

LAND USE
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LAND USE

The land use chapter provides an overview of the land use patterns and zoning regulations in Kittery. This chapter will discuss the variety of land uses in Kittery and provide a general overview of the town's residential, commercial, and industrial zoning districts and the permitting process.

Summary of Key Points

- The land use pattern in Kittery varies greatly as one travels from north to south.
- The density of development drops considerably between the southern and northern portions of town.
- A majority of the land in Kittery is being utilized for residential development and open space.
- Kittery has eighteen zoning districts, many with overlapping use allowances and dimensional standards.
- Kittery has four overlay districts to help protect wetlands, waterways, and fisheries.
- The Industrial district lacks dimensional standards to guide the design of future development.
- The Route 1 Mixed-Use district's dimensional standards may not allow for a built form consistent with the district's intended purpose.



OVERVIEW

The term “land use” refers to the way in which land is utilized in a community to support different activities. The land in a town may be used to support the development of residential, commercial, industrial, or institutional uses. Land can also be used for roadways and utility corridors. Land can also be open, vacant, or preserved for public use or wildlife. The land use patterns that developed over time in a town are telling of the era, the mode of transportation used at the time, the geography of the land, access to water resources, and the economic status of the people who lived there.

As a component of the Comprehensive Plan, land use is connected to all other components because everything is in one way or another connected to land. The Town’s housing stock, commercial land supporting economic development, open space, community facilities, recreation opportunities, transportation connections, and the tax base are all tied back to land. Zoning, which was introduced in the early twentieth century, is a method of regulating land use with the intent of defining and managing growth and community character. The resulting vision and goals of this Comprehensive Plan will help shape recommendations for the future land use patterns and zoning regulations in Kittery. In concert with the goals for the other elements of the Plan, zoning changes can become a key mechanism for implementation.

EXISTING CONDITIONS

LAND USE PATTERNS

Kittery was incorporated in 1647, making it the oldest town in Maine. Kittery sits on the southern border of Maine and New Hampshire, bounded on the eastern and southeastern sides by water. Water has been a major contributor to Kittery’s history since 1647. In the late 1600s, the area was a source of masts for the Royal Navy resulting in much of the land being harvested of timber. The creation of the Naval Shipyard in 1800 helped shape much of Kittery up through the mid-twentieth century. Over the following decades, housing and businesses were constructed adjacent to the Navy yard, and this resulted in the creation of what is known today as Foreside and Kittery Point¹.

The unique development pattern of the Foreside are indicative of an era before the enactment of modern day zoning laws. Small lots with homes and businesses constructed within close proximity make for an inviting and walkable neighborhood district. A large majority of the homes in this area were constructed prior to 1900, with a unique architectural pattern fostering a very different neighborhood than may be found in other parts of town. The homes and businesses built in this location help support the Naval Yard and the employees who work there. Today, the Foreside is a regional tourist attraction for

those who come to Kittery to work, shop, or view the historical and natural attractions.

After World War II, the construction of U.S. Route 1 brought more changes to Kittery. The roadway created a new route for local travelers and tourists to access Maine. For Kittery, this brought the development of the outlet retail centers in the 1980s. Over time, this area has transformed into a major retail hub for Kittery, drawing local and regional shoppers alike. Over the last ten to fifteen years, new housing developments have been constructed along Route 1 in the form of multifamily and age-restricted housing (both independent and assisted living).

The sections of Kittery north of Spruce Creek and west of I-95 are very different from the Foreside, Kittery Point, and Route 1 Corridor. North of Spruce Creek, Kittery becomes more rural, with winding roads and small subdivisions sprouting off primary roadways. The subdivisions dot a landscape that is primarily open land and protected wildlife sanctuaries. To the west of I-95, a similar land use pattern continues with small single road subdivisions having been constructed on previously farmed or forested land. Much of the housing located in these areas was constructed after 1970.

