



TOWN OF KITTELY

200 Rogers Road, Kittery, ME 03904
 Telephone: (207) 475-1323 | Fax: (207) 439-6806
 Visit us: www.kitteryme.gov/planning-board

Planning Board Meeting January 25, 2024

ITEM 2 – 47 Cutts Road – Major Conservation Subdivision Plan – Preliminary Review

Action: Approve plan or continue review. Mike Sudak, on behalf of owner/applicant Chip and Anne Andrews, is proposing to divide 14.1 acres of a 36.06-acre parcel into a major conservation subdivision of 12 single-family residential building lots with shared community septic systems, a private street, and a public access parking lot for abutting Kittery Land Trust nature trails, located on the current property of 28 Andys Lane, Map 60 Lot 10-3, in the Residential-Rural, Shoreland Overlay, and Resource Protection Overlay Zones.

Process Summary

REQ'D	ACTION	COMMENTS	STATUS
YES	Sketch Plan Acceptance/Approval	3/23/23	Accepted
YES	Planning board determination of completeness	9/28/23	Completed
NO	Site Visit	10/17/23	Held
YES	Public Hearing	10/26/23	Held
YES	Preliminary Plan Approval	1/25/24	Pending
YES	Wetland Alteration Permit	Submitted 1/11/24. Required as part of final plan approval	Pending
YES	Final Plan Review and Decision		TBD

Applicant: Prior to the signing of the approved Plan any Conditions of Approval related to the Findings of Fact along with waivers and variances (by the BOA) must be placed on the Final Plan and, when applicable, recorded at the York County Registry of Deeds. PLACE THE MAP AND LOT NUMBER IN 1/4" HIGH LETTERS AT LOWER RIGHT BORDER OF ALL PLAN SHEETS. As per Section 16.4.4.L - Grading/Construction Final Plan Required. - Grading or construction of roads, grading of land or lots, or construction of buildings is prohibited until the original copy of the approved final plan endorsed has been duly recorded in the York County registry of deeds when applicable.

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16 **Other Permits and Requirements**

- 17 • Subsurface wastewater disposal application with Town
- 18 • Delineation of wetlands and protected water bodies
- 19 • Natural Resources Protection Act Permit (Maine DEP)
- 20 • Maine General Permit (DEP)
- 21 • Street naming application with assessing
- 22 • A driveway entrance or road opening permit for private ROW being built
- 23 along Cutts Road.

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25 **PROJECT INTRODUCTION**

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27 This is the third preliminary review for a proposed 12-lot conservation subdivision
28 located at 47 Cutts Road in the R-RL (Residential-Rural) zoning district and partially
29 within the Shoreland Overlay and Resource Protection Overlay zones. The property is
30 currently listed as 28 Andy's Lane and contains an existing single-family dwelling in
31 the area of proposed lot 9. The area of proposed lot 4 is the location of an existing
32 construction service commercial building, which has been demolished. In between
33 proposed lots 8 and 9 is 25 Andy's Lane, a separate land-locked parcel under different
34 ownership, which currently has access to the existing private right-of-way. 25 Andy's
35 Lane also maintains access to Cutts Road through a gravel road leading southeast,
36 between two man-made ponds and through an abutting property. Forested wetlands
37 cover several portions of the total parcel, which abuts a critical vernal pool and Kittery
38 Land Trust nature trails to the north.

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40 The plan proposes 3 "clusters" of lots, each with their own community septic systems
41 and access to Town water. The existing single-family dwelling on lot 9 would be
42 maintained, and the commercial business use on lot 4, which has already been
43 demolished, would be replaced with a single-family dwelling. The applicant plans to
44 develop new single-family dwellings on all other lots. The existing road will be
45 replaced by a private street that forks in two directions, with both roads ending in a
46 cul-de-sac. Right-of-way access for the owner of 25 Andy's Lane will be provided by
47 the applicant through an easement, which will be submitted to the Town before final
48 plan approval. On-site stormwater management will be through a series of swales,
49 culvert crossings, and stormwater detention areas. The applicant has expressed
50 interest in donating some of the open space on the property to the Kittery land Trust;
51 this is a private matter and not purview of the planning board until confirmed but is
52 being mentioned as the plan set shows a proposed parking lot south of lot 12 to
53 provide public access to KLT nature trails.

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55 On September 28th, 2023, the planning board accepted this application as complete,
56 then scheduled a site walk on October 17th and a public hearing on October 26th. The
57 full application and drainage analysis has been sent out to a third-party engineer
58 review and completed with the determination that there are no significant issues with
59 the plan and conditional preliminary approval can be provided at this time.

60 During the public hearing, questions were raised regarding what development is
61 allowed in the shoreland overlay zone, and what assurances can be made to ensure
62 the proposed development does not create any adverse impact on the island lot of 25
63 Andy's Way. The applicant has resubmitted a plan set to show the ROW with
64 requested modifications following feedback from the planning board, as well as
65 revisions following feedback to incorporate feedback from the hearing, as described
66 in the notes below.

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68 **Staff recommend conditional approval at this time.** Following guidance from the
69 planning board and Town staff, the applicant is still requesting waivers regarding road
70 width and topography. The plan set should be reviewed by the third-party engineer
71 as part of the final application process to ensure the revised plan complies with all
72 standards.

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74 **WAIVERS REQUESTED**

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76 1. Road modification: At the sketch review, the planning board asked the applicant to
77 provide narrower roads in their preliminary application. To comply with this, the
78 applicant built to the standards of a Class II private street and requested a
79 modification of road length from a maximum of 600 feet to 1,030 feet and 1,520 feet.
80 Because this length so greatly exceeds the maximum allowable for Class II, Fire and
81 Public Works staff requested the applicant instead build a Class III private street and
82 seek a modification to road width. The applicant was amenable to this, and the
83 modifications for the street are as follows:

- 84 1. Request a modification to the Class III ROW requirements from 60 feet to 40
85 feet, with a travel pavement minimum of 23 feet and 1-foot gravel shoulders.
- 86 2. Request a modification to the Class III grade maximum from 8% to 9% in a
87 few locations of the road to be notated on the plan set.
- 88 3. Request a modification to the Class III requirement of 5 feet sidewalks. The
89 applicant proposes a paved pedestrian travel way along the side of the road
90 instead of full sidewalks.

91 2. Plan scale modification: The applicant is requesting the planning board modify the
92 maximum plan scale for developments greater than 10 acres in size from 1" = 50" to
93 1" = 80." The overall size of the subject parcel and its unique shape prevent the
94 standard from being met without this modification.

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96 **STAFF COMMENTS**

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99 Listed below are comments provided by staff in addition to general review of
100 standards:

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- 102 1. To account for the overlay zones and provide extra space for the island lot of 25
103 Andy's Lane, one proposed lot has been removed from the plan. The lots closest
104 to 25 Andy's Lane have been moved, providing a buffer of ~140 feet on all sides
105 from the edge of the island lot to any other proposed parcel.

- 106 a. Movement of the parcels required that one community septic system be
107 moved to the area between 25 Andy's Lane and lot 9. Test pits have already
108 been dug, and the wastewater unit will be reviewed by Code Enforcement
109 before development can begin.
- 110 b. The Acorn Lane right-of-way cannot be moved further from the island lot
111 as it directly abuts a shoreland overlay zone. The applicant is amenable to
112 providing landscape screening between the ROW and 25 Andy's Lane, if
113 the property owner requests it.
- 114 2. During the public hearing, the residents of 25 Andy's Lane expressed concerns
115 regarding maintenance of the flood gates used to drain the existing artificial
116 ponds. The site plan now has a note speaking to the maintenance of the existing
117 outfall and gate valve serving as emergency flood control to the southern on-site
118 pond.
- 119 3. The easement currently granting the owner of 25 Andy's Lane access to the Acorn
120 Lane ROW will need to be revised to ensure access to the proposed new ROW.
121 While legal access will be confirmed before final plan approval, the actual
122 agreement is a civil issue between the private parties involved, and not the purview
123 of the Town or planning board.
- 124 4. The applicant plans to work with the Fire department during final review for an
125 official location of any fire hydrants on the private roads. Preliminary
126 conversations have landed on the intersection between Dogwood and Acorn
127 Lane as the optimal location.
- 128 5. Police and Public Works have asked that a stop sign be installed at the
129 intersection of Acorn Lane onto Cutts Road. While this isn't required, planning
130 staff strongly suggest this, as the 40-foot vegetative buffer along Cutts Road will
131 reduce visibility.
- 132 a. Staff do not believe a stop sign at the intersection of Dogwood Lane and
133 Acorn Lane is necessary.
- 134 6. The applicant has a draft easement regarding access and maintenance of the
135 KLT parking lot ready. It has not been submitted as part of this application, as the
136 planning board has stated they cannot consider the proposed donation to KLT
137 until it has been confirmed as part of final subdivision review.
- 138 7. There appears to be a minor visual error showing a stone wall crossing the Acorn
139 Lane ROW. This should be corrected as part of the final plan submission, any
140 stone wall in the area should be identified.
- 141 8. The site plan now shows the shoreland and resource protection overlay zones.
142 Per **§16.10.5.C**, all development is now located outside of the zone, except for the
143 proposed KLT parking lot (which can be within the overlay, as long as it maintains
144 all required setbacks and is used to facilitate use of the open space).
- 145 9. The total wetland impact is 3,804 sq ft, which is below the maximum
146 requirement of 4,300 in the conservation subdivision ordinance. A wetland
147 alteration permit has been submitted and will be reviewed if this application
148 reaches the final subdivision plan stage.
- 149 10. The wetland delineation recommended that the test pits **not** have a no-cut, no-
150 disturb buffer around them. The subsurface wastewater application will have a
151 proposed "safety radius" around each test pit showing what portions of the buffer

