



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

**AGENDA for Thursday, February 13, 2014**

**6:00 P.M. to 10:00 P.M.**

### **CALL TO ORDER – ROLL CALL – PLEDGE OF ALLEGIANCE – APPROVAL OF MINUTES – 1/23/2014**

**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.

### **OLD BUSINESS**

**ITEM 1 – (30 min.) – Rt. 236 Commercial Lot Development— Paolucci Realty –Site/Subdivision Preliminary Plan Review.** Action: Grant or deny preliminary plan approval. Owner and applicant Peter J. Paul Trustee of Paolucci Realty, is requesting consideration of plans to divide an existing commercial lot located at 93 Route 236, thereby creating a second division within 5 years and requiring subdivision review. The 4.1 acre parcel is located on a portion of Tax Map 28, Lot 14, in the Commercial C-2 Zone. Agent is Tom Harmon, Civil Consultants.

### **ITEM 2 – (30 min.)– Estes Bulk Propane Storage/U.S. Route 1 –Preliminary Site Plan Review**

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

### **ITEM 3 – (10 minutes) Town Code Amendment - Title 16.10.9.1.4. Approved Plan Expiration.**

Discuss proposed amendment and make a recommendation to Town Council. Proposed amendment reduces the period of time in which extensions can be granted and modifies the process for extension requests.

### **ITEM 4 – (30 minutes) - Board Member Items / Discussion**

- A. Comprehensive Plan Update
- B. Quality Improvement Plan for Kittery Shore and Harbors

### **ITEM 5 – (15 minutes) - Town Planner Items:**

- A. Quality Improvement Overlay Zone; B. Sign Standards and Compliance; C. Other

### **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

5 Meeting called to order at 6:06 p.m.  
6 Board Members Present: Tom Emerson, Susan Tuveson, Karen Kalmar, Bob Melanson, Ann Grinnell,  
7 Mark Alesse, Deborah Driscoll Davis  
8 Members absent: None  
9 Staff: Gerry Mylroie, Planner; Chris DiMatteo, Assistant Planner  
10

11 Pledge of Allegiance  
12

13 Minutes:

14 Ms. Grinnell moved to approve the minutes of January 9, 2014 as corrected

15 Ms. Kalmar seconded

16 Motion carried unanimously.  
17

18 Ms. Grinnell moved to amend the agenda to move Item 4 to the first item discussion

19 Ms. Tuveson seconded

20 Ms. Grinnell stated she invited the Town Manager to discuss Item 4.

21 Motion carried unanimously.  
22

23 Public Comment: No public comment.  
24

25 **ITEM 1 – Town Code Amendment - Chapter 7, Article 3 Nonconformance, Title 16 Land Use**  
26 **Development Code.** Action: review amendment and schedule a public hearing Amendment includes  
27 changes to 16.7.3.5.10. *Contiguous Non-Conforming Lots* that would allow for more consistent adjustment  
28 to lot-lines. Applicants Mary Thron and Ray Arris, Kittery residents.

29 David Jones, Attorney representing Applicants, explained the Zoning amendment change application was  
30 submitted and reviewed by the MDEP, Planning Office and Town Attorney and they are requesting the  
31 Board schedule a public hearing.

32 Mr. DiMatteo explained the amendment must meet, at a minimum, MDEP standards. Mr. Jones then  
33 explained the specific request of the applicant, the impact of the proposed amendment, and noted his  
34 support of the amendment. Discussion followed regarding separating shoreland vs. non-shoreland  
35 references in the amendment.

36 Mr. Melanson moved to schedule a public hearing for Title 16.7.3.5.10, including the amended portions of  
37 paragraph e, separating land inside and outside of the shoreland zone, as discussed

38 Ms. Grinnell seconded

39 Motion carried unanimously.  
40  
41

42 **ITEM 2 – Town Code Amendment – Title 16.7 Sewer System and Septic Disposal and 16.9.1.4 Soil**  
43 **Suitability.** Action: review amendment and schedule a public hearing. Amendments to the Town Code to  
44 address soil suitability as it pertains to septic disposal systems and other development.

45 Ms. Kalmar stated she had a number of issues with the proposal and thought meeting to discuss and hash  
46 out as a smaller group would be a better resolution to drafting this amendment. A sub-committee will  
47 include Ms. Kalmar, Ms. Tuveson and Ms. Grinnell. Earledean Wells asked questions on behalf of the  
48 Conservation Commission:  
49

50 1. If, for well over the past ten years, the Comprehensive Plan has directed the growth in Kittery toward  
51 areas of town with town sewer and water, why would or why should the Planning Board be working

52 on revisions to Kittery Ordinance that could encourage development in those areas of Kittery requiring  
53 septic systems?  
54

55 2. Since it appears that it is beyond the ability of the Code Enforcement to enforce Kittery Ordinances  
56 already in place, requiring regular maintenance and reporting of Kittery septic systems, why would the  
57 Planning Board encourage the huge master systems that would require more maintenance than the  
58 normal one house septic system?  
59

60 Ms Driscoll's concerns with amendment language:

- 61 1. 'Sanitary sewer agency' should say Kittery Sewer Department (16.8.7.1.A);
- 62 2. Remove 'significant' (16.8.7.1.C)/(16.8.7.1.G);
- 63 3. Find better word for 'perennial' (16.8.7.1.F);
- 64 4. What does 'first-time residential use' (16.8.7.1.F.2) mean? Staff will check wording of state statute.
- 65 5. Add "filter and/or pre-tank" (16.8.7.14.G) language.

66 Mr. Melanson suggested referencing the appropriate licensing agencies, either the DEP or Plumbing Code.  
67 What would be done if a large system goes down?

- 68 6. Replace 'proposed development' with 'property line' (16.8.7.3);
- 69 7. Replace 'and this Code' with consistent language (Code/Title 16/Ordinance?).  
70

71 Ms. Tuveson moved to continue this item until such time as the subcommittee can report back to the  
72 Board.

73 Ms. Grinnell seconded

74 Motion carried unanimously.  
75

76

77 **ITEM 3 – Town Code Amendment – Title 16.7.8 Land Not Suitable for Development.**

78 Action: review amendment and schedule a public hearing. An amendment to the Town Code to address  
79 the applicability of the *Soil Suitability Guide for Land Use Planning in the State of Maine* referenced in  
80 Title 16.7.8.1 Locations of Sewage, item 5, which pertains to soils related to septic sewage. The proposed  
81 amendment also includes changes to the net residential area calculations.

82 Mr. Emerson stated he would like to see this item remain in concert with item 2 and requested a similar  
83 motion to continue review.

84 Ms. Grinnell moved that review of amendment to Title 16.7.8 Land Not Suitable for Development be  
85 continued.

86 Mr. Melanson seconded

87 Discussion followed regarding the proposed definition of Cemetery and Burying Ground. Additional  
88 language to consider including: 'starting with a 10-foot distance from existing tombstones and expanding  
89 as necessary to form a final rectilinear area'.

90 Motion carried unanimously  
91

92

93 **ITEM 4 – Board Member Items / Discussion**

94 A. Review Bylaw changes - Board Comments:

95 - Section 1, Board: Retain "Members shall be residents of the Town for at least one (1) year prior to their  
96 appointment."

97 - Section 2, Officers: Accept changes.

98 - Section 3, Meetings: Add a cancellation clause. Ms. Tuveson will check for a citation for cancellation.

99 - Section 4, Special Meetings: Include 'email with receipt acknowledgement', in addition to phone  
100 contact.

101 Bob Melanson stated the Port Authority Rules and Regulations (by Statute) require a Planning Board  
102 member be appointed to the Port Authority. This should be included in the Planning Board Bylaws. Ms.  
103 Tuveson will draft language for this.

104 - Section 5, Format: Move Board and Planner time before new business; move 'call the roll' before  
105 'pledge'.

106 - Section 6, Minutes: Accept changes.

107 - Section 7, Quorum: Procedural matters shall be a simple majority in all cases.

108 - Section 8, Conflict of interest: remove language "under the influence of a conflict of interest".  
109 Members discussed the perception and instances of conflict of interest and bias.

110 - Section 9, Attendance: Include language 'without notice' (where a member is absent 'without notice'...).

111 - Section 10, Site Walks: Further discussion is needed. Change: "Minutes of site walks shall be the  
112 responsibility of the Planner or Planner's designee, and after Board approval shall be included in the  
113 applicant's record."

114 - Section 11, Chair: Accept changes.

115 - Section 12, Votes: Accept changes.

116 - Section 13, Debate: Accept changes.

117 - Section 14, Adjourn: Accept changes.

118 - Section 15, Reconsideration: Accept changes.

119 - Section 16, Public Meeting: Accept changes.

120 - Section 17, Executive Session: Accept changes.

121 - Section 18, Bylaws: Accept changes.

122 - Section 19, Roberts Rules: Accept changes.

123 Ms. Tuveson will revise the Bylaws to include strikeouts and underlines for final Board review, excluding  
124 revisions by Mr. Dennett.

125

126 B. Discuss legal issues associated with Waivers - Will be discussed at 1/24/14 meeting.

127

128 C. Punch List Item 'Non-Conforming Structure Replacement outside the Shoreland Zone' - Will be  
129 discussed at 1/24/14 meeting.

130

131 D. Other

132 Ann Grinnell:

133 - If the Board has their meeting on 1/24/14, the agenda should be changed as it was clear in the minutes of  
134 1/9/14 there would be Board members only, and no staff present. Ms. Tuveson concurred, noting her  
135 planned work had been dropped from the agenda. Discussion followed regarding what the Board will  
136 discuss on 1/24.

137 Ms. Grinnell moved to discuss the bylaws at the workshop on 1/24

138 Ms. Tuveson seconded

139 Ms. Driscoll thought the bylaws could be reviewed and finished at tonight's meeting. Mr. Alesse and Mr.  
140 Melanson concurred.

141 Motion failed with 1 in favor (Grinnell); 6 against; 0 abstentions.

142

143 Discussion followed regarding the development of Board agendas, the intent of the advertised 1/24 Board  
144 meeting, and what would be discussed

145 Ms. Kalmar moved to follow the printed agenda and see what happens

146 Mr. Melanson seconded

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

148

149 - Foreside Listening Session: Why wasn't the session done by the Planning Board? Mr. Emerson  
150 explained the Board needs to be careful with economic development initiatives that the Council can  
151 initiate.

152 Nancy Colbert Puff, Town Manager, stated the Council is interested in listening to all involved parties  
153 concerned about the Foreside, and would seek the input of the Board and individual members as discussion  
154 progresses. The common goal should be the same.

155 Ms. Tuveson noted she felt there is a conflict with the Planner also involved in economic development,  
156 and the staff developing the agenda. Ms. Grinnell noted the Shore and Harbor Grant did not include the  
157 Planning Board's participation. Mr. Melanson explained the Grant was initiated by the former  
158 Commissioner of Public Works. Discussion followed regarding the involvement of staff and Board  
159 members in the Shore and Harbor Grant development and in Foreside planning.

160 Ms. Grinnell asked about the Route 1 By-Pass meeting, and noted the Council should be involved. Mr.  
161 Emerson explained the closing of the bridge will not be as impactful as the Memorial Bridge, so  
162 discussions have begun regarding improvements to the area. Ms. Driscoll suggested the business owners  
163 can take an active interest in the area while working with the state. Discussion followed regarding  
164 planning and economic development responsibilities handled by one person. Mr. Mylroie explained his  
165 work and efforts in both areas. Ms. Colbert Puff explained the Council has charged her with promoting  
166 better communication and involvement within the town.

167

168 Tom Emerson:

169 - Emails were sent to members regarding a meeting on Sea Level Rise in Kittery.

170

171 Gerry Mylroie:

172 - By-pass property owners will be meeting on Wednesday, January 29 at 8:00 p.m. in Council Chambers,  
173 and will be looking to re-brand the area. Ms. Driscoll stated residents need to be able to weigh in on  
174 naming areas of town, not just business owners.

175 Mr. Melanson moved this type of issue should be an agenda item, and not just a planner time item,  
176 providing specificity to allow for Board participation.

177 Ms. Tuveson seconded

178 Mr. Emerson re-framed the motion: Any Destination Marketing program be included as an agenda item.

179 Motion carried unanimously

180

181

182 **ITEM 5 – Town Planner Items:**

183 A. Town Code Amendments- Quality Improvement Overlay Zone; Outdoor Seating; and others - To be  
184 discussed at a future date; punchlist.

185 B. Town Comprehensive Plan Update Status -

186 Ms. Driscoll: Plan is in final edit process with strikethroughs and underlines.

187 C. Other Town Comprehensive Plan Implementation Activities - To be discussed at a future date.

188 D. Other

189  
190 Mr. Mylroie asked about staff participation at the 1/24/14 Board meeting. Mr. Emerson said it seemed  
191 clear from Board members that this meeting will be for Board members only.

192

193 Mr. Melanson moved to adjourn

194 Ms. Grinnell seconded

195 Motion carried by all members present

196

197

198

199 The Kittery Planning Board meeting of January 23, 2014 adjourned at 9:35 p.m.

200 Submitted by Jan Fisk, Recorder, February 5, 2014

## Town of Kittery Planning Board Meeting February 13, 2014

**Rt. 236 Commercial Lot Development— Paolucci Realty –Subdivision Preliminary Plan Review.**

Action: Grant or deny preliminary plan approval. Owner and applicant Peter J. Paul Trustee of Paolucci Realty, is requesting consideration of plans to divide an existing commercial lot located at 93 Route 236, thereby creating a second division within 5 years and requiring subdivision review. The 4.1 acre parcel is located on a portion of Tax Map 28, Lot 14, in the Commercial C-2 Zone. Agent is Tom Harmon, Civil Consultants.

**PROJECT TRACKING**

REQ'D	ACTION	COMMENTS	STATUS
YES	Sketch Plan Review	Accepted June 13, 2013	GRANTED
NO	Site Visit	June 27, 2013	HELD
YES	Completeness/Acceptance	July 11, 2013	ACCEPTED
YES	Public Hearing	August 8, 2013	HELD
YES	Preliminary/Final Plan Review and Approval	Initiated on August 8, 2013, Continued for 90 days, and another 90 days on Nov. 14	PENDING

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

Overview

Applicant is requesting Board to consider a plan for the division of a lot along Route 236 in the Commercial-2 Zone into two commercial lots. The subject lot was divided earlier this year from land owned by AMP Realty Holdings, as shown on the attached plan marked as Sheet No. SK. By dividing the commercial lot the applicant is creating a third lot within a five year period requiring subdivision. The Board accepted the Sketch Plan at the 6/13/2013 meeting and held a site walk on 6/27. On July 11, 2013 the Board accepted the Preliminary Plan Application and a public hearing was held on August 8. On November 14, the Board directed the applicant to return with a revised plan that “complies with a permitted use in the Commercial C-2 Zone.”

The proposed parcel division is denoted on Sheet C1, *Boundary, Existing Conditions and Proposed Paolucci Subdivision*, and includes the ‘new entrance under construction 1/17/2013. The building envelopes, setbacks and test pit locations are included (municipal water runs along Rt. 236, but there is no municipal sewer service). The applicant has submitted revised drawings dated January 22, 2014 that no longer includes an easement for a 6-ft wide pedestrian walkway, limits clearing to the setbacks for yards and buffer area, and maintains all stormwater buffer areas on site.

The applicant is requesting approval to clear and grade the lots in addition to the subdivision. The revised plans maintains the two wetlands adjacent to Route 236 rather than requesting approval to fill as part of the initial application. It also appears from the revised plans there is an effort to not burden the adjacent AMP Realty Trust LLC lot (Bartlett Hill Subdivision) with site drainage and associated stormwater buffers.

Staff Review

Staff has the following comments:

- 1) Staff has requested and still recommends that the final subdivision plan include the AMP Realty Trust LLC lot (Bartlett Hill Subdivision) parcel. This provides appropriate context for the recorded plan with all lots associated with the subdivision identified. The AMP property does not need to be denoted as a lot and its status can be qualified with a plan note that it is not included in the planning board approval. At a minimum, the Applicant should include the previously submitted existing conditions plan (C-1 from the April 2013 Plan Set) rather than the current C-1 plan provided. The originally submitted C-1 plan that is referenced on the Subdivision Plan (sheet 1) should be recorded at the YCRD along with the subdivision plan.
- 2) Recommended changes to the plans:
  - a) The subdivision plan (Sheet 1) does not include designating the rear yard as a buffer per 16.9.1.7 Buffer Areas. A portion of the yard is designated as a stormwater buffer required to meet Maine DEP stormwater regulations, however, 16.9.1.7 and 16.3.2.11.D.2 require the side and/or rear yards to be 40-foot wide buffers when non-residential use abuts a residential use, which is the case here. The Applicant has provided for the increase in width (40 feet) but has not designated on the plan has a required buffer. Without such designation it would unlikely be maintained as such.
  - b) With review of the Bartlett Hill Subdivision, proposed development adjacent and to the west, there is a utility easement denoted on that project's plan shown to connect to rear portion of the proposed commercial Lot 2. Apparently this is to be used for a water main connection between Route 236 and proposed Ashely Morgan Way. This utility easement needs to be identified on Commercial Lot Subdivision Plan and that it benefits the adjacent lot (Bartlett Hill Subdivision). A copy of this easement should be provided prior to final approval.
  - c) A note on the subdivision plan and a condition of final approval that subjects the 50-foot front setback area to a public easement for a sidewalk and associated street trees. For example:

The front yard of Lots 1 and 2 is subject to a public easement to the Town of Kittery for the construction of a paved walkway and associated street trees, furnished and installed by the owner and/or the developer.
  - d) A note on the subdivision plan and a condition of final approval that states: Any and all development of the lots is prohibited prior to the approval of the Planning Board, with the exception of that development which was already approved on \_\_\_\_\_, 2014. Before operation commences all new businesses are required to submit a Business Use Application for review and approval by the Code Enforcement Officer and Town Planner.
  - e) Note 6 on the Site Plan should be modified to substitute the word "hardwood" for "firewood". In addition the hours of operation should be added, assuming no dark-time hours that would require site lighting.
- 3) Staff recommended at the last meeting that the northerly lot line of proposed lot #1 be relocated to the south to accommodate the entire adjacent stream and associated wetlands. It was stated by the applicant that the land area was necessary to maintain a required MDEP stormwater buffer on the site, rather than burned the adjacent AMP parcel as was previously proposed. Staff recommends that the plan is revised to make it more evident that the "stormwater treatment area" is a no-cut and no disturb area. The Board may also consider expanding this area to the 100-foot setback to increase protection of the adjacent stream that apparently feeds a large marsh to the east side of Route 236 where Eastern Cottontail habitat has been identified by *Beginning with Habitat, An Approach to Conserving Open Space* program.
- 4) The revised grading design limits clearing to essentially the building envelopes. This approach allows for the preservation of mature trees and other vegetation within the yards, especially the 50-foot wide setback adjacent to Route 236. While the wetlands along the Route 236 roadside are not proposed to be filled at this point in time, and the grading design accommodates this, the limits of disturbance around the wetland adjacent to Lot 1 needs to be reduced. Table 16.9 in the Town Code requires a minimum of

25 feet between a wetland over 501 SF and less than 1 acre in size and top soil removal that is supported by an approved erosion and sedimentation plan.

In addition to the above change to the plan, Staff recommends the Planning Board consider requiring a site visit prior to any earthwork to allow for identify any significant trees that straddle the 50-foot setback line and warrant preservation, thereby adjusting the grading design in the field. This approach is supported by the Town Code.

Title 16.3.2.11 references *Kittery's Design Handbook* for proper application of code standards. In Part I. Site Planning, page 2 of the Handbook, *Site Analysis*, and *Preservation of Existing Features* (e.g. mature trees) are site planning principles that should be used to apply the required standards.

### Planning Board Action

The revised plan before the Board with the recommendations above, accommodates the preservation of existing trees and vegetation while providing the opportunity for the owner to present the lots for sale and use Lot 1 for the sale of firewood.

Staff recommends the Board grant preliminary approval with conditions if the Board wants to see the revised plans before final approval, the Board can consider granting both preliminary and final approval with conditions combined.

**KITTERY PLANNING BOARD  
FINDINGS OF FACT**

**UNAPPROVED**

**for  
Paolucci Realty Trust  
Route 236 Commercial Lot Subdivision**

**Note:** This approval by the Planning Board constitutes an agreement between the Town and the Developer incorporating the Development plan and supporting documentation, the Findings of Fact, and all waivers and/or conditions approved and required by the Planning Board.

**WHEREAS:** Peter J. Paul Trustee of Paolucci Realty Trust, owner and applicant of Route 236 Commercial Lot Subdivision, proposes to divide an existing commercial lot located at 93 Route 236, thereby creating a second division within 5 years and requiring subdivision review. The 4.1 acre parcel is located on a portion of Tax Map 28, Lot 14, in the Commercial C-2 Zone. Agent is Tom Harmon, Civil Consultants.

Hereinafter the "Development".

Pursuant to the Plan Review meetings conducted by the Planning Board as duly noted; and pursuant to the Project Application and Plan and other documents considered to be a part of the approval by the Planning Board in this finding consist of the following (Hereinafter the "Plan"), prepared by . Easterly Surveying, Inc (or as noted):

- 1. Application and associated submittal information  
*Town of Kittery Preliminary Subdivision Application for Peter J. Paul Trustee...* Date: 4/18/2013
- 2. Subdivision Plan Set entitled:  
*Subdivision of Land of PeterJ. Paul, Route 236, Kittery, Maine* Date: 4/18/2013
- 3. Wetland Alteration Application:  
*Memorandum to Kittery Planning Board* Date: 4/29/2013
- 4. Submitted supplemental information:  
*Subdivision Plan* REV Date: 1/22/2014  
*Site Plan* REV Date: 1/22/2014

**NOW THEREFORE,** based on the entire record before the Planning Board as and pursuant to the applicable standards in the Land Use and Development Code, the Planning Board makes the following factual findings as required by Section 16.10.8.3.4. and as recorded below:

**FINDINGS OF FACT**

**RED TEXT DENOTES COMMENTS BY CMA ENGINEERS**

Action by the board shall be based upon findings of fact which certify or waive compliance with all the required standards of this title, and which certify that the development satisfies the following requirements:
<b>A. Development Conforms to Local Ordinances.</b> <i>The proposed development conforms to a duly adopted comprehensive plan as per adopted provisions in the Town Code, zoning ordinance, subdivision regulation or ordinance, development plan or land use plan, if any. In making this determination, the municipal reviewing authority may interpret these ordinances and plans.</i>
Title 16.3.2.11.D.2 Standards has not been adequately addressed as it pertains to side yards in the Commercial Zones that abut residential use/zone. The Applicant does provide the required 40-foot wide yard (setback), however, the plan shows removal of existing vegetation that would provide a screen/buffer that is likely anticipated by the standard. With revised grading more existing vegetation can be maintained thereby creating a more effective separation between uses. The Board may want to consider applying a no-cut/no disturb buffer to the rear and side yards, with the exception of drainage requirements, since there is proposed a residential use in the residential zone abutting the commercial lots. At a minimum the plan must identify that the side and rear yards are to be maintained as buffers per Town Code Title 16.3.2.11.D.2 Standards for the Commercial Zone and 16.2 Defintion of Buffer
The Applicant is proposing to use Lot #1 as a retail use to conduct cut hardwood sales, as for stoves and fireplaces.. No timber will be brought on the site for processing. Lot #2 has no defined use at this time. The front, rear and side yards specified by the Ordinance are shown on the plan. The zone also calls for a maximum building height (40ft) and building coverage (40%) that should be included on the plan for proposed future development.

