

1 **16.9 Other Plan Development Review**

2 **Contents**

3 16.9 Other Plan Development Review1
4 16.9.1 Maritime and Shoreland Related Development1
5 16.9.2 Port Authority Shoreland Development Review2
6 16.9.3 Planning Board Shoreland Development Review5
7 16.9.4 Right of Way Plan Review9

8

9 **16.9.1 Maritime and Shoreland Related Development**

10 A. General. The purpose of maritime and shoreland development reviews function
11 as a control for the Town to oversee proposed developments located in, or in close
12 proximity to, designated resource protected areas so as to ensure the safe and
13 healthful conditions of significant natural, wildlife, cultural and maritime
14 resource.

15 B. Applicability

16 (1). Kittery Port Authority. The Kittery Port Authority’s (“Port Authority”)
17 jurisdiction extends to applications proposing any development from the
18 navigable tidal waters to the mean high-water line or upland edge of a
19 coastal wetland. The Port Authority, through its established Rules and
20 Regulations, reviews and approves applications for piers, wharves,
21 landings, floats, bridges, other water-dependent structures or uses.

22 (2). Planning Board. The Planning Board’s jurisdiction for review and
23 approval extends to applications proposing any upland development from
24 the normal high-water line of any water bodies or upland edge of a costal
25 or freshwater wetland or any development located within the Shoreland,
26 Resource Protection, and Commercial Fisheries/Maritime Uses Overlay
27 Zones or all other structures not requiring Port Authority approval, except
28 for applications as provided under 16.9.1.B.1

29 C. General review Process and Notification

30 (1). Process.

31 a. Prior to the submission of a shoreland development application
32 with the Port Authority or the Planning Board, a preliminary
33 application meeting between the Town Planner, Code Enforcement
34 Officer, or designee, and the applicant or agent, shall occur to
35 review the proposed project, performance standards and procedural
36 requirements thereof.

37 b. If Port Authority or Planning Board review is not required, the

- 38 Planning and Development Department shall review the
39 application for compliance with this title.
- 40 c. Where the Planning Board must review and approve a
41 development plan involving a pier, ramp, flotation system or
42 principal marine structure, and prior to Planning Board approval,
43 the Port Authority must comment on the plan's conformance with
44 Port Authority rules and regulations and navigational aspects of
45 any proposed pier, ramp and float system or principal marine
46 structure.
 - 47 d. All required local approvals (excluding Town building permits),
48 federal and state approvals and/or permits shall be received by the
49 Code Enforcement Officer, prior to the issuance of a building
50 permit.
 - 51 e. Prior to the commencement of construction on any pier, dock,
52 wharf, marina or any other proposed use that projects into a water
53 body, the owner and/or developer shall apply for, and obtain, a
54 building permit from the Code Enforcement Officer.
- 55 (2). Notification.
- 56 a. If Port Authority or Planning Board review is not required, the
57 Planning and Development Department shall send a written record
58 of their findings to both the Planning Board and Port Authority.
 - 59 b. The Town Planner must transmit copies of Planning Board
60 decisions and the Code Enforcement Officer must transmit copies
61 of Board of Appeals decisions and all documentation constituting
62 the record of the decision for marine-related development to the
63 Port Authority.
 - 64 c. The Port Authority shall notify the applicant and the Code
65 Enforcement Officer, in writing, of the granting of, or denial of,
66 the applicant's request.

67 **16.9.2 Port Authority Shoreland Development Review**

- 68 A. Review for completeness. The Planning and Development Department shall
69 review Port Authority applications for completeness prior to the Port Authority's
70 Chairperson placing the application on the Port Authority's agenda.
- 71 B. Application process. All Port Authority applications for shoreland development
72 review shall adhere to the listed procedures as enumerated in their Rules and
73 Regulations.
- 74 C. Submission requirements. Shoreland Development Plans for marine-related uses
75 requiring Port Authority approval shall include the following elements:
 - 76 (1). Aerial photographs (images available in the public domain) and vicinity
77 maps and plans showing the property in relation to surrounding properties,
78 and the location of the lots that would have use of the pier, ramp and float
79 system. Maps and plans are to include:

