



STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
BUREAU OF RESOURCE INFORMATION & LAND USE PLANNING
93 STATE HOUSE STATION
AUGUSTA, MAINE 04333

JANET T. MILLS
GOVERNOR

AMANDA E. BEAL
COMMISSIONER

March 27, 2023

Michelle Radley, Planner
Town of Kennebunkport
6 Elm Street, PO Box 566
Kennebunkport, ME 04046

Dear Michelle,

The Department of Agriculture, Conservation & Forestry thanks the Town of Kennebunkport for submitting its Comprehensive Plan for review for consistency with the Growth Management Act in accordance with our Comprehensive Plan Review Criteria Rule (the Rule).

As soon as the town's plan was accepted for review, we invited other state agencies, neighboring municipalities, and your regional planning organization to review it and submit written comments. By the end of the comment period, we received written comments from the Beginning with Habitat program (Natural Areas Program & IFW), Maine Department of Transportation, Maine Drinking Water Program, Town of Arundel, Five Acre Farm, and the Southern Maine Planning and Development Commission. Those written comments are attached to this letter. The comments contain suggestions for improving and strengthening the plan. We urge the Comprehensive Planning Committee to consider how the plan might be revised to incorporate suggestions found in the comments.

With the close of the comment period, we began our review of the plan's "completeness". This is the point at which we determine whether the various elements of the plan, aside from the Future Land Use Plan, sufficiently address requirements of the Rule. **We identified missing elements that will need to be added or corrected before we can find the plan to be consistent with the Growth Management Act.** All missing items are policies or strategies. If you have troubles with any of the following items, please reach out and I can provide examples.

MUNICIPAL PLANNING ASSISTANCE PROGRAM
22 STATE HOUSE STATION
18 ELKINS LANE, HARLOW BUILDING
AUGUSTA, ME 04333



PHONE: (207) 287-3860
WWW.MAINE.GOV/DACF/MUNICIPALPLANNING

Missing items. Two pairs can be corrected with one new strategy per pair (#1/#12 and #6/#11).

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| | Required Element |
| 1 | <p>Evaluation measures that describe how the community will periodically (at least every five years) evaluate the following:</p> <p>A. The degree to which future land use plan strategies have been implemented;</p> <p>B. Percent of municipal growth-related capital investments in growth areas;</p> <p>C. Location and amount of new development in relation to community’s designated growth areas, rural areas, and transition areas (if applicable)</p> <p>D. Amount of critical natural resource, critical rural, and critical waterfront areas protected through acquisition, easements, or other measures.</p> |

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| | Housing |
| | Strategies |
| 2 | Designate a location(s) in growth areas where mobile home parks are allowed pursuant to 30-A M.R.S.A. §4358(3)(M) and where manufactured housing is allowed pursuant to 30-A M.R.S.A. §4358(2). |

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|---|---|
| | Recreation |
| | Strategies |
| 3 | Work with public and private partners to extend and maintain a network of trails for motorized and non-motorized uses. Connect with regional trail systems where possible. |
| 4 | Work with an existing local land trust or other conservation organizations to pursue opportunities to protect important open space or recreational land. |
| 5 | Provide educational materials regarding the benefits and protections for landowners allowing public recreational access on their property. At a minimum this will include information on Maine’s landowner liability law regarding recreational or harvesting use, Title 14, M.R.S.A. §159-A. |

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| | Public Facilities and Services |
| | Strategies |
| 6 | Locate new public facilities comprising at least 75% of new municipal growth-related capital investments in designated growth areas. |

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| | Future Land Use Plan |
| | Policies |
| 7 | To coordinate the community’s land use strategies with other local and regional land use planning efforts. |
| 8 | To support the level of financial commitment necessary to provide needed infrastructure in growth areas. |
| | Strategies |
| 9 | Provide the code enforcement officer with the tools, training, and support necessary to enforce land use regulations, and ensure that the Code Enforcement Officer is certified in accordance with 30-A M.R.S.A. §4451. |
| 10 | Track new development in the community by type and location. |
| 11 | Direct a minimum of 75% of new municipal growth-related capital investments into designated growth areas identified in the Future Land Use Plan. |
| 12 | Periodically (at least every five years) evaluate implementation of the plan in accordance with Section 2.7. |

We trust the Committee will find this letter and agency comments to be helpful, and that it will be willing and able to submit plan revisions to us in relatively short order. That said, per the Rule, the town has 90 business days from the date of this letter in which to submit the revisions needed to complete the plan. That means we can accept your submission any time through **August 4, 2023**. Once we have received your revisions and confirmed the plan’s completeness, we will conclude our review for consistency within an additional 10 business days.

