

Town of Kittery Planning Board Meeting July 22, 2021

ITEM 1— Land Use Development Code Amendments—Proposed Revisions to Title 16 to Amend Distant Requirements between a Gas Station and Protective Structures.

Action: Continue to a subsequent meeting, close public hearing, issue recommendation to Town Council. Pursuant to M.R.S.A Title 30-A, Chapter 187, §4352 and §16.1.9 *Amendments* of the Town of Kittery Land Use and Development Code, the Planning Board seek to hold a public hearing for a proposed amendment to §16.3 *Land Use Regulations* from petitioner Cumberland Farms Inc., and agent Archipelago Law, LLP by amending §16.3.2.11.C(1)(b.) to reduce the required distance between Gasoline Sales and protected uses and certain types of structures.

PROJECT TRACKING

REQ'D	ACTION	COMMENTS	STATUS
Yes	Public Hearing	July 22, 2021	Ongoing
Yes	Recommendation	Made be made at the July 22, 2021 meeting	Pending

Background

The purpose of text amendment change is for the applicant to be permitted to use a certain property (Map 47- Lot 3A) for gasoline sales. Currently, as the code is written, pursuant to §16.3.2.11.(C)(1)(a.)¹, gasoline sales are not permitted if an existing gas station or dwelling unit is within 1,000-ft. thereof. Moreover, the provision states that a gas station cannot be less than 150-ft from a structure. The currently language would prohibit outright the installation of a gas station at the lot in question, while the proposed language² that would narrowly permit such a use. Staff did a buffer analysis illustrating what this would look like for the rest of C-1 zoning district. It appeared that if the text amendment were to be codified, no other gas station other than the one to be proposed would be permitted as a result the protective land use types within and abutting the C-1 zoning district. The language appeared to tailor the use to a specific location and, if approved, would disallow any further gasoline stations to be located within the zone based on the current land use characteristics.

From a standpoint of concern over the proliferation of gasoline sales within the zoning district, it appears that the text amendment coupled with the proposed site location and existing land use characteristics would zone out any further gas stations within the C-1 zone. Accordingly, the Board should not be concerned over more gasoline sales stations establishing within the zoning district.

As regards the justification for the zoning amendment, the petitioner reference multiple sections of the comprehensive plan that reference economic activity improvement, tourism accommodation, increase in tax revenue, and redevelopment opportunities of underutilized and vacant properties. Also in the comprehensive plan, which were not referenced by the applicant are references to traffic mitigation efforts, implementing climate change adaptation measures and uses, making more accommodations for alternative modes of transportation, protect natural resources, and improve safety of existing roads.³

Accordingly, the Board needs to review the comprehensive plan and determine if the incorporation of additional gasoline sales establishments within the C-1 zoning district fits into the vision that the comprehensive plan had established for that area. The Board should consider the merits the text change would bring and compare them to the disadvantages that it might produce and make a recommendation to Town Council.

Planning Board Procedural Steps

After the Board has been presented with the petition and deliberation has exhausted, the following procedural sequence must take place:

¹ The applicant mistakenly reference the incorrect provision, which was originally stated as §16.3.2.11.C(1)(b.)

² Proposed language from petition: Gasoline Sales if : i) not located within 1,000 feet of an existing gasoline station; ii) no location within 1,000 feet of an existing private residence unless that 1,000-foot measurement is bisected by an arterial as defined in Article 16.8.4.3.A. in which case not located within 150 of an existing building.

³ See pages 16-30 of volume 1 of the Kittery Comprehensive Plan 2015-2025.

https://www.kitteryme.gov/sites/g/files/vyhlf3316/f/uploads/000-complete_comp_plan_vol_1_final_no_exec_summary_3.22.18.pdf

1. Continue the application to a subsequent meeting;
2. Close the public hearing
3. Make recommendation to Town Council

Recommended Motions

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

Motion to continue petition

Move to continue the public hearing for a proposed amendment to §16.3 Land Use Regulations from petitioner Cumberland Farms Inc., and agent Archipelago Law, LLP by amending §16.3.2.11.C(1)(b.) to reduce the required distance between Gasoline Sales and protected uses and certain types of structures.

Motion to recommend to Town Council

Move to recommend / not recommend to Town Council the proposed amendment to §16.3 Land Use Regulations from petitioner Cumberland Farms Inc., and agent Archipelago Law, LLP by amending §16.3.2.11.C(1)(b.) to reduce the required distance between Gasoline Sales and protected uses and certain types of structures.

