

TOWN OF KENNEBUNKPORT, MAINE

- INCORPORATED 1653 -

MAINE'S FINEST RESORT

**Board of Selectmen
Village Fire Station – 32 North Street
July 13, 2017 – 7:00 PM**

1. Call to Order.
2. Approve the June 17, 21, and 30, 2017, selectmen 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. Consider a renewal liquor license application submitted by Captain Jefferds Inn, LLC., d.b.a. Captain Jefferds Inn, 5 Pearl St.
5. Request to waive tent permit fee for Circus Smirkus.
6. Consider dock application to construct a 4ft x 65 ft pier with associated ramp and float at 37 Langsford Road.
7. Police Chief Sanford presents security and law enforcement issues relative to recreational marijuana.
8. Consider funding study analyzing FEMA Flood Maps.
9. Communications from Goose Rocks Beach Advisory Committee regarding the need for public bathrooms and a request from Central Maine Power Company regarding the frequency of power outages at Goose Rocks Beach.
10. Consider telecommunications ordinance.
11. Consider Land Use Ordinance amendment re: growth permits and accessory apartments for the November warrant.
12. Authorization to enter into a contract with Wright-Pierce Engineers for the design and bid of the Parks and Recreation Building.
13. Consider request to extend sewer on Mills Rd.
14. Appoint Boards/Committees.

15. Appoint Selectmen Representatives to Boards/Committees

16. Other business.

17. Approve the July 13, 2017, Treasurer's Warrant.

18. Adjournment.



Agenda Item Divider



**Town of Kennebunkport
Board of Selectmen Meeting
June 17, 2017 – Immediately following the Annual Town Meeting
Consolidated School, School Street**

Minutes of the Selectmen's Meeting of June 17, 2017

Selectmen Attending: Stuart E. Barwise, Patrick A. Briggs, Sheila Matthews-Bull, Allen A. Daggett, and Ed Hutchins

Others: Tracey O'Roak, Laurie A. Smith, and others

1. Call to Order.

Town Clerk Tracey O'Roak called the meeting to order at 9:40 AM.

2. Elect a Chair.

Motion by Selectmen Barwise, seconded by Selectman Daggett, to nominate Patrick A. Briggs as chair of the Board of Selectmen. **Vote:** 5-0.

3. Elect a Vice-Chair.

Motion by Selectmen Matthews-Bull, seconded by Selectman Daggett, to nominate Edward Hutchins as vice-chair of the Board of Selectmen. **Vote:** 5-0.

4. Other business and communications.

There was no other business.

5. Adjournment.

Motion by Selectman Barwise, seconded by Selectman Matthews-Bull, to adjourn.

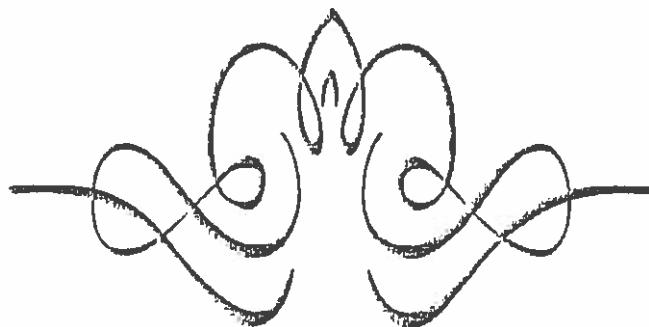
The meeting adjourned at 9:42 AM.

Submitted by

Laurie A. Smith
Town Manager



Agenda Item Divider



**Town of Kennebunkport
Board of Selectmen Meeting
June 21, 2017
9:00 AM - Town Hall, 6 Elm Street**

Minutes of the Selectmen's Meeting of June 21, 2017

Selectmen Attending: Stuart Barwise, Patrick A. Briggs, Sheila Matthews-Bull and Allen Daggett.

Selectmen absent: Edward Hutchins

Others: Laurie Smith, Werner Gilliam, Tracey O'Roak, J. Steven Kingston and Colby Kingston

1. Call to Order.

Chairman Briggs, called the meeting to order at 9:02 AM.

2. Approve the June 5 and 8, 2017 selectmen meeting minutes.

Motion by Selectman Matthews-Bull, seconded by Selectman Daggett, to approve the June 5, 2017 selectmen meeting minutes. VOTE: 3-0 (Selectman Barwise abstained because he was not present at that meeting.)

Motion by Selectman Daggett, seconded by Selectman Barwise, to approve the June 8, 2017 selectmen meeting minutes. VOTE: 3-0 (Selectman Matthews-Bull abstained because she was not present at that meeting)

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.)

There were no comments.

4. Public Hearing to consider application for victualer's license for J. Steven Kingston, DBA Satellite Doughnuts, 4 Spring Street.

Chairman Briggs opened the public hearing at 9:07 AM.

Mr. Kingston gave additional information on the doughnut shop. Colby Kingston will be the manager of the shop. It will be seasonal from May to October, however, they may also open during Prelude.

Chairman Briggs closed the public hearing at 9:08 AM.

Motion by Selectman Daggett, seconded by Selectman Matthews-Bull to approve the application for victualer's license. VOTE: 4-0

5. Appoint Becky Nolette as Assessor's Agent.

Motion by Selectman Daggett, seconded by Selectman Barwise to appoint Becky Nolette as Assessor's Agent. VOTE: 4-0

6. Approve the proclamation recognizing David Kling as the recipient of the 2017 Spirit of America Award.

Motion by Selectman Daggett, seconded by Selectman Barwise to approve the proclamation recognizing David Kling as the recipient of the 2017 Spirit of America Award. VOTE: 4-0

7. Approve the proclamation recognizing the 150th birthday of Canada.

Motion by Selectman Barwise, seconded by Selectman Matthews-Bull to approve the proclamation recognizing the 150th birthday of Canada. VOTE: 4-0

8. Sign the supplemental Certificate of Commitment of Sewer User Rates.

Motion by Selectman Daggett, seconded by Selectman Barwise to sign the supplemental Certificate of Commitment of Sewer User Rates. VOTE: 4-0

9. Other Business.

Selectman Matthews-Bull pointed out a piece of property on Langsford Road that has a flower garden planted next to the road on Town owned property. She questioned whether the Town should ask for an easement similar to another property on that road. Ms. Smith and Mr. Gilliam advised that they would look at the property in question to make a determination.

Ms. Smith reminded the Board that there will be a short meeting on June 30th to sign the end of fiscal year warrant.

Ms. Smith also advised that there will be an executive session on July 6, 2017. It will probably be at 3 p.m. but she needs to confirm with the Town attorney to see if she is available at that time.

10. Approve the June 21, 2017 Treasurer's Warrant.

Motion by Selectman Matthews-Bull, seconded by Selectman Daggett to approve the June 21, 2017 Treasurer's Warrant. VOTE: 4-0

11. Adjournment.

Motion by Selectman Matthews-Bull to adjourn, seconded by Selectman Daggett. VOTE: 4-0

The meeting was adjourned at 9:14 AM

Submitted by

Laurie A. Smith
Town Manager



Agenda Item Divider



**Town of Kennebunkport
Board of Selectmen Meeting
June 30, 2017
9:00 AM - Town Hall, 6 Elm Street**

Minutes of the Selectmen's Meeting of June 30, 2017

Selectmen Attending: Stuart Barwise, Patrick A. Briggs, Edward Hutchins, Sheila Matthews-Bull and Allen Daggett.

Others: Laurie Smith, Tracey O'Roak, and Jim Black

1. Call to Order.

Chairman Briggs, called the meeting to order at 9:00 AM.

2. Approve the June 30, 2017 Treasurer's Warrant.

Motion by Selectman Daggett, seconded by Selectman Barwise, to approve the June 30, 2017 Treasurer's Warrant. VOTE: 5-0

Motion by Selectman Hutchins, seconded by Selectman Daggett, to sign the June 30, 2017 Treasurer's Warrant. VOTE: 5-0

3. Appoint Jim Black as Assistant Harbormaster.

Motion by Selectman Hutchins, seconded by Selectman Barwise to appoint Jim Black as Assistant Harbormaster. VOTE: 5-0

4. Adjournment.

Motion by Selectman Hutchins, seconded by Selectman Barwise to adjourn. VOTE: 5-0

The meeting was adjourned at 9:13 AM

Submitted by

Laurie A. Smith
Town Manager



Agenda Item Divider



(4)

Captain Jeffords Inn
7/13/17

This application has been reviewed and approved by the following Municipal Officials,
whose signatures are on file with the Town Clerk:

✓

Police Chief

✓

Fire Inspector

✓

Code Enforcement Officer

Tracy Orsak

Town Clerk

BUREAU OF ALCOHOL BEVERAGES AND LOTTERY OPERATIONS
DIVISION OF LIQUOR LICENSING AND ENFORCEMENT
8 STATE HOUSE STATION, AUGUSTA, ME 04333-0008
10 WATER STREET, HALLOWELL, ME 04347
TEL: (207) 624-7220 FAX: (207) 287-3434
EMAIL INQUIRIES: MAINELIQUOR@MAINE.GOV

DIVISION USE ONLY	
License No:	
Class:	By:
Deposit Date:	
Amt. Deposited:	
Cash Ck Mo:	

NEW application: ☐ Yes ☒ No

PRESENT LICENSE EXPIRES 08/02/2017

INDICATE TYPE OF PRIVILEGE: ☒ MALT ☒ VINOUS ☐ SPIRITUOUS

INDICATE TYPE OF LICENSE:

- | | | |
|---|---|---|
| <input type="checkbox"/> RESTAURANT (Class I,II,III,IV) | <input type="checkbox"/> RESTAURANT/LOUNGE (Class XI) | <input type="checkbox"/> CLASS A LOUNGE (Class X) |
| <input type="checkbox"/> HOTEL (Class I,II,III,IV) | <input type="checkbox"/> HOTEL, FOOD OPTIONAL (Class I-A) | <input checked="" type="checkbox"/> BED & BREAKFAST (Class V) |
| <input type="checkbox"/> CLUB w/o Catering (Class V) | <input type="checkbox"/> CLUB with CATERING (Class I) | <input type="checkbox"/> GOLF COURSE (Class I,II,III,IV) |
| <input type="checkbox"/> TAVERN (Class IV) | <input type="checkbox"/> QUALIFIED CATERING | <input type="checkbox"/> OTHER: _____ |

REFER TO PAGE 3 FOR FEE SCHEDULE

ALL QUESTIONS MUST BE ANSWERED IN FULL

Corporation Name: Captain jefferds Inn, LLC		Business Name (D/B/A) Captain Jefferds Inn	
APPLICANT(S) - (Sole Proprietor) Sarah M Lindblom		DOB: 04/07/48	
Physical Location: 5 Pearl Street			
City/Town Erik A Lindblom		State 02/24/43	Zip Code Kennebunkport, ME 04046
Address 7 Fisher's Lane		Mailing Address PO Box 691	
City/Town Kennebunkport, ME	State 04046	City/Town Kennebunkport, ME	Zip Code 04046
Telephone Number 207 204-0118	Fax Number	Business Telephone Number 207 967-2311	Fax Number
Federal I.D. #		Seller Certificate #: or Sales Tax #: 1082845	
Email Address: Please Print Sarah@captainjefferdsinn.com		Website: www.captainjefferdsinn.com	

If business is NEW or under new ownership, indicate starting date: _____

Requested inspection date: _____ Business hours: _____

- If premise is a Hotel or Bed & Breakfast, indicate number of rooms available for transient guests: 16
- State amount of gross income from period of last license: ROOMS \$ 821,000 FOOD \$ 1,200 LIQUOR \$ 5,500
- Is applicant a corporation, limited liability company or limited partnership? YES ☒ NO ☐
If Yes, please complete the Corporate Information required for Business Entities who are licensees.
- Do you own or have any interest in any another Maine Liquor License? ☐ Yes ☒ No
If yes, please list License Number, Name, and physical location of any other Maine Liquor Licenses.

License # Name of Business (Use an additional sheet(s) if necessary.)

Physical Location City / Town



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KCPTA
Kennebunkport Consolidated School
25 School Street
Kennebunkport, ME 04046

June 28, 2017

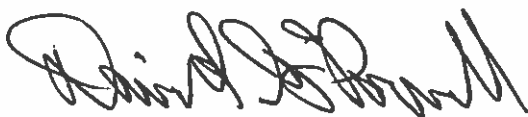
Board of Selectmen
Town of Kennebunkport
P.O. Box 566, 6 Elm Street
Kennebunkport, ME 04046

Dear Board of Selectmen,

The Kennebunkport Consolidated PTA (KCPTA) is hosting the children's circus "Circus Smirkus" again this year at Rockin' Horse Stables on August 10th and 11th. This is the KCPTA's ONE fundraiser for the entire year. All of the money we make by hosting the circus is used to enrich the curriculum for KCS students - to pay for field trips throughout the school year and to provide activities, equipment, and materials to the students that are not covered in the annual school budget.

As the KCPTA is a non-profit, and the proceeds that come from hosting the circus directly benefit the children who attend KCS, we would like to request that the Selectmen waive the usual Tent Permit Fee, as you have generously done in previous years.

Respectfully,



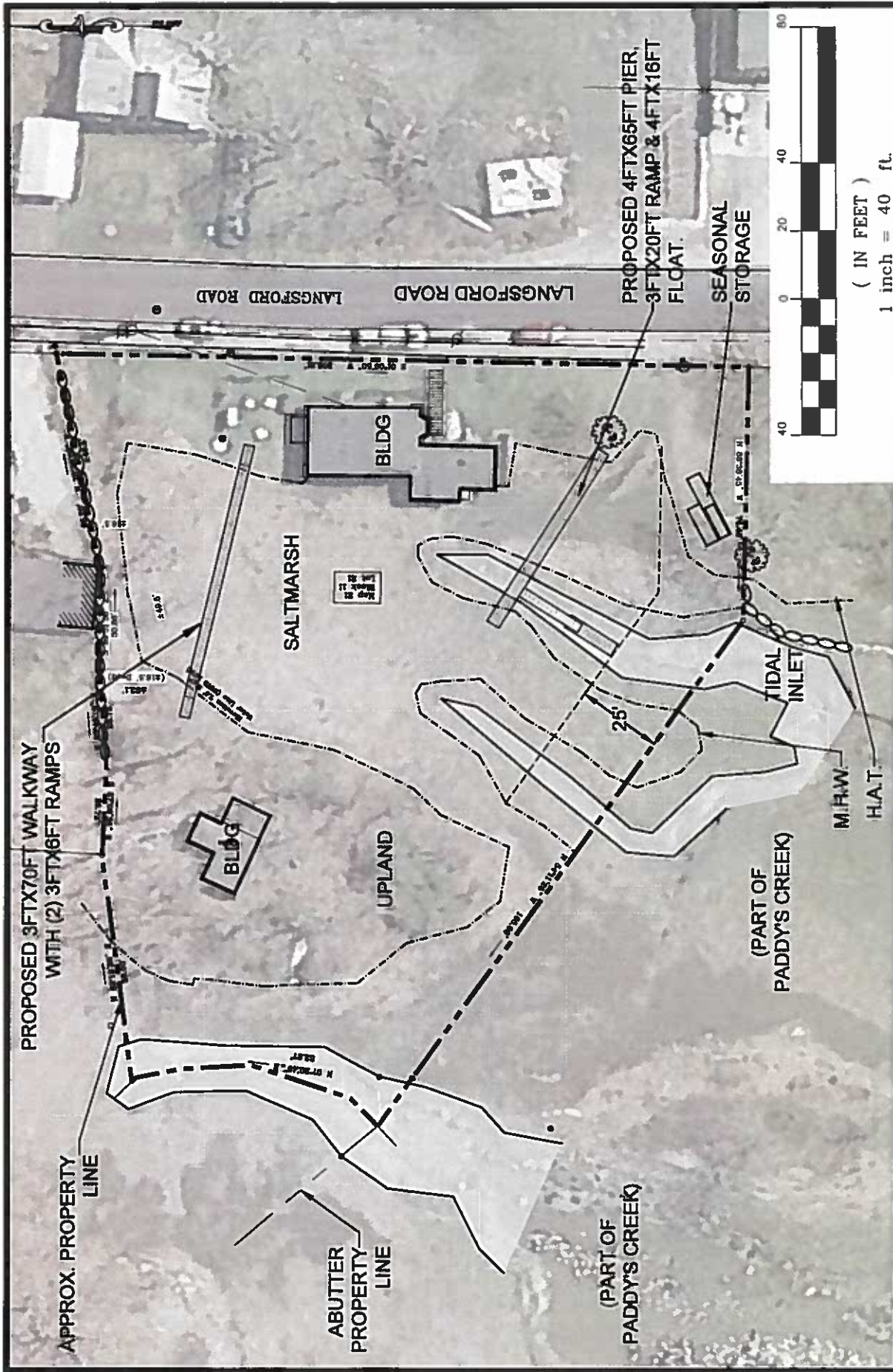
Dave Powell
Vice President of Technology & Communications
KCPTA



Agenda Item Divider



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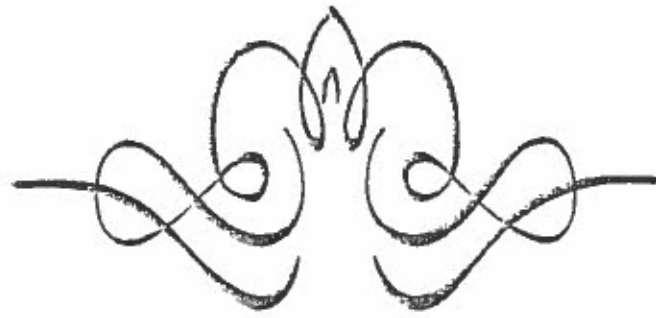


ECO-ANALYSTS, INC.
ENVIRONMENTAL CONSULTANTS
P.O. BOX 224 BATH, MAINE 04530
(207) 837-2199 Fax (207) 386-0451
timforrester@comcast.net

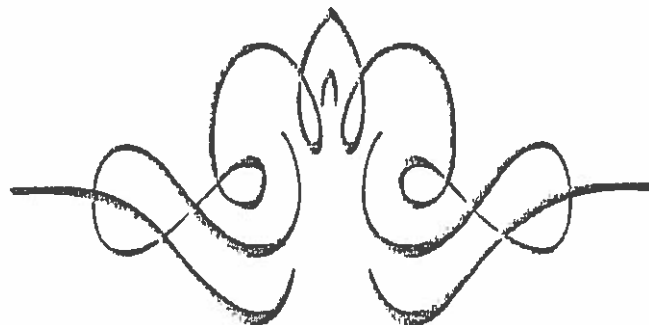
Date: 3/16/2017
Drafted By: TF/SS

Proposed Pier, Ramp & Float Plan for Edward Buttner
Residence at 37 Langsford Road in Cape Porpoise, Maine.