- 152 must be excluded from the no-cut requirement. All septic systems must still
 153 maintain necessary setbacks from wetlands and water bodies.
- 154 11. Maine Fish and Wildlife determined New England cottontails were highly unlikely
 155 on the property. The applicant has still provided the overlay zone from MDIF&W on
 156 the plan set.
- 157 12. Maine DACF found no rare botanical features, but noted this could be due to a lack
 158 of data and minimal survey efforts and suggested a site inventory by a qualified
 159 field biologist “to ensure that no undocumented rare features are inadvertently
 160 harmed.”
- 161 13. Following planning board and staff feedback, the revised plan set now shows snow
 162 storage in the proposed cul-de-sac areas to reduce the risk of pollutant
 163 contamination in the abutting natural resources.
- 164 14. Two buildings are proposed on lot 3: one single-family dwelling and one barn
 165 meant to store lumber and equipment. Accessory buildings and structures are a
 166 permitted use in the R-RL zone, meaning this is allowable if all buildings meet
 167 required setbacks and dimensions.
- 168 a. The site plan now has a note indicating the proposed accessory building will
 169 only be used for storage.
- 170 15. Because the conservation subdivision ordinance strongly recommends all
 171 buildings within the subdivision be designed for maximum energy
 172 efficiency per **§16.10.6.A.(4)**, it is suggested that buildings be designed as
 173 south-facing whenever possible in this subdivision. This facilitates optimal
 174 rooftop solar generation, and can potentially reduce winter heating costs.

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 176 **PROJECT ANALYSIS**
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Code Ref.	§16.4 Land Use Zone Standards	
	Standard	Determination
§16.4.10.B	Permitted/Special Exception Uses	The proposed subdivision is a permitted use
§16.4.10.E.(2).(a).	Minimum area per dwelling: 40,000 sq ft.	It appears the standard is satisfied.
§16.4.10.E.(2).(b).	Lot size: 40,000 sq ft minimum	The proposed lot size is 15,000 sq ft. Requirements may be modified in a conservation subdivision. Per §16.10.5.E , lots in a conservation subdivision may be less

		than 20,000 sq ft. if serviced by community sewer.
§16.4.10.E.(2).(c).	Street frontage: 150 ft minimum	Not all lots meet this standard. Requirements may be modified in a conservation subdivision. Lot 4 abutting Cutts Road appears to have minimum frontage
§16.4.10.E.(2).(d).	Front setback: 40 ft minimum	10 ft front yard setback proposed. Requirements may be modified in a conservation subdivision.
§16.4.10.E.(2).(e).	Building coverage: 15% maximum	The standard appears to be satisfied.
§16.4.10.E.(2).(f).	Rear and side setbacks: 20 ft minimum.	10 ft setbacks proposed. Not all lots meet this standard. Requirements may be modified in a conservation subdivision.
§16.4.10.E.(2).(g).	Building height: 35 ft maximum	It appears the standard is satisfied.
§16.4.10.E.(2).(i).	Minimum water-body setbacks: up to 100 feet from high-water line of identified wetlands	The standard appears to be satisfied for all proposed new buildings. If final plan approval is granted, Code Enforcement will require a subsurface wastewater permit to confirm shared septic systems are maintaining necessary setbacks before a

		building permit can be issued.
Code Ref.	§16.5 Performance Standards	
	Standard	Determination
§16.5.4	<p>Minimum affordable housing requirements for 13 homes is one of the following:</p> <ul style="list-style-type: none"> • 1 affordable home and \$30,000 in-lieu payment • \$130,000 in-lieu payment 	The applicant has submitted a letter of intent to pay the full \$130,000 in-lieu fee and provide 0 affordable housing units. Payment will be confirmed before final plan approval.
§16.5.9	Conservation of vernal pools	<p>Identified vernal pools on the property were not deemed significant. Standard setback applies determined by size.</p> <p>Critical vernal pool on an abutting lot (and setbacks) are notated in the existing conditions plan.</p>
§16.5.10	Essential services	Test pit locations have been notated, and water capacity is confirmed by Kittery Water District.
§16.5.11	Floodplain Management	The proposed development is outside of the indicated floodplain. Standards appear to be met.
§16.5.14.B	Lots	Lot standards appear to be met. For lots containing wetlands, building envelopes are outside of all indicated setbacks.

§16.5.18.	Net residential acreage	Net residential acreage calculations support the proposed number of lots. The standard appears to be satisfied.
§16.5.24.	Dwellings in the Shoreland Overlay Zone	All new dwellings are outside of indicated setbacks. The house on lot 11, an existing non-conforming house, will remain in the same location with the same dimensions.
§16.5.26	Street Signage	A street naming application has been submitted. The proposed street sign names are on the plan.
§16.5.27	Street Standards	Sheet 2 details the road with the proposed modifications listed above. Planning board approval of said street modifications are required.
§16.5.30	All wetlands of 501 sq ft. or greater trigger setbacks for certain uses	Delineation was submitted, and wetlands of special significance have been identified. All new buildings are outside of any wetland setbacks. The applicant will submit a wetland alteration permit to receive permission to build streets in the areas encroaching on the setbacks.

Code Ref.	§16.10 Additional Requirements for Conservation Subdivision	
	Standard	Determination
§16.10.4.B	Indicate any proposed public open space and Town Council approval	The Kittery Land Trust is not a government body, meaning the public access granted in the proposed parking lot does not require Council approval.
§16.10.5.C	Proposed private and water systems must show: <ul style="list-style-type: none"> • adequate groundwater is available. • Proposed groundwater sources are safe from on-site and off-site contamination. • Proposed individual septic systems will not endanger drinking water supply. • The costs of a community water or wastewater system is prohibitively expensive 	The lot is serviced by public water, and the application is providing community septic systems. The standard does not appear applicable.
§16.10.5.D	Designated open space to be permanently preserved	The application appears to meet minimum open space standards. Proposed configuration requires planning board approval.
§16.10.5.E	Minimum lot size with private water/wastewater: 20,000 sq ft	The applicant is proposing community septic systems. This standard does not appear applicable.
§16.10.5.F	No individual lot may have direct vehicular access onto a public road	All proposed lots will access the proposed private way, including Lot 4, which abuts Cutts Road.

		25 Andy's way is not a part of the subdivision application, but will have access to the proposed ROW. The gravel road in the ROW between the two artificial ponds will not be altered as a part of this plan.
§16.10.5.G	<p>All areas designated as Shoreland, Resource Protection, or Stream Protection must be protected as open space.</p> <p>NOTE: uses that facilitate the use of open space may be permitted within the overlay zone, as long as all setbacks and standards are met</p>	<p>The only portion of the proposed development within an overlay zone is the KLT parking lot, which staff believe facilitates the use of open space.</p> <p>The standard appears to be satisfied.</p>
§16.10.5.I	Wetlands designated as open space to have a "no-cut, no disturb" buffer	The standard appears to be satisfied.
§16.10.5.J	All utilities must be installed underground	The standard appears to be met.
§16.10.5.K	All subsurface wastewater disposal areas to be indicated on plan	The standard appears to be met
§16.10.6.F	Vegetated buffer located on front lot line, a minimum width of 40 feet	The standard appears to be satisfied. Note 22 on sheet 1 of the plan set states existing vegetation in the buffer area will remain.

