



# 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, December 11, 2014 6:00 P.M. to 10:00 P.M.

### CALL TO ORDER – ROLL CALL – PLEDGE OF ALLEGIANCE – APPROVAL OF MINUTES – 11/13/2014

**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 – (15 MIN.) – Bartlett Hill Multifamily Cluster Subdivision – Subdivision Preliminary Plan Review.

Action: Grant or deny request to continue application. Owner and applicant Peter J. Paul Trustee of AMP Realty Holdings LLC, is requesting consideration of plans to develop a multi-family residential cluster subdivision. The approximately 18 acre parcel is located on a portion of Tax Map 28, Lot 14 with frontage along Fernald Road and Route 236, in the Residential Suburban Zone with portions in the Commercial C-2 zone and Resource Protection Overlay Zone. Agent is Tom Harmon, Civil Consultants.

### NEW BUSINESS

#### ITEM 2 – (15 MIN.) – McCoy Residence - Shoreland Development Plan Review.

Action: Accept or Deny Plan Application, schedule a Public Hearing and Site Walk. Kevin and Terry McCoy, owners and applicant request approval for a nonconforming structure reconstruction in the Shoreland Zone to include the removal of an existing house, garage and shed and construct a new house, garage and barn at 24 Goose Point, Kittery, Tax Map 34 Lot 9 in the Residential-Rural, Shoreland and Resource Protection Overlay zones. Agent is architect Tom Emerson, Studio B-E

#### ITEM 3 – (15 MIN.) - Beatrice Way – Preliminary Major Subdivision Plan –Completeness Review

Action: Accept or Deny Plan Application, schedule a Public Hearing and Site Walk. Owner Operation Blessing LP, and applicant Richard Sparkowich, propose a five lot subdivision on remaining land from the previously approved 3-lot subdivision located between Highpoint Circle and Kittree Lane. The site is identified as Tax Map 61 Lot 08, ±65 acres, in the Residential - Rural (R-RL) Zone. Agent is Ken Markley, Easterly Survey Inc.

#### ITEM 4 – (15 MIN.) - Board Member Items / Discussion

- A. Amendments to Title 16, scheduled Town Council 12/8 Public Hearing and 1/5 Joint Workshop

**ITEM 5 – (15 MIN.) – Town Planner Items:** 1) KACTS Route One By-Pass Study; 2) Lewis Farm III Minor Modification to an Approved Plan; and 3) Other.

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

UNAPPROVED  
November 13, 2014

4  
5 Meeting called to order at 6:02 p.m.  
6 Board Members Present: Karen Kalmar, Mark Alesse, Deborah Driscoll, Ann Grinnell, David Lincoln  
7 Members absent: Tom Emerson  
8 Staff: Chris DiMatteo, Interim Planner

9  
10 In the absence of Chairman Emerson, Ann Grinnell took position of Chair.

11  
12 Pledge of Allegiance

13  
14 Agenda changes:  
15 Ms. Grinnell moved to amend the agenda as follows: Item 9 moved to beginning of meeting and  
16 Item 8 moved behind Item 5.  
17 Ms. Kalmar seconded  
18 Motion carried unanimously

19  
20 Minutes: October 23, 2014  
21 Ms. Kalmar moved to approve the minutes as submitted  
22 Ms. Grinnell seconded  
23 Motion carried unanimously by all members present

24  
25 Ms. Kalmar moved to approve the site walk minutes of September 24, 2014 for Betty Welch Road  
26 Cluster Subdivision as submitted  
27 Mr. Alesse seconded  
28 Motion carried unanimously by all members present

29  
30 Ms. Kalmar moved to approve site walk minutes of October 20, 2014 for 70 Chauncey Creek as  
31 submitted  
32 Ms. Grinnell seconded  
33 Motion carried unanimously by all members present

34  
35 Public Comment: No public comment.

36  
37 ITEM 9 – Town of Kittery –Sewer - Wetland Alteration. Action: review and grant or deny plan approval.  
38 Owner and Applicant Kittery Wastewater Treatment Department is requesting consideration of their plans  
39 to temporarily impact wetlands as part of expanding public sewer through a CMP corridor located  
40 between Route 236 and I-95, Tax Map 12, Lot 03-1 and Map 21, Lot 18, in the Business Park Zone.  
41 Agent is Kleinfelder Engineers..

- 42 George Kathois, provided a brief history and status of the project:
- 43 1. Improvements under consideration since 1991 to provide sewer connections to the older parts of
  - 44 Kittery.
  - 45 2. CIP completed in late 2012.
  - 46 3. The Planning Board conceptually endorsed infrastructure improvements on January 10, 2013.
  - 47 4. A June 2013 referendum approved by voters, funded by a Maine DEP loan.
  - 48 5. The Planning Board conceptually endorsed the Sewer Expansion project on August 22, 2013.
  - 49 6. Plant infrastructure improvements under construction, with completion spring 2015.
  - 50 7. Sewer expansion bidding to begin December 5, 2014, with completion spring 2016.

52 Plan is to run the sewer pipes through a CMP corridor containing, mostly, man-made wetlands.  
53 Ms. Kalmar: The information packet submitted was well-prepared and informative.  
54 Ms. Driscoll: Will any of the proposed construction impact the large wetland area?  
55 Mr. Kathois: No, only those small areas within the corridor will be impacted. The plan proposal has been  
56 approved by the ACOE and the MDEP.  
57 Don Moore, Kittery Conservation Commission: Does Kleinfelder have wetland biologists, will the  
58 wetland alteration near the vernal pool be suspended during spring activity, and how is dewatering  
59 accomplished? Who makes determination that the vernal pool has been returned to its normal state?  
60 Mark Thompson, Kleinfelder Engineers: Trenches will be de-watered and pumped to sedimentation  
61 basins to leach out. Construction plans to accomplish this are under review by MDEP. There are small  
62 areas not certified as vernal pools, but there will no construction within any suspected pool area. MDEP  
63 personnel and Kleinfelder Engineers will be on site during and after construction to assure areas are  
64 protected and restored.  
65 Ken Markley: The Town has discussed using this same corridor to tie Dennett Road to Rt. 236. Has the  
66 depth of the sewer design considered this possibility without further damage in this corridor?  
67 George Kathois: Land owners have been contacted but, because this is private property, constructing a  
68 road will be up to the property owners. Ditches and pipes, etc. will be designed and a gravel bed prepared  
69 to accommodate a road if that should occur in the future, but the actual road construction would be  
70 accomplished through property owners or a developer.  
71  
72 Ms. Kalmar moved to approve the wetland alteration plan for the sewer extension through a CMP  
73 corridor located between Route 236 and I-95, Tax Map 12, Lot 03-1 and Map 21, Lot 18, in the Business  
74 Park Zone.  
75 Mr. Alesse seconded

76  
77 Findings of Fact  
78

WETLAND ALTERATION FINDINGS OF FACT:
<i>16.9.3.7 Wetlands Alteration Approval Criteria</i>
<i>A. In making the final determination as to whether a wetland application should be approved, the Planning Board will consider existing wetland destruction and the cumulative effect of reasonably anticipated future uses similar to the one proposed.</i>
Conclusion: The proposed impact is limited to temporary disturbance and there is no cumulative effect associated with similar future uses.
Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
<i>B. It is the responsibility and burden of the applicant to show that the proposed use meets the purposes of this Code and the specific standards listed below to gain Planning Board approval to alter a wetland.</i>
Conclusion: The applicant appears to have provided clear and convincing evidence that the proposed use meets the purpose of the Town Code including standards in Chapter 9, Article 3.
Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
<i>C. In evaluating the proposed activity, the Planning Board may need to acquire expert advisory opinions.</i>
Conclusion: It does not appear that in addition information prepared to date that expert advisory opinion in is warranted.
Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
<i>D. ...practicable mitigation plan,...</i>
Conclusion: It does not appear that the proposed development warrants more than the planned measures to protect existing vegetation through the use of crane mats and to salvage and replant vegetation where trenching is required to be considered a “reasonable and practicable mitigation plan.”
Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining

*E. The applicant must submit applicable documentation that demonstrates there is no practicable alternative to the proposed alteration of the wetland.*

Conclusion: The applicant appears to have demonstrated there is no practicable alternative to the proposed alteration of the wetland

Vote of 5 in favor 0 against 0 abstaining

*F. Objectives of 16.9.3.7.F*

Conclusion: The applicant appears to have demonstrated that the objectives outlined in 16.9.3.7.F can be met

Vote of 5 in favor 0 against 0 abstaining

79

80 NOW THEREFORE the Kittery Planning Board adopts each of the foregoing Findings of Fact and based on  
81 these Findings determines the proposed Development will have no significant detrimental impact, and the Kittery  
82 Planning Board hereby grants Preliminary and Final Approval for the Development at the above referenced  
83 property, including any waivers granted or conditions as noted.

84

85 Waivers: none

86

87 Conditions and instructions/notice to Applicant per the November 13, 2014 Findings of Fact

88

89 Vote of 5 in favor 0 against 0 abstaining

90

91

92 PUBLIC HEARINGS

93

94 ITEM 1 – 84 Pepperrell LLC – Shoreland Development Plan Review - Action: Hold public hearing,  
95 review, and approve or deny plan approval. Owner 84 Pepperrell LLC and applicant Jonathan  
96 MacDougal are requesting approval of their plans to reconstruct expand an existing non-conforming  
97 building located at 84 Pepperrell Rd., Tax Map 27, Lot 51, in the Kittery Point Village and Shoreland  
98 Overlay zones.

99 The Public Hearing opened and closed at 6:30. There was no public testimony.

100

101 Mr. MacDougal noted there are no changes to the proposed plan since the prior meeting.

102 Mr. DiMatteo: The applicant is aware there are some amendments to the final plan that need to be made  
103 prior to signature, but the plan is ready for approval.

104 Ms. Kalmar moved to approve with conditions the Shoreland Development Plan at 84 Pepperrell Road.

105 Ms. Driscoll seconded

106

107 Findings of Fact

16.3.2.17. D Shoreland Overlay Zone - Standards.

*1.d d. The total footprint of areas devegetated for structures, parking lots and other impervious surfaces, must not exceed twenty (20) percent of the lot area, including existing development, except in the following zones:*

Conclusion: This standard appears to have been met.

Vote: 5 in favor 0 against 0 abstaining

108

II. Standards in the Shoreland Overlay Zone

109

Chapter 16.7 GENERAL DEVELOPMENT REQUIREMENTS have been met.

16.7.3.1 Prohibitions and Allowances.

*A. Except as otherwise provided in this Article, a non-conforming condition must not be permitted to become more non-conforming.*

Conclusion: The requirement appears to be met.

Vote: 5 in favor 0 against 0 abstaining

16.7.3.6 Nonconforming Structures in Shoreland and Resource Protection Zones have been met.

<u>Conclusion:</u> This standard appears to have been met.	
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining	
110	III. Procedures for Administering Permits For Shoreland Development Review
111	16.10.10.2 D. <i>An Application will be approved or approved with conditions if the reviewing authority makes a</i>
112	<i>positive finding based on the information presented. It must be demonstrated the proposed use will:</i>
	1. <i>Maintain safe and healthful conditions;</i>
	Finding/Conclusion: The proposed development does not appear to have an adverse impact.
	Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
	2. <i>Not result in water pollution, erosion or sedimentation to surface waters;</i>
	The proposed development does not appear to have an adverse impact.
	Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
	3. <i>Adequately provide for the disposal of all wastewater;</i>
	This standard is not applicable.
	Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
	4. <i>Not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;</i>
	The proposed development does not appear to have an adverse impact
	Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
	5. <i>Conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;</i>
	The proposed development does not appear to have an adverse impact
	Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
	6. <i>Protect archaeological and historic resources;</i>
	The proposed development does not appear to have an adverse impact
	Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
	7. <i>Not adversely affect existing commercial fishing or maritime activities in a commercial fisheries/ maritime activities district;</i>
	The proposed development does not appear to have an adverse impact
	Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
	8. <i>Avoid problems associated with floodplain development and use</i>
	The proposed addition of a 72 sf patio does not appear to have an adverse impact.
	Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
	9. <i>Is in conformance with the provisions of this Code;</i>
	Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
	10. <i>Be recorded with the York County Registry of Deeds.</i>
	Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining

113  
 114 Based on the foregoing Findings, the Planning Board finds the applicant has satisfied each of the review standards for  
 115 approval and, therefore, the Planning Board approves the Shoreland Development Plan Application of 84 Pepperrell  
 116 LLC, owner, and Jonathan MacDougall, applicant, to add a patio to an existing accessory building at 84 Pepperrell  
 117 Road subject to any conditions and/or waivers, as follows:

118  
 119 Application Waivers: None

120 Conditions of Approval and Notices to Applicant contained in the Findings of Fact dated 11/13/14.

121

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

124

**Vote: 5 in favor 0 against 0 abstaining**

125

126

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

130

131

132 **ITEM 2 – 62 Pepperrell Cove LLC – Shoreland Development Plan Review - Action: Hold public**  
133 **hearing, review, and approve or deny plan approval.** Owner Pepperrell Cove LLC and Applicant Michael  
134 McCuddy is requesting approval of their plans to expand an existing non-conforming building located at  
135 62 Pepperrell Rd., Tax Map 18, Lot 46, in the Kittery Point Village and Shoreland Overlay zones.

136 The Public Hearing opened and closed at 6:38 p.m.. There was no public testimony.

137 Michael McCuddy: There are changes to the volume and impervious surface to be certified by the  
138 engineer and included on the final plan.

139 Ken Markley, Easterly Survey: The impervious area is 18.1% because a portion of the roadway owned  
140 by the applicant was not included in the previous calculations. The area and volume calculations have  
141 been verified, and will be certified on the plan as well.

142 David Lincoln: Will the profile of building be changed? Will additional bathrooms be added?

143 Michael McCuddy: The garage will be raised 5 feet, 1 foot higher than the main house. There will be  
144 additional bedrooms and bathroom changes. The existing septic system is to be replaced, outside of 100-  
145 foot setback. There has been no abutter response.

146 Ms. Kalmar moved to approve with conditions the Shoreland Development Plan for 62 Pepperrell Road,  
147 Tax Map 18 Lot 46.

148 Mr. Alesse seconded

149

150

**Findings of Fact**

16.3.2.17. D Shoreland Overlay Zone - Standards.

*1.d d. The total footprint of areas de-vegetated for structures, parking lots and other impervious surfaces, must not exceed twenty (20) percent of the lot area, including existing development, except in the following zones:*

**Findings:** The proposal does not increase existing de-vegetated areas. Total de-vegetated area is 18.1%.

**Conclusion:** This standard has been met.

**Vote: 5 in favor 0 against 0 abstaining**

151

**II. Standards in the Shoreland Overlay Zone**

152

Chapter 16.7 GENERAL DEVELOPMENT REQUIREMENTS have been met.

16.7.3.1 Prohibitions and Allowances.

*A. Except as otherwise provided in this Article, a non-conforming condition must not be permitted to become more non-conforming.*

**Conclusion:** The proposal is within allowable percent increase (<30%) within the shoreland zone.

**Vote: 5 in favor 0 against 0 abstaining**

16.7.3.6 Nonconforming Structures in Shoreland and Resource Protection Zones have been met.

**Conclusion:** The criteria for expansion of non-conforming structures in the Shoreland Overlay zone appears to have been met. Findings regarding percent expansion will be submitted to the Assessor for inclusion in the tax records.

**Vote: 5 in favor 0 against 0 abstaining**

153

**III. Procedures for Administering Permits For Shoreland Development Review**

154 16.10.10.2 D. *An Application will be approved or approved with conditions if the reviewing authority makes a*  
 155 *positive finding based on the information presented. It must be demonstrated the proposed use will:*

1. <i>Maintain safe and healthful conditions;</i>
Finding/Conclusion: The proposed development will not have an adverse impact.
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
2. <i>Not result in water pollution, erosion or sedimentation to surface waters;</i>
Finding/Conclusion: The proposed development does not appear to have an adverse impact.
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
3. <i>Adequately provide for the disposal of all wastewater;</i>
Finding/Conclusion: This standard is not applicable for the proposed development.
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
4. <i>Not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;</i>
Finding/Conclusion: The proposed development does not appear to have an adverse impact
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
5. <i>Conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;</i>
Finding/Conclusion: The proposed development will not have an adverse impact.
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
6. <i>Protect archaeological and historic resources;</i>
Finding/Conclusion: The proposed development will not have an adverse impact
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
7. <i>Not adversely affect existing commercial fishing or maritime activities in a commercial fisheries/ maritime activities district;</i>
Finding/Conclusion: The proposed development will not have an adverse impact
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
8. <i>Avoid problems associated with floodplain development and use</i>
Portions of the property are located in VE flood management areas. The areas identified for square footage and volume increase do not appear to be located within the flood management area.
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
9. <i>Is in conformance with the provisions of this Code;</i>
Finding/Conclusion: The increase in area and volume are in conformance with the provisions of this Code.
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
10. <i>Be recorded with the York County Registry of Deeds.</i>
Shoreland Development plans must be recorded with the York County Registry of Deeds prior to the issuance of a building permit.
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining

156  
 157 Based on the foregoing Findings, the Planning Board finds the applicant has satisfied each of the review standards for  
 158 approval and therefore the Planning Board approves the Shoreland Development Plan Application of Pepperrell Cove  
 159 LLC, owner, and Michael McCuddy, applicant to increase the volume and square footage at an existing home at 62  
 160 Pepperrell Road subject to any conditions and/or waivers, following:

161  
 162 Conditions of Approval/Notices to Applicant in the Findings of Fact dated November 13, 2014.  
 163 style="text-align: right;">Vote: 5 in favor 0 against 0 abstaining

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

167  
168

169 ITEM 3 – Deuell Revocable Trust — Shoreland Development Plan Review - Action: Hold public hearing,  
170 review, and approve or deny plan approval Owner Deuell Revocable Trust and Applicant Peter Whitman  
171 are requesting approval of their plans to replace an existing non-conforming building located at 70  
172 Chauncey Creek Rd., Tax Map 45, Lot 70, in the Kittery Point Village and Shoreland Overlay zones.

173 The Public Hearing opened at 6:50 p.m.

174 Gaylen Beale, 63 Chauncey Creek Road, speaking for Martha Kowle, 62 Chauncey Creek Road:

175 *I'm puzzled. If you compare my house to 70 Chauncey Creek Road most, if not all, observers*  
176 *would say that my house was bigger-even before the bedroom and deck were added on. I was*  
177 *curious after the last Planning Board how my numbers compared to 70 Chauncey Creek Road.*  
178 *Before my addition my living area was calculated at 1,341 sf, without including the basement. 70*  
179 *Chauncey Creek Road is calculated at 1,872 sf, a 531 sf difference in living area, basements not*  
180 *included. 70 Chauncey Creek Road basement is 768 sf. Mine is only 699 sf. I'm assuming all*  
181 *these numbers were reported correctly. I don't begrudge Peter and Barb building a house. I just*  
182 *want it to fit in.*

183

184 Rich Holzer, 72 Chauncey Creek Road: Explained how the proposed structure will alter his view from a  
185 deck to the side of the larger, proposed structure, noting there is very little area between the two  
186 structures. He suggesting the new structure could be moved three feet away from the property line to  
187 allow more privacy space on his side.

188

189 The Public Hearing closed at 6:56 p.m.

190

191 Peter Whitman: Regarding Ms. Kowal's concerns, he cannot confirm where her calculations came from.  
192 The calculations for the proposed structure were prepared by a certified architect and confirmed by staff.  
193 Regarding Mr. Holzer's concerns: This is a small house on a small lot, and will remain a small house.  
194 The CEO (Heather Ross) explained that they have the right to expand over the existing foundation. The  
195 proposed height increase is 8 feet and this increase does not change the neighborhood or area between the  
196 residences. To move the house would increase the nonconformities, which would not allowed.

197 Ms. Driscoll: Existing holding tank?

198 Mr. Whitman: The revised plan will replace the existing tank with a pre-treatment system before a  
199 Certificate of Occupancy is awarded. The design has been approved.

200 Ms. Kalmar: If the structure could be moved, would it affect the new septic system design?

201 Mr. Whitman: It would not, but a variance would not be granted for this proposed structure.

202 Mr. Alesse: Is a fence between properties? Would he consider adding vegetation.

203 Mr. Whitman: The fence is 5-6' tall, and you cannot see through the fence. There will not many windows  
204 on the side of house facing the Holzer property.

205 Mr. DiMatteo: The Architect will need to certify the calculations on the final plan, and include the Map  
206 and Lot on the plan's lower right corner, to be included on the Notices to Applicant.

207

208 Ms. Driscoll moved to approve the plan Owner Deuell Revocable Trust and Applicant Peter Whitman are  
209 requesting approval of their plans to replace an existing non-conforming building located at 70 Chauncey  
210 Creek Rd., Tax Map 45, Lot 70, in the Kittery Point Village and Shoreland Overlay zones.

211 Ms. Kalmar seconded

212

213

214 Findings of Fact

16.3.2.17. D Shoreland Overlay Zone - Standards.
<u>Conclusion:</u> The criteria limiting impervious surface coverage to 20% has been met.
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining

215 II. Standards in the Shoreland Overlay Zone  
 216 Chapter 16.7 GENERAL DEVELOPMENT REQUIREMENTS have been met.

16.7.3.1 Prohibitions and Allowances.
<u>Conclusion:</u> The proposed structure location on a non-conforming lot will not be more non-conforming than the existing structure.
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining

16.7.3.6. 1 Expansion
<u>Conclusion:</u> The criteria for expansion of non-conforming structures in the Shoreland Overlay zone appears to have been met, and the location of the structure appears to be in compliance to the greatest practical extent (16.7.3.5.6), given the limited building envelope of the non-conforming lot.
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining

217 III. Procedures for Administering Permits For Shoreland Development Review  
 218 16.10.10.2 D. *An Application will be approved or approved with conditions if the reviewing authority makes a*  
 219 *positive finding based on the information presented. It must be demonstrated the proposed use will:*

1. <i>Maintain safe and healthful conditions;</i>
<u>Conclusion:</u> This standard appears to be met.
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
2. <i>Not result in water pollution, erosion or sedimentation to surface waters;</i>
<u>Conclusion:</u> This standard appears to be met.
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
3. <i>Adequately provide for the disposal of all wastewater;</i>
<u>Conclusion:</u> This standard appears to be met.
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
4. <i>Not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;</i>
<u>Conclusion:</u> The proposed development does not appear to have an adverse impact, and this standard appears to be met.
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
5. <i>Conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;</i>
<u>Conclusion:</u> The proposed development does not appear to have an adverse impact, and this standard appears to be met.
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
6. <i>Protect archaeological and historic resources;</i>
<u>Conclusion:</u> This standard appears to be met.
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
7. <i>Not adversely affect existing commercial fishing or maritime activities in a commercial fisheries/ maritime activities district;</i>
<u>Conclusion:</u> This standard is not applicable.
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
8. <i>Avoid problems associated with floodplain development and use</i>

Conclusion: The use is an existing, nonconforming use in the Shoreland Overlay Zone. This standard appears to be met, with condition.
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
<i>9. Is in conformance with the provisions of this Code;</i>
Conclusion: The proposed development is in conformance with the Code.
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
<i>10. Be recorded with the York County Registry of Deeds.</i>
Shoreland Development plans must be recorded with the York County Registry of Deeds prior to the issuance of a building permit, and include all waivers and conditions of approval if applicable.
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining

220  
221 Based on the foregoing Findings, the Planning Board finds the applicant has satisfied each of the review standards for  
222 approval and therefore the Planning Board approves the Shoreland Development Plan Application of Peter Whitman,  
223 Applicant and Deuell Revocable Trust, Owner, to construct a single family home on an existing foundation at 70  
224 Chauncey Creek Rd., Tax Map 45, Lot 70, in the Kittery Point Village and Shoreland Overlay zones, subject to any  
225 conditions and/or waivers:  
226  
227 Waivers: None  
228 Conditions of Approval/Notices to Applicant in the Findings of Fact, as amended, November 13, 2014.  
229

230 The Planning Board authorizes the Planning Board Chairman to sign the Final Plan and the Findings of Fact upon  
231 confirmation of compliance with any conditions of approval.  
232  
233 style="text-align: right;">Vote: 5 in favor 0 against 0 abstaining

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

237  
238  
239 OLD BUSINESS

240  
241 ITEM 4 – Betty Welch Road Cluster Subdivision - Sketch Plan Review - Action: Review, grant or deny  
242 concept approval. Landmark Properties, LTD., owner and Chinburg Builders, Inc., applicant, proposes to  
243 develop a 24-lot single family cluster subdivision on 86.5 +/- acres. The site is identified as Tax Map 22  
244 Lots 2A & 8 in the Residential Rural and Shoreland Overlay Zones. Agent is Jeff Clifford, P.E., Altus  
245 Engineering.  
246 Mr. Clifford: We are asking for a continuance and further direction from the Board. There was Board  
247 interest in a site walk continuance. They are concerned with pending Code amendments and their impact on  
248 this project's preliminary plan review.  
249 Ms. Driscoll: Would like to schedule another site walk to view the leach bed area.  
250 Ms. Kalmar: Amount of water in upland area is significant considering this was a dry summer; need to  
251 exercise caution as this projected is located at the headwaters of the York River; would the Board  
252 consider the Conservation Commission's request for independent soil data review.  
253 Jim Gove, Gove Environmental Services: Mr. Logan identified areas in the larger portion of the parcel as  
254 somewhat poorly drained; the soil profiles are the same in the upland, leach bed, areas; third party  
255 reviews yield very little changes, and found the soil profiles were virtually the same as Mr. Logan's  
256 observations. The amount of water on the site appears to be attributable to kidder tracks that are so  
257 compacted there is no drainage to the water table; these conditions are not indicative of the entire site's  
258 soil profile; the ruts should be graded out to natural soil, and restored to allow infiltration; some wetland

259 areas were diverted by skidders, as well. In Maine; individual septic systems are allowed in seasonal  
260 highwater tables deeper than 7". From a practical perspective, it would be better to have these located in  
261 the proposed septic area where the seasonal highwater table is 30".

262 Mr. Lincoln: How will the effluent be moved from the housing units to the disposal area?

263 Mr. Clifford: Each home will have an advanced pre-treatment system comprised of a septic tank and  
264 aeration tank. The resultant wastewater will be pumped to 1-2 common force mains to distribution boxes,  
265 where the highly cleaned and virtually clear wastewater will be disposed.

266 Mr. Lincoln: Does the developer plan to start with a spec house before completing the remaining 23  
267 houses? Are there other cluster developments in the area with wetland issues? Does the developer have  
268 an option on the property?

269 Mr. Clifford: This is possible, but is up to the developer. The other developments had wetlands, but the  
270 septic designs were different. The developer has not purchased the property as yet.

271 Ms. Kalmar: Will the slope of the area have an impact on the septic design?

272 Mr. Clifford: The surface is sloped and works well. The system has not been designed at this level of  
273 review.

274 Ms. Driscoll: There were so many ferns noticed on the sitewalk, indicating wet areas.

275 Mr. Gove: The timber harvesting opened the site and seeds were distributed all over. Many of the  
276 dominate ferns identified are upland ferns. Along the wetland edge the wetland ferns became dominate.

277 Don Moore, Kittery Conservation Commission: Asked about the highwater table associated with test pit  
278 locations [discussed with Mr. Gove]. Asked about mounding calculations for septic design.

279 Mr. Clifford: This in-depth level of review will be addressed as the project requires a SLDA review by  
280 the MDEP, including 25 sections of review. The septic design, most likely prepared by R.W. Gillespie,  
281 Geotechnical Engineers, will be reviewed by Maine Department of Health and Human Services.

282 Discussion followed regarding the proposed roadway located within the 100-foot no cut, no disturb buffer  
283 required between structures and wetlands in cluster development, vs. setback requirements from wetland  
284 areas.

285 Mr. DiMatteo: Asked the applicant to confirm the statute regarding timber harvesting.

286 Discussion followed regarding scheduling another site walk; timetable for project review; existing water  
287 lines on the property, spreading of invasive species due to timber harvesting; potential waivers;

288 Ms. Kalmar: Asked the Board to consider a third party soil review and for the applicant to illustrate how  
289 homes could be located on the parcel in a standard subdivision design.

290 Mr. Clifford: This is not required in the ordinance, as the cluster subdivision ordinance has replaced  
291 standard subdivision design.

292

293 Ms. Driscoll moved to continue the Betty Welch Road Cluster subdivision application 90 days from  
294 November 13, 2014.

295 Mr. Lincoln seconded

296 Motion carried unanimously by all members present

297

298 A site walk will be scheduled at the December meeting.

299

300 Break

301

302 ITEM 5 – Brave Boat Conservation at Sawyer Lane – Cluster Subdivision —Final Plan Review - Action:  
303 review and grant or deny final plan approval. Owner and Applicant Jonathon & Kathleen Watts are  
304 requesting consideration of their plans for a 4-lot cluster subdivision at 143 Brave Boat Harbor Road, Tax  
305 Map 63, Lot 19, Residential Rural Zone, with a portion in the Shoreland Overlay Zone. Agents are Ken  
306 Markley, Easterly Surveying, Inc.

307 Ken Markley: Disagrees with staff comments regarding an additional 20-foot no-cut no-disturb buffer in  
308 addition to the proposed fence and existing vegetation. This was not addressed previously by staff, and  
309 the buffer is substantial as it exists. These lots are the same size or larger than existing lots in the

310 neighborhood. The homes are almost 100 feet apart as designed. Discussion followed regarding the  
311 setbacks and buffers.

312 Ms. Driscoll: From a practical standpoint it is difficult to get home insurance when trees are located too  
313 close to a home.

314 Mr. DiMatteo: The standard regarding buffering applies to the entire development, and lot #2 is  
315 potentially visible from the roadway and the existing vegetation would be protected with a 40-foot buffer.

316 Mr. Watts: This was brought up by Ms. Burke in August and has been addressed.

317 Ms. Kalmar: Concerned about the remaining changes that need to be made to Homeowners Documents,  
318 regarding maintenance of open space, to receive final approval. Does not object to the plan.

319 Mr. DiMatteo: These changes can be finalized with the Town Attorney before the plans are signed. The  
320 applicant is in agreement with these needed changes to the documents.

321 Discussion followed regarding how the Homeowners Documents would be finalized prior to plan signing.

322 Ms. Driscoll: We did ask for setbacks and buffers that have been provided, and asking for additional  
323 changes at final review is not fair to the applicant.