<b>Vote of <u>0</u> in favor <u>0</u> against <u>0</u> abstaining</b>
<b>B. Freshwater Wetlands Identified.</b> <i>All freshwater wetlands within the project area have been identified on any maps submitted as part of the application, regardless of the size of these wetlands.</i>
Wetland delineation has been shown on the plan. No wetland filling proposed.
<b>Vote of <u>0</u> in favor <u>0</u> against <u>0</u> abstaining</b>
<b>C. River, Stream or Brook Identified.</b> <i>Any river, stream or brook within or abutting the proposed project area has been identified on any maps submitted as part of the application. For purposes of this section, "river, stream or brook" has the same meaning as in 38 M.R.S. §480-B, Subsection 9.</i>
The standard appears to have been met. Adjacent stream to the property has been identified on the plan.
<b>Vote of <u>0</u> in favor <u>0</u> against <u>0</u> abstaining</b>
<b>D. Water Supply Sufficient.</b> <i>The proposed development has sufficient water available for the reasonably foreseeable needs of the development.</i>
The standard appears to have been met. There is public water in the street.
<b>Vote of <u>0</u> in favor <u>0</u> against <u>0</u> abstaining</b>
<b>E. Municipal Water Supply Available. (WAIVER REQUIRED FROM 16.8.6.1 WATER SUPPLY SERVICE REQ.)</b> <i>The proposed development will not cause an unreasonable burden on an existing water supply, if one is to be used.</i>
The standard appears to have been met. There is public water in the street. The Applicant has confirmation from the Water District that there is sufficient capacity to serve both domestic and fire protection purposes.
<b>Vote of <u>0</u> in favor <u>0</u> against <u>0</u> abstaining</b>
<b>F. Sewage Disposal Adequate.</b> <i>The proposed development will provide for adequate sewage waste disposal and will not cause an unreasonable burden on municipal services if they are utilized.</i>
The standard appears to have been met. Individual sewage disposal systems proposed. Applicant has obtained high-intensity soil mapping that indicates soils conducive for moderate sewage use.
<b>Vote of <u>0</u> in favor <u>0</u> against <u>0</u> abstaining</b>
<b>G. Municipal Solid Waste Disposal Available.</b> <i>The proposed development will not cause an unreasonable burden on the municipality's ability to dispose of solid waste, if municipal services are to be used.</i>
The standard appears to have been met. Applicant has stated there are no plans to use municipal solid waste services.
<b>Vote of <u>0</u> in favor <u>0</u> against <u>0</u> abstaining</b>
<b>H. Water Body Quality and Shoreline Protected.</b> <i>Whenever situated entirely or partially within two hundred fifty (250) feet of any wetland, the proposed development will not adversely affect the quality of that body of water or unreasonably affect the shoreline of that body of water.</i>
The standard appears to have been met.

No wetland filling proposed.
Vote of <u>0</u> in favor <u>0</u> against <u>0</u> abstaining
<b>I. Groundwater Protected.</b> <i>The proposed development will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of groundwater.</i>
The standard appears to have been met. Based on that the fact that only clearing, grading and a proposed retail use for cut stove/fireplace wood sales is proposed for this plan review. However, proposed future commercial development should be reviewed to determine if it will have an adverse effect on the quality of groundwater.
Vote of <u>0</u> in favor <u>0</u> against <u>0</u> abstaining
<b>J. Flood Areas Identified and Development Conditioned.</b> <i>All flood-prone areas within the project area have been identified on maps submitted as part of the application based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, and information presented by the applicant. If the proposed development, or any part of it, is in such an area, the applicant must determine the one hundred (100) year flood elevation and flood hazard boundaries within the project area. The proposed plan must include a condition of plan approval requiring that principal structures in the development will be constructed with their lowest floor, including the basement, at least one foot above the one hundred (100) year flood elevation.</i>
The standard appears to have been met. The subject property does not lie within the floodplain.
Vote of <u>0</u> in favor <u>0</u> against <u>0</u> abstaining
<b>K. Stormwater Managed.</b> <i>Stormwater Managed. The proposed development will provide for adequate stormwater management</i>
The standard appears to have been met. The applicant has submitted information to the Town of Kittery demonstrating compliance with the applicable sections of Kittery's LUDC. The proposed stormwater management system uses a combination of a swale, level spreaders and a stormwater treatment buffer to treat stormwater on site. The approach appears reasonable and adequate to manage stormwater from the current proposed clearing and grading of the sites. The Applicant has included an easement on Lot #1 for stormwater generated by future commercial development occurring on Lot #2. However, the proposed grading plan indicates that stormwater from Lot #2 will be conveyed to the swale and level spreader on Lot #1 prior to any future development so the easement should be expanded to include this stormwater flow.
Vote of <u>0</u> in favor <u>0</u> against <u>0</u> abstaining
<b>L. Erosion Controlled.</b> <i>The proposed development will not cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results.</i>
The standard appears to have been met. The plan indicates erosion control practices and their proposed locations.
Vote of <u>0</u> in favor <u>0</u> against <u>0</u> abstaining
<b>M. Traffic Managed.</b> <i>The proposed development will:</i> <ol style="list-style-type: none"><li>1. <i>Not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed; and</i></li><li>2. <i>Provide adequate traffic circulation, both on-site and off-site.</i></li></ol>
Standard appears to be not applicable since there has not been a specific development submitted and the approval will not include a specific use at this time. <ol style="list-style-type: none"><li>a. The applicant has obtained a driveway permit from Maine DOT.</li><li>b. No traffic circulation is shown likely because the proposed use cut for stove/fireplace wood sales does not a need</li></ol>

<p>for extensive traffic planning.</p> <p>c. The Applicant has provided a letter that describes the anticipated traffic impact associated to the clearing and re-grading of the lots, the immediate proposed use of timber retail sales. Future use and development would need to address these issues.</p> <p>d. The Applicant has accommodated an easement for shared access to the site from Route 236 to the proposed commercial lots.</p> <p>e. The applicant has indicated large sight distances north and south on Rte. 236</p>
<b>Vote of <u>0</u> in favor <u>0</u> against <u>0</u> abstaining</b>
<p><b>N. Water and Air Pollution Minimized.</b></p> <p><i>The proposed development will not result in undue water or air pollution. In making this determination, the following must be considered:</i></p> <ol style="list-style-type: none"><li>1. <i>Elevation of the land above sea level and its relation to the floodplains;</i></li><li>2. <i>Nature of soils and sub-soils and their ability to adequately support waste disposal;</i></li><li>3. <i>Slope of the land and its effect on effluents;</i></li><li>4. <i>Availability of streams for disposal of effluents;</i></li><li>5. <i>Applicable state and local health and water resource rules and regulations; and</i></li><li>6. <i>Safe transportation, disposal and storage of hazardous materials.</i></li></ol>
<p>The standard appears to be met.</p> <ol style="list-style-type: none"><li>1. Filling or development is not proposed within a 100 year floodplain;</li><li>2. The Applicant has provided wetland soils information prepared by a soil scientist and Applicant's agent indicates that the site can support subsurface wastewater disposal systems.</li><li>3. There are several sloped areas on site outside of the wetlands. Erosion control measures are proposed in these areas.</li><li>4. There is a stream located on site, north of proposed Lot #1. Erosion control measures are proposed in these areas.</li><li>5. There are no other permits or licenses required.</li><li>6. Not applicable. The Applicant has stated there are no plans for hazardous materials.</li></ol>
<b>Vote of <u>0</u> in favor <u>0</u> against <u>0</u> abstaining</b>
<p><b>O. Aesthetic, Cultural and Natural Values Protected.</b></p> <p><i>The proposed development will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the department of inland fisheries and wildlife or the municipality, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline.</i></p>
<p>Though the site contains a mature stand of trees and understory, there are no identified areas of scenic or natural beauty, historic sites, and significant habitat that would be adversely effected by the proposed commercial development. In lieu of clearing the entire lots for grading, the revised plan limits the disturbance to only the building envelope, thereby allowing for the preservation of more mature trees on site.</p>
<b>Vote of <u>0</u> in favor <u>0</u> against <u>0</u> abstaining</b>
<p><b>P. Developer Financially and Technically Capable.</b></p> <p><i>Developer is financially and technically capable to meet the standards of this section.</i></p>
<p><b>16.10.8.2.3.A. Before the Planning Board grants approval of a final plan, the applicant must, in an amount and form acceptable to the Town manager, file with the municipal treasurer an instrument to cover the full cost of the required improvements.</b></p>
<b>Vote of <u>0</u> in favor <u>0</u> against <u>0</u> abstaining</b>

Waivers: none

Conditions: (All conditions must be included on the final plan prior to signature by the Planning Board Chairman)

1. No changes, erasures, modifications or revisions may be made to any Planning Board approved final plan...(Title 16.10.9.1.2)
2. Maine DEP *Best Management Practices* notes for all work associated with site and building renovations to ensure adequate erosion control and slope stabilization shall be included on the plan prior to signature and recording.
3. Prior to the commencement of grading and/or construction within a building envelope, as shown on the Plan, the owner and/or developer must stake all corners of the envelope. These markers must remain in place until the Code Enforcement Officer (CEO) determines construction is completed and there is no danger of damage to areas that are, per Planning Board approval, to remain undisturbed. Also at this time Town Planning Staff will review with the Owner's representative those trees to be removed along the setback line and identify any trees due to their proximity may warrant a change to the proposed site grading.
4. The front yard of Lots 1 and 2 is subject to a public easement to the Town of Kittery for the construction of a paved walkway and associated street trees, furnished and installed by the owner and/or the developer.
5. Any and all development of the lots is prohibited prior to the approval of the Planning Board, with the exception of that development which has already been approved on \_\_\_\_\_, 2014. Before operation commences all new businesses are required to submit a Business Use Application for review and approval by the Code Enforcement Officer and Town Planner.
6. Any proposed development other than what is depicted on the plan must receive prior planning board approval.

The Planning Board authorizes the Planning Board Chairman to sign the Final Plan and the Findings of Fact upon confirmation of compliance with any conditions of approval and notices to applicant.

**NOW THEREFORE** the Kittery Planning Board adopts each of the foregoing Findings, including any waivers granted or conditions as noted.

Vote of 0 in favor 0 against 0 abstaining

DATE \_\_\_\_\_

\_\_\_\_\_  
Thomas Battcock-Emerson, Planning Board Chairman

Instructions/Notice to Applicant:

1. One (1) mylar copy and two (2) paper copies of the recorded Plan and any and all related state/federal permits or legal documents that may be required, must be submitted to the Town Planning Department. The date of Planning Board approval must be included in the signature block on the final plan.
2. Prior to the release of the signed plans, the applicant must pay all outstanding fees associated with the permitting, including, but not limited to, Town Attorney fees, peer review, newspaper advertisements and abutter notification, and wetland mitigation.
3. Performance Guaranty Conditions. Prior to soil disturbance, the Developer must submit to the Planning Department a Performance Guarantee and/or an escrow account to pay for any required field inspections or improvements. See Title 16.10.8.2.2.
4. State law requires all subdivision plans, and any plans receiving waivers or variances, be recorded at the York County Registry of Deeds within 90 days of the final approval.

5. An aggrieved party with legal standing may appeal a final decision of the Planning Board to the York County Superior Court in accordance with Maine Rules of Civil Procedures Section 80B, within forty-five (45) days from the date the decision by the Planning Board was rendered. See Title 16.6.2.A.
6. This approval by the Planning Board constitutes an agreement between the Town and the Developer, incorporating as elements the Development Plan and supporting documentation, the Planning Board Findings of Fact, any Conditions of Approval, and any requirements as set forth in Title 16, Land Use and Development Code of Ordinances.

consistent regarding identification of reserved open space areas, especially when adjacent to contiguous conservation areas.

- Stream – Staff requests the extent of the stream be identified on the plans as it impacts those land areas that could be part of the Shoreland Overlay zone. Staff will review further with the applicant for Board consideration.

Mr. Mylroie noted the Police Chief requested access from the private way to the commercial property. The Board felt this would negatively impact a residential area. Ms. Kalmar asked if the current ordinance guidelines for determination density were followed. Mr. Harmon stated the manual referenced in the code is no longer in print. Ms. Kalmar stated she would like to know if the proposal meets the existing requirements, in comparison with what has been proposed.

Ms. Grinnell moved to continue review, not to exceed 90 days.

Ms. Driscoll seconded

In summary, the 100-foot buffer needs to be maintained. Mr. Harmon stated this would then change the development of individual lots, and potentially a standard subdivision design. Discussion followed regarding the cul-de-sac and lot locations.

Motion carried unanimously by all members present

## **OLD BUSINESS**

### **ITEM 2 – Rt. 236 Commercial Lot Development – Paolucci Realty –Subdivision Preliminary Plan Review.**

Action: Grant or deny preliminary plan approval. Owner and applicant Peter J. Paul Trustee of Paolucci Realty, is requesting consideration of plans to divide an existing commercial lot located at 93 Route 236, thereby creating a second division within 5 years and requiring subdivision review. The 4.1 acre parcel is located on a portion of Tax Map 28, Lot 14, in the Commercial C-2 Zone. Agent is Tom Harmon, Civil Consultants.

Mr. Mylroie summarized the Board can approve this project as a subdivision or as a proposed development to allow for clearing and grading. Mr. Paul, owner, stated he wished to clear the lot for future division and sale, but wished to use the lot for firewood storage. Mr. DiMatteo explained the applicant is wishing to develop the parcel and there are development standards that must be met. Without knowing what the potential use will be, it is difficult to determine if standards can be met. With the proposed use as for wood storage, there may be a need for screening, access, parking, etc. Mr. Harmon explained they could return to the Board with specific use, meeting all the required development standards. Ms. Kalmar asked if tree removal could be minimized in case a future use could benefit from a less intensive removal of vegetation. Mr. Paul stated he would 'do whatever it takes'. Ms. Tuveson asked about the utility easement. Mr. Harmon stated this will have to be formalized with the water district. Ms. Driscoll asked if stored firewood would be sold on site. Mr. Harmon stated he would have to check the ordinance. Ms. Kalmar asked if there is a method by which the applicant can show what the property would look like 'as proposed'. Mr. Harmon explained a commercial site needs to be level with the road for visual and vehicular access, and this lot is not level. Mr. Alesse suggested some buffer of trees be retained along Route 236. Mr. Harmon explained they have included landscaping along the front. Mr. DiMatteo suggested the applicant return with a design that meets an approved use. Ms. Tuveson noted she believes the applicant should be able to utilize the site, in the interim, as long as such use is in compliance with the code.

Mr. Melanson moved to direct the applicant to submit a plan that complies with a permitted use in the Commercial C-2 zone.

Ms. Grinnell seconded

Motion carried unanimously by all members present



**CIVIL  
CONSULTANTS**

Engineers

Planners

Surveyors

P.O. Box 100

293 Main Street

South Berwick

Maine

03908

207-384-2550

January 22, 2014

Mr. Gerry Mylroie  
Town Planner  
Kittery Town Hall  
200 Rogers Road  
Kittery, ME 03904

Re: Paolucci Subdivision

Dear Mr. Mylroie:

Please find enclosed updated plans for the referenced project reflecting comments from the planning board meetings and discussion with planning staff. 5 full size plan sets are attached and we will provide reduced scale copies for planning board distribution upon your direction.

- Sheet 1 – Subdivision Plan (Revised)
- Sheet C1 – Existing Conditions (No Change)
- Sheet C2 – Site Plan (Revised)
- Sheet C3 – Maintenance Notes (No Change)

Our client currently intends to conduct retail/wholesale hardwood sales from the site. No timber will be brought onto the site to be processed. The plans we have provided indicate that any other use will require planning board review and approval. We anticipate no further improvements to the site other than those indicated on the plans.

The limits of clearing and grading for the site have been revised as depicted and essentially fall within the building setback limits of the lot. The entranceway is cleared and clearing has been accomplished as necessary to install a drainage culvert at the entrance. A small area at the rear of the lot has been designated for level spreaders associated with stormwater management.

Lot 1 will be finish graded with gravel to facilitate the hardwood sales activity. The other lot will be loamed and seeded. The development, as currently depicted, requires a Permit by Rule under the Maine Department of Environmental Protection Chapter 500 Stormwater Management rules. Three copies of the updated Stormwater Submission reflecting the hardwood sales operation are attached.

Lastly, we have provided letters from Ken Gardner and Gary Fullerton regarding stream locations and wetland classifications.

Should you/staff have questions or need additional information please contact us.

Very truly yours,  
CIVIL CONSULTANTS

Thomas W. Harmon, PE  
Principal

Enclosures

cc: Peter Paul, gray, file

12198 00

KENNETH GARDNER  
JRK SOIL SEARCH, INC.  
PO BOX 291  
LIMINGTON, ME 04049  
(207) 637-2260

December 23, 2013

Tom Harmon  
Civil Consultants  
PO Box 100  
So. Berwick, ME

Re: Proposed development off Fernald Rd., Kittery, ME

Dear Mr. Harmon;

Recently I reviewed the wetland which is located on Bartlett Hills Development off Fernald Rd in Kittery, ME. The USGS Topographic map of the area delineates a stream traversing the area. The stream, as shown as a blue line on the map, is misplaced. What is on the ground does not match what is on the map.

There is a small water course which runs southwesterly under Route 236 and then turns and runs northwesterly toward and under Bolt Hill Rd. in Eliot. I have flagged the channel of the water course which is nearest to the proposed development.

If you have any questions, please contact me at 637-2260.

Sincerely,



Kenneth Gardner  
CSS #61

RECEIVED

DEC 30 2013

CIVIL CONSULTANTS



11201  
January 17, 2014

Thomas Harmon  
Civil Consultants  
PO Box 100  
South Berwick, ME 03908

**Re: Bartlett Hill – Kittery, Maine**

Dear Tom:

On January 15, 2014 I performed a site reconnaissance of the non-forested portion of the wetland adjacent to the proposed Bartlett Hill development per your request. The Maine DEP Shoreland Zoning Guidelines define a freshwater wetland as 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 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.

You have provided me with an aerial photograph which included an outline of the non-forested wetland area adjacent to your project site. The total area within this outline is 7.2 acres. I have walked around that area and taken a few key gps points to confirm this location. I am in full agreement with this outline. The southerly end of the wetland includes approximately 300 feet of forested wetland between the transmission line and the non-forested wetland area on your project site, making it two separate non-forested wetland areas. The northerly border is Bolt Hill Road where the outlet of this wetland is constricted. There are no non-forested wetlands adjacent to the north side of Bolt Hill Road. Attached are a few photos showing these areas. In my opinion, the non-forested wetland as depicted on your plan is not a freshwater wetland as defined above.

You have also asked if there is a stream flowing southerly through this wetland as depicted on the USGS topographic map. The topography appears to slope slightly towards Bolt Hill Road. Any flow that I could see within this wetland was heading toward the north. The only stream I could identify would be the one flowing westerly under Route 236 onto the project site and

Mr. Harmon  
11201

-2-

January 17, 2013

then exiting the site to the north under Bolt Hill Road. Using Google Earth, it appears this stream flows northerly through several large bogs, crosses under Route 236 a couple of times and then eventually flows under Route 103 where it enters the Piscataqua River.

I hope this information is sufficient for your use. Please feel free to contact me with any questions.

Sincerely,

SEBAGO TECHNICS, INC.

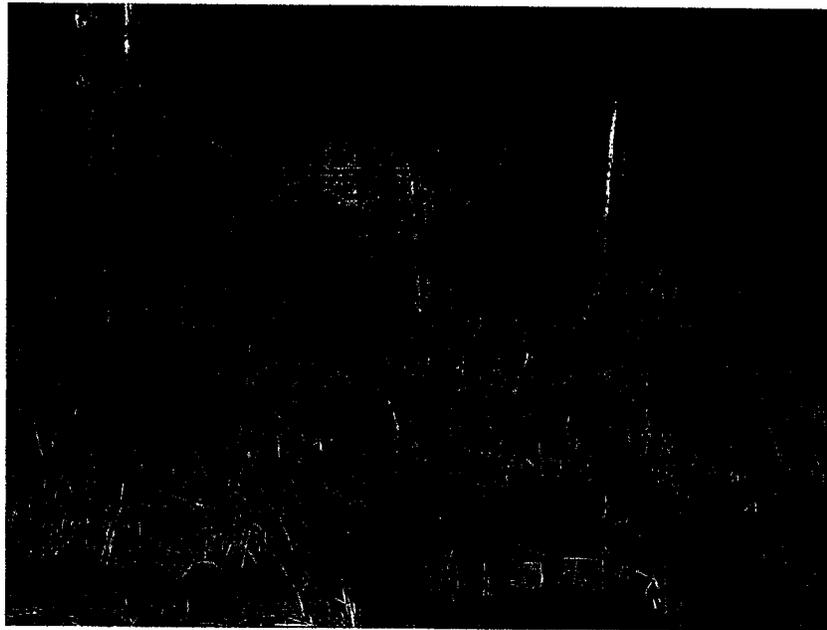
A handwritten signature in black ink, appearing to read "Gary M. Fullerton". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Gary M. Fullerton, CSS, LSE  
Director of Natural Resources

GMF:gmf/jsf



PHOTOGRAPH #1: Looking southerly at wetland from Bolt Hill Road.