§16.10.6.H	Low-impact design must be incorporated into the plan whenever possible	The applicant is proposing narrower roads and community septic systems. Required vegetated buffers plan to use existing vegetation to the greatest practical extent. The standard appears to be satisfied.
§16.10.7.A	<p>Open space minimum: 60% of lot, with 40% of that consisting of net residential acreage.</p> <p>Example: in a parcel of 1,000,000 sq ft, 600,000 sq ft (60%) must be open space. Of that 600,000 sq ft, 240,000 (40% of open space, or 24% of total lot) must be included in the net residential acreage calculations.</p>	The standard appears to be satisfied.
§16.10.7.B	All wetlands, water bodies, and floodplains must be located within open space boundaries	This standard appears to be met.
§16.10.7.C	Significant natural resources or wildlife habitat areas must be designated as open space	This standard appears to be met.
§16.10.7.D	Open space must include any notable features	This standard appears to be met.
§16.10.7.E	All historic, cultural, or archaeological resources must be included as open space	No such resources are located on the property. The standard appears to be satisfied.
§16.10.7.F	Open space areas must be made contiguous to the greatest extent possible	Staff believe this standard has been met, but open space configuration is up to the decision of the planning board.

§16.10.7.G	Open space may not be mowed unless part of a public park/trail	The standard appears to be satisfied.
§16.10.10	<p>The homeowner's association will be held responsible for:</p> <ul style="list-style-type: none"> • Maintenance of open space • Maintenance public facilities such as road and stormwater systems • An initial capital fund required to cover expenses. • Maintenance and replacement of plantings, including additional plantings required by the planning board 	The plan indicates the subdivision will be maintained by a Homeowner's Association
§16.10.11	<p>Prior to the beginning of any site work, the applicant must:</p> <ul style="list-style-type: none"> • Define the limits of any proposed clearings. • File all required performance guarantees and inspection escrows in forms acceptable to the Town Manager 	Not applicable at preliminary stage
Code Ref.	§16.8.9.C Preliminary Subdivision Plan Requirements	
	Standard	Determination
§16.8.9.C.(5).(a-i).	<ul style="list-style-type: none"> * Paper plan sheets no smaller than 11" x 17" * Scale of drawing no greater than 1 inch = 30 feet * Code block in right-hand corner * Standard boundary survey of existing conditions * Compass with arrow pointing true north * Locus map of property * Vicinity map and aerial photograph * Surveyed acreage of parcel(s), rights-of-way, wetlands, and amount of street frontage * Names and addresses of owners of record abutting property 	Provided, with requested modification for scale of drawing, listed above

§16.8.9.C.(5).(j).	Existing conditions survey including all identified structures, natural resources, rights-of-way, and utilities located on and within 100 feet of the property	Provided
§16.8.9.C.(5).(k).	Proposed development area including: * Location and detail of proposed structures and signs * Proposed utilities including power, water, and sewer * Sewage facilities type and placement * Domestic water source * Lot lines, rights-of-way, and street alignments * Road and other paved area plans * Existing and proposed setbacks * Storage areas for waste or hazardous materials * Topographic contours of existing contours and finished grade elevations * Locations and dimensions of artificial features such as pedestrian ways, sidewalks, curb cuts, driveways, fences, retaining walls,	Provided
§16.8.9.C.(6).(a).	Documents showing legal interest in the property	Provided
§16.8.9.C.(6).(b).	Identified property encumbrances	Provided
§16.8.9.C.(6).(c).	Kittery Water District approval letter	Provided
§16.8.9.C.(6).(d).	Erosion and sedimentation control plan	Provided
§16.8.9.C.(6).(e).	Stormwater management plan and drainage analysis	Provided
§16.8.9.C.(6).(f).	Soil survey	Provided
§16.8.9.C.(6).(g).	Vehicular traffic report	Provided
§16.8.9.C.(6).(h).	Traffic impact analysis	Not deemed applicable due to low traffic volume

§16.8.9.C.(6).(i).	Test pit analysis for proposed septic systems	Provided
§16.8.9.C.(6).(j).	Town sewage department confirmation	Not applicable.
§16.8.10.C.(6).(k).	Evaluation of development by Police, Fire, and Public Works department heads	Provided
§16.8.10.C.(6).(l).	Additional submissions as required	None proposed at this time

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DISCUSSION, NEXT STEPS, AND RECOMMENDATIONS

Staff believe the revised plan set has taken efforts to prevent adverse impacts to the abutting property on 25 Andy’s Lane. Beyond this, the Town maintains their stance that all other issues between the applicant and the residents of 25 Andy’s Lane are civil issues, and not to be factored into planning board determination. Staff believe preliminary approval is warranted at this stage, on the condition that a second engineer peer review be performed to ensure the plan revisions meet all engineering standards.

Recommended Motions

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Below are recommended motions for the Board’s use and consideration:

Motion to conditionally approve the application as complete

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Move to approve the plan (with conditions listed above) by Mike Sudak, on behalf of owner/applicant Chip and Anne Andrews,.

GENERAL NOTES (CONT.)

- 13) DEPICED WETLAND SETBACKS TO PRINCIPAL BUILDINGS OR STRUCTURES ARE INFORMED BY TOWN OF KITTEERY LAND USE AND DEVELOPMENT CODE TABLE 16.5.30 'MINIMUM SETBACKS FROM WETLANDS AND WATER BODIES'...

GENERAL NOTES (CONT.)

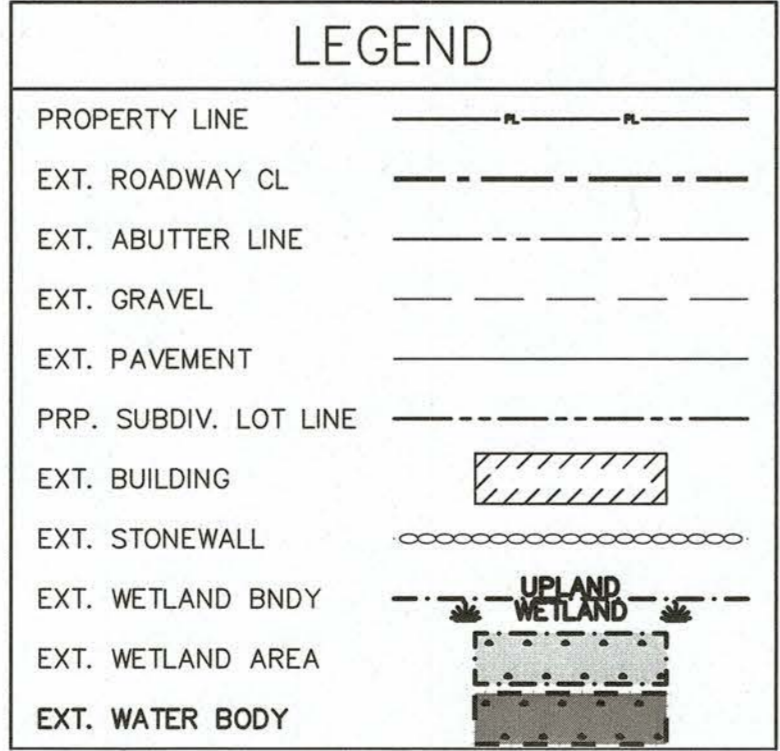
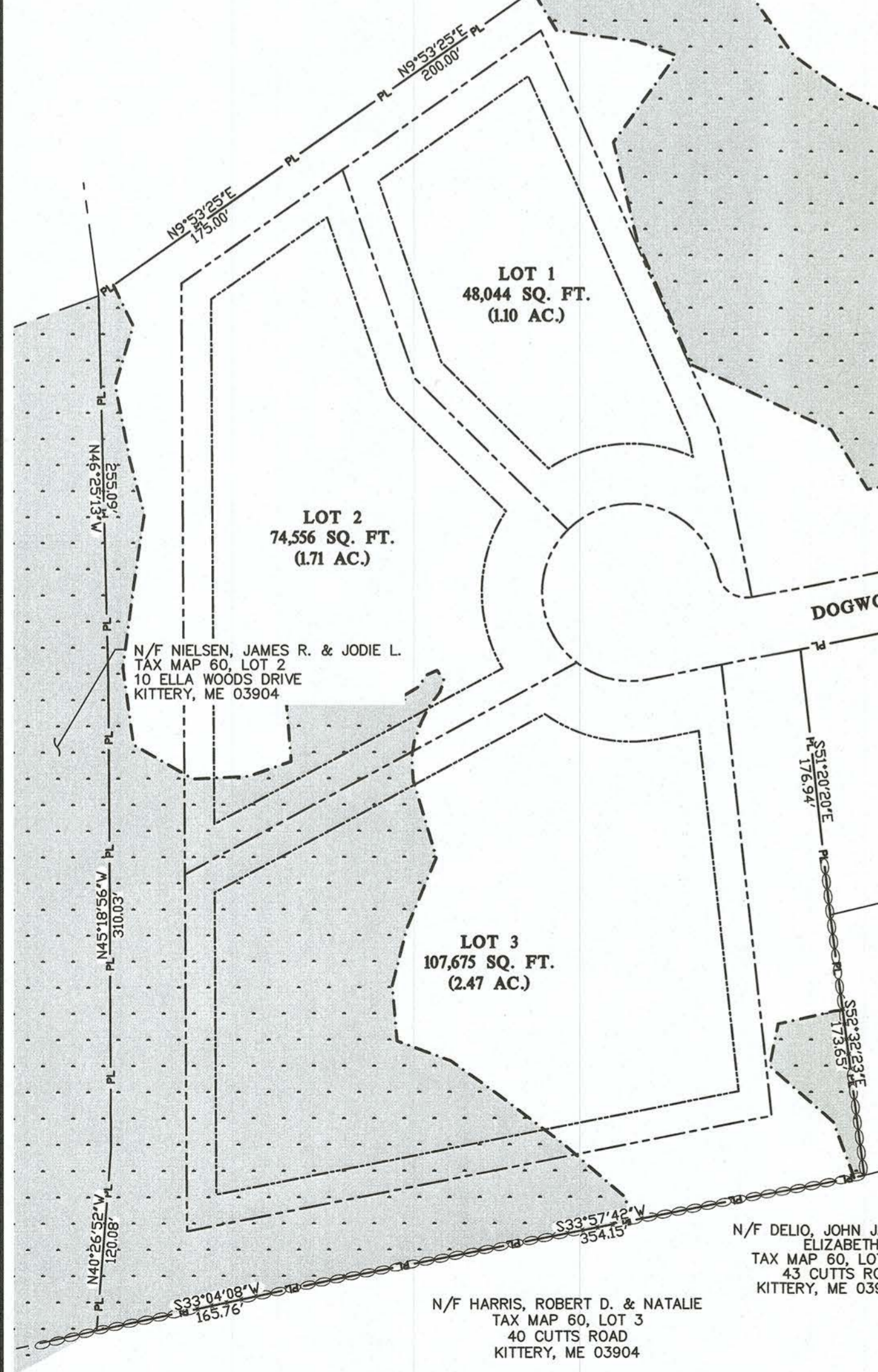
- 22) THE ADDITIONAL STRUCTURE DEPICED ON LOT #3 IS PROPOSED TO BE A 40'x40' TIMBER BARN. THIS BARN SHALL BE USED EXCLUSIVELY FOR STORAGE, AND IS AN ALLOWED ACCESSORY USE IN THE R-RL ZONE.

