

1 **16.1 General Provisions**

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3 **16.1.1 Title; Applicability**

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5 A. This title is known, and may be cited as, the "Land Use and Development Code of the Town
6 of Kittery, Maine."

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8 B. Application of title. The provisions of this title pertain to all the land and water areas as
9 herein defined within the boundaries of the Town.

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12 **16.1.2 Purpose**

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14 A. This title is designed for all the purposes of zoning embraced in the Maine Revised Statutes
15 and has been created as an integral part of a growth management program, comprehensive
16 planning, and implementation process for the Town to promote the health, safety and general
17 welfare of its residents.

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19 B. Among other things, zoning is designed to:

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21 (1). Encourage the most appropriate use of land and water throughout the Town;

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23 (2). Promote traffic safety;

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25 (3). Provide safety from fire and other elements;

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27 (4). Provide adequate light and air;

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29 (5). Prevent overcrowding of real property;

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31 (6). Prevent development in unsuitable areas;

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33 (7). Promote an adequate transportation and circulation system;

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35 (8). Control and manage the coordinated development of unbuilt areas;

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37 (9). Encourage the formation of community units;

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39 (10). Provide an allotment of land area in new developments sufficient for all the

40 requirements of community life;

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42 (11). Conserve energy and natural resources and protect the environment;

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44 (12). Preserve land values; and

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46 (13). Provide for adequate public services.

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48 **16.1.3 Administration of Title 16**

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50 A. The Planning Board and Code Enforcement Officer administer this Title and have the duties
51 as prescribed herein.

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53 **16.1.4 Conflicting requirements**

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55 A. Conflict within this title. Where the requirements of this title are in conflict with each other,
56 the most restrictive or that imposing the higher standards governs.

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58 B. Conflict with other laws. Wherever the requirements of this title are at variance with the
59 requirements of any other lawfully adopted rules, regulations, ordinances, deed restrictions or
60 covenants, the most restrictive or that imposing the higher standards governs.

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62 **16.1.5 Severability**

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64 A. In the event that any section, subsection or any portion of this title is declared by any court of
65 competent jurisdiction to be invalid for any reason, such decision does not affect the validity
66 of any other section, subsection or other portion of this title; to this end, the provisions of this
67 title are declared to be severable.

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69 **16.1.6 Rules of Construction**

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71 A. For the purposes of this Ordinance:

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73 B. The word “person” includes a firm, association, organization, partnership, trust, company or
74 corporation as well as an individual;

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76 C. The present tense includes the future tense;

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78 D. Words used in the singular include the plural and words used in the plural include the
79 singular;

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- E. The words “shall” and “must” are mandatory, the word “may” is permissive;
- F. The words “used” or “occupied” include the words “intended,” “designed,” or “arranged to be used or occupied”;
- G. The word “dwelling” includes the word “residence”;
- H. The word “lot” includes the words “plot” and parcel”
- I. In case of any difference of meaning or implication between the text of this chapter and any map or illustration, the text shall control;
- J. Terms not defined shall have their customary dictionary meaning.

16.1.7 Amendments

- A. No amendments to this title may be adopted until after the Planning Board and the Town Council have held a public hearing thereon. Public notice of the hearing must be published as required by 30-A M.R.S. Section 4352. Said amendments are effective as provided by the Town Charter.

16.1.8 General Development Requirements

- A. This chapter outlines requirements for conformity; discusses nonconformance and waivers; and defines various development review thresholds and requirements to further the safe and orderly development of the Town.
- B. Conformity
 - (1). Conformity required.
No building, structure or land may hereafter be used or occupied, and no building or structure or part thereof may hereafter be erected, constructed, expanded, moved or altered, and no new lot may be created except in conformity with all of the regulations herein specified for the zone where it is located, unless such structure or use exists as a legally nonconforming use or a variance is granted. See §16.7.11.B. and §16.8.10.D., for specific requirements related to septic waste disposal systems.
 - (2). Minimums and uniformity.
The regulations specified by this title for each class of district are minimum requirements and apply uniformly to each class or kind of structure or land.

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- (3). Land within street lines.
Land within the lines of a street on which a lot abuts is not considered as part of such lot for the purposes of meeting the area/frontage requirements of §16.4, notwithstanding the fact that the fee to such land may be in the owner of such lot.

- (4). Yard, parking or loading space.
No part of a yard or other space or off-street parking or loading space about or in connection with any building and required for the purpose of complying with this title may be included as part of a yard, open space or off-street parking or loading space similarly required for any other building, except as authorized in § 16.7.11.F.

- (5). Zone boundary line extension.
Where a zoning district boundary line divides a lot, the regulations applicable to either zone of such lot may extend not more than 50 feet into the portion in the other zone(s), except when a less restrictive portion abuts the Resource Protection Zone.
 - (a) Before granting any such extension, the Planning Board must determine that the proposed use of the extended portion will:
 - [1] Not prevent the orderly and reasonable use of properties in the adjacent zone;
 - [2] Be in harmony with the character of the adjacent zone;
 - [3] Not adversely affect the property values of adjacent zone's immediate neighborhoods;
 - [4] Not create any traffic hazards or undue traffic congestion on streets in the adjacent zone;
 - [5] Not give off obnoxious gases, odors, smoke or soot;
 - [6] Not cause disturbing emission of electrical discharges, dust, light, vibration or noise; and
 - [7] Be adequately screened from the adjacent zone.
 - (b) The Planning Board may require a study to be performed or commissioned by the applicant to ensure compliance with the above requirements.

- (6). Averaging building setbacks.

162 Building setback from the street line need not be greater than the average of the setback
163 distances of the buildings on the lots next thereto on either side.

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165 C. Nonconformance

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167 (1). Purpose.

168 The purpose of this title is to promote land use conformities and to regulate
169 nonconforming structures, uses, and lots, and to promote the following objectives.

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171 (2). Prohibitions and allowances.

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173 (a) Except as otherwise provided in this article, a nonconforming condition must not be
174 permitted to become more nonconforming.

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176 (b) Nonconforming vacant lots of record may be developed, maintained or repaired.

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178 (c) Nonconforming uses may continue, may be changed to an equal or more
179 appropriate nonconforming use, or be changed to a conforming use.

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181 (3). General.

182

183 (a) Transfer of ownership. Legally nonconforming structures, lots, and uses may be
184 transferred, and the new owner may continue the nonconforming use or continue to
185 use the nonconforming structure and/or lot, subject to the provisions of this title.

186

187 (b) Repair and maintenance. This title allows the normal upkeep and maintenance of
188 nonconforming uses and structures including repairs or renovations that do not
189 involve expansion of the nonconforming use or structure that is not otherwise
190 permitted by this title, and such other changes in a nonconforming use or structure
191 as federal, state, or local building and safety codes may require.

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193 (c) Nonconforming parking or loading space. A structure and/or use which is
194 nonconforming as to the requirements for off-street loading and/or parking spaces
195 may not be enlarged or added to unless off-street space is provided sufficient to
196 satisfy the requirements of this title for both the original and addition or
197 enlargement of the structure or use.

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199 (4). Nonconforming structures.

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201 (a) Nonconforming structure relocation. Except where otherwise permitted in this title,
202 relocation of a nonconforming structure must be approved by the Board of Appeals.

203 In cases where the structure is located in the Shoreland or Resource Protection
204 Overlay Zone, the relocation must be approved by the Planning Board.

205
206 [1] A nonconforming structure may be relocated within the boundaries of the parcel
207 on which the structure is located provided the site of relocation conforms to all
208 dimensional requirements, to the greatest practical extent, as determined by the
209 Planning Board or Board of Appeals, and provided the applicant demonstrates
210 the present subsurface sewage disposal system meets the requirements of state
211 law and the State of Maine Subsurface Wastewater Disposal Rules, or a new
212 system can be installed in compliance with the law and said rules. In no case
213 may the relocation of a structure be permitted that causes the structure to be
214 more nonconforming. See Chapter §16.7.11.B and §16.8.10.D, for other specific
215 requirements related to septic waste disposal systems.

216
217 [2] In determining whether the structure relocation meets the setback to the greatest
218 practical extent, the Planning Board or Board of Appeals must consider the
219 following conditions:

- 220
- 221 [a] The size of the lot;
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 - 223 [b] The slope of the land;
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 - 225 [c] The potential for soil erosion;
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 - 227 [d] The location of other structures on the property and on adjacent properties;
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 - 229 [e] The location of the septic system and other on-site soils suitable for septic
230 systems;
 - 231
 - 232 [f] The type and amount of vegetation to be removed to accomplish the
233 relocation.

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235 [3] When it is necessary to remove vegetation within the water or wetland setback
236 area to relocate a structure, replanting of native vegetation to compensate for the
237 destroyed vegetation is required. The Planning Board or Board of Appeals may
238 restrict mowing around and pruning of the replanted native vegetation to
239 encourage a more natural state of growth. Tree removal and vegetation
240 replanting is required as follows, effective 2-28-15:

- 241
- 242 [a] Prior to the commencement of on-site construction, areas to remain
243 undisturbed must be clearly marked with stakes and caution tape. All stakes,
244 caution tape, silt fences, and other materials used during construction must

245 remain until all on-site work is completed. Prior to removal, written
246 permission to remove such materials must be given by the Code Enforcement
247 Officer.

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249 [b] Trees removed to relocate a structure must be replanted with at least one
250 native tree, six feet in height, for every tree removed. If more than five trees
251 are planted, no one species of tree can be used to make up more than 50% of
252 the number of trees planted. Replaced trees must be planted no farther from
253 the water or wetland than the trees removed.

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255 [c] Other woody and herbaceous vegetation and ground cover that is
256 removed, or destroyed, to relocate a structure must be reestablished. An area
257 at least the same size as the area where vegetation and/or ground cover was
258 disturbed, damaged, or removed must be reestablished within the setback
259 area. The vegetation and/or ground cover must consist of native vegetation
260 and/or ground cover similar to that disturbed, destroyed or removed.

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262 [d] Where feasible, when a structure is relocated on a parcel, the original
263 location of the structure must be replanted with vegetation consisting of
264 grasses, shrubs, trees or a combination thereof.

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266 [4] If the total footprint of the original structure can be relocated beyond the
267 required setback area, no portion of the relocated structure may be constructed at
268 less than the setback requirement for a new structure.

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270 (b) Nonconforming structure repair and/or expansion.

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272 [1] The Code Enforcement Officer may approve the repair and/or expansion of a
273 nonconforming structure provided the proposed expansion is not located in the
274 base zone setback of the Shoreland Overlay Zone or at any location and meets
275 either of the following criteria:

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277 [a] A vertical expansion that follows the existing building footprint;

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279 [b] Will not result in setbacks less than those existing.

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281 [2] Except where otherwise permitted in this title, repair and/or expansion of a
282 nonconforming structure must be approved by the Board of Appeals. In cases
283 where the structure is located in the base zone setback of the Shoreland Overlay
284 or Resource Protection Overlay Zone, the repair and/or expansion must be
285 approved by the Planning Board.

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287 [3] This subsection does not apply to any proposed vertical expansion of a patio,
288 deck or accessory structure permitted to be closer to a water body or to a
289 principal structure in accordance with Table 16.5.30s - Minimum Setbacks from
290 Wetlands and Water Bodies.

291
292 [a] A nonconforming structure may be repaired or maintained and may be
293 expanded in conformity with the dimensional requirements, such as setback,
294 height, etc., as contained in this title. If the proposed expansion of a
295 nonconforming structure cannot meet the dimensional requirements of this
296 title, the Board of Appeals or the Planning Board will review such expansion
297 application and may approve proposed changes provided the changes are no
298 more nonconforming than the existing condition and the Board of Appeals or
299 the Planning Board makes its decision per § 16.2.12.F(2).

300
301 [b] Except in the Residential - Village (R-V) Zone, minimum setbacks of
302 residential storage sheds that are less than 121 square feet, one-story
303 residential garages that are less than 577 square feet, and decks less than 251
304 square feet may be one-half the minimum rear and side yard setbacks,
305 providing the lots are legally nonconforming.

306
307 [c] Where the expansion of the residential use within the Commercial Zones
308 involves an expansion of a structure, the structure must be expanded in
309 conformity with the dimensional requirements contained in this title. If the
310 proposed structure expansion cannot meet the dimensional requirements of
311 this title, the application may be submitted to the Board of Appeals for review
312 as a miscellaneous variation request. In reviewing all such applications, the
313 Board of Appeals must use the criteria established in this section, and then
314 may approve the proposed variations to the dimensional requirements.

315
316 [d] The addition of steps and landings, exterior to the structure, does not
317 constitute expansion. Such steps are not to be considered part of the structure
318 for such determination. Step landings may not exceed three feet by three feet
319 in size.

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321 [e] In addition to the standards in the above § 16.1.8.C(4)(b)[3][a] through
322 [d], the expansion of nonconforming and the construction of new, enlarged,
323 or replacement foundation beneath a nonconforming structure located in the
324 Shoreland or Resource Protection Overlay Zone must meet the following:

325
326 [i] Wherever a new, enlarged, or replacement foundation is constructed under
327 an existing nonconforming structure the structure and new foundation
328 must be placed such that setback requirements are met to the greatest
329 practical extent as determined by the Planning Board, basing its decision
330 on the criteria specified in § 16.1.8.C(4)(a), Nonconforming structure

331 relocation.

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333 [ii] All new principal and accessory structures, excluding functionally water-
334 dependent uses, must meet the water body, tributary stream, or wetland
335 setback requirements contained in § 16.4.28.E. A nonconforming structure
336 may be added to or expanded after obtaining a permit from the same
337 permitting authority as that for a new structure, if such addition or
338 expansion does not increase the nonconformity of the structure and is in
339 accordance with § 16.1.8(4)(b)[3][e][iv] and [v] below.

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341 [iii] If a legally nonconforming principal structure is located partially within
342 25 feet from the normal high-water line of a water body, tributary stream,
343 or upland edge of a coastal or freshwater wetland, expansion of the
344 footprint and/or height of any portion of the structure that is located within
345 25 feet of the normal high-water line of a water body, tributary stream, or
346 upland edge of a coastal or freshwater wetland is prohibited even if the
347 expansion will not increase nonconformity with the water body, tributary
348 stream, or wetland setback requirement. Expansion of an accessory
349 structure that is located closer to the normal high-water line of a water
350 body, tributary stream, or upland edge of a coastal or freshwater wetland
351 than the principal structure is prohibited, even if the expansion will not
352 increase nonconformity with the water body, tributary stream, or coastal or
353 freshwater wetland setback requirement.

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355 [iv] Notwithstanding § 16.1.8.C.(4)(b)[3][e][ii] , if a legally existing
356 nonconforming principal structure is entirely located less than 25 feet from
357 the normal high-water line of a waterbody, tributary stream, or upland
358 edge of a coastal or freshwater wetland, that structure may be expanded as
359 follows, as long as all other applicable municipal land use standards are
360 met and the expansion is not prohibited by § 16.1.8.C(4)(b)[3][e][ii]:

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362 [A] The maximum total footprint for the principal structure may not be
363 expanded to a size greater than 800 square feet or 30% larger than the
364 footprint that existed on January 1, 1989, whichever is greater. The
365 maximum height of the principal structure may not be made greater than
366 15 feet or the height of the existing structure, whichever is greater.

367

368 [v] All other legally existing nonconforming principal and accessory
369 structures that do not meet the water body, tributary stream, or coastal or
370 freshwater wetland setback requirements may be expanded or altered as
371 follows, as long as other applicable municipal land use standards are met
372 and the expansion is not prohibited by § 16.1.8.C(4)(b)[3][e][ii] and [iii].
373 above:

374

375 [A] For structures located less than the base zone setback from the
376 normal high-water line of a water body, tributary stream, or upland edge
377 of a coastal or freshwater wetland, the maximum combined total footprint
378 for all structures may not be expanded to a size greater than 1,000 square
379 feet, or 30% larger than the footprint that existed on January 1, 1989,
380 whichever is greater. The maximum height of any portion of a structure
381 that is located within the base zone setback may not be made greater than
382 20 feet, or the height of the existing structure, whichever is greater.

383
384 [B] In addition to the limitations in § 16.1.8.C(4)(b)[3][e][v] above, for
385 structures that are legally nonconforming due to their location within the
386 Resource Protection Overlay Zone when located at less than 250 feet from
387 the normal high-water line of a water body or the upland edge of a coastal
388 or freshwater wetland, the maximum combined total footprint for all
389 structures may not be expanded to a size greater than 1,500 square feet, or
390 30% larger than the footprint that existed at the time the Resource
391 Protection Overlay Zone was established on the lot, whichever is greater.
392 The maximum height of any structure may not be greater than 25 feet, or
393 the height of the existing structure, whichever is greater, except that any
394 portion of those structures located less than the base zone setback from the
395 normal high-water line of a waterbody, tributary stream, or upland edge of
396 a coastal or freshwater wetland must meet the footprint and height limits
397 in § 16.1.8.C(4)(b)[3][e][iv][A], and [v][A] above.

398 [vi] An approved plan for expansion of a nonconforming structure must be
399 recorded by the applicant with the York County Registry of Deeds within 90
400 days of approval. The recorded plan must show the existing and proposed
401 footprint of the nonconforming structure, the existing and proposed structure
402 height, the footprint of any other structures on the parcel, the Shoreland
403 Overlay Zone and/or the Resource Protection Overlay Zone boundary and
404 evidence of approval by the municipal review authority.

405
406 (c) Nonconforming structure reconstruction.

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408 [1] In the Shoreland or Resource Protection Overlay Zone(s), any nonconforming
409 structure which is located less than the required setback from a water body,
410 tributary stream, or coastal or freshwater wetland and which is removed,
411 damaged or destroyed, by any cause, by more than 50% of the assessed value of
412 the structure before such damage, destruction or removal, may be reconstructed
413 or replaced provided that a permit is obtained within 18 months of the date of
414 said damage, destruction, or removal, and provided that such reconstruction or
415 replacement is in compliance with the water body, tributary stream or coastal or
416 freshwater wetland setback requirement to the greatest practical extent as
417 determined by the Planning Board. In determining whether the structure
418 reconstruction meets the setback to the greatest practical extent the Planning

- 419 Board must consider, in addition to the criteria in § 16.1.8.C(4)(a),
420 Nonconforming structure relocation, the physical condition and type of
421 foundation present, if any.
422
- 423 [2] In the Shoreland or Resource Protection Overlay Zone(s), any nonconforming
424 structure which is located less than the required setback from a water body,
425 tributary stream, or coastal or freshwater wetland and removed, damaged or
426 destroyed by any cause by 50% or less of the assessed value of the structure
427 before such damage, destruction or removal, may be reconstructed in place if a
428 permit is obtained from the Code Enforcement Officer within 12 months of the
429 established date of damage or destruction.
430
- 431 [3] Outside of the Shoreland or Resource Protection Overlay Zone(s), any
432 nonconforming structure which is removed, damaged or destroyed by any cause
433 may be restored or reconstructed in place if a permit is obtained from the Code
434 Enforcement Officer within 18 months of the date of said removal, damage or
435 destruction. Such restoration or reconstruction must not make the structure more
436 nonconforming than the prior nonconforming structure.
437
- 438 [4] Nothing in this section prevents the demolition of the remains of any structure
439 damaged or destroyed. Application for a demolition permit for any structure that
440 has been partially damaged or destroyed must be made to the Code Enforcement
441 Officer.
442
- 443 [5] In the Shoreland or Resource Protection Overlay Zone(s), if the total footprint of
444 the original structure can be reconstructed beyond the required setback area, no
445 portion of the reconstructed structure may be reconstructed at less than the
446 setback requirement for a new structure. If the reconstructed or replacement
447 structure is less than the required setback, it may not be any larger than the
448 original structure, except as allowed in § 16.1.8.C(4)(b), Nonconforming
449 structure repair and expansion.
450
- 451 [6] When it is necessary to remove vegetation to reconstruct a structure, vegetation
452 must be replanted in accordance with § 16.1.8.C(4)(a)[3], Nonconforming
453 structure relocation.
454
- 455 [7] Except where expressly permitted in this title, in no case may a structure be
456 reconstructed or replaced so as to increase its nonconformity.
457
- 458 (5). Nonconforming uses.
459
- 460 (a) Nonconforming use continuance. The use of land, or structure, lawful at the time
461 such use began, may continue although such use may not meet the provisions of

462 this title.

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464 (b) Resumption of discontinued use prohibited. A nonconforming use discontinued for
465 a period exceeding one year, or which is superseded by a conforming use, loses its
466 status as a permitted nonconforming use. The uses of the land or structure must
467 thereafter meet the provisions of this title. This provision does not apply to the
468 resumption of a use of a residential structure where it can be demonstrated that the
469 structure has been used or maintained for residential occupancy during the
470 preceding five-year period.

471

472 (c) Nonconforming use expansion. Expansion of nonconforming uses is prohibited,
473 except nonconforming residential uses may be expanded within existing residential
474 structures. Where the expansion of a nonconforming residential use involves the
475 expansion of a structure, the structure must be expanded in conformity with all
476 requirements as outlined in § 16.1.8.C(4), Nonconforming structures.

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478 (d) Nonconforming use change: review authority and evaluations. The reviewing
479 authority may require evaluations be prepared by a person certified and/or qualified
480 to perform the required evaluation. It is the burden and responsibility of the
481 applicant to bear the costs for such evaluations. In the event there are existing
482 official maps, data and/or reports for general use, the applicant is encouraged to
483 submit copies of these documents to the reviewing authority. In determining that no
484 greater adverse impact will occur, the applicant may be required to submit an
485 evaluation in writing regarding the probable effects on public health and safety,
486 erosion and sedimentation, water quality, fish and wildlife habitat, vegetative
487 cover, visual and actual points of public access to waters, natural beauty, floodplain
488 management, archaeological and historic resources, and commercial fishing and
489 maritime activities, and other functionally water-dependent uses.

490

491 [1] The Town Planner and the Code Enforcement Officer may approve the change
492 of use of a nonconforming structure where it can be deemed the proposed use is
493 a conforming use and the proposed use does not impact a water body, tributary
494 stream, or wetland.

495

496 [2] Outside the areas regulated by Shoreland Overlay Zone or Resource Protection
497 Overlay Zone, an existing nonconforming use may be changed to another
498 nonconforming use with approval of the Board of Appeals.

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500 [3] Within areas regulated by Shoreland Overlay Zone or Resource Protection
501 Overlay Zone, an existing nonconforming use may be changed to another
502 nonconforming use with the approval of the Planning Board.

503

504 (6). Nonconforming lots.

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(a) Nonconforming lots of record.

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[1] Nonconforming lots. In any district, notwithstanding limitations imposed by other sections of this title, single noncontiguous lots legally created when recorded may be built upon consistent with the uses in the particular zone. These provisions apply even though such lots fail to meet the minimum requirements for area or width, or both, which are applicable in the zone, provided that yard dimensions and other requirements, not involving area or width, or both, of the lot conform to the regulation for the zone in which such lot is located.

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Relaxation of yard and other requirements not involving area or width may be obtained only through miscellaneous variation request to the Board of Appeals.

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(b) Contiguous nonconforming lots.

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[1] Contiguous nonconforming lots. If two or more contiguous nonconforming lots or portions thereof are in single or joint ownership of record, and if all or part of the lots do not meet the dimensional requirements of this title, and if one or more of the lots are vacant or contain no principal structure, the lots must be combined to the extent necessary to meet the applicable dimensional requirements of this title.

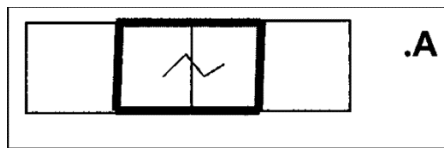
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[2] Contiguous-built upon nonconforming lots. If two or more contiguous lots or parcels were in a single or joint ownership of record prior to July 13, 1977, or prior to December 15, 1973 for properties within the Shoreland Overlay Zone, if all or part of the lots do not meet the dimensional requirements of this title, and if a principal use or structure exists on each lot, the nonconforming lots may be conveyed separately or together, provided that the State Minimum Lot Size Law (12 M.R.S. § 4807-A through 4807-D) and the State of Maine Subsurface Wastewater Disposal Rules are complied with.

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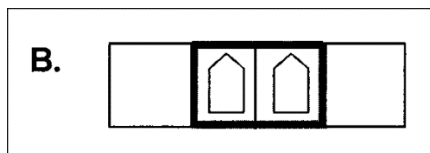
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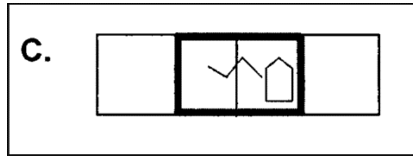
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[3] Contiguous partially built-upon lot. If two or more contiguous lots or parcels are in a single or joint ownership of record at the time of or since adoption or amendment of this title, if any of these lots do not individually meet the

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539 dimensional requirements of this title or subsequent amendments, and if one or
 540 more of the lots are vacant or contain no principal structure, the lots shall be
 541 combined to the extent necessary to meet the applicable dimensional
 542 requirements of this title.



543
 544 [4] This subsection does not apply:

545
 546 [a] To any Planning Board approved subdivision located entirely outside of
 547 the Shoreland Overlay Zone and Resource Protection Overlay Zone, and
 548 which was recorded with the York County Registry of Deeds on or before
 549 July 13, 1977;

550
 551 [b] If one or more of the contiguous lots is served by a public sewer, or can
 552 accommodate a subsurface sewage disposal system in conformance with this
 553 title § 16.8.10.D, Septic Waste Disposal, and the State of Maine Subsurface
 554 Wastewater Disposal Rules; and

555
 556 [i] If each lot contains at least 100 feet of shore frontage and at least 20,000
 557 square feet of lot area; or

558
 559 [ii] If any lot(s) that do not meet the frontage and lot size requirements of
 560 § 16.4.28.E(1) are reconfigured or combined so each new lot contains at
 561 least 100 feet of shore frontage and 20,000 square feet of lot area.

562
 563 (c) Single lot division of a nonconforming lot. If two principal structures exist
 564 on a single lot legally created when recorded, each may be sold on a
 565 separate lot provided the Board of Appeals determines that each resulting
 566 lot is as conforming as practicable to the dimensional requirements of this
 567 title. If three or more principal structures exist on a single lot legally created
 568 when recorded, each may be sold on a separate lot provided the Planning
 569 Board determines that each resulting lot is as conforming as practicable to
 570 the dimensional requirements of this title.

571
 572 (d) Adjustment of common boundary line of nonconforming lots.

573
 574 [1] The common property line of two nonconforming lots of record, each
 575 with legally created principal structures, may be adjusted if:

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[a] The Code Enforcement Officer (CEO) determines that the resulting lots are not more nonconforming than the existing lots with respect to the dimensional requirements of this title; or

[b] Where the lots are located entirely outside the Shoreland Overlay Zone and the CEO determines the proposed lot line adjustment makes the lot more nonconforming, the Board of Appeals determines that each resulting lot is as conforming as practicable to the dimensional requirements of this title; and

[i] Each resulting lot is not less than 20,000 square feet in lot size when not served by public sewer; or

[ii] Each resulting lot is not less than the smallest residential lot permitted under the Town's land use base zones, Title 16.3, when served by public sewer; or

[c] Where all or part of either lot is located in the Shoreland Overlay Zone and the CEO determines the proposed lot line adjustment makes the lot more nonconforming, the Planning Board determines that each resulting lot is as conforming as practicable to the Maine Department of Environmental Protection (MDEP) Mandatory Shoreland Zoning minimum lot standards for principal structures and uses¹; and

[i] Each resulting lot is not less than 20,000 square feet in lot size and not less than 100 feet in shore frontage^{2,3}; and

[ii] A lot that is conforming to the MDEP Mandatory Shoreland Zoning minimum lot standards for principal structures and uses remains conforming to those requirements¹; and

[iii] Common boundary lines may not be adjusted when both subject lots are nonconforming per MDEP Mandatory Shoreland Zoning minimum lot standards.³

[2] It is not the intention of the above subsection (Adjustment of common boundary line of nonconforming lots) to allow for the creation of an additional lot. A property line adjustment in accordance with this subsection and Title 16.8 does not constitute the creation of a new lot and the adjusted lot remains a legally non-conforming lot of record, not applicable to the joining of lots.

16.1 GENERAL PROVISIONS

Adopted: January 24, 2022

NOTES:

- 1 Chapter 1000: Guidelines for Municipal Shoreland Zoning Ordinances, Section 15.A Minimum Lot Standards; adjacent to Tidal Areas: 30,000 square feet lot size with 150 feet of shore frontage; and adjacent to Non-Tidal Areas: 40,000 square feet lot size with 200 feet of shore frontage.
- 2 Title 16.1.8.C(6)[d] is allowed only when both subject lots are under the same single or joint ownership.
- 3 Adherence to State Minimum Lot Size Law (12 M.R.S. §§ 4807-A through 4807-D) and State of Maine Subsurface Wastewater Disposal Rules or public sewer is required.

618

16.2 ADMINISTRATION & ENFORCEMENT

Adopted: January 24, 2022

16.2 Administration and Enforcement

16.2.1. Administration and Enforcement

This Chapter describes general administration and enforcement of the requirements of this title.

16.2.2. Planning Board appointment and powers.

A. Appointment and composition.

- (1). The Planning Board is established by the Town Charter, Article VIII, Sec. 8.01, Planning, and applicable state statutes.
- (2). The Board consists of seven members, who are Kittery residents, serving staggered terms of office of three years.
- (3). Members of the Board are appointed by the Town Council.
- (4). A municipal officer, or spouse thereof, may not serve as a member of the Board.
- (5). Members serve until their successors are appointed and qualified.
- (6). The number of consecutive terms by any Board member is limited by Sec. 8.01(3) of the Town Charter.
- (7). A member of the Board may be dismissed for cause by the Town Council before the expiration of such member's term after notice and hearing.
- (8). Vacancies are filled by Town Council appointment for the unexpired term.

B. Powers and duties.

- (1). The Board shall elect annually a chairperson and vice chairperson from its membership and a secretary. It is the duty of the secretary to keep and maintain a permanent record of all meetings of the Board and show the vote of each member upon each question.
- (2). A quorum consists of four or more members. All decisions must be made by a minimum of four like votes, except on procedural matters.
- (3). The Board shall adopt bylaws to govern routine proceedings and set agendas and hold meetings to perform duties.
- (4). Any question of whether a particular issue involves a conflict of interest sufficient to disqualify a member from voting thereon shall be decided by a majority vote of the members present, excluding the member who is being challenged, who may not vote on the issue.

Commented [1]: Editor's Note: Amended at time of adoption of Code (see Ch. 1.1, Code Adoption).

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- (5). All records of the Board are public records, except as excluded by statute.
- (6). The Board shall:
- a. Perform duties as provided by law.
 - b. Hear and decide on required development plans, including special exception use requests, that require Planning Board review, using the development application and review procedures and criteria and other provisions in this title.
 - c. Prepare and recommend for Council adoption a Comprehensive Plan and initiate Plan implementation by zoning ordinance, other land use and development regulations, and other means; and monitor and report on Plan implementation progress.

57 **16.2.3. Board of Appeals**

58 **A. Appointment and composition.**

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- (1). The Board of Appeals is established by the Town Charter, Article VIII, Sec. 8.04, and 30-A M.R.S. § 2691.
 - (2). The Board consists of seven members, who are Kittery residents, serving staggered terms of office of three years.
 - (3). Members of the Board are appointed by the Town Council.
 - (4). A municipal officer, or spouse thereof, may not serve as a member of the Board.
 - (5). Members serve until their successors are appointed and qualified.
 - (6). The number of consecutive terms by any Board member is limited by Sec. 8.01(3) of the Town Charter.
 - (7). A member of the Board may be dismissed for cause by the Town Council before the expiration of such member's term, after notice and hearing.
 - (8). Vacancies are filled by Town Council appointment for the unexpired term.

80 **B. Powers and duties.**

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- (1). The Board shall elect annually a chairperson and vice chairperson from its membership and a secretary. It is the duty of the secretary to keep and maintain a permanent record of all meetings of the Board and show the vote of each member upon each question.

Commented [2]: Editor's Note: Amended at time of adoption of Code (see Ch. 1.1, Code Adoption).

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Adopted: January 24, 2022

- 86 (2). A quorum consists of four or more members. All decisions must be made by a minimum of four
- 87 like votes, except on procedural matters.
- 88
- 89 (3). The Board shall adopt bylaws to govern routine proceedings and set agendas and hold meetings
- 90 to perform duties
- 91
- 92 (4). Any question of whether a particular issue involves a conflict of interest sufficient to disqualify
- 93 a member from voting thereon is decided by a majority vote of the members present, except the
- 94 member who is being challenged, who may not vote on the issue.
- 95
- 96 (5). All records of the Board are public records, except as excluded under 1 M.R.S. § 402(3) and (3-
- 97 A).|
- 98
- 99 (6). The Board is to:
- 100
- 101 a. Perform duties as provided by law.
- 102
- 103 b. Administrative decision appeal. Hear and decide on an administrative decision appeal where
- 104 it is alleged by an aggrieved party that there is an error in any order, requirement, decision
- 105 or determination made by the Code Enforcement Officer in review of an action on a permit
- 106 application under this title.
- 107
- 108 c. Variance request. Hear and decide on a variance request within the limitations set forth in
- 109 this title and 30-A M.R.S. § 4353(4).
- 110
- 111 d. Miscellaneous variation request. To hear and decide on a miscellaneous variation request to
- 112 permit variation in:
- 113
- 114 i. Nonconformance as prescribed in § 16.1.8;
- 115
- 116 ii. Standards contained in § 16.7.E, § 16.7.F, or § 16.5.23 Sign violation and appeal; or
- 117
- 118 iii. Accessory dwelling unit standards per § 16.5.3.
- 119
- 120 e. Special exception use request. Hear and decide on a special exception use request not
- 121 requiring Planning Board review per development and site review thresholds and using the
- 122 development application and review (§16.7) procedures and review criteria and other
- 123 provisions in this title.
- 124

Commented [3]: Editor's Note: Amended at time of adoption of Code (see Ch. 1.1, Code Adoption).

16.2.4. Port Authority

A. Appointment and composition.

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- 129 (1). The Port Authority is established by Maine Private and Special Law 1961, Chapter 163, as
- 130 amended, and Town Charter, Article IX.

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- (2). The Port Authority consists of seven members, who are Kittery residents, serving staggered terms of office of five years.
- (3). Members of the Port Authority are appointed by the Town Council.
- (4). A municipal officer, or spouse thereof, may not serve as a member of the Port Authority.
- (5). Members serve until their successors are appointed and qualified.
- (6). No member shall serve more than two consecutive terms of five years. Any member who has served two consecutive terms of five years is ineligible to serve on the Board for a period of one year. Computation of term limits commences with the first term of five years following the effective date of this provision. Computation of term limits does not include service prior to the effective date of this provision nor to terms of fewer than five years after the effective date.
- (7). A member of the Port Authority may be dismissed for cause by the Town Council before the expiration of such member's term after notice and hearing.
- (8). Vacancies are filled by Town Council appointment for the unexpired term.

B. Powers and duties.

- (1). The Board shall elect annually a chairperson and vice chairperson from its membership and a secretary. It is the duty of the secretary to keep and maintain a permanent record of all meetings of the Port Authority and show the vote of each member upon each question
- (2). The Port Authority is to:
 - a. Perform duties as provided by law.
 - b. Where Town Council action is required under 38 M.R.S. § 1021 et seq., Wharves and Fish Weirs, the Council may appoint the Port Authority as its designee for on-site inspection and to issue a written report on the same to the Council.
 - c. Water area development powers and duties.
 - i. The Port Authority is to provide advice to the Planning Board on development applications dealing with piers, wharfs, marinas and other uses projecting into water bodies.
 - ii. Where Port Authority review is required, such review must be completed prior to Planning Board review.
 - iii. Port Authority review and approval authority under this title applies to structures

Commented [4]: Editor's Note: Amended at time of adoption of Code (see Ch. 1.1, Code Adoption).

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177 extending into a water body beyond the mean high-water line or the upland edge of a
178 coastal wetland and extends from the water body to the mean high-water line or upland
179 edge of a coastal wetland.

- 180 iv. The Port Authority may approve, for convenience of access to a pier from land upland of
181 the mean high-water line or the edge of a coastal wetland, an extension of the pier that is
182 the shortest practicable extension at its nominal height and width. All other structures
183 upland of, and abutting or built on or over, a structure extending into a water body
184 beyond the mean high-water line or the edge of a coastal wetland require Planning
185 Board approval. Only one pier, ramp and float structure is permitted on any
186 noncommercial or nonindustrial lot.
- 187
- 188 v. Where the Planning Board is the lead reviewing authority, a shorefront development
189 plan must be submitted for Planning Board approval. A Port Authority ruling on the
190 shorefront development plan's conformance with Port Authority rules and regulations
191 and navigational aspects of any proposed pier, ramp and float system or principal marine
192 structure is required prior to Planning Board approval.
- 193
- 194 vi. Only functionally water-dependent uses are allowed on, over or abutting a pier, wharf or
195 other structure beyond the normal high-water line. The standards contained in § 16.5.22.
196 are to be met.

197 **16.2.5. Town Planner**

198 A. Responsibilities. The Town Planner is responsible for the overall planning in accordance with
199 applicable federal, state and municipal law, codes and ordinances. The Town Planner is responsible
200 for all municipal planning functions, including the administration of this title, and the implementation
201 of the Kittery Growth Management Program. These functions include but are not limited to land and
202 water use planning; providing technical assistance and staff support to the Planning Board;
203 researching, developing, coordinating and administering land and water use and planning related
204 projects; maintaining accurate planning records; and interacting with members of the public involved
205 with the planning process.

206

207 B. Plan submission.

- 208
- 209 (1). All plan submission requirements for an application for land/water area use and development are
210 to be submitted to the Town Planner.
- 211
- 212 (2). The Town Planner must review all plan submission contents to ascertain that they meet the
213 requirements of this title before they are delivered for review or consideration by the Planning
214 Board.
- 215
- 216 (3). The Town Planner, upon confirmation of a plan's submission contents sufficiency, is to place the
217 application on the Planning Board's agenda for a scheduling hearing.
218 NOTE: Town Planner confirmation does not constitute substantive review under Maine law,
219 which commences at the first public hearing for an application held by the Planning Board.

220

221 C. Staff coordination. The Town Planner is to coordinate with appropriate municipal department heads to

222 **16.2 ADMINISTRATION & ENFORCEMENT**

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223 ensure they have received required plan information for the performance of their duties under this
224 title.

- 225 D. Reporting. The Planner must report the status of all active plans (received, pending, under review, and
226 approved not built – past expiration date) to the Board annually.

227
228 **16.2.6. Code Enforcement Officer (CEO)**

- 229
230 A. Responsibility. It is the duty of the Code Enforcement Officer or other person duly authorized by the
231 Town to enforce the provisions of this title.

- 232
233 B. Permits. The CEO is to issue required permits for building, occupancy, plumbing, electrical or such
234 other as may be required.

- 235
236 C. Appeal/request initiation. The CEO must initiate the forms required for appeals/requests to the Board
237 of Appeals.

- 238
239 D. Inspection. The CEO must inspect all buildings, developments, subdivisions and such other
240 facilities/uses within the requirements of this title.

- 241
242 E. Business use changes. The Town Planner and the Code Enforcement Officer are to review and
243 approve, or refer to the Planning Board for action, all business use changes which occur that fall
244 below Planning Board review thresholds as outlined in § 16.7.2.B. Approval must be based on
245 compliance with all requirements of this title.

246
247 **16.2.7. Enforcement; general**

- 248 A. If the Code Enforcement Officer (CEO) finds any of the provisions of this title are being violated, the
249 CEO must notify by certified mail, return receipt requested, the person responsible for such violations,
250 indicate the nature of the violation, and order the action necessary to correct it. The CEO must order
251 discontinuance of illegal use of land, buildings or structures; removal of illegal buildings or structures
252 or of additions, alterations or structural changes thereto; a discontinuance of any illegal work being
253 done; or take any other action authorized by this title to ensure compliance with or to prevent
254 violations of its provisions.

255
256 **16.2.8. Building/Regulated Activity Permits and Requirements**

257 Building/regulated activity permits and certificates of occupancy are required to control development to
258 ensure that such development conforms to this title. This chapter outlines the requirements of this process.

- 259
260 A. Permit. No building, including municipal buildings, or structure may be erected, moved, added to or
261 otherwise structurally altered and no regulated activity is to commence without a permit, issued by the
262 Code Enforcement Officer and in compliance with all applicable state and federal requirements.

- 263
264 B. Conformity. No building/regulated activity permit may be issued except in conformity with this title,

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Adopted: January 24, 2022

266 except after written order of the Board of Appeals.

267 C. Permit records. The CEO must maintain a public record of all building/regulated activity permits and
268 applications thereof.

269
270 D. Permit period.

271
272 (1). A permit expires if the Code Enforcement Officer determines no substantial work has been
273 commenced within six months from date of issue. A permit expires if work is not substantially
274 complete within two years from date of issue. Expired permits may be renewed upon written
275 request and justifiable cause demonstrated to the Code Enforcement Officer's satisfaction.
276 Written request for renewal must be made prior to the permit expiration.

277
278 (2). The permit may be renewed one time only for a single six-month period to commence work,
279 upon payment of the base application fee. If the Code Enforcement Officer determines
280 substantial work has not commenced upon expiration of the six-month renewal period, a new
281 permit application and payment of all applicable new permit fees must be submitted.

282
283 (3). The permit may be renewed one time only for a single six-month period to complete work, upon
284 payment of the base application fee. If work is not substantially complete as determined by the
285 Code Enforcement Officer upon expiration of the six-month renewal period, a new permit
286 application and payment of all applicable new permit fees must be submitted based on the value
287 of the remaining permitted work.

288
289 (4). Any work commenced or completed without the issue of a permit as required by this title is
290 subject to an after-the-fact permit with all applicable fees doubled.

291
292 E. Permit threshold. A permit is required if the activity involves any of the following thresholds, as
293 determined by the Code Enforcement Officer:

294 (1). Fair market value of the work is greater than \$2,000;

295
296 (2). Changes to electric, plumbing or septic systems;

297
298 (3). Increase in coverage;

299
300 (4). Construction of a building or expansion of a structure;

301
302 (5). Structural alteration;

303
304 (6). Change in use or new business occupancy;

305
306 (7). Erection or expansion of signage;

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Adopted: January 24, 2022

- 309 (8). Installation or expansion of piers and docks;
- 310
- 311 (9). An activity that requires inspection by the CEO to determine compliance with this title; or
- 312
- 313 (10). Creates one or more acres of disturbed area.
- 314
- 315 (11). Structure demolition.
- 316
- 317 F. Application.
- 318 (1). Plans.
- 319
- 320 a. All applications for building/regulated activity permits are to be accompanied by plans
- 321 showing the actual dimensions and shape of the lot to be built upon, including but not
- 322 limited to property and setback lines; the exact sizes and locations and dimensions of the
- 323 proposed building or alteration of any existing structures and the proposed sewage disposal
- 324 systems as designed by a Maine-licensed site evaluator. The Code Enforcement Officer may
- 325 waive the requirement for plans in the case of minor interior alterations which in the CEO's
- 326 opinion do not result in a change in use. The application is to include such other information
- 327 as lawfully may be required by the Code Enforcement Officer to determine conformance
- 328 with and provide for the enforcement of this title. All plans and correspondence are to
- 329 include the map and lot designation of the property concerned in the upper right-hand
- 330 corner.
- 331
- 332 b. At any time between the initial request for a building/regulated activity permit and the
- 333 granting of final occupancy certificate the CEO or designated representative is to have
- 334 access to the subject property and structures without obtaining prior permission, written or
- 335 oral, from the property owner or applicant, except when a temporary occupancy permit has
- 336 been given to the dwelling owner or applicant.
- 337
- 338 (2). Drainage and sewage disposal. Wherever on-site subsurface disposal is contemplated, the
- 339 approval of building/regulated activity permit applications are subject to evidence of satisfactory
- 340 subsurface soil conditions for drainage and sewage disposal and prior obtainment of a
- 341 subsurface wastewater disposal permit. Such evidence must be furnished in compliance with the
- 342 Maine State Plumbing Code and § 16.7 or § 16.8.
- 343
- 344 (3). Fee. Except for municipality permits, application for a building/regulated activity permit must
- 345 be accompanied by a fee which is established by the Town Council. (See Appendix A, Fee
- 346 Schedules.)
- 347
- 348 (4). Flood hazard ordinance. Any building or structure that might be erected in an area subject to
- 349 periodic flooding must meet all conditions of Chapter 15.3, relating to flood hazard permit and
- 350 review procedure, of this Code and the applicable Federal Emergency Management Agency
- 351 (FEMA) regulation(s). No alteration of the natural contour of the land by grading or filling for
- 352 any purpose is permitted in an area subject to periodic flooding.
- 353
- 354 (5). Conformance to standards.
- 355

Commented [5]: Editor's Note: Title 15 was repealed. See now Chapter 16.9, Art. VIII.

356 **16.2 ADMINISTRATION & ENFORCEMENT**

Adopted: January 24, 2022

- 357 a. All developments must be in conformance with the procedures, standards and requirements
358 of this title.
- 359 b. All work that requires a building/regulated activity permit must conform to the Maine
360 Uniform Building and Energy Code (MUBEC), pursuant to 10 M.R.S. § 9721 et seq., which
361 is adopted by the Department of Public Safety, Bureau of Building Codes and Standards,
362 Maine Technical Building Codes and Standards Board, by Rule 16-635, Chapters 1 through
363 6, as may be amended from time to time.
- 364
- 365 c. The following codes, standards, rules and their amendments are in full force and effect in
366 their entirety and are not affected by the operation of Title 16 or the MUBEC:
- 367
- 368 i. National Electrical Code® standards (NFPA 70), adopted pursuant to 32 M.R.S. § 1153-
369 A.
- 370
- 371 ii. Maine State Plumbing Codes standards, adopted pursuant to 32 M.R.S. § 3403-B.
- 372
- 373 iii. Standard for the Installation of Oil-Burning Equipment standards (NFPA 31), adopted
374 pursuant to 32 M.R.S. § 2353.
- 375
- 376 iv. Flammable and Combustible Liquids Code standards (NFPA 30), adopted pursuant to 32
377 M.R.S. § 14804.
- 378
- 379 v. Boiler and pressure vessel standards, adopted pursuant to 32 M.R.S. § 15104-A.
- 380
- 381 vi. Elevator standards, adopted pursuant to 32 M.R.S. § 15206.
- 382
- 383 vii. National Fire Protection Association (NFPA) firesafety codes and standards, adopted
384 pursuant to 25 M.R.S. § 2452 and § 2465, as follows:
- 385
- 386 a. NFPA 1 - Fire Code.
- 387
- 388 b. NFPA 101 - Life Safety Code.
- 389
- 390 c. NFPA 54 - Fuel Gas Code.
- 391
- 392 d. NFPA 211 - Standard for Chimneys, Fireplaces, Vents, and Solid-Fuel-Burning
393 Appliances.
- 394
- 395 (6). Permit review time constraints. The Code Enforcement Officer must approve or deny an
396 application for a building/regulated activity permit within 14 working days of receiving said
397 application. The Town Manager may approve or deny an application if no action is taken by the
398 Code Enforcement Officer within 14 working days.
- 399

400 16.2.9. **Certificate of occupancy**

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Adopted: January 24, 2022

- 401 A. Certificate requirement. It is unlawful to use or occupy or permit the use or occupancy of any building
402 or premises, or both, or part thereof hereafter created, erected, changed, converted or wholly or partly
403 altered or enlarged in its use or structure until a certificate of occupancy has been issued by the Code
404 Enforcement Officer and endorsed to the effect that the proposed use of the building or land conforms
405 with the requirements of this title and all applicable state and federal requirements.
- 406
- 407 B. Certificate application requirement. No building/regulated activity permit may be issued until an
408 application has been made for a certificate of occupancy and the certificate of occupancy is issued in
409 conformity with the provisions of this title upon completion of the work.
- 410
- 411 C. Temporary certificate.
 - 412 (1). A temporary certificate of occupancy may be issued by Code Enforcement Officer for a period
413 of six months during construction or alterations for partial occupancy of a building pending its
414 completion, provided that such temporary certificate requires such conditions and safeguards as
415 will protect the safety of the occupants and the public.
- 416
- 417 D. Commercial establishments may not be granted a temporary certificate of occupancy. Occupancy may
418 be granted when construction is complete, all Planning Board conditions have been met, and all
419 applicable state and local code requirements have been met to the satisfaction of the CEO. Phased
420 construction may be approved by the Planning Board, and certificate of occupancy may be issued by
421 the CEO, when phase conditions have been met.
- 422
- 423 E. Records. The Code Enforcement Officer must maintain a public record of all certificates of
424 occupancy.
- 425
- 426 F. Failure to obtain certificate. Failure to obtain a certificate of occupancy is a violation of this title.
427
- 428 G. Minor interior alterations. An occupancy permit is not required for minor interior alterations during
429 which the building would be considered occupied and which, in the judgment of the Code
430 Enforcement Officer, does not constitute a change in use of the building.

16.2.10. Numbering of buildings

- 433 A. Street-numbering map.
 - 434
 - 435 (1). All buildings must bear a distinctive street number in accordance with and as designated upon
436 the street-numbering map on file with the Town's Assessing Department. The Town Assessor is
437 responsible to maintain and keep current said map.
 - 438
 - 439 (2). No person may affix, or allow to be affixed, a different street number from the one designated
440 on the street-numbering map.
 - 441
- 442 B. Display of number. The number is to be displayed upon the front of the building and/or on the side
443 facing the street. The number must be plainly visible from the street. Owners of buildings and houses

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445 that are set back out of view from the road must place a post or sign at the driveway entrance with the
446 specified numbers. Said post/sign is not considered a structure which must conform to Land Use and
447 Development Code setbacks. In place of a post/sign, the number may be affixed to a mailbox. Said
448 post/sign must be placed out of the Town's right-of-way and be six feet in height.

449 C. Multi-Family Dwellings. For multi-family dwellings, the house number is to be displayed as outlined
450 in Subsection B. Each individual apartment or living unit must be clearly sublettered.

451
452 D. Number dimensions and color. Numbers must be no less than three inches in height and contrast in
453 color with the color of the building or background to which they are attached.

454
455 E. Time limit for compliance; violation; penalty. Any person who, after being notified by the Police
456 Chief or any law enforcement officer from the Town, fails to comply with any of the provisions of
457 this section within the time limit of not more than 30 days specified in such notice is liable to a fine of
458 not less than \$50 nor more than \$100 per violation.

459
460 **16.2.11. Plumbing and septic system permit fees**

461 A. Applicability. This section applies to fees charged by the Town for plumbing and subsurface
462 wastewater disposal system permits issued by the Town pursuant to 30-A M.R.S. § 4201 et seq. and
463 pursuant to rules promulgated by the Department of Health and Human Services (DHHS) under the
464 authority of 30-A M.R.S. § 4201 et seq. ("State Plumbing Code"). For purposes of this section, the
465 terms contained in this section have the meanings given to them in the State Plumbing Code.

466
467 B. Plumbing permit fees.

468 (1). At the time of issuance by the Town of a plumbing permit pursuant to 30-A M.R.S. § 4201 et
469 seq. and the State Plumbing Code, the plumbing permit applicant must pay a fee in accordance
470 with the following schedule and at the rate provided for each classification shown herein:

471
472 a. Any person who begins any work for which a permit is required by the State Plumbing Code
473 without first having obtained a permit therefor, if subsequently eligible to obtain a permit, is
474 liable to pay double the permit fee fixed by this section for such work. However, this
475 provision does not apply to emergency work when it is proven to the satisfaction of the local
476 plumbing inspector that such work was urgently necessary and that it was not practical to
477 obtain a permit before the commencement of the work. In all such emergency cases, a
478 permit must be obtained within four working days, or else a double permit fee as
479 hereinabove provided is to be charged.

480
481 b. For the purpose of this section, a sanitary plumbing outlet on or to which a plumbing fixture
482 or appliance may be set or attached is construed to be a fixture. Fees for reconnection and
483 retest of existing plumbing systems in relocated buildings are to be based on the number of
484 plumbing fixtures, water heaters, etc., involved.

485
486 c. The following permit fees are to be charged:

487
488 i. Minimum fee for all permits, see Appendix A.

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- ii. Fixture fee, see Appendix A.
- iii. Reinspection fee, see Appendix A. A reinspection fee must be charged by the local plumbing inspector in those instances when work has not been completed upon an inspection or when work was not in compliance with the State Plumbing Code.
- iv. When only new water distribution and/or drainage pipes are installed or relocated in a building, but no fixtures installed, the fee is as set out in Appendix A.
- v. A hook-up fee as set out in Appendix A is to be charged for the connection of a mobile home which bears the Housing and Urban Development (HUD) seal or a modular home which bears the Manufactured Housing Board seal to a building sewer.
- vi. A hook-up fee as set out in Appendix A is to be charged for connection to a public sewer when piping is installed beyond the jurisdiction of the sanitary district.
- vii. Relocated mobile homes, modular homes or any other similar structures are considered as new conventional stick-built structures, and a plumbing fixture fee is to be charged based on this section.
- viii. A permit is valid only for the named applicant but may be transferred by payment of a transfer fee as set out in Appendix A.

513 C. Subsurface wastewater disposal system fees.

- (1). Prior to the local plumbing inspector's issuance of a subsurface wastewater disposal system permit, the permit applicant must pay the local plumbing inspector a permit fee calculated in accordance with schedule set out in Appendix A.
- (2). Late permit fee. A person who starts construction without first obtaining a subsurface wastewater disposal permit must pay double the permit fee indicated in Subsection A of this section.

522 **16.2.12. Decision Appeal, Variance and Other Requests**

523 A. Purpose. This chapter describes the minimum requirements for aggrieved parties to file an appeal
524 under this title and related state statutes or to seek the granting of a special exception as found in §
525 16.4, as well as a variance or miscellaneous variation request to the standards as provided herein.

526
527 B. Appeal of Planning Board, Board of Appeals or Port Authority decision.

- (1). An aggrieved party with legal standing may appeal a final decision of the Planning Board to the York County Superior Court in accordance with Maine Rules of Civil Procedures Rule 80B within 45 days from the date the decision by the Planning Board was rendered.

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533 (2). An aggrieved party with legal standing may appeal a final decision of the Board of Appeals to
534 the York County Superior Court in accordance with Maine Rules of Civil Procedures Rule 80B
535 within 45 days from the date the decision by the Board of Appeals was rendered.

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537 (3). An aggrieved party with legal standing may appeal a final decision of the Port Authority to the
538 York County Superior Court in accordance with Maine Rules of Civil Procedures Rule 80B
539 within 45 days from the date the decision by the Port Authority was rendered.

540
541 C. Appeal of Code Enforcement Officer decision.
542 A Code Enforcement Officer decision may be appealed to the Board of Appeals as provided below in
543 § 16.2.12.D.(2).

544
545 D. Appeals/requests to Board of Appeals.
546 For the purposes of this chapter, an appeal or request means any of the following:

547
548 (1). Administrative decision appeal. When the Board of Appeals reviews an administrative decision
549 appeal of a decision made by the Code Enforcement Officer, the Board of Appeals may receive
550 new evidence and testimony consistent with this title and the rules of the Board of Appeals. At
551 the conclusion of the hearing and deliberation, the Board of Appeals may uphold, modify or
552 reverse the decision of the Code Enforcement Officer.

553
554 (2). Variance request.
555
556 a. A variance may be granted only by the Board of Appeals under the following conditions:
557
558 i. For a reduction in dimensional requirements related to height, area and size of structure
559 or size of yards and open spaces;
560
561 ii. The use is not prohibited by this title; and
562
563 iii. Only if the strict application of the terms of this title would result in undue hardship. The
564 term "undue hardship" means the applicant must demonstrate all of the following:
565
566 a. The land in question cannot yield a reasonable return unless a variance is granted.
567
568 b. The need for a variance is due to the unique circumstances of the property and not to
569 the general conditions in the neighborhood.
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571 c. The granting of a variance will not alter the essential character of the locality.
572
573 d. The hardship is not the result of action taken by the applicant or a prior owner.

574
575 b. Notwithstanding § 16.2.12.D(2)a, the Board of Appeals may grant a variance to an owner of
576 a residential dwelling for the purpose of making that dwelling accessible to a person with a
577 disability who resides in or regularly uses the dwelling. The Board of Appeals must restrict

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578 any variance granted under this subsection solely to the installation of equipment or the
579 construction of structures necessary for access to or egress from the dwelling by the person
580 with the disability. The Board of Appeals may impose conditions on the variance, including
581 limiting the variance to the duration of the disability or to the time that the person with the
582 disability lives in the dwelling. The term "structures necessary for access to or egress from
583 the dwelling" includes railing, wall or roof systems necessary for the safety or effectiveness
584 of the structure.

- 585
- 586 c. A copy of each variance request within the Shoreland Overlay Zone, including the
587 application and all supporting information supplied by the applicant, must be forwarded by
588 the Code Enforcement Officer to the Commissioner of the Maine Department of
589 Environmental Protection at least 20 days prior to action by the Board of Appeals. Any
590 comments received from the Commissioner prior to the action by the Board of Appeals will
591 be made part of the record to be taken into consideration by the Board of Appeals.
- 592
- 593 d. The Board of Appeals must limit any variance granted as strictly as possible to ensure
594 conformance with the purposes and provisions of this title to the greatest extent possible
595 and, in doing so, may impose such conditions of approval to a variance as it deems
596 necessary. The party receiving the variance must comply with any conditions imposed.

597

598 (3). Miscellaneous variation request. The Board of Appeals may hear, decide and approve variations
599 in:

- 600
- 601 a. Nonconformance as prescribed in § 16.1.8;
- 602
- 603 b. Parking, loading and traffic standards contained in § 16.7.11.E and § 16.7.11.F;
- 604
- 605 c. Sign violation and appeal standards contained in § 16.5.23.M; or
- 606
- 607 d. Accessory dwelling unit standards contained in § 16.5.3.

608

609 (4). Special exception use request.

- 610
- 611 a. The Board of Appeals will hear, decide and may grant an applicant's special exception use
612 request where authorized in § 16.4 for any application excluded from Planning Board
613 review as stated in § 16.7.2.B, if the proposed use meets the criteria set forth in § 16.2.12.F,
614 Basis for decision.
- 615
- 616 b. The Planning Board will review, decide and may approve an applicant's special exception
617 use request where the proposed project requires Planning Board review as defined in
618 § 16.7.2.B or is located in a Shoreland or Resource Protection Overlay Zone. The Planning
619 Board must find the proposed project and use meets the criteria set forth in § 16.7.10.D and
620 § 16.2.12.F.

621

622 E. BOA appeal/request filing procedures.

- 623 (1). Making an appeal/request. An administrative decision appeal, variance request or miscellaneous
624 variation request may be submitted to the Board of Appeals. An administrative appeal must be

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submitted within 30 days of the date of the official written decision being appealed. Other requests may be filed at will.

- a. The appeal or request must be filed with the Code Enforcement Officer on forms approved by the Board of Appeals and the party must specifically state on such forms the grounds for such appeal or request, including claimed discrepancies in the interpretation of this title and reasons why the appeal or request should be granted. Incomplete applications for appeals and/or requests will not be accepted. Upon receipt of an appeal or request application, the Code Enforcement Office must stamp a receipt date on the appeal or required form. Said date constitutes the filing date of the appeal or request. Applications for appeals or requests must include the following:
 - i. The appeal or request must be made by the property owner, an aggrieved party or their respective duly authorized agent.
 - ii. The appeal or request must include a concise written statement, indicating what relief is requested and why the appeal or request should be granted.
 - iii. Where the appeal or request is made from a decision by the Code Enforcement Officer, the applicant must submit plans, maps and related documentation to the code enforcement office for distribution to the Board of Appeals members at least two weeks prior to the meeting of the Board of Appeals. A minimum of 10 sets of all submissions is required.
 - iv. The Board of Appeals must hold a public hearing on an appeal or request within 35 days of its receipt of a complete written application, unless this time period is extended by the applicant and BOA.
 - b. At any time between the initial acceptance by the Code Enforcement Officer of an appeal/request and final approval or denial of the appeal/request by the Board of Appeals, the owner or applicant must allow members of the Board of Appeals full access to the subject property, not including building interiors, without obtaining prior permission, written or oral.
- (2). Hearing and notice.
- a. Before taking any action on any appeal/request, the Board of Appeals must hold a public hearing and provide the following notifications:
 - i. By mail at least seven and not more than 14 days prior to the scheduled hearing date, to owners of abutting property that an appeal/request is made, the nature of the appeal/request and the time and place of the public hearing thereon; and
 - ii. Notice of all such actions must also be published in a newspaper of general circulation in the Town at least seven days prior to the public hearing.
 - b. Failure of any property owner to receive a notice of public hearing will not necessitate

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673 another hearing or invalidate any action by the Board of Appeals.

- 674 (3). Notification and timing constraints. Following the filing of an appeal/request, the Code
675 Enforcement Officer must notify the Board of Appeals, Planning Board and Conservation
676 Commission of the filing. The appeal or request must be complete for hearing at a subsequent
677 meeting of the Board of Appeals occurring no less than 10 days after the mailing of notices but
678 within 30 days of the appeal filing date.

- 679
680 (4). Decisions of the Board of Appeals.

- 681 a. The person filing the appeal or request has the burden of proof.
- 682
683 b. A minimum of four like votes is required for a decision by the Board of Appeals, except on
684 procedural matters.
- 685
686 c. The Board of Appeals must decide the appeal or request within 30 days after the close of the
687 hearing and issue a written decision.
- 688
689 d. Written notice of the decision of the Board of Appeals must be sent to the appellant or
690 petitioner, the Code Enforcement Officer, Conservation Commission, Planning Board and
691 municipal department heads within seven days of the decision. The vote of each member
692 must be part of the record. The written notice of the decision of the Board of Appeals must
693 include the statement of findings. In the case of denials, the statement of findings must
694 include the reason for the denial.

- 695
696
697 (5). Order of review.

- 698
699 a. Where a special exception request or appeal is necessary as an integral part of a
700 development review process, Board of Appeals action is encouraged prior to Planning
701 Board review where required. The findings of the Board of Appeals as well as any file
702 material must be made available to the Planning Board.
- 703
704 b. The Planning Board may give approval to the preliminary plan as an overall development
705 prior to the applicant filing an appeal/request.

- 706
707 (6). Special exception referral.

- 708
709 a. Before granting any special exception, the Board of Appeals may refer the application to the
710 Planning Board and/or Port Authority for a report prior to any subsequent BOA review of
711 the application.
- 712
713 b. The Planning Board and/or Port Authority report must be considered informational in
714 character and may take into consideration the effect of the proposal upon the character of
715 the neighborhood or any other pertinent data.
- 716
717 c. The Planning Board and/or Port Authority report must be submitted to the BOA for its
718 consideration prior to the officially scheduled time of public hearing on the request.

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- (7). Venue and representation. At any hearing, a party may appear by agent or attorney. Hearings may be continued to other times/places.
- (8). Code Enforcement Officer attendance. The CEO or designated assistant must attend all hearings and may present to the BOA all plans, photographs or other material the CEO deems appropriate for an understanding of the appeal/request.
- (9). Appellant's case first. The appellant's case must be heard first. To maintain orderly procedure, each side shall proceed without interruption. Questions may be asked through the Chair. All persons at the hearing shall abide by the order of the Chairperson.
- (10). Expiration of approval.
 - a. Approvals granted under the provisions of this chapter expire if work or change in use involved is not commenced within six months of the date on which approval is granted, or if the work or change in use is not substantially completed within one year of the date on which such approval is granted, unless as otherwise provided for in the approval decision.
 - b. When circumstances are such that a plan with an approved appeal or special exception is required to be reviewed by another agency (e.g., DEP, Planning Board, Port Authority), any period the plan is at that agency, from time of submission to time of decision inclusive, verified by recorded documentation, will not be counted as part of the cumulative time periods described in the section above.
 - c. Should a successful appellant not be able to commence and/or substantially complete the work or change in use before the time constraints contained in Subsection 10(a) above, the appellant may reappear before the Board before the original approval expires and request an extension of the approval.
 - d. Such a request must be submitted in writing to the Code Enforcement Officer prior to the date of said approval expiration.
- (11). Reconsideration. In accordance with 30-A M.R.S. § 2691(3)(F), the Board of Appeals may reconsider any decision within 45 days of its prior decision.
 - a. A request for the Board of Appeals to reconsider a decision must be filed with the Code Enforcement Officer within 10 days of the decision that is to be reconsidered. A vote to reconsider and the action taken on that reconsideration must occur and be completed within 45 days of the date of the vote on the original decision. Reconsideration of a decision requires a positive vote of the entire Board and proper notification to the landowner, petitioner, Planning Board, the Town Planner, including abutters and those who testified at the original hearing(s). The Board may conduct additional hearings and receive additional evidence and testimony.
 - b. Appeal of a reconsidered decision to the Superior Court must be made within 15 days after the decision on reconsideration.

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(12). Second appeals/requests. If the Board of Appeals denies an appeal/request, a second appeal/request of a similar nature may not be brought before the BOA within one year from the date of original denial, unless the appellant submits new evidence and the BOA, by formal action, decides the evidence is significant and warrants a new hearing, or unless the BOA finds in its sole and exclusive judgment that an error or mistake of law or misunderstanding of facts has been made.

(13). Fees. The appellant must pay a fee for filing an appeal or special exception request in an amount as set by the Town Council.

Commented [6]: Editor's Note: See § A-23.

F. Basis for decision.

(1). Conditions.

a. In hearing appeals/requests under this section, the appropriate jurisdictional board must first establish that it has a basis in law to conduct the hearing and decide the question.

b. In hearing appeals/requests under this section, the appropriate jurisdictional board must use the following criteria as the basis of a decision, that:

i. The proposed use will not prevent the orderly and reasonable use of adjacent properties or of properties in adjacent use zones;

ii. The use will 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;

iii. The safety, the health and the welfare of the Town will not be adversely affected by the proposed use or its location; and

iv. The use will be in harmony with and promote the general purposes and intent of this title.

(2). Factors for consideration. In making such determination, the appropriate jurisdictional board must also give consideration, among other things, to:

a. The character of the existing and probable development of uses in the zone and the peculiar suitability of such zone for the location of any of such uses;

b. The conservation of property values and the encouragement of the most appropriate uses of land;

c. The effect that the location of the proposed use may have upon the congestion or undue increase of vehicular traffic congestion on public streets or highways;

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- d. The availability of adequate and proper public or private facilities for the treatment, removal or discharge of sewage, refuse or other effluent (whether liquid, solid, gaseous or otherwise) that may be caused or created by or as a result of the use;
- e. Whether the use, or materials incidental thereto, or produced thereby, may give off obnoxious gases, odors, smoke or soot;
- f. Whether the use will cause disturbing emission of electrical discharges, dust, light, vibration or noise;
- g. Whether the operations in pursuance of the use will cause undue interference with the orderly enjoyment by the public of parking or of recreational facilities, if existing, or if proposed by the Town or by other competent governmental agency;
- h. The necessity for paved off-street parking;
- i. Whether a hazard to life, limb or property because of fire, flood, erosion or panic may be created by reason or as a result of the use, or by the structures to be used, or by the inaccessibility of the property or structures thereon for the convenient entry and operation of fire and other emergency apparatus, or by the undue concentration or assemblage of persons upon such plot;
- j. Whether the use, or the structures to be used, will cause an overcrowding of land or undue concentration of population or unsightly storage of equipment, vehicles or other materials;
- k. Whether the plot area is sufficient, appropriate and adequate for the use and the reasonably anticipated operation and expansion thereof;
- l. Whether the proposed use will be adequately screened and buffered from contiguous properties;
- m. The assurance of adequate landscaping, grading and provision for natural drainage;
- n. Whether the proposed use will provide for adequate pedestrian circulation;
- o. Whether the proposed use anticipates and eliminates potential nuisances created by its location; and
- p. The satisfactory compliance with all applicable performance standard criteria contained in § 16.6 and 16.7.

(3). Additional special exception conditions. Special exception approvals may be subject to additional conditions as determined by the appropriate jurisdictional board, including the following:

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- 857 a. Front, side or rear yards in excess of minimum requirements;
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859 b. Modifications of the exterior features of buildings or other structures;
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861 c. Limitations on the size of buildings and other structures more stringent than the minimum or
862 maximum requirements;
863
864 d. Regulation of design of access drives, sidewalks and other traffic features;
865
866 e. Off-street parking and loading spaces in excess of the minimum requirements; or
867
868 f. Restrictions on hours of operation.
- 869 (4). Findings of fact. After reaching a decision on an appeal/request under this section, the
871 appropriate jurisdictional board must verify on the record its findings of fact supporting the basis
872 of its decision.
873
- 874 (5). Outstanding violations. No variance, special exception or miscellaneous variation request may
875 be granted for premises on which outstanding violations of this title exist, unless the effect of
876 such variance, special exception or miscellaneous variation would remedy all such violations.
877
- 878 (6). Appeals and variances. The Board of Appeals may, upon written application of an aggrieved
879 party, hear and decide appeals from determinations of the Code Enforcement Officer in the
880 administration of the provisions of this chapter. The Board of Appeals may grant a variance
881 from the requirements of § 16.5.11, Floodplain Management, § 16.5.11.A et seq., consistent
882 with state law and the following criteria:
883
- 884 a. Variances may not be granted within any designated regulatory floodway if any increase in
885 flood levels during the base flood discharge would result.
886
- 887 b. Variances may be granted only upon:
888
- 889 i. A showing of good and sufficient cause; and
890
- 891 ii. A determination that, should a flood comparable to the base flood occur, the granting of
892 a variance will not result in increased flood heights, additional threats to public safety,
893 public expense, or create nuisances, cause fraud or victimization of the public or conflict
894 with existing local laws or ordinances; and
895
- 896 iii. A showing that the existence of the variance will not cause a conflict with other state,
897 federal or local laws or ordinances; and
898
- 899 iv. A determination that failure to grant the variance would result in "undue hardship,"
900 which in this subsection means:
901
- 902 a. That the land in question cannot yield a reasonable return unless a variance is granted;

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- 903 and
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- 905 b. That the need for a variance is due to the unique circumstances of the property and not
906 to the general conditions in the neighborhood; and
907
- 908 c. That the granting of a variance will not alter the essential character of the locality; and
909
- 910 d. That the hardship is not the result of action taken by the applicant or a prior owner.
911
- 912 c. Variances may only be issued upon a determination that the variance is the minimum
913 necessary, considering the flood hazard, to afford relief.
914
- 915 d. Variances may be issued by the Board of Appeals for new construction, substantial
916 improvements, or other development for the conduct of a functionally dependent use,
917 provided that:
918
- 919 i. Other criteria of this section and § 16.5.11.H.(9) are met; and
920
- 921 ii. The structure or other development is protected by methods that minimize flood
922 damages during the base flood and create no additional threats to public safety.
923
- 924 e. Variances may be issued by the Board of Appeals for the reconstruction, rehabilitation or
925 restoration of structures listed on the National Register of Historic Places or a State
926 Inventory of Historic Places, without regard to the procedures set forth in Subsection 6(a)
927 through (d) of this section.
928
- 929 f. Any applicant who meets the criteria of Subsection 6(a) through (e) of this section is to be
930 notified by the Board of Appeals, in writing, over the signature of the Chairperson of the
931 Board of Appeals, that:
932
- 933 i. The issuance of a variance to construct a structure below the base flood level will result
934 in greatly increased premium rates for flood insurance, up to amounts as high as \$25 per
935 \$100 of insurance coverage;
936
- 937 ii. Such construction below the base flood level increases risks to life and property; and
938
- 939 iii. The applicant agrees, in writing, that the applicant is fully aware of all the risks inherent
940 in the use of land subject to flooding, assumes those risks and agrees to indemnify and
941 defend the municipality against any claims filed against it that are related to the
942 applicant's decision to use land located in a floodplain and that the applicant individually
943 releases the municipality from any claims the applicant may have against the
944 municipality that are related to the use of land located in a floodplain.
945
- 946 g. The Board of Appeals must submit to the Planning Board a report of all variance actions,
947 including justification for the granting of the variance and an authorization for the Code
948 Enforcement Officer to issue a flood hazard development permit, which includes any
949 conditions to be attached to said permit.

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951 **16.2.13. Violations and Enforcement**

952 When any violation of any provision of this title or § 16.5.19, Nonstormwater Discharge, is found to
953 exist, the Town Attorney or the CEO, as provided by Maine Rules of Civil Procedure Rule 80K and any
954 provisions of this title and relevant statute, with the advice and consent of the Town Manager, is
955 authorized and directed to institute any and all appropriate actions and proceedings either legal or
956 equitable that may be appropriate or necessary for the enforcement of the provisions of this title, the same
957 to be brought in the name of the Town.

958

959 A. Owner or persons liable. Any person(s), firm, corporation or legal entity, being the owner of or having
960 control or use of any buildings or premises, who participates in, assists, directs, creates or maintains
961 any situation that is contrary to the requirements of this title, is responsible for the violation and is
962 subject to the penalties and the remedies herein provided.

963

964 B. Applications for permits or approvals involving sites with a violation. An application for a
965 building/regulated activity permit (see § 16.2.8), certificate of occupancy permit, sign permit,
966 subdivision approval or development review approval will be denied for any property where a
967 violation exists until such violation has been corrected or resolved.

968

969 C. Purpose of enforcement provisions. The purpose of these title enforcement provisions is to provide an
970 alternative method in addition to § 16.2.7 for enforcing and securing compliance with the provisions
971 of this title in a just, speedy and cost-effective manner, and thereby to protect, preserve and enhance
972 the public health, safety and general welfare.

973

974 D. Notice of violation and order (notice).

975

976 (1). It is the duty of the CEO to serve written notice on the landowner or the landowner's agent and
977 any other person or entity responsible (hereafter termed "violation") for such violation. The
978 notice must describe the nature of the violation, include a specific reference to the provision(s)
979 of this title and/or state statute violated, and direct the discontinuance of the illegal action or
980 condition. The notice must also contain an order setting forth the action necessary to correct the
981 violation specifying a time period for correction as provided in § 16.2.13.H and must set forth a
982 fine to be imposed as authorized by § 16.2.13.I and/or 30-A M.R.S. § 4452

983

984 (2). Notwithstanding any other provision of this chapter, when the notice involves a violation of this
985 title pertaining to shoreland or resource protection zoning or 30-A M.R.S. § 4452(3), the notice
986 must also set forth, in addition to the fine to be imposed, an order of remediation or other
987 corrective action(s) consistent with and in compliance with 30-A M.R.S. § 4452 deemed
988 necessary by the CEO to correct or mitigate the violation to the affected area(s), unless the
989 correction or mitigation would result in a threat or hazard to public health or safety, substantial
990 environmental damage or a substantial injustice.

991

992 (3). All proposed plans for corrective action submitted by the violator must comply with the
993 standards set forth in this chapter where applicable and 30-A M.R.S. § 4452(3). The acceptance
994 by the CEO of a violator's proposed plan(s) of correction or mitigation will not relieve the
995 violator of the requirement to pay the fine set forth in the notice.

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- (4). The notice must also advise the violator of any right to appeal to the Board of Appeals with respect to the CEO's determination that a violation of this title and/or 30-A M.R.S. § 4452 exists for which the violator is responsible.
 - (5). Additionally, if there is a violation of § 16.5.19, Nonstormwater Discharge, the enforcement authority will order compliance by written notice of violation to that person, indicating the nature of the violation and ordering the action necessary to correct it, including, without limitation:
 - a. The elimination of nonstormwater discharges to the storm drainage system, including, but not limited to, disconnection of the premises from the MS-4;
 - b. The cessation of discharge practices or operations in violation of this section;
 - c. At the person's expense, the abatement or remediation (in accordance with best management practices in DEP rules and regulations) of nonstormwater discharges to the storm drainage system and the restoration of any affected property; and/or
 - d. The payment of fines, of the municipality's remediation costs, and of the municipality's reasonable administrative costs and attorneys' fees and costs. If abatement of a violation and/or restoration of affected property is required, the notice will set forth a deadline within which such abatement or restoration must be completed.
- E. Procedure to serve notice of violation and order. The notice pursuant to § 16.2.13.D must either:
- (1). Be served in hand to the violator by the CEO or a person duly authorized by the CEO;
 - (2). Be left at the violator's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein or with an agent authorized by appointment or by law to receive service of process;
 - (3). Be mailed by certified U.S. mail, return receipt requested, to the violator's last known address. If the return receipt is not returned, the notice will be conclusively presumed to have been served. Such notice sent by regular U.S. mail, if not returned or undeliverable, is conclusively deemed to be received by the addressee on the fifth day following the date of mailing; or
 - (4). Any procedure for service of process authorized by Rule 4 of the Maine Rules of Civil Procedure (MRCP).
- F. Appeal of notice of violation and order.
- (1). The violator served with a notice of violation and order may appeal the notice of violation and order to the Board of Appeals by filing an administrative appeal application in accordance with

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§ 16.2.12.E(1).

(2). If a completed appeal is not filed within 30 days of receipt of the violation and order, then the notice of violation and order is final, and the violator is subject to the penalty contained therein. If a completed appeal application is timely filed, the Board of Appeals (BOA) must hold a public hearing pursuant to § 16.2.12.E(2) and render a decision to uphold, modify or reverse the violation notice and order issued by the CEO. The Board must set forth its findings of fact and conclusions of law in support of its decision and give notice of the same to the violator.

(3). Any adverse decision of the BOA may be further appealed to the Superior Court pursuant to the provisions of Rule 80(B) of the Maine Rules of Civil Procedure (MRCP). If a timely appeal is taken, the notice of violation and order is stayed. If no appeal is taken, or any appeal once taken is withdrawn or not pursued, the violation notice and order is final and enforceable as provided in the title.

(4). Civil proceedings. If the notice of violation and order has not been corrected, and no appeal is pending before the BOA or Superior Court, or the parties have not reached a consent agreement as provided in § 16.2.13.J, the Town Attorney or the CEO, as provided by MRCP Rule 80K, upon notice from the Town Manager, may initiate any and all appropriate legal proceedings authorized in this title or state statute to compel the violator to correct the violation, pay any fine imposed, and seek whatever other relief to which the Town may be entitled. Such legal proceedings may include the initiation of a land use complaint pursuant to MRCP Rule 80K and 30-A M.R.S. § 4452 et seq., as amended.

G. Civil proceedings. If the notice of violation and order has not been corrected, and no appeal is pending before the BOA, or the parties have not reached a consent agreement as provided in § 16.2.13.J, the Town Attorney or the CEO, as provided by MRCP Rule 80K, upon notice from the Town Manager, may initiate any and all appropriate legal proceedings authorized in this title or state statute to compel the violator to correct the violation, pay any fine imposed, and seek whatever other relief to which the Town may be entitled. Such legal proceedings may include the initiation of a land use complaint pursuant to MRCP Rule 80K and 30-A M.R.S. § 4452 et seq., as amended.

H. Time limit for corrective action.

(1). The time period within which a violation must be corrected as set forth in the notice of violation and order under § 16.2.13.D of this section is 30 days following receipt of the notice of the violation and order, unless:

- a. The CEO determines a longer reasonable time limit is necessary considering the nature and extent of the work required to correct the violation.
- b. The CEO determines a shorter reasonable time limit is appropriate due to the threat posed by said violation to the health, safety and welfare of the public.
- c. The CEO finds the violator has been previously served a notice of violation and order for a similar violation within the last 18 months; in which case the time limit for corrective action must be no more than five days.

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- 1088 (2). If a violator in a timely fashion files a completed administrative appeal application with the
1089 Town Clerk as provided in § 16.2.13.F, any period of time from date of receipt of such an
1090 appeal to date of decision of the BOA, inclusive, is not counted as part of the cumulative time
1091 period described in this section. If the BOA upholds the CEO's determination, the timeline set
1092 forth in the notice of violation and order resumes, beginning the day after the decision is
1093 rendered, unless it is extended by the BOA.

1094
1095 I. Penalties.

- 1096
1097 (1). The Code Enforcement Officer must impose the following penalties for the failure to correct a
1098 cited violation within the prescribed time set forth in the notice:
1099
1100 a. Fine imposed: \$200 for the first seven-day period the violation continues beyond the
1101 time specified for corrective action. Thereafter, each day the violation continues, a
1102 separate and specific violation with an additional minimum of \$100 per day penalty for
1103 each day of the continuing violation up to a maximum penalty imposed of \$2,500 for
1104 each specific violation, or the maximum as provided by 30-A M.R.S. § 4452, if greater.
1105
1106 b. When the violation set forth in the notice involves any cutting of tree(s) or other
1107 vegetation in violation of § 16.8.10.O(2) or 30-A M.R.S. § 4452(3), the penalty provided
1108 by this section will be imposed from the date of notification of the violation in writing in
1109 addition to the required corrective action set forth in the § 16.2.13.D.
1110
1111 (2). After the time specified to correct the violation in the notice of violation and order passes, it is
1112 the responsibility of the violator to inform the Code Enforcement Officer in writing when the
1113 violation has been corrected and seek an inspection to verify the violation has been corrected.
1114 For the purposes of this section, the violation will be assumed to have continued to exist
1115 uncorrected until the violator has informed the Code Enforcement Officer in writing that the
1116 violation has been corrected or the Code Enforcement Officer discovers through inspection of
1117 the premises that the violation has been corrected, whichever comes earlier.

1118
1119 J. Consent agreements.

- 1120
1121 (1). In special cases, particularly minor, unintentional violations that are unduly difficult to
1122 correct, the Town Manager, with advice of the Code Enforcement Officer, is authorized to
1123 enter into a consent agreement with the violator to resolve the violation without further
1124 enforcement action or appeal. Consent agreements are not intended to allow a violator to
1125 substitute fines for corrective actions.
1126
1127 (2). Any such violation that is allowed to continue pursuant to a consent agreement is not granted
1128 the status of a nonconforming use. Any further actions by the violator with regard to the
1129 property must comply in all respects to the existing terms and provisions of this title.

1130
1131 K. Payment of civil penalties. All civil penalties imposed pursuant to a notice of violation and order as
1132 provided in § 16.2.13.D are payable to the Town and due within 30 days after the notice of violation
1133 and order become final. All such civil penalties not paid when due accrue interest on the unpaid
1134 penalties at the rate provided for judgments in 14 M.R.S. § 1602-A. If the violator fails to pay this

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1136 penalty, the penalty may be recovered by the Town in a civil action in the nature of debt.

1137

- 1138 L. Fines. Any person, including but not limited to a property owner, an owner's agent or a contractor,
1139 who violates any provision or requirement of this title will be penalized in accordance with this title
and 30-A M.R.S. § 4452.

1140

1141 **16.2.14. Enforcement and Penalties**

1142

- 1143 A. It is the duty of the Code Enforcement Officer to enforce the provisions of Chapter 16.5.11,
1144 Floodplain Management, pursuant to 30-A M.R.S. §4452.

1145

- 1146 B. The penalties contained in 30-A M.R.S. §4452 apply to any violation of this chapter.

1147

- 1148 C. In addition to any other actions, the Code Enforcement Officer, upon determination that a violation of
1149 applicable floodplain management regulations exists, is to submit a declaration to the Administrator
1150 of the Federal Insurance Administration requesting a denial of flood insurance. The valid declaration
1151 is to consist of:

1152

- 1153 (1). The name of the property owner and address or legal description of the property sufficient to
1154 confirm its identity or location;

1155

- 1156 (2). A clear and unequivocal declaration that the property is in violation of a cited state or local law,
1157 regulation or ordinance;

1158

- 1159 (3). A clear statement that the public body making the declaration has authority to do so and a
1160 citation to that authority;

1161

- 1162 (4). Evidence that the property owner has been provided notice of the violation and the prospective
1163 denial of insurance; and

1164

- 1165 (5). A clear statement that the declaration is being submitted pursuant to Section 1316 of the
1166 National Flood Insurance Act of 1968, as amended.

1 **16.3 Definitions**

2
3 **16.3.1. Purpose**

4 Except where specifically defined in this chapter, all words used in this title carry their
5 customary dictionary meanings. Words used in the present tense include the future, and the
6 plural includes the singular; the word "lot" includes the word "plot"; the word "building"
7 includes the word "structure"; the words "shall" or "must" are always mandatory; "occupied" or
8 "used" are considered as though followed by the words "or intended, arranged or designed to be
9 used or occupied"; and gender-specific words (e.g., she, he, his, hers) include the opposite sex
10 equivalent.

11 **16.3.2. Definitions**

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

13 **ABUTS**

14 That which is contiguous to, or shares, a common boundary line. The owner of a property
15 that is contiguous to or shares a common boundary line is an abutter. See § 16.5.2, §
16 16.7.10.C(2)c and § 16.8.9.C(3)c on abutter notification process when a new development
17 or redevelopment is proposed.

18 **ACCESSORY BUILDING**

19 A subordinate building on the lot, the use of which is incidental to that of the main or
20 principal building.

21 **ACCESSORY DWELLING UNIT (ADU)**

22 A dwelling unit which is part of an existing structure on the property where the owner of the
23 property occupies one of the units. See § 16.5.3 for Accessory Dwelling Unit general
24 performance standards.

25 **ACCESSORY STRUCTURE**

26 A structure that is subordinate to and serves a principal building or use on the lot.

27 **ACCESSORY USE**

28 A use customarily incidental and subordinate to a Principal Use and located on the same lot
29 with such Principal Use. See Principal Use definition.

30 **ADJACENT GRADE**

31 The natural elevation of the ground surface prior to construction next to the proposed walls
32 of a structure.

33 **ADULT ENTERTAINMENT ESTABLISHMENT**

34 A. Any business in any use category, a substantial or significant portion of which consists of
35 selling, renting, leasing, exhibiting, displaying or otherwise dealing in materials, actions,
36 and/or devices of any kind which appeal to prurient interest and which depict or describe
37 specified sexual activities, including but not limited to:

- 38 (1). Live entertainment, books, magazines, periodicals or other printed matter, or
- 39 photographs, films, motion pictures, video cassettes or video reproductions, slides
- 40 or other visual representations which are characterized by the depiction or
- 41 description of "specified sexual activities," or
- 42 (2). Instruments, devices or paraphernalia which are designed for use in connection with
- 43 "specified sexual activities."
- 44 B. For the purpose of this definition, "specified sexual activities" means:
- 45 (1). Human genitals in a state of sexual stimulation or arousal;
- 46 (2). Acts of human masturbation, sexual intercourse or sodomy, fondling or other erotic
- 47 touching of human genitals, pubic region, buttocks or female breasts.

48 **AFFORDABLE**

49 The percentage of income a household is charged in rent and other housing expenses, or must
50 pay in monthly mortgage payments (including insurance, HOA fees, and taxes), does not
51 exceed 30% of a household’s gross income, or other amount established in town regulations
52 that does not vary significantly from this amount.

53 **AFFORDABLE HOUSING UNIT**

54 One dwelling unit of either affordable housing for rent or affordable housing for sale.

55 **AFFORDABLE HOUSING FOR RENT**

56 A dwelling unit that may be rented for year-round occupancy for which the rental cost does
57 not exceed the maximum cost set forth for households making up to 80% of area median
58 income, as determined by HUD's York-Kittery-South Berwick Metro Fair Market Area
59 (HMFA) limits. Annual rent increases are limited by deed restriction, lease agreement or
60 other legally binding agreement to the percentage increase in the HUD York-Kittery-South
61 Berwick Metro Fair Market Area (HMFA) median income figures for a household of that
62 size.

63 **AFFORDABLE HOUSING FOR SALE**

64 A dwelling unit that may be purchased for year-round occupancy for which the selling price
65 does not exceed the maximum price set forth for households making up to 120% of area
66 median income, as determined by HUD's York-Kittery-South Berwick Metro Fair Market
67 Area (HMFA) limits. The resale price is limited by deed restriction or other legally binding
68 agreement for all future sales of the unit, or a lesser term if permitted by regulations, to the
69 percentage increase in the HUD York-Kittery-South Berwick Metro Fair Market Area
70 (HMFA) median income figures for a household of that size.

71 **AGE-RESTRICTED HOUSING**

72 A residential use occupied principally by residents who are at least 55 years of age (or in the
73 case of a couple, at least one of whom is at least 55 years of age) in which the
74 accommodations are all dwelling units with private bathrooms and cooking facilities.
75 Occupants of this residential use may also include handicapped individuals of any age. Age-
76 Restricted Housing does not include Residential Care Facilities that are typically referred to

77 as independent living units, congregate care units, assisted living units, dementia or
78 Alzheimer's units or hospice units, or a nursing care or convalescent care facility that
79 provides nursing services.

80 **AGGRIEVED PARTY**

81 An owner of land whose property is directly or indirectly affected by the granting or denial
82 of a permit or variance under this title; a person whose land abuts land for which a permit or
83 variance has been granted; or any other person or group of persons who have suffered
84 particularized injury as a result of the granting or denial of such permit or variance.

85 **AGRICULTURE**

86 The production, storage, keeping, harvesting, grading, packaging, processing, boarding, or
87 maintenance for sale or lease of plants and/or animals, including but not limited to: forages
88 and sod crops; grains and seed crops; dairy animals and dairy products; poultry and poultry
89 products; livestock, including beef cattle, sheep, swine, horse, ponies, mules, or goats or any
90 mutations or hybrids thereof, including the breeding and grazing of any or all such animals;
91 bees and apiary products; fur animals; trees, and forest berries; vegetables; nursery, floral,
92 ornamental, and greenhouse products; but excluding marijuana. Agriculture does not
93 include agriculture for personal use nor forestry or sawmills, as defined in this Ordinance.
94 See § 16.5.5 for Agriculture general performance standards.

95 **AGRICULTURE, PIGGERY**

96 A premises, area, fenced enclosure, building or structure, or portion thereof, used or designed
97 for the keeping of pigs. See § 16.5.6 for Agriculture, Piggery general performance standards.
98

99 **AGRICULTURE, POULTRY FACILITY**

100 A premises, area, fenced enclosure, building or structure, or portion thereof, used or designed
101 for the keeping of poultry or fowl. See § 16.5.7 for Agriculture, Poultry Facility general
102 performance standards.
103

104 **ALTERNATIVE TOWER STRUCTURE**

105 Includes but is not limited to clock towers, bell steeples, utility/light poles, water towers, and
106 similar alternative-design mounting structures that camouflage or conceal the presence of
107 antennas or towers, referred to by the industry as "stealth" technology.

108 **ANTENNA**

109 Any apparatus designed for telephonic, radio, television or similar communications through
110 the sending and/or receiving of electromagnetic waves.
111

112 **ANNUAL AVERAGE DAILY TRAFFIC (AADT)**

113 The total volume of vehicle traffic of a road, street, or highway for a year divided by 365
114 days, as determined by methods approved by the American Association of State
115 Highway and Transportation Officials (AASHTO).
116

117 **AQUACULTURE**

118 The growing or propagation of harvestable freshwater, estuarine or marine plant or animal

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119 species.

120

121 **ART STUDIO OR GALLERY**

122 Enclosed place for the exhibition, production and sales of art.

123 **ASSESSED VALUE**

124 A value of real property derived from a mass appraisal technique in accordance with market
125 value and is equitable to similarly situated properties within the Town.

126 **BANNER**

127 Any sign of lightweight fabric or similar material that is mounted for display at one or more
128 edges.

129 **BASAL AREA**

130 The area of a tree stem derived by measuring the diameter of a standing tree measured 4.5
131 feet from ground level and inclusive of bark.

132 **BASE FLOOD**

133 The flood having a one-percent chance of being equaled or exceeded in any given year,
134 commonly called the one-hundred-year flood.

135 **BASEMENT**

136 An area below the first floor having a floor-to-ceiling height of six feet or more and 50% of
137 its volume below the existing ground.

138 **BED-AND-BREAKFAST**

139 A home occupation in a single-family dwelling in which lodging or lodgings with meals
140 served before noon are offered to the general public for compensation, offering no more
141 than six bedrooms for lodging purposes.

142 **BEST MANAGEMENT PRACTICES ("BMP")**

143 Schedules of activities, prohibitions of practices, maintenance procedures, and other
144 management practices to prevent or reduce the pollution of water bodies. BMPs also include
145 treatment requirements, operating procedures, and practices to control plant site runoff,
146 spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

147 **BILLBOARD**

148 The surface of any building or structure which is available for hire for advertising goods or
149 services not provided on the premises. Official business directional signs (OBDS) are not
150 considered billboards.

151 **BOARD OF APPEALS**

152 The Board of Appeals of the Town of Kittery; may be referred to as the BOA.

153 **BOAT LAUNCHING FACILITY**

154 A facility designed primarily for the launching and landing of watercraft, and which may
155 include an access ramp, docking area, and parking spaces for vehicles and trailers.

156 **BOAT YARD**

157 A business or gainful occupation where boats are hauled, stored, repaired and/or
158 constructed.

159 **BOATHOUSE**

160 A nonresidential structure designed exclusively for the protection, storage, repairing and
161 maintenance of boats for noncommercial purposes.

162 **BREAKAWAY WALL**

163 A wall that is not part of the structural support of the building and is intended, through its
164 design and construction, to collapse under specific lateral loading forces without causing
165 damage to the elevated portion of the building or supporting foundation system.

166 **BROOK**

167 A channel between defined banks, including the floodway, associated floodplain wetlands,
168 where the channel is created by the action of surface water and characterized by the lack of
169 upland vegetation or presence of aquatic vegetation and by the presence of a bed devoid of
170 topsoil containing waterborne deposits on exposed soil, parent material or bedrock.

171 **BUFFER**

172 A combination of physical space and vertical elements, such as, but not limited to plants,
173 berms, fences or walls, the purpose of which is to separate and screen incompatible land
174 uses from each other.

175 **BUILDING**

176 Any structure having a roof supported by columns or walls and intended for the shelter,
177 housing or enclosure of persons, animals or property. Each portion of a building separated
178 from other portions by a fire wall is considered as a separate structure.

179 **BUILDING COVERAGE**

180 The aggregate or the maximum horizontal area of all buildings on the lot including
181 accessory buildings but excluding cornices, eaves or gutters projecting not more than 24
182 inches. Pet shelters, playground equipment, tree houses, and structures that are not also
183 "buildings" are not used in calculating building coverage. Additionally, this is not to be
184 construed to mean the aggregate of floors in a multilevel building.

185 **BUILDING FRONTAGE**

186 Linear footage along the face of the building containing the main public entry, commonly
187 labeled "front elevation" on building plans.

188 **BUSINESS**

189 For the purposes of the sign regulations, any corporation, trust, partnership or other
190 verifiable legal entity with the object of gain, benefit or advantage.

191 **BUSINESS AND PROFESSIONAL OFFICES**

192 A building, or portion thereof, in which there are located the offices of a profession or
193 business, including, but not limited to, banks, insurance, realtors, attorneys, appraisers,
194 engineers, architects, landscape architects, accountants, dentists, optometrists and
195 physicians.

196 **BUSINESS FACILITY**

197 For the purposes of the sign regulations, a workplace of a business other than an employee's
198 or employer's personal residence.

199 **BUSINESS SERVICES**

200 Establishments primarily engaged in providing services to business enterprises on a fee or
201 contract basis, including, but not limited to, advertising, credit agencies, photocopying,
202 commercial graphics, computer programming, cleaning and maintenance services,
203 employment agencies, data processing, consulting and public relations, security and
204 business equipment rental.

205 **CAMPGROUND**

206 Any area or tract of land use to accommodate two or more people, including tents, trailers
207 or other camping outfits, not to be used as permanent residence.

208 **CANNABIS**

209 All parts of the plant of the genus Cannabis whether growing or not, the seeds thereof, the
210 resin extracted from any part of the plant and every compound, manufacture, salt, derivative,
211 mixture or preparation of the plant, its seeds or its resin including cannabis concentrate. This
212 term does not include industrial hemp, fiber produced from the stalks, oil, cake made from
213 the seeds of the plant, sterilized seed of the plant that is incapable of germination or any
214 ingredient combined with cannabis to prepare topical or oral administrations, food, drink or
215 any other product. Cannabis also means marijuana.

216 **CANOPY, TREE (TREE CANOPY)**

217 The more or less continuous cover formed by tree crowns in a wooded area.

218 **CEMETERY**

219 A private or public place set apart for the interment of the dead. In the absence of an apparent
220 boundary, i.e., fence, stone wall, survey markers, survey plan, or information from the
221 Kittery Historical and Naval Society or other reliable historic sources, the perimeter of the
222 interment area is determined by starting with a ten-foot distance from existing tombstones
223 and expanded, where necessary, to form a final rectilinear area.

224 **CERTIFICATE OF COMPLIANCE**

225 A document signed by the Code Enforcement Officer stating that a structure is in compliance
226 with all of the provisions of § 16.5.11.I

227 **CERTIFICATE OF OCCUPANCY**

228 A permit issued by the Code Enforcement Officer that authorizes the recipient to make use of

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229 property in accordance with the requirements of this title and applicable state and federal
230 requirements.

231 **CHARACTER**

232 The main or essential nature, especially as strongly marked and serving to distinguish.

233 **CLEAN WATER ACT**

234 The federal Water Pollution Control Act (33 U.S.C. § 1251 et seq., also known as the "Clean
235 Water Act"), and any subsequent amendments thereto.

236 **CLEAR-CUT**

237 Any timber harvesting on a forested site greater than one acre in size which, over a ten-year
238 period, results in an average residual basal area of trees over six inches in diameter of less
239 than 30 square feet per acre, unless one or both of the following conditions exist:

240 A. If after harvesting the average residual basal area of trees over one inch in diameter
241 measured at 4.5 feet above the ground is 30 square feet per acre or more, a clear cut does
242 not occur until the average residual basal area of trees six inches or larger measured at
243 4.5 feet above the ground is less than 10 square feet per acre; or

244 B. After harvesting, the site has a well-distributed stand of trees at least five feet in height
245 that meets the regeneration standards applicable under 12 M.R.S. Chapter 805,
246 § 8869(1).

247 **CLUSTER RESIDENTIAL DEVELOPMENT**

248 A form of land use improvements and/or change in which certain dimensional requirements
249 limited to lot area, lot coverage, frontage and setbacks may be reduced below that normally
250 required in the zoning district in which the land use improvements and/or change is located
251 in return for the provision to set aside a portion of the tract as of permanent open space and
252 other environmental enhancements owned and maintained jointly in common by individual
253 lot/unit owners, the Town, or a land conservation organization.

254 **CODE ENFORCEMENT OFFICER (CEO)**

255 The person duly authorized by the Town to carry out the duties as prescribed herein and in
256 the Town Administrative Code.

257 **CO-LOCATION**

258 The location of more than one telecommunications facility (use) on a tower or alternative
259 tower structure.

260 **COMMERCIAL FISHERIES/MARITIME ACTIVITIES (USE)**

261 The active use of lands, buildings, wharves, piers, floats, docks or landings with the principal
262 intent of such activity being the production of income by an individual or legal business
263 entity through the operation of a vessel(s). This activity may be either a principal or
264 accessory use as herein defined.

265 **COMMERCIAL GREENHOUSE**

266 A building or structure used by a business or in the production of income, which is designed
267 and/or used for the indoor propagation and/or cultivation of plants.

268 **COMMERCIAL KENNEL**

269 A commercial operation that: 1) provides food and shelter and care of eight or more
270 domestic animals for purposes not primarily related to medical care; or 2) has at any one
271 time eight or more animals for the purpose of commercial breeding.

272 **COMMERCIAL MARINA USE STRUCTURE**

273 A structure which is used by a business entity to serve the general public by providing
274 marine-related services.

275 **COMMERCIAL OR HOME OCCUPATION VESSEL**

276 The vessel is used for commercial or home occupation use when its principal purpose or use
277 is in the pursuit of one's business or trade for the purpose of earning a livelihood. The
278 burden of proof in establishing the commercial or home occupation use of a vessel lies with
279 the vessel owner.

280 **COMMERCIAL SCHOOL**

281 A building or buildings which is principally used to conduct commercial educational classes
282 including, but not limited to trade schools, schools of art, beauty, business, dancing, driving,
283 music, martial arts, but not including private nursery, elementary or secondary schools.
284 Retail sales of items related to the school are allowed as an accessory use to commercial
285 schools.

286 **COMMERCIAL USE**

287 The use of lands, buildings or structures, other than a "home occupation" defined below, the
288 intent and result of which activity is the production of income from the buying and selling
289 of goods and/or services, exclusive of rental of residential buildings and/or dwelling units.

290 **COMMUNITY**

291 The Town of Kittery and its people.

292 **COMPACT OR BUILT-UP SECTION**

293 The "compact or built-up section" of the Town means a section of the Street or way where
294 structures are nearer than 200 feet apart for a distance of 1/4 mile.

295 **COMPREHENSIVE PLAN**

296 Any part or element of the plan or policy for the development of the Town, as defined in
297 Title 30-A M.R.S. § 4301, as issued in the Kittery Comprehensive Plan as approved by the
298 Town Council, or subsequent revisions or additions thereto.

299 **CONFERENCE CENTER**

300 A facility used for conferences, seminars and meetings, including accessory
301 accommodations for food preparation and eating, recreation, entertainment, resource
302 facilities, and meeting rooms.

303 **CONSTRUCTION DRAWINGS**

304 Drawings showing the location, profile, grades, size and type of drains, sewers, water
305 mains, underground fire alarm ducts, pavements, of streets, miscellaneous structures, etc.

306 **CONSTRUCTION SERVICES**

307 The performance of work and/or the furnishing of supplies to members of the building
308 trades, such as, but not limited to, plumbing, painting, building, well drilling, carpentry,
309 masonry or electrical installation, which requires, or customarily includes, the storage of
310 materials and/or the location of commercial vehicles at the site.

311 **CONTIGUOUS LOTS**

312 Lots which adjoin at any line or point or are separated at any point by a body of water less
313 than 15 feet wide.

314 **CONTRACTOR, EXCAVATION**

315 An individual or firm engaged in a business that causes the disturbance of soil, including
316 grading, filling and removal, or in a business in which the disturbance of soil results from an
317 activity that the individual or firm is retained to perform.

318 **CONVALESCENT CARE FACILITY**

319 A facility that is licensed by the State of Maine to provide nursing care to persons during
320 periods of recovery or rehabilitation. The facility provides nursing care and related
321 rehabilitation services. The facility does not provide hospital services except as incidental to
322 the delivery of nursing care. A convalescent care facility does not include any facility that is
323 defined as an elder-care facility.

324 **CORNER LOT**

325 A lot or parcel of land abutting on two or more streets at their intersection or on two parts of
326 the same street forming an interior angle of less than 135 degrees. In zones where yards are
327 required:

328 A. Such corner lots, located at the intersection of two streets, are deemed to have a side
329 rather than a front yard between the principal building and the side street. Such side yard
330 may not be less than the front yard requirements of uses located on the side street.

331 B. Such corner lots, located at the intersection of two streets, are deemed to have a side
332 rather than a rear yard between the principal building and the abutting property on the
333 side street. Such side yard may not be less than the side yard requirements of uses
334 located on the side street.

335 C. All such side yards described above must conform to the specific regulations related to
336 yard space and related building height contained in the district provisions of this title.

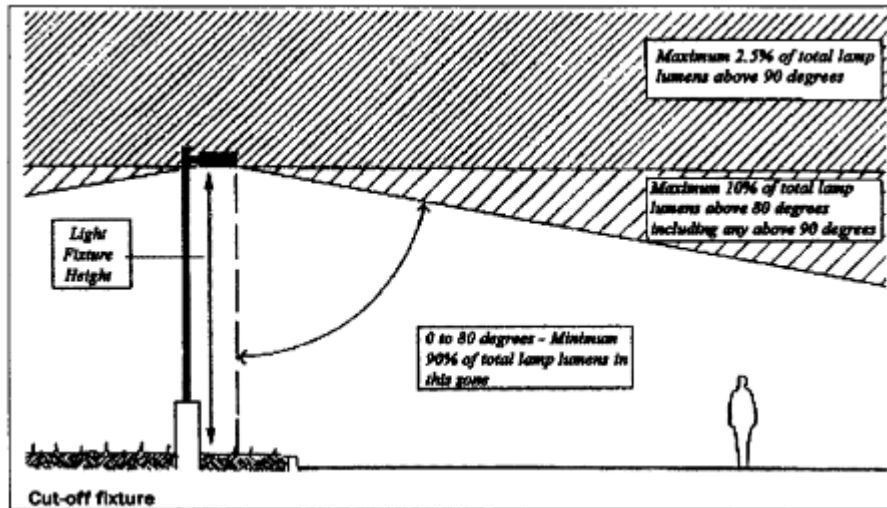
337 **COTTAGE CLUSTER**

338 **COVERAGE (LOT, BUILDING)**

339 See definition for "building coverage."

340 **CUTOFF FIXTURE**

341 A lighting fixture or luminaire that controls glare by directing light well below the horizontal.
 342 A cutoff fixture limits the direction of light so that a maximum of 2 1/2% of the total lamp
 343 lumens shine above 90° or a line parallel to the surface of the ground and a maximum of 10%
 344 of the lamp lumens shine above 80°, including any above 90°, as shown in the following
 345 sketch.



346 **DAY**

347 A calendar day unless otherwise indicated.

348 **DAY CARE FACILITY**

349 A house or other place conducted or maintained by anyone who provides on a regular basis
 350 and for consideration, care and protection for three or more unrelated children under 16 years
 351 of age, who are unattended by their parent(s) or guardian(s), for any part of a day. Any
 352 facility, the chief purpose of which is to provide education, is not considered a Day Care
 353 Facility.

354 **DECK**

355 An unenclosed, unroofed exterior platform structure, with or without railings, which is
 356 elevated above ground and is typically of wood construction, whether attached to a building
 357 or freestanding. A deck is not a water-dependent structure.

358 **DESIGNATED HISTORIC BUILDING**

359 A building listed on or located within a historic district listed on the National Register of
 360 Historic Places or a list of historic buildings or local historic districts published by the Maine
 361 Historic Preservation Office, or contained in the Town's adopted Comprehensive Plan.

362 **DESIGN HANDBOOK**

363 A handbook which is intended to supplement, illustrate and amplify various sections of this
 364 Title 16, Land Use and Development Code, and which is on file in the Town offices.

365 **DEVEGETATED AREA**

366 The total area of all existing and proposed structures, driveways, parking areas and other
367 nonvegetated surfaces located in the Shoreland Overlay and Resource Protection Zones.

368 **DEVELOPER**

369 Any person, firm, corporation or other legal entity that makes application for any type of
370 development within the Town.

371 **DEVELOPMENT**

- 372 A. A change in land use involving alteration of the land, water or vegetation; or
- 373 B. The addition or alteration of structures or other construction not naturally occurring.

374 **DIMENSIONAL REQUIREMENTS**

375 Numerical standards relating to spatial relationships, including, but not limited to, setbacks,
376 lot width and area, shore frontage, percent of lot coverage and height.

377 **DISABILITY**

378 Any disability, infirmity, malformation, disfigurement, congenital defect or mental
379 condition caused by bodily injury, accident, disease, birth defect, environmental conditions
380 or illness; and also includes the physical or mental condition of a person which constitutes a
381 substantial handicap as determined by a physician or, in the case of mental handicap, by a
382 psychiatrist or psychologist, as well as any other health or sensory impairment which
383 requires special education, vocational rehabilitation or related services.

384 **DISCHARGE**

385 For the purposes of stormwater regulation, means any spilling, leaking, pumping, pouring,
386 emptying, dumping, disposing or other addition of pollutants to "waters of the state."
387 "Direct discharge" or "point source" means any discernible, confined and discrete
388 conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well,
389 discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or
390 other floating craft, from which pollutants are or may be discharged.

391 **DISTRIBUTION CENTER**

392 A warehouse or specialized building with refrigeration or climate control, stocked with
393 products to be shipped to retailers, wholesalers or directly to consumers.

394 **DISTURBED AREA**

395 Land altered by the clearing of vegetation, grading, excavation and redevelopment. The
396 cutting of trees without grubbing, stump removal, and the disturbance or exposure of soil is
397 not considered to be disturbed area. Work performed in order to continue the original line
398 and grade, hydraulic capacity, and the original purpose of the land or the improvements
399 thereon is not considered to be disturbed area.

400 **DOCK**

401 The slip or waterway extending between two piers or projecting wharves or cut into the land
402 for the reception of vessels.

403 **DRAINAGE DITCH**

404 A man-made, regularly maintained channel, trench or swale for conducting water that has a
405 direction of flow to remove surface water or groundwater from land by means of gravity.
406 For the purposes of this title, any new activity that reroutes a streambed or dredges a
407 wetland is not considered to be a "drainage ditch." Where a drainage ditch widens out into a
408 larger wetland, a route no more than 12 feet in width can be considered to be the drainage
409 ditch. The remainder is considered wetlands unless it is demonstrated that the originally
410 developed drainage ditch was designed to be greater than 12 feet in width.

411 **DREDGE**

412 To move or remove, by digging, scraping, scooping or suctioning, any earth, sand, silt, mud,
413 gravel, rock or other material from the bottom of a water body or wetland surface.

414 **DRIVEWAY**

415 A vehicular accessway less than 500 feet in length serving two lots or less.

416 **DRIVE-THROUGH FACILITY**

417 Any portion of a structure from which business is transacted, or is capable of being
418 transacted, directly with customers located in a motor vehicle during such business
419 transaction.

420 **DWELLING**

421 A building designed or used as the living quarters for one or more families. The term does
422 not include motel, rooming house, hotel, inn, club, trailer, or structures solely used for
423 transient or overnight occupancy.

424 **DWELLING, ATTACHED SINGLE-FAMILY**

425 A dwelling unit, located on its own lot that shares one or more common or abutting walls
426 with one or more dwelling units. The common or abutting wall must be shared for at least
427 25 percent of the length of the side of the dwelling.

428 **DWELLING, COTTAGE CLUSTER**

429 A dwelling unit that shares a common lot as well as common open space and may
430 share a parking area and/or accessory structures.

431 **DWELLING, MANUFACTURED HOUSING**

432 Manufactured housing shall be defined according to 30-A, M.R.S.A. § 4358, as amended
433 from time to time. See § 16.5.15 for Manufactured Housing general performance
434 standards.

435 **DWELLING, MULTI-FAMILY**

436 A structure that contains three (3) or more dwelling units that share common walls or
437 floors/ceilings with one or more units. The land underneath the structure is not divided
438 into separate lots.

440 **DWELLING, SINGLE-FAMILY**

441 A detached dwelling unit located on its own lot.

442

443 **DWELLING, TWO-FAMILY**

444 A building that contains two primary dwelling units on one lot. The units must share a
445 common wall or common floor/ceiling.

446 **DWELLING UNIT**

447 A room or group of rooms forming a habitable unit for one household, with facilities used
448 or intended to be used for living, sleeping, cooking, eating and sanitary facilities. Such a
449 unit must meet the building code standards adopted and amended from time to time by
450 Maine’s Bureau of Building Codes and Standards.

451 **DWELLING UNIT (IN THE SHORELAND AND RESOURCE PROTECTION
452 OVERLAY ZONES)**

453 A room or group of rooms designed and equipped exclusively for use as permanent,
454 seasonal, or temporary living quarters for only one family at a time and containing cooking,
455 sleeping and toilet facilities. The term includes mobile homes and rental units that contain
456 cooking, sleeping, and toilet facilities regardless of the time period rented. Recreational
457 vehicles are not dwelling units.

458 **EASEMENT**

459 The authorization of a property owner for the use by another, and for a specified purpose, of
460 any designated part of the owner’s property.

461 **EAVE**

462 The projecting lower edges of a roof overhanging the wall of the building.

463 **ELDERLY DAY CARE FACILITY**

464 A facility that provides short-term care, supervision and recreation and social activities for
465 elderly and handicapped individuals, in which the participants do not stay overnight.

466 **ELEVATED BUILDING**

467 A. A non-basement building:

468 (1). Built, in the case of a building in Zone A1 — 30, AE, A, A99, AO or AH, to have the
469 top of the elevated floor, elevated above the ground level by means of pilings, columns,
470 post, piers or “stilts”; and

471 (2). Adequately anchored so as not to impair the structural integrity of the building during a
472 flood of up to one foot above the magnitude of the base flood.

473 B. In the case of Zone A1 — 30, AE, A, A99, AO or AH, “elevated building” also includes
474 a building elevated by means of fill or solid foundation perimeter walls less than three
475 feet in height with openings sufficient to facilitate the unimpeded movement of
476 floodwaters.

477 **ELEVATION CERTIFICATE**

478 An official form (FEMA Form 81-31, 05/90, as amended) that:

479 A. Is used to verify compliance with the floodplain management regulations of the National
480 Flood Insurance Program; and

481 B. Is required for purchasing flood insurance.

482 **EMERGENCY OPERATIONS**

483 Operations conducted by or on behalf of the municipality for the public health, safety or
484 general welfare, such as protection of resources from immediate destruction or loss, law
485 enforcement and operations to rescue human beings, property and livestock from the threat
486 of destruction or injury.

487 **ESSENTIAL SERVICES**

488 The construction, alteration or maintenance of gas, electrical or communication facilities;
489 steam, fuel, electric power or water transmission or distribution lines, towers and related
490 equipment; telephone cables or lines, poles and related equipment; gas, oil, water, slurry, or
491 other similar pipelines; municipal sewage lines, collection or supply systems; and associated
492 storage tanks. Such systems may include towers, poles, wires, mains, drains, pipes,
493 conduits, cables, fire alarms, all police call boxes, traffic signals, hydrants and similar
494 accessories, but do not include service drops or buildings which are necessary for the
495 furnishing of such services.

496 **EXEMPT PERSON OR DISCHARGE**

497 For the purposes of stormwater regulation, means any person who is subject to a multi-
498 sector general permit for industrial activities, a general permit for construction activity, a
499 general permit for the discharge of stormwater from the Maine Department of
500 Transportation and the Maine Turnpike Authority, municipal separate storm sewer systems,
501 or a general permit for the discharge of stormwater from state or federally owned authority,
502 municipal separate storm sewer system facilities, and any nonstormwater discharge
503 permitted under a National Pollutant Discharge Elimination System permit, waiver, or
504 waste discharge license or order issued to the discharger and administered under the
505 authority of the U.S. Environmental Protection Agency (EPA) or the Maine Department of
506 Environmental Protection (DEP).

507 **EXPANSION OF STRUCTURE**

508 An increase in the footprint of a structure, including all extensions, such as, but not limited
509 to, piers or attached decks, garages, porches and greenhouses.

510 **EXPANSION OF USE**

511 The addition of weeks or months to a use's operating season; additional hours of operation;
512 or the use of more floor area or ground area devoted to a particular use.

513 **FAA**

514 The Federal Aviation Administration.

515 **FAMILY**

516 One or more persons occupying premises and living as a single housekeeping unit.

517 **FARMERS MARKET**

518 An event where farmers, ranchers, and other agricultural producers sell food, plants,
519 flowers, marine-products, and added-value products, such as jams and jellies or handmade
520 crafts, they have grown, raised, caught, or prepared for retail sale. In addition, some vendors
521 sell food that is available for immediate consumption on site, and some may be community
522 groups, services, or other vendors or organizations. Farmers Markets occur on a regular
523 basis in the same location. They are free and open to the public. Some markets are seasonal,
524 while others occur year-round.

525 **FCC**

526 The Federal Communications Commission.

527 **FILL**

528 Materials such as select soils, rock, sand and gravel added to a land area or wetland area.

529 **FILLING**

530 The act of adding and/or placing fill into or upon a land area or wetland area.

531 **FINGER FLOAT**

532 A float extending from the main float of a pier, ramp and float system that creates slips
533 and/or increases the pier or float edge available for mooring boats.

534 **FLAG**

535 Any fabric containing distinctive colors, patterns or symbols, used as a symbol of a
536 government or recognized political subdivision.

537 **FLOAT**

538 A platform that floats and is anchored, moored or secured at or near the shore, used for
539 landing or other purposes.

