



TOWN OF KITTERY

200 Rogers Road, Kittery, ME 03904
Telephone: (207) 475-1329 Fax: (207) 439-6806

KITTERY TOWN COUNCIL COUNCIL CHAMBERS

September 26, 2022

6:00PM

Meetings may be watched in person, on Channel 22, the Town's website, or Kittery Channel 22 Facebook page.

The public may submit public comments via email, US Mail, or by dropping off written comments at the Town Hall. Emailed comments should be sent to:
TownComments@kitteryme.org.

The public may participate in person or via Zoom webinar. **To register for the Zoom webinar, click this link:**
https://us02web.zoom.us/webinar/register/WN_CD691HNuREm-Rubc-ZqPMq

After registering, you will receive a confirmation email containing information about joining the webinar. Webinar participants will be able to submit questions and comments during a public hearing and public comment.

Written comments received by noon on the day of the meeting will become part of the public record and may be read in whole or in summary by the Council Chair.

1. Call to Order
2. Introductory
3. Pledge of Allegiance
4. Roll Call
5. Agenda Amendment and Adoption
6. Town Manager's Report
7. Acceptance of Previous Minutes

8. Interviews for the Board of Appeals and Planning Board
9. All items involving the town attorney, town engineers, town employees or other town consultants or requested offices.
 - a. (090222-01) – The Kittery Town Council moves to receive a report on the status of implementation and compliance with the Short Term Rental License Ordinance in accordance with Title 5.12-5.D.

10. PUBLIC HEARINGS

11. DISCUSSION

- a. Discussion by members of the public (three minutes per person)
- b. Response to public comment directed to a particular Councilor
- c. Chairperson's response to public comments

12. UNFINISHED BUSINESS

13. NEW BUSINESS

- a. Donations/gifts received for Council disposition.

(090222-02) - The Kittery Town Council moves to accept a donation in the amount of \$100.00 from Jim O'Neill to be deposited in account 4019 KCC Equipment Reserves.

(090222-03) - The Kittery Town Council moves to accept a donation in the amount of \$1,000.00 from York Hospital to be deposited in account 5003 York Hospital Scholarships.

(090222-04) – The Kittery Town Council moves to accept a donation in the amount of \$2,350.00 from Kittery Maine Improvement Foundation to be deposited in account 2063 KCC Donations.

- b. (090222-05) – The Kittery Town Council moves to authorize the allocation of up to \$700,000 from the Real Estate Transactions Reserve (Account 5509) to the expansion of the Gorges Road Fire Station.

- c. (090222-06) – The Kittery Town Council moves to schedule a public hearing on October 24, 2022 on Title 16 – Constructed Wetlands Amendment.

- d. (090222-07) – The Kittery Town Council moves to schedule a public hearing on October 24, 2022 on Title 16 – Cluster/Conservation Subdivisions Amendment.

- e. (090222-08) - The Kittery Town Council moves to schedule a public hearing on

October 24, 2022 for a proposed budget transfer from Overlay to the Fire Department and Shared Services budgets.

f. (090222-09) – The Kittery Town Council moves to appoint Nancy Long-Broughton (Democrat) and Susan Tennant (Unenrolled) to the Board of Registration Appeals for terms to expire December 31, 2025.

g. (090222-10) – The Kittery Town Council moves to appoint Adam Causey, Director of Planning and Development, as Acting Town Manager for Sunday, October 9 through Sunday October 16, 2022.

14. COUNCILOR ISSUES OR COMMENTS

15. COMMITTEE AND OTHER REPORTS

- a. Communications from the Chairperson
- b. Committee Reports

16. EXECUTIVE SESSION

17. ADJOURNMENT

Posted: September 22, 2022



TOWN OF KITTERY

Office of the Town Manager

200 Rogers Road, Kittery, ME 03904

Telephone: 207-475-1329 Fax: 207-439-6806

kamaral@kitteryme.org

Town Manager's Report to the Town Council September 26, 2022

- 1. Election Season** – We are gearing up for a busy election season. Voters should be aware this election includes various federal and state level seats (Congress Reps, Governor, State Reps, etc.) and municipal seats (Council and School Committee). We also have a district boundary change that impacts certain voters in Kittery. We want to make sure voters are prepared and able to vote with ease and confidence.

Election Day is November 8, 2022. Polling takes place from 8AM to 8PM at the Kittery Community Center.

Attached are two maps that indicate the portion of Kittery that is in State Representative District 150. District 150 now incorporates every parcel south of Route 236 and west of Route 95. To confirm what State Representative District you are in, please contact the Town Clerk's Office or visit our Elections page on the Town's website at www.kitteryme.gov.

To register to vote, or update your registration please visit the Town's website or by visiting Town Hall.

We are still accepting absentee ballot applications. We have over 500 applications so far. We expect to begin mailing out ballots in October. Absentee ballots may be mailed back with proper postage, or dropped off at Town Hall in the ballot drop box out front or inside with an Administrative Clerk.

Candidate Night is Thursday, October 20 at 6PM. This is for candidates of local seats, specifically Town Council and School Committee. Candidate Night is hosted by the Student Government of Traip Academy and their advisor. Candidate Night is not led by any local voter group or newspaper. The format and questions are chosen and managed by the students.

- 2. Understanding and Preventing Hate-Based Activity** – The Kittery Police Department, in partnership with New Hampshire Listens, our neighboring police agencies, and others is hosting two sessions on addressing hate-based activity in our communities. Participants will learn how about hate group activity in our area and actions that can be taken when community members encounter hate group literature and activities.

The in-person session is October 3, 6PM at the Kittery Community Center. The online session is October 6, 6PM via Zoom. To register visit: www.tinyurl.com/nhlevents.

Upcoming Dates:

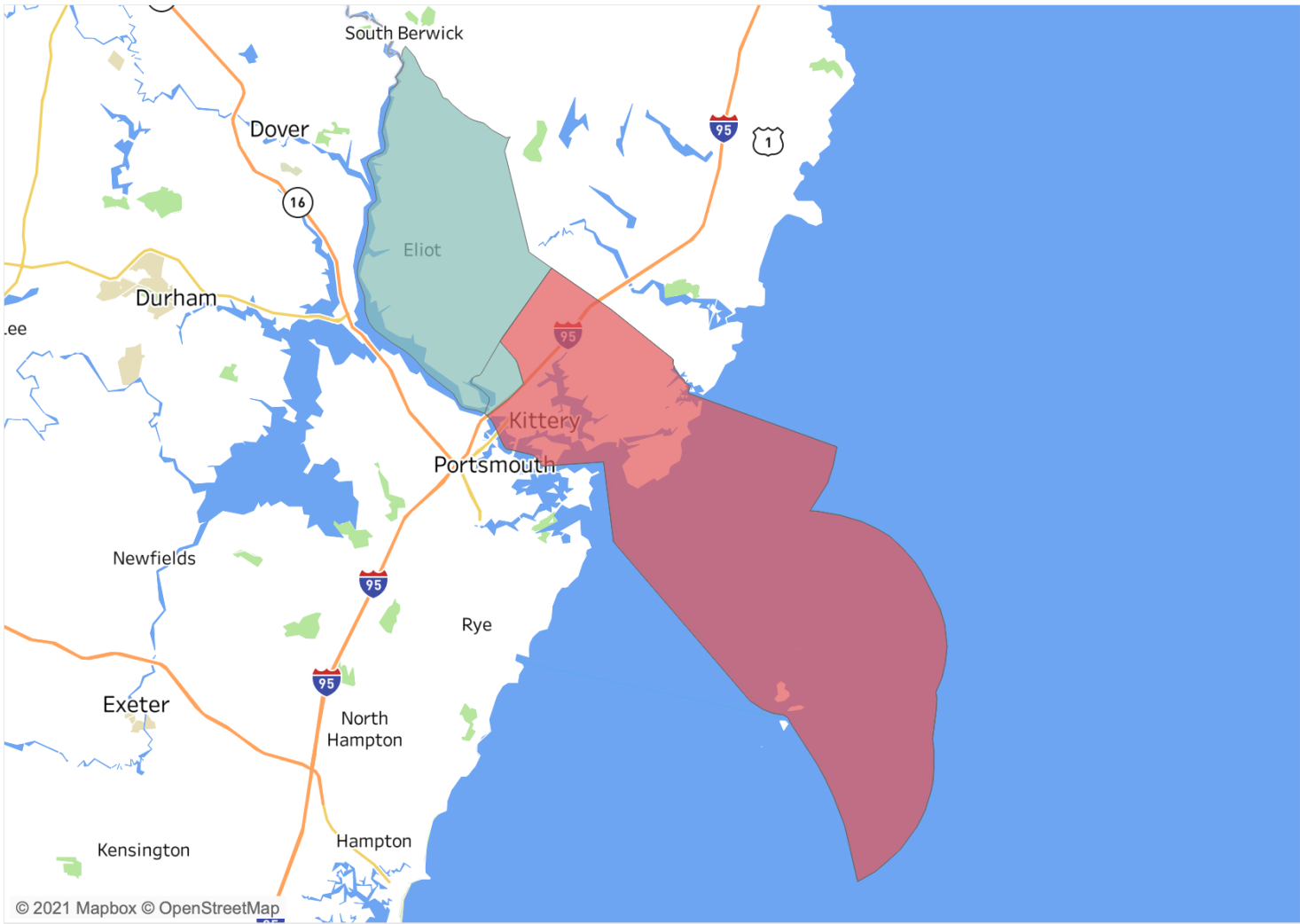
- Shellfish License Issuance Day – October 1, 12PM, Traip Boat Launch
- Understanding and Preventing Hate-Based Activity – October 3, 6PM, Kittery Community Center
- Town Hall Closed - Indigenous Peoples Day – October 10
- Seapoint and Crescent Beaches Clean-Up Day – October 15, 9AM, Seapoint Beach

- November Election Absentee Ballot Applications Available – Town Clerk’s Office
- Property Tax Stabilization Applications Due – December 1, Town Hall

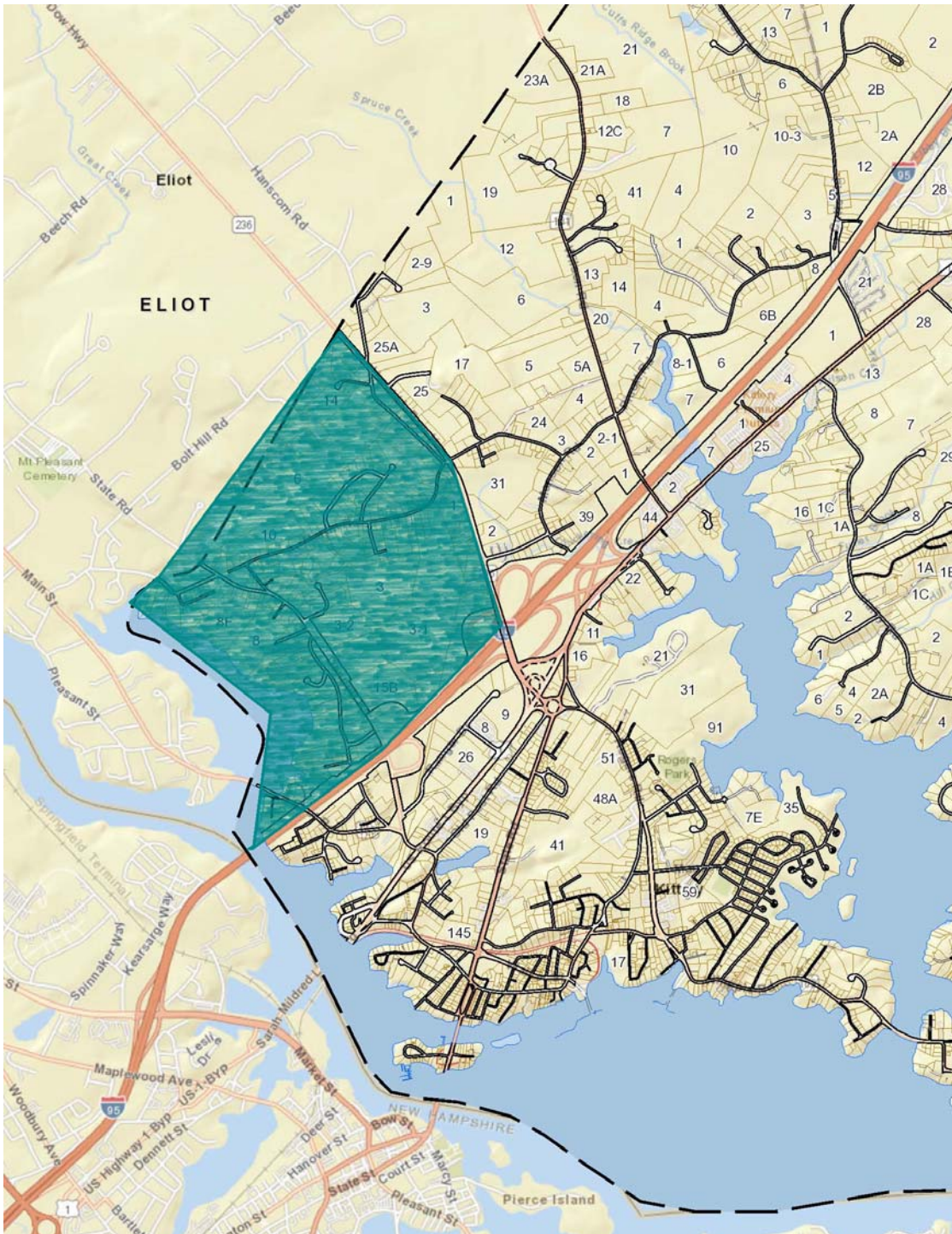
Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'K. Amaral', with a long horizontal flourish extending to the right.

