



TOWN OF KENNEBUNKPORT, MAINE

**Board of Selectmen Agenda  
February 22, 2024 @ 6:00 PM  
VILLAGE FIRE STATION  
32 North Street**

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**This is an in-person meeting, but the public may join in the Zoom webinar format.**  
Join by **computer or mobile device** and click on: <https://us06web.zoom.us/j/81364718107>  
or go to ZOOM and enter the **webinar ID**: 813 6471 8107  
By **phone** 1(929) 205 6099 US

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1. Call to Order.
2. Approve the February 8, 2024, selectboard meeting minutes.
3. Public Forum (This is an opportunity for anyone who wants to address the Board of Selectmen with any issue that is not on the agenda.)
4. Presentation of proposed June 2024 ordinance changes:
  - a. LD 2003 Land Use Ordinance Amendments
  - b. Floodplain Ordinance Amendment
5. Approve restrictions on vehicle weight limits on certain roads in accordance with 29-A M.R.S.A. Section 2395 and the Kennebunkport Traffic and Parking Control Ordinance.
6. Accept the proposal from George Burr & Sons to complete the repairs on the masonry seawall, and travel lane on Ocean Avenue.
7. Request to extend shellfish season for 2024 - 2025.
8. Consider applying for a Maine Shore and Harbor Planning Grant to study design options for the Colony Beach Parking area.
9. Town Hall Building Committee Update.
10. Authorize electric vehicle lease with Hyundai for the Public Health Department.
11. Accept a \$50.00 donation from an anonymous donor to the nurses' general account.
12. Accept a \$50.00 donation from an anonymous donor to the emergency fuel fund.
13. Other Business.
14. Approve the February 22, 2024, Treasurer's Warrant.
15. Adjournment.

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# **AGENDA ITEM DIVIDER**

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Town of Kennebunkport  
Board of Selectmen Meeting  
February 8, 2024  
5:00 PM  
Village Fire Station (32 North Street)

**MINUTES**

**Selectmen attending in person:** Mike Weston, Sheila Matthews-Bull, Jon Dykstra, Marybeth Gilbert.

**Selectmen attending via Zoom:** Allen Daggett

**1. Call To Order.**

Chairman Weston called the meeting to order at 5:00 PM.

**2. 5:00 PM - Executive Session per MRSA 1, §405-6D - discussion of labor contracts and proposals for upcoming negotiations.**

**Motion** by Selectman Matthews-Bull, seconded by Selectman Dykstra, to enter Executive Session per MRSA 1, §405-6D. **Voted:** 4-0. **Motion passed.** (Selectman Daggett had not yet joined the meeting).

The Selectmen entered Executive Session at 5:01 PM.

**Motion** by Selectman Matthews-Bull, seconded by Selectman Gilbert, to leave Executive Session per MRSA 1, §405-6D. **Voted:** 4-0. **Motion passed.**

The Selectmen resumed the public meeting at 6:08 PM.

**3. ESTIMATED 6:00 PM - Approve the January 18, 2024, January 25, 2024, and January 30, 2024, selectmen meeting minutes.**

**Motion** by Selectman Matthews-Bull, seconded by Selectman Dykstra, to approve the January 18, 2024, January 25, 2024, and January 30, 2024, selectmen meeting minutes. **Voted:** 4-0. **Motion passed.**

**4. Public Forum (This is an opportunity for anyone who wants to address the Board of Selectmen with any issue that is not on the agenda.)**

Kate Bauer Burke asked if there would be time for public comment when the Board takes up the agenda item reviewing the January 13<sup>th</sup> storm response. Chairman Weston responded that public comment would be permitted at that time.

Selectman Daggett confirmed that he had joined the meeting via Zoom.

Bob Domine stated that he does not support the Climate Action Committee or the Climate Action Plan. He feels it provides an avenue for local government overreach. As an example, he cited the plan's recommendation that gas-powered backpack leaf blowers are not used. Bob claimed they emit an estimated 90 pounds of carbon dioxide when used for 8 hours. He contrasted this with the estimated 48,000 international tourists to Maine each year (encouraged by the Maine State Office of Tourism), whose flights are responsible for 106 million pounds of carbon dioxide emissions. Selectman Dykstra pointed out that there is no mandate in the draft of the Climate Action Plan and that no committee has the power to write an ordinance. Any changes would have to be approved by the Board of Selectmen and the voters.

**No motion was necessary. No motion was taken.**

**5. Presentation of proposed June 2024 ordinance changes:**

**a. LD 2003 Land Use Ordinance Amendments**

Galen Weibley, Director of Planning and Development, informed the Board that he met with the Growth Planning Committee (GPC) earlier in the week. He presented a Venn diagram they developed to help people understand the Affordable Housing Density Bonus. It has three circles/colors:

Yellow (caution) – where multiplexes are permitted. The property must have a connection to public water & sewer to get the density bonus.

Blue (freeze) – growth map areas. They don't have the zoning for multiplexes and, therefore, do not get the density bonus.

Green (go) – the overlap of yellow and blue, where the density bonus is applied.

The GPC also recommended some changes, including adding a definition for multi-family to be included in the definition of multiplex, a definition of average median income, and rephrasing the affordable house definition to make it clearer.

The GPC also discussed the “double-dipping provision” regarding the 2-4 units to make clear that the bonus is “one and done” and to clarify that only one Accessory Dwelling Unit (ADU) is permissible per lot.

Laurie Smith, Town Manager, and Chairman Weston said they would like to have a public workshop on LD 2003 attended by the Select Board, Growth Planning Committee & Planning Board, and staff from the state to answer questions. Galen and Laurie said they would work to set up a date for the workshop.

**b. Floodplain Ordinance Amendment**

Galen informed the Board that he had spoken with the Town attorney. She has submitted the amendment she is proposing to the State, but they have not yet responded with a comment.

Bob Domine commented that in his many years as a Maine resident, the State has tightly constrained what he can and cannot do with his property. He finds it strange that now the State seems to be advocating a rush of high-density buildings.

Selectman Dykstra commented, and Galen confirmed, that Kennebunkport currently limits the number of new building permits to a total of 40 per year. No individual or developer may be issued more than seven permits unless there are unused permits by December.

**No motion was necessary. No motion was taken.**

**6. Approval of bid for construction of bridges for wastewater tanks.**

Eric Labelle, Project Engineer, informed the board that in our last budget, \$60,000 was approved for two bridges to go over the aeration tanks at the wastewater treatment plant. We didn’t have a design, so we went to a local fabricator. They came back with a bid of \$57,703.02 for design, fabrication & installation of three bridges. Eric did a cost check with Apex Construction, who said their estimated price would be approximately \$90,000.

**Motion** by Selectman Matthews-Bull, seconded by Selectman Dykstra, to purchase the three aeration tank bridges for \$57,703.02. **Voted:** 5-0. **Motion passed.**

**7. Review of January 13, 2024, storm response.**

Laurie stated that the January 10<sup>th</sup> & 13<sup>th</sup> storms were severe and brought historic flooding to the coast of Maine and Kennebunkport. We have submitted our initial storm damage estimate to FEMA in the amount of \$850,000. Dock Square, Ocean Avenue,

and Cape Porpoise Pier were the most damaged. The flooding was exacerbated by heavy rains and frozen ground. Laurie developed an analysis which is broken up into Strengths, Challenges & Recommendations.

Craig Sanford, Police Chief and EMA Director, added that the Public Works staff were helpful in putting up barricades in flooded areas. He estimated approximately \$50,000 in damage from the January 10th storm. Though the January 13<sup>th</sup> storm was projected to be like the previous storm, it came with almost three times as much rain as predicted. There were five police officers on duty that day who spent much of their time getting people out of dangerous situations. Ocean Avenue near Wandby Beach was a particular concern as the flooding was compromising the pavement, and people were attempting to walk and drive through. The police wrote a few summonses as some people moved barricades aside and drove through deep water. The chief worked with the Maine Turnpike Authority to acquire 25 Jersey barriers, which were delivered to Colony Beach. He stated that it was a challenge to address the situation with so few staff in this small community. The Board thanked the Chief and the Police department for their efforts.

Chris Simeoni, Public Works Director, added that crews monitored the streets for flooding on Friday evening (January 12<sup>th</sup>), but there weren't significant problems until Saturday when full Public Works and Wastewater crews were called in. Eric managed the Wastewater crew and the situation at the plant while Chris managed the highway crew. Chris thought it was a strength that the crews were well prepared and got out the equipment. But they weren't prepared for the intensity of the storm. A half inch of rain was predicted, but 3.1 inches were recorded at the Wastewater plant in a short period of time. In combination with the frozen ground and snow melt, interior roads flooded, as well as those on the coast. "Storm tourists" complicated the situation not only because they were putting themselves in precarious situations but also because they were getting in the way of storm crews operating heavy machinery. The Jersey barriers made the situation easier. By Saturday at 8 pm, all roads were reopened except for Ocean Avenue near St. Ann's and Wandby Beach and the west end of Goose Rocks Beach. Chris attempted to procure a pump to relieve the flooding on Kings Highway, but none were available, even from as far away as Massachusetts. The Board thanked Chris and the Public Works crews for their efforts.

Selectman Dykstra asked Chris to comment on the implications of opening the manhole covers at the west end of Kings Highway to solve the flooding situation there. Chris responded that this is not a good long-term solution because it puts the flood waters through the wastewater treatment system. The system is not designed to deal with this quantity of water, nor to treat saltwater as it affects the "flock" of microbes at the plant that treats the wastewater, potentially causing a permit violation. Only one of three

aeration tanks was in use at this time of year, so we were able to open the other two 107,000-gallon tanks to take some of the overflow. Yet we were still over peak capacity. Had this storm happened in the summertime when all three tanks were already in use, the results could have been catastrophic.

Jay Everett, Fire Chief, described the situation during the storm where six or seven structures were “sizzling” with smoke in them because the flood waters had covered their electrical systems. Mutual aid was not an option because all the surrounding communities were dealing with the storm. He had Central Maine Power (CMP) turn off power to the affected block. The Fire Department also dealt with a situation where they had to extract a person from a car because he attempted to drive through two feet of water, and the car was floating. Additional calls were coming in from people asking to have their basement pumped or floating LP tanks that had broken away from buildings and were leaking. There were 62 calls to the Fire Department that Saturday. All but a couple of the calls were for not very dangerous situations. But the Chief would like to discuss public expectations when it comes to pumping out basements.

Laurie followed up with lessons learned and recommendations for the future being considered:

- Issue a notice to evacuate locations in Town we know are susceptible to flooding and have an evacuation protocol.
- Purchase additional electronic message boards to deploy around town to enhance communications.
- Call additional fire and dispatch personnel ahead of the storm.
- Have fire crews stationed with the equipment.
- Provide a storm refuge for the public during flooding events.
- Deploy Jersey barriers in advance of the storm.
- Purchase a trash pump.
- Add staff to answer the phones (dispatch and/or Town Hall).
- Create a nuisance flooding alert for King and astronomical high tides.
- Educate the public about preparation for storms and thinking about storage and electrical systems in basements.
- Notify the public that the pump-out program is intended for residents experiencing a frozen pipe burst or after a fire and that it is not intended for flood pumping. Residents should make their own provisions to deal with basement flooding.
- Communicate with and prepare Town staff at all levels regarding the Town’s protocols and policies to provide a consistent message to the public, no matter which individual the public questions.

- Inform the public about the problem of water from sump pumps being introduced into the wastewater treatment system.

Laurie continued, saying that the Board had been provided with a storm surge concern list of roads, properties, areas with flooding and drainage issues, and the wastewater treatment system. Also of concern is Prescott Drive – a private road at the back of Goose Rocks that was used for public access during the flooding when other roads were impassable.

Kate Bauer Burke stated that the group of roads, including Prescott Drive, which she calls the Beaver Pond Corridor, was heavily used by emergency vehicles and the public during and after the second storm as the only safe way to access and evacuate the beach. She was not asking that the Town take over the roads but did ask that the Town consider making improvements to the drainage and culverts to make the road safer and more passable. John Downey added that he feels Prescott Dr should be redesignated from “Private” to “Access.” He accepted that the property owners are responsible for maintaining grading and plowing of the road but was requesting that the Town assist in bringing the road up about 12 inches to make it safer for transit by emergency vehicles and the public when needed for beach access and evacuation.

Laurie updated everyone on storm repair efforts. Ocean Avenue remains closed at Wandby Beach as the pavement is buckled, and there is surrounding erosion damage. We considered pulling up the pavement, allowing vehicles to pass on gravel. However, the engineers were concerned about further erosion and advised us to leave the pavement in place for the moment. In March, when we have warmer weather and the asphalt plants have reopened, we can reconstruct that section of the road with completion targeted at the beginning of May.

Colony Beach presents a more difficult situation. Part of the gravel parking area eroded in the storm last Winter. Laurie & Chris made the recommendation last year that we should add gravel to the area to shore it up at a cost of about \$40,000. However, the January 2024 storms caused more severe damage to the parking area, rendering it unsafe for vehicle parking. It would cost more than double the previous estimate to remediate the parking area now, with the real possibility that another storm could damage it again in a short time if configured the same way. The Town has announced that Colony Beach is closed to vehicles until further notice, but that the limited parking along Ocean Avenue can be used, and people are still welcome to visit the beach on foot. Town staff have met with various groups to investigate other potential solutions, but nothing promising has been proposed yet. We are still looking for solutions for Colony Beach.



Chris added that there is another damage along Ocean Avenue that Public Works intends to address. He will get some more definitive cost estimates for repairs and present those to the Board, deferring some other projects that were planned for this fiscal year.

**No motion was necessary. No motion was taken.**

**8. Approval of Dock Square Parking Lot fees for the 2024 season.**

Yanina Nickless, Director of Support Services, stated that the Dock Square Parking Lot fee is currently \$4 per hour.

The Town provides five “chaser tickets” to Town resident taxpayers who request them as part of a voucher system. Last year, 7,650 tickets were mailed out last year, but only 20% were used. This manually intensive system is a barrier to adopting a more streamlined technology in the future. Town staff are asking if the Board is willing to explore other options. The Board members expressed their support for continuing the voucher system and requested that staff investigate ways it could be integrated with new technology.

**Motion** by Selectman Dykstra, seconded by Selectman Daggett, to increase the Dock Square Parking Lot fee from \$4 per hour to \$5 per hour. **Voted: 4-1. Motion passed.**

**9. Discussion of waiver of beach stair building permit fees.**

Laurie relayed a request from a Goose Rocks Beach resident. Considering that so many stairs to the beach were washed away in the recent storms, the resident is requesting that the building permit fees be waived for those who are rebuilding beach stairs. Galen explained that rebuilt stairs require a Natural Resources Protection Act (NRPA) permit by rule, which includes a \$307 fee submitted to the State. The Town's fee is approximately \$60, which covers the expense of a code officer visiting the stair construction to confirm that it has been built to code. While the Town is sympathetic to the intent of the request, other towns have requested that the NRPA fee be waived, and the State has declined.