Sheet
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of
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NEW CHALLENGES FACING THE LAW ENFORCEMENT COMMUNITY IN MAINE WITH THE LEGALIZATION OF MARIJUANA

HOW CAN I AS THE CHIEF LOOK INTO THE FUTURE TO SEE HOW THE LEGALIZATION OF MARIJUANA WILL IMPACT THE POLICE DEPARTMENT HERE IN KENNEBUNKPORT?

- Attended seminars on the issue.
- Spoken to representatives from the Maine Attorney Generals Office.
- Spoken with area chiefs.
- Contacted police chiefs in Colorado with departments similar in size to Kennebunkport.

JOB/TASK ANALYSIS RELATED TO POLICE WORK

- Investigative work
- Roadside investigation (operating under the influence)
- Hiring and Retention of employees
- Management of applications and licensing of businesses
- Management of investigative materials



- ▶ Require Large amounts of manpower/time
- ▶ Require technical training or assistance when dealing with cross boarder crimes.
- ▶ Different states have different laws
- ▶ No clear law currently in place
- ▶ No established case law dealing with the new law
- ▶ No certified facilities to do testing of marijuana products
- ▶ Costs associated with testing must be paid for by police

INVESTIGATIVE WORK DEALING WITH VIOLATIONS OF MARIJUANA LAW

- ▶ No actual testing procedure available or in place to prove intoxication
- ▶ If blood sample is to be used, it requires us to obtain a search warrant to get sample
- ▶ It takes time for an officer to draft an application for the search warrant
- ▶ We must then find a judge to approve and issue the search warrant
- ▶ We must maintain custody of the arrestee during application process
- ▶ We then need to find a person certified to draw the sample
- ▶ Time to write the required reports
- ▶ Costs associated with testing must be paid for by police



ROADSIDE INVESTIGATIONS (OPERATING UNDER THE INFLUENCE)

HIRING AND RETENTION OF EMPLOYEES

- ▶ New employees must be evaluated differently as far as marijuana use in their past
- ▶ Civilian employees may be involved with marijuana use
- ▶ Employees may have family members involved with the use and sale of marijuana
- ▶ Current employees may seek part time employment in the marijuana trade
- ▶ Current employees may leave and seek full time employment in the marijuana trade because of pay.
- ▶ Local housing costs cause employees to leave the area

MANAGEMENT OF APPLICATION AND LICENSING OF BUSINESSES

- Requires the creation of new infrastructure to deal with process
- Extra staff or increase in current staff time is needed to process applications, do inspections and do follow ups
- Requires training for staff on the process
- Training on new equipment used in process
- Currently no certified testing facilities in state
- Costs associated with testing

MANAGEMENT OF INVESTIGATIVE MATERIAL

- Current police facility could not correctly handle the intake of investigative material from a large scale operation
- Not enough room
- No climate control (toxic mold issues)
- Not enough security (large quantities of processed material or cash)
- Staff would require training on proper procedures/handling of evidentiary material

- ▶ Residential investigations may require special protective clothing requirements to protect officers
- ▶ Toxic mold can be present requiring special breathing apparatus
- ▶ High carbon levels from heaters can be an issue
- ▶ Electrical dangers/fire dangers
- ▶ Pesticides and fertilizers can be a hazard if not handled correctly
- ▶ THC levels in evidence can be a hazard to officers
- ▶ Explosion investigations caused by improper processing techniques can cause numerous hazards



TRAINING AND EQUIPMENT ISSUES



- ▶ Large amounts of cash in businesses because of banking issues create opportunities for various criminal activity
- ▶ Most business sales are to tourists who are inexperienced with the products causing strains on EMS services and local emergency rooms
- ▶ Some police agencies are seeking extra funding for staffing needs as well as overtime costs associated with the business
- ▶ Significant increase in homeless population of younger adults who seek to benefit from the marijuana trade
- ▶ Black market industry has boomed (organized crime is buying homes to establish grows then sell the product "under the radar")

OTHER UNFORESEEN ISSUES

WHAT HAVE WE DONE SO FAR ?

- Get staff extra training in roadside detection
- Develop staff guidelines on marijuana use
- Obtain equipment necessary to conduct safe operations
- Stay informed on developing trends from other states
- Stay up to date on current state of Maine legislation

APPENDICES

APPENDIX 1

An Ordinance to Amend Chapter 145 (Land Use) of the Code of the Town of Wells to Retroactively Regulate Medical Marijuana Cultivation and Production Facilities, to Prohibit Them From All Zones Except the Light Industrial District, and to Adopt and Amend Definitions Relating to Marijuana

NOTE: Proposed additions to existing Code sections are underlined.
 Proposed deletions of existing Code sections are ~~crossed out~~.
 Other sections of the Ordinance are unchanged.

An Ordinance to Amend Chapter 145 (Land Use) of the Code of the Town of Wells to Retroactively Regulate Medical Marijuana Cultivation and Production Facilities, to Prohibit Them From all Zones Except the Light Industrial District, and to Adopt and Amend Definitions Relating to Marijuana.

Part 1: Article II (Word Usage and Definitions), § 145-10, titled "Definitions" is hereby amended as follows:

AGRICULTURE

The business of producing or raising plants and crops, including gardening as a commercial operation, greenhouses which are not used for raising plants as a wholesale business, tree farms and nurseries. Agriculture does not include timber harvesting. Agriculture does not include the growing, production, testing, sale or processing of marijuana. The extraction of water for use in plant, crop or livestock irrigation is not agriculture, but rather an accessory use to agriculture or animal husbandry.

MANUFACTURING

A business of making goods and articles by hand or machinery. "Manufacturing" shall include assembling, fabricating, finishing, packaging, or processing. Manufacturing does not include the growing, production, testing, sale or processing of marijuana.

MARIJUANA

As defined in State Administrative Rules (10-144 CMR Chapter 122), § 1.17.

MEDICAL MARIJUANA

Marijuana specifically permitted pursuant to the Maine Medical Use of Marijuana Act.

MEDICAL MARIJUANA CAREGIVER

As defined in State Administrative Rules (10-144 CMR Chapter 122), § 1.31, "Primary Caregiver."

MEDICAL MARIJUANA CULTIVATION AND PROCESSING FACILITY

A facility used for cultivating, processing, testing, and/or storing of medical marijuana by a medical marijuana caregiver at a location which is not the medical marijuana caregiver's primary year-round residence or their patient's primary year-round residence.

RESEARCH AND DEVELOPMENT FACILITY

A business in which new products or processes are created and studied. Research and Development Facility does not include the growing, production, testing, sale or processing of marijuana.

BUSINESS, WHOLESALE

A business engaged in the sale of merchandise to retailers and not to the ultimate consumer. A wholesale business does not include the growing, production, testing, sale or processing of marijuana.

BUSINESS, RETAIL

A business engaged in the sale, rental or lease of goods to the ultimate consumer for his or her use or consumption and not for resale. So-called wholesale clubs at which members pay a yearly fee but are primarily ultimate consumers are considered retail uses. The maximum size of retail businesses in the General Business District shall not exceed 40,000 square feet. A retail business does not include the growing, production, testing, sale or processing of marijuana.

BUSINESS, PERSONAL SERVICE

A business engaged in the provision of personal services, such as but not limited to a doctor, hairdresser, barber, beautician, masseuse or tanning salon. A personal service business does not include the growing, production, testing, sale or processing of marijuana.

Part 2: Article V (District Regulations), § 145-28, entitled "Light Industrial District" is hereby amended as follows:

C. Permitted uses requiring the approval of a site plan. The following uses are permitted upon obtaining site plan approval and any required permits from the Code Enforcement Officer:

- (6) Manufacturing.
- (7) Medical Marijuana Cultivation and Production Facility
- (8) ~~(7)~~ Motor vehicle rental.
- (9) ~~(8)~~ Municipal facility.
- (10) ~~(9)~~ Parking lot, commercial.
- (11) ~~(10)~~ Public transportation shelter.
- (12) ~~(11)~~ Public utility facility.
- (13) ~~(12)~~ Recreation, medium intensity commercial.
- (14) ~~(13)~~ Research and development facility.
- (15) ~~(14)~~ Recycling facility.
- (16) ~~(15)~~ Restaurant, standard.
- (17) ~~(16)~~ Restaurant, fast-food.
- (18) ~~(17)~~ School, vocational-technical.

- (19) ~~(18)~~ Transmission tower, radio.
- (20) ~~(19)~~ Transportation facility.
- (21) ~~(20)~~ Truck terminal.
- (22) ~~(21)~~ Warehousing.
- (23) ~~(22)~~ Self-storage facility.

Part 3: Article VII (Performance Standards), § 145-58.3, entitled "Medical Marijuana Cultivating and Processing Facility" is hereby enacted as follows:

§ 145-58.3. Medical Marijuana Cultivation and Processing Facility

A. Medical marijuana cultivation and processing facilities are allowed subject to the following performance standards in addition to the requirements of the districts in which the facilities are located:

- (1) Notwithstanding any other provision of the Wells Code, all medical marijuana cultivation and production facilities must be reviewed by the Wells Planning Board, and not by the Staff Review Committee or other reviewing authority.
- (2) Medical marijuana caregivers and facilities must meet all of the standards and conditions imposed by the State of Maine issued under the aegis of the Maine Medical Use of Marijuana Program.
- (3) Notwithstanding the Maine Rules Governing the Maine Medical Use of Marijuana Program, no medical marijuana cultivation and processing facility located in Wells may be located where any of the lot lines of the lot on which the facility will be located are within 1,000 feet of the lot line of any preexisting public or private school facility; or any preexisting and licensed child-care facility.
- (4) There shall be opaque windows or walls for any building involved in the facility, so that the interior is completely screened from lot lines and from any person passing along the street boundaries of the lot on which it is located.
- (5) All buildings associated with the facility shall be protected by use of fire suppression sprinkler systems, or other effective fire suppression system that may be approved by the Chief of the Wells Fire Department. Emergency vehicle access shall be provided on a minimum of three sides of a building.
- (6) The facility shall have a Knox-Box® at the security gate and building or shall provide emergency response personnel with the necessary information to allow entry in the event of an emergency at the location.
- (7) The facility shall have at least one parking space per 1,000 square feet of gross floor area, and such additional parking as may be required by the Planning Board.

(8) No facility building shall be allowed to be constructed or occupied within 500 feet of an existing dwelling unit.

(9) The operator of the facility must provide a security plan to the Chief of Police for the Town of Wells, who will provide the Planning Board with a report and recommendations for specific conditions of approval regarding required security measures to be incorporated. The requirements for this plan should be coordinated with the requirements for any security plan that the State of Maine may require for such a facility. A minimum of a chain link fence, 6 feet in height is required surrounding the facility. Recordable video surveillance is also required. Exterior lighting must be sufficient to deter nuisance activity and facilitate surveillance.

(10) The hours of operation for the facility, including the hours that persons other than staff of the facility may be present at a cultivation facility, shall be limited. No sales or dispensing of materials may take place at the facility.

(11) Signs for the facility may not contain any visual depiction of marijuana or marijuana paraphernalia.

(12) Vegetative buffers may be required by the Planning Board to create a visual screen or minimize odors.

(13) The growing, cultivating, production, processing, testing, and/or storing of medical marijuana by a medical marijuana caregiver shall be located within a building. Said activities may not be conducted anywhere outside of a building.

Part 4: Retroactive Application of Ordinance Amendments.

Notwithstanding the provisions of 1 M.R.S.A. § 302 and regardless of the date on which these amendments are approved by voters, these amendments shall govern any and all applications for permits and approvals required under Chapter 145 (Land Use) of the Code of the Town of Wells that were received, or, that were pending before any official, officer, committee or board at any time on or after October 1, 2016. These amendments shall not apply to any agricultural use which received final approval prior to January 1, 2017 for the growing of medical marijuana located outside of the Light Industrial District.

Part 5: Effective Date.

This Ordinance shall take effect upon adoption by the Town Meeting.

APPENDIX 2

An Ordinance to Amend Chapter 145 (Land Use) of the Code of the Town of Wells to Prohibit Both Retail Marijuana Establishments and Retail Marijuana Social Clubs Within the Town of Wells

NOTE: Proposed additions to existing Code sections are underlined.
Proposed deletions of existing Code sections are ~~crossed-out~~.
Other sections of the Ordinance are unchanged.

Pursuant to its authority under 7 M.R.S. § 2447(4), the Town of Wells hereby ordains and enacts “An Ordinance to Amend Chapter 145 (Land Use) of the Code of the Town of Wells to Prohibit Both Retail Marijuana Establishments and Retail Marijuana Social Clubs Within the Town of Wells as follows:

Part 1: Article II (Word Usage and Definitions), § 145-10, titled “Definitions” is hereby amended as follows:

RETAIL MARIJUANA

Marijuana that is cultivated, manufactured, distributed or sold by a retail marijuana establishment or retail marijuana social club. Retail Marijuana are prohibited in the Town of Wells, pursuant to the Town’s authority under 7 M.R.S. § 2447(4), as amended.

RETAIL MARIJUANA CULTIVATION FACILITY

A facility or an entity licensed to cultivate, prepare and package retail marijuana and to sell retail marijuana to retail marijuana establishments and retail marijuana social clubs. Retail Marijuana Cultivation Facilities are prohibited in the Town of Wells, pursuant to the Town’s authority under 7 M.R.S. § 2447(4), as amended.

RETAIL MARIJUANA ESTABLISHMENT

Includes retail marijuana stores, retail marijuana cultivation facilities, retail marijuana products manufacturing facilities, and retail marijuana testing facilities. Retail Marijuana Establishments are prohibited in the Town of Wells, pursuant to the Town’s authority under 7 M.R.S. § 2447(4), as amended.

RETAIL MARIJUANA PRODUCT

Concentrated retail marijuana and retail marijuana products that are composed of retail marijuana and other ingredients and are intended for use or consumption, including, but not limited to, edible products, ointments and tinctures.

RETAIL MARIJUANA PRODUCTS MANUFACTURING FACILITY

A facility or an entity licensed to purchase retail marijuana; manufacture, prepare and package retail marijuana products; and sell retail marijuana and retail marijuana products only to other retail marijuana products manufacturing facilities, retail marijuana stores and retail marijuana social clubs. Retail Marijuana Products Manufacturing Facilities are prohibited in the Town of Wells, pursuant to the Town's authority under 7 M.R.S. § 2447(4), as amended.

RETAIL MARIJUANA SOCIAL CLUB

A facility or an entity licensed to sell retail marijuana and retail marijuana products to consumers for consumption on the licensed premises. Retail Marijuana Social Clubs are prohibited in the Town of Wells, pursuant to the Town's authority under 7 M.R.S. § 2447(4), as amended.

RETAIL MARIJUANA STORE

A facility or an entity licensed to purchase retail marijuana from a retail marijuana cultivation facility and to purchase retail marijuana products from a retail marijuana products manufacturing facility and to sell retail marijuana and retail marijuana products to consumers. Retail Marijuana Stores are prohibited in the Town of Wells, pursuant to the Town's authority under 7 M.R.S. § 2447(4), as amended.

RETAIL MARIJUANA TESTING FACILITY

A facility or an entity licensed and certified to analyze and certify the safety and potency of retail marijuana and retail marijuana products. Retail Marijuana Testing Facilities are prohibited in the Town of Wells, pursuant to the Town's authority under 7 M.R.S. § 2447(4), as amended.

Part 2: Effective Date.

This Ordinance shall take effect upon adoption by the Town Meeting.

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[Note: This model ordinance was initially prepared by the law firm of Jensen, Baird, Gardner and Henry, and with their permission, was modified for use as a model ordinance. MMA Legal Services provides this moratorium as an example only. Local counsel should be consulted first before enacting a moratorium.]

