



# TOWN OF KITTERY

200 Rogers Road, Kittery, ME 03904  
Telephone: (207) 475-1329 Fax: (207) 439-6806

## WORKSHOP 6:00 P.M.

The Town Council will meet with the Town Manager and WILSSA to discuss the Wood Island Repair Agreement and Concession Agreement.

December 14, 2015

Council Chambers

Kittery Town Council  
Regular Meeting  
7:00 p.m.

1. Call to Order
2. Introductory
3. Pledge of Allegiance
4. Roll Call
5. Agenda Amendment and Adoption
6. Town Manager's Report
7. Acceptance of Previous Minutes – 11/23/15 Regular Meeting
8. Interviews for the Board of Appeals and Planning

Planning Board: one appointment until 11/30/18

- Lored Fabbicatore
- Brett Costa

9. All items involving the town attorney, town engineers, town employees or other town consultants or requested officials

a. (120115-1) The Kittery Town Council moves to approve a new four year Ambulance Service Agreement between the Towns of Kittery and Eliot and American Ambulance New England, Inc. (AANE) for ambulance service, and an extension to the Lease Agreement with American Ambulance, Inc. and the Town of Kittery of the old Walker Street Fire Station for the delivery of emergency medical services until June 30, 2017, and authorizes the Town Manager to sign all necessary documents.

b. (120115-2) The Kittery Town Council moves to discuss and consider the Wood Island Life Saving Station Repair, Maintenance and Use Agreement called "Agreement Two".

c. (120115-3) The Kittery Town Council moves to authorize the Town Manager to work with legal counsel, WILSSA's President, and the National Park Service to review, edit if necessary, and finalize the Concession Agreement as soon as practical and bring back to Council for final approval.

d. (120115-4) The Kittery Town Council moves to authorize the Town Manager and the WILSSA President to finalize and submit an application to the Maine National Guard for an Innovative Readiness Program training exercise to rebuild the sea walls of Wood Island.

10. PUBLIC HEARINGS

a. (120115-2) The Kittery Town Council moves to hold a public hearing on an application from Cupcake Charlie's LLC, PO Box 614, Pocasset, MA 02559 for a Victualer's License for Cupcake Charlie's, 345 US Route 1, Suite 10.

b. (120115-3) The Kittery Town Council moves to hold a public hearing on an application from Vida Cantina LLC, 1 Middle Street, Suite 1, Portsmouth NH 03801 for a Victualer's License for Vida Cantina, 10 Shapleigh Road, Kittery.

c. (110315-1) The Kittery Town Council moves to continue its public hearing and hereby ordains amendments to Title 4 Boards, Commissions and Committees of the Kittery Town Code.

d. (120115-4) The Kittery Town Council moves and hereby ordains amendments to Title 4 Boards, Commissions and Committees of the Kittery Town Code as an emergency ordinance in accordance with Sec. 2.15 of the Kittery Town Charter.

11. DISCUSSION

- a. Discussion by members of the public (three minutes per person)
- b. Response to public comment directed to a particular Councilor
- c. Chairperson's response to public comments

12. UNFINISHED BUSINESS

13. NEW BUSINESS

a. (120115-4) Donations/gifts received for Council disposition

- The Kittery Town Council moves to accept donations in the amount of \$2,760.50 for the Thresher Memorial Fund to be deposited in account #5007-43600.
- The Kittery Town Council moves to accept a donation from York Hospital in the amount of \$9,250 for Scholarships to be deposited in account #5003-43600.

b. (120115-5) The Kittery Town Council moves to approve a renewal application for The Ares LLC, 68 Wallingford Square, Kittery for a Malt and Vinous Liquor License for AJ's Wood Grill Pizza, 68 Wallingford Square.

c. (120115-6) The Kittery Town Council moves to approve a renewal application for Weathervane Seafoods, Inc., 21 Badgers Island West, Kittery for a Malt, Spirituous and Vinous Liquor License for Weathervane Seafoods, 306 US Route 1.

d. (120115-7) The Kittery Town Council moves to extend the existence of the Economic Development Committee (EDC) past its current sunset date of 12/31/15, to a future date certain of December 31, 2016, at which time Council will review the status of the EDC and its continued need.

e. (120115-8) The Kittery Town Council moves to discuss and consider the offer of a conservation easement gift of land to the Town by owner Stephen A. Hynes Real Property Trust Agreement.

f. (120115-9) The Kittery Town Council moves to approve the disbursement warrants.

g. (120115-10) The Kittery Town Council moves to appoint a representative to meet with the Chair of the KCC Board of Directors to interview Eric Lemont for appointment to that board for arts and culture until \_\_\_\_\_.

h. (120115-11) The Kittery Town Council moves to appoint a representative to meet with the Chair of the Comprehensive Plan Update Committee to interview Holly Zurer for appointment to that board until the task is completed.

i. (120115-12) The Kittery Town Council moves to ratify and sign a three year labor contract from July 1, 2014 thru June 30, 2017, for the Police Officers unit.

j. (120115-13) The Kittery Town Council moves to appoint a representative to meet with the Chair of the Port Authority to interview Peter Johnson for his appointment to that board until \_\_\_\_\_.

14. COUNCILOR ISSUES OR COMMENTS

15. COMMITTEE AND OTHER REPORTS

- a. Communications from the Chairperson
- b. Committee Reports

16. EXECUTIVE SESSION

17. ADJOURNMENT

Posted: December 10, 2015



# TOWN OF KITTERY

Office of the Town Manager

200 Rogers Road, Kittery, ME 03904

Telephone: 207-475-1329 Fax: 207-439-6806

[ncolbertpuff@kitteryme.org](mailto:ncolbertpuff@kitteryme.org)

Nancy Colbert Puff  
Town Manager

## Town Manager's Report to the Town Council December 14, 2015

1. **Safford School** – Due to the weather turning colder, it was inadvisable to move forward with replacement of the roof – instead, we have had a contractor repair select areas and place a tarp over the area subject to the most infiltration. We will proceed with the replacement in the spring.
2. **Channel 22** – We are working with the School Department to broadcast winter basketball events on Channel 22 in the near future. We hope to train interested students to provide commentary and camera operation.
3. **Kittery Community Center (KCC) and the Kittery Volunteer Scribes Program** – I received a letter from the Maine Chapter of the Alzheimer's Association in appreciation of the KCC's hosting of the Volunteer Scribes program, which enables college students to interview and record the life stories of persons living with dementia.
4. **Senior Help program** – Pursuant to Councilor Thomson's request made at the last meeting, the Police Chief and KCC General Manager have been collaborating about hosting a program to call and check in with Kittery seniors who are interested in such a service. I will keep Council updated on our progress.
5. **Surplus Property Sale** – On December 3<sup>rd</sup> we opened bids for surplus property – the bid results are posted on our web page. The Town received approximately \$6,200 in revenue from the sale. Thanks to Councilor Denault for publicizing some of the items and to DPW Commission Norm Albert for coordinating the bid process.
6. **Police Chief Search Update** – The Council's Shared Services Committee requested a meeting with the leadership of the Eliot Board of Selectmen to discuss the future of the inter-municipal agreement (IMA) concerning the shared Chief. Eliot's Board is meeting on December 10<sup>th</sup> to formalize their desire with regard to the IMA.
7. **Holiday Hours** – Town Hall will be closed on both December 24<sup>th</sup> and 25<sup>th</sup> and on December 31<sup>st</sup> and January 1<sup>st</sup> in observance of the Christmas and New Year's legal holidays and pursuant to contractual obligations.

As always, if you have any questions or concerns prior to the meeting, please do not hesitate to contact me. Thank you.

Respectfully Submitted,

Nancy Colbert Puff

- 1  
2 1. Call to Order  
3  
4 Chair Beers called the meeting to order at 7:01 p.m.  
5  
6 2. Introductory  
7  
8 Chairperson Beers read the introductory  
9  
10 3. Pledge of Allegiance  
11  
12 Chairperson Beers led those present in the Pledge of Allegiance  
13  
14 4. Roll Call  
15  
16 Answering the roll were Chairperson Gary Beers, Vice Chairperson Charles Denault,  
17 Councilors Kenneth Lemont, Judith Spiller, Jeffrey Thomson, Russell White and Frankl Dennett.  
18  
19 5. Agenda Amendment and Adoption  
20  
21 Chairperson Beers proposed item 13c under New Business be rescheduled until December 14,  
22 2015 due to missing enclosures.  
23  
24 6. Town Manager's Report  
25  
26 Town Manager Puff reviewed her written report.  
27  
28 Town Manager Puff informed council that the grant request to fund improvements to  
29 Emery Field was submitted on November 19<sup>th</sup>. She thanked Norm Albert, DPW Commissioner;  
30 Jeremy Paul, Assistant Director of recreation of the KCC; and the Kittery Athletic Improvement  
31 Committee for their assistance in helping her complete the application. The final amount  
32 requested was for \$187,000. She should hear sometime in January whether the application was  
33 successful.  
34  
35 Residents have asked about the paving that was just completed. The paving stops short  
36 of the shoulders on South Eliot and Cutts Road. A final curb to curb overlay is scheduled in the  
37 spring on those roads and the reason it is thinner on the edges is to maintain a curb reveal  
38 without reconstructing the whole street.  
39  
40 The Town is trying to get the contractor back before winter sets in to fill in the trenches  
41 on Route 236 that have settled since the end of the substantial sewer extension project.  
42  
43 Manager Puff stated that she is working with Sam Reid of WILSSA to prepare a  
44 concession agreement and revised repair agreement for Council's consideration in December.  
45 She has received strong letters of support for WILSSA's plans from potential partners which  
46 include the Gundalow Company and Portsmouth Harbor Cruises. Key items being discussed are

47 the term of the agreement (WILSSA has proposed 30 years), allowed uses, and conditions in the  
48 event of non-performance.

49  
50 Manager Puff was happy to report that the Town has assembled a variety of surplus items  
51 to be sold. They can be seen on-line on the News and Announcements page of the Town  
52 Website. They are also being advertised on the Portsmouth Herald and are on the MMA  
53 Website. Bid openings are being scheduled for December 3, 2015. Anyone interested in the  
54 items is advised to consult those sites.

55  
56 The Portsmouth Naval Shipyard has been conducting their Bridge 1 Project and just  
57 recently has had the need to have concrete cure over the weekend. As a result, on two successive  
58 Fridays they had to close Gate 1 entirely and have all traffic to go through Gate 2 which caused  
59 severe backups in Kittery. PNSY was in communication with the Town and took several  
60 measures to mitigate the issue. That period of work is over now.

61  
62 Town Manager Puff announced that the Town of Kittery is hiring for several positions  
63 which can all be found under the Employment Opportunities section of the Town website.

64  
65 Town Manager Puff brought to Council's attention an article in this month's Maine's  
66 Townsman. The article was written by Dave Evans who works in the Kittery's DPW  
67 Department. He wrote an impressive article titled "Maine's Dilemma; Retaining Young People  
68 and Preserving Amenities". He recently completed an MPA at Norwich University.

69  
70 Ms. Puff received a letter from the Town of Eliot today. The Eliot Board of Selectmen  
71 asked their town manger to reach out to Town Manager Puff informally about the inter-  
72 municipal agreement for a joint chief. Currently we share the chief's salary 60-40 and we share  
73 all benefits 50-50 with Eliot. They are suggesting that Eliot should pay only 25% of both salary  
74 and benefits to the Town of Kittery. She has done some calculations and the impact would be  
75 negative, calling into question whether the joint chief is something that the Town should  
76 continue to pursue. She is asking that the Shared Services Committee meet with her. Eliot is  
77 looking for a prompt response.

78  
79 Councilor Spiller referred to item 4 and asked that consideration of a concession and  
80 revised repair agreement for Wood Island come before the Council in the form of a workshop  
81 rather than an item on the agenda. A workshop would allow for more thorough discussion. She  
82 is concerned about the 30 year term of the agreement as well as surveillance, seawalls and other  
83 issues.

84  
85 Chairperson Beers noted that he and Town Manger Puff have received communications  
86 regarding deadlines that WILSSA is looking at for significant funding contributions. He will be  
87 planning some workshops in the next two or three weeks. Councilor Spiller requested a  
88 workshop on December 14<sup>th</sup>. Chairperson Beers responded that that would work if scheduling  
89 allows.

90  
91 7. Acceptance of Previous Minutes – 11/9/15 Regular Meeting

92

93 The minutes of 11/9/15 were approved as amended.

94

95 8. Interviews for the Board of Appeals and Planning

96

97 Chairperson Beers brought to Council's attention information provided concerning Board  
98 of Appeals and Planning interview process. The information was a result of a meeting with the  
99 Chair and Vice Chair of the Planning Board and the ensuing opinion sought from the Town  
100 Attorney regarding the specific details of the process. Chairperson Beers summarized the  
101 document for Councilor Dennett. The interpretation of the Ordinance by the Town attorney says  
102 that members who are applying for reappointment may be reappointed without interview. If  
103 there are other new applicants, they need to be interviewed in accordance with the Charter and  
104 the Ordinance. If there are multiple applicants they would be interviewed and voted on with  
105 nominations second. If there is a tie vote, a second vote is taken. If there continues to be a tie  
106 vote between two candidates, the Attorney suggested that the Ordinance provision for a coin toss  
107 prevail; however, if there are more than two candidates it may be suitable to draw lots.

108

109 Councilor Spiller added that on page four the document reads that the Town has a history  
110 of appointing members for additional terms when the Board Member desires to continue service  
111 on the Board. It appears to be the intent of the Code in this respect to honor that past practice  
112 involving members seeking to be reappointed.

113

114 Councilor Dennett responded that although he is not satisfied with the protocol he will  
115 not argue the point as he has not had the chance to review it.

116

117 Chairperson Beers recused himself from the interviews for the Board of Appeals and  
118 Planning as he is an owner/agent for an application before the Planning Board for review. He  
119 passed the meeting over to Vice Chair Denault.

120

121 Planning Board:

122

123 • Karen Kalmar – re-appointment until 11/30/18

124 • Mark Alessee – re-appointment until 11/30/18

125

126 **COUNCILOR SPILLER MOVED THAT THE COUNCIL INTERVIEW**  
127 **REQUIREMENT BE WAIVED AND KAREN KALMAR AND MARK ALESSE BE**  
128 **REAPPOINTED TO THE PLANNING BOARD FOR APPOINTMENTS TO RUN UNTIL**  
129 **11/30/2018, SECONDED BY COUNCILOR LEMONT. A ROLL CALL WAS TAKEN**  
130 **WITH CHAIRPERSON BEERS RECUSING. MOTION PASSED 6/0/0.**

131

132 Vice Chairperson Denault thanked Karen Kalmar and Mark Alessee for their service and  
133 willingness to continue serving the Town.

134

135 • Brett Costa – appointment until 11/30/18 (to replace David Lincoln whose term is  
136 expiring and is not seeking re-appointment.

137

138 Mr. Costa of 19 Lynch Lane, Kittery Point approached the podium and introduced

139 himself. He offered that he has been on the Board of Appeals for nearly thirteen years and has  
140 been the Chair for the last year. He noted that he has stayed on the Board because the Board  
141 membership has been scarce at times and he feels that the Townspeople deserved as many  
142 members as possible for their decisions. The Board is full at this time and he feels it is time for  
143 him to move on to a different area with his experience from the Board of Appeals and having run  
144 construction companies since he was 17 years old. With his working knowledge of Codes and  
145 their application and feels his qualifications are among the best of the applicants.  
146

147 Councilor Spiller asked Mr. Costa to describe what he feels the function of the Planning  
148 Board is. Mr. Costa responded that the Planning Board comes up with Codes that eventually  
149 become Title 16 which has a great deal to do with how the Town runs, the ability of people to do  
150 projects, and the direction of the town. The Code book can have either a positive or negative  
151 effect. He feels that diversity on the Board is a good thing and that the Board has done its best  
152 when there is a wide range of diversity.  
153

154 Councilor Thomson asked Mr. Dennett if he is still concerned about the possibility of a  
155 committee of six in which a tie vote might occur or does he prefer Mr. Costa remain on the  
156 Board of Appeals to avoid this. Councilor Thomson asked why Mr. Costa wanted to be on the  
157 Board of Appeals earlier that day and now wants to be on the Planning Board. Mr. Costa  
158 responded that if he doesn't apply at this time while there is an opening on the Planning Board,  
159 then when his appointment on the Board of Appeals expires the opening on the Planning Board  
160 will not be there.  
161

162 Councilor White thanked Mr. Costa for applying and asked Mr. Costa if he feels that there are  
163 changes needed in current Planning Board practices or Kittery's Land Use Ordinance. Mr. Costa  
164 responded that he thinks things could be simplified both with new codes and code revisions. He  
165 has run large construction companies in Massachusetts and feels that Kittery's residential and  
166 commercial code books are more difficult than those in Massachusetts. Councilor White asked  
167 Mr. Costa where the direction for code change comes from. Mr. Costa believes that the Chair of  
168 the Planning Board receives ideas from people and presents them to the Board.  
169

170 Mr. Costa answered Councilor White's question about the importance of the Comprehensive  
171 Plan stating that he would liken it to a closet organizer with the Town of Kittery being the closet.  
172 Councilor White asked what might be a conflict of interest for Mr. Costa while serving on the  
173 Planning Board. Mr. Costa responded that if a relative or business interest would come before  
174 the Board he would bring it to the Board to determine his ability to sit for that particular  
175 application.  
176

177 Councilor Thomson asked what Mr. Costa meant by people bringing ideas to present to the  
178 Board. Does he mean Staff? Mr. Costa responded that anyone in Town could bring ideas to the  
179 Board.  
180

181 Councilor Lemont thanked Mr. Costa and said that he has applied for the right board with his  
182 background in construction, his many years on the Board of Appeals and his understanding of  
183 the Code. He asked Mr. Costa how he feels about growth. Mr. Costa said that each Town has its  
184 own personality and that Kittery has its own nuances and everything should be looked at.