324

325 Ms. Kalmar moved to approve with conditions the Brave Boat Conservation at Sawyer Lane Cluster  
326 Subdivision

327 Mr. Lincoln seconded

328

329 Findings

A. Development Conforms to Local Ordinances.
Conclusion: This standard appears to be met.
Vote of <u> 5 </u> in favor <u> 0 </u> against <u> 0 </u> abstaining
B. Freshwater Wetlands Identified.
Conclusion: The standard appears to be met
Vote of <u> 5 </u> in favor <u> 0 </u> against <u> 0 </u> abstaining
C. River, Stream or Brook Identified.
Conclusion: The standard appears to be met
Vote of <u> 5 </u> in favor <u> 0 </u> against <u> 0 </u> abstaining
D. Water Supply Sufficient.
Conclusion: The standard appears to be met
Vote of <u> 5 </u> in favor <u> 0 </u> against <u> 0 </u> abstaining
E. Municipal Water Supply Available.
Conclusion: The standard appears to be met
Vote of <u> 5 </u> in favor <u> 0 </u> against <u> 0 </u> abstaining
F. Sewage Disposal Adequate.
Conclusion: The standard appears to be met
Vote of <u> 5 </u> in favor <u> 0 </u> against <u> 0 </u> abstaining
G. Municipal Solid Waste Disposal Available.
Conclusion: The standard appears to be met
Vote of <u> 5 </u> in favor <u> 0 </u> against <u> 0 </u> abstaining
H. Water Body Quality and Shoreline Protected.
Conclusion: The standard appears to be met
Vote of <u> 5 </u> in favor <u> 0 </u> against <u> 0 </u> abstaining
I. Groundwater Protected.

Conclusion: The standard appears to be met	Vote of <u>  5  </u> in favor <u>  0  </u> against <u>  0  </u> abstaining
J. Flood Areas Identified and Development Conditioned.	
Conclusion: The standard appears to be met	Vote of <u>  5  </u> in favor <u>  0  </u> against <u>  0  </u> abstaining
K. Stormwater Managed.	
Conclusion: The standard appears to be met	Vote of <u>  5  </u> in favor <u>  0  </u> against <u>  0  </u> abstaining
L. Erosion Controlled.	
Conclusion: The standard appears to be met	Vote of <u>  5  </u> in favor <u>  0  </u> against <u>  0  </u> abstaining
M. Traffic Managed.	
Conclusion: The standard appears to be met	Vote of <u>  5  </u> in favor <u>  0  </u> against <u>  0  </u> abstaining
N. Water and Air Pollution Minimized.	
Conclusion: The standard appears to be met	Vote of <u>  5  </u> in favor <u>  0  </u> against <u>  0  </u> abstaining
O. Aesthetic, Cultural and Natural Values Protected.	
Conclusion: The standard appears to be met	Vote of <u>  5  </u> in favor <u>  0  </u> against <u>  0  </u> abstaining
P. Developer Financially and Technically Capable.	
Conclusion: The standard appears to be met.	Vote of <u>  5  </u> in favor <u>  0  </u> against <u>  0  </u> abstaining
Title 16.8.3.1 - Street Naming Application The proposed street name, Sawyer Lane, has been accepted by Kittery Police, Fire, Assessing and Public Works departments.	
	Vote of <u>  5  </u> in favor <u>  0  </u> against <u>  0  </u> abstaining

330 II. Standards in the Shoreland Overlay Zone  
 331 Chapter 16.7 GENERAL DEVELOPMENT REQUIREMENTS have been met.

16.7.3.1 Prohibitions and Allowances.	
These standards are not applicable to the proposed development	
	Vote of <u>  5  </u> in favor <u>  0  </u> against <u>  0  </u> abstaining

332 III. Procedures for Administering Permits For Shoreland Development Review

1. <i>Maintain safe and healthful conditions;</i>	Vote of <u>  5  </u> in favor <u>  0  </u> against <u>  0  </u> abstaining
2. <i>Not result in water pollution, erosion or sedimentation to surface waters;</i>	Vote of <u>  5  </u> in favor <u>  0  </u> against <u>  0  </u> abstaining
3. <i>Adequately provide for the disposal of all wastewater;</i>	Vote of <u>  5  </u> in favor <u>  0  </u> against <u>  0  </u> abstaining
4. <i>Not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;</i>	

	Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
5. <i>Conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;</i>	
	Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
6. <i>Protect archaeological and historic resources;</i>	
	Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
7. <i>Not adversely affect existing commercial fishing or maritime activities in a commercial fisheries/ maritime activities district;</i>	
	Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
8. <i>Avoid problems associated with floodplain development and use</i>	
	Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
9. <i>Is in conformance with the provisions of this Code;</i>	
	Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
10. <i>Be recorded with the York County Registry of Deeds.</i>	
	Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining

333

334 The Planning Board finds the proposed project and use meets the criteria set forth in Section 16.10.8.3.4 (Findings)  
335 Conditions of Approval / Notices to Applicant per Findings of Fact dated November 13, 2014  
336

337

Vote of 5 in favor 0 against 0 abstaining

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

341

342 NEW BUSINESS

343

344 ITEM 8 – Cheatham Shoreland Development Plan - Action: Accept or deny plan application; schedule  
345 site walk and/or public hearing. Linda Cheatham, owner/applicant; Holly Bowdoin and Art Feith,  
346 Pearson Traditional Design, agents request approval to remove an existing detached garage and construct  
347 a new garage with attached breezeway at 144 Pepperrell Road, Kittery Point, Tax Map 36, Lot 80, in the  
348 Residential-Kittery Point Village and Shoreland Overlay Zones.

349 Board members agreed a site walk is not needed.

350 Holly Bowdoin: The applicant has submitted letters of no-objection and has received another letter of no-  
351 -objection.

352 Linda Cheatham: An email was received including multiple property owners with no-objection, including  
353 McCormick.

354

355 Ms. Kalmar moved to approve the application of Linda Cheatham to construct a new garage with attached  
356 breezeway at 144 Pepperrell Road, Kittery Point, Tax Map 36, Lot 80, in the Residential-Kittery Point  
357 Village and Shoreland Overlay Zones.

358 Ms. Driscoll seconded

359 Mr. Lincoln: What is the status of the nonconforming setback?

360 Mr. DiMatteo: This proposal is not more non-conforming than what exists, and actually decreases the  
361 nonconformity, from 3 feet to 10 feet.

362

363 Findings of Fact:

364 III. Procedures for Administering Permits For Shoreland Development Review

365

366 1. maintain safe and healthful conditions;

367

Vote of 5 in favor 0 against 0 abstaining

368 2. not result in water pollution, erosion or sedimentation to surface waters;

369

Vote of 5 in favor 0 against 0 abstaining

370

371 3. adequately provide for the disposal of all wastewater;

372

Vote of 5 in favor 0 against 0 abstaining

373

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

375

Vote of 5 in favor 0 against 0 abstaining

376

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

378

Vote of 5 in favor 0 against 0 abstaining

379

380 6. protect archaeological and historic resources;

381

Vote of 5 in favor 0 against 0 abstaining

382

383 7. not adversely affect existing commercial fishing or maritime activities in a commercial fisheries/ maritime  
384 activities district;

385

Vote of 5 in favor 0 against 0 abstaining

386

387 8. avoid problems associated with floodplain development and use;

388

Vote of 5 in favor 0 against 0 abstaining

389

390 9. is in conformance with the provisions of this Code;

391

392

Vote of 5 in favor 0 against 0 abstaining

393

394 10. recorded with the York County Registry of Deeds.

395

Vote of 5 in favor 0 against 0 abstaining

396 Based on the foregoing Findings, the Planning Board finds the applicant has satisfied each of the review standards for  
397 approval and approves the Shoreland Development Plan Application of Linda Cheatham, owner, to remove an  
398 existing garage and construct a new garage and attached breezeway at 144 Pepperrell Road, subject to any conditions  
399 and/or waivers, as follows:

400

401 Application Waivers: None

402 Conditions of Approval/Notices to Applicant from Findings of Fact dated: November 13, 2014.

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

405

406

Vote of 5 in favor 0 against 0 abstaining

407

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

411

412 ITEM 6 – Board Member Items / Discussion

413 · Ms. Driscoll: The Comprehensive Plan Committee meeting will be held December 3, 2014

414 Mr. Lincoln: When will the plan be done?

415 Ms. Driscoll: The plan will be re-written, as it is too late for an update. Now looking at 2015 for  
416 completion.

417 · Ms. Grinnell: She is representing the Board on the Port Authority and was elected as  
418 Secretary/Treasurer.

419

420

421 ITEM 7 – Town Planner Items

422 1. Kittery Foreside Committee: In discussions with the Town Manager, the Board needs to determine  
423 whether the Board wants to continue with the Committee and provide additional information regarding  
424 the Committee's mandate. This will be included on the December 18 agenda for discussion.

425 2. KACTS Update: A consultant has been chosen and more information will be provided.

426

427 Mr. Lincoln: Will a detour map be provided for when the Sarah Long Bridge is closed? Town should be  
428 involved with the detour plans.

429 Mr. DiMatteo: MDOT will be involved with that, and he will provide further information.

430

431 Ms. Driscoll: Since the state is requesting Kittery take over Rt. 1 By-Pass maintenance, what is the  
432 status/condition of the pass-through under the roadway?

433 Mr. DiMatteo will follow-up.

434

435

436 Ms. Kalmar moved to adjourn

437 Mr. Lincoln seconded

438 Motion carried unanimously by all members present

439

440 The Kittery Planning Board meeting of November 13, 2014 adjourned at 9:00 p.m.

441 Submitted by Jan Fisk, Recorder, November 18, 2014

442

443

## Town of Kittery Planning Board Meeting December 11, 2014

### **Bartlett Hill Multifamily Cluster Subdivision – Subdivision Preliminary Plan Review.**

Action: Grant or deny request to continue application. Owner and applicant Peter J. Paul Trustee of AMP Realty Holdings LLC, is requesting consideration of plans to develop a multi-family residential cluster subdivision. The approximately 18 acre parcel is located on a portion of Tax Map 28, Lot 14 with frontage along Fernald Road and Route 236, in the Residential Suburban Zone with portions in the Commercial C-2 zone and Resource Protection Overlay Zone. Agent is Tom Harmon, Civil Consultants.

#### **PROJECT TRACKING**

REQ'D	ACTION	COMMENTS	STATUS
YES	Sketch Plan Review	Initiated July 11, 2013, Approved August 8, 2013	APPROVED
NO	Site Visit	Scheduled August 8, 2013	HELD
YES	Completeness/Acceptance	10/10/2013	ACCEPTED
YES	Public Hearing	November 13, 2013	HELD
YES	Preliminary Review and Approval	Review: November 13, 2013; Continued for 90 Days Review: December 11, 2014;	
YES	Final Plan Review and 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.

### **Background**

The Board last reviewed this project as a Sketch Plan and approved the concept at their August 8, 2013 meeting. The proposed cluster subdivision is located off Fernald Road and behind the commercial lots along Route 236. At the meeting the Board expressed an interest to review this project and the Rt. 236 Commercial Lot Subdivision at the same time since they not only abut one another but are reliant on each other for stormwater management.

The Applicant submitted a complete preliminary plan application in October 2013. At the November 14, 2013 meeting, the Board continued the application not to exceed 90 days. However, the applicant has been waiting for the code amendments regarding the Soil Suitability Guide to be adopted. With code amendments in place the project can move forward. See attached letter from the agent.

### **Board Action**

Staff recommends that the Planning Board continue the plan application not to exceed 90 days (March 12, 2015 is 91 days).

Move to continue for 90 days from December 11, 2014 [or, not later than March 12, 2015], per the request by owner and applicant Peter J. Paul, Trustee of AMP Realty Holdings LLC, for consideration of the multi-family residential cluster subdivision located at Fernald Road and Route 236, Tax Map 28, Lot 14.

## Chris DiMatteo

---

**From:** Tom Harmon <tharmon@civcon.com>  
**Sent:** Thursday, December 04, 2014 9:50 AM  
**To:** Chris DiMatteo  
**Cc:** PETER PAUL; Jay Stephens  
**Subject:** bartlett Hill continuation 12-198

Kittery Planning Office

As Chris DiMatteo and I discussed, we would like the Bartlett Hill project to be placed on the next available Planning Board agenda to insure that this project is continued to await revisions to the soil suitability section of the Kittery Code.

The project was last continued by the board on November 14 of 2013. At that time the board wished to have revisions to the project which were to be worked out by the applicant with the planning department. At a meeting in December (2013) Jay Stephens, Chris DiMatteo and I met to review the project status and determine changes which should be made. It was the planning department's recommendation that we wait until the soil suitability section of the ordinance was changed (to bring it up to today's industry standards). The planning office felt that would occur in February of 2014.

Unfortunately, that amendment is still in the processing/approval stage at the town, consequently further action has not been taken with the planning board regarding this project.

A great deal of time and expense has been expended by the applicant and this office in attempts to satisfy the ordinance and meet the development desires of the town. This office agreed with the planning office that the ordinance revisions for soil suitability should be accomplished to allow the most desirable development. To our knowledge no ordinance changes have currently taken place that would impact this project requiring the application process to be reinitiated.

Tom Harmon



**CIVIL CONSULTANTS**

*Engineers • Planners • Surveyors*

Thomas W. Harmon, P.E., P.L.S.

P.O. Box 100 • 293 Main Street

South Berwick, ME 03906

tel 207-384-2550 • fax 207-384-2112

## **PUBLIC HEARING - November 14, 2013 (Approved Minutes)**

### **ITEM 1 – Bartlett Hill Multifamily Cluster Subdivision – Subdivision Preliminary Plan Review.**

Action: Grant or deny preliminary plan approval. Owner and applicant Peter J. Paul Trustee of AMP Realty Holdings LLC, is requesting consideration of plans to develop a multi-family residential cluster subdivision. The approximately 18 acre parcel is located on a portion of Tax Map 28, Lot 14 with frontage along Fernald Road and Route 236, in the Residential Suburban Zone with portions in the Commercial C-2 zone and Resource Protection Overlay Zone. Agent is Tom Harmon, Civil Consultants.

- Tom Harmon, Civil Consultants, introduced Jay Stevens, Civil Consultants and Peter Paul, applicant. He summarized the plan before the Board:
  - Identified plan sheets submitted;
  - 3 duplexes and one tri-plex for a total of 9 residential units proposed;
  - Municipal water with common septic systems;
  - Identified location of open space, reserve areas, and buffers;
  - Walkway proposed along right-of-way, following contours;
  - Stormwater management plan currently under review by the DEP;

Christine Bennett, Kittery Land Trust (KLT), noted the KLT has an 88 acre preserve adjacent to this project, and has the following observations:

- Access to a very popular network of trails on the Remick Preserve is via an easement adjacent to the project.
- The proposed amount of tree removal will impact the mature forest canopy and diminish the experience of visiting the Preserve. No-cut, no disturb buffers would help reduce this impact.
- The multiple impromptu entrances onto the Remick Preserve by residents of the proposed development are of concern. The KLT would like one controlled entrance, and would also like to pursue a new easement from the proposed right of way, which would be accessible by the residents of the development and the general public.
- One of the common septic areas appears too close to the Preserve and far removed from the buildings it will be servicing. The KLT would like to see the preserved open space be contiguous to the adjacent Preserve.

Sammy Yaso, Volunteer, KLT, noted his support of staff recommendations, specifically:

- Consider the atypical cul-de-sac design that would reduce the development footprint, and consider including the septic system within the center of the cul-de-sac, away from sensitive areas.
- Preserving those areas abutting the existing preserved land better meets the objectives of cluster development, instead of placing a septic system in those sensitive areas.
- The proposed walkway could be graded into the parking area open to the public and residents, providing access to the Remick Preserve.

Steve Hall, Conservation Commission, asked if the Board has considered the wetland across from 236 that drains into the abutting property, and whether stormwater is draining from one lot to another.

Ms. Tuveson noted this will most likely be discussed under item 2.

Mr. Mylroie added the following:

- The Fire Chief asked the name of 'Bartlett Hill' be changed because of the similar name of a local street, in consideration of E911.
- The Fire Chief asked that road standards be consistent for all subdivisions and meet minimum standards should these private streets become public streets. Discussion followed regarding minimum street standards based on trips. Mr. Melanson stated the proposal should meet minimum standards.
- The Police Chief asked about street lighting at the project.

The public hearing closed at 6:40 p.m.

Ms. Tuveson asked the applicant to address the following staff concerns:

- 100-foot wetland setbacks: Mr. Harmon stated they are measuring the setback from the wetland based on the location of the driveway, not the structure. Mr. DiMatteo noted it is the intent, through the cluster ordinance and in Board discussions, that a wetland setback from structures is 100-feet. Ms. Grinnell noted the 100-foot setback for a structure cannot be disturbed by a driveway. Mr. Harmon explained that Table 2 allows for roadways closer to the wetlands. Discussion followed regarding how to interpret the ordinance regarding water and wetland setbacks. The Board concurred the applicant needs to meet the 100-foot setback requirement.
- Pedestrian walkway not shown – Jay Stevens spoke about location of a walkway along Fernald Road and connection to the adjacent parcel on Rt. 236. Discussion followed regarding sidewalk connections.
- Open Space – applicant has provided 79% open space. Staff requested that areas close to the adjacent Reserve be identified as reserved open space and the common space (upland) provide a no-cut/no-disturb buffer adjacent to the Reserve. Mr. Stevens stated they would be willing to include some of the open space areas with the reserved open space, and identified the ‘common space’ adjacent to the KLT parcel as the only remaining land on the parcel that could be further developed, with Board review and approval. Ms. Grinnell is uncomfortable with this area remaining for potential future development. Ms. Driscoll stated the intent of the cluster ordinance is to provide for common open space for use by the residents, such as recreational use. Mr. Harmon stated this area cannot be developed as the total number of units have been reached with the density available. He explained the location of the proposed septic system creates the least disturbance while located where soils support a septic system. Discussion followed regarding common vs. individual septic systems and maintenance provisions. [unidentified] explained the identified septic area are double the size needed, but are done so to show there is sufficient area for back-up if needed. Mr. DiMatteo stated the Board needs to be 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

## Town of Kittery Maine Town Planning Board Meeting November 13, 2014

### McCoy Residence - Shoreland Development Plan Review - Determination of Completeness.

Kevin and Terry McCoy, owners and applicant request approval for a nonconforming structure demolition and new construction, including the removal of an existing house, garage and shed and construction of a new house, garage and barn at 24 Goose Point, Kittery. Tax Map 34 Lot 9 in the Residential-Rural, Shoreland and Resource Protection Overlay zones. Agent is Tom Emerson, Studio B-E.

#### PROJECT TRACKING

REQ'D	ACTION	COMMENTS	STATUS
NO	Sketch Plan Review		
NO	Site Visit		
YES	Determination of Completeness/Acceptance	December 8, 2014	
NO	Public Hearing		
YES	Final Plan Review and Approval		

Plan Review Notes reflect comments and recommendations regarding applicability of Town Land Use Development Code, and standard planning and development practices. Only the PB makes final decisions on code compliance and approves, approves with conditions or denies final plans. 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 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.

#### Staff Comments:

Applicant is proposing to remove existing buildings on parcel and replace with new construction.

Standards	R-Rural	Shoreland	Existing	Proposed
Use	Permitted	Special Exception	Nonconforming	Nonconforming
Minimum Lot Size	40,000	40,000	59,480 sf	N/C
Street Frontage	150 feet	150 feet	200 feet	N/C
Max. Building Cover	15%		5,146 sf (8.59%)	3,882 sf (6.48%)
Front yard	40 feet		20.7 feet	~ 45 feet
Side yard	20 feet		8.3 feet	~ 35 feet
Rear yard	20 feet		10.8 feet	
Setback from Resource		100	10.8 feet	~34 feet <i>50'</i>
Building Height	35 feet	35 feet	25 feet	29'4"

*\* Height of a building means the vertical measurement from the average grade ... to a level midway between the level of the eaves and highest point of pitched roofs or hip roofs: ... For this purpose, the level of the eaves is taken to mean the highest level where the plane of the roof intersects the plane of the outside wall on a side containing the eaves.*

The proposed site plan (Sheet 1) indicates a portion of the proposed new home and all of the proposed barn and garage will be outside the 100-foot shoreland/resource protection minimum setback. Area and volume calculations apply to those areas within the 100-foot minimum setback. (Note: sketch at 1"=40') Table below represents volume and area only within the 100-foot setback. Increase in area and volume may not exceed 30%.

**Structure:** 30% Area and Cubic Feet (expansion) allowed.

Area/Existing	Area/Proposed	% Change	Volume/Existing	Volume/Proposed	% Change
3,232 sf	4,114 sf	27.29%	48,800 cf	61,120 cf	25.24%

**Devegetation:**

Lot Area SF	Exiting Deveg.	%	Proposed Deveg.	%	Allowed
59,480 sf	8,890 sf	14.94%	8,800	14.79%	20%

- Records indicate the existing structure was built in 1972. The lot is conforming, use is nonconforming in OZ-SL zone, and the primary structure is nonconforming (setbacks).
- Title 16.7.3.5.1: The use of land, or structure, lawful at the time such use or structure was created, may continue although such use or structure does not meet the provisions of this Code and Title 16.7.3.1.C: Nonconforming uses may continue, may be changed to an equal or more appropriate nonconforming use, or be changed to a conforming use. The new construction does not require Special Exception review as it is a continuation of a nonconforming use.
- Agent has provided a proposed site plan (Sheet 1) illustrating location of existing structure(s) to be demolished (in grey); proposed new structures (red) and building footprint on the parcel (yellow). For final approval, a Shoreland Development Plan should be provided illustrating the location of proposed new structures over the existing structures.
- Applicant's right, title and interest has been provided (Warranty Deed, Horton to McCoy, October 7, 2014).
- Architectural drawings of the proposed structures and volume and area calculations and proposed building height have been submitted (included in tables above). It is requested that the total area and volume for each floor plan be included on each plan page. There are no architectural drawings of the proposed barn and breezeway attachment. Is the square footage for these structures provided in the devegetation calculations?
- Setbacks to the proposed structures will need to be shown on the final plan. Sheet 1 shows the side front and rear setbacks have been met to the building envelope (see table, page 1).
- Existing and proposed location of new pre-treatment septic system is noted on Sheet 1. A septic permit needs to be provided to assure proper location and separation from the proposed structures and wetland area. Septic application attached (not net approved).
- Extent of Flood Zone onto parcel should be illustrated. Flood Zone AE appears to extend approximately 47 feet onto the property (GIS). Actual extent is not indicated on the site plan submitted (see note #8).
- Percent of non-vegetated coverage by structures has been submitted, it is unclear if all non-vegetated areas have been included, i.e. length and width of driveway, parking areas, path to dock, etc.
- 16.7.3.5.6 Nonconforming Structure Reconstruction.  
*A. Any nonconforming structure which is located less than the required setback from a water body, tributary stream, or wetland and which is removed, damaged or destroyed, by any cause, by more than 50% of the market value of the structure before such damage, destruction or removal, may be reconstructed or replaced provided that a permit is obtained within eighteen (18) months of the date of said damage, destruction, or removal, and provided that such reconstruction or replacement is in*

compliance with the water body, tributary stream or wetland setback requirement to the greatest practical extent as determined by the Planning Board...

*16.7.3.5.4.B. In determining whether the structure relocation meets the setback to the greatest practical extent, the Board of Appeals or Planning Board (in cases where the structure is located in a Shoreland Overlay or Resources Protection Overlay Zone.), must consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, the location of the septic system and other on-site soils suitable for septic systems, and the type and amount of vegetation to be removed to accomplish the relocation.*

11. How will the shoreline area be treated following removal of the existing home? Will there be a path (devegetated area) linking the structures to the existing dock? If so, dimensions must be included in revegetation calculations. 16.7.3.5.4.C.3. *Where feasible, when a structure is relocated on a parcel, the original location of the structure must be replanted with vegetation consisting of grasses, shrubs, trees or a combination thereof.*

12. Miscellaneous:

- Site Plan title (*Shoreland Development Plan*) and property owners need to be updated for final plan.
- OZ-SL requirements and actual calculations included on final plan.
- Owners of Record (Note #1) updated.
- A copy of the referenced Boundary Survey should also be submitted.
- 

This is a determination of application completeness review. Substantive review at this time is not recommended without further information and submittals from the applicant.

### **Board Action**

A public hearing and/or site walk is not required. However, this is a substantial change to the existing site within the Shoreland Protection Overlay zones. If the Board is comfortable with the information presented, the application could be accepted, with conditions that specific information be provided prior to further, more substantial, review and/or public hearing and site walk.

### **Recommendation:**

Move to schedule a site walk and public hearing for the Shoreland Development application of Kevin and Terry McCoy, to demolish and rebuild structures located at 24 Goose Point, Kittery, Tax Map 34 Lot 9 in the Residential-Rural and Shoreland Overlay zones.

END OF PLAN REVIEW NOTES



BK 16917 PGS 686 - 688 11/03/2014 09:44:14 AM  
INSTR # 2014044892 DEBRA ANDERSON  
RECEIVED YORK SS REGISTER OF DEEDS

**WARRANTY DEED**

**KNOW ALL MEN BY THESE PRESENTS:** That we, **Cleveland Forbes Horton**, of 148 Old Concord Turnpike, Barrington NH and **Andrew M. Horton**, of PO Box 1640, Westcliff, CO, for consideration paid grant to **Kevin M. McCoy** and **Theresa A. McCoy**, of 12019 Sawhill Boulevard, Spotsylvania VA 22553, as joint tenants, with **WARRANTY COVENANTS**:

A certain lot or parcel of land situate in Kittery, County of York and State of Maine, bounded as follows:

Being Lot No. 9A on a Plan entitled "Final Plan Dorney Home Site, Inc. Kittery, Maine" by G. L. Davis Associates, Dover, -N. H. filed in the Registry of Deeds of York County, Plan Book 44, Page 42, bound and described as follows:

Beginning on the roadway called Dorney Drive at Lot No. 9 on said plan; thence running northerly by said roadway, one hundred (100) feet, to the line of a reserved way leading to the water; thence northwesterly by said reserved roadway, eighty-five (85) feet, more or less, to Spruce Creek; thence by said Creek westerly and southerly by said Creek by estimation, four hundred (400) feet, to said Lot No. 9; thence North 76° 30' East, two hundred (200) feet, to place of beginning.

Together with all tide lands between high and low water lines on said Spruce Creek.

Also a certain lot or parcel of land situate in Kittery, County of York, State of Maine and being Lot No. 9 on a plan entitled "Final Plan Dorney Home Sites, Inc." by G. L. Davis Associates, Civil Engineers, Dover, N. B° dated Sept, 1967, filed in York County Registry of Deeds, Plan Book 44, Page 42, bounded and described as follows:

Beginning on the roadway called Dorney Drive, at line of Lot No. 8; thence running northwesterly by said Dorney Drive, one hundred (100) feet, to Lot No. 9A; thence South 76° 30' West by said Lot No. 9A, two hundred (200) feet, to Spruce Creek; thence northeasterly by said Creek, one hundred eighty (180) feet, more or less, to said Lot No. 8; thence North 54° East by said Lot No. 8, two hundred ten (210) feet/ to the place of beginning.

Together with all tidelands between high and low water marks on said Spruce Creek.

Said lots being conveyed, however, subject to the following express conditions, reservation and reservations (applying to the whole and every part of the premises conveyed hereby), by which the Grantees agree, for themselves, their heirs and assigns, to be bound by the delivery and acceptance of this deed, and which conditions, reservations and restrictions shall inure to the benefit of and may be specifically enforced by the Grantors, their successors and assigns, and by the Grantees (by subsequent or earlier deeds) of any lots on the plan of lots of Dorney Home sites, Inc., prior Grantor to these Grantors by deed dated May 20, 1970 and recorded in Liber 1873 of Deeds at Page 887, it being covenanted and agreed by the Grantors, by the delivery and acceptance of this deed,

Vertical text: **Maine R.E. Transfer Tax Paid**

3pg → **Red Door Title • 1 New Hampshire Avenue, Suite 320 Portsmouth NH 03801 • (207) 358-7500**

RE: 2014-2889

Page 1 of 3

BK 10917 Page 09/ INS 1109 2014044092

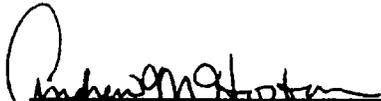
(1) That any structures or building constructed on the premises hereby conveyed shall be used ~~only~~ for the purpose of a single dwelling house and for purposes directly incidental thereof, and not for use, in whole or in part, either temporarily or permanently, for commercial, mercantile or manufacturing purposes or as a boarding house, apartment house, hotel, overnight cabins, trailer camps, store, gasoline station, garages (except for owner's private use), dog kennels, stores and storehouses, warehouses, greenhouses or hot houses, signs, billboard, cemeteries, farms, institutions or for the production of any natural, manufactured or other materials, or for the maintenance or care, for hire or commercially, of any domestic animals, or for any offensive activities or any other purposes which might depreciate the value of the property in the vicinity for use for dwelling houses.

(2) That any structure, appurtenance or equipment erected on said premises shall be constructed of materials generally considered acceptable for new construction. Dwelling shall contain not less than twelve hundred square feet of floor space\* Dwellings shall not be occupied until essentially completed. The length of construction time must be kept to a reasonable minimum. The architecture of the buildings shall be in harmony with the development as a whole.

(3) That no building/ structures, appurtenances or equipment shall be erected or located on the premises conveyed hereby, any part of which is less than thirty (30) feet from the nearest street or road, or less than ten (10) feet from the nearest boundary, as shown on the above plans.

Meaning and intending to describe and convey the same premises conveyed to Cleveland Forbes Horton and Andrew M. Horton by virtue of deed of Lois M. Horton a/k/a Lois M. M. Horton dated August 6, 2013 and recorded in the York County Registry of Deeds at Book 16672, Page 549.

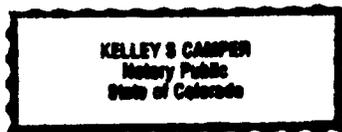
Executed this 10 / 7, 2014.

  
Andrew M. Horton

State of Colorado  
County of Custer

Oct. 7, 2014

Then personally appeared before me the said Andrew M. Horton and acknowledged the foregoing to be their voluntary act and deed.



Kelley S. Camper  
Notary Public/Justice of the Peace  
Commission expiration: 05.05.2016

Red Door Title • 1 New Hampshire Avenue, Suite 320 Portsmouth NH 03801 • (207) 358-7500

RE: 2014-2889

Page 2 of 3

DA 10917 Page 000 INSTR# 2014044892 LAST PAGE OF DOCUMENT

Executed this October 6, 2014.

  
Cleveland Forbes Horton

State of New Hampshire  
County of Rochester

October 6, 2014

Then personally appeared before me the said Cleveland Forbes Horton and acknowledged the foregoing to be their voluntary act and deed.