ADDITIONS AND MODIFICATIONS TO THE EXISTING CODE

Code section number to be amended	Article 16.3.2.11.C(1)(b)
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Proposed amendment language	Please see attached
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Provide a narrative of why the proposed amendment would be beneficial for the Town in the space provided below. Include benefits and hardship this would address.

Please see attached

Amendment to the Land Use Zoning Map

Provide a narrative of the proposed change including benefits for the Town, compatibility to the abutting land uses and any supporting information. Also, attach a sketch of the proposed map change with this application.

N/A

PROPOSED KITTERY ZONING ORDINANCE AMENDMENT

Article: 16.3.2.11.C(1)(b)

I. Introduction

For some time now, Cumberland Farms has envisioned repurposing the parcel located at 355 U.S. Route 1, the former location of the Super Shoes store, with a new Cumberland Farms convenience store and bakery with state-of-the-art fuel service. This vision is supported by the Town's most recent update to the Comprehensive Plan, wherein the Town expresses an interest in exploring, with outlet property owners, the eventual adoption of more of a mixed-reuse approach to the Kittery outlet area. Attached to this Application as Attachment 1 are examples of the style and landscaping at similar new Cumberland Farms stores. As can be seen, the Kittery Cumberland Farms store and landscaping plan would be designed to assist in the Town's vision for the outlet area, through enhancement and beautification of that section of Route 1.

The 355 U.S. Route 1 property is located in the Town's Commercial (C-1) Zone. Gasoline sales are a Special Exception Use in the C-1 Zone. (Article 16.3.2.11.C). Per Article 16.3.2.11.C(1)(b) as presently drafted, gasoline sales is a permitted use in the C-1:

- i) if not located within 1,000 feet of an existing station or private residence; and
- ii) not located within 150 feet of an existing structure.

The drawing attached as Attachment 2 shows the 1,000-foot perimeter from the proposed point of fuel sales at the 355 U.S. Route 1 property.¹ If measured "as the crow flies" there is one residential structure and one partial residential structure within that perimeter. If measured linearly along the travelled way, the closest residential structure is greater than 1,000 feet from the proposed point of sale.²

The intent of the 1,000-foot perimeter appears to be to separate fuel sales from existing residential structures. In this case however the proposed use and the residential structures are bisected by U.S. Route 1, an arterial highway at the 355 U.S. Route 1 property that serves approximately 14,000 vehicles each day.³

¹ The Code Enforcement Officer ("CEO") has determined that the 1,000-foot perimeter is to be measured from point of sale on the property to the closest point of the residential structure.

² The CEO has determined that the distance should be measured "as the crow flies" as opposed to linearly along the travelled way.

³ MaineDOT 2019 Average Daily Traffic (ADT) count. The Ordinance defines "arterial highways" as "major traffic ways that provide connections with other thoroughfare or interstate roads and have a high potential for the location of significant community activity centers as well as retail, commercial and industrial facilities. The average daily traffic count (ADT) would be 9,001 or more trip ends." (Article 16.8.4.3.A.).

In addition, the Ordinance defines the term "structure" as:

Anything built for the support, shelter or enclosure of persons, animals, goods or property of any kind, or anything constructed or erected with a fixed location on or in the ground, or attached to something having a fixed location on or in the ground. The term includes decks. The term does not include fences less than eight feet in height, nor any required by the Planning Board or Town Planner to be taller; flagpoles no higher than 50 feet in height; signs located in conformance with Article X of Chapter 16.8; and electricity generators and propane and oil tanks for residential use only and the pads on which they are located, provided the pad is less than 20 square feet in size.

The term structure does not exclude such items typically located in a developed commercial area, such as utility poles, light poles, guardrails and parking stanchions.

The intent of this section would appear to be designed to keep gasoline station buildings separated from other *buildings* in the C-1 Zone.

II. Proposed Amendment

To allow for redevelopment of the 355 U.S. Route 1 property with the convenience store and bakery with fuel service, Cumberland Farm proposes the following revised language for Article 16.3.2.11.C(1)(b):

Gasoline sales if: i) not located within 1,000 feet of an existing gasoline station; ii) not located within 1,000 feet of an existing private residence [unless that 1,000-foot measurement is bisected by an arterial as defined in Article 16.8.4.3.A. in which case not located within 800 feet of an existing private residence; and iii) not located within 150 of an existing building.]