185 Kittery has a unique location next to Interstate 95 which is a huge commercial interest with  
186 tourism and business. He feels that a lot could be done with that to expand Kittery's tax base and  
187 relieve the citizens of the Town.  
188

189 **COUNCILOR DENNET MOVED TO APPOINT MR. COSTA TO THE PLANNING**  
190 **BOARD TO A THREE YEAR TERM COMMENCING NOVEMBER 30, 2015 AND**  
191 **ENDING NOVEMBER 30, 2018. SECONDED BY COUNCILOR LEMONT.**  
192

193 Councilor Spiller added that she appreciates anyone who applies to any of the Boards and feels  
194 that the Planning Board may be the most important, and considerable consideration needs to go  
195 into any appointment. There have been multiple candidates for recent appointments and a lot of  
196 discussion and this time there is only one candidate and she would rather wait for a diversity of  
197 more applicants. She does not share the same fears that Councilor Dennett has about having only  
198 six people serve on the Board as often there are Boards without full membership. She stated that  
199 for this reason she will not support appointment at this time.  
200

201 Vice Chair Denault noted that the advertisement has been out there for many months. Although  
202 it would be good to have more applicants, are we doing a disservice to the Town by waiting? He  
203 supports appointing the applicant before the Council at this time.  
204

205 **A ROLL CALL VOTE WAS TAKEN WITH COUNCILORS SPILLER, THOMSON,**  
206 **WHITE OPPOSED AND CHAIRPERSON BEERS RECUSING. MOTION FAILED**  
207 **3/3/0.**  
208

209 Councilor Dennett noted that it was a tie vote and that it shows the perils of having an even  
210 number of Board Members.  
211

212 Vice Chair Denault handed the meeting back to Chairperson Beers.  
213

214 9. All items involving the town attorney, town engineers, town employees or other town  
215 consultants or requested officials - None.  
216

217 10. PUBLIC HEARINGS  
218

219 (110315-1) The Kittery Town Council moves to hold a public hearing and hereby ordains  
220 amendments to Title 4 Boards, Commissions and Committees of the Kittery Town Code.  
221

222 Chairperson Beers opened the public hearing and called anyone from the audience that  
223 would like to speak to come forward.  
224

225 Councilor Thomson noted that it is usual procedure that the Chair, Staff or committee  
226 representative informs the public about the topic. Chairperson Beers responded that due to some  
227 errors in the materials and recent input from the Planning Board since this was scheduled, the  
228 presented document is incomplete and he wishes to have a motion to continue the hearing to a  
229 date specific of December 14, 2015, a regular meeting.  
230

231 **THE MOTION TO CONTINUE THE HEARING TO DECEMBER 14, 2015 WAS**  
232 **MOVED BY COUNCILOR WHITE, SECONDED BY COUNCILOR SPILLER.**  
233

234 In response to Councilor Thomson's inquiry Chairperson Beers noted that there are a number of  
235 issues related to incorporation of the protocol for Planning Board and Board of Appeals  
236 appointments, and the Town attorney's opinion on these issues was just received. The original  
237 material included passages that were repealed a number of years ago and did not include  
238 passages that are now ordained.  
239

240 Town Manager Puff reminded Council that this proposed change which is very limited in its  
241 scope came from a Committee that the Council asked Town Manager Puff to establish last year  
242 in December. There were a number of questions that the Council had for the Committee about  
243 how the Planning Board appointments were made and what the code said about it. The  
244 Committee met and included George Dow, Ann Grinnell and the Councilors, and came up with a  
245 memo to Council dated last April with changes to be made that ultimately resulted in changes to  
246 the code last May. This was the final recommendation contained in that memorandum that  
247 sought to align term ending dates to the end of perhaps December, such that the Town could  
248 make the appointments all at one time in advance of the appointment expiration dates. It was her  
249 understanding that Ordinance Review Committee had sent several additional things to the  
250 Appointment Committee to consider before December 14<sup>th</sup>. She thought that the Committee's  
251 work was primarily done but if the Committee can expect to receive comments from the  
252 Ordinance Review Committee that entertain a larger scope than the Committee was originally  
253 formed for, she would seek further direction from Council.  
254

255 Chairperson Beers noted that a first draft of the materials is with the Town Manager, the review  
256 comment and follow up will be available by December 7<sup>th</sup>.  
257

258 **A ROLL CALL VOTE WAS TAKEN WITH COUNCILOR THOMSON OPPOSED.**  
259 **MOTION CARRIED 6/1/0.**  
260

261 Councilor Thomson requested that the charge of the Committee be clarified for Town Manager  
262 Puff. Chairperson Beers responded that a revision was proposed by the Appointment Committee  
263 and additional errors and revisions were discovered and a proposal made to the Town Manager  
264 for consideration for the Ordinance Review Committee.  
265

266 Councilor White asked for a reminder of who is on the Appointment Committee. Town Manager  
267 Puff noted that Councilor Lemont, Councilor White, Vice Chair Denault, George Dow, Ann  
268 Grinnell and MaryAnn Place are on the Committee. Town Manager Puff has received several  
269 documents back from the Ordinance Review Committee. The request was that the Committee  
270 reconvenes to review additional documents pursuant to Title 4.  
271

272 Councilor Thomson expressed concern about the Ordinance Review Committee as it was  
273 dissolved four years ago because it was not functioning well. Chairperson Beers stated that no  
274 one was presented the material for which this hearing was scheduled. In the intervening  
275 timeframe a member of the Planning Board came forward with strong recommendations for  
276 revisions for consideration. He added that there not being any other avenue it is actually a

277 misrepresentation to state that ORC produced this particular set of documentations. He noted  
278 that he produced them and sent them to the Town Manager, the understanding being that there  
279 would be a review process with the Appointment Committee, which is what he thought the  
280 process would be. When the documents are done the routine protocol is for the ORC to review  
281 for grammar, style, accuracy and legal basis and not to delve into the substance or policy of any  
282 issue related to an ordinance. Chairperson Beers

283

284 11. DISCUSSION

285 a. Discussion by members of the public (three minutes per person).

286

287 George Dow, of One Kittery Point, asked if he understood clearly that the Chair reviewed  
288 the ordinance and then gave it back to the Town Manager to bring back to the Committee for  
289 review of Chairperson Beers Comments. Chairperson Beers clarified that the input was the result  
290 of comment and written input from the Planning Board and the Town Attorney.

291

292 Mr. Dow noted that he was able to look at the Council packet and Town Managers  
293 Report on line. Although he has no preference one way or the other about Wood Island, he  
294 would like to express his concern about scope creep with projects. He read a statement aloud. In  
295 his statement he expressed concern raised from the Town Mangers Report regarding the Town  
296 Managers efforts in working with WILSA towards the completion of a concession agreement.  
297 Mr. Dow has had correspondence with WILSA President Sam Reed regarding his concerns.

298

299 Mr. Dow commented that WILSA is looking for a thirty year agreement, and is looking  
300 to incorporate a pier, and create a full time museum. None of these are included in the  
301 WILSA/Kittery agreement dated 10/18/2013. Mr. Dow asked the Council if there has been an  
302 amendment change to the original agreement between WILSA and the Town. Councilor Spiller  
303 replied that there has not been an amendment change. Mr. Dow went on to say that WILSA  
304 wants the concession agreement to help establish a way to support their vision; and he questions  
305 if this is also the vision of the Kittery residents and taxpayers. The current agreement is for the  
306 restoration of the exterior of the Wood Island Life Saving Station and any work needed to  
307 support the exterior efforts. Upon completion the Town of Kittery would then discuss the plan if  
308 any for ongoing management of the structures and give WILSA the first opportunity for that.  
309 Mr. Dow urged Council to ensure that the public has a vote on the future use through a non-  
310 binding referendum vote. Mr. Dow expressed that if a concession agreement is required to  
311 commence work he is not sure why the initial agreement was entered into in the first place. Mr.  
312 Dow wants the Council and the people to be aware that the Town of Kittery will be responsible  
313 for the infrastructure, in whatever form that may be for next twenty years.

314

315 Lee Perkins, Director of Rice Public Library, would like to submit the financial review  
316 for the Library. There was a full audit in 2010 and now there is an annual review. Copies are  
317 provided to the Town Council and electronic version to the finance director. The possibility has  
318 been raised that there be a review every other year due to expenses.

319

320 D. Allen Kerr, of 4 Colonial Road congratulated the Chair and Vice Chair of the Council.  
321 He addressed Mr. Thomson and the Council and is hopeful that the tenure will be civil.

322

323 Mr. Milton Hall noted that the Shore and Harbor Plan went to the Planning Board four to  
324 six months ago from a public hearing with the Port Authority as is supposed to go to public  
325 hearing with the Planning Board and then to Town Council. He stated that the Plan has not been  
326 addressed.

327  
328 Public discussion was closed.

329  
330 b. Response to public comment directed to a particular Councilor  
331  
332 Councilor Thomson had no response to Mr. Kerr's comments

333  
334 c. Chairperson's response to public comments

335  
336 Chairperson Beers thanked Mr. Dow for his input. He noted that Council has not been  
337 presented with the documents that Mr. Dow questioned but assured him that the documents will  
338 be made public as soon as they are available.

339  
340 Ms. Perkins was thanked for her presentation. Chairperson Beers requested an electronic  
341 copy of the Rice Public Library financial review.

342  
343 Chairperson Beers recognized Mr. Kerr for his comments stating "if we could just all  
344 work together".

345  
346 Chairperson Beers assured Mr. Hall that he will follow up with Staff and Planning Board  
347 to provide him with the Shore and Harbor Plan status.

348  
349 12. UNFINISHED BUSINESS – none.

350  
351 13. NEW BUSINESS

352  
353 a. Donations/gifts received for Council disposition - none.

354  
355 b. (110315-2) The Kittery Town Council moves to approve proposed revisions to the  
Facility Use Policy for the Kittery Community Center at Frisbee Common.

356 Mr. Workman, President of the Kittery Community Center Board of Directors,  
357 approached the podium. He presented a document to Council which was originally approved by  
358 Council in January 2013. He KCC has been operating for approximately two years. That time  
359 has been a learning process. The reservation process has been looked at carefully. There have  
360 been a couple of changes regarding alcohol sections. Mr. Workman and Assistant Director  
361 Jeremy Paul attended training on alcohol service and were able to incorporate some items from  
362 the training into the KCC policies. Mr. Workman entertained questions from Council.

363 **COUNCILOR THOMSON MADE A MOTION TO APPROVE THE KCC POLICY**  
364 **REVISIONS, SECONDED BY COUNCILOR SPILLER.**

365 Councilor Lemont thanked Mr. Workman for his report.

366 **A ROLL CALL WAS TAKEN WITH ALL IN FAVOR. MOTION PASSED 7/0/0.**

367 c. (110315-3) The Kittery Town Council moves to discuss the offer of a conservation  
368 easement gift of land to the Town by owner Stephen A. Hynes Real Property Trust Agreement. -  
369 Rescheduled

370 d. (110315-4) The Kittery Town Council moves to approve the disbursement warrants.  
371 Town warrant accounts payable of \$96,524.15, Sewer accounts payable of \$12,227.14, School  
372 accounts payable of \$14,560.63. Councilor Dennett stated that the Town and Sewer warrants are  
373 in order. Councilor Lemont stated that the School warrants are in order.

374 **A MOTION WAS MADE BY COUNCILOR THOMSON TO APPROVE THE**  
375 **DISBURSEMENT WARRANTS, SECONDED BY SECONDED BY COUNCILOR**  
376 **SPELLER. A ROLL CALL WAS TAKEN WITH ALL IN FAVOR. MOTION PASSED**  
377 **7/0/0.**

378 e. (110315-5) The Kittery Town Council moves to appoint a representative to meet with  
379 the Chair of the Port Authority to interview William Pike for his appointment to that board until  
380 8/31/20.

381  
382 **A MOTION WAS MADE BY COUNCILOR DENNETT, SECONDED BY COUNCILOR**  
383 **DENAULT TO APPOINT COUNCILOR THOMSON, MOTION CARRIED BY VOICE**  
384 **VOTE 7/0/0.**

385  
386 f. (110315-6) The Kittery Town Council moves to approve and sign the policy on  
387 Treasurer's Disbursement Warrants for Employee Wages and Benefits, designating three  
388 Councilors, who may review, approve and sign such warrants, to expire on November 30, 2016.

389  
390 **A MOTION WAS MADE BY COUNCILOR WHITE AND SECONDED BY**  
391 **COUNCILOR THOMSON TO APPROVE AND SIGN THE POLICY AS STATED IN**  
392 **ITEM F, MOTION CARRIED BY VOICE VOTE 7/0/0.**

393  
394 g. (110315-7) The Kittery Town Council moves to approve and sign the policy on  
395 Treasurer's Disbursement Warrants for Municipal Expenses, designating three Councilors who  
396 may review, approve and sign such warrants, to expire on November 30, 2016.

397  
398 **A MOTION WAS MADE BY COUNCILOR WHITE AND SECONDED BY**  
399 **COUNCILOR DENAULT TO APPROVE AND SIGN THE POLICY AS STATED IN**  
400 **ITEM G, MOTION CARRIED BY VOICE VOTE 7/0/0.**

401  
402 h. (110315-8) The Kittery Town Council approve and sign the School Department policy  
403 on General Disbursement Warrants for Educational Expenses, designating three Councilors who  
404 may review, approve and sign such warrants, to expire on November 30, 2016.

405

406 A MOTION WAS MADE BY COUNCILOR WHITE AND SECONDED BY  
407 COUNCILOR THOMSON TO APPROVE AND SIGN THE POLICY AS STATED IN  
408 ITEM H, MOTION CARRIED BY VOICE VOTE 7/0/0.

409 i. (110315-9) The Kittery Town Council moves to approve and sign the School  
410 Department policy on Disbursement Warrants for School Employee Wages and Benefits,  
411 designating three School Committee Members who may review, approve and sign such warrants,  
412 to expire on November 30, 2016.

413 A MOTION WAS MADE BY COUNCILOR SPILLER AND SECONDED BY  
414 COUNCILOR WHITE TO APPROVE AND SIGN THE POLICY AS STATED IN ITEM  
415 I, MOTION CARRIED BY VOICE VOTE 7/0/0.

416  
417 14. COUNCILOR ISSUES OR COMMENTS

418 Council Denault thanked the new recorder. Councilor Denault then Councilor Denault  
419 then announced the following names of those who had passed.

420  
421 Michael J. Fielders  
422 Robert B. Johnson  
423 Beatrice Landry  
424 Wayne Manson  
425 Bryan Costello  
426 Thomas M. O'Brien  
427 Doris E. Thomas  
428 Gordon H. Main  
429 Andrew Rochelle "Andy" Cole  
430 George "Ted" Essex Jr  
431 Glendon Carroll Ayer

432  
433 Councilor Thomson has been made aware of a program by the PD called the Good  
434 Morning Project or Program where seniors or people living alone register with the PD and will  
435 call the PD every day by 10:00am; if the PD does not hear from them, the PD will call the  
436 residence. If there is no answer a wellness visit would be made. Councilor Thomson is  
437 wondering if a program like that could be explored by Kittery.

438  
439 He also mentioned that at the KCC Board meeting last night Janice Grady mentioned that  
440 the sign up special for fitness center began last Monday. In 3 days alone that there had been 129  
441 sign-ups and 64 were new individuals and that means additional revenue coming to the  
442 community center. He also noted that there was a group of citizens in York voicing a desire to  
443 have a new community center after having visited the Kittery community center.

444  
445 He also added that in a follow up memo about the last meeting that Councilor Denault  
446 will conduct a detailed review of the Managers contract. Councilor Thomson asked why this  
447 will be done at this juncture. Chairperson Beers added that Councilor Denault will conduct a

448 review that will be included in documentation that will be presented to the entire Council.  
449

450 Councilor White does recall this but if there is no justification to review the three year  
451 contract since the contract has been agreed to. Councilor Spiller agrees with Councilor White  
452 and that the specifics should be reviewed at the end of the three year contract. Vice Chair  
453 suggests that it shouldn't wait until the end but the review should start several months in  
454 advance.  
455

456 Councilor White does not like the position being put on one Councilor and that it should  
457 be the responsibility of the entire Council.  
458

459 Councilor Lemont will produce compensation comparison documentation.  
460

461 Councilor Thomson added that an opinion has been received by the Town Attorney who  
462 has determined that Council rules had been violated in the Board of Appeals appointments two  
463 weeks ago. Councilor Thomson feels that there was an illegal executive session held as the  
464 executive session was held to discuss a personnel matter and much of the document provided  
465 didn't involve personnel matters that required executive session. Matters were also discussed  
466 that should have involved the Town Manger in violation the Right to Know Act.  
467

468 Councilor Dennett asked that when a voice vote is taken that it be announced as a voice  
469 vote for the record.  
470

471 Chair Beers added two items. In a recent Portsmouth Herald Article Councilor Beers was  
472 misquoted as establishing goals for Council. He stated that it is the charge of the entire  
473 membership to establish goals for the Council. If anyone is an Amazon customer, Amazon  
474 Smile will provide ½ of 1% donation for many charities. You will find 41 non-profits in Kittery.  
475

#### 476 15. COMMITTEE AND OTHER REPORTS 477

##### 478 Communications from the Chairperson 479

480 The Granite State Wheel and Bicycle Club conducted their Tri-State Seacoast Century  
481 Event on September 26 & 27 and applauded the Kittery Police that staffed the route details.  
482

483 The Chair of the Board of Appeals and the Port Authority have requested a workshop.  
484

485 The Town Manager and Superintendent of schools and have asked for a fiscal year 2017  
486 budget discussion. Possible dates were announced and Chairperson Beers asked for input.  
487 Councilor Spiller requested Board of Appeals workshop be held on December 14<sup>th</sup> or sometime  
488 in January as she will be out of the Country. Councilor Thomson added that for the past couple  
489 of years the Council has reserved the first Monday in January, May and October to meet with the  
490 Planning Board for a workshop. The first of those meetings would be January 4<sup>th</sup>. Councilor  
491 White asked when the goal setting meeting will take place. Councilor Spiller noted that it is  
492 typically in January. The Planning Board session will be followed with the Goal setting meeting.  
493 The Town Manager noted that the School Department asked for time in December due to their

494 schedule. Chairperson Beers suggested that prior to the regular meeting on the 14<sup>th</sup> for the  
495 School Department would be appropriate as Councilor Spiller can attend. Chairperson Beers set  
496 prior to the meeting on January 11<sup>th</sup> for The Port Authority and Mr. Whitman. All meetings will  
497 commence at 6:00p.m. Thomson requested that an e-mail be sent out reminding Council about  
498 the dates of the workshops.  
499

500 The Finance Director asked that a correction be made to a statement that had been made  
501 at the last meeting that the Town Manager had already received a raise from the Sewer  
502 Department in the amount of \$900. While that money is in the Sewer Department for this fiscal  
503 year, none of that money has or will be paid unless and until the Town Council approves an  
504 actual raise.  
505

506 Committee Reports – none.  
507

508 16. EXECUTIVE SESSION  
509

510 **IT WAS MOVED BY COUNCILOR THOMSON AND SECONDED BY COUNCILOR**  
511 **SPILLER TO GO INTO EXECUTIVE SESSION IN ACCORDANCE WITH 1 M.R.S.**  
512 **§405 (6) (C) WITH THE TOWN MANAGER AND COMMISSIONER OF PUBLIC**  
513 **WORKS TO DISCUSS LAND ACQUISITION; AND, 1 M.R.S. §405 (6) (D) WITH THE**  
514 **TOWN MANAGER TO DISCUSS LABOR NEGOTIATIONS AT 8:46P.M. A ROLL**  
515 **CALL VOTE WAS TAKEN WITH ALL IN FAVOR. MOTION PASSED 7/0/0.**  
516

517 **IT WAS MOVED BY COUNCILOR WHITE AND SECONDED BY COUNCILOR**  
518 **SPILLER TO COME OUT OF EXECUTIVE SESSION AT 9:57P.M. A ROLL CALL**  
519 **VOTE WAS TAKEN WITH ALL IN FAVOR. MOTION PASSED 7/0/0.**

520  
521 17. ADJOURNMENT:  
522

523 **IT WAS MOVED BY COUNCILOR THOMSON, SECONDED BY COUNCILOR**  
524 **WHITE TO ADJOURN THE MEETING AT 9:58P.M. ALL WERE IN FAVOR BY A**  
525 **VOICE VOTE. MOTION PASSED 7/0/0.**



# TOWN OF KITTEERY, MAINE

TOWN CLERK'S OFFICE

200 Rogers Road, Kittery, ME 03904

Telephone: (207) 475-1328 Fax: (207) 439-6806

RECEIVED  
DEC 07 2015

BY: 11:40 AM

## APPLICATION FOR APPOINTMENT TO TOWN BOARDS

NAME: LORGD FABBRIATORE

RESIDENCE: 5 SHAPLEIGH ROAD APT 205 Kittery

MAILING (if different) SAME AS ABOVE

E-MAIL ADDRESS: loredfabbriatore (\* preferred contact phone → 617-833-0088)  
@ hotmail.com PHONE #: (Home) \_\_\_\_\_ (Work) \_\_\_\_\_

**Please check your choice:**

- |  |   |
|--|---|
| <input type="checkbox"/> Board of Appeals                    | <input type="checkbox"/> Board of Assessment Review       |
| <input type="checkbox"/> Conservation Commission             | <input type="checkbox"/> Mary Safford Wildes Trust        |
| <input type="checkbox"/> Comprehensive Plan Update Committee | <input type="checkbox"/> Shellfish Conservation Committee |
| <input type="checkbox"/> Education Scholarship Committee     | <input type="checkbox"/> Economic Development Committee   |
| <input type="checkbox"/> Parks Commission                    | <input type="checkbox"/> Open Space Committee             |
| <input type="checkbox"/> Port Authority                      | <input checked="" type="checkbox"/> Planning Board        |
| <input type="checkbox"/> Personnel Board                     | <input type="checkbox"/> Other _____                      |

EDUCATION/TRAINING: B.S. Biology, Masters in Project Management

RELATED EXPERIENCE (Including other Boards and Commissions) \_\_\_\_\_

Indirectly my line of work aligns closely with legal, government and I believe that it could prove useful.