PHOTOGRAPH #2: Looking northerly at non-forested wetland.

**SEBAGO**  
TECHNICS

CIVIL ENGINEERING • SURVEYING • LANDSCAPE ARCHITECTURE

75 John Roberts Road, Suite 1A  
South Portland, ME 04106-6963  
Tel. (207) 200.2100

**Wetland Photographs**

TAKEN BY: Gary M. Fullerton

SCALE: None

DATE: 1-15-14

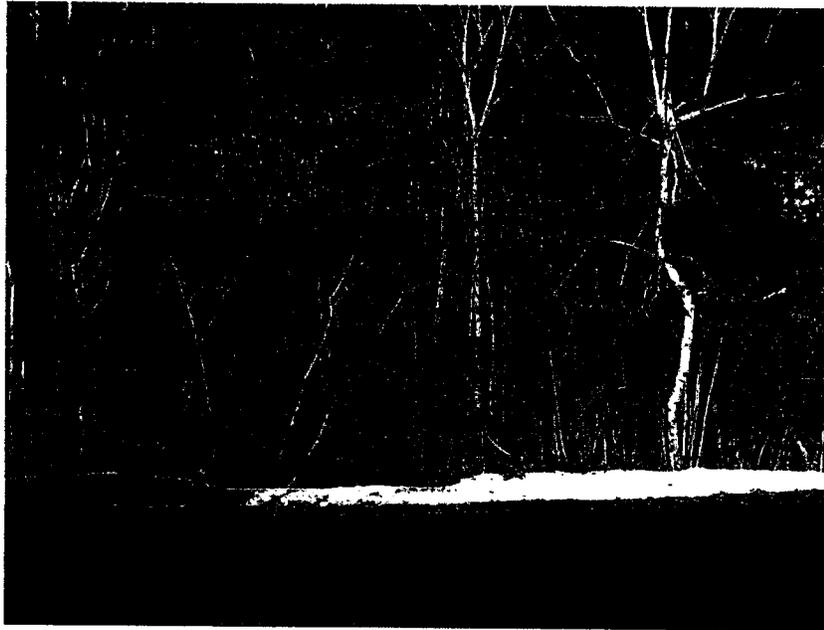
LOCATION:  
Bolt Hill Road  
Kittery, Maine

APPLICATION BY:  
Civil Consultants

SHEET:  
1 of 2



PHOTOGRAPH #3: Looking at southerly edge of forested wetland.



PHOTOGRAPH #4: Looking at north side of Bolt Hill Road.

**SEBAGO**  
TECHNICS

CIVIL ENGINEERING - SURVEYING - LANDSCAPE ARCHITECTURE

75 John Roberts Road, Suite 1A  
South Portland, ME 04106-6963  
Tel. (207) 200.2100

**Wetland Photographs**

TAKEN BY: Gary M. Fullerton

LOCATION:

Bolt Hill Road  
Kittery, Maine

APPLICATION BY:

Civil Consultants

SCALE: None

DATE: 1-15-14

SHEET:

2 of 2

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## CIVIL CONSULTANTS MEMORANDUM

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**TO:** Planning Board, Town of Kittery

**FROM:** Neil J. Rapoza, PE

**SUBJECT:** Stormwater management plan revision

**DATE:** 1/20/2014

**PROJECT:** 12-198.00 SUBDIVISION OF LAND OF PETER J.  
PAUL, PAOLUCCI REALTY TRUST

This narrative has been provided to indicate the changes to the stormwater management plan originally submitted for the above referenced project.

Per request of the Town, all grading has been revised to be located within the building envelope of the lots. No grading will occur in the setbacks, aside from the re-installation of the culvert at the existing entrance location and the installation of two level spreaders at the west edge of the development.

The developer proposes to install gravel on one of the lots in order to utilize the area for processing and selling the hardwood that will be cut on site. No lumber will be transported to the site for processing. The area that will not be utilized for processing will be loamed and seeded. Any further development of the lots will require Planning Board approval, which will include a revised Stormwater Management Plan.

The proposed disturbed area and impervious area will require a Permit by Rule from the Maine DEP per Chapter 500 of the Stormwater Law.

A drainage easement is proposed on Lot 1 in order to allow grading (if necessary) for the conveyance of runoff from Lot 2 in the future.

As in the initial submission, there is a slight increase in flow due to the proposed development. Information regarding the increase has been added indicating the increase in both flow and volume. The revised HydroCAD study indicates that there will be less than 1/10 inch increase in runoff storage depth in the receiving wetland during the 25 year storm.

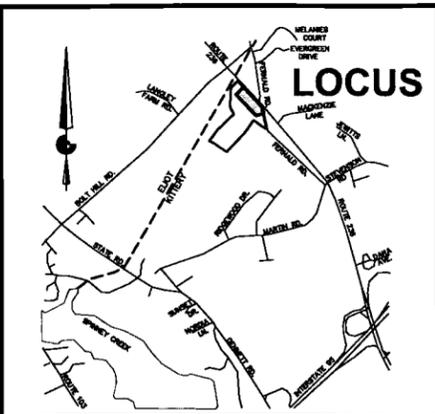
Refer to the revised Stormwater Management Plan and associated documents for additional information.

J:\aaa\2012\1219800\Planning Board\20140120\_stormwater\_rev\_memo.doc



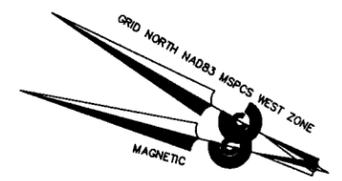
**CIVIL  
CONSULTANTS**

*P.O. Box 100 South Berwick, Maine 03908 207-384-2550*



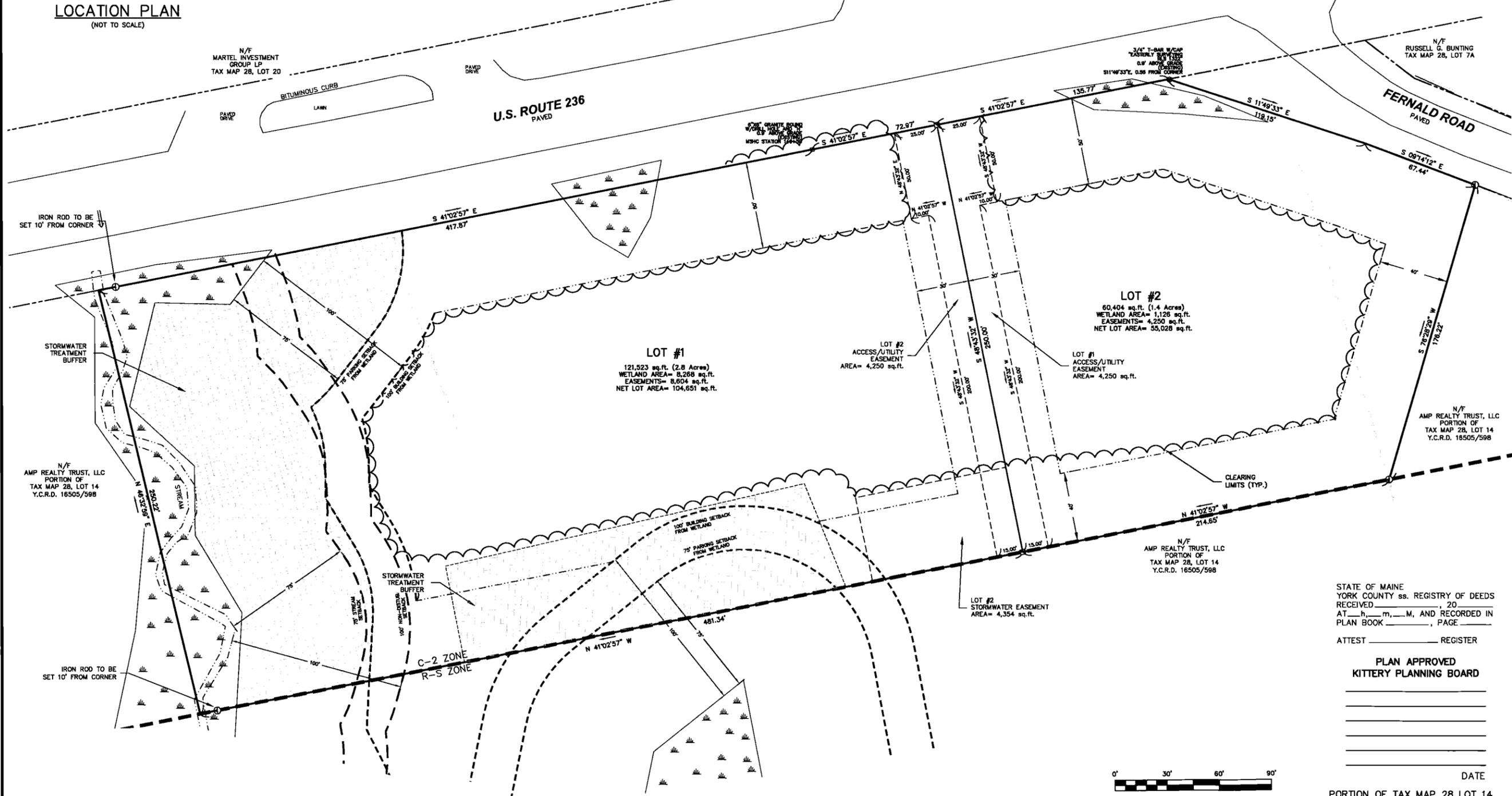
- NOTES:**
- ASSESSOR'S INFORMATION: TOWN OF KITTERY  
PORTION OF ASSESSOR'S MAP 28  
LOT 14
  - RECORD OWNER: PETER J. PAUL, TRUSTEE OF THE  
PAOLUCCI REALTY TRUST  
291 HAROLD L. DOW HIGHWAY  
ELIOT, MAINE 03903
  - DEED REFERENCE: Y.C.R.D. 16573/762  
Y.C.R.D. 16505/598
  - ZONING INFORMATION: COMMERCIAL (C2) ZONE  
  
LOT SIZE: 40,000 sq.ft.  
MINIMUM FRONTAGE: 150'  
SETBACKS:  
FRONT YARD: 50'  
SIDE YARD: 30'  
REAR YARD: 40' (ABUTTING  
RESIDENTIAL ZONE)  
MAXIMUM BUILDING HEIGHT: 40'  
MAXIMUM BUILDING COVERAGE: 40%
  - THE PARCEL IS LOCATED IN FLOOD HAZARD ZONE C AS SHOWN ON  
THE FLOOD INSURANCE RATE MAP FOR THE TOWN OF KITTERY,  
COMMUNITY PANEL NO 230171 0004 D, EFFECTIVE DATE: JULY 5,  
1984. FLOOD ZONE C IS DEFINED AS AREAS OF MINIMAL FLOODING.
  - TOTAL PARCEL AREA= 4.18 ACRES.

- PLAN REFERENCE:**  
"BOUNDARY AND EXISTING CONDITIONS LAND OF AMP REALTY HOLDINGS,  
LLC AND PETER J. PAUL, TRUSTEE - ROUTE 236 TAX MAP 28 LOT 14  
KITTEY YORK COUNTY MAINE", BY CIVIL CONSULTANTS, DATED: 4/8/2013.  
PLAN FROM CIVIL CONSULTANTS' OFFICE FILES, JOB #12-198.00
- CONDITIONS OF APPROVAL:**
- THE STORMWATER TREATMENT AREAS SHALL BE MAINTAINED PER MDEP  
CHAPTER 500 TREATMENT STANDARDS.
  - ANY FUTURE STORMWATER FROM FUTURE IMPERVIOUS AREA ON LOT 2  
SHALL BE DIRECTED TO THE STORMWATER EASEMENT AREA.



- LEGEND**
- 2/60 TAX MAP / LOT NUMBER
  - 9374/148 DEED BOOK / PAGE NUMBER
  - N/F NOW OF FORMERLY
  - Y.C.R.D. YORK COUNTY REGISTRY OF DEEDS
  - PROPERTY LINE
  - APPROXIMATE ABUTTING PROPERTY
  - SETBACK
  - T-BAR FOUND
  - 5/8" REBAR TO BE SET
  - BOUND TO BE SET
  - BOUND FOUND
  - WETLAND
  - STONE WALL
  - STREAM
  - EASEMENT
  - ..... RESERVE AREA FOR PUBLIC WALKWAY

**CIVIL CONSULTANTS**  
Engineers  
Planners  
Surveyors  
P.O. Box 100  
South Berwick  
Maine  
03908  
207-384-2550  
civilcon@ciicon.com



NO.	REVISIONS	DATE
4	UPDATE CLEARING LIMITS & WOODED BUFFERS	JAA 07/22/14
3	UPDATE STORMWATER TREATMENT BUFFER	JAA 10/20/13
2	UPDATE RESERVE AREA LOCATION	JAA 09/26/13
1	ADD RESERVE AREA, UPDATE TREATMENT BUFFER	JAA 07/24/13
		INT.
		NC.

SUBDIVISION OF LAND OF PETER J. PAUL,  
TRUSTEE OF THE PAOLUCCI REALTY TRUST  
U.S. ROUTE 236  
KITTEY, MAINE  
PREPARED FOR:  
PETER J. PAUL  
MAILING ADDRESS: 291 HAROLD L. DOW HIGHWAY, ELIOT, MAINE 03903

**CIVIL CONSULTANTS**  
DRAWN JAA | CALC. \_\_\_\_\_  
DATE 18 APRIL 2013  
CHECKED \_\_\_\_\_  
APPROVED \_\_\_\_\_  
SCALE 1"=30'  
SHEET TITLE:  
-SUBDIVISION PLAN  
SHEET NUMBER:  
1  
SHEET 1 of 1  
PROJECT # 12-198.00

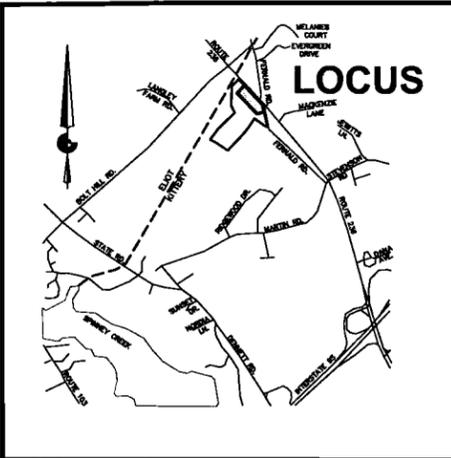


STATE OF MAINE  
YORK COUNTY ss. REGISTRY OF DEEDS  
RECEIVED \_\_\_\_\_, 20\_\_\_\_  
AT \_\_\_\_\_h\_\_\_\_m\_\_\_\_, AND RECORDED IN  
PLAN BOOK \_\_\_\_\_, PAGE \_\_\_\_\_  
ATTEST \_\_\_\_\_ REGISTER

**PLAN APPROVED**  
KITTEY PLANNING BOARD

\_\_\_\_\_

DATE



**NOTES:**

- ASSESSOR'S INFORMATION: TOWN OF KITTERY  
PORTION OF ASSESSOR'S MAP 28  
LOT 14
- RECORD OWNER: PETER J. PAUL, TRUSTEE OF THE  
PAOLUCCI REALTY TRUST  
291 HAROLD L. DOW HIGHWAY  
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- ZONING INFORMATION: COMMERCIAL (C2) ZONE  
  
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RESIDENTIAL ZONE)  
  
MAXIMUM BUILDING HEIGHT: 40'  
MAXIMUM BUILDING COVERAGE: 40%
- THE PARCEL IS LOCATED IN FLOOD HAZARD ZONE C AS SHOWN ON THE FLOOD INSURANCE RATE MAP FOR THE TOWN OF KITTERY, COMMUNITY PANEL NO 230171 0004 D, EFFECTIVE DATE: JULY 5, 1984. FLOOD ZONE C IS DEFINED AS AREAS OF MINIMAL FLOODING.
- TOTAL PARCEL AREA= 4.18 ACRES±.
- HIGH INTENSITY SOIL SURVEY AND TEST PITS BY KENNETH GARDNER, CSS #61. TEST PITS WERE LOCATED BY CIVIL CONSULTANTS (JANUARY 2013). REFER TO SOILS REPORT FOR TEST PIT LOSS AND SOILS CLASSIFICATIONS.

**PLAN REFERENCE:**

"BOUNDARY AND EXISTING CONDITIONS LAND OF AMP REALTY HOLDINGS, LLC AND PETER J. PAUL, TRUSTEE - ROUTE 236 TAX MAP 28 LOT 14 KITTERY YORK COUNTY MAINE", BY CIVIL CONSULTANTS, DATED: 4/8/2013. PLAN FROM CIVIL CONSULTANTS OFFICE FILES, JOB #12-198.00

**LEGEND**

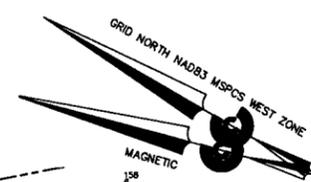
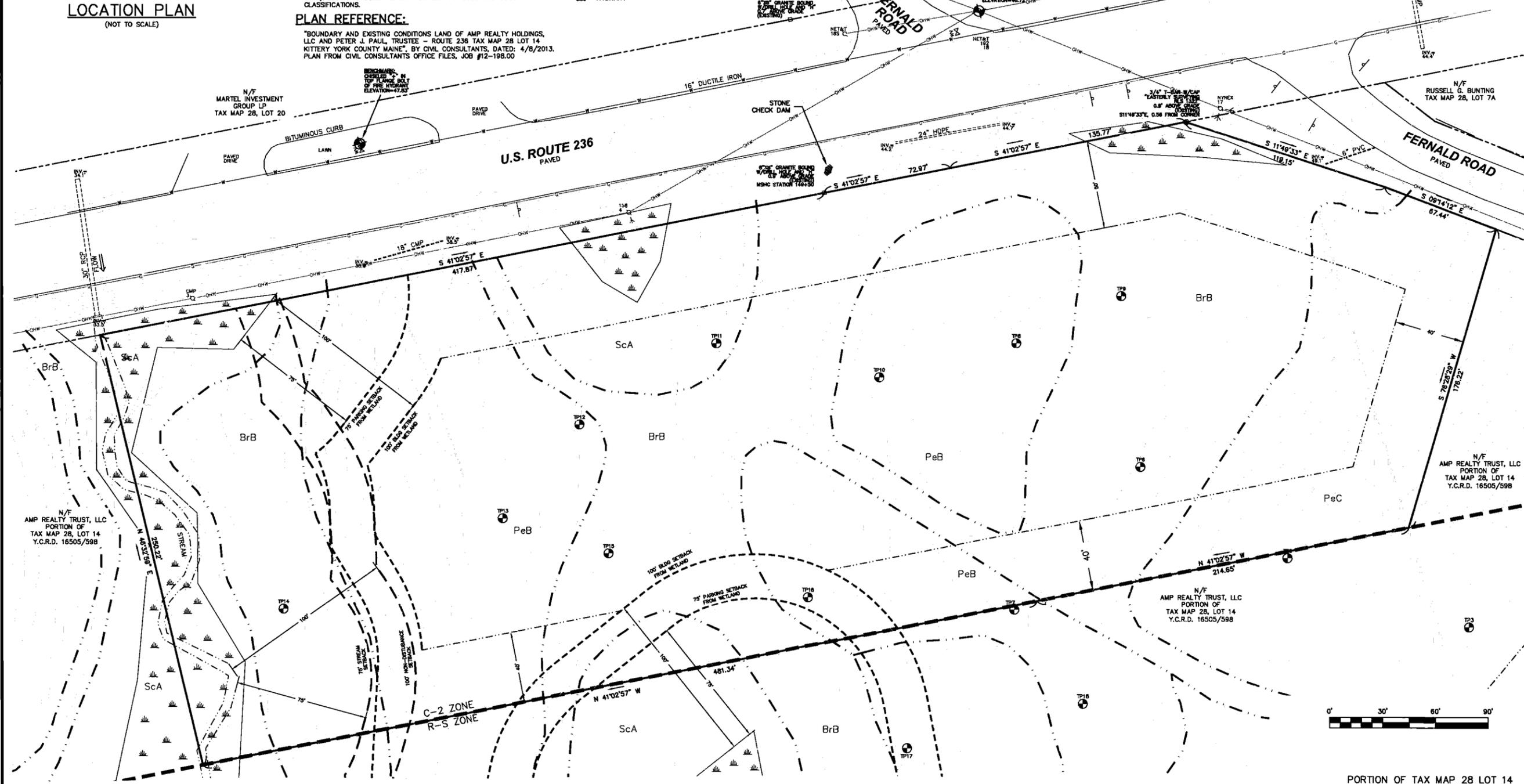
- |          |                                   |
|----------|-----------------------------------|
| 2/60     | TAX MAP / LOT NUMBER              |
| 9374/148 | DEED BOOK / PAGE NUMBER           |
| CMP      | CORRUGATED METAL PIPE             |
| HDPE     | HIGH DENSITY POLYETHYLENE         |
| NET&T    | NEW ENGLAND TELEPHONE & TELEGRAPH |
| N/F      | NOW OF FORMERLY                   |
| OHW      | OVERHEAD WIRE                     |
| RCP      | REINFORCED CONCRETE WALL          |
| Y.C.R.D. | YORK COUNTY REGISTRY OF DEEDS     |
| ---      | PROPERTY LINE                     |
| ---      | APPROXIMATE ABUTTING PROPERTY     |
| ---      | SETBACK                           |
| ⊙        | BENCHMARK                         |
| ⊙        | IRON ROD FOUND                    |
| ⊙        | BOUND FOUND                       |
| ---      | EXISTING CONTOUR                  |
| ---      | WETLAND                           |
| ---      | STONE WALL                        |
| ⊙        | TEST PIT                          |
| ---      | SIGN                              |
| ---      | HIGH INTENSITY SOIL LINE          |
| ---      | STREAM                            |
| ---      | EXISTING WATER MAIN               |
| ---      | EXISTING DRAIN LINE               |
| ---      | EXISTING OVERHEAD WIRE            |
| ---      | EXISTING GAS MAIN                 |
| ---      | UTILITY POLE                      |
| ---      | WATER VALVE                       |
| ---      | HYDRANT                           |