540 **FLOOD, AREA OF A SHALLOW FLOODING**

541 A designated AO or AH Zone on a community's Flood Insurance Rate Map (FIRM), with a
542 one-percent or greater annual chance of flooding to an average depth of one to three feet,
543 where a clearly defined channel does not exist, where the path of flooding is unpredictable,
544 and where velocity flow may be evident. Such flooding is characterized by ponding or sheet
545 flow.

546 **FLOOD, AREA OF SPECIAL FLOOD HAZARD**

547 The land in the floodplain having a one-percent or greater chance of flooding in any given
548 year, as specifically identified in the Flood Insurance Study cited in § 16.5.11.C,
549 Establishment of areas.

550 **FLOOD ELEVATION STUDY**

551 An examination, evaluation and determination of flood hazards and, if appropriate,
552 corresponding water surface elevations.

553 **FLOOD HAZARD ZONE**

554 That portion of land which has one-percent chance of flooding in any given year, as
555 designated on Flood Insurance Rate Maps issued by the Federal Insurance Administration,
556 if available, or on Flood Hazard Boundary Maps issued by the Federal Insurance
557 Administration.

558 **FLOOD INSURANCE RATE MAP (FIRM)**

559 An official map of a community on which the Administrator of the Federal Insurance
560 Administration has delineated both the special hazard areas and the risk premium zones
561 applicable to the community.

562 **FLOOD INSURANCE STUDY**

563 See "flood elevation study."

564 **FLOOD OR FLOODING**

565 A. A general and temporary condition of partial or complete inundation of normally dry land
566 areas from:

567 (1). The overflow of inland or tidal waters; or

568 (2). The unusual and rapid accumulation or runoff of surface waters from any source.

569 B. The collapse or subsidence of land along the shore of a lake or other body of water as a
570 result of erosion or undermining caused by waves or currents or water exceeding
571 anticipated cyclical levels or suddenly caused by an unusually high water level in a
572 natural body of water, accompanied by a severe storm, or by an unanticipated force of
573 nature, such as a flash flood or an abnormal tidal surge, or by some similarly unusual and
574 unforeseeable event which results in flooding as defined in Subsection A(1) of this
575 definition.

576 **FLOOD, ONE-HUNDRED-YEAR**

577 The highest level of flood that, on the average, is likely to occur once every 100 years (that
578 has a one-percent chance of occurring in any given year). See Base Flood.

579 **FLOODPLAIN MANAGEMENT**

580 The operation of an overall program of corrective and preventive measures for reducing
581 flood damage, including, but not limited to, emergency preparedness plans, flood control
582 works, and floodplain management regulations.

583 **FLOODPLAIN MANAGEMENT REGULATIONS**

584 Zoning ordinances, subdivision regulations, building codes, health regulations, special
585 purpose ordinances (such as a floodplain ordinance, grading ordinance, and erosion control
586 ordinance) and other applications of police power. The term describes such state or local
587 regulations, in any combination thereof, which provide standards for the purpose of flood
588 damage prevention and reduction.

589 **FLOODPLAIN OR FLOOD-PRONE AREA**

590 Any land area susceptible to being inundated by water from any source (see "flood").

591 FLOODPROOFING

592 Any combination of structural and nonstructural additions, changes or adjustments to
593 structures which reduce or eliminate flood damage to real estate or improved real property,
594 water and sanitary facilities, structures and contents.

595 FLOODWAY

596 See "regulatory floodway."

597 FLOODWAY ENCROACHMENT LINES

598 The lines marking the limits of floodways on federal, state and local floodplain maps.

599 FLOOR AREA

600 The sum of the horizontal areas of the floor(s) of a structure enclosed by exterior walls, plus
601 the horizontal area of any unenclosed portions of a structure such as porches and decks.

602 FOREST MANAGEMENT ACTIVITIES

603 Timber cruising and other forest resource evaluation activities, pesticide or fertilizer
604 application, management planning activities, timber stand improvement, pruning,
605 regeneration of forest stands, and other similar or associated activities, exclusive of timber
606 harvesting and the construction, creation or maintenance of roads.

608 FOUNDATION

609 The supporting substructure of a building or other structure, including, but not limited to,
610 basements, slabs, sills, posts or frost walls.

611 FREEBOARD

612 A factor of safety usually expressed in feet above a flood level for purposes of floodplain
613 management. Freeboard tends to compensate for the many unknown factors, such as wave
614 action, bridge openings, and the hydrological effect of urbanization of the watershed, that
615 could contribute to flood heights greater than the height calculated for a selected size flood
616 and floodway conditions.

617 FULFILLMENT CENTER

618 A physical location, often a warehouse or a specialized building with automation, from
619 which a fulfillment provider fills customer orders from multiple e-commerce retailers.

620 FUNCTIONALLY WATER-DEPENDENT USES

621 Those uses that require, for their primary purpose, location on submerged lands or that
622 require direct access to, or location in, coastal and inland waters and which cannot be
623 located away from these waters. The uses include, but are not limited to, commercial and
624 recreational fishing and boating facilities, finfish and shellfish processing, fish storage and
625 retail and wholesale fish marketing facilities, waterfront dock and port facilities, excluding
626 recreational boat storage buildings, shipyards and boat-building facilities, marinas,
627 navigation aids, basins and channels, industrial uses dependent upon waterborne
628 transportation or requiring large volumes of cooling or processing water and which cannot
629 reasonably be located or operated at an inland site, and uses which primarily provide

630 general public access to marine or tidal waters.

631 **GAMBLING OR GAMING**

632 Any banking or percentage game played for money, property, or any representative of value
633 with cards, dice, or any device or machine and located exclusively within a facility licensed
634 for such activity.

635 **GAMBLING CASINO**

636 A room or rooms in which legal gaming or gambling is conducted.

637 **GASOLINE SALES**

638 The retail sales of fuel for motor vehicles, including, but not limited to, gasoline, diesel fuel,
639 bio-diesel, kerosene, ethanol, propane and hydrogen, and related goods and services. The
640 gasoline sales can be the principal use or accessory to another principal use, such as a
641 convenience store or other retail or service use.

642 **GASOLINE SERVICE STATION**

643 An establishment for the retail sales of fuel for motor vehicles, including, but not limited to,
644 gasoline, diesel fuel, bio-diesel, kerosene, ethanol, propane and hydrogen, and related goods
645 and services, and may provide service and minor repairs for motor vehicles.

646 **GLARE**

647 Excessive brightness that makes it difficult to see or that causes discomfort. Glare includes
648 direct glare, disability glare, and discomfort glare.

649 **GLARE, DIRECT**

650 Glare resulting from insufficiently shielded light sources or areas of excessive luminance
651 within the field of view.

652 **GLARE, DISABILITY**

653 The effect of stray light in the eye whereby visibility and visual performance are reduced.
654

655 **GLARE, DISCOMFORT**

656 Glare producing discomfort. It does not necessarily interfere with visual performance or
657 visibility.

658 **GRADE PLANE**

659 A reference plane representing the average of finished ground level adjoining the building
660 at all exterior walls. Where the finished ground level slopes away from the exterior walls,
661 the reference plane is to be established by the lowest points within the area between the
662 building and the lot line or, where the lot line is more than six feet (1,829 mm) from the
663 building, between the building and a point six feet (1,829 mm) from the building.

664 **GROSS FLOOR AREA**

665 The sum of the horizontal areas of the floor(s) of a structure enclosed by exterior walls or a
666 roof, plus the horizontal area of portions of the site used for customer seating, display of

667 merchandise, or outdoor sales.

668 **GROUND COVER**

669 Small plants, fallen leaves, needles and twigs, and the partially decayed organic matter of
670 the forest floor.

671 **HAZARDOUS WASTE**

672 As defined in 38 M.R.S. § 1319-O, a waste substance or material in any physical state,
673 designated as hazardous by the Board of Environmental Protection under 38 M.R.S. § 1303-
674 C.

675 **HEIGHT OF BUILDING**

676 The vertical measurement from the average grade between the highest and lowest elevation
677 of the original ground level to the highest point of the roof beams in flat roofs; to the highest
678 point on the deck of mansard roofs; to a level midway between the level of the eaves and
679 highest point of pitched roofs or hip roofs; or to a level 2/3 of the distance from the level of
680 the eaves to the highest point of gambrel roofs. For this purpose, the level of the eaves is
681 taken to mean the highest level where the plane of the roof intersects the plane of the
682 outside wall on a side containing the eaves. This is not intended to include weather-vanes or
683 residential antennas that protrude from a roof, but does include all towers, excepting those
684 utilized for amateur radio communications, and other structures. Building height restrictions
685 do not apply to roadside utility poles approved by the Town Council of less than 45 feet in
686 height above ground.

687 **HEIGHT OF STRUCTURE**

688 The vertical distance between the mean original grade at the downhill side of the structure
689 and the highest point of the structure, excluding chimneys, steeples, antennas and similar
690 appurtenances which have no floor area.

691 **HEIGHT OF WIRELESS COMMUNICATION SERVICES FACILITIES**

692 The distance measured from ground level to the highest point on the tower or other
693 structure, even if such highest point is an antenna.

694 **HIGH INTENSITY SOIL SURVEY**

695 A map prepared by a certified soil scientist using the guidance defined and prepared by the
696 Maine Association of Professional Soil Scientists. The soils must be identified in
697 accordance with the National Cooperative Soil Survey. The map must show the location of
698 all test pits used to identify the soils, and be accompanied by a log of each sample point,
699 identifying the textural classification and the depth to seasonal high-water table or bedrock
700 at that point. Evaluations of single soil test pits for subsurface waste disposal do not meet
701 the requirements for high intensity soil surveys and are not suitable replacement.

702 **HISTORIC STRUCTURE**

703 Any structure that is:

704 A. Listed individually on the National Register of Historic Places (a listing maintained by

705 the Department of the Interior) or preliminarily determined by the Secretary of the
706 Interior as meeting the requirements for individual listing on the National Register;

707 B. Certified or preliminarily determined by the Secretary of the Interior as contributing to
708 the historical significance of a registered historic district or a district preliminarily
709 determined by the Secretary of the Interior to qualify as a registered historic district;

710 C. Individually listed on a state inventory of historic places in states with historic
711 preservation programs which have been approved by the Secretary of the Interior; or

712 D. Individually listed on a local inventory of historic places in communities with historic
713 preservation programs that have been certified either:

714 (1). By an approved state program as determined by the Secretary of the Interior; or

715 (2). Directly by the Secretary of the Interior in states without approved programs.

716 HOME OCCUPATION

717 Any activity carried out for gain by a resident of the premises with the permission of the
718 property owner and conducted as an accessory use to the principal residential use.

719 HOME OCCUPATION, MAJOR

720 A type of home occupation that fails to meet all of the standards for a "minor home
721 occupation" established in § 16.5.12, but is found by the Board of Appeals to satisfy the
722 standards established in § 16.5.12 to ensure that a business results in no more than a minor
723 intrusion in the quality of life of residents in the surrounding neighborhood.

724 HOME OCCUPATION, MINOR

725 The least intensive type of home occupation that meets the standards established in §
726 16.5.12 to ensure compatibility with the surrounding neighborhood.

727 HOSPITAL

728 An institution specializing in providing inpatient and outpatient treatment and emergency
729 services of a medical nature to human patients. A hospital may include the offices or
730 facilities of independent service providers and/or a freestanding outpatient clinic or
731 diagnostic facility that operates as part of, or an adjunct to, the main facility.

732 HOTEL

733 A building or group of buildings in which lodging or boarding and lodging capabilities are
734 provided for more than 20 persons, and offered to the public for compensation, and in
735 which ingress and egress to and from rooms are made primarily through an inside lobby or
736 office supervised by a person in charge at all hours. As such, it is open to the public in
737 contradistinction to a rooming house or a motel, which are separately defined in this section.

738 HYDRIC SOIL

739 A soil that in its undrained condition is saturated, flooded or ponded long enough during the
740 growing season to develop anaerobic conditions that favor the growth and regeneration of
741 wetland (hydrophytic) vegetation. Soils found in Kittery which may be considered hydric
742 soils include but are not limited to: Biddeford, Brayton, Chocorua, Rumney, Scantic,
743 Sebago, Vassalboro, Naumberg, Raynham and Waskish. All hydric soils listed in the

744 Natural Resources Conservation Service list entitled "National Hydric Soils List by State"
745 are included for consideration in this title. (<http://soils.usda.gov/use/hydric/lists/state.html>)

746 **HYDROPHYTIC VEGETATION**

747 Plant life growing in water or on a substrate that is at least periodically deficient in oxygen
748 as a result of excessive water content. Hydrophytic vegetation includes plants classified as
749 obligate wetland, facultative wetland, or facultative in the U.S. Fish and Wildlife Service
750 publication National List of Plant Species That Occur in Wetlands: 1988 – Maine, as
751 amended or superseded. This publication is available at the municipal offices for inspection.

752 **ILLICIT DISCHARGE**

753 For the purposes of stormwater regulation, means any discharge to the small municipal
754 separate storm sewer system (MS4) that does not consist entirely of stormwater or
755 authorized non-stormwater discharges.

756 **IMPERVIOUS SURFACE**

757 The total area of a parcel that consists of buildings and any associated structures as well as
758 roads, driveways, and parking areas, whether paved or unpaved and any additional area that
759 is covered with a low-permeability material such as asphalt, stone or concrete or compacted
760 through design or use to reduce permeability.

761 **IMPROVEMENT PLANS**

762 Maps, plans, profiles, studies, cross sections and other required details for the construction
763 of all improvements.

764 **INDIVIDUAL PRIVATE CAMPSITE**

765 An area of land which is not associated with a campground, but which is developed for
766 repeated camping by only one group not to exceed 10 individuals and no more than one
767 recreational vehicle, and which involves site improvements which may include but not be
768 limited to gravel pads, parking areas, fireplaces or tent platforms.

769 **INDUSTRIAL ACTIVITY**

770 The assembling, fabrication, finishing, manufacturing, packaging or processing of goods, or
771 the extraction of minerals.

772 **INDUSTRIAL ACTIVITY, STORMWATER REGULATION**

773 Activity or activities subject to National Pollutant Discharge Elimination System
774 industrial permits as defined in 40 CFR 122.26(b)(14).

775 **INDUSTRY, HEAVY**

776 A facility and/or site used in the basic processing and manufacturing of materials or
777 products predominantly from extracted or raw materials, or a use engaged in storage of or
778 manufacturing processes using flammable or explosive materials, or storage or
779 manufacturing processes that potentially involve hazardous or commonly recognized
780 offensive conditions.

781 **INDUSTRY, LIGHT**

782 A facility used in the manufacture, predominantly from previously prepared materials, of
783 finished products or parts, including processing, fabrication, assembly, treatment, blending,
784 packaging, inside an enclosed structure. Basic industrial processing, such as paper
785 manufacturing, petroleum processing, manufacture of explosives, production of chemicals
786 or fertilizer, are not light industrial uses.

787 **INN**

788 A commercial place of lodging which contains a dwelling unit occupied by an owner or
789 resident manager, which has 12 or fewer guest rooms, and may include a restaurant which
790 also serves non-guests. Rentals to the same party for more than 12 weeks in a calendar year
791 are prohibited.

792 **INTERMITTENT STREAM**

793 A channel of a stream, river or brook that is without flowing surface water for at least one
794 month of a year.

795 **INVASIVE NONNATIVE PLANT**

796 Grasses, forbs, shrubs or trees not native to the State of Maine and which proliferate in and
797 dominate vegetation to the exclusion or elimination of native plants.

798 **JULY 13, 1977**

799 That date upon which a complete revision of the first zoning ordinances was adopted by the
800 Town and upon which certain existing nonconforming conditions are considered to be
801 protected (legally nonconforming).

802 **JUNKYARD**

803 A lot or part thereof exposed to the elements, which is used for the sale or for the storage,
804 keeping or abandonment of junk or scrap materials, or the storage, dismantling, demolition,
805 abandonment or sale of construction equipment or machinery, or parts thereof or of
806 unregistered automobiles or other vehicles not in condition for use on the public highway.

807 **LANDING**

808 A place for loading or discharging persons or goods, as from a vessel.

809 **LANDSCAPE PLANTER STRIP**

810 A vegetated area (naturally vegetated and/or landscaped) located adjacent and parallel to a
811 road or street and designed to visually and functionally separate the roadway from the
812 abutting property upon which it is located.

813 **LARGE, HEALTHY TREE**

814 A tree with a diameter at breast height (dbh) of at least 12 inches and which does not exhibit any
815 indicators of stress, damage, disease or decay that will limit its expected additional life to less
816 than 20 years.

817 **LEGISLATIVE BODY**

818 Town Council.

819 **LIGHT FIXTURE HEIGHT**

820 The vertical distance between the surface that will be illuminated by the fixture and the
821 bottom of the light source (see "cutoff fixture" diagram).

822 **LINER BUILDING**

823 A building that lines the edge of a street or other public space. Liner Buildings are typically
824 used to shield public space, like a street or sidewalk, from something less desirable to view,
825 such as a parking garage. They can also be used to enclose a space such as protecting a
826 courtyard from a busy street. Where allowed, a Liner Building must be a minimum of eight
827 feet deep and a maximum of 14 feet deep.

828 **LOCALLY ESTABLISHED DATUM**

829 For purposes of § 16.5.11 Floodplain Management, an elevation established for a specific
830 site to which all other elevations at the site are referenced. This elevation is generally not
831 referenced to the National Geodetic Vertical Datum (NGVD) or any other established
832 datum and is used in areas where mean sea level is too far from a specific site to be
833 practically used.

834 **LOT**

835 A parcel of land, legally created and recorded, having frontage upon an approved public or
836 private street; or a tract of land legally created and recorded prior to July 13, 1977.

837 **LOT AREA**

838 The area of land enclosed within the boundary lines of a lot, minus:

- 839 A. Land below the normal high-water line of a water body or upland edge of a coastal
840 wetland;
- 841 B. Areas beneath Planning Board-approved right-of-way; and
- 842 C. Land within public street rights-of-way.

843
844 **LOT WIDTH**

845 The horizontal distance between the side lot lines, measured at the setback lines.

846 **LOW IMPACT DEVELOPMENT (LID)**

847 The site-based process of developing land while minimizing impacts on water resources and
848 infrastructure. LID replicates the natural hydrology of a site.

849 [Added 11-26-2018 by Ord. No. 10.18]

850 **LOWEST FLOOR**

851 The lowest floor of the lowest enclosed area (including basement). An unfinished or flood-
852 resistant enclosure, usable solely for parking of vehicles, building access or storage in an
853 area other than a basement area, is not considered a building's lowest floor, provided that
854 such enclosure is not built so as to render the structure in violation of the applicable non-
855 elevation design requirements described in § 16.5.11.H.

856 **LUMEN**

857 A standard measure of light energy generated by a light source, normally reported by the
858 manufacturer of the lamp or bulb.

859 **MANUFACTURED HOUSING**

860 Manufactured Housing shall be defined according to 30-A, M.R.S.A. § 4358, as amended
861 from time to time. See § 16.5.15.

862 **MARIJUANA**

863 Cannabis. See Cannabis definition.

864 **MARIJUANA, ADULT USE STORE**

865 Means a facility licensed under 28-B MRS Chapter 1 to purchase adult use marijuana,
866 immature marijuana plants and seedlings from a cultivation facility, and to sell adult use
867 marijuana, adult use marijuana products, immature marijuana plants and seedlings to
868 consumers.

869 **MARIJUANA, BUSINESS**

870 Means an Adult Use Marijuana Store, Marijuana Cultivation Facility, Medical Marijuana
871 Registered Dispensary, Medical Marijuana Caregiver Retail Store, Marijuana Manufacturing
872 Facility, or Marijuana Testing Facility.

873 **MARIJUANA, CULTIVATION FACILITY**

874 Means a facility licensed by the State of Maine to purchase marijuana plants and seeds from
875 other cultivation facilities; to cultivate, prepare and package marijuana; to sell marijuana,
876 marijuana seedlings, plants and seeds to products manufacturing facilities, marijuana stores,
877 caregivers or other cultivation facilities.

878 Tier 1: Up to 500 square feet of plant canopy

879 Tier 2: Up to 2,000 square feet of plant canopy

880 Tier 3: Up to 7,000 square feet of plant canopy

881 Tier 4: Up to 20,000 square feet of plant canopy

882 **MARIJUANA, MANUFACTURING FACILITY**

883 Means (1) a registered tier 1 or tier 2 manufacturing facility, as designated by state law, or a
884 person authorized to engage in marijuana extraction under 22 MRS §2423- F; or (2) a facility
885 licensed under M.R.S. 28-B, Subchapter 2 to purchase marijuana from a cultivation facility
886 or another products manufacturing facility; to manufacture, label and package marijuana and
887 marijuana products; and to sell marijuana and marijuana products to marijuana stores and to

888 other products manufacturing facilities.

889 **MARIJUANA, MEDICAL CAREGIVER RETAIL STORE**

890 Means a store that has attributes generally associated with retail stores, including, but not
891 limited to, a fixed location, a sign, regular business hours, accessibility to the public and sales
892 of goods or services directly to a consumer, and that is used by a registered caregiver to offer
893 marijuana plants or harvested marijuana for sale to qualifying patients.

894 **MARIJUANA, MEDICAL REGISTERED CAREGIVER**

895 Means a person or an assistant of that person registered in accordance with state law to
896 provide care for a qualifying patient in accordance with state law.

897 **MARIJUANA, MEDICAL REGISTERED CAREGIVER HOME ESTABLISHMENT**

898 Means a medical marijuana registered caregiver business operating on the property of a
899 dwelling unit serving as the primary residence of the Registered Caregiver.

900 **MARIJUANA, MEDICAL REGISTERED DISPENSARY**

901 Means an entity registered under 22 M.R.S. § 2425-A that acquires, possesses, cultivates,
902 manufactures, delivers, transfers, transports, sells, supplies or dispenses marijuana plants or
903 harvested marijuana or related supplies and educational materials to qualifying patients and
904 the caregivers of those patients.

905 **MARIJUANA, TESTING FACILITY**

906 Means a public or private laboratory that is authorized and accredited in accordance with
907 state law for the research and analysis of marijuana, marijuana products or other substances
908 for contaminants, safety or potency.

909 **MARINA**

910 A facility constructed for water-dependent uses, used exclusively or in part for the storing,
911 servicing, fueling, berthing, and securing of boats.

912 **MARKET VALUE**

913 The estimated price a property will bring in the open market and under prevailing market
914 conditions in a sale between a willing seller and a willing buyer, both conversant with the
915 property and with prevailing general price levels.

916 **MASS TRANSIT STATION**

917 A place where people transfer between modes of transportation or any premises for the
918 transient housing or parking of buses, trains or ride-sharing vehicles and the loading and
919 unloading of passengers.

920 **MASTER SITE DEVELOPMENT PLAN**

921 A conceptual, integrated design and infrastructure plan for the development of a master

922 planned property, in which:

923 A. The development standards are applied to the land as defined by its perimeter, rather
 924 than by the individual lots, tracts and parcels into which the land may be divided; and

925 B. The standards are applied to the proposed master site development boundary rather than
 926 to individual lots, tracts and parcels within the development.

927 **MEAN SEA LEVEL**

928 For purposes of the National Flood Insurance Program, the National Geodetic Vertical
 929 Datum (NGVD) of 1929, or other datum, to which base flood elevations shown on a
 930 community's Flood Insurance Rate Map are referenced.

931 **MECHANICAL SERVICE**

932 Establishments primarily engaged in mechanical or electronic repair or maintenance of
 933 motorized or mechanical equipment, such as, but not limited to, welding repair, small
 934 engine repair, tool sharpening, and refrigeration and air-conditioning repair, but excluding
 935 repair garages.

936 **MINERAL EXTRACTION**

937 Any operation within any twelve-month period which removes more than 100 cubic yards
 938 of soil, topsoil, loam, sand, gravel, clay, rock, peat or other like material from its natural
 939 location and to transport the product removed away from the extraction site.

940 **MINERAL/EARTH MATERIAL EXPLORATION**

941 Hand sampling, test boring or other methods of determining the nature or extent of
 942 mineral/earth resources which create minimal disturbance to the land and which include
 943 reasonable measures to restore the land to its original condition.

944 **MINI STORAGE**

945 A commercial facility for the storage of consumer or business property on a rental basis in
 946 which the tenant receives the exclusive use of a storage unit or locker and can access the
 947 unit to drop off or retrieve property at designated times.

948 **MINIMUM LAND AREA PER DWELLING UNIT**

949 The gross area of a parcel not subject to subdivision regulations minus the land area listed
 950 below. Where land areas to be subtracted overlap, the area therein shall be subtracted once.
 951 For land area subject to subdivision, see "net residential acreage."

952 A. All land located below the highest annual tide elevation as published in the Maine DEP
 953 Highest Annual Tide (HAT) levels for the most-current year.

954 B. All wetlands as defined in the definition of "wetland," as well as vernal pools, ponds,
 955 streams and other water bodies.

956 C. All land located on filled tidal lands, per the definition of "tidal land, filled."

957 D. All land located within existing rights-of-way and other existing easements wherein
 958 dwelling units cannot be built.

959 **MIXED-USE BUILDING**

960 A building occupied by two or more types or categories of principal uses (for example,
961 residential and office, or office and retail) in which any category of uses occupies at least
962 10% of the gross floor area of the building.

963 **MOBILE HOME PARK**

964 Mobile Home Park shall be defined according to 30-A, M.R.S.A. § 4358, as amended from
965 time to time. See § 16.5.17.

966 **MOTEL**

967 A building or group of detached or connected buildings designed, intended or used
968 primarily to provide sleeping accommodations without cooking facilities for travelers for
969 compensation and having a parking space adjacent to a sleeping room. An automobile court
970 or a tourist court with more than one unit or a motor lodge is deemed to be a motel.

971 **MUNICIPAL SEPARATE STORM SEWER SYSTEM OR MS4**

972 A conveyance or system of conveyances designed or used for collecting or conveying
973 stormwater [other than a publicly owned treatment works (POTW), as defined at 40 CFR
974 122.2, or a combined sewer], including, but not limited to, roads with drainage systems,
975 municipal streets, catch basins, curbs, gutters, ditches, human-made channels or storm
976 drains owned or operated by any municipality, sewer or sewage district. Maine Department
977 of Transportation (MaineDOT), Maine Turnpike Authority (MTA), state agency or federal
978 agency or other public entity that discharges directly to waters of the state other than
979 groundwater. See also "regulated small MS4" and "small MS4."

980 **MUNICIPALITY**

981 Town of Kittery, Maine.

982 **NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)
983 STORMWATER DISCHARGE PERMIT**

984 A permit issued by the EPA or by the DEP that authorizes the discharge of pollutants to
985 waters of the United States, whether the permit is applicable on an individual, group, or
986 general area-wide basis.

987 **NAVIGABLE WATERS**

988 The "waters of the United States including territorial seas" as defined in the Federal Clean
989 Water Act and 33 CFR Part 328, as amended.

990 **NET RESIDENTIAL ACREAGE**

991 The land area subject to subdivision that is identified for regulatory purposes as developable
992 and is the gross available acreage minus land area identified in § 16.5.18, Net Residential
993 Acreage, unless otherwise exempt in § 16.5.18.D, Exemptions to net residential acreage
994 calculations.

995 **NET RESIDENTIAL DENSITY**

996 The number of dwelling units in a subdivision per net residential acre. This is calculated by

997 dividing the net residential acreage by the square feet specified as minimum land area per
998 dwelling unit in the dimensional standards in § 16.4, for the relevant base zone or overlay
999 zone(s) where applicable.

1000 **NEW CONSTRUCTION**

1001 Structures for which the "start of construction" commenced on or after the effective date of
1002 floodplain management regulations adopted by a community, and includes any subsequent
1003 improvements to such structures.

1004 **NEW MOTOR VEHICLE SALES**

1005 A commercial establishment whose primary business is the buying and selling or offering to
1006 negotiate a sale of new motor vehicles, including related service activities, and has a
1007 franchise from a distributor or manufacturer. An establishment is "engaged in the business
1008 of buying, selling or offering to negotiate the sale of a vehicle" if that business buys motor
1009 vehicles for the purpose of resale, sells or offers to negotiate the sale of more than five
1010 motor vehicles in any twelve-month period, or displays or permits the display of three or
1011 more motor vehicles for sale at any one time or within any thirty-day period upon the
1012 premises, unless that person has owned and registered each vehicle for at least six months.

1013 **NONCONFORMING LOT OF RECORD**

1014 A single lot of record which was created prior to July 13, 1977, or subsequently created by
1015 legislative or judicial decision, which does not meet the area and/or frontage requirements
1016 of the district in which it is located; or is the result of legally authorized development
1017 created between July 13, 1977 and April 26, 1990, and became nonconforming as a direct
1018 result of the implementation of this title.

1019 **NONCONFORMING STRUCTURE**

1020 A structure that does not meet one or more of the following dimensional requirements:
1021 setbacks, yard, height or lot coverage. It is allowed solely because it was lawful when
1022 created and became legally nonconforming as a direct result of a change in the provisions of
1023 this title.

1024 **NONCONFORMING USE**

1025 Use of buildings, structures, premises, land or parts thereof which is not allowed in the
1026 district and/or zone in which it is situated, but which is allowed to remain solely because it
1027 was in lawful existence when created or became legally nonconforming as a direct result of
1028 a change in the provisions of this title.

1029 **NONCONFORMING, LEGALLY**

1030 It was lawfully created but became nonconforming due to a change in the Town Code.

1031 **NONSTORMWATER DISCHARGE**

1032 Any discharge to an MS4 that is not composed entirely of stormwater.

1033 **NORMAL HIGH-WATER LINE**

1034 The line which is apparent from visible markings, changes in the character of soils due to

1035 prolonged action of the water or changes in vegetation, and which distinguishes between
1036 predominantly aquatic and predominantly terrestrial land.

1037 **NURSERY SCHOOL**

1038 A house or other place in which a person or combination of persons maintains or otherwise
1039 carries out for consideration during the day a regular program which provides care for three
1040 or more children in accordance with 22 M.R.S. § 8401, provided that:

- 1041 A. No session conducted for the children is longer than 3 1/2 hours in length;
- 1042 B. No more than two sessions are conducted per day;
- 1043 C. Each child in attendance at the nursery school attends only one session per day; and
- 1044 D. No hot meal is served to the children.

1045 **NURSING CARE FACILITY, LONG-TERM**

1046 A facility that is licensed by the State of Maine to provide nursing care to persons who are
1047 unable to care for themselves. The facility provides long-term residential and nursing care
1048 to its residents. The facility does not provide hospital services except as incidental to the
1049 delivery of nursing care. A long-term nursing care facility does not include any facility that
1050 is defined as a Residential Care Facility.

1051 **OFFICIAL BUSINESS DIRECTIONAL SIGN (OBDS)**

1052 Any sign erected and maintained in accordance with the Maine Traveler Information
1053 Services Act, 23 M.R.S. § 1901 et seq., and regulations adopted pursuant to it, and which
1054 complies with the requirements of this title.

1055 **OFFICIAL MAP**

1056 The map adopted by the municipality showing the location of public property, ways used in
1057 common by more than two owners of abutting property, and approved subdivision or site
1058 plan, and any amendments thereto adopted by the municipality or additions thereto resulting
1059 from the approval of a subdivision or site plan by the Planning Board and the subsequent
1060 filing for record of such plan.

1061 **OFFICIAL SUBMITTAL DATE**

1062 The date upon which the Town Planner receives a complete application and issues a receipt
1063 so indicating.

1064 **ONE-HUNDRED-YEAR FLOOD**

1065 See "base flood."

1066 **OPEN SPACE**

1067 Includes all dedicated portions of a parcel that has vegetated surfaces or is in an undisturbed
1068 natural state. "Open space" does not include areas occupied by a building or a parking area,
1069 except where required by the management plan in place to govern the open space and as
1070 approved by the Planning Board.

1071 **OPEN SPACE, COMMON**

1072 Usable land within or related to a development, not individually owned, which is designed
1073 and intended for the common use or enjoyment of the residents of the development and may
1074 include such complementary structures, improvements and uses approved by the Planning
1075 Board. Such uses may include active or passive recreation or agriculture, where permitted.

1076 **OPEN SPACE, PUBLIC**

1077 Land accessible or dedicated for public use.

1078 **OPEN SPACE, RESERVED**

1079 Dedicated land that is permanently protected from further development and remains in a
1080 natural condition or is managed according to an approved management plan for natural
1081 resource functions, e.g., forestry, agriculture, habitat protection, passive recreation, or
1082 limited uses as approved by the Planning Board as part of cluster residential developments.

1083 **OUTDOOR DINING**

1084 A dining area with seats and/or table(s) located outside of a restaurant, which is either: a)
1085 located entirely outside of the walls of the building of the subject business, or b) enclosed
1086 on two (2) sides or fewer by the walls of the building with or without a solid roof cover, or
1087 c) enclosed on three (3) sides by the walls of the building without a solid roof cover.

1088 **OUTDOOR SERVICE AREAS**

1089 Areas located outside of a building or structure that are used for the delivery, handling,
1090 storage or processing of materials, goods or wastes, including areas used for the servicing,
1091 repairing, washing or fueling of motor vehicles and equipment.

1092 **OWNER**

1093 Any person, corporation or other legal entity having record title ownership to the property
1094 or the expressly authorized agent or designee thereof.

1095 **PARAPET**

1096 The extension of the wall(s) of a building above the roof eave and/or roofline.

1097 **PARCEL**

1098 See "tract or parcel of land."

1099 **PARKING AREA**

1100 Any public or private area, under, within or outside of a building or structure, designed and
1101 used for parking motor vehicles, including parking lots, garages, private driveways, and
1102 legally designated areas of public streets.

1103 **PATIO**

1104 An unenclosed, unroofed, exterior floor-like surface, usually composed of brick, stone or
1105 concrete, situated no higher than 18 inches above ground level, accessory to a dwelling and
1106 serving as an area for outdoor living.

1107 **PERSON**

1108 Any individual, firm, corporation, municipality, quasi-municipal corporation, two or more
1109 individuals having a joint or common interest, state agency or federal agency or other legal
1110 entity.

1111 **PERSONAL SERVICES**

1112 Establishments primarily engaged in providing services generally involving the care of
1113 one's personal appearance or apparel, including, but not limited to, barbers and beauty
1114 shops, laundries, photographic studios, shoe repair, garment altering, and diaper services.

1115 **PIER**

1116 A structure built out into the water generally with piles for use as a landing place.

1117 **POLLUTANT**

1118 Dredged spoil, solid waste, junk, incinerator residue, sewage, refuse, effluent, garbage,
1119 sewage sludge, munitions, chemicals, biological or radiological materials, oil, petroleum
1120 products or byproducts, heat, wrecked or discarded equipment, rock, sand, dirt and
1121 industrial, municipal, domestic, commercial or agricultural wastes of any kind.

1122 **POST-CONSTRUCTION STORMWATER MANAGEMENT PLAN**

1123 An inspection and maintenance plan as required by rule for projects that require approval by
1124 the Maine Department of Environmental Protection (MDEP) under Chapter 500,
1125 Stormwater Management; or a plan to inspect and maintain best management practices
1126 (BMPs) and stormwater management facilities employed by a new development or
1127 redevelopment, not subject to MDEP Chapter 500 rules, to meet the stormwater standards
1128 of this Code.

1129 **PRACTICABLE**

1130 Available and feasible, considering cost, existing technology, and logistics, based on overall
1131 project purposes.

1132 **PREEXISTING ACCESSORY-USE TOWERS/ANTENNAS**

1133 Legally existing prior to December 21, 1997, wireless communication system facility
1134 (WCSF), towers/antennas and alternative tower structures. Enlargements of WCSF,
1135 accessory use towers/antennas legally existing prior to December 21, 1997 must conform to
1136 the requirements of this title.

1137 **PREMISES**

1138 For the purposes of stormwater regulation, means any building, lot, parcel of land, or
1139 portion of land, whether improved or unimproved, including adjacent sidewalks and parking
1140 strips, located within the municipality from which discharges into the storm drainage
1141 system are or may be created, initiated, originated or maintained.

1142 **PRIMARY CAREGIVER**

1143 A person or an employee of that person, a licensed hospice provider or licensed nursing
1144 facility that provides care for a qualifying patient and is registered under 22 M.R.S. § 2425

1145 and receives Board of Appeals approval for a major home occupation.

1146 **PRINCIPAL BUILDING**

1147 The primary building on a lot or a building that shelters or encloses the principal use on a
1148 lot.

1149 **PRINCIPAL STRUCTURE**

1150 The primary structure on a lot or a structure that supports, shelters or encloses the principal
1151 use on the lot.

1152 **PRINCIPAL USE**

1153 The primary or predominant use. An activity that is conducted in conjunction with the
1154 principal use and such activity that either constitutes only an incidental or insubstantial part
1155 of the total activity that takes place on a lot; or is commonly associated with the principal
1156 use and integrally related to it, is regarded as "accessory to the principal use." An accessory
1157 to the principal use is regarded as "incidental or insubstantial" if it is both incidental and
1158 insubstantial in and of itself, and in relation to the principal use. Quantitative measures for
1159 consideration in this determination include the percentage and total amount of square
1160 footage attributed to the accessory to the principal use and sales or income derived from the
1161 accessory to the principal use.

1162 **PRIVATE ASSEMBLY**

1163 A building which is owned and used as a meeting place for private or semi-private social
1164 organization and clubs such as grange halls, fraternal organizations, religious institutions,
1165 etc. in which the principal use is exclusively for members. Rental of the facilities to outside
1166 groups is clearly incidental to the principle use and shall not significantly increase the
1167 intensity of the use of the site, especially regarding parking.

1168 **PRIVATE MARINA USE STRUCTURE**

1169 A structure which is owned and/or used by a private group, club, association or other legal
1170 entity's organization, and is used by its members only, and has frontage on navigable water,
1171 and as its principal use provides offshore moorings and/or docking facilities for vessels for
1172 use by its members and/or guests. The private marina may also provide accessory boating
1173 services. These accessory boating services may be provided to the boating public, members
1174 or guests.

1175 **PRUDENT AVOIDANCE**

1176 In any case where aboveground electrical utilities are approved, the plan is to be designed to
1177 avoid human residences as distant as possible without prohibitive cost.

1178 **PUBLIC ASSEMBLY AREA**

1179 Any area where large numbers of individuals collect to participate or to observe programs of
1180 participation.

1181

1182 **PUBLIC FACILITY**

1183 Any facility, including, but not limited to, buildings, property, recreation areas and roads

1184 which are owned, leased or otherwise operated, or funded by a governmental body or public
1185 entity

1186 **PUBLIC OR PRIVATE SCHOOL**

1187 A building or buildings and its associated grounds which is principally used to conduct
1188 educational classes including public and private elementary schools and nursery schools,
1189 including post-secondary schools, but not including commercial schools.

1190 **PUBLIC UTILITY**

1191 As defined in Title 35-A M.R.S. § 102, as amended.

1192 **PUBLIC UTILITY FACILITY**

1193 Buildings, structures, and facilities, including generating and switching stations, poles,
1194 lines, pipes, pumping stations, repeaters, antennas, transmitters and receivers, valves, and all
1195 buildings and structures relating to the furnishing of utility services, such as electric, gas,
1196 telephone, water and sewer, to the public, excluding solar energy systems.

1197 **QUALIFIED POST-CONSTRUCTION STORMWATER INSPECTOR**

1198 A person who conducts post-construction stormwater management facilities inspections for
1199 compensation and who has received the appropriate training for the same from the Maine
1200 Department of Environmental Protection.

1201 **RECENT FLOODPLAIN SOILS**

1202 The following soil series as described and identified by the National Cooperative Soil
1203 Survey: Alluvial, Cornish, Charles, Fryeburg, Hadley, Limerick, Lovewell, Medomak,
1204 Ondawa, Podunk, Rumney, Saco, Suncook, Sunday and Winooski.

1205 **RECREATION, COMMERCIAL INDOOR**

1206 The use of a building for play, sports, games, fitness, and other similar diversions operated
1207 as a business and open to the public for a fee.

1208 **RECREATION, COMMERCIAL OUTDOOR**

1209 The use of a land outside of a fully enclosed building, as defined, for play, sports, games,
1210 and other similar diversions operated as a business and open to the public for a fee.

1211 **RECREATION, PASSIVE**

1212 Outdoor recreational activities which have a low impact on the environment and
1213 neighborhood and require no motorized vehicles, significant earthmoving or substantial
1214 structures, such as hiking, fishing, canoeing, hunting, cross-country skiing, and wildlife
1215 observation and study. Benches and boardwalks, steps, railings and other structures
1216 necessary to provide safe accessibility for physically handicapped persons are allowed.

1217 **RECREATION, PUBLIC FACILITY**

1218 Means a facility open to the general public, for no charge or a subsidized charge, where
1219 organized recreational or athletic activities and events are held.

1220

1221 **RECREATION, PUBLIC OPEN SPACE**

1222 Open Space owned by a public agency and maintained by it for the use and enjoyment of the
1223 general public.

1224 **RECREATIONAL VEHICLE**

1225 A vehicle or an attachment to a vehicle designed to be towed, hauled, or driven and is
1226 primarily designed as temporary living accommodations for one or more persons. The
1227 vehicle must be registered with the State Division of Motor Vehicles.

1228 **RECREATIONAL VEHICLE PARK**

1229 Any lot or parcel of land upon which two or more sites are located, established, or
1230 maintained for occupancy by recreational vehicle for a fee as temporary living quarters for
1231 recreation or vacation purposes.

1232 **REGULATED SMALL MS4**

1233 Any small municipal separate storm sewer system (MS4) regulated by the State of Maine
1234 "General Permit for the Discharge of Stormwater from Small Municipal Separate Storm
1235 Sewer Systems" dated July 2013 ("general permit"), including all those located partially or
1236 entirely within an urbanized area (UA) and those additional small MS4s located outside an
1237 UA that as of the issuance of the general permit have been designated by the DEP as
1238 regulated small MS4s. The Town of Kittery is a regulated small MS4.

1239 **REGULATORY FLOODWAY**

- 1240 A. The channel of a river or other watercourse and the adjacent land areas that must be
1241 reserved in order to discharge the base flood without cumulatively increasing the water
1242 surface elevation more than one foot; and
- 1243 B. In riverine areas, is considered to be the channel of a river or other watercourse and the
1244 adjacent land areas to a distance of 1/2 the width of the floodplain, as measured from the
1245 normal high-water mark to the upland limit of the floodplain.

1246 **RELIGIOUS USE**

1247 A structure of place in which worship, ceremonies, rituals, and education pertaining to a
1248 particular system of beliefs are held.

1249 **REPAIR GARAGE**

1250 An establishment providing for the repair or servicing of motor vehicles. A repair garage
1251 does not include activities that are defined as mechanical service or a junkyard.

1252 **REPAIR SERVICE**

1253 A business providing for the repair of personal or small business property, such as radios
1254 and televisions, household or office electrical or electronic equipment, watches, clocks and
1255 jewelry, furniture and upholstery, sporting equipment, and similar items, but not including
1256 items included under mechanical services or automotive services and repair.

1257 **REPLACEMENT SYSTEM**

1258 A system intended to replace:

- 1259 A. An existing system which is either malfunctioning or being upgraded with no significant

1260 change of design flow or use of the structure; or

1261 B. Any existing overboard wastewater discharge.

1262 **RESEARCH AND DEVELOPMENT**

1263 A building or group of buildings in which are located facilities for technical or scientific
1264 research, investigation, testing or experimentation, but not facilities for the manufacture or
1265 sale of products, except as incidental to the main purpose of the facility.

1266 **RESIDENTIAL CARE FACILITY**

1267 A house or other place that, for consideration, is maintained wholly or partly for the purpose
1268 of providing residents with assisted living services. Residential Care Facilities provide
1269 housing and services to residents in private or semi-private bedrooms in buildings with
1270 common living areas and dining areas. "Residential Care Facility" does not include a
1271 licensed nursing home or supportive living arrangement certified by the state.

1272 **RESIDENTIAL CARE UNIT**

1273 A type of residential accommodation in a Residential Care Facility that has private sleeping
1274 and bathroom facilities but does not have permanent complete cooking facilities within the
1275 unit. The occupant of a residential care unit typically eats all or most of meals in a shared
1276 dining room. Residential care units may have a portable or removable kitchen or partial
1277 kitchen facilities such as a refrigerator and microwave oven. A residential care unit may be
1278 a unit with a separate bedroom, a suite or a room. A residential care unit is distinct from a
1279 dwelling unit that is defined separately.

1280 **RESIDENTIAL DEVELOPMENT USE PIER, RAMP AND FLOAT SYSTEM**

1281 A pier and/or ramp and float system which is used in common by lot owners or residents of
1282 a subdivision or residential planned development. The purpose is to provide waterfront
1283 access to the owners of lots in a residential development that has the potential for more than
1284 one waterfront lot. The object is to minimize the number of piers, ramps and floats resulting
1285 from new development.

1286 **RESIDENTIAL HOME OCCUPATION USE PIER, RAMP AND FLOAT SYSTEM**

1287 A pier and/or ramp and float system which is used for the residential home occupation
1288 workers in an approved functionally water-dependent home occupation (minor or major) in
1289 addition to its customary residential accessory use.

1290 **RESIDENTIAL JOINT/SHARED-USE PIER, RAMP AND FLOAT SYSTEM**

1291 A pier and/or ramp and float system which is used by the owners of not more than four
1292 residential shorefront lots, at least one boundary of whose building lot lies within 1,000 feet
1293 of the lot on which the joint/shared-use pier is constructed.

1294 **RESIDENTIAL SINGLE-USE PIER, RAMP AND FLOAT SYSTEM**

1295 A pier and/or ramp and float system which is used by the owner(s) of a single residential
1296 shorefront lot.

1297 **RESIDUAL BASAL AREA**

16.3 DEFINITIONS

Adopted: January 24, 2022

1298 The sum of the basal area of trees remaining on a harvested site.

1299 **RESIDUAL STAND**

1300 A stand of trees remaining in the forest following timber harvesting.

1301 **RESTAURANT**

1302 An establishment where food or food and drink are prepared and sold for consumption on
1303 the premises by the public and includes cafes, coffee shops and similar establishments that
1304 serve food.

1305 **RESUBDIVISION**

1306 The division of an existing subdivision or any change of lot size therein or the relocation of
1307 any street or lot in a subdivision, or any changes thereto.

1308 **RETAIL SALES**

1309 Any business engaged primarily in the sale of goods for personal or household consumption
1310 and/or use, and not for resale. The term "retail sale" does not include specific types of retail
1311 uses that are individually listed in § 16.4.

1312 **RETAIL SALES, BUILDING MATERIALS AND GARDEN SUPPLY**

1313 A retail establishment primarily engaged in selling lumber and other building materials;
1314 paint, glass, floor covering and wallpaper; hardware, drapery and upholstery; flowers and/or
1315 nursery stock, lawn and garden supplies; modular homes and mobile homes.

1316 **RETAIL SALES, CONVENIENCE STORE**

1317 A retail store containing less than 2,000 square feet of gross floor area that is designed and
1318 stocked to sell primarily food, beverages and other household supplies to customers who
1319 purchase only a relatively few items (in contrast to a grocery store). It is designed to attract
1320 and depends upon a large volume of stop-and-go traffic. Supplementing these uses with
1321 accessory gasoline sales requires additional parking and traffic considerations.

1322 **RIGHT-OF-WAY, PRIVATE**

1323 A platted and dedicated access route normally to back lot(s); and as approved by the
1324 Planning Board and recorded in the York County Registry of Deeds.

1325 **RIPRAP**

1326 Rocks, irregularly shaped, and at least six inches in diameter, used for erosion control and
1327 soil stabilization, typically used on ground slopes of two units horizontal to one unit vertical
1328 or less.

1329 **RIVER**

1330 A free-flowing body of water, including its associated floodplain wetlands, from that point
1331 at which it provides drainage for a watershed of 25 square miles to its mouth.

1332 **RIVERINE**

1333 Relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

1334 **ROAD**

1335 A route or track consisting of a bed of exposed mineral soil, gravel, asphalt or other
 1336 surfacing material constructed for or created by the repeated passage of motorized vehicles,
 1337 excluding driveways

1338 **ROOMING HOUSE**

1339 A residential use in which the owner or manager of the facility resides on the premises and
 1340 in which more than three persons who are not part of the owner's/manager's family are
 1341 housed in rooms for compensation with or without meals. This includes fraternities and
 1342 sororities.

1343 **SALT MARSH**

1344 Areas along coastal waters (most often along coastal bays) which support salt-tolerant
 1345 species, and where, at average high tide during the growing season, the soil is regularly
 1346 inundated by tidal waters. The predominant species is salt marsh cordgrass (*Spartina*
 1347 *alterniflora*). More open areas often support widgeon grass, eelgrass and Sago pondweed.

1348 **SALT MEADOW**

1349 Areas which support salt-tolerant plant species bordering the landward side of salt marshes
 1350 or open coastal water, where the soil is saturated during the growing season, but which is
 1351 rarely inundated by tidal water. Indigenous plant species include salt meadow cordgrass
 1352 (*Spartina patens*) and black rush; common three-square occurs in fresher areas.

1353 **SAWMILL, PERMANENT**

1354 A facility where logs are cut into boards or timbers; a mill or machine for sawing logs or
 1355 producing firewood that is in operation on a permanent basis. Sawmill operations may be
 1356 subject to State regulations.

1357 **SAWMILL, TEMPORARY**

1358 A facility where logs are cut into boards or timbers, a mill or machine for sawing logs or
 1359 producing firewood that is in operation for a cumulative duration of two (2) months or fewer
 1360 in any twelve (12) month period. Sawmill operations may be subject to State regulations.
 1361 This definition does not include the use of handheld chainsaws.

1362 **SCREEN**

1363 A method of significantly reducing the impact of noise and unsightly visual intrusions with
 1364 less offensive or more harmonious elements, such as plants, berms, fences, walls, or any
 1365 appropriate combination thereof.

1366 **SCREENING**

1367 Either: 1) a strip of at least 10 feet wide, densely planted (or having equivalent natural
 1368 growth) shrubs or trees at least four feet high at the time of planting, of an evergreen type
 1369 that will grow to a year-round dense screen at least six feet high in three years; or 2) an
 1370 opaque wall or barrier of uniformly colored fence at least six feet in height. Screening of
 1371 either type must be maintained in good condition at all times.

1372

1373 **SEPTIC SYSTEM**

1374 See "subsurface wastewater disposal system."

1375

1376 **SERVICE DROP**1377 Any utility line extension which does not cross or run beneath any portion of a water body,
1378 provided that:

1379

A. In the case of electric service:

1380

(1). The placement of wires and/or the installation of utility poles is located entirely upon
1381 the premises of the customer requesting service or upon a roadway at the right-of-way;
1382 and

1383

(2). The total length of the extension is less than 1,000 feet.

1384

B. In the case of telecommunications service:

1385

(1). The extension, regardless of length, will be made by the installation of telephone wires
1386 to existing utility poles; or

1387

(2). The extension requiring the installation of new utility poles or placement underground
1388 is less than 1,000 feet in length.

1389

SETBACK

1390

The minimum horizontal distance from an identified object, line, boundary or feature to the
1391 nearest part of a regulated object, use or feature. (Note: See § 16.1, for setbacks from water
1392 bodies and wetlands. See § 16.7.8 for applying setbacks in special situations.)

1393

SETBACK FROM STREAMS, WATER BODIES AND WETLANDS

1394

The minimum horizontal distance allowed from the upland edge of a wetland and/or from
1395 the normal high-water line to the nearest part of a structure (excluding cornices, eaves or
1396 gutters projecting not more than 24 inches), roads, parking areas, or other regulated
1397 activities. See Table 16.5.30. Minimum Setbacks from Wetlands and Water Bodies, for
1398 required horizontal distances, and § 16.7.8 and § 16.8.7 for applying setbacks in special
1399 situations. Adjacent to tidal waters, setbacks are measured from the upland edge of the
1400 coastal wetland.

1401

SHOP IN PURSUIT OF TRADES

1402

An establishment occupied by a business or craftsperson in a skilled trade, including, by
1403 way of example only, plumbing, carpentry or electrical work. Not more than 10 people may
1404 be employed at and/or work from the shop. The shop may include work space, storage
1405 space and/or office space. A shop in pursuit of trades does not include "construction
1406 services," which is separately defined.

1407

SHOPPING FULFILLMENT CENTERS

1408

A physical location that combines a business's retail functions and its warehouse or
1409 distribution activities into one Building. These facilities provide customers options for
1410 viewing goods and placing orders online or onsite. Products are stored and orders are

1411 processed onsite.

1412 **SHORE FRONTAGE**

1413 The width of a lot as it fronts the shore as measured in a straight line between the point of
1414 intersection of the side lot lines with the shoreline at normal high-water elevation.

1415 **SHOREFRONT DEVELOPMENT PLAN**

1416 A plan for any development extending into or within 100 feet of the upland edge of a
1417 coastal wetland, or into or within 100 feet of the upland edge of a fresh water wetland
1418 shown on the Zoning Map, including but not limited to public and private access paths;
1419 piers, ramps and floats; storage of boats and/or floats; clearing of vegetation, visual impact
1420 and controls to assure continuing conformance to the plan.

1421 **SHORELINE**

1422 The normal high-water line or upland edge of a wetland.

1423 **SIGN**

1424 Any structure or part of the structure attached thereto or painted or represented thereon,
1425 which displays or includes any letter, word, model, banner, flag, pennant, insignia, trade
1426 name, trademark, logo, device or representation used as, or which is in the nature of, any
1427 announcement of the purpose of a business, entity or person, direction or advertisement.
1428 The term "sign" does not include a flag.

1429 **SIGN AREA**

1430 The enclosed space within a geometric figure which contains the advertising message,
1431 illustration, insignia or display, together with any frame, color or other material which
1432 comprises the display and is used to differentiate or draw attention to the sign and away
1433 from the background. Each face of a sign is considered a separate sign for area
1434 computations, but supporting brackets and posts are not included.

1435 **SIGN, CHANGEABLE MESSAGE**

1436 Any sign or portion thereof designed to allow characters, letters and numbers on the face of
1437 the sign to be changed or rearranged.

1438 **SIGN, FREESTANDING**

1439 Any sign supported by a structure or supports that are permanently anchored in the ground
1440 and that is independent from any building.

1441 **SIGN, REAL ESTATE**

1442 Any sign advertising real estate for sale, lease or rent.

1443 **SIGN, TEMPORARY**

1444 A sign that is intended to remain where it is erected or placed for a period of time not to
1445 exceed 21 days in any calendar quarter.

1446 **SIGN, TRAILER**

1447 A portable sign mounted on a chassis and wheels or supported by legs.

1448 **SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEM, OR SMALL MS4**

1449 Any MS4 that is not already covered by the Phase I MS4 stormwater program including
 1450 municipally owned or operated storm sewer systems, state or federally owned systems, such
 1451 as colleges, universities, prisons, Maine Department of Transportation and Maine Turnpike
 1452 Authority Road systems and facilities, and military bases and facilities. The Town of
 1453 Kittery is a small MS4.

1454 **SOILS**

1455 A soil's drainage class must be determined by a Maine certified soil scientist and based on
 1456 the most-recent Natural Resources Conservation Service Supplemental Key for the
 1457 Identification of Soil Drainage Class that reflects the Maine Association of Professional Soil
 1458 Scientists, Key to Drainage Classes. The Key includes, among other terms, the following:

1459 A. **VERY POORLY DRAINED** Water is removed from the soil so slowly that the water
 1460 table remains at or above the surface most of the year. A seasonal high-water table is at
 1461 or above the surface from at least October through July and sometimes throughout the
 1462 year. In August and September, the water table may recede below 12 inches. The high-
 1463 water table severely limits the use of these soils for most agricultural, forestry, and
 1464 urban activities. These soils are hydric and typically support a wetland plant community.

1465 B. **POORLY DRAINED** Water is removed from the soil so slowly that the soil remains
 1466 wet most of the year. A seasonal high-water table is at or near the surface from October
 1467 through June. In July, August and September, it may recede below 16 inches. The
 1468 seasonal high-water table limits the use of these soils for most agricultural, forestry, and
 1469 urban activities. These soils are hydric and typically support a wetland plant community.

1470 C. **SOMEWHAT POORLY DRAINED** Water is removed from the soil slowly enough to
 1471 keep it wet for significant periods of time but not the entire year. A seasonal high-water
 1472 table is at seven inches to 16 inches in depth from October through May and sometimes
 1473 June. From July to October, it may recede below 30 inches in depth. A seasonal water
 1474 table limits the use of these soils for some agricultural, forestry and urban activities.
 1475 These soils are not hydric in Maine and are commonly found in the transitional
 1476 landscape positions between wetland and upland soils.

1477 **SPECIAL EXCEPTION**

1478 A use that would not be appropriate generally or without restriction throughout the zoning
 1479 district, but which, if controlled as to number, area, location or relation to the neighborhood,
 1480 would promote the public health, safety, welfare, morals, order, comfort, convenience,
 1481 appearance, prosperity or general welfare. Such uses may be permitted in such zoning
 1482 districts as special exceptions, if specific provision for such special exceptions is made in §
 1483 16.4.

1484 **SPECIAL FLOOD HAZARD AREA**

1485 See "Flood, area of special flood hazard."

1486 **SPECIALTY FOOD AND/OR BEVERAGE FACILITY**

1487 A facility wherein food and/or beverage is produced, sold on a wholesale and/or retail basis,
 1488 distributed, and/or consumed on the premises. This may include, but not be limited to, a
 1489 brew pub, microbrewery, coffee roaster and/or other facilities producing crafted alcoholic or
 1490 nonalcoholic beverages and/or artisan food.

1491 **START OF CONSTRUCTION**

1492 The date the building/regulated activity permit was issued, provided the actual start of
 1493 construction, repair, reconstruction, rehabilitation, addition, placement, substantial
 1494 improvement or other improvement was within 180 days of the permit date. The "actual
 1495 start" means either the first placement of permanent construction of a structure on a site,
 1496 such as the pouring of slab or footings, the installation of piles, the construction of columns,
 1497 or any work beyond the stage of excavation; or the placement of a manufactured home on a
 1498 foundation. Permanent construction does not include land preparation, such as clearing,
 1499 grading and filling; nor does it include the installation of streets and/or walkways; nor does
 1500 it include excavation for basement, footings, piers, or foundations or the erection of
 1501 temporary forms; nor does it include the installation on the property of accessory buildings,
 1502 such as garages or sheds not occupied as dwelling units or not part of the main structure.
 1503 For a substantial improvement, the "actual start of construction" means the first alteration of
 1504 any wall, ceiling, floor, or other structural part of a building, whether or not that alteration
 1505 affects the external dimensions of the building.

1506 **STORM DRAINAGE SYSTEM**

1507 The entire Town's storm drainage system.

1508 **STORMWATER**

1509 Any stormwater runoff, snowmelt runoff, and surface runoff and drainage.

1510 **STORY**

1511 That portion of a building included between the upper surface of a floor and the upper
 1512 surface of the floor or roof next above. For any building that contains no floors in the vertical
 1513 plane, every 10 feet or portion thereof counts as a floor.

1514 **STORY ABOVE GRADE**

1515 Any story having its finished floor surface entirely above grade, except that a basement is
 1516 considered as a story above grade where the finished surface of the floor above the basement
 1517 is:

- 1518 A. More than six feet (1,829 mm) above the grade plane;
- 1519 B. More than six feet (1,829 mm) above the finished ground level for more than 50% of the
 1520 total building perimeter; or
- 1521 C. More than 12 feet (3,658 mm) above the finished ground level at any point.

1522 **STREAM OR BROOK**

1523 A channel between defined banks, including the floodway and associated floodplain
 1524 wetlands, where the channel is created by the action of surface water and characterized by

1525 the lack of upland vegetation or presence of aquatic vegetation and by the presence of a bed
1526 devoid of topsoil containing waterborne deposits on exposed soil, parent material or
1527 bedrock.

1528 **STREET**

1529 A way established or maintained under public authority, or a minimum forty-foot-wide
1530 private way constructed to Town standards as contained in § 16.5 and § 16.8, approved by
1531 the Planning Board and plotted, dedicated and recorded, or a way shown on a plan of a
1532 subdivision duly approved by the Planning Board. Also included are such ways as alleys,
1533 avenues, boulevards, highways, roads, streets and other rights-of-way.

1534 **STREET FRONTAGE**

1535 A continuous portion of a boundary of a lot which abuts a street, ordinarily regarded as the
1536 front of the lot. When a lot is bounded by more than one street, any one of them, but only
1537 one, may be designated as the frontage street by the owner, provided that the lot meets the
1538 frontage requirement on that street, front, side and rear yard setbacks, and that the principal
1539 building is numbered on that street.

1540 **STREET LINE**

1541 The exterior line of a street right-of-way which separates it from abutting lots.

1542 **STRUCTURALLY ALTERED**

1543 Any work which requires or contemplates any changes to the structural capabilities of a
1544 building.

1545 **STRUCTURE**

1546 Anything built for the support, shelter or enclosure of persons, animals, goods or property
1547 of any kind, or anything constructed or erected with a fixed location on or in the ground, or
1548 attached to something having a fixed location on or in the ground. The term includes decks.
1549 The term does not include fences less than eight feet in height, nor any required by the
1550 Planning Board or Town Planner to be taller; flagpoles no higher than 50 feet in height;
1551 signs located in conformance with § 16.5.23; and electricity generators and propane and oil
1552 tanks for residential use only and the pads on which they are located, provided the pad is
1553 less than 20 square feet in size.

1554 **SUBDIVIDER**

1555 Any person, firm, corporation or other legal entity making application for the subdivision of
1556 land or buildings within the Town.

1557 **SUBDIVISION**

1558 The division of a tract or parcel of land into three or more lots within any five-year period
1559 that begins on or after September 23, 1971. This definition applies whether the division is
1560 accomplished by sale, lease, development, building or otherwise. The term "subdivision"
1561 also includes the division of a new structure of structures on a tract or parcel of land into
1562 three or more dwelling units within a five-year period, the construction or placement of
1563 three or more dwelling units on a single tract or parcel of land and the division of an

1564 existing structure or structures previously used for commercial or industrial use into three or
1565 more dwelling units within a five-year period, as set forth in 30-A M.R.S. § 4401, as
1566 amended.

1567 **SUBDIVISION, MAJOR**

1568 Any subdivision containing more than four lots or any subdivision requiring any new public
1569 street extension or the extension of public or municipal facilities.

1570 **SUBDIVISION, MINOR**

1571 A subdivision containing not more than four lots.

1572 **SUBDIVISION PLAN, FINAL**

1573 The final drawings on which an applicant's plan of a subdivision is presented to the
1574 Planning Board for approval and which, if approved, must be filed for the record with the
1575 Municipal Clerk and York County Registry of Deeds.

1576 **PRELIMINARY SUBDIVISION PLAN**

1577 The preliminary drawings indicating the proposed layout of the subdivision to be submitted
1578 to the Planning Board for its consideration.

1579 **SUBSTANTIAL DAMAGE**

1580 Damage of any origin sustained by a structure whereby the cost of restoring the structure to
1581 its before-damage condition would equal or exceed 50% of the assessed value of the structure
1582 before the damage occurred.

1583 **SUBSTANTIAL IMPROVEMENT**

1584 Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of
1585 which equals or exceeds 50% of the market value of the structure before the start of
1586 construction of the improvement. This term includes structures which have incurred
1587 substantial damage, regardless of the actual repair work performed. The term does not,
1588 however, include either:

- 1589 A. Any project for improvement of a structure to correct existing violations of state or local
1590 health, sanitary or safety code specifications which have been identified by the local
1591 code enforcement official and which are the minimum necessary to assure safe living
1592 conditions; or
- 1593 B. Any alteration of an historic structure, provided that the alteration will not preclude the
1594 structure's continued designation as an historic structure.

1595 **SUBSURFACE WASTEWATER DISPOSAL SYSTEM (SWDS)**

1596 Any system designed to dispose of waste or wastewater on or beneath the surface of the
1597 earth. These include, but are not limited to, septic tanks, disposal fields, holding tanks,
1598 pretreatment filters, piping, or any other fixture, mechanism or apparatus used for such
1599 purposes. This definition does not include any discharge system licensed under 38 M.R.S.
1600 § 414, any surface wastewater disposal system or any municipal or quasi-municipal sewer
1601 or wastewater treatment system. (See also "wastewater" and "domestic wastewater.")

1602 **SUSTAINED SLOPE**

1603 A change in elevation where the referenced percent grade is substantially maintained or
1604 exceeded throughout the measured area.

1605 **TEMPORARY STRUCTURE**

1606 A structure which by type and materials of its construction is erected for not more than 30
1607 days with a permit from the CEO. Such structures include tents, portable bandstands,
1608 bleachers, reviewing stands, a mobile home, tractor trailers or structures of a similar
1609 character. Temporary structures erected in conjunction with licensed circuses are not
1610 construed to be temporary structures under this title.

1611 **THEATER**

1612 A building or portion of a building for the showing of motion pictures or the presentation of
1613 dramatic, musical or other live performances.

1614 **THEATER, DRIVE-IN**

1615 An open lot devoted primarily to the showing of motion pictures and theatrical productions
1616 on a paid admission basis to patrons seated in automobiles.

1617 **TIDAL LAND, FILLED**

1618 Portions of the submerged and intertidal lands that have been rendered by human activity to
1619 be no longer subject to tidal action or below the natural low-water mark after October 1,
1620 1975.

1621 **TIDAL WATERS**

1622 All waters where the high-water line is affected by the ebb and flow of tidal action.

1623 **TIMBER HARVESTING**

1624 A. **TIMBER HARVESTING** Selective cutting or removal of 10 or more cords, or the
1625 equivalent thereof, but no more than 40% of the total volume of trees four inches or more
1626 in diameter measured at 4 1/2 feet above ground level on any lot in any ten-year period
1627 for the purpose of selling or processing forest products. Clearing of land necessary for
1628 approved construction is not considered as timber harvesting.

1629 B. For the purposes of this title, timber harvesting activities taking place outside the
1630 shoreland overlay zone on land classified by the Town Assessor as enrolled in the state
1631 tree growth program (36 M.R.S. §§ 571 to 584-A), which is conducted in compliance
1632 with a forest management and harvest plan prepared by a licensed professional forester, is
1633 not considered timber harvesting.

1634 **TOWER**

1635 Any structure, whether freestanding or in association with a building or other permanent
1636 structure, that is designed and constructed primarily for the purposes of supporting one or
1637 more antennas, including self-supporting lattice towers, guyed towers, or monopole towers.
1638 The term includes radio and television transmission towers, microwave towers, common-
1639 carrier towers, cellular telephone towers, alternative tower structures, and similar structures.

1640 **TRACT OR PARCEL OF LAND**

1641 All contiguous land in the same ownership, except those lands located on opposite sides of a
1642 public or private street are considered separate tracts or parcels of land unless the street was
1643 established by the owner of land on both sides of the street after September 22, 1971.

1644 **TRANSPORTATION TERMINAL**

1645 Land and buildings used as a relay station for the transfer of a load from one vehicle to
1646 another. The terminal facility may include storage areas for trucks and buildings or areas for
1647 the repair of trucks associated with the terminal.

1648 **TRAVELED WAY**

1649 That portion of a road or driveway designed for vehicle travel. Where a road or driveway
1650 surface is paved, the traveled way is that portion of the road surface between the edges of
1651 the paved width.

1652 **TRIBUTARY STREAM**

1653 A channel between defined banks created by the action of surface water, whether
1654 intermittent or perennial, and which is characterized by the lack of upland vegetation or
1655 presence of aquatic vegetation and by the presence of a bed devoid of topsoil, containing
1656 waterborne deposits on exposed soil, parent material or bedrock, and which flows to a water
1657 body or wetland as defined. This definition does not include the term "stream" as defined
1658 elsewhere in this title and only applies to that portion of the tributary stream located within
1659 the shoreland or resource protection overlay zones of the receiving water body or wetland.

1660 **UPLAND EDGE**

1661 The boundary between upland and wetland. For purposes of a coastal wetland, this
1662 boundary is the line formed by the landward limits of the salt-tolerant vegetation and/or the
1663 elevation being six feet above mean sea level based on the North American Vertical Datum
1664 of 1988 (NAVD 88), including all area affected by tidal action. For purposes of a freshwater
1665 wetland, the upland edge is formed where the soils are not saturated for a time period
1666 sufficient to support wetland vegetation or where the soils support the growth of wetland
1667 vegetation, but such vegetation is dominated by woody stems that are 20 feet tall or taller;
1668 whichever is more restrictive.

1669 **URBANIZED AREA (UA)**

1670 The areas of the State of Maine so defined by the latest decennial census by the U.S. Bureau
1671 of the Census.

1672 **USED CAR LOT**

1673 A lot exposed to the elements which is used for the sale of secondhand automobiles or
1674 trucks which can pass the state inspection tests in their existing conditions.

1675 **VARIANCE**

1676 A. A relaxation of the terms of this title where such relaxation will not be contrary to the
1677 public interest and where, owing to conditions peculiar to the property and not the result
1678 of the actions of the applicant or prior owner, a literal enforcement of the title will result

1679 in unnecessary or undue hardship.

1680 B. As used in this title, a variance is authorized only for dimensional requirements related to
1681 height, area and size of structure, or size of yards and open spaces. Establishment or
1682 expansion of a use otherwise prohibited is not allowed by variance, nor may a variance be
1683 granted because of the presence of nonconforming uses in the particular zone or
1684 adjoining zone.

1685 **VEGETATION**

1686 All live trees, shrubs, ground cover and other plants.

1687 **VETERINARY HOSPITAL**

1688 A commercial establishment, operated by a licensed veterinarian, for the medical and
1689 surgical care of sick or injured animals.

1690 **VOLUME OF A STRUCTURE**

1691 The volume of all portions of a structure enclosed by roof and fixed exterior walls, as
1692 measured from the exterior faces of these walls and roof.

1693 **WAREHOUSING AND STORAGE**

1694 Premises where goods or materials are stored in an enclosed structure or in specific outdoor
1695 areas.

1696 **WASTE**

1697 Any unwanted or discarded substance or material, whether or not such substance or material
1698 has any future use, and includes any substance or material that is spilled, leaked, pumped,
1699 poured, emitted, disposed of, emptied, or dumped onto the land or into the water.

1700 **WASTEWATER**

1701 Any domestic wastewater, or other wastewater from commercial, industrial or residential
1702 sources that has attributes similar to those of domestic wastewater. This term specifically
1703 excludes hazardous or toxic wastes and materials. (Applicable only to Title 16. If there is a
1704 conflict with the definition of "wastewater" in Title 13, the Title 13 definition takes
1705 precedence.)

1706 **WASTEWATER, DOMESTIC**

1707 Any wastewater produced by ordinary living uses, including liquid waste containing animal
1708 or vegetable matter in suspension or solution, or the water-carried waste from the discharge
1709 of water closets, laundry tubs, washing machines, sinks, dishwashers, or other source of
1710 water-carried wastes of human origin.

1711 **WATER BODY**

1712 Any pond, river, brook, stream, intermittent stream or coastal wetland.

1713 **WATER CROSSING**

1714 Any project extending from one bank to the opposite bank of a water body, whether under,
1715 through or over the watercourse. Such projects include but may not be limited to roads,

1716 fords, bridges, culverts, waterlines, sewer lines and cables, as well as maintenance work on
1717 these crossings.

1718 **WATER-DEPENDENT USE**

1719 See "functionally water-dependent use."

1720 **WATER FRONT COMMERCIAL/INDUSTRIAL AND/OR FISHERIES USE**
1721 **STRUCTURE**

1722 A structure which is used by a business entity, Port Authority or municipality having
1723 frontage on navigable water and, as its principal use, provides for hire to the general public
1724 offshore mooring and/or docking facilities for vessels used for any marine-related
1725 commercial, industrial or fisheries use

1726 **WETLAND**

1727 Areas that under normal circumstances have hydrophytic vegetation, hydric soils and
1728 wetland hydrology, as determined in the Corps of Engineers Wetlands Delineation Manual
1729 — Waterways Experiment Station Technical Report Y-87-1, January 1987" (1987 manual).
1730 This definition of wetland is based on the 1987 manual and is not subject to further
1731 revisions and/or amendments.

1732 **WETLAND ALTERATION**

1733 Filling, dredging, removal of vegetation, muck or debris, draining or otherwise changing the
1734 hydrology; construction or repair of a structure. On a case-by-case basis and as determined
1735 by the Planning Board, the term "alteration" may exclude:

- 1736 A. An activity of installing a fence post or planting shrubs by hand;
1737 B. Alteration of an existing structure such as a bench or handrail; and
1738 C. The construction, repair or alteration of a structure with minimal impact such as a
1739 nesting box, pasture fence or staff gauge.

1740 **WETLAND, COASTAL**

1741 All tidal and subtidal lands; all lands below any identifiable debris line left by tidal action; all
1742 lands with vegetation present that is tolerant of salt water and occurs primarily in a salt water
1743 or estuarine habitat; and any swamp, marsh, bog, beach, flat or other contiguous low land
1744 which is subject to tidal action during the maximum spring tide level as identified in tide
1745 tables published by the National Ocean Service. Coastal wetlands may include portions of
1746 coastal sand dunes.

1747 **WETLAND CREATION**

1748 Conversion of a non-wetland area into a wetland, where a wetland never existed.

1749 **WETLAND ENHANCEMENT**

1750 An activity increasing the value of one or more functions in an existing wetland. Activities
1751 may also include improvements to upland buffers where timber harvesting or other
1752 activities have degraded the value for wildlife.

1753 **WETLAND, FORESTED**

1754 A fresh water wetland dominated by woody vegetation that is 20 feet tall or taller.

1755 **WETLAND, FRESHWATER**

1756 Noncoastal types of wetlands, including, but not limited to, freshwater swamps, marshes,
1757 bogs and similar areas.

1758 **WETLAND, FRESHWATER (IN THE SHORELAND AND RESOURCE**
1759 **PROTECTION OVERLAY ZONES)**

1760 A. Freshwater swamps, marshes, bogs and similar areas, other than forested wetlands, which
1761 are: [Added 5-22-2017 by Ord. No. 17-04]

1762 (1). Of 10 or more contiguous acres; or of less than 10 contiguous acres and adjacent to a
1763 surface water body, excluding any river, stream or brook, such that in a natural state,
1764 the combined surface area is in excess of 10 acres; and

1765 (2). Inundated or saturated by surface- or groundwater at a frequency and for a duration
1766 sufficient to support, and which under normal circumstances do support, a prevalence
1767 of wetland vegetation typically adapted for life in saturated soils.

1768 B. Freshwater wetlands may contain small stream channels or inclusions of land that do not
1769 conform to the criteria in this definition.

1770
1771 **WETLAND FUNCTIONS**

1772 The roles wetlands serve which are of value to society or the environment, including, but
1773 not limited to, floodwater storage, floodwater conveyance, groundwater recharge and
1774 discharge, erosion control, wave attenuation, water quality protection, scenic and aesthetic
1775 use, food chain support, fisheries, wetland plant habitat, aquatic habitat and wildlife habitat.

1776 **WETLAND HYDROLOGY**

1777 In general terms, a condition where permanent or periodic inundation or prolonged soil
1778 saturation is sufficient to create anaerobic conditions in the soil. According to the 1989
1779 Manual, inundation or saturation for one week or more during the growing season and a
1780 water table within at least 18 inches of soil surface is required to meet the wetland
1781 hydrology criterion.

1782 **WETLAND PRESERVATION**

1783 The maintenance of an area of wetlands or adjacent upland so that it remains in a natural or
1784 undeveloped condition. Preservation measures include, but are not limited to, conservation
1785 easements and land trusts.

1786 **WETLAND RESTORATION**

1787 An activity returning a wetland from a disturbed or altered condition with lesser acreage or
1788 fewer functions to a previous condition with greater wetland acreage or function.

1789 **WETLAND VALUE**

1790 The importance of a wetland with respect to the individual or collective functions it

1791 provides.

1792 **WETLAND VEGETATION**

1793 Those plants classified as Obligate, Facultative Wetland or Facultative in the U.S. Fish and
1794 Wildlife Service publication, Wetland Plants of the State of Maine, 1986, as amended or
1795 superseded.

1796 **WETLANDS ASSOCIATED WITH RIVERS**

1797 Wetlands contiguous with or adjacent to a river, and which during normal high water are
1798 connected by surface water to the river. Also included are wetlands which are separated
1799 from the river by a berm, causeway or similar feature less than 100 feet in width, and which
1800 have a surface elevation at or below the normal high-water line of the river. Wetlands
1801 associated with rivers are considered to be part of that great pond or river.

1802 **WETLANDS IMPACT**

1803 Any disturbance, including but not limited to filling, dredging, draining, bridging and
1804 cutting or clearing of vegetation in the wetland and buffer areas.

1805 **WHARF**

1806 A structure on the shore, parallel to the shoreline of navigable waters, alongside of which
1807 vessels can be brought for loading or unloading.

1808 **WHOLESALE BUSINESS**

1809 The sale of goods not produced on the premises primarily to customers engaged in the
1810 business of reselling the goods.

1811 **WIRELESS COMMUNICATION SERVICES FACILITIES (WCSF)**

1812 Any structure, antenna, tower or other device which provides radio/television transmission,
1813 commercial mobile wireless services, unlicensed wireless services, cellular phone services,
1814 specialized mobile radio communications (SMR), common carrier wireless exchange access
1815 services, and personal communications service (PCS) or pager services, and associated
1816 development. Telecommunications facilities are considered a principal use.

1817 **WORK**

1818 Activity related to physical change for improvements and not the engineering, production or
1819 correction of construction drawings, or real estate marketing.

1820 **YARD, ACCESSORY BUILDING SIDE AND REAR**

1821 In the R-RL, R-U, R-S and B-L Zones, accessory building side and rear yard setbacks that
1822 are at least 10 feet, except no building may be closer than 30 feet to a principal building on
1823 an adjoining lot.

1824 **YARD, FRONT**

1825 An open area unoccupied by any structure, excluding cornices, eaves or gutters projecting
1826 not more than 24 inches, on the same lot with the building between the front line of the

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Adopted: January 24, 2022

1827 building and the front line of the lot and extending the full width of the lot as it abuts along
1828 a public or private street.

1829 **YARD, REAR**

1830 An open area unoccupied by any structure, excluding cornices, eaves or gutters projecting
1831 not more than 24 inches, on the same lot with the building between the rear line of the
1832 building and the rear line of the lot and extending the full width of the lot.

1833 **YARD, SIDE**

1834 An open area unoccupied by any structure, excluding cornices, eaves or gutters projecting
1835 not more than 24 inches, on the same lot with the building situated between the building and
1836 the side line of the lot and extending from the front yard to the rear yard. Any lot line not a
1837 rear line or a front line will be deemed a side line.

1 **16.4 Land Use Zone Regulations**

2 **16.4.1 Purpose**

3 The purpose of this chapter is to establish zones, uses, standards and dimensional
4 requirements for the Town to implement the adopted Comprehensive Plan.

5 **16.4.2 Establishment of Zones**

6 To implement the provision of this title, the Town is divided into the following base and
7 overlay zones:

8 **16.4.3 Base zones**

- 9 A. Residential – Rural (R-RL)
- 10 B. Residential – Suburban (R-S)
- 11 C. Residential – Kittery Point Village (R-KPV)
- 12 D. Residential – Urban (R-U)
- 13 E. Residential – Village (R-V)
- 14 F. Residential – Rural Conservation (R-RC)
- 15 G. Conservation (CON)
- 16 H. Business – Local (B-L)
- 17 I. Business – Local 1 (B-L1)
- 18 J. Commercial 1 (C-1)
- 19 K. Commercial 2 (C-2)
- 20 L. Commercial 3 (C-3)
- 21 M. Industrial (IND)
- 22 N. Mixed-Use (MU)
- 23 O. Mixed-Use – Badgers Island (MU-BI)
- 24 P. Mixed-Use – Kittery Foreside (MU-KF)
- 25 Q. Mixed Use – Neighborhood (MU-N)
- 26 R. Transportation – Maine Turnpike (T-MT)

27 **16.4.4 Overlay zones**

- 28 A. Shoreland Overlay Zones
 - 29 (1) Water Body/Wetland Protection Area – 250 feet (OZ-SL-250)
 - 30 (2) Stream Protection Area – 75 feet (OZ-SL-75)
- 31 B. Commercial Fisheries/Maritime Uses Overlay Zone (OZ-CFMU)
- 32 C. Resource Protection Overlay Zone (OZ-RP)

33 16.4.5 Zoning Map**34 A. Zone boundaries**

35 The location and boundaries of the zones are established as shown on the current Official
36 Zoning Map titled "Town of Kittery Maine Land Use Zoning Map," as may be amended
37 by law. The Zoning Map with all explanatory matter thereon is hereby made part of this
38 title and must be kept on file at the Town office. Said Zoning Map must be drawn at a
39 scale of not less than one-inch equals 1,000 feet. Zone boundaries must be clearly
40 delineated, and the Map must have a legend indicating the name and symbol for each
41 zone.

42 16.4.6 Boundary line interpretation

43 A. Where uncertainty exists with respect to property or natural resource boundaries of the
44 various zones as shown on the Zoning Map, the following rules apply:

45 (1) Unless otherwise shown, zone boundary lines are coincidental with street center lines
46 and lot lines. Where zone boundary lines are designated on the Zoning Map, those lines
47 are construed to be the boundary of the zone.

48 (2) Where the zone boundary lines are not otherwise indicated and where the property has
49 been or may hereafter be divided into blocks and lots, the zone boundaries are construed
50 to be the lot lines, and where the zones designated on the Map accompanying and made
51 a part of this title are bounded approximately by lot lines, the lot lines are construed to
52 be the boundary of the zones unless the boundary lines are otherwise indicated on the
53 Zoning Map.

54 (3) Where unsubdivided property lies within two or more zones, the zone boundary lines on
55 the Zoning Map are determined by use of the scale appearing on the Zoning Map.

56 (4) Where there is uncertainty regarding a zone boundary, the Planning Board is the local
57 decision authority as to the exact location of said boundary. In the Shoreland and
58 Resource Protection Overlay Zones, boundary redefinition must be supported by
59 documentation from an appropriate certified Maine state land surveyor.

60 16.4.7 Overlay zone

61 A. An overlay zone is a special purpose zone where additional regulations, beyond those set
62 forth in the base zone, apply. The regulations of the underlying zone must apply unless
63 specified otherwise in the overlay zone.

**64 16.4.8 Zoning Map amendments to Resource Protection and Shoreland
65 Overlay Zones**

66 A. If Zoning Map amendments are adopted that change the Shoreland or Resource Protection
67 Overlay Zones, said amendments also must be approved by the Maine Commissioner of
68 the State Department of Environmental Protection and then implemented within 30 days
69 of approval.

70 16.4.9 Prohibited uses

71 A. Uses in all zones are defined in § 16.4 of this ordinance by zone as permitted or special
72 exception uses. Any use not listed as a permitted or a special exception use is prohibited in
73 the zone.

74 **16.4.10 Residential – Rural (R-RL)**

75 A. Purpose

76 The purpose of the Residential – Rural R-RL Zone is to protect the prevailing rural
77 character of the Town and its natural rural quality from development sprawl by
78 prescribing the most appropriate uses and standards.

79 B. Permitted uses

80 The following uses are permitted in the R-RL Zone:

- 81 (1) Accessory Dwelling Unit
- 82 (2) Cluster Residential Development
- 83 (3) Dwelling, Manufactured Housing
- 84 (4) Dwelling, Single-Family
- 85 (5) Convalescent Care Facility
- 86 (6) Nursing Care Facility, Long-Term
- 87 (7) Accessory Buildings, Structures, and Uses
- 88 (8) Home Occupation, Minor
- 89 (9) Individual Private Campsite
- 90 (10) Day Care Facility
- 91 (11) Hospital
- 92 (12) Private Assembly
- 93 (13) Public Facility
- 94 (14) Public or Private School
- 95 (15) Religious Use
- 96 (16) Recreation, Public Open Space
- 97 (17) Agriculture
- 98 (18) Commercial School

99

100 C. Special exception uses

101 The following uses are permitted as special exception uses in the R-RL Zone:

- 102 (1) Mobile Home Park, subject to § 16.5.17.D
- 103 (2) Home Occupation, Major
- 104 (3) Campgrounds
- 105 (4) Rooming House
- 106 (5) Public Utility Facility
- 107 (6) Recreation, Commercial Indoor
- 108 (7) Recreation, Commercial Outdoor
- 109 (8) Agriculture, Piggery

- 110 (9) Commercial Kennel
- 111 (10) Sawmill, Permanent
- 112 (11) Sawmill, Temporary
- 113 (12) Veterinary Hospital
- 114 (13) Cemetery
- 115 (14) Shops in Pursuit of Trade
- 116 (15) Junkyard
- 117 (16) Mineral extraction, subject to § 16.5.16
- 118 (17) Major or Minor Subdivision

119

120 D. Standards

121 The following standards must be met unless modified per § 16.8.10.H(3), Cluster
 122 Residential Development:

123

124 (1) Design and performance standards in § 16.5, 16.7 and 16.8

125 (2) Dimensional standards:

126 (a) Minimum land area per dwelling unit: 40,000 square feet.*

127 *As per §16.3 definition of "minimum land area per dwelling unit," except to
 128 exempt properties which are unable to meet the square feet required for a single-
 129 family dwelling unit, provided the lot was conforming prior to October 25, 2012.

130 (b) Minimum lot size: 40,000 square feet.

131 (c) Minimum street frontage: 150 feet.

132 (d) Minimum front yard: 40 feet.

133 (e) Maximum building coverage: 15%.

134 (f) Minimum rear and side yards: 20 feet

135 (NOTE: Buildings higher than 40 actual feet are to have side and rear yards not
 136 less than 50% of building height.)

137 (g) Maximum building height: 35 feet

138 (NOTE: Minimum distance between principal buildings on the same lot is the
 139 height equivalent to the taller building.)

140 (h) Minimum water body setback for functionally water-dependent uses: zero feet

141 (i) Minimum setback from streams, water bodies and wetlands: in accordance with
 142 Table 16.5.30, § 16.4.28 and Appendix A, Fee Schedules.

143

144 (3) Subdivision types and standards

145 Subject to net residential acreage and net residential density per § 16.3.

146

147 (a) Cluster residential development

148 In a cluster residential development, the above standards may be modified in
 149 accordance with special provisions of § 16.8.10.H(3), including that there is no
 150 minimum lot size, and with the conditions that:

151 [1] Minimum principal building separation as required by the Fire Chief, but not

152 less than 20 feet.

153

154 (b) Subdivision development [per special exception uses, § 16.4.10.C].

155 In a subdivision development, standards in § 16.4.10.D(2)(a) and (i) apply and
156 include:

157 [1] Minimum percentage of common open space: 15%

158

159 (4) Junkyards

160 In the case of junkyards, the following special standards apply, which are in addition to
161 the standards and provisions prescribed in Maine State Statutes, 30-A M.R.S. §§ 3751
162 to 3760, and any changes thereto:

163 (a) Minimum land area: 400,000 square feet.

164 (b) Minimum street frontage: 600 feet.

165 (c) Minimum distance from street or highway to junk concentration area: 200 feet.

166 (d) Other standards as prescribed in § 16.5.13.

167

168 (5) Mobile Home Parks

169 In the case of Mobile Home Parks, sites must be at least 10 acres, subject to the special
170 provisions of § 16.5.17.

171

172 E. Shoreland Overlay Zone OZ-SL – Residential – Rural Zone (R-RL)

173 (1) Permitted uses

174 (a) Accessory Buildings, Structures, and Uses

175 (b) Agriculture

176 (c) Dwellings, if located farther than 100 feet from the normal high-water line of any
177 water bodies, or the upland edge of a wetland Individual Private Campsite

178 [1] Dwelling, Single-Family

179 (d) Recreation, Public Open Space

180

181 (2) Special exception uses

182 (a) Day Care Facility

183 (b) Home occupation, Major

184 (c) Home Occupation, Minor

185 (d) Mineral extraction subject to § 16.5.16;

186 (e) Public Utility Facility

187 (f) Recreation, Commercial Indoor

188 (g) Recreation, Commercial Outdoor

189 (h) Commercial School

190 (i) Public or Private School

191 (j) Hospital

192 (k) Nursing Care Facility, Long-Term

193 (l) Convalescent Care Facility

- 194 (m) Public Facility
- 195 (n) Religious Use
- 196 (o) Private Assembly
- 197
- 198 (3) See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL
- 199
- 200 **B. Resource Protection Overlay Zone OZ-RP – Residential – Rural Zone (R-RL)**
- 201 (1) Permitted uses
- 202 (a) Individual Private Campsite
- 203 (b) Recreation, Public Open Space
- 204
- 205 (2) Special exception uses
- 206 (a) Accessory Buildings, Structures, and Uses
- 207 (b) Agriculture
- 208 (c) Home Occupation, Major
- 209 (d) Home Occupation, Minor
- 210 (e) Dwelling, Single-Family
- 211 (f) Commercial School,
- 212 (g) Public or Private School,
- 213 (h) Religious Use,
- 214 (i) Private Assembly,
- 215 (j) Public Utility Facility
- 216
- 217 (3) See § 16.4.29 for purpose and standards in the Resource Protection Overlay Zone OZ-
- 218 RP
- 219

220 **16.4.11 Residential – Suburban (R-S)**

221 A. Purpose

222 The purpose of the Residential – Suburban R-S Zone is to provide areas adjacent to the
223 developed urban areas for future residential growth consistent with the availability of public
224 utilities. To this end, the following apply:

225 B. Permitted uses

226 The following uses are permitted in the R-S Zone:

- 227 (1) Accessory Dwelling Unit
- 228 (2) Cluster Residential Development
- 229 (3) Dwelling, Attached Single-Family
- 230 (4) Dwelling, Multi-Family (not more than four (4) units per building)
- 231 (5) Dwelling, Single-Family
- 232 (6) Dwelling, Two-Family
- 233 (7) Convalescent Care Facility (may not occupy more than 5,000 square feet of floor
234 area)
- 235 (8) Nursing Care Facility, Long-term (may not occupy more than 5,000 square feet of
236 floor area)
- 237 (9) Residential Care Facility (may not occupy more than 5,000 square feet of floor area)
- 238 (10) Accessory Buildings, Structures, and Uses
- 239 (11) Home Occupation, Minor
- 240 (12) Day Care Facility
- 241 (13) Elderly Day Care Facility
- 242 (14) Hospital (may not occupy more than 5,000 square feet of floor area)
- 243 (15) Nursery School (may not occupy more than 5,000 square feet of floor area)
- 244 (16) Private Assembly (may not occupy more than 5,000 square feet of floor area)
- 245 (17) Public Facility (may not occupy more than 5,000 square feet of floor area)
- 246 (18) Public or Private School (may not occupy more than 5,000 square feet of floor area)
- 247 (19) Religious Use (may not occupy more than 5,000 square feet of floor area)
- 248 (20) Recreation, Public Open Space
- 249 (21) Agriculture
- 250 (22) Commercial School (may not occupy more than 5,000 square feet of floor area)

251

252 C. Special exception uses

253 The following uses are permitted as special exception uses in the R-S Zone:

- 254 (1) Dwelling, Multi-Family (five to twelve (5-12) units per building)
- 255 (2) Home Occupations, Major
- 256 (3) Rooming House
- 257 (4) Public Utility Facility
- 258 (5) Cemetery
- 259 (6) Retail Sales, Convenience (excluding the sale of gasoline)

- 260 (7) Any use listed in Subsection B(12-20) (permitted uses) of this section that occupies
- 261 more than 5,000 square feet of floor area
- 262 (8) Mineral Extraction, subject to § 16.5.16
- 263 (9) Major or Minor Subdivision
- 264

265 D. Standards

266 The following standards must be met unless modified per § 16.8.10.H(3), Cluster Residential
 267 Development:

268 (1) Design and performance standards.

269 The design and performance standards of § 16.5, 16.7 and 16.8 must be met. The
 270 Design Handbook provides examples of appropriate design for nonresidential and
 271 multiunit residential projects.

272

273 (2) Dimensional standards.

274 (a) Minimum land area per dwelling unit:*

275 [1] Without public sewage disposal: 40,000 square feet.

276 [2] With public sewage disposal: 30,000 square feet unless reduced in accordance
 277 with Note A.

278 *As per § 16.3 definition of "minimum land area per dwelling unit," except to
 279 exempt properties which are unable to meet the square feet required for a
 280 single-family dwelling unit, provided the lot was conforming prior to October
 281 25, 2012.

282

283 (b) Minimum lot size:

284 [1] Without public sewage disposal: 40,000 square feet.

285 [2] With public sewage disposal: 30,000 square feet unless reduced in accordance
 286 with Note A.

287

288 (c) Minimum street frontage: 150 feet unless reduced in accordance with Note A.

289 (d) Minimum front yard: 40 feet.

290 (e) Maximum building coverage: 20%.

291 (f) Minimum rear and side yards: 15 feet

292 (NOTE: Buildings higher than 40 actual feet must have side and rear yards not less
 293 than 50% of the building height.)

294 (g) Maximum building height: 35 feet

295 (NOTE: Minimum distance between principal buildings on the same lot is the
 296 height equivalent to the taller building.)

297 (h) Minimum water body setback for functionally water-dependent uses: zero feet.

298 (i) Minimum setback from streams, water bodies and wetlands: in accordance with
 299 Table 16.5.30, § 16.4.28 and Appendix A, Fee Schedules.

300 **Note A:**

- 301 • The required minimum land area per dwelling unit and/or minimum lot size
- 302 for residential uses that are served by public sewage disposal and that are
- 303 located outside of areas subject to shoreland zoning may be less than 30,000

304 square feet per lot/unit if the established average density of development in the
 305 immediate area of the use as determined below is less than 30,000 square feet.
 306 • If the average of the lot sizes and/or land area per dwelling unit of the
 307 developed residential lots that are located on the same street and within 500
 308 feet of the parcel is less than 30,000 square feet, the required minimum lot size
 309 or required minimum land area per dwelling unit is the calculated average lot
 310 size or average land area per dwelling unit but not less than 20,000 square feet.
 311 • If the required minimum lot size is reduced, the required minimum street
 312 frontage for new residential uses served by public sewerage may also be
 313 reduced to the average of the lot frontage of existing developed residential lots
 314 that are located on the same street and within 500 feet of the parcel but in no
 315 case to less than 100 feet.

316
 317 (3) Subdivision types and standards. Subject to net residential acreage and net residential
 318 density per § 16.3

319 (a) Cluster residential development. In a cluster residential development, the above
 320 standards may be modified in accordance with special provisions of §
 321 16.8.10.H(3), including that there is no minimum lot size, and with the conditions
 322 that:

323 [1] Minimum principal building separation as required by the Fire Chief, but not
 324 less than 15 feet.

325 (b) Subdivision development [per special exception uses, § 16.4.11.C].

326 In a subdivision development, standards in § 16.4.11.D(1) and (2) apply and
 327 include:

328 [1]. Minimum percentage of common open space: 15%.

329

330 (4) Mobile Homes. Mobile Homes must meet the standards of § 16.5.17.

331

332 E. Shoreland Overlay Zone OZ-SL – Residential – Suburban Zone (R-S)

333 (1) Permitted uses

334 (a) Day Care Facility

335 (b) Dwellings if located farther than 100 feet from the normal high-water line of any
 336 water bodies, or the upland edge of a wetland

337 [1] Dwelling, Attached Single-Family

338 [2] Dwelling, Multi-Family (not more than four (4) units per building)

339 [3] Dwelling, Single-Family

340 [4] Dwelling, Two-Family

341 (c) Elderly Day Care Facility

342 (d) Recreation, Public Open Space

343

344 (2) Special exception uses

345 (a) Home Occupation, Major

346 (b) Home Occupation, Minor

347 (c) Mineral Extraction subject to § 16.5.16

- 348 (d) Public Utility Facility
- 349 (e) Commercial School (must not occupy more than 5,000 square feet of floor area)
- 350 (f) Public or Private School (must not occupy more than 5,000 square feet of floor
- 351 area)
- 352 (g) Residential Care Facility (must not occupy more than 5,000 square feet of floor
- 353 area)
- 354 (h) Hospital (must not occupy more than 5,000 square feet of floor area)
- 355 (i) Nursing Care Facility, Long-term (must not occupy more than 5,000 square feet of
- 356 floor area)
- 357 (j) Public Facility (must not occupy more than 5,000 square feet of floor area)
- 358 (k) Religious Use (must not occupy more than 5,000 square feet of floor area)
- 359 (l) Private Assembly (must not occupy more than 5,000 square feet of floor area)

360

361 (3) See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL

362

363 F. Resource Protection Overlay Zone OZ-RP – Residential Suburban Zone (R-S)

364 (1) Permitted Uses

365 (a). Recreation, Public Open Space

366

367 (2) Special Exception Uses

368 (b). Accessory Buildings, Structures, and Uses

369 (c). Agriculture

370 (d). Home Occupation, Major

371 (e). Home Occupation, Minor

372 (f). Public Utility Facility

373 (g). Dwelling, Single-Family

374

375 (3). See § 16.4.29 for purpose and standards in the Resource Protection Overlay Zone

376 OZ-RP

377

378 **16.4.12 Residential – Kittery Point Village (R-KPV)**

379 A. Purpose

380 The purpose of the Residential – Kittery Point Village R-KPV Zone is to preserve the
381 established character and development pattern of the Kittery Point neighborhood while
382 assuring that any new development is consistent with this historical development pattern and
383 is environmentally suitable. To this end, the following apply:

384

385 B. Permitted uses

386 The following uses are permitted in the R-KPV Zone:

- 387 (1) Accessory Dwelling Units
- 388 (2) Cluster Residential Development
- 389 (3) Dwelling, Attached Single-Family
- 390 (4) Dwelling, Multi-Family (not more than four (4) units per building)
- 391 (5) Dwelling, Single-Family
- 392 (6) Dwelling, Two-Family
- 393 (7) Accessory Buildings, Structures, and Uses
- 394 (8) Home Occupations, Minor
- 395 (9) Day Care Facility
- 396 (10) Nursery School (must not occupy more than 5,000 square feet of floor area)
- 397 (11) Private Assembly (must not occupy more than 5,000 square feet of floor area)
- 398 (12) Public Facility (must not occupy more than 5,000 square feet of floor area)
- 399 (13) Public or Private School (must not occupy more than 5,000 square feet of floor area)
- 400 (14) Religious Use (must not occupy more than 5,000 square feet of floor area)
- 401 (15) Recreation, Public Open Space
- 402 (16) Agriculture
- 403 (17) Commercial School (must not occupy more than 5,000 square feet of floor area)

404

405 C. Special exception uses

406 The following uses are permitted as special exception uses in the R-KPV Zone:

- 407 (1) Rooming House
- 408 (2) Any use listed in Subsection B.(11) through B.(15) of this section (permitted uses)
409 that occupies more than 5,000 square feet of floor area
- 410 (3) Public Utility Facility
- 411 (4) Cemetery
- 412 (5) Retail Sales, Convenience (excluding sale of gasoline)
- 413 (6) Home Occupation, Major
- 414 (7) The reuse of a designated historic building, in nonresidential use as of the effective
415 date of this provision, as an art studio/gallery, museum, or business and professional
416 office subject to standards for a minor home occupation as set forth in § 16.5.12.
- 417 (8) Major or Minor Subdivision

418

419 D. Standards

420 The following standards must be met unless modified per § 16.8.10.H(3), Cluster Residential
421 Development:

422 (1) Design and performance standards in §16.5, 16.7 and 16.8.

423 The Design Handbook provides examples of appropriate design for nonresidential and
424 multiunit residential projects.

425

426 (2) Dimensional standards.

427 (a) Minimum land area per dwelling unit: 40,000 square feet.*

428 As per Chapter 16.3 definition of "minimum land area per dwelling unit," except to
429 exempt properties which are unable to meet the square feet required for a single-
430 family dwelling unit, provided the lot was conforming prior to October 25, 2012.

431 (b) Minimum lot size: 40,000 square feet.

432 (c) Minimum street frontage: 150 feet unless reduced in accordance with Note A.

433 **Note A:**

434 • The required minimum street frontage for a new lot may be less than 150 feet if the
435 established pattern of street frontage in the immediate area of the lot as determined
436 below is less than 150 feet per lot.

437 • The required minimum street frontage in this case is the average of the street
438 frontage of existing developed residential lots that are located on the same street
439 and within 500 feet of the parcel, but in no case less than 100 feet.

440 (d) Minimum front yard: 40 feet

441 (e) Maximum building coverage: 20%.

442 (f) Minimum rear and side yards: 15 feet. (NOTE: Buildings higher than 40 actual feet
443 must have side and rear yards not less than 50% of the building height.)

444 (g) Maximum building height: 35 feet. (NOTE: Minimum distance between principal
445 buildings on the same lot is the height equivalent to the taller building.)

446 (h) Minimum water body setback for functionally water-dependent uses: zero feet.

447 (i) Minimum setback from streams, water bodies and wetlands: in accordance with
448 Table 16.5.30, § 16.4.28 and Appendix A, Fee Schedules.

449 Subdivision types and standards

450

451 (3) Subject to net residential acreage and net residential density per § 16.3.

452 (a) Cluster residential development

453 In a cluster residential development, the above standards may be modified in
454 accordance with special provisions of § 16.8.10.H(3), including that there is no
455 minimum lot size, and with the conditions that:

456 [1] Minimum principal building separation as required by the Fire Chief, but
457 not less than 15 feet.

458

459 (b) Subdivision development [per special exception uses, § 16.4.12.C].

460 In a subdivision development, standards in § 16.4.12.D(1) and (2) apply and
461 include:

462 [1] Minimum percentage of common open space: 15%.

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- E. Shoreland Overlay Zone OZ-SL – Residential – Kittery Point Village (R-KPV)
 - (1) Permitted uses.
 - (a) Agriculture
 - (b) Accessory Buildings, Structures, and Uses
 - (c) Day Care Facility
 - (d) Dwellings if located farther than 100 feet from the normal high-water line of any water bodies, or the upland edge of a wetland
 - [1] Dwelling, Attached Single-Family
 - [2] Dwelling, Multi-Family (not more than four (4) units per building)
 - [3] Dwelling, Single-Family
 - [4] Dwelling, Two-Family
 - (2) Special exception uses.
 - (a). Home Occupation, Major
 - (b). Home Occupation, Minor
 - (c). Public Utility Facility
 - (d). Commercial School (must not occupy more than 5,000 square feet of floor area)
 - (e). Public or Private School (must not occupy more than 5,000 square feet of floor area)
 - (f). Nursery School (must not occupy more than 5,000 square feet of floor area)
 - (g). Public Facility (must not occupy more than 5,000 square feet of floor area)
 - (h). Religious Use (must not occupy more than 5,000 square feet of floor area)
 - (i). Private Assembly (must not occupy more than 5,000 square feet of floor area)See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL
- F. Resource Protection Overlay Zone OZ-RP – Residential – Kittery Point Village Zone (R-KPV)
 - (1) Permitted Uses
 - (a) Recreation, Public Open Space
 - (2) Special Exception Uses
 - (a) Accessory Buildings, Structures, and Uses
 - (b) Agriculture
 - (c) Home Occupations, Major
 - (d) Home Occupations, Minor
 - (e) Public Utility Facility
 - (f) Dwelling, Single-Family
 - (3) See § 16.4.29 for purpose and standards in the Resource Protection Overlay Zone OZ-RP

504 **16.4.13 Residential – Urban (R-U)**

505 A. Purpose

506 The purpose of the Residential – Urban R-U Zone is to preserve the physical, aesthetic and
507 social quality of Kittery's urban area and, consistent with this goal, to provide therein for the
508 location of a variety of residential uses in accordance with the standards of this title. To this
509 end, the following apply:

510 B. Permitted uses

511 The following uses are permitted in the R-U Zone:

- 512 (1) Accessory Dwelling Units
- 513 (2) Cluster Residential Development
- 514 (3) Dwelling, Attached Single-Family
- 515 (4) Dwelling, Manufactured Housing
- 516 (5) Dwelling, Multi-Family
- 517 (6) Dwelling, Single-family
- 518 (7) Dwelling, Two-Family
- 519 (8) Convalescent Care Facility
- 520 (9) Nursing Care Facility, Long-term
- 521 (10) Accessory Buildings, Structures, and Uses
- 522 (11) Home Occupations, Minor
- 523 (12) Day Care Facility
- 524 (13) Hospital
- 525 (14) Nursery School
- 526 (15) Private Assembly
- 527 (16) Public Facility
- 528 (17) Public or Private School
- 529 (18) Religious Use
- 530 (19) Recreation, Public Open Space
- 531 (20) Commercial School
- 532 (21) Conference Center

533

534 C. Special exception uses

535 The following uses are permitted as special exception uses in the R-U Zone:

- 536 (1) Rooming House
- 537 (2) Business & Professional Offices
- 538 (3) Funeral Home
- 539 (4) Art Studio or Gallery
- 540 (5) Recreation, Public Facility
- 541 (6) Recreation, Commercial Indoor
- 542 (7) Recreation, Commercial Outdoor
- 543 (8) Public Utility Facility

- 544 (9) Inn
 545 (10) Home Occupations, Major
 546 (11) Age-Restricted Housing
 547 (12) Major or Minor Subdivision

548

549 D. Standards

550 The following standards must be met unless modified per § 16.8.10.H(3), Cluster Residential
 551 Development:

552

553 (1) The design and performance standards in § 16.5, 16.7 and 16.8.

554 (2) Dimensional standards:

555 (a) Minimum land area per dwelling unit: 20,000 square feet.*

556 *As per Chapter 16.3 definition of "minimum land area per dwelling unit," except
 557 to exempt properties which are unable to meet the square feet required for a single-
 558 family dwelling unit, provided the lot was conforming prior to October 25, 2012.

559 (b) Minimum lot size: 20,000 square feet.

560 (c) Minimum street frontage: 100 feet.

561 (d) Minimum front yard, all buildings: 30 feet.

562 (e) Minimum rear and side yards, all buildings: 15 feet.

563 (NOTE: Buildings higher than 40 actual feet must have side and rear yards not less
 564 than 50% of building height.)

565 (f) Maximum building height: 35 feet.

566 (NOTE: Minimum distance between principal buildings on the same lot is the
 567 height equivalent to the taller building.)

568 (g) Maximum building coverage: 20%.

569 (h) Minimum water body setback for functionally water-dependent uses: zero feet.

570 (i) Minimum setback from streams, water bodies and wetlands: in accordance with
 571 Table 16.5.30 § 16.4.28 and Appendix A, Fee Schedules.

572

573 (3) Subdivision types and standards

574 Subject to net residential acreage and net residential density per § 16.3.

575 (a) Cluster residential development

576 In a cluster residential development, the above standards may be modified in
 577 accordance with special provisions of § 16.8.10.H(3), including that there is no
 578 minimum lot size, and with the conditions that:

579 [1] Minimum principal building separation as required by the Fire Chief, but not
 580 less than 15 feet.

581 (b) Subdivision development [special exception uses, § 16.4.13.C].

582 In a subdivision development, standards in § 16.4.13.D(1) and (2) apply and
 583 include:

584 [1] Minimum percentage of common open space: 15%.

585

- 586 (4) Age-Restricted Housing
- 587 In the case of Age-Restricted Housing, the above standards may be modified in
- 588 accordance with the special provisions of § 16.5.15 and with the condition that:
- 589 (a) Municipal sewerage and water must be provided.
- 590 (b) A minimum land area of three acres must be provided.
- 591 (c) The maximum net density may not exceed four dwelling units per net residential
- 592 acre. In no event may the Planning Board authorize a departure which increases
- 593 the total number of dwelling units greater than that specified under the applicable
- 594 zoning ordinance.
- 595 (d) A single bedroom unit may not be less than 550 square feet and a two-bedroom
- 596 unit not less than 650 square feet.

- 597
- 598 (5) Manufactured Housing
- 599 Manufactured Housing must meet standards of § 16.5.15
- 600

601 E. Shoreland Overlay Zone OZ-SL – Residential – Urban Zone (R-U)

- 602 (1) Permitted uses.
- 603 (a). Accessory Buildings, Structures, and Uses
- 604 (b). Day Care Facility
- 605 (c). Dwellings if located farther than 100 feet from the normal high-water line of any
- 606 water bodies, or the upland edge of a wetland
- 607 [1]. Dwelling, Attached Single-Family
- 608 [2]. Dwelling, Manufactured Housing
- 609 [3]. Dwelling, Multi-Family
- 610 [4]. Dwelling, Single-family
- 611 [5]. Dwelling, Two-Family
- 612 (d). Recreation, Public Open Space
- 613
- 614 (2) Special exception uses.
- 615 (a). Home Occupation, Major
- 616 (b). Home Occupation, Minor
- 617 (c). Inn
- 618 (d). Public Utility Facility
- 619 (e). Recreation, Commercial Indoor
- 620 (f). Recreation, Commercial Outdoor
- 621 (g). Commercial School
- 622 (h). Public or Private School
- 623 (i). Nursery School
- 624 (j). Hospital
- 625 (k). Nursing Care Facility, Long-term
- 626 (l). Convalescent Care Facility
- 627 (m). Public Facility

- 628 (n).Religious Use
- 629 (o).Private Assembly
- 630
- 631 (3) See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL
- 632
- 633 F. Resource Protection Overlay Zone OZ-RP – Residential – Urban Zone (R-U)
- 634 (1) Permitted Uses
- 635 (a). Recreation, Public Open Space
- 636 (2) Special Exception Uses
- 637 (a). Accessory Buildings, Structures, and Uses
- 638 (b). Home Occupation, Major
- 639 (c). Home Occupation, Minor
- 640 (d). Public Utility Facility
- 641 (e). Dwelling, Single-Family
- 642
- 643 (3) See § 16.4.29 for purpose and standards in the Resource Protection Overlay Zone OZ-
- 644 RP
- 645

646 **16.4.14 Residential – Village (R-V)**

647 A. Purpose

648 The purpose of the Residential – Village R-V Zone is to recognize the special nature of the
649 Admiralty Village neighborhood as a densely developed residential zone composed primarily
650 of affordable housing on small lots serviced by sewer and water and to encourage
651 reinvestment in maintaining and upgrading the neighborhood. Consistent with this goal, the
652 zone provides for uses that reinforce the residential character and establish building standards
653 that allow improvements on typical lots to enhance the residential quality of life in the
654 neighborhood. To this end, the following will apply:

655

656 B. Permitted uses

657 The following uses are permitted in the R-V Zone:

- 658 (1) Accessory Dwelling Unit
- 659 (2) Dwelling, Attached Single-Family
- 660 (3) Dwelling, Manufactured Housing
- 661 (4) Dwelling, Single-Family
- 662 (5) Dwelling, Two-Family
- 663 (6) Accessory Buildings, Structures, and Uses
- 664 (7) Home Occupation, Minor
- 665 (8) Day Care Facility (limited to twelve (12) or fewer persons in care, in conformance
666 with the standards for a Home Occupation, Minor. See § 16.5.12)
- 667 (9) Nursery School (limited to twelve (12) or fewer persons in care, in conformance
668 with the standards for a Home Occupation, Minor See § 16.5.12)
- 669 (10) Public Facility
- 670 (11) Recreation, Public Facility
- 671 (12) Recreation, Public Open Space

672

673 C. Special exception uses

674 The following uses are permitted as special exception uses in the R-V Zone:

- 675 (1) Public Utility Facility
- 676 (2) Home Occupations, Major
- 677 (3) Day Care Facility (for thirteen (13) or more persons in care, in conformance with the
678 standards for a Home Occupation, Major. See § 16.5.12)
- 679 (4) Nursery School (for thirteen (13) or more persons in care, in conformance with the
680 standards for a Home Occupation, Major. See § 16.5.12)

681 D. Standards.

682 All development and the use of land in the R-V Zone must meet the following standards. In
683 addition, the design and performance standards of Chapters 16.5, 16.7 and 16.8 must be met.
684 The Design Handbook provides examples of appropriate design for nonresidential and
685 multiunit residential projects.

686 (1) The following space standards apply:

- 687 (a) Minimum land area per dwelling unit: 4,000 square feet.*

- 688 *As per Chapter 16.3 definition of "minimum land area per dwelling unit,"
 689 except to exempt properties which are unable to meet the square feet required
 690 for a single-family dwelling unit, provided the lot was conforming prior to
 691 October 25, 2012.
- 692 (b) Minimum lot size: 6,000 square feet.
 693 (c) Minimum street frontage: 50 feet.
 694 (d) Minimum front yard: 15 feet.
 695 (e) Minimum rear yard, dwellings/structures: 15 feet.
 696 (f) Minimum side yard, dwellings/structures: 10 feet.
 697 (g) Minimum rear and side yards for accessory buildings/structures that are
 698 accessory to a residential use and located at least four feet behind the
 699 predominant rear line of the principal building: three feet.
 700 (h) (h) Maximum structure coverage: 40%.
 701 (i) Maximum height of principal dwellings/structures: 35 feet.
 702 (j) Maximum height of accessory buildings/structures located closer than 10 feet to
 703 a lot line: 15 feet.
 704 (k) Maximum building coverage: 20%
 705 (l) Minimum water body setback for functionally water-dependent uses: zero feet
 706 (m) Minimum setback from streams, water bodies and wetlands: in accordance with
 707 Table 16.5.30, § 16.4.28 and Appendix A, Fee Schedules.

708 E. Shoreland Overlay Zone OZ-SL – Residential – Village Zone (R-V)

- 709 (1) Permitted uses
- 710 (a) Accessory Buildings, Structures, and Uses
 711 (b) Dwellings if located farther than 100 feet from the normal high-water line of any
 712 water bodies, or the upland edge of a wetland Public Facility
- 713 [1] Dwelling, Attached Single-Family
 714 [2] Dwelling, Manufactured Housing
 715 [3] Dwelling, Single-Family
 716 [4] Dwelling, Two-Family
- 717 (c) Recreation, Public Facility
 718 (d) Recreation, Public Open Space
 719
- 720 (2) Special exception uses
- 721 (a) Day Care Facility (for thirteen (13) or more persons in care, in conformance with
 722 the standards for a major home occupation see § 16.5.12);
 723 (b) Nursery School (for thirteen (13) or more persons in care, in conformance with the
 724 standards for a major home occupation (see § 16.5.12);
 725 (c) Home occupation, Major
 726 (d) Home Occupation, Minor
 727 (e) Public Utility Facility
 728
- 729 (3) See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL
 730

- 731 F. Resource Protection Overlay Zone OZ-RP – Residential – Village Zone (R-V)
- 732 (1) Permitted Uses: none
- 733 (2) Special Exception Uses
- 734 (a) Accessory Buildings, Structures, and Uses
- 735 (b) Home Occupations, Major
- 736 (c) Home Occupations, Minor
- 737 (d) Public Utility Facility
- 738 (e) Dwelling, Single-Family
- 739
- 740 (3) See § 16.4.29 for purpose and standards in the Resource Protection Overlay Zone OZ-
- 741 RP
- 742

743 **16.4.15 Residential – Rural Conservation (R-RC)**

744 A. Purpose

745 The purpose of the Residential – Rural Conservation R-RC Zone is to conserve and
746 protect land areas of the Town which by their location and character require special
747 measures to ensure low-density development. To this end, the following apply:

748

749 B. Permitted use.

750 The following uses are permitted in the R-RC Zone:

- 751 (1) Accessory Dwelling Units
- 752 (2) Cluster Residential Development
- 753 (3) Dwelling, Manufactured Housing
- 754 (4) Dwelling, Single-Family
- 755 (5) Accessory Buildings, Structures, and Uses
- 756 (6) Home Occupations, Minor
- 757 (7) Recreation, Public Facility
- 758 (8) Recreation, Public Open Space
- 759 (9) Agriculture
- 760 (10) Timber Harvesting

761

762 C. Special exception uses

763 The following uses are permitted as special exception uses in the R-RC Zone:

- 764 (1) Home Occupations, Major
- 765 (2) Day Care Facility
- 766 (3) Private Assembly
- 767 (4) Public Facility
- 768 (5) Public or Private School
- 769 (6) Public Utility Facility
- 770 (7) Religious Use
- 771 (8) Recreation, Commercial Indoor
- 772 (9) Recreation, Commercial Outdoor
- 773 (10) Commercial School
- 774 (11) Cemetery
- 775 (12) Major or Minor Subdivision

776

777 D. Standards

778 The following standards must be met unless modified per § 16.8.10H(3), Cluster Residential
779 Development:

- 780 (1) The design and performance standards of Chapters 16.5, 16.7 and 16.8 must be met.
- 781 (2) The following dimensional standards apply:
 - 782 (a) Minimum land area per dwelling unit: 80,000 square feet.*

783 *As per Chapter 16.3 definition of "minimum land area per dwelling unit," except
 784 to exempt properties which are unable to meet the square feet required for a single-
 785 family dwelling unit, provided the lot was conforming prior to October 25, 2012.