  
Notary Public/Justice of the Peace  
Commission expiration:  
DORTHA E. SCOTT, Notary Public  
My Commission Expires February 2, 2016

**SEAL**

**Red Door Title • 1 New Hampshire Avenue, Suite 320 Portsmouth NH 03801 • (207) 358-7500**

RE: 2014-2889

Page 3 of 3

CH

Maine Dept. Health & Human Services Div. of Environmental Health, 11 SHS (207) 287-5672, Fax: (207) 287-4172	
<b>PROPERTY LOCATION</b>	
City, Town, or Plantation <b>KITTERY</b>	<b>&gt;&gt; CAUTION: LPI APPROVAL REQUIRED &lt;&lt;</b>
Street or Road <b>24 GOOSE POINT</b>	Town/City _____ Permit # _____
Subdivision, Lot #	Date Permit Issued ___/___/___ Fee: \$ _____ Double Fee Charged ( )
<b>OWNER/APPLICANT INFORMATION</b>	
Name (Last, First, MI) <b>EAS CONSTRUCTION</b> <input type="checkbox"/> Owner <input checked="" type="checkbox"/> Applicant	Local Plumbing Inspector Signature _____ L.P.I. # _____
Mailing Address of Owner/Applicant <b>14 FORESTVIEW DRIVE BOSTON MA 02104</b>	The Subsurface Wastewater Disposal System shall not be installed until a Permit is issued by the Local Plumbing Inspector. The Permit shall authorize the owner or installer to install the disposal system in accordance with this application and the Maine Subsurface Wastewater Disposal Rules.
Daytime Tel. # <b>781 662-2465</b>	Municipal Tax Map # <b>24</b> Lot # <b>9</b>
<b>OWNER/APPLICANT STATEMENT</b>	
I state and acknowledge that the information submitted is correct to the best of my knowledge and consent that any falsification is reason for the Department to refer this application to the Local Plumbing Inspector for denial of a Permit. <i>[Signature]</i> <b>10/20/14</b>	<b>CAUTION: INSPECTION REQUIRED</b> I have inspected the installation authorized above and found it to be in compliance with the Subsurface Wastewater Disposal Rules Application. (1st) date approved _____ Local Plumbing Inspector Signature _____ (2nd) date approved _____
<b>PERMIT INFORMATION</b>	
<b>TYPE OF APPLICATION</b> <input type="checkbox"/> 1. First Time System <input checked="" type="checkbox"/> 2. Replacement System Type replaced: <b>1990</b> Year installed: <b>UNKN</b> <input checked="" type="checkbox"/> 3. Expanded System <input checked="" type="checkbox"/> 4. Experimental System <input type="checkbox"/> 5. Seasonal Conversion	<b>THIS APPLICATION REQUIRES</b> <input type="checkbox"/> 1. No Rule Variance <input type="checkbox"/> 2. First Time System Variance <input checked="" type="checkbox"/> 3. Local Plumbing Inspector Approval <input checked="" type="checkbox"/> 4. State & Local Plumbing Inspector Approval <input checked="" type="checkbox"/> 5. Replacement System Variance <input checked="" type="checkbox"/> 6. Local Plumbing Inspector Approval <input checked="" type="checkbox"/> 7. State & Local Plumbing Inspector Approval <input type="checkbox"/> 8. Minimum Lot Size Variance <input type="checkbox"/> 9. Seasonal Conversion Permit
<b>SIZE OF PROPERTY</b> <b>1.37</b> <input type="checkbox"/> SQ. FT. <input checked="" type="checkbox"/> ACRES	<b>DISPOSAL SYSTEM TO SERVE</b> <input checked="" type="checkbox"/> 1. Single Family Dwelling Unit, No. of Bedrooms: <b>4</b> <input type="checkbox"/> 2. Multiple Family Dwelling, No. of Units: _____ <input type="checkbox"/> 3. Other: _____ (specify)
<b>SHORELAND ZONING</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<b>DISPOSAL SYSTEM COMPONENTS</b> <input checked="" type="checkbox"/> 1. Complete Non-engineered System <input type="checkbox"/> 2. Primitive System (graywater & silt. inlet) <input type="checkbox"/> 3. Alternative Toilet, specify: _____ <input type="checkbox"/> 4. Non-engineered Treatment Tank (only) <input type="checkbox"/> 5. Holding Tank, _____ gallons <input type="checkbox"/> 6. Non-engineered Disposal Field (only) <input type="checkbox"/> 7. Separated Laundry System <input type="checkbox"/> 8. Complete Engineered System (2000 gpd or more) <input type="checkbox"/> 9. Engineered Treatment Tank (only) <input type="checkbox"/> 10. Engineered Disposal Field (only) <input checked="" type="checkbox"/> 11. Pre-treatment, specify: <b>CLAY SAND</b> <input type="checkbox"/> 12. Miscellaneous Components <b>MANG. 200</b>
<b>TYPE OF WATER SUPPLY</b> <input type="checkbox"/> 1. Drilled Well <input type="checkbox"/> 2. Dug Well <input type="checkbox"/> 3. Private <input checked="" type="checkbox"/> 4. Public <input type="checkbox"/> 5. Other	
<b>DESIGN DETAILS (SYSTEM LAYOUT SHOWN ON PAGE 3)</b>	
<b>TREATMENT TANK</b> <input checked="" type="checkbox"/> 1. Concrete <input checked="" type="checkbox"/> a. Regular <b>12'</b> <input type="checkbox"/> b. Low Profile <input type="checkbox"/> 2. Plastic <input type="checkbox"/> 3. Other CAPACITY: <b>1600</b> GAL	<b>DISPOSAL FIELD TYPE &amp; SIZE</b> <input checked="" type="checkbox"/> 1. Stone Bed <input type="checkbox"/> 2. Stone Trench <input type="checkbox"/> 3. Proprietary Device <input type="checkbox"/> a. cluster array <input type="checkbox"/> c. Linear <input type="checkbox"/> b. regular load <input type="checkbox"/> d. H-20 load <input type="checkbox"/> 4. Other: <b>10' x 30'</b> SIZE: <b>300</b> <input type="checkbox"/> sq. ft. <input type="checkbox"/> lin. ft.
<b>SOIL DATA &amp; DESIGN CLASS PROFILE CONDITION</b> <b>3 A/C</b> at Observation Hole # <b>5</b> Depth <b>25/30</b> of Most Limiting Soil Factor	<b>DISPOSAL FIELD SIZING</b> <input type="checkbox"/> 1. Medium—2.6 sq. ft. / gpd <input checked="" type="checkbox"/> 2. Medium—Large 3.3 sq. ft. / gpd <input type="checkbox"/> 3. Large—4.1 sq. ft. / gpd <input type="checkbox"/> 4. Extra Large—5.0 sq. ft. / gpd
<b>GARBAGE DISPOSAL UNIT</b> <input checked="" type="checkbox"/> 1. No <input type="checkbox"/> 2. Yes <input type="checkbox"/> 3. Maybe If Yes or Maybe, specify one below: <input type="checkbox"/> a. multi-compartment tank <input type="checkbox"/> b. _____ tanks in series <input type="checkbox"/> c. increase in tank capacity <input type="checkbox"/> d. Filter on Tank Outlet	<b>DESIGN FLOW</b> <input checked="" type="checkbox"/> 1. No <input type="checkbox"/> 2. Yes <input type="checkbox"/> 3. Maybe _____ <b>300</b> gallons per day BASED ON: <input checked="" type="checkbox"/> 1. Table 4A (dwelling unit(s)) <input type="checkbox"/> 2. Table 4C (other facilities) SHOW CALCULATIONS for other facilities
<b>EFFLUENT/TRACTOR PUMP</b> <input type="checkbox"/> 1. Not Required <input type="checkbox"/> 2. May Be Required <input type="checkbox"/> 3. Required Specify only for engineered systems. DOSE: _____ gallons	<b>LATITUDE AND LONGITUDE</b> at center of disposal area Lat. <b>43</b> d <b>5</b> m <b>430</b> s Lon. <b>70</b> d <b>0</b> m <b>300</b> s If g.p.s., state margin of error.
<b>SITE EVALUATOR STATEMENT</b>	
I certify that on <b>10/20/14</b> (date) I completed a site evaluation on this property and state that the data reported are accurate and that the proposed system is in compliance with the State of Maine Subsurface Wastewater Disposal Rules (10-144A CMR 241). <i>[Signature]</i> <b>211</b> <b>10/20/14</b> Site Evaluator Signature SE # Date	
<b>Michael Cuomo</b> Site Evaluator Name Printed	<b>(207) 363-4532</b> Telephone Number
	<b>mcuomosoil@gmail.com</b> E-mail Address
Note: Changes to or deviations from the design should be confirmed with the Site Evaluator	
Page 1 of 8 HHE-200 Rev. 08/2011	

<b>SUBSURFACE WASTEWATER DISPOSAL SYSTEM APPLICATION</b>		Department of Human Services Division of Health Engineering (207) 287-5672 Fax: (207) 287-3165
Town, City, Plantation <b>KITTERY</b>	Street, Road, Subdivision <b>24 GOOSE POINT</b>	APPL Owner's Name <b>EJS CONSTRUCTION</b>
<b>SITE PLAN</b> Scale 1" = 20' ft.		<b>SITE LOCATION PLAN</b>
<p>EXISTING HOUSE TO BE DEMOLISHED</p> <p>TEMPORARY STAKES AT CORNERS OF 10' x 30' EFFLUENT DISPOSAL AREA (E.D.A.)</p> <p>EXISTING GARAGE/BARN TO BE DEMOLISHED</p> <p>RED OAK TREE</p> <p>WHITE PINE TREE</p> <p>FRESHWATER WETLAND</p> <p>Pump out and remove or crush/fill &amp; bury in place existing septic tank.</p>		<p>GOOSE POINT</p> <p>SPRING CREEK</p> <p>HALES</p> <p>WATER</p> <p>HIGH TIDE LINE SPRING CREEK</p>
<p>WICKEL <i>[Signature]</i></p> <p>Site Evaluator Signature</p>		<p>211</p> <p>SE #</p>
<p>17 OCT 14</p> <p>Date</p>		<p>Page 2 of 8</p> <p>HHE-200 Rev. 8/01</p>

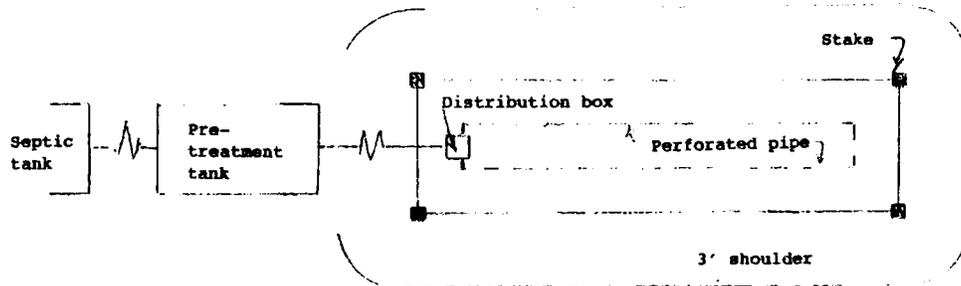
<b>SUBSURFACE WASTEWATER DISPOSAL SYSTEM APPLICATION</b>		Department of Human Services Division of Health Engineering (207) 287-5672 Fax: (207) 287-3165
Town, City, Plantation <b>KITTERY</b>	Street, Road, Subdivision <b>24 GOOSE POINT</b>	App. Owner's Name <b>EJS CONSTRUCTION</b>
<b>SUBSURFACE WASTEWATER DISPOSAL PLAN</b>		SCALE: 1" = <u>20</u> FT.
<p><b>DISPOSAL AREA MUST BE INSTALLED PER THIS PLAN AND STATE RULES (SEE ATTACHED SPECIFICATIONS)</b></p> <p><b>ABBREVIATIONS:</b> Building Sewer (BS); Septic Tank (ST); Pretreatment Unit (PT); Effluent Sewer (ES); Distribution Box (DB); and High Point (HP). Existing Grade (EG) and Finish Grade (FG) referenced to nail at zero.</p>		
<p><b>FILL REQUIREMENTS</b></p> <p>Depth of Fill (Upslope) <u>+15"</u></p> <p>Depth of Fill (Downslope) <u>+31"</u></p>	<p><b>CONSTRUCTION ELEVATIONS</b></p> <p>Finished Grade Elevation <u>-41"</u></p> <p>Top of Distribution Pipes/Regulatory Devices <u>-51"</u></p> <p>Bottom of Disposal Area <u>-66"</u></p>	<p><b>ELEVATION REFERENCE POINT</b></p> <p>Location &amp; Description: <u>SEE PAGE 2</u></p> <p>Reference Elevation: <u>657 NAILS = 3520</u></p>
<b>DISPOSAL AREA CROSS SECTION</b>		
<p>* Large oak tree; does not need to be cut; Grade fill around or install tree 'well'.</p> <p style="text-align: center;">See next page <b>FOR CROSS SECTION</b></p>		
<p>* If the PT outlet is no more than <u>50</u> ft. from the distribution box, the invert of the outlet must be no lower than <u>50</u> inches below the nail to achieve gravity flow.</p> <p>* Location of ST and PT may vary; must be at least 8ft off foundation, 10 ft off property line, 10ft off water line.</p> <p>* Where ST or PT access cover is more than 6" below FG, a watertight riser at least 18" dia. must be provided to within 6" of FG. Location of ST may vary.</p> <p>* DBox must be frost protected with 2" HD expanded rigid polystyrene insulation.</p> <p>* The DBox may be placed at either end of the disposal area.</p> <p>* Do not work soil when wet</p> <p>Septic tank and pretreatment tank must be at least 50 feet from high water mark of Spruce Creek.</p>		
<p><i>Michael Chernio</i> Site Evaluator Signature</p>	<p>Z 11 SE #</p>	<p>17 OCT 14 Date</p>
		<p>Page 3 of 8 HHE-200 Rev. 10/02</p>

Town: **Kittely**

Street: **24 GOOSE POINT**

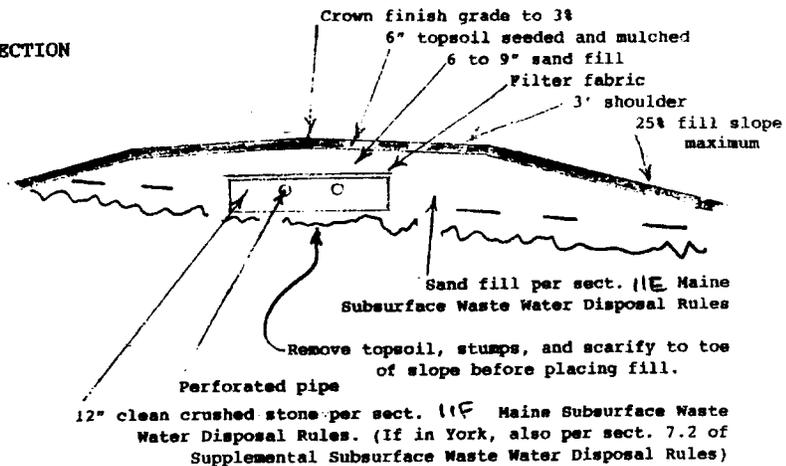
Owner: **APPL.:**  
**EJS CONSTR.**

PLAN VIEW  
This bed is **10** x **30** feet



Pre-treatment model: **250 CLEAN SOLUTION**  
Manufacturer: **A.O.S.**  
Contact phone #: **603 783 8042**

CROSS SECTION



*Michael G... ..*

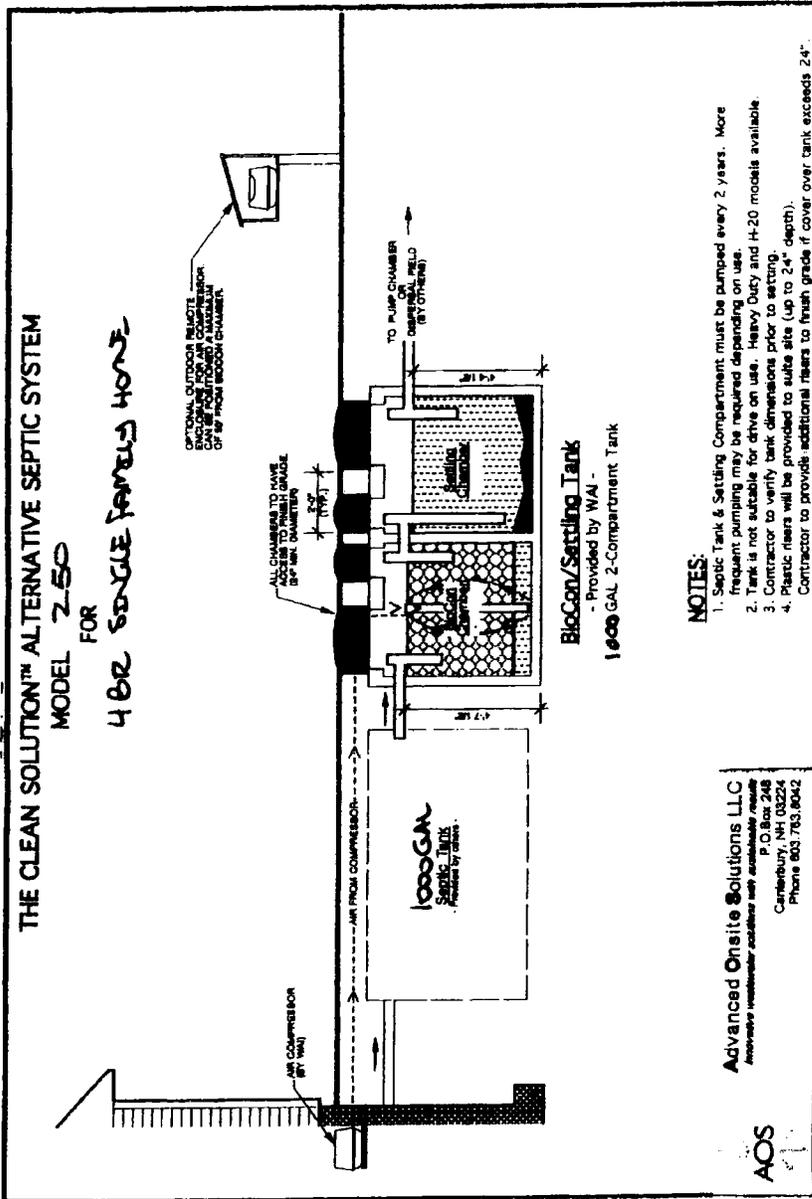
SE# 211 Date: **17 OCT 14**

Page **4** of **8**

Town **Kenosha** Location **24 Goose Point**

APPLICANT: **EJS Construction, LLC**

OWNER: **EJS Construction, LLC**



Page **5** of **8**

Date **17 Oct 14**

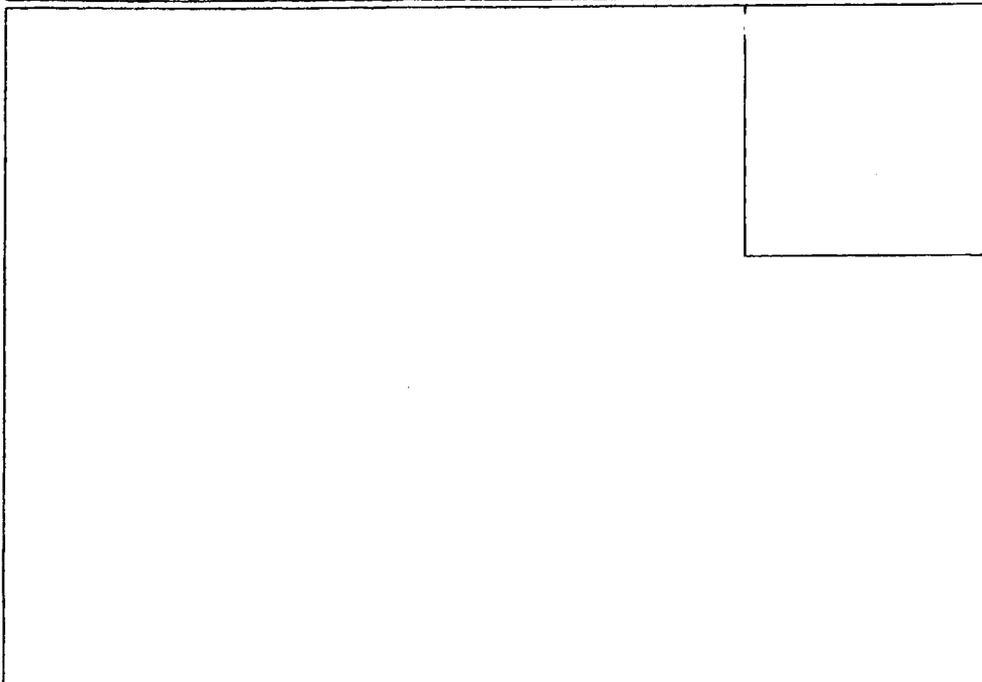
SE #211

Michael Cupao  
*Michael Cupao*

**SUBSURFACE WASTEWATER DISPOSAL SYSTEM APPLICATION**

Maine Dept. of Health & Human Services  
 Division of Environmental Health, 373 11  
 (207) 287-8999 FAX (207) 287-3168

Town, City, Plantation <b>KITTSBY</b>	Street, Road, Subdivision <b>24 GOOSE POINT</b>	Owner/Applicant Name <b>EJS CONSTRUCTION</b>
--	--	---



SOIL PROFILE DESCRIPTION AND CLASSIFICATION					(Location of Observation Holes Shown Above)				
Observation Hole # <b>F01E</b> <input checked="" type="checkbox"/> Test Pit <input type="checkbox"/> Boring					Observation Hole # <b>SE01</b> <input checked="" type="checkbox"/> Test Pit <input type="checkbox"/> Boring				
○ - Depth of organic horizon above mineral soil					○ - Depth of organic horizon above mineral soil				
Depth below mineral soil surface (inches)	Texture	Consistency	Color	Mottling	Depth below mineral soil surface (inches)	Texture	Consistency	Color	Mottling
0			<b>VERY DARK BROWN</b>		0			<b>VERY DARK BROWN</b>	
6	<b>SANDY</b>		<b>YELLOW</b>	<b>NO</b>	6	<b>SANDY</b>		<b>BROWN</b>	
12	<b>FINE GRAINED</b>	<b>PLASTIC</b>			12	<b>FINE</b>		<b>YELLOW</b>	<b>NO</b>
18	<b>SANDY</b>		<b>BROWN</b>		18	<b>SANDY</b>	<b>PLASTIC</b>		
24	<b>LOAM</b>	<b>FIRM</b>	<b>LIGHT YELLOW BROWN</b>	<b>YES</b>	24	<b>LOAM</b>		<b>BROWN</b>	
30	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	30	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>
36			<b>RED BROWN</b>		36			<b>RED BROWN</b>	
42					42			<b>BAND ROCK</b>	
48					48				

Michael Corbett  
Site Evaluator Signature
211  
SE #
19 OCT 14  
Date
Page 6 of 8  
HHE-200 Rev. 08/08

### SUBSURFACE WASTEWATER DISPOSAL SYSTEM VARIANCE REQUEST - REPLACEMENT SYSTEM

This form must accompany an application (HHE-200 Form) for any subsurface wastewater disposal system which requires a variance to provisions of the Subsurface Wastewater Disposal Rules. The Local Plumbing Inspector must not issue a permit for the installation of a subsurface wastewater disposal system requiring a variance from the Department of Health and Human Services until approval has been received from the Department.

**GENERAL INFORMATION** Town of KITTERY  
Property Owner's Name: APPLICANT: EJS CONSTRUCTION Tel. No: 603 234 6530  
System's Location: 24 GOOSE POINT KITTERY NH 03850  
Property Owner's Address: EJS CONSTRUCTION 14 FAYDEN DRIVE  
ROBESONVILLE, NH 03801  
EJS@EJS.COM CONTACT. ASST

The subsurface wastewater disposal system design for the subject property requires a  replacement system variance  first-time system variance to the Subsurface Wastewater Disposal Rules. This variance requires  local approval  local-and-state-approval

**SPECIFIC VARIANCE REQUESTED** (To be filled in by Site Evaluator. Use additional sheets if needed.) SECTION OF RULE  
1. WATER DEPTH: 100 FT REQUIRED, 73 FT PROVIDED. PAR 28A

**SITE EVALUATOR**  
When a property is found to be unsuitable for subsurface wastewater disposal by a licensed Site Evaluator, the Evaluator shall so inform the property owner. If the property owner, after exploring all other alternatives, wishes to request a variance to the Rules, and the Evaluator in his professional opinion feels the variance request is justified and the site limitations can be overcome, he shall document the soil and site conditions on the Application. The Evaluator shall list the specific variances necessary plus describe below the proposed system design and function. The Evaluator shall further describe how the specific site limitations are to be overcome, and provide any other support documentation as required prior to consideration by the Department. Attach a separate sheet if necessary.  
WATER DEPTH PROVIDED, DRAINAGE AREA WOULD BE FURTHER FROM WATER TABLES BUT SOILS AND SLOPE WOULD BE MORE LIMITED.

I, Michael Cuomo, S.E. #211, certify that a variance to the Rules is necessary since a system cannot be installed which will completely satisfy all the Rule requirements. In my judgment, the proposed system design on the attached Application is the best alternative available; enhances the potential of the site for subsurface wastewater disposal; and that the system should function properly.

Michael Cuomo SIGNATURE OF SITE EVALUATOR 17 OCT 14 DATE

**PROPERTY OWNER**  
I, STEVE FATEHMAN, am the AGENT agent for the owner of the subject property. I understand that the installation on the Application is not in total compliance with the Rules. Should the proposed system malfunction, I release all concerned provided they have performed their duties in a reasonable and proper manner, and I will promptly notify the Local Plumbing Inspector and make any corrections required by the Rules. By signing the variance request form, I acknowledge permission for representatives of the Department to enter onto the property to perform such duties as may be necessary to evaluate the variance request.

[Signature] SIGNATURE OF OWNER 10/20/14 DATE  
AGENT FOR THE OWNER

**LOCAL PLUMBING INSPECTOR – Approval at local level**

The local plumbing inspector shall review all variance requests prior to rendering a decision.

I, \_\_\_\_\_, the undersigned, have visited the above property and find that the variance request submitted by the applicant does not conform with certain provisions of the wastewater disposal rules. The variance request submitted by the applicant is the best alternative for a subsurface wastewater disposal system on this property. The proposed system (  does  does not) conflict with any provisions controlling subsurface wastewater disposal in the shoreland zone. Therefore, I (  do  do not) approve the requested variance. I (  will  will not) issue a permit for the system's installation as proposed by the application.

\_\_\_\_\_  
LPI Signature

\_\_\_\_\_  
Date

**LOCAL PLUMBING INSPECTOR – Referral to the Department**

The local plumbing inspector shall review all variance requests prior to forwarding to the Division of Environmental Health.

I, \_\_\_\_\_, the undersigned, have visited the above property and find that the variance request submitted by the applicant does not conform with certain provisions of the wastewater disposal rules. The variance request submitted by the applicant is the best alternative for a subsurface wastewater disposal system on this property. The proposed system (  does  does not) conflict with any provisions controlling subsurface wastewater disposal in the shoreland zone. Therefore, I (  do  do not) recommend the issuance of a permit for the system's installation as proposed by the application.

\_\_\_\_\_  
LPI Signature

\_\_\_\_\_  
Date

**FOR USE BY THE DEPARTMENT ONLY**

The Department has reviewed the variance(s) and (  does  does not) give its approval. Any additional requirements, recommendations, or reasons for the Variance denial, are given in the attached letter.

\_\_\_\_\_  
SIGNATURE OF THE DEPARTMENT

\_\_\_\_\_  
DATE

HHE-204

Page 2 of 8



## **24 Goose Point**

Kittery Point, ME

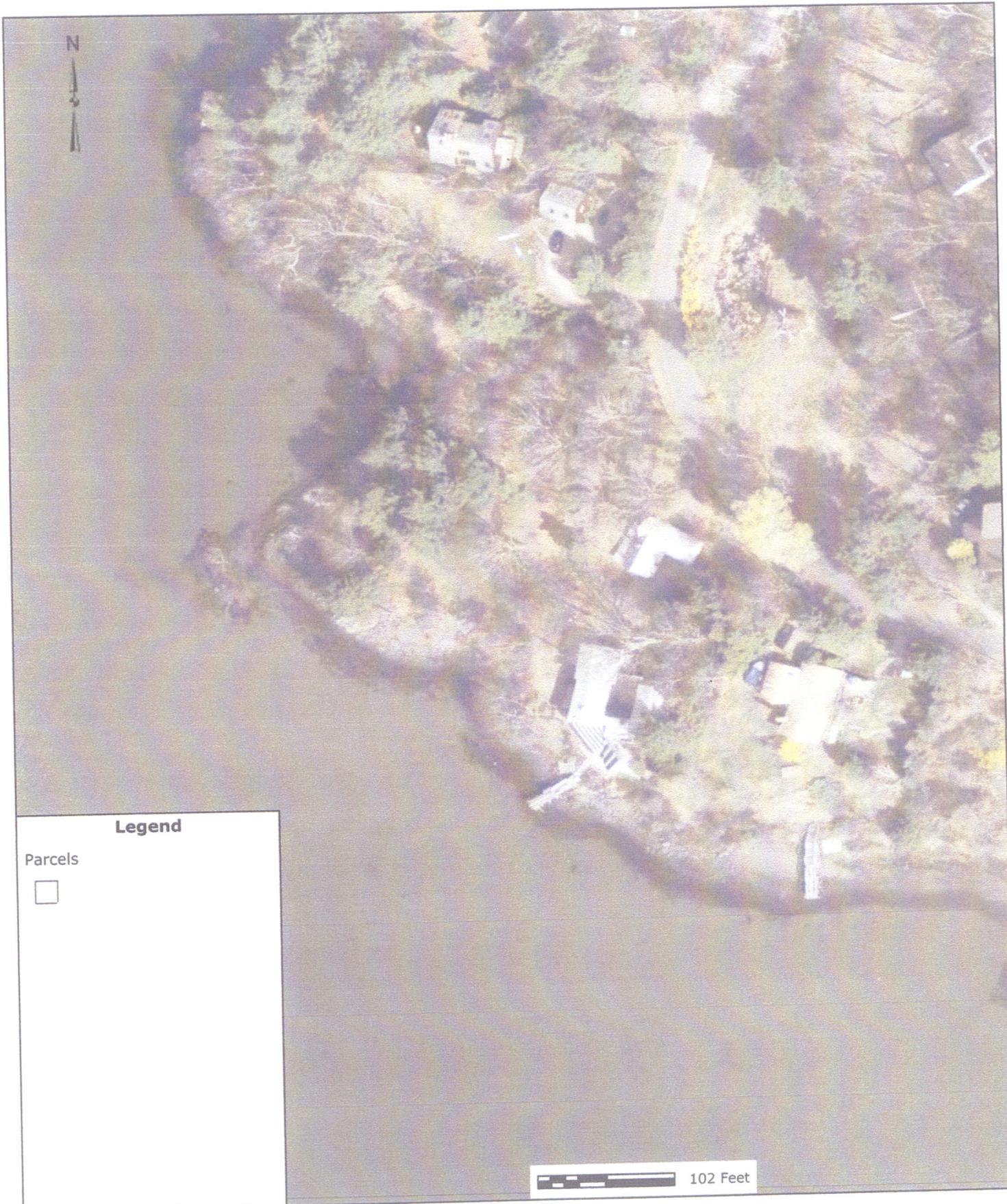
### **Project Narrative:**

#### **Existing:**

The 59,480 sf. property is located on map 34 lot 9 and has 580' of frontage on Spruce Creek. It is located in both the Rural Residential & Shoreland Overlay Zones. There is also a Freshwater Wetland on a portion of the property. There are currently five legally nonconforming structures (in place prior to the advent of zoning in Kittery) built on the property. They are the main house, which includes various decks and an enclosed pool, a garage & shop building, a garden shed, a deck (which we call the Promontory) on the edge of the Creek and a boathouse that is almost entirely below the 7.1' Highest Annual Tide line. The main house is located entirely within the 100' required Shoreland setback. It is also located within the required 20' side yard setback. The shop/garage building is located within the required 40' front yard setback and the garden shed is located within the required 50' freshwater wetland setback. The property is served by town water and has a septic system that is located entirely within the 75' setback from Spruce Creek.