WAIVERS REQUESTED:

- §16.8.0.C.(5)(b) - PLAN SCALE GREATER THAN 1" = 50' FOR DEVELOPMENTS GREATER THAN 10 ACRES. APPLICANT PROPOSES 1" = 80' FOR OVERALL SITE PLAN & SUBDIVISION PLAN.

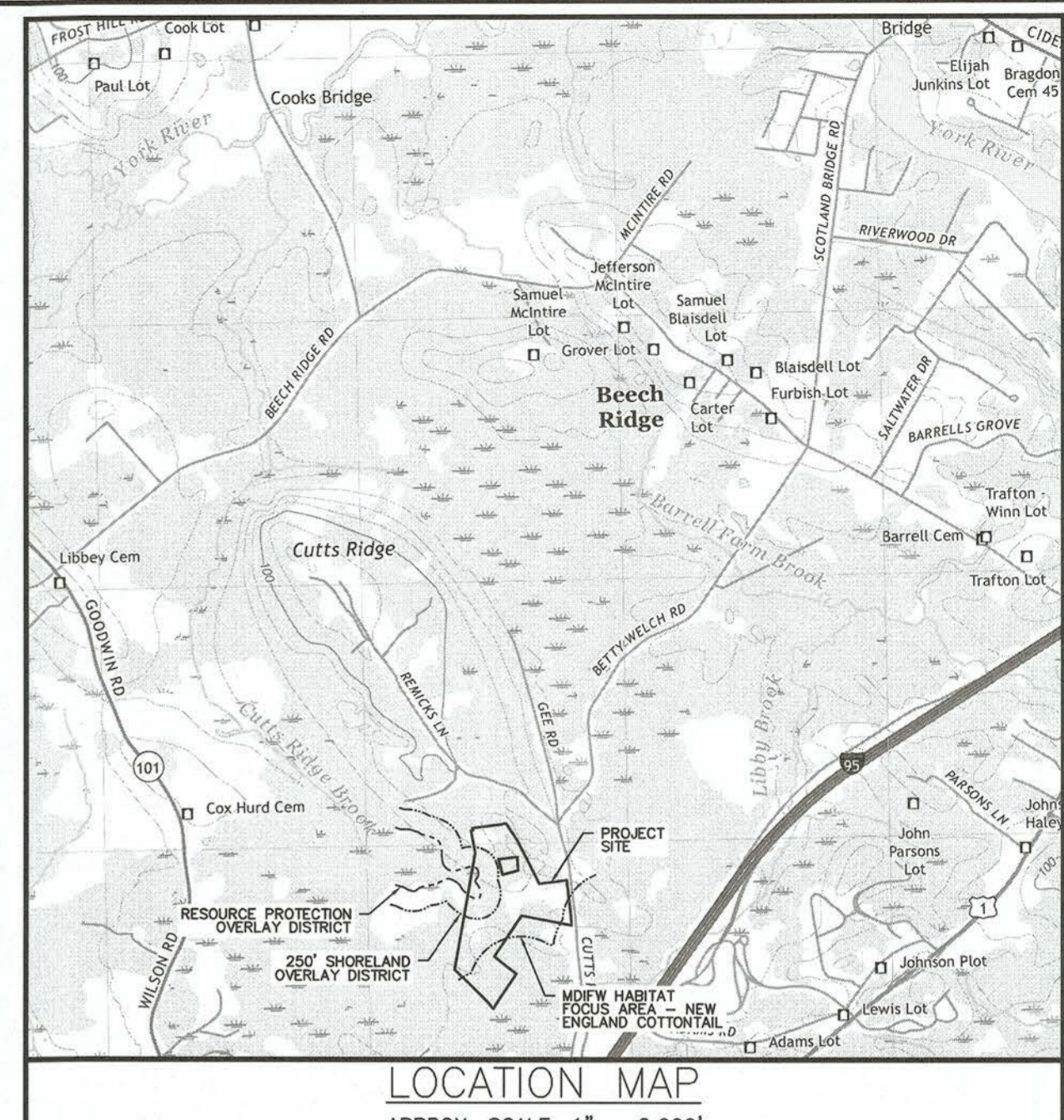
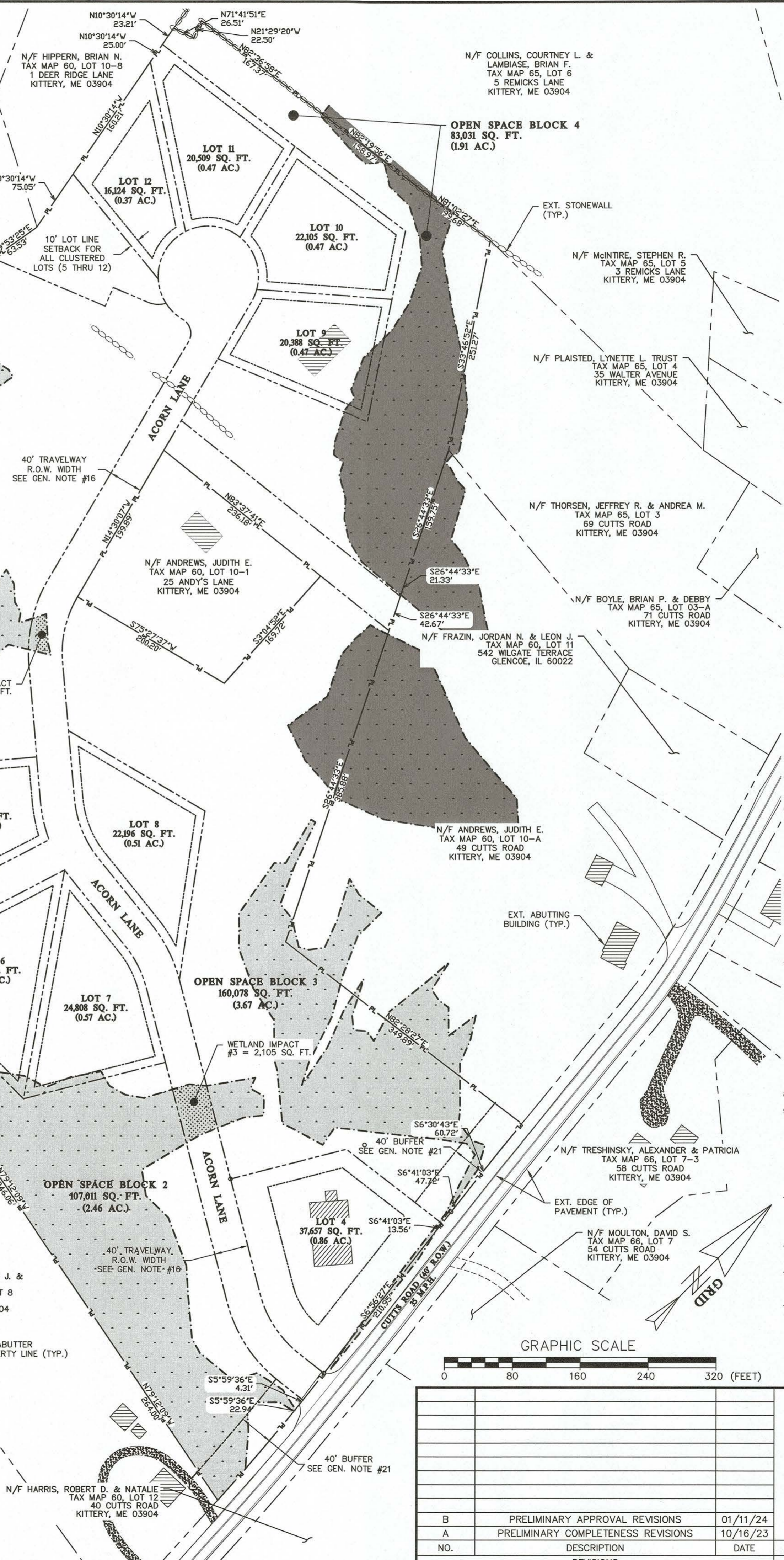
INDEX OF SHEETS:

- 1) OVERALL DEVELOPMENT PLAN
2) CONSERVATION SUBDIVISION PLAN
3) EXISTING CONDITIONS PLAN
4) GRADING & UTILITIES PLAN



PLAN REFERENCES:

- 1) "STANDARD BOUNDARY SURVEY PLAN OF LAND OF ARTHUR W. & ROSEANN ANDREWS", PREPARED BY CIVIL CONSULTANTS, PLAN DATED 07/28/2000 AND RECORDED AT THE YORK COUNTY REGISTRY OF DEEDS IN PLAN BOOK 289, PAGE 46.



- 1) THIS PLAN DEPICTS THE DEVELOPMENT OF THE SUBJECT PARCEL INTO A MAJOR CONSERVATION SUBDIVISION CONSISTING OF 12 SINGLE-FAMILY RESIDENTIAL LOTS SERVED BY A PAIR OF CLASS III ROADWAYS. THE PROPOSED ROADWAYS WERE DESIGNED IN ACCORDANCE WITH TOWN OF KITTEERY §16.8 TABLE 1 - SEE GENERAL NOTE #16.

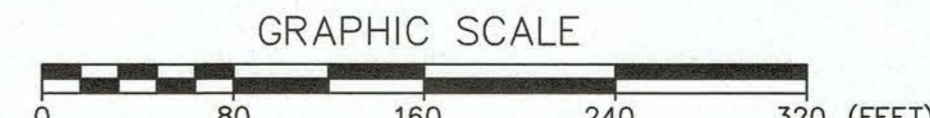
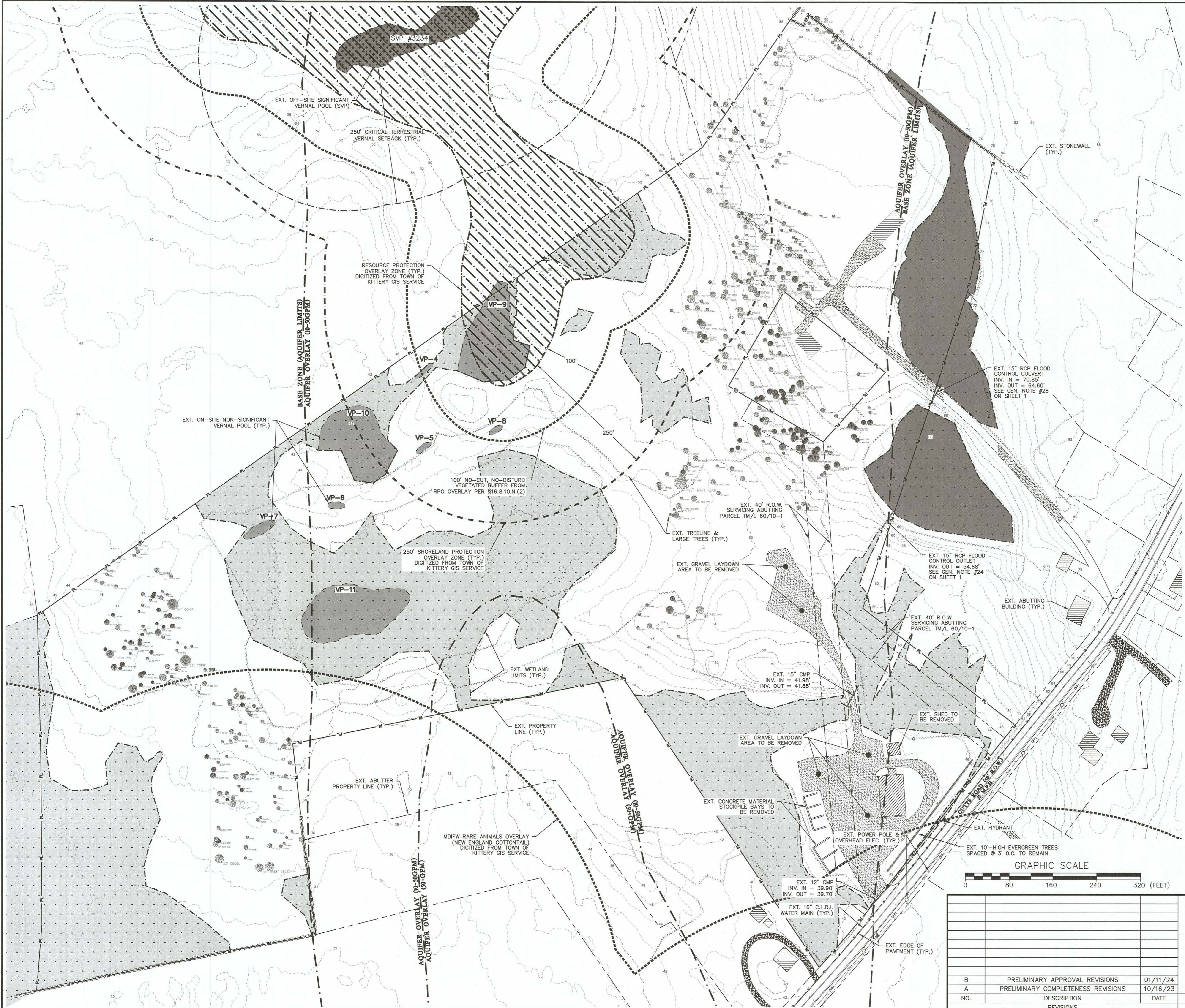


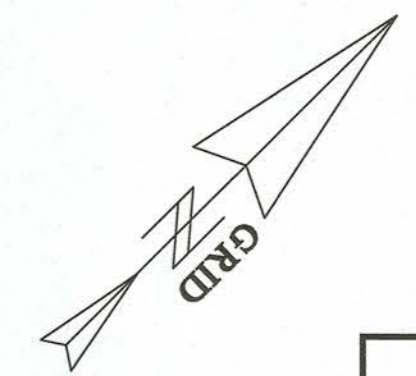
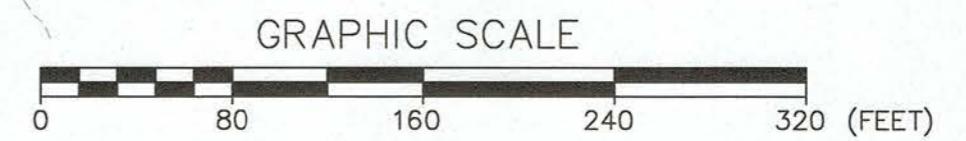
Table with columns: NO., DESCRIPTION, REVISIONS, DATE. Includes entries for PRELIMINARY APPROVAL REVISIONS and PRELIMINARY COMPLETENESS REVISIONS.



