



TOWN OF KITTERY

200 Rogers Road, Kittery, ME 03904

Kittery Land Issues Committee

AGENDA

Tuesday, December 17, 2019, 6:00pm

1. Review last meeting – November 19
 - a. Definitions, Use Table
2. Development Review
 - a. Project Classification & Review Process
 - i. Minor/Major projects
 - ii. Approval authority: Staff approval & Planning Board
3. Next Meeting - January 14, 2020 (2 hrs?)
 - a. Performance Standards & Approval Standards
4. Adjourn

MEMORANDUM

TO: Adam Causey, AICP, Director of Planning and Development

CC: Jamie Steffen, Town Planner
Sarah DeGizzo, North Star Planning
Kittery Land Issues Committee (KLIC)

From: Ben Smith, AICP, North Star Planning *BSM*

RE: Title 16 suggested changes – project classification & review process

Date: December 3, 2019

North Star Planning delivered a reorganized draft of Title 16 on August 12, which shifted existing ordinance wording around to match the ordinance framework (table of contents) developed earlier in the year. Since that time, we have been working on updates and changes to the wording of Title 16. These updates and changes are consistent with suggestions made in our Code Audit from January, the Elected and Appointed Officials meeting in March, past KLIC meetings and conversations with staff.

The KLIC meeting on December 17, will focus on suggested changes to the sections of Title 16 dealing with development review. As noted previously, the organizational changes break the existing 16.10-Development Plan Application and Review and 16.11-Marine-Related Development into individual sections::

- 16.6 – Master Site Development Plan Review
- 16.7 – Site Plan Review
- 16.8 – Subdivision Review
- 16.9 – Shoreland and Marine-Related Development

Highlights of suggested changes:

- Changes to the Development Review Process. North Star Planning suggests greater differentiation in the process between Minor and Major Subdivisions as well as creating Minor and Major Site Plan classes. Clarity has been added within the ordinance as to how projects are classified and how the process is different for minor and major projects. In the table below, the full circles are required steps in the process, and half circles are discretionary steps. The discretion is up to the applicant when it comes to Pre-application meetings and to the review authority in regard to site walks and public hearings. Blank cells indicate that a particular step is not applicable. In this case, the Preliminary Plan review stage is only applicable to Major Subdivisions.
- Creation of a Staff-level review authority for Minor Site Plans, in addition to the Planning Board. The Board would review Major Site Plans, all Subdivisions, and any projects that require Master Site Development review.

| | Master Site Development Plan | Site Plan | | Subdivision | |
|------------------------------|---------------------------------|-----------|-------|-------------|-------|
| | | Minor | Major | Minor | Major |
| Pre-application meeting | ● | ◐ | ◐ | ◐ | ● |
| Sketch Plan | ● | ● | ● | ● | ● |
| Site Walk/on-site inspection | | ◐ | ◐ | ◐ | ◐ |
| Preliminary Plan | | | | | ● |
| Public Hearing | | ◐ | ● | ● | ● |
| Final Plan | ● | ● | ● | ● | ● |
| minimum # of review meetings | 2 | 2 | 2 | 2 | 3 |

- Criteria for classification of projects. Clear thresholds are suggested for the classification of projects which are missing from the ordinance today.

| | Master Site Plan | Site Plan | |
|---|---|--|---|
| | | Minor | Major |
| Review Authority | Planning Board | Staff Review Committee | Planning Board |
| New Construction or Additions (cumulative within 5 years) | Cummulative lot area is one acre or larger, AND | 1,000 s.f - 4,999 s.f nonresidential | 5,000 s.f. or more nonresidential |
| | The site is designed as a cohesive and integral development program consisting of multiple buildings and associated site improvements proposed to be built in phases. | 5,000 s.f. or more nonresidential if in approved subdivision | |
| Development or establishment of new nonresidential use if no buildings or structures are proposed | | 25,000 s.f. - less than 1 acre | more than 1 acre |
| Multiunit developments | | | Creation of 5 or more dwelling units within 5 years |
| Wireless Communications Systems Facilities (WCSF) | | | yes |
| Projects that require waivers from performance standards | | | yes |
| projects that require subdivision or special exception approval | | | yes |
| all other projects | | | yes |

As with our work at the November meeting, we'll be asking for reactions to the main points in the ordinance as well as dedicating meeting time to addressing specific questions that will shape the next draft of these sections.

16.6 Master Site Development Plan Review

1. General.

- A. Master Site Development Plans are intended to show an overall development scheme for a large property so that the Planning Board can ensure that development of large sites with potential town-wide or regional impacts proceed in an orderly sequence with coordinated phasing. Master Site Development Plans are to assure adequate provisions are made to protect the public health and safety, taking into account such factors as traffic safety and access; water supply and sewage disposal; management of stormwater, erosion, and sedimentation; protection of the environment; and other criteria as noted below.

2. Applicability

- A. A person who has right, title, or interest in a parcel of land shall obtain Master Site Development Plan approval for a site when:
 - (1). The cumulative lot area is one acre or larger, and
 - (2). The site is designed as a cohesive and integral development program consisting of multiple buildings and associated site improvements proposed to be built in phases.

3. Review Process & Submission Requirements

A. Pre-application and Conference

(1). Process

Before submitting a proposed Master Site Development Plan to the Board, the owner must meet with the Town Planner to discuss the feasibility and conceptual design, including sketch plans, regarding land use, parcel layout, public improvement, and the surrounding existing development and environment.

B. Sketch Plan

(1). Process

The applicant must prepare and submit, for review and consideration by the Planning Board, a sketch plan and subsequently, for review and possible approval by the Planning Board, a Master Site Development Plan for the mixed-use development of the parcel.

(2). Plan Requirements

A Master Site Development Sketch Plan must include, at a minimum:

- a. Location, type and amount of the uses proposed to be developed on the parcel, including the proposed area, percentage and intensity of each proposed use;
- b. Proposed provisions for utilities, access roads, parking and public and private ways;
- c. Areas proposed to be permanently dedicated for public or private open space or other public purpose;
- d. Proposed buffers between uses and adjacent properties in accordance with the provisions of § 16.7.8.D.9.P of this title;
- e. Proposed phasing of the overall site development, including the general sequence in which related public and private improvements are to be completed, clearly defined on Master Site Development Plan.

(3). Written Submission Requirements

- a. A project narrative, describing the nature of the proposed project along with an anticipated timeframes for project phases and overall project buildout.
- b. In the event the development site is not comprised of a single parcel, the master site development plan must detail the manner in which multiple

parcels will be consolidated into a single parcel and subsequently subdivided, if necessary, to facilitate the completion of the plan.

(4). Decisions.

- a. The Planning Board must determine whether the Sketch Plan proposal complies with the standards contained herein and must, where it deems necessary, make specific suggestions in writing to be incorporated by the applicant in subsequent submissions.
- b. If the concept is approved, inform the applicant in writing.

C. Final Master Site Development Plan

(1). Process

- a. The Planning Board may approve the Final Master Site Development Plan as submitted, return the Final Development Master Plan for additional information or revision, or deny the Final Development Master Plan.
- b. The Final Master Site Development Plan becomes the plan with which subsequent submittals must conform. The Planning Board must sign and date the Final Master Site Development to indicate approval by the Board.
- c. The approved Master Site Development Plan remains valid as set forth in this chapter but may be amended and extended as set forth in this chapter.

(2). Plan Requirements

The Final Master Site Development Plan must include the following elements:

- a. land use,
- b. public sites, environmental design,
- c. vehicular, pedestrian and
- d. bicycle circulation, recreation, water, wastewater, drainage and other elements as set forth in this title.
- e. The Planning Board may waive one or more elements of the plan, if they are determined inapplicable.

(3). Written Submission Requirements

- a. A project narrative describing the project, including updates and changes proposed from the Sketch Plan to the Final Plan.

4. Performance Standards and Approval Criteria

- A. Outside agency approvals. Any applicable approvals from Maine DEP, MaineDOT, the Army Corps of Engineers or other state or federal agencies must be sought for the entire Master Site Development Plan, not individual phases. Stormwater, traffic and other impacts of project phases are cumulative.
- B. Infrastructure. Improvements within the right-of-way, including streetlights, sidewalks, streets, guardrails and more will maintain consistency in construction details, design and materials throughout the Master Site Development Plan.
- C. Stormwater. Each phase of the project shall include stormwater treatment adequate to treat that phase of the project. It is acceptable to oversize stormwater infrastructure in early phases to treat later development. It is not acceptable for proposed development to rely on later phase construction for necessary stormwater treatment.
- D. Traffic. New streets in the Master Site Development Plan will include provisions for adequate turnarounds between project phases. Hammerheads or cul-de-sacs installed at the end of each phase may be removed if the street is extended in future phases.

5. Decisions

- A. The Planning Board shall approve, approve with conditions, or deny a Master Site

Development Plan application based on the applicable review standards. An approval, including any approval of waivers from Performance Standards, establishes the general parameters to be adhered to for the development, including the supporting documentation for floor area and/or residential density, general types of uses, building coverage, generalize open space plans and infrastructure systems.

- (1). A Master Site Development Plan approval shall not be construed as final authorization of the development. Approval shall confer pending proceeding status upon the development with the effect of maintaining the applicability of regulations in effect at the time of approval for as long as the Master Site Development Plan remains valid, including permissible extensions, if granted.
 - (2). Final approved Master Site Development Plan signing. The Planning Board must sign and date the plan to indicate that it is the Master Site Development Plan approved by the Board.
- B. A Master Site Development Plan and each subsequent development plan thereof has final approval only when the Planning Board has indicated approval by formal action and the plan has been properly signed by a majority of the Planning Board members or by the Chair only, if so voted by the Planning Board.

6. Post-Approval Activities

A. Recording of master planned property survey.

- (1). The owner must record the signed Master Site Development Plan at the York County Registry of Deeds after Planning Board approval.

B. Land division applications.

- (1). After approval of the Master Site Development Plan and recording of the master site development plan property survey, the owner may initiate land division applications.
- (2). The Code Enforcement Officer may issue permits only after the Master Site Development Plan property survey has been recorded and all other applicable state and local approvals have been obtained.

7. Recreational Land Allocation

A. Size.

(Reserved for future use.)

B. Character and configuration.

(Reserved for future use.)

C. Waterfront inclusion.

(Reserved for future use.)

8. Development Exaction

A. Municipal space.

The Planning Board may require the developer provide space for future municipal uses, in accordance with a Council-approved plan, on a reimbursable basis, with a five-year option, after which the space may be sold for other development.

B. Impact fees.

Impact fees and other like development exactions must be required by the Planning Board when all legal requirements have been fulfilled in accordance with 30-A M.R.S. § 4961-A (e.g., sewer connection fees).

16.7 Site Plan Review

1. General.

The site plan review provisions set forth in this section are intended to protect the public health and safety, promote the general welfare of the community, and conserve the environment by assuring that nonresidential and multipamily construction is designed and developed in a manner which assures that adequate provisions are made for traffic safety and access; emergency access; water supply; sewage disposal; management of stormwater, erosion and sedimentation; protection of groundwater, environment, wildlife habitat, fisheries, and unique natural areas; protection of historic and archaeological resources; minimizing the adverse impacts on adjacent properties; and fitting the project harmoniously into the fabric of the community.

2. Applicability.

A. A person who has right, title, or interest in a parcel of land shall obtain site plan approval prior to commencing any of the following activities on the parcel, including contracting or offering for the conveyance of the proposed development (or portion thereof), obtaining a building or regulated activity permit for any structure within the development is issues, or undertaking work on any improvements, including installation of roads or utilities or land clearing.

- (1). The construction or placement of any new building or structure for a nonresidential use, including accessory buildings and structures, if such buildings or structures have a total area for all floors of all structures of one thousand (1,000) square feet or more measured cumulatively over a five (5) year period.
- (2). The expansion of an existing nonresidential building or structure, including accessory buildings, if the enlargement increases the total area for all floors within a five (5) year period by more than twenty (20) percent of the existing total floor area or one thousand (1,000) square feet, whichever is greater.
- (3). The conversion of an existing building in which one thousand (1,000) or more square feet of total floor area are converted from residential to nonresidential use.
- (4). The establishment of a new nonresidential use even if no buildings or structures are proposed, that involves the Development of more than twenty-five thousand (25,000) square feet of land. This includes uses such as gravel pits, cemeteries, golf courses, and other nonstructural nonresidential uses.
- (5). The conversion of an existing nonresidential use, in whole or in part, to another nonresidential use if the new use changes the basic nature of the existing use such that it increases the intensity of on- or off-site impacts of the use subject to the standards and criteria of site plan review described in this section.
- (6). The construction of a residential building containing three (3) or more dwelling units.
- (7). The modification or expansion of an existing residential structure that increases the number of dwelling units in the structure by three (3) or more in any five (5) year period.
- (8). The conversion of an existing nonresidential building or structure, in whole or in part, into three (3) or more dwelling units within a five (5) year period.
- (9). The cumulative Development of an area equal to, or greater than, one (1) acre within any three (3) year period. The applicability of this section does not include the construction of streets that are reviewed as part of a subdivision application.

B. Other development review. [Amended 9-26-2011 by Ord. No. 11-15; 7-25-2016 by Ord. No. 16-02]

Unless subject to a shoreland development plan review per § 16.10.3.4, the following do not require Planning Board approval:

- (1). Single and duplex family dwellings.
- (2). Division of land into lots (i.e., two lots), which division is not otherwise subject to Planning Board review as a subdivision.
- (3). Business use as provided in § 16.4.3.6.

3. Other Potential Reviews

A. Shoreland development review.

[Amended 7-25-2016 by Ord. No. 16-02]

- (1). All development in the Shoreland, Resource Protection, and Commercial Fisheries/Maritime Uses Overlay Zones involving the use, expansion, change or replacement of an existing use or structure, or renewal of a discontinued nonconforming use, must be reviewed and approved as provided in § 16.10.10 and elsewhere in this title, and tracked as a shoreland development for reporting purposes.
- (2). All development in the Shoreland, Resource Protection, and Commercial Fisheries/Maritime Uses Overlay Zones must be approved by the Planning Board except for the following:
 - a. Proposed development of principal and accessory structures in compliance with § 16.3.2.17D(2), when not subject to Planning Board review as explicitly required elsewhere in this title. Such proposed development must be reviewed and approved by the Code Enforcement Officer (CEO) prior to issuing a building permit. The total devegetated area of the lot (that portion within the Shoreland Overlay Zone) must be calculated by the applicant and verified by the CEO and recorded in the Town's property records. Any development proposed in the Resource Protection and Shoreland - Stream Protection Area Overlay Zones must be approved by the Planning Board.
 - b. Piers, docks, wharves, bridges and other structures and uses extending over or below the highest annual tide (HAT) elevation, subject to review and approval by the Port Authority as outlined in Chapter 16.11, Marine-related development.
 - c. Division of a conforming parcel that is not subject to subdivision as defined in § 16.2.2.
 - d. Clearing of vegetation for activities other than timber harvesting. These are subject to review and approval by the Shoreland Resource Officer or Code Enforcement Officer.

4. Review and Approval Authority

A. Application Classification. The review and approval authority for site plans shall depend on the classification of the project.

- (1). Major Site Plan. The Planning Board is authorized to review and act on all site plans for Major Site Plan applications. In considering site plans under this section, the Planning Board may act to approve, disapprove, or approve with project with such conditions as are authorized by this section.
- (2). Minor Site Plan. The Staff Review Committee is authorized to review all site plans for Minor Site Plan applications and may approve, disapprove, or approve the project with such conditions as are authorized by this section. In addition, the Committee may reclassify a Minor Site Plan as a Major Site Plan, due to the scope or anticipated impacts of a project, and forward it to the Planning Board with its recommendations for Planning Board action.

B. Staff Review Committee Established. There is hereby created a Staff Review Committee. The Staff Review Committee shall consist of the Director of Planning and Development,

the Code Enforcement Officer, Fire Chief, Director of Public Works, or their designees, and a designee of the Town Manager.

- C. Operation of the Staff Review Committee. The Director of Planning and Development shall serve as Chair of the Staff Review Committee and shall be responsible for calling meetings of the Committee, presiding at its meetings, and maintaining the records of the Committee. In the absence of the Director of Planning and Development or his/her designee, the Code Enforcement Officer shall serve as chair pro tem.
- (1). Attendance. If any member of the Staff Review Committee is unable to attend any meeting of the Committee, he/she shall designate another member of that department to serve in his/her place. Such designation shall be in writing and shall apply only to that meeting. This designee shall have the same power and authority as the member.
 - (2). Meeting Dates. The Staff Review Committee shall meet once each month as needed. The Committee may schedule additional meetings, as needed.
 - (3). Advertisement. Meetings of the Committee shall be advertised in the same manner as those of other Town committees and shall be open to the public.
 - (4). Vacancy. If a vacancy exists in any of the positions serving on the Committee, the Town Manager shall name an interim committee member with appropriate expertise in the respective department, until such vacancy is filled.
 - (5). Quorum. A quorum is necessary to conduct any official meeting of the Committee, and a quorum shall consist of at least three (3) members.
 - (6). Voting. A majority vote of the quorum is required to constitute an action (passage or denial) on any motion before the Committee. Should a Committee member need to be recused due to a conflict once a quorum is established and a meeting is in session, the meeting may proceed and the Committee may take action on any motion before the Committee with less than three (3) voting members present. In this event, the applicant shall have the right to have a vote postponed to the next Committee meeting.
 - (7). Minutes. The Staff Review Committee shall keep a record of its proceedings.

5. Classification of Projects

- A. The Planner shall classify each project as a Major or Minor Site Plan. Minor Site Plans are smaller scale projects for which a minor review process is adequate to protect the Town's interest. Major Site Plans are larger, more complex projects for which a more detailed review process and additional information are necessary. The following review thresholds shall be used by the Planner in classifying each project. The Planner may, due to the scope or anticipated impacts of a project, classify any project as a Major Site Plan.
- (1). Minor Site Plans shall include those projects involving:
 - a. The cumulative construction or addition of fewer than five thousand (5,000) square feet of gross nonresidential floor area.
 - b. Any individual or cumulative construction or addition of five thousand (5,000) square feet or more of gross nonresidential floor area within an approved subdivision.
 - c. The establishment of a new nonresidential use even if no buildings or structures are proposed, that involves the Development of more than twenty-five thousand (25,000) square feet but less than one (1) acre of land.
 - (2). Major Site Plans shall include projects involving:
 - a. The individual or cumulative construction or addition of five thousand (5,000) or more square feet of gross nonresidential floor area on a lot that is not part of an approved subdivision,
 - b. The individual or cumulative Development of one (1) acre or more land,

unless the Development is part of a site plan application in an approved subdivision (see Section 805 A.1.b. above.)

- c. Projects that involve Wireless Communication System Facilities (WCSF),
 - d. Projects that require any waiver from performance standards.
 - e. Projects that also require subdivision or special exception approval, or
 - f. Other projects requiring review which are not classified as a minor development.
- B. An applicant may request that the Planner classify an application prior to its submission. In this case, the applicant shall make a written request for a classification.
- (1). This request shall include the following information:
 - a. The names and addresses of the record owner and the applicant and the applicant's legal interest in the property.
 - b. The location of the project, including the tax map and lot number.
 - c. A brief description of the proposed activities in such detail as to allow a classification to be made.
 - (2). When the Planner classifies a project based upon a request for classification rather than an application, the subsequent application shall be consistent with the activities described in the request for classification.
 - a. The Planner shall review such application to determine if the classification is still correct and may reclassify the application if the scope of activities has been changed.
 - (3). Within ten (10) working days of the receipt of a site plan application or a request for a classification, the Planner shall notify the applicant, and the Chair of the Planning Board of the classification of the project in writing.

6. Application and Review Fees

A. Review fee(s); reimbursements.

- (1). All applications for plan approval for properties which come under this title must be accompanied by a fee as determined by the Town Council.
- (2). The applicant must reimburse the Town for all expenses incurred for notifying abutters of the proposed plan and advertising of any public hearing regarding a development.

B. Independent peer review.

[Amended 9-28-2015 by Ord. No. 15-08]

- (1). The Planning Board or, after the Town Manager's approval, the Town Planner and the Code Enforcement Officer, may require an independent consultant or specialist engaged by the Town, at the applicant's expense, to:
 - a. Determine compliance with all requirements of this title related to public health, safety and welfare and the abatement of nuisances; or
 - b. Assist with the technical review of applications submitted for new or amended development.

C. When peer review is required of the applicant, sufficient funds, based on a written estimate by the required consultant, must be deposited in an applicant's service account per Chapter 3.3, prior to commencing said review and continuing with the review of the development plan application.

7. Applicant attendance at review meeting(s).

- A. The applicant or duly authorized representative must attend all Board meetings for which the applicant's application has been placed on the agenda. Relief may be given from this

requirement by the Board Chairperson.

8. Waivers [Amended 9-26-2011 by Ord. No. 11-14]

A. Waiver authorization.

Where the Planning Board finds, due to special circumstances of a particular plan, certain required improvements do not promote the interest of public health, safety and general welfare, or are inappropriate because of inadequacy or lack of connecting facilities adjacent or in proximity to the proposed development, upon written request, it may waive or modify such requirements, subject to appropriate conditions as determined by the Planning Board.

B. The Staff Review Committee may only grant waivers from submission requirements, and many not grant waivers from performance standards. Projects seeking such waivers must be classified as Major Site Plan applications to be reviewed by the Planning Board.

C. Objectives secured.

In granting modifications or waivers, the Planning Board must require such conditions as will, in its judgment, secure substantially the objectives of the requirements so waived or modified.

9. Other Requirements

A. Burden of proof.

In all instances, the burden of proof is upon the applicant proposing the development.

B. Comprehensive Plan.

Any proposed development or use must be in harmony with the Town Comprehensive Plan guidance adopted into the provisions of this title.

C. Site inspection.

- (1). So the Planning Board may be fully informed about the site and in a knowledgeable position to prescribe contour intervals to be employed on topographic maps and grading plans for the development, the applicant must arrange a joint inspection of the site with the Planning Board.

D. Safe use.

The land/water area to be developed must be of such character that it can be used without danger to health or peril from fire, flood, soil failure or other hazard.

10. Review Process and Submission Requirements

A. Pre Application and Conference

- (1). Process. Preapplication Conference. Applicants for site plan review are encouraged to schedule a preapplication conference with the Planner. The purpose of this meeting is to familiarize the applicant with the review procedures and submission requirements, and approval criteria, and to familiarize the Planner with the nature of the project.
 - a. Such review shall not cause the plan to be a pending application or proceeding under 1 M.R.S.A. §302. No decisions relative to the plan may be made at this meeting.
 - b. To request a preapplication conference the applicant shall submit, at a minimum, a brief narrative describing the project, the location of the project on a US Geologic Survey (USGS) topographic map, and a copy of the Tax Map showing the development parcel.

B. Sketch Plan Review

- (1). Planning Board or Staff Review Committee review. The Review Authority must, within 30 days of Sketch Plan submission, act upon the Sketch Plan as follows:

- a. The Planning Board or Staff Review Committee must determine whether the Sketch Plan proposal complies with the standards contained herein and must act to formally accept the Sketch Plan and authorize a Final Plan application submission.
- b. ,Where it deems necessary, make specific suggestions in writing to be incorporated by the applicant in subsequent submissions.
- c. The Review Authority should provide guidance as to whether or not an on-site inspection will be required
- d. For applications for a Minor Site Plan, the Staff Review Committee should indicate whether or not a public hearing will be required.
- e. The applicant should provide an indication as to whether or not waivers from the submission requirements or performance standards will be part of the next phase of review.
- f. Any plan may be continued for a total period not to exceed 90 calendar days for good and sufficient reason (i.e., for revisions to be made, studies completed, or additional information submitted) and acceptable to both the applicant and the Planning Board. Such plan is automatically scheduled for the agenda of the next regular Planning Board meeting after the 90th day and action completed in accordance with the requirements and timing contained in this title, whether the applicant has accomplished the purposes for which continued or not.
 - i. The action to table by the Planning Board must be an action to temporarily suspend action and not to suppress a vote on the plan.

(2). Plan Requirements

- a. The sketch plan must be submitted to the Planning Board at the time of, or prior to, the on-site inspection.
- b. The sketch plan must show in simple form on a topographic map the proposed site, subdivision, landscape architectural or architectural design concept, including streets, lots, structures and other features, in relation to existing conditions and municipal land use zone(s) regulations.
- c. The sketch may be a freehand penciled sketch and must include the data listed below.

(3). Written Submission Requirements

- a. Any person requiring development review must submit an application on forms prescribed by the Planning Board, together with a development plan and such submission contents as may be required in § 16.10.5.2. A complete application consists of all the required elements. No more than one application/plan for a piece of property may be under review at a time. No more than one approved final plan for a piece of property may exist.
- b. General project information must describe or outline the existing conditions of the site, including:
 - i. Covenants.
 - ii. High-intensity Class "A" soil survey and soil interpretation sheets.
 - iii. Available community facilities.
 - iv. Utilities.
- c. Proposed development, such as:
 - i. Number of residential or business lots and/or dwelling units;
 - ii. Typical lot width and depth;
 - iii. Price range;

- iv. Business areas;
- v. Playgrounds, park areas and other public areas;
- vi. Protective covenants;
- vii. Utilities; and
- viii. Street improvements.

C. Final Plan Review

(1). General Process

- a. Final Plan application filing and completeness review. A determination as to whether the Town Planner validates an application is based on a review of the application in accordance with the submission contents checklist filed with the plan, which indicates all elements required under §§ 16.10.5.2 and 16.10.7.2 have been received, or written request for any waivers of submission requirements or performance standards is included. The application must be accompanied by a plan and the required fee, together with a certification the applicant has notified abutters by mail of the filing of the plan application for approval.
- b. Receipt and scheduling review. Upon validation, the Town Planner must place the application on the agenda for Planning Board or Staff Review Committee completeness review and acceptance and, upon acceptance, issue a dated receipt to the applicant, which is thereafter the official time of submission. **[Amended 9-26-2011 by Ord. No. 11-15]**
- c. Site inspection. In the course of the review of the plan, the Planner must, and the Planning Board may at its discretion, make a physical inspection and may make photographic record of the existing conditions on the site. **[Amended 9-26-2011 by Ord. No. 11-15; 1-23-2012 by Ord. No. 12-01]**
- d. Advisory opinions. At any time during review, the Planner may request an advisory opinion from the Planning Board, Conservation Commission or Port Authority on issues related to the application. Where applications are for land within wetland setbacks or the Resource Protection Overlay Zone, the Conservation Commission must be invited to review and offer recommendations from an environmental protection perspective. The Planner also must make recommendation on the necessity for independent review.
- e. Planner analysis. The Planner must analyze the application and forward comments and recommendations to the applicant and the Review Authority..
- f. A completed application must be submitted to the Town Planner no later than 21 days prior to the meeting date for the item to be included on the agenda. The submission must include on the plan or attached thereto, the following items, unless upon the applicant's written request, the Planning Board, by formal action, waives or defers any requirement(s) for submission.
 - i. A minimum of 12 paper copies of the application form, plan and all attachments thereto plus, if applicable, an additional three paper copies of the twenty-four-inch-by-thirty-six-inch-size plan sheets.

(2). Public hearing

- a. Scheduling
 - i. A Major Site Plan application must be scheduled for review and public hearing once the Final Plan application is complete.
 - ii. A Minor Site Plan application may be scheduled for a public hearing

at the Staff Review Committee's discretion.

b. Public notice.

- i. The Town Planner must place a public notice of such public hearing in a newspaper of general circulation in the Town at least seven and not more than 14 days prior to the scheduled hearing date; said notice must also be posted in at least three prominent public locations in Town at least 10 days prior to the hearing; and, in the case of a plan located within 500 feet of the Towns of Eliot or York, Maine, must be forwarded to the Southern Maine Regional Planning Commission and to the Town Clerk of Eliot or York, Maine, at least 10 days prior to the hearing.

c. Abutter notice.

- i. The Town Planner must cause written notice of the public hearing to be sent by postage paid, first-class mail (cost to be paid by the applicant) to all owners of abutting property, as herein defined (within 150 feet of the property), and by regular mail to the Code Enforcement Officer, the Commissioner of Public Works, and where applicable, the Port Authority or Conservation Commission, at least seven days prior to the scheduled date. Failure of the parties to receive said notice does not invalidate any Board action.
- ii. For a wireless communication system facility (WCSF) plan application, the Town Planner must cause written notice of the hearing sent by postage paid, first-class mail, provided by the applicant, at least seven days prior to the hearing to all owners of abutting property and property located within 1,000 feet of any property line of the property for which the permit is requested. Notice must also be given to any town located within 1,000 feet of the proposed telecommunications facility. The applicant must provide this notification and must present proof of such notification to the Town Planner. The notification must include: the name of the applicant, location of the property, a brief description of the project, and a plot plan identifying the proposed site layout in relation to nearby streets and properties.

d. Public Hearing Procedure

- i. The Review Authority may receive oral and documentary evidence, but must exclude evidence which it considers irrelevant, immaterial or unduly repetitious.
- ii. The Chairperson of the Planning Board or Staff Review Committee must determine the order of presentation by parties to the hearing. Each party must have the right to proceed without interruption, except that rulings by the Chairperson prevail. The applicant's presentation must proceed in accordance with the checklist provided.
- iii. Any party may be represented by agent or attorney.
- iv. The Town Planner, in consultation with the other Town officials as may have an interest in the application, must present into evidence a written summary of findings and recommendations.
- v. The Planning Board or Staff Review Committee may continue the hearing to another time and location, including the site of the development, as it deems necessary.