#### **Proposed:**

The new owners are proposing to remove the main house, the garage/shop and the garden shed. The waterside deck (Promontory) will remain. The owners would like to remove the boathouse, but its almost inaccessible location within the resource may render demolition more problematic from an environmental perspective than allowing the structure to decay naturally. They are proposing to build a new house with an attached garage and a separate car/boat barn. Both the car/boat barn and attached garage will be built within the lot's buildable area, respecting the front & side yard setbacks as well as the setback from the Freshwater Wetland. The new main house, which will have a smaller footprint than the existing house, will be located further away from Spruce Creek (50' vs. 10.8') and out of the side yard setback. Though it will still be located within the 100' setback, it will have a reduced building footprint and floor area within the setback. There will be a volume increase, but it will be within the allowable 30% expansion standard. The septic system will be relocated to a portion of the buildable area in excess of 75' from the resource. The areas where buildings have been removed will be revegetated so that the proposed vegetation will provide a net increase in vegetated area. The impervious surface area of the lot will also be decreased. The removal of the garden shed will keep all structures outside of the 50' Freshwater Wetland setback.



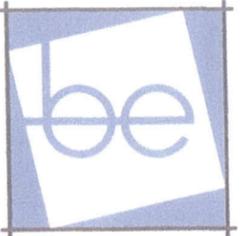
**Legend**

Parcels



**Town of Kittery,  
Maine**





studioB-E  
ARCHITECTURE

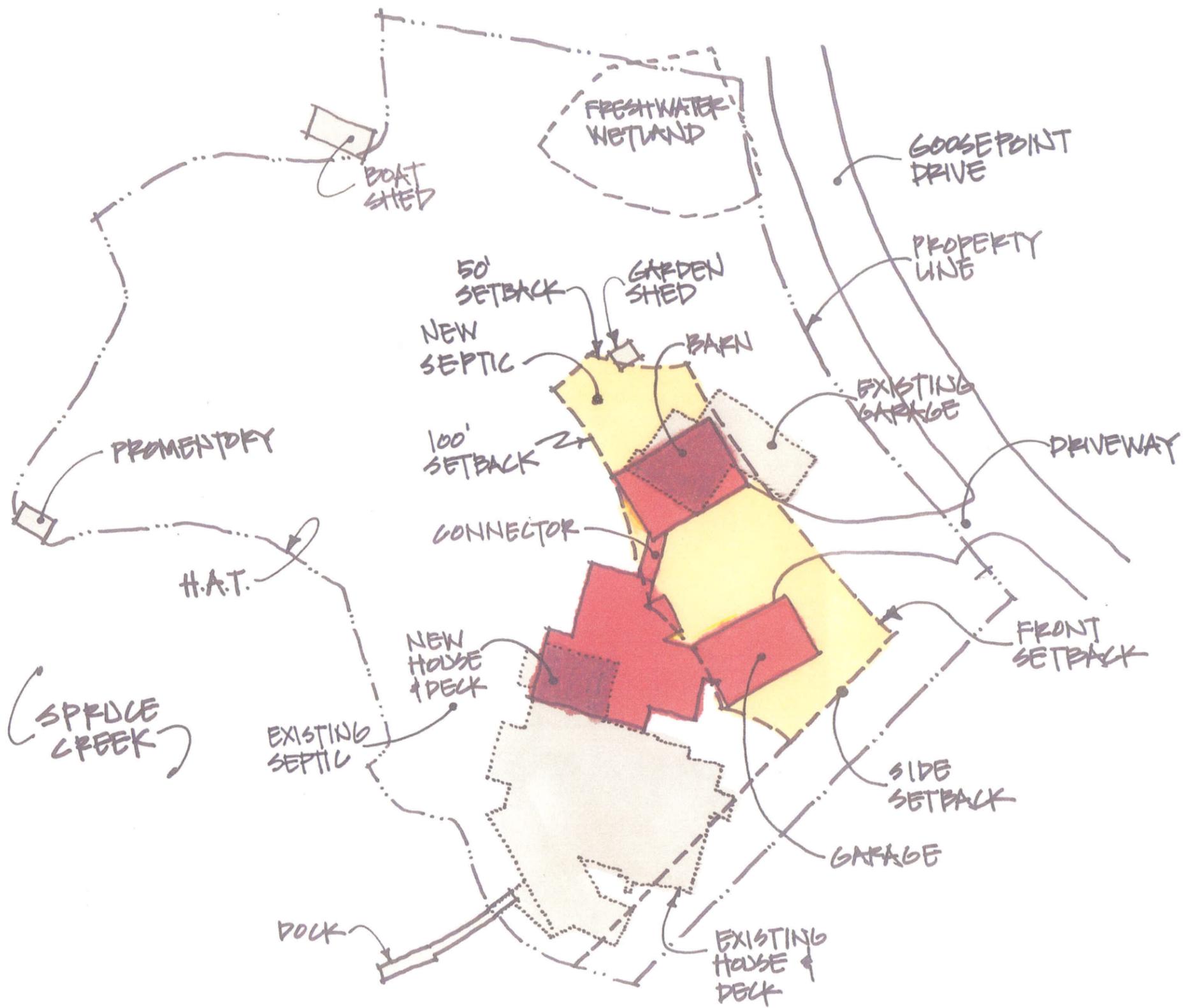
10 Ox Point Drive  
Kittery, ME 03904  
207.752.1371  
studioB-E.com



# McCoy Residence

24 Goose Point Road  
Kittery Point, ME

PROPOSED  
SITE  
PLAN

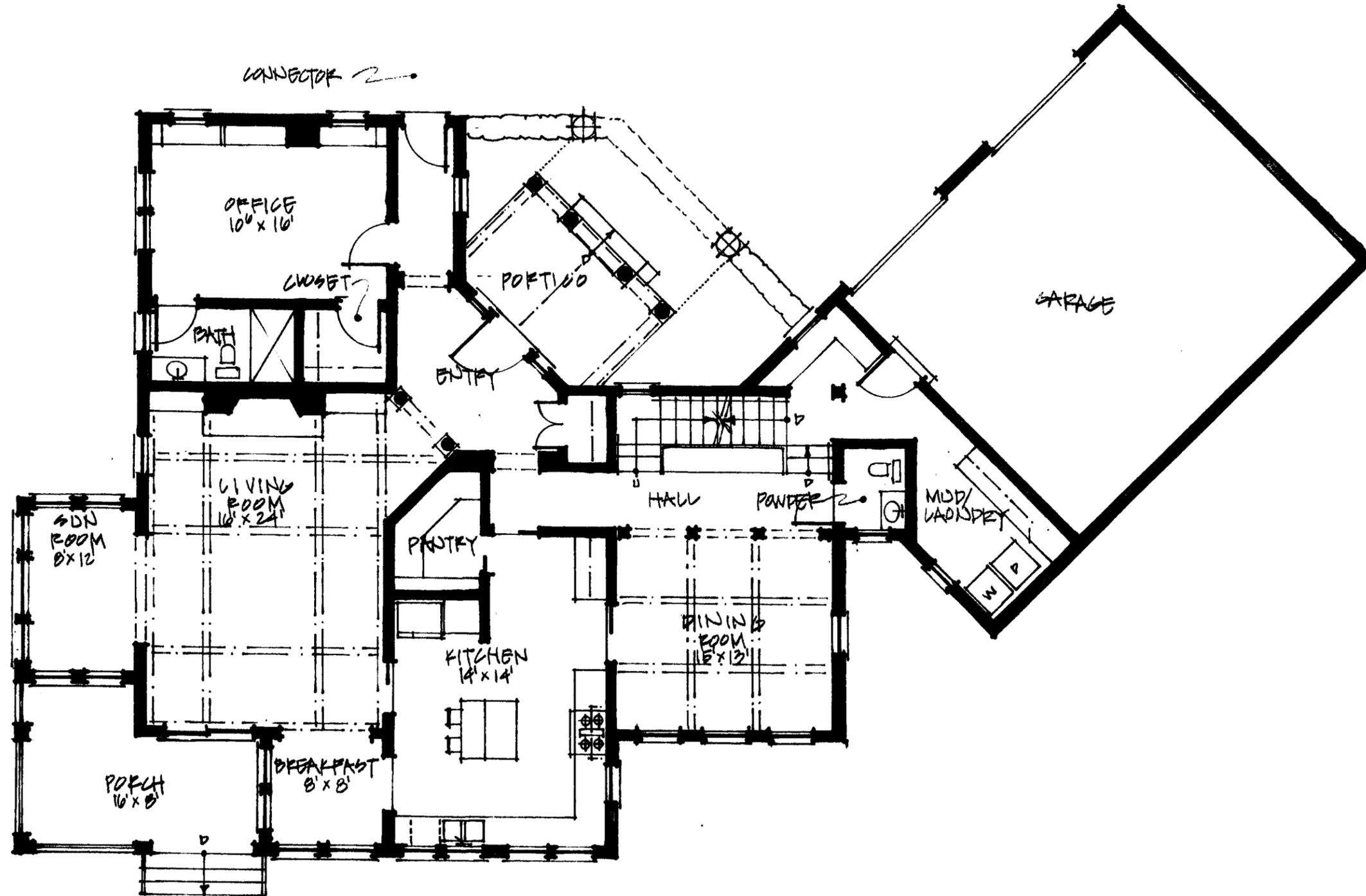


SITE PLAN  
1" = 40'



studioB-E  
ARCHITECTURE

10 Ox Point Drive  
Kittery, ME 03904  
207.752.1371  
studioB-E.com



FIRST FLOOR PLAN

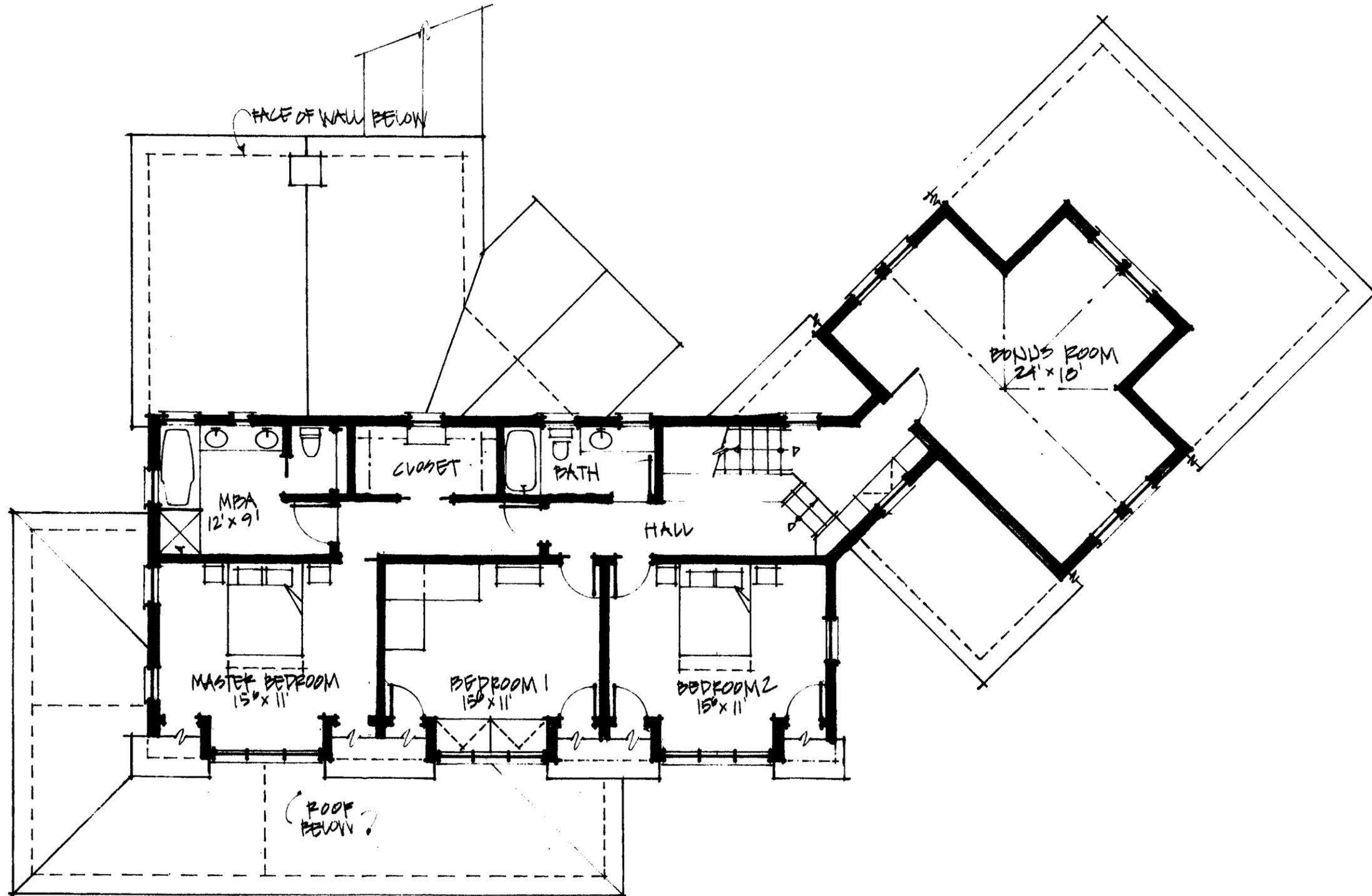
1/8" = 1'-0"

# McCoy Residence

24 Goose Point Road  
Kittery Point, ME

FIRST  
FLOOR  
PLAN

# 2



SECOND FLOOR PLAN  
 1/8" = 1'-0"



10 Ox Point Drive  
 Kittery, ME 03904  
 207.752.1371  
 studioB-E.com



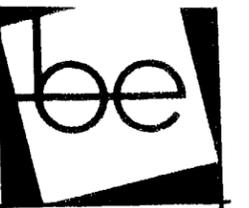
**McCoy  
 Residence**

24 Goose Point Road  
 Kittery Point, ME

SECOND  
FLOOR  
PLAN

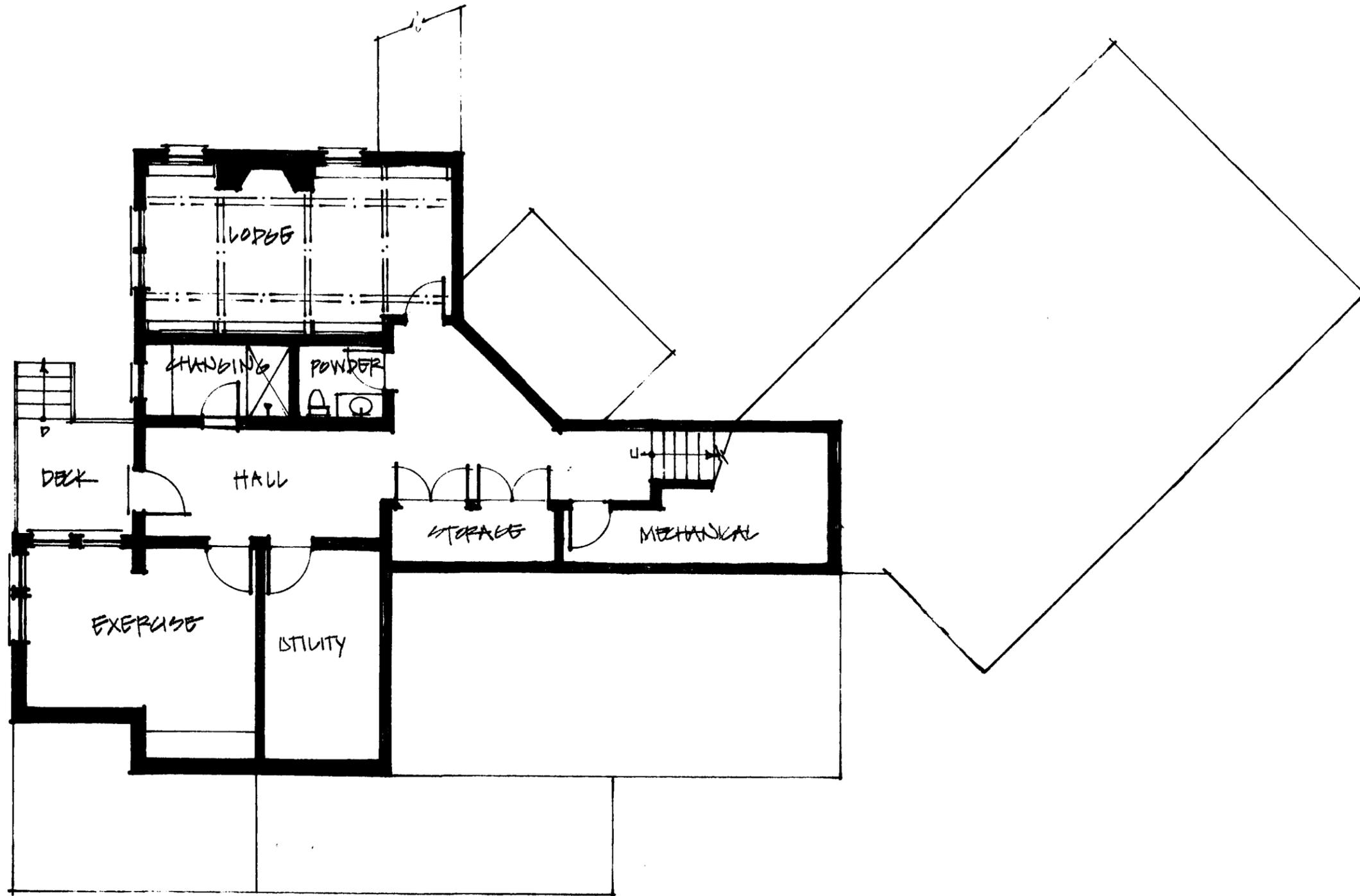
**3**

11.14.12



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LOWER LEVEL PLAN  
1/8" = 1'-0"

# McCoy Residence

24 Goose Point Road  
Kittery Point, ME

LOWER  
FLOOR  
PLAN

# 4

11.12.12



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ARCHITECTURE

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Kittery, ME 03904  
207.752.1371  
studioB-E.com



**McCoy  
Residence**

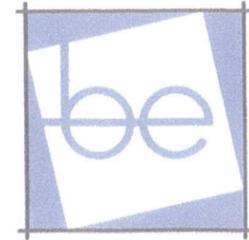
24 Goose Point Road  
Kittery Point, ME

ELEVATION

SOUTH ELEVATION

1/8" = 1'-0"

5



studioB-E  
ARCHITECTURE

10 Ox Point Drive  
Kittery, ME 03904  
207.752.1371  
studioB-E.com



WEST ELEVATION

1/8" = 1'-0"

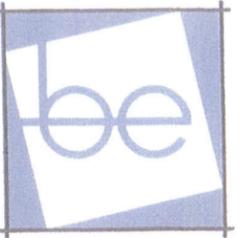
## McCoy Residence

24 Goose Point Road  
Kittery Point, ME

ELEVATION



00000000



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ARCHITECTURE

10 Ox Point Drive  
Kittery, ME 03904  
207.752.1371  
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NORTH ELEVATION

1/8" = 1'-0"

**McCoy  
Residence**

24 Goose Point Road  
Kittery Point, ME

ELEVATION

7

11.14.14

**Town of Kittery  
 Planning Board Meeting  
 December 11, 2014**

**Beatrice Way – Preliminary Major Subdivision Plan –Completeness Review**

Action: Accept or Deny Plan Application, schedule a Public Hearing and Site Walk. Owner Operation Blessing LP, and applicant Richard Sparkowich, propose a five lot subdivision on remaining land from the previously approved 3-lot subdivision located between Highpoint Circle and Kittree Lane. The site is identified as Tax Map 61 Lot 08, ±65 acres, in the Residential - Rural (R-RL) Zone. Agent is Ken Markley, Easterly Survey Inc.

**PROJECT TRACKING**

REQ'D	ACTION	COMMENTS	STATUS
YES	Sketch Plan Review	Scheduled 6-12-14	APPROVED
NO	Site Visit		
YES	Determination of Completeness/Acceptance		
	Waiver Request:		TBD
Yes	Preliminary Plan	Scheduled 12-11-14	
YES	Public Hearing		
YES	Final Plan Review and 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.**

**Staff Comments**

**Background**

Operation Blessing, LP, represented by Richard Sparkowich, received subdivision approval in August 2008 for three lots. The remaining 58 acres (with existing access from Old Farm Road) maintains 78 feet of frontage along a right-of-way that formerly was owned by Goodhouse Construction (Highpoint Circle developer) and currently co-owned by abutters Hanson and Gasbarro.

Through numerous iterations that included an amended subdivision plan, a cluster Sketch Plan, a Right-Of-Way plan, the Board granted approval of the conventional subdivision concept June 12, 2014. The Applicant has submitted a preliminary plan application for a conventional subdivision including a Request for Special Exception as required for non-clustered subdivision.

Minutes from the June meeting are attached for your reference.

**Review to date**

Review only for completeness. The peer review by CMA must be completed before a holding a public hearing. The applicant should make it clear to the Board any waivers they are planning will be needed.

**Recommendation**

The application appears to be substantially complete and Staff recommends the Planning Board accept the plan application and schedule a Public Hearing and, if the warranted, schedule a site walk.

- Kittery Outlet Center: Addition of gables and cupolas [inaudible].
- Councilman Thompson requested a list of pending ordinance amendments for October target date.

## NEW BUSINESS

[this item was reviewed out of sequence]

ITEM 8 – Knutel/56 Chauncey Creek Rd – Modification to an Approved Plan - Shoreland Development Review

Action: Accept or deny plan application and schedule site walk and/or public hearing. Owner and applicant Philip Knutel is requesting approval of their plans to expand an existing non-conforming building located on Chauncey Creek Rd., Tax Map 44, Lot 55, in the Kittery Point Village and Shoreland Overlay zones. Agent is Architect Tom Emerson, Studio B-E.

Chairman Emerson recused himself.

Ms. Tuveson summarized the request, noting this is not an expansion, but a modification of a previously approved expansion.

Mr. Emerson: The brick stoop is being removed for ease of access, to be replaced by a 7' x 3' stoop and a 3-foot wide step, further back from road, and creates less impervious surface.

Ms. Kalmar moved to approve modification to the previously approved Shoreland Development Plan for Philip Knutel at 56 Chauncey Creek Road, Map 44 Lot 55, concluding the proposed improvements related to the front porch, associated steps and roof canopy meet all applicable standards including Title 16.10.140.2.D, and authorize the Vice-Chair to sign the amended Findings of Fact and revised development plan to be recorded at the York County Registry of Deeds.

Ms. Grinnell seconded

Ms. Tuveson: Is the Board comfortable approving this project without a site walk or public hearing?

Members agreed they were.

Motion carried unanimously

ITEM 9 – Beatrice Way –Subdivision– Sketch Plan Review

Action: Review and approve concept if in compliance with Town Code and provide direction to Applicant Owner Operation Blessing LP, and applicant Richard Sparkowich, propose a new Right-Of-Way to allow the division of remaining land from the previously approved 3-lot subdivision located between Highpoint Circle and Kittree Lane. The site identified as Tax Map 61 Lot 08, ±65 acres, in the Residential - Rural (R-RL) Zone. Agent is Ken Markley, Easterly Survey Inc.

Mr. Markley: Taking Board and staff comments under consideration, the applicant is now requesting this application be reviewed as a conventional subdivision instead of a cluster subdivision.

Mr. Mylroie: Summarized how the applicant can meet his needs through a cluster subdivision application, without actually developing a cluster subdivision, but applying cluster standards to determine net residential acreage, open and common space, etc. [stepped away from microphone; inaudible]

Ms. Driscoll Davis: Uncomfortable with trying to predict what will be done in the future.

Ms. Tuveson: What is feasible in the future is not at issue before the Board now.

Ms. Kalmar: Title 16.8.16.6 allows the Board to require potential division of lots be shown.

Mr. Emerson: We need to determine if the existing lots belong with this proposed subdivision when determining net acreage for development.

Mr. Markley: This would be unfair; the applicant had originally come before the Board with a ROW application to divide the property, and were told to change to the current application before the Board. Now you're asking to include the existing duplex lots as part of a cluster application.

Mr. DiMatteo: This meets subdivision requirements as three lots are being created within a 5 year period.

Mr. Sparkowich: Referenced May 22, 2014 letter regarding inappropriateness of cluster subdivision provisions for the project. He summarized:

1. Clustering homes in the only developable area would require a road 2,000-3,000 feet long, with accompanying utilities, sidewalks, etc. which is not feasible;
2. The proposed cul-de-sac provides access to an easement to reach the large parcel and upland area for a single home;
3. Frontage for the proposed lots and existing subdivision has been provided.

Mr. Emerson: Is there a provision in the code for a simple lot division? Is there a provision for the Board to approve as a conventional subdivision?

Ms. Driscoll Davis: Does the Board have authority to restrict use of the easement beyond the proposed single home on the large lot? Does the owner of the easement lot have the right to know how the easement will be used?

Mr. Emerson: Yes the owner would, but that would be addressed in the future should there ever be any additional development on the large parcel.

Ms. Kalmar: If you force a cluster on this large parcel, the resources are impacted. If we review as proposed, the housing is where we want it and it meets the code now, and could be justified as a special exception. Item O in standards for subdivision review addresses the natural values and resources.

Mr. DiMatteo: Cluster development will preserve open space, but a conventional subdivision could provide conditions for preservation of the resource. Just because someone owns the property does not necessarily meet the goal of protecting the natural habitat.

Mr. Emerson: If we require a cluster subdivision it forces development into this habitat.

Mr. Mylroie: The intent is not to force a cluster, but to determine the maximum development allowed for future consideration, for instance setting 50% aside for open space.

Ms. Tuveson: Not sure it is fair to impose this upon the applicant. Agrees with Ms. Kalmar.

Mr. Emerson: Likes the way the lot is parceled at this time. If there is to be additional development, they will have to deal with that in the future.

Mr. Markley: Requests Board intent to grant special exception so they can proceed.

Mr. Sparkowich: Met with individuals regarding the gate and no one wants one.

Ms. Kalmar moved to grant approval of the sketch plan for Operation Blessing LP and direct the applicant to address the comments raised and to submit a special exception request with their preliminary plan application.

Ms. Driscoll Davis seconded

Motion carried unanimously

Mr. Emerson: This is a paper cul-de-sac, as a hammerhead will be designed.

Mr. Markley: Correct. Additional changes requested:

1. Access to back lot shown;
2. Setbacks shown;
3. Emergency access road to cul-de-sac for existing units;
4. Buffering to neighboring parcels;
5. Building envelopes and open space.

Ms. Tuveson moved to adjourn

Mr. Emerson seconded

Motion carried by all members present

The Kittery Planning Board meeting of June 12, 2014 adjourned at 9:35 p.m.

Submitted by Jan Fisk, Recorder, June 17, 2014



# TOWN OF KITTERY MAINE

## TOWN PLANNING AND DEVELOPMENT DEPARTMENT

200 Rogers Road, Kittery, Maine 03904  
 PHONE: (207) 475-1323  
 Fax: (207) 439-6806  
[www.kittery.org](http://www.kittery.org)



### APPLICATION: SUBDIVISION PLAN REVIEW

<b>FEE FOR REVIEW:</b>	<input checked="" type="checkbox"/> \$500.00 PLUS	<input checked="" type="checkbox"/> \$50.00/LOT OR DWELLING UNIT	<input type="checkbox"/> Minor Subdivision: not more than 4 lots	<b>Fee Paid:</b> \$ <u>750.00</u> Date: <u>10/27/2014</u>	
			<input checked="" type="checkbox"/> Major Subdivision: 5 or more lots <b>Special Exception</b>	<b>Escrow Fee Paid:</b> \$ <u>395.00</u> Date: <u>10/27/2014</u>	
<b>PROPERTY DESCRIPTION</b>	Parcel ID	Map <u>61</u> Lot <u>8</u>	Zone(s): Base: <u>RR</u> Overlay: _____ MS4	Total Land Area: <u>58 Acres</u>	
	Physical Address	<u>Access via a Private Way Off Highpointe Circle</u>			
<b>PROPERTY OWNER'S INFORMATION</b>	Name	<u>Operation Blessing LTD. Partnership</u>		Mailing Address <u>600A Lafayette Road Portsmouth, NH 03801</u>	
	Phone	<u>207-439-6141</u>			
	Fax	<u>same (call first)</u>			
	Email	<u>ricksparkowich@gmail.com</u>			
<b>APPLICANT'S AGENT INFORMATION</b>	Name	<u>Richard Sparkowich</u>		Name of Business <u>Operation Blessing Limited Partnership</u>	
	Phone	<u>207-439-6141</u>			
	Fax	<u>same (call first)</u>			
	Email	<u>ricksparkowich@gmail.com</u>			
<b>PROJECT DESCRIPTION</b>	Existing Use(s): <u>7 Acres occupied by 2 Duplexes and a 3 Bay Garage, that serves as Operation Blessing (O.B.) staff housing. The remaining 51 acres have been made available for recreational use of O.B. and some neighbors.</u>				
	Number of Proposed Lots	<u>5</u>	Subdivision Name	<u>Beatrice Lane Subdivision</u>	
	Proposed Subdivision: <u>Beatrice Lane 5 Lot Subdivision</u>				
	Design: (check)	<input checked="" type="checkbox"/> Conventional	Responsibilities: (check)	<input type="checkbox"/> Total Development	<input type="checkbox"/> Landscaping
		<input type="checkbox"/> Cluster Development		<input type="checkbox"/> Other	<input checked="" type="checkbox"/> Road
	Ownership: (check)	<input checked="" type="checkbox"/> Fee- Simple	<input type="checkbox"/> Post-Construction Storm Water Runoff System Maintenance		
<input type="checkbox"/> Condominium		<u>On 6/12/2014, the Kittery Planning Board voted ungraciously to grant approval of the O.B. Ltd. P. 5 Lot Conventional Subdiv. SKETCH PLAN, advising the Applicant to move forward as a "Special Exception" and file a "Preliminary Plan Application."</u>			
Homeowner's Association	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO				

## WAIVER REQUEST (Submittal Information or Development Standard)

	Ordinance Section	Describe why this request is being made.
Waivers	***EXAMPLE*** 16.32.560 (B)- OFFSTREET PARKING.	***EXAMPLE*** Requesting a waiver of this ordinance since the proposed professional offices have a written agreement with the abutting Church owned property to share parking.