**MUNICIPALITY OF _____ MORATORIUM
ORDINANCE ON RETAIL MARIJUANA ESTABLISHMENTS AND RETAIL
MARIJUNA STORES AND RETAIL MARIJUANA SOCIAL CLUBS**

WHEREAS, the “Marijuana Legalization Act,” has become law in Maine, codified in the Maine Revised Statutes in Title 7, chapter 417; and

WHEREAS, the Marijuana Legalization Act (hereinafter, “Act”) authorizes municipalities to regulate the number of retail marijuana stores and the location and operation of retail marijuana social clubs and retail marijuana establishments, including retail marijuana stores, retail marijuana cultivation facilities, retail marijuana products manufacturing facilities and retail marijuana testing facilities, as those terms are defined in the Act, as well as providing the option to prohibit the operation of retail marijuana social clubs and retail marijuana establishments, including stores, cultivation facilities, manufacturing facilities and testing facilities, within their jurisdiction; and

WHEREAS, the proposed Act will not limit the privileges or rights afforded by the Maine Medical Use of Marijuana Act (22 M.R.S.A. §§ 2421 – 2430-B) to qualifying patients, primary caregivers, or registered dispensaries, including cultivation facilities associated with any of those classifications; and

WHEREAS, the Municipality’s current ordinances do not include any regulations related to retail marijuana stores, retail marijuana establishments or retail marijuana social clubs under the proposed new Act; and

WHEREAS, the unregulated location and operation of retail marijuana establishments, retail marijuana stores and retail marijuana social clubs within the Municipality of _____ raises legitimate and substantial questions about the impact of such establishments, stores and social clubs on the Municipality, including questions about the compatibility of retail marijuana establishments, retail marijuana stores and retail marijuana social clubs with existing uses and development in residential, commercial and industrial zoning districts; the potential adverse health and safety effects of retail marijuana establishments, retail marijuana stores and retail marijuana social clubs on the community if not properly regulated; the possibility of illicit sale and use of marijuana and marijuana products to minors and misuse of marijuana and marijuana products by those who would abuse the uses authorized under the Act; potential criminal activity associated with the cultivation, manufacturing, sale and use of marijuana and marijuana products for non-medicinal purposes and the potential increased burden on the Municipality’s police and fire departments; and the adequacy of the Municipality’s streets and infrastructure to accommodate the additional traffic and/or population that may result from the presence of retail marijuana establishments, retail marijuana stores or retail marijuana social clubs; and

WHEREAS, the possible effect of the location and operation of retail marijuana establishments and/or retail marijuana stores and/or retail marijuana social clubs within the Municipality has potentially serious implications for the health, safety and welfare of the Municipality and its residents; and

WHEREAS, the Municipality needs time to review the Act and to review its own ordinances to determine the implications of future proposed retail marijuana establishments and/or retail marijuana stores and/or retail marijuana social clubs to develop reasonable ordinances governing the location and operations of such establishments and stores and social clubs to address the concerns cited above; and

WHEREAS, the Municipality's current ordinances are insufficient to prevent serious public harm that could be caused by the unregulated development of retail marijuana establishments and retail marijuana stores and retail marijuana social clubs and other uses authorized by the Act, thereby necessitating a moratorium; and

WHEREAS, the board of municipal officers, the administration and the planning board, with the professional advice and assistance of the police department, shall study the Municipality's current ordinances to determine the land use and other regulatory implications of retail marijuana establishments and retail marijuana stores and retail marijuana social clubs and consider what locations, if any, and conditions of approval, if any, might be appropriate for such uses; and

WHEREAS, a moratorium is necessary to prevent an overburdening of public facilities that is reasonably foreseeable as the result of retail marijuana establishments and retail marijuana stores and retail marijuana social clubs and other uses authorized by the Act, being located in the Municipality; and

WHEREAS, it is anticipated that such a study, review, and development of recommended ordinance changes will take at least one hundred and eighty (180) days from the date the Municipality enacts this Moratorium Ordinance on retail marijuana establishments and retail marijuana stores and retail marijuana social Clubs;

NOW, THEREFORE, be it ordained by the legislative body of the Municipality of _____, that the following Moratorium Ordinance on retail marijuana establishments and retail marijuana stores and retail marijuana social clubs be, and hereby is, enacted, and, in furtherance thereof, the legislative body does hereby declare a moratorium on the location, operation or licensing of any retail marijuana social clubs and any retail marijuana establishments, including retail marijuana stores, retail marijuana cultivation facilities, retail marijuana products manufacturing facilities and retail marijuana testing facilities, within the City.

This Moratorium Ordinance shall take effect, once enacted by the legislative body, but shall be applicable as of _____ as expressly provided below. The moratorium shall remain in effect for one hundred and eighty (180) days from the date of applicability of this Ordinance, unless extended, repealed, or modified by the legislative body,

for the express purpose of drafting an amendment or amendments to the Municipality's current ordinances to protect the public from health and safety risks including, but not limited to, compatibility of retail marijuana establishments, retail marijuana stores and retail marijuana social clubs with existing and permitted uses in residential, commercial and industrial zoning districts; the correlation of retail marijuana establishments, retail marijuana stores and retail marijuana social clubs with medical marijuana cultivation facilities and dispensaries, all as defined in the Act; the potential adverse health and safety effects of retail marijuana establishments and retail marijuana stores and retail marijuana social clubs on the community if not properly regulated; the possibility of illicit sale and use of marijuana and marijuana products to minors and misuse of marijuana and marijuana products by those who would abuse the uses authorized under the new law; criminal activity associated with the cultivation, manufacturing, sale and use of marijuana and marijuana products for non-medicinal purposes and the potential increased burden on the public safety agencies serving the Municipality in responding to the same; and the adequacy of the Municipality's infrastructure to accommodate the additional traffic and/or population that may result from the presence of retail marijuana establishments or retail marijuana stores or retail marijuana social clubs in the Municipality.

BE IT FURTHER ORDAINED, that this Ordinance shall apply to retail marijuana stores and retail marijuana social clubs and retail marijuana establishments, including retail marijuana stores, retail marijuana cultivation facilities, retail marijuana products manufacturing facilities and retail marijuana testing facilities, as those terms are defined by the Act, codified at 7 M.R.S.A. §§ 2442 (36), (38), (39), (40) (41), that may be proposed to be located within the Municipality on or after the _____ (date) applicability date of this Ordinance; and

BE IT FURTHER ORDAINED, that notwithstanding the provisions of 1 M.R.S.A. § 302 or any other law to the contrary, this Ordinance, when enacted, shall govern any proposed retail marijuana establishments or retail marijuana stores or retail marijuana social clubs for which an application for a building permit, Certificate of Occupancy, site plan or any other required approval has not been submitted to and granted final approval by the Code Enforcement Officer, Planning Board or other Municipal official or board prior to the applicability date of this Ordinance; and

BE IT FURTHER ORDAINED, that no person or organization shall develop or operate a retail marijuana establishment or retail marijuana store or retail marijuana social club within the Municipality on or after the effective date of this Ordinance without complying with whatever ordinance amendment or amendments the legislative body may enact as a result of this Moratorium Ordinance; and

BE IT FURTHER ORDAINED, that during the time this Moratorium Ordinance is in effect, no officer, official, employee, office, administrative board or agency of the Municipality shall accept, process, approve, deny, or in any other way act upon any application for a license, building permit or any other type of land use approval or permit and/or any other permits or licenses related to a retail marijuana establishment or retail marijuana stores or retail marijuana social club; and

BE IT FURTHER ORDAINED, that those provisions of the Municipality's ordinances that are inconsistent or conflicting with the provisions of this Ordinance, are hereby repealed to the extent that they are applicable for the duration of the moratorium hereby ordained, and as it may be extended as permitted by law, but not otherwise; and

BE IT FURTHER ORDAINED, that if retail marijuana establishments or retail marijuana stores or retail marijuana social clubs are established in violation of this Ordinance, each day of any continuing violation shall constitute a separate violation of this Ordinance, and the Municipality shall be entitled to all rights available to it in law and equity, including, but not limited to, fines and penalties, injunctive relief, and its reasonable attorney's fees and costs in prosecuting any such violations; and

BE IT FURTHER ORDAINED, that should any section or provision of this Ordinance be declared by any court of competent jurisdiction to be invalid, such a declaration shall not invalidate any other section or provision.

[Note: This sample ordinance prohibits all types of retail marijuana establishments as well as retail marijuana social clubs. However, the scope of the ordinance may be limited to only one or some but not all of these uses. This is a sample ordinance only. In order to thoroughly address concerns within a given municipality, MMA Legal Services advises that local counsel be consulted before enacting any ordinance.]

Ordinance Prohibiting Retail Marijuana Establishments and Retail Marijuana Social Clubs
in the Municipality of _____

Section 1. Authority.

This ordinance is enacted pursuant to the Marijuana Legalization Act, 7 M.R.S.A. c. 417; and Municipal Home Rule Authority, Me. Const., art. VIII, pt. 2; and 30-A M.R.S.A. § 3001.

Section 2. Definitions.

For purposes of this ordinance, retail marijuana establishments, including retail marijuana stores, retail marijuana cultivation facilities, retail marijuana products manufacturing facilities and retail marijuana testing facilities, and retail marijuana social clubs are defined as set forth in 7 M.R.S.A. § 2442.

Section 3. Prohibition on Retail Marijuana Establishments and Retail Marijuana Social Clubs.

Retail marijuana establishments, including retail marijuana stores, retail marijuana cultivation facilities, retail marijuana products manufacturing facilities, and retail marijuana testing facilities, and retail marijuana social clubs, are expressly prohibited in this municipality.

No person or organization shall develop or operate a business that engages in retail or wholesale sales of a retail marijuana product, as defined by 7 M.R.S.A. § 2442.

Nothing in this ordinance is intended to prohibit any lawful use, possession or conduct pursuant to the Maine Medical Use of Marijuana Act, 22 M.R.S.A. c. 558-C.

Section 4. Effective date; duration.

This ordinance shall take effect immediately upon enactment by the municipal legislative body unless otherwise provided and shall remain in effect until it is amended or repealed.

Section 5. Penalties.

This ordinance shall be enforced by the municipal officers or their designee. Violations of this ordinance shall be subject to the enforcement and penalty provisions of 30-A M.R.S.A. § 4452.



Agenda Item Divider





Consulting
Engineers
and Scientists

June 19, 2017

Project 171.06082.001

Mr. Werner Gilliam, CFM
Director of Planning & Development
6 Elm Street
PO Box 566
Kennebunkport, ME 04046

Sent via Email: wgilliam@kennebunkportme.gov

RE: Appeal Assistance for 2017 Preliminary Flood Insurance Rate Maps
Town of Kennebunkport, Maine

Dear Mr. Gilliam,

Ransom Consulting, Inc. (Ransom) is pleased to present the following proposal to assist the Town of Kennebunkport (Town) in an appeal of the recently issued 2017 Federal Emergency Management Agency (FEMA) Preliminary Flood Insurance Rate Maps (FIRM). Ransom previously performed a review of the draft preliminary FIRM (work maps) that FEMA provided to the Town in November 2016. Our review of the work maps is described in a memorandum provide to the town March 2, 2017. More recently Ransom has received the preliminary FIRM and engineering data deliverable that FEMA issued April 14, 2017. We have now had a chance to look at the 2017 preliminary maps and engineering data for York County, and are providing this proposal to offer our assistance in appealing these latest preliminary FIRMs.

Ransom has previously prepared an appeal against the 2013 FIRM that revises the FIRM in the area of town along the Kennebunk River. Ransom also investigated the feasibility of appealing the 2013 FIRM for the area near Goose Rocks Beach, but found that methods using the one-dimensional Stimulating Waves Near Shore (SWAN 1-D) model to revise the wave setup were not likely to result in much improvement over the 2013 FIRM. However, the preliminary 2017 FIRM has been updated and revised from what FEMA provided in 2013. With the new revision we expect appealing zones in the Goose Rocks Beach area will now be feasible. Furthermore, we believe the approach described in this proposal has potential to improve the analysis and mapping along the Kennbunk River beyond our previous approach, and has potential to improve the mapping in other areas of the Town where there are many properties that would be adversely impacted if the 2017 maps are not revised.

Ransom's staff have been closely following FEMA map modernization efforts in southern Maine for nearly a decade and have an in-depth understanding of the potential scientific and/or technical deficiencies that may be present in FEMA's coastal flood analysis. Through FEMA's appeal process, we have successfully helped a number of municipal and private clients in Maine in obtaining flood maps with more accurate representations of the 1% annual chance flood hazard.

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Mr. Werner Gilliam, Director of Planning & Development
Town of Kennebunkport, Maine

Perhaps the most significant deficiency in FEMA's coastal flood hazard analysis for Southern Maine is the use of simplified and overly-conservative methods to compute the components of the Total Water Level (TWL). The TWL is a primary input to calculations that ultimately determine the Base Flood Elevation (BFE), which is the elevation shown on the FIRM to represent the 1% annual chance flood hazard. Where the TWL is incorrect, it can lead to incorrect BFEs and incorrect delineation of the 1% annual chance Special Flood Hazard Area (SFHA), or more commonly known as "the 100-year flood zone." The TWL is the combination of two terms: 1) the Still Water Level (SWL), which is the mean water level that results from combination of astronomical tides and storm surge; and 2) The wave setup, which is an additional elevation of the mean water level due to shoreward momentum flux that is associated with breaking waves¹. FEMA has computed these terms separately using statistical analyses of historic tide gauge data to determine the SWL and a simplified version of the Direct Integration Method (DIM) to calculate the wave setup. In reality, the processes that cause storm surge and wave setup interact dynamically and are not physically separable. The wave setup directly contributes to the mean water level, and the mean water level, in-turn, influences the wave conditions. This makes FEMA's approach, which separates the wave setup from the storm surge, conceptually confusing and theoretically questionable. Furthermore, FEMA's simplified approach does not account for the high degree of spatial variability of storm surge and wave setup because the tide gauge stations are sparsely distributed. And the DIM method does not consider nearshore wave transformation effects, such as wave refraction and diffraction.

FEMA has provided a guidance document, "Criteria for Appeals of Flood Insurance Rate Maps", dated November 30, 2011, which describes acceptable bases for appeals of preliminary FIRMs. Based on our preliminary review of FEMA's coastal engineering data for both York and Cumberland Counties, we believe the FIRM can be appealed on the basis that the SFHA and BFEs are scientifically incorrect because inaccurate methods were used to determine the TWL. However, according to the guidance, FEMA does not consider it sufficient criteria for appeal to simply point out the scientific deficiencies in their analysis. To appeal on this basis, FEMA requires the appellate also provide revised analyses and mapping based on an alternative methodology, and an explanation of why the alternative methodology is more correct.

On May 17, 2017, Ransom sent a memo to a number of Towns in York and Cumberland Counties, which points out some of the common issues with the 2017 preliminary FIRMs in both counties, and proposes a strategy to develop appeals. This memo describes a methodology that would leverage the recently completed North Atlantic Coast Comprehensive Study (NACCS) performed by the U.S Army Corps of Engineers (USACE) to provide more accurate TWL values. We believe an appeal following these methods would be defensible, as it uses methods that were largely developed by FEMA and have been

¹ According to FEMA's 2005 "Final Draft Guidelines for Coastal Flood Hazard Analysis and Mapping for the Pacific Coast of the United States", the combination of the SWL and static wave setup is more appropriately termed the Static Water Level (STWL), while the term TWL is defined to include the SWL, wave setup, and wave run-up. However, in FEMA Region I, FEMA has not included the wave run-up in the water level they have labeled as the TWL in their engineering data submission. To avoid confusion, we are using the term TWL to mean the same as FEMA has implied in Region I. That is, the TWL is defined as the sum of the SWL and the wave setup, but not including any wave run-up.

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applied by FEMA in coastal flood hazard analyses in many other regions of the Atlantic and Gulf of Mexico Coast. Because these methods are regional in nature, they could potentially benefit the coastal communities in Southern Maine by correcting overly-conservative estimates of the TWL throughout the region.

We believe a coordinated appeal effort between multiple communities in York and Cumberland counties would be the best approach to facilitate a broad correction in TWL values, based on state-of-the-practice modeling methodologies. This makes sense from a modeling perspective for a number of reasons: increased computational efficiency, reduced model development efforts, and consistency in modeling approach and technical documentation across multiple communities. It also makes sense from a political perspective, as it would demonstrate to FEMA that York and Cumberland County communities are interested in collectively improving the coastal flood hazard mapping with a consistent regional approach.

Although there are other possible approaches that could successfully improve the accuracy of the TWL², we recommend this approach for a number of reasons:

1. Coupled two-dimensional (2-D) Hydrodynamic-Wave modeling is the-state-of-the-practice for coastal flood hazard analyses across the nation. Using this technique, we can leverage the effort of the USACE recent NACCS.
2. It is the only method we are aware of that doesn't require the overly-conservative assumption that open coast wave setup fully propagates into estuaries and other sheltered areas.
3. Model results will provide TWL values everywhere, not just at the location of specific wave transects. This reduces the effort required for wave transect-based calculations that would be required at new transect locations, and is useful for non-FEMA mapping that can take full advantage of truly two-dimensional flood hazard data.
4. In addition to providing TWL values, the modeling results also provide incident nearshore wave condition data that are required for transect-based analyses and mapping.
5. If enough communities share the cost of a joint effort, the per-community cost is comparable to other less precise methods that would broadly revise the TWL values.
6. Although it is not a requirement for FEMA coastal flood mapping, the model will provide results for the full range of coastal flood probabilities and could serve as a tool for community level-planning and resiliency design. For example, 10-year, 50-year, and 500-year TWL values will be available from the model results, in addition to the 100-year value. The statistical methods can also be extended to include hazard assessments

² For example, applying SWAN-1D on a transect-by-transect basis would be an improvement over FEMA's DIM calculation for wave setup.

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for future conditions that might consider sea level rise and/or future changes in the frequency of extreme storm events.

The following scope of work outlines a phased approach to appealing the 2017 preliminary FIRMs. Phase I involves the modeling and analysis required to develop revised TWL and incident wave conditions for all of York and Cumberland Counties. We propose Phase I as a single joint effort that would provide the basis for appeal in each of these Southern Maine coastal communities. Phase II is community-specific and assumes we will use Phase I results to perform revised site-specific wave transect-based calculations and re-mapping in particular areas of concern, which would be required to meet the criteria for an appeal. Phase II also involves preparation of community-specific appeal documentation, and any follow-up work required if FEMA makes requests for more information following the appeal submittal.

Please be aware that Ransom is proposing a similar scope of work for the following communities: Town of Harpswell, City of South Portland, Town of Scarborough, Town of Old Orchard Beach, City of Saco, Town of Kennebunkport, Town of Wells, and Town of Kittery. It is our hope that each of these communities choose to participate in this effort, as this will dramatically reduce the per-community cost associated with the Phase I effort. We also believe that if more communities participate it will strengthen each individual community's argument and specific appeal under Phase II for more accurate FIRMs.