**No motion was necessary. No motion was taken.**

**10. Other Business.**

Laurie asked Eric to provide a Pier Road causeway update. He informed the board that there will be a pre-construction meeting next week, with the block to be delivered on

February 26th and construction to begin in March. The project is due for completion by the end of May. While the road will be reduced to one lane at times, it will remain open. Yanina announced that Laurie will mark her ten-year anniversary as Kennebunkport Town Manager on Saturday. She praised Laurie for her hard work and dedication to the Town in a position that can often be quite challenging, saying that Town staff and the community are lucky to have her.

Selectman Daggett requested an update on an analysis of flooding along the Kennebunk River and what can be done to mitigate it. Laurie responded that we are working with the Town of Kennebunk to explore solutions. We met with Boston-based VHB, a national firm, as Woodard & Curran indicated that the scope of the project is not in their wheelhouse. Eric added that VHB wants to study the hydraulics of the area before recommending the feasibility of resiliency options (e.g., raising roads) or a tide gate and where it would go. The project study would cost between \$200,000 - \$300,000 and take 9 to 18 months to complete. Kennebunk's Town Manager indicated a willingness to split costs for the study. Laurie also reached out to the Southern Maine Planning and Development Commission, briefing them on the potential cost. They are looking into grants and other funding possibilities.

**11. Approve the February 8, 2024, Treasurer's Warrant.**

**Motion** by Selectman Matthews-Bull, seconded by Selectman Dykstra, to approve the February 8, 2024, Treasurer's Warrant. **Voted: 5-0. Motion passed.**

**12. Adjournment.**

**Motion** by Selectman Matthews-Bull, seconded by Selectman Daggett, to adjourn. **Voted: 5-0. Motion passed.** The meeting adjourned at 7:30 PM.

Submitted by,  
Dave Powell,  
Technology Specialist

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# **AGENDA ITEM DIVIDER**

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TOWN OF KENNEBUNKPORT, MAINE  
~ INCORPORATED 1653 ~

MEMORANDUM

Date: January 26, 2024  
To: Growth Planning Committee, Planning Board  
From: Galen Weibley  
Re: LD 2003 Follow Up Research

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The Town's planning staff met with Maine DECD on January 25, 2024 at the Town of Gray Public Library for a roundtable discussion of planners to understand the nuances with implementation of LD 2003 for local land use ordinances (LUO). Below is a summary of findings as it relates to the 2-4 unit LUO amendment.

**What does the legislation require municipalities to adopt in their LUO?**

: The law requires towns to allow two units (attached or detached) on vacant parcels town wide that meet the density requirements of the zone. Currently the town is in compliance of this provision.

The law also requires towns with a comprehensive plan to allow up to four units on a vacant parcel within the Growth Area (structures can be attached or detached) that meet the density requirements of the zone. The town needs to update language for the LUO to comply.

If an existing single-family dwelling is located on a parcel, the parcel can have an additional two units added to the parcel townwide (not four if in the growth area) if the parcels meet the density requirements of the zone. Staff note: Planning Board review will be required as this would trigger a subdivision. The town will need to update language of the LUO to comply.

**If I have a single-family dwelling, can I “double dip” in adding an accessory apartment and then add three additional units to my property if I meet density?** State law addressed this issue and double dipping is not allowed. Either you can add one accessory apartment or add up to three additional units to a parcel if you meet density. This can be clarified in the ordinance amendment.

**If I have a duplex or multiplex aka apartment, can I add an accessory apartment to my lot?:** State law only requires accessory apartments for single-family dwellings. This is already addressed in the town's LUO.

### **Other questions asked and helpful in education/outreach**

**If I want to add an accessory apartment to my single-family dwelling, what will my requirements be for water/sewer:** The state wastewater requirements are reviewed by the Code Enforcement Officer when reviewing a building permit application for an accessory apartment. If an existing septic tank is at max capacity for existing bedrooms, a property owner will be required to upgrade the capacity of their existing septic tank or add a new septic tank to meet the wastewater requirements of the additional bedroom(s) that are part of the accessory apartment.

#### **Wastewater Flow Rates for septic tanks**

- 2 Bedrooms or less need 180 gallons/day
  - Add 90 gallons/day for each additional bedroom.
- 2 Bedrooms or less need 750 gallon septic tank
- 3-4 bedrooms require 1,000 gallon septic tank
- 5+ bedrooms require 1,000+250 gallon/bedroom septic tank

**With Affordable Housing Development planned for private homeownership, what safeguards are in place to protect a property to be affordable and not be flipped for a private rental or vacation home given the density bonus of LD 2003?**

Maine Housing and United State Housing Urban Development (HUD) have [specific income guidelines](https://mainehousing.org/docs/default-source/development/program-guides/affordable-homeownership-program-guide.pdf?sfvrsn=66da8715_12) for the area medium income for a household to qualify for their programs. In addition, Maine Housing has guidelines for homeownership that limit the purchase price not to exceed the 85% of the purchase price limit for the applicable county under MaineHousing's First Home Loan Program or its successor ("First Home Loan Program") and that the purchaser meets the applicable percentage of area median income in effect under the First Home Loan Program at the time of the sale of the Affordable Homeownership Unit. More details on this program can be found here: [https://mainehousing.org/docs/default-source/development/program-guides/affordable-homeownership-program-guide.pdf?sfvrsn=66da8715\\_12](https://mainehousing.org/docs/default-source/development/program-guides/affordable-homeownership-program-guide.pdf?sfvrsn=66da8715_12)

If an outside developer wants to provide affordable housing outside the HUD guidelines, they would need to record a deed restriction that is agreeable to the municipality that will protect the property for at least 30 years to qualify for the density.

**I am concerned about the increased density affordable housing development can have on stormwater runoff given recent storms and flooding. What can be done?**

Affordable housing developments while allowed a residential density are still required to meet the maximum lot coverage for a lot (20% in most zones outside Dock Square Zone). This is a combination of all structures (defined as “Anything built for the support, shelter or enclosure of persons, animals, goods or property of any kind together with anything constructed or erected with a fixed location above, below or upon the surface of the ground or water”). Within the Shoreland Zone, lot coverage shall include driveways, parking lots, and other non-vegetated surfaces in addition to structures defined above.

In addition, with affordable housing the key to making these projects viable is density. This will lead to a trigger of subdivision review by the planning board which requires plans submitted by developers to address concerns to the surrounding environment including abutters.

Projects located in Shoreland Zones do not gain a bonus since multiples are not allowed in this area as permitted or conditional use.

**Actions to Consider**

The Selectboard heard the first presentation of the proposed changes drafted by staff and GPC members for LD 2003. Members should be prepared to discuss any additional changes or questions to help the selectboard in weighing their options before the town attorney makes final edits before the town vote.

Time permitting, 2-4 unit LUO amendment can be discussed.

*Enclosures*

Updated LD 2003 Amendments with comments from PB & Staff  
DECD Handout of Summary LD 2003 changes  
Understanding Affordable Housing Density Bonus Illustration  
Town Table of Dimensional Requirements  
Draft LUO Amendment 2-4 Units (Optional Review if Time Permits)

ARTICLE2  
Terminology

## § 240-2.2, Definitions.

In this chapter, the following terms shall have the following meanings:

AFFORDABLE HOUSING: Decent, safe and sanitary dwelling Dwelling units that can be afforded by households in the following two categories:

- A. For rental housing, a development in which a household whose income does not exceed 80% of the median income for the area as defined by the United States Department of Housing and Urban Development under the United States Housing Act of 1937, Public Law 75-412, 50 Stat. 888, Section 8, as amended, can afford a majority of the units that the developer designates as affordable without spending more than 30% of the household's monthly income on housing costs; and

For rental housing, a development in which a household whose income does not exceed 80% of the AMI can afford a majority (51%) of the units that the developer designates as affordable, without spending more than 30% of the household's monthly income on housing costs; and

- B. For owned housing, a development in which a household whose income does not exceed 120% of the median income for the area as defined by the United States Department of Housing and Urban Development under the United States Housing Act of 1937, Public Law 75-412, 50 Stat. 888, Section 8, as amended, can afford a majority of the units that the developer designates as affordable without spending more than 30% of the household's monthly income on housing costs.

B. For owned housing, a development in which a household whose income does not exceed 120% of the AMI can afford a majority (51%) of the units that the developer designates as affordable, without spending more than 30% of the household's monthly income on housing.

AVERAGE MEDIAN INCOME - The Area Median Income (AMI) describes the midpoint of an area's income distribution, where 50 percent of households earn above the median figure while 50 percent earn less than the median. As required by the United States Housing Act of 1937, Public Law 75-412, 50 Stat. 888, Section 8, as amended, the Department of Housing and Urban Development (HUD) calculates AMI for U.S. metropolitan areas on an annual basis.

HOUSEHOLD - defines as any individual or group of individuals who are living together as one economic unit for whom residential energy is customarily purchased in common or who make undesignated payments for energy in the form of rent.

**Commented [GW1]:** Vague meaning of adjectives. PB suggestion to remove section.

**Commented [GW2]: E. Francis Proposed Amendment:** Suggest clarifying the intent of definition instead of above.

**Commented [GW3]: E. Francis Proposed Amendment:** Suggested language to Clarify intent of subsection above. Make it easier to understand.

**Commented [GW4]: E. Francis Proposed Amendment:** Suggested definition to clarify what is a household for affordable housing purposes. This definition is from US Code 42 (Public Health and Welfare)

- B. Each multiplex shall meet the following standards:
- (I) The design, layout, size, area, construction, and screening standards of §§ 240-7.11 and 240-10.7 shall be met.
  - (2) Parking spaces shall be provided to conform with the number required in the following schedule:
    - (a) One-bedroom units: one space per unit.
    - (b) Two-bedroom units: two spaces per unit.
    - (c) Three- and four-bedroom units: two spaces per unit.
    - (e)(d) Affordable Housing Developments: .66 spaces per unit.
- C. Off-street parking shall be provided for elder-care facilities in accordance with the following schedule:
- (I) One space for each employee on the shift with the greatest number of employees; plus
  - (2) One space for each independent living unit in which the occupant receives no supportive services; plus
  - (3) One space for every two congregate living or similar units in which the occupant receives only a basic level of supportive services; plus
  - (4) One space for every three assisted-living or similar units or beds in a nursing home in which the occupant receives a high level of supportive services.
- D. Parking spaces must be composed of sufficient impervious or semipervious material (e.g., asphalt, concrete, composites, gravel) to support a vehicle in all conditions. Semipervious materials such as "grass pavers" or similar materials can be used.
- E. Parking for residential components of residential mixed use shall be as follows:
- (I) One-bedroom unit: one parking space.
  - (2) Two-or-more-bedroom unit: two parking spaces.
- F. Parking for a residential rental accommodation shall include one additional off-street parking space per room rented, in addition to the minimum parking spaces required for the dwelling unit.

**§ 240-6.11. Sanitary provisions.**

- A. Connection to public facilities. All plumbing shall be connected to public collection and treatment facilities when required by other ordinances.
- B. Subsurface sewage disposal. No plumbing permit shall be issued for a subsurface disposal system unless:
- (I) The system meets the requirements of the State of Maine Subsurface Wastewater Disposal Rules, 10-144 CMR Chapter 241; a second disposal site that meets the state rules is not required unless mandated by other law. Any such site shall be shown on the permit application as a reserve area and be set aside on the plot plan for possible future use as a disposal site; and



## ARTICLE 7

## Performance Standards for Specific Activities, Land Uses and Zones

## § 240-7.1. Accessory apartments. [Amended 11-3-2020; 6-13-2023]

Accessory apartments may only be located in, attached to, or detached from a single-family dwelling, shall not be defined as a two-family or a multiplex, are allowed as a permitted use in all zones, except where otherwise noted in Subsection D, and are subject to the limitations below:

- A. A request for an accessory apartment requires submittal of a site plan that shall include the property owner with deed reference, lot boundaries and dimensions to scale and the location and setbacks of all buildings and parking areas.
- B. A request for an accessory apartment shall include a plan of the entire building showing a separate floor layout of all finished levels identifying the use of all rooms and the location of all entrances ~~and exits.~~ [All Accessory Apartments either attached to the principal building or stand alone shall meet the design criteria in Article 240-Article 6 section 6.2 (Height Restrictions) where appropriate as well as 240-Article 7 section 7.1.C of this ordinance.]
- C. The dwelling shall have only one front entrance and all other entrances shall be either on the side or in the rear of the dwelling. An entrance leading to a foyer with interior entrances leading from the foyer to the two dwelling units is permitted. The living area of an accessory apartment shall be a minimum of 190 square feet, and a maximum of 800 square feet. An accessory apartment may not have any living space on a third story unless it meets the minimum life safety requirements as defined in the Building Code.
- D. Accessory apartments are not permitted in the Shoreland Zone unless the lot on which it will be located has at least double the lot size for that zone, double the minimum lot size, and double the shore frontage for that zone.
- E. Only one accessory apartment shall be permitted per single-family dwelling. Only one accessory apartment shall be permitted per lot regardless of the number of single-family dwellings on a lot.
- F. An accessory apartment shall be occupied as a primary residence. ("Primary residence" shall be defined as more than six months per year.) An accessory apartment is not eligible to operate as a short-term rental.
- G. Accessory apartment located on properties connected to the Town's wastewater collection system must be approved by the Sewer Department. Properties utilizing subsurface waste system and private wells must meet the standards required in the Maine Subsurface Wastewater Disposal Rules. In addition:
  - (1) Existing septic systems must be evaluated for condition and capacity by a licensed site evaluator. A reserve is required for existing and new systems in the event that replacement is necessary. Biannual pump-outs of septic systems servicing the property are required and documentation must be provided to the Town upon request.
  - (2) Properties serviced by private wells must provide to the Code Enforcement Office a water quality test to ensure adequate water quality prior to issuance of a certificate of occupancy.

H. Any plan for a stand alone Accessory Apartment or an addition to the primary structure for an Accessory Apartment must provide a Drainage Plan which meets the following stormwater design standards:

- (1) The plan must demonstrate that the proposed improvements are designed to minimize

**Commented [GW1]:** Clarifies the cross reference and removes section below.

**Commented [GW2]:** GPC amendment to address design concerns

**Commented [GW3]: Suggested Staff Amendment:** In speaking with Code & Planning Staff, town staff recommend adding this language to help address potential double dipping with density changes in LD 2003...GLW

the amount of stormwater leaving the site. This must include consideration of the design and location of improvements to minimize the total area of impervious surface on the site and stormwater management techniques to minimize both the volume and rate of runoff from the lot.