(3). Planning Board review schedule and vote on application.

- a. Within 35 days after making a finding that the Final Plan application is complete, the Planning Board or Staff Review Committee must approve the plan, approve the plan with conditions, disapprove the plan, postpone action on the plan, or continue the review to another time/location.
 - b. Continuation or tabling of a review beyond the thirty-day period for subdivision applications, and the thirty-five-day period for other applications, must be for good and sufficient reason and be acceptable to both the applicant and the Planning Board.
 - c. Any plan may be continued for a total period not to exceed 90 calendar days for good and sufficient reason (i.e., for revisions to be made, studies completed or additional information submitted) and acceptable to both the applicant and the Planning Board. Such plan is automatically scheduled for the agenda of the next regular Planning Board meeting after the 90th day and action completed in accordance with the requirements and timing contained in this title, whether the applicant has accomplished the purposes for which continued or not.
 - d. The action to table by the Planning Board must be an action to temporarily suspend action and not to suppress a vote on the plan.
 - e. Failure to act within the thirty-five-day period constitutes disapproval of the plan, in which case the applicant may resubmit the plan without payment of an additional application fee.
- (4). Final Plan review and decision.
- a. The applicant must submit a Final Plan application to the Planning Department within six months of the date the Planning Board or Staff Review Committee makes a The Planning Board or Staff Review Committee must approve, approve with conditions or deny the preliminary plan.
 - b. Conditions of approval may include, but are not limited to, type of vegetation, increased setbacks and yard space, specifications for sewage and water supply facilities, buffers and screens, period of maintenance sureties, deed restrictions, locations of piers, docks, parking or signs, type or style of construction, and the amount of all guarantees which may be required.
 - c. The decision of the Planning Board plus any conditions imposed must be noted on three copies of the plan. One copy must be returned to the applicant, one retained by the Planning Board and one forwarded to the municipal officials.
- (5). Plan Requirements
- a. Plan sheets drawn on a reproducible medium and must measure no less than 11 inches by 17 inches and no larger than 24 inches by 36 inches;
 - b. With scale of the drawings no greater than one inch equals 30 feet for developments less than 10 acres, and one inch equals 50 feet for all others;
 - c. Code block in the lower right-hand corner. The block must contain:
 - i. Name(s) and address(es) of the applicant and owner;
 - ii. Name of the project;
 - iii. Name and address of the preparer of the plan, with professional seal, if applicable;
 - iv. Date of plan preparation/revision, and a unique ID number for the plan and any revisions;
 - d. Standard boundary survey conducted by a surveyor licensed in the State of

Maine, in the manner recommended by the State Board of Registration for Land Surveyors;

- e. An arrow showing true North and the magnetic declination, a graphic scale, and signature blocks for the owner(s) and members of the Planning Board;
- f. Locus map showing the property in relation to surrounding roads, within 2,000 feet of any property line of the development;
- g. Vicinity map and aerial photograph showing the property in relation to surrounding properties, roads, geographic, natural resource (wetland, etc.), historic sites, applicable comprehensive plan features such as proposed park locations, land uses, zones, and other features within 500 feet from any boundary of the proposed development;
- h. Surveyed acreage of the total parcel, of rights-of-way, wetlands, and area to be disturbed and amount of street frontage;
- i. Names and addresses of all owners of record of property abutting the development, including those across a street;
- j. Existing Development Area Conditions, including but not limited to:
 - i. Location and description of all structures, including signs, existing on the site, together with accesses located within 100 feet of the property line;
 - ii. Essential physical features such as watercourses, wetlands, floodplains, wildlife habitat areas, forest cover, and outcroppings;
 - iii. Utilities existing, including power, water, sewer, holding tanks, bridges, culverts and drainageways;
- k. Proposed development area conditions including, but not limited to:
 - i. Structures: their location and description, including signs, to be placed on the site, floor plans and elevations of principal structures as well as detail of all structures, showing building materials and colors, and accesses located within 100 feet of the property line.
 - ii. Utilities proposed including power, water, sewer, holding tanks, bridges, culverts and drainageways;
 - iii. Sewage facilities type and placement. Test pit locations, at least two of which must meet the State of Maine Plumbing Code requirements, must be shown;
 - iv. Domestic water source;
 - v. Parks, open space, or conservation easement locations;
 - vi. Lot lines, interior and exterior, right-of-way, and street alignments;
 - vii. Road and other paved ways plans, profiles and typical sections including all relevant data;
 - viii. Setbacks existing and proposed;
 - ix. Machinery permanently installed locations likely to cause appreciable noise at the lot lines;
 - x. Raw, finished or waste materials to be stored outside the buildings, and any stored material of a toxic or hazardous nature;
 - xi. Topographic contours of existing contours and finished grade elevations within the development;
 - xii. Pedestrian ways/sidewalks, curbs, driveways, fences, retaining walls and other artificial features locations and dimensions proposed;
 - xiii. Temporary marker locations adequate to enable the Planning Board to readily locate and appraise the layout of the development;

- xiv. Land proposed to be dedicated to public use and the conditions of such dedication;
 - xv. Natural features or site elements to be preserved.
- l. Street names and lines, pedestrianways, lots, easements and areas to be reserved for or dedicated to public use.
 - m. Street length of all straight lines, the deflection angles, radii, lengths of curves and central angles of all curves, tangent distances and tangent bearings.
 - n. Lots and blocks within a subdivision, numbered in accordance with local practice.
 - o. Markers/permanent reference monuments: Their location, source references and, where required, constructed in accordance with specifications herein.
 - p. Outdoor lighting and signage plan if the application involves the construction of more than 5,000 square feet of nonresidential floor area; or the creation of more than 20,000 square feet of impervious area; or the creation of three or more dwelling units in a building — prepared by a qualified lighting professional, showing at least the following at the same scale as the site plan:
 - i. All buildings, parking areas, driveways, service areas, pedestrian areas, landscaping and proposed exterior lighting fixtures;
 - ii. All proposed lighting fixture specifications and illustrations, including photometric data, designation as "cutoff" fixtures, color rendering index (CRI) of all lamps (bulbs), and other descriptive information on the fixtures;
 - iii. Mounting height of all exterior lighting fixtures;
 - iv. Lighting analyses and luminance level diagrams or photometric point-by-point diagrams on a twenty-foot grid, showing that the proposed installation conforms to the lighting level standards of the ordinance codified in this section together with statistical summaries documenting the average luminance, maximum luminance, minimum luminance, average-to-minimum uniformity ratio, and maximum-to-minimum uniformity ratio for each parking area, drive, canopy and sales or storage area;
 - v. Drawings of all relevant building elevations, showing the fixtures, the portions of the walls to be illuminated, the luminance levels of the walls, and the aiming points for any remote light fixtures; and
 - vi. A narrative that describes the hierarchy of site lighting and how the lighting will be used to provides safety, security and aesthetic effects.
 - q. Machinery in permanently installed locations likely to cause appreciable noise at the lot lines.
 - r. Materials (raw, finished or waste) storage areas, their types and location, and any stored toxic or hazardous materials, their types and locations.
 - s. Fences, retaining walls and other artificial features locations and dimensions proposed.
 - t. Landscaping plan, including location, size and type of plant material.
 - u. Stormwater management plan for stormwater and other surface water drainage prepared by a registered professional engineer, including the location of stormwater and other surface water drainage area; a post-construction stormwater management plan that defines maintenance

responsibilities, responsible parties, shared costs, and schedule for maintenance; a draft maintenance agreement for stormwater management facilities; and, where applicable, draft documents creating a homeowners' association referencing the maintenance responsibilities. Where applicable, the maintenance agreement must be included in the document of covenants, homeowners' documents and/or as riders to the individual deed and recorded with the York County Registry of Deeds. **[Added 9-26-2011 by Ord. No. 11-15;7-25-2016 by Ord. No. 16-06]**

- v. Phasing plan. Upon applicant's request, the Planning Board may permit phasing of the plans, where it can be demonstrated to the Planning Board's satisfaction that such phasing would result in a safe and orderly development of the plan.
 - i. The applicant may file a section of the approved plan with the municipal officials and the York County Registry of Deeds if said section constitutes at least 25% of the total number of lots, or for plans including buildings, 25% of the gross area, contained in the approved plan. In all circumstances, plan approval of the remaining sections of the plan will remain in effect for three years unless the applicant requests and the Planning Board grants extensions of time equivalent to the requirements for approved plans in § 16.10.9.1E.
 - ii. Phasing is subject to any conditions deemed necessary to assure a reasonable mixture of uses is completed within each separate phase of the plan.
 - iii. Where projects are to be constructed in phases, phasing of stormwater management, water mains and streets are part of the review process.
 - iv. Portions of both the developed and undeveloped site impacted by interim infrastructure conditions such as unlooped water systems, stormwater runoff from unfinished areas onto finished areas and vice versa, dead-end streets, etc., must be clearly defined and shown on the plans.
 - v. The Planning Board may permit construction of phases out of order only when the storm drainage plan and the water plan, etc., have been reviewed, and it has been demonstrated that the impact on both the developed and undeveloped sections is negligible.

(6). Written Submission Requirements

- a. Legal interest documents showing legal interest of the applicant in the property to be developed. Such documents must contain the description upon which the survey was based;
- b. Property encumbrances currently affecting the property, as well as any proposed encumbrances;
- c. Water District approval letter, if public water is used, indicating there is adequate supply and pressure to be provided to the development;
- d. Erosion and sedimentation control plan endorsed by the York County Soil and Water Conservation District or the Town's engineering consultant;
- e. Stormwater management preliminary plan for stormwater and other surface water drainage prepared by a registered professional engineer including the general location of stormwater and other surface water drainage areas;
- f. Soil survey for York County covering the development. Where the soil survey shows soils with severe restrictions for development, a high intensity Class "A" soil survey must be provided;

- g. Vehicular traffic report estimating the amount and type of vehicular traffic that will be generated by the development on a daily basis and for peak hours;
 - h. Traffic impact analysis in accordance with § 16.10.5.2D(1) for developments involving 40 or more parking spaces or which are projected to generate more than 400 vehicle trips per day;
 - i. Test pit(s) analysis prepared by a licensed site evaluator when sewage disposal is to be accomplished by subsurface disposal, pits, prepared by a licensed site evaluator;
 - j. Town Sewage Department or community system authority letter, when sewage disposal is to be through a public or community system, approving the connection and its location;
 - k. Letters of evaluation of the development by the Chief of Police, Fire Chief, Commissioner of Public Works, and, for residential applications, the superintendent of schools, must be collected and provided by the Town Planner.
 - l. Additional submissions as may be required by other sections of this title such as for clustered development, mobile home parks, or junkyards must be provided.
- (7). Additional requirements. In its consideration of an application/plan, the Planning Board or Staff Review Committee may at any point in the review require the applicant to submit additional materials, studies, analyses, and agreement proposals as it may deem necessary for complete understanding of the application. Such materials may include:
- a. Traffic impact analysis, for projects that are not required by C.(6).h., above.
 - b. Environmental analysis. An analysis of the effects that the development may have upon surrounding lands and resources, including intensive study of groundwater, ecosystems, or pollution control systems;
 - c. Hydrologic analysis. An analysis of the effects that the development may have on groundwater must be conducted in accordance with § 16.8.6.9. This analysis is always required for mobile home park proposals.
 - d. Performance guaranty and Town acceptance to secure completion of all improvements required by the Planning Board or Staff Review Committee and written evidence the Town Manager is satisfied with the sufficiency of such guaranty.
 - i. Where improvements for the common use of lessees or the general public have been approved, the Planning Board must require a performance guaranty of amount sufficient to pay for said improvements as a part of the agreement.
 - ii. Process. Prior to the issue of a building permit, the applicant must, in an amount and form acceptable to the Town Manager, file with the Municipal Treasurer an instrument to cover the full cost of the required improvements. A period of one year (or such other period as the Planning Board may determine appropriate, not to exceed three years) is the guaranty time within which required improvements must be completed. The performance guaranty must include an amount required for recreation land or improvements, as specified.
- (8). Additional Submittal Content Required for Review of Wireless Communication Services Facilities (WCSF).
- a. A visual impact analysis prepared by a landscape architect or other

qualified professional acceptable to the Town that quantifies the amount of visual impact on properties located within 500 feet, within 2,500 feet and within two miles of the WCSF. This analysis will include recommendations to mitigate adverse visual impacts on such properties;

- b. An analysis prepared by a qualified professional acceptable to the Town that describes why this site and structure is critical to the operation for which it is proposed. The analysis must address, at a minimum: existing and proposed service area; how this WCSF is integrated with other company operations, particularly other structures in Kittery and surrounding communities; future expansion needs in the area; the effect on company operations if this structure is not constructed in this location; other sites evaluated for location of this structure and how such sites compare to the proposed site; other options, if any, which could be used to deliver similar services, particularly if the proposed equipment can be co-located (shared use) on an existing structure; and an analysis to the projected life cycle of this structure and location;
 - c. Certification by a structural engineer that construction of the structure satisfies all federal, state and local building code requirements as well as the requirement of maximum permitted co-location at the site as approved by the Planning Board/Town Planner;
 - d. A plan note stating the payment of all required performance guarantees as a condition of plan approval;
 - e. Payment of the Planning Board application fees;
 - f. And all other requirements per this chapter.
- (9). Findings of Fact.
- a. After considering all submissions, evidence and testimony in accordance with the requirements of all applicable state and the Town Code, the Planning Board must make a finding of facts for each and every proposed phase of development, including the development master plan and each subsequent development plan, and take formal action as required in this title.
 - b. Findings of fact. Action by the Planning Board must be based upon findings of fact which certify or waive compliance with all the required standards of this title and which certify the development meets the following requirements:
 - i. Development conforms to local ordinances. The proposed development conforms to a duly adopted Comprehensive Plan as per adopted provisions in the Town Code, zoning ordinance, subdivision regulation or ordinance, development plan or land use plan, if any. In making this determination, the municipal reviewing authority may interpret these ordinances and plans.
 - ii. Freshwater wetlands identified. All freshwater wetlands within the project area have been identified on any maps submitted as part of the application, regardless of the size of these wetlands.
 - iii. River, stream or brook identified. Any river, stream or brook within or abutting the proposed project area has been identified on any maps submitted as part of the application. For purposes of this section, "river, stream or brook" has the same meaning as in 38 M.R.S. § 480-B, subsection 9.
 - iv. Water supply sufficient. The proposed development has sufficient water available for the reasonably foreseeable needs of the

development.

- v. Municipal water supply available. The proposed development will not cause an unreasonable burden on an existing water supply, if one is to be used.
- vi. Sewage disposal adequate. The proposed development will provide for adequate sewage waste disposal and will not cause an unreasonable burden on municipal services, if they are utilized.
- vii. Municipal solid waste disposal available. The proposed development will not cause an unreasonable burden on the municipality's ability to dispose of solid waste, if municipal services are to be used.
- viii. Water body quality and shoreline protected. Whenever situated entirely or partially within 250 feet of any wetland, the proposed development will not adversely affect the quality of that body of water or unreasonably affect the shoreline of that body of water.
- ix. Groundwater protected. The proposed development will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of groundwater.
- x. Flood areas identified and development conditioned. All flood-prone areas within the project area have been identified on maps submitted as part of the application, based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps and information presented by the applicant. If the proposed development, or any part of it, is in such an area, the applicant must determine the one-hundred-year flood elevation and flood hazard boundaries within the project area. The proposed plan must include a condition of plan approval requiring that principal structures in the development will be constructed with their lowest floor, including the basement, at least one foot above the one-hundred-year flood elevation.
- xi. Stormwater managed. The proposed development will provide for adequate stormwater management.
- xii. Erosion controlled. The proposed development will not cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results.
- xiii. Traffic managed. The proposed development will:
 - a. Not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed; and
 - b. Provide adequate traffic circulation, both on site and off site.
- xiv. Water and air pollution minimized. The proposed development will not result in undue water or air pollution. In making this determination, the following must be considered:
 - a. Elevation of the land above sea level and its relation to the floodplains;
 - b. Nature of soils and subsoils and their ability to adequately support waste disposal;
 - c. Slope of the land and its effect on effluents;
 - d. Availability of streams for disposal of effluents;

- e. Applicable state and local health and water resource rules and regulations; and
 - f. Safe transportation, disposal and storage of hazardous materials.
- xv. Aesthetic, cultural and natural values protected. The proposed development will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the Department of Inland Fisheries and Wildlife or the municipality, or rare and irreplaceable natural areas, or any public rights for physical or visual access to the shoreline.
- xvi. Developer financially and technically capable. Developer is financially and technically capable to meet the standards of this section.
- c. For wireless communication system facility (WCSF). In development, the WCSF:
- i. Tower or other structure height does not exceed that which is essential for its intended use and public safety;
 - ii. Proximity of tower to residential development or zones is acceptable;
 - iii. Nature of uses on adjacent and nearby properties is compatible;
 - iv. Surrounding topography is protected;
 - v. Surrounding tree coverage and foliage is protected;
 - vi. Design of the tower, antenna or facility with particular reference to design characteristics effectively eliminating or significantly reducing visual obtrusiveness is minimized;
 - vii. Proposed ingress and egress to the site is adequate;
 - viii. Co-location with another existing WCSF has been thoroughly pursued and is not feasible;
 - ix. Visual impacts on view sheds, ridgelines and other impacts caused by tower location, tree and foliage clearing and placement of structures and associated development is minimized;
 - x. Will not unreasonably interfere with the view of or from any public park, natural scenic vista, and historic building or major view corridor and the Kittery waterfront and harbor;
 - xi. Is not constructed in such a manner as to result in needless height, mass and guy-wire supports, with documentation having been provided and reviewed regarding the design capacity and/or the remaining co-location capacity of the tower/facility; and
 - xii. "Stealth" technology has been pursued and is not a viable option.
- d. In Shoreland, Resource Protection or Commercial Fisheries/Maritime Use Overlay Zones, the proposed use will:
- i. Maintain safe and healthful conditions;
 - ii. Not result in water pollution, erosion or sedimentation to surface waters;
 - iii. Adequately provide for the disposal of all wastewater;
 - iv. Not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;
 - v. Conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;

- vi. Protect archaeological and historic resources as designated in the comprehensive plan;
 - vii. Not adversely affect existing commercial fishing or maritime activities in a commercial fisheries/maritime activities district;
 - viii. Avoid problems associated with floodplain development and use; and
 - ix. Is in conformance with the provisions of this title.
- e. For a right-of-way plan. The proposed right-of-way:
 - i. Does not create any nonconforming lots or buildings; and
 - ii. Could reasonably permit the right of passage for an automobile.
 - f. For special exception use – special exception use permitted. If a special exception use is requested, the special exception use will: **[Added 9-26-2011 by Ord. No. 11-15]**
 - i. Not prevent the orderly and reasonable use of adjacent properties or of properties in adjacent use zones;
 - ii. Not prevent the orderly and reasonable use of permitted or legally established uses in the zone wherein the proposed use is to be located, or of permitted or legally established uses in adjacent use zones; and
 - iii. Not adversely affect the safety, the health, and the welfare of the Town.
 - iv. Be in harmony with and promote the general purposes and intent of this title.
- (10). Final plan approval and recording.
- a. Agreement form. An approval by the Planning Board or Staff Review Committee must take the form of an agreement between the Town and the applicant, incorporating as elements the application, the Planning Board's findings of fact, and such conditions as the Planning Board may impose upon approval.
 - b. Agreement distribution. The Planning Board must send copies of the agreement to the Town Manager and Code Enforcement Officer. **[Amended 9-26-2011 by Ord. No. 11-15]**
 - c. Approved final plan signing. A plan has final approval only when the Planning Board has indicated approval by formal action and the plan has been properly signed by a majority of the Planning Board members or by the Chair only, if so voted by the Planning Board.
 - d. Approved final plan recording. An approved plan involving the division of land, easements, or property boundary modification must be recorded by the York County Registry of Deeds. A Mylar copy of the recorded plan must be returned to the Town Planner. **[Amended 9-26-2011 by Ord. No. 11-15]**

11. Performance Standards and Approval Criteria

A. Monuments.

- (1). Stone monuments. For site plans that involve the creation of new streets or rights-of-way,
 - a. Stone monuments must be set at all street intersections and points of curvature, but not more than 750 feet apart along street lines without curves or intersections.
 - b. Stone monuments must be set at all corners and angle points of the

development boundaries where the interior angle of the boundaries is less than 135° or greater than 225°.

- c. Stone monuments must be a minimum of four inches square at the top and four feet in length and set in the ground at final grade level. Drilled holes, 1/2 inch deep, are to serve to locate the point or points described above.
- (2). Other monumentation.
All other development boundary corners and angle points, as well as all lot boundary corners and angle points are to be marked by suitable monumentation constructed of reasonably permanent material and solidly embedded in the ground. All such monumentation must be capable of being detected by commonly used magnetic or electronic equipment and clearly show the registration number of the registered land surveyor responsible for the survey.
 - (3). Impractical placement.
Where the placement of a required monument at its proper location is impractical, it is permissible to set a reference monument close to that point on an adjacent property line.

B. Water Supply

- (1). The development shall be provided with a system of water supply that provides each use with an adequate supply of water.
- (2). If the project is to be served by a public water supply, the applicant shall secure and submit a written statement from the Kittery Water District that the proposed water supply system conforms with its design and construction standards, will not result in an undue burden on the source of distribution system, and will be installed in a manner adequate to provide needed domestic and fire protection flows.

C. Sewage Disposal [Amended 10-14-2015 by Ord. No. 15-10]

- (1). Sewers.
 - a. As per Chapter 13.1, Sewer Service System, connection to public sewer is required, provided said sewer, located within an abutting public way, is within 100 feet of the property line as measured along the said public way. Individual dwellings and structures in approved and recorded developments where public sewer becomes available as described in this subsection must connect per the requirements of Title 13, Chapter 13.1.
 - b. Notwithstanding the provision above and Chapter 13.1, connection to public sewer is required for a commercial or industrial development or a residential subdivision, where public sewer, within an abutting public way, is within 1,000 feet of the property line as measured along said public way. In such an event, the developer shall connect to public sewer per the Town's Superintendent of Sewer Services (SSS) specifications and in accordance with Title 13. The developer shall provide written certification to the Planning Board from the SSS that the proposed addition to public sewer is within the capacity of the collection and wastewater treatment system.
 - c. Sewer mains, service lines and related improvements must be installed at the developer's expense. Service lines must extend to each lot's boundary line. Connections to public sewer must be installed in accordance with this article and Chapter 13.1, Sewer Service System, of the Kittery Town Code.
 - d. Proposal and construction drawings must be approved in writing by the Town's SSS. All required approvals must be secured before the start of final plan review.

- e. When public sewer connection pursuant to Subsection b above is not feasible as determined by the Planning Board or Staff Review Committee, the Review Authority may allow individual or common subsurface wastewater disposal systems in accordance with § 16.8.7.2. To determine feasibility, the developer shall submit information that considers the unique physical circumstances of the property and sewer connection alternatives to conventional construction/installation techniques, such as, but not limited to, horizontal/directional boring and low-pressure sewer. The developer's information must be accompanied by findings and recommendations of the Town Peer Review Engineer. In determining feasibility, the Board may not base its decision solely on additional costs associated with a sewer connection. The intent of this subsection is not to avoid the requirements of Chapter 13.1, Sewer Service System, of the Kittery Town Code.
- (2). Subsurface wastewater disposal systems.
- a. The developer shall submit plans for subsurface wastewater disposal designed by a Maine licensed site evaluator in full compliance with the requirements of the State of Maine Plumbing Code, Subsurface Wastewater Disposal Rules, and this title. Subsurface wastewater disposal systems (SWDS) must be constructed according to the approved plan.
 - b. All first-time subsurface wastewater disposal systems must be installed in conformance with State of Maine Subsurface Wastewater Disposal Rules and this title. The following also apply:
 - i. The minimum setback distance for a first-time subsurface disposal system may not be reduced by variance.
 - ii. Clearing or removal of woody vegetation necessary to site a first-time system, and any associated fill extensions may not extend closer than is allowed in Table 16.9, Minimum Setbacks from Wetlands and Water Bodies, for subsurface sewage disposal.
 - c. Replacement of subsurface wastewater disposal systems (SWDS) for existing legal uses:
 - i. Where no expansion is proposed, the SWDS must comply with § 16.8.7.2 and Table 16.9 to the extent practicable and otherwise are allowed per the Maine Subsurface Wastewater Disposal Rules; or
 - ii. Where expansion is proposed, the SWDS must comply with § 16.8.7.2 and Table 16.9 in addition to the Maine Subsurface Wastewater Disposal Rules.

NOTE: For the purposes of this subsection, “expansion” is defined in Section 9 of the Maine Subsurface Wastewater Disposal Rules.
 - d. Subsurface wastewater disposal systems on unimproved lots created after April 26, 1990. Where public sewer connection is not feasible, the developer must submit evidence of soil suitability for subsurface wastewater disposal systems, i.e., test pit data and other information as required by the State of Maine Subsurface Wastewater Disposal Rules and this title. In addition:
 - i. On lots with a limiting factor identified as being within 24 inches of the surface, a second site with suitable soils must be shown as a reserve area for future replacement should the primary site fail. Such reserve area is to be shown on the plan; not be built upon; and, must comply with all the setback requirements of the Subsurface Wastewater Disposal Rules and this title.
 - ii. In no instance may a primary or reserve disposal area be permitted

on soils or on a lot requiring a first-time system variance request per the State of Maine Subsurface Wastewater Disposal Rules.

- iii. Test pits must be of sufficient numbers (a minimum of two) and so located at representative points within each disposal area (primary and reserve sites) to ensure that the proposed disposal system can be located on soils and slopes that meet the criteria of the State of Maine Subsurface Wastewater Disposal Rules and the State Plumbing Code. All passing and failing test pits must be shown on the plan.
 - e. The developer shall install advanced pretreatment to subsurface wastewater disposal systems that are located inside or within 100 feet of areas that include a sand and gravel aquifer as indicated on the Maine Department of Agriculture, Conservation and Forestry (DACF) Geological Survey Maps or determined by Maine DACF staff.
- (3). Holding tanks.
 - a. Holding tanks are not allowed for a first-time residential use.
 - (4). (Reserved)
 - (5). Sanitary facilities/restrooms.
 - a. Any development containing a retail use or a food service use, or a combination thereof, exceeding 10,000 square feet must provide public toilet facilities in accordance with Subsections **B**, **C** and **D** of this section.
 - b. Public toilet facilities are to consist of at least one separate toilet for each sex; be clearly marked; maintained in a sanitary condition and in good repair. Lavatory facilities must be located within or immediately adjacent to all toilet rooms or vestibules. There may be no charge for their use.
 - c. Where a retail development exceeds 60,000 square feet, each toilet facility must contain a minimum of two water closets.
 - d. Requirements for handicapped accessibility to sanitary facilities are pursuant to applicable state standards.

D. Stormwater and Surface Drainage

- (1). Adequate provision must be made for drainage of all stormwater generated with the development and any drained groundwater through a management system of natural and constructed features. Where possible, existing natural runoff control features, such as berms, swales, terraces and wooded areas must be retained to reduce runoff and encourage infiltration of storm waters. Otherwise drainage may be accomplished by a management system of constructed features such as swales, culverts, underdrains and storm drains.
- (2). To ensure proper functioning, stormwater runoff control systems must be maintained in good working order per **§ 16.8.8.2, Post-construction stormwater management.**
- (3). Where a development is traversed by a stream, river or surface water drainageway, or where the Planning Board or Staff Review Committee determines that surface runoff should be controlled, easements and or drainage rights-of-way must be provided which conform substantially to the lines of existing natural drainage paths. The minimum width of the drainage easements or rights-of-way is 30 feet.
 - a. The minimum pipe size for any storm drainage pipe must be 12 inches. Maximum trench width at the pipe crown must be the outside diameter of the pipe plus two feet. The pipe must be bedded in a fine granular material, containing no stones larger than three inches, lumps of clay, or organic matter, reaching a minimum of six inches below the bottom of the pipe

extending to six inches above the top of the pipe.

