

16.1 General Provisions

16.1.1 Title; Applicability

- A. This title is known, and may be cited as, the "Land Use and Development Code of the Town of Kittery, Maine."
- B. Application of title. The provisions of this title pertain to all the land and water areas as herein defined within the boundaries of the Town.

16.1.2 Purpose

- A. This title is designed for all the purposes of zoning embraced in the Maine Revised Statutes and has been created as an integral part of a growth management program, comprehensive planning, and implementation process for the Town to promote the health, safety and general welfare of its residents.
- B. Among other things, zoning is designed to:
 - (1). Encourage the most appropriate use of land and water throughout the Town;
 - (2). Promote traffic safety;
 - (3). Provide safety from fire and other elements;
 - (4). Provide adequate light and air;
 - (5). Prevent overcrowding of real property;
 - (6). Prevent development in unsuitable areas;
 - (7). Promote an adequate transportation and circulation system;
 - (8). Control and manage the coordinated development of unbuilt areas;
 - (9). Encourage the formation of community units;
 - (10). Provide an allotment of land area in new developments sufficient for all the

requirements of community life;

(11). Conserve energy and natural resources and protect the environment;

(12). Preserve land values; and

(13). Provide for adequate public services.

16.1.3 Administration of Title 16

A. The Planning Board and Code Enforcement Officer administer this Title and have the duties as prescribed herein.

16.1.4 Conflicting requirements

A. Conflict within this title. Where the requirements of this title are in conflict with each other, the most restrictive or that imposing the higher standards governs.

B. Conflict with other laws. Wherever the requirements of this title are at variance with the requirements of any other lawfully adopted rules, regulations, ordinances, deed restrictions or covenants, the most restrictive or that imposing the higher standards governs.

16.1.5 Severability

A. In the event that any section, subsection or any portion of this title is declared by any court of competent jurisdiction to be invalid for any reason, such decision does not affect the validity of any other section, subsection or other portion of this title; to this end, the provisions of this title are declared to be severable.

16.1.6 Rules of Construction

A. For the purposes of this Ordinance:

B. The word “person” includes a firm, association, organization, partnership, trust, company or corporation as well as an individual;

C. The present tense includes the future tense;

D. Words used in the singular include the plural and words used in the plural include the singular;

- 80
- 81 E. The words “shall” and “must” are mandatory, the word “may” is permissive;
- 82
- 83 F. The words “used” or “occupied” include the words “intended,” “designed,” or “arranged to
- 84 be used or occupied”;
- 85
- 86 G. The word “dwelling” includes the word “residence”;
- 87
- 88 H. The word “lot” includes the words “plot” and parcel”
- 89
- 90 I. In case of any difference of meaning or implication between the text of this chapter and any
- 91 map or illustration, the text shall control;
- 92
- 93 J. Terms not defined shall have their customary dictionary meaning.
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95 **16.1.7 Amendments**

96

- 97 A. No amendments to this title may be adopted until after the Planning Board and the Town
- 98 Council have held a public hearing thereon. Public notice of the hearing must be published as
- 99 required by 30-A M.R.S. Section 4352. Said amendments are effective as provided by the
- 100 Town Charter.
- 101

102 **16.1.8 General Development Requirements**

103

- 104 A. This chapter outlines requirements for conformity; discusses nonconformance and waivers;
- 105 and defines various development review thresholds and requirements to further the safe and
- 106 orderly development of the Town.
- 107

108 **B. Conformity**

109

110 **(1). Conformity required.**

111 No building, structure or land may hereafter be used or occupied, and no building or

112 structure or part thereof may hereafter be erected, constructed, expanded, moved or

113 altered, and no new lot may be created except in conformity with all of the regulations

114 herein specified for the zone where it is located, unless such structure or use exists as a

115 legally nonconforming use or a variance is granted. See §16.7.11.B. and §16.8.10.D.,

116 for specific requirements related to septic waste disposal systems.

117

118 **(2). Minimums and uniformity.**

119 The regulations specified by this title for each class of district are minimum

120 requirements and apply uniformly to each class or kind of structure or land.

- 121
- 122 (3). Land within street lines.
- 123 Land within the lines of a street on which a lot abuts is not considered as part of such
- 124 lot for the purposes of meeting the area/frontage requirements of §16.4,
- 125 notwithstanding the fact that the fee to such land may be in the owner of such lot.
- 126
- 127 (4). Yard, parking or loading space.
- 128 No part of a yard or other space or off-street parking or loading space about or in
- 129 connection with any building and required for the purpose of complying with this title
- 130 may be included as part of a yard, open space or off-street parking or loading space
- 131 similarly required for any other building, except as authorized in § 16.7.11.F.
- 132
- 133 (5). Zone boundary line extension.
- 134 Where a zoning district boundary line divides a lot, the regulations applicable to either
- 135 zone of such lot may extend not more than 50 feet into the portion in the other zone(s),
- 136 except when a less restrictive portion abuts the Resource Protection Zone.
- 137
- 138 (a) Before granting any such extension, the Planning Board must determine that the
- 139 proposed use of the extended portion will:
- 140
- 141 [1] Not prevent the orderly and reasonable use of properties in the adjacent zone;
- 142
- 143 [2] Be in harmony with the character of the adjacent zone;
- 144
- 145 [3] Not adversely affect the property values of adjacent zone's immediate
- 146 neighborhoods;
- 147
- 148 [4] Not create any traffic hazards or undue traffic congestion on streets in the
- 149 adjacent zone;
- 150
- 151 [5] Not give off obnoxious gases, odors, smoke or soot;
- 152
- 153 [6] Not cause disturbing emission of electrical discharges, dust, light, vibration or
- 154 noise; and
- 155
- 156 [7] Be adequately screened from the adjacent zone.
- 157
- 158 (b) The Planning Board may require a study to be performed or commissioned by the
- 159 applicant to ensure compliance with the above requirements.
- 160
- 161 (6). Averaging building setbacks.

Building setback from the street line need not be greater than the average of the setback distances of the buildings on the lots next thereto on either side.

C. Nonconformance

(1). Purpose.

The purpose of this title is to promote land use conformities and to regulate nonconforming structures, uses, and lots, and to promote the following objectives.

(2). Prohibitions and allowances.

(a) Except as otherwise provided in this article, a nonconforming condition must not be permitted to become more nonconforming.

(b) Nonconforming vacant lots of record may be developed, maintained or repaired.

(c) Nonconforming uses may continue, may be changed to an equal or more appropriate nonconforming use, or be changed to a conforming use.

(3). General.

(a) Transfer of ownership. Legally nonconforming structures, lots, and uses may be transferred, and the new owner may continue the nonconforming use or continue to use the nonconforming structure and/or lot, subject to the provisions of this title.

(b) Repair and maintenance. This title allows the normal upkeep and maintenance of nonconforming uses and structures including repairs or renovations that do not involve expansion of the nonconforming use or structure that is not otherwise permitted by this title, and such other changes in a nonconforming use or structure as federal, state, or local building and safety codes may require.

(c) Nonconforming parking or loading space. A structure and/or use which is nonconforming as to the requirements for off-street loading and/or parking spaces may not be enlarged or added to unless off-street space is provided sufficient to satisfy the requirements of this title for both the original and addition or enlargement of the structure or use.

(4). Nonconforming structures.

(a) Nonconforming structure relocation. Except where otherwise permitted in this title, relocation of a nonconforming structure must be approved by the Board of Appeals.

In cases where the structure is located in the Shoreland or Resource Protection Overlay Zone, the relocation must be approved by the Planning Board.

[1] A nonconforming structure may be relocated within the boundaries of the parcel on which the structure is located provided the site of relocation conforms to all dimensional requirements, to the greatest practical extent, as determined by the Planning Board or Board of Appeals, and provided the applicant demonstrates the present subsurface sewage disposal system meets the requirements of state law and the State of Maine Subsurface Wastewater Disposal Rules, or a new system can be installed in compliance with the law and said rules. In no case may the relocation of a structure be permitted that causes the structure to be more nonconforming. See Chapter §16.7.11.B and §16.8.10.D, for other specific requirements related to septic waste disposal systems.

[2] In determining whether the structure relocation meets the setback to the greatest practical extent, the Planning Board or Board of Appeals must consider the following conditions:

[a] The size of the lot;

[b] The slope of the land;

[c] The potential for soil erosion;

[d] The location of other structures on the property and on adjacent properties;

[e] The location of the septic system and other on-site soils suitable for septic systems;

[f] The type and amount of vegetation to be removed to accomplish the relocation.

[3] When it is necessary to remove vegetation within the water or wetland setback area to relocate a structure, replanting of native vegetation to compensate for the destroyed vegetation is required. The Planning Board or Board of Appeals may restrict mowing around and pruning of the replanted native vegetation to encourage a more natural state of growth. Tree removal and vegetation replanting is required as follows, effective 2-28-15:

[a] Prior to the commencement of on-site construction, areas to remain undisturbed must be clearly marked with stakes and caution tape. All stakes, caution tape, silt fences, and other materials used during construction must

remain until all on-site work is completed. Prior to removal, written permission to remove such materials must be given by the Code Enforcement Officer.

[b] Trees removed to relocate a structure must be replanted with at least one native tree, six feet in height, for every tree removed. If more than five trees are planted, no one species of tree can be used to make up more than 50% of the number of trees planted. Replaced trees must be planted no farther from the water or wetland than the trees removed.

[c] Other woody and herbaceous vegetation and ground cover that is removed, or destroyed, to relocate a structure must be reestablished. An area at least the same size as the area where vegetation and/or ground cover was disturbed, damaged, or removed must be reestablished within the setback area. The vegetation and/or ground cover must consist of native vegetation and/or ground cover similar to that disturbed, destroyed or removed.

[d] 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.

[4] If the total footprint of the original structure can be relocated beyond the required setback area, no portion of the relocated structure may be constructed at less than the setback requirement for a new structure.

(b) Nonconforming structure repair and/or expansion.

[1] The Code Enforcement Officer may approve the repair and/or expansion of a nonconforming structure provided the proposed expansion is not located in the base zone setback of the Shoreland Overlay Zone or at any location and meets either of the following criteria:

[a] A vertical expansion that follows the existing building footprint;

[b] Will not result in setbacks less than those existing.

[2] Except where otherwise permitted in this title, repair and/or expansion of a nonconforming structure must be approved by the Board of Appeals. In cases where the structure is located in the base zone setback of the Shoreland Overlay or Resource Protection Overlay Zone, the repair and/or expansion must be approved by the Planning Board.

[3] This subsection does not apply to any proposed vertical expansion of a patio, deck or accessory structure permitted to be closer to a water body or to a principal structure in accordance with Table 16.5.30s - Minimum Setbacks from Wetlands and Water Bodies.

[a] A nonconforming structure may be repaired or maintained and may be expanded in conformity with the dimensional requirements, such as setback, height, etc., as contained in this title. If the proposed expansion of a nonconforming structure cannot meet the dimensional requirements of this title, the Board of Appeals or the Planning Board will review such expansion application and may approve proposed changes provided the changes are no more nonconforming than the existing condition and the Board of Appeals or the Planning Board makes its decision per § 16.2.12.F(2).

[b] Except in the Residential - Village (R-V) Zone, minimum setbacks of residential storage sheds that are less than 121 square feet, one-story residential garages that are less than 577 square feet, and decks less than 251 square feet may be one-half the minimum rear and side yard setbacks, providing the lots are legally nonconforming.

[c] Where the expansion of the residential use within the Commercial Zones involves an expansion of a structure, the structure must be expanded in conformity with the dimensional requirements contained in this title. If the proposed structure expansion cannot meet the dimensional requirements of this title, the application may be submitted to the Board of Appeals for review as a miscellaneous variation request. In reviewing all such applications, the Board of Appeals must use the criteria established in this section, and then may approve the proposed variations to the dimensional requirements.

[d] The addition of steps and landings, exterior to the structure, does not constitute expansion. Such steps are not to be considered part of the structure for such determination. Step landings may not exceed three feet by three feet in size.

[e] In addition to the standards in the above § 16.1.8.C(4)(b)[3][a] through [d], the expansion of nonconforming and the construction of new, enlarged, or replacement foundation beneath a nonconforming structure located in the Shoreland or Resource Protection Overlay Zone must meet the following:

[i] Wherever a new, enlarged, or replacement foundation is constructed under an existing nonconforming structure the structure and new foundation must be placed such that setback requirements are met to the greatest practical extent as determined by the Planning Board, basing its decision on the criteria specified in § 16.1.8.C(4)(a), Nonconforming structure

331 relocation.

332
333 [ii] All new principal and accessory structures, excluding functionally water-
334 dependent uses, must meet the water body, tributary stream, or wetland
335 setback requirements contained in § 16.4.28.E. A nonconforming structure
336 may be added to or expanded after obtaining a permit from the same
337 permitting authority as that for a new structure, if such addition or
338 expansion does not increase the nonconformity of the structure and is in
339 accordance with § 16.1.8(4)(b)[3][e][iv] and [v] below.

340
341 [iii] If a legally nonconforming principal structure is located partially within
342 25 feet from the normal high-water line of a water body, tributary stream,
343 or upland edge of a coastal or freshwater wetland, expansion of the
344 footprint and/or height of any portion of the structure that is located within
345 25 feet of the normal high-water line of a water body, tributary stream, or
346 upland edge of a coastal or freshwater wetland is prohibited even if the
347 expansion will not increase nonconformity with the water body, tributary
348 stream, or wetland setback requirement. Expansion of an accessory
349 structure that is located closer to the normal high-water line of a water
350 body, tributary stream, or upland edge of a coastal or freshwater wetland
351 than the principal structure is prohibited, even if the expansion will not
352 increase nonconformity with the water body, tributary stream, or coastal or
353 freshwater wetland setback requirement.

354
355 [iv] Notwithstanding § 16.1.8.C.(4)(b)[3][e][ii] , if a legally existing
356 nonconforming principal structure is entirely located less than 25 feet from
357 the normal high-water line of a waterbody, tributary stream, or upland
358 edge of a coastal or freshwater wetland, that structure may be expanded as
359 follows, as long as all other applicable municipal land use standards are
360 met and the expansion is not prohibited by § 16.1.8.C(4)(b)[3][e][ii]:

361
362 [A] The maximum total footprint for the principal structure may not be
363 expanded to a size greater than 800 square feet or 30% larger than the
364 footprint that existed on January 1, 1989, whichever is greater. The
365 maximum height of the principal structure may not be made greater than
366 15 feet or the height of the existing structure, whichever is greater.

367
368 [v] All other legally existing nonconforming principal and accessory
369 structures that do not meet the water body, tributary stream, or coastal or
370 freshwater wetland setback requirements may be expanded or altered as
371 follows, as long as other applicable municipal land use standards are met
372 and the expansion is not prohibited by § 16.1.8.C(4)(b)[3][e][ii] and [iii].
373 above:

[A] For structures located less than the base zone setback from the normal high-water line of a water body, tributary stream, or upland edge of a coastal or freshwater wetland, the maximum combined total footprint for all structures may not be expanded to a size greater than 1,000 square feet, or 30% larger than the footprint that existed on January 1, 1989, whichever is greater. The maximum height of any portion of a structure that is located within the base zone setback may not be made greater than 20 feet, or the height of the existing structure, whichever is greater.

[B] In addition to the limitations in § 16.1.8.C(4)(b)[3][e][v] above, for structures that are legally nonconforming due to their location within the Resource Protection Overlay Zone when located at less than 250 feet from the normal high-water line of a water body or the upland edge of a coastal or freshwater wetland, the maximum combined total footprint for all structures may not be expanded to a size greater than 1,500 square feet, or 30% larger than the footprint that existed at the time the Resource Protection Overlay Zone was established on the lot, whichever is greater. The maximum height of any structure may not be greater than 25 feet, or the height of the existing structure, whichever is greater, except that any portion of those structures located less than the base zone setback from the normal high-water line of a waterbody, tributary stream, or upland edge of a coastal or freshwater wetland must meet the footprint and height limits in § 16.1.8.C(4)(b)[3][e][iv][A], and [v][A] above.

[vi] An approved plan for expansion of a nonconforming structure must be recorded by the applicant with the York County Registry of Deeds within 90 days of approval. The recorded plan must show the existing and proposed footprint of the nonconforming structure, the existing and proposed structure height, the footprint of any other structures on the parcel, the Shoreland Overlay Zone and/or the Resource Protection Overlay Zone boundary and evidence of approval by the municipal review authority.

(c) Nonconforming structure reconstruction.

[1] In the Shoreland or Resource Protection Overlay Zone(s), any nonconforming structure which is located less than the required setback from a water body, tributary stream, or coastal or freshwater wetland and which is removed, damaged or destroyed, by any cause, by more than 50% of the assessed value of the structure before such damage, destruction or removal, may be reconstructed or replaced provided that a permit is obtained within 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 coastal or freshwater wetland setback requirement to the greatest practical extent as determined by the Planning Board. In determining whether the structure reconstruction meets the setback to the greatest practical extent the Planning

Board must consider, in addition to the criteria in § 16.1.8.C(4)(a),
Nonconforming structure relocation, the physical condition and type of
foundation present, if any.

[2] In the Shoreland or Resource Protection Overlay Zone(s), any nonconforming structure which is located less than the required setback from a water body, tributary stream, or coastal or freshwater wetland and removed, damaged or destroyed by any cause by 50% or less of the assessed value of the structure before such damage, destruction or removal, may be reconstructed in place if a permit is obtained from the Code Enforcement Officer within 12 months of the established date of damage or destruction.

[3] Outside of the Shoreland or Resource Protection Overlay Zone(s), any nonconforming structure which is removed, damaged or destroyed by any cause may be restored or reconstructed in place if a permit is obtained from the Code Enforcement Officer within 18 months of the date of said removal, damage or destruction. Such restoration or reconstruction must not make the structure more nonconforming than the prior nonconforming structure.

[4] Nothing in this section prevents the demolition of the remains of any structure damaged or destroyed. Application for a demolition permit for any structure that has been partially damaged or destroyed must be made to the Code Enforcement Officer.

[5] In the Shoreland or Resource Protection Overlay Zone(s), if the total footprint of the original structure can be reconstructed beyond the required setback area, no portion of the reconstructed structure may be reconstructed at less than the setback requirement for a new structure. If the reconstructed or replacement structure is less than the required setback, it may not be any larger than the original structure, except as allowed in § 16.1.8.C(4)(b), Nonconforming structure repair and expansion.

[6] When it is necessary to remove vegetation to reconstruct a structure, vegetation must be replanted in accordance with § 16.1.8.C(4)(a)[3], Nonconforming structure relocation.

[7] Except where expressly permitted in this title, in no case may a structure be reconstructed or replaced so as to increase its nonconformity.

(5). Nonconforming uses.

(a) Nonconforming use continuance. The use of land, or structure, lawful at the time such use began, may continue although such use may not meet the provisions of

this title.

(b) Resumption of discontinued use prohibited. A nonconforming use discontinued for a period exceeding one year, or which is superseded by a conforming use, loses its status as a permitted nonconforming use. The uses of the land or structure must thereafter meet the provisions of this title. This provision does not apply to the resumption of a use of a residential structure where it can be demonstrated that the structure has been used or maintained for residential occupancy during the preceding five-year period.

(c) Nonconforming use expansion. Expansion of nonconforming uses is prohibited, except nonconforming residential uses may be expanded within existing residential structures. Where the expansion of a nonconforming residential use involves the expansion of a structure, the structure must be expanded in conformity with all requirements as outlined in § 16.1.8.C(4), Nonconforming structures.

(d) Nonconforming use change: review authority and evaluations. The reviewing authority may require evaluations be prepared by a person certified and/or qualified to perform the required evaluation. It is the burden and responsibility of the applicant to bear the costs for such evaluations. In the event there are existing official maps, data and/or reports for general use, the applicant is encouraged to submit copies of these documents to the reviewing authority. In determining that no greater adverse impact will occur, the applicant may be required to submit an evaluation in writing regarding the probable effects on public health and safety, erosion and sedimentation, water quality, fish and wildlife habitat, vegetative cover, visual and actual points of public access to waters, natural beauty, floodplain management, archaeological and historic resources, and commercial fishing and maritime activities, and other functionally water-dependent uses.

[1] The Town Planner and the Code Enforcement Officer may approve the change of use of a nonconforming structure where it can be deemed the proposed use is a conforming use and the proposed use does not impact a water body, tributary stream, or wetland.

[2] Outside the areas regulated by Shoreland Overlay Zone or Resource Protection Overlay Zone, an existing nonconforming use may be changed to another nonconforming use with approval of the Board of Appeals.

[3] Within areas regulated by Shoreland Overlay Zone or Resource Protection Overlay Zone, an existing nonconforming use may be changed to another nonconforming use with the approval of the Planning Board.

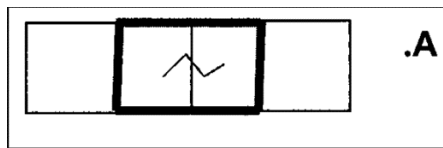
(6). Nonconforming lots.

(a) Nonconforming lots of record.

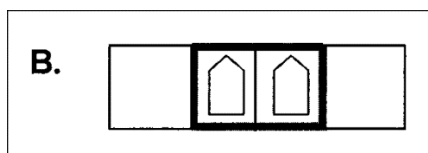
- [1] Nonconforming lots. In any district, notwithstanding limitations imposed by other sections of this title, single noncontiguous lots legally created when recorded may be built upon consistent with the uses in the particular zone. These provisions apply even though such lots fail to meet the minimum requirements for area or width, or both, which are applicable in the zone, provided that yard dimensions and other requirements, not involving area or width, or both, of the lot conform to the regulation for the zone in which such lot is located. Relaxation of yard and other requirements not involving area or width may be obtained only through miscellaneous variation request to the Board of Appeals.

(b) Contiguous nonconforming lots.

- [1] Contiguous nonconforming lots. If two or more contiguous nonconforming lots or portions thereof are in single or joint ownership of record, and if all or part of the lots do not meet the dimensional requirements of this title, and if one or more of the lots are vacant or contain no principal structure, the lots must be combined to the extent necessary to meet the applicable dimensional requirements of this title.

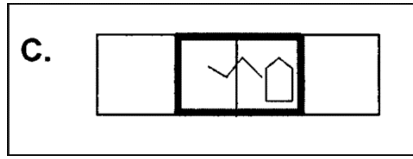


- [2] Contiguous-built upon nonconforming lots. If two or more contiguous lots or parcels were in a single or joint ownership of record prior to July 13, 1977, or prior to December 15, 1973 for properties within the Shoreland Overlay Zone, if all or part of the lots do not meet the dimensional requirements of this title, and if a principal use or structure exists on each lot, the nonconforming lots may be conveyed separately or together, provided that the State Minimum Lot Size Law (12 M.R.S. § 4807-A through 4807-D) and the State of Maine Subsurface Wastewater Disposal Rules are complied with.



- [3] Contiguous partially built-upon lot. If two or more contiguous lots or parcels are in a single or joint ownership of record at the time of or since adoption or amendment of this title, if any of these lots do not individually meet the

dimensional requirements of this title or subsequent amendments, and if one or more of the lots are vacant or contain no principal structure, the lots shall be combined to the extent necessary to meet the applicable dimensional requirements of this title.



[4] This subsection does not apply:

[a] To any Planning Board approved subdivision located entirely outside of the Shoreland Overlay Zone and Resource Protection Overlay Zone, and which was recorded with the York County Registry of Deeds on or before July 13, 1977;

[b] If one or more of the contiguous lots is served by a public sewer, or can accommodate a subsurface sewage disposal system in conformance with this title § 16.8.10.D, Septic Waste Disposal, and the State of Maine Subsurface Wastewater Disposal Rules; and

[i] If each lot contains at least 100 feet of shore frontage and at least 20,000 square feet of lot area; or

[ii] If any lot(s) that do not meet the frontage and lot size requirements of § 16.4.28.E(1) are reconfigured or combined so each new lot contains at least 100 feet of shore frontage and 20,000 square feet of lot area.

(c) Single lot division of a nonconforming lot. If two principal structures exist on a single lot legally created when recorded, each may be sold on a separate lot provided the Board of Appeals determines that each resulting lot is as conforming as practicable to the dimensional requirements of this title. If three or more principal structures exist on a single lot legally created when recorded, each may be sold on a separate lot provided the Planning Board determines that each resulting lot is as conforming as practicable to the dimensional requirements of this title.

(d) Adjustment of common boundary line of nonconforming lots.

[1] The common property line of two nonconforming lots of record, each with legally created principal structures, may be adjusted if:

[a] The Code Enforcement Officer (CEO) determines that the resulting lots are not more nonconforming than the existing lots with respect to the dimensional requirements of this title; or

[b] Where the lots are located entirely outside the Shoreland Overlay Zone and the CEO determines the proposed lot line adjustment makes the lot more nonconforming, the Board of Appeals determines that each resulting lot is as conforming as practicable to the dimensional requirements of this title; and

[i] Each resulting lot is not less than 20,000 square feet in lot size when not served by public sewer; or

[ii] Each resulting lot is not less than the smallest residential lot permitted under the Town's land use base zones, Title 16.3, when served by public sewer; or

[c] Where all or part of either lot is located in the Shoreland Overlay Zone and the CEO determines the proposed lot line adjustment makes the lot more nonconforming, the Planning Board determines that each resulting lot is as conforming as practicable to the Maine Department of Environmental Protection (MDEP) Mandatory Shoreland Zoning minimum lot standards for principal structures and uses¹; and

[i] Each resulting lot is not less than 20,000 square feet in lot size and not less than 100 feet in shore frontage^{2,3}; and

[ii] A lot that is conforming to the MDEP Mandatory Shoreland Zoning minimum lot standards for principal structures and uses remains conforming to those requirements¹; and

[iii] Common boundary lines may not be adjusted when both subject lots are nonconforming per MDEP Mandatory Shoreland Zoning minimum lot standards.³

[2] It is not the intention of the above subsection (Adjustment of common boundary line of nonconforming lots) to allow for the creation of an additional lot. A property line adjustment in accordance with this subsection and Title 16.8 does not constitute the creation of a new lot and the adjusted lot remains a legally non-conforming lot of record, not applicable to the joining of lots.

NOTES:

- 1 Chapter 1000: Guidelines for Municipal Shoreland Zoning Ordinances, Section 15.A Minimum Lot Standards; adjacent to Tidal Areas: 30,000 square feet lot size with 150 feet of shore frontage; and adjacent to Non-Tidal Areas: 40,000 square feet lot size with 200 feet of shore frontage.
- 2 Title 16.1.8.C(6)[d] is allowed only when both subject lots are under the same single or joint ownership.
- 3 Adherence to State Minimum Lot Size Law (12 M.R.S. §§ 4807-A through 4807-D) and State of Maine Subsurface Wastewater Disposal Rules or public sewer is required.

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16.2 Administration and Enforcement**16.2.1. Administration and Enforcement**

This Chapter describes general administration and enforcement of the requirements of this title.

16.2.2. Planning Board appointment and powers.**A. Appointment and composition.**

- (1). The Planning Board is established by the Town Charter, Article VIII, Sec. 8.01, Planning, and applicable state statutes.
- (2). The Board consists of seven members, who are Kittery residents, serving staggered terms of office of three years.
- (3). Members of the Board are appointed by the Town Council.
- (4). A municipal officer, or spouse thereof, may not serve as a member of the Board.
- (5). Members serve until their successors are appointed and qualified.
- (6). The number of consecutive terms by any Board member is limited by Sec. 8.01(3) of the Town Charter.
- (7). A member of the Board may be dismissed for cause by the Town Council before the expiration of such member's term after notice and hearing.
- (8). Vacancies are filled by Town Council appointment for the unexpired term.

B. Powers and duties.

- (1). The Board shall elect annually a chairperson and vice chairperson from its membership and a secretary. It is the duty of the secretary to keep and maintain a permanent record of all meetings of the Board and show the vote of each member upon each question.
- (2). A quorum consists of four or more members. All decisions must be made by a minimum of four like votes, except on procedural matters.
- (3). The Board shall adopt bylaws to govern routine proceedings and set agendas and hold meetings to perform duties.
- (4). Any question of whether a particular issue involves a conflict of interest sufficient to disqualify a member from voting thereon shall be decided by a majority vote of the members present, excluding the member who is being challenged, who may not vote on the issue.

(5). All records of the Board are public records, except as excluded by statute.

(6). The Board shall:

(a) Perform duties as provided by law.

(b) Ss and decide on required development plans, including special exception use requests, that require Planning Board review, using the development application and review procedures and criteria and other provisions in this title.

(c) Prepare and recommend for Council adoption a Comprehensive Plan and initiate Plan implementation by zoning ordinance, other land use and development regulations, and other means; and monitor and report on Plan implementation progress.

16.2.3. Board of Appeals

A. Appointment and composition.

(1). The Board of Appeals is established by the Town Charter, Article VIII, Sec. 8.04, and 30-A M.R.S. § 2691.

(2). The Board consists of seven members, who are Kittery residents, serving staggered terms of office of three years.

(3). Members of the Board are appointed by the Town Council.

(4). A municipal officer, or spouse thereof, may not serve as a member of the Board.

(5). Members serve until their successors are appointed and qualified.

(6). The number of consecutive terms by any Board member is limited by Sec. 8.01(3) of the Town Charter.

(7). A member of the Board may be dismissed for cause by the Town Council before the expiration of such member's term, after notice and hearing.

(8). Vacancies are filled by Town Council appointment for the unexpired term.

B. Powers and duties.

(1). The Board shall elect annually a chairperson and vice chairperson from its membership and a secretary. It is the duty of the secretary to keep and maintain a permanent record of all meetings of the Board and show the vote of each member upon each question.

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- (2). A quorum consists of four or more members. All decisions must be made by a minimum of four like votes, except on procedural matters.
- (3). The Board shall adopt bylaws to govern routine proceedings and set agendas and hold meetings to perform duties
- (4). Any question of whether a particular issue involves a conflict of interest sufficient to disqualify a member from voting thereon is decided by a majority vote of the members present, except the member who is being challenged, who may not vote on the issue.
- (5). All records of the Board are public records, except as excluded under 1 M.R.S. § 402(3) and (3-A).
- (6). The Board is to:
- (d) Perform duties as provided by law.
 - (e) Administrative decision appeal. Hear and decide on an administrative decision appeal where it is alleged by an aggrieved party that there is an error in any order, requirement, decision or determination made by the Code Enforcement Officer in review of an action on a permit application under this title.
 - (f) Variance request. Hear and decide on a variance request within the limitations set forth in this title and 30-A M.R.S. § 4353(4).
 - (g) Miscellaneous variation request. To hear and decide on a miscellaneous variation request to permit variation in:
 - [1] Nonconformance as prescribed in § 16.1.8;
 - [2] Standards contained in § 16.7.E, § 16.7.F, or § 16.5.23 Sign violation and appeal; or
 - [3] Accessory dwelling unit standards per § 16.5.3. Nonconformance as prescribed in §16.1.8;
 - (h) Special exception use request. Hear and decide on a special exception use request not requiring Planning Board review per development and site review thresholds and using the development application and review (§16.7) procedures and review criteria and other provisions in this title.

16.2.4. Port Authority

A. Appointment and composition.

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- (1). The Port Authority is established by Maine Private and Special Law 1961, Chapter 163, as amended, and Town Charter, Article IX.
- (2). The Port Authority consists of seven members, who are Kittery residents, serving staggered terms of office of five years.
- (3). Members of the Port Authority are appointed by the Town Council.
- (4). A municipal officer, or spouse thereof, may not serve as a member of the Port Authority.
- (5). Members serve until their successors are appointed and qualified.
- (6). No member shall serve more than two consecutive terms of five years. Any member who has served two consecutive terms of five years is ineligible to serve on the Board for a period of one year. Computation of term limits commences with the first term of five years following the effective date of this provision. Computation of term limits does not include service prior to the effective date of this provision nor to terms of fewer than five years after the effective date.
- (7). A member of the Port Authority may be dismissed for cause by the Town Council before the expiration of such member's term after notice and hearing.
- (8). Vacancies are filled by Town Council appointment for the unexpired term.

B. Powers and duties.

- (1). The Board shall elect annually a chairperson and vice chairperson from its membership and a secretary. It is the duty of the secretary to keep and maintain a permanent record of all meetings of the Port Authority and show the vote of each member upon each question
- (2). The Port Authority is to:
 - (a) Perform duties as provided by law.
 - (b) Where Town Council action is required under 38 M.R.S. § 1021 et seq., Wharves and Fish Weirs, the Council may appoint the Port Authority as its designee for on-site inspection and to issue a written report on the same to the Council.
 - (c) Water area development powers and duties.

[1] The Port Authority is to provide advice to the Planning Board on development applications dealing with piers, wharfs, marinas and other uses projecting into water bodies.

[2] Where Port Authority review is required, such review must be completed prior to Planning Board review.

- [3] Port Authority review and approval authority under this title applies to structures extending into a water body beyond the mean high-water line or the upland edge of a coastal wetland and extends from the water body to the mean high-water line or upland edge of a coastal wetland.
- [4] The Port Authority may approve, for convenience of access to a pier from land upland of the mean high-water line or the edge of a coastal wetland, an extension of the pier that is the shortest practicable extension at its nominal height and width. All other structures upland of, and abutting or built on or over, a structure extending into a water body beyond the mean high-water line or the edge of a coastal wetland require Planning Board approval. Only one pier, ramp and float structure is permitted on any noncommercial or nonindustrial lot.
- [5] Where the Planning Board is the lead reviewing authority, a shorefront development plan must be submitted for Planning Board approval. A Port Authority ruling on the shorefront development plan's conformance with Port Authority rules and regulations and navigational aspects of any proposed pier, ramp and float system or principal marine structure is required prior to Planning Board approval.
- [6] Only functionally water-dependent uses are allowed on, over or abutting a pier, wharf or other structure beyond the normal high-water line. The standards contained in § 16.5.22. are to be met.

16.2.5. Town Planner

- A. Responsibilities. The Town Planner is responsible for the overall planning in accordance with applicable federal, state and municipal law, codes and ordinances. The Town Planner is responsible for all municipal planning functions, including the administration of this title, and the implementation of the Kittery Growth Management Program. These functions include but are not limited to land and water use planning; providing technical assistance and staff support to the Planning Board; researching, developing, coordinating and administering land and water use and planning related projects; maintaining accurate planning records; and interacting with members of the public involved with the planning process.
- B. Plan submission.
- (1). All plan submission requirements for an application for land/water area use and development are to be submitted to the Town Planner.
 - (2). The Town Planner must review all plan submission contents to ascertain that they meet the requirements of this title before they are delivered for review or consideration by the Planning Board.
 - (3). The Town Planner, upon confirmation of a plan's submission contents sufficiency, is to place the application on the Planning Board's agenda for a scheduling hearing.
NOTE: Town Planner confirmation does not constitute substantive review under Maine law, which commences at the first public hearing for an application held by the Planning Board.

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- C. Staff coordination. The Town Planner is to coordinate with appropriate municipal department heads to ensure they have received required plan information for the performance of their duties under this title.
- D. Reporting. The Planner must report the status of all active plans (received, pending, under review, and approved not built – past expiration date) to the Board annually.

16.2.6. Code Enforcement Officer (CEO)

- A. Responsibility. It is the duty of the Code Enforcement Officer or other person duly authorized by the Town to enforce the provisions of this title.
- B. Permits. The CEO is to issue required permits for building, occupancy, plumbing, electrical or such other as may be required.
- C. Appeal/request initiation. The CEO must initiate the forms required for appeals/requests to the Board of Appeals.
- D. Inspection. The CEO must inspect all buildings, developments, subdivisions and such other facilities/uses within the requirements of this title.
- E. Business use changes. The Town Planner and the Code Enforcement Officer are to review and approve, or refer to the Planning Board for action, all business use changes which occur that fall below Planning Board review thresholds as outlined in § 16.7.2.B. Approval must be based on compliance with all requirements of this title.

16.2.7. Enforcement; general

- A. If the Code Enforcement Officer (CEO) finds any of the provisions of this title are being violated, the CEO must notify by certified mail, return receipt requested, the person responsible for such violations, indicate the nature of the violation, and order the action necessary to correct it. The CEO must order discontinuance of illegal use of land, buildings or structures; removal of illegal buildings or structures or of additions, alterations or structural changes thereto; a discontinuance of any illegal work being done; or take any other action authorized by this title to ensure compliance with or to prevent violations of its provisions.

16.2.8. Building/Regulated Activity Permits and Requirements

Building/regulated activity permits and certificates of occupancy are required to control development to ensure that such development conforms to this title. This chapter outlines the requirements of this process.

- A. Permit. No building, including municipal buildings, or structure may be erected, moved, added to or otherwise structurally altered and no regulated activity is to commence without a permit, issued by the Code Enforcement Officer and in compliance with all applicable state and federal requirements.

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- B. Conformity. No building/regulating activity permit may be issued except in conformity with this title, except after written order of the Board of Appeals.
- C. Permit records. The CEO must maintain a public record of all building/regulating activity permits and applications thereof.
- D. Permit period.
- (1). A permit expires if the Code Enforcement Officer determines no substantial work has been commenced within six months from date of issue. A permit expires if work is not substantially complete within two years from date of issue. Expired permits may be renewed upon written request and justifiable cause demonstrated to the Code Enforcement Officer's satisfaction. Written request for renewal must be made prior to the permit expiration.
 - (2). The permit may be renewed one time only for a single six-month period to commence work, upon payment of the base application fee. If the Code Enforcement Officer determines substantial work has not commenced upon expiration of the six-month renewal period, a new permit application and payment of all applicable new permit fees must be submitted.
 - (3). The permit may be renewed one time only for a single six-month period to complete work, upon payment of the base application fee. If work is not substantially complete as determined by the Code Enforcement Officer upon expiration of the six-month renewal period, a new permit application and payment of all applicable new permit fees must be submitted based on the value of the remaining permitted work.
 - (4). Any work commenced or completed without the issue of a permit as required by this title is subject to an after-the-fact permit with all applicable fees doubled.
- E. Permit threshold. A permit is required if the activity involves any of the following thresholds, as determined by the Code Enforcement Officer:
- (1). Fair market value of the work is greater than \$2,000;
 - (2). Changes to electric, plumbing or septic systems;
 - (3). Increase in coverage;
 - (4). Construction of a building or expansion of a structure;
 - (5). Structural alteration;
 - (6). Change in use or new business occupancy;
 - (7). Erection or expansion of signage;

(8). Installation or expansion of piers and docks;

(9). An activity that requires inspection by the CEO to determine compliance with this title; or

(10). Creates one or more acres of disturbed area.

(11). Structure demolition.

F. Application.

(1). Plans.

(a) All applications for building/regulated activity permits are to be accompanied by plans showing the actual dimensions and shape of the lot to be built upon, including but not limited to property and setback lines; the exact sizes and locations and dimensions of the proposed building or alteration of any existing structures and the proposed sewage disposal systems as designed by a Maine-licensed site evaluator. The Code Enforcement Officer may waive the requirement for plans in the case of minor interior alterations which in the CEO's opinion do not result in a change in use. The application is to include such other information as lawfully may be required by the Code Enforcement Officer to determine conformance with and provide for the enforcement of this title. All plans and correspondence are to include the map and lot designation of the property concerned in the upper right-hand corner.

(b) At any time between the initial request for a building/regulated activity permit and the granting of final occupancy certificate the CEO or designated representative is to have access to the subject property and structures without obtaining prior permission, written or oral, from the property owner or applicant, except when a temporary occupancy permit has been given to the dwelling owner or applicant.

(2). Drainage and sewage disposal. Wherever on-site subsurface disposal is contemplated, the approval of building/regulated activity permit applications are subject to evidence of satisfactory subsurface soil conditions for drainage and sewage disposal and prior obtainment of a subsurface wastewater disposal permit. Such evidence must be furnished in compliance with the Maine State Plumbing Code and § 16.7 or § 16.8.

(3). Fee. Except for municipality permits, application for a building/regulated activity permit must be accompanied by a fee which is established by the Town Council. (See Appendix A, Fee Schedules.)

(4). Flood hazard ordinance. Any building or structure that might be erected in an area subject to periodic flooding must meet all conditions of §16.5.11, relating to flood hazard permit and review procedure, of this Code and the applicable Federal Emergency Management Agency (FEMA) regulation(s). No alteration of the natural contour of the land by grading or filling for any purpose is permitted in an area subject to periodic flooding.

(5). Conformance to standards.

- (c) All developments must be in conformance with the procedures, standards and requirements of this title.
- (d) All work that requires a building/regulated activity permit must conform to the Maine Uniform Building and Energy Code (MUBEC), pursuant to 10 M.R.S. § 9721 et seq., which is adopted by the Department of Public Safety, Bureau of Building Codes and Standards, Maine Technical Building Codes and Standards Board, by Rule 16-635, Chapters 1 through 6, as may be amended from time to time.
- (e) The following codes, standards, rules and their amendments are in full force and effect in their entirety and are not affected by the operation of Title 16 or the MUBEC:
- [1] National Electrical Code® standards (NFPA 70), adopted pursuant to 32 M.R.S. § 1153-A.
 - [2] Maine State Plumbing Codes standards, adopted pursuant to 32 M.R.S. § 3403-B.
 - [3] Standard for the Installation of Oil-Burning Equipment standards (NFPA 31), adopted pursuant to 32 M.R.S. § 2353.
 - [4] Flammable and Combustible Liquids Code standards (NFPA 30), adopted pursuant to 32 M.R.S. § 14804.
 - [5] Boiler and pressure vessel standards, adopted pursuant to 32 M.R.S. § 15104-A.
 - [6] Elevator standards, adopted pursuant to 32 M.R.S. § 15206.
 - [7] National Fire Protection Association (NFPA) firesafety codes and standards, adopted pursuant to 25 M.R.S. § 2452 and § 2465, as follows:
 - [a] NFPA 1 - Fire Code.
 - [b] NFPA 101- Life Safety Code.
 - [c] NFPA 54 - Fuel Gas Code.
 - [d] NFPA 211 - Standard for Chimneys, Fireplaces, Vents, and Solid-Fuel-Burning Appliances.
- (6). Permit review time constraints. The Code Enforcement Officer must approve or deny an application for a building/regulated activity permit within 14 working days of receiving said application. The Town Manager may approve or deny an application if no action is taken by the Code Enforcement Officer within 14 working days.

16.2.9. Certificate of occupancy

- A. Certificate requirement. It is unlawful to use or occupy or permit the use or occupancy of any building or premises, or both, or part thereof hereafter created, erected, changed, converted or wholly or partly altered or enlarged in its use or structure until a certificate of occupancy has been issued by the Code Enforcement Officer and endorsed to the effect that the proposed use of the building or land conforms with the requirements of this title and all applicable state and federal requirements.
- B. Certificate application requirement. No building/regulated activity permit may be issued until an application has been made for a certificate of occupancy and the certificate of occupancy is issued in conformity with the provisions of this title upon completion of the work.
- C. Temporary certificate.
- (1). A temporary certificate of occupancy may be issued by Code Enforcement Officer for a period of six months during construction or alterations for partial occupancy of a building pending its completion, provided that such temporary certificate requires such conditions and safeguards as will protect the safety of the occupants and the public.
- D. Commercial establishments may not be granted a temporary certificate of occupancy. Occupancy may be granted when construction is complete, all Planning Board conditions have been met, and all applicable state and local code requirements have been met to the satisfaction of the CEO. Phased construction may be approved by the Planning Board, and certificate of occupancy may be issued by the CEO, when phase conditions have been met.
- E. Records. The Code Enforcement Officer must maintain a public record of all certificates of occupancy.
- F. Failure to obtain certificate. Failure to obtain a certificate of occupancy is a violation of this title.
- G. Minor interior alterations. An occupancy permit is not required for minor interior alterations during which the building would be considered occupied and which, in the judgment of the Code Enforcement Officer, does not constitute a change in use of the building.

16.2.10. Numbering of buildings

- A. Street-numbering map.
- (1). All buildings must bear a distinctive street number in accordance with and as designated upon the street-numbering map on file with the Town's Assessing Department. The Town Assessor is responsible to maintain and keep current said map.
- (2). No person may affix, or allow to be affixed, a different street number from the one designated on the street-numbering map.

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- B. Display of number. The number is to be displayed upon the front of the building and/or on the side facing the street. The number must be plainly visible from the street. Owners of buildings and houses that are set back out of view from the road must place a post or sign at the driveway entrance with the specified numbers. Said post/sign is not considered a structure which must conform to Land Use and Development Code setbacks. In place of a post/sign, the number may be affixed to a mailbox. Said post/sign must be placed out of the Town's right-of-way and be six feet in height.
- C. Multi-Family Dwellings. For multi-family dwellings, the house number is to be displayed as outlined in Subsection B. Each individual apartment or living unit must be clearly sublettered.
- D. Number dimensions and color. Numbers must be no less than three inches in height and contrast in color with the color of the building or background to which they are attached.
- E. Time limit for compliance; violation; penalty. Any person who, after being notified by the Police Chief or any law enforcement officer from the Town, fails to comply with any of the provisions of this section within the time limit of not more than 30 days specified in such notice is liable to a fine of not less than \$50 nor more than \$100 per violation.

16.2.11. Plumbing and septic system permit fees

- A. Applicability. This section applies to fees charged by the Town for plumbing and subsurface wastewater disposal system permits issued by the Town pursuant to 30-A M.R.S. § 4201 et seq. and pursuant to rules promulgated by the Department of Health and Human Services (DHHS) under the authority of 30-A M.R.S. § 4201 et seq. ("State Plumbing Code"). For purposes of this section, the terms contained in this section have the meanings given to them in the State Plumbing Code.
- B. Plumbing permit fees.
- (1). At the time of issuance by the Town of a plumbing permit pursuant to 30-A M.R.S. § 4201 et seq. and the State Plumbing Code, the plumbing permit applicant must pay a fee in accordance with the following schedule and at the rate provided for each classification shown herein:
- (a) Any person who begins any work for which a permit is required by the State Plumbing Code without first having obtained a permit therefor, if subsequently eligible to obtain a permit, is liable to pay double the permit fee fixed by this section for such work. However, this provision does not apply to emergency work when it is proven to the satisfaction of the local plumbing inspector that such work was urgently necessary and that it was not practical to obtain a permit before the commencement of the work. In all such emergency cases, a permit must be obtained within four working days, or else a double permit fee as hereinabove provided is to be charged.
- (b) For the purpose of this section, a sanitary plumbing outlet on or to which a plumbing fixture or appliance may be set or attached is construed to be a fixture. Fees for reconnection and retest of existing plumbing systems in relocated buildings are to be based on the number of plumbing fixtures, water heaters, etc., involved.
- (c) The following permit fees are to be charged:

- [1] Minimum fee for all permits, see Appendix A.
- [2] Fixture fee, see Appendix A.
- [3] Reinspection fee, see Appendix A. A reinspection fee must be charged by the local plumbing inspector in those instances when work has not been completed upon an inspection or when work was not in compliance with the State Plumbing Code.
- [4] When only new water distribution and/or drainage pipes are installed or relocated in a building, but no fixtures installed, the fee is as set out in Appendix A.
- [5] A hook-up fee as set out in Appendix A is to be charged for the connection of a mobile home which bears the Housing and Urban Development (HUD) seal or a modular home which bears the Manufactured Housing Board seal to a building sewer.
- [6] A hook-up fee as set out in Appendix A is to be charged for connection to a public sewer when piping is installed beyond the jurisdiction of the sanitary district.
- [7] Relocated mobile homes, modular homes or any other similar structures are considered as new conventional stick-built structures, and a plumbing fixture fee is to be charged based on this section.
- [8] A permit is valid only for the named applicant but may be transferred by payment of a transfer fee as set out in Appendix A.

C. Subsurface wastewater disposal system fees.

- (1). Prior to the local plumbing inspector's issuance of a subsurface wastewater disposal system permit, the permit applicant must pay the local plumbing inspector a permit fee calculated in accordance with schedule set out in Appendix A.
- (2). Late permit fee. A person who starts construction without first obtaining a subsurface wastewater disposal permit must pay double the permit fee indicated in Subsection A of this section.

16.2.12. Decision Appeal, Variance and Other Requests

A. Purpose. This chapter describes the minimum requirements for aggrieved parties to file an appeal under this title and related state statutes or to seek the granting of a special exception as found in § 16.4, as well as a variance or miscellaneous variation request to the standards as provided herein.

B. Appeal of Planning Board, Board of Appeals or Port Authority decision.

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

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- (2). An aggrieved party with legal standing may appeal a final decision of the Board of Appeals to the York County Superior Court in accordance with Maine Rules of Civil Procedures Rule 80B within 45 days from the date the decision by the Board of Appeals was rendered.

- (3). An aggrieved party with legal standing may appeal a final decision of the Port Authority to the York County Superior Court in accordance with Maine Rules of Civil Procedures Rule 80B within 45 days from the date the decision by the Port Authority was rendered.

C. Appeal of Code Enforcement Officer decision.

A Code Enforcement Officer decision may be appealed to the Board of Appeals as provided below in § 16.2.12.D(2).

D. Appeals/requests to Board of Appeals.

For the purposes of this chapter, an appeal or request means any of the following:

- (1). Administrative decision appeal. When the Board of Appeals reviews an administrative decision appeal of a decision made by the Code Enforcement Officer, the Board of Appeals may receive new evidence and testimony consistent with this title and the rules of the Board of Appeals. At the conclusion of the hearing and deliberation, the Board of Appeals may uphold, modify or reverse the decision of the Code Enforcement Officer.

- (2). Variance request.

- (a) A variance may be granted only by the Board of Appeals under the following conditions:

[1] For a reduction in dimensional requirements related to height, area and size of structure or size of yards and open spaces;

[2] The use is not prohibited by this title; and

[3] Only if the strict application of the terms of this title would result in undue hardship. The term "undue hardship" means the applicant must demonstrate all of the following:

[a] The land in question cannot yield a reasonable return unless a variance is granted.

[b] The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood.

[c] The granting of a variance will not alter the essential character of the locality.

[d] The hardship is not the result of action taken by the applicant or a prior owner.

- (b) Notwithstanding § 16.2.12.D(2)(a), the Board of Appeals may grant a variance to an owner of a residential dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. The Board of Appeals must

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restrict any variance granted under this subsection solely to the installation of equipment or the construction of structures necessary for access to or egress from the dwelling by the person with the disability. The Board of Appeals may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the person with the disability lives in the dwelling. The term "structures necessary for access to or egress from the dwelling" includes railing, wall or roof systems necessary for the safety or effectiveness of the structure.

- (c) A copy of each variance request within the Shoreland Overlay Zone, including the application and all supporting information supplied by the applicant, must be forwarded by the Code Enforcement Officer to the Commissioner of the Maine Department of Environmental Protection at least 20 days prior to action by the Board of Appeals. Any comments received from the Commissioner prior to the action by the Board of Appeals will be made part of the record to be taken into consideration by the Board of Appeals.
 - (d) The Board of Appeals must limit any variance granted as strictly as possible to ensure conformance with the purposes and provisions of this title to the greatest extent possible and, in doing so, may impose such conditions of approval to a variance as it deems necessary. The party receiving the variance must comply with any conditions imposed.
- (3). Miscellaneous variation request. The Board of Appeals may hear, decide and approve variations in:
- (a) Nonconformance as prescribed in § 16.1.8;
 - (b) Parking, loading and traffic standards contained in § 16.7.11.E and § 16.7.11.F;
 - (c) Sign violation and appeal standards contained in § 16.5.23.M; or
 - (d) Accessory dwelling unit standards contained in § 16.5.3.
- (4). Special exception use request.
- (a) The Board of Appeals will hear, decide and may grant an applicant's special exception use request where authorized in § 16.4 for any application excluded from Planning Board review as stated in § 16.7.2.B, if the proposed use meets the criteria set forth in § 16.2.12.F, Basis for decision.
 - (b) The Planning Board will review, decide and may approve an applicant's special exception use request where the proposed project requires Planning Board review as defined in § 16.7.2.B or is located in a Shoreland or Resource Protection Overlay Zone. The Planning Board must find the proposed project and use meets the criteria set forth in § 16.7.10.D and § 16.2.12.F.

E. BOA appeal/request filing procedures.

- (1). Making an appeal/request. An administrative decision appeal, variance request or miscellaneous variation request may be submitted to the Board of Appeals. An administrative appeal must be

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submitted within 30 days of the date of the official written decision being appealed. Other requests may be filed at will.

- (a) The appeal or request must be filed with the Code Enforcement Officer on forms approved by the Board of Appeals and the party must specifically state on such forms the grounds for such appeal or request, including claimed discrepancies in the interpretation of this title and reasons why the appeal or request should be granted. Incomplete applications for appeals and/or requests will not be accepted. Upon receipt of an appeal or request application, the Code Enforcement Office must stamp a receipt date on the appeal or required form. Said date constitutes the filing date of the appeal or request. Applications for appeals or requests must include the following:

- [1] The appeal or request must be made by the property owner, an aggrieved party or their respective duly authorized agent.
- [2] The appeal or request must include a concise written statement, indicating what relief is requested and why the appeal or request should be granted.
- [3] Where the appeal or request is made from a decision by the Code Enforcement Officer, the applicant must submit plans, maps and related documentation to the code enforcement office for distribution to the Board of Appeals members at least two weeks prior to the meeting of the Board of Appeals. A minimum of 10 sets of all submissions is required.
- [4] The Board of Appeals must hold a public hearing on an appeal or request within 35 days of its receipt of a complete written application, unless this time period is extended by the applicant and BOA.

- (b) At any time between the initial acceptance by the Code Enforcement Officer of an appeal/request and final approval or denial of the appeal/request by the Board of Appeals, the owner or applicant must allow members of the Board of Appeals full access to the subject property, not including building interiors, without obtaining prior permission, written or oral.

(2). Hearing and notice.

- (a) Before taking any action on any appeal/request, the Board of Appeals must hold a public hearing and provide the following notifications:

- [1] By mail at least seven and not more than 14 days prior to the scheduled hearing date, to owners of abutting property that an appeal/request is made, the nature of the appeal/request and the time and place of the public hearing thereon; and
- [2] Notice of all such actions must also be published in a newspaper of general circulation in the Town at least seven days prior to the public hearing.

- (b) Failure of any property owner to receive a notice of public hearing will not necessitate

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another hearing or invalidate any action by the Board of Appeals.

- (3). Notification and timing constraints. Following the filing of an appeal/request, the Code Enforcement Officer must notify the Board of Appeals, Planning Board and Conservation Commission of the filing. The appeal or request must be complete for hearing at a subsequent meeting of the Board of Appeals occurring no less than 10 days after the mailing of notices but within 30 days of the appeal filing date.
- (4). Decisions of the Board of Appeals.
 - (a) The person filing the appeal or request has the burden of proof.
 - (b) A minimum of four like votes is required for a decision by the Board of Appeals, except on procedural matters.
 - (c) The Board of Appeals must decide the appeal or request within 30 days after the close of the hearing and issue a written decision.
 - (d) Written notice of the decision of the Board of Appeals must be sent to the appellant or petitioner, the Code Enforcement Officer, Conservation Commission, Planning Board and municipal department heads within seven days of the decision. The vote of each member must be part of the record. The written notice of the decision of the Board of Appeals must include the statement of findings. In the case of denials, the statement of findings must include the reason for the denial.
- (5). Order of review.
 - (a) Where a special exception request or appeal is necessary as an integral part of a development review process, Board of Appeals action is encouraged prior to Planning Board review where required. The findings of the Board of Appeals as well as any file material must be made available to the Planning Board.
 - (b) The Planning Board may give approval to the preliminary plan as an overall development prior to the applicant filing an appeal/request.
- (6). Special exception referral.
 - (a) Before granting any special exception, the Board of Appeals may refer the application to the Planning Board and/or Port Authority for a report prior to any subsequent BOA review of the application.
 - (b) The Planning Board and/or Port Authority report must be considered informational in character and may take into consideration the effect of the proposal upon the character of the neighborhood or any other pertinent data.
 - (c) The Planning Board and/or Port Authority report must be submitted to the BOA for its consideration prior to the officially scheduled time of public hearing on the request.

- (7). Venue and representation. At any hearing, a party may appear by agent or attorney. Hearings may be continued to other times/places.
- (8). Code Enforcement Officer attendance. The CEO or designated assistant must attend all hearings and may present to the BOA all plans, photographs or other material the CEO deems appropriate for an understanding of the appeal/request.
- (9). Appellant's case first. The appellant's case must be heard first. To maintain orderly procedure, each side shall proceed without interruption. Questions may be asked through the Chair. All persons at the hearing shall abide by the order of the Chairperson.
- (10). Expiration of approval.
- (a) Approvals granted under the provisions of this chapter expire if work or change in use involved is not commenced within six months of the date on which approval is granted, or if the work or change in use is not substantially completed within one year of the date on which such approval is granted, unless as otherwise provided for in the approval decision.
- (b) When circumstances are such that a plan with an approved appeal or special exception is required to be reviewed by another agency (e.g., DEP, Planning Board, Port Authority), any period the plan is at that agency, from time of submission to time of decision inclusive, verified by recorded documentation, will not be counted as part of the cumulative time periods described in the section above.
- (c) Should a successful appellant not be able to commence and/or substantially complete the work or change in use before the time constraints contained in Subsection 10(a) above, the appellant may reappear before the Board before the original approval expires and request an extension of the approval.
- (d) Such a request must be submitted in writing to the Code Enforcement Officer prior to the date of said approval expiration.
- (11). Reconsideration. In accordance with 30-A M.R.S. § 2691(3)(F), the Board of Appeals may reconsider any decision within 45 days of its prior decision.
- (a) A request for the Board of Appeals to reconsider a decision must be filed with the Code Enforcement Officer within 10 days of the decision that is to be reconsidered. A vote to reconsider and the action taken on that reconsideration must occur and be completed within 45 days of the date of the vote on the original decision. Reconsideration of a decision requires a positive vote of the entire Board and proper notification to the landowner, petitioner, Planning Board, the Town Planner, including abutters and those who testified at the original hearing(s). The Board may conduct additional hearings and receive additional evidence and testimony.
- (b) Appeal of a reconsidered decision to the Superior Court must be made within 15 days after the decision on reconsideration.

- (12). Second appeals/requests. If the Board of Appeals denies an appeal/request, a second appeal/request of a similar nature may not be brought before the BOA within one year from the date of original denial, unless the appellant submits new evidence and the BOA, by formal action, decides the evidence is significant and warrants a new hearing, or unless the BOA finds in its sole and exclusive judgment that an error or mistake of law or misunderstanding of facts has been made.
- (13). Fees. The appellant must pay a fee for filing an appeal or special exception request in an amount as set by the Town Council.

F. Basis for decision.

(1). Conditions.

(a) In hearing appeals/requests under this section, the appropriate jurisdictional board must first establish that it has a basis in law to conduct the hearing and decide the question.

(b) In hearing appeals/requests under this section, the appropriate jurisdictional board must use the following criteria as the basis of a decision, that:

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

(2). Factors for consideration. In making such determination, the appropriate jurisdictional board must also give consideration, among other things, to:

- (a) The character of the existing and probable development of uses in the zone and the peculiar suitability of such zone for the location of any of such uses;
- (b) The conservation of property values and the encouragement of the most appropriate uses of land;
- (c) The effect that the location of the proposed use may have upon the congestion or undue increase of vehicular traffic congestion on public streets or highways;

- 811
- 812 (d) The availability of adequate and proper public or private facilities for the treatment, removal
- 813 or discharge of sewage, refuse or other effluent (whether liquid, solid, gaseous or otherwise)
- 814 that may be caused or created by or as a result of the use;
- 815
- 816 (e) Whether the use, or materials incidental thereto, or produced thereby, may give off
- 817 obnoxious gases, odors, smoke or soot;
- 818
- 819 (f) Whether the use will cause disturbing emission of electrical discharges, dust, light, vibration
- 820 or noise;
- 821
- 822 (g) Whether the operations in pursuance of the use will cause undue interference with the
- 823 orderly enjoyment by the public of parking or of recreational facilities, if existing, or if
- 824 proposed by the Town or by other competent governmental agency;
- 825
- 826 (h) The necessity for paved off-street parking;
- 827
- 828 (i) Whether a hazard to life, limb or property because of fire, flood, erosion or panic may be
- 829 created by reason or as a result of the use, or by the structures to be used, or by the
- 830 inaccessibility of the property or structures thereon for the convenient entry and operation of
- 831 fire and other emergency apparatus, or by the undue concentration or assemblage of persons
- 832 upon such plot;
- 833
- 834 (j) Whether the use, or the structures to be used, will cause an overcrowding of land or undue
- 835 concentration of population or unsightly storage of equipment, vehicles or other materials;
- 836
- 837 (k) Whether the plot area is sufficient, appropriate and adequate for the use and the reasonably
- 838 anticipated operation and expansion thereof;
- 839
- 840 (l) Whether the proposed use will be adequately screened and buffered from contiguous
- 841 properties;
- 842
- 843 (m) The assurance of adequate landscaping, grading and provision for natural drainage;
- 844
- 845 (n) Whether the proposed use will provide for adequate pedestrian circulation;
- 846
- 847 (o) Whether the proposed use anticipates and eliminates potential nuisances created by its
- 848 location; and
- 849
- 850 (p) The satisfactory compliance with all applicable performance standard criteria contained in
- 851 § 16.6 and 16.7.
- 852
- 853 (3). Additional special exception conditions. Special exception approvals may be subject to
- 854 additional conditions as determined by the appropriate jurisdictional board, including the
- 855 following:
- 856

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- (a) Front, side or rear yards in excess of minimum requirements;
 - (b) Modifications of the exterior features of buildings or other structures;
 - (c) Limitations on the size of buildings and other structures more stringent than the minimum or maximum requirements;
 - (d) Regulation of design of access drives, sidewalks and other traffic features;
 - (e) Off-street parking and loading spaces in excess of the minimum requirements; or
 - (f) Restrictions on hours of operation.
- (4). Findings of fact. After reaching a decision on an appeal/request under this section, the appropriate jurisdictional board must verify on the record its findings of fact supporting the basis of its decision.
- (5). Outstanding violations. No variance, special exception or miscellaneous variation request may be granted for premises on which outstanding violations of this title exist, unless the effect of such variance, special exception or miscellaneous variation would remedy all such violations.
- (6). Appeals and variances. The Board of Appeals may, upon written application of an aggrieved party, hear and decide appeals from determinations of the Code Enforcement Officer in the administration of the provisions of this chapter. The Board of Appeals may grant a variance from the requirements of § 16.5.11, Floodplain Management, § 16.5.11.A et seq., consistent with state law and the following criteria:
- (a) Variances may not be granted within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.
 - (b) Variances may be granted only upon:
 - [1] A showing of good and sufficient cause; and
 - [2] A determination that, should a flood comparable to the base flood occur, the granting of a variance will not result in increased flood heights, additional threats to public safety, public expense, or create nuisances, cause fraud or victimization of the public or conflict with existing local laws or ordinances; and
 - [3] A showing that the existence of the variance will not cause a conflict with other state, federal or local laws or ordinances; and
 - [4] A determination that failure to grant the variance would result in "undue hardship," which in this subsection means:
 - [a] That the land in question cannot yield a reasonable return unless a variance is

granted; and

[b] That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood; and

[c] That the granting of a variance will not alter the essential character of the locality; and

[d] That the hardship is not the result of action taken by the applicant or a prior owner.

(c) Variances may only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(d) Variances may be issued by the Board of Appeals for new construction, substantial improvements, or other development for the conduct of a functionally dependent use, provided that:

[1] Other criteria of this section and § 16.5.11.H(9) are met; and

[2] The structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

(e) Variances may be issued by the Board of Appeals for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or a State Inventory of Historic Places, without regard to the procedures set forth in Subsection 6(a) through (d) of this section.

(f) Any applicant who meets the criteria of Subsection 6(a) through (e) of this section is to be notified by the Board of Appeals, in writing, over the signature of the Chairperson of the Board of Appeals, that:

[1] The issuance of a variance to construct a structure below the base flood level will result in greatly increased premium rates for flood insurance, up to amounts as high as \$25 per \$100 of insurance coverage;

[2] Such construction below the base flood level increases risks to life and property; and

[3] The applicant agrees, in writing, that the applicant is fully aware of all the risks inherent in the use of land subject to flooding, assumes those risks and agrees to indemnify and defend the municipality against any claims filed against it that are related to the applicant's decision to use land located in a floodplain and that the applicant individually releases the municipality from any claims the applicant may have against the municipality that are related to the use of land located in a floodplain.

(g) The Board of Appeals must submit to the Planning Board a report of all variance actions, including justification for the granting of the variance and an authorization for the Code Enforcement Officer to issue a flood hazard development permit, which includes any

conditions to be attached to said permit.

16.2.13. Violations and Enforcement

When any violation of any provision of this title or § 16.5.19, Nonstormwater Discharge, is found to exist, the Town Attorney or the CEO, as provided by Maine Rules of Civil Procedure Rule 80K and any provisions of this title and relevant statute, with the advice and consent of the Town Manager, is authorized and directed to institute any and all appropriate actions and proceedings either legal or equitable that may be appropriate or necessary for the enforcement of the provisions of this title, the same to be brought in the name of the Town.

A. Owner or persons liable. Any person(s), firm, corporation or legal entity, being the owner of or having control or use of any buildings or premises, who participates in, assists, directs, creates or maintains any situation that is contrary to the requirements of this title, is responsible for the violation and is subject to the penalties and the remedies herein provided.

B. Applications for permits or approvals involving sites with a violation. An application for a building/regulated activity permit (see § 16.2.8), certificate of occupancy permit, sign permit, subdivision approval or development review approval will be denied for any property where a violation exists until such violation has been corrected or resolved.

C. Purpose of enforcement provisions. The purpose of these title enforcement provisions is to provide an alternative method in addition to § 16.2.7 for enforcing and securing compliance with the provisions of this title in a just, speedy and cost-effective manner, and thereby to protect, preserve and enhance the public health, safety and general welfare.

D. Notice of violation and order (notice).

- (1). It is the duty of the CEO to serve written notice on the landowner or the landowner's agent and any other person or entity responsible (hereafter termed "violation") for such violation. The notice must describe the nature of the violation, include a specific reference to the provision(s) of this title and/or state statute violated, and direct the discontinuance of the illegal action or condition. The notice must also contain an order setting forth the action necessary to correct the violation specifying a time period for correction as provided in § 16.2.13.H and must set forth a fine to be imposed as authorized by § 16.2.13.I and/or 30-A M.R.S. § 4452
- (2). Notwithstanding any other provision of this chapter, when the notice involves a violation of this title pertaining to shoreland or resource protection zoning or 30-A M.R.S. § 4452(3), the notice must also set forth, in addition to the fine to be imposed, an order of remediation or other corrective action(s) consistent with and in compliance with 30-A M.R.S. § 4452 deemed necessary by the CEO to correct or mitigate the violation to the affected area(s), unless the correction or mitigation would result in a threat or hazard to public health or safety, substantial environmental damage or a substantial injustice.
- (3). All proposed plans for corrective action submitted by the violator must comply with the standards set forth in this chapter where applicable and 30-A M.R.S. § 4452(3). The acceptance by the CEO of a violator's proposed plan(s) of correction or mitigation will not relieve the

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violator of the requirement to pay the fine set forth in the notice.

- (4). The notice must also advise the violator of any right to appeal to the Board of Appeals with respect to the CEO's determination that a violation of this title and/or 30-A M.R.S. § 4452 exists for which the violator is responsible.

- (5). Additionally, if there is a violation of § 16.5.19, Nonstormwater Discharge, the enforcement authority will order compliance by written notice of violation to that person, indicating the nature of the violation and ordering the action necessary to correct it, including, without limitation:

(a) The elimination of nonstormwater discharges to the storm drainage system, including, but not limited to, disconnection of the premises from the MS-4;

(b) The cessation of discharge practices or operations in violation of this section;

(c) At the person's expense, the abatement or remediation (in accordance with best management practices in DEP rules and regulations) of nonstormwater discharges to the storm drainage system and the restoration of any affected property; and/or

(d) The payment of fines, of the municipality's remediation costs, and of the municipality's reasonable administrative costs and attorneys' fees and costs. If abatement of a violation and/or restoration of affected property is required, the notice will set forth a deadline within which such abatement or restoration must be completed.

E. Procedure to serve notice of violation and order. The notice pursuant to § 16.2.13.D must either:

- (1). Be served in hand to the violator by the CEO or a person duly authorized by the CEO;
- (2). Be left at the violator's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein or with an agent authorized by appointment or by law to receive service of process;
- (3). Be mailed by certified U.S. mail, return receipt requested, to the violator's last known address. If the return receipt is not returned, the notice will be conclusively presumed to have been served. Such notice sent by regular U.S. mail, if not returned or undeliverable, is conclusively deemed to be received by the addressee on the fifth day following the date of mailing; or
- (4). Any procedure for service of process authorized by Rule 4 of the Maine Rules of Civil Procedure (MRCP).

F. Appeal of notice of violation and order.

- (1). The violator served with a notice of violation and order may appeal the notice of violation and

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order to the Board of Appeals by filing an administrative appeal application in accordance with § 16.2.12.E(1).

- (2). If a completed appeal is not filed within 30 days of receipt of the violation and order, then the notice of violation and order is final, and the violator is subject to the penalty contained therein. If a completed appeal application is timely filed, the Board of Appeals (BOA) must hold a public hearing pursuant to § 16.2.12.E(2) and render a decision to uphold, modify or reverse the violation notice and order issued by the CEO. The Board must set forth its findings of fact and conclusions of law in support of its decision and give notice of the same to the violator.
- (3). Any adverse decision of the BOA may be further appealed to the Superior Court pursuant to the provisions of Rule 80(B) of the Maine Rules of Civil Procedure (MRCP). If a timely appeal is taken, the notice of violation and order is stayed. If no appeal is taken, or any appeal once taken is withdrawn or not pursued, the violation notice and order is final and enforceable as provided in the title.
- (4). Civil proceedings. If the notice of violation and order has not been corrected, and no appeal is pending before the BOA or Superior Court, or the parties have not reached a consent agreement as provided in § 16.2.13.J, the Town Attorney or the CEO, as provided by MRCP Rule 80K, upon notice from the Town Manager, may initiate any and all appropriate legal proceedings authorized in this title or state statute to compel the violator to correct the violation, pay any fine imposed, and seek whatever other relief to which the Town may be entitled. Such legal proceedings may include the initiation of a land use complaint pursuant to MRCP Rule 80K and 30-A M.R.S. § 4452 et seq., as amended.

G. Civil proceedings. If the notice of violation and order has not been corrected, and no appeal is pending before the BOA, or the parties have not reached a consent agreement as provided in § 16.2.13.J, the Town Attorney or the CEO, as provided by MRCP Rule 80K, upon notice from the Town Manager, may initiate any and all appropriate legal proceedings authorized in this title or state statute to compel the violator to correct the violation, pay any fine imposed, and seek whatever other relief to which the Town may be entitled. Such legal proceedings may include the initiation of a land use complaint pursuant to MRCP Rule 80K and 30-A M.R.S. § 4452 et seq., as amended.

H. Time limit for corrective action.

- (1). The time period within which a violation must be corrected as set forth in the notice of violation and order under § 16.2.13.D of this section is 30 days following receipt of the notice of the violation and order, unless:
 - (a) The CEO determines a longer reasonable time limit is necessary considering the nature and extent of the work required to correct the violation.
 - (b) The CEO determines a shorter reasonable time limit is appropriate due to the threat posed by said violation to the health, safety and welfare of the public.
 - (c) The CEO finds the violator has been previously served a notice of violation and order for a similar violation within the last 18 months; in which case the time limit for corrective action must be no more than five days.

- (2). If a violator in a timely fashion files a completed administrative appeal application with the Town Clerk as provided in § 16.2.13.F, any period of time from date of receipt of such an appeal to date of decision of the BOA, inclusive, is not counted as part of the cumulative time period described in this section. If the BOA upholds the CEO's determination, the timeline set forth in the notice of violation and order resumes, beginning the day after the decision is rendered, unless it is extended by the BOA.

I. Penalties.

- (1). The Code Enforcement Officer must impose the following penalties for the failure to correct a cited violation within the prescribed time set forth in the notice:
- (a) Fine imposed: \$200 for the first seven-day period the violation continues beyond the time specified for corrective action. Thereafter, each day the violation continues, a separate and specific violation with an additional minimum of \$100 per day penalty for each day of the continuing violation up to a maximum penalty imposed of \$2,500 for each specific violation, or the maximum as provided by 30-A M.R.S. § 4452, if greater.
 - (b) When the violation set forth in the notice involves any cutting of tree(s) or other vegetation in violation of § 16.8.10.O(2) or 30-A M.R.S. § 4452(3), the penalty provided by this section will be imposed from the date of notification of the violation in writing in addition to the required corrective action set forth in the § 16.2.13.D.
- (2). After the time specified to correct the violation in the notice of violation and order passes, it is the responsibility of the violator to inform the Code Enforcement Officer in writing when the violation has been corrected and seek an inspection to verify the violation has been corrected. For the purposes of this section, the violation will be assumed to have continued to exist uncorrected until the violator has informed the Code Enforcement Officer in writing that the violation has been corrected or the Code Enforcement Officer discovers through inspection of the premises that the violation has been corrected, whichever comes earlier.

J. Consent agreements.

- (1). In special cases, particularly minor, unintentional violations that are unduly difficult to correct, the Town Manager, with advice of the Code Enforcement Officer, is authorized to enter into a consent agreement with the violator to resolve the violation without further enforcement action or appeal. Consent agreements are not intended to allow a violator to substitute fines for corrective actions.
- (2). Any such violation that is allowed to continue pursuant to a consent agreement is not granted the status of a nonconforming use. Any further actions by the violator with regard to the property must comply in all respects to the existing terms and provisions of this title.

K. Payment of civil penalties. All civil penalties imposed pursuant to a notice of violation and order as provided in § 16.2.13.D are payable to the Town and due within 30 days after the notice of violation

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and order become final. All such civil penalties not paid when due accrue interest on the unpaid penalties at the rate provided for judgments in 14 M.R.S. § 1602-A. If the violator fails to pay this penalty, the penalty may be recovered by the Town in a civil action in the nature of debt.

- L. Fines. Any person, including but not limited to a property owner, an owner's agent or a contractor, who violates any provision or requirement of this title will be penalized in accordance with this title and 30-A M.R.S. § 4452.

16.2.14. Enforcement and Penalties

- A. It is the duty of the Code Enforcement Officer to enforce the provisions of Chapter 16.5.11, Floodplain Management, pursuant to 30-A M.R.S. §4452.

- B. The penalties contained in 30-A M.R.S. §4452 apply to any violation of this chapter.

- C. In addition to any other actions, the Code Enforcement Officer, upon determination that a violation of applicable floodplain management regulations exists, is to submit a declaration to the Administrator of the Federal Insurance Administration requesting a denial of flood insurance. The valid declaration is to consist of:

- (1). The name of the property owner and address or legal description of the property sufficient to confirm its identity or location;
- (2). A clear and unequivocal declaration that the property is in violation of a cited state or local law, regulation or ordinance;
- (3). A clear statement that the public body making the declaration has authority to do so and a citation to that authority;
- (4). Evidence that the property owner has been provided notice of the violation and the prospective denial of insurance; and
- (5). A clear statement that the declaration is being submitted pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended.

16.3 Definitions**16.3.1. Purpose**

Except where specifically defined in this chapter, all words used in this title carry their customary dictionary meanings. Words used in the present tense include the future, and the plural includes the singular; the word "lot" includes the word "plot"; the word "building" includes the word "structure"; the words "shall" or "must" are always mandatory; "occupied" or "used" are considered as though followed by the words "or intended, arranged or designed to be used or occupied"; and gender-specific words (e.g., she, he, his, hers) include the opposite sex equivalent.

16.3.2. Definitions

As used in this title, the following terms shall have the meanings indicated:

ABUTS

That which is contiguous to, or shares, a common boundary line. The owner of a property that is contiguous to or shares a common boundary line is an abutter. See § 16.5.2, § 16.7.10.C(2)c and § 16.8.9.C(3)c on abutter notification process when a new development or redevelopment is proposed.

ACCESSORY BUILDING

A subordinate building on the lot, the use of which is incidental to that of the main or principal building.

ACCESSORY DWELLING UNIT (ADU)

A dwelling unit which is part of an existing structure on the property where the owner of the property occupies one of the units. See § 16.5.3 for Accessory Dwelling Unit general performance standards.

ACCESSORY STRUCTURE

A structure that is subordinate to and serves a principal building or use on the lot.

ACCESSORY USE

A use customarily incidental and subordinate to a Principal Use and located on the same lot with such Principal Use. See Principal Use definition.

ADJACENT GRADE

The natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

ADULT ENTERTAINMENT ESTABLISHMENT

- A. Any business in any use category, a substantial or significant portion of which consists of selling, renting, leasing, exhibiting, displaying or otherwise dealing in materials, actions, and/or devices of any kind which appeal to prurient interest and which depict or describe specified sexual activities, including but not limited to:

- (1). Live entertainment, books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides or other visual representations which are characterized by the depiction or description of "specified sexual activities," or
- (2). Instruments, devices or paraphernalia which are designed for use in connection with "specified sexual activities."

B. For the purpose of this definition, "specified sexual activities" means:

- (1). Human genitals in a state of sexual stimulation or arousal;
- (2). Acts of human masturbation, sexual intercourse or sodomy, fondling or other erotic touching of human genitals, pubic region, buttocks or female breasts.

AFFORDABLE

The percentage of income a household is charged in rent and other housing expenses, or must pay in monthly mortgage payments (including insurance, HOA fees, and taxes), does not exceed 30% of a household's gross income, or other amount established in town regulations that does not vary significantly from this amount.

AFFORDABLE HOUSING UNIT

One dwelling unit of either affordable housing for rent or affordable housing for sale.

AFFORDABLE HOUSING FOR RENT

A dwelling unit that may be rented for year-round occupancy for which the rental cost does not exceed the maximum cost set forth for households making up to 80% of area median income, as determined by HUD's York-Kittery-South Berwick Metro Fair Market Area (HMFA) limits. Annual rent increases are limited by deed restriction, lease agreement or other legally binding agreement to the percentage increase in the HUD York-Kittery-South Berwick Metro Fair Market Area (HMFA) median income figures for a household of that size.

AFFORDABLE HOUSING FOR SALE

A dwelling unit that may be purchased for year-round occupancy for which the selling price does not exceed the maximum price set forth for households making up to 120% of area median income, as determined by HUD's York-Kittery-South Berwick Metro Fair Market Area (HMFA) limits. The resale price is limited by deed restriction or other legally binding agreement for all future sales of the unit, or a lesser term if permitted by regulations, to the percentage increase in the HUD York-Kittery-South Berwick Metro Fair Market Area (HMFA) median income figures for a household of that size.

AGE-RESTRICTED HOUSING

A residential use occupied principally by residents who are at least 55 years of age (or in the case of a couple, at least one of whom is at least 55 years of age) in which the accommodations are all dwelling units with private bathrooms and cooking facilities. Occupants of this residential use may also include handicapped individuals of any age. Age-Restricted Housing does not include Residential Care Facilities that are typically referred to

as independent living units, congregate care units, assisted living units, dementia or Alzheimer's units or hospice units, or a nursing care or convalescent care facility that provides nursing services.

AGGRIEVED PARTY

An owner of land whose property is directly or indirectly affected by the granting or denial of a permit or variance under this title; a person whose land abuts land for which a permit or variance has been granted; or any other person or group of persons who have suffered particularized injury as a result of the granting or denial of such permit or variance.

AGRICULTURE

The production, storage, keeping, harvesting, grading, packaging, processing, boarding, or maintenance for sale or lease of plants and/or animals, including but not limited to: forages and sod crops; grains and seed crops; dairy animals and dairy products; poultry and poultry products; livestock, including beef cattle, sheep, swine, horse, ponies, mules, or goats or any mutations or hybrids thereof, including the breeding and grazing of any or all such animals; bees and apiary products; fur animals; trees, and forest berries; vegetables; nursery, floral, ornamental, and greenhouse products; but excluding marijuana. Agriculture does not include agriculture for personal use nor forestry or sawmills, as defined in this Ordinance. See § 16.5.5 for Agriculture general performance standards.

AGRICULTURE, PIGGERY

A premises, area, fenced enclosure, building or structure, or portion thereof, used or designed for the keeping of pigs. See § 16.5.6 for Agriculture, Piggery general performance standards.

AGRICULTURE, POULTRY FACILITY

A premises, area, fenced enclosure, building or structure, or portion thereof, used or designed for the keeping of poultry or fowl. See § 16.5.7 for Agriculture, Poultry Facility general performance standards.

ALTERNATIVE TOWER STRUCTURE

Includes but is not limited to clock towers, bell steeples, utility/light poles, water towers, and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers, referred to by the industry as "stealth" technology.

ANTENNA

Any apparatus designed for telephonic, radio, television or similar communications through the sending and/or receiving of electromagnetic waves.

ANNUAL AVERAGE DAILY TRAFFIC (AADT)

The total volume of vehicle traffic of a road, street, or highway for a year divided by 365 days, as determined by methods approved by the American Association of State Highway and Transportation Officials (AASHTO).

AQUACULTURE

The growing or propagation of harvestable freshwater, estuarine or marine plant or animal

119 species.

120

121 **ART STUDIO OR GALLERY**

122 Enclosed place for the exhibition, production and sales of art.

123 **ASSESSED VALUE**

124 A value of real property derived from a mass appraisal technique in accordance with market
125 value and is equitable to similarly situated properties within the Town.

126 **BANNER**

127 Any sign of lightweight fabric or similar material that is mounted for display at one or more
128 edges.

129 **BASAL AREA**

130 The area of a tree stem derived by measuring the diameter of a standing tree measured 4.5
131 feet from ground level and inclusive of bark.

132 **BASE FLOOD**

133 The flood having a one-percent chance of being equaled or exceeded in any given year,
134 commonly called the one-hundred-year flood.

135 **BASEMENT**

136 An area below the first floor having a floor-to-ceiling height of six feet or more and 50% of
137 its volume below the existing ground.

138 **BED-AND-BREAKFAST**

139 A home occupation in a single-family dwelling in which lodging or lodgings with meals
140 served before noon are offered to the general public for compensation, offering no more
141 than six bedrooms for lodging purposes.

142 **BEST MANAGEMENT PRACTICES ("BMP")**

143 Schedules of activities, prohibitions of practices, maintenance procedures, and other
144 management practices to prevent or reduce the pollution of water bodies. BMPs also include
145 treatment requirements, operating procedures, and practices to control plant site runoff,
146 spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

147 **BILLBOARD**

148 The surface of any building or structure which is available for hire for advertising goods or
149 services not provided on the premises. Official business directional signs (OBDS) are not
150 considered billboards.

151 **BOARD OF APPEALS**

152 The Board of Appeals of the Town of Kittery; may be referred to as the BOA.

153 **BOAT LAUNCHING FACILITY**

154 A facility designed primarily for the launching and landing of watercraft, and which may
155 include an access ramp, docking area, and parking spaces for vehicles and trailers.

156 **BOAT YARD**

157 A business or gainful occupation where boats are hauled, stored, repaired and/or
158 constructed.

159 **BOATHOUSE**

160 A nonresidential structure designed exclusively for the protection, storage, repairing and
161 maintenance of boats for noncommercial purposes.

162 **BREAKAWAY WALL**

163 A wall that is not part of the structural support of the building and is intended, through its
164 design and construction, to collapse under specific lateral loading forces without causing
165 damage to the elevated portion of the building or supporting foundation system.

166 **BROOK**

167 A channel between defined banks, including the floodway, associated floodplain wetlands,
168 where the channel is created by the action of surface water and characterized by the lack of
169 upland vegetation or presence of aquatic vegetation and by the presence of a bed devoid of
170 topsoil containing waterborne deposits on exposed soil, parent material or bedrock.

171 **BUFFER**

172 A combination of physical space and vertical elements, such as, but not limited to plants,
173 berms, fences or walls, the purpose of which is to separate and screen incompatible land
174 uses from each other.

175 **BUILDING**

176 Any structure having a roof supported by columns or walls and intended for the shelter,
177 housing or enclosure of persons, animals or property. Each portion of a building separated
178 from other portions by a fire wall is considered as a separate structure.

179 **BUILDING COVERAGE**

180 The aggregate or the maximum horizontal area of all buildings on the lot including
181 accessory buildings but excluding cornices, eaves or gutters projecting not more than 24
182 inches. Pet shelters, playground equipment, tree houses, and structures that are not also
183 "buildings" are not used in calculating building coverage. Additionally, this is not to be
184 construed to mean the aggregate of floors in a multilevel building.

185 **BUILDING FRONTAGE**

186 Linear footage along the face of the building containing the main public entry, commonly
187 labeled "front elevation" on building plans.

188 **BUSINESS**

189 For the purposes of the sign regulations, any corporation, trust, partnership or other
190 verifiable legal entity with the object of gain, benefit or advantage.

BUSINESS AND PROFESSIONAL OFFICES

A building, or portion thereof, in which there are located the offices of a profession or business, including, but not limited to, banks, insurance, realtors, attorneys, appraisers, engineers, architects, landscape architects, accountants, dentists, optometrists and physicians.

BUSINESS FACILITY

For the purposes of the sign regulations, a workplace of a business other than an employee's or employer's personal residence.

BUSINESS SERVICES

Establishments primarily engaged in providing services to business enterprises on a fee or contract basis, including, but not limited to, advertising, credit agencies, photocopying, commercial graphics, computer programming, cleaning and maintenance services, employment agencies, data processing, consulting and public relations, security and business equipment rental.

CAMPGROUND

Any area or tract of land use to accommodate two or more people, including tents, trailers or other camping outfits, not to be used as permanent residence.

CANNABIS

All parts of the plant of the genus Cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or its resin including cannabis concentrate. This term does not include industrial hemp, fiber produced from the stalks, oil, cake made from the seeds of the plant, sterilized seed of the plant that is incapable of germination or any ingredient combined with cannabis to prepare topical or oral administrations, food, drink or any other product. Cannabis also means marijuana.

CANOPY, TREE (TREE CANOPY)

The more or less continuous cover formed by tree crowns in a wooded area.

CEMETERY

A private or public place set apart for the interment of the dead. In the absence of an apparent boundary, i.e., fence, stone wall, survey markers, survey plan, or information from the Kittery Historical and Naval Society or other reliable historic sources, the perimeter of the interment area is determined by starting with a ten-foot distance from existing tombstones and expanded, where necessary, to form a final rectilinear area.

CERTIFICATE OF COMPLIANCE

A document signed by the Code Enforcement Officer stating that a structure is in compliance with all of the provisions of § 16.5.11.I

CERTIFICATE OF OCCUPANCY

A permit issued by the Code Enforcement Officer that authorizes the recipient to make use of

229 property in accordance with the requirements of this title and applicable state and federal
230 requirements.

231 **CHARACTER**

232 The main or essential nature, especially as strongly marked and serving to distinguish.

233 **CLEAN WATER ACT**

234 The federal Water Pollution Control Act (33 U.S.C. § 1251 et seq., also known as the "Clean
235 Water Act"), and any subsequent amendments thereto.

236 **CLEAR-CUT**

237 Any timber harvesting on a forested site greater than one acre in size which, over a ten-year
238 period, results in an average residual basal area of trees over six inches in diameter of less
239 than 30 square feet per acre, unless one or both of the following conditions exist:

240 A. If after harvesting the average residual basal area of trees over one inch in diameter
241 measured at 4.5 feet above the ground is 30 square feet per acre or more, a clear cut does
242 not occur until the average residual basal area of trees six inches or larger measured at
243 4.5 feet above the ground is less than 10 square feet per acre; or

244 B. After harvesting, the site has a well-distributed stand of trees at least five feet in height
245 that meets the regeneration standards applicable under 12 M.R.S. Chapter 805,
246 § 8869(1).

247 **CLUSTER RESIDENTIAL DEVELOPMENT**

248 A form of land use improvements and/or change in which certain dimensional requirements
249 limited to lot area, lot coverage, frontage and setbacks may be reduced below that normally
250 required in the zoning district in which the land use improvements and/or change is located
251 in return for the provision to set aside a portion of the tract as of permanent open space and
252 other environmental enhancements owned and maintained jointly in common by individual
253 lot/unit owners, the Town, or a land conservation organization.

254 **CODE ENFORCEMENT OFFICER (CEO)**

255 The person duly authorized by the Town to carry out the duties as prescribed herein and in
256 the Town Administrative Code.

257 **CO-LOCATION**

258 The location of more than one telecommunications facility (use) on a tower or alternative
259 tower structure.

260 **COMMERCIAL FISHERIES/MARITIME ACTIVITIES (USE)**

261 The active use of lands, buildings, wharves, piers, floats, docks or landings with the principal
262 intent of such activity being the production of income by an individual or legal business
263 entity through the operation of a vessel(s). This activity may be either a principal or
264 accessory use as herein defined.

265 **COMMERCIAL GREENHOUSE**

266 A building or structure used by a business or in the production of income, which is designed
267 and/or used for the indoor propagation and/or cultivation of plants.

268 **COMMERCIAL KENNEL**

269 A commercial operation that: 1) provides food and shelter and care of eight or more
270 domestic animals for purposes not primarily related to medical care; or 2) has at any one
271 time eight or more animals for the purpose of commercial breeding.

272 **COMMERCIAL MARINA USE STRUCTURE**

273 A structure which is used by a business entity to serve the general public by providing
274 marine-related services.

275 **COMMERCIAL OR HOME OCCUPATION VESSEL**

276 The vessel is used for commercial or home occupation use when its principal purpose or use
277 is in the pursuit of one's business or trade for the purpose of earning a livelihood. The
278 burden of proof in establishing the commercial or home occupation use of a vessel lies with
279 the vessel owner.

280 **COMMERCIAL SCHOOL**

281 A building or buildings which is principally used to conduct commercial educational classes
282 including, but not limited to trade schools, schools of art, beauty, business, dancing, driving,
283 music, martial arts, but not including private nursery, elementary or secondary schools.
284 Retail sales of items related to the school are allowed as an accessory use to commercial
285 schools.

286 **COMMERCIAL USE**

287 The use of lands, buildings or structures, other than a "home occupation" defined below, the
288 intent and result of which activity is the production of income from the buying and selling
289 of goods and/or services, exclusive of rental of residential buildings and/or dwelling units.

290 **COMMUNITY**

291 The Town of Kittery and its people.

292 **COMPACT OR BUILT-UP SECTION**

293 The "compact or built-up section" of the Town means a section of the Street or way where
294 structures are nearer than 200 feet apart for a distance of 1/4 mile.

295 **COMPREHENSIVE PLAN**

296 Any part or element of the plan or policy for the development of the Town, as defined in
297 Title 30-A M.R.S. § 4301, as issued in the Kittery Comprehensive Plan as approved by the
298 Town Council, or subsequent revisions or additions thereto.

299 **CONFERENCE CENTER**

300 A facility used for conferences, seminars and meetings, including accessory
301 accommodations for food preparation and eating, recreation, entertainment, resource
302 facilities, and meeting rooms.

CONSTRUCTION DRAWINGS

Drawings showing the location, profile, grades, size and type of drains, sewers, water mains, underground fire alarm ducts, pavements, of streets, miscellaneous structures, etc.

CONSTRUCTION SERVICES

The performance of work and/or the furnishing of supplies to members of the building trades, such as, but not limited to, plumbing, painting, building, well drilling, carpentry, masonry or electrical installation, which requires, or customarily includes, the storage of materials and/or the location of commercial vehicles at the site.

CONTIGUOUS LOTS

Lots which adjoin at any line or point or are separated at any point by a body of water less than 15 feet wide.

CONTRACTOR, EXCAVATION

An individual or firm engaged in a business that causes the disturbance of soil, including grading, filling and removal, or in a business in which the disturbance of soil results from an activity that the individual or firm is retained to perform.

CONVALESCENT CARE FACILITY

A facility that is licensed by the State of Maine to provide nursing care to persons during periods of recovery or rehabilitation. The facility provides nursing care and related rehabilitation services. The facility does not provide hospital services except as incidental to the delivery of nursing care. A convalescent care facility does not include any facility that is defined as an elder-care facility.

CORNER LOT

A lot or parcel of land abutting on two or more streets at their intersection or on two parts of the same street forming an interior angle of less than 135 degrees. In zones where yards are required:

- A. Such corner lots, located at the intersection of two streets, are deemed to have a side rather than a front yard between the principal building and the side street. Such side yard may not be less than the front yard requirements of uses located on the side street.
- B. Such corner lots, located at the intersection of two streets, are deemed to have a side rather than a rear yard between the principal building and the abutting property on the side street. Such side yard may not be less than the side yard requirements of uses located on the side street.
- C. All such side yards described above must conform to the specific regulations related to yard space and related building height contained in the district provisions of this title.

COTTAGE CLUSTER

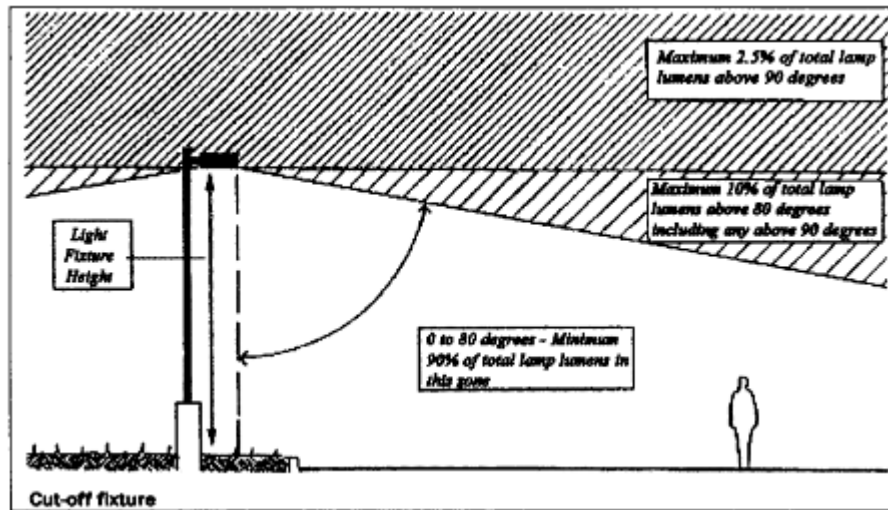
A group of size-restricted single-family detached dwelling units that share a common lot as well as common open space and may share a parking area and/or accessory structures.

COVERAGE (LOT, BUILDING)

See definition for "building coverage."

CUTOFF FIXTURE

A lighting fixture or luminaire that controls glare by directing light well below the horizontal. A cutoff fixture limits the direction of light so that a maximum of 2 1/2% of the total lamp lumens shine above 90° or a line parallel to the surface of the ground and a maximum of 10% of the lamp lumens shine above 80°, including any above 90°, as shown in the following sketch.

**DAY**

A calendar day unless otherwise indicated.

DAY CARE FACILITY

A house or other place conducted or maintained by anyone who provides on a regular basis and for consideration, care and protection for three or more unrelated children under 16 years of age, who are unattended by their parent(s) or guardian(s), for any part of a day. Any facility, the chief purpose of which is to provide education, is not considered a Day Care Facility.

DECK

An unenclosed, unroofed exterior platform structure, with or without railings, which is elevated above ground and is typically of wood construction, whether attached to a building or freestanding. A deck is not a water-dependent structure.

DESIGNATED HISTORIC BUILDING

A building listed on or located within a historic district listed on the National Register of Historic Places or a list of historic buildings or local historic districts published by the Maine Historic Preservation Office, or contained in the Town's adopted Comprehensive Plan.

DESIGN HANDBOOK

A handbook which is intended to supplement, illustrate and amplify various sections of this Title 16, Land Use and Development Code, and which is on file in the Town offices.

DEVEGETATED AREA

The total area of all existing and proposed structures, driveways, parking areas and other nonvegetated surfaces located in the Shoreland Overlay and Resource Protection Zones.

DEVELOPER

Any person, firm, corporation or other legal entity that makes application for any type of development within the Town.

DEVELOPMENT

- A. A change in land use involving alteration of the land, water or vegetation; or
- B. The addition or alteration of structures or other construction not naturally occurring.

DIMENSIONAL REQUIREMENTS

Numerical standards relating to spatial relationships, including, but not limited to, setbacks, lot width and area, shore frontage, percent of lot coverage and height.

DISABILITY

Any disability, infirmity, malformation, disfigurement, congenital defect or mental condition caused by bodily injury, accident, disease, birth defect, environmental conditions or illness; and also includes the physical or mental condition of a person which constitutes a substantial handicap as determined by a physician or, in the case of mental handicap, by a psychiatrist or psychologist, as well as any other health or sensory impairment which requires special education, vocational rehabilitation or related services.

DISCHARGE

For the purposes of stormwater regulation, means any spilling, leaking, pumping, pouring, emptying, dumping, disposing or other addition of pollutants to "waters of the state." "Direct discharge" or "point source" means any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft, from which pollutants are or may be discharged.

DISTRIBUTION CENTER

A warehouse or specialized building with refrigeration or climate control, stocked with products to be shipped to retailers, wholesalers or directly to consumers.

DISTURBED AREA

Land altered by the clearing of vegetation, grading, excavation and redevelopment. The cutting of trees without grubbing, stump removal, and the disturbance or exposure of soil is not considered to be disturbed area. Work performed in order to continue the original line and grade, hydraulic capacity, and the original purpose of the land or the improvements thereon is not considered to be disturbed area.

DOCK

The slip or waterway extending between two piers or projecting wharves or cut into the land for the reception of vessels.

DRAINAGE DITCH

A man-made, regularly maintained channel, trench or swale for conducting water that has a direction of flow to remove surface water or groundwater from land by means of gravity. For the purposes of this title, any new activity that reroutes a streambed or dredges a wetland is not considered to be a "drainage ditch." Where a drainage ditch widens out into a larger wetland, a route no more than 12 feet in width can be considered to be the drainage ditch. The remainder is considered wetlands unless it is demonstrated that the originally developed drainage ditch was designed to be greater than 12 feet in width.

DREDGE

To move or remove, by digging, scraping, scooping or suctioning, any earth, sand, silt, mud, gravel, rock or other material from the bottom of a water body or wetland surface.

DRIVEWAY

A vehicular accessway less than 500 feet in length serving two lots or less.

DRIVE-THROUGH FACILITY

Any portion of a structure from which business is transacted, or is capable of being transacted, directly with customers located in a motor vehicle during such business transaction.

DWELLING

A building designed or used as the living quarters for one or more families. The term does not include motel, rooming house, hotel, inn, club, trailer, or structures solely used for transient or overnight occupancy.

DWELLING, ATTACHED SINGLE-FAMILY

A dwelling unit, located on its own lot that shares one or more common or abutting walls with one or more dwelling units. The common or abutting wall must be shared for at least 25 percent of the length of the side of the dwelling.

DWELLING, COTTAGE CLUSTER

A dwelling unit that shares a common lot as well as common open space and may share a parking area and/or accessory structures.

DWELLING, MANUFACTURED HOUSING

Manufactured housing shall be defined according to 30-A, M.R.S.A. § 4358, as amended from time to time. See § 16.5.15 for Manufactured Housing general performance standards.

DWELLING, MULTI-FAMILY

A structure that contains three (3) or more dwelling units that share common walls or

440 floors/ceilings with one or more units. The land underneath the structure is not divided
441 into separate lots.

442
443 **DWELLING, SINGLE-FAMILY**

444 A detached dwelling unit located on its own lot.

445
446 **DWELLING, TWO-FAMILY**

447 A building that contains two primary dwelling units on one lot. The units must share a
448 common wall or common floor/ceiling.

449 **DWELLING UNIT**

450 A room or group of rooms forming a habitable unit for one household, with facilities used
451 or intended to be used for living, sleeping, cooking, eating and sanitary facilities. Such a
452 unit must meet the building code standards adopted and amended from time to time by
453 Maine's Bureau of Building Codes and Standards.

454 **DWELLING UNIT (IN THE SHORELAND AND RESOURCE PROTECTION**
455 **OVERLAY ZONES)**

456 A room or group of rooms designed and equipped exclusively for use as permanent,
457 seasonal, or temporary living quarters for only one family at a time and containing cooking,
458 sleeping and toilet facilities. The term includes mobile homes and rental units that contain
459 cooking, sleeping, and toilet facilities regardless of the time period rented. Recreational
460 vehicles are not dwelling units.

461 **EASEMENT**

462 The authorization of a property owner for the use by another, and for a specified purpose, of
463 any designated part of the owner's property.

464 **EAVE**

465 The projecting lower edges of a roof overhanging the wall of the building.

466 **ELDERLY DAY CARE FACILITY**

467 A facility that provides short-term care, supervision and recreation and social activities for
468 elderly and handicapped individuals, in which the participants do not stay overnight.

469 **ELEVATED BUILDING**

470 A. A non-basement building:

- 471 (1). Built, in the case of a building in Zone A1 — 30, AE, A, A99, AO or AH, to have the
472 top of the elevated floor, elevated above the ground level by means of pilings, columns,
473 post, piers or "stilts"; and
474 (2). Adequately anchored so as not to impair the structural integrity of the building during a
475 flood of up to one foot above the magnitude of the base flood.

476 B. In the case of Zone A1 — 30, AE, A, A99, AO or AH, "elevated building" also includes
477 a building elevated by means of fill or solid foundation perimeter walls less than three
478 feet in height with openings sufficient to facilitate the unimpeded movement of

479 floodwaters.

480 **ELEVATION CERTIFICATE**

481 An official form (FEMA Form 81-31, 05/90, as amended) that:

482 A. Is used to verify compliance with the floodplain management regulations of the National
483 Flood Insurance Program; and

484 B. Is required for purchasing flood insurance.

485 **EMERGENCY OPERATIONS**

486 Operations conducted by or on behalf of the municipality for the public health, safety or
487 general welfare, such as protection of resources from immediate destruction or loss, law
488 enforcement and operations to rescue human beings, property and livestock from the threat
489 of destruction or injury.

490 **ESSENTIAL SERVICES**

491 The construction, alteration or maintenance of gas, electrical or communication facilities;
492 steam, fuel, electric power or water transmission or distribution lines, towers and related
493 equipment; telephone cables or lines, poles and related equipment; gas, oil, water, slurry, or
494 other similar pipelines; municipal sewage lines, collection or supply systems; and associated
495 storage tanks. Such systems may include towers, poles, wires, mains, drains, pipes,
496 conduits, cables, fire alarms, all police call boxes, traffic signals, hydrants and similar
497 accessories, but do not include service drops or buildings which are necessary for the
498 furnishing of such services.

499 **EXEMPT PERSON OR DISCHARGE**

500 For the purposes of stormwater regulation, means any person who is subject to a multi-
501 sector general permit for industrial activities, a general permit for construction activity, a
502 general permit for the discharge of stormwater from the Maine Department of
503 Transportation and the Maine Turnpike Authority, municipal separate storm sewer systems,
504 or a general permit for the discharge of stormwater from state or federally owned authority,
505 municipal separate storm sewer system facilities, and any nonstormwater discharge
506 permitted under a National Pollutant Discharge Elimination System permit, waiver, or
507 waste discharge license or order issued to the discharger and administered under the
508 authority of the U.S. Environmental Protection Agency (EPA) or the Maine Department of
509 Environmental Protection (DEP).

510 **EXPANSION OF STRUCTURE**

511 An increase in the footprint of a structure, including all extensions, such as, but not limited
512 to, piers or attached decks, garages, porches and greenhouses.

513 **EXPANSION OF USE**

514 The addition of weeks or months to a use's operating season; additional hours of operation;
515 or the use of more floor area or ground area devoted to a particular use.

516 **FAA**

517 The Federal Aviation Administration.

518 **FAMILY**

519 One or more persons occupying premises and living as a single housekeeping unit.

520 **FARMERS MARKET**

521 An event where farmers, ranchers, and other agricultural producers sell food, plants,
522 flowers, marine-products, and added-value products, such as jams and jellies or handmade
523 crafts, they have grown, raised, caught, or prepared for retail sale. In addition, some vendors
524 sell food that is available for immediate consumption on site, and some may be community
525 groups, services, or other vendors or organizations. Farmers Markets occur on a regular
526 basis in the same location. They are free and open to the public. Some markets are seasonal,
527 while others occur year-round.

528 **FCC**

529 The Federal Communications Commission.

530 **FILL**

531 Materials such as select soils, rock, sand and gravel added to a land area or wetland area.

532 **FILLING**

533 The act of adding and/or placing fill into or upon a land area or wetland area.

534 **FINGER FLOAT**

535 A float extending from the main float of a pier, ramp and float system that creates slips
536 and/or increases the pier or float edge available for mooring boats.

537 **FLAG**

538 Any fabric containing distinctive colors, patterns or symbols, used as a symbol of a
539 government or recognized political subdivision.

540 **FLOAT**

541 A platform that floats and is anchored, moored or secured at or near the shore, used for
542 landing or other purposes.

543 **FLOOD, AREA OF A SHALLOW FLOODING**

544 A designated AO or AH Zone on a community's Flood Insurance Rate Map (FIRM), with a
545 one-percent or greater annual chance of flooding to an average depth of one to three feet,
546 where a clearly defined channel does not exist, where the path of flooding is unpredictable,
547 and where velocity flow may be evident. Such flooding is characterized by ponding or sheet
548 flow.

549 **FLOOD, AREA OF SPECIAL FLOOD HAZARD**

550 The land in the floodplain having a one-percent or greater chance of flooding in any given
551 year, as specifically identified in the Flood Insurance Study cited in § 16.5.11.C,
552 Establishment of areas.

553 **FLOOD ELEVATION STUDY**

554 An examination, evaluation and determination of flood hazards and, if appropriate,

555 corresponding water surface elevations.

556 **FLOOD HAZARD ZONE**

557 That portion of land which has one-percent chance of flooding in any given year, as
558 designated on Flood Insurance Rate Maps issued by the Federal Insurance Administration,
559 if available, or on Flood Hazard Boundary Maps issued by the Federal Insurance
560 Administration.

561 **FLOOD INSURANCE RATE MAP (FIRM)**

562 An official map of a community on which the Administrator of the Federal Insurance
563 Administration has delineated both the special hazard areas and the risk premium zones
564 applicable to the community.

565 **FLOOD INSURANCE STUDY**

566 See "flood elevation study."

567 **FLOOD OR FLOODING**

568 A. A general and temporary condition of partial or complete inundation of normally dry land
569 areas from:

570 (1). The overflow of inland or tidal waters; or

571 (2). The unusual and rapid accumulation or runoff of surface waters from any source.

572 B. The collapse or subsidence of land along the shore of a lake or other body of water as a
573 result of erosion or undermining caused by waves or currents or water exceeding
574 anticipated cyclical levels or suddenly caused by an unusually high water level in a
575 natural body of water, accompanied by a severe storm, or by an unanticipated force of
576 nature, such as a flash flood or an abnormal tidal surge, or by some similarly unusual and
577 unforeseeable event which results in flooding as defined in Subsection A(1) of this
578 definition.

579 **FLOOD, ONE-HUNDRED-YEAR**

580 The highest level of flood that, on the average, is likely to occur once every 100 years (that
581 has a one-percent chance of occurring in any given year). See Base Flood.

582 **FLOODPLAIN MANAGEMENT**

583 The operation of an overall program of corrective and preventive measures for reducing
584 flood damage, including, but not limited to, emergency preparedness plans, flood control
585 works, and floodplain management regulations.

586 **FLOODPLAIN MANAGEMENT REGULATIONS**

587 Zoning ordinances, subdivision regulations, building codes, health regulations, special
588 purpose ordinances (such as a floodplain ordinance, grading ordinance, and erosion control
589 ordinance) and other applications of police power. The term describes such state or local
590 regulations, in any combination thereof, which provide standards for the purpose of flood
591 damage prevention and reduction.

592 FLOODPLAIN or FLOOD-PRONE AREA

593 Any land area susceptible to being inundated by water from any source (see "flood").

594 FLOODPROOFING

595 Any combination of structural and nonstructural additions, changes or adjustments to
596 structures which reduce or eliminate flood damage to real estate or improved real property,
597 water and sanitary facilities, structures and contents.

598 FLOODWAY

599 See "regulatory floodway."

600 FLOODWAY ENCROACHMENT LINES

601 The lines marking the limits of floodways on federal, state and local floodplain maps.

602 FLOOR AREA

603 The sum of the horizontal areas of the floor(s) of a structure enclosed by exterior walls, plus
604 the horizontal area of any unenclosed portions of a structure such as porches and decks.

605 FOREST MANAGEMENT ACTIVITIES

606 Timber cruising and other forest resource evaluation activities, pesticide or fertilizer
607 application, management planning activities, timber stand improvement, pruning,
608 regeneration of forest stands, and other similar or associated activities, exclusive of timber
609 harvesting and the construction, creation or maintenance of roads.

611 FOUNDATION

612 The supporting substructure of a building or other structure, including, but not limited to,
613 basements, slabs, sills, posts or frost walls.

614 FREEBOARD

615 A factor of safety usually expressed in feet above a flood level for purposes of floodplain
616 management. Freeboard tends to compensate for the many unknown factors, such as wave
617 action, bridge openings, and the hydrological effect of urbanization of the watershed, that
618 could contribute to flood heights greater than the height calculated for a selected size flood
619 and floodway conditions.

620 FULFILLMENT CENTER

621 A physical location, often a warehouse or a specialized building with automation, from
622 which a fulfillment provider fills customer orders from multiple e-commerce retailers.

623 FUNCTIONALLY WATER-DEPENDENT USES

624 Those uses that require, for their primary purpose, location on submerged lands or that
625 require direct access to, or location in, coastal and inland waters and which cannot be
626 located away from these waters. The uses include, but are not limited to, commercial and
627 recreational fishing and boating facilities, finfish and shellfish processing, fish storage and
628 retail and wholesale fish marketing facilities, waterfront dock and port facilities, excluding
629 recreational boat storage buildings, shipyards and boat-building facilities, marinas,

630 navigation aids, basins and channels, industrial uses dependent upon waterborne
631 transportation or requiring large volumes of cooling or processing water and which cannot
632 reasonably be located or operated at an inland site, and uses which primarily provide
633 general public access to marine or tidal waters.

634 **GAMBLING OR GAMING**

635 Any banking or percentage game played for money, property, or any representative of value
636 with cards, dice, or any device or machine and located exclusively within a facility licensed
637 for such activity.

638 **GAMBLING CASINO**

639 A room or rooms in which legal gaming or gambling is conducted.

640 **GASOLINE SALES**

641 The retail sales of fuel for motor vehicles, including, but not limited to, gasoline, diesel fuel,
642 bio-diesel, kerosene, ethanol, propane and hydrogen, and related goods and services. The
643 gasoline sales can be the principal use or accessory to another principal use, such as a
644 convenience store or other retail or service use.