Kendra Amaral
Town Manager



District
150
151



District 150 - All roads that are
- South of 236
- West of 95

OUR COMMUNITY: WELCOMING AND SAFE

Understanding and Preventing Hate-Based Activity

The **Maine and New Hampshire Seacoast area** has experienced **increased hate-based activity** in recent months.

Please join us for an informative presentation and Q&A with area police departments and local community groups working to address hate-based activity. Talk with your neighbors about proactive and effective ways to respond. Learn more about:

- How to identify symbols affiliated with hate groups
- Active groups identified in our area
- How activity in the Seacoast compares regionally and nationally
- Actions you can take if you encounter literature or activity of hate groups

JOIN US

Monday, October 3

In-person

Kittery Community
Center Star Theatre

6:00 – 8:00pm

Thursday, October 6

Online

Please register for
Zoom information

6:00 – 8:00pm

**REGISTER FOR
BOTH DATES**
tinyurl.com/nhlevents

Refreshments will be available. Childcare provided by local, background-checked professionals.

This event is hosted by Maine and New Hampshire Police Departments of Kittery, Portsmouth, South Berwick, Ogunquit, UNH, and Dover, Granite State Progress, New Hampshire Council of Churches, New Hampshire Listens, United Against Hate on Seacoast, and area school districts & community groups.



TOWN OF KITTERY
200 Rogers Road, Kittery, ME 03904
Telephone: 207-475-1329

REPORT TO TOWN COUNCIL

Date: September 26, 2022
From: Kendra Amaral, Town Manager
Subject: Short Term Rental Report
Councilor Sponsor: N/A

EXECUTIVE SUMMARY

In accordance with §5.12.5.D of the Short Term Rental License ordinance, the Town Manager is required to provide a report to the Town Council no later than September 30, 2022 regarding the total number of licenses issued and the status of the implementation and compliance with the ordinance, to determine if the total number of available licenses for issuance per year should be adjusted for the ensuing year.

The data in this report represents a snapshot of the status as of August 31, 2022. The Council has received intermittent reports on the number of licenses, waitlisted applications, and revenues since adoption of the ordinance. Please review Town Manager reports from January 25, 2021 and June 28, 2021.

NUMBER OF LICENSES

§5.12.5.A establishes a baseline of short-term rental license available for issuance equal to the total number of units as of December 31, 2020. After adjusting for applications received by the deadline but still in process, we calculated 89 licenses as the baseline. Each year the number of available licenses grow by 8%.

As of August 31, 2022 the total available licenses are 104. 102 are issued and 1 is in process. There are 45 applicants on the waiting list.

Of those with licenses, 14 property owners hold more than one license for their property(ies). Approximately 90% of the licenses are issued to single family properties; the remaining 10% are for multi-family units on a property. Of the multi-family units, 8 have two units on the property licensed for STRs.

Revenue collections were as follows:

	FY21	FY22	FY23
New	\$ 7,450	\$ 1,250	\$ -
Renewal	\$ -	\$ 6,750	\$ 1,800
Increase Occupancy	\$ 200	\$ -	\$ -
TOTAL	\$ 7,650	\$ 8,000	\$ 1,800

IMPLEMENTATION AND COMPLIANCE

When licensing was first launched, the Town purchased a license for a technology solution to assist with identifying unlicensed STRs for enforcement action. After multiple solutions were evaluated and interviewed, a provider was selected and engaged. The cost of the service was \$13,000 for the year. The other solution considered was approximately \$20,000 per year.

The software solution was expected to scrape the web of listings in Kittery and cross reference them against licensed STRs and report any discrepancies. The software can also analyze if listings are inconsistent with local ordinance for durations and other specific factors.

Though the expectation was high, the results of working with the software was not great. The lists of addresses for STRs provided by the software were predominately wrong, requiring a significant amount of staff time to research and correct the information.

We have had six complaints and issued four notices of violation for unlicensed STRs. Two were brought into compliance through the waiting list process. The other two are still in the enforcement phase.

We have one complaint from a neighbor about people from an adjacent STR walking across her driveway/yard. We do not have any other records of complaints from Code Enforcement or the Police Department.

PROPOSED SOLUTION/RECOMMENDATION

The Council may wish to consider the following:

- Make no change
- Increase the number of STR licenses allowed
- Increase fees to cover the cost of compliance monitoring

ATTACHMENTS

- Title 5 – Short Term Rental
- Appendix A – Short Term Rental Fee
- Map of Renewals

Chapter 5.12

SHORT-TERM RENTAL

[HISTORY: Adopted 7-27-2020 by Ord. No. 20-05. Amendments noted where applicable]

§ 5.12-1. Purpose.

The use and intent of these regulations is to ensure that any home-based short-term rental business operates in a manner that respects the neighborhood in which it is situated. The regulations allow short term rental operations in residential dwelling units with the intent of protecting the quality of life of the surrounding residential neighborhood from unreasonable or unsafe intrusions and nuisances inappropriate to a residential setting.

§ 5.12-2. Definitions.

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

OWNER — A person who is the owner of record of real property as documented by deed or other document evidencing ownership recorded at the York County Registry of Deeds.

OWNER OCCUPIED — The owner is domiciled at the property for no less than 183 days in a tax year, as documented by a State of Maine Income Tax Return or other document evidencing owner occupancy.

SHORT-TERM RENTAL — The use, control, management or operation of a dwelling unit or accessory dwelling unit, in whole or in part for dwelling, sleeping or lodging purposes for periods of fewer than 30 consecutive days; for compensation, directly or indirectly.

§ 5.12-3. Applicability.

- A. This chapter applies to any residential dwelling unit, room within a dwelling unit, or accessory dwelling unit that is rented, in whole or in part, for a period of less than 30 consecutive days, for compensation, directly or indirectly.
- B. Exclusions. Excluded from this chapter are:
 - (1) Dwelling units used, in whole or in part, for dwelling, sleeping or lodging purposes for periods 30 consecutive days or more.
 - (2) Lodging establishments such as hotels, motels, bed and breakfasts, inns, boarding or rooming houses, or temporary housing.
- C. Nothing contained in this chapter supersedes any condominium, homeowner, or restrictive deed covenants that apply to the dwelling unit.

§ 5.12-4. License required.

- A. No person may advertise or operate a short-term rental unit without a license issued by the Code Enforcement Officer. Short-term rental units in operation prior to the adoption of this chapter must be licensed no later than December 31, 2020.

- B. Nonrefundable fees for the license are set forth in Appendix A.
- C. Short-term rental licenses must be renewed on an annual basis. Each license issued under this chapter expires one year from issuance.
- D. Each licensee will receive a certificate issued by the Code Enforcement Officer stating the license number, valid license period, occupancy limit for the unit, the name and emergency contact information of the operator of the short-term rental unit, and the name and contact information of the property owner if different than the operator.
- E. A license is not transferrable to any other person, or from location to location, and is valid only at the location and for the person designated. Any change in ownership of the dwelling unit will require a new license.

§ 5.12-5. License limits.

- A. The baseline number of short-term rental licenses available for issuance will be equal to the total number of licensed short-term rental units as of December 31, 2020 in accordance with § 5.12.4A.
- B. The number of licenses issued in calendar year 2021 may not exceed the starting number as determined by § 5.12.5A plus 8%.
- C. The number of licenses issued in calendar year 2022 may not exceed the total number of valid licenses as of December 31, 2021 plus 8%.
- D. No later than September 30, 2022, the Kittery Town Council will receive a report from the Town Manager, regarding the total number of licenses issued and the status of implementation and compliance with the ordinance, to determine if the total number of available licenses for issuance per year should be adjusted for the ensuing calendar year.
- E. If a license is cancelled by the license holder or denied or revoked in accordance with § 5.12.8, it will become an available license for issuance in the calendar year it is cancelled, denied or revoked.
- F. Owners will have the right to renew their license each year, unless the license is otherwise denied, revoked or suspended in accordance with § 5.12.8.

§ 5.12-6. Standards.

- A. Owner: Only the owner of the property can apply for the dwelling unit to be used for short-term rental.
- B. Occupancy limits.
 - (1) No more than one short-term rental contract is allowed per dwelling unit at any one time.
 - (2) No more than two adults per bedroom are allowed, unless otherwise approved by the Code Enforcement Officer and the Fire Chief or their respective designees. Increased occupancy limits may be granted upon application to the

Code Enforcement Officer and inspection of the dwelling unit.

- C. Property taxes current. No property may be licensed for short-term rental if the property is subject to an existing foreclosure or lien from the Town for non-payment of taxes.
- D. Emergency contact. The owner must provide emergency contact information or identify a person who will serve as the agent or representative for emergency contact purposes. Multiple emergency contact people may be identified. One of the emergency contact people must be able to respond within 60 minutes or less to complaints regarding the condition, safety or operation of the dwelling unit as a short-term rental, or the conduct of guests, and take remedial action to resolve such complaints. The owner must notify the Town and provide updated contact information if a contact person or information changes.
- E. License number. Licenses will be issued with a unique license number. The license number must be displayed within the dwelling unit and in all advertising for the short-term rental of the dwelling unit.
- F. Parking.
 - (1) The owner must provide sufficient on-site parking to serve the residential dwelling unit(s) and the short-term rental unit(s) on the property. The total number of on-site parking spaces will be calculated as the number of spaces required for the dwelling unit per § 16.8.9.4 plus one parking space for each short-term rental unit on the property. Tandem parking is permitted.
 - (2) Required on-site 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 indicating the availability of the parking to the Code Enforcement Officer for review and approval prior to issuance of a license.

§ 5.12-7. Complaints.

Complaints of criminal or ordinance violations associated with the operation of short-term rentals brought to the attention of the Code Enforcement Officer or Police Department will be logged and investigated.

§ 5.12-8. Denial, suspension, or revocation of license.

- A. Denial. The Code Enforcement Officer may deny a license or license renewal upon failure of the applicant to meet all of the requirements of this chapter, or for three or more substantiated criminal or ordinance violations associated with the property within the prior 12 months.
- B. Suspension or revocation. The Code Enforcement Officer may suspend or revoke a license for violation of any provisions of this Chapter, or for three or more substantiated criminal or ordinance violations associated with the property within a twelve-month period.

- (1) A license may be suspended for no longer than six months, during which time the dwelling unit may not be used as a short-term rental.
- (2) A license may be revoked and cannot be reissued for 12 months. The Code Enforcement Officer may authorize the reissuance of a license if they find sufficient corrective action has been taken to prevent violations in the future.

§ 5.12-9. Appeal.

A Code Enforcement Officer decision on denial, suspension, or revocation of a license may be appealed to the Board of Appeals as provided in § 16.6.4A.

§ 5.12-10. Violations.