We congratulate the Comprehensive Plan Committee and the citizens of Kennebunkport for creating this valuable plan. We hope you'll continue to work with us to bring it into greater alignment with the Act. As you move forward, we stand ready to answer any questions that may come up, and to assist you in whatever way we can. Please don't hesitate to contact me at (207) 287-3860 or tom.miragliuolo@maingov.

Best wishes,

A handwritten signature in blue ink that reads "Tom Miragliuolo". The signature is written in a cursive style.

Tom Miragliuolo
Senior Planner
Municipal Planning Assistance Program

Attachments:

- State Agency comments

cc: Abbie Sherwin, SMPDC



STATE OF MAINE
BEGINNING WITH HABITAT
DEPARTMENT OF INLAND FISHERIES & WILDLIFE
41 STATE HOUSE STATION
AUGUSTA ME 04333-0041



Date: October 31, 2022

To: Tom Miragliuolo, Municipal Planning Assistance

From: Lisa St. Hilaire, MNAP and Steve Walker, MDIFW

Re: Kennebunkport Comprehensive Plan Review

On behalf of Beginning with Habitat (BwH), the Maine Department of Inland Fisheries and Wildlife (MDIFW) and the Maine Natural Areas Program (MNAP) have reviewed the town of Kennebunkport's Draft Comprehensive Plan (the Plan) and provide the following comments.

As you are aware, BwH is a habitat-based approach to conserving wildlife and plant habitat on a landscape scale. The goal of the BwH program is to maintain sufficient habitat to support all native plant and animal species currently breeding in Maine. BwH compiles habitat information from multiple sources, integrates it into one package, and makes it accessible to towns, land trusts, landowners, conservation organizations, and others to use proactively in conservation planning. The habitat information BwH provides is objective, comprehensive, and equips local decision-makers with the necessary tools to make informed and responsible land use decisions that mesh wildlife and habitat conservation with future growth needs. While BwH information is comprised of both regulated and non-regulated features, it should be used for planning purposes only. Other resources, such as MDIFW's Environmental Review Program (<https://www.maine.gov/ifw/programs-resources/environmental-review/index.htm>) and MNAP's Environmental Review Program (<https://www.maine.gov/dacf/mnap/assistance/review.htm>) should be contacted for assistance as projects get closer to the final design and permitting review phase.

BwH is housed at MDIFW but is comprised of more than ten public agency and conservation partners. Comments provided below represent two BwH public agency partners (MDIFW and MNAP) but are guided by the overall conservation principles of the BwH program. Feedback and recommendations included in this memo are based on the Maine Municipal Planning Assistance Program at the Department of Agriculture, Conservation, and Forestry (DACF) instructions for agency comments.

Appropriate Use of Data Provided by BwH, MDIFW, and MNAP

BwH provides natural resource data to all Maine municipalities on behalf of MNAP and MDIFW. Information on rare plants and natural communities is provided by MNAP within DACF. MDIFW data depict high value plant and wildlife habitats and critical natural resources. MDIFW and MNAP data were used appropriately in the Kennebunkport Comprehensive Plan. Below are suggestions for improving the town's discussion of natural resource topics. BwH data are regularly updated, and we encourage Kennebunkport to request information as plan implementation proceeds to ensure that land use decisions are based on the best available information at the time.



JUDITH CAMUSO
COMMISSIONER

AMANDA E. BEAL
COMMISSIONER



Resources identified on BwH maps are accurate at the time they are produced; however, it is important to note that the data contained on these maps are regularly updated. Much of this updated information is accessible to the public online through the BwH MapViewer:

<https://webapps2.cgis-solutions.com/beginningwithhabitat/mapviewer/>

Kennebunkport also may request updated paper and digital BwH maps as often as needed from MDIFW during plan completion and plan implementation:

<https://www.maine.gov/ifw/fish-wildlife/wildlife/beginning-with-habitat/maps/index.html>

Additional mapped information on stream habitats and barriers is available on the Maine Stream Connectivity Workgroup's Maine Stream Habitat Viewer:

<https://www.maine.gov/ifw/fish-wildlife/wildlife/beginning-with-habitat/maps/maine-stream-habitat-viewer.html>

Additional land use planning resources and tools intended for use at the municipal level are available through BwH: <https://www.maine.gov/ifw/fish-wildlife/wildlife/beginning-with-habitat/index.html>.

Relation of Plan's Policies and Implementation Strategies to BwH Principal Objectives and Directives

The policies and implementation strategies proposed by the town are consistent with BwH objectives and directives. Kennebunkport's plan is one of the most thorough and thoughtful treatments of BwH priorities seen in a local plan in recent years. Additional information is included below that could help clarify information to readers and possibly improve the policies and strategies outlined within this Plan.