- (2) Any stormwater draining onto or across the lot in its pre-improvement state will not be impeded or redirected so as to create ponding on, or flooding of, adjacent lots; and
- (3) Any increase in volume or rate of stormwater draining from the lot onto an adjacent following the improvement can be handled on the adjacent lot, whether privately or publicly owned, without creating ponding, flooding or other drainage problems and that the owner of the lot being improved has the legal right to increase the flow of stormwater onto the adjacent lot.

The Drainage Plan must include a written statement demonstrating how the proposed addition for an Accessory Apartment or stand alone Accessory Apartment has been designed to meet the requirements of this subsection and must contain at least the following information:

- (1) The location and characteristics of any streams or drainage courses existing on the parcel and/or abutting parcels;
- (2) The existing and proposed grading of the site using one-foot contours;
- (3) The location and area of existing and proposed buildings and impervious surfaces on the site;
- (4) The existing pattern of stormwater drainage on the site, including points of discharge to public ways or adjacent properties; and
- (5) The proposed pattern of stormwater drainage after the improvements, including the location and design of any stormwater facilities.

l. An accessory apartment is allowed on a lot that does not conform to the municipal zoning ordinance if the accessory apartment does not further increase the nonconformity.

**Commented [GW4]: P. Hogan Amendment:** Addresses post-development concerns of stormwater impacting abutting properties or waterbodies.

**Commented [GW5]:** GPC concerned with nonconforming lots, state legislature addressed this with passage of LD 1706. This language will address concerns of detached ADU on non-conforming lot given setbacks and lot coverage

shall have code compliant smoke and carbon monoxide detectors in addition to complying with current building code requirements for primary and secondary means of escape;

- (5) The rooms occupied by the roomers do not have a separate entrance from the outside;
- (6) The rooms occupied by the roomers are within the principal structure;
- (7) The roomers use utilities which are not separately metered from those used by the remaining occupants of the dwelling unit;
- (8) One off-street parking space per room rented shall be required as per § 240-6.1OF; and
- (9) The owner of the residential rental accommodation shall remain in residence while rooms are being rented.

C. Approval; permit; appeal.

- (1) Approval to operate a residential rental accommodation shall be granted by the Code Enforcement Officer upon a successful property inspection and complete permit application. Such permit shall be issued to the property owner only, and is subject to sufficient evidence that the property is owner occupied. **[Amended 11-8-2022]**
- (2) A permit to operate a residential rental accommodation shall expire upon a change in ownership or a change in owner residency status.
- (3) A single-family dwelling approved to accommodate roomers prior to November 8, 2016, may continue to operate under the conditions of approval as specified by the Zoning Board of Appeals, including the Land Use Ordinance requirements and restrictions in effect at the time of such approval.
- (4) Penni! shall be revoked upon confirmation of a second confirmed noise or barking dog citation related to use of a dwelling unit by a roomer. Permit shall also be revoked upon any confirmed violation of the requirements contained within the definition of residential rental accommodation located in Article 2. Any such permit having been revoked shall not be reissued to the same property owner within one year (365 days) from the date of revocation, which shall require Code Enforcement Officer reapproval. **[Amended 11-8-2022]**
- (5) An appeal from any decision of the Code Enforcement Officer related to the issuance, non issuance, suspension or revocation of a residential rental accommodation permit shall be taken by-an aggrieved party to the Zoning Board of Appeals within 30 days of the decision.

240-7.15

Affordable housing density

For an affordable housing development approved on or after July 1, 2023, the town shall apply density requirements in accordance with this section.

- A. Affordable housing development shall be allowed where multifamily dwellings are allowed and have a dwelling unit density of at least 2 1/2 times the base density that is otherwise allowed in that location and may not require more than 2 off-street parking spaces for every 3 units. The development must be in a designated growth area and have 51% of the units designated as affordable under the Affordable Housing Development Definition meeting the following criteria:

1. The locally designated growth area, as identified in a comprehensive plan adopted pursuant to and consistent with the procedures, goals and guidelines of this subchapter or as identified in a growth management program certified under MRS 30-A section 4347-A;

The development must comply with minimum lot size requirements in accordance with MRS Title 12, chapter 423- A, as applicable.

**B. Long-term affordability.** Before approving an affordable housing development, the developer shall provide proof that the owner of the affordable housing development have executed a restrictive covenant, recorded in the appropriate registry of deeds, for the benefit of and enforceable by a party acceptable to the municipality, to ensure that for at least 30 years after completion of construction:

1. For rental housing, occupancy of all of the units designated affordable in the development will remain limited to households at or below 80% of the local area median income at the time of initial occupancy; and

2. For owned housing, occupancy of all of the units designated affordable in the development will remain limited to households at or below 120% of the local area median income at the time of initial occupancy.

**C. Shoreland zoning.** An affordable housing development must comply with shoreland zoning requirements established by the Department of Environmental Protection under Title 38, chapter 3 and municipal shoreland zoning ordinances.

**D. Water and wastewater.** The owner/developer of an affordable housing development shall provide written verification to the municipality that each unit of the housing development is connected to adequate water and wastewater services before the municipality may certify the development for occupancy. Written verification under this subsection must include:

1. If a housing unit is connected to a public, special district or other comparable sewer system, proof of adequate service to support any additional flow created by the unit and proof of payment for the connection to the sewer system;

2. If a housing unit is connected to a public, special district or other centrally managed water system, proof of adequate service to support any additional flow created by the unit, proof of payment for the connection and the volume and supply of water required for the unit; and

3. If a housing unit is connected to a well, proof of access to potable water. Any tests of an existing well or proposed well must indicate that the water supply is potable and acceptable for domestic use.

**E. Subdivision requirements.** This section may not be construed to exempt a subdivider from the requirements for division of a tract or parcel of land in accordance with the state & municipal subdivision regulations.

**F. Restrictive covenants.** This section may not be construed to interfere with, abrogate or annul the validity or enforceability of any valid and enforceable easement, covenant, deed restriction or other agreement or instrument between private parties that imposes greater restrictions than those provided in this section, as long as the agreement does not abrogate rights under the United States Constitution or the Constitution of Maine.

**G. Short-Term Rental License Prohibition.** No units created by an affordable housing development shall qualify for the Town's Short Term Rental License Program during the duration of the long-term affordability restriction in subsection B above.

**H. Growth Permit Requirements.** All affordable housing developments shall comply with Section 240-11.12 (Growth management permit required)

**Commented [GW1]:** This provision is added if a parcel is located in the growth area but public water is unavailable. SMPDC is in agreement this would be costly from a developer perspective for monthly testing requirements.

**Commented [GW2]:** GPC suggested change relating to short term rental prohibition concerns for new market rate units that are part of development.

**Commented [GW3]:** Suggested amendment by staff to clarify separation from LD 2003 ADU & Affordable house development provisions.

**Commented [GW4]:** PB suggestion for easy cross reference by the public.

# What is LD 2003?

## Affordable Housing Density Bonus

30-A M.R.S. 4364

**Density bonus for affordable housing developments of 2.5x base density; requirement of 2 parking spaces for every 3 units.**

To qualify for bonus:

- ✓ 51% or more of the units must be affordable;
- ✓ Development must be located in an area with zoning and multi-family housing; and
- ✓ Development must be located in a designated growth area or served by water/sewer or a comparable system.

## Up to Four Dwelling Units

30-A M.R.S. 4364-A

**Allows between 2-4 dwelling units on residential lots.**

- ✓ Lots without an existing unit:
  - Up to 2 units allowed
  - Exception: up to 4 units if lot is in designated growth area or has water/sewer in a municipality without a comprehensive plan.
- ✓ Lots with 1 existing dwelling unit:
  - Up to 2 units allowed (within, detached, or attached)

## Accessory Dwelling Unit

30-A M.R.S. 4364-B

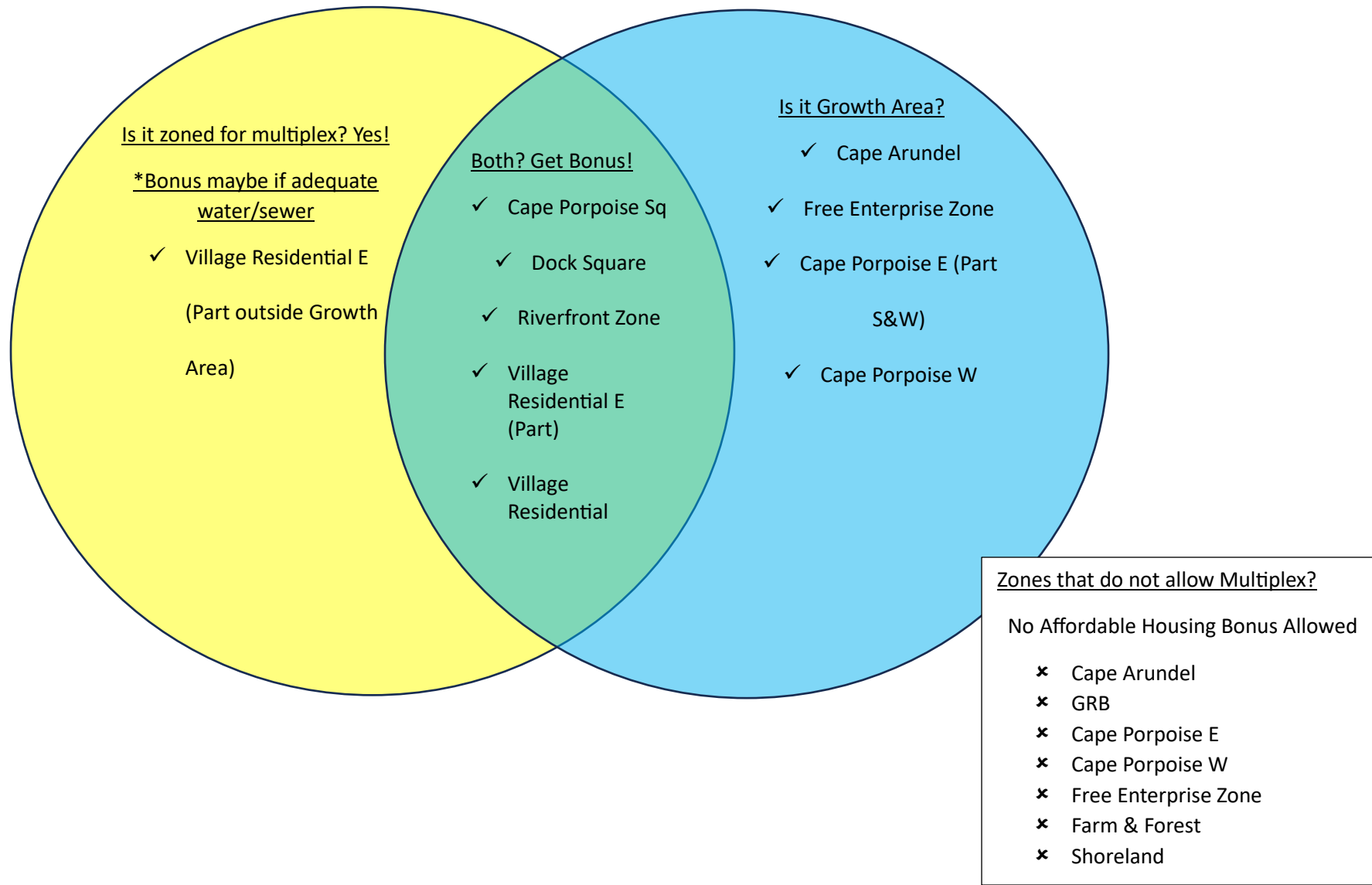
**Allows 1 ADU on a lot with an existing single-family home within home, attached to it, or detached.**

- ✓ Exempt from zoning density requirements and rate of growth ordinances.
- ✓ No additional parking
- ✓ 190 square feet min; max can be set by municipality

For more information, contact [housing.decd@maine.gov](mailto:housing.decd@maine.gov) or visit <https://www.maine.gov/decd/housingopportunityprogram>

## Affordable Housing Density Bonus Allowed

\* For illustrative and general educational purposes only. Full determination is site specific and determined based on overlays and zoning standards specific to site of proposed development. See staff for a more accurate assessment of a proposed project.



# LAND USE

## 240 Attachment 1

### Town of Kennebunkport

#### Table of Dimensional Requirements

	Minimum Lot Area <sup>1</sup> (square feet)	Minimum Lot Width (feet)	Maximum Lot Coverage	Minimum Net Residential Area per Dwelling Unit (square feet)	Minimum Setbacks			Coastal Wetland Setback (feet)	Minimum Open Space	Maximum Building Height (feet)
					Front (feet)	Side (feet)	Rear (feet)			
§ 240-4.3 Village Residential Zone										
Single-family dwelling (1 per lot) or other use § 240-4.16	40,000	100	20%	40,000	20	15	15		20%	35
Two-family dwelling	40,000	100	20%	20,000	40	20	20		20%	35
Multiplex	60,000	150	20%	20,000	25	50	50		20%	35
Public libraries	40,000	100	75%		20	15	15		5%	35
§ 240-4.4 Village Residential East Zone										
Single-family dwelling (1 per lot) or other use § 240-4.16	40,000	100	20%	40,000	20	15	15		20%	35
Two-family dwelling	40,000	100	20%	20,000	40	20	20		20%	35
Multiplex	90,000	150	20%	30,000	40	50	50		20%	35
§ 240-4.5 Dock Square Zone										
Single-family dwelling (1 per lot) or other use § 240-4.16	20,000	100	70%	20,000	20	15	15	25	20%	30
Two-family dwelling	20,000	100	70%	10,000	40	20	20	25	20%	30
Multiplex	30,000	150	70%	10,000	40	20	20	25	20%	30
§ 240-4.6 Riverfront Zone										
Single-family dwelling (1 per lot) or other use § 240-4.16	20,000	100	20%	20,000	20	15	15	75	20%	30
Two-family dwelling	20,000	100	20%	10,000	40	20	20	75	20%	30
Multiplex	60,000	150	20%	20,000	25	50	50	75	20%	30

# KENNEBUNKPORT CODE

	Minimum Lot Area <sup>1</sup> (square feet)	Minimum Lot Width (feet)	Maximum Lot Coverage	Minimum Net Residential Area per Dwelling Unit (square feet)	Minimum Setbacks			Coastal Wetland Setback (feet)	Minimum Open Space	Maximum Building Height (feet)
					Front (feet)	Side (feet)	Rear (feet)			
§ 240-4.7 Cape Arundel Zone										
Single-family dwelling (1 per lot) or other use § 240-4.16	40,000	100	20%	40,000	20	15	15		20%	35
Two-family dwelling	40,000	100	20%	20,000	40	20	20		20%	35
§ 240-4.8 Goose Rocks Zone										
Single-family dwelling (1 per lot) or other use § 240-4.16	40,000	100	20%	40,000	20	15	15		20%	30
Two-family dwelling	40,000	100	20%	20,000	40	20	20		20%	30
§ 240-4.9 Cape Porpoise East and Cape Porpoise West Zones										
Single-family dwelling (1 per lot) or other use § 240-4.16	20,000	100	20%	20,000	20	15	15		20%	30
Two-family dwelling	30,000	100	20%	15,000	40	20	20		20%	30
§ 240-4.10 Cape Porpoise Square Zone										
Single-family dwelling (1 per lot) or other use § 240-4.16	20,000	100	20%	20,000	20	15	15		20%	30
Two-family dwelling	20,000	100	20%	10,000	40	20	20		20%	30
Multiplex	60,000	150	20%	20,000	25	50	50		20%	30
§ 240-4.11 Free Enterprise Zone										
Single-family dwelling (1 per lot) or other use § 240-4.16	40,000	100	20%	40,000	20	15	15		20%	35
Two-family dwelling	40,000	100	20%	20,000	40	20	20		20%	35
§ 240-4.12 Farm and Forest Zone										
Single-family dwelling (1 per lot) or other use § 240-4.16	3 acres/ 130,680 square feet	200	10%	130,680	20	15	15		20%	35
Two-family dwelling	3 acres/ 130,680 square feet	100	20%	65,340	40	20	20		20%	35

**NOTE:**

<sup>1</sup> Land use activities within the Shoreland Zone shall conform to the minimum lot size and shore frontage requirements set forth in § 240-4.16.