- b. Except for normal thinning and landscaping, existing vegetation must be left intact to prevent soil erosion.
- (4). When proposed development does not require Maine Department of Environmental (MDEP) approval under MDEP Chapters 500 and 502, the following applies:
- a. All components of the stormwater management system must be designed to limit peak discharge to predevelopment levels for the two-year and twenty-five-year, twenty-four-hour duration, frequencies, based on the rainfall data for Portsmouth, NH. When the development discharges directly to a major water body, peak discharge may be increased from predevelopment levels, provided downstream drainage structures are suitably sized.
 - b. The stormwater management system must be designed to accommodate upstream drainage, taking into account existing conditions and approved or planned developments not yet built and must include a surplus design capacity factor of 25% for potential increases in upstream runoff.
 - c. Downstream drainage requirements must be studied to determine the effect of the proposed development. The storm drainage must not overload existing or future planned storm drainage systems downstream from the development. The developer is responsible for financing any improvements to existing drainage systems required to handle the increased storm flows.
 - i. Wherever the storm drainage system is not within the right-of-way of a public street, perpetual easements must be provided to the Town allowing maintenance and improvement to the system.
 - ii. All sediment and erosion control measures must be designed in accordance with MDEP's "Maine Erosion and Sediment Control BMPs," March 2003.
 - iii. Catch basins in streets and roads must be installed where necessary and located at the curblineline. In parking lots and other areas, catch basins must be located where necessary to ensure proper drainage.
 - iv. Where soils require a subsurface drainage system, the drains must be installed and maintained separately from the stormwater drainage system.
 - v. Where the Board has required a stormwater management and erosion control plan and MDEP approval under Chapters 500 and 502 is not required, said plan must be endorsed by the York County Soil and Water Conservation District.
 - vi. Drainage easements for existing or proposed drainageways located outside a public way must be maintained and/or improved in accordance with § 16.8.8.2, Post-construction stormwater management.

E. Post-construction stormwater management.

- (1). Purposes. This section is enacted to provide for the health, safety and general welfare of the citizens of Kittery through monitoring and enforcement of compliance with post-construction stormwater management plans in order to comply with minimum control measures requirements of the federal Clean Water Act, of federal regulations and of Maine's Small Municipal Separate Storm Sewer Systems General Permit. This section seeks to ensure that post-construction stormwater management plan are followed and stormwater management facilities, including but not limited to any parking areas, catch basins, drainage swales, detention basins and ponds, pipes and related structures that are part of the storm drainage system, are properly maintained and pose no threat to public safety.

- (2). Authority. The Maine Department of Environmental Protection, through its dissemination of the General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems, has listed the Town of Kittery, Maine, as having a regulated small municipal separate storm sewer system ("small MS4"); under this general permit, listing as a regulated small MS4 requires enactment of this section as part of the Town's stormwater management program in order to satisfy the minimum control measures required by Part IV D 5 ("Post-construction stormwater management in new development and redevelopment").
- (3). Applicability.
 - a. In general. This section applies to all new development or redevelopment (any construction activity on premises already improved that alters stormwater drainage patterns) including one acre or more of disturbed area, or activity with less than one acre of total land area that is part of a subdivision, if the subdivision will ultimately disturb an area equal to or greater than one acre. **[Amended 7-25-2016 by Ord. No. 16-06]**
 - b. Exception. This section does not apply to new development or redevelopment on a lot, tract or parcel where that lot, tract or parcel is part of a subdivision that has received approval of its post-construction stormwater management plan and stormwater management facilities under the Town's subdivision or other zoning, planning or other land use ordinances; said lot, tract or parcel will not require additional review under this section but must comply with the post-construction stormwater management plan for that approved subdivision.
 - c. Post-construction stormwater management plan approval.
 - i. General requirement. Notwithstanding any ordinance provision to the contrary, and except as provided in § 16.8.8.2C(2), Exception, no applicant for a building permit, subdivision approval, site plan approval or other zoning, planning or other land use approval for new development or redevelopment to which this section is applicable will receive such permit or approval for that new development or redevelopment unless the applicant also receives approval for its post-construction stormwater management plan and stormwater management facilities.
 - ii. Notice of BMP discharge to Town's MS4. At the time of application for a building permit, subdivision approval, site plan approval or other zoning, planning or other land use approval for new development or redevelopment to which this section is applicable, the applicant must notify the Town Planner if its post-construction stormwater management plan includes any BMP(s) that will discharge to the Town's MS4 and must include in this notification a listing of which BMP(s) will so discharge.
 - iii. Engineering and administrative fees. At the time of application, the applicant must pay an amount to the Town estimated to be sufficient to pay the engineering review costs and administrative costs incurred by the Town in review of the post-construction stormwater management plan. The Town will deduct from this amount the engineering and administrative costs incurred by the Town based upon the hours of engineering review time and prevailing hourly rate for reimbursement of the Town's administrative costs. Any remaining engineering and administrative review costs owed by the applicant must be paid in full by the applicant prior to the issuance of any temporary or permanent certificate of occupancy, and any

unused balance remaining at that time will be refunded to the applicant.

- d. Post-construction stormwater management plan compliance.
 - i. General requirements. Any person owning, operating, leasing or having control over stormwater management facilities required by a post-construction stormwater management plan approved under the Town's subdivision, site plan or other zoning, planning or other land use ordinances must demonstrate compliance with that plan as follows:
 - a. That person or a qualified post-construction stormwater inspector hired by that person must, at least annually, inspect the stormwater management facilities in accordance with all municipal and state inspection, cleaning and maintenance requirements of the approved post-construction stormwater management plan;
 - b. If the stormwater management facilities require maintenance to function as intended by the approved post-construction stormwater management plan, that person must take corrective action(s) to address the deficiency or deficiencies; and
 - c. That person or a qualified post-construction stormwater inspector hired by that person must, on or by July 1 of each year, provide a completed and signed certification to the Code Enforcement Officer in a form provided by the Town, certifying that the person has inspected the stormwater management facilities and that they are adequately maintained and functioning as intended by the approved post-construction stormwater management plan or that they require maintenance or repair, describing any required maintenance and any deficiencies found during inspection of the stormwater management facilities, and if the stormwater management facilities require maintenance or repair of deficiencies in order to function as intended by the approved post-construction stormwater management plan, the person must provide a record of the required maintenance or deficiency and corrective action(s) taken.
 - ii. Right of entry. In order to determine compliance with this section and with the post-construction stormwater management plan, the Code Enforcement Officer may enter upon property at reasonable hours with the consent of the owner, occupant or agent to inspect the stormwater management facilities.
- e. Annual report. Beginning July 1, 2009, and each year thereafter, the Town must include the following in its annual report to the Maine Department of Environmental Protection:
 - i. Cumulative number of sites that have stormwater management facilities discharging into its MS4;
 - ii. Summary of the number of sites that have stormwater management facilities discharging into its MS4 that were reported to the Town;
 - iii. Number of sites with documented functioning stormwater management facilities; and
 - iv. Number of sites that require routine maintenance in order to

continue the original line and grade, the hydraulic capacity, and the original purpose of improvements; or remedial action to ensure that stormwater management facilities are functioning as intended.

- f. Enforcement. It is the duty of the Code Enforcement Officer to enforce the provisions of this section and take appropriate actions to seek the correction of violations. Enforcement of the post-construction stormwater management regulations are conducted in accordance with Chapter 16.4.
- (4). Storm drainage construction standards.
- a. Materials:
 - i. Reinforced concrete pipe must meet the requirements of ASTM Designation C-76 (AASHTO M170). Pipe classes are required to meet the soil and traffic loads with a safety factor of 1.2 on the 0.01 inch crack strength with Class B bedding. Joints are to be of the rubber gasket type, meeting ASTM Designation C443-70, or of an approved performed plastic jointing material such as "Ramnek." Perforated concrete pipe must conform to the requirements of AASHTO M175 for the appropriate diameters.
 - ii. Corrugated metal pipe must be bituminous-coated, meeting the requirements of AASHTO Designation M190 Type C for an iron or steel pipe or AASHTO Designation M196 for aluminum alloy pipe for sectional dimensions and type of bituminous coating. Pipe gauge is to be as required to meet the soil and traffic loads with a deflection of not more than 5%.
 - iii. SDR-35 plastic pipe installed in conformance with AASHTO bedding requirements.
 - iv. Aluminized steel (AASHTO M274) and aluminum pipe (AASHTO M46).
 - v. Catch basins are to be precast concrete truncated cone section construction, meeting the requirements of ASTM Designation C478, or precast concrete manhole block construction, meeting the requirements of ASTM C139, radial type. Castings are to be square cast iron sized for the particular inlet condition with the gratings perpendicular to the curbline. Bases may be cast-in-place 3,000 psi twenty-eight-day strength concrete or may be of precast concrete, placed on a compacted foundation of uniform density. Metal frames and traps must be set in a full mortar bed with tops and are to conform to the requirements of AASHTO M103 for carbon steel casings, AASHTO M105, Class 30 for gray iron castings or AASHTO M183 (ASTM A283, Grade B or better) for structure steel.
 - b. Drain inlet alignment is to be straight in both vertical and horizontal alignment unless specific approval for curvilinear drain is obtained in writing from the Commissioner of Public Works.
 - c. Manholes are to be provided at all changes in vertical or horizontal alignment and at all junctions. On straight runs, manholes are to be placed at a maximum of three-hundred-foot intervals.
 - d. Upon completion, each catch basin or manhole must be cleared of all accumulation of silt, debris or other foreign matter and kept clean until final acceptance.

F. Vehicular Traffic

- (1). Adequacy of Road System. Vehicular access to the site shall be on roads which

have adequate capacity to accommodate the additional traffic generated by the development. Intersections on arterial streets within a half (0.5) mile of any entrance road which are functioning at a Level of Service of D or better prior to the development shall function at a minimum at Level of Service D after development. If any such intersection is functioning at a Level of Service E or lower prior to the development, the project shall not reduce the current level of service. This requirement may be waived by the Planning Board if the project is located within a growth area designated in the Town's adopted Comprehensive Plan and the Board determines that the project will not have an unnecessary adverse impact on traffic flow or safety.

- a. A development not meeting this requirement may be approved if the applicant demonstrates that:
 - i. A public agency has committed funds to construct the improvements necessary to bring the level of access to this standard, or
 - ii. The applicant will assume financial responsibility for the improvements necessary to bring the level of service to this standard and will assure the completion of the improvements with a financial guarantee acceptable to the municipality.
- (2). Traffic Impact Study. When required by the Planning Board or Staff Review Committee, a Traffic Impact Study will include the following elements related to the project and surrounding street network.
- a. An executive summary outlining the study findings and recommendations.
 - b. A physical description of the project site and study area encompassed by the report with a diagram of the site and its relationship to existing and proposed development sites within the study area.
 - c. A complete description of the proposed uses for the project site (in cases where specific uses have not been identified, the highest traffic generators within the category best fitting the proposed development must be used to estimate traffic generators).
 - d. Existing land uses and zone(s) in the vicinity of the site must be described. Any proposals for the development of vacant parcels or redevelopment of parcels within the study area of which the municipality makes the applicant aware, must be included in the description.
 - e. Street geometry and existing traffic control devices on all major streets and intersections affected by the anticipated traffic generated.
 - f. Trip generation must be calculated for the proposed project and other proposed new projects and redevelopment projects within the study area using the most recent data available from the Institute of Transportation Engineers' (ITE) Trip Generation Guide, and/or actual field data collected from a comparable trip generator (i.e., comparable in size, location and setting). This data will be presented in a summary table such that assumptions on trip generation and rates arrived at by the engineer are fully understandable to the Planning Board.
 - g. The anticipated trip distribution of vehicles entering and exiting the proposed site during the appropriate peak hour(s) must be described and diagrammed.
 - h. Trip assignment, the anticipated utilization of study area streets by traffic generated by the proposed project, must be described and diagrammed.
 - i. Existing traffic conditions in the study area will be identified and analyzed based upon actual field counts and/or recent available machine counts.

- j. Existing traffic conditions in the study area will be described and diagrammed, specifically AADT, appropriate peak design hour(s), traffic volumes, street and intersection capacities, and levels of service.
 - k. Existing safety conditions must be evaluated based upon the traffic accident data available for the most current three years and described including link and node critical rate factors (CRF).
 - l. Future traffic conditions on the street system will be estimated based on existing volumes, projected traffic growth in the general study area, projected traffic from approved development, and traffic generated by the proposed project, specifically AADT traffic, appropriate peak hour(s) traffic volumes, street and intersection capacity, street and intersection levels of service will be analyzed. When other projects are being proposed within the impact area of the project, the Planning Board may require these projects to be incorporated into the analysis.
 - m. When the analysis of the proposed project's impact on traffic indicates unsatisfactory CRF, levels of service or operating capacity on study area streets and intersections, a description of proposed improvements to remedy identified deficiencies must be included.
 - n. The base data collected and analyzed during the course of the traffic impact study.
 - o. If a development that requires a traffic impact study is within 500 feet of York or Eliot, Maine, or if the study identifies impacts on segments of Route 1 or Route 236 or on their intersections located in York or Eliot, Maine, the applicant must provide evidence that a copy of the impact study has been given to the impacted municipality's chief administrative officer;
- (3). Access to the Site. Vehicular access to and from the development shall be safe and convenient.
- a. Any driveway or proposed street shall be designed so as to provide the minimum sight distance according to the Maine Department of Transportation standards.
 - b. Points of access and egress shall be located to avoid hazardous conflicts with existing turning movements and traffic flows.
 - c. The grade of any proposed drive shall be not more than $\pm 3\%$ for a minimum of fifty (50) feet, from the intersection.
 - d. The intersection of any access/egress drive or proposed street shall function: (a) at a Level of Service of D following development if the project will generate one thousand (1,000) or more vehicle trips per twenty-four (24) hour period.
 - e. Where a lot has frontage on two (2) or more streets, the primary access to and egress from the lot shall be provided from the street where there is less potential for traffic congestion and for traffic and pedestrians hazards. Access from other streets may be allowed if it is safe and does not promote shortcutting through the site.
 - f. Where it is necessary to safeguard against hazards to traffic and pedestrians and/or to avoid traffic congestion, the applicant shall be responsible for providing turning lanes, traffic directional islands, and traffic controls within public streets.
 - g. Accessways shall be designed and have sufficient capacity to avoid queuing of entering vehicles on any public street.
 - h. The following criteria shall be used to limit the number of driveways serving a proposed project:

- i. No use which generates less than one hundred (100) vehicle trips per day shall have more than one (1) two-way driveway onto a single roadway. Such driveway shall be no greater than forty (40) feet wide.
 - ii. No use which generates one hundred (100) or more vehicle trips per day shall have more than two (2) points of entry from and two (2) points of egress to a single roadway. The combined width of all accessways shall not exceed sixty (60) feet.
 - iii. The Planning Board or Development Review Committee may limit a development to one (1) point of ingress/egress onto Routes 302, 35 and 115.
- (4). Accessway Location and Spacing. Accessways shall meet the following standards:
 - a. Private entrances/exits shall be located at least fifty (50) feet from the closest unsignalized intersection and one hundred fifty (150) feet from the closest signalized intersection, as measured from the point of tangency for the corner to the point of tangency for the accessway. This requirement may be reduced if the shape of the site does not allow conformance with this standard.
 - b. Private accessways in or out of a development shall be separated by a minimum of seventy-five (75) feet where possible.
 - c. Accessways shall be aligned with accessways on the opposite side of a public street to the greatest extent possible.
- (5). Internal Vehicular Circulation. The layout of the site shall provide for the safe movement of passenger, service, and emergency vehicles through the site.
 - a. Nonresidential projects that will be served by delivery vehicles shall provide a clear route for such vehicles with appropriate geometric design to allow turning and backing for a minimum of SU-30 vehicles.
 - i. If the project is to be served by “tractor-trailer” delivery vehicles, a clear route for such vehicles with appropriate geometric design shall allow for turning and backing for a minimum of WB-50 vehicles.
 - b. Clear routes of access shall be provided and maintained for emergency vehicles to and around buildings and shall be posted with appropriate signage (fire lane - no parking).
 - c. The layout and design of parking areas shall provide for safe and convenient circulation of vehicles throughout the lot.
 - d. All roadways shall be designed as follows:
 - i. To harmonize with the topographic and natural features of the site insofar as practical by minimizing filling, grading, excavation, or other similar activities which result in unstable soil conditions and soil erosion,
 - ii. By fitting the development to the natural contour of the land and avoiding substantial areas of excessive grade and tree removal, and by retaining existing vegetation during construction,
 - iii. The road network shall provide for vehicular, pedestrian, and cyclist safety, all season emergency access, snow storage, and delivery and collection services.
 - e. Nonresidential projects that include drive-through services shall be designed and have sufficient stacking capacity to avoid the queuing of vehicles on any public street.

G. Parking and Loading

(1). General standards.

- a. All development, special exceptions and changes in use must comply with the performance standards herein and, where applicable, those contained in **Article V** of this chapter. The Planning Board may impose additional reasonable requirements, which may include off-site improvements, based on the following considerations:
 - i. Sight distances along public rights-of-way;
 - ii. The existence and impact upon adjacent access points and intersections;
 - iii. Turning movements of vehicles entering and leaving the public streets;
 - iv. Snow removal; and
 - v. General condition and capacity of public streets serving the facility.
- b. Such requirements are intended to maintain traffic safety and an acceptable level of service throughout the impact area of the facility.
- c. In front of areas zoned and designed for commercial use, or where a change of zoning to one which permits commercial use is contemplated, the street right-of-way and/or pavement width must be increased by such amount on each side as may be deemed necessary to assure the free flow of through traffic without interference by parked or parking vehicles, and to provide adequate and safe parking space for such commercial or business district.
- d. The Town reserves the right to designate in conjunction with the Maine State Department of Transportation all ingress and egress points to the public highway and to select areas for the grouping and placement of signs and traffic directions.
- e. All traffic flow in parking areas is to be clearly marked with signs and/or surface directions at all times.
- f. Off-street parking must be constructed in accordance with Table 2 of this chapter, set out at the end of **Article IX**, Parking Loading and Traffic.

(2). Corner clearances.

For purposes of traffic safety in all zoning districts, no building or structure other than public utility structures and traffic control devices may be erected, and no vegetation other than shade trees may be maintained above a height of two feet above the plane through the curb grades of intersection streets within a triangle, two sides of which are the edges of the traveled public ways for 20 feet measured from their point of intersection or, in the case of rounded street corners, the point of intersection of their tangents. The Town is not responsible for violations which lead to accidents. The Town will direct, however, a continued program designed to identify intersections having traffic safety problems.

(3). Off-street loading standards.

- a. In those districts where off-street loading is required, the following minimum off-street loading bays or loading berths must be provided and maintained in the case of new construction, alterations and changes of use:
 - i. Office buildings, hospitals, long-term nursing care facilities, convalescent care facilities, elder-care facilities, hotels and motels with a gross floor area of more than 100,000 square feet: one bay.
 - ii. Retail, wholesale, warehouse and industrial operations with a gross floor area of more than 10,000 square feet:

10,001 to 40,000 square feet

1 bay

| | |
|--------------------------------------|------------------|
| 40,001 to 100,000 square feet | 2 bays |
| 100,001 to 160,000 square feet | 3 bays |
| 160,001 to 240,000 square feet | 4 bays |
| 240,001 to 320,000 square feet | 5 bays |
| 320,001 to 400,000 square feet | 6 bays |
| Each 90,000 square feet over 400,000 | 1 additional bay |

- b. Each loading bay is to have minimum dimensions of 70 feet by 14 feet and may be located either within a building or outside and adjoining an opening in the building. Every part of such loading bay is to be located completely off the street. In case of trucks, trailers or other motor vehicles larger than the dimensions of the minimum loading bay habitually serve the building in question, or so that said equipment can be kept on site while awaiting loading or unloading, additional space is to be provided, so that such vehicle parks or stands completely off the street.
 - c. The provisions of this section for off-street loading do not prohibit incidental curbside business deliveries, dispatches or services, provided that they are in compliance with all applicable state and local traffic regulations.
 - d. The Board of Appeals has full authority to waive the requirements of this section if it is shown that appropriate parking and loading spaces will be maintained sufficient for intended use.
- (4). Off-street parking standards.
- a. Off-street parking, in addition to being a permitted use, is considered as an accessory use when required or provided to serve conforming uses located in any district.
 - b. The following minimum off-street parking and loading requirements must be provided and maintained in case of new construction, alterations and changes of use. Such parking may be provided in the open air in design-dependent spaces dimensioned as may be required to suit the particular use as indicated in Table 2 of this chapter, set out at the end of Article **IX**, Parking Loading and Traffic, or in garages.
 - c. All spaces must be accessible from lanes of adequate size and location as per Table 2 of this chapter, set out at the end of Article **IX**, Parking Loading and Traffic. In cases not specifically covered, the Town Board or officer with jurisdiction to approve the application is authorized to determine the parking requirements and projected development use intensity. Existing parking standards are to be used as a guide where applicable to ensure that a sufficient number of parking spaces are provided to accommodate the number and type of vehicles attracted to the development during peak parking demand times.
 - d. When determination of the number of parking spaces required results in a requirement of a fractional space, any fraction of 1/2 or less may be disregarded, while a fraction in excess of 1/2 is counted as one parking space. **[Amended 9-26-2011 by Ord. No. 11-15]**

| Use | Parking Spaces Required | |
|--|---|---|
| Automobile, truck and tractor repair and filling station | 1 parking space for each regular employee plus 1 space for each 200 square feet of floor area used for service work | |
| Dwellings | 2 vehicle spaces per each dwelling unit | |
| Elderly housing | 1.5 parking spaces for each dwelling unit with 2 or fewer bedrooms | |
| | 2 parking spaces for each dwelling unit with more than 2 bedrooms | |
| Elder-care facilities | 1 parking space per dwelling unit; | |
| | 0.65 parking spaces per residential care unit | |
| Motels, hotels, tourist homes, rooming houses, or other rooming spaces associated with a permitted use | 1 parking space for each rental unit plus 1 space for each 100 square feet of meeting room | |
| Schools | Nursery school and day-care facilities | 1 space for every 100 square feet of gross floor area used as school area |
| | Elementary and junior high schools | 1 parking space for each adult employee, plus 15 parking spaces for each 100 students or major fraction thereof of total enrollment |
| | Senior high schools | 1 parking space for each adult employee, plus 20 parking spaces for each 100 students or major fraction thereof of total enrollment |
| Marinas and other water-oriented recreational facilities | With launching facilities | 3 parking spaces for every 2 slips or moorings, arranged for trailers |
| | Without launching facilities | 1 parking space for each slip or mooring |
| | Hospitals | 1 parking space per each three beds |
| Long-term nursing care facilities and convalescent care facilities | 1 parking space for each 4 beds | |
| Theaters, auditoria, churches and arenas | 1 parking space for each 4 seats or for each 100 square feet or major fraction thereof of | |

| Use | Parking Spaces Required |
|--|---|
| Mortuary chapels | <p>assemblage space if no fixed seats</p> <p>5 parking spaces for each chapel</p> |
| Retail stores and financial institutions | <p>1 parking space for each 175 square feet of gross floor area</p> |
| Bowling alley | <p>4 parking spaces for each bowling lane</p> |
| Drive-in restaurants, snack bars and fast food outlets | <p>Minimum 15 parking spaces, plus 1 space for each three seats. Seating is calculated by dividing the total floor area with customer access by 15</p> |
| Restaurant | <p>1 parking space for each three seats. Seating is calculated by dividing the total floor area with customer access by 15</p> |
| Offices, professional and public buildings | <p>2 parking spaces for each office unit plus 1 space for each 250 square feet of gross floor area</p> |
| Convenience stores or neighborhood grocery facilities | <p>6 spaces in the rural residential zone; all other zones, 10 parking spaces</p> |
| Mobile home | <p>2 vehicle spaces per each mobile home</p> |
| Transportation terminals | <p>In addition to meeting all applicable standards as enumerated above, transportation terminals must meet the following:</p> <p>1 parking space for each employee;</p> <p>1 parking space for each three seats of the terminal's major carrier vehicle; and</p> <p>1 parking space for each rented vehicle to be based on site</p> |
| Warehouse and storage | <p>1 parking space for each 500 square feet of gross floor area except that portion of such facility which is used for retail sales and display or office area, which adds additional parking in accordance with the standards for those uses</p> |
| Industry, manufacturing and business | <p>1 parking space for each 500 square feet of floor area, or major fraction thereof, or 1.1</p> |

Use**Parking Spaces Required**

spaces per employee on the maximum shift, for that part of every business, manufacturing and industrial building not catering to retail trade

Bus parking

For each 25,000 square feet of gross floor area, retail business must provide one bus parking area. Said area(s) are to be 12 feet by 50 feet in dimension, marked on the parking lot surface and labeled as such. Bus parking must be located in the parking area as far from the store entrance(s) as possible

- e. A parking area is allowed in the Resource Protection Overlay Zone only where no reasonable alternative route or location is available outside the Resource Protection Overlay Zone, in which case a permit or site plan or subdivision plan approval is required by the Planning Board.
- f. A parking area must meet the wetland and water body setback requirements for structures for the district in which such areas are located, per Table 16.9, Minimum Setback from Wetlands and Water Bodies; except, in the Commercial Fisheries/Maritime Uses Overlay Zone, parking area must be set back at least 25 feet from the normal high-water line or the upland edge of a wetland. The setback requirement for a parking area serving public boat-launching facilities, in zones other than the Commercial, Business-Local, Residential-Urban Zones, and the Commercial Fisheries/Maritime Uses Overlay Zone, may be reduced to no less than 50 feet from the normal high-water line or upland edge of a wetland if the Planning Board finds no other reasonable alternative exists.
- g. Parking landscaping is required for parking areas containing 10 or more parking spaces and must have at least one tree per eight spaces. Such trees are to be located either within the lot or within five feet of it. Such trees are to be at least 1 1/2 inches in diameter, with no less than 25 square feet of unpaved soil or permeable surface area per tree. At least 10% of the interior of any parking area having 25 or more spaces is to be maintained with landscaping, including trees, in plots of at least five feet in width.
- h. Required off-street parking in all residential districts is to be located on the same lot as the principal building or use, except that where it cannot reasonably be provided on the same lot, the Board of Appeals may authorize residential off-street parking to be located on another lot within 300 feet of the residential uses served, as measured along lines of public access. Such parking areas must be held under the same ownership or lease as the residential uses served, and evidence of such control or lease is required. Leases obtained for this purpose must be reviewed by the Town Attorney at the developer's expense and include requirement for notice to the Town upon termination of lease. Approval for uses dependent on such lease is terminated upon termination of the lease.
- i. If parking spaces are provided for employees, customers or visitors, then accessible parking spaces must be included in each such parking area in conformance with the following table:

Total Parking in Lot**Required Minimum Number of Accessible Spaces**

| | |
|----------------|-----------------------------------|
| 1 to 25 | 1 |
| 26 to 50 | 2 |
| 51 to 75 | 3 |
| 76 to 100 | 4 |
| 101 to 150 | 5 |
| 151 to 200 | 6 |
| 201 to 300 | 7 |
| 301 to 400 | 8 |
| 401 to 500 | 9 |
| 501 to 1,000 | 2% of total |
| 1,001 and over | 20 plus 1 for each 100 over 1,000 |

- i. Each accessible parking space must contain a rectangular area at least 19 feet long and eight feet wide with access to a designated and marked five-foot-wide aisle. All required accessible parking spaces are to be identified by a vertical sign displaying the international symbol of accessibility; pavement marking alone is not adequate to identify accessible parking spaces.
- ii. The total number of accessible parking spaces is to be distributed to serve the various accessible entrances as well as possible.
- iii. At least one accessible route is to connect from each accessible parking space to the accessible building entrance.
- j. Required off-street parking in all commercial, business and industrial zones must be located on the same lot with the principal building or use, or within 100 feet measured along lines of public access; except that, where off-street parking cannot be provided within these limits, the Board of Appeals may permit such off-street parking to be located a reasonable distance from the principal building or use, measured along lines of public access. Such parking areas must be held under the same ownership or lease, and evidence of such control or lease is required. Such lots must be located within business or industrial districts.
- k. The Planning Board or Board of Appeals may, in specific cases of hardship, reduce the requirements for off-street parking where it is clearly demonstrated that such reduction will not detract from neighborhood values, inconvenience the public or increase congestion in the streets.
- l. The Planning Board or Board of Appeals may approve the joint use of a parking facility by two or more principal buildings or uses where it is clearly demonstrated that said parking facility will substantially meet the

intent of the requirements by reasons of variation in the probable time of maximum use by patrons or employees among such establishments.