786 (b) Minimum lot size: 80,000 square feet.

787 (c) Minimum street frontage: 200 feet.

788 (d) Minimum front yard: 40 feet.

789 (e) Maximum building coverage: 6%.

790 (f) Minimum rear and side yards: 20 feet.

791 (NOTE: Buildings higher than 40 actual feet must have side and rear yards not less
 792 than 50% of building height.)

793 (g) Maximum building height: 35 feet.

794 (NOTE: Minimum distance between principal buildings on the same lot is the
 795 height equivalent to the taller building.)

796 (h) Minimum water body setback for functionally water-dependent uses: zero feet.

797 (i) Minimum setback from streams, water bodies and wetlands: in accordance with
 798 Table 16.5.30, § 16.4.28 and Appendix A, Fee Schedules.

799

800 (3) Subdivision types and standards.

801 Subject to net residential acreage and net residential density per § 16.2.2.

802 (a) Cluster residential development.

803 In a cluster residential development, the above standards may be modified in
 804 accordance with special provisions of § 16.8.10.H(3), including that there is no
 805 minimum lot size, and with the conditions that:

806 [1] Minimum principal building separation as required by the Fire Chief, but not
 807 less than 20 feet.

808 (b) Subdivision development [special exception uses, § 16.4.15.C].

809 In a subdivision development, standards in § 16.4.15D(1) and (2) apply and
 810 include:

811 [1] Minimum percentage of common open space: 15%.

812

813 E. Shoreland Overlay Zone – Residential Conservation Zone (R-RC)

814 (1) Permitted uses

815 (a) Accessory Buildings, Structures, and Uses

816 (b) Agriculture

817 (c) Dwellings if located farther than 100 feet from the normal high-water line of any
 818 water bodies, or the upland edge of a wetland

819 [1] Dwelling, Manufactured Housing

820 [2] Dwelling, Single-Family

821 (d) Recreation, Public Facility

822 (e) Recreation, Public Open Space

823 (f) Timber Harvesting

824

825 (2) Special exception uses

- 826 (a) Day Care Facility
- 827 (b) Home occupation, Major
- 828 (c) Home Occupation, Minor
- 829 (d) Recreation, Selected Commercial
- 830 (e) Public Utility Facility
- 831 (f) Commercial School
- 832 (g) Public or Private School
- 833 (h) Public Facility
- 834 (i) Religious Use
- 835 (j) Private Assembly
- 836
- 837 (3) See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL
- 838
- 839 F. Resource Protection Overlay Zone OZ-RP – Residential – Rural Conservation Zone (R-
- 840 RC)
- 841 (1) Permitted Uses
- 842 (a) Recreation, Public Facility
- 843 (b) Recreation, Public Open Space
- 844 (c) Timber Harvesting
- 845
- 846 (2) Special Exception Uses
- 847 (a) Accessory Buildings, Structures, and Uses
- 848 (b) Agriculture
- 849 (c) Home Occupations, Major
- 850 (d) Home Occupations, Minor
- 851 (e) Recreation, Commercial Indoor
- 852 (f) Recreation, Commercial Outdoor (exclusive of golf courses)
- 853 (g) Public Utility Facility
- 854 (h) Dwelling, Single-Family
- 855
- 856 (3) See § 16.4.29 for purpose and standards in the Resource Protection Overlay Zone OZ-
- 857 RP
- 858 A. 16.4.16 Conservation (CON)Purpose
- 859 The purposes of the Conservation Zone are to preserve and protect natural environmental
- 860 areas, conservation lands, park and other areas, including but not limited to the Rachel
- 861 Carson Wildlife Preserve, Town Farm Forest, state and local parklands, and land with
- 862 conservation easements that prohibit development in perpetuity; further the maintenance of
- 863 safe and healthful conditions; prevent and control potential water pollution sources; protect
- 864 spawning grounds, fish, aquatic life, bird and other wildlife habitat; and conserve shore
- 865 cover, visual as well as actual point of access to inland and coastal waters and natural beauty.
- 866 B. Permitted uses
- 867 The following uses are permitted in the CON Zone:

- 868 (1) Accessory Buildings, Structures, and Uses
- 869 (2) Open Space, Reserved
- 870 (3) Recreation, Public Facility
- 871 (4) Recreation, Public Open Space
- 872 (5) Existing Land Conservation Uses

873

874 C. Special exception uses

875 The following uses are permitted as special exception uses in the CON Zone:

- 876 (1) Public Facility

877

878 D. Standards.

879 (1) The design and performance standards of Chapters 16.5, 16.7 and 16.8 must be met.

880 (2) Dimensional standards:

881 (a) Minimum land area per dwelling unit: not applicable.

882 (b) Minimum lot size: none.

883 (c) Minimum street frontage: none.

884 (d) Minimum front yard: 40 feet.

885 (e) Maximum building coverage: 6%.

886 (f) Minimum rear and side yards: 20 feet. (NOTE: If by variance or existing
887 conditions a building is higher than 40 actual feet, it must have side and rear
888 yards not less than 50% of building height.)

889 (g) Maximum building height: 35 feet. (NOTE: Minimum distance between
890 principal buildings on the same lot is the height equivalent to the taller
891 building.)

892 (h) Minimum water body setback for functionally water-dependent uses: zero feet.

893 (i) Minimum setback from streams, water bodies and wetlands: in accordance with
894 Table 16.5.30, § 16.4.28 and Appendix A, Fee Schedules.

895

896 E. Shoreland Overlay Zone OZ-SL – Conservation (CON)

897 (1) Permitted uses.

898 (a) Open Space, Reserved

899 (b) Recreation, Public Facility

900 (c) Recreation, Public Open Space

901 (d) Accessory Buildings, Structures, and Uses

902 (e) Existing Land Conservation Uses

903

904 (2) Special exception uses.

905 (a) Public facility

906

907 (3) See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL

908

909 F. Resource Protection Overlay Zone OZ-RP – Conservation (CON)

910 (1) Permitted Uses.

911 (a) Accessory Buildings, Structures, and Uses

912 (b) Existing Land Conservation Uses

913 (c) Recreation, Public Facility

914 (d) Recreation, Public Open Space

915

916 (2) Special Exception Uses

917 (a) Public Facility

918

919 (3) See 16.4.29 for purpose and standards in the Resource Protection Overlay Zone OZ-

920 RP

921 **16.4.17 Business – Local Zone (B-L)**

922 A. Purpose

923 The purpose of the Business – Local B-L Zone is to provide local sales, services and business
924 space within the Town.

925

926 B. Permitted uses

927 The following uses are permitted in the B-L Zone:

928 (1) Accessory Dwelling Unit

929 (2) Dwelling, Attached Single-Family

930 (3) Dwelling, Manufactured Housing

931 (4) Dwelling, Multi-Family

932 (5) Dwelling, Single-Family

933 (6) Dwellings Two-Family

934 (7) Convalescent Care Facility

935 (8) Nursing Care Facility, Long-term

936 (9) Residential Care Facility

937 (10) Accessory Buildings, Structures, and Uses

938 (11) Home Occupation, Major

939 (12) Home Occupation, Minor

940 (13) Day Care Facility

941 (14) Hospital

942 (15) Nursery School

943 (16) Private Assembly

944 (17) Public Facility

945 (18) Public or Private School

946 (19) Religious Use

947 (20) Recreation, Public Open Space

- 948 (21) Aquaculture
- 949 (22) Commercial Fisheries/Maritime Activities (provided only incidental cleaning and
- 950 cooking of seafood occur at the site)
- 951 (23) Commercial School
- 952 (24) Art Studio or Gallery
- 953 (25) Business & Professional Offices
- 954 (26) Business Service
- 955 (27) Conference Center
- 956 (28) Personal Service
- 957 (29) Restaurant
- 958 (30) Retail Sales (excluding those of which the principal activity entails outdoor sales
- 959 and/or storage and excluding those specifically mentioned under Subsection C of this
- 960 section)
- 961 (31) Retail Sales, Building Materials & Garden Supply (excluding those of which the
- 962 principal activity entails outdoor sales and/or storage)
- 963 (32) Retail Sales, Convenience
- 964 (33) Specialty Food and/or Beverage Facility
- 965 (34) Mass Transit Station
- 966 (35) Parking Area

967

968 C. Special exception uses

969 The following uses are permitted as special exception uses in the B-L Zone:

- 970 (1) Motel
- 971 (2) Hotel
- 972 (3) Inn
- 973 (4) Rooming House
- 974 (5) Funeral Home
- 975 (6) Gasoline Service Station
- 976 (7) Public Assembly Area
- 977 (8) Theater
- 978 (9) Public Utility Facility
- 979 (10) Mechanical Service
- 980 (11) Residential Dwelling Units, as part of a mixed-use building

981

982 D. Standards.

983 All development and the use of land in the B-L Zone must meet the following standards.

984 Kittery's Design Handbook illustrates how these standards can be met. In addition, the design
985 and performance standards of Chapters 16.5, 16.7 and 16.8 must be met.

- 986 (1) Parking. One row of parking spaces and a related access drive may be located between
- 987 the front property line and the front wall of the building extending the full width of the
- 988 lot. All other parking must be located to the side and/or rear of the building. All new or
- 989 revised parking must be visually screened through the use of landscaping, earthen berms

990 and/or fencing from adjacent public streets or residential properties. (See the Design
991 Handbook for appropriate examples.)

992

993 (2) Building design standards. Kittery's characteristic buildings reflect its historic seacoast
994 past. The primary architectural styles are New England Colonial (such as Cape Cod and
995 saltbox), Georgian, Federal and Classical Revival. New buildings must be compatible
996 with Kittery's characteristic styles in form, scale, material and color. In general, buildings
997 should be oriented with the front of the building facing the street on which the building is
998 located. The front or street facade must be designed as the front of the building. The front
999 elevation must contain one or more of the following elements: 1) a "front door," although
1000 other provisions for access to the building may be provided; 2) windows; or 3) display
1001 cases. (See Design Handbook for examples of acceptable materials and designs.) Strict
1002 imitation is not required. Design techniques can be used to maintain compatibility with
1003 characteristic styles and still leave enough flexibility for architectural variety. To achieve
1004 this purpose, the following design standards apply to new and modified existing building
1005 projects:

1006 (a) Exterior building materials and details. Building materials and details strongly
1007 define a project's architectural style and overall character. (See Design Handbook
1008 for examples of acceptable materials, building scale and designs.) "One-sided"
1009 schemes are prohibited; similar materials and details must be used on all sides of a
1010 building to achieve continuity and completeness of design. Predominant exterior
1011 building materials must be of good quality and characteristic of Kittery, such as
1012 horizontal wood board siding, vertical wood boards, wood shakes, brick, stone or
1013 simulated stone, glass and vinyl, or metal clapboard.

1014 (b) Roofs. A building's prominent roofs must be pitched a minimum of 4:12 unless
1015 demonstrated to the Planning Board's satisfaction that this is not practicable.
1016 Acceptable roof styles are gabled, gambrel, and hipped roofs. Flat roofs, shed
1017 roofs and roof facades (such as "stuck on" mansards) are not acceptable as
1018 prominent roof forms except as provided above. Roof colors must be muted. (See
1019 Design Handbook for examples.) The roof design must screen or camouflage
1020 rooftop protrusions to minimize the visual impact of air-conditioning units, air-
1021 handler units, exhaust vents, transformer boxes, and the like. (See Design
1022 Handbook for examples of appropriate treatments.)

1023 (c) Loading docks and overhead doors. Loading docks and overhead doors must be
1024 located on the side or rear of the building and screened from view from adjacent
1025 properties in residential use.

1026

1027 (3) Landscaping standards. To achieve attractive and environmentally sound site design
1028 and appropriate screening of parking areas, in addition to the landscaping standards
1029 contained in Chapters 16.7 and 16.8 the following landscaping requirements apply to
1030 new and modified existing developments:

1031 (a) Landscape planter strip. A vegetated landscape planter strip must be provided a
1032 minimum of 15 feet in depth adjacent to the right-of-way of all public roads. The
1033 Planning Board may reduce the required depth of the landscape planter strip if a
1034 sidewalk is provided in front of the parcel and the area between the front property
1035 line and the front wall of the building will be designed and used as a pedestrian
1036 space. The landscape planter strip must include the following landscape elements:

1037 (b) Ground cover. The entire landscape planter must be vegetated except for approved

- 1038 driveways, walkways, bikeways and screened utility equipment.
- 1039 (c) Street-side trees. A minimum of one tree must be planted for each 25 feet of street
1040 frontage. The trees may be spaced along the frontage or grouped or clustered to
1041 enhance the visual quality of the site. (See Design Handbook for examples.) The
1042 trees must be a minimum two-and-one-half-inch caliper and be at least 12 feet
1043 high at the time of planting. The species must be selected from the list of approved
1044 street trees in the Design Handbook. Existing large healthy trees must be
1045 preserved if practical and will count toward this requirement.
- 1046 (d) Special situations.
- 1047 [1]. Expansions of less than 1,000 square feet to existing uses are exempt from the
1048 landscaping standard of this subsection.
- 1049 [2]. Depth of landscape planter strip. In instances where the required minimum
1050 depth of the landscape planter strip is legally utilized in accordance with
1051 previous permits or approvals, for parking, display, storage, building or
1052 necessary vehicle circulation, the depth may be narrowed by the Planning
1053 Board to the minimum extent necessary to achieve the objective of the
1054 proposed project, provided that shrubs and perennials are planted along the
1055 street frontage to soften the appearance of the development from the public
1056 street.
- 1057 [3]. Additions and changes in use. For additions to existing buildings and changes
1058 of residential structures to a nonresidential use, one street-side tree (see list of
1059 street trees in Design Handbook) is required to be planted for every 1,000
1060 square feet of additional gross floor area added or converted to nonresidential
1061 use. In instances where parking, display area, storage, building or necessary
1062 vehicle circulation exists at the time of enactment of this section, the required
1063 trees may be clustered and/or relocated away from the road as is necessary to
1064 be practicable. The preservation of existing large trees is encouraged;
1065 therefore, the Planning Board may permit the preservation of existing healthy,
1066 large, mature trees within the landscape planter strip or other developed areas
1067 of the site to be substituted for the planting of new trees.
- 1068 (e). Outdoor service and storage areas. Service and storage areas must be located to
1069 the side or rear of the building. Facilities for waste storage such as dumpsters must
1070 be located within an enclosure and be visually buffered by fencing, landscaping
1071 and/or other treatments. (See Design Handbook for examples of appropriate
1072 buffering.)
- 1073
- 1074 (4) Traffic and circulation standards. Sidewalks and roadways must be provided within
1075 the site to internally join abutting properties that are determined by the Planning
1076 Board to be compatible. In addition, safe pedestrian route(s) must be provided to
1077 allow pedestrians to move within the site and between the principal customer entrance
1078 and the front lot line where a sidewalk exists or will be provided or where the
1079 Planning Board determines that such a route is needed for adequate pedestrian safety
1080 and movement. (See Design Handbook for appropriate examples.)
- 1081
- 1082 (5) Open space standards. Open space must be provided as a percentage of the total area
1083 of the lot, including freshwater wetlands, water bodies, streams and setbacks. Fifteen
1084 percent of each lot must be designated as open space. Required open space must be
1085 shown on the plan with a note dedicating it as "open space." The open space must be

1086 located to create an attractive environment on the site, minimize environmental
1087 impacts, protect significant natural features or resources on the site and maintain
1088 wildlife habitat. Individual large, healthy trees and areas with mature tree cover
1089 should be included in the open space. Where possible, the open space must be located
1090 to allow the creation of continuous open space networks in conjunction with existing
1091 or potential open space on adjacent properties. The required amount of designated
1092 open space is reduced to 10% of each lot that is less than 40,000 square feet in size.

1093

1094 (6) The following space standards apply:

1095 (a) Minimum land area per dwelling unit when all floors are residential: 20,000
1096 square feet if served by on-site sewage disposal; 8,000 square feet if served by the
1097 public sewerage system.

1098 (NOTE: Except as otherwise required by the buffer provisions of this title, and
1099 except where the side and/or rear yards abut a residential district or use; in which
1100 case a minimum of 15 feet or 50% of the building height is required.)

1101 (b). Minimum land area per dwelling unit when the entire first floor is used for
1102 nonresidential uses: 20,000 square feet if served by on-site sewage disposal; 4,000
1103 square feet if served by the public sewerage system.

1104 (c). Minimum lot size: none.

1105 (NOTE: Except as otherwise required by the buffer provisions of this title, and
1106 except where the side and/or rear yards abut a residential district or use; in which
1107 case a minimum of 15 feet or 50% of the building height is required.)

1108 (d). Minimum street frontage: none.

1109 (NOTE: Except as otherwise required by the buffer provisions of this title, and
1110 except where the side and/or rear yards abut a residential district or use; in which
1111 case a minimum of 15 feet or 50% of the building height is required.)

1112 (e). Minimum front yard: 15 feet.

1113 (NOTE: Except as otherwise required by the buffer provisions of this title, and
1114 except where the side and/or rear yards abut a residential district or use; in which
1115 case a minimum of 15 feet or 50% of the building height is required.)

1116 (f). Maximum front setback of the principal building: 60 feet.

1117 (g). Minimum rear and side yards: 10 feet.

1118 (NOTE: Except as otherwise required by the buffer provisions of this title, and
1119 except where the side and/or rear yards abut a residential district or use; in which
1120 case a minimum of 15 feet or 50% of the building height is required.)

1121 (h). Maximum building height: 40 feet.

1122 (NOTE: Except that space standards for single- and two-family residential uses are
1123 the same as for those of the Urban Residential District.)

1124 (i). Maximum building and outdoor stored material coverage: none, except that side,
1125 rear and front yards must be maintained

1126 (j). Minimum water body setback for functionally water-dependent uses: zero feet.

1127 (k). Minimum setback from streams, water bodies and wetlands: in accordance with
1128 Table 16.5.30, § 16.4.28 and Appendix A, Fee Schedules.

1129

1130 (7) Gasoline Sales

- 1131 (a). Gasoline Sales must a) not be located within 1,000 feet of an existing station; (b)
1132 not be located within 1,000 feet of any private residence; and (c) not be located
1133 within 150 feet of any existing structure.

1134

1135 E. Shoreland Overlay Zone OZ-SL – Business – Local Zone (B-L)

1136 (1) Permitted uses.

1137 (a) Accessory Buildings, Structures, and Uses

1138 (b) Dwellings if located farther than 100 feet from the normal high-water line of any
1139 water bodies, or the upland edge of a wetland

1140 [1] Dwelling, Attached Single-Family

1141 [2] Dwelling, Manufactured Housing

1142 [3] Dwelling, Multi-Family

1143 [4] Dwelling, Single-Family

1144 [5] Dwellings Two-Family

1145 (c) Recreation, Public Open Space

1146

1147 (2) Special exception uses.

1148 (a). Art Studio or Gallery

1149 (b). Retail Sales, Building Materials & Garden Supply (excluding those of which the
1150 principal activity entails outdoor sales and/or storage)

1151 (c). Business Services

1152 (d). Business & Professional Offices

1153 (e). Commercial Fisheries/Maritime Activities (provided only incidental cleaning and
1154 cooking of seafood occur at the site)

1155 (f). Parking Area

1156 (g). Conference Center

1157 (h). Retail Sales, Convenience

1158 (i). Home Occupation, Major

1159 (j). Home Occupation, Minor

1160 (k). Mass Transit Station

1161 (l). Motel

1162 (m). Hotel

1163 (n). Inn

1164 (o). Rooming House

1165 (p). Personal Services

1166 (q). Public Assembly Area

1167 (r). Theater

1168 (s). Public Utility Facility

1169 (t). Restaurant

1170 (u). Retail Sales, but (excluding those of which the principal activity entails outdoor
1171 sales and/or storage)

1172 (v). Commercial School

- 1173 (w). Public or Private School
- 1174 (x).Nursery School
- 1175 (y).Day Care Facility
- 1176 (z).Elder Care Facility
- 1177 (aa). Hospital
- 1178 (bb). Nursing Care Facility, Long-term
- 1179 (cc). Convalescent Care Facility
- 1180 (dd). Public Facility
- 1181 (ee). Religious Use
- 1182 (ff). Private Assembly
- 1183 (gg). Specialty Food and/or Beverage Facility

1184

1185 (3) See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL

1186

1187 G. Resource Protection Overlay Zone OZ-RP – Business – Local (B-L).

1188 (1) Permitted Uses.

1189 (a) Recreation, Public Open Space

1190

1191 (2) Special Exception Uses.

1192 (a) Accessory Uses & Buildings

1193 (b) Aquaculture

1194 (c) Home Occupations, Major

1195 (d) Home Occupations, Minor

1196 (e) Public Utility Facilities,

1197 (f) Dwelling, Single-Family

1198

1199 (3) See § 16.4.29 for purpose and standards in the Resource Protection Overlay Zone RP-
1200 SL

1201 **16.4.18 Business – Local 1 (B-L1)**

1202 Purpose

1203 A. Purpose

1204 The purpose of the Business – Local 1 B-L1 Zone is to encourage a smart growth/urban
1205 design pattern that will serve as a focal point for the provision of local sales, urban
1206 residences, services and business space. The goal of this section is to create an attractive,
1207 functional and vibrant pedestrian-scaled neighborhood supporting a mix of commercial and
1208 residential uses. This type of development reflects a traditional New England pattern of
1209 building, where commercial uses are located on the first floor and housing on the upper
1210 floors.

1211

1212 B. Permitted uses

1213 The following uses are permitted in the B-L1 Zone:

- 1214 (1) Accessory Dwelling Unit
- 1215 (2) Dwelling, Attached Single-Family
- 1216 (3) Dwelling, Manufactured Housing
- 1217 (4) Dwelling, Multi-Family
- 1218 (5) Dwelling, Single-Family
- 1219 (6) Dwelling, Two-Family
- 1220 (7) Convalescent Care Facility
- 1221 (8) Nursing Care Facility, Long-term
- 1222 (9) Residential Care Facility
- 1223 (10) Accessory Buildings, Structures, and Uses
- 1224 (11) Home Occupation, Major
- 1225 (12) Home Occupation, Minor
- 1226 (13) Inn
- 1227 (14) Day Care Facility
- 1228 (15) Hospital
- 1229 (16) Nursery School
- 1230 (17) Private Assembly
- 1231 (18) Public Facility
- 1232 (19) Public or Private School
- 1233 (20) Religious Use
- 1234 (21) Recreation, Public Open Space
- 1235 (22) Commercial School
- 1236 (23) Art Studio or Gallery
- 1237 (24) Business & Professional Offices
- 1238 (25) Business Services
- 1239 (26) Conference Center
- 1240 (27) Personal Services
- 1241 (28) Restaurant
- 1242 (29) Retail Sales (excluding those of which the principal activity entails outdoor sales
- 1243 and/or storage and excluding those specifically mentioned under Subsection **C** of this
- 1244 section)
- 1245 (30) Retail Sales, Building Materials & Garden Supply (excluding those of which the
- 1246 principal activity entails outdoor sales and/or storage)
- 1247 (31) Retail Sales, Convenience
- 1248 (32) Specialty Food and/or Beverage Facility
- 1249 (33) Mass Transit Station
- 1250 (34) Parking Area
- 1251
- 1252 C. Special exception uses
- 1253 The following uses are permitted as special exception uses in the B-L1 Zone:
- 1254 (1) Motel

- 1255 (2) Hotel
- 1256 (3) Rooming House
- 1257 (4) Funeral Home
- 1258 (5) Gasoline Service Station
- 1259 (6) Public Assembly Area
- 1260 (7) Theater
- 1261 (8) Public Utility Facility
- 1262 (9) Farmers Market
- 1263 (10) Mechanical service

1264

1265 D. Standards

1266 All development and the use of land in the B-L1 Zone must meet the following standards.

1267 Kittery's Design Handbook illustrates how these standards can be met. In addition, the design
1268 and performance standards of § 16.5, 16.7 and 16.8 must be met.

1269

1270 (1) The following space standards apply

1271 (a) Minimum land area per dwelling unit:

1272 [1] When all floors are residential: 8,000 square feet

1273 [2] When the entire first floor is in nonresidential use: 3,500 square feet.

1274 (b) Minimum parking spaces per dwelling unit: 1.5.

1275 (c) Minimum lot size: 20,000 square feet.

1276 (d) Minimum street frontage per building: 50 feet.

1277 (e) Maximum front yard: 30 feet.

1278 (NOTE: This area must be designed to promote a pedestrian public space, which
1279 includes, but is not limited to, landscaping, sidewalks and sitting areas. Parking
1280 and outdoor storage are prohibited anywhere in the front yard of the structure,
1281 except for seasonal sales items.)

1282 (f) Minimum rear and side yards: 10 feet.

1283 (NOTE: Except as otherwise required by the buffer provisions of this title, and
1284 except where the side and/or rear yards abut a residential zone or use; in which
1285 case a minimum of 15 feet or 50% of the building height, whichever is greater, is
1286 required.)

1287 (g) Maximum building height: 40 feet.

1288 (h) Maximum building and outdoor stored material coverage: 50%.

1289 (i) Minimum area dedicated to landscaped area: 15%.

1290 (j) Hours of operation must be noted on the final site plan and are determined by the
1291 Planning Board on a case-by-case basis. All lighting other than designated
1292 security lighting must be extinguished outside of noted hours of operation.

1293 (k) Minimum water body setback for functionally water-dependent uses: zero feet.

1294 (l) Minimum setback from streams, water bodies and wetlands: in accordance with
1295 Table 16.5.30, § 16.4.28 and Appendix A, Fee Schedules.

1296 (m) Gasoline Sales must a) not be located within 1,000 feet of an existing station; (b)
1297 not be located within 1,000 feet of any private residence; and (c) not be located

1298 within 150 feet of any existing structure.

1299

1300 (2) Parking.

1301 (a) Parking must be on the side or back yard;

1302 (b) Shared access must be provided where feasible; and

1303 (c) New or revised parking must be visually screened through the use of landscaping,
1304 earthen berms and/or fencing from adjacent public streets or residential properties.

1305 (See the Design Handbook for appropriate examples.)

1306

1307 (3) Building design standards

1308 Kittery's characteristic buildings reflect its historic seacoast past. The primary
1309 architectural styles are New England Colonial (such as Cape Cod and saltbox),
1310 Georgian, Federal and Classical Revival. New buildings must be compatible with
1311 Kittery's characteristic styles in form, scale, material and color. In general, buildings
1312 should be oriented to the street with the front of the building facing the street.
1313 Architectural design and structure location must reinforce the human scale and
1314 pedestrian nature of the neighborhood by using orientation and building massing,
1315 exterior building materials, and roofing as set forth below. The front or street facade
1316 must be designed as the front of the building. The front elevation must contain one or
1317 more of the following elements: 1) a "front door," although other provisions for
1318 access to the building may be provided; 2) windows; or 3) display cases. (See Design
1319 Handbook for examples of acceptable materials and designs.) Main entries should be
1320 clearly visible from the street and provide adequate cover from the weather. Strict
1321 imitation is not required. Design techniques can be used to maintain compatibility
1322 with characteristic styles and still leave enough flexibility for architectural variety. To
1323 achieve this purpose, the following design standards apply to new and modified
1324 existing building projects:

1325 (a) Exterior building materials and details. Building materials and details strongly
1326 define a project's architectural style and overall character. (See Design Handbook
1327 for examples of acceptable materials, building scale, and designs.) "One-sided"
1328 schemes are prohibited; similar materials and details must be used on all sides of a
1329 building to achieve continuity and completeness of design. Predominant exterior
1330 building materials must be of good quality and characteristic of Kittery, such as
1331 horizontal wood board siding, vertical wood boards, wood shakes, brick, stone or
1332 simulated stone, glass and vinyl, or metal clapboard.

1333 (b) Roofs. A building's prominent roofs must be pitched a minimum of 4:12 unless
1334 demonstrated to the Planning Board's satisfaction that this is not practicable.
1335 Acceptable roof styles are gabled, gambrel and hipped roofs. Flat roofs, shed roofs
1336 and roof facades (such as "stuck on" mansards) are not acceptable as prominent
1337 roof forms except as provided above. Roof colors must be muted. (See Design
1338 Handbook for examples.) The roof design must screen or camouflage rooftop
1339 protrusions to minimize the visual impact of air-conditioning units, air handler
1340 units, exhaust vents, transformer boxes and the like. (See Design Handbook for
1341 examples of appropriate treatments.)

1342 (c) Loading docks and overhead doors. Loading docks and overhead doors must be
1343 located on the side or rear of the building and must be screened from view from
1344 adjacent properties in residential use.

1345

1346 (4) Landscaping/site improvements.

1347 To achieve attractive and environmentally sound site design and appropriate screening of
1348 parking areas, in addition to the landscaping standards contained in § 16.7 and § 16.8, the
1349 following landscaping requirements apply to new and modified existing developments:

1350

1351 (a) Fifteen percent of site area must be landscaped;

1352 (b) Outdoor spaces must be created to reinforce commercial activities and pedestrian-
1353 friendly access. Outdoor spaces are encouraged throughout the site with special
1354 attention along the sidewalk and street. Architectural features such as decorative
1355 pavers, planters and benches are encouraged in the creation of these spaces;

1356 (c) The space between the roadway and any buildings must be attractively landscaped
1357 using trees, flowers, shrubs, fencing or stone walls to reinforce the site's unique
1358 character and building design;

1359 (d) A buffer between commercial and residential zones must be established and be
1360 landscaped with a visually pleasing mixed planting type;

1361 (e) Solid fencing, berms and/or stone walls must be used to prevent headlights from
1362 shining on abutting residential property. Incorporating flowering vines and other
1363 plantings on fences and blank exterior walls is encouraged;

1364 (f) Provide street trees in a pattern reflecting the existing streetscape. For new
1365 buildings, a minimum of one street tree must be planted for each 25 feet of street
1366 frontage. The trees may be spaced along the frontage or grouped or clustered to
1367 enhance the visual quality of the site. (See Design Handbook for examples.) The
1368 trees must be a minimum two-and-one-half-inch caliper and be at least 12 feet
1369 high at the time of planting. The species must be selected from the list of approved
1370 street trees in the Design Handbook. Existing large healthy trees must be
1371 preserved if practical and will count toward this requirement.

1372 (g) For additions to existing buildings and changes of residential structures to a
1373 nonresidential use, one street-side tree (see list of street trees in Design
1374 Handbook) is required to be planted for every 1,000 square feet of additional gross
1375 floor area added or converted to nonresidential use. In instances where parking,
1376 display area, storage, building or necessary vehicle circulation exists at the time of
1377 enactment of this section, the required trees may be clustered and/or relocated
1378 away from the road as is necessary to be practicable. The preservation of existing
1379 large trees is encouraged; therefore, the Planning Board may permit the
1380 preservation of existing healthy, large, mature trees within developed areas of the
1381 site to be substituted for the planting of new trees;

1382 (h) Service and storage areas must be located to the rear of the building and be
1383 shielded using plantings and/or fencing. Facilities for waste storage such as
1384 dumpsters must be located within an enclosure and be visually buffered by
1385 fencing, landscaping and/or other treatments (see Design Handbook for examples
1386 of appropriate buffering);

1387 (i) No storage may be in front of buildings except seasonal sales items;

1388 (j) Lighting and landscape plans must be provided and approved as a part of final
1389 plan; and

1390 (k) Lighting along the street must be of a pedestrian scale using an architectural
1391 fixture appropriate to the neighborhood.

1392

1393 (5) Traffic and circulation standards.

1394 Sidewalks and roadways must be provided within the site to internally join abutting
 1395 properties that are determined by the Planning Board to be compatible. In addition, safe
 1396 pedestrian route(s) must be provided to allow pedestrians to move within the site and
 1397 between the principal customer entrance and the front lot line where a sidewalk exists or
 1398 will be provided or where the Planning Board determines that such a route is needed for
 1399 adequate pedestrian safety and movement. (See Design Handbook for appropriate
 1400 examples.)

1401

1402 E. Shoreland Overlay Zone OZ-SL – Business Local Zone (B-L1)

1403 (1) Permitted uses

1404 (a) Accessory Uses & Building

1405 (b) Aquaculture

1406 (c) Recreation, Public Open Space

1407

1408 (2) Special exception uses

1409 (a) Art Studio or Gallery

1410 (b) Business & Professional Offices

1411 (c) Business Services

1412 (d) Retail Sales, Building Materials & Garden Supply (excluding those of which the
 1413 principal activity entails outdoor sales and/or storage)

1414 (e) Conference Center

1415 (f) Retail Sales, Convenience

1416 (g) Commercial Fisheries/Maritime Activities (provided only incidental cleaning and
 1417 cooking of seafood occur at the site)

1418 (h) Parking Area

1419 (i) Dwelling, Manufactured Housing

1420 (j) Dwelling, Single-Family

1421 (k) Dwelling, Two-Family

1422 (l) Farmers market

1423 (m) Funeral Home

1424 (n) Home Occupation, Major

1425 (o) Home Occupation, Minor

1426 (p) Inn

1427 (q) Mass Transit Station

1428 (r) Motel

1429 (s) Hotel

1430 (t) Inn

1431 (u) Rooming House

1432 (v) Personal Service

1433 (w) Public Assembly Area

1434 (x) Theater

1435 (y) Public Utility Facility

1436 (z) Restaurant

1437 (aa) Retail Sales (excluding those of which the principal activity entails outdoor
 1438 sales and/or storage)

1439 (bb) Specialty Food and/or Beverage Facility

1440

1441 (3) See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL

1442

1443 F. Resource Protection Overlay Zone OZ-RP – Business – Local Zone (B-L1)

1444 (1) Permitted Uses

1445 (a) Recreation, Public Open Space

1446

1447 (2) Special Exception Uses

1448 (a) Accessory Uses & Buildings

1449 (b) Home Occupations, Major

1450 (c) Home Occupations, Minor

1451 (d) Public Utility Facility

1452 (e) Dwelling, Single-Family, including modular homes

1453

1454 (3) See § 16.4.29 for purpose and standards in the Resource Protection Overlay Zone OZ-

1455 RP

1456 **16.4.19. Commercial 1, Route 1 Commercial Zone (C-1)**

1457 A. Purpose

1458 (1) The C-1 (Route 1 Commercial) Zone proposes to add a range of uses and building types,
 1459 including residential, to a vehicle-dependent predominately retail-oriented shopping area
 1460 with proximity to several small neighborhoods. The presence of significant existing
 1461 infrastructure and the opportunity to redevelop under-utilized properties for a diversity of
 1462 housing types, restaurants, services and shops with increased pedestrian access will allow
 1463 the Town to advance Comprehensive Plan housing and economic development goals and
 1464 meet the needs of residents into the future.

1465

1466 To reflect the differing character of various parts of the commercial areas, it is divided
 1467 into three zones that are shown on the Zoning Map:

1468 C-1 Route 1 Commercial Zone

1469 C-2 Route 236 Commercial Zone

1470 C-3 Bypass/Old Post Road Commercial Zone

1471

1472 Where the standards or requirements for the zones vary, the provisions for the zone in
 1473 which the parcel is located apply.

1474

1475 B. Permitted uses

1476 The following uses are permitted in the C-1 Zone:

1477 (1) Accessory Dwelling Unit

1478 (2) Convalescent Care Facility

- 1479 (3) Dwelling, two-family
- 1480 (4) Nursing Care Facility, Long-term
- 1481 (5) Accessory Buildings, Structures, and Uses
- 1482 (6) Home Occupation, Major
- 1483 (7) Home Occupation, Minor
- 1484 (8) Hotel
- 1485 (9) Inn
- 1486 (10) Motel
- 1487 (11) Rooming House
- 1488 (12) Day Care Facility
- 1489 (13) Hospital
- 1490 (14) Nursery School
- 1491 (15) Private Assembly
- 1492 (16) Public Facility
- 1493 (17) Public or Private School
- 1494 (18) Public Utility Facility
- 1495 (19) Religious Use
- 1496 (20) Recreation, Commercial Indoor
- 1497 (21) Recreation, Commercial Outdoor
- 1498 (22) Recreation, Public Open Space
- 1499 (23) Recreation, Public Facility
- 1500 (24) Commercial School
- 1501 (25) Veterinary Hospital
- 1502 (26) Art Studio or Gallery
- 1503 (27) Business & Professional Offices
- 1504 (28) Business Services
- 1505 (29) Conference Center
- 1506 (30) Personal Services
- 1507 (31) Repair Services
- 1508 (32) Restaurant
- 1509 (33) Retail Sales
- 1510 (34) Retail Sales, Building Materials & Garden Supply
- 1511 (35) Retail Sales, Convenience
- 1512 (36) Specialty Food and/or Beverage Facility
- 1513 (37) Mass Transit Station
- 1514 (38) Parking Area
- 1515 (39) Wholesale Businesses
- 1516
- 1517 C. Special exception uses
- 1518 The following uses are permitted as special exception uses in the C-1 Zone:
- 1519 (1) Aquaculture

- 1520 (2) Buildings and structures over 40 feet that conform to the provisions of § 16.7 and
- 1521 16.8. Buildings and structures, other than multi-family dwelling units as part of a
- 1522 mixed-use building in the C-1 Zone, west of Route 1, which are taller as allowed in
- 1523 § 16.4.19.E(2)e higher than 40 actual feet from the lowest point of grade to the
- 1524 highest point of the building or structure must have side, rear and front yards of
- 1525 sufficient depth to adequately protect the health, safety and welfare of abutting
- 1526 properties and which may not be less than current standards or 50% of actual height,
- 1527 whichever is greater;
- 1528 (3) Cottage Cluster
- 1529 (4) Dwelling, attached single-family
- 1530 (5) Dwelling, multi-family
- 1531 (6) Dwelling units as part of a mixed-use building
- 1532 (7) Funeral Home
- 1533 (8) Gasoline Service Station
- 1534 (9) Industry, Light
- 1535 (10) Mechanical Services
- 1536 (11) Mini Storage not located within 2,000 feet from an existing mini storage
- 1537 facility located in the same zoning district
- 1538 (12) Public Assembly Area
- 1539 (13) Theater
- 1540 (14) Repair Garage
- 1541 (15) Research & Development
- 1542 (16) Transportation Terminal
- 1543 (17) Warehousing & Storage
- 1544 (18) Marijuana Business, except a Marijuana Cultivation Facility

1545

1546 D. Undefined Uses in C-1 and C-3 Zones

- 1547 (1) Undefined uses will be considered by the Planning Board based on the following
- 1548 criteria:
- 1549 (a). If the use is consistent with the Comprehensive Plan and zoning district purposed;
- 1550 and
- 1551 (b). If the use meets special exception criteria found in § 16.4.19.E.
- 1552
- 1553 (2) In addition, the undefined use must meet one or both of the following criteria:
- 1554 (a). If the proposed use has substantially similar impacts as a listed use.
- 1555 (b). If the proposed use is compatible with existing uses within the zoning district for
- 1556 which it is proposed.
- 1557

1558 E. Standards.

- 1559 (1) C Zone standards. All development and the use of land in the C Zone must meet the
- 1560 following standards. Kittery's Design Handbook illustrates how these standards can be
- 1561 met. In addition, the design and performance standards of § 16.5, 16.7 and 16.8 must
- 1562 be met unless noted otherwise below.

1563

1564 (2) The following space standards apply in the C-1 Zones:

1565

1566 (a) Minimum lot size or density:

C-1 Zones	
Cottage Cluster; Dwelling, attached single-family; Dwelling, multi-family; Dwelling, two-family; Dwelling units as part of a mixed-use building	16 units per acre unless 25% of units are affordable housing units as defined by this code, in which case 20 units per acres allowed*
All other uses	40,000 Sq Ft

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*NOTE: These uses are exempt from net residential acreage calculations but are subject to minimum land area per dwelling unit requirement as described in § 16.5.18.D Exemptions to net residential acreage calculations.

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(b). Minimum street frontage:

C-1 Zone	
All uses	No minimum*

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*NOTE: All lots must meet the requirements of § 16.5.14 Lots unless specifically modified by this section (16.4.19). Street frontage must provide sufficient vehicular and pedestrian access for the uses proposed while meeting public health and safety requirements (e.g. Fire Department, Department of Public Works). The applicant must demonstrate to the municipal permitting authority, that the street frontage and lot design meet these requirements to the extent practicable.

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(c). Maximum front setback:

C-1 Zone	
All uses	15 Ft*

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* NOTE: The Planning Board may, at its discretion, allow a greater setback when public amenities such as benches, pocket parks, outdoor dining or seating areas are proposed. Properties in the C-3 Zone with frontage on Old Post Road, including those lots which also have frontage on Route 1 Bypass, are required to have at least a 15-foot setback on Old Post Road.

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(d). Minimum rear and side setbacks:

C-1 Zone	
All Uses	10 Ft*

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*NOTE: Except where side and/or rear setback of proposed new uses about a single-family use and/or any properties located on the east side of Route 1 from the southernmost extent of the C-1 zone north to properties abutting Ox Point Drive in

1588

1589

1590 which case a minimum of 40 feet is required. See 16.4.19.E(4)e for buffer
 1591 requirements.

1592
 1593 (e). Maximum building height:

C-1 Zone	
Dwelling, multi-family; Dwelling units as part of a mixed-use building	50 feet on the west side of Route 1, not including solar apparatus* and 40 feet on the east side of Route 1, not including solar apparatus*.
All other uses	40 Ft

1594 *NOTE: Flat roofs, proposed to locate heating, cooling, or other such mechanical or
 1595 electrical apparatus off the ground, are acceptable provided that such apparatus is
 1596 screened from view and the screening is designed as an integral part of the building to
 1597 aid both aesthetics and noise attenuation. Flat roofs proposed for the purpose of solar
 1598 array installations are also acceptable.

1599
 1600 (f). Impervious Surface:

1601 [1]. For lots in the C-1 and C-3 zones which are currently developed and for which
 1602 new multi-family, attached single-family or two-family dwellings, cottage
 1603 clusters, or dwelling units as part of mixed-use building are proposed, either
 1604 with or without existing or new commercial uses on the same lot, the
 1605 maximum impervious surface, including but not limited to driveways,
 1606 buildings, sidewalks and parking areas:

- 1607 [a]. Is 70%; or
- 1608 [b]. The Planning Board may at its discretion, allow greater than 70% if proof
 1609 that all stormwater will be managed on-site, utilizing LID (Low Impact
 1610 Development) and BMP (Best Management Practice) systems based on
 1611 MaineDEP’s Maine Stormwater Best Management Practices Manual,
 1612 Volumes I-III as amended from time to time. The stormwater report and
 1613 plan demonstrating that this requirement is met must be included with the
 1614 application at the time of submission.

1615
 1616 [2]. For lots in the C-3 zone which are currently vacant (no existing structure) and
 1617 for which new multi-family, attached single-family, or two-family dwellings,
 1618 cottage clusters, or dwelling units as part of mixed-use building are proposed,
 1619 the maximum impervious surface, including driveways, buildings, sidewalks
 1620 and parking areas:

- 1621 [a]. Is 60%; or
- 1622 [b]. The Planning Board may, at its discretion, allow greater than 60% if
 1623 proof that all stormwater will be managed on-site utilizing LID (Low
 1624 Impact Development) and BMP (Best Management Practice) systems
 1625 based on Maine DEP’s Maine Stormwater Best Management Practices
 1626 Manual, Volumes 1-III as amended from time to time. The stormwater
 1627 report and plan demonstrating that this requirement is met must be
 1628 included with the application at the time of submission.

1629

1630 [3] For lots in the C-1 or C-3 zones which are currently developed and for which
 1631 redevelopment is proposed with new non-residential structures, the maximum
 1632 impervious surface, including but not limited to driveways, buildings,
 1633 sidewalks and parking areas:

1634 [a]. Is 70%; and all stormwater must be managed on-site, utilizing LID (Low
 1635 Impact Development) and BMP (Best Management Practice) systems
 1636 based on Maine DEP’s Maine Stormwater Best Management Practices
 1637 Manual, Volumes 1-III as amended from time to time. The stormwater
 1638 report and plan demonstrating that this requirement is met must be
 1639 included with the application at the time of submission.

1640
 1641 [4] For all uses in the C-2 Zone, building and outdoor material coverage must
 1642 not exceed 40%.

1643
 1644 (g). Minimum water body setback for functionally water-dependent uses: zero feet.

1645 (h). Minimum setback from streams, water bodies and wetlands: in accordance with
 1646 Table 16.5.30, § 16.4.28 and Appendix A, Fee Schedules.

1647 (i). Gasoline Sales i) not located within 1,000 feet of an existing station or private
 1648 residence; and ii) not located within 150 feet of an existing structure.

1649 (j). Repair Garages must not be located within 150 feet of a private dwelling or
 1650 existing structure.

1651 (k). Affordable housing requirements:

1652 [1]. All requirements in 16.5.4 Affordable Housing must be met.

1653 [2]. Density incentives outlined above in (2)(a) may be applied to projects that
 1654 create affordable housing units, as defined by this code. No proportional
 1655 payment-in-lieu is required if the affordable dwelling unit requirements for the
 1656 density incentives are met.

1657 (l). Mixed-use buildings must have non-residential uses comprising at least 50% of
 1658 the street-facing first floor.

1659 (m). Underground utilities are required. The Planning Board may allow an
 1660 alternative but it is incumbent upon the applicant to demonstrate why such a
 1661 modification request should be granted.

1662 (n). Cottage cluster requirements:

1663 [1]. Cottage cluster dwelling units must either face the required common open
 1664 space or the street. The required open space must be held in common for use
 1665 by all the cottage cluster residents and must be immediately accessible to each
 1666 dwelling unit, via either the front or the back of each unit.

1667 [2]. Each cottage cluster dwelling unit must be no greater than 1,200 square feet.
 1668 Spacing between units must comply with the requirements of the Fire
 1669 Department and/or the State Fire Marshal’s office.

1670 [3]. Shared parking areas must be connected to each dwelling unit via a sidewalk

1671
 1672 (3) C-1 Zone standards. All development and the use of land except for new multifamily,
 1673 attached single-family or two-family dwellings, cottage clusters, or dwelling units as
 1674 part of a mixed-use building within the C-1 Zone must meet the following standards:

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(a). Parking.

- [1]. All new or revised parking must be visually screened by landscaping, earthen berms and/or fencing from adjacent public streets or residential properties. (See the Design Handbook for appropriate examples.)
- [2]. Each parking space is to contain a rectangular area at least 19 feet long and nine feet wide. Lines demarcating parking spaces may be drawn at various angles in relation to curbs or aisles, so long as the parking spaces so created contain within them the rectangular area required by this section. This is exclusive of drives or aisles giving access thereto, accessible from streets or aisles leading to streets, and usable for the storage or parking of passenger vehicles. Parking spaces or access thereto must be constructed as to be usable year-round.

(b). Building design standards.

Kittery's characteristic buildings reflect its historic seacoast past. The primary architectural styles are New England Colonial (such as Cape Cod and saltbox), Georgian, Federal and Classical Revival. New buildings must be compatible with Kittery's characteristic styles in form, scale, material and color. In general, buildings should be oriented to the street with the front of the building facing the street. The front or street facade must be designed as the front of the building. The front elevation must contain one or more of the following elements: 1) a "front door," although other provisions for access to the building may be provided; 2) windows; or 3) display cases. (See Design Handbook for examples of acceptable materials and designs.) Strict imitation is not required. Design techniques can be used to maintain compatibility with characteristic styles and still leave enough flexibility for architectural variety. To achieve this purpose, the following design standards apply to new and modified existing building projects:

- [1] Exterior building materials and details. Building materials and details strongly define a project's architectural style and overall character. (See Design Handbook for examples of acceptable materials, building scale, and designs.) "One-sided" schemes are prohibited; similar materials and details must be used on all sides of a building to achieve continuity and completeness of design. Predominant exterior building materials must be of good quality and characteristic of Kittery, such as horizontal wood board siding, vertical wood boards, wood shakes, brick, stone or simulated stone, glass and vinyl, or metal clapboard.
- [2] Roofs. A building's prominent roofs must be pitched a minimum of 4:12 unless demonstrated to the Planning Board's satisfaction that this is not practicable. Acceptable roof styles are gabled, gambrel and hipped roofs. Flat roofs, shed roofs and roof facades (such as "stuck on" mansards) are not acceptable as prominent roof forms except as provided above. The roof design must screen or camouflage rooftop protrusions to minimize the visual impact of air-conditioning units, air handler units, exhaust vents, transformer boxes, and the like. (See Design Handbook for examples of appropriate treatments.)
- [3] Loading docks and overhead doors. Loading docks and overhead doors must be located on the side or rear of the building and screened from view from adjacent properties in residential use.

- 1724 (c). Landscaping site improvements
1725 To achieve attractive and environmentally sound site design and appropriate screening
1726 of parking areas, in addition to the landscaping standards contained in Chapter 16.8
1727 the following landscaping requirements apply to new and modified existing
1728 developments:
- 1729 [1]. Landscape planter strip. A vegetated landscape planter strip must be provided
1730 a minimum of 30 feet in depth adjacent to the right-of-way of all public roads
1731 and include the following landscape elements:
- 1732 [2]. Ground cover. The entire landscape planter strip must be vegetated except for
1733 approved driveways, walkways, bikeways and screened utility equipment.
- 1734 [3]. Street-side trees. A minimum of one street tree must be planted for each 25
1735 feet of street frontage. The trees may be spaced along the frontage or grouped
1736 or clustered to enhance the visual quality of the site. (See Design Handbook
1737 for examples.) The trees must be a minimum two-and-one-half-inch caliper
1738 and be at least 12 feet high at the time of planting. The species should be
1739 selected from the list of recommended street trees in the Design Handbook.
1740 Existing large healthy trees must be preserved if practical and will count
1741 toward this requirement.
- 1742 [4]. Planter strip. Shrubs and flowering perennials must be planted at a minimum
1743 of 10 plants per 40 linear feet of street frontage unless existing woodlands are
1744 being retained or such planting is inconsistent with the retention of rural
1745 landscape features. The plant material should be selected from the list of
1746 recommended materials in the Design Handbook. The plants must be placed
1747 within the planter strip to enhance the visual character of the site and augment
1748 natural features and vegetation. (See Design Handbook for examples of
1749 appropriate treatments.)
- 1750 [5]. Special situations.
- 1751 [a]. Expansions of less than 2,000 square feet to existing uses are exempt
1752 from the landscaping standard of this subsection. [b]. Depth of landscape
1753 planter strip. In instances where the required minimum depth of the
1754 landscape planter strip is legally utilized, in accordance with previous
1755 permits or approvals, for parking, display, storage, building or necessary
1756 vehicle circulation, the depth may be narrowed by the Planning Board to the
1757 minimum extent necessary to achieve the objective of the proposed project,
1758 provided the required shrubs and perennials are planted along the street
1759 frontage to soften the appearance of the development from the public street.
1760 If providing the required landscape planter strip together with other required
1761 landscaping and required vegetated areas in and around wetlands would
1762 cause the project to exceed the required open space standards, the depth of
1763 the landscape planter strip and the front yard may be reduced by the
1764 Planning Board so the open space standards are not exceeded, but in no case
1765 to less than 20 feet for this reason.
- 1766 [c]. Additions and changes in use. For additions to existing buildings and
1767 changes of residential structures to a nonresidential use, one street-side tree
1768 (see list of recommended street trees in Design Handbook) is required to be
1769 planted for every 1,000 square feet of additional gross floor area added or
1770 converted to nonresidential use. In instances where parking, display area,
1771 storage, building or necessary vehicle circulation exists at the time of

1772 enactment of this section, the required trees may be clustered and/or
 1773 relocated away from the road as is necessary to be practicable. The
 1774 preservation of existing large trees is encouraged; therefore, the Planning
 1775 Board may permit the preservation of existing healthy, large, mature trees
 1776 within the landscape planter strip or other developed areas of the site to be
 1777 substituted for the planting of new trees.

1778 [d]. Residences. Residential additions to existing single- and two-family
 1779 dwellings and proposed single- and duplex-family dwellings are exempt
 1780 from the landscaping standards of this subsection.

1781

1782 [6]. Outdoor service and storage areas. Service and storage areas must be located
 1783 to the side or rear of the building. Facilities for waste storage such as
 1784 dumpsters must be located within an enclosure and be visually buffered by
 1785 fencing, landscaping and/or other treatments. (See Design Handbook for
 1786 examples of appropriate buffering.)

1787

1788 (d). Traffic and circulation standards

1789 [1]. Sidewalks and roadways must be provided within the site to internally join
 1790 abutting properties that are determined by the Planning Board to be
 1791 compatible. In addition, safe pedestrian route(s) must be provided to allow
 1792 pedestrians to move within the site and between the principal customer
 1793 entrance and the front lot line where a sidewalk exists or will be provided or
 1794 where the Planning Board determines that such a route is needed for adequate
 1795 pedestrian safety and movement. (See Design Handbook for appropriate
 1796 examples.)

1797

1798 (e). Open space standards

1799 [1]. Open space must be provided as a percentage of the total area of the lot,
 1800 including freshwater wetlands, water bodies, streams and setbacks. Twenty-
 1801 five percent of each lot must be designated as open space. Required open
 1802 space must be shown on the plan with a note dedicating it as "open space."
 1803 The open space must be located to create an attractive environment on the site,
 1804 minimize environmental impacts, protect significant natural features or
 1805 resources on the site, and maintain wildlife habitat. Individual large, healthy
 1806 trees and areas with mature tree cover should be included in the open space.
 1807 Where possible, the open space must be located to allow the creation of
 1808 continuous open space networks in conjunction with existing or potential open
 1809 space on adjacent properties. The required amount of designated open space is
 1810 reduced to 15% of each lot that is less than 100,000 square feet in size.

1811 [2]. Minimum land area per unit for elder-care facilities that are connected to the
 1812 public sewerage system:

1813 [a]. Dwelling unit with two or more bedrooms: 3,000 square feet.

1814 [b]. Dwelling unit with less than two bedrooms: 2,000 square feet.

1815 [c]. Residential care unit: 1,500 square feet.

1816 [d]. Minimum land area per bed for nursing care and convalescent care
 1817 facilities that are connected to the public sewerage system: 1,200 square
 1818 feet.

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(4) C-1 and C-3 Zone standards for attached single-family dwellings, multi-family dwellings, two-family dwellings where more than one two-family dwelling is proposed for a single lot, cottage clusters, and dwelling units as part of a mixed-use building:

(a). Design Standards.

See Kittery’s Design Handbook for further information on how these standards can be met.

- [1]. Sidewalks must be installed within the right-of-way to meet minimum requirements as specified in 16.5.27, subject to review and approval by the Department of Public Works and MaineDOT if required.
- [2]. Connectivity between new housing development and adjacent existing or new commercial areas is required. This connectivity must, at minimum, include sidewalks or walkways. In the C-1 zone, connectivity may also include vehicular access coupled with sidewalks or walkways between residential and commercial areas. Connectivity must be pedestrian-friendly with appropriately scaled improvements such as eight-foot-wide sidewalks and human-scaled lighting.
- [3]. On-street parking is encouraged on new or existing private roads off Route 1, and may be considered as a part of a joint use parking plan when such on-street parking is proposed as part of a development or redevelopment plan.
- [4]. All service areas for dumpsters, compressors, generators and similar items must be screened by a fence at least six feet tall, constructed of a material similar to surrounding buildings, and must surround the service area except for the necessary ingress/egress.
- [5]. Parking must be located behind multifamily dwellings and mixed-use buildings with residential dwelling units when viewed from the street. The Planning Board may allow parking to the side or front of such residential or mixed-use buildings at its discretion, but it is incumbent upon the applicant to demonstrate why rear parking is not feasible.
- [6]. Lighting plans, including lighting fixture designs and photometric plans must be included at the time of application submission. All fixtures must be cut-off to prevent light trespass and meet all requirements of § 16.7.11.H.
- [7]. A single new two-family dwelling proposed for a lot, the addition of another dwelling unit to an existing single-family residence to create a two-family dwelling and the addition of an ADU (Accessory Dwelling Unit) to a single-family residence is exempt from these design standards.

(b). Open Space Standards.

- [1]. Open space must be provided as a percentage of the total area of the lot, and may include wetlands, waterbodies, streams, and setbacks. Fifteen percent (15%) of each lot must be designated as open space.
- [2]. For multifamily dwellings, mixed-use buildings with residential dwelling units and attached single-family dwellings, in cases where the property does not meet the 15% requirement due to existing development, and where redevelopment will remain at the same or comprise a lower percentage of the

1866 lot, the Planning Board may, at its discretion, allow a smaller percentage of
1867 open space. In granting this concession, the Board may require more intensive
1868 landscape plantings.

1869

1870 (c). Parking Standards.

1871 The following minimum off-street parking requirements must be provided and
1872 maintained in case of new construction, alterations, and changes of use:

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1874 [1]. Parking requirements must be met on site unless an existing building covers so
1875 much of the lot as to make the provision of parking impractical in whole or in
1876 part. If meeting the parking requirements is not practical, then the parking
1877 demand may be satisfied off site or through joint-use agreements as specified
1878 herein. Notwithstanding the off-street parking requirements in 16.7.11.F,
1879 minimum parking requirements for the uses below are modified as specified:

1880 [a]. Dwelling units: 1 parking space per dwelling unit.

1881 [b]. For multifamily dwellings, if more than ten parking spaces are required,
1882 up to 20% of the parking may be designated for compact cars. See 16.7.11.F
1883 Off-Street Parking Standards.

1884

1885 [2]. Off-site parking. Required off-street parking may be satisfied at off-site
1886 locations, provided such parking is on other property owned by the applicant
1887 or is under the terms of a contractual agreement that will ensure such parking
1888 remains available for the uses served. Applicant must present evidence of a
1889 parking location and a contractual agreement;

1890

1891 [3]. Joint-use parking. Required off-street parking may also be satisfied by the
1892 joint use of parking space by two or more uses if the applicant can show that
1893 parking demand is nonconflicting and will reasonably provide adequate
1894 parking for the multiple uses without parking overflowing into undesignated
1895 areas. Nonconflicting periods may consist of daytime as opposed to evening
1896 hours of operation or weekday as opposed to weekends or seasonal variation
1897 in parking demand.

1898 [a]. Such joint parking areas must be held under ownership of the applicant
1899 or under terms of a contractual agreement that ensures such parking remains
1900 available to all users of the shared parking spaces;

1901 [b]. Determination of parking adequacy will be based on a most frequent
1902 basis, not a "worst case" scenario;

1903 [c]. Joint use parking areas must be located within 1,500 feet of the uses
1904 served, but do not need to be located on the same lot as the uses served;

1905 [d]. Ease and safety of pedestrian access to shared parking by the users
1906 served must be demonstrated to the municipal permitting authority's
1907 satisfaction, including any proposed improvements, such as crosswalks or
1908 shuttle service that may be offered and its requisite loading/unloading areas;

1909 [e]. Such joint parking areas must not be located in residential zones of the
1910 Town.

1911

1912 [4].In making determinations on off-site or joint-use parking under a development
 1913 plan review, the municipal permitting authority with jurisdiction to review and
 1914 approve will make a final determination of the joint-use and/or off-site spaces
 1915 that constitute an acceptable combination of spaces to meet the required
 1916 parking demand.

1917
 1918 [5].Electric car charging stations are allowed in parking lots but must not interfere
 1919 with pedestrian movement on sidewalks.

1920
 1921 (d).Landscaping and Screening.

1922 [1].For new multi-family, attached single-family, or dwelling units as part of a
 1923 mixed-use building or any new residential use that will create more than three
 1924 dwelling units on a site, the following standards apply:

1925 [a]. A landscape plan prepared by a registered landscape architect is a
 1926 submission requirement. However, a landscape plan done by other design
 1927 professionals may be allowed at the Planning Board’s discretion.

1928 [b]. A minimum of one street tree must be planted for each 25 feet of street
 1929 frontage. Trees may be planted in groups or spaced along the frontage.
 1930 However, trees must be planted to ensure survival, using silva cells,
 1931 bioretention cells or tree wells. Trees are to be a minimum of 2.5-inch
 1932 caliper and 12 feet high at the time of planting. Existing large healthy
 1933 trees must be preserved if practical and will count towards this
 1934 requirement. Trees proposed within the right-of-way must remain under
 1935 20 feet tall at maturity.

1936 [c]. Surface parking lots designed for five or more cars that will service
 1937 multifamily or mixed-use buildings with dwelling units and which abut a
 1938 street, an existing single- family use, or a residential zone, must provide
 1939 screening in one of the following ways:

1940 [i]. One tree per 25 feet of street frontage backed by a fence constructed
 1941 of a material similar to surrounding buildings which must screen the
 1942 parking area from the street except for necessary vehicular and
 1943 pedestrian access. To ensure survival, trees must be planted using
 1944 silva cells, bioretention cells or tree wells. Trees must be at least 2.5-
 1945 inch caliper and 12 feet high at the time of planting. Existing large
 1946 healthy trees must be preserved if practical and will count towards this
 1947 requirement. Trees proposed within the right-of-way must remain
 1948 under 20 feet tall at maturity.

1949 [ii].A combination of trees and shrubs including at least 50% evergreen
 1950 species, all at least six feet high at time of planting, in a planting bed
 1951 at least eight feet wide. Plantings must be sufficient, as determined by
 1952 the Planning Board, to screen the parking area from the street except
 1953 for necessary vehicular and pedestrian access. Planting beds may be
 1954 mulched but no dyed-mulching material may be used.

1955 [d]. A minimum of 10% of any surface parking area consisting of 10 or more
 1956 spaces must be landscaped with trees and vegetated islands. This
 1957 requirement is in addition to the aforementioned screening and street tree
 1958 requirements.

- 1959 [e]. Native trees are preferred and must be drought and salt tolerant when used
- 1960 along streets. A diversity of tree species (three to five species per every 12
- 1961 trees) is required to provide greater resiliency to threats from introduced
- 1962 insect pests and diseases.
- 1963 [f]. Any required plantings that do not survive must be replaced within one
- 1964 year. This requirement does not expire and runs with the land.
- 1965 [g]. If 25% of the proposed development will be affordable dwelling units, the
- 1966 Planning Board may, at its discretion, modify surface parking lot
- 1967 landscaping and screening requirements under [c] and [d] above.
- 1968
- 1969 (e). Buffers.
- 1970 [1]. Buffers are required between new residential uses and existing nonresidential
- 1971 uses and must be at least 10 feet wide. A buffer plan must be prepared in
- 1972 conjunction with the landscape plan as described in [d] [1] above and consist
- 1973 of:
- 1974 [a]. A fence at least six feet high, constructed of material similar to
- 1975 surrounding buildings, with plantings of trees at least six feet tall at time
- 1976 of planting and shrubs on the new residential side of the fence.
- 1977 [b]. Ground cover plantings such as perennials or ornamental grasses must be
- 1978 used where appropriate.
- 1979 [c]. Plantings must be provided with irrigation to enhance survival unless
- 1980 they are part of a bioretention cell, rain garden or tree well.
- 1981 [d]. Any required plantings that do not survive must be replaced within one
- 1982 year. This requirement does not expire and runs with the land.
- 1983 [e]. If 25% of the proposed development will be affordable housing
- 1984 dwelling units, the Planning Board may, at its discretion, modify buffer
- 1985 requirements under [a] and [c].
- 1986
- 1987 [2]. Buffers are required between new residential uses and existing single-family
- 1988 uses and must be at least 10 feet wide. A buffer plan must be prepared in
- 1989 conjunction with the landscape plan as described in [d] [1] above and consist
- 1990 of:
- 1991 [a]. A fence at least six feet high, constructed of material similar to
- 1992 surrounding buildings, with plantings of trees and shrubs at least six feet
- 1993 tall on the new residential side of the fence; or
- 1994 [b]. Plantings of trees at least six feet tall and shrubs, including at least 50%
- 1995 evergreen species. Such plantings must ensure adequate buffering and
- 1996 screening is achieved as determined by the Planning Board.
- 1997 [c]. Ground cover plantings, such as perennials or ornamental grasses must be
- 1998 used where appropriate.
- 1999 [d]. Plantings must be provided with irrigation to enhance survival unless
- 2000 they are part of a bioretention cell, rain garden or tree well.
- 2001 [e]. Any required plantings that do not survive must be replaced within one
- 2002 year. This requirement does not expire and runs with the land.
- 2003 [f]. If 25% of the proposed development will be affordable housing dwelling
- 2004 units, the Planning Board may, at its discretion, modify buffer

2005 requirements under [a], [b] and [c].

2006

2007 F. Shoreland Overlay Zone OZ-SL – Commercial – 1 Zone (C-1)

2008 (1) Permitted uses

2009 (a) Accessory Buildings, Structures, and Uses

2010 (b) Home Occupation, Major

2011 (c) Home Occupation, Minor

2012 (d) Recreation, Public Facility

2013 (e) Recreation, Public Open Space

2014 (f) Recreation, Selected Commercial

2015 (g) Public Utility Facility

2016 (h) Commercial School

2017 (i) Public or Private School

2018 (j) Nursery School

2019 (k) Hospital

2020 (l) Nursing Care Facility, Long-term

2021 (m) Convalescent Care Facility

2022 (n) Public Facility

2023 (o) Religious Use

2024 (p) Private Assembly

2025

2026 (2) Special exception uses

2027 (a) Aquaculture

2028 (b) Art Studio or Gallery

2029 (c) Retail Sales, Building Materials & Garden Supply;

2030 (d) Business & Professional Offices

2031 (e) Business Services

2032 (f) Parking Area

2033 (g) Conference Center

2034 (h) Day Care Facility

2035 (i) Retail Sales

2036 (j) Retail Sales, Convenience

2037 (k) Mass Transit Station

2038 (l) Mini Storage

2039 (m) Motel

2040 (n) Hotel

2041 (o) Rooming House

2042 (p) Inn

2043 (q) Personal Services

2044 (r) Repair Services

2045 (s) Public Assembly Area

- 2046 (t) Theater
- 2047 (u) Research & Development
- 2048 (v) Restaurant
- 2049 (w) Retail Sales
- 2050 (x) Wholesale Businesses
- 2051 (y) Specialty Food and/or Beverage Facility
- 2052 (z) Transportation Terminal
- 2053 (aa) Veterinary Hospital
- 2054 (bb) Warehousing & Storage
- 2055
- 2056 (3) See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL
- 2057
- 2058 G. Resource Protection Overlay Zone OZ-RP – Commercial – 1 Zone (C-1).
- 2059 (1) Permitted uses.
- 2060 (a) Recreation, Public Open Space
- 2061
- 2062 (2) Special exception uses.
- 2063 (a) Accessory Uses & Buildings
- 2064 (b) Aquaculture
- 2065 (c) Home Occupations, Major
- 2066 (d) Home Occupations, Minor
- 2067 (e) Public Utility Facilities
- 2068 (f) Research & Development
- 2069
- 2070 (3) See § 16.4.29 for purpose and standards in the Resource Protection Overlay Zone OZ-
- 2071 RP
- 2072

2073 **16.4.20 Commercial 2, Route 236 Commercial Zone (C-2)**

2074 A. Purpose

2075 (1) The purpose of the C-2 (Route 236 Commercial) Zone is to provide services, industry
 2076 and business space within the Town in a location capable of conveniently serving
 2077 community-wide and/or regional trade areas and oriented primarily to vehicular access.

2078 To reflect the differing character of various parts of the commercial areas, it is divided
 2079 into three zones that are shown on the Zoning Map:

2080 C-1 Route 1 Commercial Zone

2081 C-2 Route 236 Commercial Zone

2082 C-3 Bypass/Old Post Road Commercial Zone

2083 Where the standards or requirements for the zones vary, the provisions for the zone in
 2084 which the parcel is located apply.

2085 B. Permitted uses

2086 The following uses are permitted in the C-2 Zone:

2087 (1) Accessory Dwelling Unit

2088 (2) Convalescent Care Facility

2089 (3) Nursing Care Facility, Long-term

2090 (4) Accessory Buildings, Structures, and Uses

2091 (5) Home Occupation, Major

2092 (6) Home Occupation, Minor

2093 (7) Hotel

2094 (8) Inn

2095 (9) Motel

2096 (10) Rooming House

2097 (11) Day Care Facility

2098 (12) Hospital

2099 (13) Nursery School

2100 (14) Private Assembly

2101 (15) Public Facility

2102 (16) Public or Private School

2103 (17) Public Utility Facility

2104 (18) Religious Use

2105 (19) Recreation, Commercial Indoor

2106 (20) Recreation, Commercial Outdoor

2107 (21) Recreation, Public Open Space

2108 (22) Recreation, Public Facility

2109 (23) Aquaculture

2110 (24) Commercial Fisheries/Maritime Activities (provided only incidental cleaning and
 2111 cooking of seafood occur at the site)

2112 (25) Commercial School

- 2113 (26) Veterinary Hospital
- 2114 (27) Art Studio or Gallery
- 2115 (28) Business & Professional Offices
- 2116 (29) Business Service
- 2117 (30) Conference Center
- 2118 (31) Personal Service
- 2119 (32) Repair Service
- 2120 (33) Restaurant
- 2121 (34) Retail Sales
- 2122 (35) Retail Sales, Building Materials & Garden Supply
- 2123 (36) Retail Sales, Convenience
- 2124 (37) Specialty Food and/or Beverage Facility
- 2125 (38) Boatyard
- 2126 (39) Mass Transit Station
- 2127 (40) Mechanical Services
- 2128 (41) New Motor Vehicle Sales
- 2129 (42) Parking Area
- 2130 (43) Wholesale Business

2131

2132 C. Special Exceptions

2133 The following land uses are permitted as special exception uses in the C-2 Zone:

- 2134 (1) Adult Entertainment Establishment
- 2135 (2) Buildings and structures over 40 feet that conform to the provisions of § 16.7 and
- 2136 16.8. Buildings and structures higher than 40 actual feet from the lowest point of
- 2137 grade to the highest point of the building or structure must have side, rear and front
- 2138 yards of sufficient depth to adequately protect the health, safety and welfare of
- 2139 abutting properties, and which may not be less than current standards or 50% of actual
- 2140 height, whichever is greater;
- 2141 (3) Commercial Greenhouse
- 2142 (4) Construction Services
- 2143 (5) Funeral Home
- 2144 (6) Gasoline Service Station
- 2145 (7) Industry, Light
- 2146 (8) Mini Storage
- 2147 (9) Repair Garage
- 2148 (10) Public Assembly Area
- 2149 (11) Theater
- 2150 (12) Research & Development
- 2151 (13) Shops in Pursuit of Trade
- 2152 (14) Transportation Terminal
- 2153 (15) Used Car Lot
- 2154 (16) Warehousing & Storage

2155 (17) Marijuana Business

2156

2157 D. Standards

2158 (1) C Zone standards. All development and the use of land in the C Zone must meet the
 2159 following standards. Kittery's Design Handbook illustrates how these standards can be
 2160 met. In addition, the design and performance standards of § 16.5, 16.7 and 16.8 must
 2161 be met unless noted otherwise below.

2162

2163 (2) The following space standards apply in the C-2 Zones:

2164 (a) Minimum lot size or density:

C-2 Zone	
All uses:	40,000 Sq Ft

2165

2166 (b). Minimum street frontage:

C-2 Zone	
All uses:	150 Ft

2167

2168 (c). Maximum front setback:

C-2 Zone	
All uses:	50 Ft

2169

2170 (d). Minimum rear and side setbacks:

C-2 Zone	
All Uses	30 Ft**

2171 **NOTE: Except as may be required by the buffer provisions of
 2172 this title, and where the side and/or rear yards of the proposed
 2173 nonresidential use abut a residential zone or use; in which case
 2174 a minimum of 40 feet is required.

2175

2176 (e). Maximum building height:

C-2 Zone	
(f). All uses:	(g). 40 Ft

2177

2178 (f). Impervious Surface:

2179 [1] For all uses in the C-2 Zone, building and outdoor material coverage must not
 2180 exceed 40%.

2181 (g). Minimum water body setback for functionally water-dependent uses: zero feet.

- 2182 (h). Minimum setback from streams, water bodies and wetlands: in accordance with
 2183 Table 16.5.30, § 16.4.28 and Appendix A, Fee Schedules.
- 2184 (i). Gasoline Sales i) not located within 1,000 feet of an existing station or private
 2185 residence; and ii) not located within 150 feet of an existing structure.
- 2186 (j). Repair Garages must not be located within 150 feet of a private dwelling or
 2187 existing structure.
- 2188 (k). Affordable housing requirements:
- 2189 [1]. All requirements in 16.5.4 Affordable Housing must be met.
- 2190 [2]. Density incentives outlined above in (2) (a) may be applied to projects that
 2191 create affordable housing units, as defined by this code. No proportional
 2192 payment-in-lieu is required if the affordable dwelling unit requirements for the
 2193 density incentives are met.
- 2194
- 2195 (l). Mixed-use buildings must have non-residential uses comprising at least 50% of
 2196 the street-facing first floor.
- 2197 (m). Underground utilities are required. The Planning Board may allow an
 2198 alternative but it is incumbent upon the applicant to demonstrate why such a
 2199 modification request should be granted.
- 2200 (n). Cottage cluster requirements:
- 2201 [1]. Cottage cluster dwelling units must either face the required common open
 2202 space or the street. The required open space must be held in common for use
 2203 by all the cottage cluster residents and must be immediately accessible to each
 2204 dwelling unit, via either the front or the back of each unit.
- 2205 [2]. Each cottage cluster dwelling unit must be no greater than 1,200 square feet.
 2206 Spacing between units must comply with the requirements of the Fire
 2207 Department and/or the State Fire Marshal's office.
- 2208 [3]. Shared parking areas must be connected to each dwelling unit via a sidewalk
 2209
- 2210 (3) C-2 Zone standards.
- 2211 (a). Parking
- 2212 [1]. All new or revised parking must be visually screened through the use of
 2213 landscaping, earthen berms and/or fencing from adjacent public streets or
 2214 residential properties. (See the Design Handbook for appropriate examples.)
- 2215 [2]. Each parking space is to contain a rectangular area at least 19 feet long and
 2216 nine feet wide. Lines demarcating parking spaces may be drawn at various
 2217 angles in relation to curbs or aisles, so long as the parking spaces so created
 2218 contain within them the rectangular area required by this section. This is
 2219 exclusive of drives or aisles giving access thereto, accessible from streets or
 2220 aisles leading to streets, and usable for the storage or parking of passenger
 2221 vehicles. Parking spaces or access thereto must be constructed as to be usable
 2222 year-round.
- 2223
- 2224 (b). Building design standards
- 2225 [1]. New buildings should meet the general design principles set forth in the
 2226 Design Handbook. In general, buildings should be oriented to the street with
 2227 the front of the building facing the street. The front or street facade must be

- 2228 designed as the front of the building. The front elevation must contain one or
 2229 more of the following elements:
- 2230 [a]. A "front door," although other provisions for access to the building may
 2231 be provided;
- 2232 [b]. Windows; or
- 2233 [c]. Display cases.
- 2234
- 2235 [2]. A building's prominent roofs must be pitched a minimum of 4:12 unless
 2236 demonstrated to the Planning Board's satisfaction that this is not practicable.
 2237 Acceptable roof styles are gabled, gambrel and hipped roofs. Flat roofs, shed
 2238 roofs and roof facades (such as "stuck on" mansards) are not acceptable as
 2239 prominent roof forms except as provided above. (See Design Handbook for
 2240 examples of acceptable designs.)
- 2241 (c). Landscaping site improvements. To achieve attractive and environmentally sound
 2242 site design and appropriate screening of parking areas, in addition to the
 2243 landscaping standards contained in Chapter 16.8 the following landscaping
 2244 requirements apply to new and modified existing developments:
- 2245 [1]. Landscape planter strip. A vegetated landscape planter strip must be provided
 2246 a minimum of 20 feet in depth adjacent to the right-of-way of all public roads
 2247 and include the following landscape elements:
- 2248 [a]. Ground cover. The entire landscape planter strip must be vegetated
 2249 except for approved driveways, walkways, bikeways and screened utility
 2250 equipment.
- 2251 [b]. Street-side trees. A minimum of one street tree must be planted for each
 2252 50 feet of street frontage. The trees may be spaced along the frontage or
 2253 grouped or clustered to enhance the visual quality of the site. (See Design
 2254 Handbook for examples.) The trees must be a minimum two-and-one-
 2255 half-inch caliper and be at least 12 feet high at the time of planting. The
 2256 species should be selected from the list of recommended street trees in the
 2257 Design Handbook. Existing large healthy trees must be preserved if
 2258 practical and will count toward this requirement.
- 2259
- 2260 (d). Special situations
- 2261 [1]. Expansions of less than 2,000 square feet to existing uses are exempt from the
 2262 landscaping standard of this subsection.
- 2263 [2]. Depth of landscape planter strip. In instances where the required minimum
 2264 depth of the landscape planter strip is legally utilized, in accordance with
 2265 previous permits or approvals for parking, display, storage, building or
 2266 necessary vehicle circulation, the depth may be narrowed by the Planning
 2267 Board to the minimum extent necessary to achieve the objective of the
 2268 proposed project, provided that the required shrubs and perennials are planted
 2269 along the street frontage to soften the appearance of the development from the
 2270 public street.
- 2271 [3]. Additions and changes in use. For additions to existing buildings and changes
 2272 of residential structures to a nonresidential use, one street-side tree (see list of
 2273 recommended street trees in Design Handbook) is required to be planted for
 2274 every 1,000 square feet of additional gross floor area added or converted to

2275 nonresidential use. In instances where parking, display area, storage, building
 2276 or necessary vehicle circulation exists at the time of enactment of this section,
 2277 the required trees may be clustered and/or relocated away from the road as is
 2278 necessary to be practicable. The preservation of existing large trees is
 2279 encouraged; therefore, the Planning Board may permit the preservation of
 2280 existing healthy, large, mature trees within the landscape planter strip or other
 2281 developed areas of the site to be substituted for the planting of new trees.

2282 [4].Residences. Residential additions to existing single- and two-family dwellings
 2283 and proposed single and duplex family dwellings are exempt from the
 2284 landscaping standards of this subsection.

2285

2286 (e). Outdoor service and storage areas. No areas for the storage of raw materials,
 2287 equipment or finished products other than small areas for the display of samples
 2288 of products available for sale or rent may be located between the front property
 2289 line and the front facade of the building. Display areas may not be located within
 2290 the required landscape planter strip. Facilities for waste storage such as dumpsters
 2291 must be located within an enclosure and be visually buffered by fencing,
 2292 landscaping and/or other treatments. (See Design Handbook for examples of
 2293 appropriate buffering.)

2294

2295 (f). Traffic and circulation standards

2296 [1]. Vehicular and pedestrian circulation must meet the general provisions of the
 2297 Design Handbook.

2298

2299 E. Shoreland Overlay Zone OZ-SL – Commercial – 2 Zone (C-2)

2300 (1) Permitted uses

2301 (a) Accessory Buildings, Structures, and Uses

2302 (b) Home Occupation, Major

2303 (c) Home Occupation, Minor

2304 (d) Aquaculture

2305 (e) Recreation, Public Facility

2306 (f) Recreation, Public Open Space

2307 (g) Recreation, Selected Commercial

2308 (h) Public Utility Facility

2309 (i) Commercial School

2310 (j) Public or Private School

2311 (k) Nursery School

2312 (l) Hospital

2313 (m)Nursing Care Facility, Long-term

2314 (n) Convalescent Care Facility

2315 (o) Public Facility

2316 (p) Religious Institution

2317 (q) Private Assembly

2318

- 2319 (2) Special exception uses
- 2320 (a) Adult Entertainment Establishment, not located within 1,000 feet of an existing
- 2321 private residence, school or place of worship
- 2322 (b) Art Studio or Gallery
- 2323 (c) Boatyard
- 2324 (d) Business & Professional Offices
- 2325 (e) Business Services
- 2326 (f) Commercial Fisheries/Maritime Activities (provided only incidental cleaning and
- 2327 cooking of seafood occur at the site)
- 2328 (g) Parking Area
- 2329 (h) Conference Center
- 2330 (i) Construction Services
- 2331 (j) Day Care Facility
- 2332 (k) Retail Sales, Convenience
- 2333 (l) Retail Sales
- 2334 (m) Mass Transit Station
- 2335 (n) Mini Storage
- 2336 (o) Motel
- 2337 (p) Hotel
- 2338 (q) Rooming House
- 2339 (r) Inn
- 2340 (s) Personal Service
- 2341 (t) Public Assembly Area
- 2342 (u) Theater
- 2343 (v) Research & Development
- 2344 (w) Restaurant
- 2345 (x) Wholesale Business
- 2346 (y) Repair Services
- 2347 (z) Shops in Pursuit of Trade
- 2348 (aa) Specialty Food and/or Beverage Facility
- 2349 (bb) Transportation Terminal
- 2350 (cc) Veterinary Hospital
- 2351 (dd) Warehousing & Storage

2352

2353 (3) See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL

2354

2355 F. Resource Protection Overlay Zone OZ-RP – Commercial – 2 Zone (C-2).

- 2356 (1) Permitted Uses.
- 2357 (a) Recreation, Public Open Space
- 2358
- 2359 (2) Special Exception Uses.

16.4 LAND USE ZONE REGULATIONS

Adopted: January 24, 2022

2360 (a) Accessory Uses & Buildings

2361 (b) Aquaculture

2362 (c) Public Utility Facility

2363

2364 (3) See § 16.4.29 for purpose and standards in the Resource Protection Overlay Zone OZ-

2365 RP

2366

2367 **16.4.21 Commercial 3, Bypass/Old Post Road Commercial Zone (C-3)**

2368 A. Purpose.

2369 (1) The C-3 (Bypass/Old Post Road Commercial) Zone proposed to introduce a mix of
2370 housing, businesses and services to an area that serves as one of the gateways to and
2371 through Kittery. Existing infrastructure, proximity to residential neighborhoods, and
2372 direct access to I-95 give this zone opportunities for housing and commercial uses, as
2373 well as advancing pedestrian access, serving residents and the region.

2374

2375 To reflect the differing character of various parts of the commercial areas, it is divided
2376 into three zones that are shown on the Zoning Map:

2377 C-1 Route 1 Commercial Zone

2378 C-2 Route 236 Commercial Zone

2379 C-3 Bypass/Old Post Road Commercial Zone

2380

2381 Where the standards or requirements for the zones vary, the provisions for the zone in
2382 which the parcel is located apply.

2383 B. Permitted uses

2384 The following uses are permitted in the C-3 Zone:

2385 (1) Accessory Dwelling Unit

2386 (2) Convalescent Care Facility

2387 (3) Dwelling, two-family

2388 (4) Nursing Care Facility, Long-term

2389 (5) Residential Care Facility

2390 (6) Accessory Buildings, Structures, and Uses

2391 (7) Home Occupation, Major

2392 (8) Home Occupation, Minor

2393 (9) Hotel

2394 (10) Inn

2395 (11) Motel

2396 (12) Rooming House

2397 (13) Day Care Facility

2398 (14) Hospital

2399 (15) Nursery School

2400 (16) Private Assembly

2401 (17) Public Facility

2402 (18) Public or Private School

2403 (19) Public Utility Facility

2404 (20) Religious Use

2405 (21) Recreation, Commercial Indoor

2406 (22) Recreation, Commercial Outdoor

2407 (23) Recreation, Public Open Space

- 2408 (24) Recreation, Public Facility
- 2409 (25) Aquaculture
- 2410 (26) Commercial Fisheries/Maritime Activities (provided only incidental cleaning and
- 2411 cooking of seafood occur at the site)
- 2412 (27) Commercial School
- 2413 (28) Veterinary Hospital
- 2414 (29) Art Studio or Gallery
- 2415 (30) Business & Professional Offices
- 2416 (31) Business Services
- 2417 (32) Conference Center
- 2418 (33) Personal Services
- 2419 (34) Repair Service
- 2420 (35) Restaurant
- 2421 (36) Retail Sales
- 2422 (37) Retail Sales, Building Materials & Garden Supply
- 2423 (38) Retail Sales, Convenience
- 2424 (39) Specialty Food and/or Beverage Facility
- 2425 (40) Boatyard
- 2426 (41) Mass Transit Station
- 2427 (42) Mechanical Services
- 2428 (43) Parking Area
- 2429 (44) Wholesale Business

2430

2431 C. Special exception uses

2432 The following uses are permitted by special exception uses in the C-3 Zone:

- 2433 (1) Buildings and structures over 40 feet that conform to the provisions of § 16.7 and
- 2434 16.8. Buildings and structures, other than multi-family dwellings and dwelling units
- 2435 as part of a mixed-use building in the C-3 Zone, west of Route 1, which are taller as
- 2436 allowed in § 16.4.21.B(41) higher than 40 actual feet from the lowest point of grade
- 2437 to the highest point of the building or structure must have side, rear and front yards of
- 2438 sufficient depth to adequately protect the health, safety and welfare of abutting
- 2439 properties, and which may not be less than current standards or 50% of actual height,
- 2440 whichever is greater;
- 2441 (2) Commercial Greenhouses
- 2442 (3) Construction Services
- 2443 (4) Cottage Cluster
- 2444 (5) Dwelling, attached single-family
- 2445 (6) Dwelling, multi-family
- 2446 (7) Dwellings as part of a mixed-use building
- 2447 (8) Funeral Home
- 2448 (9) Gasoline Service Station
- 2449 (10) Industry, Light

- 2450 (11) Mini Storage not located within 2,000 feet from an existing mini storage facility
- 2451 located in the same zoning district
- 2452 (12) Public Assembly Area
- 2453 (13) Theater
- 2454 (14) Repair Garage
- 2455 (15) Research & Development
- 2456 (16) Shops in Pursuit of Trade
- 2457 (17) Transportation Terminal (excluding truck stops)
- 2458 (18) Warehousing & Storage
- 2459 (19) Marijuana Business

2460

2461 D. Undefined Uses in C-1 and C-3 Zones

- 2462 (1) Undefined uses will be considered by the Planning Board based on the following
- 2463 criteria:
- 2464 (a). If the use is consistent with the Comprehensive Plan and zoning district purposed;
- 2465 and
- 2466 (b). If the use meets special exception criteria found in § 16.4.21.C.
- 2467
- 2468 (2) In addition, the undefined use must meet one or both of the following criteria:
- 2469 (a). If the proposed use has substantially similar impacts as a listed use.
- 2470 (b). If the proposed use is compatible with existing uses within the zoning district for
- 2471 which it is proposed.

2472 E. Standards.

- 2473 (1) C Zone standards. All development and the use of land in the C Zone must meet the
- 2474 following standards. Kittery's Design Handbook illustrates how these standards can be
- 2475 met. In addition, the design and performance standards of § 16.5, 16.7 and 16.8 must
- 2476 be met unless noted otherwise below.

2477

- 2478 (2) The following space standards apply in the C-3 Zone:

- 2479 (a) Minimum lot size or density:

C-1 and C-3 Zones	
Cottage Cluster; Dwelling, attached single-family; Dwelling, multi-family; Dwelling, two-family; Dwelling units as part of a mixed-use building	16 units per acre unless 25% of units are affordable housing units as defined by this code, in which case 20 units per acres allowed*
All other uses	40,000 Sq Ft

2480 *NOTE: These uses are exempt from net residential acreage
 2481 calculations but are subject to minimum land area per dwelling
 2482 unit requirement as described in § 16.5.18.D Exemptions to net
 2483 residential acreage calculations.

2484
2485

(b). Minimum street frontage:

C-1 and C-3 Zones	
All uses	No minimum*

2486
2487
2488
2489
2490
2491
2492
2493
2494

*NOTE: All lots must meet the requirements of § 16.5.14 Lots unless specifically modified by this section (16.4.21). Street frontage must provide sufficient vehicular and pedestrian access for the uses proposed while meeting public health and safety requirements (e.g. Fire Department, Department of Public Works). The applicant must demonstrate to the municipal permitting authority, that the street frontage and lot design meet these requirements to the extent practicable.

2495

(c). Maximum front setback:

C-1 and C-3 Zones	
All uses	15 Ft*

2496
2497
2498
2499
2500
2501
2502

* NOTE: The Planning Board may, at its discretion, allow a greater setback when public amenities such as benches, pocket parks, outdoor dining or seating areas are proposed. Properties in the C-3 Zone with frontage on Old Post Road, including those lots which also have frontage on Route 1 Bypass, are required to have at least a 15-foot setback on Old Post Road.

2503

(d). Minimum rear and side setbacks:

C-3 Zone	
All Uses	10 Ft***

2504
2505
2506
2507

***NOTE: Except where side and/or rear setbacks of proposed new uses about a single-family use in which case a minimum of 15 feet is required.

2508

(e). Maximum building height:

C-3 Zone	
Dwelling, multi-family; Dwelling units as part of a mixed-use building	40 Ft*
All other uses	40 Ft

2509
2510
2511

*NOTE: Flat roofs, proposed to locate heating, cooling, or other such mechanical or electrical apparatus off the ground, are acceptable provided that such apparatus is screened from view and the screening

2512 is designed as an integral part of the building to aid both aesthetics
 2513 and noise attenuation. Flat roofs proposed for the purpose of solar
 2514 array installations are also acceptable.

2515

2516 **NOTE: For properties in the C- 3 Zone with frontage on Old Post
 2517 Road, including those lots which also have frontage on Route 1
 2518 Bypass, the setback on Old Post Road must be 15 feet or greater as
 2519 provided by section(c)above and building heights must not exceed 25
 2520 feet for the first 15 feet beyond the minimum 15-foot setback.

2521

2522

(f). Impervious Surface:

2523

[1].For lots in the C-1 and C-3 zones which are currently developed and for which
 2524 new multi-family, attached single-family or two-family dwellings, cottage
 2525 clusters, or dwelling units as part of mixed-use building are proposed, either
 2526 with or without existing or new commercial uses on the same lot, the
 2527 maximum impervious surface, including but not limited to driveways,
 2528 buildings, sidewalks and parking areas:

2529

[a]. Is 70%; or

2530

[b]. The Planning Board may at its discretion, allow greater than 70% if
 2531 proof that all stormwater will be managed on-site, utilizing LID
 2532 (Low Impact Development) and BMP (Best Management Practice)
 2533 systems based on MaineDEP's Maine Stormwater Best Management
 2534 Practices Manual, Volumes I-III as amended from time to time. The
 2535 stormwater report and plan demonstrating that this requirement is
 2536 met must be included with the application at the time of submission.

2537

2538

[2].For lots in the C-3 zone which are currently vacant (no existing structure) and
 2539 for which new multi-family, attached single-family, or two-family dwellings,
 2540 cottage clusters, or dwelling units as part of mixes-use building are proposed,
 2541 the maximum impervious surface, including driveways, buildings, sidewalks
 2542 and parking areas:

2543

[a]. Is 60%; or

2544

[b]. The Planning Board may, at its discretion, allow greater than 60% if
 2545 proof that all stormwater will be managed on-site utilizing LID (Low
 2546 Impact Development) and BMP (Best Management Practice) systems
 2547 based on Maine DEP's Maine Stormwater Best Management Practices
 2548 Manual, Volumes 1-III as amended from time to time. The stormwater
 2549 report and plan demonstrating that this requirement is met must be
 2550 included with the application at the time of submission.

2551

2552

[3] For lots in the C-1 or C-3 zones which are currently developed and for which
 2553 redevelopment is proposed with new non-residential structures, the maximum
 2554 impervious surface, including but not limited to driveways, buildings,
 2555 sidewalks and parking areas:

2556

[a]. Is 70%; and all stormwater must be managed on-site, utilizing LID
 2557 (Low Impact Development) and BMP (Best Management Practice)
 2558 systems based on Maine DEP's Maine Stormwater Best Management

- 2559 Practices Manual, Volumes 1-III as amended from time to time. The
 2560 stormwater report and plan demonstrating that this requirement is met
 2561 must be included with the application at the time of submission.
 2562
- 2563 [4] For all uses in the C-2 Zone, building and outdoor material coverage must not
 2564 exceed 40%.
 2565
- 2566 (g). Minimum water body setback for functionally water-dependent uses: zero feet.
 2567
- 2568 (h). Minimum setback from streams, water bodies and wetlands: in accordance with
 2569 Table 16.5.30, § 16.4.28 and Appendix A, Fee Schedules.
 2570
- 2571 (i). Gasoline Sales i) not located within 1,000 feet of an existing station or private
 2572 residence; and ii) not located within 150 feet of an existing structure.
 2573
- 2574 (j). Repair Garages must not be located within 150 feet of a private dwelling or
 2575 existing structure.
 2576
- 2577 (k). Affordable housing requirements:
 2578 [1]. All requirements in 16.5.4 Affordable Housing must be met.
 2579 [2]. Density incentives outlined above in (2).(a) may be applied to projects that
 2580 create affordable housing units, as defined by this code. No proportional
 2581 payment-in-lieu is required if the affordable dwelling unit requirements for the
 2582 density incentives are met.
 2583
- 2584 (l). Mixed-use buildings must have non-residential uses comprising at least 50% of
 2585 the street-facing first floor.
 2586
- 2587 (m). Underground utilities are required. The Planning Board may allow an
 2588 alternative but it is incumbent upon the applicant to demonstrate why such a
 2589 modification request should be granted.
 2590
- 2591 (n). Cottage cluster requirements:
 2592 [1]. Cottage cluster dwelling units must either face the required common open
 2593 space or the street. The required open space must be held in common for use
 2594 by all the cottage cluster residents and must be immediately accessible to each
 2595 dwelling unit, via either the front or the back of each unit.
 2596 [2]. Each cottage cluster dwelling unit must be no greater than 1,200 square feet.
 2597 Spacing between units must comply with the requirements of the Fire
 2598 Department and/or the State Fire Marshal's office.
 2599 [3]. Shared parking areas must be connected to each dwelling unit via a sidewalk
 2600
- 2601 (3) C-3 Zone standards. All development and the use of land except for new multifamily,
 2602 attached single-family or two-family dwellings, cottage clusters, or dwelling units as
 2603 part of a mixed-use building within the C-3 Zone must meet the following standards:

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(a). Parking.

- [1]. All new or revised parking must be visually screened through the use of landscaping, earthen berms and/or fencing from adjacent public streets or residential properties. (See the Design Handbook for appropriate examples.)
- [2]. Each parking space is to contain a rectangular area at least 19 feet long and nine feet wide. Lines demarcating parking spaces may be drawn at various angles in relation to curbs or aisles, so long as the parking spaces so created contain within them the rectangular area required by this section. This is exclusive of drives or aisles giving access thereto, accessible from streets or aisles leading to streets, and usable for the storage or parking of passenger vehicles. Parking spaces or access thereto must be constructed as to be usable year-round.

(b). Building design

- [1]. Kittery's characteristic buildings reflect its historical seacoast past. The primary architectural styles are New England Colonial (such as Cape Cod and saltbox), Georgian, Federal and Classical Revival. New buildings must be compatible with Kittery's characteristic styles in form, scale, material and color. In general, buildings should be oriented to the street with the front of the building facing the street. The front or street facade must be designed as the front of the building. The front elevation must contain one or more of the following elements: 1) a "front door," although other provisions for access to the building may be provided; 2) windows; or 3) display cases. (See Design Handbook for examples of acceptable materials and designs.) Strict imitation is not required. Design techniques can be used to maintain compatibility with characteristic styles and still leave enough flexibility for architectural variety. To achieve this purpose, the following design standards apply to new and remodeled building projects:
- [2]. Exterior building materials and details. Building materials and details strongly define a project's architectural style and overall character. (See Design Handbook for examples of acceptable materials, building scale and designs.) "One-sided" schemes are prohibited; similar materials and details must be used on all sides of a building to achieve continuity and completeness of design. Predominant exterior building materials must be of good quality and characteristic of Kittery, such as horizontal wood board siding, vertical wood boards, wood shakes, brick, stone or simulated stone, glass and vinyl, or metal clapboard.
- [3]. Roofs. A building's prominent roofs must be pitched a minimum of 4:12 unless demonstrated to the Planning Board's satisfaction that this is not practicable. Acceptable roof styles are gabled, gambrel and hipped roofs. Flat roofs, shed roofs and roof facades (such as "stuck on" mansards) are not acceptable as prominent roof forms except as provided above. The roof design must screen or camouflage rooftop protrusions to minimize the visual impact of air-conditioning units, air handler units, exhaust vents, transformer boxes and the like. (See Design Handbook for examples of appropriate treatments.)
- [4]. Loading docks and overhead doors. Loading docks and overhead doors must be located on the side or rear of the building and screened from view from adjacent properties in residential use.

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(c). Landscaping site improvements

[1]. To achieve attractive and environmentally sound site design and appropriate screening of parking areas, in addition to the landscaping standards contained in § 16.7 the following landscaping requirements apply to new and modified existing developments:

[2]. Landscape planter strip. A vegetated landscape planter strip must be provided a minimum of 15 feet in depth adjacent to the right-of-way of all public roads and include the following landscape elements:

[a]. Ground cover. The entire landscape planter strip must be vegetated except for approved driveways, walkways, bikeways and screened utility equipment.

[b]. Street-side trees. A minimum of one tree must be planted for each 50 feet of street frontage. The trees may be spaced along the frontage or grouped or clustered to enhance the visual quality of the site. (See Design Handbook for examples.) The trees must be a minimum two-and-one-half-inch caliper and be at least 12 feet high at the time of planting. The species should be selected from the list of recommended street trees in the Town Design Handbook. Existing large healthy trees must be preserved if practical and will count toward this requirement.

[3]. Special situations.

[a]. Expansions of less than 1,000 square feet to existing uses are exempt from the landscaping standard of this subsection.

[b]. Depth of landscape planter strip. In instances where the required minimum depth of the landscape planter strip is legally utilized, in accordance with previous permits or approvals, for parking, display, storage, building or necessary vehicle circulation, the depth may be narrowed by the Planning Board to the minimum extent necessary to achieve the objective of the proposed project, provided that the required shrubs and perennials are planted along the street frontage to soften the appearance of the development from the public street.

[c]. Additions and changes in use. For additions to existing buildings and changes of residential structures to a nonresidential use, one tree (see list of recommended street trees in Design Handbook) is required to be planted for every 1,000 square feet of additional gross floor area added or converted to nonresidential use. In instances where parking, display area, storage, building or necessary vehicle circulation exists at the time of enactment of this section, the required trees may be clustered and/or relocated away from the road as is necessary to be practicable. The preservation of existing large trees is encouraged; therefore, the Planning Board may permit the preservation of existing healthy, large, mature trees within the landscape planter strip or other developed areas of the site to be substituted for the planting of new trees.

[4]. Outdoor service and storage areas. Service and storage areas must be located

2699 to the side or rear of the building. Facilities for waste storage such as
 2700 dumpsters must be located within an enclosure and be visually buffered by
 2701 fencing, landscaping and/or other treatments. (See Design Handbook for
 2702 examples of appropriate buffering.)

2703

2704 (d). Traffic and circulation standards

2705 [1]. Sidewalks and roadways must be provided within the site to internally join
 2706 abutting properties that are determined by the Planning Board to be
 2707 compatible. In addition, safe pedestrian route(s) must be provided to allow
 2708 pedestrians to move within the site and between the principal customer
 2709 entrance and the front lot line where a sidewalk exists or will be provided or
 2710 where the Planning Board determines that such a route is needed for adequate
 2711 pedestrian safety and movement. (See Design Handbook for appropriate
 2712 examples.)

2713

2714 (e). Open space standards

2715 [1]. Open space must be provided as a percentage of the total area of the lot,
 2716 including freshwater wetlands, water bodies, streams and setbacks. Twenty
 2717 percent of each lot must be designated as open space. Required open space
 2718 must be shown on the plan with a note dedicating it as "open space." The open
 2719 space must be located to create an attractive environment on the site, minimize
 2720 environmental impacts, protect significant natural features or resources on the
 2721 site, and maintain wildlife habitat. Individual large, healthy trees and areas
 2722 with mature tree cover should be included in the open space. Where possible,
 2723 the open space must be located to allow the creation of continuous open space
 2724 networks in conjunction with existing or potential open space on adjacent
 2725 properties. The required amount of designated open space is reduced to 10%
 2726 of each lot that is less than 40,000 square feet in size.

2727

2728 (4) C-1 and C-3 Zone standards for attached single-family dwellings, multi-family
 2729 dwellings, two-family dwellings where more than one two-family dwelling is
 2730 proposed for a single lot, cottage clusters, and dwelling units as part of a mixed-use
 2731 building:

2732 (a). Design Standards.

2733 See Kittery’s Design Handbook for further information on how these standards can be
 2734 met.

2735 [1]. Sidewalks must be installed within the right-of-way to meet minimum
 2736 requirements as specified in 16.5.27, subject to review and approval by the
 2737 Department of Public Works and MaineDOT if required.

2738 [2]. Connectivity between new housing development and adjacent existing or new
 2739 commercial areas is required. This connectivity must, at minimum, include
 2740 sidewalks or walkways. In the C-1 zone, connectivity may also include
 2741 vehicular access coupled with sidewalks or walkways between residential and
 2742 commercial areas. Connectivity must be pedestrian-friendly with
 2743 appropriately scaled improvements such as eight-foot wide sidewalks and
 2744 human-scaled lighting.

2745 [3]. On-street parking is encouraged on new or existing private roads off Route 1,

- 2746 and may be considered as a part of a joint use parking plan when such on-
2747 street parking is proposed as part of a development or redevelopment plan.
- 2748 [4]. All service areas for dumpsters, compressors, generators and similar items
2749 must be screened by a fence at least six feet tall, constructed of a material
2750 similar to surrounding buildings, and must surround the service area except for
2751 the necessary ingress/egress.
- 2752 [5]. Parking must be located behind multifamily dwellings and mixed-use
2753 buildings with residential dwelling units when viewed from the street. The
2754 Planning Board may allow parking to the side or front of such residential or
2755 mixed-use buildings at its discretion, but it is incumbent upon the applicant to
2756 demonstrate why rear parking is not feasible.
- 2757 [6]. Lighting plans, including lighting fixture designs and photometric plans must
2758 be included at the time of application submission. All fixtures must be cut-off
2759 to prevent light trespass and meet all requirements of 16.7.11.H.
- 2760 [7]. A single new two-family dwelling proposed for a lot, the addition of another
2761 dwelling unit to an existing single-family residence to create a two-family
2762 dwelling and the addition of an ADU (Accessory Dwelling Unit) to a single-
2763 family residence is exempt from these design standards.
- 2764
- 2765 (b). Open Space Standards.
- 2766 [1]. Open space must be provided as a percentage of the total area of the lot, and
2767 may include wetlands, waterbodies, streams, and setbacks. Fifteen percent
2768 (15%) of each lot must be designated as open space.
- 2769 [2]. For multifamily dwellings, mixed-use buildings with residential dwelling units
2770 and attached single-family dwellings, in cases where the property does not
2771 meet the 15% requirement due to existing development, and where
2772 redevelopment will remain at the same or comprise a lower percentage of the
2773 lot, the Planning Board may, at its discretion, allow a smaller percentage of
2774 open space. In granting this concession, the Board may require more intensive
2775 landscape plantings.
- 2776
- 2777 (c). Parking Standards.
- 2778 The following minimum off-street parking requirements must be provided and
2779 maintained in case of new construction, alterations, and changes of use:
- 2780 [1]. Parking requirements must be met on site unless an existing building covers so
2781 much of the lot as to make the provision of parking impractical in whole or in
2782 part. If meeting the parking requirements is not practical, then the parking
2783 demand may be satisfied off site or through joint-use agreements as specified
2784 herein. Notwithstanding the off-street parking requirements in Article IX of
2785 Chapter 16.8, minimum parking requirements for the uses below are modified
2786 as specified:
- 2787 [a]. Dwelling units: 1 parking space per dwelling unit.
- 2788 [b]. For multifamily dwellings, if more than ten parking spaces are required,
2789 up to 20% of the parking may be designated for compact cars. See
2790 16.7.11.F Off-Street Parking Standards.
- 2791
- 2792 [2]. Off-site parking. Required off-street parking may be satisfied at off-site

2793 locations, provided such parking is on other property owned by the applicant
 2794 or is under the terms of a contractual agreement that will ensure such parking
 2795 remains available for the uses served. Applicant must present evidence of a
 2796 parking location and a contractual agreement;

2797

2798 [3]. Joint-use parking. Required off-street parking may also be satisfied by the
 2799 joint use of parking space by two or more uses if the applicant can show that
 2800 parking demand is nonconflicting and will reasonably provide adequate
 2801 parking for the multiple uses without parking overflowing into undesignated
 2802 areas. Nonconflicting periods may consist of daytime as opposed to evening
 2803 hours of operation or weekday as opposed to weekends or seasonal variation
 2804 in parking demand.

2805 [a]. Such joint parking areas must be held under ownership of the applicant
 2806 or under terms of a contractual agreement that ensures such parking
 2807 remains available to all users of the shared parking spaces;

2808 [b]. Determination of parking adequacy will be based on a most frequent
 2809 basis, not a "worst case" scenario;

2810 [c]. Joint use parking areas must be located within 1,500 feet of the uses
 2811 served, but do not need to be located on the same lot as the uses served;

2812 [d]. Ease and safety of pedestrian access to shared parking by the users
 2813 served must be demonstrated to the municipal permitting authority's
 2814 satisfaction, including any proposed improvements, such as crosswalks
 2815 or shuttle service that may be offered and its requisite loading/unloading
 2816 areas;

2817 [e]. Such joint parking areas must not be located in residential zones of the
 2818 Town.

2819

2820 [4]. In making determinations on off-site or joint-use parking under a development
 2821 plan review, the municipal permitting authority with jurisdiction to review and
 2822 approve will make a final determination of the joint-use and/or off-site spaces
 2823 that constitute an acceptable combination of spaces to meet the required
 2824 parking demand.

2825

2826 [5]. Electric car charging stations are allowed in parking lots but must not interfere
 2827 with pedestrian movement on sidewalks.

2828

2829 (d). Landscaping and Screening.

2830 [1]. For new multi-family, attached single-family, or dwelling units as part of a
 2831 mixed-use building or any new residential use that will create more than three
 2832 dwelling units on a site, the following standards apply:

2833 [a]. A landscape plan prepared by a registered landscape architect is a
 2834 submission requirement. However, a landscape plan done by other
 2835 design professionals may be allowed at the Planning Board's discretion.

2836

2837 [b]. A minimum of one street tree must be planted for each 25 feet of street
 2838 frontage. Trees may be planted in groups or spaced along the frontage.

2839 However, trees must be planted to ensure survival, using silva cells,
2840 bioretention cells or tree wells. Trees are to be a minimum of 2.5-inch
2841 caliper and 12 feet high at the time of planting. Existing large healthy
2842 trees must be preserved if practical and will count towards this
2843 requirement. Trees proposed within the right-of-way must remain under
2844 20 feet tall at maturity.

2845

2846 [c]. Surface parking lots designed for five or more cars that will service
2847 multifamily or mixed-use buildings with dwelling units and which abut a
2848 street, an existing single-family use, or a residential zone, must provide
2849 screening in one of the following ways:

2850 [i]. One tree per 25 feet of street frontage backed by a fence constructed
2851 of a material similar to surrounding buildings which must screen the
2852 parking area from the street except for necessary vehicular and
2853 pedestrian access. To ensure survival, trees must be planted using
2854 silva cells, bioretention cells or tree wells. Trees must be at least 2.5-
2855 inch caliper and 12 feet high at the time of planting. Existing large
2856 healthy trees must be preserved if practical and will count towards
2857 this requirement. Trees proposed within the right-of-way must
2858 remain under 20 feet tall at maturity.

2859 [ii]. A combination of trees and shrubs including at least 50% evergreen
2860 species, all at least six feet high at time of planting, in a planting bed
2861 at least eight feet wide. Plantings must be sufficient, as determined
2862 by the Planning Board, to screen the parking area from the street
2863 except for necessary vehicular and pedestrian access. Planting beds
2864 may be mulched but no dyed-mulching material may be used.

2865

2866 [d]. A minimum of 10% of any surface parking area consisting of 10 or more
2867 spaces must be landscaped with trees and vegetated islands. This
2868 requirement is in addition to the aforementioned screening and street tree
2869 requirements.

2870

2871 [e]. Native trees are preferred and must be drought and salt tolerant when
2872 used along streets. A diversity of tree species (three to five species per
2873 every 12 trees) is required to provide greater resiliency to threats from
2874 introduced insect pests and diseases.

2875

2876 [f]. Any required plantings that do not survive must be replaced within one
2877 year. This requirement does not expire and runs with the land.

2878

2879 [g]. If 25% of the proposed development will be affordable dwelling units,
2880 the Planning Board may, at its discretion, modify surface parking lot
2881 landscaping and screening requirements under [c] and [d].

2882

2883 (e). Buffers.

2884 [1]. Buffers are required between new residential uses and existing nonresidential
2885 uses and must be at least 10 feet wide. A buffer plan must be prepared in

2886 conjunction with the landscape plan as described in [d] [1] [a] above and
 2887 consist of:

2888 [a]. A fence at least six feet high, constructed of material similar to
 2889 surrounding buildings, with plantings of trees at least six feet tall at time
 2890 of planting and shrubs on the new residential side of the fence.

2891 [b]. Ground cover plantings such as perennials or ornamental grasses must be
 2892 used where appropriate.

2893 [c]. Plantings must be provided with irrigation to enhance survival unless
 2894 they are part of a bioretention cell, rain garden or tree well.

2895 [d]. Any required plantings that do not survive must be replaced within one
 2896 year. This requirement does not expire and runs with the land.

2897 [e]. If 25% of the proposed development will be affordable housing dwelling
 2898 units, the Planning Board may, at its discretion, modify buffer
 2899 requirements under [a] and [b].

2900

2901 [2]. Buffers are required between new residential uses and existing single-family
 2902 uses and must be at least 10 feet wide. A buffer plan must be prepared in
 2903 conjunction with the landscape plan as described in [d] [1] [a] above and
 2904 consist of:

2905 [a]. A fence at least six feet high, constructed of material similar to
 2906 surrounding buildings, with plantings of trees and shrubs at least six feet
 2907 tall on the new residential side of the fence; or

2908 [b]. Plantings of trees at least six feet tall and shrubs, including at least 50%
 2909 evergreen species. Such plantings must ensure adequate buffering and
 2910 screening is achieved as determined by the Planning Board.

2911 [c]. Ground cover plantings, such as perennials or ornamental grasses must
 2912 be used where appropriate.

2913 [d]. Plantings must be provided with irrigation to enhance survival unless
 2914 they are part of a bioretention cell, rain garden or tree well.

2915 [e]. Any required plantings that do not survive must be replaced within one
 2916 year. This requirement does not expire and runs with the land.

2917 [f]. If 25% of the proposed development will be affordable housing dwelling
 2918 units, the Planning Board may, at its discretion, modify buffer
 2919 requirements under [a], [b] and [c].

2920

2921 F. Shoreland Overlay Zone OZ-SL – Commercial – 3 Zone (C-3)

2922 (1) Permitted uses

2923 (a) Accessory Buildings, Structures, and Uses

2924 (b) Home Occupation, Major

2925 (c) Home Occupation, Minor

2926 (d) Aquaculture

2927 (e) Recreation, Public Facility

2928 (f) Recreation, Public Open Space

2929 (g) Recreation, Selected Commercial

- 2930 (h) Public Utility Facility
- 2931 (i) Commercial School
- 2932 (j) Public or Private School
- 2933 (k) Nursery School
- 2934 (l) Hospital
- 2935 (m) Elder Care Facility
- 2936 (n) Nursing Care Facility, Long-term
- 2937 (o) Convalescent Care Facility
- 2938 (p) Public Facility
- 2939 (q) Religious Use
- 2940 (r) Private Assembly
- 2941
- 2942 (2) Special exception uses
- 2943 (a) Adult Entertainment Establishment, not located within 1,000 feet of an existing
- 2944 private residence, school or place of worship
- 2945 (b) Art Studio or Gallery
- 2946 (c) Boatyard
- 2947 (d) Business & Professional Offices
- 2948 (e) Business Services
- 2949 (f) Commercial Fisheries/Maritime Activities, provided only incidental cleaning and
- 2950 cooking of seafood occur at the site
- 2951 (g) Parking Area
- 2952 (h) Conference Center
- 2953 (i) Construction Services
- 2954 (j) Day Care Facility
- 2955 (k) Funeral Home
- 2956 (l) Retail Sales, Convenience
- 2957 (m) Mass Transit Station
- 2958 (n) Motel
- 2959 (o) Hotel
- 2960 (p) Rooming House
- 2961 (q) Inn
- 2962 (r) Mini Storage
- 2963 (s) Personal Service
- 2964 (t) Public Assembly Area
- 2965 (u) Theater
- 2966 (v) Research & Development
- 2967 (w) Restaurant
- 2968 (x) Retail Sales
- 2969 (y) Wholesale Business
- 2970 (z) Shops in Pursuit of Trade
- 2971 (aa) Transportation Terminal (excluding truck stops)

- 2972 (bb) Veterinary Hospital
- 2973 (cc) Warehousing & Storage
- 2974
- 2975 (3) See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL
- 2976
- 2977 G. Resource Protection Overlay Zone OZ-RP – Commercial – 3 Zone (C-3)
- 2978 (1) Permitted Uses
- 2979 (a) Recreation, Public Open Space
- 2980
- 2981 (2) Special Exception Uses
- 2982 (a) Accessory Uses & Buildings
- 2983 (b) Aquaculture
- 2984 (c) Home Occupations, Major
- 2985 (d) Home Occupations, Minor
- 2986 (e) Public Utility Facility
- 2987
- 2988 (3) See § 16.4.29 for purpose and standards in the Resource Protection Overlay Zone OZ-
- 2989 RP
- 2990

2991 **16.4.22 Industrial (IND)**

2992 A. Purpose

2993 The purpose of the Industrial IND Zone is to provide areas within the Town for
2994 manufacturing, processing, treatment and research, to which end all the performance
2995 standards set forth in this title apply.

2996

2997 B. Permitted uses

2998 The following uses are permitted in the IND Zone:

2999 (1) Accessory Buildings, Structures, and Uses

3000 (2) Home Occupation, Major

3001 (3) Home Occupation, Minor

3002 (4) Research & Development

3003 (5) Industry, Heavy

3004

3005 C. Special exception uses

3006 The following uses are permitted as special exception uses in the IND Zone:

3007 (1) Public Facility

3008 (2) Public Utility Facility

3009

3010 D. Standards

3011 (1) The design and performance standards of § 16.5, 16.7 and 16.8 must be met.

3012 (2) The following space standards apply:

3013

3014 (a) Minimum area of lot: none.

3015 (b) Minimum street frontage: none.

3016 (c) Minimum front yard: none.

3017 (d) Minimum rear and side yards: 30 feet.

3018 (NOTE: Except as may be required by the buffer provisions of this title, and
3019 except where the side and/or rear yards abut a residential zone or use; in which
3020 case a minimum of 50 feet or 50% of the building or outdoor stored material
3021 height, whichever is greater, is required.)

3022 (e) Maximum building height: none.

3023 (f) Maximum building coverage: none.