III. Compliance with the Comprehensive Plan; Town Benefits

The Kittery Comprehensive Plan 2015-2025 ("Plan") notes that more than 6,000 workers commute to Kittery daily from Massachusetts, New Hampshire and northern areas of Maine. (Plan; page 44). "Kittery also functions as the tourist and principle economic gateway to Maine" with Route 1 "playing a role in welcoming and servicing both the

commercial traveler and the tourist” which has greatly expanded with the development of the Outlet Mall area. (Plan pages 44-45).

With this in mind, the proposed amendment to Article 16.3.2.11.C(1)(b) to allow for a convenience store with fuel sales use is well supported by the Town’s Plan:

- While the Plan recognizes that the Route 1 Outlet Malls area has contributed a substantial amount over time to the commercial tax base in Kittery and that the area continues to draw visitors, particularly from all over Northern New England, it also recognizes that changes in retailing threaten to leave long term vacancies and lost revenue. (Plan; page 119). This has certainly been the case for the property located a 355 U.S. Route 1 which has been vacant since at least 2019. The redevelopment of the 355 U.S. Route 1 property would provide the Town with significant new tax revenue.
- The area around the Outlet Mall is seen in the Plan as successful but with an uptick in vacancies. The Town’s vision is to encourage the Town to look for ways to provide property owners with the tools appropriate for redevelopment options. (Plan; page 78). The Plan recognizes that there is a desire expressed by residents to see more of a mixed-use in that area which might include the addition of housing; however, the Plan also expresses a desire to direct new commercial development to existing commercial areas. (Plan; page 77). The Plan discusses possible consideration of establishing Design Guidelines in this area of Route 1 to guide future development. (Plan; page 130). The attractively designed Cumberland Farms store supports that vision by providing a convenience store and bakery in a developed commercial area but also within walking distance of the envisioned future mixed-uses as well as convenient fuel service both for the travelling public and for nearby residents. The New England styled architecture with particular attention to landscaping will provide a model for future commercial design guidelines.
- The Town has stated as an objective to economic development to “continue to promote economic development in areas already identified by the town” as growth areas. (Plan; page 30). The Route 1 Outlet Mall area, including the 355 U.S. Route 1 property, is a mapped growth area in the Plan. (Plan; page 134).
- As part of its Future Land Use Plan, the Plan provides that the “Town should look to direct new development, where feasible, to vacant or underutilized sites and buildings within developed areas.” (Plan; page 125). Again, the property located at 355 U.S. Route 1 has been vacant and underutilized for over two years.



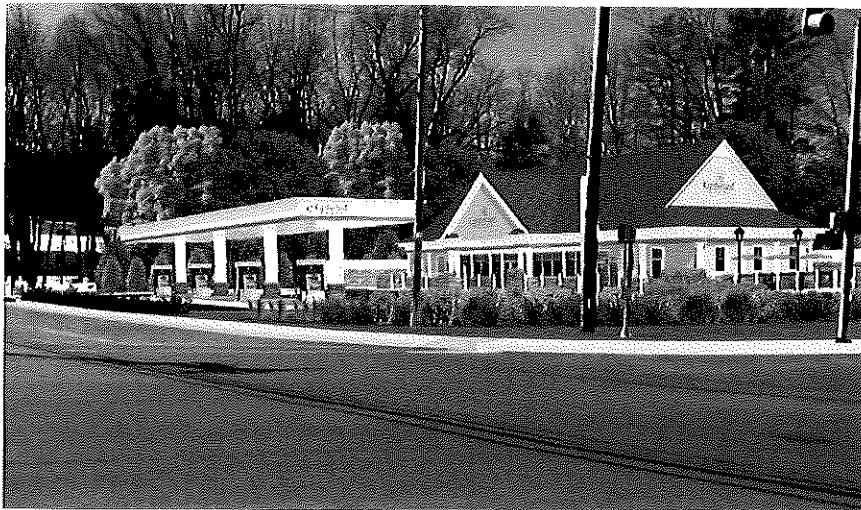
I, Thomas Cacciola, on behalf of my company Cumberland Farms, Inc., hereby authorize our attorneys, Archipelago Law, LLP, and our engineers, Civil Design Group, LLC, to sign any and all State of Maine or Town of Kittery permit, zoning amendment, and/or appeal applications on our behalf with regard to the proposed Cumberland Farms development located at 355 US Route 1, Kittery, Maine (Map 47, Lot 3A) (the "Project"). I further authorize any of the attorneys in that firm to appear on behalf of Cumberland Farms, Inc. and to represent the Company before any department, board, committee or agency of said State or Town, including, but not limited to, the Maine Department of Environmental Protection, Planning Board and the Zoning Board of Appeals, regarding the Project.