**Related Kittery Land Use and Development Code Provisions:**

**16.10.8.2.5 Conditions or Waivers.**

Conditions required by the Planning Board at the final plan review phase must have been met before the final plan may be given final approval unless so specified in the condition or specifically waived, upon written request by the applicant, by formal Planning Board action wherein the character and extent of such waivers which may have been requested are such that they may be waived without jeopardy to the public health, safety and general welfare.

**16.7.4.1 Objectives Met.** In granting modifications or waivers, the Planning Board must require such conditions as will, in its judgment, substantially meet the objectives of the requirements so waived or modified.

### ABUTTER NOTIFICATION

**16.10.5.1.1. Preliminary Plan Application Filing and Completeness Review.** ... The application must be accompanied by a Plan and the required fee together with a certification the applicant has notified abutters by mail of the filing of the Plan application for approval.

**Submitted Application must include a list showing the names and addresses of the abutters notified and date mailed.**

**The Abutter Notice must include a copy of page one and where applicable page 2 of a signed Application.**

I certify, to the best of my knowledge, the information provided in this Application is true and correct, abutters to the project have been notified, and I will not deviate from the Plan submitted without notifying the Kittery Planning Department of any changes.

Applicant's Signature:	<i>Richard J. Sparkowich</i>	Owner's Signature:	<i>Richard J. Sparkowich</i>
Date:	<i>10/23/14</i>	Date:	<i>10/23/14</i>

# Minimum Plan Submittal Requirements

- 15 COPIES OF THE SUBDIVISION PLAN APPLICATION AND PLAN – 5 PLAN COPIES MUST BE 24" X 36"
- 1 PDF OF THE SUBDIVISION PLAN SHOWING GPS COORDINATES

PRIOR TO STARTING THE REVIEW PROCESS, THE PLANNING BOARD WILL DECIDE WHETHER SUFFICIENT INFORMATION HAS BEEN PROVIDED AND WILL VOTE TO DETERMINE COMPLETENESS/ACCEPTANCE.

**NOTE: THE APPLICANT IS RESPONSIBLE TO PRESENT A CLEAR UNDERSTANDING OF THE PROJECT.**

- A) Paper size:
  - No less than 11" X 17" (reduced) or greater than 24" X 36" (full)
- B) Scale size:
  - Under 10 acres: no greater than 1" = 30'
  - 10 + acres: 1" = 50' 1" = 100'
- C) Title block:
  - Applicant's name and address
  - Name of preparer of plans with professional information and professional seal
  - Parcel's tax map identification (map - lot)
  - Date of plan preparation
- D) Boundary survey performed and sealed by licensed surveyor:
  - Identify all existing boundary markers
  - Show all proposed boundary monuments (per ordinance)
- E) Provide orientation:
  - Arrow showing true north and magnetic declination
  - Graphic scale  Parcel Owners and map and lot
  - Deed docket and page numbers  Draft Deed of Covenants
  - Signature block for planning board
- F) Show location and description of:
  - Elevations of dwelling units. If applicable
  - All structures and accesses within 100 feet
- G) Show parcel data:
  - Zoning District(s)  Lots  Lot Widths  Lot Depths
  - Street frontage  Building setback lines  Lot Areas
  - Rights-of-way  ROW area  Exist. & new street names
  - Wetlands  Wetland area  Wetland setbacks
  - Common tracts  Easements  parcel areas
  - Shoreland Zoning setbacks  undisturbed areas
  - Note on the subdivision plan regarding areas to be taped off and protected until project construction is completed.
- H)  Show names and addresses of all owners of record on abutting parcels and the assessor's map and lot numbers.
- I)  Label all zoning districts abutting the property boundaries.
- J)  Show locations of natural physical features such as water bodies, watercourses, forest cover, and ledge outcroppings.
- K) Show the location of existing and proposed Utilities and identify which utilities are to be privately owned/ municipally owned:
  - Overhead Electric  underground electric
  - Water mains  Wells  Gas mains  Cable TV
  - Sewer mains  Test pits  Septic tanks  Leach fields
  - Storm drain lines  Catch basins  Culverts  Gutters
  - Stormwater storage basins  Rain gardens
  - Nearest fire hydrant

- L) Indicate required landscaping including:
  - Type of plant material  Plant/Tree sizes
  - Placement  Irrigation systems
- M) Show natural and historical topography:
  - Rock walls  Railroad beds
  - The location of all natural features or site elements to be preserved.
- N) Provide a vicinity map and aerial photograph at a scale not more than 400 feet to the inch showing the relation to other properties and geographic features and show:
  - All the area within five hundred (500) feet of the boundary line of the proposed development including roads, geographic features, natural resources (wetlands, etc.), historic sites, applicable comprehensive plan features such as proposed park locations, land uses, Zones and other features;
  - Any smaller area between the tract and all-existing streets, provided any part of such a street used as part of the perimeter for the vicinity map is at least five hundred (500) feet from any boundary of the proposed development.
- O) Show the locations of any:
  - Parks  Preserved Open space  Conservation easements
  - Note on the subdivision plan regarding areas to be dedicated for public use and conditions of such dedication.
- P) Identify and locate each:
  - Easements  Rights-of-way  Street alignments
  - All intersecting property lines within 50 feet of the parcel.
- Q) Include plans, profiles and typical sections of all roads and other paved ways, including all relevant street data.
  - Intersections or  Distance to nearest intersection
  - Driveways onsite  Distance to nearest driveway
  - Sight visibility lines
- R) Show all existing and proposed lighting
  - Map of all street lighting, attached lighting, and area lighting
  - Location of lighted signs  Photo-metrics map
- S)  Indicate the location of any permanently installed machinery likely to cause appreciable noise at the lot lines.
- T)  Provide description of these materials stored on the property:
  - Hazardous  Toxic  Raw Waste
- U)  Show existing contours and finished grade elevations onsite and sufficiently offsite to demonstrate how the project is situated in the surrounding environment.
- V) Indicate the location and dimensions of:
  - Sidewalks  Curbs  Driveways
  - Fences  Retaining walls  Other artificial features
- W) Copies of State and Local permit applications:
  - Notice of Intent  NRPÁ  Permit by Rule
  - All other applicable permits
- X)  Copy of FIRM Map showing the proposed subdivision boundary to scale.

NOTE TO APPLICANT: PRIOR TO THE SITE WALK, TEMPORARY MARKERS MUST BE ADEQUATELY PLACED THAT ENABLE THE PLANNING BOARD TO READILY LOCATE AND APPRAISE THE LAYOUT OF DEVELOPMENT.

**SUBMITTALS THE TOWN PLANNER DEEMS SUFFICIENTLY LACKING IN CONTENT WILL NOT BE SCHEDULED FOR PLANNING BOARD REVIEW.**

To: Kittery Planning Department  
c/o Chris DiMatteo (Interim Planner)

October 23, 2014

Re: Beatrice Lane 5 Lot Subdivision

The following list of Abutters were mailed the attached notice on 10/23/14.

CERTIFIED BY: Richard D. Sparkowich for Operation Blessing LTD Partnership

*Richard D. Sparkowich*

61-29  
CONTOOCOOK RIVER LOFTS LLC  
3 PENSTOCK WAY  
NEWMARKET, NH 03857-4416  
-Or Current Resident-

61-09-8  
JOSEPH A GASBARRO  
11 HIGHPOINTE CIRCLE  
KITTERY, ME 03904  
-Or Current Resident-

61-8D  
OPERATION BLESSING LP  
PO BOX 4069  
Portsmouth, NH 03802

39-17B-13  
TERRI MCCOLGAN  
36 CEDAR DRIVE  
KITTERY, ME 03904  
-Or Current Resident-

55-01B  
EDWARD T JANKAUSKAS JR  
15 AUTUMN WAY  
KITTERY, ME 03904  
-Or Current Resident-

48-15  
RICHARD P SARCIA  
48 FRONT STREET  
NEW HAVEN, CT 06513  
-Or Current Resident-

61-8F  
MARTHA G ROTHWELL  
154 CHASES POND ROAD  
YORK, ME 03909  
-Or Current Resident-

61-09-7  
DAVID F HANSON  
14 HIGHPOINTE CIRCLE  
KITTERY, ME 03904  
-Or Current Resident-

61-8E  
GABRIELLE BURKE  
12 KITTREE LANE  
KITTERY, ME 03904  
-Or Current Resident-

61-09-9  
DENNIS A DEAN  
9 HIGHPOINTE CIRCLE  
KITTERY, ME 03904  
-Or Current Resident-

61-08  
OPERATION BLESSING LP  
PO BOX 4069  
PORTSMOUTH, NH 03802  
-Or Current Resident-

61-04B-1  
KEVIN BRADSTREET  
16 OLD FARM ROAD  
KITTERY, ME 03904  
-Or Current Resident-

39-17B-12  
DAVID FLAMAND  
35 CEDAR DRIVE  
KITTERY, ME 03904  
-Or Current Resident-

39-17B-14  
ROBERT B ALLEN  
34 CEDAR DRIVE  
KITTERY, ME 03904  
-Or Current Resident-

61-8C  
MARY-ELLEN CIALI  
KITTERY, ME 03904  
-Or Current Resident-

48-21  
FULLER BROOK ESTATES LLC  
1293 MAIN STREET  
SANFORD, ME 04073  
-Or Current Resident-

61-09  
Christopher A Taylor  
9 OLD FARM ROAD  
KITTERY, ME 03904  
-Or Current Resident-

61-04B  
SUE ANN CALDWELL  
12 OLD FARM ROAD  
KITTERY, ME 03904  
-Or Current Resident-

39-17B-11  
SHIRLEY A MONTMARQUET  
33 CEDAR DRIVE  
KITTERY, ME 03904  
-Or Current Resident-

39-17B  
WELLSWOOD INC  
282 HALEY ROAD  
KITTERY, ME 03904  
-Or Current Resident-

61-04E  
PHILIP DOUCETTE  
64 NORTON ROAD  
KITTERY, ME 03904  
-Or Current Resident-

**SUBSURFACE WASTEWATER DISPOSAL SYSTEM APPLICATION**  
**BEATRICE LANE 5 LOT SUBDIV.**

Department of Human Services  
 Division of Health Engineering  
 (207) 287-5672 Fax: (207) 287-3165

Town, City, Plantation  
 Kittery

**PARCEL  
 A**

Street, Road, Subdivision  
 Old Farm Lane

Owner's Name  
 Operation Blessing  
 Limited Partnership

**SOIL DESCRIPTION AND CLASSIFICATION (Location of Observation Holes Shown Above)**

Observation Hole A1  Test Pit  Boring  
 2 " Depth of Organic Horizon Above Mineral Soil

Texture	Consistency	Color	Mottling
0	Fine sandy loam	Dark brown 10YR 3/3 Yellowish brown 10YR 5/4	None
10	Stony fine sandy loam	Light olive brown	
20	loam	2.5Y 5/4	
	Friable		
30	Stony sandy loam	Olive brown	Mottles
40	loam	2.5Y 4/3	

Soil Classification	Slope	Limiting Factor	<input checked="" type="checkbox"/> Ground Water
<u>2</u> <u>D</u>	___ %	<u>13</u> "	<input type="checkbox"/> Restrictive Layer
Profile Condition			<input type="checkbox"/> Bedrock
			<input type="checkbox"/> Pit Depth

Observation Hole A2  Test Pit  Boring  
 1 " Depth of Organic Horizon Above Mineral Soil

Texture	Consistency	Color	Mottling
0	Fine sandy loam	Very dark gr. brown 10YR 3/2 Yellowish brown 10YR 5/6	None
10	loam		
20	Stony	Olive	
	Friable		
30	sandy loam	brown	Mottles
40	loam	2.5Y 4/4	

Soil Classification	Slope	Limiting Factor	<input checked="" type="checkbox"/> Ground Water
<u>2</u> <u>C</u>	___ %	<u>16</u> "	<input type="checkbox"/> Restrictive Layer
Profile Condition			<input type="checkbox"/> Bedrock
			<input type="checkbox"/> Pit Depth

Observation Hole A3  Test Pit  Boring  
 2 " Depth of Organic Horizon Above Mineral Soil

Texture	Consistency	Color	Mottling
0	Fine sandy loam	Very dark gr. brown Yellowish brown 10YR 5/6	None
10	Stony	Light	
20	sandy loam	olive brown	Mottles
30	loam	2.5Y 5/4	
40	X	X Bedrock X	X

Soil Classification	Slope	Limiting Factor	<input checked="" type="checkbox"/> Ground Water
<u>2</u> <u>D/All</u>	___ %	<u>13</u> "	<input type="checkbox"/> Restrictive Layer
Profile Condition			<input type="checkbox"/> Bedrock
			<input type="checkbox"/> Pit Depth

Observation Hole A4  Test Pit  Boring  
 2 " Depth of Organic Horizon Above Mineral Soil

Texture	Consistency	Color	Mottling
0	Fine sandy loam	Dark brown 10YR 3/3 Yellowish brown 10YR 5/4	None
10	loam		
20	Stony fine sandy loam	Light olive brn 2.5Y 5/4	
30	Stony sandy loam	Olive brown	Mottles
40	loam	2.5Y 4/3	
50	X	X Bedrock X	X

Soil Classification	Slope	Limiting Factor	<input checked="" type="checkbox"/> Ground Water
<u>3</u> <u>C/All</u>	___ %	<u>17</u> "	<input type="checkbox"/> Restrictive Layer
Profile Condition			<input type="checkbox"/> Bedrock
			<input type="checkbox"/> Pit Depth

*Michael Carson*  
 Site Evaluator Signature

211  
 SE #

20 June 06  
 Date

# SOIL PROFILE/CLASSIFICATION INFORMATION

Project Name: **BEATRICE LANE  
5 LOT SUBDIVISION**

Applicant Name: **OPERATION BLESSING LTD P.**

Project Location (municipality): **KITTERY, MAINE**

Observation Hole JN TP1  Test Pit  Boring  
2 " Depth of Organic Horizon Above Mineral Soil (PARCEL B)

Texture	Consistency	Color	Mottling
		DARK BROWN	
FINE			
	FRIABLE	DARK YELLOWISH BROWN	NONE
SANDY			
LOAM	FIRM	LIGHT OLIVE BROWN	COMMON DISTINCT
BEDROCK @ 48"			
Soil Classification Profile: <u>3</u>	Slope: <u>-7</u> %	Limiting Factor: <u>26</u>	<input checked="" type="checkbox"/> Ground Water <input type="checkbox"/> Restrictive Layer <input type="checkbox"/> Bedrock <input type="checkbox"/> Pit Depth

DIXFIELD SERIES VARIANT - HYD GRP C - NON-HYDRIC

Observation Hole JN TP2  Test Pit  Boring  
2 " Depth of Organic Horizon Above Mineral Soil (PARCEL B)

Texture	Consistency	Color	Mottling
		DARK BROWN	
FINE			
	FRIABLE	DARK YELLOWISH BROWN	NONE
SANDY			
LOAM	FIRM	OLIVE	COMMON DISTINCT
BEDROCK @ 37"			
Soil Classification Profile: <u>3</u>	Slope: <u>-7</u> %	Most Limiting Factor: <u>37</u>	<input type="checkbox"/> Ground Water <input type="checkbox"/> Restrictive Layer <input type="checkbox"/> Bedrock <input type="checkbox"/> Pit Depth

DIXFIELD SERIES VARIANT - HYD GRP C - NON-HYDRIC

*Backhoe excavated test pits were conducted on July 1, 2014.*

*Test pits JN TP1 & JN TP2 have suitable soils for the placement of a wastewater disposal system for a 4-bedroom home.  
 Test pits JN TP3, JN TP4, & JN TP5 have suitable soils for the placement of a wastewater disposal system for a 3-bedroom home.*

Observation Hole JN TP3  Test Pit  Boring  
2 " Depth of Organic Horizon Above Mineral Soil (PARCEL H)

Texture	Consistency	Color	Mottling
		DARK BROWN	
STONY FINE SANDY LOAM			
	FRIABLE	DARK YELLOWISH BROWN	NONE
BEDROCK FROM 12" TO 24"			
Soil Classification Profile: <u>2</u>	Slope: <u>-4</u> %	Limiting Factor: <u>12</u>	<input type="checkbox"/> Ground Water <input type="checkbox"/> Restrictive Layer <input type="checkbox"/> Bedrock <input type="checkbox"/> Pit Depth

LYMAN SERIES - HYD GRP D - NON-HYDRIC (12 INCHES)  
 TUNBRIDGE SERIES - HYD GRP C - NON-HYDRIC (>20 INCHES)

Observation Hole JN TP4  Test Pit  Boring  
2 " Depth of Organic Horizon Above Mineral Soil (PARCEL H)

Texture	Consistency	Color	Mottling
		DARK BROWN	
FINE			
	FRIABLE	DARK YELLOWISH BROWN	NONE
SANDY			
LOAM	FIRM	LIGHT OLIVE BROWN	COMMON DISTINCT
BEDROCK @ 45"			
Soil Classification Profile: <u>3</u>	Slope: <u>-4</u> %	Limiting Factor: <u>29</u>	<input type="checkbox"/> Ground Water <input type="checkbox"/> Restrictive Layer <input type="checkbox"/> Bedrock <input type="checkbox"/> Pit Depth

DIXFIELD SERIES VARIANT - HYD GRP C - NON-HYDRIC

*John W. Neil*  
 Signature

221 209  
 SE # SS#

7/2/14  
 Date



**SUBSURFACE WASTEWATER DISPOSAL SYSTEM APPLICATION**  
**BEATRICE LANE 5 LOT SUBDIV.**

Department of Human Services  
 Division of Health Engineering  
 (207) 287-5672 Fax: (207) 287-3165

Town, City, Plantation  
 Kittery

**PARCEL I**

Street, Road, Subdivision  
 Old Farm Lane

Owner's Name  
 Operation Blessing  
 Limited Partnership

**SOIL DESCRIPTION AND CLASSIFICATION (Location of Observation Holes Shown Above)**

Observation Hole A5  Test Pit  Boring  
 2 " Depth of Organic Horizon Above Mineral Soil

Texture	Consistency	Color	Mottling
0	Fine	Dark brown 10YR 3/3	None
10	sandy	Yellowish	
20	loam	brown 10YR 5/6	
30	Stony fine	Friable Light	
40	sandy	olive brown	Mottles
50	loam	2.5Y 5/4	

Soil Classification	Slope	Limiting Factor	<input checked="" type="checkbox"/> Ground Water
<u>2</u> <u>C</u>	— %	<u>20</u> "	<input type="checkbox"/> Restrictive Layer
Profile Condition			<input type="checkbox"/> Bedrock
			<input type="checkbox"/> Pit Depth

Observation Hole A6  Test Pit  Boring  
 2 " Depth of Organic Horizon Above Mineral Soil

Texture	Consistency	Color	Mottling
0	Fine	Dark brown 10YR 3/3	None
10	sandy	Yellowish	
20	loam	brown 10YR 5/6	
30	Stony	Friable Light	
40	loamy	olive	Mottles
50	sand	brown 2.5Y 5/4	

Soil Classification	Slope	Limiting Factor	<input checked="" type="checkbox"/> Ground Water
<u>4</u> <u>C</u>	— %	<u>26</u> "	<input type="checkbox"/> Restrictive Layer
Profile Condition			<input type="checkbox"/> Bedrock
			<input type="checkbox"/> Pit Depth

Observation Hole A7  Test Pit  Boring  
 2 " Depth of Organic Horizon Above Mineral Soil

Texture	Consistency	Color	Mottling
0	Fine	Dark brown	None
10	sandy	Yellowish brown	
20	loam	10YR 5/6 Light yel brown	
30	Stony fine	Friable Olive	
40	sandy	Firm brown	Mottles
52	loam	2.5Y 4/4	

Soil Classification	Slope	Limiting Factor	<input checked="" type="checkbox"/> Ground Water
<u>3</u> <u>C</u>	— %	<u>20</u> "	<input type="checkbox"/> Restrictive Layer
Profile Condition			<input type="checkbox"/> Bedrock
			<input type="checkbox"/> Pit Depth

Observation Hole A8  Test Pit  Boring  
 2 " Depth of Organic Horizon Above Mineral Soil

Texture	Consistency	Color	Mottling
0	Stony	Dark brown 10YR 3/3	None
10	fine	Dark	
20	sandy	Friable yellowish	
30	loam	brown	
40	X	10YR 4/6	
50	X	Bedrock	
52	X	X	

Soil Classification	Slope	Limiting Factor	<input type="checkbox"/> Ground Water
<u>2</u> <u>All</u>	— %	<u>19</u> "	<input type="checkbox"/> Restrictive Layer
Profile Condition			<input checked="" type="checkbox"/> Bedrock
			<input type="checkbox"/> Pit Depth

*Michael...*  
 Site Evaluator Signature

211  
 SE #

20 June 06  
 Date

North  
W  EASTERLY  
SURVEYING, Inc.

191 State Road, Suite #1 • Kittery, Maine 03904 • (207) 439-6333 • Fax (207) 439-1354  
December 4, 2014

Town of Kittery Planning Board  
c/o Tom Emerson, Chair  
200 Rogers Road  
Kittery, ME 03904

Re: Preliminary Plan Application

Dear Chairman Emerson and Members of the Board:

On behalf of the applicant, Operation Blessing, the following is a discussion of the special exception standards for the use of dwellings within a subdivision in the Rural Residential Zone R-RL.

**Special Exception Standards:**

The board must use the following criteria as the basis of their decision:

- Item 1:** The proposed use will not prevent the orderly and reasonable use of adjacent properties or of the properties in adjacent use zones;  
Response: The proposed residential use is located in an area of existing residential dwellings. The density of the proposed development is less than the existing adjacent areas of residential use. Therefore, the proposed residential use of this subdivision will not prevent the orderly and reasonable use of adjacent properties.
- Item 2:** The proposed use will not prevent the orderly and reasonable use of permitted or legally established uses in the zone wherein the proposed use is to located, or of permitted or legally established uses in adjacent use zones;  
Response: The proposed use is residential within a subdivision. Most of the adjacent properties are legally and reasonable residential uses within subdivisions. Therefore, the proposed use would not prevent the existing uses to continue.
- Item 3:** Safety, the health, and the welfare of the Town will not be adversely affected by the proposed use or its location;  
Response: The proposed use is in concert with the adjacent properties and no adverse affect by the Town has been historically documented from dwellings within subdivisions.
- Item 4:** Use will be in harmony with and promote the general purposes and intent of this code;  
Response: The proposed use is residential dwellings within a residential zone and, therefore, in harmony with the intent of this code.

**Conclusion**

For the reasons set forth above, Operation Blessing, LP respectfully requests that, in addition to finding that the proposed subdivision conforms to the factors in Section 16.6.6 of the Code the Planning Board grant special exception approval for the use of dwellings within a subdivision as shown on the plan. Please feel free to contact me if there are any questions or if additional information is requested.

  
Kenneth D. Markley, RLS  
President NorthEasterly Surveying, Inc.

North  
W  EASTERLY  
SURVEYING, Inc.

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

October 23, 2014

Kittery Planning Board  
Chris DiMatteo – Acting Town Planner  
200 Rogers Road  
Kittery, ME 03904

Planning Board Review – Preliminary Application Acceptance – Subdivision – Beatrice Lane –  
Operation Blessing L. P. - 22/24 Old Farm Road, Kittery – Tax Map 61 Lot 8 - Job# 12726

Dear Chairman and Planning Board Members,

Operation Blessing would like to continue their quest to subdivide the above mentioned property into 5 lots. We presented a conceptual drawing of this conventional subdivision to the planning board on 6/12/14 which was unanimously accepted by vote by said board. It was determined that this division of land did not lend itself to the cluster subdivision concept and that the conventional subdivision route was more appropriate for this parcel of land. Since then Operation Blessing has retained the services of Attar Engineering to design the road, stormwater plan/report and associated details.

As previously discussed and viewed both by site visit and in meetings we have shown the lots as follows:

- 1.) Proposed Parcel 61-8G - Is 7.12 acres in size and has existing dwellings on it. This lot will be accessed from the new Beatrice Lane by use of a driveway to the southwest of Parcel H. No additional development or changes are anticipated.
- 2.) Proposed Parcel H – Is 40,035 sqft. in size and has been soils tested and passed for a single family dwelling. This lot will be accessed from the new Beatrice Lane by use of a driveway located approximately in the middle of the lot.
- 3.) Proposed Parcel I – Is 3.41 acres in size and has been soils tested and passed for a single family dwelling. This lot will be accessed from the end of the new Beatrice Lane by use of a driveway.
- 4.) Proposed Parcel A – Is 43.03 acres in size and has been soils tested and passed for a single family dwelling. This lot will be accessed from the end of the new Beatrice Lane by use of a driveway using a right of way across Proposed Parcel I. This parcel gets it's frontage on the cul-de-sac adjacent to Proposed Parcel B.
- 5.) Proposed Parcel B – Is 1.67 acres in size and has been soils tested and passed for a single family dwelling. This lot will be accessed from the end of the new Beatrice Lane by use of a driveway.

Attached you will find the following:

- 1.) Letters and supporting documentation
  - a.) Application for Subdivision Review

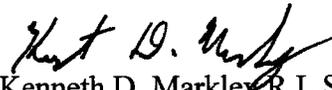
- b.) Stormwater Management Study by Attar Engineering
- c.) Soils tests for proposed new lots.

2.) Set of drawings including:

- a.) Cover Sheet
- b.) Subdivision Plan by North Easterly Surveying, Inc.
- c.) Road Construction and stormwater drainage plans by Attar Engineering showing grading details.

We would appreciate your review and comments on this project at your next Planning Board meeting. Please feel free to contact me should you have any questions.

Sincerely:



Kenneth D. Markley R.L.S. L.S.E  
President – NorthEasterly Surveying, Inc.