3024 (g) Minimum setback from water body and wetland water-dependent uses: zero feet.

3025 (h) Minimum setback from streams, water bodies and wetlands: in accordance with
3026 Table 16.5.30, § 16.4.28 and Appendix A, Fee Schedules.

3027

3028 E. Shoreland Overlay Zone OZ-SL – Industrial Zone (IND)

3029 (1) Permitted uses

3030 (a) Accessory Use & Building

- 3031 (b) Home Occupation, Major
- 3032 (c) Home Occupation, Minor
- 3033 (d) Research & Development
- 3034
- 3035 (2) Special exception uses
- 3036 (a) Industry, Heavy
- 3037 (b) Public Facility
- 3038 (c) Public Utility Facility
- 3039
- 3040 (3) See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL
- 3041
- 3042 F. Resource Protection Overlay Zone OZ-RP – Industrial Zone (IND)
- 3043 (1) Permitted Uses
- 3044 (a) Research & Development
- 3045
- 3046 (2) Special Exception Uses
- 3047 (a) Accessory Uses & Buildings
- 3048 (b) Home Occupations, Major
- 3049 (c) Home Occupations, Minor
- 3050 (d) Public Facility
- 3051 (e) Public Utility Facility
- 3052
- 3053 (3) See § 16.4.29 for purpose and standards in the Resource Protection Overlay Zone OZ-
- 3054 RP
- 3055 NOTE: It is recognized that federal ownership of this zone at the time of enactment of
- 3056 the ordinance codified in this title precludes enforcement of any local regulations.
- 3057

3058 **16.4.23 Mixed-Use (MU)**

3059 A. Purpose

3060 To provide opportunities for a mix of office, service, and limited residential and retail uses, to
3061 alter the pattern of commercial activity on Route 1, to serve Kittery's needs, and to minimize
3062 traffic congestion. A mix of uses on a site is desired and, in some cases, required; a
3063 continuation of strip development is not encouraged in this zone. The Mixed-Use Zone is
3064 intended to accommodate growth.

3065 The purpose of large lot sizes, open space standards, and frontage requirements is to limit the
3066 number of access points along U.S. Route 1, to encourage the development of service roads
3067 which may serve several developments, and to create development that will retain the
3068 predominant rural character of the zone. Other objectives are to encourage an orderly and
3069 safe traffic flow along U.S. Route 1, pedestrian safety, and an attractive site design enhanced
3070 by landscaping, open space, and restrictions on the locations of parking. These development
3071 goals are supported by the principles and objectives identified in the Town's Design
3072 Handbook, Kittery Maine.

3073 B. Permitted uses

- 3074 (1) Accessory Dwelling Units
- 3075 (2) Dwelling, Single-Family (limited to lots of record as of April 1, 2004)
- 3076 (3) Dwelling, Multi-Family (limited to the upper floors of mixed-use building that is
3077 served by public sewerage)
- 3078 (4) Convalescent Care Facility
- 3079 (5) Nursing Care Facility, Long-term
- 3080 (6) Residential Care Facility
- 3081 (7) Accessory Buildings, Structures, and Uses
- 3082 (8) Home Occupations, Major
- 3083 (9) Home Occupations, Minor
- 3084 (10) Inn
- 3085 (11) Day Care Facility
- 3086 (12) Hospital
- 3087 (13) Private Assembly (which is not used for residential or overnight occupancy)
- 3088 (14) Public Facility
- 3089 (15) Public or Private School (which is not used for residential or overnight occupancy)
- 3090 (16) Recreation, Commercial Indoor
- 3091 (17) Recreation, Commercial Outdoor
- 3092 (18) Recreation, Public Open Space
- 3093 (19) Agriculture
- 3094 (20) Commercial School (which is not used for residential or overnight occupancy)
- 3095 (21) Timber Harvesting
- 3096 (22) Veterinary Hospital
- 3097 (23) Art Studio or Gallery
- 3098 (24) Business & Professional Offices
- 3099 (25) Funeral Home

- 3100 (26) Personal Services
- 3101 (27) Repair Service
- 3102 (28) Research & Development
- 3103 (29) Restaurant
- 3104 (30) Retail Sales (a single use not to exceed 50,000 square feet in gross floor area)
- 3105 (31) Retail Sales, Building Materials & Garden Supply
- 3106 (32) Retail Sales, Convenience
- 3107 (33) Specialty Food and/or Beverage Facility
- 3108 (34) Theater
- 3109 (35) Boat Yard
- 3110 (36) Mass Transit Station
- 3111 (37) Industry, light (less than or equal to 20,000 square feet in gross floor area).
- 3112 (38) Parking Area
- 3113
- 3114 C. Special exception uses
- 3115 (1) Aged-Restricted Housing
- 3116 (2) Campground
- 3117 (3) Recreational Vehicle Park
- 3118 (4) Construction Services
- 3119 (5) Commercial Kennel
- 3120 (6) Commercial Greenhouses
- 3121 (7) Theater, Drive-in
- 3122 (8) Gas Service Station
- 3123 (9) Industry, Light (greater than 20,000 square feet in gross floor area)
- 3124 (10) Mechanical Services
- 3125 (11) Motel
- 3126 (12) Hotel
- 3127 (13) New Motor Vehicle Sales
- 3128 (14) Public Utility Facilities
- 3129 (15) Repair Garage
- 3130 (16) Retail Sales (a single use greater than 50,000 square feet in gross floor area and less
- 3131 than 150,000 square feet in gross floor area)
- 3132 (17) Shop in Pursuit of Trade
- 3133 (18) Transportation Terminal
- 3134 (19) Warehousing & Storage
- 3135 (20) Wholesale Business
- 3136
- 3137 D. Standards
- 3138 (1) All development and the use of land in the MU Zone must meet the following
- 3139 standards. Kittery's Design Handbook illustrates how these standards can be met. In
- 3140 addition, the design and performance standards of § 16.5, 16.7 and § 16.8 must be

3141 met.

3142

3143 (2) Minimum dimensional standards. The following apply:

3144 (a) Minimum lot size:

3145 [1]. Lots with frontage on Route 1: 200,000 square feet.

3146 [2]. Lots without frontage on Route 1: 80,000 square feet.

3147

3148 (b). Minimum street frontage on road with access along U.S. Route 1, Haley Road,
3149 Lewis Road, or Cutts Road: 250 feet.

3150 [1]. Other streets or approved ways: 150 feet.

3151

3152 (c). Minimum front yard: 30 feet.

3153 (d). Minimum rear and side yards: 30 feet.

3154 (e). Maximum building height: 40 feet.

3155 (f). Maximum height above grade of building-mounted signs: 40 feet.

3156 (g). Minimum setback from water body and wetland water dependent uses: zero feet.

3157 (h). Minimum setback from streams, water bodies and wetlands: in accordance with
3158 Table 16.5.30, § 16.4.28 and Appendix A, Fee Schedules.

3159 (i). Minimum land area per unit for eldercare facilities that are connected to the public
3160 sewerage system:

3161 [1]. Dwelling unit with two or more bedrooms: 5,000 square feet.

3162 [2]. Dwelling unit with less than two bedrooms: 4,000 square feet.

3163 [3]. Residential care unit: 2,500 square feet.

3164

3165 (j). Minimum land area per bed for nursing care and convalescent care facilities that
3166 are connected to the public sewerage system: 2,000 square feet.

3167 (k). Buffer to I-95 right-of-way: 40 feet.

3168 (l). Buffer to neighboring lot with an existing residence within 100 feet of the lot line:
3169 40 feet.

3170 (m). Vegetated buffer to be maintained between the MU and R-RL Zones: 40 feet.

3171 NOTE 1: For single-family dwellings, one dwelling unit is allowed for each
3172 200,000 square feet of land area. A lot of record having a land area of more than
3173 200,000 square feet that was improved with a single-family dwelling as of April 1,
3174 2004, may be divided into two lots with a single-family dwelling on each lot
3175 provided that each of the lots contains at least 40,000 square feet of land area and
3176 meets the other dimensional standards of the zone. § 16.4.10.D(1) and (2) as set
3177 forth in the Residential - Rural Zone apply and no further subdivision is allowed.

3178 NOTE 2: For dwelling units that are part of a mixed-use building and are
3179 connected to the public sewerage system, one dwelling unit is allowed for each
3180 10,000 square feet of buildable land area. Within the Resource Protection and
3181 Shoreland Overlay Zones, one dwelling unit is allowed for each 40,000 square
3182 feet of land area within these zones. If the parking for the residential units is
3183 encompassed within the building, the minimum required buildable land area per
3184 dwelling unit is reduced to 7,500 square feet, except in the Resource Protection

3185 and Shoreland Overlay Zones where the area per dwelling unit remains 40,000
3186 square feet.

3187 NOTE 3: For aged-restricted dwelling units that are connected to the public
3188 sewerage system, one dwelling unit is allowed for each 15,000 square feet of
3189 buildable land area. Within the Resource Protection and Shoreland Overlay Zones,
3190 one dwelling unit is allowed for each 40,000 square feet of land within these
3191 zones. If the parking for the aged-restricted units is encompassed within the
3192 building, the minimum required buildable land area per dwelling unit is reduced to
3193 10,000 square feet, except in the Resource Protection and Shoreland Overlay
3194 Zones where the area per dwelling unit remains 40,000 square feet.

3195

3196 (3) Retail use limitation

3197 Retail use, including parking areas and other supporting unvegetated areas for retail use,
3198 is limited to not more than 30% of the developable area of any lot or portion of a lot
3199 within the Mixed-Use Zone.

3200

3201 (4) Mixed-use requirement

3202 The Mixed-Use Zone is intended for the creation of an area in the Town that has a
3203 mix of uses and in which no single type of use predominates. To this end, larger scale
3204 projects must incorporate a mix of principal uses into the development. Any new
3205 development that creates more than 20,000 square feet of gross floor area must
3206 include at least two principal uses as set forth in the list of permitted uses and special
3207 exceptions. To fulfill this requirement, the smaller use or combination of smaller uses
3208 must contain at least 10% of the gross floor area. The combination of retail uses that
3209 are permitted uses and one larger retail use allowed as a special exception does not
3210 fulfill this requirement. This provision does not apply to the development of a single
3211 lot of record as of April 1, 2004, that has a lot area of less than 200,000 square feet.

3212

3213 (5) Location and screening of parking areas

3214 All new parking areas must be located at the side of, and/or to the rear of, principal
3215 buildings. Where unique circumstances exist and it is demonstrated to the Planning
3216 Board that prohibition of parking in front of the principal building is not practicable,
3217 with the Board's approval, 10 or fewer parking spaces may be located closer to the
3218 front lot line than a principal building. All new or altered parking must be visually
3219 screened from U.S. Route 1, Lewis Road, Cutts Road, and Haley Road by extensive
3220 landscaping, earthen berms, and/or fencing (see Design Handbook for examples of
3221 acceptable screening).

3222

3223 (6) Building design standards

3224 Kittery's characteristic buildings reflect its historic seacoast past. The primary
3225 architectural styles are New England Colonial (such as Cape Cod and saltbox),
3226 Georgian, Federal, and Classical Revival. New buildings should be compatible with
3227 Kittery's characteristic styles in form, scale, material, and color. In general, buildings
3228 should be oriented to the street with the front of the building facing the street. The
3229 front or street facade must be designed as the front of the building. The front elevation
3230 must contain one or more of the following elements: (1) a front door although other
3231 provisions for access to the building may be provided, (2) windows, or (3) display

- 3232 cases (see Design Handbook for examples of acceptable materials and designs).
 3233 Though strict imitation is not required, design techniques can be used to maintain
 3234 compatibility with characteristic styles and still leave enough flexibility for
 3235 architectural variety. To achieve this purpose, the following design standards apply to
 3236 new and remodeled building projects:
- 3237 (a) Exterior building materials and details. Building materials and details strongly
 3238 define a project's architectural style and overall character (see Design Handbook
 3239 for examples of acceptable materials, building scale, and designs). "One-sided"
 3240 schemes are prohibited; similar materials and details must be used on all sides of a
 3241 building to achieve continuity and completeness of design.
- 3242 [1]. Predominant exterior building materials. Predominant exterior building
 3243 materials must be of good quality and characteristic of Kittery, such as
 3244 horizontal wood board siding, vertical wood boards, wood shakes, brick, stone
 3245 or simulated stone, glass and vinyl, or metal clapboard. Stucco, adobe, sheet
 3246 metal, standard concrete block, tilt-up concrete panels, plywood or particle
 3247 board are prohibited as the primary materials.
- 3248 [2]. Blank walls. A wall may not extend for a length of more than 50 linear feet
 3249 without an architectural feature such as a dormer, pilaster, cornice, corner,
 3250 window, porch, or visually compatible door to break up the large mass of a
 3251 featureless wall (see Design Handbook for examples of the appropriate
 3252 treatment of walls). As an exception, walls with a clapboard facade may
 3253 extend for a length of up to 100 feet without such an architectural feature.
- 3254 [3]. Light industrial and boatyard uses. Such uses must comply with the above
 3255 standards only along the front face and extending back 100 feet along the side
 3256 walls.
- 3257
- 3258 (b). Roofs. Roofs must meet the following standards:
- 3259 [1]. Form. A building's prominent roofs must be pitched a minimum of 4:12 unless
 3260 demonstrated to the Planning Board's satisfaction that this is not practicable.
 3261 Acceptable roof styles are gabled, gambrel, and hipped roofs. Flat roofs, shed
 3262 roofs, and roof facades (such as "stuck on" mansards) are not acceptable as
 3263 primary roof forms.
- 3264 [2]. Color. Roof colors must be muted (see Design Handbook for examples).
- 3265 [3]. Rooftop mechanical and electrical equipment. Rooftops must be free of
 3266 clutter. The roof design must screen or camouflage rooftop protrusions to
 3267 minimize the visual impact of air conditioning units, air handler units, exhaust
 3268 vents, transformer boxes, and the like (see Design Handbook for examples of
 3269 appropriate treatments). Interior-mounted equipment is encouraged. Whenever
 3270 possible, utility equipment areas must be placed in an obscure location and
 3271 screened from view.
- 3272 [4]. Loading docks and overhead doors. Loading docks and overhead doors must
 3273 be located on the side or rear of the building and be screened from view from
 3274 public streets.
- 3275
- 3276 (7) Landscaping standards
- 3277 To achieve attractive and environmentally sound site design, and appropriate screening of
 3278 parking areas, in addition to the landscaping standards contained in § 16.7 and 16.8,

3279 the following landscaping requirements apply to new and modified existing
3280 developments:

3281

3282 (a) Landscape planter strip. A vegetated landscape planter strip 30 feet in depth (as
3283 measured from the edge of the property line) must be provided along the length of
3284 all developed portions of a parcel that are adjacent to a street right-of-way. The
3285 planter strip must include the following landscape elements:

3286 [1]. Ground cover. The entire landscape planter strip must be vegetated except for
3287 approved driveways, walkways, bikeways, and screened utility equipment.

3288 [2]. Streetside trees. A minimum of one street tree must be planted for each 25 feet
3289 of street frontage. The trees may be spaced along the frontage or grouped or
3290 clustered to enhance the visual quality of the site (see Design Handbook for
3291 examples). The trees must be a minimum 2.5-inch caliper, and be at least 12
3292 feet high at the time of planting. The species should be selected from the list of
3293 approved street trees in the Design Handbook. Existing large healthy trees
3294 must be preserved if practical and will count toward this requirement.

3295 [3]. Planter strip. Shrubs and flowering perennials must be planted at a minimum
3296 of 10 plants per 40 linear feet of street frontage unless existing woodlands are
3297 being retained or such planting is inconsistent with the retention of rural
3298 landscape features. The plant material should be selected from the list of
3299 approved materials in the Design Handbook. The plants must be placed within
3300 the planter strip to enhance the visual character of the site and augment natural
3301 features and vegetation (see Design Handbook for examples of appropriate
3302 treatments).

3303 [4]. Special situations.

3304 [a]. Expansions of less than 500 square feet to existing uses are exempt from
3305 the landscaping standard of this subsection.

3306 [b]. Depth of landscape planter strip. In instances where the required average
3307 depth of the landscape planter strip is legally utilized, in accordance with
3308 previous permits or approval, for parking, display, storage, building, or
3309 necessary vehicle circulation, the depth may be narrowed by the Planning
3310 Board to the minimum extent necessary to achieve the objective of the
3311 proposed project, provided that the required shrubs and perennials are
3312 planted along the street frontage to soften the appearance of the
3313 development from the public street. If providing the required landscape
3314 planter strip along with other required landscaping and required vegetated
3315 areas in and around wetlands would cause the project to exceed the
3316 required open space standards, the depth of the landscape planter strip and
3317 the front yard may be reduced by the Planning Board so that the open
3318 space standards are not exceeded, but in no case to less than 20 feet for
3319 this reason.

3320 [c]. Additions and changes in use. For additions to existing buildings and
3321 changes of residential structures to a nonresidential use, one streetside tree
3322 (see list of recommended street trees in Design Handbook) is required for
3323 every 500 square feet of additional gross floor area added or converted to
3324 nonresidential use. In instances where parking, display area, storage,
3325 building or necessary vehicle circulation exists at the time of enactment of
3326 this section, the required trees may be clustered and/or relocated away

3327 from the road as is necessary to be practicable. The preservation of
3328 existing large trees is encouraged; therefore, the Planning Board may
3329 permit the preservation of existing healthy, large, mature trees within the
3330 landscape planter strip or other developed areas of the site to be
3331 substituted for the planting of new trees.

3332 [d]. Residences. Residential additions to existing single- and two-family
3333 dwellings and proposed single- and duplex-family dwellings are exempt
3334 from the landscaping standards of this subsection.

3335

3336 (b). Buffer area. Where buffering is required, it must provide a year-round visual
3337 screen to minimize adverse impacts and screen new development (see Design
3338 Guidelines for examples of appropriate buffers for various situations), and may
3339 consist of fencing, evergreens, retention of existing vegetation, berms, rocks,
3340 boulders, mounds or combinations thereof. Within three growing seasons, the
3341 buffer must provide a year-round screen at least eight feet in height or such lower
3342 height as determined by the Planning Board to be appropriate for the situation.
3343 Buffer areas must be maintained and kept free of all outdoor storage, debris, and
3344 rubbish. The width of the buffer area may be reduced by the Planning Board if the
3345 function of the buffer is still fulfilled.

3346

3347 (c). Rural landscape features. Rural landscape features such as stonewalls, berms, and
3348 other agricultural structures, and tree lines or fields must be retained to the
3349 maximum extent practicable.

3350

3351 (d). Lighting. Outdoor lighting must provide the minimum illumination needed for the
3352 safe use of the site while enhancing the nighttime visual character of the site.
3353 Lighting must conform to the standards for outdoor lighting in § 16.7.11.H.

3354

3355 (e). Outdoor service and storage areas. Service and storage areas must be located to
3356 the side or rear of the building. Facilities for waste storage such as dumpsters must
3357 be located within an enclosure and be visually buffered by fencing, landscaping,
3358 and/or other treatments (see Design Handbook for examples of appropriate
3359 buffering).

3360

3361 (8) Traffic and circulation standards

3362 Sidewalks and roadways must be provided within the site to internally join abutting
3363 properties that are determined by the Planning Board to be compatible. In addition,
3364 safe pedestrian route(s) must be provided to allow pedestrians to move within the site
3365 and between the principal customer entrance and the front lot line where a sidewalk
3366 exists or will be provided or where the Planning Board determines that such a route is
3367 needed for adequate pedestrian safety and movement.

3368

3369 (9) Open space standards

3370 Open space must be provided as a percentage of the total area of the lot, including
3371 freshwater wetlands, water bodies, streams, and setbacks. Thirty-five percent of each
3372 lot must be designated as open space. Required open space must be shown on the plan
3373 with a note dedicating it as "open space."

- 3374 (a) An objective of the open space standard is to encourage the integration of open
 3375 space throughout the entire development and with the open space on adjoining
 3376 properties in order to alter the pattern of commercial activity along Route 1. To
 3377 this end, a minimum of 25% of the required open space must be located in the
 3378 front 50% of the lot area closest to U.S. Route 1, or if not fronting Route 1, closest
 3379 to the public street used to enter the lot. The Planning Board may modify this
 3380 requirement when it is demonstrated to the Board's satisfaction that the objective
 3381 is met to the greatest practicable extent.
- 3382 (b) The open space must be located to create an attractive environment on the site,
 3383 minimize environmental impacts, protect significant natural features or resources
 3384 on the site, and maintain wildlife habitat. Where possible, the open space must be
 3385 located to allow the creation of continuous open space networks in conjunction
 3386 with existing or potential open space on adjacent properties.
- 3387 (c) Special situations.
- 3388 [1]. Cases where integrating open space would require exceeding the open space
 3389 standards. In cases where the topography, wetlands, and existing development
 3390 on the lot dictates that more than 75% of the required open space be located
 3391 outside the front portion of the lot, a percentage of the open space normally
 3392 required in the front portion of the lot may be shifted to the rear portion of the
 3393 lot in order to achieve the required amount of vegetated open space and not
 3394 reduce the allowable developable area on the lot, provided minimum
 3395 landscaping standards are satisfied.
- 3396 [2]. Small lots. The required amount of designated open space is reduced to 20%
 3397 of each lot that is less than 100,000 square feet in size.
- 3398
- 3399 (10) Conditions for approving special exception uses in the Mixed-Use Zone.
- 3400 (a) All special exception uses in the Mixed-Use Zone must be visually harmonious
 3401 with the neighborhood and natural landscape by the use of adequate screening
 3402 and/or architectural design as follows:
- 3403 [1]. Screening. Must be screened and buffered through landscaping, fencing,
 3404 planted berms, existing vegetation, and separations of spaces to shield
 3405 neighbors from any adverse external effects of the facility and to integrate the
 3406 facility into the landscape. Plantings must be of sufficient maturity to achieve
 3407 the desired screening effect within three years.
- 3408 [2]. Architectural compatibility. Must be in architectural harmony with the area in
 3409 which it is located to the maximum extent practicable through the appropriate
 3410 use of facade materials, roof style, scale, bulk, and architectural style and
 3411 details.
- 3412 [3]. Location. Facilities located above ground must be sited so as to eliminate
 3413 adverse impacts associated with the facility to the maximum extent practicable
 3414 while still fulfilling the basic purpose of the facility.
- 3415
- 3416 (b). Retail Sales, a single retail use greater than 50,000 square feet in gross floor area
 3417 and less than 150,000 square feet in gross floor area:
- 3418 [1]. Timing. No more than one retail use with a gross floor area greater than
 3419 50,000 square feet and less than 150,000 square feet may be approved in any
 3420 three-year period.

3421 [2].Size. A single retail use with a gross floor area greater than 150,000 square
3422 feet is not permitted.

3423

3424 (c). Gasoline Service Stations.

3425 [1]. Visual screening. A year-round buffer area must be provided between the
3426 gasoline service station and neighboring uses in accordance with the
3427 landscaping standards of the mixed-use zone regulations.

3428 [2]. Separation distance. A gasoline service station may not be located within
3429 2,000 feet of another service station.

3430 [3]. Minimum distance, pump to existing structures. A fuel pump may not be
3431 located closer than 150 feet to an existing occupied structure located off the
3432 site of the gasoline service station.

3433

3434 (d). Theater, Drive-in.

3435 [1]. To protect the tranquility and quality of life of existing residential uses in the
3436 vicinity of the proposed drive-in theater, the hours of operation must be
3437 limited to the degree necessary and/or adequate visual and sound buffers must
3438 be established.

3439

3440 (e). Campground/Recreational Vehicle Park.

3441 [1]. The standards in § 16.5.17 must be satisfied.

3442 [2]. Occupation of any site by single user for a period exceeding 96 hours is
3443 prohibited.

3444 [3]. Quiet hours must be enforced between 10:00 p.m. and 7:00 a.m.

3445

3446 (f). Motel or Hotel.

3447 [1]. Multiple-story structures are encouraged.

3448 [2]. Wherever practicable, building orientation should not be parallel to U.S. Route
3449 1, but must take maximum advantage of the depth of the mixed-use zone.

3450 [3]. More than three separate motels and/or hotels may not be permitted in the
3451 mixed-use zone.

3452

3453 (g). Public Utility Facility.

3454 [1]. Public health and safety. Must not endanger the public health or safety.

3455 [2]. Protect property values. Must not unreasonably reduce the value of abutting
3456 property without just compensation.

3457 [3]. Prevent nuisances. Must prevent the emission of nuisances, such as but not
3458 limited to noise, odors, dust, gas, fumes, smoke, light, vibrations, and
3459 electrical interference, beyond the boundaries of the site to the maximum
3460 extent practicable.

3461

3462 (h). Age-Restricted Housing.

3463 [1]. Location suitability. The location of the site must allow it to be developed so
3464 that the residents of the project will be able to function as part of the

3465 community and have pedestrian access to services and facilities within the
 3466 area.

3467 [2]. Mixed use. If an aged-restricted housing component is proposed as part of the
 3468 project, it must be an essential element of the mixed-use project and be
 3469 designed to be an integrated part of the overall development.

3470

3471 (i). Commercial Greenhouses

3472 [1]. The greenhouses and any related outdoor storage or service areas or structures
 3473 must be visually buffered from Route 1 and adjacent properties.

3474 [2]. If the greenhouses will be internally lit between 9:00 p.m. and 6:00 a.m., the
 3475 internal lighting may not be visible from adjacent properties including public
 3476 streets.

3477 [3]. The noise resulting from the operation of the facility as measured at the
 3478 property line must be comparable with other uses in the MU Zone during the
 3479 period between 9:00 p.m. and 6:00 a.m.

3480 [4]. The greenhouses and related storage and service areas may not be located
 3481 within 200 feet of any legally existing residential use, inn, motel or hotel,
 3482 hospital, or nursing home/convalescent center on another lot.

3483

3484 (j). Industry, light (greater than 20,000 square feet in gross floor area), Transportation
 3485 Terminal, Warehousing & Storage, or Wholesale Business.

3486 [1]. The building and any related outdoor storage or service areas or structures
 3487 must be visually buffered from Route 1 and adjacent properties by other uses
 3488 allowed in the zone and/or by a landscaped buffer strip.

3489 [2]. If the area between this use and Route 1 is not developed for another permitted
 3490 use or special exception, it must be maintained as a naturally vegetated buffer
 3491 in addition to the provision of a landscape planter strip.

3492 [3]. The noise resulting from the operation of the facility as measured at the
 3493 property line must be comparable with other uses in the MU Zone during the
 3494 period between 9:00 p.m. and 6:00 a.m.

3495 [4]. The use and related storage and service areas may not be located within 200
 3496 feet for any legally existing residential use, inn, motel or hotel, hospital, or
 3497 nursing home/convalescent center on another lot.

3498

3499 E. Shoreland Overlay Zone OZ-SL – Mixed-Use Zone (MU)

3500 (1) Permitted uses

3501 (a) Agriculture

3502 (b) Art Studio or Gallery

3503 (c) Dwellings, limited to the following:

3504 [1] Dwellings on lots of record as of April 1, 2004 if located farther than 100 feet
 3505 from the normal high-water line of any water bodies, or the upland edge of a
 3506 wetland.

3507 [2] Dwelling units on the upper floors of a mixed-use building is served by public
 3508 sewerage if located farther than 100 feet from the normal high-water line of
 3509 any water bodies, or the upland edge of a wetland.

- 3510 (d) Religious Use
- 3511 (e) Home Occupation, Major
- 3512 (f) Home Occupation, Minor
- 3513 (g) Private Assembly (which is not used for residential or overnight occupancy)
- 3514 (h) Public Facility
- 3515 (i) Recreation, Public Open Space
- 3516 (j) Research & Development
- 3517 (k) Timber Harvesting
- 3518
- 3519 (2) Special exception uses
- 3520 (a) Accessory Buildings, Structures, and Uses
- 3521 (b) Boatyard
- 3522 (c) Business & Professional Offices
- 3523 (d) Commercial Kennel
- 3524 (e) Parking Area
- 3525 (f) Construction Services
- 3526 (g) Convalescent Care Facility
- 3527 (h) Nursing Care Facility, long-term
- 3528 (i) Day Care Facility
- 3529 (j) Residential Care Facility
- 3530 (k) Funeral Home
- 3531 (l) Retail Sales, Convenience
- 3532 (m) Retail Sales (a single use not to exceed 50,000 square feet in gross floor area)
- 3533 (n) Hospital
- 3534 (o) Inn
- 3535 (p) Commercial School (which is not used for residential or overnight occupancy)
- 3536 (q) Public or Private School (which is not used for residential or overnight
- 3537 occupancy)
- 3538 (r) Mass Transit Station
- 3539 (s) Motel
- 3540 (t) Hotel
- 3541 (u) Personal Services
- 3542 (v) Public Utility Facility
- 3543 (w) Repair Services
- 3544 (x) Research & Development
- 3545 (y) Restaurant
- 3546 (z) Recreation, Selected Commercial
- 3547 (aa) Shop in Pursuit of Trade
- 3548 (bb) Specialty Food and/or Beverage Facility
- 3549 (cc) Theater
- 3550 (dd) Transportation Terminal
- 3551 (ee) Veterinary Hospital
- 3552 (ff) Warehousing & Storage
- 3553 (gg) Wholesale Business
- 3554
- 3555 (3) See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL
- 3556

- 3557 F. Resource Protection Overlay Zone OZ-RP – Mixed-Use Zone (MU).
- 3558 (1) Permitted Uses
- 3559 (a) Recreation, Public Open Space
- 3560 (b) Timber Harvesting
- 3561
- 3562 (2) Special Exception Uses
- 3563 (a) Accessory Uses & Buildings
- 3564 (b) Agriculture
- 3565 (c) Home Occupations, Major
- 3566 (d) Home Occupations, Minor
- 3567 (e) Public Utility Facility
- 3568 (f) Dwelling, Single-Family (on lots of record as of April 1, 2004)
- 3569
- 3570 (3) See § 16.4.29 for purpose and standards in the Resource Protection Overlay Zone OZ-
- 3571 RP
- 3572

3573 **16.4.24 Mixed-Use – Badger Island (MU-BI)**

3574 A. Purpose

3575 The purpose of the Mixed-Use – Badgers Island MU-BI Zone is to provide opportunities for
3576 a wide variety of uses, including marine-related activities, offices, restaurants, shops,
3577 residences and services, to take advantage of a unique island setting located within walking
3578 distance to both downtown Portsmouth and downtown Kittery, in which water and sewer
3579 services are available to support development.

3580 This zone is further intended to develop standards appropriate for existing small lot sizes and
3581 street frontages to encourage investment in buildings that will contribute to the revitalization
3582 of the greater Kittery Foreside area while balancing business and residential interests to keep
3583 property values up and maintain an urban residential quality of life in the zone.

3584 B. Permitted uses.

3585 The following uses are permitted in the MU-BI Zone:

- 3586 (1) Accessory Dwelling Units
- 3587 (2) Dwellings, Attached Single-Family
- 3588 (3) Dwellings, Manufactured Housing
- 3589 (4) Dwelling, Multi-Family
- 3590 (5) Dwellings, Single-Family
- 3591 (6) Accessory Buildings, Structures, and Uses
- 3592 (7) Home Occupations, Major
- 3593 (8) Home Occupations, Minor
- 3594 (9) Inn
- 3595 (10) Day Care Facility
- 3596 (11) Private Assembly
- 3597 (12) Public Facility
- 3598 (13) Public or Private School
- 3599 (14) Religious Use
- 3600 (15) Recreation, Public Open Space
- 3601 (16) Aquaculture
- 3602 (17) Commercial Fisheries/Maritime Activities (provided only incidental cleaning and
3603 cooking of seafood occur at the site)
- 3604 (18) Commercial School
- 3605 (19) Art Studio or Gallery
- 3606 (20) Business & Professional Offices
- 3607 (21) Conference Center
- 3608 (22) Personal Service
- 3609 (23) Restaurant (with the hours of operation limited to 5:00 a.m. to 11:00 p.m., but
3610 excluding restaurants where ordering and/or pickup of food may take place from a
3611 motorized vehicle)
- 3612 (24) Retail Sales (excluding those with any outdoor sales and/or storage)
- 3613 (25) Specialty Food and/or Beverage Facility
- 3614 (26) Boat Yard

- 3615 (27) Marina
- 3616 (28) Mass Transit Station
- 3617 (29) Mechanical Services

3618

3619 C. Special exception uses.

3620 The following uses are permitted as special exception uses in the MU-BI Zone:

- 3621 (1) Recreation, Commercial Indoor
- 3622 (2) Recreation, Commercial Outdoor
- 3623 (3) Public Assembly Area
- 3624 (4) Theater
- 3625 (5) Public Utility Facility

3626

3627 D. Standards

3628 (1) The following space standards apply

3629 (a) Minimum land area per dwelling unit: 3,000 square feet.

3630 [1]. For each of the first two dwelling units and thereafter: 6,000 square feet.

3631

3632 (b). Minimum lot size: 6,000 square feet.

3633 (c). Minimum street frontage: 50 feet.

3634 (d). Minimum front yard: five feet.

3635 (e). Minimum rear and side yards: 10 feet.

3636 (f). Maximum building height: 40 feet.

3637 (g). Minimum setback from:

3638 [1]. Water body and wetland water-dependent uses: zero feet.

3639 [2]. All other uses (including buildings and parking): 75 feet unless modified,
3640 according to the terms of Subsection E of this section.

3641

3642 (h). Minimum open space on the site: 40%. (NOTE: The Planning Board may reduce
3643 the required open space to 30% where it is clearly demonstrated that no
3644 practicable alternative exists to accommodate a water-dependent use.)

3645

3646 (2) The design and performance standards of § 16.5, 16.7 and 16.8 must be met, except
3647 where specifically altered in this subsection.

3648

3649 (3) Appropriate waterfront activity incentives

3650 To encourage objectives of the Comprehensive Plan to: 1) provide public access to
3651 the waterfront; 2) retain and expand commercial water-dependent uses; and 3) take
3652 extraordinary steps to preserve the environmental quality of the shoreline and tidal
3653 waters, the required setback from water bodies and wetlands may be reduced to 25
3654 feet where the Planning Board finds a development plan significantly contributes to
3655 accomplishment of the above objectives by satisfactorily achieving one or more of the
3656 following:

- 3657 (a) Public access
3658 Grants an easement to the Town, or other acceptable party, providing public access
3659 to the waterfront at no charge to the general public via a developed accessible
3660 pedestrian route with appropriate signage or includes an outdoor deck or patio for
3661 customer seating at a restaurant open to the general public; or
3662
- 3663 (b) Retain/expand commercial water-dependent uses
3664 Provides for inclusion of commercial water-dependent use(s) on the property for
3665 the duration of the portion of the project that encroaches closer than the normal
3666 minimum setback from water bodies and wetlands. Provision of fewer than six
3667 boat slips for leisure/recreational boating do not constitute a commercial water-
3668 dependent use for the purposes of this section; or
3669
- 3670 (c) Preserve the environmental quality of coastal resources. Protect existing wildlife
3671 habitat, conserve shore cover and ensure the quality of stormwater runoff by
3672 satisfying all of the following standards:
- 3673 [1] Retain and protect existing significant wildlife habitat that provides food,
3674 cover and/or nesting for migratory song birds and wading birds;
- 3675 [2] In order to conserve shore cover, contiguous areas of shrubberies of varying
3676 height, such as dwarf species of barberry, serviceberry, holly, crabapple,
3677 dogwood, cotoneaster, euonymus, firethorn and/or rosa rugosa, as well as
3678 erosion-resistant ground cover plantings must be retained and planted, and
3679 existing trees retained, wherever practicable in the setback;
- 3680 [3] Implementation of a stormwater management plan endorsed by the York
3681 County Soil and Water Conservation District (SCS), or the Town's
3682 engineering peer review consultant, that treats stormwater with appropriate
3683 BMPs and removes pollutants in accordance with the most-current edition of
3684 the Maine Department of Environmental Protection BMP Manual, Stormwater
3685 Management for Maine. Pollutants sought to be removed include suspended
3686 solids, nitrates, hydrocarbons and heavy metals. Such special treatment of the
3687 first flush of runoff may include detention, infiltration, filtering and trapping
3688 of pollutants.
3689
- 3690 (4) Special parking standards
- 3691 (a) Revised off-street parking standards
3692 Off-street parking must be provided in accordance with § 16.7.11.F unless
3693 modified below for the following uses:
- 3694 [1].Dwellings: 1 1/2 parking space for each dwelling unit;
3695 [2].Retail stores: one parking space for each 400 square feet of gross floor area;
3696 [3].Drive-in restaurants, snack bars and fast-food outlets, but excluding
3697 restaurants where ordering and/or pickup of food may take place from a
3698 motorized vehicle: one parking space for every three seats, but in no case less
3699 than four spaces;
- 3700 [4].Conference centers: one parking space for every 60 square feet in the largest
3701 assembly or meeting room.
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- (b) Joint-use parking
 - Required off-street parking may be satisfied by the joint use of parking spaces by two or more uses if the applicant can show that parking demand is nonconflicting and will reasonably provide adequate parking for multiple uses without parking overflowing into undesignated areas. Nonconflicting periods may consist of daytime as opposed to evening hours of operation or weekday as opposed to weekend hours of operation or seasonal variation in parking demand. In making this determination under development plan review, the Planning Board must consider the following factors:
 - [1].Such joint parking areas must be held under ownership or under terms of a contractual agreement that ensures such parking remains available to all users of the shared parking spaces;
 - [2].Analysis is based on a most frequent basis not a "worst case" scenario;
 - [3].Joint-use parking areas must be located within reasonable distance to the uses served, but do not need to be located on the same parcel as the uses served;
 - [4].Ease and safety of pedestrian access to shared parking by the users served, including any improvements or shuttle service necessary; and
 - [5].Such joint parking areas may not be located in residential zoning districts.

- (c). Off-site parking
 - Reuired off-street parking for employee use may be satisfied at off-site locations located within 1,000 feet measured along lines of public access from the lot to be served, provided such parking area is on other property owned by the applicant or under terms of a contractual agreement that will ensure such parking remains available to the use served.

- (d).Employee parking
 - Required off-street parking for employee use may be satisfied at off-site locations greater than 1,000 feet from the lot served upon a finding by the Planning Board that such parking is practicable and will reasonably prevent overflow parking from occurring on Badgers Island in undesignated locations. In making this determination under development review, the Planning Board must consider the following factors:
 - [1].Such parking must be located within a reasonable distance to the users.
 - [2].Such parking area must be on other property of the applicant or under terms of a contractual agreement that will ensure such parking remains available to the use served.
 - [3].Safe and convenient means of transporting users to and from the off-site parking must be demonstrated by the applicant.
 - [4].Such off-site parking area must not be located in residential zones of the Town. Off-site parking for use by employees may deviate from the dimensional standards contained in § 16.7.11.F, Table 2, Parking Space Design, if the applicant can demonstrate that the proposal practicably accommodates the number of parking spaces proposed.

- (e). Parking demand management (PDM) strategies

- 3749 [1]. Parking demand strategies are measures geared toward affecting the demand
3750 side of the parking equation rather than the supply side. They attempt to
3751 change people's behavior away from traveling to work as a single occupant in
3752 an automobile to be parked near the work site. To be successful, they must
3753 rely on incentives or disincentives to make these shifts in behavior attractive to
3754 the traveler.
- 3755 [2]. A portion of required off-street parking may be satisfied by an owner
3756 incorporating PDM strategies to effectively reduce demand for parking stalls
3757 as determined by the Planning Board. In making this determination the
3758 Planning Board, under development plan review, must consider the following
3759 factors:
- 3760 [a]. The written commitment of the employer to maintain and enforce parking
3761 policies to reduce demand for parking stalls;
- 3762 [b]. The likelihood that specific incentives and policies adopted by the
3763 applicant will reduce parking demand on a regular basis throughout the
3764 year;
- 3765 [c]. Written commitments by employees to participate in PDM strategies; and
3766 [d]. The results of any studies demonstrating the effectiveness of strategies
3767 adopted by the applicant to reduce parking demand.
3768
- 3769 (f). PDM strategies include, but are not limited to, the following:
- 3770 [1]. Increase the number of persons per parked vehicle. Potential incentives:
- 3771 [a]. Preferential parking locations for car pools and van pools;
3772 [b]. Guaranteed ride home programs/taxi subsidies;
3773 [c]. Employer provision of vans for van pools; and
3774 [d]. Financial incentives to participants in car pools and van pools.
3775
- 3776 [2]. Increase the number of persons using an alternative mode of travel to the
3777 automobile, such as walking, bicycling, motorcycle, moped, bus and shuttle
3778 service. Potential incentives:
- 3779 [a]. Preferential parking locations for alternative modes of travel;
3780 [b]. Provision of changing rooms, lockers and showers;
3781 [c]. Early work release for employees using alternative modes of travel;
3782 [d]. Financial subsidies toward the purchase of alternative modes of travel to
3783 be used for commuting;
3784 [e]. Guaranteed ride home programs in inclement weather;
3785 [f]. Preferential work station locations; and
3786 [g]. Free use of a business vehicle for errands, lunch and off-site
3787 appointments.
3788
- 3789 [3]. Influencing the time of, or need to, travel to work. Potential incentives:
- 3790 [a]. Reward employees who telecommute from their home or other remote
3791 location;
3792 [b]. Offer an optional four-day, forty-hour workweek as an alternative to a
3793 five-day workweek;
3794 [c]. Allow nonoverlapping early and late work shifts; and

3794 [d]. Flextime.

3795

3796 E. Shoreland Overlay Zone OZ-SL Mixed-Use – Badger’s Island Zone (MU-BI)

3797 (1) Permitted uses

3798 (a) Aquaculture

3799 (b) Dwellings if located 75 feet or farther from the normal high-water line of any
3800 water bodies, or the upland edge of a wetland.

3801 [1] Dwellings, Attached Single-Family

3802 [2] Dwellings, Manufactured Housing

3803 [3] Dwelling, Multi-Family

3804 [4] Dwellings, Single-Family

3805 (c) Recreation, Public Open Space

3806 (d) Research & Development

3807 (e) Mass Transit Station

3808

3809 (2) Special exception uses

3810 (a) Accessory Buildings, Structures, and Uses

3811 (b) Art Studio or Gallery

3812 (c) Boatyard

3813 (d) Business & Professional Offices

3814 (e) Commercial Fisheries/Maritime Activities (provided only incidental cleaning and
3815 cooking of seafood occur at the site)

3816 (f) Recreation, Commercial Indoor

3817 (g) Recreation, Commercial Outdoor

3818 (h) Day Care Facility

3819 (i) Retail Sales (excluding those with any outdoor sales and/or storage)

3820 (j) Home occupation, Major

3821 (k) Home Occupation, Minor

3822 (l) Inn

3823 (m) Marina

3824 (n) Personal Services

3825 (o) Business Services

3826 (p) Public Assembly Area

3827 (q) Public Utility Facility

3828 (r) Restaurant (with the hours of operation limited to 5:00 a.m. to 11:00 p.m., but
3829 excluding restaurants where ordering and/or pickup of food may take place from a
3830 motorized vehicle)

3831 (s) Commercial School

3832 (t) Public or Private School

3833 (u) Public Facility

3834 (v) Religious Use

3835 (w) Private Assembly

- 3836 (x) Specialty Food and/or Beverage Facility
- 3837 (y) Theater
- 3838
- 3839 (3) See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL
- 3840
- 3841 F. Resource Protection Overlay Zone OZ-RP – Mixed-Use – Badger’s Island Zone (MU-BI)
- 3842 (1) Permitted Uses
- 3843 (a) Aquaculture
- 3844 (b) Recreation, Public Open Space
- 3845
- 3846 (2) Special Exception Uses
- 3847 (a) Accessory Uses & Buildings
- 3848 (b) Home Occupations, Major
- 3849 (c) Home Occupations, Minor
- 3850 (d) Public Utility Facility
- 3851 (e) Dwelling, Single-Family
- 3852
- 3853 (3) See § 16.4.29 for purpose and standards in the Resource Protection Overlay Zone OZ-
- 3854 RP
- 3855

3856 **16.4.25 Mixed-Use – Kittery Foreside (MU-KF)**

3857 A. Purpose

3858 The purpose of the Mixed-Use – Kittery Foreside MU-KF Zone is to provide business,
3859 service and community functions within the Mixed-Use – Kittery Foreside Zone and to
3860 provide a mix of housing opportunities in the historic urbanized center of the community and
3861 to allow for use patterns which recognize the densely built-up character of the zone and the
3862 limitations for providing off-street parking. Design standards are used to facilitate the
3863 revitalization of downtown Kittery Foreside as a neighborhood center, while promoting
3864 economic development of service businesses and walk-in shopping as well as respecting the
3865 zone's historic and residential character.

3866

3867 B. Permitted uses

3868 The following uses are permitted in the MU-KF Zone:

- 3869 (1) Accessory Dwelling Units
- 3870 (2) Dwelling, Attached Single-Family
- 3871 (3) Dwellings, Single-family
- 3872 (4) Dwellings, Two-Family
- 3873 (5) Dwellings, Multi-Family (up to 12 units per lot)
- 3874 (6) Convalescent Care Facility
- 3875 (7) Nursing Care Facility, Long-term
- 3876 (8) Residential Care Facility
- 3877 (9) Accessory Buildings, Structures, and Uses
- 3878 (10) Home Occupation, Major
- 3879 (11) Home Occupation, Minor
- 3880 (12) Inn
- 3881 (13) Hospital
- 3882 (14) Nursery School
- 3883 (15) Private Assembly
- 3884 (16) Public Facility
- 3885 (17) Public or Private School
- 3886 (18) Religious Use
- 3887 (19) Recreation, Public Open Space
- 3888 (20) Commercial Fisheries/Maritime Activities, provided only incidental cleaning and
3889 cooking of seafood occur at the site
- 3890 (21) Commercial School
- 3891 (22) Art Studio or Gallery
- 3892 (23) Business & Professional Offices
- 3893 (24) Business Service
- 3894 (25) Personal Service
- 3895 (26) Public Assembly Area
- 3896 (27) Restaurant

- 3897 (28) Retail Sales (excluding those where the principal activity entails outdoor sales and/or
- 3898 storage)
- 3899 (29) Specialty Food and/or Beverage Facility
- 3900 (30) Theater
- 3901 (31) Marinas
- 3902 (32) Mass Transit Station
- 3903 (33) Parking Area
- 3904
- 3905 C. Special exception uses
- 3906 The following uses are permitted as special exception uses in the MU-KF Zone:
- 3907 (1) Public Utility Facility
- 3908 (2) Research & Development
- 3909
- 3910 D. Standards.
- 3911 (1) The design and performance standards of § 16.7 and 16.8 must be met, except where
- 3912 specifically altered in this subsection.
- 3913
- 3914 (2) Dimensional standards. The following space standards apply:
- 3915 (a) Minimum land area per dwelling unit: 5,000 square feet.
- 3916 (b) Minimum lot size: 5,000 square feet.
- 3917 (c) Minimum street frontage: zero feet.
- 3918 (d) Minimum front yard along:
- 3919 [1]. Government Street east of Jones Avenue including Lot 107 at the corner of
- 3920 Government and Walker Streets: zero feet.
- 3921 [2]. Wallingford Square: zero feet.
- 3922 [3]. Other streets: 10 feet.
- 3923
- 3924 (e) Minimum rear and side yards: 10 feet.
- 3925
- 3926 (f) Minimum separation distance between principal buildings on the same lot: 10 feet.
- 3927
- 3928 (g) Maximum building height: 40 feet. (NOTE: Except that for buildings located on
- 3929 lots that abut tidal waters, the highest point on the primary structure of the
- 3930 building including the roof, but excluding chimneys, towers, cupolas and similar
- 3931 appurtenances that have no floor area, may be not more than 35 feet above the
- 3932 average grade between the highest and lowest elevations of the original ground
- 3933 level adjacent to the building.)
- 3934
- 3935 (h) Minimum setback from:
- 3936 [1]. Water body and wetland water-dependent uses: zero feet.
- 3937 [2]. All other uses (including buildings and parking): 75 feet unless modified,
- 3938 according to the terms of §16.4.25.D(7) through §16.4.25.D(10).

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- (i) Maximum building coverage: 60%.

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- (j) Minimum open space on the site: 40%.

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- (k) Minimum land area per unit for elder-care facilities that are connected to the public sewerage system:

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- [1]. Dwelling unit with two or more bedrooms: 3,000 square feet.

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- [2]. Dwelling unit with less than two bedrooms: 2,500 square feet.

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- [3]. Residential care unit: 2,000 square feet.

3949

- [a]. Minimum land area per bed for nursing care and convalescent care facilities that are connected to the public sewerage system: 1,500 square feet.

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- (3) Maximum building footprint. The maximum area of the building footprint of any new building is 1,500 square feet unless the building is replacing a larger building that existed on the lot as of April 1, 2005.

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- (a) If the footprint of the preexisting building was larger than 1,500 square feet, the maximum size of the footprint of the new building may be no larger than the footprint of the preexisting building.

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- (b) If the footprint of the new building is larger than 1,500 square feet, the width of the new building as measured parallel to the front lot line may not be greater than the width of the preexisting building.

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- (4) Design standards.

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Any new building or additions or modifications to an existing building that cumulatively increases the building footprint or building volume by more than 30% after April 1, 2005, or is subject to shoreland overlay zoning as set forth in § 16.4.28 must conform to the following standards:

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NOTE: This requirement does not apply to the replacement of a building destroyed by accidental or natural causes after April 1, 2005 that is rebuilt within the preexisting building footprint and that does not increase the preexisting building volume by more than 30%.

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- (a) Placement and orientation of buildings within a lot.

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- [1]. The placement of buildings on the lot must acknowledge the uniqueness of the site, the neighboring buildings, and the natural setting. Existing views and vistas must be preserved in the design of the site and buildings, and buildings must be placed to frame, rather than block, vistas.

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- [2]. Buildings and the front elevation must be oriented facing the street on which the building is located. The siting of buildings on corner lots must consider the placement of buildings on both streets.

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- (b) Overall massing of buildings. The overall massing objective is to simulate a concentrated use of space in the Foreside Zone while avoiding the use of large,

3983

- 3984 multiunit buildings. In the interest of this objective, building footprints must not
3985 exceed the maximums set forth within this subsection. Larger parcels may be
3986 developed but will require the use of multiple buildings with smaller footprints.
3987 The smaller scale of the buildings will allow new projects to fit in with the
3988 existing architectural styles of the Foreside Zone.
3989
- 3990 (c) Grouping of smaller buildings. When smaller buildings that are part of one project
3991 are placed adjacent to one another on the same lot or adjacent lots, each building
3992 must have its own structure and elevation treatment that is different from its
3993 neighbor. Small decorative wings may be attached to larger structures if well
3994 integrated into the overall arrangement of shapes.
- 3995 (d) Building details. Buildings must include architectural details that reflect the
3996 historic style of the Foreside Zone. Molding and trim must be used to decorate or
3997 finish the surface of buildings and doors. Eaves and overhangs should be
3998 incorporated into the design.
- 3999 (e) Roof slopes and shapes.
- 4000 [1]. Allowable roof shapes include a simple gable, gambrel, saltbox and hip. The
4001 minimum roof pitch must be 8:12 (rise over run), except in the case of a hip
4002 roof, where a lesser pitch is acceptable.
- 4003 [2]. The roof pitch of elements that link buildings or portions of buildings must be
4004 the same or greater than the pitch of the roofs on the buildings that are being
4005 linked.
- 4006 [3]. Flat or nearly flat shed roofs are not allowed except for porches, dormers or
4007 attachments distinct from the primary structure or where systems are
4008 concealed by standard roof forms.
- 4009 [4]. The roof pitch of additions or wings must be similar to the pitch of the primary
4010 roof. Clusters of buildings must apply the same roof plan principles to pitch
4011 and link roofs.
4012
- 4013 (f) Fencing and walls.
- 4014 [1]. Fencing may be used to separate public and private spaces, mark property
4015 lines, and protect plantings.
- 4016 [2]. Fences must harmonize with nearby structures and not unduly interfere with
4017 existing scenic views or vistas.
- 4018 [3]. Picket and other medium height fences and low stone walls are permitted.
- 4019 [4]. Modern concrete walls and similar structures are prohibited.
- 4020 [5]. Chain-link and stockade fences are not appropriate in front yards and may be
4021 used in side and rear yards only if compatible with the overall design of the
4022 site.
- 4023 [6]. Waste receptacles, dumpsters, exterior systems, service entrances and similar
4024 areas must be screened with board fences, board and lattice fences, and/or
4025 landscaping.
4026
- 4027 (g) Utilities. All utilities serving a new building, including electricity, telephone,
4028 cable, Internet and alarm systems must be placed underground from the access
4029 pole.

- 4030 (h) Preservation of trees. Existing large, healthy trees must be preserved if practical.
4031
- 4032 (5) Signage. Display of signboard and/or products for sale may be placed on a Town
4033 sidewalk only if:
- 4034 (a) Products for sale displayed outside the building are limited to an area extending
4035 no greater than two feet from the front facade of the building;
- 4036 (b) Signboards and/or products for sale must be removed from the sidewalk at the
4037 close of each business day;
- 4038 (c) An annual permit must be obtained from the Code Enforcement Officer. Permits
4039 are issued for a calendar year or portion thereof, to expire December 31 of each
4040 year. Sign permit application fee, reference Appendix A.
4041
- 4042 (6) Special parking standards.
4043 The Kittery Foreside Zone is already largely built up and many buildings either
4044 completely or almost completely cover the lot on which they are located. Therefore, it
4045 is not possible to comply with parking standards which would otherwise be required
4046 for open land. To encourage the reuse of existing structures as far as practical, the
4047 Town establishes special parking standards and conditions within the zone.
4048
- 4049 (7) Revised off-street parking standards.
4050 Insofar as practical, parking requirements are to be met on site unless an existing
4051 building covers so much of the lot as to make the provision of parking impractical in
4052 whole or in part. If meeting the parking requirements is not practical, then the parking
4053 demand may be satisfied off site or through joint-use agreements as specified herein.
4054 Notwithstanding the off-street parking requirements in § 16.7.11.F(3), minimum
4055 parking requirements for the uses below are modified as specified herein:
4056
- 4057 (a) Dwelling units in buildings that existed as of April 1, 2005, including the
4058 replacement of units destroyed by accidental or natural causes regardless of how
4059 configured: one parking space per dwelling unit;
- 4060 (b) Dwelling units in new buildings, including the replacement of existing buildings
4061 other than the replacement of units destroyed by accidental or natural causes: 1
4062 1/2 parking spaces per dwelling unit;
- 4063 (c) Retail, business office or bank facilities: one parking space for each 400 square
4064 feet of gross floor area;
- 4065 (d) Professional office: one parking space for each 300 square feet of gross floor area;
- 4066 (e) Inn: one parking space for each guest room;
- 4067 (f) Church: none required, if primary use occurs on weekends;
- 4068 (g) Restaurants: one parking space for each 100 square feet of gross floor area used
4069 by the public.
- 4070 NOTE: For each use in the zone, the total parking demand is calculated using the
4071 standards above or in § 16.7.11.F(3), if not modified above. Then each
4072 nonresidential use is exempt from providing off-street parking for the first three
4073 required spaces. For uses requiring a demand of greater than three, then the off-
4074 street parking is to be provided on site and/or in accordance with Subsection (9)
4075 and (10) of this section.

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(8) Maximum parking on new impervious surface
 Not more than 1 1/2 parking spaces per dwelling unit may be created on new impervious surface in conjunction with the construction of a new or replacement building. This restriction does not apply to parking spaces located within the same building with the dwelling units, to spaces located on preexisting impervious surface, or to spaces located on a pervious surface such as parking pavers designed to allow infiltration of precipitation.

(9) Off-site parking
 Required off-street parking may be satisfied at off-site locations, provided such parking is on other property owned by the applicant or is under the terms of a contractual agreement that will ensure such parking remains available for the uses served. Applicant must present evidence of a parking location and a contractual agreement to the Town Board or officer with jurisdiction to review and approve.

(10) Joint-use parking
 Required off-street parking may also be satisfied by the joint use of parking space by two or more uses if the applicant can show that parking demand is nonconflicting and will reasonably provide adequate parking for the multiple uses without parking overflowing into undesignated areas. Nonconflicting periods may consist of daytime as opposed to evening hours of operation or weekday as opposed to weekends or seasonal variation in parking demand. In making this determination under development plan review, the Planning Board is to consider the following factors:

- (a) Such joint parking areas must be held under ownership of the applicant or under terms of a contractual agreement that ensures such parking remains available to all users of the shared parking spaces;
- (b). Analysis is to be based on a most frequent basis not a "worst case" scenario;
- (c). Joint use parking areas must be located within reasonable distance to the use served, but do not need to be located on the same lot as the uses served;
- (d). Ease and safety of pedestrian access to shared parking by the users served, including any improvements or shuttle service necessary;
- (e). Such joint parking areas must not be located in residential zones of the Town. The Planning Board must make a final determination of the joint-use and/or off-site parking spaces that constitute an acceptable combination of spaces to meet the required parking demand

E. Shoreland Overlay Zone OZ-SL – Mixed-Use – Kittery Foreside Zone (MU-KF)

- (1) Permitted uses
- (a) Dwellings if located farther than 75 feet or farther from the normal high-water line of any water bodies, or the upland edge of a wetland
 - [1] Dwelling, Attached Single-Family
 - [2] Dwellings, Single-family
 - [3] Dwellings, Two-Family

- 4121 [4] Dwellings, Multi-Family (up to 12 units per lot)
- 4122 (b) Recreation, Public Open Space
- 4123
- 4124 (2) Special exception uses
- 4125 (a) Art Studio or Gallery
- 4126 (b) Business & Professional Offices
- 4127 (c) Commercial Fisheries/Maritime Activities, provided only incidental cleaning and
- 4128 cooking of seafood occur at the site
- 4129 (d) Parking Area
- 4130 (e) Home Occupation, Major
- 4131 (f) Home Occupation, Minor
- 4132 (g) Inn
- 4133 (h) Marinas
- 4134 (i) Personal Services
- 4135 (j) Business Services
- 4136 (k) Public Assembly Area
- 4137 (l) Public Utility Facility
- 4138 (m) Research & Development;
- 4139 (n) Restaurant, coffee shop, bakery, cafes and similar food service operations, but
- 4140 excluding drive-in facilities;
- 4141 (o) Retail Sales, excluding those where the principal activity entails outdoor sales
- 4142 and/or storage
- 4143 (p) Mass Transit Station
- 4144 (q) Specialty Food and/or Beverage Facility
- 4145 (r) Theater
- 4146
- 4147 (3) See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL
- 4148
- 4149 F. Resource Protection Overlay Zone OZ-RP – Mized Use – Kittery Foreside Zone (MU-
- 4150 KF)
- 4151 (1) Permitted Uses
- 4152 (a) Recreation, Public Open Space
- 4153
- 4154 (2) Special Exception Uses
- 4155 (a) Accessory Buildings, Structures, and Uses
- 4156 (b) Home Occupation, Major
- 4157 (c) Home Occupation, Minor
- 4158 (d) Public Utility Facility
- 4159 (e) Dwelling, Single-Family
- 4160
- 4161 (3) See § 16.4.29 for purpose and standards in the Resource Protection Overlay Zone OZ-
- 4162 RP

4163 **16.4.26 Mixed-Use-Neighborhood MU-N**

4164 A. Purpose

4165 To encourage higher density, mixed-use development that provides increased housing
4166 opportunities and a desirable setting for business while balancing such increased
4167 development with environmentally conscious and ecologically sensitive use of land.

4168

4169 B. Permitted Uses

4170 (1) Dwelling, Attached Single-Family

4171 (2) Dwelling, Multi-Family

4172 (3) Dwelling, Multi-Family (units on the upper floors of a mixed-use building that is
4173 served by public sewer)

4174 (4) Convalescent Care Facility

4175 (5) Nursing Care Facility, Long-term

4176 (6) Residential Care Facility (attached dwelling units only)

4177 (7) Accessory Buildings, Structures, and Uses

4178 (8) Home Occupation, Major

4179 (9) Home Occupation, Minor

4180 (10) Hotel

4181 (11) Inn

4182 (12) Day Care Facility

4183 (13) Elderly Day Care Facility

4184 (14) Hospital

4185 (15) Public Utility Facility

4186 (16) Recreation, Passive

4187 (17) Recreation, Public Open Space

4188 (18) Recreation, Commercial Indoor (except shooting and archery ranges)

4189 (19) Recreation, Commercial Outdoor (except shooting and archery ranges)

4190 (20) Veterinary Hospital

4191 (21) Art Studio or Gallery

4192 (22) Business & Professional Offices

4193 (23) Business Services

4194 (24) Conference Center

4195 (25) Personal Services

4196 (26) Repair Service

4197 (27) Research & Development

4198 (28) Restaurant

4199 (29) Retail Sales (not to exceed 30,000 square feet in gross floor area unless part of a
4200 mixed-use building)

4201 (30) Retail Sales, Convenience (excluding the sale of gasoline)

4202 (31) Shops in Pursuit of Trade

4203 (32) Specialty Food and/or Beverage Facility

- 4204 (33) Theater
- 4205 (34) Industry, light (less than or equal to 20,000 square feet in gross floor area)
- 4206 (35) Liner Buildings (as part of a mixed-use building)
- 4207
- 4208 C. Special exception uses
- 4209 (1) Commercial Kennel
- 4210 (2) Parking Area
- 4211 (3) Construction Services
- 4212 (4) Equipment sales and rentals (only on lots with frontage on Route 236)
- 4213 (5) Gas service station (only on lots with frontage on Route 236)
- 4214 (6) Industry, light (greater than 20,000 square feet in gross floor area)
- 4215 (7) Mass Transit Station
- 4216 (8) Mechanical Services
- 4217 (9) New Motor Vehicle Sales (only on lots with frontage on Route 236)
- 4218 (10) Used Car Lot (only on lots with frontage on Route 236)
- 4219 (11) Repair Garage (only on lots with frontage on Route 236)
- 4220 (12) Retail Sales (greater than 30,000 square feet in gross floor area and less than 50,000
- 4221 square feet in gross floor area)
- 4222 (13) Undefined use; additional commercial/business uses not defined by § 16.3.
- 4223 (f) Undefined uses: will be considered by the Planning Board based on the following
- 4224 criteria:
- 4225 [1]. If the use is consistent with the Comprehensive Plan and zoning district
- 4226 purposes; and
- 4227 [2]. If the use meets special exception criteria found in § 16.3.2.1.C(14)
- 4228 (g) In addition, the undefined use must meet one or both of the following criteria:
- 4229 [1] If the proposed use has substantially similar impacts as a listed use.
- 4230 [2] If the proposed use is compatible with existing uses within the zoning district
- 4231 for which it is proposed.
- 4232
- 4233 D. Standards.
- 4234 All development and the use of land in the MU-N Zone must meet the following standards.
- 4235 Kittery's Design Handbook illustrates how these standards can be met. In addition, the design
- 4236 and performance standards of § 16.5, 16.7 and 16.8 must be met unless noted otherwise
- 4237 below.
- 4238 (1) All submissions must include a lighting plan. Hours of operation and number of
- 4239 employees for businesses must also be provided.
- 4240
- 4241 (2) The following space standards apply:
- 4242 (a) Minimum land area per dwelling unit - mixed-use building: 4,000 square feet for
- 4243 first residential unit plus 3,000 square feet for each additional unit, no minimum
- 4244 land area for business or commercial uses when combined in a building with
- 4245 residential uses except that the total lot size must be at least 20,000 square feet.

- 4246 NOTE: ADA-compliant units may be located on the first floor through a
 4247 special exception permit by the Planning Board but only 50% of the first
 4248 floor may be such ADA-compliant residential units.
 4249
- 4250 (b). Minimum land area per dwelling unit - multiunit residential: 4,000 square feet for first
 4251 unit, plus 2,500 square feet for each additional unit up to 16 units per acre of lot size.
 4252 Total lot size must be a minimum of 20,000 square feet.
 4253
- 4254 (c). Mixed-use or multiunit residential buildings which encompass at least 50% of
 4255 required parking within the building: Two additional residential units may be added to
 4256 each story above the parking with no additional land area required.
 4257
- 4258 (d). Mixed-use buildings which encompass at least 50% of required parking within the
 4259 building and include a liner building for nonresidential uses buffering parking from
 4260 the street: One additional residential unit may be added to each story with no
 4261 additional land area required.
 4262
- 4263 (e). Minimum land area per bed for long-term nursing care and convalescent care facilities
 4264 that are connected to public sewer: 2,000 square feet.
 4265
- 4266 (f). Minimum land area per residential unit for eldercare facilities that are connected to
 4267 public sewer: 3,000 square feet.
 4268
- 4269 (g). Minimum lot size: 20,000 square feet.
 4270
- 4271 (h). Minimum street frontage: 75 feet.
 4272
- 4273 (i). Minimum front setback on Route 236: 30 feet.
 4274
- 4275 (j). Minimum front setback on Dennett Road: 50 feet.
 4276
- 4277 (k). Minimum front setback on Martin Road: 100 feet.
 4278
- 4279 (l). Maximum front setback all other roads: 20 feet.
 4280
- 4281 (m). Spacing between buildings: 15 feet.*
 4282
- 4283 (n). Maximum rear and side setbacks: 20 feet.**
 4284
- NOTES:

* Or as required by the Fire Department or State Fire Marshal's office.

** Except as may be required by the buffer provisions of Code. See Landscaping, Screening and Buffers § 16.4.26.(8)

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- (o). Maximum building height: 50 feet (exclusive of solar apparatus).
- (p). Maximum impervious and outdoor stored material coverage: 70%.
 NOTE: With Best Management Practices (BMPs) and Low Impact Development Practices (LIDs) as defined in § 16.3 and based on Maine DEP's Maine Stormwater Best Management Practices Manual, Volumes I - III, as amended from time to time, incorporated in site design, otherwise 60%. Maximum on-site stormwater infiltration is the desired and measurable outcome.
- (q). Minimum setback from streams, water bodies and wetlands in accordance with Table 16.5.30.
 - [1] With Best Management Practices (BMPs) and Low Impact Development Practices (LIDs) as defined in § 16.3 and based on Maine DEP's Maine Stormwater Best Management Practices Manual, Volumes I - III, as amended from time to time, incorporated in site design, then wetland setbacks pursuant only to Maine Department of Environmental Protection (MDEP) Rules Chapters 305 and 310.
 - [2] Without Best Management Practices (BMPs) and Low Impact Development Practices (LIDs) as defined in § 16.3 and based on Maine DEP's Maine Stormwater Best Management Practices Manual, Volumes I - III, as amended from time to time, incorporated in site design, wetland setbacks pursuant to Kittery Town Code Title 16, Table 16.5.30.
 - [3] The Town shall retain expert consultation (qualified wetland scientist and/or Maine-certified soil scientist) to determine wetland delineations and classifications and to perform soil testing as needed, all of which shall be paid for by the applicant at the time of sketch plan. The qualified wetlands scientist and/or Maine-certified soil scientist shall determine through field investigation the presence, location and configuration of wetlands on the area proposed for use. Any wetland alterations proposed must also be reviewed by the Town's consultant(s) at the applicant's expense. These requirements are in addition to engineering, stormwater management/BMPs, traffic or other types of peer review that may also be required.
- (r). Minimum open space:
 - [1] Lot size less than 100,000 square feet: 15%.
 - [2] Lot size greater than 100,000 square feet: 25%.
 NOTE: This requirement may be met by a payment-in-lieu to the Wetland Mitigation Fund. These fees shall be set by Town Council. Landscaping, screening and buffer requirements must still be met.
- (3) Parking:
 - (a) Parking is encouraged within buildings. New or revised surface parking areas, garages, and entrances to parking within buildings must be located to the rear of buildings. If a rear location is not achievable, as determined by the Planning Board, parking, garages and entrances to parking must be located to the side of the building. Screening and/or fencing is required for surface parking areas along a

- 4332 street. See Subsection (8), Landscaping, Screening and Buffers. Parking
4333 requirements are based on the Institute of Transportation Engineers (ITE) parking
4334 generation rates.
- 4335 (b). Joint-use agreements (between businesses and residences) for parking are
4336 encouraged. A plan describing how joint-use parking needs will be met is required
4337 as part of any development that proposes such parking and must be reviewed and
4338 approved by the Planning Board.
- 4339 (c). Parking requirements for nonresidential uses may be met partially or in full by
4340 parking on the street except that no parking is allowed on Route 236, Dennett
4341 Road, or Martin Road. Such on-street parking plans must be reviewed by planning
4342 staff prior to submission and then reviewed and approved by the Planning Board.
- 4343 (d). Electric car charging stations are allowed in parking lots but must not interfere
4344 with pedestrian movement on sidewalks.
- 4345 [1] Parking for development that includes trails and low intensity recreation:
4346 Development that includes the creation of public trails and low intensity
4347 recreational opportunities such as wildlife observation stations or boardwalks
4348 may apply the pertinent off-street parking standards below. All other off-street
4349 parking standards as found in § 16.7.11F(3) shall apply.
- 4350
- 4351 (e) Multiunit residential buildings and mixed-use buildings that include residential.
4352 [1] One parking space for studio and one-bedroom dwelling units.
4353 [2] One and one-half parking spaces for two-bedroom dwelling units plus one
4354 guest parking space per every four dwelling units.
4355 [3] Parking spaces for more-than-two-bedroom dwelling units.
- 4356
- 4357 (4) Loading docks, overhead doors, service areas and outdoor storage areas.
- 4358 (a) Loading docks and overhead doors must be located on the rear or side of the
4359 building. Loading docks must be screened from view by adjacent residential uses.
4360 This screening must consist of the following:
- 4361 [1] A fence, constructed of a material similar to surrounding buildings, of
4362 sufficient height as determined by the Planning Board to accomplish the
4363 screening. No fence may be less than six feet tall.
- 4364
- 4365 (b). All service areas for dumpsters, compressors, generators and similar items as well
4366 as any outdoor storage areas must be screened by a fence at least six feet tall,
4367 constructed of a material similar to surrounding buildings, and must surround the
4368 service or storage area except for the necessary ingress/egress.
- 4369
- 4370 (5) Site design
4371 Site design and building placement must be attentive to the surrounding environment
4372 including sun, wind and shade patterns related to proposed and existing buildings. A
4373 sun/shade analysis may be required by the Planning Board.
- 4374
- 4375 (6) Energy and sustainability
4376 Energy efficiency is allowed and encouraged through the use of solar power,
4377 geothermal, and other alternative and sustainable power sources.

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4379

(7) Building design standards.

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- (a) New buildings must meet the general design principles set forth in the Design Handbook except as noted below. In general, buildings should be oriented to the street from which they derive frontage, with the front of the building facing the street. The front facade must contain the following:

4384

[1] A front door for pedestrian access.

4385

[2] Windows.

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- (b). Flat roofs, proposed to locate heating, cooling, or other such mechanical or electrical apparatus off the ground, are acceptable provided that such apparatus are screened from view and the screening is designed as an integral part of the building to aid both aesthetics and noise attenuation. Flat roofs proposed for the purpose of solar array installations are also acceptable.

4393

(8) Landscaping, screening and buffers.

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- (a) A landscape plan prepared by a registered landscape architect is a submission requirement. However, a landscape plan done by other design professionals may be allowed at the Planning Board's discretion.

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- (b). Native trees, shrubs and herbaceous plantings are preferred and must be drought and salt tolerant when used along streets. A diversity of tree species (three to five species per every 12 trees) is required to provide greater resiliency to threats from introduced insect pests and diseases.

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- (c). Any required plantings approved by the Planning Board that do not survive must be replaced within one year.

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- (d) Landscaping along the street frontage of each building must consist of one of the following:

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- [1] Street trees. A minimum of one street tree must be planted for each 20 feet of street frontage. Trees may be planted in groups or spaced along the frontage. However, trees must be planted to ensure survival, using silva cells, bioretention cells or tree wells. Trees are to be a minimum of 2.5-inch caliper and 12 feet high at the time of planting. Existing large healthy trees must be preserved if practical and will count towards this requirement.

4414

4415

4416

- [2] Pocket Park. The park must be at least 200 square feet. A minimum of three trees and a bench for sitting are required. Park must be vegetated with ground cover except for walkways.

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4419

- (e) Surface parking areas that abut a street must provide screening in one of the following ways:

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4421

4422

4423

- [1] One tree per 25 feet of street frontage backed by a fence constructed of a material similar to surrounding buildings which must screen the parking area from the street except for necessary vehicular and pedestrian access. Trees must be at least 2.5-inch caliper and 12 feet high at the time of planting.

4424 [2] A combination of trees and shrubs including at least 50% evergreen species,
 4425 all at least six feet high at time of planting, in a planting bed at least eight feet
 4426 wide. Plantings must be sufficient, as determined by the Planning Board, to
 4427 screen the parking area from the street except for necessary vehicular and
 4428 pedestrian access. Planting beds may be mulched but no orange- or red-dyed
 4429 mulching material may be used.

4430 [3] A minimum of 10% of any surface parking area consisting of 10 or more
 4431 parking spaces must be landscaped with trees and vegetated islands. This
 4432 requirement is in addition to the screening requirements in Subsection
 4433 §16.4.26.D(8)(e)(i) and §16.4.26.D(8)(e)(ii) if the parking area abuts a
 4434 street. Bioretention cells and rain gardens may be utilized to meet the
 4435 landscaping requirements and perform stormwater management.

4436
 4437 (f) Buffers required between residential uses and mixed use or nonresidential uses,
 4438 and between adjacent residential zones and this zone must be 50 feet wide and
 4439 consist of one of the following as determined by the Planning Board:

- 4440 [1]. Existing natural woodland and vegetation.
- 4441 [2]. Existing natural woodland augmented by the planting of additional trees
 4442 consisting of a variety of species at least 2.5-inch caliper and 12 feet high.
- 4443 [3]. A fence at least six feet high, constructed of material similar to surrounding
 4444 buildings, with plantings of trees and shrubs at least six feet tall on either side
 4445 of the fence.

4446
 4447 (9) Open space
 4448 Open space must be provided as a percentage of the total parcel area including
 4449 freshwater wetlands, water bodies, streams and setbacks. Required open space must
 4450 be shown on the site plan with a note dedicating it as open space. The open space
 4451 must be situated to protect significant natural features and resources, minimize
 4452 environmental impacts and promote an aesthetically pleasing site.

- 4453 (a) Wherever possible, large healthy trees and areas with mature tree cover must be
 4454 included in the open space.
- 4455 (b). Location of open space must promote the continuity of open-space networks
 4456 across adjacent parcels.
- 4457 (c). Where possible, open space and open-space networks must include public trails
 4458 and low-intensity recreational opportunities.

4459
 4460 (10) Special situations
 4461 Expansions or modifications of 1,000 square feet or less to existing uses are exempt
 4462 from landscaping, screening and buffer requirements.

4463
 4464 (11) Conditions for approving special exception uses in the Neighborhood Mixed-
 4465 Use Zone.
 4466 All applications must include a narrative describing why the use proposed will
 4467 promote the general welfare (specifics may be found in § 16.3 Definitions for special
 4468 exception) of the Town of Kittery, how the use proposed will meet the special
 4469 exception criteria found in § 16.2.12.F.(3) and how the proposed development will

4470 adapt and relate to the natural environmental conditions found on the site.

4471

4472 **16.4.27 Transportation – Maine Turnpike T-MT**

4473 A. Purpose

4474 The purpose of the Transportation – Maine Turnpike Zone (T-MT) is to provide for the safe,
4475 effective, efficient and environmentally compatible use of the right-of-way owned and
4476 operated by the Maine Department of Transportation and the Maine Turnpike Authority as
4477 authorized by the state, as well as for safe and environmentally compatible buffering for the
4478 adjacent land uses along the right-of-way.

4479

4480 B. Permitted uses: Permitted and special exception land uses include the highway,
4481 information center and other uses as authorized by the state.

4482

4483 C. Special exception uses: none.

4484

4485 D. Standards.

4486 (1) The design and performance standards of § 16.5, 16.7 and 16.8 and the Shoreland and
4487 Resource Protection Overlay Zones, where applicable.

4488 (2) Dimensional standards.

4489 (a) Minimum land area per dwelling unit: not applicable.

4490 (b) Minimum lot size: not applicable.

4491 (c) Minimum street frontage: not applicable.

4492 (d) Minimum front yard: not applicable.

4493 (e) Maximum building coverage: not applicable.

4494 (f) Minimum rear and side yards: not applicable.

4495 (g) Maximum building height: 35 feet.

4496 (h) Minimum distance between principal buildings on the same lot: not applicable.

4497 (i) Minimum setback from water bodies and wetlands: not applicable.

4498

4499 E. Shoreland Overlay Zone OZ-SL – Transportation – Maine Turnpike (T-MT)

4500 (1) Permitted uses: Permitted and special exception land uses include the highway,
4501 information center and other uses as authorized by the state.

4502 (2) Special Exceptions: None.

4503 (3) See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL

4504

4505 F. Resource Protection Overlay Zone OZ-RP – Transportation – Maine Turnpike (T-MT)

4506 (1) Permitted Uses.

4507 (a). Permitted land uses include the highway, information center and other uses as
4508 authorized by the state.

4509 (2) Special Exception uses: none.

4510

4511 **16.4.28 Shoreland Overlay Zone OZ-SL**

4512 A. Purpose

4513 The purpose of the Shoreland Overlay Zone OZ-SL is to further the maintenance of safe and
4514 healthful conditions; to prevent and control water pollution; to protect fish spawning grounds,
4515 aquatic life, bird and other wildlife habitat; to protect buildings and lands from flooding and
4516 accelerated erosion; to protect archaeological and historic resources, to protect commercial
4517 fishing and maritime industries; to protect freshwater and coastal wetlands; to control
4518 building sites, placement of structures and land uses; to conserve shore cover and visual as
4519 well as actual points of access to inland and coastal waters; to conserve natural beauty and
4520 open space; and to anticipate and respond to the impacts of development in shoreland areas.

4521

4522 B. Authority

4523 These provisions have been prepared in accordance with the provisions of 38 M.R.S. §§ 435
4524 to 449.

4525

4526 C. Applicability and boundaries

4527 The provisions of this section apply to all uses, lots and structures within the following:

4528

4529 Shoreland Overlay Zone – Water Body/Wetland Protection Area 250 feet (OZ-SL-250
4530 feet): Land areas within 250 feet, horizontal distance, of the:

4531

(a) Normal high-water line of any river or saltwater body.

4532

(b). Upland edge of a coastal wetland, including all areas affected by tidal action.

4533

(c). Land edge of a fresh water wetland connecting to a protected stream as identified
4534 on the Zoning Map.

4535

4536 Shoreland Overlay Zone – Stream Protection Area 75 feet (OZ-SL-75 feet): Land areas
4537 within 75 feet, horizontal distance, of the normal high-water line of a stream, exclusive
4538 of those areas within 250 feet horizontal distance of the normal high-water line of a
4539 river or within 250 feet horizontal distance of the upland edge of a freshwater or coastal
4540 wetland.

4541

(a) However, where a stream and its associated Shoreland Overlay Zone area are
4542 located within 250 feet, horizontal distance, of the above water bodies or
4543 wetlands, that land area will be regulated under the provisions of the Shoreland
4544 Overlay Zone associated with that water body or wetland.

4545

(b) Where uncertainty exists as to the exact location of the Shoreland Overlay Zone
4546 boundary, the Planning Board, with expert consultation as may be required, is the
4547 final authority as to location.

4548 D. Permitted and special exception land use

4549 The permitted and special exception uses in the Shoreland Overlay Zone section are allowed
4550 in accordance with the land use standards established in the underlying base zone in this
4551 chapter and land uses identified by the Mandatory Shoreland Zoning Act, 38 M.R.S. §§ 435
4552 to 449.

4553

- 4554 E. Standards
- 4555 Minimum lot standards
- 4556 (a) Minimum lot size by base zone, within the:
- 4557 [1].Residential-Village (R-V) Zone: 8,000 square feet.
- 4558 [2].Residential-Urban (R-U) Zone: 20,000 square feet.
- 4559 [3].Residential-Rural (R-RL), Residential-Suburban (R-S) and Residential-Kittery
- 4560 Point Village (R-KPV) Zones: 40,000 square feet.
- 4561 [4].Commercial (C1), (C2), (C3), Industrial (IND), Business-Local (B-L) and
- 4562 Business-Local 1 (B-L1) Zones: 60,000 square feet.
- 4563 [5].Residential-Rural Conservation (R-RLC) Zone: 80,000 square feet.
- 4564 [6].Business-Park (B-PK) Zone: 120,000 square feet.
- 4565 [7].Mixed-Use Badgers Island (MU-BI) Zone: 6,000 square feet.
- 4566 [8].Mixed-Use Kittery Foreside (MU-KF) Zone: 10,000 square feet.
- 4567
- 4568 (b).Minimum land area per dwelling unit by base zone, within the:
- 4569 [1].Residential-Village (R-V) Zone: 8,000 square feet.
- 4570 [2].Business-Park (B-PK) Zone: 10,000 square feet.
- 4571 [3].Residential-Urban (R-U), Business-Local (B-L) and Business-Local 1 (B-L1)
- 4572 Zones: 20,000 square feet.
- 4573 [4].Mixed-Use (M-U), Residential-Rural (R-RL), Residential-Suburban (R-S) and
- 4574 Residential-Kittery Point Village (R-KPV) Zones: 40,000 square feet.
- 4575 [5].Residential-Rural Conservation (R-RLC) Zone: 80,000 square feet.
- 4576 [6].Mixed-Use Badgers Island (MU-BI) Zone: 6,000 square feet. [NOTE: 3,000
- 4577 square feet for the first two dwelling units.]
- 4578 [7].Mixed-Use Kittery Foreside (MU-KF) Zone: 10,000 square feet.
- 4579
- 4580 (c).Minimum shore frontage by base zone per lot and dwelling unit.
- 4581 [1].Mixed Use-Badgers Island (MU-BI): 25 feet.
- 4582
- 4583 [2].Residential-Village (R-V), Residential Urban (R-U), and Mixed-Use Kittery
- 4584 Foreside (MU-KF) Zones: 50 feet.
- 4585
- 4586 [3].Mixed-Use (M-U), Commercial (C1), (C2), (C3), Industrial (IND), Business-
- 4587 Park (B-PK), Business-Local (B-L) and Business-Local 1 (B-L1) Zones:
- 4588 [a]. Shore frontage per lot: 150 feet.
- 4589 [b]. Shore frontage per dwelling unit: 50 feet.
- 4590
- 4591 [4].Residential-Rural (R-RL), Residential-Suburban (R-S), and Residential-
- 4592 Kittery Point Village (R-KPV) Zones:
- 4593 [a]. Shore frontage per lot: 150 feet.
- 4594 [b]. Shore frontage per dwelling unit: 100 feet.
- 4595
- 4596 [5].Residential-Rural Conservation (R-RLC) Zone (per lot and dwelling unit): 250

- 4597 feet.
- 4598 [6]. The minimum shore frontage requirement for public and private recreational
- 4599 facilities is the same as that for residential development in the respective zone.
- 4600
- 4601 The total footprint of devegetated area must not exceed 20% of the lot area located
- 4602 within the Shoreland Overlay Zone, except in the following zones:
- 4603 (a) Mixed-Use – Badgers Island (MU-BI) and Mixed-Use – Kittery Foreside (MU-
- 4604 KF) Zones, where the maximum devegetated area is 60%. The Board of Appeals
- 4605 may approve a miscellaneous appeal application to increase allowable devegetated
- 4606 area in the Mixed-Use – Badgers Island (MU-B1) Zone to 70% where it is clearly
- 4607 demonstrated that no practicable alternative exists to accommodate a water-
- 4608 dependent use.
- 4609 (b) Commercial (C1, C-2, C-3), Business – Local (B-L and B-L1) and Industrial
- 4610 (IND) Zones where the maximum devegetated area is 70%.
- 4611 (c) Residential – Urban (R-U) Zone where the lot is equal to or less than 10,000
- 4612 square feet, the maximum devegetated area is 50%.
- 4613
- 4614 Principal and accessory structures — setbacks and development
- 4615 (a) All new principal and accessory structures [except certain patios and decks per §
- 4616 16.4.28.E(3)b] must be set back at least 100 feet, horizontal distance, from the
- 4617 normal high-water line of any water bodies, tributary streams, the upland edge of
- 4618 a coastal wetland, or the upland edge of a freshwater wetland, with the following
- 4619 exceptions:
- 4620 [1]. In the Mixed Use – Badgers Island and Kittery Foreside Zones, the setback
- 4621 requirement is 75 feet, horizontal distance, from the normal high-water line of
- 4622 any water bodies, or the upland edge of a wetland, unless modified according
- 4623 to the terms of §§ 16.4.24.D(1) through (6) and 16.4.25.D
- 4624 [2]. In the Resource Protection Overlay Zone, the setback requirement is 250 feet,
- 4625 horizontal distance, except for structures, roads, parking spaces or other
- 4626 regulated objects specifically allowed in the zone, in which case the setback
- 4627 requirements specified above apply.
- 4628 [3]. The water body, tributary stream, or wetland setbacks do not apply to
- 4629 structures that require direct access to the water body or wetland as an
- 4630 operational necessity, such as piers and retaining walls, nor do they apply to
- 4631 other functionally water-dependent uses, as defined in § 16.3.
- 4632
- 4633 (b). Accessory patios or decks no larger than 500 square feet in area must be set back
- 4634 at least 75 feet from the normal high-water line of any water bodies, tributary
- 4635 streams, the upland edge of a coastal wetland, or the upland edge of a freshwater
- 4636 wetland. Other patios and decks must satisfy the normal setback required for
- 4637 principal structures in the Shoreland Overlay Zone.
- 4638
- 4639 (c). If there is a bluff, setback measurements for principal structures, water and
- 4640 wetland must be taken from the top of a coastal bluff that has been identified on
- 4641 coastal bluff maps as being "highly unstable" or "unstable" by the Maine
- 4642 Geological Survey pursuant to its "Classification of Coastal Bluffs" and published
- 4643 on the most recent Coastal Bluff Map. If the applicant and Code Enforcement

- 4644 Officer are in disagreement as to the specific location of a "highly unstable" or
4645 "unstable" bluff, or where the top of the bluff is located, the applicant is
4646 responsible for the employment of a Maine-registered professional engineer, a
4647 Maine-certified soil scientist, or a Maine state geologist qualified to make a
4648 determination. If agreement is still not reached, the applicant may appeal the
4649 matter to the Board of Appeals.
4650
- 4651 (d). Public access to the waterfront must be discouraged through the use of visually
4652 compatible fencing and/or landscape barriers where parking lots, driveways or
4653 pedestrian routes abut the protective buffer. The planting or retention of thorny
4654 shrubs, such as wild rose or raspberry plants, or dense shrubbery along the
4655 perimeter of the protective buffer is encouraged as a landscape barrier. If hedges
4656 are used as an element of a landscape barrier, they must form a solid continuous
4657 visual screen of at least three feet in height immediately upon planting.
4658
- 4659 (e). On a nonconforming lot of record on which only a residential structure exists, and
4660 it is not possible to place an accessory structure meeting the required water body,
4661 tributary stream or wetland setbacks, the Code Enforcement Officer may issue a
4662 permit to place a single accessory structure, with no utilities, for the storage of
4663 yard tools and similar equipment. Such accessory structure must not exceed 80
4664 square feet in area nor eight feet in height and must be located as far from the
4665 shoreline or tributary stream as practical and meet all other applicable standards,
4666 including lot coverage and vegetation clearing limitations. In no case will the
4667 structure be allowed to be situated closer to the shoreline or tributary stream than
4668 the existing principal structure.
4669
- 4670 (f). The lowest floor elevation or openings of all buildings and structures, including
4671 basements, must be elevated at least one foot above the elevation of the one-
4672 hundred-year flood, the flood of record or, in the absence of these, the flood as
4673 defined by soil types identified as recent floodplain soils.
4674
- 4675 (g). Stairways or similar structures may be allowed with a permit from the Code
4676 Enforcement Officer to provide shoreline access in areas of steep slopes or
4677 unstable soils, provided the:
- 4678 [1]. Structure is limited to a maximum of four feet in width;
- 4679 [a]. Structure does not extend below or over the normal high-water line of a
4680 water body or upland edge of a wetland (unless permitted by the
4681 Department of Environmental Protection pursuant to the Natural
4682 Resources Protection Act, 38 M.R.S. § 480-C); and
- 4683 [2]. Applicant demonstrates that no reasonable access alternative exists on the
4684 property.
4685
- 4686 (h). If more than one dwelling unit, principal governmental, institutional, commercial
4687 or industrial structure or use, or combination thereof, is constructed or established
4688 on a single parcel in the Shoreland Overlay Zone, all dimensional requirements
4689 shall be met for each additional dwelling unit, principal structure, or use.
4690

4691 **16.4.29 Resource Protection Overlay Zone OZ-RP**

4692 A. Purpose

4693 The purposes of this zone are to further the maintenance of safe and healthful conditions;
4694 prevent and control potential water pollution sources; protect spawning grounds, fish, aquatic
4695 life, bird and other wildlife habitat; and conserve shore cover, visual as well as actual point of
4696 access to inland and coastal waters, and natural beauty.

4697

4698 B. Authority

4699 These provisions have been prepared in accordance with the provisions of 38 M.R.S. §§ 435
4700 to 449.

4701

4702 C. Applicability and boundaries

4703 The provisions of this section apply to all uses, lots and structures within areas where the
4704 existing conservation and accessory development is consistent with the allowed uses for this
4705 zone. The Resource Protection Overlay Zone includes areas where development would
4706 adversely affect water quality, productive habitat, biological ecosystems, or scenic and
4707 natural values. This includes the following areas when they also occur within the limits of the
4708 Shoreland Overlay Zone, exclusive of a stream protection area, except currently developed
4709 areas and areas that meet the criteria for commercial fisheries/maritime uses:

4710 Waterfowl and wading bird habitat/water body related wetland areas. Land areas within
4711 250 feet, horizontal distance, of the upland edge of freshwater wetlands, salt marshes
4712 and salt meadows, and wetlands associated with rivers which are rated "moderate" or
4713 "high" value waterfowl and wading bird habitat, including nesting and feeding areas as
4714 identified as of December 31, 2008, and salt marshes and salt meadows as identified as
4715 of January 1, 1973, by the Maine Department of Inland Fisheries and Wildlife
4716 (MDIF&W). For the purposes of this section "wetlands associated with rivers" means:
4717 areas characterized by nonforested wetland vegetation and hydric soils that are
4718 contiguous with a river and have a surface elevation at or below the water level of the
4719 river during the period of normal high water. "Wetlands associated with rivers" are
4720 considered to be part of that river.

4721

4722 Steep slope areas.

4723 (a) Land areas that have two or more contiguous acres of land where the slopes are
4724 20% or greater; and

4725 (b) Land areas along rivers subject to severe bank erosion, undercutting or riverbed
4726 movement; and

4727 (c) Land adjacent to tidal waters which are subject to severe erosion or mass
4728 movement, such as steep coastal bluffs.

4729

4730 Independent wetland areas. Land areas of two or more contiguous acres supporting
4731 wetland vegetation and hydric soils which are not part of a freshwater or coastal
4732 wetland as defined and which are not surficially connected to a water body during the
4733 period of normal high water.

4734

4735 Floodplain areas. This includes areas along rivers, areas adjacent to tidal waters, and
4736 other areas susceptible to flooding as defined as being located within the one-hundred-
4737 year floodplain as designated on the FEMA Flood Insurance Rate Maps or Flood
4738 Hazard Boundary Maps, or the flood of record or, in the absence of these, by soil types
4739 identified as recent floodplain soils.

4740

4741 D. Standards

4742 The design and performance standards of § 16.5, 16.7 and 16.8 and Shoreland Overlay
4743 Zone provisions of § 16.4.28 apply, where applicable, in addition to the following
4744 standards, whichever is the most restrictive.

4745 Dimensional standards such as front, side and rear yards, building coverage, height and
4746 the like are the same as those in the underlying zone.

4747 Road construction and parking facilities are allowed in the Resource Protection Overlay
4748 Zone only where no reasonable alternative route or location is available outside the
4749 Resource Protection Overlay Zone, in which case a permit or site plan or subdivision
4750 plan approval is required by the Planning Board.

4751 Clearing or removal of vegetation for uses, other than timber harvesting as limited per §
4752 16.5.29, in a Resource Protection Overlay Zone, is prohibited within the strip of land
4753 extending 100 feet, horizontal distance, inland from the normal high-water line, except
4754 to remove safety hazards. Elsewhere in a Resource Protection Overlay Zone, the cutting
4755 or removal of vegetation is limited to that which is necessary for uses expressly
4756 authorized in the Resource Protection Overlay Zone.

4757

4758 **16.4.30 Commercial Fisheries/Maritime Activities Overlay Zone OZ-CFMU**

4759 A. Purpose

4760 The purpose of the Commercial Fisheries/Maritime Uses Overlay Zone is to provide for the
4761 development and expansion of water-dependent commercial fisheries/maritime activities.
4762 Commercial fisheries/maritime activities and other areas suitable for functionally water-
4763 dependent uses, considers:

4764 Shelter from prevailing winds and waves;

4765 Slope of the land within 250 feet, horizontal distance, of the normal high-water line;

4766 Depth of the water within 150 feet, horizontal distance, of the shoreline;

4767 Available support facilities, including utilities and transportation facilities; and

4768 Compatibility with adjacent upland uses.

4769

4770 B. Authority

4771 These provisions have been prepared in accordance with the provisions of 38 M.R.S. §§ 435
4772 to 449.

4773

4774 C. Applicability and boundaries

4775 The provisions of this section apply to all uses, lots and structures within areas where the
4776 existing predominant pattern of development is consistent with the allowed uses for this
4777 overlay zone, where consistent with dimensional requirements of the underlying base zone,
4778 and where the active use of lands, buildings, wharves, piers, floats or landings with the
4779 principal intent of such activity is the production of income by an individual or legal business
4780 entity through the operation of a vessel(s) as shown on the Zoning Map. The activity may be
4781 either a principal or accessory use, as defined in this title.

4782

4783 D. Permitted uses: Functionally water-dependent Commercial Fisheries/Marine Activities.

4784

4785 E. Special exception uses: none

4786

4787 F. Standards. Dimensional standards of the underlying base and overlay zone(s).

4788

4789 G. Prohibited uses. All permitted uses in the base zones, including R-KPV, R-U, R-S, IND
4790 and MU-KF, except as permitted herein.

4791

4792

4793

1 **16.5 General Performance Standards**

2 **16.5.1 General**

3 The purpose of this chapter is to outline development design and performance standards to
4 ensure public health, safety and welfare.

5 16.5.2 Abutter Notice

6 A. Purpose.

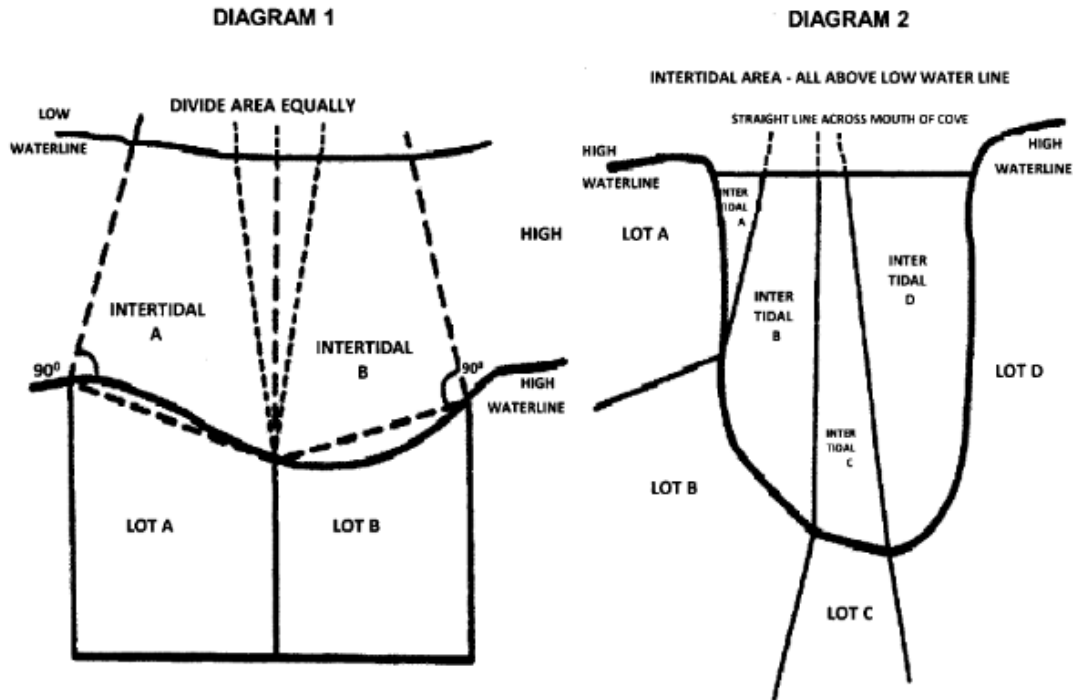
7 It is the intent of this article to impose standards to identify abutting property owners who
8 must be notified in writing when new development or redevelopment is proposed within 150
9 feet of their property boundary(ies).

10 B. Applicability.

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

17 (2) These requirements relate solely to the notification of property owners who must be notified
18 in writing when new development or redevelopment is proposed within 150 feet of their
19 property boundary(ies). This notification must include intertidal land below the normal high-
20 water line, but not that land beyond 100 rods (1,650 feet) distant from the normal high water
21 line, or that land below the normal low-water line. Where question exists regarding to
22 ownership of intertidal lands, consult Figure 1 entitled, “Formula for Determining
23 Ownership of Intertidal Land as a Guide for Identifying Abutters,” attached to this chapter.

Figure 1. Abutters



24

Figure 1 Formula for Determining Ownership of Intertidal Land as a Guide for Identifying

25 (3) For a wireless communication system facility (WCSF) plan application, the Town Planner
 26 must cause written notice of the hearing sent by postage paid, first-class mail, provided by
 27 the applicant, at least seven days prior to the hearing to all owners of abutting property and
 28 property located within 1,000 feet of any property line of the property located within 1,000
 29 feet of the proposed telecommunications facility. The applicant must provide this
 30 notification and must present proof of such notification to the Town Planner. The
 31 notification must include: the name of the applicant, location of the property, a brief
 32 description of the project, and a plot plan identifying the proposed site layout in relation to
 33 nearby streets and properties.

34 16.5.3 Accessory Dwelling Units

35 A. Purpose.

36 It is the intent of this article to provide standards that enable homeowners to create accessory
 37 dwelling units that are compatible with this title and to provide a means for residents,
 38 including seniors, single parents, and families with grown children, to remain in their homes

39 and neighborhoods, and increase the housing stock of existing neighborhoods in a manner
40 that is compatible with their size and scale, and allow more efficient use of existing housing
41 stock and infrastructure, and provide a broader range of affordable housing options. The
42 purpose of this article is not intended to create a new supply of short-term rental (STR) units,
43 such as those commonly advertised to tourists.

44 B. Applicability.

45 (1) An accessory dwelling unit is allowed in all zoning districts where the use is permitted in
46 Chapter 16.4. The unit must be located:

47 (a) Within an existing structure, either principal or accessory on the property; or

48 (b) Attached to the existing principal structure, sharing a common wall; or

49 (c) Within a new accessory structure constructed for this purpose on the property.

50 (2) Accessory dwelling units that have a valid certificate of occupancy or have vested rights in
51 the permitting process with an active building permit as of April 28, 2020 are exempted
52 from the use standard, § 16.5.3.D(3).

53 C. Application for accessory dwelling unit.

54 (1) An application for an accessory dwelling unit must be made by the owner of the parcel on
55 which the primary residential unit sits. The completed application and associated fees must
56 be submitted to the Code Enforcement Officer for review.

57 (2) Applications for an accessory dwelling unit that meets the unit size standards and
58 development standards contained in this article may be approved administratively and
59 require approval by the Code Enforcement Officer.

60 (3) An accessory dwelling unit that fails to meet the standards provided in this article may not
61 receive administrative approval; however, the accessory dwelling unit may still be permitted
62 pursuant to § 16.5.3.D(4) below.

63 D. Accessory dwelling unit standards.

64 (1) Lot standards.

65 (a) Legal lot/residence. An accessory dwelling unit is allowed only on lots within the Town
66 that contain one legal, single-family residence as the primary unit.

67 (b) Number of accessory dwelling units per lot. No more than one accessory dwelling unit is
68 permitted on a lot.

69 (c) Zone lot size and unit density. The property on which an accessory dwelling unit is
70 located must meet the size required by the applicable zoning standards for the principal
71 residence, except in the case of legally nonconforming lots. However, an accessory dwelling

72 unit is exempt from the density requirements of the zone in which it is located.

73 (d) Setbacks and coverage. Yard setbacks for the zone must be met. However, for legally
74 nonconforming lots where a proposed accessory dwelling unit will be attached to a
75 principal dwelling unit and cannot meet the zone's side and rear yard setbacks, the
76 percentage by which a lot is smaller than the required lot size for the zone will dictate the
77 required setback for that lot. For example, a 30,000 square foot legally nonconforming lot in
78 a zone that requires 40,000 square feet would require side and rear yard setbacks that are
79 75% of the zone's side and rear yard setbacks. Building coverage requirements will remain
80 as required by the zone.

81 (e) Utility connections. Accessory dwelling units must be connected to adequate water and
82 wastewater services.

83 [1] Public sewer.

84 [a] Service: written verification must be provided of adequate service to support the
85 additional flow from the Superintendent of Wastewater Treatment Facilities.

86 [b] Fees: Payment of appropriate fees for connection to the municipal sewer system
87 is required prior to obtaining the certificate of occupancy.

88 [2] Septic systems. Verification of adequate sewage disposal for subsurface waste
89 disposal is required. The septic system, existing or proposed, must be verified as
90 adequate or reconstructed as required. Plans for subsurface waste disposal must be
91 prepared by a Maine-licensed site evaluator in full compliance with the State of
92 Maine Subsurface Wastewater Disposal Rules, 10-144C.M.R. 241.

93 [3] Public water. Verification in writing is required from the Kittery Water District for
94 volume and supply.

95 [4] Wells. Verification of the potable water supply for private wells is required. Tests of
96 the existing well or proposed well, if applicable, must indicate that the water supply is
97 potable and acceptable for domestic use and must conform to the recommendations
98 included in the "Manual for Evaluating Public Drinking Water Supplies, Public
99 Health Service No. 1180 (1969)."

100 (f) Parking. Each accessory dwelling unit must have one on-site parking space in addition to
101 the parking for the primary dwelling unit. Tandem parking is permitted.

102 (g) Private road or right-of-way access. Where an applicant seeks to locate an accessory
103 dwelling unit on a privately maintained road or right-of-way the following applies:

104 [1] Applicant must submit written consent from the road or homeowner's association or
105 owner and parties responsible for street maintenance.

106 (2) Unit standards.

107 (a) Unit size. The size of an accessory dwelling unit must meet the minimum size for a
 108 dwelling unit as set by building code standards adopted and amended from time to time by
 109 Maine's Bureau of Building Codes and Standards, and be no larger than 1,000 square feet.
 110 For principal dwelling units 1,000 square feet or smaller, an accessory dwelling unit may be
 111 no greater than 80% of the size of the principal dwelling unit, as measured in square feet. An
 112 accessory dwelling unit may have no more than two bedrooms.

113 (b) Unit location.

114 [1] An accessory dwelling unit must meet one or more of the following conditions:

115 [a] Be fully constructed within the existing footprint of any legal primary residence
 116 or accessory building; or

117 [b] Share a common wall with the principal residence, providing yard setbacks per
 118 § 16.5.3(2)(a); or

119 [c] Be constructed as a new accessory building containing an accessory dwelling
 120 unit, providing yard setbacks can be met for the zone.

121 [2] Accessory dwelling units will be allowed to be fully constructed within the principal
 122 residence even if the building does not meet yard setbacks.

123 [3] Accessory dwelling units will not be allowed in accessory buildings encroaching on
 124 yard setbacks.

125 (3) Use Standards. The accessory dwelling unit may not be rented to the same person or party
 126 for less than a thirty-day period.

127 (4) Development standards. Should an accessory dwelling unit fail to meet the applicable unit
 128 standards listed in this article, the accessory dwelling unit may still be allowed if the
 129 applicant obtains approval from the Board of Appeals under the provisions of a
 130 miscellaneous variation request, as outlines in § 16.2.12. The Board of Appeals shall review
 131 any appeal decision in conformance with § 16.2.12.F, Basis for decision.

132 (5) Violations. A violation of the use standard § 16.5.3.D(3) will lose the certificate of
 133 occupancy for the unit for no less than 30 days, and be assessed a penalty of \$500.

134 16.5.4 Affordable Housing

135 A. Purpose.

136 Recognizing that the market alone will not provide the range and diversity of housing types
 137 needed for a vibrant community, the Town of Kittery desires to encourage affordable housing for
 138 households of modest means and for all ages. The purpose of this ordinance is to offer incentives
 139 to developers to include affordable housing, either for lease or sale, particularly in those zones
 140 that offer utilities and/or services, and to mitigate the impacts of market-rate housing
 141 development on the limited supply of land available for suitable using. The Town looks to its

142 comprehensive plan and finds that this ordinance will assist in meeting housing goals and in
143 promoting the public health, safety and welfare of its residents.

144 B. Applicability.

145 (1) Affordable housing regulations are applicable only in zones which explicitly state so and as
146 follows:

147 (a) All development involving three or more new dwelling units. The proposed dwelling
148 units may be new construction, created through a change of use or created through a
149 renovation, rehabilitation or remodel. Projects may not be phased or segmented to avoid
150 compliance with these requirements.

151 (b) All major subdivisions, including those planned in phases, in all zones that create 5 or
152 more lots. Minor subdivisions are exempt.

153 (c) All developments as described in 1) and 2) above whether the dwelling units proposed
154 are intended for sale or for lease.

155 (2) Affordable housing regulations do not apply to hotels, motels, rooming houses, inns, bed
156 and breakfasts, residential care facilities or elder care facilities.

157 C. Requirements.

158 (1) For projects proposing five (5) or more dwelling units, at least 10% of the units, rounded
159 down to the nearest whole number, must be affordable housing units, as defined by this
160 code. Any fractional unit obligation left after the rounding results in a proportional payment-
161 in-lieu (see 3) below). For example, if 15 units are proposed, then one affordable unit is
162 required plus 50% of a payment-in-lieu. If an additional affordable unit is offered for the
163 fractional unit obligation, no payment-in-lieu is required.

164 (2) The affordable housing units must remain affordable (via a recorded land use restriction,
165 deed restriction or other legal instrument, a copy of which must be submitted to the Town
166 prior to issuance of any building permits) for the longest term permitted under federal, state
167 and local laws and ordinances, or 30 years, whichever is greater.

168 (3) As an alternative to providing affordable housing units, projects may pay a fee in lieu of
169 some or all of the units. In-lieu fees shall be paid into the Kittery Housing Reserve Fund, as
170 ordained by the Kittery Town Council. The fee for affordable units not provided must be
171 established by the Kittery Town Council in the schedule of fees.

172 (4) If the developer prefers to provide a payment-in-lieu instead of the required affordable
173 housing units, that proportional payment will be calculated based on the number of
174 affordable housing units that are required plus any fractional unit obligation. Using the
175 example above, if 15 units are proposed, the developer would provide 1.5 times the current
176 rate set by the Town.

177 D. Location.

178 (1) Required affordable housing may be located either on-site with any market rate dwelling
179 units or off-site within areas appropriately zoned for residential use. For development
180 proposed in the C-1, C-3, B-L and B-L1 zones, any off-site affordable housing must be
181 located within one of those zones.

182 (2) Off-site affordable housing may be new construction, a rehabilitation, remodel or renovation
183 of an existing structure, or a change of use from non-residential to residential.

184 (3) Developers of market-rate units for sale who seek to provide the required affordable housing
185 units off-site may opt to provide such dwelling units as rentals, subject to review and
186 approval by the Planning Board.

187 E. Incentives.

188 (1) Zoning districts having density incentives may be reviewed under the pertinent zone located
189 in §16.4 Land Use Zone Regulations.

190 (2) The Town will reduce the permitting costs for developments including affordable housing as
191 follows:

192 (a) For developments comprised of 10% – 15% affordable housing units: 10% off total
193 permitting costs except for sewer connection fees.

194 (b) For developments comprised of 16% – 24% affordable housing units: 15% off total
195 permitting costs except for sewer connection fees.

196 (c) For developments comprised of 25% and over affordable housing units: 20% off total
197 permitting costs except for sewer connection fees.

198 F. Standards.

199 (1) Affordable housing units must be built in reasonable accordance with any market-rate units
200 such that at minimum, for every five market rate units built, one affordable unit must be
201 completed. All affordable housing units in a development must have received a certificate of
202 occupancy before the final market rate unit receives such. If a development is proposed for
203 five dwelling units, including one affordable unit, that affordable unit must be completed
204 before the last market rate unit receives its certificate of occupancy.

205 (2) When affordable housing units are part of a development which also includes market rate
206 housing units, the outside appearance of affordable units must be similar to the market rate
207 units and any affordable units must be integrated into the development as a whole.
208 Affordable units cannot be confined to one building of a multiple building development
209 except in the cases of cottage clusters, accessory dwelling units or two-family residences.

210 (3) Affordable housing units need not be the same size as market rate housing units but the
211 number of bedrooms in each such dwelling unit may not be less than 10% of the total
212 number of market rate bedrooms in the development, rounded up when the fractional portion
213 is .5 or more. For example, a five-unit multi-family dwelling with four market rate housing

214 units of 2 bedrooms each would be required to provide one affordable housing unit with one
215 bedroom.

216 (a) Studio dwelling units will be counted as a one-bedroom unit. In cases where a
217 development is providing only studio apartments and one-bedroom apartments, the Planning
218 Board has the authority to decide whether each required affordable housing unit will be a
219 studio or one-bedroom unit.

220 (4) Affordable housing units to be located off-site must be of comparable quality with the same
221 number of bedrooms (see 3) above) as any new affordable housing units that would be
222 created by the project on-site. The Town will not accept off-site units that are run-down or
223 show signs of substantial wear or deterioration. This includes but is not limited to: heating
224 and cooling systems, plumbing, wiring, appliances, flooring, walls, counters, cabinets, and
225 fixtures as well as roofing, siding, doors and windows.

226 G. Eligibility and Restrictions.

227 (1) Affordable housing units or lots that will be owner-occupied must be:

228 (a) Restricted to households having an income that does not exceed 120% of the area median
229 income for the family size having the same number of persons as the subject household for
230 the York-Kittery-South Berwick, Maine, Metro Fair Market Area (HMFA), as published by
231 the U.S. Department of Housing and Urban Development as of the date of the buyer’s
232 application, and whose housing and utility costs do not exceed 30 percent of the household’s
233 annual gross income; and

234 (b) Maintained as affordable housing units through a land use restriction agreement with the
235 Town of Kittery or its designee for a period no less than the maximum period permitted by
236 Maine law or thirty (30) years, whichever is longer.

237 (2) Affordable housing units that will be leased must be:

238 (a) Restricted to households having an income that does not exceed 80% of the area median
239 income for the family size having the same number of persons as the subject household for
240 the York-Kittery- South Berwick, Maine, Metro Fair Market Area, as published by the U.S.
241 Department of Housing and Urban Development as of the date of the household’s
242 application, and whose housing and utility costs do not exceed 30 percent of the household’s
243 annual gross income; and

244 (b) Maintained as affordable housing units through a land use restriction agreement with the
245 Town of Kittery or its designee for a period no less than the maximum period permitted
246 Maine law or thirty (30) years, whichever is longer.

247 (3) Subleasing of any leased affordable housing unit is not permitted. Leasing or renting,
248 including short-term rentals, of any owner-occupied affordable housing unit is not permitted.

249 H. Market and Pricing.

- 250 (1) Affordable housing units must be actively marketed for sale or lease, as applicable, to
251 eligible households, which active marketing must include, as a minimum, the following:
- 252 (a) The owner shall provide a notice of availability to the Town of intent to lease or sell an
253 affordable housing unit. Such notice must be given at least 14 days prior to advertising the
254 unit.
- 255 (b) The owner or their authorized representative shall provide an affidavit to the Town
256 confirming that household eligibility requirements have been met upon successful sale or
257 lease of an affordable housing unit. Any lease agreement must be in writing and provided to
258 the Town upon request.
- 259 (c) A non-eligible household may occupy an affordable housing unit if, despite active
260 marketing, an eligible household is not available to lease the housing unit. If an affordable
261 housing unit is being offered for lease, a non-eligible household may occupy it under the
262 following conditions:
- 263 [1] The housing unit must be marketed for 90 days after the Town’s receipt of notice of
264 availability.
- 265 [2] If no eligible household is found, a lease may be signed with a non-eligible household
266 14 days after the Town is notified of the failure to lease, with the condition that the
267 next housing unit that becomes available in the development must be offered as an
268 affordable unit so that the affordable housing requirements for the development
269 continue to be met.
- 270 (d) If, 120 days after the Town’s receipt of notice of availability, the initial sale of an
271 affordable housing unit by the developer has not occurred, a non-eligible household may
272 occupy it but that household may only lease the unit for one year from the developer thus
273 preserving the affordable restrictions. The unit must again be offered for sale upon
274 termination of the one-year lease. The lease may not be renewed. The Town must be notified
275 of the failure to sell 14 days before the lease is signed and of the subsequent lease agreement
276 within 30 days of such lease being signed.
- 277 (2) Initial maximum sale pricing of new affordable units must be set as follows:
- 278 (a) Establish the target percentage of area median income level from the York-Kittery-South
279 Berwick, Maine, Metro Fair market Area (HMFA), as published by the U.S. Department of
280 Housing and Urban Development that the unit will be marketed to. For projects being
281 funded privately, that number must be 110% of area median income. For projects that
282 include state, federal or municipal funding, that number will be influenced by the
283 stipulations attached to the funding.
- 284 (b) From the table below, determine the minimum household size based on the number of
285 bedrooms in the unit
- 286

	1 – bedroom or studio	2 - bedroom	3 - bedroom	4 - bedroom
Minimum Household Size	1	2	3	4

287

288 (c) Calculate 30% of the gross median income based on the area median income from the
 289 York- Kittery-South Berwick, Maine, Metro Fair market Area (HMFA), as published by the
 290 U.S. Department of Housing and Urban Development for the minimum household size
 291 based on the number of bedrooms. For example: (Household’s 110% AMI x .30)/12 =
 292 monthly income available for housing-related expenses

293 (d) The amount obtained from the formula above must then have other housing-related
 294 expenses, such as mortgage insurance, real estate taxes, home insurance and any
 295 HOA/condominium fees removed. Mortgage insurance must be estimated similar to current
 296 rates utilized by the Federal Housing Administration unless otherwise agreed to by the Town
 297 or its designee. What remains after removing non-mortgage related housing expenses is that
 298 portion of a household’s monthly income which is available for a mortgage payment.

299 (e) The sale price will then be set based on a 30-year fixed-rate mortgage with a minimum
 300 3.5% down payment. Larger down payments will not change the maximum allowable sale
 301 price.

302 (f) No affordable housing unit may be sold for more than the maximum sale price.

303 (3) Affordable housing units located in a development for which a home owner association
 304 (HOA) or condominium association will be established must obtain the Town’s review and
 305 approval of the draft budget and condominium/HOA documents. The Town or its designee
 306 may request quotes for costs such as replacement reserves and insurance. Fees will be shared
 307 proportionately based on the Town’s tax assessment of the properties or if that information
 308 is not available, on the initial sales price of the units. Affordable units will be assessed with
 309 consideration given to the associated restrictions. The condominium/HOA fees may not
 310 increase more than 5% any given year and cannot exceed 15% within any five-year period
 311 without a supermajority 67% vote of the association. The Town may choose to have a
 312 consultant or the Town Attorney review the condominium/HOA documents, which fee is
 313 payable by the developer.