A. Single-family dwellings. A single-family dwelling and any accessory apartment located therein shall be constructed on one continuous foundation and under one continuous roof; no part of the dwelling unit shall be located in a detached building or structure. Detached accessory apartment units shall be exempt from this requirement. [Amended 6-13-2023]

B. Two-family dwellings. Each unit in a two-family dwelling shall have not less than 650 square feet. The two-family dwelling shall have only one front entrance, and all other entrances shall be on the side or in the rear of the dwelling. An entrance leading to a foyer with entrances leading from the foyer to the two dwelling units is permitted. One dwelling shall be subordinate in size. A home occupation shall not be permitted in the subordinate unit. A two-family dwelling shall be constructed on one continuous foundation and under one continuous roof; no part of the dwelling units shall be located in a detached building or structure.

C. For any area in which housing is allowed there shall be up to 2 dwelling units per lot if that lot does not contain an existing dwelling unit and meets the minimum net residential area per dwelling unit within the table of dimensional requirements (240 Attachment 1) for the lot's zone, except that it shall allow up to 4 dwelling units per lot if that lot does not contain an existing dwelling unit and the lot is located in a the designated growth area as noted below: for the Town of Kennebunkport (See town's comprehensive plan for the growth area).

If a single-family dwelling is demolished after July 1, 2024, that lot shall not be defined as a vacant lot for section C above.

~~1. The locally designated growth area, as identified in a comprehensive plan adopted pursuant to and consistent with the procedures, goals and guidelines of this subchapter or as identified in a growth management program certified under section 4347-A;~~

D. A lot with an existing dwelling unit may have up to two additional dwelling units, either one additional attached dwelling unit, one additional detached dwelling unit, or one of each townwide if the lot meets the minimum net residential area per dwelling unit within the table of dimensional requirements (240 Attachment 1) for the lot's zone. ~~On a lot with one existing dwelling unit the addition of up to 2 dwelling units: one additional dwelling unit within or attached to an existing structure or one additional detached dwelling unit, or one of each.~~

~~If more than one dwelling unit has been constructed on a lot as the result of the allowance of subsections D above, the lot is not eligible for any additional increases in density.~~

~~Additional units may be be allowed by this subsection provided the appropriate lot areas can be provided.~~

The owner of a housing structure must provide written verification to the municipality that the structure is connected to adequate water and wastewater services before the municipality may certify the structure for occupancy. Written verification under this subsection must include:

1. If a housing structure is connected to a public, special district or other comparable sewer system, proof of adequate service to support any additional flow created by the structure and proof of payment for the connection to the sewer system;

2. If a housing structure is connected to a septic system, proof of adequate sewage disposal for subsurface wastewater. The septic system must be verified as adequate by a local plumbing inspector under section 4221. Plans for subsurface wastewater disposal must be prepared by a licensed site evaluator in accordance with subsurface wastewater disposal rules adopted under Title 22, section 42;

**Commented [GW1]:** Made edits to this section to clarify only in the Growth Area located in the Comp Plan shall be afforded the 4 units on a vacant lot if they meet density.

**Commented [GW2]: Optional Amendment:** Allows municipality the option of prohibiting lots with a SFD to demolish to qualify for 4 units in the growth area.

**Commented [GW3]:** Reworded SMPDC draft to understand

**Commented [GW4]: Optional Amendment:** State law allows municipalities to add a one and done rule... If you can construct up to 2 more units and only construct one, you can't return to add another in the future.

**Commented [GW5]: Optional Change:** State allows communities to allow more density above the 2-4 unit requirement on the lot. Staff suggest removal to avoid complex issues with multiplex uses in not permitted zones.

3. If a housing structure is connected to a public, special district or other centrally managed water system, proof of adequate service to support any additional flow created by the structure, proof of payment for the connection and the volume and supply of water required for the structure; and

4. If a housing structure is connected to a well, proof of access to potable water. Any tests of an existing well or proposed well must indicate that the water supply is potable and acceptable for domestic use.

E. **Restrictive covenants.** This section may not be construed to interfere with, abrogate or annul the validity or enforceability of any valid and enforceable easement, covenant, deed restriction or other agreement or instrument between private parties that imposes greater restrictions than those provided in this section.

**Commented [GW6]:** This section pertains to wastewater and water supply requirements which are reviewed by the CEO for compliance during the building permit application process.

**Commented [GW7]:** State law section that allows for restrictive covenants which can be enforced in civil court between private parties.

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# **AGENDA ITEM DIVIDER**

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TOWN OF KENNEBUNKPORT, MAINE  
~ INCORPORATED 1653 ~

MEMORANDUM

To: Laurie Smith, Town Manager & Kennebunkport Selectboard  
Fr: Galen Weibley, Director of Planning & Development  
Re: Floodplain Ordinance Amendment  
Date: January 18, 2024

Enclosed are proposed changes for consideration by the Selectboard to update Kennebunkport's Floodplain Ordinance (Chapter 219) to comply with updated Federal Emergency Management Agency's (FEMA) updated Flood Insurance Rate maps (FIRM) and state model ordinance (enclosed). FEMA FIRM update has been an ongoing and contentious issue of the inaccuracy of the proposed FEMA map and its impact on resident's properties and insurance premiums.

The Town has received word that the final letter of determination (FLD) has been issued by FEMA, requiring municipalities to begin the adoption process of updating their floodplain ordinances with the revised map. The town is required to adopt these changes while FEMA processes the town's Letter of Map Amendment (LOMA) application, which has been pending until the final adoption of FEMA's proposed map. Failure of the town to make necessary updates will disqualify residents and mortgagors from obtaining insurance policies under the National Flood Insurance Program for properties within the town.

The strategy moving forward is to adopt an amended model ordinance to repeal the town's existing Floodplain Ordinance to include a disclaimer pending the consideration of the Town's LOMA application. This will do two things:

1. Not jeopardize current property owners flood insurance eligibility in the National Flood Insurance Program.
2. Allow for an automatic update of the floodplain maps without a future amendment requiring a future town vote which will lapse coverage or require coverage for currently exempt properties.

With town adoption, the FEMA FIRM will go into effect July 1, 2024, with the town's LOMA map taking effect the day after.

**Actions Requested:**

Suggested motion: Mr. Chairman, I move that we schedule a public hearing regarding the proposed changes to Chapter 219 of the town's Floodplain Ordinance.

*Enclosures*

Maine DEP Floodplain Model Ordinance

Map differences between current, proposed and LOMA maps

**FLOODPLAIN MANAGEMENT ORDINANCE**

**FOR THE**

**TOWN OF KENNEBUNKPORT, MAINE**

---

ENACTED: \_\_\_\_\_  
Date

EFFECTIVE: \_\_\_\_\_  
Date

CERTIFIED BY: \_\_\_\_\_  
Signature

CERTIFIED BY: \_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

Affix Seal

# **FLOODPLAIN MANAGEMENT ORDINANCE**

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## **ARTICLE I - PURPOSE AND ESTABLISHMENT**

Certain areas of the Town of Kennebunkport, Maine are subject to periodic flooding, causing serious damages to properties within these areas. Relief is available in the form of flood insurance as authorized by the National Flood Insurance Act of 1968.

Therefore, the Town of Kennebunkport, Maine has chosen to become a participating community in the National Flood Insurance Program and agrees to comply with the requirements of the National Flood Insurance Act of 1968 (P.L. 90-488, as amended) as delineated in this Floodplain Management Ordinance.

It is the intent of the Town of Kennebunkport, Maine to require the recognition and evaluation of flood hazards in all official actions relating to land use in the floodplain areas having special flood hazards.

The Town of Kennebunkport has the legal authority to adopt land use and control measures to reduce future flood losses pursuant to Title 30-A MRSA, Sections 3001-3007, 4352, 4401-4407, and Title 38 MRSA, Section 440.

The National Flood Insurance Program, established in the aforesaid Act, provides that areas of the Town of Kennebunkport having a special flood hazard be identified by the Federal Emergency Management Agency and that floodplain management measures be applied in such flood hazard areas. This Ordinance establishes a Flood Hazard Development Permit system and review procedure for development activities in the designated flood hazard areas of the Town of Kennebunkport, Maine.

The areas of special flood hazard, Zones A, AE, and VE for the Town of Kennebunkport, York County, Maine, identified by the Federal Emergency Management Agency in a report entitled "Flood Insurance Study – York County, Maine" dated \_\_\_\_\_, 2023 with accompanying "Flood Insurance Rate Map" dated \_\_\_\_\_, 2023 are hereby adopted by reference and declared to be a part of this Ordinance.

## **ARTICLE II - PERMIT REQUIRED**

The Code Enforcement Officer shall be designated as the local Floodplain Administrator. The Floodplain Administrator shall have the authority to implement the commitment made to administer and enforce the requirements for participation in the National Flood Insurance Program.

Before any construction or other development (as defined in Article XIV), including the placement of manufactured homes, begins within any areas of special flood hazard established in Article I, a Flood Hazard Development Permit shall be obtained from the Code Enforcement Officer, except as provided in Article VII. This permit shall be in addition to any other permits which may be required pursuant to the codes and ordinances of the Town of Kennebunkport, Maine.

## **ARTICLE III - APPLICATION FOR PERMIT**

The application for a Flood Hazard Development Permit shall be submitted to the Code Enforcement Officer and shall include:

A. The name, address, and phone number of the applicant, owner, and contractor;



- B. An address and a map indicating the location of the construction site;
- C. A site plan showing locations of existing and/or proposed development, including but not limited to structures, sewage disposal facilities, water supply facilities, areas to be cut and filled, and lot dimensions;
- D. A statement of the intended use of the structure and/or development;
- E. A statement of the cost of the development including all materials and labor;
- F. A statement as to the type of sewage system proposed;
- G. Specification of dimensions of the proposed structure and/or development;

[Items H-K.3. apply only to new construction and substantial improvements.]

- H. The elevation in relation to the National Geodetic Vertical Datum (NGVD), North American Vertical Datum (NAVD), or to a locally established datum in Zone A only, of the:
  - 1. base flood at the proposed site of all new or substantially improved structures, which is determined:
    - a. in Zones AE, and VE from data contained in the "Flood Insurance Study - York County, Maine," as described in Article I; or,
    - b. in Zone A:
      - (1) from any base flood elevation data from federal, state, or other technical sources (such as FEMA's Quick-2 model, FEMA 265), including information obtained pursuant to Article VI.M. and IX.D.; or,
      - (2) in the absence of all data described in Article III.H.1.b.(1), information to demonstrate that the structure shall meet the elevation requirement in Article VI.H.2.b., Article VI.I.2.b., or Article VI.J.2.b.
  - 2. highest and lowest grades at the site adjacent to the walls of the proposed building;
  - 3. lowest floor, including basement; and whether or not such structures contain a basement;
  - 4. lowest machinery and equipment servicing the building; and,
  - 5. level, in the case of non-residential structures only, to which the structure will be floodproofed.
- I. A description of an elevation reference point established on the site of all developments for which elevation standards apply as required in Article VI;

J. A written certification by:

1. a Professional Land Surveyor that the grade elevations shown on the application are accurate; and,
2. a Professional Land Surveyor, registered professional engineer or architect that the base flood elevation shown on the application is accurate.

K. The following certifications as required in Article VI by a registered professional engineer or architect:

1. a Floodproofing Certificate (FEMA Form FF-206-FY-22-153, as amended), to verify that the floodproofing methods for any non-residential structures will meet the floodproofing criteria of Article VI.I., and other applicable standards in Article VI;
2. a V-Zone Certificate to verify that the construction in coastal high hazard areas, Zone VE and Coastal AE Zone, will meet the criteria of Article VI.R.; and other applicable standards in Article VI;
3. a Hydraulic Openings Certificate to verify that engineered hydraulic openings in foundation walls will meet the standards of Article VI.N.2.a.;
4. a certified statement that bridges will meet the standards of Article VI.O.;
5. a certified statement that containment walls will meet the standards of Article VI.P.

L. A description of the extent to which any water course will be altered or relocated as a result of the proposed development; and,

M. A statement of construction plans describing in detail how each applicable development standard in Article VI will be met.

#### **ARTICLE IV - APPLICATION FEE AND EXPERT'S FEE**

A non-refundable application fee of \$50.00 shall be paid to the Code Enforcement Officer and a copy of a receipt for the same shall accompany the application.

An additional fee may be charged if the Code Enforcement Officer, Planning Board, and/or Board of Appeals needs the assistance of a professional engineer or other expert. The expert's fee shall be paid in full by the applicant within 10 days after the town submits a bill to the applicant. Failure to pay the bill shall constitute a violation of the ordinance and be grounds for the issuance of a stop work order. An expert shall not be hired by the municipality at the expense of an applicant until the applicant has either consented to such hiring in writing or been given an opportunity to be heard on the subject. An applicant who is dissatisfied with a decision to hire expert assistance may appeal that decision to the Board of Appeals.