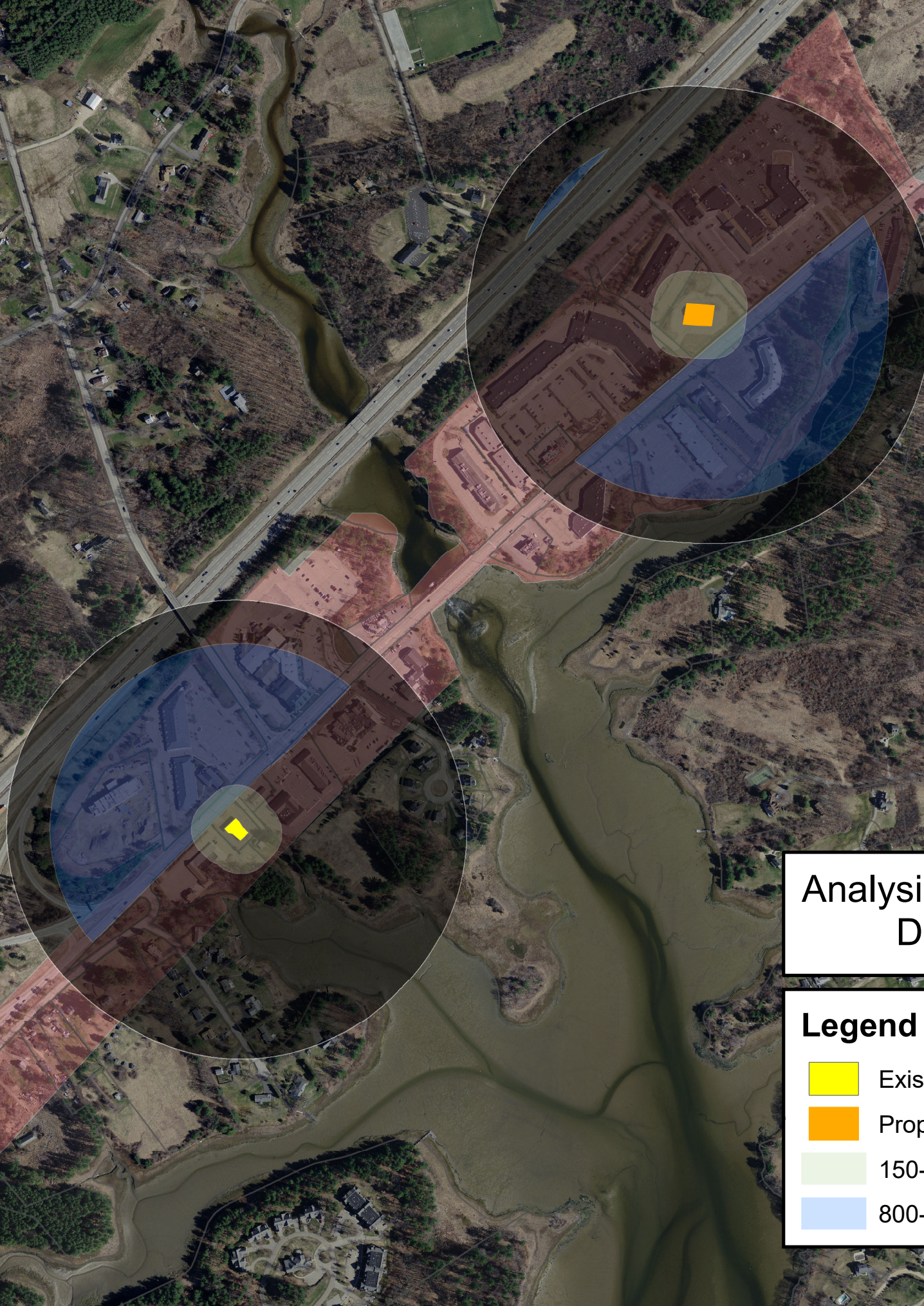
DATED: May 17, 2021

Cumberland Farms, Inc.