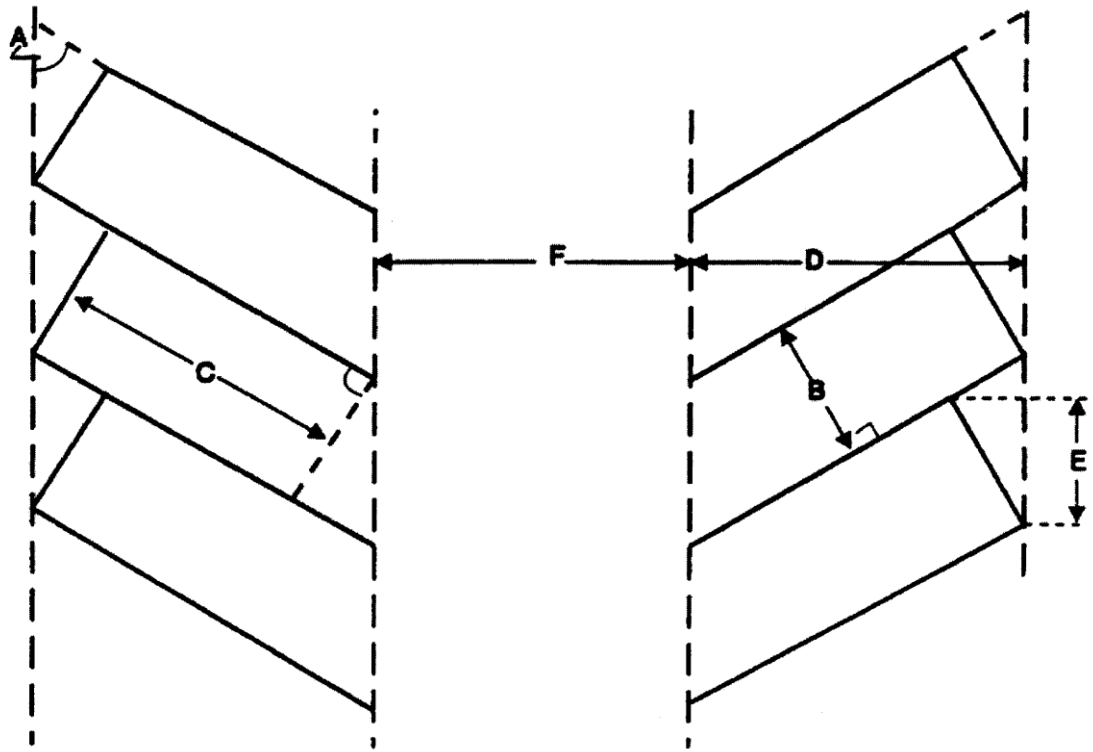
Table 2

Parking Space Design

(minimum dimensions)

(Dimensions in feet unless otherwise indicated.)

| | A | B | C | D | E | F | |
|----------------|----------------------------|--------------------|--------------------|----------------------|-------------------|------------------------|------------------------|
| | | | | | | (Aisle Width) | |
| | | | | | | One-Way Traffic | Two-Way Traffic |
| To curb | Angle (degrees) | Stall Width | Stall Depth | Stall to Curb | Skew Width | | |
| Parallel | 0 | 9 | 22 | 9.0 | 22.0 | 13 | 19 |
| Diagonal | 30 | 9 | 19 | 17.3 | 18.0 | 11 | 20 |
| Diagonal | 45 | 9 | 19 | 19.8 | 12.9 | 13 | 21 |
| Diagonal | 60 | 9 | 19 | 21.0 | 10.5 | 18 | 23 |
| Perpendicular | 90 | 9 | 19 | 19.0 | 9.0 | 24 | 24 |



H. Utilities

(1). Approval.

The size, type and location of public utilities, such as streetlights, electricity, telephone, cable television, natural gas lines, fire hydrants, water and sewer lines, etc., must be approved by the Board and installed in accordance with accepted engineering practice.

(2). Underground installation.

Utilities, where feasible, are to be installed underground. The Board must require the developer to adopt a prudent avoidance approach when aboveground electrical installations are approved.

I. Exterior Lighting [Amended 3-25-2013 by Ord. No. 13-01]

(1). General requirements.

All new or revised exterior lighting, including the replacement or modification of existing lighting fixtures that result in a change in the lighting characteristics of the fixture, must be designed to provide only the minimum lighting necessary to ensure adequate vision, safety and comfort and may not cause glare beyond the limits of the property boundaries. New and replacement exterior lighting must conform to the current recommended practices of the Illuminating Engineering Society of North America (IESNA) unless more restrictive requirements are established by this article. Exterior lighting should also be consistent with the Design Handbook. When the lamps or bulbs of existing lighting installations are replaced, the replacements must conform to the requirements of IESNA and this article to the extent reasonable.

(2). Lighting fixtures.

All new or replacement exterior lighting fixtures and installations for multifamily housing and nonresidential uses other than outdoor sports and recreational facilities that are located outside the right-of-way of a public street must meet the following standards:

- a. Lighting fixtures mounted on masts or poles must be cutoff fixtures except for period or historical fixtures meeting the provisions of Subsection **G** of this section.

- b. Floodlighting or other directional lighting may be used for supplemental illumination of sales or storage areas, provided that the floodlights are installed no higher than 12 feet above ground level, are aimed to avoid the source of the light being seen from adjacent streets or properties, and utilize lamps with an initial lumen rating not exceeding 39,000 lumens. The Town has the right to inspect the completed lighting installation and, if floodlights are used, to require that the floodlights be re-aimed or fitted with face louvers if necessary to control direct brightness or glare.
- c. Except for ornamental lighting fixtures that utilize lamps with initial lumen ratings of 8,500 lumens or less, wall-mounted building lights must include full-face shielding consisting of either a solid panel or full-face louvers. Exposed lamps, reflectors or refractors may not be visible from any part of the fixture except the bottom light-emitting surface.
- d. Light fixtures located on or within canopies must be recessed into the ceiling of the canopy so that the lamp, reflector and lens are not visible from public streets. Fixtures must limit the direction of light as required for a cutoff fixture. Refractors or diffusing panels that are dropped below the canopy ceiling surface are not permitted.
- e. Light fixtures must be mounted at the lowest level that allows reasonable compliance with IESNA-recommended practices and the provisions of this article.
 - i. In approving new or modified lighting, the Planning Board may permit a maximum light fixture height for pole-mounted or mast-mounted light fixtures located between the building and the front lot line of not more than 15 feet, unless the applicant demonstrates that a higher height is necessary to allow reasonable compliance with the lighting standards and the Planning Board finds that no practicable alternative for lighting of the site exists.
 - ii. The Planning Board may permit a maximum light fixture height for pole-mounted or mast-mounted light fixtures for other areas of the site of not more than 20 feet, unless the applicant demonstrates that a higher height is necessary to allow reasonable compliance with the lighting standards and the Planning Board finds that no practicable alternative for lighting of that area of the site exists.
 - iii. The maximum light fixture height for building-mounted light fixtures is the equivalent of that allowed for a pole-mounted light illuminating the same area. See the Design Handbook for examples of acceptable lighting installations.
- f. Lamps in exterior light fixtures must be incandescent, metal halide, high-pressure sodium, compact fluorescent or light-emitting diode (LED). This provision does not prohibit the use of fluorescent lamps in internally lighted signs where such signs are otherwise permitted, provided such signs meet the requirements of this article. See the Design Handbook for appropriate examples of signs. With the use of LED lighting, the applicant is required to demonstrate that standards within this article are met and/or meet comparable accepted standards for LED exterior lighting. Required photometric test reports for LED lighting must be based on the IESNA LM-79-08 test procedure.
- g. Period or historical fixtures that do not meet the requirements of this section may be used as an alternative to cutoff fixtures, provided the maximum initial lumens generated by each fixture does not exceed 2,000. The maximum initial lumens for metal halide lamps may be increased to 8,500

if the lamp is internally recessed within the fixture or is shielded by internal louvers or refractors. The mounting height of period or historical fixtures may not exceed 12 feet above the adjacent ground. See the Design Handbook for examples.

- h. State and national flags that are flown on flagpoles may be illuminated by ground-mounted lighting that shines vertically as long as exposed lamps, reflectors or refractors are not visible from any public street.
- (3). Illumination standards for nonresidential uses and multifamily housing. New or revised exterior lighting serving nonresidential uses and multifamily housing must conform to the following standards:
 - a. The illumination of access drives must provide for a uniformity ratio of not more than 4:1 (ratio of average to minimum luminance). The illumination of parking lots and outdoor sales and service areas must provide for a uniformity ratio of not more than 20:1 (ratio of maximum to minimum luminance).
 - b. The maximum illumination level within access drives, parking lots and sales and service areas may not exceed eight footcandles measured at the ground surface.
 - c. The maximum illumination level at the property line of a nonresidential or multifamily housing use with abutting properties in a residential district may not exceed 0.1 footcandle.
 - d. Areas directly under canopies must be illuminated so that the uniformity ratio (ratio of average to minimum luminance) will be not greater than 3:1 with an average illumination level at ground level of not more than 30 footcandles. Areas of access drives, parking lots, sales display areas, etc., which are adjacent to canopies must taper down in illumination level from the illumination level permitted under the canopy to the maximum illumination level permitted in Subsection **B** of this section for the access drive, parking lot or sales display area adjacent to the canopy within a horizontal distance equivalent to the height of the canopy.
 - e. The maximum illumination levels and uniformity ratios for areas other than parking lots, access drives and canopies must be consistent with IESNA-recommended practices and be compatible with the overall lighting of the project and be specifically approved by the Planning Board.
 - f. Illuminated signs must not produce glare and are otherwise governed by Article **XXIV** of this chapter.
 - (4). Illumination standards for outdoor sports and recreational facilities. New or revised exterior lighting serving sports fields and outdoor recreational facilities, including commercial recreational uses, must conform to the following standards:
 - a. Such fields and facilities may be illuminated for use during daylight hours and until 10:00 p.m. unless the Planning Board specifically approves a later time based upon the applicant demonstrating that such later time is needed for the reasonable operation of the facility and will be compatible with and will not result in adverse impacts on neighboring properties. If a later hour is approved, the Planning Board may impose conditions on the approval, including provisions for the periodic review of the time limit.
 - b. The illumination levels and mounting heights of the lighting fixtures may not exceed the minimum necessary to provide reasonable illumination for the proposed use consistent with IESNA-recommended practices.
 - c. The maximum illumination level at the property line of the use with

abutting properties in a residential district may not exceed 0.1 footcandle.

- (5). Illumination standards for single- and two-family residential uses.
New or revised exterior lighting serving single- and two-family residential uses must be located and designed so that it does not result in excessive illumination levels on adjoining properties such as to amount to a public or private nuisance and must be compatible with the zone requirements in the neighborhood in which it is located. A maximum illumination level at the property line of more than 0.1 footcandle is considered to be excessive if the lighting level is in dispute. In the case of a major home occupation, the application must include a lighting plan meeting the requirements of § 16.10.7.2H(1).

J. Prevention of erosion. [Amended 9-26-2011 by Ord. No. 11-15; 10-26-2015 by Ord. No. 15-12]

- (1). No person may perform any act or use the land in a manner which would cause substantial or avoidable erosion, create a nuisance, or alter existing patterns of natural water flow in the Town. This does not affect any extractive operations complying with the standards of performance specified elsewhere in this title.
 - a. When an excavation contractor, as defined in § 16.2.2, performs an activity that requires or results in more than one cubic yard of soil disturbance within the Shoreland or Resource Protection Overlay Zones, there must be a person responsible for management of erosion and sedimentation control practices on site, and that person must be certified in erosion control practices by the Maine Department of Environmental Protection. This person must be present at the site each day earthmoving activity occurs for a duration that is sufficient to ensure that proper erosion and sedimentation control practices are followed. This is required until erosion and sedimentation control measures have been installed, which will either stay in place permanently or stay in place until the area is sufficiently covered with vegetation necessary to prevent soil erosion. The name and certification number of the person who will oversee the activity causing or resulting in soil disturbance must be included on the permit application. Excavation contractors will have one year from the date of the adoption of this subsection to comply with certification requirements.
 - b. The above requirement of § 16.9.1.3A(1) does not apply to a property owner performing work themselves, or a person or firm engaged in agriculture or timber harvesting when best management practices for erosion and sedimentation control are used.
 - c. The above requirement of § 16.9.1.3A(1) only applies to regulated activities requiring local, state or federal permits and/or Planning Board approval.
- (2). All development must generally comply with the provisions of the "Environmental Quality Handbook, Erosion and Sediment Control," published by the Maine Soil and Water Conservation Commission.
 - a. The developer must:
 - i. Select a site with the right soil properties, including natural drainage and topography, for the intended use;
 - ii. Utilize for open space uses those areas with soil unsuitable for construction;
 - iii. Preserve trees and other vegetation wherever possible;
 - iv. Hold lot grading to a minimum by fitting the development to the natural contour of the land; avoid substantial areas of excessive grade;
 - v. Spread jute matting, straw or other suitable material during

construction in critical areas subject to erosion;

- vi. Construct sediment basins to trap sediment from runoff waters during development; expose as small an area of subsoil as possible at any one time during development and for as short a period as possible;
 - vii. Provide for disposing of increased runoff caused by changed land formation, paving and construction, and for avoiding sedimentation of runoff channels on or off the site;
 - viii. Plant permanent and, where applicable, indigenous, vegetation and install structures as soon as possible for the purpose of soil stabilization and revegetation;
- b. All logging or woodlot roads must be located, constructed and maintained in conformance with the erosion prevention provisions of "Permanent Logging Roads for Better Woodlot Management," published by the United States Department of Agriculture.
- (3). Where the Board has required a stormwater management and erosion control plan, said plan must be endorsed by the York County Soil and Water Conservation District or found satisfactory by the Town's Engineering Peer Reviewer.
 - (4). All activities which involve filling, grading, excavation or other similar activities that potentially may result in unstable soil conditions, and which require a permit, must be made known in a written soil erosion and sedimentation control plan in accordance with the "Maine Erosion and Sediment Control Practices Field Guide for Contractors," 2015, and as amended. The plan must be submitted to the permitting authority for approval and must include, where applicable, provisions for:
 - a. Mulching and revegetation of disturbed soil;
 - b. Temporary runoff control features, such as straw bales, silt fencing, filter socks or diversion ditches;
 - c. Permanent stabilization structures, such as retaining walls or riprap.
 - (5). To create the least potential for erosion, development must be designed to fit with the topography and soil of the site. Areas of steep slopes where high cuts and fills may be required are to be avoided wherever possible, and natural contours must be followed as closely as possible.
 - (6). Erosion and sedimentation control measures apply to all aspects of the proposed project involving land disturbance and must be in operation during all stages of the activity. The amount of exposed soil at every phase of construction must be minimized to reduce the potential for erosion.
 - (7). Any exposed ground area must be temporarily or permanently stabilized in accordance with the "Maine Erosion and Sediment Control Practices Field Guide for Contractors," 2015, and as amended. All erosion control measures that are no longer necessary as determined by the CEO or Shoreland Resource Officer must be removed at the owner's expense.
 - (8). Natural and man-made drainageways and drainage outlets must be protected from erosion from water flowing through them. Drainageways must be designed and constructed in order to carry water from a twenty-five-year storm or greater and be stabilized with vegetation or lined with riprap.

K. Water quality and wastewater pollution.

- (1). No activity is allowed to deposit on or into the ground or discharge to any river, stream or brook, pond or lake, or wetland any pollutant that, by itself or in combination with other activities or substances, will impair designated uses or the

water classification of the water body.

- (2). Wastewater to be discharged into Kittery Sewer Department sewers, should they be available, must be in such quantities and/or of such quality as to be compatible with standards established by the municipality or the Sewer Department.
- (3). To meet those standards, the municipality or Sewer Department may require that such wastes undergo pretreatment or full treatment at the site in order to render them acceptable for the treatment processes.
- (4). The disposal of wastewater by means other than a public system must comply with the laws of the State of Maine and the Town concerning water pollution. Where a public sanitary sewer system is located within 200 feet of the property line as measured along a public way, the Town requires individual entrance into said sewer.
- (5). Discharge of sanitary wastes to any water body is subject to the issuance of Maine State Department of Environmental Protection licenses, but no such off-site discharge will be allowed unless same is buried or not visible to a point below normal low water and is secured against damage and uncovering by the tides, erosion or other foreseeable action.

L. Air pollution.

All air pollution control shall comply with the minimum state requirements, and detailed plans shall be submitted to the State of Maine Department of Environmental Protection for approval before a building/regulated activity permit is granted. In any case, no objectionable odor, dust or smoke shall be detectable beyond the property line.

M. Buffer areas.

Any nonresidential yard setback space abutting an existing or potential residential area shall be maintained as a buffer strip by the developer. Such buffer area shall be for the purpose of eliminating any adverse effects upon the environmental or aesthetic qualities of abutting properties or any type of nuisance affecting the health, safety, welfare and property values of the residents of Kittery.

N. Floodplain areas. [Amended 9-26-2011 by Ord. No. 11-15]

- (1). Land along rivers, streams and ponds which is subject to flooding through storm or seasonal action, called floodplain areas, may be used for woodland, grassland, agricultural or outdoor recreational use. The Code Enforcement Officer shall maintain a map showing the latest updated federal and state information of the known floodplain areas, and no building shall be constructed therein when there are undue flooding hazards, unless it can meet all requirements of Chapter 16.9, Article **VIII**, Floodplain Management, relating to flood hazard permit and review procedure, of this title. Floodplain areas shall be considered as those areas within the one-hundred-year frequency floodplain, as identified by an authorized federal or state agency, or where such identification is not available, are located on floodplain soils identified as described in the York County Soil Survey to comprise the following soil types: Alluvial-Ondawa fsl; Podunk fsl; Rumney fsl; Saco sl.

O. Noise abatement.

- (1). Excessive noise at unreasonable hours shall be controlled so as not to be objectionable due to intermittence, beat frequency, shrillness or volume.
- (2). The maximum permissible sound pressure level of any continuous, regular or frequent source of sound produced by any activity regulated by this title shall be as established by the time period and type of land use district listed below. Sound pressure levels shall be measured at all major lot lines at a height of at least four feet above the ground surface. Sound from any source controlled by this title shall not exceed the following limits at the property line of the "receiver" premises.

Sound Pressure Level Limit Measured in dBs

| Districts | 7:00 a.m. to 9:00 p.m. | 9:00 p.m. to 7:00 a.m. |
|---|---------------------------|------------------------|
| Industrial | 65 | 60 |
| Commercial and Business | 60 | 50 |
| Residential Districts, Kittery Foreside District, Badgers Island District, Rural Conservation and Resource Protection | 55 | 45 |

- a. Where the emitting and receiving premises are in different zones, the limits governing the stricter zone shall apply to any regulated noise entering that zone.
 - b. The levels specified may be exceeded by 10 dB for a single period no longer than 15 minutes in any one day.
- (3). Noise shall be measured with a sound level meter meeting the standards of the American National Standards Institute (ANSI S1.4-1961, American Standard Specification for General Purpose Sound Level Meters). The instrument shall be set to the A-weighted response scale and the meter to the slow response. Measurements shall be conducted in accordance with ANSI S1.2-1962, American Standard Meter for the Physical Measurements of Sound.
- (4). No person shall engage in, cause or permit to be engaged in construction activities producing excessive noise on a site abutting any residential use between the hours of 9:00 p.m. on one day and 7:00 a.m. of the following day. Construction activities shall be subject to the maximum permissible sound level specified for commercial districts for the periods within which construction is to be completed pursuant to any applicable building/regulated activity permit.
- (5). The following uses and activities shall be exempt from the sound pressure level regulations:
- a. Home maintenance activities (i.e., mowing lawns, cutting one's own firewood, etc.) between the hours of 7:00 a.m. and 9:00 p.m.;
 - b. Timber harvesting (felling trees and removing logs from the woods);
 - c. Noise created by construction and maintenance activities between 7:00 a.m. and 9:00 p.m.;
 - d. The noises of safety signals, warning devices and emergency pressure relief valves and any other public emergency activity; and
 - e. Traffic noise on existing public roads, railways or airports.
- (6). These noise regulations are enforceable by law enforcement officers and by the Code Enforcement Officer (who may measure noise levels, and who shall report documented violations to the police). For the purposes of enforcement, sounds exceeding the above limits shall be deemed to constitute "loud and unreasonable noise" under Title 17-A M.R.S. § 501-A ("disorderly conduct").
- P. Radiation.
No dangerous radiation shall be detectable at the property line, in accordance with the applicable state and federal laws. In the case of electromagnetic pulses emanating from electrical service components, the Planning Board or Staff Review Committee shall require the developer to adopt a "prudent avoidance" approach, wherever possible.

Q. Retention of Open Spaces and Natural or Historic Features

- (1). Tree clearing.
Proposed development plans must, by notes on the final plan and deed restrictions, limit the clearing of trees to those areas designated on the plans.
- (2). Clearing or removal of vegetation for uses other than timber harvesting in Resource Protection or Shoreland Overlay Zone.
 - a. In a Resource Protection or Shoreland Overlay Zone, cutting of vegetation is prohibited within the strip of land extending 100 feet, horizontal distance, inland from the normal high-water line, except to remove safety hazards. Elsewhere in a Resource Protection or Shoreland Overlay Zone, the cutting or removal of vegetation is limited to that which is necessary for uses expressly authorized in the Resource Protection or Shoreland Overlay Zone.
 - b. Except in areas as described in §§ 16.9.2.1 and 16.9.2.2A above and 100 feet, horizontal distance, from any other water body, tributary stream or the upland edge of a wetland, a buffer strip of vegetation must be preserved as follows:
 - i. Clearance of an opening greater than 250 square feet in the forest canopy, or other existing woody vegetation if a forested canopy is not present, as measured from the outer limits of the tree or shrub crown, is prohibited. However, a footpath not to exceed six feet in width as measured between tree trunks and/or shrub stems is allowed, provided that a cleared line of sight to the water through the buffer strip is not created.
 - ii. Selective cutting of trees within the buffer strip is allowed, provided a well-distributed stand of trees and other natural vegetation is maintained. Adjacent to water bodies, tributary streams and wetlands, a "well-distributed stand of trees" is defined as maintaining a minimum rating score of 16 per twenty-five-foot-by-fifty-foot rectangular area.

Diameter of Tree at 4 1/2 feet Above Ground Level

| (inches) | Points |
|-----------------|---------------|
| 2 to < 4 | 1 |
| 4 to < 8 | 2 |
| 8 to < 12 | 4 |
| 12 or greater | 8 |

- a. The following governs in applying this point system:
 1. The twenty-five-foot-by-fifty-foot rectangular plots must be established where the landowner or lessee proposes clearing within the required buffer;
 2. Each successive plot must be adjacent to, but not overlap a previous plot;
 3. Any plot not containing the required points must have no vegetation removed except as otherwise allowed by this title;

4. Any plot containing the required points may have vegetation removed down to the minimum points required or as otherwise allowed by this title; and
 5. Where conditions permit, no more than 50% of the points on any twenty-five-foot-by-fifty-foot rectangular area may consist of trees greater than 12 inches in diameter.
- iii. For the purposes of § 16.9.2.2B(2), "other natural vegetation" is defined as retaining existing vegetation under three feet in height and other ground cover and retaining at least five saplings less than two inches in diameter at 4 1/2 feet above ground level for each twenty-five-foot-by-fifty-foot rectangle area. If five saplings do not exist, no woody stems less than two inches in diameter may be removed until five saplings have been recruited into the plot.
 - iv. Notwithstanding the above provisions, no more than 40% of the total volume of trees four inches or more in diameter, measured at 4 1/2 feet above ground level, may be removed in any ten-year period.
 - a. To protect water quality and wildlife habitat, existing vegetation under three feet in height and other ground cover, including leaf litter and the forest duff layer, must remain uncut, uncovered or undisturbed, except to provide for a footpath or other permitted uses as described in § 16.9.2.2B(2) above.
 - b. Pruning of tree branches on the bottom 1/3 of the tree is allowed.
 - c. To maintain a buffer strip of vegetation, when the removal of storm-damaged, diseased, unsafe or dead trees results in the creation of cleared openings, these openings must be replanted with tree species that are suitable to Kittery's growing conditions unless existing new tree growth is present. See Design Handbook Kittery Maine, approved by the Kittery Planning Board, August 11, 2005, pages 13 and 14, for the listing of approved plant materials.
 - d. Article **II** of this chapter does not apply to those portions of public recreational facilities adjacent to public swimming areas as long as cleared areas are limited to the minimum area necessary.
 - c. At distances greater than 100 feet, horizontal distance, from the normal high-water line of any other water body, tributary stream, or the upland edge of a coastal wetland, and 100 feet, horizontal distance, from the normal high-water line of any other water body, tributary stream, or the upland edge of a wetland, there will be allowed on any lot, in any ten-year period, selective cutting of not more than 40% of the volume of trees four inches or more in diameter, measured 4 1/2 feet above ground level. Tree removal in conjunction with the development of permitted uses must be included in the forty-percent calculation. For the purposes of these standards, volume may be considered to be equivalent to basal area.
 - d. It is not permissible to clear openings for any purpose, including but not limited to principal and accessory structures, driveways, lawns and sewage disposal areas, exceeding in the aggregate 25% of the lot area within the Resource Protection or Shoreland Overlay Zone or 10,000 square feet,

whichever is greater, including land previously cleared. This provision does not apply to the Commercial Fisheries/Maritime Activities Zones.

- e. Legally existing nonconforming cleared openings may be maintained, but must not be enlarged, except as allowed by this title.
 - f. Fields and other cleared openings which have reverted to primarily shrubs, trees or other woody vegetation will be regulated under the provisions of this chapter.
- (3). Land dedication.
Reserved land acceptable to the Planning Board and applicant may be gifted to the municipality as a condition of approval, only when Council has agreed to the gifting.
- (4). Landscape plan for preservation of natural and historic features.
- a. The applicant is required to submit a proposed development design plan(s) that includes a landscape plan showing:
 - i. Preservation of existing trees 10 inches or more caliper at breast height;
 - ii. Replacement of trees and vegetation;
 - iii. Graded contours;
 - iv. Streams, wetlands and water bodies; and
 - v. Preservation of scenic, historic or environmentally significant areas.
 - b. Cutting of trees on the northerly borders of lots should be avoided as far as possible to provide a natural wind buffer.
 - c. Unless the applicant can demonstrate it is impracticable, street and lot layout must be adapted to the topography. Extensive grading and filling must be avoided as much as possible.
- (5). Archaeological or historic sites.
- a. When the proposed development contains any identified archaeological or historic sites or any areas identified by the Maine Critical Areas Program as rare and irreplaceable natural areas, these areas must be included in a development plan's open space, and suitably protected by appropriate covenants and management plans.
 - b. Any proposed land use activity involving structural development or soil disturbance on or adjacent to sites listed on or eligible to be listed on the National Register of Historic Places must be submitted by the applicant to the Maine Historic Preservation Commission for review and comment at least 20 days prior to action being taken by the Town Planner and/or the Planning Board. The development Review Authority will consider comments received from the Commission prior to rendering a decision on the application.
 - c. In Shoreland, Resource Protection or Commercial Fisheries/Maritime Uses Overlay Zones, a permit is not required for an archaeological excavation, provided the excavation is conducted by an archaeologist listed on the State Historic Preservation Officer's Level 1 or Level 2 approved list, and unreasonable erosion and sedimentation is prevented by means of adequate and timely temporary and permanent stabilization measures.

12. Post-Approval

A. Approved plan expiration. [Amended 1-28-2015 by Ord. No. 15-01]

- (1). A site plan approval will expire if work has not commenced within one year from the date of Planning Board or Staff Review Committee approval. Where work has

commenced within one year of such approval, the approval will expire if work is not complete within two years of the original date of approval.

- (2). Prior to expiration, the Planning Board or Staff Review Committee may, on a case-by-case basis, grant extensions to an approved plan expiration date upon written request by the developer for an inclusive period from the original approval date, not to exceed three years.
- (3). When a plan's approval expires, the applicant may reapply subject to the Town Code current at the time of reapplication.

B. Inspection of required improvements. [Amended 9-28-2015 by Ord. No. 15-08]

- (1). A preconstruction meeting is required for an approved site plan.. Prior to the commencement of any work associated with development approved in accordance with this title, the developer or duly authorized representative must provide a schedule of expected construction activities by phase to the inspecting official [the Code Enforcement Officer (CEO) or their representative or, when applicable, the Town's Peer Review Engineer], and coordinate a preconstruction meeting. Attendance at said meeting must at a minimum include authorized representation from the Town, the developer and their general contractor. Meeting minutes must be prepared by the Town's representative and distributed to all attendees and the Town Planner.
- (2). The developer or general contractor shall coordinate inspections with the inspecting official and provide written notice at least seven days prior to commencing each major phase of construction as outlined in the construction schedule. When all phases of work are complete, the general contractor shall request a final inspection from the inspecting official, who shall prepare a punch list of any outstanding items to be completed, within seven days of the final inspection. Once all outstanding items have been completed, the developer or the general contractor shall coordinate a final walk-through where the inspecting official determines if the construction has been completed in accordance with the approved plans. The inspecting official shall provide, in writing, to the developer or the general contractor within seven days of the final walk-through what, if any, construction is not complete or confirm that the development is complete and has been constructed according to the approved plans.
- (3). If the inspecting official finds, upon inspection of the required improvements, that any of the required improvements have not been constructed in accordance with the approved plans and specifications, the inspecting official must report, in writing, to the Town Planner, the developer or duly authorized representative of the developer, and, when applicable, the CEO. The Town Planner shall inform the Planning Board of any issues identified by the inspections. The Town shall take any steps necessary to preserve the municipality's rights.
- (4). Where applicable and in advance of any construction, the developer must deposit sufficient funds for said inspections in an applicant's service account per **Chapter 3.3**. The amount is based on a scope of services and fee prepared by the Town's Peer Review Engineer after review of the developer's construction estimate prepared by a professional engineer or a qualified contractor.
- (5). Stormwater and erosion control inspection.
 - a. During October to November of each year in which construction for grading, paving and landscaping occurs on a development site, the Town will, at the expense of the developer, cause the site to be inspected by a qualified individual. By December 1, the inspector must submit a site report to the Town Planner that describes the inspection findings and indicates whether stormwater and erosion control measures (both temporary and

permanent) are in place and properly installed. The report must include a discussion and recommendation on any and all problem areas encountered.