- 80 a. Construction plans for piers, ramps and floats;
- 81 b. Areas of vegetation clearing;
- 82 c. Location of required parking space(s); and
- 83 d. Location of boat and/or float storage.
- 84 (2). Rights granted for access to the pier, ramp and float system or to any
- 85 water-dependent structure; public and private access paths.
- 86 (3). Documentation addressing visual impact and controls to assure continuing
- 87 conformance to the shorefront development plan and this title.
- 88 (4). All necessary applications for permits, leases, approvals, and any
- 89 supporting documentation as may be required have been filed, including
- 90 the following:
- 91 a. Department of Environmental Protection permit application
- 92 pursuant to the Natural Resources Protection Act, 38 M.R.S.
- 93 § 480C;
- 94 b. Army Corps of Engineers permit application;
- 95 c. Maine State Department of Conservation, Bureau of Parks and
- 96 Lands, Submerged Land Coordinator application; and
- 97 d. Building permit application
- 98 (5). Any other details requested by the Port Authority, including, but not
- 99 limited to, information as enumerated in the Port Authority's Rules and
- 100 Regulations.

- 101 D. Performance standards. Development involving piers, wharves, marinas and
- 102 other uses projecting into water bodies must conform to the following standards:
- 103 (1). In accordance with 38 M.R.S. § 435 et seq., Mandatory Shoreland Zoning,
- 104 all dimensional and other standards (excluding setbacks from water
- 105 bodies) of this title apply to structures and uses projecting into a water
- 106 body beyond the normal high-water mark
- 107 (2). Boathouses, while convenient to locate near the water, are not considered
- 108 functionally water-dependent uses and must meet the same setback
- 109 requirement as principal structures. The State of Maine no longer issues
- 110 permits for construction of boathouses below the normal high-water line
- 111 due to the adverse environmental impact; therefore, new boathouses must
- 112 be located on uplands.
- 113 (3). Only functionally water-dependent uses are allowed on, over or abutting a
- 114 pier, wharf or other structure beyond the normal high-water line.
- 115 (4). Access from shore must be developed on soils appropriate for such use
- 116 and constructed so as to control erosion.
- 117 (5). The location must not interfere with existing developed recreational and
- 118 maritime commerce or natural beach areas.
- 119 (6). The facility must be located so as to minimize adverse effects on fisheries.
- 120 (7). The facility must be a water-dependent use and no larger in dimension
- 121 than necessary to carry on the activity and must be consistent with existing

- 122 conditions, use and character of the area.
- 123 (8). No new structure may be built on, over or abutting a pier, wharf, dock or
124 other structure extending beyond the normal high-water line of a water
125 body or within a wetland unless the structure requires direct access to the
126 water as an operational necessity.
- 127 (9). No existing structures built on, over or abutting a pier, dock, wharf or
128 other structure extending beyond the normal high-water line of a water
129 body or within a wetland may be converted to residential dwelling units in
130 any district.
- 131 (10). Except in the Commercial Fisheries/Maritime Uses Overlay Zone,
132 structures built on, over or abutting a pier, wharf, dock or other structure
133 extending beyond the normal high-water line of a water body or within a
134 wetland must not exceed 20 feet in height above the pier, wharf, dock or
135 other structure.
- 136 (11). Applicants proposing any construction or fill activities in a waterway or
137 wetland requiring approval by the U.S. Army Corps of Engineers pursuant
138 to Section 404 of the Clean Water Act, Section 9 or 10 of the Rivers and
139 Harbors Act, or Section 103 of the Marine Protection, Research and
140 Sanctuaries Act, must submit proof of a valid permit issued.
- 141 (12). Proposals for any principal marine structure use, any residential joint-
142 and/or shared-use pier, or any residential-development-use pier require
143 Planning Board approval.
- 144 (13). A residential development containing five or more lots in a zone
145 permitting a residential-development-use pier may construct only one
146 residential development use pier.
- 147 (14). Commercial development of the shorefront must provide for access by the
148 general public as part of a shorefront development plan.
- 149 (15). Only one pier, ramp and float structure is permitted on any noncommercial
150 or nonindustrial lot.
- 151 (16). Marine-related permanent structures located below the mean low-water
152 line require the following permits, leases and approvals:
- 153 a. Port Authority approval;
- 154 b. Department of Environmental Protection permit pursuant to the
155 Natural Resources Protection Act, 38 M.R.S. § 480-C;
- 156 c. Army Corps of Engineers permit;
- 157 d. Maine State Department of Conservation, Bureau of Parks and
158 Lands, Submerged Land Coordinator approval; and
- 159 e. Building permit.
- 160 (17). Any other performance standards as enumerated in the Port Authorities
161 Rules and Regulations.
- 162 E. Findings of fact. An application shall be approved or approved with conditions if
163 the Port Authority makes a positive finding based on the information presented.
164 The application must be demonstrated that the proposed use will shall:

- 165 (1). Maintain safe and healthful conditions;
166 (2). Not result in water pollution, erosion or sedimentation to surface waters;
167 (3). Adequately provide for the disposal of all wastewater;
168 (4). Not have an adverse impact on spawning grounds, fish, aquatic life, bird
169 or other wildlife habitat;
170 (5). Conserve shore cover and visual, as well as actual, points of access to
171 inland and coastal waters;
172 (6). Protect archaeological and historic resources;
173 (7). Not adversely affect existing commercial fishing or maritime activities in
174 a commercial fisheries/maritime activities district;
175 (8). Avoid problems associated with floodplain development and use
176 (9). Is in conformance with the provisions of this title; and
177 F. The approved plan must be recorded with the York County Registry of Deeds.
178 G. Appeal of Port Authority decision. Appeal of a Port Authority shoreland
179 development plan decision by the Planning Board may be made per §16.2.12.B.

180 **16.9.3 Planning Board Shoreland Development Review**

181 A. Review process

- 182 (1). Following a pre-application meeting with the Town Planner, the applicant
183 filing a shoreland development review permit shall submit to the Town
184 Planner a complete application and site plan, drawn to scale as indicated in
185 accordance with §16.7.10.C.4.
186 (2). Within 35 days of the receipt of a written application, the Town Planner
187 must notify the applicant, in writing, that the application is or is not
188 complete. If the application is incomplete, the written notification must
189 specify the additional material required to complete the application.
190 (3). A decision on the application will occur within 35 days after the first
191 available date on the Planning Board's agenda following receipt of the
192 completed application, or within 35 days of the public hearing, if one is
193 held.

194 B. Waivers

- 195 (1). Over the course of the application's review, with consideration of the
196 development's overall limited scale and impact to the site, the Planning
197 Board may waive or modify application submittals required in §16.9.3.C

198 C. Submission requirements

- 199 (1). All applications shall be signed by the owner, or an agent with written
200 authorization from the owner to apply for a shoreland development review
201 permit, certifying that the information in the application is complete and
202 correct.
203 (2). All applications shall be dated, and the Town Planner or designee shall

204 note upon each application the date and time of its receipt.
205 (3). Whenever the nature of the proposed structure requires the installation of a
206 subsurface sewage disposal system, a complete application for a
207 subsurface wastewater disposal permit shall be submitted. The application
208 shall include a site evaluation approved by the Plumbing Inspector.

209 D. Exempt and non-exempt uses.

210 (1). Exempt uses and development not requiring shoreland development
211 review by the Planning Board

212 a. Proposed development of principal and accessory structures in
213 compliance with §16.4.11.5.b, when not subject to Planning Board
214 review as explicitly required elsewhere in this title, shall be
215 reviewed and approved by the Code Enforcement Officer (CEO)
216 prior to issuing a building permit, subject to, but not limited to the
217 following requirement:
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219 \pm The total devegetated area of the lot (that portion within the
220 Shoreland Overlay Zone) shall be calculated by the
221 applicant and verified by the CEO and recorded in the
222 Town's property records.
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224 (2). Clearing of vegetation for activities other than timber harvesting. These
225 are subject to review and approval by the Shoreland Resource Officer or
226 Code Enforcement Officer.