**Legend**

Parcels  
 □

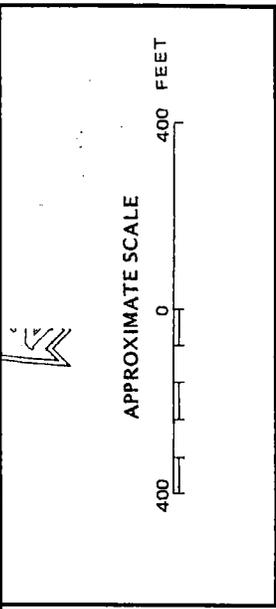
Roads  
 —

621 Feet

**12726**

**Town of Kittery,  
 Maine**

*This information has been compiled from various public and private sources. While every attempt has been made to provide accurate information, neither the municipality nor the service host guarantee the accuracy of information provided herein.*



NATIONAL FLOOD INSURANCE PROGRAM

**FIRM**  
FLOOD INSURANCE RATE MAP

TOWN OF  
KITTEERY, MAINE  
YORK COUNTY

PANEL 2 OF 10  
(SEE MAP INDEX FOR PANELS NOT PRINTED)

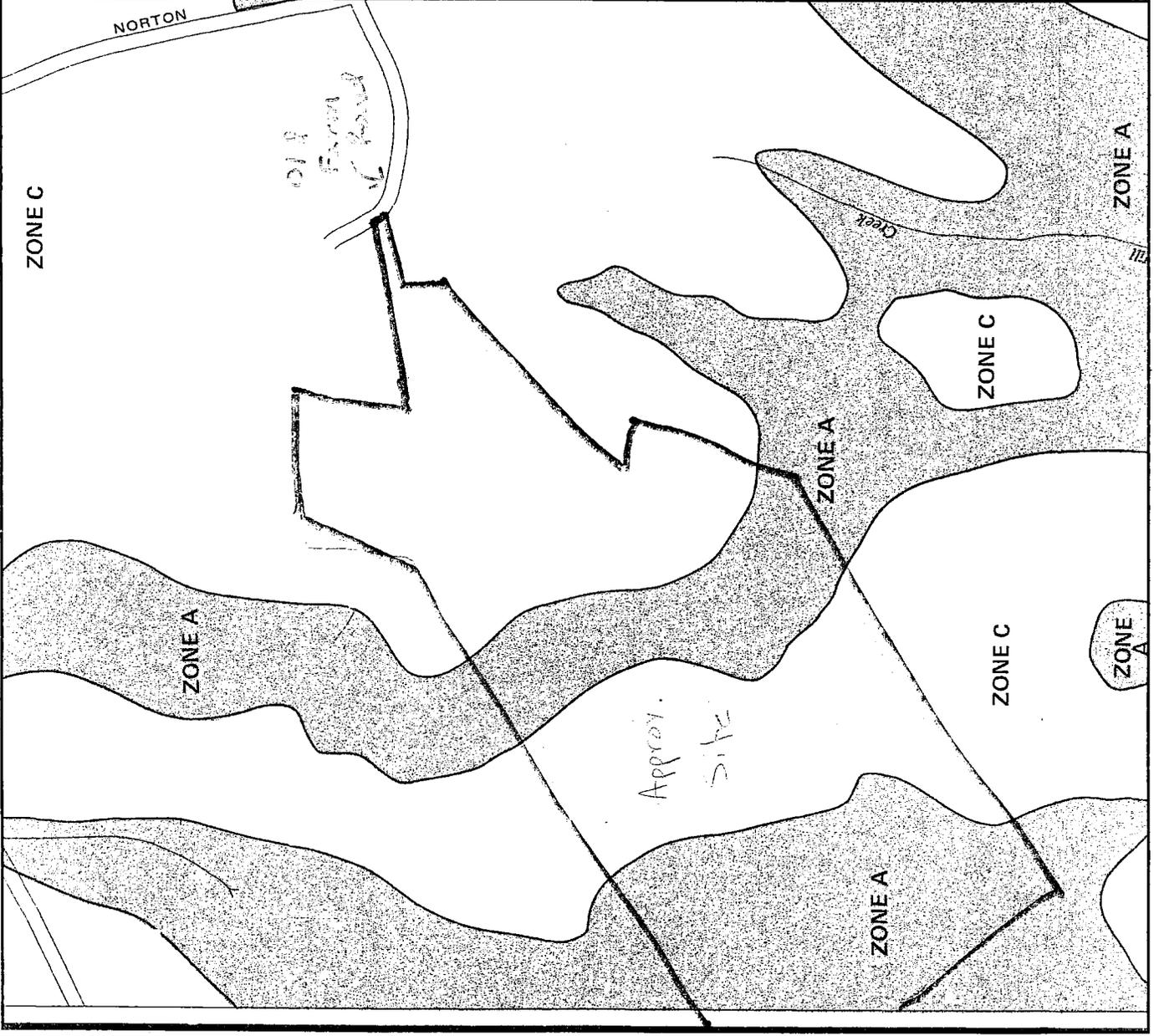
COMMUNITY-PANEL NUMBER  
230171 0002 C

EFFECTIVE DATE:  
JULY 5, 1984



Federal Emergency Management Agency

This is an official copy of a portion of the above referenced flood map. It was extracted using F-MIT On-Line. This map does not reflect changes or amendments which may have been made subsequent to the date on the title block. For the latest product information about National Flood Insurance Program flood maps check the FEMA Flood Map Store at [www.msc.fema.gov](http://www.msc.fema.gov)



# "BEATRICE LANE"

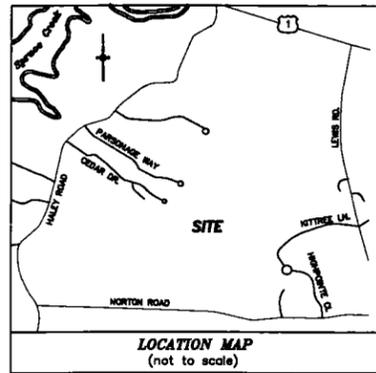
Kittery, York County, Maine

APPLICANT/OWNER:  
**Operation Blessing, LP**  
c/o Richard D. Sparkowich  
PO Box 4069, Portsmouth, NH 03802

PREPARED BY:

North  
W  Easterly  
**SURVEYING, Inc.**

SURVEYORS IN N.H. & MAINE 191 STATE ROAD, SUITE #1  
(207) 439-8333 KITTERY, MAINE 03904



**LIST OF PROJECT PLANS AND DOCUMENTS:**

PLANS: SHEET No.	PLAN TYPE	LAST REVISED
S-1	SUBDIVISION PLAN.....	10/23/2014
C-1	PLAN AND PROFILE.....	10/23/2014
C-2	EROSION & SEDIMENT CONTROL DETAILS.....	10/23/2014
C-3	SITE DETAILS.....	10/23/2014

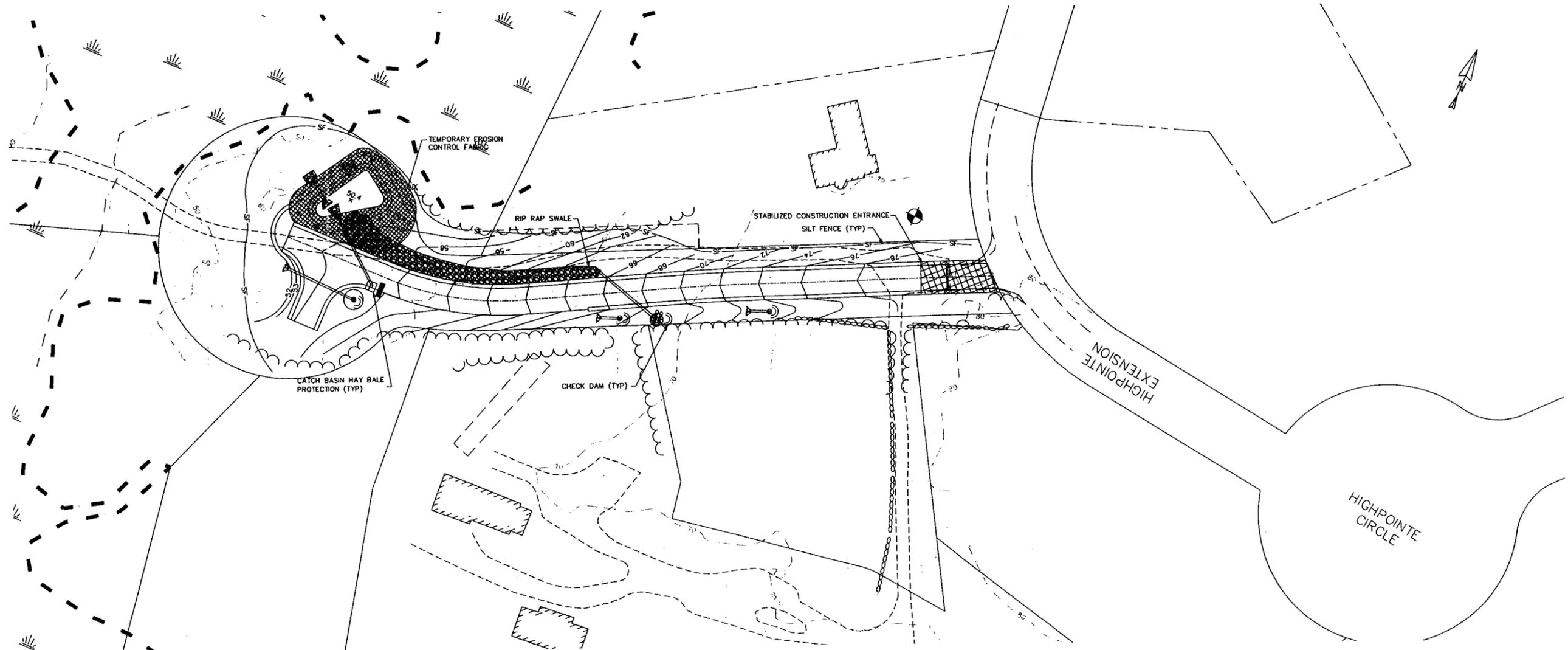


**ATTAR ENGINEERING, INC.**

CIVIL • STRUCTURAL • MARINE  
1284 STATE ROAD - ELIOT, MAINE 03903  
PHONE: (207)439-6023 FAX: (207)439-2128







**EROSION & SEDIMENTATION CONTROL NOTES**

1. SILTATION FENCE OR HAY BALE BARRIERS WILL BE INSTALLED DOWNSLOPE OF ALL STRIPPING OR CONSTRUCTION OPERATIONS. A DOUBLE SILT FENCE BARRIER SHALL BE INSTALLED DOWNSLOPE OF ANY EROSION AND SEDIMENTATION CONTROL PLAN. ALL AREAS SHALL BE INSPECTED AND MAINTAINED DAILY DURING PROLONGED RAIN. SILT AND SOIL PARTICLES ACCUMULATING BEHIND THE FENCE SHALL BE REMOVED AFTER EACH SIGNIFICANT RAIN EVENT AND IN NO INSTANCE SHOULD ACCUMULATION EXCEED 1/2 THE HEIGHT OF THE FENCE. TORN OR DAMAGED AREAS SHALL BE REPAIRED.
2. TEMPORARY AND PERMANENT VEGETATION AND MULCHING IS AN INTEGRAL COMPONENT OF THE EROSION AND SEDIMENTATION CONTROL PLAN. ALL AREAS SHALL BE INSPECTED AND MAINTAINED UNTIL THE DESIRED VEGETATIVE COVER IS ESTABLISHED. THESE CONTROL MEASURES ARE ESSENTIAL TO EROSION PREVENTION AND ALSO REDUCE COSTLY REWORK OF GRADED AND SHAPED AREAS.
3. SEEDING, FERTILIZER AND LIME RATES AND TIME OF APPLICATION WILL BE DEPENDENT ON SOIL REQUIREMENTS. TEMPORARY VEGETATION SHALL BE MAINTAINED IN THESE AREAS UNTIL PERMANENT SEEDING IS APPLIED. ADDITIONALLY, EROSION AND SEDIMENTATION MEASURES SHALL BE MAINTAINED UNTIL PERMANENT VEGETATION IS ESTABLISHED.
4. ALL LAWN AREA, OUTER POND SIDE SLOPES AND SWALES SHALL BE PERMANENTLY SEEDED WITH THE FOLLOWING MIXTURE: 20 LB/ACRE CREEPING RED FESCUE, 2 LB/ACRE REDTOP AND 20 LB/ACRE TALL FESCUE FOR A TOTAL OF 42 LB/ACRE. FERTILIZER AND LIME RATES SHALL BE DEPENDENT ON SOIL TESTING. IN THE ABSENCE OF SOIL TESTS, FERTILIZE WITH 10-20-20 (N-P205-K201) AT 800 LB/ACRE AND LIME AT 3 TONS/ACRE. MULCH WITH HAY AT 70-90 LB/1000 S.F. 4" OF LOAM SHALL BE APPLIED PRIOR TO SEEDING.
5. POND BOTTOMS AND INNER POND SIDESLOPES SHALL BE PERMANENTLY SEEDED WITH THE FOLLOWING MIXTURE: 20 LB/ACRE CREEPING RED FESCUE, 8 LB/ACRE BIRDSFOOT TREFOL AND 20 LB/ACRE TALL FESCUE FOR A TOTAL OF 48 LB/ACRE. SEE THE ABOVE NOTE FOR FERTILIZER, LIME AND MULCHING RATES.
6. TEMPORARY VEGETATION OF ALL DISTURBED AREAS, MATERIAL STOCKPILES AND OTHER SUCH AREAS SHALL BE ESTABLISHED BY SEEDING WITH EITHER WINTER RYE AT A RATE OF 112 LB/ACRE OR ANNUAL RYEGRASS AT A RATE OF 40 LB/ACRE. WINTER RYE SHALL BE USED FOR FALL SEEDING AND ANNUAL RYEGRASS FOR SHORT DURATION SEEDING. SEEDING SHALL BE ACCOMPLISHED BEFORE OCTOBER 1.
7. TEMPORARY SEEDING OF DISTURBED AREAS SHALL BE ACCOMPLISHED BEFORE OCTOBER 1. PERMANENT SEEDING SHALL BE ACCOMPLISHED BEFORE SEPTEMBER 15.
8. ALL SEEDED AREAS SHALL BE MULCHED WITH HAY AT A RATE OF 2 BALES (70-90 LB) PER 1000 S.F. OF SEEDED AREA.
9. ALL DISTURBED AREAS ON THE SITE SHALL BE PERMANENTLY STABILIZED WITHIN 7 DAYS OF FINAL GRADING OR TEMPORARILY STABILIZED WITHIN 30 DAYS OF INITIAL DISTURBANCE.
10. A STABILIZED CONSTRUCTION ENTRANCE SHALL BE INSTALLED AT ALL ACCESSES TO PUBLIC ROADS (SEE PLAN). TEMPORARY CULVERTS SHALL BE PROVIDED AS REQUIRED.
11. SLOPES 2:1 OR STEEPER SHALL BE TREATED WITH POLYJUTE OPEN WEAVE GEOTEXTILE (OR EQUIVALENT) AFTER SEEDING. JUTE MATS SHALL BE ANCHORED PER MANUFACTURER'S SPECIFICATIONS.
12. EXCESSIVE DUST CAUSED BY CONSTRUCTION OPERATIONS SHALL BE CONTROLLED BY APPLICATION OF WATER OR CALCIUM CHLORIDE.
13. THE CONTRACTOR MAY OPT TO USE EROSION CONTROL MIX BERM AS A SEDIMENT BARRIER IN LIEU OF SILTATION FENCE OR HAY BALE BARRIERS WITH APPROVAL FROM THE INSPECTING ENGINEER.

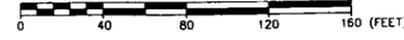
**WINTER CONSTRUCTION NOTES**

1. EXPOSED AREAS SHOULD BE LIMITED TO AN AREA THAT CAN BE MULCHED IN ONE DAY PRIOR TO ANY SNOW EVENT.
2. AN AREA SHALL BE CONSIDERED STABILIZED WHEN EXPOSED SURFACES HAVE BEEN EITHER MULCHED WITH HAY AT A RATE OF 100 LB/1000 S.F. OR DORMANT SEEDED, MULCHED AND ADEQUATELY ANCHORED BY AN APPROVED ANCHORING TECHNIQUE. IN ALL CASES, MULCH SHALL BE APPLIED SO THAT THE SOIL SURFACE IS NOT VISIBLE THROUGH THE MULCH.
3. FROM OCTOBER 15 TO APRIL 1, LOAM AND SEED WILL NOT BE REQUIRED. DURING PERIODS OF TEMPERATURES ABOVE FREEZING, DISTURBED AREAS SHALL BE FINE GRADED AND PROTECTED WITH MULCH OR TEMPORARILY SEEDED AND MULCHED UNTIL PERMANENT SEEDING CAN BE APPLIED. AFTER NOVEMBER 1, DISTURBED AREAS MAY BE LOAMED, FINE GRADED AND DORMANT SEEDED AT A RATE 200-300% HIGHER THAN THE SPECIFIED PERMANENT SEEDING RATE. IF CONSTRUCTION CONTINUES DURING FREEZING WEATHER, DISTURBED AREAS SHALL BE GRADED BEFORE FREEZING AND TEMPORARILY STABILIZED WITH MULCH. DISTURBED AREAS SHALL NOT BE LEFT OVER THE WINTER OR FOR ANY OTHER EXTENDED PERIOD OF TIME UNLESS STABILIZED WITH MULCH.
4. FROM NOVEMBER 1 TO APRIL 15 ALL MULCH SHALL BE ANCHORED BY EITHER PEG LINE, MULCH NETTING, ASPHALT EMULSION CHEMICAL, TRACK OR WOOD CELLULOSE FIBER. MULCH NETTING SHALL BE USED TO ANCHOR MULCH IN ALL DRAINAGE WAYS WITH SLOPES GREATER THAN 3% SLOPES EXPOSED TO DIRECT WINDS AND FOR SLOPES GREATER THAN 8%. MULCH NETTING SHALL BE USED TO ANCHOR MULCH IN ALL AREAS WITH SLOPES GREATER THAN 15% AFTER OCTOBER 1, THE SAME APPLIES TO ALL SLOPES GREATER THAN 8%.
5. DURING WINTER CONSTRUCTION, DORMANT SEEDING OR MULCH AND ANCHORING SHALL BE APPLIED TO ALL DISTURBED AREAS AT THE END OF EACH WORKING DAY.
6. SNOW SHALL BE REMOVED FROM AREAS OF SEEDING AND MULCHING PRIOR TO PLACEMENT.

**LEGEND**

PROP. LINE	---
WETLAND BOUNDARY	- - - - -
EXT. PAVEMENT	=====
PRP. PAVEMENT	=====
TREELINE	~~~~~
WETLAND	
STONEWALL	o-o-o-o-o

**GRAPHIC SCALE**



EROSION CONTROL PLAN  
BEATRICE LANE  
HIGHPOINT CIRCLE AND KITTREE LANE  
KITTEERY, MAINE

FOR: RICHARD SPARKOWICH  
OPERATION BLESSING, LP  
P.O. BOX 4069  
PORTSMOUTH, NH 03802

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

SCALE: 1" = 40'  
DATE: 9/1/14  
JOB NO: C085-14

APPROVED BY: *[Signature]*  
DATE: 10/21/2014  
CAD FILE: BEATRICE WAY SITE-MR

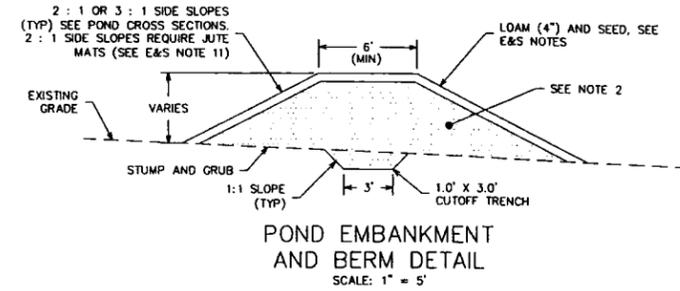
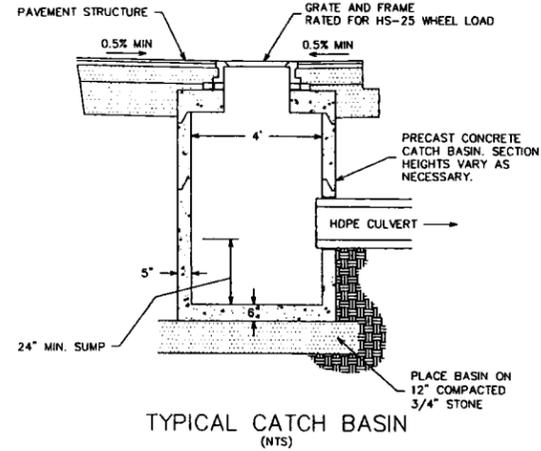
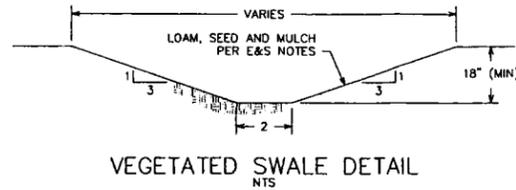
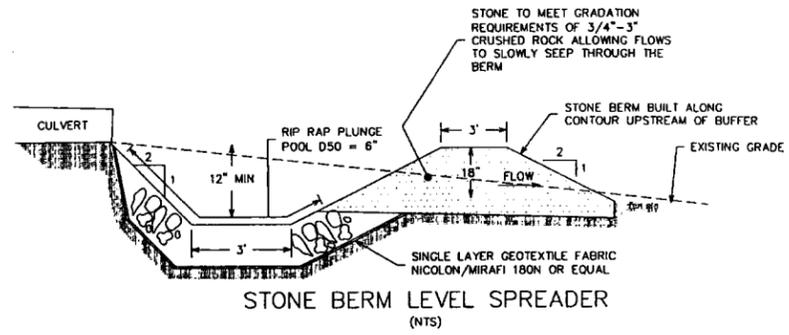
DRAWN BY: MMR  
REVISION: DAT  
SHEET C2

NO.	DESCRIPTION	DATE



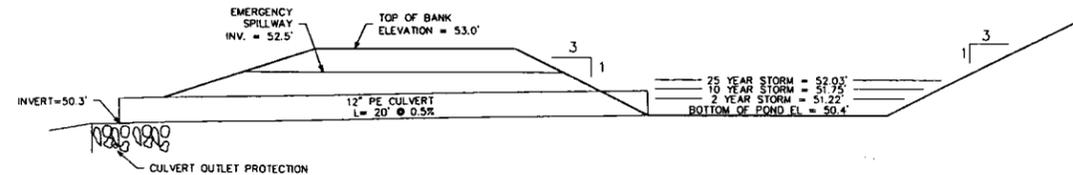
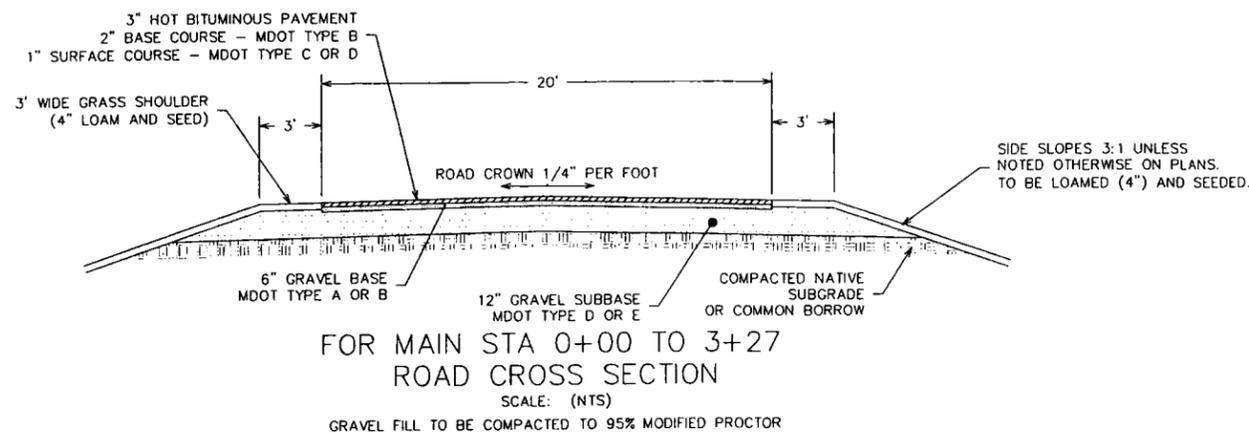
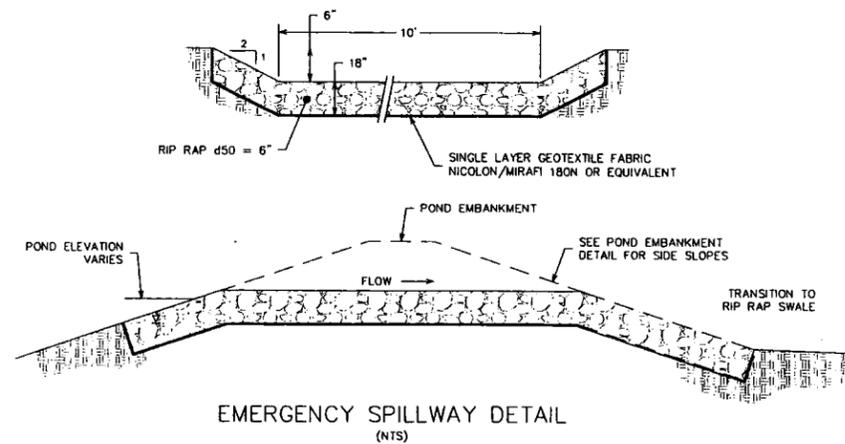
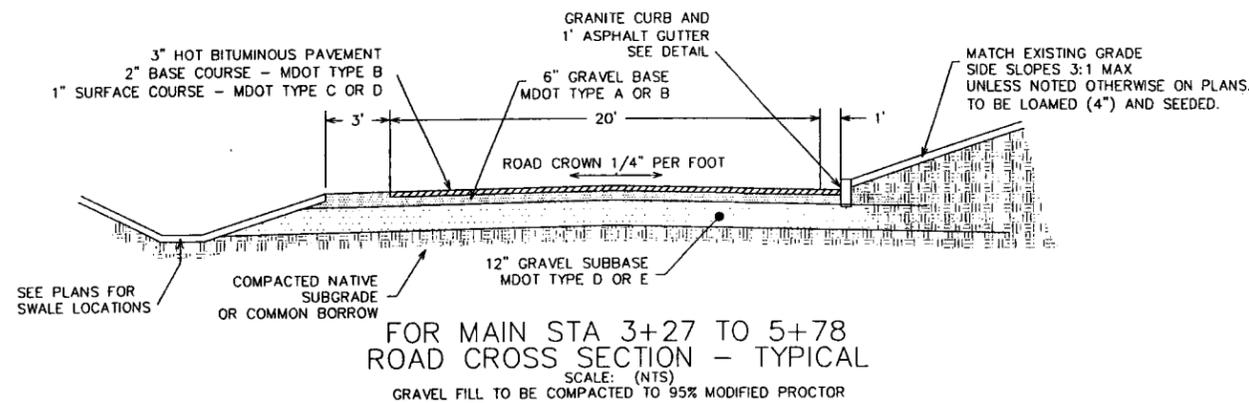
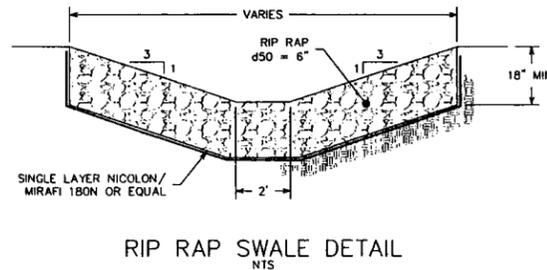
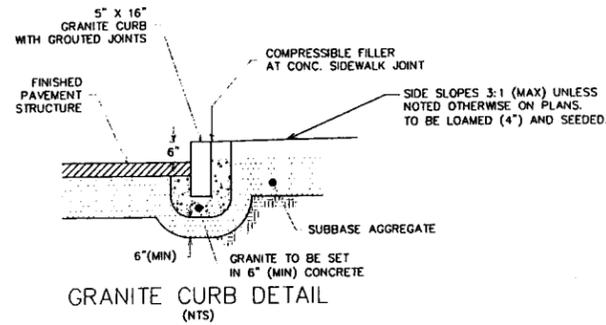
*[Signature]*





EMBANKMENT CONSTRUCTION NOTES

1. ALL ORGANIC MATERIAL, STUMPS, ROCKS AND BOULDERS SHALL BE REMOVED TO A MINIMUM DEPTH OF 24" BELOW SUBGRADE OF THE BASIN EMBANKMENT. ALL EXCAVATIONS BELOW THE BASIN EMBANKMENT SHALL HAVE A MINIMUM SLOPE OF 1H : 1V.
2. ALL BASIN EMBANKMENT FILL MATERIAL SHALL BE WELL GRADED BORROW WITH A MINIMUM OF 20% FINES CONTENT. EMBANKMENT FILL SHALL BE PLACED IN 12" (MAX.) LIFTS AND BE COMPACTED TO 95% MODIFIED PROCTOR. A CUTOFF TRENCH SHALL BE EXCAVATED AS SHOWN PRIOR TO CONSTRUCTION OF EMBANKMENT.
3. DETENTION BASIN AND ALL EXCAVATIONS SHALL BE KEPT FREE OF WATER DURING CONSTRUCTION.



NO.	DESCRIPTION	DATE

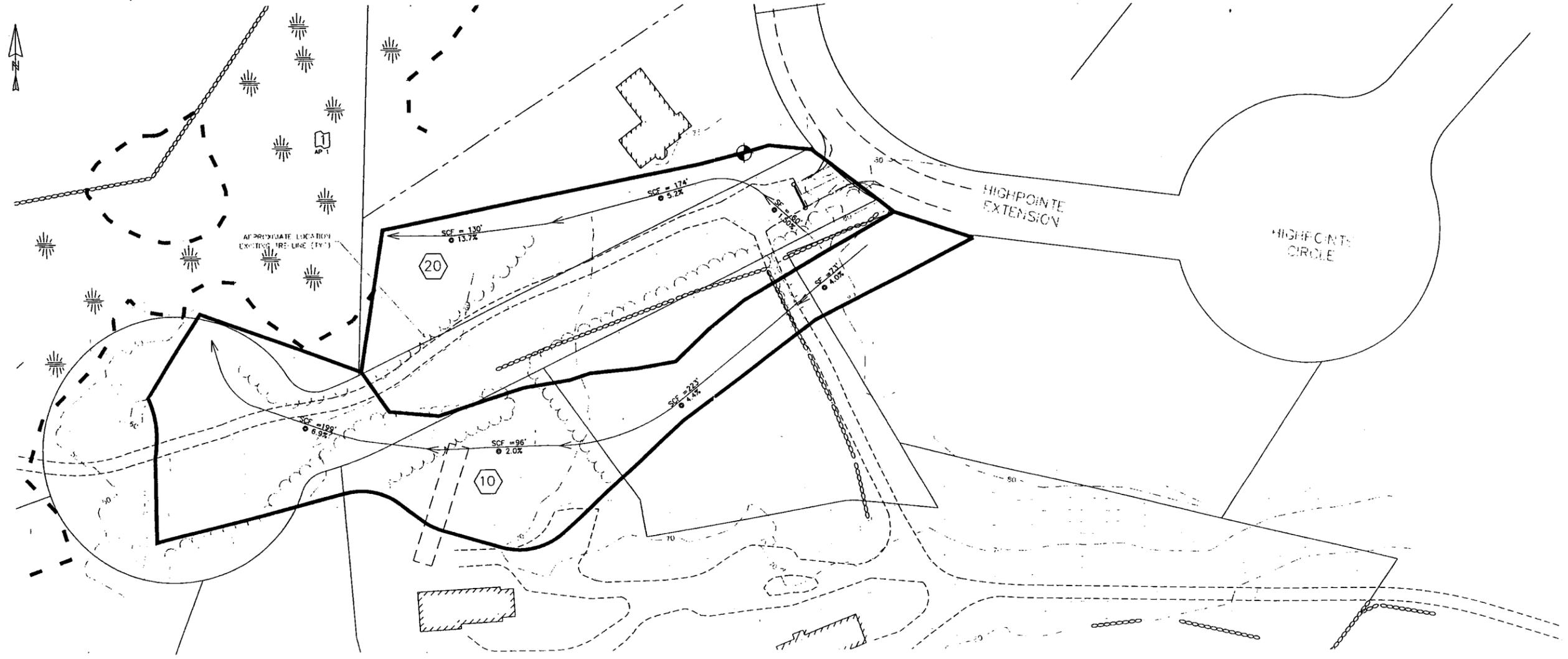


SITE DETAILS  
BEATRICE LANE  
HIGHPOINTE CIRCLE AND KITTREE LANE  
KITTEERY, MAINE

FOR: RICHARD SPARKOWICH  
OPERATION BLESSING, LP  
P.O. BOX 4069  
PORTSMOUTH, NH 03802

**ATTAR ENGINEERING, INC.**  
CIVIL • STRUCTURAL • MARINE  
1284 STATE ROAD - ELIOT, MAINE 03903  
PHONE: (207)439-8023 FAX: (207)439-2128

SCALE: AS NOTED	APPROVED BY: <i>[Signature]</i>	DRAWN BY: MMR
DATE: 10/20/14	DATE: 10/20/14	REVISION: DA
JOB NO: C085-14	CAD FILE: BEATRICE LANE-DET	SHEET C4



APPROXIMATE LOCATION EXISTING FIRE LINE (FY)

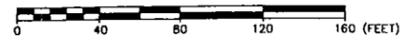
**SOILS NOTES**

- SOILS DESIGNATIONS FOUND ON THE SITE WERE DELINEATED AS PART OF A HIGH INTENSITY SOIL SURVEY PREPARED, CLD CONSULTING ENGINEERS INC., DATED MARCH 2007.
- SOILS FOUND IN THE UPLAND AREAS OF THE ROAD CONSTRUCTION AREA ARE LYMAN -ROCK OUTCROP.
- SOILS FOUND IN THE WETLAND AREAS IS A MIX OF SCANTIC SILT LOAM AND BIDDEFORD MUCKY SILT LOAM .