- b. After major construction activities have been completed on a development site, the developer must, on or by July 1 of each year, provide a completed and signed certification to the Code Enforcement Officer per § 16.8.8.2, Post-construction stormwater management.
 - c. Erosion control debris. The owner or occupant of any land in any zone must not allow erosion control materials, such as plastic erosion control fences and related stakes or other materials, to remain on the site but must remove the same within six months of the date such erosion control materials were installed, or the date when no longer required, whichever is later. When a violation is discovered, the Code Enforcement Officer will order compliance by written notice of violation to the owner of any land in any zone requesting removal of such violation within 30 days of the date of written notice. An extension of time to correct may be made by the Code Enforcement Officer for good and sufficient reason.
- C. Modifications to an approved plan. Any modification to an approved plan may be considered for approval under § 16.10.3.1, General development, site and subdivision plan review, § 16.10.3.2, Other development review, and/or § 16.10.9.1B, Plan revisions after approval, or § 16.10.9.3, Modifications to approved plan.
- D. Plan revisions after approval. No changes, erasures, modifications or revisions may be made to any Planning Board approved final plan, unless in accordance with the Planner's and CEO's powers and duties as found in Chapter 16.4, or unless the plan has been resubmitted and the Planning Board specifically approves such modifications. In the event a final plan is recorded without complying with this requirement, the same is null and void, and the Planning Board must institute proceedings to have the plan stricken from Town records and the York County Registry of Deeds. [Amended 9-26-2011 by Ord. No. 11-15]
- (1). Field changes. [Amended 9-24-2012 by Ord. No. 12-11]
 - a. Minor. If at any time before or during the construction of the required improvements it appears to be necessary or desirable to modify the required improvements, the Code Enforcement Officer and Town Planner are authorized to approve minor plan amendments due to unforeseen field circumstances, such as encountering hidden outcrops of bedrock, natural springs, etc. The Code Enforcement Officer and Town Planner must issue any approval under this subsection in writing and transmit a copy of the approval to the Planning Board. Revised plans must be filed with the Town and recorded, where appropriate. The developer must provide the revised plan to the Town Planner, and it shall be recorded in the York County Register of Deeds when applicable.
 - b. Major. If, at any time during the construction of the required improvements, it appears necessary or desirable to modify the required improvements, major plan changes due to unforeseen field circumstances, such as relocations of rights-of-way, property boundaries, changes of grade by more than 1%, or other modifications requiring review per § 16.10.3.2, must be reviewed by the Planning Board or Staff Review Committee.
 - (2). Modifications to approved plan.
 - c. Minor modifications. Modifications to a Planning Board approved plan that do not require Planning Board review per § 16.10.3.2 may be approved by the Code Enforcement Officer and Town Planner. Such approvals must be issued in writing to the developer with a copy to the Planning Board. The

developer must provide the revised plan to the Town Planner, and it shall be recorded in the York County Register of Deeds, when applicable.

[Amended 9-24-2012 by Ord. No. 12-11]

- d. Major modifications. Major modifications (e.g., relocations of principal structures, rights-of-way or property boundaries; changes of grade by more than 1%) require Planning Board or Staff Review Committee approval.
- E. Maintenance of improvements. The developer, or owner, is required to maintain all improvements and provide for snow removal on streets and pedestrianways/sidewalks unless and until the improvement has been accepted by the Town Council.
- F. Acceptance of Streets and Ways
 - (1). Conditions. A street or way constructed on private lands by the owner(s) thereof and not dedicated for public travel prior to the enactment of this title must be laid out and accepted as a public street or way by the Town Council only upon the following conditions:
 - a. The owners must give the Town a deed to the property within the boundaries of the street at the time of acceptance by the Town.
 - b. A plan of said street or way must be recorded in the York County Registry of Deeds at the time of its acceptance.
 - c. A petition for laying out and acceptance of said street or way must be submitted to the Town Council upon a form prescribed by the Commissioner of Public Works. Said petition must be accompanied by a plan, profile and cross section of said street as follows:
 - i. A plan drawn, when practical, to a scale of 40 feet to one inch and to be on one or more sheets of paper not exceeding 24 inches by 36 inches in size. Said plan must show the North point; the location and ownership of all adjoining lots of land; rights-of-way and easements; streetlights and electric lines; boundary monuments; waterways, topography and natural drainage courses with contour at not greater than two-foot intervals; all angles, bearings and radii necessary for the plotting of said street and lots and their reproduction on the ground; the distance to the nearest established street or way, together with the stations of their side lines;
 - ii. A profile of said street or way drawn to a horizontal scale of 40 feet to one inch and a vertical scale of four feet to one inch. Said profile must show the profile of the side lines and center line of said street or way and the proposed grades thereof. Any buildings abutting the street or way must be shown on said profile;
 - iii. A cross section of said street or way drawn to a horizontal scale of five feet to one inch and a vertical scale of one foot to one inch; and
 - iv. The location and size of water and sewer mains and surface water drainage systems, as installed.
 - (2). Such street or way must have been previously constructed in accordance with the standards and criteria established in **Article IV** of this chapter.
 - (3). Acceptance of streets and ways required in public interest.
 - a. Notwithstanding the provisions of any other section hereof, the Town may at any time lay out and accept any street or way in the Town as a public street or way of said Town whenever the general public interest so requires. The cost of said street or way may be borne by the Town.
 - (4). Easements.
 - a. The Board may require easements for sewerage, other utilities, drainage and

stream protection. In general, easements may not be less than 20 feet in width. Wider easements may be required.

- (5). No street or way to be accepted until after report.
 - a. No street or way may be laid out and accepted by the Town Council until the Planning Board and the Public Works Commissioner have made a careful investigation thereof and reported to the Town Council their recommendations in writing with respect thereto.
 - b. Upon completion of construction of any street/road intended for proposal for acceptance as a Town way, a written certification that such way meets or exceeds the design and construction standards of this title, signed by a professional engineer registered by the State of Maine, prepared at the developer's expense, must be submitted to the Board. If underground utilities are laid in such way, the developer must also provide written certification from the servicing utility(ies), that such installation was in a manner acceptable to the utility. The Board is to review the proposal and forward a recommendation to the Town Council regarding acceptance.
- G. Recordkeeping in Shoreland and Resource Protection Overlay Zones. The Code Enforcement Officer is to keep a complete record of all essential transactions of development in the Shoreland and Resource Protection Overlay Zones, including applications submitted, permits granted or denied, variances granted or denied, revocation actions, revocation of permits, appeals, court actions, violations investigated, violations found, and fees collected. On a biennial basis, a summary of this record must be submitted to the Director of the Bureau of Land and Water Quality within the Department of Environmental Protection.
- H. Nonstormwater discharge. No person, except where exempted in **Title 16.9.7**, may create, initiate, originate, or maintain a nonstormwater discharge to the storm drainage system. Such nonstormwater discharges are prohibited notwithstanding the fact that the municipality may have approved the connections, drains or conveyances by which a person discharges unallowable nonstormwater discharges to the storm drainage system. [Amended 5-22-2017 by Ord. No. 17-06; 5-30-2018 by Ord. No. 04-18]
- I. Nuisances. Any violation of this title is deemed to be a nuisance.

16.8 Subdivision Review

1. General.

The purpose of this chapter is to assure the comfort, convenience, safety, health, and welfare of the people, to protect the environment and to promote the development of an economically sound and stable community. To that end, the Planning Board will evaluate proposed subdivisions using the following criteria. The subdivision provisions set forth in these regulations are intended to protect the public health and safety, promote the general welfare of the community, and conserve the environment by assuring that nonresidential and multifamily construction is designed and developed in a manner that assures that adequate provisions are made for traffic safety and access; emergency access; water supply; sewage disposal; management of storm water, erosion, and sedimentation; protection of groundwater; protection of the environment, wildlife habitat, fisheries, and unique natural areas; protection of historic and archaeological resources; minimizing the adverse impacts on adjacent properties; and fitting the project harmoniously into the fabric of the community.

2. Authority and Statutory Review Criteria.

- A. These standards have been prepared in accordance with the provisions of 30-A M.R.S.A. § 4401 et seq., and all amendments thereto.
- B. When reviewing any application for a subdivision, the Planning Board shall find that the criteria as found in Title 30-A M.R.S.A. §4404 have been met, as well as all applicable provisions of Title 16, Land Use and Development Code have been met, before granting approval.

3. Preapproval development prohibited.

The applicant or applicant's authorized agent must obtain final Planning Board approval before:

- A. Any contract or offer for the conveyance of the proposed development (or portion thereof) has been made;
- B. Any subdivision into three or more lots has been recorded in the York County Registry of Deeds;
- C. A building/regulated activity permit for any structure within the development is issued; or
- D. Work on any improvements (including installation of roads or utilities or land clearing) has begun.

4. Other Potential Reviews

A. Shoreland development review.

[Amended 7-25-2016 by Ord. No. 16-02]

- (1). All development in the Shoreland, Resource Protection, and Commercial Fisheries/Maritime Uses Overlay Zones involving the use, expansion, change or replacement of an existing use or structure, or renewal of a discontinued nonconforming use, must be reviewed and approved as provided in § 16.10.10 and elsewhere in this title, and tracked as a shoreland development for reporting purposes.
- (2). All development in the Shoreland, Resource Protection, and Commercial Fisheries/Maritime Uses Overlay Zones must be approved by the Planning Board except for the following:
 - a. Proposed development of principal and accessory structures in compliance with § 16.3.2.17D(2), when not subject to Planning Board review as explicitly required elsewhere in this title. Such proposed development must be reviewed and approved by the Code Enforcement Officer (CEO) prior to issuing a building permit. The total devegetated area of the lot (that portion within the Shoreland Overlay Zone) must be calculated by the applicant and

verified by the CEO and recorded in the Town's property records. Any development proposed in the Resource Protection and Shoreland - Stream Protection Area Overlay Zones must be approved by the Planning Board.

- b. Piers, docks, wharves, bridges and other structures and uses extending over or below the highest annual tide (HAT) elevation, subject to review and approval by the Port Authority as outlined in Chapter 16.11, Marine-related development.
 - c. Division of a conforming parcel that is not subject to subdivision as defined in § 16.2.2.
 - d. Clearing of vegetation for activities other than timber harvesting. These are subject to review and approval by the Shoreland Resource Officer or Code Enforcement Officer.
- (3). Establishment of new commercial or business entity in an existing facility, where intensity of use is not significantly different.

5. Application and Review Fees

- (1). Review fee(s); reimbursements.
 - a. All applications for plan approval for properties which come under this title must be accompanied by a fee as determined by the Town Council.
 - b. The applicant must reimburse the Town for all expenses incurred for notifying abutters of the proposed plan and advertising of any public hearing regarding a development.
- (2). Independent peer review.
[Amended 9-28-2015 by Ord. No. 15-08]
 - a. The Planning Board or, after the Town Manager's approval, the Town Planner and the Code Enforcement Officer, may require an independent consultant or specialist engaged by the Town, at the applicant's expense, to:
 - i. Determine compliance with all requirements of this title related to public health, safety and welfare and the abatement of nuisances; or
 - ii. Assist with the technical review of applications submitted for new or amended development.
 - b. When peer review is required of the applicant, sufficient funds, based on a written estimate by the required consultant, must be deposited in an applicant's service account per **Chapter 3.3**, prior to commencing said review and continuing with the review of the development plan application.

6. Applicant attendance at review meeting(s).

The applicant or duly authorized representative must attend all Board meetings for which the applicant's application has been placed on the agenda. Relief may be given from this requirement by the Board Chairperson.

7. Waivers [Amended 9-26-2011 by Ord. No. 11-14]

A. Waiver authorization.

Where the Planning Board finds, due to special circumstances of a particular plan, certain required improvements do not promote the interest of public health, safety and general welfare, or are inappropriate because of inadequacy or lack of connecting facilities adjacent or in proximity to the proposed development, upon written request, it may waive or modify such requirements, subject to appropriate conditions as determined by the Planning Board.

B. Objectives secured.

In granting modifications or waivers, the Planning Board must require such conditions as will, in its judgment, secure substantially the objectives of the requirements so waived or

modified.

8. Other Requirements

A. Burden of proof.

In all instances, the burden of proof is upon the applicant proposing the development.

B. Comprehensive Plan.

Any proposed development or use must be in harmony with the Town Comprehensive Plan guidance adopted into the provisions of this title.

C. Site inspection.

- (1). So the Planning Board may be fully informed about the site and in a knowledgeable position to prescribe contour intervals to be employed on topographic maps and grading plans for the development, the applicant must arrange a joint inspection of the site with the Planning Board.

D. Safe use.

The land/water area to be developed must be of such character that it can be used without danger to health or peril from fire, flood, soil failure or other hazard.

9. Review Process and Submission Requirements

A. Preapplication and Conference

- (1). Process. The purpose of this meeting is to familiarize the applicant with the review procedures and submission requirements, and approval criteria, and to familiarize the Planner with the nature of the project.
 - a. This meeting is optional for Minor Subdivisions, but required for Major Subdivisions.
 - b. Such review shall not cause the plan to be a pending application or proceeding under 1M.R.S.A. §302. No decisions relative to the plan may be made at this meeting.
 - c. To request a preapplication conference the applicant shall submit, at a brief narrative describing the project, the location of the project on a US Geologic Survey (USGS) topographic map, and a copy of the Tax Map showing the development parcel.

B. Sketch Plan Review

- (1). Review application form.

Any person requiring subdivision review must submit an application on forms prescribed by the Planning Board, together with a development plan and such submission contents as may be required in [§ 16.10.5.2](#). A complete application consists of all the required elements. No more than one application/plan for a piece of property may be under review before the Planning Board. No more than one approved final plan for a piece of property may exist.
- (2). Planning Board review and decision. The Planning Board must, within 30 days of sketch plan submission, act upon the sketch plan as follows:
 - a. The Planning Board must determine whether the sketch plan proposal complies with the standards contained herein and must, where it deems necessary, make specific suggestions in writing to be incorporated by the applicant in subsequent submissions.
 - b. If the concept is approved, inform subdivision applicants in writing of the contour interval which will be required for the plans; classify the sketch plan into one of two categories defined herein, as a minor subdivision or a major subdivision., and authorize submission of the next application stage. The next application stage for a Minor Subdivision is a Final Plan

application and the next application stage for a Major Subdivision is a Preliminary Plan application.

- c. Any plan may be continued for a total period not to exceed 90 calendar days for good and sufficient reason (i.e., for revisions to be made, studies completed, or additional information submitted) and acceptable to both the applicant and the Planning Board. Such plan is automatically scheduled for the agenda of the next regular Planning Board meeting after the 90th day and action completed in accordance with the requirements and timing contained in this title, whether the applicant has accomplished the purposes for which continued or not.
- d. The action to table by the Planning Board must be an action to temporarily suspend action and not to suppress a vote on the plan.

(3). Plan Requirements

- a. The sketch plan must show in simple form on a topographic map the proposed site, subdivision, landscape architectural or architectural design concept, including streets, lots, structures and other features, in relation to existing conditions and municipal land use zone(s) regulations.
- b. The sketch may be a freehand penciled sketch and must include the data listed below.

(4). Written Submission Requirements

- a. General subdivision information must describe or outline the existing conditions of the site, including:
 - i. Covenants.
 - ii. High-intensity Class "A" soil survey and soil interpretation sheets.
 - iii. Available community facilities.
 - iv. Utilities.
- b. Proposed development, such as:
 - i. Number of residential or business lots and/or dwelling units;
 - ii. Typical lot width and depth;
 - iii. Price range;
 - iv. Business areas;
 - v. Playgrounds, park areas and other public areas;
 - vi. Protective covenants;
 - vii. Utilities; and
 - viii. Street improvements.

C. Preliminary Plan Review

- (1). Applicability. Preliminary Plan Review only applies to Major Subdivision applications.
- (2). General Process
 - a. Preliminary plan application filing and completeness review. A determination as to whether the Town Planner validates an application is based on a review of the application in accordance with the submission contents checklist filed with the plan, which indicates all elements required under §§ 16.10.5.2 and 16.10.7.2 have been received, or written request for waiver of submittal for any nonreceived items is included. The application must be accompanied by a plan and the required fee, together with a certification the applicant has notified abutters by mail of the filing of the plan application for approval.

- b. Receipt and scheduling review. Upon validation, the Town Planner must place the application on the Planning Board's agenda for Planning Board completeness review and acceptance and, upon Planning Board acceptance, issue a dated receipt to the applicant, which is thereafter the official time of submission. **[Amended 9-26-2011 by Ord. No. 11-15]**
 - c. Site inspection. In the course of the review of the plan, the Planner must, and the Planning Board may at its discretion, make a physical inspection and may make photographic record of the existing conditions on the site. **[Amended 9-26-2011 by Ord. No. 11-15; 1-23-2012 by Ord. No. 12-01]**
 - d. Advisory opinions. At any time during review, the Planner may request an advisory opinion from the Planning Board, Conservation Commission or Port Authority on issues related to the application. Where applications are for land within wetland setbacks or the Resource Protection Overlay Zone, the Conservation Commission must be invited to review and offer recommendations from an environmental protection perspective. The Planner also must make recommendation on the necessity for independent review.
 - e. Planner analysis. The Planner must analyze the application and forward comments to the applicant and the Planning Board with a recommendation as to review category (e.g., site, minor/major subdivision).
 - f. A completed application must be submitted to the Town Planner no later than 21 days prior to the meeting date for the item to be included on the agenda. The submission must include on the plan or attached thereto, the following items, unless upon the applicant's written request, the Planning Board, by formal action, waives or defers any requirement(s) for submission.
 - i. A minimum of 12 paper copies of the application form, plan and all attachments thereto plus, if applicable, an additional three paper copies of the twenty-four-inch-by-thirty-six-inch-size plan sheets.
 - g. Submission contents complete. Upon determination by the Planner that the preliminary plan application is complete, the Planner must receive it, together with an application fee in the amount set by the Town Council. (See Appendix A, Fee Schedules.) No application may be deemed complete by the Planning Board until payment of the proper fees.
 - i. Once the Planning Board makes a finding that the preliminary plan is complete in regard to the submission requirements, it must if any studies/review or analysis is required in accordance with **§ 16.10.5.2D** and schedule the date for a public hearing.
- (3). Public hearing
- a. Scheduling
 - i. In the case of an accepted subdivision plan application, such public hearing must be scheduled no later than 30 days from the date of Planning Board acceptance. With the concurrence of the applicant, this deadline may be modified.
 - ii. For all other development plan applications (i.e., right-of-way plan application and development in the Shoreland Overlay Zone), at the Planning Board's discretion, a public hearing may or may not be held.
 - b. Public notice.
 - i. The Town Planner must place a public notice of such public hearing in a newspaper of general circulation in the Town at least seven and

not more than 14 days prior to the scheduled hearing date; said notice must also be posted in at least three prominent public locations in Town at least 10 days prior to the hearing; and, in the case of a plan located within 500 feet of the Towns of Eliot or York, Maine, must be forwarded to the Southern Maine Regional Planning Commission and to the Town Clerk of Eliot or York, Maine, at least 10 days prior to the hearing.

ii. A subdivision public notice must be published at least two times in a newspaper of general circulation in the Town. The date of the first notice must be at least seven days before the scheduled public hearing date.

c. Abutter notice.

i. The Town Planner must cause written notice of the public hearing to be sent by postage paid, first-class mail (cost to be paid by the applicant) to all owners of abutting property, as herein defined (within 150 feet of the property), and by regular mail to the Code Enforcement Officer, the Commissioner of Public Works, and where applicable, the Port Authority or Conservation Commission, at least seven days prior to the scheduled date. Failure of the parties to receive said notice does not invalidate any Board action.

d. Preliminary Plan Public Hearing Procedure

i. The Planning Board may receive oral and documentary evidence, but must exclude evidence which it considers irrelevant, immaterial or unduly repetitious.

ii. The Chairperson of the Planning Board must determine the order of presentation by parties to the hearing. Each party must have the right to proceed without interruption, except that rulings by the Chairperson prevail. The applicant's presentation must proceed in accordance with the checklist provided.

iii. Any party may be represented by agent or attorney.

iv. The Town Planner, in consultation with the Code Enforcement Officer, Commissioner of Public Works, and such other Town officials as may have an interest in the application, must present into evidence a written summary of findings and recommendations.

v. The Planning Board may continue the hearing to another time and location, including the site of the development, as it deems necessary.

(4). Planning Board review schedule.

a. Within six months after approval/classification of a sketch plan by the Board, the applicant must submit an application for approval of a subdivision preliminary plan or site plan preliminary plan in the form prescribed herein. [Amended 9-26-2011 by Ord. No. 11-15]

b. Within 30 days after acceptance by the Planning Board of a subdivision plan, and within 35 days after acceptance by the Planning Board of other applications, the Planning Board must approve the plan, approve the plan with conditions, disapprove the plan, postpone action on the plan, or continue the review to another time/location.

c. Continuation or tabling of a review beyond the thirty-day period for subdivision applications, and the thirty-five-day period for other applications, must be for good and sufficient reason and be acceptable to both the applicant and the Planning Board.

- d. Any plan may be continued for a total period not to exceed 90 calendar days for good and sufficient reason (i.e., for revisions to be made, studies completed or additional information submitted) and acceptable to both the applicant and the Planning Board. Such plan is automatically scheduled for the agenda of the next regular Planning Board meeting after the 90th day and action completed in accordance with the requirements and timing contained in this title, whether the applicant has accomplished the purposes for which continued or not.
 - e. The action to table by the Planning Board must be an action to temporarily suspend action and not to suppress a vote on the plan.
 - f. Failure of the Planning Board to act within the thirty-day period for an accepted subdivision application, and the thirty-five-day period for other Planning Board accepted applications, constitutes disapproval of the plan, in which case the applicant may resubmit the plan without payment of an additional application fee.
- (5). Planning Board review and decision.
- a.
 - a. The Planning Board must approve, approve with conditions or deny the preliminary plan.
 - b. Approval of a preliminary plan does not constitute approval of a final plan, but rather it is be deemed an expression of approval of the design submitted on the preliminary plan as a guide to the preparation of the final plan.
 - c. Conditions of the Planning Board's approval may include, but are not limited to, type of vegetation, increased setbacks and yard space, specifications for sewage and water supply facilities, buffers and screens, period of maintenance sureties, deed restrictions, locations of piers, docks, parking or signs, type or style of construction, and the amount of all guarantees which may be required.
 - d. Conditions required by the Planning Board at the preliminary plan review phase must have been met before the final plan may be given final approval unless specifically waived, upon written request by the applicant, by formal Planning Board action, wherein the character and extent of such waivers which may have been requested are such that they may be waived without jeopardy to the public health, safety and general welfare.
 - e. The decision of the Planning Board plus any conditions imposed must be noted on three copies of the preliminary plan. One copy must be returned to the applicant, one retained by the Planning Board and one forwarded to the municipal officials.
 - f. If the final plan is not submitted to the Planning Board within six months after classification of the sketch plan, the Planning Board may refuse to act on the subdivision preliminary plan or final site plan and require resubmission of the sketch plan. All such plans resubmitted must comply with all normal application requirements.
- (6). Plan Requirements
- a. Plan sheets drawn on a reproducible medium and must measure no less than 11 inches by 17 inches and no larger than 24 inches by 36 inches;
 - b. With scale of the drawings no greater than one inch equals 30 feet for developments less than 10 acres, and one inch equals 50 feet for all others;
 - c. Code block in the lower right-hand corner. The block must contain:
 - i. Name(s) and address(es) of the applicant and owner;

- ii. Name of the project;
 - iii. Name and address of the preparer of the plan, with professional seal, if applicable;
 - iv. Date of plan preparation/revision, and a unique ID number for the plan and any revisions;
- d. Standard boundary survey conducted by a surveyor licensed in the State of Maine, in the manner recommended by the State Board of Registration for Land Surveyors;
- e. An arrow showing true North and the magnetic declination, a graphic scale, and signature blocks for the owner(s) and members of the Planning Board;
- f. Locus map showing the property in relation to surrounding roads, within 2,000 feet of any property line of the development;
- g. Vicinity map and aerial photograph showing the property in relation to surrounding properties, roads, geographic, natural resource (wetland, etc.), historic sites, applicable comprehensive plan features such as proposed park locations, land uses, zones, and other features within 500 feet from any boundary of the proposed development;
- h. Surveyed acreage of the total parcel, of rights-of-way, wetlands, and area to be disturbed and amount of street frontage;
- i. Names and addresses of all owners of record of property abutting the development, including those across a street;
- j. Existing Development Area Conditions, including but not limited to:
 - i. Location and description of all structures, including signs, existing on the site, together with accesses located within 100 feet of the property line;
 - ii. Essential physical features such as watercourses, wetlands, floodplains, wildlife habitat areas, forest cover, and outcroppings;
 - iii. Utilities existing, including power, water, sewer, holding tanks, bridges, culverts and drainageways;
- k.
- l.
- m.
- n. Proposed development area conditions including, but not limited to:
 - i. Structures; their location and description including signs, to be placed on the site, floor plan of exterior walls and accesses located within 100 feet of the property line;
 - ii. Utilities proposed including power, water, sewer, holding tanks, bridges, culverts and drainageways;
 - iii. Sewage facilities type and placement. Test pit locations, at least two of which must meet the State of Maine Plumbing Code requirements, must be shown;
 - iv. Domestic water source;
 - v. Parks, open space, or conservation easement locations;
 - vi. Lot lines, interior and exterior, right-of-way, and street alignments;
 - vii. Road and other paved ways plans, profiles and typical sections including all relevant data;
 - viii. Setbacks existing and proposed;
 - ix. Machinery permanently installed locations likely to cause

appreciable noise at the lot lines;

- x. Raw, finished or waste materials to be stored outside the buildings, and any stored material of a toxic or hazardous nature;
- xi. Topographic contours of existing contours and finished grade elevations within the development;
- xii. Pedestrian ways/sidewalks, curbs, driveways, fences, retaining walls and other artificial features locations and dimensions proposed;
- xiii. Temporary marker locations adequate to enable the Planning Board to readily locate and appraise the layout of the development;
- xiv. Land proposed to be dedicated to public use and the conditions of such dedication;
- xv. Natural features or site elements to be preserved.