314 (4) Maximum resale pricing of affordable units must be set as follows:

315 (a) Calculate the average percentage change in the area median income used for the initial
 316 pricing for the relevant minimum household size between the year of purchase and the
 317 present.

318 (b) Using that percentage number, calculate the new selling price. For example, if the
 319 average percentage change in area median income over the time the home was owned is 2%

320 then: (original purchase price) * 1.02) = new selling price.

321 (5) Monthly rental costs for affordable housing units will be set based on the following:

322 (a) Find the minimum household size based on the number of bedrooms from the table
 323 below:

324

	1 – bedroom or studio	2 - bedroom	3 - bedroom	4 - bedroom
Minimum Household Size	1	2	3	4

325 (b) Use the formula below to calculate the monthly rent:

326 $0.30 \times (\text{annual income based on minimum household size}/12) \text{ minus utilities} = \text{affordable}$
 327 rental unit rent.

328 (6) The Town Manager or designee, with recommendation from the Affordable Housing
 329 Committee, may modify the requirements in 16.5.4(H) as needed to advance Kittery’s
 330 affordable housing goals and objectives.

331 I. Supplemental Standards for Approval.

332 (1) Prior to submission of any plan for review by a Town land use board such as the Planning
 333 Board or Board of Appeals, the developer shall submit a Housing Plan to the Planning
 334 Department outlining the incentives sought, target median income percentage for the
 335 affordable units, proposed location of affordable housing and standards satisfied from this
 336 section.

337 (2) The Town must review the plan and certify in writing that the development for which
 338 approval is sought, as described in the Housing Plan, is consistent with all applicable
 339 requirements of this Section. If the plan does not meet the requirements, the Town must
 340 notify the developer and the project may not proceed to the applicable land use board.

341 (3) In addition, all housing-related projects in the C-1 zone must undergo master site plan
 342 review even if only one building is proposed. See Chapter 16.6.

343 (4) Prior to the submittal of any development application for consideration by a Town land use
 344 board, a pre-application conference between the developer and the Town is required to
 345 discuss the application, site design and relevant requirements of the certified Housing Plan.

346 (5) Prior to issuance of a building permit, a land use restriction agreement shall be executed
 347 between the Town Manager and the developer, in a form promulgated by the Town and
 348 approved by the Town Attorney, based on the Housing Plan, which land use restriction

349 agreement sets forth the land use restrictions required by this section.

350 (6) Prior to issuance of the certificate of occupancy for a development subject to this section,
351 the developer shall provide the Town with a fully executed copy of the land use restriction
352 agreement as recorded in the real property records maintained by the York County Registry
353 of Deeds.

354 16.5.5 Agriculture

355 A. Agricultural practices must be conducted to minimize soil erosion, sedimentation,
356 contamination and nutrient enrichment of groundwater and surface waters.

357 B. All spreading or disposal of manure must be accomplished in conformance with the
358 Manure Utilization Guidelines, November 1, 2001, published by the Maine Department of
359 Agriculture and the Nutrient Management Act (7 M.R.S. §§ 4201 to 4214).

360 C. Manure must not be stored or stockpiled within 100 feet, horizontal distance, of the
361 normal high-water line of any water bodies, tributary streams, coastal wetlands or
362 freshwater wetlands shown on the Map. Within five years of the effective date of this
363 chapter, all manure storage areas within the Shoreland Overlay and Resource Protection
364 Overlay Zones must be constructed or modified so the facility produces no discharge of
365 effluent or contaminated stormwater. Existing facilities which do not meet the setback
366 requirement may remain, but must meet the no-discharge provision within the above five-
367 year period.

368 D. Owners of agricultural activities involving tillage of soil greater than 40,000 square feet in
369 surface area or the spreading, disposal or storage of manure within the Shoreland Overlay
370 Zone are required to submit a soil and water conservation plan to the Planning Board for
371 review and approval. Nonconformance with the provisions of said approved plan will be
372 considered to be a violation of this section.

373 E. New tilling of soil within 100 feet, horizontal distance, of the normal high-water line of
374 water bodies or coastal wetlands; within 25 feet, horizontal distance, of the normal high-
375 water line of tributary streams and freshwater wetlands shown on the Map is prohibited.
376 Operations in existence on the effective date of this chapter and not in conformance with
377 this provision may be maintained.

378 F. After the effective date of this section, newly established livestock grazing areas will not
379 be permitted within 100 feet, horizontal distance, of the normal high-water line of any
380 water bodies or coastal wetlands or within 25 feet, horizontal distance, of the normal high-
381 water line of tributary streams and freshwater wetlands shown on the Zoning Map.
382 Livestock grazing associated with ongoing farm activities, and which are not in
383 conformance with the above setback provision, may continue, provided that such grazing
384 is conducted in accordance with a soil and water conservation plan that has been approved
385 by the Planning Board.

386 16.5.6 Agriculture, Piggery

- 387 A. Number of animals. There may be no more than three (3) pigs allowed on a lot.
- 388 B. Setbacks. The following distances are from the identified use to the nearest property not
389 owned or controlled by the operator/owner of the piggery:
- 390 (1) Structures: 50 ft.
- 391 (2) Feed lots, pens and extensively used areas: 100 ft.
- 392 C. Erosion and Sediment Control. The property owner shall demonstrate to the Code
393 Enforcement Officer that erosion and sediment runoff will not enter an abutting property.
- 394 D. Spreading or Disposal of Manure. All spreading or disposal of manure shall be
395 accomplished in conformance with the, "Manual of Best Management Practices for Maine
396 Agriculture," published by the Maine Department of Agriculture in January 2007, and as
397 this may be amended or superseded.

398 16.5.7 Agriculture, Poultry Facility

- 399 A. Number of Animals. These standards apply to the keeping of ten (10) or more poultry
400 animals that are six (6) months old or older in zoning districts in which Agriculture,
401 Poultry Facility is either a permitted use or a special exception use.
- 402 B. Setbacks. The following distances are from the identified nearest property not owned or
403 controlled by the operator/owner of the poultry facility:
- 404 (1) Structure, including Barn or Coops: 50 ft.
- 405 (2) Feed lots, pens and extensively used areas: 100 ft.
- 406 C. Erosion and Sediment Control. The property owner shall demonstrate to the Code
407 Enforcement Officer that erosion and sediment runoff will not enter an abutting property.
- 408 D. Spreading or Disposal of Manure. All spreading or disposal of manure shall be
409 accomplished in conformance with the, "Manual of Best Management Practices for Maine
410 Agriculture," published by the Maine Department of Agriculture in January 2007, and as
411 this may be amended or superseded.

412 16.5.8 Campgrounds and Campsites

- 413 A. Campgrounds. Campgrounds must meet the minimum requirements according to state
414 licensing procedures and the following:
- 415 (1) Campgrounds must contain a minimum of 5,000 square feet of land, not including roads and
416 driveways, for each site.
- 417 (2) Land supporting wetland vegetation and land below the normal high-water line of a water

- 418 body is not to be included in calculating land area per site.
- 419 (3) The areas intended for placement of a recreational vehicle, tent or shelter, and utility and
420 service buildings must be set back a minimum of 75 feet, horizontal distance, from the
421 normal high-water line of water bodies, tributary streams or the upland edge of a wetland.
- 422 B. Individual private campsites. Individual private campsites not associated with
423 campgrounds may be permitted in a Shoreland Overlay Zone, provided the following
424 conditions are met:
- 425 (1) One campsite per lot existing on the effective date of this chapter or 30,000 square feet of lot
426 area within the SL-OZ, whichever is less, may be permitted.
- 427 (2) Campsite placement on any lot, including the area intended for a recreational vehicle or tent
428 platform, must be set back 75 feet, horizontal distance, from the normal high-water line of
429 water bodies, tributary streams or the upland edge of a wetland.
- 430 (3) Only one recreational vehicle is allowed on a campsite. Permanent foundations for
431 recreational vehicles are prohibited. Gravel pads for temporary recreational vehicle parking
432 are permissible. No structures, other than canopies, are allowed for attachment to the
433 recreational vehicle.
- 434 (4) The clearing of vegetation for the siting of the recreational vehicle, tent or similar shelter in
435 a Resource Protection Overlay Zone is limited to 1,000 square feet.
- 436 (5) A written sewage disposal plan describing the proposed method and location of sewage
437 disposal is required for each campsite and must be approved by the local Plumbing
438 Inspector. Where disposal is off site, written authorization from the receiving facility or
439 property owner is required.
- 440 (6) Recreational vehicles, tents or similar shelters are not allowed to remain on site for a period
441 longer than 120 days per year, unless it can be demonstrated that all requirements for
442 residential structures have been met, including the installation of a subsurface sewage
443 disposal system in compliance with the State of Maine Subsurface Wastewater Disposal
444 Rules and/or the site is served by public sewage facilities.

445 16.5.9 Conservation of Wetlands Including Vernal Pools

- 446 A. Purpose.
- 447 (1) Wetlands are a fragile natural resource which, in their natural state, directly and indirectly
448 benefit the public by serving valuable functions such as pollution filtration systems (i.e.,
449 retention of suspended solids, phosphorus and other nutrients), control of floodwaters,
450 erosion control, groundwater recharge, educational and scientific study, wildlife habitat,
451 open space and recreation. Considerable wetland acreage has been lost or impaired by
452 draining, dredging, filling, excavating, building, pollution and other acts inconsistent with
453 the valuable functions and natural limitations of wetlands. It is, therefore, the intent of the
454 Town to:

- 455 (a). Prevent the development of structures and land uses within wetlands and wetland
456 setback areas that may contribute to the pollution of surface water and groundwater by
457 sewage or toxic substances;
- 458 (b). Prevent the destruction of, or significant changes to, wetlands which provide flood and
459 shoreline protection, recharge groundwater supplies, and augment stream flow during
460 dry periods;
- 461 (c). Protect wetland areas and promote healthy wetland buffers that will preserve and
462 enhance the wetlands;
- 463 (d). Protect wildlife habitats, such as vernal pools, deer habitat, nesting sites, etc., and
464 maintain ecological balances; and
- 465 (e). Establish maintenance responsibility and/or fees to protect and maintain the wetland
466 areas.
- 467 (2) The number of healthy, functional wetlands in Kittery is decreasing; therefore, practices and
468 strategies, such as buffering and the avoidance of wetland alterations that serve to protect
469 functional wetlands and the repair of degraded wetlands, are encouraged. The reviewing
470 authority will review plans for proposed development within 100 feet of a wetland to
471 determine if wetlands of special significance are impacted. The applicant may be required to
472 pay the cost of an independent study. For the reviewing authorities, refer to § 16.2.
- 473 (3) Wetlands of special significance have one or more of the following characteristics:
- 474 (a). Critically imperiled or imperiled community. The freshwater wetland contains a natural
475 community that is "critically imperiled" as defined by the Maine Natural Areas Program.
- 476 (b). Significant wildlife habitat. The freshwater wetland contains significant wildlife habitat
477 as defined by 38 M.R.S. §480-B(10).
- 478 (c). Location near coastal wetland. The freshwater wetland is located within 250 feet of a
479 coastal wetland.
- 480 (d). Location near a water body. The freshwater wetland is located within 250 feet of the
481 normal high-water line and within the same watershed of a lake or pond.
- 482 (e). Aquatic vegetation, emergent marsh vegetation or open water. The freshwater wetland
483 contains, under normal circumstances, at least 20,000 square feet of aquatic vegetation,
484 emergent marsh vegetation or open water, unless the twenty-thousand or more square
485 foot area is the result of an artificial pond or impoundment.
- 486 (f). Wetlands subject to flooding. The freshwater wetland is inundated with floodwater
487 during a one-hundred-year flood event based on flood insurance maps produced by the
488 Federal Emergency Management Agency or other site-specific information.
- 489 (g). Peatlands. The freshwater wetland is or contains peatlands, except that the Planning

490 Board may determine that a previously mined peatland, or portion thereof, is not a
491 wetland of special significance.

492 (h). River, stream or brook. The freshwater wetland is located within 25 feet of a river,
493 stream or brook.

494 (i). Monetary value. An estimation can be determined based on the importance of the
495 wetland with respect to the individual or collective functions it provides.

496 (j). Vernal pools. The wetland contains a particular aquatic habitat as defined by the Maine
497 Department of Environmental Protection (MDEP), including those mapped as significant
498 vernal pools by MDEP.

499 B. Wetlands boundaries.

500 The definition of wetland boundaries is as described in this section and in § 16.3. Planning
501 Board approval to alter a wetland area one acre or larger in size will not be issued until the
502 applicant has submitted to the Town a wetlands delineation map and summary prepared by
503 a qualified wetlands scientist or a Maine-certified soil scientist, at the applicant's expense.
504 The qualified wetlands scientist or Maine-certified soil scientist must determine through
505 field investigation the presence, location and configuration of wetlands on the area
506 proposed for use.

507 (1) Disturbed areas. An area which has been disturbed or modified such that natural vegetation,
508 hydrology or soils are altered or removed may still satisfy the wetland criteria. In the event
509 disturbance of a wetland causes the wetland boundary to be altered, a new boundary may
510 need to be delineated in order to determine if the wetland is a regulated wetland. Wetland
511 boundaries are to be delineated according to procedures described in the Corps of Engineers
512 Wetlands Delineation Manual — Waterways Experiment Station Technical Report Y-87-1,
513 January 1987, (1987 Manual). Notwithstanding the above, areas legally disturbed or
514 modified prior to May 13, 1987 will be considered "wetlands" for the purpose of this title if
515 such disturbed areas currently meet the normal criteria for delineating undisturbed wetlands.

516 (2) Settling disputes over wetland boundaries. If there is a dispute regarding the existence or
517 boundaries of the wetlands, the boundaries of the wetland are to be determined, at the
518 expense of the applicant, by a qualified wetlands scientist or a qualified Maine-certified soils
519 scientist agreeable to both the Planning Board and the applicant.

520 (3) Permits required from other agencies. The determination of wetlands boundaries for Town
521 jurisdiction by the Town Planning Board, the Conservation Commission, or the Code
522 Enforcement Officer does not eliminate the need for the applicant to seek jurisdictional
523 determinations and/or permits from the Maine Department of Environmental Protection and
524 the United States Army Corps of Engineers when required.

525 C. Regulated activities within wetlands.

526 (1) Unless otherwise specified, all new structures and activities within wetlands, including but
527 not limited to dredging and filling and expansions of existing structures and activities, are
528 subject to the provisions of these regulations. Proposed activities and structures within a

529 freshwater wetland smaller than 501 square feet in total size are exempt from the regulations
530 in this article.

531 D. Permitted activities within regulated wetlands. The following uses are considered to be
532 compatible within regulated wetlands and are permitted within regulated wetlands without
533 Planning Board approval, provided they are in conformance with all local, federal and
534 state regulations:

535 (1) Agriculture, including pasturing, farming, haying and harvesting of wild crops. Such
536 agriculture must not cause or contribute to surface water or groundwater pollution by use of
537 pesticides, toxic chemicals or other pollutants and must not cause soil erosion;

538 (2) Conservation areas and nature trails;

539 (3) Education and scientific research;

540 (4) Forestry, tree farming and timber harvesting using the best management practices in order to
541 protect streams from damage and prevent sedimentation. Timber harvesting must be
542 conducted during periods when the ground is frozen. The practice known as "clear cutting"
543 is not permitted by right and requires a special permit under § 16.5.29;

544 (5) Low-intensity recreation;

545 (6) Repair and maintenance of existing ways, roads, driveways, railroad beds, wharfs, docks or
546 utilities. Such repair and maintenance must not negatively impact the wetland or alter the
547 existing watercourse and related hydrology;

548 (7) Repair and maintenance of existing permanent structures requiring the addition or removal
549 of 10 cubic yards or less of earth material to (form) a water body or wetland;

550 (8) Placement of drainage outfall pipes requiring the addition or removal of less than 10 cubic
551 yards of material;

552 (9) Repair in kind, maintenance and necessary upgrade of existing drainage facilities;

553 (10) Repair in kind and maintenance of existing transportation facilities;

554 (11) Placement of moorings, subject to Harbormaster approval;

555 (12) Wilderness areas and natural wildlife refuges;

556 (13) Piers, fences, blinds, footbridges and shelters to enhance wildlife, provided they do not
557 involve draining, grading, filling or dredging within the wetland. All such structures must be
558 constructed of nontoxic materials and designed in such a manner to permit the unobstructed
559 flow of waters and must preserve the natural contour and hydrology of the wetland, unless
560 otherwise authorized by special permit as per § 16.5.9.D;

561 (14) Emergency public safety operations; and

- 562 (15) Any other activity as determined by the Planning Board that does not result in a measurable
563 alteration of the wetland.
- 564 E. Prohibited uses within regulated wetlands.
565 The following structures and activities are considered to be incompatible with protecting
566 wetlands and are prohibited within regulated wetlands:
- 567 (1) Disposal or storage of waste and/or hazardous materials;
568 (2) Manure stockpiles;
569 (3) Road salt stockpiles;
570 (4) Topsoil removal except as permitted in § 16.5.9.D or with Planning Board approval;
571 (5) Bulk fuel storage;
572 (6) Herbicidal spraying;
573 (7) Invasive nonnative wetland plants; and
574 (8) Snow dumping.
- 575 F. Procedures for wetlands alteration application.
- 576 (1) Application and review process. The application and review process for the review of
577 proposals within regulated wetlands must conform to the procedures explained in § 16.5.9 of
578 this chapter, except where specifically stated otherwise in this section.
- 579 (2) Submission requirements. An application to alter a wetland must be made in accordance
580 with the submission requirements in § 16.5.9.L to the Town Planner, or designee,
581 accompanied by a fee as determined in Appendix A.
- 582 (3) Advisory opinion. The Planning Board may request the Town Planner to acquire more
583 specific data and analysis from qualified sources and/or the opinion of the Conservation
584 Commission concerning the proposed activity.
- 585 (4) Timing after Board acceptance. The Planning Board will issue its decision within 35 days of
586 receipt of the completed wetlands alteration application, unless a public hearing is
587 necessary. A hearing is not necessary if the Planning Board finds that the activity is so minor
588 that it will not significantly affect the wetland or that the hearing will not produce additional
589 information useful to the review. A decision may be rendered at the scheduling hearing if
590 the Board determines that a complete application has been received and no public hearing is
591 necessary. If a public hearing is held, the Planning Board is required to issue its decision
592 within 35 days of completion of the public hearing.
- 593 (5) Abutter notice. Owners of property within 150 feet, horizontal distance, of the proposed
594 alteration must be notified by first class U.S. Mail of any public hearing on the application

595 for wetlands alteration.

596 (6) Coordination. Submission requirements for an application for a wetlands alteration will be
597 integrated into the required submissions for a subdivision or development review application
598 to the Planning Board.

599 G. Wetlands alteration approval criteria.

600 (1) In making the final determination as to whether a wetland application should be approved,
601 the Planning Board will consider existing wetland destruction and the cumulative effect of
602 reasonably anticipated future uses similar to the one proposed. Preference will be given to
603 activities that meet wetland setbacks, have a reasonable stormwater management plan
604 (subject to Planning Board review and approval), and that dedicate easements for the
605 purposes of maintaining the wetland and the associated drainage system. Approval to alter a
606 wetland will not be granted for dredging or ditching solely for the purpose of draining
607 wetlands and creating dry buildable land areas. An application for a wetlands alteration will
608 not be approved for the purpose of creating a sedimentation or retention basin in the
609 wetland. Increased peak runoff rates resulting from an increase in impermeable surfaces
610 from development activities are not allowed.

611 (2) It is the responsibility and burden of the applicant to show that the proposed use meets the
612 purposes of this title and the specific standards listed below to gain Planning Board approval
613 to alter a wetland. The Planning Board will not approve a wetlands alteration unless the
614 applicant provides clear and convincing evidence of compliance with this title.

615 (3) In evaluating the proposed activity, the Planning Board may need to acquire expert advisory
616 opinions. The applicant must be notified in writing, by the Town Planner at the Planning
617 Board's request, that the applicant will bear the expenses incurred for the expert persons or
618 agencies. The Planning Board will consider the advisory opinion, including any
619 recommendations and conditions, provided by the Conservation Commission.

620 (4) When the Planning Board finds the demonstrated public benefits of the project as proposed,
621 or modified, clearly outweigh the detrimental environmental impacts, the Planning Board
622 may approve such development, but not prior to granting approval of a reasonable and
623 practicable mitigation plan (see § 16.5.9.I) and not prior to the completion of all
624 performance guaranties for the project (see § 16.8.11.F).

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

628 (a). The proposed use:

629 [1] Uses, manages or expands one or more other areas of the site that will avoid or reduce
630 the wetland impact;

631 [2] Reduces the size, scope, configuration or density of the project as proposed, thereby
632 avoiding or reducing the wetland impact;

- 633 [3] Provides alternative project designs, such as cluster development, roof gardens,
634 bridges, etc., that avoid or lessen the wetland impact; and
- 635 [4] Demonstrates that the proposed development meets or exceeds best management
636 practices for stormwater management in the wetland areas.
- 637 (6) In determining if the proposed development plan affects no more wetland than is necessary,
638 the Planning Board will consider if the alternatives discussed above in Subsection (1) of this
639 section accomplish the following project objectives:
- 640 (a). The proposed use will not:
- 641 [1] Unreasonably impair or diminish the wetland's existing capacity to absorb, store and
642 slowly release stormwater and surface water runoff;
- 643 [2] Unreasonably increase the flow of surface waters through the wetland;
- 644 [3] Result in a measurable increase in the discharge of surface waters from the wetland;
- 645 [4] Unreasonably impair or diminish the wetland's capacity for retention and absorption
646 of silt, organic matter, and nutrients;
- 647 [5] Result in an unreasonable loss of important feeding, nesting, breeding or wintering
648 habitat for wildlife or aquatic life; all crossings must be designed to provide a moist
649 soil bed in culvert inverts and to not significantly impede the natural migration of
650 wildlife across the filled area;
- 651 [6] Result in a measurable increase of the existing seasonal temperature of surface waters
652 in the wetland or surface waters discharged from the wetlands; or
- 653 [7] Result in a measurable alteration or destruction of a vernal pool.
- 654 H. Expiration of wetlands alteration approval. =
- 655 (1) Wetlands alteration approval will expire if work has not commenced within one year of the
656 Planning Board date of approval. Where work has commenced within one year of approval,
657 such approval will expire unless work is complete within two years of the original approval
658 date.
- 659 (2) Prior to expiration, the Planning Board may, on a case-by-case basis, grant extensions to an
660 approved plan expiration date upon written request by the developer for an inclusive period
661 from the original approval date, not to exceed five years for a subdivision plan and three
662 years for all other development plans.
- 663 I. Mitigation plan.
- 664 (1) Mitigation activities are actions taken to offset potential adverse environmental impact, as
665 well as the remittance of fees and a plan for the preservation of buildable/usable upland

666 areas when the applicant has proven to the Planning Board's satisfaction that there are no
667 practical alternatives to impacting a wetland.

668 (2) Required fees and compensation.

669 (a). For activities which in total will alter or fill less than 501 square feet of regulated
670 wetlands, the mitigation plan must include the preservation of an undisturbed upland
671 buffer zone adjacent to the wetland boundary equal in size to the area of the wetland to
672 be altered.

673 (b). For activities which in total alter or fill a five-hundred-and-one-square foot to twenty-
674 thousand-square-foot wetland, the mitigation plan must include the preservation of an
675 undisturbed upland buffer zone adjacent to the wetland boundary equal in size to the
676 area of the wetland to be altered. The undisturbed buffer zone from the wetland
677 boundary must be placed in deed restrictions and be located and configured in a manner
678 acceptable to the Planning Board.

679 (c). In addition, a wetlands preservation fee for each square foot of altered wetland area, as
680 determined in Appendix A, will be deposited into the account of the Town to achieve
681 one or more of the following objectives related to the conservation of Kittery wetlands,
682 with the Planning Board's recommendation and release of funds by the Town Council:

683 [1] Restoration and preservation of wetlands;

684 [2] Purchase of buffer areas for wetlands deemed at risk;

685 [3] Monitoring and improvement of water quality;

686 [4] Environmental and conservation projects, such as, but not limited to, education;

687 [5] Matching grant funds;

688 [6] Open space land purchases in conjunction with the Open Space Committee;

689 [7] Assistance to the Kittery Land Trust; and/or

690 [8] Purchase of signage to denote sensitive and wetland areas.

691 (d). Assessment. A functional assessment and report of the wetlands to be altered must be
692 conducted in accordance with the requirements in § 16.5.9.L(3). The assessment must
693 demonstrate the existing wetland functions and functional value and summarize the
694 impairments, degradation and/or loss of function due to the proposed development.

695 [1] When required. Fees for deposit to the wetlands preservation account are required
696 whenever wetland areas or wetland functions will be lost or degraded due to the
697 project, as identified by the functional assessment.

698 [2] Where required. Fees for deposit to the wetlands preservation account must be used

699 on the proposed site or on parcels adjacent to the project site when possible. If not
 700 possible, the fees must be used within the same watershed as the proposed alteration,
 701 or within the project vicinity, except as allowed for mitigation banking approved in
 702 writing by the Maine Department of Environmental Protection. In all cases, use of the
 703 fees must occur within the boundaries of the Town.

704 [3] Wetland impact mitigation process. Fees or developable land, or a combination
 705 thereof, as determined by the Planning Board, will be used to replace lost wetlands
 706 and wetland functions. Where the Maine Department of Environmental Protection
 707 and this title require and the Planning Board has approved a mitigation plan, such
 708 plan is deemed to satisfy Town standards.

709 (e). Homeowners' association documents, deed covenants, maintenance agreements, and
 710 easements must establish responsibility for the maintenance of wetlands. The association
 711 documents must stipulate periodic maintenance of the surface and subsurface stormwater
 712 system, including but not limited to catch basins, stormwater manholes, pipes, ditches,
 713 curbs, settling basins and other structures designed to direct, retain and/or discharge
 714 stormwater runoff. In the event the Code Enforcement Officer and/or the Town's
 715 Engineer finds the wetlands are not in a natural healthy state, the association will be
 716 required to hire a qualified wetlands scientist or a Maine-certified soils scientists to
 717 evaluate all wetlands within the development at the association's expense.

718 J. Coordination.
 719 To reduce delays, the applicant may, upon written notice to the Town Planner,
 720 simultaneously apply to the Army Corps of Engineers and the Maine Department of
 721 Environmental Protection for permits during the Town review process. In addition, the
 722 applicant may simultaneously apply for other local land use regulation approvals while
 723 applying for wetlands alteration approval.

724 K. Enforcement.
 725 The provisions of this Section (§16.5.9), Conservation of Wetlands Including Vernal
 726 Pools, are to be administered and enforced pursuant to the provisions of § 16.2,
 727 Administration and Enforcement.

728 L. Submission requirements for wetland alteration application.

729 (1) Minimum requirements. Unless specifically waived by the Planning Board, all applications
 730 must contain the following information:

731 (a). Fifteen copies of the narrative, the site plan and the vicinity map required in this
 732 subsection.

733 (b). A copy of the official documents showing legal interest of the applicant in the property
 734 to be affected.

735 (c). A narrative, describing:

736 [1] The purpose of the project;

- 737 [2] The type of alteration to the wetland (fill, culvert, dredge, etc.);
- 738 [3] Why there is no practicable alternative to impacting the wetland; and
- 739 [4] How the proposed activity has been designed to minimize the impact on the wetland.
- 740 (d). A plan view showing the site as viewed from above is required. The plan view must:
- 741 [1] Be drawn at an appropriate scale, but no smaller scale than one inch equals 100 feet,
742 and show the proposed activity, the location and size of all existing and proposed
743 structures, roads, parking areas and sewage treatment facilities.
- 744 [2] Contain a code block in the lower right-hand corner. The block must contain the:
- 745 [a] Name(s) and address(es) of the applicant or owner;
- 746 [b] Name and address of the preparer of the plan, with professional seal, if applicable;
- 747 [c] Name of plan, date of plan preparation, and a revision number and date, if
748 applicable; and
- 749 [d] Map and lot number(s), according to Kittery tax maps, shown in the lower right-
750 hand corner in bold lettering and 1/4 inch high.
- 751 [3] Show a North arrow.
- 752 [4] Show property boundaries.
- 753 [5] Show the location of any wetlands, shorelines and floodplains. Wetland boundaries
754 must be delineated using the Corps of Engineers Wetlands Delineation Manual —
755 Waterways Experiment Station Technical Report Y-87-1, January 1987," (1987
756 Manual).
- 757 [6] Show the location (tied by measurement to identifiable structures or boundary points)
758 of all proposed draining, fill, grading, dredging and vegetation removal, including
759 specification of amount of materials to be added or removed and procedures to be
760 used.
- 761 [7] Indicate the square footage of wetlands to be affected by the proposed activity.
- 762 [8] Show the direction of natural water flow over the land, in the wetland, and in the
763 proposed alteration area.
- 764 [9] Show the location of the one-hundred-year floodway and flood hazard boundaries as
765 shown on the current effective National Flood Insurance Program maps, if applicable.
- 766 [10] Specify the number of cubic yards and type of material to be used as fill, if fill
767 material is involved.

- 768 [11] Specify the type of material, number of cubic yards, method of handling, and the
769 location of fill and spoil disposal area, if dredge material is involved.
- 770 [a] Show all owners of property within 150 feet of the proposed alteration, together
771 with their mailing addresses and map and lot designations from the Assessor's
772 records.
- 773 [12] A vicinity map, utilizing a topographic map at a scale no smaller than one inch
774 equals 600 feet, showing the boundary of the proposed activity.
- 775 [13] One set of photographs, taken during the growing season if possible, showing the
776 wetland, adjacent water bodies if applicable, and the alteration area before
777 development begins.
- 778 (2) Additional requirements. In its consideration of an application, the Board may at any point
779 in the review require the applicant to submit additional materials, studies, analyses and
780 agreement proposals that the Board may deem necessary for a complete understanding of the
781 application. Such material may include the following items:
- 782 (a). A site plan showing existing and proposed topographic contours at two-foot intervals;
- 783 (b). A hydrologic analysis in accordance with the requirements of this chapter;
- 784 (c). Cross-section drawings showing the nature of the construction, the depth of excavation
785 or height of fill, if applicable, and surface water and groundwater elevations; and
- 786 (d). An evaluation, by a qualified wetlands scientist or a Maine-certified soils scientist,
787 assessing the functions of the wetland and the impact of the proposed activity on these
788 functions.
- 789 (3) Wetlands mitigation plan and report. A wetlands mitigation plan and report is required for
790 activities which, in total, affect or fill more than 500 square feet of wetlands.
- 791 (a). The wetland mitigation plan and report must contain the following:
- 792 [1] Plan at a scale of one inch equals 100 feet that shows two-foot contour intervals,
793 existing wetland boundaries, the area of wetland to be altered, project dimensions and
794 all off-site wetlands being extensions of the wetland to be altered;
- 795 [2] Existing wetland characteristics, including water depth, vegetation and fauna;
- 796 [3] Functional assessment, conducted by a qualified wetlands scientist or a Maine-
797 certified soils scientist, on the wetland to be altered, which analyzes the wetland's
798 value based on the functions it serves and how the wetland will be affected by the
799 proposed alteration. The Wetland Evaluation Technique (WET) methodology,
800 published by the U.S. Army Corps of Engineers, is one acceptable methodology.
801 Other comparable assessment techniques may be accepted, provided the applicant
802 submits documentation of how the methodology was developed, how the wetland

- 803 functions and values are determined, and how much field testing the technique has
804 undergone; and
- 805 [4] Photographs of the wetland to be altered which show its characteristics.
- 806 (b).Description of the overall proposed activity with particular reference to its impact on the
807 wetland, including the precise location of the activity, its dimensions, the amount and
808 type of fill (if any proposed), any proposed drainage, the timing and procedures
809 proposed for the alteration, and any efforts proposed for reducing impacts. The Planning
810 Board may require certain fill areas (such as stormwater storage basins, solid waste
811 landfills, fill behind retaining walls, etc.) to be structurally engineered.
- 812 (c). Plan for the proposed wetlands work, if any, including a topographic plan at the scale of
813 one-inch equals 100 feet, showing two-foot contour intervals and proposed wetland
814 boundaries. This plan must also include:
- 815 [1] Proposed boundaries and characteristics of the mitigation site, including elevation,
816 sources of water, and proposed vegetation;
- 817 [2] Narrative describing the specific goals in terms of particular wetland functions and
818 values. These goals must be related to those of the original wetland;
- 819 [3] Narrative describing the available literature or experience to date (if any) for carrying
820 out the mitigation work;
- 821 [4] Proposed implementation and management procedures for the wetlands work;
- 822 [5] Description of the short-term and long-term sources of water for this wetland,
823 including the water quality of these sources;
- 824 [6] Plans for replanting, including a description of plant species, sizes and sources of
825 plant material, as well as how, when and where seeding or planting will take place;
- 826 [7] Proposed buffers or protective measures, such as sediment control methods;
- 827 [8] Plans for monitoring the wetlands work, showing capability for mid-course
828 corrections; and
- 829 [9] Plans, if any, for control of nonindigenous plant species.
- 830 (d).For wetlands work involving creation, restoration and/or enhancement of degraded
831 wetlands, a maintenance agreement must be approved by the Board and recorded in the
832 York County Registry of Deeds. The maintenance agreement must be conveyed or a
833 deed restriction imposed, and such maintenance responsibility is not dissolvable without
834 Council approval. The maintenance agreement must meet or exceed the criteria listed in
835 § 16.5.9.I.
- 836 (e). For projects involving preservation of wetlands or adjacent uplands, a conservation

837 easement must be conveyed or deed restriction imposed so that the parcel will remain
838 undeveloped in perpetuity.

839 16.5.10 Essential Services

840 A. Installation.

841 Where feasible, the installation of essential services will be limited to existing public ways
842 and existing service corridors.

843 B. Location in CON or OZ-RP Zone.

844 The installation of essential services is not permitted in a Conservation Zone or Resource
845 Protection Overlay Zone, except to provide services to a permitted use within said zone, or
846 except where the applicant demonstrates no reasonable alternative exists. Where
847 permitted, such structures and facilities must be located to minimize any adverse impacts
848 on surrounding uses and resources, including visual impacts.

849 C. Replacement of equipment without permit.

850 Damaged or destroyed public utility transmission and distribution lines, towers and related
851 equipment may be replaced or reconstructed without a permit.

852 16.5.11 Floodplain Management

853 A. Statement of purpose and intent.

854 (1) Certain areas of the Town are subject to periodic flooding, causing serious damages to
855 properties within these areas. Relief is available in the form of federally subsidized flood
856 insurance as authorized by the National Flood Insurance Act of 1968.

857 (2) Therefore, the Town has chosen to become a participating community in the National Flood
858 Insurance Program and agrees to comply with the requirements of the National Flood
859 Insurance Act of 1968 (P.L. 90-488, as amended) as delineated in this article.

860 (3) It is the intent of the Town to require the recognition and evaluation of flood hazards in all
861 official actions relating to land use in the floodplain areas having special flood hazards. This
862 body has the legal authority to adopt land use and control measures to reduce future flood
863 losses pursuant to 30-A M.R.S §§ 3001-3007, 4352 and 4401-4407.

864 B. Definitions.

865 Unless specifically defined in § 16.3, words and phrases used in this article have the same
866 meanings as they have in common law to give this article its most reasonable application.

867 C. Establishment of areas.

868 (1) The Town elects to comply with the requirements of the National Flood Insurance Act of
869 1968 (P.L. 90-488, as amended). The National Flood Insurance Program, established in the
870 aforesaid Act, provides that areas of the Town having a special flood hazard be identified by
871 the Federal Emergency Management Agency and that floodplain management measures be
872 applied in such flood hazard areas. This article establishes a flood hazard development

- 873 permit system and review procedure for development activities in the designated flood
874 hazard areas of the Town.
- 875 (2) The areas of special flood hazard, Zones A, A1 — 30, AE, AO, AH, V1 — 30 and/or VE,
876 identified by the Federal Emergency Management Agency in a report entitled "Flood
877 Insurance Study — Town of Kittery, Maine, York County," dated January 5, 1984, with
878 accompanying Flood Insurance Rate Map dated July 3, 1986, are adopted by reference and
879 declared to be a part of this article.
- 880 D. Permit required.
881 Before any construction or other development (as defined in § 16.3), including the
882 placement of manufactured homes, begins within any areas of special flood hazard
883 established in § 16.5.11.C, a flood hazard development permit is to be obtained from the
884 Code Enforcement Officer. This permit is in addition to any other building/regulated
885 activity permits which may be required pursuant to this title.
- 886 E. Application for permit.
887 The application for a flood hazard development permit is to be submitted to the Code
888 Enforcement Officer and include:
- 889 (1) The name and address of the applicant.
- 890 (2) An address and a map indicating the location of the construction site.
- 891 (3) A site plan showing the location of existing and/or proposed structures, sewage disposal
892 facilities, water supply facilities, areas to be cut and filled, and lot dimensions.
- 893 (4) A statement of the intended use of the structure.
- 894 (5) A statement as to the type of sewage system proposed.
- 895 (6) Specification of dimensions of the proposed structure.
- 896 (7) The elevation in relation to the National Geodetic Vertical Datum (NGVD), or to a locally
897 established datum in Zone A only, of the:
- 898 (a). Base flood at the proposed site of all new or substantially improved structures, which is
899 determined:
- 900 [1] In Zones A1 — 30, AE, AO, AH, V1 — 30, and VE, from data contained in the
901 "Flood Insurance Study — Town of Kittery, Maine," as described in § 16.5.10.C or
- 902 [2] In Zone A, to be the elevation of the ground at the intersection of the floodplain
903 boundary and a line perpendicular to the shoreline which passes along the ground
904 through the site of the proposed building.
- 905 (b). Highest and lowest grades at the site adjacent to the walls of the proposed building.

- 906 (c). Lowest floor, including basement, and whether or not such structures contain a
907 basement.
- 908 (d). Level, in the case of nonresidential structures only, to which the structure will be
909 floodproofed.
- 910 (8) A description of a base flood elevation reference point established on the site of all new or
911 substantially improved structures.
- 912 (9) A written certification by a registered land surveyor that the elevations shown on the
913 application are accurate.
- 914 (10) Certification by a registered professional engineer or architect that floodproofing methods
915 for any:
- 916 (a). Nonresidential structures will meet the floodproofing criteria of Subsection 7(d) of this
917 section. Subsection 7 of § 16.5.11.H, and other applicable standards in § 16.5.11.H; and
- 918 (b). Construction in coastal high-hazard areas, Zones V1 — 30 and VE, will meet the
919 floodproofing criteria of Subsection 11 of § 16.5.11.H and other applicable standards in
920 § 16.5.11.H
- 921 (11) A description of the extent to which any watercourse will be altered or relocated as a result
922 of the proposed development.
- 923 (12) A statement of construction plans describing in detail how each applicable development
924 standard in § 16.5.11.H will be met.
- 925 F. Application fee and expert's fee.
- 926 (1) A nonrefundable application fee as set out in Appendix A is to be paid to the Town Clerk,
927 and a copy of a receipt for the same must accompany the application.
- 928 (2) An additional fee may be charged if the Code Enforcement Officer and/or Board of Appeals
929 needs the assistance of a professional engineer or other expert. The expert's fee must be paid
930 in full by the applicant within 10 days after the Town submits a bill to the applicant. Failure
931 to pay the bill constitutes a violation of this title and is grounds for the issuance of a stop-
932 work order. An expert may not be hired by the municipality at the expense of an applicant
933 until the applicant has either consented to such hiring in writing or been given an
934 opportunity to be heard on the subject. An applicant who is dissatisfied with a decision of
935 the Code Enforcement Officer may appeal that decision to the Board of Appeals.
- 936 G. Review of flood hazard development permit applications.
937 The Code Enforcement Officer must:
- 938 (1) Review all applications for a flood hazard development permit to assure that proposed
939 building sites are reasonably safe from flooding and to determine that all pertinent
940 requirements of § 16.5.11.H, Development standards, have or will be met.

- 941 (2) Utilize, in the review of all flood hazard development permit applications, the base flood
942 data contained in the "Flood Insurance Study — Town of Kittery, Maine," as described in
943 § 16.5.11.C. In special flood hazard areas where base flood elevation data are not provided,
944 the Code Enforcement Officer is to obtain, review and reasonably utilize any base flood
945 elevation and floodway data from federal, state, or other sources, including information
946 obtained pursuant to §16.5.11.E(7)(a)[2], § 16.5.11.H(9) and §16.5.11.J, in order to
947 administer § 16.5.11.H of this article.
- 948 (3) Make interpretations of the location of boundaries of special flood hazard areas shown on
949 the maps described in § 16.5.11.C.
- 950 (4) In the review of flood hazard development permit applications, determine that all necessary
951 permits have been obtained from those federal, state and local government agencies from
952 which prior approval is required by federal or state law, including, but not limited to,
953 Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C.
954 § 1334.
- 955 (5) Notify adjacent municipalities, the Department of Environmental Protection, and the Maine
956 Office of Community Development prior to any alteration or relocation of a watercourse and
957 submit copies of such notifications to the Federal Emergency Management Agency.
- 958 (6) Issue a two-part flood hazard development permit for elevated structures. Part I is to
959 authorize the applicant to build a structure to and including the first horizontal floor only
960 above the base flood level. At that time the applicant must provide the Code Enforcement
961 Officer with an application for Part II of the flood hazard development permit and include an
962 elevation certificate completed by a registered Maine surveyor for compliance with the
963 elevation requirements of Subsections 6, 7, 8 and 11 of § 16.5.11.H. Following review of the
964 application, which review must take place within three working days of receipt of the
965 application, the Code Enforcement Officer is to issue Part II of the flood hazard
966 development permit. Part II authorizes the applicant to complete the construction project.
- 967 (7) Maintain, as a permanent record, copies of all flood hazard development permits issued and
968 data relevant thereto, including reports of the Board of Appeals on variances granted under
969 the provisions of § 16.2.12; and copies of elevation certificates and certificates of
970 compliance required under the provisions of § 16.5.11.I.
- 971 H. Development standards.
972 All developments in areas of special flood hazard are to meet the following applicable
973 standards:
- 974 (1) New construction or substantial improvement of any structure must:
- 975 (a). Be designed or modified and adequately anchored to prevent flotation, collapse or lateral
976 movement of the structure resulting from hydrodynamic and hydrostatic loads, including
977 the effects of buoyancy;
- 978 (b). Use construction materials that are resistant to flood damage;

- 979 (c). Use construction methods and practices that will minimize flood damage; and
- 980 (d). Use electrical, heating, ventilation, plumbing, and air-conditioning equipment, and other
981 service facilities, that are designed and/or located so as to prevent water from entering or
982 accumulating within the components during flooding conditions.
- 983 (2) All new and replacement water supply systems are to be designed to minimize or eliminate
984 infiltration of floodwaters into the systems.
- 985 (3) All new and replacement sanitary sewage systems are to be designed and located to
986 minimize or eliminate infiltration of floodwaters into the system and discharges from the
987 system into floodwaters.
- 988 (4) On-site waste disposal systems are to be located and constructed to avoid impairment to
989 them or contamination from them during floods.
- 990 (5) All development is to be constructed and maintained in such a manner that no reduction
991 occurs in the flood-carrying capacity of any watercourse.
- 992 (6) New construction or substantial improvement of any residential structure located within:
- 993 (a). Zones A1 — 30, AE and AH is to have the lowest floor (including basement) elevated to
994 at least one foot above the base flood elevation.
- 995 (b). Zones AO and AH is to have adequate drainage paths around structures on slopes, to
996 guide floodwater away from the proposed structures.
- 997 (c). Zone AO is to have the lowest floor (including basement) elevated above the highest
998 adjacent grade:
- 999 [1] At least one foot higher than the depth specified in feet on the community's Flood
1000 Insurance Rate Map; or
- 1001 [2] At least three feet if no depth number is specified.
- 1002 (d). Zone A is to have the lowest floor (including basement) elevated to at least one foot
1003 above the base flood elevation utilizing information obtained pursuant to
1004 § 16.5.11.E(7)(a)[2], 16.5.11.G(2) or 16.5.11.J(4).
- 1005 (e). Zones V1 — 30 and VE is to meet the requirements of Subsection **11** of this section.
- 1006 (7) New construction or substantial improvement of any nonresidential structure located within:
- 1007 (a). Zones A1 — 30, AE and AH is to have the lowest floor (including basement) elevated to
1008 at least one foot above the base flood elevation or, together with attendant utility and
1009 sanitary facilities, must:
- 1010 [1] Be floodproofed to at least one foot above the base flood level so that below that
1011 elevation the structure is watertight with walls substantially impermeable to passage

- 1012 of water;
- 1013 [2] Have structural components capable of resisting hydrostatic and hydrodynamic loads
1014 and the effects of buoyancy; and
- 1015 [3] Be certified by a registered professional engineer or architect that the design and
1016 methods of construction are in accordance with accepted standards of practice for
1017 meeting the provisions of this section. Such certification must be provided with the
1018 application for a flood hazard development permit, as required by § 16.5.11.E(10),
1019 and include a record of the elevation above mean sea level of the lowest floor,
1020 including basement.
- 1021 (b). Zones AO and AH is to have adequate drainage paths around structures on slopes, to
1022 guide floodwater away from the proposed structures.
- 1023 (c). Zone AO is to have the lowest floor (including basement) elevated above the highest
1024 adjacent grade:
- 1025 [1] At least one foot higher than the depth specified in feet on the community's Flood
1026 Insurance Rate Map; or
- 1027 [2] At least three feet if no depth number is specified; or
- 1028 [3] Together with attendant utility and sanitary facilities, be floodproofed to meet the
1029 elevation requirements of this section and floodproofing standards of Subsection **7(a)**
1030 of this section.
- 1031 (d). Zone A is to have the lowest floor (including basement) elevated to at least one foot
1032 above the base flood elevation utilizing information obtained pursuant to
1033 § 16.5.11.E(7)(a)[2], 16.5.11.G(2) or 16.5.11.J
- 1034 (e). Zones V1 — 30 and VE is to meet the requirements of Subsection **11** of this section.
- 1035 (8) New or substantially improved manufactured homes located within:
- 1036 (a). Zones A1 — 30, AE or AH must:
- 1037 [1] Be elevated on a permanent foundation such that the lowest floor is at least one foot
1038 above the base flood elevation; and
- 1039 [2] Be securely anchored to an adequately anchored foundation system to resist flotation,
1040 collapse, or lateral movement. Methods of anchoring may include, but are not limited
1041 to:
- 1042 [a] Over-the-top ties anchored to the ground at the four corners of the manufactured
1043 home, plus two additional ties per side at intermediate points (manufactured homes
1044 less than 50 feet long require one additional tie per side); or

- 1045 [b] By frame ties at each corner of the home, plus five additional ties along each side
 1046 at intermediate points (manufactured homes less than 50 feet long require four
 1047 additional ties per side).
- 1048 [c] All components of the anchoring system described in Subsection 8(a)(ii)[a] and
 1049 [b] of this section must be capable of carrying a force of 4,800 pounds.
- 1050 (d) Zones AO and AH are to have adequate drainage paths around structures on slopes, to
 1051 guide floodwater away from the proposed structures.
- 1052 (e) Zone AO are to have the lowest floor (including basement) elevated above the highest
 1053 adjacent grade:
- 1054 [1] At least one foot higher than the depth specified in feet on the community's Flood
 1055 Insurance Rate Map; or
- 1056 [2] At least three feet if no depth number is specified; and
- 1057 [3] Meet the requirements of Subsection 8(a)(i) and (ii) of this section.
- 1058 [4] Zone A are to have the lowest floor (including basement) elevated to at least one foot
 1059 above the base flood elevation utilizing information obtained pursuant to
 1060 § 16.5.11.E(7)(a)[2], 16.5.11.G(2) or 16.5.11.J.
- 1061 [5] Zones V1 — 30 and VE are to meet the requirements of Subsection 11 of this section.
- 1062 (9) Floodways.
- 1063 (a). In Zones A1 — 30 and AE, encroachments, including fill, new construction, substantial
 1064 improvement, and other development, are not permitted in riverine areas, for which a
 1065 regulatory floodway is designated on the community's "Flood Boundary and Floodway
 1066 Map," unless a technical evaluation certified by a registered professional engineer is
 1067 provided demonstrating that such encroachments will not result in any increase in flood
 1068 levels within the community during the occurrence of the base flood discharge.
- 1069 (b). In Zones A1 — 30 and AE riverine areas, for which no regulatory floodway is
 1070 designated, encroachments, including fill, new construction, substantial improvement,
 1071 and other development, are not permitted unless a technical evaluation certified by a
 1072 registered professional engineer is provided demonstrating that the cumulative effect of
 1073 the proposed development, when combined with all other existing development and
 1074 anticipated development:
- 1075 [1] Will not increase the water surface elevation of the base flood more than one foot at
 1076 any point within the community; and
- 1077 [2] Is consistent with the technical criteria contained in Section 2-7, entitled "Hydraulic
 1078 Analyses," Flood Insurance Study — Guidelines and Specifications for Study

- 1079 Contractors, FEMA 37/September, 1985, as amended.
- 1080 (c). In Zone A riverine areas, in which the regulatory floodway is determined to be the
1081 channel of the river or other watercourse and the adjacent land areas to a distance of 1/2
1082 the width of the floodplain as measured from the normal high-water mark to the upland
1083 limit of the floodplain, encroachments, including fill, new construction, substantial
1084 improvement, and other development, are not permitted unless a technical evaluation
1085 certified by a registered professional engineer is provided meeting the requirements of
1086 Subsection **9(b)** of this section.
- 1087 (10) New construction or substantial improvement of any structure in Zones A1 — 30, AE, AO,
1088 AH and A that meets the development standards of this section, including the elevation
1089 requirements of Subsection **6**, **7** or **8** of this section, and is elevated on posts, columns, piers,
1090 piles, "stilts" or crawl spaces less than three feet in height may be enclosed below the
1091 elevation requirements provided all the following criteria are met or exceeded:
- 1092 (a). Walls, with the exception of crawl spaces less than three feet in height, must not be part
1093 of the structural support of the building; and
- 1094 (b). Enclosed areas are not "basements" as defined in § 16.5.11.B; and
- 1095 (c). Enclosed areas are to be designed to automatically equalize hydrostatic flood forces on
1096 exterior walls by allowing for the entry and exit of floodwater. Designs for meeting this
1097 requirement must either:
- 1098 [1] Be certified by a registered professional engineer or architect; or
- 1099 [2] Meet or exceed the following minimum criteria:
- 1100 [a] A minimum of two openings having a total net area of not less than one square
1101 inch for every square foot of the enclosed area;
- 1102 [b] The bottom of all openings may be no higher than one foot above the lowest
1103 grade; and
- 1104 [c] Openings may be equipped with screens, louvers, valves, or other coverings or
1105 devices, provided that they permit the entry and exit of floodwaters automatically
1106 without any external influence or control, such as human intervention, including the
1107 use of electrical and other nonautomatic mechanical means; and
- 1108 (f) The enclosed area may not be used for human habitation; and
- 1109 (g) The enclosed area may be used for building maintenance, access, parking vehicles, or
1110 storing of articles and equipment used for maintenance of the building.
- 1111 (11) Coastal floodplains.
- 1112 (a). All new construction located within Zones V1 — 30 and VE is to be located landward of

- 1113 the reach of the highest annual spring tide.
- 1114 (b). New construction or substantial improvement of any structure located within Zones V1
1115 — 30 or VE must:
- 1116 [1] Be prohibited unless the following criteria are met:
- 1117 [a] The area is zoned for general development or its equivalent, as defined in the
1118 Mandatory Shoreland Zoning guidelines adopted pursuant to 38 M.R.S. § 438-A; or
- 1119 [b] The area is designated as densely developed as defined in 38 M.R.S. § 436-A,
1120 Subsection 3.
- 1121 [2] Be elevated on posts or columns such that:
- 1122 [a] The bottom of the lowest structural member of the lowest floor (excluding the
1123 pilings or columns) is elevated to one foot above the base flood level;
- 1124 [b] The pile or column foundation and the elevated portion of the structure attached
1125 thereto is anchored to resist flotation, collapse, and lateral movement due to the
1126 effects of wind and water loads acting simultaneously on all building components;
1127 and
- 1128 [c] Water loading values used must be those associated with the base flood. Wind
1129 loading values used must be those required by applicable state and local building
1130 standards.
- 1131 [3] Have the space below the lowest floor:
- 1132 [a] Free of obstructions; or
- 1133 [b] Constructed with open wood lattice-work, or insect screening intended to collapse
1134 under wind and water without causing collapse, displacement, or other structural
1135 damage to the elevated portion of the building or supporting piles or columns; or
- 1136 [c] Constructed with nonsupporting breakaway walls which have a design safe
1137 loading resistance of not less than 10 nor more than 20 pounds per square foot.
- 1138 (c) A registered professional engineer or architect must:
- 1139 [1] Develop or review the structural design, specifications and plans for the construction,
1140 which must meet or exceed the technical criteria contained in the Coastal
1141 Construction Manual (FEMA-55/February, 1986); and
- 1142 [a] Certify that the design and methods of construction to be used are in accordance
1143 with accepted standards of practice for meeting the criteria of Subsection **11(b)** of this
1144 section.

- 1145 (d) The use of fill for structural support in Zones V1 — 30 and VE is prohibited.
- 1146 (e) Human alteration of sand dunes within Zones V1 — 30 and VE is prohibited unless it
1147 can be demonstrated that such alterations will not increase potential flood damage.
- 1148 (f) The enclosed areas may be used solely for parking vehicles, building access, and
1149 storage.
- 1150 I. Certificate of compliance.
1151 No land in a special flood hazard area may be occupied or used and no structure which is
1152 constructed or substantially improved may be occupied until a certificate of compliance is
1153 issued by the Code Enforcement Officer subject to the following provisions:
- 1154 (1) The applicant must submit an elevation certificate completed by:
- 1155 (a). A registered Maine surveyor for compliance with Subsection 6, 7, 8 or 11 of
1156 § 16.5.11.H; and
- 1157 (b). A registered professional engineer or architect in the case of:
- 1158 [1] Floodproofed, nonresidential structures, for compliance with § 16.5.11.H(7); and
- 1159 [2] Construction of structures in the coastal floodplains for compliance with
1160 § 16.5.11.H(11)(c).
- 1161 (2) The application for a certificate of compliance is to be submitted by the applicant in writing,
1162 along with a completed elevation certificate, to the Code Enforcement Officer.
- 1163 (3) The Code Enforcement Officer is to review the application within 10 working days of
1164 receipt of the application and issue a certificate of compliance, provided the building
1165 conforms with the provisions of this article.
- 1166 J. Review of subdivision and development proposals.
1167 The Planning Board must, when reviewing subdivisions and other proposed developments
1168 that require review under other federal law, state law or local ordinances or regulations,
1169 and all projects on five or more acres, or in the case of manufactured home parks divided
1170 into two or more lots, assure that:
- 1171 (1) All such proposals are consistent with the need to minimize flood damage.
- 1172 (2) All public utilities and facilities, such as sewer, gas, electrical and water systems, are located
1173 and constructed to minimize or eliminate flood damages.
- 1174 (3) Adequate drainage is provided so as to reduce exposure to flood hazards.
- 1175 (4) All proposals include base flood elevation and, in a riverine floodplain, floodway data.
- 1176 (5) Any proposed development plan must include a statement that the developer will require
1177 that structures on lots in the development be constructed in accordance with § 16.5.11.H and

1178 that such requirement will be included in any deed, lease, purchase and sale agreement, or
1179 document transferring or expressing an intent to transfer any interest in real estate or
1180 structure, including, but not limited to, a time-share interest. The statement must clearly
1181 articulate that the municipality may enforce any violation of the construction requirement
1182 and that fact is also to be included in the deed or any other document previously described.
1183 The construction requirement must also be clearly stated on any map, plat or plan to be
1184 signed by the Planning Board or local reviewing authority as part of the approval process.

1185 16.5.12 Home Occupation

1186 A. Purpose.

1187 (1) It is the intent of these regulations governing home occupations to balance the economic and
1188 community benefits of allowing home-based businesses with the goal of protecting the
1189 quality of life of the surrounding residential neighborhood from unreasonable or unsafe
1190 intrusions and nuisances inappropriate to a residential setting. The regulations attempt to
1191 ensure that any home-based business operates in a manner that respects the neighborhood in
1192 which it is situated.

1193 (2) Regulation of home occupations should not prohibit beneficial and unobtrusive uses and
1194 should provide standards to protect the health, safety and general welfare of the surrounding
1195 neighborhood. A home occupation should not degrade the residential character of the
1196 neighborhood.

1197 (3) These regulations take a two-tier approach to regulating home occupations. At the least
1198 intrusive level are business activities that by their nature and intensity will be compatible
1199 with a residential location. These types of businesses are considered minor home
1200 occupations and require only review by the Code Enforcement Officer for compliance with
1201 the standards. A major home occupation in a residential district has the potential to be
1202 incompatible with its neighborhood setting. Therefore, a public hearing with notification to
1203 abutting property owners and BOA approval is necessary.

1204 (4) A more extensive business activity that does not satisfy the standards for a major home
1205 occupation is treated as a type of commercial use and does not qualify as an acceptable type
1206 of home occupation. Such businesses should be located in an appropriately zoned area of the
1207 Town.

1208 B. Minor home occupation standards.

1209 (1) Compliance with the definition of a "home occupation."

1210 (a). An applicant must be a resident of a dwelling on the premises where the home
1211 occupation will occur. An applicant who is not the owner of the property, but is residing
1212 on the premises, must submit written permission of the property owner for the proposed
1213 home occupation.

1214 (b). As an accessory use, the home occupation(s) must be subordinate to the principal use.
1215 Quantitative measures that may be considered in determining whether a proposed

- 1216 activity is an accessory use include, but are not limited to, percentage and/or total
 1217 amount of square footage attributed to the home occupation(s) use in relation to the
 1218 residential use. Qualitative factors include, but are not limited to, the projected activity
 1219 level of the home occupation(s) on the premises in relation to the residential use and
 1220 whether the proposed home occupation is a traditional accessory use in the community.
- 1221 (2) Number of workers. There must be no more than three persons, inclusive of residents of the
 1222 premises, working in the home occupation(s) at the site at any one time.
- 1223 (3) Prohibited uses. The following uses are categorically prohibited as minor home occupations:
 1224 motor vehicle repair; motor vehicle sales or rental; commercial parking; commercial outdoor
 1225 storage; machine shop; wholesale use; junkyard; auto salvage yard; seafood cooking;
 1226 processing and/or cleaning; bait sales; Marijuana Business.
- 1227 (4) Business hours. Business activities involving clients or customers on the premises or
 1228 vehicular traffic to and from the premises must not be conducted between the hours of 7:00
 1229 p.m. and 8:00 a.m., except for a bed-and-breakfast, a day-care facility or a functionally
 1230 water-dependent use.
- 1231 (5) Nuisances.
- 1232 (a). Any excessive noise, dust, smoke, vibrations, glare, direct lighting, objectionable fumes,
 1233 traffic or electrical interference detected at the property boundary must not be greater in
 1234 duration or intensity than that expected in the surrounding residential neighborhood.
- 1235 (b). When reviewing a functionally water-dependent use, the above standards allow
 1236 customary noises and smells caused by the use if all practicable steps are taken to
 1237 manage and minimize the adverse impact on abutting property owners.
- 1238 (6) Parking. A plan must be submitted showing sufficient and safe parking for customers',
 1239 clients' and workers' use during normal business operations. To the maximum extent
 1240 practicable, parking should be arranged so as to avoid vehicles backing out into the street. In
 1241 addition to parking required for the residence, the following parking is required:
- 1242 (a). One parking space per nonresident worker at the site during the peak shift;
- 1243 (b). One parking space if clients or customers frequently visit the site;
- 1244 (c). One parking space per adult student up to the maximum class size; or
- 1245 (d). One parking space per rental unit.
- 1246 (7) The parking design standards in Table 16.7.11.F of § 16.7 Site Plan Review, set out at the
 1247 end of § 16.7.11.F, Parking Loading and Traffic (e.g., aisle width, stall size, etc.), may be
 1248 modified for parking by workers if the parking arrangement will still provide for practical
 1249 off-street parking adequate to prevent parking from overflowing the site.
- 1250 (8) With the exception of a bed-and-breakfast with more than three rooms for rent, three

- 1251 additional off-street parking spaces should satisfy the parking demand for a minor home
1252 occupation. Any recurring observed parking overflow is a violation of these standards.
- 1253 (9) The CEO may approve the joint use of a parking area where it is clearly demonstrated that
1254 the parking area will be available for use by customers or workers during the hours of
1255 operation due to the variation in time of use.
- 1256 (10) Outdoor storage. All outdoor storage of equipment, vehicles, items or equipment associated
1257 with the home occupation is prohibited except for the following:
- 1258 (a). One vehicle used in conjunction with the home occupation;
- 1259 (b). Seasonal storage of items necessary for functionally water-dependent uses, such as
1260 lobster traps; and
- 1261 (c). Vehicles owned by residents of the premises with valid license plates.
- 1262 (d). All bait must be stored indoors and must be kept refrigerated or otherwise stored to
1263 prevent offensive odors.
- 1264 (11) Business conduct. All business activities on the site must take place within the dwelling or
1265 enclosed buildings, except for outdoor recreational uses, agriculturally oriented uses or
1266 functionally water-dependent uses.
- 1267 (12) Refuse and recyclables. All refuse and recyclables must be stored within an enclosed
1268 building. No outdoor dumpsters are allowed. All waste materials from the home occupation
1269 must be removed from the premises on at least a monthly basis.
- 1270 (13) Traffic. The home occupation must not result in creating or significantly exacerbating a
1271 traffic hazard. Recurring vehicle traffic involving vehicles larger than a twenty-foot fixed
1272 axle, thirty-foot total length truck is prohibited.
- 1273 (14) Retail sales. Retail sales in which customers do not come to the premises are permissible,
1274 such as mail order or telephone sales. On-site retail sales are limited to the following:
- 1275 (a). Sales of products grown, raised or produced on the premises. For the purposes of this
1276 subsection, the term "produced" is not to be construed to allow the assembly of a product
1277 from components produced elsewhere; and
- 1278 (b). Sales of items customarily incidental and subordinate to a nonretail home occupation,
1279 such as sales of shampoo and hair brushes at a beauty salon.
- 1280 (c). All other on-site retail sales are prohibited as a minor home occupation.
- 1281 (15) Health and safety. The proposed use must not create a health or safety hazard.
- 1282 C. Major home occupation standards.
- 1283 (1) Compliance with the Definition of a "Home Occupation."

- 1284 (a). An applicant must be a resident of a dwelling on the premises where the home
1285 occupation will occur. An applicant who is not the owner of the property, but is residing
1286 on the premises, must submit written permission of the property owner for the proposed
1287 home occupation.
- 1288 (b). As an accessory use, the home occupation(s) must be subordinate to the principal use.
1289 Quantitative measures that may be considered in determining whether a proposed
1290 activity is an accessory use include, but are not limited to, percentage and/or total
1291 amount of square footage attributed to the home occupation(s) use in relation to the
1292 residential use. Qualitative factors include, but are not limited to, the projected activity
1293 level of the home occupation(s) on the premises in relation to the residential use and
1294 whether the proposed home occupation is a traditional accessory use in the community.
- 1295 (2) Number of workers. There must be no more than five persons, inclusive of residents of the
1296 premises, working in the home occupation(s) at the site at any one time.
- 1297 (3) Prohibited uses. The following uses are categorically prohibited as major home occupations:
1298 motor vehicle repair; motor vehicle sales or rental; commercial parking; commercial outdoor
1299 storage; junkyard; auto salvage yard; marijuana retail use; and marijuana medical use except
1300 the activities of a primary caregiver registered under 22 M.R.S. § 2425.
- 1301 (4) Business hours. Business activities involving clients or customers on the premises or
1302 vehicular traffic to and from the premises must not be conducted between the hours of 7:00
1303 p.m. and 7:00 a.m., except for a bed-and-breakfast, a day-care facility or a functionally
1304 water-dependent use. This limitation may be modified by the BOA provided the proposal
1305 satisfies the intent of this section.
- 1306 (5) Nuisances.
- 1307 (a). Any excessive noise, dust, smoke, vibrations, glare, direct lighting, obnoxious fumes or
1308 odors, traffic, or electrical interference detected at the property boundary must not be
1309 greater in duration or intensity than that expected in the surrounding residential
1310 neighborhood.
- 1311 (b). When reviewing a functionally water-dependent use, the above standards allow
1312 customary noises and smells caused by the use if all practicable steps are taken to
1313 manage and minimize the adverse impact on abutting properties.
- 1314 (6) Parking. A plan must be submitted that provides safe and sufficient off-street parking to
1315 meet the needs of the business to prevent parking from overflowing off the site. Any
1316 recurring observed parking overflow is a violation of these standards. The creation of more
1317 than four off-street parking spaces must be located, designed, screened and landscaped to
1318 minimize adverse impact on abutting properties.
- 1319 (7) Outdoor storage. All outdoor storage of equipment, vehicles or items associated with the
1320 home occupation must be screened from view of abutting properties and from all streets
1321 except for the following:

- 1322 (a). One vehicle used in conjunction with the home occupation;
- 1323 (b). Seasonal storage of items necessary for functionally water-dependent uses, such as
- 1324 lobster traps; and
- 1325 (c). Vehicles owned by residents of the premises with valid license plates.
- 1326 (d). All bait must be stored indoors and must be kept refrigerated or otherwise stored to
- 1327 prevent offensive odors.
- 1328 (8) Business conduct. All business activities on the site must take place within an enclosed
- 1329 building or be screened from view of abutting properties and from all publicly maintained
- 1330 streets, except for outdoor recreational uses, agriculturally oriented uses or functionally
- 1331 water-dependent uses. This standard may be modified by the BOA provided the proposal
- 1332 satisfies the intent of this section.
- 1333 (9) Refuse and recyclables. All refuse and recyclables must be stored in containers that are
- 1334 screened from view of abutting properties and from streets. No emptying of dumpsters is
- 1335 allowed before 8:00 a.m. or after 7:00 p.m.
- 1336 (10) Traffic. The home occupation must not result in creating or significantly exacerbating a
- 1337 traffic hazard. Furthermore, the home occupation must not create an objectionable increase
- 1338 in vehicle traffic considering the type, time and amount of vehicle traffic generated and the
- 1339 design and capacity of the roads to the site and traffic normal for the neighborhood.
- 1340 (11) Retail sales. Retail sales on the premises are limited to the following:
- 1341 (a). Sales in which customers do not come to the premises, such as mail order or telephone
- 1342 sales;
- 1343 (b). Sales of products grown, raised or produced on the premises;
- 1344 (c). Sales of seafood harvested by the residents of the premises;
- 1345 (d). Sales of items customarily incidental and subordinate to a nonretail home occupation,
- 1346 such as sales of shampoo and hair brushes at a beauty salon; and/or
- 1347 (e). Sales by appointment only for which any signage identifying the business states a "by
- 1348 appointment only" policy.
- 1349 (12) Health and safety. The proposed use must not create a health or safety hazard.
- 1350 (13) Neighborhood compatibility. The proposed use is determined to be compatible with the
- 1351 surrounding neighborhood. In reaching this determination, the following factors are to be
- 1352 considered:
- 1353 (a). The nature of the property;
- 1354 (b). The physical characteristics of the neighborhood, including the amount of nonresidential

- 1355 activity;
- 1356 (c). Hours of operation;
- 1357 (d). Intensity of the activity;
- 1358 (e). Potential to degrade the quality of life for residents of the surrounding neighborhood;
- 1359 and
- 1360 (f). The cumulative impact of existing home occupations and other accessory uses both on
- 1361 the premises and in the surrounding neighborhood.
- 1362 (g). Medical marijuana use is restricted to single-family residences only.
- 1363 (14) Large lots. When a seventy-five-foot-deep buffer yard is provided between all business
- 1364 activities (including storage and parking, except a driveway) and contiguous properties, and
- 1365 the buffer yard is sufficiently vegetated, fenced or otherwise screened so as to obscure the
- 1366 home occupation activities from an abutting property, the BOA may relax the above
- 1367 standards, except those pertaining to nuisances and prohibited uses, if the use is considered
- 1368 to comply with the intent of this subsection.
- 1369 (15) Annual renewal.
- 1370 (a). Upon approval of a major home occupation by the Board of Appeals, the Code
- 1371 Enforcement Officer is authorized to issue a certificate of occupancy permit for not more
- 1372 than a one-year time period. Such permit may be renewed annually upon application to
- 1373 the Code Enforcement Officer. Operation of a major home occupation with an expired
- 1374 certificate of occupancy is a violation of this Code.
- 1375 (b). The annual permit may be renewed only if the Code Enforcement Officer finds the
- 1376 major home occupation complies with all applicable standards of this Code and any
- 1377 conditions required by the Board of Appeals in the original approval.
- 1378 16.5.13 Junkyards and/or Automobile Salvage Yards
- 1379 A. Buffering.
- 1380 Buffering will be 100 feet on all sides except on the street, where 200 feet will be the
- 1381 minimum. Trees, shrubbery and fencing not less than eight feet in height, or all three, may
- 1382 be required by the Board to restrict visibility of the area from the road and neighbors.
- 1383 Land contour is to be taken into consideration. Approval of the junkyard plan is required
- 1384 by the Police, Highway and Fire Departments before any permit is presented to the Town
- 1385 Council for consideration.
- 1386 B. Buildings.
- 1387 Office, control or storage building must be inside the buffered area and no more than a
- 1388 maximum of 30 feet in height. The adequacy of buffering is to be considered in allowing
- 1389 heights over 20 feet.

- 1390 C. Junk piles.
1391 Junk piles may only be inside the buffered area and piled no higher than 15 feet.
- 1392 D. Waste.
1393 No garbage, toxic waste or liquid or sanitary wastes are permitted. The Maine State
1394 Plumbing Code will apply for sanitary waste and any state laws regulating toxic waste.
1395 Separate storage must be maintained for toxic waste, including but not limited to oil,
1396 grease, gasoline and solvents. This waste must be removed at least twice a year by an
1397 accredited dealer in such wastes. All tanks of vehicles must be drained and contents
1398 properly disposed of.
- 1399 E. Drainage.
1400 Provision must be made for proper drainage of stormwater or other wastewater, so that
1401 contaminated, rusted or other noticeable effluent does not go beyond actual junk area or
1402 into buffering. Special attention is to be given to acceptable drainage of normal
1403 stormwater. § 16.7.11.C of this chapter also applies.
- 1404 F. Hours of operation.
1405 Work in connection with demolishing or wrecking cars or purchasing or selling items is
1406 permitted only on Monday through Saturday between the hours of 7:00 a.m. and 6:00 p.m.
- 1407 G. Signs.
1408 One four-foot-by-six-foot maximum, non-illuminated sign is permitted at the entrance to
1409 the property.
- 1410 H. Cleanliness.
1411 Junkyards and salvage yards should be kept reasonably neat and clean, with no debris or
1412 other nuisance permitted outside of the buffered area.
- 1413 I. Permits.
1414 A permit for not more than one year's operation is required in addition to the state permit.
1415 The Town fee is as set by the Town Council. Periodic inspections must be made by the
1416 Code Enforcement Officer during the year to ensure compliance with the state and local
1417 ordinances.
- 1418 J. Other standards application.
1419 All other applicable standards of this chapter not specifically mentioned here, such as
1420 parking, noise, etc., also apply to this use.
- 1421 16.5.14 Lots
- 1422 A. Dimensions.
1423 The lot size, width, depth and shape and orientation and the minimum building setback
1424 lines must be appropriate for the location of the development and for the type of
1425 development and use contemplated. The lot configuration should be designed to maximize
1426 access to solar energy for building sites with suitable orientation.
- 1427 B. Lot shape.

- 1428 (1) The ratio of lot length to width must not be more than 3:1. Flag-shaped lots are prohibited.
1429 Other odd-shaped lots in which narrow strips are joined to other parcels in order to meet
1430 minimum lot size requirements are also prohibited.
- 1431 (2) Spaghetti lots prohibited. If any lots in a proposed subdivision have shore frontage on a
1432 river, stream, brook or coastal wetland, as these features are defined in 38 M.R.S. §480-B,
1433 none of the lots created within the subdivision may have a lot depth to shore frontage ratio
1434 greater than 5:1.
- 1435 C. Double/reverse-frontage lots.
1436 Double-frontage and reverse-frontage lots are to be avoided except where essential to
1437 provide separation of residential development from traffic arteries or to overcome specific
1438 disadvantages of topography and orientation. A planting screen easement of at least 10
1439 feet, across which there may be no right of access, is to be provided along the lot lines
1440 abutting such a traffic artery or other disadvantageous use.
- 1441 D. Side lot lines.
1442 Side lot lines must be substantially at right angles or radial to street lines.
- 1443 E. Substantially larger lots.
1444 Where a tract is subdivided into lots substantially larger than the minimum size required in
1445 the zone in which a subdivision is located, and where no covenants exist to preclude lots
1446 from resubdivision, the Board may require that streets and lots be laid out so as to permit
1447 future resubdivision in accordance with the requirements contained in these standards.
- 1448 F. Multiple frontages.
1449 When lots have frontage on two or more streets, the plan and deed restrictions must
1450 indicate vehicular access to be located only on the least-traveled way.
- 1451 G. Divided lots.
1452 If a lot on one side of a stream, tidal water, road or other similar barrier fails to meet the
1453 minimum requirements for lot size, it may not be combined with a lot on the other side of
1454 such barrier to meet the minimum lot size unless in conformance with § 16.1.8.B, General
1455 Development Requirements, Conformity.
- 1456 H. Off-street parking.
1457 Depth and width of properties reserved or laid out for all purposes must be adequate to
1458 provide for off-street parking and service facilities for vehicles required by type of
1459 development and use contemplated.
- 1460 I. Access to arterial street.
1461 Where a major subdivision abuts or contains an existing or proposed arterial street, no
1462 residential lot may have vehicular access directly onto the arterial street. This requirement
1463 must be noted on the plan and in the deed of any lot with frontage on the arterial street.
- 1464 J. Land subdivision.
1465 The subdividing of land must conform to the requirements of § 16.4.

1466 16.5.15 **Manufactured Housing**

1467 A. Standards.

1468 Standards for manufactured housing include the following:

1469 (1) All mobile home units must be manufactured after June 15, 1976, and shall have a
1470 manufacturer-installed sticker indicating HUD approval.1471 (2) All units must be manufactured with a pitched, shingled roof, with a minimum slope three
1472 inches on 12 inches (3:12).1473 (3) All units must have residential-type siding, such as clapboards, shakes, horizontally applied
1474 aluminum, or vinyl resembling clapboards.1475 (4) All units, excluding individual mobile home park installations, must have a permanent
1476 foundation, which may be either a full basement or a poured or block frost wall.

1477 (5) All other sections of this title must be adhered to.

1478 16.5.16 **Mineral/earth material exploration and removal**1479 A. Topsoil, rock, sand, gravel and similar earth materials may be removed from locations
1480 where permitted under the terms of this title, only after a special permit for such
1481 operations has been issued by the Code Enforcement Officer, upon approval and review of
1482 plans by the Planning Board in accordance with the provisions of this title, and provided
1483 that nothing herein may be deemed to apply to normal excavation operations incidental to
1484 construction activities for which a valid permit is held. The following standards must be
1485 met:1486 (1) The applicant must submit to the Code Enforcement Officer plans of the proposed extraction
1487 site, showing the property lines and names of all abutting owners and ways, indicating by
1488 not greater than five-foot contour intervals related to U.S. Geodetic Survey data, the location
1489 and slope of the grades existing and as proposed upon completion of the extraction
1490 operation; proposed fencing; buffer strips; signs; lighting; parking and loading areas;
1491 entrances and exits, together with a written statement of the proposed method, regularity,
1492 working hours and total proposed rehabilitation and restoration of the site upon completion
1493 of the operation.1494 (2) Said plans and statement are to be promptly submitted with the recommendations of the
1495 Code Enforcement Officer to the Planning Board for its consideration with respect to the
1496 effect of the proposed operation upon existing and foreseeable traffic patterns within the
1497 Town, upon existing or approved land uses which might be affected by the operations. The
1498 Planning Board may recommend changes to the applicant for resubmission to the Planning
1499 Board. The Planning Board is to promptly call and hold a public hearing upon the final
1500 application in the same manner as provided for any final plan review.1501 (3) The Planning Board shall render a written decision as to whether, and under what
1502 conditions, the proposed operation may be permitted, consistent with public health and

1503 safety; the preservation of attractive natural features; compatibility, despite temporary and
1504 reasonable disturbance, with existing or approved land uses which might be affected; and
1505 implementation of the Comprehensive Plan. If the Planning Board approves the application,
1506 it may condition the special permit upon such alterations in the proposed operation or upon
1507 the performance or omission of such acts as it may deem proper to assure attainment of the
1508 objectives set forth in the preceding sentence, and it may require filing of a performance
1509 guaranty in an amount and form acceptable to the Town Manager to indemnify the Town
1510 against any claims arising from the proposed operations and to assure satisfactory
1511 performance of all conditions imposed or otherwise applicable.

1512 B. Mandatory restrictions. All extraction operations and sites within the Town must be
1513 conducted and maintained in accordance with, and the Planning Board shall impose, such
1514 conditions upon any special permit issued under this subsection as it deems necessary or
1515 desirable to assure compliance with the following requirements:

1516 (1) Mineral exploration to determine the nature or extent of mineral resources must be
1517 accomplished by hand sampling, test boring, or other methods which create minimal
1518 disturbance of less than 100 square feet of ground surface. A permit from the Code
1519 Enforcement Officer is required for mineral exploration which exceeds the above limitation.
1520 All excavations, including test pits and holes, must immediately be capped, filled or secured
1521 by other equally effective measures so as to restore disturbed areas and to protect the public
1522 health and safety.

1523 (2) Mineral extraction, including sand and gravel extraction, is prohibited within the
1524 Conservation, Shoreland Overlay and Resource Protection Overlay Zones.

1525 (3) No part of any extraction operation may be permitted within 100 feet of any property or
1526 street line, and natural vegetation must be left and maintained on the undisturbed land.
1527 Minimize the volume of earth cut and fill, in general, with no cut or fill greater than seven
1528 feet for construction in an urban residential zone. Topographical change will not result in
1529 cuts or fills exceeding seven feet.

1530 (4) No standing water may be permitted in any extraction site during or after extraction
1531 operations; except that, during or after extraction operations, standing water may be
1532 permitted under strict conditions with respect to fencing, safe levels of coliform bacteria
1533 count, and treatment to prevent breeding of insects so as to assure the public health and
1534 safety, as determined by the Town Health Officer.

1535 (5) No slopes steeper than three feet horizontal to one foot vertical may be permitted at any
1536 extraction site unless a fence at least three feet high is erected to limit access to such
1537 locations.

1538 (6) Before commencing removal of any earth materials, the owner or operator of the extraction
1539 site must present evidence to the Planning Board of insurance against liability arising from
1540 the proposed extraction operations and maintain such insurance throughout the period of
1541 operation.

1542 (7) Any topsoil and subsoil suitable for purposes of revegetation must, to the extent required for

1543 restoration, be stripped from the locations of extraction operations and stockpiled for use in
1544 restoring the location after extraction operations have ceased.

1545 (8) Upon completion of active extraction operations, the land must be left so that natural storm
1546 drainage and watercourses leave the location at the original natural drainage points and in a
1547 manner such that the amount of drainage at any point is not significantly increased.

1548 (9) The hours of operation at any extraction site are to be limited as the Planning Board deems
1549 advisable to ensure operational compatibility with residents of the Town.

1550 (10) Loaded vehicles must be suitably covered to prevent dust and contents from spilling or
1551 blowing from the load, and all trucking routes and methods are subject to approval by the
1552 Chief of Police.

1553 (11) All access roads leading from the extraction site to public ways must be treated with stone,
1554 calcium or other suitable materials to reduce dust and mud for a distance of at least 100 feet
1555 from such public ways.

1556 (12) No equipment, debris, junk or other material is permitted at an extraction site except those
1557 directly relating to active extraction operations, and any temporary shelters or buildings
1558 erected for such operations and equipment used in connection therewith must be removed
1559 within 30 days following completion of active extraction operations.

1560 (13) Following the completion of extraction operations at any extraction site or at any one or
1561 more locations within any extraction site, ground levels and grades must be established in
1562 accordance with the approved plans filed with the Planning Board; all debris, stumps,
1563 boulders and similar materials must be removed and disposed of in an approved location or,
1564 in the case of inorganic material, buried and covered with a minimum of two feet of soil.
1565 Sufficient topsoil or loam must be retained to cover all disturbed areas, so that they must be
1566 revegetated and properly restored to a stable condition adequate to meet the provisions of
1567 the "Maine Erosion and Sediment Control BMPs," March 2003.

1568 C. Issuance and renewal of permits. Special permits may be issued in accordance with the
1569 foregoing provisions for a period not to exceed one year, and they are renewable only
1570 upon application by the owner, after a finding by the Planning Board that the conduct of
1571 the operation has been substantially in accordance with any and all conditions imposed or
1572 material representations made in connection with the original special permit, and upon
1573 such additional and altered conditions as the Board may deem necessary in accordance
1574 with Subsection **A(3)** of this section.

1575 16.5.17 Mobile Home Parks, Recreational Vehicle Parks and Campgrounds

1576 A. Permit required. No person, firm, corporation or other legal entity may establish or
1577 maintain a Mobile Home Park, Recreational Vehicle Park or Campground within the
1578 Town without a permit issued in conformity with the provisions of this title. It is the park
1579 operator's responsibility to obtain the permit.

1580 (1) Application. Application for a Mobile Home Park, Recreational Vehicle Park or

1581 Campground permit must be filed with the Code Enforcement Officer, who will present said
1582 application to the Planning Board for review as a subdivision, except that permit renewals
1583 are not subject to Board review. The Board must review the proposal in accordance with the
1584 standards contained herein and inform the CEO of its decision. The CEO shall then act on
1585 the application as required.

1586 (2) Fee and expiration. Each application for a permit or a renewal thereof must be accompanied
1587 by a fee as established by the Town Council for a Mobile Home Park, Recreational Vehicle
1588 Park or Campground designed for the accommodation of no more than 10 Manufactured
1589 Housing units, Recreational Vehicles or tent sites and an additional fee, as established by the
1590 Town Council, for each additional Manufactured Housing unit, Recreational Vehicle or tent
1591 site located at the site. (See Appendix A for annual mobile home park fee schedule.) Permits
1592 expire on the first day of April next following date of issuance. Before any permit is
1593 renewed, the premises are subject to inspection by the Health Officer and CEO. If all
1594 requirements of this and other federal, state and local laws have been complied with, the
1595 same is to be certified and the permit renewed.

1596 (3) Permit display. Permits issued under this section must be conspicuously posted on the
1597 premises at all times and are not transferable.

1598 (4) Revocation. The CEO is authorized to revoke any permit issued under this section pursuant
1599 to the terms of this title if, after due investigation, it is determined the holder thereof has
1600 violated any of the provisions of this or any applicable code, law or statute.

1601 B. Compliance.

1602 Applications for development of Mobile Home Parks, Recreational Vehicle Parks or
1603 Campgrounds must comply with all state laws and local ordinances and meet the
1604 requirements of subdivision law, except as stipulated below. Such developments in
1605 existence prior to adoption of this title may be enlarged only if the extension complies
1606 with the terms specified herein.

1607 C. Recreational Vehicle Parks and Campgrounds.

1608 In any district where Campgrounds or Recreational Vehicle Parks are permitted under the
1609 terms of this title, the following regulations and minimum standards apply:

1610 (1) A time limit is placed on the occupancy of any one camping space on a continuing basis as
1611 follows: 12 weeks for the period May 15 to October 15 of each year and two weeks for all
1612 other periods. No Recreational Vehicles or Manufactured Housing units other than such as
1613 are camping units, as defined herein, are permitted within any camper park, temporarily or
1614 otherwise.

1615 (2) A Campground or Recreational Vehicle Park may not be constructed on less than five acres
1616 of land.

1617 (3) Each tent site must be provided with a masonry or metal fireplace approved by the Fire
1618 Chief.

1619 (4) Spaces in Campgrounds and Recreational Vehicle Parks may be used by travel trailers,

- 1620 equivalent facilities constructed in or on automotive vehicles, tents or other short-term
1621 shelter devices.
- 1622 (5) A Recreational Vehicle Park or Campground must provide water and sewerage systems,
1623 sanitary stations and convenience facilities in accordance with the regulations of the State
1624 Plumbing Code and the Maine Department of Human Services. In no case may less than one
1625 toilet, lavatory and shower be provided for each sex for every 10 camping and tent sites or
1626 major portion thereof.
- 1627 (6) Recreational Vehicles must be parked on sites containing a minimum of 2,500 square feet
1628 and having a minimum frontage along the traveled way of 50 feet, exclusive of drives and
1629 aisles.
- 1630 (7) Tent sites must contain a minimum of 2,500 square feet. There must be a minimum of 30
1631 feet between tents.
- 1632 (8) Recreational Vehicles must be so parked in spaces that:
- 1633 (a). There will be a minimum of 15 feet between vehicles.
- 1634 (b). There will be a minimum of 15 feet between all Recreational Vehicles and the exterior
1635 boundary of the park.
- 1636 (c). There will be a minimum of 25 feet between all Recreational Vehicles and all public
1637 rights-of-way located inside the boundaries of the Recreational Vehicle Park or
1638 Campground. Setbacks from roads outside the Recreational Vehicle Park will be a
1639 minimum of 150 feet.
- 1640 (d). No camping unit or structure may be located less than 100 feet from any residence.
- 1641 (e). Buffering: planting, landscaping, disposition and form of building and other
1642 improvements, or fencing and screening is to be utilized to integrate the proposed
1643 development with the landscape and the character of any surrounding development.
- 1644 (9) The storage, collection and disposal of refuse must not create health hazards, rodent
1645 harborage, insect breeding areas, accident hazards or air pollution.
- 1646 (10) No unoccupied camping unit may be stored or exhibited for sale for commercial purposes
1647 within the park.
- 1648 D. Mobile Home Parks.
- 1649 (1) Mobile Home Parks, by special exception, may be located as indicated in § 16.4.
- 1650 (2) Lots within a shoreland zoning district must meet the lot area, setback and shore frontage
1651 requirements for that district.
- 1652 (3) Lots in a Mobile Home Park must meet the following lot size, width and density

- 1653 requirements:
- 1654 (a). Lots by public sewer.
- 1655 [1] Minimum lot area: 6,000 square feet.
- 1656 [2] Minimum lot width: 50 feet.
- 1657 (b). Lots served by individual on-site subsurface wastewater disposal system.
- 1658 [1] Minimum lot area: 20,000 square feet.
- 1659 [2] Minimum lot width: 100 feet.
- 1660 (c). Lots served by a central on-site subsurface wastewater disposal system*.
- 1661 * The overall density of a Mobile Home Park served by a central on-site subsurface
 1662 wastewater disposal system may be no greater than one unit per 20,000 square feet of
 1663 total park area
- 1664 [1] Minimum lot area: 12,000 square feet.
- 1665 [2] Minimum lot width: 75 feet.
- 1666 (d). The overall density of the Mobile Home Park is the combined area of its mobile home
 1667 lots plus:
- 1668 [1] The area required for road rights-of-way;
- 1669 [2] The area required for buffer strips, if any;
- 1670 [3] For areas served by public sewer, an open space area for storage and recreation equal
 1671 to 10% of the combined area of the individual lots; and
- 1672 [4] The area within the municipality's shoreland setback.
- 1673 (e). All buildings on the lot, including accessory buildings and structures, but excluding open
 1674 decks and parking spaces, may not cover more than 50% of the lot area.
- 1675 (4) The following setback rules apply to all mobile homes and accessory buildings:
- 1676 (a). Front and side setbacks are to be 20 feet; rear setbacks, 10 feet. If these requirements
 1677 conflict with the requirements of the title, 38 M.R.S. § 435 et seq., Mandatory Shoreland
 1678 Zoning, or subsequent amendments or revisions thereto, the stricter standards apply.
- 1679 (b). If a lot is on a public road, the setback must conform with the residential setback
 1680 requirements applicable to other residential dwelling units in the zone.
- 1681 (c). So as to avoid monotony and sameness, the Code Enforcement Officer may allow:

- 1682 [1] The front setback on a private road within a mobile home park to be varied, provided
1683 no mobile home may be closer than 10 feet from the right-of-way and the average
1684 distance is at least 20 feet for all units.
- 1685 [2] The replacement and/or relocation of a mobile home to be located no closer to the
1686 front yard setback than the existing mobile home or pad.
- 1687 (d). Carports of noncombustible materials are not subject to setback requirements.
- 1688 (e). The CEO may allow side yard setbacks to be reduced to five feet, provided a distance of
1689 20 feet is maintained between mobile homes for the purpose of providing more usable
1690 yard space on one side of the home.
- 1691 (f). A minimum twenty-foot separation must be maintained between all mobile homes in all
1692 directions.
- 1693 (5) All buildings on the lot, including accessory buildings and structures, but excluding open
1694 decks and parking spaces, may cover not more than 50% of the lot area.
- 1695 (6) Where a developer elects to create a Mobile Home Park where all land is under unified
1696 ownership, the park plan must demonstrate that the development standards described herein
1697 are met.
- 1698 (7) Privately owned roads within the Mobile Home Park must be designed by a professional
1699 engineer, registered in the State of Maine, and built according to accepted engineering
1700 standards.
- 1701 (a). The layout and general development plan for major and minor access streets within the
1702 Mobile Home Park, together with the location and dimensions of access junctions with
1703 existing public streets and rights-of-way must be approved by the Planning Board.
- 1704 (b). For Mobile Home Park expected to generate 200 trips per day or more, there must be at
1705 least two entrances from public streets or roads.
- 1706 (8) Mobile home park streets which intersect with public roads must meet the following
1707 standards:
- 1708 (a). Angle of intersection. The desired angle of intersection is to be 90°. The minimum angle
1709 of intersection is to be 75°.
- 1710 (b). Grade. The maximum permissible grade within 75 feet of the intersection is 2%.
- 1711 (c). Minimum sight distance. The minimum sight distance must be 10 times the posted speed
1712 limit on the existing road. Sight distance is measured from the driver's seat of a vehicle
1713 that is 10 feet behind the curb or edge of shoulder line with the height of the eye 3 1/2
1714 feet above the pavement and the height of an object 4 1/4 feet.
- 1715 (d). Distance from other intersections. The center line of any street within a park intersecting

1716 an existing public street must be at least 125 feet from the center line of any other street
1717 intersecting that public street.

1718 (9) Right-of-way and pavement width are to be as follows:

1719 (a). Two-way park roads must have a minimum right-of-way of 23 feet and a minimum
1720 paved surface of 20 feet. On-street parking is prohibited.

1721 (b). One-way streets must have a minimum right-of-way of 18 feet and a minimum paved
1722 surface of 14 feet. On-street parking is prohibited.

1723 (c). Parking lanes are to be a minimum of eight feet in width, if provided.

1724 (d). Cul-de-sac turnarounds are to have minimum radii of 50 feet at the outer edge of the
1725 pavement, exclusive of any parking areas.

1726 (e). Curvilinear streets must be utilized wherever possible. No street within the park may be
1727 more than 200 feet without a curve or bend.

1728 (f). If the developer intends to dedicate park streets to the public, such streets must meet
1729 municipal standards as contained in § 16.7.12.F and § 16.8.11.J of this chapter.

1730 (10) No mobile home lot may have vehicular access directly onto a state highway.

1731 (11) A traffic impact analysis is required if the park will generate more than 500 trips/day.

1732 (12) Parking requirements for Mobile Home Park areas follows:

1733 (a). For each mobile home lot there must be provided and maintained at least two off-street
1734 parking spaces. This requirement may be waived if an equivalent number of spaces are
1735 provided by a parking lane. Each space is design-dependent as indicated in Table
1736 16.7.11.F of this chapter, set out at the end of § 16.7.11.E and F, Parking Loading and
1737 Traffic. This requirement may be waived if an equivalent number of spaces are provided
1738 by a parking lane.

1739 (b). In addition to occupant parking, off-street guest and service parking must be provided
1740 within the boundaries of the park at a ratio of one space for each four mobile home lots.
1741 Such parking must be reserved for that sole use. This requirement may be waived if a
1742 parking lane provides an equivalent number of spaces.

1743 (c). On-street parking is prohibited unless an eight-foot parking lane is provided, in which
1744 case on-street parking may be permitted on the side of the road where the parking lane is
1745 located.

1746 (13) The mobile home park must contain pedestrian walkways that link all units and all service
1747 and recreational facilities. Such walkways are to be adequately surfaced and lit. A portion of
1748 the road surface may be reserved for walkways, provided the street width is increased
1749 accordingly. Walkways should be a minimum of width of three feet.

- 1750 (14) Outdoor lighting is to be provided to adequately illuminate internal streets and pedestrian
1751 walkways. Lights are to be sized and directed to avoid adverse impacts on adjacent
1752 properties and vehicular traffic.
- 1753 (15) Open space calculations are as follows:
- 1754 (a). For Mobile Home Park served by a public sewer, an area amounting to 10% of the total
1755 area devoted to individual lots must be set aside for open space and/or recreation. Such
1756 space is to be accessible and usable by all residents of the park. Parking space,
1757 driveways and streets and buffer areas are not considered usable open space but
1758 community recreation buildings, pools and courts are considered as open space.
- 1759 (b). At least 50% of the required open space must consist of land that is suitable for active
1760 recreation.
- 1761 (c). All developed open space is to be designed and landscaped for the use and enjoyment of
1762 the park residents and maintained for their long-term use. Plans for these areas must be
1763 submitted by the developer.
- 1764 (d). To the maximum extent possible, undeveloped open space must be left in its natural
1765 state. Improvements to make trails for walking and jogging or to make picnic areas are
1766 permitted.
- 1767 (e). The developer must submit, as part of the application, a copy of that portion of the
1768 proposed park rules and a plan which specify how the open space is to be used and
1769 maintained and what conditions apply to its use. The plan must specify the area to be
1770 dedicated open space or recreation.
- 1771 (f). Open space must be maintained and used for its approved purposes.
- 1772 (16) All Mobile Home Park must provide permanent electrical, water and sewage disposal
1773 connections to each mobile home in accordance with applicable state and local rules and
1774 regulations. If other than public water is to be utilized, the water system(s) must be capable
1775 of delivering 250 gallons per day per lot of water certified to be of primary drinking water
1776 standards.
- 1777 (17) Signs and advertising devices are prohibited in a Mobile Home Park, except:
- 1778 (a). One identifying sign at each entrance of the Mobile Home Park sized in compliance with
1779 § 16.5.16 of this chapter may be installed.
- 1780 (b). Directional and informational signs for the convenience of tenants and the public relative
1781 to parking, office, traffic movement, etc., are permitted.
- 1782 (c). Mobile/manufactured home "for sale" signs, provided that such signs that face a public
1783 road may be no more than 10 square feet and limited to two signs per Mobile Home
1784 Park.

- 1785 (d). Mobile/manufactured homes address signs are permitted when in compliance with §
1786 16.5.17 of this chapter.
- 1787 (e). The styles and location of the identifying sign must not interfere with vehicle sight
1788 distance and be constructed in accordance with § 16.5.17(17) of this chapter.
- 1789 (18) At least 300 cubic feet of enclosed tenant storage facilities must be conveniently provided
1790 on or near each mobile home lot for the storage of materials and equipment.
- 1791 (19) A storm drainage plan must be prepared by a professional engineer, registered in the State of
1792 Maine, in accordance with § 16.7.11.C, Stormwater drainage. Such plan must be approved
1793 by the York County Soil and Water Conservation District or found satisfactory and
1794 compliant to the Code by the Town's Engineering Peer Reviewer prior to Planning Board
1795 approval of the final plan.
- 1796 (20) Groundwater requirements for Mobile Home Park are as contained in § 16.7.11.J, which
1797 must be complied with for all Mobile Home Park applications.
- 1798 (21) Each mobile home lot must be provided with an area for refuse storage. Within a maximum
1799 150 feet from each mobile home lot, there must be a fly tight, watertight and rodent proof
1800 container capable of storing the amount of refuse that the mobile home park for which it was
1801 designed could generate within one week as well as any separation containers as required by
1802 the Kittery recycling program. The park management is responsible for disposal of refuse
1803 from such containers at least once a week.
- 1804 (22) Buffering requirements are as follows:
- 1805 (a). A fifty-foot-wide buffer strip must be provided along all property boundary lines that:
- 1806 [1] Abut residential land which has a gross density of less than half that proposed in the
1807 park; or
- 1808 [2] Abut residential land that is zoned at a density of less than half that proposed in the
1809 park.
- 1810 (b). Further, no structures, streets or utilities may be placed in the buffer strip, except that
1811 they may cross a buffer strip to provide services to the park.
- 1812 (c). Within 25 feet of any property line and within the buffer strip, visual screening and/or
1813 landscaping must be provided. The visual screening may consist of fences, berms,
1814 landscaping (such as shrubs or trees) and/or natural existing vegetation. This screening is
1815 to effectively screen at least 80% of the homes from view from the adjacent property and
1816 be maintained throughout the life of the project.
- 1817 (23) The owner or operator of a mobile home park is responsible for ensuring the maintenance of
1818 all park-owned structures, open space areas, roads and pedestrianways/sidewalks. Park
1819 management must comply with state laws. Compliance with this title does not exempt the
1820 park owner, developer or manager from complying with other applicable local, state and

1821 federal codes and regulations.

1822 (24) No development or subdivision which is approved under this section as a mobile home park
 1823 may be conveyed to another use without the approval of the Planning Board and meeting the
 1824 appropriate lot size, lot width, setback and other requirements contained in this title. The
 1825 approved final plan is to be recorded at the York County Registry of Deeds and filed with
 1826 the Town and have noted the following restrictions as well as any other notes or conditions
 1827 of approval: (1) "The land within this park must remain in a unified ownership and the fee to
 1828 lots or portions of lots not be transferred." (2) "No dwelling unit other than a mobile home
 1829 unit may be located within the park."

1830 16.5.18 Net Residential Acreage

1831 A. Purpose.

1832 Net residential acreage is used to determine the maximum number of dwelling units
 1833 allowed on a parcel that is subject to subdivision. The total number of dwelling units
 1834 allowed is equal to the net residential acreage divided by the minimum land area per
 1835 dwelling unit for a given land use zone.

1836 B. Net residential acreage calculation.

1837 To calculate net residential acreage, the land area listed below must be subtracted from a
 1838 parcel's gross area. Where land areas to be subtracted overlap, the area therein is
 1839 subtracted once.

1840 (1) All land located below the highest annual tide elevation as published in the Maine DEP
 1841 Highest Annual Tide (HAT) levels for the most-current year.

1842 (2) All land located within the floodplain as defined in the definition of "flood, one-hundred-
 1843 year" in § 16.3.

1844 (3) All wetlands as defined in the definition of "wetland" in § 16.3, as well as vernal pools,
 1845 ponds, lakes, streams and other water bodies, including 50% of the associated setbacks
 1846 described in other Buildings and Structures, Table 16.5.30, § 16.5 of this title.

1847 (4) All land located on filled tidal lands, per the definition of "tidal land, filled" in § 16.3.

1848 (5) All land located within existing rights-of-way and other existing easements wherein
 1849 dwelling units cannot be built.

1850 (6) All land located within proposed rights-of-way, including parking and travel ways.
 1851 Driveways are excluded.

1852 (7) All land isolated from the principal location for development on the parcel by a road/street,
 1853 existing land uses, or any physical feature, natural or man-made, such that it creates a barrier
 1854 to the central development of the site and no means of access is proposed nor likely to be
 1855 provided in the future. However, to demonstrate that identified isolated land may be
 1856 considered developable for the purpose of this calculation, the applicant must submit a plan
 1857 and supporting documentation for the Board's consideration.

- 1858 (8) All land zoned commercial (C-1, C-2, or C-3).
- 1859 (9) All land one acre or more of contiguous area with sustained slopes of 20% or greater.
- 1860 (10) All land identified as exposed bedrock, and soils with a drainage class of "poorly drained"
1861 and/or "very poorly drained" as defined in the definition of "soils" in § 16.3.
- 1862 (11) Fifty percent of all land characterized as drainage class of "somewhat poorly drained,"
1863 unless public sewer is used, in which case no land area is subtracted.
- 1864 (12) All land area within a cemetery and burying ground as defined in § 16.3, including
1865 associated setback per 13 M.R.S.A. § 1371-A, Limitations on construction and excavation
1866 near burial sites.
- 1867 (13) All land within a Commercial Fisheries/Maritime Uses Overlay Zone or Resource Protection
1868 Overlay Zone not included in Subsection **12** above.
- 1869 C. Documentation.
1870 The net residential acreage calculation must be supported by verifiable information and
1871 accurate data and be shown on the subdivision plan or other plan when applicable.
- 1872 D. Exemptions to net residential acreage calculations.
- 1873 (1) The maximum number of dwelling units for residential development not subject to
1874 subdivision is based on minimum land area per dwelling unit defined in § 16.2, Definitions
1875 of this title.
- 1876 (2) The creation of dwelling units subject to subdivision within existing buildings that are
1877 connected to Town sewer and are located in the Mixed Use - Kittery Foreside, Mixed Use -
1878 Badgers Island, Residential Village, Business Local, or Business Local-1 Zones are exempt
1879 from the net residential acreage calculations in § 16.5.18.A. The total number of dwelling
1880 units permitted is determined by dividing the gross lot area by the minimum land area per
1881 dwelling unit allowed in the zone. The exemption is allowed in the above base zones when
1882 subject to the Shoreland Overlay Zone.
- 1883 (3) The Mixed-Use – Neighborhood Zone (MU-N) and certain residential uses in the C-1 and
1884 C-3 zone as noted in 16.4.19 and 16.4.21 are exempt from § 16.5.18, Net residential acreage
1885 calculation, but is subject to the minimum land area per dwelling unit as defined in Chapter
1886 2, Definitions, except that 50% of all wetlands may be subtracted, rather than 100%.

1887

1888 16.5.19 Nonstormwater Discharge

1889 A. Basis/purpose/objectives.

- 1890 (1) The Maine Department of Environmental Protection, through its promulgation of the
1891 "General Permit for the Discharge of Stormwater from Small Municipal Separate Storm

1892 Sewer Systems" dated July 2013, has listed the Town of Kittery as having a regulated small
 1893 municipal separate storm sewer system ("small MS4"); under this general permit, listing as a
 1894 regulated small MS4 necessitates enactment of this article as part of the municipality's
 1895 stormwater management plan.

1896 (2) The purpose of this article is to provide for the health, safety, and general welfare of the
 1897 citizens of the Town of Kittery, through the regulation of nonstormwater discharges to the
 1898 municipality's storm drainage system as required by federal and state law. This article
 1899 establishes methods for controlling the introduction of pollutants into the Town's storm
 1900 drainage system in order to comply with requirements of the federal Clean Water Act and
 1901 state law.

1902 (3) The objectives of this article are:

1903 (a). To prohibit unpermitted or unapproved nonstormwater discharges to the storm drainage
 1904 system; and

1905 (b). To set forth the legal authority and procedures to carry out all inspection, monitoring and
 1906 enforcement activities necessary to ensure compliance with this article.

1907 B. Applicability.

1908 This article shall apply to all persons discharging stormwater and/or nonstormwater
 1909 discharge from any premise into the storm drainage system.

1910 C. Responsibility for administration.

1911 The Code Enforcement Officer is the enforcement authority who shall administer,
 1912 implement, and enforce the provisions of this article.

1913 D. Prohibition of nonstormwater discharges.

1914 (1) Except as allowed or exempted herein, a person may not create, initiate, originate or
 1915 maintain a nonstormwater discharge to the storm drainage system. Such nonstormwater
 1916 discharges are prohibited even where the municipality has approved the connections, drains
 1917 or conveyances through which a person creates an illicit nonstormwater discharge to the
 1918 storm drainage system.

1919 (2) The creation, initiation, origination and maintenance of the following nonstormwater
 1920 discharges to the storm drainage system are allowed as long as they do not cause or
 1921 contribute to a violation of the state's water quality standards:

1922 (a). Flow: Landscape irrigation; diverted stream flows; rising groundwaters; uncontaminated
 1923 groundwater infiltration [as defined at 40 CFR 35.2005(20)]; uncontaminated pumped
 1924 groundwater; uncontaminated flows from foundation drains; air conditioning and
 1925 compressor condensate; irrigation water; flows from uncontaminated springs;
 1926 uncontaminated water from crawlspace pumps; uncontaminated flows from footing
 1927 drains; lawn watering runoff; flows from riparian habitats and wetlands; residual street
 1928 wash water (where spills/leaks of toxic or hazardous materials have not occurred, unless
 1929 all spilled material has been removed and detergents are not used); hydrant flushing and

- 1930 firefighting activity runoff; water line flushing and discharges from potable water
 1931 sources; individual residential car washing; and dechlorinated swimming pool
 1932 discharges, as defined as having 0.5 ppm or less. Pools may only be emptied a minimum
 1933 of 48 hours after any chemical treatments were added.
- 1934 (b). Discharges specified in writing by the enforcement authority as being necessary to
 1935 protect public health and safety; and
- 1936 (c). Dye testing, with verbal notification to the enforcement authority prior to the time of the
 1937 test.
- 1938 E. Exempt person or discharge.
 1939 This article shall not apply to an exempt person or discharge, except that the enforcement
 1940 authority may request from exempt persons and persons with exempt discharges copies of
 1941 permits, notices of intent, licenses and orders from the EPA or DEP that authorize the
 1942 discharge(s).
- 1943 F. Suspension of access to municipality's storm drainage system.
- 1944 (1) The enforcement authority may, without prior notice, physically suspend discharge access to
 1945 the storm drainage system to a person when such suspension is necessary to stop an actual or
 1946 threatened nonstormwater discharge to the storm drainage system which presents or may
 1947 present imminent and substantial danger to the environment, or to the health or welfare of
 1948 persons, or to the storm drainage system, or which may cause the municipality to violate the
 1949 terms of its environmental permits. Such suspension may include, but is not limited to,
 1950 blocking pipes, constructing dams or taking other measures, on public ways or public
 1951 property, to physically block the discharge to prevent or minimize a nonstormwater
 1952 discharge to the storm drainage system.
- 1953 (2) If the person fails to comply with a suspension order issued in an emergency, the
 1954 enforcement authority may take such steps as deemed necessary to prevent or minimize
 1955 damage to the storm drainage system, or to minimize danger to persons. Only with the
 1956 consent of the premises' owner, occupant or agent may the enforcement authority enter the
 1957 premises that are the source of the actual or threatened nonstormwater discharge to the storm
 1958 drainage system.
- 1959 G. Monitoring of discharges.
 1960 In order to determine compliance with this article, the enforcement authority may enter
 1961 upon and inspect premises subject to this article at reasonable hours with the consent of
 1962 the premises' owner, occupant or agent: to inspect the premises and connections thereon to
 1963 the storm drainage system; and to conduct monitoring, sampling and testing of the
 1964 discharge to the storm drainage system.
- 1965 H. Enforcement and penalties.
 1966 See §§ 16.2.7 and 16.2.14.
- 1967 I. Ultimate responsibility of discharger.
 1968 The standards set forth herein are minimum standards; therefore this article does not

1969 intend nor imply that compliance by any person will ensure that there will be no
 1970 contamination, pollution, nor unauthorized discharge of pollutants into waters of the U.S.
 1971 caused by said person. This article shall not create liability on the part of the municipality,
 1972 or any officer agent or employee thereof for any damages that result from any person's
 1973 reliance on this article or any administrative decision lawfully made hereunder.

1974 16.5.20 Outdoor Dining

1975 A. Applicability.

1976 (1) Outdoor dining, as defined in Chapter §16.3 of this Title, is allowed as follows:

1977 (a) Within the buildable lot area in all zoning districts where restaurants are allowed as either
 1978 a permitted or a special exception use;

1979 (b) Within the front, side and/or rear yards (setbacks) of the C-1, C-2, C-3, B-L, B-L1, MU,
 1980 MU-BI, MU-KF and MU-N zones where such a setback does not abut a residential use; and

1981 (c) Outdoor dining in the public way is permitted subject to Title 5 and all Town
 1982 requirements.

1983 (2) Any existing restaurant that meets the above requirements may apply for approval for
 1984 outdoor dining on-site.

1985 (3) New restaurants to be constructed may include outdoor dining plans on-site as part of their
 1986 site plan review.

1987 B. Standards.

1988 (1) Outdoor dining on-site must meet all the requirements of the pertinent zone’s buffering and
 1989 screening requirements.

1990 (2) Proposed outdoor dining on-site must comply with all conditions pertaining to any existing
 1991 variances, special exceptions or other approvals granted for the property as well as any
 1992 conditions imposed by the granting of the site plan review approval for the outdoor dining
 1993 itself.

1994 (3) All the proposed outdoor dining activities must be conducted on private property owned,
 1995 leased or otherwise controlled by the applicant unless separate approval for the use of any
 1996 public rights-of-way has been obtained from the Town.

1997 (4) The proposed outdoor dining must not impede a site’s internal circulation or its access and
 1998 egress.

1999 (5) No additional parking is required for outdoor dining at existing restaurants where on-street
 2000 parking is available. For outdoor dining areas in existing restaurants where on-street parking
 2001 is not available, if the outdoor dining area is 1,000 square feet or less, no additional parking
 2002 is required. For outdoor dining areas in existing restaurants over 1,000 square feet but less

2003 than 2,000 square feet, one additional parking space is required. Thereafter, one additional
 2004 parking space is required for every additional 1,000 sf.

2005 C. Site Plan Review submission requirements

2006 (1) The site plan must be drawn to scale, showing the dimensions of the proposed outdoor
 2007 dining area, and its location relative to the structure where the restaurant is located.

2008 (2) The site plan must show the location of any proposed or existing pavement, hardscaping,
 2009 landscaping, planters, fencing, canopies, umbrellas, awnings or barriers surrounding or
 2010 delineating the outside dining area.

2011 (3) Calculations demonstrating the number of tables that may be placed within the proposed
 2012 outdoor dining area according to state and local regulations must be submitted.

2013 (4) The above submission requirements are all that is required for outdoor dining areas that
 2014 require Code Enforcement approval under §16.2.6. For outdoor dining areas that must be
 2015 reviewed under site plan review, the above requirements must be met in addition to the
 2016 submission requirements of §16.7 unless a submission requirements waiver is granted by the
 2017 Planning Board.

2018 16.5.21 Overboard Discharge Systems

2019 A. Treated overboard discharge system defined.
 2020 "Treated overboard discharge system" means any sand-filter system, mechanical system or
 2021 primary treatment with disinfection system designed to State of Maine Department of
 2022 Environmental Protection specifications which discharges effluent or other liquids into
 2023 any water body or watercourse.

2024 B. Permit requirement.
 2025 No person, firm or corporation may construct, install or maintain any treated overboard
 2026 discharge system without first obtaining a Town permit for the same. Such permit is in
 2027 addition to any other permit or license required by state or federal authorities for the same.

2028 C. Permit application.

2029 (1) Application for permit; fee. All applicants for permits must first apply to the Board of
 2030 Appeals with a copy of the application given to the Code Enforcement Officer. The
 2031 application form for a treated overboard discharge system must include the property owner's
 2032 name and mailing address and telephone number, the applicant's name and address and
 2033 telephone number, the location address; tax maps and lot numbers; engineer's scale drawing
 2034 showing all relevant details of the system; and any other information deemed relevant or
 2035 necessary by either the Board of Appeals or the Code Enforcement Officer. A fee as set out
 2036 in Appendix A is required for each application. Application forms are to be available from
 2037 the Code Enforcement Officer.

2038 (2) Issuance of permits; fee. The treated overboard discharge permit may be issued by the Code
 2039 Enforcement Officer only after Board of Appeals approval. A permit issue fee as set out in

- 2040 Appendix A is required for each system.
- 2041 (3) Notice of hearing.
- 2042 (a). Upon receipt of the completed application, the Board must timely notify the Code
2043 Enforcement Officer of the established hearing date, which may be no more than 30 days
2044 from the date of the receipted application. The Code Enforcement Officer must also
2045 notify the Planning Board, abutters and applicant of the hearing date. The Code
2046 Enforcement Officer must also give public notice of the permit hearing date by
2047 advertising the same in a newspaper of general circulation within the Town at least
2048 seven days prior to the hearing date.
- 2049 (b). For the purposes of this section, the abutting owners of property are considered to be the
2050 parties listed by the Assessors of taxes for the Town as those against whom taxes are
2051 assessed. Failure of any property owner to receive a notice of public hearing does not
2052 necessitate another hearing or invalidate any action by the Board of Appeals.
- 2053 (4) Conduct of hearing and standards. The Board must conduct the hearing on the application
2054 for a treated overboard discharge system permit by following the same procedures
2055 established for the consideration of a special exception under the terms of § 16.2.12.
- 2056 (a). The Board may receive oral and documentary evidence and testimony. At the close of
2057 the evidentiary portion of the hearing, the Board must consider whether the effluent or
2058 discharge from the proposed treated overboard discharge system will have a negative
2059 impact on any aquatic or fowl life, will lower the water quality standard or impair the
2060 uses designated by the classification of the receiving waters. In addition, the Board may
2061 consider any relevant provisions of the performance standards set forth in § 16.5, 16.7
2062 and 16.8.
- 2063 (b). The Board may also consider any relevant state or federal statute, rules or regulations
2064 bearing on the same. After applying the standards contained herein, the Board must issue
2065 its decision containing its findings of fact and conclusions and approve the application if
2066 the Board is satisfied that the standards have been met.
- 2067 (5) Notice of decision. The Board of Appeals must notify the applicant in writing of its decision
2068 no later than 10 days thereafter.
- 2069 D. Systems exempted.
2070 The permit requirement of this chapter does not apply to any sewage disposal system in
2071 operation at the time this chapter is adopted or the subsequent repair or replacement of any
2072 such system, including replacement by treated overboard discharge system, except that
2073 any treated overboard discharge system, as defined herein and operating as of the date of
2074 the adoption of this chapter or subsequently installed as a replacement for an existing
2075 malfunction in-ground or overboard system under license by the State of Maine, is
2076 required to conform to the standards of maintenance and monitoring set forth in
2077 § 16.5.21.E.
- 2078 E. Standards of maintenance and monitoring.

- 2079 Treated overboard discharge systems that are operating by virtue of a permit issued under
2080 the terms of this chapter, or any such system operating as of the date of the enactment of
2081 this chapter pursuant to a license issued by the State of Maine, must be maintained and
2082 monitored pursuant to the following standards:
- 2083 (1) Disinfection. Disinfection is to be provided in a manner acceptable to the Maine Department
2084 of Environmental Protection. An approved disinfectant must be used and maintained
2085 according to the replacement or renewal schedule established by the Department of
2086 Environmental Protection.
- 2087 (2) Septic tanks. Septic tanks which are part of an overboard discharge system must be pumped
2088 annually to ensure that the accumulated sludge is never nearer than 12 inches to the invert of
2089 the outlet pipe leading from the septic tank to the sand filter.
- 2090 (3) Monitoring.
- 2091 (a). The permit holder and/or the property owner must supply to the Code Enforcement
2092 Officer, prior to August 1 of each year, a report of the effluent analysis conducted by a
2093 recognized testing laboratory. All water samples for evaluation must be obtained and
2094 analyzed during the month of July. Each analysis must include the following tests:
- 2095 [1] Fecal coliform (number of colonies per milligram of water);
- 2096 [2] Biological oxygen demand (BOD) and suspended solids (mg/l); and
- 2097 [3] Settleable solids (mg/l after a twenty-minute settling period in an Imhoff cone).
- 2098 (b). In addition to the requirements contained in this subsection, the Code Enforcement
2099 Officer may require periodic operational reports from recognized laboratories in such
2100 form and containing such information as the Code Enforcement Officer may require.
- 2101 (4) Sand filters. Whenever the BOD levels exceed the limits specified in the regulations of the
2102 Maine Department of Environmental Protection, or when there are other indications of the
2103 sand-filter malfunctioning, the sand filter is to be inspected by a qualified professional. If the
2104 sand filter is found to be clogged, it must be replaced with new material meeting
2105 specifications of the Maine Department of Environmental Protection.
- 2106 (5) Emergency measures. In the event that a treated overboard discharge system is found to be
2107 malfunctioning, for any reason, the septic or settling tank must be pumped immediately and
2108 continue to be pumped as often as required until the malfunctioning is corrected.
- 2109 F. Malfunctioning of systems.
2110 The permit owner and/or property owner must immediately notify the Code Enforcement
2111 Officer of any malfunction of any component of the treated overboard discharge system.
2112 In the event that the system malfunctions, the Code Enforcement Officer may order that
2113 the effluent discharge cease within a time set by the Code Enforcement Officer.
- 2114 G. System construction.