Over 57 percent of land in Kittery is classified as a residential land use (both single family and multifamily). Commercial, industrial,

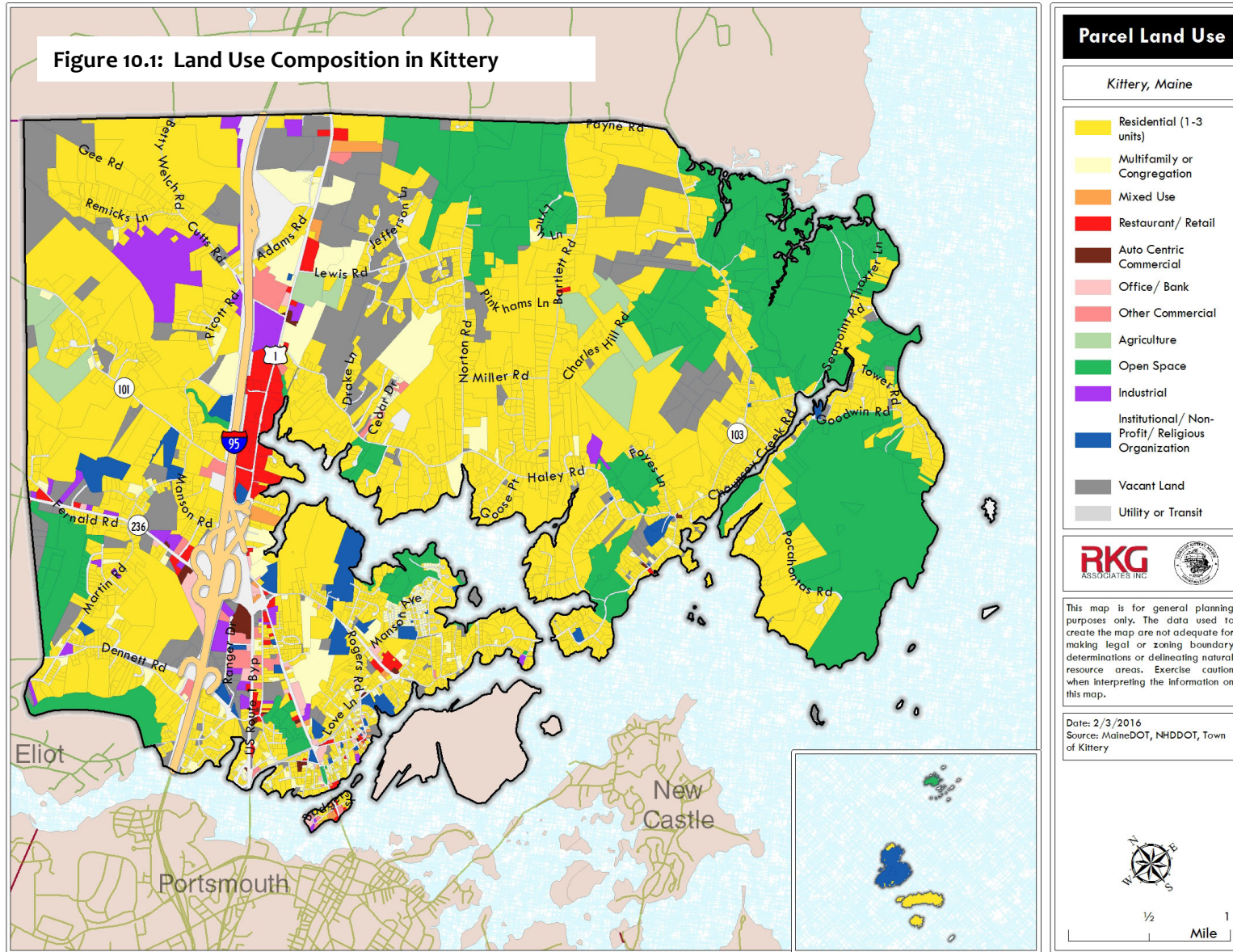
and institutional uses make up a combined 8 percent of Kittery's total land area. Besides residential uses, open space makes up a significant percentage of Kittery's land area, at 21 percent. The Rachel Carson Refuge and open space on Gerrish Island comprise a large portion of that land use classification. A full table of land

Table 10.1: Land Use Acreage

Town of Kittery, 2015 Assessors Data	Kittery
PERCENT BY LAND USE TYPE	
Agriculture	2.3%
Auto Centric Commercial	0.2%
Industrial	2.3%
Institutional	2.7%
Multifamily	4.5%
Office/Bank	0.4%
Open Space	21.4%
Other Commercial	0.8%
Residential	53.3%
Restaurant/Retail	1.5%
Utility	0.1%
Vacant Land	10.4%

uses can be seen in Figure 10.1. A land use map of Kittery can be seen in Figure 10.1.