SCOPE OF WORK

Phase I – Coupled Hydrodynamic-Wave Modeling to Revise the 1% Annual Chance Still Water Level, Wave Setup, and Associated Nearshore Wave Conditions for Southern Maine Coastal Communities

Task 1 – Collect, Compile, and Develop Topographic-Bathymetric Digital Elevation Data

Ransom is aware of a significant amount of additional and available topographic and bathymetric data that are more recent than the data used by FEMA in their analysis for the 2017 preliminary maps. These data include terrestrial Lidar collected by the U.S. Geographic Survey (USGS), and topo-bathymetric Lidar and hydrographic surveys by the USACE and the National Oceanic and Atmospheric Administration, National Ocean Service (NOAA NOS). Ransom will also obtain recent available land cover data, which will be required to provide frictional characterization to the storm surge and wave models used in subsequent tasks. Ransom will transform all data to consistent horizontal and vertical datums, and develop a topographic-bathymetric digital elevation model for the region. Upon completion of this task, Ransom will provide a memorandum describing the data sources and digital elevation model for the area, and also provide the data in digital format for submission to FEMA with appeals.

Task 2 – Develop Advanced Circulation Model (ADCIRC)+SWAN Model for Southern Maine Coastal Communities³

Ransom will use the data collected in Task 1 above to develop a dynamic, “tightly coupled” 2-D ADCIRC+SWAN model to simulate hydrodynamics and wave conditions. Model development requires the following sub tasks:

Task 2.1 – Develop unstructured finite-element model grid: This subtask involves drawing lines and polygons to specify the resolution and placement of nodal points at which the model calculations are made. It also involves interpolating merged elevation (topography and bathymetry) data to the model grid, and grid editing to ensure high quality and stable model results.

Task 2.2 - Configure boundary conditions: This subtask involves setting model nodal attribute data (e.g. bottom friction factors, eddy viscosity parameters, wind drag factors, etc.), defining river inflow and tidal elevation boundaries and associated forcing functions, and domain wide forcing including spatially and temporally variable wind and atmospheric pressure fields. Boundary conditions will be primarily extracted from results of NACCS model simulations.

Task 2.3 - Model sensitivity/stability testing: Ransom will run the model through a range of conditions to understand and improve model behavior and determine a set of model parameters that can be expected to produce stable model simulations with physically reasonable results. Stability testing is an iterative process where the model is stressed to point of instability (i.e., the model “crashes”) in order to identify sensitive areas in the model domain and/or boundary condition specification. Adjustments are made to the model grid and boundary conditions and stability testing simulations are run again until a stable and physically reasonable result is achieved. Sensitivity testing involves running multiple model simulations, while varying some model parameters (e.g. friction and eddy viscosity parameters) within a reasonable range of values to understand the degree of uncertainty in model results that can be expected, due to uncertainty in the model input parameters.

Task 2.4 – Model Validation: Model validation involves simulating a number of historic events and comparing the model results to observations to quantify the model error. The model will be validated for normal tidal conditions by comparing model simulated water levels to tide gauge observations within the model domain. The model will also be validated against storm conditions by comparing model results to high water mark observations and tide gauge observation during the February 7, 1978 blizzard, and other significant storm events for which observations are available.

³ For the purposes of this proposal, we describe developing a single model for all of York and Cumberland Counties. However, depending on community participation, Ransom may not model the entire area of both counties, and/or may choose to divide the area into a number of smaller overlapping models.

Task 3 – Determine the 1% annual chance TWL and associated wave conditions

Ransom will use the ADCIRC+SWAN model to simulate a sub-set of storms from the NACCS storm set and quantify the coastal storm hazard in terms of water level and wave exceedance probability, including determination of the 1% annual chance TWL and associated wave conditions.

Task 3.1 – Model Production Simulations: This subtask includes setting up the input files and carrying out a large number of model simulations to determine the maximum water levels and wave conditions for a set of storms that are representative of coastal storm climatology of Southern Maine. The production simulations will be based on a sub-set of historic extra-tropical storms and synthetic tropical storms (or hurricanes) taken from the NACCS storm set.

Task 3.2 - Statistical Analysis: Following the statistical methodology developed for NACCS, we will utilize the results of the production simulations to develop spatially variable water level and wave height exceedance curves for the entire model domain. Following the NACCS methods, the statistical analysis will combine Extreme Value Analysis (EVA) for the extra-tropical storms with the Joint Probability Method with Optimal Sampling (JPM-OS) for tropical storms, and incorporate an evaluation of epistemic uncertainty in order to quantify the full range of coastal flood probability, including the 1% annual chance TWL and associated wave conditions required for FEMA appeals.

Task 4 – Phase I Reporting and Documentation of the Southern Maine Hydrodynamic-Wave Model and 1% annual chance TWL and Wave Conditions.

Ransom proposes to develop a single technical report and data submission describing the entire Phase I effort. Copies of the technical report and data submission will be provided to each participating community and will be incorporated by reference and provided to FEMA with appeal report submissions. Using a single report to describe the efforts for all participating communities will simplify the community appeal reporting requirements and also reduce the burden on FEMA for reviewing community-submitted technical data.

Task 4.1 – Prepare Report: Ransom will draft a technical report describing the model development, validation, production simulations, statistical analysis, and resulting 1% annual chance water levels and wave conditions.

Task 4.2 – Prepare digital data submission: Ransom will prepare a digital archive of all computer files developed during this effort.

Phase II – Transect-Based Calculations, Revised Mapping, and Appeal Preparation for the Town of Kennebunkport

The BFE is the elevation shown on the FIRM that represents the 1% annual chance flood hazard. In order to appeal the preliminary FIRM, a community must compute revised BFEs and revise the FIRM, using methods that are more scientifically and/or technically correct than the methods applied by FEMA. Following FEMA's Guidelines and Specifications, the coastal BFE must be determined by following a series of standard engineering calculations made at precise locations along the shoreline using site-specific shore perpendicular elevation profiles called wave transects. The BFE, which may vary along a wave transect, is determined only at wave transect locations. FEMA's engineers exercise their judgement in choosing where to evaluate wave transects, and how to determine the BFE and SFHA boundaries between wave transects. The idea is that each wave transect should be representative of a segment of the shoreline and that enough transects should be evaluated to reasonably represent the entire shoreline.

For coastal analyses the BFE is determined by adding a number of different water level components together; depending on the specific wave transect elevation profile, incorporating slope, geology, and presence of structures, and the results of the calculations, different combinations of components may be used. In addition to the SWL, wave setup, and TWL described above, these components are:

1. Wave run-up – Wave run-up is the vertical extent of the rush of water that extends inland when waves come ashore. Various methods are used to calculate the wave run-up depending on the shoreline type and slope. The vertical height of the wave run-up is added to the SWL (without the wave setup) to determine the BFE in cases where run-up is the dominant hazard. This is typically the case on steep shorelines with wave exposure. If the run-up elevation is more than 3 feet above the top of the structure or steep shoreline crest the BFE is set to 3 above the crest elevation. If the run-up is higher than the crest of a structure crest or crest of a steep slope, FEMA may delineate a wave overtopping zone or wave splash zone that extends landward.
2. Controlling Wave Height – The controlling wave height is the wave height associated with the highest 1% of waves. The controlling wave height is determined by the Wave Height Analysis for Flood Insurance Studies (WHAFIS) model. 70% of the Controlling wave height is added to the TWL to determine the BFE in locations where the overland wave crest envelope dominates the hazard. This is typically the case on flatter shorelines.

For each transect, wave run-up and the controlling wave must both be evaluated, and the more hazardous condition is used to define the BFE. This analysis is further complicated where coastal structures are present, or where the shoreline is subject to erosion during the 1% annual chance event. In these cases, analyses must be carried out for both intact and failed (or eroded) profiles and the BFE is determined based on the more hazardous results.

Because the SWL, wave setup, and TWL are primary inputs to the wave transect based calculation, the results of Phase I will provide a basis for appeal of any or all transects and re-mapping of any portion or the entire SFHA within the community. While a complete revision of the SFHA throughout the

Mr. Werner Gilliam, Director of Planning & Development
Town of Kennebunkport, Maine

community might ultimately be desirable, it is not likely necessary to meet FEMA's criteria for appeals. Because there will be limited time to prepare appeals for communities in York and Cumberland counties, and because it will take a large effort to re-calculate and re-map all transects in participating municipalities, we are recommending that each community consider revising only a limited number of priority transects at first. After evaluating an initial set of transects, we will revise the mapping for those transects and prepare a submission that meets FEMA's criteria for an appeal.

With this proposed approach, our goal is to assist several communities in submitting appeals that meet FEMA's criteria, so that FEMA must consider them all. With many appeal submissions, FEMA will likely be obliged to decide on the scientific and technical merit of the Phase I modeling and broadly revised TWL and nearshore wave data. We believe that if more communities submit appeals, based on the more advanced Phase I methodology, thus presenting an improved technical approach that is consistent across multiple communities, it is more likely that FEMA will more broadly accept the revised methodology and appeals.

After initial appeal submissions are prepared for each participating communities, time permitting, we could then evaluate and re-map additional wave transects and add them to the appeal submission. If there is not sufficient time within the 90-day appeal period to revise additional transects, it is possible that FEMA may allow additional information to be submitted after the end of the appeal period, while FEMA reviews the initial appeal. If there is not sufficient opportunity to revise remaining transects at that point, there is still opportunity to do so through the Letter of Map Revision (LOMR) process, as soon as the new maps become effective.

We propose the following Phase II tasks for the Town of Kennebunkport:

Task 5 – Update of Appeal Against 2013 Preliminary FIRM and Transect-Based Wave Analysis and Mapping for Seven Priority Transects

Ransom has previously prepared an appeal against 2013 preliminary FIRMS. This appeal involved using a Hydrologic Engineering Center's River Analysis System (HEC-RAS) model of Kennebunk River to evaluate the propagation of wave setup up the River, and a Steady State Spectral Wave (STWAVE) model to determine the controlling wave height in the River. Ransom will update this appeal using the TWL data and corresponding wave conditions from Phase I to re-calculate the BFE and remap the FIRM along the Kennebunk River in Kennebunkport. Ransom will also re-evaluate FEMA transects YK-103 thru YK-109 at Goose Rocks Beach. Based on our review of FEMA's 2017 engineering data and our understanding of the typical over-conservatism in FEMA's methods, FEMA's 2017 analysis at these transects would incorrectly place a large number of buildings within the SFHA and unnecessarily increase the BFE for building that are currently in the SFHA. Ransom will re-evaluate these transects using the TWL data and corresponding wave conditions from Phase I. This includes performing the controlling wave height analysis using the WHAFIS model, as well as wave run-up analyses to determine the Base Flood Elevation along these transects. With the 2-D TWL generated in Phase I, we will be able to avoid making the over-conservative assumption that wave setup calculated for the open coast fully applies in the estuaries behind Goose Rocks Beach. We expect this will lead to a significant improvement in the FIRM for that neighborhood.

Where appropriate, Ransom's analysis will also incorporate assumed erosion profiles or structure failures as required by FEMA's guidelines and specifications. Where available, Ransom will use data from the Maine Geological Survey or other sources to determine custom eroded beach profiles based on observed beach profiles. Upon completion of this task, Ransom will provide a draft map showing proposed revisions to the flood zones in this area.

Task 6 – Appeal Documentation Preparation and Submission

For this task, Ransom will solicit and incorporate feedback from the Town on the draft analyses and mapping from Task 5 and finalize the modeling, analysis, and mapping. We will then compile the necessary documentation to meet FEMA's requirements for a formal appeal and prepare a final appeal report with digital data submission for the Town to submit directly to FEMA during the 90-day statutory appeal period.

Task 7- Transect-Based Wave Analysis for Remaining FEMA Wave Transects

This optional task, or a portion thereof, may be completed within the 90-day appeal period if time permits. This task may also be completed following the end of the 90-day appeal period if FEMA agrees to consider additional transect analyses and remapping at that time. Alternatively, if not completed through the appeal process, this task may be completed using the LOMR process after the appeal is resolved and new maps are made effective.

Ransom will perform transect-based wave analysis and mapping, described under Task 5, for the remainder of the FEMA transects in the Town. Upon completion of this task, Ransom will provide a draft map showing the proposed revisions to the flood zones in the Town.

Task 8 – Appeal Follow-Up & Response to Subsequent FEMA Requests

Following appeal submission, Ransom will respond to requests for additional information that FEMA may have, until FEMA issues an appeal resolution. In our prior experience, FEMA typically will make at least one, and as many as three (or more), requests for additional information, and may require some revision to the appeal submission documentation, prior to accepting the final appeal. Please note that it is possible, but unlikely, that FEMA will outright deny an appeal. If that happens, FEMA's Scientific Resolution Panel (SRP) process is available for communities to request an independent review and decision regarding the appeal submission. If FEMA denies the appeal and the Town decides to request an SRP review, Ransom will provide technical support for the Town through the SRP process, on an as-needed basis.

PROJECT COST & SCHEDULE

We propose to complete the above scope of work on a time-and-materials basis, according to the fee schedule in Attachment A. The total cost for developing an overall coupled Hydrodynamic-Wave Model for communities in York and Cumberland Counties under Phase I is estimated at \$210,000. A breakdown of the Phase I estimated costs by tasks is listed in the Table below. These are the total costs for all

Mr. Werner Gilliam, Director of Planning & Development
Town of Kennebunkport, Maine

participating communities assuming modeling is performed for all communities in York and Cumberland Counties. Ransom will divide the billing for Phase I tasks equally between all participating communities. Depending on the number of participating communities, the Phase I cost per community may be less. For example, if four communities participate in the effort, the estimated Phase I cost per community would be approximately \$52,500; and if all eight communities participate, the estimated Phase I cost per community would be approximately \$26,250.

To be fair to all communities that choose to participate in the effort, Ransom has decided that we will only use Phase I model results to support appeals in communities that share in the cost for Phase I. If additional communities, other than the eight listed above, decide they would like to participate, and share in the cost of Phase I, Ransom will allow those communities to join the effort, but with lower priority in completion of the Phase II effort.

Phase II costs for the Town of Kennebunkport are broken down by task in the Table below. The total estimated Phase II cost is \$58,000 assuming the Town chooses the optional Task 7 for re-calculating all FEMA wave transects, and re-mapping the SFHA for the entire town, part of which may have to be done after the appeal submission. Estimated Phase II costs required for appeal submission, including Task 5 and Task 6 only, are \$33,000. The Town may choose to approve Phase I and only the Phase II tasks required for appeal submission at this time, and then later decide to approve Task 7 or a portion thereof, if the Town would prefer to wait to see how FEMA responds to the appeal of the initial transects before appealing the remainder of the FIRM.

Phase I Estimated Project Costs by Task (Total Cost for All Participating Communities)		
Task	Task Description	Estimated Cost
Task 1	Topographic-Bathymetric Digital Elevation Data	\$15,000
Task 2	Develop ADCIRC+SWAN model for Southern Maine	\$113,000
	High Performance Computing (HPC)	\$25,000
Task 3	Determine the 1% annual chance TWL and associated wave conditions	\$42,000
Task 4	Phase I Reporting and Documentation	\$15,000
Phase I Total Estimated Cost		\$210,000
Phase II Estimated Project Costs by Task for Community-Specific Appeal (Town of Kennebunkport)		
Task 5	Update of 2013 Appeal and Transect-Based Analysis and Mapping for 7 Transects	\$25,000
Task 6	Appeal Documentation Preparation	\$8,000
Task 7	Transect-Based Analysis and Mapping for Remaining Transects (Optional)	\$25,000
Task 8	Appeal Follow-Up & Responses with FEMA and Town, As-Necessary	TBD
Phase II Total Estimated Cost		\$58,000

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These estimates are based on our understanding of the level of effort required for each task and our experience on similar appeal efforts. Although our best efforts will be made to complete the work within the estimated costs, please be aware that the flood map appeals require a number of iterative steps, where the required level of effort depends on the outcome of a previous step, and with the uncertain nature of numerical modeling, it is possible to encounter abnormal problems with model stability and validation that can require additional unforeseen efforts. Because of this, we cannot be completely certain beforehand, precisely what additional or revised analyses may be required or the associated level of effort will be. Furthermore, we recommend that Town consider adding a 10% to 20% contingency to their FEMA appeal budget to cover unforeseen conditions or additional efforts necessary to complete the appeal process. If we do encounter such difficulties during the course of the work, we will immediately notify the Town of these difficulties and/or unforeseen conditions and provide an estimate for additional efforts that might be required. We have not included an estimated cost for Task 8, because we cannot predict and do not know what, if any, additional information FEMA may request after we make the formal appeal submission. After the appeal submission, and if FEMA makes requests for additional information, we will provide the Town with a subsequent scope of work and cost estimate for responding to their requests at that time.

Although some level of reduction in flood elevations and flood zones are typically obtained through FEMA appeals, we cannot guarantee that our review and additional modeling will show that FEMA has significantly over-estimated the flood hazards and that an appeal could effectively reduce the flood zones and base flood elevations. Albeit unlikely, it is possible that our review and additional analysis may show little difference from FEMA's assessment of the flood hazard, or even that FEMA has under-estimated the flood hazard for part or all of the Town. In the latter cases, it is possible that appeal submission may not be advantageous to Town and the Town may choose not to submit the appeal. Regardless of appeal submittal, the proposed effort will provide more up-to-date and accurate flood hazard information for the Town, even if it does not result in revised FIRMs.

We are prepared to begin Phase I as soon as we receive a notice to proceed. We expect Phase I will be completed within 12 weeks. After completion of Phase I and if the appeal period has not started at that time, we recommend waiting to proceed with Phase II until FEMA has completed the public notice process, initiating the statutory 90-day appeal period. We recommend waiting, because on previous occasions, we have seen FEMA make changes to the preliminary FIRMS between their time of official release and the start of the appeal period. Based on our experience with previous FIRM updates in Maine, information from webinars that FEMA held last year, and recent communication with the State Floodplain Coordinator, Sue Baker, we expect FEMA will initiate the statutory 90-day appeal period sometime between July and September 2017, and end sometime before the end of the 2017. Although it is possible that FEMA may start the appeal period earlier⁴. We will complete Phase II Task 5 and Task 6 before the end of the appeal period. Time permitting, Task 7 may be fully or partially completed prior to the end of the appeal period, or it may be permitted following the appeal period. Timing and subsequent cost estimates for Task 8 will depend on the amount of time FEMA takes to review the appeal and any

⁴ According to 44 CFR Vol 1. Part 67.4: In order to initiate the 90-day appeal period, FEMA must first notify the Town Chief Executive by certified mail, publish public notices at least twice in a local newspaper within 10 days following the certified notice to the town, and publish public notice in the federal register.