A handwritten signature in black ink, appearing to read "Thomas Cacciola", written over a horizontal line.







By: Thomas Cacciola
Its: Senior V.P. of Real Estate,
Construction

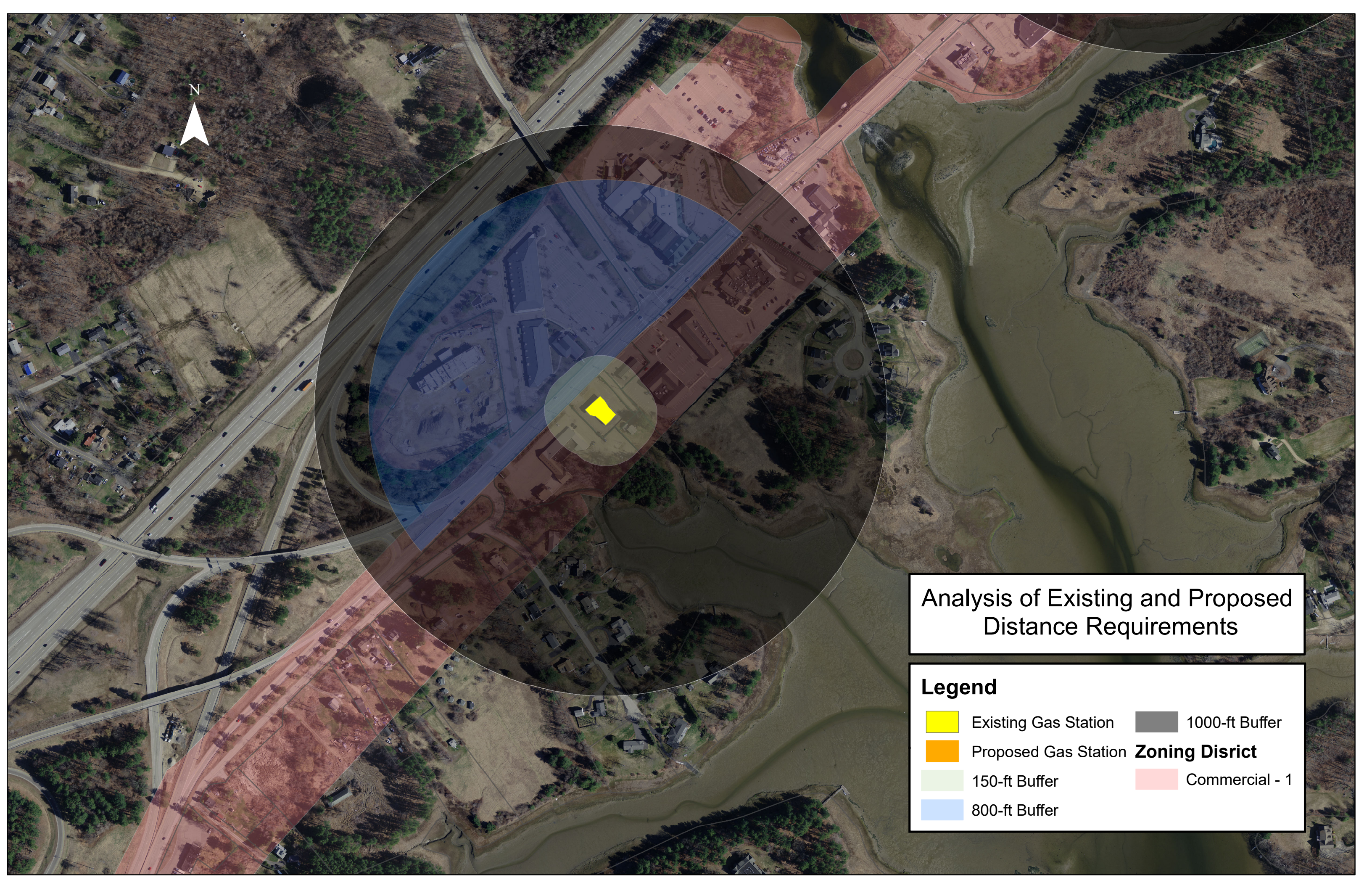




Analysis of Existing and Proposed Distance Requirements







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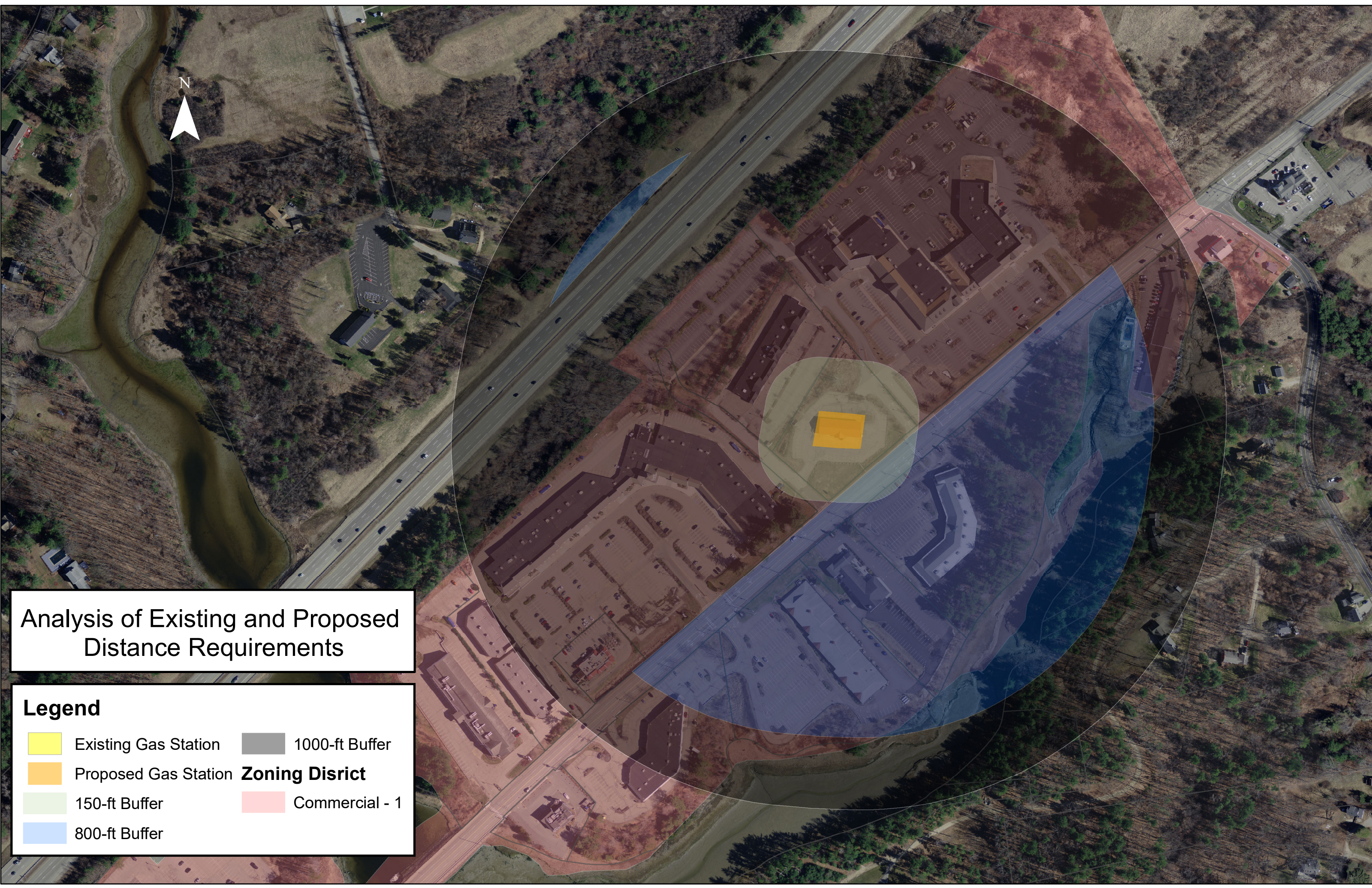
 Existing Gas Station	 1000-ft Buffer
 Proposed Gas Station	Zoning District
 150-ft Buffer	 Commercial - 1
 800-ft Buffer	



Analysis of Existing and Proposed Distance Requirements







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	Existing Gas Station		1000-ft Buffer
	Proposed Gas Station	Zoning District	
	150-ft Buffer		Commercial - 1
	800-ft Buffer		



Analysis of Existing and Proposed Distance Requirements

Legend

 Existing Gas Station	 1000-ft Buffer
 Proposed Gas Station	Zoning District
 150-ft Buffer	 Commercial - 1
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