Figure 10.1: Land Use Composition in Kittery



ZONING IN KITTERY

An important component to any Comprehensive Plan is a review of the Town's zoning. The local influence over the character and quality of the built environment is the underpinning of zoning control. Through the written regulations of zoning and the graphical representation on a zoning map, a town can guide future development in a way that benefits the people who live and work there.

USE DISTRICTS

The current Land Use and Development Code, last amended on October 26, 2015, divides Kittery into eighteen base zoning districts with four overlay zones. These base zones are divisions of land based upon the uses desired in each, e.g., residential, commercial, industrial, etc. The overlay districts are primarily in place for the protection of wetlands, waterways, and fisheries. There is nothing inherently wrong with having a large number of zoning districts so long as the intent of the district is captured by the regulations written. Table 10.2 shows the percentage of land in each zoning district in Kittery.

RESIDENTIAL

Approximately 78 percent of the land in Kittery falls within residential zoning districts, primarily the Residential – Rural (R-RL) district. This comprises nearly all of the land north of Spruce Creek and the northwest corner of Kittery. The remainder is

within the Rural Conservation, Suburban, Urban, and Village residential districts. The Rural Conservation district comprises all of Gerrish Island and Cutts Island on the east side of Kittery, making up over 11 percent of the total land area.

The six different residential districts are each written with a different purpose statement, permitted uses, and dimensional requirements. The R-RLC district is the most restrictive, requiring a minimum lot size of 80,000 square feet (nearly two acres) and a 6 percent building coverage allowance. The Residential Suburban, Urban, and Kittery Point Village districts have very similar dimensional requirements but slightly different use regulations. Each requires a minimum lot size of 40,000 square feet (one acre), and each limits building coverage to 15-20 percent of the total lot area with large setback requirements and 15 percent open space on the lot. The purpose statement for each district seems clear, but the dimensional regulations may not be accomplishing what the district is intended to do. For example, the purpose of the Rural Residential district is to curb sprawl and maintain a rural character. With a minimum lot size of 40,000 square feet and generous setback requirements, it has almost the same dimensions as the suburban and Kittery Point residential districts. Although the purpose statements for each are different, the dimensions do not vary very much. This supports why a great majority of residential growth through subdivisions has been in the R-RL portion of town over the last two to three decades.

Among the allowable uses for each district, the only major difference between residential districts is the allowance of

Table 10.2: Zoning District Acreage

Town of Kittery, 2015 Assessors Data	Kittery	
PERCENT BY ZONING DISTRICT	Acres	Percent
Business – Local	65	0.6%
Business – Local 1	41	0.4%
Business – Park	101	1.0%
Commercial - 1	113	1.1%
Commercial - 2	68	0.6%
Commercial - 3	115	1.1%
Conservation	973	9.2%
Mixed Use	470	4.5%
Mixed Use - Badgers Island	13	0.1%
Mixed Use - Kittery Foreside	56	0.5%
Residential - Kittery Point Village	466	4.4%
Residential – Rural	5,175	49.0%
Residential - Rural Conservation	1,187	11.2%
Residential – Suburban	642	6.1%
Residential – Urban	718	6.8%
Residential – Village	84	0.8%
Transportation – Maine Turnpike	0	0.0%
Industrial	275	2.6%

duplexes in both Village districts and multi-unit residences in the Kittery Point residential district, which are limited to buildings with less than four units. Otherwise, each district allows single

family homes, modular homes, and a variety of civic and recreational uses.

COMMERCIAL

Kittery has three business districts, three commercial districts, and three mixed use districts which all allow different types of commercial uses. The commercial areas are mostly limited to the areas around Route 1, Route 236, the Route 1 Bypass, and the Foreside/Downtown. These are the main transportation thoroughfares and locations where goods and services can be easily reached by residents, regional shoppers, and tourists alike.