645 **GASOLINE SERVICE STATION**

646 An establishment for the retail sales of fuel for motor vehicles, including, but not limited to,
647 gasoline, diesel fuel, bio-diesel, kerosene, ethanol, propane and hydrogen, and related goods
648 and services, and may provide service and minor repairs for motor vehicles.

649 **GLARE**

650 Excessive brightness that makes it difficult to see or that causes discomfort. Glare includes
651 direct glare, disability glare, and discomfort glare.

652 **GLARE, DIRECT**

653 Glare resulting from insufficiently shielded light sources or areas of excessive luminance
654 within the field of view.

655 **GLARE, DISABILITY**

656 The effect of stray light in the eye whereby visibility and visual performance are reduced.
657

658 **GLARE, DISCOMFORT**

659 Glare producing discomfort. It does not necessarily interfere with visual performance or
660 visibility.

661 **GRADE PLANE**

662 A reference plane representing the average of finished ground level adjoining the building
663 at all exterior walls. Where the finished ground level slopes away from the exterior walls,
664 the reference plane is to be established by the lowest points within the area between the
665 building and the lot line or, where the lot line is more than six feet (1,829 mm) from the
666 building, between the building and a point six feet (1,829 mm) from the building.

GROSS FLOOR AREA

The sum of the horizontal areas of the floor(s) of a structure enclosed by exterior walls or a roof, plus the horizontal area of portions of the site used for customer seating, display of merchandise, or outdoor sales.

GROUND COVER

Small plants, fallen leaves, needles and twigs, and the partially decayed organic matter of the forest floor.

HAZARDOUS WASTE

As defined in 38 M.R.S. § 1319-O, a waste substance or material in any physical state, designated as hazardous by the Board of Environmental Protection under 38 M.R.S. § 1303-C.

HEIGHT OF BUILDING

The vertical measurement from the average grade between the highest and lowest elevation of the original ground level to the highest point of the roof beams in flat roofs; to the highest point on the deck of mansard roofs; to a level midway between the level of the eaves and highest point of pitched roofs or hip roofs; or to a level 2/3 of the distance from the level of the eaves to the highest point of gambrel 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. This is not intended to include weather-vanes or residential antennas that protrude from a roof, but does include all towers, excepting those utilized for amateur radio communications, and other structures. Building height restrictions do not apply to roadside utility poles approved by the Town Council of less than 45 feet in height above ground.

HEIGHT OF STRUCTURE

The vertical distance between the mean original grade at the downhill side of the structure and the highest point of the structure, excluding chimneys, steeples, antennas and similar appurtenances which have no floor area.

HEIGHT OF WIRELESS COMMUNICATION SERVICES FACILITIES

The distance measured from ground level to the highest point on the tower or other structure, even if such highest point is an antenna.

HIGH INTENSITY SOIL SURVEY

A map prepared by a certified soil scientist using the guidance defined and prepared by the Maine Association of Professional Soil Scientists. The soils must be identified in accordance with the National Cooperative Soil Survey. The map must show the location of all test pits used to identify the soils, and be accompanied by a log of each sample point, identifying the textural classification and the depth to seasonal high-water table or bedrock at that point. Evaluations of single soil test pits for subsurface waste disposal do not meet the requirements for high intensity soil surveys and are not suitable replacement.

HISTORIC STRUCTURE

Any structure that is:

- A. Listed individually on the National Register of Historic Places (a listing maintained by the Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- B. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary of the Interior to qualify as a registered historic district;
- C. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- D. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - (1). By an approved state program as determined by the Secretary of the Interior; or
 - (2). Directly by the Secretary of the Interior in states without approved programs.

HOME OCCUPATION

Any activity carried out for gain by a resident of the premises with the permission of the property owner and conducted as an accessory use to the principal residential use.

HOME OCCUPATION, MAJOR

A type of home occupation that fails to meet all of the standards for a "minor home occupation" established in § 16.5.12, but is found by the Board of Appeals to satisfy the standards established in § 16.5.12 to ensure that a business results in no more than a minor intrusion in the quality of life of residents in the surrounding neighborhood.

HOME OCCUPATION, MINOR

The least intensive type of home occupation that meets the standards established in § 16.5.12 to ensure compatibility with the surrounding neighborhood.

HOSPITAL

An institution specializing in providing inpatient and outpatient treatment and emergency services of a medical nature to human patients. A hospital may include the offices or facilities of independent service providers and/or a freestanding outpatient clinic or diagnostic facility that operates as part of, or an adjunct to, the main facility.

HOTEL

A building or group of buildings in which lodging or boarding and lodging capabilities are provided for more than 20 persons, and offered to the public for compensation, and in which ingress and egress to and from rooms are made primarily through an inside lobby or office supervised by a person in charge at all hours. As such, it is open to the public in contradistinction to a rooming house or a motel, which are separately defined in this section.

HYDRIC SOIL

A soil that in its undrained condition is saturated, flooded or ponded long enough during the growing season to develop anaerobic conditions that favor the growth and regeneration of

744 wetland (hydrophytic) vegetation. Soils found in Kittery which may be considered hydric
745 soils include but are not limited to: Biddeford, Brayton, Chocorua, Rumney, Scantic,
746 Sebago, Vassalboro, Naumberg, Raynham and Waskish. All hydric soils listed in the
747 Natural Resources Conservation Service list entitled "National Hydric Soils List by State"
748 are included for consideration in this title. (<http://soils.usda.gov/use/hydric/lists/state.html>)

749 **HYDROPHYTIC VEGETATION**

750 Plant life growing in water or on a substrate that is at least periodically deficient in oxygen
751 as a result of excessive water content. Hydrophytic vegetation includes plants classified as
752 obligate wetland, facultative wetland, or facultative in the U.S. Fish and Wildlife Service
753 publication National List of Plant Species That Occur in Wetlands: 1988 – Maine, as
754 amended or superseded. This publication is available at the municipal offices for inspection.

755 **ILLICIT DISCHARGE**

756 For the purposes of stormwater regulation, means any discharge to the small municipal
757 separate storm sewer system (MS4) that does not consist entirely of stormwater or
758 authorized non-stormwater discharges.

759 **IMPERVIOUS SURFACE**

760 The total area of a parcel that consists of buildings and any associated structures as well as
761 roads, driveways, and parking areas, whether paved or unpaved and any additional area that
762 is covered with a low-permeability material such as asphalt, stone or concrete or compacted
763 through design or use to reduce permeability.

764 **IMPROVEMENT PLANS**

765 Maps, plans, profiles, studies, cross sections and other required details for the construction
766 of all improvements.

767 **INDIVIDUAL PRIVATE CAMPSITE**

768 An area of land which is not associated with a campground, but which is developed for
769 repeated camping by only one group not to exceed 10 individuals and no more than one
770 recreational vehicle, and which involves site improvements which may include but not be
771 limited to gravel pads, parking areas, fireplaces or tent platforms.

772 **INDUSTRIAL ACTIVITY**

773 The assembling, fabrication, finishing, manufacturing, packaging or processing of goods, or
774 the extraction of minerals.

775 **INDUSTRIAL ACTIVITY, STORMWATER REGULATION**

776 Activity or activities subject to National Pollutant Discharge Elimination System
777 industrial permits as defined in 40 CFR 122.26(b)(14).

778 **INDUSTRY, HEAVY**

779 A facility and/or site used in the basic processing and manufacturing of materials or
780 products predominantly from extracted or raw materials, or a use engaged in storage of or
781 manufacturing processes using flammable or explosive materials, or storage or

782 manufacturing processes that potentially involve hazardous or commonly recognized
783 offensive conditions.

784 **INDUSTRY, LIGHT**

785 A facility used in the manufacture, predominantly from previously prepared materials, of
786 finished products or parts, including processing, fabrication, assembly, treatment, blending,
787 packaging, inside an enclosed structure. Basic industrial processing, such as paper
788 manufacturing, petroleum processing, manufacture of explosives, production of chemicals
789 or fertilizer, are not light industrial uses.

790 **INN**

791 A commercial place of lodging which contains a dwelling unit occupied by an owner or
792 resident manager, which has 12 or fewer guest rooms, and may include a restaurant which
793 also serves non-guests. Rentals to the same party for more than 12 weeks in a calendar year
794 are prohibited.

795 **INTERMITTENT STREAM**

796 A channel of a stream, river or brook that is without flowing surface water for at least one
797 month of a year.

798 **INVASIVE NONNATIVE PLANT**

799 Grasses, forbs, shrubs or trees not native to the State of Maine and which proliferate in and
800 dominate vegetation to the exclusion or elimination of native plants.

801 **JULY 13, 1977**

802 That date upon which a complete revision of the first zoning ordinances was adopted by the
803 Town and upon which certain existing nonconforming conditions are considered to be
804 protected (legally nonconforming).

805 **JUNKYARD**

806 A lot or part thereof exposed to the elements, which is used for the sale or for the storage,
807 keeping or abandonment of junk or scrap materials, or the storage, dismantling, demolition,
808 abandonment or sale of construction equipment or machinery, or parts thereof or of
809 unregistered automobiles or other vehicles not in condition for use on the public highway.

810 **LANDING**

811 A place for loading or discharging persons or goods, as from a vessel.

812 **LANDSCAPE PLANTER STRIP**

813 A vegetated area (naturally vegetated and/or landscaped) located adjacent and parallel to a
814 road or street and designed to visually and functionally separate the roadway from the
815 abutting property upon which it is located.

816 **LARGE, HEALTHY TREE**

817 A tree with a diameter at breast height (dbh) of at least 12 inches and which does not exhibit any
818 indicators of stress, damage, disease or decay that will limit its expected additional life to less

819 than 20 years.

820 **LEGISLATIVE BODY**

821 Town Council.

822 **LIGHT FIXTURE HEIGHT**

823 The vertical distance between the surface that will be illuminated by the fixture and the
824 bottom of the light source (see "cutoff fixture" diagram).

825 **LINER BUILDING**

826 A building that lines the edge of a street or other public space. Liner Buildings are typically
827 used to shield public space, like a street or sidewalk, from something less desirable to view,
828 such as a parking garage. They can also be used to enclose a space such as protecting a
829 courtyard from a busy street. Where allowed, a Liner Building must be a minimum of eight
830 feet deep and a maximum of 14 feet deep.

831 **LOCALLY ESTABLISHED DATUM**

832 For purposes of § 16.5.11 Floodplain Management, an elevation established for a specific
833 site to which all other elevations at the site are referenced. This elevation is generally not
834 referenced to the National Geodetic Vertical Datum (NGVD) or any other established
835 datum and is used in areas where mean sea level is too far from a specific site to be
836 practically used.

837 **LOT**

838 A parcel of land, legally created and recorded, having frontage upon an approved public or
839 private street; or a tract of land legally created and recorded prior to July 13, 1977.

840 **LOT AREA**

841 The area of land enclosed within the boundary lines of a lot, minus:

842 A. Land below the normal high-water line of a water body or upland edge of a coastal
843 wetland;

844 B. Areas beneath Planning Board-approved right-of-way; and

845 C. Land within public street rights-of-way.

846

847 **LOT WIDTH**

848 The horizontal distance between the side lot lines, measured at the setback lines.

849 **LOW IMPACT DEVELOPMENT (LID)**

850 The site-based process of developing land while minimizing impacts on water resources and
851 infrastructure. LID replicates the natural hydrology of a site.

852 [Added 11-26-2018 by Ord. No. 10.18]

853 **LOWEST FLOOR**

854 The lowest floor of the lowest enclosed area (including basement). An unfinished or flood-
855 resistant enclosure, usable solely for parking of vehicles, building access or storage in an

856 area other than a basement area, is not considered a building's lowest floor, provided that
857 such enclosure is not built so as to render the structure in violation of the applicable non-
858 elevation design requirements described in § 16.5.11.H.

859 **LUMEN**

860 A standard measure of light energy generated by a light source, normally reported by the
861 manufacturer of the lamp or bulb.

862 **MANUFACTURED HOUSING**

863 Manufactured Housing shall be defined according to 30-A, M.R.S.A. § 4358, as amended
864 from time to time. See § 16.5.15.

865 **MARIJUANA**

866 Cannabis. See Cannabis definition.

867 **MARIJUANA, ADULT USE STORE**

868 Means a facility licensed under 28-B MRS Chapter 1 to purchase adult use marijuana,
869 immature marijuana plants and seedlings from a cultivation facility, and to sell adult use
870 marijuana, adult use marijuana products, immature marijuana plants and seedlings to
871 consumers.

872 **MARIJUANA, BUSINESS**

873 Means an Adult Use Marijuana Store, Marijuana Cultivation Facility, Medical Marijuana
874 Registered Dispensary, Medical Marijuana Caregiver Retail Store, Marijuana Manufacturing
875 Facility, or Marijuana Testing Facility.

876 **MARIJUANA, CULTIVATION FACILITY**

877 Means a facility licensed by the State of Maine to purchase marijuana plants and seeds from
878 other cultivation facilities; to cultivate, prepare and package marijuana; to sell marijuana,
879 marijuana seedlings, plants and seeds to products manufacturing facilities, marijuana stores,
880 caregivers or other cultivation facilities.

881 Tier 1: Up to 500 square feet of plant canopy

882 Tier 2: Up to 2,000 square feet of plant canopy

883 Tier 3: Up to 7,000 square feet of plant canopy

884 Tier 4: Up to 20,000 square feet of plant canopy

885 **MARIJUANA, MANUFACTURING FACILITY**

886 Means (1) a registered tier 1 or tier 2 manufacturing facility, as designated by state law, or a
887 person authorized to engage in marijuana extraction under 22 MRS §2423- F; or (2) a facility

888 licensed under M.R.S. 28-B, Subchapter 2 to purchase marijuana from a cultivation facility
889 or another products manufacturing facility; to manufacture, label and package marijuana and
890 marijuana products; and to sell marijuana and marijuana products to marijuana stores and to
891 other products manufacturing facilities.

892 **MARIJUANA, MEDICAL CAREGIVER RETAIL STORE**

893 Means a store that has attributes generally associated with retail stores, including, but not
894 limited to, a fixed location, a sign, regular business hours, accessibility to the public and sales
895 of goods or services directly to a consumer, and that is used by a registered caregiver to offer
896 marijuana plants or harvested marijuana for sale to qualifying patients.

897 **MARIJUANA, MEDICAL REGISTERED CAREGIVER**

898 Means a person or an assistant of that person registered in accordance with state law to
899 provide care for a qualifying patient in accordance with state law.

900 **MARIJUANA, MEDICAL REGISTERED CAREGIVER HOME ESTABLISHMENT**

901 Means a medical marijuana registered caregiver business operating on the property of a
902 dwelling unit serving as the primary residence of the Registered Caregiver.

903 **MARIJUANA, MEDICAL REGISTERED DISPENSARY**

904 Means an entity registered under 22 M.R.S. § 2425-A that acquires, possesses, cultivates,
905 manufactures, delivers, transfers, transports, sells, supplies or dispenses marijuana plants or
906 harvested marijuana or related supplies and educational materials to qualifying patients and
907 the caregivers of those patients.

908 **MARIJUANA, TESTING FACILITY**

909 Means a public or private laboratory that is authorized and accredited in accordance with
910 state law for the research and analysis of marijuana, marijuana products or other substances
911 for contaminants, safety or potency.

912 **MARINA**

913 A facility constructed for water-dependent uses, used exclusively or in part for the storing,
914 servicing, fueling, berthing, and securing of boats.

915 **MARKET VALUE**

916 The estimated price a property will bring in the open market and under prevailing market
917 conditions in a sale between a willing seller and a willing buyer, both conversant with the
918 property and with prevailing general price levels.

919 **MASS TRANSIT STATION**

920 A place where people transfer between modes of transportation or any premises for the
921 transient housing or parking of buses, trains or ride-sharing vehicles and the loading and
922 unloading of passengers.

MASTER SITE DEVELOPMENT PLAN

A conceptual, integrated design and infrastructure plan for the development of a master planned property, in which:

- A. The development standards are applied to the land as defined by its perimeter, rather than by the individual lots, tracts and parcels into which the land may be divided; and
- B. The standards are applied to the proposed master site development boundary rather than to individual lots, tracts and parcels within the development.

MEAN SEA LEVEL

For purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929, or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

MECHANICAL SERVICE

Establishments primarily engaged in mechanical or electronic repair or maintenance of motorized or mechanical equipment, such as, but not limited to, welding repair, small engine repair, tool sharpening, and refrigeration and air-conditioning repair, but excluding repair garages.

MINERAL EXTRACTION

Any operation within any twelve-month period which removes more than 100 cubic yards of soil, topsoil, loam, sand, gravel, clay, rock, peat or other like material from its natural location and to transport the product removed away from the extraction site.

MINERAL/EARTH MATERIAL EXPLORATION

Hand sampling, test boring or other methods of determining the nature or extent of mineral/earth resources which create minimal disturbance to the land and which include reasonable measures to restore the land to its original condition.

MINI STORAGE

A commercial facility for the storage of consumer or business property on a rental basis in which the tenant receives the exclusive use of a storage unit or locker and can access the unit to drop off or retrieve property at designated times.

MINIMUM LAND AREA PER DWELLING UNIT

The gross area of a parcel not subject to subdivision regulations minus the land area listed below. Where land areas to be subtracted overlap, the area therein shall be subtracted once. For land area subject to subdivision, see "net residential acreage."

- A. All land located below the highest annual tide elevation as published in the Maine DEP Highest Annual Tide (HAT) levels for the most-current year.
- B. All wetlands as defined in the definition of "wetland," as well as vernal pools, ponds, streams and other water bodies.
- C. All land located on filled tidal lands, per the definition of "tidal land, filled."

960 D. All land located within existing rights-of-way and other existing easements wherein
961 dwelling units cannot be built.

962 **MIXED-USE BUILDING**

963 A building occupied by two or more types or categories of principal uses (for example,
964 residential and office, or office and retail) in which any category of uses occupies at least
965 10% of the gross floor area of the building.

966 **MOBILE HOME PARK**

967 Mobile Home Park shall be defined according to 30-A, M.R.S.A. § 4358, as amended from
968 time to time. See § 16.5.17.

969 **MOTEL**

970 A building or group of detached or connected buildings designed, intended or used
971 primarily to provide sleeping accommodations without cooking facilities for travelers for
972 compensation and having a parking space adjacent to a sleeping room. An automobile court
973 or a tourist court with more than one unit or a motor lodge is deemed to be a motel.

974 **MUNICIPAL SEPARATE STORM SEWER SYSTEM OR MS4**

975 A conveyance or system of conveyances designed or used for collecting or conveying
976 stormwater [other than a publicly owned treatment works (POTW), as defined at 40 CFR
977 122.2, or a combined sewer], including, but not limited to, roads with drainage systems,
978 municipal streets, catch basins, curbs, gutters, ditches, human-made channels or storm
979 drains owned or operated by any municipality, sewer or sewage district. Maine Department
980 of Transportation (MaineDOT), Maine Turnpike Authority (MTA), state agency or federal
981 agency or other public entity that discharges directly to waters of the state other than
982 groundwater. See also "regulated small MS4" and "small MS4."

983 **MUNICIPALITY**

984 Town of Kittery, Maine.

985 **NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)**
986 **STORMWATER DISCHARGE PERMIT**

987 A permit issued by the EPA or by the DEP that authorizes the discharge of pollutants to
988 waters of the United States, whether the permit is applicable on an individual, group, or
989 general area-wide basis.

990 **NAVIGABLE WATERS**

991 The "waters of the United States including territorial seas" as defined in the Federal Clean
992 Water Act and 33 CFR Part 328, as amended.

993 **NET RESIDENTIAL ACREAGE**

994 The land area subject to subdivision that is identified for regulatory purposes as developable
995 and is the gross available acreage minus land area identified in § 16.5.18, Net Residential
996 Acreage, unless otherwise exempt in § 16.5.18.D, Exemptions to net residential acreage
997 calculations.

NET RESIDENTIAL DENSITY

The number of dwelling units in a subdivision per net residential acre. This is calculated by dividing the net residential acreage by the square feet specified as minimum land area per dwelling unit in the dimensional standards in § 16.4, for the relevant base zone or overlay zone(s) where applicable.

NEW CONSTRUCTION

Structures for which the "start of construction" commenced on or after the effective date of floodplain management regulations adopted by a community, and includes any subsequent improvements to such structures.

NEW MOTOR VEHICLE SALES

A commercial establishment whose primary business is the buying and selling or offering to negotiate a sale of new motor vehicles, including related service activities, and has a franchise from a distributor or manufacturer. An establishment is "engaged in the business of buying, selling or offering to negotiate the sale of a vehicle" if that business buys motor vehicles for the purpose of resale, sells or offers to negotiate the sale of more than five motor vehicles in any twelve-month period, or displays or permits the display of three or more motor vehicles for sale at any one time or within any thirty-day period upon the premises, unless that person has owned and registered each vehicle for at least six months.

NONCONFORMING LOT OF RECORD

A single lot of record which was created prior to July 13, 1977, or subsequently created by legislative or judicial decision, which does not meet the area and/or frontage requirements of the district in which it is located; or is the result of legally authorized development created between July 13, 1977 and April 26, 1990, and became nonconforming as a direct result of the implementation of this title.

NONCONFORMING STRUCTURE

A structure that does not meet one or more of the following dimensional requirements: setbacks, yard, height or lot coverage. It is allowed solely because it was lawful when created and became legally nonconforming as a direct result of a change in the provisions of this title.

NONCONFORMING USE

Use of buildings, structures, premises, land or parts thereof which is not allowed in the district and/or zone in which it is situated, but which is allowed to remain solely because it was in lawful existence when created or became legally nonconforming as a direct result of a change in the provisions of this title.

NONCONFORMING, LEGALLY

It was lawfully created but became nonconforming due to a change in the Town Code.

NONSTORMWATER DISCHARGE

Any discharge to an MS4 that is not composed entirely of stormwater.

1036 **NORMAL HIGH-WATER LINE**

1037 The line which is apparent from visible markings, changes in the character of soils due to
1038 prolonged action of the water or changes in vegetation, and which distinguishes between
1039 predominantly aquatic and predominantly terrestrial land.

1040 **NURSERY SCHOOL**

1041 A house or other place in which a person or combination of persons maintains or otherwise
1042 carries out for consideration during the day a regular program which provides care for three
1043 or more children in accordance with 22 M.R.S. § 8401, provided that:

1044 A. No session conducted for the children is longer than 3 1/2 hours in length;

1045 B. No more than two sessions are conducted per day;

1046 C. Each child in attendance at the nursery school attends only one session per day; and

1047 D. No hot meal is served to the children.

1048 **NURSING CARE FACILITY, LONG-TERM**

1049 A facility that is licensed by the State of Maine to provide nursing care to persons who are
1050 unable to care for themselves. The facility provides long-term residential and nursing care
1051 to its residents. The facility does not provide hospital services except as incidental to the
1052 delivery of nursing care. A long-term nursing care facility does not include any facility that
1053 is defined as a Residential Care Facility.

1054 **OFFICIAL BUSINESS DIRECTIONAL SIGN (OBDS)**

1055 Any sign erected and maintained in accordance with the Maine Traveler Information
1056 Services Act, 23 M.R.S. § 1901 et seq., and regulations adopted pursuant to it, and which
1057 complies with the requirements of this title.

1058 **OFFICIAL MAP**

1059 The map adopted by the municipality showing the location of public property, ways used in
1060 common by more than two owners of abutting property, and approved subdivision or site
1061 plan, and any amendments thereto adopted by the municipality or additions thereto resulting
1062 from the approval of a subdivision or site plan by the Planning Board and the subsequent
1063 filing for record of such plan.

1064 **OFFICIAL SUBMITTAL DATE**

1065 The date upon which the Town Planner receives a complete application and issues a receipt
1066 so indicating.

1067 **ONE-HUNDRED-YEAR FLOOD**

1068 See "base flood."

1069 **OPEN SPACE**

1070 Includes all dedicated portions of a parcel that has vegetated surfaces or is in an undisturbed
1071 natural state. "Open space" does not include areas occupied by a building or a parking area,
1072 except where required by the management plan in place to govern the open space and as

1073 approved by the Planning Board.

1074 **OPEN SPACE, COMMON**

1075 Usable land within or related to a development, not individually owned, which is designed
1076 and intended for the common use or enjoyment of the residents of the development and may
1077 include such complementary structures, improvements and uses approved by the Planning
1078 Board. Such uses may include active or passive recreation or agriculture, where permitted.

1079 **OPEN SPACE, PUBLIC**

1080 Land accessible or dedicated for public use.

1081 **OPEN SPACE, RESERVED**

1082 Dedicated land that is permanently protected from further development and remains in a
1083 natural condition or is managed according to an approved management plan for natural
1084 resource functions, e.g., forestry, agriculture, habitat protection, passive recreation, or
1085 limited uses as approved by the Planning Board as part of cluster residential developments.

1086 **OUTDOOR DINING**

1087 A dining area with seats and/or table(s) located outside of a restaurant, which is either: a)
1088 located entirely outside of the walls of the building of the subject business, or b) enclosed
1089 on two (2) sides or fewer by the walls of the building with or without a solid roof cover, or
1090 c) enclosed on three (3) sides by the walls of the building without a solid roof cover.

1091 **OUTDOOR SERVICE AREAS**

1092 Areas located outside of a building or structure that are used for the delivery, handling,
1093 storage or processing of materials, goods or wastes, including areas used for the servicing,
1094 repairing, washing or fueling of motor vehicles and equipment.

1095 **OWNER**

1096 Any person, corporation or other legal entity having record title ownership to the property
1097 or the expressly authorized agent or designee thereof.

1098 **PARAPET**

1099 The extension of the wall(s) of a building above the roof eave and/or roofline.

1100 **PARCEL**

1101 See "tract or parcel of land."

1102 **PARKING AREA**

1103 Any public or private area, under, within or outside of a building or structure, designed and
1104 used for parking motor vehicles, including parking lots, garages, private driveways, and
1105 legally designated areas of public streets.

1106 **PATIO**

1107 An unenclosed, unroofed, exterior floor-like surface, usually composed of brick, stone or
1108 concrete, situated no higher than 18 inches above ground level, accessory to a dwelling and

1109 serving as an area for outdoor living.

1110 **PERSON**

1111 Any individual, firm, corporation, municipality, quasi-municipal corporation, two or more
1112 individuals having a joint or common interest, state agency or federal agency or other legal
1113 entity.

1114 **PERSONAL SERVICES**

1115 Establishments primarily engaged in providing services generally involving the care of
1116 one's personal appearance or apparel, including, but not limited to, barbers and beauty
1117 shops, laundries, photographic studios, shoe repair, garment altering, and diaper services.

1118 **PIER**

1119 A structure built out into the water generally with piles for use as a landing place.

1120 **POLLUTANT**

1121 Dredged spoil, solid waste, junk, incinerator residue, sewage, refuse, effluent, garbage,
1122 sewage sludge, munitions, chemicals, biological or radiological materials, oil, petroleum
1123 products or byproducts, heat, wrecked or discarded equipment, rock, sand, dirt and
1124 industrial, municipal, domestic, commercial or agricultural wastes of any kind.

1125 **POST-CONSTRUCTION STORMWATER MANAGEMENT PLAN**

1126 An inspection and maintenance plan as required by rule for projects that require approval by
1127 the Maine Department of Environmental Protection (MDEP) under Chapter 500,
1128 Stormwater Management; or a plan to inspect and maintain best management practices
1129 (BMPs) and stormwater management facilities employed by a new development or
1130 redevelopment, not subject to MDEP Chapter 500 rules, to meet the stormwater standards
1131 of this Code.

1132 **PRACTICABLE**

1133 Available and feasible, considering cost, existing technology, and logistics, based on overall
1134 project purposes.

1135 **PREEXISTING ACCESSORY-USE TOWERS/ANTENNAS**

1136 Legally existing prior to December 21, 1997, wireless communication system facility
1137 (WCSF), towers/antennas and alternative tower structures. Enlargements of WCSF,
1138 accessory use towers/antennas legally existing prior to December 21, 1997 must conform to
1139 the requirements of this title.

1140 **PREMISES**

1141 For the purposes of stormwater regulation, means any building, lot, parcel of land, or
1142 portion of land, whether improved or unimproved, including adjacent sidewalks and parking
1143 strips, located within the municipality from which discharges into the storm drainage
1144 system are or may be created, initiated, originated or maintained.

1145 **PRIMARY CAREGIVER**

1146 A person or an employee of that person, a licensed hospice provider or licensed nursing
1147 facility that provides care for a qualifying patient and is registered under 22 M.R.S. § 2425
1148 and receives Board of Appeals approval for a major home occupation.

1149 **PRINCIPAL BUILDING**

1150 The primary building on a lot or a building that shelters or encloses the principal use on a
1151 lot.

1152 **PRINCIPAL STRUCTURE**

1153 The primary structure on a lot or a structure that supports, shelters or encloses the principal
1154 use on the lot.

1155 **PRINCIPAL USE**

1156 The primary or predominant use. An activity that is conducted in conjunction with the
1157 principal use and such activity that either constitutes only an incidental or insubstantial part
1158 of the total activity that takes place on a lot; or is commonly associated with the principal
1159 use and integrally related to it, is regarded as "accessory to the principal use." An accessory
1160 to the principal use is regarded as "incidental or insubstantial" if it is both incidental and
1161 insubstantial in and of itself, and in relation to the principal use. Quantitative measures for
1162 consideration in this determination include the percentage and total amount of square
1163 footage attributed to the accessory to the principal use and sales or income derived from the
1164 accessory to the principal use.

1165 **PRIVATE ASSEMBLY**

1166 A building which is owned and used as a meeting place for private or semi-private social
1167 organization and clubs such as grange halls, fraternal organizations, religious institutions,
1168 etc. in which the principal use is exclusively for members. Rental of the facilities to outside
1169 groups is clearly incidental to the principle use and shall not significantly increase the
1170 intensity of the use of the site, especially regarding parking.

1171 **PRIVATE MARINA USE STRUCTURE**

1172 A structure which is owned and/or used by a private group, club, association or other legal
1173 entity's organization, and is used by its members only, and has frontage on navigable water,
1174 and as its principal use provides offshore moorings and/or docking facilities for vessels for
1175 use by its members and/or guests. The private marina may also provide accessory boating
1176 services. These accessory boating services may be provided to the boating public, members
1177 or guests.

1178 **PRUDENT AVOIDANCE**

1179 In any case where aboveground electrical utilities are approved, the plan is to be designed to
1180 avoid human residences as distant as possible without prohibitive cost.

1181 **PUBLIC ASSEMBLY AREA**

1182 Any area where large numbers of individuals collect to participate or to observe programs of
1183 participation.
1184

1185 **PUBLIC FACILITY**

1186 Any facility, including, but not limited to, buildings, property, recreation areas and roads
1187 which are owned, leased or otherwise operated, or funded by a governmental body or public
1188 entity

1189 **PUBLIC OR PRIVATE SCHOOL**

1190 A building or buildings and its associated grounds which is principally used to conduct
1191 educational classes including public and private elementary schools and nursery schools,
1192 including post-secondary schools, but not including commercial schools.

1193 **PUBLIC UTILITY**

1194 As defined in Title 35-A M.R.S. § 102, as amended.

1195 **PUBLIC UTILITY FACILITY**

1196 Buildings, structures, and facilities, including generating and switching stations, poles,
1197 lines, pipes, pumping stations, repeaters, antennas, transmitters and receivers, valves, and all
1198 buildings and structures relating to the furnishing of utility services, such as electric, gas,
1199 telephone, water and sewer, to the public, excluding solar energy systems.

1200 **QUALIFIED POST-CONSTRUCTION STORMWATER INSPECTOR**

1201 A person who conducts post-construction stormwater management facilities inspections for
1202 compensation and who has received the appropriate training for the same from the Maine
1203 Department of Environmental Protection.

1204 **RECENT FLOODPLAIN SOILS**

1205 The following soil series as described and identified by the National Cooperative Soil
1206 Survey: Alluvial, Cornish, Charles, Fryeburg, Hadley, Limerick, Lovewell, Medomak,
1207 Ondawa, Podunk, Rumney, Saco, Suncook, Sunday and Winooski.

1208 **RECREATION, COMMERCIAL INDOOR**

1209 The use of a building for play, sports, games, fitness, and other similar diversions operated
1210 as a business and open to the public for a fee.

1211 **RECREATION, COMMERCIAL OUTDOOR**

1212 The use of a land outside of a fully enclosed building, as defined, for play, sports, games,
1213 and other similar diversions operated as a business and open to the public for a fee.

1214 **RECREATION, PASSIVE**

1215 Outdoor recreational activities which have a low impact on the environment and
1216 neighborhood and require no motorized vehicles, significant earthmoving or substantial
1217 structures, such as hiking, fishing, canoeing, hunting, cross-country skiing, and wildlife
1218 observation and study. Benches and boardwalks, steps, railings and other structures
1219 necessary to provide safe accessibility for physically handicapped persons are allowed.

1220 **RECREATION, PUBLIC FACILITY**

1221 Means a facility open to the general public, for no charge or a subsidized charge, where
1222 organized recreational or athletic activities and events are held.

- 1223
1224 **RECREATION, PUBLIC OPEN SPACE**
1225 Open Space owned by a public agency and maintained by it for the use and enjoyment of the
1226 general public.
- 1227 **RECREATIONAL VEHICLE**
1228 A vehicle or an attachment to a vehicle designed to be towed, hauled, or driven and is
1229 primarily designed as temporary living accommodations for one or more persons. The
1230 vehicle must be registered with the State Division of Motor Vehicles.
- 1231 **RECREATIONAL VEHICLE PARK**
1232 Any lot or parcel of land upon which two or more sites are located, established, or
1233 maintained for occupancy by recreational vehicle for a fee as temporary living quarters for
1234 recreation or vacation purposes.
- 1235 **REGULATED SMALL MS4**
1236 Any small municipal separate storm sewer system (MS4) regulated by the State of Maine
1237 "General Permit for the Discharge of Stormwater from Small Municipal Separate Storm
1238 Sewer Systems" dated July 2013 ("general permit"), including all those located partially or
1239 entirely within an urbanized area (UA) and those additional small MS4s located outside an
1240 UA that as of the issuance of the general permit have been designated by the DEP as
1241 regulated small MS4s. The Town of Kittery is a regulated small MS4.
- 1242 **REGULATORY FLOODWAY**
1243 A. The channel of a river or other watercourse and the adjacent land areas that must be
1244 reserved in order to discharge the base flood without cumulatively increasing the water
1245 surface elevation more than one foot; and
1246 B. In riverine areas, is considered to be the channel of a river or other watercourse and the
1247 adjacent land areas to a distance of 1/2 the width of the floodplain, as measured from the
1248 normal high-water mark to the upland limit of the floodplain.
- 1249 **RELIGIOUS USE**
1250 A structure of place in which worship, ceremonies, rituals, and education pertaining to a
1251 particular system of beliefs are held.
- 1252 **REPAIR GARAGE**
1253 An establishment providing for the repair or servicing of motor vehicles. A repair garage
1254 does not include activities that are defined as mechanical service or a junkyard.
- 1255 **REPAIR SERVICE**
1256 A business providing for the repair of personal or small business property, such as radios
1257 and televisions, household or office electrical or electronic equipment, watches, clocks and
1258 jewelry, furniture and upholstery, sporting equipment, and similar items, but not including
1259 items included under mechanical services or automotive services and repair.
- 1260 **REPLACEMENT SYSTEM**
1261 A system intended to replace:

1262 A. An existing system which is either malfunctioning or being upgraded with no significant
1263 change of design flow or use of the structure; or

1264 B. Any existing overboard wastewater discharge.

1265 **RESEARCH AND DEVELOPMENT**

1266 A building or group of buildings in which are located facilities for technical or scientific
1267 research, investigation, testing or experimentation, but not facilities for the manufacture or
1268 sale of products, except as incidental to the main purpose of the facility.

1269 **RESIDENTIAL CARE FACILITY**

1270 A house or other place that, for consideration, is maintained wholly or partly for the purpose
1271 of providing residents with assisted living services. Residential Care Facilities provide
1272 housing and services to residents in private or semi-private bedrooms in buildings with
1273 common living areas and dining areas. "Residential Care Facility" does not include a
1274 licensed nursing home or supportive living arrangement certified by the state.

1275 **RESIDENTIAL CARE UNIT**

1276 A type of residential accommodation in a Residential Care Facility that has private sleeping
1277 and bathroom facilities but does not have permanent complete cooking facilities within the
1278 unit. The occupant of a residential care unit typically eats all or most of meals in a shared
1279 dining room. Residential care units may have a portable or removable kitchen or partial
1280 kitchen facilities such as a refrigerator and microwave oven. A residential care unit may be
1281 a unit with a separate bedroom, a suite or a room. A residential care unit is distinct from a
1282 dwelling unit that is defined separately.

1283 **RESIDENTIAL DEVELOPMENT USE PIER, RAMP AND FLOAT SYSTEM**

1284 A pier and/or ramp and float system which is used in common by lot owners or residents of
1285 a subdivision or residential planned development. The purpose is to provide waterfront
1286 access to the owners of lots in a residential development that has the potential for more than
1287 one waterfront lot. The object is to minimize the number of piers, ramps and floats resulting
1288 from new development.

1289 **RESIDENTIAL HOME OCCUPATION USE PIER, RAMP AND FLOAT SYSTEM**

1290 A pier and/or ramp and float system which is used for the residential home occupation
1291 workers in an approved functionally water-dependent home occupation (minor or major) in
1292 addition to its customary residential accessory use.

1293 **RESIDENTIAL JOINT/SHARED-USE PIER, RAMP AND FLOAT SYSTEM**

1294 A pier and/or ramp and float system which is used by the owners of not more than four
1295 residential shorefront lots, at least one boundary of whose building lot lies within 1,000 feet
1296 of the lot on which the joint/shared-use pier is constructed.

1297 **RESIDENTIAL SINGLE-USE PIER, RAMP AND FLOAT SYSTEM**

1298 A pier and/or ramp and float system which is used by the owner(s) of a single residential
1299 shorefront lot.

1300 **RESIDUAL BASAL AREA**

1301 The sum of the basal area of trees remaining on a harvested site.

1302 **RESIDUAL STAND**

1303 A stand of trees remaining in the forest following timber harvesting.

1304 **RESTAURANT**1305 An establishment where food or food and drink are prepared and sold for consumption on
1306 the premises by the public and includes cafes, coffee shops and similar establishments that
1307 serve food.1308 **RESUBDIVISION**1309 The division of an existing subdivision or any change of lot size therein or the relocation of
1310 any street or lot in a subdivision, or any changes thereto.1311 **RETAIL SALES**1312 Any business engaged primarily in the sale of goods for personal or household consumption
1313 and/or use, and not for resale. The term "retail sale" does not include specific types of retail
1314 uses that are individually listed in § 16.4.1315 **RETAIL SALES, BUILDING MATERIALS AND GARDEN SUPPLY**1316 A retail establishment primarily engaged in selling lumber and other building materials;
1317 paint, glass, floor covering and wallpaper; hardware, drapery and upholstery; flowers and/or
1318 nursery stock, lawn and garden supplies; modular homes and mobile homes.1319 **RETAIL SALES, CONVENIENCE STORE**1320 A retail store containing less than 2,000 square feet of gross floor area that is designed and
1321 stocked to sell primarily food, beverages and other household supplies to customers who
1322 purchase only a relatively few items (in contrast to a grocery store). It is designed to attract
1323 and depends upon a large volume of stop-and-go traffic. Supplementing these uses with
1324 accessory gasoline sales requires additional parking and traffic considerations.1325 **RIGHT-OF-WAY, PRIVATE**1326 A platted and dedicated access route normally to back lot(s); and as approved by the
1327 Planning Board and recorded in the York County Registry of Deeds.1328 **RIPRAP**1329 Rocks, irregularly shaped, and at least six inches in diameter, used for erosion control and
1330 soil stabilization, typically used on ground slopes of two units horizontal to one unit vertical
1331 or less.1332 **RIVER**1333 A free-flowing body of water, including its associated floodplain wetlands, from that point
1334 at which it provides drainage for a watershed of 25 square miles to its mouth.1335 **RIVERINE**

1336 Relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

1337 **ROAD**

1338 A route or track consisting of a bed of exposed mineral soil, gravel, asphalt or other
1339 surfacing material constructed for or created by the repeated passage of motorized vehicles,
1340 excluding driveways

1341 **ROOMING HOUSE**

1342 A residential use in which the owner or manager of the facility resides on the premises and
1343 in which more than three persons who are not part of the owner's/manager's family are
1344 housed in rooms for compensation with or without meals. This includes fraternities and
1345 sororities.

1346 **SALT MARSH**

1347 Areas along coastal waters (most often along coastal bays) which support salt-tolerant
1348 species, and where, at average high tide during the growing season, the soil is regularly
1349 inundated by tidal waters. The predominant species is salt marsh cordgrass (*Spartina*
1350 *alterniflora*). More open areas often support widgeon grass, eelgrass and Sago pondweed.

1351 **SALT MEADOW**

1352 Areas which support salt-tolerant plant species bordering the landward side of salt marshes
1353 or open coastal water, where the soil is saturated during the growing season, but which is
1354 rarely inundated by tidal water. Indigenous plant species include salt meadow cordgrass
1355 (*Spartina patens*) and black rush; common three-square occurs in fresher areas.

1356 **SAWMILL, PERMANENT**

1357 A facility where logs are cut into boards or timbers; a mill or machine for sawing logs or
1358 producing firewood that is in operation on a permanent basis. Sawmill operations may be
1359 subject to State regulations.

1360 **SAWMILL, TEMPORARY**

1361 A facility where logs are cut into boards or timbers, a mill or machine for sawing logs or
1362 producing firewood that is in operation for a cumulative duration of two (2) months or fewer
1363 in any twelve (12) month period. Sawmill operations may be subject to State regulations.
1364 This definition does not include the use of handheld chainsaws.

1365 **SCREEN**

1366 A method of significantly reducing the impact of noise and unsightly visual intrusions with
1367 less offensive or more harmonious elements, such as plants, berms, fences, walls, or any
1368 appropriate combination thereof.

1369 **SCREENING**

1370 Either: 1) a strip of at least 10 feet wide, densely planted (or having equivalent natural
1371 growth) shrubs or trees at least four feet high at the time of planting, of an evergreen type
1372 that will grow to a year-round dense screen at least six feet high in three years; or 2) an
1373 opaque wall or barrier of uniformly colored fence at least six feet in height. Screening of

1374 either type must be maintained in good condition at all times.

1375

1376 **SEPTIC SYSTEM**

1377 See "subsurface wastewater disposal system."

1378

1379 **SERVICE DROP**

1380 Any utility line extension which does not cross or run beneath any portion of a water body,
1381 provided that:

1382 A. In the case of electric service:

1383 (1). The placement of wires and/or the installation of utility poles is located entirely upon
1384 the premises of the customer requesting service or upon a roadway at the right-of-way;
1385 and

1386 (2). The total length of the extension is less than 1,000 feet.

1387 B. In the case of telecommunications service:

1388 (1). The extension, regardless of length, will be made by the installation of telephone wires
1389 to existing utility poles; or

1390 (2). The extension requiring the installation of new utility poles or placement underground
1391 is less than 1,000 feet in length.

1392 **SETBACK**

1393 The minimum horizontal distance from an identified object, line, boundary or feature to the
1394 nearest part of a regulated object, use or feature. (Note: See § 16.1, for setbacks from water
1395 bodies and wetlands. See § 16.7.8 for applying setbacks in special situations.)

1396 **SETBACK FROM STREAMS, WATER BODIES AND WETLANDS**

1397 The minimum horizontal distance allowed from the upland edge of a wetland and/or from
1398 the normal high-water line to the nearest part of a structure (excluding cornices, eaves or
1399 gutters projecting not more than 24 inches), roads, parking areas, or other regulated
1400 activities. See Table 16.5.30. Minimum Setbacks from Wetlands and Water Bodies, for
1401 required horizontal distances, and § 16.7.8 and § 16.8.7 for applying setbacks in special
1402 situations. Adjacent to tidal waters, setbacks are measured from the upland edge of the
1403 coastal wetland.

1404 **SHOP IN PURSUIT OF TRADES**

1405 An establishment occupied by a business or craftsman in a skilled trade, including, by
1406 way of example only, plumbing, carpentry or electrical work. Not more than 10 people may
1407 be employed at and/or work from the shop. The shop may include work space, storage
1408 space and/or office space. A shop in pursuit of trades does not include "construction
1409 services," which is separately defined.

1410 **SHOPPING FULFILLMENT CENTERS**

1411 A physical location that combines a business's retail functions and its warehouse or

1412 distribution activities into one Building. These facilities provide customers options for
1413 viewing goods and placing orders online or onsite. Products are stored and orders are
1414 processed onsite.

1415 **SHORE FRONTAGE**

1416 The width of a lot as it fronts the shore as measured in a straight line between the point of
1417 intersection of the side lot lines with the shoreline at normal high-water elevation.

1418 **SHOREFRONT DEVELOPMENT PLAN**

1419 A plan for any development extending into or within 100 feet of the upland edge of a
1420 coastal wetland, or into or within 100 feet of the upland edge of a fresh water wetland
1421 shown on the Zoning Map, including but not limited to public and private access paths;
1422 piers, ramps and floats; storage of boats and/or floats; clearing of vegetation, visual impact
1423 and controls to assure continuing conformance to the plan.

1424 **SHORELINE**

1425 The normal high-water line or upland edge of a wetland.

1426 **SIGN**

1427 Any structure or part of the structure attached thereto or painted or represented thereon,
1428 which displays or includes any letter, word, model, banner, flag, pennant, insignia, trade
1429 name, trademark, logo, device or representation used as, or which is in the nature of, any
1430 announcement of the purpose of a business, entity or person, direction or advertisement.
1431 The term "sign" does not include a flag.

1432 **SIGN AREA**

1433 The enclosed space within a geometric figure which contains the advertising message,
1434 illustration, insignia or display, together with any frame, color or other material which
1435 comprises the display and is used to differentiate or draw attention to the sign and away
1436 from the background. Each face of a sign is considered a separate sign for area
1437 computations, but supporting brackets and posts are not included.

1438 **SIGN, CHANGEABLE MESSAGE**

1439 Any sign or portion thereof designed to allow characters, letters and numbers on the face of
1440 the sign to be changed or rearranged.

1441 **SIGN, FREESTANDING**

1442 Any sign supported by a structure or supports that are permanently anchored in the ground
1443 and that is independent from any building.

1444 **SIGN, REAL ESTATE**

1445 Any sign advertising real estate for sale, lease or rent.

1446 **SIGN, TEMPORARY**

1447 A sign that is intended to remain where it is erected or placed for a period of time not to
1448 exceed 21 days in any calendar quarter.

1449 **SIGN, TRAILER**

1450 A portable sign mounted on a chassis and wheels or supported by legs.

1451 **SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEM, OR SMALL MS4**

1452 Any MS4 that is not already covered by the Phase I MS4 stormwater program including
1453 municipally owned or operated storm sewer systems, state or federally owned systems, such
1454 as colleges, universities, prisons, Maine Department of Transportation and Maine Turnpike
1455 Authority Road systems and facilities, and military bases and facilities. The Town of
1456 Kittery is a small MS4.

1457 **SOILS**

1458 A soil's drainage class must be determined by a Maine certified soil scientist and based on
1459 the most-recent Natural Resources Conservation Service Supplemental Key for the
1460 Identification of Soil Drainage Class that reflects the Maine Association of Professional Soil
1461 Scientists, Key to Drainage Classes. The Key includes, among other terms, the following:

- 1462 A. **VERY POORLY DRAINED** Water is removed from the soil so slowly that the water
1463 table remains at or above the surface most of the year. A seasonal high-water table is at
1464 or above the surface from at least October through July and sometimes throughout the
1465 year. In August and September, the water table may recede below 12 inches. The high-
1466 water table severely limits the use of these soils for most agricultural, forestry, and
1467 urban activities. These soils are hydric and typically support a wetland plant community.
- 1468 B. **POORLY DRAINED** Water is removed from the soil so slowly that the soil remains
1469 wet most of the year. A seasonal high-water table is at or near the surface from October
1470 through June. In July, August and September, it may recede below 16 inches. The
1471 seasonal high-water table limits the use of these soils for most agricultural, forestry, and
1472 urban activities. These soils are hydric and typically support a wetland plant community.
- 1473 C. **SOMEWHAT POORLY DRAINED** Water is removed from the soil slowly enough to
1474 keep it wet for significant periods of time but not the entire year. A seasonal high-water
1475 table is at seven inches to 16 inches in depth from October through May and sometimes
1476 June. From July to October, it may recede below 30 inches in depth. A seasonal water
1477 table limits the use of these soils for some agricultural, forestry and urban activities.
1478 These soils are not hydric in Maine and are commonly found in the transitional
1479 landscape positions between wetland and upland soils.

1480 **SPECIAL EXCEPTION**

1481 A use that would not be appropriate generally or without restriction throughout the zoning
1482 district, but which, if controlled as to number, area, location or relation to the neighborhood,
1483 would promote the public health, safety, welfare, morals, order, comfort, convenience,
1484 appearance, prosperity or general welfare. Such uses may be permitted in such zoning
1485 districts as special exceptions, if specific provision for such special exceptions is made in §
1486 16.4.

1487 **SPECIAL FLOOD HAZARD AREA**

1488 See "Flood, area of special flood hazard."

1489 SPECIALTY FOOD AND/OR BEVERAGE FACILITY

1490 A facility wherein food and/or beverage is produced, sold on a wholesale and/or retail basis,
1491 distributed, and/or consumed on the premises. This may include, but not be limited to, a
1492 brew pub, microbrewery, coffee roaster and/or other facilities producing crafted alcoholic or
1493 nonalcoholic beverages and/or artisan food.

1494 START OF CONSTRUCTION

1495 The date the building/regulated activity permit was issued, provided the actual start of
1496 construction, repair, reconstruction, rehabilitation, addition, placement, substantial
1497 improvement or other improvement was within 180 days of the permit date. The "actual
1498 start" means either the first placement of permanent construction of a structure on a site,
1499 such as the pouring of slab or footings, the installation of piles, the construction of columns,
1500 or any work beyond the stage of excavation; or the placement of a manufactured home on a
1501 foundation. Permanent construction does not include land preparation, such as clearing,
1502 grading and filling; nor does it include the installation of streets and/or walkways; nor does
1503 it include excavation for basement, footings, piers, or foundations or the erection of
1504 temporary forms; nor does it include the installation on the property of accessory buildings,
1505 such as garages or sheds not occupied as dwelling units or not part of the main structure.
1506 For a substantial improvement, the "actual start of construction" means the first alteration of
1507 any wall, ceiling, floor, or other structural part of a building, whether or not that alteration
1508 affects the external dimensions of the building.

1509 STORM DRAINAGE SYSTEM

1510 The entire Town's storm drainage system.

1511 STORMWATER

1512 Any stormwater runoff, snowmelt runoff, and surface runoff and drainage.

1513 STORY

1514 That portion of a building included between the upper surface of a floor and the upper
1515 surface of the floor or roof next above. For any building that contains no floors in the vertical
1516 plane, every 10 feet or portion thereof counts as a floor.

1517 STORY ABOVE GRADE

1518 Any story having its finished floor surface entirely above grade, except that a basement is
1519 considered as a story above grade where the finished surface of the floor above the basement
1520 is:

- 1521 A. More than six feet (1,829 mm) above the grade plane;
1522 B. More than six feet (1,829 mm) above the finished ground level for more than 50% of the
1523 total building perimeter; or
1524 C. More than 12 feet (3,658 mm) above the finished ground level at any point.

1525 STREAM OR BROOK

1526 A channel between defined banks, including the floodway and associated floodplain
1527 wetlands, where the channel is created by the action of surface water and characterized by

1528 the lack of upland vegetation or presence of aquatic vegetation and by the presence of a bed
1529 devoid of topsoil containing waterborne deposits on exposed soil, parent material or
1530 bedrock.

1531 **STREET**

1532 A way established or maintained under public authority, or a minimum forty-foot-wide
1533 private way constructed to Town standards as contained in § 16.5 and § 16.8, approved by
1534 the Planning Board and plotted, dedicated and recorded, or a way shown on a plan of a
1535 subdivision duly approved by the Planning Board. Also included are such ways as alleys,
1536 avenues, boulevards, highways, roads, streets and other rights-of-way.

1537 **STREET FRONTAGE**

1538 A continuous portion of a boundary of a lot which abuts a street, ordinarily regarded as the
1539 front of the lot. When a lot is bounded by more than one street, any one of them, but only
1540 one, may be designated as the frontage street by the owner, provided that the lot meets the
1541 frontage requirement on that street, front, side and rear yard setbacks, and that the principal
1542 building is numbered on that street.

1543 **STREET LINE**

1544 The exterior line of a street right-of-way which separates it from abutting lots.

1545 **STRUCTURALLY ALTERED**

1546 Any work which requires or contemplates any changes to the structural capabilities of a
1547 building.

1548 **STRUCTURE**

1549 Anything built for the support, shelter or enclosure of persons, animals, goods or property
1550 of any kind, or anything constructed or erected with a fixed location on or in the ground, or
1551 attached to something having a fixed location on or in the ground. The term includes decks.
1552 The term does not include fences less than eight feet in height, nor any required by the
1553 Planning Board or Town Planner to be taller; flagpoles no higher than 50 feet in height;
1554 signs located in conformance with § 16.5.23; and electricity generators and propane and oil
1555 tanks for residential use only and the pads on which they are located, provided the pad is
1556 less than 20 square feet in size.

1557 **SUBDIVIDER**

1558 Any person, firm, corporation or other legal entity making application for the subdivision of
1559 land or buildings within the Town.

1560 **SUBDIVISION**

1561 The division of a tract or parcel of land into three or more lots within any five-year period
1562 that begins on or after September 23, 1971. This definition applies whether the division is
1563 accomplished by sale, lease, development, building or otherwise. The term "subdivision"
1564 also includes the division of a new structure of structures on a tract or parcel of land into
1565 three or more dwelling units within a five-year period, the construction or placement of
1566 three or more dwelling units on a single tract or parcel of land and the division of an

1567 existing structure or structures previously used for commercial or industrial use into three or
1568 more dwelling units within a five-year period, as set forth in 30-A M.R.S. § 4401, as
1569 amended.

1570 **SUBDIVISION, MAJOR**

1571 Any subdivision containing more than four lots or any subdivision requiring any new public
1572 street extension or the extension of public or municipal facilities.

1573 **SUBDIVISION, MINOR**

1574 A subdivision containing not more than four lots.

1575 **SUBDIVISION PLAN, FINAL**

1576 The final drawings on which an applicant's plan of a subdivision is presented to the
1577 Planning Board for approval and which, if approved, must be filed for the record with the
1578 Municipal Clerk and York County Registry of Deeds.

1579 **PRELIMINARY SUBDIVISION PLAN**

1580 The preliminary drawings indicating the proposed layout of the subdivision to be submitted
1581 to the Planning Board for its consideration.

1582 **SUBSTANTIAL DAMAGE**

1583 Damage of any origin sustained by a structure whereby the cost of restoring the structure to
1584 its before-damage condition would equal or exceed 50% of the assessed value of the structure
1585 before the damage occurred.

1586 **SUBSTANTIAL IMPROVEMENT**

1587 Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of
1588 which equals or exceeds 50% of the market value of the structure before the start of
1589 construction of the improvement. This term includes structures which have incurred
1590 substantial damage, regardless of the actual repair work performed. The term does not,
1591 however, include either:

1592 A. Any project for improvement of a structure to correct existing violations of state or local
1593 health, sanitary or safety code specifications which have been identified by the local
1594 code enforcement official and which are the minimum necessary to assure safe living
1595 conditions; or

1596 B. Any alteration of an historic structure, provided that the alteration will not preclude the
1597 structure's continued designation as an historic structure.

1598 **SUBSURFACE WASTEWATER DISPOSAL SYSTEM (SWDS)**

1599 Any system designed to dispose of waste or wastewater on or beneath the surface of the
1600 earth. These include, but are not limited to, septic tanks, disposal fields, holding tanks,
1601 pretreatment filters, piping, or any other fixture, mechanism or apparatus used for such
1602 purposes. This definition does not include any discharge system licensed under 38 M.R.S.
1603 § 414, any surface wastewater disposal system or any municipal or quasi-municipal sewer
1604 or wastewater treatment system. (See also "wastewater" and "domestic wastewater.")

1605 **SUSTAINED SLOPE**

1606 A change in elevation where the referenced percent grade is substantially maintained or
1607 exceeded throughout the measured area.

1608 **TEMPORARY STRUCTURE**

1609 A structure which by type and materials of its construction is erected for not more than 30
1610 days with a permit from the CEO. Such structures include tents, portable bandstands,
1611 bleachers, reviewing stands, a mobile home, tractor trailers or structures of a similar
1612 character. Temporary structures erected in conjunction with licensed circuses are not
1613 construed to be temporary structures under this title.

1614 **THEATER**

1615 A building or portion of a building for the showing of motion pictures or the presentation of
1616 dramatic, musical or other live performances.

1617 **THEATER, DRIVE-IN**

1618 An open lot devoted primarily to the showing of motion pictures and theatrical productions
1619 on a paid admission basis to patrons seated in automobiles.

1620 **TIDAL LAND, FILLED**

1621 Portions of the submerged and intertidal lands that have been rendered by human activity to
1622 be no longer subject to tidal action or below the natural low-water mark after October 1,
1623 1975.

1624 **TIDAL WATERS**

1625 All waters where the high-water line is affected by the ebb and flow of tidal action.

1626 **TIMBER HARVESTING**

1627 A. TIMBER HARVESTING Selective cutting or removal of 10 or more cords, or the
1628 equivalent thereof, but no more than 40% of the total volume of trees four inches or more
1629 in diameter measured at 4 1/2 feet above ground level on any lot in any ten-year period
1630 for the purpose of selling or processing forest products. Clearing of land necessary for
1631 approved construction is not considered as timber harvesting.

1632 B. For the purposes of this title, timber harvesting activities taking place outside the
1633 shoreland overlay zone on land classified by the Town Assessor as enrolled in the state
1634 tree growth program (36 M.R.S. §§ 571 to 584-A), which is conducted in compliance
1635 with a forest management and harvest plan prepared by a licensed professional forester, is
1636 not considered timber harvesting.

1637 **TOWER**

1638 Any structure, whether freestanding or in association with a building or other permanent
1639 structure, that is designed and constructed primarily for the purposes of supporting one or
1640 more antennas, including self-supporting lattice towers, guyed towers, or monopole towers.
1641 The term includes radio and television transmission towers, microwave towers, common-
1642 carrier towers, cellular telephone towers, alternative tower structures, and similar structures.

1643 **TRACT OR PARCEL OF LAND**

1644 All contiguous land in the same ownership, except those lands located on opposite sides of a
1645 public or private street are considered separate tracts or parcels of land unless the street was
1646 established by the owner of land on both sides of the street after September 22, 1971.

1647 **TRANSPORTATION TERMINAL**

1648 Land and buildings used as a relay station for the transfer of a load from one vehicle to
1649 another. The terminal facility may include storage areas for trucks and buildings or areas for
1650 the repair of trucks associated with the terminal.

1651 **TRAVELED WAY**

1652 That portion of a road or driveway designed for vehicle travel. Where a road or driveway
1653 surface is paved, the traveled way is that portion of the road surface between the edges of
1654 the paved width.

1655 **TRIBUTARY STREAM**

1656 A channel between defined banks created by the action of surface water, whether
1657 intermittent or perennial, and which is characterized by the lack of upland vegetation or
1658 presence of aquatic vegetation and by the presence of a bed devoid of topsoil, containing
1659 waterborne deposits on exposed soil, parent material or bedrock, and which flows to a water
1660 body or wetland as defined. This definition does not include the term "stream" as defined
1661 elsewhere in this title and only applies to that portion of the tributary stream located within
1662 the shoreland or resource protection overlay zones of the receiving water body or wetland.

1663 **UPLAND EDGE**

1664 The boundary between upland and wetland. For purposes of a coastal wetland, this
1665 boundary is the line formed by the landward limits of the salt-tolerant vegetation and/or the
1666 elevation being six feet above mean sea level based on the North American Vertical Datum
1667 of 1988 (NAVD 88), including all area affected by tidal action. For purposes of a freshwater
1668 wetland, the upland edge is formed where the soils are not saturated for a time period
1669 sufficient to support wetland vegetation or where the soils support the growth of wetland
1670 vegetation, but such vegetation is dominated by woody stems that are 20 feet tall or taller;
1671 whichever is more restrictive.

1672 **URBANIZED AREA (UA)**

1673 The areas of the State of Maine so defined by the latest decennial census by the U.S. Bureau
1674 of the Census.

1675 **USED CAR LOT**

1676 A lot exposed to the elements which is used for the sale of secondhand automobiles or
1677 trucks which can pass the state inspection tests in their existing conditions.

1678 **VARIANCE**

1679 A. A relaxation of the terms of this title where such relaxation will not be contrary to the
1680 public interest and where, owing to conditions peculiar to the property and not the result
1681 of the actions of the applicant or prior owner, a literal enforcement of the title will result

1682 in unnecessary or undue hardship.

1683 B. As used in this title, a variance is authorized only for dimensional requirements related to
1684 height, area and size of structure, or size of yards and open spaces. Establishment or
1685 expansion of a use otherwise prohibited is not allowed by variance, nor may a variance be
1686 granted because of the presence of nonconforming uses in the particular zone or
1687 adjoining zone.

1688 **VEGETATION**

1689 All live trees, shrubs, ground cover and other plants.

1690 **VETERINARY HOSPITAL**

1691 A commercial establishment, operated by a licensed veterinarian, for the medical and
1692 surgical care of sick or injured animals.

1693 **VOLUME OF A STRUCTURE**

1694 The volume of all portions of a structure enclosed by roof and fixed exterior walls, as
1695 measured from the exterior faces of these walls and roof.

1696 **WAREHOUSING AND STORAGE**

1697 Premises where goods or materials are stored in an enclosed structure or in specific outdoor
1698 areas.

1699 **WASTE**

1700 Any unwanted or discarded substance or material, whether or not such substance or material
1701 has any future use, and includes any substance or material that is spilled, leaked, pumped,
1702 poured, emitted, disposed of, emptied, or dumped onto the land or into the water.

1703 **WASTEWATER**

1704 Any domestic wastewater, or other wastewater from commercial, industrial or residential
1705 sources that has attributes similar to those of domestic wastewater. This term specifically
1706 excludes hazardous or toxic wastes and materials. (Applicable only to Title 16. If there is a
1707 conflict with the definition of "wastewater" in Title 13, the Title 13 definition takes
1708 precedence.)

1709 **WASTEWATER, DOMESTIC**

1710 Any wastewater produced by ordinary living uses, including liquid waste containing animal
1711 or vegetable matter in suspension or solution, or the water-carried waste from the discharge
1712 of water closets, laundry tubs, washing machines, sinks, dishwashers, or other source of
1713 water-carried wastes of human origin.

1714 **WATER BODY**

1715 Any pond, river, brook, stream, intermittent stream or coastal wetland.

1716 **WATER CROSSING**

1717 Any project extending from one bank to the opposite bank of a water body, whether under,
1718 through or over the watercourse. Such projects include but may not be limited to roads,

1719 fords, bridges, culverts, waterlines, sewer lines and cables, as well as maintenance work on
1720 these crossings.

1721 **WATER-DEPENDENT USE**

1722 See "functionally water-dependent use."

1723 **WATER FRONT COMMERCIAL/INDUSTRIAL AND/OR FISHERIES USE**

1724 **STRUCTURE**

1725 A structure which is used by a business entity, Port Authority or municipality having
1726 frontage on navigable water and, as its principal use, provides for hire to the general public
1727 offshore mooring and/or docking facilities for vessels used for any marine-related
1728 commercial, industrial or fisheries use

1729 **WETLAND**

1730 Areas that under normal circumstances have hydrophytic vegetation, hydric soils and
1731 wetland hydrology, as determined in the Corps of Engineers Wetlands Delineation Manual
1732 — Waterways Experiment Station Technical Report Y-87-1, January 1987" (1987 manual).
1733 This definition of wetland is based on the 1987 manual and is not subject to further
1734 revisions and/or amendments.

1735 **WETLAND ALTERATION**

1736 Filling, dredging, removal of vegetation, muck or debris, draining or otherwise changing the
1737 hydrology; construction or repair of a structure. On a case-by-case basis and as determined
1738 by the Planning Board, the term "alteration" may exclude:

- 1739 A. An activity of installing a fence post or planting shrubs by hand;
1740 B. Alteration of an existing structure such as a bench or handrail; and
1741 C. The construction, repair or alteration of a structure with minimal impact such as a
1742 nesting box, pasture fence or staff gauge.

1743 **WETLAND, COASTAL**

1744 All tidal and subtidal lands; all lands below any identifiable debris line left by tidal action; all
1745 lands with vegetation present that is tolerant of salt water and occurs primarily in a salt water
1746 or estuarine habitat; and any swamp, marsh, bog, beach, flat or other contiguous low land
1747 which is subject to tidal action during the maximum spring tide level as identified in tide
1748 tables published by the National Ocean Service. Coastal wetlands may include portions of
1749 coastal sand dunes.

1750 **WETLAND CREATION**

1751 Conversion of a non-wetland area into a wetland, where a wetland never existed.

1752 **WETLAND ENHANCEMENT**

1753 An activity increasing the value of one or more functions in an existing wetland. Activities
1754 may also include improvements to upland buffers where timber harvesting or other
1755 activities have degraded the value for wildlife.

1756 **WETLAND, FORESTED**

1757 A fresh water wetland dominated by woody vegetation that is 20 feet tall or taller.

1758 **WETLAND, FRESHWATER**1759 Noncoastal types of wetlands, including, but not limited to, freshwater swamps, marshes,
1760 bogs and similar areas.1761 **WETLAND, FRESHWATER (IN THE SHORELAND AND RESOURCE**
1762 **PROTECTION OVERLAY ZONES)**1763 A. Freshwater swamps, marshes, bogs and similar areas, other than forested wetlands, which
1764 are: [Added 5-22-2017 by Ord. No. 17-04]1765 (1). Of 10 or more contiguous acres; or of less than 10 contiguous acres and adjacent to a
1766 surface water body, excluding any river, stream or brook, such that in a natural state,
1767 the combined surface area is in excess of 10 acres; and1768 (2). Inundated or saturated by surface- or groundwater at a frequency and for a duration
1769 sufficient to support, and which under normal circumstances do support, a prevalence
1770 of wetland vegetation typically adapted for life in saturated soils.1771 B. Freshwater wetlands may contain small stream channels or inclusions of land that do not
1772 conform to the criteria in this definition.

1773

1774 **WETLAND FUNCTIONS**1775 The roles wetlands serve which are of value to society or the environment, including, but
1776 not limited to, floodwater storage, floodwater conveyance, groundwater recharge and
1777 discharge, erosion control, wave attenuation, water quality protection, scenic and aesthetic
1778 use, food chain support, fisheries, wetland plant habitat, aquatic habitat and wildlife habitat.1779 **WETLAND HYDROLOGY**1780 In general terms, a condition where permanent or periodic inundation or prolonged soil
1781 saturation is sufficient to create anaerobic conditions in the soil. According to the 1989
1782 Manual, inundation or saturation for one week or more during the growing season and a
1783 water table within at least 18 inches of soil surface is required to meet the wetland
1784 hydrology criterion.1785 **WETLAND PRESERVATION**1786 The maintenance of an area of wetlands or adjacent upland so that it remains in a natural or
1787 undeveloped condition. Preservation measures include, but are not limited to, conservation
1788 easements and land trusts.1789 **WETLAND RESTORATION**1790 An activity returning a wetland from a disturbed or altered condition with lesser acreage or
1791 fewer functions to a previous condition with greater wetland acreage or function.1792 **WETLAND VALUE**

1793 The importance of a wetland with respect to the individual or collective functions it

1794 provides.

1795 **WETLAND VEGETATION**

1796 Those plants classified as Obligate, Facultative Wetland or Facultative in the U.S. Fish and
1797 Wildlife Service publication, Wetland Plants of the State of Maine, 1986, as amended or
1798 superseded.

1799 **WETLANDS ASSOCIATED WITH RIVERS**

1800 Wetlands contiguous with or adjacent to a river, and which during normal high water are
1801 connected by surface water to the river. Also included are wetlands which are separated
1802 from the river by a berm, causeway or similar feature less than 100 feet in width, and which
1803 have a surface elevation at or below the normal high-water line of the river. Wetlands
1804 associated with rivers are considered to be part of that great pond or river.

1805 **WETLANDS IMPACT**

1806 Any disturbance, including but not limited to filling, dredging, draining, bridging and
1807 cutting or clearing of vegetation in the wetland and buffer areas.

1808 **WHARF**

1809 A structure on the shore, parallel to the shoreline of navigable waters, alongside of which
1810 vessels can be brought for loading or unloading.

1811 **WHOLESALE BUSINESS**

1812 The sale of goods not produced on the premises primarily to customers engaged in the
1813 business of reselling the goods.

1814 **WIRELESS COMMUNICATION SERVICES FACILITIES (WCSF)**

1815 Any structure, antenna, tower or other device which provides radio/television transmission,
1816 commercial mobile wireless services, unlicensed wireless services, cellular phone services,
1817 specialized mobile radio communications (SMR), common carrier wireless exchange access
1818 services, and personal communications service (PCS) or pager services, and associated
1819 development. Telecommunications facilities are considered a principal use.

1820 **WORK**

1821 Activity related to physical change for improvements and not the engineering, production or
1822 correction of construction drawings, or real estate marketing.

1823 **YARD, ACCESSORY BUILDING SIDE AND REAR**

1824 In the R-RL, R-U, R-S and B-L Zones, accessory building side and rear yard setbacks that
1825 are at least 10 feet, except no building may be closer than 30 feet to a principal building on
1826 an adjoining lot.

1827 **YARD, FRONT**

1828 An open area unoccupied by any structure, excluding cornices, eaves or gutters projecting
1829 not more than 24 inches, on the same lot with the building between the front line of the

1830 building and the front line of the lot and extending the full width of the lot as it abuts along
1831 a public or private street.

1832 **YARD, REAR**

1833 An open area unoccupied by any structure, excluding cornices, eaves or gutters projecting
1834 not more than 24 inches, on the same lot with the building between the rear line of the
1835 building and the rear line of the lot and extending the full width of the lot.

1836 **YARD, SIDE**

1837 An open area unoccupied by any structure, excluding cornices, eaves or gutters projecting
1838 not more than 24 inches, on the same lot with the building situated between the building and
1839 the side line of the lot and extending from the front yard to the rear yard. Any lot line not a
1840 rear line or a front line will be deemed a side line.

16.4 Land Use Zone Regulations**16.4.1 Purpose**

The purpose of this chapter is to establish zones, uses, standards and dimensional requirements for the Town to implement the adopted Comprehensive Plan.

16.4.2 Establishment of Zones

To implement the provision of this title, the Town is divided into the following base and overlay zones:

16.4.3 Base zones

- A. Residential – Rural (R-RL)
- B. Residential – Suburban (R-S)
- C. Residential – Kittery Point Village (R-KPV)
- D. Residential – Urban (R-U)
- E. Residential – Village (R-V)
- F. Residential – Rural Conservation (R-RC)
- G. Conservation (CON)
- H. Business – Local (B-L)
- I. Business – Local 1 (B-L1)
- J. Commercial 1 (C-1)
- K. Commercial 2 (C-2)
- L. Commercial 3 (C-3)
- M. Industrial (IND)
- N. Mixed-Use (MU)
- O. Mixed-Use – Badgers Island (MU-BI)
- P. Mixed-Use – Kittery Foreside (MU-KF)
- Q. Mixed Use – Neighborhood (MU-N)
- R. Transportation – Maine Turnpike (T-MT)

16.4.4 Overlay zones

- A. Shoreland Overlay Zones
 - (1) Water Body/Wetland Protection Area – 250 feet (OZ-SL-250)
 - (2) Stream Protection Area – 75 feet (OZ-SL-75)
- B. Commercial Fisheries/Maritime Uses Overlay Zone (OZ-CFMU)
- C. Resource Protection Overlay Zone (OZ-RP)

16.4.5 Zoning Map**A. Zone boundaries**

The location and boundaries of the zones are established as shown on the current Official Zoning Map titled "Town of Kittery Maine Land Use Zoning Map," as may be amended by law. The Zoning Map with all explanatory matter thereon is hereby made part of this title and must be kept on file at the Town office. Said Zoning Map must be drawn at a scale of not less than one-inch equals 1,000 feet. Zone boundaries must be clearly delineated, and the Map must have a legend indicating the name and symbol for each zone.

16.4.6 Boundary line interpretation**A. Where uncertainty exists with respect to property or natural resource boundaries of the various zones as shown on the Zoning Map, the following rules apply:**

- (1) Unless otherwise shown, zone boundary lines are coincidental with street center lines and lot lines. Where zone boundary lines are designated on the Zoning Map, those lines are construed to be the boundary of the zone.
- (2) Where the zone boundary lines are not otherwise indicated and where the property has been or may hereafter be divided into blocks and lots, the zone boundaries are construed to be the lot lines, and where the zones designated on the Map accompanying and made a part of this title are bounded approximately by lot lines, the lot lines are construed to be the boundary of the zones unless the boundary lines are otherwise indicated on the Zoning Map.
- (3) Where unsubdivided property lies within two or more zones, the zone boundary lines on the Zoning Map are determined by use of the scale appearing on the Zoning Map.
- (4) Where there is uncertainty regarding a zone boundary, the Planning Board is the local decision authority as to the exact location of said boundary. In the Shoreland and Resource Protection Overlay Zones, boundary redefinition must be supported by documentation from an appropriate certified Maine state land surveyor.

16.4.7 Overlay zone

- A. An overlay zone is a special purpose zone where additional regulations, beyond those set forth in the base zone, apply. The regulations of the underlying zone must apply unless specified otherwise in the overlay zone.

16.4.8 Zoning Map amendments to Resource Protection and Shoreland Overlay Zones

- A. If Zoning Map amendments are adopted that change the Shoreland or Resource Protection Overlay Zones, said amendments also must be approved by the Maine Commissioner of the State Department of Environmental Protection and then implemented within 30 days of approval.

16.4.9 Prohibited uses

A. Uses in all zones are defined in § 16.4 of this ordinance by zone as permitted or special exception uses. Any use not listed as a permitted or a special exception use is prohibited in the zone.

16.4.10 Residential – Rural (R-RL)

A. Purpose

The purpose of the Residential – Rural R-RL Zone is to protect the prevailing rural character of the Town and its natural rural quality from development sprawl by prescribing the most appropriate uses and standards.

B. Permitted uses

The following uses are permitted in the R-RL Zone:

- (1) Accessory Dwelling Unit
- (2) Cluster Residential Development
- (3) Dwelling, Manufactured Housing
- (4) Dwelling, Single-Family
- (5) Convalescent Care Facility
- (6) Nursing Care Facility, Long-Term
- (7) Accessory Buildings, Structures, and Uses
- (8) Home Occupation, Minor
- (9) Individual Private Campsite
- (10) Day Care Facility
- (11) Hospital
- (12) Private Assembly
- (13) Public Facility
- (14) Public or Private School
- (15) Religious Use
- (16) Recreation, Public Open Space
- (17) Agriculture
- (18) Commercial School

C. Special exception uses

The following uses are permitted as special exception uses in the R-RL Zone:

- (1) Mobile Home Park, subject to § 16.5.17.D
- (2) Home Occupation, Major
- (3) Campgrounds
- (4) Rooming House
- (5) Public Utility Facility
- (6) Recreation, Commercial Indoor
- (7) Recreation, Commercial Outdoor
- (8) Agriculture, Piggery

- (9) Commercial Kennel
- (10) Sawmill, Permanent
- (11) Sawmill, Temporary
- (12) Veterinary Hospital
- (13) Cemetery
- (14) Shops in Pursuit of Trade
- (15) Junkyard
- (16) Mineral extraction, subject to § 16.5.16
- (17) Major or Minor Subdivision

D. Standards

The following standards must be met unless modified per § 16.8.10.H(3), Cluster Residential Development:

(1) Design and performance standards in § 16.5, 16.7 and 16.8

(2) Dimensional standards:

(a) Minimum land area per dwelling unit: 40,000 square feet.*

*As per §16.3 definition of "minimum land area per dwelling unit," except to exempt properties which are unable to meet the square feet required for a single-family dwelling unit, provided the lot was conforming prior to October 25, 2012.

(b) Minimum lot size: 40,000 square feet.

(c) Minimum street frontage: 150 feet.

(d) Minimum front yard: 40 feet.

(e) Maximum building coverage: 15%.

(f) Minimum rear and side yards: 20 feet

(NOTE: Buildings higher than 40 actual feet are to have side and rear yards not less than 50% of building height.)

(g) Maximum building height: 35 feet

(NOTE: Minimum distance between principal buildings on the same lot is the height equivalent to the taller building.)

(h) Minimum water body setback for functionally water-dependent uses: zero feet

(i) Minimum setback from streams, water bodies and wetlands: in accordance with Table 16.5.30, § 16.4.28 and Appendix A, Fee Schedules.

(3) Subdivision types and standards

Subject to net residential acreage and net residential density per § 16.3.

(a) Cluster residential development

In a cluster residential development, the above standards may be modified in accordance with special provisions of § 16.8.10.H(3), including that there is no minimum lot size, and with the conditions that:

[1] Minimum principal building separation as required by the Fire Chief, but not

- 152 less than 20 feet.
- 153
- 154 (b) Subdivision development [per special exception uses, § 16.4.10.C].
- 155 In a subdivision development, standards in § 16.4.10.D(2)(a) and (i) apply and
- 156 include:
- 157 [1] Minimum percentage of common open space: 15%
- 158
- 159 (4) Junkyards
- 160 In the case of junkyards, the following special standards apply, which are in addition to
- 161 the standards and provisions prescribed in Maine State Statutes, 30-A M.R.S. §§ 3751
- 162 to 3760, and any changes thereto:
- 163 (a) Minimum land area: 400,000 square feet.
- 164 (b) Minimum street frontage: 600 feet.
- 165 (c) Minimum distance from street or highway to junk concentration area: 200 feet.
- 166 (d) Other standards as prescribed in § 16.5.13.
- 167
- 168 (5) Mobile Home Parks
- 169 In the case of Mobile Home Parks, sites must be at least 10 acres, subject to the special
- 170 provisions of § 16.5.17.
- 171
- 172 E. Shoreland Overlay Zone OZ-SL – Residential – Rural Zone (R-RL)
- 173 (1) Permitted uses
- 174 (a) Accessory Buildings, Structures, and Uses
- 175 (b) Agriculture
- 176 (c) Dwellings, if located farther than 100 feet from the normal high-water line of any
- 177 water bodies, or the upland edge of a wetland Individual Private Campsite
- 178 [1] Dwelling, Single-Family
- 179 (d) Recreation, Public Open Space
- 180
- 181 (2) Special exception uses
- 182 (a) Day Care Facility
- 183 (b) Home occupation, Major
- 184 (c) Home Occupation, Minor
- 185 (d) Mineral extraction subject to § 16.5.16;
- 186 (e) Public Utility Facility
- 187 (f) Recreation, Commercial Indoor
- 188 (g) Recreation, Commercial Outdoor
- 189 (h) Commercial School
- 190 (i) Public or Private School
- 191 (j) Hospital
- 192 (k) Nursing Care Facility, Long-Term
- 193 (l) Convalescent Care Facility

- 194 (m) Public Facility
195 (n) Religious Use
196 (o) Private Assembly
197
198 (3) See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL
199
200 B. Resource Protection Overlay Zone OZ-RP – Residential – Rural Zone (R-RL)
201 (1) Permitted uses
202 (a) Individual Private Campsite
203 (b) Recreation, Public Open Space
204
205 (2) Special exception uses
206 (a) Accessory Buildings, Structures, and Uses
207 (b) Agriculture
208 (c) Home Occupation, Major
209 (d) Home Occupation, Minor
210 (e) Dwelling, Single-Family
211 (f) Commercial School,
212 (g) Public or Private School,
213 (h) Religious Use,
214 (i) Private Assembly,
215 (j) Public Utility Facility
216
217 (3) See § 16.4.29 for purpose and standards in the Resource Protection Overlay Zone OZ-
218 RP
219

220 16.4.11 Residential – Suburban (R-S)**221 A. Purpose**

222 The purpose of the Residential – Suburban R-S Zone is to provide areas adjacent to the
223 developed urban areas for future residential growth consistent with the availability of public
224 utilities. To this end, the following apply:

225 B. Permitted uses

226 The following uses are permitted in the R-S Zone:

- 227 (1) Accessory Dwelling Unit
- 228 (2) Cluster Residential Development
- 229 (3) Dwelling, Attached Single-Family
- 230 (4) Dwelling, Multi-Family (not more than four (4) units per building)
- 231 (5) Dwelling, Single-Family
- 232 (6) Dwelling, Two-Family
- 233 (7) Convalescent Care Facility (may not occupy more than 5,000 square feet of floor
234 area)
- 235 (8) Nursing Care Facility, Long-term (may not occupy more than 5,000 square feet of
236 floor area)
- 237 (9) Residential Care Facility (may not occupy more than 5,000 square feet of floor area)
- 238 (10) Accessory Buildings, Structures, and Uses
- 239 (11) Home Occupation, Minor
- 240 (12) Day Care Facility
- 241 (13) Elderly Day Care Facility
- 242 (14) Hospital (may not occupy more than 5,000 square feet of floor area)
- 243 (15) Nursery School (may not occupy more than 5,000 square feet of floor area)
- 244 (16) Private Assembly (may not occupy more than 5,000 square feet of floor area)
- 245 (17) Public Facility (may not occupy more than 5,000 square feet of floor area)
- 246 (18) Public or Private School (may not occupy more than 5,000 square feet of floor area)
- 247 (19) Religious Use (may not occupy more than 5,000 square feet of floor area)
- 248 (20) Recreation, Public Open Space
- 249 (21) Agriculture
- 250 (22) Commercial School (may not occupy more than 5,000 square feet of floor area)

251

252 C. Special exception uses

253 The following uses are permitted as special exception uses in the R-S Zone:

- 254 (1) Dwelling, Multi-Family (five to twelve (5-12) units per building)
- 255 (2) Home Occupations, Major
- 256 (3) Rooming House
- 257 (4) Public Utility Facility
- 258 (5) Cemetery
- 259 (6) Retail Sales, Convenience (excluding the sale of gasoline)

- (7) Any use listed in Subsection B(12-20) (permitted uses) of this section that occupies more than 5,000 square feet of floor area
- (8) Mineral Extraction, subject to § 16.5.16
- (9) Major or Minor Subdivision

D. Standards

The following standards must be met unless modified per § 16.8.10.H(3), Cluster Residential Development:

(1) Design and performance standards.

The design and performance standards of § 16.5, 16.7 and 16.8 must be met. The Design Handbook provides examples of appropriate design for nonresidential and multiunit residential projects.

(2) Dimensional standards.

(a) Minimum land area per dwelling unit:*

[1] Without public sewage disposal: 40,000 square feet.

[2] With public sewage disposal: 30,000 square feet unless reduced in accordance with Note A.

*As per § 16.3 definition of "minimum land area per dwelling unit," except to exempt properties which are unable to meet the square feet required for a single-family dwelling unit, provided the lot was conforming prior to October 25, 2012.

(b) Minimum lot size:

[1] Without public sewage disposal: 40,000 square feet.

[2] With public sewage disposal: 30,000 square feet unless reduced in accordance with Note A.

(c) Minimum street frontage: 150 feet unless reduced in accordance with Note A.

(d) Minimum front yard: 40 feet.

(e) Maximum building coverage: 20%.

(f) Minimum rear and side yards: 15 feet

(NOTE: Buildings higher than 40 actual feet must have side and rear yards not less than 50% of the building height.)

(g) Maximum building height: 35 feet

(NOTE: Minimum distance between principal buildings on the same lot is the height equivalent to the taller building.)

(h) Minimum water body setback for functionally water-dependent uses: zero feet.

(i) Minimum setback from streams, water bodies and wetlands: in accordance with Table 16.5.30, § 16.4.28 and Appendix A, Fee Schedules.

Note A:

- The required minimum land area per dwelling unit and/or minimum lot size for residential uses that are served by public sewage disposal and that are located outside of areas subject to shoreland zoning may be less than 30,000

- square feet per lot/unit if the established average density of development in the immediate area of the use as determined below is less than 30,000 square feet.
- If the average of the lot sizes and/or land area per dwelling unit of the developed residential lots that are located on the same street and within 500 feet of the parcel is less than 30,000 square feet, the required minimum lot size or required minimum land area per dwelling unit is the calculated average lot size or average land area per dwelling unit but not less than 20,000 square feet.
 - If the required minimum lot size is reduced, the required minimum street frontage for new residential uses served by public sewerage may also be reduced to the average of the lot frontage of existing developed residential lots that are located on the same street and within 500 feet of the parcel but in no case to less than 100 feet.
- (3) Subdivision types and standards. Subject to net residential acreage and net residential density per § 16.3
- (a) Cluster residential development. In a cluster residential development, the above standards may be modified in accordance with special provisions of § 16.8.10.H(3), including that there is no minimum lot size, and with the conditions that:
- [1] Minimum principal building separation as required by the Fire Chief, but not less than 15 feet.
- (b) Subdivision development [per special exception uses, § 16.4.11.C].
- In a subdivision development, standards in § 16.4.11.D(1) and (2) apply and include:
- [1]. Minimum percentage of common open space: 15%.
- (4) Mobile Homes. Mobile Homes must meet the standards of § 16.5.17.
- E. Shoreland Overlay Zone OZ-SL – Residential – Suburban Zone (R-S)
- (1) Permitted uses
- (a) Day Care Facility
- (b) Dwellings if located farther than 100 feet from the normal high-water line of any water bodies, or the upland edge of a wetland
- [1] Dwelling, Attached Single-Family
- [2] Dwelling, Multi-Family (not more than four (4) units per building)
- [3] Dwelling, Single-Family
- [4] Dwelling, Two-Family
- (c) Elderly Day Care Facility
- (d) Recreation, Public Open Space
- (2) Special exception uses
- (a) Home Occupation, Major
- (b) Home Occupation, Minor
- (c) Mineral Extraction subject to § 16.5.16

- (d) Public Utility Facility
- (e) Commercial School (must not occupy more than 5,000 square feet of floor area)
- (f) Public or Private School (must not occupy more than 5,000 square feet of floor area)
- (g) Residential Care Facility (must not occupy more than 5,000 square feet of floor area)
- (h) Hospital (must not occupy more than 5,000 square feet of floor area)
- (i) Nursing Care Facility, Long-term (must not occupy more than 5,000 square feet of floor area)
- (j) Public Facility (must not occupy more than 5,000 square feet of floor area)
- (k) Religious Use (must not occupy more than 5,000 square feet of floor area)
- (l) Private Assembly (must not occupy more than 5,000 square feet of floor area)

(3) See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL

F. Resource Protection Overlay Zone OZ-RP – Residential Suburban Zone (R-S)

(1) Permitted Uses

- (a). Recreation, Public Open Space

(2) Special Exception Uses

- (b). Accessory Buildings, Structures, and Uses
- (c). Agriculture
- (d). Home Occupation, Major
- (e). Home Occupation, Minor
- (f). Public Utility Facility
- (g). Dwelling, Single-Family

(3). See § 16.4.29 for purpose and standards in the Resource Protection Overlay Zone OZ-RP

16.4.12 Residential – Kittery Point Village (R-KPV)**A. Purpose**

The purpose of the Residential – Kittery Point Village R-KPV Zone is to preserve the established character and development pattern of the Kittery Point neighborhood while assuring that any new development is consistent with this historical development pattern and is environmentally suitable. To this end, the following apply:

B. Permitted uses

The following uses are permitted in the R-KPV Zone:

- (1) Accessory Dwelling Units
- (2) Cluster Residential Development
- (3) Dwelling, Attached Single-Family
- (4) Dwelling, Multi-Family (not more than four (4) units per building)
- (5) Dwelling, Single-Family
- (6) Dwelling, Two-Family
- (7) Accessory Buildings, Structures, and Uses
- (8) Home Occupations, Minor
- (9) Day Care Facility
- (10) Nursery School (must not occupy more than 5,000 square feet of floor area)
- (11) Private Assembly (must not occupy more than 5,000 square feet of floor area)
- (12) Public Facility (must not occupy more than 5,000 square feet of floor area)
- (13) Public or Private School (must not occupy more than 5,000 square feet of floor area)
- (14) Religious Use (must not occupy more than 5,000 square feet of floor area)
- (15) Recreation, Public Open Space
- (16) Agriculture
- (17) Commercial School (must not occupy more than 5,000 square feet of floor area)

C. Special exception uses

The following uses are permitted as special exception uses in the R-KPV Zone:

- (1) Rooming House
- (2) Any use listed in Subsection B.(11) through B.(15) of this section (permitted uses) that occupies more than 5,000 square feet of floor area
- (3) Public Utility Facility
- (4) Cemetery
- (5) Retail Sales, Convenience (excluding sale of gasoline)
- (6) Home Occupation, Major
- (7) The reuse of a designated historic building, in nonresidential use as of the effective date of this provision, as an art studio/gallery, museum, or business and professional office subject to standards for a minor home occupation as set forth in § 16.5.12.
- (8) Major or Minor Subdivision

D. Standards

The following standards must be met unless modified per § 16.8.10.H(3), Cluster Residential Development:

(1) Design and performance standards in §16.5, 16.7 and 16.8.

The Design Handbook provides examples of appropriate design for nonresidential and multiunit residential projects.

(2) Dimensional standards.

(a) Minimum land area per dwelling unit: 40,000 square feet.*

As per Chapter 16.3 definition of "minimum land area per dwelling unit," except to exempt properties which are unable to meet the square feet required for a single-family dwelling unit, provided the lot was conforming prior to October 25, 2012.

(b) Minimum lot size: 40,000 square feet.

(c) Minimum street frontage: 150 feet unless reduced in accordance with Note A.

Note A:

- The required minimum street frontage for a new lot may be less than 150 feet if the established pattern of street frontage in the immediate area of the lot as determined below is less than 150 feet per lot.
- The required minimum street frontage in this case is the average of the street frontage of existing developed residential lots that are located on the same street and within 500 feet of the parcel, but in no case less than 100 feet.

(d) Minimum front yard: 40 feet

(e) Maximum building coverage: 20%.

(f) Minimum rear and side yards: 15 feet. (NOTE: Buildings higher than 40 actual feet must have side and rear yards not less than 50% of the building height.)

(g) Maximum building height: 35 feet. (NOTE: Minimum distance between principal buildings on the same lot is the height equivalent to the taller building.)

(h) Minimum water body setback for functionally water-dependent uses: zero feet.

(i) Minimum setback from streams, water bodies and wetlands: in accordance with Table 16.5.30, § 16.4.28 and Appendix A, Fee Schedules.

Subdivision types and standards

(3) Subject to net residential acreage and net residential density per § 16.3.

(a) Cluster residential development

In a cluster residential development, the above standards may be modified in accordance with special provisions of § 16.8.10.H(3), including that there is no minimum lot size, and with the conditions that:

- [1] Minimum principal building separation as required by the Fire Chief, but not less than 15 feet.

(b) Subdivision development [per special exception uses, § 16.4.12.C].

In a subdivision development, standards in § 16.4.12.D(1) and (2) apply and include:

- [1] Minimum percentage of common open space: 15%.

463

464 E. Shoreland Overlay Zone OZ-SL – Residential – Kittery Point Village (R-KPV)

465 (1) Permitted uses.

466 (a) Agriculture

467 (b) Accessory Buildings, Structures, and Uses

468 (c) Day Care Facility

469 (d) Dwellings if located farther than 100 feet from the normal high-water line of any
470 water bodies, or the upland edge of a wetland

471 [1] Dwelling, Attached Single-Family

472 [2] Dwelling, Multi-Family (not more than four (4) units per building)

473 [3] Dwelling, Single-Family

474 [4] Dwelling, Two-Family

475

476 (2) Special exception uses.

477 (a). Home Occupation, Major

478 (b). Home Occupation, Minor

479 (c). Public Utility Facility

480 (d). Commercial School (must not occupy more than 5,000 square feet of floor area)

481 (e). Public or Private School (must not occupy more than 5,000 square feet of floor
482 area)

483 (f). Nursery School (must not occupy more than 5,000 square feet of floor area)

484 (g). Public Facility (must not occupy more than 5,000 square feet of floor area)

485 (h). Religious Use (must not occupy more than 5,000 square feet of floor area)

486 (i). Private Assembly (must not occupy more than 5,000 square feet of floor area)

487 See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL

488

489 F. Resource Protection Overlay Zone OZ-RP – Residential – Kittery Point Village Zone (R-
490 KPV)

491 (1) Permitted Uses

492 (a) Recreation, Public Open Space

493

494 (2) Special Exception Uses

495 (a) Accessory Buildings, Structures, and Uses

496 (b) Agriculture

497 (c) Home Occupations, Major

498 (d) Home Occupations, Minor

499 (e) Public Utility Facility

500 (f) Dwelling, Single-Family

501

502 (3) See § 16.4.29 for purpose and standards in the Resource Protection Overlay Zone OZ-
503 RP

16.4.13 Residential – Urban (R-U)**A. Purpose**

The purpose of the Residential – Urban R-U Zone is to preserve the physical, aesthetic and social quality of Kittery's urban area and, consistent with this goal, to provide therein for the location of a variety of residential uses in accordance with the standards of this title. To this end, the following apply:

B. Permitted uses

The following uses are permitted in the R-U Zone:

- (1) Accessory Dwelling Units
- (2) Cluster Residential Development
- (3) Dwelling, Attached Single-Family
- (4) Dwelling, Manufactured Housing
- (5) Dwelling, Multi-Family
- (6) Dwelling, Single-family
- (7) Dwelling, Two-Family
- (8) Convalescent Care Facility
- (9) Nursing Care Facility, Long-term
- (10) Accessory Buildings, Structures, and Uses
- (11) Home Occupations, Minor
- (12) Day Care Facility
- (13) Hospital
- (14) Nursery School
- (15) Private Assembly
- (16) Public Facility
- (17) Public or Private School
- (18) Religious Use
- (19) Recreation, Public Open Space
- (20) Commercial School
- (21) Conference Center

C. Special exception uses

The following uses are permitted as special exception uses in the R-U Zone:

- (1) Rooming House
- (2) Business & Professional Offices
- (3) Funeral Home
- (4) Art Studio or Gallery
- (5) Recreation, Public Facility
- (6) Recreation, Commercial Indoor
- (7) Recreation, Commercial Outdoor
- (8) Public Utility Facility

- (9) Inn
- (10) Home Occupations, Major
- (11) Age-Restricted Housing
- (12) Major or Minor Subdivision

D. Standards

The following standards must be met unless modified per § 16.8.10.H(3), Cluster Residential Development:

- (1) The design and performance standards in § 16.5, 16.7 and 16.8.
- (2) Dimensional standards:
 - (a) Minimum land area per dwelling unit: 20,000 square feet.*
*As per Chapter 16.3 definition of "minimum land area per dwelling unit," except to exempt properties which are unable to meet the square feet required for a single-family dwelling unit, provided the lot was conforming prior to October 25, 2012.
 - (b) Minimum lot size: 20,000 square feet.
 - (c) Minimum street frontage: 100 feet.
 - (d) Minimum front yard, all buildings: 30 feet.
 - (e) Minimum rear and side yards, all buildings: 15 feet.
(NOTE: Buildings higher than 40 actual feet must have side and rear yards not less than 50% of building height.)
 - (f) Maximum building height: 35 feet.
(NOTE: Minimum distance between principal buildings on the same lot is the height equivalent to the taller building.)
 - (g) Maximum building coverage: 20%.
 - (h) Minimum water body setback for functionally water-dependent uses: zero feet.
 - (i) Minimum setback from streams, water bodies and wetlands: in accordance with Table 16.5.30 § 16.4.28 and Appendix A, Fee Schedules.
- (3) Subdivision types and standards
Subject to net residential acreage and net residential density per § 16.3.
 - (a) Cluster residential development
In a cluster residential development, the above standards may be modified in accordance with special provisions of § 16.8.10.H(3), including that there is no minimum lot size, and with the conditions that:
 - [1] Minimum principal building separation as required by the Fire Chief, but not less than 15 feet.
 - (b) Subdivision development [special exception uses, § 16.4.13.C].
In a subdivision development, standards in § 16.4.13.D(1) and (2) apply and include:
 - [1] Minimum percentage of common open space: 15%.

(4) Age-Restricted Housing

In the case of Age-Restricted Housing, the above standards may be modified in accordance with the special provisions of § 16.5.15 and with the condition that:

- (a) Municipal sewerage and water must be provided.
- (b) A minimum land area of three acres must be provided.
- (c) The maximum net density may not exceed four dwelling units per net residential acre. In no event may the Planning Board authorize a departure which increases the total number of dwelling units greater than that specified under the applicable zoning ordinance.
- (d) A single bedroom unit may not be less than 550 square feet and a two-bedroom unit not less than 650 square feet.

(5) Manufactured Housing

Manufactured Housing must meet standards of § 16.5.15

E. Shoreland Overlay Zone OZ-SL – Residential – Urban Zone (R-U)

(1) Permitted uses.

- (a). Accessory Buildings, Structures, and Uses
- (b). Day Care Facility
- (c). Dwellings if located farther than 100 feet from the normal high-water line of any water bodies, or the upland edge of a wetland
 - [1]. Dwelling, Attached Single-Family
 - [2]. Dwelling, Manufactured Housing
 - [3]. Dwelling, Multi-Family
 - [4]. Dwelling, Single-family
 - [5]. Dwelling, Two-Family
- (d). Recreation, Public Open Space

(2) Special exception uses.

- (a). Home Occupation, Major
- (b). Home Occupation, Minor
- (c). Inn
- (d). Public Utility Facility
- (e). Recreation, Commercial Indoor
- (f). Recreation, Commercial Outdoor
- (g). Commercial School
- (h). Public or Private School
- (i). Nursery School
- (j). Hospital
- (k). Nursing Care Facility, Long-term
- (l). Convalescent Care Facility
- (m). Public Facility

- 628 (n).Religious Use
- 629 (o).Private Assembly
- 630
- 631 (3) See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL
- 632
- 633 F. Resource Protection Overlay Zone OZ-RP – Residential – Urban Zone (R-U)
- 634 (1) Permitted Uses
- 635 (a). Recreation, Public Open Space
- 636 (2) Special Exception Uses
- 637 (a). Accessory Buildings, Structures, and Uses
- 638 (b).Home Occupation, Major
- 639 (c). Home Occupation, Minor
- 640 (d).Public Utility Facility
- 641 (e). Dwelling, Single-Family
- 642
- 643 (3) See § 16.4.29 for purpose and standards in the Resource Protection Overlay Zone OZ-
- 644 RP
- 645

16.4.14 Residential – Village (R-V)**A. Purpose**

The purpose of the Residential – Village R-V Zone is to recognize the special nature of the Admiralty Village neighborhood as a densely developed residential zone composed primarily of affordable housing on small lots serviced by sewer and water and to encourage reinvestment in maintaining and upgrading the neighborhood. Consistent with this goal, the zone provides for uses that reinforce the residential character and establish building standards that allow improvements on typical lots to enhance the residential quality of life in the neighborhood. To this end, the following will apply:

B. Permitted uses

The following uses are permitted in the R-V Zone:

- (1) Accessory Dwelling Unit
- (2) Dwelling, Attached Single-Family
- (3) Dwelling, Manufactured Housing
- (4) Dwelling, Single-Family
- (5) Dwelling, Two-Family
- (6) Accessory Buildings, Structures, and Uses
- (7) Home Occupation, Minor
- (8) Day Care Facility (limited to twelve (12) or fewer persons in care, in conformance with the standards for a Home Occupation, Minor. See § 16.5.12)
- (9) Nursery School (limited to twelve (12) or fewer persons in care, in conformance with the standards for a Home Occupation, Minor See § 16.5.12)
- (10) Public Facility
- (11) Recreation, Public Facility
- (12) Recreation, Public Open Space

C. Special exception uses

The following uses are permitted as special exception uses in the R-V Zone:

- (1) Public Utility Facility
- (2) Home Occupations, Major
- (3) Day Care Facility (for thirteen (13) or more persons in care, in conformance with the standards for a Home Occupation, Major. See § 16.5.12)
- (4) Nursery School (for thirteen (13) or more persons in care, in conformance with the standards for a Home Occupation, Major. See § 16.5.12)

D. Standards.

All development and the use of land in the R-V Zone must meet the following standards. In addition, the design and performance standards of Chapters 16.5, 16.7 and 16.8 must be met. The Design Handbook provides examples of appropriate design for nonresidential and multiunit residential projects.

- (1) The following space standards apply:

- (a) Minimum land area per dwelling unit: 4,000 square feet.*

*As per Chapter 16.3 definition of "minimum land area per dwelling unit," except to exempt properties which are unable to meet the square feet required for a single-family dwelling unit, provided the lot was conforming prior to October 25, 2012.

(b) Minimum lot size: 6,000 square feet.

(c) Minimum street frontage: 50 feet.

(d) Minimum front yard: 15 feet.

(e) Minimum rear yard, dwellings/structures: 15 feet.

(f) Minimum side yard, dwellings/structures: 10 feet.

(g) Minimum rear and side yards for accessory buildings/structures that are accessory to a residential use and located at least four feet behind the predominant rear line of the principal building: three feet.

(h) Maximum structure coverage: 40%.

(i) Maximum height of principal dwellings/structures: 35 feet.

(j) Maximum height of accessory buildings/structures located closer than 10 feet to a lot line: 15 feet.

(k) Maximum building coverage: 20%

(l) Minimum water body setback for functionally water-dependent uses: zero feet

(m) Minimum setback from streams, water bodies and wetlands: in accordance with Table 16.5.30, § 16.4.28 and Appendix A, Fee Schedules.

E. Shoreland Overlay Zone OZ-SL – Residential – Village Zone (R-V)

(1) Permitted uses

(a) Accessory Buildings, Structures, and Uses

(b) Dwellings if located farther than 100 feet from the normal high-water line of any water bodies, or the upland edge of a wetland Public Facility

[1] Dwelling, Attached Single-Family

[2] Dwelling, Manufactured Housing

[3] Dwelling, Single-Family

[4] Dwelling, Two-Family

(c) Recreation, Public Facility

(d) Recreation, Public Open Space

(2) Special exception uses

(a) Day Care Facility (for thirteen (13) or more persons in care, in conformance with the standards for a major home occupation see § 16.5.12);

(b) Nursery School (for thirteen (13) or more persons in care, in conformance with the standards for a major home occupation (see § 16.5.12);

(c) Home occupation, Major

(d) Home Occupation, Minor

(e) Public Utility Facility

(3) See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL

- 731 F. Resource Protection Overlay Zone OZ-RP – Residential – Village Zone (R-V)
- 732 (1) Permitted Uses: none
- 733 (2) Special Exception Uses
- 734 (a) Accessory Buildings, Structures, and Uses
- 735 (b) Home Occupations, Major
- 736 (c) Home Occupations, Minor
- 737 (d) Public Utility Facility
- 738 (e) Dwelling, Single-Family
- 739
- 740 (3) See § 16.4.29 for purpose and standards in the Resource Protection Overlay Zone OZ-
- 741 RP
- 742

16.4.15 Residential – Rural Conservation (R-RC)**A. Purpose**

The purpose of the Residential – Rural Conservation R-RC Zone is to conserve and protect land areas of the Town which by their location and character require special measures to ensure low-density development. To this end, the following apply:

B. Permitted use.

The following uses are permitted in the R-RC Zone:

- (1) Accessory Dwelling Units
- (2) Cluster Residential Development
- (3) Dwelling, Manufactured Housing
- (4) Dwelling, Single-Family
- (5) Accessory Buildings, Structures, and Uses
- (6) Home Occupations, Minor
- (7) Recreation, Public Facility
- (8) Recreation, Public Open Space
- (9) Agriculture
- (10) Timber Harvesting

C. Special exception uses

The following uses are permitted as special exception uses in the R-RC Zone:

- (1) Home Occupations, Major
- (2) Day Care Facility
- (3) Private Assembly
- (4) Public Facility
- (5) Public or Private School
- (6) Public Utility Facility
- (7) Religious Use
- (8) Recreation, Commercial Indoor
- (9) Recreation, Commercial Outdoor
- (10) Commercial School
- (11) Cemetery
- (12) Major or Minor Subdivision

D. Standards

The following standards must be met unless modified per § 16.8.10H(3), Cluster Residential Development:

- (1) The design and performance standards of Chapters 16.5, 16.7 and 16.8 must be met.
- (2) The following dimensional standards apply:
 - (a) Minimum land area per dwelling unit: 80,000 square feet.*

- 783 *As per Chapter 16.3 definition of "minimum land area per dwelling unit," except
 784 to exempt properties which are unable to meet the square feet required for a single-
 785 family dwelling unit, provided the lot was conforming prior to October 25, 2012.
- 786 (b) Minimum lot size: 80,000 square feet.
- 787 (c) Minimum street frontage: 200 feet.
- 788 (d) Minimum front yard: 40 feet.
- 789 (e) Maximum building coverage: 6%.
- 790 (f) Minimum rear and side yards: 20 feet.
- 791 (NOTE: Buildings higher than 40 actual feet must have side and rear yards not less
 792 than 50% of building height.)
- 793 (g) Maximum building height: 35 feet.
- 794 (NOTE: Minimum distance between principal buildings on the same lot is the
 795 height equivalent to the taller building.)
- 796 (h) Minimum water body setback for functionally water-dependent uses: zero feet.
- 797 (i) Minimum setback from streams, water bodies and wetlands: in accordance with
 798 Table 16.5.30, § 16.4.28 and Appendix A, Fee Schedules.
- 799
- 800 (3) Subdivision types and standards.
- 801 Subject to net residential acreage and net residential density per § 16.2.2.
- 802 (a) Cluster residential development.
- 803 In a cluster residential development, the above standards may be modified in
 804 accordance with special provisions of § 16.8.10.H(3), including that there is no
 805 minimum lot size, and with the conditions that:
- 806 [1] Minimum principal building separation as required by the Fire Chief, but not
 807 less than 20 feet.
- 808 (b) Subdivision development [special exception uses, § 16.4.15.C].
- 809 In a subdivision development, standards in § 16.4.15D(1) and (2) apply and
 810 include:
- 811 [1] Minimum percentage of common open space: 15%.
- 812
- 813 E. Shoreland Overlay Zone – Residential Conservation Zone (R-RC)
- 814 (1) Permitted uses
- 815 (a) Accessory Buildings, Structures, and Uses
- 816 (b) Agriculture
- 817 (c) Dwellings if located farther than 100 feet from the normal high-water line of any
 818 water bodies, or the upland edge of a wetland
- 819 [1] Dwelling, Manufactured Housing
- 820 [2] Dwelling, Single-Family
- 821 (d) Recreation, Public Facility
- 822 (e) Recreation, Public Open Space
- 823 (f) Timber Harvesting
- 824
- 825 (2) Special exception uses

- (a) Day Care Facility
 - (b) Home occupation, Major
 - (c) Home Occupation, Minor
 - (d) Recreation, Selected Commercial
 - (e) Public Utility Facility
 - (f) Commercial School
 - (g) Public or Private School
 - (h) Public Facility
 - (i) Religious Use
 - (j) Private Assembly
- (3) See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL

F. Resource Protection Overlay Zone OZ-RP – Residential – Rural Conservation Zone (R-RC)

(1) Permitted Uses

- (a) Recreation, Public Facility
- (b) Recreation, Public Open Space
- (c) Timber Harvesting

(2) Special Exception Uses

- (a) Accessory Buildings, Structures, and Uses
- (b) Agriculture
- (c) Home Occupations, Major
- (d) Home Occupations, Minor
- (e) Recreation, Commercial Indoor
- (f) Recreation, Commercial Outdoor (exclusive of golf courses)
- (g) Public Utility Facility
- (h) Dwelling, Single-Family

- (3) See § 16.4.29 for purpose and standards in the Resource Protection Overlay Zone OZ-RP

16.4.16 Conservation (CON)

A. Purpose

The purposes of the Conservation Zone are to preserve and protect natural environmental areas, conservation lands, park and other areas, including but not limited to the Rachel Carson Wildlife Preserve, Town Farm Forest, state and local parklands, and land with conservation easements that prohibit development in perpetuity; further the maintenance of safe and healthful conditions; prevent and control potential water pollution sources; protect spawning grounds, fish, aquatic life, bird and other wildlife habitat; and conserve shore cover, visual as well as actual point of access to inland and coastal waters and natural beauty.

B. Permitted uses

The following uses are permitted in the CON Zone:

- (1) Accessory Buildings, Structures, and Uses
- (2) Open Space, Reserved
- (3) Recreation, Public Facility
- (4) Recreation, Public Open Space
- (5) Existing Land Conservation Uses

C. Special exception uses

The following uses are permitted as special exception uses in the CON Zone:

- (1) Public Facility

D. Standards.

- (1) The design and performance standards of Chapters 16.5, 16.7 and 16.8 must be met.

- (2) Dimensional standards:

- (a) Minimum land area per dwelling unit: not applicable.
- (b) Minimum lot size: none.
- (c) Minimum street frontage: none.
- (d) Minimum front yard: 40 feet.
- (e) Maximum building coverage: 6%.
- (f) Minimum rear and side yards: 20 feet. (NOTE: If by variance or existing conditions a building is higher than 40 actual feet, it must have side and rear yards not less than 50% of building height.)
- (g) Maximum building height: 35 feet. (NOTE: Minimum distance between principal buildings on the same lot is the height equivalent to the taller building.)
- (h) Minimum water body setback for functionally water-dependent uses: zero feet.
- (i) Minimum setback from streams, water bodies and wetlands: in accordance with Table 16.5.30, § 16.4.28 and Appendix A, Fee Schedules.

C. Shoreland Overlay Zone OZ-SL – Conservation (CON)

- (1) Permitted uses.

- (a) Open Space, Reserved
- (b) Recreation, Public Facility
- (c) Recreation, Public Open Space
- (d) Accessory Buildings, Structures, and Uses
- (e) Existing Land Conservation Uses

- (2) Special exception uses.

- (a) Public facility

908 (3) See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL

909

910 D. Resource Protection Overlay Zone OZ-RP – Conservation (CON)

911 (1) Permitted Uses.