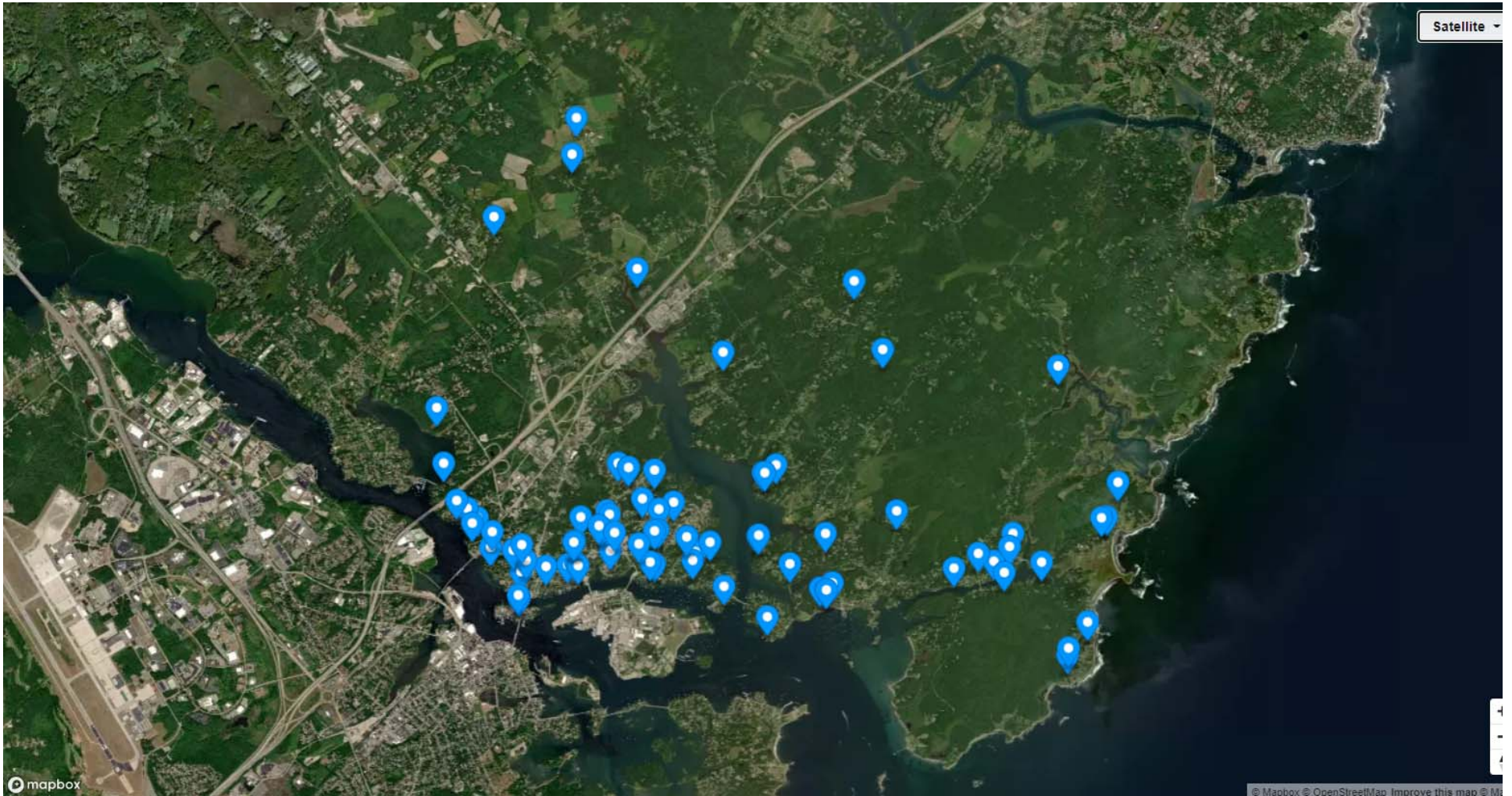
- A. Any violation of this chapter will be assessed a penalty of \$250. Each day any violation of this chapter continues constitutes a separate offense.

§ A-4 Schedules.

Chapter 5.12 SHORT-TERM RENTAL

Owner-occupied	\$50 annually
Non-owner-occupied	\$100 annually
Increased occupancy limit application	\$100 one time

Short Term Rental License Renewals



October 1, 2021 - September 22, 2022

Hi Jeremy -
- per our conversation
enclosed to assist
with the maintenance
of the Nautilus
equipment.
Jim O

KITTERY COMMUNITY CENTER DEPOSIT

Donation from Jim O'Neill toward Fitness Inspection

Date: 9/12/22

Receipt # _____

Checks: \$ 100.00

Cash: \$ _____

Total: \$ 100.00

Account: 10830-65801

Initials: J O


52-7450/2112 5916

JAMES O'NEIL PO Box 445
York, ME 03909

DATE 9/3/2022

PAY TO THE ORDER OF Kittery Community Center \$ 100.00

One hundred DOLLARS

 Kennebunk Savings

MEMO Nautilus Maint. Contribution J O'Neil MP

LOOK FOR FRAUD-DETERRING FEATURES INCLUDING THE SECURITY SQUARE AND HEAT-REACTIVE INK. DETAILS ON BACK.

KITTERY COMMUNITY CENTER DEPOSIT

*For Council
Agenda*

Date: 9/22/22

Receipt # _____

Checks: \$ 10,000.00

Cash: \$ _____

Total: \$ 10,000.00

Account #: 5003-43600 *YM Scholarship*

Initials: *[Signature]*

THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER AND ORIGINAL DOCUMENT SECURITY SCREEN ON BACK WITH PADLOCK SECURITY ICON

York Hospital
LOVING KINDNESS
 15 Hospital Drive
 York ME 03909

KENNEBUNK SAVINGS BANK
 KENNEBUNK, ME 04043

N^o 100736

CHECK AMOUNT
 10,000.00

and And 00/100 Dollars*****

ORDER OF KITTERY COMMUNITY CENTER

KITTERY COMMUNITY CENTER
 120 ROGERS ROAD
 KITTERY, ME 03904

MADE WHEN HEAT IS APPLIED

[Signature] MP
[Signature] MP
TWO SIGNATURES REQUIRED FOR AMOUNTS OVER \$5000
 VALID AFTER 180 DAYS

Security features included. Details on back.

⑈ 100736 ⑆ ⑆ 211274502 ⑆ 44007084 ⑆

HOLD DOCUMENT UP TO THE LIGHT TO VIEW TRUE WATERMARK

OFFICIAL CHECK

HOLD DOCUMENT UP TO THE LIGHT TO VIEW TRUE WATERMARK



10523182-4

52-0133
112

RE: KITTERY MAINE IMPROVEMENT FOUN

DATE: 09/20/2022

PAY TO THE ORDER OF ***TOWN OF KITTERY***

Two Thousand Three Hundred Fifty AND 00/100

\$2,350.00



DRAWER: TD BANK, N.A.



[Handwritten Signature]
AUTHORIZED SIGNATURE



TOWN OF KITTERY
200 Rogers Road, Kittery, ME 03904
Telephone: 207-475-1329

REPORT TO TOWN COUNCIL

Date: September 26, 2022
From: Kendra Amaral, Town Manager
Subject: Gorges Road Fire Station Expansion
Councilor Sponsor: Chairperson Judy Spiller

EXECUTIVE SUMMARY

Working with Port One Architects, the Fire Chief has refined the expansion plans for the Gorges Road Fire Station. The expansion is designed to include bays, office, and bunk space to support the ambulance and fire service. As the Council may recall this project was approved by ballot in 2021. This project was put forward to achieve the beneficial service outcomes of having the ambulance service out of the Foreside and co-located with the Fire Department on the Rte 1 Bypass. The importance and need for the project are still highly relevant; albeit delayed due to the pandemic.

Construction costs have skyrocketed since the warrant article was approved. The cost of the project is estimated at \$1.5M. Our original estimate was \$800,000.

The sale of the 25 Walker Street is for approximately \$900,000. After fees, there will be approximately \$850,000, leaving a funding gap for the expansion of approximately \$700,000. The gap is resolvable using the proceeds from the recent sale of other properties; but such approach would require Council approval due.

WARRANT ARTICLE BACKGROUND

The warrant article that allowed for the expansion of the Gorges Road Fire Station stated:

Shall the town vote to authorize the Town Council to transfer up to \$800,000 from unassigned funds (unencumbered surplus) and to expend up to that amount for the expansion of the Gorges Road Fire Station to house the ambulance service; and to surplus and sell, in accordance with Town Ordinance, 25 Walker Street (Walker Street Fire Station), with sale proceeds to be returned to the unassigned funds?

This means that, technically, we are authorized to utilize unassigned funds up to \$800,000 to build the expansion, however the sale proceeds must be used to replenish the unassigned funds used.

Additionally, since the sale of the Walker Street Fire Station is expected to be executed prior to construction of the expansion, we will have access to the full amount of the sale proceeds, estimated at \$850,000 after all fees.

A strict reading of the warrant article would suggest we could still utilize the \$800,000 in unassigned fund balance in addition to the sale proceeds, with the argument that, there will be no surplus proceeds remaining after construction of the Gorges Road expansion to replenish the unassigned fund balance. This is not in keeping with the intent of the warrant article and is therefore not recommended.

FINANCIAL PROPOSAL

To make up the estimated \$700,000 funding gap for the expansion of the Gorges Road Fire Station, I recommend the Town utilize the proceeds from the sale of other real property held in Fund 5509 Real Estate Transactions.

Fund 5509 - Real Estate Transactions:

Real Property	Proceeds	Adjustments
Taylor Building	\$558,513	
3 Walker Street	\$384,714	
Less:	(\$44,978)	Cost of tax liens and legal fees
NET	\$898,249	

ALTERNATIVES

There are other alternatives to approaching the funding gap, though each would result in a delay of the project and has a potential impact on cost (inflation) and the sale value of 25 Walker Street. Below is a brief assessment of each:

- Warrant article to utilize unassigned fund balance
 - o Pro: keeps real estate transactions fund at current level, allows for more funds available to go Housing Reserve
 - o Con: Warrant Article cannot occur until June 2023, delaying the project up to a year which may cause additional cost inflation and jeopardize the sale of 25 Walker
- Add to FY24 Capital Improvement Plan
 - o Pro: keeps real estate transactions fund at current level, allows for more funds available to go Housing Reserve
 - o Con: CIP is not approved until June 2023, delaying the project up to a year which may cause additional cost inflation and jeopardize the sale of 25 Walker

Neither alternative is more advantageous than the proposed solution of utilizing the Real Estate Transactions Fund.

PROPOSED SOLUTION/RECOMMENDATION

Authorize the use of the full sale proceeds from 25 Walker Street, approximately \$850,000, and \$700,000 of the Real Estate Transaction fund for the construction project. This will give a total available for the project of \$1.5M.

ATTACHMENTS

- Port One Architects Conceptual Cost Estimates



1.01 EXECUTIVE SUMMARY

Port One Architects, Inc. was contracted by the Town of Kittery, ME to conduct feasibility analysis and conceptual design. The planning approach led to a solution that separated the program into the Dormitory addition and expanded Kitchen connector on one end of the building, with the Apparatus Bay addition on the opposite end of the building.

The decision to separate the program spaces stems from an effort to minimize site development impact and take advantage of existing building systems where possible. The isolation of emergency response operations on one side of the building also protects occupants from potential cross-contamination into administrative and living spaces.

Other design objectives include a massing and materials design that compliments and blends with the existing station while meeting the space needs of the Department well into the future.

BACKGROUND INFORMATION

In February of 2022, Town of Kittery, ME issued an RFP for bids on the design & construction of the Gorges Road Station under a Design-Build construction delivery method. The requests of the proposal sited the addition entirely on the southeastern end of the existing building.

The resulting bids were rejected by the Town and no firm was selected to commence work.

In March of 2022, Town of Kittery, ME issued a subsequent RFQ for Architecture and Engineering firms to conduct programming, conceptual design and feasibility for the fully-engineered design of the addition(s).

The contents of this report is the end result of the conceptual design and feasibility phase conducted by Port One Architects and their consulting Engineers.