Consistency of Plan with BwH Programs and Policies

Kennebunkport has done an excellent job in the preparation of this plan. The proposed policies, strategies, and Future Land Use Plan are consistent with BwH programs and policies.

Specific Plan comments and recommendations below are provided by the following staff:

- *MDIFW: Steve Walker (Beginning with Habitat Program Coordinator – Augusta), Josh Matijas (Assistant Regional Wildlife Biologist – Region A, Gray), and Nicholas Kalejs (Assistant Regional Fisheries Biologist – Region A, Gray)*
- *MNAP: Kristen Puryear (Ecologist) and Lisa St. Hilaire (Information Manager)*

BwH and its partners congratulate the town for completing a plan that effectively lays out an approach to future community growth that is in harmony with existing critical natural resources and forward looking enough to address emerging challenges of climate change. Should the town need future assistance in implementing the plan's various strategies, the BwH partnership stands ready to help.

Critical and Important Natural Resources

The availability of high-quality habitat for plants and animals is essential to maintaining abundant and diverse populations for ecological, economic, and recreational purposes. The town of Kennebunkport is home to many critical and important natural resources, including rare plant and animal species, Significant Wildlife Habitats such as Inland Waterfowl and Wading Bird Habitat, and rare and exemplary natural communities. The plan has captured each of these elements and presented

information in a logical and instructive way. Minor comments follow that are intended to further clarify natural resource information for future implementation purposes.

General Resource Comments by PDF Page Number

Page 23 (Plan Summary - *Collaborative*) We applaud Kennebunkport's acknowledgement that effective natural resource protection requires working across municipal and jurisdictional borders. The BwH partnership has the capacity to assist Kennebunkport in future efforts to create an inter-municipal strategy for protecting shared resources of concern and would be happy to bring our expertise and network to the table as needed.

Page 29 (Plan Strategies – A Steward). The plan calls for the creation and implementation of an invasive species management policy. Certainly, both MNAP and IFW applaud this suggestion, and both agencies would be happy to assist in developing management guidelines, etc. for both non-native plants and animals impacting Kennebunkport's native species and habitats.

Page 29 (Plan Strategies – Resilient) BwH partners would be happy to assist as needed with future discussions regarding the disposition of undeveloped lands vulnerable to sea level rise. While some of these areas may be able to naturally transition to tidally influenced habitats, others may benefit from proactive management treatments that could enhance eventual transition. Below is a useful link to consider adding to the plan narrative where appropriate:

https://www.maine.gov/dacf/mnap/assistance/coastal_resiliency.html

Page 30 (Plan Strategies – Connected) Both suggestions to enhance terrestrial wildlife corridors and to follow StreamSmart road crossing techniques are valuable approaches for building long-term habitat resiliency into Kennebunkport's growth plans. BwH field biologists would be happy to assist the town in designing approaches that fit the specific situations on the ground.

Page 30 (Plan Strategies – Collaborative) The plan suggests a regional data base of educational resources and information about critical habitat, etc. BwH partners would be happy to help supply the town with existing resources regarding priority plant, animal and habitat information as this strategy is implemented.

Page 189 (Beginning with Habitat Focus Areas) The plan does a great job in integrating the State Wildlife Action Plan (SWAP) into the discussion of natural resources. While the SWAP is technically an IFW document, it should be clarified that the designation of Focus Areas is not carried out by IFW alone, but includes input from the BwH partnership including MNAP, and the Maine Department of Marine Resources among others.

Page 190 (Beginning with Habitat Focus Areas) The link provided in the plan: https://www.beginningwithhabitat.org/pdf/NorthMaine_Draft10_Large_10_08_2010.pdf is no longer functional and should be replaced with: <https://www.maine.gov/dacf/mnap/focusarea/index.htm>. Additionally, the source for Table 7.4 should be cited as both MDIFW and MNAP; "NAP Communities" should be changed to "Rare/Exemplary Natural Community"; "NAP Plants" should be changed to "ETSC Plants" under the source column; and spotted wintergreen status should be changed to Threatened. The note at the bottom of the table should be changed to reflect that state ranks for *animals* is determined by MDIFW.

Page 192 (Natural Community Call Out Boxes) We recommend clarifying that not all state listed species associated with the natural community types occur within Kennebunkport.

Page 194 (Table 7-5) While this table is described as “Essential Habitat”, it includes multiple Significant Wildlife Habitat types and not all of the Essential Habitat types designated in Kennebunkport. We suggest re-titling the table to “Essential and Significant Wildlife Habitat”. Essential Habitats are designated through the Maine Endangered Species Act process and should include Piping Plover/Least Tern (as well as the currently included Roseate Tern habitat). Significant Wildlife Habitats, although identified and mapped by IFW, are regulated primarily through the Maine Department of Environmental Protection’s Natural Resource Protection Act. Similarly, Figure 7-7 should reflect that the listed high value animal habitats are not necessarily “Essential Habitat”.