912 (a) Accessory Buildings, Structures, and Uses

913 (b) Existing Land Conservation Uses

914 (c) Recreation, Public Facility

915 (d) Recreation, Public Open Space

916

917 (2) Special Exception Uses

918 (a) Public Facility

919

920 (3) See 16.4.29 for purpose and standards in the Resource Protection Overlay Zone OZ-
921 RP

922 **16.4.17 Business – Local Zone (B-L)**

923 A. Purpose

924 The purpose of the Business – Local B-L Zone is to provide local sales, services and business
925 space within the Town.

926

927 B. Permitted uses

928 The following uses are permitted in the B-L Zone:

929 (1) Accessory Dwelling Unit

930 (2) Dwelling, Attached Single-Family

931 (3) Dwelling, Manufactured Housing

932 (4) Dwelling, Multi-Family

933 (5) Dwelling, Single-Family

934 (6) Dwellings Two-Family

935 (7) Convalescent Care Facility

936 (8) Nursing Care Facility, Long-term

937 (9) Residential Care Facility

938 (10) Accessory Buildings, Structures, and Uses

939 (11) Home Occupation, Major

940 (12) Home Occupation, Minor

941 (13) Day Care Facility

942 (14) Hospital

943 (15) Nursery School

944 (16) Private Assembly

945 (17) Public Facility

946 (18) Public or Private School

- 947 (19) Religious Use
- 948 (20) Recreation, Public Open Space
- 949 (21) Aquaculture
- 950 (22) Commercial Fisheries/Maritime Activities (provided only incidental cleaning and
- 951 cooking of seafood occur at the site)
- 952 (23) Commercial School
- 953 (24) Art Studio or Gallery
- 954 (25) Business & Professional Offices
- 955 (26) Business Service
- 956 (27) Conference Center
- 957 (28) Personal Service
- 958 (29) Restaurant
- 959 (30) Retail Sales (excluding those of which the principal activity entails outdoor sales
- 960 and/or storage and excluding those specifically mentioned under Subsection C of this
- 961 section)
- 962 (31) Retail Sales, Building Materials & Garden Supply (excluding those of which the
- 963 principal activity entails outdoor sales and/or storage)
- 964 (32) Retail Sales, Convenience
- 965 (33) Specialty Food and/or Beverage Facility
- 966 (34) Mass Transit Station
- 967 (35) Parking Area

968

969 C. Special exception uses

970 The following uses are permitted as special exception uses in the B-L Zone:

- 971 (1) Motel
- 972 (2) Hotel
- 973 (3) Inn
- 974 (4) Rooming House
- 975 (5) Funeral Home
- 976 (6) Gasoline Service Station
- 977 (7) Public Assembly Area
- 978 (8) Theater
- 979 (9) Public Utility Facility
- 980 (10) Mechanical Service
- 981 (11) Residential Dwelling Units, as part of a mixed-use building

982

983 D. Standards.

984 All development and the use of land in the B-L Zone must meet the following standards.
985 Kittery's Design Handbook illustrates how these standards can be met. In addition, the design
986 and performance standards of Chapters 16.5, 16.7 and 16.8 must be met.

- 987 (1) Parking. One row of parking spaces and a related access drive may be located between
- 988 the front property line and the front wall of the building extending the full width of the

lot. All other parking must be located to the side and/or rear of the building. All new or revised parking must be visually screened through the use of landscaping, earthen berms and/or fencing from adjacent public streets or residential properties. (See the Design Handbook for appropriate examples.)

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

- (a) Exterior building materials and details. Building materials and details strongly define a project's architectural style and overall character. (See Design Handbook for examples of acceptable materials, building scale and designs.) "One-sided" schemes are prohibited; similar materials and details must be used on all sides of a building to achieve continuity and completeness of design. Predominant exterior building materials must be of good quality and characteristic of Kittery, such as horizontal wood board siding, vertical wood boards, wood shakes, brick, stone or simulated stone, glass and vinyl, or metal clapboard.
- (b) Roofs. A building's prominent roofs must be pitched a minimum of 4:12 unless demonstrated to the Planning Board's satisfaction that this is not practicable. Acceptable roof styles are gabled, gambrel, and hipped roofs. Flat roofs, shed roofs and roof facades (such as "stuck on" mansards) are not acceptable as prominent roof forms except as provided above. Roof colors must be muted. (See Design Handbook for examples.) The roof design must screen or camouflage rooftop protrusions to minimize the visual impact of air-conditioning units, air-handler units, exhaust vents, transformer boxes, and the like. (See Design Handbook for examples of appropriate treatments.)
- (c) Loading docks and overhead doors. Loading docks and overhead doors must be located on the side or rear of the building and screened from view from adjacent properties in residential use.

(3) Landscaping standards. To achieve attractive and environmentally sound site design and appropriate screening of parking areas, in addition to the landscaping standards contained in Chapters 16.7 and 16.8 the following landscaping requirements apply to new and modified existing developments:

- (a) Landscape planter strip. A vegetated landscape planter strip must be provided a minimum of 15 feet in depth adjacent to the right-of-way of all public roads. The Planning Board may reduce the required depth of the landscape planter strip if a sidewalk is provided in front of the parcel and the area between the front property line and the front wall of the building will be designed and used as a pedestrian

- space. The landscape planter strip must include the following landscape elements:
- (b) Ground cover. The entire landscape planter must be vegetated except for approved driveways, walkways, bikeways and screened utility equipment.
 - (c) Street-side trees. A minimum of one tree must be planted for each 25 feet of street frontage. The trees may be spaced along the frontage or grouped or clustered to enhance the visual quality of the site. (See Design Handbook for examples.) The trees must be a minimum two-and-one-half-inch caliper and be at least 12 feet high at the time of planting. The species must be selected from the list of approved street trees in the Design Handbook. Existing large healthy trees must be preserved if practical and will count toward this requirement.
 - (d) Special situations.
 - [1]. Expansions of less than 1,000 square feet to existing uses are exempt from the landscaping standard of this subsection.
 - [2]. Depth of landscape planter strip. In instances where the required minimum depth of the landscape planter strip is legally utilized in accordance with previous permits or approvals, for parking, display, storage, building or necessary vehicle circulation, the depth may be narrowed by the Planning Board to the minimum extent necessary to achieve the objective of the proposed project, provided that shrubs and perennials are planted along the street frontage to soften the appearance of the development from the public street.
 - [3]. Additions and changes in use. For additions to existing buildings and changes of residential structures to a nonresidential use, one street-side tree (see list of street trees in Design Handbook) is required to be planted for every 1,000 square feet of additional gross floor area added or converted to nonresidential use. In instances where parking, display area, storage, building or necessary vehicle circulation exists at the time of enactment of this section, the required trees may be clustered and/or relocated away from the road as is necessary to be practicable. The preservation of existing large trees is encouraged; therefore, the Planning Board may permit the preservation of existing healthy, large, mature trees within the landscape planter strip or other developed areas of the site to be substituted for the planting of new trees.
 - (e). Outdoor service and storage areas. Service and storage areas must be located to the side or rear of the building. Facilities for waste storage such as dumpsters must be located within an enclosure and be visually buffered by fencing, landscaping and/or other treatments. (See Design Handbook for examples of appropriate buffering.)
- (4) Traffic and circulation standards. Sidewalks and roadways must be provided within the site to internally join abutting properties that are determined by the Planning Board to be compatible. In addition, safe pedestrian route(s) must be provided to allow pedestrians to move within the site and between the principal customer entrance and the front lot line where a sidewalk exists or will be provided or where the Planning Board determines that such a route is needed for adequate pedestrian safety and movement. (See Design Handbook for appropriate examples.)
- (5) Open space standards. Open space must be provided as a percentage of the total area of the lot, including freshwater wetlands, water bodies, streams and setbacks. Fifteen

percent of each lot must be designated as open space. Required open space must be shown on the plan with a note dedicating it as "open space." The open space must be located to create an attractive environment on the site, minimize environmental impacts, protect significant natural features or resources on the site and maintain wildlife habitat. Individual large, healthy trees and areas with mature tree cover should be included in the open space. Where possible, the open space must be located to allow the creation of continuous open space networks in conjunction with existing or potential open space on adjacent properties. The required amount of designated open space is reduced to 10% of each lot that is less than 40,000 square feet in size.

(6) The following space standards apply:

- (a) Minimum land area per dwelling unit when all floors are residential: 20,000 square feet if served by on-site sewage disposal; 8,000 square feet if served by the public sewerage system.

(NOTE: Except as otherwise required by the buffer provisions of this title, and except where the side and/or rear yards abut a residential district or use; in which case a minimum of 15 feet or 50% of the building height is required.)

- (b). Minimum land area per dwelling unit when the entire first floor is used for nonresidential uses: 20,000 square feet if served by on-site sewage disposal; 4,000 square feet if served by the public sewerage system.

- (c). Minimum lot size: none.

(NOTE: Except as otherwise required by the buffer provisions of this title, and except where the side and/or rear yards abut a residential district or use; in which case a minimum of 15 feet or 50% of the building height is required.)

- (d). Minimum street frontage: none.

(NOTE: Except as otherwise required by the buffer provisions of this title, and except where the side and/or rear yards abut a residential district or use; in which case a minimum of 15 feet or 50% of the building height is required.)

- (e). Minimum front yard: 15 feet.

(NOTE: Except as otherwise required by the buffer provisions of this title, and except where the side and/or rear yards abut a residential district or use; in which case a minimum of 15 feet or 50% of the building height is required.)

- (f). Maximum front setback of the principal building: 60 feet.

- (g). Minimum rear and side yards: 10 feet.

(NOTE: Except as otherwise required by the buffer provisions of this title, and except where the side and/or rear yards abut a residential district or use; in which case a minimum of 15 feet or 50% of the building height is required.)

- (h). Maximum building height: 40 feet.

(NOTE: Except that space standards for single- and two-family residential uses are the same as for those of the Urban Residential District.)

- (i). Maximum building and outdoor stored material coverage: none, except that side, rear and front yards must be maintained

- (j). Minimum water body setback for functionally water-dependent uses: zero feet.

- (k). Minimum setback from streams, water bodies and wetlands: in accordance with Table 16.5.30, § 16.4.28 and Appendix A, Fee Schedules.

- 1131 (7) Gasoline Sales
1132 (a). Gasoline Sales must a) not be located within 1,000 feet of an existing station; (b)
1133 not be located within 1,000 feet of any private residence; and (c) not be located
1134 within 150 feet of any existing structure.
1135
- 1136 E. Shoreland Overlay Zone OZ-SL – Business – Local Zone (B-L)
- 1137 (1) Permitted uses.
- 1138 (a) Accessory Buildings, Structures, and Uses
1139 (b) Dwellings if located farther than 100 feet from the normal high-water line of any
1140 water bodies, or the upland edge of a wetland
1141 [1] Dwelling, Attached Single-Family
1142 [2] Dwelling, Manufactured Housing
1143 [3] Dwelling, Multi-Family
1144 [4] Dwelling, Single-Family
1145 [5] Dwellings Two-Family
1146 (c) Recreation, Public Open Space
1147
- 1148 (2) Special exception uses.
- 1149 (a). Art Studio or Gallery
1150 (b). Retail Sales, Building Materials & Garden Supply (excluding those of which the
1151 principal activity entails outdoor sales and/or storage)
1152 (c). Business Services
1153 (d). Business & Professional Offices
1154 (e). Commercial Fisheries/Maritime Activities (provided only incidental cleaning and
1155 cooking of seafood occur at the site)
1156 (f). Parking Area
1157 (g). Conference Center
1158 (h). Retail Sales, Convenience
1159 (i). Home Occupation, Major
1160 (j). Home Occupation, Minor
1161 (k). Mass Transit Station
1162 (l). Motel
1163 (m). Hotel
1164 (n). Inn
1165 (o). Rooming House
1166 (p). Personal Services
1167 (q). Public Assembly Area
1168 (r). Theater
1169 (s). Public Utility Facility
1170 (t). Restaurant
1171 (u). Retail Sales, but (excluding those of which the principal activity entails outdoor
1172 sales and/or storage)

- 1173 (v). Commercial School
- 1174 (w). Public or Private School
- 1175 (x). Nursery School
- 1176 (y). Day Care Facility
- 1177 (z). Elder Care Facility
- 1178 (aa). Hospital
- 1179 (bb). Nursing Care Facility, Long-term
- 1180 (cc). Convalescent Care Facility
- 1181 (dd). Public Facility
- 1182 (ee). Religious Use
- 1183 (ff). Private Assembly
- 1184 (gg). Specialty Food and/or Beverage Facility
- 1185
- 1186 (3) See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL
- 1187
- 1188 E. Resource Protection Overlay Zone OZ-RP – Business – Local (B-L).
- 1189 (1) Permitted Uses.
- 1190 (a) Recreation, Public Open Space
- 1191
- 1192 (2) Special Exception Uses.
- 1193 (a) Accessory Uses & Buildings
- 1194 (b) Aquaculture
- 1195 (c) Home Occupations, Major
- 1196 (d) Home Occupations, Minor
- 1197 (e) Public Utility Facilities,
- 1198 (f) Dwelling, Single-Family
- 1199
- 1200 (3) See § 16.4.29 for purpose and standards in the Resource Protection Overlay Zone RP-
- 1201 SL

1202 **16.4.18 Business – Local 1 (B-L1)**

1203 A. Purpose

1204 The purpose of the Business – Local 1 B-L1 Zone is to encourage a smart growth/urban
 1205 design pattern that will serve as a focal point for the provision of local sales, urban
 1206 residences, services and business space. The goal of this section is to create an attractive,
 1207 functional and vibrant pedestrian-scaled neighborhood supporting a mix of commercial and
 1208 residential uses. This type of development reflects a traditional New England pattern of
 1209 building, where commercial uses are located on the first floor and housing on the upper
 1210 floors.

1211

1212 B. Permitted uses

1213 The following uses are permitted in the B-L1 Zone:

- 1214 (1) Accessory Dwelling Unit
- 1215 (2) Dwelling, Attached Single-Family
- 1216 (3) Dwelling, Manufactured Housing
- 1217 (4) Dwelling, Multi-Family
- 1218 (5) Dwelling, Single-Family
- 1219 (6) Dwelling, Two-Family
- 1220 (7) Convalescent Care Facility
- 1221 (8) Nursing Care Facility, Long-term
- 1222 (9) Residential Care Facility
- 1223 (10) Accessory Buildings, Structures, and Uses
- 1224 (11) Home Occupation, Major
- 1225 (12) Home Occupation, Minor
- 1226 (13) Inn
- 1227 (14) Day Care Facility
- 1228 (15) Hospital
- 1229 (16) Nursery School
- 1230 (17) Private Assembly
- 1231 (18) Public Facility
- 1232 (19) Public or Private School
- 1233 (20) Religious Use
- 1234 (21) Recreation, Public Open Space
- 1235 (22) Commercial School
- 1236 (23) Art Studio or Gallery
- 1237 (24) Business & Professional Offices
- 1238 (25) Business Services
- 1239 (26) Conference Center
- 1240 (27) Personal Services
- 1241 (28) Restaurant
- 1242 (29) Retail Sales (excluding those of which the principal activity entails outdoor sales
- 1243 and/or storage and excluding those specifically mentioned under Subsection C of this
- 1244 section)
- 1245 (30) Retail Sales, Building Materials & Garden Supply (excluding those of which the
- 1246 principal activity entails outdoor sales and/or storage)
- 1247 (31) Retail Sales, Convenience
- 1248 (32) Specialty Food and/or Beverage Facility
- 1249 (33) Mass Transit Station
- 1250 (34) Parking Area
- 1251
- 1252 C. Special exception uses
- 1253 The following uses are permitted as special exception uses in the B-L1 Zone:
- 1254 (1) Motel

- 1255 (2) Hotel
- 1256 (3) Rooming House
- 1257 (4) Funeral Home
- 1258 (5) Gasoline Service Station
- 1259 (6) Public Assembly Area
- 1260 (7) Theater
- 1261 (8) Public Utility Facility
- 1262 (9) Farmers Market
- 1263 (10) Mechanical service

1264

1265 D. Standards

1266 All development and the use of land in the B-L1 Zone must meet the following standards.

1267 Kittery's Design Handbook illustrates how these standards can be met. In addition, the design
1268 and performance standards of § 16.5, 16.7 and 16.8 must be met.

1269

1270 (1) The following space standards apply

1271 (a) Minimum land area per dwelling unit:

1272 [1] When all floors are residential: 8,000 square feet

1273 [2] When the entire first floor is in nonresidential use: 3,500 square feet.

1274 (b) Minimum parking spaces per dwelling unit: 1.5.

1275 (c) Minimum lot size: 20,000 square feet.

1276 (d) Minimum street frontage per building: 50 feet.

1277 (e) Maximum front yard: 30 feet.

1278 (NOTE: This area must be designed to promote a pedestrian public space, which
1279 includes, but is not limited to, landscaping, sidewalks and sitting areas. Parking
1280 and outdoor storage are prohibited anywhere in the front yard of the structure,
1281 except for seasonal sales items.)

1282 (f) Minimum rear and side yards: 10 feet.

1283 (NOTE: Except as otherwise required by the buffer provisions of this title, and
1284 except where the side and/or rear yards abut a residential zone or use; in which
1285 case a minimum of 15 feet or 50% of the building height, whichever is greater, is
1286 required.)

1287 (g) Maximum building height: 40 feet.

1288 (h) Maximum building and outdoor stored material coverage: 50%.

1289 (i) Minimum area dedicated to landscaped area: 15%.

1290 (j) Hours of operation must be noted on the final site plan and are determined by the
1291 Planning Board on a case-by-case basis. All lighting other than designated
1292 security lighting must be extinguished outside of noted hours of operation.

1293 (k) Minimum water body setback for functionally water-dependent uses: zero feet.

1294 (l) Minimum setback from streams, water bodies and wetlands: in accordance with
1295 Table 16.5.30, § 16.4.28 and Appendix A, Fee Schedules.

1296 (m) Gasoline Sales must a) not be located within 1,000 feet of an existing station; (b)
1297 not be located within 1,000 feet of any private residence; and (c) not be located

within 150 feet of any existing structure.

(2) Parking.

- (a) Parking must be on the side or back yard;
- (b) Shared access must be provided where feasible; and
- (c) New or revised parking must be visually screened through the use of landscaping, earthen berms and/or fencing from adjacent public streets or residential properties. (See the Design Handbook for appropriate examples.)

(3) Building design standards

Kittery's characteristic buildings reflect its historic seacoast past. The primary architectural styles are New England Colonial (such as Cape Cod and saltbox), Georgian, Federal and Classical Revival. New buildings must be compatible with Kittery's characteristic styles in form, scale, material and color. In general, buildings should be oriented to the street with the front of the building facing the street. Architectural design and structure location must reinforce the human scale and pedestrian nature of the neighborhood by using orientation and building massing, exterior building materials, and roofing as set forth below. The front or street facade must be designed as the front of the building. The front elevation must contain one or more of the following elements: 1) a "front door," although other provisions for access to the building may be provided; 2) windows; or 3) display cases. (See Design Handbook for examples of acceptable materials and designs.) Main entries should be clearly visible from the street and provide adequate cover from the weather. Strict imitation is not required. Design techniques can be used to maintain compatibility with characteristic styles and still leave enough flexibility for architectural variety. To achieve this purpose, the following design standards apply to new and modified existing building projects:

- (a) Exterior building materials and details. Building materials and details strongly define a project's architectural style and overall character. (See Design Handbook for examples of acceptable materials, building scale, and designs.) "One-sided" schemes are prohibited; similar materials and details must be used on all sides of a building to achieve continuity and completeness of design. Predominant exterior building materials must be of good quality and characteristic of Kittery, such as horizontal wood board siding, vertical wood boards, wood shakes, brick, stone or simulated stone, glass and vinyl, or metal clapboard.
- (b) Roofs. A building's prominent roofs must be pitched a minimum of 4:12 unless demonstrated to the Planning Board's satisfaction that this is not practicable. Acceptable roof styles are gabled, gambrel and hipped roofs. Flat roofs, shed roofs and roof facades (such as "stuck on" mansards) are not acceptable as prominent roof forms except as provided above. Roof colors must be muted. (See Design Handbook for examples.) The roof design must screen or camouflage rooftop protrusions to minimize the visual impact of air-conditioning units, air handler units, exhaust vents, transformer boxes and the like. (See Design Handbook for examples of appropriate treatments.)
- (c) Loading docks and overhead doors. Loading docks and overhead doors must be located on the side or rear of the building and must be screened from view from adjacent properties in residential use.

(4) Landscaping/site improvements.

To achieve attractive and environmentally sound site design and appropriate screening of parking areas, in addition to the landscaping standards contained in § 16.7 and § 16.8, the following landscaping requirements apply to new and modified existing developments:

- (a) Fifteen percent of site area must be landscaped;
- (b) Outdoor spaces must be created to reinforce commercial activities and pedestrian-friendly access. Outdoor spaces are encouraged throughout the site with special attention along the sidewalk and street. Architectural features such as decorative pavers, planters and benches are encouraged in the creation of these spaces;
- (c) The space between the roadway and any buildings must be attractively landscaped using trees, flowers, shrubs, fencing or stone walls to reinforce the site's unique character and building design;
- (d) A buffer between commercial and residential zones must be established and be landscaped with a visually pleasing mixed planting type;
- (e) Solid fencing, berms and/or stone walls must be used to prevent headlights from shining on abutting residential property. Incorporating flowering vines and other plantings on fences and blank exterior walls is encouraged;
- (f) Provide street trees in a pattern reflecting the existing streetscape. For new buildings, a minimum of one street tree must be planted for each 25 feet of street frontage. The trees may be spaced along the frontage or grouped or clustered to enhance the visual quality of the site. (See Design Handbook for examples.) The trees must be a minimum two-and-one-half-inch caliper and be at least 12 feet high at the time of planting. The species must be selected from the list of approved street trees in the Design Handbook. Existing large healthy trees must be preserved if practical and will count toward this requirement.
- (g) For additions to existing buildings and changes of residential structures to a nonresidential use, one street-side tree (see list of street trees in Design Handbook) is required to be planted for every 1,000 square feet of additional gross floor area added or converted to nonresidential use. In instances where parking, display area, storage, building or necessary vehicle circulation exists at the time of enactment of this section, the required trees may be clustered and/or relocated away from the road as is necessary to be practicable. The preservation of existing large trees is encouraged; therefore, the Planning Board may permit the preservation of existing healthy, large, mature trees within developed areas of the site to be substituted for the planting of new trees;
- (h) Service and storage areas must be located to the rear of the building and be shielded using plantings and/or fencing. Facilities for waste storage such as dumpsters must be located within an enclosure and be visually buffered by fencing, landscaping and/or other treatments (see Design Handbook for examples of appropriate buffering);
- (i) No storage may be in front of buildings except seasonal sales items;
- (j) Lighting and landscape plans must be provided and approved as a part of final plan; and
- (k) Lighting along the street must be of a pedestrian scale using an architectural fixture appropriate to the neighborhood.

1392

1393 (5) Traffic and circulation standards.

1394 Sidewalks and roadways must be provided within the site to internally join abutting
 1395 properties that are determined by the Planning Board to be compatible. In addition, safe
 1396 pedestrian route(s) must be provided to allow pedestrians to move within the site and
 1397 between the principal customer entrance and the front lot line where a sidewalk exists or
 1398 will be provided or where the Planning Board determines that such a route is needed for
 1399 adequate pedestrian safety and movement. (See Design Handbook for appropriate
 1400 examples.)

1401

1402 E. Shoreland Overlay Zone OZ-SL – Business Local Zone (B-L1)

1403 (1) Permitted uses

1404 (a) Accessory Uses & Building

1405 (b) Aquaculture

1406 (c) Recreation, Public Open Space

1407

1408 (2) Special exception uses

1409 (a) Art Studio or Gallery

1410 (b) Business & Professional Offices

1411 (c) Business Services

1412 (d) Retail Sales, Building Materials & Garden Supply (excluding those of which the
 1413 principal activity entails outdoor sales and/or storage)

1414 (e) Conference Center

1415 (f) Retail Sales, Convenience

1416 (g) Commercial Fisheries/Maritime Activities (provided only incidental cleaning and
 1417 cooking of seafood occur at the site)

1418 (h) Parking Area

1419 (i) Dwelling, Manufactured Housing

1420 (j) Dwelling, Single-Family

1421 (k) Dwelling, Two-Family

1422 (l) Farmers market

1423 (m) Funeral Home

1424 (n) Home Occupation, Major

1425 (o) Home Occupation, Minor

1426 (p) Inn

1427 (q) Mass Transit Station

1428 (r) Motel

1429 (s) Hotel

1430 (t) Inn

1431 (u) Rooming House

1432 (v) Personal Service

1433 (w) Public Assembly Area

1434 (x) Theater

1435 (y) Public Utility Facility

1436 (z) Restaurant

1437 (aa) Retail Sales (excluding those of which the principal activity entails outdoor
 1438 sales and/or storage)

1439 (bb) Specialty Food and/or Beverage Facility

1440

1441 (3) See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL

1442

1443 F. Resource Protection Overlay Zone OZ-RP – Business – Local Zone (B-L1)

1444 (1) Permitted Uses

1445 (a) Recreation, Public Open Space

1446

1447 (2) Special Exception Uses

1448 (a) Accessory Uses & Buildings

1449 (b) Home Occupations, Major

1450 (c) Home Occupations, Minor

1451 (d) Public Utility Facility

1452 (e) Dwelling, Single-Family, including modular homes

1453

1454 (3) See § 16.4.29 for purpose and standards in the Resource Protection Overlay Zone OZ-
1455 RP1456 **16.4.19. Commercial 1, Route 1 Commercial Zone (C-1)**

1457 A. Purpose

1458 (1) The C-1 (Route 1 Commercial) Zone proposes to add a range of uses and building types,
1459 including residential, to a vehicle-dependent predominately retail-oriented shopping area
1460 with proximity to several small neighborhoods. The presence of significant existing
1461 infrastructure and the opportunity to redevelop under-utilized properties for a diversity of
1462 housing types, restaurants, services and shops with increased pedestrian access will allow
1463 the Town to advance Comprehensive Plan housing and economic development goals and
1464 meet the needs of residents into the future.

1465

1466 To reflect the differing character of various parts of the commercial areas, it is divided
1467 into three zones that are shown on the Zoning Map:

1468 C-1 Route 1 Commercial Zone

1469 C-2 Route 236 Commercial Zone

1470 C-3 Bypass/Old Post Road Commercial Zone

1471

1472 Where the standards or requirements for the zones vary, the provisions for the zone in
1473 which the parcel is located apply.

1474

1475 B. Permitted uses

1476 The following uses are permitted in the C-1 Zone:

1477 (1) Accessory Dwelling Unit

1478 (2) Convalescent Care Facility

- 1479 (3) Dwelling, two-family
- 1480 (4) Nursing Care Facility, Long-term
- 1481 (5) Accessory Buildings, Structures, and Uses
- 1482 (6) Home Occupation, Major
- 1483 (7) Home Occupation, Minor
- 1484 (8) Hotel
- 1485 (9) Inn
- 1486 (10) Motel
- 1487 (11) Rooming House
- 1488 (12) Day Care Facility
- 1489 (13) Hospital
- 1490 (14) Nursery School
- 1491 (15) Private Assembly
- 1492 (16) Public Facility
- 1493 (17) Public or Private School
- 1494 (18) Public Utility Facility
- 1495 (19) Religious Use
- 1496 (20) Recreation, Commercial Indoor
- 1497 (21) Recreation, Commercial Outdoor
- 1498 (22) Recreation, Public Open Space
- 1499 (23) Recreation, Public Facility
- 1500 (24) Commercial School
- 1501 (25) Veterinary Hospital
- 1502 (26) Art Studio or Gallery
- 1503 (27) Business & Professional Offices
- 1504 (28) Business Services
- 1505 (29) Conference Center
- 1506 (30) Personal Services
- 1507 (31) Repair Services
- 1508 (32) Restaurant
- 1509 (33) Retail Sales
- 1510 (34) Retail Sales, Building Materials & Garden Supply
- 1511 (35) Retail Sales, Convenience
- 1512 (36) Specialty Food and/or Beverage Facility
- 1513 (37) Mass Transit Station
- 1514 (38) Parking Area
- 1515 (39) Wholesale Businesses

1516

1517 C. Special exception uses

1518 The following uses are permitted as special exception uses in the C-1 Zone:

- 1519 (1) Aquaculture

- 1520 (2) Buildings and structures over 40 feet that conform to the provisions of § 16.7 and
1521 16.8. Buildings and structures, other than multi-family dwelling units as part of a
1522 mixed-use building in the C-1 Zone, west of Route 1, which are taller as allowed in
1523 § 16.4.19.E(2)e higher than 40 actual feet from the lowest point of grade to the
1524 highest point of the building or structure must have side, rear and front yards of
1525 sufficient depth to adequately protect the health, safety and welfare of abutting
1526 properties and which may not be less than current standards or 50% of actual height,
1527 whichever is greater;
- 1528 (3) Cottage Cluster
- 1529 (4) Dwelling, attached single-family
- 1530 (5) Dwelling, multi-family
- 1531 (6) Dwelling units as part of a mixed-use building
- 1532 (7) Funeral Home
- 1533 (8) Gasoline Service Station
- 1534 (9) Industry, Light
- 1535 (10) Mechanical Services
- 1536 (11) Mini Storage not located within 2,000 feet from an existing mini storage
1537 facility located in the same zoning district
- 1538 (12) Public Assembly Area
- 1539 (13) Theater
- 1540 (14) Repair Garage
- 1541 (15) Research & Development
- 1542 (16) Transportation Terminal
- 1543 (17) Warehousing & Storage
- 1544 (18) Marijuana Business, except a Marijuana Cultivation Facility
- 1545

1546 D. Undefined Uses in C-1 and C-3 Zones

- 1547 (1) Undefined uses will be considered by the Planning Board based on the following
1548 criteria:
- 1549 (a). If the use is consistent with the Comprehensive Plan and zoning district purposed;
1550 and
- 1551 (b). If the use meets special exception criteria found in § 16.4.19.E.
- 1552
- 1553 (2) In addition, the undefined use must meet one or both of the following criteria:
- 1554 (a). If the proposed use has substantially similar impacts as a listed use.
- 1555 (b). If the proposed use is compatible with existing uses within the zoning district for
1556 which it is proposed.
- 1557

1558 E. Standards.

- 1559 (1) C Zone standards. All development and the use of land in the C Zone must meet the
1560 following standards. Kittery's Design Handbook illustrates how these standards can be
1561 met. In addition, the design and performance standards of § 16.5, 16.7 and 16.8 must
1562 be met unless noted otherwise below.

(2) The following space standards apply in the C-1 Zones:

(a) Minimum lot size or density:

C-1 Zones	
Cottage Cluster; Dwelling, attached single-family; Dwelling, multi-family; Dwelling, two-family; Dwelling units as part of a mixed-use building	16 units per acre unless 25% of units are affordable housing units as defined by this code, in which case 20 units per acres allowed*
All other uses	40,000 Sq Ft

*NOTE: These uses are exempt from net residential acreage calculations but are subject to minimum land area per dwelling unit requirement as described in § 16.5.18.D Exemptions to net residential acreage calculations.

(b). Minimum street frontage:

C-1 Zone	
All uses	No minimum*

*NOTE: All lots must meet the requirements of § 16.5.14 Lots unless specifically modified by this section (16.4.19). Street frontage must provide sufficient vehicular and pedestrian access for the uses proposed while meeting public health and safety requirements (e.g. Fire Department, Department of Public Works). The applicant must demonstrate to the municipal permitting authority, that the street frontage and lot design meet these requirements to the extent practicable.

(c). Maximum front setback:

C-1 Zone	
All uses	15 Ft*

* NOTE: The Planning Board may, at its discretion, allow a greater setback when public amenities such as benches, pocket parks, outdoor dining or seating areas are proposed. Properties in the C-3 Zone with frontage on Old Post Road, including those lots which also have frontage on Route 1 Bypass, are required to have at least a 15-foot setback on Old Post Road.

(d). Minimum rear and side setbacks:

C-1 Zone	
All Uses	10 Ft*

*NOTE: Except where side and/or rear setback of proposed new uses about a single-family use and/or any properties located on the east side of Route 1 from the southernmost extent of the C-1 zone north to properties abutting Ox Point Drive in

which case a minimum of 40 feet is required. See 16.4.19.E(4)e for buffer requirements.

(e). Maximum building height:

C-1 Zone	
Dwelling, multi-family; Dwelling units as part of a mixed-use building	50 feet on the west side of Route 1, not including solar apparatus* and 40 feet on the east side of Route 1, not including solar apparatus*.
All other uses	40 Ft

*NOTE: Flat roofs, proposed to locate heating, cooling, or other such mechanical or electrical apparatus off the ground, are acceptable provided that such apparatus is screened from view and the screening is designed as an integral part of the building to aid both aesthetics and noise attenuation. Flat roofs proposed for the purpose of solar array installations are also acceptable.

(f). Impervious Surface:

[1]. For lots in the C-1 and C-3 zones which are currently developed and for which new multi-family, attached single-family or two-family dwellings, cottage clusters, or dwelling units as part of mixed-use building are proposed, either with or without existing or new commercial uses on the same lot, the maximum impervious surface, including but not limited to driveways, buildings, sidewalks and parking areas:

[a]. Is 70%; or

[b]. The Planning Board may at its discretion, allow greater than 70% if proof that all stormwater will be managed on-site, utilizing LID (Low Impact Development) and BMP (Best Management Practice) systems based on MaineDEP's Maine Stormwater Best Management Practices Manual, Volumes I-III as amended from time to time. The stormwater report and plan demonstrating that this requirement is met must be included with the application at the time of submission.

[2]. For lots in the C-3 zone which are currently vacant (no existing structure) and for which new multi-family, attached single-family, or two-family dwellings, cottage clusters, or dwelling units as part of mixed-use building are proposed, the maximum impervious surface, including driveways, buildings, sidewalks and parking areas:

[a]. Is 60%; or

[b]. The Planning Board may, at its discretion, allow greater than 60% if proof that all stormwater will be managed on-site utilizing LID (Low Impact Development) and BMP (Best Management Practice) systems based on Maine DEP's Maine Stormwater Best Management Practices Manual, Volumes 1-III as amended from time to time. The stormwater report and plan demonstrating that this requirement is met must be included with the application at the time of submission.

- 1630 [3] For lots in the C-1 or C-3 zones which are currently developed and for which
1631 redevelopment is proposed with new non-residential structures, the maximum
1632 impervious surface, including but not limited to driveways, buildings,
1633 sidewalks and parking areas:
- 1634 [a]. Is 70%; and all stormwater must be managed on-site, utilizing LID (Low
1635 Impact Development) and BMP (Best Management Practice) systems
1636 based on Maine DEP's Maine Stormwater Best Management Practices
1637 Manual, Volumes 1-III as amended from time to time. The stormwater
1638 report and plan demonstrating that this requirement is met must be
1639 included with the application at the time of submission.
- 1640
- 1641 [4] For all uses in the C-2 Zone, building and outdoor material coverage must
1642 not exceed 40%.
- 1643
- 1644 (g). Minimum water body setback for functionally water-dependent uses: zero feet.
- 1645 (h). Minimum setback from streams, water bodies and wetlands: in accordance with
1646 Table 16.5.30, § 16.4.28 and Appendix A, Fee Schedules.
- 1647 (i). Gasoline Sales i) not located within 1,000 feet of an existing station or private
1648 residence; and ii) not located within 150 feet of an existing structure.
- 1649 (j). Repair Garages must not be located within 150 feet of a private dwelling or
1650 existing structure.
- 1651 (k). Affordable housing requirements:
- 1652 [1]. All requirements in 16.5.4 Affordable Housing must be met.
- 1653 [2]. Density incentives outlined above in (2)(a) may be applied to projects that
1654 create affordable housing units, as defined by this code. No proportional
1655 payment-in-lieu is required if the affordable dwelling unit requirements for the
1656 density incentives are met.
- 1657 (l). Mixed-use buildings must have non-residential uses comprising at least 50% of
1658 the street-facing first floor.
- 1659 (m). Underground utilities are required. The Planning Board may allow an
1660 alternative but it is incumbent upon the applicant to demonstrate why such a
1661 modification request should be granted.
- 1662 (n). Cottage cluster requirements:
- 1663 [1]. Cottage cluster dwelling units must either face the required common open
1664 space or the street. The required open space must be held in common for use
1665 by all the cottage cluster residents and must be immediately accessible to each
1666 dwelling unit, via either the front or the back of each unit.
- 1667 [2]. Each cottage cluster dwelling unit must be no greater than 1,200 square feet.
1668 Spacing between units must comply with the requirements of the Fire
1669 Department and/or the State Fire Marshal's office.
- 1670 [3]. Shared parking areas must be connected to each dwelling unit via a sidewalk
- 1671
- 1672 (3) C-1 Zone standards. All development and the use of land except for new multifamily,
1673 attached single-family or two-family dwellings, cottage clusters, or dwelling units as
1674 part of a mixed-use building within the C-1 Zone must meet the following standards:
1675

(a). Parking.

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

[2]. Each parking space is to contain a rectangular area at least 19 feet long and nine feet wide. Lines demarcating parking spaces may be drawn at various angles in relation to curbs or aisles, so long as the parking spaces so created contain within them the rectangular area required by this section. This is exclusive of drives or aisles giving access thereto, accessible from streets or aisles leading to streets, and usable for the storage or parking of passenger vehicles. Parking spaces or access thereto must be constructed as to be usable year-round.

(b). Building design standards.

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

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

[2] Roofs. A building's prominent roofs must be pitched a minimum of 4:12 unless demonstrated to the Planning Board's satisfaction that this is not practicable. Acceptable roof styles are gabled, gambrel and hipped roofs. Flat roofs, shed roofs and roof facades (such as "stuck on" mansards) are not acceptable as prominent roof forms except as provided above. The roof design must screen or camouflage rooftop protrusions to minimize the visual impact of air-conditioning units, air handler units, exhaust vents, transformer boxes, and the like. (See Design Handbook for examples of appropriate treatments.)

[3] Loading docks and overhead doors. Loading docks and overhead doors must be located on the side or rear of the building and screened from view from adjacent properties in residential use.

(c). Landscaping site improvements

To achieve attractive and environmentally sound site design and appropriate screening of parking areas, in addition to the landscaping standards contained in Chapter 16.8 the following landscaping requirements apply to new and modified existing developments:

[1]. Landscape planter strip. A vegetated landscape planter strip must be provided a minimum of 30 feet in depth adjacent to the right-of-way of all public roads and include the following landscape elements:

[2]. Ground cover. The entire landscape planter strip must be vegetated except for approved driveways, walkways, bikeways and screened utility equipment.

[3]. Street-side trees. A minimum of one street tree must be planted for each 25 feet of street frontage. The trees may be spaced along the frontage or grouped or clustered to enhance the visual quality of the site. (See Design Handbook for examples.) The trees must be a minimum two-and-one-half-inch caliper and be at least 12 feet high at the time of planting. The species should be selected from the list of recommended street trees in the Design Handbook. Existing large healthy trees must be preserved if practical and will count toward this requirement.

[4]. Planter strip. Shrubs and flowering perennials must be planted at a minimum of 10 plants per 40 linear feet of street frontage unless existing woodlands are being retained or such planting is inconsistent with the retention of rural landscape features. The plant material should be selected from the list of recommended materials in the Design Handbook. The plants must be placed within the planter strip to enhance the visual character of the site and augment natural features and vegetation. (See Design Handbook for examples of appropriate treatments.)

[5]. Special situations.

[a]. Expansions of less than 2,000 square feet to existing uses are exempt from the landscaping standard of this subsection. [b]. Depth of landscape planter strip. In instances where the required minimum depth of the landscape planter strip is legally utilized, in accordance with previous permits or approvals, for parking, display, storage, building or necessary vehicle circulation, the depth may be narrowed by the Planning Board to the minimum extent necessary to achieve the objective of the proposed project, provided the required shrubs and perennials are planted along the street frontage to soften the appearance of the development from the public street. If providing the required landscape planter strip together with other required landscaping and required vegetated areas in and around wetlands would cause the project to exceed the required open space standards, the depth of the landscape planter strip and the front yard may be reduced by the Planning Board so the open space standards are not exceeded, but in no case to less than 20 feet for this reason.

[c]. Additions and changes in use. For additions to existing buildings and changes of residential structures to a nonresidential use, one street-side tree (see list of recommended street trees in Design Handbook) is required to be planted for every 1,000 square feet of additional gross floor area added or converted to nonresidential use. In instances where parking, display area, storage, building or necessary vehicle circulation exists at the time of

enactment of this section, the required trees may be clustered and/or relocated away from the road as is necessary to be practicable. The preservation of existing large trees is encouraged; therefore, the Planning Board may permit the preservation of existing healthy, large, mature trees within the landscape planter strip or other developed areas of the site to be substituted for the planting of new trees.

[d]. Residences. Residential additions to existing single- and two-family dwellings and proposed single- and duplex-family dwellings are exempt from the landscaping standards of this subsection.

[6]. Outdoor service and storage areas. Service and storage areas must be located to the side or rear of the building. Facilities for waste storage such as dumpsters must be located within an enclosure and be visually buffered by fencing, landscaping and/or other treatments. (See Design Handbook for examples of appropriate buffering.)

(d). Traffic and circulation standards

[1]. Sidewalks and roadways must be provided within the site to internally join abutting properties that are determined by the Planning Board to be compatible. In addition, safe pedestrian route(s) must be provided to allow pedestrians to move within the site and between the principal customer entrance and the front lot line where a sidewalk exists or will be provided or where the Planning Board determines that such a route is needed for adequate pedestrian safety and movement. (See Design Handbook for appropriate examples.)

(e). Open space standards

[1]. Open space must be provided as a percentage of the total area of the lot, including freshwater wetlands, water bodies, streams and setbacks. Twenty-five percent of each lot must be designated as open space. Required open space must be shown on the plan with a note dedicating it as "open space." The open space must be located to create an attractive environment on the site, minimize environmental impacts, protect significant natural features or resources on the site, and maintain wildlife habitat. Individual large, healthy trees and areas with mature tree cover should be included in the open space. Where possible, the open space must be located to allow the creation of continuous open space networks in conjunction with existing or potential open space on adjacent properties. The required amount of designated open space is reduced to 15% of each lot that is less than 100,000 square feet in size.

[2]. Minimum land area per unit for elder-care facilities that are connected to the public sewerage system:

[a]. Dwelling unit with two or more bedrooms: 3,000 square feet.

[b]. Dwelling unit with less than two bedrooms: 2,000 square feet.

[c]. Residential care unit: 1,500 square feet.

[d]. Minimum land area per bed for nursing care and convalescent care facilities that are connected to the public sewerage system: 1,200 square feet.

- (4) C-1 and C-3 Zone standards for attached single-family dwellings, multi-family dwellings, two-family dwellings where more than one two-family dwelling is proposed for a single lot, cottage clusters, and dwelling units as part of a mixed-use building:

(a). Design Standards.

See Kittery's Design Handbook for further information on how these standards can be met.

- [1]. Sidewalks must be installed within the right-of-way to meet minimum requirements as specified in 16.5.27, subject to review and approval by the Department of Public Works and MaineDOT if required.
- [2]. Connectivity between new housing development and adjacent existing or new commercial areas is required. This connectivity must, at minimum, include sidewalks or walkways. In the C-1 zone, connectivity may also include vehicular access coupled with sidewalks or walkways between residential and commercial areas. Connectivity must be pedestrian-friendly with appropriately scaled improvements such as eight-foot-wide sidewalks and human-scaled lighting.
- [3]. On-street parking is encouraged on new or existing private roads off Route 1, and may be considered as a part of a joint use parking plan when such on-street parking is proposed as part of a development or redevelopment plan.
- [4]. All service areas for dumpsters, compressors, generators and similar items must be screened by a fence at least six feet tall, constructed of a material similar to surrounding buildings, and must surround the service area except for the necessary ingress/egress.
- [5]. Parking must be located behind multifamily dwellings and mixed-use buildings with residential dwelling units when viewed from the street. The Planning Board may allow parking to the side or front of such residential or mixed-use buildings at its discretion, but it is incumbent upon the applicant to demonstrate why rear parking is not feasible.
- [6]. Lighting plans, including lighting fixture designs and photometric plans must be included at the time of application submission. All fixtures must be cut-off to prevent light trespass and meet all requirements of § 16.7.11.H.
- [7]. A single new two-family dwelling proposed for a lot, the addition of another dwelling unit to an existing single-family residence to create a two-family dwelling and the addition of an ADU (Accessory Dwelling Unit) to a single-family residence is exempt from these design standards.

(b). Open Space Standards.

- [1]. Open space must be provided as a percentage of the total area of the lot, and may include wetlands, waterbodies, streams, and setbacks. Fifteen percent (15%) of each lot must be designated as open space.
- [2]. For multifamily dwellings, mixed-use buildings with residential dwelling units and attached single-family dwellings, in cases where the property does not meet the 15% requirement due to existing development, and where redevelopment will remain at the same or comprise a lower percentage of the

lot, the Planning Board may, at its discretion, allow a smaller percentage of open space. In granting this concession, the Board may require more intensive landscape plantings.

(c). Parking Standards.

The following minimum off-street parking requirements must be provided and maintained in case of new construction, alterations, and changes of use:

[1]. Parking requirements must be met on site unless an existing building covers so much of the lot as to make the provision of parking impractical in whole or in part. If meeting the parking requirements is not practical, then the parking demand may be satisfied off site or through joint-use agreements as specified herein. Notwithstanding the off-street parking requirements in 16.7.11.F, minimum parking requirements for the uses below are modified as specified:

[a]. Dwelling units: 1 parking space per dwelling unit.

[b]. For multifamily dwellings, if more than ten parking spaces are required, up to 20% of the parking may be designated for compact cars. See 16.7.11.F Off-Street Parking Standards.

[2]. Off-site parking. Required off-street parking may be satisfied at off-site locations, provided such parking is on other property owned by the applicant or is under the terms of a contractual agreement that will ensure such parking remains available for the uses served. Applicant must present evidence of a parking location and a contractual agreement;

[3]. Joint-use parking. Required off-street parking may also be satisfied by the joint use of parking space by two or more uses if the applicant can show that parking demand is nonconflicting and will reasonably provide adequate parking for the multiple uses without parking overflowing into undesignated areas. Nonconflicting periods may consist of daytime as opposed to evening hours of operation or weekday as opposed to weekends or seasonal variation in parking demand.

[a]. Such joint parking areas must be held under ownership of the applicant or under terms of a contractual agreement that ensures such parking remains available to all users of the shared parking spaces;

[b]. Determination of parking adequacy will be based on a most frequent basis, not a "worst case" scenario;

[c]. Joint use parking areas must be located within 1,500 feet of the uses served, but do not need to be located on the same lot as the uses served;

[d]. Ease and safety of pedestrian access to shared parking by the users served must be demonstrated to the municipal permitting authority's satisfaction, including any proposed improvements, such as crosswalks or shuttle service that may be offered and its requisite loading/unloading areas;

[e]. Such joint parking areas must not be located in residential zones of the Town.

[4]. In making determinations on off-site or joint-use parking under a development plan review, the municipal permitting authority with jurisdiction to review and approve will make a final determination of the joint-use and/or off-site spaces that constitute an acceptable combination of spaces to meet the required parking demand.

[5]. Electric car charging stations are allowed in parking lots but must not interfere with pedestrian movement on sidewalks.

(d). Landscaping and Screening.

[1]. For new multi-family, attached single-family, or dwelling units as part of a mixed-use building or any new residential use that will create more than three dwelling units on a site, the following standards apply:

[a]. A landscape plan prepared by a registered landscape architect is a submission requirement. However, a landscape plan done by other design professionals may be allowed at the Planning Board's discretion.

[b]. A minimum of one street tree must be planted for each 25 feet of street frontage. Trees may be planted in groups or spaced along the frontage. However, trees must be planted to ensure survival, using silva cells, bioretention cells or tree wells. Trees are to be a minimum of 2.5-inch caliper and 12 feet high at the time of planting. Existing large healthy trees must be preserved if practical and will count towards this requirement. Trees proposed within the right-of-way must remain under 20 feet tall at maturity.

[c]. Surface parking lots designed for five or more cars that will service multifamily or mixed-use buildings with dwelling units and which abut a street, an existing single-family use, or a residential zone, must provide screening in one of the following ways:

[i]. One tree per 25 feet of street frontage backed by a fence constructed of a material similar to surrounding buildings which must screen the parking area from the street except for necessary vehicular and pedestrian access. To ensure survival, trees must be planted using silva cells, bioretention cells or tree wells. Trees must be at least 2.5-inch caliper and 12 feet high at the time of planting. Existing large healthy trees must be preserved if practical and will count towards this requirement. Trees proposed within the right-of-way must remain under 20 feet tall at maturity.

[ii]. A combination of trees and shrubs including at least 50% evergreen species, all at least six feet high at time of planting, in a planting bed at least eight feet wide. Plantings must be sufficient, as determined by the Planning Board, to screen the parking area from the street except for necessary vehicular and pedestrian access. Planting beds may be mulched but no dyed-mulching material may be used.

[d]. A minimum of 10% of any surface parking area consisting of 10 or more spaces must be landscaped with trees and vegetated islands. This requirement is in addition to the aforementioned screening and street tree requirements.

- 1959 [e]. Native trees are preferred and must be drought and salt tolerant when used
- 1960 along streets. A diversity of tree species (three to five species per every 12
- 1961 trees) is required to provide greater resiliency to threats from introduced
- 1962 insect pests and diseases.
- 1963 [f]. Any required plantings that do not survive must be replaced within one
- 1964 year. This requirement does not expire and runs with the land.
- 1965 [g]. If 25% of the proposed development will be affordable dwelling units, the
- 1966 Planning Board may, at its discretion, modify surface parking lot
- 1967 landscaping and screening requirements under [c] and [d] above.

1968

1969 (e). Buffers.

1970 [1]. Buffers are required between new residential uses and existing nonresidential

1971 uses and must be at least 10 feet wide. A buffer plan must be prepared in

1972 conjunction with the landscape plan as described in [d] [1] above and consist

1973 of:

1974 [a]. A fence at least six feet high, constructed of material similar to

1975 surrounding buildings, with plantings of trees at least six feet tall at time

1976 of planting and shrubs on the new residential side of the fence.

1977 [b]. Ground cover plantings such as perennials or ornamental grasses must be

1978 used where appropriate.

1979 [c]. Plantings must be provided with irrigation to enhance survival unless

1980 they are part of a bioretention cell, rain garden or tree well.

1981 [d]. Any required plantings that do not survive must be replaced within one

1982 year. This requirement does not expire and runs with the land.

1983 [e]. If 25% of the proposed development will be affordable housing

1984 dwelling units, the Planning Board may, at its discretion, modify buffer

1985 requirements under [a] and [c].

1986

1987 [2]. Buffers are required between new residential uses and existing single-family

1988 uses and must be at least 10 feet wide. A buffer plan must be prepared in

1989 conjunction with the landscape plan as described in [d] [1] above and consist

1990 of:

1991 [a]. A fence at least six feet high, constructed of material similar to

1992 surrounding buildings, with plantings of trees and shrubs at least six feet

1993 tall on the new residential side of the fence; or

1994 [b]. Plantings of trees at least six feet tall and shrubs, including at least 50%

1995 evergreen species. Such plantings must ensure adequate buffering and

1996 screening is achieved as determined by the Planning Board.

1997 [c]. Ground cover plantings, such as perennials or ornamental grasses must be

1998 used where appropriate.

1999 [d]. Plantings must be provided with irrigation to enhance survival unless

2000 they are part of a bioretention cell, rain garden or tree well.

2001 [e]. Any required plantings that do not survive must be replaced within one

2002 year. This requirement does not expire and runs with the land.

2003 [f]. If 25% of the proposed development will be affordable housing dwelling

2004 units, the Planning Board may, at its discretion, modify buffer

2005 requirements under [a], [b] and [c].

2006

2007 F. Shoreland Overlay Zone OZ-SL – Commercial – 1 Zone (C-1)

2008 (1) Permitted uses

2009 (a) Accessory Buildings, Structures, and Uses

2010 (b) Home Occupation, Major

2011 (c) Home Occupation, Minor

2012 (d) Recreation, Public Facility

2013 (e) Recreation, Public Open Space

2014 (f) Recreation, Selected Commercial

2015 (g) Public Utility Facility

2016 (h) Commercial School

2017 (i) Public or Private School

2018 (j) Nursery School

2019 (k) Hospital

2020 (l) Nursing Care Facility, Long-term

2021 (m) Convalescent Care Facility

2022 (n) Public Facility

2023 (o) Religious Use

2024 (p) Private Assembly

2025

2026 (2) Special exception uses

2027 (a) Aquaculture

2028 (b) Art Studio or Gallery

2029 (c) Retail Sales, Building Materials & Garden Supply;

2030 (d) Business & Professional Offices

2031 (e) Business Services

2032 (f) Parking Area

2033 (g) Conference Center

2034 (h) Day Care Facility

2035 (i) Retail Sales

2036 (j) Retail Sales, Convenience

2037 (k) Mass Transit Station

2038 (l) Mini Storage

2039 (m) Motel

2040 (n) Hotel

2041 (o) Rooming House

2042 (p) Inn

2043 (q) Personal Services

2044 (r) Repair Services

2045 (s) Public Assembly Area

- 2046 (t) Theater
2047 (u) Research & Development
2048 (v) Restaurant
2049 (w) Retail Sales
2050 (x) Wholesale Businesses
2051 (y) Specialty Food and/or Beverage Facility
2052 (z) Transportation Terminal
2053 (aa) Veterinary Hospital
2054 (bb) Warehousing & Storage
2055
2056 (3) See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL
2057
2058 G. Resource Protection Overlay Zone OZ-RP – Commercial – 1 Zone (C-1).
2059 (1) Permitted uses.
2060 (a) Recreation, Public Open Space
2061
2062 (2) Special exception uses.
2063 (a) Accessory Uses & Buildings
2064 (b) Aquaculture
2065 (c) Home Occupations, Major
2066 (d) Home Occupations, Minor
2067 (e) Public Utility Facilities
2068 (f) Research & Development
2069
2070 (3) See § 16.4.29 for purpose and standards in the Resource Protection Overlay Zone OZ-
2071 RP
2072

2073 16.4.20 Commercial 2, Route 236 Commercial Zone (C-2)**2074 A. Purpose**

2075 (1) The purpose of the C-2 (Route 236 Commercial) Zone is to provide services, industry
2076 and business space within the Town in a location capable of conveniently serving
2077 community-wide and/or regional trade areas and oriented primarily to vehicular access.

2078 To reflect the differing character of various parts of the commercial areas, it is divided
2079 into three zones that are shown on the Zoning Map:

2080 C-1 Route 1 Commercial Zone

2081 C-2 Route 236 Commercial Zone

2082 C-3 Bypass/Old Post Road Commercial Zone

2083 Where the standards or requirements for the zones vary, the provisions for the zone in
2084 which the parcel is located apply.

2085 B. Permitted uses

2086 The following uses are permitted in the C-2 Zone:

2087 (1) Accessory Dwelling Unit

2088 (2) Convalescent Care Facility

2089 (3) Nursing Care Facility, Long-term

2090 (4) Accessory Buildings, Structures, and Uses

2091 (5) Home Occupation, Major

2092 (6) Home Occupation, Minor

2093 (7) Hotel

2094 (8) Inn

2095 (9) Motel

2096 (10) Rooming House

2097 (11) Day Care Facility

2098 (12) Hospital

2099 (13) Nursery School

2100 (14) Private Assembly

2101 (15) Public Facility

2102 (16) Public or Private School

2103 (17) Public Utility Facility

2104 (18) Religious Use

2105 (19) Recreation, Commercial Indoor

2106 (20) Recreation, Commercial Outdoor

2107 (21) Recreation, Public Open Space

2108 (22) Recreation, Public Facility

2109 (23) Aquaculture

2110 (24) Commercial Fisheries/Maritime Activities (provided only incidental cleaning and
2111 cooking of seafood occur at the site)

2112 (25) Commercial School

- 2113 (26) Veterinary Hospital
- 2114 (27) Art Studio or Gallery
- 2115 (28) Business & Professional Offices
- 2116 (29) Business Service
- 2117 (30) Conference Center
- 2118 (31) Personal Service
- 2119 (32) Repair Service
- 2120 (33) Restaurant
- 2121 (34) Retail Sales
- 2122 (35) Retail Sales, Building Materials & Garden Supply
- 2123 (36) Retail Sales, Convenience
- 2124 (37) Specialty Food and/or Beverage Facility
- 2125 (38) Boatyard
- 2126 (39) Mass Transit Station
- 2127 (40) Mechanical Services
- 2128 (41) New Motor Vehicle Sales
- 2129 (42) Parking Area
- 2130 (43) Wholesale Business

2131

2132 C. Special Exceptions

2133 The following land uses are permitted as special exception uses in the C-2 Zone:

- 2134 (1) Adult Entertainment Establishment
- 2135 (2) Buildings and structures over 40 feet that conform to the provisions of § 16.7 and
- 2136 16.8. Buildings and structures higher than 40 actual feet from the lowest point of
- 2137 grade to the highest point of the building or structure must have side, rear and front
- 2138 yards of sufficient depth to adequately protect the health, safety and welfare of
- 2139 abutting properties, and which may not be less than current standards or 50% of actual
- 2140 height, whichever is greater;
- 2141 (3) Commercial Greenhouse
- 2142 (4) Construction Services
- 2143 (5) Funeral Home
- 2144 (6) Gasoline Service Station
- 2145 (7) Industry, Light
- 2146 (8) Mini Storage
- 2147 (9) Repair Garage
- 2148 (10) Public Assembly Area
- 2149 (11) Theater
- 2150 (12) Research & Development
- 2151 (13) Shops in Pursuit of Trade
- 2152 (14) Transportation Terminal
- 2153 (15) Used Car Lot
- 2154 (16) Warehousing & Storage

2155 (17) Marijuana Business

2156

2157 D. Standards

2158 (1) C Zone standards. All development and the use of land in the C Zone must meet the
 2159 following standards. Kittery's Design Handbook illustrates how these standards can be
 2160 met. In addition, the design and performance standards of § 16.5, 16.7 and 16.8 must
 2161 be met unless noted otherwise below.

2162

2163 (2) The following space standards apply in the C-2 Zones:

2164 (a) Minimum lot size or density:

C-2 Zone	
All uses:	40,000 Sq Ft

2165

2166 (b). Minimum street frontage:

C-2 Zone	
All uses:	150 Ft

2167

2168 (c). Maximum front setback:

C-2 Zone	
All uses:	50 Ft

2169

2170 (d). Minimum rear and side setbacks:

C-2 Zone	
All Uses	30 Ft**

2171 **NOTE: Except as may be required by the buffer provisions of
 2172 this title, and where the side and/or rear yards of the proposed
 2173 nonresidential use abut a residential zone or use; in which case
 2174 a minimum of 40 feet is required.

2175

2176 (e). Maximum building height:

C-2 Zone	
(f). All uses:	(g). 40 Ft

2177

2178 (f). Impervious Surface:

2179 [1] For all uses in the C-2 Zone, building and outdoor material coverage must not
 2180 exceed 40%.

2181 (g). Minimum water body setback for functionally water-dependent uses: zero feet.

- 2182 (h). Minimum setback from streams, water bodies and wetlands: in accordance with
 2183 Table 16.5.30, § 16.4.28 and Appendix A, Fee Schedules.
- 2184 (i). Gasoline Sales i) not located within 1,000 feet of an existing station or private
 2185 residence; and ii) not located within 150 feet of an existing structure.
- 2186 (j). Repair Garages must not be located within 150 feet of a private dwelling or
 2187 existing structure.
- 2188 (k). Affordable housing requirements:
- 2189 [1]. All requirements in 16.5.4 Affordable Housing must be met.
- 2190 [2]. Density incentives outlined above in (2) (a) may be applied to projects that
 2191 create affordable housing units, as defined by this code. No proportional
 2192 payment-in-lieu is required if the affordable dwelling unit requirements for the
 2193 density incentives are met.
- 2194
- 2195 (l). Mixed-use buildings must have non-residential uses comprising at least 50% of
 2196 the street-facing first floor.
- 2197 (m). Underground utilities are required. The Planning Board may allow an
 2198 alternative but it is incumbent upon the applicant to demonstrate why such a
 2199 modification request should be granted.
- 2200 (n). Cottage cluster requirements:
- 2201 [1]. Cottage cluster dwelling units must either face the required common open
 2202 space or the street. The required open space must be held in common for use
 2203 by all the cottage cluster residents and must be immediately accessible to each
 2204 dwelling unit, via either the front or the back of each unit.
- 2205 [2]. Each cottage cluster dwelling unit must be no greater than 1,200 square feet.
 2206 Spacing between units must comply with the requirements of the Fire
 2207 Department and/or the State Fire Marshal's office.
- 2208 [3]. Shared parking areas must be connected to each dwelling unit via a sidewalk
 2209
- 2210 (3) C-2 Zone standards.
- 2211 (a). Parking
- 2212 [1]. All new or revised parking must be visually screened through the use of
 2213 landscaping, earthen berms and/or fencing from adjacent public streets or
 2214 residential properties. (See the Design Handbook for appropriate examples.)
- 2215 [2]. Each parking space is to contain a rectangular area at least 19 feet long and
 2216 nine feet wide. Lines demarcating parking spaces may be drawn at various
 2217 angles in relation to curbs or aisles, so long as the parking spaces so created
 2218 contain within them the rectangular area required by this section. This is
 2219 exclusive of drives or aisles giving access thereto, accessible from streets or
 2220 aisles leading to streets, and usable for the storage or parking of passenger
 2221 vehicles. Parking spaces or access thereto must be constructed as to be usable
 2222 year-round.
- 2223
- 2224 (b). Building design standards
- 2225 [1]. New buildings should meet the general design principles set forth in the
 2226 Design Handbook. In general, buildings should be oriented to the street with
 2227 the front of the building facing the street. The front or street facade must be

- 2228 designed as the front of the building. The front elevation must contain one or
2229 more of the following elements:
- 2230 [a]. A "front door," although other provisions for access to the building may
2231 be provided;
- 2232 [b]. Windows; or
- 2233 [c]. Display cases.
- 2234
- 2235 [2]. A building's prominent roofs must be pitched a minimum of 4:12 unless
2236 demonstrated to the Planning Board's satisfaction that this is not practicable.
2237 Acceptable roof styles are gabled, gambrel and hipped roofs. Flat roofs, shed
2238 roofs and roof facades (such as "stuck on" mansards) are not acceptable as
2239 prominent roof forms except as provided above. (See Design Handbook for
2240 examples of acceptable designs.)
- 2241 (c). Landscaping site improvements. To achieve attractive and environmentally sound
2242 site design and appropriate screening of parking areas, in addition to the
2243 landscaping standards contained in Chapter 16.8 the following landscaping
2244 requirements apply to new and modified existing developments:
- 2245 [1]. Landscape planter strip. A vegetated landscape planter strip must be provided
2246 a minimum of 20 feet in depth adjacent to the right-of-way of all public roads
2247 and include the following landscape elements:
- 2248 [a]. Ground cover. The entire landscape planter strip must be vegetated
2249 except for approved driveways, walkways, bikeways and screened utility
2250 equipment.
- 2251 [b]. Street-side trees. A minimum of one street tree must be planted for each
2252 50 feet of street frontage. The trees may be spaced along the frontage or
2253 grouped or clustered to enhance the visual quality of the site. (See Design
2254 Handbook for examples.) The trees must be a minimum two-and-one-
2255 half-inch caliper and be at least 12 feet high at the time of planting. The
2256 species should be selected from the list of recommended street trees in the
2257 Design Handbook. Existing large healthy trees must be preserved if
2258 practical and will count toward this requirement.
- 2259
- 2260 (d). Special situations
- 2261 [1]. Expansions of less than 2,000 square feet to existing uses are exempt from the
2262 landscaping standard of this subsection.
- 2263 [2]. Depth of landscape planter strip. In instances where the required minimum
2264 depth of the landscape planter strip is legally utilized, in accordance with
2265 previous permits or approvals for parking, display, storage, building or
2266 necessary vehicle circulation, the depth may be narrowed by the Planning
2267 Board to the minimum extent necessary to achieve the objective of the
2268 proposed project, provided that the required shrubs and perennials are planted
2269 along the street frontage to soften the appearance of the development from the
2270 public street.
- 2271 [3]. Additions and changes in use. For additions to existing buildings and changes
2272 of residential structures to a nonresidential use, one street-side tree (see list of
2273 recommended street trees in Design Handbook) is required to be planted for
2274 every 1,000 square feet of additional gross floor area added or converted to

nonresidential use. In instances where parking, display area, storage, building or necessary vehicle circulation exists at the time of enactment of this section, the required trees may be clustered and/or relocated away from the road as is necessary to be practicable. The preservation of existing large trees is encouraged; therefore, the Planning Board may permit the preservation of existing healthy, large, mature trees within the landscape planter strip or other developed areas of the site to be substituted for the planting of new trees.

[4]. Residences. Residential additions to existing single- and two-family dwellings and proposed single and duplex family dwellings are exempt from the landscaping standards of this subsection.

(e). Outdoor service and storage areas. No areas for the storage of raw materials, equipment or finished products other than small areas for the display of samples of products available for sale or rent may be located between the front property line and the front facade of the building. Display areas may not be located within the required landscape planter strip. Facilities for waste storage such as dumpsters must be located within an enclosure and be visually buffered by fencing, landscaping and/or other treatments. (See Design Handbook for examples of appropriate buffering.)

(f). Traffic and circulation standards

[1]. Vehicular and pedestrian circulation must meet the general provisions of the Design Handbook.

E. Shoreland Overlay Zone OZ-SL – Commercial – 2 Zone (C-2)

(1) Permitted uses

(a) Accessory Buildings, Structures, and Uses

(b) Home Occupation, Major

(c) Home Occupation, Minor

(d) Aquaculture

(e) Recreation, Public Facility

(f) Recreation, Public Open Space

(g) Recreation, Selected Commercial

(h) Public Utility Facility

(i) Commercial School

(j) Public or Private School

(k) Nursery School

(l) Hospital

(m) Nursing Care Facility, Long-term

(n) Convalescent Care Facility

(o) Public Facility

(p) Religious Institution

(q) Private Assembly

- 2319 (2) Special exception uses
- 2320 (a) Adult Entertainment Establishment, not located within 1,000 feet of an existing
- 2321 private residence, school or place of worship
- 2322 (b) Art Studio or Gallery
- 2323 (c) Boatyard
- 2324 (d) Business & Professional Offices
- 2325 (e) Business Services
- 2326 (f) Commercial Fisheries/Maritime Activities (provided only incidental cleaning and
- 2327 cooking of seafood occur at the site)
- 2328 (g) Parking Area
- 2329 (h) Conference Center
- 2330 (i) Construction Services
- 2331 (j) Day Care Facility
- 2332 (k) Retail Sales, Convenience
- 2333 (l) Retail Sales
- 2334 (m) Mass Transit Station
- 2335 (n) Mini Storage
- 2336 (o) Motel
- 2337 (p) Hotel
- 2338 (q) Rooming House
- 2339 (r) Inn
- 2340 (s) Personal Service
- 2341 (t) Public Assembly Area
- 2342 (u) Theater
- 2343 (v) Research & Development
- 2344 (w) Restaurant
- 2345 (x) Wholesale Business
- 2346 (y) Repair Services
- 2347 (z) Shops in Pursuit of Trade
- 2348 (aa) Specialty Food and/or Beverage Facility
- 2349 (bb) Transportation Terminal
- 2350 (cc) Veterinary Hospital
- 2351 (dd) Warehousing & Storage

2352

- 2353 (3) See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL

2354

2355 F. Resource Protection Overlay Zone OZ-RP – Commercial – 2 Zone (C-2).

- 2356 (1) Permitted Uses.

- 2357 (a) Recreation, Public Open Space

2358

- 2359 (2) Special Exception Uses.

16.4 LAND USE ZONE REGULATIONS

Adopted: January 24, 2022

- 2360 (a) Accessory Uses & Buildings
- 2361 (b) Aquaculture
- 2362 (c) Public Utility Facility
- 2363
- 2364 (3) See § 16.4.29 for purpose and standards in the Resource Protection Overlay Zone OZ-
- 2365 RP
- 2366

2367 16.4.21 Commercial 3, Bypass/Old Post Road Commercial Zone (C-3)**2368 A. Purpose.**

- 2369 (1) The C-3 (Bypass/Old Post Road Commercial) Zone proposed to introduce a mix of
2370 housing, businesses and services to an area that serves as one of the gateways to and
2371 through Kittery. Existing infrastructure, proximity to residential neighborhoods, and
2372 direct access to I-95 give this zone opportunities for housing and commercial uses, as
2373 well as advancing pedestrian access, serving residents and the region.

2374

2375 To reflect the differing character of various parts of the commercial areas, it is divided
2376 into three zones that are shown on the Zoning Map:

2377 C-1 Route 1 Commercial Zone

2378 C-2 Route 236 Commercial Zone

2379 C-3 Bypass/Old Post Road Commercial Zone

2380

2381 Where the standards or requirements for the zones vary, the provisions for the zone in
2382 which the parcel is located apply.

2383 B. Permitted uses

2384 The following uses are permitted in the C-3 Zone:

- 2385 (1) Accessory Dwelling Unit
2386 (2) Convalescent Care Facility
2387 (3) Dwelling, two-family
2388 (4) Nursing Care Facility, Long-term
2389 (5) Residential Care Facility
2390 (6) Accessory Buildings, Structures, and Uses
2391 (7) Home Occupation, Major
2392 (8) Home Occupation, Minor
2393 (9) Hotel
2394 (10) Inn
2395 (11) Motel
2396 (12) Rooming House
2397 (13) Day Care Facility
2398 (14) Hospital
2399 (15) Nursery School
2400 (16) Private Assembly
2401 (17) Public Facility
2402 (18) Public or Private School
2403 (19) Public Utility Facility
2404 (20) Religious Use
2405 (21) Recreation, Commercial Indoor
2406 (22) Recreation, Commercial Outdoor
2407 (23) Recreation, Public Open Space

- 2408 (24) Recreation, Public Facility
- 2409 (25) Aquaculture
- 2410 (26) Commercial Fisheries/Maritime Activities (provided only incidental cleaning and
- 2411 cooking of seafood occur at the site)
- 2412 (27) Commercial School
- 2413 (28) Veterinary Hospital
- 2414 (29) Art Studio or Gallery
- 2415 (30) Business & Professional Offices
- 2416 (31) Business Services
- 2417 (32) Conference Center
- 2418 (33) Personal Services
- 2419 (34) Repair Service
- 2420 (35) Restaurant
- 2421 (36) Retail Sales
- 2422 (37) Retail Sales, Building Materials & Garden Supply
- 2423 (38) Retail Sales, Convenience
- 2424 (39) Specialty Food and/or Beverage Facility
- 2425 (40) Boatyard
- 2426 (41) Mass Transit Station
- 2427 (42) Mechanical Services
- 2428 (43) Parking Area
- 2429 (44) Wholesale Business
- 2430
- 2431 C. Special exception uses
- 2432 The following uses are permitted by special exception uses in the C-3 Zone:
- 2433 (1) Buildings and structures over 40 feet that conform to the provisions of § 16.7 and
- 2434 16.8. Buildings and structures, other than multi-family dwellings and dwelling units
- 2435 as part of a mixed-use building in the C-3 Zone, west of Route 1, which are taller as
- 2436 allowed in § 16.4.21.B(41) higher than 40 actual feet from the lowest point of grade
- 2437 to the highest point of the building or structure must have side, rear and front yards of
- 2438 sufficient depth to adequately protect the health, safety and welfare of abutting
- 2439 properties, and which may not be less than current standards or 50% of actual height,
- 2440 whichever is greater;
- 2441 (2) Commercial Greenhouses
- 2442 (3) Construction Services
- 2443 (4) Cottage Cluster
- 2444 (5) Dwelling, attached single-family
- 2445 (6) Dwelling, multi-family
- 2446 (7) Dwellings as part of a mixed-use building
- 2447 (8) Funeral Home
- 2448 (9) Gasoline Service Station
- 2449 (10) Industry, Light

- 2450 (11) Mini Storage not located within 2,000 feet from an existing mini storage facility
 2451 located in the same zoning district
 2452 (12) Public Assembly Area
 2453 (13) Theater
 2454 (14) Repair Garage
 2455 (15) Research & Development
 2456 (16) Shops in Pursuit of Trade
 2457 (17) Transportation Terminal (excluding truck stops)
 2458 (18) Warehousing & Storage
 2459 (19) Marijuana Business
 2460

2461 D. Undefined Uses in C-1 and C-3 Zones

- 2462 (1) Undefined uses will be considered by the Planning Board based on the following
 2463 criteria:
 2464 (a). If the use is consistent with the Comprehensive Plan and zoning district purposed;
 2465 and
 2466 (b). If the use meets special exception criteria found in § 16.4.21.C.
 2467
 2468 (2) In addition, the undefined use must meet one or both of the following criteria:
 2469 (a). If the proposed use has substantially similar impacts as a listed use.
 2470 (b). If the proposed use is compatible with existing uses within the zoning district for
 2471 which it is proposed.

2472 E. Standards.

- 2473 (1) C Zone standards. All development and the use of land in the C Zone must meet the
 2474 following standards. Kittery's Design Handbook illustrates how these standards can be
 2475 met. In addition, the design and performance standards of § 16.5, 16.7 and 16.8 must
 2476 be met unless noted otherwise below.
 2477

- 2478 (2) The following space standards apply in the C-3 Zone:

- 2479 (a) Minimum lot size or density:

C-1 and C-3 Zones	
Cottage Cluster; Dwelling, attached single-family; Dwelling, multi-family; Dwelling, two-family; Dwelling units as part of a mixed-use building	16 units per acre unless 25% of units are affordable housing units as defined by this code, in which case 20 units per acres allowed*
All other uses	40,000 Sq Ft

- 2480 *NOTE: These uses are exempt from net residential acreage
 2481 calculations but are subject to minimum land area per dwelling
 2482 unit requirement as described in § 16.5.18.D Exemptions to net
 2483 residential acreage calculations.

2484

2485

(b). Minimum street frontage:

C-1 and C-3 Zones	
All uses	No minimum*

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(c). Maximum front setback:

C-1 and C-3 Zones	
All uses	15 Ft*

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(d). Minimum rear and side setbacks:

C-3 Zone	
All Uses	10 Ft***

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(e). Maximum building height:

C-3 Zone	
Dwelling, multi-family; Dwelling units as part of a mixed-use building	40 Ft*
All other uses	40 Ft

2509

2510

2511

*NOTE: Flat roofs, proposed to locate heating, cooling, or other such mechanical or electrical apparatus off the ground, are acceptable provided that such apparatus is screened from view and the screening

is designed as an integral part of the building to aid both aesthetics and noise attenuation. Flat roofs proposed for the purpose of solar array installations are also acceptable.

****NOTE:** For properties in the C- 3 Zone with frontage on Old Post Road, including those lots which also have frontage on Route 1 Bypass, the setback on Old Post Road must be 15 feet or greater as provided by section(c)above and building heights must not exceed 25 feet for the first 15 feet beyond the minimum 15-foot setback.

(f). Impervious Surface:

[1]. For lots in the C-1 and C-3 zones which are currently developed and for which new multi-family, attached single-family or two-family dwellings, cottage clusters, or dwelling units as part of mixed-use building are proposed, either with or without existing or new commercial uses on the same lot, the maximum impervious surface, including but not limited to driveways, buildings, sidewalks and parking areas:

[a]. Is 70%; or

[b]. The Planning Board may at its discretion, allow greater than 70% if proof that all stormwater will be managed on-site, utilizing LID (Low Impact Development) and BMP (Best Management Practice) systems based on MaineDEP's Maine Stormwater Best Management Practices Manual, Volumes I-III as amended from time to time. The stormwater report and plan demonstrating that this requirement is met must be included with the application at the time of submission.

[2]. For lots in the C-3 zone which are currently vacant (no existing structure) and for which new multi-family, attached single-family, or two-family dwellings, cottage clusters, or dwelling units as part of mixes-use building are proposed, the maximum impervious surface, including driveways, buildings, sidewalks and parking areas:

[a]. Is 60%; or

[b]. The Planning Board may, at its discretion, allow greater than 60% if proof that all stormwater will be managed on-site utilizing LID (Low Impact Development) and BMP (Best Management Practice) systems based on Maine DEP's Maine Stormwater Best Management Practices Manual, Volumes 1-III as amended from time to time. The stormwater report and plan demonstrating that this requirement is met must be included with the application at the time of submission.

[3] For lots in the C-1 or C-3 zones which are currently developed and for which redevelopment is proposed with new non-residential structures, the maximum impervious surface, including but not limited to driveways, buildings, sidewalks and parking areas:

[a]. Is 70%; and all stormwater must be managed on-site, utilizing LID (Low Impact Development) and BMP (Best Management Practice) systems based on Maine DEP's Maine Stormwater Best Management

- 2559 Practices Manual, Volumes 1-III as amended from time to time. The
2560 stormwater report and plan demonstrating that this requirement is met
2561 must be included with the application at the time of submission.
2562
- 2563 [4] For all uses in the C-2 Zone, building and outdoor material coverage must not
2564 exceed 40%.
2565
- 2566 (g). Minimum water body setback for functionally water-dependent uses: zero feet.
2567
- 2568 (h). Minimum setback from streams, water bodies and wetlands: in accordance with
2569 Table 16.5.30, § 16.4.28 and Appendix A, Fee Schedules.
2570
- 2571 (i). Gasoline Sales i) not located within 1,000 feet of an existing station or private
2572 residence; and ii) not located within 150 feet of an existing structure.
2573
- 2574 (j). Repair Garages must not be located within 150 feet of a private dwelling or
2575 existing structure.
2576
- 2577 (k). Affordable housing requirements:
2578 [1]. All requirements in 16.5.4 Affordable Housing must be met.
2579 [2]. Density incentives outlined above in (2).(a) may be applied to projects that
2580 create affordable housing units, as defined by this code. No proportional
2581 payment-in-lieu is required if the affordable dwelling unit requirements for the
2582 density incentives are met.
2583
- 2584 (l). Mixed-use buildings must have non-residential uses comprising at least 50% of
2585 the street-facing first floor.
2586
- 2587 (m). Underground utilities are required. The Planning Board may allow an
2588 alternative but it is incumbent upon the applicant to demonstrate why such a
2589 modification request should be granted.
2590
- 2591 (n). Cottage cluster requirements:
2592 [1]. Cottage cluster dwelling units must either face the required common open
2593 space or the street. The required open space must be held in common for use
2594 by all the cottage cluster residents and must be immediately accessible to each
2595 dwelling unit, via either the front or the back of each unit.
2596 [2]. Each cottage cluster dwelling unit must be no greater than 1,200 square feet.
2597 Spacing between units must comply with the requirements of the Fire
2598 Department and/or the State Fire Marshal's office.
2599 [3]. Shared parking areas must be connected to each dwelling unit via a sidewalk
2600
- 2601 (3) C-3 Zone standards. All development and the use of land except for new multifamily,
2602 attached single-family or two-family dwellings, cottage clusters, or dwelling units as
2603 part of a mixed-use building within the C-3 Zone must meet the following standards:

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- (a). Parking.
- [1]. All new or revised parking must be visually screened through the use of landscaping, earthen berms and/or fencing from adjacent public streets or residential properties. (See the Design Handbook for appropriate examples.)
- [2]. Each parking space is to contain a rectangular area at least 19 feet long and nine feet wide. Lines demarcating parking spaces may be drawn at various angles in relation to curbs or aisles, so long as the parking spaces so created contain within them the rectangular area required by this section. This is exclusive of drives or aisles giving access thereto, accessible from streets or aisles leading to streets, and usable for the storage or parking of passenger vehicles. Parking spaces or access thereto must be constructed as to be usable year-round.
- (b). Building design
- [1]. Kittery's characteristic buildings reflect its historical seacoast past. The primary architectural styles are New England Colonial (such as Cape Cod and saltbox), Georgian, Federal and Classical Revival. New buildings must be compatible with Kittery's characteristic styles in form, scale, material and color. In general, buildings should be oriented to the street with the front of the building facing the street. The front or street facade must be designed as the front of the building. The front elevation must contain one or more of the following elements: 1) a "front door," although other provisions for access to the building may be provided; 2) windows; or 3) display cases. (See Design Handbook for examples of acceptable materials and designs.) Strict imitation is not required. Design techniques can be used to maintain compatibility with characteristic styles and still leave enough flexibility for architectural variety. To achieve this purpose, the following design standards apply to new and remodeled building projects:
- [2]. Exterior building materials and details. Building materials and details strongly define a project's architectural style and overall character. (See Design Handbook for examples of acceptable materials, building scale and designs.) "One-sided" schemes are prohibited; similar materials and details must be used on all sides of a building to achieve continuity and completeness of design. Predominant exterior building materials must be of good quality and characteristic of Kittery, such as horizontal wood board siding, vertical wood boards, wood shakes, brick, stone or simulated stone, glass and vinyl, or metal clapboard.
- [3]. Roofs. A building's prominent roofs must be pitched a minimum of 4:12 unless demonstrated to the Planning Board's satisfaction that this is not practicable. Acceptable roof styles are gabled, gambrel and hipped roofs. Flat roofs, shed roofs and roof facades (such as "stuck on" mansards) are not acceptable as prominent roof forms except as provided above. The roof design must screen or camouflage rooftop protrusions to minimize the visual impact of air-conditioning units, air handler units, exhaust vents, transformer boxes and the like. (See Design Handbook for examples of appropriate treatments.)
- [4]. Loading docks and overhead doors. Loading docks and overhead doors must be located on the side or rear of the building and screened from view from adjacent properties in residential use.

(c). Landscaping site improvements

[1]. To achieve attractive and environmentally sound site design and appropriate screening of parking areas, in addition to the landscaping standards contained in § 16.7 the following landscaping requirements apply to new and modified existing developments:

[2]. Landscape planter strip. A vegetated landscape planter strip must be provided a minimum of 15 feet in depth adjacent to the right-of-way of all public roads and include the following landscape elements:

[a]. Ground cover. The entire landscape planter strip must be vegetated except for approved driveways, walkways, bikeways and screened utility equipment.

[b]. Street-side trees. A minimum of one tree must be planted for each 50 feet of street frontage. The trees may be spaced along the frontage or grouped or clustered to enhance the visual quality of the site. (See Design Handbook for examples.) The trees must be a minimum two-and-one-half-inch caliper and be at least 12 feet high at the time of planting. The species should be selected from the list of recommended street trees in the Town Design Handbook. Existing large healthy trees must be preserved if practical and will count toward this requirement.

[3]. Special situations.

[a]. Expansions of less than 1,000 square feet to existing uses are exempt from the landscaping standard of this subsection.

[b]. Depth of landscape planter strip. In instances where the required minimum depth of the landscape planter strip is legally utilized, in accordance with previous permits or approvals, for parking, display, storage, building or necessary vehicle circulation, the depth may be narrowed by the Planning Board to the minimum extent necessary to achieve the objective of the proposed project, provided that the required shrubs and perennials are planted along the street frontage to soften the appearance of the development from the public street.

[c]. Additions and changes in use. For additions to existing buildings and changes of residential structures to a nonresidential use, one tree (see list of recommended street trees in Design Handbook) is required to be planted for every 1,000 square feet of additional gross floor area added or converted to nonresidential use. In instances where parking, display area, storage, building or necessary vehicle circulation exists at the time of enactment of this section, the required trees may be clustered and/or relocated away from the road as is necessary to be practicable. The preservation of existing large trees is encouraged; therefore, the Planning Board may permit the preservation of existing healthy, large, mature trees within the landscape planter strip or other developed areas of the site to be substituted for the planting of new trees.

[4]. Outdoor service and storage areas. Service and storage areas must be located

to the side or rear of the building. Facilities for waste storage such as dumpsters must be located within an enclosure and be visually buffered by fencing, landscaping and/or other treatments. (See Design Handbook for examples of appropriate buffering.)

(d). Traffic and circulation standards

- [1]. Sidewalks and roadways must be provided within the site to internally join abutting properties that are determined by the Planning Board to be compatible. In addition, safe pedestrian route(s) must be provided to allow pedestrians to move within the site and between the principal customer entrance and the front lot line where a sidewalk exists or will be provided or where the Planning Board determines that such a route is needed for adequate pedestrian safety and movement. (See Design Handbook for appropriate examples.)

(e). Open space standards

- [1]. Open space must be provided as a percentage of the total area of the lot, including freshwater wetlands, water bodies, streams and setbacks. Twenty percent of each lot must be designated as open space. Required open space must be shown on the plan with a note dedicating it as "open space." The open space must be located to create an attractive environment on the site, minimize environmental impacts, protect significant natural features or resources on the site, and maintain wildlife habitat. Individual large, healthy trees and areas with mature tree cover should be included in the open space. Where possible, the open space must be located to allow the creation of continuous open space networks in conjunction with existing or potential open space on adjacent properties. The required amount of designated open space is reduced to 10% of each lot that is less than 40,000 square feet in size.

- (4) C-1 and C-3 Zone standards for attached single-family dwellings, multi-family dwellings, two-family dwellings where more than one two-family dwelling is proposed for a single lot, cottage clusters, and dwelling units as part of a mixed-use building:

(a). Design Standards.

See Kittery's Design Handbook for further information on how these standards can be met.

- [1]. Sidewalks must be installed within the right-of-way to meet minimum requirements as specified in 16.5.27, subject to review and approval by the Department of Public Works and MaineDOT if required.
- [2]. Connectivity between new housing development and adjacent existing or new commercial areas is required. This connectivity must, at minimum, include sidewalks or walkways. In the C-1 zone, connectivity may also include vehicular access coupled with sidewalks or walkways between residential and commercial areas. Connectivity must be pedestrian-friendly with appropriately scaled improvements such as eight-foot wide sidewalks and human-scaled lighting.
- [3]. On-street parking is encouraged on new or existing private roads off Route 1,

and may be considered as a part of a joint use parking plan when such on-street parking is proposed as part of a development or redevelopment plan.

[4]. All service areas for dumpsters, compressors, generators and similar items must be screened by a fence at least six feet tall, constructed of a material similar to surrounding buildings, and must surround the service area except for the necessary ingress/egress.

[5]. Parking must be located behind multifamily dwellings and mixed-use buildings with residential dwelling units when viewed from the street. The Planning Board may allow parking to the side or front of such residential or mixed-use buildings at its discretion, but it is incumbent upon the applicant to demonstrate why rear parking is not feasible.

[6]. Lighting plans, including lighting fixture designs and photometric plans must be included at the time of application submission. All fixtures must be cut-off to prevent light trespass and meet all requirements of 16.7.11.H.

[7]. A single new two-family dwelling proposed for a lot, the addition of another dwelling unit to an existing single-family residence to create a two-family dwelling and the addition of an ADU (Accessory Dwelling Unit) to a single-family residence is exempt from these design standards.

(b). Open Space Standards.

[1]. Open space must be provided as a percentage of the total area of the lot, and may include wetlands, waterbodies, streams, and setbacks. Fifteen percent (15%) of each lot must be designated as open space.

[2]. For multifamily dwellings, mixed-use buildings with residential dwelling units and attached single-family dwellings, in cases where the property does not meet the 15% requirement due to existing development, and where redevelopment will remain at the same or comprise a lower percentage of the lot, the Planning Board may, at its discretion, allow a smaller percentage of open space. In granting this concession, the Board may require more intensive landscape plantings.

(c). Parking Standards.

The following minimum off-street parking requirements must be provided and maintained in case of new construction, alterations, and changes of use:

[1]. Parking requirements must be met on site unless an existing building covers so much of the lot as to make the provision of parking impractical in whole or in part. If meeting the parking requirements is not practical, then the parking demand may be satisfied off site or through joint-use agreements as specified herein. Notwithstanding the off-street parking requirements in Article IX of Chapter 16.8, minimum parking requirements for the uses below are modified as specified:

[a]. Dwelling units: 1 parking space per dwelling unit.

[b]. For multifamily dwellings, if more than ten parking spaces are required, up to 20% of the parking may be designated for compact cars. See 16.7.11.F Off-Street Parking Standards.

[2]. Off-site parking. Required off-street parking may be satisfied at off-site

locations, provided such parking is on other property owned by the applicant or is under the terms of a contractual agreement that will ensure such parking remains available for the uses served. Applicant must present evidence of a parking location and a contractual agreement;

[3]. Joint-use parking. Required off-street parking may also be satisfied by the joint use of parking space by two or more uses if the applicant can show that parking demand is nonconflicting and will reasonably provide adequate parking for the multiple uses without parking overflowing into undesignated areas. Nonconflicting periods may consist of daytime as opposed to evening hours of operation or weekday as opposed to weekends or seasonal variation in parking demand.

[a]. Such joint parking areas must be held under ownership of the applicant or under terms of a contractual agreement that ensures such parking remains available to all users of the shared parking spaces;

[b]. Determination of parking adequacy will be based on a most frequent basis, not a "worst case" scenario;

[c]. Joint use parking areas must be located within 1,500 feet of the uses served, but do not need to be located on the same lot as the uses served;

[d]. Ease and safety of pedestrian access to shared parking by the users served must be demonstrated to the municipal permitting authority's satisfaction, including any proposed improvements, such as crosswalks or shuttle service that may be offered and its requisite loading/unloading areas;

[e]. Such joint parking areas must not be located in residential zones of the Town.

[4]. In making determinations on off-site or joint-use parking under a development plan review, the municipal permitting authority with jurisdiction to review and approve will make a final determination of the joint-use and/or off-site spaces that constitute an acceptable combination of spaces to meet the required parking demand.

[5]. Electric car charging stations are allowed in parking lots but must not interfere with pedestrian movement on sidewalks.

(d). Landscaping and Screening.

[1]. For new multi-family, attached single-family, or dwelling units as part of a mixed-use building or any new residential use that will create more than three dwelling units on a site, the following standards apply:

[a]. A landscape plan prepared by a registered landscape architect is a submission requirement. However, a landscape plan done by other design professionals may be allowed at the Planning Board's discretion.

[b]. A minimum of one street tree must be planted for each 25 feet of street frontage. Trees may be planted in groups or spaced along the frontage.

However, trees must be planted to ensure survival, using silva cells, bioretention cells or tree wells. Trees are to be a minimum of 2.5-inch caliper and 12 feet high at the time of planting. Existing large healthy trees must be preserved if practical and will count towards this requirement. Trees proposed within the right-of-way must remain under 20 feet tall at maturity.

- [c]. Surface parking lots designed for five or more cars that will service multifamily or mixed-use buildings with dwelling units and which abut a street, an existing single-family use, or a residential zone, must provide screening in one of the following ways:

[i]. One tree per 25 feet of street frontage backed by a fence constructed of a material similar to surrounding buildings which must screen the parking area from the street except for necessary vehicular and pedestrian access. To ensure survival, trees must be planted using silva cells, bioretention cells or tree wells. Trees must be at least 2.5-inch caliper and 12 feet high at the time of planting. Existing large healthy trees must be preserved if practical and will count towards this requirement. Trees proposed within the right-of-way must remain under 20 feet tall at maturity.

[ii]. A combination of trees and shrubs including at least 50% evergreen species, all at least six feet high at time of planting, in a planting bed at least eight feet wide. Plantings must be sufficient, as determined by the Planning Board, to screen the parking area from the street except for necessary vehicular and pedestrian access. Planting beds may be mulched but no dyed-mulching material may be used.

- [d]. A minimum of 10% of any surface parking area consisting of 10 or more spaces must be landscaped with trees and vegetated islands. This requirement is in addition to the aforementioned screening and street tree requirements.

- [e]. Native trees are preferred and must be drought and salt tolerant when used along streets. A diversity of tree species (three to five species per every 12 trees) is required to provide greater resiliency to threats from introduced insect pests and diseases.

- [f]. Any required plantings that do not survive must be replaced within one year. This requirement does not expire and runs with the land.

- [g]. If 25% of the proposed development will be affordable dwelling units, the Planning Board may, at its discretion, modify surface parking lot landscaping and screening requirements under [c] and [d].

(e). Buffers.

- [1]. Buffers are required between new residential uses and existing nonresidential uses and must be at least 10 feet wide. A buffer plan must be prepared in

2886 conjunction with the landscape plan as described in [d] [1] [a] above and
 2887 consist of:

- 2888 [a]. A fence at least six feet high, constructed of material similar to
- 2889 surrounding buildings, with plantings of trees at least six feet tall at time
- 2890 of planting and shrubs on the new residential side of the fence.
- 2891 [b]. Ground cover plantings such as perennials or ornamental grasses must be
- 2892 used where appropriate.
- 2893 [c]. Plantings must be provided with irrigation to enhance survival unless
- 2894 they are part of a bioretention cell, rain garden or tree well.
- 2895 [d]. Any required plantings that do not survive must be replaced within one
- 2896 year. This requirement does not expire and runs with the land.
- 2897 [e]. If 25% of the proposed development will be affordable housing dwelling
- 2898 units, the Planning Board may, at its discretion, modify buffer
- 2899 requirements under [a] and [b].

2900

2901 [2]. Buffers are required between new residential uses and existing single-family
 2902 uses and must be at least 10 feet wide. A buffer plan must be prepared in
 2903 conjunction with the landscape plan as described in [d] [1] [a] above and
 2904 consist of:

- 2905 [a]. A fence at least six feet high, constructed of material similar to
- 2906 surrounding buildings, with plantings of trees and shrubs at least six feet
- 2907 tall on the new residential side of the fence; or
- 2908 [b]. Plantings of trees at least six feet tall and shrubs, including at least 50%
- 2909 evergreen species. Such plantings must ensure adequate buffering and
- 2910 screening is achieved as determined by the Planning Board.
- 2911 [c]. Ground cover plantings, such as perennials or ornamental grasses must
- 2912 be used where appropriate.
- 2913 [d]. Plantings must be provided with irrigation to enhance survival unless
- 2914 they are part of a bioretention cell, rain garden or tree well.
- 2915 [e]. Any required plantings that do not survive must be replaced within one
- 2916 year. This requirement does not expire and runs with the land.
- 2917 [f]. If 25% of the proposed development will be affordable housing dwelling
- 2918 units, the Planning Board may, at its discretion, modify buffer
- 2919 requirements under [a], [b] and [c].

2920

2921 F. Shoreland Overlay Zone OZ-SL – Commercial – 3 Zone (C-3)

2922 (1) Permitted uses

- 2923 (a) Accessory Buildings, Structures, and Uses
- 2924 (b) Home Occupation, Major
- 2925 (c) Home Occupation, Minor
- 2926 (d) Aquaculture
- 2927 (e) Recreation, Public Facility
- 2928 (f) Recreation, Public Open Space
- 2929 (g) Recreation, Selected Commercial

- 2930 (h) Public Utility Facility
- 2931 (i) Commercial School
- 2932 (j) Public or Private School
- 2933 (k) Nursery School
- 2934 (l) Hospital
- 2935 (m) Elder Care Facility
- 2936 (n) Nursing Care Facility, Long-term
- 2937 (o) Convalescent Care Facility
- 2938 (p) Public Facility
- 2939 (q) Religious Use
- 2940 (r) Private Assembly
- 2941
- 2942 (2) Special exception uses
- 2943 (a) Adult Entertainment Establishment, not located within 1,000 feet of an existing
- 2944 private residence, school or place of worship
- 2945 (b) Art Studio or Gallery
- 2946 (c) Boatyard
- 2947 (d) Business & Professional Offices
- 2948 (e) Business Services
- 2949 (f) Commercial Fisheries/Maritime Activities, provided only incidental cleaning and
- 2950 cooking of seafood occur at the site
- 2951 (g) Parking Area
- 2952 (h) Conference Center
- 2953 (i) Construction Services
- 2954 (j) Day Care Facility
- 2955 (k) Funeral Home
- 2956 (l) Retail Sales, Convenience
- 2957 (m) Mass Transit Station
- 2958 (n) Motel
- 2959 (o) Hotel
- 2960 (p) Rooming House
- 2961 (q) Inn
- 2962 (r) Mini Storage
- 2963 (s) Personal Service
- 2964 (t) Public Assembly Area
- 2965 (u) Theater
- 2966 (v) Research & Development
- 2967 (w) Restaurant
- 2968 (x) Retail Sales
- 2969 (y) Wholesale Business
- 2970 (z) Shops in Pursuit of Trade
- 2971 (aa) Transportation Terminal (excluding truck stops)

- 2972 (bb) Veterinary Hospital
2973 (cc) Warehousing & Storage
2974
2975 (3) See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL
2976
2977 G. Resource Protection Overlay Zone OZ-RP – Commercial – 3 Zone (C-3)
2978 (1) Permitted Uses
2979 (a) Recreation, Public Open Space
2980
2981 (2) Special Exception Uses
2982 (a) Accessory Uses & Buildings
2983 (b) Aquaculture
2984 (c) Home Occupations, Major
2985 (d) Home Occupations, Minor
2986 (e) Public Utility Facility
2987
2988 (3) See § 16.4.29 for purpose and standards in the Resource Protection Overlay Zone OZ-
2989 RP
2990

2991 **16.4.22 Industrial (IND)**

2992 A. Purpose

2993 The purpose of the Industrial IND Zone is to provide areas within the Town for
2994 manufacturing, processing, treatment and research, to which end all the performance
2995 standards set forth in this title apply.

2996

2997 B. Permitted uses

2998 The following uses are permitted in the IND Zone:

2999 (1) Accessory Buildings, Structures, and Uses

3000 (2) Home Occupation, Major

3001 (3) Home Occupation, Minor

3002 (4) Research & Development

3003 (5) Industry, Heavy

3004

3005 C. Special exception uses

3006 The following uses are permitted as special exception uses in the IND Zone:

3007 (1) Public Facility

3008 (2) Public Utility Facility

3009

3010 D. Standards

3011 (1) The design and performance standards of § 16.5, 16.7 and 16.8 must be met.

3012 (2) The following space standards apply:

3013

3014 (a) Minimum area of lot: none.

3015 (b) Minimum street frontage: none.

3016 (c) Minimum front yard: none.

3017 (d) Minimum rear and side yards: 30 feet.

3018 (NOTE: Except as may be required by the buffer provisions of this title, and
3019 except where the side and/or rear yards abut a residential zone or use; in which
3020 case a minimum of 50 feet or 50% of the building or outdoor stored material
3021 height, whichever is greater, is required.)

3022 (e) Maximum building height: none.

3023 (f) Maximum building coverage: none.

3024 (g) Minimum setback from water body and wetland water-dependent uses: zero feet.

3025 (h) Minimum setback from streams, water bodies and wetlands: in accordance with
3026 Table 16.5.30, § 16.4.28 and Appendix A, Fee Schedules.

3027

3028 E. Shoreland Overlay Zone OZ-SL – Industrial Zone (IND)

3029 (1) Permitted uses

3030 (a) Accessory Use & Building

- 3031 (b) Home Occupation, Major
3032 (c) Home Occupation, Minor
3033 (d) Research & Development
3034
3035 (2) Special exception uses
3036 (a) Industry, Heavy
3037 (b) Public Facility
3038 (c) Public Utility Facility
3039
3040 (3) See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL
3041
3042 F. Resource Protection Overlay Zone OZ-RP – Industrial Zone (IND)
3043 (1) Permitted Uses
3044 (a) Research & Development
3045
3046 (2) Special Exception Uses
3047 (a) Accessory Uses & Buildings
3048 (b) Home Occupations, Major
3049 (c) Home Occupations, Minor
3050 (d) Public Facility
3051 (e) Public Utility Facility
3052
3053 (3) See § 16.4.29 for purpose and standards in the Resource Protection Overlay Zone OZ-
3054 RP
3055 NOTE: It is recognized that federal ownership of this zone at the time of enactment of
3056 the ordinance codified in this title precludes enforcement of any local regulations.
3057

3058 **16.4.23 Mixed-Use (MU)**

3059 A. Purpose

3060 To provide opportunities for a mix of office, service, and limited residential and retail uses, to
3061 alter the pattern of commercial activity on Route 1, to serve Kittery's needs, and to minimize
3062 traffic congestion. A mix of uses on a site is desired and, in some cases, required; a
3063 continuation of strip development is not encouraged in this zone. The Mixed-Use Zone is
3064 intended to accommodate growth.

3065 The purpose of large lot sizes, open space standards, and frontage requirements is to limit the
3066 number of access points along U.S. Route 1, to encourage the development of service roads
3067 which may serve several developments, and to create development that will retain the
3068 predominant rural character of the zone. Other objectives are to encourage an orderly and
3069 safe traffic flow along U.S. Route 1, pedestrian safety, and an attractive site design enhanced
3070 by landscaping, open space, and restrictions on the locations of parking. These development
3071 goals are supported by the principles and objectives identified in the Town's Design
3072 Handbook, Kittery Maine.

3073 B. Permitted uses

- 3074 (1) Accessory Dwelling Units
- 3075 (2) Dwelling, Single-Family (limited to lots of record as of April 1, 2004)
- 3076 (3) Dwelling, Multi-Family (limited to the upper floors of mixed-use building that is
3077 served by public sewerage)
- 3078 (4) Convalescent Care Facility
- 3079 (5) Nursing Care Facility, Long-term
- 3080 (6) Residential Care Facility
- 3081 (7) Accessory Buildings, Structures, and Uses
- 3082 (8) Home Occupations, Major
- 3083 (9) Home Occupations, Minor
- 3084 (10) Inn
- 3085 (11) Day Care Facility
- 3086 (12) Hospital
- 3087 (13) Private Assembly (which is not used for residential or overnight occupancy)
- 3088 (14) Public Facility
- 3089 (15) Public or Private School (which is not used for residential or overnight occupancy)
- 3090 (16) Recreation, Commercial Indoor
- 3091 (17) Recreation, Commercial Outdoor
- 3092 (18) Recreation, Public Open Space
- 3093 (19) Agriculture
- 3094 (20) Commercial School (which is not used for residential or overnight occupancy)
- 3095 (21) Timber Harvesting
- 3096 (22) Veterinary Hospital
- 3097 (23) Art Studio or Gallery
- 3098 (24) Business & Professional Offices
- 3099 (25) Funeral Home

- 3100 (26) Personal Services
- 3101 (27) Repair Service
- 3102 (28) Research & Development
- 3103 (29) Restaurant
- 3104 (30) Retail Sales (a single use not to exceed 50,000 square feet in gross floor area)
- 3105 (31) Retail Sales, Building Materials & Garden Supply
- 3106 (32) Retail Sales, Convenience
- 3107 (33) Specialty Food and/or Beverage Facility
- 3108 (34) Theater
- 3109 (35) Boat Yard
- 3110 (36) Mass Transit Station
- 3111 (37) Industry, light (less than or equal to 20,000 square feet in gross floor area).
- 3112 (38) Parking Area
- 3113
- 3114 C. Special exception uses
- 3115 (1) Aged-Restricted Housing
- 3116 (2) Campground
- 3117 (3) Recreational Vehicle Park
- 3118 (4) Construction Services
- 3119 (5) Commercial Kennel
- 3120 (6) Commercial Greenhouses
- 3121 (7) Theater, Drive-in
- 3122 (8) Gas Service Station
- 3123 (9) Industry, Light (greater than 20,000 square feet in gross floor area)
- 3124 (10) Mechanical Services
- 3125 (11) Motel
- 3126 (12) Hotel
- 3127 (13) New Motor Vehicle Sales
- 3128 (14) Public Utility Facilities
- 3129 (15) Repair Garage
- 3130 (16) Retail Sales (a single use greater than 50,000 square feet in gross floor area and less
- 3131 than 150,000 square feet in gross floor area)
- 3132 (17) Shop in Pursuit of Trade
- 3133 (18) Transportation Terminal
- 3134 (19) Warehousing & Storage
- 3135 (20) Wholesale Business
- 3136
- 3137 D. Standards
- 3138 (1) All development and the use of land in the MU Zone must meet the following
- 3139 standards. Kittery's Design Handbook illustrates how these standards can be met. In
- 3140 addition, the design and performance standards of § 16.5, 16.7 and § 16.8 must be

met.

(2) Minimum dimensional standards. The following apply:

(a) Minimum lot size:

[1]. Lots with frontage on Route 1: 200,000 square feet.

[2]. Lots without frontage on Route 1: 80,000 square feet.

(b). Minimum street frontage on road with access along U.S. Route 1, Haley Road, Lewis Road, or Cutts Road: 250 feet.

[1]. Other streets or approved ways: 150 feet.

(c). Minimum front yard: 30 feet.

(d). Minimum rear and side yards: 30 feet.

(e). Maximum building height: 40 feet.

(f). Maximum height above grade of building-mounted signs: 40 feet.

(g). Minimum setback from water body and wetland water dependent uses: zero feet.

(h). Minimum setback from streams, water bodies and wetlands: in accordance with Table 16.5.30, § 16.4.28 and Appendix A, Fee Schedules.

(i). Minimum land area per unit for eldercare facilities that are connected to the public sewerage system:

[1]. Dwelling unit with two or more bedrooms: 5,000 square feet.

[2]. Dwelling unit with less than two bedrooms: 4,000 square feet.

[3]. Residential care unit: 2,500 square feet.

(j). Minimum land area per bed for nursing care and convalescent care facilities that are connected to the public sewerage system: 2,000 square feet.

(k). Buffer to I-95 right-of-way: 40 feet.

(l). Buffer to neighboring lot with an existing residence within 100 feet of the lot line: 40 feet.

(m). Vegetated buffer to be maintained between the MU and R-RL Zones: 40 feet.

NOTE 1: For single-family dwellings, one dwelling unit is allowed for each 200,000 square feet of land area. A lot of record having a land area of more than 200,000 square feet that was improved with a single-family dwelling as of April 1, 2004, may be divided into two lots with a single-family dwelling on each lot provided that each of the lots contains at least 40,000 square feet of land area and meets the other dimensional standards of the zone. § 16.4.10.D(1) and (2) as set forth in the Residential - Rural Zone apply and no further subdivision is allowed.

NOTE 2: For dwelling units that are part of a mixed-use building and are connected to the public sewerage system, one dwelling unit is allowed for each 10,000 square feet of buildable land area. Within the Resource Protection and Shoreland Overlay Zones, one dwelling unit is allowed for each 40,000 square feet of land area within these zones. If the parking for the residential units is encompassed within the building, the minimum required buildable land area per dwelling unit is reduced to 7,500 square feet, except in the Resource Protection

3185 and Shoreland Overlay Zones where the area per dwelling unit remains 40,000
3186 square feet.

3187 NOTE 3: For aged-restricted dwelling units that are connected to the public
3188 sewerage system, one dwelling unit is allowed for each 15,000 square feet of
3189 buildable land area. Within the Resource Protection and Shoreland Overlay Zones,
3190 one dwelling unit is allowed for each 40,000 square feet of land within these
3191 zones. If the parking for the aged-restricted units is encompassed within the
3192 building, the minimum required buildable land area per dwelling unit is reduced to
3193 10,000 square feet, except in the Resource Protection and Shoreland Overlay
3194 Zones where the area per dwelling unit remains 40,000 square feet.

3195

3196 (3) Retail use limitation

3197 Retail use, including parking areas and other supporting unvegetated areas for retail use,
3198 is limited to not more than 30% of the developable area of any lot or portion of a lot
3199 within the Mixed-Use Zone.

3200

3201 (4) Mixed-use requirement

3202 The Mixed-Use Zone is intended for the creation of an area in the Town that has a
3203 mix of uses and in which no single type of use predominates. To this end, larger scale
3204 projects must incorporate a mix of principal uses into the development. Any new
3205 development that creates more than 20,000 square feet of gross floor area must
3206 include at least two principal uses as set forth in the list of permitted uses and special
3207 exceptions. To fulfill this requirement, the smaller use or combination of smaller uses
3208 must contain at least 10% of the gross floor area. The combination of retail uses that
3209 are permitted uses and one larger retail use allowed as a special exception does not
3210 fulfill this requirement. This provision does not apply to the development of a single
3211 lot of record as of April 1, 2004, that has a lot area of less than 200,000 square feet.

3212

3213 (5) Location and screening of parking areas

3214 All new parking areas must be located at the side of, and/or to the rear of, principal
3215 buildings. Where unique circumstances exist and it is demonstrated to the Planning
3216 Board that prohibition of parking in front of the principal building is not practicable,
3217 with the Board's approval, 10 or fewer parking spaces may be located closer to the
3218 front lot line than a principal building. All new or altered parking must be visually
3219 screened from U.S. Route 1, Lewis Road, Cutts Road, and Haley Road by extensive
3220 landscaping, earthen berms, and/or fencing (see Design Handbook for examples of
3221 acceptable screening).

3222

3223 (6) Building design standards

3224 Kittery's characteristic buildings reflect its historic seacoast past. The primary
3225 architectural styles are New England Colonial (such as Cape Cod and saltbox),
3226 Georgian, Federal, and Classical Revival. New buildings should be compatible with
3227 Kittery's characteristic styles in form, scale, material, and color. In general, buildings
3228 should be oriented to the street with the front of the building facing the street. The
3229 front or street facade must be designed as the front of the building. The front elevation
3230 must contain one or more of the following elements: (1) a front door although other
3231 provisions for access to the building may be provided, (2) windows, or (3) display

cases (see Design Handbook for examples of acceptable materials and designs). Though strict imitation is not required, design techniques can be used to maintain compatibility with characteristic styles and still leave enough flexibility for architectural variety. To achieve this purpose, the following design standards apply to new and remodeled building projects:

- (a) Exterior building materials and details. Building materials and details strongly define a project's architectural style and overall character (see Design Handbook for examples of acceptable materials, building scale, and designs). "One-sided" schemes are prohibited; similar materials and details must be used on all sides of a building to achieve continuity and completeness of design.

- [1]. Predominant exterior building materials. Predominant exterior building materials must be of good quality and characteristic of Kittery, such as horizontal wood board siding, vertical wood boards, wood shakes, brick, stone or simulated stone, glass and vinyl, or metal clapboard. Stucco, adobe, sheet metal, standard concrete block, tilt-up concrete panels, plywood or particle board are prohibited as the primary materials.

- [2]. Blank walls. A wall may not extend for a length of more than 50 linear feet without an architectural feature such as a dormer, pilaster, cornice, corner, window, porch, or visually compatible door to break up the large mass of a featureless wall (see Design Handbook for examples of the appropriate treatment of walls). As an exception, walls with a clapboard facade may extend for a length of up to 100 feet without such an architectural feature.