CONCEPTUAL DESIGN & FEASIBILITY STUDY
PROPOSED FIRE STATION ADDITION
TOWN OF KITTERY MAINE

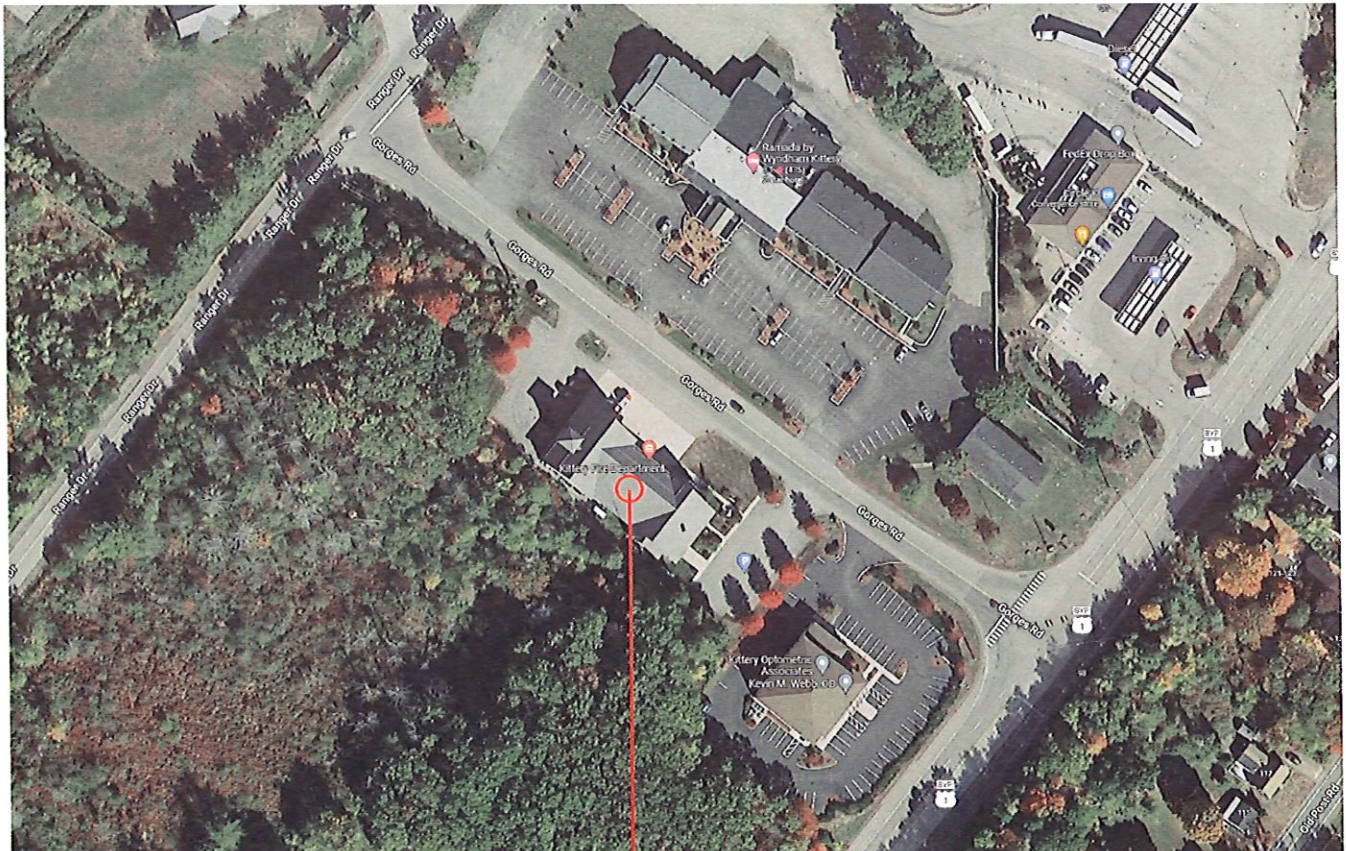
2.01 EXISTING CONDITIONS

The existing central fire station - constructed in 2005 - is located at 3 Gorges Road, Kittery, ME. The front apron, Apparatus Bay O.H. doors and primary entrances face northeast to Gorges Road. Administrative and support spaces are located on the southeast end of the building and apparatus bays occupy approximately 2/3 of the building area opposite the offices, locker rooms, kitchen and day room.

Original construction documents were provided to Port One Architects for reference and the station appears to have been built consistently (in majority) with the original construction documents.

For the purposes of this report, only spaces and systems that would be impacted by potential additions/renovations were surveyed, including mechanical, electrical, plumbing and fire protection.

Electrical utilities run from a pole at the street near the northern edge of the property and run underground to the rear corner of the building to a meter located in front of the end wall overhead door. Gas is provided by above-ground tank in the rear of the building.



Aerial of Existing Gorges Rd. Station



CONCEPTUAL DESIGN & FEASIBILITY STUDY
PROPOSED FIRE STATION ADDITION
TOWN OF KITTERY MAINE



Existing Northeast View



Existing Northern Corner View



3.01 SPACE PROGRAMMING

Architectural programming is the process of space needs research and analysis that identifies the types and sizes of spaces to be incorporated into the design.

The program for the additions / renovations to the Gorges Road Station was defined in both the initial Design-Build RFP as well as the subsequent Architectural & Engineering Services RFP and were consistent between both solicitations.

SPACE NEEDS

	Dimensions	Net Sq. Ft.	Notes
Apparatus Bay Wing:			
(2) Small	18' x 22'	792 sf	2 new bays (non-drivethru)
(1) Large	18' x 26'	468 sf	1 new bay (non-drivethru)
Storage	11' x 4'	44 sf	
Office	17'-6" x 9'	158 sf	
Circulation		290 sf	
Subtotal		1,752 sf	

	Dimensions	Net Sq. Ft.	Notes
Dormitory Wing:			
(2) Bunk - 1	14' x 10'-8"	300 sf	
(4) Bunk - 2	11'-4" x 12'-4"	280 sf	
Circulation		260 sf	Common Corridors
Kitchen		105 sf	Expanded Kitchen at Connector to existing building
Subtotal		945 sf	



6.01 CONCEPTUAL DESIGN COST ESTIMATE

A conceptual estimate is necessary to evaluate the feasibility of any construction project. The estimate is based on building program, drawings, conceptual plans and elevations and Engineering narratives. This information is supplemented with utility requirements, foundation requirements and construction type/size determinations.

This estimate consists of two parts: the first being the cost of constructing the site and building and the second being the project soft costs. Soft costs are not necessarily related to the actual physical site/building materials and labor but are fees and necessary expenses to complete a project. Typically soft costs are 16-20% of the combined site and building costs.

\$1,583,058

The site and buildings cost estimate is ~~\$6,499,930~~ (Site & Building). Along with this is our projected soft costs budget (18% of hard costs). Combining these two numbers creates the Total Project Cost.

Site & Building Costs:	\$1,242,110
Bonding:	\$18,000
GC's OH and Profit:	\$124,211
Design Fees (carried by GC):	\$62,105
<u>Estimated Owner Soft Costs:</u>	<u>\$136,632</u>
 Total Project Costs:	 \$1,583,058

For this purpose, the cost estimate was generated based on a Design-Build construction delivery method. Please see appendix for cost estimates associated with other construction delivery methods.



TOWN OF KITTERY
200 Rogers Road, Kittery, ME 03904
Telephone: 207-475-1329 Fax: 207-439-6806

REPORT TO TOWN COUNCIL

Meeting Date: September 26, 2022
From: Kendra Amaral, Town Manager
CC: Dutch Dunkelberger, Planning Board Chair
Subject: Title 16 – Constructed Wetlands
Sponsor: Chairperson Judy Spiller

OVERVIEW

In addition to reviewing applications, the Planning Board establishes an action list of zoning amendments they are interested in pursuing each year. The action list is developed via workshop and updated a few times annually. The action list helps us organize staff resources and manage workplans, while helping the Planning Board stay coordinated.

Conservation Commission Chairperson Earldean Wells requested the update to the constructed wetlands ordinance.

The proposed amendment was drafted by staff, reviewed and recommended for approval by the Kittery Land Issues Committee (KLIC) and reviewed and recommended for approval by the Planning Board.

SUMMARY – Constructed Wetlands

The Conservation Commission requested the Planning Board update the wetlands protections in the zoning to include constructed/manmade wetlands in the protective buffers excepting if the constructed wetland is part of a permitted stormwater management system.

Constructed wetlands can occur for a whole host of reasons, including abandonment of previously developed or partially developed land and/or changes in water flow as a result of development.

PROPOSED SOLUTION/RECOMMENDATION

Adopt amendment to Title 16 as proposed.

ATTACHMENTS

- Staff Memo Regarding Amendment
- Draft Title 16 – Constructed Wetlands
- Draft Title 16 – Constructed Wetlands Enactment



TOWN OF KITTERY
Planning and Development Department
200 Rogers Road, Kittery, ME 03904
Telephone: 207-475-1307

TO: Kendra Amaral, Town Manager
FROM: Adam Causey, Director of Planning & Development
SUBJECT: Constructed wetlands
DATE: August 23, 2022

At the May 12, 2022 regular meeting, the Planning Board recommended an amendment to Title 16 Land Use & Development Code regarding constructed wetlands. The Board previously held a public hearing on this amendment at their April 28, 2022 meeting.

The proposed ordinance changes to §16.5.30.B. Constructed Wetlands and Water Bodies (formerly known as “Newly Created Wetlands and Water Bodies”) are designed to protect any wetland or water body that demonstrates the characteristics of a functioning wetland or water body, no matter how or why it was created.

Based on the Planning Board discussion at their meeting, additional edits were made to clarify that permitted stormwater management systems are not meant to be included as possible wetlands or waterbodies. Those types of stormwater management systems would typically be permitted as part of a subdivision or site plan review by the Planning Board.

**TITLE 16
LAND USE ZONE REGULATIONS
CONSTRUCTED WETLANDS**

1. **AMEND §16.5.30 Wetland Setbacks to incorporate constructed wetlands as follows:**

1 §16.5.30.

2
3 B ~~Newly created~~ Constructed wetlands and water bodies.

4 (1) Setbacks are ~~not~~ required from all wetlands or water ~~body~~ bodies created from upland land area, ~~provided~~
5 ~~the newly created wetland or water body is not~~ as part of a required mitigation plan. ~~B-~~

6 (2) A performance guarantee, such as an escrow or bond, is required to guarantee that new vegetation
7 required by the mitigation plan will survive. Prior to the release or drawdown of funds in such accounts, a
8 written statement from a qualified wetlands scientist that says the vegetation is thriving must be
9 submitted to the ~~Town Manager~~ Town Planner.

10 (3) In addition, any constructed wetland or water body, not part of a required mitigation plan or a stormwater
11 management system permitted by the Town and regardless of the circumstances under which it was
12 created either intentionally or not, that demonstrates the characteristics of a functioning wetland or water
13 body such as but not limited to hydric soils, open water, wetland functions and vegetation, will be
14 considered wetlands or water bodies as defined in Title 16 for regulatory purposes.

15 ~~(+)~~(4) Wetland setbacks for the ~~base~~ base zoning district and the Shoreland Overlay District will apply to
16 wetlands and water bodies described in A1 and B3 above.

**KITTERY TOWN CODE –
TITLE 16
CONSTRUCTED WETLANDS**

1 **AN ORDINANCE** relating to the municipality’s authority for Town governance to give due and
2 proper attention to its many demands pursuant to the Town Charter, Federal law, and Maine
3 Revised Statutes, and more particularly where set forth in Maine Revised Statutes Title 30-A,
4 Municipalities and Counties.

5 **WHEREAS**, the Kittery Town Council is authorized to enact this Ordinance, as specified in
6 Sections 1.01 and 2.07(3) of the Town Charter; and 30-A MRS §3001, pursuant to its powers
7 that authorize the town, under certain circumstances, to provide for the public health, welfare,
8 morals, and safety, and does not intend for this Ordinance to conflict with any existing state or
9 federal laws; and

10 **WHEREAS**, the Town of Kittery desires to protect wetlands and waterbodies, regardless of their
11 origin, from development encroachment; and

12 **WHEREAS**, the Town of Kittery seeks to apply wetlands buffers and protections to constructed
13 wetlands; and

14 **NOW THEREFORE**, IN ACCORDANCE WITH TITLE 30-A MRS §3001, AND TOWN
15 CHARTER §2.14, THE TOWN OF KITTERY HEREBY ORDAINS AMENDMENTS TO TOWN
16 CODE, TITLE 16, LAND USE and DEVELOPMENT CODE, WETLANDS, AS PRESENTED.

17 **INTRODUCED** and read in a public session of the Town Council on the ____ day of _____,
18 20____, by:_____ {NAME} Motion to approve by Councilor
19 _____ {NAME}, as seconded by Councilor _____ {NAME} and
20 passed by a vote of _____.

21 **THIS ORDINANCE IS DULY AND PROPERLY ORDAINED** by the Town Council of Kittery,
22 Maine on the ____ day of _____, 20____, {NAME}, _____, Chairperson

23 **Attest:** {NAME}, _____Town Clerk



TOWN OF KITTERY
200 Rogers Road, Kittery, ME 03904
Telephone: 207-475-1329 Fax: 207-439-6806

REPORT TO TOWN COUNCIL

Meeting Date: September 26, 2022
From: Kendra Amaral, Town Manager
CC: Dutch Dunkelberger, Planning Board Chair
Subject: Title 16 – Conservation Subdivision
Sponsor: Chairperson Judy Spiller

OVERVIEW

In addition to reviewing applications, the Planning Board establishes an action list of zoning amendments they are interested in pursuing each year. The action list is developed via workshop and updated a few times annually. The action list helps us organize staff resources and manage workplans, while helping the Planning Board stay coordinated.

The proposed amendment to the Cluster Development was championed by Planning Board Vice Chair Karen Kalmar. It was drafted by staff, reviewed and recommended for approval by the Kittery Land Issues Committee (KLIC) and reviewed and recommended for approval by the Planning Board.

TITLE 16 – Cluster/Conservation Subdivision

The Planning Board requested amendments to the zoning related to “cluster subdivisions”. The purpose of the cluster zoning is to shrink the footprint of built infrastructure such as roads and utilities in order to protect sensitive environmental areas and reduce disturbance of undeveloped land on larger parcels. This type of zoning accomplishes its objectives through less-restrictive setbacks and lot coverage within the clustered development; or put more simply it seeks to cluster development into a more-dense core on a parcel in order to have greater amounts of open space undeveloped on a parcel.