2115 (1) Notice to Code Enforcement Officer and DEP. Before any work is undertaken pursuant to a
 2116 permit issued under the terms of this chapter, the permit holder and/or property owner must
 2117 notify the Code Enforcement Officer and the Department of Environmental Protection
 2118 (DEP) at least seven days prior to commencement of the system's construction in order that
 2119 all proper inspections of the proposed construction may be made by the Code Enforcement
 2120 Officer and the DEP.

2121 (2) Certificate of compliance. Upon the completion of the construction of the treated overboard
 2122 discharge system and prior to its operation, the Code Enforcement Officer is to issue a
 2123 certificate of compliance, certifying that the system complies with all municipal ordinances,
 2124 rules and regulations.

2125 H. Violations and penalties.
 2126 Failure to conform to the provisions of the chapter constitutes a violation. A written notice
 2127 of violation must be sent by the Code Enforcement Officer to the permit holder and/or the
 2128 property owner operating the treated overboard discharge system which is in
 2129 noncompliance with this chapter.

2130 (1) This notice is to be sent by certified mail, return receipt requested, and must inform the
 2131 permit holder and/or property owner of the deadline for correcting the malfunction. The
 2132 permit holder and/or property owner is to be given a reasonable time, not to exceed 30 days,
 2133 to correct the malfunction.

2134 (2) If the violation is not corrected within this specified time period, the Code Enforcement
 2135 Officer must notify the permit holder and/or the property owner by certified mail, return
 2136 receipt requested, that the permit is revoked.

2137 (3) Each day that the system is allowed to discharge after the notice of permit revocation is
 2138 received constitutes a separate offense. A fine of not more than \$100 will be levied for each
 2139 such separate offense. In addition to the remedy contained herein, said violation constitutes a
 2140 nuisance for which the municipality, through its Code Enforcement Officer, may seek
 2141 adequate remedy.

2142 (4) Any actual and direct expenses incurred by the Town in abatement of such nuisance may be
 2143 recovered from the permit holder and/or property owner by civil complaint.

2144 I. Property rights.
 2145 The issuance of any permit authorized by this chapter does not convey any property rights
 2146 to the permit holder. The permit holder and/or the property owner, by accepting the permit
 2147 under the terms of this chapter, consent to allow the Code Enforcement Officer or
 2148 authorized agent, at all reasonable and proper times, to enter upon the property for
 2149 inspection of the system or otherwise enforce the terms of this chapter.

2150 J. Permit expiration date.
 2151 Such permit automatically expires within 90 days after the municipal sanitary sewer
 2152 system becomes available within 200 feet of the property line of the lot or parcel of land
 2153 on which the treated overboard discharge system is located, as measured along the public
 2154 way.

- 2155 16.5.22 Piers, Wharves, Marinas and Other Uses Projecting into Water Bodies
- 2156 A. Standards.
- 2157 Development involving piers, wharves, marinas and other uses projecting into water
- 2158 bodies must conform to the following standards:
- 2159 (1) In accordance with 38 M.R.S. § 435 et seq., Mandatory Shoreland Zoning, all dimensional
- 2160 and other standards (excluding setbacks from water bodies) of this title apply to structures
- 2161 and uses projecting into a water body beyond the normal high-water mark.
- 2162 (2) Boathouses, while convenient to locate near the water, are not considered functionally
- 2163 water-dependent uses and must meet the same setback requirement as principal structures.
- 2164 The State of Maine no longer issues permits for construction of boathouses below the
- 2165 normal high-water line due to the adverse environmental impact; therefore, new boathouses
- 2166 must be located on uplands.
- 2167 (3) Only functionally water-dependent uses are allowed on, over or abutting a pier, wharf or
- 2168 other structure beyond the normal high-water line.
- 2169 (4) Access from shore must be developed on soils appropriate for such use and constructed so as
- 2170 to control erosion.
- 2171 (5) The location must not interfere with existing developed recreational and maritime commerce
- 2172 or natural beach areas.
- 2173 (6) The facility must be located so as to minimize adverse effects on fisheries.
- 2174 (7) The facility must be a water-dependent use and no larger in dimension than necessary to
- 2175 carry on the activity and must be consistent with existing conditions, use and character of
- 2176 the area.
- 2177 (8) No new structure may be built on, over or abutting a pier, wharf, dock or other structure
- 2178 extending beyond the normal high-water line of a water body or within a wetland unless the
- 2179 structure requires direct access to the water as an operational necessity.
- 2180 (9) No existing structures built on, over or abutting a pier, dock, wharf or other structure
- 2181 extending beyond the normal high-water line of a water body or within a wetland may be
- 2182 converted to residential dwelling units in any district.
- 2183 (10) Except in the Commercial Fisheries/Maritime Uses Overlay Zone, structures built on, over
- 2184 or abutting a pier, wharf, dock or other structure extending beyond the normal high-water
- 2185 line of a water body or within a wetland must not exceed 20 feet in height above the pier,
- 2186 wharf, dock or other structure.
- 2187 (11) Applicants proposing any construction or fill activities in a waterway or wetland requiring
- 2188 approval by the U.S. Army Corps of Engineers pursuant to Section 404 of the Clean Water
- 2189 Act, Section 9 or 10 of the Rivers and Harbors Act, or Section 103 of the Marine Protection,
- 2190 Research and Sanctuaries Act, must submit proof of a valid permit issued.

- 2191 (12) Proposals for any principal marine structure use, any residential joint- and/or shared-use
2192 pier, or any residential-development-use pier require Planning Board approval.
- 2193 (13) A residential development containing five or more lots in a zone permitting a residential-
2194 development-use pier may construct only one residential development use pier.
- 2195 (14) Commercial development of the shorefront must provide for access by the general public as
2196 part of a shorefront development plan.
- 2197 (15) Only one pier, ramp and float structure is permitted on any noncommercial or nonindustrial
2198 lot.
- 2199 (16) Marine-related permanent structures located below the mean low-water line require the
2200 following permits, leases and approvals:
- 2201 (a). Port Authority approval;
- 2202 (b). Department of Environmental Protection permit pursuant to the Natural Resources
2203 Protection Act, 38 M.R.S. § 480-C;
- 2204 (c). Army Corps of Engineers permit;
- 2205 (d). Maine State Department of Conservation, Bureau of Parks and Lands, Submerged Land
2206 Coordinator approval; and
- 2207 (e). Building permit.

2208 16.5.23 Signs

2209 A. Purpose.

2210 The purpose of this article is to balance the need for adequate identification and advertising
2211 for land uses to promote the economic well-being of the Town with the need to protect the
2212 public safety and maintain and enhance the physical appearance of the community. This
2213 objective is to be achieved by:

- 2214 (1) Allowing adequate signage for the effective use of signs as a means of identifying,
2215 advertising and communication of land uses;
- 2216 (2) Establishing the appropriate bounds for location, size, number, type and use of signs to
2217 protect traffic safety, preserve property values and to promote visual order and clarity; and
- 2218 (3) Establishing procedures and regulations for the fair and consistent administration and
2219 enforcement of these sign restrictions.

2220 B. Nonconforming existing signs.

- 2221 (1) All signs lawfully existing on October 1, 1997 that do not conform to the terms of this
2222 article may be continued and maintained, subject to § 16.5.23.B(2), but may neither be
2223 enlarged nor substantially altered except in conformity with this article.

2224 (2) Lawfully nonconforming signs must be made to conform or be removed if any of the
2225 following circumstances occur, individually or in combination, for a consecutive three-year
2226 time period:

2227 (a). The sign has ceased to be accurate by reason of vacancy or closure of the business which
2228 the sign advertises.

2229 (b). The sign face is blank, illegible, obscured, painted over, concealed or otherwise not
2230 decipherable.

2231 (3) In no event may the degree of nonconformity of any sign or type of signage on any lot be
2232 increased.

2233 C. General requirements.

2234 (1) No sign may be erected, posted, enlarged, or substantially changed without a permit issued
2235 by the Code Enforcement Officer (CEO) and also approved by the Town Planner, except
2236 where § 16.5.23.J provides otherwise.

2237 (2) No exterior sign may be artificially illuminated except where hooded or shielded or
2238 otherwise designed to prevent direct light spilling onto traveled ways or neighboring
2239 property.

2240 (3) No sign may contain a moving message board or intermittent illumination, except where
2241 necessary in time/temperature/date signs.

2242 (4) Any sign that interferes with or closely imitates any official traffic sign, signal or device is
2243 prohibited.

2244 (5) No sign designed to be transported by means of wheels is allowed, unless said vehicle is
2245 used in the normal day-to-day transportation operations of the business. All trailer signs are
2246 prohibited.

2247 (6) Any changeable message signs must be integrated into a permanently-mounted sign. Such a
2248 changeable message board is to be mounted a minimum of 3 1/2 feet above ground level.

2249 (7) All signs must be maintained in a safe and sound structural condition.

2250 (8) Advertising. No advertising or signage is permitted on wireless communication services
2251 facilities.

2252 (9) Any sign not expressly permitted herein is prohibited.

2253 D. Sign location.

2254 (1) All signs must be permanently installed on the premises of the activity to which the
2255 advertising message refers, except where § 16.5.23.H provides otherwise or upon approval
2256 by the Town Council.

- 2257 (2) All signs must be located outside the full width of the right-of-way of any public way, unless
2258 authorized by the Town Council.
- 2259 (3) Except for signs authorized in §§ 16.5.23.H and 16.5.23.J, freestanding signs erected after
2260 October 1, 1997 must be located at least 33 feet from the center line of any U.S. or state
2261 numbered highway less than 66 feet in width and at least 20 feet from the outside edge of
2262 the paved portion of any travel lane of any U.S. or state numbered highway which has both
2263 more than two travel lanes and a total paved portion in excess of 24 feet in width.
- 2264 (4) Signs must not be placed on or above the roof of any building. All signs must be located
2265 below the level of the eaves of the portion of building where the sign is to be erected, except
2266 as follows:
- 2267 (a) Signage may be located above the eaves on a gable or dormer of a building, providing it
2268 does not extend above or beyond the roofline of the gable or dormer; and
- 2269 (b) Signage may be located on a parapet wall, provided the sign neither extends any more
2270 than eight feet above the roof-wall junction of the parapet wall nor extends beyond the
2271 height of the parapet wall.
- 2272 Note: Please see Figure 3 of § 16.5 at the end of this article to assist the reader in
2273 understanding acceptable and unacceptable locations of building-mounted signs according to
2274 the terms of § 16.5.23.D
- 2275 (5) Building-mounted signs which extend more than six inches from the surface of the structure
2276 must provide a minimum of eight feet of vertical clearance to a walkway, parking area,
2277 private drive and ground surface. Such signs must not extend beyond the street right-of-way
2278 boundary unless authorized by the Town Council.
- 2279 (6) Freestanding signs must not extend higher than 20 feet above the original ground level or the
2280 elevation of the center line of the nearest street measured at the closest point to the sign,
2281 whichever is greater.
- 2282 (7) Signs must not be posted on trees, utility poles, traffic control devices, or unregistered motor
2283 vehicles or trailers. Signs posted on fences are treated as a type of freestanding sign. Any
2284 unpermitted and unallowed sign located in a public road right-of-way may be caused to be
2285 removed by the Town without notice to the owner of such sign.
- 2286 (8) No sign may be located so that it interferes with the safe sight distances necessary for
2287 motorists to proceed safely through intersections or to enter onto or exit from public streets,
2288 private roads or driveways.
- 2289 (9) All building-mounted signs must be located only on the building that contains the activities
2290 or businesses advertised, except that up to 10% of the allowed signage for building-mounted
2291 signs in § 16.5.23.K may be allocated to signs mounted on fuel pumps and/or fuel pump
2292 canopies.
- 2293 (10) In cases where multiple freestanding signs are permitted, any additional allowed smaller

- 2294 freestanding sign must face and be located along a separate publicly maintained street.
- 2295 E. Number of freestanding signs.
- 2296 (1) Except as otherwise authorized in this section, as well as §§ 16.5.23.I and 16.5.23.J, each
2297 development is prohibited from having more than one freestanding sign.
- 2298 (2) Multisided signs are considered as one sign; however, the square footage of each sign face is
2299 calculated to determine total sign area.
- 2300 (3) Where a development fronts on two publicly maintained streets and has designed and
2301 approved access onto both those publicly maintained streets, the development is allowed one
2302 additional freestanding sign that faces and is located along a second publicly maintained
2303 street in accordance with § 16.5.23.G.
- 2304 (4) Where a development fronts on three publicly maintained streets and has designed and
2305 approved access onto each publicly maintained street, a third freestanding sign facing and
2306 located along the third publicly maintained street may be authorized at the Planning Board's
2307 discretion if it finds that other freestanding signage is not visible from the third street and
2308 that there is a need for a third freestanding sign to adequately communicate the business
2309 location to travelers on a third road fronted by the business.
- 2310 F. Number of building-mounted signs.
2311 To prevent sign clutter, except for those signs authorized by § 16.5.23.I or 16.5.23.J, each
2312 business facility which is on a site where two or more businesses occupy the same
2313 building, lot or development is prohibited from having more than two building-mounted,
2314 nontemporary signs.
- 2315 G. Sign area.
- 2316 (1) Residential Zones. Zones designated Residential - Rural Conservation, Residential - Rural,
2317 Residential - Suburban, Residential - Urban, and Residential - Village on the Zoning Map
2318 are residential zones for the purpose of this section.
- 2319 (a). Accessory uses, including home occupations, are allowed sign area no greater than eight
2320 square feet.
- 2321 (b). Other permitted uses are allowed sign area no greater than 16 square feet, except as
2322 otherwise provided. Residential developments are also allowed 24 square feet, provided
2323 that signs are located within the development on premises owned by the developer or an
2324 owners' association.
- 2325 (2) All other zones.
- 2326 (a). A single business situated on a lot of record is allowed a total sign area no greater than
2327 300 square feet or 1 1/2 square feet for every linear foot of building frontage, whichever
2328 is smaller. In any case, a single business on a lot of record is allowed a minimum sign
2329 area of 72 square feet.

- 2330 (b). Where two or more business facilities occupy the same building, lot or development,
2331 allowable sign area is calculated as follows:
- 2332 [1] Total building-mounted sign area equals 1 1/2 square feet per linear foot of building
2333 frontage for each business facility. The total allowed building-mounted sign area may
2334 be allocated among individual business facilities at the property owner's discretion.
- 2335 [2] The development is allowed one freestanding sign not greater than 150 square feet in
2336 sign area. An additional freestanding sign no greater than 72 square feet in sign area
2337 facing and located along that secondary street is allowed if the development fronts on
2338 multiple streets and has designed and approved access onto each publicly maintained
2339 street. A third freestanding sign may be permitted at the Planning Board's discretion
2340 in accordance with § 16.5.23.E.
- 2341 H. Off-premises signs.
- 2342 (1) An individual business or service, upon application, may be assigned no more than three off-
2343 premises business directional signs (OBDS). An OBDS must be designed and located so as
2344 to avoid conflict with other signs and minimize impact on the scenic environment through
2345 the following standards:
- 2346 (a). Dimensions: 12 inches by 48 inches.
- 2347 (b). Coloring: state standard blue background, white lettering, logo may be any color.
- 2348 (c). Reflectorization: optional.
- 2349 (d). Location: on existing assemblies (posts) where possible. No more than two assemblies
2350 per intersection approach.
- 2351 (e). Restricted areas: An OBDS must not be placed on an inbound leg of the Kittery traffic
2352 circle within 400 feet of its outer perimeter, or adjacent to points of scenic or historical
2353 interest, including but not limited to federal, state and local parks and reserves,
2354 recognized historic sites and buildings, water bridges and cemeteries.
- 2355 (2) An off-premises sign which advertises commercial or other activity without advertising any
2356 specific enterprise (generic signs) may be approved by the Planning Board at size and
2357 location to be specified.
- 2358 I. Temporary signs.
2359 All temporary signs must be installed on the premises of the activity to which the
2360 advertising message refers. Moveable signs are prohibited as temporary signs. The
2361 following types of temporary signs are allowed with an approved sign permit:
- 2362 (1) The use of one temporary sign, other than a trailer sign, at any one time per business, that is
2363 mounted to the building or attached to a freestanding sign structure for the purpose of
2364 advertising special events, provided that such signs are displayed for no longer than a
2365 combined total of 21 days in any calendar quarter (January 1 to March 30, etc.), may be

- 2366 permitted. Total sign area for a temporary sign must not exceed 72 square feet. The allowed
 2367 twenty-one-day display period may be divided into no more than three separate,
 2368 nonoverlapping temporary periods of not less than seven days.
- 2369 (2) One additional temporary sign, other than a trailer sign, mounted to the building or to a
 2370 freestanding sign structure, is permitted per legally participating site for the duration of each
 2371 Town Council-approved sidewalk sales event.
- 2372 J. Signs allowed without sign permit.
 2373 The following types of signs, in sizes and under conditions stated, are allowed without a
 2374 Town sign permit, but must conform with all other provisions of § 16.5.23 of this chapter
 2375 except for the provisions restricting the number of signs (§§ 16.5.23.E and 16.5.23.F) and
 2376 limiting the total sign area (§ 16.5.23.G).
- 2377 (1) Public information signs. Signs for the control of traffic and other regulatory purposes, route
 2378 markers, street signs, warning signs, utility, danger or warning signs, signs which indicate
 2379 direction to hospitals, churches or other places of worship, or other public facilities.
- 2380 (2) General information signs. Signs which provide direction or instruction, such as location of
 2381 telephone, restrooms, parking, automatic teller machines (ATMs), transit stops, entrances
 2382 and exits, open and closed signs, where installed entirely upon the property to which they
 2383 pertain. "Enter" and "Exit" signs must not exceed four square feet in size. All other general
 2384 information signs must not exceed two square feet in size. Except for identifying approved
 2385 off-premises parking stalls, no logos, trademarks or names of businesses are permitted on
 2386 general information signs. The Planning Board may approve increased sizes and/or the use
 2387 of logos or names of businesses on general information signs when considered necessary to
 2388 promote safety or eliminate confusion.
- 2389 (3) Memorial tablets. Grave markers, signs commemorating a historical figure or event, names
 2390 or dates of buildings to which a sign is attached.
- 2391 (4) Public notices and community signs. Official notices posted by public employees in
 2392 performance of their duties, and any sign for Town sponsored or supported events or
 2393 facilities as approved by the Town Council.
- 2394 (5) Flags of any government or recognized political subdivision. The flag of any government or
 2395 recognized political subdivision is allowed, provided it is displayed no higher than 50 feet
 2396 above the original ground level or the elevation of the center line of the nearest street
 2397 measured at the closest point to the flag, whichever is greater. A single memorial flagpole
 2398 installation sponsored by private funding not to exceed 129 feet in height installed on Town-
 2399 owned or regulated property at Memorial Circle is allowed.
- 2400 (6) Religious symbols.
- 2401 (7) Building street numbers. In accordance with the street-numbering map on file with the Town
 2402 Assessing Department;
- 2403 (8) Political campaign signs. Signs bearing political messages relating to an election, primary or

16.5 GENERAL PERFORMANCE STANDARDS

Adopted: January 24, 2022

- 2404 referendum, provided these signs may be displayed on:
- 2405 (a). Public property not earlier than 30 days prior to the election, primary or referendum to
2406 which they relate and are removed not later than two days thereafter.
- 2407 (b). Private property without time constraints.
- 2408 (9) Interior signs. Signs placed inside a building which are located at least 10 feet inside the
2409 building or otherwise not oriented to be viewed from outside the building;
- 2410 (10) Vehicular signs. Signs painted on or affixed to registered motor vehicles or trailers where
2411 such signs are clearly incidental to the regular transportation function of the vehicle.
- 2412 (11) Service club signs. Service club signs may be placed within the right-of-way of a street with
2413 approval of the Commissioner of Public Works. Such signs are encouraged to be
2414 consolidated on a single designated assembly structure at major entranceways to the Town.
2415 In addition, such signs not exceeding four square feet in size may be erected at locations
2416 where meetings of such service clubs are convened.
- 2417 (12) Real estate signs. Any sign advertising real estate for sale, lease or rent, provided:
- 2418 (a). Each sign does not exceed 12 square feet;
- 2419 (b). Each sign is located on the property being advertised, except one sign may be located as
2420 an off-premises directional sign, provided the sign does not restrict safe sight distances
2421 or impair safety;
- 2422 (c). No more than two signs are erected per property being advertised; and
- 2423 (d). Each sign is removed within 60 days of transfer of title.
- 2424 (13) Window signs. Any sign that is placed inside a window and is visible from the exterior of
2425 the window, provided such signage covers no more than 50% of the area of any window.
- 2426 (14) Legally required signs. Any sign required by local, state or federal law with sign area no
2427 greater than two square feet or the minimum size required by law, whichever is larger.
- 2428 (15) Food menu signs. Up to two signs advertising food items for sale on the premises at a
2429 legally existing restaurant, fast-food outlet, drive-in restaurant, or snack bar are allowed,
2430 provided that:
- 2431 (a). The total sign area of each such food menu sign on the site must not exceed 32 square
2432 feet; and
- 2433 (b). Such food menu signs must either be building-mounted or comply with the front yard
2434 requirements for structures and be located within 75 feet of the restaurant.
- 2435 (16) Undercanopy, pedestrian-oriented signs. One building-mounted business identification sign
2436 per business facility, not to exceed 10 square feet in size per sign, where two or more

- 2437 businesses occupy the same building with a pedestrian walkway and canopy that parallels
 2438 and connects the front entrances of the business facilities. The sign must be oriented toward
 2439 pedestrians using the walkway, be located under the canopy near the main entrance to the
 2440 business advertised and solely identify the business name or logo.
- 2441 (17) Construction phase and contractor signs. Signs, other than trailer signs, identifying the name
 2442 of a contractor working on the premises or describing a construction project, erected only
 2443 during the construction phase of a development, provided each sign does not exceed 75
 2444 square feet.
- 2445 (18) Garage sale signs as allowed by § 5.4.9A(2).
- 2446 K. Signs in Shoreland Overlay and Resource Protection Overlay Zones.
 2447 The following provisions govern signs in the Conservation, Shoreland Overlay and
 2448 Resource Protection Overlay Zones, except where either is overlaid by the Commercial
 2449 Fisheries/Maritime Uses Overlay Zone:
- 2450 (1) Signs relating to goods and services sold on the premises are allowed, provided such signs
 2451 do not exceed six square feet in area and do not exceed two signs per premises.
- 2452 (2) Signs relating to goods or services not sold or rendered on the premises are prohibited.
- 2453 (3) Name signs are allowed, provided such signs do not exceed two signs per premises and do
 2454 not exceed 12 square feet in the aggregate.
- 2455 (4) Residential users may display a temporary single sign not over three square feet in area
 2456 relating to the sale, rental or lease of the premises.
- 2457 (5) Signs relating to trespassing and hunting are allowed without restriction as to number,
 2458 provided no such sign exceeds two square feet in area.
- 2459 (6) Signs relating to public safety are allowed without restriction.
- 2460 (7) Signs higher than 20 feet above the ground are prohibited.
- 2461 (8) Signs may be illuminated only by shielded, nonflashing lights.
- 2462 L. Sign permit application procedures.
- 2463 (1) No person may erect, post, enlarge, relocate, replace or modify a sign except in conformance
 2464 with a permit issued by the Code Enforcement Officer and also approved by the Town
 2465 Planner. Notwithstanding the above statement, the following signs may be erected or
 2466 modified without a sign permit:
- 2467 (a). Signs authorized in § 16.5.23.J.
- 2468 (b). Changes to nameplates or "shingles" to reflect occupancy changes on an existing
 2469 approved freestanding sign identifying individual occupants on the site, provided no

- 2470 change is made to the shape or size of the sign or sign area.
- 2471 (c). Characters, letters and numbers may be changed on approved changeable message signs
2472 without a sign permit, provided no other change is made to the sign.
- 2473 (d). Signs may be maintained, cleaned or repainted, provided no change is made to the shape
2474 or size of the sign or to the sign area, and provided no new business name is advertised.
- 2475 (2) A complete sign application submission consists of the following items submitted to the
2476 Code Enforcement Officer:
- 2477 (a). A completed sign permit application form provided by the Town;
- 2478 (b). An application fee in accordance with a fee schedule established by the Town Council;
2479 and
- 2480 (c). A self-addressed, stamped envelope.
- 2481 (3) Complete applications must be reviewed by the CEO for compliance with this title.
2482 Complete sign permit application submissions must be returned by the CEO after rendering
2483 a decision to the applicant if accompanied by an SASE. Incomplete sign permit application
2484 submissions will only be returned to the applicant if accompanied by an SASE.
- 2485 (4) Unless the proposed sign is located within the Shoreland Zone, the CEO must issue, deny or
2486 seek a formal Planning Board opinion within 14 working days of receiving a complete sign
2487 permit application submission. If either a Planning Board opinion is sought or the proposed
2488 sign is located within the Shoreland Zone, the CEO must issue or deny the application
2489 within 35 calendar days of receiving a complete sign permit application submission.
- 2490 (5) The sign permit must be approved if the proposed sign conforms in every respect with the
2491 requirements of this article. In the CEO's absence, or if no action is taken by the CEO within
2492 the above time limits, the Town Manager or the Town Manager's designee may approve or
2493 deny the sign permit application submission.
- 2494 (6) All new signs approved as of October 1, 1997 must display a numbered sign permit sticker
2495 provided by the Town in a visible location at the lower right-hand corner of the sign face.
2496 Failure to display such sign permit sticker on signs erected as of October 1, 1997 will be
2497 considered a violation of this article. Replacement stickers are available from the CEO based
2498 on a fee schedule established by the Town Council.
- 2499 M. Sign violations and appeal.
- 2500 (1) The CEO must notify and order the owner to immediately correct any sign that endangers
2501 public safety. Signs that endanger public safety include, but are not limited to, those which
2502 are dangerous by reason of structural defect or those that interfere or obstruct a driver's safe
2503 operation of a motor vehicle.
- 2504 (2) A nonconforming sign which is required to conform to the sign regulations per § 16.5.23.B

2505 must be brought into conformity.

2506 (3) Enforcement of the provisions of this article is in accordance with §16.2.

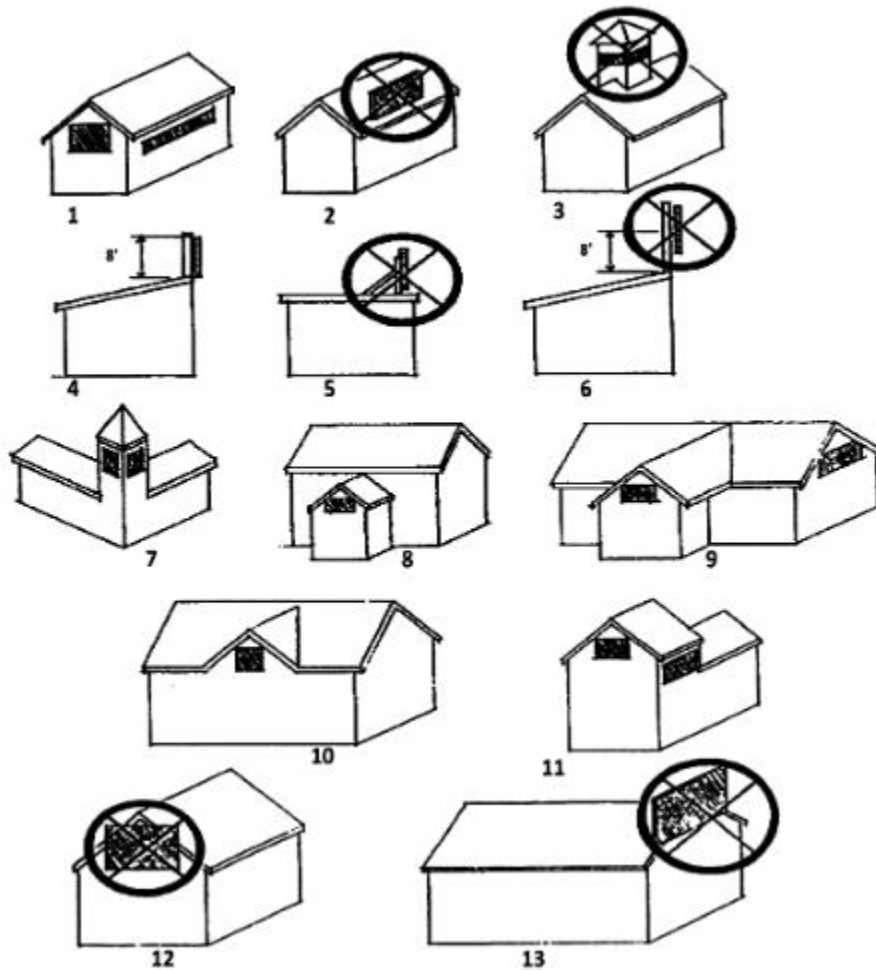
2507

2508 Figure 3

2509 Examples of Allowed and Prohibited Sign Placement

2510 These drawings are illustrative and meant to be an aid to the reader; refer to § 16.5.21, for full
2511 details.

2512



2513

2514 16.5.24 Dwellings in Resource Protection and Shoreland Overlay Zones

2515 A. Dwellings in Resource Protection and Shoreland Overlay Zones.

2516 The Code Enforcement Officer may issue a permit for a new dwelling outside the base zone

2517 setback ion the Shoreland Overlay Zone only provided the structure us conforming with all base
2518 zone standards. In addition to the criteria specified in § 16.2.12.F, § 16.8.9.D(5) and §
2519 16.7.10.D(6), applicable to the granting of a special exception use request, the Planning Board
2520 may approve an application for a single- family dwelling special exception use request within the
2521 Resource Protection Overlay Zone, where applicable, provided the applicant demonstrates all of
2522 the following conditions are met:

2523 (1) There is no location on the property, other than a location within Resource Protection
2524 Overlay Zones, where a single-family dwelling can be built, provided the structure us
2525 conforming with all base zone standards.

2526 (2) The lot on which the structure is proposed is undeveloped and was established and recorded
2527 in the York County Registry of Deeds before inclusion in the Shoreland or Resource
2528 Protection Overlay Zones.

2529 (3) All proposed buildings, sewage disposal systems, other than municipal sewer, and other
2530 improvements are located:

2531 (a). On natural ground slopes of less than 20%;

2532 (b). Outside the floodway of the one-hundred-year floodplain along rivers; and

2533 (c). Outside the velocity zone in areas subject to tides, based on detailed flood insurance
2534 studies and as delineated on the Federal Emergency Management Agency's Flood
2535 Boundary and Floodway Maps and Flood Insurance Rate Maps.

2536 (4) The lowest floor elevation or openings of all buildings and structures, including basements,
2537 must be elevated at least one foot above the elevation of the one-hundred-year flood, the
2538 flood of record or, in the absence of these, the flood as defined by soil types identified as
2539 recent floodplain soils.

2540 (5) If the floodway is not shown on the Federal Emergency Management Agency Maps, it is
2541 deemed to be 1/2 the width of the one-hundred-year floodplain.

2542 (6) The total ground-floor area, including cantilevered or similar overhanging extensions, of all
2543 principal and accessory structures is limited to a maximum of 1,500 square feet. This
2544 limitation may not be altered by variance.

2545 (7) All structures, except functionally water-dependent structures, are set back from the normal
2546 high-water line of a water body, tributary stream or upland edge of a wetland to the greatest
2547 practical extent but not less than 75 feet horizontal distance. In determining the greatest
2548 practical extent, the Planning Board must consider the depth of the lot, the slope of the land,
2549 the potential for soil erosion, the type and amount of vegetation to be removed, the proposed
2550 building site's elevation in regard to the floodplain and its proximity to the wetlands.

2551 16.5.25 Sprinkler Systems

2552 A. Requirement.

- 2553 (1) An approved automatic sprinkler system must be installed in all areas of new buildings
2554 meeting any or all of the following criteria:
- 2555 (a). Three or more stories in height; or
- 2556 (b). Thirty-six or more feet in height; or
- 2557 (c). One hundred thousand cubic feet in volume or 10,000 square feet in floor area; or
- 2558 (d). Multiple-family or multiple-occupant dwelling and/or all lodging units; or
- 2559 (e). Any single-family attached units, such as garden apartments or townhouse with three or
2560 more units attached together; or
- 2561 (f). All motels, hotels, rooming houses, inns or other structures containing more than two
2562 dwelling or living units, hotel or motel rooms.
- 2563 (2) An approved automatic sprinkler system must be installed in new additions to existing
2564 buildings and to the existing building(s) meeting any or all of the following criteria:
- 2565 (a). When the addition causes the building to become three or more stories in height; or
- 2566 (b). When the addition causes the building to become 36 or more feet in height; or
- 2567 (c). When the addition causes the building to become 100,000 cubic feet in volume or
2568 10,000 square feet in area;
- 2569 (d). When the addition to or renovation of the existing building results in the end use
2570 becoming a motel, hotel, rooming house, inn or other structure which contains more than
2571 two dwelling or living units, hotel or motel rooms; or
- 2572 (e). When the addition to or renovation of the existing building results in the end use
2573 becoming single-family attached units, such as garden apartments or townhouses with
2574 three or more units attached together.
- 2575 B. Sprinkler system standards.
- 2576 (1) An approved automatic sprinkler system means a system installed in accordance with the
2577 National Fire Protection Association (NFPA) Standard 13 or NFPA 13D, or a system
2578 otherwise lawfully approved in writing by the State Fire Marshal's office; provided,
2579 however, any such system remains subject to the Fire Chief's approval under Subsection (3)
2580 of this section.
- 2581 (2) Any structure requiring the installation of a NFPA Standard 13 system must have a Fire
2582 Department connection with location approved by the Fire Chief.
- 2583 (3) The type of system to be installed and its adequacy of life safety from fire in accordance
2584 with the provisions of this title must be reviewed and approved by the Fire Chief or duly
2585 authorized designee, provided adequate provision is made for life and property safety.

- 2586 (4) All sprinkler systems installed under this title must have the following:
- 2587 (a). A tamper-switch alarm at the system shutoff.
- 2588 (b). An evacuation alarm for the building that will sound when the sprinkler system is
2589 activated; such evacuation alarm is to be audible throughout the entire structure.
- 2590 (c). An outside water-flow alarm.
- 2591 (d). Butterfly valves will not be allowed on any Standard 13 system.
- 2592 (e). Local fire alarm panel.
- 2593 (5) Occupied or unoccupied buildings or portions thereof or any under construction having a
2594 sprinkler system in place must maintain all sprinklers and standpipe systems and all
2595 component parts in a workable condition at all times, and it is unlawful for any owner,
2596 occupant or other person whatever to reduce the effectiveness of the protection these
2597 systems provide, except that this does not prohibit the owner or occupant from temporarily
2598 reducing or discontinuing the protection where necessary for the purposes of conducting
2599 tests, repairs, alterations or additions, provided that the test, repairs, alterations or additions
2600 are done in such a way as to avoid the creation of a safety hazard.
- 2601 (6) For the purposes of this section, the term "building" means any structure excluding single-
2602 family dwellings, two-family dwellings and any barn or stable used exclusively for
2603 agricultural purposes, having a roof supported by columns or walls and intended for the
2604 shelter, storage, housing or enclosure of persons, animals or property. The term "building"
2605 also includes any garage, outbuilding or other accessory building used for any commercial
2606 or industrial purposes.
- 2607 (7) Any building having more than one sprinkler riser must have the risers separately zoned and
2608 wired to a local fire alarm panel to provide zone identification upon activation. The
2609 fire alarm panel is to be located as near as possible to the main exit door. There must also be
2610 a building map located at the fire alarm panel showing each zone of the building.
- 2611 (8) A lock box must be provided outside the main entrance to any buildings regulated
2612 hereunder, containing a key to allow access to all Fire Department areas. So as to be
2613 compatible with existing lock box systems, the type of lock box must be approved by the
2614 Fire Chief.
- 2615 (9) Any structure containing a sprinkler system is required to have a yearly test completed on
2616 the system by a qualified sprinkler technician. A written copy of the yearly test report must
2617 be forwarded to the Fire Chief.
- 2618 C. Permit.
- 2619 (1) A permit must be obtained from the Fire Chief before the start of construction of the system
2620 and a set of blueprints showing the entire sprinkler system and the rate of flow provided to
2621 and approved by the Fire Chief in order to obtain the permit.

2622 (2) A copy of the permit must be forwarded to the CEO, and no certificate of occupancy may be
 2623 issued until the system has been properly installed, tested by a qualified technician and
 2624 approved by the Fire Chief or duly authorized designee.

2625 D. Fees and fines.

2626 (1) A sprinkler system permit fee is to be paid with the permit request in such amount as
 2627 established by Council. The fee for a sprinkler permit is as set out in Appendix A.

2628 (2) Any person, firm or corporation being the owner or having control or use of any building or
 2629 premises who violates this section of this title will be assessed a penalty under Title 1,
 2630 Chapter 1.3. Each day such violation is permitted to exist after notification constitutes a
 2631 separate offense.

2632 E. Sprinkler administrative appeal.

2633 If any party is aggrieved by a determination of the Fire Chief under the requirements of
 2634 this section, a written appeal may be filed with the BOA within 10 days from the date of
 2635 notification of such determination by the Fire Chief. Such written appeal must set forth a
 2636 concise statement of the grounds upon which the party contends the Fire Chief's
 2637 determination to be in error.

2638 16.5.26 [Street Signage](#)

2639 A. Names.

2640 Streets which join or are in alignment with streets of abutting or neighboring properties
 2641 must bear the same name. Names of new streets may not duplicate, nor bear phonetic
 2642 resemblance to, the names of existing streets within the municipality and are subject to the
 2643 approval of the Planning Board.

2644 B. Signs provided.

2645 Street name signs are to be furnished and installed by the developer; the type, size and
 2646 location to be approved by the Commissioner of Public Works.

2647 16.5.27 [Streets and Pedestrianways/Sidewalks Site Design Standards](#)

2648 A. Purpose.

2649 The design of streets must provide for proper continuation of streets from adjacent
 2650 development and for proper projection into adjacent undeveloped and open land. These
 2651 design standards must be met by all streets within Kittery and control street shoulders,
 2652 curbs, pedestrianways/sidewalks, drainage systems, culverts and other appurtenances.

2653 B. Layout.

2654 (1) Streets are to be designed to discourage through traffic on minor streets within a residential
 2655 subdivision.

2656 (2) Reserve strips controlling access to streets are prohibited except where control is definitely
 2657 placed with the municipality.

- 2658 (3) Any development expected to generate average daily traffic of 201 or more trips per day is
2659 to have at least two street connections with existing public street(s).
- 2660 (4) Where a development borders an existing narrow street (below standards set herein) or when
2661 the Comprehensive Plan indicates plans for realignment or widening of a street that would
2662 require use of some of the land in a development, the plans must indicate reserved areas for
2663 widening or realigning such streets, marked on the plan "reserved for street
2664 widening/realignment purposes." Land reserved for such purposes may not be included in
2665 computing lot area or setback requirements of this title.
- 2666 (5) Where a development abuts or contains an existing or proposed arterial street, the Board
2667 may require marginal access streets (i.e., street parallel to arterial street providing access to
2668 adjacent lots), reverse frontage (i.e., frontage on a street other than the existing or proposed
2669 arterial street) with screen planting contained in a non-access reservation along the rear
2670 property line, or such other treatments as may be necessary for adequate protection of
2671 residential properties and to afford separation of through and local traffic.
- 2672 (6) Entrances onto existing or proposed arterial highways/secondary arterials may not exceed a
2673 frequency of one per 1,000 feet of street frontage.
- 2674 C. Street classification.
2675 Streets are classified by purpose, function and use frequency.
- 2676 (1) Arterial highways are major traffic ways that provide connections with other thoroughfare or
2677 interstate roads and have a high potential for the location of significant community activity
2678 centers as well as retail, commercial and industrial facilities. The average daily traffic count
2679 (ADT) would be 9,001 or more trip ends.
- 2680 (2) Secondary arterials carry relatively high volumes of traffic to or from arterial highways,
2681 adjacent communities and through local residential areas, activity centers and minor
2682 commercial establishments. The ADT would be 3,001 to 9,000 trip ends.
- 2683 (3) Commercial, light industrial and mixed-use zone developments are located in areas where
2684 street design is oriented to accommodate community-wide and regional interests with
2685 limited residential uses. The intended uses, ADT, peak hour traffic, and any other additional
2686 information that may be required by the Board will determine their classification, which
2687 may not be lower than a secondary collector.
- 2688 (4) Primary collectors may be residential or business, or both, and serve both as collectors to
2689 lesser residential streets and as connections to or between arterials. The ADT would be from
2690 801 to 3,000 trip ends, and in the interests of traffic and public safety must be owned and
2691 maintained by the Town.
- 2692 (5) Secondary collectors may be residential or business, or both, and connect to or between
2693 streets of a higher classification, and/or may collect traffic from minor streets or private
2694 ways. The ADT would be 201 to 800 trip ends.
- 2695 (6) Minor streets are predominantly single-family residential short or dead-end streets, which

- 2696 may have branching minor streets, private lanes or private ways and conduct traffic to streets
 2697 of higher classification. This is the lowest level of public street in the hierarchy and must
 2698 serve at least four dwelling units. The ADT would be 35 to 200 trip ends.
- 2699 (7) Private streets function exclusively as residential streets serving high-density housing
 2700 developments, including clustered housing, multi-family dwellings, elderly housing, and
 2701 mobile home parks, and may not be dedicated for public acceptance. Maintenance and
 2702 improvements must be controlled by proprietorship, corporation, association or deed
 2703 covenants. The ADT would be 72 to 800 trip ends. Design and construction is to be in
 2704 accordance with the applicable standards and specifications for minor streets or secondary
 2705 collectors.
- 2706 (8) Private lanes are short low-traffic volume residential dead-end streets which may serve part
 2707 of a high-density development or other residential uses conforming to the applicable
 2708 standard residential space requirements enumerated in this title. Private ways may not be
 2709 dedicated for public acceptance, and improvements must be controlled by proprietorship,
 2710 corporation, association or deed covenants. The ADT would be 35 to 71 trip ends.
- 2711 (9) Private ways are dead-end, very-low-volume residential streets that connect to streets of a
 2712 higher classification and function similar to an individual driveway by providing a low
 2713 standard two-way traffic flow. Private ways may not be used in high-density residential
 2714 developments or subdivisions of four or more lots. Private ways cannot be dedicated for
 2715 public acceptance, and all maintenance and improvements must be controlled by
 2716 proprietorship, corporation, association or deed covenants. The ADT would be 12 to 35 trip
 2717 ends.
- 2718 (10) Average daily traffic (ADT) is computed using the latest Institute for Transportation
 2719 Engineers (ITE) codes and figures.
- 2720 D. Street design standards.
 2721 Design standards for classified streets and sidewalks are those contained in attachment
 2722 Table 1 Design and Construction Standards for Streets and Pedestrianways, which is
 2723 attached to this chapter.
- 2724 E. Access control and traffic impacts.
 2725 Provision must be made for vehicular access to a development and circulation upon the lot
 2726 in such a manner as to safeguard against hazards to traffic and pedestrians in the street and
 2727 within the development, to avoid traffic congestion on any street and to provide safe and
 2728 convenient circulation on public streets and within the development. Access and
 2729 circulation must also conform to the standards and criteria listed below.
- 2730 (1) Vehicular access to the development must be arranged to avoid traffic use of local
 2731 residential streets.
- 2732 (2) Where a lot has frontage on two or more streets, the access to the lot must be provided to the
 2733 lot across the frontage and to the street where there is lesser potential for traffic congestion
 2734 and for hazards to traffic and pedestrians.

2735 (3) The street giving access to the lot and neighboring streets which can be expected to carry
 2736 traffic to and from the development must have traffic-carrying capacity and be suitably
 2737 improved to accommodate the amount and types of traffic generated by the proposed use.
 2738 No development may increase the volume/capacity ratio of any street above 0.8 nor reduce
 2739 any intersection or link level of service to "D" or below.

2740 (4) Where necessary to safeguard against hazards to traffic and pedestrians and/or to avoid
 2741 traffic congestion, provision must be made for turning lanes, traffic directional islands,
 2742 frontage roads, driveways and traffic controls within public streets.

2743 (5) Accessways must be of a design and have sufficient capacity to avoid hazardous queuing of
 2744 entering vehicles on any street.

2745 (6) Where topographic and other conditions allow, provision must be made for circulation
 2746 driveway connections to adjoining lots of similar existing or potential use:

2747 (a). When such driveway connection will facilitate fire protection services as approved by
 2748 the Fire Chief; or

2749 (b). When such driveway will enable the public to travel between two existing or potential
 2750 uses, generally open to the public, without need to travel upon a street.

2751 F. Center line.
 2752 The center line of a roadway must be the center line of the right-of-way.

2753 G. Dead-end streets.

2754 (1) Where a permanent cul-de-sac is placed in an area, wooded prior to development, a stand of
 2755 trees must be maintained within the center of the cul-de-sac.

2756 (2) The Board may require the reservation of a twenty-foot easement in line with the street to
 2757 provide continuation of pedestrian traffic or utilities to the next street.

2758 (3) The Board may also require the reservation of a fifty-foot easement in line with the street to
 2759 provide for continuation of the road where future development is possible.

2760 H. Grades, intersections and sight distances.

2761 (1) Grades of all streets are to conform, where feasible, to the terrain, so that cut and fill are
 2762 minimized while maintaining the grade standards of this title.

2763 (2) All changes in grade are to be corrected by vertical curves in order to provide the following
 2764 minimum stopping distance where based on street design speed calculated with a height of
 2765 eye at 3.5 feet and the height of object at 0.5 feet:

Design speed (mph)	20	25	30	35
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Stopping sight distance (feet)	125	150	200	250
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2766 (3) Intersections of streets are to be at angles as close to 90° as possible, and in no case may two
 2767 streets intersect at an angle smaller than 60°. To this end, where one street approaches
 2768 another between 60° and 90°, the former street should be curved approaching the
 2769 intersection.

2770 (4) Where new street intersections or curb cuts are proposed, sight distances, as measured along
 2771 the street onto which traffic would be turning, is based on the posted speed limit and must
 2772 conform to the table following:

Posted speed limit (mph)	25	30	35	40	45	50	55
Sight distance (feet)	250	300	350	400	450	500	550

2773 (a). Sight distance is the length of roadway visible to a driver exiting an intersection or curb
 2774 cut. Such sight distance is measured from a point that is located at the center line of the
 2775 exit lane and 15 feet back from the edge of the travel way to the center line of the
 2776 oncoming lane(s), with the height of eye at 3.5 feet and the height of an object 4.25 feet
 2777 above the pavement.

2778 (b). When the actual traveling speed of normal traffic on a road is substantially higher than
 2779 the posted speed limit, the sight distance is computed by multiplying the 85th percentile
 2780 of such speed as measured by a qualified traffic engineer by a factor of 10. The result, in
 2781 feet, is the minimum sight distance required.

2782 (c). Where necessary, corner lots must be cleared of all growth or other sight obstructions,
 2783 including ground excavations, to achieve the required visibility.

2784 (5) Cross (four-cornered) intersections are to be avoided insofar as possible.

2785 I. Side slopes.
 2786 Side slopes of all streets must be graded, covered with appropriate compost or loamed,
 2787 fertilized and seeded in accordance with the specifications of the erosion and
 2788 sedimentation plan.

2789 J. Right-of-way (ROW) grading.
 2790 Streets are to be rough-graded full width.

2791 K. Street construction standards.

2792 (1) The subgrade of the roadway. On soils which have been identified by the Commissioner of
 2793 Public Works as not suitable for roadways, the subsoil must be removed from such locations
 2794 to a depth of two feet below subgrade and replaced with material meeting the specifications
 2795 for gravel aggregate subbase or a substitute acceptable to the Commissioner of Public
 2796 Works.

- 2797 (2) The aggregate subbase course must be sand or gravel of hard, durable particles, free from
 2798 vegetative matter, lumps or balls of clay and other deleterious substances. The gradation of
 2799 the part that passes a three-inch-square mesh sieve must meet the following grading
 2800 requirements and contain no particles of rock exceeding four inches in diameter [MDOT
 2801 Specification 703.06(b) Type D]:

Sieve Designation Percent by Weight Passing Square Mesh Sieve	
1/4 inch	25% to 70%
No. 40	0% to 30%
No. 200	0% to 7%

- 2802 (3) The aggregate base course must be sand or gravel of hard, durable particles, free from
 2803 vegetative matter, lumps or balls of clay and other deleterious substances. The gradation of
 2804 the part that passes a three-inch square mesh sieve must meet the following requirements
 2805 [MDOT Specification 703.06(a) Type A]:

Sieve Designation Percent by Weight Passing Square Mesh Sieve	
1/2 inch	45% to 70%
1/4 inch	30% to 55%
No. 40	0% to 20%
No. 200	0% to 5%

- 2806 L. Street plantings.
 2807 When appropriate, the Board may require a street design that incorporates a green
 2808 space/planting area within the street's ROW. Said plantings must be installed at the
 2809 developer's expense according to a plan drawn up by a landscape architect.
- 2810 M. Sidewalks.
- 2811 (1) Where required, sidewalks must be installed to meet minimum requirements as specified in
 2812 Table 1 of this chapter.
- 2813 (2) The position of any sidewalk within the street ROW in relation to the pavement surface is to
 2814 be determined by the Planning Board.
- 2815 N. Road and driveway standards in Shoreland and Resource Protection Overlay Zones.
- 2816 (1) Road construction and parking facilities are allowed in the Resource Protection Overlay
 2817 Zone only where no reasonable alternative route or location is available outside the

- 2818 Resource Protection Overlay Zone, in which case a permit or site plan or subdivision plan
2819 approval is required by the Planning Board.
- 2820 (2) The following standards apply to the construction of roads and/or driveways and drainage
2821 systems, culverts and other related features in the Shoreland and Resource Protection
2822 Overlay Zones:
- 2823 (a). Roads and driveways must be set back:
- 2824 [1] At least 100 feet from the normal high-water line of any water bodies, tributary
2825 streams, the upland edge of a coastal wetland, or the upland edge of a freshwater
2826 wetland; and
- 2827 [2] Seventy-five feet from the normal high-water line of any water bodies or the upland
2828 edge of a wetland on Badgers Island, unless no reasonable alternative exists, as
2829 determined by the Planning Board.
- 2830 [3] If no other reasonable alternative exists, the Planning Board may reduce the road
2831 and/or driveway setback requirement to no less than 50 feet upon clear showing by
2832 the applicant that appropriate techniques will be used to prevent sedimentation of the
2833 water body. Said erosion and sediment control measures for roads and driveways
2834 must meet "Maine Erosion and Sediment Control Best Management Practices,"
2835 March 2003.
- 2836 (b). On slopes of greater than 20%, the road and/or driveway setback must be increased by
2837 10 feet, horizontal distance, for each five-percent increase in slope above 20%.
- 2838 (c). Existing public roads may be expanded within the legal road right-of-way, regardless of
2839 their setback from a water body.
- 2840 (d). New roads and driveways are prohibited in a Resource Protection Overlay Zone, except
2841 the Planning Board may grant a permit to construct a road or driveway to provide access
2842 to permitted uses within the zone. A road or driveway also may be approved by the
2843 Planning Board in a Resource Protection Overlay Zone, upon a finding no reasonable
2844 alternative route or location is available outside the zone. When a road or driveway is
2845 permitted in a Resource Protection Overlay Zone, the road and/or driveway must be set
2846 back as far as practicable from the normal high-water line of a water body, tributary
2847 stream, or upland edge of a wetland.
- 2848 (e). The maximum slope for road and driveway banks is two horizontal to one vertical (2:1).
2849 Bank slopes must be graded and stabilized in accordance with the provisions for erosion
2850 and sedimentation control contained in Section.
- 2851 (f). The maximum slope for road and driveway grades is 10%, except for segments of less
2852 than 200 feet.
- 2853 (g). To prevent road and driveway surface drainage from directly entering water bodies,
2854 tributary streams or wetlands, roads and driveways must be designed, constructed and

2855 maintained to empty onto an unscarified buffer strip at least 50 feet plus two times the
 2856 average slope [50 feet + (2 x S average)], in width between the outflow point of the ditch
 2857 or culvert and the normal high-water line of a water body, tributary stream or upland
 2858 edge of a wetland. Surface drainage that is directed to an unscarified buffer strip must be
 2859 diffused or spread out to promote infiltration of the runoff and to minimize channelized
 2860 flow of the drainage through the buffer strip.

2861 (h). Ditch relief (cross drainage) culverts, drainage dips and points of stormwater discharge
 2862 must be designed and constructed so that drainage is diverted onto unscarified buffer
 2863 strips before the flow gains sufficient volume or head. The following criteria should be
 2864 implemented where possible to deter and prevent excessive erosion:

2865 [1] Ditch relief culverts, drainage dips and associated water turnouts must be spaced
 2866 along the road or driveway at intervals no greater than indicated in the following
 2867 table:

Grade (percent)	Spacing (feet)
0 to 2%	250 maximum
3 to 5%	135 to 200 maximum
6 to 10%	80 to 100 maximum
11 to 14% maximum	60 to 80 maximum

2874 [2] Drainage dips may be used in place of ditch relief culverts only where the grade is
 2875 10% or less.

2876 [3] On sections having slopes greater than 10%, ditch relief culverts must be placed at
 2877 approximately a thirty-degree angle downslope from a line perpendicular to the center
 2878 line of the road or driveway.

2879 [4] Ditch relief culverts must be sufficiently sized and properly installed to allow for
 2880 effective functioning, and their inlet and outlet ends appropriately stabilized with
 2881 acceptable materials and construction techniques.

2882 (i). Ditches, culverts, bridges, dips, water turnouts and other stormwater runoff control
 2883 installations associated with roads and driveways must be maintained by the owner(s) on
 2884 a regular basis to assure effective functioning.

2885 (j). In a Shoreland or Resource Protection Overlay Zone, when replacing an existing culvert
 2886 the watercourse must be protected so the crossing does not block fish passage, and
 2887 adequate erosion control measures must be taken to prevent sedimentation of the water
 2888 in the watercourse.

2889 (k). A permit is not required for the replacement of an existing road culvert, provided the
2890 replacement culvert is:

2891 [1] Not more than one standard culvert size larger in diameter than the culvert being
2892 replaced;

2893 [2] Not more than 25% longer than the culvert being replaced; and

2894 [3] Not longer than 75 feet.

2895 16.5.28 Temporary Housing

2896 A. Purpose. The intent of this section is to provide temporary housing for resident owners
2897 (exclusive of corporations, trusts and estates) and their immediate families who have lost
2898 primary dwellings through fire or natural disaster.

2899 B. Dwellings uninhabitable by disaster. In case a fire or natural disaster destroys, or damages,
2900 or renders a dwelling or dwelling unit uninhabitable, the following apply:

2901 (1) The dwelling owner may apply to the CEO for a permit to place a mobile home on the lot as
2902 a temporary residence for the dwelling owner for a period of six months;

2903 (2) The applicant must file such an application within six months from the date of the disaster
2904 and agree, in writing, that a time limit of six months is acceptable. Proof of financial ability
2905 to reconstruct the building must be furnished;

2906 (3) If at the end of six months substantial work has been completed to the satisfaction of the
2907 CEO, the permit may be extended for an additional six months. No further extensions may
2908 be granted;

2909 (4) A multifamily dwelling may be temporarily replaced by a single mobile home unit for the
2910 use of the dwelling owner only; and

2911 (5) Setback requirements may be waived for temporary mobile homes by the CEO, provided
2912 matters of public health and safety are not impaired.

2913 16.5.29 Timber Harvesting

2914 A. Timber harvesting (as permitted in R-RLC and MU Zones).

2915 (1) Repeal of the timber harvesting regulation. Subsequent to the establishment of the State of
2916 Maine Department of Conservation's Bureau of Forestry Timber Harvesting Standards, the
2917 state will commence administration of all timber harvesting within the Shoreland Overlay
2918 Zone. Under 38 M.R.S. § 438-A(5), the following provisions of this title will be repealed: In
2919 § 16.3, the definitions of "forest management activities" and "residual basal area."

2920 (2) Timber harvesting must conform to the following provisions:

2921 (a). Selective cutting of no more than 40% of the total volume of trees four inches or more in

- 2922 diameter, measured at 4 1/2 feet above ground level, on any lot in any ten-year period is
2923 permitted. In addition:
- 2924 [1] Within 75 feet, horizontal distance, of the normal high-water line of water bodies,
2925 tributary streams or the upland edge of a wetland, clear-cut openings are prohibited
2926 and a well-distributed stand of trees and other vegetation, including existing ground
2927 cover, must be maintained.
- 2928 [2] At distances greater than 75 feet, horizontal distance, of the normal high-water line of
2929 water bodies or the upland edge of a wetland, harvesting operations are limited to
2930 single clear-cut openings of 10,000 square feet or less in the forest canopy. Where
2931 such openings exceed 5,000 square feet, they must be at least 100 feet, horizontal
2932 distance, apart. Such clear-cut openings must be included in the calculation of total
2933 volume removal. For purposes of these standards, volume may be considered
2934 equivalent to basal area.
- 2935 (b). Timber harvesting operations exceeding the forty-percent limitation in § 16.5.29(2).a
2936 above may be allowed by the Planning Board upon a clear showing, including a forest
2937 management plan signed by a Maine-licensed professional forester, that such an
2938 exception is necessary for good forest management and will be carried out in accordance
2939 with the purposes of this title. The Planning Board is required to notify the
2940 Commissioner of the Department of Environmental Protection of each exception
2941 allowed within 14 days of the Planning Board's decision.
- 2942 (c). No accumulation of slash is to be left within 50 feet, horizontal distance, of the normal
2943 high-water line of a water body. In all other areas slash must either be removed or
2944 disposed of in such a manner that it lies on the ground and no part thereof extends more
2945 than four feet above the ground. Any debris that falls below the normal high-water line
2946 of a water body or tributary stream must be removed.
- 2947 (d). Timber harvesting equipment is prohibited from using stream channels as travel routes,
2948 except when:
- 2949 [1] Surface waters are frozen; and
- 2950 [2] The activity will not result in any ground disturbance.
- 2951 (e). All crossings of flowing water require a bridge or culvert, except in areas with low banks
2952 and channel beds which are composed of gravel, rock or similar hard surface which
2953 would not be eroded or otherwise damaged.
- 2954 (f). Skid trail approaches to water crossings must be located and designed to prevent water
2955 runoff from directly entering the water body or tributary stream. Upon completion of
2956 timber harvesting, temporary bridges and culverts must be removed and areas of exposed
2957 soil revegetated.
- 2958 (g). Except for water crossings, skid trails and other sites where the operation of machinery
2959 used in timber harvesting results in the exposure of mineral soil must be located so an

2960 unscarified strip of vegetation of at least 75 feet, horizontal distance, in width for slopes
 2961 up to 10% must be retained between the exposed mineral soil and the normal high-water
 2962 line of a water body or upland edge of a wetland. For each ten-percent increase in slope,
 2963 the unscarified strip must be increased by 20 feet, horizontal distance. The provisions of
 2964 this section apply only to a face sloping toward the water body or wetland; provided,
 2965 however, that no portion of such exposed mineral soil on a back face can be closer than
 2966 25 feet, horizontal distance, from the normal high-water line of a water body or upland
 2967 edge of a wetland.

2968 16.5.30 Wetland Setbacks for Special Situations

- 2969 A. Wetland setbacks extending beyond publicly accepted streets.
 2970 The required setback distances do not extend beyond the center line of publicly accepted
 2971 street that generally parallels the normal high-water line of a water body, tributary stream
 2972 or the upland edge of a wetland.
- 2973 B. Newly created wetlands and water bodies.
 2974 Setbacks are not required from a wetland or water body created from upland land area,
 2975 provided the newly created wetland or water body is not part of a required mitigation plan.
- 2976 (1) Wetland setbacks for the zoning district and the Shoreland Overlay District apply.
- 2977 (2) A performance guarantee, such as an escrow or bond, is required to guarantee that new
 2978 vegetation will survive. Prior to the release or drawdown of funds in such accounts, a written
 2979 statement from a qualified wetlands scientist that says the vegetation is thriving must be
 2980 submitted to the Town Manager.
- 2981 C. Setbacks from altered wetlands or water bodies.
- 2982 (1) The illegal altering of a water body or wetland area, where the surface area of the water
 2983 body is decreased (lowered), after May 13, 1987, may not be used to change the location
 2984 from which a setback is measured. The illegal filling of a water body or wetland area, where
 2985 the normal water surface area of the water body is increased (raised), after May 13, 1987,
 2986 must be measured from the most recent edge of the normal water surface elevation.
- 2987 (2) Alterations to the wetland boundaries that have been approved by the Planning Board and
 2988 are in compliance with regulations of the Army Corps of Engineers and the Maine
 2989 Department of Environmental Protection may be constructed per the Planning Board's
 2990 approved wetlands alteration plan.
- 2991 D. Setbacks for utility poles.
 2992 Setbacks for utility poles must be shown and identified on the development plans.
 2993 Distances from utility pole structures and the upland edge of wetlands of any type may not
 2994 have to be set back from the wetland. Such setback distances require Planning Board
 2995 approval.
- 2996 E. Utilities within wetland.
 2997 Where it is demonstrated that there is no alternative to avoid utilities within a wetland, the

16.5 GENERAL PERFORMANCE STANDARDS

Adopted: January 24, 2022

- 2998 applicant's engineer must provide trench details for depth, distance between pipes, if
 2999 applicable, fill materials, minimum compaction and/or encasement.
- 3000 (1) Rotted material, muck and unsuitable soils must be removed from the trench and replaced
 3001 with select materials that provide the required compaction, pipe support and protection.
- 3002 (2) Trenches for shallow-depth pipes (having less than four feet of cover) must be designed to
 3003 avoid pipe movement that may result in breakage.

Table 16.5.30			
Minimum Setbacks from Wetlands and Water Bodies*			
Structure/Activity	Total Size of Wetland and/or Water Body		
	Less than 501 square feet (feet)	501 square feet to 1 acre and Intermittent Streams (feet)	Greater than 1 acre (feet)
Local distribution utility pole, fence, flagpole, signs or drainage structure	0	0	0
Functionally water-dependent uses	0	0	0
Roads and Driveways			
Traveled way of road or driveway of 18 feet or less in width ¹	0	10 from toe of slope	10 from toe of slope
Traveled way of road or driveway greater than 18 feet in width ¹	0	30 or 10 from toe of slope, whichever is greater	30 or 10 from toe of slope, whichever is greater
Parking Areas			
Parking areas for one- and two-family residential uses	0	10	20
1 to 5 stall parking area	0	30	50
6 to 20 stall parking area incorporating BMPs for stormwater management ²	0	40	75
6 to 20 stall parking area without incorporating BMPs for stormwater	0	75	100

Table 16.5.30			
Minimum Setbacks from Wetlands and Water Bodies*			
Structure/Activity	Total Size of Wetland and/or Water Body		
	Less than 501 square feet (feet)	501 square feet to 1 acre and Intermittent Streams (feet)	Greater than 1 acre (feet)
management ²			
21 or more stall parking area ³ incorporating BMPs for stormwater management	0	50	75
Patios, Decks, Accessory Buildings			
Patio or deck area no larger than 500 square feet in size	0	30	50
Detached residential storage shed no larger than 120 square feet in size	0	30	50
Other Buildings and Structures			
Building or structure (including patio or deck area larger than 500 square feet in size)	0	50	100
Activities and structures permitted within regulated wetlands	0	0	0
Subsurface Sewage Disposal			
Treatment tanks and disposal areas for new subsurface sewage disposal systems with design flows of less than 2,000 GPD	0	50	100
Treatment tanks and disposal areas for new subsurface sewage disposal systems with design flows of 2,000 GPD or more	0	100	100
Recreational Uses and Structures			

Table 16.5.30			
Minimum Setbacks from Wetlands and Water Bodies*			
	Total Size of Wetland and/or Water Body		
Structure/Activity	Less than 501 square feet (feet)	501 square feet to 1 acre and Intermittent Streams (feet)	Greater than 1 acre (feet)
Low-intensity recreation	0	0	0
Recreational facility or structure excluding a golf course	0	50	100
Topsoil Removal			
Removal of more than 10 cubic yards of topsoil except for approved projects	0	50	100
Topsoil removal with a Soil Conservation Service-endorsed erosion and sedimentation plan	0	25	25
Special Uses			
Junkyard ¹	0	100	150
Bulk salt storage not in an enclosed structure ¹	0	100	150
Gravel and mineral extraction or processing ¹	0	100	150
Storage of hazardous chemicals or special wastes other than amounts normally associated with individual households/farms ¹	0	100	150
Commercial painting, wood preserving or furniture stripping ¹	0	100	150
Laundromats, auto wash, printing, dry-cleaning, photographic processing, if not connected to a	0	100	150

Table 16.5.30			
Minimum Setbacks from Wetlands and Water Bodies*			
Structure/Activity	Total Size of Wetland and/or Water Body		
	Less than 501 square feet (feet)	501 square feet to 1 acre and Intermittent Streams (feet)	Greater than 1 acre (feet)
sanitary sewer ⁴			
Metal plating, finishing, polishing ¹	0	100	150
NOTES:			
*	All vernal pools, including those having an area less than 501 square feet, are regulated by MDEP 06-096 Chapter 335.9.		
1	The street setback does not serve to negate a wetland crossing project for which a wetlands permit has been approved by the Planning Board.		
2	Written endorsement by the York County Soil and Water Conservation District (YCSWCD) or the Town’s Peer Review Consultant that best management practices (BMPs) for protecting water quality by minimizing pollutants leaving the site in the stormwater runoff are incorporated to the maximum extent practicable is required to satisfy this condition. The Planning Board may waive the requirement for written endorsement by the SWCD or the Town’s Peer Review Consultant when it finds a drainage plan has adequately protected the wetland from adverse impacts.		
3	Parking areas with 21 or more stalls must incorporate BMPs.		
4	Wetland setback may be reduced to 100 feet if the YCSWCD or the Town’s Peer Review Consultant finds the stormwater management plan incorporates BMPs for protecting water quality by minimizing pollutants leaving the site in the stormwater.		

3004 16.5.31 Wireless Communication Services Facilities

3005 A. Purpose. This article is designed and intended to balance the interests of the residents of
 3006 the Town, telecommunications providers, and telecommunications customers in the siting
 3007 of wireless communication services facilities (WCSF) within the Town. These standards
 3008 are also intended:

- 3009 (1) To avoid or minimize the adverse impacts of such facilities on visual, environmental,
 3010 historically significant areas, health and safety, and property value;

- 3011 (2) To require the use of alternative structures for the purposes of co-location of carriers and
3012 minimize the total number of towers located within the Town;
- 3013 (3) To permit the construction of new towers only where all other opportunities have been
3014 exhausted;
- 3015 (4) To require the users of WCSF and antenna structures to configure them in a way that
3016 minimizes the need for additional WCSF in the Town;
- 3017 (5) To provide for the removal of WCSF and associated development which are no longer being
3018 used for telecommunications purposes;
- 3019 (6) These regulations are not intended to place any restrictions on privately operated and
3020 licensed amateur radio operators as per FCC regulations.
- 3021 B. Location, height and setback requirements.
- 3022 (1) New WCSF are permitted within 1,000 feet from the I-95 corridor center line north of
3023 Dennett Road with Planning Board approval conforming to the performance standards and
3024 dimensional requirements. Shared use of preexisting accessory-use towers and alternative
3025 tower structures in all zones is permitted with Town Planner's approval, provided the tower
3026 or structure height is not increased. Location on existing structures in a manner that
3027 camouflages or conceals the presence of antennas or towers, also referred by the industry as
3028 "stealth," is permitted with Town Planner's approval in all districts except the Resource
3029 Conservation, Shoreland and Resource Protection Overlay Zones. The Town Planner may
3030 request Planning Board review of any proposed siting of a WCSF facility.
- 3031 (2) Height. Towers, antennas and all WCSF may not exceed a height of 150 feet, except for
3032 those towers expressly satisfying all co-location requirements for four or more carriers,
3033 which may be constructed to a maximum height of 199 feet.
- 3034 (3) Setbacks.
- 3035 (a). All telecommunications towers must be set back from the lot lines a distance equal to at
3036 least 125% of the tower height.
- 3037 (b). Tower, guyed wires and accessory facilities must meet the minimum zoning district
3038 setback requirements.
- 3039 C. Aesthetics, landscaping, buffers and fencing.
- 3040 (1) Towers and antennas are to have a neutral finish or be painted a neutral color as approved so
3041 as to reduce visual impact.
- 3042 (2) All WCSF must maintain the required setbacks as undisturbed vegetated buffers, except for
3043 the access road. Access roads are to be constructed in a nonlinear manner so as not to
3044 provide a direct view corridor to the support structures. The Planning Board/Town Planner
3045 may require additional plantings in the buffer area to enhance the quality and effectiveness

- 3046 of the buffer area to serve as a visual screen. The size and quantity of plantings is subject to
3047 Planning Board/Town Planner approval.
- 3048 (3) At a WCSF, the design of the buildings and related structures must, to the extent possible,
3049 use materials, colors, textures, screenings and landscaping that will blend the facilities to be
3050 compatible with the natural setting and built environment. The building and related
3051 structures must be planned in a manner to accept equipment of co-locators. Underground
3052 utilities must be used to serve the WCSF.
- 3053 (4) Towers may not be artificially lighted.
- 3054 (5) Road access to the telecommunications structure is to be the minimum size necessary to
3055 allow safe access.
- 3056 (6) The base of a telecommunications tower may not be located in wetland, floodplain,
3057 Resource Conservation, Shoreland and Resource Protection Overlay Zones.
- 3058 (7) A security fence to be approved by the Planning Board/Town Planner of not fewer than
3059 eight feet in height from the finished grade is to be provided around the tower and painted a
3060 neutral color as approved to minimize visual impacts. Access to the tower is to be through a
3061 gate that can be secured.
- 3062 D. Investigation of existing alternative towers, sites and structures.
3063 Applicants must identify all existing and proposed towers, including their heights, located
3064 in the Town and within two miles beyond Town boundaries. Applicants must provide
3065 evidence of the lack of antenna space on all such towers and identify alternative tower
3066 structures and sites which have been investigated as an alternative to constructing a new
3067 tower. Applicant must address the pros and cons of utilizing co-location and other
3068 alternative tower structures with respect to their application and demonstrate that they
3069 cannot provide adequate communication service utilizing such existing towers or
3070 structures.
- 3071 E. Co-location.
- 3072 (1) The applicant and owner must allow other future wireless service carriers, including
3073 providing space at no charge to public agencies (including but not limited to police, fire,
3074 ambulance, communications and highway if requested at the time of review by the Planning
3075 Board), using functionally equivalent personal wireless technology to co-locate antennas,
3076 equipment and facilities on a telecommunications tower and site, unless satisfactory
3077 evidence is presented and the Planning Board/Town Planner concurs that technical
3078 constraints prohibit co-location. Applicant and other wireless service carriers must provide a
3079 mechanism for the construction and maintenance of shared facilities and infrastructure and
3080 for reasonable sharing of cost in accordance with industry standards. (A reasonable charge
3081 for shared use is based on generally accepted accounting principles.
- 3082 (2) This charge may include, but not be limited to, a pro rata share of the cost of site selection,
3083 planning, project administration, land costs, site design, construction and maintenance,
3084 financing, return of equity, depreciation and all of the costs of adapting the tower or

- 3085 equipment to accommodate a shared user without causing electromagnetic interference, all
3086 being pertinent to the southern Maine market area.)
- 3087 (3) To ensure co-location, the Planning Board/Town Planner may require co-location on a tower
3088 so as to prevent the need for new carriers to build new towers, may deny an application for a
3089 telecommunications facility because of inadequate provisions and/or arrangements for co-
3090 location, and may require an existing tower to be extended in height (provided that a
3091 structural analysis indicates that such extension is structurally feasible and safe) in order to
3092 provide for co-location.
- 3093 F. Performance guarantees.
3094 No building permit may be issued until the applicant has filed a performance guarantee
3095 and approved by the Town Manager equal to 125% of the cost of completing the
3096 following improvements:
- 3097 (1) The construction of any drainage systems involving piping, culverts, or retention or
3098 detention facilities;
- 3099 (2) The construction of erosion and sedimentation control measures or landscaping required to
3100 meet the standards of this article; and
- 3101 (3) Other site improvements required by the Board/Town Planner to meet the standards of this
3102 article.
- 3103 G. Removal of abandoned or unused facilities.
- 3104 (1) The owner of a telecommunications facility is required to remove the tower and associated
3105 facilities should it not be used for the use or uses approved for a period of 90 consecutive
3106 days. This period may be extended by the Planning Board/Town Planner if there are
3107 extenuating circumstances beyond the control of the applicant. An applicant for a permit
3108 under this article must post a performance guarantee approved by the Town Manager with
3109 the Town prior to obtaining a permit that is equal to 125% of the cost of removing the
3110 structure. The performance guarantee must be in effect for the life of the WCSF;
- 3111 (2) The performance guarantee covering such removal must be reviewed for renewal at a
3112 maximum term of five years, to account for cost adjustments. It must contain a mechanism,
3113 satisfactory to the Town, for review of the cost of removal of the structure every five years
3114 and a mechanism for increasing the amount of the guarantee should the revised cost estimate
3115 so necessitate.
- 3116 H. Annual permit renewal.
3117 To ensure compliance with the prescribed ordinances, all approvals will be subject to an
3118 annual permit renewal conducted by the Town Planner. The Town Planner at a minimum
3119 is to review the continued use of the facility; maintenance of the facility and site
3120 improvements; availability for co-location of new service; and review of bonding
3121 documents. The documents and permit renewal fee must be submitted to the Town
3122 Planner no later than October 1 of each year following the original approval.

3123 16.5.32 Marijuana Business

3124 A. General.

3125 (1) This section regulates Marijuana Businesses as defined uses within the Town of Kittery.
3126 The permitting standards outlined here must be adhered to for all Marijuana Businesses, in
3127 addition to other applicable standards in this and other ordinances or state law.

3128 B. Standards.

3129 Marijuana Businesses must meet the following standards:

3130 (1) Marijuana Businesses may not locate within 1,000 feet of a public or private school or a
3131 public recreation facility measured from the exterior wall of the Marijuana Business in a
3132 straight line to the property line of the protected use. This section does not prohibit the
3133 activity of a caregiver or other authorized individual from administering medical marijuana
3134 to a qualified patient who is located within one of these protected areas.

3135 (2) Marijuana Businesses may not have any odor of marijuana detectible beyond the area
3136 controlled by the business, whether that be a leased or owned area that is a portion or all of a
3137 recorded parcel of land. Odors must be controlled by whatever best practices exist.

3138 (3) Marijuana grown by any Marijuana Business may be grown indoors only. For the purpose
3139 of this section hoop houses or outdoor tunnels must not be considered as an indoor growing
3140 facility and are prohibited for marijuana cultivation by a Marijuana Business.

3141 (4) The design of any building containing a Marijuana Business must conform to the standards
3142 within this Title and the Town of Kittery Design Handbook.

3143 (5) The area of any Marijuana Business accessible to customers must be no less than 400 nor
3144 more than 2,000 square feet.

3145 (6) Parking must conform to Article IX.

3146 (7) Any building containing a Marijuana Business must be protected by fire suppression
3147 measures and fire alarms to the satisfaction of the Fire Chief and in accordance with all
3148 applicable building codes.

3149 (8) The Owner of any Marijuana Business, at the time of application for a building permit, must
3150 provide an affidavit from a master electrician or electrical engineer certifying that the
3151 electrical components can meet the electrical load demands of the use.

3152 (9) Security.

3153 (a) The Licensed Premises must have video surveillance capable of covering the exterior and
3154 interior of the facility. The video surveillance system must be operated with continuous
3155 recording twenty-four hours per day, seven days per week and video retained for a minimum
3156 duration of thirty (30) days. Such records must be made available to law enforcement

3157 agencies when investigating a criminal compliant.

3158 (10) The Licensed Premises must have an approved wastewater discharge plan in accordance
3159 with this Title and Title 13.

3160 (11) The Licensed Premises must have exterior lighting that conforms with this Title and the
3161 Town of Kittery’s Design Handbook. The Planning Board, at its discretion, may require
3162 motion sensors covering the full perimeter of the building(s).

3163

3164 16.5.33 Medical Marijuana Registered Caregiver Home Establishment

3165 A. General.

3166 (1) Pursuant to 22 MRS §2429-D, municipalities are prohibited from restricting the number of
3167 registered caregivers operating within their jurisdiction. The regulation of registered
3168 caregivers as provided for herein is not intended to proscribe their operation, but rather to
3169 promote the health, safety and welfare of the Town of Kittery by ensuring that a registered
3170 caregiver home establishment is compatible with both the area it is situated and the
3171 community as a whole.

3172 (2) A Medical Marijuana Registered Caregiver Home Establishment may not conduct activities
3173 that would qualify the use as a Medical Marijuana Registered Dispensary, Adult Use
3174 Marijuana Store, Medical Marijuana Caregiver Retail Store, Marijuana Manufacturing
3175 Facility or Marijuana Testing Facility.

3176 (3) Any Medical Marijuana Registered Caregiver legally operating with Town approval as a
3177 Home Occupation as of the Effective Date of this Section, but otherwise not meeting the
3178 definition of a Medical Marijuana Registered Caregiver Home Establishment, may continue
3179 to operate provided it has a valid Medical Marijuana Registered Caregiver Home
3180 Establishment license from the Town and any applicable State License, and is maintained in
3181 accordance with this Title. Such operations may not be built, used or occupied in any way
3182 that constitutes a material difference from any representations in either the approved
3183 application, Findings of Fact, or approval conditions for the Major Home Occupation. If
3184 majority ownership of such an operation is transferred to any other person(s), the business
3185 must be brought into conformance with the definition and standards applicable to a Medical
3186 Marijuana Registered Caregiver Home Establishment, or may be permitted and licensed as
3187 any other type of Marijuana Business allowed on the property.

3188 B. Permit Required.

3189 (1) An applicant seeking Planning Board approval for a Medical Marijuana Registered
3190 Caregiver Home Establishment must submit a complete application with the following
3191 furnished documents:

3192 (a) Proof of property ownership or lease agreement in the Town of Kittery;

- 3193 (b) Proof of residency in Town of Kittery as determined by voter registration, vehicle
 3194 registration or other documentation deemed acceptable to the Town;
- 3195 (c) All relevant State of Maine license information demonstrating the applicant as a valid
 3196 registered caregiver;
- 3197 (d) A site plan that depicts all proposed outdoor growing areas. The Planning Board may
 3198 require a site plan designed by a licensed surveyor or civil engineer registered in the State of
 3199 Maine.
- 3200 (e) A floor plan of the building showing the existing and proposed layout and square footage.
- 3201 (f) Narrative describing the nature of the registered caregiver operation.
- 3202 (2) An application will be approved or approved with conditions if the Planning Board makes a
 3203 positive finding based on the information presented that the proposed Medical Marijuana
 3204 Registered Caregiver Home Establishment demonstrates compliance with §16.5.33.C
- 3205 C. Standards
- 3206 (1) Medical Marijuana Registered Caregiver Home Establishment must meet the following
 3207 standards, except that a Medical Marijuana Registered Caregiver legally operating with
 3208 Town approval as a Major Home Occupation as of the Effective Date of this Section is not
 3209 required to meet these standards to the extent the Major Home Occupation application, as
 3210 approved, specifically allowed activities, uses or development that are not in conformance
 3211 with these standards.
- 3212 (2) Manufacturing of medical marijuana products may occur only in zoning districts where a
 3213 Marijuana Manufacturing Facility is permitted.
- 3214 (3) A Medical Marijuana Registered Caregiver Home Establishment is restricted to the property
 3215 of a dwelling unit serving as the primary residence of the Registered Caregiver. Proof of
 3216 primary residence will be determined by voter registration, vehicle registration, property tax
 3217 bill and/or other documentation acceptable to the Town.
- 3218 (4) The Registered Caregiver must provide documentation demonstrating ownership of the
 3219 dwelling unit or a lease agreement permitting the registered caregiver to operate a Medical
 3220 Marijuana Registered Caregiver Home Establishment.
- 3221 (5) A Medical Marijuana Registered Caregiver Home Establishment must be an accessory use
 3222 of the property, and is limited to utilize 40% or 400-square feet, whichever is greater, of the
 3223 total floor area available within the dwelling unit.
- 3224 (6) A Medical Marijuana Registered Caregiver Home Establishment is permitted only to see
 3225 patients, provide consultations, and perform other functions, pursuant to 22 M.R.S. 558-C
 3226 §2423-A.
- 3227 (7) Hours of operation may be between 7 am and 7 pm Sunday through Saturday inclusive, and

16.5 GENERAL PERFORMANCE STANDARDS

Adopted: January 24, 2022

- 3228 must be by appointment only.

- 3229 (8) A Medical Marijuana Registered Caregiver Home Establishment may not have more than
3230 three (3) employees.

- 3231 (9) There must be adequate parking on the lot to accommodate the property’s residents in
3232 accordance with this Title and zone-specific standards of this Title; provided that at a
3233 minimum the site must include two parking spots plus one spot for each employees.

- 3234 (10) A Medical Marijuana Registered Caregiver Home Establishment must mitigate offensive
3235 odors such that they are not detectable by reasonable means at the property lines. Odors
3236 must be controlled by whatever best practices exist.

- 3237 (11) A Medical Marijuana Registered Caregiver Home Establishment is permitted to cultivate a
3238 cumulative total of 30 mature plants or 500 square feet of plant canopy, 60 immature plants,
3239 and unlimited seedlings. Cultivation may occur indoors, outdoors, or both.

- 3240 (12) The installation and displaying of signage advertising the presence of a Medical Marijuana
3241 Registered Caregiver Home Establishment on a lot is prohibited.

- 3242

- 3243

- 3244

1 16.6 Master Site Development Plan

2 General

3 Master Site Development Plans are intended to show an overall development scheme for a large
4 property so that the Planning Board can ensure that development of large sites, with potential town-
5 wide or regional impacts, proceeds in an orderly sequence with coordinated phasing. Further, a
6 master site development plan intends to be a framework for a conceptual, integrated design and
7 infrastructure plan for the development of a property, in which:

- 8 A. The development standards are applied to the land as defined by its perimeter, rather than by the
9 individual lots, tracts and parcels into which the land may be divided; and
- 10 B. The standards are applied to the proposed master development boundary rather than to individual lots,
11 tracts and parcels.

12 Master Site Development Plans are to assure adequate provisions are made to protect the public health
13 and safety, taking into account such factors as traffic safety and access; water supply and sewage
14 disposal; management of stormwater, erosion, and sedimentation; protection of the environment; and
15 other criteria as noted below.

16 16.6.1 Applicability

17 A. A person who has right, title, or interest in a parcel of land shall obtain Master Site Development Plan
18 approval for a site when:

- 19 (1) The cumulative lot area is one acre or larger, and
- 20 (2) The site is designed as a cohesive and integral development program consisting of multiple
21 buildings and associated site improvements proposed to be built in phases.

22 16.6.2 Review Process & Submission Requirements

23 A. Pre-application and Conference

24 (1) Process

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

29 B. Sketch Plan Review

30 (1) Process

31 The applicant must prepare and submit, for review and consideration by the Planning Board, a
32 sketch plan and subsequently, for review and possible approval by the Planning Board, a Master
33 Site Development Plan for the development of the parcel(s).

34 (2) Plan Requirements

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

- 36 (a) Location, type and amount of the uses proposed to be developed on the parcel, including the
37 proposed area, percentage and intensity of each proposed use;
- 38 (b) Proposed provisions for utilities, access roads, parking and public and private ways;
- 39 (c) Areas proposed to be permanently dedicated for public or private open space or other public
40 purpose;
- 41 (d) Proposed phasing of the overall site development, including the general sequence in which related
42 public and private improvements are to be completed, clearly defined on Master Site Development
43 Plan.

- 44 (3) Written Submission Requirements
- 45 (a) A project narrative, describing the nature of the proposed project along with an anticipated
- 46 timeframes for project phases and overall project buildout.
- 47 (b) In the event the development site is not comprised of a single parcel, the master site development
- 48 plan must detail the manner in which multiple parcels will be consolidated into a single parcel
- 49 and subsequently subdivided, if necessary, to facilitate the completion of the plan.
- 50 (4) Decisions.
- 51 (a) The Planning Board must determine whether the Sketch Plan proposal complies with the
- 52 standards contained within Title 16 and must, where it deems necessary, make specific
- 53 suggestions in writing to be incorporated by the applicant in subsequent submissions.
- 54 (b) If the concept is approved, inform the applicant in writing.
- 55
- 56 (5) Preliminary Master Site Development Plan
- 57 (a) A Preliminary Master Site Development Plan shall be submitted with its corresponding
- 58 development plan in accordance with 16.7 Site Plan Review and 16.8 Subdivision.
- 59

60 C. Final Master Site Development Plan

- 61 (1) Process
- 62 (a) The Planning Board may approve the Final Master Site Development Plan as submitted, return
- 63 the Final Development Master Plan for additional information or revision, or deny the Final
- 64 Development Master Plan.
- 65 (b) The Final Master Site Development Plan becomes the plan with which subsequent submittals
- 66 must conform. The Planning Board must sign and date the Final Master Site Development to
- 67 indicate approval by the Board.
- 68 (c) The approved Master Site Development Plan remains valid as set forth in this chapter but may be
- 69 amended and extended as set forth in this chapter.
- 70 (2) Plan Requirements
- 71 The Final Master Site Development Plan must include the following elements:
- 72 (a) land use,
- 73 (b) public sites, environmental design,
- 74 (c) vehicular, pedestrian and
- 75 (d) bicycle circulation, recreation, water, wastewater, drainage and other elements as set forth in this
- 76 title.
- 77 (e) The Planning Board may waive one or more elements of the plan, if they are determined
- 78 inapplicable.
- 79 (3) Written Submission Requirements
- 80 (a) A project narrative describing the project, including updates and changes proposed from the
- 81 Sketch Plan to the Final Plan.

82 16.6.3 Performance Standards and Approval Criteria

83 A. Outside agency approvals.

- 84 (1) Any applicable approvals from Maine DEP, MaineDOT, the Army Corps of Engineers or other state
- 85 or federal agencies must be sought for the entire Master Site Development Plan, not individual
- 86 phases.

87 B. Infrastructure.

88 (1) Improvements within the right-of-way, including streetlights, sidewalks, streets, and guardrails shall
89 be consistent in construction details, design and materials throughout the Master Site Development
90 Plan.

91 C. Stormwater.

92 (1) Each phase of the project shall include stormwater treatment adequate to treat that phase of the
93 project. It is acceptable to oversize stormwater infrastructure in early phases to treat later
94 development. It is not acceptable for proposed development to rely on later phase construction for
95 necessary stormwater treatment.

96 D. Traffic.

97 (1) New streets in the Master Site Development Plan will include provisions for adequate turnarounds
98 between project phases. Hammerheads or cul-de-sacs installed at the end of each phase may be
99 removed if the street is extended in future phases.

100 16.6.4 Decisions

101 A. The Planning Board shall approve, approve with conditions, or deny a Master Site Development Plan
102 application based on the applicable review standards. An approval, including any approval of waivers
103 from Performance Standards, establishes the general parameters to be adhered to for the development,
104 including the supporting documentation for floor area and/or residential density, general types of uses,
105 building coverage, generalize open space plans and infrastructure systems.

106 (1) A Master Site Development Plan approval shall not be construed as final authorization of the
107 development. Approval shall confer pending proceeding status upon the development with the
108 effect of maintaining the applicability of regulations in effect at the time of approval for as long as
109 the Master Site Development Plan remains valid, including permissible extensions, if granted.

110 (2) Final approved Master Site Development Plan signing. The Planning Board must sign and date the
111 plan to indicate that it is the Master Site Development Plan approved by the Board.

112 B. A Master Site Development Plan and each subsequent development plan thereof has final approval
113 only when the Planning Board has indicated approval by formal action and the plan has been properly
114 signed by a majority of the Planning Board members or by the Chair only, if so voted by the Planning
115 Board.

116 16.6.5 Post-Approval Activities

117 A. Recording of master planned property survey.

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

120 B. Land division applications.

121 (1) After approval of the Master Site Development Plan and recording of the master site development
122 plan property survey, the owner may initiate land division applications.

123 (2) The Code Enforcement Officer may issue permits only after the Master Site Development Plan
124 property survey has been recorded and all other applicable state and local approvals have been
125 obtained.

126

127

128

16.7 Site Plan Review

16.7.1 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 multifamily 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.

16.7.2 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 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 five (5) year period. The applicability of this section does not include the construction of

43 streets that are reviewed as part of a Subdivision application.

44 (10) Marijuana Businesses and Medical Marijuana Registered Caregiver Home Establishments.

45 B. Other development review

46 Unless subject to a shoreland development plan review or Right of Way Plan per § 16.7.3.A,
47 the following do not require Planning Board approval:

48 (1) Single and duplex family dwellings.

49 (2) Division of land into lots (i.e., two lots), which division is not otherwise subject to Planning
50 Board review as a subdivision.

51 (3) Business use as provided in § 16.4.26.C.(13)

52

53 (4) Phasing plan. Upon applicant's request, the Planning Board may permit phasing of the
54 plans, where it can be demonstrated to the Planning Board's satisfaction that such phasing
55 would result in a safe and orderly development of the plan.

56 (a) The applicant may file a section of the approved plan with the municipal officials and
57 the York County Registry of Deeds if said section constitutes at least 25% of the total
58 number of lots, or for plans including buildings, 25% of the gross area, contained in
59 the approved plan. In all circumstances, plan approval of the remaining sections of
60 the plan will remain in effect for three years unless the applicant requests and the
61 Planning Board grants extensions of time equivalent to the requirements for approved
62 plans in § 16.7.12.

63 (b) Phasing is subject to any conditions deemed necessary to assure a reasonable mixture
64 of uses is completed within each separate phase of the plan.

65 (c) Where projects are to be constructed in phases, phasing of stormwater management,
66 water mains and streets are part of the review process.

67 (d) Portions of both the developed and undeveloped site impacted by interim
68 infrastructure conditions such as unlooped water systems, stormwater runoff from
69 unfinished areas onto finished areas and vice versa, dead-end streets, etc., must be
70 clearly defined and shown on the plans.

71 (e) The Planning Board may permit construction of phases out of order only when the
72 storm drainage plan and the water plan, etc., have been reviewed, and it has been
73 demonstrated that the impact on both the developed and undeveloped sections is
74 negligible.

75

76 **16.7.3 Other Potential Reviews**

77 A. Shoreland development review.

78 (1) All development in the Shoreland, Resource Protection, and Commercial
79 Fisheries/Maritime Uses Overlay Zones involving the use, expansion, change or
80 replacement of an existing use or structure, or renewal of a discontinued nonconforming
81 use, must be reviewed and approved as provided in § 16.9.1 and elsewhere in this title, and
82 tracked as a shoreland development for reporting purposes.

83 (2) All development in the Shoreland, Resource Protection, and Commercial
84 Fisheries/Maritime Uses Overlay Zones must be approved by the Planning Board except

85 for the following:

- 86 (a) Proposed development of principal and accessory structures in compliance with
 87 § 16.9.1.B.(1), when not subject to Planning Board review as explicitly required
 88 elsewhere in this title. Such proposed development must be reviewed and approved
 89 by the Code Enforcement Officer (CEO) prior to issuing a building permit. The total
 90 devegetated area of the lot (that portion within the Shoreland Overlay Zone) must be
 91 calculated by the applicant and verified by the CEO and recorded in the Town's
 92 property records. Any development proposed in the Resource Protection and
 93 Shoreland - Stream Protection Area Overlay Zones must be approved by the Planning
 94 Board.
- 95 (b) Piers, docks, wharves, bridges and other structures and uses extending over or below
 96 the highest annual tide (HAT) elevation, subject to review and approval by the Port
 97 Authority as outlined in Chapter 16.9.1, Marine-related development.
- 98 (c) Division of a conforming parcel that is not subject to subdivision as defined in § 16.3.
- 99 (d) Clearing of vegetation for activities other than timber harvesting. These are subject to
 100 review and approval by the Shoreland Resource Officer or Code Enforcement
 101 Officer.

102 **16.7.4 Review and Approval Authority**

- 103 A. Application Classification. The review and approval authority for Site Plans shall depend on
 104 the classification of the project.
- 105 (1) Major Site Plan. The Planning Board is authorized to review and act on all Site Plans for
 106 Major Site Plan applications. In considering Site Plans under this section, the Planning
 107 Board may act to approve, disapprove, or approve with project with such conditions as are
 108 authorized by this section.
- 109 (2) Minor Site Plan. The Kittery Director of Planning and Development is authorized to
 110 review all Site Plans for Minor Site Plan applications and may approve, disapprove, or
 111 approve the project based upon all applicable approval standards and with such conditions
 112 as are authorized by this section. This administrative review will be made in consultation
 113 with the Town Planner and Code Enforcement Officer. In addition, the Director in his or
 114 her sole discretion may reclassify a Minor Site Plan as a Major Site Plan, due to the scope
 115 or anticipated impacts of a project, and forward it to the Planning Board with
 116 recommendations for Planning Board action.
- 117 B. Technical Review Committee Established. The Technical Review Committee is to provide
 118 advisory comments on all Site Plan applications. Membership will consist of Town
 119 department heads and senior staff. The Technical Review Committee will meet on an as
 120 needed basis, dependent upon the timing Site Plan application submissions.

121 **16.7.5 Classification of Projects**

- 122 A. The Town Planner shall classify each project as a Major or Minor Site Plan. Minor Site
 123 Plans are smaller scale projects for which a minor review process is adequate to protect the
 124 Town's interest. Major Site Plans are larger, more complex projects for which a more
 125 detailed review process and additional information are necessary. The following review
 126 thresholds shall be used by the Town Planner in classifying each project. The Town

- 127 Planner's classification of a project shall be final.
- 128 (1) Minor Site Plans shall include those projects involving:
- 129 (a) The cumulative construction or addition above one thousand (1,000) square feet and
- 130 no more than five thousand (5,000) square feet of gross nonresidential floor area.
- 131 (b) Any individual or cumulative construction or addition between one thousand (1,000)
- 132 square feet and five thousand (5,000) square feet of gross nonresidential floor area
- 133 within an approved subdivision.
- 134 (c) The establishment of a new nonresidential use even if no buildings or structures are
- 135 proposed, that involves the Development of more than twenty-five thousand (25,000)
- 136 square feet but less than one (1) acre of land.
- 137 (2) Major Site Plans shall include projects involving:
- 138 (a) The individual or cumulative construction or addition above five thousand (5,000)
- 139 square feet of gross nonresidential floor area on a lot that is not part of an approved
- 140 subdivision,
- 141 (b) The individual or cumulative Development of one (1) acre or more land, unless the
- 142 Development is part of a Site Plan application in an approved subdivision,
- 143 (c) Any mixed-use project that contains residential and non-residential uses,
- 144 (d) Projects that involve Wireless Communication System Facilities (WCSF),
- 145 (e) Projects that require any waiver from performance standards.
- 146 (f) Projects that also require subdivision or special exception approval, or
- 147 (g) Other projects requiring review which are not classified as a minor development.
- 148

149 **16.7.6 Application and Review Fees**

- 150 A. Review fee(s); reimbursements.
- 151 (1) All applications for plan approval for properties which come under this title must be
- 152 accompanied by a fee as determined by the Town Council.
- 153 (2) The applicant must reimburse the Town for all expenses incurred for notifying abutters of
- 154 the proposed plan and advertising of any public hearing regarding a development.
- 155 B. Independent peer review.
- 156 (1) The Planning Board or, after the Town Manager's approval, the Town Planner and the
- 157 Code Enforcement Officer, may require an independent consultant or specialist engaged by
- 158 the Town, at the applicant's expense, to:
- 159 (a) Determine compliance with all requirements of this title related to public health,
- 160 safety and welfare and the abatement of nuisances; or
- 161 (b) Assist with the technical review of applications submitted for new or amended
- 162 development.
- 163 C. When peer review is required of the applicant, sufficient funds, based on a written estimate
- 164 by the required consultant, must be deposited in an applicant's service account per Chapter
- 165 3.3, prior to commencing said review and continuing with the review of the development
- 166 plan application.

167 **16.7.7 Applicant attendance at review meeting(s).**

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

171 **16.7.8 Waivers**

172 A. Waiver authorization.

173 Upon written request, the Planning Board may waive or modify certain required
 174 improvements, due to special circumstances of a particular plan, if the applicant demonstrates
 175 that the interest of public health, safety, the natural environment, and general welfare are not
 176 harmed, or if those improvements are inappropriate because of inadequacy or lack of
 177 connecting facilities adjacent or in proximity to the proposed development, subject to
 178 appropriate conditions as determined by the Planning Board, and provided the waivers do not
 179 have the effect of nullifying the intent and purpose of the Comprehensive Plan and Title 16.

180 B. Only waivers from submission requirements may be considered for Minor Site Plans, and not
 181 waivers from performance standards. Projects seeking waiver of performance standards must
 182 be classified as Major Site Plan applications to be reviewed by the Planning Board.

183 C. Objectives secured.

184 In granting modifications or waivers, the Planning Board must require such conditions as
 185 will, in its judgment, secure substantially the objectives of the requirements so waived or
 186 modified. The Planning Board is not obligated to consider the costs of required
 187 improvements when reviewing waiver or modification requests. The Planning Board shall
 188 consider the provisions in Section 16.2.12.F. Basis for Decisions when reviewing waiver or
 189 modification requests.

190 **16.7.9 Other Requirements**

191 A. Burden of proof.

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

193 B. Site walk determination.

194 (1) The Planning Board should make a determination on whether a site walk would be
 195 beneficial in order to become fully informed about the site and in a knowledgeable position
 196 to prescribe contour intervals to be employed on topographic maps and grading plans for
 197 the development, the applicant must arrange a joint inspection of the site with the Planning
 198 Board.

199 (2) If a site inspection is required, the applicant must stake out property corners, entrance
 200 locations, and building corners, along with other site features to help orient the Board and
 201 members of the public.

202 (3) The applicant must provide each Board member with a copy of the plan on an 11"x17"
 203 sheet at the site walk.

204 C. Safe use.

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

207 **16.7.10 Review Process and Submission Requirements**

208 A. Pre-Application and Conference

209 (1) Process. Pre-Application Conference. Applicants for Site Plan review are encouraged to
210 schedule a Pre-Application conference with the Town Planner. The purpose of this meeting
211 is to familiarize the applicant with the review procedures and submission requirements, and
212 approval criteria, and to familiarize the Planner with the nature of the project.

213 (a) Such review shall not cause the plan to be a pending application or proceeding under
214 1 M.R.S.A. §302. No decisions relative to the plan may be made at this meeting.

215 (b) To request a Pre-Application conference the applicant shall submit, at a minimum, a
216 brief narrative describing the project, the location of the project on a US Geologic
217 Survey (USGS) topographic map, a rough drawing of the proposal for the subject
218 property, and a copy of the Tax Map showing the development parcel.

219 B. Sketch Plan Review

220 (1) Major Site Plan applicants may choose to submit a development sketch plan with design
221 concept, at their discretion. The purpose of Sketch Plan Review with the Planning Board is
222 a chance for the applicant to ask questions and get feedback and guidance from the Board
223 before proceeding with an advance site plan design, and for the Board to provide guidance
224 on submission requirements.

225 Any person requiring Site Plan review must submit an application on forms prescribed by
226 the Planning Board. No more than one application/plan for a piece of property may be
227 under review before the Planning Board.

228 (a) A completed application must be submitted to the Town Planner no later than 21 days
229 prior to the meeting date for the item to be included on the agenda.

230 [1] Refer to current Planning Department application checklist for required
231 number of paper copies.

232 [2] One electronic submission in PDF format of the complete submission
233 including all forms, plans, and documentation.

234 (2) Planning Board review. The Planning Board must, within 65 days of Sketch Plan
235 submission, act upon the Sketch Plan as follows:

236 (a) The Planning Board must determine whether the Sketch Plan proposal complies with
237 the standards contained herein.

238 (b) Where it deems necessary, make specific suggestions in writing to be incorporated by
239 the applicant in subsequent submissions.

240 (c) The Planning Board should determine as to whether or not an on-site walk will be
241 required.

242 (d) The applicant should provide an indication as to whether or not waivers from the
243 submission requirements or performance standards will be part of the next phase of
244 review.

245 (e) Any plan may be continued for a total period not to exceed 90 calendar days for good
246 and sufficient reason (i.e., for revisions to be made, studies completed, or additional
247 information submitted) and acceptable to both the applicant and the Planning Board.
248 Such plan is automatically scheduled for the agenda of the next regular Planning
249 Board meeting after the 90th day and action completed in accordance with the
250 requirements and timing contained in this title, whether the applicant has

251 accomplished the purposes for which continued or not.

252 [1] The action to table by the Planning Board must be an action to temporarily
253 suspend action and not to suppress a vote on the plan.

254 (3) Plan Requirements

255 (a) The Sketch Plan must be submitted to the Planning Board at the time of, or prior to,
256 the on-site inspection.

257 (b) The Sketch Plan must show in simple form on a topographic map the proposed site,
258 subdivision, landscape architectural or architectural design concept, including streets,
259 lots, structures and other features, in relation to existing conditions and municipal
260 land use zone(s) regulations.

261 (c) The sketch may be a freehand penciled sketch and must include the data listed below.

262 (4) Written Submission Requirements

263 (a) Any person requiring development review must submit an application on forms
264 prescribed by the Planning Board, together with a development plan and such
265 submission contents as may be required in § 16.7.10.C. A complete application
266 consists of all the required elements. No more than one application/plan for a piece of
267 property may be under review at a time. No more than one approved Final Plan for a
268 piece of property may exist.

269 (b) General project information must describe or outline the existing conditions of the
270 site, including:

271 [1] Covenants;

272 [2] Available community facilities; and

273 [3] Utilities.

274 (c) Proposed development, such as:

275 [1] Number of residential or business lots and/or dwelling units;

276 [2] Typical lot width and depth;

277 [3] Price range;

278 [4] Business areas;

279 [5] Playgrounds, park areas and other public areas;

280 [6] Protective covenants;

281 [7] Utilities; and

282 [8] Street improvements.

283 C. Preliminary Plan Review

284 (1) General Process

285 (a) Within six months after Planning Board acceptance of a Sketch Plan, if applicable,
286 the applicant must submit an application for preliminary Site Plan approval in the
287 form prescribed herein.

288 (b) Preliminary Plan application filing and completeness review. A determination as to
289 whether the Town Planner validates an application is based on a review of the
290 application in accordance with the submission contents checklist filed with the plan,
291 which indicates all elements required under § 16.7.10.C and § 16.7.10.D have been

- 292 received, or written request for any waivers of submission requirements or
 293 performance standards is included. The application must be accompanied by a plan
 294 and the required fee, together with a certification the applicant has notified abutters
 295 by mail of the filing of the plan application for approval.
- 296 (c) Receipt and scheduling review. Upon validation, the Town Planner must place the
 297 application on the Planning Board's agenda for Planning Board completeness review
 298 and vote to find the Preliminary Plan application complete and, upon Planning Board
 299 approval, issue a dated notice to the applicant, which is thereafter the official time of
 300 submission.
- 301 (d) Site inspection. In the course of the review of the plan, the Planner must, and the
 302 Planning Board may at its discretion, make a physical inspection and may make
 303 photographic record of the existing conditions on the site.
- 304 (e) Advisory opinions. At any time during review, the Planner may request an advisory
 305 opinion from the Planning Board, Conservation Commission or Port Authority on
 306 issues related to the application. Where applications are for land within wetland
 307 setbacks or the Resource Protection Overlay Zone, the Conservation Commission
 308 must be invited to review and offer recommendations from an environmental
 309 protection perspective. The Planner also must make recommendation on the necessity
 310 for independent review.
- 311 (f) Planner analysis. The Planner must analyze the application and forward comments
 312 and recommendations to the applicant and the Planning Board.
- 313 (g) A completed application must be submitted to the Town Planner no later than 21 days
 314 prior to the meeting date for the item to be included on the agenda. The submission
 315 must include on the plan or attached thereto, the requirements of subsection (4) Plan
 316 Requirements and subsection (5) Additional Requirements, unless upon the
 317 applicant's written request, the Planning Board, by formal action, waives or defers
 318 any requirement(s) for submission.
- 319 [1] Refer to current Planning Department application checklist for required number of
 320 paper copies.
- 321 [2] One electronic submission in PDF format of the complete submission including
 322 all forms, plans, and documentation.
- 323 (2) Public hearing
- 324 (a) Scheduling
- 325 [1] A Major Site Plan application must be scheduled for review and public hearing
 326 once the Preliminary Plan application has been found complete by the Planning
 327 Board.
- 328 (a) Public notice.
- 329 [1] The Town Planner must place a public notice of such public hearing in a
 330 newspaper of general circulation in the Town at least seven and not more than 14
 331 days prior to the scheduled hearing date; said notice must also be posted in at least
 332 three prominent public locations in Town at least 10 days prior to the hearing;
 333 and, in the case of a plan located within 500 feet of the Towns of Eliot or York,
 334 Maine, must be forwarded to the Southern Maine Planning and Development
 335 Commission and to the Town Clerk of Eliot or York, Maine, at least 10 days prior

336 to the hearing.

337 (b) Abutter notice.

338 [1] The Town Planner must cause written notice of the public hearing to be sent by
339 postage paid, first-class mail (cost to be paid by the applicant) to all owners of
340 abutting property, as herein defined (within 150 feet of the property), and by
341 regular mail to the Code Enforcement Officer, the Commissioner of Public
342 Works, and where applicable, the Port Authority or Conservation Commission, at
343 least seven days prior to the scheduled date. Failure of the parties to receive said
344 notice does not invalidate any Board action.

345 [2] Abutter notice must follow applicability as described in §16.5.2 Abutter Notice.

346 [3] For a wireless communication system facility (WCSF) plan application, the Town
347 Planner must cause written notice of the hearing sent by postage paid, first-class
348 mail, provided by the applicant, at least seven days prior to the hearing to all
349 owners of abutting property and property located within 1,000 feet of any
350 property line of the property for which the permit is requested. Notice must also
351 be given to any town located within 1,000 feet of the proposed
352 telecommunications facility. The applicant must provide this notification and
353 must present proof of such notification to the Town Planner. The notification
354 must include: the name of the applicant, location of the property, a brief
355 description of the project, and a plot plan identifying the proposed site layout in
356 relation to nearby streets and properties.

357 (c) Public Hearing Procedure

358 [1] The Planning Board may receive oral and documentary evidence, but must
359 exclude evidence which it considers irrelevant, immaterial or unduly repetitious.

360 [2] The Chairperson of the Planning Board must determine the order of presentation
361 by parties to the hearing. Each party must have the right to proceed without
362 interruption, except that rulings by the Chairperson prevail. The applicant's
363 presentation must proceed in accordance with the checklist provided.

364 [3] Any party may be represented by agent or attorney.

365 [4] The Town Planner, in consultation with other Town officials as may have an
366 interest in the application, must present into evidence a written summary of
367 findings and recommendations.

368 [5] The Planning Board may continue the hearing to another time and location,
369 including the site of the development, as it deems necessary.

370 (3) Planning Board review schedule and decision on Preliminary Plan application.

371 (a) Within 35 days of a Public Hearing, the Planning Board must approve the plan,
372 approve the plan with conditions, disapprove the plan, postpone action on the plan, or
373 continue the review to another time/location.

374 (b) Continuation or tabling of a review beyond the thirty-five-day period for Site Plan
375 applications must be for good and sufficient reason and be acceptable to both the
376 applicant and the Planning Board.

377 (c) Any plan may be continued for a total period not to exceed 90 calendar days for good
378 and sufficient reason (i.e., for revisions to be made, studies completed or additional

379 information submitted) and acceptable to both the applicant and the Planning Board.
 380 Such plan is automatically scheduled for the agenda of the next regular Planning
 381 Board meeting after the 90th day and action completed in accordance with the
 382 requirements and timing contained in this title, whether the applicant has
 383 accomplished the purposes for which continued or not.

384 (d) The action to table by the Planning Board must be an action to temporarily suspend
 385 action and not to suppress a vote on the plan.

386 (e) Failure to act within thirty-five-days constitutes disapproval of the plan, in which case
 387 the applicant may resubmit the plan without payment of an additional application fee.
 388 Conditions of approval may include, but are not limited to, type of vegetation,
 389 increased setbacks and yard space, specifications for sewage and water supply
 390 facilities, buffers and screens, period of maintenance sureties, deed restrictions,
 391 locations of piers, docks, parking or signs, type or style of construction, and the
 392 amount of all guarantees which may be required.

393 (f) The decision of the Planning Board to include any conditions imposed must be noted
 394 on three copies of the Preliminary Plan. One copy must be returned to the applicant,
 395 one retained by the Planning Board and one forwarded to the municipal officials.

396 (4) Plan Requirements

397 (a) Plan sheets drawn on a reproducible medium and must measure no less than 11 inches
 398 by 17 inches and no larger than 24 inches by 36 inches;

399 (b) With scale of the drawings no greater than one inch equals 30 feet for developments
 400 less than 10 acres, and one inch equals 50 feet for all others;

401 (c) Code block in the lower right-hand corner. The block must contain:

402 [1] Name(s) and address(es) of the applicant and owner;

403 [2] Name of the project;

404 [3] Name and address of the preparer of the plan, with professional seal, if applicable;

405 [4] Date of plan preparation/revision, and a unique ID number for the plan and any
 406 revisions;

407 (d) Standard boundary survey conducted by a surveyor licensed in the State of Maine, in
 408 the manner recommended by the State Board of Registration for Land Surveyors;

409 (e) An arrow showing true North and the magnetic declination, a graphic scale, and
 410 signature blocks for the owner(s) and members of the Planning Board;

411 (f) Locus map showing the property in relation to surrounding roads, within 2,000 feet of
 412 any property line of the development;

413 (g) Vicinity map and aerial photograph showing the property in relation to surrounding
 414 properties, roads, geographic, natural resource (wetland, etc.), historic sites,
 415 applicable comprehensive plan features such as proposed park locations, land uses,
 416 zones, and other features within 500 feet from any boundary of the proposed
 417 development;

418 (h) Surveyed acreage of the total parcel, of rights-of-way, wetlands, and area to be
 419 disturbed and amount of street frontage;

420 (i) Names and addresses of all owners of record of property abutting the development,
 421 including those across a street;

- 422 (j) Existing Development Area Conditions, including but not limited to:
423 [1] Location and description of all structures, including signs, existing on the site,
424 together with accesses located within 100 feet of the property line;
425 [2] Essential physical features such as watercourses, wetlands, floodplains, wildlife
426 habitat areas, forest cover, and outcroppings;
427 [3] Utilities existing, including power, water, sewer, holding tanks, bridges, culverts
428 and drainageways.
- 429 (k) Proposed development area conditions including, but not limited to:
430 [1] Structures: their location and description, including signs, to be placed on the
431 site, floor plans and elevations of principal structures as well as detail of all
432 structures, showing building materials and colors, and accesses located within
433 100 feet of the property line.
434 [2] Utilities proposed including power, water, sewer, holding tanks, bridges, culverts
435 and drainageways;
436 [3] Sewage facilities type and placement. Test pit locations, at least two of which
437 must meet the State of Maine Plumbing Code requirements, must be shown;
438 [4] Domestic water source;
439 [5] Parks, open space, or conservation easement locations;
440 [6] Lot lines, interior and exterior, right-of-way, and street alignments;
441 [7] Road and other paved ways plans, profiles and typical sections including all
442 relevant data;
443 [8] Setbacks existing and proposed;
444 [9] Machinery permanently installed locations likely to cause appreciable noise at
445 the lot lines;
446 [10] Raw, finished or waste materials to be stored outside the buildings, and any
447 stored material of a toxic or hazardous nature;
448 [11] Topographic contours of existing contours and finished grade elevations within
449 the development;
450 [12] Pedestrian ways/sidewalks, curbs, driveways, fences, retaining walls and other
451 artificial features locations and dimensions proposed;
452 [13] Temporary marker locations adequate to enable the Planning Board to readily
453 locate and appraise the layout of the development;
454 [14] Land proposed to be dedicated to public use and the conditions of such
455 dedication;
- 456 (l) Natural features or site elements to be preserved. Written Submission Requirements
457 Legal interest documents showing legal interest of the applicant in the property to be
458 developed. Such documents must contain the description upon which the survey was
459 based;
- 460 (m) Property encumbrances currently affecting the property, as well as any proposed
461 encumbrances;
- 462 (n) Water District approval letter, if public water is used, indicating there is adequate
463 supply and pressure to be provided to the development;

- 464 (o) Erosion and sedimentation control plan endorsed by the York County Soil and Water
465 Conservation District or the Town's engineering consultant;
- 466 (p) Stormwater management preliminary plan for stormwater and other surface water
467 drainage prepared by a registered professional engineer including the general location
468 of stormwater and other surface water drainage areas;
- 469 (q) Soil survey for York County covering the development. Where the soil survey shows
470 soils with severe restrictions for development, a high intensity Class "A" soil survey
471 must be provided;
- 472 (r) Vehicular traffic report estimating the amount and type of vehicular traffic that will
473 be generated by the development on a daily basis and for peak hours;
- 474 (s) Traffic impact analysis in accordance with § 16.5.27.E for developments involving 40
475 or more parking spaces or which are projected to generate more than 400 vehicle trips
476 per day;
- 477 (t) Test pit(s) analysis prepared by a licensed site evaluator when sewage disposal is to
478 be accomplished by subsurface disposal, pits, prepared by a licensed site evaluator;
- 479 (u) Town Sewage Department or community system authority letter, when sewage
480 disposal is to be through a public or community system, approving the connection and
481 its location;
- 482 (v) Letters of evaluation of the development by the Chief of Police, Fire Chief,
483 Commissioner of Public Works, and, for residential applications, the superintendent
484 of schools, must be collected and provided by the Town Planner.
- 485 (w) Additional submissions as may be required by other sections of this title such as for
486 clustered development, mobile home parks, or junkyards must be provided.
- 487 (5) Additional requirements. In its consideration of an application/plan, the Planning Board
488 may at any point in the review require the applicant to submit additional materials, studies,
489 analyses, and agreement proposals as it may deem necessary for complete understanding of
490 the application. Such materials may include:
- 491 (a) Traffic impact analysis, for projects that are not otherwise required to submit a traffic
492 impact analysis by submission requirement C(4)(s), above.
- 493 (b) Environmental analysis. An analysis of the effects that the development may have
494 upon surrounding lands and resources, including intensive study of groundwater,
495 ecosystems, or pollution control systems;
- 496 (c) Hydrologic analysis. An analysis of the effects that the development may have on
497 groundwater must be conducted in accordance with § 16.7.11.J. This analysis is
498 always required for mobile home park proposals.
- 499 (6) Additional Submittal Content Required for Review of Wireless Communication Services
500 Facilities (WCSF).
- 501 (a) A visual impact analysis prepared by a landscape architect or other qualified
502 professional acceptable to the Town that quantifies the amount of visual impact on
503 properties located within 500 feet, within 2,500 feet and within two miles of the
504 WCSF. This analysis will include recommendations to mitigate adverse visual
505 impacts on such properties;
- 506 (b) An analysis prepared by a qualified professional acceptable to the Town that

507 describes why this site and structure is critical to the operation for which it is
 508 proposed. The analysis must address, at a minimum: existing and proposed service
 509 area; how this WCSF is integrated with other company operations, particularly other
 510 structures in Kittery and surrounding communities; future expansion needs in the
 511 area; the effect on company operations if this structure is not constructed in this
 512 location; other sites evaluated for location of this structure and how such sites
 513 compare to the proposed site; other options, if any, which could be used to deliver
 514 similar services, particularly if the proposed equipment can be co-located (shared use)
 515 on an existing structure; and an analysis to the projected life cycle of this structure
 516 and location;

- 517 (c) Certification by a structural engineer that construction of the structure satisfies all
 518 federal, state and local building code requirements as well as the requirement of
 519 maximum permitted co-location at the site as approved by the Planning Board/Town
 520 Planner;
- 521 (d) A plan note stating the payment of all required performance guarantees as a condition
 522 of plan approval;
- 523 (e) Payment of the Planning Board application fees;
- 524 (f) And all other requirements per this chapter.

