducted in accordance with a Conservation Plan.

NOTE: 17 M.R.S.A. section 2805(4) requires a municipality to provide the Commissioner of Agriculture, Food and Rural Resources with a copy of any proposed ordinance that impacts farm operations. The law further requires the Commissioner to review the proposed ordinance and advise the municipality if the proposed ordinance would restrict or prohibit the use of best management practices. A copy of a shoreland zoning ordinance that regulates no more restrictively than contained in these Guidelines need not be provided to the Commissioner of Agriculture, Food and Rural Resources.

NOTE RELATING TO TIMBER HARVESTING STANDARDS:

Title 38 MRSA section 438-B of the Mandatory Shoreland Zoning Act addresses timber harvesting and timber harvesting activities in shoreland areas. Section 438-B establishes three options from which each municipality may choose as the State moves toward a set of statewide timber harvesting standards in shoreland areas.

Option 1: The first option available to a municipality is the complete repeal of timber harvesting provisions from the shoreland zoning ordinance. Section 438-B(2) states:

A municipality may choose to have the statewide standards apply to timber harvesting and timber harvesting activities in that municipality by authorizing the repeal of all provisions within the municipal shoreland zoning ordinance that regulate timber harvesting and timber harvesting activities in shoreland areas and notifying the Director of the Bureau of Forestry within the Department of Conservation of the repeal. The authorization must specify a repeal date that is consistent with the effective date of the statewide timber harvesting standards. Then, beginning on the effective date of the statewide standards, the Bureau of Forestry will administer and enforce those standards within that municipality.

Option 2: The second option available to the municipality is the adoption of timber harvesting standards within the shoreland zoning ordinance that are identical to the statewide standards. Section 438-B(3) states:

A municipality may adopt an ordinance to regulate timber harvesting and timber harvesting activities that is identical to the statewide standards. A municipality that adopts an ordinance under this subsection may request the director of the Bureau of Forestry to administer and enforce the ordinance or to participate in joint administration and enforcement of the ordinance with the municipality beginning on the effective date of the statewide standards. This option retains local control over the administration and enforcement of timber harvesting in the shoreland zone, while receiving assistance and expertise from staff of the Bureau of Forestry. If the municipality requests joint responsibilities, the director and the municipality must enter into an agreement that delineates the administrative and enforcement duties of each. To continue to receive administrative and enforcement assistance from the Bureau of Forestry, a municipality must amend its ordinance as necessary to maintain identical provisions with the statewide standards.

Option 3: The third option is that a municipality may elect to simply retain its current timber harvesting standards. However, a municipality that retains an ordinance with provisions that differ from the statewide standards must administer and enforce that ordinance, and will not receive the assistance of

the Bureau of Forestry. Furthermore, after the legislative effective date of the statewide standards, a municipality may not amend an ordinance regulating timber harvesting and timber harvesting activities in a manner that results in standards that are less stringent than or otherwise conflict with the statewide standards (Section 438-B(4)).

The event that triggers the effective date of the “statewide standards” has been legislatively established. The standards will apply statewide beginning on the first day of January of the 2nd year following the year in which the Commissioner of Conservation determines that at least 252 of the 336 municipalities identified by the Commissioner of Conservation as the municipalities with the highest acreage of timber harvesting activity on an annual basis for the period 1999-2003 have either accepted the statewide standards or have adopted an ordinance identical to the statewide standards.

For those municipalities that choose option 2, these Guidelines contain timber harvesting standards that are identical to the statewide standards (Section 15(O-1)). They are written in a form that can be enacted prospectively, with the effective date linked to the legislative effective date of the statewide standards. On that effective date, Section 15(O) will be repealed and replaced with Section 15(O-1) and the municipality will begin administering the statewide timber harvesting standards for shoreland areas. If the municipality also enters into an agreement with the Bureau of Forestry delineating the administrative and enforcement duties of each party, the municipality will receive assistance in those aspects of the Ordinance from the Bureau of Forestry.

If a municipality chooses option 1, completely repealing the municipal regulation of timber harvesting activities in the shoreland zone and deferring the regulation of timber harvesting activities to the Bureau of Forestry, the ordinance must include “transition” language because the repeal of timber harvesting regulations in a municipality cannot occur until the statewide standards become effective. For those municipalities that wish to ultimately repeal their timber harvesting regulations the Department recommends that Section 15(O) be retained, along with repeal language (modified Section 4(B)) that would take effect on the date that the state-wide standards become effective. The repeal language should include the specific sections that will be repealed when the legislative effective date arrives. This would include all references to timber harvesting regulations, including:

1. Section 14, Table 1, *Land Uses in the Shoreland Zone*, Item 3 (forest management activities except for timber harvesting & land management roads), Item 4 (timber harvesting), and Item 27 (land management roads) of the Table;
2. Section 15(O) in its entirety (Section 15(O-1) would not have been adopted by those municipalities that had elected to retain section 15(O), so there would be no need to repeal section 15(O-1)); and
3. All definitions in Section 17 pertaining to timber harvesting and forest management activities, including the terms: Cross-sectional area, DBH, Disruption of shoreline integrity, Forest management activities, Forest stand, Harvest area, Land management road, Licensed forester, Residual basal area, Residual stand, Skid road or skid trail, Slash, Timber harvesting, Timber harvesting and related activities, and Wind firm.

A municipality that chooses option 3, retaining or adopting timber harvesting and forest management activities regulations that differ from the statewide standards, will simply adopt Section 15(O) or adopt/retain other consistent standards approved by the Department. These municipalities will not adopt Section 15(O-1), the new definitions listed above or the repeal language at Section 4(B).

Municipal officials must remember that any future amendments to ordinances that have maintained the earlier timber harvesting standards must, thereafter, be consistent with the statewide standards, once those statewide standards become effective.

Some municipalities have questioned whether the statewide timber harvesting standards can be adopted and administered locally before the statewide standards become effective. The answer is yes, in part. The statewide standards contain three alternatives that a landowner may choose to satisfy the requirement of leaving “adequate tree cover” and retaining a “well-distributed stand of trees. The first alternative (Section 15(O-1)(3)(a)) is based on the removal of up to 40% of the volume of trees in a 10 year period. This option is very similar to the standard that has been in place for many years. The second alternative (Section 15(O-1)(3)(b)) bases the allowed harvest not on volume removal, but on retaining at least 60 square feet of basal area. Either or both alternatives can be enacted and administered before the statewide standards are effective. The third alternative (Section 15(O-1)(3)(c)) bases the permitted harvest on an outcome-based plan which provides equal or better protection of the shoreland area than the other two alternatives. This option is only available if the plan is signed by a Licensed Forester, and approved by the Bureau of Forestry. However, since the Bureau of Forestry will not be actively participating in the administration of the statewide standards until the legislative effective date, a municipal ordinance that includes the outcome based alternative that is immediately effective will not be approved before that date. Thus, if a municipality wishes to adopt and administer the standards in Section 15(O-1) immediately, it must adopt only alternatives one and two as described above, or draft the ordinance such that the option-based alternative in Section 15(O-1)(3)(c) does not become effective until the legislative effective date of the statewide standards.

O. Timber Harvesting

- (1) In a Resource Protection District abutting a great pond, timber harvesting shall be limited to the following:
 - (a) Within the strip of land extending 75 feet, horizontal distance, inland from the normal high-water line, timber harvesting may be conducted when the following conditions are met:
 - (1) The ground is frozen;
 - (2) There is no resultant soil disturbance;
 - (3) The removal of trees is accomplished using a cable or boom and there is no entry of tracked or wheeled vehicles into the 75-foot strip of land;
 - (4) There is no cutting of trees less than 6 inches in diameter; no more than 30% of the trees 6 inches or more in diameter, measured at 4 ½ feet above ground level, are cut in any 10-year period; and a well-distributed stand of trees and other natural vegetation remains; and
 - (5) A licensed professional forester has marked the trees to be harvested prior to a permit being issued by the municipality.
 - (b) Beyond the 75 foot strip referred to in Section 15(O)(1)(a) above, timber harvesting is permitted in accordance with paragraph 2 below except that in no case shall the average residual basal area of trees over 4 ½ inches in diameter at 4 1/2 feet above ground level be reduced to less than 30 square feet per acre.

NOTE: Consistent with 38 M.R.S.A. section 439-A(5)(B), a municipality may elect to replace subparagraph 15(O)(1)(a) with the following: (a) Within the strip of land extending 75 feet inland from the normal high-water line in a shoreland area zoned for resource protection abutting a great pond there shall be no timber harvesting except to remove safety hazards.

- (2) Except in areas as described in Section 15(O)(1) above, timber harvesting shall conform with the following provisions:
- (a) Selective cutting of no more than forty (40) percent of the total volume of trees four (4) inches or more in diameter measured at 4 1/2 feet above ground level on any lot in any ten (10) year period is permitted. In addition:
- (i) Within one-hundred (100) feet, horizontal distance, of the normal high-water line of a great pond classified GPA or a river flowing to a great pond classified GPA, and within seventy-five (75) feet, horizontal distance, of the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland, there shall be no clearcut openings and a well-distributed stand of trees and other vegetation, including existing ground cover, shall be maintained.
- (ii) At distances greater than one-hundred (100) feet, horizontal distance, of a great pond classified GPA or a river flowing to a great pond classified GPA, and greater than seventy-five (75) feet, horizontal distance, of the normal high-water line of other water bodies or the upland edge of a wetland, harvesting operations shall not create single clearcut openings greater than ten-thousand (10,000) square feet in the forest canopy. Where such openings exceed five-thousand (5000) square feet they shall be at least one hundred (100) feet, horizontal distance, apart. Such clearcut openings shall be included in the calculation of total volume removal. Volume may be considered to be equivalent to basal area.

NOTE: Subparagraph 15 (O)(2)(b) below, should be included only if a municipality desires to permit harvesting operations to exceed 40% of the volume of trees in a 10-year period if necessary for good forest management. The adoption of subparagraph 15(O)(2)(b) is not a requirement.

- (b) Timber harvesting operations exceeding the 40% limitation in Section 15(O)(2)(a) above, may be allowed by the planning board upon a clear showing, including a forest management plan signed by a Maine licensed professional forester, that such an exception is necessary for good forest management and will be carried out in accordance with the purposes of this Ordinance. The planning board shall notify the Commissioner of the Department of Environmental Protection of each exception allowed, within fourteen (14) days of the planning board's decision.
- (c) No accumulation of slash shall be left within fifty (50) feet, horizontal distance, of the normal high-water line of a water body. In all other areas slash shall either be removed or disposed of in such a manner that it lies on the ground and no part thereof extends more than four (4) feet above the ground. Any debris that falls below the normal high-water line of a water body or tributary stream shall be removed.