PRESENT EMPLOYMENT: Verizon - Cyber Security Analyst

ARE YOU A REGISTERED VOTER OF THE TOWN OF KITTEERY  Yes  No

ANY KNOWN CONFLICT OF INTEREST (please read back of application): \_\_\_\_\_

No known conflict of interest

REASON FOR APPLICATION TO THIS BOARD: To play a more integral part of the community in which I live.

I HAVE X / HAVE NOT ATTENDED AT LEAST TWO MEETINGS OF THE BOARD FOR WHICH APPLICATION IS BEING MADE. I AGREE TO ATTEND ALL MEETINGS, EXCEPT FOR SICKNESS OR EMERGENCY, AND WILL ADVISE THE CHAIRPERSON WHEN I AM UNABLE TO ATTEND, IF APPOINTED.

Please read the back of this application before signing.

[Signature]  
SIGNATURE OF APPLICANT

12/03/15  
DATE



# TOWN OF KITTELY, MAINE

TOWN CLERK'S OFFICE

200 Rogers Road, Kittery, ME 03904

Telephone: (207) 475-1328 Fax: (207) 439-6806

RECEIVED  
NOV 24 2015

BY: 10:15 Am

Re applied  
MP

## APPLICATION FOR APPOINTMENT TO TOWN BOARDS

NAME: Brett Costa

RESIDENCE: 19 Lynch Lane

MAILING (if different) \_\_\_\_\_

E-MAIL ADDRESS: Drcosta1 PHONE #: (Home) <sup>207</sup> 451-0442 (Work) \_\_\_\_\_  
@Comcast.net

**Please check your choice:**

- |  |   |
|--|---|
| <input type="checkbox"/> Board of Appeals                    | <input type="checkbox"/> Board of Assessment Review       |
| <input type="checkbox"/> Conservation Commission             | <input type="checkbox"/> Mary Safford Wildes Trust        |
| <input type="checkbox"/> Comprehensive Plan Update Committee | <input type="checkbox"/> Shellfish Conservation Committee |
| <input type="checkbox"/> Education Scholarship Committee     | <input type="checkbox"/> Economic Development Committee   |
| <input type="checkbox"/> Parks Commission                    | <input type="checkbox"/> Open Space Committee             |
| <input type="checkbox"/> Port Authority                      | <input checked="" type="checkbox"/> Planning Board        |
| <input type="checkbox"/> Personnel Board                     | <input type="checkbox"/> Other _____                      |

EDUCATION/TRAINING: CEO owner Costa Enterprises, Pl. to Telo, Stryker Const.

RELATED EXPERIENCE (Including other Boards and Commissions) \_\_\_\_\_  
Board of Appeals 13<sup>+</sup> years

PRESENT EMPLOYMENT: Self

ARE YOU A REGISTERED VOTER OF THE TOWN OF KITTELY  Yes  No

ANY KNOWN CONFLICT OF INTEREST (please read back of application): \_\_\_\_\_

REASON FOR APPLICATION TO THIS BOARD: Termed out on BOA want to cont service to town

I HAVE  HAVE NOT \_\_\_ ATTENDED AT LEAST TWO MEETINGS OF THE BOARD FOR WHICH APPLICATION IS BEING MADE. I AGREE TO ATTEND ALL MEETINGS, EXCEPT FOR SICKNESS OR EMERGENCY, AND WILL ADVISE THE CHAIRPERSON WHEN I AM UNABLE TO ATTEND, IF APPOINTED.

Please read the back of this application before signing.

Brett Costa  
SIGNATURE OF APPLICANT

11/24/15  
DATE



# Town of Kittery, Maine Fire Department

3 Gorges Road  
Kittery, Maine 03904  
Tel (207) 439-2262

Chief David O'Brien  
firechief@kitteryme.org

## Report to Town Council

Meeting Date: 14 December 2015  
From: David O'Brien, Fire Chief  
Subject: Ambulance Service Contract Agreement Extension

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### EXECUTIVE SUMMARY

Two and one half years ago Kittery and Eliot entered into a one year contract agreement with an option for a two year extension with American Ambulance New England Inc. (AANE) for ambulance services. The two year option was accepted and we are now in the final year of the contract agreement. Discussion between the Towns and AANE have resulted in a proposed four year contract agreement with possible extensions at the same terms of the original contract agreement.

### STATEMENT OF NEED

The Towns of Kittery and Eliot provide through local government ambulance service for our citizens. The contract agreement with the current provider, AANE, will terminate on 30 June 2016. A new contact agreement is required to continue with the present provider of ambulance services.

### BACKGROUND

The Towns of Kittery and Eliot collaboratively advertised for ambulance service early in 2013. After receiving several proposals and conducting extensive reviews, AANE was selected for a one year contract agreement with a possible extension of two more years. AANE was selected because of their ability to meet and exceed the Town's specifications for ambulance service. The cost to the Towns was zero dollars (\$0.00). The two year extension was agreed upon and AANE is well into the second year of the extension.

#### FACTS BEARING ON THE EQUATION

The Towns public safety officials are pleased with the service provided by AANE for the last two and one half years. The present contract agreement is very rigid in response times, training requirements, quality of apparatus and equipment, achieving Commission on the Accreditation of Ambulance Service (CAAS) certification and many more special conditions. AANE has maintained appropriate response times, continues to have a highly motivated and trained workforce including paramedic level technicians, has excellent apparatus and equipment and has maintained their CAAS certification. The proposed contract agreement has been amended to ensure the primary paramedic ambulance is no older than five (5) years of age and/or has no more than 200,000 miles on the odometer. AANE has also agreed to provide sixteen thousand dollars (\$16,000) towards the improvement of the Walker Street Station. They will replace several windows in the building, repaint the entire apparatus bay, and insulate the living quarters and office spaces at the rear of the building. The Town Managers of both towns have reviewed the proposed contract agreement and have agreed to bring this proposed four year contract agreement forward to their respective Town Council/Board of Selectmen.

#### CURRENT SITUATION

Ambulance service for the Towns of Kittery and Eliot is provided by AANE. They are in the final year of a two year contract agreement extension. They have met or exceeded all requirements per the original contract agreement.

#### PROPOSED SOLUTION/RECOMMENDATION

The public safety officials of both Kittery and Eliot recommend a new four year contract agreement for ambulance service be signed between the Towns and AANE. This contract agreement includes a provision for future extensions at the same terms of the original contract agreement unless agreed otherwise by all parties. The Eliot Town Manager brought this proposal forward for discussion and action to the Eliot Board of Selectmen on 12 November 2015 where approval was granted.

#### RATIONALE FOR THE PROPOSED SOLUTION (INCLUDING COSTS)

The rationale for this proposed solution is simple. AANE has provided an excellent service to both the Towns of Kittery and Eliot for the past two and one half years. They have provided this service at no cost to the Towns and under the proposed contract agreement will continue to provide this service at no cost. It is recommended that the Town Council support this proposal and have Town Manager Nancy Colbert Puff finalize the contract agreement with AANE.



52 **5. TERMS**

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a. Unless terminated earlier as otherwise provided herein, this Agreement is for a term of four (4) years, commencing on the first (1<sup>st</sup>) day of July, 2016 at 12:01 am and terminating on the thirtieth (30<sup>th</sup>) day of June, 2020 at Midnight; with an option by the TOWNS to extend for an additional four (4) year period with the agreement of all Parties. Extensions will be at the same terms of the original Agreement unless agreed to otherwise by all Parties. The TOWNS shall give written notice to the CONTRACTOR of its intent to exercise the option within thirty (30) days of the end of original Agreement term.

b. Notwithstanding the foregoing, either Town reserves the right to cancel this Agreement for cause on seven (7) calendar days' written notice, certified mail, return receipt requested, if the CONTRACTOR fails to meet the following standards:

The CONTRACTOR agrees to uphold the service and response standards set forth in the original bid specifications. The CONTRACTOR must notify the TOWNS immediately if it fails to uphold any standard or specification in the contract. A failure to notify the TOWNS about any failure to uphold the standards and specifications set forth is considered a breach of the Agreement terms and conditions.

The CONTRACTOR agrees to possess and maintain sufficient equipment, materials and personnel to meet all requirements set forth in the bid specifications.

The CONTRACTOR agrees all bid prices must be maintained for the entire contract period.

The TOWNS shall state in its notice the specific reason(s) why the Agreement is being cancelled or not renewed. If the CONTRACTOR is adjudged as bankrupt, or if it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency, or if it should refuse, or should fail, except in cases for which extension of time is provided, to supply enough properly skilled workers or proper materials or equipment, or if it should fail to make prompt payments to sub-contractors or for material or labor, or disregard laws, ordinances or instructions of the TOWNS or otherwise be guilty of a violation of any provision of the contract, then notwithstanding the foregoing, either Town reserves the right to cancel this Agreement for cause on seven (7) calendar days' written notice, certified mail, return receipt requested without prejudice to any other right or remedy.

**6. INSURANCE**

Throughout the term of this Agreement, The CONTRACTOR agrees to furnish at its sole expense and maintain insurance per the specifications and minimum limits set forth herein:

a. Commercial General Liability on an occurrence (as opposed to claims-made) basis with general aggregate limit applicable per project and per location. (ISO CG2503 and CG2504, or equivalents)

Each occurrence limit	\$1,000,000
General aggregate limit	\$2,000,000
Products/Comp. op. aggregate limit	\$2,000,000

102 An Additional insured provision is to apply for the TOWNS, their respective officers, officials,  
103 agents, and employees on a primary, non-contributory basis. Coverage for contractual liability is  
104 to be included for the indemnification provisions of this Agreement:

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b. Automobile liability for owned, hired, and non-owned autos with a combined  
single limit each accident of \$1,000,000.

c. Workers' compensation insurance to comply with the requirements of MAINE  
statutes, plus employers' liability for:

Each accident:	\$500,000
Each employee (disease)	\$500,000
Policy limit (disease)	\$500,000

d. Ambulance services professional liability in amounts of:

Each occurrence limit	\$1,000,000
Aggregate limit	\$2,000,000

e. Umbrella liability in amounts of:

Each occurrence limit	\$10,000,000
Aggregate limit	\$10,000,000

Umbrella liability must be excess over all underlying LIABILITY coverage

All policies shall be so written that the Eliot Town Manager and Kittery Town Manager will  
be notified of cancellation or restrictive amendment at least thirty (30) days prior to the effective  
date of such cancellation or amendment. A certificate of insurance from CONTRACTOR'S  
insurance carrier showing at least the coverage and limits of liability specified above and the  
inception and expiration dates shall be filed with the TOWNS at least seven (7) calendar  
days before operations are begun. Such certificate shall not merely name the types of policy  
provided, but shall specifically refer policies to these specifications and shall state that such  
insurance is as required by these specifications.

**7. COMPLIANCE WITH THE LAW**

The CONTRACTOR agrees to be in compliance at all times with all Federal and States  
of Maine and New Hampshire Emergency Medical Service (EMS) rules and regulations per the  
respective States' Department of Public Safety EMS Divisions, legislation and the rules and  
regulations promulgated thereunder; the applicable laws, rules and regulations of the Town, State,  
and Federal Agencies and as requested by the Eliot and Kittery Fire and Police Departments,  
hereinafter referred to as the "Standards". In the event that the Contractor becomes aware of any  
material change in Town, State, or Federal standards, it shall notify the TOWNS in writing within  
fifteen (15) calendar days of having become aware of the change.

150 **8. GENERAL TERMS AND CONDITIONS**

151

152 a. The Advertisement, Request for Proposals (attached), the Information for Bidders, the  
153 Proposal (attached), this Agreement, the Bonds, the General Conditions of the Agreement, the  
154 Agreement Specifications and any Addenda comprise the Agreement Documents; the Agreement  
155 Documents are as fully a part of this Agreement as if repeated herein; and the Agreement  
156 Documents, taken together, constitute the Agreement. The more stringent provisions of the  
157 terms set forth in the Agreement document shall prevail.

158

159 b. Work will not begin without receipt of an executed Agreement.

160

161 c. In accordance with Section 504 of the (Federal) Rehabilitation Act of 1973 and 31  
162 Code of Federal Regulations Part 51, the CONTRACTOR pursuant to these General  
163 Requirements agrees to certify to the TOWNS that said CONTRACTOR does not  
164 discriminate in its employment, procurement, and marketing activities on the basis of race,  
165 creed, color, national origin, sex, handicap or age.

166

167 d. The TOWNS, without invalidating the Agreement, may order extra work or make  
168 changes by altering, adding to, or deducting from the work. All such work must be executed  
169 under conditions of the original Agreement. In giving instructions, the Eliot Town Manager  
170 or the Kittery Town Manager or their project directors have authority to make minor changes  
171 in the work not involving extra cost and consistent with the purposes of the work; but  
172 otherwise no extra work or change may be made unless in pursuance of written Agreement  
173 amendment signed by the TOWNS and no claim for addition to the Agreed sum is valid  
174 unless so ordered.

175

176 e. The CONTRACTOR agrees to not assign the Agreement or any part thereof, or  
177 sublet it or any part thereof, without previous written consent of the TOWNS.

178

179 f. The CONTRACTOR agrees to show proof that it has sufficient equipment,  
180 equipment operators and a sufficient number of qualified and experienced employees to  
181 properly and efficiently accomplish the work. The CONTRACTOR agrees to furnish proof  
182 of its financial ability to start, operate and complete the work in the form of a Performance  
183 Bond in the amount of one hundred thousand dollars (\$100,000) and a Payment Bond (see section  
184 8h below). Said Bonds must be executed yearly, be obtained prior to the execution of the initial  
185 Agreement, and are a condition precedent to the execution of the Agreement, and each and any  
186 renewal thereof.

187

188 g. The CONTRACTOR agrees to indemnify and hold harmless the Towns of Eliot and  
189 Kittery, their respective officers, officials, agents, and employees, from and against any claims on  
190 account of bodily injury (including death) and/or property damage (including loss of use thereof),  
191 plus reasonable attorney fees, arising or alleged to have arisen out of the performance or non-  
192 performance of the Agreement due to the negligence of the CONTRACTOR, its agents,  
193 employees, subcontractors, or others for whom the CONTRACTOR is responsible.

194

195 This indemnification provision survives termination of this Agreement.

196

197 h. The CONTRACTOR agrees to furnish a Payment Bond in a form acceptable to the  
198 TOWNS, executed by a surety company duly authorized to do business in the State of Maine in  
199 the amount of fifty thousand dollars (\$50,000) as security for payment of all persons performing

200 labor and furnishing materials and equipment in connection with this Agreement. Said bond  
201 must be executed yearly, be obtained prior to the execution of the initial Agreement, and is a  
202 condition precedent to the execution of the Agreement, and each and any renewal thereof.

203

204 i. The CONTRACTOR agrees to hold the TOWNS harmless from all and any claims,  
205 liens, demands or bills for labor and/or materials furnished or delivered in the performance of  
206 this Agreement, and agrees to indemnify the TOWNS against all loss, damage or costs, legal or  
207 otherwise, ensuing from the same.

208

209 j. No officials of the Towns of Eliot and Kittery or their agents or employees may be  
210 held personally responsible by CONTRACTOR, his agents or employees for any liability arising  
211 under the Agreement.

212

## 213 9. SEVERABILITY

214

215 If any part of this Agreement is found to be void or legally unenforceable, all remaining  
216 provisions continue to be binding and valid, and those unenforceable sections are to be  
217 interpreted if possible to best reflect the intention of the parties.

218

## 219 10. GOVERNING LAW

220

221 This Agreement is governed and enforced by the laws of the State of Maine.

222

## 223 11. NOTICES

224

225 All notice and other communications hereunder must be in writing and are deemed to be  
226 given and to satisfy any notice requirements contained in this Agreement, and when delivered in  
227 fully legible form and sent by certified mail, return receipt requested. Notices must be addressed  
228 to CONTRACTOR or TOWNS at its address's set forth below:

229

230 In the case of the TOWNS:

231 Town of Kittery, ME

232 200 Rogers Road

233 Kittery, ME 03904

234

Town of Eliot, ME

1333 State Road

Eliot, ME 03903

235 In the case of the CONTRACTOR:

236 American Ambulance, Inc.

237 16 Hamilton Street

238 Saugus, MA 0906

239

## 240 12. SPECIAL CONDITIONS

241

242 a. The CONTRACTOR shall furnish all the dedicated Emergency Ambulance  
243 services, with all services incidental thereto, for the transportation of Eliot and Kittery  
244 patients to area medical facilities. Service will be under the general direction of staff  
245 from the Eliot and Kittery Police and/or Fire Departments.

246

247 b. The CONTRACTOR agrees to provide ambulance(s) customarily assigned to  
248 Eliot and Kittery with functioning mobile and portable two-way radios, on such frequencies  
249 that communication is obtained between the Ambulance, the current Dispatch  
250 Communications Center, Towns of Eliot and Kittery Public Safety Vehicles, and with other  
251 emergency ambulance service response coordinating agencies and Emergency Room  
252 Facilities. Dispatch for emergency ambulance service shall be performed by the Kittery Police  
253 Dispatch Communication Center (Kittery Dispatch). Dispatch will be direct from Kittery  
254 Dispatch to the CONTRACTORS emergency ambulance service located at 25 Walker Street in  
255 the Town of Kittery, Maine or directly to the ambulance when not in station. Whenever the  
256 ambulance is dispatched to an emergency call, it shall log in with the Kittery Police  
257 Dispatch Communications Center at the time of dispatch, and maintain communications  
258 throughout the incident, until closure. The CONTRACTOR agrees to annually pay the Town  
259 of Kittery, upon invoice, the sum of sixteen thousand dollars (\$16,000) for EMS dispatch  
260 services. Quarterly payments in the amount of four thousand dollars (\$4,000) shall begin at  
261 the time of Agreement commencement and continue through the life of the Agreement. The  
262 TOWNS, valid government entities legally empowered to regulate the provision of EMS  
263 within their respective municipalities, have entered into this Agreement with CONTRACTOR  
264 in a manner consistent with relevant government contracting laws. The TOWNS  
265 acknowledge and certify that the price paid for dispatch services is an approximate cost of  
266 these services and the CONTRACTOR is not overpaying for these services. Parties  
267 acknowledge and certify that the dispatch fee will not be tied directly or indirectly to the  
268 volume or value of referrals.

269  
270 c. In the event of simultaneous calls for emergency medical service and/or overlapping  
271 calls for emergency medical service, the CONTRACTOR agrees to have sufficient staffing and  
272 equipment capable of responding within a reasonable time, with one or more additional  
273 ambulance(s) as the incident(s) may require. In case of medical necessity, the CONTRACTOR  
274 agrees to furnish transportation while also simultaneously maintaining backup coverage. The  
275 licensure level of one or more additional ambulance(s) is at the discretion of the  
276 CONTRACTOR but must always maintain BLS minimum coverage. The CONTRACTOR  
277 agrees to provide the TOWNS one (1) 24 hour/7 days per week/365 days per year dedicated  
278 Paramedic ambulance housed at 25 Walker Street in Kittery. The CONTRACTOR agrees to also  
279 provide an additional/secondary 24 hour/7 days per week/365 days per year Paramedic  
280 ambulance housed at 25 Walker Street, Kittery that is dedicated to the TOWNS for twelve  
281 hundred and fifty hours (1250) hours and available for emergency ambulance calls when not on  
282 inter-facility transports. The 1250 dedicated hours must be scheduled at the TOWNS discretion  
283 and may be changed based on conditions. The CONTRACTOR agrees to subsidize additional  
284 dedicated hours from the secondary Paramedic ambulance when requested by the TOWNS at the  
285 rate of eighty dollars (\$80.00) per unit hour and for a minimum of four (4) hour daily increments.  
286 The CONTRACTOR agrees to establish mutual aid agreements with other communities and  
287 private ambulance services with written approval of the TOWNS.