BUSINESS DISTRICTS

The three business zoning districts, Business Local, Business Local 1, and Business Park, differ quite a bit from each other and have regulations that generally match the purpose of the district. The Business Local 1 (B-L1) district resides in two locations in Kittery, both on the edges of the Foreside/Downtown Kittery area. The purpose of this district is to encourage smart growth and good urban design patterns in a way that will serve as a focal point for the provision of local sales, urban residences, services, and business space. The development pattern should reflect traditional New England buildings with commercial uses on the first floor with residences above. This is supported by smaller minimum lot sizes, higher lot coverage, and less restrictive setback requirements.

The largest sections of the Business Local (B-L) district are located along the southern portion of State Road (Route 1) and the southeast side of the Route 1 Bypass in the vicinity of Sarah Mildred Long Bridge. The purpose of this district is to provide local sales, services, and business space within Town. The nature of the location of this district is such that it supports more local-serving retail and services compared to farther up Route 1 where the outlets are. The current uses along Route 1 and the Route 1 Bypass are single-use commercial buildings and single family residences. This district does not have a minimum lot size or a maximum building coverage, and it has relatively minimal setback requirements compared to many other districts in the Town. This, and the B-L1 district, are the only zones that have a maximum front yard setback versus a minimum. Single family dwellings are permitted in the district, but are regulated by a fairly large minimum lot size per dwelling unit requirement for parcels where sewer service is not yet available. This is in alignment with the state's minimum lot size for lots served by septic.

In addition to the larger sections of Business Local along State Road (Route 1) and the southeast portion of the Bypass, there are several smaller pockets of B-L1 that help support neighborhood serving local retail. For example, just north of the intersection of Whipple Road and Shapleigh Road there is a small pocket of B-L1 which contains uses such as a gas station, brewery, two banks, and a hardware store. Further east along Route 103, in Kittery Point, there are two more areas of B-L which contain gas stations, a market, and a post office.

The Business Park (B-PK) zoning district encompasses the business park area between Dennett Road and Route 236, where sewer service was recently extended. The purpose of this district is to create a high quality park-like setting for both businesses and residences. The area encourages a cluster of mixed use development on large tracts of land to foster greater business growth and a sense of community. The intent of the district is to provide a more efficient use of land than might be obtained through segregated development. Currently, the land area contained within this zoning district is vacant therefore there are no prevailing development patterns to describe. The district has a very high minimum lot size (120,000 square feet) compared to the other business districts. The district also requires a minimum of 10,000 square feet per dwelling unit for any residential development including apartments. This severely restricts the amount of residential that could be accommodated on a parcel of land in the district, and would make it difficult to accomplish the mixed use pattern as intended.

COMMERCIAL DISTRICTS

The Commercial 1, 2, and 3 districts provide locations for general retail sales, services, and business space in locations capable of serving community-wide and regional trade areas which are primarily accessible by the automobile. These three commercial districts are located along Route 1 north of the traffic circle and Route 236 and along the northern section of the Route 1 Bypass. Each of these areas are set up to accommodate local and regional

traffic and serve as a retail and employment destination. These commercial areas, unlike the business districts, do not allow residential development. Each requires a minimum of 40,000 square feet of land in order to develop with large front, side, and rear setbacks.

The purpose of these districts matches well with what has been constructed to date in Kittery. Along Route 1, the regional outlets, restaurants, and hotels do serve a very wide trade area, drawing patrons from all over New England. The development along the Route 1 Bypass includes a number of motels, convenience stores, gas stations, and small retail and sales establishments. The development along Route 236 is very similar to the Bypass, with a number of stand-alone commercial and service-oriented buildings on single parcels. Along the Bypass and Route 236, there are several single family homes that dot the landscape in between commercial development.