- (d) Timber harvesting equipment shall not use stream channels as travel routes except when:
 - (i) Surface waters are frozen; and
 - (ii) The activity will not result in any ground disturbance.
- (e) All crossings of flowing water shall require a bridge or culvert, except in areas with low banks and channel beds which are composed of gravel, rock or similar hard surface which would not be eroded or otherwise damaged.
- (f) Skid trail approaches to water crossings shall be located and designed so as to prevent water runoff from directly entering the water body or tributary stream. Upon completion of timber harvesting, temporary bridges and culverts shall be removed and areas of exposed soil revegetated.
- (g) Except for water crossings, skid trails and other sites where the operation of machinery used in timber harvesting results in the exposure of mineral soil shall be located such that an unscarified strip of vegetation of at least seventy-five (75) feet, horizontal distance, in width for slopes up to ten (10) percent shall be retained between the exposed mineral soil and the normal high-water line of a water body or upland edge of a wetland. For each ten (10) percent increase in slope, the unscarified strip shall be increased by twenty (20) feet, horizontal distance. The provisions of this paragraph apply only to a face sloping toward the water body or wetland, provided, however, that no portion of such exposed mineral soil on a back face shall be closer than twenty five (25) feet, horizontal distance, from the normal high-water line of a water body or upland edge of a wetland.

O-1. Timber Harvesting – Statewide Standards [Effective on effective date established in Section 4(B)]

- (1) **Shoreline integrity and sedimentation.** Persons conducting timber harvesting and related activities must take reasonable measures to avoid the disruption of shoreline integrity, the occurrence of sedimentation of water, and the disturbance of water body and tributary stream banks, water body and tributary stream channels, shorelines, and soil lying within water bodies, tributary streams and wetlands. If, despite such precautions, the disruption of shoreline integrity, sedimentation of water, or the disturbance of water body and tributary stream banks, water body and tributary stream channels, shorelines, and soil lying within water bodies, tributary streams and wetlands occurs, such conditions must be corrected.
- (2) **Slash treatment.** Timber harvesting and related activities shall be conducted such that slash or debris is not left below the normal high-water line of any water body or tributary stream, or the upland edge of a wetland. Section 15(O-1)(2) does not apply to minor, incidental amounts of slash that result from timber harvesting and related activities otherwise conducted in compliance with this section.
 - (a) Slash actively used to protect soil from disturbance by equipment or to stabilize exposed soil, may be left in place, provided that no part thereof extends more than 4 feet above the ground.
 - (b) Adjacent to great ponds, rivers and wetlands:

- (i) No accumulation of slash shall be left within 50 feet, horizontal distance, of the normal high-water line or upland edge of a wetland; and
 - (ii) Between 50 feet and 250 feet, horizontal distance, of the normal high-water line or upland edge of a wetland, all slash larger than 3 inches in diameter must be disposed of in such a manner that no part thereof extends more than 4 feet above the ground.
- (3) Timber harvesting and related activities must leave adequate tree cover and shall be conducted so that a well-distributed stand of trees is retained. This requirement may be satisfied by following one of the following three options:
- (a) **Option 1 (40% volume removal)**, as follows:
- (i) Harvesting of no more than 40 percent of the total volume on each acre of trees 4.5 inches DBH or greater in any 10 year period is allowed. Volume may be considered to be equivalent to basal area;
 - (ii) A well-distributed stand of trees which is windfirm, and other vegetation including existing ground cover, must be maintained; and,
 - (iii) Within 75 feet, horizontal distance, of the normal high-water line of rivers, streams, and great ponds, and within 75 feet, horizontal distance, of the upland edge of a freshwater or coastal wetlands, there must be no cleared openings. At distances greater than 75 feet, horizontal distance, of the normal high-water line of a river or great pond or upland edge of a wetland, timber harvesting and related activities must not create single cleared openings greater than 14,000 square feet in the forest canopy. Where such openings exceed 10,000 square feet, they must be at least 100 feet, horizontal distance, apart. Such cleared openings will be included in the calculation of total volume removal. Volume may be considered equivalent to basal area.
- (b) **Option 2 (60 square foot basal area retention)**, as follows:
- (i) The residual stand must contain an average basal area of at least 60 square feet per acre of woody vegetation greater than or equal to 1.0 inch DBH, of which 40 square feet per acre must be greater than or equal to 4.5 inches DBH;
 - (ii) A well-distributed stand of trees which is windfirm, and other vegetation including existing ground cover, must be maintained; and,
 - (iii) Within 75 feet, horizontal distance, of the normal high-water line of water bodies and within 75 feet, horizontal distance, of the upland edge of wetlands, there must be no cleared openings. At distances greater than 75 feet, horizontal distance, of the normal high-water line of a river or great pond, or upland edge of a wetland, timber harvesting and related activities must not create single cleared openings greater than 14,000 square feet in the forest canopy. Where such openings exceed 10,000 square feet, they must be at least 100 feet, horizontal distance, apart. Such cleared openings will be included in the calculation of the average basal area. Volume may be considered equivalent to basal area.

- (c) **Option 3 (Outcome based)**, which requires: An alternative method proposed in an application, signed by a Licensed Forester or certified wildlife professional, submitted by the landowner or designated agent to the State of Maine Department of Conservation's Bureau of Forestry (Bureau) for review and approval, which provides equal or better protection of the shoreland area than this rule.

Landowners must designate on the Forest Operations Notification form required by 12 M.R.S.A. chapter 805, subchapter 5 which option they choose to use. If landowners choose Option 1 or Option 2, compliance will be determined solely on the criteria for the option chosen. If landowners choose Option 3, timber harvesting and related activities may not begin until the Bureau has approved the alternative method.

The Bureau may verify that adequate tree cover and a well-distributed stand of trees is retained through a field procedure that uses sample plots that are located randomly or systematically to provide a fair representation of the harvest area.

- (4) **Skid trails, yards, and equipment operation.** This requirement applies to the construction, maintenance, and use of skid trails and yards in shoreland areas.
 - (a) Equipment used in timber harvesting and related activities shall not use river, stream or tributary stream channels as travel routes except when surface waters are frozen and snow covered, and the activity will not result in any ground disturbance.
 - (b) Skid trails and yards must be designed and constructed to prevent sediment and concentrated water runoff from entering a water body, tributary stream, or wetland. Upon termination of their use, skid trails and yards must be stabilized.
 - (c) **Setbacks:**
 - (i) Equipment must be operated to avoid the exposure of mineral soil within 25 feet, horizontal distance, of any water body, tributary stream, or wetland. On slopes of 10 percent or greater, the setback for equipment operation must be increased by 20 feet, horizontal distance, plus an additional 10 feet, horizontal distance, for each 5 percent increase in slope above 10 percent. Where slopes fall away from the resource, no increase in the 25-foot setback is required.
 - (ii) Where such setbacks are impracticable, appropriate techniques shall be used to avoid sedimentation of the water body, tributary stream or wetland. Such techniques may include the installation of sump holes or settling basins, and/or the effective use of additional ditch relief culverts and ditch water turnouts placed to avoid sedimentation of the water body, tributary stream, or wetland. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.
- (5) **Land Management Roads.** Land management roads, including approaches to crossings of water bodies, tributary stream channels, and freshwater wetlands, ditches and other related structures, must be designed, constructed, and maintained to prevent sediment and concentrated water runoff from directly entering the water body, tributary stream or wetland. Surface water on or adjacent to water crossing approaches must be diverted through vegetative filter strips to avoid

sedimentation of the watercourse or wetland. Because roadside ditches may not extend to the resource being crossed, vegetative filter strips must be established in accordance with the setback requirements in Section 15(O-1)(7) of this rule.

- (a) Land management roads and associated ditches, excavation, and fill must be set back at least:
 - (i) 100 feet, horizontal distance, from the normal high-water line of a great pond, river or freshwater or coastal wetland;
 - (ii) 50 feet, horizontal distance, from the normal high-water line of streams; and
 - (iii) 25 feet, horizontal distance, from the normal high-water line of tributary streams
- (b) The minimum 100 foot setback specified in Section 15(O-1)(5)(a)(i) above may be reduced to no less than 50 feet, horizontal distance, and the 50 foot setback specified in Section 15(O-1)(5)(a)(ii) above may be reduced to no less than 25 feet, horizontal distance, if, prior to construction, the landowner or the landowner's designated agent demonstrates to the Planning Board's satisfaction that no reasonable alternative exists and that appropriate techniques will be used to prevent sedimentation of the water body, tributary stream, or wetland. Such techniques may include, but are not limited to, the installation of settling basins, and/or the effective use of additional ditch relief culverts and turnouts placed to avoid sedimentation of the water body, tributary stream or wetland. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.
- (c) On slopes of 10 percent or greater, the land management road setback must be increased by at least 20 feet, horizontal distance, plus an additional 10 feet, horizontal distance, for each 5 percent increase in slope above 10 percent.
- (d) New land management roads are not allowed within the shoreland area along Significant River Segments as identified in 38 M.R.S.A. section 437, nor in a Resource Protection District, unless, prior to construction, the landowner or the landowner's designated agent makes a clear demonstration to the Planning Board's satisfaction that no reasonable alternative route exists outside the shoreland zone, and that the new road must be set back as far as practicable from the normal high-water line and screened from the river by existing vegetation.
- (e) Ditches, culverts, bridges, dips, water turnouts and other water control installations associated with roads must be maintained on a regular basis to assure effective functioning. Drainage structures shall deliver a dispersed flow of water into an unscarified filter strip no less than the width indicated in the setback requirements in Section 15(O-1)(7). Where such a filter strip is impracticable, appropriate techniques shall be used to avoid sedimentation of the water body, tributary stream, or wetland. Such techniques may include the installation of sump holes or settling basins, and/or the effective use of additional ditch relief culverts and ditch water turnouts placed to avoid sedimentation of the water body, tributary stream, or wetland. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.

- (f) **Road closeout and discontinuance.** Maintenance of the water control installations required in Section 15(O-1)(5)(e) must continue until use of the road is discontinued and the road is put to bed by effective installation of water bars or other adequate road drainage structures at appropriate intervals, constructed to avoid surface water flowing over or under the water bar, and extending a sufficient distance beyond the traveled way so that water does not reenter the road surface.
 - (g) **Upgrading existing roads.** Extension or enlargement of presently existing roads must conform to the provisions of Section 15(O-1). Any nonconforming existing road may continue to exist and to be maintained, as long as the nonconforming conditions are not made more nonconforming.
 - (h) **Exception.** Extension or enlargement of presently existing roads need not conform to the setback requirements of Section 15(O-1)(5)(a) if, prior to extension or enlargement, the landowner or the landowner's designated agent demonstrates to the Planning Board's satisfaction that no reasonable alternative exists and that appropriate techniques will be used to prevent sedimentation of the water body, tributary stream, or wetland. Such techniques may include, but are not limited to, the installation of settling basins, and/or the effective use of additional ditch relief culverts and turnouts placed to avoid sedimentation of the water body, tributary stream, or wetland. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.
 - (i) **Additional measures.** In addition to the foregoing minimum requirements, persons undertaking construction and maintenance of roads and river, stream and tributary stream crossings must take reasonable measures to avoid sedimentation of surface waters.
- (6) **Crossings of waterbodies.** Crossings of rivers, streams, and tributary streams must allow for fish passage at all times of the year, must not impound water, and must allow for the maintenance of normal flows.
- (a) **Determination of flow.** Provided they are properly applied and used for the circumstances for which they are designed, methods including but not limited to the following are acceptable as a means of calculating the 10 year and 25 year frequency water flows and thereby determining water crossing sizes as required in Section 15(O-1): The United States Geological Survey (USGS) Methods; specifically: Hodgkins, G. 1999. Estimating the Magnitude of Peak Flows for Streams in Maine for Selected Recurrence Intervals. U.S. Geological Survey. Water Resources Investigations Report 99-4008. 45 pp.
 - (b) **Upgrading existing water crossings.** Extension or enlargement of presently existing water crossings must conform to the provisions of Section 15(O-1). Any nonconforming existing water crossing may continue to exist and be maintained, as long as the nonconforming conditions are not made more nonconforming; however, any maintenance or repair work done below the normal high-water line must conform to the provisions of Section 15(O-1).
 - (c) **Other Agency Permits.** Any timber harvesting and related activities involving the design, construction, and maintenance of crossings on waterbodies other than a river, stream or tributary stream may require a permit from the Land Use Regulation Commission, the Department of Environmental Protection, or the US Army Corps of Engineers.