**HIGH INTENSITY SOILS LEGEND:**

- Br BRAYTON - FINE SANDY LOAM
- Sc SCANTIC - SILT LOAM
- Pe PERU - FINE SANDY LOAM

**HIGH INTENSITY SOILS SLOPES:**

- A: 0-3%
- B: 3-8%
- C: 8-15%
- D: 15-25%



**CIVIL CONSULTANTS**  
Engineers  
Planners  
Surveyors  
P.O. Box 100  
South Berwick  
Maine  
03908  
207-364-2550  
civcon@civcon.com

NO.	REVISIONS	INT.	DATE
1			

SUBDIVISION OF LAND OF PETER J. PAUL,  
TRUSTEE OF THE PAOLUCCI REALTY TRUST  
U.S. ROUTE 236  
KITTERY, MAINE  
PREPARED FOR:  
PETER J. PAUL  
MAILING ADDRESS: 291 HAROLD L. DOW HIGHWAY, ELIOT, MAINE 03903

**CIVIL CONSULTANTS**

DRAWN JAA	CALC.
DATE 18 APRIL 2013	
CHECKED	
APPROVED	
SCALE 1"=30'	
SHEET TITLE: -EXISTING CONDITIONS PLAN	
SHEET NUMBER: <b>C1</b>	
SHEET 1 of 3	
PROJECT #12-198.00	

**EROSION AND SEDIMENT CONTROL PRACTICES**

- NO SOIL SHALL BE DISTURBED DURING THE PERIOD OF MARCH 1 THROUGH APRIL 15, NOR DURING ANY OTHER PERIOD WHEN SOILS ARE SATURATED DUE TO RAIN OR SNOW MELT.
- DISTURBED SOILS SHALL BE STABILIZED WITHIN ONE (1) WEEK FROM THE TIME IT WAS LAST ACTIVELY WORKED USING TEMPORARY OR PERMANENT MEASURES SUCH AS PLACEMENT OF RIPRAP, MULCH OR OTHER EROSION CONTROL BLANKET, OR OTHER COMPARABLE MEASURES.
- HAY OR STRAW MULCH, WHERE USED, SHALL BE APPLIED AT A RATE OF AT LEAST ONE (1) BALE PER 500 SQUARE FEET (1-2 TONS PER ACRE).
- IF MULCH IS LIKELY TO BE REMOVED DUE TO STEEP SLOPES OR WIND, IT SHALL BE ANCHORED WITH NETTING, PEG OR TWINE, OR OTHER SUITABLE METHOD AND SHALL BE MAINTAINED UNTIL A CATCH OF VEGETATION IS ESTABLISHED OVER THE ENTIRE DISTURBED AREA.
- IN ADDITION TO PLACEMENT OF RIPRAP, MULCH OR EROSION CONTROL BLANKETS, ADDITIONAL STEPS SHALL BE TAKEN WHERE NECESSARY IN ORDER TO PREVENT SEDIMENTATION OF THE WATER. EVIDENCE OF SEDIMENTATION INCLUDES VISIBLE GULLY EROSION, DISCOLORATION OF WATER BY SUSPENDED PARTICLES AND SLUMPING OF BANKS. SILT FENCES, STAKED HAY BALES AND OTHER SEDIMENTATION CONTROL MEASURES, WHERE PLANNED FOR, SHALL BE IN PLACE PRIOR TO COMMENCEMENT OF WORK, BUT SHALL ALSO BE INSTALLED WHEREVER NECESSARY DUE TO SEDIMENTATION.
- MULCH OR OTHER TEMPORARY MEASURES SHALL BE MAINTAINED UNTIL THE SITE IS PERMANENTLY STABILIZED WITH VEGETATION OR OTHER PERMANENT CONTROL MEASURES AFTER WHICH TEMPORARY MEASURES WILL BE REMOVED.
- PERMANENT RE-VEGETATION OF ALL DISTURBED AREAS, USING NATIVE PLANT MATERIAL WHEN POSSIBLE, SHALL OCCUR WITHIN 30 DAYS FROM THE TIME THE AREAS WERE LAST ACTIVELY WORKED, OR FOR FALL AND WINTER ACTIVITIES, BY JUNE 15, EXCEPT WHERE PRECLUDED BY THE TYPE OF ACTIVITY (E.G. RIPRAP, ROAD SURFACES, ETC.). THE VEGETATIVE COVER SHALL BE MAINTAINED.
- DISPOSAL OF COLLECTED DEBRIS MUST BE IN CONFORMANCE WITH MAINE SOLID WASTE LAW, TITLE 38 MRSA SECTION 1301 ET. SEQ.
- LIME AND FERTILIZER APPLICATION RATES SHALL NOT EXCEED THE FOLLOWING:  
GROUND LIMESTONE: 3 TONS/ACRE (130 LBS./1000 S.F.)  
FERTILIZER, 10-10-10 OF EQUIVALENT: 600 LBS./ACRE (14 LBS./1000 S.F.)  
FERTILIZER SHALL NOT BE APPLIED BEFORE START OF THE GROWING SEASON NOR AFTER SEPTEMBER 30. FERTILIZED AREAS SHALL BE MULCHED TO REDUCE OFF-SITE TRANSPORT OF NUTRIENTS UNTIL USED BY VEGETATIVE GROWTH.

**SEEDING MIXTURE AND SCHEDULE:**

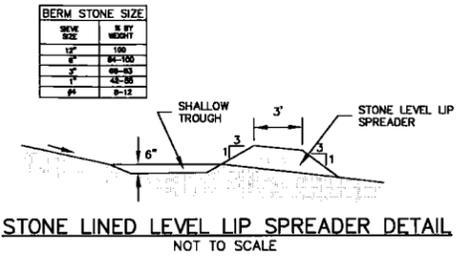
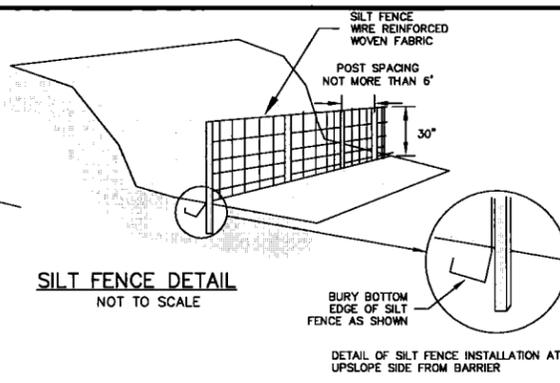
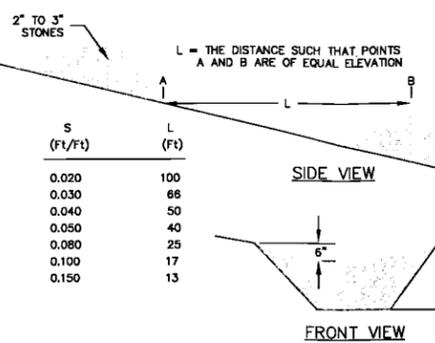
SPREAD TOPSOIL UNIFORMLY 6" DEEP OVER AREAS TO BE RECLAIMED. THE FOLLOWING SEED MIXTURE SHALL BE USED:

LAWNS:  
 KENTUCKY BLUEGRASS 0.46 LBS./1000 S.F.  
 CREEPING RED FESCUE 0.46 LBS./1000 S.F.  
 PERENNIAL RYE GRASS 0.11 LBS./1000 S.F.  
 TOTAL 1.03 LBS./1000 S.F.

APPLY LIME AND FERTILIZER AS SPECIFIED UNDER THE EROSION AND SEDIMENTATION CONTROL NOTES. WORK INTO THE TOP (4) INCHES OF SOIL PRIOR TO SEEDING. AFTER SEEDING, APPLY MULCH HAY AS SPECIFIED, ON FLAT AREAS AND NOT EXPOSED TO WIND, THE MULCH WILL BE ANCHORED BY WETTING DOWN. IN OTHER AREAS, JUTE NETTING SHALL BE USED FOR ANCHORAGE. THE ABOVE SEEDING SCHEDULE IS APPLICABLE IF SEEDING DURING THE GROWING SEASON (APRIL 15 TO JUNE 15 AND AUGUST 30 TO SEPTEMBER 30). BETWEEN JUNE 15 AND AUGUST 30, SEEDING WILL BE DELAYED UNTIL AUGUST 30. IF SOIL IS DISTURBED BETWEEN OCTOBER 1 AND NOVEMBER 1, DELAY SEEDING UNTIL NOVEMBER 1. AFTER NOVEMBER 1 AND BEFORE A SNOW COVER FORMS, THE SAME PROCEDURE WILL BE FOLLOWED EXCEPT THE SEED RATE WILL BE DOUBLED. AFTER SNOW COVER AND BEFORE APRIL 15, SEEDING WILL BE DELAYED UNTIL APRIL 15. HAY MULCH WILL BE APPLIED AT A RATE OF 150 LBS./1000 SQUARE FEET. THIS WILL BE ANCHORED BY NON-ASPHALTIC TACKIFIER SPRAYED ON LAWNS AND JUTE NETTING IN DRAINAGE WAYS AND OTHER AREAS.

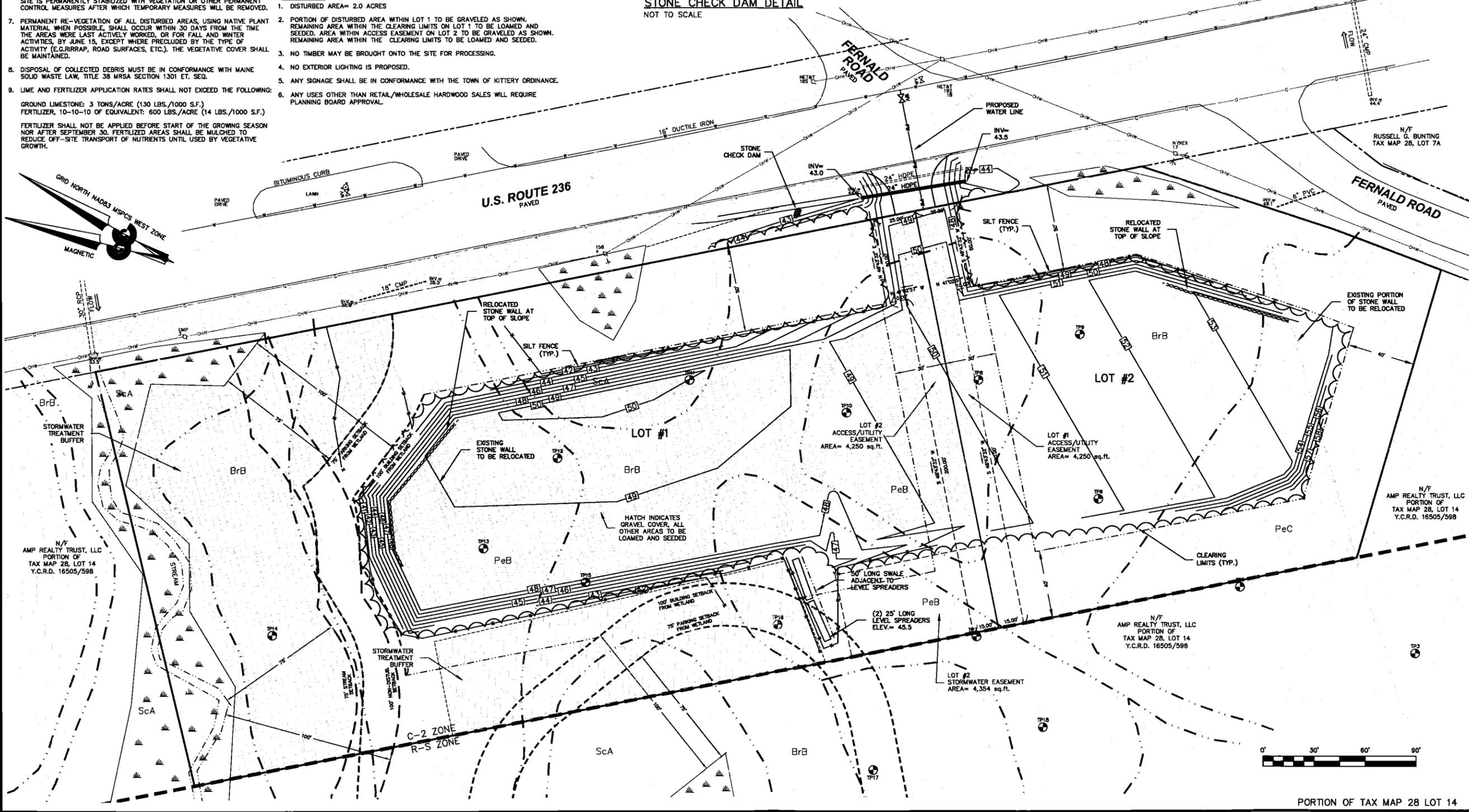
**NOTES:**

- DISTURBED AREA= 2.0 ACRES
- PORTION OF DISTURBED AREA WITHIN LOT 1 TO BE GRAVELED AS SHOWN. REMAINING AREA WITHIN THE CLEARING LIMITS ON LOT 1 TO BE LOADED AND SEEDED. AREA WITHIN ACCESS EASEMENT ON LOT 2 TO BE GRAVELED AS SHOWN. REMAINING AREA WITHIN THE CLEARING LIMITS TO BE LOADED AND SEEDED.
- NO TIMBER MAY BE BROUGHT ONTO THE SITE FOR PROCESSING.
- NO EXTERIOR LIGHTING IS PROPOSED.
- ANY SIGNAGE SHALL BE IN CONFORMANCE WITH THE TOWN OF KITTERY ORDINANCE.
- ANY USES OTHER THAN RETAIL/WHOLESALE HARDWOOD SALES WILL REQUIRE PLANNING BOARD APPROVAL.



**BERM STONE SIZE**

MIN. SIZE	MAX. SIZE
1 1/2"	100
2"	84-100
3"	66-84
4"	48-66
6"	30-48



**CIVIL CONSULTANTS**  
 Engineers  
 Planners  
 Surveyors  
 P.O. Box 100  
 South Berwick  
 Maine  
 03906  
 207-384-2550  
 civcon@civcon.com

NO.	REVISIONS	DATE
4	UPDATE LOT GRADING CLEARING LIMITS & BUFFERS	JAA 01/22/14
3	UPDATE DRAINAGE TREATMENT	JAA 10/20/13
2	REVISE GRADING AROUND WETLANDS	JAA 08/20/13
1	RELOCATE STONE WALLS, ADD RESERVE AREA	JAA 07/24/13

SUBDIVISION OF LAND OF PETER J. PAUL, TRUSTEE OF THE PAOLUCCI REALTY TRUST U.S. ROUTE 236 KITTERY, MAINE  
 PREPARED FOR PETER J. PAUL  
 MAILING ADDRESS: 291 HARGOLD L. DOW HIGHWAY, ELDT, MAINE 03903

**CIVIL CONSULTANTS**

DRAWN JAA CALC. JAA  
 DATE 18 APRIL 2013  
 CHECKED  
 APPROVED  
 SCALE 1"=30'  
 SHEET TITLE: SITE PLAN  
 SHEET NUMBER: C2  
 SHEET 2 of 3  
 PROJECT #12-198.00



**Town of Kittery  
Planning Board Meeting  
February 13, 2014**

**Estes Bulk Propane Storage – Public Hearing / Preliminary Plan Review.**

Owner M&T Realty, and applicant Estes Oil & Propane Company is requesting consideration of their plans for a 60,000 gallon bulk propane storage facility at their property south of 506 U.S. Route One., Tax Map 67, Lot 4, Mixed Use Zone, with a portion in the Residential Rural and Shoreland Overlay zones. Agent is Joe Cheever, ATTAR Engineering,

**PROJECT TRACKING**

REQ'D	ACTION	COMMENTS	STATUS
	Sketch Plan Review	March 14, 2013; scheduled for 4/11/13; applicant requested a continuance to 5/9/13;	Sketch Plan accepted: 5/9/13
NO	Site Visit	Site walk conducted 4/10/13 as part of Sketch (no minutes taken); 1/7 and 1/22 meetings were cancelled due to inclement weather.	
Yes	Preliminary Plan Review Completeness/Acceptance	Preliminary Plan received 11/7/13 (w/in 6 months of sketch plan acceptance); preliminary plan accepted as substantially complete	12/12/13
Yes	Public Hearing	Scheduled 1/9/14	HELD
Yes	Preliminary Approval	Review started 1/9/14	PENDING
Yes	Final Plan Approval		

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

Overview

Applicant is requesting Site Plan approval for the construction of two 30,000 gallon propane tanks for a bulk propane storage facility. The proposed development also includes a 24' x 30' garage, a 1,360-foot long 20-foot wide roadway, and associated drainage structures, pavement and earthwork. Site walks scheduled have been cancelled due to inclement weather. The Applicant has requested to forgo the site walk during the preliminary review phase and hold it during the final plan review phase.

The public hearing was held on 1/9/14 and the Board received a presentation from the Applicant's Fire Safety consultant and comments from Fire Chief David O'Brien who supported the report's conclusion that the proposed development is compliant with NFPA 58 and State Fire Codes. In addition, a letter dated August, 2013 from abutting property (Map 67 Lot 3) owner, Betty Crawford describing her concerns about the project was read into the record.

Staff Review

The Town's Peer Review Engineer, CMA, has prepared an initial review of the project and summarized their comments in the attached 12/20/13 report. These comments for the last meeting were incorporated in the review criteria (in *italics*). The review criteria has been updated to reflect CMA's latest comments.

The latest submittal, dated 1/22/14, provides a response to the questions the applicant heard at the January 9 meeting, letter/response from Maine Historic Preservation and Kenneth Wood regarding Vernal Pools, and a revised grading plan. Also attached is an email response from ATTAR engineers in response to Conservation Commission's request to have vernal pools identified off-site.

### Vernal Pools

The applicant has provided a letter from Kenneth Wood, P.E. with ATTAR Engineering who is a certified wetland scientist in the State of New Hampshire. His letter certifies that there was no evidence of vernal pools on the site. Attached is an email from Ed Brake, E.I.T., ATTAR Engineering, responding to Earledean Wells, KCC, email request for additional vernal pool determination on the neighboring parcel to the north at 506 Route One. Mr. Brake states that the Applicant shouldn't be responsible for off-site vernal pools and that MDEP regulates only "significant" vernal pools and only those that they are located in an area under control by the developer/owner. He also speculates that if there were to be a vernal pool located off site the proposed development is outside of the required 250-foot buffer, which can comprise of a minimum of 75% un-fragmented forest.

The Planning Board can require an additional vernal pools study as allowed under 16.10.5.2. *Additional Requirements*. The Board would need, however, a compelling reason to do so, and it is unclear if there is one at this time.

With regard to the description of the MDEP regulation of Vernal Pools, the applicant should provide a similar synopsis for the Army Corps of Engineers (AOCE), since that agency would have jurisdiction also, due to the wetland fill, if a vernal pool was found off site.

The applicant is correct in that the MDEP does not consider any vernal pools on land not under the control of the developer/owner, per Title 38 §480-BB. Significant wildlife habitat; major substantive rules in the Maine Revised Statutes. The AOCE has a similar policy in that they don't request the applicant to search neighboring properties for vernal pools, however, if vernal pools are known to be off site, then they are considered. Many towns have inventoried the location of vernal pools with owner permission and have created published maps of these resources.

The letter from Mr. Wood, certifies that he found no evidence of vernal pools on the site. Mr. Wood should clarify if in fact the entire site was investigated, because in the letter he states that he only "observed all wetland areas on the parcel for evidence of vernal pools". Vernal Pools are often found isolated within upland woodlands.

The Board needs to determine if there is any compelling information that would support the Board waiting for the snow pack to melt and have additional investigation performed for presence of vernal pools.

### Wetland Mitigation Upland Buffer Zone

The applicant has addressed the requirement in Title 16.9.3.9.B.2 where undisturbed upland is used to create a deed restricted buffer zone adjacent to a wetland boundary. The proposed 15,000 SF area proposed, identified on the revised grading plan, is located north of the proposed propane tanks. The proposed buffer area is adjacent to a wetland boundary, however, since the area lies within the 100-foot setback, it is somewhat unlikely it will be disturbed. In effect, the area is already protected. The Board may want to consider an area on the site that might be more effective in protecting upland area.

### Current LOMA and Preliminary FIRM

Staff has confirmed that the LOMA previously issued for the property is listed among what FEMA plans to "revalidate" after the preliminary FIRM becomes effective and that the actual map does not reflect the LOMA changes due to scale limitations. Attached is an exhibit that shows the revised flood zone as it pertains to the approved LOMA.

### Inland Waterfowl and Wading Bird Habitat/Resource Protection Boundary

That applicant reports that the boundary will be determined in the field as requested, however, given the proximity of the development to the Resource Protection boundary, having this information not until the final plan seems not very timely.

#### Landscape Standards for the Mixed-Use District

The Applicant makes a point that the requirements under Title 16.3.2.13.D.6.a.iii are not appropriate due to the natural and rural character of the site. If the Board concurs with this perspective, they might consider placing the vegetation in an area where it may be a productive screen, along the northeast boundary of the property, for example, adjacent to the first portion of the proposed roadway. Plant palette can be designed with native plant species to be more appropriate for a natural setting. At a minimum, street trees probably would fit straddling the front property line or inside the U.S. Route One ROW.

Also in the zoning standards, 16.3.2.13.D.6.c Rural Landscape Features requires features such as “stonewalls, berms, and other agricultural structures, tree lines or fields must be retained to the maximum extent possible.” It is not clear if all of these types of features have been considered and/or identified on the plan. Applicant needs to clarify. And 16.3.2.13.D.8 Open Space Standards, does not appear to have been addressed.

#### Additional Information

The applicant states that the 8” water line, compete stormwater analysis, and a design for a subsurface wastewater system will all be part of the final plan application. The Board should discuss if this amenable. Typically wastewater systems and associated HHE-200 information is submitted as part of the preliminary plan phase. Lighting, that is typically part of the final plan application, needs to be addressed by the applicant.