Mr. Werner Gilliam, Director of Planning & Development
Town of Kennebunkport, Maine

responses we may have to their requests for information. Based on prior experience, we anticipate Task 8 will be completed within 6 months to 1 year after the initial appeal submission.

ORGANIZATION

Nathan Dill, P.E. will be serving as project manager for this project and will be your primary contact at Ransom. Nathan will be assisted by Kevin Trainor, P.E. If Nathan or Kevin are not available, please feel free to contact Peter Sherr, Senior Project Manager or Nick Sabatine, Office Manager in their absence.

BILLING AND PAYMENT OPTIONS

Ransom will send invoices electronically to the email address you provide. If you prefer to receive paper invoices by mail, please check the "Opt Out" option below.

Send invoices to the following email address(es): _____

☐ I wish to opt out of electronic invoicing. Please mail invoices to this address:

Street/P.O. Box: _____

City/State/Zip: _____

For billing questions, please provide a telephone number to contact you: (____) _____

You may also choose to pay invoices via Discover, Visa, Mastercard, or American Express. To do so, please provide the following information.

CREDIT CARD PAYMENT OPTION: (Check one) ☐ Visa ☐ MasterCard ☐ AmEx ☐ Discover

Card Number: _____ Expiration Date: _____ CVV Code _____

Print Name as it appears on card: _____

3-digit code on back: M/C, Visa,
Discover
4-digit code on front of Amex

Billing Address: _____

Street City/State Zip

Cardholder's Signature _____

Mr. Werner Gilliam, Director of Planning & Development
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NOTE: If the credit card payment option is selected, the retainer amount will be charged to card upon receipt of signed agreement. Balance owing will be charged either: (a) monthly, if time-and-materials billing applies; or (b) at project completion, if lump-sum fee applies.

AUTHORIZATION

Prior to initiation of project work, we will need to receive an executed copy of this proposal, which will serve as our authorization to proceed. Ransom's *Fee Schedule* and *Terms and Conditions* are attached to this Scope of Work as Attachments A and B, respectively, and are hereby incorporated by reference as if fully stated herein.

We would like to thank you again for the opportunity to submit this scope of work and cost estimate. If you have any questions regarding this proposal, please contact either of the undersigned.

Sincerely,

RANSOM CONSULTING, INC.



Nathan Dill, P.E.
Project Manager/Modeling Specialist



Peter Sherr, P.E.
Senior Project Manager



Nicholas Sabatine, P.G.
Vice President

APPROVED AND ACCEPTED BY THE TOWN OF KENNEBUNKPORT, MAINE:

Signature: _____

Name (print or type): _____

Title: _____ Date: _____

ATTACHMENT A

Fee Schedule

**Appeal Assistance for 2017 preliminary Flood Insurance Rate Maps
Town of Kennebunkport, Maine**

Fee Schedule 2017

PROFESSIONAL SERVICES

Hourly¹ Rate (\$)

Principal	175-210
Licensed Site/Environmental Professional	160-210
Professional Engineer/Professional Geologist	115-210
Senior Project Manager/Specialist	140-195
Project Manager	115-155
Associate Project Manager	95-110
Project Engineer/Geologist/Hydrogeologist/Scientist	75-105
GIS Specialist/CAD	70-100
Administrative	65

EMERGENCY RESPONSE SERVICES

Overtime rates (1.5 times hourly rate) will apply for emergency response services performed between 5:00 p.m. and 7:00 a.m. Monday through Friday, and all day Saturday. Premium rates (2.0 times hourly rate) will apply for emergency response services performed on Sundays and Holidays.

LITIGATION SUPPORT

Expert testimony will be billed at two times the standard fee schedule hourly rate.
Depositions will be billed at one and a half times the standard fee schedule hourly rate.

PROJECT SUBCONTRACTORS, MATERIALS, AND EXPENDABLE SUPPLIES

Handling charges will be added on all project supplies and services procured from outside vendors.

VEHICLES, MILEAGE

Vehicle	\$125.00/day
Mileage (company or personal vehicle)	IRS Prevailing Rate

EQUIPMENT RENTAL

Air Flow Meter	\$25/each	Photoionization Detector (PID)	\$110/day
Generator	\$50/day	Pump, Bladder	\$160/day
Stainless Steel Hand Auger	\$20/day	Pump, Peristaltic	\$35/day
Hydrolab Water Quality Meter	\$115/day	Purging Pump	\$40/day
Low Flow Sampling Equipment	\$175/day	Redi Flow 2 Submersible Pump	\$50/day
Metal Detector	\$25/day	Survey Equipment (Basic)	\$45/day
Meter Rental (DO, pH, Cond., Temp)	\$30/day	Survey Equipment (Total Station)	\$75/day
Oil/Water Interface Probe	\$50/day	Water Level Indicator	\$40/day

¹ These hourly rates are firm through December 31, 2017

ATTACHMENT B

Terms and Conditions

**Appeal Assistance for 2017 preliminary Flood Insurance Rate Maps
Town of Kennebunkport, Maine**

RANSOM CONSULTING, INC.

TERMS AND CONDITIONS

Ransom Consulting, Inc. (the "Company") shall perform the services described in the attached Work Scope on behalf of the "Client" at a charge pursuant to either the fixed cost enumerated in the Work Scope or at the rates set forth in the attached Fee Schedule for time and materials and under the conditions and circumstances set forth below:

1. Billings/Payment:

Invoices for the Company's services shall be submitted, at the Company's option, either upon completion of such services or at the end of each calendar month. All such invoices shall be payable within thirty (30) days, the outstanding balance shall bear interest at the rate of one and one-half (1.5%) percent per month from date of original billing or at the highest interest rate permitted by law, whichever is less. The Client shall pay any service, sales or similar tax imposed upon the Company's services. It is further understood and agreed that if the Client fails to pay any invoice due to the Company within thirty (30) days after the date thereof, then the Company, without waiving any other claim or right against the Client, and without liability whatsoever to the Client, may terminate its performance hereunder. In the event of such termination, the Client agrees to promptly pay the Company for all services rendered through the date of termination. Such payment shall include: (a) full payment of all outstanding invoices, plus interest as stated above, plus (b) full payment of a final invoice for all work performed from the date of the last invoice outstanding through the date of termination. All amounts shall be paid in full, with interest as stated above, within ten (10) days after receipt by the Client of the final invoice. In the event that the Company places any invoice which is unpaid after the due date with an agency or an attorney for collection, the Client shall pay all costs and expenses of such collection, including without limitation attorney's fees and court costs, if any.

2. Limitations:

The Client recognizes that the Company's services are solely for the benefit of the Client and these services will include judgments based upon limited data rather than upon scientific fact. The Client understands that the Company may be required to make judgments or decisions based upon information provided by the Client or its contractors, and agrees that the Company may rely on such information in performing services under this Agreement. The Client understands and agrees that the services rendered by the Company shall be advisory only, and that the Client retains all decision-making responsibility with respect to all projects in which the Company participates. The Company shall perform its services in accordance with generally accepted practices and the Company shall be responsible solely for its own negligence. Any delayed use of the results of the Company's services will require updates. **THE SERVICES OF THE COMPANY SHALL BE RENDERED WITHOUT ANY WARRANTY, EXPRESSED OR IMPLIED. IN NO EVENT SHALL THE COMPANY BE LIABLE FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING OUT OF SERVICES PERFORMED HEREUNDER BY THE COMPANY, ITS AGENTS, EMPLOYEES OR OTHER REPRESENTATIVES, EVEN IF THE COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE TOTAL LIABILITY OF THE COMPANY TO THE CLIENT OR ANY OTHER PERSON NOT A PARTY TO THIS AGREEMENT ARISING OUT OF ANY SERVICES PROVIDED BY THE COMPANY HEREUNDER SHALL NOT EXCEED THE AGGREGATE SUM OF COMPANY INVOICES SUBMITTED TO THE CLIENT FOR SERVICES PERFORMED HEREUNDER.**

The Client agrees to notify all contractors and/or subcontractors who may perform work in connection with any report or study prepared by the Company of the above limitations on the Company's liability for errors, omissions or professional negligence, and to require, as a condition precedent of their performing work, a like limitation of liability as against the Company. In the event that the Client fails to obtain a like limitation of liability, any liability of the Company to such contractor or subcontractor arising out of alleged error, omissions or professional negligence shall be allocated between the Client and the Company in such a manner that the aggregate liability of the Company to all parties, including the Client, shall not exceed the aggregate amount of invoices submitted hereunder. In the event that the Client makes a claim against the Company, at law or otherwise, for any alleged error, omission or act arising out of the performance of the Company's services, and the Client fails to prove such claim upon final adjudication, then the Client shall pay all costs incurred by the Company in defending itself against such claim, including, without limitation, attorney's fees and costs and fees and expenses of experts. In no event may the Client bring any claim, action or proceeding arising out of the services provided by the Company hereunder more than two (2) years after the date such services were provided.

Without limiting the generality of the above limitations on liability of the Company, the Company will not be liable for damage or injury arising from damage to or interference with subterranean structures (including without limitation, pipes, tanks, telephone cables, etc.) which are not called to the Company's attention and not correctly shown on the plans furnished by the Client in connection with work performed under this Work Scope.

3. **Right of Entry:**

The Client hereby authorizes the Company, or represents and warrants that authorization has been duly granted to the Company (if the project location is not owned by the Client), its agents, staff, consultants and contractors or subcontractors, to enter upon the project location for the purpose of performing and with the right to perform all acts, studies and research, including without limitation, the making of test borings and other soil and water samplings, pursuant to the Work Scope. The Client hereby recognizes that the use of exploration equipment may unavoidably affect, alter or damage the terrain and affect vegetation, building, structures and equipment, in, at or upon the area being studied. The Client will not hold the Company liable or responsible for any such reasonable effect, alteration or damage. The Client agrees to pay the Company an additional fee for any services performed at the Client's request to restore the condition of the area being studied.

4. **On-Site Services:**

Any services or monitoring provided by the Company at a site during project construction, remedial action or other site activities are not intended to include review of the adequacy of any contractor's health and safety measures in, on or near the construction site and will not relieve any contractor of its responsibilities for performing the work in accordance with applicable laws and regulations and with the plans and specifications. The Company and the Client agree that the contractor will be solely and completely responsible for working conditions on the job site, including health and safety of all persons and property during the performance of the work, and compliance with OSHA, NIOSH, U.S. EPA, and other applicable regulations.

5. **Licensed Site Professional Services:**

If any of the services to be performed under the Work Scope relate to sites in Massachusetts, the following provisions will apply:

In the event that any employee or subcontractor of the Company acts as a licensed site professional ("LSP"), as defined in the Massachusetts Contingency Plan (310 CMR 40.0000), the Client acknowledges that (a) any opinions rendered by the LSP will reflect the LSP's independent professional judgment based upon the studies, investigations, tests, analyses, level of supervision or other services that the LSP determines to be necessary or appropriate in order to establish a basis for such opinions, (b) other professionals and the Massachusetts Department of Environmental Protection ("MA DEP") may have legitimate differences of opinion regarding various aspects of an environmental site assessment or remediation and (c) the MA DEP may require additional assessment and/or remediation services, even though the Company's services have been performed competently and in accordance with the standard of care set forth in the Massachusetts Contingency Plan, as in effect at the time of the Company's original provision of services. The Client agrees to cooperate with the LSP and the MA DEP in obtaining all additional services or information deemed necessary by the LSP or the MA DEP. If the Company and the Client are unable to reach mutual agreement on the terms under which the services or information will be obtained, the Company may terminate its services upon giving written notice to the Client, and the Client will pay the Company for all services and expenses through the date of termination in accordance with this Agreement.

In addition, the Client recognizes that the MA DEP may at any time audit all or part of the LSP's services or the assessment or remediation in which the LSP participated. The Client acknowledges that such an audit is not an indication that the services were deficient or failed to comply with the Massachusetts Contingency Plan as in effect at the time the Company originally provided its services. The Company shall be entitled to additional compensation for any time spent and to reimbursement for any expenses incurred in responding to any MA DEP audit (in accordance with the Company's fee schedule then in effect).

6. **Indemnification:**

The Client acknowledges that the Company has not generated or released and is not otherwise responsible, in whole or in part, for the presence of any oil, hazardous materials, pollutants, asbestos or other potentially dangerous substance at the site identified in the Work Scope. Therefore, the Client agrees to defend and save the Company, its officers, employees and subcontractors harmless from all liability, losses, damages, claims, demands and suits, including expenses of suit and reasonable attorneys' fees, arising from personal injuries, disease or death, property loss or damage, natural resource damages, injuries to others (including personnel of the Client and of the Company, its contractors and subcontractors performing work hereunder), or from air, water or soil pollution or environmental contamination arising out of or in any manner connected with or related to the performance of this Work Scope, except if such injury, loss or damage shall be caused solely by the gross negligence or willful misconduct of the Company, its employees, agents or representatives.

7. **Duty of the Client:**

It shall be the duty of the Client to advise the Company promptly of any known or reasonably knowable oil or hazardous materials or any condition existing in, on or near the premises upon which work is to be performed by the Company's employees or subcontractors that presents a potential or possible health hazard or nuisance. If the Client fails to advise the Company or, notwithstanding such advice, unanticipated occurrences of such substances or conditions are discovered during the course of the work, and such discovery in the judgment of the Company results in or may result in injury or a

health risk to persons, whether the Company's personnel, the Client's personnel or others, the Client agrees that it shall assume full responsibility and liability for any resulting personal injury, including disease, medical expenses and/or death, property damage or economic loss, including consequential damages.

8. Changes in Work Scope:

If any unforeseen hazardous materials or other unforeseen conditions are encountered during execution of the work which, in the judgment of the Company, significantly affect or may affect the work or the recommended Work Scope, the Company will notify the Client as soon as practicable. In such event, the Client and the Company agree to pursue one of the following: (1) if practicable, in the judgment of the Company, complete the original Work Scope; (2) modify the Work Scope and budget estimate to include study of the previously unforeseen conditions, with this Agreement being amended accordingly and in writing; or (3) terminate the Work Scope. In the event of termination, the Client agrees to pay the Company in full for all work completed and fees due until written termination notice has been received by the Company and to pay all costs incurred by the Company prior to and in connection with discontinuing the work hereunder, such as completion of files and preparation of a written report to the Client of findings to date of termination and all costs associated with subcontract termination. The Client also acknowledges that the Company may be required by statute, regulation or court order to report the finding of oil or hazardous materials or certain other matters to state or federal authorities.

9. Confidentiality:

The Company will not disclose information about its services, its reports or information which the Client has provided to the Company and designated as confidential, without the Client's prior consent, except to the extent necessary (a) for the Company to perform its services, (b) to comply with professional standards to protect public health, safety and the environment or (c) to comply with court orders, laws, governmental regulations and other legal requirements. Information generally available to the public, technical information the Company may have developed independently and information the Company acquires from third parties without any breach of duty will not be considered confidential. If by order of court, statute or regulation ("orders"), the Company is required to disclose information in its possession, it shall give the Client prompt notice of such facts. Thereafter, the Company may, without liability to the Client or others, comply with such orders. If any claims are asserted against the Company because of its compliance, the Client will hold the Company harmless from such claims and any reasonable expenses incurred, provided that the Company's disclosure is made under a reasonable bona fide belief, or on advice of counsel, that disclosure is required by such orders.

10. Opinions of Probable Clean-up and Disposal Costs:

The Company may give opinions of probable clean-up and disposal costs as part of the Work Scope. These opinions may also involve approximate quantity estimates. The Client understands and agrees that quantity estimates are estimates only, and are not accurate enough for clean-up and disposal bids. The Company does not guarantee or warrant the accuracy of estimates of probable clean-up and disposal costs as compared to bids of Contractors, or compared to actual clean-up and disposal costs.

11. Documents:

All reports, boring logs, field data, field notes, laboratory test data, calculations, estimates and other documents prepared by the Company shall remain the property of the Company. The Client agrees that all reports and other work furnished to the Client or its agents, shall be utilized by the Client solely for the purposes of the contemplated project. Any documents prepared by the Company which are not paid for by the Client, shall be returned upon demand and shall not be used by the Client for any purpose whatsoever. The Company will retain all pertinent records relating to performed services for a period of two (2) years following submission of the report or any other period mandated by law, during which period the records will be made available to the Client at the Company's Office at all reasonable times. Copies will be prepared by the Company for the Client for reasonable cost of reproduction.

12. Disposal of Contaminated Material:

The Client agrees that the Company is not, and has no responsibility as, a handler, generator, owner, operator, treater, storer, transporter or disposer of oil, hazardous material or toxic substances found or identified at a site except as relates to laboratory samples. With the exception of laboratory samples, the Company does not arrange directly or indirectly for the transport, disposal, storage or treatment of any material, including oil or hazardous waste. Arrangements for the handling, removal, treatment, storage, transportation and disposal of oil, hazardous material or constituents found or identified at the site will be undertaken by others.

13. Samples:

The Client will pay all costs associated with the storage, transport and disposal of samples. All samples of soil, water, waste, stock or other materials collected from the site will be disposed of sixty (60) days after completion of laboratory testing unless the Client makes other arrangements at the time it accepts the Company's proposal or unless applicable law requires their retention, in which event the Client will pay an additional fee for storage as determined by the Company.