PROPOSED SOLUTION/RECOMMENDATION

Adopt amendment to Title 16 as proposed.

ATTACHMENTS

- Staff Memo Regarding Amendment
- Draft Title 16 – Conservation Subdivision
- Draft Title 16 – Conservation Subdivision Enactment



TOWN OF KITTERY
Planning and Development Department
200 Rogers Road, Kittery, ME 03904
Telephone: 207-475-1307

TO: Kendra Amaral, Town Manager
FROM: Adam Causey, Director of Planning & Development
SUBJECT: Conservation Subdivision (formerly Cluster Residential Development)
DATE: August 23, 2022

At their April 28, 2022 regular meeting, the Planning Board unanimously recommended amendments that change the current Cluster Subdivision ordinance to the Conservation Subdivision ordinance within Title 16 Land Use & Development Code. These proposed changes are the result of a workshop the Planning Board held with staff in early spring of 2020 before the pandemic as well as discussions on the ordinance with the Board at their meeting on March 24 of this year. In 2020, the Board expressed dissatisfaction with the cluster subdivision ordinance and felt it was not serving the Town well due to lack of defined standards, lack of clarity in the design process, and a flawed approach to determining the net residential acreage.

These changes are still in compliance with the state's "cluster subdivision" ordinance that is permitted by Maine statute and has two main purposes:

1. Protect natural resources and sensitive environmental areas
2. Shrink the footprint of infrastructure like roads and utilities.

Five important aspects of the former cluster subdivision ordinance were carried over to the conservation subdivision:

1. Conservation subdivision remains the permitted use, while the conventional subdivision remains the special exception use
2. The three types of open space: public, reserved and common remain
3. There still is a required percentage of open space which must also include a required percentage of buildable land – not just wetlands, hydric soils etc.
4. Deeded access by subdivision residents to any significant wetland or water body
5. The open space must be permanently protected

A summary of the changes within the proposed ordinance include:

- A list of objectives that not only include protection of significant natural resources and a reduction in infrastructure footprint, but also reduction of impacts to water quality, recognition and protection of locally significant natural and cultural areas, and climate change resiliency requirements.
- Enhanced and clarified submission requirements.

- An open space design first, followed by development approach
- More flexibility for the Board but anchored by criteria for the Board to consider when making decisions (examples: water and wastewater, above-ground utility lines)
- Wetland alterations (not deemed a significant wetland by the State) are limited to 4,300 sf which is the threshold for DEP's Permit By Rule.
- Areas within the shoreland, resource protection and stream protection zones as well as floodplains and vernal pools must be included in the open space and may not be part of a private house lot.
- Emphasis on site-specific layout and design with encouragement to utilize energy-efficient heating and cooling systems.
- In the R-RL and R-C zones, a vegetated buffer is required along the front lot line designated no-cut, no-disturb but the Board has flexibility to modify it. (40 ft)
- Setbacks from all state, town or land-trust protected land (30 ft)
- Zone-specific open space +net residential acreage (buildable land) requirements
- Standards for how open space must be protected, designated and used
- Standards for historic or culturally important sites and/or structures
- Documentation and home-owner association-related requirements and obligations
- Affordable housing incentives

In addition, additional restrictions were placed on any density bonus when affordable housing is proposed, more clarity was added on climate change-awareness requirements, an increased protection of groundwater was included, along with other minor edits.

TITLE 16
LAND USE ZONE REGULATIONS
CONSERVATION SUBDIVISION

1. AMEND §16.3 Definitions as follows:

~~CLUSTER RESIDENTIAL DEVELOPMENT~~ CONSERVATION SUBDIVISION

A form of land use improvements and/or change in which the dimensional requirements are reduced below that what is normally required in the zoning district in which the land use improvements and/or change is located in return for the provision to set aside a portion of the tract as of permanent open space and other environmental enhancements owned and maintained jointly in common by individual lot/unit owners, the Town, or a land conservation organization.

A type of land use which in its simplest form allows a reduction of the pertinent zoning district's dimensional requirements such as lot size, frontage and setbacks, on a property to be subdivided while permanently protecting open space on the property based on certain criteria and objectives.

OPEN SPACE

Includes all dedicated portions of a parcel that has vegetated surfaces or is in an undisturbed natural state. "Open space" does not include areas occupied by a building or a parking area, except where required by the management plan in place to govern the open space and as approved by the Planning Board. Vegetated surfaces of outdoor commercial uses may be used to satisfy up to 50% of the required open space on any parcel, except those parcels within a conservation subdivision ~~cluster residential or cluster mixed-use development.~~

OPEN SPACE, RESERVED

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

2. AMEND §16.4 Land Use Zone Regulations as follows:

§16.4.10 Residential – Rural R-RL.

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

- (2) Conservation Subdivision ~~Cluster residential development.~~

D. Standards.

The following standards must be met unless modified per §16.10, ~~Section 16.8.10.H(3),~~ Conservation Subdivision ~~Cluster Residential Development:~~

- (3) Subdivision types and standards. Subject to net residential acreage and net residential density per §16.3.

- (a) ~~Cluster residential development.~~ In a conservation subdivision ~~cluster residential development,~~ the above standards may be modified in accordance with special provisions of §16.10 ~~§ 16.8.10.H(3),~~ including that there is no minimum lot size, and with the conditions

34 that:

35 (6) Affordable housing requirements:

36 (a) All requirements in §16.5.4 Affordable Housing must be met.

37 (b) Density incentives detailed in §16.10 may be applied to projects that create affordable
38 housing units, as defined by this code. No proportional payment-in-lieu is required if the
39 affordable dwelling unit requirements for the density incentives are met.

40 §16.4.11 Residential – Suburban R-S.

41 B. Permitted uses. The following uses are permitted in the R-S Zone:

42 (2) Conservation subdivision~~Cluster residential development.~~

43 D. Standards.

44 The following standards must be met unless modified per §16.10~~§16.8.10.H(3)~~, Conservation
45 Subdivision~~Cluster Residential Development~~

46 (3) Subdivision types and standards. Subject to net residential acreage and net residential density per
47 §16.3.

48 (a) ~~Cluster residential development.~~In a conservation subdivision~~cluster residential~~
49 ~~development~~, the above standards may be modified in accordance with special provisions of
50 §16.10~~§ 16.8.10.H(3)~~, including that there is no minimum lot size, and with the conditions
51 that:

52 (5) Affordable housing requirements:

53 (a) All requirements in §16.5.4 Affordable Housing must be met.

54 (b) Density incentives detailed in §16.10 may be applied to projects that create affordable
55 housing units, as defined by this code. No proportional payment-in-lieu is required if the
56 affordable dwelling unit requirements for the density incentives are met.

57 §16.4.12 Residential - Kittery Point Village R-KPV.

58 B. Permitted uses. The following uses are permitted in the R-KPV Zone:

59 (2) Conservation subdivision~~Cluster residential development.~~

60 D. Standards.

61 The following standards must be met unless modified per §16.10~~16.8.10.H(3)~~, Conservation
62 Subdivision~~Cluster Residential and Cluster Mixed Use Development:~~

63 (3) Subdivision types and standards. Subject to net residential acreage and net residential density per
64 §16.3.

65 (a) ~~Cluster residential development.~~In a conservation subdivision~~cluster residential~~
66 ~~development~~, the above standards may be modified in accordance with special provisions of
67 §16.10~~§ 16.8.10.H(3)~~, including that there is no minimum lot size, and with the conditions
68 that:

69 (4) Affordable housing requirements:

70 (a) All requirements in §16.5.4 Affordable Housing must be met.

71 (b) Density incentives detailed in §16.10 may be applied to projects that create affordable housing
72 units, as defined by this code. No proportional payment-in-lieu is required if the affordable
73 dwelling unit requirements for the density incentives are met.

74 §16.4.13 Residential - Urban R-U.

75 B. Permitted uses. The following uses are permitted in the R-U Zone:

- 76 (2) Conservation subdivision~~Cluster residential development~~

77 D. Standards.

78 The following standards must be met unless modified per ~~§16.10~~16.8.10.H(3), Conservation
79 Subdivision~~Cluster Residential and Cluster Mixed-Use Development~~:

- 80 (3) Subdivision types and standards. Subject to net residential acreage and net residential density per
81 §16.3

- 82 (a) ~~Cluster residential development~~. In a conservation subdivision~~cluster residential~~
83 ~~development~~, the above standards may be modified in accordance with special provisions
84 of ~~§16.10~~16.8.10.H(3), including that there is no minimum lot size, and with the
85 conditions that:

86 (6) Affordable housing requirements:

- 87 (a) All requirements in §16.5.4 Affordable Housing must be met.

- 88 (b) Density incentives detailed in §16.10 may be applied to projects that create affordable housing
89 units, as defined by this code. No proportional payment-in-lieu is required if the affordable
90 dwelling unit requirements for the density incentives are met.

91 §16.4.15 Residential - Conservation R-C.

92 B. Permitted uses. The following uses are permitted in the R-C Zone:

- 93 (7) Conservation subdivision~~Cluster residential development~~

94 D. Standards. The following standards must be met unless modified per ~~§16.10~~16.8.10.H(3),
95 Conservation Subdivision~~Cluster Residential and Cluster Mixed-Use Development~~:

- 96 (3) Subdivision types and standards. Subject to net residential acreage and net residential density per
97 §16.3.

- 98 (a) ~~Cluster residential development~~. In a conservation subdivision~~cluster residential~~
99 ~~development~~, the above standards may be modified in accordance with special provisions of
100 ~~§16.10~~16.8.10.H(3) including that there is no minimum lot size, and with the conditions that:

101 (4) Affordable housing requirements:

- 102 (a) All requirements in §16.5.4 Affordable Housing must be met.

- 103 (b) Density incentives detailed in §16.10 may be applied to projects that create affordable housing
104 units, as defined by this code. No proportional payment-in-lieu is required if the affordable
105 dwelling unit requirements for the density incentives are met.

106 **3. AMEND §16.5.2.7.C. Street Classification as follows:**

- 107 (7) Private streets function exclusively as residential streets serving higher-density housing
108 developments, including ~~clustered housing~~ conservation subdivisions, multi-family dwellings, age-
109 restricted housing, and mobile home parks, and may not be dedicated for public acceptance. Maintenance
110 and improvements must be controlled by proprietorship, corporation, association or deed covenants. The
111 ADT would be 72 to 800 trip ends. Design and construction is to be in accordance with the applicable
112 standards and specifications for minor streets or secondary collectors.

114 **4. AMEND §16.5.9.G. Wetlands Alteration Approval Criteria:**

115 (5) The applicant must submit applicable documentation that demonstrates there is no practicable
116 alternative to the proposed alteration of the wetland. In determining if no practicable alternative exists,
117 the Planning Board will consider the following:

118 (a). The proposed use:

119 [3] Provides alternative project designs, such as ~~cluster-development~~ conservation subdivision,
120 roof gardens, bridges, etc., that avoid or lessen the wetland impact; and

121 **5. AMEND §16.8.9.C. Preliminary Plan Review as follows:**

122 (6) Written submission requirements, Preliminary Plan

123 (l). Additional submissions as may be required by other sections of this title such as for ~~clustered~~
124 ~~development~~ conservation subdivisions, mobile home parks, or junkyards must be provided.

125 **6. AMEND §16.8.10.H. Cluster Residential Development as follows:**

126 Delete entire subsection and renumber subsections I through P to H through O, respectively.

127 **7. AMEND §16.8.10.L Soil Suitability as follows:**

128 §16.8.10.~~L-K~~ Soil Suitability

129 4. ~~Cluster residential and cluster mixed-use~~ Conservation subdivision, commercial or industrial
130 development and similar intensive land uses require a Class A (high-intensity) soil survey by a Maine-
131 certified soil scientist.

132 5. Where ~~nonclustered~~ development is limited in scale and intensity and is not a conservation
133 subdivision, the developer may request the Class A (high-intensity) soil survey required by §16.
134 8.10.L(3) 9.1.4E above be waived by the Planning Board.

135 **8. ADD new section §16.10 Conservation Subdivision as follows:**

136 §16.10 Conservation Subdivision

137 §16.10.1 Purpose.

138 This ordinance will allow new concepts and innovative approaches to housing and environmental design so
139 that the Town’s natural, scenic, cultural, marine and historic resources may be preserved, thus meeting the
140 relevant objectives of the Comprehensive Plan, while limiting the costs and impacts of development on the
141 community and mitigating the effects of climate change. Because Kittery’s character is expressed diversely
142 through its natural environment comprising fields, forests, rock outcrops, vernal pools, wetlands, salt marshes
143 and shoreland interwoven with its built environment including both compact neighborhoods and large lot
144 neighborhoods, conservation subdivisions in different zones may necessarily differ in how they achieve this
145 balance between development and preservation. In all instances the objectives include:

146 A. Preservation of open space, including but not limited to farmland, meadows, forests, and wildlife
147 habitat as well as scenic views identified in the Comprehensive Plan.