288  
289 d. The CONTRACTOR agrees all vehicles utilized within the TOWNS must be  
290 properly insured, registered, and maintained, and display a valid Motor Vehicle Inspection  
291 sticker at all times during the life of this contract. All drivers/emergency personnel must at all  
292 times hold all professional, regulatory and administrative certifications required for the work.  
293 All driver/operators of ambulance apparatus must be accredited Emergency Vehicle Operators.  
294 The CONTRACTOR agrees the primary paramedic ambulance must be no older than five (5)  
295 years of age and/or have no more than 200,000 miles on the odometer.

296

297 e. The CONTRACTOR agrees to meet an ALS average response time of six (6) minutes,  
298 fifty-nine (59) seconds 90% of the time for the Town of Kittery and an ALS average response  
299 time of eight (8) minutes, fifty-nine (59) seconds 90% of the time for the Town of Eliot. These  
300 response times are committed based on the ambulance being within the TOWNS limits and  
301 available for service.  
302

303 f. The CONTRACTOR agrees to meet a BLS average response time of six (6) minutes,  
304 fifty-nine (59) seconds 60% of the time for the Town of Kittery and a BLS average response time  
305 of eight (8) minutes, fifty-nine (59) seconds 60% of the time for the Town of Eliot. These  
306 response times are committed based on the ambulance being within the TOWNS limits and  
307 available for service.  
308

309 g. The CONTRACTOR agrees to provide training at no cost to the TOWNS' Public  
310 Safety personnel (Fire and Police) to maintain First Responder certification. Instructors,  
311 curriculum, and schedule will be reviewed and approved by the respective Fire Chiefs of Eliot  
312 and Kittery.  
313

314 h. The CONTRACTOR agrees to house CONTRACTOR vehicles, equipment and  
315 personnel in 25 Walker Street, a Kittery town-owned building. A separate lease will be written  
316 and attached as Addendum to this Agreement. The CONTRACTOR agrees to perform upgrades  
317 to the building at 25 Walker Street in the amount not to exceed sixteen thousand dollars (\$16,000)  
318 over the four year period of this agreement. The upgrades include replacing windows in the  
319 living spaces, insulating the living spaces ceiling and roof areas, and repainting the apparatus bay  
320 walls, ceiling and fixtures. The Kittery Fire Chief will serve as the representative for the Town of  
321 Kittery to ensure specifications, materials and installation is acceptable and to ensure compliance  
322 with this section of the Agreement.  
323

324 i. The CONTRACTOR agrees monthly run reports and response time data will be  
325 sent to Towns of Eliot and Kittery Fire Chiefs. The data will include all incidents and  
326 response times.  
327

328 j. The CONTRACTOR agrees to forward to the TOWNS the CONTRACTOR'S usual  
329 and customary billing rates. They will be forwarded by the fifteenth (15<sup>th</sup>) of January of each  
330 contract year.  
331

332 k. The CONTRACTOR agrees to maintain Global Positioning System (GPS)  
333 capability/vehicle location capability using the existing Kittery Dispatch software in each  
334 ambulance with position/location indication to the current Dispatch Center.  
335

336 l. The CONTRACTOR agrees to provide ambulance standby service for TOWNS' Fire  
337 and Police Departments at their request and at no additional cost.  
338

339 m. The CONTRACTOR agrees to working with the TOWNS' Fire Departments in  
340 developing a comprehensive incident scene rehabilitation program.

341 n. The CONTRACTOR agrees to letter the primary assigned ambulance apparatus  
342 stating "Servicing the Towns of Eliot and Kittery" (or something similar). Lettering is to be  
343 approved by the TOWNS' Fire Chiefs.  
344

345 o. The CONTRACTOR agrees all primary assigned ambulances must maintain a 12-lead  
346 EKG capability with carbon monoxide (CO) monitoring capability manufactured by Zoll, model  
347 # X-series monitor/defibrillator.

348 p. The CONTRACTOR agrees all primary assigned ambulances must be equipped with  
349 power-operated cots/stretchers manufactured by Stryker, model # Power-Pro XT Stretcher.  
350

351 q. The CONTRACTOR agrees to provide to the TOWNS a nationally registered  
352 Emergency Medical Technician (EMT) (IAW DOT Standards) Training Course, taught in house  
353 or at one of the TOWNS fire stations, for up to fifteen (15) enrollees per agreement year. The  
354 CONTRACTOR agrees when the prospective student enrollment is less than the number that  
355 supports an in-house program, twelve (12) students, the CONTRACTOR will fully fund the  
356 tuition of outside EMT training for up to three (3) students per year. All training materials  
357 including text books and supplies/materials must be funded by the CONTRACTOR.  
358

359 r. The CONTRACTOR agrees to continue the EMS Review Board established by the  
360 original AGREEMENT to address complaints or concerns. Board must be convened within 72  
361 hours of written concern/complaint. The EMS Review Board will consist of Eliot and Kittery  
362 Police and Fire Chiefs or their designated representatives, and a supervisor from the  
363 CONTRACTOR. The Board will meet at least quarterly to review services and standards at  
364 which time recorded minutes will be taken and reported routinely to town officials.  
365

366 s. The CONTRACTOR agrees to supply an off-line Operations Manager in a non-  
367 transporting vehicle to the TOWNS. This vehicle will be available to the TOWNS during peak  
368 hours. The determination of peak hours will be done in agreement with the CONTRACTOR  
369 representatives and the TOWNS' representatives.  
370

371 t. The CONTRACTOR agrees to stock and maintain a Mass Casualty trailer. The trailer  
372 will be stationed in the CONTRACTOR'S Somersworth, NH station and will be capable of being  
373 towed by the CONTRACTOR to the scene of large incidents at the request of the TOWNS'  
374 Public Safety Officials. The trailer will contain supplies and equipment to treat up to one  
375 hundred (100) patients.  
376

377 u. The CONTRACTOR agrees to provide extra emergency (911) staffing for any severe  
378 weather events at no cost to the TOWNS.  
379

380 v. The CONTRACTOR agrees to provide "hands-only" Cardio Pulmonary Resuscitation  
381 (CPR) instruction to the citizens of the TOWNS. This must be accomplished on a quarterly basis  
382 and at no cost to the TOWNS or their citizens.  
383

384 w. The CONTRACTOR agrees to provide blood pressure monitoring clinics to the  
385 citizens of the TOWNS. This must be accomplished on a quarterly basis and at no cost to the  
386 TOWNS or their citizens.  
387

388 x. The CONTRACTOR agrees to provide CPR and Automatic External Defibrillation  
389 (AED) training to the TOWNS' municipal employees. This must be accomplished on an annual  
390 basis and at no cost to the TOWNS or their employees.  
391

392 y. The CONTRACTOR agrees to participate in a Mass Casualty Incident drill.  
393 Participation will include initial planning and preparation through to completion of the drill. The  
394 drill will be under the direction of the TOWNS' public safety personnel.  
395

396 z. The CONTRACTOR agrees to maintain C.A.A.S (Commission on the Accreditation of  
397 Ambulance Service) certification throughout the agreement period.  
398



450 STATE OF MAINE  
451 COUNTY OF YORK, ss.

452  
453 The foregoing instrument was acknowledged before me on the day of  
454 201 , by Nancy Colbert Puff, to me known, who being duly sworn acknowledges that she  
455 is the Town Manager of the Town of Kittery, Maine which executed the foregoing  
456 Agreement as the free act and deed of the Town and in her said capacity duly authorized.

457  
458  
459 \_\_\_\_\_  
460 Notary Public  
461 Name:  
462 My commission expires on

463 STATE OF MAINE  
464 COUNTY OF YORK, ss.

465  
466 The foregoing instrument was acknowledged before me on the day of  
467 201 , by Dana K. Lee, to me known, who being duly sworn acknowledges that he is the  
468 Town Manager of the Town of Eliot, Maine which executed the foregoing Agreement as  
469 the free act and deed of the Town and in his said capacity duly authorized.

470  
471  
472 \_\_\_\_\_  
473 Notary Public  
474 Name:  
475 My commission expires on

476  
477 STATE OF  
478 COUNTY OF ,ss

479  
480 The foregoing instrument was acknowledged before me on the day of  
481 201 , by BRENDAN McNIFF, to me known, who being duly sworn, did depose and say  
482 and did acknowledge that he is Chief Operating Officer of American Ambulance, Inc.,  
483 the corporation described in and which executed the foregoing Agreement; that he knows  
484 the seal of said corporation; that the seal affixed to said Agreement is such corporate seal;  
485 that it was so affixed by the order of the board of directors of the said corporation; and  
486 that he signed his name thereto by like order.

487  
488  
489 \_\_\_\_\_  
490 Notary Public  
491 Name:  
492 My commission expires on

493  
494

Addenda:

**LEASE**

dated

June \_\_\_\_\_, 2016

between

Town of Kittery, Maine

LANDLORD

and

American Ambulance, Inc.

TENANT

Affecting premises commonly known as  
25 Walker Street, in the Town of Kittery, Maine

## LEASE

THIS LEASE is made as of June \_\_\_\_, 2016, by and between the Town of Kittery, Maine, a municipal corporation having an address at 200 Rogers Road, Kittery, Maine 03904 (hereinafter "Landlord") and American Ambulance Inc., a Massachusetts corporation, having an address at American Ambulance, Inc. 16 Hamilton Street, Saugus, MA 01906 (hereinafter "Tenant").

### 1. Leased Premises.

In consideration of the rent and other payments and covenants of Tenant hereinafter set forth, and upon the following terms and conditions, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord that certain parcel of property consisting of a parcel of land as generally described on the Kittery Town Tax Map 4, Lot 137, including a building consisting of approximately 4,875 square feet of space and located at 25 Walker Street, Kittery, Maine 03904 (hereinafter "Demised Premises").

### 2. Definition(s).

Ambulance Service Agreement: Ambulance Service Agreement means that Agreement made June \_\_\_\_, 2015 by and between the Towns of Eliot, ME, and Kittery, ME, and American Ambulance, Inc., including and amendments thereto or renewal thereof.

### 3. Term.

This Lease commences on July 1, 2016 and expires on June 30, 2017, being a term concurrent with the term of the Ambulance Service Agreement between American Ambulance New England and the Towns of Eliot and Kittery, Maine, dated June \_\_\_\_, 2015.

### 4. Use of Demised Premises.

Tenant may use the Demised Premises to house and quarter ambulance and medical transportation vehicles, equipment and personnel consistent with all municipal, state and federal rules, regulations, ordinances, statutes, and controlling authority and in agreement with the Ambulance Service Agreement.

### 5. Rent.

Direct rental payments to the Landlord in the form of cash payments are waived in consideration of the performance of the Tenant of all the terms and conditions of this Lease and the Ambulance Service Agreement between the Tenant and the Landlord.

### 6. Utilities.

Tenant shall be solely responsible for all costs of utilities serving the Demised Premises, including but not limited to heat, water, sewer, electricity, gas and the like.

### 7. Representation and Warranties of Landlord.

Landlord represents and warrants to Tenant that the Landlord has authority for the execution, delivery, and performance of its obligations under this Lease.

#### 8. Representations and Warranties of Tenant.

The Tenant represents and warrants to Landlord that the Tenant has the authority to execute, deliver, and perform all of its obligations under this Lease. Tenant further represents to Landlord that Tenant has had the full opportunity to inspect the Demised Premises and to employ professionals on behalf of Tenant to make any investigations of the Demised Premises at Tenant's sole cost and discretion. Tenant accepts the Demised Premises in its "as is" condition with no reliance upon any representations, expressed or implied, as to the condition of the Demised Premises by the Landlord. Tenant represents that the Tenant has examined and is fully familiar with the physical condition of the Demised Premises, the improvements thereon, and surface conditions of the exterior of the Demised Premises. Tenant accepts the same without recourse to the Landlord in the condition and state in which they now are and agrees that the Demised Premises complies in all respects with the requirements of this Lease. The Landlord makes no representation or warranty, expressed or implied, in fact or by law, as to the nature or condition of the Demised Premises, or its fitness or availability for any particular use.

Tenant represents and warrants as an integral part of this Lease that it will timely comply with all promises, conditions, and covenants in the Ambulance Service Agreement and it further represents that any breach of said Ambulance Service Agreement constitutes a breach of this Lease, for which all Landlord's remedies provided in this Lease are available.

Tenant warrants that it will make no use of the Demised Premises nor allow any other individual, person, corporation, partnership, or entity of any kind to use the Demised Premises for any purpose other than as expressly provided in the Lease.

#### 9. Repairs and Maintenance.

Tenant shall, at its own cost and expense, maintain the Demised Premises in good repair due to normal wear and tear, to a maximum of \$24,000 per year. Landlord shall be responsible for any structural maintenance, structural repairs, or structural replacement to the Demised Premises not caused in any manner by the negligence of the Tenant, its employees, agents, or invitees. Tenant shall preserve the structural integrity of the Demised Premises in a reasonable manner. Tenant shall not undertake any structural improvements or repairs to the Demised Premises without prior written approval by the Landlord. Tenant, at its sole cost and expense, shall maintain the exterior of the Demised Premises in a safe and reasonable condition, and shall be solely responsible for removal of any waste materials generated by Tenant's use of the Demised Premises. Tenant shall be responsible for its own parking and/or snow removal from the walkways, driveway, and parking areas of the Demised Premises.

Any improvements made by the Tenant to the Demised Premises shall become the sole property of the Landlord upon termination of this Lease. Should any damage be done to the Demised Premises through the removal of equipment upon the termination of this Lease, the Tenant shall immediately repair, at Tenant's expense, all damage to the Demised Premises caused by any such removal, whether effected by the Tenant or any other person.

10. Landlord Access.

Tenant agrees to permit Landlord or its authorized representatives to enter to inspect the Demised Premises with a management representative of the Tenant present at all reasonable times during usual business hours after reasonable notice (except in the case of an emergency). Landlord shall use all reasonable efforts to minimize the disruption to Tenant by any such entry into the Demised Premises.

11. Insurance.

During the term of this Lease, Landlord, in its sole discretion, may maintain protection against physical damage to the building in such amount and against such causes of loss as Landlord deems appropriate. Tenant shall, upon receipt of Landlord's notification as to cost of such protection, promptly reimburse Landlord for such costs.

Tenant is responsible for maintaining protection against physical damage to its business personal property, including motor vehicles, but without obligation to do so.

During the terms of this Lease Tenant shall maintain and provide Landlord with certificate(s) evidencing:

a. Workers' compensation insurance which complies with the requirements of Maine Statute; and

b. Commercial general liability insurance in amounts not less than \$1,000,000 each occurrence and \$2,000,000 general aggregate with a provision that the Town of Kittery, its officers, officials, agents, servants and employees are included as additional insureds.

12. Indemnification.

Tenant shall indemnify and hold Landlord, its officers, officials, agents, servants and employees harmless from and against all liabilities, obligations, claims, damages, fines, penalties, interest, causes of action, costs and expenses (including attorneys' fees), imposed or incurred by or asserted against Landlord or the Demised Premises by reason of occurrence or existence of any of the following caused or alleged to have been caused in whole or in part by Tenant: any accident, injury to or death of persons (including employees) or loss of or damage to property, including loss or use thereof, occurring, or claimed to have occurred, on or about the Demised Premises or any part thereof, or any improvements now or hereafter erected thereon; any failure on the part of the Tenant promptly and fully to comply with or perform any of the terms, covenants or conditions of this Lease; or performance of any labor or services in respect to the Demised Premises or any part thereof. In the case of any suit, action or proceeding brought against Landlord or filed against the Demised Premises or any part thereof by reason of any such occurrence, Tenant, upon Landlord's request and at Tenant's expense, shall resist and defend such suit, action or proceeding, or cause the same to be resisted and defended by counsel designated by Tenant. The obligations of Tenant under this provision survive the expiration of the Lease term.

13. Landlord's Covenant of Quiet Enjoyment; Title.

Landlord covenants that it has good and clear record and marketable title to the Demised Premises and that Tenant, upon satisfying the terms and conditions of this Lease and the Ambulance Service Agreement, may peaceably and quietly hold and enjoy the Demised Premises for the term of the Lease.

14. Tenant's Obligation to Quit.

Tenant shall, upon expiration or earlier termination of this Lease, leave and peaceably and quietly surrender and deliver to Landlord the Demised Premises in as good condition, order and repair as the same were at the commencement date, reasonable wear and tear excepted.

15. Tenant's Default; Landlord's Remedies.

If Tenant defaults in any covenants of this Lease or breaches the Tenant's obligations under the Ambulance Service Agreement with the Landlord and such default or breach continues for fifteen (15) days after written notice from the Landlord, the Landlord may, to the extent permitted by law, immediately or at any time thereafter while the situation still exists enter into and upon the Demised Premises, or any part thereof in the name of the whole, and repossess the same as of Landlord's former estate, and expel Tenant and those claiming through or under Tenant and remove its effects without being deemed guilty of any manner of trespass, and without prejudice to any remedies which might otherwise be used for breach of Tenant obligations and covenants, and upon entry as aforesaid this Lease terminates.

Tenant shall reimburse Landlord for all costs and expenses, including reasonable attorneys' fees, incurred by or on behalf of the Landlord occasioned by or in connection with any default by Tenant under this Lease or under the separate Ambulance Service Agreement.

16. Landlord's Remedies Cumulative.

All the rights, powers and remedies of Landlord provided for in this Lease now or hereafter existing at law or in equity, or by statute or otherwise, are deemed to be separate, distinct, cumulative, and concurrent. No one or more of such rights, powers or remedies, nor any mention of reference to any one or more of them in this Lease, is deemed to be in the exclusion of, or a waiver of, any other rights, powers or remedies provided for in this Lease, or now or hereafter existing at law or in equity, or by statute or otherwise. The exercise or enforcement by Landlord of any one or more of such rights, powers or remedies does not preclude the simultaneous or later exercise or enforcement by Landlord of any or all of such other rights, powers or remedies.

17. Compliance with Laws and Regulations.

Landlord and Tenant will abide with all applicable federal, state, and municipal laws, statutes, regulations, and ordinances in connection with Tenant's use and occupancy of the Demised Premises and the execution of this Lease. This Lease is governed by the laws of the State of Maine.

18. Referrals.

It is not the intent of either party that any remuneration, benefit or privilege under this Lease shall influence or in any way be based on the referral or recommended referral by Landlord of patients to the Tenant or its affiliated providers, if any, or the purchasing, leasing or ordering of any services other than the specific services described in this Lease. Any payments or credits specified herein are consistent with what the parties reasonably believe to be a fair market value for the services provided.

19. Assignment and Subletting.

This Lease may not be assigned or sublet without the express, written consent of the Landlord.

20. Severability.

If any part of this Lease is found to be legally unenforceable, all remaining provisions continue to be binding, valid and enforceable and in no way affected by those unenforceable sections interpreted to best reflect the intention of the parties.

21. Notices.

All notice and other communications hereunder must be in writing and are deemed to be given and to satisfy any notice requirements contained in this Lease, and when delivered in fully legible form and sent by certified mail, return receipt requested. Notices must be addressed to Landlord or Tenant at its address set forth below:

In the case of the Landlord: Town Manager  
Town of Kittery  
200 Rogers Road  
Kittery, ME 03904

In the case of the Tenant: Brendan McNiff  
American Ambulance, Inc.  
16 Hamilton Street  
Saugus, MA 01906

Either party may change the address to which notices are to be sent to it by providing notice of same to the other party in accordance with the provisions of this Section.