## **ARTICLE V - REVIEW STANDARDS FOR FLOOD HAZARD DEVELOPMENT PERMIT APPLICATIONS**

The Code Enforcement Officer shall:

- A. Review all applications for the Flood Hazard Development Permit to assure that proposed developments are reasonably safe from flooding and to determine that all pertinent requirements of Article VI (Development Standards) have been, or will be met;
- B. Utilize, in the review of all Flood Hazard Development Permit applications:
  - 1. the base flood and floodway data contained in the "Flood Insurance Study - York County, Maine," as described in Article I;
  - 2. in special flood hazard areas where base flood elevation and floodway data are not provided, the Code Enforcement Officer shall obtain, review, and reasonably utilize any base flood elevation and floodway data from federal, state, or other technical sources, including information obtained pursuant to Article III.H.1.b.(1); Article VI.M.; and Article IX.D., in order to administer Article VI of this Ordinance; and,
  - 3. when the community establishes a base flood elevation in a Zone A by methods outlined in Article III.H.1.b.(1), the community shall submit that data to the Maine Floodplain Management Program.
- C. Make interpretations of the location of boundaries of special flood hazard areas shown on the maps described in Article I of this Ordinance;
- D. In the review of Flood Hazard Development Permit applications, determine that all necessary permits have been obtained from those federal, state, and local government agencies from which prior approval is required by federal or state law, including but not limited to Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1344;
- E. Notify adjacent municipalities, the Department of Environmental Protection, and the Maine Floodplain Management Program prior to any alteration or relocation of a water course and submit copies of such notifications to the Federal Emergency Management Agency;
- F. If the application satisfies the requirements of this Ordinance, approve the issuance of one of the following Flood Hazard Development Permits, based on the type of development:
  - 1. A two-part Flood Hazard Development Permit for elevated structures. Part I shall authorize the applicant to build a structure to and including the first horizontal floor only above the base flood level. At that time the applicant shall provide the Code Enforcement Officer with an "under construction" Elevation Certificate completed by a Professional Land Surveyor based on the Part I permit construction for verifying compliance with the elevation requirements of Article VI, paragraphs H., I., J., or R. Following review of the Elevation Certificate data, which shall take place within 72 hours of receipt of the application, the Code Enforcement Officer shall issue Part

II of the Flood Hazard Development Permit. Part II shall authorize the applicant to complete the construction project; or,

2. A Flood Hazard Development Permit for Floodproofing of Non-Residential Structures that are new construction or substantially improved non-residential structures that are not being elevated but that meet the floodproofing standards of Article VI.I.1. The application for this permit shall include a Floodproofing Certificate signed by a registered professional engineer or architect; or,
3. A Flood Hazard Development Permit for Minor Development for all development that is not new construction or a substantial improvement, such as repairs, maintenance, renovations, or additions, whose value is less than 50% of the market value of the structure. Minor development also includes but is not limited to: accessory structures as provided for in Article VI.L., mining, dredging, filling, grading, paving, excavation, drilling operations, storage of equipment or materials, deposition or extraction of materials, public or private sewage disposal systems or water supply facilities that do not involve structures; and non-structural projects such as bridges, dams, towers, fencing, pipelines, wharves, and piers.

For development that requires review and approval as a Conditional Use, as provided for in this Ordinance, the Flood Hazard Development Permit Application shall be acted upon by the Planning Board as required in Article VII.

- G. Maintain, as a permanent record, copies of all Flood Hazard Development Permit Applications, corresponding Permits issued, and data relevant thereto, including reports of the Board of Appeals on variances granted under the provisions of Article X of this Ordinance, and copies of Elevation Certificates, Floodproofing Certificates, Certificates of Compliance, and certifications of design standards required under the provisions of Articles III, VI, and VIII of this Ordinance.

## **ARTICLE VI - DEVELOPMENT STANDARDS**

All developments in areas of special flood hazard shall meet the following applicable standards:

### **A. All Development - All development shall:**

1. be designed or modified and adequately anchored to prevent flotation (excluding piers and docks), collapse, or lateral movement of the development resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
2. use construction materials that are resistant to flood damage;
3. use construction methods and practices that will minimize flood damage; and,
4. use electrical, heating, ventilation, plumbing, and air conditioning equipment, and other service facilities that are designed and/or located to prevent water from entering or accumulating within the components during flooding conditions.

- B. **Water Supply** - All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems.
- C. **Sanitary Sewage Systems** - All new and replacement sanitary sewage systems shall be designed and located to minimize or eliminate infiltration of flood waters into the system and discharges from the system into flood waters.
- D. **On Site Waste Disposal Systems** - On site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during floods.
- E. **Watercourse Carrying Capacity** - All development associated with altered or relocated portions of a watercourse shall be constructed and maintained in such a manner that no reduction occurs in the flood carrying capacity of the watercourse.
- F. **Utilities** - New construction or substantial improvement of any structure (including manufactured homes) located within:
  - 1. Zones A and AE shall have the bottom of all electrical, heating, plumbing, ventilation and air conditioning equipment, permanent fixtures and components, HVAC ductwork and duct systems, and any other utility service equipment, facilities, machinery, or connections servicing a structure, elevated to at least two feet above the base flood elevation.
  - 2. Zone VE shall meet the requirements of Article VI.R.2.
- G. **Physical Changes to the Natural Landscape** - Certain development projects, including but not limited to, retaining walls, sea walls, levees, berms, and rip rap, can cause physical changes that affect flooding conditions.
  - 1. All development projects in Zones AE and VE that cause physical changes to the natural landscape shall be reviewed by a Professional Engineer to determine whether or not the project changes the base flood elevation, zone, and/or the flood hazard boundary line.
    - a. If the Professional Engineer determines, through the use of engineering judgement, that the project would not necessitate a Letter of Map Revision (LOMR), a certified statement shall be provided.
    - b. If the Professional Engineer determines that the project may cause a change, a hydrologic and hydraulic analysis that meets current FEMA standards shall be performed.
  - 2. If the hydrologic and hydraulic analysis performed indicates a change to the base flood elevation, zone, and/or the flood hazard boundary line, the applicant may submit a Conditional Letter of Map Revision (C-LOMR) request to the Federal Emergency Management Agency for assurance that the as-built project will result in a change to the Flood Insurance Rate Map. Once the development is completed, a request for a Letter of Map Revision (LOMR) shall be initiated.

3. If the hydrologic and hydraulic analysis performed show a change to the base flood elevation, zone, and/or the flood hazard boundary line, as soon as practicable, but no later than 6 months after the completion of the project, the applicant shall submit the technical data to FEMA in the form of a Letter of Map Revision request.
- H. **Residential** - New construction or substantial improvement of any residential structure located within:
1. Zones AE shall have the lowest floor (including basement) elevated to at least two feet above the base flood elevation.
  2. Zone A shall have the lowest floor (including basement) elevated:
    - a. to at least two feet above the base flood elevation utilizing information obtained pursuant to Article III.H.1.b.(1); Article V.B.; or Article IX.D., or;
    - b. in the absence of all data described in Article VI.H.2.a., to at least two feet above the highest adjacent grade to the structure.
  3. Zone VE and Coastal AE Zone (as defined) shall meet the requirements of Article VI.R.
- I. **Non-Residential** - New construction or substantial improvement of any non-residential structure located within:
1. Zones AE shall have the lowest floor (including basement) elevated to at least two feet above the base flood elevation, or together with attendant utility and sanitary facilities shall:
    - a. be floodproofed to at least two feet above the base flood elevation so that below that elevation the structure is watertight with walls substantially impermeable to the passage of water;
    - b. have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and,
    - c. be certified by a registered professional engineer or architect that the floodproofing design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section. Such certification shall be provided with the application for a Flood Hazard Development Permit, as required by Article III.K., and shall include a record of the elevation above mean sea level to which the structure is floodproofed.
  2. Zone A shall have the lowest floor (including basement) elevated:
    - a. to at least two feet above the base flood elevation utilizing information obtained pursuant to Article III.H.1.b.(1); Article V.B.; or Article IX.D., or;

- b. in the absence of all data described in Article VI.I.2.a., to at least two feet above the highest adjacent grade to the structure; or,
- c. together with attendant utility and sanitary facilities, be floodproofed to two feet above the elevation established in Article VI.I.2.a. or b. and meet the floodproofing standards of Article VI.I.1.a., b., and c.

3. Zone VE and Coastal AE Zone (as defined) shall meet the requirements of Article VI.R.

**J. Manufactured Homes** - New or substantially improved manufactured homes located within:

1. Zones AE shall:

- a. be elevated such that the lowest floor (including basement) of the manufactured home is at least two feet above the base flood elevation;
- b. be on a permanent foundation, which may be poured masonry slab or foundation walls, with hydraulic openings, or may be reinforced piers or block supports, any of which support the manufactured home so that no weight is supported by its wheels and axles; and,
- c. be securely anchored to an adequately anchored foundation system to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to:
  - (1) over-the-top ties anchored to the ground at the four corners of the manufactured home, plus two additional ties per side at intermediate points (manufactured homes less than 50 feet long require one additional tie per side); or by,
  - (2) frame ties at each corner of the home, plus five additional ties along each side at intermediate points (manufactured homes less than 50 feet long require four additional ties per side).
  - (3) All components of the anchoring system described in Article VI.J.1.c.(1) & (2) shall be capable of carrying a force of 4800 pounds.

2. Zone A shall:

- a. be elevated on a permanent foundation, as described in Article VI.J.1.b., such that the lowest floor (including basement) of the manufactured home is at least two feet above the base flood elevation utilizing information obtained pursuant to Article III.H.1.b.(1); Article V.B.; or Article IX.D.; or,
- b. in the absence of all data described in Article VI.J.2.a., to at least two feet above the highest adjacent grade to the structure; and,
- c. meet the anchoring requirements of VI.J.1.c.

3. Zone VE and Coastal AE Zone (as defined) shall meet the requirements of Article VI.R.

**K. Recreational Vehicles** - Recreational Vehicles located within:

1. Zones A and AE shall either:
  - a. be on the site for fewer than 180 consecutive days; and,
  - b. be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or,
  - c. be permitted in accordance with the elevation and anchoring requirements for "manufactured homes" in Article VI.J.1.
2. Zone VE and Coastal AE Zone (as defined) shall meet the requirements of either Article VI.K.1.a. and b., or Article VI.R.

**L. Accessory Structures** - New construction or substantial improvement of Accessory Structures, as defined in Article XIV, shall be exempt from the elevation criteria required in Article VI.H. & I. above, if all other requirements of Article VI and all the following requirements are met.

1. Accessory Structures located in Zone A and AE shall:
  - a. meet the requirements of Article VI.A.1. through 4., as applicable;
  - b. be limited in size to a one-story two car garage;
  - c. have unfinished interiors and not be used for human habitation;
  - d. have only ground fault interrupt electrical outlets. The electric service disconnect shall be located above the base flood elevation and, when possible, outside the Special Flood Hazard Area;
  - e. be located outside the floodway;
  - f. when possible be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters and be placed further from the source of flooding than is the primary structure;
  - g. have hydraulic openings, as specified in Article VI.N.2., in at least two different walls of the accessory structure; and
  - h. be located outside the Coastal AE Zone.



2. Accessory Structures in Zone VE and Coastal A Zones shall meet the requirements of Article VI.R.

**M. Floodways -**

1. In Zone AE riverine areas, encroachments, including fill, new construction, substantial improvement, and other development shall not be permitted within a regulatory floodway which is designated on the community's Flood Insurance Rate Map unless a technical evaluation certified by a registered professional engineer is provided demonstrating that such encroachments will not result in any increase in flood levels within the community during the occurrence of the base flood discharge.
2. In Zones A and AE riverine areas, for which no regulatory floodway is designated, encroachments, including fill, new construction, substantial improvement, and other development shall not be permitted in the floodway as determined in Article VI.M.3. unless a technical evaluation certified by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing development and anticipated development:
  - a. will not increase the water surface elevation of the base flood more than one foot at any point within the community; and,
  - b. is consistent with the technical criteria contained in FEMA's guidelines and standards for flood risk analysis and mapping.
3. In Zones A and AE riverine areas, for which no regulatory floodway is designated, the regulatory floodway is determined to be the channel of the river or other water course and the adjacent land areas to a distance of one-half the width of the floodplain as measured from the normal high water mark to the upland limit of the floodplain.

**N. Hydraulic Openings/Flood Vents -** New construction or substantial improvement of any structure in Zones A and AE that meets the development standards of Article VI, including the elevation requirements of Article VI, paragraphs H., I., or J. and is elevated on posts, columns, piers, piles, or crawl spaces may be enclosed below the base flood elevation requirements provided all the following criteria are met or exceeded:

1. Enclosed areas are not "basements" as defined in Article XIV;
2. Enclosed areas shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood water. Designs for meeting this requirement must either:
  - a. be engineered and certified by a registered professional engineer or architect; or,
  - b. meet or exceed the following minimum criteria:

- (1) a minimum of two openings having a total net area of not less than one square inch for every square foot of the enclosed area;
- (2) the bottom of all openings shall be below the base flood elevation and no higher than one foot above the lowest grade; and,
- (3) openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the entry and exit of flood waters automatically without any external influence or control such as human intervention, including the use of electrical and other non-automatic mechanical means;

3. The enclosed area shall not be used for human habitation; and,

4. The enclosed areas are usable solely for building access, parking of vehicles, or storage.

O. **Bridges** - New construction or substantial improvement of any bridge in Zones A, AE, and VE shall be designed such that:

1. when possible, the lowest horizontal member (excluding the pilings or columns) is elevated to at least two feet above the base flood elevation; and,
2. a registered professional engineer shall certify that:
  - a. the structural design and methods of construction shall meet the elevation requirements of this section and the floodway standards of Article VI.M.; and,
  - b. the foundation and superstructure attached thereto are designed to resist flotation, collapse, and lateral movement due to the effects of wind and water loads acting simultaneously on all structural components. Water loading values used shall be those associated with the base flood.

P. **Containment Walls** - New construction or substantial improvement of any containment wall located within:

1. Zones A, AE, and VE shall:
  - a. have the containment wall elevated to at least two feet above the base flood elevation;
  - b. have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and,
  - c. be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section. Such certification shall be provided with the application for a Flood Hazard Development Permit, as required by Article III.K.

**Q. Wharves, Piers, and Docks** - New construction or substantial improvement of wharves, piers, and docks are permitted in and over water and seaward of the mean high tide if the following requirements are met:

1. in Zones A and AE, wharves, piers, and docks shall comply with all applicable local, state, and federal regulations; or,
2. in Zone VE, wharves, piers, and docks shall have a registered professional engineer develop or review the structural design, specifications, and plans for the construction.