- [3]. Light industrial and boatyard uses. Such uses must comply with the above standards only along the front face and extending back 100 feet along the side walls.

- (b). Roofs. Roofs must meet the following standards:

- [1]. Form. A building's prominent roofs must be pitched a minimum of 4:12 unless demonstrated to the Planning Board's satisfaction that this is not practicable. Acceptable roof styles are gabled, gambrel, and hipped roofs. Flat roofs, shed roofs, and roof facades (such as "stuck on" mansards) are not acceptable as primary roof forms.

- [2]. Color. Roof colors must be muted (see Design Handbook for examples).

- [3]. Rooftop mechanical and electrical equipment. Rooftops must be free of clutter. The roof design must screen or camouflage rooftop protrusions to minimize the visual impact of air conditioning units, air handler units, exhaust vents, transformer boxes, and the like (see Design Handbook for examples of appropriate treatments). Interior-mounted equipment is encouraged. Whenever possible, utility equipment areas must be placed in an obscure location and screened from view.

- [4]. Loading docks and overhead doors. Loading docks and overhead doors must be located on the side or rear of the building and be screened from view from public streets.

- (7) Landscaping standards

To achieve attractive and environmentally sound site design, and appropriate screening of parking areas, in addition to the landscaping standards contained in § 16.7 and 16.8,

the following landscaping requirements apply to new and modified existing developments:

(a) Landscape planter strip. A vegetated landscape planter strip 30 feet in depth (as measured from the edge of the property line) must be provided along the length of all developed portions of a parcel that are adjacent to a street right-of-way. The planter strip must include the following landscape elements:

[1]. Ground cover. The entire landscape planter strip must be vegetated except for approved driveways, walkways, bikeways, and screened utility equipment.

[2]. Streetside trees. A minimum of one street tree must be planted for each 25 feet of street frontage. The trees may be spaced along the frontage or grouped or clustered to enhance the visual quality of the site (see Design Handbook for examples). The trees must be a minimum 2.5-inch caliper, and be at least 12 feet high at the time of planting. The species should be selected from the list of approved street trees in the Design Handbook. Existing large healthy trees must be preserved if practical and will count toward this requirement.

[3]. Planter strip. Shrubs and flowering perennials must be planted at a minimum of 10 plants per 40 linear feet of street frontage unless existing woodlands are being retained or such planting is inconsistent with the retention of rural landscape features. The plant material should be selected from the list of approved materials in the Design Handbook. The plants must be placed within the planter strip to enhance the visual character of the site and augment natural features and vegetation (see Design Handbook for examples of appropriate treatments).

[4]. Special situations.

[a]. Expansions of less than 500 square feet to existing uses are exempt from the landscaping standard of this subsection.

[b]. Depth of landscape planter strip. In instances where the required average depth of the landscape planter strip is legally utilized, in accordance with previous permits or approval, for parking, display, storage, building, or necessary vehicle circulation, the depth may be narrowed by the Planning Board to the minimum extent necessary to achieve the objective of the proposed project, provided that the required shrubs and perennials are planted along the street frontage to soften the appearance of the development from the public street. If providing the required landscape planter strip along with other required landscaping and required vegetated areas in and around wetlands would cause the project to exceed the required open space standards, the depth of the landscape planter strip and the front yard may be reduced by the Planning Board so that the open space standards are not exceeded, but in no case to less than 20 feet for this reason.

[c]. Additions and changes in use. For additions to existing buildings and changes of residential structures to a nonresidential use, one streetside tree (see list of recommended street trees in Design Handbook) is required for every 500 square feet of additional gross floor area added or converted to nonresidential use. In instances where parking, display area, storage, building or necessary vehicle circulation exists at the time of enactment of this section, the required trees may be clustered and/or relocated away

from the road as is necessary to be practicable. The preservation of existing large trees is encouraged; therefore, the Planning Board may permit the preservation of existing healthy, large, mature trees within the landscape planter strip or other developed areas of the site to be substituted for the planting of new trees.

[d]. Residences. Residential additions to existing single- and two-family dwellings and proposed single- and duplex-family dwellings are exempt from the landscaping standards of this subsection.

(b). Buffer area. Where buffering is required, it must provide a year-round visual screen to minimize adverse impacts and screen new development (see Design Guidelines for examples of appropriate buffers for various situations), and may consist of fencing, evergreens, retention of existing vegetation, berms, rocks, boulders, mounds or combinations thereof. Within three growing seasons, the buffer must provide a year-round screen at least eight feet in height or such lower height as determined by the Planning Board to be appropriate for the situation. Buffer areas must be maintained and kept free of all outdoor storage, debris, and rubbish. The width of the buffer area may be reduced by the Planning Board if the function of the buffer is still fulfilled.

(c). Rural landscape features. Rural landscape features such as stonewalls, berms, and other agricultural structures, and tree lines or fields must be retained to the maximum extent practicable.

(d). Lighting. Outdoor lighting must provide the minimum illumination needed for the safe use of the site while enhancing the nighttime visual character of the site. Lighting must conform to the standards for outdoor lighting in § 16.7.11.H.

(e). Outdoor service and storage areas. Service and storage areas must be located to the side or rear of the building. Facilities for waste storage such as dumpsters must be located within an enclosure and be visually buffered by fencing, landscaping, and/or other treatments (see Design Handbook for examples of appropriate buffering).

(8) Traffic and circulation standards

Sidewalks and roadways must be provided within the site to internally join abutting properties that are determined by the Planning Board to be compatible. In addition, safe pedestrian route(s) must be provided to allow pedestrians to move within the site and between the principal customer entrance and the front lot line where a sidewalk exists or will be provided or where the Planning Board determines that such a route is needed for adequate pedestrian safety and movement.

(9) Open space standards

Open space must be provided as a percentage of the total area of the lot, including freshwater wetlands, water bodies, streams, and setbacks. Thirty-five percent of each lot must be designated as open space. Required open space must be shown on the plan with a note dedicating it as "open space."

(a) An objective of the open space standard is to encourage the integration of open space throughout the entire development and with the open space on adjoining properties in order to alter the pattern of commercial activity along Route 1. To this end, a minimum of 25% of the required open space must be located in the front 50% of the lot area closest to U.S. Route 1, or if not fronting Route 1, closest to the public street used to enter the lot. The Planning Board may modify this requirement when it is demonstrated to the Board's satisfaction that the objective is met to the greatest practicable extent.

(b) The open space must be located to create an attractive environment on the site, minimize environmental impacts, protect significant natural features or resources on the site, and maintain wildlife habitat. Where possible, the open space must be located to allow the creation of continuous open space networks in conjunction with existing or potential open space on adjacent properties.

(c) Special situations.

[1]. Cases where integrating open space would require exceeding the open space standards. In cases where the topography, wetlands, and existing development on the lot dictates that more than 75% of the required open space be located outside the front portion of the lot, a percentage of the open space normally required in the front portion of the lot may be shifted to the rear portion of the lot in order to achieve the required amount of vegetated open space and not reduce the allowable developable area on the lot, provided minimum landscaping standards are satisfied.

[2]. Small lots. The required amount of designated open space is reduced to 20% of each lot that is less than 100,000 square feet in size.

(10) Conditions for approving special exception uses in the Mixed-Use Zone.

(a) All special exception uses in the Mixed-Use Zone must be visually harmonious with the neighborhood and natural landscape by the use of adequate screening and/or architectural design as follows:

[1]. Screening. Must be screened and buffered through landscaping, fencing, planted berms, existing vegetation, and separations of spaces to shield neighbors from any adverse external effects of the facility and to integrate the facility into the landscape. Plantings must be of sufficient maturity to achieve the desired screening effect within three years.

[2]. Architectural compatibility. Must be in architectural harmony with the area in which it is located to the maximum extent practicable through the appropriate use of facade materials, roof style, scale, bulk, and architectural style and details.

[3]. Location. Facilities located above ground must be sited so as to eliminate adverse impacts associated with the facility to the maximum extent practicable while still fulfilling the basic purpose of the facility.

(b). Retail Sales, a single retail use greater than 50,000 square feet in gross floor area and less than 150,000 square feet in gross floor area:

[1]. Timing. No more than one retail use with a gross floor area greater than 50,000 square feet and less than 150,000 square feet may be approved in any three-year period.

3421 [2].Size. A single retail use with a gross floor area greater than 150,000 square
3422 feet is not permitted.

3423

3424 (c). Gasoline Service Stations.

3425 [1]. Visual screening. A year-round buffer area must be provided between the
3426 gasoline service station and neighboring uses in accordance with the
3427 landscaping standards of the mixed-use zone regulations.

3428 [2]. Separation distance. A gasoline service station may not be located within
3429 2,000 feet of another service station.

3430 [3]. Minimum distance, pump to existing structures. A fuel pump may not be
3431 located closer than 150 feet to an existing occupied structure located off the
3432 site of the gasoline service station.

3433

3434 (d). Theater, Drive-in.

3435 [1]. To protect the tranquility and quality of life of existing residential uses in the
3436 vicinity of the proposed drive-in theater, the hours of operation must be
3437 limited to the degree necessary and/or adequate visual and sound buffers must
3438 be established.

3439

3440 (e). Campground/Recreational Vehicle Park.

3441 [1]. The standards in § 16.5.17 must be satisfied.

3442 [2]. Occupation of any site by single user for a period exceeding 96 hours is
3443 prohibited.

3444 [3]. Quiet hours must be enforced between 10:00 p.m. and 7:00 a.m.

3445

3446 (f). Motel or Hotel.

3447 [1]. Multiple-story structures are encouraged.

3448 [2]. Wherever practicable, building orientation should not be parallel to U.S. Route
3449 1, but must take maximum advantage of the depth of the mixed-use zone.

3450 [3]. More than three separate motels and/or hotels may not be permitted in the
3451 mixed-use zone.

3452

3453 (g). Public Utility Facility.

3454 [1]. Public health and safety. Must not endanger the public health or safety.

3455 [2]. Protect property values. Must not unreasonably reduce the value of abutting
3456 property without just compensation.

3457 [3]. Prevent nuisances. Must prevent the emission of nuisances, such as but not
3458 limited to noise, odors, dust, gas, fumes, smoke, light, vibrations, and
3459 electrical interference, beyond the boundaries of the site to the maximum
3460 extent practicable.

3461

3462 (h). Age-Restricted Housing.

3463 [1]. Location suitability. The location of the site must allow it to be developed so
3464 that the residents of the project will be able to function as part of the

community and have pedestrian access to services and facilities within the area.

- [2]. Mixed use. If an aged-restricted housing component is proposed as part of the project, it must be an essential element of the mixed-use project and be designed to be an integrated part of the overall development.

(i). Commercial Greenhouses

- [1]. The greenhouses and any related outdoor storage or service areas or structures must be visually buffered from Route 1 and adjacent properties.

- [2]. If the greenhouses will be internally lit between 9:00 p.m. and 6:00 a.m., the internal lighting may not be visible from adjacent properties including public streets.

- [3]. The noise resulting from the operation of the facility as measured at the property line must be comparable with other uses in the MU Zone during the period between 9:00 p.m. and 6:00 a.m.

- [4]. The greenhouses and related storage and service areas may not be located within 200 feet of any legally existing residential use, inn, motel or hotel, hospital, or nursing home/convalescent center on another lot.

(j). Industry, light (greater than 20,000 square feet in gross floor area), Transportation Terminal, Warehousing & Storage, or Wholesale Business.

- [1]. The building and any related outdoor storage or service areas or structures must be visually buffered from Route 1 and adjacent properties by other uses allowed in the zone and/or by a landscaped buffer strip.

- [2]. If the area between this use and Route 1 is not developed for another permitted use or special exception, it must be maintained as a naturally vegetated buffer in addition to the provision of a landscape planter strip.

- [3]. The noise resulting from the operation of the facility as measured at the property line must be comparable with other uses in the MU Zone during the period between 9:00 p.m. and 6:00 a.m.

- [4]. The use and related storage and service areas may not be located within 200 feet for any legally existing residential use, inn, motel or hotel, hospital, or nursing home/convalescent center on another lot.

E. Shoreland Overlay Zone OZ-SL – Mixed-Use Zone (MU)

(1) Permitted uses

(a) Agriculture

(b) Art Studio or Gallery

(c) Dwellings, limited to the following:

- [1] Dwellings on lots of record as of April 1, 2004 if located farther than 100 feet from the normal high-water line of any water bodies, or the upland edge of a wetland.

- [2] Dwelling units on the upper floors of a mixed-use building is served by public sewerage if located farther than 100 feet from the normal high-water line of any water bodies, or the upland edge of a wetland.

- 3510 (d) Religious Use
- 3511 (e) Home Occupation, Major
- 3512 (f) Home Occupation, Minor
- 3513 (g) Private Assembly (which is not used for residential or overnight occupancy)
- 3514 (h) Public Facility
- 3515 (i) Recreation, Public Open Space
- 3516 (j) Research & Development
- 3517 (k) Timber Harvesting
- 3518
- 3519 (2) Special exception uses
- 3520 (a) Accessory Buildings, Structures, and Uses
- 3521 (b) Boatyard
- 3522 (c) Business & Professional Offices
- 3523 (d) Commercial Kennel
- 3524 (e) Parking Area
- 3525 (f) Construction Services
- 3526 (g) Convalescent Care Facility
- 3527 (h) Nursing Care Facility, long-term
- 3528 (i) Day Care Facility
- 3529 (j) Residential Care Facility
- 3530 (k) Funeral Home
- 3531 (l) Retail Sales, Convenience
- 3532 (m) Retail Sales (a single use not to exceed 50,000 square feet in gross floor area)
- 3533 (n) Hospital
- 3534 (o) Inn
- 3535 (p) Commercial School (which is not used for residential or overnight occupancy)
- 3536 (q) Public or Private School (which is not used for residential or overnight
- 3537 occupancy)
- 3538 (r) Mass Transit Station
- 3539 (s) Motel
- 3540 (t) Hotel
- 3541 (u) Personal Services
- 3542 (v) Public Utility Facility
- 3543 (w) Repair Services
- 3544 (x) Research & Development
- 3545 (y) Restaurant
- 3546 (z) Recreation, Selected Commercial
- 3547 (aa) Shop in Pursuit of Trade
- 3548 (bb) Specialty Food and/or Beverage Facility
- 3549 (cc) Theater
- 3550 (dd) Transportation Terminal
- 3551 (ee) Veterinary Hospital
- 3552 (ff) Warehousing & Storage
- 3553 (gg) Wholesale Business
- 3554
- 3555 (3) See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL
- 3556

- 3557 F. Resource Protection Overlay Zone OZ-RP – Mixed-Use Zone (MU).
3558 (1) Permitted Uses
3559 (a) Recreation, Public Open Space
3560 (b) Timber Harvesting
3561
3562 (2) Special Exception Uses
3563 (a) Accessory Uses & Buildings
3564 (b) Agriculture
3565 (c) Home Occupations, Major
3566 (d) Home Occupations, Minor
3567 (e) Public Utility Facility
3568 (f) Dwelling, Single-Family (on lots of record as of April 1, 2004)
3569
3570 (3) See § 16.4.29 for purpose and standards in the Resource Protection Overlay Zone OZ-
3571 RP
3572

3573 16.4.24 Mixed-Use – Badger Island (MU-BI)**3574 A. Purpose**

3575 The purpose of the Mixed-Use – Badgers Island MU-BI Zone is to provide opportunities for
3576 a wide variety of uses, including marine-related activities, offices, restaurants, shops,
3577 residences and services, to take advantage of a unique island setting located within walking
3578 distance to both downtown Portsmouth and downtown Kittery, in which water and sewer
3579 services are available to support development.

3580 This zone is further intended to develop standards appropriate for existing small lot sizes and
3581 street frontages to encourage investment in buildings that will contribute to the revitalization
3582 of the greater Kittery Foreside area while balancing business and residential interests to keep
3583 property values up and maintain an urban residential quality of life in the zone.

3584 B. Permitted uses.

3585 The following uses are permitted in the MU-BI Zone:

- 3586 (1) Accessory Dwelling Units
- 3587 (2) Dwellings, Attached Single-Family
- 3588 (3) Dwellings, Manufactured Housing
- 3589 (4) Dwelling, Multi-Family
- 3590 (5) Dwellings, Single-Family
- 3591 (6) Accessory Buildings, Structures, and Uses
- 3592 (7) Home Occupations, Major
- 3593 (8) Home Occupations, Minor
- 3594 (9) Inn
- 3595 (10) Day Care Facility
- 3596 (11) Private Assembly
- 3597 (12) Public Facility
- 3598 (13) Public or Private School
- 3599 (14) Religious Use
- 3600 (15) Recreation, Public Open Space
- 3601 (16) Aquaculture
- 3602 (17) Commercial Fisheries/Maritime Activities (provided only incidental cleaning and
3603 cooking of seafood occur at the site)
- 3604 (18) Commercial School
- 3605 (19) Art Studio or Gallery
- 3606 (20) Business & Professional Offices
- 3607 (21) Conference Center
- 3608 (22) Personal Service
- 3609 (23) Restaurant (with the hours of operation limited to 5:00 a.m. to 11:00 p.m., but
3610 excluding restaurants where ordering and/or pickup of food may take place from a
3611 motorized vehicle)
- 3612 (24) Retail Sales (excluding those with any outdoor sales and/or storage)
- 3613 (25) Specialty Food and/or Beverage Facility
- 3614 (26) Boat Yard

- 3615 (27) Marina
- 3616 (28) Mass Transit Station
- 3617 (29) Mechanical Services

3618

3619 C. Special exception uses.

3620 The following uses are permitted as special exception uses in the MU-BI Zone:

- 3621 (1) Recreation, Commercial Indoor
- 3622 (2) Recreation, Commercial Outdoor
- 3623 (3) Public Assembly Area
- 3624 (4) Theater
- 3625 (5) Public Utility Facility

3626

3627 D. Standards

3628 (1) The following space standards apply

3629 (a) Minimum land area per dwelling unit: 3,000 square feet.

3630 [1]. For each of the first two dwelling units and thereafter: 6,000 square feet.

3631

3632 (b). Minimum lot size: 6,000 square feet.

3633 (c). Minimum street frontage: 50 feet.

3634 (d). Minimum front yard: five feet.

3635 (e). Minimum rear and side yards: 10 feet.

3636 (f). Maximum building height: 40 feet.

3637 (g). Minimum setback from:

3638 [1]. Water body and wetland water-dependent uses: zero feet.

3639 [2]. All other uses (including buildings and parking): 75 feet unless modified,
3640 according to the terms of Subsection E of this section.

3641

3642 (h). Minimum open space on the site: 40%. (NOTE: The Planning Board may reduce
3643 the required open space to 30% where it is clearly demonstrated that no
3644 practicable alternative exists to accommodate a water-dependent use.)

3645

3646 (2) The design and performance standards of § 16.5, 16.7 and 16.8 must be met, except
3647 where specifically altered in this subsection.

3648

3649 (3) Appropriate waterfront activity incentives

3650 To encourage objectives of the Comprehensive Plan to: 1) provide public access to
3651 the waterfront; 2) retain and expand commercial water-dependent uses; and 3) take
3652 extraordinary steps to preserve the environmental quality of the shoreline and tidal
3653 waters, the required setback from water bodies and wetlands may be reduced to 25
3654 feet where the Planning Board finds a development plan significantly contributes to
3655 accomplishment of the above objectives by satisfactorily achieving one or more of the
3656 following:

- 3657 (a) Public access
3658 Grants an easement to the Town, or other acceptable party, providing public access
3659 to the waterfront at no charge to the general public via a developed accessible
3660 pedestrian route with appropriate signage or includes an outdoor deck or patio for
3661 customer seating at a restaurant open to the general public; or
3662
- 3663 (b) Retain/expand commercial water-dependent uses
3664 Provides for inclusion of commercial water-dependent use(s) on the property for
3665 the duration of the portion of the project that encroaches closer than the normal
3666 minimum setback from water bodies and wetlands. Provision of fewer than six
3667 boat slips for leisure/recreational boating do not constitute a commercial water-
3668 dependent use for the purposes of this section; or
3669
- 3670 (c) Preserve the environmental quality of coastal resources. Protect existing wildlife
3671 habitat, conserve shore cover and ensure the quality of stormwater runoff by
3672 satisfying all of the following standards:
3673 [1] Retain and protect existing significant wildlife habitat that provides food,
3674 cover and/or nesting for migratory song birds and wading birds;
3675 [2] In order to conserve shore cover, contiguous areas of shrubberies of varying
3676 height, such as dwarf species of barberry, serviceberry, holly, crabapple,
3677 dogwood, cotoneaster, euonymus, firethorn and/or rosa rugosa, as well as
3678 erosion-resistant ground cover plantings must be retained and planted, and
3679 existing trees retained, wherever practicable in the setback;
3680 [3] Implementation of a stormwater management plan endorsed by the York
3681 County Soil and Water Conservation District (SCS), or the Town's
3682 engineering peer review consultant, that treats stormwater with appropriate
3683 BMPs and removes pollutants in accordance with the most-current edition of
3684 the Maine Department of Environmental Protection BMP Manual, Stormwater
3685 Management for Maine. Pollutants sought to be removed include suspended
3686 solids, nitrates, hydrocarbons and heavy metals. Such special treatment of the
3687 first flush of runoff may include detention, infiltration, filtering and trapping
3688 of pollutants.
3689
- 3690 (4) Special parking standards
3691 (a) Revised off-street parking standards
3692 Off-street parking must be provided in accordance with § 16.7.11.F unless
3693 modified below for the following uses:
3694 [1]. Dwellings: 1 1/2 parking space for each dwelling unit;
3695 [2]. Retail stores: one parking space for each 400 square feet of gross floor area;
3696 [3]. Drive-in restaurants, snack bars and fast-food outlets, but excluding
3697 restaurants where ordering and/or pickup of food may take place from a
3698 motorized vehicle: one parking space for every three seats, but in no case less
3699 than four spaces;
3700 [4]. Conference centers: one parking space for every 60 square feet in the largest
3701 assembly or meeting room.
3702

3703 (b) Joint-use parking

3704 Required off-street parking may be satisfied by the joint use of parking spaces by
3705 two or more uses if the applicant can show that parking demand is nonconflicting
3706 and will reasonably provide adequate parking for multiple uses without parking
3707 overflowing into undesignated areas. Nonconflicting periods may consist of
3708 daytime as opposed to evening hours of operation or weekday as opposed to
3709 weekend hours of operation or seasonal variation in parking demand. In making
3710 this determination under development plan review, the Planning Board must
3711 consider the following factors:

3712 [1]. Such joint parking areas must be held under ownership or under terms of a
3713 contractual agreement that ensures such parking remains available to all users
3714 of the shared parking spaces;

3715 [2]. Analysis is based on a most frequent basis not a "worst case" scenario;

3716 [3]. Joint-use parking areas must be located within reasonable distance to the uses
3717 served, but do not need to be located on the same parcel as the uses served;

3718 [4]. Ease and safety of pedestrian access to shared parking by the users served,
3719 including any improvements or shuttle service necessary; and

3720 [5]. Such joint parking areas may not be located in residential zoning districts.
3721

3722 (c). Off-site parking

3723 Required off-street parking for employee use may be satisfied at off-site locations
3724 located within 1,000 feet measured along lines of public access from the lot to be
3725 served, provided such parking area is on other property owned by the applicant or
3726 under terms of a contractual agreement that will ensure such parking remains
3727 available to the use served.

3729 (d). Employee parking

3730 Required off-street parking for employee use may be satisfied at off-site locations
3731 greater than 1,000 feet from the lot served upon a finding by the Planning Board
3732 that such parking is practicable and will reasonably prevent overflow parking
3733 from occurring on Badgers Island in undesignated locations. In making this
3734 determination under development review, the Planning Board must consider the
3735 following factors:

3736 [1]. Such parking must be located within a reasonable distance to the users.

3737 [2]. Such parking area must be on other property of the applicant or under terms of
3738 a contractual agreement that will ensure such parking remains available to the
3739 use served.

3740 [3]. Safe and convenient means of transporting users to and from the off-site
3741 parking must be demonstrated by the applicant.

3742 [4]. Such off-site parking area must not be located in residential zones of the
3743 Town. Off-site parking for use by employees may deviate from the
3744 dimensional standards contained in § 16.7.11.F, Table 2, Parking Space
3745 Design, if the applicant can demonstrate that the proposal practicably
3746 accommodates the number of parking spaces proposed.

3748 (e). Parking demand management (PDM) strategies

[1]. Parking demand strategies are measures geared toward affecting the demand side of the parking equation rather than the supply side. They attempt to change people's behavior away from traveling to work as a single occupant in an automobile to be parked near the work site. To be successful, they must rely on incentives or disincentives to make these shifts in behavior attractive to the traveler.

[2]. A portion of required off-street parking may be satisfied by an owner incorporating PDM strategies to effectively reduce demand for parking stalls as determined by the Planning Board. In making this determination the Planning Board, under development plan review, must consider the following factors:

- [a]. The written commitment of the employer to maintain and enforce parking policies to reduce demand for parking stalls;
- [b]. The likelihood that specific incentives and policies adopted by the applicant will reduce parking demand on a regular basis throughout the year;
- [c]. Written commitments by employees to participate in PDM strategies; and
- [d]. The results of any studies demonstrating the effectiveness of strategies adopted by the applicant to reduce parking demand.

(f). PDM strategies include, but are not limited to, the following:

[1]. Increase the number of persons per parked vehicle. Potential incentives:

- [a]. Preferential parking locations for car pools and van pools;
- [b]. Guaranteed ride home programs/taxi subsidies;
- [c]. Employer provision of vans for van pools; and
- [d]. Financial incentives to participants in car pools and van pools.

[2]. Increase the number of persons using an alternative mode of travel to the automobile, such as walking, bicycling, motorcycle, moped, bus and shuttle service. Potential incentives:

- [a]. Preferential parking locations for alternative modes of travel;
- [b]. Provision of changing rooms, lockers and showers;
- [c]. Early work release for employees using alternative modes of travel;
- [d]. Financial subsidies toward the purchase of alternative modes of travel to be used for commuting;
- [e]. Guaranteed ride home programs in inclement weather;
- [f]. Preferential work station locations; and
- [g]. Free use of a business vehicle for errands, lunch and off-site appointments.

[3]. Influencing the time of, or need to, travel to work. Potential incentives:

- [a]. Reward employees who telecommute from their home or other remote location;
- [b]. Offer an optional four-day, forty-hour workweek as an alternative to a five-day workweek;
- [c]. Allow nonoverlapping early and late work shifts; and

3794 [d]. Flextime.

3795

3796 E. Shoreland Overlay Zone OZ-SL Mixed-Use – Badger’s Island Zone (MU-BI)

3797 (1) Permitted uses

3798 (a) Aquaculture

3799 (b) Dwellings if located 75 feet or farther from the normal high-water line of any
3800 water bodies, or the upland edge of a wetland.

3801 [1] Dwellings, Attached Single-Family

3802 [2] Dwellings, Manufactured Housing

3803 [3] Dwelling, Multi-Family

3804 [4] Dwellings, Single-Family

3805 (c) Recreation, Public Open Space

3806 (d) Research & Development

3807 (e) Mass Transit Station

3808

3809 (2) Special exception uses

3810 (a) Accessory Buildings, Structures, and Uses

3811 (b) Art Studio or Gallery

3812 (c) Boatyard

3813 (d) Business & Professional Offices

3814 (e) Commercial Fisheries/Maritime Activities (provided only incidental cleaning and
3815 cooking of seafood occur at the site)

3816 (f) Recreation, Commercial Indoor

3817 (g) Recreation, Commercial Outdoor

3818 (h) Day Care Facility

3819 (i) Retail Sales (excluding those with any outdoor sales and/or storage)

3820 (j) Home occupation, Major

3821 (k) Home Occupation, Minor

3822 (l) Inn

3823 (m) Marina

3824 (n) Personal Services

3825 (o) Business Services

3826 (p) Public Assembly Area

3827 (q) Public Utility Facility

3828 (r) Restaurant (with the hours of operation limited to 5:00 a.m. to 11:00 p.m., but
3829 excluding restaurants where ordering and/or pickup of food may take place from a
3830 motorized vehicle)

3831 (s) Commercial School

3832 (t) Public or Private School

3833 (u) Public Facility

3834 (v) Religious Use

3835 (w) Private Assembly

- 3836 (x) Specialty Food and/or Beverage Facility
3837 (y) Theater
3838
3839 (3) See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL
3840
3841 F. Resource Protection Overlay Zone OZ-RP – Mixed-Use – Badger’s Island Zone (MU-BI)
3842 (1) Permitted Uses
3843 (a) Aquaculture
3844 (b) Recreation, Public Open Space
3845
3846 (2) Special Exception Uses
3847 (a) Accessory Uses & Buildings
3848 (b) Home Occupations, Major
3849 (c) Home Occupations, Minor
3850 (d) Public Utility Facility
3851 (e) Dwelling, Single-Family
3852
3853 (3) See § 16.4.29 for purpose and standards in the Resource Protection Overlay Zone OZ-
3854 RP
3855

3856 16.4.25 Mixed-Use – Kittery Foreside (MU-KF)**3857 A. Purpose**

3858 The purpose of the Mixed-Use – Kittery Foreside MU-KF Zone is to provide business,
3859 service and community functions within the Mixed-Use – Kittery Foreside Zone and to
3860 provide a mix of housing opportunities in the historic urbanized center of the community and
3861 to allow for use patterns which recognize the densely built-up character of the zone and the
3862 limitations for providing off-street parking. Design standards are used to facilitate the
3863 revitalization of downtown Kittery Foreside as a neighborhood center, while promoting
3864 economic development of service businesses and walk-in shopping as well as respecting the
3865 zone's historic and residential character.

3866

3867 B. Permitted uses

3868 The following uses are permitted in the MU-KF Zone:

- 3869 (1) Accessory Dwelling Units
- 3870 (2) Dwelling, Attached Single-Family
- 3871 (3) Dwellings, Single-family
- 3872 (4) Dwellings, Two-Family
- 3873 (5) Dwellings, Multi-Family (up to 12 units per lot)
- 3874 (6) Convalescent Care Facility
- 3875 (7) Nursing Care Facility, Long-term
- 3876 (8) Residential Care Facility
- 3877 (9) Accessory Buildings, Structures, and Uses
- 3878 (10) Home Occupation, Major
- 3879 (11) Home Occupation, Minor
- 3880 (12) Inn
- 3881 (13) Hospital
- 3882 (14) Nursery School
- 3883 (15) Private Assembly
- 3884 (16) Public Facility
- 3885 (17) Public or Private School
- 3886 (18) Religious Use
- 3887 (19) Recreation, Public Open Space
- 3888 (20) Commercial Fisheries/Maritime Activities, provided only incidental cleaning and
3889 cooking of seafood occur at the site
- 3890 (21) Commercial School
- 3891 (22) Art Studio or Gallery
- 3892 (23) Business & Professional Offices
- 3893 (24) Business Service
- 3894 (25) Personal Service
- 3895 (26) Public Assembly Area
- 3896 (27) Restaurant

- 3897 (28) Retail Sales (excluding those where the principal activity entails outdoor sales and/or
3898 storage)
- 3899 (29) Specialty Food and/or Beverage Facility
- 3900 (30) Theater
- 3901 (31) Marinas
- 3902 (32) Mass Transit Station
- 3903 (33) Parking Area
- 3904
- 3905 C. Special exception uses
- 3906 The following uses are permitted as special exception uses in the MU-KF Zone:
- 3907 (1) Public Utility Facility
- 3908 (2) Research & Development
- 3909
- 3910 D. Standards.
- 3911 (1) The design and performance standards of § 16.7 and 16.8 must be met, except where
3912 specifically altered in this subsection.
- 3913
- 3914 (2) Dimensional standards. The following space standards apply:
- 3915 (a) Minimum land area per dwelling unit: 5,000 square feet.
- 3916 (b) Minimum lot size: 5,000 square feet.
- 3917 (c) Minimum street frontage: zero feet.
- 3918 (d) Minimum front yard along:
- 3919 [1]. Government Street east of Jones Avenue including Lot 107 at the corner of
3920 Government and Walker Streets: zero feet.
- 3921 [2]. Wallingford Square: zero feet.
- 3922 [3]. Other streets: 10 feet.
- 3923
- 3924 (e) Minimum rear and side yards: 10 feet.
- 3925
- 3926 (f) Minimum separation distance between principal buildings on the same lot: 10 feet.
- 3927
- 3928 (g) Maximum building height: 40 feet. (NOTE: Except that for buildings located on
3929 lots that abut tidal waters, the highest point on the primary structure of the
3930 building including the roof, but excluding chimneys, towers, cupolas and similar
3931 appurtenances that have no floor area, may be not more than 35 feet above the
3932 average grade between the highest and lowest elevations of the original ground
3933 level adjacent to the building.)
- 3934
- 3935 (h) Minimum setback from:
- 3936 [1]. Water body and wetland water-dependent uses: zero feet.
- 3937 [2]. All other uses (including buildings and parking): 75 feet unless modified,
3938 according to the terms of § 16.4.25.D(7) through § 16.4.25.D(10).

- 3939
- 3940 (i) Maximum building coverage: 60%.
- 3941
- 3942 (j) Minimum open space on the site: 40%.
- 3943
- 3944 (k) Minimum land area per unit for elder-care facilities that are connected to the
- 3945 public sewerage system:
- 3946 [1]. Dwelling unit with two or more bedrooms: 3,000 square feet.
- 3947 [2]. Dwelling unit with less than two bedrooms: 2,500 square feet.
- 3948 [3]. Residential care unit: 2,000 square feet.
- 3949 [a]. Minimum land area per bed for nursing care and convalescent care
- 3950 facilities that are connected to the public sewerage system: 1,500 square
- 3951 feet.
- 3952
- 3953 (3) Maximum building footprint. The maximum area of the building footprint of any new
- 3954 building is 1,500 square feet unless the building is replacing a larger building that
- 3955 existed on the lot as of April 1, 2005.
- 3956 (a) If the footprint of the preexisting building was larger than 1,500 square feet, the
- 3957 maximum size of the footprint of the new building may be no larger than the
- 3958 footprint of the preexisting building.
- 3959 (b) If the footprint of the new building is larger than 1,500 square feet, the width of
- 3960 the new building as measured parallel to the front lot line may not be greater than
- 3961 the width of the preexisting building.
- 3962
- 3963 (4) Design standards.
- 3964 Any new building or additions or modifications to an existing building that cumulatively
- 3965 increases the building footprint or building volume by more than 30% after April 1,
- 3966 2005, or is subject to shoreland overlay zoning as set forth in § 16.4.28 must conform
- 3967 to the following standards:
- 3968 NOTE: This requirement does not apply to the replacement of a building destroyed by
- 3969 accidental or natural causes after April 1, 2005 that is rebuilt within the preexisting
- 3970 building footprint and that does not increase the preexisting building volume by more
- 3971 than 30%.
- 3972
- 3973 (a) Placement and orientation of buildings within a lot.
- 3974 [1]. The placement of buildings on the lot must acknowledge the uniqueness of the
- 3975 site, the neighboring buildings, and the natural setting. Existing views and
- 3976 vistas must be preserved in the design of the site and buildings, and buildings
- 3977 must be placed to frame, rather than block, vistas.
- 3978 [2]. Buildings and the front elevation must be oriented facing the street on which
- 3979 the building is located. The siting of buildings on corner lots must consider the
- 3980 placement of buildings on both streets.
- 3981
- 3982 (b) Overall massing of buildings. The overall massing objective is to simulate a
- 3983 concentrated use of space in the Foreside Zone while avoiding the use of large,

multiunit buildings. In the interest of this objective, building footprints must not exceed the maximums set forth within this subsection. Larger parcels may be developed but will require the use of multiple buildings with smaller footprints. The smaller scale of the buildings will allow new projects to fit in with the existing architectural styles of the Foreside Zone.

(c) Grouping of smaller buildings. When smaller buildings that are part of one project are placed adjacent to one another on the same lot or adjacent lots, each building must have its own structure and elevation treatment that is different from its neighbor. Small decorative wings may be attached to larger structures if well integrated into the overall arrangement of shapes.

(d) Building details. Buildings must include architectural details that reflect the historic style of the Foreside Zone. Molding and trim must be used to decorate or finish the surface of buildings and doors. Eaves and overhangs should be incorporated into the design.

(e) Roof slopes and shapes.

[1]. Allowable roof shapes include a simple gable, gambrel, saltbox and hip. The minimum roof pitch must be 8:12 (rise over run), except in the case of a hip roof, where a lesser pitch is acceptable.

[2]. The roof pitch of elements that link buildings or portions of buildings must be the same or greater than the pitch of the roofs on the buildings that are being linked.

[3]. Flat or nearly flat shed roofs are not allowed except for porches, dormers or attachments distinct from the primary structure or where systems are concealed by standard roof forms.

[4]. The roof pitch of additions or wings must be similar to the pitch of the primary roof. Clusters of buildings must apply the same roof plan principles to pitch and link roofs.

(f) Fencing and walls.

[1]. Fencing may be used to separate public and private spaces, mark property lines, and protect plantings.

[2]. Fences must harmonize with nearby structures and not unduly interfere with existing scenic views or vistas.

[3]. Picket and other medium height fences and low stone walls are permitted.

[4]. Modern concrete walls and similar structures are prohibited.

[5]. Chain-link and stockade fences are not appropriate in front yards and may be used in side and rear yards only if compatible with the overall design of the site.

[6]. Waste receptacles, dumpsters, exterior systems, service entrances and similar areas must be screened with board fences, board and lattice fences, and/or landscaping.

(g) Utilities. All utilities serving a new building, including electricity, telephone, cable, Internet and alarm systems must be placed underground from the access pole.

- 4030 (h) Preservation of trees. Existing large, healthy trees must be preserved if practical.
4031
- 4032 (5) Signage. Display of signboard and/or products for sale may be placed on a Town
4033 sidewalk only if:
- 4034 (a) Products for sale displayed outside the building are limited to an area extending
4035 no greater than two feet from the front facade of the building;
- 4036 (b) Signboards and/or products for sale must be removed from the sidewalk at the
4037 close of each business day;
- 4038 (c) An annual permit must be obtained from the Code Enforcement Officer. Permits
4039 are issued for a calendar year or portion thereof, to expire December 31 of each
4040 year. Sign permit application fee, reference Appendix A.
4041
- 4042 (6) Special parking standards.
4043 The Kittery Foreside Zone is already largely built up and many buildings either
4044 completely or almost completely cover the lot on which they are located. Therefore, it
4045 is not possible to comply with parking standards which would otherwise be required
4046 for open land. To encourage the reuse of existing structures as far as practical, the
4047 Town establishes special parking standards and conditions within the zone.
4048
- 4049 (7) Revised off-street parking standards.
4050 Insofar as practical, parking requirements are to be met on site unless an existing
4051 building covers so much of the lot as to make the provision of parking impractical in
4052 whole or in part. If meeting the parking requirements is not practical, then the parking
4053 demand may be satisfied off site or through joint-use agreements as specified herein.
4054 Notwithstanding the off-street parking requirements in § 16.7.11.F(3), minimum
4055 parking requirements for the uses below are modified as specified herein:
4056
- 4057 (a) Dwelling units in buildings that existed as of April 1, 2005, including the
4058 replacement of units destroyed by accidental or natural causes regardless of how
4059 configured: one parking space per dwelling unit;
- 4060 (b) Dwelling units in new buildings, including the replacement of existing buildings
4061 other than the replacement of units destroyed by accidental or natural causes: 1
4062 1/2 parking spaces per dwelling unit;
- 4063 (c) Retail, business office or bank facilities: one parking space for each 400 square
4064 feet of gross floor area;
- 4065 (d) Professional office: one parking space for each 300 square feet of gross floor area;
- 4066 (e) Inn: one parking space for each guest room;
- 4067 (f) Church: none required, if primary use occurs on weekends;
- 4068 (g) Restaurants: one parking space for each 100 square feet of gross floor area used
4069 by the public.
- 4070 NOTE: For each use in the zone, the total parking demand is calculated using the
4071 standards above or in § 16.7.11.F(3), if not modified above. Then each
4072 nonresidential use is exempt from providing off-street parking for the first three
4073 required spaces. For uses requiring a demand of greater than three, then the off-
4074 street parking is to be provided on site and/or in accordance with Subsection (9)
4075 and (10) of this section.

4076

4077 (8) Maximum parking on new impervious surface

4078 Not more than 1 1/2 parking spaces per dwelling unit may be created on new impervious
4079 surface in conjunction with the construction of a new or replacement building. This
4080 restriction does not apply to parking spaces located within the same building with the
4081 dwelling units, to spaces located on preexisting impervious surface, or to spaces
4082 located on a pervious surface such as parking pavers designed to allow infiltration of
4083 precipitation.

4084

4085 (9) Off-site parking

4086 Required off-street parking may be satisfied at off-site locations, provided such
4087 parking is on other property owned by the applicant or is under the terms of a
4088 contractual agreement that will ensure such parking remains available for the uses
4089 served. Applicant must present evidence of a parking location and a contractual
4090 agreement to the Town Board or officer with jurisdiction to review and approve.

4091

4092 (10) Joint-use parking

4093 Required off-street parking may also be satisfied by the joint use of parking space by
4094 two or more uses if the applicant can show that parking demand is nonconflicting
4095 and will reasonably provide adequate parking for the multiple uses without parking
4096 overflowing into undesignated areas. Nonconflicting periods may consist of daytime
4097 as opposed to evening hours of operation or weekday as opposed to weekends or
4098 seasonal variation in parking demand. In making this determination under
4099 development plan review, the Planning Board is to consider the following factors:

4100

4101 (a) Such joint parking areas must be held under ownership of the applicant or under
4102 terms of a contractual agreement that ensures such parking remains available to
4103 all users of the shared parking spaces;

4104 (b). Analysis is to be based on a most frequent basis not a "worst case" scenario;

4105 (c). Joint use parking areas must be located within reasonable distance to the use
4106 served, but do not need to be located on the same lot as the uses served;

4107 (d). Ease and safety of pedestrian access to shared parking by the users served,
4108 including any improvements or shuttle service necessary;

4109 (e). Such joint parking areas must not be located in residential zones of the Town.
4110 The Planning Board must make a final determination of the joint-use and/or off-
4111 site parking spaces that constitute an acceptable combination of spaces to meet
4112 the required parking demand

4113

4114 E. Shoreland Overlay Zone OZ-SL – Mixed-Use – Kittery Foreside Zone (MU-KF)

4115 (1) Permitted uses

4116 (a) Dwellings if located farther than 75 feet or farther from the normal high-water line
4117 of any water bodies, or the upland edge of a wetland

4118 [1] Dwelling, Attached Single-Family

4119 [2] Dwellings, Single-family

4120 [3] Dwellings, Two-Family

- 4121 [4] Dwellings, Multi-Family (up to 12 units per lot)
 4122 (b) Recreation, Public Open Space
 4123
 4124 (2) Special exception uses
 4125 (a) Art Studio or Gallery
 4126 (b) Business & Professional Offices
 4127 (c) Commercial Fisheries/Maritime Activities, provided only incidental cleaning and
 4128 cooking of seafood occur at the site
 4129 (d) Parking Area
 4130 (e) Home Occupation, Major
 4131 (f) Home Occupation, Minor
 4132 (g) Inn
 4133 (h) Marinas
 4134 (i) Personal Services
 4135 (j) Business Services
 4136 (k) Public Assembly Area
 4137 (l) Public Utility Facility
 4138 (m) Research & Development;
 4139 (n) Restaurant, coffee shop, bakery, cafes and similar food service operations, but
 4140 excluding drive-in facilities;
 4141 (o) Retail Sales, excluding those where the principal activity entails outdoor sales
 4142 and/or storage
 4143 (p) Mass Transit Station
 4144 (q) Specialty Food and/or Beverage Facility
 4145 (r) Theater
 4146
 4147 (3) See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL
 4148
 4149 F. Resource Protection Overlay Zone OZ-RP – Mixed Use – Kittery Foreside Zone (MU-
 4150 KF)
 4151 (1) Permitted Uses
 4152 (a) Recreation, Public Open Space
 4153
 4154 (2) Special Exception Uses
 4155 (a) Accessory Buildings, Structures, and Uses
 4156 (b) Home Occupation, Major
 4157 (c) Home Occupation, Minor
 4158 (d) Public Utility Facility
 4159 (e) Dwelling, Single-Family
 4160
 4161 (3) See § 16.4.29 for purpose and standards in the Resource Protection Overlay Zone OZ-
 4162 RP

4163 **16.4.26 Mixed-Use-Neighborhood MU-N**

4164 A. Purpose

4165 To encourage higher density, mixed-use development that provides increased housing
4166 opportunities and a desirable setting for business while balancing such increased
4167 development with environmentally conscious and ecologically sensitive use of land.

4168

4169 B. Permitted Uses

4170 (1) Dwelling, Attached Single-Family

4171 (2) Dwelling, Multi-Family

4172 (3) Dwelling, Multi-Family (units on the upper floors of a mixed-use building that is
4173 served by public sewer)

4174 (4) Convalescent Care Facility

4175 (5) Nursing Care Facility, Long-term

4176 (6) Residential Care Facility (attached dwelling units only)

4177 (7) Accessory Buildings, Structures, and Uses

4178 (8) Home Occupation, Major

4179 (9) Home Occupation, Minor

4180 (10) Hotel

4181 (11) Inn

4182 (12) Day Care Facility

4183 (13) Elderly Day Care Facility

4184 (14) Hospital

4185 (15) Public Utility Facility

4186 (16) Recreation, Passive

4187 (17) Recreation, Public Open Space

4188 (18) Recreation, Commercial Indoor (except shooting and archery ranges)

4189 (19) Recreation, Commercial Outdoor (except shooting and archery ranges)

4190 (20) Veterinary Hospital

4191 (21) Art Studio or Gallery

4192 (22) Business & Professional Offices

4193 (23) Business Services

4194 (24) Conference Center

4195 (25) Personal Services

4196 (26) Repair Service

4197 (27) Research & Development

4198 (28) Restaurant

4199 (29) Retail Sales (not to exceed 30,000 square feet in gross floor area unless part of a
4200 mixed-use building)

4201 (30) Retail Sales, Convenience (excluding the sale of gasoline)

4202 (31) Shops in Pursuit of Trade

4203 (32) Specialty Food and/or Beverage Facility

- 4204 (33) Theater
- 4205 (34) Industry, light (less than or equal to 20,000 square feet in gross floor area)
- 4206 (35) Liner Buildings (as part of a mixed-use building)
- 4207
- 4208 C. Special exception uses
- 4209 (1) Commercial Kennel
- 4210 (2) Parking Area
- 4211 (3) Construction Services
- 4212 (4) Equipment sales and rentals (only on lots with frontage on Route 236)
- 4213 (5) Gas service station (only on lots with frontage on Route 236)
- 4214 (6) Industry, light (greater than 20,000 square feet in gross floor area)
- 4215 (7) Mass Transit Station
- 4216 (8) Mechanical Services
- 4217 (9) New Motor Vehicle Sales (only on lots with frontage on Route 236)
- 4218 (10) Used Car Lot (only on lots with frontage on Route 236)
- 4219 (11) Repair Garage (only on lots with frontage on Route 236)
- 4220 (12) Retail Sales (greater than 30,000 square feet in gross floor area and less than 50,000
- 4221 square feet in gross floor area)
- 4222 (13) Undefined use; additional commercial/business uses not defined by § 16.3.
- 4223 (f) Undefined uses: will be considered by the Planning Board based on the following
- 4224 criteria:
- 4225 [1]. If the use is consistent with the Comprehensive Plan and zoning district
- 4226 purposes; and
- 4227 [2]. If the use meets special exception criteria found in § 16.2.12.F
- 4228 (g) In addition, the undefined use must meet one or both of the following criteria:
- 4229 [1] If the proposed use has substantially similar impacts as a listed use.
- 4230 [2] If the proposed use is compatible with existing uses within the zoning district
- 4231 for which it is proposed.
- 4232
- 4233 D. Standards.
- 4234 All development and the use of land in the MU-N Zone must meet the following standards.
- 4235 Kittery's Design Handbook illustrates how these standards can be met. In addition, the design
- 4236 and performance standards of § 16.5, 16.7 and 16.8 must be met unless noted otherwise
- 4237 below.
- 4238 (1) All submissions must include a lighting plan. Hours of operation and number of
- 4239 employees for businesses must also be provided.
- 4240
- 4241 (2) The following space standards apply:
- 4242 (a) Minimum land area per dwelling unit - mixed-use building: 4,000 square feet for
- 4243 first residential unit plus 3,000 square feet for each additional unit, no minimum
- 4244 land area for business or commercial uses when combined in a building with
- 4245 residential uses except that the total lot size must be at least 20,000 square feet.

NOTE: ADA-compliant units may be located on the first floor through a special exception permit by the Planning Board but only 50% of the first floor may be such ADA-compliant residential units.

(b). Minimum land area per dwelling unit - multiunit residential: 4,000 square feet for first unit, plus 2,500 square feet for each additional unit up to 16 units per acre of lot size. Total lot size must be a minimum of 20,000 square feet.

(c). Mixed-use or multiunit residential buildings which encompass at least 50% of required parking within the building: Two additional residential units may be added to each story above the parking with no additional land area required.

(d). Mixed-use buildings which encompass at least 50% of required parking within the building and include a liner building for nonresidential uses buffering parking from the street: One additional residential unit may be added to each story with no additional land area required.

(e). Minimum land area per bed for long-term nursing care and convalescent care facilities that are connected to public sewer: 2,000 square feet.

(f). Minimum land area per residential unit for eldercare facilities that are connected to public sewer: 3,000 square feet.

(g). Minimum lot size: 20,000 square feet.

(h). Minimum street frontage: 75 feet.

(i). Minimum front setback on Route 236: 30 feet.

(j). Minimum front setback on Dennett Road: 50 feet.

(k). Minimum front setback on Martin Road: 100 feet.

(l). Maximum front setback all other roads: 20 feet.

(m). Spacing between buildings: 15 feet.*

(n). Maximum rear and side setbacks: 20 feet.**

NOTES:

* Or as required by the Fire Department or State Fire Marshal's office.

** Except as may be required by the buffer provisions of Code. See Landscaping, Screening and Buffers § 16.4.26.(8)

(o). Maximum building height: 50 feet (exclusive of solar apparatus).

(p). Maximum impervious and outdoor stored material coverage: 70%.

NOTE: With Best Management Practices (BMPs) and Low Impact Development Practices (LIDs) as defined in § 16.3 and based on Maine DEP's Maine Stormwater Best Management Practices Manual, Volumes I - III, as amended from time to time, incorporated in site design, otherwise 60%. Maximum on-site stormwater infiltration is the desired and measurable outcome.

(q). Minimum setback from streams, water bodies and wetlands in accordance with Table 16.5.30.

[1] With Best Management Practices (BMPs) and Low Impact Development Practices (LIDs) as defined in § 16.3 and based on Maine DEP's Maine Stormwater Best Management Practices Manual, Volumes I - III, as amended from time to time, incorporated in site design, then wetland setbacks pursuant only to Maine Department of Environmental Protection (MDEP) Rules Chapters 305 and 310.

[2] Without Best Management Practices (BMPs) and Low Impact Development Practices (LIDs) as defined in § 16.3 and based on Maine DEP's Maine Stormwater Best Management Practices Manual, Volumes I - III, as amended from time to time, incorporated in site design, wetland setbacks pursuant to Kittery Town Code Title 16, Table 16.5.30.

[3] The Town shall retain expert consultation (qualified wetland scientist and/or Maine-certified soil scientist) to determine wetland delineations and classifications and to perform soil testing as needed, all of which shall be paid for by the applicant at the time of sketch plan. The qualified wetlands scientist and/or Maine-certified soil scientist shall determine through field investigation the presence, location and configuration of wetlands on the area proposed for use. Any wetland alterations proposed must also be reviewed by the Town's consultant(s) at the applicant's expense. These requirements are in addition to engineering, stormwater management/BMPs, traffic or other types of peer review that may also be required.

(r). Minimum open space:

[1] Lot size less than 100,000 square feet: 15%.

[2] Lot size greater than 100,000 square feet: 25%.

NOTE: This requirement may be met by a payment-in-lieu to the Wetland Mitigation Fund. These fees shall be set by Town Council. Landscaping, screening and buffer requirements must still be met.

(3) Parking:

(a) Parking is encouraged within buildings. New or revised surface parking areas, garages, and entrances to parking within buildings must be located to the rear of buildings. If a rear location is not achievable, as determined by the Planning Board, parking, garages and entrances to parking must be located to the side of the building. Screening and/or fencing is required for surface parking areas along a

- street. See Subsection (8), Landscaping, Screening and Buffers. Parking requirements are based on the Institute of Transportation Engineers (ITE) parking generation rates.
- (b). Joint-use agreements (between businesses and residences) for parking are encouraged. A plan describing how joint-use parking needs will be met is required as part of any development that proposes such parking and must be reviewed and approved by the Planning Board.
- (c). Parking requirements for nonresidential uses may be met partially or in full by parking on the street except that no parking is allowed on Route 236, Dennett Road, or Martin Road. Such on-street parking plans must be reviewed by planning staff prior to submission and then reviewed and approved by the Planning Board.
- (d). Electric car charging stations are allowed in parking lots but must not interfere with pedestrian movement on sidewalks.
- [1] Parking for development that includes trails and low intensity recreation: Development that includes the creation of public trails and low intensity recreational opportunities such as wildlife observation stations or boardwalks may apply the pertinent off-street parking standards below. All other off-street parking standards as found in § 16.7.11F(3) shall apply.
- (e) Multiunit residential buildings and mixed-use buildings that include residential.
- [1] One parking space for studio and one-bedroom dwelling units.
- [2] One and one-half parking spaces for two-bedroom dwelling units plus one guest parking space per every four dwelling units.
- [3] Parking spaces for more-than-two-bedroom dwelling units.
- (4) Loading docks, overhead doors, service areas and outdoor storage areas.
- (a) Loading docks and overhead doors must be located on the rear or side of the building. Loading docks must be screened from view by adjacent residential uses. This screening must consist of the following:
- [1] A fence, constructed of a material similar to surrounding buildings, of sufficient height as determined by the Planning Board to accomplish the screening. No fence may be less than six feet tall.
- (b). All service areas for dumpsters, compressors, generators and similar items as well as any outdoor storage areas must be screened by a fence at least six feet tall, constructed of a material similar to surrounding buildings, and must surround the service or storage area except for the necessary ingress/egress.
- (5) Site design
- Site design and building placement must be attentive to the surrounding environment including sun, wind and shade patterns related to proposed and existing buildings. A sun/shade analysis may be required by the Planning Board.
- (6) Energy and sustainability
- Energy efficiency is allowed and encouraged through the use of solar power, geothermal, and other alternative and sustainable power sources.

(7) Building design standards.

- (a) New buildings must meet the general design principles set forth in the Design Handbook except as noted below. In general, buildings should be oriented to the street from which they derive frontage, with the front of the building facing the street. The front facade must contain the following:
- [1] A front door for pedestrian access.
 - [2] Windows.
- (b). Flat roofs, proposed to locate heating, cooling, or other such mechanical or electrical apparatus off the ground, are acceptable provided that such apparatus are screened from view and the screening is designed as an integral part of the building to aid both aesthetics and noise attenuation. Flat roofs proposed for the purpose of solar array installations are also acceptable.

(8) Landscaping, screening and buffers.

- (a) A landscape plan prepared by a registered landscape architect is a submission requirement. However, a landscape plan done by other design professionals may be allowed at the Planning Board's discretion.
- (b). Native trees, shrubs and herbaceous plantings are preferred and must be drought and salt tolerant when used along streets. A diversity of tree species (three to five species per every 12 trees) is required to provide greater resiliency to threats from introduced insect pests and diseases.
- (c). Any required plantings approved by the Planning Board that do not survive must be replaced within one year.
- (d) Landscaping along the street frontage of each building must consist of one of the following:
- [1] Street trees. A minimum of one street tree must be planted for each 20 feet of street frontage. Trees may be planted in groups or spaced along the frontage. However, trees must be planted to ensure survival, using silva cells, bioretention cells or tree wells. Trees are to be a minimum of 2.5-inch caliper and 12 feet high at the time of planting. Existing large healthy trees must be preserved if practical and will count towards this requirement.
 - [2] Pocket Park. The park must be at least 200 square feet. A minimum of three trees and a bench for sitting are required. Park must be vegetated with ground cover except for walkways.
- (e) Surface parking areas that abut a street must provide screening in one of the following ways:
- [1] One tree per 25 feet of street frontage backed by a fence constructed of a material similar to surrounding buildings which must screen the parking area from the street except for necessary vehicular and pedestrian access. Trees must be at least 2.5-inch caliper and 12 feet high at the time of planting.

- 4424 [2] A combination of trees and shrubs including at least 50% evergreen species,
4425 all at least six feet high at time of planting, in a planting bed at least eight feet
4426 wide. Plantings must be sufficient, as determined by the Planning Board, to
4427 screen the parking area from the street except for necessary vehicular and
4428 pedestrian access. Planting beds may be mulched but no orange- or red-dyed
4429 mulching material may be used.
- 4430 [3] A minimum of 10% of any surface parking area consisting of 10 or more
4431 parking spaces must be landscaped with trees and vegetated islands. This
4432 requirement is in addition to the screening requirements in Subsection
4433 §16.4.26.D(8)(e)[1] and §16.4.26.D(8)(e)[3] if the parking area abuts a street.
4434 Bioretention cells and rain gardens may be utilized to meet the landscaping
4435 requirements and perform stormwater management.
- 4436
- 4437 (f) Buffers required between residential uses and mixed use or nonresidential uses,
4438 and between adjacent residential zones and this zone must be 50 feet wide and
4439 consist of one of the following as determined by the Planning Board:
- 4440 [1]. Existing natural woodland and vegetation.
- 4441 [2]. Existing natural woodland augmented by the planting of additional trees
4442 consisting of a variety of species at least 2.5-inch caliper and 12 feet high.
- 4443 [3]. A fence at least six feet high, constructed of material similar to surrounding
4444 buildings, with plantings of trees and shrubs at least six feet tall on either side
4445 of the fence.
- 4446
- 4447 (9) Open space
- 4448 Open space must be provided as a percentage of the total parcel area including
4449 freshwater wetlands, water bodies, streams and setbacks. Required open space must
4450 be shown on the site plan with a note dedicating it as open space. The open space
4451 must be situated to protect significant natural features and resources, minimize
4452 environmental impacts and promote an aesthetically pleasing site.
- 4453 (a) Wherever possible, large healthy trees and areas with mature tree cover must be
4454 included in the open space.
- 4455 (b). Location of open space must promote the continuity of open-space networks
4456 across adjacent parcels.
- 4457 (c). Where possible, open space and open-space networks must include public trails
4458 and low-intensity recreational opportunities.
- 4459
- 4460 (10) Special situations
- 4461 Expansions or modifications of 1,000 square feet or less to existing uses are exempt
4462 from landscaping, screening and buffer requirements.
- 4463
- 4464 (11) Conditions for approving special exception uses in the Neighborhood Mixed-
4465 Use Zone.
- 4466 All applications must include a narrative describing why the use proposed will
4467 promote the general welfare (specifics may be found in § 16.3 Definitions for special
4468 exception) of the Town of Kittery, how the use proposed will meet the special
4469 exception criteria found in § 16.2.12.F.(3) and how the proposed development will

4470 adapt and relate to the natural environmental conditions found on the site.

4471

4472 **16.4.27 Transportation – Maine Turnpike T-MT**

4473 A. Purpose

4474 The purpose of the Transportation – Maine Turnpike Zone (T-MT) is to provide for the safe,
4475 effective, efficient and environmentally compatible use of the right-of-way owned and
4476 operated by the Maine Department of Transportation and the Maine Turnpike Authority as
4477 authorized by the state, as well as for safe and environmentally compatible buffering for the
4478 adjacent land uses along the right-of-way.

4479

4480 B. Permitted uses: Permitted and special exception land uses include the highway,
4481 information center and other uses as authorized by the state.

4482

4483 C. Special exception uses: none.

4484

4485 D. Standards.

4486 (1) The design and performance standards of § 16.5, 16.7 and 16.8 and the Shoreland and
4487 Resource Protection Overlay Zones, where applicable.

4488 (2) Dimensional standards.

4489 (a) Minimum land area per dwelling unit: not applicable.

4490 (b) Minimum lot size: not applicable.

4491 (c) Minimum street frontage: not applicable.

4492 (d) Minimum front yard: not applicable.

4493 (e) Maximum building coverage: not applicable.

4494 (f) Minimum rear and side yards: not applicable.

4495 (g) Maximum building height: 35 feet.

4496 (h) Minimum distance between principal buildings on the same lot: not applicable.

4497 (i) Minimum setback from water bodies and wetlands: not applicable.

4498

4499 E. Shoreland Overlay Zone OZ-SL – Transportation – Maine Turnpike (T-MT)

4500 (1) Permitted uses: Permitted and special exception land uses include the highway,
4501 information center and other uses as authorized by the state.

4502 (2) Special Exceptions: None.

4503 (3) See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL

4504

4505 F. Resource Protection Overlay Zone OZ-RP – Transportation – Maine Turnpike (T-MT)

4506 (1) Permitted Uses.

4507 (a). Permitted land uses include the highway, information center and other uses as
4508 authorized by the state.

4509 (2) Special Exception uses: none.

4510

16.4.28 Shoreland Overlay Zone OZ-SL**A. Purpose**

The purpose of the Shoreland Overlay Zone OZ-SL is to further the maintenance of safe and healthful conditions; to prevent and control water pollution; to protect fish spawning grounds, aquatic life, bird and other wildlife habitat; to protect buildings and lands from flooding and accelerated erosion; to protect archaeological and historic resources, to protect commercial fishing and maritime industries; to protect freshwater and coastal wetlands; to control building sites, placement of structures and land uses; to conserve shore cover and visual as well as actual points of access to inland and coastal waters; to conserve natural beauty and open space; and to anticipate and respond to the impacts of development in shoreland areas.

B. Authority

These provisions have been prepared in accordance with the provisions of 38 M.R.S. §§ 435 to 449.

C. Applicability and boundaries

The provisions of this section apply to all uses, lots and structures within the following:

Shoreland Overlay Zone – Water Body/Wetland Protection Area 250 feet (OZ-SL-250 feet): Land areas within 250 feet, horizontal distance, of the:

- (a) Normal high-water line of any river or saltwater body.
- (b). Upland edge of a coastal wetland, including all areas affected by tidal action.
- (c). Land edge of a fresh water wetland connecting to a protected stream as identified on the Zoning Map.

Shoreland Overlay Zone – Stream Protection Area 75 feet (OZ-SL-75 feet): Land areas within 75 feet, horizontal distance, of the normal high-water line of a stream, exclusive of those areas within 250 feet horizontal distance of the normal high-water line of a river or within 250 feet horizontal distance of the upland edge of a freshwater or coastal wetland.

- (a) However, where a stream and its associated Shoreland Overlay Zone area are located within 250 feet, horizontal distance, of the above water bodies or wetlands, that land area will be regulated under the provisions of the Shoreland Overlay Zone associated with that water body or wetland.
- (b) Where uncertainty exists as to the exact location of the Shoreland Overlay Zone boundary, the Planning Board, with expert consultation as may be required, is the final authority as to location.

D. Permitted and special exception land use

The permitted and special exception uses in the Shoreland Overlay Zone section are allowed in accordance with the land use standards established in the underlying base zone in this chapter and land uses identified by the Mandatory Shoreland Zoning Act, 38 M.R.S. §§ 435 to 449.

4554 E. Standards

4555 Minimum lot standards

4556 (a) Minimum lot size by base zone, within the:

4557 [1]. Residential-Village (R-V) Zone: 8,000 square feet.

4558 [2]. Residential-Urban (R-U) Zone: 20,000 square feet.

4559 [3]. Residential-Rural (R-RL), Residential-Suburban (R-S) and Residential-Kittery
4560 Point Village (R-KPV) Zones: 40,000 square feet.4561 [4]. Commercial (C1), (C2), (C3), Industrial (IND), Business-Local (B-L) and
4562 Business-Local 1 (B-L1) Zones: 60,000 square feet.

4563 [5]. Residential-Rural Conservation (R-RLC) Zone: 80,000 square feet.

4564 [6]. Mixed-Use – Neighborhood (MU-N)

4565 [7]. Zone: 120,000 square feet.

4566 [8]. Mixed-Use Badgers Island (MU-BI) Zone: 6,000 square feet.

4567 [9]. Mixed-Use Kittery Foreside (MU-KF) Zone: 10,000 square feet.

4568

4569 (b). Minimum land area per dwelling unit by base zone, within the:

4570 [1]. Residential-Village (R-V) Zone: 8,000 square feet.

4571 [2]. Mixed Use – Neighborhood (MU-N) Zone: 10,000 square feet.

4572 [3]. Residential-Urban (R-U), Business-Local (B-L) and Business-Local 1 (B-L1)
4573 Zones: 20,000 square feet.4574 [4]. Mixed-Use (M-U), Residential-Rural (R-RL), Residential-Suburban (R-S) and
4575 Residential-Kittery Point Village (R-KPV) Zones: 40,000 square feet.

4576 [5]. Residential-Rural Conservation (R-RLC) Zone: 80,000 square feet.

4577 [6]. Mixed-Use Badgers Island (MU-BI) Zone: 6,000 square feet. [NOTE: 3,000
4578 square feet for the first two dwelling units.]

4579 [7]. Mixed-Use Kittery Foreside (MU-KF) Zone: 10,000 square feet.

4580

4581 (c). Minimum shore frontage by base zone per lot and dwelling unit.

4582 [1]. Mixed Use-Badgers Island (MU-BI): 25 feet.

4583

4584 [2]. Residential-Village (R-V), Residential Urban (R-U), and Mixed-Use Kittery
4585 Foreside (MU-KF) Zones: 50 feet.

4586

4587 [3]. Mixed-Use (M-U), Commercial (C1), (C2), (C3), Industrial (IND), Mixed Use
4588 – Neighborhood (MU-N), Business-Local (B-L) and Business-Local 1 (B-L1)
4589 Zones:

4590 [a]. Shore frontage per lot: 150 feet.

4591 [b]. Shore frontage per dwelling unit: 50 feet.

4592

4593 [4]. Residential-Rural (R-RL), Residential-Suburban (R-S), and Residential-
4594 Kittery Point Village (R-KPV) Zones:

4595 [a]. Shore frontage per lot: 150 feet.

4596 [b]. Shore frontage per dwelling unit: 100 feet.

[5]. Residential-Rural Conservation (R-RLC) Zone (per lot and dwelling unit): 250 feet.

[6]. The minimum shore frontage requirement for public and private recreational facilities is the same as that for residential development in the respective zone.

The total footprint of devegetated area must not exceed 20% of the lot area located within the Shoreland Overlay Zone, except in the following zones:

- (a) Mixed-Use – Badgers Island (MU-BI) and Mixed-Use – Kittery Foreside (MU-KF) Zones, where the maximum devegetated area is 60%. The Board of Appeals may approve a miscellaneous appeal application to increase allowable devegetated area in the Mixed-Use – Badgers Island (MU-BI) Zone to 70% where it is clearly demonstrated that no practicable alternative exists to accommodate a water-dependent use.
- (b) Commercial (C1, C-2, C-3), Business – Local (B-L and B-L1) and Industrial (IND) Zones where the maximum devegetated area is 70%.
- (c) Residential – Urban (R-U) Zone where the lot is equal to or less than 10,000 square feet, the maximum devegetated area is 50%.

Principal and accessory structures — setbacks and development

- (a) All new principal and accessory structures [except certain patios and decks per § 16.4.28.E(3)b] must be set back at least 100 feet, horizontal distance, from the normal high-water line of any water bodies, tributary streams, the upland edge of a coastal wetland, or the upland edge of a freshwater wetland, with the following exceptions:
 - [1]. In the Mixed Use – Badgers Island and Kittery Foreside Zones, the setback requirement is 75 feet, horizontal distance, from the normal high-water line of any water bodies, or the upland edge of a wetland, unless modified according to the terms of §§ 16.4.24.D(1) through (6) and 16.4.25.D
 - [2]. In the Resource Protection Overlay Zone, the setback requirement is 250 feet, horizontal distance, except for structures, roads, parking spaces or other regulated objects specifically allowed in the zone, in which case the setback requirements specified above apply.
 - [3]. The water body, tributary stream, or wetland setbacks do not apply to structures that require direct access to the water body or wetland as an operational necessity, such as piers and retaining walls, nor do they apply to other functionally water-dependent uses, as defined in § 16.3.
- (b). Accessory patios or decks no larger than 500 square feet in area must be set back at least 75 feet from the normal high-water line of any water bodies, tributary streams, the upland edge of a coastal wetland, or the upland edge of a freshwater wetland. Other patios and decks must satisfy the normal setback required for principal structures in the Shoreland Overlay Zone.
- (c). If there is a bluff, setback measurements for principal structures, water and wetland must be taken from the top of a coastal bluff that has been identified on

coastal bluff maps as being "highly unstable" or "unstable" by the Maine Geological Survey pursuant to its "Classification of Coastal Bluffs" and published on the most recent Coastal Bluff Map. If the applicant and Code Enforcement Officer are in disagreement as to the specific location of a "highly unstable" or "unstable" bluff, or where the top of the bluff is located, the applicant is responsible for the employment of a Maine-registered professional engineer, a Maine-certified soil scientist, or a Maine state geologist qualified to make a determination. If agreement is still not reached, the applicant may appeal the matter to the Board of Appeals.

(d). Public access to the waterfront must be discouraged through the use of visually compatible fencing and/or landscape barriers where parking lots, driveways or pedestrian routes abut the protective buffer. The planting or retention of thorny shrubs, such as wild rose or raspberry plants, or dense shrubbery along the perimeter of the protective buffer is encouraged as a landscape barrier. If hedges are used as an element of a landscape barrier, they must form a solid continuous visual screen of at least three feet in height immediately upon planting.

(e). On a nonconforming lot of record on which only a residential structure exists, and it is not possible to place an accessory structure meeting the required water body, tributary stream or wetland setbacks, the Code Enforcement Officer may issue a permit to place a single accessory structure, with no utilities, for the storage of yard tools and similar equipment. Such accessory structure must not exceed 80 square feet in area nor eight feet in height and must be located as far from the shoreline or tributary stream as practical and meet all other applicable standards, including lot coverage and vegetation clearing limitations. In no case will the structure be allowed to be situated closer to the shoreline or tributary stream than the existing principal structure.

(f). The lowest floor elevation or openings of all buildings and structures, including basements, must be elevated at least one foot above the elevation of the one-hundred-year flood, the flood of record or, in the absence of these, the flood as defined by soil types identified as recent floodplain soils.

(g). Stairways or similar structures may be allowed with a permit from the Code Enforcement Officer to provide shoreline access in areas of steep slopes or unstable soils, provided the:

[1]. Structure is limited to a maximum of four feet in width;

[a]. Structure does not extend below or over the normal high-water line of a water body or upland edge of a wetland (unless permitted by the Department of Environmental Protection pursuant to the Natural Resources Protection Act, 38 M.R.S. § 480-C); and

[2]. Applicant demonstrates that no reasonable access alternative exists on the property.

(h). If more than one dwelling unit, principal governmental, institutional, commercial or industrial structure or use, or combination thereof, is constructed or established

4690 on a single parcel in the Shoreland Overlay Zone, all dimensional requirements
4691 shall be met for each additional dwelling unit, principal structure, or use.
4692

16.4.29 Resource Protection Overlay Zone OZ-RP**A. Purpose**

The purposes of this zone are to further the maintenance of safe and healthful conditions; prevent and control potential water pollution sources; protect spawning grounds, fish, aquatic life, bird and other wildlife habitat; and conserve shore cover, visual as well as actual point of access to inland and coastal waters, and natural beauty.

B. Authority

These provisions have been prepared in accordance with the provisions of 38 M.R.S. §§ 435 to 449.

C. Applicability and boundaries

The provisions of this section apply to all uses, lots and structures within areas where the existing conservation and accessory development is consistent with the allowed uses for this zone. The Resource Protection Overlay Zone includes areas where development would adversely affect water quality, productive habitat, biological ecosystems, or scenic and natural values. This includes the following areas when they also occur within the limits of the Shoreland Overlay Zone, exclusive of a stream protection area, except currently developed areas and areas that meet the criteria for commercial fisheries/maritime uses:

Waterfowl and wading bird habitat/water body related wetland areas. Land areas within 250 feet, horizontal distance, of the upland edge of freshwater wetlands, salt marshes and salt meadows, and wetlands associated with rivers which are rated "moderate" or "high" value waterfowl and wading bird habitat, including nesting and feeding areas as identified as of December 31, 2008, and salt marshes and salt meadows as identified as of January 1, 1973, by the Maine Department of Inland Fisheries and Wildlife (MDIF&W). For the purposes of this section "wetlands associated with rivers" means: areas characterized by nonforested wetland vegetation and hydric soils that are contiguous with a river and have a surface elevation at or below the water level of the river during the period of normal high water. "Wetlands associated with rivers" are considered to be part of that river.

Steep slope areas.

- (a) Land areas that have two or more contiguous acres of land where the slopes are 20% or greater; and
- (b) Land areas along rivers subject to severe bank erosion, undercutting or riverbed movement; and
- (c) Land adjacent to tidal waters which are subject to severe erosion or mass movement, such as steep coastal bluffs.

Independent wetland areas. Land areas of two or more contiguous acres supporting wetland vegetation and hydric soils which are not part of a freshwater or coastal wetland as defined and which are not surficially connected to a water body during the period of normal high water.

4737 Floodplain areas. This includes areas along rivers, areas adjacent to tidal waters, and
4738 other areas susceptible to flooding as defined as being located within the one-hundred-
4739 year floodplain as designated on the FEMA Flood Insurance Rate Maps or Flood
4740 Hazard Boundary Maps, or the flood of record or, in the absence of these, by soil types
4741 identified as recent floodplain soils.

4742

4743 D. Standards

4744 The design and performance standards of § 16.5, 16.7 and 16.8 and Shoreland Overlay
4745 Zone provisions of § 16.4.28 apply, where applicable, in addition to the following
4746 standards, whichever is the most restrictive.

4747 Dimensional standards such as front, side and rear yards, building coverage, height and
4748 the like are the same as those in the underlying zone.

4749 Road construction and parking facilities are allowed in the Resource Protection Overlay
4750 Zone only where no reasonable alternative route or location is available outside the
4751 Resource Protection Overlay Zone, in which case a permit or site plan or subdivision
4752 plan approval is required by the Planning Board.

4753 Clearing or removal of vegetation for uses, other than timber harvesting as limited per §
4754 16.5.29, in a Resource Protection Overlay Zone, is prohibited within the strip of land
4755 extending 100 feet, horizontal distance, inland from the normal high-water line, except
4756 to remove safety hazards. Elsewhere in a Resource Protection Overlay Zone, the cutting
4757 or removal of vegetation is limited to that which is necessary for uses expressly
4758 authorized in the Resource Protection Overlay Zone.

4759

4760 16.4.30 Commercial Fisheries/Maritime Activities Overlay Zone OZ-CFMU**4761 A. Purpose**

4762 The purpose of the Commercial Fisheries/Maritime Uses Overlay Zone is to provide for the
4763 development and expansion of water-dependent commercial fisheries/maritime activities.
4764 Commercial fisheries/maritime activities and other areas suitable for functionally water-
4765 dependent uses, considers:

- 4766 Shelter from prevailing winds and waves;
- 4767 Slope of the land within 250 feet, horizontal distance, of the normal high-water line;
- 4768 Depth of the water within 150 feet, horizontal distance, of the shoreline;
- 4769 Available support facilities, including utilities and transportation facilities; and
- 4770 Compatibility with adjacent upland uses.

4771

4772 B. Authority

4773 These provisions have been prepared in accordance with the provisions of 38 M.R.S. §§ 435
4774 to 449.

4775

4776 C. Applicability and boundaries

4777 The provisions of this section apply to all uses, lots and structures within areas where the
4778 existing predominant pattern of development is consistent with the allowed uses for this
4779 overlay zone, where consistent with dimensional requirements of the underlying base zone,
4780 and where the active use of lands, buildings, wharves, piers, floats or landings with the
4781 principal intent of such activity is the production of income by an individual or legal business
4782 entity through the operation of a vessel(s) as shown on the Zoning Map. The activity may be
4783 either a principal or accessory use, as defined in this title.

4784

4785 D. Permitted uses: Functionally water-dependent Commercial Fisheries/Marine Activities.

4786

4787 E. Special exception uses: none

4788

4789 F. Standards. Dimensional standards of the underlying base and overlay zone(s).

4790

**4791 G. Prohibited uses. All permitted uses in the base zones, including R-KPV, R-U, R-S, IND
4792 and MU-KF, except as permitted herein.**

4793

4794

4795

1 **16.5 General Performance Standards**

2 **16.5.1 General**

3 The purpose of this chapter is to outline development design and performance standards to
4 ensure public health, safety and welfare.

5 16.5.2 Abutter Notice

6 A. Purpose.

7 It is the intent of this article to impose standards to identify abutting property owners who
8 must be notified in writing when new development or redevelopment is proposed within 150
9 feet of their property boundary(ies).

10 B. Applicability.

11 (1) The Town Planner must cause written notice of the public hearing to be sent by postage
12 paid, first-class mail (cost to be paid by applicant) to all owners of abutting property, as
13 herein defined (within 150 feet of the property), and by regular mail to the Code
14 Enforcement Officer, the Commissioner of Public Works, and where applicable, the Port
15 Authority or Conservation Commission, at least seven days prior to the scheduled date.
16 Failure of the parties to receive said notices does not invalidate any Board action.

17 (2) These requirements relate solely to the notification of property owners who must be notified
18 in writing when new development or redevelopment is proposed within 150 feet of their
19 property boundary(ies). This notification must include intertidal land below the normal high-
20 water line, but not that land beyond 100 rods (1,650 feet) distant from the normal high water
21 line, or that land below the normal low-water line. Where question exists regarding to
22 ownership of intertidal lands, consult Figure 1 entitled, “Formula for Determining
23 Ownership of Intertidal Land as a Guide for Identifying Abutters,” attached to this chapter.

Figure 1. Abutters

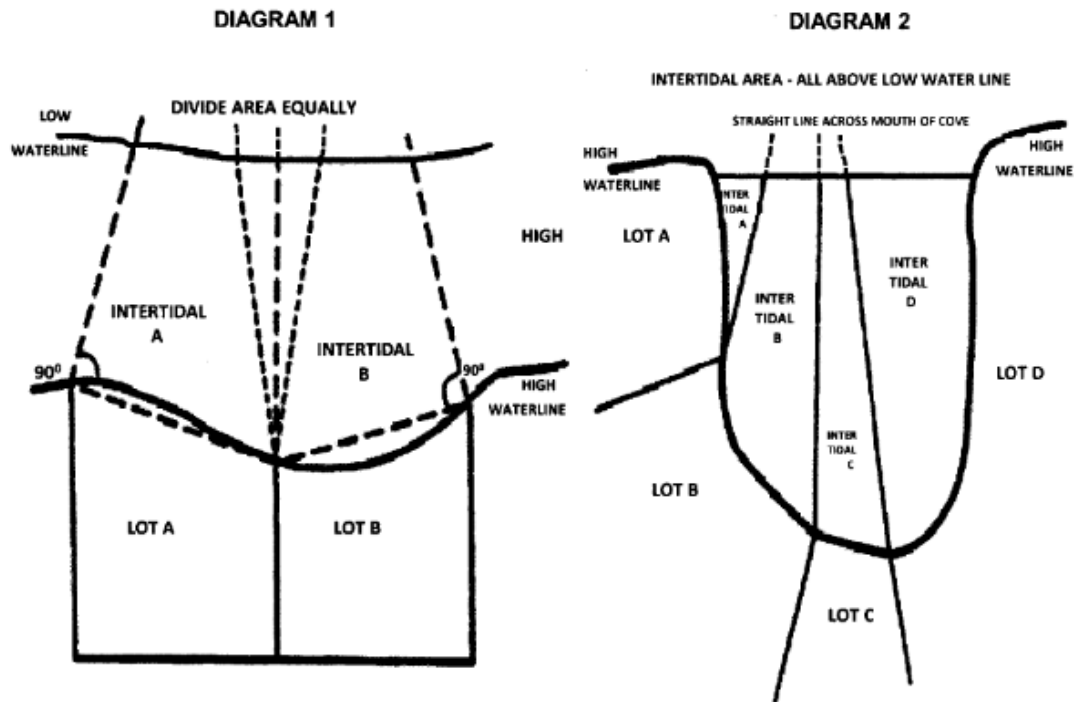


Figure 1 Formula for Determining Ownership of Intertidal Land as a Guide for Identifying

- (3) For a wireless communication system facility (WCSF) plan application, the Town Planner must cause written notice of the hearing sent by postage paid, first-class mail, provided by the applicant, at least seven days prior to the hearing to all owners of abutting property and property located within 1,000 feet of any property line of the property located within 1,000 feet of the proposed telecommunications facility. The applicant must provide this notification and must present proof of such notification to the Town Planner. The notification must include: the name of the applicant, location of the property, a brief description of the project, and a plot plan identifying the proposed site layout in relation to nearby streets and properties.

16.5.3 Accessory Dwelling Units

A. Purpose.

It is the intent of this article to provide standards that enable homeowners to create accessory dwelling units that are compatible with this title and to provide a means for residents, including seniors, single parents, and families with grown children, to remain in their homes

and neighborhoods, and increase the housing stock of existing neighborhoods in a manner that is compatible with their size and scale, and allow more efficient use of existing housing stock and infrastructure, and provide a broader range of affordable housing options. The purpose of this article is not intended to create a new supply of short-term rental (STR) units, such as those commonly advertised to tourists.

B. Applicability.

(1) An accessory dwelling unit is allowed in all zoning districts where the use is permitted in Chapter 16.4. The unit must be located:

(a) Within an existing structure, either principal or accessory on the property; or

(b) Attached to the existing principal structure, sharing a common wall; or

(c) Within a new accessory structure constructed for this purpose on the property.

(2) Accessory dwelling units that have a valid certificate of occupancy or have vested rights in the permitting process with an active building permit as of April 28, 2020 are exempted from the use standard, § 16.5.3.D(3).

C. Application for accessory dwelling unit.

(1) An application for an accessory dwelling unit must be made by the owner of the parcel on which the primary residential unit sits. The completed application and associated fees must be submitted to the Code Enforcement Officer for review.

(2) Applications for an accessory dwelling unit that meets the unit size standards and development standards contained in this article may be approved administratively and require approval by the Code Enforcement Officer.

(3) An accessory dwelling unit that fails to meet the standards provided in this article may not receive administrative approval; however, the accessory dwelling unit may still be permitted pursuant to § 16.5.3.D(4) below.

D. Accessory dwelling unit standards.

(1) Lot standards.

(a) Legal lot/residence. An accessory dwelling unit is allowed only on lots within the Town that contain one legal, single-family residence as the primary unit.

(b) Number of accessory dwelling units per lot. No more than one accessory dwelling unit is permitted on a lot.

(c) Zone lot size and unit density. The property on which an accessory dwelling unit is located must meet the size required by the applicable zoning standards for the principal residence, except in the case of legally nonconforming lots. However, an accessory dwelling

unit is exempt from the density requirements of the zone in which it is located.

(d) Setbacks and coverage. Yard setbacks for the zone must be met. However, for legally nonconforming lots where a proposed accessory dwelling unit will be attached to a principal dwelling unit and cannot meet the zone's side and rear yard setbacks, the percentage by which a lot is smaller than the required lot size for the zone will dictate the required setback for that lot. For example, a 30,000 square foot legally nonconforming lot in a zone that requires 40,000 square feet would require side and rear yard setbacks that are 75% of the zone's side and rear yard setbacks. Building coverage requirements will remain as required by the zone.

(e) Utility connections. Accessory dwelling units must be connected to adequate water and wastewater services.

[1] Public sewer.

[a] Service: written verification must be provided of adequate service to support the additional flow from the Superintendent of Wastewater Treatment Facilities.

[b] Fees: Payment of appropriate fees for connection to the municipal sewer system is required prior to obtaining the certificate of occupancy.

[2] Septic systems. Verification of adequate sewage disposal for subsurface waste disposal is required. The septic system, existing or proposed, must be verified as adequate or reconstructed as required. Plans for subsurface waste disposal must be prepared by a Maine-licensed site evaluator in full compliance with the State of Maine Subsurface Wastewater Disposal Rules, 10-144C.M.R. 241.

[3] Public water. Verification in writing is required from the Kittery Water District for volume and supply.

[4] Wells. Verification of the potable water supply for private wells is required. Tests of the existing well or proposed well, if applicable, must indicate that the water supply is potable and acceptable for domestic use and must conform to the recommendations included in the "Manual for Evaluating Public Drinking Water Supplies, Public Health Service No. 1180 (1969)."

(f) Parking. Each accessory dwelling unit must have one on-site parking space in addition to the parking for the primary dwelling unit. Tandem parking is permitted.

(g) Private road or right-of-way access. Where an applicant seeks to locate an accessory dwelling unit on a privately maintained road or right-of-way the following applies:

[1] Applicant must submit written consent from the road or homeowner's association or owner and parties responsible for street maintenance.

(2) Unit standards.

(a) Unit size. The size of an accessory dwelling unit must meet the minimum size for a dwelling unit as set by building code standards adopted and amended from time to time by Maine's Bureau of Building Codes and Standards, and be no larger than 1,000 square feet. For principal dwelling units 1,000 square feet or smaller, an accessory dwelling unit may be no greater than 80% of the size of the principal dwelling unit, as measured in square feet. An accessory dwelling unit may have no more than two bedrooms.

(b) Unit location.

[1] An accessory dwelling unit must meet one or more of the following conditions:

[a] Be fully constructed within the existing footprint of any legal primary residence or accessory building; or

[b] Share a common wall with the principal residence, providing yard setbacks per § 16.5.3.D(2)(a); or

[c] Be constructed as a new accessory building containing an accessory dwelling unit, providing yard setbacks can be met for the zone.

[2] Accessory dwelling units will be allowed to be fully constructed within the principal residence even if the building does not meet yard setbacks.

[3] Accessory dwelling units will not be allowed in accessory buildings encroaching on yard setbacks.

(3) Use Standards. The accessory dwelling unit may not be rented to the same person or party for less than a thirty-day period.

(4) Development standards. Should an accessory dwelling unit fail to meet the applicable unit standards listed in this article, the accessory dwelling unit may still be allowed if the applicant obtains approval from the Board of Appeals under the provisions of a miscellaneous variation request, as outlines in § 16.2.12. The Board of Appeals shall review any appeal decision in conformance with § 16.2.12.F, Basis for decision.

(5) Violations. A violation of the use standard § 16.5.3.D(3) will lose the certificate of occupancy for the unit for no less than 30 days, and be assessed a penalty of \$500.

16.5.4 Affordable Housing

A. Purpose.

Recognizing that the market alone will not provide the range and diversity of housing types needed for a vibrant community, the Town of Kittery desires to encourage affordable housing for households of modest means and for all ages. The purpose of this ordinance is to offer incentives to developers to include affordable housing, either for lease or sale, particularly in those zones that offer utilities and/or services, and to mitigate the impacts of market-rate housing development on the limited supply of land available for suitable using. The Town looks to its

comprehensive plan and finds that this ordinance will assist in meeting housing goals and in promoting the public health, safety and welfare of its residents.

B. Applicability.

- (1) Affordable housing regulations are applicable only in zones which explicitly state so and as follows:

(a) All development involving three or more new dwelling units. The proposed dwelling units may be new construction, created through a change of use or created through a renovation, rehabilitation or remodel. Projects may not be phased or segmented to avoid compliance with these requirements.

(b) All major subdivisions, including those planned in phases, in all zones that create 5 or more lots. Minor subdivisions are exempt.

(c) All developments as described in 1) and 2) above whether the dwelling units proposed are intended for sale or for lease.

- (2) Affordable housing regulations do not apply to hotels, motels, rooming houses, inns, bed and breakfasts, residential care facilities or elder care facilities.

C. Requirements.

- (1) For projects proposing five (5) or more dwelling units, at least 10% of the units, rounded down to the nearest whole number, must be affordable housing units, as defined by this code. Any fractional unit obligation left after the rounding results in a proportional payment-in-lieu (see 3) below). For example, if 15 units are proposed, then one affordable unit is required plus 50% of a payment-in-lieu. If an additional affordable unit is offered for the fractional unit obligation, no payment-in-lieu is required.

- (2) The affordable housing units must remain affordable (via a recorded land use restriction, deed restriction or other legal instrument, a copy of which must be submitted to the Town prior to issuance of any building permits) for the longest term permitted under federal, state and local laws and ordinances, or 30 years, whichever is greater.

- (3) As an alternative to providing affordable housing units, projects may pay a fee in lieu of some or all of the units. In-lieu fees shall be paid into the Kittery Housing Reserve Fund, as ordained by the Kittery Town Council. The fee for affordable units not provided must be established by the Kittery Town Council in the schedule of fees.

- (4) If the developer prefers to provide a payment-in-lieu instead of the required affordable housing units, that proportional payment will be calculated based on the number of affordable housing units that are required plus any fractional unit obligation. Using the example above, if 15 units are proposed, the developer would provide 1.5 times the current rate set by the Town.

D. Location.

(1) Required affordable housing may be located either on-site with any market rate dwelling units or off-site within areas appropriately zoned for residential use. For development proposed in the C-1, C-3, B-L and B-L1 zones, any off-site affordable housing must be located within one of those zones.

(2) Off-site affordable housing may be new construction, a rehabilitation, remodel or renovation of an existing structure, or a change of use from non-residential to residential.

(3) Developers of market-rate units for sale who seek to provide the required affordable housing units off-site may opt to provide such dwelling units as rentals, subject to review and approval by the Planning Board.

E. Incentives.

(1) Zoning districts having density incentives may be reviewed under the pertinent zone located in §16.4 Land Use Zone Regulations.

(2) The Town will reduce the permitting costs for developments including affordable housing as follows:

(a) For developments comprised of 10% – 15% affordable housing units: 10% off total permitting costs except for sewer connection fees.

(b) For developments comprised of 16% – 24% affordable housing units: 15% off total permitting costs except for sewer connection fees.

(c) For developments comprised of 25% and over affordable housing units: 20% off total permitting costs except for sewer connection fees.

F. Standards.

(1) Affordable housing units must be built in reasonable accordance with any market-rate units such that at minimum, for every five market rate units built, one affordable unit must be completed. All affordable housing units in a development must have received a certificate of occupancy before the final market rate unit receives such. If a development is proposed for five dwelling units, including one affordable unit, that affordable unit must be completed before the last market rate unit receives its certificate of occupancy.

(2) When affordable housing units are part of a development which also includes market rate housing units, the outside appearance of affordable units must be similar to the market rate units and any affordable units must be integrated into the development as a whole. Affordable units cannot be confined to one building of a multiple building development except in the cases of cottage clusters, accessory dwelling units or two-family residences.

(3) Affordable housing units need not be the same size as market rate housing units but the number of bedrooms in each such dwelling unit may not be less than 10% of the total number of market rate bedrooms in the development, rounded up when the fractional portion is .5 or more. For example, a five-unit multi-family dwelling with four market rate housing

214 units of 2 bedrooms each would be required to provide one affordable housing unit with one
215 bedroom.

216 (a) Studio dwelling units will be counted as a one-bedroom unit. In cases where a
217 development is providing only studio apartments and one-bedroom apartments, the Planning
218 Board has the authority to decide whether each required affordable housing unit will be a
219 studio or one-bedroom unit.

220 (4) Affordable housing units to be located off-site must be of comparable quality with the same
221 number of bedrooms (see 3) above) as any new affordable housing units that would be
222 created by the project on-site. The Town will not accept off-site units that are run-down or
223 show signs of substantial wear or deterioration. This includes but is not limited to: heating
224 and cooling systems, plumbing, wiring, appliances, flooring, walls, counters, cabinets, and
225 fixtures as well as roofing, siding, doors and windows.

226 G. Eligibility and Restrictions.

227 (1) Affordable housing units or lots that will be owner-occupied must be:

228 (a) Restricted to households having an income that does not exceed 120% of the area median
229 income for the family size having the same number of persons as the subject household for
230 the York-Kittery-South Berwick, Maine, Metro Fair Market Area (HMFA), as published by
231 the U.S. Department of Housing and Urban Development as of the date of the buyer's
232 application, and whose housing and utility costs do not exceed 30 percent of the household's
233 annual gross income; and

234 (b) Maintained as affordable housing units through a land use restriction agreement with the
235 Town of Kittery or its designee for a period no less than the maximum period permitted by
236 Maine law or thirty (30) years, whichever is longer.

237 (2) Affordable housing units that will be leased must be:

238 (a) Restricted to households having an income that does not exceed 80% of the area median
239 income for the family size having the same number of persons as the subject household for
240 the York-Kittery- South Berwick, Maine, Metro Fair Market Area, as published by the U.S.
241 Department of Housing and Urban Development as of the date of the household's
242 application, and whose housing and utility costs do not exceed 30 percent of the household's
243 annual gross income; and

244 (b) Maintained as affordable housing units through a land use restriction agreement with the
245 Town of Kittery or its designee for a period no less than the maximum period permitted
246 Maine law or thirty (30) years, whichever is longer.

247 (3) Subleasing of any leased affordable housing unit is not permitted. Leasing or renting,
248 including short-term rentals, of any owner-occupied affordable housing unit is not permitted.

249 H. Market and Pricing.

(1) Affordable housing units must be actively marketed for sale or lease, as applicable, to eligible households, which active marketing must include, as a minimum, the following:

(a) The owner shall provide a notice of availability to the Town of intent to lease or sell an affordable housing unit. Such notice must be given at least 14 days prior to advertising the unit.

(b) The owner or their authorized representative shall provide an affidavit to the Town confirming that household eligibility requirements have been met upon successful sale or lease of an affordable housing unit. Any lease agreement must be in writing and provided to the Town upon request.

(c) A non-eligible household may occupy an affordable housing unit if, despite active marketing, an eligible household is not available to lease the housing unit. If an affordable housing unit is being offered for lease, a non-eligible household may occupy it under the following conditions:

[1] The housing unit must be marketed for 90 days after the Town's receipt of notice of availability.

[2] If no eligible household is found, a lease may be signed with a non-eligible household 14 days after the Town is notified of the failure to lease, with the condition that the next housing unit that becomes available in the development must be offered as an affordable unit so that the affordable housing requirements for the development continue to be met.

(d) If, 120 days after the Town's receipt of notice of availability, the initial sale of an affordable housing unit by the developer has not occurred, a non-eligible household may occupy it but that household may only lease the unit for one year from the developer thus preserving the affordable restrictions. The unit must again be offered for sale upon termination of the one-year lease. The lease may not be renewed. The Town must be notified of the failure to sell 14 days before the lease is signed and of the subsequent lease agreement within 30 days of such lease being signed.

(2) Initial maximum sale pricing of new affordable units must be set as follows:

(a) Establish the target percentage of area median income level from the York-Kittery-South Berwick, Maine, Metro Fair market Area (HMFA), as published by the U.S. Department of Housing and Urban Development that the unit will be marketed to. For projects being funded privately, that number must be 110% of area median income. For projects that include state, federal or municipal funding, that number will be influenced by the stipulations attached to the funding.

(b) From the table below, determine the minimum household size based on the number of bedrooms in the unit

	1 – bedroom or studio	2 - bedroom	3 - bedroom	4 - bedroom
Minimum Household Size	1	2	3	4

(c) Calculate 30% of the gross median income based on the area median income from the York- Kittery-South Berwick, Maine, Metro Fair market Area (HMFA), as published by the U.S. Department of Housing and Urban Development for the minimum household size based on the number of bedrooms. For example: (Household's 110% AMI x .30)/12 = monthly income available for housing-related expenses

(d) The amount obtained from the formula above must then have other housing-related expenses, such as mortgage insurance, real estate taxes, home insurance and any HOA/condominium fees removed. Mortgage insurance must be estimated similar to current rates utilized by the Federal Housing Administration unless otherwise agreed to by the Town or its designee. What remains after removing non-mortgage related housing expenses is that portion of a household's monthly income which is available for a mortgage payment.

(e) The sale price will then be set based on a 30-year fixed-rate mortgage with a minimum 3.5% down payment. Larger down payments will not change the maximum allowable sale price.

(f) No affordable housing unit may be sold for more than the maximum sale price.

(3) Affordable housing units located in a development for which a home owner association (HOA) or condominium association will be established must obtain the Town's review and approval of the draft budget and condominium/HOA documents. The Town or its designee may request quotes for costs such as replacement reserves and insurance. Fees will be shared proportionately based on the Town's tax assessment of the properties or if that information is not available, on the initial sales price of the units. Affordable units will be assessed with consideration given to the associated restrictions. The condominium/HOA fees may not increase more than 5% any given year and cannot exceed 15% within any five-year period without a supermajority 67% vote of the association. The Town may choose to have a consultant or the Town Attorney review the condominium/HOA documents, which fee is payable by the developer.

(4) Maximum resale pricing of affordable units must be set as follows:

(a) Calculate the average percentage change in the area median income used for the initial pricing for the relevant minimum household size between the year of purchase and the present.

(b) Using that percentage number, calculate the new selling price. For example, if the average percentage change in area median income over the time the home was owned is 2%

then: (original purchase price) * 1.02) = new selling price.

(5) Monthly rental costs for affordable housing units will be set based on the following:

(a) Find the minimum household size based on the number of bedrooms from the table below:

	1 – bedroom or studio	2 - bedroom	3 - bedroom	4 - bedroom
Minimum Household Size	1	2	3	4

(b) Use the formula below to calculate the monthly rent:

$0.30 \times (\text{annual income based on minimum household size}/12) \text{ minus utilities} = \text{affordable rental unit rent.}$

(6) The Town Manager or designee, with recommendation from the Affordable Housing Committee, may modify the requirements in 16.5.4(H) as needed to advance Kittery's affordable housing goals and objectives.

I. Supplemental Standards for Approval.

(1) Prior to submission of any plan for review by a Town land use board such as the Planning Board or Board of Appeals, the developer shall submit a Housing Plan to the Planning Department outlining the incentives sought, target median income percentage for the affordable units, proposed location of affordable housing and standards satisfied from this section.

(2) The Town must review the plan and certify in writing that the development for which approval is sought, as described in the Housing Plan, is consistent with all applicable requirements of this Section. If the plan does not meet the requirements, the Town must notify the developer and the project may not proceed to the applicable land use board.

(3) In addition, all housing-related projects in the C-1 zone must undergo master site plan review even if only one building is proposed. See Chapter 16.6.

(4) Prior to the submittal of any development application for consideration by a Town land use board, a pre-application conference between the developer and the Town is required to discuss the application, site design and relevant requirements of the certified Housing Plan.

(5) Prior to issuance of a building permit, a land use restriction agreement shall be executed between the Town Manager and the developer, in a form promulgated by the Town and approved by the Town Attorney, based on the Housing Plan, which land use restriction

agreement sets forth the land use restrictions required by this section.

- (6) Prior to issuance of the certificate of occupancy for a development subject to this section, the developer shall provide the Town with a fully executed copy of the land use restriction agreement as recorded in the real property records maintained by the York County Registry of Deeds.

16.5.5 Agriculture

- A. Agricultural practices must be conducted to minimize soil erosion, sedimentation, contamination and nutrient enrichment of groundwater and surface waters.
- B. All spreading or disposal of manure must be accomplished in conformance with the Manure Utilization Guidelines, November 1, 2001, published by the Maine Department of Agriculture and the Nutrient Management Act (7 M.R.S. §§ 4201 to 4214).
- C. Manure must not be stored or stockpiled within 100 feet, horizontal distance, of the normal high-water line of any water bodies, tributary streams, coastal wetlands or freshwater wetlands shown on the Map. Within five years of the effective date of this chapter, all manure storage areas within the Shoreland Overlay and Resource Protection Overlay Zones must be constructed or modified so the facility produces no discharge of effluent or contaminated stormwater. Existing facilities which do not meet the setback requirement may remain, but must meet the no-discharge provision within the above five-year period.
- D. Owners of agricultural activities involving tillage of soil greater than 40,000 square feet in surface area or the spreading, disposal or storage of manure within the Shoreland Overlay Zone are required to submit a soil and water conservation plan to the Planning Board for review and approval. Nonconformance with the provisions of said approved plan will be considered to be a violation of this section.
- E. New tilling of soil within 100 feet, horizontal distance, of the normal high-water line of water bodies or coastal wetlands; within 25 feet, horizontal distance, of the normal high-water line of tributary streams and freshwater wetlands shown on the Map is prohibited. Operations in existence on the effective date of this chapter and not in conformance with this provision may be maintained.
- F. After the effective date of this section, newly established livestock grazing areas will not be permitted within 100 feet, horizontal distance, of the normal high-water line of any water bodies or coastal wetlands or within 25 feet, horizontal distance, of the normal high-water line of tributary streams and freshwater wetlands shown on the Zoning Map. Livestock grazing associated with ongoing farm activities, and which are not in conformance with the above setback provision, may continue, provided that such grazing is conducted in accordance with a soil and water conservation plan that has been approved by the Planning Board.

16.5.6 Agriculture, Piggery

- A. Number of animals. There may be no more than three (3) pigs allowed on a lot.
- B. Setbacks. The following distances are from the identified use to the nearest property not owned or controlled by the operator/owner of the piggery:
- (1) Structures: 50 ft.
- (2) Feed lots, pens and extensively used areas: 100 ft.
- C. Erosion and Sediment Control. The property owner shall demonstrate to the Code Enforcement Officer that erosion and sediment runoff will not enter an abutting property.
- D. Spreading or Disposal of Manure. All spreading or disposal of manure shall be accomplished in conformance with the, "Manual of Best Management Practices for Maine Agriculture," published by the Maine Department of Agriculture in January 2007, and as this may be amended or superseded.

16.5.7 Agriculture, Poultry Facility

- A. Number of Animals. These standards apply to the keeping of ten (10) or more poultry animals that are six (6) months old or older in zoning districts in which Agriculture, Poultry Facility is either a permitted use or a special exception use.
- B. Setbacks. The following distances are from the identified nearest property not owned or controlled by the operator/owner of the poultry facility:
- (1) Structure, including Barn or Coops: 50 ft.
- (2) Feed lots, pens and extensively used areas: 100 ft.
- C. Erosion and Sediment Control. The property owner shall demonstrate to the Code Enforcement Officer that erosion and sediment runoff will not enter an abutting property.
- D. Spreading or Disposal of Manure. All spreading or disposal of manure shall be accomplished in conformance with the, "Manual of Best Management Practices for Maine Agriculture," published by the Maine Department of Agriculture in January 2007, and as this may be amended or superseded.

16.5.8 Campgrounds and Campsites

- A. Campgrounds. Campgrounds must meet the minimum requirements according to state licensing procedures and the following:
- (1) Campgrounds must contain a minimum of 5,000 square feet of land, not including roads and driveways, for each site.
- (2) Land supporting wetland vegetation and land below the normal high-water line of a water

- 418 body is not to be included in calculating land area per site.
- 419 (3) The areas intended for placement of a recreational vehicle, tent or shelter, and utility and
420 service buildings must be set back a minimum of 75 feet, horizontal distance, from the
421 normal high-water line of water bodies, tributary streams or the upland edge of a wetland.
- 422 B. Individual private campsites. Individual private campsites not associated with
423 campgrounds may be permitted in a Shoreland Overlay Zone, provided the following
424 conditions are met:
- 425 (1) One campsite per lot existing on the effective date of this chapter or 30,000 square feet of lot
426 area within the SL-OZ, whichever is less, may be permitted.
- 427 (2) Campsite placement on any lot, including the area intended for a recreational vehicle or tent
428 platform, must be set back 75 feet, horizontal distance, from the normal high-water line of
429 water bodies, tributary streams or the upland edge of a wetland.
- 430 (3) Only one recreational vehicle is allowed on a campsite. Permanent foundations for
431 recreational vehicles are prohibited. Gravel pads for temporary recreational vehicle parking
432 are permissible. No structures, other than canopies, are allowed for attachment to the
433 recreational vehicle.
- 434 (4) The clearing of vegetation for the siting of the recreational vehicle, tent or similar shelter in
435 a Resource Protection Overlay Zone is limited to 1,000 square feet.
- 436 (5) A written sewage disposal plan describing the proposed method and location of sewage
437 disposal is required for each campsite and must be approved by the local Plumbing
438 Inspector. Where disposal is off site, written authorization from the receiving facility or
439 property owner is required.
- 440 (6) Recreational vehicles, tents or similar shelters are not allowed to remain on site for a period
441 longer than 120 days per year, unless it can be demonstrated that all requirements for
442 residential structures have been met, including the installation of a subsurface sewage
443 disposal system in compliance with the State of Maine Subsurface Wastewater Disposal
444 Rules and/or the site is served by public sewage facilities.

445 16.5.9 Conservation of Wetlands Including Vernal Pools

- 446 A. Purpose.
- 447 (1) Wetlands are a fragile natural resource which, in their natural state, directly and indirectly
448 benefit the public by serving valuable functions such as pollution filtration systems (i.e.,
449 retention of suspended solids, phosphorus and other nutrients), control of floodwaters,
450 erosion control, groundwater recharge, educational and scientific study, wildlife habitat,
451 open space and recreation. Considerable wetland acreage has been lost or impaired by
452 draining, dredging, filling, excavating, building, pollution and other acts inconsistent with
453 the valuable functions and natural limitations of wetlands. It is, therefore, the intent of the
454 Town to:

- 455 (a). Prevent the development of structures and land uses within wetlands and wetland
456 setback areas that may contribute to the pollution of surface water and groundwater by
457 sewage or toxic substances;
- 458 (b). Prevent the destruction of, or significant changes to, wetlands which provide flood and
459 shoreline protection, recharge groundwater supplies, and augment stream flow during
460 dry periods;
- 461 (c). Protect wetland areas and promote healthy wetland buffers that will preserve and
462 enhance the wetlands;
- 463 (d). Protect wildlife habitats, such as vernal pools, deer habitat, nesting sites, etc., and
464 maintain ecological balances; and
- 465 (e). Establish maintenance responsibility and/or fees to protect and maintain the wetland
466 areas.
- 467 (2) The number of healthy, functional wetlands in Kittery is decreasing; therefore, practices and
468 strategies, such as buffering and the avoidance of wetland alterations that serve to protect
469 functional wetlands and the repair of degraded wetlands, are encouraged. The reviewing
470 authority will review plans for proposed development within 100 feet of a wetland to
471 determine if wetlands of special significance are impacted. The applicant may be required to
472 pay the cost of an independent study. For the reviewing authorities, refer to § 16.2.
- 473 (3) Wetlands of special significance have one or more of the following characteristics:
- 474 (a). Critically imperiled or imperiled community. The freshwater wetland contains a natural
475 community that is "critically imperiled" as defined by the Maine Natural Areas Program.
- 476 (b). Significant wildlife habitat. The freshwater wetland contains significant wildlife habitat
477 as defined by 38 M.R.S. §480-B(10).
- 478 (c). Location near coastal wetland. The freshwater wetland is located within 250 feet of a
479 coastal wetland.
- 480 (d). Location near a water body. The freshwater wetland is located within 250 feet of the
481 normal high-water line and within the same watershed of a lake or pond.
- 482 (e). Aquatic vegetation, emergent marsh vegetation or open water. The freshwater wetland
483 contains, under normal circumstances, at least 20,000 square feet of aquatic vegetation,
484 emergent marsh vegetation or open water, unless the twenty-thousand or more square
485 foot area is the result of an artificial pond or impoundment.
- 486 (f). Wetlands subject to flooding. The freshwater wetland is inundated with floodwater
487 during a one-hundred-year flood event based on flood insurance maps produced by the
488 Federal Emergency Management Agency or other site-specific information.
- 489 (g). Peatlands. The freshwater wetland is or contains peatlands, except that the Planning

490 Board may determine that a previously mined peatland, or portion thereof, is not a
491 wetland of special significance.

492 (h). River, stream or brook. The freshwater wetland is located within 25 feet of a river,
493 stream or brook.

494 (i). Monetary value. An estimation can be determined based on the importance of the
495 wetland with respect to the individual or collective functions it provides.

496 (j). Vernal pools. The wetland contains a particular aquatic habitat as defined by the Maine
497 Department of Environmental Protection (MDEP), including those mapped as significant
498 vernal pools by MDEP.

499 B. Wetlands boundaries.

500 The definition of wetland boundaries is as described in this section and in § 16.3. Planning
501 Board approval to alter a wetland area one acre or larger in size will not be issued until the
502 applicant has submitted to the Town a wetlands delineation map and summary prepared by
503 a qualified wetlands scientist or a Maine-certified soil scientist, at the applicant's expense.
504 The qualified wetlands scientist or Maine-certified soil scientist must determine through
505 field investigation the presence, location and configuration of wetlands on the area
506 proposed for use.

507 (1) Disturbed areas. An area which has been disturbed or modified such that natural vegetation,
508 hydrology or soils are altered or removed may still satisfy the wetland criteria. In the event
509 disturbance of a wetland causes the wetland boundary to be altered, a new boundary may
510 need to be delineated in order to determine if the wetland is a regulated wetland. Wetland
511 boundaries are to be delineated according to procedures described in the Corps of Engineers
512 Wetlands Delineation Manual — Waterways Experiment Station Technical Report Y-87-1,
513 January 1987, (1987 Manual). Notwithstanding the above, areas legally disturbed or
514 modified prior to May 13, 1987 will be considered "wetlands" for the purpose of this title if
515 such disturbed areas currently meet the normal criteria for delineating undisturbed wetlands.

516 (2) Settling disputes over wetland boundaries. If there is a dispute regarding the existence or
517 boundaries of the wetlands, the boundaries of the wetland are to be determined, at the
518 expense of the applicant, by a qualified wetlands scientist or a qualified Maine-certified soils
519 scientist agreeable to both the Planning Board and the applicant.

520 (3) Permits required from other agencies. The determination of wetlands boundaries for Town
521 jurisdiction by the Town Planning Board, the Conservation Commission, or the Code
522 Enforcement Officer does not eliminate the need for the applicant to seek jurisdictional
523 determinations and/or permits from the Maine Department of Environmental Protection and
524 the United States Army Corps of Engineers when required.