227 (3). Division of a conforming parcel that is not subject to subdivision as
228 defined in §16.3.2.

229 (4). A permit is not required for the replacement of an existing road culvert,
230 provided the replacement culvert is not:
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232 a. More than one standard culvert size larger in diameter than the
233 culvert being replaced;

234 b. More than 25% longer than the culvert being replaced; and

235 c. Longer than 75 feet.

236 (5). When replacing an existing culvert, the watercourse must be protected so
237 that the crossing does not block fish passage, and adequate erosion control
238 measures must be taken to prevent sedimentation of the water in the
239 watercourse.

240 (6). A permit is not required for an archaeological excavation, provided the
241 excavation is conducted by an archaeologist listed on the State Historic
242 Preservation Officer's Level 1 or Level 2 approved list and unreasonable
243 erosion and sedimentation is prevented by means of adequate and timely
244 temporary and permanent stabilization measure

245 E. Non-exempt uses requiring shoreland development review

246 (1). After the effective date of this title, no person may, without first obtaining

- 247 a permit, engage in any activity or use of land or structure requiring a
248 permit in the Shoreland or Resource Protection Overlay Zones in which
249 such activity or use would occur, or expand, change or replace an existing
250 use or structure, or renew a discontinued nonconforming use.
- 251 (2). Any development proposed in the Resource Protection (OZ-RP) and
252 Shoreland - Stream Protection Area (OZ-SL-75) Overlay Zones must be
253 approved by the Planning Board.
- 254 (3). Any permit required by this section is in addition to any other permit
255 required by other law or ordinance.

256 F. Findings of fact.

- 257 (1). Permits shall be approved, or approved with conditions, if the proposed
258 use or structure is found to be in conformance with the purposes and
259 provisions of this section and all other applicable provisions found in this
260 title, except where expressed relief has been lawfully granted.
- 261 (2). An application shall be approved or approved with conditions if the
262 Planning Board makes a positive finding based on the information
263 presented. The application must demonstrate that the proposed use shall:
- 264 a. Maintain safe and healthful conditions;
- 265 b. Not result in water pollution, erosion or sedimentation to surface
266 waters;
- 267 c. Adequately provide for the disposal of all wastewater;
- 268 d. Not have an adverse impact on spawning grounds, fish, aquatic
269 life, bird or other wildlife habitat;
- 270 e. Conserve shore cover and visual, as well as actual, points of access
271 to inland and coastal waters;
- 272 f. Protect archaeological and historic resources;
- 273 g. Not adversely affect existing commercial fishing or maritime
274 activities in a commercial fisheries/maritime activities district;
- 275 h. Avoid problems associated with floodplain development and use
- 276 i. Is in conformance with the provisions of this title; and
- 277 j. Be recorded with the York County Registry of Deeds.

278 G. Final plan approval and recording.

- 279 (1). An approval by the Planning Board must take the form of an agreement
280 between the Town and the applicant, incorporating as elements the
281 application, the Planning Board's findings of fact, and such conditions as
282 the Planning Board may impose upon approval.
- 283 (2). The Planning Board must send copies of the agreement to Code
284 Enforcement Officer.
- 285 (3). A plan has final approval only when the Planning Board has indicated
286 approval by formal action and the plan has been properly signed by a
287 majority of the Planning Board members or by the Chair only, if so voted

- 288 by the Planning Board.
- 289 (4). Approved final plan recording. An approved plan involving the division of
290 land, easements, or property boundary modification must be recorded by
291 the York County Registry of Deeds. A paper copy and an electronic
292 version of the recorded plan must be returned to the Town Planner.
- 293 H. Modification to an approved plan. Any modification to an approved shoreland
294 development may be considered for approval under §16.9.3.
- 295 I. Plan revisions after approval. No changes, erasures, modifications or revisions
296 may be made to any Planning Board approved shoreland development plan,
297 unless in accordance with the Planner's and CEO's powers and duties as found in
298 Chapter 16.4 and elsewhere found in Title 16, or unless the plan has been
299 resubmitted and the Planning Board specifically approves such modifications. In
300 the event a final plan is recorded without complying with this requirement, the
301 same is null and void, and the Planning Board must institute proceedings to have
302 the plan stricken from Town records and the York County Registry of Deeds.
- 303 J. Appeal of shoreland development plan decision. Appeal of a Planning Board
304 shoreland development plan decision may be made pursuant to §16.2.12.B.