- (d) Any timber harvesting and related activities involving the design, construction, and maintenance of crossings of freshwater wetlands identified by the Department of Inland Fisheries and Wildlife as essential wildlife habitat require prior consultation with the Department of Inland Fisheries and Wildlife.
- (e) **Notice to Bureau of Forestry.** Written notice of all water crossing construction maintenance, alteration and replacement activities in shoreland areas must be given to the Bureau prior to the commencement of such activities. Such notice must contain all information required by the Bureau, including:
- (i) a map showing the location of all proposed permanent crossings;
 - (ii) the GPS location of all proposed permanent crossings;
 - (iii) for any temporary or permanent crossing that requires a permit from state or federal agencies, a copy of the approved permit or permits; and
 - (iv) a statement signed by the responsible party that all temporary and permanent crossings will be constructed, maintained, and closed out in accordance with the requirements of this Section.
- (f) **Water crossing standards.** All crossings of rivers require a bridge or culvert sized according to the requirements of Section 15(O-1)(6)(g) below. Streams and tributary streams may be crossed using temporary structures that are not bridges or culverts provided:
- (i) concentrated water runoff does not enter the stream or tributary stream;
 - (ii) sedimentation of surface waters is reasonably avoided;
 - (iii) there is no substantial disturbance of the bank, or stream or tributary stream channel;
 - (iv) fish passage is not impeded; and,
 - (v) water flow is not unreasonably impeded.

Subject to Section 15(O-1)(6)(f)(i-v) above, skid trail crossings of streams and tributary streams when channels of such streams and tributary streams are frozen and snow-covered or are composed of a hard surface which will not be eroded or otherwise damaged are not required to use permanent or temporary structures.

- (g) **Bridge and Culvert Sizing.** For crossings of river, stream and tributary stream channels with a bridge or culvert, the following requirements apply:
- (i) Bridges and culverts must be installed and maintained to provide an opening sufficient in size and structure to accommodate 10 year frequency water flows or with a cross-sectional area at least equal to 2 1/2 times the cross-sectional area of the river, stream, or tributary stream channel.
 - (ii) Temporary bridge and culvert sizes may be smaller than provided in Section 15(O-1)(6)(g)(i) if techniques are effectively employed such that in the event of culvert or bridge failure, the natural course of water flow is maintained and sedimentation of the water body or tributary stream is avoided. Such crossing structures must be at least as wide as the channel and placed above the normal high-water line. Techniques may include, but are not limited to, the effective use of any, a combination of, or all of the following:

1. use of temporary skidder bridges;
 2. removing culverts prior to the onset of frozen ground conditions;
 3. using water bars in conjunction with culverts;
 4. using road dips in conjunction with culverts.
- (iii) Culverts utilized in river, stream and tributary stream crossings must:
1. be installed at or below river, stream or tributary stream bed elevation;
 2. be seated on firm ground;
 3. have soil compacted at least halfway up the side of the culvert;
 4. be covered by soil to a minimum depth of 1 foot or according to the culvert manufacturer's specifications, whichever is greater; and
 5. have a headwall at the inlet end which is adequately stabilized by riprap or other suitable means to reasonably avoid erosion of material around the culvert.
- (iv) River, stream and tributary stream crossings allowed under Section 15(O-1), but located in flood hazard areas (i.e. A zones) as identified on a community's Flood Insurance Rate Maps (FIRM) or Flood Hazard Boundary Maps (FHBM), must be designed and constructed under the stricter standards contained in that community's National Flood Insurance Program (NFIP). For example, a water crossing may be required to pass a 100-year flood event.
- (v) **Exception.** Skid trail crossings of tributary streams within shoreland areas and wetlands adjacent to such streams may be undertaken in a manner not in conformity with the requirements of the foregoing subsections provided persons conducting such activities take reasonable measures to avoid the disruption of shoreline integrity, the occurrence of sedimentation of water, and the disturbance of stream banks, stream channels, shorelines, and soil lying within ponds and wetlands. If, despite such precautions, the disruption of shoreline integrity, sedimentation of water, or the disturbance of stream banks, stream channels, shorelines, and soil lying within ponds and wetlands occurs, such conditions must be corrected.
- (h) **Skid trail closeout.** Upon completion of timber harvesting and related activities, or upon the expiration of a Forest Operations Notification, whichever is earlier, the following requirements apply:
- (i) Bridges and culverts installed for river, stream and tributary stream crossings by skid trails must either be removed and areas of exposed soil stabilized, or upgraded to comply with the closeout standards for land management roads in Section 15(O-1)(6)(i) below.
 - (ii) Water crossing structures that are not bridges or culverts must either be removed immediately following timber harvesting and related activities, or, if frozen into the river, stream or tributary stream bed or bank, as soon as practical after snowmelt.
 - (iii) River, stream and tributary stream channels, banks and approaches to crossings of water bodies and tributary streams must be immediately stabilized on completion of harvest, or if the ground is frozen and/or snow-covered, as soon as practical after

snowmelt. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.

(i) **Land management road closeout.** Maintenance of the water control features must continue until use of the road is discontinued and the road is put to bed by taking the following actions:

- (i) Effective installation of water bars or other adequate road drainage structures at appropriate intervals, constructed to reasonably avoid surface water flowing over or under the water bar, and extending sufficient distance beyond the traveled way so that water does not reenter the road surface.
- (ii) Water crossing structures must be appropriately sized or dismantled and removed in a manner that reasonably avoids sedimentation of the water body or tributary stream.
- (iii) Any bridge or water crossing culvert in roads to be discontinued shall satisfy one of the following requirements:
 - 1. it shall be designed to provide an opening sufficient in size and structure to accommodate 25 year frequency water flows;
 - 2. it shall be designed to provide an opening with a cross-sectional area at least 3 1/2 times the cross-sectional area of the river, stream or tributary stream channel; or
 - 3. it shall be dismantled and removed in a fashion to reasonably avoid sedimentation of the river, stream or tributary stream.

If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.

(7) Slope Table

Filter strips, skid trail setbacks, and land management road setbacks must be maintained as specified in Section 15(O-1), but in no case shall be less than shown in the following table.

| Average slope of land between exposed mineral soil and the shoreline (percent) | Width of strip between exposed mineral soil and shoreline (feet along surface of the ground) |
|--|--|
| 0 | 25 |
| 10 | 45 |
| 20 | 65 |
| 30 | 85 |
| 40 | 105 |
| 50 | 125 |
| 60 | 145 |
| 70 | 165 |

P. Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting

- (1) In a Resource Protection District abutting a great pond, there shall be no cutting of vegetation within the strip of land extending 75 feet, horizontal distance, inland from the normal high-water line, except to remove safety hazards.

Elsewhere, in any Resource Protection District the cutting or removal of vegetation shall be limited to that which is necessary for uses expressly authorized in that district.

- (2) Except in areas as described in Section P(1), above, and except to allow for the development of permitted uses, within a strip of land extending one-hundred (100) feet, horizontal distance, inland from the normal high-water line of a great pond classified GPA or a river flowing to a great pond classified GPA, and seventy-five (75) feet, horizontal distance, from any other water body, tributary stream, or the upland edge of a wetland, a buffer strip of vegetation shall be preserved as follows:
 - (a) There shall be no cleared opening greater than 250 square feet in the forest canopy (or other existing woody vegetation if a forested canopy is not present) as measured from the outer limits of the tree or shrub crown. However, a footpath not to exceed six (6) feet in width as measured between tree trunks and/or shrub stems is allowed provided that a cleared line of sight to the water through the buffer strip is not created.
 - (b) Selective cutting of trees within the buffer strip is allowed provided that a well-distributed stand of trees and other natural vegetation is maintained. For the purposes of Section 15(P)(2)(b) a "well-distributed stand of trees" adjacent to a great pond classified GPA or a river or stream flowing to a great pond classified GPA, shall be defined as maintaining a rating score of 24 or more in each 25-foot by 50-foot rectangular (1250 square feet) area as determined by the following rating system.

| Diameter of Tree at 4-1/2 feet Above Ground Level (inches) | Points |
|---|--------|
| 2 - < 4 in. | 1 |
| 4 - <8 in. | 2 |
| 8-< 12 in. | 4 |
| 12 in. or greater | 8 |

Adjacent to other water bodies, tributary streams, and wetlands, a "well-distributed stand of trees" is defined as maintaining a minimum rating score of 16 per 25-foot by 50-foot rectangular area.

NOTE: As an example, adjacent to a great pond, if a 25-foot x 50-foot plot contains four (4) trees between 2 and 4 inches in diameter, two trees between 4 and 8 inches in diameter, three trees between 8 and 12 inches in diameter, and two trees over 12 inches in diameter, the rating score is:

$$(4 \times 1) + (2 \times 2) + (3 \times 4) + (2 \times 8) = 36 \text{ points}$$

Thus, the 25-foot by 50-foot plot contains trees worth 36 points. Trees totaling 12 points (36- 24 =12) may be removed from the plot provided that no cleared openings are created.

The following shall govern in applying this point system:

- (i) The 25-foot by 50-foot rectangular plots must be established where the landowner or lessee proposes clearing within the required buffer;
- (ii) Each successive plot must be adjacent to, but not overlap a previous plot;
- (iii) Any plot not containing the required points must have no vegetation removed except as otherwise allowed by this Ordinance;
- (iv) Any plot containing the required points may have vegetation removed down to the minimum points required or as otherwise allowed by is Ordinance;
- (v) Where conditions permit, no more than 50% of the points on any 25-foot by 50-foot rectangular area may consist of trees greater than 12 inches in diameter.

For the purposes of Section 15(P)(2)(b) “other natural vegetation” is defined as retaining existing vegetation under three (3) feet in height and other ground cover and retaining at least five (5) saplings less than two (2) inches in diameter at four and one half (4 ½) feet above ground level for each 25-foot by 50-foot rectangle area. If five saplings do not exist, no woody stems less than two (2) inches in diameter can be removed until 5 saplings have been recruited into the plot.