148 B. Preservation of areas with the highest ecological value as well as areas with significant value not
149 otherwise protected by law.

150 C. Location of buildings, streets and structures on those portions of the site most appropriate for
151 development based on environmentally-aware site design.

152 D. Connections to open space on adjoining lands wherever possible.

153 E. Reduction of impacts on water resources and water quality by minimizing land disturbance and
154 impervious surfaces while utilizing nature-based strategies such as Low Impact Development (LID)
155 combined with Best Management Practices (BMP) for optimal stormwater management.

156 F. Expansion of outdoor recreation opportunities wherever possible.

157 G. Preservation of historic, archaeological, and cultural features, such as but not limited to, historic
158 structures, stone walls, cellar holes, earthworks, middens or graves.

159 H. Minimization of residential development’s footprint, including streets, utilities, and driveways, to
160 lower the impact on the municipality, neighboring properties and the natural environment.

161 I. Demonstrated awareness of and response to climate change effects such as:

162 (1) Sea level rise considerations where shoreland exists. Properties that include coastal shoreland
163 must show areas affected by 1.6 and 3.0 feet of storm surge plus sea level rise utilizing data
164 from Maine Geological Survey or other sources as approved/adopted by the Town as well as
165 any existing salt marsh and potential salt marsh migration areas on the plans.

166 (2) Utilization of nature-based adaptation strategies, such as Low Impact Development (LID) for
167 stormwater management and groundwater quality and preservation of woodlands for wildlife,
168 cooling effects and for their role in carbon capture.

169 (3) Energy efficiency and reduced greenhouse gas emissions in both site design and building
170 design.

171 (4) Protection against salt water intrusion into freshwater drinking water supplies. Properties that
172 include coastal shoreland or that are affected by tidal waters must demonstrate that proposed
173 drinking water supplies are located beyond the potential reach (see I.(1) above) of salt water
174 intrusion.

175 J. Conservation of the Town’s natural resource and neighborhood diversity.

176 §16.10.2 Applicability.

177 A. Conservation subdivisions ~~is~~ are a residential use permitted in various zones as indicated in Chapter
178 16.4. Mobile home parks or manufactured homes on individual lots are not eligible for conservation
179 subdivisions. Subdivisions that are not conservation subdivisions, referred to herein as conventional
180 subdivisions, are a special exception use.

181 §16.10.3 Dimensional standards modifications.

182 A. The Planning Board, in reviewing and approving proposed residential development under this
183 ordinance, may modify the following dimensional standards to permit flexibility in approaches to site

184 design in accordance with the standards of this ordinance: lot area, impervious surface, street frontage
185 and front/rear/side setbacks. The Board may allow such dimensional modifications when the Board
186 finds a determination of benefit consistent with this ordinance.

187 B. The Board may also modify density standards when certain affordable housing provisions are met. See
188 16.10.9.

189 §16.10.4 Application procedure.

190 All development reviewed under this article is subject to the application procedures in Chapter 16.8,
191 Subdivision, and the following:

192 A. In addition to the requirements of Chapter 16.8, the following items are required with submission of the
193 sketch plan:

194 (1) A plan showing the proposed conservation subdivision and a plan showing a conventional
195 subdivision for the site. Both plans must include the following information as applicable:

196 (a) The location of each of the proposed building envelopes, as well as the proposed placement of
197 sidewalks, roads, service areas and parking areas. Only developments having complete plans
198 with building envelopes shown will be considered.

199 (b) Proposed dimensional measurements and sizes for all lots and the dimensional standards
200 required in the zone in which the development will be located.

201 (c) All land area identified in 16.5.18, Net Residential Acreage, noted with total land areas for each
202 applicable category.

203 (d) Net residential density calculations demonstrating how many dwelling units are allowable based
204 on the net residential acreage arrived at above and how many dwelling units are proposed. The
205 number of dwelling units proposed must be the same for both the conventional subdivision and
206 the conservation subdivision unless the conservation subdivision proposes to build or create
207 affordable housing as described in §16.10.9. In the uncommon circumstance where the number
208 of proposed dwelling units differs between a conventional subdivision plan and a conservation
209 subdivision plan without the affordable housing incentive involved, the smaller number of units
210 prevails, no matter which type of subdivision is pursued.

211 (e) Open space as described in §16.10.7 of this ordinance, labeled appropriately.

212 (f) Natural features, with areas of ecological value noted, including those identified by the Maine
213 Natural Areas Program and Maine Inland Fisheries and Wildlife, as well as all waterbodies,
214 streams, aquifers, wetlands, vernal pools, salt marshes, floodplains, farmland, forested and non-
215 forested areas and scenic vistas.

216 (g) Historical, archeological or culturally important features and/or structures.

217 (2) A map or plan showing constraints to development, such as, but not limited to, wetlands, vernal
218 pools, resource protection zones, stream protection zones, shoreland zones, rare plant and animal
219 habitat, slopes in excess of 20%, easements, proposed or existing rights-of-way, existing roads,
220 driveway entrances and intersections, existing structures, and existing utilities.

221 (3) If the site includes valuable agricultural soils, such as but not limited to, prime farmland soils or
222 soils of state-wide importance, a soils map illustrating their locations must be included.

223 (4) A written statement describing the site and the ways the proposed development furthers the
224 purpose and objectives of this ordinance, including how natural features will be preserved or
225 enhanced.

226 (5) If the conservation subdivision will rely on groundwater for its drinking water supply, a written
227 statement prepared by a hydrogeologist must attest to the sufficiency and quality of water for the
228 development and that such a private well or wells will not reduce either the quantity or quality of
229 the groundwater supply for surrounding properties.

230 B. For preliminary plan submission, in addition to the requirements of Chapter 16.8, an applicant with a
231 project that includes proposed public open space such as a park or a nature trail must obtain Town
232 Council approval for accepting the public land prior to Planning Board’s preliminary plan approval.
233 Such open space must be offered to the Town in fee or through an easement to be held by the Town.
234 Town Council acceptance of the public open space is contingent upon receipt of final plan approval by
235 the Planning Board.

236 C. An applicant with a project that includes moderate to high value wildlife habitat or other exceptional
237 natural features is strongly encouraged to seek a conservation easement to be held by a land trust or
238 other such conservation entity. Such easements will be counted towards the open space requirements for
239 the subdivision as reserved open space and must be approved by the Planning Board.

240 D. The Planning Board may, at the applicant’s expense, seek expert and professional opinions concerning
241 any aspect of the proposed development including but not limited to, engineering, site evaluation/septic
242 design, landscaping, natural resources, historic resources, traffic, wetlands, soil, stormwater and water
243 quality.

244 §16.10.5 General standards.

245 A. The purpose and objectives as stated above in §16.10.1 must be upheld for all subdivision reviews
246 conducted under this ordinance. In all cases, the subdivision must be designed for the open space first,
247 with the remaining area designated and designed for development. The Planning Board has final
248 authority over the site design and type of subdivision (conservation or conventional) permitted.

249 B. A conservation subdivision must meet all requirements for a subdivision and all other applicable federal,
250 state and local ordinances, except as modified by §16.10 and/or action of the Planning Board, where
251 authorized.

252 C. Public or privately shared sewer and water must be provided unless it is demonstrated to the Planning
253 Board's satisfaction that alternative methods proposed will result in development that is compatible with
254 the purpose and objectives of §16.10 and meets all other state and municipal requirements. Criteria for
255 the Board to consider include:

- 256 (1) Adequate ground water is available at all locations proposed for any individual water systems.
- 257 (2) The ground water source(s) proposed for any individual water systems is safe from both on-site and
258 off-site contamination.
- 259 (3) Any proposed individual septic systems must in no way endanger ground water supplies which are
260 currently being utilized as a water source for any existing development.
- 261 (4) Any proposed individual septic systems must in no way endanger ground water supplies which will
262 be utilized by any proposed common or individual water system in the conservation subdivision
263 development.
- 264 (5) The costs of providing a common water supply and distribution system and/or a central collection
265 and wastewater treatment system are prohibitive due to characteristics unique to the property. This
266 criteria by itself is not sufficient, but may inform the Board when making decisions.

267 D. Open space designated and set aside in a conservation subdivision will be permanently preserved as
268 required by this performance standard. Land that is designated as reserved or common open space as
269 defined by Title 16 must be separate tax parcels and not included as a part of any residential lot. Public
270 open space must be approved and accepted by Town Council per subsection §16.10.4.B. In all cases, the
271 Planning Board must approve the configuration of the open space.

272 E. Unless a public or shared sewer collection and treatment system is provided, no lot may be smaller than
273 20,000 square feet per single-family residence.

274 F. No individual lot or dwelling unit may have direct vehicular access onto a public road existing at the
275 time of development. This requirement may be modified at the Planning Board's discretion in cases
276 where existing structures included in the proposed subdivision have access from a public road, and the
277 overall site design is improved for allowing such access to remain.

278 G. In cases where proposed development includes shoreland, the entire area that falls within the Shoreland
279 Overlay Zone, the Resource Protection Overlay Zone or the Stream Protection Overlay Zone must be
280 protected as open space. All areas designated as floodplain and the 250-foot radius around a state-
281 designated significant vernal pool must similarly be protected as open space. Where an area falls within
282 two or more such zone designations, the zone with the largest total area will apply. Such open space
283 may not be part of any private house lot.

284 H. Where a conservation subdivision abuts a body of water, stream, or a significant wetland as defined by

285 the State of Maine, a portion of the shoreline, as well as reasonable and appropriate access to such
286 waterbody, stream or wetland, as determined by the Planning Board, must be a part of the commonly
287 held open space. Shoreland frontage must not be less than 100 feet. Deeded access to the shoreland
288 frontage must be conveyed to each lot owner in the conservation subdivision.

289 I. Wetlands, as defined by federal, state, and/or Town of Kittery regulations or ordinances, must be
290 included in the open space with a designated “no cut, no disturbance” setback per §16.10.6.E. While
291 wetland alterations are generally discouraged, there may be circumstances under which an alteration
292 could be considered. Wetlands under consideration for alteration as part of a conservation subdivision
293 are not eligible for a Wetland Alteration Permit unless all requirements for a Wetland Alteration Permit
294 are met as well as the following conditions:

295 (1) The wetland has been assessed/evaluated using techniques such as those used or developed by The
296 New England Biological Assessment of Wetlands Workgroup, including the *Method for*
297 *Inventorizing and Evaluating Freshwater Wetlands in New Hampshire*, 2016 and as amended from
298 time to time. Such assessment must be done by a Certified Professional Wetland Scientist or a
299 Maine-certified Wetland Scientist and submitted to the Board.

300 (2) The wetland alteration proposed must be less than 4,300 square feet in size and must constitute a
301 single complete project.

302 (3) The wetland must not:

303 (a) Be deemed a significant wetland by the State of Maine

304 (b) Be within the Shoreland, Stream Protection or Resource Protection Zones

305 (c) Contain 10,000 sf or greater of open water or emergent vegetation.

306 (4) An analysis of the proposed development-related impact to the wetland must be done and submitted
307 by a professional qualified as in (1) above.

308 (5) The Board may, at its discretion, request a more detailed site study (intensive site assessment) of the
309 wetland in question to be done by professionals as qualified in (1) above at the expense of the
310 applicant.

311 (6) When proposing a wetland alteration, particularly in order to create access, there is a strong
312 preference for bridging a wetland, rather than using a culvert crossing.

313 Wetland alterations that exceed 4,300 sf are not permitted within a conservation subdivision. If greater
314 wetland alterations are proposed, the applicant must request a special exception conventional
315 subdivision permit from the Planning Board and meet all the requirements of Chapter 16.8. It is
316 incumbent on the applicant to demonstrate the need to exceed the 4,300 sf. All requirements in

317 subsections I.(1), I.(3)-I.(5) apply. The Planning Board has final authority over whether or not to grant
318 such a request and may require additional open space, conservation easements, or buffers when granting
319 such a concession.

320 I. All utilities must be installed underground. Underground utilities and related easements may be located
321 in designated common open space but must be shown on the plans, including the as-built plan. The
322 Planning Board may allow aboveground electrical/utility service installation but it is incumbent on the
323 developer to demonstrate to the Planning Board’s satisfaction that underground installation of utilities is
324 not technically possible. When determining whether or not to permit aboveground utilities, the Board
325 will use the following criteria:

- 326 (1) The proximity and visibility of such a proposed utility line(s) to the surrounding neighborhood and
327 public streets.
- 328 (2) The impact that aboveground utilities will have on natural resources, any public recreation areas,
329 scenic views and conserved land.
- 330 (3) The ramifications of aboveground utilities on the overall design and functionality of the conservation
331 subdivision and how well the developer has addressed these ramifications.