Page 197 (Aquatic and Shoreland Habitats 4th paragraph) The mention of piping plover should be moved from the saltmarsh discussion to the dune discussion further below.

Page 218 (Figure 8-2 Aquatic Habitat) The plan does a good job of illustrating wild brook trout streams, but this section lacks a discussion of the significance of this resource, especially in coastal York County. Refer to fisheries comments below.

Page 232 (Dams & Culverts) The link provided in the third paragraph should be replaced with: <https://www.maine.gov/ifw/fish-wildlife/wildlife/beginning-with-habitat/maps/maine-stream-habitat-viewer.html>

Page 237 (Figure 8-12 Shoreland zoning in Kennebunkport) This figure illustrates that several of the town’s wild brook trout streams receive no shoreland zone protection. While MDIFW recommends a 100-foot no cut buffer around these high value streams, simply extending shoreland zoning protections could serve as an intermediate strategy to consider.

Page 255 (Eel Grass) Physical disturbance of eel grass beds including clipping and washing from boat propellers and installation of moorings with chains that drag the bottom are also primary causes of decline that we recommend mentioning in the narrative.

Fisheries and Public Access to Waters

The plan addresses some fishery habitat protection issues and states that protecting natural resources is a priority and guiding principle of future town land use. However, more detail is needed in some areas. While most wild brook trout habitat is correctly highlighted on resource maps, MDIFW data indicate that this habitat inventory is not comprehensive. Most streams in Kennebunkport have been inventoried by MDIFW with many flowing waters supporting wild brook trout; a list of these waters has been attached at the end of these comments and should be part of a complete inventory of important natural resources. Further, the plan should expand maps (Fig. 7-7, Fig. 8-2) to fully reflect distribution of wild brook trout. In particular, the middle reach of the Batson River and the Kennebunk River should be highlighted, as wild brook trout utilize these habitats, including on a seasonal basis. Some rivers and streams are also stocked with brook trout and/or brown trout, representing a significant investment of state resources (see attached list of stocked water bodies in Kennebunkport). Additional protection should be considered to protect these waters and other important natural resources when reviewing proposed development projects. Brook trout habitat is particularly vulnerable to a host of land-based activities, which often lead to a concurrent loss of riparian habitat. We typically request 100-foot

undisturbed buffers along both sides of any stream, including stream-associated wetlands. Buffers should be measured from the upland wetland edge of stream-associated wetlands; if the natural vegetation has been previously altered then restoration may be warranted¹. Protection of riparian areas diminishes erosion/sedimentation problems, reduces thermal impacts, maintains water quality, and supplies leaf litter/woody debris (energy and habitat) for the system. Protection of these important riparian functions ensures that the overall health of the stream habitat is maintained. In addition, smaller headwater and lower order streams are often affected the greatest by development and these systems benefit the most from adequately sized, vegetated buffers.

Based on MDIFW surveys around the region, many road maintenance and construction projects also often inadvertently impede passage at stream crossings. The Town should consistently adopt stream-crossing practices (i.e., culvert installation/maintenance) which do not impede fish passage as required by the Natural Resources Protection Act². Refer to guidelines attached to this document. In addition, the Army Corps of Engineers has adopted regulations regarding stream crossings that potentially affect municipal road maintenance programs. Maine Audubon, along with many local and federal partners, has also developed a “Stream Smart” design methodology for road crossings built according to high standards of aquatic organism passage. Such a methodology may be of use to the Town in future development projects; it was good to see awareness of this methodology within the Town comprehensive plan.

II. Public Access

There is a public need to provide safe angler access to all Town waters that support recreational and commercial fisheries, as well as other recreational uses. The Town plan should adopt language that reflects State and MDIFW goals^{3,4,5} and access development needs to be consistent with those goals. For example, public access to public waters must never be limited to Town residents only, as such action would jeopardize existing MDIFW stocking and management programs⁶ and is inconsistent with MDIFW and State public access goals.

Based on this review, no formal boat access sites to inland waters exist within the Town. Creating a public boat launch is listed as a strategy to “expand access to the shore and rivers for recreational uses;” the Town should ensure that consideration of this strategy includes inland waters as well as marine.

The plan does a good job of identifying public access facilities to marine waters located within the Town of Kennebunkport; however, more information could similarly be provided on freshwater access. The town plan should identify and describe the status of public access to all freshwater within the Town’s boundaries, including more detailed enumeration of parking capacity, facilities, and type of boat launch present, if applicable. For example, Table 15-1 provides a list of sites that possess small craft launches, but does not include information on location, amenities, size, etc. Kennebunkport encompasses or borders no Great Ponds at least ten acres in size but contains miles of flowing waters.