**R. Coastal Floodplains** -

1. New construction located within Zones AE and VE shall be located landward of the reach of mean high tide except as provided in Article VI.R.7.
2. New construction or substantial improvement of any structure located within Zone VE or Coastal AE Zone shall have the bottom of all electrical, heating, plumbing, ventilation and air conditioning equipment, permanent fixtures and components, HVAC ductwork and duct systems, and any other utility service equipment, facilities, machinery, or connections servicing a structure, elevated to at least two feet above the base flood elevation. Systems, fixtures, equipment, and components shall not be mounted on or penetrate through walls intended to break away under flood loads.
3. New construction or substantial improvement of any structure located within Zone VE and Coastal AE Zones (as defined) shall:
  - a. be elevated on posts or columns such that:
    - (1) the bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated to at least two feet above the base flood elevation;
    - (2) the pile or column foundation and the elevated portion of the structure attached thereto is anchored to resist flotation, collapse, and lateral movement due to the effects of wind and water loads acting simultaneously on all building components; and,
    - (3) water loading values used shall be those associated with the base flood. Wind loading values used shall be those required by applicable state and local building standards.
  - b. have the space below the lowest floor:
    - (1) free of obstructions; or,
    - (2) constructed with open wood lattice-work, or insect screening intended to collapse under wind and water without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting piles or columns; or,

- (3) constructed with non-supporting breakaway walls that have a design safe loading resistance of not less than 10 or more than 20 pounds per square foot.
- c. require a registered professional engineer or architect to:
  - (1) develop or review the structural design, specifications, and plans for the construction, which must meet or exceed the technical criteria contained in the *Coastal Construction Manual*, (FEMA-55); and,
  - (2) certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the criteria of Article VI.R.3.
- 4. The use of fill for structural support in Zone VE and Coastal AE Zones is prohibited.
- 5. Human alteration of sand dunes within Zone VE and Coastal AE Zones is prohibited unless it can be demonstrated that such alterations will not increase potential flood damage.
- 6. The area below the lowest floor shall be used solely for parking vehicles, building access, and storage.
- 7. Conditional Use - Lobster sheds and fishing sheds may be located seaward of mean high tide and shall be exempt from the elevation requirement in Article VI.I. only if permitted as a Conditional Use following review and approval by the Planning Board, as provided in Article VII, and if all the following requirements and those of Article VI.A., VI.M., and VI.N. are met:
  - a. The conditional use shall be limited to low value structures such as metal or wood sheds 200 square feet or less and shall not exceed more than one story.
  - b. The structure shall be securely anchored to the wharf or pier to resist flotation, collapse, and lateral movement due to the effect of wind and water loads acting simultaneously on all building components.
  - c. The structure will not adversely increase wave or debris impact forces affecting nearby buildings.
  - d. The structure shall have unfinished interiors and shall not be used for human habitation.
  - e. Any mechanical, utility equipment, and fuel storage tanks must be anchored and either elevated or floodproofed to at least two feet above the base flood elevation.
  - f. All electrical outlets shall be ground fault interrupt type. The electrical service disconnect shall be located on shore above the base flood elevation and, when possible, outside the Special Flood Hazard Area.

## ARTICLE VII - CONDITIONAL USE REVIEW

The Planning Board shall hear and decide upon applications for conditional uses provided for in this Ordinance. The Planning Board shall hear and approve, approve with conditions, or disapprove all applications for conditional uses. An applicant informed by the Code Enforcement Officer that a Conditional Use Permit is required shall file an application for the permit with the Planning Board.

**A. Review Procedure for a Conditional Use Flood Hazard Development Permit**

1. The Flood Hazard Development Permit Application with additional information attached addressing how each of the conditional use criteria specified in the Ordinance will be satisfied may serve as the permit application for the Conditional Use Permit.
2. Before deciding any application, the Planning Board shall hold a public hearing on the application within thirty days of their receipt of the application.
3. If the Planning Board finds that the application satisfies all relevant requirements of the ordinance, the Planning Board must approve the application or approve with conditions within 45 days of the date of the public hearing.
4. A Conditional Use Permit issued under the provisions of this Ordinance shall expire if the work or change involved is not commenced within 180 days of the issuance of the permit by the Planning Board.
5. The applicant shall be notified by the Planning Board in writing over the signature of the Chairman of the Planning Board that flood insurance is not available for structures located entirely over water or seaward of mean high tide.

**B. Expansion of Conditional Uses**

1. No existing building or use of premises may be expanded or enlarged without a permit issued under this section if that building or use was established or constructed under a previously issued Conditional Use Permit or if it is a building or use which would require a Conditional Use Permit if being newly-established or constructed under this Ordinance.

**ARTICLE VIII - CERTIFICATE OF COMPLIANCE**

No land in a special flood hazard area shall be occupied or used and no structure which is constructed or substantially improved shall be occupied until a Certificate of Compliance is issued by the Code Enforcement Officer subject to the following provisions:

**A. For New Construction or Substantial Improvement of any elevated structure the applicant shall submit to the Code Enforcement Officer:**

1. an Elevation Certificate completed by a Professional Land Surveyor for compliance with Article VI, paragraphs H., I., J., or R.; and,

2. for structures in Zone VE and Coastal AE Zone (as defined), certification by a registered professional engineer or architect that the design and methods of construction used are in compliance with Article VI.R.3.
- B. The applicant shall submit written notification to the Code Enforcement Officer that the development is complete and complies with the provisions of this ordinance.
  - C. Within 10 working days, the Code Enforcement Officer shall:
    1. review the required certificate(s) and the applicant's written notification; and,
    2. upon determination that the development conforms to the provisions of this ordinance, shall issue a Certificate of Compliance.

## **ARTICLE IX - REVIEW OF SUBDIVISION AND DEVELOPMENT PROPOSALS**

The Planning Board shall, when reviewing subdivisions and other proposed developments that require review under other federal law, state law, local ordinances or regulations, and all projects on 5 or more disturbed acres, or in the case of manufactured home parks divided into two or more lots, assure that:

- A. All such proposals are consistent with the need to minimize flood damage.
- B. All public utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damages.
- C. Adequate drainage is provided so as to reduce exposure to flood hazards.
- D. All proposals include base flood elevations, flood boundaries, and, in a riverine floodplain, floodway data. These determinations shall be based on engineering practices recognized by the Federal Emergency Management Agency.
- E. Any proposed development plan must include a condition of plan approval requiring that structures on any lot in the development having any portion of its land within a Special Flood Hazard Area are to be constructed in accordance with Article VI of this ordinance. Such requirement will be included in any deed, lease, purchase and sale agreement, or document transferring or expressing an intent to transfer any interest in real estate or structure, including but not limited to a time-share interest. The condition shall clearly articulate that the municipality may enforce any violation of the construction requirement and that fact shall also be included in the deed or any other document previously described. The construction requirement shall also be clearly stated on any map, plat, or plan to be signed by the Planning Board or local reviewing authority as part of the approval process.

## **ARTICLE X - APPEALS AND VARIANCES**

The Board of Appeals of the Town of Kennebunkport may, upon written application of an aggrieved party, hear and decide appeals where it is alleged that there is an error in any order, requirement, decision,

or determination made by, or failure to act by, the Code Enforcement Officer or Planning Board in the administration or enforcement of the provisions of this Ordinance.

The Board of Appeals may grant a variance from the requirements of this Ordinance consistent with state law and the following criteria:

- A. Variances shall not be granted within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.
- B. Variances shall be granted only upon:
  - 1. a showing of good and sufficient cause; and,
  - 2. a determination that should a flood comparable to the base flood occur, the granting of a variance will not result in increased flood heights, additional threats to public safety, public expense, or create nuisances, cause fraud or victimization of the public, or conflict with existing local laws or ordinances; and,
  - 3. a showing that the issuance of the variance will not conflict with other state, federal, or local laws or ordinances; and,
  - 4. a determination that failure to grant the variance would result in "undue hardship," which in this sub-section means:
    - a. that the land in question cannot yield a reasonable return unless a variance is granted; and,
    - b. that the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood; and,
    - c. that the granting of a variance will not alter the essential character of the locality; and,
    - d. that the hardship is not the result of action taken by the applicant or a prior owner.
- C. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief, and the Board of Appeals may impose such conditions to a variance as is deemed necessary.
- D. Variances may be issued for new construction, substantial improvements, or other development for the conduct of a functionally dependent use provided that:
  - 1. the criteria of Article X.A. through C. and Article VI.M. are met; and,
  - 2. the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

- E. Variances may be issued for the repair, reconstruction, rehabilitation, or restoration of Historic Structures upon the determination that:
1. the development meets the criteria of Article X.A. through C.; and,
  2. the proposed repair, reconstruction, rehabilitation, or restoration will not preclude the structure's continued designation as a Historic Structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- F. Variances may be issued for new construction and substantial improvement of Agricultural Structures being used for the conduct of agricultural uses provided that:
1. the development meets the criteria of Article X.A. through C.; and,
  2. the development meets the criteria of Article VI.M. and Article VI.N.
- G. Any applicant who meets the criteria of Article X.A. through C. and Article X.D., E., or F. shall be notified by the Board of Appeals in writing over the signature of the Chairman of the Board of Appeals that:
1. the issuance of a variance to construct a structure below the base flood level will result in greatly increased premium rates for flood insurance up to amounts as high as \$25 per \$100 of insurance coverage; and,
  2. such construction below the base flood level increases risks to life and property; and,
  3. the applicant agrees in writing that the applicant is fully aware of all the risks inherent in the use of land subject to flooding, assumes those risks, and agrees to indemnify and defend the municipality against any claims filed against it that are related to the applicant's decision to use land located in a floodplain and that the applicant individually releases the municipality from any claims the applicant may have against the municipality that are related to the use of land located in a floodplain.
- H. Appeal Procedure for Administrative and Variance Appeals
1. An administrative or variance appeal may be taken to the Board of Appeals by an aggrieved party within thirty days after receipt of a written decision of the Code Enforcement Officer or Planning Board.
  2. Upon being notified of an appeal, the Code Enforcement Officer or Planning Board, as appropriate, shall transmit to the Board of Appeals all of the documents constituting the record of the decision appealed from.
  3. The Board of Appeals shall hold a public hearing on the appeal within thirty-five days of its receipt of an appeal request.



4. The person filing the appeal shall have the burden of proof.
5. The Board of Appeals shall decide all appeals within thirty-five days after the close of the hearing and shall issue a written decision on all appeals.
6. The Board of Appeals shall submit to the Code Enforcement Officer a report of all variance actions, including justification for the granting of the variance and an authorization for the Code Enforcement Officer to issue a Flood Hazard Development Permit, which includes any conditions to be attached to said permit.
7. Any aggrieved party who participated as a party during the proceedings before the Board of Appeals may take an appeal to Superior Court in accordance with State laws within forty-five days from the date of any decision of the Board of Appeals.

## **ARTICLE XI - ENFORCEMENT AND PENALTIES**

- A. It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Ordinance pursuant to Title 30-A MRSA § 4452.
- B. The penalties contained in Title 30-A MRSA § 4452 shall apply to any violation of this Ordinance.
- C. In addition to other actions, the Code Enforcement Officer, upon identifying a violation, may submit a declaration to the Administrator of the Federal Insurance Administration requesting a flood insurance denial. The valid declaration shall consist of:
  1. the name of the property owner and address or legal description of the property sufficient to confirm its identity or location;
  2. a clear and unequivocal declaration that the property is in violation of a cited State or local law, regulation, or ordinance;
  3. a clear statement that the public body making the declaration has authority to do so and a citation to that authority;
  4. evidence that the property owner has been provided notice of the violation and the prospective denial of insurance; and,
  5. a clear statement that the declaration is being submitted pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended.

## **ARTICLE XII - VALIDITY AND SEVERABILITY**

If any section or provision of this Ordinance is declared by the courts to be invalid, such decision shall not invalidate any other section or provision of this Ordinance.

## **ARTICLE XIII - CONFLICT WITH OTHER ORDINANCES**

This Ordinance shall not in any way impair or remove the necessity of compliance with any other applicable rule, ordinance, regulation, bylaw, permit, or provision of law. Where this Ordinance imposes a greater restriction upon the use of land, buildings, or structures, the provisions of this Ordinance shall control.

## **ARTICLE XIV - DEFINITIONS**

Unless specifically defined below, words and phrases used in this Ordinance shall have the same meaning as they have at common law, and to give this Ordinance its most reasonable application. Words used in the present tense include the future, the singular number includes the plural, and the plural number includes the singular. The word "may" is permissive; "shall" is mandatory and not discretionary.

**Accessory Structure** - a structure which is on the same parcel of property as a principal structure and the use of which is incidental to the use of the principal structure.

**Adjacent Grade** - the natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

**Agricultural Structure** - structures that are used exclusively for agricultural purposes or uses in connection with the production, harvesting, storage, raising, or drying of agricultural commodities and livestock. Structures that house tools or equipment used in connection with these purposes or uses are also considered to have agricultural purposes or uses.

**Area of Special Flood Hazard** - land in the floodplain having a one percent or greater chance of flooding in any given year, as specifically identified in the Flood Insurance Study cited in Article I of this Ordinance.

**Base Flood** - a flood having a one percent chance of being equaled or exceeded in any given year, commonly called the 100-year flood.

**Basement** - any area of a building that includes a floor that is subgrade (below ground level) on all sides.

**Breakaway Wall** - a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

**Building** - see **Structure**.

**Certificate of Compliance** - a document signed by the Code Enforcement Officer stating that a structure is in compliance with all of the provisions of this Ordinance.

**Coastal AE Zone** - The portion of the Coastal High Hazard Area with wave heights between 1.5 feet and 3.0 feet and bounded by a line labeled the "Limit of Moderate Wave Action" (LiMWA) on a Flood Insurance Rate Map (FIRM). VE Zone floodplain construction standards are applied to development, new construction, and substantial improvements in the Coastal AE Zone.

**Coastal High Hazard Area** - An area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. Coastal High Hazard Areas are designated as Zone VE and Zone AE bounded by a line labeled “Limit of Moderate Wave Action” (LiMWA) on a Flood Insurance Rate Map (FIRM).

**Code Enforcement Officer** - a person certified under Title 30-A MRSA, Section 4451 (including exceptions in Section 4451, paragraph 1) and employed by a municipality to enforce all applicable comprehensive planning and land use laws.

**Conditional Use** - a use that, because of its potential impact on surrounding areas and structures, is permitted only upon review and approval by the Planning Board pursuant to Article VII.

**Containment Wall** - a wall surrounding all sides of an above ground tank to contain any spills or leaks.

**Development** - any manmade change to improved or unimproved real estate. This includes, but is not limited to, buildings or other structures; mining, dredging, filling, grading, paving, excavation, drilling operations or storage of equipment or materials; and the storage, deposition, or extraction of materials.

**Elevated Building** - a non-basement building that is:

- a. built, in the case of a building in Zones A or AE, so that the top of the elevated floor, or in the case of a building in Zone VE or Coastal AE Zone, to have the bottom of the lowest horizontal structural member of the elevated floor, elevated above the ground level by means of pilings, columns, posts, or piers; and,
- b. adequately anchored to not impair the structural integrity of the building during a flood of up to one foot above the magnitude of the base flood.

In the case of Zones A or AE, **Elevated Building** also includes a building elevated by means of fill or solid foundation perimeter walls with hydraulic openings sufficient to facilitate the unimpeded movement of flood waters, as required in Article VI.N. In the case of Zone VE and Coastal AE Zone, **Elevated Building** also includes a building otherwise meeting the definition of elevated building, even though the lower area is enclosed by means of breakaway walls, if the breakaway walls meet the standards of Article VI.R.3.b.(3).