NOTE: A municipality may elect to retain their present “point system” that is based on 25-foot by 25-foot plots. If so, the paragraph above must be modified as follows:

For the purposes of Section 15(P)(2)(b), “other natural vegetation” is defined as retaining existing vegetation under three (3) feet in height and other ground cover and retaining at least three (3) saplings less than two (2) inches in diameter at four and one-half (4 ½) feet above ground level for each 25-foot by 25-foot rectangular area. If three (3) saplings do not exist, no woody stems less than two (2) inches in diameter can be removed until 3 saplings have been recruited into the plot.

Subparagraph 15 (P)(2)(b) must also be modified to make it clear that the point system establishes only a “well-distributed stand of trees” not a well-distributed stand of trees and other vegetation. “Other vegetation” is described elsewhere.

Notwithstanding the above provisions, no more than 40% of the total volume of trees four (4) inches or more in diameter, measured at 4 1/2 feet above ground level may be removed in any ten (10) year period.

- (c) In order to protect water quality and wildlife habitat, existing vegetation under three (3) feet in height and other ground cover, including leaf litter and the forest duff layer, shall not be cut, covered, or removed, except to provide for a footpath or other permitted uses as described in Section 15(P) paragraphs (2) and (2)(a) above.
- (d) Pruning of tree branches, on the bottom 1/3 of the tree is allowed.

- (e) In order to maintain a buffer strip of vegetation, when the removal of storm-damaged, diseased, unsafe, or dead trees results in the creation of cleared openings, these openings shall be replanted with native tree species unless existing new tree growth is present.

Section 15(P)(2) does not apply to those portions of public recreational facilities adjacent to public swimming areas as long as cleared areas are limited to the minimum area necessary.

- (3) At distances greater than one hundred (100) feet, horizontal distance, from a great pond classified GPA or a river flowing to a great pond classified GPA, and seventy-five (75) feet, horizontal distance, from the normal high-water line of any other water body, tributary stream, or the upland edge of a wetland, there shall be allowed on any lot, in any ten (10) year period, selective cutting of not more than forty (40) percent of the volume of trees four (4) inches or more in diameter, measured 4 1/2 feet above ground level. Tree removal in conjunction with the development of permitted uses shall be included in the forty (40) percent calculation. For the purposes of these standards volume may be considered to be equivalent to basal area.

In no event shall cleared openings for any purpose, including but not limited to, principal and accessory structures, driveways, lawns and sewage disposal areas, exceed in the aggregate, 25% of the lot area within the shoreland zone or ten thousand (10,000) square feet, whichever is greater, including land previously cleared. This provision shall not apply to the General Development or Commercial Fisheries/Maritime Activities Districts.

- (4) Legally existing nonconforming cleared openings may be maintained, but shall not be enlarged, except as allowed by this Ordinance.
- (5) Fields and other cleared openings which have reverted to primarily shrubs, trees, or other woody vegetation shall be regulated under the provisions of Section 15(P).

Q. Erosion and Sedimentation Control

- (1) All activities which involve filling, grading, excavation or other similar activities which result in unstabilized soil conditions and which require a permit shall also require a written soil erosion and sedimentation control plan. The plan shall be submitted to the permitting authority for approval and shall include, where applicable, provisions for:
- (a) Mulching and revegetation of disturbed soil.
 - (b) Temporary runoff control features such as hay bales, silt fencing or diversion ditches.
 - (c) Permanent stabilization structures such as retaining walls or rip-rap.
- (2) In order to create the least potential for erosion, development shall be designed to fit with the topography and soils of the site. Areas of steep slopes where high cuts and fills may be required shall be avoided wherever possible, and natural contours shall be followed as closely as possible.
- (3) Erosion and sedimentation control measures shall apply to all aspects of the proposed project involving land disturbance, and shall be in operation during all stages of the activity. The

- amount of exposed soil at every phase of construction shall be minimized to reduce the potential for erosion.
- (4) Any exposed ground area shall be temporarily or permanently stabilized within one (1) week from the time it was last actively worked, by use of riprap, sod, seed, and mulch, or other effective measures. In all cases permanent stabilization shall occur within nine (9) months of the initial date of exposure. In addition:
- (a) Where mulch is used, it shall be applied at a rate of at least one (1) bale per five hundred (500) square feet and shall be maintained until a catch of vegetation is established.
 - (b) Anchoring the mulch with netting, peg and twine or other suitable method may be required to maintain the mulch cover.
 - (c) Additional measures shall be taken where necessary in order to avoid siltation into the water. Such measures may include the use of staked hay bales and/or silt fences.
- (5) Natural and man-made drainage ways and drainage outlets shall be protected from erosion from water flowing through them. Drainageways shall be designed and constructed in order to carry water from a twenty five (25) year storm or greater, and shall be stabilized with vegetation or lined with riprap.
- R. Soils.** All land uses shall be located on soils in or upon which the proposed uses or structures can be established or maintained without causing adverse environmental impacts, including severe erosion, mass soil movement, improper drainage, and water pollution, whether during or after construction. Proposed uses requiring subsurface waste disposal, and commercial or industrial development and other similar intensive land uses, shall require a soils report based on an on-site investigation and be prepared by state-certified professionals. Certified persons may include Maine Certified Soil Scientists, Maine Registered Professional Engineers, Maine State Certified Geologists and other persons who have training and experience in the recognition and evaluation of soil properties. The report shall be based upon the analysis of the characteristics of the soil and surrounding land and water areas, maximum ground water elevation, presence of ledge, drainage conditions, and other pertinent data which the evaluator deems appropriate. The soils report shall include recommendations for a proposed use to counteract soil limitations where they exist.
- S. Water Quality.** No activity shall deposit on or into the ground or discharge to the waters of the State any pollutant that, by itself or in combination with other activities or substances, will impair designated uses or the water classification of the water body, tributary stream or wetland.
- T. Archaeological Site.** Any proposed land use activity involving structural development or soil disturbance on or adjacent to sites listed on, or eligible to be listed on the National Register of Historic Places, as determined by the permitting authority, shall be submitted by the applicant to the Maine Historic Preservation Commission for review and comment, at least twenty (20) days prior to action being taken by the permitting authority. The permitting authority shall consider comments received from the Commission prior to rendering a decision on the application.

NOTE: Municipal officials should contact the Maine Historic Preservation Commission for the listing and location of Historic Places in their community.

16. Administration

A. Administering Bodies and Agents

- (1) **Code Enforcement Officer.** A Code Enforcement Officer shall be appointed or reappointed annually by July 1st.
- (2) **Board of Appeals.** A Board of Appeals shall be created in accordance with the provisions of 30-A M.R.S.A. section 2691.
- (3) **Planning Board.** A Planning Board shall be created in accordance with the provisions of State law.

B. Permits Required.

After the effective date of this Ordinance no person shall, without first obtaining a permit, engage in any activity or use of land or structure requiring a permit in the district in which such activity or use would occur; or expand, change, or replace an existing use or structure; or renew a discontinued nonconforming use. A person who is issued a permit pursuant to this Ordinance shall have a copy of the permit on site while the work authorized by the permit is performed.

- (1) A permit is not required for the replacement of an existing road culvert as long as:
 - (a) The replacement culvert is not more than 25% longer than the culvert being replaced;
 - (b) The replacement culvert is not longer than 75 feet; and
 - (c) Adequate erosion control measures are taken to prevent sedimentation of the water, and the crossing does not block fish passage in the watercourse.
- (2) A permit is not required for an archaeological excavation as long as the excavation is conducted by an archaeologist listed on the State Historic Preservation Officer's level 1 or level 2 approved list, and unreasonable erosion and sedimentation is prevented by means of adequate and timely temporary and permanent stabilization measures.
- (3) Any permit required by this Ordinance shall be in addition to any other permit required by other law or ordinance.

C. Permit Application

- (1) Every applicant for a permit shall submit a written application, including a scaled site plan, on a form provided by the municipality, to the appropriate official as indicated in Section 14.
- (2) All applications shall be signed by an owner or individual who can show evidence of right, title or interest in the property or by an agent, representative, tenant, or contractor of the owner with authorization from the owner to apply for a permit hereunder, certifying that the information in the application is complete and correct.

- (3) All applications shall be dated, and the Code Enforcement Officer or Planning Board, as appropriate, shall note upon each application the date and time of its receipt.
- (4) If the property is not served by a public sewer, a valid plumbing permit or a completed application for a plumbing permit, including the site evaluation approved by the Plumbing Inspector, shall be submitted whenever the nature of the proposed structure or use would require the installation of a subsurface sewage disposal system.

D. Procedure for Administering Permits. Within 35 days of the date of receiving a written application, the Planning Board or Code Enforcement Officer, as indicated in Section 14, shall notify the applicant in writing either that the application is a complete application, or, if the application is incomplete, that specified additional material is needed to make the application complete. The Planning Board or the Code Enforcement Officer, as appropriate, shall approve, approve with conditions, or deny all permit applications in writing within 35 days of receiving a completed application. However, if the Planning Board has a waiting list of applications, a decision on the application shall occur within 35 days after the first available date on the Planning Board's agenda following receipt of the completed application, or within 35 days of the public hearing, if the proposed use or structure is found to be in conformance with the purposes and provisions of this Ordinance.

The applicant shall have the burden of proving that the proposed land use activity is in conformity with the purposes and provisions of this Ordinance.

After the submission of a complete application to the Planning Board, the Board shall approve an application or approve it with conditions if it makes a positive finding based on the information presented that the proposed use:

- (1) Will maintain safe and healthful conditions;
- (2) Will not result in water pollution, erosion, or sedimentation to surface waters;
- (3) Will adequately provide for the disposal of all wastewater;
- (4) Will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;
- (5) Will conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;
- (6) Will protect archaeological and historic resources as designated in the comprehensive plan;
- (7) Will not adversely affect existing commercial fishing or maritime activities in a Commercial Fisheries/Maritime Activities district;
- (8) Will avoid problems associated with floodplain development and use; and
- (9) Is in conformance with the provisions of Section 15, Land Use Standards.

If a permit is either denied or approved with conditions, the reasons as well as conditions shall be stated in writing. No approval shall be granted for an application involving a structure if the structure would be located in an unapproved subdivision or would violate any other local ordinance, or regulation or statute administered by the municipality.

E. Special Exceptions. In addition to the criteria specified in Section 16(D) above, excepting structure setback requirements, the Planning Board may approve a permit for a single family residential structure in a Resource Protection District provided that the applicant demonstrates that all of the following conditions are met:

- (1) There is no location on the property, other than a location within the Resource Protection District, where the structure can be built.
- (2) The lot on which the structure is proposed is undeveloped and was established and recorded in the registry of deeds of the county in which the lot is located before the adoption of the Resource Protection District.
- (3) All proposed buildings, sewage disposal systems and other improvements are:
 - (a) Located on natural ground slopes of less than 20%; and
 - (b) Located outside the floodway of the 100-year flood-plain along rivers and artificially formed great ponds along rivers and outside the velocity zone in areas subject to tides, based on detailed flood insurance studies and as delineated on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps; all buildings, including basements, are elevated at least one foot above the 100-year flood-plain elevation; and the development is otherwise in compliance with any applicable municipal flood-plain ordinance.

If the floodway is not shown on the Federal Emergency Management Agency Maps, it is deemed to be 1/2 the width of the 100-year flood-plain.