22. Miscellaneous.

All rights, powers and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate any applicable law, and are intended to be limited to the extent necessary so that they will not render this Lease invalid, unenforceable or not entitled to be recorded under any applicable law. The headings in this Lease are for purposes of reference only and shall not limit or define the meaning hereof. This Lease may be changed or modified only by an instrument in writing signed by the party against which enforcement of such change or modification is sought. This Lease is binding upon and inures to the benefit of and is enforceable by the respective successors and any permitted assignees of the parties hereto.

IN WITNESS WHEREOF, Lessor and Lessee have executed this Lease on the date first above written.

TOWN OF KITTERY, MAINE  
LANDLORD

By \_\_\_\_\_  
Nancy Colbert Puff

\_\_\_\_\_  
Witness

AMERICAN AMBULANCE, INC.  
TENANT

By \_\_\_\_\_  
Brendan McNiff

\_\_\_\_\_  
Witness

STATE OF MAINE  
COUNTY OF YORK, ss.

The foregoing instrument was acknowledged before me on the     day of 2016, by Nancy Colbert Puff, to me known, who being duly sworn acknowledges that she is the Town Manager of the Town of Kittery, Maine which executed the foregoing Lease as the free act and deed of the Town and in her said capacity duly authorized.

\_\_\_\_\_  
Notary Public  
Name:  
My commission expires on

STATE OF MASSACHUSETTS  
COUNTY OF \_\_\_\_\_,ss

The foregoing instrument was acknowledged before me on the \_\_\_\_\_ day of 2016, by BRENDAN McNIFF, to me known, who being duly sworn, did depose and say and did acknowledge that he is Chief Operating Officer of American Ambulance, Inc., the corporation described in and which executed the foregoing Lease; that he knows the seal of said corporation; that the seal affixed to said Lease is such corporate seal; that it was so affixed by the order of the board of directors of the said corporation; and that he signed his name thereto by like order.

\_\_\_\_\_  
Notary Public  
Name:  
My commission expires on

**REPORT to THE KITTERY TOWN COUNCIL: Wood Island Life Saving Station  
Approval of Repair Agreement Amendments and Concession Agreement**

1 **Date:** December 8, 2015

2 **Responsible Individual:** Wood Island Life Saving Station Association. Sam Reid, President.

3 **Subject:** Approval of 1) Repair, Maintenance and Use Agreement and 2) Concession Agreement  
4 for Wood Island Life Saving Station.

5 **Drone Video of Wood Island Station:** <http://tinyurl.com/prz8jhi>

6 **EXECUTIVE SUMMARY:**

7 A negotiation that can produce an outcome with “wins” for both parties is most likely to succeed.  
8 There are two documents attached to this report and they represent wins for both WILSSA and  
9 Kittery. The documents are amendments to the existing October 18, 2013 repair agreement  
10 between WILSSA and the Town and a new concession agreement. Council voted to allow the  
11 Town Manager and the WILSSA President to craft these contracts on August 10, 2015.  
12 Kittery’s legal council is expected to review the contracts, assuming Council action, and provide  
13 comments. The National Park Service too will need to review the concession agreement. Since  
14 both Kittery’s legal council and Park Service will need to provide their input, Council approval is  
15 recommended for December 14 in order to keep the project on schedule to start next spring.

16 These documents will 1) allow the property to be fully restored and maintained by the non-profit  
17 WILSSA at no cost to the Town and 2) operated as a maritime museum for the benefit of the  
18 public also at no cost to the Town. The agreement includes numerous provisions to protect  
19 Kittery including indemnification, liability insurance paid by WILSSA, a financial security  
20 package confirmed by the Town Manager in advance of any work being done, no liens allowed,  
21 all improvements inuring to the Town, and the review of all work on the building by the State  
22 Historic Office. The risk to Kittery presented by these documents is extremely low and the  
23 benefits are numerous and large.

24 What WILSSA is seeking in these contracts is clarity about being able to restore the historic life  
25 saving station and open it to the public. What Kittery is seeking is a no cost remedy to a mess of  
26 a building that is currently dangerous and expensive to resolve on its own. The community  
27 support for restoring Wood Island Station for the use of the public has been exceptionally strong  
28 and continues to grow.

29 WILSSA has already secured the \$750,000 in funding needed to clean the building of hazardous  
30 materials and repair its exterior. But unless there is clarity about being able to finish the job and  
31 open the station to the public, WILSSA’s concern of finishing the work and being forced out of  
32 the project by Kittery remains high. Kittery has owned the property for 42 years and has proven  
33 to be a poor steward of this asset. WILSSA, therefore, does not want to restore the building and  
34 have Kittery’s poor track record potentially come into play again. WILSSA will not spend the  
35 funds without the clarity it requires. The contracts will need to be signed by WILSSA to commit  
36 those funds in the first 60 days of 2016. Without those contracts being signed then, the work  
37 won’t be able to begin in the spring and the EPA funding (and therefore the entire project) will be  
38 at risk since the EPA money must be spent in 2016.

39 The “worst case” for Kittery of WILSSA failing to raise any more funds after the first phase  
40 (clean up of hazardous materials and repair of exterior) is completed is discussed here as  
41 attractive for Kittery compared to the current state. The true worst case for Kittery is also

**REPORT to THE KITTERY TOWN COUNCIL: Wood Island Life Saving Station  
Approval of Repair Agreement Amendments and Concession Agreement**

42 described here and that is a failure of the first phase to occur in 2016 which remains a real  
43 possibility without approval of the documents proposed.

44 These documents have been reviewed by the Town Manager and the WILSSA President. There is  
45 nearly total agreement on the many details. Compromises have been made on both sides and a  
46 productive process has made excellent progress. There are two substantive items remaining to be  
47 resolved and both relate to timing. There is not agreement on the duration of the concession  
48 agreement (Kittery is offering 10 years and WILSSA is seeking 30 with an additional 10 year  
49 option). There is not agreement on a deadline for completing the repairs and opening to the  
50 public (Kittery is offering 6 years and WILSSA believes a 20 year timeframe to match the 20  
51 year time of the Preservation Covenant between Kittery and the State of Maine is best). The  
52 Town Manager also has general concerns that finalizing a concession agreement now is  
53 premature. WILSSA believes that Kittery offered a long-term concession agreement as an  
54 explicit part of its request for proposals to repair the Station that started this process in 2011.

55 Drafts of these documents were initially provided to Council on July 13, 2015. A vote of  
56 Council on August 10, 2015 authorized the Town Manager and the WILSSA President to finalize  
57 the documents. They are now ready for the approval of Council. Approval is recommended.

58

59 **FACTS BEARING ON THE EQUATION:**

60 **Repair Agreement Amendments:**

61 There are three substantive changes being proposed to the existing repair agreement that has  
62 already been approved by Council, and some others as well. They are:

63

64 ***1) Allow for the full restoration project to be accomplished.***

65 The current "Repair Agreement" from October 2013 between WILSSA and Kittery does not  
66 allow for any work besides "exterior repairs and interior repairs necessary to insure structural  
67 stability." This will not be adequate to successfully accomplish a "Section 106" review required  
68 by the National Preservation Act when spending federal funding (in this case \$200,000 from  
69 EPA and \$200,000 from the National Park Service funding). This review ensures that there are  
70 no "adverse impacts" to historic resources using federal funding. Since the building is now  
71 "eligible" for listing on the National Register of Historic Places, work on the structure must  
72 conform with the Secretary of Interior's Standards for the Treatment of Historic Properties, 1995.  
73 Unless the repair agreement is amended to take into account the challenge of removing the  
74 interior "historic fabric" (such as baseboards, plinths, window casings, surviving built in storage,  
75 etc) and returning it to the building after the clean up is accomplished, the Section 106 review  
76 will not allow any of the federal funding to be spent.

77 The scope of work for the clean up and repair project expected to begin in the spring of 2016  
78 must be reviewed and approved by the Maine State Historic Preservation Officer before it is put  
79 out to bid. That work is underway and is expected to be completed shortly. The bid package for  
80 interested parties is nearing completion and needs to be advertised early in the New Year in order  
81 for the project to begin in the spring. Therefore, Kittery Town Council needs to proceed with its  
82 approval of the proposed changes to the repair agreement promptly. The fabric of Wood Island  
83 Station was described in detail in a report commissioned by WILSSA and published in June of

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84 2015. Called “Historic Fabric Assessment of Wood Island Life Saving Station” it was written by  
85 Penelope Watson, the leading national expert on the restoration of life saving stations with  
86 particular experience in Duluth type stations and board member of the US Life Saving Service  
87 Heritage Association. That report can be accessed here: <http://tinyurl.com/pqwqmvn>

88

89 **2) Clarify what happens after the clean up and exterior repairs are complete.**

90 The current repair agreement does not have a clear plan for what will happen to the building after  
91 the clean up and exterior repairs are done. WILSSA feels strongly that this question must be  
92 answered before any work begins, and the result should have WILSSA authorized to complete  
93 the restoration of the entire building and open it to the public as a maritime museum. Council’s  
94 vote on August 10 to allow the creation of a concession agreement appeared to confirm that.

95

96 **3) Specify that WILSSA will be responsible for ongoing maintenance.**

97 The 20-year covenant that Council approved for Kittery to maintain the exterior of the Station on  
98 August 10 was required by the National Park Service. That covenant includes language that  
99 allows Kittery to assign its maintenance responsibility to others. The proposed amendments say  
100 that WILSSA will be responsible for all maintenance, the exterior as well as the interior for the  
101 duration of the agreement not only during the restoration of the building, but also during the  
102 concession agreement.

103

104 **4) Other items.** Kittery concurs that an application for this building to be listed on the National  
105 Register of Historic Places is appropriate. The State appropriation and Federal grant are  
106 described as appropriate funding sources. Kittery will support WILSSA’s efforts to raise funds  
107 for the project. Records regarding the project will be shared between Kittery and WILSSA. A  
108 dock, moorings and wreck pole are added to the definition of “structures”.

109

110 **Concession Agreement:**

111 The Concession Agreement is entirely new. According to the “Concession Agreements  
112 Guidance” document created by the National Park Service for public benefit conveyance  
113 properties such as Wood Island, *“concessions are private businesses (or non-profits) operating  
114 under contract in a state/county/municipal park or recreational area to provide products and  
115 services intended to enhance the park visitor’s experience.”* The proposed concession  
116 agreement for Wood Island has specifically followed the “Concession Agreement Guidance”  
117 document.

118 In summary, the property must be used as a maritime museum for the use of the public. The term  
119 of the agreement is 30 years with an option for an additional 10 years. No rent or fees will be  
120 charged for the agreement. WILSSA will be responsible for the ongoing maintenance and  
121 income from the property will be used for the benefit of the museum. There will be no  
122 restrictions or fees for the daytime use of Wood Island by the public at any time, even when the  
123 museum is closed or during the off-season.

124

125 **BACKGROUND:**

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126 A comprehensive background description of the effort to prevent the demolition of this historic  
127 station is available on line at the web site of Wood Island Life Saving Station Association under  
128 the tab "The Update" or by clicking on <http://woodislandlifesaving.org/the-plan/>

129 There has been significant deferred maintenance on the property owned by Kittery and it has  
130 become dangerous to visitors to the island, a public park. The building is in imminent jeopardy  
131 of collapse. The current liability for the Town is serious as the building is wide open and an  
132 attractive nuisance with rotting floors. Kittery has estimated the cost to remove this building at  
133 \$255,000.

134 Overcoming long odds, the building was found to be "eligible" for the National Register of  
135 Historic Places in April of 2015 by the State of Maine Historic Preservation Commission. This  
136 resolved a serious problem with the inability to secure local building permits for this work, but it  
137 also created a new level of review (called Section 106) for a historic property using federal funds.  
138 Federal funds for this project include \$200,000 from EPA secured in May of 2014 and \$200,000  
139 from the National Park Service granted in April of 2015 that were matched with \$200,000 from  
140 the State of Maine that became law in July of 2015. Added to ongoing private donations, more  
141 than \$750,000 has been raised and plans are underway to put those funds to action in the spring  
142 of 2016.

143 On August 10, 2015 Council voted to disband WIAC (Kittery Town Council's committee to  
144 review proposals for Wood Island) and begin discussions between the Town Manager and the  
145 President of WILSSA to finalize those two documents. Council also voted that day to approve a  
146 20 years maintenance agreement for the Station's exterior which was required by the Park  
147 Service grant.

148

149 **THIS IS A HISTORICALLY SIGNIFICANT BUILDING:**

150 Although there is much to discuss regarding the recent history of the grassroots effort to save this  
151 building from demolition, what is regularly overlooked is that it is a historically significant  
152 building. It is more historically significant, in fact, than any of the supporters knew until  
153 recently.

154 This history was described in detail in the application submitted by WILSSA to the State Historic  
155 Preservation Office for the property to become eligible for listing on the National Register of  
156 Historic Places and the written portion can be found here: <http://tinyurl.com/qa75s3a>

157 There were only 13 life saving stations constructed in Maine before 1915 and only nine survive.  
158 Of those nine, only three have been found to be historically significant enough to be selected for  
159 inclusion on the National Register of Historic Places. Wood Island Station is a Duluth type,  
160 named after a specific architectural style first used in Duluth MN in 1894 will, with Council's  
161 approval of these amendments, become the forth life saving station listed on the National  
162 Register in the State of Maine, likely in 2016. Only 24 of this type were ever constructed, and  
163 only 12 remain nationwide. There is one other in Maine, in Biddeford Pool, but it has been  
164 restored and significantly altered into a private residence and would be extremely unlikely to be  
165 eligible for National Register listing.

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166 What is most historically significant about Wood Island Station is that it is the only remaining  
167 life saving station of any design nationwide with a surviving marine railway. That fact was only  
168 learned through the 2015 process to have the building declared eligible for the National Register.  
169 This is an exceptionally rare and nationally significant historic building that is also in a very  
170 unique location. There are no other life saving stations of any design on such a small island.

171 But what is utterly unheard of for any life saving station is that Wood Island has been untouched  
172 since 1948 when it was decommissioned. The design, the interior finishes, the paint remnants,  
173 the floor plan and the location have been unaltered in 67 years. This is not only unusual, it is  
174 unprecedented. There are no other life saving stations that have had no work done to them since  
175 they were decommissioned. This offers a unique opportunity to learn first hand what was in  
176 place in 1948 and to restore the building accurately.

177 The intention of this undertaking is to return the building to the 1914 time period when the  
178 Station was part of the US Life Saving Service, previous to the hand over to the US Coast Guard  
179 in 1915. A specific rescue craft arrived at Wood Island Station in 1914, a Beebe McLellan  
180 motorized surfboat. It was serial number 1217. The plans for this boat have been located and a  
181 replica of that boat is planned. It had an innovative twin screw design with two independent gear  
182 systems which allowed the two propellers to operate separately. That meant that one propeller  
183 could be in forward and the other in reverse at the same time allowing the boat to pivot quickly.  
184 What is more, the original 1907 working drawings for the marine railway have also been located.  
185 In short, that particular replica boat is intended to be able to use that particular restored marine  
186 railway. The combination of these two elements, were presented at Wood Island for the first  
187 time anywhere and were considered "state of the art" for the time.

188 When completed, this restored life saving station will be entirely unique within the very small  
189 universe (18 in total) of restored life saving stations open to the public nationwide. There has  
190 been substantial interest in a restored Wood Island Station expressed by the various boat  
191 companies that offer public tours of the Piscataqua River. WILSSA intends to create contracts  
192 with these vendors and thereby bring visitors to the restored station. The public in their own  
193 boats will also be warmly welcome. Naturally there is a long way to travel before the project is  
194 complete, but a very impressive amount of work has already occurred to begin the work of the  
195 first phase in the spring / summer of 2016. A comprehensive room-by-room discussion of the  
196 clean up and restoration plan is available at: <http://tinyurl.com/jhvdx6>

197

**198 CURRENT SITUATION:**

199 The current condition of Wood Island Station is very poor. It is a serious hazard to visitors to the  
200 island, a public park. The National Park Service even communicated to Kittery in writing in  
201 2010 that they consider the island closed to the public due to the potential for harm to visitors.  
202 The potential for liability to the Town of Kittery for someone to be injured in that building is  
203 clear and obvious. The floors are rotted and the space is entirely wide open to anyone wishing to  
204 explore. It is an attractive nuisance and represents a serious risk to Kittery from a liability  
205 perspective. No action is not an option.

206 A detailed examination of the hazardous materials was undertaken by Ransom Environmental in  
207 2010 and found that the cost to remove the materials was at least \$180,000. A structural review  
208 of the building was also undertaken in 2010 by Attar Engineering and found that the building was

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209 not beyond repair. The Town also sought a cost estimate to remove the building after clean up  
210 from Riverside Pickering and learned it would be \$70,000. Therefore the cost to clean and  
211 remove the building is, according to Kittery’s own work, at least \$255,000. But that clean and  
212 demolish option has been put to rest, it is hoped, by the October 18, 2013 agreement.

213 The \$200,000 in funding secured from EPA to clean the hazardous materials from the building  
214 was awarded in May of 2014. WILSSA is almost entirely responsible for that funding success.  
215 Those dollars, however, are only available for three years. Kittery must move forward with the  
216 clean up work in the spring of 2016 or risk losing the clean up funding. What is more, those  
217 dollars can not be used to demolish the building. Not only would that not be allowed by the  
218 Section 106 review to prevent “adverse impacts” to historic properties using federal funds, but  
219 demolition is not an eligible expense of the EPA dollars.

220 The \$200,000 awarded by the National Park Service in April of 2015 and the matching \$200,000  
221 from the State of Maine in June of 2015 is ready to be spent in the spring of 2016 as soon as the  
222 clean up is complete. These funds (EPA, NPS and Maine) are believed to be sufficient to clean  
223 the building and create an entirely new exterior that will secure the building to prevent any  
224 visitors from wandering into the building and create a safe environment for Wood Island,  
225 eliminating the serious liability to the Town at no cost to the Town.

226 Securing these two grants is an exceptional accomplishment as both of these funding sources are  
227 either exceptionally competitive or perhaps unprecedented. The State Historic Preservation  
228 Officer was quoted as saying he had never seen a historic preservation non-profit receive funding  
229 of this size from the State of Maine in his nearly 30 years of service. He believes it may be  
230 unprecedented. The Park Service grant bested a highly qualified field of applicants nationwide  
231 and joined a prestigious list that included the USS Monitor and the USS Constitution. It was the  
232 largest such grant awarded nationwide in 2015. Approximately \$2 million in grant money was  
233 available and more than \$10 million was requested. WILSSA worked hard to secure these  
234 dollars and the outstanding team that realized these remarkable results remains in place ready to  
235 continue to try to raise funds to finish this exciting job.

236 But as described, the federal funding can not be spent without amendments to the existing  
237 agreement.

238

**239 PROPOSED SOLUTION / RECOMMENDATION**

240 Approve the two proposed documents.

241

**242 RATIONALE FOR THE PROPOSED SOLUTION / RECOMMENDATION**

243 The “Facts Bearing on the Equation” and “Background” sections found here describe the  
244 rationale for this recommendation. But what is worth noting is the “worst case scenario” from  
245 Kittery’s perspective also offers a strong endorsement for this recommendation.

246 The funding is in place for the first phase of this project, the clean up and exterior repair. That  
247 work appears ready to begin in the spring of 2016. Assuming a worse case that no additional  
248 funds are raised ever and / or WILSSA fails entirely after that first phase, the result will be a  
249 significant benefit for Kittery. In that worst case scenario the historic station will be saved and  
250 Kittery will have avoided spending at least \$255,000 to have it cleaned and removed.

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251 What is more, WILSSA is offering to pay for ongoing maintenance for the repaired structure.  
252 Assuming that WILSSA fails after the first phase and the Town is left on the hook for ongoing  
253 maintenance, there is also a large benefit. The maintenance of a completely restored building  
254 will be small and the challenge of how to clean and repair the station will have been answered  
255 with a safe and lovely new exterior for the building.