525 C. Regulated activities within wetlands.

526 (1) Unless otherwise specified, all new structures and activities within wetlands, including but
527 not limited to dredging and filling and expansions of existing structures and activities, are
528 subject to the provisions of these regulations. Proposed activities and structures within a

- 529 freshwater wetland smaller than 501 square feet in total size are exempt from the regulations
530 in this article.
- 531 D. Permitted activities within regulated wetlands. The following uses are considered to be
532 compatible within regulated wetlands and are permitted within regulated wetlands without
533 Planning Board approval, provided they are in conformance with all local, federal and
534 state regulations:
- 535 (1) Agriculture, including pasturing, farming, haying and harvesting of wild crops. Such
536 agriculture must not cause or contribute to surface water or groundwater pollution by use of
537 pesticides, toxic chemicals or other pollutants and must not cause soil erosion;
- 538 (2) Conservation areas and nature trails;
- 539 (3) Education and scientific research;
- 540 (4) Forestry, tree farming and timber harvesting using the best management practices in order to
541 protect streams from damage and prevent sedimentation. Timber harvesting must be
542 conducted during periods when the ground is frozen. The practice known as "clear cutting"
543 is not permitted by right and requires a special permit under § 16.5.29;
- 544 (5) Low-intensity recreation;
- 545 (6) Repair and maintenance of existing ways, roads, driveways, railroad beds, wharfs, docks or
546 utilities. Such repair and maintenance must not negatively impact the wetland or alter the
547 existing watercourse and related hydrology;
- 548 (7) Repair and maintenance of existing permanent structures requiring the addition or removal
549 of 10 cubic yards or less of earth material to (form) a water body or wetland;
- 550 (8) Placement of drainage outfall pipes requiring the addition or removal of less than 10 cubic
551 yards of material;
- 552 (9) Repair in kind, maintenance and necessary upgrade of existing drainage facilities;
- 553 (10) Repair in kind and maintenance of existing transportation facilities;
- 554 (11) Placement of moorings, subject to Harbormaster approval;
- 555 (12) Wilderness areas and natural wildlife refuges;
- 556 (13) Piers, fences, blinds, footbridges and shelters to enhance wildlife, provided they do not
557 involve draining, grading, filling or dredging within the wetland. All such structures must be
558 constructed of nontoxic materials and designed in such a manner to permit the unobstructed
559 flow of waters and must preserve the natural contour and hydrology of the wetland, unless
560 otherwise authorized by special permit as per § 16.5.9.D;
- 561 (14) Emergency public safety operations; and

562 (15) Any other activity as determined by the Planning Board that does not result in a measurable
563 alteration of the wetland.

564 E. Prohibited uses within regulated wetlands.

565 The following structures and activities are considered to be incompatible with protecting
566 wetlands and are prohibited within regulated wetlands:

567 (1) Disposal or storage of waste and/or hazardous materials;

568 (2) Manure stockpiles;

569 (3) Road salt stockpiles;

570 (4) Topsoil removal except as permitted in § 16.5.9.D or with Planning Board approval;

571 (5) Bulk fuel storage;

572 (6) Herbicidal spraying;

573 (7) Invasive nonnative wetland plants; and

574 (8) Snow dumping.

575 F. Procedures for wetlands alteration application.

576 (1) Application and review process. The application and review process for the review of
577 proposals within regulated wetlands must conform to the procedures explained in § 16.5.9 of
578 this chapter, except where specifically stated otherwise in this section.

579 (2) Submission requirements. An application to alter a wetland must be made in accordance
580 with the submission requirements in § 16.5.9.L to the Town Planner, or designee,
581 accompanied by a fee as determined in Appendix A.

582 (3) Advisory opinion. The Planning Board may request the Town Planner to acquire more
583 specific data and analysis from qualified sources and/or the opinion of the Conservation
584 Commission concerning the proposed activity.

585 (4) Timing after Board acceptance. The Planning Board will issue its decision within 35 days of
586 receipt of the completed wetlands alteration application, unless a public hearing is
587 necessary. A hearing is not necessary if the Planning Board finds that the activity is so minor
588 that it will not significantly affect the wetland or that the hearing will not produce additional
589 information useful to the review. A decision may be rendered at the scheduling hearing if
590 the Board determines that a complete application has been received and no public hearing is
591 necessary. If a public hearing is held, the Planning Board is required to issue its decision
592 within 35 days of completion of the public hearing.

593 (5) Abutter notice. Owners of property within 150 feet, horizontal distance, of the proposed
594 alteration must be notified by first class U.S. Mail of any public hearing on the application

for wetlands alteration.

- (6) Coordination. Submission requirements for an application for a wetlands alteration will be integrated into the required submissions for a subdivision or development review application to the Planning Board.

G. Wetlands alteration approval criteria.

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

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

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

- (4) When the Planning Board finds the demonstrated public benefits of the project as proposed, or modified, clearly outweigh the detrimental environmental impacts, the Planning Board may approve such development, but not prior to granting approval of a reasonable and practicable mitigation plan (see § 16.5.9.I) and not prior to the completion of all performance guaranties for the project (see § 16.8.11.F).

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

(a). The proposed use:

[1] Uses, manages or expands one or more other areas of the site that will avoid or reduce the wetland impact;

[2] Reduces the size, scope, configuration or density of the project as proposed, thereby avoiding or reducing the wetland impact;

- 633 [3] Provides alternative project designs, such as cluster development, roof gardens,
634 bridges, etc., that avoid or lessen the wetland impact; and
- 635 [4] Demonstrates that the proposed development meets or exceeds best management
636 practices for stormwater management in the wetland areas.
- 637 (6) In determining if the proposed development plan affects no more wetland than is necessary,
638 the Planning Board will consider if the alternatives discussed above in Subsection (1) of this
639 section accomplish the following project objectives:
- 640 (a). The proposed use will not:
- 641 [1] Unreasonably impair or diminish the wetland's existing capacity to absorb, store and
642 slowly release stormwater and surface water runoff;
- 643 [2] Unreasonably increase the flow of surface waters through the wetland;
- 644 [3] Result in a measurable increase in the discharge of surface waters from the wetland;
- 645 [4] Unreasonably impair or diminish the wetland's capacity for retention and absorption
646 of silt, organic matter, and nutrients;
- 647 [5] Result in an unreasonable loss of important feeding, nesting, breeding or wintering
648 habitat for wildlife or aquatic life; all crossings must be designed to provide a moist
649 soil bed in culvert inverts and to not significantly impede the natural migration of
650 wildlife across the filled area;
- 651 [6] Result in a measurable increase of the existing seasonal temperature of surface waters
652 in the wetland or surface waters discharged from the wetlands; or
- 653 [7] Result in a measurable alteration or destruction of a vernal pool.
- 654 H. Expiration of wetlands alteration approval. =
- 655 (1) Wetlands alteration approval will expire if work has not commenced within one year of the
656 Planning Board date of approval. Where work has commenced within one year of approval,
657 such approval will expire unless work is complete within two years of the original approval
658 date.
- 659 (2) Prior to expiration, the Planning Board may, on a case-by-case basis, grant extensions to an
660 approved plan expiration date upon written request by the developer for an inclusive period
661 from the original approval date, not to exceed five years for a subdivision plan and three
662 years for all other development plans.
- 663 I. Mitigation plan.
- 664 (1) Mitigation activities are actions taken to offset potential adverse environmental impact, as
665 well as the remittance of fees and a plan for the preservation of buildable/usable upland

areas when the applicant has proven to the Planning Board's satisfaction that there are no practical alternatives to impacting a wetland.

(2) Required fees and compensation.

(a). For activities which in total will alter or fill less than 501 square feet of regulated wetlands, the mitigation plan must include the preservation of an undisturbed upland buffer zone adjacent to the wetland boundary equal in size to the area of the wetland to be altered.

(b). For activities which in total alter or fill a five-hundred-and-one-square foot to twenty-thousand-square-foot wetland, the mitigation plan must include the preservation of an undisturbed upland buffer zone adjacent to the wetland boundary equal in size to the area of the wetland to be altered. The undisturbed buffer zone from the wetland boundary must be placed in deed restrictions and be located and configured in a manner acceptable to the Planning Board.

(c). In addition, a wetlands preservation fee for each square foot of altered wetland area, as determined in Appendix A, will be deposited into the account of the Town to achieve one or more of the following objectives related to the conservation of Kittery wetlands, with the Planning Board's recommendation and release of funds by the Town Council:

[1] Restoration and preservation of wetlands;

[2] Purchase of buffer areas for wetlands deemed at risk;

[3] Monitoring and improvement of water quality;

[4] Environmental and conservation projects, such as, but not limited to, education;

[5] Matching grant funds;

[6] Open space land purchases in conjunction with the Open Space Committee;

[7] Assistance to the Kittery Land Trust; and/or

[8] Purchase of signage to denote sensitive and wetland areas.

(d). Assessment. A functional assessment and report of the wetlands to be altered must be conducted in accordance with the requirements in § 16.5.9.L(3). The assessment must demonstrate the existing wetland functions and functional value and summarize the impairments, degradation and/or loss of function due to the proposed development.

[1] When required. Fees for deposit to the wetlands preservation account are required whenever wetland areas or wetland functions will be lost or degraded due to the project, as identified by the functional assessment.

[2] Where required. Fees for deposit to the wetlands preservation account must be used

699 on the proposed site or on parcels adjacent to the project site when possible. If not
700 possible, the fees must be used within the same watershed as the proposed alteration,
701 or within the project vicinity, except as allowed for mitigation banking approved in
702 writing by the Maine Department of Environmental Protection. In all cases, use of the
703 fees must occur within the boundaries of the Town.

704 [3] Wetland impact mitigation process. Fees or developable land, or a combination
705 thereof, as determined by the Planning Board, will be used to replace lost wetlands
706 and wetland functions. Where the Maine Department of Environmental Protection
707 and this title require and the Planning Board has approved a mitigation plan, such
708 plan is deemed to satisfy Town standards.

709 (e). Homeowners' association documents, deed covenants, maintenance agreements, and
710 easements must establish responsibility for the maintenance of wetlands. The association
711 documents must stipulate periodic maintenance of the surface and subsurface stormwater
712 system, including but not limited to catch basins, stormwater manholes, pipes, ditches,
713 curbs, settling basins and other structures designed to direct, retain and/or discharge
714 stormwater runoff. In the event the Code Enforcement Officer and/or the Town's
715 Engineer finds the wetlands are not in a natural healthy state, the association will be
716 required to hire a qualified wetlands scientist or a Maine-certified soils scientists to
717 evaluate all wetlands within the development at the association's expense.

718 J. Coordination.
719 To reduce delays, the applicant may, upon written notice to the Town Planner,
720 simultaneously apply to the Army Corps of Engineers and the Maine Department of
721 Environmental Protection for permits during the Town review process. In addition, the
722 applicant may simultaneously apply for other local land use regulation approvals while
723 applying for wetlands alteration approval.

724 K. Enforcement.
725 The provisions of this Section (§16.5.9), Conservation of Wetlands Including Vernal
726 Pools, are to be administered and enforced pursuant to the provisions of § 16.2,
727 Administration and Enforcement.

728 L. Submission requirements for wetland alteration application.

729 (1) Minimum requirements. Unless specifically waived by the Planning Board, all applications
730 must contain the following information:

731 (a). Fifteen copies of the narrative, the site plan and the vicinity map required in this
732 subsection.

733 (b). A copy of the official documents showing legal interest of the applicant in the property
734 to be affected.

735 (c). A narrative, describing:

736 [1] The purpose of the project;

- 737 [2] The type of alteration to the wetland (fill, culvert, dredge, etc.);
- 738 [3] Why there is no practicable alternative to impacting the wetland; and
- 739 [4] How the proposed activity has been designed to minimize the impact on the wetland.
- 740 (d). A plan view showing the site as viewed from above is required. The plan view must:
- 741 [1] Be drawn at an appropriate scale, but no smaller scale than one inch equals 100 feet,
- 742 and show the proposed activity, the location and size of all existing and proposed
- 743 structures, roads, parking areas and sewage treatment facilities.
- 744 [2] Contain a code block in the lower right-hand corner. The block must contain the:
- 745 [a] Name(s) and address(es) of the applicant or owner;
- 746 [b] Name and address of the preparer of the plan, with professional seal, if applicable;
- 747 [c] Name of plan, date of plan preparation, and a revision number and date, if
- 748 applicable; and
- 749 [d] Map and lot number(s), according to Kittery tax maps, shown in the lower right-
- 750 hand corner in bold lettering and 1/4 inch high.
- 751 [3] Show a North arrow.
- 752 [4] Show property boundaries.
- 753 [5] Show the location of any wetlands, shorelines and floodplains. Wetland boundaries
- 754 must be delineated using the Corps of Engineers Wetlands Delineation Manual —
- 755 Waterways Experiment Station Technical Report Y-87-1, January 1987," (1987
- 756 Manual).
- 757 [6] Show the location (tied by measurement to identifiable structures or boundary points)
- 758 of all proposed draining, fill, grading, dredging and vegetation removal, including
- 759 specification of amount of materials to be added or removed and procedures to be
- 760 used.
- 761 [7] Indicate the square footage of wetlands to be affected by the proposed activity.
- 762 [8] Show the direction of natural water flow over the land, in the wetland, and in the
- 763 proposed alteration area.
- 764 [9] Show the location of the one-hundred-year floodway and flood hazard boundaries as
- 765 shown on the current effective National Flood Insurance Program maps, if applicable.
- 766 [10] Specify the number of cubic yards and type of material to be used as fill, if fill
- 767 material is involved.

[11] Specify the type of material, number of cubic yards, method of handling, and the location of fill and spoil disposal area, if dredge material is involved.

[a] Show all owners of property within 150 feet of the proposed alteration, together with their mailing addresses and map and lot designations from the Assessor's records.

[12] A vicinity map, utilizing a topographic map at a scale no smaller than one inch equals 600 feet, showing the boundary of the proposed activity.

[13] One set of photographs, taken during the growing season if possible, showing the wetland, adjacent water bodies if applicable, and the alteration area before development begins.

(2) Additional requirements. In its consideration of an application, the Board may at any point in the review require the applicant to submit additional materials, studies, analyses and agreement proposals that the Board may deem necessary for a complete understanding of the application. Such material may include the following items:

(a). A site plan showing existing and proposed topographic contours at two-foot intervals;

(b). A hydrologic analysis in accordance with the requirements of this chapter;

(c). Cross-section drawings showing the nature of the construction, the depth of excavation or height of fill, if applicable, and surface water and groundwater elevations; and

(d). An evaluation, by a qualified wetlands scientist or a Maine-certified soils scientist, assessing the functions of the wetland and the impact of the proposed activity on these functions.

(3) Wetlands mitigation plan and report. A wetlands mitigation plan and report is required for activities which, in total, affect or fill more than 500 square feet of wetlands.

(a). The wetland mitigation plan and report must contain the following:

[1] Plan at a scale of one inch equals 100 feet that shows two-foot contour intervals, existing wetland boundaries, the area of wetland to be altered, project dimensions and all off-site wetlands being extensions of the wetland to be altered;

[2] Existing wetland characteristics, including water depth, vegetation and fauna;

[3] Functional assessment, conducted by a qualified wetlands scientist or a Maine-certified soils scientist, on the wetland to be altered, which analyzes the wetland's value based on the functions it serves and how the wetland will be affected by the proposed alteration. The Wetland Evaluation Technique (WET) methodology, published by the U.S. Army Corps of Engineers, is one acceptable methodology. Other comparable assessment techniques may be accepted, provided the applicant submits documentation of how the methodology was developed, how the wetland

- 803 functions and values are determined, and how much field testing the technique has
804 undergone; and
- 805 [4] Photographs of the wetland to be altered which show its characteristics.
- 806 (b).Description of the overall proposed activity with particular reference to its impact on the
807 wetland, including the precise location of the activity, its dimensions, the amount and
808 type of fill (if any proposed), any proposed drainage, the timing and procedures
809 proposed for the alteration, and any efforts proposed for reducing impacts. The Planning
810 Board may require certain fill areas (such as stormwater storage basins, solid waste
811 landfills, fill behind retaining walls, etc.) to be structurally engineered.
- 812 (c). Plan for the proposed wetlands work, if any, including a topographic plan at the scale of
813 one-inch equals 100 feet, showing two-foot contour intervals and proposed wetland
814 boundaries. This plan must also include:
- 815 [1] Proposed boundaries and characteristics of the mitigation site, including elevation,
816 sources of water, and proposed vegetation;
- 817 [2] Narrative describing the specific goals in terms of particular wetland functions and
818 values. These goals must be related to those of the original wetland;
- 819 [3] Narrative describing the available literature or experience to date (if any) for carrying
820 out the mitigation work;
- 821 [4] Proposed implementation and management procedures for the wetlands work;
- 822 [5] Description of the short-term and long-term sources of water for this wetland,
823 including the water quality of these sources;
- 824 [6] Plans for replanting, including a description of plant species, sizes and sources of
825 plant material, as well as how, when and where seeding or planting will take place;
- 826 [7] Proposed buffers or protective measures, such as sediment control methods;
- 827 [8] Plans for monitoring the wetlands work, showing capability for mid-course
828 corrections; and
- 829 [9] Plans, if any, for control of nonindigenous plant species.
- 830 (d).For wetlands work involving creation, restoration and/or enhancement of degraded
831 wetlands, a maintenance agreement must be approved by the Board and recorded in the
832 York County Registry of Deeds. The maintenance agreement must be conveyed or a
833 deed restriction imposed, and such maintenance responsibility is not dissolvable without
834 Council approval. The maintenance agreement must meet or exceed the criteria listed in
835 § 16.5.9.I.
- 836 (e). For projects involving preservation of wetlands or adjacent uplands, a conservation

837 easement must be conveyed or deed restriction imposed so that the parcel will remain
838 undeveloped in perpetuity.

839 16.5.10 Essential Services

840 A. Installation.

841 Where feasible, the installation of essential services will be limited to existing public ways
842 and existing service corridors.

843 B. Location in CON or OZ-RP Zone.

844 The installation of essential services is not permitted in a Conservation Zone or Resource
845 Protection Overlay Zone, except to provide services to a permitted use within said zone, or
846 except where the applicant demonstrates no reasonable alternative exists. Where
847 permitted, such structures and facilities must be located to minimize any adverse impacts
848 on surrounding uses and resources, including visual impacts.

849 C. Replacement of equipment without permit.

850 Damaged or destroyed public utility transmission and distribution lines, towers and related
851 equipment may be replaced or reconstructed without a permit.

852 16.5.11 Floodplain Management

853 A. Statement of purpose and intent.

854 (1) Certain areas of the Town are subject to periodic flooding, causing serious damages to
855 properties within these areas. Relief is available in the form of federally subsidized flood
856 insurance as authorized by the National Flood Insurance Act of 1968.

857 (2) Therefore, the Town has chosen to become a participating community in the National Flood
858 Insurance Program and agrees to comply with the requirements of the National Flood
859 Insurance Act of 1968 (P.L. 90-488, as amended) as delineated in this article.

860 (3) It is the intent of the Town to require the recognition and evaluation of flood hazards in all
861 official actions relating to land use in the floodplain areas having special flood hazards. This
862 body has the legal authority to adopt land use and control measures to reduce future flood
863 losses pursuant to 30-A M.R.S §§ 3001-3007, 4352 and 4401-4407.

864 B. Definitions.

865 Unless specifically defined in § 16.3, words and phrases used in this article have the same
866 meanings as they have in common law to give this article its most reasonable application.

867 C. Establishment of areas.

868 (1) The Town elects to comply with the requirements of the National Flood Insurance Act of
869 1968 (P.L. 90-488, as amended). The National Flood Insurance Program, established in the
870 aforesaid Act, provides that areas of the Town having a special flood hazard be identified by
871 the Federal Emergency Management Agency and that floodplain management measures be
872 applied in such flood hazard areas. This article establishes a flood hazard development

- 873 permit system and review procedure for development activities in the designated flood
874 hazard areas of the Town.
- 875 (2) The areas of special flood hazard, Zones A, A1 — 30, AE, AO, AH, V1 — 30 and/or VE,
876 identified by the Federal Emergency Management Agency in a report entitled "Flood
877 Insurance Study — Town of Kittery, Maine, York County," dated January 5, 1984, with
878 accompanying Flood Insurance Rate Map dated July 3, 1986, are adopted by reference and
879 declared to be a part of this article.
- 880 D. Permit required.
881 Before any construction or other development (as defined in § 16.3), including the
882 placement of manufactured homes, begins within any areas of special flood hazard
883 established in § 16.5.11.C, a flood hazard development permit is to be obtained from the
884 Code Enforcement Officer. This permit is in addition to any other building/regulated
885 activity permits which may be required pursuant to this title.
- 886 E. Application for permit.
887 The application for a flood hazard development permit is to be submitted to the Code
888 Enforcement Officer and include:
- 889 (1) The name and address of the applicant.
- 890 (2) An address and a map indicating the location of the construction site.
- 891 (3) A site plan showing the location of existing and/or proposed structures, sewage disposal
892 facilities, water supply facilities, areas to be cut and filled, and lot dimensions.
- 893 (4) A statement of the intended use of the structure.
- 894 (5) A statement as to the type of sewage system proposed.
- 895 (6) Specification of dimensions of the proposed structure.
- 896 (7) The elevation in relation to the National Geodetic Vertical Datum (NGVD), or to a locally
897 established datum in Zone A only, of the:
- 898 (a). Base flood at the proposed site of all new or substantially improved structures, which is
899 determined:
- 900 [1] In Zones A1 — 30, AE, AO, AH, V1 — 30, and VE, from data contained in the
901 "Flood Insurance Study — Town of Kittery, Maine," as described in § 16.5.10.C or
- 902 [2] In Zone A, to be the elevation of the ground at the intersection of the floodplain
903 boundary and a line perpendicular to the shoreline which passes along the ground
904 through the site of the proposed building.
- 905 (b). Highest and lowest grades at the site adjacent to the walls of the proposed building.

- 906 (c). Lowest floor, including basement, and whether or not such structures contain a
907 basement.
- 908 (d). Level, in the case of nonresidential structures only, to which the structure will be
909 floodproofed.
- 910 (8) A description of a base flood elevation reference point established on the site of all new or
911 substantially improved structures.
- 912 (9) A written certification by a registered land surveyor that the elevations shown on the
913 application are accurate.
- 914 (10) Certification by a registered professional engineer or architect that floodproofing methods
915 for any:
- 916 (a). Nonresidential structures will meet the floodproofing criteria of Subsection 7(d) of this
917 section. Subsection 7 of § 16.5.11.H, and other applicable standards in § 16.5.11.H; and
- 918 (b). Construction in coastal high-hazard areas, Zones V1 — 30 and VE, will meet the
919 floodproofing criteria of Subsection 11 of § 16.5.11.H and other applicable standards in
920 § 16.5.11.H
- 921 (11) A description of the extent to which any watercourse will be altered or relocated as a result
922 of the proposed development.
- 923 (12) A statement of construction plans describing in detail how each applicable development
924 standard in § 16.5.11.H will be met.
- 925 F. Application fee and expert's fee.
- 926 (1) A nonrefundable application fee as set out in Appendix A is to be paid to the Town Clerk,
927 and a copy of a receipt for the same must accompany the application.
- 928 (2) An additional fee may be charged if the Code Enforcement Officer and/or Board of Appeals
929 needs the assistance of a professional engineer or other expert. The expert's fee must be paid
930 in full by the applicant within 10 days after the Town submits a bill to the applicant. Failure
931 to pay the bill constitutes a violation of this title and is grounds for the issuance of a stop-
932 work order. An expert may not be hired by the municipality at the expense of an applicant
933 until the applicant has either consented to such hiring in writing or been given an
934 opportunity to be heard on the subject. An applicant who is dissatisfied with a decision of
935 the Code Enforcement Officer may appeal that decision to the Board of Appeals.
- 936 G. Review of flood hazard development permit applications.
937 The Code Enforcement Officer must:
- 938 (1) Review all applications for a flood hazard development permit to assure that proposed
939 building sites are reasonably safe from flooding and to determine that all pertinent
940 requirements of § 16.5.11.H, Development standards, have or will be met.

- (2) Utilize, in the review of all flood hazard development permit applications, the base flood data contained in the "Flood Insurance Study — Town of Kittery, Maine," as described in § 16.5.11.C. In special flood hazard areas where base flood elevation data are not provided, the Code Enforcement Officer is to obtain, review and reasonably utilize any base flood elevation and floodway data from federal, state, or other sources, including information obtained pursuant to §16.5.11.E(7)(a)[2], § 16.5.11.H(9) and §16.5.11.J, in order to administer § 16.5.11.H of this article.
- (3) Make interpretations of the location of boundaries of special flood hazard areas shown on the maps described in § 16.5.11.C.
- (4) In the review of flood hazard development permit applications, determine that all necessary permits have been obtained from those federal, state and local government agencies from which prior approval is required by federal or state law, including, but not limited to, Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. § 1334.
- (5) Notify adjacent municipalities, the Department of Environmental Protection, and the Maine Office of Community Development prior to any alteration or relocation of a watercourse and submit copies of such notifications to the Federal Emergency Management Agency.
- (6) Issue a two-part flood hazard development permit for elevated structures. Part I is to authorize the applicant to build a structure to and including the first horizontal floor only above the base flood level. At that time the applicant must provide the Code Enforcement Officer with an application for Part II of the flood hazard development permit and include an elevation certificate completed by a registered Maine surveyor for compliance with the elevation requirements of Subsections 6, 7, 8 and 11 of § 16.5.11.H. Following review of the application, which review must take place within three working days of receipt of the application, the Code Enforcement Officer is to issue Part II of the flood hazard development permit. Part II authorizes the applicant to complete the construction project.
- (7) Maintain, as a permanent record, copies of all flood hazard development permits issued and data relevant thereto, including reports of the Board of Appeals on variances granted under the provisions of § 16.2.12; and copies of elevation certificates and certificates of compliance required under the provisions of § 16.5.11.I.
- H. Development standards.
All developments in areas of special flood hazard are to meet the following applicable standards:
- (1) New construction or substantial improvement of any structure must:
- (a). Be designed or modified and adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
- (b). Use construction materials that are resistant to flood damage;

- 979 (c). Use construction methods and practices that will minimize flood damage; and
- 980 (d). Use electrical, heating, ventilation, plumbing, and air-conditioning equipment, and other
981 service facilities, that are designed and/or located so as to prevent water from entering or
982 accumulating within the components during flooding conditions.
- 983 (2) All new and replacement water supply systems are to be designed to minimize or eliminate
984 infiltration of floodwaters into the systems.
- 985 (3) All new and replacement sanitary sewage systems are to be designed and located to
986 minimize or eliminate infiltration of floodwaters into the system and discharges from the
987 system into floodwaters.
- 988 (4) On-site waste disposal systems are to be located and constructed to avoid impairment to
989 them or contamination from them during floods.
- 990 (5) All development is to be constructed and maintained in such a manner that no reduction
991 occurs in the flood-carrying capacity of any watercourse.
- 992 (6) New construction or substantial improvement of any residential structure located within:
- 993 (a). Zones A1 — 30, AE and AH is to have the lowest floor (including basement) elevated to
994 at least one foot above the base flood elevation.
- 995 (b). Zones AO and AH is to have adequate drainage paths around structures on slopes, to
996 guide floodwater away from the proposed structures.
- 997 (c). Zone AO is to have the lowest floor (including basement) elevated above the highest
998 adjacent grade:
- 999 [1] At least one foot higher than the depth specified in feet on the community's Flood
1000 Insurance Rate Map; or
- 1001 [2] At least three feet if no depth number is specified.
- 1002 (d). Zone A is to have the lowest floor (including basement) elevated to at least one foot
1003 above the base flood elevation utilizing information obtained pursuant to
1004 § 16.5.11.E(7)(a)[2], 16.5.11.G(2) or 16.5.11.J(4).
- 1005 (e). Zones V1 — 30 and VE is to meet the requirements of Subsection **11** of this section.
- 1006 (7) New construction or substantial improvement of any nonresidential structure located within:
- 1007 (a). Zones A1 — 30, AE and AH is to have the lowest floor (including basement) elevated to
1008 at least one foot above the base flood elevation or, together with attendant utility and
1009 sanitary facilities, must:
- 1010 [1] Be floodproofed to at least one foot above the base flood level so that below that
1011 elevation the structure is watertight with walls substantially impermeable to passage

- 1012 of water;
- 1013 [2] Have structural components capable of resisting hydrostatic and hydrodynamic loads
1014 and the effects of buoyancy; and
- 1015 [3] Be certified by a registered professional engineer or architect that the design and
1016 methods of construction are in accordance with accepted standards of practice for
1017 meeting the provisions of this section. Such certification must be provided with the
1018 application for a flood hazard development permit, as required by § 16.5.11.E(10),
1019 and include a record of the elevation above mean sea level of the lowest floor,
1020 including basement.
- 1021 (b). Zones AO and AH is to have adequate drainage paths around structures on slopes, to
1022 guide floodwater away from the proposed structures.
- 1023 (c). Zone AO is to have the lowest floor (including basement) elevated above the highest
1024 adjacent grade:
- 1025 [1] At least one foot higher than the depth specified in feet on the community's Flood
1026 Insurance Rate Map; or
- 1027 [2] At least three feet if no depth number is specified; or
- 1028 [3] Together with attendant utility and sanitary facilities, be floodproofed to meet the
1029 elevation requirements of this section and floodproofing standards of Subsection 7(a)
1030 of this section.
- 1031 (d). Zone A is to have the lowest floor (including basement) elevated to at least one foot
1032 above the base flood elevation utilizing information obtained pursuant to
1033 § 16.5.11.E(7)(a)[2], 16.5.11.G(2) or 16.5.11.J
- 1034 (e). Zones V1 — 30 and VE is to meet the requirements of Subsection 11 of this section.
- 1035 (8) New or substantially improved manufactured homes located within:
- 1036 (a). Zones A1 — 30, AE or AH must:
- 1037 [1] Be elevated on a permanent foundation such that the lowest floor is at least one foot
1038 above the base flood elevation; and
- 1039 [2] Be securely anchored to an adequately anchored foundation system to resist flotation,
1040 collapse, or lateral movement. Methods of anchoring may include, but are not limited
1041 to:
- 1042 [a] Over-the-top ties anchored to the ground at the four corners of the manufactured
1043 home, plus two additional ties per side at intermediate points (manufactured homes
1044 less than 50 feet long require one additional tie per side); or

- 1045 [b] By frame ties at each corner of the home, plus five additional ties along each side
1046 at intermediate points (manufactured homes less than 50 feet long require four
1047 additional ties per side).
- 1048 [c] All components of the anchoring system described in Subsection 8(a)(ii)[a] and
1049 [b] of this section must be capable of carrying a force of 4,800 pounds.
- 1050 (d) Zones AO and AH are to have adequate drainage paths around structures on slopes, to
1051 guide floodwater away from the proposed structures.
- 1052 (e) Zone AO are to have the lowest floor (including basement) elevated above the highest
1053 adjacent grade:
- 1054 [1] At least one foot higher than the depth specified in feet on the community's Flood
1055 Insurance Rate Map; or
- 1056 [2] At least three feet if no depth number is specified; and
- 1057 [3] Meet the requirements of Subsection 8(a)(i) and (ii) of this section.
- 1058 [4] Zone A are to have the lowest floor (including basement) elevated to at least one foot
1059 above the base flood elevation utilizing information obtained pursuant to
1060 § 16.5.11.E(7)(a)[2], 16.5.11.G(2) or 16.5.11.J.
- 1061 [5] Zones V1 — 30 and VE are to meet the requirements of Subsection 11 of this section.
- 1062 (9) Floodways.
- 1063 (a). In Zones A1 — 30 and AE, encroachments, including fill, new construction, substantial
1064 improvement, and other development, are not permitted in riverine areas, for which a
1065 regulatory floodway is designated on the community's "Flood Boundary and Floodway
1066 Map," unless a technical evaluation certified by a registered professional engineer is
1067 provided demonstrating that such encroachments will not result in any increase in flood
1068 levels within the community during the occurrence of the base flood discharge.
- 1069 (b). In Zones A1 — 30 and AE riverine areas, for which no regulatory floodway is
1070 designated, encroachments, including fill, new construction, substantial improvement,
1071 and other development, are not permitted unless a technical evaluation certified by a
1072 registered professional engineer is provided demonstrating that the cumulative effect of
1073 the proposed development, when combined with all other existing development and
1074 anticipated development:
- 1075 [1] Will not increase the water surface elevation of the base flood more than one foot at
1076 any point within the community; and
- 1077 [2] Is consistent with the technical criteria contained in Section 2-7, entitled "Hydraulic
1078 Analyses," Flood Insurance Study — Guidelines and Specifications for Study

- 1079 Contractors, FEMA 37/September, 1985, as amended.
- 1080 (c). In Zone A riverine areas, in which the regulatory floodway is determined to be the
1081 channel of the river or other watercourse and the adjacent land areas to a distance of 1/2
1082 the width of the floodplain as measured from the normal high-water mark to the upland
1083 limit of the floodplain, encroachments, including fill, new construction, substantial
1084 improvement, and other development, are not permitted unless a technical evaluation
1085 certified by a registered professional engineer is provided meeting the requirements of
1086 Subsection **9(b)** of this section.
- 1087 (10) New construction or substantial improvement of any structure in Zones A1 — 30, AE, AO,
1088 AH and A that meets the development standards of this section, including the elevation
1089 requirements of Subsection **6, 7** or **8** of this section, and is elevated on posts, columns, piers,
1090 piles, "stilts" or crawl spaces less than three feet in height may be enclosed below the
1091 elevation requirements provided all the following criteria are met or exceeded:
- 1092 (a). Walls, with the exception of crawl spaces less than three feet in height, must not be part
1093 of the structural support of the building; and
- 1094 (b). Enclosed areas are not "basements" as defined in § 16.5.11.B; and
- 1095 (c). Enclosed areas are to be designed to automatically equalize hydrostatic flood forces on
1096 exterior walls by allowing for the entry and exit of floodwater. Designs for meeting this
1097 requirement must either:
- 1098 [1] Be certified by a registered professional engineer or architect; or
- 1099 [2] Meet or exceed the following minimum criteria:
- 1100 [a] A minimum of two openings having a total net area of not less than one square
1101 inch for every square foot of the enclosed area;
- 1102 [b] The bottom of all openings may be no higher than one foot above the lowest
1103 grade; and
- 1104 [c] Openings may be equipped with screens, louvers, valves, or other coverings or
1105 devices, provided that they permit the entry and exit of floodwaters automatically
1106 without any external influence or control, such as human intervention, including the
1107 use of electrical and other nonautomatic mechanical means; and
- 1108 (f) The enclosed area may not be used for human habitation; and
- 1109 (g) The enclosed area may be used for building maintenance, access, parking vehicles, or
1110 storing of articles and equipment used for maintenance of the building.
- 1111 (11) Coastal floodplains.
- 1112 (a). All new construction located within Zones V1 — 30 and VE is to be located landward of

- 1113 the reach of the highest annual spring tide.
- 1114 (b). New construction or substantial improvement of any structure located within Zones V1
1115 — 30 or VE must:
- 1116 [1] Be prohibited unless the following criteria are met:
- 1117 [a] The area is zoned for general development or its equivalent, as defined in the
1118 Mandatory Shoreland Zoning guidelines adopted pursuant to 38 M.R.S. § 438-A; or
- 1119 [b] The area is designated as densely developed as defined in 38 M.R.S. § 436-A,
1120 Subsection 3.
- 1121 [2] Be elevated on posts or columns such that:
- 1122 [a] The bottom of the lowest structural member of the lowest floor (excluding the
1123 pilings or columns) is elevated to one foot above the base flood level;
- 1124 [b] The pile or column foundation and the elevated portion of the structure attached
1125 thereto is anchored to resist flotation, collapse, and lateral movement due to the
1126 effects of wind and water loads acting simultaneously on all building components;
1127 and
- 1128 [c] Water loading values used must be those associated with the base flood. Wind
1129 loading values used must be those required by applicable state and local building
1130 standards.
- 1131 [3] Have the space below the lowest floor:
- 1132 [a] Free of obstructions; or
- 1133 [b] Constructed with open wood lattice-work, or insect screening intended to collapse
1134 under wind and water without causing collapse, displacement, or other structural
1135 damage to the elevated portion of the building or supporting piles or columns; or
- 1136 [c] Constructed with nonsupporting breakaway walls which have a design safe
1137 loading resistance of not less than 10 nor more than 20 pounds per square foot.
- 1138 (c) A registered professional engineer or architect must:
- 1139 [1] Develop or review the structural design, specifications and plans for the construction,
1140 which must meet or exceed the technical criteria contained in the Coastal
1141 Construction Manual (FEMA-55/February, 1986); and
- 1142 [a] Certify that the design and methods of construction to be used are in accordance
1143 with accepted standards of practice for meeting the criteria of Subsection **11(b)** of this
1144 section.

- 1145 (d) The use of fill for structural support in Zones V1 — 30 and VE is prohibited.
- 1146 (e) Human alteration of sand dunes within Zones V1 — 30 and VE is prohibited unless it
1147 can be demonstrated that such alterations will not increase potential flood damage.
- 1148 (f) The enclosed areas may be used solely for parking vehicles, building access, and
1149 storage.
- 1150 I. Certificate of compliance.
1151 No land in a special flood hazard area may be occupied or used and no structure which is
1152 constructed or substantially improved may be occupied until a certificate of compliance is
1153 issued by the Code Enforcement Officer subject to the following provisions:
- 1154 (1) The applicant must submit an elevation certificate completed by:
- 1155 (a). A registered Maine surveyor for compliance with Subsection 6, 7, 8 or 11 of
1156 § 16.5.11.H; and
- 1157 (b). A registered professional engineer or architect in the case of:
- 1158 [1] Floodproofed, nonresidential structures, for compliance with § 16.5.11.H(7); and
- 1159 [2] Construction of structures in the coastal floodplains for compliance with
1160 § 16.5.11.H(11)(c).
- 1161 (2) The application for a certificate of compliance is to be submitted by the applicant in writing,
1162 along with a completed elevation certificate, to the Code Enforcement Officer.
- 1163 (3) The Code Enforcement Officer is to review the application within 10 working days of
1164 receipt of the application and issue a certificate of compliance, provided the building
1165 conforms with the provisions of this article.
- 1166 J. Review of subdivision and development proposals.
1167 The Planning Board must, when reviewing subdivisions and other proposed developments
1168 that require review under other federal law, state law or local ordinances or regulations,
1169 and all projects on five or more acres, or in the case of manufactured home parks divided
1170 into two or more lots, assure that:
- 1171 (1) All such proposals are consistent with the need to minimize flood damage.
- 1172 (2) All public utilities and facilities, such as sewer, gas, electrical and water systems, are located
1173 and constructed to minimize or eliminate flood damages.
- 1174 (3) Adequate drainage is provided so as to reduce exposure to flood hazards.
- 1175 (4) All proposals include base flood elevation and, in a riverine floodplain, floodway data.
- 1176 (5) Any proposed development plan must include a statement that the developer will require
1177 that structures on lots in the development be constructed in accordance with § 16.5.11.H and

1178 that such requirement will be included in any deed, lease, purchase and sale agreement, or
1179 document transferring or expressing an intent to transfer any interest in real estate or
1180 structure, including, but not limited to, a time-share interest. The statement must clearly
1181 articulate that the municipality may enforce any violation of the construction requirement
1182 and that fact is also to be included in the deed or any other document previously described.
1183 The construction requirement must also be clearly stated on any map, plat or plan to be
1184 signed by the Planning Board or local reviewing authority as part of the approval process.

1185 16.5.12 Home Occupation

1186 A. Purpose.

1187 (1) It is the intent of these regulations governing home occupations to balance the economic and
1188 community benefits of allowing home-based businesses with the goal of protecting the
1189 quality of life of the surrounding residential neighborhood from unreasonable or unsafe
1190 intrusions and nuisances inappropriate to a residential setting. The regulations attempt to
1191 ensure that any home-based business operates in a manner that respects the neighborhood in
1192 which it is situated.

1193 (2) Regulation of home occupations should not prohibit beneficial and unobtrusive uses and
1194 should provide standards to protect the health, safety and general welfare of the surrounding
1195 neighborhood. A home occupation should not degrade the residential character of the
1196 neighborhood.

1197 (3) These regulations take a two-tier approach to regulating home occupations. At the least
1198 intrusive level are business activities that by their nature and intensity will be compatible
1199 with a residential location. These types of businesses are considered minor home
1200 occupations and require only review by the Code Enforcement Officer for compliance with
1201 the standards. A major home occupation in a residential district has the potential to be
1202 incompatible with its neighborhood setting. Therefore, a public hearing with notification to
1203 abutting property owners and BOA approval is necessary.

1204 (4) A more extensive business activity that does not satisfy the standards for a major home
1205 occupation is treated as a type of commercial use and does not qualify as an acceptable type
1206 of home occupation. Such businesses should be located in an appropriately zoned area of the
1207 Town.

1208 B. Minor home occupation standards.

1209 (1) Compliance with the definition of a "home occupation."

1210 (a). An applicant must be a resident of a dwelling on the premises where the home
1211 occupation will occur. An applicant who is not the owner of the property, but is residing
1212 on the premises, must submit written permission of the property owner for the proposed
1213 home occupation.

1214 (b). As an accessory use, the home occupation(s) must be subordinate to the principal use.
1215 Quantitative measures that may be considered in determining whether a proposed

- 1216 activity is an accessory use include, but are not limited to, percentage and/or total
1217 amount of square footage attributed to the home occupation(s) use in relation to the
1218 residential use. Qualitative factors include, but are not limited to, the projected activity
1219 level of the home occupation(s) on the premises in relation to the residential use and
1220 whether the proposed home occupation is a traditional accessory use in the community.
- 1221 (2) Number of workers. There must be no more than three persons, inclusive of residents of the
1222 premises, working in the home occupation(s) at the site at any one time.
- 1223 (3) Prohibited uses. The following uses are categorically prohibited as minor home occupations:
1224 motor vehicle repair; motor vehicle sales or rental; commercial parking; commercial outdoor
1225 storage; machine shop; wholesale use; junkyard; auto salvage yard; seafood cooking;
1226 processing and/or cleaning; bait sales; Marijuana Business.
- 1227 (4) Business hours. Business activities involving clients or customers on the premises or
1228 vehicular traffic to and from the premises must not be conducted between the hours of 7:00
1229 p.m. and 8:00 a.m., except for a bed-and-breakfast, a day-care facility or a functionally
1230 water-dependent use.
- 1231 (5) Nuisances.
- 1232 (a). Any excessive noise, dust, smoke, vibrations, glare, direct lighting, objectionable fumes,
1233 traffic or electrical interference detected at the property boundary must not be greater in
1234 duration or intensity than that expected in the surrounding residential neighborhood.
- 1235 (b). When reviewing a functionally water-dependent use, the above standards allow
1236 customary noises and smells caused by the use if all practicable steps are taken to
1237 manage and minimize the adverse impact on abutting property owners.
- 1238 (6) Parking. A plan must be submitted showing sufficient and safe parking for customers',
1239 clients' and workers' use during normal business operations. To the maximum extent
1240 practicable, parking should be arranged so as to avoid vehicles backing out into the street. In
1241 addition to parking required for the residence, the following parking is required:
- 1242 (a). One parking space per nonresident worker at the site during the peak shift;
- 1243 (b). One parking space if clients or customers frequently visit the site;
- 1244 (c). One parking space per adult student up to the maximum class size; or
- 1245 (d). One parking space per rental unit.
- 1246 (7) The parking design standards in Table 16.7.11.F of § 16.7 Site Plan Review, set out at the
1247 end of § 16.7.11.F, Parking Loading and Traffic (e.g., aisle width, stall size, etc.), may be
1248 modified for parking by workers if the parking arrangement will still provide for practical
1249 off-street parking adequate to prevent parking from overflowing the site.
- 1250 (8) With the exception of a bed-and-breakfast with more than three rooms for rent, three

- 1251 additional off-street parking spaces should satisfy the parking demand for a minor home
1252 occupation. Any recurring observed parking overflow is a violation of these standards.
- 1253 (9) The CEO may approve the joint use of a parking area where it is clearly demonstrated that
1254 the parking area will be available for use by customers or workers during the hours of
1255 operation due to the variation in time of use.
- 1256 (10) Outdoor storage. All outdoor storage of equipment, vehicles, items or equipment associated
1257 with the home occupation is prohibited except for the following:
- 1258 (a). One vehicle used in conjunction with the home occupation;
- 1259 (b). Seasonal storage of items necessary for functionally water-dependent uses, such as
1260 lobster traps; and
- 1261 (c). Vehicles owned by residents of the premises with valid license plates.
- 1262 (d). All bait must be stored indoors and must be kept refrigerated or otherwise stored to
1263 prevent offensive odors.
- 1264 (11) Business conduct. All business activities on the site must take place within the dwelling or
1265 enclosed buildings, except for outdoor recreational uses, agriculturally oriented uses or
1266 functionally water-dependent uses.
- 1267 (12) Refuse and recyclables. All refuse and recyclables must be stored within an enclosed
1268 building. No outdoor dumpsters are allowed. All waste materials from the home occupation
1269 must be removed from the premises on at least a monthly basis.
- 1270 (13) Traffic. The home occupation must not result in creating or significantly exacerbating a
1271 traffic hazard. Recurring vehicle traffic involving vehicles larger than a twenty-foot fixed
1272 axle, thirty-foot total length truck is prohibited.
- 1273 (14) Retail sales. Retail sales in which customers do not come to the premises are permissible,
1274 such as mail order or telephone sales. On-site retail sales are limited to the following:
- 1275 (a). Sales of products grown, raised or produced on the premises. For the purposes of this
1276 subsection, the term "produced" is not to be construed to allow the assembly of a product
1277 from components produced elsewhere; and
- 1278 (b). Sales of items customarily incidental and subordinate to a nonretail home occupation,
1279 such as sales of shampoo and hair brushes at a beauty salon.
- 1280 (c). All other on-site retail sales are prohibited as a minor home occupation.
- 1281 (15) Health and safety. The proposed use must not create a health or safety hazard.
- 1282 C. Major home occupation standards.
- 1283 (1) Compliance with the Definition of a "Home Occupation."

- 1284 (a). An applicant must be a resident of a dwelling on the premises where the home
1285 occupation will occur. An applicant who is not the owner of the property, but is residing
1286 on the premises, must submit written permission of the property owner for the proposed
1287 home occupation.
- 1288 (b). As an accessory use, the home occupation(s) must be subordinate to the principal use.
1289 Quantitative measures that may be considered in determining whether a proposed
1290 activity is an accessory use include, but are not limited to, percentage and/or total
1291 amount of square footage attributed to the home occupation(s) use in relation to the
1292 residential use. Qualitative factors include, but are not limited to, the projected activity
1293 level of the home occupation(s) on the premises in relation to the residential use and
1294 whether the proposed home occupation is a traditional accessory use in the community.
- 1295 (2) Number of workers. There must be no more than five persons, inclusive of residents of the
1296 premises, working in the home occupation(s) at the site at any one time.
- 1297 (3) Prohibited uses. The following uses are categorically prohibited as major home occupations:
1298 motor vehicle repair; motor vehicle sales or rental; commercial parking; commercial outdoor
1299 storage; junkyard; auto salvage yard; marijuana retail use; and marijuana medical use except
1300 the activities of a primary caregiver registered under 22 M.R.S. § 2425.
- 1301 (4) Business hours. Business activities involving clients or customers on the premises or
1302 vehicular traffic to and from the premises must not be conducted between the hours of 7:00
1303 p.m. and 7:00 a.m., except for a bed-and-breakfast, a day-care facility or a functionally
1304 water-dependent use. This limitation may be modified by the BOA provided the proposal
1305 satisfies the intent of this section.
- 1306 (5) Nuisances.
- 1307 (a). Any excessive noise, dust, smoke, vibrations, glare, direct lighting, obnoxious fumes or
1308 odors, traffic, or electrical interference detected at the property boundary must not be
1309 greater in duration or intensity than that expected in the surrounding residential
1310 neighborhood.
- 1311 (b). When reviewing a functionally water-dependent use, the above standards allow
1312 customary noises and smells caused by the use if all practicable steps are taken to
1313 manage and minimize the adverse impact on abutting properties.
- 1314 (6) Parking. A plan must be submitted that provides safe and sufficient off-street parking to
1315 meet the needs of the business to prevent parking from overflowing off the site. Any
1316 recurring observed parking overflow is a violation of these standards. The creation of more
1317 than four off-street parking spaces must be located, designed, screened and landscaped to
1318 minimize adverse impact on abutting properties.
- 1319 (7) Outdoor storage. All outdoor storage of equipment, vehicles or items associated with the
1320 home occupation must be screened from view of abutting properties and from all streets
1321 except for the following:

- 1322 (a). One vehicle used in conjunction with the home occupation;
- 1323 (b). Seasonal storage of items necessary for functionally water-dependent uses, such as
1324 lobster traps; and
- 1325 (c). Vehicles owned by residents of the premises with valid license plates.
- 1326 (d). All bait must be stored indoors and must be kept refrigerated or otherwise stored to
1327 prevent offensive odors.
- 1328 (8) Business conduct. All business activities on the site must take place within an enclosed
1329 building or be screened from view of abutting properties and from all publicly maintained
1330 streets, except for outdoor recreational uses, agriculturally oriented uses or functionally
1331 water-dependent uses. This standard may be modified by the BOA provided the proposal
1332 satisfies the intent of this section.
- 1333 (9) Refuse and recyclables. All refuse and recyclables must be stored in containers that are
1334 screened from view of abutting properties and from streets. No emptying of dumpsters is
1335 allowed before 8:00 a.m. or after 7:00 p.m.
- 1336 (10) Traffic. The home occupation must not result in creating or significantly exacerbating a
1337 traffic hazard. Furthermore, the home occupation must not create an objectionable increase
1338 in vehicle traffic considering the type, time and amount of vehicle traffic generated and the
1339 design and capacity of the roads to the site and traffic normal for the neighborhood.
- 1340 (11) Retail sales. Retail sales on the premises are limited to the following:
- 1341 (a). Sales in which customers do not come to the premises, such as mail order or telephone
1342 sales;
- 1343 (b). Sales of products grown, raised or produced on the premises;
- 1344 (c). Sales of seafood harvested by the residents of the premises;
- 1345 (d). Sales of items customarily incidental and subordinate to a nonretail home occupation,
1346 such as sales of shampoo and hair brushes at a beauty salon; and/or
- 1347 (e). Sales by appointment only for which any signage identifying the business states a "by
1348 appointment only" policy.
- 1349 (12) Health and safety. The proposed use must not create a health or safety hazard.
- 1350 (13) Neighborhood compatibility. The proposed use is determined to be compatible with the
1351 surrounding neighborhood. In reaching this determination, the following factors are to be
1352 considered:
- 1353 (a). The nature of the property;
- 1354 (b). The physical characteristics of the neighborhood, including the amount of nonresidential

- 1355 activity;
- 1356 (c). Hours of operation;
- 1357 (d). Intensity of the activity;
- 1358 (e). Potential to degrade the quality of life for residents of the surrounding neighborhood;
1359 and
- 1360 (f). The cumulative impact of existing home occupations and other accessory uses both on
1361 the premises and in the surrounding neighborhood.
- 1362 (g). Medical marijuana use is restricted to single-family residences only.
- 1363 (14) Large lots. When a seventy-five-foot-deep buffer yard is provided between all business
1364 activities (including storage and parking, except a driveway) and contiguous properties, and
1365 the buffer yard is sufficiently vegetated, fenced or otherwise screened so as to obscure the
1366 home occupation activities from an abutting property, the BOA may relax the above
1367 standards, except those pertaining to nuisances and prohibited uses, if the use is considered
1368 to comply with the intent of this subsection.
- 1369 (15) Annual renewal.
- 1370 (a). Upon approval of a major home occupation by the Board of Appeals, the Code
1371 Enforcement Officer is authorized to issue a certificate of occupancy permit for not more
1372 than a one-year time period. Such permit may be renewed annually upon application to
1373 the Code Enforcement Officer. Operation of a major home occupation with an expired
1374 certificate of occupancy is a violation of this Code.
- 1375 (b). The annual permit may be renewed only if the Code Enforcement Officer finds the
1376 major home occupation complies with all applicable standards of this Code and any
1377 conditions required by the Board of Appeals in the original approval.
- 1378 16.5.13 Junkyards and/or Automobile Salvage Yards
- 1379 A. Buffering.
1380 Buffering will be 100 feet on all sides except on the street, where 200 feet will be the
1381 minimum. Trees, shrubbery and fencing not less than eight feet in height, or all three, may
1382 be required by the Board to restrict visibility of the area from the road and neighbors.
1383 Land contour is to be taken into consideration. Approval of the junkyard plan is required
1384 by the Police, Highway and Fire Departments before any permit is presented to the Town
1385 Council for consideration.
- 1386 B. Buildings.
1387 Office, control or storage building must be inside the buffered area and no more than a
1388 maximum of 30 feet in height. The adequacy of buffering is to be considered in allowing
1389 heights over 20 feet.

- 1390 C. Junk piles.
 1391 Junk piles may only be inside the buffered area and piled no higher than 15 feet.
- 1392 D. Waste.
 1393 No garbage, toxic waste or liquid or sanitary wastes are permitted. The Maine State
 1394 Plumbing Code will apply for sanitary waste and any state laws regulating toxic waste.
 1395 Separate storage must be maintained for toxic waste, including but not limited to oil,
 1396 grease, gasoline and solvents. This waste must be removed at least twice a year by an
 1397 accredited dealer in such wastes. All tanks of vehicles must be drained and contents
 1398 properly disposed of.
- 1399 E. Drainage.
 1400 Provision must be made for proper drainage of stormwater or other wastewater, so that
 1401 contaminated, rusted or other noticeable effluent does not go beyond actual junk area or
 1402 into buffering. Special attention is to be given to acceptable drainage of normal
 1403 stormwater. § 16.7.11.C of this chapter also applies.
- 1404 F. Hours of operation.
 1405 Work in connection with demolishing or wrecking cars or purchasing or selling items is
 1406 permitted only on Monday through Saturday between the hours of 7:00 a.m. and 6:00 p.m.
- 1407 G. Signs.
 1408 One four-foot-by-six-foot maximum, non-illuminated sign is permitted at the entrance to
 1409 the property.
- 1410 H. Cleanliness.
 1411 Junkyards and salvage yards should be kept reasonably neat and clean, with no debris or
 1412 other nuisance permitted outside of the buffered area.
- 1413 I. Permits.
 1414 A permit for not more than one year's operation is required in addition to the state permit.
 1415 The Town fee is as set by the Town Council. Periodic inspections must be made by the
 1416 Code Enforcement Officer during the year to ensure compliance with the state and local
 1417 ordinances.
- 1418 J. Other standards application.
 1419 All other applicable standards of this chapter not specifically mentioned here, such as
 1420 parking, noise, etc., also apply to this use.
- 1421 16.5.14 **Lots**
- 1422 A. Dimensions.
 1423 The lot size, width, depth and shape and orientation and the minimum building setback
 1424 lines must be appropriate for the location of the development and for the type of
 1425 development and use contemplated. The lot configuration should be designed to maximize
 1426 access to solar energy for building sites with suitable orientation.
- 1427 B. Lot shape.

- 1428 (1) The ratio of lot length to width must not be more than 3:1. Flag-shaped lots are prohibited.
1429 Other odd-shaped lots in which narrow strips are joined to other parcels in order to meet
1430 minimum lot size requirements are also prohibited.
- 1431 (2) Spaghetti lots prohibited. If any lots in a proposed subdivision have shore frontage on a
1432 river, stream, brook or coastal wetland, as these features are defined in 38 M.R.S. §480-B,
1433 none of the lots created within the subdivision may have a lot depth to shore frontage ratio
1434 greater than 5:1.
- 1435 C. Double/reverse-frontage lots.
1436 Double-frontage and reverse-frontage lots are to be avoided except where essential to
1437 provide separation of residential development from traffic arteries or to overcome specific
1438 disadvantages of topography and orientation. A planting screen easement of at least 10
1439 feet, across which there may be no right of access, is to be provided along the lot lines
1440 abutting such a traffic artery or other disadvantageous use.
- 1441 D. Side lot lines.
1442 Side lot lines must be substantially at right angles or radial to street lines.
- 1443 E. Substantially larger lots.
1444 Where a tract is subdivided into lots substantially larger than the minimum size required in
1445 the zone in which a subdivision is located, and where no covenants exist to preclude lots
1446 from resubdivision, the Board may require that streets and lots be laid out so as to permit
1447 future resubdivision in accordance with the requirements contained in these standards.
- 1448 F. Multiple frontages.
1449 When lots have frontage on two or more streets, the plan and deed restrictions must
1450 indicate vehicular access to be located only on the least-traveled way.
- 1451 G. Divided lots.
1452 If a lot on one side of a stream, tidal water, road or other similar barrier fails to meet the
1453 minimum requirements for lot size, it may not be combined with a lot on the other side of
1454 such barrier to meet the minimum lot size unless in conformance with § 16.1.8.B, General
1455 Development Requirements, Conformity.
- 1456 H. Off-street parking.
1457 Depth and width of properties reserved or laid out for all purposes must be adequate to
1458 provide for off-street parking and service facilities for vehicles required by type of
1459 development and use contemplated.
- 1460 I. Access to arterial street.
1461 Where a major subdivision abuts or contains an existing or proposed arterial street, no
1462 residential lot may have vehicular access directly onto the arterial street. This requirement
1463 must be noted on the plan and in the deed of any lot with frontage on the arterial street.
- 1464 J. Land subdivision.
1465 The subdividing of land must conform to the requirements of § 16.4.

1466 16.5.15 **Manufactured Housing**

1467 A. Standards.

1468 Standards for manufactured housing include the following:

1469 (1) All mobile home units must be manufactured after June 15, 1976, and shall have a
1470 manufacturer-installed sticker indicating HUD approval.1471 (2) All units must be manufactured with a pitched, shingled roof, with a minimum slope three
1472 inches on 12 inches (3:12).1473 (3) All units must have residential-type siding, such as clapboards, shakes, horizontally applied
1474 aluminum, or vinyl resembling clapboards.1475 (4) All units, excluding individual mobile home park installations, must have a permanent
1476 foundation, which may be either a full basement or a poured or block frost wall.

1477 (5) All other sections of this title must be adhered to.

1478 16.5.16 **Mineral/earth material exploration and removal**1479 A. Topsoil, rock, sand, gravel and similar earth materials may be removed from locations
1480 where permitted under the terms of this title, only after a special permit for such
1481 operations has been issued by the Code Enforcement Officer, upon approval and review of
1482 plans by the Planning Board in accordance with the provisions of this title, and provided
1483 that nothing herein may be deemed to apply to normal excavation operations incidental to
1484 construction activities for which a valid permit is held. The following standards must be
1485 met:1486 (1) The applicant must submit to the Code Enforcement Officer plans of the proposed extraction
1487 site, showing the property lines and names of all abutting owners and ways, indicating by
1488 not greater than five-foot contour intervals related to U.S. Geodetic Survey data, the location
1489 and slope of the grades existing and as proposed upon completion of the extraction
1490 operation; proposed fencing; buffer strips; signs; lighting; parking and loading areas;
1491 entrances and exits, together with a written statement of the proposed method, regularity,
1492 working hours and total proposed rehabilitation and restoration of the site upon completion
1493 of the operation.1494 (2) Said plans and statement are to be promptly submitted with the recommendations of the
1495 Code Enforcement Officer to the Planning Board for its consideration with respect to the
1496 effect of the proposed operation upon existing and foreseeable traffic patterns within the
1497 Town, upon existing or approved land uses which might be affected by the operations. The
1498 Planning Board may recommend changes to the applicant for resubmission to the Planning
1499 Board. The Planning Board is to promptly call and hold a public hearing upon the final
1500 application in the same manner as provided for any final plan review.1501 (3) The Planning Board shall render a written decision as to whether, and under what
1502 conditions, the proposed operation may be permitted, consistent with public health and

1503 safety; the preservation of attractive natural features; compatibility, despite temporary and
1504 reasonable disturbance, with existing or approved land uses which might be affected; and
1505 implementation of the Comprehensive Plan. If the Planning Board approves the application,
1506 it may condition the special permit upon such alterations in the proposed operation or upon
1507 the performance or omission of such acts as it may deem proper to assure attainment of the
1508 objectives set forth in the preceding sentence, and it may require filing of a performance
1509 guaranty in an amount and form acceptable to the Town Manager to indemnify the Town
1510 against any claims arising from the proposed operations and to assure satisfactory
1511 performance of all conditions imposed or otherwise applicable.

1512 B. Mandatory restrictions. All extraction operations and sites within the Town must be
1513 conducted and maintained in accordance with, and the Planning Board shall impose, such
1514 conditions upon any special permit issued under this subsection as it deems necessary or
1515 desirable to assure compliance with the following requirements:

1516 (1) Mineral exploration to determine the nature or extent of mineral resources must be
1517 accomplished by hand sampling, test boring, or other methods which create minimal
1518 disturbance of less than 100 square feet of ground surface. A permit from the Code
1519 Enforcement Officer is required for mineral exploration which exceeds the above limitation.
1520 All excavations, including test pits and holes, must immediately be capped, filled or secured
1521 by other equally effective measures so as to restore disturbed areas and to protect the public
1522 health and safety.

1523 (2) Mineral extraction, including sand and gravel extraction, is prohibited within the
1524 Conservation, Shoreland Overlay and Resource Protection Overlay Zones.

1525 (3) No part of any extraction operation may be permitted within 100 feet of any property or
1526 street line, and natural vegetation must be left and maintained on the undisturbed land.
1527 Minimize the volume of earth cut and fill, in general, with no cut or fill greater than seven
1528 feet for construction in an urban residential zone. Topographical change will not result in
1529 cuts or fills exceeding seven feet.

1530 (4) No standing water may be permitted in any extraction site during or after extraction
1531 operations; except that, during or after extraction operations, standing water may be
1532 permitted under strict conditions with respect to fencing, safe levels of coliform bacteria
1533 count, and treatment to prevent breeding of insects so as to assure the public health and
1534 safety, as determined by the Town Health Officer.

1535 (5) No slopes steeper than three feet horizontal to one foot vertical may be permitted at any
1536 extraction site unless a fence at least three feet high is erected to limit access to such
1537 locations.

1538 (6) Before commencing removal of any earth materials, the owner or operator of the extraction
1539 site must present evidence to the Planning Board of insurance against liability arising from
1540 the proposed extraction operations and maintain such insurance throughout the period of
1541 operation.

1542 (7) Any topsoil and subsoil suitable for purposes of revegetation must, to the extent required for

1543 restoration, be stripped from the locations of extraction operations and stockpiled for use in
1544 restoring the location after extraction operations have ceased.

1545 (8) Upon completion of active extraction operations, the land must be left so that natural storm
1546 drainage and watercourses leave the location at the original natural drainage points and in a
1547 manner such that the amount of drainage at any point is not significantly increased.

1548 (9) The hours of operation at any extraction site are to be limited as the Planning Board deems
1549 advisable to ensure operational compatibility with residents of the Town.

1550 (10) Loaded vehicles must be suitably covered to prevent dust and contents from spilling or
1551 blowing from the load, and all trucking routes and methods are subject to approval by the
1552 Chief of Police.

1553 (11) All access roads leading from the extraction site to public ways must be treated with stone,
1554 calcium or other suitable materials to reduce dust and mud for a distance of at least 100 feet
1555 from such public ways.

1556 (12) No equipment, debris, junk or other material is permitted at an extraction site except those
1557 directly relating to active extraction operations, and any temporary shelters or buildings
1558 erected for such operations and equipment used in connection therewith must be removed
1559 within 30 days following completion of active extraction operations.

1560 (13) Following the completion of extraction operations at any extraction site or at any one or
1561 more locations within any extraction site, ground levels and grades must be established in
1562 accordance with the approved plans filed with the Planning Board; all debris, stumps,
1563 boulders and similar materials must be removed and disposed of in an approved location or,
1564 in the case of inorganic material, buried and covered with a minimum of two feet of soil.
1565 Sufficient topsoil or loam must be retained to cover all disturbed areas, so that they must be
1566 revegetated and properly restored to a stable condition adequate to meet the provisions of
1567 the "Maine Erosion and Sediment Control BMPs," March 2003.

1568 C. Issuance and renewal of permits. Special permits may be issued in accordance with the
1569 foregoing provisions for a period not to exceed one year, and they are renewable only
1570 upon application by the owner, after a finding by the Planning Board that the conduct of
1571 the operation has been substantially in accordance with any and all conditions imposed or
1572 material representations made in connection with the original special permit, and upon
1573 such additional and altered conditions as the Board may deem necessary in accordance
1574 with Subsection A(3) of this section.

1575 16.5.17 Mobile Home Parks, Recreational Vehicle Parks and Campgrounds

1576 A. Permit required. No person, firm, corporation or other legal entity may establish or
1577 maintain a Mobile Home Park, Recreational Vehicle Park or Campground within the
1578 Town without a permit issued in conformity with the provisions of this title. It is the park
1579 operator's responsibility to obtain the permit.

1580 (1) Application. Application for a Mobile Home Park, Recreational Vehicle Park or

1581 Campground permit must be filed with the Code Enforcement Officer, who will present said
1582 application to the Planning Board for review as a subdivision, except that permit renewals
1583 are not subject to Board review. The Board must review the proposal in accordance with the
1584 standards contained herein and inform the CEO of its decision. The CEO shall then act on
1585 the application as required.

1586 (2) Fee and expiration. Each application for a permit or a renewal thereof must be accompanied
1587 by a fee as established by the Town Council for a Mobile Home Park, Recreational Vehicle
1588 Park or Campground designed for the accommodation of no more than 10 Manufactured
1589 Housing units, Recreational Vehicles or tent sites and an additional fee, as established by the
1590 Town Council, for each additional Manufactured Housing unit, Recreational Vehicle or tent
1591 site located at the site. (See Appendix A for annual mobile home park fee schedule.) Permits
1592 expire on the first day of April next following date of issuance. Before any permit is
1593 renewed, the premises are subject to inspection by the Health Officer and CEO. If all
1594 requirements of this and other federal, state and local laws have been complied with, the
1595 same is to be certified and the permit renewed.

1596 (3) Permit display. Permits issued under this section must be conspicuously posted on the
1597 premises at all times and are not transferable.

1598 (4) Revocation. The CEO is authorized to revoke any permit issued under this section pursuant
1599 to the terms of this title if, after due investigation, it is determined the holder thereof has
1600 violated any of the provisions of this or any applicable code, law or statute.

1601 B. Compliance.
1602 Applications for development of Mobile Home Parks, Recreational Vehicle Parks or
1603 Campgrounds must comply with all state laws and local ordinances and meet the
1604 requirements of subdivision law, except as stipulated below. Such developments in
1605 existence prior to adoption of this title may be enlarged only if the extension complies
1606 with the terms specified herein.

1607 C. Recreational Vehicle Parks and Campgrounds.
1608 In any district where Campgrounds or Recreational Vehicle Parks are permitted under the
1609 terms of this title, the following regulations and minimum standards apply:

1610 (1) A time limit is placed on the occupancy of any one camping space on a continuing basis as
1611 follows: 12 weeks for the period May 15 to October 15 of each year and two weeks for all
1612 other periods. No Recreational Vehicles or Manufactured Housing units other than such as
1613 are camping units, as defined herein, are permitted within any camper park, temporarily or
1614 otherwise.

1615 (2) A Campground or Recreational Vehicle Park may not be constructed on less than five acres
1616 of land.

1617 (3) Each tent site must be provided with a masonry or metal fireplace approved by the Fire
1618 Chief.

1619 (4) Spaces in Campgrounds and Recreational Vehicle Parks may be used by travel trailers,

- 1620 equivalent facilities constructed in or on automotive vehicles, tents or other short-term
1621 shelter devices.
- 1622 (5) A Recreational Vehicle Park or Campground must provide water and sewerage systems,
1623 sanitary stations and convenience facilities in accordance with the regulations of the State
1624 Plumbing Code and the Maine Department of Human Services. In no case may less than one
1625 toilet, lavatory and shower be provided for each sex for every 10 camping and tent sites or
1626 major portion thereof.
- 1627 (6) Recreational Vehicles must be parked on sites containing a minimum of 2,500 square feet
1628 and having a minimum frontage along the traveled way of 50 feet, exclusive of drives and
1629 aisles.
- 1630 (7) Tent sites must contain a minimum of 2,500 square feet. There must be a minimum of 30
1631 feet between tents.
- 1632 (8) Recreational Vehicles must be so parked in spaces that:
- 1633 (a). There will be a minimum of 15 feet between vehicles.
- 1634 (b). There will be a minimum of 15 feet between all Recreational Vehicles and the exterior
1635 boundary of the park.
- 1636 (c). There will be a minimum of 25 feet between all Recreational Vehicles and all public
1637 rights-of-way located inside the boundaries of the Recreational Vehicle Park or
1638 Campground. Setbacks from roads outside the Recreational Vehicle Park will be a
1639 minimum of 150 feet.
- 1640 (d). No camping unit or structure may be located less than 100 feet from any residence.
- 1641 (e). Buffering: planting, landscaping, disposition and form of building and other
1642 improvements, or fencing and screening is to be utilized to integrate the proposed
1643 development with the landscape and the character of any surrounding development.
- 1644 (9) The storage, collection and disposal of refuse must not create health hazards, rodent
1645 harborage, insect breeding areas, accident hazards or air pollution.
- 1646 (10) No unoccupied camping unit may be stored or exhibited for sale for commercial purposes
1647 within the park.
- 1648 D. Mobile Home Parks.
- 1649 (1) Mobile Home Parks, by special exception, may be located as indicated in § 16.4.
- 1650 (2) Lots within a shoreland zoning district must meet the lot area, setback and shore frontage
1651 requirements for that district.
- 1652 (3) Lots in a Mobile Home Park must meet the following lot size, width and density

- 1653 requirements:
- 1654 (a). Lots by public sewer.
- 1655 [1] Minimum lot area: 6,000 square feet.
- 1656 [2] Minimum lot width: 50 feet.
- 1657 (b). Lots served by individual on-site subsurface wastewater disposal system.
- 1658 [1] Minimum lot area: 20,000 square feet.
- 1659 [2] Minimum lot width: 100 feet.
- 1660 (c). Lots served by a central on-site subsurface wastewater disposal system*.
- 1661 * The overall density of a Mobile Home Park served by a central on-site subsurface
1662 wastewater disposal system may be no greater than one unit per 20,000 square feet of
1663 total park area
- 1664 [1] Minimum lot area: 12,000 square feet.
- 1665 [2] Minimum lot width: 75 feet.
- 1666 (d). The overall density of the Mobile Home Park is the combined area of its mobile home
1667 lots plus:
- 1668 [1] The area required for road rights-of-way;
- 1669 [2] The area required for buffer strips, if any;
- 1670 [3] For areas served by public sewer, an open space area for storage and recreation equal
1671 to 10% of the combined area of the individual lots; and
- 1672 [4] The area within the municipality's shoreland setback.
- 1673 (e). All buildings on the lot, including accessory buildings and structures, but excluding open
1674 decks and parking spaces, may not cover more than 50% of the lot area.
- 1675 (4) The following setback rules apply to all mobile homes and accessory buildings:
- 1676 (a). Front and side setbacks are to be 20 feet; rear setbacks, 10 feet. If these requirements
1677 conflict with the requirements of the title, 38 M.R.S. § 435 et seq., Mandatory Shoreland
1678 Zoning, or subsequent amendments or revisions thereto, the stricter standards apply.
- 1679 (b). If a lot is on a public road, the setback must conform with the residential setback
1680 requirements applicable to other residential dwelling units in the zone.
- 1681 (c). So as to avoid monotony and sameness, the Code Enforcement Officer may allow:

- 1682 [1] The front setback on a private road within a mobile home park to be varied, provided
1683 no mobile home may be closer than 10 feet from the right-of-way and the average
1684 distance is at least 20 feet for all units.
- 1685 [2] The replacement and/or relocation of a mobile home to be located no closer to the
1686 front yard setback than the existing mobile home or pad.
- 1687 (d). Carports of noncombustible materials are not subject to setback requirements.
- 1688 (e). The CEO may allow side yard setbacks to be reduced to five feet, provided a distance of
1689 20 feet is maintained between mobile homes for the purpose of providing more usable
1690 yard space on one side of the home.
- 1691 (f). A minimum twenty-foot separation must be maintained between all mobile homes in all
1692 directions.
- 1693 (5) All buildings on the lot, including accessory buildings and structures, but excluding open
1694 decks and parking spaces, may cover not more than 50% of the lot area.
- 1695 (6) Where a developer elects to create a Mobile Home Park where all land is under unified
1696 ownership, the park plan must demonstrate that the development standards described herein
1697 are met.
- 1698 (7) Privately owned roads within the Mobile Home Park must be designed by a professional
1699 engineer, registered in the State of Maine, and built according to accepted engineering
1700 standards.
- 1701 (a). The layout and general development plan for major and minor access streets within the
1702 Mobile Home Park, together with the location and dimensions of access junctions with
1703 existing public streets and rights-of-way must be approved by the Planning Board.
- 1704 (b). For Mobile Home Park expected to generate 200 trips per day or more, there must be at
1705 least two entrances from public streets or roads.
- 1706 (8) Mobile home park streets which intersect with public roads must meet the following
1707 standards:
- 1708 (a). Angle of intersection. The desired angle of intersection is to be 90°. The minimum angle
1709 of intersection is to be 75°.
- 1710 (b). Grade. The maximum permissible grade within 75 feet of the intersection is 2%.
- 1711 (c). Minimum sight distance. The minimum sight distance must be 10 times the posted speed
1712 limit on the existing road. Sight distance is measured from the driver's seat of a vehicle
1713 that is 10 feet behind the curb or edge of shoulder line with the height of the eye 3 1/2
1714 feet above the pavement and the height of an object 4 1/4 feet.
- 1715 (d). Distance from other intersections. The center line of any street within a park intersecting

- 1716 an existing public street must be at least 125 feet from the center line of any other street
1717 intersecting that public street.
- 1718 (9) Right-of-way and pavement width are to be as follows:
- 1719 (a). Two-way park roads must have a minimum right-of-way of 23 feet and a minimum
1720 paved surface of 20 feet. On-street parking is prohibited.
- 1721 (b). One-way streets must have a minimum right-of-way of 18 feet and a minimum paved
1722 surface of 14 feet. On-street parking is prohibited.
- 1723 (c). Parking lanes are to be a minimum of eight feet in width, if provided.
- 1724 (d). Cul-de-sac turnarounds are to have minimum radii of 50 feet at the outer edge of the
1725 pavement, exclusive of any parking areas.
- 1726 (e). Curvilinear streets must be utilized wherever possible. No street within the park may be
1727 more than 200 feet without a curve or bend.
- 1728 (f). If the developer intends to dedicate park streets to the public, such streets must meet
1729 municipal standards as contained in § 16.7.12.F and § 16.8.11.J of this chapter.
- 1730 (10) No mobile home lot may have vehicular access directly onto a state highway.
- 1731 (11) A traffic impact analysis is required if the park will generate more than 500 trips/day.
- 1732 (12) Parking requirements for Mobile Home Park areas follows:
- 1733 (a). For each mobile home lot there must be provided and maintained at least two off-street
1734 parking spaces. This requirement may be waived if an equivalent number of spaces are
1735 provided by a parking lane. Each space is design-dependent as indicated in Table
1736 16.7.11.F of this chapter, set out at the end of § 16.7.11.E and F, Parking Loading and
1737 Traffic. This requirement may be waived if an equivalent number of spaces are provided
1738 by a parking lane.
- 1739 (b). In addition to occupant parking, off-street guest and service parking must be provided
1740 within the boundaries of the park at a ratio of one space for each four mobile home lots.
1741 Such parking must be reserved for that sole use. This requirement may be waived if a
1742 parking lane provides an equivalent number of spaces.
- 1743 (c). On-street parking is prohibited unless an eight-foot parking lane is provided, in which
1744 case on-street parking may be permitted on the side of the road where the parking lane is
1745 located.
- 1746 (13) The mobile home park must contain pedestrian walkways that link all units and all service
1747 and recreational facilities. Such walkways are to be adequately surfaced and lit. A portion of
1748 the road surface may be reserved for walkways, provided the street width is increased
1749 accordingly. Walkways should be a minimum of width of three feet.

- 1750 (14) Outdoor lighting is to be provided to adequately illuminate internal streets and pedestrian
1751 walkways. Lights are to be sized and directed to avoid adverse impacts on adjacent
1752 properties and vehicular traffic.
- 1753 (15) Open space calculations are as follows:
- 1754 (a). For Mobile Home Park served by a public sewer, an area amounting to 10% of the total
1755 area devoted to individual lots must be set aside for open space and/or recreation. Such
1756 space is to be accessible and usable by all residents of the park. Parking space,
1757 driveways and streets and buffer areas are not considered usable open space but
1758 community recreation buildings, pools and courts are considered as open space.
- 1759 (b). At least 50% of the required open space must consist of land that is suitable for active
1760 recreation.
- 1761 (c). All developed open space is to be designed and landscaped for the use and enjoyment of
1762 the park residents and maintained for their long-term use. Plans for these areas must be
1763 submitted by the developer.
- 1764 (d). To the maximum extent possible, undeveloped open space must be left in its natural
1765 state. Improvements to make trails for walking and jogging or to make picnic areas are
1766 permitted.
- 1767 (e). The developer must submit, as part of the application, a copy of that portion of the
1768 proposed park rules and a plan which specify how the open space is to be used and
1769 maintained and what conditions apply to its use. The plan must specify the area to be
1770 dedicated open space or recreation.
- 1771 (f). Open space must be maintained and used for its approved purposes.
- 1772 (16) All Mobile Home Park must provide permanent electrical, water and sewage disposal
1773 connections to each mobile home in accordance with applicable state and local rules and
1774 regulations. If other than public water is to be utilized, the water system(s) must be capable
1775 of delivering 250 gallons per day per lot of water certified to be of primary drinking water
1776 standards.
- 1777 (17) Signs and advertising devices are prohibited in a Mobile Home Park, except:
- 1778 (a). One identifying sign at each entrance of the Mobile Home Park sized in compliance with
1779 § 16.5.16 of this chapter may be installed.
- 1780 (b). Directional and informational signs for the convenience of tenants and the public relative
1781 to parking, office, traffic movement, etc., are permitted.
- 1782 (c). Mobile/manufactured home "for sale" signs, provided that such signs that face a public
1783 road may be no more than 10 square feet and limited to two signs per Mobile Home
1784 Park.

- 1785 (d). Mobile/manufactured homes address signs are permitted when in compliance with §
1786 16.5.17 of this chapter.
- 1787 (e). The styles and location of the identifying sign must not interfere with vehicle sight
1788 distance and be constructed in accordance with § 16.5.17(17) of this chapter.
- 1789 (18) At least 300 cubic feet of enclosed tenant storage facilities must be conveniently provided
1790 on or near each mobile home lot for the storage of materials and equipment.
- 1791 (19) A storm drainage plan must be prepared by a professional engineer, registered in the State of
1792 Maine, in accordance with § 16.7.11.C, Stormwater drainage. Such plan must be approved
1793 by the York County Soil and Water Conservation District or found satisfactory and
1794 compliant to the Code by the Town's Engineering Peer Reviewer prior to Planning Board
1795 approval of the final plan.
- 1796 (20) Groundwater requirements for Mobile Home Park are as contained in § 16.7.11.J, which
1797 must be complied with for all Mobile Home Park applications.
- 1798 (21) Each mobile home lot must be provided with an area for refuse storage. Within a maximum
1799 150 feet from each mobile home lot, there must be a fly tight, watertight and rodent proof
1800 container capable of storing the amount of refuse that the mobile home park for which it was
1801 designed could generate within one week as well as any separation containers as required by
1802 the Kittery recycling program. The park management is responsible for disposal of refuse
1803 from such containers at least once a week.
- 1804 (22) Buffering requirements are as follows:
- 1805 (a). A fifty-foot-wide buffer strip must be provided along all property boundary lines that:
- 1806 [1] Abut residential land which has a gross density of less than half that proposed in the
1807 park; or
- 1808 [2] Abut residential land that is zoned at a density of less than half that proposed in the
1809 park.
- 1810 (b). Further, no structures, streets or utilities may be placed in the buffer strip, except that
1811 they may cross a buffer strip to provide services to the park.
- 1812 (c). Within 25 feet of any property line and within the buffer strip, visual screening and/or
1813 landscaping must be provided. The visual screening may consist of fences, berms,
1814 landscaping (such as shrubs or trees) and/or natural existing vegetation. This screening is
1815 to effectively screen at least 80% of the homes from view from the adjacent property and
1816 be maintained throughout the life of the project.
- 1817 (23) The owner or operator of a mobile home park is responsible for ensuring the maintenance of
1818 all park-owned structures, open space areas, roads and pedestrianways/sidewalks. Park
1819 management must comply with state laws. Compliance with this title does not exempt the
1820 park owner, developer or manager from complying with other applicable local, state and

1821 federal codes and regulations.

1822 (24) No development or subdivision which is approved under this section as a mobile home park
1823 may be conveyed to another use without the approval of the Planning Board and meeting the
1824 appropriate lot size, lot width, setback and other requirements contained in this title. The
1825 approved final plan is to be recorded at the York County Registry of Deeds and filed with
1826 the Town and have noted the following restrictions as well as any other notes or conditions
1827 of approval: (1) "The land within this park must remain in a unified ownership and the fee to
1828 lots or portions of lots not be transferred." (2) "No dwelling unit other than a mobile home
1829 unit may be located within the park."

1830 16.5.18 Net Residential Acreage

1831 A. Purpose.

1832 Net residential acreage is used to determine the maximum number of dwelling units
1833 allowed on a parcel that is subject to subdivision. The total number of dwelling units
1834 allowed is equal to the net residential acreage divided by the minimum land area per
1835 dwelling unit for a given land use zone.

1836 B. Net residential acreage calculation.

1837 To calculate net residential acreage, the land area listed below must be subtracted from a
1838 parcel's gross area. Where land areas to be subtracted overlap, the area therein is
1839 subtracted once.

1840 (1) All land located below the highest annual tide elevation as published in the Maine DEP
1841 Highest Annual Tide (HAT) levels for the most-current year.

1842 (2) All land located within the floodplain as defined in the definition of "flood, one-hundred-
1843 year" in § 16.3.

1844 (3) All wetlands as defined in the definition of "wetland" in § 16.3, as well as vernal pools,
1845 ponds, lakes, streams and other water bodies, including 50% of the associated setbacks
1846 described in other Buildings and Structures, Table 16.5.30, § 16.5 of this title.

1847 (4) All land located on filled tidal lands, per the definition of "tidal land, filled" in § 16.3.

1848 (5) All land located within existing rights-of-way and other existing easements wherein
1849 dwelling units cannot be built.

1850 (6) All land located within proposed rights-of-way, including parking and travel ways.
1851 Driveways are excluded.

1852 (7) All land isolated from the principal location for development on the parcel by a road/street,
1853 existing land uses, or any physical feature, natural or man-made, such that it creates a barrier
1854 to the central development of the site and no means of access is proposed nor likely to be
1855 provided in the future. However, to demonstrate that identified isolated land may be
1856 considered developable for the purpose of this calculation, the applicant must submit a plan
1857 and supporting documentation for the Board's consideration.

- 1858 (8) All land zoned commercial (C-1, C-2, or C-3).
- 1859 (9) All land one acre or more of contiguous area with sustained slopes of 20% or greater.
- 1860 (10) All land identified as exposed bedrock, and soils with a drainage class of "poorly drained"
1861 and/or "very poorly drained" as defined in the definition of "soils" in § 16.3.
- 1862 (11) Fifty percent of all land characterized as drainage class of "somewhat poorly drained,"
1863 unless public sewer is used, in which case no land area is subtracted.
- 1864 (12) All land area within a cemetery and burying ground as defined in § 16.3, including
1865 associated setback per 13 M.R.S.A. § 1371-A, Limitations on construction and excavation
1866 near burial sites.
- 1867 (13) All land within a Commercial Fisheries/Maritime Uses Overlay Zone or Resource Protection
1868 Overlay Zone not included in Subsection 12 above.
- 1869 C. Documentation.
1870 The net residential acreage calculation must be supported by verifiable information and
1871 accurate data and be shown on the subdivision plan or other plan when applicable.
- 1872 D. Exemptions to net residential acreage calculations.
- 1873 (1) The maximum number of dwelling units for residential development not subject to
1874 subdivision is based on minimum land area per dwelling unit defined in § 16.2, Definitions
1875 of this title.
- 1876 (2) The creation of dwelling units subject to subdivision within existing buildings that are
1877 connected to Town sewer and are located in the Mixed Use - Kittery Foreside, Mixed Use -
1878 Badgers Island, Residential Village, Business Local, or Business Local-1 Zones are exempt
1879 from the net residential acreage calculations in § 16.5.18.A. The total number of dwelling
1880 units permitted is determined by dividing the gross lot area by the minimum land area per
1881 dwelling unit allowed in the zone. The exemption is allowed in the above base zones when
1882 subject to the Shoreland Overlay Zone.
- 1883 (3) The Mixed-Use – Neighborhood Zone (MU-N) and certain residential uses in the C-1 and
1884 C-3 zone as noted in 16.4.19 and 16.4.21 are exempt from § 16.5.18, Net residential acreage
1885 calculation, but is subject to the minimum land area per dwelling unit as defined in Chapter
1886 2, Definitions, except that 50% of all wetlands may be subtracted, rather than 100%.

1887

1888 16.5.19 Nonstormwater Discharge

1889 A. Basis/purpose/objectives.

- 1890 (1) The Maine Department of Environmental Protection, through its promulgation of the
1891 "General Permit for the Discharge of Stormwater from Small Municipal Separate Storm

1892 Sewer Systems" dated July 2013, has listed the Town of Kittery as having a regulated small
1893 municipal separate storm sewer system ("small MS4"); under this general permit, listing as a
1894 regulated small MS4 necessitates enactment of this article as part of the municipality's
1895 stormwater management plan.

1896 (2) The purpose of this article is to provide for the health, safety, and general welfare of the
1897 citizens of the Town of Kittery, through the regulation of nonstormwater discharges to the
1898 municipality's storm drainage system as required by federal and state law. This article
1899 establishes methods for controlling the introduction of pollutants into the Town's storm
1900 drainage system in order to comply with requirements of the federal Clean Water Act and
1901 state law.

1902 (3) The objectives of this article are:

1903 (a). To prohibit unpermitted or unapproved nonstormwater discharges to the storm drainage
1904 system; and

1905 (b). To set forth the legal authority and procedures to carry out all inspection, monitoring and
1906 enforcement activities necessary to ensure compliance with this article.

1907 B. Applicability.

1908 This article shall apply to all persons discharging stormwater and/or nonstormwater
1909 discharge from any premise into the storm drainage system.

1910 C. Responsibility for administration.

1911 The Code Enforcement Officer is the enforcement authority who shall administer,
1912 implement, and enforce the provisions of this article.

1913 D. Prohibition of nonstormwater discharges.

1914 (1) Except as allowed or exempted herein, a person may not create, initiate, originate or
1915 maintain a nonstormwater discharge to the storm drainage system. Such nonstormwater
1916 discharges are prohibited even where the municipality has approved the connections, drains
1917 or conveyances through which a person creates an illicit nonstormwater discharge to the
1918 storm drainage system.

1919 (2) The creation, initiation, origination and maintenance of the following nonstormwater
1920 discharges to the storm drainage system are allowed as long as they do not cause or
1921 contribute to a violation of the state's water quality standards:

1922 (a). Flow: Landscape irrigation; diverted stream flows; rising groundwaters; uncontaminated
1923 groundwater infiltration [as defined at 40 CFR 35.2005(20)]; uncontaminated pumped
1924 groundwater; uncontaminated flows from foundation drains; air conditioning and
1925 compressor condensate; irrigation water; flows from uncontaminated springs;
1926 uncontaminated water from crawlspace pumps; uncontaminated flows from footing
1927 drains; lawn watering runoff; flows from riparian habitats and wetlands; residual street
1928 wash water (where spills/leaks of toxic or hazardous materials have not occurred, unless
1929 all spilled material has been removed and detergents are not used); hydrant flushing and

- 1930 firefighting activity runoff; water line flushing and discharges from potable water
 1931 sources; individual residential car washing; and dechlorinated swimming pool
 1932 discharges, as defined as having 0.5 ppm or less. Pools may only be emptied a minimum
 1933 of 48 hours after any chemical treatments were added.
- 1934 (b). Discharges specified in writing by the enforcement authority as being necessary to
 1935 protect public health and safety; and
- 1936 (c). Dye testing, with verbal notification to the enforcement authority prior to the time of the
 1937 test.
- 1938 E. Exempt person or discharge.
 1939 This article shall not apply to an exempt person or discharge, except that the enforcement
 1940 authority may request from exempt persons and persons with exempt discharges copies of
 1941 permits, notices of intent, licenses and orders from the EPA or DEP that authorize the
 1942 discharge(s).
- 1943 F. Suspension of access to municipality's storm drainage system.
- 1944 (1) The enforcement authority may, without prior notice, physically suspend discharge access to
 1945 the storm drainage system to a person when such suspension is necessary to stop an actual or
 1946 threatened nonstormwater discharge to the storm drainage system which presents or may
 1947 present imminent and substantial danger to the environment, or to the health or welfare of
 1948 persons, or to the storm drainage system, or which may cause the municipality to violate the
 1949 terms of its environmental permits. Such suspension may include, but is not limited to,
 1950 blocking pipes, constructing dams or taking other measures, on public ways or public
 1951 property, to physically block the discharge to prevent or minimize a nonstormwater
 1952 discharge to the storm drainage system.
- 1953 (2) If the person fails to comply with a suspension order issued in an emergency, the
 1954 enforcement authority may take such steps as deemed necessary to prevent or minimize
 1955 damage to the storm drainage system, or to minimize danger to persons. Only with the
 1956 consent of the premises' owner, occupant or agent may the enforcement authority enter the
 1957 premises that are the source of the actual or threatened nonstormwater discharge to the storm
 1958 drainage system.
- 1959 G. Monitoring of discharges.
 1960 In order to determine compliance with this article, the enforcement authority may enter
 1961 upon and inspect premises subject to this article at reasonable hours with the consent of
 1962 the premises' owner, occupant or agent: to inspect the premises and connections thereon to
 1963 the storm drainage system; and to conduct monitoring, sampling and testing of the
 1964 discharge to the storm drainage system.
- 1965 H. Enforcement and penalties.
 1966 See §§ 16.2.7 and 16.2.14.
- 1967 I. Ultimate responsibility of discharger.
 1968 The standards set forth herein are minimum standards; therefore this article does not

1969 intend nor imply that compliance by any person will ensure that there will be no
 1970 contamination, pollution, nor unauthorized discharge of pollutants into waters of the U.S.
 1971 caused by said person. This article shall not create liability on the part of the municipality,
 1972 or any officer agent or employee thereof for any damages that result from any person's
 1973 reliance on this article or any administrative decision lawfully made hereunder.

1974 16.5.20 **Outdoor Dining**

1975 A. Applicability.

1976 (1) Outdoor dining, as defined in Chapter §16.3 of this Title, is allowed as follows:

1977 (a) Within the buildable lot area in all zoning districts where restaurants are allowed as either
 1978 a permitted or a special exception use;

1979 (b) Within the front, side and/or rear yards (setbacks) of the C-1, C-2, C-3, B-L, B-L1, MU,
 1980 MU-BI, MU-KF and MU-N zones where such a setback does not abut a residential use; and

1981 (c) Outdoor dining in the public way is permitted subject to Title 5 and all Town
 1982 requirements.

1983 (2) Any existing restaurant that meets the above requirements may apply for approval for
 1984 outdoor dining on-site.

1985 (3) New restaurants to be constructed may include outdoor dining plans on-site as part of their
 1986 site plan review.

1987 B. Standards.

1988 (1) Outdoor dining on-site must meet all the requirements of the pertinent zone's buffering and
 1989 screening requirements.

1990 (2) Proposed outdoor dining on-site must comply with all conditions pertaining to any existing
 1991 variances, special exceptions or other approvals granted for the property as well as any
 1992 conditions imposed by the granting of the site plan review approval for the outdoor dining
 1993 itself.

1994 (3) All the proposed outdoor dining activities must be conducted on private property owned,
 1995 leased or otherwise controlled by the applicant unless separate approval for the use of any
 1996 public rights-of-way has been obtained from the Town.

1997 (4) The proposed outdoor dining must not impede a site's internal circulation or its access and
 1998 egress.

1999 (5) No additional parking is required for outdoor dining at existing restaurants where on-street
 2000 parking is available. For outdoor dining areas in existing restaurants where on-street parking
 2001 is not available, if the outdoor dining area is 1,000 square feet or less, no additional parking
 2002 is required. For outdoor dining areas in existing restaurants over 1,000 square feet but less

2003 than 2,000 square feet, one additional parking space is required. Thereafter, one additional
 2004 parking space is required for every additional 1,000 sf.

2005 C. Site Plan Review submission requirements

2006 (1) The site plan must be drawn to scale, showing the dimensions of the proposed outdoor
 2007 dining area, and its location relative to the structure where the restaurant is located.

2008 (2) The site plan must show the location of any proposed or existing pavement, hardscaping,
 2009 landscaping, planters, fencing, canopies, umbrellas, awnings or barriers surrounding or
 2010 delineating the outside dining area.

2011 (3) Calculations demonstrating the number of tables that may be placed within the proposed
 2012 outdoor dining area according to state and local regulations must be submitted.

2013 (4) The above submission requirements are all that is required for outdoor dining areas that
 2014 require Code Enforcement approval under §16.2.6. For outdoor dining areas that must be
 2015 reviewed under site plan review, the above requirements must be met in addition to the
 2016 submission requirements of §16.7 unless a submission requirements waiver is granted by the
 2017 Planning Board.

2018 16.5.21 Overboard Discharge Systems

2019 A. Treated overboard discharge system defined.
 2020 "Treated overboard discharge system" means any sand-filter system, mechanical system or
 2021 primary treatment with disinfection system designed to State of Maine Department of
 2022 Environmental Protection specifications which discharges effluent or other liquids into
 2023 any water body or watercourse.

2024 B. Permit requirement.
 2025 No person, firm or corporation may construct, install or maintain any treated overboard
 2026 discharge system without first obtaining a Town permit for the same. Such permit is in
 2027 addition to any other permit or license required by state or federal authorities for the same.

2028 C. Permit application.

2029 (1) Application for permit; fee. All applicants for permits must first apply to the Board of
 2030 Appeals with a copy of the application given to the Code Enforcement Officer. The
 2031 application form for a treated overboard discharge system must include the property owner's
 2032 name and mailing address and telephone number, the applicant's name and address and
 2033 telephone number, the location address; tax maps and lot numbers; engineer's scale drawing
 2034 showing all relevant details of the system; and any other information deemed relevant or
 2035 necessary by either the Board of Appeals or the Code Enforcement Officer. A fee as set out
 2036 in Appendix A is required for each application. Application forms are to be available from
 2037 the Code Enforcement Officer.

2038 (2) Issuance of permits; fee. The treated overboard discharge permit may be issued by the Code
 2039 Enforcement Officer only after Board of Appeals approval. A permit issue fee as set out in

2040 Appendix A is required for each system.

2041 (3) Notice of hearing.

2042 (a). Upon receipt of the completed application, the Board must timely notify the Code
2043 Enforcement Officer of the established hearing date, which may be no more than 30 days
2044 from the date of the receipted application. The Code Enforcement Officer must also
2045 notify the Planning Board, abutters and applicant of the hearing date. The Code
2046 Enforcement Officer must also give public notice of the permit hearing date by
2047 advertising the same in a newspaper of general circulation within the Town at least
2048 seven days prior to the hearing date.

2049 (b). For the purposes of this section, the abutting owners of property are considered to be the
2050 parties listed by the Assessors of taxes for the Town as those against whom taxes are
2051 assessed. Failure of any property owner to receive a notice of public hearing does not
2052 necessitate another hearing or invalidate any action by the Board of Appeals.

2053 (4) Conduct of hearing and standards. The Board must conduct the hearing on the application
2054 for a treated overboard discharge system permit by following the same procedures
2055 established for the consideration of a special exception under the terms of § 16.2.12.

2056 (a). The Board may receive oral and documentary evidence and testimony. At the close of
2057 the evidentiary portion of the hearing, the Board must consider whether the effluent or
2058 discharge from the proposed treated overboard discharge system will have a negative
2059 impact on any aquatic or fowl life, will lower the water quality standard or impair the
2060 uses designated by the classification of the receiving waters. In addition, the Board may
2061 consider any relevant provisions of the performance standards set forth in § 16.5, 16.7
2062 and 16.8.

2063 (b). The Board may also consider any relevant state or federal statute, rules or regulations
2064 bearing on the same. After applying the standards contained herein, the Board must issue
2065 its decision containing its findings of fact and conclusions and approve the application if
2066 the Board is satisfied that the standards have been met.

2067 (5) Notice of decision. The Board of Appeals must notify the applicant in writing of its decision
2068 no later than 10 days thereafter.

2069 D. Systems exempted.

2070 The permit requirement of this chapter does not apply to any sewage disposal system in
2071 operation at the time this chapter is adopted or the subsequent repair or replacement of any
2072 such system, including replacement by treated overboard discharge system, except that
2073 any treated overboard discharge system, as defined herein and operating as of the date of
2074 the adoption of this chapter or subsequently installed as a replacement for an existing
2075 malfunction in-ground or overboard system under license by the State of Maine, is
2076 required to conform to the standards of maintenance and monitoring set forth in
2077 § 16.5.21.E.

2078 E. Standards of maintenance and monitoring.

2079 Treated overboard discharge systems that are operating by virtue of a permit issued under
2080 the terms of this chapter, or any such system operating as of the date of the enactment of
2081 this chapter pursuant to a license issued by the State of Maine, must be maintained and
2082 monitored pursuant to the following standards:

2083 (1) Disinfection. Disinfection is to be provided in a manner acceptable to the Maine Department
2084 of Environmental Protection. An approved disinfectant must be used and maintained
2085 according to the replacement or renewal schedule established by the Department of
2086 Environmental Protection.

2087 (2) Septic tanks. Septic tanks which are part of an overboard discharge system must be pumped
2088 annually to ensure that the accumulated sludge is never nearer than 12 inches to the invert of
2089 the outlet pipe leading from the septic tank to the sand filter.

2090 (3) Monitoring.

2091 (a). The permit holder and/or the property owner must supply to the Code Enforcement
2092 Officer, prior to August 1 of each year, a report of the effluent analysis conducted by a
2093 recognized testing laboratory. All water samples for evaluation must be obtained and
2094 analyzed during the month of July. Each analysis must include the following tests:

2095 [1] Fecal coliform (number of colonies per milligram of water);

2096 [2] Biological oxygen demand (BOD) and suspended solids (mg/l); and

2097 [3] Settleable solids (mg/l after a twenty-minute settling period in an Imhoff cone).

2098 (b). In addition to the requirements contained in this subsection, the Code Enforcement
2099 Officer may require periodic operational reports from recognized laboratories in such
2100 form and containing such information as the Code Enforcement Officer may require.

2101 (4) Sand filters. Whenever the BOD levels exceed the limits specified in the regulations of the
2102 Maine Department of Environmental Protection, or when there are other indications of the
2103 sand-filter malfunctioning, the sand filter is to be inspected by a qualified professional. If the
2104 sand filter is found to be clogged, it must be replaced with new material meeting
2105 specifications of the Maine Department of Environmental Protection.

2106 (5) Emergency measures. In the event that a treated overboard discharge system is found to be
2107 malfunctioning, for any reason, the septic or settling tank must be pumped immediately and
2108 continue to be pumped as often as required until the malfunctioning is corrected.

2109 F. Malfunctioning of systems.

2110 The permit owner and/or property owner must immediately notify the Code Enforcement
2111 Officer of any malfunction of any component of the treated overboard discharge system.
2112 In the event that the system malfunctions, the Code Enforcement Officer may order that
2113 the effluent discharge cease within a time set by the Code Enforcement Officer.

2114 G. System construction.

- 2115 (1) Notice to Code Enforcement Officer and DEP. Before any work is undertaken pursuant to a
2116 permit issued under the terms of this chapter, the permit holder and/or property owner must
2117 notify the Code Enforcement Officer and the Department of Environmental Protection
2118 (DEP) at least seven days prior to commencement of the system's construction in order that
2119 all proper inspections of the proposed construction may be made by the Code Enforcement
2120 Officer and the DEP.
- 2121 (2) Certificate of compliance. Upon the completion of the construction of the treated overboard
2122 discharge system and prior to its operation, the Code Enforcement Officer is to issue a
2123 certificate of compliance, certifying that the system complies with all municipal ordinances,
2124 rules and regulations.
- 2125 H. Violations and penalties.
2126 Failure to conform to the provisions of the chapter constitutes a violation. A written notice
2127 of violation must be sent by the Code Enforcement Officer to the permit holder and/or the
2128 property owner operating the treated overboard discharge system which is in
2129 noncompliance with this chapter.
- 2130 (1) This notice is to be sent by certified mail, return receipt requested, and must inform the
2131 permit holder and/or property owner of the deadline for correcting the malfunction. The
2132 permit holder and/or property owner is to be given a reasonable time, not to exceed 30 days,
2133 to correct the malfunction.
- 2134 (2) If the violation is not corrected within this specified time period, the Code Enforcement
2135 Officer must notify the permit holder and/or the property owner by certified mail, return
2136 receipt requested, that the permit is revoked.
- 2137 (3) Each day that the system is allowed to discharge after the notice of permit revocation is
2138 received constitutes a separate offense. A fine of not more than \$100 will be levied for each
2139 such separate offense. In addition to the remedy contained herein, said violation constitutes a
2140 nuisance for which the municipality, through its Code Enforcement Officer, may seek
2141 adequate remedy.
- 2142 (4) Any actual and direct expenses incurred by the Town in abatement of such nuisance may be
2143 recovered from the permit holder and/or property owner by civil complaint.
- 2144 I. Property rights.
2145 The issuance of any permit authorized by this chapter does not convey any property rights
2146 to the permit holder. The permit holder and/or the property owner, by accepting the permit
2147 under the terms of this chapter, consent to allow the Code Enforcement Officer or
2148 authorized agent, at all reasonable and proper times, to enter upon the property for
2149 inspection of the system or otherwise enforce the terms of this chapter.
- 2150 J. Permit expiration date.
2151 Such permit automatically expires within 90 days after the municipal sanitary sewer
2152 system becomes available within 200 feet of the property line of the lot or parcel of land
2153 on which the treated overboard discharge system is located, as measured along the public
2154 way.

- 2155 16.5.22 Piers, Wharves, Marinas and Other Uses Projecting into Water Bodies
- 2156 A. Standards.
- 2157 Development involving piers, wharves, marinas and other uses projecting into water
- 2158 bodies must conform to the following standards:
- 2159 (1) In accordance with 38 M.R.S. § 435 et seq., Mandatory Shoreland Zoning, all dimensional
- 2160 and other standards (excluding setbacks from water bodies) of this title apply to structures
- 2161 and uses projecting into a water body beyond the normal high-water mark.
- 2162 (2) Boathouses, while convenient to locate near the water, are not considered functionally
- 2163 water-dependent uses and must meet the same setback requirement as principal structures.
- 2164 The State of Maine no longer issues permits for construction of boathouses below the
- 2165 normal high-water line due to the adverse environmental impact; therefore, new boathouses
- 2166 must be located on uplands.
- 2167 (3) Only functionally water-dependent uses are allowed on, over or abutting a pier, wharf or
- 2168 other structure beyond the normal high-water line.
- 2169 (4) Access from shore must be developed on soils appropriate for such use and constructed so as
- 2170 to control erosion.
- 2171 (5) The location must not interfere with existing developed recreational and maritime commerce
- 2172 or natural beach areas.
- 2173 (6) The facility must be located so as to minimize adverse effects on fisheries.
- 2174 (7) The facility must be a water-dependent use and no larger in dimension than necessary to
- 2175 carry on the activity and must be consistent with existing conditions, use and character of
- 2176 the area.
- 2177 (8) No new structure may be built on, over or abutting a pier, wharf, dock or other structure
- 2178 extending beyond the normal high-water line of a water body or within a wetland unless the
- 2179 structure requires direct access to the water as an operational necessity.
- 2180 (9) No existing structures built on, over or abutting a pier, dock, wharf or other structure
- 2181 extending beyond the normal high-water line of a water body or within a wetland may be
- 2182 converted to residential dwelling units in any district.
- 2183 (10) Except in the Commercial Fisheries/Maritime Uses Overlay Zone, structures built on, over
- 2184 or abutting a pier, wharf, dock or other structure extending beyond the normal high-water
- 2185 line of a water body or within a wetland must not exceed 20 feet in height above the pier,
- 2186 wharf, dock or other structure.
- 2187 (11) Applicants proposing any construction or fill activities in a waterway or wetland requiring
- 2188 approval by the U.S. Army Corps of Engineers pursuant to Section 404 of the Clean Water
- 2189 Act, Section 9 or 10 of the Rivers and Harbors Act, or Section 103 of the Marine Protection,
- 2190 Research and Sanctuaries Act, must submit proof of a valid permit issued.

- 2191 (12) Proposals for any principal marine structure use, any residential joint- and/or shared-use
2192 pier, or any residential-development-use pier require Planning Board approval.
- 2193 (13) A residential development containing five or more lots in a zone permitting a residential-
2194 development-use pier may construct only one residential development use pier.
- 2195 (14) Commercial development of the shorefront must provide for access by the general public as
2196 part of a shorefront development plan.
- 2197 (15) Only one pier, ramp and float structure is permitted on any noncommercial or nonindustrial
2198 lot.
- 2199 (16) Marine-related permanent structures located below the mean low-water line require the
2200 following permits, leases and approvals:
- 2201 (a). Port Authority approval;
- 2202 (b). Department of Environmental Protection permit pursuant to the Natural Resources
2203 Protection Act, 38 M.R.S. § 480-C;
- 2204 (c). Army Corps of Engineers permit;
- 2205 (d). Maine State Department of Conservation, Bureau of Parks and Lands, Submerged Land
2206 Coordinator approval; and
- 2207 (e). Building permit.
- 2208 16.5.23 Signs
- 2209 A. Purpose.
- 2210 The purpose of this article is to balance the need for adequate identification and advertising
2211 for land uses to promote the economic well-being of the Town with the need to protect the
2212 public safety and maintain and enhance the physical appearance of the community. This
2213 objective is to be achieved by:
- 2214 (1) Allowing adequate signage for the effective use of signs as a means of identifying,
2215 advertising and communication of land uses;
- 2216 (2) Establishing the appropriate bounds for location, size, number, type and use of signs to
2217 protect traffic safety, preserve property values and to promote visual order and clarity; and
- 2218 (3) Establishing procedures and regulations for the fair and consistent administration and
2219 enforcement of these sign restrictions.
- 2220 B. Nonconforming existing signs.
- 2221 (1) All signs lawfully existing on October 1, 1997 that do not conform to the terms of this
2222 article may be continued and maintained, subject to § 16.5.23.B(2), but may neither be
2223 enlarged nor substantially altered except in conformity with this article.

- 2224 (2) Lawfully nonconforming signs must be made to conform or be removed if any of the
2225 following circumstances occur, individually or in combination, for a consecutive three-year
2226 time period:
- 2227 (a). The sign has ceased to be accurate by reason of vacancy or closure of the business which
2228 the sign advertises.
- 2229 (b). The sign face is blank, illegible, obscured, painted over, concealed or otherwise not
2230 decipherable.
- 2231 (3) In no event may the degree of nonconformity of any sign or type of signage on any lot be
2232 increased.
- 2233 C. General requirements.
- 2234 (1) No sign may be erected, posted, enlarged, or substantially changed without a permit issued
2235 by the Code Enforcement Officer (CEO) and also approved by the Town Planner, except
2236 where § 16.5.23.J provides otherwise.
- 2237 (2) No exterior sign may be artificially illuminated except where hooded or shielded or
2238 otherwise designed to prevent direct light spilling onto traveled ways or neighboring
2239 property.
- 2240 (3) No sign may contain a moving message board or intermittent illumination, except where
2241 necessary in time/temperature/date signs.
- 2242 (4) Any sign that interferes with or closely imitates any official traffic sign, signal or device is
2243 prohibited.
- 2244 (5) No sign designed to be transported by means of wheels is allowed, unless said vehicle is
2245 used in the normal day-to-day transportation operations of the business. All trailer signs are
2246 prohibited.
- 2247 (6) Any changeable message signs must be integrated into a permanently-mounted sign. Such a
2248 changeable message board is to be mounted a minimum of 3 1/2 feet above ground level.
- 2249 (7) All signs must be maintained in a safe and sound structural condition.
- 2250 (8) Advertising. No advertising or signage is permitted on wireless communication services
2251 facilities.
- 2252 (9) Any sign not expressly permitted herein is prohibited.
- 2253 D. Sign location.
- 2254 (1) All signs must be permanently installed on the premises of the activity to which the
2255 advertising message refers, except where § 16.5.23.H provides otherwise or upon approval
2256 by the Town Council.