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306 **16.11.1.6 Other References to Shoreland Development Review Within Title 16.**

- 307 1. Below are other pertinent sections within Title 16 referencing shoreland development
308 provisions:
309
- 310 A. §16.3.2.17— Shoreland Overlay Zone OZ-SL Development and Performance
311 Standards
 - 312 B. §16.3.2.18— Commercial Fisheries / Maritime Activities Overlay Zones OZ-
313 CFMU
 - 314 C. §16.3.2. 19— Resource Protection Overlay Zone OP-RP
 - 315 D. §16.4.4.C—Recordkeeping in the Shoreland and Resource Protection Overlay
316 Zones
 - 317 E. §16.4.5.D(2)—Notice of violation within the shoreland or resource protection
318 overlay zones
 - 319 F. §16.5.21.K—Signs in Shoreland Overlay and Resource Protection Overlay Zone
 - 320 G. §16.5.22.A—Single- and duplex-family dwellings in Resource Protection and
321 Shoreland Overlay Zones
 - 322 H. §16.5.25.N—Road and driveway standards in Shoreland and Resource Protection
323 Overlay Zones.
 - 324 I. §16.5.27.A(1)—Timber Harvesting in the Shoreland Overlay Zone
 - 325 J. §16.7.3.A—Shoreland development review during site plan review
 - 326 K. §16.8.4.A—Shoreland development review during subdivision review
 - 327 L. §16.8.9.C(3)(A)—Scheduling public hearings for shoreland development
328 applications

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16.9.4 Right of Way Plan Review

- A. General. Right-of-Way Plans are intended to demonstrate to the Planning Board that a lot will have a sufficient ROW to provide both the required frontage to that lot and to allow safe vehicular access. Such a lot may exist as a “landlocked” lot which requires a Right-of-Way Plan approval because necessary access doesn’t meet driveway standards or the lot may be a proposed division from an existing lot which wouldn’t have required frontage without a new ROW. When a lot is proposed for division, such division must not create a non-conforming lot or structure. Right-of-Way Plans do not apply to any lot that requires subdivision approval.
- B. Applicability.
 - (1). A person who has right, title, or interest in a parcel of land must obtain Right of Way Plan approval for a site when:
 - a. A lot requires a new ROW to meet street frontage requirements
 - b. A lot is proposed for division and requires ROW access and street frontage for the proposed new lot.
 - (2). A ROW proposed under this section must be and will remain a private road unless the applicant pursues street acceptance and is granted that acceptance by the Town per §16.8.11.L of the municipal ordinance.
- C. Review Process & Submission Requirements
 - (1). Pre-application and Conference
 - a. Process. Before submitting a proposed Right-of-Way Plan to the Board, the owner and/or applicant must meet with the Town Planner to discuss the conceptual design regarding road design, stormwater management, dimensional requirements, and any potential impacts to existing or proposed development and the environment.
 - (2). Sketch Plan
 - a. Process. The applicant must submit a Right-of-Way application and sketch plan for review and consideration by the Planning Board.
 - b. Plan requirements
 - i. The sketch plan must show the proposed road and lot division (if applicable), including structures, site improvements and landscape features, in relation to existing conditions and municipal land use regulations. Any proposed buildings must also be shown.
 - ii. If the proposed ROW could or will provide frontage to lots other than the lot under consideration, those abutting lots and their structures, if any, must also be shown on the sketch plan.