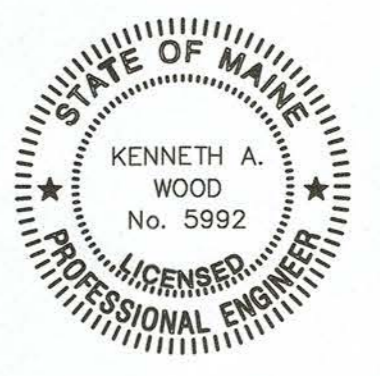
Overall Development Plan Twin Oaks Subdivision 47 CUTTS ROAD, KITTEERY, MAINE. FOR: C/O CHIP ANDREWS 28 ANDY'S LANE KITTEERY, ME 03904. ATTAR ENGINEERING, INC. CIVIL • STRUCTURAL • MARINE • SURVEYING. SCALE: 1" = 80'. DATE: 09/07/23. APPROVED BY: [Signature]. DRAWN BY: MJS. REVISION DATE: 01/11/24. JOB NO: C160-21. FILE: TWIN OAKS CS24 BASE.DWG. SHEET: 1



LEGEND	
PROPERTY LINE	---
EXT. ROADWAY CL	---+---
EXT. ABUTTER LINE	---
EXT. GRAVEL	---
EXT. PAVEMENT	---
EXT. BUILDING	▨
EXT. TREELINE	~
EXT. STONEWALL	~
EXT. WATER HYDRANT	⊗
EXT. WATER LINE	— W —
EXT. STORM LINE	— D —
EXT. POWER POLE	⊕
EXT. OVERHEAD ELEC	— OHU —
EXT. MAJOR CONTOUR	---XXX---
EXT. MINOR CONTOUR	---xxx---
EXT. WETLAND BNDY	WETLAND
EXT. WETLAND AREA	WETLAND
EXT. WETLAND BUFFER	WETLAND
EXT. SIGNIF. VERNAL POOL	VP
EXT. OZ-RP AREA	▨
EXT. OZ-SL LIMITS	---+---
EXT. MDIF RESOURCE	▨



NO.	DESCRIPTION	DATE
B	PRELIMINARY APPROVAL REVISIONS	01/11/24
A	PRELIMINARY COMPLETENESS REVISIONS	10/16/23



EXISTING CONDITIONS PLAN
TWIN OAKS SUBDIVISION
47 CUTTS ROAD, KITTERY, MAINE
TAX MAP 60, LOT 10-3

FOR: C/O CHIP ANDREWS
28 ANDY'S LANE
KITTERY, ME 03904

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

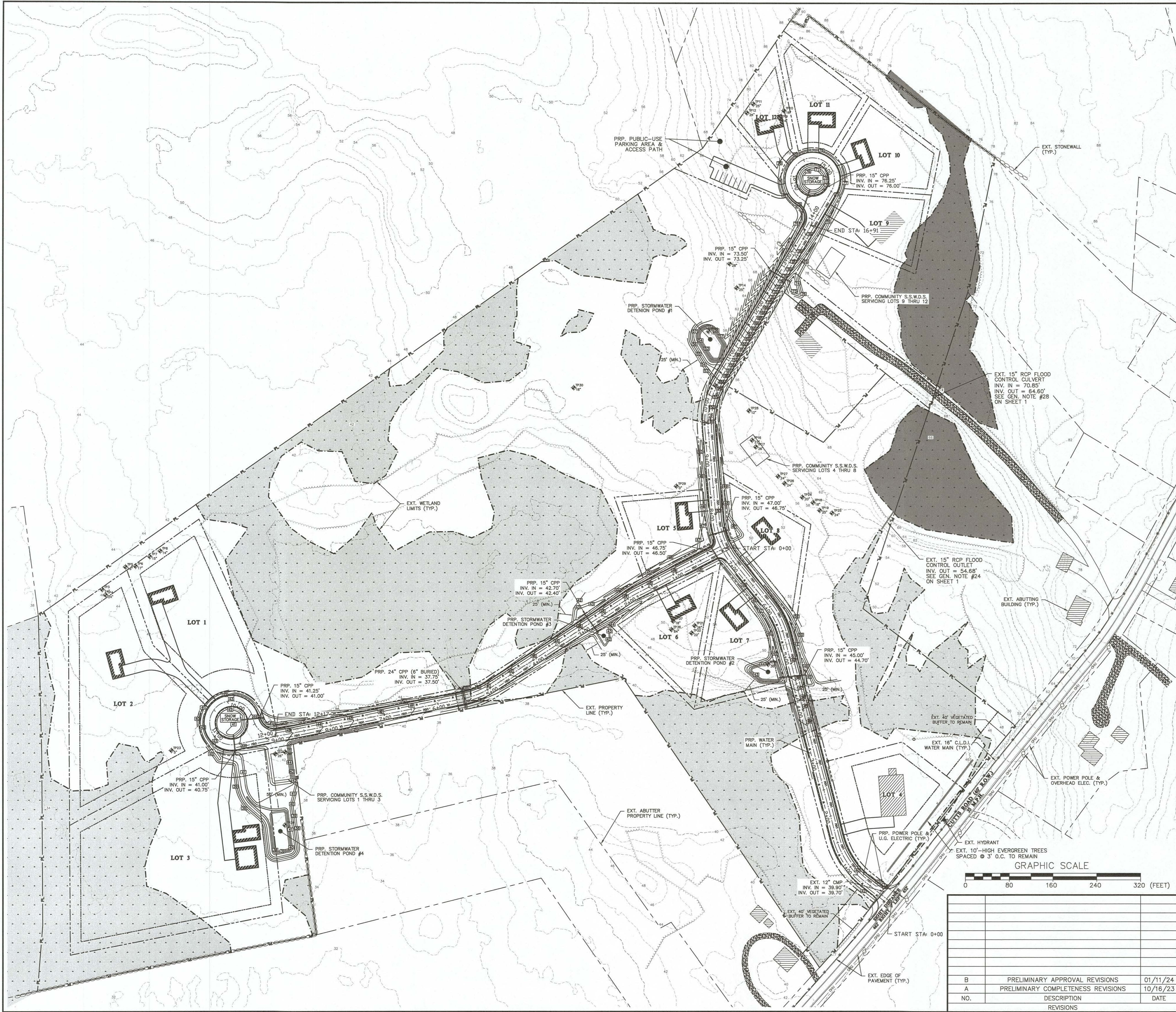
SCALE: 1" = 80'
DATE: 09/07/23
JOB NO: C160-21

APPROVED BY: *Chip Andrews*

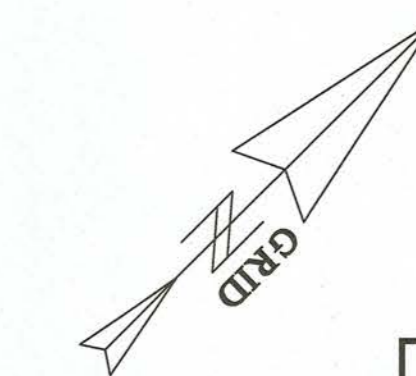
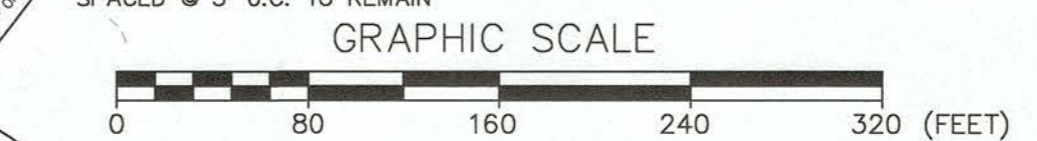
DRAWN BY: M.J.S.
REVISION DATE: B : 01/11/24
SHEET: 3

GRADING & UTILITIES NOTES:

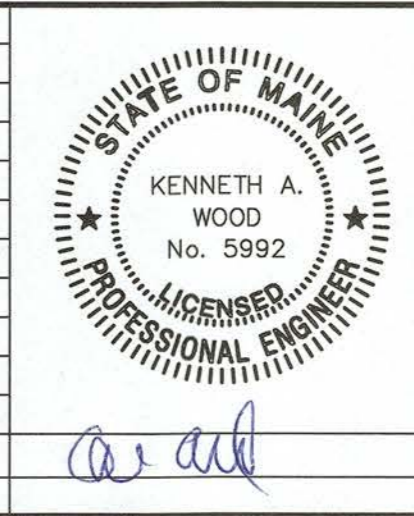
- 1.) ALL PIPES, VALVES, FITTINGS, AND CONNECTIONS SHALL MEET CURRENT KITTERY WATER DISTRICT STANDARDS.
- 2.) ALL WATER SERVICES TO BE EQUIPPED WITH CURB STOPS. A MINIMUM OF 5.0' OF COVER SHALL BE MAINTAINED OVER ALL WATER LINES. NEW WATER LINES SHALL BE TESTED IN ACCORDANCE WITH KITTERY WATER DISTRICT REQUIREMENTS.
- 3.) ALL STORM DRAINS SHALL BE ADS N-12 (HDPE) OR APPROVED EQUAL (UNLESS NOTED OTHERWISE). PROPER TRENCHING AND BACKFILLING ARE VITAL TO THE LONG TERM PERFORMANCE AND DURABILITY OF HDPE CULVERT INSTALLATIONS. SEE HDPE CULVERT TRENCH DETAIL.
- 4.) SNOW STORAGE LOCATIONS ARE DEPICTED ON THE PLANS. ROADSIDE SNOW STORAGE IS NOT ALLOWED IN THE ROADSIDE VEGETATED AND ARMORED SWALES, INSTEAD BEING REQUIRED TO BE LOCATED IN THE CENTER OF BOTH PROPOSED CULS-DE-SAC. IN AN INSTANCE WHERE THE DEVELOPED LOT REACHES ITS CAPACITY FOR SNOW STORAGE, ALL EXCESS SNOW SHALL BE CARRIED OFF-SITE.
- 5.) CENTRAL MAINE POWER COMPANY WILL PREPARE THE ELECTRICAL PLAN FOR CONSTRUCTION. ALL ELECTRICAL, TELEPHONE, AND CABLE SERVICES WILL BE UNDERGROUND.
- 6.) DRIVEWAY CULVERTS, WHERE REQUIRED TO BE INSTALLED FOR LOTS, SHALL BE A MINIMUM OF 12" CPP.
- 7.) CONSTRUCTION ACTIVITIES SHALL BE PROTECTED BY EROSION & SEDIMENT CONTROL BEST MANAGEMENT PRACTICES AS REQUIRED BY THE EROSION & SEDIMENTATION CONTROL PLAN. EROSION & SEDIMENT CONTROL SHALL BE MAINTAINED THROUGH TO THE COMPLETION OF THE ENTIRE PROJECT.



LEGEND	
PROPERTY LINE	---
EXT. ROADWAY CL	---
EXT. ABUTTER LINE	---
PRP. ROADWAY CL	---
PRP. SUBDIV. LOT LINE	---
EXT. GRAVEL	---
PRP. GRAVEL	---
EXT. PAVEMENT	---
PRP. PAVEMENT	---
EXT. BUILDING	[Hatched Box]
PRP. BUILDING	[Hatched Box]
EXT. TREELINE	[Wavy Line]
PRP. TREELINE	[Wavy Line]
EXT. STONEWALL	[Dashed Line]
EXT. TEST PIT	[Star Symbol]
EXT. WATER HYDRANT	[Star Symbol]
EXT. WATER LINE	W ---
PRP. WATER LINE	W ---
EXT. STORM LINE	D ---
PRP. STORM LINE	D ---
EXT. POWER POLE	⊕ ---
EXT. OVERHEAD ELEC	OHU ---
PRP. U.G. ELECTRIC	UGU ---
EXT. MAJOR CONTOUR	---XXX---
EXT. MINOR CONTOUR	---xxx---
PRP. MAJOR CONTOUR	---XXX---
PRP. MINOR CONTOUR	---xxx---
PRP. SPOT GRADE	102.0' x
EXT. WETLAND BNDY	[Wetland Boundary Symbol]
EXT. WETLAND AREA	[Wetland Area Symbol]
EXT. WATER BODY	[Water Body Symbol]



NO.	DESCRIPTION	DATE
B	PRELIMINARY APPROVAL REVISIONS	01/11/24
A	PRELIMINARY COMPLETENESS REVISIONS	10/16/23
NO.	DESCRIPTION	DATE

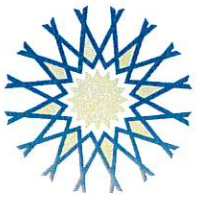


GRADING & UTILITIES PLAN
TWIN OAKS SUBDIVISION
47 CUTTS ROAD, KITTERY, MAINE
TAX MAP 60, LOT 10-3

FOR: C/O CHIP ANDREWS
28 ANDY'S LANE
KITTERY, ME 03904

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

SCALE:	APPROVED BY:	DRAWN BY:
1" = 80'	[Signature]	MJS
DATE:		REVISION DATE:
09/07/23		B : 01/11/24
JOB NO: C160-21	FILE: TWIN OAKS CSDV BASE.DWG	SHEET: 4



ATTAR

ENGINEERING, INC

CIVIL • STRUCTURAL • MARINE

Mr. Maxim Zakian, Town Planner
Mr. Jason Garnham, Director of Planning & Development
Town of Kittery, Maine
200 Rogers Road
Kittery, Maine 03904

January 11th, 2024
Project No. C160-21

**RE: Major Conservation Subdivision – Preliminary Completeness Revisions
Twin Oaks Subdivision (Tax Map 60, Lot 10-3)
47 Cutts Road, Kittery, Maine**

Dear Mr. Zakian & Mr. Garnham:

On behalf of Chip and Anne Andrews, I have enclosed for your review and consideration revised Plan Set sheets and attachments for the above-referenced project. Revisions have been made to address comments presented from the following:

- Planning Board and Public comments from the site walk on October 17th,
- Town Staff comments from the review memo prepared for the October 26th meeting,
- Planning Board comments during the October 26th meeting,
- Public Comment – both during the October 26th public hearing and from letters received in advance of said meeting
- Ongoing correspondence with the Town Planner between the October 26th meeting and the writing of this cover letter.

Overall Subdivision Layout Updates:

- The Applicant has completed Street Name applications for the private travelways proposed with this development, which have received preliminary signoff from the Town's Code Enforcement Department. The primary travelway shall be Acorn Lane, with the spur road extending into the southern portion of the parcel being named Dogwood Lane. Both of these street names have been added to relevant Plan Set sheets throughout the Plan Set.
- Sheet #2 (Conservation Subdivision Plan) has been revised to include the Resource Protection and 250' Shoreland Protection Overlay zones, which were previously included only on the Sheet #3 (Existing Conditions Plan). This addition to Sheet #2 addresses one of the major talking points of the October 26th public hearing – namely what can and cannot reside within the Shoreland Overlay.
 - For the Conservation Subdivision use, additional restrictions are applied on what is allowed within such overlays compared to traditional subdivisions. The governing Town Ordinance section is §16.10.5.G, and correspondence with Town Staff is attached which covers their interpretation of this section.
 - As this relates to Plan Set revisions, enforcement of this provision requires the removal of one of the previously-proposed lots. This lot shall not be relocated elsewhere within the proposed development, so the lot total now drops from 13 to 12. Callouts and general notes throughout the Plan Set have been revised to reflect this change.

- One of the other major discussion points during the October 26th public hearing was the desire expressed by the residents of the island lot (TM/L 60/10-1) for as much privacy from the proposed development and as much preservation of the natural landscape as possible. The Applicants have revisited the overall layout of the Conservation Subdivision and have made the following changes:
 - Former Lot #8, previously proposed directly south of the island lot, has been relocated further south to the intersection of Acorn Lane and Dogwood Lane, now proposed to be constructed in the location of the community subsurface wastewater disposal system servicing this cluster of lots. In turn, this septic system has been relocated to the area of former Lot #8. This swapping of features creates a ~150' buffer between the boundary of the island lot and the nearest southerly lot. Preservation of the existing vegetation in this area will be maintained to the greatest extent practicable with the installation of this septic system.
 - Similarly, former Lot #10, previously proposed directly north of the island lot, has been relocated further north to the northwest corner of Acorn Lane's cul-de-sac, now proposed to be constructed in the location of the community subsurface wastewater disposal system servicing this cluster of lots. A similar swapping will occur in this instance, which creates a ~140' buffer between the boundary of the island lot and the nearest northerly lot (the existing structure). Preservation of the existing vegetation and stone wall in this area will be similarly maintained to the greatest extent practicable with the installation of this system.
 - Strict enforcement of §16.10.5.G described above prevents any movement of Acorn Lane further northwest and away from the island lot. The Applicant is willing to work with the residents of the island lot to install any landscape or visual screening elements along the northwest sideline shared with the island lot, if desired.