525 D. Final Plan Review

526 (1) Process, Major Site Plan

527 (a) Final Plan application. The applicant must, within six months after approval of a
 528 Preliminary Plan, file with the Planning Board an application for approval of the Final
 529 Plan in the form prescribed herein.

530 (b) Failure to submit Final Plan application. If the Final Plan is not submitted to the
 531 Planning Board within six months after the approval of the Preliminary Plan, the
 532 Planning Board may refuse to act on the Final Plan and require resubmission of the
 533 Preliminary Plan. Any plan resubmitted must comply with all application
 534 requirements, including payment of fees.

535 (c) A completed application must be submitted to the Town Planner no later than 21 days
 536 prior to the meeting date for the item to be included on the agenda. The submission
 537 must include on the plan or attached thereto, the requirements of subsection (3) Final
 538 Plan Requirements, unless upon the applicant's written request, the Planning Board,
 539 by formal action, waives or defers any requirement(s) for submission.

540 [1] Refer to current Planning Department application checklist for required number of
 541 paper copies.

542 [2] One electronic submission in PDF format of the complete submission including
 543 all forms, plans, and documentation.

544 [3] GIS data for all property corners and site plan elements.

545 (d) Application/plan review expiration.

546 [1] Uncounted time. When an approved plan is required to be reviewed/approved by
 547 another agency (e.g., DEP, BOA, KPA), any period the plan is at such an agency
 548 or that a plan is continued by the Planning Board in accordance with
 549 § 16.7.10.C(3) from time of submission to time of decision inclusive, verifiable

550 by recorded documentation, is not counted as part of the cumulative time periods
551 described in this section.

552 [2] Requests for extension. The Planning Board may grant extensions to expiration
553 dates upon written request by the developer, on a case-by-case basis.

554 (2) Process, Minor Site Plan

555 (a) The Final Plan application may be submitted concurrently with Preliminary Plan
556 submission requirements to the Director of Planning and Development for
557 administrative review and decision.

558 (3) Final Plan Requirements

559 A complete Final Plan application must fulfill all the requirements of a Preliminary Plan as
560 indicated in § 16.7.10.C of this section and must show the following items, unless the
561 Planning Board, by formal action, upon the applicant's written request, waives or defers
562 any requirement(s) for submission. If no changes occurred to the Preliminary Plan, it also
563 may be considered to be the Final Plan.

564 (a) Preliminary Plan information, including vicinity map and any amendments thereto
565 suggested or required by the Planning Board or other required reviewing agency.

566 (b) Street names and lines, pedestrianways, lots, easements and areas to be reserved for
567 or dedicated to public use.

568 (c) Street length of all straight lines, the deflection angles, radii, lengths of curves and
569 central angles of all curves, tangent distances and tangent bearings.

570 (d) Lots and blocks within a subdivision, numbered in accordance with local practice.

571 (e) Markers/permanent reference monuments: Their location, source references and,
572 where required, constructed in accordance with specifications herein.

573 (f) Structures: their location and description, including signs, to be placed on the site,
574 floor plans and elevations of principal structures as well as detail of all structures,
575 showing building materials and colors, and accesses located within 100 feet of the
576 property line.

577 (g) Outdoor lighting and signage plan if the application involves the construction of more
578 than 5,000 square feet of nonresidential floor area; or the creation of more than
579 20,000 square feet of impervious area; or the creation of three or more dwelling units
580 in a building — prepared by a qualified lighting professional, showing at least the
581 following at the same scale as the site plan:

582 [1] All buildings, parking areas, driveways, service areas, pedestrian areas,
583 landscaping and proposed exterior lighting fixtures and snow storage;

584 [2] All proposed lighting fixture specifications and illustrations, including
585 photometric data, designation as "cutoff" fixtures, color rendering index (CRI) of
586 all lamps (bulbs), and other descriptive information on the fixtures;

587 [3] Mounting height of all exterior lighting fixtures;

588 [4] Lighting analyses and luminance level diagrams or photometric point-by-point
589 diagrams on a twenty-foot grid, showing that the proposed installation conforms
590 to the lighting level standards of the ordinance codified in this section together
591 with statistical summaries documenting the average luminance, maximum
592 luminance, minimum luminance, average-to-minimum uniformity ratio, and

- 593 maximum-to-minimum uniformity ratio for each parking area, drive, canopy and
594 sales or storage area;
- 595 [5] Drawings of all relevant building elevations, showing the fixtures, the portions of
596 the walls to be illuminated, the luminance levels of the walls, and the aiming
597 points for any remote light fixtures; and
- 598 [6] A narrative that describes the hierarchy of site lighting and how the lighting will
599 be used to provides safety, security and aesthetic effects.
- 600 (h) Machinery in permanently installed locations likely to cause appreciable noise at the
601 lot lines.
- 602 (i) Materials (raw, finished or waste) storage areas, their types and location, and any
603 stored toxic or hazardous materials, their types and locations.
- 604 (j) Fences, retaining walls and other artificial features, locations, and dimensions
605 proposed.
- 606 (k) Landscaping plan, including location, size and type of plant material.
- 607 (l) Stormwater management plan for stormwater and other surface water drainage
608 prepared by a registered professional engineer, including the location of stormwater
609 and other surface water drainage area; a post-construction stormwater management
610 plan that defines maintenance responsibilities, responsible parties, shared costs, and
611 schedule for maintenance; a draft maintenance agreement for stormwater
612 management facilities; and, where applicable, draft documents creating a
613 homeowners' association referencing the maintenance responsibilities. Where
614 applicable, the maintenance agreement must be included in the document of
615 covenants, homeowners' documents and/or as riders to the individual deed and
616 recorded with the York County Registry of Deeds.
- 617 (4) Written Submission Requirements
- 618 (a) Municipal impact analysis of the relationship of the revenues to the Town from the
619 development and the costs of additional publicly funded resources, including:
- 620 [1] Review for impacts. A list of the construction items that will be completed by the
621 developer prior to the sale of lots.
- 622 [2] Municipal construction and maintenance items. A list of construction and
623 maintenance items that must be borne by the municipality, which must include,
624 but not be limited to:
- 625 [a] Schools, including busing;
- 626 [b] Road maintenance and snow removal;
- 627 [c] Police and fire protection;
- 628 [d] Solid waste disposal;
- 629 [e] Recreation facilities;
- 630 [f] Runoff water disposal drainageways and/or storm sewer enlargement with
631 sediment traps.
- 632 [3] Municipal costs and revenues. Cost estimates to the Town for the above services
633 and the expected tax revenue of the development.
- 634 (b) Open space land cession offers. Written offers of cession to the municipality of all

- 635 public open space shown on the plan, and copies of agreements or other documents
636 showing the manner in which space(s), title to which is reserved by the subdivider,
637 are to be maintained.
- 638 (c) Open space land cession offers acknowledgement by Town. Written evidence that the
639 municipal officers are satisfied with the legal sufficiency of the documents referred to
640 in § 16.7.10.D(4)b. Such written evidence does not constitute an acceptance by the
641 municipality of any public open space referred to in § 16.7.10.D(4)b.
- 642 (d) Maintenance plan and agreement defining maintenance responsibilities, responsible
643 parties, shared costs and schedule. Where applicable, a maintenance agreement must
644 be included in the document of covenants, homeowners' documents and/or as riders
645 to the individual deed.
- 646 (e) Estimated costs. Specify the estimated total cost of the development and itemize the
647 estimated major expenses. The itemization of major costs should include, but not be
648 limited to, the costs of the following activities: roads, sewers, structures, water
649 supply, erosion control, pollution abatement and landscaping.
- 650 (f) The applicant shall demonstrate they have sent written notice of their filing for Minor
651 Site Plan review by postage paid, first-class mail (cost to be paid by the applicant) to
652 all owners of abutting property, as herein defined (within 150 feet of the property).
- 653 (5) Findings of Fact.
- 654 (a) After considering all submissions, evidence and testimony in accordance with the
655 requirements of all applicable state and the Town Code, the Planning Board or
656 Director of Planning and Development must make a finding of facts for each and
657 every proposed phase of development, including the development master plan and
658 each subsequent development plan, and take formal action as required in this title.
- 659 (b) Findings of fact. Action by the Planning Board must be based upon findings of fact
660 which certify or waive compliance with all the required standards of this title and
661 which certify the development meets the following requirements:
- 662 [1] Development conforms to local ordinances. The proposed development conforms
663 to a duly adopted Comprehensive Plan as per adopted provisions in the Town
664 Code, zoning ordinance, subdivision regulation or ordinance, development plan or
665 land use plan, if any. In making this determination, the municipal reviewing
666 authority may interpret these ordinances and plans.
- 667 [2] Water supply sufficient. The proposed development has sufficient water available
668 for the reasonably foreseeable needs of the development.
- 669 [3] Sewage disposal adequate. The proposed development will provide for adequate
670 sewage waste disposal and will not cause an unreasonable burden on municipal
671 services, if they are utilized.
- 672 [4] Stormwater managed. The proposed development will provide for adequate
673 stormwater management.
- 674 [5] Traffic managed. The proposed development will:
- 675 [a] Not cause unreasonable highway or public road congestion or unsafe
676 conditions with respect to the use of the highways or public roads existing or
677 proposed; and

- 678 [b] Provide adequate traffic circulation, both on site and off site.
- 679 [6] Parking and Loading. Provisions have been made for safe internal vehicular
680 circulation, loading and service areas, and parking associated with the proposed
681 development.
- 682 [7] Utilities. The size, type, and locations of all public utilities and private utilities to
683 serve the proposed development will be installed per accepted engineering
684 practices.
- 685 [8] Erosion controlled. The proposed development will not cause unreasonable soil
686 erosion or a reduction in the land's capacity to hold water so that a dangerous or
687 unhealthy condition results.
- 688 [9] Groundwater protected. The proposed development will not, alone or in
689 conjunction with existing activities, adversely affect the quality or quantity of
690 groundwater.
- 691 [10] Freshwater wetlands identified. All freshwater wetlands within the project area
692 have been identified on any maps submitted as part of the application, regardless
693 of the size of these wetlands.
- 694 [11] River, stream or brook identified. Any river, stream or brook within or abutting
695 the proposed project area has been identified on any maps submitted as part of
696 the application. For purposes of this section, "river, stream or brook" has the
697 same meaning as in 38 M.R.S. § 480-B, subsection 9. Municipal solid waste
698 disposal available. The proposed development will not cause an unreasonable
699 burden on the municipality's ability to dispose of solid waste, if municipal
700 services are to be used.
- 701 [12] Water body quality and shoreline protected. Whenever situated entirely or
702 partially within 250 feet of any wetland, the proposed development will not
703 adversely affect the quality of that body of water or unreasonably affect the
704 shoreline of that body of water. Flood areas identified and development
705 conditioned. All flood-prone areas within the project area have been identified on
706 maps submitted as part of the application. Water and air pollution minimized.
707 The proposed development will not result in undue water or air pollution. In
708 making this determination, the following must be considered:
- 709 [a] Elevation of the land above sea level and its relation to the floodplains;
710 [b] Nature of soils and subsoils and their ability to adequately support waste
711 disposal;
712 [c] Slope of the land and its effect on effluents;
713 [d] Availability of streams for disposal of effluents;
714 [e] Applicable state and local health and water resource rules and regulations; and
715 [f] Safe transportation, disposal and storage of hazardous materials.
- 716 [13] Aesthetic, cultural and natural values protected. The proposed development will
717 not have an undue adverse effect on the scenic or natural beauty of the area,
718 aesthetics, historic sites, significant wildlife habitat identified by the Department
719 of Inland Fisheries and Wildlife or the municipality, or rare and irreplaceable
720 natural areas, or any public rights for physical or visual access to the shoreline.

- 721 [14] Environmental Considerations. The proposed development will not result in
 722 undue levels of lighting, noise, vibrations, smoke, heat, glare, fumes, dust, toxic
 723 matter, odors, or electromagnetic interference.
- 724 [15] Utilization of the site. The proposed development does reflect the natural
 725 capabilities of the site to support development.
- 726 [16] Developer financially and technically capable. Developer is financially and
 727 technically capable to meet the standards of this section.
- 728 (c) For wireless communication system facility (WCSF). In development, the WCSF:
- 729 [1] Tower or other structure height does not exceed that which is essential for its
 730 intended use and public safety;
- 731 [2] Proximity of tower to residential development or zones is acceptable;
- 732 [3] Nature of uses on adjacent and nearby properties is compatible;
- 733 [4] Surrounding topography is protected;
- 734 [5] Surrounding tree coverage and foliage is protected;
- 735 [6] Design of the tower, antenna or facility with particular reference to design
 736 characteristics effectively eliminating or significantly reducing visual
 737 obtrusiveness is minimized;
- 738 [7] Proposed ingress and egress to the site is adequate;
- 739 [8] Co-location with another existing WCSF has been thoroughly pursued and is not
 740 feasible;
- 741 [9] Visual impacts on viewsheds, ridgelines and other impacts caused by tower
 742 location, tree and foliage clearing and placement of structures and associated
 743 development is minimized;
- 744 [10] Will not unreasonably interfere with the view of or from any public park, natural
 745 scenic vista, and historic building or major view corridor and the Kittery
 746 waterfront and harbor;
- 747 [11] Is not constructed in such a manner as to result in needless height, mass and guy-
 748 wire supports, with documentation having been provided and reviewed regarding
 749 the design capacity and/or the remaining co-location capacity of the
 750 tower/facility; and
- 751 [12] "Stealth" technology has been pursued and is not a viable option.
- 752 (d) In Shoreland, Resource Protection or Commercial Fisheries/Maritime Use Overlay
 753 Zones, the proposed use will:
- 754 [1] Maintain safe and healthful conditions;
- 755 [2] Not result in water pollution, erosion or sedimentation to surface waters;
- 756 [3] Adequately provide for the disposal of all wastewater;
- 757 [4] Not have an adverse impact on spawning grounds, fish, aquatic life, bird or other
 758 wildlife habitat;
- 759 [5] Conserve shore cover and visual, as well as actual, points of access to inland and
 760 coastal waters;
- 761 [6] Protect archaeological and historic resources as designated in the comprehensive
 762 plan;

- 763 [7] Not adversely affect existing commercial fishing or maritime activities in a
 764 commercial fisheries/maritime activities district;
- 765 [8] Avoid problems associated with floodplain development and use; and
 766 [9] Is in conformance with the provisions of this title.
- 767 (e) For a right-of-way plan. The proposed right-of-way:
- 768 [1] Does not create any nonconforming lots or buildings; and
 769 [2] Could reasonably permit the right of passage for an automobile.
- 770 (f) For special exception use – special exception use permitted. If a special exception use
 771 is requested, the special exception use will:
- 772 [1] Not prevent the orderly and reasonable use of adjacent properties or of properties
 773 in adjacent use zones;
- 774 [2] Not prevent the orderly and reasonable use of permitted or legally established
 775 uses in the zone wherein the proposed use is to be located, or of permitted or
 776 legally established uses in adjacent use zones; and
- 777 [3] Not adversely affect the safety, the health, and the welfare of the Town.
 778 [4] Be in harmony with and promote the general purposes and intent of this title.
- 779 (6) Final Plan approval and recording.
- 780 (a) Agreement form. An approval by the Planning Board or Director of Planning and
 781 Development must take the form of an agreement between the Town and the
 782 applicant, incorporating as elements the application, the Planning Board’s findings of
 783 fact, and such conditions as the Planning Board may impose upon approval.
- 784 (b) Agreement distribution. The Planning Board must send copies of the agreement to the
 785 Town Manager and Code Enforcement Officer.
- 786 (c) Updated GIS information. The applicant shall provide revised GIS data with any
 787 changes made during the review process for Major Site Plans, if necessary.
- 788 (d) Approved Final Plan signing. A plan has final approval only when the Planning
 789 Board has indicated approval by formal action and the plan has been properly signed
 790 by a majority of the Planning Board members or by the Chair only, if so voted by the
 791 Planning Board.
- 792 (e) Approved Final Plan recording. An approved plan involving the division of land,
 793 easements, or property boundary modification must be recorded by the York County
 794 Registry of Deeds.

795 **16.7.11 Performance Standards and Approval Criteria**

796 A. Water Supply

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

804 B. Sewage Disposal

805 (1) Sewers.

806 (a) As per Chapter 13.1, Sewer Service System, connection to public sewer is required,
807 provided said sewer, located within an abutting public way, is within 100 feet of the
808 property line as measured along the said public way. Individual dwellings and
809 structures in approved and recorded developments where public sewer becomes
810 available as described in this subsection must connect per the requirements of Title
811 13, Chapter 13.1.

812 (b) Notwithstanding the provision above and Chapter 13.1, connection to public sewer is
813 required for a commercial or industrial development or a residential subdivision,
814 where public sewer, within an abutting public way, is within 1,000 feet of the
815 property line as measured along said public way. In such an event, the developer shall
816 connect to public sewer per the Town's Superintendent of Sewer Services (SSS)
817 specifications and in accordance with Title 13. The developer shall provide written
818 certification to the Planning Board from the SSS that the proposed addition to public
819 sewer is within the capacity of the collection and wastewater treatment system.

820 (c) Sewer mains, service lines and related improvements must be installed at the
821 developer's expense. Service lines must extend to each lot's boundary line.
822 Connections to public sewer must be installed in accordance with this article and
823 Chapter 13.1, Sewer Service System, of the Kittery Town Code.

824 (d) Proposal and construction drawings must be approved in writing by the Town's SSS.
825 All required approvals must be secured before the start of Final Plan review.

826 (e) When public sewer connection pursuant to Subsection b above is not feasible as
827 determined by the Planning Board or Director of Planning and Development, the
828 applicable review authority may allow individual or common subsurface wastewater
829 disposal systems in accordance with § 16.7.11.B(2). To determine feasibility, the
830 developer shall submit information that considers the unique physical circumstances
831 of the property and sewer connection alternatives to conventional
832 construction/installation techniques, such as, but not limited to, horizontal/directional
833 boring and low-pressure sewer. The developer's information must be accompanied by
834 findings and recommendations of the Town Peer Review Engineer. In determining
835 feasibility, the Board may not base its decision solely on additional costs associated
836 with a sewer connection. The intent of this subsection is not to avoid the requirements
837 of Chapter 13.1, Sewer Service System, of the Kittery Town Code.

838 (2) Subsurface wastewater disposal systems.

839 (a) The developer shall submit plans for subsurface wastewater disposal designed by a
840 Maine licensed site evaluator in full compliance with the requirements of the State of
841 Maine Plumbing Code, Subsurface Wastewater Disposal Rules, and this title.
842 Subsurface wastewater disposal systems (SWDS) must be constructed according to
843 the approved plan.

844 (b) All first-time subsurface wastewater disposal systems must be installed in
845 conformance with State of Maine Subsurface Wastewater Disposal Rules and this
846 title. The following also apply:

847 [1] The minimum setback distance for a first-time subsurface disposal system may

- 848 not be reduced by variance.
- 849 [2] Clearing or removal of woody vegetation necessary to site a first-time system, and
850 any associated fill extensions may not extend closer than is allowed in Table
851 16.5.30, Minimum Setbacks from Wetlands and Water Bodies, for subsurface
852 sewage disposal.
- 853 (c) Replacement of subsurface wastewater disposal systems (SWDS) for existing legal
854 uses:
- 855 [1] Where no expansion is proposed, the SWDS must comply with § 16.7.11.B(2)
856 and Table 16.5.30 to the extent practicable and otherwise are allowed per the
857 Maine Subsurface Wastewater Disposal Rules; or
- 858 [2] Where expansion is proposed, the SWDS must comply with § 16.7.11.B(2) and
859 Table 16.5.30 in addition to the Maine Subsurface Wastewater Disposal Rules.
- 860 NOTE: For the purposes of this subsection, “expansion” is defined in Section 9 of
861 the Maine Subsurface Wastewater Disposal Rules.
- 862 (d) Subsurface wastewater disposal systems on unimproved lots created after April 26,
863 1990. Where public sewer connection is not feasible, the developer must submit
864 evidence of soil suitability for subsurface wastewater disposal systems, i.e., test pit
865 data and other information as required by the State of Maine Subsurface Wastewater
866 Disposal Rules and this title. In addition:
- 867 [1] On lots with a limiting factor identified as being within 24 inches of the surface, a
868 second site with suitable soils must be shown as a reserve area for future
869 replacement should the primary site fail. Such reserve area is to be shown on the
870 plan; not be built upon; and, must comply with all the setback requirements of the
871 Subsurface Wastewater Disposal Rules and this title.
- 872 [2] In no instance may a primary or reserve disposal area be permitted on soils or on a
873 lot requiring a first-time system variance request per the State of Maine
874 Subsurface Wastewater Disposal Rules.
- 875 [3] Test pits must be of sufficient numbers (a minimum of two) and so located at
876 representative points within each disposal area (primary and reserve sites) to
877 ensure that the proposed disposal system can be located on soils and slopes that
878 meet the criteria of the State of Maine Subsurface Wastewater Disposal Rules and
879 the State Plumbing Code. All passing and failing test pits must be shown on the
880 plan.
- 881 (e) The developer shall install advanced pretreatment to subsurface wastewater disposal
882 systems that are located inside or within 100 feet of areas that include a sand and
883 gravel aquifer as indicated on the Maine Department of Agriculture, Conservation
884 and Forestry (DACF) Geological Survey Maps or determined by Maine DACF staff.
- 885 (3) Holding tanks.
- 886 (a) Holding tanks are not allowed for a first-time residential use.
- 887 (4) Sanitary facilities/restrooms.
- 888 (a) Any development containing a retail use or a food service use, or a combination
889 thereof, exceeding 10,000 square feet must provide public toilet facilities in
890 accordance with Subsections (b), (c) and (d) of this section.

- 891 (b) Public toilet facilities are to consist of at least one separate toilet for each sex; be
892 clearly marked; maintained in a sanitary condition and in good repair. Lavatory
893 facilities must be located within or immediately adjacent to all toilet rooms or
894 vestibules. There may be no charge for their use.
- 895 (c) Where a retail development exceeds 60,000 square feet, each toilet facility must
896 contain a minimum of two water closets.
- 897 (d) Requirements for handicapped accessibility to sanitary facilities are pursuant to
898 applicable state standards.

899 C. Stormwater and Surface Drainage

- 900 (1) Adequate provision must be made for drainage of all stormwater generated with the
901 development and any drained groundwater through a management system of natural and
902 constructed features. Where possible, existing natural runoff control features, such as
903 berms, swales, terraces and wooded areas must be retained to reduce runoff and encourage
904 infiltration of storm waters. Otherwise, drainage may be accomplished by a management
905 system of constructed features such as swales, culverts, underdrains and storm drains.
- 906 (2) To ensure proper functioning, stormwater runoff control systems must be maintained in
907 good working order per § 16.7.11.D, Post-construction stormwater management.
- 908 (3) Where a development is traversed by a stream, river or surface water drainage way, or
909 where the Planning Board or Director of Planning and Development determines that
910 surface runoff should be controlled, easements and or drainage rights-of-way must be
911 provided which conform substantially to the lines of existing natural drainage paths. The
912 minimum width of the drainage easements or rights-of-way is 30 feet.
- 913 (a) The minimum pipe size for any storm drainage pipe must be 12 inches. Maximum
914 trench width at the pipe crown must be the outside diameter of the pipe plus two feet.
915 The pipe must be bedded in a fine granular material, containing no stones larger than
916 three inches, lumps of clay, or organic matter, reaching a minimum of six inches
917 below the bottom of the pipe extending to six inches above the top of the pipe.
- 918 (b) Except for normal thinning and landscaping, existing vegetation must be left intact to
919 prevent soil erosion.
- 920 (4) When proposed development does not require Maine Department of Environmental
921 (MDEP) approval under MDEP Chapters 500 and 502, the following applies:
- 922 (a) All components of the stormwater management system must be designed to limit
923 peak discharge to predevelopment levels for the two-year and twenty-five-year,
924 twenty-four-hour duration, frequencies, based on the rainfall data for Portsmouth,
925 NH. When the development discharges directly to a major water body, peak discharge
926 may be increased from predevelopment levels, provided downstream drainage
927 structures are suitably sized.
- 928 (b) The stormwater management system must be designed to accommodate upstream
929 drainage, taking into account existing conditions and approved or planned
930 developments not yet built and must include a surplus design capacity factor of 25%
931 for potential increases in upstream runoff.
- 932 (c) Downstream drainage requirements must be studied to determine the effect of the
933 proposed development. The storm drainage must not overload existing or future

934 planned storm drainage systems downstream from the development. The developer is
 935 responsible for financing any improvements to existing drainage systems required to
 936 handle the increased storm flows.

937 [1] Wherever the storm drainage system is not within the right-of-way of a public
 938 street, perpetual easements must be provided to the Town allowing maintenance
 939 and improvement to the system.

940 [2] All sediment and erosion control measures must be designed in accordance with
 941 MDEP's "Maine Erosion and Sediment Control BMPs," March 2003.

942 [3] Catch basins in streets and roads must be installed where necessary and located at
 943 the curbline. In parking lots and other areas, catch basins must be located where
 944 necessary to ensure proper drainage.

945 [4] Where soils require a subsurface drainage system, the drains must be installed and
 946 maintained separately from the stormwater drainage system.

947 [5] Where the Board has required a stormwater management and erosion control plan
 948 and MDEP approval under Chapters 500 and 502 is not required, said plan must
 949 be endorsed by the York County Soil and Water Conservation District.

950 [6] Drainage easements for existing or proposed drainageways located outside a
 951 public way must be maintained and/or improved in accordance with § 16.7.11.D,
 952 Post-construction stormwater management.

953 D. Post-construction stormwater management.

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

964 (2) Authority. The Maine Department of Environmental Protection, through its dissemination
 965 of the General Permit for the Discharge of Stormwater from Small Municipal Separate
 966 Storm Sewer Systems, has listed the Town of Kittery, Maine, as having a regulated small
 967 municipal separate storm sewer system ("small MS4"); under this general permit, listing as
 968 a regulated small MS4 requires enactment of this section as part of the Town's stormwater
 969 management program in order to satisfy the minimum control measures required by Part IV
 970 D 5 ("Post-construction stormwater management in new development and
 971 redevelopment").

972 (3) Applicability.

973 (a) In general. This section applies to all new development or redevelopment (any
 974 construction activity on premises already improved that alters stormwater drainage
 975 patterns) including one acre or more of disturbed area, or activity with less than one
 976 acre of total land area that is part of a subdivision, if the subdivision will ultimately
 977 disturb an area equal to or greater than one acre.

- 978 (b) Exception. This section does not apply to new development or redevelopment on a
979 lot, tract or parcel where that lot, tract or parcel is part of a subdivision that has
980 received approval of its post-construction stormwater management plan and
981 stormwater management facilities under the Town's subdivision or other zoning,
982 planning or other land use ordinances; said lot, tract or parcel will not require
983 additional review under this section but must comply with the post-construction
984 stormwater management plan for that approved subdivision.
- 985 (c) Post-construction stormwater management plan approval.
- 986 [1] General requirement. Notwithstanding any ordinance provision to the contrary,
987 and except as provided in § 16.7.11.D.(3)(b), Exception, no applicant for a
988 building permit, Subdivision approval, Site Plan approval or other zoning,
989 planning or other land use approval for new development or redevelopment to
990 which this section is applicable will receive such permit or approval for that new
991 development or redevelopment unless the applicant also receives approval for its
992 post-construction stormwater management plan and stormwater management
993 facilities.
- 994 [2] Notice of BMP discharge to Town's MS4. At the time of application for a
995 building permit, subdivision approval, Site Plan approval or other zoning,
996 planning or other land use approval for new development or redevelopment to
997 which this section is applicable, the applicant must notify the Town Planner if its
998 post-construction stormwater management plan includes any BMP(s) that will
999 discharge to the Town's MS4 and must include in this notification a listing of
1000 which BMP(s) will so discharge.
- 1001 [3] Engineering and administrative fees. At the time of application, the applicant
1002 must pay an amount to the Town estimated to be sufficient to pay the engineering
1003 review costs and administrative costs incurred by the Town in review of the post-
1004 construction stormwater management plan. The Town will deduct from this
1005 amount the engineering and administrative costs incurred by the Town based
1006 upon the hours of engineering review time and prevailing hourly rate for
1007 reimbursement of the Town's administrative costs. Any remaining engineering
1008 and administrative review costs owed by the applicant must be paid in full by the
1009 applicant prior to the issuance of any temporary or permanent certificate of
1010 occupancy, and any unused balance remaining at that time will be refunded to the
1011 applicant.
- 1012 (d) Post-construction stormwater management plan compliance.
- 1013 [1] General requirements. Any person owning, operating, leasing or having control
1014 over stormwater management facilities required by a post-construction
1015 stormwater management plan approved under the Town's Subdivision, Site Plan
1016 or other zoning, planning or other land use ordinances must demonstrate
1017 compliance with that plan as follows:
- 1018 [a] That person or a qualified post-construction stormwater inspector hired by that
1019 person must, at least annually, inspect the stormwater management facilities in
1020 accordance with all municipal and state inspection, cleaning and maintenance
1021 requirements of the approved post-construction stormwater management plan;
- 1022 [b] If the stormwater management facilities require maintenance to function as

- 1023 intended by the approved post-construction stormwater management plan, that
1024 person must take corrective action(s) to address the deficiency or deficiencies;
1025 and
- 1026 [c] That person or a qualified post-construction stormwater inspector hired by that
1027 person must, on or by July 1 of each year, provide a completed and signed
1028 certification to the Code Enforcement Officer in a form provided by the
1029 Town, certifying that the person has inspected the stormwater management
1030 facilities and that they are adequately maintained and functioning as intended
1031 by the approved post-construction stormwater management plan or that they
1032 require maintenance or repair, describing any required maintenance and any
1033 deficiencies found during inspection of the stormwater management facilities,
1034 and if the stormwater management facilities require maintenance or repair of
1035 deficiencies in order to function as intended by the approved post-construction
1036 stormwater management plan, the person must provide a record of the
1037 required maintenance or deficiency and corrective action(s) taken.
- 1038 [2] Right of entry. In order to determine compliance with this section and with the
1039 post-construction stormwater management plan, the Code Enforcement Officer
1040 may enter upon property at reasonable hours with the consent of the owner,
1041 occupant or agent to inspect the stormwater management facilities.
- 1042 (e) Annual report. Beginning July 1, 2009, and each year thereafter, the Town must
1043 include the following in its annual report to the Maine Department of Environmental
1044 Protection:
- 1045 [1] Cumulative number of sites that have stormwater management facilities
1046 discharging into its MS4;
- 1047 [2] Summary of the number of sites that have stormwater management facilities
1048 discharging into its MS4 that were reported to the Town;
- 1049 [3] Number of sites with documented functioning stormwater management facilities;
1050 and
- 1051 [4] Number of sites that require routine maintenance in order to continue the original
1052 line and grade, the hydraulic capacity, and the original purpose of improvements;
1053 or remedial action to ensure that stormwater management facilities are
1054 functioning as intended.
- 1055 (f) Enforcement. It is the duty of the Code Enforcement Officer to enforce the provisions
1056 of this section and take appropriate actions to seek the correction of violations.
1057 Enforcement of the post-construction stormwater management regulations are
1058 conducted in accordance with Chapter 16.7.11.D.
- 1059 (2). Storm drainage construction standards.
- 1060 (a) Materials:
- 1061 [1] Reinforced concrete pipe must meet the requirements of ASTM Designation C-76
1062 (AASHTO M170). Pipe classes are required to meet the soil and traffic loads with
1063 a safety factor of 1.2 on the 0.01-inch crack strength with Class B bedding. Joints
1064 are to be of the rubber gasket type, meeting ASTM Designation C443-70, or of an
1065 approved performed plastic jointing material such as "Ramnek." Perforated
1066 concrete pipe must conform to the requirements of AASHTO M175 for the

- 1067 appropriate diameters.
- 1068 [2] Corrugated metal pipe must be bituminous-coated, meeting the requirements of
1069 AASHTO Designation M190 Type C for an iron or steel pipe or AASHTO
1070 Designation M196 for aluminum alloy pipe for sectional dimensions and type of
1071 bituminous coating. Pipe gauge is to be as required to meet the soil and traffic
1072 loads with a deflection of not more than 5%.
- 1073 [3] SDR-35 plastic pipe installed in conformance with AASHTO bedding
1074 requirements.
- 1075 [4] Aluminized steel (AASHTO M274) and aluminum pipe (AASHTO M46).
- 1076 [5] Catch basins are to be precast concrete truncated cone section construction,
1077 meeting the requirements of ASTM Designation C478, or precast concrete
1078 manhole block construction, meeting the requirements of ASTM C139, radial
1079 type. Castings are to be square cast iron sized for the particular inlet condition
1080 with the gratings perpendicular to the curbline. Bases may be cast-in-place 3,000
1081 psi twenty-eight-day strength concrete or may be of precast concrete, placed on a
1082 compacted foundation of uniform density. Metal frames and traps must be set in a
1083 full mortar bed with tops and are to conform to the requirements of AASHTO
1084 M103 for carbon steel casings, AASHTO M105, Class 30 for gray iron castings
1085 or AASHTO M183 (ASTM A283, Grade B or better) for structure steel.
- 1086 (b) Drain inlet alignment is to be straight in both vertical and horizontal alignment unless
1087 specific approval for curvilinear drain is obtained in writing from the Commissioner
1088 of Public Works.
- 1089 (c) Manholes are to be provided at all changes in vertical or horizontal alignment and at
1090 all junctions. On straight runs, manholes are to be placed at a maximum of three-
1091 hundred-foot intervals.
- 1092 (d) Upon completion, each catch basin or manhole must be cleared of all accumulation of
1093 silt, debris or other foreign matter and kept clean until final acceptance.

1094 E. Vehicular Traffic

- 1095 (1) Adequacy of Road System. Vehicular access to the site shall be on roads which have
1096 adequate capacity to accommodate the additional traffic generated by the development.
1097 Intersections on arterial streets within a half (0.5) mile of any entrance road which are
1098 functioning at a Level of Service of D or better prior to the development shall function at a
1099 minimum at Level of Service D after development. If any such intersection is functioning
1100 at a Level of Service E or lower prior to the development, the project shall not reduce the
1101 current level of service. This requirement may be waived by the Planning Board if the
1102 project is located within a growth area designated in the Town's adopted Comprehensive
1103 Plan and the Board determines that the project will not have an unnecessary adverse impact
1104 on traffic flow or safety.
- 1105 (a) A development not meeting this requirement may be approved if the applicant
1106 demonstrates that:
- 1107 [1] A public agency has committed funds to construct the improvements necessary to
1108 bring the level of access to this standard, or
- 1109 [2] The applicant will assume financial responsibility for the improvements necessary

- 1110 to bring the level of service to this standard and will assure the completion of the
1111 improvements with a financial guarantee acceptable to the municipality.
- 1112 (2). Traffic Impact Study. When required by the Planning Board or Director of Planning and
1113 Development, a Traffic Impact Study will include the following elements related to the
1114 project and surrounding street network.
- 1115 (a) An executive summary outlining the study findings and recommendations.
- 1116 (b) A physical description of the project site and study area encompassed by the report
1117 with a diagram of the site and its relationship to existing and proposed development
1118 sites within the study area.
- 1119 (c) A complete description of the proposed uses for the project site (in cases where
1120 specific uses have not been identified, the highest traffic generators within the
1121 category best fitting the proposed development must be used to estimate traffic
1122 generators).
- 1123 (d) Existing land uses and zone(s) in the vicinity of the site must be described. Any
1124 proposals for the development of vacant parcels or redevelopment of parcels within
1125 the study area of which the municipality makes the applicant aware, must be included
1126 in the description.
- 1127 (e) Street geometry and existing traffic control devices on all major streets and
1128 intersections affected by the anticipated traffic generated.
- 1129 (f) Trip generation must be calculated for the proposed project and other proposed new
1130 projects and redevelopment projects within the study area using the most recent data
1131 available from the Institute of Transportation Engineers' (ITE) Trip Generation
1132 Guide, and/or actual field data collected from a comparable trip generator (i.e.,
1133 comparable in size, location and setting). This data will be presented in a summary
1134 table such that assumptions on trip generation and rates arrived at by the engineer are
1135 fully understandable to the Planning Board.
- 1136 (g) The anticipated trip distribution of vehicles entering and exiting the proposed site
1137 during the appropriate peak hour(s) must be described and diagrammed.
- 1138 (h) Trip assignment, the anticipated utilization of study area streets by traffic generated
1139 by the proposed project, must be described and diagrammed.
- 1140 (i) Existing traffic conditions in the study area will be identified and analyzed based
1141 upon actual field counts and/or recent available machine counts.
- 1142 (j) Existing traffic conditions in the study area will be described and diagrammed,
1143 specifically AADT, appropriate peak design hour(s), traffic volumes, street and
1144 intersection capacities, and levels of service.
- 1145 (k) Existing safety conditions must be evaluated based upon the traffic accident data
1146 available for the most current three years and described including link and node
1147 critical rate factors (CRF).
- 1148 (l) Future traffic conditions on the street system will be estimated based on existing
1149 volumes, projected traffic growth in the general study area, projected traffic from
1150 approved development, and traffic generated by the proposed project, specifically
1151 AADT traffic, appropriate peak hour(s) traffic volumes, street and intersection
1152 capacity, street and intersection levels of service will be analyzed. When other
1153 projects are being proposed within the impact area of the project, the Planning Board

- 1154 may require these projects to be incorporated into the analysis.
- 1155 (m) When the analysis of the proposed project's impact on traffic indicates unsatisfactory
1156 CRF, levels of service or operating capacity on study area streets and intersections, a
1157 description of proposed improvements to remedy identified deficiencies must be
1158 included.
- 1159 (n) The base data collected and analyzed during the course of the traffic impact study.
- 1160 (o) If a development that requires a traffic impact study is within 500 feet of York or
1161 Eliot, Maine, or if the study identifies impacts on segments of Route 1 or Route 236
1162 or on their intersections located in York or Eliot, Maine, the applicant must provide
1163 evidence that a copy of the impact study has been given to the impacted
1164 municipality's chief administrative officer;
- 1165 (3). Access to the Site. Vehicular access to and from the development shall be safe and
1166 convenient.
- 1167 (a) Any driveway or proposed street shall be designed so as to provide the minimum
1168 sight distance according to the Maine Department of Transportation standards.
- 1169 (b) Points of access and egress shall be located to avoid hazardous conflicts with existing
1170 turning movements and traffic flows.
- 1171 (c) The grade of any proposed drive shall be not more than $\pm 3\%$ for a minimum of fifty
1172 (50) feet, from the intersection.
- 1173 (d) The intersection of any access/egress drive or proposed street shall function: (a) at a
1174 Level of Service of D following development if the project will generate one
1175 thousand (1,000) or more vehicle trips per twenty-four (24) hour period.
- 1176 (e) Where a lot has frontage on two (2) or more streets, the primary access to and egress
1177 from the lot shall be provided from the street where there is less potential for traffic
1178 congestion and for traffic and pedestrians hazards. Access from other streets may be
1179 allowed if it is safe and does not promote shortcutting through the site.
- 1180 (f) Where it is necessary to safeguard against hazards to traffic and pedestrians and/or to
1181 avoid traffic congestion, the applicant shall be responsible for providing turning
1182 lanes, traffic directional islands, and traffic controls within public streets.
- 1183 (g) Accessways shall be designed and have sufficient capacity to avoid queuing of
1184 entering vehicles on any public street.
- 1185 (h) The following criteria shall be used to limit the number of driveways serving a
1186 proposed project:
- 1187 [1] No use which generates less than one hundred (100) vehicle trips per day shall
1188 have more than one (1) two-way driveway onto a single roadway. Such driveway
1189 shall be no greater than forty (40) feet wide.
- 1190 [2] No use which generates one hundred (100) or more vehicle trips per day shall
1191 have more than two (2) points of entry from and two (2) points of egress to a
1192 single roadway. The combined width of all accessways shall not exceed sixty (60)
1193 feet.
- 1194 [3] The Planning Board or Technical Review Committee may limit a development to
1195 one (1) point of ingress/egress onto US Route 1, Route 236 and US Route 1
1196 Bypass.

- 1197 (4). Accessway Location and Spacing. Accessways shall meet the following standards:
- 1198 (a) Private entrances/exits shall be located at least fifty (50) feet from the closest
- 1199 unsignalized intersection and one hundred fifty (150) feet from the closest signalized
- 1200 intersection, as measured from the point of tangency for the corner to the point of
- 1201 tangency for the accessway. This requirement may be reduced if the shape of the site
- 1202 does not allow conformance with this standard.
- 1203 (b) Private accessways in or out of a development shall be separated by a minimum of
- 1204 seventy-five (75) feet where possible.
- 1205 (c) Accessways shall be aligned with accessways on the opposite side of a public street to
- 1206 the greatest extent possible.
- 1207 (5). Internal Vehicular Circulation. The layout of the site shall provide for the safe movement
- 1208 of passenger, service, and emergency vehicles through the site.
- 1209 (a) Nonresidential projects that will be served by delivery vehicles shall provide a clear
- 1210 route for such vehicles with appropriate geometric design to allow turning and
- 1211 backing for a minimum of SU-30 vehicles.
- 1212 [1] If the project is to be served by “tractor-trailer” delivery vehicles, a clear route for
- 1213 such vehicles with appropriate geometric design shall allow for turning and
- 1214 backing for a minimum of WB-50 vehicles.
- 1215 (b) Clear routes of access shall be provided and maintained for emergency vehicles to
- 1216 and around buildings and shall be posted with appropriate signage (fire lane - no
- 1217 parking).
- 1218 (c) The layout and design of parking areas shall provide for safe and convenient
- 1219 circulation of vehicles throughout the lot.
- 1220 (d) All roadways shall be designed as follows:
- 1221 [1] To harmonize with the topographic and natural features of the site insofar as
- 1222 practical by minimizing filling, grading, excavation, or other similar activities
- 1223 which result in unstable soil conditions and soil erosion,
- 1224 [2] By fitting the development to the natural contour of the land and avoiding
- 1225 substantial areas of excessive grade and tree removal, and by retaining existing
- 1226 vegetation during construction,
- 1227 [3] The road network shall provide for vehicular, pedestrian, and cyclist safety, all
- 1228 season emergency access, snow storage, and delivery and collection services.
- 1229 (e) Nonresidential projects that include drive-through services shall be designed and have
- 1230 sufficient stacking capacity to avoid the queuing of vehicles on any public street.

1231 F. Parking and Loading

- 1232 (1) General standards.
- 1233 (a) All development, special exceptions and changes in use must comply with the
- 1234 performance standards herein and, where applicable, those contained in § 16.5.27 of
- 1235 this chapter. The Planning Board may impose additional reasonable requirements,
- 1236 which may include off-site improvements, based on the following considerations:
- 1237 [1] Sight distances along public rights-of-way;
- 1238 [2] The existence and impact upon adjacent access points and intersections;

- 1239 [3] Turning movements of vehicles entering and leaving the public streets;
- 1240 [4] Snow removal; and
- 1241 [5] General condition and capacity of public streets serving the facility.
- 1242 (b) Such requirements are intended to maintain traffic safety and an acceptable level of
- 1243 service throughout the impact area of the facility.
- 1244 (c) In front of areas zoned and designed for commercial use, or where a change of zoning
- 1245 to one which permits commercial use is contemplated, the street right-of-way and/or
- 1246 pavement width must be increased by such amount on each side as may be deemed
- 1247 necessary to assure the free flow of through traffic without interference by parked or
- 1248 parking vehicles, and to provide adequate and safe parking space for such commercial
- 1249 or business district.
- 1250 (d) The Town reserves the right to designate in conjunction with the Maine State
- 1251 Department of Transportation all ingress and egress points to the public highway and
- 1252 to select areas for the grouping and placement of signs and traffic directions.
- 1253 (e) All traffic flow in parking areas is to be clearly marked with signs and/or surface
- 1254 directions at all times.
- 1255 (f) Off-street parking must be constructed in accordance with Table 2 of this chapter, set
- 1256 out at the end of § 16.7.11.F, Parking Loading and Traffic.

1257 (2). Corner clearances.

1258 For purposes of traffic safety in all zoning districts, no building or structure other than
 1259 public utility structures and traffic control devices may be erected, and no vegetation other
 1260 than shade trees may be maintained above a height of two feet above the plane through the
 1261 curb grades of intersection streets within a triangle, two sides of which are the edges of the
 1262 traveled public ways for 20 feet measured from their point of intersection or, in the case of
 1263 rounded street corners, the point of intersection of their tangents. The Town is not
 1264 responsible for violations which lead to accidents. The Town will direct, however, a
 1265 continued program designed to identify intersections having traffic safety problems.

1266 (3). Off-street loading standards.

- 1267 (a) In those districts where off-street loading is required, the following minimum off-
- 1268 street loading bays or loading berths must be provided and maintained in the case of
- 1269 new construction, alterations and changes of use:

- 1270 [1] Office buildings, hospitals, long-term nursing care facilities, convalescent care
- 1271 facilities, elder-care facilities, hotels and motels with a gross floor area of more
- 1272 than 100,000 square feet: one bay.
- 1273 [2] Retail, wholesale, warehouse and industrial operations with a gross floor area of
- 1274 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
--------------------------------------	------------------

- 1275 (b) Each loading bay is to have minimum dimensions of 70 feet by 14 feet and may be
 1276 located either within a building or outside and adjoining an opening in the building.
 1277 Every part of such loading bay is to be located completely off the street. In case of
 1278 trucks, trailers or other motor vehicles larger than the dimensions of the minimum
 1279 loading bay habitually serve the building in question, or so that said equipment can be
 1280 kept on site while awaiting loading or unloading, additional space is to be provided,
 1281 so that such vehicle parks or stands completely off the street.
- 1282 (c) The provisions of this section for off-street loading do not prohibit incidental curbside
 1283 business deliveries, dispatches or services, provided that they are in compliance with
 1284 all applicable state and local traffic regulations.
- 1285 (d) The Board of Appeals has full authority to waive the requirements of this section if it
 1286 is shown that appropriate parking and loading spaces will be maintained sufficient for
 1287 intended use.
- 1288 (4). Off-street parking standards.
- 1289 (a) Off-street parking, in addition to being a permitted use, is considered as an accessory
 1290 use when required or provided to serve conforming uses located in any district.
- 1291 (b) The following minimum off-street parking and loading requirements must be
 1292 provided and maintained in case of new construction, alterations and changes of use.
 1293 Such parking may be provided in the open air in design-dependent spaces
 1294 dimensioned as may be required to suit the particular use as indicated in Table 2 of
 1295 this chapter, set out at the end of § 16.7.11.F, Parking Loading and Traffic, or in
 1296 garages.
- 1297 (c) All spaces must be accessible from lanes of adequate size and location as per Table 2
 1298 of this chapter, set out at the end of § 16.7.11.F, Parking Loading and Traffic. In
 1299 cases not specifically covered, the Town Board or officer with jurisdiction to
 1300 approve the application is authorized to determine the parking requirements and
 1301 projected development use intensity. Existing parking standards are to be used as a
 1302 guide where applicable to ensure that a sufficient number of parking spaces are
 1303 provided to accommodate the number and type of vehicles attracted to the
 1304 development during peak parking demand times.
- 1305 (d) When determination of the number of parking spaces required results in a
 1306 requirement of a fractional space, any fraction of 1/2 or less may be disregarded,
 1307 while a fraction in excess of 1/2 is counted as one parking space.
 1308

Use	Parking Spaces Required
Automobile, truck and tractor repair and filling station	<ul style="list-style-type: none"> ▪ 1 parking space for each regular employee plus 1 space for each 200 square feet of floor area used for service work
Dwellings	<ul style="list-style-type: none"> ▪ 2 vehicle spaces per each dwelling unit

Use	Parking Spaces Required
Age-Restricted Housing	<ul style="list-style-type: none"> ▪ 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
Residential Care facilities	<ul style="list-style-type: none"> ▪ 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	<ul style="list-style-type: none"> ▪ 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	<ul style="list-style-type: none"> ▪ 1 space for every 100 square feet of gross floor area used as school area
Elementary and junior high schools	<ul style="list-style-type: none"> ▪ 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	<ul style="list-style-type: none"> ▪ 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	<ul style="list-style-type: none"> ▪ 3 parking spaces for every 2 slips or moorings, arranged for trailers
Without launching facilities	<ul style="list-style-type: none"> ▪ 1 parking space for each slip or mooring
Hospitals	<ul style="list-style-type: none"> ▪ 1 parking space per each three beds
Long-term nursing care facilities and convalescent care facilities	<ul style="list-style-type: none"> ▪ 1 parking space for each 4 beds
Theaters, auditoria, churches and arenas	<ul style="list-style-type: none"> ▪ 1 parking space for each 4 seats or for each 100 square feet or major fraction thereof of assemblage space if no fixed seats
Mortuary chapels	<ul style="list-style-type: none"> ▪ 5 parking spaces for each chapel
Retail stores and financial institutions	<ul style="list-style-type: none"> ▪ 1 parking space for each 175 square feet of gross floor area
Bowling alley	<ul style="list-style-type: none"> ▪ 4 parking spaces for each bowling lane
Drive-in restaurants, snack bars and fast food outlets	<ul style="list-style-type: none"> ▪ 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

Use	Parking Spaces Required
Restaurant	<ul style="list-style-type: none"> ▪ 1 parking space for each three seats. Seating is calculated by dividing the total floor area with customer access by 15
Offices, professional and public buildings	<ul style="list-style-type: none"> ▪ 2 parking spaces for each office unit plus 1 space for each 250 square feet of gross floor area
Convenience stores or neighborhood grocery facilities	<ul style="list-style-type: none"> ▪ 6 spaces in the rural residential zone; all other zones, 10 parking spaces
Mobile home	<ul style="list-style-type: none"> ▪ 2 vehicle spaces per each mobile home
Transportation terminals	<p>In addition to meeting all applicable standards as enumerated above, transportation terminals must meet the following:</p> <ul style="list-style-type: none"> ▪ 1 parking space for each employee; ▪ 1 parking space for each three seats of the terminal's major carrier vehicle; and ▪ 1 parking space for each rented vehicle to be based on site
Warehouse and storage	<ul style="list-style-type: none"> ▪ 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
Industry, manufacturing and business	<ul style="list-style-type: none"> ▪ 1 parking space for each 500 square feet of floor area, or major fraction thereof, or 1.1 spaces per employee on the maximum shift, for that part of every business, manufacturing and industrial building not catering to retail trade
Bus parking	<ul style="list-style-type: none"> ▪ 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

1309 (e) A parking area is allowed in the Resource Protection Overlay Zone only where no
 1310 reasonable alternative route or location is available outside the Resource Protection
 1311 Overlay Zone, in which case a permit or Site Plan or Subdivision plan approval is
 1312 required by the Planning Board.

1313 (f) A parking area must meet the wetland and water body setback requirements for
 1314 structures for the district in which such areas are located, per Table 16.5.30,

1315 Minimum Setback from Wetlands and Water Bodies; except, in the Commercial
 1316 Fisheries/Maritime Uses Overlay Zone, parking area must be set back at least 25 feet
 1317 from the normal high-water line or the upland edge of a wetland. The setback
 1318 requirement for a parking area serving public boat-launching facilities, in zones other
 1319 than the Commercial, Business-Local, Residential-Urban Zones, and the Commercial
 1320 Fisheries/Maritime Uses Overlay Zone, may be reduced to no less than 50 feet from
 1321 the normal high-water line or upland edge of a wetland if the Planning Board finds no
 1322 other reasonable alternative exists.

1323 (g) Parking landscaping is required for parking areas containing 10 or more parking
 1324 spaces and must have at least one tree per eight spaces. Such trees are to be located
 1325 either within the lot or within five feet of it. Such trees are to be at least 1 1/2 inches
 1326 in diameter, with no less than 25 square feet of unpaved soil or permeable surface
 1327 area per tree. At least 10% of the interior of any parking area having 25 or more
 1328 spaces is to be maintained with landscaping, including trees, in plots of at least five
 1329 feet in width.

1330 (h) Required off-street parking in all residential districts is to be located on the same lot
 1331 as the principal building or use, except that where it cannot reasonably be provided on
 1332 the same lot, the Board of Appeals may authorize residential off-street parking to be
 1333 located on another lot within 300 feet of the residential uses served, as measured
 1334 along lines of public access. Such parking areas must be held under the same
 1335 ownership or lease as the residential uses served, and evidence of such control or
 1336 lease is required. Leases obtained for this purpose must be reviewed by the Town
 1337 Attorney at the developer's expense and include requirement for notice to the Town
 1338 upon termination of lease. Approval for uses dependent on such lease is terminated
 1339 upon termination of the lease.

1340 (i) If parking spaces are provided for employees, customers or visitors, then accessible
 1341 parking spaces must be included in each such parking area in conformance with the
 1342 following table:

1343

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

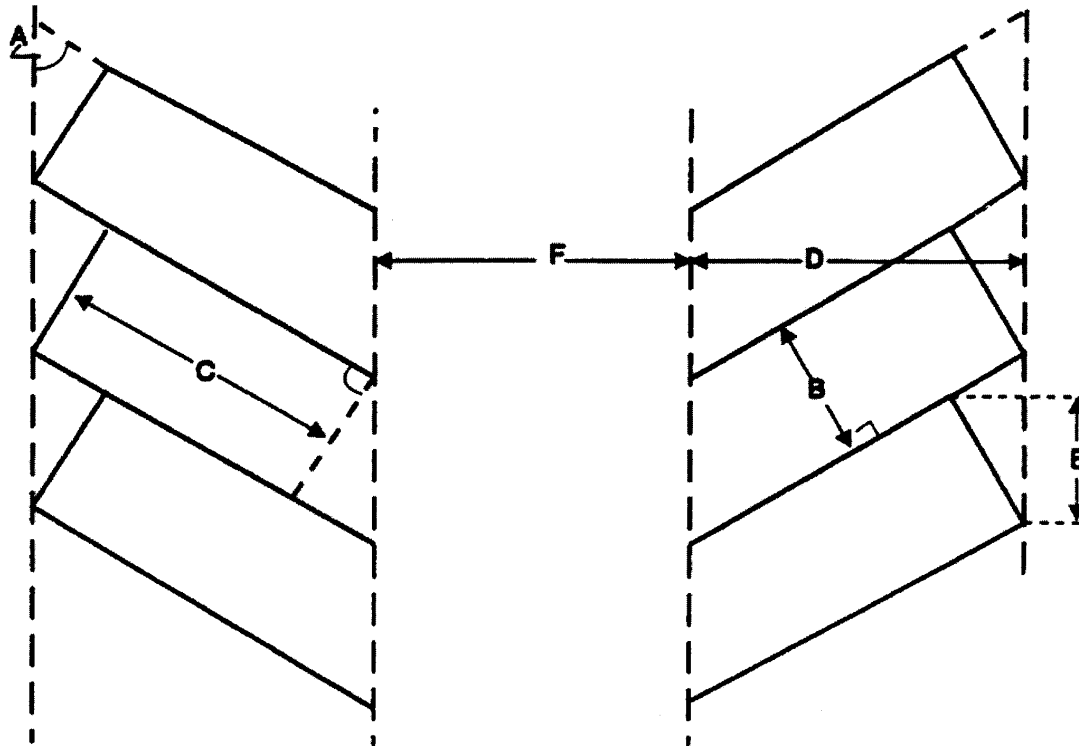
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- [1] Each accessible parking space must contain a rectangular area at least 19 feet long and eight feet wide with access to a designated and marked five-foot-wide aisle. All required accessible parking spaces are to be identified by a vertical sign displaying the international symbol of accessibility; pavement marking alone is not adequate to identify accessible parking spaces.
- [2] The total number of accessible parking spaces is to be distributed to serve the various accessible entrances as well as possible.
- [3] 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.
- (m) Compact-size parking spaces, unless restricted for use by and located adjacent to a dwelling unit, must be located in one (1) or more continuous areas and cannot be intermixed with spaces designed for full size vehicles.
- (n) Compact-size parking spaces shall be clearly designated by pavement marking and by direction sign in conformance with Table 16.7.11.F.(B)

Table 16.7.11.F (A) Parking Space Design (minimum dimensions) (Dimensions in feet unless otherwise indicated.)							
	A	B	C	D	E	F (Aisle Width)	
To curb	Angle (degrees)	Stall Width	Stall Depth	Stall to Curb	Skew Width	One-Way Traffic	Two-Way Traffic
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

Table 16.7.11.F (A) Parking Space Design (minimum dimensions) (Dimensions in feet unless otherwise indicated.)							
	A	B	C	D	E	F (Aisle Width)	
To curb	Angle (degrees)	Stall Width	Stall Depth	Stall to Curb	Skew Width	One-Way Traffic	Two-Way Traffic
Diagonal	60	9	19	21.0	10.5	18	23
Perpendicular	90	9	19	19.0	9.0	24	24

Table 16.7.11.F(B) Compact Car Parking Space Design (minimum dimensions) (Dimensions in feet unless otherwise indicated.)							
	A	B	C	D	E	F (Aisle Width)	
To curb	Angle (degrees)	Stall Width	Stall Depth	Stall to Curb	Skew Width	One-Way Traffic	Two-Way Traffic
Parallel	0	8	16	8.0	16.0	12	19
Diagonal	45	8	16	17.0	5.7	13	20
Diagonal	60	8	16	17.8	6.9	18	20
Perpendicular	90	8	16	16.0	8.0	22	22



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1379 G. Utilities

1380 (1) Approval.

1381 The size, type and location of public utilities, such as streetlights, electricity, telephone,
 1382 cable television, natural gas lines, fire hydrants, water and sewer lines, etc., must be
 1383 approved by the Board and installed in accordance with accepted engineering practice.

1384 (2). Underground installation.

1385 Utilities, where feasible, are to be installed underground. The Board must require the
 1386 developer to adopt a prudent avoidance approach when aboveground electrical installations
 1387 are approved.

1388 (1) Exterior Lighting General requirements.

1389 All new or revised exterior lighting, including the replacement or modification of existing
 1390 lighting fixtures that result in a change in the lighting characteristics of the fixture, must be
 1391 designed to provide only the minimum lighting necessary to ensure adequate vision, safety
 1392 and comfort and may not cause glare beyond the limits of the property boundaries. New
 1393 and replacement exterior lighting must conform to the current recommended practices of
 1394 the Illuminating Engineering Society of North America (IESNA) unless more restrictive
 1395 requirements are established by this article. Exterior lighting should also be consistent with
 1396 the Design Handbook. When the lamps or bulbs of existing lighting installations are
 1397 replaced, the replacements must conform to the requirements of IESNA and this article to
 1398 the extent reasonable.

1399 (2). Lighting fixtures.

- 1400 All new or replacement exterior lighting fixtures and installations for multifamily housing
1401 and nonresidential uses other than outdoor sports and recreational facilities that are located
1402 outside the right-of-way of a public street must meet the following standards:
- 1403 (a) Lighting fixtures mounted on masts or poles must be cutoff fixtures except for period
1404 or historical fixtures meeting the provisions of Subsection (g) of this section.
 - 1405 (b) Floodlighting or other directional lighting may be used for supplemental illumination
1406 of sales or storage areas, provided that the floodlights are installed no higher than 12
1407 feet above ground level, are aimed to avoid the source of the light being seen from
1408 adjacent streets or properties, and utilize lamps with an initial lumen rating not
1409 exceeding 39,000 lumens. The Town has the right to inspect the completed lighting
1410 installation and, if floodlights are used, to require that the floodlights be re-aimed or
1411 fitted with face louvers if necessary to control direct brightness or glare.
 - 1412 (c) Except for ornamental lighting fixtures that utilize lamps with initial lumen ratings of
1413 8,500 lumens or less, wall-mounted building lights must include full-face shielding
1414 consisting of either a solid panel or full-face louvers. Exposed lamps, reflectors or
1415 refractors may not be visible from any part of the fixture except the bottom light-
1416 emitting surface.
 - 1417 (d) Light fixtures located on or within canopies must be recessed into the ceiling of the
1418 canopy so that the lamp, reflector and lens are not visible from public streets. Fixtures
1419 must limit the direction of light as required for a cutoff fixture. Refractors or diffusing
1420 panels that are dropped below the canopy ceiling surface are not permitted.
 - 1421 (e) Light fixtures must be mounted at the lowest level that allows reasonable compliance
1422 with IESNA-recommended practices and the provisions of this article.
 - 1423 [1] In approving new or modified lighting, the Planning Board may permit a
1424 maximum light fixture height for pole-mounted or mast-mounted light fixtures
1425 located between the building and the front lot line of not more than 15 feet, unless
1426 the applicant demonstrates that a higher height is necessary to allow reasonable
1427 compliance with the lighting standards and the Planning Board finds that no
1428 practicable alternative for lighting of the site exists.
 - 1429 [2] The Planning Board may permit a maximum light fixture height for pole-mounted
1430 or mast-mounted light fixtures for other areas of the site of not more than 20 feet,
1431 unless the applicant demonstrates that a higher height is necessary to allow
1432 reasonable compliance with the lighting standards and the Planning Board finds
1433 that no practicable alternative for lighting of that area of the site exists.
 - 1434 [3] The maximum light fixture height for building-mounted light fixtures is the
1435 equivalent of that allowed for a pole-mounted light illuminating the same area.
1436 See the Design Handbook for examples of acceptable lighting installations.
 - 1437 (f) Lamps in exterior light fixtures must be incandescent, metal halide, high-pressure
1438 sodium, compact fluorescent or light-emitting diode (LED). This provision does not
1439 prohibit the use of fluorescent lamps in internally lighted signs where such signs are
1440 otherwise permitted, provided such signs meet the requirements of this article. See the
1441 Design Handbook for appropriate examples of signs. With the use of LED lighting,
1442 the applicant is required to demonstrate that standards within this article are met
1443 and/or meet comparable accepted standards for LED exterior lighting. Required
1444 photometric test reports for LED lighting must be based on the IESNA LM-79-08 test

- 1445 procedure.
- 1446 (g) Period or historical fixtures that do not meet the requirements of this section may be
 1447 used as an alternative to cutoff fixtures, provided the maximum initial lumens
 1448 generated by each fixture does not exceed 2,000. The maximum initial lumens for
 1449 metal halide lamps may be increased to 8,500 if the lamp is internally recessed within
 1450 the fixture or is shielded by internal louvers or refractors. The mounting height of
 1451 period or historical fixtures may not exceed 12 feet above the adjacent ground. See
 1452 the Design Handbook for examples.
- 1453 (h) State and national flags that are flown on flagpoles may be illuminated by ground-
 1454 mounted lighting that shines vertically as long as exposed lamps, reflectors or
 1455 refractors are not visible from any public street.
- 1456 (3). Illumination standards for nonresidential uses and multifamily housing.
 1457 New or revised exterior lighting serving nonresidential uses and multifamily housing must
 1458 conform to the following standards:
- 1459 (a) The illumination of access drives must provide for a uniformity ratio of not more than
 1460 4:1 (ratio of average to minimum luminance). The illumination of parking lots and
 1461 outdoor sales and service areas must provide for a uniformity ratio of not more than
 1462 20:1 (ratio of maximum to minimum luminance).
- 1463 (b) The maximum illumination level within access drives, parking lots and sales and
 1464 service areas may not exceed eight footcandles measured at the ground surface.
- 1465 (c) The maximum illumination level at the property line of a nonresidential or
 1466 multifamily housing use with abutting properties in a residential district may not
 1467 exceed 0.1 footcandle.
- 1468 (d) Areas directly under canopies must be illuminated so that the uniformity ratio (ratio
 1469 of average to minimum luminance) will be not greater than 3:1 with an average
 1470 illumination level at ground level of not more than 30 footcandles. Areas of access
 1471 drives, parking lots, sales display areas, etc., which are adjacent to canopies must
 1472 taper down in illumination level from the illumination level permitted under the
 1473 canopy to the maximum illumination level permitted in Subsection (b) of this section
 1474 for the access drive, parking lot or sales display area adjacent to the canopy within a
 1475 horizontal distance equivalent to the height of the canopy.
- 1476 (e) The maximum illumination levels and uniformity ratios for areas other than parking
 1477 lots, access drives and canopies must be consistent with IESNA-recommended
 1478 practices and be compatible with the overall lighting of the project and be specifically
 1479 approved by the Planning Board.
- 1480 (f) Illuminated signs must not produce glare and are otherwise governed by § 16.7.11.H
 1481 of this chapter.
- 1482 (4). Illumination standards for outdoor sports and recreational facilities.
 1483 New or revised exterior lighting serving sports fields and outdoor recreational facilities,
 1484 including commercial recreational uses, must conform to the following standards:
- 1485 (a) Such fields and facilities may be illuminated for use during daylight hours and until
 1486 10:00 p.m. unless the Planning Board specifically approves a later time based upon
 1487 the applicant demonstrating that such later time is needed for the reasonable operation
 1488 of the facility and will be compatible with and will not result in adverse impacts on

- 1489 neighboring properties. If a later hour is approved, the Planning Board may impose
1490 conditions on the approval, including provisions for the periodic review of the time
1491 limit.
- 1492 (b) The illumination levels and mounting heights of the lighting fixtures may not exceed
1493 the minimum necessary to provide reasonable illumination for the proposed use
1494 consistent with IESNA-recommended practices.
- 1495 (c) The maximum illumination level at the property line of the use with abutting
1496 properties in a residential district may not exceed 0.1 footcandle.
- 1497 (5). Illumination standards for single- and two-family residential uses.
1498 New or revised exterior lighting serving single- and two-family residential uses must be
1499 located and designed so that it does not result in excessive illumination levels on adjoining
1500 properties such as to amount to a public or private nuisance and must be compatible with
1501 the zone requirements in the neighborhood in which it is located. A maximum illumination
1502 level at the property line of more than 0.1 footcandle is considered to be excessive if the
1503 lighting level is in dispute. In the case of a major home occupation, the application must
1504 include a lighting plan meeting the requirements of § 16.7.10.D(3)(g)[1].
- 1505 H. Prevention of erosion
- 1506 (1) No person may perform any act or use the land in a manner which would cause substantial
1507 or avoidable erosion, create a nuisance, or alter existing patterns of natural water flow in
1508 the Town. This does not affect any extractive operations complying with the standards of
1509 performance specified elsewhere in this title.
- 1510 (a) When an excavation contractor, as defined in § 16.3, performs an activity that
1511 requires or results in more than one cubic yard of soil disturbance within the
1512 Shoreland or Resource Protection Overlay Zones, there must be a person responsible
1513 for management of erosion and sedimentation control practices on site, and that
1514 person must be certified in erosion control practices by the Maine Department of
1515 Environmental Protection. This person must be present at the site each day
1516 earthmoving activity occurs for a duration that is sufficient to ensure that proper
1517 erosion and sedimentation control practices are followed. This is required until
1518 erosion and sedimentation control measures have been installed, which will either
1519 stay in place permanently or stay in place until the area is sufficiently covered with
1520 vegetation necessary to prevent soil erosion. The name and certification number of
1521 the person who will oversee the activity causing or resulting in soil disturbance must
1522 be included on the permit application. Excavation contractors will have one year from
1523 the date of the adoption of this subsection to comply with certification requirements.
- 1524 (b) The above requirement of § 16.7.11.H(1)(a) does not apply to a property owner
1525 performing work themselves, or a person or firm engaged in agriculture or timber
1526 harvesting when best management practices for erosion and sedimentation control are
1527 used.
- 1528 (c) The above requirement of § 16.7.11.H(1)(a) only applies to regulated activities
1529 requiring local, state or federal permits and/or Planning Board approval.
- 1530 (6). All development must generally comply with the provisions of the "Environmental Quality
1531 Handbook, Erosion and Sediment Control," published by the Maine Soil and Water
1532 Conservation Commission.

- 1533 (a) The developer must:
- 1534 [1] Select a site with the right soil properties, including natural drainage and
- 1535 topography, for the intended use;
- 1536 [2] Utilize for open space uses those areas with soil unsuitable for construction;
- 1537 [3] Preserve trees and other vegetation wherever possible;
- 1538 [4] Hold lot grading to a minimum by fitting the development to the natural contour
- 1539 of the land; avoid substantial areas of excessive grade;
- 1540 [5] Spread jute matting, straw or other suitable material during construction in critical
- 1541 areas subject to erosion;
- 1542 [6] Construct sediment basins to trap sediment from runoff waters during
- 1543 development; expose as small an area of subsoil as possible at any one time
- 1544 during development and for as short a period as possible;
- 1545 [7] Provide for disposing of increased runoff caused by changed land formation,
- 1546 paving and construction, and for avoiding sedimentation of runoff channels on or
- 1547 off the site;
- 1548 [8] Plant permanent and, where applicable, indigenous, vegetation and install
- 1549 structures as soon as possible for the purpose of soil stabilization and
- 1550 revegetation;
- 1551 (b) All logging or woodlot roads must be located, constructed and maintained in
- 1552 conformance with the erosion prevention provisions of "Permanent Logging Roads
- 1553 for Better Woodlot Management," published by the United States Department of
- 1554 Agriculture.
- 1555 (7). Where the Board has required a stormwater management and erosion control plan, said
- 1556 plan must be endorsed by the York County Soil and Water Conservation District or found
- 1557 satisfactory by the Town's Engineering Peer Reviewer.
- 1558 (8). All activities which involve filling, grading, excavation or other similar activities that
- 1559 potentially may result in unstable soil conditions, and which require a permit, must be
- 1560 made known in a written soil erosion and sedimentation control plan in accordance with the
- 1561 "Maine Erosion and Sediment Control Practices Field Guide for Contractors," 2015, and as
- 1562 amended. The plan must be submitted to the permitting authority for approval and must
- 1563 include, where applicable, provisions for:
- 1564 (a) Mulching and revegetation of disturbed soil;
- 1565 (b) Temporary runoff control features, such as straw bales, silt fencing, filter socks or
- 1566 diversion ditches;
- 1567 (c) Permanent stabilization structures, such as retaining walls or riprap.
- 1568 (9). To create the least potential for erosion, development must be designed to fit with the
- 1569 topography and soil of the site. Areas of steep slopes where high cuts and fills may be
- 1570 required are to be avoided wherever possible, and natural contours must be followed as
- 1571 closely as possible.
- 1572 (10). Erosion and sedimentation control measures apply to all aspects of the proposed project
- 1573 involving land disturbance and must be in operation during all stages of the activity. The
- 1574 amount of exposed soil at every phase of construction must be minimized to reduce the
- 1575 potential for erosion.

- 1576 (11). Any exposed ground area must be temporarily or permanently stabilized in accordance
1577 with the ""Maine Erosion and Sediment Control Practices Field Guide for Contractors,"
1578 2015, and as amended. All erosion control measures that are no longer necessary as
1579 determined by the CEO or Shoreland Resource Officer must be removed at the owner's
1580 expense.
- 1581 (12). Natural and man-made drainageways and drainage outlets must be protected from erosion
1582 from water flowing through them. Drainageways must be designed and constructed in order
1583 to carry water from a twenty-five-year storm or greater and be stabilized with vegetation or
1584 lined with riprap.
- 1585 I. Water quality and wastewater pollution
- 1586 (1) No activity is allowed to deposit on or into the ground or discharge to any river, stream or
1587 brook, pond, or wetland any pollutant that, by itself or in combination with other activities
1588 or substances, will impair designated uses or the water classification of the water body.
- 1589 (2). Wastewater to be discharged into Kittery Sewer Department sewers, should they be
1590 available, must be in such quantities and/or of such quality as to be compatible with
1591 standards established by the municipality or the Sewer Department.
- 1592 (3). To meet those standards, the municipality or Sewer Department may require that such
1593 wastes undergo pretreatment or full treatment at the site in order to render them acceptable
1594 for the treatment processes.
- 1595 (4). The disposal of wastewater by means other than a public system must comply with the laws
1596 of the State of Maine and the Town concerning water pollution. Where a public sanitary
1597 sewer system is located within 200 feet of the property line as measured along a public
1598 way, the Town requires individual entrance into said sewer.
- 1599 (5). Discharge of sanitary wastes to any water body is subject to the issuance of Maine State
1600 Department of Environmental Protection licenses, but no such off-site discharge will be
1601 allowed unless same is buried or not visible to a point below normal low water and is
1602 secured against damage and uncovering by the tides, erosion or other foreseeable action.
- 1603 (6). Flood prone areas must be identified on plan submissions, and based on the Federal
1604 Emergency Management Agency's Flood Boundary and Floodway Maps and Flood
1605 Insurance Rate Maps and information presented by the applicant.
- 1606 (7). If the proposed development, or any part of it, is in such an area, the applicant must
1607 determine the one-hundred-year flood elevation and flood hazard boundaries within the
1608 project area. The proposed plan must include a condition of plan approval requiring that
1609 principal structures in the development will be constructed with their lowest floor,
1610 including the basement, at least one foot above the one-hundred-year flood elevation.
- 1611 J. Air pollution
- 1612 All air pollution control shall comply with the minimum state requirements, and detailed
1613 plans shall be submitted to the State of Maine Department of Environmental Protection for
1614 approval before a building/regulated activity permit is granted. In any case, no objectionable
1615 odor, dust or smoke shall be detectable beyond the property line.
- 1616 K. Noise abatement
- 1617 (1) Excessive noise at unreasonable hours shall be controlled so as not to be objectionable due

- 1618 to intermittence, beat frequency, shrillness or volume.
- 1619 (2). The maximum permissible sound pressure level of any continuous, regular or frequent
 1620 source of sound produced by any activity regulated by this title shall be as established by
 1621 the time period and type of land use district listed below. Sound pressure levels shall be
 1622 measured at all major lot lines at a height of at least four feet above the ground surface.
 1623 Sound from any source controlled by this title shall not exceed the following limits at the
 1624 property line of the "receiver" premises.
 1625

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

- 1626
- 1627 (a) Where the emitting and receiving premises are in different zones, the limits governing
 1628 the stricter zone shall apply to any regulated noise entering that zone.
- 1629 (b) The levels specified may be exceeded by 10 dB for a single period no longer than 15
 1630 minutes in any one day.
- 1631 (3). Noise shall be measured with a sound level meter meeting the standards of the American
 1632 National Standards Institute (ANSI S1.4-1961, American Standard Specification for
 1633 General Purpose Sound Level Meters). The instrument shall be set to the A-weighted
 1634 response scale and the meter to the slow response. Measurements shall be conducted in
 1635 accordance with ANSI S1.2-1962, American Standard Meter for the Physical
 1636 Measurements of Sound.
- 1637 (4). No person shall engage in, cause or permit to be engaged in construction activities
 1638 producing excessive noise on a site abutting any residential use between the hours of 9:00
 1639 p.m. on one day and 7:00 a.m. of the following day. Construction activities shall be subject
 1640 to the maximum permissible sound level specified for commercial districts for the periods
 1641 within which construction is to be completed pursuant to any applicable building/regulated
 1642 activity permit.
- 1643 (5). The following uses and activities shall be exempt from the sound pressure level
 1644 regulations:
- 1645 (a) Home maintenance activities (i.e., mowing lawns, cutting one's own firewood, etc.)
 1646 between the hours of 7:00 a.m. and 9:00 p.m.;
- 1647 (b) Timber harvesting (felling trees and removing logs from the woods);
- 1648 (c) Noise created by construction and maintenance activities between 7:00 a.m. and 9:00
 1649 p.m.;
- 1650 (d) The noises of safety signals, warning devices and emergency pressure relief valves
 1651 and any other public emergency activity; and
- 1652 (e) Traffic noise on existing public roads, railways or airports.

1653 (6). These noise regulations are enforceable by law enforcement officers and by the Code
1654 Enforcement Officer (who may measure noise levels, and who shall report documented
1655 violations to the police). For the purposes of enforcement, sounds exceeding the above
1656 limits shall be deemed to constitute "loud and unreasonable noise" under Title 17-A M.R.S.
1657 § 501-A ("disorderly conduct").

1658 L. Radiation

1659 No dangerous radiation shall be detectable at the property line, in accordance with the
1660 applicable state and federal laws. In the case of electromagnetic pulses emanating from
1661 electrical service components, the Planning Board or Director of Planning and Development
1662 shall require the developer to adopt a "prudent avoidance" approach, wherever possible.

1663 M. Utilization of the Site

1664 (1) The plan for the development shall reflect the natural capabilities of the site to support
1665 development. Buildings, lots, and support facilities shall be clustered in those portions of
1666 the site that have the most suitable conditions for development. Environmentally sensitive
1667 areas, including but not limited to, wetlands, steep slopes, floodplains, significant wildlife
1668 habitats, fisheries, scenic areas, habitat for rare and endangered plants and animals, unique
1669 natural communities and natural areas, and sand and gravel aquifers shall be maintained
1670 and preserved to the maximum extent. Natural drainage areas shall also be preserved to the
1671 maximum extent. The development shall include appropriate measures for protecting these
1672 resources, including but not limited to, modification of the proposed design of the site,
1673 timing of construction, and limiting the extent of excavation.

1674 N. Storage of Materials

1675 (1) Exposed nonresidential storage areas, exposed machinery, and areas used for the storage or
1676 collection of discarded automobiles, auto parts, metals or other articles of salvage or refuse
1677 shall have sufficient setbacks and screening (such as a stockade fence or a dense evergreen
1678 hedge) to provide a visual buffer sufficient to minimize their impact on abutting residential
1679 uses and users of public streets.

1680 (2). All dumpsters or similar large collection receptacles for trash or other wastes shall be
1681 located on level surfaces which are paved or graveled. The dumpster or receptacle shall be
1682 screened by fencing or landscaping.

1683 (3). Where a potential safety hazard to children is likely to arise, physical screening sufficient
1684 to deter small children from entering the premises shall be provided and maintained in
1685 good condition.

1686 O. Technical and Financial Capacity

1687 (1) Financial Capacity. The applicant shall have adequate financial resources to construct the
1688 proposed improvements and meet the criteria of the standards of these regulations. In
1689 making its determination the Planning Board shall consider all relevant evidence to the
1690 effect that the developer has the financial capacity to construct, operate, and maintain all
1691 aspects of the development.

1692 (2). Technical Capacity. The applicant shall retain qualified contractors and consultants to
1693 supervise, construct and inspect the required improvements in the proposed site plan.

1694 (a) In determining the applicant's technical ability the Planning Board shall consider the

1695 applicant's previous experience, the experience and training of the applicant's
 1696 consultants and contractors, and the existence of violations of previous approvals
 1697 granted to the applicant.

1698 **16.7.12 Post-Approval**

1699 A. Approved plan expiration.

- 1700 (1) A Site Plan approval will expire if work has not commenced within one year from the date
 1701 of Planning Board or Director of Planning and Development approval. Where work has
 1702 commenced within one year of such approval, the approval will expire if work is not
 1703 complete within two years of the original date of approval.
- 1704 (2). Prior to expiration, the approval authority may, on a case-by-case basis, grant extensions to
 1705 an approved plan expiration date upon written request by the developer for an inclusive
 1706 period from the original approval date, not to exceed three years.
- 1707 (3). When a plan's approval expires, the applicant may reapply subject to the Town Code
 1708 current at the time of reapplication.

1709 B. Inspection of required improvements.

- 1710 (1) A preconstruction meeting is required for an approved Site Plan. Prior to the
 1711 commencement of any work associated with development approved in accordance with this
 1712 title, the developer or duly authorized representative must provide a schedule of expected
 1713 construction activities by phase to the inspecting official [the Code Enforcement Officer
 1714 (CEO) or their representative or, when applicable, the Town's Peer Review Engineer], and
 1715 coordinate a preconstruction meeting. Attendance at said meeting must at a minimum
 1716 include authorized representation from the Town, the developer and their general
 1717 contractor. Meeting minutes must be prepared by the Town's representative and distributed
 1718 to all attendees and the Town Planner.
- 1719 (2). The developer or general contractor shall coordinate inspections with the inspecting official
 1720 and provide written notice at least seven days prior to commencing each major phase of
 1721 construction as outlined in the construction schedule. When all phases of work are
 1722 complete, the general contractor shall request a final inspection from the inspecting official,
 1723 who shall prepare a punch list of any outstanding items to be completed, within seven days
 1724 of the final inspection. Once all outstanding items have been completed, the developer or
 1725 the general contractor shall coordinate a final walk-through where the inspecting official
 1726 determines if the construction has been completed in accordance with the approved plans.
 1727 The inspecting official shall provide, in writing, to the developer or the general contractor
 1728 within seven days of the final walk-through what, if any, construction is not complete or
 1729 confirm that the development is complete and has been constructed according to the
 1730 approved plans.
- 1731 (3). If the inspecting official finds, upon inspection of the required improvements, that any of
 1732 the required improvements have not been constructed in accordance with the approved
 1733 plans and specifications, the inspecting official must report, in writing, to the Town
 1734 Planner, the developer or duly authorized representative of the developer, and, when
 1735 applicable, the CEO. The Town Planner shall inform the Planning Board of any issues
 1736 identified by the inspections. The Town shall take any steps necessary to preserve the
 1737 municipality's rights.

1738 (4). Where applicable and in advance of any construction, the developer must deposit sufficient
1739 funds for said inspections in an applicant’s service account per Chapter 3.3. The amount is
1740 based on a scope of services and fee prepared by the Town’s Peer Review Engineer after
1741 review of the developer’s construction estimate prepared by a professional engineer or a
1742 qualified contractor.

1743 (5). Stormwater and erosion control inspection.

1744 (a) During October to November of each year in which construction for grading, paving
1745 and landscaping occurs on a development site, the Town will, at the expense of the
1746 developer, cause the site to be inspected by a qualified individual. By December 1,
1747 the inspector must submit a site report to the Town Planner that describes the
1748 inspection findings and indicates whether stormwater and erosion control measures
1749 (both temporary and permanent) are in place and properly installed. The report must
1750 include a discussion and recommendation on any and all problem areas encountered.

1751 (b) After major construction activities have been completed on a development site, the
1752 developer must, on or by July 1 of each year, provide a completed and signed
1753 certification to the Code Enforcement Officer per § 16.7.11.D, Post-construction
1754 stormwater management.

1755 (c) Erosion control debris. The owner or occupant of any land in any zone must not allow
1756 erosion control materials, such as plastic erosion control fences and related stakes or
1757 other materials, to remain on the site but must remove the same within six months of
1758 the date such erosion control materials were installed, or the date when no longer
1759 required, whichever is later. When a violation is discovered, the Code Enforcement
1760 Officer will order compliance by written notice of violation to the owner of any land
1761 in any zone requesting removal of such violation within 30 days of the date of written
1762 notice. An extension of time to correct may be made by the Code Enforcement
1763 Officer for good and sufficient reason.

1764 C. Plan revisions after approval.

1765 No changes, erasures, modifications or revisions may be made to any Planning Board
1766 approved Final Plan, unless in accordance with the Planner's and CEO's powers and duties as
1767 found in § 16.2, or unless the plan has been resubmitted and the Planning Board specifically
1768 approves such modifications. In the event a Final Plan is recorded without complying with
1769 this requirement, the same is null and void, and the Planning Board must institute
1770 proceedings to have the plan stricken from Town records and the York County Registry of
1771 Deeds.

1772 (1) Field changes.

1773 (a) If at any time before or during the construction of the required improvements it
1774 appears to be necessary or desirable to modify the required improvements, the Code
1775 Enforcement Officer and Town Planner are authorized to approve minor plan
1776 amendments due to unforeseen field circumstances, such as encountering hidden
1777 outcrops of bedrock, natural springs, etc. The Code Enforcement Officer and Town
1778 Planner must issue any approval under this subsection in writing and transmit a copy
1779 of the approval to the Planning Board. Revised plans must be filed with the Town and
1780 recorded, where appropriate. The developer must provide the revised plan to the
1781 Town Planner, and it shall be recorded in the York County Register of Deeds when

- 1782 applicable.
- 1783 (2). Modifications to approved plan.
- 1784 (a) Minor modifications. Modifications to an approved plan that do not require review
 1785 per § 16.7.2.A may be approved by the Code Enforcement Officer and Town Planner.
 1786 Such approvals must be issued in writing to the developer with a copy to the Planning
 1787 Board. The developer must provide the revised plan to the Town Planner, and it shall
 1788 be recorded in the York County Register of Deeds, when applicable.
- 1789 (b) Major modifications. Major modifications (e.g., relocations of principal structures,
 1790 rights-of-way or property boundaries; changes of grade by more than 1%) require
 1791 Planning Board or Director of Planning and Development approval.
- 1792 D. Maintenance of improvements.
- 1793 E. The developer, or owner, is required to maintain all improvements and provide for snow
 1794 removal on streets and pedestrianways/sidewalks unless and until the improvement has been
 1795 accepted by the Town Council. Acceptance of Streets and Ways
- 1796 (1) Conditions. A street or way constructed on private lands by the owner(s) thereof and not
 1797 dedicated for public travel prior to the enactment of this title must be laid out and accepted
 1798 as a public street or way by the Town Council only upon the following conditions:
- 1799 (a) The owners must give the Town a deed to the property within the boundaries of the
 1800 street at the time of acceptance by the Town.
- 1801 (b) A plan of said street or way must be recorded in the York County Registry of Deeds
 1802 at the time of its acceptance.
- 1803 (c) A petition for laying out and acceptance of said street or way must be submitted to the
 1804 Town Council upon a form prescribed by the Commissioner of Public Works. Said
 1805 petition must be accompanied by a plan, profile and cross section of said street as
 1806 follows:
- 1807 [1] A plan drawn, when practical, to a scale of 40 feet to one inch and to be on one or
 1808 more sheets of paper not exceeding 24 inches by 36 inches in size. Said plan must
 1809 show the North point; the location and ownership of all adjoining lots of land;
 1810 rights-of-way and easements; streetlights and electric lines; boundary monuments;
 1811 waterways, topography and natural drainage courses with contour at not greater
 1812 than two-foot intervals; all angles, bearings and radii necessary for the plotting of
 1813 said street and lots and their reproduction on the ground; the distance to the
 1814 nearest established street or way, together with the stations of their side lines;
- 1815 [2] A profile of said street or way drawn to a horizontal scale of 40 feet to one inch
 1816 and a vertical scale of four feet to one inch. Said profile must show the profile of
 1817 the side lines and center line of said street or way and the proposed grades thereof.
 1818 Any buildings abutting the street or way must be shown on said profile;
- 1819 [3] A cross section of said street or way drawn to a horizontal scale of five feet to one
 1820 inch and a vertical scale of one foot to one inch; and
- 1821 [4] The location and size of water and sewer mains and surface water drainage
 1822 systems, as installed.
- 1823 (3). Such street or way must have been previously constructed in accordance with the standards
 1824 and criteria established in § 16.5.27 of this chapter.

- 1825 (4). Acceptance of streets and ways required in public interest.
1826 (a) Notwithstanding the provisions of any other section hereof, the Town may at any time
1827 lay out and accept any street or way in the Town as a public street or way of said
1828 Town whenever the general public interest so requires. The cost of said street or way
1829 may be borne by the Town.
- 1830 (5). Easements.
1831 (a) The Board may require easements for sewerage, other utilities, drainage and stream
1832 protection. In general, easements may not be less than 20 feet in width. Wider
1833 easements may be required.
- 1834 (6). No street or way to be accepted until after report.
1835 (a) No street or way may be laid out and accepted by the Town Council until the
1836 Planning Board and the Public Works Commissioner have made a careful
1837 investigation thereof and reported to the Town Council their recommendations in
1838 writing with respect thereto.
1839 (b) Upon completion of construction of any street/road intended for proposal for
1840 acceptance as a Town way, a written certification that such way meets or exceeds the
1841 design and construction standards of this title, signed by a professional engineer
1842 registered by the State of Maine, prepared at the developer's expense, must be
1843 submitted to the Board. If underground utilities are laid in such way, the developer
1844 must also provide written certification from the servicing utility(ies), that such
1845 installation was in a manner acceptable to the utility. The Board is to review the
1846 proposal and forward a recommendation to the Town Council regarding acceptance.
- 1847 F. Recordkeeping in Shoreland and Resource Protection Overlay Zones.
1848 The Code Enforcement Officer is to keep a complete record of all essential transactions of
1849 development in the Shoreland and Resource Protection Overlay Zones, including
1850 applications submitted, permits granted or denied, variances granted or denied, revocation
1851 actions, revocation of permits, appeals, court actions, violations investigated, violations
1852 found, and fees collected. On a biennial basis, a summary of this record must be submitted to
1853 the Director of the Bureau of Land and Water Quality within the Department of
1854 Environmental Protection.
- 1855 G. Nonstormwater discharge.
1856 No person, except where exempted in § 16.5.19, may create, initiate, originate, or maintain a
1857 nonstormwater discharge to the storm drainage system. Such nonstormwater discharges are
1858 prohibited notwithstanding the fact that the municipality may have approved the connections,
1859 drains or conveyances by which a person discharges unallowable nonstormwater discharges
1860 to the storm drainage system.
- 1861 H. Nuisances.
1862 Any violation of this title is deemed to be a nuisance.
1863

1 **16.8 Subdivision Review**

2 16.8.1 General

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

15 16.8.2 Authority and Statutory Review Criteria

- 16 A. These standards have been prepared in accordance with the provisions of 30-A M.R.S.A. §
17 4401 et seq., and all amendments thereto.
- 18 B. When reviewing any application for a subdivision, the Planning Board shall find that the
19 criteria as found in Title 30-A M.R.S.A. §4404 have been met, as well as all applicable
20 provisions of Title 16, Land Use and Development Code have been met, before granting
21 approval.

22 16.8.3 Approval required prior to development.

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

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

32 16.8.4 Other Potential Reviews

33 A. Shoreland development review.

- 34 (6) All development in the Shoreland, Resource Protection, and Commercial
35 Fisheries/Maritime Uses Overlay Zones involving the use, expansion, change or
36 replacement of an existing use or structure, or renewal of a discontinued nonconforming

37 use, must be reviewed and approved as provided in § 16.4.30 and elsewhere in this title,
38 and tracked as a shoreland development for reporting purposes.

39 (7) All development in the Shoreland, Resource Protection, and Commercial Fisheries/Maritime
40 Uses Overlay Zones must be approved by the Planning Board except for the following:

41 (a) Proposed development of principal and accessory structures in compliance with
42 § 16.9.1.B(1), when not subject to Planning Board review as explicitly required
43 elsewhere in this title. Such proposed development must be reviewed and approved by
44 the Code Enforcement Officer (CEO) prior to issuing a building permit. The total
45 devegetated area of the lot (that portion within the Shoreland Overlay Zone) must be
46 calculated by the applicant and verified by the CEO and recorded in the Town's property
47 records. Any development proposed in the Resource Protection and Shoreland - Stream
48 Protection Area Overlay Zones must be approved by the Planning Board.

49 (b) Piers, docks, wharves, bridges and other structures and uses extending over or below the
50 highest annual tide (HAT) elevation, subject to review and approval by the Port
51 Authority as outlined in Chapter 16.9.1, Marine-related development.

52 (c) Division of a conforming parcel that is not subject to subdivision as defined in § 16.3.

53 (d) Clearing of vegetation for activities other than timber harvesting. These are subject to
54 review and approval by the Shoreland Resource Officer or Code Enforcement Officer.

55 (8) Establishment of new commercial or business entity in an existing facility, where intensity
56 of use is not significantly different.

57 16.8.5 Application and Review Fees

58 B. Review fee(s); reimbursements.

59 (1) All applications for plan approval for properties which come under this title must be
60 accompanied by a fee as determined by the Town Council.

61 (2) The applicant must reimburse the Town for all expenses incurred for notifying abutters of
62 the proposed plan and advertising of any public hearing regarding a development.

63 C. Independent peer review.

64 (1) The Planning Board or, after the Town Manager's approval, the Town Planner and the Code
65 Enforcement Officer, may require an independent consultant or specialist engaged by the
66 Town, at the applicant's expense, to:

67 (a) Determine compliance with all requirements of this title related to public health, safety
68 and welfare and the abatement of nuisances; or

69 (b) Assist with the technical review of applications submitted for new or amended
70 development.

71 (2) When peer review is required of the applicant, sufficient funds, based on a written estimate
72 by the required consultant, must be deposited in an applicant's service account per Chapter
73 3.3, prior to commencing said review and continuing with the review of the development
74 plan application.

75 16.8.6 Applicant attendance at review meeting(s)

76 A. The applicant or duly authorized representative must attend all Board meetings for which

77 the applicant's application has been placed on the agenda. Relief may be given from this
78 requirement by the Board Chairperson.

79 16.8.7 Waivers

80 A. Waiver authorization.

81 Upon written request, the Planning Board may waive or modify certain required
82 improvements, due to special circumstances of a particular plan, if the applicant
83 demonstrates that the interest of public health, safety, the natural environment, and general
84 welfare are not harmed, or if those improvements are inappropriate because of inadequacy
85 or lack of connecting facilities adjacent or in proximity to the proposed development,
86 subject to appropriate conditions as determined by the Planning Board, and provided the
87 waivers do not have the effect of nullifying the intent and purpose of the Comprehensive
88 Plan and Title 16.

89 B. Objectives secured.

90 In granting modifications or waivers, the Planning Board must require such conditions as
91 will, in its judgment, secure substantially the objectives of the requirements so waived or
92 modified. The Planning Board is not obligated to consider the costs of required
93 improvements when reviewing waiver or modification requests. The Planning Board shall
94 consider the provisions in Section 16.2.12.F. Basis for Decisions when reviewing such
95 waiver or modification requests.

- 96 (1) Any waivers granted must improve the ability of the project to take the property's pre-
97 development natural features into consideration. Natural features include but are not
98 limited to topography, location of water bodies, location of unique or valuable natural
99 resources, and relation to abutting properties or land uses.

100 16.8.8 Other Requirements

101 A. Burden of proof.

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

103 B. Comprehensive Plan.

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

106 C. Site inspection.

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

111 D. Safe use.

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

114 16.8.9 Review Process and Submission Requirements

115 A. Preapplication and Conference

116 (1) Process. The purpose of this meeting is to familiarize the applicant with the review
117 procedures and submission requirements, and approval criteria, and to familiarize the
118 Planner with the nature of the project.

119 (a) This meeting is optional for Minor Subdivisions, but required for Major Subdivisions.

120 (b) Such review shall not cause the plan to be a pending application or proceeding under
121 1M.R.S.A. §302. No decisions relative to the plan may be made at this meeting.

122 (c) To request a preapplication conference the applicant shall submit, at a brief narrative
123 describing the project, the location of the project on a US Geologic Survey (USGS)
124 topographic map, and a copy of the Tax Map showing the development parcel.

125 B. Sketch Plan Review

126 (1) Review application form.

127 Any person requiring subdivision review must submit an application on forms prescribed
128 by the Planning Board, together with a development plan and such submission contents as
129 may be required in §16.8.9.B(3) and §16.8.9(B)(4). A complete application consists of all
130 the required elements. No more than one application/plan for a piece of property may be
131 under review before the Planning Board. No more than one approved final plan for a piece
132 of property may exist.

133 (2) Planning Board review and decision. The Planning Board must, within 30 days of sketch
134 plan submission, act upon the sketch plan as follows:

135 (a) The Planning Board must determine whether the sketch plan proposal complies with the
136 standards contained herein and must, where it deems necessary, make specific suggestions
137 in writing to be incorporated by the applicant in subsequent submissions.

138 [1] If the concept is approved, inform subdivision applicants in writing of the contour
139 interval which will be required for the plans; classify the sketch plan into one of two
140 categories defined herein, as a minor subdivision or a major subdivision, and
141 authorize submission of the next application stage. The next application stage for a
142 Minor Subdivision is a Final Plan application and the next application stage for a
143 Major Subdivision is a Preliminary Plan application.

144 [2] Any plan may be continued for a total period not to exceed 90 calendar days for good
145 and sufficient reason (i.e., for revisions to be made, studies completed, or additional
146 information submitted) and acceptable to both the applicant and the Planning Board.
147 Such plan is automatically scheduled for the agenda of the next regular Planning
148 Board meeting after the 90th day and action completed in accordance with the
149 requirements and timing contained in this title, whether the applicant has
150 accomplished the purposes for which continued or not.

151 [3] The action to table by the Planning Board must be an action to temporarily suspend
152 action and not to suppress a vote on the plan.

153 (3) Plan Requirements

154 (a) The sketch plan must show in simple form on a topographic map the proposed site,
155 subdivision, landscape architectural or architectural design concept, including streets, lots,
156 structures and other features, in relation to existing conditions and municipal land use
157 zone(s) regulations.

158 (b) The sketch may be a freehand penciled sketch and must include the data listed below.

159 (4) Written Submission Requirements

160 (a) General subdivision information must describe or outline the existing conditions of the
161 site, including:

162 [1] Covenants.

163 [2] High-intensity Class "A" soil survey and soil interpretation sheets.

164 [3] Available community facilities.

165 [4] Utilities.

166 (b) Proposed development, such as:

167 [1] Number of residential or business lots and/or dwelling units;

168 [2] Typical lot width and depth;

169 [3] Price range;

170 [4] Business areas;

171 [5] Playgrounds, park areas and other public areas;

172 [6] Protective covenants;

173 [7] Utilities; and

174 [8] Street improvements.

175 C. Preliminary Plan Review

176 (1) Applicability. Preliminary Plan Review only applies to Major Subdivision applications.

177 (2) General Process

178 (a) Preliminary plan application filing and completeness review. A determination as to
179 whether the Town Planner validates an application is based on a review of the application in
180 accordance with the submission contents checklist filed with the plan, which indicates all
181 elements required under §16.8.9.C(6) and §16.8.9.C(7) have been received, or written
182 request for waiver of submittal for any non received items is included. The application must
183 be accompanied by a plan and the required fee, together with a certification the applicant has
184 notified abutters by mail of the filing of the plan application for approval.

185 (b) Receipt and scheduling review. Upon validation, the Town Planner must place the
186 application on the Planning Board's agenda for Planning Board completeness review and
187 acceptance and, upon Planning Board acceptance, issue a dated receipt to the applicant,
188 which is thereafter the official time of submission.

189 (c) Site inspection. In the course of the review of the plan, the Planner must, and the
190 Planning Board may at its discretion, make a physical inspection and may make
191 photographic record of the existing conditions on the site.

192 (d) Advisory opinions. At any time during review, the Planner may request an advisory
193 opinion from the Planning Board, Conservation Commission or Port Authority on issues
194 related to the application. Where applications are for land within wetland setbacks or the
195 Resource Protection Overlay Zone, the Conservation Commission must be invited to review
196 and offer recommendations from an environmental protection perspective. The Planner also
197 must make recommendation on the necessity for independent review.

198 (e) Planner analysis. The Planner must analyze the application and forward comments to the

- 199 applicant and the Planning Board with a recommendation as to review category (e.g.,
 200 minor/major subdivision).
- 201 (f) A completed application must be submitted to the Town Planner no later than 21 days
 202 prior to the meeting date for the item to be included on the agenda. The submission must
 203 include on the plan or attached thereto, the following items, unless upon the applicant's
 204 written request, the Planning Board, by formal action, waives or defers any requirement(s)
 205 for submission.
- 206 [1] Refer to current Planning Department application checklist for required number of
 207 paper copies.
 - 208 [2] One electronic submission in PDF format of the complete submission including all
 209 forms, plans and documentation.
- 210 (g) Submission contents complete. Upon determination by the Planner that the preliminary
 211 plan application is complete, the Planner must receive it, together with an application fee in
 212 the amount set by the Town Council. (See Appendix A, Fee Schedules.) No application may
 213 be deemed complete by the Planning Board until payment of the proper fees.
- 214 [1] the Planning Board makes a finding that the preliminary plan is complete in regard to
 215 the submission requirements, it must determine if any studies/review or analysis is
 216 required in accordance with §16.8.9.C(7)(1) and §16.8.9.C(8) and schedule the date
 217 for a public hearing.
- 218 (3) Public hearing
- 219 (a) Scheduling
 - 220 [1] In the case of an accepted subdivision plan application, such public hearing must be
 221 scheduled no later than 30 days from the date of Planning Board acceptance. With the
 222 concurrence of the applicant, this deadline may be modified.
 - 223 [2] For all other development plan applications (i.e., right-of-way plan application and
 224 development in the Shoreland Overlay Zone), at the Planning Board's discretion, a
 225 public hearing may or may not be held.
 - 226 (b) Public notice.
 - 227 [1] The Town Planner must place a public notice of such public hearing in a newspaper
 228 of general circulation in the Town at least seven and not more than 14 days prior to
 229 the scheduled hearing date; said notice must also be posted in at least three prominent
 230 public locations in Town at least 10 days prior to the hearing; and, in the case of a
 231 plan located within 500 feet of the Towns of Eliot or York, Maine, must be forwarded
 232 to the Southern Maine Regional Planning Commission and to the Town Clerk of Eliot
 233 or York, Maine, at least 10 days prior to the hearing.
 - 234 [2] A subdivision public notice must be published at least two times in a newspaper of
 235 general circulation in the Town. The date of the first notice must be at least seven
 236 days before the scheduled public hearing date.
 - 237 (c) Abutter notice.
 - 238 [1] The Town Planner must cause written notice of the public hearing to be sent by
 239 postage paid, first-class mail (cost to be paid by the applicant) to all owners of
 240 abutting property, as herein defined (within 150 feet of the property), and by regular
 241 mail to the Code Enforcement Officer, the Commissioner of Public Works, and where

242 applicable, the Port Authority or Conservation Commission, at least seven days prior
 243 to the scheduled date. Failure of the parties to receive said notice does not invalidate
 244 any Board action.

245 [2] As used herein, relates solely to the notification of property owners who must be
 246 notified in writing when new development or redevelopment is proposed within 150
 247 feet of their property boundary(ies). This notification must include intertidal land
 248 below the normal high-water line, but not that land beyond 100 rods (1,650 feet)
 249 distant from the normal high water line, or that land below the normal low-water line.
 250 Where question exists regarding ownership of intertidal lands, consult Figure 1 in
 251 16.5.2, entitled, "Formula for Determining Ownership of Intertidal Land as a Guide
 252 for Identifying Abutters," attached to this chapter.

253 (d) Preliminary Plan Public Hearing Procedure

254 [1] The Planning Board may receive oral and documentary evidence, but must exclude
 255 evidence which it considers irrelevant, immaterial or unduly repetitious.

256 [2] The Chairperson of the Planning Board must determine the order of presentation by
 257 parties to the hearing. Each party must have the right to proceed without interruption,
 258 except that rulings by the Chairperson prevail. The applicant's presentation must
 259 proceed in accordance with the checklist provided.

260 [3] Any party may be represented by agent or attorney.

261 [4] The Town Planner, in consultation with the Code Enforcement Officer,
 262 Commissioner of Public Works, and such other Town officials as may have an
 263 interest in the application, must present into evidence a written summary of findings
 264 and recommendations.

265 [5] The Planning Board may continue the hearing to another time and location, including
 266 the site of the development, as it deems necessary.

267 (4) Planning Board Preliminary Plan review schedule.

268 (a) Within six months after approval/classification of a sketch plan by the Board, the
 269 applicant must submit an application for approval of a subdivision Preliminary Plan in the
 270 form prescribed herein.

271 (b) Within 30 days after acceptance by the Planning Board of a subdivision plan, the
 272 Planning Board must approve the plan, approve the plan with conditions, disapprove the
 273 plan, postpone action on the plan, or continue the review to another time/location.

274 (c) Continuation or tabling of a review beyond the thirty-day period for subdivision
 275 applications must be for good and sufficient reason and be acceptable to both the applicant
 276 and the Planning Board.

277 (d) Any plan may be continued for a total period not to exceed 90 calendar days for good and
 278 sufficient reason (i.e., for revisions to be made, studies completed or additional information
 279 submitted) and acceptable to both the applicant and the Planning Board. Such plan is
 280 automatically scheduled for the agenda of the next regular Planning Board meeting after the
 281 90th day and action completed in accordance with the requirements and timing contained in
 282 this title, whether the applicant has accomplished the purposes for which it was continued or
 283 not.

284 (e) The action to table by the Planning Board must be an action to temporarily suspend
 285 action and not to suppress a vote on the plan.

- 286 (f) Failure of the Planning Board to act within the thirty-day period for an accepted
287 subdivision application constitutes disapproval of the plan, in which case the applicant may
288 resubmit the plan without payment of an additional application fee.
- 289 (g) Planning Board review and decision. The Planning Board must approve, approve with
290 conditions or deny the preliminary plan.
- 291 (h) Approval of a preliminary plan does not constitute approval of a final plan, but rather it is
292 be deemed an expression of approval of the design submitted on the preliminary plan as a
293 guide to the preparation of the final plan.
- 294 (i) Conditions of the Planning Board's approval may include, but are not limited to, type of
295 vegetation, increased setbacks and yard space, specifications for sewage and water supply
296 facilities, buffers and screens, period of maintenance sureties, deed restrictions, locations of
297 piers, docks, parking or signs, type or style of construction, and the amount of all guarantees
298 which may be required.
- 299 (j) Conditions required by the Planning Board at the preliminary plan review phase must
300 have been met before the final plan may be given final approval unless specifically waived,
301 upon written request by the applicant, by formal Planning Board action, wherein the
302 character and extent of such waivers which may have been requested are such that they may
303 be waived without jeopardy to the public health, safety and general welfare.
- 304 (k) The decision of the Planning Board plus any conditions imposed must be noted on three
305 copies of the preliminary plan. One copy must be returned to the applicant, one retained by
306 the Planning Board and one forwarded to the municipal officials.
- 307 (l) If the final plan is not submitted to the Planning Board within six months after
308 classification of the sketch plan, the Planning Board may refuse to act on the subdivision
309 preliminary plan and require resubmission of the sketch plan. All such plans resubmitted
310 must comply with all normal application requirements.
- 311 (5) Plan Requirements, Preliminary Plan
- 312 (a) Plan sheets drawn on a reproducible medium and must measure no no larger than 24
313 inches by 36 inches;
- 314 (b) With scale of the drawings no greater than one inch equals 30 feet for developments less
315 than 10 acres, and one inch equals 50 feet for all others;
- 316 (c) Code block in the lower right-hand corner. The block must contain:
- 317 [1] Name(s) and address(es) of the applicant and owner;
- 318 [2] Name of the project;
- 319 [3] Name and address of the preparer of the plan, with professional seal, if applicable;
- 320 [4] Date of plan preparation/revision, and a unique ID number for the plan and any
321 revisions;
- 322 (d) Standard boundary survey conducted by a surveyor licensed in the State of Maine, in the
323 manner recommended by the State Board of Registration for Land Surveyors;
- 324 (e) An arrow showing true North and the magnetic declination, a graphic scale, and signature
325 blocks for the owner(s) and members of the Planning Board;
- 326 (f) Locus map showing the property in relation to surrounding roads, within 2,000 feet of
327 any property line of the development;
- 328 (g) Vicinity map and aerial photograph showing the property in relation to surrounding

- 329 properties, roads, geographic, natural resource (wetland, etc.), historic sites, applicable
 330 comprehensive plan features such as proposed park locations, land uses, zones, and other
 331 features within 500 feet from any boundary of the proposed development;
- 332 (h) Surveyed acreage of the total parcel, of rights-of-way, wetlands, and area to be disturbed
 333 and amount of street frontage;
- 334 (i) Names and addresses of all owners of record of property abutting the development,
 335 including those across a street;
- 336 (j) Existing Development Area Conditions, including but not limited to:
- 337 [1] Location and description of all structures, including signs, existing on the site,
 338 together with accesses located within 100 feet of the property line;
- 339 [2] Essential physical features such as watercourses, wetlands, floodplains, wildlife
 340 habitat areas, forest cover, and outcroppings;
- 341 (k) Utilities existing, including power, water, sewer, holding tanks, bridges, culverts and
 342 drainageways. Proposed development area conditions including, but not limited to:
- 343 [1] Structures; their location and description including signs, to be placed on the site,
 344 floor plan of exterior walls and accesses located within 100 feet of the property line;
- 345 [2] Utilities proposed including power, water, sewer, holding tanks, bridges, culverts and
 346 drainageways;
- 347 [3] Sewage facilities type and placement. Test pit locations, at least two of which must
 348 meet the State of Maine Plumbing Code requirements, must be shown;
- 349 [4] Domestic water source;
- 350 [5] Parks, open space, or conservation easement locations;
- 351 [6] Lot lines, interior and exterior, right-of-way, and street alignments;
- 352 [7] Road and other paved ways plans, profiles and typical sections including all relevant
 353 data;
- 354 [8] Setbacks existing and proposed;
- 355 [9] Machinery permanently installed locations likely to cause appreciable noise at the lot
 356 lines;
- 357 [10] Topographic contours of existing contours and finished grade elevations within the
 358 development;
- 359 [11] Pedestrian ways/sidewalks, curbs, driveways, fences, retaining walls and other
 360 artificial features locations and dimensions proposed;
- 361 [12] Temporary marker locations adequate to enable the Planning Board to readily locate
 362 and appraise the layout of the development;
- 363 [13] Land proposed to be dedicated to public use and the conditions of such dedication;
- 364 [14] Natural features or site elements to be preserved.
- 365 (6) Written Submission Requirements, Preliminary Plan
- 366 (a) Legal interest documents showing legal interest of the applicant in the property to be
 367 developed. Such documents must contain the description upon which the survey was based;
- 368 (b) Property encumbrances currently affecting the property, as well as any proposed
 369 encumbrances;

- 370 (c) Water District approval letter, if public water is used, indicating there is adequate supply
 371 and pressure to be provided to the development;
- 372 (d) Erosion and sedimentation control plan endorsed by the York County Soil and Water
 373 Conservation District or the Town's engineering consultant;
- 374 (e) Stormwater management preliminary plan for stormwater and other surface water
 375 drainage prepared by a registered professional engineer including the general location of
 376 stormwater and other surface water drainage areas;
- 377 (f) Soil survey for York County covering the development. Where the soil survey shows
 378 soils with severe restrictions for development, a high intensity Class "A" soil survey must be
 379 provided;
- 380 (g) Vehicular traffic report estimating the amount and type of vehicular traffic that will be
 381 generated by the development on a daily basis and for peak hours;
- 382 (h) Traffic impact analysis in accordance with § 16.8.9.C(8)(a) for developments involving
 383 40 or more parking spaces or which are projected to generate more than 400 vehicle trips per
 384 day;
- 385 (i) Test pit(s) analysis prepared by a licensed site evaluator when sewage disposal is to be
 386 accomplished by subsurface disposal, pits, prepared by a licensed site evaluator;
- 387 (j) Town Sewage Department or community system authority letter, when sewage disposal
 388 is to be through a public or community system, approving the connection and its location;
- 389 (k) Letters of evaluation of the development by the Chief of Police, Fire Chief,
 390 Commissioner of Public Works, Sewage Department, Kittery Water District and, for
 391 residential applications, the superintendent of schools, must be collected and provided by the
 392 Town Planner.
- 393 (l) Additional submissions as may be required by other sections of this title such as for
 394 clustered development, mobile home parks, or junkyards must be provided.
- 395 (7) Additional requirements. In its consideration of an application/plan, the Planning Board
 396 may at any point in the review require the applicant to submit additional materials, studies,
 397 analyses, and agreement proposals as it may deem necessary for complete understanding of
 398 the application. Such materials may include:
- 399 (a) Traffic impact analysis, including the following data:
- 400 [1] An executive summary outlining the study findings and recommendations.
- 401 [2] A physical description of the project site and study area encompassed by the report
 402 with a diagram of the site and its relationship to existing and proposed development
 403 sites within the study area.
- 404 [3] A complete description of the proposed uses for the project site (in cases where
 405 specific uses have not been identified, the highest traffic generators within the
 406 category best fitting the proposed development must be used to estimate traffic
 407 generators).
- 408 [4] Existing land uses and zone(s) in the vicinity of the site must be described. Any
 409 proposals for the development of vacant parcels or redevelopment of parcels within
 410 the study area of which the municipality makes the applicant aware, must be included
 411 in the description.
- 412 [5] Street geometry and existing traffic control devices on all major streets and

- 413 intersections affected by the anticipated traffic generated.
- 414 [6] Trip generation must be calculated for the proposed project and other proposed new
 415 projects and redevelopment projects within the study area using the most recent data
 416 available from the Institute of Transportation Engineers' (ITE) Trip Generation
 417 Guide, and/or actual field data collected from a comparable trip generator (i.e.,
 418 comparable in size, location and setting). This data will be presented in a summary
 419 table such that assumptions on trip generation and rates arrived at by the engineer are
 420 fully understandable to the Planning Board.
- 421 [7] The anticipated trip distribution of vehicles entering and exiting the proposed site
 422 during the appropriate peak hour(s) must be described and diagrammed.
- 423 [8] Trip assignment, the anticipated utilization of study area streets by traffic generated
 424 by the proposed project, must be described and diagrammed.
- 425 [9] Existing traffic conditions in the study area will be identified and analyzed based
 426 upon actual field counts and/or recent available machine counts.
- 427 [10] Existing traffic conditions in the study area will be described and diagrammed,
 428 specifically AADT, appropriate peak design hour(s), traffic volumes, street and
 429 intersection capacities, and levels of service.
- 430 [11] Existing safety conditions must be evaluated based upon the traffic accident data
 431 available for the most current three years and described including link and node
 432 critical rate factors (CRF).
- 433 [12] Future traffic conditions on the street system will be estimated based on existing
 434 volumes, projected traffic growth in the general study area, projected traffic from
 435 approved development, and traffic generated by the proposed project, specifically
 436 AADT traffic, appropriate peak hour(s) traffic volumes, street and intersection
 437 capacity, street and intersection levels of service will be analyzed. When other
 438 projects are being proposed within the impact area of the project, the Planning Board
 439 may require these projects to be incorporated into the analysis.
- 440 [13] When the analysis of the proposed project's impact on traffic indicates unsatisfactory
 441 CRF, levels of service or operating capacity on study area streets and intersections, a
 442 description of proposed improvements to remedy identified deficiencies must be
 443 included.
- 444 [14] The base data collected and analyzed during the course of the traffic impact study.
- 445 [15] If a development that requires a traffic impact study is within 500 feet of York or
 446 Eliot, Maine, or if the study identifies impacts on segments of Route 1 or Route 236
 447 or on their intersections located in York or Eliot, Maine, the applicant must provide
 448 evidence that a copy of the impact study has been given to the impacted
 449 municipality's chief administrative officer;
- 450 (b) Environmental analysis. An analysis of the effects that the development may have upon
 451 surrounding lands and resources, including intensive study of groundwater, ecosystems, or
 452 pollution control systems;
- 453 D. Final Plan Review
- 454 (1) Process
- 455 (a) Final plan application. The applicant must, within six months after approval of a

456 preliminary plan, file with the Planning Board an application for approval of the final plan in
457 the form prescribed herein.