332 When permitting such aboveground electrical service installations, the Board must require the developer
333 to adopt a prudent avoidance approach in regard to pole and line placements as a condition of approval
334 and include their placement within the site on the final plan. Transformer boxes, pumping stations and
335 meters must be located so as not to be unsightly or hazardous to the public.

336 J. The location of any subsurface wastewater disposal systems and reserve areas, if required, must be
337 shown on the plan. The reserve areas must be labeled as restricted so as not to be built or encroached
338 upon. All necessary information such as the site evaluator report and state-required permits must be
339 included prior to final plan approval.

340 §16.10.6 Design standards.

341 A. The developer must take the site’s natural features and physical location into consideration as follows:

- 342 (1) All elements of the site including the individual buildings must be designed so scenic vistas,
343 including views from scenic roads, natural, historic and cultural features are preserved and
344 protected while being integrated into the development.
- 345 (2) Buildings must be sited to consider sunlight, shade, topography, natural drainage, prevailing winds
346 and ventilation.
- 347 (3) Buildings must be designed and oriented to protect against light trespass from vehicle headlights,
348 and any existing outdoor lighting to the greatest extent possible.

349 (4) It is strongly recommended that all buildings be designed for maximum energy efficiency and use
350 heating and cooling systems that reduce greenhouse gases.

351 (5) Existing natural vegetation, including trees, unless diseased or dying, must remain to control soil
352 erosion, provide shade and wildlife habitat and assist in stormwater infiltration to ensure the least
353 amount of disturbance during construction. Existing large healthy trees located near new rights of
354 ways, driveways or building sites, whose removal is not necessary for construction, must be
355 protected from damage during construction. Such trees must be noted on the plans and plan notes
356 must include protection details.

357 B. Active recreational facilities such as playgrounds or tennis courts requiring permanent equipment
358 affixed to the ground and/or modification of the site may not be located within the wetland or shoreland
359 setback areas or within reserved open space areas.

360 C. Where a park or a playground with permanent affixed equipment, either recreational or artistic in nature
361 is proposed as common open space, the park or playground must be designed by a landscape architect
362 or a professional specializing in playgrounds. The plans for the playground or park must be submitted
363 as part of the preliminary plan or if the conservation subdivision is less than five lots, part of the final
364 plan. Any impervious surface created as part of the park or playground must be included in the
365 stormwater management report to ensure the design of adequate stormwater management systems.

366 D. Plantings, landscaping, naturally existing vegetation, and the forms and siting of buildings and other
367 improvements, must be used to integrate the proposed development with the surrounding landscape and
368 any neighboring development.

369 E. Development setbacks from wetlands, streams and waterbodies must comply with §16.5.30 and
370 §16.10.5.G. These setbacks must be permanently maintained as "no cut, no disturb" buffer areas except
371 where common access by the conservation subdivision residents is required per §16.10.5.H. These
372 buffer areas must be identified as such on all subdivision plans, including the as-built plan. The Planning
373 Board may require signs denoting the boundaries of these buffer areas be placed prior to the issuance of
374 any certificate of occupancy to ensure that encroachment does not occur. If the setback areas do not
375 contain substantial vegetation, as determined by the Planning Board, to provide a sufficient and
376 environmentally appropriate buffer and ecological benefit, the Board may require additional native or
377 Northeastern native climate tolerant plantings. If plantings are required, any plantings that do not survive
378 must be replaced. This plantings requirement does not expire and runs with the land.

379 F. A vegetated buffer is required in zones R-C and R-RL along the front lot line (except for access to the
380 development) of the proposed development where designated open space or "no-cut, no disturb buffers"
381 as described in subsection E. above, do not exist. The frontage buffer must be at least 40 feet wide and
382 will serve to screen the development from the street, perform carbon capture and aid in stormwater
383 absorption. This buffer may not be built on, paved, mowed or used for parking or storage nor can it be
384 part of any residential lot. No trees may be cut within the buffer unless they are dead, diseased or dying,
385 are identified as an invasive species or are less than a two-inch caliper. Any invasive plant species, as

386 identified by the State of Maine, that are found in the buffer must be removed. Vegetation will be
387 maintained in its natural state (excluding invasive species) unless the Planning Board deems the buffer
388 insufficiently vegetated to serve its purpose, in which case, the Board may also require additional native
389 or Northeastern native climate tolerant plantings. If plantings are required, any plantings that do not
390 survive must be replaced. This plantings requirement does not expire and runs with the land.

391 (1) The buffer may be increased to a maximum of 50 feet, if in the Board’s judgement, the
392 preservation of natural features or the design of the site as proposed, including how it blends with
393 the surrounding environment, would be improved by wider buffers.

394 (2) The buffer requirement may also be modified by the Board in different ways than described by (1)
395 above, if, in the Board’s judgement, the buffer would impact important objectives, such as
396 preserving views, providing access to a trail/open space, creating LID features for stormwater or
397 protecting natural features.

398 G. The Planning Board may require vegetated buffers in other locations on the site, such as but not limited
399 to, side lot lines or rear lot lines, when, in the Board’s judgement, such a buffer will allow the site design
400 to better meet the criteria and objectives of this conservation subdivision ordinance. Such buffers may
401 not exceed 40 feet in width and all requirements in F. above apply.

402 H. Low Impact Development (LID) must be incorporated into the site design and should include simple
403 nature-based strategies such as maintaining significant stands of forest and intact and ecologically
404 functional wetlands.

405 I. In cases where a proposed conservation subdivision abuts permanently protected land such as property
406 owned by a land trust or private property with a conservation easement, all proposed development
407 including private house lots, structures, roads, driveways, utility easements, stormwater management
408 systems, and utilities must be set back at least 30 feet from the edge of the protected property. This 30-
409 foot setback also applies to Town-owned land used by the general public such as but not limited to
410 Rogers Park, the Town Farm Forest and Fort Foster.

411 §16.10.7 Open space requirements

412 A. The amount of open space required varies with the zoning district in which the conservation subdivision
413 is located. The requirements are as follows:

414 (1) In the R-C Zone, the designated open space must be a minimum of 70% of the total land area,
415 with a minimum of 50% of that consisting of net residential acreage as defined by this Title.

416 (2) In the R-RL Zone, the designated open space must be a minimum of 60% of the total land
417 area, with a minimum of 40% of that consisting of net residential acreage as defined by this
418 Title.

419 (3) In the KP-V Zone, the designated open space must be a minimum of 50% of the total land
420 area, with a minimum of 30% of that consisting of net residential acreage as defined by this

421 Title.

422 (4) In the R-S and R-U Zones:

- 423 (a) For properties of ten (10) acres or more, the designated open space must be at least
424 50% of the total land area, with a minimum of 30% of that consisting of net residential
425 acreage as defined by this Title.
- 426 (b) For properties of less than ten acres with public sewer or common private septic, the
427 designated open space must be at least 25% of the total land area with a minimum of
428 5% of that consisting of net residential acreage.
- 429 (c) For properties of less than ten acres with private septic, the designated open space must
430 be at least 25% of the total land area with no minimum net residential acreage
431 requirement.

432 B. Wetlands of all types, water bodies, floodplains, and streams located on the site must be protected as
433 reserved open space, except as otherwise allowed in §16.10.5.

434 C. Natural resources such as wildlife habitat or areas of ecological importance must be included in the
435 designated open space.

436 D. The required designated open space must include any notable natural features found on the site, such as
437 but not limited to, stands of mature trees, meadows, hillsides, ledge/outcroppings, and former or existing
438 farmland.

439 E. All historic, cultural or archeological resources must be included in the designated open space.

440 F. Open space areas within a site must be contiguous blocks, to the greatest extent possible, and link to
441 open space on abutting land where it exists to protect natural resources, including plant and wildlife
442 habitats. It is incumbent on the applicant to demonstrate to the Planning Board's satisfaction that non-
443 contiguous open space still meets the criteria and intent of this ordinance.

444 (1) Narrow strips of open space located around the perimeters of the site will not necessarily meet
445 this standard but such narrow strips may exist for purposes of buffering the development from
446 the street as required in §16.10.6.F.

447 (2) Narrow strips of open space which serve purposes other than those required by §16.10.6.F
448 such as a buffer to neighboring properties or to provide public access connectors to public
449 open space, public trails or links to neighborhoods, all of which must be approved by the
450 Board, may be counted towards the total open space requirements.

451 G. Open space may not consist entirely of mowed grass areas unless such a space is designated as a park,
452 either public or private. If a park is proposed or included in the development, seating areas and shade
453 trees, at minimum, must also be included in the park. See §16.10.6 for design details.

454 H. All three types of open space, public, common and reserved as defined by Title 16, may be used for a
455 proposed development to meet the open space area requirements of the applicable zone. For example, a
456 conservation subdivision may propose common open space for a community garden with mowed areas
457 around the garden for community gatherings while designating the woodlands beyond as reserved open
458 space with both areas combining to meet the necessary open space requirements. The Planning Board
459 must approve the designations and may require changes in the designations and/or the uses based on the
460 standards of this ordinance.

461 §16.10.8 Open space and facilities dedication and maintenance.

462 A. This conservation subdivision ordinance will supersede inconsistent provisions regarding buffers, open
463 space and vegetation/landscaping requirements of Title 16 where relevant and applied to a conservation
464 subdivision development being considered by the Board.

465 B. Open space designated and set aside in a conservation subdivision will be permanently protected from
466 development as required by this ordinance. Such perpetual protection includes but is not limited to
467 conservation easements and declarations of covenants, conditions, and restrictions.

468 C. A conservation easement may be granted to or the declarations may be for the benefit of a qualified not-
469 for-profit conservation organization such as a land trust acceptable to the Planning Board or to the Town
470 of Kittery with the approval of Town Council.

471 D. The Planning Board may require that any conservation easement or declaration of covenants, conditions
472 and restrictions be enforceable by a third party as specified and/or approved by the Board.

473 E. On all parcels, open space uses must be appropriate to the site as follows:

474 (1) Parcels that include three acres or more of land suitable for agriculture by reason of former or
475 existing agricultural use or agriculturally valuable soil must be conserved for agriculture or other
476 compatible open space uses such as wildlife habitat, resource conservation and/or passive
477 recreation. A conservation easement to be held by a land conservation entity is strongly
478 encouraged.

479 (2) If any portion of the designated open space will be devoted to an agricultural land use, the
480 developer must submit a management plan to the Planning Board for review and approval
481 demonstrating how the use will be fostered into the future. Examples of such plans include a farm
482 management plan or a community garden plan. If the open space will be leased to another party, a
483 long-term lease (three years or more) must be included with the management plan.

484 (3) When the principal purpose for conserving certain portions of the open space is protection and
485 preservation of natural resources such as but not limited to, wetlands, stream corridors, waterbody
486 shores, wildlife habitat, woodlands, meadows and hillsides, those open spaces must be designated
487 as reserved open space with no use allowed beyond passive recreation.

- 488 (4) For the purposes of this conservation subdivision ordinance, forestry means the practice of
489 planting, managing, and caring for forests. Any portion of the open space designated for forestry
490 must be covered by a plan done by a licensed Maine Forester that manages for the health of the
491 forest and, if appropriate, passive recreation. Timber harvesting as a main objective is not
492 allowed, although trees removed for health and/or safety reasons according to the management
493 plan may be sold per state and local regulations.
- 494 (5) The use of any proposed open space may be limited by the Planning Board prior to final plan
495 approval when the Board finds that it is necessary to protect sensitive natural features or resources
496 or to protect adjacent properties or uses.
- 497 (6) No further subdivision of open space is allowed and the deed restrictions must clearly state this.
498 Such deed restrictions must be reviewed by the Town’s legal counsel prior to final plan approval
499 at the applicant’s expense. See subsection F. below Any use of open space other than that
500 designated at the time of Planning Board final approval for agriculture, forestry, recreation and/or
501 conservation, is prohibited except for underground utility easements (see §16.10.5.I) which, if
502 necessary, may be reviewed and approved by the Board as a major modification after final plan
503 approval. Any modification of a previously approved use for open space must be reviewed and
504 approved by the Planning Board as a major modification.
- 505 (7) Proposed structures or buildings accessory to agriculture, recreation or conservation uses of open
506 space are allowed subject to Planning Board approval through the major site plan review process
507 pursuant to this ordinance and §16.7. Such a process may run concurrently with the conservation
508 subdivision approval process.
- 509 (8) In cases where historic or culturally important sites are included in the open space, the Planning
510 Board may require that extra protections be put into place, such as a fence around a graveyard or a
511 stone wall around an early homestead site. The Board may also require that markers or signs be
512 erected at the developer’s expense, describing the site’s significance.
- 513 (9) Adapting an historic or culturally important structure within a proposed conservation subdivision
514 for use either residentially or as an accessory structure is encouraged. For the purposes of this
515 ordinance, a historic structure means any structure that is significant in the history, architecture or
516 landscape of Kittery and is at least 50 years old. If the proposed open space in the subdivision
517 includes a historic or culturally important structure or building, the following options exist:
- 518 (a) Repurposing of such a building is allowed if all other state and local regulations are met,
519 for example, a historic barn could be used as a clubhouse or for storage of small
520 recreational vehicles and watercraft. The building must be repaired and maintained by the
521 homeowner’s association with the necessary funding put in place for continued upkeep.
522 The proposed use must be reviewed and approved by the Planning Board through the
523 major site plan review process pursuant to this ordinance and Chapter 16.7. The site plan
524 review may be done concurrently with the subdivision review.