- (4) The total ground-floor area, including cantilevered or similar overhanging extensions, of all principal and accessory structures is limited to a maximum of 1,500 square feet. This limitation shall not be altered by variance.
- (5) All structures, except functionally water-dependent structures, are set back from the normal high-water line of a water body, tributary stream or upland edge of a wetland to the greatest practical extent, but not less than 75 feet, horizontal distance. In determining the greatest practical extent, the Planning Board shall consider the depth of the lot, the slope of the land, the potential for soil erosion, the type and amount of vegetation to be removed, the proposed building site's elevation in regard to the flood-plain, and its proximity to moderate-value and high-value wetlands.

F. Expiration of Permit. Permits shall expire one year from the date of issuance if a substantial start is not made in construction or in the use of the property during that period. If a substantial start is made within one year of the issuance of the permit, the applicant shall have one additional year to complete the project, at which time the permit shall expire.

G. Installation of Public Utility Service. A public utility, water district, sanitary district or any utility company of any kind may not install services to any new structure located in the shoreland zone unless written authorization attesting to the validity and currency of all local permits required under this or any previous Ordinance has been issued by the appropriate municipal officials or other written arrangements have been made between the municipal officials and the utility.

H. Appeals

(1) Powers and Duties of the Board of Appeals. The Board of Appeals shall have the following powers:

- (a) **Administrative Appeals:** To hear and decide administrative appeals, on an appellate basis, where it is alleged by an aggrieved party that there is an error in any order, requirement, decision, or determination made by, or failure to act by, the Planning Board in the administration of this Ordinance; and to hear and decide administrative appeals on a de novo basis where it is alleged by an aggrieved party that there is an error in any order, requirement, decision or determination made by, or failure to act by, the Code Enforcement Officer in his or her review of and action on a permit application under this Ordinance. Any order, requirement, decision or determination made, or failure to act, in the enforcement of this ordinance is not appealable to the Board of Appeals.

NOTE: Whether an administrative appeal is decided on an “appellate” basis or on a “de novo” basis, or whether an enforcement decision is appealable to the board of appeals, shall be the decision of the municipality through its specific ordinance language. The Department is not mandating one alternative over the other. If a municipality chooses appeals procedures different from those in Section 16(H), it is recommended that assistance be sought from legal counsel to ensure that the adopted language is legally sound.

- (b) **Variance Appeals:** To authorize variances upon appeal, within the limitations set forth in this Ordinance.

(2) **Variance Appeals.** Variances may be granted only under the following conditions:

- (a) Variances may be granted only from dimensional requirements including, but not limited to, lot width, structure height, percent of lot coverage, and setback requirements.
- (b) Variances shall not be granted for establishment of any uses otherwise prohibited by this Ordinance.
- (c) The Board shall not grant a variance unless it finds that:
- (i) The proposed structure or use would meet the provisions of Section 15 except for the specific provision which has created the non-conformity and from which relief is sought; and
- (ii) The strict application of the terms of this Ordinance would result in undue hardship. The term "undue hardship" shall mean:

- a. That the land in question cannot yield a reasonable return unless a variance is granted;
 - b. That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
 - c. That the granting of a variance will not alter the essential character of the locality; and
 - d. That the hardship is not the result of action taken by the applicant or a prior owner.
- (d) Notwithstanding Section 16(H)(2)(c)(ii) above, the Board of Appeals may grant a variance to an owner of a residential dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. The board shall restrict any variance granted under this subsection solely to the installation of equipment or the construction of structures necessary for access to or egress from the dwelling by the person with the disability. The board may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the person with the disability lives in the dwelling. The term “structures necessary for access to or egress from the dwelling” shall include railing, wall or roof systems necessary for the safety or effectiveness of the structure.
- (e) The Board of Appeals shall limit any variances granted as strictly as possible in order to ensure conformance with the purposes and provisions of this Ordinance to the greatest extent possible, and in doing so may impose such conditions to a variance as it deems necessary. The party receiving the variance shall comply with any conditions imposed.
- (f) A copy of each variance request, including the application and all supporting information supplied by the applicant, shall be forwarded by the municipal officials to the Commissioner of the Department of Environmental Protection at least twenty (20) days prior to action by the Board of Appeals. Any comments received from the Commissioner prior to the action by the Board of Appeals shall be made part of the record and shall be taken into consideration by the Board of Appeals.

(3) Administrative Appeals

When the Board of Appeals reviews a decision of the Code Enforcement Officer the Board of Appeals shall hold a “de novo” hearing. At this time the Board may receive and consider new evidence and testimony, be it oral or written. When acting in a “de novo” capacity the Board of Appeals shall hear and decide the matter afresh, undertaking its own independent analysis of evidence and the law, and reaching its own decision.

When the Board of Appeals hears a decision of the Planning Board, it shall hold an appellate hearing, and may reverse the decision of the Planning Board only upon finding that the decision was contrary to specific provisions of the Ordinance or contrary to the facts presented to the Planning Board. The Board of Appeals may only review the record of the proceedings before the Planning Board. The Board Appeals shall not receive or consider any evidence which was not presented to the Planning Board, but the Board of Appeals may receive and

consider written or oral arguments. If the Board of Appeals determines that the record of the Planning Board proceedings are inadequate, the Board of Appeals may remand the matter to the Planning Board for additional fact finding.

(4) Appeal Procedure

(a) Making an Appeal

- (i) An administrative or variance appeal may be taken to the Board of Appeals by an aggrieved party from any decision of the Code Enforcement Officer or the Planning Board, except for enforcement-related matters as described in Section 16(H)(1)(a) above. Such an appeal shall be taken within thirty (30) days of the date of the official, written decision appealed from, and not otherwise, except that the Board, upon a showing of good cause, may waive the thirty (30) day requirement.
- (ii) Applications for appeals shall be made by filing with the Board of Appeals a written notice of appeal which includes:
 - a. A concise written statement indicating what relief is requested and why the appeal or variance should be granted.
 - b. A sketch drawn to scale showing lot lines, location of existing buildings and structures and other physical features of the lot pertinent to the relief sought.
- (iii) Upon receiving an application for an administrative appeal or a variance, the Code Enforcement Officer or Planning Board, as appropriate, shall transmit to the Board of Appeals all of the papers constituting the record of the decision appealed from.
- (iv) The Board of Appeals shall hold a public hearing on an administrative appeal or a request for a variance within thirty-five (35) days of its receipt of a complete written application, unless this time period is extended by the parties.

(b) Decision by Board of Appeals

- (i) A majority of the full voting membership of the Board shall constitute a quorum for the purpose of deciding an appeal.
- (ii) The person filing the appeal shall have the burden of proof.
- (iii) The Board shall decide all administrative appeals and variance appeals within thirty five (35) days after the close of the hearing, and shall issue a written decision on all appeals.
- (iv) The Board of Appeals shall state the reasons and basis for its decision, including a statement of the facts found and conclusions reached by the Board. The Board shall cause written notice of its decision to be mailed or hand-delivered to the applicant and to the Department of Environmental Protection within seven (7) days of the Board's decision. Copies of written decisions of the Board of Appeals shall

be given to the Planning Board, Code Enforcement Officer, and the municipal officers.

- (5) **Appeal to Superior Court.** Except as provided by 30-A M.R.S.A. section 2691(3)(F), any aggrieved party who participated as a party during the proceedings before the Board of Appeals may take an appeal to Superior Court in accordance with State laws within forty-five (45) days from the date of any decision of the Board of Appeals.
- (6) **Reconsideration.** In accordance with 30-A M.R.S.A. section 2691(3)(F), the Board of Appeals may reconsider any decision within forty-five (45) days of its prior decision. A request to the Board to reconsider a decision must be filed within ten (10) days of the decision that is being reconsidered. A vote to reconsider and the action taken on that reconsideration must occur and be completed within forty-five (45) days of the date of the vote on the original decision. Reconsideration of a decision shall require a positive vote of the majority of the Board members originally voting on the decision, and proper notification to the landowner, petitioner, planning board, code enforcement officer, and other parties of interest, including abutters and those who testified at the original hearing(s). The Board may conduct additional hearings and receive additional evidence and testimony.

Appeal of a reconsidered decision to Superior Court must be made within fifteen (15) days after the decision on reconsideration.

I. Enforcement

- (1) **Nuisances.** Any violation of this Ordinance shall be deemed to be a nuisance.
- (2) **Code Enforcement Officer**
- (a) It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Ordinance. If the Code Enforcement Officer shall find that any provision of this Ordinance is being violated, he or she shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it, including discontinuance of illegal use of land, buildings or structures, or work being done, removal of illegal buildings or structures, and abatement of nuisance conditions. A copy of such notices shall be submitted to the municipal officers and be maintained as a permanent record.
- (b) The Code Enforcement Officer shall conduct on-site inspections to insure compliance with all applicable laws and conditions attached to permit approvals. The Code Enforcement Officer shall also investigate all complaints of alleged violations of this Ordinance.
- (c) The Code Enforcement Officer shall keep a complete record of all essential transactions of the office, including applications submitted, permits granted or denied, variances granted or denied, revocation actions, revocation of permits, appeals, court actions, violations investigated, violations found, and fees collected. On a biennial basis, a summary of this record shall be submitted to the Director of the Bureau of Land and Water Quality within the Department of Environmental Protection.

- (3) **Legal Actions.** When the above action does not result in the correction or abatement of the violation or nuisance condition, the Municipal Officers, upon notice from the Code Enforcement Officer, are hereby directed to institute any and all actions and proceedings, either legal or equitable, including seeking injunctions of violations and the imposition of fines, that may be appropriate or necessary to enforce the provisions of this Ordinance in the name of the municipality. The municipal officers, or their authorized agent, are hereby authorized to enter into administrative consent agreements for the purpose of eliminating violations of this Ordinance and recovering fines without Court action. Such agreements shall not allow an illegal structure or use to continue unless there is clear and convincing evidence that the illegal structure or use was constructed or conducted as a direct result of erroneous advice given by an authorized municipal official and there is no evidence that the owner acted in bad faith, or unless the removal of the structure or use will result in a threat or hazard to public health and safety or will result in substantial environmental damage.
- (4) **Fines.** Any person, including but not limited to a landowner, a landowner's agent or a contractor, who violates any provision or requirement of this Ordinance shall be penalized in accordance with 30-A, M.R.S.A. section 4452.

NOTE: Current penalties include fines of not less than \$100 nor more than \$2500 per violation for each day that the violation continues. However, in a resource protection district the maximum penalty is increased to \$5000 (38 M.R.S.A. section 4452).

17. Definitions

Accessory structure or use - a use or structure which is incidental and subordinate to the principal use or structure. Accessory uses, when aggregated, shall not subordinate the principal use of the lot. A deck or similar extension of the principal structure or a garage attached to the principal structure by a roof or a common wall is considered part of the principal structure.

Aggrieved party - an owner of land whose property is directly or indirectly affected by the granting or denial of a permit or variance under this Ordinance; a person whose land abuts land for which a permit or variance has been granted; or any other person or group of persons who have suffered particularized injury as a result of the granting or denial of such permit or variance.