**Elevation Certificate** - an official form (FEMA Form FF-206-FY-22-152, as amended) that is used to verify compliance with the floodplain management regulations of the National Flood Insurance Program.

**Existing Manufactured Home Park or Subdivision** - a manufactured home park or subdivision that was recorded in the deed registry prior to the adoption date of the community’s first floodplain management regulations.

**Flood or Flooding** -

- a. A general and temporary condition of partial or complete inundation of normally dry land areas from:
  1. The overflow of inland or tidal waters.

2. The unusual and rapid accumulation or runoff of surface waters from any source.
- b. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph a.1. of this definition.

**Flood Elevation Study** - an examination, evaluation, and determination of flood hazards and, if appropriate, corresponding water surface elevations.

**Flood Insurance Rate Map (FIRM)** - an official map of a community, on which the Federal Insurance Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community.

**Flood Insurance Study** - see **Flood Elevation Study**.

**Floodplain or Floodprone Area** - any land area susceptible to being inundated by water from any source (see **Flood or Flooding**).

**Floodplain Management** - the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works, and floodplain management regulations.

**Floodplain Management Regulations** - zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance, and erosion control ordinance), and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

**Floodproofing** - any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures, and contents.

**Floodway** - see **Regulatory Floodway**.

**Floodway Encroachment Lines** - the lines marking the limits of floodways on federal, state, and local floodplain maps.

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

**Functionally Dependent Use** - a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

**Historic Structure** - any structure that is:

- a. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- b. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary of the Interior to qualify as a registered historic district;
- c. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or,
- d. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
  1. By an approved state program as determined by the Secretary of the Interior, or,
  2. Directly by the Secretary of the Interior in states without approved programs.

**Limit of Moderate Wave Action (LiMWA)** - The landward limit of the 1.5 foot breaking wave within a Coastal AE Zone. These areas are bounded by a line labeled "Limit of Moderate Wave Action" (LiMWA) on a Flood Insurance Rate Map (FIRM). The LiMWA line delineates that portion of the Special Flood Hazard Area (SFHA) landward of a VE zone in which the principal sources of flooding are astronomical high tides, storm surges, or tsunamis, not riverine sources. These areas may be subject to wave effects, velocity flows, erosion, scour, or combinations of these forces. The floodplain development and construction standards for VE Zones will be applied in the Coastal AE Zone.

**Locally Established Datum** - for purposes of this ordinance, an elevation established for a specific site to which all other elevations at the site are referenced. This elevation is generally not referenced to the National Geodetic Vertical Datum (NGVD), North American Vertical Datum (NAVD), or any other established datum and is used in areas where Mean Sea Level data is too far from a specific site to be practically used.

**Lowest Floor** - the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or storage in an area other than a basement area is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements described in Article VI.N. of this Ordinance.

**Manufactured Home** - a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term manufactured home also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days.

**Manufactured Home Park or Subdivision** - a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

**Mean Sea Level** - for the purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD), or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

**Minor Development** - all development that is not new construction or a substantial improvement, such as repairs, maintenance, renovations, or additions, whose value is less than 50% of the market value of the structure. It also includes but is not limited to: accessory structures as provided for in Article VI.L., mining, dredging, filling, grading, paving, excavation, drilling operations, storage of equipment or materials, deposition or extraction of materials, public or private sewage disposal systems or water supply facilities that do not involve structures; and non-structural projects such as bridges, dams, towers, fencing, pipelines, wharves, and piers.

**National Geodetic Vertical Datum (NGVD)** - the national vertical datum, a standard established in 1929, which is used by the National Flood Insurance Program (NFIP). NGVD is based upon mean sea level in 1929 and has been called "1929 Mean Sea Level" (MSL).

**New Construction** - structures for which the "start of construction" commenced on or after the effective date of the initial floodplain management regulations adopted by a community and includes any subsequent improvements to such structures.

**North American Vertical Datum (NAVD)** - the national datum whose standard was established in 1988, which is the new vertical datum used by the National Flood Insurance Program (NFIP) for all new Flood Insurance Rate Maps. NAVD is based upon the vertical data used by other North American countries such as Canada and Mexico and was established to replace NGVD because of constant movement of the earth's crust, glacial rebound and subsidence, and the increasing use of satellite technology.

**100-year flood** - see **Base Flood**.

**Recreational Vehicle** - a vehicle that is:

- a. built on a single chassis;
- b. 400 square feet or less when measured at the largest horizontal projection, not including slideouts;
- c. designed to be self-propelled or permanently towable by a motor vehicle; and,
- d. designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

### **Regulatory Floodway -**

- a. the channel of a river or other water course and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height, and,
- b. when not designated on the community's Flood Insurance Rate Map, it is considered to be the channel of a river or other water course and the adjacent land areas to a distance of one-half the width of the floodplain, as measured from the normal high water mark to the upland limit of the floodplain.

**Riverine** - relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

**Special Flood Hazard Area** - see **Area of Special Flood Hazard**.

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

**Structure** - for floodplain management purposes, a walled and roofed building. A gas or liquid storage tank that is principally above ground is also a structure.

**Substantial Damage** - damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damage condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

**Substantial Improvement** - any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either:

- a. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or,

- b. Any alteration of a Historic Structure, provided that the alteration will not preclude the structure's continued designation as a historic structure, and a variance is obtained from the Board of Appeals.

**Variance** - a grant of relief by a community from the terms of a floodplain management regulation.

**Violation** - the failure of a structure or development to comply with a community's floodplain management regulations.

## **ARTICLE XV - ABROGATION**

This ordinance repeals and replaces any municipal ordinance previously enacted to comply with the National Flood Insurance Act of 1968 (P.L. 90-488, as amended).

## **ARTICLE XVI - DISCLAIMER OF LIABILITY**

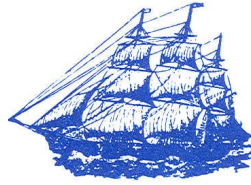
The degree of flood protection required by the ordinance is considered reasonable but does not imply total flood protection.



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# **AGENDA ITEM DIVIDER**

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## KENNEBUNKPORT WASTEWATER DEPARTMENT

### MEMORANDUM

**To:** Laurie Smith  
**Fr:** Chris Simeoni, Director of Public Works  
**Re:** Authorization to post roads  
**Dt:** February 13<sup>th</sup>, 2024

Annually, the Public Works Department posts roads in Kennebunkport to prevent heavy vehicles from causing damage to the roadways during the winter-to-spring transition. During this time, roads are subject to additional damage from heavy vehicles due to freezing and thaw cycles.

During the winter/spring, Maine roads weaken, and they need to be protected. As temperatures warm and the ground thaws, the soil under the pavement becomes saturated with water, making pavement unstable. As a result, many roads cannot support heavy loads.

To protect roads from serious damage, The Public Works Department, seasonally, will post roads to protect its public infrastructure from damages and pre-mature repairs and or improvements. Our roads are posted in accordance with [Title 29-A MRSA 2395](#).

The Town does sometimes allow for travel during certain periods of cold weather. This will require permission from the Director of Public Works. An application to operate on a posted way is available on the Town's website.

It is my recommendation to authorize the posting of the attached list of roads in accordance with [Title 29-A MRSA 2395](#). The attached list of roads would be closed to such traffic commencing on February 29, 2024, and would remain closed until April 30<sup>th</sup>, 2024, unless postings are removed earlier at the discretion of the Public Works Director.

## **Restricted Vehicle Weight on Posted Roadways**

The Town of Kennebunkport has authorized the closing of certain town ways to any non-exempt vehicle or combination of vehicles registered for a gross weight of over 23,000 pounds. The following roads will be closed to such traffic commencing on February 27th, 2024, and will remain closed until April 30th, 2024, unless postings are removed earlier at the discretion of the Director of Public Works. Any violation of the rules is a traffic infraction punishable by a fine of not less than \$250. Home Heating Fuel Delivery Trucks and Municipal Solid Waste Collection Trucks are exempt from Posted Road regulations. The posting shall remain in force except when the way is solidly frozen. The highway is considered solidly frozen only when the air temperature is 32 degrees F. or below, and no water is showing in the cracks in the road. Both conditions must be met. The Town of Kennebunkport will be posting restricted vehicle weight signs on the following roads:

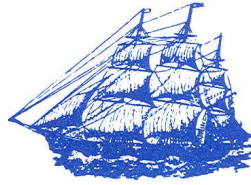
- Arundel Road from Goff Brook to Goose Rocks Road
- River Road from Goff Brook to North Street
- Beachwood Avenue from North Street to Route 9
- Walkers Lane from North Street to Beachwood Avenue
- Old Cape Road from Beachwood Avenue to Route 9
- Goose Rocks Road from Log Cabin Road to Route 9
- Stone Road from Beachwood Avenue to Goose Rocks Road
- Guinea Road from Goose Rocks Road to Biddeford Line
- Whitten Hill Road from Goose Rocks Road to Guinea Road
- Pier Road
- New Biddeford Road from Route 9 to Kings Highway
- Winter Harbor Road from Route 9 to New Biddeford Road
- Dyke Road
- Wildes District Road
- Ocean Avenue
- Arlington Avenue
- Langsford Road
- Ward Road
- Northwood Drive
- Oak Ridge Road
- West Street, Oak Street, Locke Street
- Others, if needed

Please contact the Highway Department at 967-5728 if you have any questions or concerns. An application for a Posted Road Permit is available for download on our website.

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# **AGENDA ITEM DIVIDER**

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## KENNEBUNKPORT WASTEWATER DEPARTMENT

### MEMORANDUM

**To:** Laurie Smith  
**Fr:** Chris Simeoni, Director of Public Works  
**Re:** Accept proposal from George Burr & Sons to complete the repairs on the masonry seawall, sidewalk and travel lane on Ocean Avenue  
**Dt:** February 15<sup>th</sup>, 2024

As a result of the January 13<sup>th</sup> storm, the masonry seawall on Ocean Avenue in the area of Spouting Rock was heavily damaged. This damage was not limited to the wall itself. The sidewalk and one travel lane were also undermined and collapsed. I solicited a proposal from George Burr & Sons to repair the resulting damage to the masonry seawall and subbase for the sidewalk and travel lane. This proposal did not include replacement of the asphalt as the Public Works Department will utilize Dayton Sand & Gravel this spring after the other sidewalk street repairs are completed in the area of Walker's Point and Wandby Beach.

We are looking to sole-source this repair as this proposal from George Burr & Sons is extremely economical/of great value and can be done expeditiously by the contractor. This would allow us to open this travel lane much sooner. I recommend accepting the proposal from George Burr & Sons for \$15,700 to complete the needed repairs. The funding for this repair would come from a reappropriation of our current year's capital from capital roads and/or sidewalks.

GEORGE  
**BURR & SON**

69 Old FALLS RD

KENNEBUNK, MAINE 04043

Phone: 207-468-1646

[georgeburranson@gmail.com](mailto:georgeburranson@gmail.com)

Town of Kennebunkport  
6 Elm St  
Kennebunkport, Me 04046

Ocean Ave wall and road repair

Prep work road

Price to include

Cutting back and removing asphalt as needed to access washed out areas

Remove broken sections of wall from hole and disposing

Clean out soils in washed out area and disposing

Clean ledge where exposed

Install rebar pins into ledge

Price \$ 3,100.00

Patch wall

Price to include

Clean area under hole in wall to ledge

Install rebar pins into ledge

Patch ocean side of wall to seal hole

After roadside of wall is filled in, patch bottom of wall to concrete as needed

Price \$ 4,300.00

Concrete

Pour road side hole with concrete

Concrete to be poured in two separate pours

Concrete based on 30 yds of concrete

Supply and install 8" of  $\frac{3}{4}$ " gravel on top of concrete to lift to road grade

Gravel to be graded and compacted

Price \$ 8,300.00

Not included

Paving of sidewalk or road

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# **AGENDA ITEM DIVIDER**

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## Item 7

To: Select Board

From: Shellfish Commission

The current Kennebunkport clamming season is April 15 thru October 15. The State has two conditional closure areas (See Maps) CA1 (AKA Smithbrook/Batson River area) is closed from June 1 thru September 30 and area CA2 (AKA Sampson Cove) is closed August 1 thru October 31.

The Shellfish Commission would like to ask for your consideration to extend the clamming season four months (October 15 thru February 15). We are not trying to add more dig days just compensating for the State closure months.

Thank you,

Everett Leach :chairman

Shellfish commission



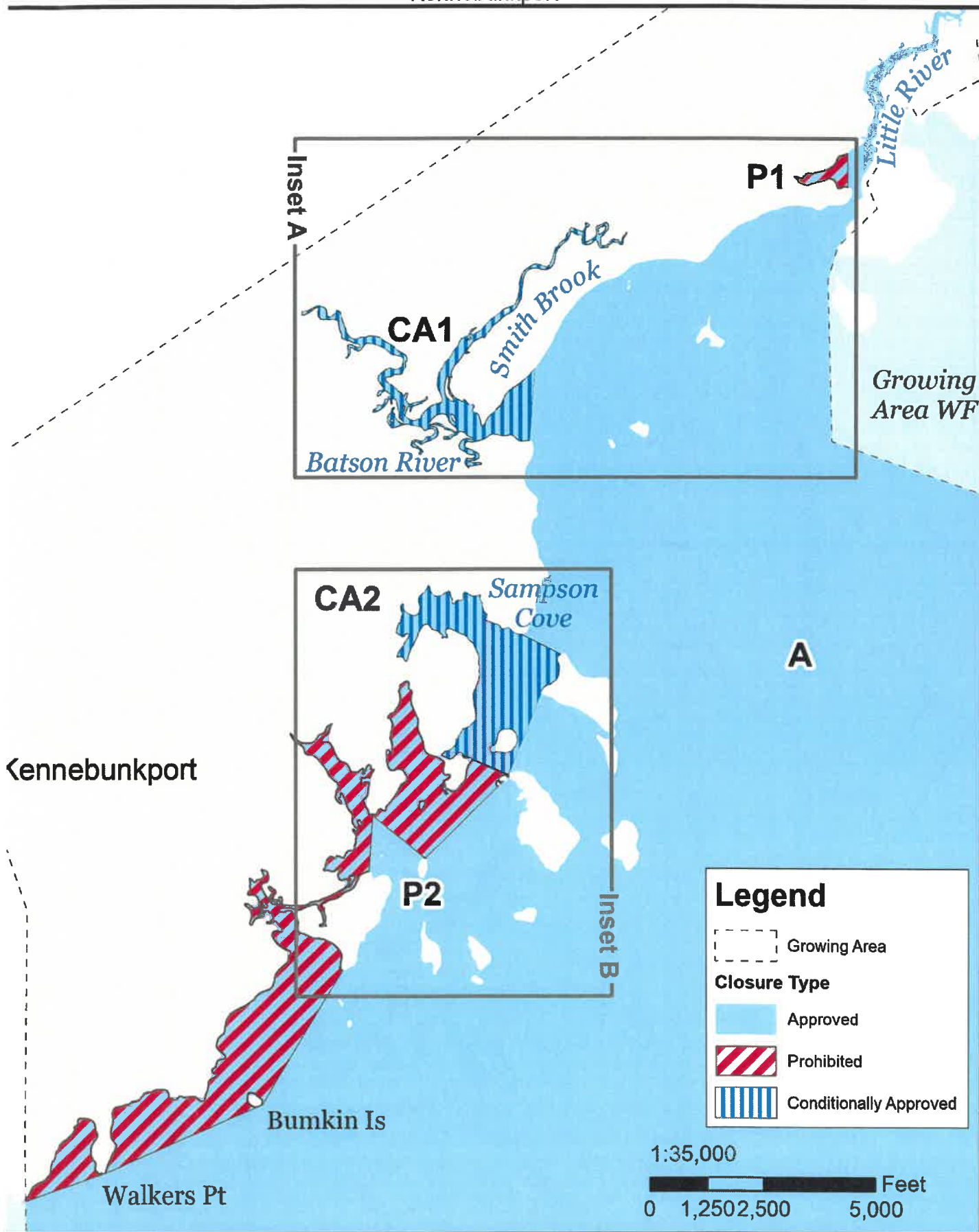


# Maine Department of Marine Resources

**Growing Area WE, Insets A - B**

10/13/22

Kennebunkport



This map is provided as a courtesy. Read the provided legal notice for closure details. Closures are not shown outside of the designated growing area. Maritime navigational aids are for reference only and are not suitable for maritime navigation.