**LEGEND**

- SUBCATCHMENT 
- ANALYSIS POINT 
- REACH 
- POND 
- SF = SHEET FLOW
- SCF = SHALLOW CONCENTRATED FLOW
- CF = CHANNEL FLOW
- LR = LYMAN ROCK OUTCROP("C/D")
- Bm = BIDDEFORD MUCKY PEAT ("D")
- Sc = SCANTIC SILT LOAM
- WETLAND BOUNDARY 
- SUBCATCHMENT BORDER 
- SOIL BORDER 

**GRAPHIC SCALE**



NO.	DESCRIPTION	DATE



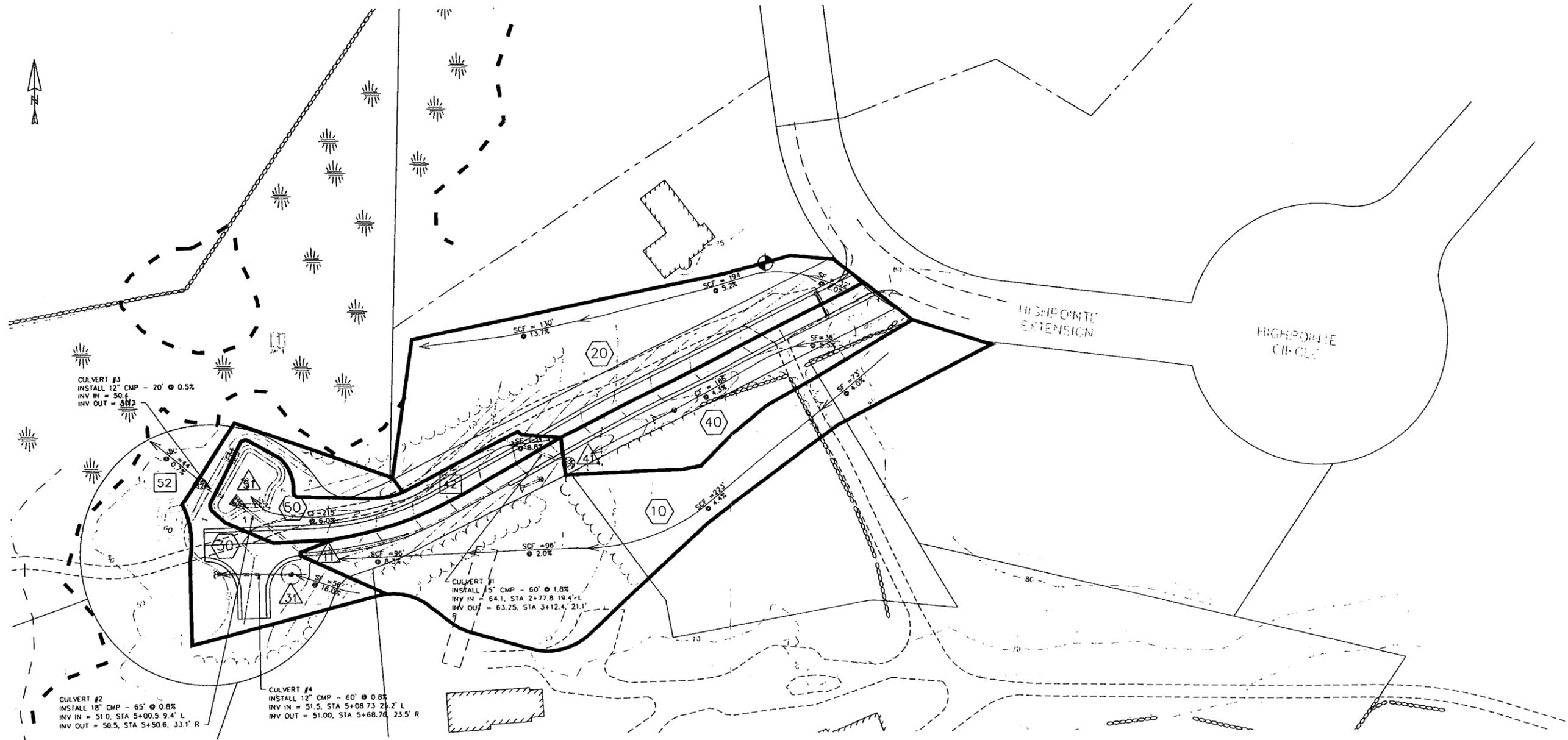
APPROVED BY: *Kenneth A. Wood*  
DATE: 10/20/14

EXISTING CONDITIONS AND TC'S  
BEATRICE LANE  
HIGHPOINT CIRCLE AND KITTREE LANE  
KITTERY, MAINE

FOR: RICHARD SPARKOWICH  
OPERATION BLESSING, LP  
P.O. BOX 4069  
PORTSMOUTH, NH 03802

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

SCALE: 1" = 40'  
DATE: 10/20/14  
JOB NO. COB5-14  
DRAWN BY: MMR  
REVISION: DAT  
CAD FILE: BEATRICE LANE-EXT-MMR  
SHEET 1 OF 2



**SOILS NOTES**

- SOILS DESIGNATIONS FOUND ON THE SITE WERE DELINEATED AS PART OF A HIGH INTENSITY SOIL SURVEY PREPARED, CLD CONSULTING ENGINEERS INC., DATED MARCH 2007.
- SOILS FOUND IN THE UPLAND AREAS OF THE ROAD CONSTRUCTION AREA ARE LYMAN - ROCK OUTCROP.
- SOILS FOUND IN THE WETLAND AREAS IS A MIX OF SCANTIC SILT LOAM AND BIDDEFORD MUCKY SILT LOAM.

**LEGEND**

- SUBCATCHMENT
- ANALYSIS POINT
- REACH
- POND
- SF = SHEET FLOW
- SCF = SHALLOW CONCENTRATED FLOW
- CF = CHANNEL FLOW
- Ln = Lyman ("C")
- Bm = BIDDEFORD MUCKY PEAT ("D")
- WETLAND BOUNDARY
- SUBCATCHMENT BORDER
- SOIL BORDER



NO.	DESCRIPTION	DATE



PROPOSED CONDITIONS AND TO'S  
 BEATRICE LANE  
 HIGHPOINT CIRCLE AND KITTREE LANE  
 KITTERY, MAINE

FOR: RICHARD SPARKOWICH  
 OPERATION BLESSING, LP  
 P.O. BOX 4069  
 PORTSMOUTH, NH 03802

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

SCALE: 1" = 40'  
 DATE: 10/20/14

APPROVED BY:   
 DATE: 10/21/2014

DRAWN BY: MMR  
 REVISION: DATE

JOB NO: COB5-14 CAD FILE: BEATRICE LANE-PRP-MMR SHEET 2 OF 2



**TOWN OF KITTEERY**  
 Office of the Town Manager  
 200 Rogers Road, Kittery, ME 03904  
 Telephone: 207-475-1329 Fax: 207-439-6806

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**INTEROFFICE MEMORANDUM**

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**TO:** TOWN PLANNING BOARD  
**FROM:** CHRIS DI MATTEO, INTERIM TOWN PLANNER  
**SUBJECT:** TOWN MANAGER'S PROPOSAL REVIEW GROUP REVIEW OF TITLE 16 AMENDMENTS  
**DATE:** DECEMBER 2, 2014  
**CC:** NANCY COLBERT PUFF, TOWN MANAGER

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Below is an effort to address the comments by the Proposal Review Group (PRG) with regard to the Title 16 Amendments currently before Town Council. Only Items 1, 2, 3 and 8 have been scheduled for a public hearing, Monday December 8<sup>th</sup>. The remaining proposed amendments have been scheduled for a joint workshop with Town Council and Planning Board. The item numbers below correspond to the Report to Town Council we provided as an executive summary for the proposed code amendments, attached for your reference. The PRG comments are italicized followed by my comments and suggestions.

**Item 1** – *no comments*

**Item 2:** *We talked at length about the differing definitions for dwelling unit (lines 39-43). While the State prescribes its own definition for Shoreland Protection purposes, we question whether the Shoreland will act as a true overlay definition (e.g. units must be at least 650 s.f. of habitable space, or does it operate independently of the Kittery Code definition (e.g. no min. s.f. required).*

In practice the shoreland zoning requirements, have been applied independent of the base zone requirements. It is not clear from 16.3.2.17 OZ-SL that the overlay zone does operate independently, however, 16.3.1.4 Overlay Zone does state that “regulations of the underlying zone must apply unless specified otherwise in the overlay zone.”

**Item 3:** *While we noticed inconsistent use of the hyphen in the term “non-conforming,” it is consistently used as “nonconforming” in the ordinance.*

The amendment should be revised to reflect consistency with removing the hyphens in “non-conforming.”

*16.7.3.5.12 – Lines 116-117: we recommend that the clause “the smallest residential lot permitted under the town’s land use base codes, Title 16.3” be changed to “5,000 s.f.” so that the reader need not guess what that measurement is, and to be consistent with the preceding 2a which notes 20,000 s.f. in specific.*

Making this change would make the provision clearer and expedite finding the numeric value. Perhaps both clauses should remain, the former allowing for context behind the numerical value.

*Lines 123-140 – In reading this section closely, it occurred to us that items a-c and footnotes 1-3 apply to all cases in every instance. We question if this section should be reorganized to make this more apparent to the reader.*

It is not readily clear what alternative would provide greater clarity. All three clauses a, b, and c are distinct requirements and all apply to subsection 16.7.3.5.12.A.3. The footnotes all apply and help to not overwhelm the primary and secondary clauses of this subsection. A great deal of time was spent with the MDEP to finalize this portion of the amendment.

*Lines 143-147 – We questioned the language that clarifies the intent of this section. If a conforming lot were to result from an adjustment to a common boundary, it is also possible that it “remains a legally non-conforming lot of record?” Also: delete hyphen in the word “nonconforming” from line 146.*

We can qualify the statement with the: (addition underlined) “...does not constitute the creation of a new lot and the adjusted lot, if nonconformities persist, remains a legally nonconforming lot of record, not applicable to the joining of lots.”

**Item 4:** *We had trouble understanding how the current ordinance works vs. what this new calculation will result in.*

In addition to deducting the land area “required for streets or access” per the definition of Net Residential Acreage in 16.2.2, the current ordinance requires the following land area deductions under Title 16.7.8.1 Land Not Suitable for Development:

1. Land area below sea level;
2. Land area within the floodplain;
3. Land area that needs to be filled or drained before being developed or land that was previously wet by diverting a watercourse;
4. Land area where the development lies within filled tidal wetlands; and
5. Land area where the soils are rated poor or very poor by the *Soil Suitability Guide for Land Use Planning in Maine*.

Item 1 equates mostly to deduction A included in the proposed amendment. The amendment would deduct more area than area below sea level, however, that increased area, between sea level and highest annual tide (HAT) is typically included in the floodplain.

Item 2 equates to deduction B included in the proposed amendment.

Item 3 equates to deduction C included in the proposed amendment.

Item 4 equates to deduction D included in the proposed amendment.

Item 5 equates somewhat to deductions J and K in the proposed amendment. A case can be made that a strict application of item 5 is significantly more restrictive than the proposed J. This is based on the Soil Suitability Guide’s lack of applicability and appropriateness due to the document being considerably out-of-date.

The remaining deductions in the proposed amendment are summarized as follows:

Item E equates to the land area deducted per the current definition of Net Residential Acreage cited at the beginning of the comment.

Item F, the deduction of proposed easements, is new and expands on the concept of E, where land that will be burdened in a dedicated manner, such as an easement and Right-Of-Way, that would not allow for the permanent location of a dwelling.

Item G is also a new deduction and aims to limit the potential for land that is not feasible to develop to be counted as net residential area. An example of this may be a large parcel that is transected by a large water body and associated wetlands that makes developing the adjacent land not practicable.

Item H is a new deduction that aims to have land zoned non-residential not be counted as net residential acreage.

Items I, L, and M are new deductions that aim to have land where the location of dwellings that would not be possible or not suitable would not be counted as net residential acreage.

*16.7.8.1 Net Residential Acreage (line 60-62) – We note that the term subdivision also applies to structures, and question how this might be applied in an instance of conversion of an existing 1-unit structure into 3 or more units. This may cause unintended consequences.*

It would be applied how it currently is applied, per the state statute, three or more dwelling units created within a five year period, barring any exemptions, incurs subdivision regulations. Perhaps the unintended consequences might include decreasing density in those growth areas where greater density is allowed. With this consequence in mind, perhaps some of the land area deductions (A through M) are not applied in instances where it significantly hinders the overall development goal for a particular zone, presumably those that include greater density.

*Also: the calculation results in a land area, not in a number of dwelling units (line 60). To arrive at the number of units, one must then divide the net acreage by the minimum land area per dwelling unit standard for each zone. Therefore, perhaps line 60 should read: “Net Residential Acreage calculation is used to determine ~~determines~~ ... subdivision, by first determining the usable area of a parcel.”*

The amendment should be revised as suggested.

*16.7.8.1 C (lines 66-68) – Given that wetland setbacks are already a regulatory restriction, we question if subtracting 50% of the setback is “double-counting.”*

It is not considered “double-counting” because the setback area is not deducted in any other items.

*16.7.8.1 E (lines 70-71) – Subtraction of easements may cause owners additional pause in the instance where they are requested to provide utility and other easements that may serve public purposes. We are concerned about this possibility.*

This provision is common among many towns that employ net residential acreage requirements for subdivision.

*16.7.8.1 G (lines 73-77) – We question the definition of “primary portion of the parcel,” especially given that this calculation may be applied in a multiple parcel development/subdivision proposal.*

Multiple parcel development is not relevant since the definition of a “tract or parcel of land” is “...all contiguous land in the same ownership...” It is presumed that the property is a single tract/parcel of land under single ownership. Perhaps “primary portion of the parcel,” should be changed to read “...principal location for development on the parcel...”

*16.7.8.1 H (line 78) – We assume this means only land within C-1, C-2, and C-3.*

The assumption is correct and perhaps the addition of the actual zone names should be included.

*16.7.8.1 J & K (lines 80-83) – These sections refer to soils which are “somewhat poorly, poorly, and very poorly drained,” and then refer to 16.2 for definition. Definitions have been deleted from that section.*

16.2.2. Definitions refer the most up-to-date descriptions for soil drainage classes, the document is attached. The length of the definitions in the document is not suitable for inclusion in Title 16.2.2. At a minimum, however, the terms themselves, i.e. ‘somewhat poorly drained’, ‘poorly drained’, and ‘very poorly drained’, should be included in the 16.2.2. Definitions with a reference ‘See Supplemental Key for Identification of Soil Drainage Class’ for example.

*In addition, we note that K provides for no subtraction on somewhat poorly drained soils if on public sewer, and we question whether this might also be considered as to appropriateness for section J. We read in the justification (line 28-30), that the current ordinance prohibits septic systems on poor and very poor soils, and as a result, wonder if the drafters intended to continue this limitation even in the event the development is located on sewer.*

Perhaps this is something that should be re-considered.

*16.7.8.1 M (lines 86-87) – We question how elimination of any residential development potential in the Commercial Fisheries/Maritime (16.3.2.18) and Resource Protection Overlay (16.3.2.19) zones works together with the uses that are specifically allowed in the overlay sections. Perhaps additional changes need to be made to those zones as well in order for the proposal to work properly. We also wonder if passage will cause broad nonconformity within those areas. A map illustration may help in furthering how this might work.*

The only residential use that is allowed is single family dwelling as a special exception in the Resource Protection Zone. The primary objective in this overlay zone is not residential development. Nonconformity would not result from this provision since it only influences the net residential density and not the allowance for the construction of actual dwellings. A map can be prepared and presumably it would show that these areas are predominately associated with small parcels and not the dominant zone in the large parcels that are conducive to subdivision.

*16.7.8.3 (lines 93-95) – We suggest the name of this section might parallel 16.7.8.1 to provide greater clarity, e.g. “Net Residential Acreage Calculation for Residential Development not Subject to Subdivision.” We note that this Article VIII is entitled Net Residential Acreage, but then section 16.7.8.3 exists primarily to redirect readers to the definition section, and may have no place here.*

*16.2 Definitions*

*Soils #2 (lines 104-111) – This refers back to 16.7.8.1 J & K, but provides no definition for somewhat poorly, poorly, and very poorly drained soils. We understand that the referenced guide does provide these definitions, but we believe they should be spelled out here.*

See comment above for 16.7.8.1 J & K

***Minimum land area per dwelling unit (lines 123-143) – While this definition appears to propose that it applies only to land not subject to subdivision, each zone contains a minimum land area per dwelling unit standard that then refers back to this definition. Our question arises: once the net residential acreage calculation is determined, then does each lot fall under the minimum land area per dwelling unit requirements?***

No. Each lot was created by subdivision. The definition of the minimum land area per dwelling unit specifically states that it only pertains to land “not subject to subdivision”

*Chapter 16.3, Section 16.3.2.1-6 D (lines 143-202) – Each minimum land area standard exempts properties for single-family units if they were conforming prior to October 25, 2012. If the new minimum land area per dwelling unit definition is applied and does not exempt conforming properties from Oct. 26, 2012 to the date of enactment, is there an unintended consequence of making properties nonconforming retroactively?*

At the top of Item 4 a description of how the current net residential density is applied and how it equates to the proposed amendment demonstrates that the provision that came into effect 10/25/2012 is essentially the same as what is currently proposed. It is unlikely that properties will be nonconforming as a result of this proposed amendment and not as a result of the current provision as well. In fact the provision has become less restrictive with 16.7.8.1.5 no longer being applied (Soil Suitability Guide). The intent is to simply maintain the start date of the initiative, which is the same in both current and proposed provisions. Would the question still be raised if the only amendment proposed was to delete 16.7.8.1.5 from 16.7.8 Land Not Suitable for Development?

**Item 5:** *In general, the name of the Sewer Department should be consistent. We note it is referenced herein as the “town WTD” Wastewater Treatment Department, and “WSD.” See lines 110-112, and 120).*

The amendment should be revised to reflect the current name of the department, WTD.

*Section 16.8.7.1.A (line 105) – This sentence references Town Code Title 13 Chapter 13.1 “Public Sewer System,” while we believe the title of the Chapter is “Sewer Service System.”*

The amendment should be revised as suggested.

*Section 16.8.7.1 B (lines 104-107) – Town Code Chapter 13.1 does not require a connection for homes within 100’ for which gravity flow “cannot be obtained.”*

The amendment (Section 16.8.7.1 A) should be revised to reflect the comment. Perhaps the amendment should read: “...where sewer is within 100 feet of a property line and where gravity flow can be obtained per Town Code Title 13...”

*Section 16.8.7.1 E (line 125) – Proposed edit: delete the words “to be used.”*

The amendment should be revised as suggested.

*Section 16.8.7.2 C1 (line 176) – Proposed edit: insert words as follows – “is proposed, the subsurface wastewater disposal system must...”*

The amendment should be revised as suggested. Perhaps the amendment should read:

- “C. Replacement of subsurface wastewater disposal systems (SWDS) for existing legal uses:
1. Where no expansion of use is proposed, the SWDS must comply with 16.8.7.2 and Table 16.9 to the extent practicable and otherwise are allowed per the Maine Subsurface Wastewater Disposal Rules; or
  2. Where expansion of use is proposed, the SWDS must comply with 16.8.7.2 and Table 16.9.”

**Item 6:** *Section 16.8.16.3 (line 59) – We question if perhaps poorly drained soils might be added to the credit, consistent with Section 16.7.8.1 J.*

This should be reconsidered, apparently a portion of the original provision to allow 50% of poorly drained soils to be counted toward lot size when connected to sewer and water is not maintained in the proposed amendment. This may incur unintended consequences.

Should also reconsider the use of the term ‘very poorly drained’. The original provision uses the term “scantic soils”, which is more specific and tend to be the very marginal portion of the ‘very poorly drained’ soils.

**Item 7:** *We have no comments on this item.*

**Item 8:** *We have no comments on this item.*

# THE NATURAL RESOURCES CONSERVATION SERVICE SUPPLEMENTAL KEY FOR THE IDENTIFICATION OF SOIL DRAINAGE CLASS\*

2/28/90  
4/01/92 Rev.  
4/01/93 Rev.  
4/04/94 Rev.  
3/21/96 Rev.  
3/17/99 Rev.  
3/01/00 Rev.  
3/05/02 Rev.

\* (Based upon the Maine Association of Professional Soil Scientists, Key to Drainage Classes, March 05/02)

Use this key starting at the first drainage class listed (very poorly drained). If the soil being evaluated does not exhibit the soil morphological features for that drainage class, go to the next drainage class. Continue through each drainage class until the soil being evaluated meets the soil morphological features for a particular drainage class.

## DRAINAGE CLASS

### SOIL MORPHOLOGICAL FEATURES

### COMMON SITE INDICATORS

- |   |  |
|---|--|
| <p>1) Has organic soil material that extends from the surface to a depth of 16 inches or more. (Histosols)<sup>2</sup> or,</p> <p>2) Has organic soil material that extends from the surface to a depth of 8 to 16 inches (Histic Epipedon)<sup>3</sup> and is directly underlain by a horizon that has a depleted or gleyed matrix. or,</p> <p>3) Has organic soil material that extends from the surface to a depth of 4 to 8 inches and is directly underlain by a horizon that has a depleted or gleyed matrix or,</p> <p>4) Mineral soils with sulfidic materials within 20 inches of the mineral soil surface; Alluvial soils with an umbric epipedon or,</p> | <p>Level or nearly level; occupies lowest position in the landscape. Commonly in the depressions and is seasonally ponded or flooded.</p> <p>Common plant species include: rushes, cattails, sedges, sphagnum moss, tamarack, willow, black spruce, northern white cedar, and red maple.</p> |
|---|--|

## VERY POORLY DRAINED

- |   |   |
|---|---|
| <p>1) Has dominant textures in the upper 20 inches (below the "A" or "Ap" horizon if present) of loamy fine sand or coarser and has redoximorphic features or has a Bh or Bhs horizon that is value 3 or less and chroma 2 or less, which is directly underlain by a horizon with redoximorphic features, within 7 inches of the mineral soil surface; or</p> <p>2) Has an Ap horizon that is 7 inches thick or greater with a value of 3 or less and chroma of 2 or less and a texture in all subhorizons within 20 inches of the mineral soil surface of loamy fine sand or coarser and have redoximorphic features directly beneath the Ap horizon or,</p> <p>3) Has a depleted or gleyed matrix within 20 inches of the mineral soil surface and redox depletions with value 4 or more and chroma 2 or less in ped interiors that are less than 7 inches below the mineral soil surface or,</p> <p>4) Has an Ap horizon that is 7 inches thick or greater with value of 3 or less and chroma of 2 or less and has a depleted or gleyed matrix within 20 inches of the mineral soil surface and has redox depletions with value 4 or more and chroma 2 or less in ped interiors or a depleted or gleyed matrix directly beneath the Ap horizon or,</p> | <p>Level to gently sloping; sideslopes, toe slopes, depressions, and seepage areas.</p> <p>Common plant species include: sedges, alders, willow, red maple, gray birch, and aspen</p> |
|---|---|

## POORLY DRAINED

DRAINAGE CLASS	SOIL MORPHOLOGICAL FEATURES	COMMON SITE INDICATORS
<b>SOMEWHAT POORLY DRAINED</b>	1) Is not very poorly or poorly drained and has redoximorphic features at a depth of less than 16 inches below the mineral soil surface or,	Level to strongly sloping; long smooth side slopes, broad depressions and seepage areas.  Common plant species include: red osier dogwood, alders, willow, spruce, balsam fir, red maple, elm, aspen, gray and yellow birch.
<b>MODERATELY WELL DRAINED</b>	2) Has redoximorphic features at a depth of 16 inches to less than 40 inches below the mineral soil surface or,	Level to steep; crests and upper part of long smooth slopes and broad terraces.  Common plant species include: northern hardwoods, white and red pine, hemlock, and grasses.
<b>WELL DRAINED</b>	Soil depth is at least 20 inches to bedrock and has a texture of loamy very fine sand or finer and redoximorphic features, if present, are 40 inches or more below the mineral soil surface. <sup>4</sup> Or,,	Level to very steep; knolls, complex slopes and terraces.  Common plant species include: northern hardwoods, white and red pine, hemlock, and grasses
<b>SOMEWHAT EXCESSIVELY DRAINED</b>	1) Soil depth is 10 to 20 inches to bedrock with a loamy or loamy-skeletal particle-size class.  2) Soil depth is 20 inches or greater to bedrock with a sandy or sandy-skeletal particle-size class with a loamy cap 10 inches thick or greater.	Level to very steep; knolls, convex slopes and terraces.  Common plant species include: northern hardwoods, white and red pine, white and red spruce, hemlock, and grasses.
<b>EXCESSIVELY DRAINED</b>	1) Soil depth is less than 10 inches to bedrock.  2) Sandy or sandy-skeletal particle-size class with a loamy cap less than 10 inches thick.	Level to very steep; knolls, convex slopes and terraces.  Common plant species include: northern hardwoods, white and red pine, white and red spruce, hemlock and grasses. Vegetation also includes shrubs, ferns, mosses, and lichens.

1 Surface excludes loose leaves, needles and twigs.  
 2 Twenty-four inches or more if 75 percent or more of the volume is sphagnum fibers. Organic soil excludes Folists in this key.  
 3. Eight to 24 inches if 75 percent or more of the volume is sphagnum fibers.  
 4. Soils that are coarse-loamy over sandy or sandy-skeletal and lack redoximorphic features within 40 inches of the mineral soil surface also are well drained.  
 The U.S. Department of Agriculture (USDA) prohibits discrimination in its programs on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, or marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication or program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at 202-720-2600 (voice and TDD). To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 14<sup>th</sup> & Independence Avenue, S.W., Washington, D.C. 20250-9410 or call (202) 720-5964 (voice and TDD). USDA is an equal opportunity provider and employer.

A	B	C	D	E	F	G	H	I	J	K	L	
1	Oct-14		BUILDING PERMIT									
2			Number of Building		19							
3			Value of Building		\$524,699.00							
4			Permit Fees Collected		\$3,765.00							
5			Impact Fees Paid		\$375.00							
6												
7	Date Issued	Permit	Property Owner	Address	Map	Lot	C	Work	Description	Fee	Value	Impact Fee
8												
9	October											
10												
11	10/2/2014	14-288	Nadean Cercone	53 Manson Road	30	28	R	Maint/Repair	Re-shingle roof	\$ 25.00	\$ 7,400.00	
12	10/2/2014	14-289	Lorraine Soukup	11 Island Avenue	1	5	R	Renovate	install 3/4 bathroom	\$ 37.00	\$ 1,000.00	
13	10/14/2014	14-290	Gary & Paulette Beers	54 Lewis Road	66	21	R	new const	10' x 17' temp shed	\$ 31.00	\$ 500.00	
14	10/14/2014	14-291	Daniel Grant	34 Remicks Lane	65	30	R	Maint/Repair	replace 11 windows	\$ 25.00	\$ 9,200.00	
15	10/14/2014	14-292	Elizabeth Perkins	34 Pocalontas Road	51	4	R	Maint/Repair/New	Repair chimney, install generator	\$ 67.00	\$ 7,329.00	
16	10/14/2014	14-293	Nancy Roy	2 Ox Point Drive	31	21	R	Maint/Repair	Replace 3 windows	\$ 25.00	\$ 4,340.00	
17	10/14/2014	14-294	Michael Campion	18 Trap Avenue	4	86	R	Maint/Repair	re-shingle roof, new front door, repl 3 windows	\$ 25.00	\$ 8,000.00	
18	10/15/2014	14-295	Wallngford SquareLLC	7 Wallngford	4	106	C	Expand Kitchen	Anju-expand kitchen in basement	\$ 400.00	\$ 20,000.00	
19	10/15/2014	14-296	David Sterling	4 Woodlawn	10	47	R	Maint/Repair	Re-shingle roof	\$ 25.00	\$ 6,500.00	
20	10/15/2014	14-297	Stanley Szydlk	152 Peppertell Road	36	70	R	new stove	install pellet stove	\$ 73.00	\$ 4,000.00	
21	10/15/2014	14-298	Sharon Finley	24 Main Street	4	157	R	Maint/Repair	Replace siding & trim	\$ 25.00	\$ 8,300.00	
22	10/15/2014	14-299	Ryan Burrobridge	4 Newmarch Street	3	10	R	Demo/rebuild	demo porch repl w/ 12' x 18' deck	\$ 97.00	\$ 6,000.00	
23	10/28/2014	14-300	Steve McCloskey	18 Remicks Lane	65	37	R	New	Install generator	\$ 109.00	\$ 6,850.00	
24	10/30/2014	14-301	Jewel & Llian Buckley	5 Manson Avenue	15	72	R	Maint/Repair	Install vinyl siding on barn	\$ 25.00	\$ 4,000.00	
25	10/30/2014	14-302	Carol James/Karen Pellet	34 Mill Pond Road	23	79	R	New/Dormer	16' x 20' Shed	\$ 169.00	\$ 12,400.00	
26	10/30/2014	14-303	Alyson Fink	1 Dismuke Street	16	79	R	New	28' Dormer & stairs to second floor, 3x3' handing	\$ 445.00	\$ 35,000.00	
27	10/28/2014	14-304	Town of Kittery Sewer D	18 Dennett Road	7	16G	C	New	33' x 30' building for maintenance garage	waived	\$ 208,000.00	
28	10/30/2014	14-305	Charles Tobey	35 Dion Avenue	15	104	R	Maint	Upgrade electrical service 100 amp	\$ 37.00	\$ 850.00	
29	10/30/2014	14-306	Graystone Builders	121 Whipple Road	10	104	R	New	24' x 34' Single family w/14' x 22' great room 3 bdr, 2.5 ba 12' x 16 patio	\$ 2,125.00	\$ 175,000.00	\$ 375.00

B	C	D	E	F	G	H	I	J	K	L		
1	Nov. 2014											
2		BUILDING PERMIT REPORT										
3		Number of Building Permits Issued		18								
4		Value of Building Permits		\$476,771.00								
5		Permit Fees Collected		\$5,501.76								
6		Impact Fees Paid		\$325.00								
7	Permit #	Property Owner	Address	Map	Lot	C	R	Work	Description	Value	Fee	Impact Fee
8												
9												
10												
11	14-307	Marton Lewin	3 Sterling Road		14	R			Replace 2 windows, add insulation, 2 new skylights	\$ 12,000.00	\$ 49.00	
12	14-308	Paul Debrodt	3 Woodlawn Avenue		10	R			Re-shingle roof	\$ 6,500.00	\$ 25.00	
13	14-309	Michael Landgarten	578 Haley Road		26	R			New	\$ 20,705.00	\$ 265.00	
14	14-310	Bob Borden	9 Colonial Road		14	R			Re-shingle roof	\$ 4,336.00	\$ 25.00	
15	14-311	Kurt May	110 State Road		8	R			Renovate 1st floor, change floor plan	\$ 12,000.00	\$ 49.00	
16	14-312	Coastal Benchmark	191 State Road		22	C			Renovate existing retaining wall with concrete	\$ 9,000.00	\$ 235.00	
17	14-313	Gayle Wells	22 Seapoint Road		58	R			Replace 2 sliders & 3 windows, construct 59" x 15' addition, & 116" x 123" addition	\$ 90,000.00	\$ 1,105.00	
18	14-314	Ernest & Sharon	p/o 18 Adams Road		66	R			Single family 26'x45' w/173" x 9' connector, 14' x 9' bumpout, 26' x 28' garage, 12' x 20'	\$ 205,000.00	\$ 2,485.00	\$ 525.00
19	14-315	Salomon & Sons	174 State Road		14	C			Replace deck-8' x 36', 10' x 39' & 4' x 5'	\$ 6,000.00	\$ 97.00	
20	14-316	Elisabeth Ewing	109 Peppertrell Road		27	R			replace 2 decks-6'6" x 8'6" x 173" deck #2-6' x 29'	\$ 6,000.00	\$ 97.00	
21	14-317	Riley	6 Cuts Road # 91		60	R			Demolish mobile home		\$ 20.00	
22	14-318	Stanley Spydlik	152 Peppertrell Road		36	R			Interior renovations per application submitted	\$ 45,000.00	\$ 445.00	
23	14-319	Nicholas Valhos	4 Walker Street		4	R			Renovate bathroom & kitchen cabinets	\$ 3,500.00	\$ 25.00	
24	14-320	Spruce Creek	340 U.S. Route # 1		47	C			Demolish interior space	\$ 3,000.00	\$ 20.00	
25	14-321	Spruce Creek	340 U.S. Route # 1		47	C			Demolish interior space	\$ 5,000.00	\$ 20.00	
26	14-322	Melissa Trembley &	3 Foyes Lane		36	R			upgrade electrical, install insulation, replace sheetrock & windows, replace footings on	\$ 29,500.00	\$ 259.00	
27	14-323	Elizabeth Wolcott	193 Brave Boat Harbor Road		69	R			Relocate 20' x 30' garage to property	\$ 5,000.00	\$ 85.00	
28	14-324	Wallace Gerry	27 Route 236		20	R			Relocate 12' x 24' shed attached to existing garage	\$ 14,230.00	\$ 195.76	

**Chris DiMatteo**

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**From:** Chris DiMatteo  
**Sent:** Wednesday, November 26, 2014 12:38 PM  
**To:** 'Richard Johnson'  
**Cc:** Ron Beal; Jeff Clifford; C. Wesley Crowell; Signe LaFrance; JoAnne Wilson; Shelly Bishop; Jan Fisk {Office} (jfisk@kitteryme.org); Tom Emerson  
**Subject:** RE: LF 42 Minor revision  
**Attachments:** 3796.024.mdep.ltr.pdf; LF42 MDEP Buffer.pdf; Modication to an Approved Site or Subdivision Plan Application\_2014.pdf

Good afternoon.