14. Public Liability:

Company represents and warrants that its staff are protected by Worker's Compensation insurance with statutory limits; and that Company has such coverage under Public Liability and Property Damage insurance policies which Company deems adequate. Certificates for all such policies of insurance shall be provided to Client upon written request. Only within and only to the extent of the limits and conditions of such insurance, Company agrees to indemnify and save Client harmless from any claims, demands, suits, or liabilities arising from any negligent acts by Company, its agents, staff, contractors or consultants employed or engaged by it. In no event shall Company be liable or responsible for any loss, damage, or liability, including but not limited to fire and explosion, beyond the amounts, limits, and conditions of such insurance, or if such loss, damage, or liability is excluded from such coverage of such insurance.

15. Reliance:

The Client recognizes that the services and the contents of any project reports and associated documents provided to the Client by the Company are solely for the benefit of the Client and its heirs, successors and permitted assigns whose reliance thereon is not independent of Client's. The contents of any project reports and associated documents, including but not limited to any opinions and recommendations embodied therein, are not to be quoted or otherwise referenced to nor furnished to any other person, and no other person shall be entitled to rely thereon, without the Company's prior written consent. The Company and the Client agree that such consent will be given by the Company only upon its receipt of (i) additional consideration in an amount sufficient in its sole discretion to compensate the Company for its additional exposure, and (ii) the written agreement of the third party seeking to rely upon the contents of any project reports and associated documents accepting the entire contents of this Agreement, including the specified Work Scope, the Terms and Conditions, and any additional limitations included within the body of the applicable reports and/or documents upon which reliance is sought. Notwithstanding the foregoing, the Company may withhold its consent for any reason or no reason in its sole discretion.

16. General:

In an effort to resolve any conflicts that arise during the Project or following the completion of the Project, the Client and the Company agree that all disputes between them arising out of or relating to this Agreement or the Project shall be submitted to nonbinding mediation unless the parties mutually agree otherwise.

The Client and the Company further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the Project and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with their subcontractors, subconsultants, suppliers and fabricators, thereby providing for mediation as the primary method for dispute resolution between the parties to all those agreements.

The Work Scope, Fee Schedule and these Terms and Conditions constitute the entire agreement of the parties and there is no other agreement relating to the services to be rendered by the Company that is not expressed herein. This Agreement shall be governed by, and construed and enforced in accordance with, the substantive laws of The Commonwealth of Massachusetts without regard to its principles of conflicts of laws.

Each party is and shall perform this Agreement as an independent contractor and, as such, shall have and maintain complete control over all of its employees, agents (including without limitation, any subcontractors) and operations. Neither party nor anyone employed by it shall be, represent, act, purport to act or be deemed to be the agent, representative, employee or servant of the other party.

These Terms and Conditions shall take precedence over any inconsistent or contradictory provisions contained in any proposal, contract, purchase order, requisition, notice to proceed or like document.

If any of these Terms and Conditions shall be finally determined to be invalid or unenforceable in whole or part, the remaining provisions hereof shall remain in full force and effect, and be binding upon the parties hereto. The parties agree to reform these conditions and to replace any such invalid or unenforceable provision with a valid and enforceable provision as close in meaning as possible to the intention of the stricken provision.

Ransom Consulting, Inc. is an Equal Opportunity Employer.



Agenda Item Divider



Verrill Dana LLP

Attorneys at Law



SCOTT D. ANDERSON
PARTNER
sanderson@verrilldana.com
Direct: 207-253-4540

ONE PORTLAND SQUARE
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www.verrilldana.com

May 8, 2017

Via Electronic and U.S. Mail

Laurie A. Smith, Town Manager
Werner D. Gilliam, CFM, Director of Planning & Development
Town of Kennebunkport
6 Elm Street
Kennebunkport, ME 04046

Re: Request for Zoning Ordinance Amendment
Verizon Wireless

Dear Ms. Smith and Mr. Gilliam:

Following up on my recent discussion with Werner, I am writing on behalf of Verizon Wireless to ask that you consider our request to amend the Kennebunkport Zoning Ordinance to permit so-called "small cell" installations, small wireless telecommunications installations, on utility poles and other similar structures in all zones within the Town. The following is a discussion of the use of small cells and the existing restrictions in the Town's zoning ordinance that prohibit this activity, as well as why a change to the Town's zoning ordinance would be in the public interest.

Verizon's Current Proposal and the Need for Small Cells

Attached at Tab "A" are plans for a series of small cell installations within the Goose Rocks Zoning District. As you can see from the plans, a small cell facility is a small wireless facility, installed on a utility pole, light pole, or other existing structure, that helps to improve coverage and network capacity in specific areas. These facilities are comprised of two primary components: a single canister antenna, approximately 40 inches high and 12 inches in diameter, and the "remote radio head," or RRH, that facilitates the sending and receiving of cellular signals to and from users' phones.

These facilities are deployed to improve service in areas of high cellphone use. They are often installed in downtown areas, sports stadiums, shopping malls, and other areas of concentrated demand. As you are likely aware, the growth in mobile data traffic is growing exponentially. In the year 2015 alone, the use of mobile data in the United States grew a staggering 55%. Annual nationwide increases are estimated at more than 40%, and the use of "small cell" facilities allows carriers like Verizon to strengthen the network in anticipation of the rollout of "5G," or Fifth Generation, cell service.

This planned network improvement is necessary to accommodate the use of wireless networks by the growing list of devices that depend on this service. In addition to cell phones, residents are using numerous other “smart” devices, including tablets, home appliances, and voice-activated home organizers. Businesses rely on wireless networks for internal communication systems and equipment operations. Municipalities are using wireless networks for smart parking meter systems, and for managing utility functions.

Finally, small cell sites are not lit, they do not generate any noise, and they do not result in any other impacts to surrounding areas, such as traffic, dust, or stormwater runoff. Given the amount of equipment and wiring on utility and light poles, the addition of small cell facilities does not significantly increase visual impacts. Use of small cells also allows carriers to improve coverage without the need for new cell towers, which further reduces the impact of network improvements on municipalities and their residents.

Kennebunkport Zoning Ordinance

Verizon’s facilities are considered “wireless telecommunications facilities,” and are a permitted use only in the Free Enterprise Zoning District. Verizon’s proposed installation is within the Goose Rocks District. As such, these small cell sites are not permitted. Given that the increase in demand in Kennebunkport is in the more developed areas, not the Free Enterprise District, Verizon cannot meet its coverage objectives with new facilities—either larger towers or small cells—just in the FE District.

Kennebunkport’s existing ordinance provided a balanced regulatory framework when carriers such as Verizon were constructing new tower sites. Your ordinance, like many in Maine, were not drafted with small cell facilities in mind. Given the smaller impact and special siting considerations for small cells, Kennebunkport is not alone in considering a review and update of its wireless ordinance. We are currently working with the towns of Scarborough and Ogunquit on possible changes to those ordinances, and work with other communities will occur as Verizon expands the use of small cells to meet the demands of Maine residents.

An Amendment to the Zoning Ordinance is in the Public Interest

We appreciate that a request from a single potential applicant may not always justify a broader change in your zoning ordinance. Further, the Town may utilize a contract zone if a change is appropriate, but necessary only for a single applicant or property owner. In this case, however, we feel that a broader amendment is in the Town’s interest, for the following reasons.

First, the use of small cells represents an evolution in network design that is not often accommodated in existing municipal ordinances. As you know, the bulk of your wireless ordinance was taken from the Maine State Planning Office’s sample wireless ordinance, which was drafted at a time when wireless companies relied exclusively on new tower sites in Maine to extend and improve coverage. As such, it is an effective ordinance for regulating new towers, but fails to address the use of newer technology.

Second, it is in the best interests of the town to encourage wireless companies to use existing structures for new antenna installations. This can minimize the need for new towers. Your current ordinance does attempt to do this—you provide for expedited permitting by the

May 8, 2017

Page 3

code officer for antenna installations on existing wireless towers, although such projects are still subject to the zoning limitations for wireless facilities. The town might consider doing what Kennebunk, Falmouth, and other towns have done, to permit the installation of antennas on existing structures in all, or nearly all, zoning districts. Installations on such "alternative tower structures" obviate the need for new towers, and by permitting such installations more widely in town you can direct and encourage carriers to use existing structures, while still strictly regulating the siting of new towers. I have enclosed a copy of a generic small cell ordinance we have proposed in several municipalities, which encourages carriers to utilize small cell facilities, both to improve service and to minimize (or eliminate) the impacts of new towers (attached at Tab "B"). Although we appreciate that if the town proceeds to revisit its existing ordinance it will develop its own recommendations, we thought it would be helpful to provide one option to consider.

Third, a change in your ordinance may limit the town's legal exposure due to the current restrictions. As the demands for network strength continue, wireless carriers must add facilities in order to maintain the functionality of the network. Although cities and towns may require permits for wireless facilities, even those installed on existing structures, towns should avoid local ordinances that have the effect of prohibiting installations in any significant areas, including residential, as well as commercial, areas. An ordinance that regulates wireless facilities in all locations, without banning them in certain areas, allows towns to monitor and manage the impacts from these facilities, while allowing appropriately scaled and sited projects in areas where improved coverage is needed. Although the "first generation" of local wireless ordinances regulated new towers by allowing them in some places, and banning them in others, regulation of this newer (and smaller) technology requires a more nuanced and flexible approach.

Proposed Next Steps

We understand that any change in your ordinance requires a thoughtful process, with input from residents and other stakeholders. We would appreciate an opportunity to meet with the Board of Selectmen to provide a more detailed summary of the growth of small cell facilities in meeting the current and expanding demand for data access, and to answer any questions the Board may have about any potential change in your ordinance that would permit such development.

We are available at any time convenient to the Selectmen, and I will call to follow up. Thank you for your consideration of our request and please do not hesitate to contact me if you have any questions or need any further information.

We look forward to hearing from you.

Very truly yours,


Scott D. Anderson

SDA/mtt
Enclosures



10

TOWN OF KENNEBUNKPORT, MAINE

~ INCORPORATED 1653 ~

MAINE'S FINEST RESORT

Memo

July 5th 2017

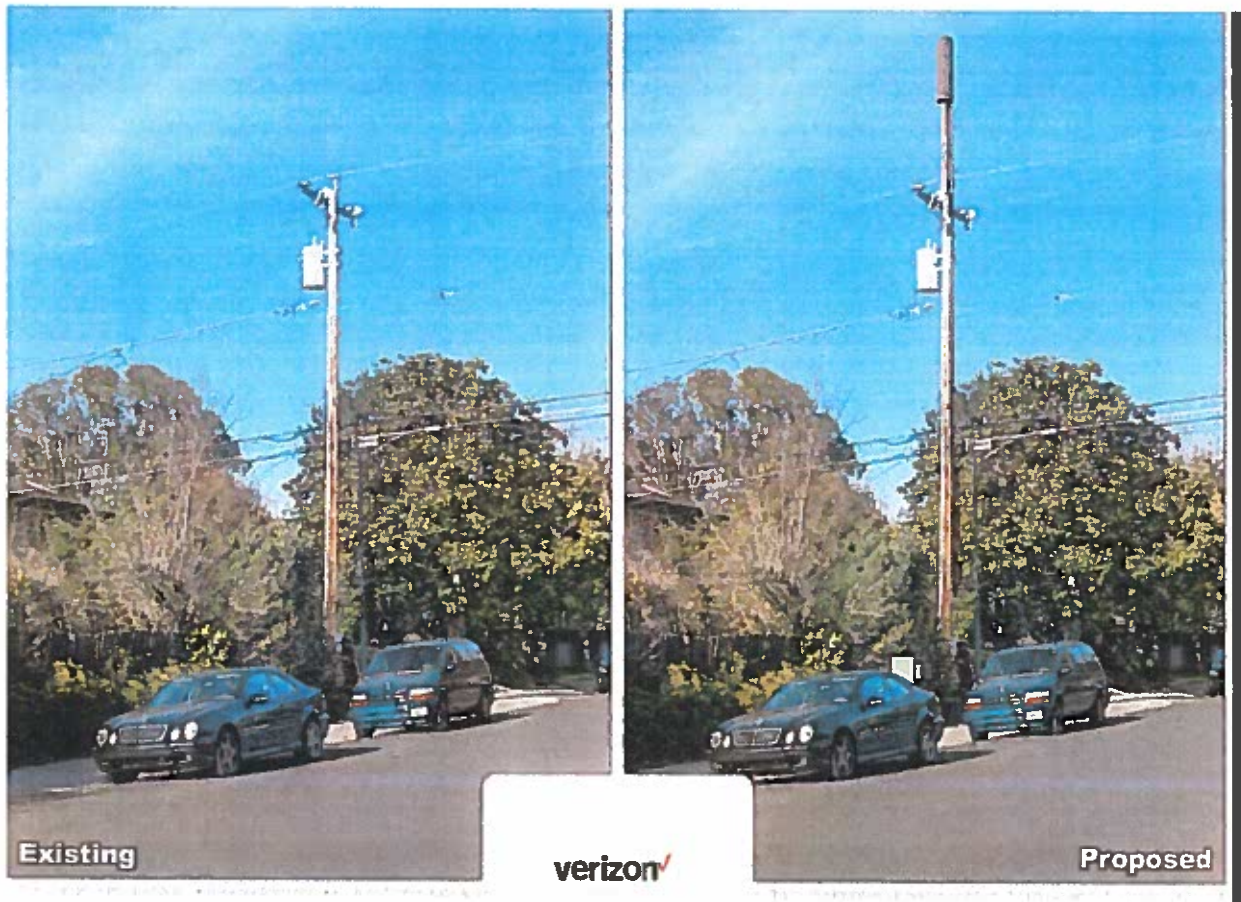
RE: Telecommunications Ordinance

From: Werner Gilliam CFM Director of Planning and Development

To: Laurie Smith, Town Manager

The Town of Kennebunkport has a separate stand-alone wireless telecommunications ordinance that was adopted November 2nd 1999. It has not undergone any revisions or modifications since then. In the past 18 years, much has changed in the world relative to wireless telecommunications. Gone is the occasional use of a cell phone for emergency calls, enter the world where cell phones are a functional necessity, spanning well beyond our use as a communication tool.

The Town has been approached by Verizon Wireless to review and comment on a proposal to install numerous small scale cellular nodes which would be located on top of existing utility poles.





TOWN OF KENNEBUNKPORT, MAINE

~ INCORPORATED 1653 ~

MAINE'S FINEST RESORT

As one can imagine Kennebunkport's wireless telecommunications ordinance does not address these types of facilities, nor other wireless service options that are now available. The expectations and demands of cellular and wireless data use have also changed dramatically since the original enactment of our ordinance.

In light of significant changes in technology, public service demands and federal law concerning wireless telecommunications, I would like for the Board of Selectmen to authorize staff to move forward working with town counsel and representatives from Verizon to author proposed revisions to Kennebunkport's Telecommunications Ordinance. I expect that 75% of the revisions will be legal and technical in nature, with the other 25% being subjective in terms of permitting process, locations, etc. I anticipate engaging either an ad hoc committee of residents as appointed by the Board of Selectmen or would request input from the Planning Board.

Without an updated ordinance Kennebunkport is potentially exposing itself to legal challenges that could be avoided with some updates.



Agenda Item Divider



11

11.10 Growth Management Permit Required

A. Purpose. The purpose of this section is to:

1. Ensure fairness in the allocation of building permits between sub-dividers and single lot property owners.
2. Avoid a situation in which the rapid completion of major subdivisions could outstrip the Town's capability to expand its municipal services.
3. Guide the Town's growth in an orderly fashion so that the annual increase in population can be adequately served by community facilities as those services are needed.
4. Manage the Town's future residential growth in a manner consistent with the Town of Kennebunkport's Comprehensive Plan.

B. Compliance required; violations.

1. All new dwelling units, including new manufactured housing dwelling units, within the Town, whether occupied permanently or seasonally, shall conform with the provisions of this section. It shall be a violation of this section for any person to construct or place a new dwelling unit within the Town, without first having obtained a growth management permit and building permit, in accordance with this section and Article 11, from the Code Enforcement Officer, unless such construction or placement constitutes an exception under this section.
2. If a dwelling unit has been constructed or placed without a growth management permit or building permit as required under the provisions of this Ordinance, it shall also be a violation for any person to convey such dwelling unit.

C. Exemptions. The following are exempt from the provisions of this section:

1. The repair, replacement, reconstruction or alteration of any existing building or structure not resulting in additional dwelling units;
2. Housing for the elderly which is constructed, operated, subsidized or funded, in whole or in part, by an agency of the state or federal government; and
3. The construction or alteration of a nonresidential building or structure.

4. The Construction or alteration of a new Accessory Apartment.

G. Application. Applications for growth management permits shall comply with the following:

1. A growth management permit application must be completed by the lot owner of record and/or the owner's agent, including all endorsements and certifications.
2. Applications shall be on forms provided by the Town. The Code Enforcement Officer may request additional information and shall have the authority to require that the application be revised or supplemented in order to meet state or local requirements.
3. Growth management permit applications shall be accompanied by a non-refundable application fee of ~~\$250.00~~ as set annually by the Municipal Officers, a complete application for a building permit and Planning Board and/or Zoning Board of Appeals approval, when necessary.



Agenda Item Divider



June 23, 2017
W-P Project No. 13431B

DRAFT

Ms. Laurie Smith
Town Manager
Town of Kennebunkport
6 Elm Street
P.O. Box 566
Kennebunkport, ME 04046

Subject: Proposal for Professional Services related to Final Design for the Kennebunkport Parks and Recreation Department's Office, adjacent to the Kennebunkport Consolidated School

Dear Ms. Smith:

Wright-Pierce is pleased to provide you with the following proposal to provide final design services associated with construction of a new Parks and Recreation Department office building at the Parsons Field facilities located adjacent to the Kennebunkport Consolidated School.