Agriculture - the production, keeping or maintenance for sale or lease, of plants and/or animals, including but not limited to: forages and sod crops; grains and seed crops; dairy animals and dairy products; poultry and poultry products; livestock; fruits and vegetables; and ornamental and green-house products. Agriculture does not include forest management and timber harvesting activities.

Aquaculture - the growing or propagation of harvestable freshwater, estuarine, or marine plant or animal species.

Basal Area - the area of cross-section of a tree stem at 4 1/2 feet above ground level and inclusive of bark.

Basement - any portion of a structure with a floor-to-ceiling height of 6 feet or more and having more than 50% of its volume below the existing ground level.

Boat Launching Facility - a facility designed primarily for the launching and landing of watercraft, and which may include an access ramp, docking area, and parking spaces for vehicles and trailers.

Bureau – State of Maine Department of Conservation’s Bureau of Forestry

Campground - any area or tract of land to accommodate two (2) or more parties in temporary living quarters, including, but not limited to tents, recreational vehicles or other shelters.

Canopy – the more or less continuous cover formed by tree crowns in a wooded area.

Coastal wetland - all tidal and subtidal lands; all lands with vegetation present that is tolerant of salt water and occurs primarily in a salt water or estuarine habitat; and any swamp, marsh, bog, beach, flat or other contiguous low land that is subject to tidal action during the highest tide level for the year in which an activity is proposed as identified in tide tables published by the National Ocean Service. Coastal wetlands may include portions of coastal sand dunes.

NOTE: All areas below the maximum spring tide level are coastal wetlands. These areas may consist of rocky ledges, sand and cobble beaches, mud flats, etc., in addition to salt marshes and salt meadows.

Commercial use - the use of lands, buildings, or structures, other than a "home occupation," defined below, the intent and result of which activity is the production of income from the buying and selling of goods and/or services, exclusive of rental of residential buildings and/or dwelling units.

Cross-sectional area – the cross-sectional area of a stream or tributary stream channel is determined by multiplying the stream or tributary stream channel width by the average stream or tributary stream channel depth. The stream or tributary stream channel width is the straight line distance from the normal high-water line on one side of the channel to the normal high-water line on the opposite side of the channel. The average stream or tributary stream channel depth is the average of the vertical distances from a straight line between the normal high-water lines of the stream or tributary stream channel to the bottom of the channel.

DBH – the diameter of a standing tree measured 4.5 feet from ground level.

Development – a change in land use involving alteration of the land, water or vegetation, or the addition or alteration of structures or other construction not naturally occurring.

Dimensional requirements - numerical standards relating to spatial relationships including but not limited to setback, lot area, shore frontage and height.

Disability - any disability, infirmity, malformation, disfigurement, congenital defect or mental condition caused by bodily injury, accident, disease, birth defect, environmental conditions or illness; and also includes the physical or mental condition of a person which constitutes a substantial handicap as determined by a physician or in the case of mental handicap, by a psychiatrist or psychologist, as well as any other health or sensory impairment which requires special education, vocational rehabilitation or related services.

Disruption of shoreline integrity - the alteration of the physical shape, properties, or condition of a shoreline at any location by timber harvesting and related activities. A shoreline where shoreline

integrity has been disrupted is recognized by compacted, scarified and/or rutted soil, an abnormal channel or shoreline cross-section, and in the case of flowing waters, a profile and character altered from natural conditions.

Driveway - a vehicular access-way less than five hundred (500) feet in length serving two single-family dwellings or one two-family dwelling, or less.

Emergency operations - operations conducted for the public health, safety or general welfare, such as protection of resources from immediate destruction or loss, law enforcement, and operations to rescue human beings, property and livestock from the threat of destruction or injury.

Essential services - gas, electrical or communication facilities; steam, fuel, electric power or water transmission or distribution lines, towers and related equipment; telephone cables or lines, poles and related equipment; gas, oil, water, slurry or other similar pipelines; municipal sewage lines, collection or supply systems; and associated storage tanks. Such systems may include towers, poles, wires, mains, drains, pipes, conduits, cables, fire alarms and police call boxes, traffic signals, hydrants and similar accessories, but shall not include service drops or buildings which are necessary for the furnishing of such services.

Expansion of a structure - an increase in the floor area or volume of a structure, including all extensions such as, but not limited to: attached decks, garages, porches and greenhouses.

Expansion of use - the addition of one or more months to a use's operating season; or the use of more floor area or ground area devoted to a particular use.

Family - one or more persons occupying a premises and living as a single housekeeping unit.

Floodway - the channel of a river or other watercourse and adjacent land areas that must be reserved in order to discharge the 100-year flood without cumulatively increasing the water surface elevation by more than one foot in height.

Floor area - the sum of the horizontal areas of the floor(s) of a structure enclosed by exterior walls, plus the horizontal area of any unenclosed portions of a structure such as porches and decks.

Forest management activities - timber cruising and other forest resource evaluation activities, pesticide or fertilizer application, management planning activities, timber stand improvement, pruning, regeneration of forest stands, and other similar or associated activities, exclusive of timber harvesting and the construction, creation or maintenance of roads.

Forested wetland - a freshwater wetland dominated by woody vegetation that is six (6) meters tall (approximately twenty (20) feet) or taller.

Forest Stand - a contiguous group of trees sufficiently uniform in age class distribution, composition, and structure, and growing on a site of sufficiently uniform quality, to be a distinguishable unit.

Foundation - the supporting substructure of a building or other structure, excluding wooden sills and post supports, but including basements, slabs, frostwalls, or other base consisting of concrete, block, brick or similar material.

Freshwater wetland - freshwater swamps, marshes, bogs and similar areas, other than forested wetlands, which are:

1. Of ten or more contiguous acres; or of less than 10 contiguous acres and adjacent to a surface water body, excluding any river, stream or brook, such that in a natural state, the combined surface area is in excess of 10 acres; and
2. Inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils.

Freshwater wetlands may contain small stream channels or inclusions of land that do not conform to the criteria of this definition.

Functionally water-dependent uses - those uses that require, for their primary purpose, location on submerged lands or that require direct access to, or location in, coastal or inland waters and that can not be located away from these waters. The uses include, but are not limited to commercial and recreational fishing and boating facilities, excluding recreational boat storage buildings, finfish and shellfish processing, fish storage and retail and wholesale fish marketing facilities, waterfront dock and port facilities, shipyards and boat building facilities, marinas, navigation aids, basins and channels, retaining walls, industrial uses dependent upon water-borne transportation or requiring large volumes of cooling or processing water that can not reasonably be located or operated at an inland site, and uses that primarily provide general public access to coastal or inland waters.

Great pond - any inland body of water which in a natural state has a surface area in excess of ten acres, and any inland body of water artificially formed or increased which has a surface area in excess of thirty (30) acres except for the purposes of this Ordinance, where the artificially formed or increased inland body of water is completely surrounded by land held by a single owner,

Great pond classified GPA - any great pond classified GPA, pursuant to 38 M.R.S.A. Article 4-A Section 465-A. This classification includes some, but not all impoundments of rivers that are defined as great ponds.

Ground cover – small plants, fallen leaves, needles and twigs, and the partially decayed organic matter of the forest floor.

Harvest Area - the area where timber harvesting and related activities, including the cutting of trees, skidding, yarding, and associated road construction take place. The area affected by a harvest encompasses the area within the outer boundaries of these activities, excepting unharvested areas greater than 10 acres within the area affected by a harvest.

Height of a structure - the vertical distance between the mean original (prior to construction) grade at the downhill side of the structure and the highest point of the structure, excluding chimneys, steeples, antennas, and similar appurtenances that have no floor area.

Home occupation - an occupation or profession which is customarily conducted on or in a residential structure or property and which is 1) clearly incidental to and compatible with the

residential use of the property and surrounding residential uses; and 2) which employs no more than two (2) persons other than family members residing in the home.

Increase in nonconformity of a structure - any change in a structure or property which causes further deviation from the dimensional standard(s) creating the nonconformity such as, but not limited to, reduction in water body, tributary stream or wetland setback distance, increase in lot coverage, or increase in height of a structure. Property changes or structure expansions which either meet the dimensional standard or which cause no further increase in the linear extent of nonconformance of the existing structure shall not be considered to increase nonconformity. For example, there is no increase in nonconformity with the setback requirement for water bodies, wetlands, or tributary streams if the expansion extends no further into the required setback area than does any portion of the existing nonconforming structure. Hence, a structure may be expanded laterally provided that the expansion extends no closer to the water body, tributary stream, or wetland than the closest portion of the existing structure from that water body, tributary stream, or wetland. Included in this allowance are expansions which in-fill irregularly shaped structures.

Individual private campsite - an area of land which is not associated with a campground, but which is developed for repeated camping by only one group not to exceed ten (10) individuals and which involves site improvements which may include but not be limited to a gravel pad, parking area, fire place, or tent platform.

Industrial - The assembling, fabrication, finishing, manufacturing, packaging or processing of goods, or the extraction of minerals.

Institutional – a non-profit or quasi-public use, or institution such as a church, library, public or private school, hospital, or municipally owned or operated building, structure or land used for public purposes.

Land Management Road - a route or track consisting of a bed of exposed mineral soil, gravel, or other surfacing materials constructed for, or created by, the passage of motorized vehicles and used primarily for timber harvesting and related activities, including associated log yards, but not including skid trails or skid roads.

Licensed Forester - a forester licensed under 32 M.R.S.A. Chapter 76.

Lot area - The area of land enclosed within the boundary lines of a lot, minus land below the normal high-water line of a water body or upland edge of a wetland and areas beneath roads serving more than two lots.

Marina - a business establishment having frontage on navigable water and, as its principal use, providing for hire offshore moorings or docking facilities for boats, and which may also provide accessory services such as boat and related sales, boat repair and construction, indoor and outdoor storage of boats and marine equipment, bait and tackle shops and marine fuel service facilities.

Market value - the estimated price a property will bring in the open market and under prevailing market conditions in a sale between a willing seller and a willing buyer, both conversant with the property and with prevailing general price levels.

Mineral exploration - hand sampling, test boring, or other methods of determining the nature or extent of mineral resources which create minimal disturbance to the land and which include reasonable measures to restore the land to its original condition.

Mineral extraction - any operation within any twelve (12) month period which removes more than one hundred (100) cubic yards of soil, topsoil, loam, sand, gravel, clay, rock, peat, or other like material from its natural location and to transport the product removed, away from the extraction site.

Minimum lot width - the closest distance between the side lot lines of a lot. When only two lot lines extend into the shoreland zone, both lot lines shall be considered to be side lot lines.

Multi-unit residential - a residential structure containing three (3) or more residential dwelling units.

Native – indigenous to the local forests.

Non-conforming condition – non-conforming lot, structure or use which is allowed solely because it was in lawful existence at the time this Ordinance or subsequent amendment took effect.

Non-conforming lot - a single lot of record which, at the effective date of adoption or amendment of this Ordinance, does not meet the area, frontage, or width requirements of the district in which it is located.

Non-conforming structure - a structure which does not meet any one or more of the following dimensional requirements; setback, height, or lot coverage, but which is allowed solely because it was in lawful existence at the time this Ordinance or subsequent amendments took effect.