Took a first look at this today and it does not appear it would need Planning Board approval, but as a minor modification it will need Staff approval.

I will plan to have it on the agenda under planners time as an FYI to the Board.

Unlike more recent Planning Board conditions of approval, there is no language requiring this type of modification to go back to the Board.

Section 16.10.9.3.2 Major Modifications includes Right-Of-Ways and property lines but not setbacks and buffers.

One question, however, was the change to the building location ever submitted to the Town?

We don't have any information in the file that shows the Code Enforcement Officer was contacted or reviewed/approved any changes to the building location that was submitted and approved as part of your 6/26/2012 building permit application.

The attached building sketch was not in the Town File.

In the future, please remember that any changes to the building location needs to be approved by the Code Enforcement Officer.

The next Planning Board Meeting is December 11th and will let you know what I hear.

But as I stated, Shelly and I will plan to review the changes as a minor modification to an approved plan.

Please submit the completed application and fee asap and we'll work at getting our review done before 12/3.

Enjoy the holiday!

Best regards,

Chris

Christopher Di Matteo  
Interim Town Planner  
200 Rogers Road, Kittery Maine 03904  
(207) 439-6807 Ext. 303 / (207) 475-1323 (Direct Line) cdimatteo@kitteryme.org

-----Original Message-----

From: Richard Johnson [mailto:rdj@pinebrookcorp.com]  
Sent: Tuesday, November 25, 2014 6:16 PM  
To: Chris DiMatteo; C. Wesley Crowell; JoAnne Wilson; Signe LaFrance  
Cc: Ron Beal; Jeff Clifford

## Chris DiMatteo

---

**From:** Richard Johnson <rdj@pinebrookcorp.com>  
**Sent:** Tuesday, November 25, 2014 6:13 PM  
**To:** Chris DiMatteo; C. Wesley Crowell; JoAnne Wilson; Signe LaFrance  
**Subject:** LF 42 Minor revision  
**Attachments:** 3796.024.mdep.ltr.pdf

11/25/14

Chris

We have a 3 Dec Closing on LF42 on hold till 17 Dec pending completion of the Minor Revision

Altus has forwarded the Application to Mary Beth Richardson/MDEP. We reviewed this with Mary Beth Monday morning

If the Planning Board needs to sign off on this, can you get it onto the next meeting under Planners Time?

Let me know if you need anything from us please

Thx/rdj

-----Original Message-----

**From:** Ron Beal [mailto:rbeal@altus-eng.com]  
**Sent:** Tuesday, November 25, 2014 5:39 PM  
**To:** Marybeth.Richardson@maine.gov  
**Cc:** Signe LaFrance; Richard Johnson; Jeff Clifford; DeMatteo Chris  
**Subject:** 3796 Lewis Farm Lot 42

Marybeth,

Attached is a copy of the minor revision application for a modification to the MDEP "wooded" buffer that was FEDEX to you.

Ronald M. Beal, PE  
Altus Engineering, Inc.  
133 Court Street  
Portsmouth, NH 03801  
(603) 433-2335



Civil  
Site Planning  
Environmental  
Engineering  
133 Court Street  
Portsmouth, NH  
03801-4413

November 25, 2014

Marybeth Richardson, Licensing Supervisor  
Division of Land Resource Regulation  
Bureau of Land and Water Quality, M.D.E.P.  
312 Canco Road  
Portland, Maine 04103

Re: **DEP #L-21656-L3-J-N**  
**Lewis Farm Conservation Subdivision – Phase III**  
**Kittery, Maine**  
**P3796**

Ms. Richardson:

Altus Engineering, Inc. is submitting on behalf of the applicant, Lewis Farm, LLC, a *Minor Revision Application* for revision to the MDEP “wooded” buffer on Lot 4H (a.k.a. lot 42) located in Lewis Farm - Phase III. To preserve a cluster of trees on the north side of the house, the applicant located the foundation and clearing limits south of the original design intent and unknowingly encroached into the MDEP “wooded” buffer. The surveyor preparing a Mortgage Inspection Plan noted the encroachment and notified the applicant. This *Application* serves to address the encroachment by modifying the wooded buffer limit adjacent to the building.

The approved subdivision plan called for a 100-foot “wooded” buffer to provide a minimum flow path length of 75 feet for stormwater management. An alternate buffer standard has been approved previously by MDEP on other phases of the Lewis Farm Subdivision and is being proposed for Lot 4H. In December 2007, Ms. Marianne Hubert proposed an “alternative buffer standard for single family residential lots” in lieu of individual bioretention structures on house lots. The alternate buffer standard reduced the minimum flow path length of “wooded” buffers from 75 feet to 50 feet for “C” sandy loam soils.

A site visit on November 25<sup>th</sup>, 2014 by Altus, verified the clearing limits to adjust the “wooded” buffer easement. Altus believes that a proposed “wooded” buffer will provide an approximate flow path length of 50 feet to meet Chapter 500 standards for stormwater treatment. Per the conditions of approval, this revised Plot Plan will be recorded as part of the deed description upon the sale of the lot.

Marybeth Richardson  
November 25, 2014  
Page 2

The following are provided as an after-the-fact application:

- Minor Revision Application plus check for \$298
- Plot Plan – Lot 4H
- Lot Plan 42 (4H)

Please call if you have any questions about the project.

Sincerely,

ALTUS ENGINEERING, INC.



Jeffrey K. Clifford, P.E.  
Vice President

Enclosures  
RMB/jkc/3796.024.mdep.ltr.doc

cc: Richard D. Johnson  
Chris DiMatteo, Planner

#L- \_\_\_\_\_  
ATS # \_\_\_\_\_  
Fees Paid \_\_\_\_\_  
Date Received \_\_\_\_\_

**MINOR REVISION APPLICATION**

For Site Location, Natural Resources Protection Act & Stormwater Projects

This form shall be used for minor revisions to a project that has received previous Site Law, NRPA or Stormwater Law approval from the Department, where the revision(s) significantly decreases or eliminates an environmental impact, does not significantly expand the project, does not change the nature of the project or does not modify any Department findings with respect to any licensing criteria. If significant project changes are proposed, then an amendment application will be required by the Department.

Please contact the DEP for current fee schedule information. The fee schedule is updated every November 1. The fee is payable to "Treasurer, State of Maine", and **MUST** accompany the application.

Please type or print in black ink only

<b>1. Name of Applicant:</b>	Lewis Farm, LLC c/o Richard D. Johnson	<b>5. Name of Agent:</b>	Altus Engineering, Inc. c/o Jeffrey K. Clifford, P.E
<b>2. Applicant's Mailing Address:</b>	37 Route 236, Suite 105 Kittery, Maine 03904	<b>6. Agent's Mailing Address:</b>	133 Court Street Portsmouth, NH 03801
<b>3. Applicant's Daytime Phone #:</b>	207-439-3186	<b>7. Agent's Daytime Phone #:</b>	603-433-2335
<b>4. Applicant e-mail address (REQUIRED):</b>	rdj@pinebrookcorp.com	<b>8. Agent e-mail address (REQUIRED):</b>	jclifford@altus-eng.com
<b>LOCATION OF ACTIVITY</b>			
<b>9. Name of Project:</b>	Lewis Farm - Phase III		
<b>10. Name of Town where project is located:</b>	Kittery	<b>11. County:</b>	York
<b>REQUIRED INFORMATION:</b>			
<b>12. Existing DEP permit number:</b>	L-21656-L3-J-N	<b>13. DEP Project Manager for previous application (if known):</b>	Lisa Vickers Marybeth Richardson
<b>14. Description of Proposed Change: (Use additional sheet, if necessary)</b>	Revise MDEP "wooded" buffer on Lot 4H (a.k.a. Lot 42)		

Provide all documentation necessary to support the proposed change. This documentation should include, as appropriate, revised site plans, construction drawings, and technical data such as HHE-200 forms. (If you are unsure of what information to include, please contact the original DEP project manager, or the Division of Land Resource Regulation in the appropriate regional office for assistance.)

This completed application form, fee and all supporting documents summarized above shall be sent to the appropriate DEP Office in Augusta, Portland or Bangor.

Bureau of Land and Water Quality 17 State House Station Augusta, ME 04333 Tel: (207) 287-3901	Bureau of Land and Water Quality 312 Canco Road Portland, ME 04103 Tel: (207) 822-6300	Bureau of Land and Water Quality 106 Hogan Road Bangor, ME 04401 (207) 941-4570
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**CERTIFICATIONS / SIGNATURES on PAGE 2**

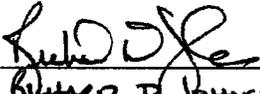
**IMPORTANT: IF THE SIGNATURE BELOW IS NOT THE APPLICANT'S SIGNATURE, ATTACH LETTER OF AGENT AUTHORIZATION SIGNED BY THE APPLICANT.**

By signing below the applicant (or authorized agent), certifies that he or she has read and understood the following :

**CERTIFICATIONS / SIGNATURES**

"I certify under penalty of law that I have personally examined the information submitted in this document and all attachments thereto and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the information is true, accurate, and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment. I authorize the Department to enter the property that is the subject of this application, at reasonable hours, including buildings, structures or conveyances on the property, to determine the accuracy of any information provided herein.

Further, I hereby authorize the DEP to send me an electronically signed decision on the license I am applying for with this application by e-mailing the decision to the electronic address located on the front page of this application (see #4 and #8)"

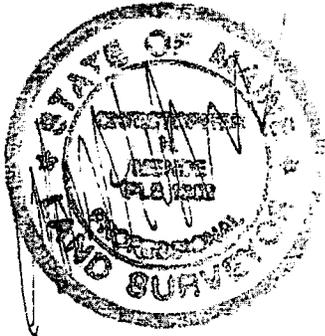
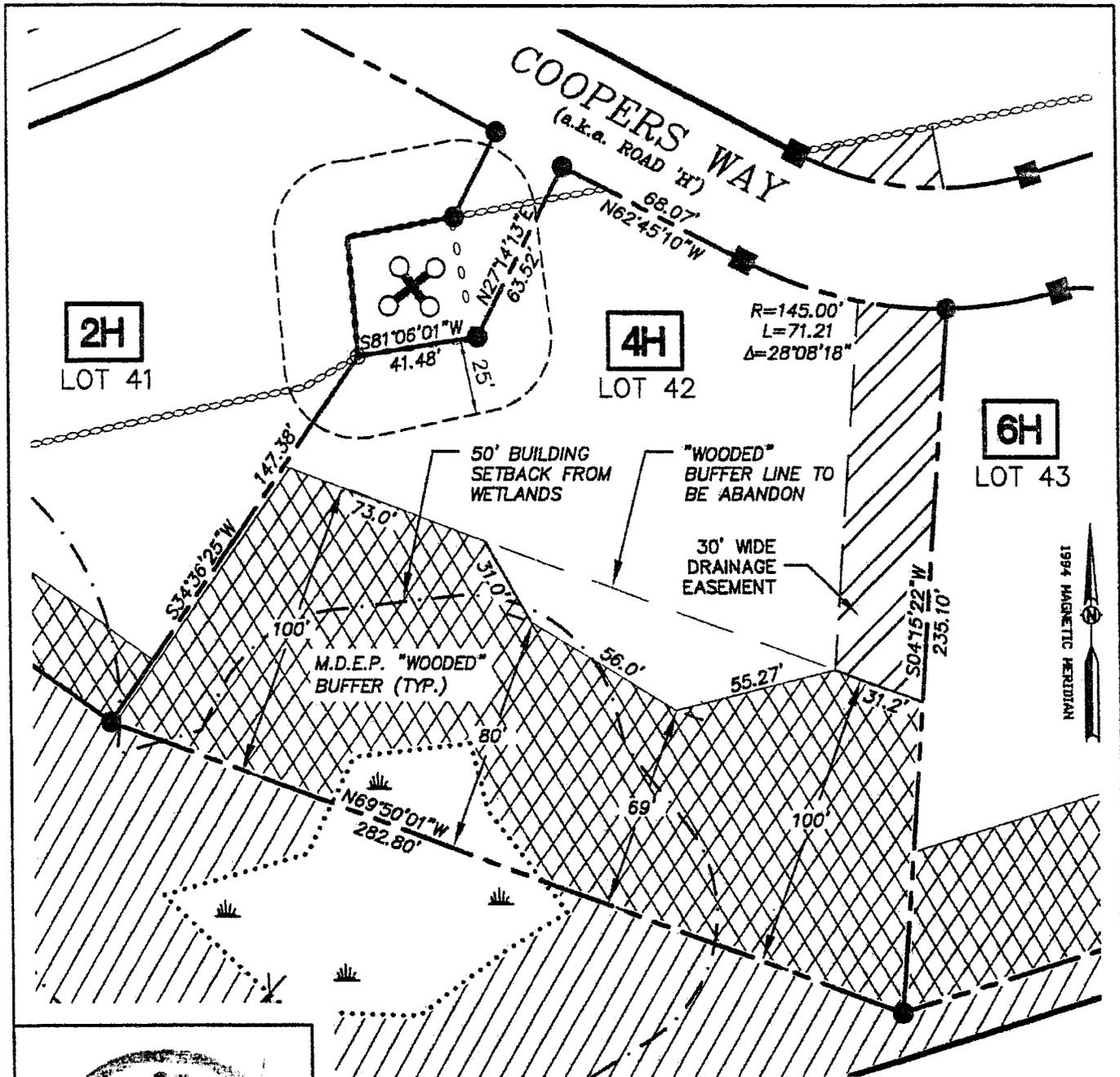
Signed:  Title MEM Date: 24 Nov 14  
Richard D. Johnson KEWAS FARM LLC

Notice of Intent to Comply with Maine Construction General Permit

If over one acre of new disturbance will result as part of the proposed minor revision, please sign here acknowledging that with this minor revision form and signature below, I am filing notice of my intent to carry out work which meets the requirements of the Maine Construction General Permit. I have read and will comply with all of the MCGP standards.

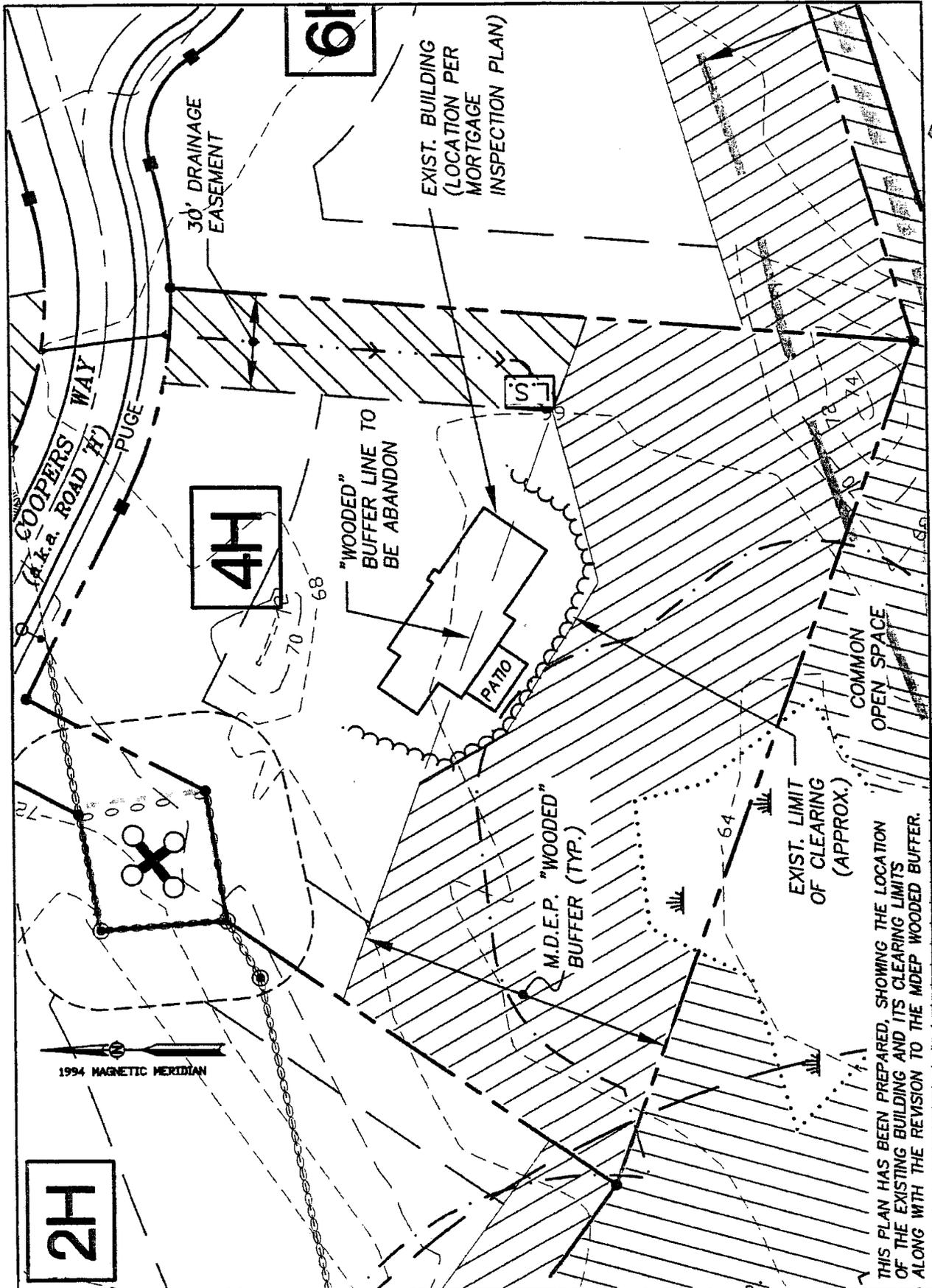
Signed \_\_\_\_\_ Date: \_\_\_\_\_

**NOTE: If a Notice of Intent is required, you must file a Notice of Termination (NOT form available from the Department) within 20 days of completing permanent stabilization of the project site.**



THIS PLAN HAS BEEN PREPARED TO SHOW A REVISION TO THE M.D.E.P. WOODED BUFFER ON LOT 4H AS PREVIOUSLY DEPICTED ON PLAN RECORDED AT THE YORK COUNTY REGISTRY OF DEEDS IN PLAN BOOK 350, PAGE 36 ON AUGUST 10, 2011, TITLED "LEWIS FARM SUBDIVISION - PHASE III, MAP 67, LOTS 21 AND 41, JEFFERSON LANE, KITTEERY, MAINE", DATED JULY 18, 2011. CONDITIONS AS SHOWN HEREON ARE OTHERWISE UNCHANGED FROM THOSE DEPICTED ON THE RECORDED PLAN.

 <p><b>CIVIL CONSULTANTS</b> Engineers Planners Surveyors PO Box 100, South Berwick, ME 03908 207-384-2550 civcon@civcon.com</p>	DATE: 11/25/14	SCALE: 1" = 50'	TITLE: <b>PLOT PLAN - LOT 4H</b>
	DRAWING REFERENCE: 3796SUB.DWG		JOB NAME: LEWIS FARM SUBDIVISION - PHASE III JEFFERSON LANE KITTEERY, MAINE
	DRAWING NUMBER: PP-2		



**LOT PLAN 42 (4H)  
4 COOPERS WAY**

PROJECT: P3796  
 SCALE: 1" = 40'  
 DATE: NOVEMBER 25, 2014

THIS PLAN HAS BEEN PREPARED, SHOWING THE LOCATION OF THE EXISTING BUILDING AND ITS CLEARING LIMITS ALONG WITH THE REVISION TO THE MDEP WOODED BUFFER.



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



PAUL R. LEPAGE  
GOVERNOR

PATRICIA W. AHO  
COMMISSIONER

December 2014

Lewis Farm, LLC  
37 Route 236, Suite 105  
Kittery, ME 03904  
ATTN: Richard D. Johnson

RE: Site Location of Development Minor Revision Application, Kittery  
DEP #L-21656-L3-L-M

Dear Mr. Johnson:

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 207-592-1692 or at [Marybeth.richardson@maine.gov](mailto:Marybeth.richardson@maine.gov).

Sincerely,

Marybeth Richardson, Project Manager  
Division of Land Resource Regulation  
Bureau of Land and 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

LEWIS FARM, LLC ) SITE LOCATION OF DEVELOPMENT ACT  
Kittery, York County )  
WOODED BUFFER - LOT 4H ) MINOR REVISION  
L-21656-L3-L-M (approval, after-the-fact) ) FINDINGS OF FACT AND ORDER

Pursuant to the provisions of 38 M.R.S.A. Sections 481 et seq., the Department of Environmental Protection has considered the application of LEWIS FARM, LLC with the supporting data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

1. PROJECT DESCRIPTION:

A. History: In Department Order #L-21656-L3-A-N, dated March 2, 2004, the Department approved the development of Lewis Farm subdivision, a 40-lot clustered residential subdivision on approximately 226 acres of land. The Department subsequently approved several minor changes to the project. In Department Order #L-21656-L3-F-N/L-21656-TB-G-N, dated May 31, 2007, the Department approved Phases II and III of the Lewis Farm subdivision, which consisted of 17 single-family and duplex lots between Lewis Road and Haley Road, and five single-family house lots to be accessed from a Phase I subdivision road on the north side of Lewis Road. Phase III construction was not started prior to the expiration of the permit approval. In Department Order #L-21656-L3-J-N, dated July 14, 2011, the Department re-approved the development of Phase III of the subdivision, still consisting of five single-family house lots. Lewis Farm Subdivision is located on both sides of Lewis Road in the Town of Kittery.

B. Summary: The applicant requests after-the-fact approval to amend the wooded buffer on Lot 4H, which is located in Phase III of Lewis Farm Subdivision. The applicant stated that in the fall of 2012, the applicant did an initial layout of Lot 4H in Phase III of Lewis Farm Subdivision and removed all dead or damaged trees. The applicant returned to the lot in 2013 and adjusted the foundation layout to preserve a cluster of trees on the north side of the house, which is when the error was made that affected the buffer. In adjusting the house location, the applicant inadvertently encroached into the wooded buffer located on the south side of the lot. The proposed buffer amendment is shown on a plan titled "Plot Plan – Lot 4H, Lewis Farm Subdivision, Phase III," prepared by Civil Consultants and dated November 25, 2014, and on a second plan titled "Lot Plan 42 (4H) – 4 Coopers Way," prepared by Altus Engineering, Inc., also dated November 25, 2014.

C. Current Use of Site: The site is an approved subdivision lot. A home is currently under construction on the lot and is scheduled for closing on December 17, 2014.

2. FINDING:

The plan approved in Department Order #L-21656-L3-J-A included a 100-foot wide wooded buffer to be located on Lot 4H at the rear of the lot to attenuate and treat stormwater from the lot prior to discharge to a common open space lot. To accommodate the existing clearing limit, the applicant requests approval to reduce the minimum buffer width on Lot 4H to no less than 69 feet from the rear clearing limit to the rear property line. The applicant submitted a statement from its stormwater engineer stating that the revised buffer configuration will provide an approximate flow path length of 50 feet, which would meet the Chapter 500 General Standards for stormwater management.

Lot 4H has not yet been sold and the applicant stated that the revised plot plan will be recorded as part of the deed description upon the sale of the lot. Within 60 days from the date of this Order, the location of the revised buffer on Lot 4H must be permanently marked on the ground.

The proposed project is a minor change and will not significantly affect any other issues identified during previous Department reviews of the project site.

Based on its review of the application, the Department finds the requested minor revision to be in accordance with all relevant Departmental standards. All other findings of fact, conclusions and conditions remain as approved in Department Order #L-21656-L3-A-N, and subsequent Orders.

BASED on the above findings of fact, and subject to the conditions listed below, the Department makes the following conclusions pursuant to 38 M.R.S.A. Sections 481 et seq.:

- A. The applicant has provided adequate evidence of financial capacity and technical ability to develop the project in a manner consistent with state environmental standards.
- B. The applicant has made adequate provision for fitting the development harmoniously into the existing natural environment and the development will not adversely affect existing uses, scenic character, air quality, water quality or other natural resources in the municipality or in neighboring municipalities.
- C. The proposed development will be built on soil types which are suitable to the nature of the undertaking and will not cause unreasonable erosion of soil or sediment nor inhibit the natural transfer of soil.
- D. The proposed development meets the standards for storm water management in Section 420-D and the standard for erosion and sedimentation control in Section 420-C provided the location of the revised buffer is permanently marked as described in Finding 2.
- E. The proposed development will not pose an unreasonable risk that a discharge to a significant groundwater aquifer will occur.
- F. The applicant has made adequate provision of utilities, including water supplies, sewerage facilities and solid waste disposal required for the development and the

development will not have an unreasonable adverse effect on the existing or proposed utilities in the municipality or area served by those services.

- G. The activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties nor create an unreasonable flood hazard to any structure.

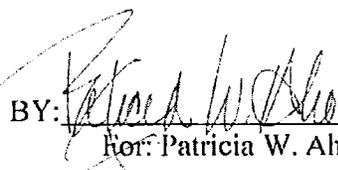
THEREFORE, the Department APPROVES the after-the-fact application of LEWIS FARM, LLC to revise the wooded buffer on Lot 4H of Phase III of Lewis Farm Subdivision as described in Finding 1, SUBJECT TO THE FOLLOWING CONDITIONS and all applicable standards and regulations:

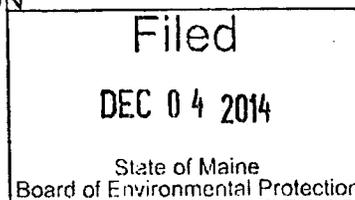
1. The Standard Conditions of Approval, a copy attached.
2. In addition to any specific erosion control measures described in this or previous orders, the applicant shall take all necessary actions to ensure that its activities or those of its agents do not result in noticeable erosion of soils or fugitive dust emissions on the site during the construction and operation of the project covered by this approval.
3. Severability. The invalidity or unenforceability of any provision, or part thereof, of this License shall not affect the remainder of the provision or any other provisions. This License shall be construed and enforced in all respects as if such invalid or unenforceable provision or part thereof had been omitted.
4. Within 60 days from the date of this Order, the location of the revised buffer on Lot 4H shall be permanently marked on the ground.
5. All other Findings of Fact, Conclusions and Conditions remain as approved in Department Order #L-21656-L3-A-N, and subsequent Orders, and are incorporated herein.

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 4th DAY OF December, 2014.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY:   
 For: Patricia W. Aho, Commissioner



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

**DEP SITE LOCATION OF DEVELOPMENT (SITE) STANDARD CONDITIONS  
STRICT CONFORMANCE WITH THE STANDARD AND SPECIAL CONDITIONS OF THIS  
APPROVAL IS NECESSARY FOR THE PROJECT TO MEET THE STATUTORY CRITERIA FOR  
APPROVAL.**

- A. Approval of Variations from Plans.** The granting of this approval 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. Further subdivision of proposed lots by the applicant or future owners is specifically prohibited without prior approval of the Board, and the applicant shall include deed restrictions to that effect.
- 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. Compliance with All Terms and Conditions of Approval.** The applicant shall submit all reports and information requested by the Board or the Department demonstrating that the applicant has complied or will comply with all preconstruction terms and conditions of this approval. All preconstruction terms and conditions must be met before construction begins.
- D. Advertising.** Advertising relating to matters included in this application shall refer to this approval only if it notes that the approval has been granted WITH CONDITIONS, and indicates where copies of those conditions may be obtained.
- E. Transfer of Development.** Unless otherwise provided in this approval, the applicant shall not sell, lease, assign or otherwise transfer the development or any portion thereof without prior written approval of the Board where the purpose or consequence of the transfer is to transfer any of the obligations of the developer as incorporated in this approval. Such approval shall be granted only if the applicant or transferee demonstrates to the Board that the transferee has the technical capacity and financial ability to comply with conditions of this approval and the proposals and plans contained in the application and supporting documents submitted by the applicant.
- F. Time frame for approvals.** If the construction or operation of the activity is not begun within four years, this approval shall lapse and the applicant shall reapply to the Board for a new approval. The applicant may not begin construction or operation of the development until a new approval is granted. A reapplication for approval 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.
- G. Approval Included in Contract Bids.** A copy of this approval must be included in or attached to all contract bid specifications for the development.
- H. Approval Shown to Contractors.** Work done by a contractor pursuant to this approval shall not begin before the contractor has been shown by the developer a copy of this approval.



# 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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