PROJECT BACKGROUND AND UNDERSTANDING:

The Town intends to construct a new office building for the Parks and Recreation Department on the property adjacent to the Kennebunkport Consolidated School. This new building will be a single story, wood framed building, approximately 2,000 square feet in size and will be based on the preliminary design developed by Wright-Pierce in 2016 that was used for developing a budget for the project. We understand information on the existing site is available from the school expansion project. The Town will provide electronic CADD files of the site drawings, along with geotechnical information, eliminating the need for surveying or geotechnical services under this project. The Town will be responsible for the fees of any state or local permits required for this project. To limit our fee for services we have included two meetings with the Planning Board. Additional meetings or changes to the design would be considered additional services.

PROPOSED SCOPE OF SERVICES:

Upon authorization to proceed, we will perform the following tasks:

- Prepare detailed drawings and specifications based on the Project Background and Understanding outlined above.
- Prepare detailed drawings and specifications of the site design, access, parking, grading and site utilities.
- Prepare detailed drawings and specifications of the building design, structure and finishes.
- Prepare detail drawings and specifications of the HVAC systems and plumbing.



- Prepare detailed drawings and specifications of the lighting and power systems. Note that this does not include the telephone system, public address system or computer networking. These specialty systems are typically designed and installed by separate contractors hired directly by the building owner.
- Provide an estimate of the anticipated construction cost to assist the Town in determining the funds required for the project.
- Provide the Town with (1) one electronic PDF file and (3) hard copy files of the final design plans, specifications and construction cost estimate.

COMPENSATION AND SCHEDULE

Wright-Pierce will complete the above *Proposed Scope of Services* for on a time and expense basis, not-to-exceed the sum of \$62,000.

We would expect to start our services promptly after receipt of your acceptance of this agreement. We would anticipate that conceptual design and planning level estimate materials would be available for review by the Town for comment within 30 days of receipt of a notice to proceed.

ADDITIONAL SERVICES

Any additional services performed at the Client's request and authorization will be compensated on a time and expense basis.

Wright-Pierce is available to assist the Town in bidding the project and providing services during construction as an additional service.

AGREEMENT

This Letter Agreement and the attached Terms & Conditions represent the entire understanding between you and us with respect to the above services and may not be amended or modified unless such amendment or modification is signed by both parties to this contract and attached thereto. If this letter satisfactorily sets forth your understanding of the arrangement between us, please sign a copy of this letter in the space below and return it to us.

We appreciate the opportunity to be of service to the Town of Kennebunkport and look forward to working with you. Please contact us at 761-2991 in the event you have any questions.

Very truly yours,

WRIGHT-PIERCE

Travis J. Pryor, RLA
Project Manager

**SCHEDULE OF TERMS AND CONDITIONS
FOR
AGREEMENT BETWEEN
TOWN OF KENNEBUNKPORT, MAINE
AND
WRIGHT-PIERCE
DATED _____**

Parks and Recreation Office Building Final Design Proposal
June 23, 2017
DRAFT



Accepted this _____ day of June, 2017

TOWN OF KENNEBUNKPORT, MAINE:

WRIGHT-PIERCE:

By _____
Authorized Representative

By _____
Jonathan C. Edgerton, PE

Title _____

Title _____ Senior Vice President



Agenda Item Divider



8 13



TOWN OF KENNEBUNKPORT, MAINE

- INCORPORATED 1653 -

MAINE'S FINEST RESORT

June 12, 2017

Stuart A. Barwise, Chairman
Kennebunkport Board of Selectmen
P.O. Box 566
Kennebunkport, ME 04046

Re: Mills Road Subdivision, Proposed Sewer Extension
Mills Road - Map 23, Block 1, Lot 19A

Dear Chairman Barwise:

In accordance with Kennebunkport Sewer Use Ordinance Section 2(B), the Kennebunkport Planning Board has reviewed the application and all related documentation submitted by Cripple Creek, LLC with regard to its proposed sewer extension to service the Mills Road Subdivision to be located on Mills Road. The Planning Board has also reviewed a letter from Thomas S. Greer, P.E., of Pinkham & Greer dated May 11, 2017. Based upon its review, the Planning Board voted at its June 7, 2017 meeting to recommend to the Board of Selectman that the sewer extension project should be built and that the proposed unconditional gift of that sewer extension to the Town should be accepted.

The Planning Board's recommendation is based on the fact that, for a cluster style subdivision, there is no reasonable alternative method of sewage disposal at the site. In addition, the proposed sewer extension will result in significant benefit to environmental quality in that area.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Peter Fellenz', written over a horizontal line.

Peter Fellenz, Chairman
Kennebunkport Planning Board

cc: Laurie Smith, Town Manager
File

Sewer Extension Application

Project Name: Mills Road Subdivision

Applicant: Cripple Creek, LLC / PDF Development and Construction

Address: PO Box 1179, Saco, ME 04072 / PO Box 313, W. Kennebunk, ME 04096

Phone number: 207-590-8296 207-590-2671

Engineering firm: Attar Engineering, Inc.

Contact Person: Kenneth A. Wood P.E., Michael Sudak, E.I.T.

Address: 1284 State Road, Eliot, ME 03903

Phone number: ~~207-704-8196~~ 439-6023

Contractor: Not determined

Contact Person: _____

Address: _____

Phone number: _____

Location of the proposed extension Tax Map # 23 Block # 1 Lot # 19A

Street Address: 98 Mills Road

Does the Sewer Extension have frontage on the collection system? Yes [] No [X]

Is this expansion for industrial or commercial use? Yes [] No [X]

If yes will the user have to comply with US EPA Pretreatment Standards? Yes [] No []

Is this property in the resource protection, shore land protection, critical edge, and flood plain zone or in a sand dune area? Yes [] No [X]

Do you have the necessary environmental permits to do the project? Yes [] No [X] Not Yet

Will this project require planning board approval in any way? Yes [X] No []

The Sewer Extension will be

A. Within the public way [X]

B. On private property only []

C. On both public and private property [X]

Description of Sewer Extension

Linear feet of pipe in the public way. 800

Linear feet of pipe on private property. 1020

Number of new sewer units to be served:

On the public way 8 1

On private property 14

Estimated start date of construction? 7/1/2017

Estimated completion date? 11/1/2017

General Description of extension: 2" HDEP low pressure force main, Each dwelling will
be served with a low pressure pump system (e-one or Barnes Elotran)

All applications must include the following:

A survey showing the location and the proposed sewer extension

A copy of the survey and the engineering drawing's, will be submitted on a 3.5 inch computer disk in the DWG format for use with AutoCAD along with the paper drawings.

A list of all the property owners and mailing address that are within two hundred (200) feet of the proposed sewer extension. This list must be submitted on a 3.5 computer disk and be able to be used with MS Word.

Proof of the owner of the project to secure a letter of credit, equal to the amount of 125% of the estimated cost of the project. This letter will be issued to The Town of Kennebunkport before approval of the project is given.

In consideration of the granting of this application, the undersigned agrees to the following:

To accept and abide by all the rules and regulations of the Town of Kennebunkport Sewer Dept. and the State of Maine Dept. of Environmental Protections and the US Environmental Protection Agency and all pertinent ordinances and regulation.

Approval of this application is only for the concept of the sewer extension. Approval of the construction plans and specifications will be needed before any construction can begin.

If approval is given for this project, two (2) complete sets of plans and specifications must be given to the Sewer Superintendent for his approval. The plans and specifications must be approved by the Superintendent at least 30 day before the start of the project.

To submit a sewer connection application for each building that will be connecting into the collection system, due to this sewer extension and pay all the appropriate fees.

Application Fees:

\$5.00 / foot of pipe in the sewer extension. \$ 9145.00
\$500.00 / sewer unit served by this project. \$ 7000.00

All fees will be based on the higher amount of the per foot costs or the per units cost.

Date: 4/12/2017 Signed: [Signature]
(Applicant or if a corporation the president only)

\$ 7000.00 Application Fees paid [Signature]
(Certification by)

Date of approval from The Board of Selectman: _____

Date of Town Meeting: _____

Date of Acceptance or Rejection at Town Meeting: _____

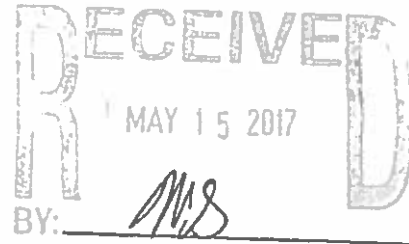
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**PINKHAM & GREER
CIVIL ENGINEERS**

28 VANDER AVENUE, PORTLAND, ME 04103
Tel: 207.781.5242 Fax: 207.781.4245

May 11, 2017

Mr. Allan Moir
Kennebunkport Sewer District
PO Box 1038
Kennebunkport, ME 04046



RE: MILLS ROAD SUBDIVISION, SEWER CAPACITY REVIEW

Dear Allan,

As requested, we have reviewed the Mills Road Subdivision plans prepared by ATTAR Engineering, Inc. The plans include:

- Sheet 1 - Cover Sheet
- Sheet 2 - Subdivision Plan
- Sheet 3 - Grading and Utility Plan
- Sheet 4 - Roadway Plan and Profile
- Sheet 5 - Sewer Plan and Profile
- Sheet 6 - Site Details
- Sheet 7 - Site Details
- Sheet 1 of 2 - Stormwater Existing Conditions
- Sheet 2 of 2 - Stormwater Developed Conditions

Included in the submittal is the Sewer Extension Application. I received the hour readings from Pump Station II from Ron Taylor.

Please note Sheet 6 was updated with cleanout details dated 5/10/17.

This subdivision of 14 single family homes will add approximately 2,184 gallons per day based on 2.6 people per home and 60 gallons per day per person.

This flow will add approximately 22 minutes of run time per day at Pump Station II. It will operate well within an acceptable range.

The treatment plant is well within its licensed operating flows and the additional flow will not create an issue.

The design of the pressure system is within customary design parameters and should function well

7
Mr. Allan Moir
May 11, 2017
Page 2 of 2
File: 17130

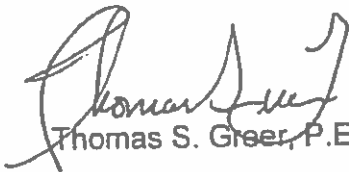
PINKHAM & GREER
CIVIL ENGINEERS

Based on my review of the data, the Town's wastewater collection and treatment system has the capacity for the additional flow.

Let me know if you have any questions.

Sincerely,

PINKHAM & GREER,
CIVIL ENGINEERS



Thomas S. Greer, P.E.

cc: Werner Gilliam, Ken Wood, File

TSG/rjs

AUSTIN, MICHAEL H & ROBER
PO BOX 725
KENNEBUNKPORT, ME 04046-0725

BERYL R BILDERBACK REVOCA
PO BOX 611501
ROSEMARY BEACH, FL 32461

DUCHEMIN, PAUL & JOANNE
15 CEDAR CREST LANE
HAVERHILL, MA 01830

FEDERMAN, FRANK & LINDA
90 MILLS ROAD
KENNEBUNKPORT, ME 04046

FIRTH IRREV TRUST & MARY
30 HACKENSACK RD
CHESTNUT HILL, MA 02467

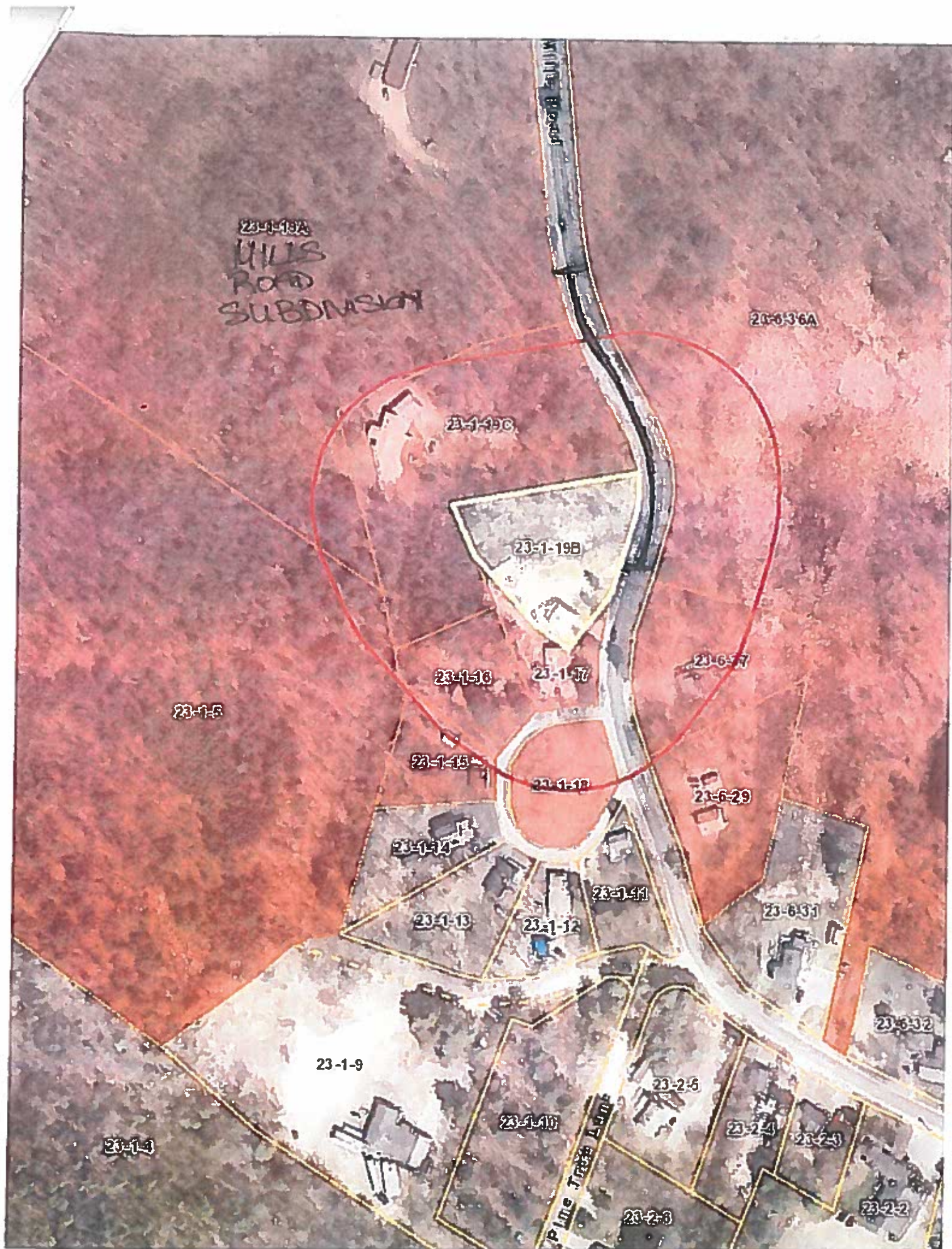
GRAY, CAROL RUTH
14111 GABLE HILL DRIVE
SUN CITY WEST, AZ 85375

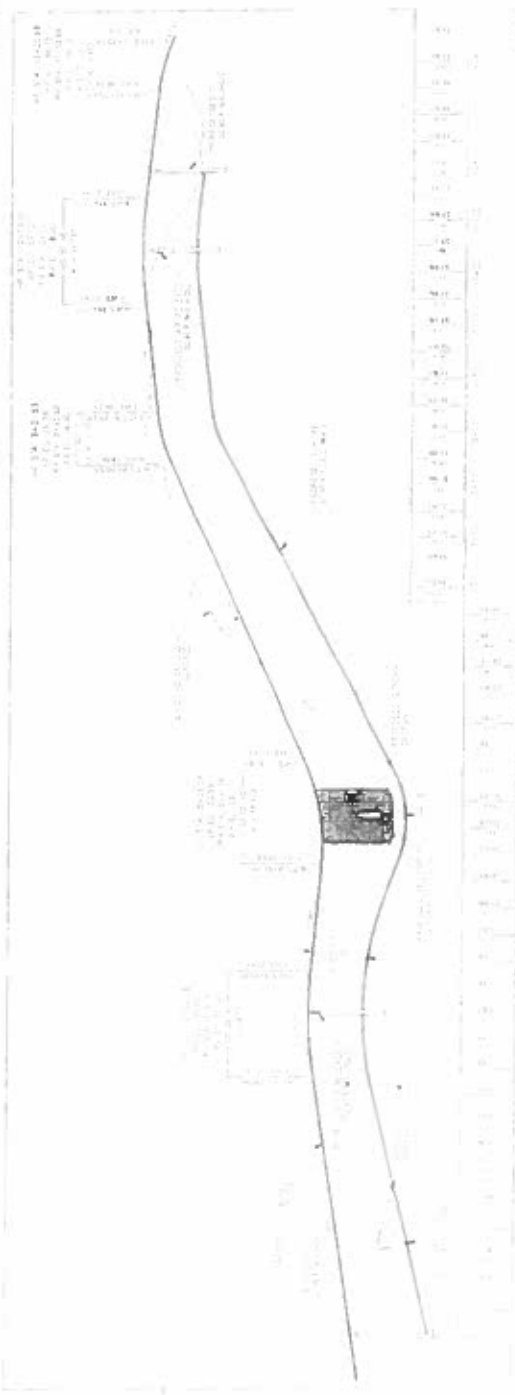
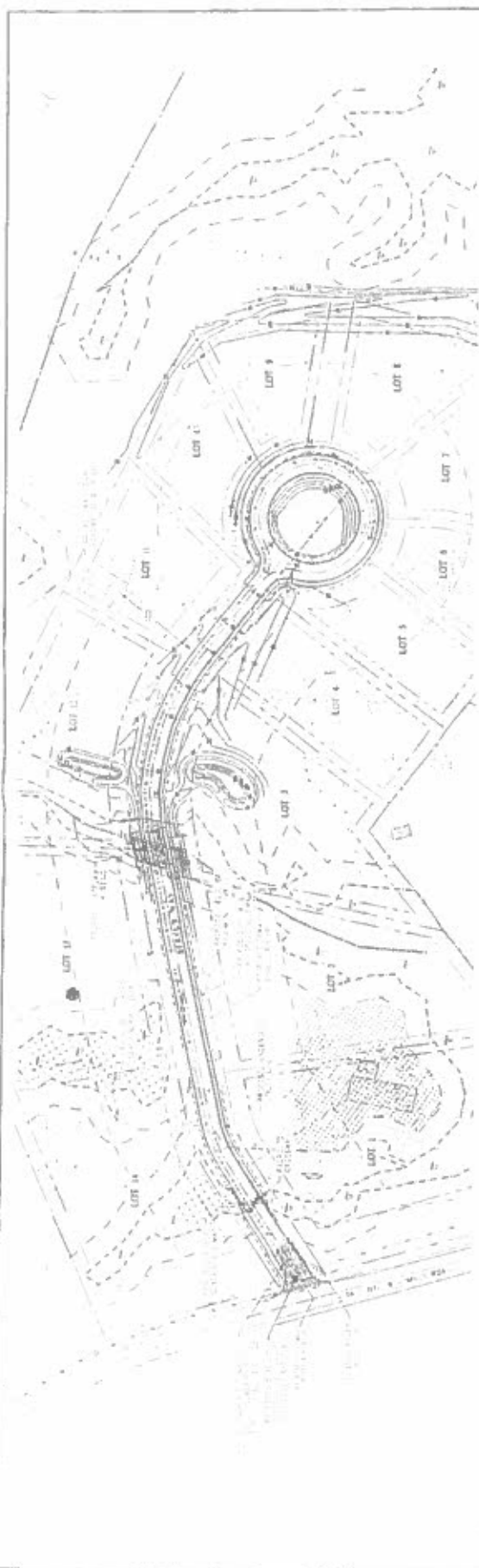
GRAY, CAROL RUTH
14111 GABLE HILL DRIVE
SUN CITY WEST, AZ 85375