525 (b) The building's deed can be transferred to an entity, such as a historical society, that can
526 preserve and maintain it. Such a transfer must be approved by the Board.

527 (c) In cases where the building will not be repurposed and an entity cannot be found to accept
528 the deed for the building, the Board may allow the building to be dismantled and given or
529 sold to a willing party, moved to another location off the site by a willing party or
530 demolished. If the building will be dismantled, moved or demolished, the developer must
531 document the building. Such documentation must include dimensions and photographs,
532 inside and out, on its original site prior to any further action taken to remove the building.
533 The Board may require the developer to hire a historian at the developer's expense to
534 create the documentation. A copy of the completed documentation must be given to the
535 Kittery Historical and Naval Museum and a copy must be filed with the Town Planning
536 Department prior to the issuance of the first building permit and will be a condition of
537 approval.

538 F. Prior to approval of the final plan by the Planning Board, documentation, including plans, homeowner
539 association documents such as the covenants, conditions and restrictions as well as bylaws, deed
540 restrictions, conservation easements and any other legal instruments for open space concerned with the
541 subdivision and its open space must be submitted to the Town for review by legal counsel at the
542 applicant's expense. Once reviewed by legal counsel and any corrections required are made, the
543 documents must be submitted to the Board as part of the final plan submission. Upon approval of the
544 final plan, all documents described above that apply to the homeowners' association and/or open space
545 must be submitted to the Registry of Deeds and a recorded copy submitted to the Town prior to the
546 issuance of the first building permit.

547 G. The open space must be accurately shown on the development plans, at least by final plan submission
548 and on the as-built plan with appropriate notation to indicate:

- 549 (1) The open space is permanently protected and must not be used for future building lots or any
550 additional development unless approved by the Planning Board where authorized;
- 551 (2) The uses or uses applicable, ownership, management, method of preservation and the rights, if any
552 of the owners of the subdivision to such land or portions thereof;
- 553 (3) Any open space that will be deeded to a land conservation entity, dedicated for acceptance by the
554 Town or protected by a conservation easement held by a land conservation entity;
- 555 (4) The type of open space: reserved, common or public; and
- 556 (5) The book and page of any conservation easements or deed restrictions required to be recorded to
557 implement such protections or restrictions.

558 H. The Planning Board may require that a separate open space plan with full details and notations per

559 subsection E. above be submitted for preliminary or final plan approval or both. Planning staff may also
560 require such a plan to be included as part of the as-built plan.

561 I. If any, or all, of the open space will be owned in common by the residents of the conservation
562 subdivision, the bylaws of the proposed homeowners' association and/or the recorded covenants,
563 conditions and restrictions must specify maintenance responsibilities and tasks and be submitted to the
564 Planning Board for review prior to final plan approval. See Subsection F above.

565 §16.10.9 Affordable Housing

566 A. In instances where affordable housing as defined by Title 16 is required, and the affordable housing will
567 be built, either on-site or off-site per §16.5.4, the Planning Board may allow:

568 (1) In the R-C, R-RL and KP-V Zones, one additional lot for a market-rate single-family dwelling to
569 be created in the conservation subdivision, provided all objectives, requirements and criteria in
570 §16.10 are met to the Board's satisfaction and as follows:

571 (a) Base zone residential density requirements will be necessarily modified to allow an
572 additional dwelling unit.

573 (b) All lots must be served by public water and sewer.

574 (c) No lots may be located within 100 feet of a Conservation-zoned property.

575 (2) In the R-S and R-U Zones, one additional lot for a market-rate single-family dwelling to be
576 created in the conservation subdivision, provided all objectives, requirements and criteria in
577 §16.10 are met to the Board's satisfaction and as follows:

578 (a) Base zone residential density requirements will be necessarily modified to allow an
579 additional dwelling unit.

580 (b) Open space requirements may also be modified by the Board when doing so will result in
581 development that meets the intent of §16.10 while supplying modestly priced housing in a
582 designated growth area per the Comprehensive Plan.

583 (c) To qualify for this allowance, the affordable housing, if not located on the conservation
584 subdivision site itself, must be located in one of these zones: R-S, R-U, B-L, or B-L1.

585 (d) All lots must be served by public water and sewer.

586 (e) No lots may be located within 100 feet of a Conservation-zoned property.

587 §16.10.10 Homeowners association responsibilities.

588 A. The homeowners' association (HOA) is responsible for the maintenance of open space(s) owned in

589 common by the residents and other common facilities such as streets, stormwater management
590 systems, and shared septic and water systems. Associations must maintain adequate funds to defray
591 these expenses. The Planning Board shall require an initial capital fund for associations to be paid by
592 the developer to cover these expenses.

593 B. Any additional plantings required by the Planning Board must be documented and provisions made in
594 the HOA's documents to ensure that the plantings are maintained and replaced when necessary.

595 C. The Planning Board may require that a qualified independent party or steward be designated and
596 contracted to oversee homeowner association-owned open space in instances where natural resources
597 or historical, archeological or cultural features must be expertly observed and monitored. Such an
598 arrangement must be approved by the Board and will be funded by the HOA in perpetuity or until a
599 conservation or historic preservation entity holds a conservation or historic preservation easement for
600 the open space or obtains the open space in fee. Any such transfer of responsibility from the HOA to
601 another entity must be reviewed and approved by the Board as a major modification.

602 D. Stormwater. The stormwater management system must be maintained in accordance with §16.8.10.F,
603 Post-construction stormwater management. As stated in A. above, an initial capital fund will be
604 provided by the developer to cover expenses but the HOA will be responsible for maintaining adequate
605 funding going forward.

606 E. Transition of responsibility. The developer is responsible for maintenance of all open space and all
607 facilities until development, sufficient to support the HOA has taken place. At minimum, 75% of the
608 residences must be built and sold before any transfer of responsibility may occur. All HOA
609 documentation must be distributed to the HOA prior to the issuance of the final occupancy permit so the
610 transition of responsibilities is seamless.

611 §16.10.11 Predevelopment requirements.

612 Prior to the beginning of any site work, including tree cutting or disturbing any soil, the applicant must:

613 (1) Clearly define the limits of clearing and obtain sign-off from Code Enforcement per approved
614 plan; and

615 (2) Schedule a pre-construction meeting with the Town and file all required performance
616 guarantees and inspection escrows in forms acceptable to the Town Manager in accordance
617 with §16.8.11.F.

**KITTERY TOWN CODE –
TITLE 16
CLUSTER/CONSERVATION SUBDIVISION**

1 **AN ORDINANCE** relating to the municipality’s authority for Town governance to give due and
2 proper attention to its many demands pursuant to the Town Charter, Federal law, and Maine
3 Revised Statutes, and more particularly where set forth in Maine Revised Statutes Title 30-A,
4 Municipalities and Counties.

5 **WHEREAS**, the Kittery Town Council is authorized to enact this Ordinance, as specified in
6 Sections 1.01 and 2.07(3) of the Town Charter; and 30-A MRS §3001, pursuant to its powers
7 that authorize the town, under certain circumstances, to provide for the public health, welfare,
8 morals, and safety, and does not intend for this Ordinance to conflict with any existing state or
9 federal laws; and

10 **WHEREAS**, the Town of Kittery desires to protect natural resources and sensitive
11 environmental areas, and shrink the footprint of infrastructure like roads and utilities in new
12 subdivisions; and

13 **WHEREAS**, the Town of Kittery recognizes that greater clarity in defined standards and the
14 design process, and corrections to the net residential acreage calculation process will improve
15 the outcomes of cluster subdivisions for the town; and

16 **NOW THEREFORE**, IN ACCORDANCE WITH TITLE 30-A MRS §3001, AND TOWN
17 CHARTER §2.14, THE TOWN OF KITTERY HEREBY ORDAINS AMENDMENTS TO TOWN
18 CODE, TITLE 16, LAND USE and DEVELOPMENT CODE, CLUSTER/CONSERVATION
19 SUBDIVISION, AS PRESENTED.

20 **INTRODUCED** and read in a public session of the Town Council on the ____ day of _____,
21 20____, by: _____ {NAME} Motion to approve by Councilor
22 _____ {NAME}, as seconded by Councilor _____ {NAME} and
23 passed by a vote of _____.

24 **THIS ORDINANCE IS DULY AND PROPERLY ORDAINED** by the Town Council of Kittery,
25 Maine on the ____ day of _____, 20____, {NAME}, _____, Chairperson

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



TOWN OF KITTERY

200 Rogers Road, Kittery, ME 03904

Telephone: 207-475-1329 Fax: 207-439-6806

REPORT TO TOWN COUNCIL

Meeting Date: September 26, 2022
From: Kendra Amaral, Town Manager
Subject: Transfer Request for Fiscal Year 2023 for Full-Time Firefighters
Councilor Sponsor: Chairperson Judy Spiller

EXECUTIVE SUMMARY

In accordance with Town Charter 6.09(4) Transfer Appropriation, the following is a request to transfer unencumbered appropriation balances from Fiscal Year 2023 (FY23) to various accounts to support the hiring of four more full-time firefighters.

This proposal for transfers follows approval at the Council Meeting of September 12, 2022 to increase the tax levy to support a plan to hire four full-time firefighters if the Town is not awarded the SAFER grant this year.

The transfers will come from Overlay and go to the various accounts (Fire Department, Employee Benefits, etc.) to cover wages, benefits, hiring costs, and new equipment for the new firefighters.

PROPOSED SOLUTION/RECOMMENDATION

Approve transfers as requested.

ATTACHMENTS

- FY23 Full-Time Firefighter Transfer Breakdown
- FY23 Full-Time Firefighter Transfer Enactment

Report to Council
 Fiscal Year 2023
 Transfers & Carry Forwards
 Increase Firefighters

GENERAL FUND TRANSFERS

FROM			TO		
101160	Overlay	\$ 325,000	101320	Fire	\$ 325,000
101160	Overlay	\$ 35,000	103000	FICA	\$ 35,000
101160	Overlay	\$ 30,000	103002	Retirement	\$ 30,000
101160	Overlay	\$ 110,000	103001	Employee Benefits	\$ 110,000
Total General Funds Transfers		\$ 500,000			\$ 500,000

**TOWN OF KITTERY
FISCAL YEAR 2023
TRANSFER OF APPROPRIATIONS
ADDITIONAL FULL TIME FIREFIGHTERS**

1 **AN ORDINANCE** relating to the municipality's authority for Town governance to give due and
2 proper attention to its many demands pursuant to the Town Charter, Federal law, and Maine
3 Revised Statutes, and more particularly where set forth in Maine Revised Statutes Title 30-A,
4 Municipalities and Counties.

5 **WHEREAS**, the Kittery Town Council is authorized to enact this Ordinance, as specified in
6 Sections 1.01 and 6.09(4) of the Town Charter; 30-A MRS §3001, pursuant to its powers that
7 authorize the town, under certain circumstances, to provide for the public health, welfare,
8 morals, and safety, and does not intend for this Ordinance to conflict with any existing state or
9 federal laws; and

10 **WHEREAS**, the Town Manager has submitted a written request to transfer Fiscal Year 2023
11 appropriations from one department to another to cover the Council approved increase in the
12 number of full-time firefighters; and

13 **NOW THEREFORE**, IN ACCORDANCE WITH TITLE 30-A MRS §3001 AND TOWN CHARTER
14 §6.09(4), AND THE APPROVED WARRANT ARTICLE 8 THE TOWN OF KITTERY HEREBY
15 ORDAINS THE FISCAL YEAR 2022 TRANSFER OF FUNDS, AS PRESENTED.

16 **INTRODUCED** and read in a public session of the Town Council on the ____ day of _____,
17 20____, by: _____ {NAME} Motion to approve by Councilor
18 _____ {NAME}, as seconded by Councilor _____ {NAME} and
19 passed by a vote of _____.

20 **THIS ORDINANCE IS DULY AND PROPERLY ORDAINED** by the Town Council of Kittery,
21 Maine on the ____ day of _____, 20____, {NAME}, _____, Chairperson

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