256 But without amendments to the existing agreement, the federal funds will not be able to be spent,  
257 and that outcome would be a real worst case for Kittery – the failure of the first phase and the  
258 loss of the federal and state funds. The EPA money must be spent in 2016 as it will expire in the  
259 spring of 2017. The Park Service money can't be spent until the EPA money has cleaned the  
260 building. The State money is a match for the Park Service funding.

261 All of these pieces hang together, and they all speak to amending the existing agreement and  
262 approving a concession agreement now.

263

264 **CONCLUSION**

265 Kittery has a serious liability in Wood Island Station. A non-profit, WILSSA, was formed in  
266 2011 and, through a contract with Kittery, has raised substantial funding to resolve that liability  
267 at no cost to the Town. The first phase of work, the clean up of hazardous materials found  
268 throughout the building and the repair of the building's exterior will be ready to begin in the  
269 spring of 2016. But the current agreement between the Town and the non-profit will not allow  
270 the historic 1907 life saving station to be fully restored or opened to the public. In fact, without  
271 amendment to the current agreement, the first phase of the project will not be able to proceed as  
272 only exterior repairs are allowed. It is also currently unclear what will happen to the station after  
273 the clean up and exterior repair are accomplished.

274 Two documents that were first provided in draft form to Kittery's Wood Island Advisory  
275 Committee in May of 2015 and to the full Town Council in July of 2015 would answer those  
276 issues and are ready for approval. What is more, the calendar is becoming crowded to be able to  
277 put the final bid package out to the public and have the work begin this spring without this  
278 approval now. The Maine State Historic Preservation Office is now reviewing the scope of work  
279 to be sure that there are no "adverse impacts" to the historic fabric of the historic building using  
280 federal funds.

281 In order to allow for the public to enjoy the restored station, the repair agreement must be  
282 amended to allow for the full restoration to occur, not just the exterior work. Also, a concession  
283 agreement is allowed by the 1973 quit claim deed from National Park Service to Kittery to have  
284 third parties operate the property for the enjoyment of the public. Council has already voted its  
285 interest in having such an agreement created. With the Council's approval, this document will be  
286 provided to Kittery's legal council and Park Service for their review.

287 WILSSA has proven decisively that even though it is a non-profit with only a five year history it  
288 is well qualified to follow through on not only the first phase of this project, the clean up and  
289 exterior repair, but the entire undertaking. Substantial additional funds remain to be raised for  
290 Wood Island Station to be fully restored and open to the public. WILSSA's board has  
291 demonstrated that was up to the task of fund raising for the first phase, the clean up and exterior  
292 repairs. Now is the time to give WILSSA the authority to continue to raise funds to finish the  
293 job.

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294 It should be noted that much of the work necessary to restore the building and grounds fully has  
295 already been accomplished. Plans and / or permits applications are in place or are pending for  
296 the restoration of the sea walls, the dock, the marine railway and the full building's restoration.  
297 Planning is underway for the museum portion of the project including presentations, exhibits, and  
298 demonstrations.

299 What is before Council is a remarkable historic preservation success in the making. For Council  
300 to realize that outcome, a vote to approve the two documents is recommended now. A rejection  
301 of these documents would expose Kittery to ongoing liability and expense as well as the loss of  
302 an asset that has proven to be even more historically significant than even its supporters realized.  
303 The worst case scenario for Kittery after the first phase is completed is attractive compared to the  
304 current state. A rejection of these documents, however, would put at risk the substantial funding  
305 that has already been raised. That is the true worst case for Kittery, the potential failure of the  
306 clean up and exterior repair in 2016.

307 Council, on August 10, indicated its interest in moving forward by discontinuing the Wood  
308 Island Advisory Committee, approving a 20 year easement to maintain the building's exterior  
309 and encouraging the Town Manager and WILSSA President to finalize these two documents.  
310 Now the documents are ready to be approved and the time is appropriate to do so.

311 **REQUEST:**

312 WILSSA requests that Council approve two documents at its December 14 Council meeting.

313 **SUGGESTED AGENDA ITEM & MOTION:**

314

315 **AGENDA:** The Kittery Town Council moves to approve the Repair, Maintenance and Use  
316 Agreement called "Agreement Two" and the Concession Agreement for Wood Island Station.

317 Kittery Town Council moves to authorize the Town Manager and WILSSA President to work  
318 with the National Park Service to review, edit if necessary, and finalize the Concession  
319 Agreement as soon as practical and bring back to Council for final approval.

320 **MOTION TO APPROVE:** The Kittery Town Council approves the Repair, Maintenance and  
321 Use Agreement called "Agreement Two" dated December 4, 2015 and the Concession  
322 Agreement for Wood Island Station dated December 5, 2015.

323 **MOTION TO WORK WITH PARK SERVICE:** The Kittery Town Manager and WILSSA's  
324 President are authorized to work with the National Park Service to review, edit if necessary, and  
325 finalize the concession agreement dated December 5, 2015 as soon as practical and bring back to  
326 Council for final approval.

Draft December 4, 2015

Wood Island Life Saving Station Repair, Maintenance and Use Agreement

Draft: December 4, 2015

**WOOD ISLAND LIFE SAVING STATION REPAIR, MAINTENANCE, AND USE AGREEMENT**

This REPAIR, MAINTENANCE and USE AGREEMENT, hereinafter referred to as "AGREEMENT TWO" is made and entered into this \_\_ day of , 2015, by and between the Town of Kittery, hereinafter referred to as the "TOWN", and the Wood Island Life Saving Station Association, a non-profit corporation based in Kittery Point, Maine, hereinafter called the "WILSSA", collectively called "PARTIES."

**WITNESSETH:**

**Whereas**, the TOWN owns certain land totaling 1.25 acres, obtained by the TOWN from the United States of America, hereinafter referred to as the "USA", as surplus property, known as Wood Island Life Saving Station, hereinafter referred to as the "STATION", and appurtenances, and deeded to the TOWN February 27, 1973. Said quitclaim deed is attached and hereinafter referred to as Exhibit A; and

**Whereas**, the TOWN and WILSSA use the term structures to mean hereinafter the STATION, shed, marine railway, dock, moorings, seawalls, wreck pole; and premises to mean the whole of Wood Island; and

**Whereas**, Condition No. 3 of said Deed provides that the TOWN "will not sell, lease, assign or otherwise dispose of the premises, except to another local Government agency..."; and

**Whereas**, Condition No. 3 of said deed further provides that "nothing ... shall preclude ... concession agreements entered into with third parties" and the US National Park Service has informed TOWN it has no objection to the TOWN of Kittery entering into a concession agreement with a viable organization to repair and maintain the structures for public use; and

**Whereas**, WILSSA desires to repair or construct the structures, maintain them and use them as a maritime museum for the enjoyment of the public; and

**Whereas**, the TOWN proposes to allow the WILSSA to repair or construct the structures, maintain them and use them as a maritime museum for the enjoyment of the public; and

**Whereas**, the TOWN acknowledges that only the TOWN can fund a hazardous material abatement of the structures and premises; the TOWN has secured \$200,000 in federal Brownfields funding; the abatement of all hazardous materials eligible for federal funding will be undertaken by TOWN with the concurrence of WILSSA in terms of planning, timing, budgeting, phasing, approach and vendor selection; and, every effort will be made by parties to create and publically advertise

37 a scope of work as soon as practical to allow work to begin in the spring of 2016;  
38 and

39 **Whereas**, the TOWN and WILSSA have finalized a concession agreement for the  
40 approval of National Park Service that specifies the conditions under which the  
41 restored structures and premises will be operated for the enjoyment of the public  
42 by WILSSA; and

43 **Whereas**, Kittery and the Maine State Historic Preservation Office have finalized a  
44 20 year Preservation Covenant as required by the National Maritime Heritage grant  
45 which has been approved by National Park Service that specifies the conditions  
46 under which the restored exterior of the STATION will be maintained; and

47 **Whereas**, WILSSA desires to seek private, foundation, corporate, state and federal  
48 funding or assistance to satisfy the financing of these repairs, maintenance and  
49 operation and TOWN agrees to promptly review, make comments and edits to, and  
50 support applications for funding or assistance by WILSSA, or apply for such funds or  
51 assistance itself on behalf of WILSSA (such as an application for an innovative  
52 readiness training exercise from the Maine National Guard), with the understanding  
53 that TOWN will not pay for any matching dollars with the exception of the  
54 Brownfields grant; and

55 **Whereas**, TOWN agrees to allow WILSSA to create a protocol for recognizing  
56 donors and volunteers to this project; and

57 **Whereas**, WILSSA and TOWN agree that a nomination for National Register of  
58 Historic Places is appropriate and fitting for the historic STATION that is eligible for  
59 such listing and TOWN agrees not to object to such a nomination and to support it;

60 **NOW, THEREFORE**, for the reasons set forth above, and in consideration of the  
61 mutual covenants and agreements as hereinafter set forth, the TOWN agrees to  
62 allow WILSSA to repair or construct the structures subject to all the terms and  
63 conditions of this AGREEMENT.

64 **1. Exclusive Authority to Repair and Construct Structures**

65 The TOWN does hereby allow the WILSSA to repair or construct the structures. The  
66 TOWN agrees not to award contracts to any other individual or entity, including  
67 itself, during the term of this AGREEMENT regarding the structures, including, but  
68 not limited to, their repair, maintenance or use and the design, scheduling and  
69 execution of same without the written approval of WILSSA.

70 **2. Improvements to Inure to the TOWN**

71 Improvements to the structures as undertaken and completed by WILSSA become  
72 the sole property of the TOWN.

73 **3. Term**

74 This AGREEMENT is effective immediately. This AGREEMENT will expire either at  
75 the end of the term of the concession agreement or any extension thereof or 20  
76 years after the completion of the exterior repairs if no certificate of occupancy has  
77 been secured by WILSSA for the Station in that time, whichever occurs later.

78 **4. Payments, Fees and Royalties**

79 There will be no fee or tax paid by WILSSA to TOWN or any other party for this  
80 AGREEMENT or for any matters covered by this AGREEMENT. No funds raised by  
81 WILSSA will become the property of the TOWN except in accordance with Article 17  
82 or 18 of this Agreement. WILSSA is authorized to create and retain any royalties or  
83 payments for the use of images and descriptions of the STATION or any activities  
84 related to repairing, maintaining or operating the STATION.

85 **5. WILSSA's and TOWN'S Records and Documents / Annual Report of**  
86 **Activities**

87 With respect to all matters covered by this AGREEMENT, WILSSA'S records and  
88 documents are subject at reasonable times to inspection, review or audit by the  
89 TOWN. With respect to all matters covered by this AGREEMENT, TOWN'S records  
90 and documents are subject at reasonable times to inspection, review or audit by  
91 WILSSA. WILSSA must provide to the TOWN a regular report of activities on an  
92 annual basis. This report must include milestones reached, approximate contract  
93 and volunteer hours expended, funds raised, funds expended, and forward looking  
94 estimates of the tasks ahead. TOWN may use this report as it wishes, including  
95 using it in whole or in part to satisfy any reporting requirements regarding Wood  
96 Island with the National Park Service.

97 **6. Licenses and Permits**

98 All necessary licenses and/or permits to undertake repairs to or construction of the  
99 structures or to undertake the operations found in the concession agreement must  
100 be obtained by the WILSSA from the appropriate TOWN, State, and Federal offices.  
101 All fees for TOWN licenses and/or permits and inspections will be waived for this  
102 project. Consent for any TOWN permits or permissions must not be unreasonably  
103 withheld.

104 **7. Financial Security Package**

105 Before undertaking any repairs or other improvements to the structures as  
106 permitted under the terms of this AGREEMENT and to insure the satisfactory  
107 performance and completion of such repairs and improvements, WILSSA must  
108 establish an Irrevocable Letter Of Credit (LOC) with a Maine licensed bank or other  
109 comparable security or contract such as a federal grant agreement or a state  
110 appropriation with a relevant oversight agency in an amount of not less than the  
111 projected total costs of the proposed repairs and improvements as reflected in the  
112 building permit(s). The specific amount, financial institution, form and terms of the  
113 LOC or other comparable security or contract to fund the portion of the project to be

114 completed must be approved by the Kittery Town Manager for only the purpose of  
115 assuring the financial security package meets the intent of this requirement. The  
116 Kittery Town Manager will consider in-kind contributions as a part of the financial  
117 security package.

#### 118 **8. Repair**

119 WILSSA shall select, arrange, design, schedule and supervise any and all aspects of  
120 the restoration of the structures including all construction and finish work. TOWN  
121 will secure WILSSA's concurrence in terms of planning, timing, phasing, design,  
122 budgeting, approach, and vendor selection regarding the hazardous materials  
123 abatement.

#### 124 **9. Inspection of Structures**

125 TOWN, National Park Service, and the State Historic Preservation Officer and their  
126 duly authorized representatives have the right to enter into and upon the STATION  
127 at a reasonable hour for the purpose of inspection of the structures covered by this  
128 AGREEMENT upon reasonable advance notice to WILSSA.

#### 129 **10. Other Terms and Conditions**

##### 130 **A. Indemnity and Limitation of Liability**

131 1) WILSSA hereby agrees to indemnify, defend and hold harmless TOWN and its  
132 respective officers, officials, agents, employees, members of boards and committees,  
133 with respect to the equipment, work and materials that WILSSA or its  
134 subcontractors, employees, agents or representatives have agreed to perform and  
135 supply under this AGREEMENT from and against all expenses, losses and claims,  
136 demands, payments, suits, actions, liabilities, recoveries, and judgments of any  
137 nature and description, other than as a result of the sole negligence of TOWN,  
138 including reasonable attorney's fees, resulting from claims arising out of or related  
139 to any act or omission of WILSSA, its agents, employees, contractors,  
140 representatives for service or materials provided, in the work and materials that  
141 WILSSA has agreed to perform and supply under this AGREEMENT, or by reason of  
142 any suit or claim for royalties, license fees, or infringement of copyright or patent  
143 rights arising, or alleged to have arisen, from WILSSA'S performance under this  
144 AGREEMENT. This obligation to indemnify, defend and hold harmless does not  
145 waive any defense, immunity or limitation of liability which may be available to the  
146 TOWN, its officers, agents, or employees under the Maine Tort Claims Act pursuant  
147 to 14 M.R.S. §8101 et. seq.

148 2) In the event of the commencement of any action against TOWN, or its respective  
149 officers, officials, agents, employees, or members of boards and committees which is  
150 within the scope of this indemnification, TOWN will give notice thereof to WILSSA  
151 within fifteen business days after the TOWN is formally noticed in any such action,

152 and, after consultation with TOWN, WILSSA will have the right to select and furnish  
153 counsel for the defense of any such action, at no cost or expense to the TOWN.

154 3) TOWN'S failure to give timely notice to WILSSA of the commencement of any  
155 such action does not relieve WILSSA of its obligations under this section unless such  
156 failure to give timely notice causes actual prejudice to WILSSA'S ability to defend  
157 any such claim. Except for settlements involving only the payment of money, no  
158 settlement which creates an obligation for TOWN of any such action, or any claim  
159 therein, may be made by WILSSA or by counsel selected by WILSSA without the  
160 approval of TOWN, which approval may not be unreasonably withheld.

161 4) The extent of WILSSA's indemnification and hold harmless is not limited by the  
162 requirements for liability insurance under this Agreement.

163 5) The provisions of this article survive the termination of this agreement.

164 **B. Force Majeure**

165 WILSSA is not liable for any loss or damage due to failure or delay in performance  
166 under this Agreement resulting from any unusual or unavoidable cause beyond  
167 WILSSA's reasonable control including, but not limited to: acts of God; acts or  
168 omissions of civil or military authority; fires; floods; epidemics; quarantine  
169 restrictions; unusually severe weather; strikes or other labor disputes; embargoes;  
170 wars; political strife; riots; sabotage; unusual delay in transportation.

171 **11. Insurance**

172 **A. Coverage and Limits**

173 Once construction begins on the structures and thereafter, WILSSA shall at its sole  
174 expense maintain insurance per the specifications and minimum limits set forth  
175 herein.

176 1) Commercial General Liability on an occurrence, as opposed to claims made, basis  
177 with general aggregate limit applicable per project and per location.

178 Each occurrence limit:.....\$1,000,000.00

179 General aggregate limit:.....\$2,000,000.00

180 Products/Completed operations aggregate limit:.....\$2,000,000.00

181 An additional insured provision is to apply to the TOWN of Kittery and its respective  
182 officers, officials, agents, and employees on a primary, non---contributory basis.

183 2) Automobile liability for owned, hired, and non-owned autos with combined  
184 single limit each accident of \$1,000,000. An additional insured, or designated  
185 insured, provision is to apply to the TOWN of Kittery and its respective officers,  
186 officials, agents, and employees.

187 3) If there are any employees, workers' compensation insurance to comply with the  
188 requirements of Maine statute, plus employers' liability for:

189 Each Accident:.....\$100,000.00  
190 Each Employee (disease):.....\$100,000.00  
191 Policy Limit (disease):.....\$500,000.00

192 4) If required by Federal Statute, coverage to comply with the Longshore and  
193 Harbor Workers' Compensation Act (33 USC Sections 901-950) and/or Merchant  
194 Marine Act, 1920 (46 USC Section 688) commonly referenced as the "Jones Act".

195 5) All policies required by this AGREEMENT are to be provided by a company, or  
196 companies, admitted to conduct business in the State of Maine.

197 6) WILSSA agrees to require that any written Agreements between WILSSA and any  
198 of its service or material provider(s) will require the same provisions, coverages,  
199 and limits as in this Article 11. WILSSA shall obtain an endorsement to its  
200 Commercial General Liability policy to cover WILSSA'S obligations under this  
201 Article.

202 7) The TOWN will use its best effort to include WILSSA as an insured party in any  
203 agreement with the Abatement Contractor.

204 **12. Amendment to AGREEMENT**

205 This AGREEMENT contains all the terms and conditions between the parties, and no  
206 alteration, amendment, or addition including any new TOWN rules or regulations  
207 related to Wood Island or its operations is valid unless in writing and signed by the  
208 WILSSA and a majority of the TOWN COUNCIL.

209 **13. Governing Law**

210 This AGREEMENT is governed and interpreted by Maine law.

211 **14. Liens**

212 WILSSA shall keep the assigned facilities free from any and all liens arising out of  
213 any work performed, materials furnished, or obligations incurred by WILSSA during  
214 the term of this AGREEMENT or any extension or renewal thereof.

215 **15. Severability**

216 No waiver by either party at any time, expressed or implied, of any breach of any  
217 provision of this AGREEMENT may be deemed a waiver of breach of any other  
218 provision of this AGREEMENT or a consent to any subsequent breach of the same or  
219 any other provision.

220 **16. Dispute Resolution**

221 Any dispute between the parties arising out of or relating to this AGREEMENT must  
222 be resolved in accordance with this article. Any party may give written notice of a  
223 dispute arising out of or related to this Agreement to the other party in person or by  
224 certified mail, return receipt requested. The parties must attempt to resolve the  
225 matter through informal communication or negotiation for a period of thirty (30)  
226 days from the date of receipt of notice by the last party to receive notice.

227

228 If the dispute has not been resolved within thirty (30) days, either party may serve  
229 written notice on the other party of a request for mediation. The mediation must be  
230 conducted in Maine by a mediator mutually agreeable to the parties, must not  
231 exceed one full day or two half days in length, and must be completed within ninety  
232 (90) days from the date of receipt of notice of a request for mediation by the last  
233 party to receive notice. In the event that the parties are unable to agree on a  
234 mediator within thirty (30) days, or to resolve the dispute through mediation within  
235 90 days, the dispute must be submitted to arbitration in accordance with the  
236 procedures of the Maine Uniform Arbitration Act, 14 M.R.S. §5927 et seq. Nothing  
237 in this provision precludes either party from seeking any other available legal  
238 remedy following mediation and arbitration as set forth in this agreement.