(7). Written Submission Requirements

- a. Legal interest documents showing legal interest of the applicant in the property to be developed. Such documents must contain the description upon which the survey was based;
 - b. Property encumbrances currently affecting the property, as well as any proposed encumbrances;
 - c. Water District approval letter, if public water is used, indicating there is adequate supply and pressure to be provided to the development;
 - d. Erosion and sedimentation control plan endorsed by the York County Soil and Water Conservation District or the Town's engineering consultant;
 - e. Stormwater management preliminary plan for stormwater and other surface water drainage prepared by a registered professional engineer including the general location of stormwater and other surface water drainage areas;
 - f. Soil survey for York County covering the development. Where the soil survey shows soils with severe restrictions for development, a high intensity Class "A" soil survey must be provided;
 - g. Vehicular traffic report estimating the amount and type of vehicular traffic that will be generated by the development on a daily basis and for peak hours;
 - h. Traffic impact analysis in accordance with § 16.10.5.2D(1) for developments involving 40 or more parking spaces or which are projected to generate more than 400 vehicle trips per day;
 - i. Test pit(s) analysis prepared by a licensed site evaluator when sewage disposal is to be accomplished by subsurface disposal, pits, prepared by a licensed site evaluator;
 - j. Town Sewage Department or community system authority letter, when sewage disposal is to be through a public or community system, approving the connection and its location;
 - k. Letters of evaluation of the development by the Chief of Police, Fire Chief, Commissioner of Public Works, and, for residential applications, the superintendent of schools, must be collected and provided by the Town Planner.
 - l. Additional submissions as may be required by other sections of this title such as for clustered development, mobile home parks, or junkyards must be provided.
- (8). Additional requirements. In its consideration of an application/plan, the Planning Board may at any point in the review require the applicant to submit additional materials, studies, analyses, and agreement proposals as it may deem necessary for

complete understanding of the application. Such materials may include:

- a. Traffic impact analysis, including the following data:
 - i. An executive summary outlining the study findings and recommendations.
 - ii. A physical description of the project site and study area encompassed by the report with a diagram of the site and its relationship to existing and proposed development sites within the study area.
 - iii. A complete description of the proposed uses for the project site (in cases where specific uses have not been identified, the highest traffic generators within the category best fitting the proposed development must be used to estimate traffic generators).
 - iv. Existing land uses and zone(s) in the vicinity of the site must be described. Any proposals for the development of vacant parcels or redevelopment of parcels within the study area of which the municipality makes the applicant aware, must be included in the description.
 - v. Street geometry and existing traffic control devices on all major streets and intersections affected by the anticipated traffic generated.
 - vi. Trip generation must be calculated for the proposed project and other proposed new projects and redevelopment projects within the study area using the most recent data available from the Institute of Transportation Engineers' (ITE) Trip Generation Guide, and/or actual field data collected from a comparable trip generator (i.e., comparable in size, location and setting). This data will be presented in a summary table such that assumptions on trip generation and rates arrived at by the engineer are fully understandable to the Planning Board.
 - vii. The anticipated trip distribution of vehicles entering and exiting the proposed site during the appropriate peak hour(s) must be described and diagrammed.
 - viii. Trip assignment, the anticipated utilization of study area streets by traffic generated by the proposed project, must be described and diagrammed.
 - ix. Existing traffic conditions in the study area will be identified and analyzed based upon actual field counts and/or recent available machine counts.
 - x. Existing traffic conditions in the study area will be described and diagrammed, specifically AADT, appropriate peak design hour(s), traffic volumes, street and intersection capacities, and levels of service.
 - xi. Existing safety conditions must be evaluated based upon the traffic accident data available for the most current three years and described including link and node critical rate factors (CRF).
 - xii. Future traffic conditions on the street system will be estimated based on existing volumes, projected traffic growth in the general study area, projected traffic from approved development, and traffic generated by the proposed project, specifically AADT traffic, appropriate peak hour(s) traffic volumes, street and intersection capacity, street and intersection levels of service will be analyzed. When other projects are being proposed within the impact area of

the project, the Planning Board may require these projects to be incorporated into the analysis.

- xiii. When the analysis of the proposed project's impact on traffic indicates unsatisfactory CRF, levels of service or operating capacity on study area streets and intersections, a description of proposed improvements to remedy identified deficiencies must be included.
 - xiv. The base data collected and analyzed during the course of the traffic impact study.
 - xv. If a development that requires a traffic impact study is within 500 feet of York or Eliot, Maine, or if the study identifies impacts on segments of Route 1 or Route 236 or on their intersections located in York or Eliot, Maine, the applicant must provide evidence that a copy of the impact study has been given to the impacted municipality's chief administrative officer;
- b. Environmental analysis. An analysis of the effects that the development may have upon surrounding lands and resources, including intensive study of groundwater, ecosystems, or pollution control systems;
 - c. Hydrologic analysis. An analysis of the effects that the development may have on groundwater must be conducted in accordance with § 16.8.6.9. This analysis is always required for mobile home park proposals.

D. Final Plan Review

(1). Process

- a. Final plan application. The applicant must, within six months after approval of a preliminary plan, file with the Planning Board an application for approval of the final plan in the form prescribed herein.
- b. Failure to submit final plan application. If the final plan is not submitted to the Planning Board within six months after the approval of the preliminary plan, the Planning Board may refuse to act on the final plan and require resubmission of the preliminary plan. Any plan resubmitted must comply with all application requirements, including payment of fees.
- c. Application/plan review expiration.
 - i. Uncounted time. When an approved plan is required to be reviewed/approved by another agency (e.g., DEP, BOA, KPA), any period the plan is at such an agency or that a plan is continued by the Planning Board in accordance with § 16.10.5.4A(3) from time of submission to time of decision inclusive, verifiable by recorded documentation, is not counted as part of the cumulative time periods described in this section.
 - ii. Requests for extension. The Planning Board may grant extensions to expiration dates upon written request by the developer, on a case-by-case basis.

(2). Final Plan Requirements

A complete final plan application must fulfill all the requirements of a preliminary plan as indicated in § 16.10.5.2 of this section and must show the following items, unless the Planning Board, by formal action, upon the applicant's written request, waives or defers any requirement(s) for submission. If no changes occurred to the preliminary plan, it also may be considered to be the final plan.

- a. Preliminary plan information, including vicinity map and any amendments thereto suggested or required by the Planning Board or other required reviewing agency.

- b. Street names and lines, pedestrian ways, lots, easements and areas to be reserved for or dedicated to public use.
- c. Street length of all straight lines, the deflection angles, radii, lengths of curves and central angles of all curves, tangent distances and tangent bearings.
- d. Lots and blocks within a subdivision, numbered in accordance with local practice.
- e. Markers/permanent reference monuments: Their location, source references and, where required, constructed in accordance with specifications herein.
- f. Structures: their location and description, including signs, to be placed on the site, floor plans and elevations of principal structures as well as detail of all structures, showing building materials and colors, and accesses located within 100 feet of the property line.
- g. Outdoor lighting and signage plan if the application involves the construction of more than 5,000 square feet of nonresidential floor area; or the creation of more than 20,000 square feet of impervious area; or the creation of three or more dwelling units in a building — prepared by a qualified lighting professional, showing at least the following at the same scale as the site plan:
 - i. All buildings, parking areas, driveways, service areas, pedestrian areas, landscaping and proposed exterior lighting fixtures;
 - ii. All proposed lighting fixture specifications and illustrations, including photometric data, designation as "cutoff" fixtures, color rendering index (CRI) of all lamps (bulbs), and other descriptive information on the fixtures;
 - iii. Mounting height of all exterior lighting fixtures;
 - iv. Lighting analyses and luminance level diagrams or photometric point-by-point diagrams on a twenty-foot grid, showing that the proposed installation conforms to the lighting level standards of the ordinance codified in this section together with statistical summaries documenting the average luminance, maximum luminance, minimum luminance, average-to-minimum uniformity ratio, and maximum-to-minimum uniformity ratio for each parking area, drive, canopy and sales or storage area;
 - v. Drawings of all relevant building elevations, showing the fixtures, the portions of the walls to be illuminated, the luminance levels of the walls, and the aiming points for any remote light fixtures; and
 - vi. A narrative that describes the hierarchy of site lighting and how the lighting will be used to provides safety, security and aesthetic effects.
- h. Machinery in permanently installed locations likely to cause appreciable noise at the lot lines.
- i. Materials (raw, finished or waste) storage areas, their types and location, and any stored toxic or hazardous materials, their types and locations.
- j. Fences, retaining walls and other artificial features locations and dimensions proposed.
- k. Landscaping plan, including location, size and type of plant material.
- l. Stormwater management plan for stormwater and other surface water drainage prepared by a registered professional engineer, including the location of stormwater and other surface water drainage area; a post-

construction stormwater management plan that defines maintenance responsibilities, responsible parties, shared costs, and schedule for maintenance; a draft maintenance agreement for stormwater management facilities; and, where applicable, draft documents creating a homeowners' association referencing the maintenance responsibilities. Where applicable, the maintenance agreement must be included in the document of covenants, homeowners' documents and/or as riders to the individual deed and recorded with the York County Registry of Deeds. **[Added 9-26-2011 by Ord. No. 11-15;7-25-2016 by Ord. No. 16-06]**

- m. Phasing plan. Upon applicant's request, the Planning Board may permit phasing of the plans, where it can be demonstrated to the Planning Board's satisfaction that such phasing would result in a safe and orderly development of the plan.
 - i. The applicant may file a section of the approved plan with the municipal officials and the York County Registry of Deeds if said section constitutes at least 25% of the total number of lots, or for plans including buildings, 25% of the gross area, contained in the approved plan. In all circumstances, plan approval of the remaining sections of the plan will remain in effect for three years unless the applicant requests and the Planning Board grants extensions of time equivalent to the requirements for approved plans in § 16.10.9.1E.
 - ii. Phasing is subject to any conditions deemed necessary to assure a reasonable mixture of uses is completed within each separate phase of the plan.
 - iii. Where projects are to be constructed in phases, phasing of stormwater management, water mains and streets are part of the review process.
 - iv. Portions of both the developed and undeveloped site impacted by interim infrastructure conditions such as unlooped water systems, stormwater runoff from unfinished areas onto finished areas and vice versa, dead-end streets, etc., must be clearly defined and shown on the plans.
 - v. The Planning Board may permit construction of phases out of order only when the storm drainage plan and the water plan, etc., have been reviewed, and it has been demonstrated that the impact on both the developed and undeveloped sections is negligible.

(3). Written Submission Requirements

- a. Open space land cession offers. Written offers of cession to the municipality of all public open space shown on the plan, and copies of agreements or other documents showing the manner in which space(s), title to which is reserved by the subdivider, are to be maintained.
- b. Open space land cession offers acknowledgement by Town. Written evidence that the municipal officers are satisfied with the legal sufficiency of the documents referred to in § 16.10.7.2M. Such written evidence does not constitute an acceptance by the municipality of any public open space referred to in § 16.10.7.2M.
- c. Performance guaranty and Town acceptance to secure completion of all improvements required by the Planning Board, and written evidence the Town Manager is satisfied with the sufficiency of such guaranty.
 - i. Where improvements for the common use of lessees or the general public have been approved, the Planning Board must require a

performance guaranty of amount sufficient to pay for said improvements as a part of the agreement.

- ii. Process. Prior to the issue of a building permit, the applicant must, in an amount and form acceptable to the Town Manager, file with the Municipal Treasurer an instrument to cover the full cost of the required improvements. A period of one year (or such other period as the Planning Board may determine appropriate, not to exceed three years) is the guaranty time within which required improvements must be completed. The performance guaranty must include an amount required for recreation land or improvements, as specified.
- d. Maintenance plan and agreement defining maintenance responsibilities, responsible parties, shared costs and schedule. Where applicable, a maintenance agreement must be included in the document of covenants, homeowners' documents and/or as riders to the individual deed.

(4). Findings of Fact.

- a. After considering all submissions, evidence and testimony in accordance with the requirements of all applicable state and the Town Code, the Planning Board must make a finding of facts for each and every proposed phase of development, including the development master plan and each subsequent development plan, and take formal action as required in this title.
- b. Findings of fact. Action by the Planning Board must be based upon findings of fact which certify or waive compliance with all the required standards of this title and which certify the development meets the following requirements:
 - i. Development conforms to local ordinances. The proposed development conforms to a duly adopted Comprehensive Plan as per adopted provisions in the Town Code, zoning ordinance, subdivision regulation or ordinance, development plan or land use plan, if any. In making this determination, the municipal reviewing authority may interpret these ordinances and plans.
 - ii. Freshwater wetlands identified. All freshwater wetlands within the project area have been identified on any maps submitted as part of the application, regardless of the size of these wetlands.
 - iii. River, stream or brook identified. Any river, stream or brook within or abutting the proposed project area has been identified on any maps submitted as part of the application. For purposes of this section, "river, stream or brook" has the same meaning as in 38 M.R.S. § 480-B, subsection 9.
 - iv. Water supply sufficient. The proposed development has sufficient water available for the reasonably foreseeable needs of the development.
 - v. Municipal water supply available. The proposed development will not cause an unreasonable burden on an existing water supply, if one is to be used.
 - vi. Sewage disposal adequate. The proposed development will provide for adequate sewage waste disposal and will not cause an unreasonable burden on municipal services, if they are utilized.
 - vii. Municipal solid waste disposal available. The proposed development will not cause an unreasonable burden on the

municipality's ability to dispose of solid waste, if municipal services are to be used.

- viii. Water body quality and shoreline protected. Whenever situated entirely or partially within 250 feet of any wetland, the proposed development will not adversely affect the quality of that body of water or unreasonably affect the shoreline of that body of water.
- ix. Groundwater protected. The proposed development will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of groundwater.
- x. Flood areas identified and development conditioned. All flood-prone areas within the project area have been identified on maps submitted as part of the application, based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps and information presented by the applicant. If the proposed development, or any part of it, is in such an area, the applicant must determine the one-hundred-year flood elevation and flood hazard boundaries within the project area. The proposed plan must include a condition of plan approval requiring that principal structures in the development will be constructed with their lowest floor, including the basement, at least one foot above the one-hundred-year flood elevation.
- xi. Stormwater managed. The proposed development will provide for adequate stormwater management.
- xii. Erosion controlled. The proposed development will not cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results.
- xiii. Traffic managed. The proposed development will:
 - a. Not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed; and
 - b. Provide adequate traffic circulation, both on site and off site.
- xiv. Water and air pollution minimized. The proposed development will not result in undue water or air pollution. In making this determination, the following must be considered:
 - a. Elevation of the land above sea level and its relation to the floodplains;
 - b. Nature of soils and subsoils and their ability to adequately support waste disposal;
 - c. Slope of the land and its effect on effluents;
 - d. Availability of streams for disposal of effluents;
 - e. Applicable state and local health and water resource rules and regulations; and
 - f. Safe transportation, disposal and storage of hazardous materials.
- xv. Aesthetic, cultural and natural values protected. The proposed development will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the Department of Inland Fisheries and Wildlife or the municipality, or rare and irreplaceable natural areas,

or any public rights for physical or visual access to the shoreline.

- xvi. Developer financially and technically capable. Developer is financially and technically capable to meet the standards of this section.
- c. In Shoreland, Resource Protection or Commercial Fisheries/Maritime Use Overlay Zones, the proposed use will:
 - i. Maintain safe and healthful conditions;
 - ii. Not result in water pollution, erosion or sedimentation to surface waters;
 - iii. Adequately provide for the disposal of all wastewater;
 - iv. Not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;
 - v. Conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;
 - vi. Protect archaeological and historic resources as designated in the comprehensive plan;
 - vii. Not adversely affect existing commercial fishing or maritime activities in a commercial fisheries/maritime activities district;
 - viii. Avoid problems associated with floodplain development and use; and
 - ix. Is in conformance with the provisions of this title.
- d. For a right-of-way plan. The proposed right-of-way:
 - i. Does not create any nonconforming lots or buildings; and
 - ii. Could reasonably permit the right of passage for an automobile.
- e. For special exception use – special exception use permitted. If a special exception use is requested, the special exception use will: **[Added 9-26-2011 by Ord. No. 11-15]**
 - i. Not prevent the orderly and reasonable use of adjacent properties or of properties in adjacent use zones;
 - ii. Not prevent the orderly and reasonable use of permitted or legally established uses in the zone wherein the proposed use is to be located, or of permitted or legally established uses in adjacent use zones; and
 - iii. Not adversely affect the safety, the health, and the welfare of the Town.
 - iv. Be in harmony with and promote the general purposes and intent of this title.

(5). Final plan approval and recording.

- a. Agreement form. An approval by the Planning Board must take the form of an agreement between the Town and the applicant, incorporating as elements the application, the Planning Board's findings of fact, and such conditions as the Planning Board may impose upon approval.
- b. Agreement distribution. The Planning Board must send copies of the agreement to the Town Manager and Code Enforcement Officer. **[Amended 9-26-2011 by Ord. No. 11-15]**
- c. Approved final plan signing. A plan has final approval only when the Planning Board has indicated approval by formal action and the plan has been properly signed by a majority of the Planning Board members or by the Chair only, if so voted by the Planning Board.

- d. Approved final plan recording. An approved plan involving the division of land, easements, or property boundary modification must be recorded by the York County Registry of Deeds. A Mylar copy of the recorded plan must be returned to the Town Planner. [**Amended 9-26-2011 by Ord. No. 11-15**]

10. Performance Standards and Approval Criteria

A. Monuments

- (1). Stone monuments.
 - a. Stone monuments must be set at all street intersections and points of curvature, but not more than 750 feet apart along street lines without curves or intersections.
 - b. Stone monuments must be set at all corners and angle points of the development boundaries where the interior angle of the boundaries is less than 135° or greater than 225°.
 - c. Stone monuments must be a minimum of four inches square at the top and four feet in length and set in the ground at final grade level. Drilled holes, 1/2 inch deep, are to serve to locate the point or points described above.
- (2). Other monumentation.

All other development boundary corners and angle points, as well as all lot boundary corners and angle points are to be marked by suitable monumentation constructed of reasonably permanent material and solidly embedded in the ground. All such monumentation must be capable of being detected by commonly used magnetic or electronic equipment and clearly show the registration number of the registered land surveyor responsible for the survey.
- (3). Impractical placement.

Where the placement of a required monument at its proper location is impractical, it is permissible to set a reference monument close to that point on an adjacent property line.

B. Water Supply

- (1). The development shall be provided with a system of water supply that provides each use with an adequate supply of water.
- (2). If the project is to be served by a public water supply, the applicant shall secure and submit a written statement from the Kittery Water District that the proposed water supply system conforms with its design and construction standards, will not result in an undue burden on the source of distribution system, and will be installed in a manner adequate to provide needed domestic and fire protection flows.
- (3). Service required.
 - a. A public water supply system with fire hydrants must be installed and approved in writing by the servicing water department.
 - a. If in the opinion of the Board service to each lot by a public water system is not feasible, the Board may allow individual wells or a central water supply system approved in writing by a civil engineer registered in the State of Maine.
 - b. If the developer proposes a central water supply system, it must also be approved in writing by the Maine Department of Human Services.
 - c. Water supply system installations are at the expense of the developer.
 - d. All required approvals of a water supply system must be secured before

official submission of the final plan.

- (4). Quality and pressure.
[Amended 9-26-2011 by Ord. No. 11-15]
The developer must demonstrate by actual test or by a signed affidavit from an authorized representative of the servicing water company that water meeting the "Maine Rules Relating to Drinking Water (10-144 C.M.R. 231)" can be supplied to the development at the rate of at least 350 gallons per day per dwelling unit and at an adequate pressure for firefighting purposes.
- (5). Storage.
Storage must be provided as necessary to meet peak domestic demands and fire protection needs.
- (6). Adequacy.
The developer must demonstrate in the form of signed affidavits from the servicing water company or by engineering reports prepared by a civil engineer registered in the State of Maine that the proposed development will not result in an undue burden on the source, treatment facilities or distribution system involved or provide adequate assurance that such source, treatment facilities or distribution system will be modified to meet the expanded needs. The cost of such improvements is to be borne by the developer.
- (7). Water main size.
The minimum water main size permitted is to be as required by the Kittery Water District, installed at the expense of the developer.
- (8). Design and installation.
The water supply system must be designed and installed in accordance with requirements of the Maine Department of Human Services.
- (9). Dug wells.
Because they are difficult to maintain in a sanitary condition, dug wells must be prohibited by deed restriction and a note on the plan, unless permitted by the Board only if it is not economically or technically feasible to develop other groundwater sources. Such dug wells permitted must be constructed so as to prevent infiltration of surface water into the well.
- (10). Central water supplies.
If a central water supply system is provided by the developer, location and protection of the source, and design, construction and operation of the distribution system and appurtenances and treatment facilities must conform to the recommendations included in the "Manual for Evaluating Public Drinking Water Supplies, Public Health Service No. 1180 (1969)."
- (11). Hydrologic analysis.
The Board may require the developer to provide a detailed hydrologic analysis in accordance with the requirements of **§ 16.9.1.5**.

C. Sewage Disposal [Amended 10-14-2015 by Ord. No. 15-10]

- (1). Sewers.
 - a. As per Chapter 13.1, Sewer Service System, connection to public sewer is required, provided said sewer, located within an abutting public way, is within 100 feet of the property line as measured along the said public way. Individual dwellings and structures in approved and recorded developments where public sewer becomes available as described in this subsection must connect per the requirements of Title 13, Chapter 13.1.
 - b. Notwithstanding the provision above and Chapter 13.1, connection to public sewer is required for a commercial or industrial development or a residential subdivision, where public sewer, within an abutting public way,

is within 1,000 feet of the property line as measured along said public way. In such an event, the developer shall connect to public sewer per the Town's Superintendent of Sewer Services (SSS) specifications and in accordance with Title 13. The developer shall provide written certification to the Planning Board from the SSS that the proposed addition to public sewer is within the capacity of the collection and wastewater treatment system.

- c. Sewer mains, service lines and related improvements must be installed at the developer's expense. Service lines must extend to each lot's boundary line. Connections to public sewer must be installed in accordance with this article and Chapter 13.1, Sewer Service System, of the Kittery Town Code.
 - d. Proposal and construction drawings must be approved in writing by the Town's SSS. All required approvals must be secured before the start of final plan review.
 - e. When public sewer connection pursuant to Subsection **B** above is not feasible as determined by the Planning Board, the Board may allow individual or common subsurface wastewater disposal systems in accordance with **§ 16.8.7.2**. To determine feasibility, the developer shall submit information that considers the unique physical circumstances of the property and sewer connection alternatives to conventional construction/installation techniques, such as, but not limited to, horizontal/directional boring and low-pressure sewer. The developer's information must be accompanied by findings and recommendations of the Town Peer Review Engineer. In determining feasibility, the Board may not base its decision solely on additional costs associated with a sewer connection. The intent of this subsection is not to avoid the requirements of Chapter 13.1, Sewer Service System, of the Kittery Town Code.
- (2). Subsurface wastewater disposal systems.
- a. The developer shall submit plans for subsurface wastewater disposal designed by a Maine licensed site evaluator in full compliance with the requirements of the State of Maine Plumbing Code, Subsurface Wastewater Disposal Rules, and this title. Subsurface wastewater disposal systems (SWDS) must be constructed according to the approved plan.
 - b. All first-time subsurface wastewater disposal systems must be installed in conformance with State of Maine Subsurface Wastewater Disposal Rules and this title. The following also apply:
 - i. The minimum setback distance for a first-time subsurface disposal system may not be reduced by variance.
 - ii. Clearing or removal of woody vegetation necessary to site a first-time system, and any associated fill extensions may not extend closer than is allowed in **Table 16.9, Minimum Setbacks from Wetlands and Water Bodies**, for subsurface sewage disposal.
 - c. Replacement of subsurface wastewater disposal systems (SWDS) for existing legal uses:
 - i. Where no expansion is proposed, the SWDS must comply with **§ 16.8.7.2 and Table 16.9** to the extent practicable and otherwise are allowed per the Maine Subsurface Wastewater Disposal Rules; or
 - ii. Where expansion is proposed, the SWDS must comply with **§ 16.8.7.2 and Table 16.9** in addition to the Maine Subsurface Wastewater Disposal Rules.

NOTE: For the purposes of this subsection, "expansion" is defined in Section 9 of the Maine Subsurface Wastewater Disposal Rules.

- d. Subsurface wastewater disposal systems on unimproved lots created after April 26, 1990. Where public sewer connection is not feasible, the developer must submit evidence of soil suitability for subsurface wastewater disposal systems, i.e., test pit data and other information as required by the State of Maine Subsurface Wastewater Disposal Rules and this title. In addition:
 - i. On lots with a limiting factor identified as being within 24 inches of the surface, a second site with suitable soils must be shown as a reserve area for future replacement should the primary site fail. Such reserve area is to be shown on the plan; not be built upon; and, must comply with all the setback requirements of the Subsurface Wastewater Disposal Rules and this title.
 - ii. In no instance may a primary or reserve disposal area be permitted on soils or on a lot requiring a first-time system variance request per the State of Maine Subsurface Wastewater Disposal Rules.
 - iii. Test pits must be of sufficient numbers (a minimum of two) and so located at representative points within each disposal area (primary and reserve sites) to ensure that the proposed disposal system can be located on soils and slopes that meet the criteria of the State of Maine Subsurface Wastewater Disposal Rules and the State Plumbing Code. All passing and failing test pits must be shown on the plan.
 - e. The developer shall install advanced pretreatment to subsurface wastewater disposal systems that are located inside or within 100 feet of areas that include a sand and gravel aquifer as indicated on the Maine Department of Agriculture, Conservation and Forestry (DACF) Geological Survey Maps or determined by Maine DACF staff.
- (3). Holding tanks.
 - a. Holding tanks are not allowed for a first-time residential use.
 - (4). (Reserved)
 - (5). Sanitary facilities/restrooms.
 - a. Any development containing a retail use or a food service use, or a combination thereof, exceeding 10,000 square feet must provide public toilet facilities in accordance with Subsections **B**, **C** and **D** of this section.
 - b. Public toilet facilities are to consist of at least one separate toilet for each sex; be clearly marked; maintained in a sanitary condition and in good repair. Lavatory facilities must be located within or immediately adjacent to all toilet rooms or vestibules. There may be no charge for their use.
 - c. Where a retail development exceeds 60,000 square feet, each toilet facility must contain a minimum of two water closets.
 - d. Requirements for handicapped accessibility to sanitary facilities are pursuant to applicable state standards.

D. Stormwater and Surface Drainage

- (1). Adequate provision must be made for drainage of all stormwater generated with the development and any drained groundwater through a management system of natural and constructed features. Where possible, existing natural runoff control features, such as berms, swales, terraces and wooded areas must be retained to reduce runoff and encourage infiltration of storm waters. Otherwise drainage may be accomplished by a management system of constructed features such as swales, culverts, underdrains and storm drains.

- (2). To ensure proper functioning, stormwater runoff control systems must be maintained in good working order per § 16.8.8.2, Post-construction stormwater management.
- (3). Where a development is traversed by a stream, river or surface water drainageway, or where the Planning Board determines that surface runoff should be controlled, easements and or drainage rights-of-way must be provided which conform substantially to the lines of existing natural drainage paths. The minimum width of the drainage easements or rights-of-way is 30 feet.
 - a. The minimum pipe size for any storm drainage pipe must be 12 inches. Maximum trench width at the pipe crown must be the outside diameter of the pipe plus two feet. The pipe must be bedded in a fine granular material, containing no stones larger than three inches, lumps of clay, or organic matter, reaching a minimum of six inches below the bottom of the pipe extending to six inches above the top of the pipe.
 - b. Except for normal thinning and landscaping, existing vegetation must be left intact to prevent soil erosion.
- (4). When proposed development does not require Maine Department of Environmental (MDEP) approval under MDEP Chapters 500 and 502, the following applies:
 - a. All components of the stormwater management system must be designed to limit peak discharge to predevelopment levels for the two-year and twenty-five-year, twenty-four-hour duration, frequencies, based on the rainfall data for Portsmouth, NH. When the development discharges directly to a major water body, peak discharge may be increased from predevelopment levels, provided downstream drainage structures are suitably sized.
 - b. The stormwater management system must be designed to accommodate upstream drainage, taking into account existing conditions and approved or planned developments not yet built and must include a surplus design capacity factor of 25% for potential increases in upstream runoff.
 - c. Downstream drainage requirements must be studied to determine the effect of the proposed development. The storm drainage must not overload existing or future planned storm drainage systems downstream from the development. The developer is responsible for financing any improvements to existing drainage systems required to handle the increased storm flows.
 - i. Wherever the storm drainage system is not within the right-of-way of a public street, perpetual easements must be provided to the Town allowing maintenance and improvement to the system.
 - ii. All sediment and erosion control measures must be designed in accordance with MDEP's "Maine Erosion and Sediment Control BMPs," March 2003.
 - iii. Catch basins in streets and roads must be installed where necessary and located at the curblin. In parking lots and other areas, catch basins must be located where necessary to ensure proper drainage.
 - iv. Where soils require a subsurface drainage system, the drains must be installed and maintained separately from the stormwater drainage system.
 - v. Where the Board has required a stormwater management and erosion control plan and MDEP approval under Chapters 500 and 502 is not required, said plan must be endorsed by the York County Soil and Water Conservation District.
 - vi. Drainage easements for existing or proposed drainageways located outside a public way must be maintained and/or improved in

accordance with § 16.8.8.2, Post-construction stormwater management.