Access to flowing waters is generally informal, but waters such as the Kennebunk River, Batson River, Smith Brook, Goff Mill Brook and tributaries, and the Little River may be of special interest to anglers. Recreational access to most of these waters is not discussed and should be more detailed in terms of any existing facilities and locations, if applicable. There is some discussion regarding the development of new access sites, and the desire to expand public access to natural resources comprises an important part of the plan. The Town could explicitly outline strategies to maintain or expand public access to additional water bodies, including in the form of future development goals. These strategies should help prioritize public access needs based on a variety of factors including existing access, fisheries present, water size, proximity to population centers, land availability and cost, existing waterfront development, and other related factors. Lastly, the Town should consider MDIFW and MDOC as a potential partner in future public access projects. By working together Town and State agencies are more likely to be successful in achieving our common goal of improving public access.

In adopting measures to address land use and development issues, it is imperative that language and measures not be adopted which could preclude efforts by the Town, MDIFW, or other State agencies from developing public access to public waters of the State, which would be inconsistent with State and MDIFW goals^{3,4,5}. Also, land use zoning ordinances and practices designed to protect water quality should not be so strict as to impede the development of public access opportunities. These measures could severely limit or eliminate good access prospects on heavily developed waterfront areas. An “exemption” for public access projects should be adopted for projects which are consistent with Town, State, and MDIFW public access goals. This measure will ensure consistency while foregoing the need to undertake a very detailed and comprehensive review of all plan provisions, including their implications.

Open space is being used more and more by Towns to provide recreational opportunities and access. This is a good idea, particularly when public resources (i.e. lakes, rivers, and streams) are located within or adjacent to the designated open space areas. Additionally, the open space that public water resources provide can greatly expand the total amount of recreational space for town residents and visitors. However, the Town should be sure that such areas are open to and can accommodate use by all Maine citizens and not just Town residents.

III. Significant Habitats and Fisheries

The plan discusses habitats and values for some inland rivers and streams within the Town of Kennebunkport. However, more attention should be paid to wild brook trout fisheries. Wild brook trout streams represent a unique resource, and their importance should be emphasized; emphasis given to marine fisheries (alewives, shad, striped bass, etc.) in Chapter 9 could be replicated for brook trout in Chapter 7. Presenting trout habitat as an essential part of local environmental systems reinforces the Town’s commitment to conservation of important fisheries resources. Brook trout are of special conservation importance to the State of Maine, and habitats necessary to sustain wild

populations merit additional protections. As there are numerous wild brook trout streams in Kennebunkport, this knowledge may be useful for prioritizing public access needs/improvements, identifying significant fisheries habitats for protection, securing additional partnerships with conservation organizations, and addressing other Town planning needs.

Finally, see the attached list of stocked water bodies in Kennebunkport for an inventory of stocked trout fisheries within Town boundaries. Along with the list of wild brook trout waters (also attached), the plan should include this information in the description of each inland water.

IV. Miscellaneous Items/Errors

(1) In the discussion of Kennebunk River fisheries (Volume 2, pg. 214), the plan mentions dip net fisheries for rainbow smelt. It should be clarified that per 2022 sea-run rainbow smelt regulations issued by the Department of Marine Resources, Kennebunkport is part of Zone 1 which prohibits the use of dip nets to recreationally capture sea-run rainbow smelt. Dip net fisheries for landlocked rainbow smelt would be permitted unless otherwise prohibited by water-specific regulations but are neither numerous in the Town nor relevant to a discussion of marine resources.

¹ MAINE DEPARTMENT OF INLAND FISHERIES AND WILDLIFE, STANDARD ENVIRONMENTAL REVIEW RECOMMENDATIONS

Riparian Buffers Along Streams

We recommend that 100-foot undisturbed vegetated buffers be maintained along streams. Buffers should be measured from the edge of stream or associated fringe and floodplain wetlands. Maintaining and enhancing buffers along streams that support coldwater fisheries is critical to the protection of water temperatures, water quality, natural inputs of coarse woody debris, and various forms of aquatic life necessary to support conditions required by many fish species. Stream crossings should be avoided, but if a stream crossing is necessary, or an existing crossing needs to be modified, it should be designed to provide full fish passage. Small streams, including intermittent streams, can provide crucial rearing habitat, cold water for thermal refugia, and abundant food for juvenile salmonids on a seasonal basis and undersized crossings may inhibit these functions. Generally, MDIFW recommends that all new, modified, and replacement stream crossings be sized to span at least 1.2 times the bankfull width of the stream. In addition, we generally recommend that stream crossings be open bottomed (i.e. natural bottom), although embedded structures which are backfilled with representative streambed material have been shown to be effective in not only providing habitat connectivity for fish but also for other aquatic organisms. Construction Best Management Practices should be closely followed to avoid erosion, sedimentation, alteration of stream flow, and other impacts as eroding soils from construction activities can travel significant distances as well as transport other pollutants resulting in direct impacts to fish and fisheries habitat. In addition, we recommend that any necessary instream work occur between July 15 and October 1.