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- iii. While not required, a plan prepared by a surveyor is recommended.
 - c. Planning Board review and decisions, including site walk
 - i. The Planning Board must determine whether the Right-of-Way sketch plan proposal complies with municipal land use regulations regarding both submission content and design and must, when necessary, make specific suggestions to be incorporated by the applicant in subsequent submissions.
 - ii. If the sketch plan is accepted and approved, with or without conditions, the next application step will be a Final Plan.
 - iii. A site walk may be scheduled at the Planning Board's discretion.
- (3). Final Plan
- a. Failure to submit final plan application. If a Right-of-Way final plan is not submitted to the Planning Board within six months after the approval of the sketch plan, the Planning Board may, at its discretion, refuse to act on the final plan and require resubmission of the sketch plan. Any plan resubmitted must comply with all application requirements, including payment of application fees.
 - b. Process, including optional public hearing
 - i. The applicant must submit a final Right-of-Way plan for review and consideration by the Planning Board. Any conditions imposed by sketch plan approval must be addressed in the submission.
 - ii. The Planning Board may, at its discretion, choose to hold a public hearing. If a public hearing will be held, the proceedings must conform to public hearings as described by 16.8.9.C.(3).
 - iii. The Planning Board may, at its discretion, request a review of the plans by the Town's peer review engineer. The cost of this peer review will be borne by the applicant.
 - iv. The Technical Review Committee (TRC) must review the final plan and submit comments prior to final plan approval.
 - v. The Board must accept the application as complete and after consideration and review, which may span more than one regularly scheduled meeting, vote to approve with or without conditions or deny the plan.
 - c. Plan requirements
 - i. A complete final plan application must fulfill all the requirements as indicated on the application checklist and described by §16.8.9.D.(10) unless the Planning Board, by

414 formal action, upon the applicant's written request, waives
415 or defers any requirement(s) for submission. The Board
416 may request any additional information pertinent to
417 complete understanding of the application.

418 d. Findings of Fact

419 i. Action by the Planning Board must be based upon findings
420 of fact which certify or waive compliance with all the
421 required standards of this ordinance, and which certify the
422 Right-of-Way plan meets the requirements as listed in
423 §16.8.9.D.(4).(b).

424 ii. In addition, the Board must find that the proposed ROW:

425 a. Does not create any nonconforming lots or
426 buildings; and

427 b. Can reasonably permit vehicular passage.

428 e. Street naming

429 i. Prior to submission of the final plan for Planning Board
430 signatures (see §16.9.4.C.f.i below), the applicant must
431 apply for and be approved for, a street name which
432 complies with Chapter 8.5 of the municipal regulations.

433 ii. Once approved, the street name must be placed on the final
434 plan prior to submission for Planning Board signature.

435 iii. Street signage is required per Chapter 8.5-5.

436 f. Final Plan approval and recording

437 i. A plan has final approval only when the Planning Board
438 has indicated approval by formal action and the plan has
439 been properly signed by a majority of the Planning Board
440 members or by the Chair or Vice-Chair only, if so voted by
441 the Planning Board.

442 ii. An approved Row-of-Way plan involving the division of
443 land, easements, or property boundary modification must
444 be recorded by the York County Registry of Deeds. A
445 paper copy and electronic copy of the recorded plan must
446 be returned to the Town Planner. An as-built plan and
447 electronic files may also be required at the discretion of the
448 Town Planner or Director of Planning.

449 g. Performance guaranty

450 i. Prior to the issue of a building permit, the applicant must,
451 in an amount and form acceptable to the Town Manager,
452 file with the Municipal Treasurer an instrument to cover the
453 full cost of the required improvements. A period of one
454 year (or such other period as the Planning Board may
455 determine appropriate, not to exceed three years) is the
456 guaranty time within which required improvements must be

- 457 completed.
- 458 ii. In cases where the Right-of-Way plan consists of an
459 extension of an existing road and as approved, will remain
460 unpaved with minimal site improvements required, the
461 Director of Planning may waive the performance guaranty.
- 462 iii. Where applicable, a maintenance agreement must be
463 included in the document of covenants, homeowners'
464 documents and/or as riders to the individual deed.
- 465 h. Modifications to approved plans. No modifications to an approved
466 Right-of-Way final plan may be made unless such modifications
467 comply with §16.9.4.
- 468 i. Appeal of Planning Board decision. Appeal of a Right-of-Way
469 plan decision by the Planning Board may be made per §16.2.12.B.