General Plan Set Updates:

- General Notes #1, #6, #7, #15, and #18 on Sheet 1 have been revised to reflect the change in overall Lot count (from 13 to 12) as well as the relocation of two lots as described above. The proposed subdivision maintains its compliance with open space, lot coverage, and devegetated area calculations.
- General Note #12 on Sheet 1 has been revised to include language describing the stricter Shoreland Protection Overlay requirements of §16.10.5.G. which were discussed above.
- General Note #24 on Sheet 1 has been added to speak to the capping, maintenance, and protection of the existing outfall and gate valve which serve as an emergency flood control to the southern on-site pond.
- General Note #25 on Sheet 1 has been added to declare that the entire development shall be subject to mechanical-only maintenance of landscaped areas – both within the open space and within the proposed lots. Chemical maintenance shall be prohibited.
- General Note #26 on Sheet 1 has been added to declare that the entire development shall be similarly subject to mechanical-only snow maintenance. The use of chemical agents for snow and/or ice removal shall be prohibited.
- General Note #27 on Sheet 1 has been added to describe the easement which will be established for the proposed public-use parking lot abutting the existing Kittery Land Trust property. This 20'-wide easement shall extend from the proposed parking lot along the travelway of Acorn Lane out to its intersection with Cutts Road.

- General Note #28 on Sheet 1 has been added to identify the existing culvert which connects the northern and southern on-site ponds and serves as an emergency flood control mechanism. This culvert shall be preserved in the dedicated open space of this development and shall be maintained as part of the project's stormwater operation and maintenance program. The inlet side of this culvert resides on abutting property, so this note also declares that an access easement shall need to be established to allow the association to legally maintain the culvert.

We look forward to discussing this project with the Planning Board at the January 25th Planning Board meeting and public hearing. Please contact me for any additional information or clarifications.

Sincerely;

A handwritten signature in blue ink that reads "Michael J. Sudak". The signature is written in a cursive style with a large, stylized initial "M".

Michael J. Sudak, E.I.
Staff Engineer

cc: Chip & Anne Andrews
C160-22 Cover Rev 11Jan2024

From: [Maxim Zakian](#)
To: [Mike Sudak](#)
Cc: [Jason Garnham](#)
Subject: 47 Cutts public hearing follow up
Date: Monday, October 30, 2023 11:31:09 AM

Good morning, Mike,

I'm emailing you to confirm the planning board closed the public hearing for your preliminary subdivision application for 47 Cutts Road, and voted to continue (**not** table) the application. They did not set a return date; you can work internally with me to determine when you wish to return to planning board.

I have my notes from the meeting listed below:

- I am genuinely sorry I did not catch the issue with the overlay zone overlapping the parking lot sooner. The provision in the code, [16.10.5.G](#), clearly says anything in the overlay zone must be open space. In your next set of the plans, please include the overlay zone in the proposed subdivision plan.
 - I checked with Kathy, and while the wetland setback can encroach into a proposed lot (as long as it has those "not-cut no-disturb" signs and there are no structures in the setback) the ordinance is clear that anything within the overlay zone must be designated open space. We interpret this to mean it can't be a part of a private lot, even if it's designated as untouched land. The overlay zone cannot be a part of any of the proposed lots. If they are, they will need to be re-configured.
 - In terms of the Land Trust parking lot specifically, Kathy and I believe that, because it facilitates the use of open space, it could remain where it currently is. It would be up to the planning board to agree with this determination, but we believe this is allowable and I am optimistic the planning board will agree as long as we make it clear it's something within their purview.
 - The rest of the ROW still has to be out of the overlay zone.
- You read a legal response from a contracted attorney. We would like to receive a copy of it when you can send it. Before you do, I want to inform you that it is considered public record once I receive it, and I've already received a request from an abutter to read it, so I would have to send it to them.

It sounded like you were planning to tweak the road and lot configuration a bit in response to the public hearing input. Please let me know if you have any questions as you work on a resubmission.

Best,
Max

[Maxim Zakian](#)
Town Planner

Town of Kittery

(207) 475-1323

mzakian@kitteryme.org

From: [Sandra Guay](#)
To: [Mike Sudak](#)
Cc: chipandrews21@icloud.com; andrewsats@comcast.net
Subject: Re: Request for Opinion - 47 Cutts Road, Kittery ME
Date: Wednesday, July 26, 2023 2:46:09 PM

Hi Mike – please see my responses, below, and let me know if you have any questions about the responses, or any other questions about the property.

Thank you – Sandy

Sandra L. Guay, Partner
Archipelago
One Dana Street
Portland, ME 04101
Ph: 207.558-0102
Fx: 207.536-0080
sguay@archipelagolaw.com
<https://archipelagona.com/>



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From: Mike Sudak <mike@attarengineering.com>
Date: Monday, July 10, 2023 at 1:29 PM
To: Sandra Guay <sguay@archipelagona.com>
Cc: Sammie Goddard <sammie@attarengineering.com>
Subject: RE: Request for Opinion - 47 Cutts Road, Kittery ME

That list looks great to me Sandy – I think that encapsulates what we are after at this point in the application.

Thanks again,
-Mike

From: Sandra Guay <sguay@archipelagona.com>

Sent: Monday, July 10, 2023 1:27 PM
To: Sammie Goddard <sammie@attarengineering.com>
Cc: Mike Sudak <mike@attarengineering.com>
Subject: Re: Request for Opinion - 47 Cutts Road, Kittery ME

Just to clarify – this is what needs to be addressed right now, correct? Is there anything else?

- Are we correct in assuming that there was no release of any portion of the original 1981 right-of-way, and that both still exist?

I have reviewed the materials you gave me, and I also took another look in the registry. The Corrective Deed was recorded three years before the second ROW was conveyed to Judith Andrews. That deed was supposed to have corrected a (Quitclaim) deed that Judith got from her former husband as part of a divorce settlement. It is not clear what the Corrective Deed is intended to correct (it should really say what the error was in the first deed), however there is an issue with it that does not affect the land that Chip and Anne are looking to develop, but which will likely come back at Judith at some point down the road. The Quitclaim deed was from Eric B. Harris (grantor) to Judith E. Harris (grantee). The Corrective deed is from Judith E. Harris to Judith E. Andrews (formerly known as Judith E. Harris). The grantee in a deed cannot “correct” that conveyance – it would need to be corrected by the original grantor (or heirs if the grantor has passed), or by a court. Again, this does not affect title to the subject parcel, but may likely be questioned by a title attorney if Judith goes to sell or mortgage her property.

It looks like there perhaps should have been a Release Deed for the original ROW prepared in 2009, when Roseann Andrews provided the second ROW to Judith (which by the way is for ingress/egress only and not utilities - and I am not sure why this was done as a Release Deed as opposed to an Easement Deed). If that occurred, it was never recorded. The only question I have about this is that the lot line adjustments, which would impact the original ROW, did not occur until 8 years later, in 2017. If Roseann and/or Arthur are still available, perhaps they could clarify this.

- What rights do Chip and Anne retain to cross/use a portion of the existing right-of-way in the development of their proposed subdivision (specifically for the extension of a new private road)?

The original 40-foot wide ROW was granted for utilities and ingress/egress *over* the grantor’s land (so, no right to install underground utilities). Judith does not own the underlying land, and she does not have exclusive rights to use the ROW. As we had briefly discussed in your office, the owner of the fee in the ROW (the owner of the subject property to be developed) can also use the ROW area, so long as that use does not materially interfere with the ability for Judith to use the ROW for the deeded purposes (e.g., the sides of the road where it crosses the ROW should be left in such a manner that Judith could also use the ROW for access - although it might result in an interesting cross-over).

Is it of importance at all that the physical access servicing the island lot is not within the bounds of either existing right-of-way?

This is interesting, and I am guessing it has occurred because the property was all be held within one family. That driveway has apparently been there long enough now to have created prescriptive rights to continue to use it. The fact that this driveway is being used as access however does not take away from the rights that have been deeded in the other 2 ROWs.

Thanks – Sandy

Sandra L. Guay, Partner
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Portland, ME 04101
Ph: 207.558-0102
Fx: 207.536-0080
sguay@archipelagolaw.com
<https://archipelagona.com/>



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