# Maine Department of Marine Resources

## Growing Area WE, Inset A

10/13/22

Kennebunkport



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# Maine Department of Marine Resources

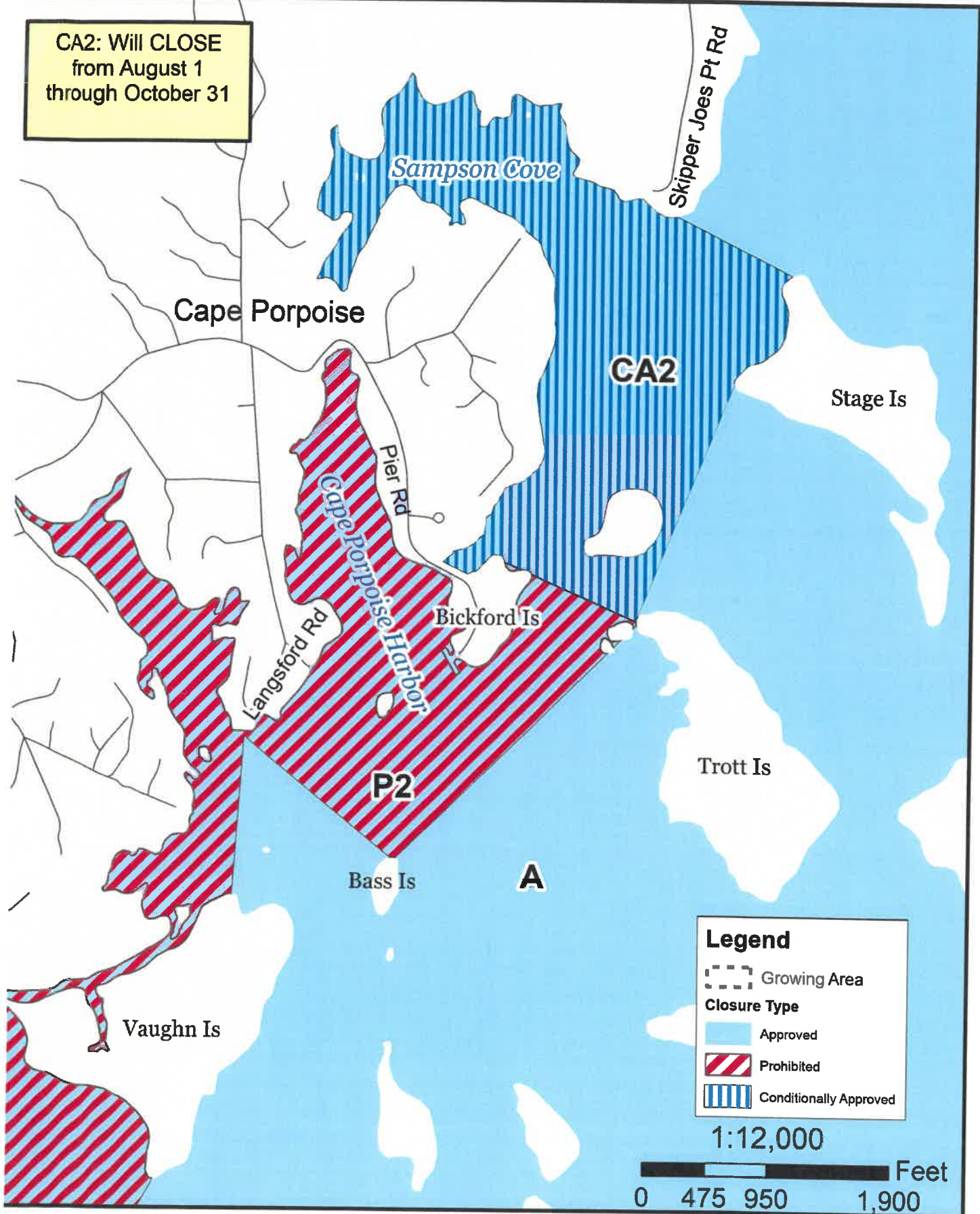
## Growing Area WE, Inset B

Cape Porpoise, Kennebunkport

10/13/22



CA2: Will CLOSE  
from August 1  
through October 31



This map is provided as a courtesy. Read the provided legal notice for closure details. Closures are not shown outside of the designated growing area. Maritime navigational aids are for reference only and are not suitable for maritime navigation.



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# **AGENDA ITEM DIVIDER**

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Town of Kennebunkport  
Town Hall Building Committee February 14, 2024, Meeting

**MINUTES**

**Selectmen attending:** Mike Weston and Marybeth Gilbert.

**Staff attending:** Laurie Smith, Yanina Nickless

**Committee members attending:** April Dufoe, Allen Evelyn, David Graham, Kevin McDonnell, Dick Smith, Tim Pattison, John Ware, Deborah Bauman, Judy Phillips,

**Invited experts:** Mark Adams, Owens McCullough, Mike Hays,

**General meeting description:**

The meeting addressed all five action items from the previous meeting:

1. The meeting commenced with Owens and Mike presenting a comparative analysis of the Village Parcel lot and the Fire Station lot, each presenting advantages and drawbacks. The Village Parcel lot creates a large space for building expansion, parking, and energy infrastructure. However, given its undeveloped status, initiating construction would require starting from scratch. On the other hand, the Fire Station lot, although previously developed, may accommodate a smaller building footprint and already includes parking facilities. Nonetheless, it faces challenges with stormwater management and potential damage from new construction, alongside limited space and parking constraints due to the occupancy of Fire and Town Hall employees, leaving minimal room for residents.
2. Mike Hays has been working diligently on a new space analysis aimed at reducing overall square footage. The revised proposal now stands at about 10,000 square feet, with 40% dedicated to the meeting room.
3. We sent out the survey to the public, which was open for two weeks (January 25 through noon on February 8) and elicited responses from over 300 participants. The survey results have been posted under the projects tab on the website. Overall, the committee found the turnout and responses within expectations.
4. Michael Weston updated the residents on the committee's progress at the meeting on January 28, 2024.
5. A substantial portion of the meeting was an educational program facilitated by multiple experts in the energy field:
  - a. Vamshi Gooje spoke about the role of building energy modeling, high-performance buildings (what that means), and what level of design is needed for complete building modeling. He supplemented his presentation with graphical representations of building energy modeling.

- b. Anthony Davis talked about the geothermal systems, commercial VRF systems, air exchanges, energy recovery ventilators, general costs of geothermal systems, sizing a geothermal system, and how a geothermal system and VRF/building ventilation system would be integrated for efficiency.
- c. John Dunster explored solar options, whether onsite or offsite, outlined tax credits applicable to on-site installations, and explained the various types of solar (fixed tilt, trackers) with some general comments on sizing a solar system and associated costs.

**Discussion points:**

- The committee asked a lot of questions about energy efficiency. – The purpose of the meeting was to introduce the committee to the idea and give them enough tools to make decisions at an appropriate time.
- The committee discussed the results of the survey. – There were no surprising findings overall. The committee will keep working on addressing it.

**Action items:**

1. Keep exploring options to reduce the cost.
2. Mike Hays will work on a new reduced-size design.
3. Owens will work on exploring the Fire Station conditions.

Submitted by,  
Yanina Nickless,  
Director of Support Services

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# **AGENDA ITEM DIVIDER**

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**HYUNDAI CAPITAL AMERICA\***  
**CERTIFIED CORPORATE RESOLUTIONS AND INCUMBENCY CERTIFICATE**

The undersigned hereby certifies to Hyundai Capital America that (i) he or she is the ☐ secretary ☐ officer ☐ general partner ☐ manager ☐ member ("Authorized Person") of Town of Kennebunkport (the "Company") and has the authority to make the certifications set forth herein to Hyundai Capital America, (ii) the Company is a ☐ corporation ☐ limited liability company ☐ limited partnership ☐ general partnership duly formed, validly existing and in good standing under the laws of the state of Maine, and (iii) the following are true, complete and correct resolutions duly adopted by the governing body ( board of directors, shareholders, partners, manager(s), or member(s)) of the Company at a meeting duly called and held on February 22, 20 24 and at which a quorum was present and voting, and that such resolutions have not been amended or rescinded and are now in full force and effect:

"RESOLVED, that the Company be, and hereby is, authorized to lease or purchase the vehicle(s) described below (collectively, the "Vehicle(s)") from Rowe Ford (the "Dealer");

<u>2024</u>	<u>Hyundai Iconic 5</u>	
Year	Make/Model	Vehicle Identification Number
<u>Year</u>	<u>Make/Model</u>	<u>Vehicle Identification Number</u>
<u>Year</u>	<u>Make/Model</u>	<u>Vehicle Identification Number</u>
<u>Year</u>	<u>Make/Model</u>	<u>Vehicle Identification Number</u>

RESOLVED, that the officers, partners, members, managers, and employees of the Company, and any of them acting individually, be, and hereby are, authorized to enter into and perform on behalf of the Company one or more retail installment contract(s) or lease agreement(s) (collectively, "Contract(s)"), by and between the Company and the Dealer, for the lease of the Vehicle(s) or the financing of the purchase of the Vehicle(s), which Contract(s) may be assigned by the Dealer to Hyundai Capital America;

RESOLVED, that the officers, partners, members, managers, and employees of the Company, and any of them acting individually be, and hereby are, authorized to do any and all acts, including, but not limited to granting of a security interest in any assets of the Company, including but not limited to the Vehicle(s), to secure the Company's obligations under the Contract(s) and any amendments, renewals, and extensions thereof, to negotiate, make, complete, execute and deliver the Contract(s), and any of the agreement(s), instruments or documents provided for in the Contract(s) or appropriate to facilitate the transactions authorized herein, on such terms and at such rates of interest as may appear to any one of them in his or her sole discretion to be necessary or appropriate;

RESOLVED, that the secretary/officer/general partner/manager/member of the Company be, and hereby is, authorized to provide to Hyundai Capital America, upon request, an incumbency certificate or other document designating the persons authorized to execute contracts on behalf of the Company and any other document required by the Contract(s) or in connection with the lease or purchase of the Vehicle(s), including without limitation a copy of these resolutions; and

RESOLVED, that these resolutions may be relied upon by Hyundai Capital America until receipt by it of a written notice of any change therein;

The undersigned further certifies that the following individuals are the duly elected and acting officers of the Company as of the date hereof and that their genuine signatures appear after their respective names:

<u>Name</u>	<u>Office</u>	<u>Signature</u>
<u></u>	<u></u>	<u></u>
<u></u>	<u></u>	<u></u>
<u></u>	<u></u>	<u></u>
<u></u>	<u></u>	<u></u>

IN WITNESS WHEREOF, this Certificate has been executed and delivered as of \_\_\_\_\_, 20\_\_\_\_.

[Corporate Seal]

\_\_\_\_\_  
 Secretary Signature

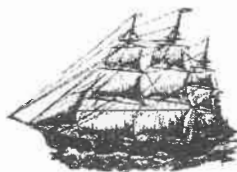
\_\_\_\_\_  
 Print Secretary Name



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# **AGENDA ITEM DIVIDER**

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# Kennebunkport Public Health

— INCORPORATED 1653 —

## Kennebunkport Public Health

February 1, 2024

ATTN: Kennebunkport Board of Selectmen, Laurie Smith-Kennebunkport Town Manager

Please accept this generous gift of \$50.00 from an anonymous donor to the Nurses account (08-01-39). This money was granted to Kennebunkport Public Health nurses to assist us with supplies, equipment, training, or any needs we see fit.

Thank you!

Alison Kenneway RN, BSN  
Kennebunkport Public Health

10-4 8110  
220

DATE 2-1-24

169

PAY TO THE ORDER OF Town of KPT Nurses

Fifty and no/100

\$50<sup>00</sup>

DOLLARS

MyChoice Premium

M&T Bank

MEMO Thank you!

M. Kenneway

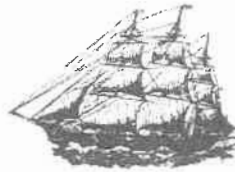
Security Features  
Details on Back.

101-A Main Street, Kennebunkport, Maine 04046  
Tel: (207) 967-4401 Fax: (207) 967-3633

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# **AGENDA ITEM DIVIDER**

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# Kennebunkport Public Health

— INCORPORATED 1653 —

## Kennebunkport Public Health

February 9, 2024

ATN: Kennebunkport Board of Selectman, Laurie Smith- Kennebunkport Town Manager

Please accept this donation of \$50.00 from anonymous donor. This gift is dedicated towards the emergency fuel fund.

Thank you!

Alison Kenneway RN, BSN

10-4 220-8110		170
DATE <u>Feb. 9, 2024</u>		RECORDED BY <u>220-8110</u>
PAY TO THE ORDER OF <u>Town of KPC</u>	\$ <u>50.00</u>	
<u>1</u> <u>hundred and no/100</u>	DOLLARS	Security Features included. Details on Bank.
M&T Bank	MyChoice Premium	
MEMO <u>Town Nurses</u>	<u>fuel fund</u>	<u>Maggie Baker</u>
989 26360 78110 170		

101-A Main Street, Kennebunkport, Maine 04046  
Tel: (207) 967-4401 Fax: (207) 967-3633

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