E. Post-construction stormwater management.

- (1). Purposes. This section is enacted to provide for the health, safety and general welfare of the citizens of Kittery through monitoring and enforcement of compliance with post-construction stormwater management plans in order to comply with minimum control measures requirements of the federal Clean Water Act, of federal regulations and of Maine's Small Municipal Separate Storm Sewer Systems General Permit. This section seeks to ensure that post-construction stormwater management plan are followed and stormwater management facilities, including but not limited to any parking areas, catch basins, drainage swales, detention basins and ponds, pipes and related structures that are part of the storm drainage system, are properly maintained and pose no threat to public safety.
- (2). Authority. The Maine Department of Environmental Protection, through its dissemination of the General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems, has listed the Town of Kittery, Maine, as having a regulated small municipal separate storm sewer system ("small MS4"); under this general permit, listing as a regulated small MS4 requires enactment of this section as part of the Town's stormwater management program in order to satisfy the minimum control measures required by Part IV D 5 ("Post-construction stormwater management in new development and redevelopment").
- (3). Applicability.
 - a. In general. This section applies to all new development or redevelopment (any construction activity on premises already improved that alters stormwater drainage patterns) including one acre or more of disturbed area, or activity with less than one acre of total land area that is part of a subdivision, if the subdivision will ultimately disturb an area equal to or greater than one acre. **[Amended 7-25-2016 by Ord. No. 16-06]**
 - b. Exception. This section does not apply to new development or redevelopment on a lot, tract or parcel where that lot, tract or parcel is part of a subdivision that has received approval of its post-construction stormwater management plan and stormwater management facilities under the Town's subdivision or other zoning, planning or other land use ordinances; said lot, tract or parcel will not require additional review under this section but must comply with the post-construction stormwater management plan for that approved subdivision.
 - c. Post-construction stormwater management plan approval.
 - i. General requirement. Notwithstanding any ordinance provision to the contrary, and except as provided in § 16.8.8.2C(2), Exception, no applicant for a building permit, subdivision approval, site plan approval or other zoning, planning or other land use approval for new development or redevelopment to which this section is applicable will receive such permit or approval for that new development or redevelopment unless the applicant also receives approval for its post-construction stormwater management plan and stormwater management facilities.
 - ii. Notice of BMP discharge to Town's MS4. At the time of application for a building permit, subdivision approval, site plan approval or other zoning, planning or other land use approval for new development or redevelopment to which this section is applicable, the applicant must notify the Town Planner if its post-construction

stormwater management plan includes any BMP(s) that will discharge to the Town's MS4 and must include in this notification a listing of which BMP(s) will so discharge.

- iii. Engineering and administrative fees. At the time of application, the applicant must pay an amount to the Town estimated to be sufficient to pay the engineering review costs and administrative costs incurred by the Town in review of the post-construction stormwater management plan. The Town will deduct from this amount the engineering and administrative costs incurred by the Town based upon the hours of engineering review time and prevailing hourly rate for reimbursement of the Town's administrative costs. Any remaining engineering and administrative review costs owed by the applicant must be paid in full by the applicant prior to the issuance of any temporary or permanent certificate of occupancy, and any unused balance remaining at that time will be refunded to the applicant.
- d. Post-construction stormwater management plan compliance.
 - i. General requirements. Any person owning, operating, leasing or having control over stormwater management facilities required by a post-construction stormwater management plan approved under the Town's subdivision, site plan or other zoning, planning or other land use ordinances must demonstrate compliance with that plan as follows:
 - a. That person or a qualified post-construction stormwater inspector hired by that person must, at least annually, inspect the stormwater management facilities in accordance with all municipal and state inspection, cleaning and maintenance requirements of the approved post-construction stormwater management plan;
 - b. If the stormwater management facilities require maintenance to function as intended by the approved post-construction stormwater management plan, that person must take corrective action(s) to address the deficiency or deficiencies; and
 - c. That person or a qualified post-construction stormwater inspector hired by that person must, on or by July 1 of each year, provide a completed and signed certification to the Code Enforcement Officer in a form provided by the Town, certifying that the person has inspected the stormwater management facilities and that they are adequately maintained and functioning as intended by the approved post-construction stormwater management plan or that they require maintenance or repair, describing any required maintenance and any deficiencies found during inspection of the stormwater management facilities, and if the stormwater management facilities require maintenance or repair of deficiencies in order to function as intended by the approved post-construction stormwater management plan, the person must provide a record of the required maintenance or deficiency and corrective action(s) taken.
 - ii. Right of entry. In order to determine compliance with this section and with the post-construction stormwater management plan, the

Code Enforcement Officer may enter upon property at reasonable hours with the consent of the owner, occupant or agent to inspect the stormwater management facilities.

- e. Annual report. Beginning July 1, 2009, and each year thereafter, the Town must include the following in its annual report to the Maine Department of Environmental Protection:
 - i. Cumulative number of sites that have stormwater management facilities discharging into its MS4;
 - ii. Summary of the number of sites that have stormwater management facilities discharging into its MS4 that were reported to the Town;
 - iii. Number of sites with documented functioning stormwater management facilities; and
 - iv. Number of sites that require routine maintenance in order to continue the original line and grade, the hydraulic capacity, and the original purpose of improvements; or remedial action to ensure that stormwater management facilities are functioning as intended.
 - f. Enforcement. It is the duty of the Code Enforcement Officer to enforce the provisions of this section and take appropriate actions to seek the correction of violations. Enforcement of the post-construction stormwater management regulations are conducted in accordance with Chapter 16.4.
- (4). Storm drainage construction standards.
- a. Materials:
 - i. Reinforced concrete pipe must meet the requirements of ASTM Designation C-76 (AASHTO M170). Pipe classes are required to meet the soil and traffic loads with a safety factor of 1.2 on the 0.01 inch crack strength with Class B bedding. Joints are to be of the rubber gasket type, meeting ASTM Designation C443-70, or of an approved performed plastic jointing material such as "Ramnek." Perforated concrete pipe must conform to the requirements of AASHTO M175 for the appropriate diameters.
 - ii. Corrugated metal pipe must be bituminous-coated, meeting the requirements of AASHTO Designation M190 Type C for an iron or steel pipe or AASHTO Designation M196 for aluminum alloy pipe for sectional dimensions and type of bituminous coating. Pipe gauge is to be as required to meet the soil and traffic loads with a deflection of not more than 5%.
 - iii. SDR-35 plastic pipe installed in conformance with AASHTO bedding requirements.
 - iv. Aluminized steel (AASHTO M274) and aluminum pipe (AASHTO M46).
 - v. Catch basins are to be precast concrete truncated cone section construction, meeting the requirements of ASTM Designation C478, or precast concrete manhole block construction, meeting the requirements of ASTM C139, radial type. Castings are to be square cast iron sized for the particular inlet condition with the gratings perpendicular to the curbline. Bases may be cast-in-place 3,000 psi twenty-eight-day strength concrete or may be of precast concrete, placed on a compacted foundation of uniform density. Metal frames and traps must be set in a full mortar bed with tops and are to conform to the requirements of AASHTO M103 for carbon steel casings, AASHTO M105, Class 30 for gray iron castings or

AASHTO M183 (ASTM A283, Grade B or better) for structure steel.

- b. Drain inlet alignment is to be straight in both vertical and horizontal alignment unless specific approval for curvilinear drain is obtained in writing from the Commissioner of Public Works.
- c. Manholes are to be provided at all changes in vertical or horizontal alignment and at all junctions. On straight runs, manholes are to be placed at a maximum of three-hundred-foot intervals.
- d. Upon completion, each catch basin or manhole must be cleared of all accumulation of silt, debris or other foreign matter and kept clean until final acceptance.

F. Vehicular Traffic

- (1). Adequacy of Road System. Vehicular access to the site shall be on roads which have adequate capacity to accommodate the additional traffic generated by the development. Intersections on arterial streets within a half (0.5) mile of any entrance road which are functioning at a Level of Service of D or better prior to the development shall function at a minimum at Level of Service D after development. If any such intersection is functioning at a Level of Service E or lower prior to the development, the project shall not reduce the current level of service. This requirement may be waived by the Planning Board if the project is located within a growth area designated in the Town's adopted Comprehensive Plan and the Board determines that the project will not have an unnecessary adverse impact on traffic flow or safety.
 - a. A development not meeting this requirement may be approved if the applicant demonstrates that:
 - i. A public agency has committed funds to construct the improvements necessary to bring the level of access to this standard, or
 - ii. The applicant will assume financial responsibility for the improvements necessary to bring the level of service to this standard and will assure the completion of the improvements with a financial guarantee acceptable to the municipality.
- (2). Traffic Impact Study. When required by the Planning Board or Staff Review Committee, a Traffic Impact Study will include the following elements related to the project and surrounding street network.
 - a. An executive summary outlining the study findings and recommendations.
 - b. A physical description of the project site and study area encompassed by the report with a diagram of the site and its relationship to existing and proposed development sites within the study area.
 - c. A complete description of the proposed uses for the project site (in cases where specific uses have not been identified, the highest traffic generators within the category best fitting the proposed development must be used to estimate traffic generators).
 - d. Existing land uses and zone(s) in the vicinity of the site must be described. Any proposals for the development of vacant parcels or redevelopment of parcels within the study area of which the municipality makes the applicant aware, must be included in the description.
 - e. Street geometry and existing traffic control devices on all major streets and intersections affected by the anticipated traffic generated.
 - f. Trip generation must be calculated for the proposed project and other

proposed new projects and redevelopment projects within the study area using the most recent data available from the Institute of Transportation Engineers' (ITE) Trip Generation Guide, and/or actual field data collected from a comparable trip generator (i.e., comparable in size, location and setting). This data will be presented in a summary table such that assumptions on trip generation and rates arrived at by the engineer are fully understandable to the Planning Board.

- g. The anticipated trip distribution of vehicles entering and exiting the proposed site during the appropriate peak hour(s) must be described and diagrammed.
 - h. Trip assignment, the anticipated utilization of study area streets by traffic generated by the proposed project, must be described and diagrammed.
 - i. Existing traffic conditions in the study area will be identified and analyzed based upon actual field counts and/or recent available machine counts.
 - j. Existing traffic conditions in the study area will be described and diagrammed, specifically AADT, appropriate peak design hour(s), traffic volumes, street and intersection capacities, and levels of service.
 - k. Existing safety conditions must be evaluated based upon the traffic accident data available for the most current three years and described including link and node critical rate factors (CRF).
 - l. Future traffic conditions on the street system will be estimated based on existing volumes, projected traffic growth in the general study area, projected traffic from approved development, and traffic generated by the proposed project, specifically AADT traffic, appropriate peak hour(s) traffic volumes, street and intersection capacity, street and intersection levels of service will be analyzed. When other projects are being proposed within the impact area of the project, the Planning Board may require these projects to be incorporated into the analysis.
 - m. When the analysis of the proposed project's impact on traffic indicates unsatisfactory CRF, levels of service or operating capacity on study area streets and intersections, a description of proposed improvements to remedy identified deficiencies must be included.
 - n. The base data collected and analyzed during the course of the traffic impact study.
 - o. If a development that requires a traffic impact study is within 500 feet of York or Eliot, Maine, or if the study identifies impacts on segments of Route 1 or Route 236 or on their intersections located in York or Eliot, Maine, the applicant must provide evidence that a copy of the impact study has been given to the impacted municipality's chief administrative officer;
- (3). Access to the Site. Vehicular access to and from the development shall be safe and convenient.
- a. Any driveway or proposed street shall be designed so as to provide the minimum sight distance according to the Maine Department of Transportation standards.
 - b. Points of access and egress shall be located to avoid hazardous conflicts with existing turning movements and traffic flows.
 - c. The grade of any proposed drive shall be not more than $\pm 3\%$ for a minimum of fifty (50) feet, from the intersection.
 - d. The intersection of any access/egress drive or proposed street shall function: (a) at a Level of Service of D following development if the project will generate one thousand (1,000) or more vehicle trips per twenty-four

(24) hour period.

- e. Where a lot has frontage on two (2) or more streets, the primary access to and egress from the lot shall be provided from the street where there is less potential for traffic congestion and for traffic and pedestrians hazards. Access from other streets may be allowed if it is safe and does not promote shortcutting through the site.
 - f. Where it is necessary to safeguard against hazards to traffic and pedestrians and/or to avoid traffic congestion, the applicant shall be responsible for providing turning lanes, traffic directional islands, and traffic controls within public streets.
 - g. Accessways shall be designed and have sufficient capacity to avoid queuing of entering vehicles on any public street.
 - h. The following criteria shall be used to limit the number of driveways serving a proposed project:
 - i. No use which generates less than one hundred (100) vehicle trips per day shall have more than one (1) two-way driveway onto a single roadway. Such driveway shall be no greater than forty (40) feet wide.
 - ii. No use which generates one hundred (100) or more vehicle trips per day shall have more than two (2) points of entry from and two (2) points of egress to a single roadway. The combined width of all accessways shall not exceed sixty (60) feet.
 - iii. The Planning Board or Development Review Committee may limit a development to one (1) point of ingress/egress onto Routes 302, 35 and 115.
- (4). Accessway Location and Spacing. Accessways shall meet the following standards:
- a. Private entrances/exits shall be located at least fifty (50) feet from the closest unsignalized intersection and one hundred fifty (150) feet from the closest signalized intersection, as measured from the point of tangency for the corner to the point of tangency for the accessway. This requirement may be reduced if the shape of the site does not allow conformance with this standard.
 - b. Private accessways in or out of a development shall be separated by a minimum of seventy-five (75) feet where possible.
 - c. Accessways shall be aligned with accessways on the opposite side of a public street to the greatest extent possible.
- (5). Internal Vehicular Circulation. The layout of the site shall provide for the safe movement of passenger, service, and emergency vehicles through the site.
- a. Nonresidential projects that will be served by delivery vehicles shall provide a clear route for such vehicles with appropriate geometric design to allow turning and backing for a minimum of SU-30 vehicles.
 - i. If the project is to be served by “tractor-trailer” delivery vehicles, a clear route for such vehicles with appropriate geometric design shall allow for turning and backing for a minimum of WB-50 vehicles.
 - b. Clear routes of access shall be provided and maintained for emergency vehicles to and around buildings and shall be posted with appropriate signage (fire lane - no parking).
 - c. The layout and design of parking areas shall provide for safe and convenient circulation of vehicles throughout the lot.
 - d. All roadways shall be designed as follows:

- i. To harmonize with the topographic and natural features of the site insofar as practical by minimizing filling, grading, excavation, or other similar activities which result in unstable soil conditions and soil erosion,
 - ii. By fitting the development to the natural contour of the land and avoiding substantial areas of excessive grade and tree removal, and by retaining existing vegetation during construction,
 - iii. The road network shall provide for vehicular, pedestrian, and cyclist safety, all season emergency access, snow storage, and delivery and collection services.
- e. Nonresidential projects that include drive-through services shall be designed and have sufficient stacking capacity to avoid the queuing of vehicles on any public street.

G. Cluster Residential and Cluster Mixed-Use Development [Amended 9-26-2011 by Ord. No. 11-15; 9-24-2012 by Ord. No. 12-09]

(1). Purpose.

To implement adopted Comprehensive Plan policies regarding the Town's natural, scenic, marine, cultural and historic resources, land use patterns and recreation and open space, this article is intended to encourage and allow new concepts and innovative approaches to housing/commercial development and environmental design so development will be a permanent and long-term asset to the Town, while in harmony with the natural features of the land, water and surrounding development. Objectives include:

- a. Efficient use of the land and water, with small networks of utilities and streets;
- a. Preservation of open space and creation of recreation areas;
- b. Maintenance of rural character, preserving farmland, forests and rural viewscapes;
- c. Preservation of areas with the highest ecological value;
- d. Location of buildings and structures on those portions of the site most appropriate for development;
- e. Creation of a network of contiguous open spaces or "greenways" by linking the common open spaces within the site and to open space on adjoining lands wherever possible;
- f. Reduction of impacts on water resources by minimizing land disturbance and the creation of impervious surfaces and stormwater runoff;
- g. Preservation of historic, archaeological, and cultural features; and
- h. Minimization of residential development impact on the municipality, neighboring properties and the natural environment.

(2). Permitted zones.

- a. Cluster residential development is permitted in various zones as indicated in **Chapter 16.3**.
- a. Cluster mixed-use development is permitted only in the Business Park (B-P) Zone.

(3). Dimension standards modifications.

Notwithstanding other provisions of this title relating to dimensional standards, the Planning Board, in reviewing and approving proposed residential or mixed-use development under this article, may modify said dimensional standards to permit

flexibility in approaches to site design in accordance with the standards of this title. The Board may allow subdivision or site development with modified dimensional standards where the Board determines the benefit of a cluster development is consistent with this title. Such modifications may not be construed as granting variances to relieve hardship.

(4). Property ownership.

Tracts or parcels of land involved in a development proposed under this article must be in single ownership; or must be the subject of an application filed jointly by the owners of all properties included; or must have an applicant with vested interest in all property included. Pursuant to the requirements of this article, mobile home parks or mobile homes on individual lots are not eligible for cluster residential development.

(5). Application procedure.

All development reviewed under this article is subject to the application procedures in Chapter 16.10, Development Plan Application and Review, and the following:

- a. In addition to the requirements of **Chapter 16.10**, the following are required at submittal of the sketch plan:
 - i. Calculations and maps to illustrate:
 - a. Proposed dimensional modifications and the dimensional standards required in the zone in which the development will be located;
 - a. All land area identified in Chapter 16.7, Article **VIII**, Net Residential Acreage; [**Amended 9-28-2015 by Ord. No. 15-05**]
 - b. Net residential density; and [Amended 9-28-2015 by Ord. No. 15-05]
 - c. Open space as defined in § 16.8.11.6E(2) of this article.
 - ii. A map showing constraints to development, such as, but not limited to, wetlands, resource protection zones, shoreland zones, deer wintering areas, side slopes in excess of 33%, easements, rights-of-way, existing roads, driveway entrances and intersections, existing structures, and existing utilities.
 - iii. A written statement describing the ways the proposed development furthers the purpose and objectives of this article, including natural features which will be preserved or enhanced. Natural features include, but are not limited to, moderate-to-high-value wildlife and waterfowl habitats, important agricultural soils, moderate-to-high-yield aquifers and important natural or historic sites worthy of preservation.
 - iv. The location of each of the proposed building envelopes. Only developments having a total subdivision or site plan with building envelopes will be considered.
- b. An applicant with a project that includes proposed public open space must obtain Town Council acceptance for the public land or easement following preliminary plan approval. Town Council acceptance is contingent upon receipt of final plan approval by the Planning Board.

(6). Standards.

- a. The purpose and intent of this title must be upheld for any reviews conducted under this article.
- a. A cluster mixed-use and cluster residential development must meet all requirements for a subdivision (and site plan where applicable) and all other

applicable federal, state and local ordinances, except as modified by action of the Planning Board, where authorized.

- b. Public or privately shared sewer and water must be provided unless it is demonstrated to the Planning Board's satisfaction that alternative methods used result in a development that is compatible with this Article **XI**.
- c. Unless a public or shared sewer collection and treatment system is provided, no lot may be smaller than 20,000 square feet per single-family residence and 8,000 square feet per bedroom per multifamily residence as outlined in the Maine Minimum Lot Size Law, 12 M.R.S. § 4807-A.
- d. Open space requirements.
 - i. Open space must contain at least 50% of the total area of the property and no less than 30% of the total net residential acreage, as defined.
 - ii. Total calculated open space must be designated as follows (see open space definitions in Chapter 16.2):
 - a. Open space, reserved;
 - b. Open space, common; and/or
 - c. Open space, public.
 - iii. The use of any open space may be further limited or controlled by the Planning Board at the time of final approval, where necessary, to protect adjacent properties or uses.
 - iv. Open space must be deeded in perpetuity for the recreational amenity and environmental enhancement of the development and be recorded as such. Such deed provisions may include deed/plan restrictions, private covenants, or arrangements to preserve the integrity of open spaces and their use as approved by the Planning Board.
 - v. Open space must also be for preserving large trees, tree groves, woods, ponds, streams, glens, rock outcrops, native plant life, and wildlife cover as identified in the applicant's written statement. In the Business Park (BP) Zone, open space may be both man-made and natural. Man-made open space must be for the development of recreational areas, pedestrianways and aesthetics that serve to interconnect and unify the built and natural environments.
 - vi. Open space should be in a contiguous form of unfragmented land to protect natural resources, including plant and wildlife habitats.
 - vii. A portion of the open space should be in close proximity to other open spaces used for recreation (e.g., a common green, multipurpose athletic field, gardens, and playgrounds).
- e. In the Business Park (BP) Zone, the maximum building height is 40 feet. If the Planning Board finds that provisions for firesafety are adequate to allow buildings of greater height, then the Board may allow a building height of up to 60 feet as a part of the development plan review and approval process.
- f. In cluster residential developments, no individual lot or dwelling unit may have direct vehicular access onto a public road existing at the time of development.
- g. Where cluster residential development abuts a body of water, stream, or a significant wetland, then a usable portion of the shoreline, as well as reasonable access to such body, stream or wetland, must be a part of the commonly held land.

- h. The developer must take into consideration the following points, and illustrate the treatment of buildings, structures, spaces, paths, roads, service and parking areas, recreational facilities, and any other features determined by the Planning Board to be a part of the proposed development.
 - i. Orientation. Buildings, view corridors and other improvements are to be designed so scenic vistas and natural features are integrated into the development. Buildings should be sited to consider natural light and ventilation.
 - ii. Utility installation. All utilities are to be installed underground, wherever possible. The Planning Board must require the developer to adopt a prudent avoidance approach when permitting aboveground electrical service installations. Transformer boxes, pumping stations and meters must be located so as not to be unsightly or hazardous to the public.
 - iii. Recreation. Facilities must be provided consistent with the development proposal. Active recreation requiring permanent equipment and/or modification of the site may not be located within the wetland setback areas or contiguous reserved open space areas.
 - iv. Buffering. Planting, landscaping, form and siting of buildings and other improvements, or fencing and screening must be used to integrate the proposed development with the landscape and the character of any surrounding development.
 - v. Development setbacks. Setbacks from wetlands and water bodies must demonstrate compliance to Table 16.9 of Chapter 16.9. These setbacks must be permanently maintained as "no cut, no disturb" buffer areas. If the setback areas are not of substantial vegetation to provide a sufficient buffer, the Planning Board may require additional plantings.
 - i. The location of subsurface wastewater disposal systems and a reserve area, if required, must be shown on the plan. The reserve areas must be restricted so as not to be built upon. The report of a site evaluator, licensed by the State of Maine, must accompany the plan. If the subsurface disposal system is an engineered system, approval from the Maine Department of Human Services, Division of Health Engineering, and the Municipal Plumbing Inspector must be obtained prior to Planning Board approval.
- (7). Open space dedication and maintenance.
- a. Prior to approval of the final plan by the Planning Board, documents for open space must be submitted to the Town for review by legal counsel. Subsequent to approval, there may be no further division of the open space; however, tracts or easements dedicated for public utilities, public access or structures accessory to noncommercial recreation, agriculture or conservation may be permitted within the open space.
 - b. The open space(s) must be shown on the development plan with appropriate notation on the face thereof to indicate that:
 - i. The open space must not be used for future building lots; and
 - ii. A part or all of the open space may be dedicated for acceptance by the Town.
 - c. If any, or all, of the open space is to be reserved for ownership by the residents and/or by commercial entities, the bylaws of the proposed homeowners' or similar governing association for commercial owners (in the Business Park Zone) and/or the recorded covenants must specify

maintenance responsibilities and be submitted to the Planning Board prior to approval. See Subsection A above.

- d. Association responsibilities.
 - i. Maintenance. The homeowners' association or similar association for commercial owners is responsible for the maintenance of open space(s) and other common facilities unless and until accepted by the Town. The stormwater management system must be maintained in accordance with § 16.8.8.2, Post-construction stormwater management. Associations must maintain adequate funds to defray these expenses. The Planning Board shall require an initial capital fund for associations to be paid by the developer to cover these expenses.
 - ii. Inspection. Annually, by June 30, the developer or association must complete and submit to the Code Enforcement Officer a maintenance compliance report, on a form prepared by the Code Enforcement Officer, certifying compliance with any open space use and protection requirements. Said report must be completed by a Maine licensed civil engineer or certified soil scientist.
- e. Transition of responsibility. The developer must maintain control of such open space(s) and be responsible for maintenance until development, sufficient to support any and all associations, residential or commercial, has taken place. Responsibility and authority must be clearly defined and described in the recorded covenants, and such information must be distributed to any and all associations in a timely manner so the transition of responsibilities is seamless.

(8). Predevelopment requirements.

Prior to the beginning of site work, the applicant must file with the Town Planning Department all required performance guarantees and inspection escrows in forms acceptable to the Town Manager in accordance with § 16.10.8.2B.

H. Utilities

(1). Approval.

The size, type and location of public utilities, such as streetlights, electricity, telephone, cable television, natural gas lines, fire hydrants, water and sewer lines, etc., must be approved by the Board and installed in accordance with accepted engineering practice.

(2). Underground installation.

Utilities, where feasible, are to be installed underground. The Board must require the developer to adopt a prudent avoidance approach when aboveground electrical installations are approved.

I. Subdivision Noise Pollution Buffer

(1). Green strip.

Subdivision design must minimize the possibility of noise pollution either from within or without the development (from highway or industrial sources) by providing and maintaining a green strip at least 20 feet wide between the abutting properties that are so endangered.

J. Prevention of erosion. [Amended 9-26-2011 by Ord. No. 11-15; 10-26-2015 by Ord. No. 15-12]

- (1). No person may perform any act or use the land in a manner which would cause substantial or avoidable erosion, create a nuisance, or alter existing patterns of natural water flow in the Town. This does not affect any extractive operations

complying with the standards of performance specified elsewhere in this title.

- a. When an excavation contractor, as defined in § 16.2.2, performs an activity that requires or results in more than one cubic yard of soil disturbance within the Shoreland or Resource Protection Overlay Zones, there must be a person responsible for management of erosion and sedimentation control practices on site, and that person must be certified in erosion control practices by the Maine Department of Environmental Protection. This person must be present at the site each day earthmoving activity occurs for a duration that is sufficient to ensure that proper erosion and sedimentation control practices are followed. This is required until erosion and sedimentation control measures have been installed, which will either stay in place permanently or stay in place until the area is sufficiently covered with vegetation necessary to prevent soil erosion. The name and certification number of the person who will oversee the activity causing or resulting in soil disturbance must be included on the permit application. Excavation contractors will have one year from the date of the adoption of this subsection to comply with certification requirements.
 - b. The above requirement of § 16.9.1.3A(1) does not apply to a property owner performing work themselves, or a person or firm engaged in agriculture or timber harvesting when best management practices for erosion and sedimentation control are used.
 - c. The above requirement of § 16.9.1.3A(1) only applies to regulated activities requiring local, state or federal permits and/or Planning Board approval.
- (2). All development must generally comply with the provisions of the "Environmental Quality Handbook, Erosion and Sediment Control," published by the Maine Soil and Water Conservation Commission.
- a. The developer must:
 - i. Select a site with the right soil properties, including natural drainage and topography, for the intended use;
 - ii. Utilize for open space uses those areas with soil unsuitable for construction;
 - iii. Preserve trees and other vegetation wherever possible;
 - iv. Hold lot grading to a minimum by fitting the development to the natural contour of the land; avoid substantial areas of excessive grade;
 - v. Spread jute matting, straw or other suitable material during construction in critical areas subject to erosion;
 - vi. Construct sediment basins to trap sediment from runoff waters during development; expose as small an area of subsoil as possible at any one time during development and for as short a period as possible;
 - vii. Provide for disposing of increased runoff caused by changed land formation, paving and construction, and for avoiding sedimentation of runoff channels on or off the site;
 - viii. Plant permanent and, where applicable, indigenous, vegetation and install structures as soon as possible for the purpose of soil stabilization and revegetation;
 - b. All logging or woodlot roads must be located, constructed and maintained in conformance with the erosion prevention provisions of "Permanent Logging Roads for Better Woodlot Management," published by the United States Department of Agriculture.

- (3). Where the Board has required a stormwater management and erosion control plan, said plan must be endorsed by the York County Soil and Water Conservation District or found satisfactory by the Town's Engineering Peer Reviewer.
- (4). All activities which involve filling, grading, excavation or other similar activities that potentially may result in unstable soil conditions, and which require a permit, must be made known in a written soil erosion and sedimentation control plan in accordance with the "Maine Erosion and Sediment Control Practices Field Guide for Contractors," 2015, and as amended. The plan must be submitted to the permitting authority for approval and must include, where applicable, provisions for:
 - a. Mulching and revegetation of disturbed soil;
 - b. Temporary runoff control features, such as straw bales, silt fencing, filter socks or diversion ditches;
 - c. Permanent stabilization structures, such as retaining walls or riprap.
- (5). To create the least potential for erosion, development must be designed to fit with the topography and soil of the site. Areas of steep slopes where high cuts and fills may be required are to be avoided wherever possible, and natural contours must be followed as closely as possible.
- (6). Erosion and sedimentation control measures apply to all aspects of the proposed project involving land disturbance and must be in operation during all stages of the activity. The amount of exposed soil at every phase of construction must be minimized to reduce the potential for erosion.
- (7). Any exposed ground area must be temporarily or permanently stabilized in accordance with the "Maine Erosion and Sediment Control Practices Field Guide for Contractors," 2015, and as amended. All erosion control measures that are no longer necessary as determined by the CEO or Shoreland Resource Officer must be removed at the owner's expense.
- (8). Natural and man-made drainageways and drainage outlets must be protected from erosion from water flowing through them. Drainageways must be designed and constructed in order to carry water from a twenty-five-year storm or greater and be stabilized with vegetation or lined with riprap.