MIXED USE DISTRICTS

The final commercial district type in Kittery are the three mixed use districts: Mixed Use (MU), Mixed Use-Kittery Foreside (MU-KF), and Mixed Use-Badgers Island (MU-BI). The MU-KF and MU-BI districts are very specific to two well-established mixed use areas in Kittery, the Foreside and Badgers Island. These two locations have a long development history of mixing both residential and commercial uses for decades. The development pattern that comprises both locations is representative of a walkable, compact, mixed use village district. Buildings were constructed in close proximity to one another, and the roadway network is more gridded than what can be found in other parts of

Kittery. It is worth noting that the entirety of Badgers Island falls within the Shoreland Overlay Zone.

Both mixed use districts have very similar purpose statements which relate to their ability to provide businesses, services, and residences as a way to help revitalize areas in close proximity to the Shipyard and Portsmouth. Both require a balance of businesses and homes to keep the support the area's vitality and create sustainable economic development opportunities. The main difference between the two in terms of uses is apartments are not allowed in the MU-BI district, where they are allowed at up to twelve units per lot in the MU-KF district. While residential is allowed in both districts, the minimum land area per dwelling unit requirements of 5,000 to 6,000 square feet will make those uses difficult to accommodate. The lot sizes in both districts are already quite small, which would require a developer to have to assemble several parcels to build a multifamily or mixed use building. This increases to 10,000 square feet in the Shoreland Zone which covers the Badgers Island mixed use district. The setback requirements in both districts are very low and will help new buildings match the character of older structures.

The Mixed Use (MU) district along the northern segment of Route 1 is very different than the two districts previously described. The purpose of the district is to provide opportunities for a mix of office, service, and limited residential and retail uses to alter the pattern of commercial activity on Route 1. A mix of uses on a single parcel is desired, and in some cases required according to the zoning. The MU district is intended to accommodate growth along Route 1. The minimum parcel size is 200,000 square feet (roughly 4.5 acres). The district is set up to accommodate primarily commercial uses, but no more than 15

percent of total square feet can be dedicated to retail (including parking) and no more than 20,000 square feet can be dedicated to a single retail use.

Residential development is allowed in the MU district, but single family homes must have a minimum of 200,000 square feet of land area per dwelling unit. Multifamily units can only be developed as part of the upper stories of a mixed use building and require a minimum land area of 40,000 square feet per dwelling unit. If the building is served by sewer, the minimum is reduced to 20,000 square feet per unit. If the development is for eldercare, the minimum land area per dwelling unit requirements drop significantly so long as the development is connected to public sewers. A unit with two or more bedrooms requires only 5,000 square feet of land area per unit, 4,000 square feet for units with less than two bedrooms, and 2,500 square feet for a residential care unit. For nursing care and convalescent care units, the minimum drops to 2,000 square feet.

INDUSTRIAL

The Industrial zoning district in Kittery is exclusively relegated to the Naval Shipyard, making up about 2.6 percent of the Town's land area. The use regulations for the district are standard, allowing manufacturing, research and development, and accessory structures to a home occupation. Interestingly, the Industrial district does not have any dimensional standards outside of minimum side and rear yard setbacks of thirty feet. While flexibility is certainly encouraged with the rapidly changing definition of industrial uses, some baseline dimensional standards

could be beneficial especially if the district were to expand to other parts of town.

OVERLAY DISTRICTS

In addition to the base zoning districts identified in the zoning code, there are three additional overlay districts in Kittery. The Resource Protection (OZ-RP), Shoreland Protection Area (OZ-SL), and the Commercial Fisheries/Maritime uses (OZ-CFMU) overlay districts are in place to help the Town protect natural resources and water bodies from the impacts of development, and as a way to promote fishing and maritime uses.

The Shoreland and Resource Protection Overlays are intended to further the maintenance of safe and healthful conditions; prevent and control potential water pollution sources; protect spawning and birding grounds; and preserving access and views to coastal waters. The Resource Protection Overlay primary covers inland parcels where fresh water bodies or wetland occur, while the Shoreland Protection Overlay pertains to inland freshwater resources and the coastal shoreline of Kittery. The zone encompasses a 250 foot buffer from the upland edge of the protected resource. The required setback is 100 feet, and reduced to seventy-five feet in the Kittery Foreside and Badgers Island mixed use districts. Within the overlay by-right uses are extremely limited. Within most zoning districts the only use permitted within the overlay is public open space or recreational uses, with some exceptions for civic uses. All other uses that