Information that the Board has not seen to date and is attached include:

- 1) CMA updated comments.
- 2) Maine DEP NRPA permit approval
- 3) Army Corps of Engineers General Permit

Other comments:

- 1) Revised Grading Utility Plan shows a drainage structure and pipe from Pond 40 leading into the Resource Protection zone. This disturbance is not allowed per 16.3.2.19.D.4:  
*4. Clearing or removal of vegetation for uses, other than timber harvesting as limited per Article V of Chapter 16.9, Design and Performance Standards, in a Resource Protection Overlay Zone, is prohibited within the strip of land extending one hundred (100) feet, horizontal distance, inland from the normal high-water line, except to remove safety hazards. **Elsewhere, in a Resource Protection Overlay Zone the cutting or removal of vegetation is limited to that which is necessary for uses expressly authorized in the Resource Protection Overlay Zone.***
- 2) How does the developer propose to handle snow storage/removal on site?  
Title 16.9.3.5 prohibits snow dumping in regulated wetlands. The applicant need to address how they plan to manage snow storage and removal.
- 3) When addressing open space the applicant should consider another location for pond #21, or the actual design so that it may be more appropriate to the rural landscape referenced in 16.3.2.13.D.
- 4) The plan uses typical tree line denotation to symbolize all vegetation. This is somewhat confusing and perhaps tree cover and simple vegetation can be distinguished separately.

### Recommendation

There are several threshold items that should get addressed earlier than later:, special exception use; site walk; and vernal pools.

The Planning Board should review the criteria for special exception use and the applicant's response. If there is information the Board needs in order to complete its review and approve the request for special exception use, it would be prudent to advise the Applicant now, prior to Preliminary approval.

The Board should also discuss the site walk and if they are amenable to the Applicant's request to hold in during Final Plan Review.

In addition, should address the request by the Conservation Commission regarding vernal pool studies off site.

### Review Criteria

Action by the board shall be based upon findings of fact which certify or waive compliance with all the required standards of this title, and which certify that the development satisfies the following requirements:
<b>A. Development Conforms to Local Ordinances.</b> The proposed development conforms to a duly adopted comprehensive plan as per adopted provisions in the Town Code, zoning ordinance, subdivision regulation or ordinance, development plan or land use plan, if any. In making this determination, the municipal reviewing authority may interpret these ordinances and plans.
<ul style="list-style-type: none"><li>• The proposed use is a special exception use within the Mixed-Use Zone. Specific review criteria is required for special exception uses (Title 16.6.6 Basis for Decision). Applicant addressed these conditions and factors in their 11/20/13 submittal. Is the Board satisfied with the applicant's compliance with these approval criteria?</li><li>• 16.3.2.13.D.5 – Applicant should provide architectural details for the proposed garage to assure compliance with building design standards.</li><li>• 16.3.2.13.D.6 - Applicant should provide a landscape plan indicating the location of the landscape planter strip with vegetation and streetside trees, or explain that the location of the facility provides adequate natural screening. Applicant notes the tanks and garage 'will be screened by existing vegetation' and the site is 'adequately screened' and 'will have adequate landscaping' (see 11/20/13 letter, Factors for Consideration, 16.6.6.2.J.-M). Applicant also addresses the treatment of the streetside landscape in the 1/22/14 submittal, see staff comments above.</li></ul>
<b>B. Freshwater Wetlands Identified.</b> All freshwater wetlands within the project area have been identified on any maps submitted as part of the application, regardless of the size of these wetlands.
Wetlands have been identified. The Conservation Commission asked that a vernal pool evaluation be conducted on the site. In a May 9, 2013 memorandum, Kenneth Wood noted that, following a site walk on May 9, no vernal pools were evident on the site (see 11/20/13 submittal package). A <i>Functional Assessment of Wetlands</i> prepared by Michael Cuomo (12/3/13) summarized the wetland's Floodflow Alteration and ability to perform Sediment and Toxicant Retention and Nutrient Removal 'will be reduced only slightly, as natural flow will be generally maintained by the installation of three culverts beneath the road fill.' (page 7).  (Note: it is not clear if the 12/7/1995 wetland delineation is superseded by the functional assessment or if Cuomo has re-certified the 1995 delineation. It is confusing to have vernal pool assessment being done by someone other than the professional delineating the wetlands and preparing a functional assessment. Is it possible for Cuomo to recertify the 1995 wetland delineation and concur that there are no vernal pools on the site? If not, the final plan needs to be revised with the certifying professionals and date for wetland delineation and vernal pool determination.) Applicant states the plan will be updated, 1/22/14.
<b>C. River, Stream or Brook Identified.</b> Any river, stream or brook within or abutting the proposed project area has been identified on any maps submitted as

<p>part of the application. For purposes of this section, "river, stream or brook" has the same meaning as in 38 M.R.S. §480-B, Subsection 9</p>
<p>An intermittent stream has been identified within the wetlands on the site plan and is included in the wetland crossing details. This stream was identified as possibly a 'farm ditch that has filled in and taken on more natural shape from lack of maintenance' (Cuomo, 12/3/13). The site does abut the Johnson Brook, whose associated wetlands have been identified by Maine IF&amp;W as important waterfowl and wading bird habitat.</p>
<p><b>D. Water Supply Sufficient.</b> The proposed development has sufficient water available for the reasonably foreseeable needs of the development.</p>
<p>The proposed development has sufficient water available per a letter dated November 13, 2013 from the Kittery Water District.</p>
<p><b>E. Municipal Water Supply Available.</b> The proposed development will not cause an unreasonable burden on an existing water supply, if one is to be used.</p>
<p>The proposed development has sufficient water available per a letter dated November 13, 2013 from the Kittery Water District. Plan and profile needs to include proposed water line. The Fire Chief requests the 8" water line be installed the full length of proposed driveway.</p>
<p><b>F. Sewage Disposal Adequate.</b> The proposed development will provide for adequate sewage waste disposal and will not cause an unreasonable burden on municipal services if they are utilized.</p>
<p>The applicant states the proposed development will utilize municipal sewer at a 'future date'. What is the rationale for deferring installation of the sewer connection? <i>Plans should show the location of the force main on the profile and provide details.</i> CEO informs staff that restroom is required with the construction of a garage associated with the proposed use. Is the garage and the sewer connection part of a future phase?</p>
<p><b>G. Municipal Solid Waste Disposal Available.</b> The proposed development will not cause an unreasonable burden on the municipality's ability to dispose of solid waste, if municipal services are to be used.</p>
<p>The applicant has not yet addressed this requirement, however there should be very little solid waste generated based on the proposed use.</p>
<p><b>H. Water Body Quality and Shoreline Protected.</b> Whenever situated entirely or partially within two hundred fifty (250) feet of any wetland, the proposed development will not adversely affect the quality of that body of water or unreasonably affect the shoreline of that body of water.</p>
<p><i>The project includes a wetland impact of 11,985 sf of wetlands crossing for the access roadway. The applicant should provide wetlands alteration and mitigation plans prior to preliminary plan approval.</i></p>
<p><b>I. Groundwater Protected.</b> The proposed development will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of groundwater.</p>
<p>Applicant proposes public sewer will be utilized in the future for the proposed garage. Applicant is now considering a septic system in the interim, location available for final plan review, 1/22/14. The Kittery Sewer Department stated a port-a-potty could be used in the interim, if no basin or toilet is installed in the proposed garage. Does the Board concur? CEO needs to verify the use of port-a-potty in lieu of restroom. CEO informs staff that restroom is required with the construction of a garage associated with the proposed use.</p>
<p><b>J. Flood Areas Identified and Development Conditioned.</b> All flood-prone areas within the project area have been identified on maps submitted as part of the application based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, and information presented by the applicant. If the proposed development, or any part of it, is in such an area, the applicant must determine the one hundred (100) year flood elevation and flood hazard boundaries within the project area. The proposed plan must include a condition of plan approval requiring that principal structures in the development will be constructed with their lowest floor, including the basement, at least one foot above the one hundred (100) year</p>

flood elevation.
Applicant has submitted an amended 100-year flood zone boundary per the September 15, 2003 Letter of Map Amendment Determination. Boundary illustrates the proposed road, road crossing, storage tanks and garage are outside of the 100-year flood zone area (A). (Site Plan, Sheet 1, Reference 2) The applicant should clarify if the 2003 LOMA supersedes the recent preliminary FEMA FIRM maps when they become finally adopted. If this is the case then why is the 2003 LOMA not reflected in the preliminary FIRM maps? Applicant has clarified this and Staff has confirmed.
<b>K. Stormwater Managed.</b> Stormwater Managed. The proposed development will provide for adequate stormwater management
<i>The applicant has shown locations of proposed piping and ponds for the stormwater management system. A more complete stormwater analysis, including pre and post development flows is needed prior to final plan approval.</i>
<b>L. Erosion Controlled.</b> The proposed development will not cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results.
This standard will be met. A standard condition of final approval states the applicant's contractor will follow MDEP best management practices for erosion and sediment control (silt fencing, silt sacks, etc.), and CMA engineers will be notified to observe application during construction.
<b>M. Traffic Managed.</b> The proposed development will: 1. Not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed; and 2. Provide adequate traffic circulation, both on-site and off-site.
The applicant states in the 11/20/13 submittal in their response to 16.6.6.2 Factors for Consideration that the proposal will (C) have a minimal effect on vehicular traffic on U.S. Route 1; is (G) separated from areas of public parking and recreational facilities; (H) will only be accessed by Estes Oil Company delivery trucks and no off street parking is required and (I) the site is designed to be accessible by fire and emergency apparatus . Total number of anticipated truck trips is not clear and needs clarification. "two trips per day for oil delivery trucks" How may "oil delivery trucks" are anticipated? At the public hearing it was stated two delivery trucks per day and one or two tractor trailer for supply per week. Other than this and pending review response from the Department of Public Works, the proposed development does not appear to cause congestion or unsafe conditions with respect to the use of public roads, and on and off-site circulation appears to be adequate.
<b>N. Water and Air Pollution Minimized.</b> The proposed development will not result in undue water or air pollution. In making this determination, the following must be considered: 1. Elevation of the land above sea level and its relation to the floodplains; Applicant has submitted an amended 100-year flood zone boundary per the September 15, 2003 Letter of Map Amendment Determination. Boundary illustrates the proposed road, road crossing, storage tanks and garage are outside of the 100-year flood zone area (A). The applicant should clarify if the 2003 LOMA supersedes the recent preliminary FEMA FIRM maps when they become finally adopted. If this is the case then why is the 2003 LOMA not reflected in the preliminary FIRM maps? 2. Nature of soils and sub-soils and their ability to adequately support waste disposal; (Not Applicable) 3. Slope of the land and its effect on effluents; (Not Applicable) 4. Availability of streams for disposal of effluents; (Not applicable) 5. Applicable state and local health and water resource rules and regulations; and 6. Safe transportation, disposal and storage of hazardous materials. <i>The project needs to be reviewed and approved or permitted through the National Fire Protection Association (NFPA)-58 process for bulk storage of flammable materials. Though the Fire Chief has reviewed this it still needs to be finalized with the State Fire Marshal.</i>

**O. Aesthetic, Cultural and Natural Values Protected.**

The proposed development will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the department of inland fisheries and wildlife or the municipality, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline.

- Letter to Maine Historic Preservation Commission dated November 8, 2013. No response received by applicant to date.
- The site plan illustrates location of the proposed development is outside of the identified natural wildlife habitat, waterfowl and wading bird/resource protection area (Site Plan, Sheet 1), however, this delineation is based on GIS data. Given the close proximity of the proposed development to the resource protection overlay zone (OZ-RP), Staff recommends a wetland delineation be performed for the regulated non-forested wetland along Johnson Brook in order to base the 250-foot offset used to determine the OZ-RP, and not GIS data.
- The Wetland Functional Assessment concluded: *The proposed wetland fill will most affect the Wildlife Habitat and Visual Quality/Aesthetics functions of the wetland, as a habitat block will be fragmented ...however, no exceptional habitats have been identified...and the visual quality ...is not exceptional. The wetland has been degraded by past land use, filling, and invasive plants are widespread. [Cuomo, 12/3/13, pg. 7]*

**P. Developer Financially and Technically Capable.**

Developer is financially and technically capable to meet the standards of this section.

Applicant has pending financial obligations for ASA charges.

**Note:** See applicant's response to the following *Basis for Decision* in the November 20, 2013 submittal (pages 3-4). Board consideration of these conditions and factors will be included in the final approval for formal action. However, each factor may be considered during review to help direct the applicant.

**16.6.6 Basis for Decision.**

**16.6.6.1 Conditions.**

1. Proposed use will not prevent the orderly and reasonable use of adjacent properties or of properties in adjacent use zones;
2. Use will not prevent the orderly and reasonable use of permitted or legally established uses in the zone wherein the proposed use is to be located, or of permitted or legally established uses in adjacent use zones;
3. Safety, the health, and the welfare of the Town will not be adversely affected by the proposed use or its location; and
4. Use will be in harmony with and promote the general purposes and intent of this Code.

**16.6.6.2 Factors for Consideration.**

- A. The character of the existing and probable development of uses in the zone and the peculiar suitability of such zone for the location of any of such uses;
- B. The conservation of property values and the encouragement of the most appropriate uses of land;
- C. The effect that the location of the proposed use may have upon the congestion or undue increase of vehicular traffic congestion on public streets or highways;
- D. The availability of adequate and proper public or private facilities for the treatment, removal or discharge of sewage, refuse or other effluent (whether liquid, solid, gaseous or otherwise) that may be caused or created by or as a result of the use);
- E. Whether the use, or materials incidental thereto, or produced thereby, may give off obnoxious gases, odors, smoke or soot;
- F. Whether the use will cause disturbing emission of electrical discharges, dust, light, vibration or noise;

- G. Whether the operations in pursuance of the use will cause undue interference with the orderly enjoyment by the public of parking or of recreational facilities, if existing, or if proposed by the Town or by other competent governmental agency;
- H. The necessity for paved off-street parking;
- I. Whether a hazard to life, limb or property because of fire, flood, erosion or panic may be created by reason or as a result of the use, or by the structures to be used, or by the inaccessibility of the property or structures thereon for the convenient entry and operation of fire and other emergency apparatus, or by the undue concentration or assemblage of person upon such plot;
- J. Whether the use, or the structures to be used, will cause an overcrowding of land or undue concentration of population; or, unsightly storage of equipment, vehicles, or other materials;
- K. Whether the plot area is sufficient, appropriate and adequate for the use and the reasonably anticipated operation and expansion thereof;
- L. Whether the proposed use will be adequately screened and buffered from contiguous properties;
- M. The assurance of adequate landscaping, grading, and provision for natural drainage;
- N. Whether the proposed use will provide for adequate pedestrian circulation;
- O. Whether the proposed use anticipates and eliminates potential nuisances created by its location;
- P. The satisfactory compliance with all applicable performance standard criteria contained in Chapter 16.8 and 16.9.

Date: November 10, 2013

To: Tom Emerson, Chairman  
Kittery Planning Board

From: Earledean Wells, Chair  
Kittery Conservation Commission

Re: Proposed Estes Bulk Storage/Rte. 1

This memo is to serve as a reminder to the Planning Board of the concerns addressed by KCC during the sitewalk at the above mentioned property on April 10, 2013. I would like to also point out that the December 12, 2013 is the first meeting since that sitewalk eight months ago and that KCC was not given any advanced notice that this proposed development would be on this agenda so that a memo from us could have been included in this packet:

1. During the April sitewalk I called attention to the sound of the peeper frogs singing. This is often an indicator of the presence of a vernal pool nearby. I requested that a vernal pool evaluation be done as there was still several weeks left that would allow such an evaluation to be done. The wetland evaluation done by Soil Scientist, Michael Cuomo, included in the December 12, 2013 packet, is an evaluation of the proposed impacted area of the wetland for a proposed road and does not include the information requested by KCC. KCC requests that a vernal pool evaluation be done and that the vernal pool be clearly located on the site plan; that it be clearly indicated whether it exists on this property or an abutting property and exactly how far it is from the proposed propane tank and road.
2. The proposed road/wetland crossing will require a huge amount of fill, 11,985 sq. ft. of fill, along with three culverts and guard rails. The impact fee for the wetland fill @ \$4.00 sq. ft. will be \$47,940.00, add to this the cost of the fill itself, the culverts, the guard rails, paving, engineering plans, etc. and KCC feels that these costs alone make a discussion of a bridge to cross this wetland viable. The area before and after the proposed crossing is higher than the wetland itself, which is why such a large amount of fill is needed. The topic of a bridge was brought up during the sitewalk and we had expected that this would be addressed.

3. KCC recently received a letter from U.S. Dept. of Homeland Security FEMA, dated November 5, 2013 which indicated that updated flood hazard risk information would soon be available. Since this the flood zone information on this property is based on 4/22/2003 information, KCC requests that the Planning Board make no decisions on this application until the new flood zone information is discussed and evaluated during the formal community coordination meeting which will be scheduled sometime after December 15, 2013.
4. During the site walk a KCC member noticed the grade of the hill on the far side of the wetland; it appeared to him that the access road would need a major cut to reduce the grade to allow the large delivery trucks to be able to access the storage tank. When he brought this to the attention of the developer he was told that part of the road would have to be 'engineered'. If the road height must be reduced we should have information not only on the amount of the reduction but also the ramifications of such an alteration to the existing wetlands, setbacks, flood plain, etc. in this area.
5. The developer's representative included plans during the Sketch Plan presentation of the expected future development along the proposed road of various businesses. Because this property is located in a very sensitive area, KCC feels that should the Planning Board approve this proposed development that there be a Condition on the plans requiring that any further/future development on this property have a full Planning Board review with a notation that the Planning Board may/or/may not approve further development of this property should the proposal pose a risk to the environmental areas.

Minutes: May 9, 2013

**ITEM 7 – Estes Bulk Propane Storage/U.S. Route 1 – Sketch Plan.**

Action: Continue Sketch Plan Review, discuss site walk, approve Sketch Plan concept if in compliance with Town Code and provide direction to Applicant Owner M&T Realty, and applicant Estes Oil & Propane Company is requesting consideration of their plans for a 60,000 gallon bulk propane storage facility at their property south of 506 U.S. Route One., Tax Map 67, Lot 4, Mixed Use Zone, with a portion in the Residential Rural and Shoreland Overlay zones. Agent is Joe Cheever, ATTAR Engineering, Lou Chamberlain, ATTAR Engineering, explained the plan has changed since the March 14 submittal to illustrate the Resource Protection zone and the flood zone area. Mr. Alesse asked about the dangers of two large propane tanks in this area especially if there is hunting and danger of a stray bullet. Mr. Chamberlain stated he cannot answer this question at this time, but could pursue for preliminary review. Ms. Driscoll concurred and asked if an earthen buffer could be designed to provide additional protection. Mike Estes stated studies conducted by Homeland Security have shown that typical bullets hitting mobile propane tanker trucks do not penetrate. The proposed tanks at the site are three-times thicker than those on tanker trucks, and the valves are constructed within safety guidelines. Mr. Emerson asked about potential development along the long road accessing the tanks. Mr. Estes stated he does not intend to go forward with any other kind of development on this property at this time. Ms. Driscoll asked about the road finish and emergency vehicle access. Mr. Estes stated he would pave the first 700-800 feet, with a dirt road the remaining distance. Herb Kingsbury, Conservation Commission, asked if the Board will be addressing the plan review notes regarding wildlife habitat, vernal pools, etc. Mr. Emerson stated these issues will be further reviewed at the preliminary review stage, and the Commission may address these in writing to the applicant. Mr. Melanson moved to accept the sketch plan concept for Estes Bulk Propane storage  
Ms. Tuveson seconded  
Motion carried unanimously by all members present.

Minutes – March 14, 2013

**ITEM 6 – Estes Bulk Propane Storage/U.S. Route 1 – Sketch Plan.**

Action: After listening and commenting on introductory presentation, schedule a site walk. Owner M&T Realty and applicant Estes Oil & Propane Company is requesting consideration of their plans for a 60,000 gallon bulk propane storage facility at their property south of 506 U.S. Route One., Tax Map 67, Lot 4, Mixed Use Zone, with a portion in the Residential Rural and Shoreland Overlay zones. Agent is Joe Cheever, ATTAR Engineering. Joe Cheever introduced Mike Estes, owner of the parcel. Mr. Cheever summarized the proposal, noting the parcel is in the shoreland and mixed-use zones. The proposed road is 1,400 feet with a wetland crossing and wetland impact of 12,355s.f. Approximately once per week, bulk propane would be delivered via 12,000 gallon trucks to the two proposed 30,000 gallon storage tanks on site. During heating season, propane delivery trucks would enter the site to fill their trucks and deliver to residential users. Fire protection will be needed, including a water line and hydrant. A standard hammerhead is included on the sketch plan. No trucks will be kept on site; they are not proposing a gate across the road. Mr. Estes noted the area will have to be fenced around the tanks to meet state and federal regulations. Mr. Emerson advised the fence will have to be included on the plan. The propane pad is approximately 45 feet x45 feet. Mr. Melanson asked if the site is accessible for a site walk. Mr. Cheever suggested they could access the site via the Take Flight parcel [Mr. Cheever will obtain permission from the owner of the adjacent parcel prior to the site walk]. Ms. Wells stated this is the third time this property has been before the Board and the wetland crossing needs to be carefully observed. Mr. Emerson reminded the applicant the Fire Chief and DPW will need to review. Mr. Melanson moved to accept the sketch plan and schedule a site walk  
Ms. Grinnell seconded  
Motion carries unanimously

A site walk was scheduled for Wednesday, April 10, 2013 at 6:15 p.m. Mr. Cheever will flag the wetland crossing, road and storage tank location.

TOWN OF KITTERY, MAINE  
PLANNING BOARD MEETING  
Council Chambers

APPROVED  
January 9, 2014

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

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

Members absent: Susan Tuveson

Staff: Gerry Mylroie, Planner; Chris DiMatteo, Assistant Planner

Pledge of Allegiance

Minutes:

Ms. Grinnell moved to approve the minutes of December 12, 2013 as corrected

Ms. Kalmar seconded

Motion carries with 5 in favor and 1 abstention (Melanson)

Public Comment:

Rachel Sparkowich, 22B Old Farm Road, representing Operation Blessing Limited Partnership, read a prepared statement (Attachment 1). Chairman Emerson stated the Board will be reviewing the right-of-way application from Operation Blessing at the next applicant Board meeting.

There was no further public comment.

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

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

The scheduled site walk did not take place (due to the weather) and will be re-scheduled.

Edward Brake, ATTAR Engineering introduced Jody Ameden and re-summarized the proposal. He noted the DEP performed a site walk as part of the NRPA application. Ken Woods investigated the site and found no vernal pools.