- 2257 (2) All signs must be located outside the full width of the right-of-way of any public way, unless
2258 authorized by the Town Council.
- 2259 (3) Except for signs authorized in §§ 16.5.23.H and 16.5.23.J, freestanding signs erected after
2260 October 1, 1997 must be located at least 33 feet from the center line of any U.S. or state
2261 numbered highway less than 66 feet in width and at least 20 feet from the outside edge of
2262 the paved portion of any travel lane of any U.S. or state numbered highway which has both
2263 more than two travel lanes and a total paved portion in excess of 24 feet in width.
- 2264 (4) Signs must not be placed on or above the roof of any building. All signs must be located
2265 below the level of the eaves of the portion of building where the sign is to be erected, except
2266 as follows:
- 2267 (a) Signage may be located above the eaves on a gable or dormer of a building, providing it
2268 does not extend above or beyond the roofline of the gable or dormer; and
- 2269 (b) Signage may be located on a parapet wall, provided the sign neither extends any more
2270 than eight feet above the roof-wall junction of the parapet wall nor extends beyond the
2271 height of the parapet wall.
- 2272 Note: Please see Figure 3 of § 16.5 at the end of this article to assist the reader in
2273 understanding acceptable and unacceptable locations of building-mounted signs according to
2274 the terms of § 16.5.23.D
- 2275 (5) Building-mounted signs which extend more than six inches from the surface of the structure
2276 must provide a minimum of eight feet of vertical clearance to a walkway, parking area,
2277 private drive and ground surface. Such signs must not extend beyond the street right-of-way
2278 boundary unless authorized by the Town Council.
- 2279 (6) Freestanding signs must not extend higher than 20 feet above the original ground level or the
2280 elevation of the center line of the nearest street measured at the closest point to the sign,
2281 whichever is greater.
- 2282 (7) Signs must not be posted on trees, utility poles, traffic control devices, or unregistered motor
2283 vehicles or trailers. Signs posted on fences are treated as a type of freestanding sign. Any
2284 unpermitted and unallowed sign located in a public road right-of-way may be caused to be
2285 removed by the Town without notice to the owner of such sign.
- 2286 (8) No sign may be located so that it interferes with the safe sight distances necessary for
2287 motorists to proceed safely through intersections or to enter onto or exit from public streets,
2288 private roads or driveways.
- 2289 (9) All building-mounted signs must be located only on the building that contains the activities
2290 or businesses advertised, except that up to 10% of the allowed signage for building-mounted
2291 signs in § 16.5.23.K may be allocated to signs mounted on fuel pumps and/or fuel pump
2292 canopies.
- 2293 (10) In cases where multiple freestanding signs are permitted, any additional allowed smaller

- 2294 freestanding sign must face and be located along a separate publicly maintained street.
- 2295 E. Number of freestanding signs.
- 2296 (1) Except as otherwise authorized in this section, as well as §§ 16.5.23.I and 16.5.23.J, each
2297 development is prohibited from having more than one freestanding sign.
- 2298 (2) Multisided signs are considered as one sign; however, the square footage of each sign face is
2299 calculated to determine total sign area.
- 2300 (3) Where a development fronts on two publicly maintained streets and has designed and
2301 approved access onto both those publicly maintained streets, the development is allowed one
2302 additional freestanding sign that faces and is located along a second publicly maintained
2303 street in accordance with § 16.5.23.G.
- 2304 (4) Where a development fronts on three publicly maintained streets and has designed and
2305 approved access onto each publicly maintained street, a third freestanding sign facing and
2306 located along the third publicly maintained street may be authorized at the Planning Board's
2307 discretion if it finds that other freestanding signage is not visible from the third street and
2308 that there is a need for a third freestanding sign to adequately communicate the business
2309 location to travelers on a third road fronted by the business.
- 2310 F. Number of building-mounted signs.
2311 To prevent sign clutter, except for those signs authorized by § 16.5.23.I or 16.5.23.J, each
2312 business facility which is on a site where two or more businesses occupy the same
2313 building, lot or development is prohibited from having more than two building-mounted,
2314 nontemporary signs.
- 2315 G. Sign area.
- 2316 (1) Residential Zones. Zones designated Residential - Rural Conservation, Residential - Rural,
2317 Residential - Suburban, Residential - Urban, and Residential - Village on the Zoning Map
2318 are residential zones for the purpose of this section.
- 2319 (a). Accessory uses, including home occupations, are allowed sign area no greater than eight
2320 square feet.
- 2321 (b). Other permitted uses are allowed sign area no greater than 16 square feet, except as
2322 otherwise provided. Residential developments are also allowed 24 square feet, provided
2323 that signs are located within the development on premises owned by the developer or an
2324 owners' association.
- 2325 (2) All other zones.
- 2326 (a). A single business situated on a lot of record is allowed a total sign area no greater than
2327 300 square feet or 1 1/2 square feet for every linear foot of building frontage, whichever
2328 is smaller. In any case, a single business on a lot of record is allowed a minimum sign
2329 area of 72 square feet.

2330 (b). Where two or more business facilities occupy the same building, lot or development,
2331 allowable sign area is calculated as follows:

2332 [1] Total building-mounted sign area equals 1 1/2 square feet per linear foot of building
2333 frontage for each business facility. The total allowed building-mounted sign area may
2334 be allocated among individual business facilities at the property owner's discretion.

2335 [2] The development is allowed one freestanding sign not greater than 150 square feet in
2336 sign area. An additional freestanding sign no greater than 72 square feet in sign area
2337 facing and located along that secondary street is allowed if the development fronts on
2338 multiple streets and has designed and approved access onto each publicly maintained
2339 street. A third freestanding sign may be permitted at the Planning Board's discretion
2340 in accordance with § 16.5.23.E.

2341 H. Off-premises signs.

2342 (1) An individual business or service, upon application, may be assigned no more than three off-
2343 premises business directional signs (OBDS). An OBDS must be designed and located so as
2344 to avoid conflict with other signs and minimize impact on the scenic environment through
2345 the following standards:

2346 (a). Dimensions: 12 inches by 48 inches.

2347 (b). Coloring: state standard blue background, white lettering, logo may be any color.

2348 (c). Reflectorization: optional.

2349 (d). Location: on existing assemblies (posts) where possible. No more than two assemblies
2350 per intersection approach.

2351 (e). Restricted areas: An OBDS must not be placed on an inbound leg of the Kittery traffic
2352 circle within 400 feet of its outer perimeter, or adjacent to points of scenic or historical
2353 interest, including but not limited to federal, state and local parks and reserves,
2354 recognized historic sites and buildings, water bridges and cemeteries.

2355 (2) An off-premises sign which advertises commercial or other activity without advertising any
2356 specific enterprise (generic signs) may be approved by the Planning Board at size and
2357 location to be specified.

2358 I. Temporary signs.

2359 All temporary signs must be installed on the premises of the activity to which the
2360 advertising message refers. Moveable signs are prohibited as temporary signs. The
2361 following types of temporary signs are allowed with an approved sign permit:

2362 (1) The use of one temporary sign, other than a trailer sign, at any one time per business, that is
2363 mounted to the building or attached to a freestanding sign structure for the purpose of
2364 advertising special events, provided that such signs are displayed for no longer than a
2365 combined total of 21 days in any calendar quarter (January 1 to March 30, etc.), may be

- 2366 permitted. Total sign area for a temporary sign must not exceed 72 square feet. The allowed
2367 twenty-one-day display period may be divided into no more than three separate,
2368 nonoverlapping temporary periods of not less than seven days.
- 2369 (2) One additional temporary sign, other than a trailer sign, mounted to the building or to a
2370 freestanding sign structure, is permitted per legally participating site for the duration of each
2371 Town Council-approved sidewalk sales event.
- 2372 J. Signs allowed without sign permit.
2373 The following types of signs, in sizes and under conditions stated, are allowed without a
2374 Town sign permit, but must conform with all other provisions of § 16.5.23 of this chapter
2375 except for the provisions restricting the number of signs (§§ 16.5.23.E and 16.5.23.F) and
2376 limiting the total sign area (§ 16.5.23.G).
- 2377 (1) Public information signs. Signs for the control of traffic and other regulatory purposes, route
2378 markers, street signs, warning signs, utility, danger or warning signs, signs which indicate
2379 direction to hospitals, churches or other places of worship, or other public facilities.
- 2380 (2) General information signs. Signs which provide direction or instruction, such as location of
2381 telephone, restrooms, parking, automatic teller machines (ATMs), transit stops, entrances
2382 and exits, open and closed signs, where installed entirely upon the property to which they
2383 pertain. "Enter" and "Exit" signs must not exceed four square feet in size. All other general
2384 information signs must not exceed two square feet in size. Except for identifying approved
2385 off-premises parking stalls, no logos, trademarks or names of businesses are permitted on
2386 general information signs. The Planning Board may approve increased sizes and/or the use
2387 of logos or names of businesses on general information signs when considered necessary to
2388 promote safety or eliminate confusion.
- 2389 (3) Memorial tablets. Grave markers, signs commemorating a historical figure or event, names
2390 or dates of buildings to which a sign is attached.
- 2391 (4) Public notices and community signs. Official notices posted by public employees in
2392 performance of their duties, and any sign for Town sponsored or supported events or
2393 facilities as approved by the Town Council.
- 2394 (5) Flags of any government or recognized political subdivision. The flag of any government or
2395 recognized political subdivision is allowed, provided it is displayed no higher than 50 feet
2396 above the original ground level or the elevation of the center line of the nearest street
2397 measured at the closest point to the flag, whichever is greater. A single memorial flagpole
2398 installation sponsored by private funding not to exceed 129 feet in height installed on Town-
2399 owned or regulated property at Memorial Circle is allowed.
- 2400 (6) Religious symbols.
- 2401 (7) Building street numbers. In accordance with the street-numbering map on file with the Town
2402 Assessing Department;
- 2403 (8) Political campaign signs. Signs bearing political messages relating to an election, primary or

- 2404 referendum, provided these signs may be displayed on:
- 2405 (a). Public property not earlier than 30 days prior to the election, primary or referendum to
2406 which they relate and are removed not later than two days thereafter.
- 2407 (b). Private property without time constraints.
- 2408 (9) Interior signs. Signs placed inside a building which are located at least 10 feet inside the
2409 building or otherwise not oriented to be viewed from outside the building;
- 2410 (10) Vehicular signs. Signs painted on or affixed to registered motor vehicles or trailers where
2411 such signs are clearly incidental to the regular transportation function of the vehicle.
- 2412 (11) Service club signs. Service club signs may be placed within the right-of-way of a street with
2413 approval of the Commissioner of Public Works. Such signs are encouraged to be
2414 consolidated on a single designated assembly structure at major entranceways to the Town.
2415 In addition, such signs not exceeding four square feet in size may be erected at locations
2416 where meetings of such service clubs are convened.
- 2417 (12) Real estate signs. Any sign advertising real estate for sale, lease or rent, provided:
- 2418 (a). Each sign does not exceed 12 square feet;
- 2419 (b). Each sign is located on the property being advertised, except one sign may be located as
2420 an off-premises directional sign, provided the sign does not restrict safe sight distances
2421 or impair safety;
- 2422 (c). No more than two signs are erected per property being advertised; and
- 2423 (d). Each sign is removed within 60 days of transfer of title.
- 2424 (13) Window signs. Any sign that is placed inside a window and is visible from the exterior of
2425 the window, provided such signage covers no more than 50% of the area of any window.
- 2426 (14) Legally required signs. Any sign required by local, state or federal law with sign area no
2427 greater than two square feet or the minimum size required by law, whichever is larger.
- 2428 (15) Food menu signs. Up to two signs advertising food items for sale on the premises at a
2429 legally existing restaurant, fast-food outlet, drive-in restaurant, or snack bar are allowed,
2430 provided that:
- 2431 (a). The total sign area of each such food menu sign on the site must not exceed 32 square
2432 feet; and
- 2433 (b). Such food menu signs must either be building-mounted or comply with the front yard
2434 requirements for structures and be located within 75 feet of the restaurant.
- 2435 (16) Undercanopy, pedestrian-oriented signs. One building-mounted business identification sign
2436 per business facility, not to exceed 10 square feet in size per sign, where two or more

- 2437 businesses occupy the same building with a pedestrian walkway and canopy that parallels
2438 and connects the front entrances of the business facilities. The sign must be oriented toward
2439 pedestrians using the walkway, be located under the canopy near the main entrance to the
2440 business advertised and solely identify the business name or logo.
- 2441 (17) Construction phase and contractor signs. Signs, other than trailer signs, identifying the name
2442 of a contractor working on the premises or describing a construction project, erected only
2443 during the construction phase of a development, provided each sign does not exceed 75
2444 square feet.
- 2445 (18) Garage sale signs as allowed by § 5.4.9A(2).
- 2446 K. Signs in Shoreland Overlay and Resource Protection Overlay Zones.
2447 The following provisions govern signs in the Conservation, Shoreland Overlay and
2448 Resource Protection Overlay Zones, except where either is overlaid by the Commercial
2449 Fisheries/Maritime Uses Overlay Zone:
- 2450 (1) Signs relating to goods and services sold on the premises are allowed, provided such signs
2451 do not exceed six square feet in area and do not exceed two signs per premises.
- 2452 (2) Signs relating to goods or services not sold or rendered on the premises are prohibited.
- 2453 (3) Name signs are allowed, provided such signs do not exceed two signs per premises and do
2454 not exceed 12 square feet in the aggregate.
- 2455 (4) Residential users may display a temporary single sign not over three square feet in area
2456 relating to the sale, rental or lease of the premises.
- 2457 (5) Signs relating to trespassing and hunting are allowed without restriction as to number,
2458 provided no such sign exceeds two square feet in area.
- 2459 (6) Signs relating to public safety are allowed without restriction.
- 2460 (7) Signs higher than 20 feet above the ground are prohibited.
- 2461 (8) Signs may be illuminated only by shielded, nonflashing lights.
- 2462 L. Sign permit application procedures.
- 2463 (1) No person may erect, post, enlarge, relocate, replace or modify a sign except in conformance
2464 with a permit issued by the Code Enforcement Officer and also approved by the Town
2465 Planner. Notwithstanding the above statement, the following signs may be erected or
2466 modified without a sign permit:
- 2467 (a). Signs authorized in § 16.5.23.J.
- 2468 (b). Changes to nameplates or "shingles" to reflect occupancy changes on an existing
2469 approved freestanding sign identifying individual occupants on the site, provided no

- 2470 change is made to the shape or size of the sign or sign area.
- 2471 (c). Characters, letters and numbers may be changed on approved changeable message signs
2472 without a sign permit, provided no other change is made to the sign.
- 2473 (d). Signs may be maintained, cleaned or repainted, provided no change is made to the shape
2474 or size of the sign or to the sign area, and provided no new business name is advertised.
- 2475 (2) A complete sign application submission consists of the following items submitted to the
2476 Code Enforcement Officer:
- 2477 (a). A completed sign permit application form provided by the Town;
- 2478 (b). An application fee in accordance with a fee schedule established by the Town Council;
2479 and
- 2480 (c). A self-addressed, stamped envelope.
- 2481 (3) Complete applications must be reviewed by the CEO for compliance with this title.
2482 Complete sign permit application submissions must be returned by the CEO after rendering
2483 a decision to the applicant if accompanied by an SASE. Incomplete sign permit application
2484 submissions will only be returned to the applicant if accompanied by an SASE.
- 2485 (4) Unless the proposed sign is located within the Shoreland Zone, the CEO must issue, deny or
2486 seek a formal Planning Board opinion within 14 working days of receiving a complete sign
2487 permit application submission. If either a Planning Board opinion is sought or the proposed
2488 sign is located within the Shoreland Zone, the CEO must issue or deny the application
2489 within 35 calendar days of receiving a complete sign permit application submission.
- 2490 (5) The sign permit must be approved if the proposed sign conforms in every respect with the
2491 requirements of this article. In the CEO's absence, or if no action is taken by the CEO within
2492 the above time limits, the Town Manager or the Town Manager's designee may approve or
2493 deny the sign permit application submission.
- 2494 (6) All new signs approved as of October 1, 1997 must display a numbered sign permit sticker
2495 provided by the Town in a visible location at the lower right-hand corner of the sign face.
2496 Failure to display such sign permit sticker on signs erected as of October 1, 1997 will be
2497 considered a violation of this article. Replacement stickers are available from the CEO based
2498 on a fee schedule established by the Town Council.
- 2499 M. Sign violations and appeal.
- 2500 (1) The CEO must notify and order the owner to immediately correct any sign that endangers
2501 public safety. Signs that endanger public safety include, but are not limited to, those which
2502 are dangerous by reason of structural defect or those that interfere or obstruct a driver's safe
2503 operation of a motor vehicle.
- 2504 (2) A nonconforming sign which is required to conform to the sign regulations per § 16.5.23.B

2505 must be brought into conformity.

2506 (3) Enforcement of the provisions of this article is in accordance with §16.2.

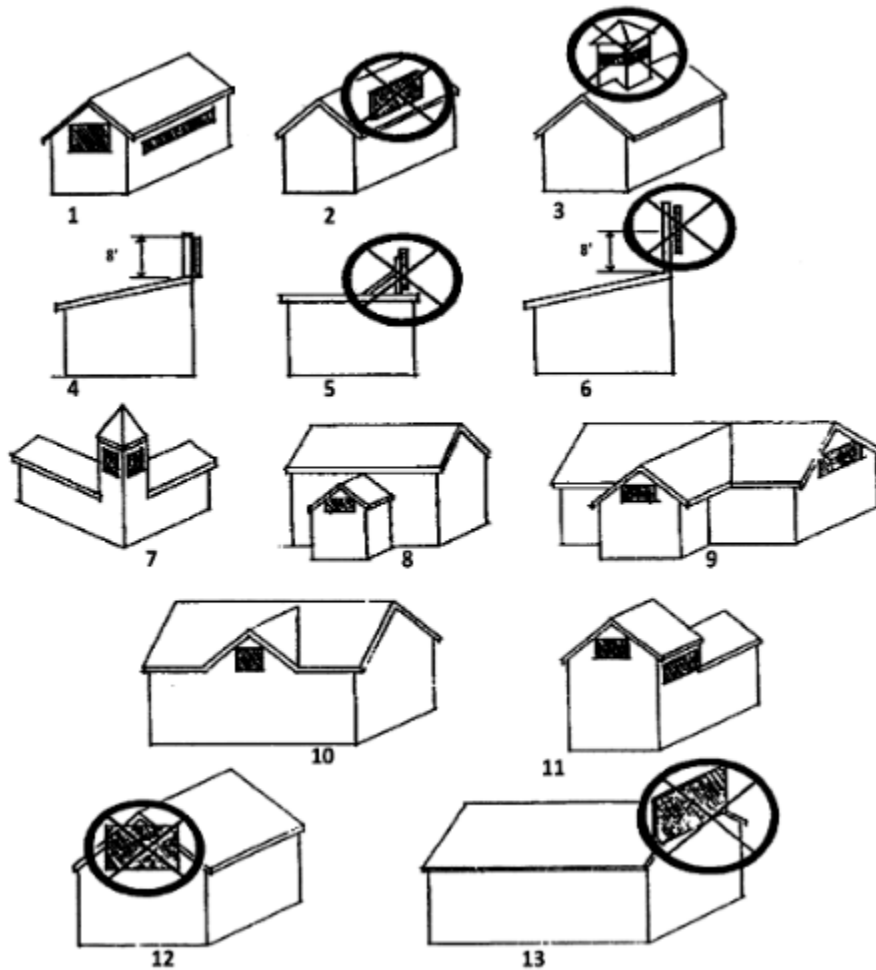
2507

2508 Figure 3

2509 Examples of Allowed and Prohibited Sign Placement

2510 These drawings are illustrative and meant to be an aid to the reader; refer to § 16.5.21, for full
2511 details.

2512



2513

2514 16.5.24 Dwellings in Resource Protection and Shoreland Overlay Zones

2515 A. Dwellings in Resource Protection and Shoreland Overlay Zones.

2516 The Code Enforcement Officer may issue a permit for a new dwelling outside the base zone

2517 setback ion the Shoreland Overlay Zone only provided the structure us conforming with all base
 2518 zone standards. In addition to the criteria specified in § 16.2.12.F, § 16.8.9.D(5) and §
 2519 16.7.10.D(6), applicable to the granting of a special exception use request, the Planning Board
 2520 may approve an application for a single- family dwelling special exception use request within the
 2521 Resource Protection Overlay Zone, where applicable, provided the applicant demonstrates all of
 2522 the following conditions are met:

2523 (1) There is no location on the property, other than a location within Resource Protection
 2524 Overlay Zones, where a single-family dwelling can be built, provided the structure us
 2525 conforming with all base zone standards.

2526 (2) The lot on which the structure is proposed is undeveloped and was established and recorded
 2527 in the York County Registry of Deeds before inclusion in the Shoreland or Resource
 2528 Protection Overlay Zones.

2529 (3) All proposed buildings, sewage disposal systems, other than municipal sewer, and other
 2530 improvements are located:

2531 (a). On natural ground slopes of less than 20%;

2532 (b). Outside the floodway of the one-hundred-year floodplain along rivers; and

2533 (c). Outside the velocity zone in areas subject to tides, based on detailed flood insurance
 2534 studies and as delineated on the Federal Emergency Management Agency's Flood
 2535 Boundary and Floodway Maps and Flood Insurance Rate Maps.

2536 (4) The lowest floor elevation or openings of all buildings and structures, including basements,
 2537 must be elevated at least one foot above the elevation of the one-hundred-year flood, the
 2538 flood of record or, in the absence of these, the flood as defined by soil types identified as
 2539 recent floodplain soils.

2540 (5) If the floodway is not shown on the Federal Emergency Management Agency Maps, it is
 2541 deemed to be 1/2 the width of the one-hundred-year floodplain.

2542 (6) The total ground-floor area, including cantilevered or similar overhanging extensions, of all
 2543 principal and accessory structures is limited to a maximum of 1,500 square feet. This
 2544 limitation may not be altered by variance.

2545 (7) All structures, except functionally water-dependent structures, are set back from the normal
 2546 high-water line of a water body, tributary stream or upland edge of a wetland to the greatest
 2547 practical extent but not less than 75 feet horizontal distance. In determining the greatest
 2548 practical extent, the Planning Board must consider the depth of the lot, the slope of the land,
 2549 the potential for soil erosion, the type and amount of vegetation to be removed, the proposed
 2550 building site's elevation in regard to the floodplain and its proximity to the wetlands.

2551 16.5.25 Sprinkler Systems

2552 A. Requirement.

- 2553 (1) An approved automatic sprinkler system must be installed in all areas of new buildings
2554 meeting any or all of the following criteria:
- 2555 (a). Three or more stories in height; or
- 2556 (b). Thirty-six or more feet in height; or
- 2557 (c). One hundred thousand cubic feet in volume or 10,000 square feet in floor area; or
- 2558 (d). Multiple-family or multiple-occupant dwelling and/or all lodging units; or
- 2559 (e). Any single-family attached units, such as garden apartments or townhouse with three or
2560 more units attached together; or
- 2561 (f). All motels, hotels, rooming houses, inns or other structures containing more than two
2562 dwelling or living units, hotel or motel rooms.
- 2563 (2) An approved automatic sprinkler system must be installed in new additions to existing
2564 buildings and to the existing building(s) meeting any or all of the following criteria:
- 2565 (a). When the addition causes the building to become three or more stories in height; or
- 2566 (b). When the addition causes the building to become 36 or more feet in height; or
- 2567 (c). When the addition causes the building to become 100,000 cubic feet in volume or
2568 10,000 square feet in area;
- 2569 (d). When the addition to or renovation of the existing building results in the end use
2570 becoming a motel, hotel, rooming house, inn or other structure which contains more than
2571 two dwelling or living units, hotel or motel rooms; or
- 2572 (e). When the addition to or renovation of the existing building results in the end use
2573 becoming single-family attached units, such as garden apartments or townhouses with
2574 three or more units attached together.
- 2575 B. Sprinkler system standards.
- 2576 (1) An approved automatic sprinkler system means a system installed in accordance with the
2577 National Fire Protection Association (NFPA) Standard 13 or NFPA 13D, or a system
2578 otherwise lawfully approved in writing by the State Fire Marshal's office; provided,
2579 however, any such system remains subject to the Fire Chief's approval under Subsection (3)
2580 of this section.
- 2581 (2) Any structure requiring the installation of a NFPA Standard 13 system must have a Fire
2582 Department connection with location approved by the Fire Chief.
- 2583 (3) The type of system to be installed and its adequacy of life safety from fire in accordance
2584 with the provisions of this title must be reviewed and approved by the Fire Chief or duly
2585 authorized designee, provided adequate provision is made for life and property safety.

- 2586 (4) All sprinkler systems installed under this title must have the following:
- 2587 (a). A tamper-switch alarm at the system shutoff.
- 2588 (b). An evacuation alarm for the building that will sound when the sprinkler system is
2589 activated; such evacuation alarm is to be audible throughout the entire structure.
- 2590 (c). An outside water-flow alarm.
- 2591 (d). Butterfly valves will not be allowed on any Standard 13 system.
- 2592 (e). Local fire alarm panel.
- 2593 (5) Occupied or unoccupied buildings or portions thereof or any under construction having a
2594 sprinkler system in place must maintain all sprinklers and standpipe systems and all
2595 component parts in a workable condition at all times, and it is unlawful for any owner,
2596 occupant or other person whatever to reduce the effectiveness of the protection these
2597 systems provide, except that this does not prohibit the owner or occupant from temporarily
2598 reducing or discontinuing the protection where necessary for the purposes of conducting
2599 tests, repairs, alterations or additions, provided that the test, repairs, alterations or additions
2600 are done in such a way as to avoid the creation of a safety hazard.
- 2601 (6) For the purposes of this section, the term "building" means any structure excluding single-
2602 family dwellings, two-family dwellings and any barn or stable used exclusively for
2603 agricultural purposes, having a roof supported by columns or walls and intended for the
2604 shelter, storage, housing or enclosure of persons, animals or property. The term "building"
2605 also includes any garage, outbuilding or other accessory building used for any commercial
2606 or industrial purposes.
- 2607 (7) Any building having more than one sprinkler riser must have the risers separately zoned and
2608 wired to a local fire alarm panel to provide zone identification upon activation. The
2609 firealarm panel is to be located as near as possible to the main exit door. There must also be
2610 a building map located at the fire alarm panel showing each zone of the building.
- 2611 (8) A lock box must be provided outside the main entrance to any buildings regulated
2612 hereunder, containing a key to allow access to all Fire Department areas. So as to be
2613 compatible with existing lock box systems, the type of lock box must be approved by the
2614 Fire Chief.
- 2615 (9) Any structure containing a sprinkler system is required to have a yearly test completed on
2616 the system by a qualified sprinkler technician. A written copy of the yearly test report must
2617 be forwarded to the Fire Chief.
- 2618 C. Permit.
- 2619 (1) A permit must be obtained from the Fire Chief before the start of construction of the system
2620 and a set of blueprints showing the entire sprinkler system and the rate of flow provided to
2621 and approved by the Fire Chief in order to obtain the permit.

2622 (2) A copy of the permit must be forwarded to the CEO, and no certificate of occupancy may be
2623 issued until the system has been properly installed, tested by a qualified technician and
2624 approved by the Fire Chief or duly authorized designee.

2625 D. Fees and fines.

2626 (1) A sprinkler system permit fee is to be paid with the permit request in such amount as
2627 established by Council. The fee for a sprinkler permit is as set out in Appendix A.

2628 (2) Any person, firm or corporation being the owner or having control or use of any building or
2629 premises who violates this section of this title will be assessed a penalty under Title 1,
2630 Chapter 1.3. Each day such violation is permitted to exist after notification constitutes a
2631 separate offense.

2632 E. Sprinkler administrative appeal.

2633 If any party is aggrieved by a determination of the Fire Chief under the requirements of
2634 this section, a written appeal may be filed with the BOA within 10 days from the date of
2635 notification of such determination by the Fire Chief. Such written appeal must set forth a
2636 concise statement of the grounds upon which the party contends the Fire Chief's
2637 determination to be in error.

2638 16.5.26 **Street Signage**

2639 A. Names.

2640 Streets which join or are in alignment with streets of abutting or neighboring properties
2641 must bear the same name. Names of new streets may not duplicate, nor bear phonetic
2642 resemblance to, the names of existing streets within the municipality and are subject to the
2643 approval of the Planning Board.

2644 B. Signs provided.

2645 Street name signs are to be furnished and installed by the developer; the type, size and
2646 location to be approved by the Commissioner of Public Works.

2647 16.5.27 **Streets and Pedestrianways/Sidewalks Site Design Standards**

2648 A. Purpose.

2649 The design of streets must provide for proper continuation of streets from adjacent
2650 development and for proper projection into adjacent undeveloped and open land. These
2651 design standards must be met by all streets within Kittery and control street shoulders,
2652 curbs, pedestrianways/sidewalks, drainage systems, culverts and other appurtenances.

2653 B. Layout.

2654 (1) Streets are to be designed to discourage through traffic on minor streets within a residential
2655 subdivision.

2656 (2) Reserve strips controlling access to streets are prohibited except where control is definitely
2657 placed with the municipality.

- 2658 (3) Any development expected to generate average daily traffic of 201 or more trips per day is
2659 to have at least two street connections with existing public street(s).
- 2660 (4) Where a development borders an existing narrow street (below standards set herein) or when
2661 the Comprehensive Plan indicates plans for realignment or widening of a street that would
2662 require use of some of the land in a development, the plans must indicate reserved areas for
2663 widening or realigning such streets, marked on the plan "reserved for street
2664 widening/realignment purposes." Land reserved for such purposes may not be included in
2665 computing lot area or setback requirements of this title.
- 2666 (5) Where a development abuts or contains an existing or proposed arterial street, the Board
2667 may require marginal access streets (i.e., street parallel to arterial street providing access to
2668 adjacent lots), reverse frontage (i.e., frontage on a street other than the existing or proposed
2669 arterial street) with screen planting contained in a non-access reservation along the rear
2670 property line, or such other treatments as may be necessary for adequate protection of
2671 residential properties and to afford separation of through and local traffic.
- 2672 (6) Entrances onto existing or proposed arterial highways/secondary arterials may not exceed a
2673 frequency of one per 1,000 feet of street frontage.
- 2674 C. Street classification.
2675 Streets are classified by purpose, function and use frequency.
- 2676 (1) Arterial highways are major traffic ways that provide connections with other thoroughfare or
2677 interstate roads and have a high potential for the location of significant community activity
2678 centers as well as retail, commercial and industrial facilities. The average daily traffic count
2679 (ADT) would be 9,001 or more trip ends.
- 2680 (2) Secondary arterials carry relatively high volumes of traffic to or from arterial highways,
2681 adjacent communities and through local residential areas, activity centers and minor
2682 commercial establishments. The ADT would be 3,001 to 9,000 trip ends.
- 2683 (3) Commercial, light industrial and mixed-use zone developments are located in areas where
2684 street design is oriented to accommodate community-wide and regional interests with
2685 limited residential uses. The intended uses, ADT, peak hour traffic, and any other additional
2686 information that may be required by the Board will determine their classification, which
2687 may not be lower than a secondary collector.
- 2688 (4) Primary collectors may be residential or business, or both, and serve both as collectors to
2689 lesser residential streets and as connections to or between arterials. The ADT would be from
2690 801 to 3,000 trip ends, and in the interests of traffic and public safety must be owned and
2691 maintained by the Town.
- 2692 (5) Secondary collectors may be residential or business, or both, and connect to or between
2693 streets of a higher classification, and/or may collect traffic from minor streets or private
2694 ways. The ADT would be 201 to 800 trip ends.
- 2695 (6) Minor streets are predominantly single-family residential short or dead-end streets, which

- 2696 may have branching minor streets, private lanes or private ways and conduct traffic to streets
 2697 of higher classification. This is the lowest level of public street in the hierarchy and must
 2698 serve at least four dwelling units. The ADT would be 35 to 200 trip ends.
- 2699 (7) Private streets function exclusively as residential streets serving high-density housing
 2700 developments, including clustered housing, multi-family dwellings, elderly housing, and
 2701 mobile home parks, and may not be dedicated for public acceptance. Maintenance and
 2702 improvements must be controlled by proprietorship, corporation, association or deed
 2703 covenants. The ADT would be 72 to 800 trip ends. Design and construction is to be in
 2704 accordance with the applicable standards and specifications for minor streets or secondary
 2705 collectors.
- 2706 (8) Private lanes are short low-traffic volume residential dead-end streets which may serve part
 2707 of a high-density development or other residential uses conforming to the applicable
 2708 standard residential space requirements enumerated in this title. Private ways may not be
 2709 dedicated for public acceptance, and improvements must be controlled by proprietorship,
 2710 corporation, association or deed covenants. The ADT would be 35 to 71 trip ends.
- 2711 (9) Private ways are dead-end, very-low-volume residential streets that connect to streets of a
 2712 higher classification and function similar to an individual driveway by providing a low
 2713 standard two-way traffic flow. Private ways may not be used in high-density residential
 2714 developments or subdivisions of four or more lots. Private ways cannot be dedicated for
 2715 public acceptance, and all maintenance and improvements must be controlled by
 2716 proprietorship, corporation, association or deed covenants. The ADT would be 12 to 35 trip
 2717 ends.
- 2718 (10) Average daily traffic (ADT) is computed using the latest Institute for Transportation
 2719 Engineers (ITE) codes and figures.
- 2720 D. Street design standards.
 2721 Design standards for classified streets and sidewalks are those contained in attachment
 2722 Table 1 Design and Construction Standards for Streets and Pedestrianways, which is
 2723 attached to this chapter.
- 2724 E. Access control and traffic impacts.
 2725 Provision must be made for vehicular access to a development and circulation upon the lot
 2726 in such a manner as to safeguard against hazards to traffic and pedestrians in the street and
 2727 within the development, to avoid traffic congestion on any street and to provide safe and
 2728 convenient circulation on public streets and within the development. Access and
 2729 circulation must also conform to the standards and criteria listed below.
- 2730 (1) Vehicular access to the development must be arranged to avoid traffic use of local
 2731 residential streets.
- 2732 (2) Where a lot has frontage on two or more streets, the access to the lot must be provided to the
 2733 lot across the frontage and to the street where there is lesser potential for traffic congestion
 2734 and for hazards to traffic and pedestrians.

- 2735 (3) The street giving access to the lot and neighboring streets which can be expected to carry
 2736 traffic to and from the development must have traffic-carrying capacity and be suitably
 2737 improved to accommodate the amount and types of traffic generated by the proposed use.
 2738 No development may increase the volume/capacity ratio of any street above 0.8 nor reduce
 2739 any intersection or link level of service to "D" or below.
- 2740 (4) Where necessary to safeguard against hazards to traffic and pedestrians and/or to avoid
 2741 traffic congestion, provision must be made for turning lanes, traffic directional islands,
 2742 frontage roads, driveways and traffic controls within public streets.
- 2743 (5) Accessways must be of a design and have sufficient capacity to avoid hazardous queuing of
 2744 entering vehicles on any street.
- 2745 (6) Where topographic and other conditions allow, provision must be made for circulation
 2746 driveway connections to adjoining lots of similar existing or potential use:
- 2747 (a). When such driveway connection will facilitate fire protection services as approved by
 2748 the Fire Chief; or
- 2749 (b). When such driveway will enable the public to travel between two existing or potential
 2750 uses, generally open to the public, without need to travel upon a street.
- 2751 F. Center line.
 2752 The center line of a roadway must be the center line of the right-of-way.
- 2753 G. Dead-end streets.
- 2754 (1) Where a permanent cul-de-sac is placed in an area, wooded prior to development, a stand of
 2755 trees must be maintained within the center of the cul-de-sac.
- 2756 (2) The Board may require the reservation of a twenty-foot easement in line with the street to
 2757 provide continuation of pedestrian traffic or utilities to the next street.
- 2758 (3) The Board may also require the reservation of a fifty-foot easement in line with the street to
 2759 provide for continuation of the road where future development is possible.
- 2760 H. Grades, intersections and sight distances.
- 2761 (1) Grades of all streets are to conform, where feasible, to the terrain, so that cut and fill are
 2762 minimized while maintaining the grade standards of this title.
- 2763 (2) All changes in grade are to be corrected by vertical curves in order to provide the following
 2764 minimum stopping distance where based on street design speed calculated with a height of
 2765 eye at 3.5 feet and the height of object at 0.5 feet:

Design speed (mph)	20	25	30	35
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Stopping sight distance (feet)	125	150	200	250
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2766 (3) Intersections of streets are to be at angles as close to 90° as possible, and in no case may two
 2767 streets intersect at an angle smaller than 60°. To this end, where one street approaches
 2768 another between 60° and 90°, the former street should be curved approaching the
 2769 intersection.

2770 (4) Where new street intersections or curb cuts are proposed, sight distances, as measured along
 2771 the street onto which traffic would be turning, is based on the posted speed limit and must
 2772 conform to the table following:

Posted speed limit (mph)	25	30	35	40	45	50	55
Sight distance (feet)	250	300	350	400	450	500	550

2773 (a). Sight distance is the length of roadway visible to a driver exiting an intersection or curb
 2774 cut. Such sight distance is measured from a point that is located at the center line of the
 2775 exit lane and 15 feet back from the edge of the travel way to the center line of the
 2776 oncoming lane(s), with the height of eye at 3.5 feet and the height of an object 4.25 feet
 2777 above the pavement.

2778 (b). When the actual traveling speed of normal traffic on a road is substantially higher than
 2779 the posted speed limit, the sight distance is computed by multiplying the 85th percentile
 2780 of such speed as measured by a qualified traffic engineer by a factor of 10. The result, in
 2781 feet, is the minimum sight distance required.

2782 (c). Where necessary, corner lots must be cleared of all growth or other sight obstructions,
 2783 including ground excavations, to achieve the required visibility.

2784 (5) Cross (four-cornered) intersections are to be avoided insofar as possible.

2785 I. Side slopes.

2786 Side slopes of all streets must be graded, covered with appropriate compost or loamed,
 2787 fertilized and seeded in accordance with the specifications of the erosion and
 2788 sedimentation plan.

2789 J. Right-of-way (ROW) grading.

2790 Streets are to be rough-graded full width.

2791 K. Street construction standards.

2792 (1) The subgrade of the roadway. On soils which have been identified by the Commissioner of
 2793 Public Works as not suitable for roadways, the subsoil must be removed from such locations
 2794 to a depth of two feet below subgrade and replaced with material meeting the specifications
 2795 for gravel aggregate subbase or a substitute acceptable to the Commissioner of Public
 2796 Works.

- 2797 (2) The aggregate subbase course must be sand or gravel of hard, durable particles, free from
 2798 vegetative matter, lumps or balls of clay and other deleterious substances. The gradation of
 2799 the part that passes a three-inch-square mesh sieve must meet the following grading
 2800 requirements and contain no particles of rock exceeding four inches in diameter [MDOT
 2801 Specification 703.06(b) Type D]:

Sieve Designation Percent by Weight Passing Square Mesh Sieve	
1/4 inch	25% to 70%
No. 40	0% to 30%
No. 200	0% to 7%

- 2802 (3) The aggregate base course must be sand or gravel of hard, durable particles, free from
 2803 vegetative matter, lumps or balls of clay and other deleterious substances. The gradation of
 2804 the part that passes a three-inch square mesh sieve must meet the following requirements
 2805 [MDOT Specification 703.06(a) Type A]:

Sieve Designation Percent by Weight Passing Square Mesh Sieve	
1/2 inch	45% to 70%
1/4 inch	30% to 55%
No. 40	0% to 20%
No. 200	0% to 5%

- 2806 L. Street plantings.
 2807 When appropriate, the Board may require a street design that incorporates a green
 2808 space/planting area within the street's ROW. Said plantings must be installed at the
 2809 developer's expense according to a plan drawn up by a landscape architect.
- 2810 M. Sidewalks.
- 2811 (1) Where required, sidewalks must be installed to meet minimum requirements as specified in
 2812 Table 1 of this chapter.
- 2813 (2) The position of any sidewalk within the street ROW in relation to the pavement surface is to
 2814 be determined by the Planning Board.
- 2815 N. Road and driveway standards in Shoreland and Resource Protection Overlay Zones.
- 2816 (1) Road construction and parking facilities are allowed in the Resource Protection Overlay
 2817 Zone only where no reasonable alternative route or location is available outside the

- 2818 Resource Protection Overlay Zone, in which case a permit or site plan or subdivision plan
2819 approval is required by the Planning Board.
- 2820 (2) The following standards apply to the construction of roads and/or driveways and drainage
2821 systems, culverts and other related features in the Shoreland and Resource Protection
2822 Overlay Zones:
- 2823 (a). Roads and driveways must be set back:
- 2824 [1] At least 100 feet from the normal high-water line of any water bodies, tributary
2825 streams, the upland edge of a coastal wetland, or the upland edge of a freshwater
2826 wetland; and
- 2827 [2] Seventy-five feet from the normal high-water line of any water bodies or the upland
2828 edge of a wetland on Badgers Island, unless no reasonable alternative exists, as
2829 determined by the Planning Board.
- 2830 [3] If no other reasonable alternative exists, the Planning Board may reduce the road
2831 and/or driveway setback requirement to no less than 50 feet upon clear showing by
2832 the applicant that appropriate techniques will be used to prevent sedimentation of the
2833 water body. Said erosion and sediment control measures for roads and driveways
2834 must meet "Maine Erosion and Sediment Control Best Management Practices,"
2835 March 2003.
- 2836 (b). On slopes of greater than 20%, the road and/or driveway setback must be increased by
2837 10 feet, horizontal distance, for each five-percent increase in slope above 20%.
- 2838 (c). Existing public roads may be expanded within the legal road right-of-way, regardless of
2839 their setback from a water body.
- 2840 (d). New roads and driveways are prohibited in a Resource Protection Overlay Zone, except
2841 the Planning Board may grant a permit to construct a road or driveway to provide access
2842 to permitted uses within the zone. A road or driveway also may be approved by the
2843 Planning Board in a Resource Protection Overlay Zone, upon a finding no reasonable
2844 alternative route or location is available outside the zone. When a road or driveway is
2845 permitted in a Resource Protection Overlay Zone, the road and/or driveway must be set
2846 back as far as practicable from the normal high-water line of a water body, tributary
2847 stream, or upland edge of a wetland.
- 2848 (e). The maximum slope for road and driveway banks is two horizontal to one vertical (2:1).
2849 Bank slopes must be graded and stabilized in accordance with the provisions for erosion
2850 and sedimentation control contained in Section.
- 2851 (f). The maximum slope for road and driveway grades is 10%, except for segments of less
2852 than 200 feet.
- 2853 (g). To prevent road and driveway surface drainage from directly entering water bodies,
2854 tributary streams or wetlands, roads and driveways must be designed, constructed and

2855 maintained to empty onto an unscarified buffer strip at least 50 feet plus two times the
 2856 average slope [50 feet + (2 x S average)], in width between the outflow point of the ditch
 2857 or culvert and the normal high-water line of a water body, tributary stream or upland
 2858 edge of a wetland. Surface drainage that is directed to an unscarified buffer strip must be
 2859 diffused or spread out to promote infiltration of the runoff and to minimize channelized
 2860 flow of the drainage through the buffer strip.

2861 (h). Ditch relief (cross drainage) culverts, drainage dips and points of stormwater discharge
 2862 must be designed and constructed so that drainage is diverted onto unscarified buffer
 2863 strips before the flow gains sufficient volume or head. The following criteria should be
 2864 implemented where possible to deter and prevent excessive erosion:

2865 [1] Ditch relief culverts, drainage dips and associated water turnouts must be spaced
 2866 along the road or driveway at intervals no greater than indicated in the following
 2867 table:

Grade (percent)	Spacing (feet)	2868 2869
0 to 2%	250 maximum	2870
3 to 5%	135 to 200 maximum	2871
6 to 10%	80 to 100 maximum	2872
11 to 14% maximum	60 to 80 maximum	2873

2874 [2] Drainage dips may be used in place of ditch relief culverts only where the grade is
 2875 10% or less.

2876 [3] On sections having slopes greater than 10%, ditch relief culverts must be placed at
 2877 approximately a thirty-degree angle downslope from a line perpendicular to the center
 2878 line of the road or driveway.

2879 [4] Ditch relief culverts must be sufficiently sized and properly installed to allow for
 2880 effective functioning, and their inlet and outlet ends appropriately stabilized with
 2881 acceptable materials and construction techniques.

2882 (i). Ditches, culverts, bridges, dips, water turnouts and other stormwater runoff control
 2883 installations associated with roads and driveways must be maintained by the owner(s) on
 2884 a regular basis to assure effective functioning.

2885 (j). In a Shoreland or Resource Protection Overlay Zone, when replacing an existing culvert
 2886 the watercourse must be protected so the crossing does not block fish passage, and
 2887 adequate erosion control measures must be taken to prevent sedimentation of the water
 2888 in the watercourse.

16.5 GENERAL PERFORMANCE STANDARDS

Adopted: January 24, 2022

(k). A permit is not required for the replacement of an existing road culvert, provided the replacement culvert is:

[1] Not more than one standard culvert size larger in diameter than the culvert being replaced;

[2] Not more than 25% longer than the culvert being replaced; and

[3] Not longer than 75 feet.

Table 1
Design and Construction Standards for Streets and Pedestrianways

Design and Construction Standards	Public Streets						Private Streets		
	Arterial Highways	Secondary Highways	Commercial Light Industrial Mixed-Use Developments	Primary Collectors	Secondary Collectors	Minor Streets	Class III	Class II	Class I
Average Daily Trips (ADT)	9,001 or More	3,001 to 9,000	ADT and Peak	801 to 3,000	201 to 800	35 to 200	72 to 800	35 to 71	12 to 35
Street Width Design:	Streets in this classification will generally be affected by development rather than constructed, and may require drainage, soil, use, traffic safety, and impact studies beyond the scope of this title for required improvements and/or construction.	Commercial, light industrial and mixed-use development streets shall be constructed to no less than secondary collector standards and may be subject to higher standards, depending upon the traffic generation and use(s) intended.					Same standards as public streets (secondary collectors, and minor streets) based on average daily trips count (ADT) calculated from the latest edition of the ITE Codes.		
a. Right-of-way			60 feet	60 feet	60 feet			40 feet	40 feet
b. Travel pavement			22 feet	22 feet	20 feet			20 feet	18 feet gravel
c. Sidewalk/pedestrianway			6 feet	6 feet	5 feet			5 feet	5 feet
d. Paved shoulder			2/8 feet, walk side/opp. side	2/8 feet, walk side/opp. side	2/8 feet, walk side/opp. side			N/A	N/A
e. Gravel shoulder			2 feet opp. side	2 feet opp. side	2 feet opp. side			Both sides	N/A
f. Enclosed drainage			Sidewalk side	Sidewalk side	Not required			N/A	N/A
g. Parking			One side	Emergency	Emergency			Emergency	No
Street Gradients:									
a. Longitudinal (minimum to maximum)			0.05% to 6%	0.05% to 7%	0.05% to 8%			0.05% to 9%	1.0% to 10%
b. Slide slope (horizontal to vertical)			3 to 1	3 to 1	3 to 1			2 to 1	2 to 1
c. Road crown			1/4 inch per foot	1/4 inch per foot	1/4 inch per foot			1/4 inch to 1/2 inch per foot	1/4 inch to 1/2 inch per foot

Table 1
Design and Construction Standards for Streets and Pedestrianways

Design and Construction Standards	Public Streets						Private Streets		
	Arterial Highways	Secondary Highways	Commercial Light Industrial Mixed-Use Developments	Primary Collectors	Secondary Collectors	Minor Streets	Class III	Class II	Class I
Average Daily Trips (ADT)	9,001 or More	3,001 to 9,000	ADT and Peak	801 to 3,000	201 to 800	35 to 200	72 to 800	35 to 71	12 to 35
Cul-de-Sac:	Streets in this classification will generally be affected by development rather than constructed, and may require drainage, soil, use, traffic safety, and impact studies beyond the scope of this title for required improvements and/or construction.		Commercial, light industrial and mixed-use development(s) streets shall be constructed to no less than secondary collector standards and may be subject to higher standards depending upon the traffic generation and use(s) intended.				Same standards as public streets (primary collectors, secondary collectors, and minor streets) based on average daily trips count (ADT) calculated from the latest edition of the ITE Codes.		
a. Street length to radius				N/A	N/A	1,200 feet		600 feet	400 feet
b. Boundary radius				N/A	N/A	60 feet		50 feet	50 feet or 40 feet by 40 feet turn tee
c. Paved radius				N/A	N/A	50 feet		40 feet	Gravel 40 feet or 18 feet by 18 feet
Second access				Yes	Yes	Not desirable		N/A	N/A
Intersection Design:				600 feet	400 feet	300 feet		N/A	N/A
a. Frequency center lines				90°	80° to 90°	80° to 90°		75° to 90°	60° to 90°
b. Maximum angle				75 feet	50 feet	40 feet		40 inches	N/A
c. Tangent section to paved edge				2% @ 75 feet	3% @ 50 feet	3% @ 40 feet		3% @ 40 feet	3% @ 25 feet
d. Curb radii				20 feet	20 feet	10 feet		10 feet	N/A
Curves:									
a. Tangent between reverse curves				200 feet	100 feet	100 feet		N/A	N/A
b. Minimum center-line curve radius				400 feet	300 feet	150 feet		100 feet	N/A

Design and Construction Standards	Public Streets						Private Streets		
	Arterial Highways	Secondary Highways	Commercial Light Industrial Mixed-Use Developments	Primary Collectors	Secondary Collectors	Minor Streets	Class III	Class II	Class I
Average Daily Trips (ADT)	9,001 or More	3,001 to 9,000	ADT and Peak	801 to 3,000	201 to 800	35 to 200	72 to 800	35 to 71	12 to 35
Street Materials Cross-Section:	Streets in this classification will generally be affected by development rather than constructed, and may require drainage, soil, use, traffic safety, and impact studies beyond the scope of this title for required improvements and/or construction.		Commercial, light industrial and mixed-use development(s) streets shall be constructed to no less than secondary collector standards and may be subject to higher standards depending upon the traffic generation and use(s) intended.				Same standards as public streets (primary collectors, secondary collectors, and minor streets) based on average daily trips count (ADT) calculated from the latest edition of the ITE Codes.		
a. Minimum gravel subbase				18 inches	12 inches	12 inches		12 inches	8 inches
b. Minimum crushed gravel				6 inches	6 inches	6 inches		4 inches	4 inches
c. Bituminous pavement				2 inches	2 inches	1 1/2 inches		1 1/2 inches	N/A
d. Bituminous pavement surface				1 1/2 inches	1 inch	1 inch		1 inch	N/A
e. Compacted loam slopes				6 inches	4 inches	4 inches		4 inches	4 inches
Sidewalk Materials Cross-Section:							Planning Board determination	Planning Board determination	Planning Board determination
a. Minimum gravel subbase				18 inches	12 inches				
b. Minimum crushed gravel				9 inches	9 inches				
c. Minimum and maximum curb reveal				6 inches to 8 inches	6 inches to 8 inches				
d. Curb material				Granite	Granite				
e. Bituminous pavement base				2 inches	2 inches				
f. Bituminous pavement surface				1 inch	1 inch				

2913



US ROUTE 1, ARTERIAL and SECONDARY STREETS, and MIXED USE DEVELOPMENTS
(Public easements may be requested)

2914

2915

2916 16.5.28 Temporary Housing

2917 A. Purpose. The intent of this section is to provide temporary housing for resident owners
2918 (exclusive of corporations, trusts and estates) and their immediate families who have lost
2919 primary dwellings through fire or natural disaster.

2920 B. Dwellings uninhabitable by disaster. In case a fire or natural disaster destroys, or damages,
2921 or renders a dwelling or dwelling unit uninhabitable, the following apply:

2922 (1) The dwelling owner may apply to the CEO for a permit to place a mobile home on the lot as
2923 a temporary residence for the dwelling owner for a period of six months;

2924 (2) The applicant must file such an application within six months from the date of the disaster
2925 and agree, in writing, that a time limit of six months is acceptable. Proof of financial ability
2926 to reconstruct the building must be furnished;

2927 (3) If at the end of six months substantial work has been completed to the satisfaction of the
2928 CEO, the permit may be extended for an additional six months. No further extensions may
2929 be granted;

2930 (4) A multifamily dwelling may be temporarily replaced by a single mobile home unit for the
2931 use of the dwelling owner only; and

2932 (5) Setback requirements may be waived for temporary mobile homes by the CEO, provided
2933 matters of public health and safety are not impaired.

2934 16.5.29 Timber Harvesting

2935 A. Timber harvesting (as permitted in R-RLC and MU Zones).

2936 (1) Repeal of the timber harvesting regulation. Subsequent to the establishment of the State of
2937 Maine Department of Conservation's Bureau of Forestry Timber Harvesting Standards, the
2938 state will commence administration of all timber harvesting within the Shoreland Overlay
2939 Zone. Under 38 M.R.S. § 438-A(5), the following provisions of this title will be repealed: In
2940 § 16.3, the definitions of "forest management activities" and "residual basal area."

2941 (2) Timber harvesting must conform to the following provisions:

2942 (a). Selective cutting of no more than 40% of the total volume of trees four inches or more in
2943 diameter, measured at 4 1/2 feet above ground level, on any lot in any ten-year period is
2944 permitted. In addition:

2945 [1] Within 75 feet, horizontal distance, of the normal high-water line of water bodies,
2946 tributary streams or the upland edge of a wetland, clear-cut openings are prohibited
2947 and a well-distributed stand of trees and other vegetation, including existing ground
2948 cover, must be maintained.

2949 [2] At distances greater than 75 feet, horizontal distance, of the normal high-water line of
2950 water bodies or the upland edge of a wetland, harvesting operations are limited to
2951 single clear-cut openings of 10,000 square feet or less in the forest canopy. Where
2952 such openings exceed 5,000 square feet, they must be at least 100 feet, horizontal
2953 distance, apart. Such clear-cut openings must be included in the calculation of total
2954 volume removal. For purposes of these standards, volume may be considered
2955 equivalent to basal area.

2956 (b). Timber harvesting operations exceeding the forty-percent limitation in § 16.5.29(2).a
2957 above may be allowed by the Planning Board upon a clear showing, including a forest
2958 management plan signed by a Maine-licensed professional forester, that such an
2959 exception is necessary for good forest management and will be carried out in accordance
2960 with the purposes of this title. The Planning Board is required to notify the
2961 Commissioner of the Department of Environmental Protection of each exception
2962 allowed within 14 days of the Planning Board's decision.

2963 (c). No accumulation of slash is to be left within 50 feet, horizontal distance, of the normal
2964 high-water line of a water body. In all other areas slash must either be removed or
2965 disposed of in such a manner that it lies on the ground and no part thereof extends more
2966 than four feet above the ground. Any debris that falls below the normal high-water line
2967 of a water body or tributary stream must be removed.

- 2968 (d). Timber harvesting equipment is prohibited from using stream channels as travel routes,
2969 except when:
- 2970 [1] Surface waters are frozen; and
- 2971 [2] The activity will not result in any ground disturbance.
- 2972 (e). All crossings of flowing water require a bridge or culvert, except in areas with low banks
2973 and channel beds which are composed of gravel, rock or similar hard surface which
2974 would not be eroded or otherwise damaged.
- 2975 (f). Skid trail approaches to water crossings must be located and designed to prevent water
2976 runoff from directly entering the water body or tributary stream. Upon completion of
2977 timber harvesting, temporary bridges and culverts must be removed and areas of exposed
2978 soil revegetated.
- 2979 (g). Except for water crossings, skid trails and other sites where the operation of machinery
2980 used in timber harvesting results in the exposure of mineral soil must be located so an
2981 unscarified strip of vegetation of at least 75 feet, horizontal distance, in width for slopes
2982 up to 10% must be retained between the exposed mineral soil and the normal high-water
2983 line of a water body or upland edge of a wetland. For each ten-percent increase in slope,
2984 the unscarified strip must be increased by 20 feet, horizontal distance. The provisions of
2985 this section apply only to a face sloping toward the water body or wetland; provided,
2986 however, that no portion of such exposed mineral soil on a back face can be closer than
2987 25 feet, horizontal distance, from the normal high-water line of a water body or upland
2988 edge of a wetland.
- 2989 16.5.30 **Wetland Setbacks for Special Situations**
- 2990 A. Wetland setbacks extending beyond publicly accepted streets.
2991 The required setback distances do not extend beyond the center line of publicly accepted
2992 street that generally parallels the normal high-water line of a water body, tributary stream
2993 or the upland edge of a wetland.
- 2994 B. Newly created wetlands and water bodies.
2995 Setbacks are not required from a wetland or water body created from upland land area,
2996 provided the newly created wetland or water body is not part of a required mitigation plan.
- 2997 (1) Wetland setbacks for the zoning district and the Shoreland Overlay District apply.
- 2998 (2) A performance guarantee, such as an escrow or bond, is required to guarantee that new
2999 vegetation will survive. Prior to the release or drawdown of funds in such accounts, a written
3000 statement from a qualified wetlands scientist that says the vegetation is thriving must be
3001 submitted to the Town Manager.
- 3002 C. Setbacks from altered wetlands or water bodies.
- 3003 (1) The illegal altering of a water body or wetland area, where the surface area of the water

- 3004 body is decreased (lowered), after May 13, 1987, may not be used to change the location
 3005 from which a setback is measured. The illegal filling of a water body or wetland area, where
 3006 the normal water surface area of the water body is increased (raised), after May 13, 1987,
 3007 must be measured from the most recent edge of the normal water surface elevation.
- 3008 (2) Alterations to the wetland boundaries that have been approved by the Planning Board and
 3009 are in compliance with regulations of the Army Corps of Engineers and the Maine
 3010 Department of Environmental Protection may be constructed per the Planning Board's
 3011 approved wetlands alteration plan.
- 3012 D. Setbacks for utility poles.
 3013 Setbacks for utility poles must be shown and identified on the development plans.
 3014 Distances from utility pole structures and the upland edge of wetlands of any type may not
 3015 have to be set back from the wetland. Such setback distances require Planning Board
 3016 approval.
- 3017 E. Utilities within wetland.
 3018 Where it is demonstrated that there is no alternative to avoid utilities within a wetland, the
 3019 applicant's engineer must provide trench details for depth, distance between pipes, if
 3020 applicable, fill materials, minimum compaction and/or encasement.
- 3021 (1) Rotted material, muck and unsuitable soils must be removed from the trench and replaced
 3022 with select materials that provide the required compaction, pipe support and protection.
- 3023 (2) Trenches for shallow-depth pipes (having less than four feet of cover) must be designed to
 3024 avoid pipe movement that may result in breakage.

Table 16.5.30			
Minimum Setbacks from Wetlands and Water Bodies*			
Structure/Activity	Total Size of Wetland and/or Water Body		
	Less than 501 square feet (feet)	501 square feet to 1 acre and Intermittent Streams (feet)	Greater than 1 acre (feet)
Local distribution utility pole, fence, flagpole, signs or drainage structure	0	0	0
Functionally water-dependent uses	0	0	0
Drainage structure outside OZ-SL- 250	10	10	10
Drainage structure within OZ-SL-250, OZ-RP, wetlands of special significance, and OZ-SP-75	75	75	75

Table 16.5.30			
Minimum Setbacks from Wetlands and Water Bodies*			
	Total Size of Wetland and/or Water Body		
Structure/Activity	Less than 501 square feet (feet)	501 square feet to 1 acre and Intermittent Streams (feet)	Greater than 1 acre (feet)
Roads and Driveways			
Traveled way of road or driveway of 18 feet or less in width ¹	0	10 from toe of slope	10 from toe of slope
Traveled way of road or driveway greater than 18 feet in width ¹	0	30 or 10 from toe of slope, whichever is greater	30 or 10 from toe of slope, whichever is greater
Parking Areas			
Parking areas for one- and two-family residential uses	0	10	20
1 to 5 stall parking area	0	30	50
6 to 20 stall parking area incorporating BMPs for stormwater management ²	0	40	75
6 to 20 stall parking area without incorporating BMPs for stormwater management ²	0	75	100
21 or more stall parking area ³ incorporating BMPs for stormwater management	0	50	75
Patios, Decks, Accessory Buildings			
Patio or deck area no larger than 500 square feet in size	0	30	50
Detached residential storage shed no larger than 120 square feet in size	0	30	50
Other Buildings and Structures			

Table 16.5.30			
Minimum Setbacks from Wetlands and Water Bodies*			
	Total Size of Wetland and/or Water Body		
Structure/Activity	Less than 501 square feet (feet)	501 square feet to 1 acre and Intermittent Streams (feet)	Greater than 1 acre (feet)
Building or structure (including patio or deck area larger than 500 square feet in size)	0	50	100
Activities and structures permitted within regulated wetlands	0	0	0
Subsurface Sewage Disposal			
Treatment tanks and disposal areas for new subsurface sewage disposal systems with design flows of less than 2,000 GPD	0	50	100
Treatment tanks and disposal areas for new subsurface sewage disposal systems with design flows of 2,000 GPD or more	0	100	100
Recreational Uses and Structures			
Low-intensity recreation	0	0	0
Recreational facility or structure excluding a golf course	0	50	100
Topsoil Removal			
Removal of more than 10 cubic yards of topsoil except for approved projects	0	50	100
Topsoil removal with a Soil Conservation Service-endorsed erosion and sedimentation plan	0	25	25
Special Uses			

Table 16.5.30			
Minimum Setbacks from Wetlands and Water Bodies*			
Structure/Activity	Total Size of Wetland and/or Water Body		
	Less than 501 square feet	501 square feet to 1 acre and Intermittent Streams	Greater than 1 acre
	(feet)	(feet)	(feet)
Junkyard ¹	0	100	150
Bulk salt storage not in an enclosed structure ¹	0	100	150
Gravel and mineral extraction or processing ¹	0	100	150
Storage of hazardous chemicals or special wastes other than amounts normally associated with individual households/farms ¹	0	100	150
Commercial painting, wood preserving or furniture stripping ¹	0	100	150
Laundromats, auto wash, printing, dry-cleaning, photographic processing, if not connected to a sanitary sewer ⁴	0	100	150
Metal plating, finishing, polishing ¹	0	100	150
NOTES:			
*	All vernal pools, including those having an area less than 501 square feet, are regulated by MDEP 06-096 Chapter 335.9.		
1	The street setback does not serve to negate a wetland crossing project for which a wetlands permit has been approved by the Planning Board.		
2	Written endorsement by the York County Soil and Water Conservation District (YCSWCD) or the Town's Peer Review Consultant that best management practices (BMPs) for protecting water quality by minimizing pollutants leaving the site in the stormwater runoff are incorporated to the maximum extent practicable is required to satisfy this condition. The Planning Board may waive the requirement for written endorsement by the SWCD or the		

Table 16.5.30			
Minimum Setbacks from Wetlands and Water Bodies*			
Structure/Activity	Total Size of Wetland and/or Water Body		
	Less than 501 square feet (feet)	501 square feet to 1 acre and Intermittent Streams (feet)	Greater than 1 acre (feet)
	Town's Peer Review Consultant when it finds a drainage plan has adequately protected the wetland from adverse impacts.		
3	Parking areas with 21 or more stalls must incorporate BMPs.		
4	Wetland setback may be reduced to 100 feet if the YCSWCD or the Town's Peer Review Consultant finds the stormwater management plan incorporates BMPs for protecting water quality by minimizing pollutants leaving the site in the stormwater.		

3025 16.5.31 Wireless Communication Services Facilities

3026 A. Purpose. This article is designed and intended to balance the interests of the residents of
3027 the Town, telecommunications providers, and telecommunications customers in the siting
3028 of wireless communication services facilities (WCSF) within the Town. These standards
3029 are also intended:

3030 (1) To avoid or minimize the adverse impacts of such facilities on visual, environmental,
3031 historically significant areas, health and safety, and property value;

3032 (2) To require the use of alternative structures for the purposes of co-location of carriers and
3033 minimize the total number of towers located within the Town;

3034 (3) To permit the construction of new towers only where all other opportunities have been
3035 exhausted;

3036 (4) To require the users of WCSF and antenna structures to configure them in a way that
3037 minimizes the need for additional WCSF in the Town;

3038 (5) To provide for the removal of WCSF and associated development which are no longer being
3039 used for telecommunications purposes;

3040 (6) These regulations are not intended to place any restrictions on privately operated and
3041 licensed amateur radio operators as per FCC regulations.

3042 B. Location, height and setback requirements.

3043 (1) New WCSF are permitted within 1,000 feet from the I-95 corridor center line north of
3044 Dennett Road with Planning Board approval conforming to the performance standards and

3045 dimensional requirements. Shared use of preexisting accessory-use towers and alternative
3046 tower structures in all zones is permitted with Town Planner's approval, provided the tower
3047 or structure height is not increased. Location on existing structures in a manner that
3048 camouflages or conceals the presence of antennas or towers, also referred by the industry as
3049 "stealth," is permitted with Town Planner's approval in all districts except the Resource
3050 Conservation, Shoreland and Resource Protection Overlay Zones. The Town Planner may
3051 request Planning Board review of any proposed siting of a WCSF facility.

3052 (2) Height. Towers, antennas and all WCSF may not exceed a height of 150 feet, except for
3053 those towers expressly satisfying all co-location requirements for four or more carriers,
3054 which may be constructed to a maximum height of 199 feet.

3055 (3) Setbacks.

3056 (a). All telecommunications towers must be set back from the lot lines a distance equal to at
3057 least 125% of the tower height.

3058 (b). Tower, guyed wires and accessory facilities must meet the minimum zoning district
3059 setback requirements.

3060 C. Aesthetics, landscaping, buffers and fencing.

3061 (1) Towers and antennas are to have a neutral finish or be painted a neutral color as approved so
3062 as to reduce visual impact.

3063 (2) All WCSF must maintain the required setbacks as undisturbed vegetated buffers, except for
3064 the access road. Access roads are to be constructed in a nonlinear manner so as not to
3065 provide a direct view corridor to the support structures. The Planning Board/Town Planner
3066 may require additional plantings in the buffer area to enhance the quality and effectiveness
3067 of the buffer area to serve as a visual screen. The size and quantity of plantings is subject to
3068 Planning Board/Town Planner approval.

3069 (3) At a WCSF, the design of the buildings and related structures must, to the extent possible,
3070 use materials, colors, textures, screenings and landscaping that will blend the facilities to be
3071 compatible with the natural setting and built environment. The building and related
3072 structures must be planned in a manner to accept equipment of co-locators. Underground
3073 utilities must be used to serve the WCSF.

3074 (4) Towers may not be artificially lighted.

3075 (5) Road access to the telecommunications structure is to be the minimum size necessary to
3076 allow safe access.

3077 (6) The base of a telecommunications tower may not be located in wetland, floodplain,
3078 Resource Conservation, Shoreland and Resource Protection Overlay Zones.

3079 (7) A security fence to be approved by the Planning Board/Town Planner of not fewer than
3080 eight feet in height from the finished grade is to be provided around the tower and painted a

3081 neutral color as approved to minimize visual impacts. Access to the tower is to be through a
3082 gate that can be secured.

3083 D. Investigation of existing alternative towers, sites and structures.
3084 Applicants must identify all existing and proposed towers, including their heights, located
3085 in the Town and within two miles beyond Town boundaries. Applicants must provide
3086 evidence of the lack of antenna space on all such towers and identify alternative tower
3087 structures and sites which have been investigated as an alternative to constructing a new
3088 tower. Applicant must address the pros and cons of utilizing co-location and other
3089 alternative tower structures with respect to their application and demonstrate that they
3090 cannot provide adequate communication service utilizing such existing towers or
3091 structures.

3092 E. Co-location.

3093 (1) The applicant and owner must allow other future wireless service carriers, including
3094 providing space at no charge to public agencies (including but not limited to police, fire,
3095 ambulance, communications and highway if requested at the time of review by the Planning
3096 Board), using functionally equivalent personal wireless technology to co-locate antennas,
3097 equipment and facilities on a telecommunications tower and site, unless satisfactory
3098 evidence is presented and the Planning Board/Town Planner concurs that technical
3099 constraints prohibit co-location. Applicant and other wireless service carriers must provide a
3100 mechanism for the construction and maintenance of shared facilities and infrastructure and
3101 for reasonable sharing of cost in accordance with industry standards. (A reasonable charge
3102 for shared use is based on generally accepted accounting principles.

3103 (2) This charge may include, but not be limited to, a pro rata share of the cost of site selection,
3104 planning, project administration, land costs, site design, construction and maintenance,
3105 financing, return of equity, depreciation and all of the costs of adapting the tower or
3106 equipment to accommodate a shared user without causing electromagnetic interference, all
3107 being pertinent to the southern Maine market area.)

3108 (3) To ensure co-location, the Planning Board/Town Planner may require co-location on a tower
3109 so as to prevent the need for new carriers to build new towers, may deny an application for a
3110 telecommunications facility because of inadequate provisions and/or arrangements for co-
3111 location, and may require an existing tower to be extended in height (provided that a
3112 structural analysis indicates that such extension is structurally feasible and safe) in order to
3113 provide for co-location.

3114 F. Performance guarantees.
3115 No building permit may be issued until the applicant has filed a performance guarantee
3116 and approved by the Town Manager equal to 125% of the cost of completing the
3117 following improvements:

3118 (1) The construction of any drainage systems involving piping, culverts, or retention or
3119 detention facilities;

3120 (2) The construction of erosion and sedimentation control measures or landscaping required to

3121 meet the standards of this article; and

3122 (3) Other site improvements required by the Board/Town Planner to meet the standards of this
3123 article.

3124 G. Removal of abandoned or unused facilities.

3125 (1) The owner of a telecommunications facility is required to remove the tower and associated
3126 facilities should it not be used for the use or uses approved for a period of 90 consecutive
3127 days. This period may be extended by the Planning Board/Town Planner if there are
3128 extenuating circumstances beyond the control of the applicant. An applicant for a permit
3129 under this article must post a performance guarantee approved by the Town Manager with
3130 the Town prior to obtaining a permit that is equal to 125% of the cost of removing the
3131 structure. The performance guarantee must be in effect for the life of the WCSF;

3132 (2) The performance guarantee covering such removal must be reviewed for renewal at a
3133 maximum term of five years, to account for cost adjustments. It must contain a mechanism,
3134 satisfactory to the Town, for review of the cost of removal of the structure every five years
3135 and a mechanism for increasing the amount of the guarantee should the revised cost estimate
3136 so necessitate.

3137 H. Annual permit renewal.

3138 To ensure compliance with the prescribed ordinances, all approvals will be subject to an
3139 annual permit renewal conducted by the Town Planner. The Town Planner at a minimum
3140 is to review the continued use of the facility; maintenance of the facility and site
3141 improvements; availability for co-location of new service; and review of bonding
3142 documents. The documents and permit renewal fee must be submitted to the Town
3143 Planner no later than October 1 of each year following the original approval.

3144 16.5.32 [Marijuana Business](#)

3145 A. General.

3146 (1) This section regulates Marijuana Businesses as defined uses within the Town of Kittery.
3147 The permitting standards outlined here must be adhered to for all Marijuana Businesses, in
3148 addition to other applicable standards in this and other ordinances or state law.

3149 B. Standards.

3150 Marijuana Businesses must meet the following standards:

3151 (1) Marijuana Businesses may not locate within 1,000 feet of a public or private school or a
3152 public recreation facility measured from the exterior wall of the Marijuana Business in a
3153 straight line to the property line of the protected use. This section does not prohibit the
3154 activity of a caregiver or other authorized individual from administering medical marijuana
3155 to a qualified patient who is located within one of these protected areas.

3156 (2) Marijuana Businesses may not have any odor of marijuana detectible beyond the area

- 3157 controlled by the business, whether that be a leased or owned area that is a portion or all of a
3158 recorded parcel of land. Odors must be controlled by whatever best practices exist.
- 3159 (3) Marijuana grown by any Marijuana Business may be grown indoors only. For the purpose
3160 of this section hoop houses or outdoor tunnels must not be considered as an indoor growing
3161 facility and are prohibited for marijuana cultivation by a Marijuana Business.
- 3162 (4) The design of any building containing a Marijuana Business must conform to the standards
3163 within this Title and the Town of Kittery Design Handbook.
- 3164 (5) The area of any Marijuana Business accessible to customers must be no less than 400 nor
3165 more than 2,000 square feet.
- 3166 (6) Parking must conform to Article IX.
- 3167 (7) Any building containing a Marijuana Business must be protected by fire suppression
3168 measures and fire alarms to the satisfaction of the Fire Chief and in accordance with all
3169 applicable building codes.
- 3170 (8) The Owner of any Marijuana Business, at the time of application for a building permit, must
3171 provide an affidavit from a master electrician or electrical engineer certifying that the
3172 electrical components can meet the electrical load demands of the use.
- 3173 (9) Security.
- 3174 (a) The Licensed Premises must have video surveillance capable of covering the exterior and
3175 interior of the facility. The video surveillance system must be operated with continuous
3176 recording twenty-four hours per day, seven days per week and video retained for a minimum
3177 duration of thirty (30) days. Such records must be made available to law enforcement
3178 agencies when investigating a criminal complaint.
- 3179 (10) The Licensed Premises must have an approved wastewater discharge plan in accordance
3180 with this Title and Title 13.
- 3181 (11) The Licensed Premises must have exterior lighting that conforms with this Title and the
3182 Town of Kittery's Design Handbook. The Planning Board, at its discretion, may require
3183 motion sensors covering the full perimeter of the building(s).

3184

3185 16.5.33 Medical Marijuana Registered Caregiver Home Establishment

3186 A. General.

- 3187 (1) Pursuant to 22 MRS §2429-D, municipalities are prohibited from restricting the number of
3188 registered caregivers operating within their jurisdiction. The regulation of registered
3189 caregivers as provided for herein is not intended to proscribe their operation, but rather to
3190 promote the health, safety and welfare of the Town of Kittery by ensuring that a registered

- 3191 caregiver home establishment is compatible with both the area it is situated and the
3192 community as a whole.
- 3193 (2) A Medical Marijuana Registered Caregiver Home Establishment may not conduct activities
3194 that would qualify the use as a Medical Marijuana Registered Dispensary, Adult Use
3195 Marijuana Store, Medical Marijuana Caregiver Retail Store, Marijuana Manufacturing
3196 Facility or Marijuana Testing Facility.
- 3197 (3) Any Medical Marijuana Registered Caregiver legally operating with Town approval as a
3198 Home Occupation as of the Effective Date of this Section, but otherwise not meeting the
3199 definition of a Medical Marijuana Registered Caregiver Home Establishment, may continue
3200 to operate provided it has a valid Medical Marijuana Registered Caregiver Home
3201 Establishment license from the Town and any applicable State License, and is maintained in
3202 accordance with this Title. Such operations may not be built, used or occupied in any way
3203 that constitutes a material difference from any representations in either the approved
3204 application, Findings of Fact, or approval conditions for the Major Home Occupation. If
3205 majority ownership of such an operation is transferred to any other person(s), the business
3206 must be brought into conformance with the definition and standards applicable to a Medical
3207 Marijuana Registered Caregiver Home Establishment, or may be permitted and licensed as
3208 any other type of Marijuana Business allowed on the property.
- 3209 B. Permit Required.
- 3210 (1) An applicant seeking Planning Board approval for a Medical Marijuana Registered
3211 Caregiver Home Establishment must submit a complete application with the following
3212 furnished documents:
- 3213 (a) Proof of property ownership or lease agreement in the Town of Kittery;
- 3214 (b) Proof of residency in Town of Kittery as determined by voter registration, vehicle
3215 registration or other documentation deemed acceptable to the Town;
- 3216 (c) All relevant State of Maine license information demonstrating the applicant as a valid
3217 registered caregiver;
- 3218 (d) A site plan that depicts all proposed outdoor growing areas. The Planning Board may
3219 require a site plan designed by a licensed surveyor or civil engineer registered in the State of
3220 Maine.
- 3221 (e) A floor plan of the building showing the existing and proposed layout and square footage.
- 3222 (f) Narrative describing the nature of the registered caregiver operation.
- 3223 (2) An application will be approved or approved with conditions if the Planning Board makes a
3224 positive finding based on the information presented that the proposed Medical Marijuana
3225 Registered Caregiver Home Establishment demonstrates compliance with §16.5.33.C
- 3226 C. Standards

- 3227 (1) Medical Marijuana Registered Caregiver Home Establishment must meet the following
3228 standards, except that a Medical Marijuana Registered Caregiver legally operating with
3229 Town approval as a Major Home Occupation as of the Effective Date of this Section is not
3230 required to meet these standards to the extent the Major Home Occupation application, as
3231 approved, specifically allowed activities, uses or development that are not in conformance
3232 with these standards.
- 3233 (2) Manufacturing of medical marijuana products may occur only in zoning districts where a
3234 Marijuana Manufacturing Facility is permitted.
- 3235 (3) A Medical Marijuana Registered Caregiver Home Establishment is restricted to the property
3236 of a dwelling unit serving as the primary residence of the Registered Caregiver. Proof of
3237 primary residence will be determined by voter registration, vehicle registration, property tax
3238 bill and/or other documentation acceptable to the Town.
- 3239 (4) The Registered Caregiver must provide documentation demonstrating ownership of the
3240 dwelling unit or a lease agreement permitting the registered caregiver to operate a Medical
3241 Marijuana Registered Caregiver Home Establishment.
- 3242 (5) A Medical Marijuana Registered Caregiver Home Establishment must be an accessory use
3243 of the property, and is limited to utilize 40% or 400-square feet, whichever is greater, of the
3244 total floor area available within the dwelling unit.
- 3245 (6) A Medical Marijuana Registered Caregiver Home Establishment is permitted only to see
3246 patients, provide consultations, and perform other functions, pursuant to 22 M.R.S. 558-C
3247 §2423-A.
- 3248 (7) Hours of operation may be between 7 am and 7 pm Sunday through Saturday inclusive, and
3249 must be by appointment only.
- 3250 (8) A Medical Marijuana Registered Caregiver Home Establishment may not have more than
3251 three (3) employees.
- 3252 (9) There must be adequate parking on the lot to accommodate the property's residents in
3253 accordance with this Title and zone-specific standards of this Title; provided that at a
3254 minimum the site must include two parking spots plus one spot for each employees.
- 3255 (10) A Medical Marijuana Registered Caregiver Home Establishment must mitigate offensive
3256 odors such that they are not detectable by reasonable means at the property lines. Odors
3257 must be controlled by whatever best practices exist.
- 3258 (11) A Medical Marijuana Registered Caregiver Home Establishment is permitted to cultivate a
3259 cumulative total of 30 mature plants or 500 square feet of plant canopy, 60 immature plants,
3260 and unlimited seedlings. Cultivation may occur indoors, outdoors, or both.
- 3261 (12) The installation and displaying of signage advertising the presence of a Medical Marijuana
3262 Registered Caregiver Home Establishment on a lot is prohibited.

16.6 Master Site Development Plan

General

Master Site Development Plans are intended to show an overall development scheme for a large property so that the Planning Board can ensure that development of large sites, with potential town-wide or regional impacts, proceeds in an orderly sequence with coordinated phasing. Further, a master site development plan intends to be a framework for a conceptual, integrated design and infrastructure plan for the development of a property, in which:

- A. The development standards are applied to the land as defined by its perimeter, rather than by the individual lots, tracts and parcels into which the land may be divided; and
- B. The standards are applied to the proposed master development boundary rather than to individual lots, tracts and parcels.

Master Site Development Plans are to assure adequate provisions are made to protect the public health and safety, taking into account such factors as traffic safety and access; water supply and sewage disposal; management of stormwater, erosion, and sedimentation; protection of the environment; and other criteria as noted below.

16.6.1 Applicability

- A. A person who has right, title, or interest in a parcel of land shall obtain Master Site Development Plan approval for a site when:

- (1) The cumulative lot area is one acre or larger, and
- (2) The site is designed as a cohesive and integral development program consisting of multiple buildings and associated site improvements proposed to be built in phases.

16.6.2 Review Process & Submission Requirements

A. Pre-application and Conference

(1) Process

Before submitting a proposed Master Site Development Plan to the Board, the owner must meet with the Town Planner to discuss the feasibility and conceptual design, including sketch plans, regarding land use, parcel layout, public improvement, and the surrounding existing development and environment.

B. Sketch Plan Review

(1) Process

The applicant must prepare and submit, for review and consideration by the Planning Board, a sketch plan and subsequently, for review and possible approval by the Planning Board, a Master Site Development Plan for the development of the parcel(s).

(2) Plan Requirements

A Master Site Development Sketch Plan must include, at a minimum:

- (a) Location, type and amount of the uses proposed to be developed on the parcel, including the proposed area, percentage and intensity of each proposed use;
- (b) Proposed provisions for utilities, access roads, parking and public and private ways;
- (c) Areas proposed to be permanently dedicated for public or private open space or other public purpose;
- (d) Proposed phasing of the overall site development, including the general sequence in which related public and private improvements are to be completed, clearly defined on Master Site Development Plan.

(3) Written Submission Requirements

- (a) A project narrative, describing the nature of the proposed project along with an anticipated timeframes for project phases and overall project buildout.
- (b) In the event the development site is not comprised of a single parcel, the master site development plan must detail the manner in which multiple parcels will be consolidated into a single parcel and subsequently subdivided, if necessary, to facilitate the completion of the plan.

(4) Decisions.

- (a) The Planning Board must determine whether the Sketch Plan proposal complies with the standards contained within Title 16 and must, where it deems necessary, make specific suggestions in writing to be incorporated by the applicant in subsequent submissions.
- (b) If the concept is approved, inform the applicant in writing.

(5) Preliminary Master Site Development Plan

- (a) A Preliminary Master Site Development Plan shall be submitted with its corresponding development plan in accordance with 16.7 Site Plan Review and 16.8 Subdivision.

C. Final Master Site Development Plan

(1) Process

- (a) The Planning Board may approve the Final Master Site Development Plan as submitted, return the Final Development Master Plan for additional information or revision, or deny the Final Development Master Plan.
- (b) The Final Master Site Development Plan becomes the plan with which subsequent submittals must conform. The Planning Board must sign and date the Final Master Site Development to indicate approval by the Board.
- (c) The approved Master Site Development Plan remains valid as set forth in this chapter but may be amended and extended as set forth in this chapter.

(2) Plan Requirements

The Final Master Site Development Plan must include the following elements:

- (a) land use,
- (b) public sites, environmental design,
- (c) vehicular, pedestrian and
- (d) bicycle circulation, recreation, water, wastewater, drainage and other elements as set forth in this title.
- (e) The Planning Board may waive one or more elements of the plan, if they are determined inapplicable.

(3) Written Submission Requirements

- (a) A project narrative describing the project, including updates and changes proposed from the Sketch Plan to the Final Plan.

16.6.3 Performance Standards and Approval Criteria

A. Outside agency approvals.

- (1) Any applicable approvals from Maine DEP, MaineDOT, the Army Corps of Engineers or other state or federal agencies must be sought for the entire Master Site Development Plan, not individual phases.

B. Infrastructure.

- (1) Improvements within the right-of-way, including streetlights, sidewalks, streets, and guardrails shall be consistent in construction details, design and materials throughout the Master Site Development Plan.

C. Stormwater.

- (1) Each phase of the project shall include stormwater treatment adequate to treat that phase of the project. It is acceptable to oversize stormwater infrastructure in early phases to treat later development. It is not acceptable for proposed development to rely on later phase construction for necessary stormwater treatment.

D. Traffic.

- (1) New streets in the Master Site Development Plan will include provisions for adequate turnarounds between project phases. Hammerheads or cul-de-sacs installed at the end of each phase may be removed if the street is extended in future phases.

16.6.4 Decisions

- A. The Planning Board shall approve, approve with conditions, or deny a Master Site Development Plan application based on the applicable review standards. An approval, including any approval of waivers from Performance Standards, establishes the general parameters to be adhered to for the development, including the supporting documentation for floor area and/or residential density, general types of uses, building coverage, generalize open space plans and infrastructure systems.

- (1) A Master Site Development Plan approval shall not be construed as final authorization of the development. Approval shall confer pending proceeding status upon the development with the effect of maintaining the applicability of regulations in effect at the time of approval for as long as the Master Site Development Plan remains valid, including permissible extensions, if granted.
- (2) Final approved Master Site Development Plan signing. The Planning Board must sign and date the plan to indicate that it is the Master Site Development Plan approved by the Board.

- B. A Master Site Development Plan and each subsequent development plan thereof has final approval only when the Planning Board has indicated approval by formal action and the plan has been properly signed by a majority of the Planning Board members or by the Chair only, if so voted by the Planning Board.

16.6.5 Post-Approval Activities

- A. Recording of master planned property survey.

- (1) The owner must record the signed Master Site Development Plan at the York County Registry of Deeds after Planning Board approval.

- B. Land division applications.

- (1) After approval of the Master Site Development Plan and recording of the master site development plan property survey, the owner may initiate land division applications.
- (2) The Code Enforcement Officer may issue permits only after the Master Site Development Plan property survey has been recorded and all other applicable state and local approvals have been obtained.

16.7 Site Plan Review

16.7.1 General

The Site Plan review provisions set forth in this section are intended to protect the public health and safety, promote the general welfare of the community, and conserve the environment by assuring that nonresidential and multifamily construction is designed and developed in a manner which assures that adequate provisions are made for traffic safety and access; emergency access; water supply; sewage disposal; management of stormwater, erosion and sedimentation; protection of groundwater, environment, wildlife habitat, fisheries, and unique natural areas; protection of historic and archaeological resources; minimizing the adverse impacts on adjacent properties; and fitting the project harmoniously into the fabric of the community.

16.7.2 Applicability

- A. A person who has right, title, or interest in a parcel of land shall obtain site plan approval prior to commencing any of the following activities on the parcel, including contracting or offering for the conveyance regulated activity permit for any structure within the development is issues, or undertaking work on any improvements, including installation of roads or utilities or land clearing.
- (1) The construction or placement of any new building or structure for a nonresidential use, including accessory buildings and structures, if such buildings or structures have a total area for all floors of all structures of one thousand (1,000) square feet or more measured cumulatively over a five (5) year period.
 - (2) The expansion of an existing nonresidential building or structure, including accessory buildings, if the enlargement increases the total area for all floors within a five (5) year period by more than twenty (20) percent of the existing total floor area or one thousand (1,000) square feet, whichever is greater.
 - (3) The conversion of an existing building in which one thousand (1,000) or more square feet of total floor area are converted from residential to nonresidential use.
 - (4) The establishment of a new nonresidential use even if no buildings or structures are proposed, that involves the Development of more than twenty-five thousand (25,000) square feet of land. This includes uses such as gravel pits, cemeteries, golf courses, and other nonstructural nonresidential uses.
 - (5) The conversion of an existing nonresidential use, in whole or in part, to another nonresidential use if the new use changes the basic nature of the existing use such that it increases the intensity of on- or off-site impacts of the use subject to the standards and criteria of site plan review described in this section.
 - (6) The construction of a residential building containing three (3) or more dwelling units.
 - (7) The modification or expansion of an existing residential structure that increases the number of dwelling units in the structure by three (3) or more in any five (5) year period.
 - (8) The conversion of an existing nonresidential building or structure, in whole or in part, into three (3) or more dwelling units within a five (5) year period.
 - (9) The cumulative Development of an area equal to, or greater than, one (1) acre within any five (5) year period. The applicability of this section does not include the construction of

streets that are reviewed as part of a Subdivision application.

(10) Marijuana Businesses and Medical Marijuana Registered Caregiver Home Establishments.

B. Other development review

Unless subject to a shoreland development plan review or Right of Way Plan per § 16.7.3.A, the following do not require Planning Board approval:

(1) Single and duplex family dwellings.

(2) Division of land into lots (i.e., two lots), which division is not otherwise subject to Planning Board review as a subdivision.

(3) Business use as provided in § 16.4.26.C.(13)

(4) Phasing plan. Upon applicant's request, the Planning Board may permit phasing of the plans, where it can be demonstrated to the Planning Board's satisfaction that such phasing would result in a safe and orderly development of the plan.

(a) The applicant may file a section of the approved plan with the municipal officials and the York County Registry of Deeds if said section constitutes at least 25% of the total number of lots, or for plans including buildings, 25% of the gross area, contained in the approved plan. In all circumstances, plan approval of the remaining sections of the plan will remain in effect for three years unless the applicant requests and the Planning Board grants extensions of time equivalent to the requirements for approved plans in § 16.7.12.

(b) Phasing is subject to any conditions deemed necessary to assure a reasonable mixture of uses is completed within each separate phase of the plan.

(c) Where projects are to be constructed in phases, phasing of stormwater management, water mains and streets are part of the review process.

(d) Portions of both the developed and undeveloped site impacted by interim infrastructure conditions such as unlooped water systems, stormwater runoff from unfinished areas onto finished areas and vice versa, dead-end streets, etc., must be clearly defined and shown on the plans.

(e) The Planning Board may permit construction of phases out of order only when the storm drainage plan and the water plan, etc., have been reviewed, and it has been demonstrated that the impact on both the developed and undeveloped sections is negligible.

16.7.3 Other Potential Reviews

A. Shoreland development review.

(1) All development in the Shoreland, Resource Protection, and Commercial Fisheries/Maritime Uses Overlay Zones involving the use, expansion, change or replacement of an existing use or structure, or renewal of a discontinued nonconforming use, must be reviewed and approved as provided in § 16.9.1 and elsewhere in this title, and tracked as a shoreland development for reporting purposes.

(2) All development in the Shoreland, Resource Protection, and Commercial Fisheries/Maritime Uses Overlay Zones must be approved by the Planning Board except

for the following:

- (a) Proposed development of principal and accessory structures in compliance with § 16.9.1.B.(1), when not subject to Planning Board review as explicitly required elsewhere in this title. Such proposed development must be reviewed and approved by the Code Enforcement Officer (CEO) prior to issuing a building permit. The total devegetated area of the lot (that portion within the Shoreland Overlay Zone) must be calculated by the applicant and verified by the CEO and recorded in the Town's property records. Any development proposed in the Resource Protection and Shoreland - Stream Protection Area Overlay Zones must be approved by the Planning Board.
- (b) Piers, docks, wharves, bridges and other structures and uses extending over or below the highest annual tide (HAT) elevation, subject to review and approval by the Port Authority as outlined in Chapter 16.9.1, Marine-related development.
- (c) Division of a conforming parcel that is not subject to subdivision as defined in § 16.3.
- (d) Clearing of vegetation for activities other than timber harvesting. These are subject to review and approval by the Shoreland Resource Officer or Code Enforcement Officer.

16.7.4 Review and Approval Authority

- A. Application Classification. The review and approval authority for Site Plans shall depend on the classification of the project.
 - (1) Major Site Plan. The Planning Board is authorized to review and act on all Site Plans for Major Site Plan applications. In considering Site Plans under this section, the Planning Board may act to approve, disapprove, or approve with project with such conditions as are authorized by this section.
 - (2) Minor Site Plan. The Kittery Director of Planning and Development is authorized to review all Site Plans for Minor Site Plan applications and may approve, disapprove, or approve the project based upon all applicable approval standards and with such conditions as are authorized by this section. This administrative review will be made in consultation with the Town Planner and Code Enforcement Officer. In addition, the Director in his or her sole discretion may reclassify a Minor Site Plan as a Major Site Plan, due to the scope or anticipated impacts of a project, and forward it to the Planning Board with recommendations for Planning Board action.
- B. Technical Review Committee Established. The Technical Review Committee is to provide advisory comments on all Site Plan applications. Membership will consist of Town department heads and senior staff. The Technical Review Committee will meet on an as needed basis, dependent upon the timing Site Plan application submissions.

16.7.5 Classification of Projects

- A. The Town Planner shall classify each project as a Major or Minor Site Plan. Minor Site Plans are smaller scale projects for which a minor review process is adequate to protect the Town's interest. Major Site Plans are larger, more complex projects for which a more detailed review process and additional information are necessary. The following review thresholds shall be used by the Town Planner in classifying each project. The Town

Planner's classification of a project shall be final.

- (1) Minor Site Plans shall include those projects involving:
 - (a) The cumulative construction or addition above one thousand (1,000) square feet and no more than five thousand (5,000) square feet of gross nonresidential floor area.
 - (b) Any individual or cumulative construction or addition between one thousand (1,000) square feet and five thousand (5,000) square feet of gross nonresidential floor area within an approved subdivision.
 - (c) The establishment of a new nonresidential use even if no buildings or structures are proposed, that involves the Development of more than twenty-five thousand (25,000) square feet but less than one (1) acre of land.
- (2) Major Site Plans shall include projects involving:
 - (a) The individual or cumulative construction or addition above five thousand (5,000) square feet of gross nonresidential floor area on a lot that is not part of an approved subdivision,
 - (b) The individual or cumulative Development of one (1) acre or more land, unless the Development is part of a Site Plan application in an approved subdivision,
 - (c) Any mixed-use project that contains residential and non-residential uses,
 - (d) Projects that involve Wireless Communication System Facilities (WCSF),
 - (e) Projects that require any waiver from performance standards.
 - (f) Projects that also require subdivision or special exception approval, or
 - (g) Other projects requiring review which are not classified as a minor development.

16.7.6 Application and Review Fees

A. Review fee(s); reimbursements.

- (1) All applications for plan approval for properties which come under this title must be accompanied by a fee as determined by the Town Council.
- (2) The applicant must reimburse the Town for all expenses incurred for notifying abutters of the proposed plan and advertising of any public hearing regarding a development.

B. Independent peer review.

- (1) The Planning Board or, after the Town Manager's approval, the Town Planner and the Code Enforcement Officer, may require an independent consultant or specialist engaged by the Town, at the applicant's expense, to:
 - (a) Determine compliance with all requirements of this title related to public health, safety and welfare and the abatement of nuisances; or
 - (b) Assist with the technical review of applications submitted for new or amended development.

C. When peer review is required of the applicant, sufficient funds, based on a written estimate by the required consultant, must be deposited in an applicant's service account per Chapter 3.3, prior to commencing said review and continuing with the review of the development plan application.

16.7.7 Applicant attendance at review meeting(s).

The applicant or duly authorized representative must attend all Board meetings for which the applicant's application has been placed on the agenda. Relief may be given from this requirement by the Board Chairperson.

16.7.8 Waivers**A. Waiver authorization.**

Upon written request, the Planning Board may waive or modify certain required improvements, due to special circumstances of a particular plan, if the applicant demonstrates that the interest of public health, safety, the natural environment, and general welfare are not harmed, or if those improvements are inappropriate because of inadequacy or lack of connecting facilities adjacent or in proximity to the proposed development, subject to appropriate conditions as determined by the Planning Board, and provided the waivers do not have the effect of nullifying the intent and purpose of the Comprehensive Plan and Title 16.

B. Only waivers from submission requirements may be considered for Minor Site Plans, and not waivers from performance standards. Projects seeking waiver of performance standards must be classified as Major Site Plan applications to be reviewed by the Planning Board.**C. Objectives secured.**

In granting modifications or waivers, the Planning Board must require such conditions as will, in its judgment, secure substantially the objectives of the requirements so waived or modified. The Planning Board is not obligated to consider the costs of required improvements when reviewing waiver or modification requests. The Planning Board shall consider the provisions in Section 16.2.12.F. Basis for Decisions when reviewing waiver or modification requests.

16.7.9 Other Requirements**A. Burden of proof.**

In all instances, the burden of proof is upon the applicant proposing the development.

B. Site walk determination.

- (1) The Planning Board should make a determination on whether a site walk would be beneficial in order to become fully informed about the site and in a knowledgeable position to prescribe contour intervals to be employed on topographic maps and grading plans for the development, the applicant must arrange a joint inspection of the site with the Planning Board.
- (2) If a site inspection is required, the applicant must stake out property corners, entrance locations, and building corners, along with other site features to help orient the Board and members of the public.
- (3) The applicant must provide each Board member with a copy of the plan on an 11"x17" sheet at the site walk.

C. Safe use.

The land/water area to be developed must be of such character that it can be used without danger to health or peril from fire, flood, soil failure or other hazard.

16.7.10 Review Process and Submission Requirements

A. Pre-Application and Conference

- (1) Process. Pre-Application Conference. Applicants for Site Plan review are encouraged to schedule a Pre-Application conference with the Town Planner. The purpose of this meeting is to familiarize the applicant with the review procedures and submission requirements, and approval criteria, and to familiarize the Planner with the nature of the project.

(a) Such review shall not cause the plan to be a pending application or proceeding under 1 M.R.S.A. §302. No decisions relative to the plan may be made at this meeting.

(b) To request a Pre-Application conference the applicant shall submit, at a minimum, a brief narrative describing the project, the location of the project on a US Geologic Survey (USGS) topographic map, a rough drawing of the proposal for the subject property, and a copy of the Tax Map showing the development parcel.

B. Sketch Plan Review

- (1) Major Site Plan applicants may choose to submit a development sketch plan with design concept, at their discretion. The purpose of Sketch Plan Review with the Planning Board is a chance for the applicant to ask questions and get feedback and guidance from the Board before proceeding with an advance site plan design, and for the Board to provide guidance on submission requirements.

Any person requiring Site Plan review must submit an application on forms prescribed by the Planning Board. No more than one application/plan for a piece of property may be under review before the Planning Board.

- (a) A completed application must be submitted to the Town Planner no later than 21 days prior to the meeting date for the item to be included on the agenda.

[1] Refer to current Planning Department application checklist for required number of paper copies.

[2] One electronic submission in PDF format of the complete submission including all forms, plans, and documentation.

- (2) Planning Board review. The Planning Board must, within 65 days of Sketch Plan submission, act upon the Sketch Plan as follows:

(a) The Planning Board must determine whether the Sketch Plan proposal complies with the standards contained herein.

(b) Where it deems necessary, make specific suggestions in writing to be incorporated by the applicant in subsequent submissions.

(c) The Planning Board should determine as to whether or not an on-site walk will be required.

(d) The applicant should provide an indication as to whether or not waivers from the submission requirements or performance standards will be part of the next phase of review.

(e) Any plan may be continued for a total period not to exceed 90 calendar days for good and sufficient reason (i.e., for revisions to be made, studies completed, or additional information submitted) and acceptable to both the applicant and the Planning Board. Such plan is automatically scheduled for the agenda of the next regular Planning Board meeting after the 90th day and action completed in accordance with the requirements and timing contained in this title, whether the applicant has

- 251 accomplished the purposes for which continued or not.
- 252 [1] The action to table by the Planning Board must be an action to temporarily
- 253 suspend action and not to suppress a vote on the plan.
- 254 (3) Plan Requirements
- 255 (a) The Sketch Plan must be submitted to the Planning Board at the time of, or prior to,
- 256 the on-site inspection.
- 257 (b) The Sketch Plan must show in simple form on a topographic map the proposed site,
- 258 subdivision, landscape architectural or architectural design concept, including streets,
- 259 lots, structures and other features, in relation to existing conditions and municipal
- 260 land use zone(s) regulations.
- 261 (c) The sketch may be a freehand penciled sketch and must include the data listed below.
- 262 (4) Written Submission Requirements
- 263 (a) Any person requiring development review must submit an application on forms
- 264 prescribed by the Planning Board, together with a development plan and such
- 265 submission contents as may be required in § 16.7.10.C. A complete application
- 266 consists of all the required elements. No more than one application/plan for a piece of
- 267 property may be under review at a time. No more than one approved Final Plan for a
- 268 piece of property may exist.
- 269 (b) General project information must describe or outline the existing conditions of the
- 270 site, including:
- 271 [1] Covenants;
- 272 [2] Available community facilities; and
- 273 [3] Utilities.
- 274 (c) Proposed development, such as:
- 275 [1] Number of residential or business lots and/or dwelling units;
- 276 [2] Typical lot width and depth;
- 277 [3] Price range;
- 278 [4] Business areas;
- 279 [5] Playgrounds, park areas and other public areas;
- 280 [6] Protective covenants;
- 281 [7] Utilities; and
- 282 [8] Street improvements.
- 283 C. Preliminary Plan Review
- 284 (1) General Process
- 285 (a) Within six months after Planning Board acceptance of a Sketch Plan, if applicable,
- 286 the applicant must submit an application for preliminary Site Plan approval in the
- 287 form prescribed herein.
- 288 (b) Preliminary Plan application filing and completeness review. A determination as to
- 289 whether the Town Planner validates an application is based on a review of the
- 290 application in accordance with the submission contents checklist filed with the plan,
- 291 which indicates all elements required under § 16.7.10.C and § 16.7.10.D have been

- received, or written request for any waivers of submission requirements or performance standards is included. 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.
- (c) Receipt and scheduling review. Upon validation, the Town Planner must place the application on the Planning Board's agenda for Planning Board completeness review and vote to find the Preliminary Plan application complete and, upon Planning Board approval, issue a dated notice to the applicant, which is thereafter the official time of submission.
- (d) Site inspection. In the course of the review of the plan, the Planner must, and the Planning Board may at its discretion, make a physical inspection and may make photographic record of the existing conditions on the site.
- (e) Advisory opinions. At any time during review, the Planner may request an advisory opinion from the Planning Board, Conservation Commission or Port Authority on issues related to the application. Where applications are for land within wetland setbacks or the Resource Protection Overlay Zone, the Conservation Commission must be invited to review and offer recommendations from an environmental protection perspective. The Planner also must make recommendation on the necessity for independent review.
- (f) Planner analysis. The Planner must analyze the application and forward comments and recommendations to the applicant and the Planning Board.
- (g) A completed application must be submitted to the Town Planner no later than 21 days prior to the meeting date for the item to be included on the agenda. The submission must include on the plan or attached thereto, the requirements of subsection (4) Plan Requirements and subsection (5) Additional Requirements, unless upon the applicant's written request, the Planning Board, by formal action, waives or defers any requirement(s) for submission.
- [1] Refer to current Planning Department application checklist for required number of paper copies.
- [2] One electronic submission in PDF format of the complete submission including all forms, plans, and documentation.
- (2) Public hearing
- (a) Scheduling
- [1] A Major Site Plan application must be scheduled for review and public hearing once the Preliminary Plan application has been found complete by the Planning Board.
- (a) Public notice.
- [1] The Town Planner must place a public notice of such public hearing in a newspaper of general circulation in the Town at least seven and not more than 14 days prior to the scheduled hearing date; said notice must also be posted in at least three prominent public locations in Town at least 10 days prior to the hearing; and, in the case of a plan located within 500 feet of the Towns of Eliot or York, Maine, must be forwarded to the Southern Maine Planning and Development Commission and to the Town Clerk of Eliot or York, Maine, at least 10 days prior

- 336 to the hearing.
- 337 (b) Abutter notice.
- 338 [1] The Town Planner must cause written notice of the public hearing to be sent by
- 339 postage paid, first-class mail (cost to be paid by the applicant) to all owners of
- 340 abutting property, as herein defined (within 150 feet of the property), and by
- 341 regular mail to the Code Enforcement Officer, the Commissioner of Public
- 342 Works, and where applicable, the Port Authority or Conservation Commission, at
- 343 least seven days prior to the scheduled date. Failure of the parties to receive said
- 344 notice does not invalidate any Board action.
- 345 [2] Abutter notice must follow applicability as described in §16.5.2 Abutter Notice.
- 346 [3] For a wireless communication system facility (WCSF) plan application, the Town
- 347 Planner must cause written notice of the hearing sent by postage paid, first-class
- 348 mail, provided by the applicant, at least seven days prior to the hearing to all
- 349 owners of abutting property and property located within 1,000 feet of any
- 350 property line of the property for which the permit is requested. Notice must also
- 351 be given to any town located within 1,000 feet of the proposed
- 352 telecommunications facility. The applicant must provide this notification and
- 353 must present proof of such notification to the Town Planner. The notification
- 354 must include: the name of the applicant, location of the property, a brief
- 355 description of the project, and a plot plan identifying the proposed site layout in
- 356 relation to nearby streets and properties.
- 357 (c) Public Hearing Procedure
- 358 [1] The Planning Board may receive oral and documentary evidence, but must
- 359 exclude evidence which it considers irrelevant, immaterial or unduly repetitious.
- 360 [2] The Chairperson of the Planning Board must determine the order of presentation
- 361 by parties to the hearing. Each party must have the right to proceed without
- 362 interruption, except that rulings by the Chairperson prevail. The applicant's
- 363 presentation must proceed in accordance with the checklist provided.
- 364 [3] Any party may be represented by agent or attorney.
- 365 [4] The Town Planner, in consultation with other Town officials as may have an
- 366 interest in the application, must present into evidence a written summary of
- 367 findings and recommendations.
- 368 [5] The Planning Board may continue the hearing to another time and location,
- 369 including the site of the development, as it deems necessary.
- 370 (3) Planning Board review schedule and decision on Preliminary Plan application.
- 371 (a) Within 35 days of a Public Hearing, the Planning Board must approve the plan,
- 372 approve the plan with conditions, disapprove the plan, postpone action on the plan, or
- 373 continue the review to another time/location.
- 374 (b) Continuation or tabling of a review beyond the thirty-five-day period for Site Plan
- 375 applications must be for good and sufficient reason and be acceptable to both the
- 376 applicant and the Planning Board.
- 377 (c) Any plan may be continued for a total period not to exceed 90 calendar days for good
- 378 and sufficient reason (i.e., for revisions to be made, studies completed or additional

- information submitted) and acceptable to both the applicant and the Planning Board. Such plan is automatically scheduled for the agenda of the next regular Planning Board meeting after the 90th day and action completed in accordance with the requirements and timing contained in this title, whether the applicant has accomplished the purposes for which continued or not.
- (d) The action to table by the Planning Board must be an action to temporarily suspend action and not to suppress a vote on the plan.
 - (e) Failure to act within thirty-five-days constitutes disapproval of the plan, in which case the applicant may resubmit the plan without payment of an additional application fee. Conditions of approval may include, but are not limited to, type of vegetation, increased setbacks and yard space, specifications for sewage and water supply facilities, buffers and screens, period of maintenance sureties, deed restrictions, locations of piers, docks, parking or signs, type or style of construction, and the amount of all guarantees which may be required.
 - (f) The decision of the Planning Board to include any conditions imposed must be noted on three copies of the Preliminary Plan. One copy must be returned to the applicant, one retained by the Planning Board and one forwarded to the municipal officials.
- (4) Plan Requirements
- (a) Plan sheets drawn on a reproducible medium and must measure no less than 11 inches by 17 inches and no larger than 24 inches by 36 inches;
 - (b) With scale of the drawings no greater than one inch equals 30 feet for developments less than 10 acres, and one inch equals 50 feet for all others;
 - (c) Code block in the lower right-hand corner. The block must contain:
 - [1] Name(s) and address(es) of the applicant and owner;
 - [2] Name of the project;
 - [3] Name and address of the preparer of the plan, with professional seal, if applicable;
 - [4] Date of plan preparation/revision, and a unique ID number for the plan and any revisions;
 - (d) Standard boundary survey conducted by a surveyor licensed in the State of Maine, in the manner recommended by the State Board of Registration for Land Surveyors;
 - (e) An arrow showing true North and the magnetic declination, a graphic scale, and signature blocks for the owner(s) and members of the Planning Board;
 - (f) Locus map showing the property in relation to surrounding roads, within 2,000 feet of any property line of the development;
 - (g) Vicinity map and aerial photograph showing the property in relation to surrounding properties, roads, geographic, natural resource (wetland, etc.), historic sites, applicable comprehensive plan features such as proposed park locations, land uses, zones, and other features within 500 feet from any boundary of the proposed development;
 - (h) Surveyed acreage of the total parcel, of rights-of-way, wetlands, and area to be disturbed and amount of street frontage;
 - (i) Names and addresses of all owners of record of property abutting the development, including those across a street;

- (j) Existing Development Area Conditions, including but not limited to:
- [1] Location and description of all structures, including signs, existing on the site, together with accesses located within 100 feet of the property line;
 - [2] Essential physical features such as watercourses, wetlands, floodplains, wildlife habitat areas, forest cover, and outcroppings;
 - [3] Utilities existing, including power, water, sewer, holding tanks, bridges, culverts and drainageways.
- (k) Proposed development area conditions including, but not limited to:
- [1] Structures: their location and description, including signs, to be placed on the site, floor plans and elevations of principal structures as well as detail of all structures, showing building materials and colors, and accesses located within 100 feet of the property line.
 - [2] Utilities proposed including power, water, sewer, holding tanks, bridges, culverts and drainageways;
 - [3] Sewage facilities type and placement. Test pit locations, at least two of which must meet the State of Maine Plumbing Code requirements, must be shown;
 - [4] Domestic water source;
 - [5] Parks, open space, or conservation easement locations;
 - [6] Lot lines, interior and exterior, right-of-way, and street alignments;
 - [7] Road and other paved ways plans, profiles and typical sections including all relevant data;
 - [8] Setbacks existing and proposed;
 - [9] Machinery permanently installed locations likely to cause appreciable noise at the lot lines;
 - [10] Raw, finished or waste materials to be stored outside the buildings, and any stored material of a toxic or hazardous nature;
 - [11] Topographic contours of existing contours and finished grade elevations within the development;
 - [12] Pedestrian ways/sidewalks, curbs, driveways, fences, retaining walls and other artificial features locations and dimensions proposed;
 - [13] Temporary marker locations adequate to enable the Planning Board to readily locate and appraise the layout of the development;
 - [14] Land proposed to be dedicated to public use and the conditions of such dedication;
- (l) Natural features or site elements to be preserved. Written Submission Requirements
- Legal interest documents showing legal interest of the applicant in the property to be developed. Such documents must contain the description upon which the survey was based;
- (m) Property encumbrances currently affecting the property, as well as any proposed encumbrances;
- (n) Water District approval letter, if public water is used, indicating there is adequate supply and pressure to be provided to the development;

- (o) Erosion and sedimentation control plan endorsed by the York County Soil and Water Conservation District or the Town's engineering consultant;
 - (p) Stormwater management preliminary plan for stormwater and other surface water drainage prepared by a registered professional engineer including the general location of stormwater and other surface water drainage areas;
 - (q) Soil survey for York County covering the development. Where the soil survey shows soils with severe restrictions for development, a high intensity Class "A" soil survey must be provided;
 - (r) Vehicular traffic report estimating the amount and type of vehicular traffic that will be generated by the development on a daily basis and for peak hours;
 - (s) Traffic impact analysis in accordance with § 16.5.27.E for developments involving 40 or more parking spaces or which are projected to generate more than 400 vehicle trips per day;
 - (t) Test pit(s) analysis prepared by a licensed site evaluator when sewage disposal is to be accomplished by subsurface disposal, pits, prepared by a licensed site evaluator;
 - (u) Town Sewage Department or community system authority letter, when sewage disposal is to be through a public or community system, approving the connection and its location;
 - (v) Letters of evaluation of the development by the Chief of Police, Fire Chief, Commissioner of Public Works, and, for residential applications, the superintendent of schools, must be collected and provided by the Town Planner.
 - (w) Additional submissions as may be required by other sections of this title such as for clustered development, mobile home parks, or junkyards must be provided.
- (5) Additional requirements. In its consideration of an application/plan, the Planning Board may at any point in the review require the applicant to submit additional materials, studies, analyses, and agreement proposals as it may deem necessary for complete understanding of the application. Such materials may include:
- (a) Traffic impact analysis, for projects that are not otherwise required to submit a traffic impact analysis by submission requirement C(4)(s), above.
 - (b) Environmental analysis. An analysis of the effects that the development may have upon surrounding lands and resources, including intensive study of groundwater, ecosystems, or pollution control systems;
 - (c) Hydrologic analysis. An analysis of the effects that the development may have on groundwater must be conducted in accordance with § 16.7.11.J. This analysis is always required for mobile home park proposals.
- (6) Additional Submittal Content Required for Review of Wireless Communication Services Facilities (WCSF).
- (a) A visual impact analysis prepared by a landscape architect or other qualified professional acceptable to the Town that quantifies the amount of visual impact on properties located within 500 feet, within 2,500 feet and within two miles of the WCSF. This analysis will include recommendations to mitigate adverse visual impacts on such properties;
 - (b) An analysis prepared by a qualified professional acceptable to the Town that

- describes why this site and structure is critical to the operation for which it is proposed. The analysis must address, at a minimum: existing and proposed service area; how this WCSF is integrated with other company operations, particularly other structures in Kittery and surrounding communities; future expansion needs in the area; the effect on company operations if this structure is not constructed in this location; other sites evaluated for location of this structure and how such sites compare to the proposed site; other options, if any, which could be used to deliver similar services, particularly if the proposed equipment can be co-located (shared use) on an existing structure; and an analysis to the projected life cycle of this structure and location;
- (c) Certification by a structural engineer that construction of the structure satisfies all federal, state and local building code requirements as well as the requirement of maximum permitted co-location at the site as approved by the Planning Board/Town Planner;
 - (d) A plan note stating the payment of all required performance guarantees as a condition of plan approval;
 - (e) Payment of the Planning Board application fees;
 - (f) And all other requirements per this chapter.
- D. Final Plan Review
- (1) Process, Major Site Plan
 - (a) Final Plan application. The applicant must, within six months after approval of a Preliminary Plan, file with the Planning Board an application for approval of the Final Plan in the form prescribed herein.
 - (b) Failure to submit Final Plan application. If the Final Plan is not submitted to the Planning Board within six months after the approval of the Preliminary Plan, the Planning Board may refuse to act on the Final Plan and require resubmission of the Preliminary Plan. Any plan resubmitted must comply with all application requirements, including payment of fees.
 - (c) A completed application must be submitted to the Town Planner no later than 21 days prior to the meeting date for the item to be included on the agenda. The submission must include on the plan or attached thereto, the requirements of subsection (3) Final Plan Requirements, unless upon the applicant's written request, the Planning Board, by formal action, waives or defers any requirement(s) for submission.
 - [1] Refer to current Planning Department application checklist for required number of paper copies.
 - [2] One electronic submission in PDF format of the complete submission including all forms, plans, and documentation.
 - [3] GIS data for all property corners and site plan elements.
 - (d) Application/plan review expiration.
 - [1] Uncounted time. When an approved plan is required to be reviewed/approved by another agency (e.g., DEP, BOA, KPA), any period the plan is at such an agency or that a plan is continued by the Planning Board in accordance with § 16.7.10.C(3) from time of submission to time of decision inclusive, verifiable

550 by recorded documentation, is not counted as part of the cumulative time periods
551 described in this section.