MDIFW Fisheries will rely on MDEP to review project applications for the adequacy of wetland functional assessments and the adequacy of proposed stream buffers, which should be reviewed based upon the aforementioned guidance.

² **MDEP, Natural Resources Protection Act, 38 M.R.S.A SS.480-A to 480-Z, Statute, revised 4/3/2002** SS. 480-Q. Activities for which a permit is not required... 2. Maintenance and repair... “B. Crossings do not block fish passages in water courses;”

2-A. Existing road culverts...”and that the crossing does not block fish passage in the water course.”

³ **MSPO, Comprehensive Planning: A manual for Maine’s communities.**

“State Goal: To promote and protect the availability of outdoor recreation opportunities for all Maine citizens, including access to surface waters.

⁴ **Strategic Plan for Providing Public Access to Maine Waters for Boating and Fishing, MDOC & MDIFW, March 1995.**

“Boating and Fishing Access Goal – The primary, long term goal of state fishing and boating access programs is to ensure legal, appropriate, adequate, and equitable means of public access to waters where recreational opportunities exist.”

⁵ **MDIFW, Administrative Policy Regarding Fisheries Management, 12/2002**

“The purpose of the Department’s Access Program is to ensure that the public is able to gain access to Maine’s public waters and to the fisheries within them. By law, all great ponds belong to the people of Maine. Private land ownership may limit access to great ponds. Fishing opportunity is directly linked to the public’s ability to get to the waters to fish, so acquiring publicly owned private points of access is critical, especially in areas where heavy development or restrictive private access already limits legal access by the public to the lake or pond.

It is also important to provide legal public access to flowing waters, although there is no parallel legal right to use flowing waters. Such acquisitions must, therefore, include enough land to allow access to stretches of the river or stream.”

⁶ **MDIFW, Administrative Policy Regarding Fisheries Management, 12/2002**

“ The Department will not stock waters without reasonable, legal public access, since stocking programs are to benefit the general fishing public, and not only the people that own land around a lake, pond, river or stream.”

⁷ **MSPO, Comprehensive Planning: A manual for Maine’s communities.**

“Legislative requirement: The act requires that each comprehensive plan include an inventory and analysis of: Significant or critical natural resources, such as wetlands, wildlife and fisheries habitats...”

Stream Crossing Guidelines

A good reference for information on fish passage at stream crossings may be found in the Maine Department of Transportation Fish Passage Policy and Design Guide. The following recommendations reduce the potential for culvert installations to create impediments to fish passage for most resident stream fish typically found in Fisheries Management Region A. These recommendations apply to circular culverts installed in streams.

- Do not install hanging culverts.
- Culvert installation should occur between July 1 and October 1.

- Culvert invert (downstream bottom end of the culvert) should be installed below streambed elevation; 6 inches deep for culverts less than 48 inches in diameter and 12 inches deep for larger culverts.
- Installation should not exceed the existing natural gradient.
- Use corrugated steel/aluminum culverts with the largest available corrugations. Smooth concrete and corrugated plastic culverts should only be used in very low gradient areas where water backs up the entire length of the pipe. In addition, polyethylene slip liners and smooth bore plastic culverts are becoming more popular for new or replacement installations due their longevity and low cost; however, they are creating serious fish passage problems around the State. A review of flow capacity specifications for Snap-Tite, a local distributor of slip liner technology, reveals that in all applications where smaller diameter Snap-Tite Solid liners are installed in existing corrugated metal pipes (CMP) flow capacities are increased, even though effective pipe size is decreased. For example, when a 28-inch (26 inch inside diameter) solid liner is installed in a 30 inch (inside diameter) CMP the new liner provides 187% of the original capacity provided by the metal pipe. The increase in capacity results from the smooth walls and nonwetting characteristic of polyethylene, which reduce friction within the pipe. The increased velocities that result from slip liner and smooth bore polyethylene culverts usually far exceed that which can be negotiated by most fish typically occurring in Maine streams, which typically ranges between 1 and 2 feet per second. Furthermore slip liner projects effectively increase the invert elevation, creating a hydraulic drop at the outlet, which creates an additional obstacle to fish passage. Increased flow velocities within the pipe also increase downstream scour, which can lead to degradation of the outlet plunge pool, important staging habitat for fish attempting to pass through culverts. Resulting erosion can also create "head cuts" or nick points that cause additional scouring of the stream channel and associated habitat degradation. Impediments and barriers to fish passage will generally be created using slip liners and smooth bore culverts, except under the following conditions:

- 1) In drainage ditches or similar circumstances where water is not being conveyed in a jurisdictional stream channel;
- 2) In streams where there are no fish present and where the presence of natural/artificial barriers prevent seasonal use by fish species lower in the drainage;
- 3) In very low gradient settings where water backs up the entire length of the pipe, and where the water depth at the inlet end of the liner/culvert is at least 4-6 inches deep at low flows.
- 4) Where a permanent, natural barrier is located upstream/downstream within 150 feet of the stream crossing. A permanent/natural barriers is defined as a vertical drop of at least 4 feet over a rock/ledge substrate, as measured during summer low flows. Beaver dams would not be considered a permanent impassable barrier.

- Culverts should be installed so as to provide a minimum water depth of 4-inches within the culvert during critical, seasonal movement/migration periods (spawning, summer refugia, etc.), which will vary by species. This minimum water depth is needed to provide passage opportunities for smaller fish that dominate the streams in Region A. MDOT's Fish Passage Policy and Design Guide provides information on movement periods.

- Flow velocities within the culvert should not exceed 1 and 2 feet per second during critical, seasonal movement/migration periods (spawning, summer refugia, etc.), which will vary by species. These low flows velocities are needed to provide passage opportunities for smaller fish that dominate the

streams in Region A. The aforementioned flows should not be exceeded more than 50% of the time during periods of movement. MDOT's Fish Passage Policy and Design Guide provides information on movement periods and how to evaluate this standard.

- Two offset culverts may be used, such that one pipe provides passage conditions during low flow periods and the other is installed to pass design peak flows. An experienced engineer should design multiple culvert installations.
- Efforts to mitigate for fish passage problems (e.g., fish ladder, tailwater control, baffles, etc.) should always be coordinated through MDIFW.

MDIFW Inventory of Kennebunkport Wild Brook Trout Streams (2022)

Stream Name:

- Kennebunk River
- Batson River
- Smith Brook
- Goff Mill Brook
- Unnamed Tributary to Goff Mill Brook (approximate location 43.4019, -70.4870)
- Little River

MDIFW Stocking Information for Kennebunkport Waters (2022)

Stream Name:

- Kennebunk River: brook trout, brown trout
- Batson River: brook trout
- Goff Mill Brook: brook trout



STATE OF MAINE
DEPARTMENT OF TRANSPORTATION
16 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0016

Janet T. Mills
GOVERNOR

Bruce A. Van Note
COMMISSIONER

October 28, 2022
Tom Miragliuolo, Senior Planner
Municipal Planning Assistance Program
Department of Agriculture, Conservation and Forestry
22 State House Station
Augusta, ME 04333-0022

Dear Tom,

The 2022 Kennebunkport Comprehensive Plan is so complete, detailed and encompassing, it seems like a once-in-a-generation document. Its landscape and aerial photographs are remarkable—inspiring affection and support for the town. MaineDOT finds the Kennebunkport Comprehensive Plan consistent with its mobility & transportation policies and goals.

Several of the Plan's Transportation strategies warrant a response from MaineDOT. Strategy 8 calls for the town to work with the Department on improved bike/ped connections between Cape Porpoise and Dock Square; Strategy 25 requests that MaineDOT construct bike routes near the public school and along state roads. Both strategies will require a long-term planning, coordination and funding partnership between Kennebunkport and the Department. The Town can contact MaineDOT's active transportation planner, Dakota Hewlett, Dakota.Hewlett@maine.gov to learn what is possible or review www.maine.gov/mdot/pga/funding/.

Similarly, Strategy 13 calls for a traffic study of Dock Square to identify means to reduce congestion. Through its Planning Partnership Initiative, www.maine.gov/mdot/ppi MaineDOT offers matching grants to fund transportation planning studies aimed at solving such problems. An additional resource is the transportation planning staff at Southern Maine Regional Planning Commission www.smpdc.org.

Strategy 21 suggests a standard minimum sidewalk width for public streets. Municipalities can consolidate infrastructure standards in a technical design and construction standards manual. Nearby Saco has a recently updated manual of this kind.

Finally, Strategy 37 aims at municipal-state coordination on community character issues in advance of state transportation projects. MaineDOT produces and advertises virtual public meetings in advance of projects encouraging questions and dialogue as design begins. Also, I, as the agency's Southern & Midcoast Maine regional planner Stephen.Cole@maine.gov can be contacted regarding community issues.

Thank you for the opportunity to review and comment on this plan.