K. Soil suitability. [Amended 9-28-2015 by Ord. No. 15-07]

- (1). The requirements and standards of the State of Maine Department of Environmental Protection, Department of Health and Welfare, the latest edition of the State Plumbing Code and this title must be met.
- (2). All land uses must be located on soils upon which the proposed uses or structures can be established or maintained without causing adverse environmental effects, including, but not limited to, severe erosion, mass soil movement, improper drainage, and water pollution to surface water and groundwater, whether during or after construction.
- (3). Any proposed development requires a soil report based on information from the Maine Natural Resources Conservation Service (NRCS). Where subsurface wastewater disposal is required and the Soil Survey for York County or information from the Maine NRCS shows soils with severe restrictions for development, a Class A (high-intensity) soil survey must be provided by a soil scientist certified in the State of Maine. The survey must be based on the Maine Association of Professional Soil Scientists Standards for Soil Survey, revised 3/2009, or subsequent revision. In addition to evaluating soil properties, the soil scientist shall analyze and document characteristics of surrounding land and water areas, maximum groundwater elevation, presence of ledge, drainage conditions and any other data deemed appropriate by the soil scientist or required by the Planning

Board. The soil scientist shall include recommendations for the proposed use to counteract soil limitations where any exist. A Class A soil survey must include a written soil narrative report accompanied by a soil map that depicts soil delineations and symbols identified in the report. The soil map must be prepared at the same scale as that of the development plan, with wetlands and floodplain depicted on both.

- (4). When constructing a new dwelling unit on soils identified with severe restrictions, requiring subsurface wastewater disposal and on a lot not subject to subdivision regulation, a Class A (high-intensity) soil survey is not required. However, the site's soil suitability must be assessed and documented in a soil report by a Maine-certified soil scientist, a Maine-certified geologist, or a Maine-licensed site evaluator. Prior to the issuance of a building permit, the soil report must be submitted to the Code Enforcement Officer (CEO) for review and assessment of compliance with this title.
- (5). Cluster residential and cluster mixed-use, commercial or industrial development and similar intensive land uses require a Class A (high-intensity) soil survey by a Maine-certified soil scientist.
- (6). Where nonclustered development is limited in scale and intensity, the developer may request the Class A (high-intensity) soil survey required by § 16.9.1.4E above be waived by the Planning Board. The Board may grant said waiver only after consideration by the Town's Peer Review Engineer of the developer's explanation as to why a Class A soil survey is not warranted. In the event a Class A soil survey is not required, the site's soil suitability must be sufficiently assessed for compliance with this title.
- (7). If the soil report is challenged by the applicant, an abutter, a landowner, the CEO, or the Conservation Commission, petition must be made in writing to the Planning Board. With such petition, or a challenge by the Planning Board, the Planning Board shall determine whether a certified soil scientist should conduct an on-site investigation and at whose expense. The soil scientist shall present evidence in written form to the Planning Board, which evidence forms the basis for the Board's decision.

L. Water quality and wastewater pollution.

- (1). No activity is allowed to deposit on or into the ground or discharge to any river, stream or brook, pond or lake, or wetland any pollutant that, by itself or in combination with other activities or substances, will impair designated uses or the water classification of the water body.
- (2). Wastewater to be discharged into Kittery Sewer Department sewers, should they be available, must be in such quantities and/or of such quality as to be compatible with standards established by the municipality or the Sewer Department.
- (3). To meet those standards, the municipality or Sewer Department may require that such wastes undergo pretreatment or full treatment at the site in order to render them acceptable for the treatment processes.
- (4). The disposal of wastewater by means other than a public system must comply with the laws of the State of Maine and the Town concerning water pollution. Where a public sanitary sewer system is located within 200 feet of the property line as measured along a public way, the Town requires individual entrance into said sewer.
- (5). Discharge of sanitary wastes to any water body is subject to the issuance of Maine State Department of Environmental Protection licenses, but no such off-site discharge will be allowed unless same is buried or not visible to a point below normal low water and is secured against damage and uncovering by the tides,

erosion or other foreseeable action.

M. Air pollution.

All air pollution control shall comply with the minimum state requirements, and detailed plans shall be submitted to the State of Maine Department of Environmental Protection for approval before a building/regulated activity permit is granted. In any case, no objectionable odor, dust or smoke shall be detectable beyond the property line.

N. Buffer areas.

Any nonresidential yard setback space abutting an existing or potential residential area shall be maintained as a buffer strip by the developer. Such buffer area shall be for the purpose of eliminating any adverse effects upon the environmental or aesthetic qualities of abutting properties or any type of nuisance affecting the health, safety, welfare and property values of the residents of Kittery.

O. Floodplain areas. [Amended 9-26-2011 by Ord. No. 11-15]

- (1). Land along rivers, streams and ponds which is subject to flooding through storm or seasonal action, called floodplain areas, may be used for woodland, grassland, agricultural or outdoor recreational use. The Code Enforcement Officer shall maintain a map showing the latest updated federal and state information of the known floodplain areas, and no building shall be constructed therein when there are undue flooding hazards, unless it can meet all requirements of Chapter 16.9, Article VIII, Floodplain Management, relating to flood hazard permit and review procedure, of this title. Floodplain areas shall be considered as those areas within the one-hundred-year frequency floodplain, as identified by an authorized federal or state agency, or where such identification is not available, are located on floodplain soils identified as described in the York County Soil Survey to comprise the following soil types: Alluvial-Ondawa fsl; Podunk fsl; Rumney fsl; Saco sl.

P. Retention of Open Spaces and Natural or Historic Features

- (1). Tree clearing.
Proposed development plans must, by notes on the final plan and deed restrictions, limit the clearing of trees to those areas designated on the plans.
- (2). Clearing or removal of vegetation for uses other than timber harvesting in Resource Protection or Shoreland Overlay Zone.
 - a. In a Resource Protection or Shoreland Overlay Zone, cutting of vegetation is prohibited within the strip of land extending 100 feet, horizontal distance, inland from the normal high-water line, except to remove safety hazards. Elsewhere in a Resource Protection or Shoreland Overlay Zone, the cutting or removal of vegetation is limited to that which is necessary for uses expressly authorized in the Resource Protection or Shoreland Overlay Zone.
 - b. Except in areas as described in §§ 16.9.2.1 and 16.9.2.2A above and 100 feet, horizontal distance, from any other water body, tributary stream or the upland edge of a wetland, a buffer strip of vegetation must be preserved as follows:
 - i. Clearance of an opening greater than 250 square feet in the forest canopy, or other existing woody vegetation if a forested canopy is not present, as measured from the outer limits of the tree or shrub crown, is prohibited. However, a footpath not to exceed six feet in width as measured between tree trunks and/or shrub stems is allowed, provided that a cleared line of sight to the water through the buffer strip is not created.
 - ii. Selective cutting of trees within the buffer strip is allowed, provided a well-distributed stand of trees and other natural vegetation is

maintained. Adjacent to water bodies, tributary streams and wetlands, a "well-distributed stand of trees" is defined as maintaining a minimum rating score of 16 per twenty-five-foot-by-fifty-foot rectangular area.

Diameter of Tree at 4 1/2 feet Above Ground Level

| (inches) | Points |
|-----------------|---------------|
| 2 to < 4 | 1 |
| 4 to < 8 | 2 |
| 8 to < 12 | 4 |
| 12 or greater | 8 |

a. The following governs in applying this point system:

1. The twenty-five-foot-by-fifty-foot rectangular plots must be established where the landowner or lessee proposes clearing within the required buffer;
2. Each successive plot must be adjacent to, but not overlap a previous plot;
3. Any plot not containing the required points must have no vegetation removed except as otherwise allowed by this title;
4. Any plot containing the required points may have vegetation removed down to the minimum points required or as otherwise allowed by this title; and
5. Where conditions permit, no more than 50% of the points on any twenty-five-foot-by-fifty-foot rectangular area may consist of trees greater than 12 inches in diameter.

iii. For the purposes of § 16.9.2.2B(2), "other natural vegetation" is defined as retaining existing vegetation under three feet in height and other ground cover and retaining at least five saplings less than two inches in diameter at 4 1/2 feet above ground level for each twenty-five-foot-by-fifty-foot rectangle area. If five saplings do not exist, no woody stems less than two inches in diameter may be removed until five saplings have been recruited into the plot.

iv. Notwithstanding the above provisions, no more than 40% of the total volume of trees four inches or more in diameter, measured at 4 1/2 feet above ground level, may be removed in any ten-year period.

a. To protect water quality and wildlife habitat, existing vegetation under three feet in height and other ground cover, including leaf litter and the forest duff layer, must remain uncut, uncovered or undisturbed, except to provide for a footpath or other permitted uses as described in § 16.9.2.2B(2) above.

b. Pruning of tree branches on the bottom 1/3 of the tree is

allowed.

c. To maintain a buffer strip of vegetation, when the removal of storm-damaged, diseased, unsafe or dead trees results in the creation of cleared openings, these openings must be replanted with tree species that are suitable to Kittery's growing conditions unless existing new tree growth is present. See Design Handbook Kittery Maine, approved by the Kittery Planning Board, August 11, 2005, pages 13 and 14, for the listing of approved plant materials.

d. Article II of this chapter does not apply to those portions of public recreational facilities adjacent to public swimming areas as long as cleared areas are limited to the minimum area necessary.

- c. At distances greater than 100 feet, horizontal distance, from the normal high-water line of any other water body, tributary stream, or the upland edge of a coastal wetland, and 100 feet, horizontal distance, from the normal high-water line of any other water body, tributary stream, or the upland edge of a wetland, there will be allowed on any lot, in any ten-year period, selective cutting of not more than 40% of the volume of trees four inches or more in diameter, measured 4 1/2 feet above ground level. Tree removal in conjunction with the development of permitted uses must be included in the forty-percent calculation. For the purposes of these standards, volume may be considered to be equivalent to basal area.
- d. It is not permissible to clear openings for any purpose, including but not limited to principal and accessory structures, driveways, lawns and sewage disposal areas, exceeding in the aggregate 25% of the lot area within the Resource Protection or Shoreland Overlay Zone or 10,000 square feet, whichever is greater, including land previously cleared. This provision does not apply to the Commercial Fisheries/Maritime Activities Zones.
- e. Legally existing nonconforming cleared openings may be maintained, but must not be enlarged, except as allowed by this title.
- f. Fields and other cleared openings which have reverted to primarily shrubs, trees or other woody vegetation will be regulated under the provisions of this chapter.

(3). Land dedication.

Reserved land acceptable to the Planning Board and applicant may be gifted to the municipality as a condition of approval, only when Council has agreed to the gifting.

(4). Landscape plan for preservation of natural and historic features.

- a. The applicant is required to submit a proposed development design plan(s) that includes a landscape plan showing:
 - i. Preservation of existing trees 10 inches or more caliper at breast height;
 - ii. Replacement of trees and vegetation;
 - iii. Graded contours;
 - iv. Streams, wetlands and water bodies; and
 - v. Preservation of scenic, historic or environmentally significant areas.
- b. Cutting of trees on the northerly borders of lots should be avoided as far as possible to provide a natural wind buffer.
- c. Unless the applicant can demonstrate it is impracticable, street and lot

layout must be adapted to the topography. Extensive grading and filling must be avoided as much as possible.

- (5). Archaeological or historic sites.
 - a. When the proposed development contains any identified archaeological or historic sites or any areas identified by the Maine Critical Areas Program as rare and irreplaceable natural areas, these areas must be included in a development plan's open space, and suitably protected by appropriate covenants and management plans.
 - b. Any proposed land use activity involving structural development or soil disturbance on or adjacent to sites listed on or eligible to be listed on the National Register of Historic Places must be submitted by the applicant to the Maine Historic Preservation Commission for review and comment at least 20 days prior to action being taken by the Town Planner and/or the Planning Board. The development Review Authority will consider comments received from the Commission prior to rendering a decision on the application.
 - c. In Shoreland, Resource Protection or Commercial Fisheries/Maritime Uses Overlay Zones, a permit is not required for an archaeological excavation, provided the excavation is conducted by an archaeologist listed on the State Historic Preservation Officer's Level 1 or Level 2 approved list, and unreasonable erosion and sedimentation is prevented by means of adequate and timely temporary and permanent stabilization measures.

11. Post-Approval

- A. Approved final plan. [Amended 9-28-2015 by Ord. No. 15-08]
 - (1). An approved subdivision plan must be filed with the York County Registry of Deeds within 90 days from date of such approval. Any plan not so filed and recorded is null and void, unless particular circumstances dictate and, upon petition, the Planning Board grants an extension, which may not exceed two additional ninety-day periods.
 - (2). Where applicable, the stormwater and erosion control maintenance agreement that must be included in the document of covenants, homeowners' documents and/or as riders to the individual deed must be recorded with the York County Registry of Deeds.
- B. Subdivision plan filing, recording. Prior to recording a subdivision plan in the York County Registry of Deeds, a subdivider must have acquired Planning Board approval in accordance with this title.
- C. Subdivision land conveyance.
 - (1). No person, firm, corporation, or other legal entity may convey, offer, or agree to convey any land in a subdivision which has not been approved by the Planning Board, recorded in the York County Registry of Deeds and shown on the final plan as a separate lot.
 - (2). Subdivision frontage street completion. No lot in a subdivision may be sold, leased or otherwise conveyed before the street upon which such lot has frontage is completed to rough grade standard up to and including the entire frontage of the lot. Prior to the issuance of certificates of occupancy by the CEO, the street from which the unit is accessed must be completed in accordance with **Chapter 16.8**.
- D. Approved plan expiration. [Amended 1-28-2015 by Ord. No. 15-01]
 - (1). A subdivision plan's approval will expire if work has not commenced within one year from the Planning Board date of approval. Where work has commenced

within one year of such approval, the approval will expire unless work is complete within three years of the original date of Planning Board approval.

- (2). For all other development plans, approval will expire if work has not commenced within one year from the date of Planning Board approval. Where work has commenced within one year of such approval, the approval will expire if work is not complete within two years of the original date of Planning Board approval.
 - (3). Prior to expiration, the Planning Board may, on a case-by-case basis, grant extensions to an approved plan expiration date upon written request by the developer for an inclusive period from the original approval date, not to exceed five years for a subdivision plan and three years for all other development plans.
 - (4). When a plan's approval expires, the applicant may reapply subject to the Town Code current at the time of reapplication.
- E. Approval not acceptance of property. The approval by the Planning Board of a plan, a master site development plan or any other subsequent development plan does not constitute, nor is it evidence of, any acceptance by the municipality of any street, easement or other open space shown on the plan. When a park, playground or other recreation area is shown on the plan, approval of the plan does not constitute an acceptance by the municipality of such areas. The Planning Board must require the plan to be endorsed with appropriate notes to this effect. The Planning Board may also require the filing of a written agreement between the applicant and the municipal officials covering future deed and title, dedication and provision for the cost of grading, development, equipment and maintenance of any such recreation area.
- F. A preconstruction meeting, in accordance with Chapter 16.4.4.1, must be held prior to any clearing or earthwork.
- G. Inspection of required improvements. **[Amended 9-28-2015 by Ord. No. 15-08]**
- (1). Prior to the commencement of any work associated with development approved in accordance with this title, the developer or duly authorized representative must provide a schedule of expected construction activities by phase to the inspecting official [the Code Enforcement Officer (CEO) or their representative or, when applicable, the Town's Peer Review Engineer], and coordinate a preconstruction meeting. Attendance at said meeting must at a minimum include authorized representation from the Town, the developer and their general contractor. Meeting minutes must be prepared by the Town's representative and distributed to all attendees and the Town Planner.
 - (2). The developer or general contractor shall coordinate inspections with the inspecting official and provide written notice at least seven days prior to commencing each major phase of construction as outlined in the construction schedule. When all phases of work are complete, the general contractor shall request a final inspection from the inspecting official, who shall prepare a punch list of any outstanding items to be completed, within seven days of the final inspection. Once all outstanding items have been completed, the developer or the general contractor shall coordinate a final walk-through where the inspecting official determines if the construction has been completed in accordance with the approved plans. The inspecting official shall provide, in writing, to the developer or the general contractor within seven days of the final walk-through what, if any, construction is not complete or confirm that the development is complete and has been constructed according to the approved plans.
 - (3). If the inspecting official finds, upon inspection of the required improvements, that any of the required improvements have not been constructed in accordance with the approved plans and specifications, the inspecting official must report, in writing, to the Town Planner, the developer or duly authorized representative of the developer,

and, when applicable, the CEO. The Town Planner shall inform the Planning Board of any issues identified by the inspections. The Town shall take any steps necessary to preserve the municipality's rights.

- (4). Where applicable and in advance of any construction, the developer must deposit sufficient funds for said inspections in an applicant's service account per Chapter 3.3. The amount is based on a scope of services and fee prepared by the Town's Peer Review Engineer after review of the developer's construction estimate prepared by a professional engineer or a qualified contractor.
- (5). Stormwater and erosion control inspection.
 - a. During October to November of each year in which construction for grading, paving and landscaping occurs on a development site, the Town will, at the expense of the developer, cause the site to be inspected by a qualified individual. By December 1, the inspector must submit a site report to the Town Planner that describes the inspection findings and indicates whether stormwater and erosion control measures (both temporary and permanent) are in place and properly installed. The report must include a discussion and recommendation on any and all problem areas encountered.
 - b. After major construction activities have been completed on a development site, the developer must, on or by July 1 of each year, provide a completed and signed certification to the Code Enforcement Officer per § 16.8.8.2, Post-construction stormwater management.
 - c. Erosion control debris. The owner or occupant of any land in any zone must not allow erosion control materials, such as plastic erosion control fences and related stakes or other materials, to remain on the site but must remove the same within six months of the date such erosion control materials were installed, or the date when no longer required, whichever is later. When a violation is discovered, the Code Enforcement Officer will order compliance by written notice of violation to the owner of any land in any zone requesting removal of such violation within 30 days of the date of written notice. An extension of time to correct may be made by the Code Enforcement Officer for good and sufficient reason.
- H. Modifications to an approved plan. Any modification to an approved plan may be considered for approval under § 16.10.3.1, General development, site and subdivision plan review, § 16.10.3.2, Other development review, and/or § 16.10.9.1B, Plan revisions after approval, or § 16.10.9.3, Modifications to approved plan.
- I. Plan revisions after approval. No changes, erasures, modifications or revisions may be made to any Planning Board approved final plan, unless in accordance with the Planner's and CEO's powers and duties as found in Chapter 16.4, or unless the plan has been resubmitted and the Planning Board specifically approves such modifications. In the event a final plan is recorded without complying with this requirement, the same is null and void, and the Planning Board must institute proceedings to have the plan stricken from Town records and the York County Registry of Deeds. **[Amended 9-26-2011 by Ord. No. 11-15]**
 - (1). Field changes. [Amended 9-24-2012 by Ord. No. 12-11]
 - a. Minor. If at any time before or during the construction of the required improvements it appears to be necessary or desirable to modify the required improvements, the Code Enforcement Officer and Town Planner are authorized to approve minor plan amendments due to unforeseen field circumstances, such as encountering hidden outcrops of bedrock, natural springs, etc. The Code Enforcement Officer and Town Planner must issue any approval under this subsection in writing and transmit a copy of the

approval to the Planning Board. Revised plans must be filed with the Town and recorded, where appropriate. The developer must provide the revised plan to the Town Planner, and it shall be recorded in the York County Register of Deeds when applicable.

- b. Major. If, at any time during the construction of the required improvements, it appears necessary or desirable to modify the required improvements, major plan changes due to unforeseen field circumstances, such as relocations of rights-of-way, property boundaries, changes of grade by more than 1%, or other modifications requiring Planning Board review per § 16.10.3.2, must be reviewed by the Planning Board.

(2). Modifications to approved plan.

- a. Minor modifications. Modifications to a Planning Board approved plan that do not require Planning Board review per § 16.10.3.2 may be approved by the Code Enforcement Officer and Town Planner. Such approvals must be issued in writing to the developer with a copy to the Planning Board. The developer must provide the revised plan to the Town Planner, and it shall be recorded in the York County Register of Deeds, when applicable.
[Amended 9-24-2012 by Ord. No. 12-11]
- b. Major modifications. Major modifications (e.g., relocations of principal structures, rights-of-way or property boundaries; changes of grade by more than 1%) require Planning Board approval.

J. Maintenance of improvements. The developer, or owner, is required to maintain all improvements and provide for snow removal on streets and pedestrianways/sidewalks unless and until the improvement has been accepted by the Town Council.

K.

L. Acceptance of Streets and Ways

- (1). Conditions. A street or way constructed on private lands by the owner(s) thereof and not dedicated for public travel prior to the enactment of this title must be laid out and accepted as a public street or way by the Town Council only upon the following conditions:
 - a. The owners must give the Town a deed to the property within the boundaries of the street at the time of acceptance by the Town.
 - b. A plan of said street or way must be recorded in the York County Registry of Deeds at the time of its acceptance.
 - c. A petition for laying out and acceptance of said street or way must be submitted to the Town Council upon a form prescribed by the Commissioner of Public Works. Said petition must be accompanied by a plan, profile and cross section of said street as follows:
 - i. A plan drawn, when practical, to a scale of 40 feet to one inch and to be on one or more sheets of paper not exceeding 24 inches by 36 inches in size. Said plan must show the North point; the location and ownership of all adjoining lots of land; rights-of-way and easements; streetlights and electric lines; boundary monuments; waterways, topography and natural drainage courses with contour at not greater than two-foot intervals; all angles, bearings and radii necessary for the plotting of said street and lots and their reproduction on the ground; the distance to the nearest established street or way, together with the stations of their side lines;
 - ii. A profile of said street or way drawn to a horizontal scale of 40 feet to one inch and a vertical scale of four feet to one inch. Said profile

- must show the profile of the side lines and center line of said street or way and the proposed grades thereof. Any buildings abutting the street or way must be shown on said profile;
- iii. A cross section of said street or way drawn to a horizontal scale of five feet to one inch and a vertical scale of one foot to one inch; and
 - iv. The location and size of water and sewer mains and surface water drainage systems, as installed.
- (2). Such street or way must have been previously constructed in accordance with the standards and criteria established in **Article IV** of this chapter.
 - (3). Acceptance of streets and ways required in public interest.
 - d. Notwithstanding the provisions of any other section hereof, the Town may at any time lay out and accept any street or way in the Town as a public street or way of said Town whenever the general public interest so requires. The cost of said street or way may be borne by the Town.
 - (4). Easements.
 - e. The Board may require easements for sewerage, other utilities, drainage and stream protection. In general, easements may not be less than 20 feet in width. Wider easements may be required.
 - (5). No street or way to be accepted until after report.
 - a. Street acceptance as Town way. Upon completion of construction of any street/road intended for proposal for acceptance as a Town way, a written certification that such way meets or exceeds the design and construction standards of this title, signed by a professional engineer registered by the State of Maine, prepared at the developer's expense, must be submitted to the Board. If underground utilities are laid in such way, the developer must also provide written certification from the servicing utility(ies), that such installation was in a manner acceptable to the utility. The Board is to review the proposal and forward a recommendation to the Town Council regarding acceptance.
 - b. No street or way may be laid out and accepted by the Town Council until the Planning Board and the Public Works Commissioner have made a careful investigation thereof and reported to the Town Council their recommendations in writing with respect thereto.
- M. Recordkeeping in Shoreland and Resource Protection Overlay Zones. The Code Enforcement Officer is to keep a complete record of all essential transactions of development in the Shoreland and Resource Protection Overlay Zones, including applications submitted, permits granted or denied, variances granted or denied, revocation actions, revocation of permits, appeals, court actions, violations investigated, violations found, and fees collected. On a biennial basis, a summary of this record must be submitted to the Director of the Bureau of Land and Water Quality within the Department of Environmental Protection.
- N. Subdivision lot monumentation prior to sale. Prior to the sale of any approved subdivision lot, the subdivider must provide the Planner with a letter from a registered land surveyor, stating all monumentation shown on the plan has been installed.
- O. Utility service. Prior to the installation of any public utility to a site, the developer must have obtained all necessary approvals from the appropriate local, state or federal authority.
- P. Grading/construction final plan required. Grading or construction of roads, grading of land or lots, or construction of buildings which require a final plan as provided in this title, until such time as the final plan has been duly prepared, submitted, reviewed, approved and endorsed as provided in this title, is prohibited until the original copy of the final plan so

approved and endorsed has been duly recorded in the York County Registry of Deeds.

- Q. Nonstormwater discharge. No person, except where exempted in Title 16.9.7, may create, initiate, originate, or maintain a nonstormwater discharge to the storm drainage system. Such nonstormwater discharges are prohibited notwithstanding the fact that the municipality may have approved the connections, drains or conveyances by which a person discharges unallowable nonstormwater discharges to the storm drainage system. [Amended 5-22-2017 by Ord. No. 17-06; 5-30-2018 by Ord. No. 04-18]
- R. Nuisances. Any violation of this title is deemed to be a nuisance.
- S. Erosion control debris. The owner or occupant of any land in any zone must not allow erosion control materials, such as plastic erosion control fences and related stakes or other materials, to remain on the site but must remove the same within six months of the date such erosion control materials were installed, or the date when no longer required, whichever is later. When a violation is discovered, the Code Enforcement Officer will order compliance by written notice of violation to the owner of any land in any zone requesting removal of such violation within 30 days of the date of written notice. An extension of time to correct may be made by the Code Enforcement Officer for good and sufficient reason.

16.9 Shoreland and Marine-Related Development

[Amended 9-24-2012 by Ord. No. 12-11; 1-27-2014 by Ord. No. 14-01]

1. Authority and scope.

- A. The Kittery Port Authority (KPA), through its established Rules and Regulations, reviews and approves applications for piers, wharves, landings, floats, bridges, and other water-dependent structures or uses. Applications are available online and at the Town offices and are submitted to the Planning and Development Department with the required copies and application fee. Applications that contain upland development within 100 feet of the upland edge of a coastal or freshwater wetland must be submitted as a separate application for Planning Board review and approval and include all information required in § 16.11.2 below.
- B. KPA applications must be reviewed by the Town Planner and Code Enforcement Officer prior to the KPA Chairperson reviewing for completeness and placement on the Port Authority's agenda.
- C. Port Authority approval extends from the navigable tidal waters to the mean high-water line or upland edge of a coastal wetland.
- D. The Port Authority may approve, for convenience of access to a pier from land upland of the mean high-water line or the edge of a coastal wetland, an extension of the pier that is the shortest practicable extension at its nominal height and width.
- E. Only one pier, ramp and float structure is permitted on any noncommercial or nonindustrial lot.
- F. Only functionally water-dependent uses are allowed on, over, or abutting a pier, wharf, or other structure beyond the normal high-water line.
- G. All other structures upland of, and abutting or built on or over, a structure extending into a water body beyond the mean high-water line or the edge of a coastal wetland require Planning Board approval.
- H. Where the Planning Board must review and approve a development plan involving a pier, ramp, flotation system or principal marine structure, and prior to Planning Board approval, the Port Authority must comment on the plan's conformance with Port Authority rules and regulations and navigational aspects of any proposed pier, ramp and float system or principal marine structure.

I.

J.

2. Applications.

- A. Shorefront development applications for marine-related use must include the following:
 - (1). Aerial photographs (images available in the public domain) and vicinity maps and plans showing the property in relation to surrounding properties, and the location of the lots that would have use of the pier, ramp and float system. Maps and plans are to include:
 - a. Construction plans for piers, ramps and floats;
 - b. Areas of vegetation clearing;
 - c. Location of required parking space(s); and
 - d. Location of boat and/or float storage.
 - (2). Rights granted for access to the pier, ramp and float system or to any water-dependent structure; public and private access paths.
 - (3). Documentation addressing visual impact and controls to assure continuing

conformance to the shorefront development plan and this title.

- (4). The applicant must show at submittal that all necessary applications for permits, leases, approvals, and any supporting documentation as may be required have been filed, including the following:
 - a. Department of Environmental Protection permit application pursuant to the Natural Resources Protection Act, 38 M.R.S. § 480C;
 - b. Army Corps of Engineers permit application;
 - c. Maine State Department of Conservation, Bureau of Parks and Lands, Submerged Land Coordinator application; and
 - d. Building permit application.
- (5). Any other details requested by the Planning Board or Port Authority.

3. Shorefront development plan review.

- A. All applications containing upland development require Planning Board review, excluding development as described in § 16.11.1B.
- B. If Planning Board review is not required, the Town Planner, in consultation with the Code Enforcement Officer, will review the application for land use compliance with this title and forward a written record of findings to the Planning Board and Port Authority, and forward the application to the Port Authority for processing.
- C. The Town Planner must transmit copies of Planning Board decisions and the Code Enforcement Officer must transmit copies of Board of Appeals decisions and all documentation constituting the record of the decision for marine-related development to the Port Authority.
- D. The Port Authority will notify the applicant and the Code Enforcement Officer, in writing, of the granting of, or denial of, the applicant's request.
- E. All required local approvals (excluding Town building permits), federal and state approvals and/or permits must be received in the Planning Office prior to the issuance of a building permit by the Code Enforcement Officer.
- F. Prior to the commencement of construction on any pier, dock, wharf, marina or any other proposed use that projects into a water body, the owner and/or developer must apply for, and obtain, a building permit from the Code Enforcement Officer.