239 **17. Termination by TOWN/ WILSSA for Cause**

240 **A. TOWN may terminate this AGREEMENT if WILSSA:**

241 1) Fails to provide timely reports of activities to the TOWN as required by this  
242 AGREEMENT.

243 2) Is in substantial breach of a provision of the AGREEMENT.

244 3) This AGREEMENT may also be terminated by the TOWN in the event that  
245 WILSSA ceases to be an active, functioning nonprofit corporation registered to do  
246 business under the laws of the STATE of MAINE.

247 When any of the above conditions exist, TOWN may, without prejudice to any other  
248 rights or remedies of TOWN and after giving WILSSA thirty days written notice to  
249 remedy above condition and the condition has not been remedied, terminate this  
250 AGREEMENT and may:

251 4) Take possession of all improvements made by WILSSA;

252 5) Maintain the work by whatever reasonable method TOWN may deem expedient  
253 using funds available through an Irrevocable Letter Of Credit or other comparable  
254 security as referred to in article 8; or

255 **B. WILSSA may terminate this AGREEMENT if TOWN:**

256 1) Is in substantial breach of a provision of the AGREEMENT document.

257 2) If the National Park Service does not approve a concession agreement agreeable  
258 to the PARTIES.

259 When any of the above conditions exist, WILSSA may, without prejudice to any other  
260 remedies or WILSSA and after giving the TOWN thirty (30) days written notice to  
261 remedy the above condition and the condition has not been remedied, terminate the

262 AGREEMENT without penalty and may revoke the Letter of Credit or Other  
263 Comparable Security.

264 **18. Voluntary Termination**

265 If there is significant damage to the structures, WILSSA will estimate the cost of the  
266 damage. If those costs exceeded 75% of the cost of replacement of one of the  
267 structures from fire (including arson), flood, lightning, wind, wave or any act of God  
268 beyond the WILSSA'S control during the course of this AGREEMENT that WILSSA is  
269 unable or unwilling to repair at their own expense, WILSSA reserves the right to  
270 terminate this contract without penalty.

271 If, in the event of damage to the structures as described above, TOWN will inquire of  
272 WILSSA if WILSSA intends to exercise its right of voluntary termination. WILSSA  
273 will answer such an inquiry from TOWN, when notified, within 60 days and if  
274 planning to repair the damage at its own expense will provide a plan of work with  
275 timetable to complete the repairs. TOWN will accept the plan of work and timetable  
276 under the same terms and conditions as are in this AGREEMENT.

277 If WILSSA chooses voluntarily to terminate this AGREEMENT for the reasons stated,  
278 any funds available in the letter of credit or other comparable security must be  
279 released to the TOWN to be used to help remedy the damage and maintain the  
280 property. Any funds remaining from the Letter of Credit or other comparable  
281 security after a remedy of the damages and maintenance of the property must be  
282 returned to WILSSA.

283 **19. Maintenance of Structures:**

284 Beginning at the completion of the repairs of the exterior of the STATION and  
285 continuing throughout the duration of this AGREEMENT, WILSSA shall, at its own  
286 expense and at no cost or expense to the TOWN, maintain the structures in a safe  
287 and attractive manner. A 20-year agreement describing maintenance and related  
288 conditions for the exterior of the STATION (Exhibit B, "Preservation Covenant") has  
289 been provided to the National Park Service and entered into by Kittery as Grantor  
290 and the State of Maine as Grantee. That Covenant allows for Kittery to seek other  
291 parties to pay for the maintenance costs of the Covenant. WILSSA shall maintain the  
292 property in accordance with that Covenant on behalf of TOWN.

293 **20. Acknowledgement: Deed Terms and Conditions**

294 This AGREEMENT and the obligations of the parties hereto are subject to the terms  
295 and conditions set forth in the deed from the United States of America to the TOWN,  
296 dated February 27, 1973, and recorded in the York County Registry of Deeds at  
297 Book 1985 Page # 201, and the current Program of Utilization which governs the  
298 use of the property.

299 **21. Assignment**

300 WILSSA may not assign or otherwise transfer in any other way to any party or  
301 individual its rights, duties or obligations under this AGREEMENT, either in whole  
302 or in part without the prior written consent of the majority of the Kittery Town  
303 Council unless specified in the concession agreement.

304 **22. Notice**

305 Any notice required or permitted to be given by either party hereto to the other is  
306 deemed to have been duly given when delivered personally or otherwise actually  
307 received after mailing by certified mail, return receipt requested, or by reputable  
308 overnight courier or by facsimile (with confirmation of receipt), addressed as  
309 follows:

310	To TOWN:	To WILSSA:
311	TOWN MANAGER	WOOD ISLAND LIFE SAVING STATION ASSOC.
312	200 ROGERS ROAD	P.O. BOX 11
313	KITTERY, ME 03904	KITTERY POINT, ME 03905

314 Other addresses may be established as the parties hereto may designate by written  
315 notice to the other party and delivered in accordance with the provisions of this  
316 article.

317 **24. Rescission and Supersession**

318 The Agreement between TOWN and WILSSA, dated October 18<sup>th</sup>, 2013, and all  
319 amendments thereto are superseded and rescinded as from the effective date of this  
320 Agreement Two.

321 **IN WITNESS WHEREOF**, the TOWN has authorized its Town Manager representing  
322 the TOWN to sign this AGREEMENT and WILSSA has approved the AGREEMENT and  
323 signed as of the date first noted above.

324 **TOWN**, by: \_\_\_\_\_

325 \_\_\_\_\_  
326 *[Name] [Title] [Address] [TOWN, State, Zip Code]*

327 **WITNESS:** \_\_\_\_\_

328 **WILSSA**, by: \_\_\_\_\_

329 \_\_\_\_\_  
*[Name] [Title] [Address] [TOWN, State, Zip Code]*

330 **WITNESS:** \_\_\_\_\_

Draft December 5, 2015

Concession Agreement Between Town of Kittery, Maine

and

Wood Island Life Saving Station Association

Draft December 5, 2015

**CONCESSION AGREEMENT**

**Between**

**TOWN OF KITTERY, MAINE**

**and**

**WOOD ISLAND LIFE SAVING STATION ASSOCIATION**

This Concession Agreement is made this \_\_\_\_ day of \_\_\_\_\_, 2015, by and between the TOWN OF KITTERY, a municipal corporation of the State of Maine, with its office at Town Hall, 200 Rogers Road, Kittery ME, 03904, hereinafter referred to as the "TOWN", and the Wood Island Life Saving Station Association, a non-profit corporation with a mailing address at PO Box 11, Kittery Point, ME, 03905 hereinafter referred to as "WILSSA", collectively as the "PARTIES".

**RECITALS**

Whereas, the TOWN owns certain land totaling 1.25 acres, obtained by the TOWN from the United States of America (hereinafter referred to as the "USA"), as surplus property, known as Wood Island Life Saving Station, hereinafter referred to as the "STATION", which was deeded to the TOWN on February 27, 1973. A copy of the quitclaim deed is attached (Exhibit A, "Quitclaim Deed"); and

Whereas, the TOWN and WILSSA use the term structures to mean hereinafter the STATION, shed, marine railway, dock, moorings, seawalls, wreck pole; and premises to mean the whole of Wood Island; and

Whereas, Condition No. 1 of said deed sets forth that the property shall be used and maintained for the public purposes for which it was conveyed in perpetuity as set forth in the program of utilization and plan contained in the application submitted by the Grantee on the 25th day of October, 1972 and amended the 27th day of November 1972, such program includes a statement that the island "would also be maintained as a point of interest or historic site;" and

Whereas, Condition No. 3 of said deed provides that the TOWN "will not sell, lease, assign or otherwise dispose of the premises, except to another local Governmental agency..." However, nothing in this provision precludes the TOWN from providing related recreational facilities and services compatible with the approved application, through a concession agreement entered into with third parties, provided prior concurrence to such agreement is provided in writing by the Secretary of the Interior or delegated representative; and

Whereas, the Secretary of the Interior or delegated representative provided written concurrence to this concession agreement on \_\_\_\_\_ ; and

Whereas, the PARTIES have entered into an agreement (Exhibit B, "Agreement Two") for WILSSA to repair the structures ,maintain them and use them for the enjoyment of the public as a Maritime Museum; and

Whereas, the PARTIES desire to specify the conditions under which the structures will be used for the enjoyment of the public as a Maritime Museum, and to allow WILSSA to raise funds for the expenses of the maintenance, construction, operation and other costs; and

Whereas, the primary purpose of the Maritime Museum established by WILSSA is the preservation of historical artifacts; the presentation of historical information; and, the offering of demonstrations and interactive exhibits of the maritime heritage of the Wood Island Life Saving Station; and

Whereas, the TOWN is satisfied that provision of additional services and facilities at the Wood Island Life Savings Station by WILSSA is in the TOWN's and the public's best interest.

NOW, THEREFORE, for the reasons set forth above, and in consideration of the mutual promises, covenants, and agreements, as hereinafter set forth, the TOWN agrees to allow WILSSA to establish, maintain and operate a Maritime Museum located at the Wood Island Life Saving Station in Kittery, Maine.

#### **1. LOCATION:**

The TOWN does hereby assign to WILSSA the use of the Wood Island Life Saving Station and structures which are part of the property described in Exhibit A. The surrounding premises of Wood Island, totally 1.25 acres, may also be used by WILSSA for the purposes stated herein but must remain open for public recreational use at all times as described in Section 3. Use of the property is subject to the terms and conditions contained in the deed, attached as Exhibit A.

#### **2. USE OF PREMISES:**

The PARTIES agree that the premises must be used as a Maritime Museum and for public recreational purposes. All uses pursuant to this agreement must comply with local land use ordinances, as well as in accordance with all local, state, and federal permits and regulations. TOWN acknowledges that this concession agreement is exclusive to WILSSA and may not contract with any other individual or entity, including the Town, during the term of this agreement, to operate the Museum. This provision does not preclude WILSSA from contracting with professional service providers, or other vendors, to assist in operating the station such as charter boat operators to transport visitors to and from Wood Island.

The premises may be used only for the following purposes, programs and activities:

- a. A museum will occupy the first floor, the observation tower and portions of the property, depicting the history of Wood Island, specifically the roles of the US Life Saving Service from 1908 to 1915; the US Coast Guard from 1916 to 1941 and 1945 to 1948; and, the US Navy from 1941 to 1945.
- b. Demonstrations of life saving operations, displays of life saving equipment and implements and demonstrations of their use, methods and types of life saving and lifesaving architecture

nationwide and interior furnishings that replicate what life was like in the STATION for the men that served there.

- c. Fund raising and income creating activities and programs for the benefit of the Museum. Fees charged for admission to the Museum will be reasonably nondiscriminatory and comparable to fees charged at similar facilities in the area. The Museum and appurtenances may be open seasonally to the public for such periods (months, days and hours) as determined in the sole discretion of WILSSA, but is intended to be open and accessible to the public from June 1st through August 31st of any year covered by this agreement.
- d. Office and lodging space to support the Museum may be provided on the second floor with limited public access. The tower is intended to be accessible to the public as much as is safe and practical. The basement is to be used for mechanical and service functions and may have no public access. The shed is expected to offer a handicapped accessible bathroom.
- e. All other programs, activities and events related to or in furtherance of the purposes of the Museum.

### **3. Free Public Access for Recreation:**

Nothing in this agreement may restrict the public's access to Wood Island itself for daytime recreational purposes year round, even when the Museum is not in operation and/or during off season. No fee will be charged for public recreational use of the property that does not involve Museum admission.

### **4. TERM:**

This agreement shall be effective from the date the certificate of occupancy is issued for an initial term of thirty (30) years.

### **5. RENEWAL**

WILSSA has the exclusive option of extending this agreement for 1 additional ten (10) year period

WILSSA shall mail notice to the Town of its intent to exercise its option to renew the agreement ninety (90) days prior to expiration.

### **6. RENT AND FEES:**

WILSSA shall pay no rent for the use of the STATION. In addition, no other costs or fees or taxes of any kind may be levied upon WILSSA or the premises including, but not limited to, real estate property taxes or special assessments.

### **7. UTILITIES:**

WILSSA is solely responsible for the design and payment of costs associated with the provision of any utility or security services on the premises.

## **8. NO RIGHT TO ASSIGN OR SUBLET:**

WILSSA agrees not to assign or sublet any part of the premises without a majority of Kittery Town Council approval and affirmed by the National Park Service to the extent it is required: This provision does not preclude WILSSA from contracting with professional service providers or other vendors to assist in operating the station such as charter boat operators to transport visitors to and from Wood Island.

## **9. MAINTENANCE OF STRUCTURES:**

During and throughout the term of this agreement, WILSSA shall, at its own expense and at no cost or expense to the TOWN, maintain the structures in a safe and attractive manner. A 20-year agreement describing maintenance and related conditions for the exterior of the STATION (Exhibit C, "Preservation Agreement") has been provided to the National Park Service and entered into by Kittery as Grantor and the State of Maine as Grantee. That Agreement allows for Kittery to seek other parties to pay for the maintenance costs of the Covenant. WILSSA shall maintain the property in accordance with that Agreement on behalf of TOWN.

## **10. RESTRICTIONS ON USE AND ACTIVITIES:**

During and throughout the term of this agreement, the use, occupancy and activity of WILSSA, all persons holding by or through WILSSA and all persons who come upon the premises with the consent of the WILSSA are restricted as follows:

- a. Permitted use. No part of the premises may be used for any purpose other than as described in this Concession Agreement.
- b. Hazardous use. No part of the premises may be used or occupied for any purpose that is extra hazardous on account of fire, explosion, or toxic or radioactive emission or contamination.
- c. Environmental protection. All activities on the premises and all uses to which any part of the premises is put must comply in all material respects with Federal, State and local environmental protection statutes, laws, rules and regulations, subject to WILSSA's right to contest the applicability thereof, during which contest WILSSA may not be deemed in non-compliance. WILSSA must not discharge, nor permit or suffer to be discharged, on or into the ground any substance that may endanger or pollute the groundwater supply in any material respect. WILSSA shall promptly execute and comply in all material respects with all statutes, ordinances, rules, orders, regulations and requirements of the Federal, State, and Local governments having jurisdiction over said premises for the correction, prevention, and abatement of pollution and use of the premises during the term of this Agreement and any renewal thereof.
- d. Historic Property: The subject property is deemed to be historic (Exhibit D, "Determination of Eligibility") and WILSSA will adequately ensure the preservation of the historic property per the agreement created to maintain the exterior of the building. Any proposed construction, alteration, remodeling, changes of color or surfacing or any other change that would affect the structural integrity,

appearance, cultural use, or archeological value of the property requires express prior written approval of the State of Maine through the Director of the Maine Historic Preservation Commission and will be in compliance with the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Structures. WILSSA must submit any proposed changes to the property to the Town simultaneously to its submittal for approval to the Director of the Maine Historic Preservation Commission.

#### **11. INSPECTION:**

TOWN, National Park Service, and the State Historic Preservation Officer, and their duly authorized representatives have the right to enter into and upon the STATION at a reasonable hour for the purpose of inspection for compliance upon reasonable advance notice to WILSSA.

#### **12. SURRENDER.**

At the expiration of the initial term or subsequent term of this agreement, WILSSA shall surrender the STATION to TOWN with all buildings, structures, and other improvements thereon.

#### **13. MOVABLE STRUCTURES.**

Machines, trade fixtures and similar installations which are installed in any building, structure, or other improvement on the premises are not deemed to be part of the realty even though such installations are attached to the floors, walls, or roof of any building or structure or to outside pavements, so long as such installation can be removed without structural damage to any building, structure, or other improvement on the premises; provided, however, that if the removal of any such installation damages any part of the building, structure, other improvement, pavements or premises, WILSSA shall repair such damage and restore said building, structure, other improvement, pavements or premises to the same condition as originally existed upon the issuance of a certificate of occupancy, ordinary and usual wear and tear excepted.

#### **14. PERSONAL PROPERTY.**

Any and all personal property of every kind and nature whatsoever, whether or not attached to or installed in any building, structure, or other improvement which WILSSA places in, upon, or about the premises during the term hereof may be removed there from prior the expiration of the term of this agreement and remain the personal property of WILSSA.

#### **15. INSURANCE.**

WILSSA shall at its sole expense during the term of this agreement maintain insurance per the specifications and minimum limits set forth herein.

a. Commercial General Liability on an occurrence, as opposed to claims made, basis with general aggregate limit applicable per project and per location.

Each occurrence limit:

\$1,000,000.00

General aggregate limit: \$2,000,000.00

Products/Completed operations aggregate limit: \$2,000,000.00

b. An additional insured provision is to apply to the Town of Kittery and its respective officers, officials, agents, and employees on a primary, non-contributory basis.

c. Automobile liability for owned, hired, and non-owned autos with combined single limit each accident of \$1,000,000. An additional insured, or designated insured, provision is to apply to the Town of Kittery and its respective officers, officials, agents, and employees.

d. If there are any employees, workers' compensation insurance to comply with the requirements of Maine statute, plus employers' liability for:

Each Accident: \$100,000.00

Each Employee (disease): \$100,000.00

Policy Limit (disease): \$500,000.00

f. If required by Federal Statute, coverage to comply with the Longshore and Harbor Workers' Compensation Act (33 USC Sections 901-950) and/or Merchant Marine Act, 1920 (46 USC Section 688) commonly referenced as the "Jones Act".

g. All policies required by this AGREEMENT are to be provided by a company, or companies, admitted to conduct business in the STATE OF MAINE.

h. WILSSA agrees to require that any written Agreements between WILSSA and any of its service or material provider(s) will require the same provisions, coverages, and limits as in this Article 15. WILSSA shall obtain an endorsement to its Commercial General Liability policy to cover WILSSA's obligations under this Article.

## **OTHER TERMS AND CONDITIONS**

### **16. INDEMNITY AND LIMITATION OF LIABILITY**

1. WILSSA hereby agrees to indemnify, defend and hold harmless TOWN and its respective officers, officials, agents, employees, members of boards and committees, with respect to the equipment, work and materials that WILSSA or its subcontractors, employees, agents or representatives have agreed to perform and supply under this AGREEMENT from and against all expenses, losses and claims, demands, payments, suits, actions, liabilities, recoveries, and judgments of any nature and description, other than as a result of the sole negligence of TOWN, including reasonable attorney's fees, resulting from claims arising out of or related to any act or omission of WILSSA, its agents, employees, contractors, representatives for service or materials provided, in the work and materials that WILSSA has agreed to perform and supply under this AGREEMENT. This obligation to indemnify, defend and hold harmless does not waive any defense, immunity or limitation of liability which may be available to the TOWN, its officers, agents, or employees under the Maine Tort Claims Act pursuant to 14 M.R.S. §8101 et. seq.

2. In the event of the commencement of any action against TOWN, or its respective officers, officials, agents, employees, or members of boards and committees which is within the scope of this indemnification, TOWN will give notice thereof to TOWN within fifteen business days after the TOWN is formally noticed in any such action, and, after consultation with TOWN, WILSSA will have the right to select and furnish counsel for the defense of any such action, at no cost or expense to the TOWN.

3. TOWN'S failure to give timely notice to WILSSA of the commencement of any such action does not relieve WILSSA of its obligations under this section unless such failure to give timely notice causes actual prejudice to WILSSA's ability to defend any such claim. Except for settlements involving only the payment of money, no settlement which creates an obligation for TOWN of any such action, or any claim therein, may be made by WILSSA or by counsel selected by WILSSA, without the approval of TOWN, which approval may not be unreasonably withheld.

4. The extent of WILSSA's indemnification and hold harmless is not limited by the requirements for liability insurance under this Agreement.

5. The provisions of this article survive the termination of this agreement.

## **17. FORCE MAJEURE**

WILSSA is not liable for any loss or damage due to failure or delay in performance under this Agreement resulting from any unusual or unavoidable cause beyond WILSSA's reasonable control including, but not limited to: acts of God; acts or omissions of civil or military authority; fires; floods; epidemics; quarantine restrictions; unusually severe weather; strikes or other labor disputes; embargoes; wars; political strife; riots; sabotage; or unusual delay in transportation.