Jody Ameden explained her role was to prepare the fire safety analysis, and distributed the reports to the Board. She met with Chief O'Brien in November to review the design. The system is designed with automatic and manual shutoffs; everything is crash protected and secured from vandalism. She could find no evidence regarding bullet penetration of these style tanks made of 5/8" thick, curved steel exterior walls.

Public Hearing opened and closed at 6:21 p.m. There was no public comment

Earldean Wells noted the Conservation Commission has submitted two letters to the Board, and questions whether the recent FEMA Floodplain maps will impact this property, and requested that CMA or a wetland specialist perform a vernal pool assessment. Mr. DiMatteo stated that CMA is not wetland scientists, but third party review could be requested by the Board. It is unclear if the wetlands have been re-certified by Michael Cuomo since the 1997 assessment, including vernal pool identification.

Ed Brake explained the draft FEMA mapping appears to be essentially the same. He is awaiting a response from FEMA as to whether the LOMR will be included in the mapping, or remain as is. Mr. Mylroie explained the LOMR would stand. Mr. DiMatteo explained the proposed FEMA mapping is still in the local review stage and final adoption, including any revisions, will not occur until 2015. He suggested the applicant confirm with FEMA the impact of these new plans on the existing LOMR.

Discussion followed regarding the existing vs. proposed flood maps. Mr. Melanson asked how far above the flood plain are the proposed tanks. Mr. Brake stated almost 20 feet based on the LOMR.

The proposal is the narrowest location to cross the wetland, and the amount of fill required will be approximately 2000 cubic yards. The installation of culverts will allow for animal crossing and water flow. Chief O'Brien stated he had no safety concerns with the project. Discussion followed regarding occasional gas plumes on Route 1 and Chief O'Brien explained there are propane tanks everywhere, but these large scale operations have few safety concerns because of the built-in safety precautions. He also explained a bullet into a propane tank will not cause an explosion without an accompanying fire. A hole would create a plume and alarms would go off, and the installation of an 8 inch water line will allow the fire department to adequately handle any leakage.

Ed Brake explained the sewer line will be installed under the proposed road, but it has yet to be determined whether it will be hooked up. The entire road is paved, with concrete saddles approximately three feet off the ground for the propane tanks. Discussion followed regarding provision of vegetation/tree buffering along Route 1 prior to potential development in the MU zone of the project, and timber harvesting.

Traffic: During peak periods, two delivery trucks per day and one semi supply truck once or twice per week.

Resource Protection Zone: This is a regulatory setback and should be ground confirmed. Applicant will survey and confirm.

In summary, the applicant needs to confirm with FEMA the status of the LOMR; re-verify the Resource Protection Zone; re-certify wetlands and vernal pools; wetland mitigation plan; review street tree code requirements.

Discussion followed regarding vernal pool certification and identification of pools off site. Documentation needs to be supplied demonstrating the methodology by which certification was determined. Discussion followed regarding a site walk. Ms. Driscoll stated frogs were heard.

Ms. Driscoll Davis moved to schedule a site walk for Estes Oil & Propane Company, at 506 U.S. Route 1, Tax Map 67, Lot 4, on Wednesday, January 22 at 10:30 a.m., and to continue preliminary plan review.

Ms. Grinnell seconded

Unanimous by all members present

## **ITEM 2 – Roylos Development - Land Division – 32 Haley Road**

Action: hold public hearing, grant or deny plan approval. Owners, John and Beth Roylos request approval to divide their property (Map 47 Lot 18-4) located off Haley Road along Wilson Creek in the Residential Rural (R-RL) Zone, a portion of which is within the Shoreland Overlay Zone.

John Roylos, owner, stated he only received comments from the Conservation Commission prior to the meeting.

The Public Hearing opened and closed at 7:19 p.m. There was no public comment.

Mr. DiMatteo summarized the project to date, noting this is a lot-split and is before them because the prior approved plan required Board review for any changes. The proposed septic locations have been identified by Sweet Associates, and reserve septic locations have been identified off-site in a separate parcel, over an easement. This is allowed, and Mr. Roylos will have to record all necessary easements within 45 days or the approval becomes void. Additionally, the mitigation tied with this project will be required to be completed, and will be monitored by the Code Enforcement Officer. The owner is required to provide an escrow to cover the costs for the mitigation, as well as for a two-year inspection period by the landscape architect. Discussion followed regarding responsibility for the mitigation on Lot 1. Discussion followed regarding access to the reserve septic location via the ROW.

Earldean Wells asked about the verification of stump removal and cul-de-sac on the plan.

Note 11 on the proposed plan will be amended to state: "The paper cul-de-sac will not be built...".

## Chris DiMatteo

---

**From:** Ed Brake <ed@attarengineering.com>  
**Sent:** Friday, January 17, 2014 10:44 AM  
**To:** Chris DiMatteo  
**Cc:** 'Earldean Wells'; Tom Emerson; Gmylroie; Jan Fisk; 'William Straub'  
**Subject:** RE: vernal pool determination  
**Attachments:** C082-14 VPool Stamped.pdf

Chris,

I am planning to submit by Jan. 23 a response to the town review and Planning Board comments, as well as any revisions to the plans.

In response to Earldean's email, I have attached Ken Wood's letter, which will be included in the Jan. 23 submission, certifying that he has done a vernal pool survey and found no vernal pools on the site. Based on the town review comments, a note specifying that no vernal pools were found on the parcel will be added to the Site Plan. Please note that Ken's letter specifically addressing the spring peepers that were heard on the site walk in April, which are a type of tree frog that are not related to vernal pools.

In regards to the question of offsite vernal pools, I do not think we should be required to do any vernal pool survey on any of the abutting parcels. I cannot find any section in the ordinance that requires an offsite vernal pool survey. Also, the MDEP does not require a permit for activities in the vernal pool habitat if the "significant vernal pool depression is not located on a parcel owned or controlled by the person carrying out the activity." For a vernal pool of special significance, the MDEP requires a 75% of the area within 250 feet of the vernal pool remain unfragmented forest. Even if there were an offsite vernal pool, the majority of the development on the site is greater than 250 feet from the property line and will be outside the required setback.

If the board were to require an additional vernal pool study, it would have a significant impact to the timeline for this project, as the study could not be accomplished until the spring. I do not believe it would be appropriate for Mr. Estes to be required to bear the cost for an additional off-site study that the ordinance does not require.

Please let me know if you need additional information. Have a good weekend.

Ed Brake, E.I.T.  
Attar Engineering, Inc  
1284 State Road  
Eliot, ME 03903  
Phone (207) 439-6023  
Fax (207) 439-2128

---

**From:** Chris DiMatteo [mailto:CDiMatteo@kitteryme.org]  
**Sent:** Thursday, January 16, 2014 3:13 PM  
**To:** Edward Brake  
**Cc:** 'Earldean Wells'; Tom Emerson; Gmylroie; Jan Fisk; 'William Straub'  
**Subject:** RE: vernal pool determination

Ed:

What is your plan to submit revised plans.  
We will need your submittal by 1/23 to get on the 2/13 agenda.  
Please let me know.

I received this email today.  
The Board will have to approve such an action first.

However, in light of this having a significant impact to the schedule of the applicant's project please address prior to your next submission.

Thanks

Chris

**Christopher Di Matteo**

Assistant Town Planner

200 Rogers Road, Kittery Maine 03904

(207) 439-6807 Ext. 303 / (207) 475-1323 (Direct Line)

[cdimatteo@kitteryme.org](mailto:cdimatteo@kitteryme.org)

**From:** Earldean Wells [mailto:earldeanwells@myfairpoint.net]

**Sent:** Thursday, January 16, 2014 1:44 PM

**To:** Tom Emerson; Gmylroie; Chris DiMatteo

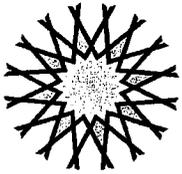
**Subject:** vernal pool determination

Tom, Gerry and Chris,

I have just gotten off the phone with Mr. Charlie Williams who has given permission to have a certified Wetland Specialist, other than Ken Woods, come onto his property in order to do a vernal pool determination/delineation as long as long as Mr. Williams is present at the time the work is done. This is to determine if the proposed Estes Propane Tanks development will not be within the restricted vernal pool setback area. This will be at the cost of Mr. Estes, of course.

Earldean

=



# ATTAR

ENGINEERING, INC

CIVIL · STRUCTURAL · MARINE

Chris DiMatteo, Ass't. Town Planner  
Town of Kittery  
P.O. Box 808  
Kittery, Maine 03904

January 10, 2014  
Project No.: C082-14

**Re: Estes Propane Storage  
Vernal Pool Survey**

Dear Mr. DiMatteo:

I understand that the Planning Board has requested additional information regarding my investigation of significant vernal pools on the referenced parcel. On May 9, 2013, I forwarded the following e-mail to the Planning Department:

Vernal Pools - I found no evidence of any vernal pools on the site, significant or non-significant.

On May 9, 2013 I observed all wetland areas on the parcel for evidence of vernal pools. "Significant" vernal pools are determined by the following indicator species, (REF: Maine DEP, CH 335, Significant Wildlife Habitat):

Fairy Shrimp	Presence
Blue spotted salamanders	10 or more egg masses
Spotted salamanders	20 or more egg masses
Wood frogs	40 or more egg masses

I did not observe the presence of any egg masses on this visit; nor did I observe any vernal pools; the excavated pond would be considered a man-made structure.

I also understand that a comment was made at last night's Board meeting that "spring peepers" were heard during the spring site walk – a spring peeper (*Pseudacris crucifer*) is a type of tree frog and should not be confused with a wood frog (*Rana sylvatica*) – wood frogs are noted by their distinctive chorusing.

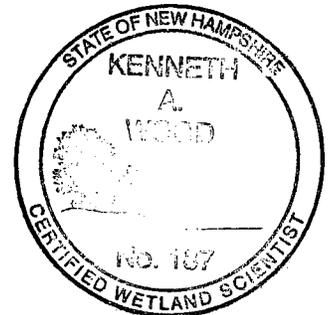
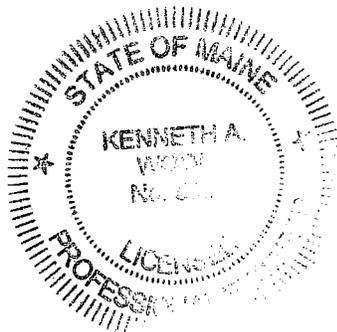
Please contact me for any additional information.

Sincerely,

Kenneth A. Wood, PE, CWS  
President

cc: Michael Estes

C082-14 Kittery vpool





**CMA ENGINEERS, INC.**  
CIVIL/ENVIRONMENTAL ENGINEERS

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February 6, 2014

Mr. Chris DiMatteo, Assistant Town Planner  
Town of Kittery  
P.O. Box 808  
Kittery, Maine 03904

**RE: Town of Kittery, Planning Board Services  
Estes Propane Storage (Tax Map 67, Lot 4) Review #2  
CMA #591.77**

Dear Chris:

CMA Engineers received the following information for Assignment #77, review #2 of the preliminary site plan application for the Estes Propane Storage (Tax Map 67, Lot 4):

- 1) Letter to Gerry Mylroie Re: Preliminary Site Plan Application from Attar Engineering dated November 20, 2013.
- 2) Maine Department of Environmental Protection land use permit dated December 2013.
- 3) Letter to Gerry Mylroie Re: Preliminary Site Plan Application from Attar Engineering dated January 22, 2014.
- 4) Letter to Chris DiMatteo Re: Vernal Pool Survey from Attar Engineering dated January 10, 2014.
- 5) Grading and Utility Plan Estes Propane Storage U.S. Route 1, Kittery, Maine by Attar Engineering dated 11/7/2013 and revised 1/22/14.

As described in our previous review, the project includes construction of a 60,000 gallon bulk storage facility comprised of two 30,000 gallon propane tanks on a concrete pad with a security fence and a garage. The site is accessed by a proposed 1,360' long road, construction of which includes a wetland crossing with 11,985 sf of impact. The project includes installation of water, and a sewer force main (for future use).

We have reviewed the information submitted for conformance with the Kittery Land Use and Development Code Zoning Ordinance and general engineering practices and offer the following comments below that correspond directly to the Town's Ordinances.

We note that we have not reviewed the application for conformance with the National Fire Protection Association-58 (NFPA-58), which regulates the safety issues associated with bulk

storage of flammable materials such as propane. The Applicant should state the requirements of NFPA-58 as they apply to this project and describe how the project conforms with those requirements.

### **Chapter 16.3 Land Use Zone Regulations**

#### **16.3.2.13 Mixed Use (MU)**

- D.5. Applicant should provide architectural details for the proposed garage to assure compliance with the building design standards.
- D6. The Applicant has provided an explanation of why a landscape buffer strip is not necessary for this site (including the proposal to leave most of the existing vegetation untouched). This explanation appears reasonable.

#### **16.3.2.19 Resource Protection Overlay Zone (OZ-RP)**

The Applicant shows a drainage pond outlet pipe from Pond 40 extending into the Resource Protection Zone, for which conventional construction requires clearing and earthwork that is prohibited. In the final design process, an alternative will need to be developed which does not require a pipe in this location.

### **Chapter 16.6 Decision Appeal, Variance and Other Requests**

16.6.6 The Applicant has provided information to demonstrate compliance with approval criteria.

### **Chapter 16.8 Design and Performance Standards-Built Environment**

#### **Article VI. Water Supply**

The Applicant has stated he will provide an updated profile showing the water main and water main details with the final approval application.

#### **Article VII. Sewage Disposal**

The Applicant has stated he will provide an updated profile showing the sewer force main location and sewer details with the final approval application.

#### **Article VIII. Surface Drainage**

The Applicant has stated that he will provide a detailed stormwater analysis, including pre and post development flows with the final approval application.

### **Chapter 16.9 Design and Performance Standards-Natural Environment**

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

The Applicant has provided a proposed 15,000 sf upland undisturbed wetland buffer per Section 16.9.3.9.B.2. This buffer is located within the 100' wetland setback and is protected otherwise. Alternative locations appear feasible and should be proposed.

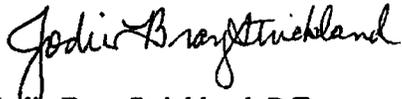
**General Comments**

The project has received a Maine Department of Environmental Protection Natural Resources Protection Act Tier I permit; the Applicant has provided a copy of the permit for the project file.

Should you have any questions, please do not hesitate to call.

Very truly yours,

CMA ENGINEERS, INC.



Jodie Bray Strickland, P.E.  
Project Engineer

cc: Edward Brake, EIT, Attar Engineering



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



PAUL R. LEPAGE  
GOVERNOR

PATRICIA W. AHO  
COMMISSIONER

December 2013

Michael Estes  
M & T Realty, LLC  
PO Box 125  
York, ME 03909

RE: Natural Resources Protection Act Tier 1 Application, Kittery, DEP #L-26124-TC-A-N

Dear Mr. Estes:

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

If you have any questions about the permit or thoughts on how the Department processed this application please get in touch with me directly. I can be reached at (207) 523-9807 or by e-mail at david.cherry@maine.gov.

Sincerely,

David Cherry, Project Manager  
Division of Land Resource Regulation  
Bureau of Land & Water Quality

pc: File

AUGUSTA  
17 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0017  
(207) 287-7688 FAX: (207) 287-7826

BANGOR  
106 HOGAN ROAD, SUITE 6  
BANGOR, MAINE 04401  
(207) 941-4570 FAX: (207) 941-4584

PORTLAND  
312 CANCO ROAD  
PORTLAND, MAINE 04103  
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE  
1235 CENTRAL DRIVE, SKYWAY PARK  
PRESQUE ISLE, MAINE 04769  
(207) 764-0477 FAX: (207) 760-3143



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

DEPARTMENT ORDER

IN THE MATTER OF

M & T REALTY, LLC  
Kittery, York County  
ROAD CONSTRUCTION  
L-26124-TC-A-N (approval)

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

**Project Description:** The applicant proposes to alter 11,985 square feet of wet meadow wetlands for the purpose of constructing a 1,360-foot long access road as shown on a plan titled "Site Plan, Estes Propane Storage, US Route 1 Kittery, Maine," prepared by Attar Engineering and dated November 11, 2013. The applicant has avoided and minimized wetland impacts to the greatest extent practicable by utilizing 2:1 side slopes on the roadway and by crossing at the narrowest point of wetlands on the parcel. The applicant will maintain wetland hydrology by utilizing a bottomless box culvert for the stream crossing and two additional 42-inch round culverts. According to the Department's Geographic Information System (GIS), there is a mapped Inland Waterfowl and Wading Bird habitat associated with the parcel, which is a significant wildlife habitat as defined by the Natural Resources Protection Act; however, the proposed project is not within the habitat area. The proposed project is located off US Route 1 in the Town of Kittery.

The applicant also submitted to the Department two Permit By Rule Notification Forms, a Section 10 Permit By Rule for a Stream Crossing (PBR # 57316), approved by the Department on December 5, 2013, and a Stormwater Permit By Rule (PBR# 57363), approved by the Department on December 10, 2013.

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

**Standard Conditions:**

- 1) If construction or operation of the activity is not begun within four (4) years from the date signed, this permit shall lapse and the applicant shall reapply to the Department for a new permit. This permit is transferable only with prior approval from the Department. If the activity is associated with a larger project, starting any aspect of that project constitutes start of construction.

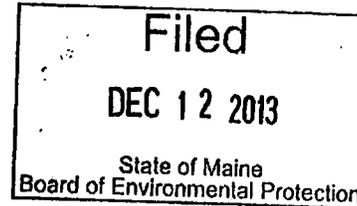
- 2) The project shall be completed according to the plans in the application. Any change in the project plans must be reviewed and approved by the Department.
- 3) Properly installed erosion control measures shall be installed prior to beginning the project, and all disturbed soil should be stabilized immediately upon project completion.
- 4) A copy of this approval will be sent to the Town of Kittery. Department approval of your activity does not supersede or substitute the need for any necessary local approvals.

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

DONE AND DATED IN AUGUSTA, MAINE, THIS 12<sup>th</sup> DAY OF December, 2013.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: Michael Kulus  
For: Patricia W. Aho, Commissioner



PLEASE NOTE THE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES...

DLC/L26124AN/ATS#76888



## Natural Resources Protection Act (NRPA) Standard Conditions

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THE FOLLOWING STANDARD CONDITIONS SHALL APPLY TO ALL PERMITS GRANTED UNDER THE NATURAL RESOURCE PROTECTION ACT, TITLE 38, M.R.S.A. SECTION 480-A ET.SEQ. UNLESS OTHERWISE SPECIFICALLY STATED IN THE PERMIT.

- A. Approval of Variations From Plans. The granting of this permit is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. Any variation from these plans, proposals, and supporting documents is subject to review and approval prior to implementation.
- B. Compliance With All Applicable Laws. The applicant shall secure and comply with all applicable federal, state, and local licenses, permits, authorizations, conditions, agreements, and orders prior to or during construction and operation, as appropriate.
- C. Erosion Control. The applicant shall take all necessary measures to ensure that his activities or those of his agents do not result in measurable erosion of soils on the site during the construction and operation of the project covered by this Approval.
- D. Compliance With Conditions. Should the project be found, at any time, not to be in compliance with any of the Conditions of this Approval, or should the applicant construct or operate this development in any way other the specified in the Application or Supporting Documents, as modified by the Conditions of this Approval, then the terms of this Approval shall be considered to have been violated.
- E. Time frame for approvals. If construction or operation of the activity is not begun within four years, this permit shall lapse and the applicant shall reapply to the Board for a new permit. The applicant may not begin construction or operation of the activity until a new permit is granted. Reapplications for permits may include information submitted in the initial application by reference. This approval, if construction is begun within the four-year time frame, is valid for seven years. If construction is not completed within the seven-year time frame, the applicant must reapply for, and receive, approval prior to continuing construction.
- F. No Construction Equipment Below High Water. No construction equipment used in the undertaking of an approved activity is allowed below the mean high water line unless otherwise specified by this permit.
- G. Permit Included In Contract Bids. A copy of this permit must be included in or attached to all contract bid specifications for the approved activity.
- H. Permit Shown To Contractor. Work done by a contractor pursuant to this permit shall not begin before the contractor has been shown by the applicant a copy of this permit.

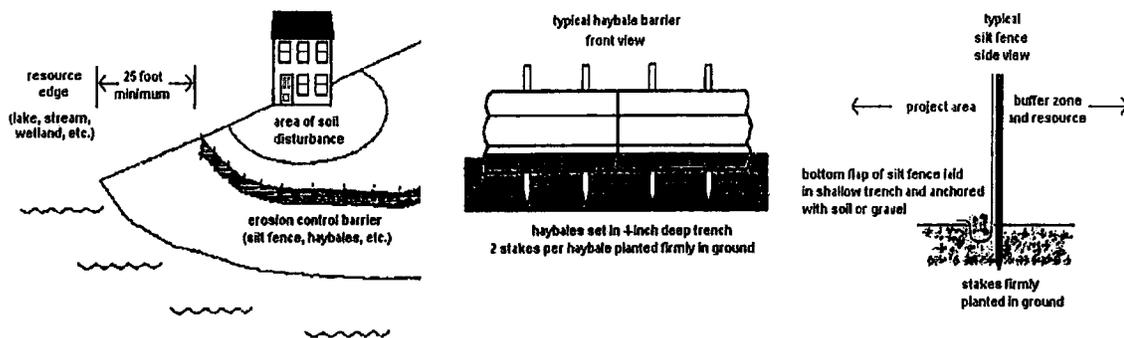


STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
17 STATE HOUSE STATION, AUGUSTA, MAINE 04333

### Erosion Control for Homeowners

#### Before Construction

1. If you have hired a contractor, make sure you discuss your permit with them. Talk about what measures they plan to take to control erosion. Everybody involved should understand what the resource is, and where it is located. Most people can identify the edge of a lake or river. However, the edges of wetlands are often not so obvious. Your contractor may be the person actually pushing dirt around, but you are both responsible for complying with the permit.
2. Call around to find where erosion control materials are available. Chances are your contractor has these materials already on hand. You probably will need silt fence, hay bales, wooden stakes, grass seed (or conservation mix), and perhaps filter fabric. Places to check for these items include farm & feed supply stores, garden & lawn suppliers, and landscaping companies. It is not always easy to find hay or straw during late winter and early spring. It also may be more expensive during those times of year. Plan ahead -- buy a supply early and keep it under a tarp.
3. Before any soil is disturbed, make sure an erosion control barrier has been installed. The barrier can be either a silt fence, a row of staked hay bales, or both. Use the drawings below as a guide for correct installation and placement. The barrier should be placed as close as possible to the soil-disturbance activity.
4. If a contractor is installing the erosion control barrier, double check it as a precaution. Erosion control barriers should be installed "on the contour", meaning at the same level or elevation across the land slope, whenever possible. This keeps stormwater from flowing to the lowest point along the barrier where it can build up and overflow or destroy the barrier.