Non-conforming use - use of buildings, structures, premises, land or parts thereof which is not allowed in the district in which it is situated, but which is allowed to remain solely because it was in lawful existence at the time this Ordinance or subsequent amendments took effect.

Normal high-water line (non-tidal waters) - that line which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or changes in vegetation, and which distinguishes between predominantly aquatic and predominantly terrestrial land. Areas contiguous with rivers and great ponds that support non-forested wetland vegetation and hydric soils and that are at the same or lower elevation as the water level of the river or great pond during the period of normal high-water are considered part of the river or great pond.

NOTE: Adjacent to tidal waters, setbacks are measured from the upland edge of the “coastal wetland.”

Person - an individual, corporation, governmental agency, municipality, trust, estate, partnership, association, two or more individuals having a joint or common interest, or other legal entity.

Piers, docks, wharves, bridges and other structures and uses extending over or beyond the normal high-water line or within a wetland.

Temporary: Structures which remain in or over the water for less than seven (7) months in any period of twelve (12) consecutive months.

Permanent: Structures which remain in or over the water for seven (7) months or more in any period of twelve (12) consecutive months.

Principal structure - a building other than one which is used for purposes wholly incidental or accessory to the use of another building or use on the same premises.

Principal use - a use other than one which is wholly incidental or accessory to another use on the same premises.

Public facility - any facility, including, but not limited to, buildings, property, recreation areas, and roads, which are owned, leased, or otherwise operated, or funded by a governmental body or public entity.

Recent floodplain soils - the following soil series as described and identified by the National Cooperative Soil Survey:

| | | |
|----------|---------|----------|
| Fryeburg | Hadley | Limerick |
| Lovewell | Medomak | Ondawa |
| Alluvial | Cornish | Charles |
| Podunk | Rumney | Saco |
| Suncook | Sunday | Winooski |

Recreational facility - a place designed and equipped for the conduct of sports, leisure time activities, and other customary and usual recreational activities, excluding boat launching facilities.

Recreational vehicle - a vehicle or an attachment to a vehicle designed to be towed, and designed for temporary sleeping or living quarters for one or more persons, and which may include a pick-up camper, travel trailer, tent trailer, camp trailer, and motor home. In order to be considered as a vehicle and not as a structure, the unit must remain with its tires on the ground, and must be registered with the State Division of Motor Vehicles.

Replacement system - a system intended to replace: 1.) an existing system which is either malfunctioning or being upgraded with no significant change of design flow or use of the structure, or 2.) any existing overboard wastewater discharge.

Residential dwelling unit - a room or group of rooms designed and equipped exclusively for use as permanent, seasonal, or temporary living quarters for only one family at a time, and containing cooking, sleeping and toilet facilities. The term shall include mobile homes and rental units that contain cooking, sleeping, and toilet facilities regardless of the time-period rented. Recreational vehicles are not residential dwelling units.

Residual basal area - the average of the basal area of trees remaining on a harvested site.

Riprap - rocks, irregularly shaped, and at least six (6) inches in diameter, used for erosion control and soil stabilization, typically used on ground slopes of two (2) units horizontal to one (1) unit vertical or less.

Residual Stand - a stand of trees remaining in the forest following timber harvesting and related activities

River - a free-flowing body of water including its associated floodplain wetlands from that point at which it provides drainage for a watershed of twenty five (25) square miles to its mouth.

NOTE: The portion of a river that is subject to tidal action is a coastal wetland.

Road - a route or track consisting of a bed of exposed mineral soil, gravel, asphalt, or other surfacing material constructed for or created by the repeated passage of motorized vehicles, excluding a driveway as defined.

Salt marsh - Areas of coastal wetland (most often along coastal bays) that support salt tolerant species, and where at average high tide during the growing season, the soil is irregularly inundated by tidal waters. The predominant species is saltmarsh cordgrass (*Spartina alterniflora*). More open areas often support widgeon grass, eelgrass, and Sago pondweed.

Salt meadow - Areas of a coastal wetland that support salt tolerant plant species bordering the landward side of salt marshes or open coastal water, where the soil is saturated during the growing season but which is rarely inundated by tidal water. Indigenous plant species include salt meadow cordgrass (*Spartina patens*) and black rush; common threesquare occurs in fresher areas.

Service drop - any utility line extension which does not cross or run beneath any portion of a water body provided that:

1. in the case of electric service
 - a. the placement of wires and/or the installation of utility poles is located entirely upon the premises of the customer requesting service or upon a roadway right-of-way; and
 - b. the total length of the extension is less than one thousand (1,000) feet.
2. in the case of telephone service
 - a. the extension, regardless of length, will be made by the installation of telephone wires to existing utility poles, or
 - b. the extension requiring the installation of new utility poles or placement underground is less than one thousand (1,000) feet in length.

Setback - the nearest horizontal distance from the normal high-water line of a water body or tributary stream, or upland edge of a wetland, to the nearest part of a structure, road, parking space or other regulated object or area.

Shore frontage - the length of a lot bordering on a water body or wetland measured in a straight line between the intersections of the lot lines with the shoreline.

Shoreland zone - the land area located within two hundred and fifty (250) feet, horizontal distance, of the normal high-water line of any great pond or river; within 250 feet, horizontal distance, of the upland edge of a coastal wetland, including all areas affected by tidal action; within 250 feet of the

upland edge of a freshwater wetland; or within seventy-five (75) feet, horizontal distance, of the normal high-water line of a stream.

Shoreline – the normal high-water line, or upland edge of a freshwater or coastal wetland.

Significant River Segments - See Appendix B or 38 M.R.S.A. section 437.

Skid Road or Skid Trail - a route repeatedly used by forwarding machinery or animal to haul or drag forest products from the stump to the yard or landing, the construction of which requires minimal excavation.

Slash - the residue, e.g., treetops and branches, left on the ground after a timber harvest.

Stream - a free-flowing body of water from the outlet of a great pond or the confluence of two (2) perennial streams as depicted on the most recent edition of a United States Geological Survey 7.5 minute series topographic map, or if not available, a 15-minute series topographic map, to the point where the body of water becomes a river or flows to another water body or wetland within the shoreland area.

Structure - anything built for the support, shelter or enclosure of persons, animals, goods or property of any kind, together with anything constructed or erected with a fixed location on or in the ground, exclusive of fences, and poles, wiring and other aerial equipment normally associated with service drops as well as guying and guy anchors. The term includes structures temporarily or permanently located, such as decks, patios, and satellite dishes.

Substantial start - completion of thirty (30) percent of a permitted structure or use measured as a percentage of estimated total cost.

Subsurface sewage disposal system – any system designed to dispose of waste or waste water on or beneath the surface of the earth; includes, but is not limited to: septic tanks; disposal fields; grandfathered cesspools; holding tanks; pretreatment filter, piping, or any other fixture, mechanism, or apparatus used for those purposes; does not include any discharge system licensed under 38 M.R.S.A. section 414, any surface waste water disposal system, or any municipal or quasi-municipal sewer or waste water treatment system..

Sustained slope - a change in elevation where the referenced percent grade is substantially maintained or exceeded throughout the measured area.

Tidal waters – all waters affected by tidal action during the maximum spring tide.

Timber harvesting - the cutting and removal of timber for the primary purpose of selling or processing forest products. The cutting or removal of trees in the shoreland zone on a lot that has less than two (2) acres within the shoreland zone shall not be considered timber harvesting. Such cutting or removal of trees shall be regulated pursuant to Section 15 (P), *Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting*.

Timber harvesting and related activities - timber harvesting, the construction and maintenance of roads used primarily for timber harvesting and other activities conducted to facilitate timber harvesting.

Tributary stream – means a channel between defined banks created by the action of surface water, which is characterized by the lack of terrestrial vegetation or by the presence of a bed, devoid of topsoil, containing waterborne deposits or exposed soil, parent material or bedrock; and which is connected hydrologically with other water bodies. “Tributary stream” does not include rills or gullies forming because of accelerated erosion in disturbed soils where the natural vegetation cover has been removed by human activity.

This definition does not include the term "stream" as defined elsewhere in this Ordinance, and only applies to that portion of the tributary stream located within the shoreland zone of the receiving water body or wetland.

NOTE: Water setback requirements apply to tributary streams within the shoreland zone.

Upland edge of a wetland - the boundary between upland and wetland. For purposes of a coastal wetland, this boundary is the line formed by the landward limits of the salt tolerant vegetation and/or the maximum spring tide level, including all areas affected by tidal action. For purposes of a freshwater wetland, the upland edge is formed where the soils are not saturated for a duration sufficient to support wetland vegetation; or where the soils support the growth of wetland vegetation, but such vegetation is dominated by woody stems that are six (6) meters (approximately twenty (20) foot) tall or taller.

Vegetation - all live trees, shrubs, and other plants including without limitation, trees both over and under 4 inches in diameter, measured at 4 1/2 feet above ground level.

Velocity zone - an area of special flood hazard extending from offshore to the inland limit of the primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources.

Volume of a structure - the volume of all portions of a structure enclosed by roof and fixed exterior walls as measured from the exterior faces of these walls and roof.

Water body - any great pond, river or stream.

Water crossing - any project extending from one bank to the opposite bank of a river, stream, tributary stream, or wetland whether under, through, or over the water or wetland. Such projects include but may not be limited to roads, fords, bridges, culverts, water lines, sewer lines, and cables as well as maintenance work on these crossings. This definition includes crossings for timber harvesting equipment and related activities.

Wetland - a freshwater or coastal wetland.

Windfirm - the ability of a forest stand to withstand strong winds and resist windthrow, wind rocking, and major breakage.

Woody Vegetation - live trees or woody, non-herbaceous shrubs.

STATUTORY AUTHORITY: 38 M.R.S.A. Section 438-A(5)

EFFECTIVE DATE:

January 13, 1988 (filed as 06-101, Ch. 1)

AMENDED:

March 24, 1990 (filed as 06-096, Ch. 1000)

June 19, 1991 - Sections 15 and 17

July 14, 1992 - Sections 4, 8, 9, 12, 15, 16 & 17

August 7, 1994 - Sections 3, 14 & 16

EFFECTIVE DATE (ELECTRONIC CONVERSION): May 5, 1996

NON-SUBSTANTIVE CORRECTIONS:

December 29, 1997 - minor spelling and formatting.

April 1, 1998 - minor renumbering and formatting.