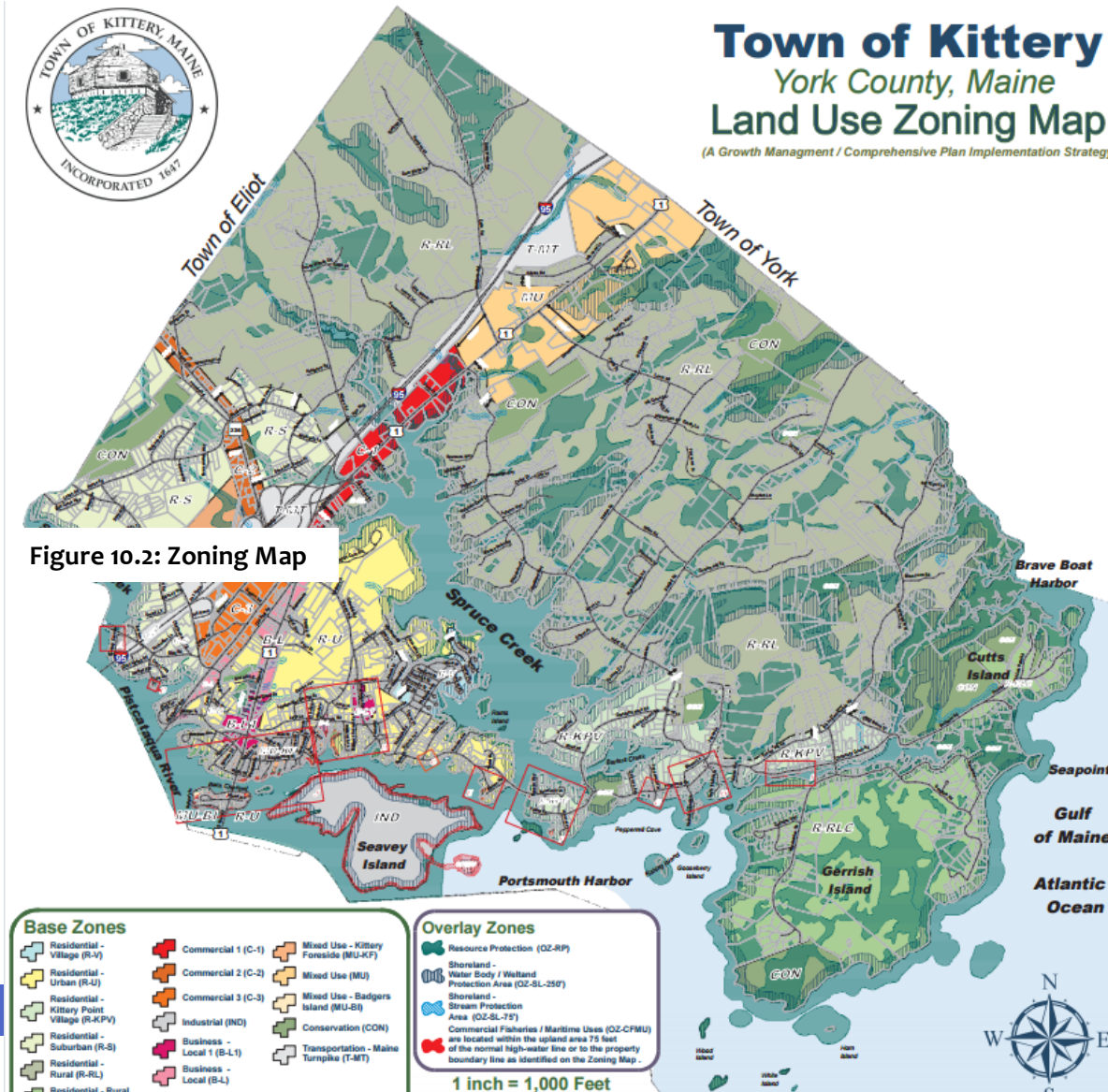
KITTERY COMPREHENSIVE PLAN EXISTING CONDITIONS INVENTORY

would otherwise be allowed in the underlying zoning district are required to be permitted through Special Exception.