HANSON, GALE M
23 IRETA RD
SHREWBURY, MA 01545

SCHAUB, JANET S & SCHAUB
11 LONG FELLOW ROAD
CAMBRIDGE, MA 02138

WRIGHT, PATRICIA L
PO BOX 7149
CAPE PORPOISE, ME 04014-7149





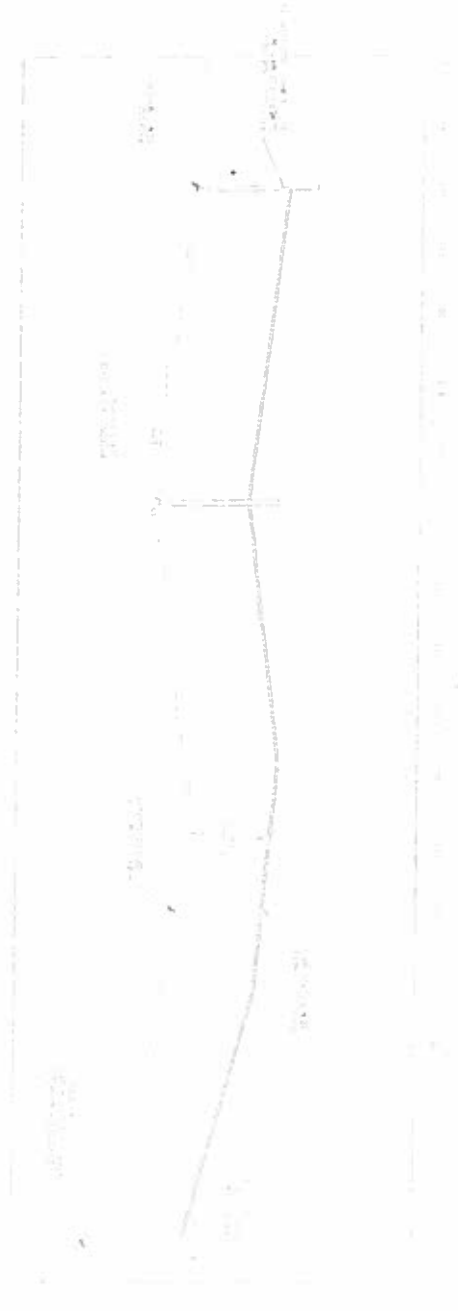
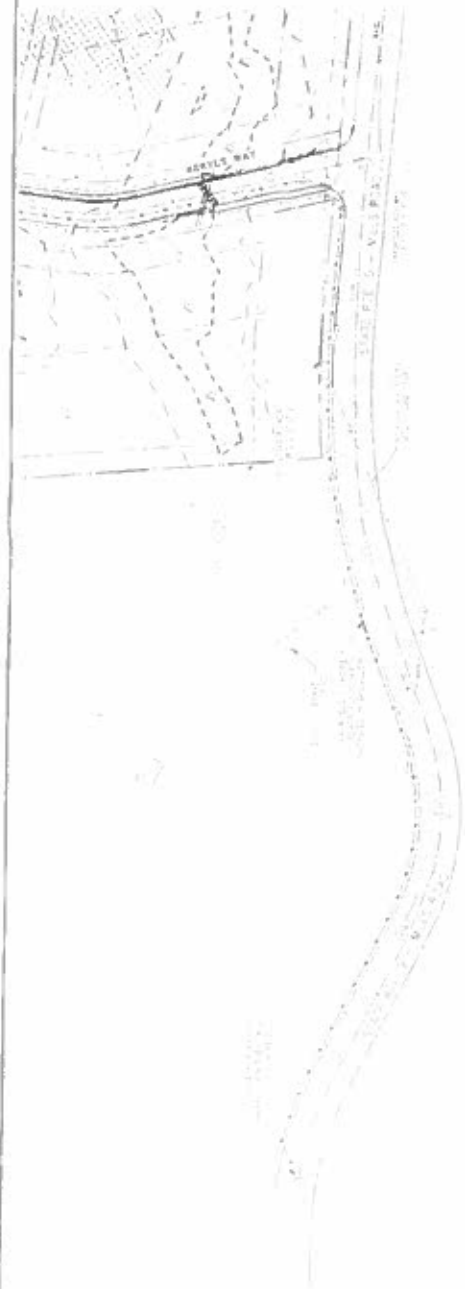
Station	Elevation	Grade	Notes
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2+00	105.00	5.00%	
3+00	110.00	5.00%	
4+00	115.00	5.00%	
5+00	120.00	5.00%	
6+00	120.00	0.00%	Peak of Profile
7+00	115.00	-5.00%	
8+00	110.00	-5.00%	
9+00	105.00	-5.00%	
10+00	100.00	-5.00%	End of Profile

ROAD PROFILE - BERYL'S WAY



ATLAR ENGINEERING INC.

Project	Client	Date
Beryl's Way	City of Beryl	10/1/2023



ROAD PROFILE - STATE ROUTE 9 (MILLS ROAD)

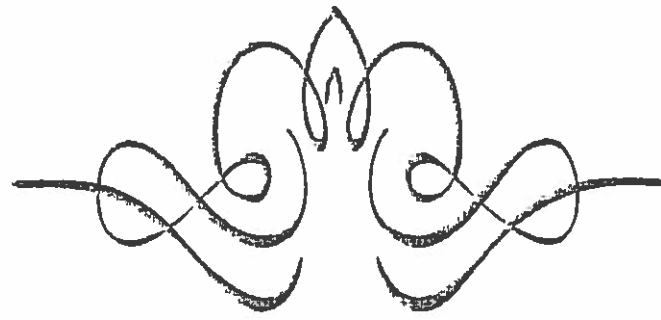
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0+30	100.00	0.00		
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0+50	100.00	0.00		
0+60	100.00	0.00		
0+70	100.00	0.00		
0+80	100.00	0.00		
0+90	100.00	0.00		
1+00	100.00	0.00		

Project No. _____
 Date _____
 Scale _____
 Drawing No. _____
 Sheet No. _____ of _____
 Project Name _____
 Client Name _____
 Engineer Name _____
 Engineer Title _____
 License No. _____
 State _____
 Seal _____
 Stamp _____
 Signature _____
 Date _____



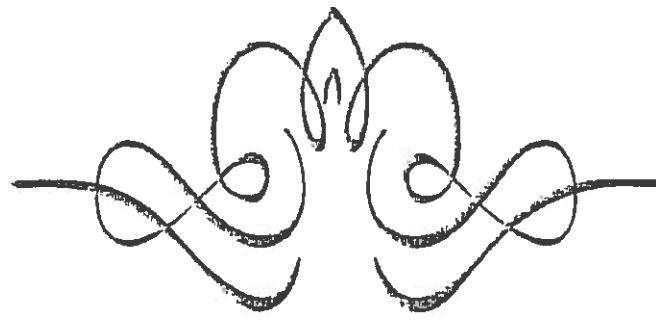
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0+10	100.00	0.00		
0+20	100.00	0.00		
0+30	100.00	0.00		
0+40	100.00	0.00		
0+50	100.00	0.00		
0+60	100.00	0.00		
0+70	100.00	0.00		
0+80	100.00	0.00		
0+90	100.00	0.00		
1+00	100.00	0.00		





Agenda Item Divider





Agenda Item Divider



2017 COMMITTEE/BOARD APPOINTMENTS/REAPPOINTMENTS

(Five or more members.) For two positions, preference given to former members of Bd of Selectmen. For one position, preference shall be given to persons who are former members of ZBA, Planning Board, or persons trained in law. (One-year term.)						
ADMINISTRATIVE CODE				Expiration	Comments	New Term Expires
Wayne Adams				2017	Appoint	2018
H. Stedman Seavey				2017	Would like to be reappointed	2018
Richard Smith				2017	Would like to be reappointed	2018
April Dufoe				2017	Would like to be reappointed	2018
D. Michael Weston				2017	Would like to be reappointed	2018
(Five members and two alternates.) Three-year terms initially on a staggered basis, with all future appointments at three-year terms. Alternates are three-year terms. Members limited to serving three full, consecutive terms. Reappointment may occur after one-year period of nonservice. The Board of Selectmen may for good cause appoint a member for an additional one year of service beyond the three consecutive terms.						
BOARD OF ASSESSMENT REVIEW				Expiration	Comments	New Term Expires
Jean Conaty				2017	Resigned	
Wayne Fessenden				2017	Termed out	
Gordon Ayer				2019		
Dudley Tyson				2018		
Karen Schlegel				2019		
Alternates						
Mark Messer				2017	Appoint	2020
April Dufoe				2019		
(Five or more members, one of whom shall be a member of the Board of Selectmen. Nonresidents may be appointed provided they are commercial fishermen from the Cape Porpoise Pier and at least 75% of the membership are registered voters of Kennebunkport.) One-year term.						
CAPE PORPOISE PIER					Comments	New Term Expires
Peter Eaton				2017	Would like to be reappointed	2018
Peter Garsoe				2017	Would like to be reappointed	2018
Arnold Nickerson IV				2017	Appoint	2018
Benjamin Nunan				2017	Appoint	2018
Zandy Talmadge				2017	Would like to be reappointed	2018
Eric Wildes				2017	Would like to be reappointed	2018
Robert J. O'Reilly				2017	Appoint	2018

2017 COMMITTEE/BOARD APPOINTMENTS/REAPPOINTMENTS

(Three or more members.) One-year term.				
CEMETERY COMMITTEE	Expiration	Comments	New Term Expires	
Ruth Fernandez, chair	2017	Would like to be reappointed	2018	
Lynda Bryan	2017	Would like to be reappointed	2018	
Greg Pargellis	2017	Would like to be reappointed	2018	
Ann Sanders, treasurer	2017	Would like to be reappointed	2018	
Rita Schlegel, secretary	2017	Would like to be reappointed	2018	
(Five or more members.) Terms shall be one, two, three years such that 1/3 of the members' terms shall expire				
CONSERVATION COMMISSION	Expiration	Comments	New Term Expires	
Benjamin Senning	2017	Would like to be reappointed	2020	
Joe Frank	2018			
Jenne James	2019			
Carol Laboissonniere	2019			
Sarah Lachance	2018			
Gillet "Jill" Page	2018			
(Five or more members, one of whom should be a member of the Board of Selectmen. Nonresidents may be appointed provided they are commercial fishermen from the Government Wharf and at least 75% of the membership are registered voters of Kennebunkport.) One-year term.				
GOVERNMENT WHARF	Expiration	Comments	New Term Expires	
Jeff Davis	2017	Would like to be reappointed	2018	
Ron Francoeur	2017	Would like to be reappointed		
Thomas Mansfield	2017	Would like to be reappointed		
Chris Welch	2017	Would like to be reappointed		
(Five members and two alternate members.) Terms shall be for three years on a staggered basis. No term limits				
GROWTH PLANNING COMMITTEE	Expiration	Comments	New Term Expires	
Adam Burnett	2017	Would like to be reappointed	2020	
James Fitzgerald, Jr.	2017	Would like to be reappointed	2020	
Barbara Barwise	2019			
Paul Hogan	2018			
Daniel Saunders, chair	2018			
Alternates				
Jim McMann	2019			
Vacancy				

(Seven members, three from each municipality, one nonresident (not residing in either Kennebunk or Kennebunkport, appointed jointly by both boards) and can have alternate members for one or more of its members from each municipality if the regular member is unable to attend a meeting. An alternate may be appointed for the nonresident member if agreed by both boards.(Per Inter-Local Agreement)				
KENNEBUNK RIVER COMMITTEE				
Kennebunkport Members:				
Mark Sutton	2017	Appoint		2020
Susan Inoue	2019			
Richard Woodman	2018			
Three or more members. Three year terms, staggered				
PARSONS WAY COMMITTEE				
Barbara Barwise	2017	Would like to be reappointed		2020
Louise Spang	2019			
Gordon Ayer	2018			
(Five members and two alternates) Terms: three years on a staggered basis. Members limited to serving three full, consecutive terms. Reappointment may occur after one-year period of nonservice. The Board of Selectmen may for good cause appoint a member for an additional one year of service beyond the three consecutive terms.				
PLANNING BOARD				
Mark Messer	2017	Would like to be reappointed		2020
Peter Fellenz	2017	Does not seek reappointment		
D. Scott Mahoney	2019			
E. Russell Grady, Jr.	2019			
Thomas Boak	2018			
Alternates				
Nina L. Pearlmutter	2017	Would like to be reappointed		2020 Move to regular
Vacancy				
PUBLIC SAFETY COMMITTEE				
Allan Moir	2017	Fire Chief, Wastewater Super.		2018
Mike Claus	2017	Highway Superintendent		
Craig Sanford	2017	Chief of Police/Emergency Ma		
Brad Chicoline	2017	Chief of KEMS		

2017 COMMITTEE/BOARD APPOINTMENTS/REAPPOINTMENTS

This committee is not listed in Administrative Code				Expiration	Comments	New Term Expires
ROAD BOOK COMMITTEE				2017	Appoint	2018
Richard Stedman						
James Burrows				2017	Appoint	
(Three or more members.) One-year term.						
SEWER ADVISORY COMMITTEE				Expiration	Comments	New Term Expires
Bob Convery				2017	Would like to be reappointed	2018
Stephen Couture				2017	Would like to be reappointed	
Richard Johnson				2017	appoint	
Joseph Martin Mead				2017	Would like to be reappointed	
(Three or more members.) One-year term.						
SHADE TREE COMMITTEE				Expiration	Comments	New Term Expires
Sarah Adams				2017	Would like to be reappointed	2018
Kimberly Gurski				2017	Appoint	
Stephen G. Doe				2017	Appoint	
Nina Pearlmuter				2017	Would like to be reappointed	
Suzanne Stohlman				2017	Would like to be reappointed	
(Minimum of five, maximum of seven members, according to the Shellfish Conservation Ordinance.)				Expiration	Comments	New Term Expires
SHELLFISH CONSERVATION COMMITTEE						New Term Expires
J. Steven Kingston				2017	Appoint	2018
Eric D. Wildes				2017	Would like to be reappointed	
Charles F. Zeiner				2017	Appoint	
Everett Leach, chair				2017	Shellfish Warden; appoint	
David Conway				2019		
(Three or more members.) One-year term.				Expiration	Comments	New Term Expires
SIDEWALK COMMITTEE						
Tony Viehmann, chair				2017	Appoint	2018
Kristen Garvin				2017	Would like to be reappointed	
Michael Claus				2017	Appoint	
Craig Sanford				2017	Appoint	

2017 COMMITTEE/BOARD APPOINTMENTS/REAPPOINTMENTS

(Seven members.) Terms shall be for three years on a staggered basis.				
Members limited to serving three full, consecutive terms. Reappointment may occur after 1				
year period of non-service. The Board of Selectmen may for good cause appoint a member				
for an additional one year of service beyond the three consecutive terms.				
ZBA		Expiration	Comments	New Term Expires
James Fitzgerald		2017	Appoint	2020
Karen Schlegel		2017	Would like to be reappointed	2020
Paul Cadigan		2018		
Jean Conaty		2018		
Gordon Ayer		2019		
Wayne Fessenden		2019		
April Dufoe		2019		



Agenda Item Divider



SELECTMEN REPRESENTATIVES		
Committees	July 2016-2017	July 2017-2018
Cape Porpoise Pier Committee	Edward W. Hutchins	Edward W. Hutchins
Goose Rocks Beach Advisory Committee	Sheila Matthews-Bull	Sheila Matthews-Bull
Government Wharf	Allen A. Daggett	
Graves Library Board	Edward W. Hutchins	Edward W. Hutchins
Investment Committee	Allen A. Daggett, Patrick Briggs	Patrick Briggs
K.E.M.S.	Patrick A. Briggs	Patrick A. Briggs
Public Safety Committee	Patrick A. Briggs	Patrick A. Briggs
S.M.R.P.C.	Stuart E. Barwise	
Growth Planning Committee	Allen A. Daggett	
Planning Board	Patrick A. Briggs	Patrick A. Briggs
Shade Tree Committee	Sheila Matthews-Bull	Sheila Matthews-Bull
Zoning Board of Appeals	Sheila Matthews-Bull	Sheila Matthews-Bull

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