AMENDED:

February 6, 1999

February 13, 2000

May 1, 2006 – filing 2006-115

November 22, 2010 – filing 2010-581

May 5, 2012 – filing 2012-134

1. Appendix A:**ALTERNATIVE TO 30% EXPANSION RULE PURSUANT TO 38 M.R.S.A. SECTION 439-A
SUBSECTION 4-A****Section 12.C. Non-conforming Structures**

- (1) Expansions. A non-conforming structure may be added to or expanded after obtaining a permit from the same permitting authority as that for a new structure, if such addition or expansion does not increase the non-conformity of the structure, and is in accordance with subparagraphs (a), and (b) below.
 - (a) Legally existing non-conforming principal and accessory structures that do not meet the water body, tributary stream, or wetland setback requirements may be expanded or altered as follows, as long as all other applicable standards contained in this Ordinance are met.
 - i. Expansion of any portion of a structure within 25 feet, horizontal distance, of the normal high-water line of a water body, tributary stream, or upland edge of a wetland is prohibited, even if the expansion will not increase nonconformity with the water body, tributary stream or wetland setback requirement.
 - ii. Expansion of an accessory structure that is located closer to the normal high-water line of a water body, tributary stream, or upland edge of a wetland than the principal structure is prohibited, even if the expansion will not increase nonconformity with the water body or wetland setback requirement.
 - iii. For structures located less than 75 feet, horizontal distance, from the normal high-water line of a water body, tributary stream, or upland edge of a wetland, the maximum combined total floor area for all portions of those structures within that 75-foot distance is 1,000 square feet, and the maximum height of any portion of a structure that is within 75 feet, horizontal distance, of a water body, tributary stream or upland edge of a wetland is 20 feet or the height of the existing structure, whichever is greater.
 - iv. For structures located less than 100 feet, horizontal distance, from the normal high-water line of a great pond classified as GPA or a river flowing to a great pond classified as GPA, the maximum combined total floor area for all portions of those structures within that 100-foot distance is 1,500 square feet, and the maximum height of any portion of a structure that is within 100 feet, horizontal distance, of a great pond is 25 feet or the height of the existing structure, whichever is greater, except that any portion of those structures located less than 75 feet, horizontal distance from the normal high-water line of a water body, tributary stream, or the upland edge of a wetland must meet the floor area and height limits of division (iii).

For the purposes of Section 12(C)(1)(a), a basement is not counted toward floor area.

- (b) Whenever a new, enlarged, or replacement foundation is constructed under a non-conforming structure, the structure and new foundation must be placed such that the setback requirement is met to the greatest practical extent as determined by the Planning Board or its designee, basing its decision on the criteria specified in Section 12(C)(2) Relocation, below. If the completed

foundation does not extend beyond the exterior dimensions of the structure and the foundation does not cause the structure to be elevated by more than three (3) additional feet, as measured from the uphill side of the structure, it shall not be considered to be an expansion of the structure.

NOTE: The special expansion allowance provided below is available to municipalities that wish to allow a greater expansion limit if the landowner has maintained a quality 50 foot buffer along the water body, tributary stream or wetland, or agrees to plant such a buffer, and agrees to implement certain measures to reduce erosion and sedimentation from the property. If the municipality does not have adequate resources to ensure compliance with this provision, the department recommends that it not be incorporated into the ordinance.

(1-A) Special expansion allowance. Existing principal and accessory structures that exceed the floor area or height limits set in Section 12(C)(1)(a)(iii) and Section 12(C)(1)(a)(iv) above, may not be expanded, except that the limits may be exceeded by not more than 500 square feet provided that all of the following requirements are met.

- (a) The principal structure is set back at least 50 feet, horizontal distance, from the normal high-water line of a water body, tributary stream or upland edge of a wetland.
- (b) A well-distributed stand of trees and other natural vegetation as defined in Section 15(P)(2)(b), extends at least 50 feet, horizontal distance, in depth as measured from the normal high-water line or upland edge for the entire width of the property.

If a well-distributed stand of trees and other vegetation meeting the requirements of Section 15(P)(2)(b) is not present, the 500 square foot special expansion allowance may be permitted only in conjunction with a written plan, including a scaled site drawing, by the property owner, and approved by the Planning Board or its designee, to reestablish a buffer of trees, shrubs, and other ground cover within 50 feet, horizontal distance, of the shoreline or tributary stream.

- (c) Adjacent to great ponds classified GPA and rivers flowing to great ponds classified GPA, except for the allowable footpath, there exists complete natural ground cover, consisting of forest duff, shrubs and other woody and herbaceous vegetation within 50 feet, horizontal distance, of the normal high-water line. Where natural ground cover is lacking the area must be supplemented with leaf or bark mulch and plantings of native shrubs, and other woody and herbaceous vegetation in quantities sufficient to retard erosion and provide for effective infiltration of stormwater.
- (d) A written plan by the property owner, including a scaled site drawing, is approved by the Planning Board and is developed, implemented, and maintained to address the following mitigation measures for the property within the shoreland zone.
 - (i) Unstabilized areas resulting in soil erosion must be mulched, seeded, or otherwise stabilized and maintained to prevent further erosion and sedimentation to water bodies, tributary streams, and wetlands.

- (ii) Roofs and associated drainage systems, driveways, parking areas, and other nonvegetated surfaces must be designed or modified, as necessary, to prevent concentrated flow of storm water runoff from reaching a water body, tributary stream or wetland. Where possible, runoff must be directed through a vegetated area or infiltrated into the soil through the use of a dry well, stone apron, or similar device.
- (1-B) Planting requirements. Any planting or revegetation required as a condition to the Special Expansion Allowance must be in accordance with a written plan drafted by a qualified professional, be implemented at the time of construction, and be designed to meet the rating scores contained in paragraph (b) and the ground cover requirements of paragraph (c) when the vegetation matures within the 50 foot strip. At a minimum, the plan must provide for the establishment of a well-distributed planting of saplings spaced so that there is at least one sapling per 80 square feet of newly established buffer. Planted saplings may be no less than three (3) feet tall for coniferous species and no less than six feet tall for deciduous species. The planting plan must include a mix of at least three native tree species found growing in adjacent areas, with no one species making up more than 50% of the number of saplings planted unless otherwise approved by the Planning Board or its designee, based on adjacent stand comparison. All aspects of the implemented plan must be maintained by the applicant and future owners.

NOTE: Municipalities are encouraged to specify those professions which they deem qualified to prepare planting and mitigation plans, taking into account the availability of those professionals in the region. Such professionals may include, but are not limited to, foresters, arborists, landscape architects, and landscape contractors.

- (1-C) Filing and reporting requirements. Written plans required pursuant to Section 12(C)(1-A)(d) must be filed with the registry of deeds of the county in which the property is located. A copy of all permits issued pursuant to this section must be forwarded by the municipality to the department within 14 days of the issuance of the permit.

APPENDIX B**38 §437. Significant river segments identified**

For purposes of this chapter, significant river segments include the following:

- 1. Aroostook River.** The Aroostook River from St. Croix Stream in Masardis to the Masardis and T.10, R.6, W.E.L.S. townline, excluding segments in T.9, R.5, W.E.L.S.; including its tributary the Big Machias River from the Aroostook River in Ashland to the Ashland and Garfield Plantation townlines;
- 2. Dennys River.** The Dennys River from the railroad bridge in Dennysville Station to the dam at Meddybemps Lake, excluding the western shore in Edmunds Township and No. 14 Plantation;
- 3. East Machias River.** The East Machias River from 1/4 of a mile above the Route 1 bridge in East Machias to the East Machias and T.18, E.D., B.P.P. townline, and from the T.19, E.D., B.P.P. and Wesley townline to the outlet of Crawford Lake in Crawford, excluding Hadley Lake;
- 4. Fish River.** The Fish River from the bridge in Fort Kent Mills to the outlet of Eagle Lake in Wallagrass, and from the Portage Lake and T.14, R.6, townline to the Portage Lake and T.13, R.7, W.E.L.S. townline, excluding Portage Lake;
- 5. Machias River.** The Machias River from the Whitneyville and Machias townline to the Northfield T.19, M.D., B.P.P. townline;
- 6. Mattawamkeag River.** The Mattawamkeag River from the outlet of Mattakeunk Stream in Winn to the Mattawamkeag and Kingman Township townline, and from the Reed Plantation and Bancroft townline to the East Branch, including its tributaries the West Branch from the Mattawamkeag River to the Haynesville T.3, R.3, W.E.L.S. townline and from its inlet into Upper Mattawamkeag Lake to the Route 2 bridge; the East Branch from the Mattawamkeag River to the Haynesville and Forkstown Township townline and from the T.4, R 3, W.E.L.S. and Oakfield townline to Red Bridge in Oakfield; the Fish Stream from the Route 95 bridge in Island Falls to the Crystal-Patten townline; and the Baskehegan Stream from its inlet into Crooked Brook Flowage in Danforth to the Danforth and Brookton Township townline;
- 7. Narraguagus River.** The Narraguagus River from the ice dam above the railroad bridge in Cherryfield to the Beddington and Devereaux Township townline, excluding Beddington Lake;
- 8. East Branch of Penobscot.** The East Branch of the Penobscot from the Route 157 bridge in Medway to the East Millinocket and Grindstone Township townline;
- 9. Pleasant River.** The Pleasant River from the railroad bridge in Columbia Falls to the Columbia and T.18, M.D., B.P.P. townline, and from the T.24, M.D., B.P.P. and Beddington townline to the outlet of Pleasant River Lake;
- 10. Rapid River.** The Rapid River from the Magalloway Plantation and Upton townline to the outlet of Pond in the River;
- 11. West Branch Pleasant River.** The West Branch Pleasant River from the East Branch to the Brownville and Williamsburg Township townline; and
- 12. West Branch of Union River.** The West Branch of the Union River from the Route 9 bridge in Amherst to the outlet of Great Pond in the Town of Great Pond.



TOWN OF KITTERY
200 Rogers Road, Kittery, ME 03904
Telephone: 207-475-1329 Fax: 207-439-6806

REPORT TO PLANNING BOARD

Meeting Date: April 30, 2014
From: Jessa Kellogg, Shoreland/Environmental Resource Officer
Subject: Municipal Awareness of MS4 Permit

The Town of Kittery is subject to the 2013-2018 General Permit for Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4 Permit). One of permit requirements specifies that municipal staff and elected officials be made aware of the General Permit and its requirements. Based on your position as a member of the Planning Board you have been chosen as key municipal staff working on elements of this permit, in particular with project reviews that trigger the Post-Construction Stormwater Management ordinance found under Town Code 16.8.8.2.

Enclosed is a Fact Sheet reviewing the basic components of the MS4 Permit and how it relates to you and your position. Because the Town is required to assess how aware the elected officials and staff are of the permit, I am requesting that you complete a short survey, also enclosed. Should you prefer to complete the survey electronically you can do so at <https://www.surveymonkey.com/s/MS4Awareness>. I would greatly appreciate it if you could take just a few minutes to review the Fact Sheet and complete either the online survey or paper survey and return it to me at Town Hall by June 30, 2014.

As I understand it the first meeting date of each month is reserved for permit review and the second meeting date for Town business. Should you have any questions or concerns about the MS4 Permit I would be happy to make a short 10 minute presentation before the Planning Board on either of the May 22nd or June 26th meeting dates to answer questions, though my preference would be for the May 22nd date as I am obligated to collect survey responses by June 30th. I can be reached easiest by email, jk Kellogg@kitteryme.org, or messages can be left for me at the Code Enforcement Office at 475-1305.

Thank you for your assistance in complying with this permit requirement.

**PLEASE REFER TO INFORMATION FROM LAST
MEETING'S PACKET (ITEM 3A)
AND COMPLETE QUESTIONNAIRE PRIOR TO
THE 5/22 MTG**