552 [2] Requests for extension. The Planning Board may grant extensions to expiration
553 dates upon written request by the developer, on a case-by-case basis.

554 (2) Process, Minor Site Plan

555 (a) The Final Plan application may be submitted concurrently with Preliminary Plan
556 submission requirements to the Director of Planning and Development for
557 administrative review and decision.

558 (3) Final Plan Requirements

559 A complete Final Plan application must fulfill all the requirements of a Preliminary Plan as
560 indicated in § 16.7.10.C of this section and must show the following items, unless the
561 Planning Board, by formal action, upon the applicant's written request, waives or defers
562 any requirement(s) for submission. If no changes occurred to the Preliminary Plan, it also
563 may be considered to be the Final Plan.

564 (a) Preliminary Plan information, including vicinity map and any amendments thereto
565 suggested or required by the Planning Board or other required reviewing agency.

566 (b) Street names and lines, pedestrianways, lots, easements and areas to be reserved for
567 or dedicated to public use.

568 (c) Street length of all straight lines, the deflection angles, radii, lengths of curves and
569 central angles of all curves, tangent distances and tangent bearings.

570 (d) Lots and blocks within a subdivision, numbered in accordance with local practice.

571 (e) Markers/permanent reference monuments: Their location, source references and,
572 where required, constructed in accordance with specifications herein.

573 (f) Structures: their location and description, including signs, to be placed on the site,
574 floor plans and elevations of principal structures as well as detail of all structures,
575 showing building materials and colors, and accesses located within 100 feet of the
576 property line.

577 (g) Outdoor lighting and signage plan if the application involves the construction of more
578 than 5,000 square feet of nonresidential floor area; or the creation of more than
579 20,000 square feet of impervious area; or the creation of three or more dwelling units
580 in a building — prepared by a qualified lighting professional, showing at least the
581 following at the same scale as the site plan:

582 [1] All buildings, parking areas, driveways, service areas, pedestrian areas,
583 landscaping and proposed exterior lighting fixtures and snow storage;

584 [2] All proposed lighting fixture specifications and illustrations, including
585 photometric data, designation as "cutoff" fixtures, color rendering index (CRI) of
586 all lamps (bulbs), and other descriptive information on the fixtures;

587 [3] Mounting height of all exterior lighting fixtures;

588 [4] Lighting analyses and luminance level diagrams or photometric point-by-point
589 diagrams on a twenty-foot grid, showing that the proposed installation conforms
590 to the lighting level standards of the ordinance codified in this section together
591 with statistical summaries documenting the average luminance, maximum
592 luminance, minimum luminance, average-to-minimum uniformity ratio, and

- 593 maximum-to-minimum uniformity ratio for each parking area, drive, canopy and
594 sales or storage area;
- 595 [5] Drawings of all relevant building elevations, showing the fixtures, the portions of
596 the walls to be illuminated, the luminance levels of the walls, and the aiming
597 points for any remote light fixtures; and
- 598 [6] A narrative that describes the hierarchy of site lighting and how the lighting will
599 be used to provides safety, security and aesthetic effects.
- 600 (h) Machinery in permanently installed locations likely to cause appreciable noise at the
601 lot lines.
- 602 (i) Materials (raw, finished or waste) storage areas, their types and location, and any
603 stored toxic or hazardous materials, their types and locations.
- 604 (j) Fences, retaining walls and other artificial features, locations, and dimensions
605 proposed.
- 606 (k) Landscaping plan, including location, size and type of plant material.
- 607 (l) Stormwater management plan for stormwater and other surface water drainage
608 prepared by a registered professional engineer, including the location of stormwater
609 and other surface water drainage area; a post-construction stormwater management
610 plan that defines maintenance responsibilities, responsible parties, shared costs, and
611 schedule for maintenance; a draft maintenance agreement for stormwater
612 management facilities; and, where applicable, draft documents creating a
613 homeowners' association referencing the maintenance responsibilities. Where
614 applicable, the maintenance agreement must be included in the document of
615 covenants, homeowners' documents and/or as riders to the individual deed and
616 recorded with the York County Registry of Deeds.
- 617 (4) Written Submission Requirements
- 618 (a) Municipal impact analysis of the relationship of the revenues to the Town from the
619 development and the costs of additional publicly funded resources, including:
- 620 [1] Review for impacts. A list of the construction items that will be completed by the
621 developer prior to the sale of lots.
- 622 [2] Municipal construction and maintenance items. A list of construction and
623 maintenance items that must be borne by the municipality, which must include,
624 but not be limited to:
- 625 [a] Schools, including busing;
- 626 [b] Road maintenance and snow removal;
- 627 [c] Police and fire protection;
- 628 [d] Solid waste disposal;
- 629 [e] Recreation facilities;
- 630 [f] Runoff water disposal drainageways and/or storm sewer enlargement with
631 sediment traps.
- 632 [3] Municipal costs and revenues. Cost estimates to the Town for the above services
633 and the expected tax revenue of the development.
- 634 (b) Open space land cession offers. Written offers of cession to the municipality of all

- 635 public open space shown on the plan, and copies of agreements or other documents
636 showing the manner in which space(s), title to which is reserved by the subdivider,
637 are to be maintained.
- 638 (c) Open space land cession offers acknowledgement by Town. Written evidence that the
639 municipal officers are satisfied with the legal sufficiency of the documents referred to
640 in § 16.7.10.D(4)b. Such written evidence does not constitute an acceptance by the
641 municipality of any public open space referred to in § 16.7.10.D(4)b.
- 642 (d) Maintenance plan and agreement defining maintenance responsibilities, responsible
643 parties, shared costs and schedule. Where applicable, a maintenance agreement must
644 be included in the document of covenants, homeowners' documents and/or as riders
645 to the individual deed.
- 646 (e) Estimated costs. Specify the estimated total cost of the development and itemize the
647 estimated major expenses. The itemization of major costs should include, but not be
648 limited to, the costs of the following activities: roads, sewers, structures, water
649 supply, erosion control, pollution abatement and landscaping.
- 650 (f) The applicant shall demonstrate they have sent written notice of their filing for Minor
651 Site Plan review by postage paid, first-class mail (cost to be paid by the applicant) to
652 all owners of abutting property, as herein defined (within 150 feet of the property).
- 653 (5) Findings of Fact.
- 654 (a) After considering all submissions, evidence and testimony in accordance with the
655 requirements of all applicable state and the Town Code, the Planning Board or
656 Director of Planning and Development must make a finding of facts for each and
657 every proposed phase of development, including the development master plan and
658 each subsequent development plan, and take formal action as required in this title.
- 659 (b) Findings of fact. Action by the Planning Board must be based upon findings of fact
660 which certify or waive compliance with all the required standards of this title and
661 which certify the development meets the following requirements:
- 662 [1] Development conforms to local ordinances. The proposed development conforms
663 to a duly adopted Comprehensive Plan as per adopted provisions in the Town
664 Code, zoning ordinance, subdivision regulation or ordinance, development plan or
665 land use plan, if any. In making this determination, the municipal reviewing
666 authority may interpret these ordinances and plans.
- 667 [2] Water supply sufficient. The proposed development has sufficient water available
668 for the reasonably foreseeable needs of the development.
- 669 [3] Sewage disposal adequate. The proposed development will provide for adequate
670 sewage waste disposal and will not cause an unreasonable burden on municipal
671 services, if they are utilized.
- 672 [4] Stormwater managed. The proposed development will provide for adequate
673 stormwater management.
- 674 [5] Traffic managed. The proposed development will:
- 675 [a] Not cause unreasonable highway or public road congestion or unsafe
676 conditions with respect to the use of the highways or public roads existing or
677 proposed; and

[b] Provide adequate traffic circulation, both on site and off site.

[6] Parking and Loading. Provisions have been made for safe internal vehicular circulation, loading and service areas, and parking associated with the proposed development.

[7] Utilities. The size, type, and locations of all public utilities and private utilities to serve the proposed development will be installed per accepted engineering practices.

[8] Erosion controlled. The proposed development will not cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results.

[9] Groundwater protected. The proposed development will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of groundwater.

[10] Freshwater wetlands identified. All freshwater wetlands within the project area have been identified on any maps submitted as part of the application, regardless of the size of these wetlands.

[11] River, stream or brook identified. Any river, stream or brook within or abutting the proposed project area has been identified on any maps submitted as part of the application. For purposes of this section, "river, stream or brook" has the same meaning as in 38 M.R.S. § 480-B, subsection 9. Municipal solid waste disposal available. The proposed development will not cause an unreasonable burden on the municipality's ability to dispose of solid waste, if municipal services are to be used.

[12] Water body quality and shoreline protected. Whenever situated entirely or partially within 250 feet of any wetland, the proposed development will not adversely affect the quality of that body of water or unreasonably affect the shoreline of that body of water. Flood areas identified and development conditioned. All flood-prone areas within the project area have been identified on maps submitted as part of the application. Water and air pollution minimized. The proposed development will not result in undue water or air pollution. In making this determination, the following must be considered:

[a] Elevation of the land above sea level and its relation to the floodplains;

[b] Nature of soils and subsoils and their ability to adequately support waste disposal;

[c] Slope of the land and its effect on effluents;

[d] Availability of streams for disposal of effluents;

[e] Applicable state and local health and water resource rules and regulations; and

[f] Safe transportation, disposal and storage of hazardous materials.

[13] Aesthetic, cultural and natural values protected. The proposed development will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the Department of Inland Fisheries and Wildlife or the municipality, or rare and irreplaceable natural areas, or any public rights for physical or visual access to the shoreline.

- 721 [14] Environmental Considerations. The proposed development will not result in
722 undue levels of lighting, noise, vibrations, smoke, heat, glare, fumes, dust, toxic
723 matter, odors, or electromagnetic interference.
- 724 [15] Utilization of the site. The proposed development does reflect the natural
725 capabilities of the site to support development.
- 726 [16] Developer financially and technically capable. Developer is financially and
727 technically capable to meet the standards of this section.
- 728 (c) For wireless communication system facility (WCSF). In development, the WCSF:
- 729 [1] Tower or other structure height does not exceed that which is essential for its
730 intended use and public safety;
- 731 [2] Proximity of tower to residential development or zones is acceptable;
- 732 [3] Nature of uses on adjacent and nearby properties is compatible;
- 733 [4] Surrounding topography is protected;
- 734 [5] Surrounding tree coverage and foliage is protected;
- 735 [6] Design of the tower, antenna or facility with particular reference to design
736 characteristics effectively eliminating or significantly reducing visual
737 obtrusiveness is minimized;
- 738 [7] Proposed ingress and egress to the site is adequate;
- 739 [8] Co-location with another existing WCSF has been thoroughly pursued and is not
740 feasible;
- 741 [9] Visual impacts on viewsheds, ridgelines and other impacts caused by tower
742 location, tree and foliage clearing and placement of structures and associated
743 development is minimized;
- 744 [10] Will not unreasonably interfere with the view of or from any public park, natural
745 scenic vista, and historic building or major view corridor and the Kittery
746 waterfront and harbor;
- 747 [11] Is not constructed in such a manner as to result in needless height, mass and guy-
748 wire supports, with documentation having been provided and reviewed regarding
749 the design capacity and/or the remaining co-location capacity of the
750 tower/facility; and
- 751 [12] "Stealth" technology has been pursued and is not a viable option.
- 752 (d) In Shoreland, Resource Protection or Commercial Fisheries/Maritime Use Overlay
753 Zones, the proposed use will:
- 754 [1] Maintain safe and healthful conditions;
- 755 [2] Not result in water pollution, erosion or sedimentation to surface waters;
- 756 [3] Adequately provide for the disposal of all wastewater;
- 757 [4] Not have an adverse impact on spawning grounds, fish, aquatic life, bird or other
758 wildlife habitat;
- 759 [5] Conserve shore cover and visual, as well as actual, points of access to inland and
760 coastal waters;
- 761 [6] Protect archaeological and historic resources as designated in the comprehensive
762 plan;

- 763 [7] Not adversely affect existing commercial fishing or maritime activities in a
764 commercial fisheries/maritime activities district;
765 [8] Avoid problems associated with floodplain development and use; and
766 [9] Is in conformance with the provisions of this title.
- 767 (e) For a right-of-way plan. The proposed right-of-way:
768 [1] Does not create any nonconforming lots or buildings; and
769 [2] Could reasonably permit the right of passage for an automobile.
- 770 (f) For special exception use – special exception use permitted. If a special exception use
771 is requested, the special exception use will:
772 [1] Not prevent the orderly and reasonable use of adjacent properties or of properties
773 in adjacent use zones;
774 [2] Not prevent the orderly and reasonable use of permitted or legally established
775 uses in the zone wherein the proposed use is to be located, or of permitted or
776 legally established uses in adjacent use zones; and
777 [3] Not adversely affect the safety, the health, and the welfare of the Town.
778 [4] Be in harmony with and promote the general purposes and intent of this title.
- 779 (6) Final Plan approval and recording.
- 780 (a) Agreement form. An approval by the Planning Board or Director of Planning and
781 Development must take the form of an agreement between the Town and the
782 applicant, incorporating as elements the application, the Planning Board's findings of
783 fact, and such conditions as the Planning Board may impose upon approval.
- 784 (b) Agreement distribution. The Planning Board must send copies of the agreement to the
785 Town Manager and Code Enforcement Officer.
- 786 (c) Updated GIS information. The applicant shall provide revised GIS data with any
787 changes made during the review process for Major Site Plans, if necessary.
- 788 (d) Approved Final Plan signing. A plan has final approval only when the Planning
789 Board has indicated approval by formal action and the plan has been properly signed
790 by a majority of the Planning Board members or by the Chair only, if so voted by the
791 Planning Board.
- 792 (e) Approved Final Plan recording. An approved plan involving the division of land,
793 easements, or property boundary modification must be recorded by the York County
794 Registry of Deeds.

795 **16.7.11 Performance Standards and Approval Criteria**

796 **A. Water Supply**

- 797 (1) The development shall be provided with a system of water supply that provides each use
798 with an adequate supply of water.
- 799 (2) If the project is to be served by a public water supply, the applicant shall secure and submit
800 a written statement from the Kittery Water District that the proposed water supply system
801 conforms with its design and construction standards, will not result in an undue burden on
802 the source of distribution system, and will be installed in a manner adequate to provide
803 needed domestic and fire protection flows.

B. Sewage Disposal

(1) Sewers.

- (a) As per Chapter 13.1, Sewer Service System, connection to public sewer is required, provided said sewer, located within an abutting public way, is within 100 feet of the property line as measured along the said public way. Individual dwellings and structures in approved and recorded developments where public sewer becomes available as described in this subsection must connect per the requirements of Title 13, Chapter 13.1.
- (b) Notwithstanding the provision above and Chapter 13.1, connection to public sewer is required for a commercial or industrial development or a residential subdivision, where public sewer, within an abutting public way, is within 1,000 feet of the property line as measured along said public way. In such an event, the developer shall connect to public sewer per the Town's Superintendent of Sewer Services (SSS) specifications and in accordance with Title 13. The developer shall provide written certification to the Planning Board from the SSS that the proposed addition to public sewer is within the capacity of the collection and wastewater treatment system.
- (c) Sewer mains, service lines and related improvements must be installed at the developer's expense. Service lines must extend to each lot's boundary line. Connections to public sewer must be installed in accordance with this article and Chapter 13.1, Sewer Service System, of the Kittery Town Code.
- (d) Proposal and construction drawings must be approved in writing by the Town's SSS. All required approvals must be secured before the start of Final Plan review.
- (e) When public sewer connection pursuant to Subsection b above is not feasible as determined by the Planning Board or Director of Planning and Development, the applicable review authority may allow individual or common subsurface wastewater disposal systems in accordance with § 16.7.11.B(2). To determine feasibility, the developer shall submit information that considers the unique physical circumstances of the property and sewer connection alternatives to conventional construction/installation techniques, such as, but not limited to, horizontal/directional boring and low-pressure sewer. The developer's information must be accompanied by findings and recommendations of the Town Peer Review Engineer. In determining feasibility, the Board may not base its decision solely on additional costs associated with a sewer connection. The intent of this subsection is not to avoid the requirements of Chapter 13.1, Sewer Service System, of the Kittery Town Code.

(2) Subsurface wastewater disposal systems.

- (a) The developer shall submit plans for subsurface wastewater disposal designed by a Maine licensed site evaluator in full compliance with the requirements of the State of Maine Plumbing Code, Subsurface Wastewater Disposal Rules, and this title. Subsurface wastewater disposal systems (SWDS) must be constructed according to the approved plan.
- (b) All first-time subsurface wastewater disposal systems must be installed in conformance with State of Maine Subsurface Wastewater Disposal Rules and this title. The following also apply:
 - [1] The minimum setback distance for a first-time subsurface disposal system may

- not be reduced by variance.
- [2] Clearing or removal of woody vegetation necessary to site a first-time system, and any associated fill extensions may not extend closer than is allowed in Table 16.5.30, Minimum Setbacks from Wetlands and Water Bodies, for subsurface sewage disposal.
- (c) Replacement of subsurface wastewater disposal systems (SWDS) for existing legal uses:
- [1] Where no expansion is proposed, the SWDS must comply with § 16.7.11.B(2) and Table 16.5.30 to the extent practicable and otherwise are allowed per the Maine Subsurface Wastewater Disposal Rules; or
- [2] Where expansion is proposed, the SWDS must comply with § 16.7.11.B(2) and Table 16.5.30 in addition to the Maine Subsurface Wastewater Disposal Rules.
- NOTE: For the purposes of this subsection, “expansion” is defined in Section 9 of the Maine Subsurface Wastewater Disposal Rules.
- (d) Subsurface wastewater disposal systems on unimproved lots created after April 26, 1990. Where public sewer connection is not feasible, the developer must submit evidence of soil suitability for subsurface wastewater disposal systems, i.e., test pit data and other information as required by the State of Maine Subsurface Wastewater Disposal Rules and this title. In addition:
- [1] On lots with a limiting factor identified as being within 24 inches of the surface, a second site with suitable soils must be shown as a reserve area for future replacement should the primary site fail. Such reserve area is to be shown on the plan; not be built upon; and, must comply with all the setback requirements of the Subsurface Wastewater Disposal Rules and this title.
- [2] In no instance may a primary or reserve disposal area be permitted on soils or on a lot requiring a first-time system variance request per the State of Maine Subsurface Wastewater Disposal Rules.
- [3] Test pits must be of sufficient numbers (a minimum of two) and so located at representative points within each disposal area (primary and reserve sites) to ensure that the proposed disposal system can be located on soils and slopes that meet the criteria of the State of Maine Subsurface Wastewater Disposal Rules and the State Plumbing Code. All passing and failing test pits must be shown on the plan.
- (e) The developer shall install advanced pretreatment to subsurface wastewater disposal systems that are located inside or within 100 feet of areas that include a sand and gravel aquifer as indicated on the Maine Department of Agriculture, Conservation and Forestry (DACF) Geological Survey Maps or determined by Maine DACF staff.
- (3) Holding tanks.
- (a) Holding tanks are not allowed for a first-time residential use.
- (4) Sanitary facilities/restrooms.
- (a) Any development containing a retail use or a food service use, or a combination thereof, exceeding 10,000 square feet must provide public toilet facilities in accordance with Subsections (b), (c) and (d) of this section.

(b) Public toilet facilities are to consist of at least one separate toilet for each sex; be clearly marked; maintained in a sanitary condition and in good repair. Lavatory facilities must be located within or immediately adjacent to all toilet rooms or vestibules. There may be no charge for their use.

(c) Where a retail development exceeds 60,000 square feet, each toilet facility must contain a minimum of two water closets.

(d) Requirements for handicapped accessibility to sanitary facilities are pursuant to applicable state standards.

C. Stormwater and Surface Drainage

(1) Adequate provision must be made for drainage of all stormwater generated with the development and any drained groundwater through a management system of natural and constructed features. Where possible, existing natural runoff control features, such as berms, swales, terraces and wooded areas must be retained to reduce runoff and encourage infiltration of storm waters. Otherwise, drainage may be accomplished by a management system of constructed features such as swales, culverts, underdrains and storm drains.

(2) To ensure proper functioning, stormwater runoff control systems must be maintained in good working order per § 16.7.11.D, Post-construction stormwater management.

(3) Where a development is traversed by a stream, river or surface water drainageway, or where the Planning Board or Director of Planning and Development determines that surface runoff should be controlled, easements and or drainage rights-of-way must be provided which conform substantially to the lines of existing natural drainage paths. The minimum width of the drainage easements or rights-of-way is 30 feet.

(a) The minimum pipe size for any storm drainage pipe must be 12 inches. Maximum trench width at the pipe crown must be the outside diameter of the pipe plus two feet. The pipe must be bedded in a fine granular material, containing no stones larger than three inches, lumps of clay, or organic matter, reaching a minimum of six inches below the bottom of the pipe extending to six inches above the top of the pipe.

(b) Except for normal thinning and landscaping, existing vegetation must be left intact to prevent soil erosion.

(4) When proposed development does not require Maine Department of Environmental (MDEP) approval under MDEP Chapters 500 and 502, the following applies:

(a) All components of the stormwater management system must be designed to limit peak discharge to predevelopment levels for the two-year and twenty-five-year, twenty-four-hour duration, frequencies, based on the rainfall data for Portsmouth, NH. When the development discharges directly to a major water body, peak discharge may be increased from predevelopment levels, provided downstream drainage structures are suitably sized.

(b) The stormwater management system must be designed to accommodate upstream drainage, taking into account existing conditions and approved or planned developments not yet built and must include a surplus design capacity factor of 25% for potential increases in upstream runoff.

(c) Downstream drainage requirements must be studied to determine the effect of the proposed development. The storm drainage must not overload existing or future

planned storm drainage systems downstream from the development. The developer is responsible for financing any improvements to existing drainage systems required to handle the increased storm flows.

[1] Wherever the storm drainage system is not within the right-of-way of a public street, perpetual easements must be provided to the Town allowing maintenance and improvement to the system.

[2] All sediment and erosion control measures must be designed in accordance with MDEP's "Maine Erosion and Sediment Control BMPs," March 2003.

[3] Catch basins in streets and roads must be installed where necessary and located at the curbline. In parking lots and other areas, catch basins must be located where necessary to ensure proper drainage.

[4] Where soils require a subsurface drainage system, the drains must be installed and maintained separately from the stormwater drainage system.

[5] Where the Board has required a stormwater management and erosion control plan and MDEP approval under Chapters 500 and 502 is not required, said plan must be endorsed by the York County Soil and Water Conservation District.

[6] Drainage easements for existing or proposed drainageways located outside a public way must be maintained and/or improved in accordance with § 16.7.11.D, Post-construction stormwater management.

D. Post-construction stormwater management.

(1) Purposes. This section is enacted to provide for the health, safety and general welfare of the citizens of Kittery through monitoring and enforcement of compliance with post-construction stormwater management plans in order to comply with minimum control measures requirements of the federal Clean Water Act, of federal regulations and of Maine's Small Municipal Separate Storm Sewer Systems General Permit. This section seeks to ensure that post-construction stormwater management plans are followed and stormwater management facilities, including but not limited to any parking areas, catch basins, drainage swales, detention basins and ponds, pipes and related structures that are part of the storm drainage system, are properly maintained and pose no threat to public safety.

(2) Authority. The Maine Department of Environmental Protection, through its dissemination of the General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems, has listed the Town of Kittery, Maine, as having a regulated small municipal separate storm sewer system ("small MS4"); under this general permit, listing as a regulated small MS4 requires enactment of this section as part of the Town's stormwater management program in order to satisfy the minimum control measures required by Part IV D 5 ("Post-construction stormwater management in new development and redevelopment").

(3) Applicability.

(a) In general. This section applies to all new development or redevelopment (any construction activity on premises already improved that alters stormwater drainage patterns) including one acre or more of disturbed area, or activity with less than one acre of total land area that is part of a subdivision, if the subdivision will ultimately disturb an area equal to or greater than one acre.

(b) Exception. This section does not apply to new development or redevelopment on a lot, tract or parcel where that lot, tract or parcel is part of a subdivision that has received approval of its post-construction stormwater management plan and stormwater management facilities under the Town's subdivision or other zoning, planning or other land use ordinances; said lot, tract or parcel will not require additional review under this section but must comply with the post-construction stormwater management plan for that approved subdivision.

(c) Post-construction stormwater management plan approval.

[1] General requirement. Notwithstanding any ordinance provision to the contrary, and except as provided in § 16.7.11.D.(3)(b), Exception, no applicant for a building permit, Subdivision approval, Site Plan approval or other zoning, planning or other land use approval for new development or redevelopment to which this section is applicable will receive such permit or approval for that new development or redevelopment unless the applicant also receives approval for its post-construction stormwater management plan and stormwater management facilities.

[2] Notice of BMP discharge to Town's MS4. At the time of application for a building permit, subdivision approval, Site Plan approval or other zoning, planning or other land use approval for new development or redevelopment to which this section is applicable, the applicant must notify the Town Planner if its post-construction stormwater management plan includes any BMP(s) that will discharge to the Town's MS4 and must include in this notification a listing of which BMP(s) will so discharge.

[3] Engineering and administrative fees. At the time of application, the applicant must pay an amount to the Town estimated to be sufficient to pay the engineering review costs and administrative costs incurred by the Town in review of the post-construction stormwater management plan. The Town will deduct from this amount the engineering and administrative costs incurred by the Town based upon the hours of engineering review time and prevailing hourly rate for reimbursement of the Town's administrative costs. Any remaining engineering and administrative review costs owed by the applicant must be paid in full by the applicant prior to the issuance of any temporary or permanent certificate of occupancy, and any unused balance remaining at that time will be refunded to the applicant.

(d) Post-construction stormwater management plan compliance.

[1] General requirements. Any person owning, operating, leasing or having control over stormwater management facilities required by a post-construction stormwater management plan approved under the Town's Subdivision, Site Plan or other zoning, planning or other land use ordinances must demonstrate compliance with that plan as follows:

[a] That person or a qualified post-construction stormwater inspector hired by that person must, at least annually, inspect the stormwater management facilities in accordance with all municipal and state inspection, cleaning and maintenance requirements of the approved post-construction stormwater management plan;

[b] If the stormwater management facilities require maintenance to function as

- 1023 intended by the approved post-construction stormwater management plan, that
1024 person must take corrective action(s) to address the deficiency or deficiencies;
1025 and
- 1026 [c] That person or a qualified post-construction stormwater inspector hired by that
1027 person must, on or by July 1 of each year, provide a completed and signed
1028 certification to the Code Enforcement Officer in a form provided by the
1029 Town, certifying that the person has inspected the stormwater management
1030 facilities and that they are adequately maintained and functioning as intended
1031 by the approved post-construction stormwater management plan or that they
1032 require maintenance or repair, describing any required maintenance and any
1033 deficiencies found during inspection of the stormwater management facilities,
1034 and if the stormwater management facilities require maintenance or repair of
1035 deficiencies in order to function as intended by the approved post-construction
1036 stormwater management plan, the person must provide a record of the
1037 required maintenance or deficiency and corrective action(s) taken.
- 1038 [2] Right of entry. In order to determine compliance with this section and with the
1039 post-construction stormwater management plan, the Code Enforcement Officer
1040 may enter upon property at reasonable hours with the consent of the owner,
1041 occupant or agent to inspect the stormwater management facilities.
- 1042 (e) Annual report. Beginning July 1, 2009, and each year thereafter, the Town must
1043 include the following in its annual report to the Maine Department of Environmental
1044 Protection:
- 1045 [1] Cumulative number of sites that have stormwater management facilities
1046 discharging into its MS4;
- 1047 [2] Summary of the number of sites that have stormwater management facilities
1048 discharging into its MS4 that were reported to the Town;
- 1049 [3] Number of sites with documented functioning stormwater management facilities;
1050 and
- 1051 [4] Number of sites that require routine maintenance in order to continue the original
1052 line and grade, the hydraulic capacity, and the original purpose of improvements;
1053 or remedial action to ensure that stormwater management facilities are
1054 functioning as intended.
- 1055 (f) Enforcement. It is the duty of the Code Enforcement Officer to enforce the provisions
1056 of this section and take appropriate actions to seek the correction of violations.
1057 Enforcement of the post-construction stormwater management regulations are
1058 conducted in accordance with Chapter 16.7.11.D.
- 1059 (2). Storm drainage construction standards.
- 1060 (a) Materials:
- 1061 [1] Reinforced concrete pipe must meet the requirements of ASTM Designation C-76
1062 (AASHTO M170). Pipe classes are required to meet the soil and traffic loads with
1063 a safety factor of 1.2 on the 0.01-inch crack strength with Class B bedding. Joints
1064 are to be of the rubber gasket type, meeting ASTM Designation C443-70, or of an
1065 approved performed plastic jointing material such as "Ramnek." Perforated
1066 concrete pipe must conform to the requirements of AASHTO M175 for the

- 1067 appropriate diameters.
- 1068 [2] Corrugated metal pipe must be bituminous-coated, meeting the requirements of
1069 AASHTO Designation M190 Type C for an iron or steel pipe or AASHTO
1070 Designation M196 for aluminum alloy pipe for sectional dimensions and type of
1071 bituminous coating. Pipe gauge is to be as required to meet the soil and traffic
1072 loads with a deflection of not more than 5%.
- 1073 [3] SDR-35 plastic pipe installed in conformance with AASHTO bedding
1074 requirements.
- 1075 [4] Aluminized steel (AASHTO M274) and aluminum pipe (AASHTO M46).
- 1076 [5] Catch basins are to be precast concrete truncated cone section construction,
1077 meeting the requirements of ASTM Designation C478, or precast concrete
1078 manhole block construction, meeting the requirements of ASTM C139, radial
1079 type. Castings are to be square cast iron sized for the particular inlet condition
1080 with the gratings perpendicular to the curbline. Bases may be cast-in-place 3,000
1081 psi twenty-eight-day strength concrete or may be of precast concrete, placed on a
1082 compacted foundation of uniform density. Metal frames and traps must be set in a
1083 full mortar bed with tops and are to conform to the requirements of AASHTO
1084 M103 for carbon steel casings, AASHTO M105, Class 30 for gray iron castings
1085 or AASHTO M183 (ASTM A283, Grade B or better) for structure steel.
- 1086 (b) Drain inlet alignment is to be straight in both vertical and horizontal alignment unless
1087 specific approval for curvilinear drain is obtained in writing from the Commissioner
1088 of Public Works.
- 1089 (c) Manholes are to be provided at all changes in vertical or horizontal alignment and at
1090 all junctions. On straight runs, manholes are to be placed at a maximum of three-
1091 hundred-foot intervals.
- 1092 (d) Upon completion, each catch basin or manhole must be cleared of all accumulation of
1093 silt, debris or other foreign matter and kept clean until final acceptance.

1094 E. Vehicular Traffic

- 1095 (1) Adequacy of Road System. Vehicular access to the site shall be on roads which have
1096 adequate capacity to accommodate the additional traffic generated by the development.
1097 Intersections on arterial streets within a half (0.5) mile of any entrance road which are
1098 functioning at a Level of Service of D or better prior to the development shall function at a
1099 minimum at Level of Service D after development. If any such intersection is functioning
1100 at a Level of Service E or lower prior to the development, the project shall not reduce the
1101 current level of service. This requirement may be waived by the Planning Board if the
1102 project is located within a growth area designated in the Town's adopted Comprehensive
1103 Plan and the Board determines that the project will not have an unnecessary adverse impact
1104 on traffic flow or safety.
- 1105 (a) A development not meeting this requirement may be approved if the applicant
1106 demonstrates that:
- 1107 [1] A public agency has committed funds to construct the improvements necessary to
1108 bring the level of access to this standard, or
- 1109 [2] The applicant will assume financial responsibility for the improvements necessary

- 1110 to bring the level of service to this standard and will assure the completion of the
1111 improvements with a financial guarantee acceptable to the municipality.
- 1112 (2). Traffic Impact Study. When required by the Planning Board or Director of Planning and
1113 Development, a Traffic Impact Study will include the following elements related to the
1114 project and surrounding street network.
- 1115 (a) An executive summary outlining the study findings and recommendations.
- 1116 (b) A physical description of the project site and study area encompassed by the report
1117 with a diagram of the site and its relationship to existing and proposed development
1118 sites within the study area.
- 1119 (c) A complete description of the proposed uses for the project site (in cases where
1120 specific uses have not been identified, the highest traffic generators within the
1121 category best fitting the proposed development must be used to estimate traffic
1122 generators).
- 1123 (d) Existing land uses and zone(s) in the vicinity of the site must be described. Any
1124 proposals for the development of vacant parcels or redevelopment of parcels within
1125 the study area of which the municipality makes the applicant aware, must be included
1126 in the description.
- 1127 (e) Street geometry and existing traffic control devices on all major streets and
1128 intersections affected by the anticipated traffic generated.
- 1129 (f) Trip generation must be calculated for the proposed project and other proposed new
1130 projects and redevelopment projects within the study area using the most recent data
1131 available from the Institute of Transportation Engineers' (ITE) Trip Generation
1132 Guide, and/or actual field data collected from a comparable trip generator (i.e.,
1133 comparable in size, location and setting). This data will be presented in a summary
1134 table such that assumptions on trip generation and rates arrived at by the engineer are
1135 fully understandable to the Planning Board.
- 1136 (g) The anticipated trip distribution of vehicles entering and exiting the proposed site
1137 during the appropriate peak hour(s) must be described and diagrammed.
- 1138 (h) Trip assignment, the anticipated utilization of study area streets by traffic generated
1139 by the proposed project, must be described and diagrammed.
- 1140 (i) Existing traffic conditions in the study area will be identified and analyzed based
1141 upon actual field counts and/or recent available machine counts.
- 1142 (j) Existing traffic conditions in the study area will be described and diagrammed,
1143 specifically AADT, appropriate peak design hour(s), traffic volumes, street and
1144 intersection capacities, and levels of service.
- 1145 (k) Existing safety conditions must be evaluated based upon the traffic accident data
1146 available for the most current three years and described including link and node
1147 critical rate factors (CRF).
- 1148 (l) Future traffic conditions on the street system will be estimated based on existing
1149 volumes, projected traffic growth in the general study area, projected traffic from
1150 approved development, and traffic generated by the proposed project, specifically
1151 AADT traffic, appropriate peak hour(s) traffic volumes, street and intersection
1152 capacity, street and intersection levels of service will be analyzed. When other
1153 projects are being proposed within the impact area of the project, the Planning Board

- 1154 may require these projects to be incorporated into the analysis.
- 1155 (m) When the analysis of the proposed project's impact on traffic indicates unsatisfactory
1156 CRF, levels of service or operating capacity on study area streets and intersections, a
1157 description of proposed improvements to remedy identified deficiencies must be
1158 included.
- 1159 (n) The base data collected and analyzed during the course of the traffic impact study.
- 1160 (o) If a development that requires a traffic impact study is within 500 feet of York or
1161 Eliot, Maine, or if the study identifies impacts on segments of Route 1 or Route 236
1162 or on their intersections located in York or Eliot, Maine, the applicant must provide
1163 evidence that a copy of the impact study has been given to the impacted
1164 municipality's chief administrative officer;
- 1165 (3). Access to the Site. Vehicular access to and from the development shall be safe and
1166 convenient.
- 1167 (a) Any driveway or proposed street shall be designed so as to provide the minimum
1168 sight distance according to the Maine Department of Transportation standards.
- 1169 (b) Points of access and egress shall be located to avoid hazardous conflicts with existing
1170 turning movements and traffic flows.
- 1171 (c) The grade of any proposed drive shall be not more than $\pm 3\%$ for a minimum of fifty
1172 (50) feet, from the intersection.
- 1173 (d) The intersection of any access/egress drive or proposed street shall function: (a) at a
1174 Level of Service of D following development if the project will generate one
1175 thousand (1,000) or more vehicle trips per twenty-four (24) hour period.
- 1176 (e) Where a lot has frontage on two (2) or more streets, the primary access to and egress
1177 from the lot shall be provided from the street where there is less potential for traffic
1178 congestion and for traffic and pedestrians hazards. Access from other streets may be
1179 allowed if it is safe and does not promote shortcutting through the site.
- 1180 (f) Where it is necessary to safeguard against hazards to traffic and pedestrians and/or to
1181 avoid traffic congestion, the applicant shall be responsible for providing turning
1182 lanes, traffic directional islands, and traffic controls within public streets.
- 1183 (g) Accessways shall be designed and have sufficient capacity to avoid queuing of
1184 entering vehicles on any public street.
- 1185 (h) The following criteria shall be used to limit the number of driveways serving a
1186 proposed project:
- 1187 [1] No use which generates less than one hundred (100) vehicle trips per day shall
1188 have more than one (1) two-way driveway onto a single roadway. Such driveway
1189 shall be no greater than forty (40) feet wide.
- 1190 [2] No use which generates one hundred (100) or more vehicle trips per day shall
1191 have more than two (2) points of entry from and two (2) points of egress to a
1192 single roadway. The combined width of all accessways shall not exceed sixty (60)
1193 feet.
- 1194 [3] The Planning Board or Technical Review Committee may limit a development to
1195 one (1) point of ingress/egress onto US Route 1, Route 236 and US Route 1
1196 Bypass.

- (4). Accessway Location and Spacing. Accessways shall meet the following standards:
- (a) Private entrances/exits shall be located at least fifty (50) feet from the closest unsignalized intersection and one hundred fifty (150) feet from the closest signalized intersection, as measured from the point of tangency for the corner to the point of tangency for the accessway. This requirement may be reduced if the shape of the site does not allow conformance with this standard.
 - (b) Private accessways in or out of a development shall be separated by a minimum of seventy-five (75) feet where possible.
 - (c) Accessways shall be aligned with accessways on the opposite side of a public street to the greatest extent possible.
- (5). Internal Vehicular Circulation. The layout of the site shall provide for the safe movement of passenger, service, and emergency vehicles through the site.
- (a) Nonresidential projects that will be served by delivery vehicles shall provide a clear route for such vehicles with appropriate geometric design to allow turning and backing for a minimum of SU-30 vehicles.
 - [1] If the project is to be served by “tractor-trailer” delivery vehicles, a clear route for such vehicles with appropriate geometric design shall allow for turning and backing for a minimum of WB-50 vehicles.
 - (b) Clear routes of access shall be provided and maintained for emergency vehicles to and around buildings and shall be posted with appropriate signage (fire lane - no parking).
 - (c) The layout and design of parking areas shall provide for safe and convenient circulation of vehicles throughout the lot.
 - (d) All roadways shall be designed as follows:
 - [1] To harmonize with the topographic and natural features of the site insofar as practical by minimizing filling, grading, excavation, or other similar activities which result in unstable soil conditions and soil erosion,
 - [2] By fitting the development to the natural contour of the land and avoiding substantial areas of excessive grade and tree removal, and by retaining existing vegetation during construction,
 - [3] The road network shall provide for vehicular, pedestrian, and cyclist safety, all season emergency access, snow storage, and delivery and collection services.
 - (e) Nonresidential projects that include drive-through services shall be designed and have sufficient stacking capacity to avoid the queuing of vehicles on any public street.

F. Parking and Loading

- (1) General standards.
- (a) All development, special exceptions and changes in use must comply with the performance standards herein and, where applicable, those contained in § 16.5.27 of this chapter. The Planning Board may impose additional reasonable requirements, which may include off-site improvements, based on the following considerations:
 - [1] Sight distances along public rights-of-way;
 - [2] The existence and impact upon adjacent access points and intersections;

- 1239 [3] Turning movements of vehicles entering and leaving the public streets;
 1240 [4] Snow removal; and
 1241 [5] General condition and capacity of public streets serving the facility.
- 1242 (b) Such requirements are intended to maintain traffic safety and an acceptable level of
 1243 service throughout the impact area of the facility.
- 1244 (c) In front of areas zoned and designed for commercial use, or where a change of zoning
 1245 to one which permits commercial use is contemplated, the street right-of-way and/or
 1246 pavement width must be increased by such amount on each side as may be deemed
 1247 necessary to assure the free flow of through traffic without interference by parked or
 1248 parking vehicles, and to provide adequate and safe parking space for such commercial
 1249 or business district.
- 1250 (d) The Town reserves the right to designate in conjunction with the Maine State
 1251 Department of Transportation all ingress and egress points to the public highway and
 1252 to select areas for the grouping and placement of signs and traffic directions.
- 1253 (e) All traffic flow in parking areas is to be clearly marked with signs and/or surface
 1254 directions at all times.
- 1255 (f) Off-street parking must be constructed in accordance with Table 2 of this chapter, set
 1256 out at the end of § 16.7.11.F, Parking Loading and Traffic.
- 1257 (2). Corner clearances.
 1258 For purposes of traffic safety in all zoning districts, no building or structure other than
 1259 public utility structures and traffic control devices may be erected, and no vegetation other
 1260 than shade trees may be maintained above a height of two feet above the plane through the
 1261 curb grades of intersection streets within a triangle, two sides of which are the edges of the
 1262 traveled public ways for 20 feet measured from their point of intersection or, in the case of
 1263 rounded street corners, the point of intersection of their tangents. The Town is not
 1264 responsible for violations which lead to accidents. The Town will direct, however, a
 1265 continued program designed to identify intersections having traffic safety problems.
- 1266 (3). Off-street loading standards.
- 1267 (a) In those districts where off-street loading is required, the following minimum off-
 1268 street loading bays or loading berths must be provided and maintained in the case of
 1269 new construction, alterations and changes of use:
- 1270 [1] Office buildings, hospitals, long-term nursing care facilities, convalescent care
 1271 facilities, elder-care facilities, hotels and motels with a gross floor area of more
 1272 than 100,000 square feet: one bay.
- 1273 [2] Retail, wholesale, warehouse and industrial operations with a gross floor area of
 1274 more than 10,000 square feet:

10,001 to 40,000 square feet	1 bay
40,001 to 100,000 square feet	2 bays
100,001 to 160,000 square feet	3 bays
160,001 to 240,000 square feet	4 bays
240,001 to 320,000 square feet	5 bays
320,001 to 400,000 square feet	6 bays

Each 90,000 square feet over 400,000	1 additional bay
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- 1275 (b) Each loading bay is to have minimum dimensions of 70 feet by 14 feet and may be
 1276 located either within a building or outside and adjoining an opening in the building.
 1277 Every part of such loading bay is to be located completely off the street. In case of
 1278 trucks, trailers or other motor vehicles larger than the dimensions of the minimum
 1279 loading bay habitually serve the building in question, or so that said equipment can be
 1280 kept on site while awaiting loading or unloading, additional space is to be provided,
 1281 so that such vehicle parks or stands completely off the street.
- 1282 (c) The provisions of this section for off-street loading do not prohibit incidental curbside
 1283 business deliveries, dispatches or services, provided that they are in compliance with
 1284 all applicable state and local traffic regulations.
- 1285 (d) The Board of Appeals has full authority to waive the requirements of this section if it
 1286 is shown that appropriate parking and loading spaces will be maintained sufficient for
 1287 intended use.
- 1288 (4). Off-street parking standards.
- 1289 (a) Off-street parking, in addition to being a permitted use, is considered as an accessory
 1290 use when required or provided to serve conforming uses located in any district.
- 1291 (b) The following minimum off-street parking and loading requirements must be
 1292 provided and maintained in case of new construction, alterations and changes of use.
 1293 Such parking may be provided in the open air in design-dependent spaces
 1294 dimensioned as may be required to suit the particular use as indicated in Table 2 of
 1295 this chapter, set out at the end of § 16.7.11.F, Parking Loading and Traffic, or in
 1296 garages.
- 1297 (c) All spaces must be accessible from lanes of adequate size and location as per Table 2
 1298 of this chapter, set out at the end of § 16.7.11.F, Parking Loading and Traffic. In
 1299 cases not specifically covered, the Town Board or officer with jurisdiction to
 1300 approve the application is authorized to determine the parking requirements and
 1301 projected development use intensity. Existing parking standards are to be used as a
 1302 guide where applicable to ensure that a sufficient number of parking spaces are
 1303 provided to accommodate the number and type of vehicles attracted to the
 1304 development during peak parking demand times.
- 1305 (d) When determination of the number of parking spaces required results in a
 1306 requirement of a fractional space, any fraction of 1/2 or less may be disregarded,
 1307 while a fraction in excess of 1/2 is counted as one parking space.

Use	Parking Spaces Required
Automobile, truck and tractor repair and filling station	▪ 1 parking space for each regular employee plus 1 space for each 200 square feet of floor area used for service work
Dwellings	▪ 2 vehicle spaces per each dwelling unit

Use	Parking Spaces Required
Age-Restricted Housing	<ul style="list-style-type: none"> 1.5 parking spaces for each dwelling unit with 2 or fewer bedrooms 2 parking spaces for each dwelling unit with more than 2 bedrooms
Residential Care facilities	<ul style="list-style-type: none"> 1 parking space per dwelling unit 0.65 parking spaces per residential care unit
Motels, hotels, tourist homes, rooming houses, or other rooming spaces associated with a permitted use	<ul style="list-style-type: none"> 1 parking space for each rental unit plus 1 space for each 100 square feet of meeting room
Schools	
Nursery school and day-care facilities	<ul style="list-style-type: none"> 1 space for every 100 square feet of gross floor area used as school area
Elementary and junior high schools	<ul style="list-style-type: none"> 1 parking space for each adult employee, plus 15 parking spaces for each 100 students or major fraction thereof of total enrollment
Senior high schools	<ul style="list-style-type: none"> 1 parking space for each adult employee, plus 20 parking spaces for each 100 students or major fraction thereof of total enrollment
Marinas and other water-oriented recreational facilities	
With launching facilities	<ul style="list-style-type: none"> 3 parking spaces for every 2 slips or moorings, arranged for trailers
Without launching facilities	<ul style="list-style-type: none"> 1 parking space for each slip or mooring
Hospitals	<ul style="list-style-type: none"> 1 parking space per each three beds
Long-term nursing care facilities and convalescent care facilities	<ul style="list-style-type: none"> 1 parking space for each 4 beds
Theaters, auditoria, churches and arenas	<ul style="list-style-type: none"> 1 parking space for each 4 seats or for each 100 square feet or major fraction thereof of assemblage space if no fixed seats
Mortuary chapels	<ul style="list-style-type: none"> 5 parking spaces for each chapel
Retail stores and financial institutions	<ul style="list-style-type: none"> 1 parking space for each 175 square feet of gross floor area
Bowling alley	<ul style="list-style-type: none"> 4 parking spaces for each bowling lane
Drive-in restaurants, snack bars and fast food outlets	<ul style="list-style-type: none"> Minimum 15 parking spaces, plus 1 space for each three seats. Seating is calculated by dividing the total floor area with customer access by 15

Use	Parking Spaces Required
Restaurant	<ul style="list-style-type: none"> 1 parking space for each three seats. Seating is calculated by dividing the total floor area with customer access by 15
Offices, professional and public buildings	<ul style="list-style-type: none"> 2 parking spaces for each office unit plus 1 space for each 250 square feet of gross floor area
Convenience stores or neighborhood grocery facilities	<ul style="list-style-type: none"> 6 spaces in the rural residential zone; all other zones, 10 parking spaces
Mobile home	<ul style="list-style-type: none"> 2 vehicle spaces per each mobile home
Transportation terminals	<p>In addition to meeting all applicable standards as enumerated above, transportation terminals must meet the following:</p> <ul style="list-style-type: none"> 1 parking space for each employee; 1 parking space for each three seats of the terminal's major carrier vehicle; and 1 parking space for each rented vehicle to be based on site
Warehouse and storage	<ul style="list-style-type: none"> 1 parking space for each 500 square feet of gross floor area except that portion of such facility which is used for retail sales and display or office area, which adds additional parking in accordance with the standards for those uses
Industry, manufacturing and business	<ul style="list-style-type: none"> 1 parking space for each 500 square feet of floor area, or major fraction thereof, or 1.1 spaces per employee on the maximum shift, for that part of every business, manufacturing and industrial building not catering to retail trade
Bus parking	<ul style="list-style-type: none"> For each 25,000 square feet of gross floor area, retail business must provide one bus parking area. Said area(s) are to be 12 feet by 50 feet in dimension, marked on the parking lot surface and labeled as such. Bus parking must be located in the parking area as far from the store entrance(s) as possible

1309 (e) A parking area is allowed in the Resource Protection Overlay Zone only where no
 1310 reasonable alternative route or location is available outside the Resource Protection
 1311 Overlay Zone, in which case a permit or Site Plan or Subdivision plan approval is
 1312 required by the Planning Board.

1313 (f) A parking area must meet the wetland and water body setback requirements for
 1314 structures for the district in which such areas are located, per Table 16.5.30,

Minimum Setback from Wetlands and Water Bodies; except, in the Commercial Fisheries/Maritime Uses Overlay Zone, parking area must be set back at least 25 feet from the normal high-water line or the upland edge of a wetland. The setback requirement for a parking area serving public boat-launching facilities, in zones other than the Commercial, Business-Local, Residential-Urban Zones, and the Commercial Fisheries/Maritime Uses Overlay Zone, may be reduced to no less than 50 feet from the normal high-water line or upland edge of a wetland if the Planning Board finds no other reasonable alternative exists.

- (g) Parking landscaping is required for parking areas containing 10 or more parking spaces and must have at least one tree per eight spaces. Such trees are to be located either within the lot or within five feet of it. Such trees are to be at least 1 1/2 inches in diameter, with no less than 25 square feet of unpaved soil or permeable surface area per tree. At least 10% of the interior of any parking area having 25 or more spaces is to be maintained with landscaping, including trees, in plots of at least five feet in width.
- (h) Required off-street parking in all residential districts is to be located on the same lot as the principal building or use, except that where it cannot reasonably be provided on the same lot, the Board of Appeals may authorize residential off-street parking to be located on another lot within 300 feet of the residential uses served, as measured along lines of public access. Such parking areas must be held under the same ownership or lease as the residential uses served, and evidence of such control or lease is required. Leases obtained for this purpose must be reviewed by the Town Attorney at the developer's expense and include requirement for notice to the Town upon termination of lease. Approval for uses dependent on such lease is terminated upon termination of the lease.
- (i) If parking spaces are provided for employees, customers or visitors, then accessible parking spaces must be included in each such parking area in conformance with the following table:

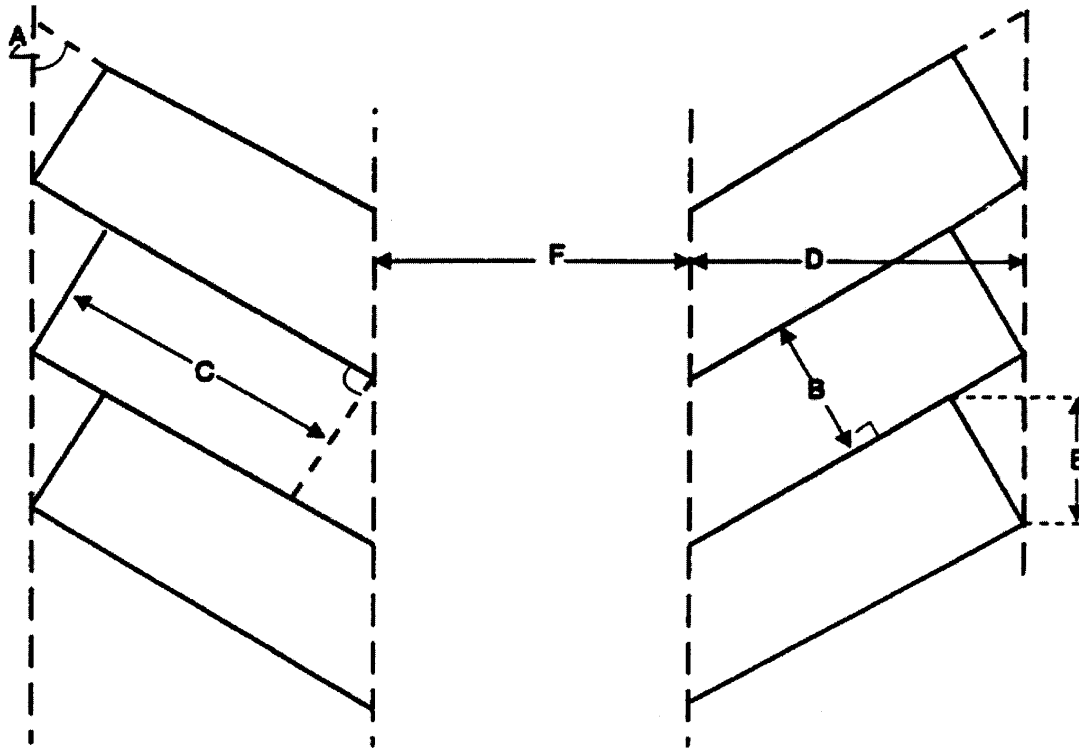
Total Parking in Lot	Required Minimum Number of Accessible Spaces
1 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1,000	2% of total
1,001 and over	20 plus 1 for each 100 over 1,000

- [1] Each accessible parking space must contain a rectangular area at least 19 feet long and eight feet wide with access to a designated and marked five-foot-wide aisle. All required accessible parking spaces are to be identified by a vertical sign displaying the international symbol of accessibility; pavement marking alone is not adequate to identify accessible parking spaces.
- [2] The total number of accessible parking spaces is to be distributed to serve the various accessible entrances as well as possible.
- [3] At least one accessible route is to connect from each accessible parking space to the accessible building entrance.
- (j) Required off-street parking in all commercial, business and industrial zones must be located on the same lot with the principal building or use, or within 100 feet measured along lines of public access; except that, where off-street parking cannot be provided within these limits, the Board of Appeals may permit such off-street parking to be located a reasonable distance from the principal building or use, measured along lines of public access. Such parking areas must be held under the same ownership or lease, and evidence of such control or lease is required. Such lots must be located within business or industrial districts.
- (k) The Planning Board or Board of Appeals may, in specific cases of hardship, reduce the requirements for off-street parking where it is clearly demonstrated that such reduction will not detract from neighborhood values, inconvenience the public or increase congestion in the streets.
- (l) The Planning Board or Board of Appeals may approve the joint use of a parking facility by two or more principal buildings or uses where it is clearly demonstrated that said parking facility will substantially meet the intent of the requirements by reasons of variation in the probable time of maximum use by patrons or employees among such establishments.
- (m) Compact-size parking spaces, unless restricted for use by and located adjacent to a dwelling unit, must be located in one (1) or more continuous areas and cannot be intermixed with spaces designed for full size vehicles.
- (n) Compact-size parking spaces shall be clearly designated by pavement marking and by direction sign in conformance with Table 16.7.11.F.(B)

Table 16.7.11.F (A) Parking Space Design (minimum dimensions) (Dimensions in feet unless otherwise indicated.)							
	A	B	C	D	E	F (Aisle Width)	
To curb	Angle (degrees)	Stall Width	Stall Depth	Stall to Curb	Skew Width	One-Way Traffic	Two-Way Traffic
Parallel	0	9	22	9.0	22.0	13	19
Diagonal	30	9	19	17.3	18.0	11	20
Diagonal	45	9	19	19.8	12.9	13	21

Table 16.7.11.F (A) Parking Space Design (minimum dimensions) (Dimensions in feet unless otherwise indicated.)							
	A	B	C	D	E	F (Aisle Width)	
To curb	Angle (degrees)	Stall Width	Stall Depth	Stall to Curb	Skew Width	One-Way Traffic	Two-Way Traffic
Diagonal	60	9	19	21.0	10.5	18	23
Perpendicular	90	9	19	19.0	9.0	24	24

Table 16.7.11.F(B) Compact Car Parking Space Design (minimum dimensions) (Dimensions in feet unless otherwise indicated.)							
	A	B	C	D	E	F (Aisle Width)	
To curb	Angle (degrees)	Stall Width	Stall Depth	Stall to Curb	Skew Width	One-Way Traffic	Two-Way Traffic
Parallel	0	8	16	8.0	16.0	12	19
Diagonal	45	8	16	17.0	5.7	13	20
Diagonal	60	8	16	17.8	6.9	18	20
Perpendicular	90	8	16	16.0	8.0	22	22



G. Utilities

(1) Approval.

The size, type and location of public utilities, such as streetlights, electricity, telephone, cable television, natural gas lines, fire hydrants, water and sewer lines, etc., must be approved by the Board and installed in accordance with accepted engineering practice.

(2). Underground installation.

Utilities, where feasible, are to be installed underground. The Board must require the developer to adopt a prudent avoidance approach when aboveground electrical installations are approved.

H. Exterior Lighting General requirements.

All new or revised exterior lighting, including the replacement or modification of existing lighting fixtures that result in a change in the lighting characteristics of the fixture, must be designed to provide only the minimum lighting necessary to ensure adequate vision, safety and comfort and may not cause glare beyond the limits of the property boundaries. New and replacement exterior lighting must conform to the current recommended practices of the Illuminating Engineering Society of North America (IESNA) unless more restrictive requirements are established by this article. Exterior lighting should also be consistent with the Design Handbook. When the lamps or bulbs of existing lighting installations are replaced, the replacements must conform to the requirements of IESNA and this article to the extent reasonable.

(1). Lighting fixtures.

All new or replacement exterior lighting fixtures and installations for multifamily housing and nonresidential uses other than outdoor sports and recreational facilities that are located outside the right-of-way of a public street must meet the following standards:

- (a) Lighting fixtures mounted on masts or poles must be cutoff fixtures except for period or historical fixtures meeting the provisions of Subsection (g) of this section.
- (b) Floodlighting or other directional lighting may be used for supplemental illumination of sales or storage areas, provided that the floodlights are installed no higher than 12 feet above ground level, are aimed to avoid the source of the light being seen from adjacent streets or properties, and utilize lamps with an initial lumen rating not exceeding 39,000 lumens. The Town has the right to inspect the completed lighting installation and, if floodlights are used, to require that the floodlights be re-aimed or fitted with face louvers if necessary to control direct brightness or glare.
- (c) Except for ornamental lighting fixtures that utilize lamps with initial lumen ratings of 8,500 lumens or less, wall-mounted building lights must include full-face shielding consisting of either a solid panel or full-face louvers. Exposed lamps, reflectors or refractors may not be visible from any part of the fixture except the bottom light-emitting surface.
- (d) Light fixtures located on or within canopies must be recessed into the ceiling of the canopy so that the lamp, reflector and lens are not visible from public streets. Fixtures must limit the direction of light as required for a cutoff fixture. Refractors or diffusing panels that are dropped below the canopy ceiling surface are not permitted.
- (e) Light fixtures must be mounted at the lowest level that allows reasonable compliance with IESNA-recommended practices and the provisions of this article.
 - [1] In approving new or modified lighting, the Planning Board may permit a maximum light fixture height for pole-mounted or mast-mounted light fixtures located between the building and the front lot line of not more than 15 feet, unless the applicant demonstrates that a higher height is necessary to allow reasonable compliance with the lighting standards and the Planning Board finds that no practicable alternative for lighting of the site exists.
 - [2] The Planning Board may permit a maximum light fixture height for pole-mounted or mast-mounted light fixtures for other areas of the site of not more than 20 feet, unless the applicant demonstrates that a higher height is necessary to allow reasonable compliance with the lighting standards and the Planning Board finds that no practicable alternative for lighting of that area of the site exists.
 - [3] The maximum light fixture height for building-mounted light fixtures is the equivalent of that allowed for a pole-mounted light illuminating the same area. See the Design Handbook for examples of acceptable lighting installations.
- (f) Lamps in exterior light fixtures must be incandescent, metal halide, high-pressure sodium, compact fluorescent or light-emitting diode (LED). This provision does not prohibit the use of fluorescent lamps in internally lighted signs where such signs are otherwise permitted, provided such signs meet the requirements of this article. See the Design Handbook for appropriate examples of signs. With the use of LED lighting, the applicant is required to demonstrate that standards within this article are met and/or meet comparable accepted standards for LED exterior lighting. Required photometric test reports for LED lighting must be based on the IESNA LM-79-08 test

- 1445 procedure.
- 1446 (g) Period or historical fixtures that do not meet the requirements of this section may be
1447 used as an alternative to cutoff fixtures, provided the maximum initial lumens
1448 generated by each fixture does not exceed 2,000. The maximum initial lumens for
1449 metal halide lamps may be increased to 8,500 if the lamp is internally recessed within
1450 the fixture or is shielded by internal louvers or refractors. The mounting height of
1451 period or historical fixtures may not exceed 12 feet above the adjacent ground. See
1452 the Design Handbook for examples.
- 1453 (h) State and national flags that are flown on flagpoles may be illuminated by ground-
1454 mounted lighting that shines vertically as long as exposed lamps, reflectors or
1455 refractors are not visible from any public street.
- 1456 (2). Illumination standards for nonresidential uses and multifamily housing.
1457 New or revised exterior lighting serving nonresidential uses and multifamily housing
1458 must conform to the following standards:
- 1459 (a) The illumination of access drives must provide for a uniformity ratio of not more than
1460 4:1 (ratio of average to minimum luminance). The illumination of parking lots and
1461 outdoor sales and service areas must provide for a uniformity ratio of not more than
1462 20:1 (ratio of maximum to minimum luminance).
- 1463 (b) The maximum illumination level within access drives, parking lots and sales and
1464 service areas may not exceed eight footcandles measured at the ground surface.
- 1465 (c) The maximum illumination level at the property line of a nonresidential or
1466 multifamily housing use with abutting properties in a residential district may not
1467 exceed 0.1 footcandle.
- 1468 (d) Areas directly under canopies must be illuminated so that the uniformity ratio (ratio
1469 of average to minimum luminance) will be not greater than 3:1 with an average
1470 illumination level at ground level of not more than 30 footcandles. Areas of access
1471 drives, parking lots, sales display areas, etc., which are adjacent to canopies must
1472 taper down in illumination level from the illumination level permitted under the
1473 canopy to the maximum illumination level permitted in Subsection (b) of this section
1474 for the access drive, parking lot or sales display area adjacent to the canopy within a
1475 horizontal distance equivalent to the height of the canopy.
- 1476 (e) The maximum illumination levels and uniformity ratios for areas other than parking
1477 lots, access drives and canopies must be consistent with IESNA-recommended
1478 practices and be compatible with the overall lighting of the project and be specifically
1479 approved by the Planning Board.
- 1480 (f) Illuminated signs must not produce glare and are otherwise governed by § 16.7.11.H
1481 of this chapter.
- 1482 (3). Illumination standards for outdoor sports and recreational facilities.
1483 New or revised exterior lighting serving sports fields and outdoor recreational facilities,
1484 including commercial recreational uses, must conform to the following standards:
- 1485 (a) Such fields and facilities may be illuminated for use during daylight hours and until
1486 10:00 p.m. unless the Planning Board specifically approves a later time based upon
1487 the applicant demonstrating that such later time is needed for the reasonable operation
1488 of the facility and will be compatible with and will not result in adverse impacts on

- 1489 neighboring properties. If a later hour is approved, the Planning Board may impose
1490 conditions on the approval, including provisions for the periodic review of the time
1491 limit.
- 1492 (b) The illumination levels and mounting heights of the lighting fixtures may not exceed
1493 the minimum necessary to provide reasonable illumination for the proposed use
1494 consistent with IESNA-recommended practices.
- 1495 (c) The maximum illumination level at the property line of the use with abutting
1496 properties in a residential district may not exceed 0.1 footcandle.
- 1497 (4). Illumination standards for single- and two-family residential uses.
1498 New or revised exterior lighting serving single- and two-family residential uses must be
1499 located and designed so that it does not result in excessive illumination levels on
1500 adjoining properties such as to amount to a public or private nuisance and must be
1501 compatible with the zone requirements in the neighborhood in which it is located. A
1502 maximum illumination level at the property line of more than 0.1 footcandle is
1503 considered to be excessive if the lighting level is in dispute. In the case of a major home
1504 occupation, the application must include a lighting plan meeting the requirements of
1505 § 16.7.10.D(3)(g)[1].
- 1506 I. Prevention of erosion
- 1507 (1) No person may perform any act or use the land in a manner which would cause substantial
1508 or avoidable erosion, create a nuisance, or alter existing patterns of natural water flow in
1509 the Town. This does not affect any extractive operations complying with the standards of
1510 performance specified elsewhere in this title.
- 1511 (a) When an excavation contractor, as defined in § 16.3, performs an activity that
1512 requires or results in more than one cubic yard of soil disturbance within the
1513 Shoreland or Resource Protection Overlay Zones, there must be a person responsible
1514 for management of erosion and sedimentation control practices on site, and that
1515 person must be certified in erosion control practices by the Maine Department of
1516 Environmental Protection. This person must be present at the site each day
1517 earthmoving activity occurs for a duration that is sufficient to ensure that proper
1518 erosion and sedimentation control practices are followed. This is required until
1519 erosion and sedimentation control measures have been installed, which will either
1520 stay in place permanently or stay in place until the area is sufficiently covered with
1521 vegetation necessary to prevent soil erosion. The name and certification number of
1522 the person who will oversee the activity causing or resulting in soil disturbance must
1523 be included on the permit application. Excavation contractors will have one year from
1524 the date of the adoption of this subsection to comply with certification requirements.
- 1525 (b) The above requirement of § 16.7.11.H(1)(a) does not apply to a property owner
1526 performing work themselves, or a person or firm engaged in agriculture or timber
1527 harvesting when best management practices for erosion and sedimentation control are
1528 used.
- 1529 (c) The above requirement of § 16.7.11.H(1)(a) only applies to regulated activities
1530 requiring local, state or federal permits and/or Planning Board approval.
- 1531 (5). All development must generally comply with the provisions of the "Environmental Quality
1532 Handbook, Erosion and Sediment Control," published by the Maine Soil and Water

Conservation Commission.

(a) The developer must:

- [1] Select a site with the right soil properties, including natural drainage and topography, for the intended use;
- [2] Utilize for open space uses those areas with soil unsuitable for construction;
- [3] Preserve trees and other vegetation wherever possible;
- [4] Hold lot grading to a minimum by fitting the development to the natural contour of the land; avoid substantial areas of excessive grade;
- [5] Spread jute matting, straw or other suitable material during construction in critical areas subject to erosion;
- [6] Construct sediment basins to trap sediment from runoff waters during development; expose as small an area of subsoil as possible at any one time during development and for as short a period as possible;
- [7] Provide for disposing of increased runoff caused by changed land formation, paving and construction, and for avoiding sedimentation of runoff channels on or off the site;
- [8] Plant permanent and, where applicable, indigenous, vegetation and install structures as soon as possible for the purpose of soil stabilization and revegetation;

(b) All logging or woodlot roads must be located, constructed and maintained in conformance with the erosion prevention provisions of "Permanent Logging Roads for Better Woodlot Management," published by the United States Department of Agriculture.

- (6). Where the Board has required a stormwater management and erosion control plan, said plan must be endorsed by the York County Soil and Water Conservation District or found satisfactory by the Town's Engineering Peer Reviewer.
- (7). All activities which involve filling, grading, excavation or other similar activities that potentially may result in unstable soil conditions, and which require a permit, must be made known in a written soil erosion and sedimentation control plan in accordance with the "Maine Erosion and Sediment Control Practices Field Guide for Contractors," 2015, and as amended. The plan must be submitted to the permitting authority for approval and must include, where applicable, provisions for:
 - (a) Mulching and revegetation of disturbed soil;
 - (b) Temporary runoff control features, such as straw bales, silt fencing, filter socks or diversion ditches;
 - (c) Permanent stabilization structures, such as retaining walls or riprap.
- (8). To create the least potential for erosion, development must be designed to fit with the topography and soil of the site. Areas of steep slopes where high cuts and fills may be required are to be avoided wherever possible, and natural contours must be followed as closely as possible.
- (9). Erosion and sedimentation control measures apply to all aspects of the proposed project involving land disturbance and must be in operation during all stages of the activity. The amount of exposed soil at every phase of construction must be minimized to reduce the

1576 potential for erosion.

1577 (10). Any exposed ground area must be temporarily or permanently stabilized in accordance
1578 with the ""Maine Erosion and Sediment Control Practices Field Guide for Contractors,"
1579 2015, and as amended. All erosion control measures that are no longer necessary as
1580 determined by the CEO or Shoreland Resource Officer must be removed at the owner's
1581 expense.

1582 (11). Natural and man-made drainageways and drainage outlets must be protected from erosion
1583 from water flowing through them. Drainageways must be designed and constructed in order
1584 to carry water from a twenty-five-year storm or greater and be stabilized with vegetation or
1585 lined with riprap.

1586 J. Water quality and wastewater pollution

1587 (1) No activity is allowed to deposit on or into the ground or discharge to any river, stream or
1588 brook, pond, or wetland any pollutant that, by itself or in combination with other activities
1589 or substances, will impair designated uses or the water classification of the water body.

1590 (2). Wastewater to be discharged into Kittery Sewer Department sewers, should they be
1591 available, must be in such quantities and/or of such quality as to be compatible with
1592 standards established by the municipality or the Sewer Department.

1593 (3). To meet those standards, the municipality or Sewer Department may require that such
1594 wastes undergo pretreatment or full treatment at the site in order to render them acceptable
1595 for the treatment processes.

1596 (4). The disposal of wastewater by means other than a public system must comply with the laws
1597 of the State of Maine and the Town concerning water pollution. Where a public sanitary
1598 sewer system is located within 200 feet of the property line as measured along a public
1599 way, the Town requires individual entrance into said sewer.

1600 (5). Discharge of sanitary wastes to any water body is subject to the issuance of Maine State
1601 Department of Environmental Protection licenses, but no such off-site discharge will be
1602 allowed unless same is buried or not visible to a point below normal low water and is
1603 secured against damage and uncovering by the tides, erosion or other foreseeable action.

1604 (6). Flood prone areas must be identified on plan submissions, and based on the Federal
1605 Emergency Management Agency's Flood Boundary and Floodway Maps and Flood
1606 Insurance Rate Maps and information presented by the applicant.

1607 (7). If the proposed development, or any part of it, is in such an area, the applicant must
1608 determine the one-hundred-year flood elevation and flood hazard boundaries within the
1609 project area. The proposed plan must include a condition of plan approval requiring that
1610 principal structures in the development will be constructed with their lowest floor,
1611 including the basement, at least one foot above the one-hundred-year flood elevation.

1612 K. Air pollution

1613 All air pollution control shall comply with the minimum state requirements, and detailed
1614 plans shall be submitted to the State of Maine Department of Environmental Protection for
1615 approval before a building/regulated activity permit is granted. In any case, no objectionable
1616 odor, dust or smoke shall be detectable beyond the property line.

1617

L. Noise abatement

- (1) Excessive noise at unreasonable hours shall be controlled so as not to be objectionable due to intermittence, beat frequency, shrillness or volume.
- (2). The maximum permissible sound pressure level of any continuous, regular or frequent source of sound produced by any activity regulated by this title shall be as established by the time period and type of land use district listed below. Sound pressure levels shall be measured at all major lot lines at a height of at least four feet above the ground surface. Sound from any source controlled by this title shall not exceed the following limits at the property line of the "receiver" premises.

Sound Pressure Level Limit Measured in dBs		
Districts	7:00 a.m. to 9:00 p.m.	9:00 p.m. to 7:00 a.m.
Industrial	65	60
Commercial and Business	60	50
Residential Districts, Kittery Foreside District, Badgers Island District, Rural Conservation and Resource Protection	55	45

- (a) Where the emitting and receiving premises are in different zones, the limits governing the stricter zone shall apply to any regulated noise entering that zone.
- (b) The levels specified may be exceeded by 10 dB for a single period no longer than 15 minutes in any one day.
- (3). Noise shall be measured with a sound level meter meeting the standards of the American National Standards Institute (ANSI S1.4-1961, American Standard Specification for General Purpose Sound Level Meters). The instrument shall be set to the A-weighted response scale and the meter to the slow response. Measurements shall be conducted in accordance with ANSI S1.2-1962, American Standard Meter for the Physical Measurements of Sound.
- (4). No person shall engage in, cause or permit to be engaged in construction activities producing excessive noise on a site abutting any residential use between the hours of 9:00 p.m. on one day and 7:00 a.m. of the following day. Construction activities shall be subject to the maximum permissible sound level specified for commercial districts for the periods within which construction is to be completed pursuant to any applicable building/regulated activity permit.
- (5). The following uses and activities shall be exempt from the sound pressure level regulations:
- (a) Home maintenance activities (i.e., mowing lawns, cutting one's own firewood, etc.) between the hours of 7:00 a.m. and 9:00 p.m.;
 - (b) Timber harvesting (felling trees and removing logs from the woods);
 - (c) Noise created by construction and maintenance activities between 7:00 a.m. and 9:00 p.m.;
 - (d) The noises of safety signals, warning devices and emergency pressure relief valves

- 1653 and any other public emergency activity; and
- 1654 (e) Traffic noise on existing public roads, railways or airports.
- 1655 (6). These noise regulations are enforceable by law enforcement officers and by the Code
- 1656 Enforcement Officer (who may measure noise levels, and who shall report documented
- 1657 violations to the police). For the purposes of enforcement, sounds exceeding the above
- 1658 limits shall be deemed to constitute "loud and unreasonable noise" under Title 17-A M.R.S.
- 1659 § 501-A ("disorderly conduct").

1660 M. Radiation

- 1661 No dangerous radiation shall be detectable at the property line, in accordance with the
- 1662 applicable state and federal laws. In the case of electromagnetic pulses emanating from
- 1663 electrical service components, the Planning Board or Director of Planning and Development
- 1664 shall require the developer to adopt a "prudent avoidance" approach, wherever possible.

1665 N. Utilization of the Site

- 1666 (1) The plan for the development shall reflect the natural capabilities of the site to support
- 1667 development. Buildings, lots, and support facilities shall be clustered in those portions of
- 1668 the site that have the most suitable conditions for development. Environmentally sensitive
- 1669 areas, including but not limited to, wetlands, steep slopes, floodplains, significant wildlife
- 1670 habitats, fisheries, scenic areas, habitat for rare and endangered plants and animals, unique
- 1671 natural communities and natural areas, and sand and gravel aquifers shall be maintained
- 1672 and preserved to the maximum extent. Natural drainage areas shall also be preserved to the
- 1673 maximum extent. The development shall include appropriate measures for protecting these
- 1674 resources, including but not limited to, modification of the proposed design of the site,
- 1675 timing of construction, and limiting the extent of excavation.

1676 O. Storage of Materials

- 1677 (1) Exposed nonresidential storage areas, exposed machinery, and areas used for the storage or
- 1678 collection of discarded automobiles, auto parts, metals or other articles of salvage or refuse
- 1679 shall have sufficient setbacks and screening (such as a stockade fence or a dense evergreen
- 1680 hedge) to provide a visual buffer sufficient to minimize their impact on abutting residential
- 1681 uses and users of public streets.
- 1682 (2). All dumpsters or similar large collection receptacles for trash or other wastes shall be
- 1683 located on level surfaces which are paved or graveled. The dumpster or receptacle shall be
- 1684 screened by fencing or landscaping.
- 1685 (3). Where a potential safety hazard to children is likely to arise, physical screening sufficient
- 1686 to deter small children from entering the premises shall be provided and maintained in
- 1687 good condition.

1688 P. Technical and Financial Capacity

- 1689 (1) Financial Capacity. The applicant shall have adequate financial resources to construct the
- 1690 proposed improvements and meet the criteria of the standards of these regulations. In
- 1691 making its determination the Planning Board shall consider all relevant evidence to the
- 1692 effect that the developer has the financial capacity to construct, operate, and maintain all
- 1693 aspects of the development.
- 1694 (2). Technical Capacity. The applicant shall retain qualified contractors and consultants to

supervise, construct and inspect the required improvements in the proposed site plan.

- (a) In determining the applicant's technical ability the Planning Board shall consider the applicant's previous experience, the experience and training of the applicant's consultants and contractors, and the existence of violations of previous approvals granted to the applicant.

16.7.12 Post-Approval

A. Approved plan expiration.

- (1) A Site Plan approval will expire if work has not commenced within one year from the date of Planning Board or Director of Planning and Development approval. Where work has commenced within one year of such approval, the approval will expire if work is not complete within two years of the original date of approval.
- (2). Prior to expiration, the approval authority may, on a case-by-case basis, grant extensions to an approved plan expiration date upon written request by the developer for an inclusive period from the original approval date, not to exceed three years.
- (3). When a plan's approval expires, the applicant may reapply subject to the Town Code current at the time of reapplication.

B. Inspection of required improvements.

- (1) A preconstruction meeting is required for an approved Site Plan. Prior to the commencement of any work associated with development approved in accordance with this title, the developer or duly authorized representative must provide a schedule of expected construction activities by phase to the inspecting official [the Code Enforcement Officer (CEO) or their representative or, when applicable, the Town's Peer Review Engineer], and coordinate a preconstruction meeting. Attendance at said meeting must at a minimum include authorized representation from the Town, the developer and their general contractor. Meeting minutes must be prepared by the Town's representative and distributed to all attendees and the Town Planner.
- (2). The developer or general contractor shall coordinate inspections with the inspecting official and provide written notice at least seven days prior to commencing each major phase of construction as outlined in the construction schedule. When all phases of work are complete, the general contractor shall request a final inspection from the inspecting official, who shall prepare a punch list of any outstanding items to be completed, within seven days of the final inspection. Once all outstanding items have been completed, the developer or the general contractor shall coordinate a final walk-through where the inspecting official determines if the construction has been completed in accordance with the approved plans. The inspecting official shall provide, in writing, to the developer or the general contractor within seven days of the final walk-through what, if any, construction is not complete or confirm that the development is complete and has been constructed according to the approved plans.
- (3). If the inspecting official finds, upon inspection of the required improvements, that any of the required improvements have not been constructed in accordance with the approved plans and specifications, the inspecting official must report, in writing, to the Town Planner, the developer or duly authorized representative of the developer, and, when applicable, the CEO. The Town Planner shall inform the Planning Board of any issues

- 1738 identified by the inspections. The Town shall take any steps necessary to preserve the
1739 municipality's rights.
- 1740 (4). Where applicable and in advance of any construction, the developer must deposit sufficient
1741 funds for said inspections in an applicant's service account per Chapter 3.3. The amount is
1742 based on a scope of services and fee prepared by the Town's Peer Review Engineer after
1743 review of the developer's construction estimate prepared by a professional engineer or a
1744 qualified contractor.
- 1745 (5). Stormwater and erosion control inspection.
- 1746 (a) During October to November of each year in which construction for grading, paving
1747 and landscaping occurs on a development site, the Town will, at the expense of the
1748 developer, cause the site to be inspected by a qualified individual. By December 1,
1749 the inspector must submit a site report to the Town Planner that describes the
1750 inspection findings and indicates whether stormwater and erosion control measures
1751 (both temporary and permanent) are in place and properly installed. The report must
1752 include a discussion and recommendation on any and all problem areas encountered.
- 1753 (b) After major construction activities have been completed on a development site, the
1754 developer must, on or by July 1 of each year, provide a completed and signed
1755 certification to the Code Enforcement Officer per § 16.7.11.D, Post-construction
1756 stormwater management.
- 1757 (c) Erosion control debris. The owner or occupant of any land in any zone must not allow
1758 erosion control materials, such as plastic erosion control fences and related stakes or
1759 other materials, to remain on the site but must remove the same within six months of
1760 the date such erosion control materials were installed, or the date when no longer
1761 required, whichever is later. When a violation is discovered, the Code Enforcement
1762 Officer will order compliance by written notice of violation to the owner of any land
1763 in any zone requesting removal of such violation within 30 days of the date of written
1764 notice. An extension of time to correct may be made by the Code Enforcement
1765 Officer for good and sufficient reason.
- 1766 C. Plan revisions after approval.
- 1767 No changes, erasures, modifications or revisions may be made to any Planning Board
1768 approved Final Plan, unless in accordance with the Planner's and CEO's powers and duties as
1769 found in § 16.2, or unless the plan has been resubmitted and the Planning Board specifically
1770 approves such modifications. In the event a Final Plan is recorded without complying with
1771 this requirement, the same is null and void, and the Planning Board must institute
1772 proceedings to have the plan stricken from Town records and the York County Registry of
1773 Deeds.
- 1774 (1) Field changes.
- 1775 (a) If at any time before or during the construction of the required improvements it
1776 appears to be necessary or desirable to modify the required improvements, the Code
1777 Enforcement Officer and Town Planner are authorized to approve minor plan
1778 amendments due to unforeseen field circumstances, such as encountering hidden
1779 outcrops of bedrock, natural springs, etc. The Code Enforcement Officer and Town
1780 Planner must issue any approval under this subsection in writing and transmit a copy
1781 of the approval to the Planning Board. Revised plans must be filed with the Town and

1782 recorded, where appropriate. The developer must provide the revised plan to the
1783 Town Planner, and it shall be recorded in the York County Register of Deeds when
1784 applicable.

1785 (2). Modifications to approved plan.

1786 (a) Minor modifications. Modifications to an approved plan that do not require review
1787 per § 16.7.2.A may be approved by the Code Enforcement Officer and Town Planner.
1788 Such approvals must be issued in writing to the developer with a copy to the Planning
1789 Board. The developer must provide the revised plan to the Town Planner, and it shall
1790 be recorded in the York County Register of Deeds, when applicable.

1791 (b) Major modifications. Major modifications (e.g., relocations of principal structures,
1792 rights-of-way or property boundaries; changes of grade by more than 1%) require
1793 Planning Board or Director of Planning and Development approval.

1794 D. Maintenance of improvements.

1795 The developer, or owner, is required to maintain all improvements and provide for snow
1796 removal on streets and pedestrianways/sidewalks unless and until the improvement has been
1797 accepted by the Town Council. Acceptance of Streets and Ways

1798 (1) Conditions. A street or way constructed on private lands by the owner(s) thereof and not
1799 dedicated for public travel prior to the enactment of this title must be laid out and accepted
1800 as a public street or way by the Town Council only upon the following conditions:

1801 (a) The owners must give the Town a deed to the property within the boundaries of the
1802 street at the time of acceptance by the Town.

1803 (b) A plan of said street or way must be recorded in the York County Registry of Deeds
1804 at the time of its acceptance.

1805 (c) A petition for laying out and acceptance of said street or way must be submitted to the
1806 Town Council upon a form prescribed by the Commissioner of Public Works. Said
1807 petition must be accompanied by a plan, profile and cross section of said street as
1808 follows:

1809 [1] A plan drawn, when practical, to a scale of 40 feet to one inch and to be on one or
1810 more sheets of paper not exceeding 24 inches by 36 inches in size. Said plan must
1811 show the North point; the location and ownership of all adjoining lots of land;
1812 rights-of-way and easements; streetlights and electric lines; boundary monuments;
1813 waterways, topography and natural drainage courses with contour at not greater
1814 than two-foot intervals; all angles, bearings and radii necessary for the plotting of
1815 said street and lots and their reproduction on the ground; the distance to the
1816 nearest established street or way, together with the stations of their side lines;

1817 [2] A profile of said street or way drawn to a horizontal scale of 40 feet to one inch
1818 and a vertical scale of four feet to one inch. Said profile must show the profile of
1819 the side lines and center line of said street or way and the proposed grades thereof.
1820 Any buildings abutting the street or way must be shown on said profile;

1821 [3] A cross section of said street or way drawn to a horizontal scale of five feet to one
1822 inch and a vertical scale of one foot to one inch; and

1823 [4] The location and size of water and sewer mains and surface water drainage
1824 systems, as installed.

1825 (3). Such street or way must have been previously constructed in accordance with the standards
1826 and criteria established in § 16.5.27 of this chapter.

1827 E. Acceptance of streets and ways required in public interest.

1828 Notwithstanding the provisions of any other section hereof, the Town may at any time lay out
1829 and accept any street or way in the Town as a public street or way of said Town whenever
1830 the general public interest so requires. The cost of said street or way may be borne by the
1831 Town.

1832 (1). Easements.

1833 The Board may require easements for sewerage, other utilities, drainage and stream
1834 protection. In general, easements may not be less than 20 feet in width. Wider easements
1835 may be required.

1836 (2). No street or way to be accepted until after report.

1837 (a) No street or way may be laid out and accepted by the Town Council until the
1838 Planning Board and the Public Works Commissioner have made a careful
1839 investigation thereof and reported to the Town Council their recommendations in
1840 writing with respect thereto.

1841 (b) Upon completion of construction of any street/road intended for proposal for
1842 acceptance as a Town way, a written certification that such way meets or exceeds the
1843 design and construction standards of this title, signed by a professional engineer
1844 registered by the State of Maine, prepared at the developer's expense, must be
1845 submitted to the Board. If underground utilities are laid in such way, the developer
1846 must also provide written certification from the servicing utility(ies), that such
1847 installation was in a manner acceptable to the utility. The Board is to review the
1848 proposal and forward a recommendation to the Town Council regarding acceptance.

1849 F. Recordkeeping in Shoreland and Resource Protection Overlay Zones.

1850 The Code Enforcement Officer is to keep a complete record of all essential transactions of
1851 development in the Shoreland and Resource Protection Overlay Zones, including
1852 applications submitted, permits granted or denied, variances granted or denied, revocation
1853 actions, revocation of permits, appeals, court actions, violations investigated, violations
1854 found, and fees collected. On a biennial basis, a summary of this record must be submitted to
1855 the Director of the Bureau of Land and Water Quality within the Department of
1856 Environmental Protection.

1857 G. Nonstormwater discharge.

1858 No person, except where exempted in § 16.5.19, may create, initiate, originate, or maintain a
1859 nonstormwater discharge to the storm drainage system. Such nonstormwater discharges are
1860 prohibited notwithstanding the fact that the municipality may have approved the connections,
1861 drains or conveyances by which a person discharges unallowable nonstormwater discharges
1862 to the storm drainage system.

1863 H. Nuisances.

1864 Any violation of this title is deemed to be a nuisance.

1865

16.8 Subdivision Review**16.8.1 General**

- A. The purpose of this chapter is to assure the comfort, convenience, safety, health, and welfare of the people, to protect the environment and to promote the development of an economically sound and stable community. To that end, the Planning Board will evaluate proposed subdivisions using the following criteria. The subdivision provisions set forth in these regulations are intended to protect the public health and safety, promote the general welfare of the community, and conserve the environment by assuring that nonresidential and multifamily construction is designed and developed in a manner that assures that adequate provisions are made for traffic safety and access; emergency access; water supply; sewage disposal; management of storm water, erosion, and sedimentation; protection of groundwater; protection of the environment, wildlife habitat, fisheries, and unique natural areas; protection of historic and archaeological resources; minimizing the adverse impacts on adjacent properties; and fitting the project harmoniously into the fabric of the community.

16.8.2 Authority and Statutory Review Criteria

- A. These standards have been prepared in accordance with the provisions of 30-A M.R.S.A. § 4401 et seq., and all amendments thereto.
- B. When reviewing any application for a subdivision, the Planning Board shall find that the criteria as found in Title 30-A M.R.S.A. §4404 have been met, as well as all applicable provisions of Title 16, Land Use and Development Code have been met, before granting approval.

16.8.3 Approval required prior to development.

The applicant or applicant's authorized agent must obtain final Planning Board approval before:

- A. Any contract or offer for the conveyance of the proposed development (or portion thereof) has been made;
- B. Any subdivision into three or more lots has been recorded in the York County Registry of Deeds;
- C. A building/regulated activity permit for any structure within the development is issued; or
- D. Work on any improvements (including installation of roads or utilities or land clearing) has begun.

16.8.4 Other Potential Reviews

- A. Shoreland development review.
- (6) All development in the Shoreland, Resource Protection, and Commercial Fisheries/Maritime Uses Overlay Zones involving the use, expansion, change or replacement of an existing use or structure, or renewal of a discontinued nonconforming

use, must be reviewed and approved as provided in § 16.4.30 and elsewhere in this title, and tracked as a shoreland development for reporting purposes.

- (7) All development in the Shoreland, Resource Protection, and Commercial Fisheries/Maritime Uses Overlay Zones must be approved by the Planning Board except for the following:
- (a) Proposed development of principal and accessory structures in compliance with § 16.9.1.B(1), when not subject to Planning Board review as explicitly required elsewhere in this title. Such proposed development must be reviewed and approved by the Code Enforcement Officer (CEO) prior to issuing a building permit. The total devegetated area of the lot (that portion within the Shoreland Overlay Zone) must be calculated by the applicant and verified by the CEO and recorded in the Town's property records. Any development proposed in the Resource Protection and Shoreland - Stream Protection Area Overlay Zones must be approved by the Planning Board.
 - (b) Piers, docks, wharves, bridges and other structures and uses extending over or below the highest annual tide (HAT) elevation, subject to review and approval by the Port Authority as outlined in Chapter 16.9.1, Marine-related development.
 - (c) Division of a conforming parcel that is not subject to subdivision as defined in § 16.3.
 - (d) Clearing of vegetation for activities other than timber harvesting. These are subject to review and approval by the Shoreland Resource Officer or Code Enforcement Officer.
- (8) Establishment of new commercial or business entity in an existing facility, where intensity of use is not significantly different.

16.8.5 Application and Review Fees

B. Review fee(s); reimbursements.

- (1) All applications for plan approval for properties which come under this title must be accompanied by a fee as determined by the Town Council.
- (2) The applicant must reimburse the Town for all expenses incurred for notifying abutters of the proposed plan and advertising of any public hearing regarding a development.

C. Independent peer review.

- (1) The Planning Board or, after the Town Manager's approval, the Town Planner and the Code Enforcement Officer, may require an independent consultant or specialist engaged by the Town, at the applicant's expense, to:
 - (a) Determine compliance with all requirements of this title related to public health, safety and welfare and the abatement of nuisances; or
 - (b) Assist with the technical review of applications submitted for new or amended development.
- (2) When peer review is required of the applicant, sufficient funds, based on a written estimate by the required consultant, must be deposited in an applicant's service account per Chapter 3.3, prior to commencing said review and continuing with the review of the development plan application.

16.8.6 Applicant attendance at review meeting(s)

- A. The applicant or duly authorized representative must attend all Board meetings for which

the applicant's application has been placed on the agenda. Relief may be given from this requirement by the Board Chairperson.

16.8.7 Waivers

A. Waiver authorization.

Upon written request, the Planning Board may waive or modify certain required improvements, due to special circumstances of a particular plan, if the applicant demonstrates that the interest of public health, safety, the natural environment, and general welfare are not harmed, or if those improvements are inappropriate because of inadequacy or lack of connecting facilities adjacent or in proximity to the proposed development, subject to appropriate conditions as determined by the Planning Board, and provided the waivers do not have the effect of nullifying the intent and purpose of the Comprehensive Plan and Title 16.

B. Objectives secured.

In granting modifications or waivers, the Planning Board must require such conditions as will, in its judgment, secure substantially the objectives of the requirements so waived or modified. The Planning Board is not obligated to consider the costs of required improvements when reviewing waiver or modification requests. The Planning Board shall consider the provisions in Section 16.2.12.F. Basis for Decisions when reviewing such waiver or modification requests.

- (1) Any waivers granted must improve the ability of the project to take the property's pre-development natural features into consideration. Natural features include but are not limited to topography, location of water bodies, location of unique or valuable natural resources, and relation to abutting properties or land uses.

16.8.8 Other Requirements

A. Burden of proof.

In all instances, the burden of proof is upon the applicant proposing the development.

B. Comprehensive Plan.

Any proposed development or use must be consistent with the Town Comprehensive Plan guidance adopted into the provisions of this title.

C. Site inspection.

- (1) So the Planning Board may be fully informed about the site and in a knowledgeable position to prescribe contour intervals to be employed on topographic maps and grading plans for the development, the applicant must arrange a joint inspection of the site with the Planning Board.

D. Safe use.

- (1) The land/water area to be developed must be of such character that it can be used without danger to health or peril from fire, flood, soil failure or other hazard.

16.8.9 Review Process and Submission Requirements

A. Preapplication and Conference

- (1) Process. The purpose of this meeting is to familiarize the applicant with the review procedures and submission requirements, and approval criteria, and to familiarize the Planner with the nature of the project.
 - (a) This meeting is optional for Minor Subdivisions, but required for Major Subdivisions.
 - (b) Such review shall not cause the plan to be a pending application or proceeding under 1M.R.S.A. §302. No decisions relative to the plan may be made at this meeting.
 - (c) To request a preapplication conference the applicant shall submit, at a brief narrative describing the project, the location of the project on a US Geologic Survey (USGS) topographic map, and a copy of the Tax Map showing the development parcel.

B. Sketch Plan Review

- (1) Review application form.

Any person requiring subdivision review must submit an application on forms prescribed by the Planning Board, together with a development plan and such submission contents as may be required in §16.8.9.B(3) and §16.8.9(B)(4). A complete application consists of all the required elements. No more than one application/plan for a piece of property may be under review before the Planning Board. No more than one approved final plan for a piece of property may exist.
- (2) Planning Board review and decision. The Planning Board must, within 30 days of sketch plan submission, act upon the sketch plan as follows:
 - (a) The Planning Board must determine whether the sketch plan proposal complies with the standards contained herein and must, where it deems necessary, make specific suggestions in writing to be incorporated by the applicant in subsequent submissions.
 - [1] If the concept is approved, inform subdivision applicants in writing of the contour interval which will be required for the plans; classify the sketch plan into one of two categories defined herein, as a minor subdivision or a major subdivision, and authorize submission of the next application stage. The next application stage for a Minor Subdivision is a Final Plan application and the next application stage for a Major Subdivision is a Preliminary Plan application.
 - [2] Any plan may be continued for a total period not to exceed 90 calendar days for good and sufficient reason (i.e., for revisions to be made, studies completed, or additional information submitted) and acceptable to both the applicant and the Planning Board. Such plan is automatically scheduled for the agenda of the next regular Planning Board meeting after the 90th day and action completed in accordance with the requirements and timing contained in this title, whether the applicant has accomplished the purposes for which continued or not.
 - [3] The action to table by the Planning Board must be an action to temporarily suspend action and not to suppress a vote on the plan.
- (3) Plan Requirements
 - (a) The sketch plan must show in simple form on a topographic map the proposed site, subdivision, landscape architectural or architectural design concept, including streets, lots, structures and other features, in relation to existing conditions and municipal land use zone(s) regulations.

(b) The sketch may be a freehand penciled sketch and must include the data listed below.

(4) Written Submission Requirements

(a) General subdivision information must describe or outline the existing conditions of the site, including:

[1] Covenants.

[2] High-intensity Class "A" soil survey and soil interpretation sheets.

[3] Available community facilities.

[4] Utilities.

(b) Proposed development, such as:

[1] Number of residential or business lots and/or dwelling units;

[2] Typical lot width and depth;

[3] Price range;

[4] Business areas;

[5] Playgrounds, park areas and other public areas;

[6] Protective covenants;

[7] Utilities; and

[8] Street improvements.

C. Preliminary Plan Review

(1) Applicability. Preliminary Plan Review only applies to Major Subdivision applications.

(2) General Process

(a) Preliminary plan application filing and completeness review. A determination as to whether the Town Planner validates an application is based on a review of the application in accordance with the submission contents checklist filed with the plan, which indicates all elements required under §16.8.9.C(6) and §16.8.9.C(7) have been received, or written request for waiver of submittal for any non received items is included. 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.

(b) Receipt and scheduling review. Upon validation, the Town Planner must place the application on the Planning Board's agenda for Planning Board completeness review and acceptance and, upon Planning Board acceptance, issue a dated receipt to the applicant, which is thereafter the official time of submission.

(c) Site inspection. In the course of the review of the plan, the Planner must, and the Planning Board may at its discretion, make a physical inspection and may make photographic record of the existing conditions on the site.

(d) Advisory opinions. At any time during review, the Planner may request an advisory opinion from the Planning Board, Conservation Commission or Port Authority on issues related to the application. Where applications are for land within wetland setbacks or the Resource Protection Overlay Zone, the Conservation Commission must be invited to review and offer recommendations from an environmental protection perspective. The Planner also must make recommendation on the necessity for independent review.

(e) Planner analysis. The Planner must analyze the application and forward comments to the

applicant and the Planning Board with a recommendation as to review category (e.g., minor/major subdivision).

(f) A completed application must be submitted to the Town Planner no later than 21 days prior to the meeting date for the item to be included on the agenda. The submission must include on the plan or attached thereto, the following items, unless upon the applicant's written request, the Planning Board, by formal action, waives or defers any requirement(s) for submission.

[1] Refer to current Planning Department application checklist for required number of paper copies.

[2] One electronic submission in PDF format of the complete submission including all forms, plans and documentation.

(g) Submission contents complete. Upon determination by the Planner that the preliminary plan application is complete, the Planner must receive it, together with an application fee in the amount set by the Town Council. (See Appendix A, Fee Schedules.) No application may be deemed complete by the Planning Board until payment of the proper fees.

[1] the Planning Board makes a finding that the preliminary plan is complete in regard to the submission requirements, it must determine if any studies/review or analysis is required in accordance with §16.8.9.C(7)(l) and §16.8.9.C(8) and schedule the date for a public hearing.

(3) Public hearing

(a) Scheduling

[1] In the case of an accepted subdivision plan application, such public hearing must be scheduled no later than 30 days from the date of Planning Board acceptance. With the concurrence of the applicant, this deadline may be modified.

[2] For all other development plan applications (i.e., right-of-way plan application and development in the Shoreland Overlay Zone), at the Planning Board's discretion, a public hearing may or may not be held.

(b) Public notice.

[1] The Town Planner must place a public notice of such public hearing in a newspaper of general circulation in the Town at least seven and not more than 14 days prior to the scheduled hearing date; said notice must also be posted in at least three prominent public locations in Town at least 10 days prior to the hearing; and, in the case of a plan located within 500 feet of the Towns of Eliot or York, Maine, must be forwarded to the Southern Maine Regional Planning Commission and to the Town Clerk of Eliot or York, Maine, at least 10 days prior to the hearing.

[2] A subdivision public notice must be published at least two times in a newspaper of general circulation in the Town. The date of the first notice must be at least seven days before the scheduled public hearing date.

(c) Abutter notice.

[1] The Town Planner must cause written notice of the public hearing to be sent by postage paid, first-class mail (cost to be paid by the applicant) to all owners of abutting property, as herein defined (within 150 feet of the property), and by regular mail to the Code Enforcement Officer, the Commissioner of Public Works, and where

applicable, the Port Authority or Conservation Commission, at least seven days prior to the scheduled date. Failure of the parties to receive said notice does not invalidate any Board action.

- [2] As used herein, relates solely to the notification of property owners who must be notified in writing when new development or redevelopment is proposed within 150 feet of their property boundary(ies). This notification must include intertidal land below the normal high-water line, but not that land beyond 100 rods (1,650 feet) distant from the normal high water line, or that land below the normal low-water line. Where question exists regarding ownership of intertidal lands, consult Figure 1 in 16.5.2, entitled, "Formula for Determining Ownership of Intertidal Land as a Guide for Identifying Abutters," attached to this chapter.

(d) Preliminary Plan Public Hearing Procedure

- [1] The Planning Board may receive oral and documentary evidence, but must exclude evidence which it considers irrelevant, immaterial or unduly repetitious.
- [2] The Chairperson of the Planning Board must determine the order of presentation by parties to the hearing. Each party must have the right to proceed without interruption, except that rulings by the Chairperson prevail. The applicant's presentation must proceed in accordance with the checklist provided.
- [3] Any party may be represented by agent or attorney.
- [4] The Town Planner, in consultation with the Code Enforcement Officer, Commissioner of Public Works, and such other Town officials as may have an interest in the application, must present into evidence a written summary of findings and recommendations.
- [5] The Planning Board may continue the hearing to another time and location, including the site of the development, as it deems necessary.

(4) Planning Board Preliminary Plan review schedule.

(a) Within six months after approval/classification of a sketch plan by the Board, the applicant must submit an application for approval of a subdivision Preliminary Plan in the form prescribed herein.

(b) Within 30 days after acceptance by the Planning Board of a subdivision plan, the Planning Board must approve the plan, approve the plan with conditions, disapprove the plan, postpone action on the plan, or continue the review to another time/location.

(c) Continuation or tabling of a review beyond the thirty-day period for subdivision applications must be for good and sufficient reason and be acceptable to both the applicant and the Planning Board.

(d) Any plan may be continued for a total period not to exceed 90 calendar days for good and sufficient reason (i.e., for revisions to be made, studies completed or additional information submitted) and acceptable to both the applicant and the Planning Board. Such plan is automatically scheduled for the agenda of the next regular Planning Board meeting after the 90th day and action completed in accordance with the requirements and timing contained in this title, whether the applicant has accomplished the purposes for which it was continued or not.

(e) The action to table by the Planning Board must be an action to temporarily suspend action and not to suppress a vote on the plan.

(f) Failure of the Planning Board to act within the thirty-day period for an accepted subdivision application constitutes disapproval of the plan, in which case the applicant may resubmit the plan without payment of an additional application fee.

(g) Planning Board review and decision. The Planning Board must approve, approve with conditions or deny the preliminary plan.

(h) Approval of a preliminary plan does not constitute approval of a final plan, but rather it is be deemed an expression of approval of the design submitted on the preliminary plan as a guide to the preparation of the final plan.

(i) Conditions of the Planning Board's approval may include, but are not limited to, type of vegetation, increased setbacks and yard space, specifications for sewage and water supply facilities, buffers and screens, period of maintenance sureties, deed restrictions, locations of piers, docks, parking or signs, type or style of construction, and the amount of all guarantees which may be required.

(j) Conditions required by the Planning Board at the preliminary plan review phase must have been met before the final plan may be given final approval unless 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.

(k) The decision of the Planning Board plus any conditions imposed must be noted on three copies of the preliminary plan. One copy must be returned to the applicant, one retained by the Planning Board and one forwarded to the municipal officials.

(l) If the final plan is not submitted to the Planning Board within six months after classification of the sketch plan, the Planning Board may refuse to act on the subdivision preliminary plan and require resubmission of the sketch plan. All such plans resubmitted must comply with all normal application requirements.

(5) Plan Requirements, Preliminary Plan

(a) Plan sheets drawn on a reproducible medium and must measure no no larger than 24 inches by 36 inches;

(b) With scale of the drawings no greater than one inch equals 30 feet for developments less than 10 acres, and one inch equals 50 feet for all others;

(c) Code block in the lower right-hand corner. The block must contain:

[1] Name(s) and address(es) of the applicant and owner;

[2] Name of the project;

[3] Name and address of the preparer of the plan, with professional seal, if applicable;

[4] Date of plan preparation/revision, and a unique ID number for the plan and any revisions;

(d) Standard boundary survey conducted by a surveyor licensed in the State of Maine, in the manner recommended by the State Board of Registration for Land Surveyors;

(e) An arrow showing true North and the magnetic declination, a graphic scale, and signature blocks for the owner(s) and members of the Planning Board;

(f) Locus map showing the property in relation to surrounding roads, within 2,000 feet of any property line of the development;

(g) Vicinity map and aerial photograph showing the property in relation to surrounding

- properties, roads, geographic, natural resource (wetland, etc.), historic sites, applicable comprehensive plan features such as proposed park locations, land uses, zones, and other features within 500 feet from any boundary of the proposed development;
- (h) Surveyed acreage of the total parcel, of rights-of-way, wetlands, and area to be disturbed and amount of street frontage;
- (i) Names and addresses of all owners of record of property abutting the development, including those across a street;
- (j) Existing Development Area Conditions, including but not limited to:
- [1] Location and description of all structures, including signs, existing on the site, together with accesses located within 100 feet of the property line;
 - [2] Essential physical features such as watercourses, wetlands, floodplains, wildlife habitat areas, forest cover, and outcroppings;
- (k) Utilities existing, including power, water, sewer, holding tanks, bridges, culverts and drainageways. Proposed development area conditions including, but not limited to:
- [1] Structures; their location and description including signs, to be placed on the site, floor plan of exterior walls and accesses located within 100 feet of the property line;
 - [2] Utilities proposed including power, water, sewer, holding tanks, bridges, culverts and drainageways;
 - [3] Sewage facilities type and placement. Test pit locations, at least two of which must meet the State of Maine Plumbing Code requirements, must be shown;
 - [4] Domestic water source;
 - [5] Parks, open space, or conservation easement locations;
 - [6] Lot lines, interior and exterior, right-of-way, and street alignments;
 - [7] Road and other paved ways plans, profiles and typical sections including all relevant data;
 - [8] Setbacks existing and proposed;
 - [9] Machinery permanently installed locations likely to cause appreciable noise at the lot lines;
 - [10] Topographic contours of existing contours and finished grade elevations within the development;
 - [11] Pedestrian ways/sidewalks, curbs, driveways, fences, retaining walls and other artificial features locations and dimensions proposed;
 - [12] Temporary marker locations adequate to enable the Planning Board to readily locate and appraise the layout of the development;
 - [13] Land proposed to be dedicated to public use and the conditions of such dedication;
 - [14] Natural features or site elements to be preserved.
- (6) Written Submission Requirements, Preliminary Plan
- (a) Legal interest documents showing legal interest of the applicant in the property to be developed. Such documents must contain the description upon which the survey was based;
 - (b) Property encumbrances currently affecting the property, as well as any proposed encumbrances;

(c) Water District approval letter, if public water is used, indicating there is adequate supply and pressure to be provided to the development;

(d) Erosion and sedimentation control plan endorsed by the York County Soil and Water Conservation District or the Town's engineering consultant;

(e) Stormwater management preliminary plan for stormwater and other surface water drainage prepared by a registered professional engineer including the general location of stormwater and other surface water drainage areas;

(f) Soil survey for York County covering the development. Where the soil survey shows soils with severe restrictions for development, a high intensity Class "A" soil survey must be provided;

(g) Vehicular traffic report estimating the amount and type of vehicular traffic that will be generated by the development on a daily basis and for peak hours;

(h) Traffic impact analysis in accordance with § 16.8.9.C(8)(a) for developments involving 40 or more parking spaces or which are projected to generate more than 400 vehicle trips per day;

(i) Test pit(s) analysis prepared by a licensed site evaluator when sewage disposal is to be accomplished by subsurface disposal, pits, prepared by a licensed site evaluator;

(j) Town Sewage Department or community system authority letter, when sewage disposal is to be through a public or community system, approving the connection and its location;

(k) Letters of evaluation of the development by the Chief of Police, Fire Chief, Commissioner of Public Works, Sewage Department, Kittery Water District and, for residential applications, the superintendent of schools, must be collected and provided by the Town Planner.

(l) Additional submissions as may be required by other sections of this title such as for clustered development, mobile home parks, or junkyards must be provided.

(7) Additional requirements. In its consideration of an application/plan, the Planning Board may at any point in the review require the applicant to submit additional materials, studies, analyses, and agreement proposals as it may deem necessary for complete understanding of the application. Such materials may include:

(a) Traffic impact analysis, including the following data:

[1] An executive summary outlining the study findings and recommendations.

[2] A physical description of the project site and study area encompassed by the report with a diagram of the site and its relationship to existing and proposed development sites within the study area.

[3] A complete description of the proposed uses for the project site (in cases where specific uses have not been identified, the highest traffic generators within the category best fitting the proposed development must be used to estimate traffic generators).

[4] Existing land uses and zone(s) in the vicinity of the site must be described. Any proposals for the development of vacant parcels or redevelopment of parcels within the study area of which the municipality makes the applicant aware, must be included in the description.

[5] Street geometry and existing traffic control devices on all major streets and

- intersections affected by the anticipated traffic generated.
- [6] Trip generation must be calculated for the proposed project and other proposed new projects and redevelopment projects within the study area using the most recent data available from the Institute of Transportation Engineers' (ITE) Trip Generation Guide, and/or actual field data collected from a comparable trip generator (i.e., comparable in size, location and setting). This data will be presented in a summary table such that assumptions on trip generation and rates arrived at by the engineer are fully understandable to the Planning Board.
- [7] The anticipated trip distribution of vehicles entering and exiting the proposed site during the appropriate peak hour(s) must be described and diagrammed.
- [8] Trip assignment, the anticipated utilization of study area streets by traffic generated by the proposed project, must be described and diagrammed.
- [9] Existing traffic conditions in the study area will be identified and analyzed based upon actual field counts and/or recent available machine counts.
- [10] Existing traffic conditions in the study area will be described and diagrammed, specifically AADT, appropriate peak design hour(s), traffic volumes, street and intersection capacities, and levels of service.
- [11] Existing safety conditions must be evaluated based upon the traffic accident data available for the most current three years and described including link and node critical rate factors (CRF).
- [12] Future traffic conditions on the street system will be estimated based on existing volumes, projected traffic growth in the general study area, projected traffic from approved development, and traffic generated by the proposed project, specifically AADT traffic, appropriate peak hour(s) traffic volumes, street and intersection capacity, street and intersection levels of service will be analyzed. When other projects are being proposed within the impact area of the project, the Planning Board may require these projects to be incorporated into the analysis.
- [13] When the analysis of the proposed project's impact on traffic indicates unsatisfactory CRF, levels of service or operating capacity on study area streets and intersections, a description of proposed improvements to remedy identified deficiencies must be included.
- [14] The base data collected and analyzed during the course of the traffic impact study.
- [15] If a development that requires a traffic impact study is within 500 feet of York or Eliot, Maine, or if the study identifies impacts on segments of Route 1 or Route 236 or on their intersections located in York or Eliot, Maine, the applicant must provide evidence that a copy of the impact study has been given to the impacted municipality's chief administrative officer;
- (b) Environmental analysis. An analysis of the effects that the development may have upon surrounding lands and resources, including intensive study of groundwater, ecosystems, or pollution control systems;
- D. Final Plan Review
- (1) Process
- (a) Final plan application. The applicant must, within six months after approval of a

preliminary plan, file with the Planning Board an application for approval of the final plan in the form prescribed herein.