The Commercial Fisheries Overlay is different from the Protection Overlays. The OZ-CMFU is to provide for the development and expansion of water-dependent commercial fisheries/maritime activities. Areas in the overlay should have been chosen based on suitability criteria that include shelter from prevailing winds/waves, slope of the land, depth of the water body within one hundred fifty feet of the shoreline, and compatibility with adjacent

uses. Parcels that fall under this overlay district are primarily located along the Foreside, Kittery Point, Badgers Island, the Naval Shipyard, and select parcels up the coast along Pepperrell Road and Chauncey Creek Road. The permitted uses under the

overlay include all functionally water dependent commercial fisheries and maritime uses, as well as the permitted uses under the base zoning districts. This creates issues where the majority of properties end up being nonconforming.



IDENTIFICATION OF PRELIMINARY ISSUES, CHALLENGES AND OPPORTUNITIES

The following is a preliminary list of issues, challenges and opportunities posed by the findings of the inventory of existing conditions of Kittery's land use and zoning. Please note that these are subject to change with the preparation of goals and objectives, not yet drafted (at the time the inventory was prepared).

ISSUES AND CHALLENGES

The Town's Zoning Code has several issues and challenges as it pertains to implementing the land use vision of Kittery residents. The purpose statements for several of the base zoning districts, and the accompanying dimensional regulations are not in sync. Currently, there are eighteen individual zoning districts across Kittery. This is a large number of districts for a community of nine thousand residents. It may not be an issue if the purpose of the district and the implementation regulations are in alignment. In Kittery, that is not always the case. Here are some issues and challenges with the current zoning districts, use restrictions, and dimensional regulations:

- Some of the zoning districts that regulate the same type of use (residential, commercial, mixed use) have very similar dimensional requirements and only differ by one or two listed uses. There seems to be a lot of redundancy in

the regulations. This is particularly true for the three commercial zoning districts (1, 2, and 3).

- The minimum lot size requirements for "rural" residential zoning districts are seen by some as too restricting and by others as not large enough. The Town needs to determine whether or not it wants to protect these rural areas or continue to allow suburban-style residential subdivisions.
- The mixed use district along Route 1 requires a minimum lot size of 200,000 square feet, yet the district purpose statement calls for smart growth or cluster development. It will be challenging to create a more compact development pattern using these large lot size minimums.
- The Commercial districts all have the same dimensional requirements, but differ when it comes to the design elements listed for each. Most of the design standards in the zoning are good ideas, and should apply to all three districts.
- The Commercial districts do not currently allow residential uses. The Town may benefit in the long term from allowing a diversity of uses in the Commercial districts to create additional flexibility for property owners, and construct residential units in closer proximity to local businesses.
- The Industrial zoning district is currently limited to the Naval Shipyard. There are currently no other areas in Town that support industrial development, neither heavy industry or light manufacturing.

- The Route 1 Mixed Use district may become problematic with its extremely large minimum lot size. A property owner could construct a single family home on a 200,000 square foot lot and effectively remove that lot from providing any economic development benefit to the Town. It will also be challenging for a developer or property owner to make a mixed use development work in this district with restrictions on upper-story residential. The minimum lot size per dwelling unit requirements are very high and would only allow a few units to be constructed on a parcel. This could create financial feasibility challenges for the property owner/developer.

OPPORTUNITIES

The Comprehensive Planning process provides an excellent opportunity to hold a community-wide discussion about development and preservation goals in the context of how zoning can be used as a tool to accomplish those goals. In some cases, the current zoning regulations may not match the intent and purpose of the district. Where that disconnect exists, it offers an opportunity to recommend changes that could bring the intended purpose of the district and the regulations that bind uses, dimensions, parking, and other elements together.

REFERENCES

DOCUMENTS

1. Kittery Land Use and Development Code. Last Amended October 26, 2015.

¹ Chapter One: The History of Kittery. 1999 Update of the Comprehensive Plan. <http://www.kitteryme.gov/Pages/FOV1-00025CA8/chapter1>