#### During Construction

1. Use lots of hay or straw mulch on disturbed soil. The idea behind mulch is to prevent rain from striking the soil directly. It is the force of raindrops hitting the bare ground that makes the soil begin to move downslope with the runoff water, and cause erosion. More than 90% of erosion is prevented by keeping the soil covered.
2. Inspect your erosion control barriers frequently. This is especially important after a rainfall. If there is muddy water leaving the project site, then your erosion controls are not working as intended. You or your contractor then need to figure out what can be done to prevent more soil from getting past the barrier.

3. Keep your erosion control barrier up and maintained until you get a good and healthy growth of grass and the area is permanently stabilized.

#### **After Construction**

1. After your project is finished, seed the area. Note that all ground covers are not equal. For example, a mix of creeping red fescue and Kentucky bluegrass is a good choice for lawns and other high-maintenance areas. But this same seed mix is a poor selection for stabilizing a road shoulder or a cut bank that you don't intend to mow. Your contractor may have experience with different seed mixes, or you might contact a seed supplier for advice.
2. Do not spread grass seed after September 15. There is the likelihood that germinating seedlings could be killed by a frost before they have a chance to become established. Instead, mulch the area with a thick layer of hay or straw. In the spring, rake off the mulch and then seed the area. Don't forget to mulch again to hold in moisture and prevent the seed from washing away or being eaten by birds or other animals.
3. Keep your erosion control barrier up and maintained until you get a good and healthy growth of grass and the area is permanently stabilized.

#### **Why Control Erosion?**

##### **To Protect Water Quality**

When soil erodes into protected resources such as streams, rivers, wetlands, and lakes, it has many bad effects. Eroding soil particles carry phosphorus to the water. An excess of phosphorus can lead to explosions of algae growth in lakes and ponds called blooms. The water will look green and can have green slime in it. If you are near a lake or pond, this is not pleasant for swimming, and when the soil settles out on the bottom, it smothers fish eggs and small animals eaten by fish. There many other effects as well, which are all bad.

##### **To Protect the Soil**

It has taken thousands of years for our soil to develop. Its usefulness is evident all around us, from sustaining forests and growing our garden vegetables, to even treating our septic wastewater! We cannot afford to waste this valuable resource.

##### **To Save Money (SS)**

Replacing topsoil or gravel washed off your property can be expensive. You end up paying twice because State and local governments wind up spending your tax dollars to dig out ditches and storm drains that have become choked with sediment from soil erosion.



# DEP INFORMATION SHEET

## Appealing a Department Licensing Decision

Dated: March 2012

Contact: (207) 287-2811

### SUMMARY

There are two methods available to an aggrieved person seeking to appeal a licensing decision made by the Department of Environmental Protection's ("DEP") Commissioner: (1) in an administrative process before the Board of Environmental Protection ("Board"); or (2) in a judicial process before Maine's Superior Court. An aggrieved person seeking review of a licensing decision over which the Board had original jurisdiction may seek judicial review in Maine's Superior Court.

A judicial appeal of final action by the Commissioner or the Board regarding an application for an expedited wind energy development (35-A M.R.S.A. § 3451(4)) or a general permit for an offshore wind energy demonstration project (38 M.R.S.A. § 480-HH(1)) or a general permit for a tidal energy demonstration project (38 M.R.S.A. § 636-A) must be taken to the Supreme Judicial Court sitting as the Law Court.

This INFORMATION SHEET, in conjunction with a review of the statutory and regulatory provisions referred to herein, can help a person to understand his or her rights and obligations in filing an administrative or judicial appeal.

### I. ADMINISTRATIVE APPEALS TO THE BOARD

#### **LEGAL REFERENCES**

The laws concerning the DEP's *Organization and Powers*, 38 M.R.S.A. §§ 341-D(4) & 346, the *Maine Administrative Procedure Act*, 5 M.R.S.A. § 11001, and the DEP's *Rules Concerning the Processing of Applications and Other Administrative Matters* ("Chapter 2"), 06-096 CMR 2 (April 1, 2003).

#### **HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD**

The Board must receive a written appeal within 30 days of the date on which the Commissioner's decision was filed with the Board. Appeals filed after 30 calendar days of the date on which the Commissioner's decision was filed with the Board will be rejected.

#### **HOW TO SUBMIT AN APPEAL TO THE BOARD**

Signed original appeal documents must be sent to: Chair, Board of Environmental Protection, c/o Department of Environmental Protection, 17 State House Station, Augusta, ME 04333-0017; faxes are acceptable for purposes of meeting the deadline when followed by the Board's receipt of mailed original documents within five (5) working days. Receipt on a particular day must be by 5:00 PM at DEP's offices in Augusta; materials received after 5:00 PM are not considered received until the following day. The person appealing a licensing decision must also send the DEP's Commissioner a copy of the appeal documents and if the person appealing is not the applicant in the license proceeding at issue the applicant must also be sent a copy of the appeal documents. All of the information listed in the next section must be submitted at the time the appeal is filed. Only the extraordinary circumstances described at the end of that section will justify evidence not in the DEP's record at the time of decision being added to the record for consideration by the Board as part of an appeal.

#### WHAT YOUR APPEAL PAPERWORK MUST CONTAIN

Appeal materials must contain the following information at the time submitted:

1. *Aggrieved Status.* The appeal must explain how the person filing the appeal has standing to maintain an appeal. This requires an explanation of how the person filing the appeal may suffer a particularized injury as a result of the Commissioner's decision.
2. *The findings, conclusions or conditions objected to or believed to be in error.* Specific references and facts regarding the appellant's issues with the decision must be provided in the notice of appeal.
3. *The basis of the objections or challenge.* If possible, specific regulations, statutes or other facts should be referenced. This may include citing omissions of relevant requirements, and errors believed to have been made in interpretations, conclusions, and relevant requirements.
4. *The remedy sought.* This can range from reversal of the Commissioner's decision on the license or permit to changes in specific permit conditions.
5. *All the matters to be contested.* The Board will limit its consideration to those arguments specifically raised in the written notice of appeal.
6. *Request for hearing.* The Board will hear presentations on appeals at its regularly scheduled meetings, unless a public hearing on the appeal is requested and granted. A request for public hearing on an appeal must be filed as part of the notice of appeal.
7. *New or additional evidence to be offered.* The Board may allow new or additional evidence, referred to as supplemental evidence, to be considered by the Board in an appeal only when the evidence is relevant and material and that the person seeking to add information to the record can show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process or that the evidence itself is newly discovered and could not have been presented earlier in the process. Specific requirements for additional evidence are found in Chapter 2.

#### OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

1. *Be familiar with all relevant material in the DEP record.* A license application file is public information, subject to any applicable statutory exceptions, made easily accessible by DEP. Upon request, the DEP will make the material available during normal working hours, provide space to review the file, and provide opportunity for photocopying materials. There is a charge for copies or copying services.
2. *Be familiar with the regulations and laws under which the application was processed, and the procedural rules governing your appeal.* DEP staff will provide this information on request and answer questions regarding applicable requirements.
3. *The filing of an appeal does not operate as a stay to any decision.* If a license has been granted and it has been appealed the license normally remains in effect pending the processing of the appeal. A license holder may proceed with a project pending the outcome of an appeal but the license holder runs the risk of the decision being reversed or modified as a result of the appeal.

### WHAT TO EXPECT ONCE YOU FILE A TIMELY APPEAL WITH THE BOARD

The Board will formally acknowledge receipt of an appeal, including the name of the DEP project manager assigned to the specific appeal. The notice of appeal, any materials accepted by the Board Chair as supplementary evidence, and any materials submitted in response to the appeal will be sent to Board members with a recommendation from DEP staff. Persons filing appeals and interested persons are notified in advance of the date set for Board consideration of an appeal or request for public hearing. With or without holding a public hearing, the Board may affirm, amend, or reverse a Commissioner decision or remand the matter to the Commissioner for further proceedings. The Board will notify the appellant, a license holder, and interested persons of its decision.

### II. JUDICIAL APPEALS

Maine law generally allows aggrieved persons to appeal final Commissioner or Board licensing decisions to Maine's Superior Court, see 38 M.R.S.A. § 346(1); 06-096 CMR 2; 5 M.R.S.A. § 11001; & M.R. Civ. P 80C. A party's appeal must be filed with the Superior Court within 30 days of receipt of notice of the Board's or the Commissioner's decision. For any other person, an appeal must be filed within 40 days of the date the decision was rendered. Failure to file a timely appeal will result in the Board's or the Commissioner's decision becoming final.

An appeal to court of a license decision regarding an expedited wind energy development, a general permit for an offshore wind energy demonstration project, or a general permit for a tidal energy demonstration project may only be taken directly to the Maine Supreme Judicial Court. See 38 M.R.S.A. § 346(4).

Maine's Administrative Procedure Act, DEP statutes governing a particular matter, and the Maine Rules of Civil Procedure must be consulted for the substantive and procedural details applicable to judicial appeals.

### ADDITIONAL INFORMATION

If you have questions or need additional information on the appeal process, for administrative appeals contact the Board's Executive Analyst at (207) 287-2452 or for judicial appeals contact the court clerk's office in which your appeal will be filed.

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**Note: The DEP provides this INFORMATION SHEET for general guidance only; it is not intended for use as a legal reference. Maine law governs an appellant's rights.**

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REPLY TO ATTENTION OF

DEPARTMENT OF THE ARMY  
NEW ENGLAND DISTRICT, CORPS OF ENGINEERS  
696 VIRGINIA ROAD  
CONCORD, MASSACHUSETTS 01742-2751

**MAINE GENERAL PERMIT (GP)  
AUTHORIZATION LETTER AND SCREENING SUMMARY**

Michael Estes  
M&T Realty  
P.O. Box 125  
York, Maine 03909

CORPS PERMIT # NAE-2013-02532  
CORPS PGP ID# 13-379  
STATE ID# NRPA/PBR

**DESCRIPTION OF WORK:**

place fill in 11,985 SF (0.275 Acres) of wetland/waterway in conjunction with the development of Estes Propane Storage facility and the construction of an access road and associated wetland and stream crossing of Johnson Brook with two 42" culverts installed in wetland areas and a low profile open bottom box culvert installed in the stream crossing off US Route 1 at Kittery, Maine as shown on the attached plans entitled "Estes Propane Storage US Route 1, Kittery, Maine by ATTAR Engineering, Inc." in 8 sheets dated Nov. 8, 2013.

**See Attached Conditions:**

LAT/LONG COORDINATES : 43.12588 N 70.70271 W USGS QUAD: ME York Harbor

**I. CORPS DETERMINATION:**

Based on our review of the information you provided, we have determined that your project will have only minimal individual and cumulative impacts on waters and wetlands of the United States. **Your work is therefore authorized by the U.S. Army Corps of Engineers under the enclosed Federal Permit, the Maine General Permit (GP).** Accordingly, we do not plan to take any further action on this project.

You must perform the activity authorized herein in compliance with all the terms and conditions of the GP [including any attached Additional Conditions and any conditions placed on the State 401 Water Quality Certification including any required mitigation]. Please review the enclosed GP carefully, including the GP conditions beginning on page 5, to familiarize yourself with its contents. You are responsible for complying with all of the GP requirements; therefore you should be certain that whoever does the work fully understands all of the conditions. You may wish to discuss the conditions of this authorization with your contractor to ensure the contractor can accomplish the work in a manner that conforms to all requirements.

If you change the plans or construction methods for work within our jurisdiction, please contact us immediately to discuss modification of this authorization. This office must approve any changes before you undertake them.

Condition 41 of the GP (page 18) provides one year for completion of work that has commenced or is under contract to commence prior to the expiration of the GP on October 12, 2015. You will need to apply for reauthorization for any work within Corps jurisdiction that is not completed by October 12, 2016.

This authorization presumes the work shown on your plans noted above is in waters of the U.S. Should you desire to appeal our jurisdiction, please submit a request for an approved jurisdictional determination in writing to the undersigned.

No work may be started unless and until all other required local, State and Federal licenses and permits have been obtained. **This includes but is not limited to a Flood Hazard Development Permit issued by the town if necessary.**

**II. STATE ACTIONS: PENDING [ X ], ISSUED[ ], DENIED [ ] DATE \_\_\_\_\_**

APPLICATION TYPE: PBR: X, TIER 1: \_\_\_\_\_, TIER 2: \_\_\_\_\_, TIER 3: X, LURC: \_\_\_\_\_, DMR LEASE: \_\_\_\_\_, NA: \_\_\_\_\_

**III. FEDERAL ACTIONS:**

JOINT PROCESSING MEETING: 11/21/13 LEVEL OF REVIEW: CATEGORY 1: \_\_\_\_\_ CATEGORY 2: X

AUTHORITY (Based on a review of plans and/or State/Federal applications): SEC 10 \_\_\_\_\_, 404 X, 10/404 \_\_\_\_\_, 103 \_\_\_\_\_

EXCLUSIONS: The exclusionary criteria identified in the general permit do not apply to this project.

FEDERAL RESOURCE AGENCY OBJECTIONS: EPA\_NO \_\_\_\_\_, USF&WS\_NO \_\_\_\_\_, NMFS\_NO \_\_\_\_\_

If you have any questions on this matter, please contact my staff at 207-623-8367 at our Manchester, Maine Project Office. In order for us to better serve you, we would appreciate your completing our Customer Service Survey located at <http://per2.nwp.usace.army.mil/survey.html>

Rodney A. Howe  
RODNEY A. HOWE  
SENIOR PROJECT MANAGER  
MAINE PROJECT OFFICE

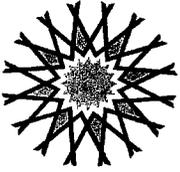
Peter Tischbein 12/31/13  
FRANK J. DEL GIUDICE DATE  
CHIEF, PERMITS & ENFORCEMENT BRANCH  
REGULATORY DIVISION



**US Army Corps  
of Engineers**  
New England District

**PLEASE NOTE THE FOLLOWING GENERAL CONDITIONS FOR  
DEPARTMENT OF THE ARMY  
GENERAL PERMIT  
NO. NAE-2013-02532**

1. This authorization requires you to 1) notify us before beginning work so we may inspect the project, and 2) submit a Compliance Certification Form. You must complete and return the enclosed Work Start Notification Form(s) to this office at least two weeks before the anticipated starting date. You must complete and return the enclosed Compliance Certification Form within one month following the completion of the authorized work and any required mitigation (but not mitigation monitoring, which requires separate submittals).
2. The permittee shall assure that a copy of this permit is at the work site whenever work is being performed and that all personnel performing work at the site of the work authorized by this permit are fully aware of the terms and conditions of the permit. This permit, including its drawings and any appendices and other attachments, shall be made a part of any and all contracts and sub-contracts for work which affects areas of Corps of Engineers' jurisdiction at the site of the work authorized by this permit. This shall be done by including the entire permit in the specifications for the work. If the permit is issued after construction specifications but before receipt of bids or quotes, the entire permit shall be included as an addendum to the specifications. The term "entire permit" includes permit amendments. Although the permittee may assign various aspects of the work to different contractors or sub-contractors, all contractors and sub-contractors shall be obligated by contract to comply with all environmental protection provisions of the entire permit, and no contract or sub-contract shall require or allow unauthorized work in areas of Corps of Engineers jurisdiction.
3. Please note General Condition 19 Work Site Restoration on page 10.
4. Please note General Condition 21 Sedimentation and Erosion Control on page 11 of the attached Programmatic General Permit.
5. Please note General Condition 22 Stream Work and Crossings on page 12 and particularly condition (h) Work in Flowing Waters on page 13 of the attached Programmatic General Permit. Also please note the Corps General Stream Crossing Standards on page 14.
6. Please note General Condition 23 Wetland Crossings on page 14 and 15 of the attached Programmatic General Permit.



**ATTAR**

ENGINEERING, INC

CIVIL • STRUCTURAL • MARINE

Gerry Mylroie, AICP, Town Planner  
Town of Kittery  
P.O. Box 808  
Kittery, Maine 03904

January 22, 2014  
Project No.: C082-14

**Re: Estes Propane Storage  
Preliminary Site Plan Application**

Dear Mr. Mylroie:

On behalf of Michael Estes, President of Estes Oil & Propane Company, I have enclosed additional information requested by the Planning Board at the January 9, 2014 meeting for the above referenced project. The site is located on Route 1 in the Mixed Use District and is described by the Town of Kittery Assessor's Map 67 as Lot 4.

Please find the following attachments:

- 1) Response to Planning Board comments at the January 9, 2014 meeting
- 2) Vernal Pool Survey by Kenneth A. Wood, PE, CWS
- 3) Maine Historic Preservation Commission
- 4) Revised Grading and Utility Plan (sheet 3)

I look forward to discussing this project with the Board at the next available meeting. Please contact me for any additional information or clarifications required.

Sincerely,

Edward Brake, E.I.T.

cc: Michael Estes

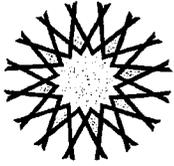
C082-14 Kittery Review Response 20140122.doc

A response to the Planning Board review comments from the January 9, 2014 meeting follows:

1. A letter from Kenneth A. Wood, PE, CWS, certifying that he has done a vernal pool survey and found no vernal pools on the site is attached. A note specifying that no vernal pools were found on the parcel will be added to the Site Plan. At the Planning Board meeting the question of offsite vernal pools was discussed. The MDEP does not require a permit for activities in the vernal pool habitat if the "significant vernal pool depression is not located on a parcel owned or controlled by the person carrying out the activity." Also note that for a vernal pool of special significance, the MDEP requires a 75% of the area within 250 feet of the vernal pool remain unfragmented forest. The majority of the development on the site is greater than 250 feet from the property line.
2. The 15,000 S.F. undisturbed wetland buffer zone, which is larger than the 11,985 S.F. of wetland fill, has been added to the Grading Plan. This area will be deed restricted following final approval of the project. The buffer zone, along with the previously submitted Wetland Alteration Application, fulfills the mitigation plan requirements of Section 16.9.3.9 of the Kittery Town Code.
3. I spoke with Chelsea Green of STARR, a subcontractor for FEMA, on January 16, 2014 and was told that the draft revised flood zone maps will not have an effect on an existing LOMA, unless the Base Flood Elevation or Flood Zone changes. In the case of the Estes Propane Storage Site, the flood zone does not change and the changes to the boundary are inconsequential. Therefore, the LOMA for the parcel will remain effective.
4. The boundary of the upland edge of the non-forested wetland associated with the inland waterfowl and wading bird habitat will be surveyed to confirm the boundary and the associated 250' resource protection zone. The confirmed boundary will be shown on the plans as part of the Final Site Plan Application.
5. The required Landscaping Standards for the Mixed-Use District are given in Section 16.3.2.13.D.6 of the Kittery Town Code. This standard requires a 50-foot wide landscape planter strip along the U.S. Route 1 right-of-way, that includes street trees, shrubs, and perennials. However, shrubs and perennials are not required if "existing woodlands are being retained or such planting is inconsistent with the retention of rural landscape features" (Section 16.3.2.13.D.6.a.iii). Also Section 16.3.2.13.D.6.c states that "rural land features such as...tree lines or fields must be retained to the maximum extent possible." Much of the existing vegetation along U.S. Route 1 will be maintained in its natural state. Of the 407 feet of total frontage along U.S. Route 1, 285 feet is wetland, 50 feet will be paved or graded for the entrance road, and the remaining 70 feet is an existing upland field. The proposed propane tanks are approximately 1,000 feet from U.S. Route 1, and will be screened by the existing tree line. It is not practical, and disturbs the natural landscape, to add street trees and plantings along the wetland, and the ordinance requires that existing fields be maintained. Therefore, no street trees or plantings should be required for this site.
6. Additional Information:
  - a. As requested by the Fire Chief, an 8" diameter waterline will be added to the Plan and Profile as part of the Final Site Plan application submittal.
  - b. The design for the wastewater system (HHE-200 Form) for the proposed garage will be included with the Final Site Plan application. Information for

the sewer line that will be installed for future use will be added to the Profile as part of the Final Site Plan application submittal.

- c. As required, a complete stormwater analysis will be included with the Final Site Plan application.
- d. A letter from the Maine Historic Preservation Commission was received on December 20, 2013 stating that there will be no historic properties affected by the project. The letter is attached.



**ATTAR**  
ENGINEERING, INC  
CIVIL STRUCTURAL MARINE

Chris DiMatteo, Ass't. Town Planner  
Town of Kittery  
P.O. Box 808  
Kittery, Maine 03904

January 10, 2014  
Project No.: C082-14

**Re: Estes Propane Storage  
Vernal Pool Survey**

Dear Mr. DiMatteo:

I understand that the Planning Board has requested additional information regarding my investigation of significant vernal pools on the referenced parcel. On May 9, 2013, I forwarded the following e-mail to the Planning Department:

Vernal Pools - I found no evidence of any vernal pools on the site, significant or non-significant.

On May 9, 2013 I observed all wetland areas on the parcel for evidence of vernal pools. "Significant" vernal pools are determined by the following indicator species, (REF: Maine DEP, CH 335, Significant Wildlife Habitat):

Fairy Shrimp	Presence
Blue spotted salamanders	10 or more egg masses
Spotted salamanders	20 or more egg masses
Wood frogs	40 or more egg masses

I did not observe the presence of any egg masses on this visit; nor did I observe any vernal pools; the excavated pond would be considered a man-made structure.

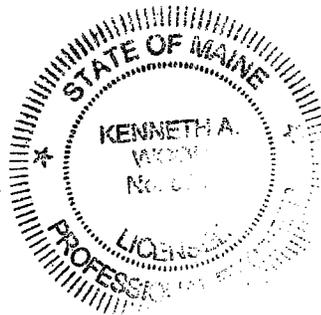
I also understand that a comment was made at last night's Board meeting that "spring peepers" were heard during the spring site walk – a spring peeper (*Pseudacris crucifer*) is a type of tree frog and should not be confused with a wood frog (*Rana sylvatica*) – wood frogs are noted by their distinctive chorusing.