(b) Failure to submit final plan application. If the final plan is not submitted to the Planning Board within six months after the approval of the preliminary plan, the Planning Board may refuse to act on the final plan and require resubmission of the preliminary plan. Any plan resubmitted must comply with all application requirements, including payment of fees.

(c) Within 30 days after the filing of a Final Subdivision plan, the Planning Board must approve the plan, approve the plan with conditions, disapprove the plan, postpone action on the plan, or continue the review to another time/location.

(d) Continuation or tabling of a review beyond the thirty-day period for subdivision applications must be for good and sufficient reason and be acceptable to both the applicant and the Planning Board.

(e) Any plan may be continued for a total period not to exceed 90 calendar days for good and sufficient reason (i.e., for revisions to be made, studies completed or additional information submitted) and acceptable to both the applicant and the Planning Board. Such plan is automatically scheduled for the agenda of the next regular Planning Board meeting after the 90th day and action completed in accordance with the requirements and timing contained in this title, whether the applicant has accomplished the purposes for which it was continued or not.

(f) The action to table by the Planning Board must be an action to temporarily suspend action and not to suppress a vote on the plan.

(g) Failure of the Planning Board to act within the thirty-day period for an accepted subdivision application, and the thirty-five-day period for other Planning Board accepted applications, constitutes disapproval of the plan, in which case the applicant may resubmit the plan without payment of an additional application fee.

(h) Application/plan review expiration.

[1] Uncounted time. When an approved plan is required to be reviewed/approved by another agency (e.g., DEP, BOA, KPA), any period the plan is at such an agency or that a plan is continued by the Planning Board in accordance with this section from time of submission to time of decision inclusive, verifiable by recorded documentation, is not counted as part of the cumulative time periods described in this section.

[2] Requests for extension. The Planning Board may grant extensions to expiration dates upon written request by the developer, on a case-by-case basis.

(i) A completed application must be submitted to the Town Planner no later than 21 days prior to the meeting date for the item to be included on the agenda. The submission must include on the plan or attached thereto, the following items, unless upon the applicant's written request, the Planning Board, by formal action, waives or defers any requirement(s) for submission.

[1] Refer to current Planning Department application checklist for required number of paper copies.

[2] One electronic submission in PDF format of the complete submission including all forms, plans and documentation.

(2) Final Plan Requirements

A complete final plan application must fulfill all the requirements of a preliminary plan as indicated in § 16.8.9.C(6) through (8) and must show the following items, unless the Planning Board, by formal action, upon the applicant's written request, waives or defers any requirement(s) for submission. If no changes occurred to the preliminary plan, it also may be considered to be the final plan.

(a) Preliminary plan information, including vicinity map and any amendments thereto suggested or required by the Planning Board or other required reviewing agency.

(b) Street names and lines, pedestrian ways, lots, easements and areas to be reserved for or dedicated to public use.

(c) Street length of all straight lines, the deflection angles, radii, lengths of curves and central angles of all curves, tangent distances and tangent bearings.

(d) Lots and blocks within a subdivision, numbered in accordance with local practice.

(e) Markers/permanent reference monuments: Their location, source references and, where required, constructed in accordance with specifications herein.

(f) Structures: their location and description, including signs, to be placed on the site, floor plans and elevations of principal structures as well as detail of all structures, showing building materials and colors, and accesses located within 100 feet of the property line.

(g) Outdoor lighting and signage plan if the application involves the construction of more than 5,000 square feet of nonresidential floor area; or the creation of more than 20,000 square feet of impervious area; or the creation of three or more dwelling units in a building — prepared by a qualified lighting professional, showing at least the following at the same scale as the site plan:

[1] All buildings, parking areas, driveways, service areas, pedestrian areas, landscaping and proposed exterior lighting fixtures;

[2] All proposed lighting fixture specifications and illustrations, including photometric data, designation as "cutoff" fixtures, color rendering index (CRI) of all lamps (bulbs), and other descriptive information on the fixtures;

[3] Mounting height of all exterior lighting fixtures;

[4] Lighting analyses and luminance level diagrams or photometric point-by-point diagrams on a twenty-foot grid, showing that the proposed installation conforms to the lighting level standards of the ordinance codified in this section together with statistical summaries documenting the average luminance, maximum luminance, minimum luminance, average-to-minimum uniformity ratio, and maximum-to-minimum uniformity ratio for each parking area, drive, canopy and sales or storage area;

[5] Drawings of all relevant building elevations, showing the fixtures, the portions of the walls to be illuminated, the luminance levels of the walls, and the aiming points for any remote light fixtures; and

[6] A narrative that describes the hierarchy of site lighting and how the lighting will be used to provides safety, security and aesthetic effects.

(h) Machinery in permanently installed locations likely to cause appreciable noise at the lot lines.

(i) Materials (raw, finished or waste) storage areas, their types and location, and any stored

toxic or hazardous materials, their types and locations.

(j) Fences, retaining walls and other artificial features, locations, and dimensions proposed.

(k) Landscaping plan, including location, size and type of plant material.

(l) Location of snow storage areas.

(m) Stormwater management plan for stormwater and other surface water drainage prepared by a registered professional engineer, including the location of stormwater and other surface water drainage area; a post-construction stormwater management plan that defines maintenance responsibilities, responsible parties, shared costs, and schedule for maintenance; a draft maintenance agreement for stormwater management facilities; and, where applicable, draft documents creating a homeowners' association referencing the maintenance responsibilities. Where applicable, the maintenance agreement must be included in the document of covenants, homeowners' documents and/or as riders to the individual deed and recorded with the York County Registry of Deeds.

(n) Phasing plan. Upon applicant's request, the Planning Board may permit phasing of the plans, where it can be demonstrated to the Planning Board's satisfaction that such phasing would result in a safe and orderly development of the plan.

[1] The applicant may file a section of the approved plan with the municipal officials and the York County Registry of Deeds if said section constitutes at least 25% of the total number of lots, or for plans including buildings, 25% of the gross area, contained in the approved plan. In all circumstances, plan approval of the remaining sections of the plan will remain in effect for three years unless the applicant requests and the Planning Board grants extensions of time equivalent to the requirements for approved plans in § 16.8.11.D.

[2] Phasing is subject to any conditions deemed necessary to assure a reasonable mixture of uses is completed within each separate phase of the plan.

[3] Where projects are to be constructed in phases, phasing of stormwater management, water mains and streets are part of the review process.

[4] Portions of both the developed and undeveloped site impacted by interim infrastructure conditions such as unlooped water systems, stormwater runoff from unfinished areas onto finished areas and vice versa, dead-end streets, etc., must be clearly defined and shown on the plans.

[5] The Planning Board may permit construction of phases out of order only when the storm drainage plan and the water plan, etc., have been reviewed by the Planning Department or peer review engineer, and it has been demonstrated that the impact on both the developed and undeveloped sections is negligible.

(3) Written Submission Requirements

(a) Open space land cession offers. Written offers of cession to the municipality of all public open space shown on the plan, and copies of agreements or other documents showing the manner in which space(s), title to which is reserved by the subdivider, are to be maintained.

(b) Open space land cession offers acknowledgement by Town. Written evidence that the municipal officers are satisfied with the legal sufficiency of the documents referred to in § 16.8.9.D(3)(a) Such written evidence does not constitute an acceptance by the municipality of any public open space referred to in § 16.8.9.D(3)(a).

(c) Performance guaranty and Town acceptance to secure completion of all improvements required by the Planning Board, and written evidence the Town Manager is satisfied with the sufficiency of such guaranty.

[1] Where improvements for the common use of lessees or the general public have been approved, the Planning Board must require a performance guaranty of amount sufficient to pay for said improvements as a part of the agreement.

[2] Process. Prior to the issue of a building permit, the applicant must, in an amount and form acceptable to the Town Manager, file with the Municipal Treasurer an instrument to cover the full cost of the required improvements. A period of one year (or such other period as the Planning Board may determine appropriate, not to exceed three years) is the guaranty time within which required improvements must be completed. The performance guaranty must include an amount required for recreation land or improvements, as specified.

(d) Maintenance plan and agreement defining maintenance responsibilities, responsible parties, shared costs and schedule. Where applicable, a maintenance agreement must be included in the document of covenants, homeowners' documents and/or as riders to the individual deed.

(4) Findings of Fact.

(a) After considering all submissions, evidence and testimony in accordance with the requirements of all applicable state and the Town Code, the Planning Board must make a finding of facts for each and every proposed phase of development, including the development master plan and each subsequent development plan, and take formal action as required in this title.

(b) Findings of fact. Action by the Planning Board must be based upon findings of fact which certify or waive compliance with all the required standards of this title and which certify the development meets the following requirements:

[1] Development conforms to local ordinances. The proposed development conforms to a duly adopted Comprehensive Plan as per adopted provisions in the Town Code, zoning ordinance, subdivision regulation or ordinance, development plan or land use plan, if any. In making this determination, the municipal reviewing authority may interpret these ordinances and plans.

[2] Freshwater wetlands identified. All freshwater wetlands within the project area have been identified on any maps submitted as part of the application, regardless of the size of these wetlands.

[3] River, stream or brook identified. Any river, stream or brook within or abutting the proposed project area has been identified on any maps submitted as part of the application. For purposes of this section, "river, stream or brook" has the same meaning as in 38 M.R.S. § 480-B, subsection 9.

[4] Water supply sufficient. The proposed development has sufficient water available for the needs of the development.

[5] Municipal water supply available. The proposed development will not cause an unreasonable burden on an existing water supply, if one is to be used.

[6] Sewage disposal adequate. The proposed development will provide for adequate sewage waste disposal and will not cause an unreasonable burden on municipal

- 630 services, if they are utilized.
- 631 [7] Municipal solid waste disposal available. The proposed development will not cause
632 an unreasonable burden on the municipality's ability to dispose of solid waste, if
633 municipal services are to be used.
- 634 [8] Water body quality and shoreline protected. Whenever situated entirely or partially
635 within 250 feet of any wetland, the proposed development will not adversely affect
636 the quality of that body of water or unreasonably affect the shoreline of that body of
637 water.
- 638 [9] Groundwater protected. The proposed development will not, alone or in conjunction
639 with existing activities, adversely affect the quality or quantity of groundwater.
- 640 [10] Flood areas identified and development conditioned. All flood-prone areas within the
641 project area have been identified on maps submitted as part of the application, based
642 on the Federal Emergency Management Agency's Flood Boundary and Floodway
643 Maps and Flood Insurance Rate Maps and information presented by the applicant. If
644 the proposed development, or any part of it, is in such an area, the applicant must
645 determine the one-hundred-year flood elevation and flood hazard boundaries within
646 the project area. The proposed plan must include a condition of plan approval
647 requiring that principal structures in the development will be constructed with their
648 lowest floor, including the basement, at least one foot above the one-hundred-year
649 flood elevation.
- 650 [11] Stormwater managed. The proposed development will provide for adequate
651 stormwater management.
- 652 [12] Erosion controlled. The proposed development will not cause unreasonable soil
653 erosion or a reduction in the land's capacity to hold water so that a dangerous or
654 unhealthy condition results.
- 655 [13] Traffic managed. The proposed development will:
- 656 [a] Not cause unreasonable highway or public road congestion or unsafe
657 conditions with respect to the use of the highways or public roads existing or
658 proposed; and
- 659 [b] Provide adequate traffic circulation, both on site and off site.
- 660 [14] Water and air pollution minimized. The proposed development will not result in
661 undue water or air pollution. In making this determination, the following must be
662 considered:
- 663 [a] Elevation of the land above sea level and its relation to the floodplains;
664 [b] Nature of soils and subsoils and their ability to adequately support waste
665 disposal;
666 [c] Slope of the land and its effect on effluents;
667 [d] Availability of streams for disposal of effluents;
668 [e] Applicable state and local health and water resource rules and regulations; and
669 [f] Safe transportation, disposal and storage of hazardous materials.
- 670 [15] Aesthetic, cultural and natural values protected. The proposed development will not
671 have an undue adverse effect on the scenic or natural beauty of the area, aesthetics,
672 historic sites, significant wildlife habitat identified by the Department of Inland

- 673 Fisheries and Wildlife or the municipality, or rare and irreplaceable natural areas, or
674 any public rights for physical or visual access to the shoreline.
- 675 [16] Developer financially and technically capable. Developer is financially and
676 technically capable to meet the standards of this section.
- 677 (c) In Shoreland, Resource Protection or Commercial Fisheries/Maritime Use Overlay
678 Zones, the proposed use will:
- 679 [1] Maintain safe and healthful conditions;
- 680 [2] Not result in water pollution, erosion or sedimentation to surface waters;
- 681 [3] Adequately provide for the disposal of all wastewater;
- 682 [4] Not have an adverse impact on spawning grounds, fish, aquatic life, bird or other
683 wildlife habitat;
- 684 [5] Conserve shore cover and visual, as well as actual, points of access to inland and
685 coastal waters;
- 686 [6] Protect archaeological and historic resources as designated in the comprehensive
687 plan;
- 688 [7] Not adversely affect existing commercial fishing or maritime activities in a
689 commercial fisheries/maritime activities district;
- 690 [8] Avoid problems associated with floodplain development and use; and
- 691 [9] Is in conformance with the provisions of this title.
- 692 (d) For a right-of-way plan. The proposed right-of-way:
- 693 [1] Does not create any nonconforming lots or buildings; and
- 694 [2] Could reasonably permit the right of passage for an automobile.
- 695 (e) For special exception use – special exception use permitted. If a special exception use is
696 requested, the special exception use will:
- 697 [1] Not prevent the orderly and reasonable use of adjacent properties or of properties in
698 adjacent use zones;
- 699 [2] Not prevent the orderly and reasonable use of permitted or legally established uses in
700 the zone wherein the proposed use is to be located, or of permitted or legally
701 established uses in adjacent use zones; and
- 702 [3] Not adversely affect the safety, the health, and the welfare of the Town.
- 703 [4] Be in harmony with and promote the general purposes and intent of this title.
- 704 (5) Final plan approval and recording.
- 705 (a) Agreement form. An approval by the Planning Board must take the form of an agreement
706 between the Town and the applicant, incorporating as elements the application, the Planning
707 Board's findings of fact, and such conditions as the Planning Board may impose upon
708 approval.
- 709 (b) Agreement distribution. The Planning Board must send copies of the agreement to the
710 Town Manager and Code Enforcement Officer.
- 711 (c) Approved final plan signing. A plan has final approval only when the Planning Board has
712 indicated approval by formal action and the plan has been properly signed by a majority of
713 the Planning Board members or by the Chair only, if so voted by the Planning Board.

(d) Approved final plan recording. An approved plan involving the division of land, easements, or property boundary modification must be recorded by the York County Registry of Deeds. Two (2) paper copies of the recorded plan must be returned to the Town Planner.

16.8.10 Performance Standards and Approval Criteria

A. Monuments

(1) Stone monuments.

(a) Stone monuments must be set at all street intersections and points of curvature, but not more than 750 feet apart along street lines without curves or intersections.

(b) Stone monuments must be set at all corners and angle points of the development boundaries where the interior angle of the boundaries is less than 135° or greater than 225°.

(c) Stone monuments must be a minimum of four inches square at the top and four feet in length and set in the ground at final grade level. Drilled holes, ½ inch deep, are to serve to locate the point or points described above.

(2) Other monumentation.

All other development boundary corners and angle points, as well as all lot boundary corners and angle points are to be marked by suitable monumentation constructed of reasonably permanent material and solidly embedded in the ground. All such monumentation must be capable of being detected by commonly used magnetic or electronic equipment and clearly show the registration number of the registered land surveyor responsible for the survey.

(3) Impractical placement.

Where the placement of a required monument at its proper location is impractical, it is permissible to set a reference monument close to that point on an adjacent property line.

B. Basic Subdivision Layout

(1) Calculation of Density: See “Net Residential Acreage” in 16.5 General Performance Standards.

(2) Wherever possible, side lot lines shall be perpendicular to the street.

(3) The subdivision of tracts into parcels with more than twice the required minimum lot size shall be laid out in such a manner as either to provide for or preclude future division. Deed restrictions or notes on the plan shall either prohibit future divisions of the lots or specify that any future division shall constitute a revision to the plan and shall require approval from the Board, subject to the criteria of the subdivision statute, the standards of these regulations and conditions placed on the original approval.

(4) If a lot on one side of a public street fails to meet the minimum requirements for lot size, it may not be combined with a lot on the other side of the public street to meet the minimum lot size.

(5) Lot Numbering. Even numbers shall be assigned to lots on one side of the street, and odd numbers on the opposite side. Where the proposed subdivision contains the extension of an existing street or street approved by the Board, but not yet constructed, the lot numbers shall correspond with the existing lot numbers. The lot numbering shall be reviewed by the E-911 Addressing Officer and the comments shall be considered by the Board.

C. Water Supply

- (1) The development shall be provided with a system of water supply that provides each use with an adequate supply of water.
- (2) If the project is to be served by a public water supply, the applicant shall secure and submit a written statement from the Kittery Water District that the proposed water supply system conforms with its design and construction standards, will not result in an undue burden on the source of distribution system, and will be installed in a manner adequate to provide needed domestic and fire protection flows.
- (3) Service required.
 - (a) A public water supply system with fire hydrants must be installed and approved in writing by the servicing water department.
 - (b) If in the opinion of the Board service to each lot by a public water system is not feasible, the Board may allow individual wells or a central water supply system approved in writing by a civil engineer registered in the State of Maine.
 - (c) If the developer proposes a central water supply system, it must also be approved in writing by the Maine Department of Human Services.
 - (d) Water supply system installations are at the expense of the developer.
 - (e) All required approvals of a water supply system must be secured before official submission of the final plan.
- (4) Quality and pressure.

The developer must demonstrate by actual test or by a signed affidavit from an authorized representative of the servicing water company that water meeting the “Maine Rules Relating to Drinking Water (10-144 C.M.R. 231)” can be supplied to the development at the rate of at least 350 gallons per day per dwelling unit and at an adequate pressure for firefighting purposes.
- (5) Storage.

Storage must be provided as necessary to meet peak domestic demands and fire protection needs.
- (6) Adequacy.

The developer must demonstrate in the form of signed affidavits from the servicing water company or by engineering reports prepared by a civil engineer registered in the State of Maine that the proposed development will not result in an undue burden on the source, treatment facilities or distribution system involved or provide adequate assurance that such source, treatment facilities or distribution system will be modified to meet the expanded needs. The cost of such improvements is to be borne by the developer.
- (7) Water main size.

The minimum water main size permitted is to be as required by the Kittery Water District, installed at the expense of the developer.
- (8) Design and installation.

The water supply system must be designed and installed in accordance with requirements of the Maine Department of Human Services.
- (9) Dug wells.

Because they are difficult to maintain in a sanitary condition, dug wells must be prohibited

by deed restriction and a note on the plan, unless permitted by the Board only if it is not economically or technically feasible to develop other groundwater sources. Such dug wells permitted must be constructed so as to prevent infiltration of surface water into the well.

(10) Central water supplies.

If a central water supply system is provided by the developer, location and protection of the source, and design, construction and operation of the distribution system and appurtenances and treatment facilities must conform to the recommendations included in the "Manual for Evaluating Public Drinking Water Supplies, Public Health Service No. 1180 (1969)."

(11) Hydrologic analysis.

The Board may require the developer to provide a detailed hydrologic analysis in accordance with the requirements of § 16.8.10.M, Water Quality and Wastewater Pollution.

D. Sewage Disposal

(1) Sewers.

(a) As per Chapter 13.1, Sewer Service System, connection to public sewer is required, provided said sewer, located within an abutting public way, is within 100 feet of the property line as measured along the said public way. Individual dwellings and structures in approved and recorded developments where public sewer becomes available as described in this subsection must connect per the requirements of Title 13, Chapter 13.1.

(b) Notwithstanding the provision above and Chapter 13.1, connection to public sewer is required for a commercial or industrial development or a residential subdivision, where public sewer, within an abutting public way, is within 1,000 feet of the property line as measured along said public way. In such an event, the developer shall connect to public sewer per the Town's Superintendent of Sewer Services (SSS) specifications and in accordance with Title 13. The developer shall provide written certification to the Planning Board from the SSS that the proposed addition to public sewer is within the capacity of the collection and wastewater treatment system.

(c) Sewer mains, service lines and related improvements must be installed at the developer's expense. Service lines must extend to each lot's boundary line. Connections to public sewer must be installed in accordance with this article and Chapter 13.1, Sewer Service System, of the Kittery Town Code.

(d) Proposal and construction drawings must be approved in writing by the Town's SSS. All required approvals must be secured before the start of final plan review.

(e) When public sewer connection pursuant to Subsection B above is not feasible as determined by the Planning Board, the Board may allow individual or common subsurface wastewater disposal systems in accordance with § 16.8.10.D(2), below. To determine feasibility, the developer shall submit information that considers the unique physical circumstances of the property and sewer connection alternatives to conventional construction/installation techniques, such as, but not limited to, horizontal/directional boring and low-pressure sewer. The developer's information must be accompanied by findings and recommendations of the Town Peer Review Engineer. In determining feasibility, the Board may not base its decision solely on additional costs associated with a sewer connection. The intent of this subsection is not to avoid the requirements of Chapter 13.1, Sewer Service System, of the Kittery Town Code.

(2) Subsurface wastewater disposal systems.

(a) The developer shall submit plans for subsurface wastewater disposal designed by a Maine licensed site evaluator in full compliance with the requirements of the State of Maine Plumbing Code, Subsurface Wastewater Disposal Rules, and this title. Subsurface wastewater disposal systems (SWDS) must be constructed according to the approved plan.

(b) All first-time subsurface wastewater disposal systems must be installed in conformance with State of Maine Subsurface Wastewater Disposal Rules and this title. The following also apply:

[1] The minimum setback distance for a first-time subsurface disposal system may not be reduced by variance.

[2] Clearing or removal of woody vegetation necessary to site a first-time system, and any associated fill extensions may not extend closer than is allowed in the table in § 16.5.30, Minimum Setbacks from Wetlands and Water Bodies, for subsurface sewage disposal.

(c) Replacement of subsurface wastewater disposal systems (SWDS) for existing legal uses:

[1] Where no expansion is proposed, the SWDS must comply with § 16.8.10.D(2) and Table 16.5.30 to the extent practicable and otherwise are allowed per the Maine Subsurface Wastewater Disposal Rules; or

[2] Where expansion is proposed, the SWDS must comply with § 16.8.10.D(2) and Table 16.5.30 in addition to the Maine Subsurface Wastewater Disposal Rules.

NOTE: For the purposes of this subsection, “expansion” is defined in Section 9 of the Maine Subsurface Wastewater Disposal Rules.

(d) Subsurface wastewater disposal systems on unimproved lots created after April 26, 1990. Where public sewer connection is not feasible, the developer must submit evidence of soil suitability for subsurface wastewater disposal systems, i.e., test pit data and other information as required by the State of Maine Subsurface Wastewater Disposal Rules and this title. In addition:

[1] On lots with a limiting factor identified as being within 24 inches of the surface, a second site with suitable soils must be shown as a reserve area for future replacement should the primary site fail. Such reserve area is to be shown on the plan; not be built upon; and, must comply with all the setback requirements of the Subsurface Wastewater Disposal Rules and this title.

[2] In no instance may a primary or reserve disposal area be permitted on soils or on a lot requiring a first-time system variance request per the State of Maine Subsurface Wastewater Disposal Rules.

[3] Test pits must be of sufficient numbers (a minimum of two) and so located at representative points within each disposal area (primary and reserve sites) to ensure that the proposed disposal system can be located on soils and slopes that meet the criteria of the State of Maine Subsurface Wastewater Disposal Rules and the State Plumbing Code. All passing and failing test pits must be shown on the plan.

(e) The developer shall install advanced pretreatment to subsurface wastewater disposal systems that are located inside or within 100 feet of areas that include a sand and gravel aquifer as indicated on the Maine Department of Agriculture, Conservation and Forestry (DACF) Geological Survey Maps or determined by Maine DACF staff.

(3) Holding tanks.

(a) Holding tanks are not allowed for a first-time residential use.

(4) (Reserved)

(5) Sanitary facilities/restrooms.

(a) Any development containing a retail use or a food service use, or a combination thereof, exceeding 10,000 square feet must provide public toilet facilities in accordance with Subsections b., c., and d. of this section.

(b) Public toilet facilities are to consist of at least one separate toilet for each sex; be clearly marked; maintained in a sanitary condition and in good repair. Lavatory facilities must be located within or immediately adjacent to all toilet rooms or vestibules. There may be no charge for their use.

(c) Where a retail development exceeds 60,000 square feet, each toilet facility must contain a minimum of two water closets.

(d) Requirements for handicapped accessibility to sanitary facilities are pursuant to applicable state standards.

E. Stormwater and Surface Drainage

(1) Adequate provision must be made for drainage of all stormwater generated with the development and any drained groundwater through a management system of natural and constructed features. Where possible, existing natural runoff control features, such as berms, swales, terraces and wooded areas must be retained to reduce runoff and encourage infiltration of storm waters. Otherwise, drainage may be accomplished by a management system of constructed features such as swales, culverts, underdrains and storm drains.

(2) To ensure proper functioning, stormwater runoff control systems must be maintained in good working order per § 16.8.10.F. Post-construction stormwater management.

(3) Where a development is traversed by a stream, river or surface water drainageway, or where the Planning Board determines that surface runoff should be controlled, easements and or drainage rights-of-way must be provided which conform substantially to the lines of existing natural drainage paths. The minimum width of the drainage easements or rights-of-way is 30 feet.

(a) The minimum pipe size for any storm drainage pipe must be 12 inches. Maximum trench width at the pipe crown must be the outside diameter of the pipe plus two feet. The pipe must be bedded in a fine granular material, containing no stones larger than three inches, lumps of clay, or organic matter, reaching a minimum of six inches below the bottom of the pipe extending to six inches above the top of the pipe.

(b) Except for normal thinning and landscaping, existing vegetation must be left intact to prevent soil erosion.

(4) When proposed development does not require Maine Department of Environmental (MDEP) approval under MDEP Chapters 500 and 502, the following applies:

(a) All components of the stormwater management system must be designed to limit peak discharge to predevelopment levels for the two-year and twenty-five-year, twenty-four-hour duration, frequencies, based on the rainfall data for Portsmouth, NH. When the development discharges directly to a major water body, peak discharge may be increased from predevelopment levels, provided downstream drainage structures are suitably sized.

(b) The stormwater management system must be designed to accommodate upstream

drainage, taking into account existing conditions and approved or planned developments not yet built and must include a surplus design capacity factor of 25% for potential increases in upstream runoff.

(c) Downstream drainage requirements must be studied to determine the effect of the proposed development. The storm drainage must not overload existing or future planned storm drainage systems downstream from the development. The developer is responsible for financing any improvements to existing drainage systems required to handle the increased storm flows.

[1] Wherever the storm drainage system is not within the right-of-way of a public street, perpetual easements must be provided to the Town allowing maintenance and improvement to the system.

[2] All sediment and erosion control measures must be designed in accordance with MDEP's "Maine Erosion and Sediment Control BMPs," March 2003.

[3] Catch basins in streets and roads must be installed where necessary and located at the curbline. In parking lots and other areas, catch basins must be located where necessary to ensure proper drainage.

[4] Where soils require a subsurface drainage system, the drains must be installed and maintained separately from the stormwater drainage system.

[5] Where the Board has required a stormwater management and erosion control plan and MDEP approval under Chapters 500 and 502 is not required, said plan must be endorsed by the York County Soil and Water Conservation District.

[6] Drainage easements for existing or proposed drainageways located outside a public way must be maintained and/or improved in accordance with § 16.8.10.F, Post-construction stormwater management.

F. Post-construction stormwater management.

(1) Purposes. This section is enacted to provide for the health, safety and general welfare of the citizens of Kittery through monitoring and enforcement of compliance with post-construction stormwater management plans in order to comply with minimum control measures requirements of the federal Clean Water Act, of federal regulations and of Maine's Small Municipal Separate Storm Sewer Systems General Permit. This section seeks to ensure that post-construction stormwater management plans are followed and stormwater management facilities, including but not limited to any parking areas, catch basins, drainage swales, detention basins and ponds, pipes and related structures that are part of the storm drainage system, are properly maintained and pose no threat to public safety.

(2) Authority. The Maine Department of Environmental Protection, through its dissemination of the General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems, has listed the Town of Kittery, Maine, as having a regulated small municipal separate storm sewer system ("small MS4"); under this general permit, listing as a regulated small MS4 requires enactment of this section as part of the Town's stormwater management program in order to satisfy the minimum control measures required by Part IV D 5 ("Post-construction stormwater management in new development and redevelopment").

(3) Applicability.

(a) In general. This section applies to all new development or redevelopment (any

construction activity on premises already improved that alters stormwater drainage patterns) including one acre or more of disturbed area, or activity with less than one acre of total land area that is part of a subdivision, if the subdivision will ultimately disturb an area equal to or greater than one acre.

(b) Exception. This section does not apply to new development or redevelopment on a lot, tract or parcel where that lot, tract or parcel is part of a subdivision that has received approval of its post-construction stormwater management plan and stormwater management facilities under the Town's subdivision or other zoning, planning or other land use ordinances; said lot, tract or parcel will not require additional review under this section but must comply with the post-construction stormwater management plan for that approved subdivision.

(c) Post-construction stormwater management plan approval.

[1] General requirement. Notwithstanding any ordinance provision to the contrary, and except as provided in § 16.8.10.F(3)(b), Exception, no applicant for a building permit, subdivision approval, site plan approval or other zoning, planning or other land use approval for new development or redevelopment to which this section is applicable will receive such permit or approval for that new development or redevelopment unless the applicant also receives approval for its post-construction stormwater management plan and stormwater management facilities.

[2] Notice of BMP discharge to Town's MS4. At the time of application for a building permit, subdivision approval, site plan approval or other zoning, planning or other land use approval for new development or redevelopment to which this section is applicable, the applicant must notify the Town Planner if its post-construction stormwater management plan includes any BMP(s) that will discharge to the Town's MS4 and must include in this notification a listing of which BMP(s) will so discharge.

[3] Engineering and administrative fees. At the time of application, the applicant must pay an amount to the Town estimated to be sufficient to pay the engineering review costs and administrative costs incurred by the Town in review of the post-construction stormwater management plan. The Town will deduct from this amount the engineering and administrative costs incurred by the Town based upon the hours of engineering review time and prevailing hourly rate for reimbursement of the Town's administrative costs. Any remaining engineering and administrative review costs owed by the applicant must be paid in full by the applicant prior to the issuance of any temporary or permanent certificate of occupancy, and any unused balance remaining at that time will be refunded to the applicant.

(d) Post-construction stormwater management plan compliance.

[1] General requirements. Any person owning, operating, leasing or having control over stormwater management facilities required by a post-construction stormwater management plan approved under the Town's subdivision, site plan or other zoning, planning or other land use ordinances must demonstrate compliance with that plan as follows:

[a] That person or a qualified post-construction stormwater inspector hired by that person must, at least annually, inspect the stormwater management facilities in accordance with all municipal and state inspection, cleaning and maintenance

- 1019 requirements of the approved post-construction stormwater management plan;
- 1020 [b] If the stormwater management facilities require maintenance to function as
- 1021 intended by the approved post-construction stormwater management plan, that
- 1022 person must take corrective action(s) to address the deficiency or deficiencies;
- 1023 and
- 1024 [c] That person or a qualified post-construction stormwater inspector hired by that
- 1025 person must, on or by July 1 of each year, provide a completed and signed
- 1026 certification to the Code Enforcement Officer in a form provided by the Town,
- 1027 certifying that the person has inspected the stormwater management facilities
- 1028 and that they are adequately maintained and functioning as intended by the
- 1029 approved post-construction stormwater management plan or that they require
- 1030 maintenance or repair, describing any required maintenance and any
- 1031 deficiencies found during inspection of the stormwater management facilities,
- 1032 and if the stormwater management facilities require maintenance or repair of
- 1033 deficiencies in order to function as intended by the approved post-construction
- 1034 stormwater management plan, the person must provide a record of the
- 1035 required maintenance or deficiency and corrective action(s) taken.
- 1036 [2] Right of entry. In order to determine compliance with this section and with the post-
- 1037 construction stormwater management plan, the Code Enforcement Officer may enter
- 1038 upon property at reasonable hours with the consent of the owner, occupant or agent to
- 1039 inspect the stormwater management facilities.
- 1040 (e) Annual report. Beginning July 1, 2009, and each year thereafter, the Town must include
- 1041 the following in its annual report to the Maine Department of Environmental Protection:
- 1042 [1] Cumulative number of sites that have stormwater management facilities discharging
- 1043 into its MS4;
- 1044 [2] Summary of the number of sites that have stormwater management facilities
- 1045 discharging into its MS4 that were reported to the Town;
- 1046 [3] Number of sites with documented functioning stormwater management facilities; and
- 1047 [4] Number of sites that require routine maintenance in order to continue the original line
- 1048 and grade, the hydraulic capacity, and the original purpose of improvements; or
- 1049 remedial action to ensure that stormwater management facilities are functioning as
- 1050 intended.
- 1051 (f) Enforcement. It is the duty of the Code Enforcement Officer to enforce the provisions of
- 1052 this section and take appropriate actions to seek the correction of violations. Enforcement of
- 1053 the post-construction stormwater management regulations are conducted in accordance with
- 1054 Chapter 16.2.
- 1055 (4) Storm drainage construction standards.
- 1056 (a) Materials:
- 1057 [1] Reinforced concrete pipe must meet the requirements of ASTM Designation C-76
- 1058 (AASHTO M170). Pipe classes are required to meet the soil and traffic loads with a
- 1059 safety factor of 1.2 on the 0.01-inch crack strength with Class B bedding. Joints are to
- 1060 be of the rubber gasket type, meeting ASTM Designation C443-70, or of an approved
- 1061 performed plastic jointing material such as "Ramnek." Perforated concrete pipe must
- 1062 conform to the requirements of AASHTO M175 for the appropriate diameters.

- [2] Corrugated metal pipe must be bituminous-coated, meeting the requirements of AASHTO Designation M190 Type C for an iron or steel pipe or AASHTO Designation M196 for aluminum alloy pipe for sectional dimensions and type of bituminous coating. Pipe gauge is to be as required to meet the soil and traffic loads with a deflection of not more than 5%.
- [3] SDR-35 plastic pipe installed in conformance with AASHTO bedding requirements.
- [4] Aluminized steel (AASHTO M274) and aluminum pipe (AASHTO M46).
- [5] Catch basins are to be precast concrete truncated cone section construction, meeting the requirements of ASTM Designation C478, or precast concrete manhole block construction, meeting the requirements of ASTM C139, radial type. Castings are to be square cast iron sized for the particular inlet condition with the gratings perpendicular to the curbline. Bases may be cast-in-place 3,000 psi twenty-eight-day strength concrete or may be of precast concrete, placed on a compacted foundation of uniform density. Metal frames and traps must be set in a full mortar bed with tops and are to conform to the requirements of AASHTO M103 for carbon steel casings, AASHTO M105, Class 30 for gray iron castings or AASHTO M183 (ASTM A283, Grade B or better) for structure steel.
- (g) Drain inlet alignment is to be straight in both vertical and horizontal alignment unless specific approval for curvilinear drain is obtained in writing from the Commissioner of Public Works.
- (h) Manholes are to be provided at all changes in vertical or horizontal alignment and at all junctions. On straight runs, manholes are to be placed at a maximum of three-hundred-foot intervals.
- (i) Upon completion, each catch basin or manhole must be cleared of all accumulation of silt, debris or other foreign matter and kept clean until final acceptance.

G. Vehicular Traffic

- (1) Adequacy of Road System. Vehicular access to the site shall be on roads which have adequate capacity to accommodate the additional traffic generated by the development. Intersections on arterial streets within a half (0.5) mile of any entrance road which are functioning at a Level of Service of D or better prior to the development shall function at a minimum at Level of Service D after development. If any such intersection is functioning at a Level of Service E or lower prior to the development, the project shall not reduce the current level of service. This requirement may be waived by the Planning Board if the project is located within a growth area designated in the Town's adopted Comprehensive Plan and the Board determines that the project will not have an unnecessary adverse impact on traffic flow or safety.
- (a) A development not meeting this requirement may be approved if the applicant demonstrates that:
- [1] A public agency has committed funds to construct the improvements necessary to bring the level of access to this standard, or
- [2] The applicant will assume financial responsibility for the improvements necessary to bring the level of service to this standard and will assure the completion of the improvements with a financial guarantee acceptable to the municipality.
- (2) Traffic Impact Study. When required by the Planning Board or Staff Review Committee, a

- 1107 Traffic Impact Study will include the following elements related to the project and
1108 surrounding street network.
- 1109 (a) An executive summary outlining the study findings and recommendations.
- 1110 (b) A physical description of the project site and study area encompassed by the report with a
1111 diagram of the site and its relationship to existing and proposed development sites within the
1112 study area.
- 1113 (c) A complete description of the proposed uses for the project site (in cases where specific
1114 uses have not been identified, the highest traffic generators within the category best fitting
1115 the proposed development must be used to estimate traffic generators).
- 1116 (d) Existing land uses and zone(s) in the vicinity of the site must be described. Any proposals
1117 for the development of vacant parcels or redevelopment of parcels within the study area of
1118 which the municipality makes the applicant aware, must be included in the description.
- 1119 (e) Street geometry and existing traffic control devices on all major streets and intersections
1120 affected by the anticipated traffic generated.
- 1121 (f) Trip generation must be calculated for the proposed project and other proposed new
1122 projects and redevelopment projects within the study area using the most recent data
1123 available from the Institute of Transportation Engineers' (ITE) Trip Generation Guide,
1124 and/or actual field data collected from a comparable trip generator (i.e., comparable in size,
1125 location and setting). This data will be presented in a summary table such that assumptions
1126 on trip generation and rates arrived at by the engineer are fully understandable to the
1127 Planning Board.
- 1128 (g) The anticipated trip distribution of vehicles entering and exiting the proposed site during
1129 the appropriate peak hour(s) must be described and diagrammed.
- 1130 (h) Trip assignment, the anticipated utilization of study area streets by traffic generated by
1131 the proposed project, must be described and diagrammed.
- 1132 (i) Existing traffic conditions in the study area will be identified and analyzed based upon
1133 actual field counts and/or recent available machine counts.
- 1134 (j) Existing traffic conditions in the study area will be described and diagrammed,
1135 specifically AADT, appropriate peak design hour(s), traffic volumes, street and intersection
1136 capacities, and levels of service.
- 1137 (k) Existing safety conditions must be evaluated based upon the traffic accident data
1138 available for the most current three years and described including link and node critical rate
1139 factors (CRF).
- 1140 (l) Future traffic conditions on the street system will be estimated based on existing
1141 volumes, projected traffic growth in the general study area, projected traffic from approved
1142 development, and traffic generated by the proposed project, specifically AADT traffic,
1143 appropriate peak hour(s) traffic volumes, street and intersection capacity, street and
1144 intersection levels of service will be analyzed. When other projects are being proposed
1145 within the impact area of the project, the Planning Board may require these projects to be
1146 incorporated into the analysis.
- 1147 (m) When the analysis of the proposed project's impact on traffic indicates unsatisfactory
1148 CRF, levels of service or operating capacity on study area streets and intersections, a
1149 description of proposed improvements to remedy identified deficiencies must be included.

- 1150 (n) The base data collected and analyzed during the course of the traffic impact study.
- 1151 (o) If a development that requires a traffic impact study is within 500 feet of York or Eliot,
- 1152 Maine, or if the study identifies impacts on segments of Route 1 or Route 236 or on their
- 1153 intersections located in York or Eliot, Maine, the applicant must provide evidence that a
- 1154 copy of the impact study has been given to the impacted municipality's chief administrative
- 1155 officer;
- 1156 (3) Access to the Site. Vehicular access to and from the development shall be safe and
- 1157 convenient.
- 1158 (a) Any driveway or proposed street shall be designed so as to provide the minimum sight
- 1159 distance according to the Maine Department of Transportation standards.
- 1160 (b) Points of access and egress shall be located to avoid hazardous conflicts with existing
- 1161 turning movements and traffic flows.
- 1162 (c) The grade of any proposed drive shall be not more than $\pm 3\%$ for a minimum of fifty (50)
- 1163 feet, from the intersection.
- 1164 (d) The intersection of any access/egress drive or proposed street shall function: (a) at a
- 1165 Level of Service of D following development if the project will generate one thousand
- 1166 (1,000) or more vehicle trips per twenty-four (24) hour period.
- 1167 (e) Where a lot has frontage on two (2) or more streets, the primary access to and egress
- 1168 from the lot shall be provided from the street where there is less potential for traffic
- 1169 congestion and for traffic and pedestrians hazards. Access from other streets may be allowed
- 1170 if it is safe and does not promote shortcutting through the site.
- 1171 (f) Where it is necessary to safeguard against hazards to traffic and pedestrians and/or to
- 1172 avoid traffic congestion, the applicant shall be responsible for providing turning lanes,
- 1173 traffic directional islands, and traffic controls within public streets.
- 1174 (g) Accessways shall be designed and have sufficient capacity to avoid queuing of entering
- 1175 vehicles on any public street.
- 1176 (h) The following criteria shall be used to limit the number of driveways serving a proposed
- 1177 project:
- 1178 [1] No use which generates less than one hundred (100) vehicle trips per day shall have
- 1179 more than one (1) two-way driveway onto a single roadway. Such driveway shall be
- 1180 no greater than forty (40) feet wide.
- 1181 [2] No use which generates one hundred (100) or more vehicle trips per day shall have
- 1182 more than two (2) points of entry from and two (2) points of egress to a single
- 1183 roadway. The combined width of all accessways shall not exceed sixty (60) feet.
- 1184 [3] The Planning Board or Technical Review Committee may limit a development to one
- 1185 (1) point of ingress/egress onto US Route 1, Route 236, and US Route 1 Bypass.
- 1186 (4) Accessway Location and Spacing. Accessways shall meet the following standards:
- 1187 (a) Private entrances/exits shall be located at least fifty (50) feet from the closest
- 1188 unsignalized intersection and one hundred fifty (150) feet from the closest signalized
- 1189 intersection, as measured from the point of tangency for the corner to the point of tangency
- 1190 for the accessway. This requirement may be reduced if the shape of the site does not allow
- 1191 conformance with this standard.
- 1192 (b) Private accessways in or out of a development shall be separated by a minimum of

- seventy-five (75) feet where possible.
- (c) Accessways shall be aligned with accessways on the opposite side of a public street to the greatest extent possible.
- (5) Internal Vehicular Circulation. The layout of the site shall provide for the safe movement of passenger, service, and emergency vehicles through the site.
- (a) Nonresidential projects that will be served by delivery vehicles shall provide a clear route for such vehicles with appropriate geometric design to allow turning and backing for a minimum of SU-30 vehicles.
- [1] If the project is to be served by "tractor-trailer" delivery vehicles, a clear route for such vehicles with appropriate geometric design shall allow for turning and backing for a minimum of WB-50 vehicles.
- (b) Clear routes of access shall be provided and maintained for emergency vehicles to and around buildings and shall be posted with appropriate signage (fire lane - no parking).
- (c) The layout and design of parking areas shall provide for safe and convenient circulation of vehicles throughout the lot.
- (d) All roadways shall be designed as follows:
- [1] To harmonize with the topographic and natural features of the site insofar as practical by minimizing filling, grading, excavation, or other similar activities which result in unstable soil conditions and soil erosion,
- [2] By fitting the development to the natural contour of the land and avoiding substantial areas of excessive grade and tree removal, and by retaining existing vegetation during construction,
- [3] The road network shall provide for vehicular, pedestrian, and cyclist safety, all season emergency access, snow storage, and delivery and collection services.
- (e) Nonresidential projects that include drive-through services shall be designed and have sufficient stacking capacity to avoid the queuing of vehicles on any public street.
- H. Cluster Residential Development
- (1) Purpose.
- To implement adopted Comprehensive Plan policies regarding the Town's natural, scenic, marine, cultural and historic resources, land use patterns and recreation and open space, this article is intended to encourage and allow new concepts and innovative approaches to housing/commercial development and environmental design so development will be a permanent and long-term asset to the Town, while in harmony with the natural features of the land, water and surrounding development. Objectives include:
- (a) Efficient use of the land and water, with small networks of utilities and streets;
- (b) Preservation of open space and creation of recreation areas;
- (c) Maintenance of rural character, preserving farmland, forests and rural viewsapes;
- (d) Preservation of areas with the highest ecological value;
- (e) Location of buildings and structures on those portions of the site most appropriate for development;
- (f) Creation of a network of contiguous open spaces or "greenways" by linking the common open spaces within the site and to open space on adjoining lands wherever possible;

- 1235 (g) Reduction of impacts on water resources by minimizing land disturbance and the creation
1236 of impervious surfaces and stormwater runoff;
- 1237 (h) Preservation of historic, archaeological, and cultural features; and
- 1238 (i) Minimization of residential development impact on the municipality, neighboring
1239 properties and the natural environment.
- 1240 (2) Permitted zones.
- 1241 (a) Cluster residential development is permitted in various zones as indicated in Chapter
1242 16.4, Land Use Zone Regulations.
- 1243 (3) Dimension standards modifications.
- 1244 Notwithstanding other provisions of this title relating to dimensional standards, the
1245 Planning Board, in reviewing and approving proposed residential development under this
1246 article, may modify certain dimensional standards limited to lot area, lot coverage, frontage
1247 and setback requirements to permit flexibility in approaches to site design in accordance
1248 with the standards of this title. The Board may allow subdivision or site development with
1249 the limited modified dimensional standards listed above where the Board determines the
1250 benefit of a cluster development is consistent with this title. Such modifications may not be
1251 construed as granting variances to relieve hardship.
- 1252 (4) Property ownership.
- 1253 Tracts or parcels of land involved in a development proposed under this article must be in
1254 single ownership; or must be the subject of an application filed jointly by the owners of all
1255 properties included; or must have an applicant with vested interest in all property included.
1256 Pursuant to the requirements of this article, mobile home parks or mobile homes on
1257 individual lots are not eligible for cluster residential development.
- 1258 (5) Application procedure.
- 1259 All development reviewed under this article is subject to the application procedures in
1260 §16.8, Subdivision Review, and the following:
- 1261 (a) In addition to the requirements of § 16.8, Subdivision Review, the following are required
1262 at submittal of the sketch plan:
- 1263 [1] Calculations and maps to illustrate:
- 1264 [a] Proposed dimensional modifications and the dimensional standards required in
1265 the zone in which the development will be located;
- 1266 [b] All land area identified in § 16.5.18, Net Residential Acreage;
- 1267 [c] Net residential density; and
- 1268 [d] Open space as defined in § 16.8.10.H(6)(e), of this article.
- 1269 [2] A map showing constraints to development, such as, but not limited to, wetlands,
1270 resource protection zones, shoreland zones, deer wintering areas, side slopes in excess
1271 of 33%, easements, rights-of-way, existing roads, driveway entrances and
1272 intersections, existing structures, and existing utilities.
- 1273 [3] A written statement describing the ways the proposed development furthers the
1274 purpose and objectives of this article, including natural features which will be
1275 preserved or enhanced. Natural features include, but are not limited to, moderate-to-
1276 high-value wildlife and waterfowl habitats, important agricultural soils, moderate-to-
1277 high-yield aquifers and important natural or historic sites worthy of preservation.

- 1278 [4] The location of each of the proposed building envelopes. Only developments having a
1279 total subdivision or site plan with building envelopes will be considered.
- 1280 (b) An applicant with a project that includes proposed public open space must obtain Town
1281 Council acceptance for the public land or easement following preliminary plan approval.
1282 Town Council acceptance is contingent upon receipt of final plan approval by the Planning
1283 Board.
- 1284 (6) Standards.
- 1285 (a) The purpose and intent of this title must be upheld for any reviews conducted under this
1286 article.
- 1287 (b) A cluster residential development must meet all requirements for a subdivision (and site
1288 plan where applicable) and all other applicable federal, state and local ordinances, except as
1289 modified by action of the Planning Board, where authorized.
- 1290 (c) Public or privately shared sewer and water must be provided unless it is demonstrated to
1291 the Planning Board's satisfaction that alternative methods used result in a development that
1292 is compatible with this section 16.8.10.H.
- 1293 (d) Unless a public or shared sewer collection and treatment system is provided, no lot may
1294 be smaller than 20,000 square feet per single-family residence and 8,000 square feet per
1295 bedroom per multifamily residence as outlined in the Maine Minimum Lot Size Law, 12
1296 M.R.S. § 4807-A.
- 1297 (e) Open space requirements.
- 1298 [1] Open space must contain at least 50% of the total area of the property and no less
1299 than 30% of the total net residential acreage, as defined.
- 1300 [2] Total calculated open space must be designated as follows (see open space definitions
1301 in Chapter 16.3):
- 1302 [a] Open space, reserved;
- 1303 [b] Open space, common; and/or
- 1304 [c] Open space, public.
- 1305 [3] The use of any open space may be further limited or controlled by the Planning Board
1306 at the time of final approval, where necessary, to protect adjacent properties or uses.
- 1307 [4] Open space must be deeded in perpetuity for the recreational amenity and
1308 environmental enhancement of the development and be recorded as such. Such deed
1309 provisions may include deed/plan restrictions, private covenants, or arrangements to
1310 preserve the integrity of open spaces and their use as approved by the Planning
1311 Board.
- 1312 [5] Open space must also be for preserving large trees, tree groves, woods, ponds,
1313 streams, glens, rock outcrops, native plant life, and wildlife cover as identified in the
1314 applicant's written statement. In the Mixed-Use Neighborhood (MU-N) Zone, open
1315 space may be both man-made and natural. Man-made open space must be for the
1316 development of recreational areas, pedestrian ways and aesthetics that serve to
1317 interconnect and unify the built and natural environments.
- 1318 [6] Open space should be in a contiguous form of unfragmented land to protect natural
1319 resources, including plant and wildlife habitats.
- 1320 [7] A portion of the open space should be in close proximity to other open spaces used

- 1321 for recreation (e.g., a common green, multipurpose athletic field, gardens, and
1322 playgrounds).
- 1323 (f) In the Mixed-Use Neighborhood (MU-N) Zone, the maximum building height is 40 feet.
1324 If the Planning Board finds that provisions for fire safety are adequate to allow buildings of
1325 greater height, then the Board may allow a building height of up to 60 feet as a part of the
1326 development plan review and approval process.
- 1327 (g) In cluster residential developments, no individual lot or dwelling unit may have direct
1328 vehicular access onto a public road existing at the time of development.
- 1329 (h) Where cluster residential development abuts a body of water, stream, or a significant
1330 wetland, then a usable portion of the shoreline, as well as reasonable access to such body,
1331 stream or wetland, must be a part of the commonly held land.
- 1332 (i) The developer must take into consideration the following points, and illustrate the
1333 treatment of buildings, structures, spaces, paths, roads, service and parking areas,
1334 recreational facilities, and any other features determined by the Planning Board to be a part
1335 of the proposed development.
- 1336 [1] Orientation. Buildings, view corridors and other improvements are to be designed so
1337 scenic vistas and natural features are integrated into the development. Buildings
1338 should be sited to consider natural light and ventilation.
- 1339 [2] Utility installation. All utilities are to be installed underground, wherever possible.
1340 The Planning Board must require the developer to adopt a prudent avoidance
1341 approach when permitting aboveground electrical service installations. Transformer
1342 boxes, pumping stations and meters must be located so as not to be unsightly or
1343 hazardous to the public.
- 1344 [3] Recreation. Facilities must be provided consistent with the development proposal.
1345 Active recreation requiring permanent equipment and/or modification of the site may
1346 not be located within the wetland setback areas or contiguous reserved open space
1347 areas.
- 1348 [4] Buffering. Planting, landscaping, form and siting of buildings and other
1349 improvements, or fencing and screening must be used to integrate the proposed
1350 development with the landscape and the character of any surrounding development.
- 1351 [5] Development setbacks. Setbacks from wetlands and water bodies must demonstrate
1352 compliance to Table 16.5.30. These setbacks must be permanently maintained as "no
1353 cut, no disturb" buffer areas. If the setback areas are not of substantial vegetation to
1354 provide a sufficient buffer, the Planning Board may require additional plantings.
- 1355 (j) The location of subsurface wastewater disposal systems and a reserve area, if required,
1356 must be shown on the plan. The reserve areas must be restricted so as not to be built upon.
1357 The report of a site evaluator, licensed by the State of Maine, must accompany the plan. If
1358 the subsurface disposal system is an engineered system, approval from the Maine
1359 Department of Human Services, Division of Health Engineering, and the Municipal
1360 Plumbing Inspector must be obtained prior to Planning Board approval.
- 1361 (7) Open space dedication and maintenance.
- 1362 (a) Prior to approval of the final plan by the Planning Board, documents for open space must
1363 be submitted to the Town for review by legal counsel. Subsequent to approval, there may be
1364 no further division of the open space; however, tracts or easements dedicated for public

1365 utilities, public access or structures accessory to noncommercial recreation, agriculture or
1366 conservation may be permitted within the open space.

1367 (b) The open space(s) must be shown on the development plan with appropriate notation on
1368 the face thereof to indicate that:

1369 [1] The open space must not be used for future building lots; and

1370 [2] A part or all of the open space may be dedicated for acceptance by the Town.

1371 (c) If any, or all, of the open space is to be reserved for ownership by the residents and/or by
1372 commercial entities, the bylaws of the proposed homeowners' or similar governing
1373 association for commercial owners (in the Mixed-Use Neighborhood Zone) and/or the
1374 recorded covenants must specify maintenance responsibilities and be submitted to the
1375 Planning Board prior to approval. See Subsection A above.

1376 (d) Association responsibilities.

1377 [1] Maintenance. The homeowners' association or similar association for commercial
1378 owners is responsible for the maintenance of open space(s) and other common
1379 facilities unless and until accepted by the Town. The stormwater management system
1380 must be maintained in accordance with § 16.8.10.F, Post-construction stormwater
1381 management. Associations must maintain adequate funds to defray these expenses.
1382 The Planning Board shall require an initial capital fund for associations to be paid by
1383 the developer to cover these expenses.

1384 [2] Inspection. Annually, by June 30, the developer or association must complete and
1385 submit to the Code Enforcement Officer a maintenance compliance report, on a form
1386 prepared by the Code Enforcement Officer, certifying compliance with any open
1387 space use and protection requirements. Said report must be completed by a Maine
1388 licensed civil engineer or certified soil scientist.

1389 (e) Transition of responsibility. The developer must maintain control of such open space(s)
1390 and be responsible for maintenance until development, sufficient to support any and all
1391 associations, residential or commercial, has taken place. Responsibility and authority must
1392 be clearly defined and described in the recorded covenants, and such information must be
1393 distributed to any and all associations in a timely manner so the transition of responsibilities
1394 is seamless.

1395 (8) Predevelopment requirements.

1396 Prior to the beginning of site work, the applicant must file with the Town Planning
1397 Department all required performance guarantees and inspection escrows in forms
1398 acceptable to the Town Manager in accordance with § 16.8.11.F.

1399 I. Utilities

1400 (1) Approval.

1401 The size, type and location of public utilities, such as streetlights, electricity, telephone,
1402 cable television, natural gas lines, fire hydrants, water and sewer lines, etc., must be
1403 approved by the Board and installed in accordance with accepted engineering practice.

1404 (2) Underground installation.

1405 Utilities, where feasible, are to be installed underground. The Board must require the
1406 developer to adopt a prudent avoidance approach when aboveground electrical installations
1407 are approved.

1408 J. Subdivision Noise Pollution Buffer

- 1409 (1) Green strip.
1410 Subdivision design must minimize the possibility of noise pollution either from within or
1411 without the development (from highway or industrial sources) by providing and
1412 maintaining a green strip at least 20 feet wide between the abutting properties that are so
1413 endangered.
- 1414 K. Prevention of erosion
- 1415 (1) No person may perform any act or use the land in a manner which would cause substantial
1416 or avoidable erosion, create a nuisance, or alter existing patterns of natural water flow in
1417 the Town. This does not affect any extractive operations complying with the standards of
1418 performance specified elsewhere in this title.
- 1419 (a) When an excavation contractor, as defined in § 16.3, performs an activity that requires or
1420 results in more than one cubic yard of soil disturbance within the Shoreland or Resource
1421 Protection Overlay Zones, there must be a person responsible for management of erosion
1422 and sedimentation control practices on site, and that person must be certified in erosion
1423 control practices by the Maine Department of Environmental Protection. This person must
1424 be present at the site each day earthmoving activity occurs for a duration that is sufficient to
1425 ensure that proper erosion and sedimentation control practices are followed. This is required
1426 until erosion and sedimentation control measures have been installed, which will either stay
1427 in place permanently or stay in place until the area is sufficiently covered with vegetation
1428 necessary to prevent soil erosion. The name and certification number of the person who will
1429 oversee the activity causing or resulting in soil disturbance must be included on the permit
1430 application. Excavation contractors will have one year from the date of the adoption of this
1431 subsection to comply with certification requirements.
- 1432 (b) The above requirement of § 16.8.10.K(1)(a) does not apply to a property owner
1433 performing work themselves, or a person or firm engaged in agriculture or timber harvesting
1434 when best management practices for erosion and sedimentation control are used.
- 1435 (c) The above requirement of § 16.8.10.K(1)(a) only applies to regulated activities requiring
1436 local, state or federal permits and/or Planning Board approval.
- 1437 (2) All development must generally comply with the provisions of the "Environmental Quality
1438 Handbook, Erosion and Sediment Control," published by the Maine Soil and Water
1439 Conservation Commission.
- 1440 (a) The developer must:
- 1441 [1] Select a site with the right soil properties, including natural drainage and topography,
1442 for the intended use;
- 1443 [2] Utilize for open space uses those areas with soil unsuitable for construction;
- 1444 [3] Preserve trees and other vegetation wherever possible;
- 1445 [4] Hold lot grading to a minimum by fitting the development to the natural contour of
1446 the land; avoid substantial areas of excessive grade;
- 1447 [5] Spread jute matting, straw or other suitable material during construction in critical
1448 areas subject to erosion;
- 1449 [6] Construct sediment basins to trap sediment from runoff waters during development;
1450 expose as small an area of subsoil as possible at any one time during development
1451 and for as short a period as possible;

[7] Provide for disposing of increased runoff caused by changed land formation, paving and construction, and for avoiding sedimentation of runoff channels on or off the site;

[8] Plant permanent and, where applicable, indigenous, vegetation and install structures as soon as possible for the purpose of soil stabilization and revegetation;

(b) All logging or woodlot roads must be located, constructed and maintained in conformance with the erosion prevention provisions of "Permanent Logging Roads for Better Woodlot Management," published by the United States Department of Agriculture.

(3) Where the Board has required a stormwater management and erosion control plan, said plan must be endorsed by the York County Soil and Water Conservation District or found satisfactory by the Town's Engineering Peer Reviewer.

(4) All activities which involve filling, grading, excavation or other similar activities that potentially may result in unstable soil conditions, and which require a permit, must be made known in a written soil erosion and sedimentation control plan in accordance with the "Maine Erosion and Sediment Control Practices Field Guide for Contractors," 2015, and as amended. The plan must be submitted to the permitting authority for approval and must include, where applicable, provisions for:

(a) Mulching and revegetation of disturbed soil;

(b) Temporary runoff control features, such as straw bales, silt fencing, filter socks or diversion ditches;

(c) Permanent stabilization structures, such as retaining walls or riprap.

(5) To create the least potential for erosion, development must be designed to fit with the topography and soil of the site. Areas of steep slopes where high cuts and fills may be required are to be avoided wherever possible, and natural contours must be followed as closely as possible.

(6) Erosion and sedimentation control measures apply to all aspects of the proposed project involving land disturbance and must be in operation during all stages of the activity. The amount of exposed soil at every phase of construction must be minimized to reduce the potential for erosion.

(7) Any exposed ground area must be temporarily or permanently stabilized in accordance with the "Maine Erosion and Sediment Control Practices Field Guide for Contractors," 2015, and as amended. All erosion control measures that are no longer necessary as determined by the CEO or Shoreland Resource Officer must be removed at the owner's expense.

(8) Natural and man-made drainageways and drainage outlets must be protected from erosion from water flowing through them. Drainageways must be designed and constructed in order to carry water from a twenty-five-year storm or greater and be stabilized with vegetation or lined with riprap.

L. Soil suitability

(1) The requirements and standards of the State of Maine Department of Environmental Protection, Department of Health and Welfare, the latest edition of the State Plumbing Code and this title must be met.

(2) All land uses must be located on soils upon which the proposed uses or structures can be established or maintained without causing adverse environmental effects, including, but not limited to, severe erosion, mass soil movement, improper drainage, and water pollution to

- 1495 surface water and groundwater, whether during or after construction.
- 1496 (3) Any proposed development requires a soil report based on information from the Maine
1497 Natural Resources Conservation Service (NRCS). Where subsurface wastewater disposal is
1498 required and the Soil Survey for York County or information from the Maine NRCS shows
1499 soils with severe restrictions for development, a Class A (high-intensity) soil survey must
1500 be provided by a soil scientist certified in the State of Maine. The survey must be based on
1501 the Maine Association of Professional Soil Scientists Standards for Soil Survey, revised
1502 3/2009, or subsequent revision. In addition to evaluating soil properties, the soil scientist
1503 shall analyze and document characteristics of surrounding land and water areas, maximum
1504 groundwater elevation, presence of ledge, drainage conditions and any other data deemed
1505 appropriate by the soil scientist or required by the Planning Board. The soil scientist shall
1506 include recommendations for the proposed use to counteract soil limitations where any
1507 exist. A Class A soil survey must include a written soil narrative report accompanied by a
1508 soil map that depicts soil delineations and symbols identified in the report. The soil map
1509 must be prepared at the same scale as that of the development plan, with wetlands and
1510 floodplain depicted on both.
- 1511 (4) Cluster residential, or mixed-use development and similar intensive land uses require a
1512 Class A (high-intensity) soil survey by a Maine-certified soil scientist.
- 1513 (5) Where non-clustered development is limited in scale and intensity, the developer may
1514 request the Class A (high-intensity) soil survey required by § 16.8.10.L(3) above be waived
1515 by the Planning Board. The Board may grant said waiver only after consideration by the
1516 Town's Peer Review Engineer of the developer's explanation as to why a Class A soil
1517 survey is not warranted. In the event a Class A soil survey is not required, the site's soil
1518 suitability must be sufficiently assessed for compliance with this title.
- 1519 M. Water quality and wastewater pollution.
- 1520 (1) No activity is allowed to deposit on or into the ground or discharge to any river, stream or
1521 brook, pond, or wetland any pollutant that, by itself or in combination with other activities
1522 or substances, will impair designated uses or the water classification of the water body.
- 1523 (2) Wastewater to be discharged into Kittery Sewer Department sewers, should they be
1524 available, must be in such quantities and/or of such quality as to be compatible with
1525 standards established by the municipality or the Sewer Department.
- 1526 (3) To meet those standards, the municipality or Sewer Department may require that such
1527 wastes undergo pretreatment or full treatment at the site in order to render them acceptable
1528 for the treatment processes.
- 1529 (4) The disposal of wastewater by means other than a public system must comply with the laws
1530 of the State of Maine and the Town concerning water pollution. Where a public sanitary
1531 sewer system is located within 200 feet of the property line as measured along a public
1532 way, the Town requires individual entrance into said sewer.
- 1533 (5) Discharge of sanitary wastes to any water body is subject to the issuance of Maine State
1534 Department of Environmental Protection licenses, but no such off-site discharge will be
1535 allowed unless same is buried or not visible to a point below normal low water and is
1536 secured against damage and uncovering by the tides, erosion or other foreseeable action.
- 1537 N. Floodplain areas.
- 1538 (1) Land along rivers, streams and ponds which is subject to flooding through storm or

seasonal action, called floodplain areas, may be used for woodland, grassland, agricultural or outdoor recreational use. The Code Enforcement Officer shall maintain a map showing the latest updated federal and state information of the known floodplain areas, and no building shall be constructed therein when there are undue flooding hazards, unless it can meet all requirements of § 16.5.11, Floodplain Management, relating to flood hazard permit and review procedure, of this title. Floodplain areas shall be considered as those areas within the one-hundred-year frequency floodplain, as identified by an authorized federal or state agency, or where such identification is not available, are located on floodplain soils identified as described in the York County Soil Survey to comprise the following soil types: Alluvial-Ondawa fsl; Podunk fsl; Rumney fsl; Saco sl.

O. Retention of Open Spaces and Natural or Historic Features

(1) Tree clearing.

Proposed development plans must, by notes on the final plan and deed restrictions, limit the clearing of trees to those areas designated on the plans.

(2) Clearing or removal of vegetation for uses other than timber harvesting in Resource Protection or Shoreland Overlay Zone.

(a) In a Resource Protection or Shoreland Overlay Zone, cutting of vegetation is prohibited within the strip of land extending 100 feet, horizontal distance, inland from the normal high-water line, except to remove safety hazards. Elsewhere in a Resource Protection or Shoreland Overlay Zone, the cutting or removal of vegetation is limited to that which is necessary for uses expressly authorized in the Resource Protection or Shoreland Overlay Zone.

(b) Except in areas as described in § 16.8.10.O(1) and § 16.8.10.O(2).a, above and 100 feet, horizontal distance, from any other water body, tributary stream or the upland edge of a wetland, a buffer strip of vegetation must be preserved as follows:

[1] Clearance of an opening greater than 250 square feet in the forest canopy, or other existing woody vegetation if a forested canopy is not present, as measured from the outer limits of the tree or shrub crown, is prohibited. However, a footpath not to exceed six feet in width as measured between tree trunks and/or shrub stems is allowed, provided that a cleared line of sight to the water through the buffer strip is not created.

[2] Selective cutting of trees within the buffer strip is allowed, provided a well-distributed stand of trees and other natural vegetation is maintained. Adjacent to water bodies, tributary streams and wetlands, a "well-distributed stand of trees" is defined as maintaining a minimum rating score of 16 per twenty-five-foot-by-fifty-foot rectangular area.

Diameter of Tree at 4 1/2 feet Above Ground Level (inches)	Points
2 to < 4	1

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Diameter of Tree at 4 1/2 feet Above Ground Level (inches)	Points
4 to < 8	2
8 to < 12	4
12 or greater	8

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[a] The following governs in applying this point system:

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[i] The twenty-five-foot-by-fifty-foot rectangular plots must be established where the landowner or lessee proposes clearing within the required buffer;

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[ii] Each successive plot must be adjacent to, but not overlap a previous plot;

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[iii] Any plot not containing the required points must have no vegetation removed except as otherwise allowed by this title;

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[iv] Any plot containing the required points may have vegetation removed down to the minimum points required or as otherwise allowed by this title; and

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[v] Where conditions permit, no more than 50% of the points on any twenty-five-foot-by-fifty-foot rectangular area may consist of trees greater than 12 inches in diameter.

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[3] For the purposes of § 16.8.10.O(2)(b)[2], "other natural vegetation" is defined as retaining existing vegetation under three feet in height and other ground cover and retaining at least five saplings less than two inches in diameter at 4 1/2 feet above ground level for each twenty-five-foot-by-fifty-foot rectangle area. If five saplings do not exist, no woody stems less than two inches in diameter may be removed until five saplings have been recruited into the plot.

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[4] Notwithstanding the above provisions, no more than 40% of the total volume of trees four inches or more in diameter, measured at 4 1/2 feet above ground level, may be removed in any ten-year period.

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[a] To protect water quality and wildlife habitat, existing vegetation under three feet in height and other ground cover, including leaf litter and the forest duff layer, must remain uncut, uncovered or undisturbed, except to provide for a footpath or other permitted uses as described in § 16.8.10.O.(2)[b] above.

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[b] Pruning of tree branches on the bottom 1/3 of the tree is allowed.

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[c] To maintain a buffer strip of vegetation, when the removal of storm-damaged, diseased, unsafe or dead trees results in the creation of cleared openings, these openings must be replanted with tree species that are suitable to Kittery's growing conditions unless existing new tree growth is present. See Design Handbook

Kittery Maine, approved by the Kittery Planning Board, August 11, 2005, pages 13 and 14, for the listing of approved plant materials.

1607

1608

[d] Article II of this chapter does not apply to those portions of public recreational facilities adjacent to public swimming areas as long as cleared areas are limited to

- 1609 the minimum area necessary.
- 1610 (c) At distances greater than 100 feet, horizontal distance, from the normal high-water line of
1611 any other water body, tributary stream, or the upland edge of a coastal wetland, and 100 feet,
1612 horizontal distance, from the normal high-water line of any other water body, tributary
1613 stream, or the upland edge of a wetland, there will be allowed on any lot, in any ten-year
1614 period, selective cutting of not more than 40% of the volume of trees four inches or more in
1615 diameter, measured 4 1/2 feet above ground level. Tree removal in conjunction with the
1616 development of permitted uses must be included in the forty-percent calculation. For the
1617 purposes of these standards, volume may be considered to be equivalent to basal area.
- 1618 (d) It is not permissible to clear openings for any purpose, including but not limited to
1619 principal and accessory structures, driveways, lawns and sewage disposal areas, exceeding
1620 in the aggregate 25% of the lot area within the Resource Protection or Shoreland Overlay
1621 Zone or 10,000 square feet, whichever is greater, including land previously cleared. This
1622 provision does not apply to the Commercial Fisheries/Maritime Activities Zones.
- 1623 (e) Legally existing nonconforming cleared openings may be maintained, but must not be
1624 enlarged, except as allowed by this title.
- 1625 (f) Fields and other cleared openings which have reverted to primarily shrubs, trees or other
1626 woody vegetation will be regulated under the provisions of this chapter.
- 1627 (3) Land dedication.
- 1628 Reserved land acceptable to the Planning Board and applicant may be gifted to the
1629 municipality as a condition of approval, only when Council has agreed to the gifting.
- 1630 (4) Landscape plan for preservation of natural and historic features.
- 1631 (a) The applicant is required to submit a proposed development design plan(s) that includes a
1632 landscape plan showing:
- 1633 [1] Preservation of existing trees 10 inches or more caliper at breast height;
1634 [2] Replacement of trees and vegetation;
1635 [3] Graded contours;
1636 [4] Streams, wetlands and water bodies; and
1637 [5] Preservation of scenic, historic or environmentally significant areas.
- 1638 (b) Cutting of trees on the northerly borders of lots should be avoided as far as possible to
1639 provide a natural wind buffer.
- 1640 (c) Unless the applicant can demonstrate it is impracticable, street and lot layout must be
1641 adapted to the topography. Extensive grading and filling must be avoided as much as
1642 possible.
- 1643 (5) Archaeological or historic sites.
- 1644 (a) When the proposed development contains any identified archaeological or historic sites
1645 or any areas identified by the Maine Critical Areas Program as rare and irreplaceable natural
1646 areas, these areas must be included in a development plan's open space, and suitably
1647 protected by appropriate covenants and management plans.
- 1648 (b) Any proposed land use activity involving structural development or soil disturbance on
1649 or adjacent to sites listed on or eligible to be listed on the National Register of Historic
1650 Places must be submitted by the applicant to the Maine Historic Preservation
1651 Commission for review and comment at least 20 days prior to action being taken by the

1652 Town Planner and/or the Planning Board. The development Review Authority will
1653 consider comments received from the Commission prior to rendering a decision on the
1654 application.

1655 (c) In Shoreland, Resource Protection or Commercial Fisheries/Maritime Uses Overlay
1656 Zones, a permit is not required for an archaeological excavation, provided the excavation
1657 is conducted by an archaeologist listed on the State Historic Preservation Officer's Level
1658 1 or Level 2 approved list, and unreasonable erosion and sedimentation is prevented by
1659 means of adequate and timely temporary and permanent stabilization measures.

1660 P. Technical and Financial Capacity

1661 (1) Financial Capacity.

1662 (a) The applicant shall have adequate financial resources to construct the proposed
1663 improvements and meet the criteria of the standards of these regulations. In making its
1664 determination the Planning Board shall consider all documentation submitted by the
1665 developer relative to their financial capacity to construct, operate, and maintain all
1666 aspects of the development. The Board shall also consider the proposed time frame for
1667 construction and the effects of inflation.

1668 (2) Technical Ability

1669 (a) The applicant shall retain qualified contractors and consultants to supervise, construct and
1670 inspect the required improvements in the proposed subdivision.

1671 (b) In determining the applicant's technical ability the Board shall consider the applicant's
1672 previous experience, the experience and training of the applicant's consultants and
1673 contractors, and the existence of violations of previous approvals granted to the
1674 applicant.

1675 16.8.11 Post-Approval

1676 A. Approved final plan.

1677 (1) No subdivision plan shall be released for recording at the Registry of Deeds until the
1678 required performance guarantee has been posted. If an approved plan is not recorded in the
1679 Registry of Deeds within one (1) year of the original approval, it shall become null and
1680 void. The Planning Board may grant an extension as particular circumstances dictate,
1681 which may not exceed an additional ninety-day period. Where applicable, the stormwater
1682 and erosion control maintenance agreement that must be included in the document of
1683 covenants, homeowners' documents and/or as riders to the individual deed must be
1684 recorded with the York County Registry of Deeds.

1685 B. Subdivision plan filing, recording. Prior to recording a subdivision plan in the York County
1686 Registry of Deeds, a subdivider must have acquired Planning Board approval in accordance
1687 with this title.

1688 C. Subdivision land conveyance.

1689 (1) No person, firm, corporation, or other legal entity may convey, offer, or agree to convey
1690 any land in a subdivision which has not been approved by the Planning Board, recorded in
1691 the York County Registry of Deeds and shown on the final plan as a separate lot.

1692 (2) Subdivision frontage street completion. No lot in a subdivision may be sold, leased or

1693 otherwise conveyed before the street upon which such lot has frontage is completed to
1694 rough grade standard up to and including the entire frontage of the lot. Prior to the issuance
1695 of certificates of occupancy by the CEO, the street from which the unit is accessed must be
1696 completed in accordance with § 16.5.27, Streets and Pedestrian ways/Sidewalks Site
1697 Design Standards.

1698 D. Approved plan expiration.

1699 (1) A subdivision plan's approval will expire if work has not commenced within one year from
1700 the Planning Board date of approval. Where work has commenced within one year of such
1701 approval, the approval will expire unless work is complete within three years of the original
1702 date of Planning Board approval.

1703 (2) Prior to expiration, the Planning Board may, on a case-by-case basis, grant extensions to an
1704 approved plan expiration date upon written request by the developer for an inclusive period
1705 from the original approval date, not to exceed five years for a subdivision plan and three
1706 years for all other development plans.

1707 (3) When a plan's approval expires, the applicant may reapply subject to the Town Code
1708 current at the time of reapplication.

1709 E. Approval not acceptance of property. The approval by the Planning Board of a plan, a
1710 master site development plan or any other subsequent development plan does not
1711 constitute, nor is it evidence of, any acceptance by the municipality of any street, easement
1712 or other open space shown on the plan. When a park, playground or other recreation area is
1713 shown on the plan, approval of the plan does not constitute an acceptance by the
1714 municipality of such areas. The Planning Board must require the plan to be endorsed with
1715 appropriate notes to this effect. The Planning Board may also require the filing of a written
1716 agreement between the applicant and the municipal officials covering future deed and title,
1717 dedication and provision for the cost of grading, development, equipment and maintenance
1718 of any such recreation area.

1719 F. Performance Guarantees

1720 (1) Types of Guarantees. The applicant shall provide one of the following performance
1721 guarantees for an amount adequate to cover 100% of the total construction costs of all
1722 required improvements, plus an additional 10% as contingency. A performance guarantee
1723 shall not expire between October 31 and April 15 the following year.

1724 (a) Certified check payable to the municipality or a savings account or certificate of deposit
1725 naming the municipality as owner, for the establishment of an escrow account;

1726 [1] For any account opened by the applicant, the Town of Kittery shall be named as
1727 owner or co-owner, and the consent of the Town shall be required for a withdrawal.

1728 (b) An irrevocable letter of credit, from a financial institution approved by the Town
1729 Manager, establishing funding for the construction of the subdivision, from which the
1730 municipality may draw if construction is inadequate.

1731 [1] The letter of credit shall use the template established by the Town of Kittery.

1732 (2) Contents of guarantee. The performance guarantee shall contain the following:

1733 (a) Construction schedule;

1734 (b) Itemized construction cost estimates for roadways, curbing, esplanades, sidewalks,

- 1735 sanitary sewerage systems, storm drainage systems, utilities, street lighting, tree
1736 planting, erosion and sedimentation control measures, and other public improvements
1737 for each major phase of construction, taking into account inflation;
- 1738 (c) Provisions for inspections of each phase of construction;
- 1739 (d) Provisions for the release of part or all of the performance guarantee to the developer;
1740 and
- 1741 (e) A date after which the applicant will be in default and the municipality shall have access
1742 to the funds to finish construction.
- 1743 (3) Release of Guarantee. Prior to the release of any part of the performance guarantee, the
1744 Town Manager shall determine to his/her satisfaction, in part based upon the report of the
1745 Town's Engineer or other qualified individual retained by the municipality and any other
1746 agencies and departments who may be involved, that the proposed improvements meet or
1747 exceed the design and construction requirements for that portion of phase of the subdivision
1748 for which the release is requested.
- 1749 (a) Performance guarantees may be reduced periodically, but in no event more than one (1)
1750 time per month. In no case shall the performance guarantee be reduced by less than ten
1751 thousand dollars (\$10,000) at one time or in any line item where improvements remain
1752 to be completed.
- 1753 (b) No performance guarantee shall be reduced to less than the ten (10) percent contingency
1754 until all work is complete.
- 1755 (c) The Town shall retain the 10% performance guarantee contingency for a period of one
1756 (1) year from the date of final paving for any street to be offered for public acceptance.
1757 The guarantee shall ensure the workmanship and the durability of all materials used in
1758 the construction of public improvements within the right-of-way that may become
1759 defective within that one (1) year period, as determined by the Director of Public Works.
- 1760 (4) Default. If upon investigation, the town's consulting engineer or other qualified individual
1761 retained by the Town finds that any of the required improvements have not been
1762 constructed in general conformance with the plans and specifications filed as part of the
1763 application, he or she shall so report in writing to the Code Enforcement Officer, the Town
1764 Manager, the Planner and the applicant or builder. The Town Manager, or his or her
1765 designee, shall take any steps necessary to preserve the municipalities rights.
- 1766 G. Inspection of required improvements.
- 1767 (1) Prior to the commencement of any work associated with development approved in
1768 accordance with this title, the developer or duly authorized representative must provide a
1769 schedule of expected construction activities by phase to the inspecting official, which may
1770 be the Code Enforcement Officer (CEO) or their representative or, when applicable, the
1771 Town's Peer Review Engineer, and coordinate a preconstruction meeting. Attendance at
1772 said meeting must at a minimum include authorized representation from the Town, the
1773 developer and their general contractor. Meeting minutes must be prepared by the Town's
1774 representative and distributed to all attendees and the Town Planner.
- 1775 (2) The developer or general contractor shall coordinate inspections with the inspecting official
1776 and provide written notice at least seven days prior to commencing each major phase of
1777 construction as outlined in the construction schedule. When all phases of work are
1778 complete, the general contractor shall request a final inspection from the inspecting official,

- 1779 who shall prepare a punch list of any outstanding items to be completed, within seven days
1780 of the final inspection. Once all outstanding items have been completed, the developer or
1781 the general contractor shall coordinate a final walk-through where the inspecting official
1782 determines if the construction has been completed in accordance with the approved plans.
1783 The inspecting official shall provide, in writing, to the developer or the general contractor
1784 within seven days of the final walk-through what, if any, construction is not complete or
1785 confirm that the development is complete and has been constructed according to the
1786 approved plans.
- 1787 (3) If the inspecting official finds, upon inspection of the required improvements, that any of
1788 the required improvements have not been constructed in accordance with the approved
1789 plans and specifications, the inspecting official must report, in writing, to the Town
1790 Planner, the developer or duly authorized representative of the developer, and, when
1791 applicable, the CEO. The Town Planner shall inform the Planning Board of any issues
1792 identified by the inspections. The Town shall take any steps necessary to preserve the
1793 municipality's rights.
- 1794 (4) Where applicable and in advance of any construction, the developer must deposit sufficient
1795 funds for said inspections in an applicant's service account per Chapter 3.3. The amount is
1796 based on a scope of services and fee prepared by the Town's Peer Review Engineer after
1797 review of the developer's construction estimate prepared by a professional engineer or a
1798 qualified contractor.
- 1799 (5) Stormwater and erosion control inspection.
- 1800 (a) During October to November of each year in which construction for grading, paving and
1801 landscaping occurs on a development site, the Town will, at the expense of the developer,
1802 cause the site to be inspected by a qualified individual. By December 1, the inspector must
1803 submit a site report to the Town Planner that describes the inspection findings and indicates
1804 whether stormwater and erosion control measures (both temporary and permanent) are in
1805 place and properly installed. The report must include a discussion and recommendation on
1806 any and all problem areas encountered.
- 1807 (b) After major construction activities have been completed on a development site, the
1808 developer must, on or by July 1 of each year, provide a completed and signed certification to
1809 the Code Enforcement Officer per § 16.8.10.F, Post-construction stormwater management.
- 1810 (c) Erosion control debris. The owner or occupant of any land in any zone must not allow
1811 erosion control materials, such as plastic erosion control fences and related stakes or other
1812 materials, to remain on the site but must remove the same within six months of the date such
1813 erosion control materials were installed, or the date when no longer required, whichever is
1814 later. When a violation is discovered, the Code Enforcement Officer will order compliance
1815 by written notice of violation to the owner of any land in any zone requesting removal of
1816 such violation within 30 days of the date of written notice. An extension of time to correct
1817 may be made by the Code Enforcement Officer for good and sufficient reason.
- 1818 H. Plan revisions after approval. No changes, erasures, modifications or revisions may be made
1819 to any Planning Board approved final plan, unless in accordance with the Planner's and
1820 CEO's powers and duties as found in Chapter 16.2, or unless the plan has been resubmitted
1821 and the Planning Board specifically approves such modifications. In the event a final plan is
1822 recorded without complying with this requirement, the same is null and void, and the
1823 Planning Board must institute proceedings to have the plan stricken from Town records and

1824 the York County Registry of Deeds.

1825 (1) Field changes.

1826 (a) If at any time before or during the construction of the required improvements it appears
1827 to be necessary or desirable to modify the required improvements, the Code Enforcement
1828 Officer and Town Planner are authorized to approve minor plan amendments due to
1829 unforeseen field circumstances, such as encountering hidden outcrops of bedrock, natural
1830 springs, etc. The Code Enforcement Officer and Town Planner must issue any approval
1831 under this subsection in writing and transmit a copy of the approval to the Planning Board.
1832 Revised plans must be filed with the Town and recorded, where appropriate. The developer
1833 must provide the revised plan to the Town Planner, and it shall be recorded in the York
1834 County Register of Deeds when applicable.

1835 (2) Modifications to approved plan.

1836 (a) Minor modifications. Modifications to a Planning Board approved plan that do not
1837 require Planning Board review per § 16.8.11.H may be approved by the Code Enforcement
1838 Officer and Town Planner. Such approvals must be issued in writing to the developer with a
1839 copy to the Planning Board. The developer must provide the revised plan to the Town
1840 Planner, and it shall be recorded in the York County Register of Deeds, when applicable.

1841 (b) Major modifications. Major modifications (e.g., relocations of principal structures, rights-
1842 of-way or property boundaries; changes of grade by more than 1%) require Planning Board
1843 approval.

1844 I. Maintenance of improvements. The developer, or owner, is required to maintain all
1845 improvements and provide for snow removal on streets and pedestrian ways/sidewalks
1846 unless and until the improvement has been accepted by the Town Council.

1847 J. Acceptance of Streets and Ways

1848 (1) Conditions. A street or way constructed on private lands by the owner(s) thereof and not
1849 dedicated for public travel prior to the enactment of this title must be laid out and accepted
1850 as a public street or way by the Town Council only upon the following conditions:

1851 (a) The owners must give the Town a deed to the property within the boundaries of the street
1852 at the time of acceptance by the Town.

1853 (b) A plan of said street or way must be recorded in the York County Registry of Deeds at
1854 the time of its acceptance.

1855 (c) A petition for laying out and acceptance of said street or way must be submitted to the
1856 Town Council upon a form prescribed by the Commissioner of Public Works. Said petition
1857 must be accompanied by a plan, profile and cross section of said street as follows:

1858 [1] A plan drawn, when practical, to a scale of 40 feet to one inch and to be on one or
1859 more sheets of paper not exceeding 24 inches by 36 inches in size. Said plan must
1860 show the North point; the location and ownership of all adjoining lots of land; rights-
1861 of-way and easements; streetlights and electric lines; boundary monuments;
1862 waterways, topography and natural drainage courses with contour at not greater than
1863 two-foot intervals; all angles, bearings and radii necessary for the plotting of said
1864 street and lots and their reproduction on the ground; the distance to the nearest
1865 established street or way, together with the stations of their side lines;

1866 [2] A profile of said street or way drawn to a horizontal scale of 40 feet to one inch and a

- 1867 vertical scale of four feet to one inch. Said profile must show the profile of the side
1868 lines and center line of said street or way and the proposed grades thereof. Any
1869 buildings abutting the street or way must be shown on said profile;
- 1870 [3] A cross section of said street or way drawn to a horizontal scale of five feet to one
1871 inch and a vertical scale of one foot to one inch; and
- 1872 [4] The location and size of water and sewer mains and surface water drainage systems,
1873 as installed.
- 1874 (2) Such street or way must have been previously constructed in accordance with the standards
1875 and criteria established in § 16.5, General Performance Standards and § 16.8, Subdivision
1876 Review.
- 1877 (3) Acceptance of streets and ways required in public interest.
- 1878 (a) Notwithstanding the provisions of any other section hereof, the Town may at any time lay
1879 out and accept any street or way in the Town as a public street or way of said Town
1880 whenever the general public interest so requires. The cost of said street or way may be borne
1881 by the Town.
- 1882 (4) Easements.
- 1883 (a) The Board may require easements for sewerage, other utilities, drainage and stream
1884 protection. In general, easements may not be less than 20 feet in width. Wider easements
1885 may be required.
- 1886 (5) No street or way to be accepted until after report.
- 1887 (a) Street acceptance as Town way. Upon completion of construction of any street/road
1888 intended for proposal for acceptance as a Town way, a written certification that such way
1889 meets or exceeds the design and construction standards of this title, signed by a professional
1890 engineer registered by the State of Maine, prepared at the developer's expense, must be
1891 submitted to the Board. If underground utilities are laid in such way, the developer must also
1892 provide written certification from the servicing utility(ies), that such installation was in a
1893 manner acceptable to the utility. The Board is to review the proposal and forward a
1894 recommendation to the Town Council regarding acceptance.
- 1895 (b) No street or way may be laid out and accepted by the Town Council until the Planning
1896 Board and the Public Works Commissioner have made a careful investigation thereof and
1897 reported to the Town Council their recommendations in writing with respect thereto.
- 1898 K. Recordkeeping in Shoreland and Resource Protection Overlay Zones. The Code
1899 Enforcement Officer is to keep a complete record of all essential transactions of
1900 development in the Shoreland and Resource Protection Overlay Zones, including
1901 applications submitted, permits granted or denied, variances granted or denied, revocation
1902 actions, revocation of permits, appeals, court actions, violations investigated, violations
1903 found, and fees collected. On a biennial basis, a summary of this record must be submitted
1904 to the Director of the Bureau of Land and Water Quality within the Department of
1905 Environmental Protection.
- 1906 L. Subdivision lot monumentation prior to sale. Prior to the sale of any approved subdivision
1907 lot, the subdivider must provide the Planner with a letter from a registered land surveyor,
1908 stating all monumentation shown on the plan has been installed.
- 1909 M. Utility service. Prior to the installation of any public utility to a site, the developer must

- 1910 have obtained all necessary approvals from the appropriate local, state or federal authority.
- 1911 N. Grading/construction final plan required. Grading or construction of roads, grading of land
1912 or lots, or construction of buildings which require a final plan as provided in this title, until
1913 such time as the final plan has been duly prepared, submitted, reviewed, approved and
1914 endorsed as provided in this title, is prohibited until the original copy of the final plan so
1915 approved and endorsed has been duly recorded in the York County Registry of Deeds.
- 1916 O. Nonstormwater discharge. No person, except where exempted in § 16.5.19, Nonstormwater
1917 Discharge may create, initiate, originate, or maintain a nonstormwater discharge to the
1918 storm drainage system. Such nonstormwater discharges are prohibited notwithstanding the
1919 fact that the municipality may have approved the connections, drains or conveyances by
1920 which a person discharges unallowable nonstormwater discharges to the storm drainage
1921 system.
- 1922 P. Nuisances. Any violation of this title is deemed to be a nuisance.
- 1923 Q. Erosion control debris. The owner or occupant of any land in any zone must not allow
1924 erosion control materials, such as plastic erosion control fences and related stakes or other
1925 materials, to remain on the site but must remove the same within six months of the date
1926 such erosion control materials were installed, or the date when no longer required,
1927 whichever is later. When a violation is discovered, the Code Enforcement Officer will
1928 order compliance by written notice of violation to the owner of any land in any zone
1929 requesting removal of such violation within 30 days of the date of written notice. An
1930 extension of time to correct may be made by the Code Enforcement Officer for good and
1931 sufficient reason.
- 1932

16.9 Other Development Review

16.9.1 Maritime and Shoreland Related Development

A. General. The purpose of maritime and shoreland development reviews function as a control for the Town to oversee proposed developments located in, or in close proximity to, designated resource protected areas so as to ensure the safe and healthful conditions of significant natural, wildlife, cultural and maritime resource.

B. Applicability

(1) Kittery Port Authority. The Kittery Port Authority's ("Port Authority") jurisdiction extends to applications proposing any development from the navigable tidal waters to the highest annual tide or upland edge of a coastal wetland. The Port Authority, through its established Rules and Regulations, reviews and approves applications for piers, wharves, landings, floats, bridges, other water-dependent structures or uses.

(2) Planning Board. The Planning Board's jurisdiction for review and approval extends to applications proposing any upland development from the highest annual tide of any water bodies or upland edge of a coastal or freshwater wetland or any development located within the Shoreland, Resource Protection, and Commercial Fisheries/Maritime Uses Overlay Zones or all other structures not requiring Port Authority approval, except for applications as provided under 16.9.1.B(1).

C. General review Process and Notification

(1) Process.

- (a) Prior to the submission of a shoreland development application with the Port Authority or the Planning Board, a preliminary application meeting between the Town Planner, Code Enforcement Officer, or designee, and the applicant or agent, shall occur to review the proposed project, performance standards and procedural requirements thereof.
- (b) If Port Authority or Planning Board review is not required, the Code Enforcement Officer and Town Planner shall review the application for compliance with this title.
- (c) If the Planning Board must review and approve a development plan application involving a pier, ramp, flotation system or principal marine structure, prior to the submission of the development plan application requiring Planning Board review, the Port Authority must review and approve any proposed pier, ramp and float system or principal marine structure application.
- (d) All required local approvals (excluding Town building permits), federal and state approvals and/or permits shall be received by the Code Enforcement Officer, prior to the issuance of a building permit.
- (e) Prior to the commencement of construction on any pier, dock, wharf, marina or any other proposed use that projects into a water body, the owner and/or developer shall apply for, and obtain, a building permit from the Code Enforcement Officer.

(2) Notification.

- (a) If Port Authority or Planning Board review is not required, the Code Enforcement

Officer shall send a written record of their findings to both the Planning Board and Port Authority.

(b) The Town Planner must transmit copies of Planning Board decisions and the Code Enforcement Officer must transmit copies of Board of Appeals decisions and all documentation constituting the record of the decision for marine-related development to the Port Authority.

(c) The Port Authority shall notify the applicant and the Code Enforcement Officer, in writing, of the granting of, or denial of, the applicant's request.

16.9.2 Port Authority Shoreland Development Review

A. Review for completeness. The Code Enforcement Officer and Town Planner shall review Port Authority applications for completeness prior to the Port Authority's Chairperson placing the application on the Port Authority's agenda.

B. Application process. All Port Authority applications for shoreland development review shall adhere to the listed procedures as enumerated in their Rules and Regulations.

C. Submission requirements. Shoreland Development Plans for marine-related uses requiring Port Authority approval shall include the following elements:

(1) Aerial photographs (images available in the public domain) and vicinity maps and plans showing the property in relation to surrounding properties, and the location of the lots that would have use of the pier, ramp and float system. Maps and plans are to include:

(a) Construction plans for piers, ramps and floats;

(b) Areas of vegetation clearing;

(c) Location of required parking space(s); and

(d) Location of boat and/or float storage.

(2) Rights granted for access to the pier, ramp and float system or to any water-dependent structure; public and private access paths.

(3) Documentation addressing visual impact and controls to assure continuing conformance to the shorefront development plan and this title.

(4) All necessary applications for permits, leases, approvals, and any supporting documentation as may be required have been filed, including the following:

(a) Department of Environmental Protection permit application pursuant to the Natural Resources Protection Act, 38 M.R.S. § 480C;

(b) Army Corps of Engineers permit application;

(c) Maine State Department of Conservation, Bureau of Parks and Lands, Submerged Land Coordinator application; and

(d) Building permit application

(5) Any other details requested by the Port Authority, including, but not limited to, information as enumerated in the Port Authority's Rules and Regulations.

D. Performance standards. Development involving piers, wharves, marinas and other uses projecting into water bodies must conform to the following standards:

- (1) In accordance with 38 M.R.S. § 435 et seq., Mandatory Shoreland Zoning, all dimensional and other standards (excluding setbacks from water bodies) of this title apply to structures and uses projecting into a water body beyond the highest annual tide.
- (2) Boathouses, while convenient to locate near the water, are not considered functionally water-dependent uses and must meet the same setback requirement as principal structures. The State of Maine no longer issues permits for construction of boathouses below the highest annual tide due to the adverse environmental impact; therefore, new boathouses must be located on uplands.
- (3) Only functionally water-dependent uses are allowed on, over or abutting a pier, wharf or other structure beyond the highest annual tide.
- (4) Access from shore must be developed on soils appropriate for such use and constructed so as to control erosion.
- (5) The location must not interfere with existing developed recreational and maritime commerce or natural beach areas.
- (6) The facility must be located so as to minimize adverse effects on fisheries.
- (7) The facility must be a water-dependent use and no larger in dimension than necessary to carry on the activity and must be consistent with existing conditions, use and character of the area.
- (8) No new structure may be built on, over or abutting a pier, wharf, dock or other structure extending beyond the highest annual tide of a water body or within a wetland unless the structure requires direct access to the water as an operational necessity.
- (9) No existing structures built on, over or abutting a pier, dock, wharf or other structure extending beyond the highest annual tide of a water body or within a wetland may be converted to residential dwelling units in any district.
- (10) Except in the Commercial Fisheries/Maritime Uses Overlay Zone, structures built on, over or abutting a pier, wharf, dock or other structure extending beyond the highest annual tide of a water body or within a wetland must not exceed 20 feet in height above the pier, wharf, dock or other structure.
- (11) Applicants proposing any construction or fill activities in a waterway or wetland requiring approval by the U.S. Army Corps of Engineers pursuant to Section 404 of the Clean Water Act, Section 9 or 10 of the Rivers and Harbors Act, or Section 103 of the Marine Protection, Research and Sanctuaries Act, must submit proof of a valid permit issued.
- (12) Proposals for any principal marine structure use, any residential joint- and/or shared-use pier, or any residential-development-use pier require Planning Board approval.
- (13) A residential development containing five or more lots in a zone permitting a residential-development-use pier may construct only one residential development use pier.
- (14) Commercial development of the shorefront must provide for access by the general public as part of a shorefront development plan.
- (15) Only one pier, ramp and float structure is permitted on any noncommercial or nonindustrial lot.
- (16) Marine-related permanent structures located below the mean low-water line require the

following permits, leases and approvals:

(a) Port Authority approval;

(b) Department of Environmental Protection permit pursuant to the Natural Resources Protection Act, 38 M.R.S. § 480-C;

(c) Army Corps of Engineers permit;

(d) Maine State Department of Conservation, Bureau of Parks and Lands, Submerged Land Coordinator approval; and

(e) Building permit.

(17) Any other performance standards as enumerated in the Port Authority's Rules and Regulations.

E. Findings of fact. An application shall be approved or approved with conditions if the Port Authority makes a positive finding based on the information presented. The application must be demonstrated that the proposed use will shall:

(1) Maintain safe and healthful conditions;

(2) Not result in water pollution, erosion or sedimentation to surface waters;

(3) Adequately provide for the disposal of all wastewater;

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

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

(6) Protect archaeological and historic resources;

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

(8) Avoid problems associated with floodplain development and use; and

(9) Is in conformance with the provisions of this title.

F. The approved plan must be recorded with the York County Registry of Deeds.

G. Appeal of Port Authority decision. Appeal of a Port Authority shoreland development plan decision by the Planning Board may be made per §16.2.12.B.

16.9.3 Planning Board Shoreland Development Review

A. Review process

(1) Following a pre-application meeting with the Town Planner or Code Enforcement Officer, the applicant filing a shoreland development review permit shall submit to the Code Enforcement Officer or Town Planner a complete application and site plan, drawn to scale as indicated in accordance with §16.7.10.C(4).

(2) Within 35 days of the receipt of a written application, the Town Planner, must notify the applicant, in writing, that the application is or is not complete. If the application is incomplete, the written notification must specify the additional material required to complete the application.

(3) A decision on the application will occur within 35 days after the first available date on

the Planning Board's agenda following receipt of the completed application, or within 35 days of the public hearing, if one is held.

B. Waivers

- (1) Over the course of the application's review, with consideration of the development's overall limited scale and impact to the site, the Planning Board may waive or modify application submittals required in §16.9.3.C

C. Submission requirements

- (1) All applications shall be signed by the owner, or an agent with written authorization from the owner to apply for a shoreland development review permit, certifying that the information in the application is complete and correct.
- (2) All applications shall be dated, and the Town Planner or designee shall note upon each application the date and time of its receipt.
- (3) Whenever the nature of the proposed structure requires the installation of a subsurface sewage disposal system, a complete application for a subsurface wastewater disposal permit shall be submitted. The application shall include a site evaluation approved by the Plumbing Inspector.

D. Exempt uses and development not requiring shoreland development review by the Planning Board

- (1) Proposed development of principal and accessory structures in compliance with §16.4.28.D, when not subject to Planning Board review as explicitly required elsewhere in this title, shall be reviewed and approved by the Code Enforcement Officer (CEO) prior to issuing a building permit, subject to, but not limited to the following requirement:
 - (a) The total devegetated area of the lot (that portion within the Shoreland Overlay Zone) shall be calculated by the applicant and verified by the CEO and recorded in the Town's property records.
- (2) Clearing of vegetation for activities other than timber harvesting. These are subject to review and approval by the Shoreland Resource Officer or Code Enforcement Officer.
- (3) Division of a conforming parcel that is not subject to subdivision as defined in §16.3.
- (4) A permit is not required for the replacement of an existing road culvert, provided the replacement culvert is not:
 - (a) More than one standard culvert size larger in diameter than the culvert being replaced;
 - (b) More than 25% longer than the culvert being replaced; and
 - (c) Longer than 75 feet.
 - (d) When replacing an existing culvert, the watercourse must be protected so that the crossing does not block fish passage, and adequate erosion control measures must be taken to prevent sedimentation of the water in the watercourse

- (5) A permit is not required for an archaeological excavation, provided the excavation is conducted by an archaeologist listed on the State Historic Preservation Officer's Level 1 or Level 2 approved list and unreasonable erosion and sedimentation is prevented by means of adequate and timely temporary and permanent stabilization measure.

E. Non-exempt uses requiring shoreland development review

- (1) After the effective date of this title, no person may, without first obtaining a permit, engage in any activity or use of land or structure requiring a permit in the Shoreland or Resource Protection Overlay Zones in which such activity or use would occur, or expand, change or replace an existing use or structure, or renew a discontinued nonconforming use.
- (2) Any development proposed in the Resource Protection (OZ-RP) and Shoreland - Stream Protection Area (OZ-SL-75) Overlay Zones must be approved by the Planning Board.
- (3) Any permit required by this section is in addition to any other permit required by other law or ordinance.

F. Findings of fact.

- (1) Permits shall be approved, or approved with conditions, if the proposed use or structure is found to be in conformance with the purposes and provisions of this section and all other applicable provisions found in this title, except where expressed relief has been lawfully granted.
- (2) An application shall be approved or approved with conditions if the Planning Board makes a positive finding based on the information presented. The application must demonstrate that the proposed use shall:
- (a) Maintain safe and healthful conditions;
 - (b) Not result in water pollution, erosion or sedimentation to surface waters;
 - (c) Adequately provide for the disposal of all wastewater;
 - (d) Not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;
 - (e) Conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;
 - (f) Protect archaeological and historic resources;
 - (g) Not adversely affect existing commercial fishing or maritime activities in a commercial fisheries/maritime activities district;
 - (h) Avoid problems associated with floodplain development and use
 - (i) Is in conformance with the provisions of this title; and
 - (j) Be recorded with the York County Registry of Deeds.

G. Final plan approval and recording.

- (1) An approval by the Planning Board must take the form of an agreement between the Town and the applicant, incorporating as elements the application, the Planning Board's findings of fact, and such conditions as the Planning Board may impose upon approval.
 - (2) The Planning Board must send copies of the agreement to Code Enforcement Officer.
 - (3) A plan has final approval only when the Planning Board has indicated approval by formal action and the plan has been properly signed by a majority of the Planning Board members or by the Chair only, if so voted by the Planning Board.
 - (4) Approved final plan recording. An approved plan involving the division of land, easements, or property boundary modification must be recorded by the York County Registry of Deeds. A paper copy and an electronic version of the recorded plan must be returned to the Town Planner.
- H. Modification to an approved plan. Any modification to an approved shoreland development may be considered for approval under §16.7.12.C or §16.8.11.H.
- I. Plan revisions after approval. No changes, erasures, modifications or revisions may be made to any Planning Board approved shoreland development plan, unless in accordance with the Planner's and CEO's powers and duties as found in Chapter 16.4 and elsewhere found in Title 16, or unless the plan has been resubmitted and the Planning Board specifically approves such modifications. In the event a final plan is recorded without complying with this requirement, the same is null and void, and the Planning Board must institute proceedings to have the plan stricken from Town records and the York County Registry of Deeds.
- J. Appeal of shoreland development plan decision. Appeal of a Planning Board shoreland development plan decision may be made pursuant to §16.2.12.B.
- K. Other References to Shoreland Development Review Within Title 16.
- (1). Below are other pertinent sections within Title 16 referencing shoreland development provisions:
 - (a) §16.4.28— Shoreland Overlay Zone OZ-SL Development and Performance Standards
 - (b) §16.4.30— Commercial Fisheries / Maritime Activities Overlay Zones OZ-CFMU
 - (c) §16.4.29— Resource Protection Overlay Zone OP-RP
 - (d) §16.2.13.D(2)—Notice of violation within the shoreland or resource protection overlay zones
 - (e) §16.5.23.K—Signs in Shoreland Overlay and Resource Protection Overlay Zone
 - (f) §16.5.24—Dwellings in Resource Protection and Shoreland Overlay Zones
 - (g) §16.5.27.N—Road and driveway standards in Shoreland and Resource Protection Overlay Zones.
 - (h) §16.5.29.A(1)—Timber Harvesting in the Shoreland Overlay Zone
 - (i) §16.7.3.A—Shoreland development review during site plan review
 - (j) §16.8.4.A—Shoreland development review during subdivision review
 - (k) §16.8.9.C(3)(a)[2]—Scheduling public hearings for shoreland development

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16.9.4 Right of Way Plan Review

A. General. Right-of-Way Plans are intended to demonstrate to the Planning Board that a lot will have a sufficient right-of-way ("ROW") to provide both the required frontage to that lot and to allow safe vehicular access. Such a lot may exist as a "landlocked" lot which requires a Right-of-Way Plan approval because necessary access doesn't meet driveway standards or the lot may be a proposed division from an existing lot which wouldn't have required frontage without a new ROW. When a lot is proposed for division, such division must not create a non-conforming lot or structure. Right-of-Way Plans do not apply to any lot that requires subdivision approval.

B. Applicability.

(1) A person who has right, title, or interest in a parcel of land must obtain Right of Way Plan approval for a site when:

(a) A lot requires a new ROW to meet street frontage requirements

(b) A lot is proposed for division and requires ROW access and street frontage for the proposed new lot.

(2) A ROW proposed under this section must be and will remain a private road unless the applicant pursues street acceptance and is granted that acceptance by the Town per §16.8.11.J. of the municipal ordinance.

C. Review Process & Submission Requirements

(1) Pre-application and Conference

(a) Process. Before submitting a proposed Right-of-Way Plan to the Board, the owner and/or applicant must meet with the Town Planner to discuss the conceptual design regarding road design, stormwater management, dimensional requirements, and any potential impacts to existing or proposed development and the environment.

(2) Sketch Plan

(a) Process. The applicant must submit a Right-of-Way application and sketch plan for review and consideration by the Planning Board.

(b) Plan requirements

[1] The sketch plan must show the proposed road and lot division (if applicable), including structures, site improvements and landscape features, in relation to existing conditions and municipal land use regulations. Any proposed buildings must also be shown.

[2] If the proposed ROW could or will provide frontage to lots other than the lot under consideration, those abutting lots and their structures, if any, must also be shown on the sketch plan.

[3] While not required, a plan prepared by a surveyor is recommended.

(c) Planning Board review and decisions, including site walk

[1] The Planning Board must determine whether the Right-of-Way sketch plan proposal complies with municipal land use regulations regarding both submission content and design and must, when necessary, make specific suggestions to be incorporated by the applicant in subsequent submissions.

[2] If the sketch plan is accepted and approved, with or without conditions, the next application step will be a Final Plan.

[3] A site walk may be scheduled at the Planning Board's discretion.

(3) Final Plan

(a) Failure to submit final plan application. If a Right-of-Way final plan is not submitted to the Planning Board within six months after the approval of the sketch plan, the Planning Board may, at its discretion, refuse to act on the final plan and require resubmission of the sketch plan. Any plan resubmitted must comply with all application requirements, including payment of application fees.

(b) Process, including optional public hearing

[1] The applicant must submit a final Right-of-Way plan for review and consideration by the Planning Board. Any conditions imposed by sketch plan approval must be addressed in the submission.

[2] The Planning Board may, at its discretion, choose to hold a public hearing. If a public hearing will be held, the proceedings must conform to public hearings as described by 16.8.9.C(3).

[3] The Planning Board may, at its discretion, request a review of the plans by the Town's peer review engineer. The cost of this peer review will be borne by the applicant.

[4] The Technical Review Committee (TRC) must review the final plan and submit comments prior to final plan approval.

[5] The Board must accept the application as complete and after consideration and review, which may span more than one regularly scheduled meeting, vote to approve with or without conditions or deny the plan.

(c) Plan requirements

[1] A complete final plan application must fulfill all the requirements as indicated on the application checklist and described by §16.8.9.D(2) unless the Planning Board, by formal action, upon the applicant's written request, waives or defers any requirement(s) for submission. The Board may request any additional information pertinent to complete understanding of the application.

(d) Findings of Fact

[1] Action by the Planning Board must be based upon findings of fact which certify or waive compliance with all the required standards of this ordinance, and which certify the Right-of-Way plan meets the requirements as listed in §16.8.9.D.(4)(b).

[2] In addition, the Board must find that the proposed ROW:

[a] Does not create any nonconforming lots or buildings; and

[b] Can reasonably permit vehicular passage.

(e) Street naming

[1] Prior to submission of the final plan for Planning Board signatures (see §16.9.4.C(f)[1] below), the applicant must apply for and be approved for, a street name which complies with Chapter 8.5 of the municipal regulations.

- 367 [2] Once approved, the street name must be placed on the final plan prior to
368 submission for Planning Board signature.
- 369 [3] Street signage is required per Chapter 8.5-5.
- 370 (f) Final Plan approval and recording
- 371 [1] A plan has final approval only when the Planning Board has indicated approval
372 by formal action and the plan has been properly signed by a majority of the
373 Planning Board members or by the Chair or Vice-Chair only, if so voted by the
374 Planning Board.
- 375 [2] An approved Right-of-Way plan involving the division of land, easements, or
376 property boundary modification must be recorded by the York County Registry of
377 Deeds. A paper copy and electronic copy of the recorded plan must be returned to
378 the Town Planner. An as-built plan and electronic files may also be required at the
379 discretion of the Town Planner or Director of Planning.
- 380 (g) Performance guaranty
- 381 [1] Prior to the issue of a building permit, the applicant must, in an amount and form
382 acceptable to the Town Manager, file with the Municipal Treasurer an instrument
383 to cover the full cost of the required improvements. A period of one year (or such
384 other period as the Planning Board may determine appropriate, not to exceed
385 three years) is the guaranty time within which required improvements must be
386 completed.
- 387 [2] In cases where the Right-of-Way plan consists of an extension of an existing road
388 and as approved, will remain unpaved with minimal site improvements required,
389 the Director of Planning may waive the performance guaranty.
- 390 [3] Where applicable, a maintenance agreement must be included in the document of
391 covenants, homeowners' documents and/or as riders to the individual deed.
- 392 (h) Modifications to approved plans. No modifications to an approved Right-of-Way
393 final plan may be made unless such modifications comply with §16.9.4.
- 394 (i) Appeal of Planning Board decision. Appeal of a Right-of-Way plan decision by the
395 Planning Board may be made per §16.2.12.B.
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