458 (b) Failure to submit final plan application. If the final plan is not submitted to the Planning
459 Board within six months after the approval of the preliminary plan, the Planning Board may
460 refuse to act on the final plan and require resubmission of the preliminary plan. Any plan
461 resubmitted must comply with all application requirements, including payment of fees.

462 (c) Within 30 days after the filing of a Final Subdivision plan, the Planning Board must
463 approve the plan, approve the plan with conditions, disapprove the plan, postpone action on
464 the plan, or continue the review to another time/location.

465 (d) Continuation or tabling of a review beyond the thirty-day period for subdivision
466 applications must be for good and sufficient reason and be acceptable to both the applicant
467 and the Planning Board.

468 (e) Any plan may be continued for a total period not to exceed 90 calendar days for good and
469 sufficient reason (i.e., for revisions to be made, studies completed or additional information
470 submitted) and acceptable to both the applicant and the Planning Board. Such plan is
471 automatically scheduled for the agenda of the next regular Planning Board meeting after the
472 90th day and action completed in accordance with the requirements and timing contained in
473 this title, whether the applicant has accomplished the purposes for which it was continued or
474 not.

475 (f) The action to table by the Planning Board must be an action to temporarily suspend
476 action and not to suppress a vote on the plan.

477 (g) Failure of the Planning Board to act within the thirty-day period for an accepted
478 subdivision application, and the thirty-five-day period for other Planning Board accepted
479 applications, constitutes disapproval of the plan, in which case the applicant may resubmit
480 the plan without payment of an additional application fee.

481 (h) Application/plan review expiration.

482 [1] Uncounted time. When an approved plan is required to be reviewed/approved by
483 another agency (e.g., DEP, BOA, KPA), any period the plan is at such an agency or
484 that a plan is continued by the Planning Board in accordance with this section from
485 time of submission to time of decision inclusive, verifiable by recorded
486 documentation, is not counted as part of the cumulative time periods described in this
487 section.

488 [2] Requests for extension. The Planning Board may grant extensions to expiration dates
489 upon written request by the developer, on a case-by-case basis.

490 (i) A completed application must be submitted to the Town Planner no later than 21 days
491 prior to the meeting date for the item to be included on the agenda. The submission must
492 include on the plan or attached thereto, the following items, unless upon the applicant's
493 written request, the Planning Board, by formal action, waives or defers any requirement(s)
494 for submission.

495 [1] Refer to current Planning Department application checklist for required number of
496 paper copies.

497 [2] One electronic submission in PDF format of the complete submission including all
498 forms, plans and documentation.

499 (2) Final Plan Requirements

500 A complete final plan application must fulfill all the requirements of a preliminary plan as
501 indicated in § 16.8.9.C(6) through (8) and must show the following items, unless the Planning
502 Board, by formal action, upon the applicant's written request, waives or defers any
503 requirement(s) for submission. If no changes occurred to the preliminary plan, it also may be
504 considered to be the final plan.

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

507 (b) Street names and lines, pedestrian ways, lots, easements and areas to be reserved for or
508 dedicated to public use.

509 (c) Street length of all straight lines, the deflection angles, radii, lengths of curves and central
510 angles of all curves, tangent distances and tangent bearings.

511 (d) Lots and blocks within a subdivision, numbered in accordance with local practice.

512 (e) Markers/permanent reference monuments: Their location, source references and, where
513 required, constructed in accordance with specifications herein.

514 (f) Structures: their location and description, including signs, to be placed on the site, floor
515 plans and elevations of principal structures as well as detail of all structures, showing
516 building materials and colors, and accesses located within 100 feet of the property line.

517 (g) Outdoor lighting and signage plan if the application involves the construction of more
518 than 5,000 square feet of nonresidential floor area; or the creation of more than 20,000
519 square feet of impervious area; or the creation of three or more dwelling units in a building
520 — prepared by a qualified lighting professional, showing at least the following at the same
521 scale as the site plan:

522 [1] All buildings, parking areas, driveways, service areas, pedestrian areas, landscaping
523 and proposed exterior lighting fixtures;

524 [2] All proposed lighting fixture specifications and illustrations, including photometric
525 data, designation as "cutoff" fixtures, color rendering index (CRI) of all lamps
526 (bulbs), and other descriptive information on the fixtures;

527 [3] Mounting height of all exterior lighting fixtures;

528 [4] Lighting analyses and luminance level diagrams or photometric point-by-point
529 diagrams on a twenty-foot grid, showing that the proposed installation conforms to
530 the lighting level standards of the ordinance codified in this section together with
531 statistical summaries documenting the average luminance, maximum luminance,
532 minimum luminance, average-to-minimum uniformity ratio, and maximum-to-
533 minimum uniformity ratio for each parking area, drive, canopy and sales or storage
534 area;

535 [5] Drawings of all relevant building elevations, showing the fixtures, the portions of the
536 walls to be illuminated, the luminance levels of the walls, and the aiming points for
537 any remote light fixtures; and

538 [6] A narrative that describes the hierarchy of site lighting and how the lighting will be
539 used to provides safety, security and aesthetic effects.

540 (h) Machinery in permanently installed locations likely to cause appreciable noise at the lot
541 lines.

542 (i) Materials (raw, finished or waste) storage areas, their types and location, and any stored

- 543 toxic or hazardous materials, their types and locations.
- 544 (j) Fences, retaining walls and other artificial features, locations, and dimensions proposed.
- 545 (k) Landscaping plan, including location, size and type of plant material.
- 546 (l) Location of snow storage areas.
- 547 (m) Stormwater management plan for stormwater and other surface water drainage prepared
548 by a registered professional engineer, including the location of stormwater and other surface
549 water drainage area; a post-construction stormwater management plan that defines
550 maintenance responsibilities, responsible parties, shared costs, and schedule for
551 maintenance; a draft maintenance agreement for stormwater management facilities; and,
552 where applicable, draft documents creating a homeowners' association referencing the
553 maintenance responsibilities. Where applicable, the maintenance agreement must be
554 included in the document of covenants, homeowners' documents and/or as riders to the
555 individual deed and recorded with the York County Registry of Deeds.
- 556 (n) Phasing plan. Upon applicant's request, the Planning Board may permit phasing of the
557 plans, where it can be demonstrated to the Planning Board's satisfaction that such phasing
558 would result in a safe and orderly development of the plan.
- 559 [1] The applicant may file a section of the approved plan with the municipal officials and
560 the York County Registry of Deeds if said section constitutes at least 25% of the total
561 number of lots, or for plans including buildings, 25% of the gross area, contained in
562 the approved plan. In all circumstances, plan approval of the remaining sections of
563 the plan will remain in effect for three years unless the applicant requests and the
564 Planning Board grants extensions of time equivalent to the requirements for approved
565 plans in § 16.8.11.D.
- 566 [2] Phasing is subject to any conditions deemed necessary to assure a reasonable mixture
567 of uses is completed within each separate phase of the plan.
- 568 [3] Where projects are to be constructed in phases, phasing of stormwater management,
569 water mains and streets are part of the review process.
- 570 [4] Portions of both the developed and undeveloped site impacted by interim
571 infrastructure conditions such as unlooped water systems, stormwater runoff from
572 unfinished areas onto finished areas and vice versa, dead-end streets, etc., must be
573 clearly defined and shown on the plans.
- 574 [5] The Planning Board may permit construction of phases out of order only when the
575 storm drainage plan and the water plan, etc., have been reviewed by the Planning
576 Department or peer review engineer, and it has been demonstrated that the impact on
577 both the developed and undeveloped sections is negligible.
- 578 (3) Written Submission Requirements
- 579 (a) Open space land cession offers. Written offers of cession to the municipality of all public
580 open space shown on the plan, and copies of agreements or other documents showing the
581 manner in which space(s), title to which is reserved by the subdivider, are to be maintained.
- 582 (b) Open space land cession offers acknowledgement by Town. Written evidence that the
583 municipal officers are satisfied with the legal sufficiency of the documents referred to in
584 § 16.8.9.D(3)(a) Such written evidence does not constitute an acceptance by the
585 municipality of any public open space referred to in § 16.8.9.D(3)(a).

- 586 (c) Performance guaranty and Town acceptance to secure completion of all improvements
587 required by the Planning Board, and written evidence the Town Manager is satisfied with
588 the sufficiency of such guaranty.
- 589 [1] Where improvements for the common use of lessees or the general public have been
590 approved, the Planning Board must require a performance guaranty of amount
591 sufficient to pay for said improvements as a part of the agreement.
- 592 [2] Process. Prior to the issue of a building permit, the applicant must, in an amount and
593 form acceptable to the Town Manager, file with the Municipal Treasurer an
594 instrument to cover the full cost of the required improvements. A period of one year
595 (or such other period as the Planning Board may determine appropriate, not to exceed
596 three years) is the guaranty time within which required improvements must be
597 completed. The performance guaranty must include an amount required for recreation
598 land or improvements, as specified.
- 599 (d) Maintenance plan and agreement defining maintenance responsibilities, responsible
600 parties, shared costs and schedule. Where applicable, a maintenance agreement must be
601 included in the document of covenants, homeowners' documents and/or as riders to the
602 individual deed.
- 603 (4) Findings of Fact.
- 604 (a) After considering all submissions, evidence and testimony in accordance with the
605 requirements of all applicable state and the Town Code, the Planning Board must make a
606 finding of facts for each and every proposed phase of development, including the
607 development master plan and each subsequent development plan, and take formal action as
608 required in this title.
- 609 (b) Findings of fact. Action by the Planning Board must be based upon findings of fact which
610 certify or waive compliance with all the required standards of this title and which certify the
611 development meets the following requirements:
- 612 [1] Development conforms to local ordinances. The proposed development conforms to a
613 duly adopted Comprehensive Plan as per adopted provisions in the Town Code,
614 zoning ordinance, subdivision regulation or ordinance, development plan or land use
615 plan, if any. In making this determination, the municipal reviewing authority may
616 interpret these ordinances and plans.
- 617 [2] Freshwater wetlands identified. All freshwater wetlands within the project area have
618 been identified on any maps submitted as part of the application, regardless of the
619 size of these wetlands.
- 620 [3] River, stream or brook identified. Any river, stream or brook within or abutting the
621 proposed project area has been identified on any maps submitted as part of the
622 application. For purposes of this section, "river, stream or brook" has the same
623 meaning as in 38 M.R.S. § 480-B, subsection 9.
- 624 [4] Water supply sufficient. The proposed development has sufficient water available for
625 the needs of the development.
- 626 [5] Municipal water supply available. The proposed development will not cause an
627 unreasonable burden on an existing water supply, if one is to be used.
- 628 [6] Sewage disposal adequate. The proposed development will provide for adequate
629 sewage waste disposal and will not cause an unreasonable burden on municipal

- 630 services, if they are utilized.
- 631 [7] Municipal solid waste disposal available. The proposed development will not cause
632 an unreasonable burden on the municipality's ability to dispose of solid waste, if
633 municipal services are to be used.
- 634 [8] Water body quality and shoreline protected. Whenever situated entirely or partially
635 within 250 feet of any wetland, the proposed development will not adversely affect
636 the quality of that body of water or unreasonably affect the shoreline of that body of
637 water.
- 638 [9] Groundwater protected. The proposed development will not, alone or in conjunction
639 with existing activities, adversely affect the quality or quantity of groundwater.
- 640 [10] Flood areas identified and development conditioned. All flood-prone areas within the
641 project area have been identified on maps submitted as part of the application, based
642 on the Federal Emergency Management Agency's Flood Boundary and Floodway
643 Maps and Flood Insurance Rate Maps and information presented by the applicant. If
644 the proposed development, or any part of it, is in such an area, the applicant must
645 determine the one-hundred-year flood elevation and flood hazard boundaries within
646 the project area. The proposed plan must include a condition of plan approval
647 requiring that principal structures in the development will be constructed with their
648 lowest floor, including the basement, at least one foot above the one-hundred-year
649 flood elevation.
- 650 [11] Stormwater managed. The proposed development will provide for adequate
651 stormwater management.
- 652 [12] Erosion controlled. The proposed development will not cause unreasonable soil
653 erosion or a reduction in the land's capacity to hold water so that a dangerous or
654 unhealthy condition results.
- 655 [13] Traffic managed. The proposed development will:
- 656 [a] Not cause unreasonable highway or public road congestion or unsafe
657 conditions with respect to the use of the highways or public roads existing or
658 proposed; and
- 659 [b] Provide adequate traffic circulation, both on site and off site.
- 660 [14] Water and air pollution minimized. The proposed development will not result in
661 undue water or air pollution. In making this determination, the following must be
662 considered:
- 663 [a] Elevation of the land above sea level and its relation to the floodplains;
664 [b] Nature of soils and subsoils and their ability to adequately support waste
665 disposal;
666 [c] Slope of the land and its effect on effluents;
667 [d] Availability of streams for disposal of effluents;
668 [e] Applicable state and local health and water resource rules and regulations; and
669 [f] Safe transportation, disposal and storage of hazardous materials.
- 670 [15] Aesthetic, cultural and natural values protected. The proposed development will not
671 have an undue adverse effect on the scenic or natural beauty of the area, aesthetics,
672 historic sites, significant wildlife habitat identified by the Department of Inland

- 673 Fisheries and Wildlife or the municipality, or rare and irreplaceable natural areas, or
 674 any public rights for physical or visual access to the shoreline.
- 675 [16] Developer financially and technically capable. Developer is financially and
 676 technically capable to meet the standards of this section.
- 677 (c) In Shoreland, Resource Protection or Commercial Fisheries/Maritime Use Overlay
 678 Zones, the proposed use will:
- 679 [1] Maintain safe and healthful conditions;
- 680 [2] Not result in water pollution, erosion or sedimentation to surface waters;
- 681 [3] Adequately provide for the disposal of all wastewater;
- 682 [4] Not have an adverse impact on spawning grounds, fish, aquatic life, bird or other
 683 wildlife habitat;
- 684 [5] Conserve shore cover and visual, as well as actual, points of access to inland and
 685 coastal waters;
- 686 [6] Protect archaeological and historic resources as designated in the comprehensive
 687 plan;
- 688 [7] Not adversely affect existing commercial fishing or maritime activities in a
 689 commercial fisheries/maritime activities district;
- 690 [8] Avoid problems associated with floodplain development and use; and
- 691 [9] Is in conformance with the provisions of this title.
- 692 (d) For a right-of-way plan. The proposed right-of-way:
- 693 [1] Does not create any nonconforming lots or buildings; and
- 694 [2] Could reasonably permit the right of passage for an automobile.
- 695 (e) For special exception use – special exception use permitted. If a special exception use is
 696 requested, the special exception use will:
- 697 [1] Not prevent the orderly and reasonable use of adjacent properties or of properties in
 698 adjacent use zones;
- 699 [2] Not prevent the orderly and reasonable use of permitted or legally established uses in
 700 the zone wherein the proposed use is to be located, or of permitted or legally
 701 established uses in adjacent use zones; and
- 702 [3] Not adversely affect the safety, the health, and the welfare of the Town.
- 703 [4] Be in harmony with and promote the general purposes and intent of this title.
- 704 (5) Final plan approval and recording.
- 705 (a) Agreement form. An approval by the Planning Board must take the form of an agreement
 706 between the Town and the applicant, incorporating as elements the application, the Planning
 707 Board’s findings of fact, and such conditions as the Planning Board may impose upon
 708 approval.
- 709 (b) Agreement distribution. The Planning Board must send copies of the agreement to the
 710 Town Manager and Code Enforcement Officer.
- 711 (c) Approved final plan signing. A plan has final approval only when the Planning Board has
 712 indicated approval by formal action and the plan has been properly signed by a majority of
 713 the Planning Board members or by the Chair only, if so voted by the Planning Board.

714 (d) Approved final plan recording. An approved plan involving the division of land,
715 easements, or property boundary modification must be recorded by the York County
716 Registry of Deeds. Two (2) paper copies of the recorded plan must be returned to the Town
717 Planner.

718 16.8.10 Performance Standards and Approval Criteria

719 A. Monuments

720 (1) Stone monuments.

721 (a) Stone monuments must be set at all street intersections and points of curvature, but not
722 more than 750 feet apart along street lines without curves or intersections.

723 (b) Stone monuments must be set at all corners and angle points of the development
724 boundaries where the interior angle of the boundaries is less than 135° or greater than 225°.

725 (c) Stone monuments must be a minimum of four inches square at the top and four feet in
726 length and set in the ground at final grade level. Drilled holes, ½ inch deep, are to serve to
727 locate the point or points described above.

728 (2) Other monumentation.

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

735 (3) Impractical placement.

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

738 B. Basic Subdivision Layout

739 (1) Calculation of Density: See “Net Residential Acreage” in 16.5 General Performance
740 Standards.

741 (2) Wherever possible, side lot lines shall be perpendicular to the street.

742 (3) The subdivision of tracts into parcels with more than twice the required minimum lot size
743 shall be laid out in such a manner as either to provide for or preclude future division. Deed
744 restrictions or notes on the plan shall either prohibit future divisions of the lots or specify
745 that any future division shall constitute a revision to the plan and shall require approval
746 from the Board, subject to the criteria of the subdivision statute, the standards of these
747 regulations and conditions placed on the original approval.

748 (4) If a lot on one side of a public street fails to meet the minimum requirements for lot size, it
749 may not be combined with a lot on the other side of the public street to meet the minimum
750 lot size.

751 (5) Lot Numbering. Even numbers shall be assigned to lots on one side of the street, and odd
752 numbers on the opposite side. Where the proposed subdivision contains the extension of an
753 existing street or street approved by the Board, but not yet constructed, the lot numbers
754 shall correspond with the existing lot numbers. The lot numbering shall be reviewed by the
755 E-911 Addressing Officer and the comments shall be considered by the Board.

756 C. Water Supply

- 757 (1) The development shall be provided with a system of water supply that provides each use
758 with an adequate supply of water.
- 759 (2) If the project is to be served by a public water supply, the applicant shall secure and submit
760 a written statement from the Kittery Water District that the proposed water supply system
761 conforms with its design and construction standards, will not result in an undue burden on
762 the source of distribution system, and will be installed in a manner adequate to provide
763 needed domestic and fire protection flows.
- 764 (3) Service required.
- 765 (a) A public water supply system with fire hydrants must be installed and approved in
766 writing by the servicing water department.
- 767 (b) If in the opinion of the Board service to each lot by a public water system is not feasible,
768 the Board may allow individual wells or a central water supply system approved in writing
769 by a civil engineer registered in the State of Maine.
- 770 (c) If the developer proposes a central water supply system, it must also be approved in
771 writing by the Maine Department of Human Services.
- 772 (d) Water supply system installations are at the expense of the developer.
- 773 (e) All required approvals of a water supply system must be secured before official
774 submission of the final plan.
- 775 (4) Quality and pressure.
- 776 The developer must demonstrate by actual test or by a signed affidavit from an authorized
777 representative of the servicing water company that water meeting the “Maine Rules
778 Relating to Drinking Water (10-144 C.M.R. 231)” can be supplied to the development at
779 the rate of at least 350 gallons per day per dwelling unit and at an adequate pressure for
780 firefighting purposes.
- 781 (5) Storage.
- 782 Storage must be provided as necessary to meet peak domestic demands and fire protection
783 needs.
- 784 (6) Adequacy.
- 785 The developer must demonstrate in the form of signed affidavits from the servicing water
786 company or by engineering reports prepared by a civil engineer registered in the State of
787 Maine that the proposed development will not result in an undue burden on the source,
788 treatment facilities or distribution system involved or provide adequate assurance that such
789 source, treatment facilities or distribution system will be modified to meet the expanded
790 needs. The cost of such improvements is to be borne by the developer.
- 791 (7) Water main size.
- 792 The minimum water main size permitted is to be as required by the Kittery Water District,
793 installed at the expense of the developer.
- 794 (8) Design and installation.
- 795 The water supply system must be designed and installed in accordance with requirements
796 of the Maine Department of Human Services.
- 797 (9) Dug wells.
- 798 Because they are difficult to maintain in a sanitary condition, dug wells must be prohibited

799 by deed restriction and a note on the plan, unless permitted by the Board only if it is not
800 economically or technically feasible to develop other groundwater sources. Such dug wells
801 permitted must be constructed so as to prevent infiltration of surface water into the well.

802 (10) Central water supplies.

803 If a central water supply system is provided by the developer, location and protection of the
804 source, and design, construction and operation of the distribution system and appurtenances
805 and treatment facilities must conform to the recommendations included in the “Manual for
806 Evaluating Public Drinking Water Supplies, Public Health Service No. 1180 (1969).”

807 (11) Hydrologic analysis.

808 The Board may require the developer to provide a detailed hydrologic analysis in
809 accordance with the requirements of § 16.8.10.M, Water Quality and Wastewater Pollution.

810 D. Sewage Disposal

811 (1) Sewers.

812 (a) As per Chapter 13.1, Sewer Service System, connection to public sewer is required,
813 provided said sewer, located within an abutting public way, is within 100 feet of the
814 property line as measured along the said public way. Individual dwellings and structures in
815 approved and recorded developments where public sewer becomes available as described in
816 this subsection must connect per the requirements of Title 13, Chapter 13.1.

817 (b) Notwithstanding the provision above and Chapter 13.1, connection to public sewer is
818 required for a commercial or industrial development or a residential subdivision, where
819 public sewer, within an abutting public way, is within 1,000 feet of the property line as
820 measured along said public way. In such an event, the developer shall connect to public
821 sewer per the Town’s Superintendent of Sewer Services (SSS) specifications and in
822 accordance with Title 13. The developer shall provide written certification to the Planning
823 Board from the SSS that the proposed addition to public sewer is within the capacity of the
824 collection and wastewater treatment system.

825 (c) Sewer mains, service lines and related improvements must be installed at the developer’s
826 expense. Service lines must extend to each lot’s boundary line. Connections to public sewer
827 must be installed in accordance with this article and Chapter 13.1, Sewer Service System, of
828 the Kittery Town Code.

829 (d) Proposal and construction drawings must be approved in writing by the Town’s SSS. All
830 required approvals must be secured before the start of final plan review.

831 (e) When public sewer connection pursuant to Subsection B above is not feasible as
832 determined by the Planning Board, the Board may allow individual or common subsurface
833 wastewater disposal systems in accordance with § 16.8.10.D(2), below. To determine
834 feasibility, the developer shall submit information that considers the unique physical
835 circumstances of the property and sewer connection alternatives to conventional
836 construction/installation techniques, such as, but not limited to, horizontal/directional boring
837 and low-pressure sewer. The developer’s information must be accompanied by findings and
838 recommendations of the Town Peer Review Engineer. In determining feasibility, the Board
839 may not base its decision solely on additional costs associated with a sewer connection. The
840 intent of this subsection is not to avoid the requirements of Chapter 13.1, Sewer Service
841 System, of the Kittery Town Code.

842 (2) Subsurface wastewater disposal systems.

843 (a) The developer shall submit plans for subsurface wastewater disposal designed by a Maine
844 licensed site evaluator in full compliance with the requirements of the State of Maine
845 Plumbing Code, Subsurface Wastewater Disposal Rules, and this title. Subsurface
846 wastewater disposal systems (SWDS) must be constructed according to the approved plan.

847 (b) All first-time subsurface wastewater disposal systems must be installed in conformance
848 with State of Maine Subsurface Wastewater Disposal Rules and this title. The following also
849 apply:

850 [1] The minimum setback distance for a first-time subsurface disposal system may not be
851 reduced by variance.

852 [2] Clearing or removal of woody vegetation necessary to site a first-time system, and
853 any associated fill extensions may not extend closer than is allowed in the table in §
854 16.5.30, Minimum Setbacks from Wetlands and Water Bodies, for subsurface sewage
855 disposal.

856 (c) Replacement of subsurface wastewater disposal systems (SWDS) for existing legal uses:

857 [1] Where no expansion is proposed, the SWDS must comply with § 16.8.10.D(2) and
858 Table 16.5.30 to the extent practicable and otherwise are allowed per the Maine
859 Subsurface Wastewater Disposal Rules; or

860 [2] Where expansion is proposed, the SWDS must comply with § 16.8.10.D(2) and Table
861 16.5.30 in addition to the Maine Subsurface Wastewater Disposal Rules.

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

864 (d) Subsurface wastewater disposal systems on unimproved lots created after April 26, 1990.
865 Where public sewer connection is not feasible, the developer must submit evidence of soil
866 suitability for subsurface wastewater disposal systems, i.e., test pit data and other
867 information as required by the State of Maine Subsurface Wastewater Disposal Rules and
868 this title. In addition:

869 [1] On lots with a limiting factor identified as being within 24 inches of the surface, a
870 second site with suitable soils must be shown as a reserve area for future replacement
871 should the primary site fail. Such reserve area is to be shown on the plan; not be built
872 upon; and, must comply with all the setback requirements of the Subsurface
873 Wastewater Disposal Rules and this title.

874 [2] In no instance may a primary or reserve disposal area be permitted on soils or on a lot
875 requiring a first-time system variance request per the State of Maine Subsurface
876 Wastewater Disposal Rules.

877 [3] Test pits must be of sufficient numbers (a minimum of two) and so located at
878 representative points within each disposal area (primary and reserve sites) to ensure
879 that the proposed disposal system can be located on soils and slopes that meet the
880 criteria of the State of Maine Subsurface Wastewater Disposal Rules and the State
881 Plumbing Code. All passing and failing test pits must be shown on the plan.

882 (e) The developer shall install advanced pretreatment to subsurface wastewater disposal
883 systems that are located inside or within 100 feet of areas that include a sand and gravel
884 aquifer as indicated on the Maine Department of Agriculture, Conservation and Forestry
885 (DACF) Geological Survey Maps or determined by Maine DACF staff.

886 (3) Holding tanks.

- 887 (a) Holding tanks are not allowed for a first-time residential use.
- 888 (4) (Reserved)
- 889 (5) Sanitary facilities/restrooms.
- 890 (a) Any development containing a retail use or a food service use, or a combination thereof,
891 exceeding 10,000 square feet must provide public toilet facilities in accordance with
892 Subsections b., c., and d. of this section.
- 893 (b) Public toilet facilities are to consist of at least one separate toilet for each sex; be clearly
894 marked; maintained in a sanitary condition and in good repair. Lavatory facilities must be
895 located within or immediately adjacent to all toilet rooms or vestibules. There may be no
896 charge for their use.
- 897 (c) Where a retail development exceeds 60,000 square feet, each toilet facility must contain a
898 minimum of two water closets.
- 899 (d) Requirements for handicapped accessibility to sanitary facilities are pursuant to
900 applicable state standards.
- 901 E. Stormwater and Surface Drainage
- 902 (1) Adequate provision must be made for drainage of all stormwater generated with the
903 development and any drained groundwater through a management system of natural and
904 constructed features. Where possible, existing natural runoff control features, such as
905 berms, swales, terraces and wooded areas must be retained to reduce runoff and encourage
906 infiltration of storm waters. Otherwise, drainage may be accomplished by a management
907 system of constructed features such as swales, culverts, underdrains and storm drains.
- 908 (2) To ensure proper functioning, stormwater runoff control systems must be maintained in
909 good working order per § 16.8.10.F. Post-construction stormwater management.
- 910 (3) Where a development is traversed by a stream, river or surface water drainageway, or
911 where the Planning Board determines that surface runoff should be controlled, easements
912 and or drainage rights-of-way must be provided which conform substantially to the lines of
913 existing natural drainage paths. The minimum width of the drainage easements or rights-of-
914 way is 30 feet.
- 915 (a) The minimum pipe size for any storm drainage pipe must be 12 inches. Maximum trench
916 width at the pipe crown must be the outside diameter of the pipe plus two feet. The pipe
917 must be bedded in a fine granular material, containing no stones larger than three inches,
918 lumps of clay, or organic matter, reaching a minimum of six inches below the bottom of the
919 pipe extending to six inches above the top of the pipe.
- 920 (b) Except for normal thinning and landscaping, existing vegetation must be left intact to
921 prevent soil erosion.
- 922 (4) When proposed development does not require Maine Department of Environmental
923 (MDEP) approval under MDEP Chapters 500 and 502, the following applies:
- 924 (a) All components of the stormwater management system must be designed to limit peak
925 discharge to predevelopment levels for the two-year and twenty-five-year, twenty-four-hour
926 duration, frequencies, based on the rainfall data for Portsmouth, NH. When the development
927 discharges directly to a major water body, peak discharge may be increased from
928 predevelopment levels, provided downstream drainage structures are suitably sized.
- 929 (b) The stormwater management system must be designed to accommodate upstream

930 drainage, taking into account existing conditions and approved or planned developments not
 931 yet built and must include a surplus design capacity factor of 25% for potential increases in
 932 upstream runoff.

933 (c) Downstream drainage requirements must be studied to determine the effect of the
 934 proposed development. The storm drainage must not overload existing or future planned
 935 storm drainage systems downstream from the development. The developer is responsible for
 936 financing any improvements to existing drainage systems required to handle the increased
 937 storm flows.

938 [1] Wherever the storm drainage system is not within the right-of-way of a public street,
 939 perpetual easements must be provided to the Town allowing maintenance and
 940 improvement to the system.

941 [2] All sediment and erosion control measures must be designed in accordance with
 942 MDEP's "Maine Erosion and Sediment Control BMPs," March 2003.

943 [3] Catch basins in streets and roads must be installed where necessary and located at the
 944 curblineline. In parking lots and other areas, catch basins must be located where
 945 necessary to ensure proper drainage.

946 [4] Where soils require a subsurface drainage system, the drains must be installed and
 947 maintained separately from the stormwater drainage system.

948 [5] Where the Board has required a stormwater management and erosion control plan and
 949 MDEP approval under Chapters 500 and 502 is not required, said plan must be
 950 endorsed by the York County Soil and Water Conservation District.

951 [6] Drainage easements for existing or proposed drainageways located outside a public
 952 way must be maintained and/or improved in accordance with § 16.8.10.F, Post-
 953 construction stormwater management.

954 F. Post-construction stormwater management.

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

965 (2) Authority. The Maine Department of Environmental Protection, through its dissemination
 966 of the General Permit for the Discharge of Stormwater from Small Municipal Separate
 967 Storm Sewer Systems, has listed the Town of Kittery, Maine, as having a regulated small
 968 municipal separate storm sewer system ("small MS4"); under this general permit, listing as
 969 a regulated small MS4 requires enactment of this section as part of the Town's stormwater
 970 management program in order to satisfy the minimum control measures required by Part IV
 971 D 5 ("Post-construction stormwater management in new development and redevelopment").

972 (3) Applicability.

973 (a) In general. This section applies to all new development or redevelopment (any

974 construction activity on premises already improved that alters stormwater drainage patterns)
975 including one acre or more of disturbed area, or activity with less than one acre of total land
976 area that is part of a subdivision, if the subdivision will ultimately disturb an area equal to or
977 greater than one acre.

978 (b) Exception. This section does not apply to new development or redevelopment on a lot,
979 tract or parcel where that lot, tract or parcel is part of a subdivision that has received
980 approval of its post-construction stormwater management plan and stormwater management
981 facilities under the Town's subdivision or other zoning, planning or other land use
982 ordinances; said lot, tract or parcel will not require additional review under this section but
983 must comply with the post-construction stormwater management plan for that approved
984 subdivision.

985 (c) Post-construction stormwater management plan approval.

986 [1] General requirement. Notwithstanding any ordinance provision to the contrary, and
987 except as provided in § 16.8.10.F(3)(b), Exception, no applicant for a building permit,
988 subdivision approval, site plan approval or other zoning, planning or other land use
989 approval for new development or redevelopment to which this section is applicable
990 will receive such permit or approval for that new development or redevelopment
991 unless the applicant also receives approval for its post-construction stormwater
992 management plan and stormwater management facilities.

993 [2] Notice of BMP discharge to Town's MS4. At the time of application for a building
994 permit, subdivision approval, site plan approval or other zoning, planning or other
995 land use approval for new development or redevelopment to which this section is
996 applicable, the applicant must notify the Town Planner if its post-construction
997 stormwater management plan includes any BMP(s) that will discharge to the Town's
998 MS4 and must include in this notification a listing of which BMP(s) will so
999 discharge.

1000 [3] Engineering and administrative fees. At the time of application, the applicant must
1001 pay an amount to the Town estimated to be sufficient to pay the engineering review
1002 costs and administrative costs incurred by the Town in review of the post-
1003 construction stormwater management plan. The Town will deduct from this amount
1004 the engineering and administrative costs incurred by the Town based upon the hours
1005 of engineering review time and prevailing hourly rate for reimbursement of the
1006 Town's administrative costs. Any remaining engineering and administrative review
1007 costs owed by the applicant must be paid in full by the applicant prior to the issuance
1008 of any temporary or permanent certificate of occupancy, and any unused balance
1009 remaining at that time will be refunded to the applicant.

1010 (d) Post-construction stormwater management plan compliance.

1011 [1] General requirements. Any person owning, operating, leasing or having control over
1012 stormwater management facilities required by a post-construction stormwater
1013 management plan approved under the Town's subdivision, site plan or other zoning,
1014 planning or other land use ordinances must demonstrate compliance with that plan as
1015 follows:

1016 [a] That person or a qualified post-construction stormwater inspector hired by that
1017 person must, at least annually, inspect the stormwater management facilities in
1018 accordance with all municipal and state inspection, cleaning and maintenance

- 1019 requirements of the approved post-construction stormwater management plan;
- 1020 [b] If the stormwater management facilities require maintenance to function as
- 1021 intended by the approved post-construction stormwater management plan, that
- 1022 person must take corrective action(s) to address the deficiency or deficiencies;
- 1023 and
- 1024 [c] That person or a qualified post-construction stormwater inspector hired by that
- 1025 person must, on or by July 1 of each year, provide a completed and signed
- 1026 certification to the Code Enforcement Officer in a form provided by the Town,
- 1027 certifying that the person has inspected the stormwater management facilities
- 1028 and that they are adequately maintained and functioning as intended by the
- 1029 approved post-construction stormwater management plan or that they require
- 1030 maintenance or repair, describing any required maintenance and any
- 1031 deficiencies found during inspection of the stormwater management facilities,
- 1032 and if the stormwater management facilities require maintenance or repair of
- 1033 deficiencies in order to function as intended by the approved post-construction
- 1034 stormwater management plan, the person must provide a record of the
- 1035 required maintenance or deficiency and corrective action(s) taken.
- 1036 [2] Right of entry. In order to determine compliance with this section and with the post-
- 1037 construction stormwater management plan, the Code Enforcement Officer may enter
- 1038 upon property at reasonable hours with the consent of the owner, occupant or agent to
- 1039 inspect the stormwater management facilities.
- 1040 (e) Annual report. Beginning July 1, 2009, and each year thereafter, the Town must include
- 1041 the following in its annual report to the Maine Department of Environmental Protection:
- 1042 [1] Cumulative number of sites that have stormwater management facilities discharging
- 1043 into its MS4;
- 1044 [2] Summary of the number of sites that have stormwater management facilities
- 1045 discharging into its MS4 that were reported to the Town;
- 1046 [3] Number of sites with documented functioning stormwater management facilities; and
- 1047 [4] Number of sites that require routine maintenance in order to continue the original line
- 1048 and grade, the hydraulic capacity, and the original purpose of improvements; or
- 1049 remedial action to ensure that stormwater management facilities are functioning as
- 1050 intended.
- 1051 (f) Enforcement. It is the duty of the Code Enforcement Officer to enforce the provisions of
- 1052 this section and take appropriate actions to seek the correction of violations. Enforcement of
- 1053 the post-construction stormwater management regulations are conducted in accordance with
- 1054 Chapter 16.2.
- 1055 (4) Storm drainage construction standards.
- 1056 (a) Materials:
- 1057 [1] Reinforced concrete pipe must meet the requirements of ASTM Designation C-76
- 1058 (AASHTO M170). Pipe classes are required to meet the soil and traffic loads with a
- 1059 safety factor of 1.2 on the 0.01-inch crack strength with Class B bedding. Joints are to
- 1060 be of the rubber gasket type, meeting ASTM Designation C443-70, or of an approved
- 1061 performed plastic jointing material such as "Ramnek." Perforated concrete pipe must
- 1062 conform to the requirements of AASHTO M175 for the appropriate diameters.

- 1063 [2] Corrugated metal pipe must be bituminous-coated, meeting the requirements of
 1064 AASHTO Designation M190 Type C for an iron or steel pipe or AASHTO
 1065 Designation M196 for aluminum alloy pipe for sectional dimensions and type of
 1066 bituminous coating. Pipe gauge is to be as required to meet the soil and traffic loads
 1067 with a deflection of not more than 5%.
- 1068 [3] SDR-35 plastic pipe installed in conformance with AASHTO bedding requirements.
- 1069 [4] Aluminized steel (AASHTO M274) and aluminum pipe (AASHTO M46).
- 1070 [5] Catch basins are to be precast concrete truncated cone section construction, meeting
 1071 the requirements of ASTM Designation C478, or precast concrete manhole block
 1072 construction, meeting the requirements of ASTM C139, radial type. Castings are to
 1073 be square cast iron sized for the particular inlet condition with the gratings
 1074 perpendicular to the curbline. Bases may be cast-in-place 3,000 psi twenty-eight-day
 1075 strength concrete or may be of precast concrete, placed on a compacted foundation of
 1076 uniform density. Metal frames and traps must be set in a full mortar bed with tops and
 1077 are to conform to the requirements of AASHTO M103 for carbon steel casings,
 1078 AASHTO M105, Class 30 for gray iron castings or AASHTO M183 (ASTM A283,
 1079 Grade B or better) for structure steel.
- 1080 (g) Drain inlet alignment is to be straight in both vertical and horizontal alignment unless
 1081 specific approval for curvilinear drain is obtained in writing from the Commissioner of
 1082 Public Works.
- 1083 (h) Manholes are to be provided at all changes in vertical or horizontal alignment and at all
 1084 junctions. On straight runs, manholes are to be placed at a maximum of three-hundred-foot
 1085 intervals.
- 1086 (i) Upon completion, each catch basin or manhole must be cleared of all accumulation of
 1087 silt, debris or other foreign matter and kept clean until final acceptance.

1088 G. Vehicular Traffic

- 1089 (1) Adequacy of Road System. Vehicular access to the site shall be on roads which have
 1090 adequate capacity to accommodate the additional traffic generated by the development.
 1091 Intersections on arterial streets within a half (0.5) mile of any entrance road which are
 1092 functioning at a Level of Service of D or better prior to the development shall function at a
 1093 minimum at Level of Service D after development. If any such intersection is functioning at
 1094 a Level of Service E or lower prior to the development, the project shall not reduce the
 1095 current level of service. This requirement may be waived by the Planning Board if the
 1096 project is located within a growth area designated in the Town's adopted Comprehensive
 1097 Plan and the Board determines that the project will not have an unnecessary adverse impact
 1098 on traffic flow or safety.
- 1099 (a) A development not meeting this requirement may be approved if the applicant
 1100 demonstrates that:
- 1101 [1] A public agency has committed funds to construct the improvements necessary to
 1102 bring the level of access to this standard, or
- 1103 [2] The applicant will assume financial responsibility for the improvements necessary to
 1104 bring the level of service to this standard and will assure the completion of the
 1105 improvements with a financial guarantee acceptable to the municipality.
- 1106 (2) Traffic Impact Study. When required by the Planning Board or Staff Review Committee, a

- 1107 Traffic Impact Study will include the following elements related to the project and
1108 surrounding street network.
- 1109 (a) An executive summary outlining the study findings and recommendations.
- 1110 (b) A physical description of the project site and study area encompassed by the report with a
1111 diagram of the site and its relationship to existing and proposed development sites within the
1112 study area.
- 1113 (c) A complete description of the proposed uses for the project site (in cases where specific
1114 uses have not been identified, the highest traffic generators within the category best fitting
1115 the proposed development must be used to estimate traffic generators).
- 1116 (d) Existing land uses and zone(s) in the vicinity of the site must be described. Any proposals
1117 for the development of vacant parcels or redevelopment of parcels within the study area of
1118 which the municipality makes the applicant aware, must be included in the description.
- 1119 (e) Street geometry and existing traffic control devices on all major streets and intersections
1120 affected by the anticipated traffic generated.
- 1121 (f) Trip generation must be calculated for the proposed project and other proposed new
1122 projects and redevelopment projects within the study area using the most recent data
1123 available from the Institute of Transportation Engineers' (ITE) Trip Generation Guide,
1124 and/or actual field data collected from a comparable trip generator (i.e., comparable in size,
1125 location and setting). This data will be presented in a summary table such that assumptions
1126 on trip generation and rates arrived at by the engineer are fully understandable to the
1127 Planning Board.
- 1128 (g) The anticipated trip distribution of vehicles entering and exiting the proposed site during
1129 the appropriate peak hour(s) must be described and diagrammed.
- 1130 (h) Trip assignment, the anticipated utilization of study area streets by traffic generated by
1131 the proposed project, must be described and diagrammed.
- 1132 (i) Existing traffic conditions in the study area will be identified and analyzed based upon
1133 actual field counts and/or recent available machine counts.
- 1134 (j) Existing traffic conditions in the study area will be described and diagrammed,
1135 specifically AADT, appropriate peak design hour(s), traffic volumes, street and intersection
1136 capacities, and levels of service.
- 1137 (k) Existing safety conditions must be evaluated based upon the traffic accident data
1138 available for the most current three years and described including link and node critical rate
1139 factors (CRF).
- 1140 (l) Future traffic conditions on the street system will be estimated based on existing
1141 volumes, projected traffic growth in the general study area, projected traffic from approved
1142 development, and traffic generated by the proposed project, specifically AADT traffic,
1143 appropriate peak hour(s) traffic volumes, street and intersection capacity, street and
1144 intersection levels of service will be analyzed. When other projects are being proposed
1145 within the impact area of the project, the Planning Board may require these projects to be
1146 incorporated into the analysis.
- 1147 (m) When the analysis of the proposed project's impact on traffic indicates unsatisfactory
1148 CRF, levels of service or operating capacity on study area streets and intersections, a
1149 description of proposed improvements to remedy identified deficiencies must be included.

- 1150 (n) The base data collected and analyzed during the course of the traffic impact study.
- 1151 (o) If a development that requires a traffic impact study is within 500 feet of York or Eliot,
- 1152 Maine, or if the study identifies impacts on segments of Route 1 or Route 236 or on their
- 1153 intersections located in York or Eliot, Maine, the applicant must provide evidence that a
- 1154 copy of the impact study has been given to the impacted municipality's chief administrative
- 1155 officer;
- 1156 (3) Access to the Site. Vehicular access to and from the development shall be safe and
- 1157 convenient.
- 1158 (a) Any driveway or proposed street shall be designed so as to provide the minimum sight
- 1159 distance according to the Maine Department of Transportation standards.
- 1160 (b) Points of access and egress shall be located to avoid hazardous conflicts with existing
- 1161 turning movements and traffic flows.
- 1162 (c) The grade of any proposed drive shall be not more than $\pm 3\%$ for a minimum of fifty (50)
- 1163 feet, from the intersection.
- 1164 (d) The intersection of any access/egress drive or proposed street shall function: (a) at a
- 1165 Level of Service of D following development if the project will generate one thousand
- 1166 (1,000) or more vehicle trips per twenty-four (24) hour period.
- 1167 (e) Where a lot has frontage on two (2) or more streets, the primary access to and egress
- 1168 from the lot shall be provided from the street where there is less potential for traffic
- 1169 congestion and for traffic and pedestrians hazards. Access from other streets may be allowed
- 1170 if it is safe and does not promote shortcutting through the site.
- 1171 (f) Where it is necessary to safeguard against hazards to traffic and pedestrians and/or to
- 1172 avoid traffic congestion, the applicant shall be responsible for providing turning lanes,
- 1173 traffic directional islands, and traffic controls within public streets.
- 1174 (g) Accessways shall be designed and have sufficient capacity to avoid queuing of entering
- 1175 vehicles on any public street.
- 1176 (h) The following criteria shall be used to limit the number of driveways serving a proposed
- 1177 project:
- 1178 [1] No use which generates less than one hundred (100) vehicle trips per day shall have
- 1179 more than one (1) two-way driveway onto a single roadway. Such driveway shall be
- 1180 no greater than forty (40) feet wide.
- 1181 [2] No use which generates one hundred (100) or more vehicle trips per day shall have
- 1182 more than two (2) points of entry from and two (2) points of egress to a single
- 1183 roadway. The combined width of all accessways shall not exceed sixty (60) feet.
- 1184 [3] The Planning Board or Technical Review Committee may limit a development to one
- 1185 (1) point of ingress/egress onto US Route 1, Route 236 , and US Route 1 Bypass.
- 1186 (4) Accessway Location and Spacing. Accessways shall meet the following standards:
- 1187 (a) Private entrances/exits shall be located at least fifty (50) feet from the closest
- 1188 unsignalized intersection and one hundred fifty (150) feet from the closest signalized
- 1189 intersection, as measured from the point of tangency for the corner to the point of tangency
- 1190 for the accessway. This requirement may be reduced if the shape of the site does not allow
- 1191 conformance with this standard.
- 1192 (b) Private accessways in or out of a development shall be separated by a minimum of

- 1193 seventy-five (75) feet where possible.
- 1194 (c) Accessways shall be aligned with accessways on the opposite side of a public street to the
1195 greatest extent possible.
- 1196 (5) Internal Vehicular Circulation. The layout of the site shall provide for the safe movement of
1197 passenger, service, and emergency vehicles through the site.
- 1198 (a) Nonresidential projects that will be served by delivery vehicles shall provide a clear route
1199 for such vehicles with appropriate geometric design to allow turning and backing for a
1200 minimum of SU-30 vehicles.
- 1201 [1] If the project is to be served by "tractor-trailer" delivery vehicles, a clear route for
1202 such vehicles with appropriate geometric design shall allow for turning and backing
1203 for a minimum of WB-50 vehicles.
- 1204 (b) Clear routes of access shall be provided and maintained for emergency vehicles to and
1205 around buildings and shall be posted with appropriate signage (fire lane - no parking).
- 1206 (c) The layout and design of parking areas shall provide for safe and convenient circulation
1207 of vehicles throughout the lot.
- 1208 (d) All roadways shall be designed as follows:
- 1209 [1] To harmonize with the topographic and natural features of the site insofar as practical
1210 by minimizing filling, grading, excavation, or other similar activities which result in
1211 unstable soil conditions and soil erosion,
- 1212 [2] By fitting the development to the natural contour of the land and avoiding substantial
1213 areas of excessive grade and tree removal, and by retaining existing vegetation during
1214 construction,
- 1215 [3] The road network shall provide for vehicular, pedestrian, and cyclist safety, all season
1216 emergency access, snow storage, and delivery and collection services.
- 1217 (e) Nonresidential projects that include drive-through services shall be designed and have
1218 sufficient stacking capacity to avoid the queuing of vehicles on any public street.

1219 H. Cluster Residential Development

- 1220 (1) Purpose.
- 1221 To implement adopted Comprehensive Plan policies regarding the Town's natural, scenic,
1222 marine, cultural and historic resources, land use patterns and recreation and open space, this
1223 article is intended to encourage and allow new concepts and innovative approaches to
1224 housing/commercial development and environmental design so development will be a
1225 permanent and long-term asset to the Town, while in harmony with the natural features of
1226 the land, water and surrounding development. Objectives include:
- 1227 (a) Efficient use of the land and water, with small networks of utilities and streets;
- 1228 (b) Preservation of open space and creation of recreation areas;
- 1229 (c) Maintenance of rural character, preserving farmland, forests and rural viewsapes;
- 1230 (d) Preservation of areas with the highest ecological value;
- 1231 (e) Location of buildings and structures on those portions of the site most appropriate for
1232 development;
- 1233 (f) Creation of a network of contiguous open spaces or "greenways" by linking the common
1234 open spaces within the site and to open space on adjoining lands wherever possible;

- 1235 (g) Reduction of impacts on water resources by minimizing land disturbance and the creation
 1236 of impervious surfaces and stormwater runoff;
- 1237 (h) Preservation of historic, archaeological, and cultural features; and
- 1238 (i) Minimization of residential development impact on the municipality, neighboring
 1239 properties and the natural environment.
- 1240 (2) Permitted zones.
- 1241 (a) Cluster residential development is permitted in various zones as indicated in Chapter
 1242 16.4, Land Use Zone Regulations.
- 1243 (3) Dimension standards modifications.
- 1244 Notwithstanding other provisions of this title relating to dimensional standards, the
 1245 Planning Board, in reviewing and approving proposed residential development under this
 1246 article, may modify certain dimensional standards limited to lot area, lot coverage, frontage
 1247 and setback requirements to permit flexibility in approaches to site design in accordance
 1248 with the standards of this title. The Board may allow subdivision or site development with
 1249 the limited modified dimensional standards listed above where the Board determines the
 1250 benefit of a cluster development is consistent with this title. Such modifications may not be
 1251 construed as granting variances to relieve hardship.
- 1252 (4) Property ownership.
- 1253 Tracts or parcels of land involved in a development proposed under this article must be in
 1254 single ownership; or must be the subject of an application filed jointly by the owners of all
 1255 properties included; or must have an applicant with vested interest in all property included.
 1256 Pursuant to the requirements of this article, mobile home parks or mobile homes on
 1257 individual lots are not eligible for cluster residential development.
- 1258 (5) Application procedure.
- 1259 All development reviewed under this article is subject to the application procedures in
 1260 §16.8, Subdivision Review, and the following:
- 1261 (a) In addition to the requirements of § 16.8, Subdivision Review, the following are required
 1262 at submittal of the sketch plan:
- 1263 [1] Calculations and maps to illustrate:
- 1264 [a] Proposed dimensional modifications and the dimensional standards required in
 1265 the zone in which the development will be located;
- 1266 [b] All land area identified in § 16.5.18, Net Residential Acreage;
- 1267 [c] Net residential density; and
- 1268 [d] Open space as defined in § 16.8.10.H(6)(e), of this article.
- 1269 [2] A map showing constraints to development, such as, but not limited to, wetlands,
 1270 resource protection zones, shoreland zones, deer wintering areas, side slopes in excess
 1271 of 33%, easements, rights-of-way, existing roads, driveway entrances and
 1272 intersections, existing structures, and existing utilities.
- 1273 [3] A written statement describing the ways the proposed development furthers the
 1274 purpose and objectives of this article, including natural features which will be
 1275 preserved or enhanced. Natural features include, but are not limited to, moderate-to-
 1276 high-value wildlife and waterfowl habitats, important agricultural soils, moderate-to-
 1277 high-yield aquifers and important natural or historic sites worthy of preservation.

- 1278 [4] The location of each of the proposed building envelopes. Only developments having a
1279 total subdivision or site plan with building envelopes will be considered.
- 1280 (b) An applicant with a project that includes proposed public open space must obtain Town
1281 Council acceptance for the public land or easement following preliminary plan approval.
1282 Town Council acceptance is contingent upon receipt of final plan approval by the Planning
1283 Board.
- 1284 (6) Standards.
- 1285 (a) The purpose and intent of this title must be upheld for any reviews conducted under this
1286 article.
- 1287 (b) A cluster residential development must meet all requirements for a subdivision (and site
1288 plan where applicable) and all other applicable federal, state and local ordinances, except as
1289 modified by action of the Planning Board, where authorized.
- 1290 (c) Public or privately shared sewer and water must be provided unless it is demonstrated to
1291 the Planning Board's satisfaction that alternative methods used result in a development that
1292 is compatible with this section 16.8.10.H.
- 1293 (d) Unless a public or shared sewer collection and treatment system is provided, no lot may
1294 be smaller than 20,000 square feet per single-family residence and 8,000 square feet per
1295 bedroom per multifamily residence as outlined in the Maine Minimum Lot Size Law, 12
1296 M.R.S. § 4807-A.
- 1297 (e) Open space requirements.
- 1298 [1] Open space must contain at least 50% of the total area of the property and no less
1299 than 30% of the total net residential acreage, as defined.
- 1300 [2] Total calculated open space must be designated as follows (see open space definitions
1301 in Chapter 16.3):
- 1302 [a] Open space, reserved;
- 1303 [b] Open space, common; and/or
- 1304 [c] Open space, public.
- 1305 [3] The use of any open space may be further limited or controlled by the Planning Board
1306 at the time of final approval, where necessary, to protect adjacent properties or uses.
- 1307 [4] Open space must be deeded in perpetuity for the recreational amenity and
1308 environmental enhancement of the development and be recorded as such. Such deed
1309 provisions may include deed/plan restrictions, private covenants, or arrangements to
1310 preserve the integrity of open spaces and their use as approved by the Planning
1311 Board.
- 1312 [5] Open space must also be for preserving large trees, tree groves, woods, ponds,
1313 streams, glens, rock outcrops, native plant life, and wildlife cover as identified in the
1314 applicant's written statement. In the Mixed-Use Neighborhood (MU-N) Zone, open
1315 space may be both man-made and natural. Man-made open space must be for the
1316 development of recreational areas, pedestrian ways and aesthetics that serve to
1317 interconnect and unify the built and natural environments.
- 1318 [6] Open space should be in a contiguous form of unfragmented land to protect natural
1319 resources, including plant and wildlife habitats.
- 1320 [7] A portion of the open space should be in close proximity to other open spaces used

- 1321 for recreation (e.g., a common green, multipurpose athletic field, gardens, and
1322 playgrounds).
- 1323 (f) In the Mixed-Use Neighborhood (MU-N) Zone, the maximum building height is 40 feet.
1324 If the Planning Board finds that provisions for fire safety are adequate to allow buildings of
1325 greater height, then the Board may allow a building height of up to 60 feet as a part of the
1326 development plan review and approval process.
- 1327 (g) In cluster residential developments, no individual lot or dwelling unit may have direct
1328 vehicular access onto a public road existing at the time of development.
- 1329 (h) Where cluster residential development abuts a body of water, stream, or a significant
1330 wetland, then a usable portion of the shoreline, as well as reasonable access to such body,
1331 stream or wetland, must be a part of the commonly held land.
- 1332 (i) The developer must take into consideration the following points, and illustrate the
1333 treatment of buildings, structures, spaces, paths, roads, service and parking areas,
1334 recreational facilities, and any other features determined by the Planning Board to be a part
1335 of the proposed development.
- 1336 [1] Orientation. Buildings, view corridors and other improvements are to be designed so
1337 scenic vistas and natural features are integrated into the development. Buildings
1338 should be sited to consider natural light and ventilation.
- 1339 [2] Utility installation. All utilities are to be installed underground, wherever possible.
1340 The Planning Board must require the developer to adopt a prudent avoidance
1341 approach when permitting aboveground electrical service installations. Transformer
1342 boxes, pumping stations and meters must be located so as not to be unsightly or
1343 hazardous to the public.
- 1344 [3] Recreation. Facilities must be provided consistent with the development proposal.
1345 Active recreation requiring permanent equipment and/or modification of the site may
1346 not be located within the wetland setback areas or contiguous reserved open space
1347 areas.
- 1348 [4] Buffering. Planting, landscaping, form and siting of buildings and other
1349 improvements, or fencing and screening must be used to integrate the proposed
1350 development with the landscape and the character of any surrounding development.
- 1351 [5] Development setbacks. Setbacks from wetlands and water bodies must demonstrate
1352 compliance to Table 16.5.30. These setbacks must be permanently maintained as "no
1353 cut, no disturb" buffer areas. If the setback areas are not of substantial vegetation to
1354 provide a sufficient buffer, the Planning Board may require additional plantings.
- 1355 (j) The location of subsurface wastewater disposal systems and a reserve area, if required,
1356 must be shown on the plan. The reserve areas must be restricted so as not to be built upon.
1357 The report of a site evaluator, licensed by the State of Maine, must accompany the plan. If
1358 the subsurface disposal system is an engineered system, approval from the Maine
1359 Department of Human Services, Division of Health Engineering, and the Municipal
1360 Plumbing Inspector must be obtained prior to Planning Board approval.
- 1361 (7) Open space dedication and maintenance.
- 1362 (a) Prior to approval of the final plan by the Planning Board, documents for open space must
1363 be submitted to the Town for review by legal counsel. Subsequent to approval, there may be
1364 no further division of the open space; however, tracts or easements dedicated for public

- 1365 utilities, public access or structures accessory to noncommercial recreation, agriculture or
 1366 conservation may be permitted within the open space.
- 1367 (b) The open space(s) must be shown on the development plan with appropriate notation on
 1368 the face thereof to indicate that:
- 1369 [1] The open space must not be used for future building lots; and
 1370 [2] A part or all of the open space may be dedicated for acceptance by the Town.
- 1371 (c) If any, or all, of the open space is to be reserved for ownership by the residents and/or by
 1372 commercial entities, the bylaws of the proposed homeowners' or similar governing
 1373 association for commercial owners (in the Mixed-Use Neighborhood Zone) and/or the
 1374 recorded covenants must specify maintenance responsibilities and be submitted to the
 1375 Planning Board prior to approval. See Subsection A above.
- 1376 (d) Association responsibilities.
- 1377 [1] Maintenance. The homeowners' association or similar association for commercial
 1378 owners is responsible for the maintenance of open space(s) and other common
 1379 facilities unless and until accepted by the Town. The stormwater management system
 1380 must be maintained in accordance with § 16.8.10.F, Post-construction stormwater
 1381 management. Associations must maintain adequate funds to defray these expenses.
 1382 The Planning Board shall require an initial capital fund for associations to be paid by
 1383 the developer to cover these expenses.
- 1384 [2] Inspection. Annually, by June 30, the developer or association must complete and
 1385 submit to the Code Enforcement Officer a maintenance compliance report, on a form
 1386 prepared by the Code Enforcement Officer, certifying compliance with any open
 1387 space use and protection requirements. Said report must be completed by a Maine
 1388 licensed civil engineer or certified soil scientist.
- 1389 (e) Transition of responsibility. The developer must maintain control of such open space(s)
 1390 and be responsible for maintenance until development, sufficient to support any and all
 1391 associations, residential or commercial, has taken place. Responsibility and authority must
 1392 be clearly defined and described in the recorded covenants, and such information must be
 1393 distributed to any and all associations in a timely manner so the transition of responsibilities
 1394 is seamless.
- 1395 (8) Predevelopment requirements.
 1396 Prior to the beginning of site work, the applicant must file with the Town Planning
 1397 Department all required performance guarantees and inspection escrows in forms
 1398 acceptable to the Town Manager in accordance with § 16.8.11.F.
- 1399 I. Utilities
- 1400 (1) Approval.
 1401 The size, type and location of public utilities, such as streetlights, electricity, telephone,
 1402 cable television, natural gas lines, fire hydrants, water and sewer lines, etc., must be
 1403 approved by the Board and installed in accordance with accepted engineering practice.
- 1404 (2) Underground installation.
 1405 Utilities, where feasible, are to be installed underground. The Board must require the
 1406 developer to adopt a prudent avoidance approach when aboveground electrical installations
 1407 are approved.
- 1408 J. Subdivision Noise Pollution Buffer

- 1409 (1) Green strip.
 1410 Subdivision design must minimize the possibility of noise pollution either from within or
 1411 without the development (from highway or industrial sources) by providing and
 1412 maintaining a green strip at least 20 feet wide between the abutting properties that are so
 1413 endangered.
- 1414 K. Prevention of erosion
- 1415 (1) No person may perform any act or use the land in a manner which would cause substantial
 1416 or avoidable erosion, create a nuisance, or alter existing patterns of natural water flow in
 1417 the Town. This does not affect any extractive operations complying with the standards of
 1418 performance specified elsewhere in this title.
- 1419 (a) When an excavation contractor, as defined in § 16.3, performs an activity that requires or
 1420 results in more than one cubic yard of soil disturbance within the Shoreland or Resource
 1421 Protection Overlay Zones, there must be a person responsible for management of erosion
 1422 and sedimentation control practices on site, and that person must be certified in erosion
 1423 control practices by the Maine Department of Environmental Protection. This person must
 1424 be present at the site each day earthmoving activity occurs for a duration that is sufficient to
 1425 ensure that proper erosion and sedimentation control practices are followed. This is required
 1426 until erosion and sedimentation control measures have been installed, which will either stay
 1427 in place permanently or stay in place until the area is sufficiently covered with vegetation
 1428 necessary to prevent soil erosion. The name and certification number of the person who will
 1429 oversee the activity causing or resulting in soil disturbance must be included on the permit
 1430 application. Excavation contractors will have one year from the date of the adoption of this
 1431 subsection to comply with certification requirements.
- 1432 (b) The above requirement of § 16.8.10.K(1)(a) does not apply to a property owner
 1433 performing work themselves, or a person or firm engaged in agriculture or timber harvesting
 1434 when best management practices for erosion and sedimentation control are used.
- 1435 (c) The above requirement of § 16.8.10.K(1)(a) only applies to regulated activities requiring
 1436 local, state or federal permits and/or Planning Board approval.
- 1437 (2) All development must generally comply with the provisions of the "Environmental Quality
 1438 Handbook, Erosion and Sediment Control," published by the Maine Soil and Water
 1439 Conservation Commission.
- 1440 (a) The developer must:
- 1441 [1] Select a site with the right soil properties, including natural drainage and topography,
 1442 for the intended use;
- 1443 [2] Utilize for open space uses those areas with soil unsuitable for construction;
- 1444 [3] Preserve trees and other vegetation wherever possible;
- 1445 [4] Hold lot grading to a minimum by fitting the development to the natural contour of
 1446 the land; avoid substantial areas of excessive grade;
- 1447 [5] Spread jute matting, straw or other suitable material during construction in critical
 1448 areas subject to erosion;
- 1449 [6] Construct sediment basins to trap sediment from runoff waters during development;
 1450 expose as small an area of subsoil as possible at any one time during development
 1451 and for as short a period as possible;

- 1452 [7] Provide for disposing of increased runoff caused by changed land formation, paving
 1453 and construction, and for avoiding sedimentation of runoff channels on or off the site;
- 1454 [8] Plant permanent and, where applicable, indigenous, vegetation and install structures
 1455 as soon as possible for the purpose of soil stabilization and revegetation;
- 1456 (b) All logging or woodlot roads must be located, constructed and maintained in
 1457 conformance with the erosion prevention provisions of "Permanent Logging Roads for
 1458 Better Woodlot Management," published by the United States Department of Agriculture.
- 1459 (3) Where the Board has required a stormwater management and erosion control plan, said plan
 1460 must be endorsed by the York County Soil and Water Conservation District or found
 1461 satisfactory by the Town's Engineering Peer Reviewer.
- 1462 (4) All activities which involve filling, grading, excavation or other similar activities that
 1463 potentially may result in unstable soil conditions, and which require a permit, must be made
 1464 known in a written soil erosion and sedimentation control plan in accordance with the
 1465 "Maine Erosion and Sediment Control Practices Field Guide for Contractors," 2015, and as
 1466 amended. The plan must be submitted to the permitting authority for approval and must
 1467 include, where applicable, provisions for:
- 1468 (a) Mulching and revegetation of disturbed soil;
- 1469 (b) Temporary runoff control features, such as straw bales, silt fencing, filter socks or
 1470 diversion ditches;
- 1471 (c) Permanent stabilization structures, such as retaining walls or riprap.
- 1472 (5) To create the least potential for erosion, development must be designed to fit with the
 1473 topography and soil of the site. Areas of steep slopes where high cuts and fills may be
 1474 required are to be avoided wherever possible, and natural contours must be followed as
 1475 closely as possible.
- 1476 (6) Erosion and sedimentation control measures apply to all aspects of the proposed project
 1477 involving land disturbance and must be in operation during all stages of the activity. The
 1478 amount of exposed soil at every phase of construction must be minimized to reduce the
 1479 potential for erosion.
- 1480 (7) Any exposed ground area must be temporarily or permanently stabilized in accordance with
 1481 the ""Maine Erosion and Sediment Control Practices Field Guide for Contractors," 2015,
 1482 and as amended. All erosion control measures that are no longer necessary as determined
 1483 by the CEO or Shoreland Resource Officer must be removed at the owner's expense.
- 1484 (8) Natural and man-made drainageways and drainage outlets must be protected from erosion
 1485 from water flowing through them. Drainageways must be designed and constructed in order
 1486 to carry water from a twenty-five-year storm or greater and be stabilized with vegetation or
 1487 lined with riprap.
- 1488 L. Soil suitability
- 1489 (1) The requirements and standards of the State of Maine Department of Environmental
 1490 Protection, Department of Health and Welfare, the latest edition of the State Plumbing
 1491 Code and this title must be met.
- 1492 (2) All land uses must be located on soils upon which the proposed uses or structures can be
 1493 established or maintained without causing adverse environmental effects, including, but not
 1494 limited to, severe erosion, mass soil movement, improper drainage, and water pollution to

- 1495 surface water and groundwater, whether during or after construction.
- 1496 (3) Any proposed development requires a soil report based on information from the Maine
 1497 Natural Resources Conservation Service (NRCS). Where subsurface wastewater disposal is
 1498 required and the Soil Survey for York County or information from the Maine NRCS shows
 1499 soils with severe restrictions for development, a Class A (high-intensity) soil survey must
 1500 be provided by a soil scientist certified in the State of Maine. The survey must be based on
 1501 the Maine Association of Professional Soil Scientists Standards for Soil Survey, revised
 1502 3/2009, or subsequent revision. In addition to evaluating soil properties, the soil scientist
 1503 shall analyze and document characteristics of surrounding land and water areas, maximum
 1504 groundwater elevation, presence of ledge, drainage conditions and any other data deemed
 1505 appropriate by the soil scientist or required by the Planning Board. The soil scientist shall
 1506 include recommendations for the proposed use to counteract soil limitations where any
 1507 exist. A Class A soil survey must include a written soil narrative report accompanied by a
 1508 soil map that depicts soil delineations and symbols identified in the report. The soil map
 1509 must be prepared at the same scale as that of the development plan, with wetlands and
 1510 floodplain depicted on both.
- 1511 (4) Cluster residential, or mixed-use development and similar intensive land uses require a
 1512 Class A (high-intensity) soil survey by a Maine-certified soil scientist.
- 1513 (5) Where non-clustered development is limited in scale and intensity, the developer may
 1514 request the Class A (high-intensity) soil survey required by § 16.8.10.L(3) above be waived
 1515 by the Planning Board. The Board may grant said waiver only after consideration by the
 1516 Town's Peer Review Engineer of the developer's explanation as to why a Class A soil
 1517 survey is not warranted. In the event a Class A soil survey is not required, the site's soil
 1518 suitability must be sufficiently assessed for compliance with this title.
- 1519 M. Water quality and wastewater pollution.
- 1520 (1) No activity is allowed to deposit on or into the ground or discharge to any river, stream or
 1521 brook, pond, or wetland any pollutant that, by itself or in combination with other activities
 1522 or substances, will impair designated uses or the water classification of the water body.
- 1523 (2) Wastewater to be discharged into Kittery Sewer Department sewers, should they be
 1524 available, must be in such quantities and/or of such quality as to be compatible with
 1525 standards established by the municipality or the Sewer Department.
- 1526 (3) To meet those standards, the municipality or Sewer Department may require that such
 1527 wastes undergo pretreatment or full treatment at the site in order to render them acceptable
 1528 for the treatment processes.
- 1529 (4) The disposal of wastewater by means other than a public system must comply with the laws
 1530 of the State of Maine and the Town concerning water pollution. Where a public sanitary
 1531 sewer system is located within 200 feet of the property line as measured along a public
 1532 way, the Town requires individual entrance into said sewer.
- 1533 (5) Discharge of sanitary wastes to any water body is subject to the issuance of Maine State
 1534 Department of Environmental Protection licenses, but no such off-site discharge will be
 1535 allowed unless same is buried or not visible to a point below normal low water and is
 1536 secured against damage and uncovering by the tides, erosion or other foreseeable action.
- 1537 N. Floodplain areas.
- 1538 (1) Land along rivers, streams and ponds which is subject to flooding through storm or

1539 seasonal action, called floodplain areas, may be used for woodland, grassland, agricultural
 1540 or outdoor recreational use. The Code Enforcement Officer shall maintain a map showing
 1541 the latest updated federal and state information of the known floodplain areas, and no
 1542 building shall be constructed therein when there are undue flooding hazards, unless it can
 1543 meet all requirements of § 16.5.11, Floodplain Management, relating to flood hazard permit
 1544 and review procedure, of this title. Floodplain areas shall be considered as those areas
 1545 within the one-hundred-year frequency floodplain, as identified by an authorized federal or
 1546 state agency, or where such identification is not available, are located on floodplain soils
 1547 identified as described in the York County Soil Survey to comprise the following soil
 1548 types: Alluvial-Ondawa fsl; Podunk fsl; Rumney fsl; Saco sl.

1549 O. Retention of Open Spaces and Natural or Historic Features

1550 (1) Tree clearing.

1551 Proposed development plans must, by notes on the final plan and deed restrictions, limit the
 1552 clearing of trees to those areas designated on the plans.

1553 (2) Clearing or removal of vegetation for uses other than timber harvesting in Resource
 1554 Protection or Shoreland Overlay Zone.

1555 (a) In a Resource Protection or Shoreland Overlay Zone, cutting of vegetation is prohibited
 1556 within the strip of land extending 100 feet, horizontal distance, inland from the normal high-
 1557 water line, except to remove safety hazards. Elsewhere in a Resource Protection or
 1558 Shoreland Overlay Zone, the cutting or removal of vegetation is limited to that which is
 1559 necessary for uses expressly authorized in the Resource Protection or Shoreland Overlay
 1560 Zone.

1561 (b) Except in areas as described in § 16.8.10.O(1) and § 16.8.10.O(2).a, above and 100 feet,
 1562 horizontal distance, from any other water body, tributary stream or the upland edge of a
 1563 wetland, a buffer strip of vegetation must be preserved as follows:

1564 [1] Clearance of an opening greater than 250 square feet in the forest canopy, or other
 1565 existing woody vegetation if a forested canopy is not present, as measured from the
 1566 outer limits of the tree or shrub crown, is prohibited. However, a footpath not to
 1567 exceed six feet in width as measured between tree trunks and/or shrub stems is
 1568 allowed, provided that a cleared line of sight to the water through the buffer strip is
 1569 not created.

1570 [2] Selective cutting of trees within the buffer strip is allowed, provided a well-
 1571 distributed stand of trees and other natural vegetation is maintained. Adjacent to
 1572 water bodies, tributary streams and wetlands, a "well-distributed stand of trees" is
 1573 defined as maintaining a minimum rating score of 16 per twenty-five-foot-by-fifty-
 1574 foot rectangular area.

Diameter of Tree at 4 1/2 feet Above Ground Level (inches)	Points
2 to < 4	1

1575

Diameter of Tree at 4 1/2 feet Above Ground Level (inches)	Points
4 to < 8	2
8 to < 12	4
12 or greater	8

1576

[a] The following governs in applying this point system:

1577

[i] The twenty-five-foot-by-fifty-foot rectangular plots must be established where the landowner or lessee proposes clearing within the required buffer;

1578

[ii] Each successive plot must be adjacent to, but not overlap a previous plot;

1579

[iii] Any plot not containing the required points must have no vegetation removed except as otherwise allowed by this title;

1580

[iv] Any plot containing the required points may have vegetation removed down to the minimum points required or as otherwise allowed by this title; and

1581

[v] 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.

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[3] For the purposes of § 16.8.10.O(2)(b)[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.

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[4] 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.

1593

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1595

[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 § 16.8.10.O.(2)[b] above.

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

1600

[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.

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[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

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- 1609 the minimum area necessary.
- 1610 (c) At distances greater than 100 feet, horizontal distance, from the normal high-water line of
 1611 any other water body, tributary stream, or the upland edge of a coastal wetland, and 100 feet,
 1612 horizontal distance, from the normal high-water line of any other water body, tributary
 1613 stream, or the upland edge of a wetland, there will be allowed on any lot, in any ten-year
 1614 period, selective cutting of not more than 40% of the volume of trees four inches or more in
 1615 diameter, measured 4 1/2 feet above ground level. Tree removal in conjunction with the
 1616 development of permitted uses must be included in the forty-percent calculation. For the
 1617 purposes of these standards, volume may be considered to be equivalent to basal area.
- 1618 (d) It is not permissible to clear openings for any purpose, including but not limited to
 1619 principal and accessory structures, driveways, lawns and sewage disposal areas, exceeding
 1620 in the aggregate 25% of the lot area within the Resource Protection or Shoreland Overlay
 1621 Zone or 10,000 square feet, whichever is greater, including land previously cleared. This
 1622 provision does not apply to the Commercial Fisheries/Maritime Activities Zones.
- 1623 (e) Legally existing nonconforming cleared openings may be maintained, but must not be
 1624 enlarged, except as allowed by this title.
- 1625 (f) Fields and other cleared openings which have reverted to primarily shrubs, trees or other
 1626 woody vegetation will be regulated under the provisions of this chapter.
- 1627 (3) Land dedication.
 1628 Reserved land acceptable to the Planning Board and applicant may be gifted to the
 1629 municipality as a condition of approval, only when Council has agreed to the gifting.
- 1630 (4) Landscape plan for preservation of natural and historic features.
 1631 (a) The applicant is required to submit a proposed development design plan(s) that includes a
 1632 landscape plan showing:
 1633 [1] Preservation of existing trees 10 inches or more caliper at breast height;
 1634 [2] Replacement of trees and vegetation;
 1635 [3] Graded contours;
 1636 [4] Streams, wetlands and water bodies; and
 1637 [5] Preservation of scenic, historic or environmentally significant areas.
- 1638 (b) Cutting of trees on the northerly borders of lots should be avoided as far as possible to
 1639 provide a natural wind buffer.
- 1640 (c) Unless the applicant can demonstrate it is impracticable, street and lot layout must be
 1641 adapted to the topography. Extensive grading and filling must be avoided as much as
 1642 possible.
- 1643 (5) Archaeological or historic sites.
 1644 (a) When the proposed development contains any identified archaeological or historic sites
 1645 or any areas identified by the Maine Critical Areas Program as rare and irreplaceable natural
 1646 areas, these areas must be included in a development plan's open space, and suitably
 1647 protected by appropriate covenants and management plans.
- 1648 (b) Any proposed land use activity involving structural development or soil disturbance on
 1649 or adjacent to sites listed on or eligible to be listed on the National Register of Historic
 1650 Places must be submitted by the applicant to the Maine Historic Preservation
 1651 Commission for review and comment at least 20 days prior to action being taken by the

- 1652 Town Planner and/or the Planning Board. The development Review Authority will
 1653 consider comments received from the Commission prior to rendering a decision on the
 1654 application.
- 1655 (c) In Shoreland, Resource Protection or Commercial Fisheries/Maritime Uses Overlay
 1656 Zones, a permit is not required for an archaeological excavation, provided the excavation
 1657 is conducted by an archaeologist listed on the State Historic Preservation Officer's Level
 1658 1 or Level 2 approved list, and unreasonable erosion and sedimentation is prevented by
 1659 means of adequate and timely temporary and permanent stabilization measures.
- 1660 P. Technical and Financial Capacity
- 1661 (1) Financial Capacity.
- 1662 (a) The applicant shall have adequate financial resources to construct the proposed
 1663 improvements and meet the criteria of the standards of these regulations. In making its
 1664 determination the Planning Board shall consider all documentation submitted by the
 1665 developer relative to their financial capacity to construct, operate, and maintain all
 1666 aspects of the development. The Board shall also consider the proposed time frame for
 1667 construction and the effects of inflation.
- 1668 (2) Technical Ability
- 1669 (a) The applicant shall retain qualified contractors and consultants to supervise, construct and
 1670 inspect the required improvements in the proposed subdivision.
- 1671 (b) In determining the applicant's technical ability the Board shall consider the applicant's
 1672 previous experience, the experience and training of the applicant's consultants and
 1673 contractors, and the existence of violations of previous approvals granted to the
 1674 applicant.
- 1675 16.8.11 Post-Approval
- 1676 A. Approved final plan.
- 1677 (1) No subdivision plan shall be released for recording at the Registry of Deeds until the
 1678 required performance guarantee has been posted. If an approved plan is not recorded in the
 1679 Registry of Deeds within one (1) year of the original approval, it shall become null and
 1680 void. The Planning Board may grant an extension as particular circumstances dictate,
 1681 which may not exceed an additional ninety-day period. Where applicable, the stormwater
 1682 and erosion control maintenance agreement that must be included in the document of
 1683 covenants, homeowners' documents and/or as riders to the individual deed must be
 1684 recorded with the York County Registry of Deeds.
- 1685 B. Subdivision plan filing, recording. Prior to recording a subdivision plan in the York County
 1686 Registry of Deeds, a subdivider must have acquired Planning Board approval in accordance
 1687 with this title.
- 1688 C. Subdivision land conveyance.
- 1689 (1) No person, firm, corporation, or other legal entity may convey, offer, or agree to convey
 1690 any land in a subdivision which has not been approved by the Planning Board, recorded in
 1691 the York County Registry of Deeds and shown on the final plan as a separate lot.
- 1692 (2) Subdivision frontage street completion. No lot in a subdivision may be sold, leased or

- 1693 otherwise conveyed before the street upon which such lot has frontage is completed to
 1694 rough grade standard up to and including the entire frontage of the lot. Prior to the issuance
 1695 of certificates of occupancy by the CEO, the street from which the unit is accessed must be
 1696 completed in accordance with § 16.5.27, Streets and Pedestrian ways/Sidewalks Site
 1697 Design Standards.
- 1698 D. Approved plan expiration.
- 1699 (1) A subdivision plan's approval will expire if work has not commenced within one year from
 1700 the Planning Board date of approval. Where work has commenced within one year of such
 1701 approval, the approval will expire unless work is complete within three years of the original
 1702 date of Planning Board approval.
- 1703 (2) Prior to expiration, the Planning Board may, on a case-by-case basis, grant extensions to an
 1704 approved plan expiration date upon written request by the developer for an inclusive period
 1705 from the original approval date, not to exceed five years for a subdivision plan and three
 1706 years for all other development plans.
- 1707 (3) When a plan's approval expires, the applicant may reapply subject to the Town Code
 1708 current at the time of reapplication.
- 1709 E. Approval not acceptance of property. The approval by the Planning Board of a plan, a
 1710 master site development plan or any other subsequent development plan does not
 1711 constitute, nor is it evidence of, any acceptance by the municipality of any street, easement
 1712 or other open space shown on the plan. When a park, playground or other recreation area is
 1713 shown on the plan, approval of the plan does not constitute an acceptance by the
 1714 municipality of such areas. The Planning Board must require the plan to be endorsed with
 1715 appropriate notes to this effect. The Planning Board may also require the filing of a written
 1716 agreement between the applicant and the municipal officials covering future deed and title,
 1717 dedication and provision for the cost of grading, development, equipment and maintenance
 1718 of any such recreation area.
- 1719 F. Performance Guarantees
- 1720 (1) Types of Guarantees. The applicant shall provide one of the following performance
 1721 guarantees for an amount adequate to cover 100% of the total construction costs of all
 1722 required improvements, plus an additional 10% as contingency. A performance guarantee
 1723 shall not expire between October 31 and April 15 the following year.
- 1724 (a) Certified check payable to the municipality or a savings account or certificate of deposit
 1725 naming the municipality as owner, for the establishment of an escrow account;
- 1726 [1] For any account opened by the applicant, the Town of Kittery shall be named as
 1727 owner or co-owner, and the consent of the Town shall be required for a withdrawal.
- 1728 (b) An irrevocable letter of credit, from a financial institution approved by the Town
 1729 Manager, establishing funding for the construction of the subdivision, from which the
 1730 municipality may draw if construction is inadequate.
- 1731 [1] The letter of credit shall use the template established by the Town of Kittery.
- 1732 (2) Contents of guarantee. The performance guarantee shall contain the following:
- 1733 (a) Construction schedule;
- 1734 (b) Itemized construction cost estimates for roadways, curbing, esplanades, sidewalks,

- 1735 sanitary sewerage systems, storm drainage systems, utilities, street lighting, tree
 1736 planting, erosion and sedimentation control measures, and other public improvements
 1737 for each major phase of construction, taking into account inflation;
- 1738 (c) Provisions for inspections of each phase of construction;
- 1739 (d) Provisions for the release of part or all of the performance guarantee to the developer;
 1740 and
- 1741 (e) A date after which the applicant will be in default and the municipality shall have access
 1742 to the funds to finish construction.
- 1743 (3) Release of Guarantee. Prior to the release of any part of the performance guarantee, the Town
 1744 Manager shall determine to his/her satisfaction, in part based upon the report of the Town's
 1745 Engineer or other qualified individual retained by the municipality and any other agencies and
 1746 departments who may be involved, that the proposed improvements meet or exceed the design
 1747 and construction requirements for that portion of phase of the subdivision for which the release
 1748 is requested.
- 1749 (a) Performance guarantees may be reduced periodically, but in no event more than one (1)
 1750 time per month. In no case shall the performance guarantee be reduced by less than ten
 1751 thousand dollars (\$10,000) at one time or in any line item where improvements remain
 1752 to be completed.
- 1753 (b) No performance guarantee shall be reduced to less than the ten (10) percent contingency
 1754 until all work is complete.
- 1755 (c) The Town shall retain the 10% performance guarantee contingency for a period of one
 1756 (1) year from the date of final paving for any street to be offered for public acceptance.
 1757 The guarantee shall ensure the workmanship and the durability of all materials used in
 1758 the construction of public improvements within the right-of-way that may become
 1759 defective within that one (1) year period, as determined by the Director of Public Works.
- 1760 (4) Default. If upon investigation, the town's consulting engineer or other qualified individual
 1761 retained by the Town finds that any of the required improvements have not been
 1762 constructed in general conformance with the plans and specifications filed as part of the
 1763 application, he or she shall so report in writing to the Code Enforcement Officer, the Town
 1764 Manager, the Planner and the applicant or builder. The Town Manager, or his or her
 1765 designee, shall take any steps necessary to preserve the municipalities rights.
- 1766 G. Inspection of required improvements.
- 1767 (1) Prior to the commencement of any work associated with development approved in
 1768 accordance with this title, the developer or duly authorized representative must provide a
 1769 schedule of expected construction activities by phase to the inspecting official, which may
 1770 be the Code Enforcement Officer (CEO) or their representative or, when applicable, the
 1771 Town's Peer Review Engineer, and coordinate a preconstruction meeting. Attendance at
 1772 said meeting must at a minimum include authorized representation from the Town, the
 1773 developer and their general contractor. Meeting minutes must be prepared by the Town's
 1774 representative and distributed to all attendees and the Town Planner.
- 1775 (2) The developer or general contractor shall coordinate inspections with the inspecting official
 1776 and provide written notice at least seven days prior to commencing each major phase of
 1777 construction as outlined in the construction schedule. When all phases of work are
 1778 complete, the general contractor shall request a final inspection from the inspecting official,

- 1779 who shall prepare a punch list of any outstanding items to be completed, within seven days
 1780 of the final inspection. Once all outstanding items have been completed, the developer or
 1781 the general contractor shall coordinate a final walk-through where the inspecting official
 1782 determines if the construction has been completed in accordance with the approved plans.
 1783 The inspecting official shall provide, in writing, to the developer or the general contractor
 1784 within seven days of the final walk-through what, if any, construction is not complete or
 1785 confirm that the development is complete and has been constructed according to the
 1786 approved plans.
- 1787 (3) If the inspecting official finds, upon inspection of the required improvements, that any of
 1788 the required improvements have not been constructed in accordance with the approved
 1789 plans and specifications, the inspecting official must report, in writing, to the Town
 1790 Planner, the developer or duly authorized representative of the developer, and, when
 1791 applicable, the CEO. The Town Planner shall inform the Planning Board of any issues
 1792 identified by the inspections. The Town shall take any steps necessary to preserve the
 1793 municipality's rights.
- 1794 (4) Where applicable and in advance of any construction, the developer must deposit sufficient
 1795 funds for said inspections in an applicant's service account per Chapter 3.3. The amount is
 1796 based on a scope of services and fee prepared by the Town's Peer Review Engineer after
 1797 review of the developer's construction estimate prepared by a professional engineer or a
 1798 qualified contractor.
- 1799 (5) Stormwater and erosion control inspection.
- 1800 (a) During October to November of each year in which construction for grading, paving and
 1801 landscaping occurs on a development site, the Town will, at the expense of the developer,
 1802 cause the site to be inspected by a qualified individual. By December 1, the inspector must
 1803 submit a site report to the Town Planner that describes the inspection findings and indicates
 1804 whether stormwater and erosion control measures (both temporary and permanent) are in
 1805 place and properly installed. The report must include a discussion and recommendation on
 1806 any and all problem areas encountered.
- 1807 (b) After major construction activities have been completed on a development site, the
 1808 developer must, on or by July 1 of each year, provide a completed and signed certification to
 1809 the Code Enforcement Officer per § 16.8.10.F, Post-construction stormwater management.
- 1810 (c) Erosion control debris. The owner or occupant of any land in any zone must not allow
 1811 erosion control materials, such as plastic erosion control fences and related stakes or other
 1812 materials, to remain on the site but must remove the same within six months of the date such
 1813 erosion control materials were installed, or the date when no longer required, whichever is
 1814 later. When a violation is discovered, the Code Enforcement Officer will order compliance
 1815 by written notice of violation to the owner of any land in any zone requesting removal of
 1816 such violation within 30 days of the date of written notice. An extension of time to correct
 1817 may be made by the Code Enforcement Officer for good and sufficient reason.
- 1818 H. Plan revisions after approval. No changes, erasures, modifications or revisions may be
 1819 made to any Planning Board approved final plan, unless in accordance with the Planner's
 1820 and CEO's powers and duties as found in Chapter 16.2, or unless the plan has been
 1821 resubmitted and the Planning Board specifically approves such modifications. In the event
 1822 a final plan is recorded without complying with this requirement, the same is null and void,
 1823 and the Planning Board must institute proceedings to have the plan stricken from Town

- 1824 records and the York County Registry of Deeds.
- 1825 (1) Field changes.
- 1826 (a) If at any time before or during the construction of the required improvements it appears
 1827 to be necessary or desirable to modify the required improvements, the Code Enforcement
 1828 Officer and Town Planner are authorized to approve minor plan amendments due to
 1829 unforeseen field circumstances, such as encountering hidden outcrops of bedrock, natural
 1830 springs, etc. The Code Enforcement Officer and Town Planner must issue any approval
 1831 under this subsection in writing and transmit a copy of the approval to the Planning Board.
 1832 Revised plans must be filed with the Town and recorded, where appropriate. The developer
 1833 must provide the revised plan to the Town Planner, and it shall be recorded in the York
 1834 County Register of Deeds when applicable.
- 1835 (2) Modifications to approved plan.
- 1836 (a) Minor modifications. Modifications to a Planning Board approved plan that do not
 1837 require Planning Board review per § 16.8.11.H may be approved by the Code Enforcement
 1838 Officer and Town Planner. Such approvals must be issued in writing to the developer with a
 1839 copy to the Planning Board. The developer must provide the revised plan to the Town
 1840 Planner, and it shall be recorded in the York County Register of Deeds, when applicable.
- 1841 (b) Major modifications. Major modifications (e.g., relocations of principal structures, rights-
 1842 of-way or property boundaries; changes of grade by more than 1%) require Planning Board
 1843 approval.
- 1844 I. Maintenance of improvements. The developer, or owner, is required to maintain all
 1845 improvements and provide for snow removal on streets and pedestrian ways/sidewalks
 1846 unless and until the improvement has been accepted by the Town Council. Acceptance of
 1847 Streets and Ways
- 1848 (1) Conditions. A street or way constructed on private lands by the owner(s) thereof and not
 1849 dedicated for public travel prior to the enactment of this title must be laid out and accepted
 1850 as a public street or way by the Town Council only upon the following conditions:
- 1851 (a) The owners must give the Town a deed to the property within the boundaries of the street
 1852 at the time of acceptance by the Town.
- 1853 (b) A plan of said street or way must be recorded in the York County Registry of Deeds at
 1854 the time of its acceptance.
- 1855 (c) A petition for laying out and acceptance of said street or way must be submitted to the
 1856 Town Council upon a form prescribed by the Commissioner of Public Works. Said petition
 1857 must be accompanied by a plan, profile and cross section of said street as follows:
- 1858 [1] A plan drawn, when practical, to a scale of 40 feet to one inch and to be on one or
 1859 more sheets of paper not exceeding 24 inches by 36 inches in size. Said plan must
 1860 show the North point; the location and ownership of all adjoining lots of land; rights-
 1861 of-way and easements; streetlights and electric lines; boundary monuments;
 1862 waterways, topography and natural drainage courses with contour at not greater than
 1863 two-foot intervals; all angles, bearings and radii necessary for the plotting of said
 1864 street and lots and their reproduction on the ground; the distance to the nearest
 1865 established street or way, together with the stations of their side lines;
- 1866 [2] A profile of said street or way drawn to a horizontal scale of 40 feet to one inch and a

- 1867 vertical scale of four feet to one inch. Said profile must show the profile of the side
 1868 lines and center line of said street or way and the proposed grades thereof. Any
 1869 buildings abutting the street or way must be shown on said profile;
- 1870 [3] A cross section of said street or way drawn to a horizontal scale of five feet to one
 1871 inch and a vertical scale of one foot to one inch; and
- 1872 [4] The location and size of water and sewer mains and surface water drainage systems,
 1873 as installed.
- 1874 (2) Such street or way must have been previously constructed in accordance with the standards
 1875 and criteria established in § 16.5, General Performance Standards and § 16.8, Subdivision
 1876 Review.
- 1877 (3) Acceptance of streets and ways required in public interest.
- 1878 (a) Notwithstanding the provisions of any other section hereof, the Town may at any time lay
 1879 out and accept any street or way in the Town as a public street or way of said Town
 1880 whenever the general public interest so requires. The cost of said street or way may be borne
 1881 by the Town.
- 1882 (4) Easements.
- 1883 (a) The Board may require easements for sewerage, other utilities, drainage and stream
 1884 protection. In general, easements may not be less than 20 feet in width. Wider easements
 1885 may be required.
- 1886 (5) No street or way to be accepted until after report.
- 1887 (a) Street acceptance as Town way. Upon completion of construction of any street/road
 1888 intended for proposal for acceptance as a Town way, a written certification that such way
 1889 meets or exceeds the design and construction standards of this title, signed by a professional
 1890 engineer registered by the State of Maine, prepared at the developer's expense, must be
 1891 submitted to the Board. If underground utilities are laid in such way, the developer must also
 1892 provide written certification from the servicing utility(ies), that such installation was in a
 1893 manner acceptable to the utility. The Board is to review the proposal and forward a
 1894 recommendation to the Town Council regarding acceptance.
- 1895 (b) No street or way may be laid out and accepted by the Town Council until the Planning
 1896 Board and the Public Works Commissioner have made a careful investigation thereof and
 1897 reported to the Town Council their recommendations in writing with respect thereto.
- 1898 J. Recordkeeping in Shoreland and Resource Protection Overlay Zones. The Code
 1899 Enforcement Officer is to keep a complete record of all essential transactions of
 1900 development in the Shoreland and Resource Protection Overlay Zones, including
 1901 applications submitted, permits granted or denied, variances granted or denied, revocation
 1902 actions, revocation of permits, appeals, court actions, violations investigated, violations
 1903 found, and fees collected. On a biennial basis, a summary of this record must be submitted
 1904 to the Director of the Bureau of Land and Water Quality within the Department of
 1905 Environmental Protection.
- 1906 K. Subdivision lot monumentation prior to sale. Prior to the sale of any approved subdivision
 1907 lot, the subdivider must provide the Planner with a letter from a registered land surveyor,
 1908 stating all monumentation shown on the plan has been installed.
- 1909 L. Utility service. Prior to the installation of any public utility to a site, the developer must

- 1910 have obtained all necessary approvals from the appropriate local, state or federal authority.
- 1911 M. Grading/construction final plan required. Grading or construction of roads, grading of land
1912 or lots, or construction of buildings which require a final plan as provided in this title, until
1913 such time as the final plan has been duly prepared, submitted, reviewed, approved and
1914 endorsed as provided in this title, is prohibited until the original copy of the final plan so
1915 approved and endorsed has been duly recorded in the York County Registry of Deeds.
- 1916 N. Nonstormwater discharge. No person, except where exempted in § 16.5.19, Nonstormwater
1917 Discharge may create, initiate, originate, or maintain a nonstormwater discharge to the
1918 storm drainage system. Such nonstormwater discharges are prohibited notwithstanding the
1919 fact that the municipality may have approved the connections, drains or conveyances by
1920 which a person discharges unallowable nonstormwater discharges to the storm drainage
1921 system.
- 1922 O. Nuisances. Any violation of this title is deemed to be a nuisance.
- 1923 P. Erosion control debris. The owner or occupant of any land in any zone must not allow
1924 erosion control materials, such as plastic erosion control fences and related stakes or other
1925 materials, to remain on the site but must remove the same within six months of the date
1926 such erosion control materials were installed, or the date when no longer required,
1927 whichever is later. When a violation is discovered, the Code Enforcement Officer will
1928 order compliance by written notice of violation to the owner of any land in any zone
1929 requesting removal of such violation within 30 days of the date of written notice. An
1930 extension of time to correct may be made by the Code Enforcement Officer for good and
1931 sufficient reason.
- 1932

1 **16.9.1 Maritime and Shoreland Related Development**

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

6 B. Applicability

7 (1) Kittery Port Authority. The Kittery Port Authority's ("Port Authority") jurisdiction
8 extends to applications proposing any development from the navigable tidal waters to the
9 highest annual tide or upland edge of a coastal wetland. The Port Authority, through its
10 established Rules and Regulations, reviews and approves applications for piers, wharves,
11 landings, floats, bridges, other water-dependent structures or uses.

12 (2) Planning Board. The Planning Board's jurisdiction for review and approval extends to
13 applications proposing any upland development from the highest annual tide of any water
14 bodies or upland edge of a coastal or freshwater wetland or any development located
15 within the Shoreland, Resource Protection, and Commercial Fisheries/Maritime Uses
16 Overlay Zones or all other structures not requiring Port Authority approval, except for
17 applications as provided under 16.9.1.B.1.

18 C. General review Process and Notification

19 (1) Process.

- 20 (a) Prior to the submission of a shoreland development application with the Port
21 Authority or the Planning Board, a preliminary application meeting between the
22 Town Planner, Code Enforcement Officer, or designee, and the applicant or agent,
23 shall occur to review the proposed project, performance standards and procedural
24 requirements thereof.
- 25 (b) If Port Authority or Planning Board review is not required, the Code Enforcement
26 Officer and Town Planner shall review the application for compliance with this title.
- 27 (c) If the Planning Board must review and approve a development plan application
28 involving a pier, ramp, flotation system or principal marine structure, prior to the
29 submission of the development plan application requiring Planning Board review, the
30 Port Authority must review and approve any proposed pier, ramp and float system or
31 principal marine structure application.
- 32 (d) All required local approvals (excluding Town building permits), federal and state
33 approvals and/or permits shall be received by the Code Enforcement Officer, prior to
34 the issuance of a building permit.
- 35 (e) Prior to the commencement of construction on any pier, dock, wharf, marina or any
36 other proposed use that projects into a water body, the owner and/or developer shall
37 apply for, and obtain, a building permit from the Code Enforcement Officer.

38 (2) Notification.

- 39 (a) If Port Authority or Planning Board review is not required, the Code Enforcement
40 Officer shall send a written record of their findings to both the Planning Board and
41 Port Authority.

- 42 (b) The Town Planner must transmit copies of Planning Board decisions and the Code
43 Enforcement Officer must transmit copies of Board of Appeals decisions and all
44 documentation constituting the record of the decision for marine-related development
45 to the Port Authority.
- 46 (c) The Port Authority shall notify the applicant and the Code Enforcement Officer, in
47 writing, of the granting of, or denial of, the applicant's request.

48 **16.9.2 Port Authority Shoreland Development Review**

- 49 A. Review for completeness. The Code Enforcement Officer and Town Planner shall review
50 Port Authority applications for completeness prior to the Port Authority's Chairperson
51 placing the application on the Port Authority's agenda.
- 52 B. Application process. All Port Authority applications for shoreland development review shall
53 adhere to the listed procedures as enumerated in their Rules and Regulations.
- 54 C. Submission requirements. Shoreland Development Plans for marine-related uses requiring
55 Port Authority approval shall include the following elements:
- 56 (1) Aerial photographs (images available in the public domain) and vicinity maps and plans
57 showing the property in relation to surrounding properties, and the location of the lots
58 that would have use of the pier, ramp and float system. Maps and plans are to include:
- 59 (a) Construction plans for piers, ramps and floats;
60 (b) Areas of vegetation clearing;
61 (c) Location of required parking space(s); and
62 (d) Location of boat and/or float storage.
- 63 (2) Rights granted for access to the pier, ramp and float system or to any water-dependent
64 structure; public and private access paths.
- 65 (3) Documentation addressing visual impact and controls to assure continuing conformance
66 to the shorefront development plan and this title.
- 67 (4) All necessary applications for permits, leases, approvals, and any supporting
68 documentation as may be required have been filed, including the following:
- 69 (a) Department of Environmental Protection permit application pursuant to the Natural
70 Resources Protection Act, 38 M.R.S. § 480C;
71 (b) Army Corps of Engineers permit application;
72 (c) Maine State Department of Conservation, Bureau of Parks and Lands, Submerged
73 Land Coordinator application; and
74 (d) Building permit application
- 75 (5) Any other details requested by the Port Authority, including, but not limited to,
76 information as enumerated in the Port Authority's Rules and Regulations.
- 77 D. Performance standards. Development involving piers, wharves, marinas and other uses
78 projecting into water bodies must conform to the following standards:
- 79 (1) In accordance with 38 M.R.S. § 435 et seq., Mandatory Shoreland Zoning, all
80 dimensional and other standards (excluding setbacks from water bodies) of this title
81 apply to structures and uses projecting into a water body beyond the highest annual tide.

- 82 (2) Boathouses, while convenient to locate near the water, are not considered functionally
83 water-dependent uses and must meet the same setback requirement as principal
84 structures. The State of Maine no longer issues permits for construction of boathouses
85 below the highest annual tide due to the adverse environmental impact; therefore, new
86 boathouses must be located on uplands.
- 87 (3) Only functionally water-dependent uses are allowed on, over or abutting a pier, wharf or
88 other structure beyond the highest annual tide.
- 89 (4) Access from shore must be developed on soils appropriate for such use and constructed
90 so as to control erosion.
- 91 (5) The location must not interfere with existing developed recreational and maritime
92 commerce or natural beach areas.
- 93 (6) The facility must be located so as to minimize adverse effects on fisheries.
- 94 (7) The facility must be a water-dependent use and no larger in dimension than necessary to
95 carry on the activity and must be consistent with existing conditions, use and character
96 of the area.
- 97 (8) No new structure may be built on, over or abutting a pier, wharf, dock or other structure
98 extending beyond the highest annual tide of a water body or within a wetland unless the
99 structure requires direct access to the water as an operational necessity.
- 100 (9) No existing structures built on, over or abutting a pier, dock, wharf or other structure
101 extending beyond the highest annual tide of a water body or within a wetland may be
102 converted to residential dwelling units in any district.
- 103 (10) Except in the Commercial Fisheries/Maritime Uses Overlay Zone, structures built on,
104 over or abutting a pier, wharf, dock or other structure extending beyond the highest
105 annual tide of a water body or within a wetland must not exceed 20 feet in height above
106 the pier, wharf, dock or other structure.
- 107 (11) Applicants proposing any construction or fill activities in a waterway or wetland
108 requiring approval by the U.S. Army Corps of Engineers pursuant to Section 404 of the
109 Clean Water Act, Section 9 or 10 of the Rivers and Harbors Act, or Section 103 of the
110 Marine Protection, Research and Sanctuaries Act, must submit proof of a valid permit
111 issued.
- 112 (12) Proposals for any principal marine structure use, any residential joint- and/or shared-use
113 pier, or any residential-development-use pier require Planning Board approval.
- 114 (13) A residential development containing five or more lots in a zone permitting a
115 residential-development-use pier may construct only one residential development use
116 pier.
- 117 (14) Commercial development of the shorefront must provide for access by the general
118 public as part of a shorefront development plan.
- 119 (15) Only one pier, ramp and float structure is permitted on any noncommercial or
120 nonindustrial lot.
- 121 (16) Marine-related permanent structures located below the mean low-water line require the
122 following permits, leases and approvals:
- 123 (a) Port Authority approval;
- 124 (b) Department of Environmental Protection permit pursuant to the Natural Resources

- 125 Protection Act, 38 M.R.S. § 480-C;
- 126 (c) Army Corps of Engineers permit;
- 127 (d) Maine State Department of Conservation, Bureau of Parks and Lands, Submerged
- 128 Land Coordinator approval; and
- 129 (e) Building permit.
- 130 (17) Any other performance standards as enumerated in the Port Authority’s Rules and
- 131 Regulations.
- 132 E. Findings of fact. An application shall be approved or approved with conditions if the Port
- 133 Authority makes a positive finding based on the information presented. The application must
- 134 be demonstrated that the proposed use will shall:
 - 135 (1) Maintain safe and healthful conditions;
 - 136 (2) Not result in water pollution, erosion or sedimentation to surface waters;
 - 137 (3) Adequately provide for the disposal of all wastewater;
 - 138 (4) Not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife
 - 139 habitat;
 - 140 (5) Conserve shore cover and visual, as well as actual, points of access to inland and coastal
 - 141 waters;
 - 142 (6) Protect archaeological and historic resources;
 - 143 (7) Not adversely affect existing commercial fishing or maritime activities in a commercial
 - 144 fisheries/maritime activities district;
 - 145 (8) Avoid problems associated with floodplain development and use; and
 - 146 (9) Is in conformance with the provisions of this title.
- 147 F. The approved plan must be recorded with the York County Registry of Deeds.
- 148 G. Appeal of Port Authority decision. Appeal of a Port Authority shoreland development plan
- 149 decision by the Planning Board may be made per §16.2.12.B.

150 **16.9.3 Planning Board Shoreland Development Review**

- 151 A. Review process
 - 152 (1) Following a pre-application meeting with the Town Planner or Code Enforcement
 - 153 Officer, the applicant filing a shoreland development review permit shall submit to the
 - 154 Code Enforcement Officer or Town Planner a complete application and site plan, drawn
 - 155 to scale as indicated in accordance with §16.7.10.C.4.
 - 156 (2) Within 35 days of the receipt of a written application, the Town Planner, must notify the
 - 157 applicant, in writing, that the application is or is not complete. If the application is
 - 158 incomplete, the written notification must specify the additional material required to
 - 159 complete the application.
 - 160 (3) A decision on the application will occur within 35 days after the first available date on
 - 161 the Planning Board's agenda following receipt of the completed application, or within 35
 - 162 days of the public hearing, if one is held.
- 163 B. Waivers

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

167 C. Submission requirements

168 (1) All applications shall be signed by the owner, or an agent with written authorization from
169 the owner to apply for a shoreland development review permit, certifying that the
170 information in the application is complete and correct.

171 (2) All applications shall be dated, and the Town Planner or designee shall note upon each
172 application the date and time of its receipt.

173 (3) Whenever the nature of the proposed structure requires the installation of a subsurface
174 sewage disposal system, a complete application for a subsurface wastewater disposal
175 permit shall be submitted. The application shall include a site evaluation approved by the
176 Plumbing Inspector.

177 D. Exempt uses and development not requiring shoreland development review by the Planning
178 Board

179 (1) Proposed development of principal and accessory structures in compliance with
180 §16.4.28.D, when not subject to Planning Board review as explicitly required elsewhere
181 in this title, shall be reviewed and approved by the Code Enforcement Officer (CEO)
182 prior to issuing a building permit, subject to, but not limited to the following requirement:

183 (a) The total devegetated area of the lot (that portion within the Shoreland Overlay Zone)
184 shall be calculated by the applicant and verified by the CEO and recorded in the
185 Town's property records.

186

187 (2) Clearing of vegetation for activities other than timber harvesting. These are subject to
188 review and approval by the Shoreland Resource Officer or Code Enforcement Officer.

189

190 (3) Division of a conforming parcel that is not subject to subdivision as defined in §16.3.

191

192 (4) A permit is not required for the replacement of an existing road culvert, provided the
193 replacement culvert is not:

194

195 (a) More than one standard culvert size larger in diameter than the culvert being
196 replaced;

197 (b) More than 25% longer than the culvert being replaced; and

198 (c) Longer than 75 feet.

199 (d) When replacing an existing culvert, the watercourse must be protected so that the
200 crossing does not block fish passage, and adequate erosion control measures must be
201 taken to prevent sedimentation of the water in the watercourse

202

203 (5) A permit is not required for an archaeological excavation, provided the excavation is
204 conducted by an archaeologist listed on the State Historic Preservation Officer's Level 1
205 or Level 2 approved list and unreasonable erosion and sedimentation is prevented by

206 means of adequate and timely temporary and permanent stabilization measure.

207

208 E. Non-exempt uses requiring shoreland development review

209 (1) After the effective date of this title, no person may, without first obtaining a permit,
210 engage in any activity or use of land or structure requiring a permit in the Shoreland or
211 Resource Protection Overlay Zones in which such activity or use would occur, or expand,
212 change or replace an existing use or structure, or renew a discontinued nonconforming
213 use.

214 (2) Any development proposed in the Resource Protection (OZ-RP) and Shoreland - Stream
215 Protection Area (OZ-SL-75) Overlay Zones must be approved by the Planning Board.

216 (3) Any permit required by this section is in addition to any other permit required by other
217 law or ordinance.

218

219 F. Findings of fact.

220 (1) Permits shall be approved, or approved with conditions, if the proposed use or structure is
221 found to be in conformance with the purposes and provisions of this section and all other
222 applicable provisions found in this title, except where expressed relief has been lawfully
223 granted.

224 (2) An application shall be approved or approved with conditions if the Planning Board
225 makes a positive finding based on the information presented. The application must
226 demonstrate that the proposed use shall:

227 (a) Maintain safe and healthful conditions;

228 (b) Not result in water pollution, erosion or sedimentation to surface waters;

229 (c) Adequately provide for the disposal of all wastewater;

230 (d) Not have an adverse impact on spawning grounds, fish, aquatic life, bird or other
231 wildlife habitat;

232 (e) Conserve shore cover and visual, as well as actual, points of access to inland and
233 coastal waters;

234 (f) Protect archaeological and historic resources;

235 (g) Not adversely affect existing commercial fishing or maritime activities in a
236 commercial fisheries/maritime activities district;

237 (h) Avoid problems associated with floodplain development and use

238 (i) Is in conformance with the provisions of this title; and

239 (j) Be recorded with the York County Registry of Deeds.

240

241 G. Final plan approval and recording.

242 (1) An approval by the Planning Board must take the form of an agreement between the
243 Town and the applicant, incorporating as elements the application, the Planning Board's
244 findings of fact, and such conditions as the Planning Board may impose upon approval.

245 (2) The Planning Board must send copies of the agreement to Code Enforcement Officer.

- 246 (3) A plan has final approval only when the Planning Board has indicated approval by formal
247 action and the plan has been properly signed by a majority of the Planning Board
248 members or by the Chair only, if so voted by the Planning Board.
- 249 (4) Approved final plan recording. An approved plan involving the division of land,
250 easements, or property boundary modification must be recorded by the York County
251 Registry of Deeds. A paper copy and an electronic version of the recorded plan must be
252 returned to the Town Planner.
- 253 H. Modification to an approved plan. Any modification to an approved shoreland development
254 may be considered for approval under §16.7.12.C or §16.8.11.H.
- 255 I. Plan revisions after approval. No changes, erasures, modifications or revisions may be made
256 to any Planning Board approved shoreland development plan, unless in accordance with the
257 Planner's and CEO's powers and duties as found in Chapter 16.4 and elsewhere found in Title
258 16, or unless the plan has been resubmitted and the Planning Board specifically approves
259 such modifications. In the event a final plan is recorded without complying with this
260 requirement, the same is null and void, and the Planning Board must institute proceedings to
261 have the plan stricken from Town records and the York County Registry of Deeds.
- 262 J. Appeal of shoreland development plan decision. Appeal of a Planning Board shoreland
263 development plan decision may be made pursuant to §16.2.12.B.
- 264 K. Other References to Shoreland Development Review Within Title 16.
 - 265 (1). Below are other pertinent sections within Title 16 referencing shoreland development
266 provisions:
 - 267 (a) §16.4.28— Shoreland Overlay Zone OZ-SL Development and Performance Standards
 - 268 (b) §16.4.30— Commercial Fisheries / Maritime Activities Overlay Zones OZ-CFMU
 - 269 (c) §16.4.29— Resource Protection Overlay Zone OP-RP
 - 270 (d) §16.2.13.D(2)—Notice of violation within the shoreland or resource protection
271 overlay zones
 - 272 (e) §16.5.23.K—Signs in Shoreland Overlay and Resource Protection Overlay Zone
 - 273 (f) §16.5.24—Dwellings in Resource Protection and Shoreland Overlay Zones
 - 274 (g) §16.5.27.N—Road and driveway standards in Shoreland and Resource Protection
275 Overlay Zones.
 - 276 (h) §16.5.29.A(1)—Timber Harvesting in the Shoreland Overlay Zone
 - 277 (i) §16.7.3.A—Shoreland development review during site plan review
 - 278 (j) §16.8.4.A—Shoreland development review during subdivision review
 - 279 (k) §16.8.9.C.(3)(a)(ii)—Scheduling public hearings for shoreland development
280 applications
 - 281
 - 282

283 **16.9.4 Right of Way Plan Review**

284 A. General. Right-of-Way Plans are intended to demonstrate to the Planning Board that a lot
285 will have a sufficient ROW to provide both the required frontage to that lot and to allow safe
286 vehicular access. Such a lot may exist as a “landlocked” lot which requires a Right-of-Way
287 Plan approval because necessary access doesn’t meet driveway standards or the lot may be a
288 proposed division from an existing lot which wouldn’t have required frontage without a new
289 ROW. When a lot is proposed for division, such division must not create a non-conforming
290 lot or structure. Right-of-Way Plans do not apply to any lot that requires subdivision
291 approval.

292 B. Applicability.

293 (1) A person who has right, title, or interest in a parcel of land must obtain Right of Way
294 Plan approval for a site when:

- 295 (a) A lot requires a new ROW to meet street frontage requirements
296 (b) A lot is proposed for division and requires ROW access and street frontage for the
297 proposed new lot.

298 (2) A ROW proposed under this section must be and will remain a private road unless the
299 applicant pursues street acceptance and is granted that acceptance by the Town per
300 §16.8.11.L of the municipal ordinance.

301 C. Review Process & Submission Requirements

302 (1) Pre-application and Conference

303 (a) Process. Before submitting a proposed Right-of-Way Plan to the Board, the owner
304 and/or applicant must meet with the Town Planner to discuss the conceptual design
305 regarding road design, stormwater management, dimensional requirements, and any
306 potential impacts to existing or proposed development and the environment.

307 (2) Sketch Plan

308 (a) Process. The applicant must submit a Right-of-Way application and sketch plan for
309 review and consideration by the Planning Board.

310 (b) Plan requirements

311 [1] The sketch plan must show the proposed road and lot division (if applicable),
312 including structures, site improvements and landscape features, in relation to
313 existing conditions and municipal land use regulations. Any proposed buildings
314 must also be shown.

315 [2] If the proposed ROW could or will provide frontage to lots other than the lot
316 under consideration, those abutting lots and their structures, if any, must also be
317 shown on the sketch plan.

318 [3] While not required, a plan prepared by a surveyor is recommended.

319 (c) Planning Board review and decisions, including site walk

320 [1] The Planning Board must determine whether the Right-of-Way sketch plan
321 proposal complies with municipal land use regulations regarding both submission
322 content and design and must, when necessary, make specific suggestions to be
323 incorporated by the applicant in subsequent submissions.

- 324 [2] If the sketch plan is accepted and approved, with or without conditions, the next
325 application step will be a Final Plan.
- 326 [3] A site walk may be scheduled at the Planning Board's discretion.
- 327 (3) Final Plan
- 328 (a) Failure to submit final plan application. If a Right-of-Way final plan is not submitted
329 to the Planning Board within six months after the approval of the sketch plan, the
330 Planning Board may, at its discretion, refuse to act on the final plan and require
331 resubmission of the sketch plan. Any plan resubmitted must comply with all
332 application requirements, including payment of application fees.
- 333 (b) Process, including optional public hearing
- 334 [1] The applicant must submit a final Right-of-Way plan for review and consideration
335 by the Planning Board. Any conditions imposed by sketch plan approval must be
336 addressed in the submission.
- 337 [2] The Planning Board may, at its discretion, choose to hold a public hearing. If a
338 public hearing will be held, the proceedings must conform to public hearings as
339 described by 16.8.9.C.(3).
- 340 [3] The Planning Board may, at its discretion, request a review of the plans by the
341 Town's peer review engineer. The cost of this peer review will be borne by the
342 applicant.
- 343 [4] The Technical Review Committee (TRC) must review the final plan and submit
344 comments prior to final plan approval.
- 345 [5] The Board must accept the application as complete and after consideration and
346 review, which may span more than one regularly scheduled meeting, vote to
347 approve with or without conditions or deny the plan.
- 348 (c) Plan requirements
- 349 [1] A complete final plan application must fulfill all the requirements as indicated on
350 the application checklist and described by §16.8.9.D.(10) unless the Planning
351 Board, by formal action, upon the applicant's written request, waives or defers any
352 requirement(s) for submission. The Board may request any additional information
353 pertinent to complete understanding of the application.
- 354 (d) Findings of Fact
- 355 [1] Action by the Planning Board must be based upon findings of fact which certify
356 or waive compliance with all the required standards of this ordinance, and which
357 certify the Right-of-Way plan meets the requirements as listed in
358 §16.8.9.D.(4).(b).
- 359 [2] In addition, the Board must find that the proposed ROW:
- 360 [a] Does not create any nonconforming lots or buildings; and
- 361 [b] Can reasonably permit vehicular passage.
- 362 (e) Street naming
- 363 [1] Prior to submission of the final plan for Planning Board signatures (see
364 §16.9.4.C.f.i below), the applicant must apply for and be approved for, a street
365 name which complies with Chapter 8.5 of the municipal regulations.

- 366 [2] Once approved, the street name must be placed on the final plan prior to
367 submission for Planning Board signature.
- 368 [3] Street signage is required per Chapter 8.5-5.
- 369 (f) Final Plan approval and recording
- 370 [1] A plan has final approval only when the Planning Board has indicated approval
371 by formal action and the plan has been properly signed by a majority of the
372 Planning Board members or by the Chair or Vice-Chair only, if so voted by the
373 Planning Board.
- 374 [2] An approved Row-of-Way plan involving the division of land, easements, or
375 property boundary modification must be recorded by the York County Registry of
376 Deeds. A paper copy and electronic copy of the recorded plan must be returned to
377 the Town Planner. An as-built plan and electronic files may also be required at the
378 discretion of the Town Planner or Director of Planning.
- 379 (g) Performance guaranty
- 380 [1] Prior to the issue of a building permit, the applicant must, in an amount and form
381 acceptable to the Town Manager, file with the Municipal Treasurer an instrument
382 to cover the full cost of the required improvements. A period of one year (or such
383 other period as the Planning Board may determine appropriate, not to exceed
384 three years) is the guaranty time within which required improvements must be
385 completed.
- 386 [2] In cases where the Right-of-Way plan consists of an extension of an existing road
387 and as approved, will remain unpaved with minimal site improvements required,
388 the Director of Planning may waive the performance guaranty.
- 389 [3] Where applicable, a maintenance agreement must be included in the document of
390 covenants, homeowners' documents and/or as riders to the individual deed.
- 391 (h) Modifications to approved plans. No modifications to an approved Right-of-Way
392 final plan may be made unless such modifications comply with §16.9.4.
- 393 (i) Appeal of Planning Board decision. Appeal of a Right-of-Way plan decision by the
394 Planning Board may be made per §16.2.12.B.
- 395
- 396