Please contact me for any additional information.

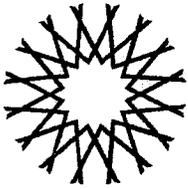
Sincerely,

Kenneth A. Wood, PE, CWS  
President

cc: Michael Estes



C082-14 Kittery vpool



# ATTAR

ENGINEERING, INC

CIVIL STRUCTURAL MARINE

NOV 14 2013 \*

1682-13

\* More Information  
rec'd Dec 16.

November 8, 2013

Project No.: C082-13

Earle G. Shettleworth, Jr.  
Maine Historic Preservation Commission  
55 Capitol Street  
65 State House Station  
Augusta, Maine 04333

**RE: Estes Propane Storage ~ NRPA Tier 1 Application**  
**Kittery, ME 03909 US Route 1 ; Map 67 lot 4**

Dear Mr. Shettleworth:

On behalf of M&T Realty, I have enclosed a copy of the MDEP NRPA Tier 1 application.

The proposed project is to develop a bulk propane storage area for Estes Oil & Propane. The storage area will be accessed by a 1,360' long, 20' wide asphalt road.

Please comment on the presence of any known or suspected archaeological resources on the property, and on the potential impact of this project on any resources such as Local Historic Districts or Landmarks, National Historic Districts, Properties listed on the National Register of Historic Places, and Cemeteries or family burial plots.

Please contact me if you have questions or require additional information.

Thank you for your assistance.

Sincerely,

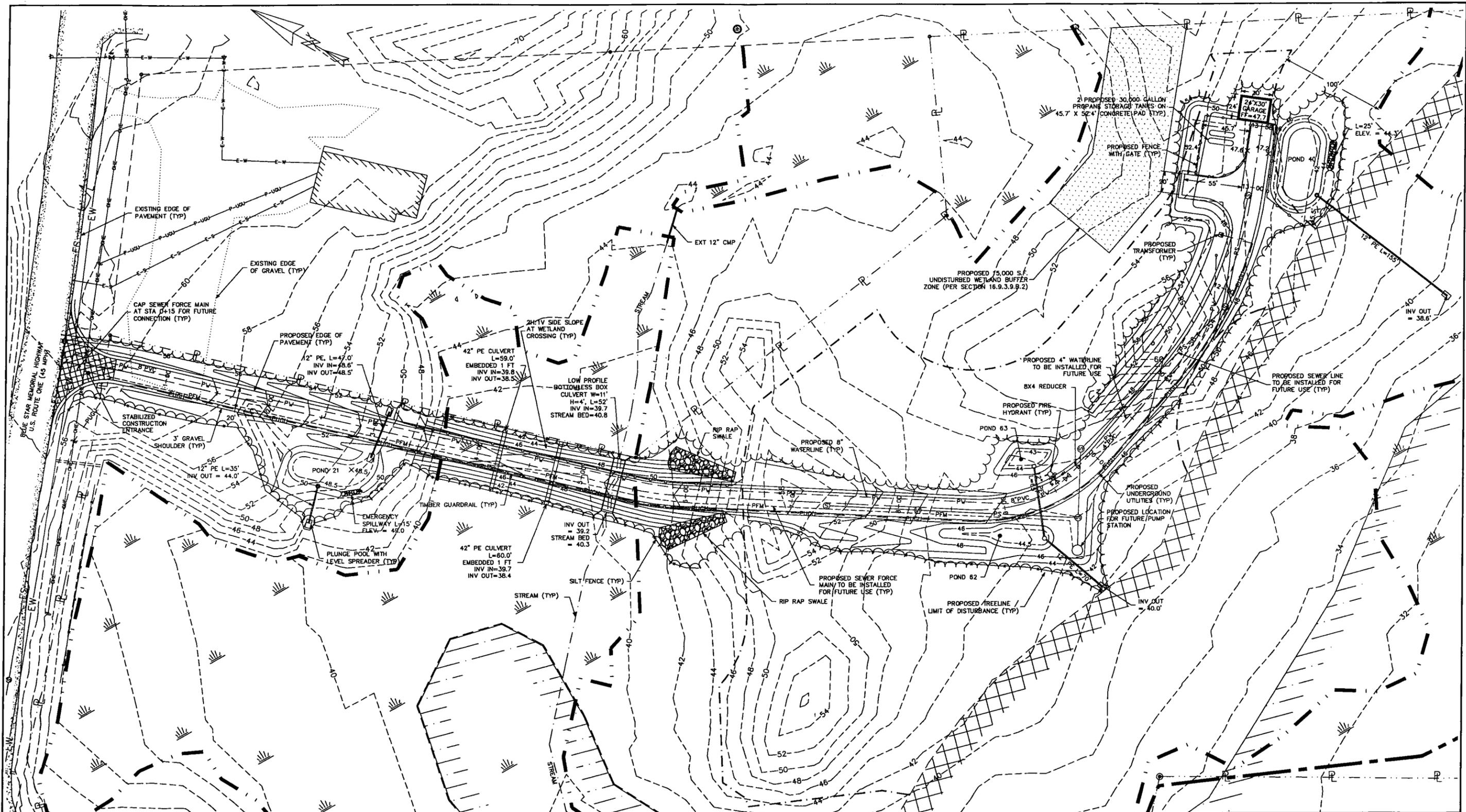
Edward Brake, E.I.T.

C082-13\_MHPC\_Ltr.doc

Based on the information submitted, I have concluded that there will be no historic properties affected by the proposed undertaking, as defined by Section 106 of the National Historic Preservation Act. Consequently, pursuant to 36 CFR 800.4(d)(1), no further Section 106 consultation is required unless additional resources are discovered during project implementation pursuant to 36 CFR 800.13.

Kirk F. Mohney,  
Deputy State Historic Preservation Officer  
Maine Historic Preservation Commission

12/20/13  
Date

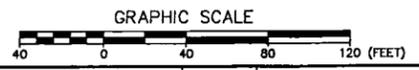


**GENERAL NOTES**

1. ALL STORM DRAINS TO BE ADS N-12 (PE) OR APPROVED EQUAL.
2. CENTRAL MAINE POWER COMPANY WILL PREPARE THE ELECTRICAL PLAN FOR CONSTRUCTION. ALL ELECTRICAL, TELEPHONE, AND CABLE SERVICES WILL BE UNDERGROUND.
3. SEWER MAINS TO BE 8" SDR 35 PVC. ALL OTHER APPURTENANCES SHALL MEET KITTERY SEWER DISTRICT STANDARDS.
4. ALL PIPES, VALVES, FITTINGS, AND CONNECTIONS SHALL MEET CURRENT KITTERY WATER DISTRICT STANDARDS.
5. A MINIMUM OF 5.0' OF COVER SHALL BE MAINTAINED OVER ALL WATER LINES.
6. NEW WATER AND SEWER LINES SHALL BE TESTED IN ACCORDANCE WITH RESPECTIVE DISTRICT REQUIREMENTS.

**LEGEND**

EXISTING CONTOUR	----	XXX
PROPOSED CONTOUR	----	XXX
WETLAND BOUNDARY	----	UPLAND WETLAND
UTILITY POLE	○	
EXT. WATER	—	EW
EXT. SEWER	—	ES
EXT. OVERHEAD UTIL.	—	OHE
EXT. PROPERTY LINE	—	
EDGE OF PAVEMENT	—	
BUILDING SETBACK	—	



NO.	DESCRIPTION	DATE
B.	ADDED WETLAND BUFFER ZONE	1/22/14
A.	STORMWATER REVISIONS	12/5/13
	REVISIONS	

**GRADING AND UTILITY PLAN  
ESTES PROPANE STORAGE  
U.S. ROUTE 1, KITTERY, MAINE**

FOR: MICHAEL ESTES  
PO BOX 125  
YORK, MAINE 03909

**ATTAR ENGINEERING, INC.**  
CIVIL • STRUCTURAL • MARINE  
1284 STATE ROAD - ELOT, MAINE 03903  
PHONE: (207)439-6023 FAX: (207)439-2128

SCALE: 1" = 40'  
DATE: 11/7/13

APPROVED BY: JLC  
DRAWN BY: JLC  
REVISION DATE: 1/22/14  
SHEET 3

JOB NO: COB2-13 CAD FILE: ESTES PROPANE BASE

**ITEM 3 – (10 minutes) Town Code Amendment - Title 16.10.9.1.4. Approved Plan Expiration and 16.10.9.1.5 Requests for Extension.**

Discuss proposed amendment and make a recommendation to Town Council. Proposed amendment reduces the period of time in which extensions may be granted, and modifies the process for extension requests.

TO: Planning Board

From: Gerry Mylroie, AICP, Town Planner

Re: Title 16.10.9.1.4 Approved Plan Expiration and 16.5.2.4. Permit Period

**Background**

**Comment:** Town Planning Board recommended amendment returned to the Town Planning Board by the Town Council for clarification as to intent; i.e., have limits on expiration periods or per a subsequent section 16.10.9.1.5 (see below) have limits determined on a case by case basis?

**Action:** Clarify intent; see below.  
Determine if a substantive or administrative change and take appropriate action.

**Decisions:** If believe amendment is not a substantive change, but administrative change, move to forward to the Town Council.

If believe amendment is a substantive change, move to schedule a public hearing AND to also amend section 16.10.9.1.5.

**ITEM 1:**

The following is proposed amendment language as recommended by the Town Manager’s Proposal Review Group and Town Council following review on 1/13/2014 (see page 4):

Chapter 16.10 DEVELOPMENT PLAN APPLICATION AND REVIEW

Article IX. Post Approval

16.10.9.1 Post Approval Actions Required.

16.10.9.1.4 Approved Plan Expiration.

A. A subdivision plan's approval by the Planning Board will expire if work on the development has not commenced within one (1) year or is not substantially complete within three (3) years from the date of Planning Board approval. The Planning Board may, ~~by formal action,~~ grant extensions for an inclusive period from the original approval date not to exceed ~~ten (10)~~ five (5) years.

B. A non-subdivision plan's approval by the Planning Board will expire if work on the development hasis not commenced within one (1) year or is not substantially complete within two (2) years from the date of Planning Board approval. The Planning Board may, ~~by formal action,~~ grant extensions for an inclusive period from the original approval date not to exceed three (3) years.

The following related section confuses the intent of section 16.10.9.1.4 A and B above.

#### 16.10.9.1.5 Requests for Extension.

The Planning Board may grant extensions to expiration dates upon written request by the developer, on a case-by-case basis.

Proposed amendment language:

#### **16.10.9.1.5 Requests for Extension.**

The Planning Board may grant extensions to an approved plan's expiration dates per section 16.10.9.1.4 upon written request by the developer, ~~on a case-by-case basis.~~

This new language REQUIRES NOTICE AND PUBLIC HEARINGS if the Board agrees.

#### **ITEM 2:**

The Town Council rejected the following amendment as unnecessary,

#### ~~16.5.2.4 Permit Period.~~

~~A permit expires if no substantial work has been commenced within six months from date of issue. A permit and expires if work is not substantially complete within two years from date of issue. Expired permits may be renewed upon application and payment of a renewal fee.~~

and requested it be left as separate sentences, with administrative revisions as noted:

#### 16.5.2.4 Permit Period

A permit expires if no substantial work has been commenced within six (6) months from date of issue. A permit expires if work is not substantially complete within two (2) years from date of issue. Expired permits may be renewed upon application and payment of a renewal fee.

Attachment – Enclosure 1 – Report to Town Council January 13, 2014  
Enclosure 1

Report to the Town Council

Reviewed and Updated by the Town Manager’s Proposal Review Group from the report contained in Council packet dated January 13, 2014.

Responsible Individuals:

- Russell White, Town Councilor, Sponsor
- Tom Emerson, Chairman, Planning Board
- Gerry Mylroie, Town Planner

Title 16.10.9.1.4 – Approved Plan Expiration and 16.5.2.4 Permit Period
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Background

Title 16.10.9.1.4, Approved Plan Expiration, allows the Planning Board to grant extensions for an inclusive period from original approval date not to exceed ten (10) years. The Planning Board proposed amendment language to reduce the extension period from 10 years to 5 years. Planning Board meetings/public hearings were held on June 27, 2013 and August 22, 2013. Planning Board voted 7-0 to move the recommendation forward to Town Council for review and approval.

Additionally, the proposal deletes the extraneous term “by formal action” in paragraphs A and B of 16.10.9.1.4, and amends paragraph B to make the language consistent between the two paragraphs.

Current Situation

Town Council held a duly noted public hearing on December 9, 2013, to discuss the proposed amendment. Due to an incomplete submittal Council postponed the item until its December 23, 2013 meeting. At the Council’s next meeting the Town Manager requested and Council approved postponing action until its January 13, 2014 meeting to allow for attendance of the Town Planner. Action was postponed again until January 27, 2014, due to the Town Manager’s request to allow for the newly formed internal Proposal Review Group to review and make revisions.

Implication:

The proposed reduction in the approval extension period will encourage a more timely start and completion of Planning Board approved projects. Approved subdivisions may not be subject to subsequent ordinance amendments if it is not commenced or completed within the approved time period. Reducing the extension period from 10 years to 5 years promotes timely completion.

Recommendation:

Move to amend as presented:

Title 16.10.9.1.4 – Approved Plan Expiration

Title 16.5.2.4 Permit Period - The Town Manager's Proposal Review Group (PRG) met and recommends no change be made to Title 16.5.2.4.

**16.10.9.1.4 Approved Plan Expiration.**

A. A subdivision plan's approval by the Planning Board will expire if work on the development has not commenced within one year or is not substantially complete within three years from the date of Planning Board approval. The Planning Board may, ~~by formal action,~~ grant extensions for an inclusive period from the original approval date not to exceed ~~ten (10)~~five (5) years.

B. A non-subdivision plan's approval by the Planning Board will expire if work on the development has not commenced within one year or is not substantially complete within two years from the date of Planning Board approval. The Planning Board may, ~~by formal action,~~ grant extensions for an inclusive period from original approval date not to exceed three years.

~~**16.5.2.4 Permit Period.**~~

~~A permit expires if no substantial work has been commenced within six months from date of issue. A permit and expires if work is not substantially complete within two years from date of issue. Expired permits may be renewed upon application and payment of a renewal fee.~~

**AN ORDINANCE** allowing the Planning Board to grant subdivision plan extensions for an inclusive period from the approval date not to exceed 5 years.

**WHEREAS**, The Council is authorized to enact this Ordinance, as specified in Section 2.14 Ordinances in general, of the Town Charter and 30-A M.R.S. §3001, pursuant to its powers that authorize the town, under certain circumstances, to provide for the public health, safety and welfare. The Council does not intend for this Ordinance to conflict with any existing state or federal laws.

**WHEREAS**, existing Title 16 language allows the Planning Board to grant extensions for an inclusive period from the original approval date not to exceed ten (10) years; and

**WHEREAS**, reducing an approved subdivision plan extension period may encourage more timely project completion; and

**WHEREAS**, the proposed amendment language is in compliance with Land Use Code Title 16 and Comprehensive Plan objectives;

**NOW THEREFORE**, IN ACCORDANCE WITH TITLE 30-A, M.R.S. §3001, AND TOWN CHARTER SECTION 2.14, THE TOWN OF KITTERY HEREBY ORDAINS REVISION TO TOWN CODE TITLE 16.10.9.1.4 CODIFIED IN THE TOWN CODE, AS PRESENTED.

**Approved as to form:** {NAME}, Town Attorney

**INTRODUCED** and read in a public session of the Town Council on the \_\_\_ day of

\_\_\_\_\_, by: \_\_\_\_\_ {NAME} Motion to approve by

Councilor \_\_\_\_\_ {NAME}, seconded by Councilor

\_\_\_\_\_

{NAME} and passed by a vote of \_\_\_\_\_.

**THIS ORDINANCE IS DULY AND PROPERLY ORDAINED** by the Town Council of Kittery,

Maine on the \_\_\_ day of \_\_\_\_\_, 2014, \_\_\_\_\_ {NAME}, Chairperson

**Attest:** {NAME}, Town Clerk

# JAN BUILDING 2014 PERMIT REPORT

Number of Building Permits Issued **28**  
 Value of Building Permits **\$483,900.38**  
 Permit Fees Collected **\$7,467.00**  
 Impact Fees Paid **\$0.00**

Date Issued	Permit #	Property Owner	Address	Map	Lot Zone	Overlay	R	Work	Description	Value	Fee	Impact Fee
1/27/2014	14-001	ENGLISH, ANDREW	55 LOVE LANE	4	199 R-1J	-	R	RENOVATION	RENOV BASEMENT	\$30,000.00	\$385.00	-
1/9/2014	14-002	HASKELL, JOHN	51 POCOHONTAS RD	51	10 R-RLC	OZ-SL	R	GENERATOR	GENERATOR	\$8,000.00	\$121.00	-
1/7/2014	14-002A	PIG PEN PARTNERS A SIGAL	46 US ROUTE 1	61	27A MU	-	C	COM.RENOV	INCLOSE DECK	\$80,000.00	\$1,300.00	-
1/9/2014	14-003	PAPER CRANE LLC	6 STATE RD	3	175 LB-1	-	C	COM.REFTT	JNG DESIGNS	\$20,000.00	\$400.00	-
1/9/2014	14-004	PAPER CRANE LLC	2 STATE RD	3	175 LB-1	-	C	COM.REFTT	YOGA EAST	\$40,000.00	\$700.00	-
1/5/2014	14-005	MURRAY, SUSAN	15 ISLAND AVE	1	6 RTI	OZ-SL	R	RENOVATION	RENOV KITCHEN	\$40,000.00	\$420.00	-
1/5/2014	14-006	JONES, VICTORIA	12 CHAUNCEY CREEK RD	44	69 R-KPV	OZ-SL	R	PROPANE TANK	TANK & HEATER	\$2,267.00	\$49.00	-
1/5/2014	14-007	KNIGHTS OF KITTEERY	4 KNIGHT AVE	4	67 MU-KF	OZ-SL	C	COMMERCIAL	BLDG ON DOCK PER PB APP	\$70,000.00	\$1,150.00	-
1/5/2014	14-008	PETERS, ANN	1 OX POINT DRIVE	31	7 C-1	OZ-SL	R	RENOVATION	RENOV BATHROOMS	\$19,000.00	\$133.00	-
1/5/2014	14-009	PHETTY, MIKE	36 MILLER ROAD	56	31/47 R-RL	-	R	MAINTENGE & REP	REPLACE 4 WINDOWS	\$3,450.00	\$25.00	-
1/22/2014	14-010	TETRAULT, STEPHEN	30 ADAMS ROAD	60	32A R-RL	-	R	DEMO	DEMO FIRE DMGD MOBILE HOME	-	\$20.00	-
1/22/2014	14-011	RECU, KENNETH	69 BARTLETT ROAD 60 BRAVE BOAT HARBOR RD	62	36A R-RL	-	R	GENERATOR	GENERATOR	\$7,290.00	\$112.00	-
1/27/2014	14-012	DELOZIER, SANDRA	RD	45	41 R-RL	-	R	RENOVATION	PROPANE LINE FOR GAS INSERT	\$1,595.00	\$43.00	-
1/27/2014	14-013	TOBIN, LAD	23 GERISH ISLAND LANE	44	52 R-KPV	-	R	GENERATOR	GENERATOR	\$8,698.38	\$91.00	-
1/27/2014	14-014	WALLINGFORD SQ LLC	7 WALLINGFORD SQ #107	4	106 MU-KF	-	C	COM.REFTT	THE JUICERY	\$5,000.00	\$175.00	-
1/27/2014	14-015	TANGER OUTLET	283 US ROUTE 1	30	44 C-1	-	C	COM.RENOV	EXISTING VAN HEUSEN STORE	\$28,000.00	\$520.00	-
1/28/2014	14-016	BRADFORD REALTY TRUST	8 DEXTER LANE	47	3 C-1	-	C	COM.REFTT	SOX MARKET	\$1,000.00	\$115.00	-
1/28/2014	14-017	SPRUCE CREEK RETAIL	340 US ROUTE 1	47	25 C-1	OZ-SL	C	COM.DEMO	DEMO INTERIOR	-	\$20.00	-
1/28/2014	14-018	DINGAN, SMITH	2 MEAD ST	24	74 R-V	-	R	MAINTENGE & REP	INTERIOR RENOV	\$14,000.00	\$73.00	-
1/29/2014	14-019	DINGAN, SMITH	4 MEAD ST	24	74 R-V	-	R	MAINTENGE & REP	INTERIOR RENOV	\$14,000.00	\$73.00	-
1/29/2014	14-020	GOLINT ENTERPRISES LLC	1-3 GOVERNMENT ST	4	65 MU-KF	-	C	COM.REFTT	STELAS SWEET CAFE	\$5,000.00	\$175.00	-
1/29/2014	14-021	SSG6 LLC	436 US ROUTE 1	50	9 MU	-	C	COM.DEMO	DEMO INTERIOR	-	\$20.00	-
1/29/2014	14-022	KNIGHTS OF KITTEERY	4 KNIGHT AVE	4	67 MU-KF	OZ-SL	C	COM	ADD 3X35 GANGWAY TO PIER	\$6,000.00	\$190.00	-
1/29/2014	14-023	WALLINGFORD SQ LLC	7 WALLINGFORD SQ	4	106 MU-KF	-	C	COM.REFTT	FRESH CATCH MEDIA	\$9,000.00	\$235.00	-
1/29/2014	14-024	KRAMER, MARK S	30 CHARLES HILL RD	56	8-2 R-RL	-	R	SINGLE FAMILY	DWELLING OVER GARAGE	\$50,000.00	\$625.00	-
1/29/2014	14-025	LANDGARTEN, MICHAEL	578 HAILEY ROAD	26	36 R-RL	OZ-SL	R	MAINTENGE & REP	REPAIR BARN CONV TO GARAGE	\$11,000.00	\$85.00	-
1/30/2014	14-026	RAWSON, OLGA	270 HAILEY ROAD	40	8 R-RL	-	R	GENERATOR	GENERATOR	\$5,000.00	\$85.00	-
1/30/2014	14-027	NICHOLD, ROBERT	102 GOODWIN ROAD	53	4B R-RLC	OZ-SL	R	GENERATOR	GENERATOR	\$8,600.00	\$127.00	-