Sincerely,

Stephen Cole, Regional Planner

Date: November 1, 2022
To: Tom Miragliuolo
From: Ashley Hodge, Drinking Water Program
Re: Town of Kennebunkport Comprehensive Plan Review

On behalf of the Maine CDC, Drinking Water Program (MEDWP), I have reviewed the Town of Kennebunkport's 2022 Comprehensive Plan and have provided the following comments.

As you are aware, The Drinking Water Program works to ensure safe drinking water in Maine, to protect public health, by administering and enforcing drinking water and subsurface wastewater regulations, providing education and technical and financial assistance. The comments submitted below are based on the Maine State Planning Office's (SPO) instructions for agency commentors.

- (1) The MEDWP has contacted Kennebunk, Kennebunkport, & Wells Water District (KKW) regarding drinking water source protection and upcoming water infrastructure construction projects. The town should continue to work with KKW to support safe drinking water and fire suppression services.

Please feel free to contact me should you have any questions regarding this information.

Miragliuolo, Tom

From: Town Planner <townplanner@arundelmaine.org>
Sent: Tuesday, October 11, 2022 10:17 AM
To: Miragliuolo, Tom
Subject: Kennebunkport Plan Comments

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Tom,

On behalf of the Town of Arundel, I would offer the following. Arundel has no concern with the plan as drafted. There is not a lot of discussion regarding any cooperation with Arundel considering we share a large common border with Kennebunkport.

On another note, I will have additional comments for you from SMPDC review of the document.

Lee Jay Feldman

Lee Jay Feldman
Town Planner
207-985-4201 X 108
207-571-7065

Miragliuolo, Tom

From: fiveacrefarm@roadrunner.com
Sent: Friday, September 23, 2022 2:59 PM
To: Miragliuolo, Tom
Subject: RE: Kennebunkport Comprehensive Plan

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Hi Tom,

I will look for the notification. At this point in the plan if there are errors can they be changed?

I see they have a farm that is in Arundel not Kennebunkport. I think the consultant that guided the GPC used the internet. Arundel and Kennebunkport share the same zip code. I also see that my farm is not in the list of farms as well. I have two licenses from the Department of Agriculture and a town licensed farm stand. I have been in business since 2005.

Thank you for your assistance,

Melinda

From: "Miragliuolo, Tom"
To: "fiveacrefarm@roadrunner.com"
Cc:
Sent: Friday September 23 2022 2:49:50PM
Subject: RE: Kennebunkport Comprehensive Plan

Hi Melinda,

I was supposed to have started the public comment clock already but have been delayed. I'll be sure to get you an email as soon as it's begun (I was hoping to have had it done yesterday!)

Tom Miragliuolo, Senior Planner
Municipal Planning Assistance

207-287-3860

maine.gov/dacf/municipalplanning

From: fiveacrefarm@roadrunner.com <fiveacrefarm@roadrunner.com>
Sent: Friday, September 23, 2022 2:37 PM
To: Miragliuolo, Tom <Tom.Miragliuolo@maine.gov>
Subject: Kennebunkport Comprehensive Plan

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Hello ,

It looks like the submitted Kennebunkport Comprehensive Plan has been submitted for your review. I was looking for the way to make a comment/concern as I heard this is possible from the code enforcement officer in our town.

Any assistance would be appreciated.

Best Regards,

Melinda Anderson

Five Acre Farm

Miragliuolo, Tom

From: Lee Jay Feldman <ljfeldman@smpdc.org>
Sent: Tuesday, October 25, 2022 2:15 PM
To: Miragliuolo, Tom
Subject: Kennebunkport Com Plan

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Tom,

I am writing to comment on the KPORT plan.

SMPDC finds a number of issues relevant to Regional coordination throughout the plan.

In the Regional Coordination portion of the plan, SMPDC was barely noted as the Regional Planning Organization. SMPDC is very involved with KPORT on a number of fronts which also leads me to the tie in on the Climate Action portion of the plan. SMPDC has assisted KPORT with a multi town Solar collaborative, We are involved with them in the GOPIF Cohort Collaborative none of which were even noted in the plan. This type of work is important to note as it may lead to additional Goals Policies and Strategies for the community which are not even mentioned.

From the Transportation portion of the plan, there are a number of issues missing including a Bridge from the State website which is not even noted. The plan suggests that they are more aligned with GPCOG as it relates to Transportation issues which is not true. SMPDC has been assisting the town on several transportation pieces as well as Transit issues.

It seems to me whomever drafted the plan did not do a very good job at laying out a number of Regional issues that SMPDC is assisting with. As noted earlier, the towns GP&S may have had additional pieces in it for the community to work on if the information had been portrayed correctly.

Thanks for your time on this issue

Lee Jay Feldman

Lee Jay Feldman
Director of Planning
Southern Maine Planning and Development Commission
110 Main Street Suite 1400
Saco, Maine 04075
Tel. 207-494-2826