## **18. WAIVER:**

Failure of either party to complain of any act or omission on the part of the other party, no matter how long the same may continue, is not deemed to be a waiver by said party of any of said party's rights hereunder. No waiver by either party at any time, expressed or implied, of any breach of any provision of this Agreement may be deemed a waiver of breach of any other provision of this Agreement or a consent to any subsequent breach of the same or any other provision. If any action by either party requires the consent and approval of the other party, the other party's consent to or approval of such action on any one occasion may not be deemed to be a consent to or approval of said action on any subsequent occasion. Any and all rights and remedies which either party may have under this agreement, upon any breach, are distinct, separate and cumulative and not be deemed inconsistent with each other; and no one of them, whether exercised by said party or not, may be deemed to be an exclusion of any other.

## **19. NON-DISCRIMINATION:**

Town and WILSSA agree to comply with all Federal laws relating to nondiscrimination in connection with any use, operation, program, or activity on or related to the previously described property, including but not limited to:

- a. All requirements imposed by or pursuant to the non-discrimination regulations of the U.S. Department of the Interior (43 C.F.R., Part 17);
- b. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d-1), which prohibits discrimination on the basis of race, color, or national origin;
- c. The Age of Discrimination Act of 1975, as amended (42 U.S.C. §6101 et seq.), which prohibits discrimination on the basis of age;
- d. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicap; and
- e. The Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151), which requires facilities located on the property to be accessible to the physically handicapped.
- f. The Americans with Disabilities Act of 1990 (42 U.S.C 12181), which requires that no otherwise qualified handicapped individual shall, solely by reason of his or her handicap, be excluded from the participation in, be denied benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance.

## **20. ACKNOWLEDGEMENT:**

This Agreement and the obligations of the parties hereto are subject to the terms and conditions set forth in the deed from the USA to the TOWN, dated the 27th day of February, 1973, and recorded at York County Registry of Deeds/Clerks Office at Book 1985, page 201, and the current Program of Utilization which governs the use of the assigned property. Violations of the said terms and conditions may be grounds for reversion to the USA, at its discretion and termination of this Agreement. Concessionaire owned personal and real property improvements associated with the real property, may be subject to seizure, without compensation by the USA

## **21. RETENTION OF EARNINGS:**

WILSSA may retain any and all income from any fees or any other income from activities such as, but not limited to, admissions fees, rental fees, docking and mooring fees, membership fees, merchandise sales, food and beverage sales, lodging fees and royalties. The scheduling and marketing of such activities are at the sole discretion of WILSSA. The values of all such fees and costs, which may be set from time to time at the sole discretion of WILSSA, are to be retained in full by WILSSA for the benefit of STATION and its Purpose, Use and Maintenance. However, admissions fees for the public to the station will be comparable to admissions fees charged at similar facilities in the area.

## **22. TERMINATION**

### **A. TOWN may terminate this AGREEMENT if WILSSA:**

- 1) Is in substantial breach of a provision of the AGREEMENT.

2) If WILSSA ceases to be an active, functioning nonprofit corporation registered to do business under the laws of the STATE of MAINE.

When any of the above conditions exist, TOWN may, without prejudice to any other rights or remedies of TOWN and after giving WILSSA thirty days written notice to remedy above condition and the condition has not been remedied, terminate this AGREEMENT:

**B. WILSSA may terminate this AGREEMENT if TOWN:**

1) Is in substantial breach of a provision of the AGREEMENT document.

If the above conditions exist, WILSSA may, without prejudice to any other remedies or WILSSA and after giving the TOWN thirty (30) days written notice to remedy the above condition and the condition has not been remedied, terminate the AGREEMENT without penalty.

**23. NOTICE:**

Whenever notice is required to be given under the terms of this License, such notice must be in writing and either hand delivered or mailed by certified mail, return receipt requested:

If to the WILSSA, to:

Wood Island Life Saving Station Assoc.

PO Box 11

Kittery Pt, ME 03905

If to TOWN, to:

Town Manager

Town of Kittery

200 Rogers Road

Kittery, ME 03904

or to such other addresses as WILSSA or TOWN designate for themselves in the same manner.

**24. AMENDMENT TO CONCESSION AGREEMENT:**

This Concession Agreement contains all the terms and conditions between the parties, and no alteration, amendment, or addition is valid unless in writing and signed by WILSSA and a majority of the

Kittery Town Council. If a substantial amendment is made, concurrence by the Secretary of the Interior or designee is required.

**25. OTHER ITEMS:**

The Repair, Maintenance and Use Agreement (Exhibit B, "Agreement Two"), dated \_\_\_\_\_, must remain in effect throughout the duration of this Concession Agreement.

**26. Captions:**

The captions to the paragraphs herein are for convenience only and are not to be deemed inclusive; the Concession Agreement must be interpreted based upon its entire context.

IN WITNESS WHEREOF, the parties have set their hands and seals or caused this agreement to be signed by their properly authorized corporate officers and caused their corporate seals to be hereunto affixed this \_\_\_\_ day of \_\_\_\_\_, 2015.

TOWN, by:

[Name] [Title] [Address] [TOWN, State, Zip Code]

WITNESS:

WILSSA, by:

[Name] [Title] [Address] [TOWN, State, Zip Code]

WITNESS:

EXHIBIT A: Quitclaim Deed

EXHIBIT B: Repair, Maintenance, and Use Agreement (Agreement Two)

EXHIBIT C: Preservation Agreement

EXHIBIT D: Determination of Eligibility

**REPORT to THE KITTERY TOWN COUNCIL: Wood Island Life Saving Station  
Authorization for Innovative Readiness Training Program application.**

1 **Date:** December 8, 2015

2 **Responsible Individual:** Wood Island Life Saving Station Association. Sam Reid, President.

3 **Subject:** Authorization for an application to be finalized and submitted to the Maine National  
4 Guard from the Town of Kittery and Wood Island Life Saving Station Assoc for “Innovative  
5 Readiness Training Program” exercise to repair the sea walls at Wood Island.

6 **EXECUTIVE SUMMARY:**

7 On October 17, 2013 the Wood Island Life Saving Station Association (WILSSA) entered into a  
8 contract with the Town of Kittery to improve portions of the life saving station on Wood Island  
9 and surrounding site including two massive sea walls.

10 The estimated expense of the sea wall work alone is approximately \$800,000. It includes  
11 rebuilding or encapsulating the remaining walls with new concrete and repairing the erosion  
12 behind the walls with new stacked stone.

13 The Maine National Guard has encouraged WILSSA and Kittery to submit an application for an  
14 Innovative Readiness Program training exercise at Wood Island in the summer of 2016. This  
15 would mean, if successful, that the Guard would provide all of the manpower and associated  
16 labor costs to rebuild the walls. WILSSA would pay for the materials, which have been estimated  
17 to cost \$166,000. There would be no cost to Kittery.

18 There is little or no downside risk to Kittery or WILSSA from submitting an application. The  
19 potential benefits are large, not only in financial terms, and public relations terms, but also in  
20 terms of succeeding with an important portion of the project in a timely manner. Approval of the  
21 authorization to complete an application and submit it is recommended.

22

23 **FACTS BEARING ON THE EQUATION:**

24 The National Guard units across America regularly participate in Innovative Readiness Training  
25 (IRT) drills. Maine’s National Guard is no exception. From the DOD web page:

26 *“The Department of Defense’s Innovative Readiness Training Program is a US military*  
27 *volunteer training opportunity that provides training and readiness for military personnel*  
28 *while addressing the needs of underserved American communities. Through this program,*  
29 *military units refine their skills by performing services and developing projects for*  
30 *communities that otherwise would not have the resources to conduct them on their own.”*

31 Wood Island Station’s restoration has, from its outset, been a project that the Town of Kittery  
32 could not afford to undertake. This island is a public park owned by a municipality. A non-  
33 profit has been formed to help the Town raise the funds to restore and reuse the historic building.  
34 These facts are attractive to the Guard as they fit well with the intent of this program.

35

36 **BACKGROUND:**

37 Through the process of securing \$200,000 in State of Maine funding for Wood Island Station’s  
38 repairs a chance meeting with the Adjutant General for the Maine National Guard, Brigadier  
39 General Gerard Bolduc, occurred in the early spring of 2015. He was told about the project of

**REPORT to THE KITTERY TOWN COUNCIL: Wood Island Life Saving Station  
Authorization for Innovative Readiness Training Program application.**

40 restoring Wood Island Station and requested additional information. His staff contacted  
41 WILSSA in June and a package describing the project and a possible role for the Guard was  
42 created for the General and provided to him. Although no site visit occurred during the summer  
43 of 2015, communication continued on and off. In November Captain Scott Baker reached out to  
44 WILSSA and asked if there was still interest from WILSSA in an Innovative Readiness Training  
45 Program exercise. The answer was a resounding “yes” and a meeting has been scheduled with  
46 the Kittery Town Manager and WILSSA’s President with the Guard at their headquarters in  
47 Augusta for December 14.

48

49 **CURRENT SITUATION:**

50 The sea walls at Wood Island have failed. The southern wall has been holding together decently  
51 well with one large exception where a breach occurred in the spring of 2015. But its useful life is  
52 very limited. The northern wall is entirely ineffective and has failed almost completely.

53 The marine engineer, Duncan Mellor, has been working hard on the design of the sea wall  
54 rebuild as a contractor to WILSSA. This design was provided first to Kittery’s Wood Island  
55 Advisory Committee for their review and then to the Maine DEP, the US Army Corps of  
56 Engineers and the State of Maine Historic Preservation Office. The design calls for a new wall  
57 that is large enough to encapsulate the remaining wall structures. It will be approximately one  
58 foot thicker and two feet taller than the current structures.

59 The permitting process for these walls has been complex, lengthy and time consuming. Maine  
60 DEP made a site visit on March 30, 2015 and subsequently requested changes to the design that  
61 had been submitted initially in November of 2014. They wished to have less stone fill employed  
62 behind the rebuilt walls. WILSSA accommodated their wishes and resubmitted the design. The  
63 final permit review from Maine DEP for this work has been described verbally in recent days as  
64 complete.

65

66 **PROPOSED SOLUTION / RECOMMENDATION**

67 Authorize the Town Manager and WILSSA President to finalize the draft application attached  
68 and forward it to the Maine National Guard to begin a six month internal review of the project.

69

70 **RATIONALE FOR THE PROPOSED SOLUTION / RECOMMENDATION**

71 If the Maine National Guard could be brought to this project in the summer of 2016 it would be a  
72 remarkable success. The funds are not in place to rebuild the walls in that time frame without  
73 their assistance.

74

75 **CONCLUSION:**

76 The synergy of the need to repair Wood Island’s sea walls and the Maine National Guard’s  
77 Innovative Readiness Training program shows real potential. An application to learn if their  
78 expertise could be brought to this project is recommended.

79

80 **REQUEST:**

**REPORT to THE KITTELY TOWN COUNCIL: Wood Island Life Saving Station  
Authorization for Innovative Readiness Training Program application.**

81 WILSSA requests that Council authorize the Town Manager and the WILSSA President to  
82 finalize the application to the Maine National Guard, including a public notice of this proposed  
83 activity, and submit the final product as soon as practical.

84 **SUGGESTED AGENDA ITEM & MOTION:**

85

86 **AGENDA:** The Kittery Town Council moves to authorize the Town Manager and the WILSSA  
87 President to finalize and submit an application to the Maine National Guard for an Innovative  
88 Readiness Program training exercise to rebuild the sea walls of Wood Island.

89 **MOTION TO APPROVE:** The Kittery Town Council authorizes the Town Manager and the  
90 WILSSA President to finalize and submit an application to the Maine National Guard for an  
91 Innovative Readiness Program training exercise to rebuild the sea walls of Wood Island.

92

93 Attachments

94

95 1) Memorandum from Duncan Mellor, Tighe and Bond, to Sam Reid, WILSSA 12/7/15

96 2) Engineers Opinion of Cost, Tighe and Bond, November 16, 2015

97 3) Draft "Request for Military Assistance."

## Wood Island Seawalls Repairs & Replacement

**TO:** Sam Reid, President  
Wood Island Life Saving Station Association (WILSSA)

**FROM:** Duncan Mellor, PE, Tighe & Bond

**DATE:** Dec. 7, 2015

---

Tighe & Bond was requested by WILSSA to create a preliminary design and estimates of time and cost of the proposed repair and reconstruction work for the North and South Seawalls on Wood Island in Kittery Maine. These quantities, times and costs are only initial estimates. Variables include the available facilities on the mainland for barge loading/unloading, equipment and crew transportation. The times will also vary depending on crew size and organization needed to have crew, materials and equipment in place when needed, however given the limited space on the island and at each construction location, these are reasonable estimates based on efficient size crews and logistics.

Preliminary design facts and figures include that this project represents the repair or reconstruction of two existing seawalls; the north and the south. The south seawall is 201 feet in length and is proposed to be approximately 8.9 feet tall and 5.5 feet wide at its base and 2.5 feet wide at its top. The majority of the south seawall is intact and the proposed project would leave the existing wall in place and encapsulate it in new concrete. The total quantity of concrete for the south seawall is estimated to be 175 cubic yards. Armor stone will be installed behind the south seawall and will total 313 cubic yards. The north seawall is in very poor condition and requires substantial rebuilding. Its length is 260 feet and it is proposed to be approximately 9.8 feet tall and 7 feet wide at its base and 2.5 feet wide at its top. The total quantity of concrete for the north seawall is estimated to be 296 cubic yards. Armor stone and rock fill will also be stacked behind the north seawall and is estimated to total 545 cubic yards.

Based on item-by-item review of the tasks outlined in the Engineer's Opinion of Probable Costs, (see attached) the estimate for the North Seawall replacement is 9 weeks based on 5 day work weeks. The estimate for the South Seawall repair is 5 weeks, also based on 5 day work weeks. These include seawall work plus rock fill including 1 week mob/demob allowance; no weather delays; with floating equipment hauling lumber etc to the island while others do site prep, excavation, formwork, etc. Essentially a construction crew and a mainland trucking crew and a boat/barge crew. If there is a large enough group of workers available, the north and south seawalls might be done on a parallel schedule, working both at once, which might make most efficient use of trucking, concrete and barge time.

Important logistical questions remaining to be answered include laydown and staging area on the mainland, as well as shore access. Frisbee Pier in Kittery Point (the Town Dock) is ideal for people and small materials transfer, but is not suitable for handling bulk materials and concrete. The USCG area at the Portsmouth Naval Shipyard would be suitable for bulk loading barges (and is in Maine). Laydown area at the Shipyard, however, is uncertain. Alternatively, the boat-launching ramp in Rye Harbor, NH has previously been used to hauling concrete trucks to the Isles of Shoals on landing craft and this may have good proximity, all-tide access, and suitability for the Wood Island sea walls restoration project, at least for concrete transport.

WOOD ISLAND LIFE SAVING STATION Kittery Point, ME		ENGINEERS OPINION OF COST		DATE PREPARED Nov. 16, 2015		SHEET 1 OF 3			
Sitework		<input type="checkbox"/> 85% (DRAFT) <input type="checkbox"/> 100% (FINAL) <input checked="" type="checkbox"/> OTHER (SPECIFY) Budget		WOOD ISLAND SEAWALL WORK				Tighe & Bond	
		ITEM DESCRIPTION	QUANTITY						
		NUMBER	UNIT	UNIT COST	TOTAL	UNIT COST	TOTAL	UNIT COST	TOTAL
North Seawall: Materials on shore at quarry or supplier yard							\$106,068		
South Seawall: Materials on shore at quarry or supplier yard							\$60,154		
Total Seawalls: Materials on shore/source							\$166,222		

This is an engineers opinion of probable construction cost. Tighe & Bond has no control over the cost of labor, materials, equipment or services furnished by others or over the Contractor(s) methods of determining prices or over competitive bidding or market conditions. Tighe & Bond cannot and does not guarantee that proposals, bids or actual Total Project or Construction Costs will not vary from this opinion of probable cost.

DATE PREPARED  
Nov. 16, 2015

**ENGINEERS OPINION OF COST**

**Tighe & Bond**

**WOOD ISLAND LIFE SAVING STATION**

Kittery Point, ME

**WOOD ISLAND SEAWALL WORK**

85% (DRAFT)   
  100% (FINAL)   
  OTHER (SPECIFY) Budget

**North Seawall Replacement**

ITEM DESCRIPTION	QUANTITY		MATERIAL COST		LABOR/EQUIP COST		TOTAL ESTIMATE	
	NUMBER	UNIT	UNIT COST	TOTAL	UNIT COST	TOTAL	UNIT COST	TOTAL
Mobilization/demobilization	1	LS	\$1,000	\$1,000		\$0	\$1,000	\$1,000
1. Removal of wall concrete (kept on site)	3	Day	\$500	\$1,500		\$0	\$500	\$1,500
2. Footing excavation	5	Day	\$400	\$2,000		\$0	\$400	\$2,000
3. Rock dowels	600	EA	\$20	\$12,000		\$0	\$20	\$12,000
4. Footing in tidal zone	91	CY	\$217	\$19,747		\$0	\$217	\$19,747
5. Wall concrete	205	CY	\$217	\$44,485		\$0	\$217	\$44,485
6. Weeps	48	EA	\$32	\$1,536		\$0	\$32	\$1,536
7. Armor stone (import) & placement	357	CY	\$40	\$14,280		\$0	\$40	\$14,280
8. Geotextile 12oz/SY NW	400	SY	\$5	\$2,000		\$0	\$5	\$2,000
9. Rock fill (import) & placement (55LF)	188	CY	\$40	\$7,520		\$0	\$40	\$7,520
Construction total								\$106,068
North seawall, replace 235 LF of 260 LF								

This is an engineers opinion of probable construction cost. Tighe & Bond has no control over the cost of labor, materials, equipment or services furnished by others or over the Contractor(s) methods of determining prices or over competitive bidding or market conditions. Tighe & Bond cannot and does not guarantee that proposals, bids or actual Total Project or Construction Costs will not vary from this opinion of probable cost.

WOOD ISLAND LIFE SAVING STATION Kittery Point, ME		ENGINEERS OPINION OF COST				DATE PREPARED Nov. 16, 2015		SHEET 3 OF 3	
South Seawall Repair		WOOD ISLAND SEAWALL WORK				Tighe & Bond			
ITEM DESCRIPTION	QUANTITY		MATERIAL COST		LABOR/EQUIP COST		TOTAL ESTIMATE		
	NUMBER	UNIT	UNIT COST	TOTAL	UNIT COST	TOTAL	UNIT COST	TOTAL	
Mobilization/demobilization	1	LS	\$1,000	\$1,000		\$0	\$1,000	\$1,000	
1. Delaminated conc. rem. (kept on site)	3	Day	\$500	\$1,500		\$0	\$500	\$1,500	
2. Repair excavation	2	Day	\$400	\$800		\$0	\$400	\$800	
3. Rock dowels	167	EA	\$20	\$3,340		\$0	\$20	\$3,340	
4. Wall concrete incl. delam. volume est	175	CY	\$217	\$37,975		\$0	\$217	\$37,975	
5. Weeps - drilled	42	EA	\$32	\$1,344		\$0	\$32	\$1,344	
6. Armor stone (import) & placement	260	CY	\$40	\$10,400		\$0	\$40	\$10,400	
7. Rock berm (import) & placement (22LF)	53	CY	\$40	\$2,120		\$0	\$40	\$2,120	
8. Geotextile 12oz/SY NW	335	SY	\$5	\$1,675		\$0	\$5	\$1,675	
Construction total								\$60,154	
South seawall, repair all of 210 LF									

This is an engineers opinion of probable construction cost. Tighe & Bond has no control over the cost of labor, materials, equipment or services furnished by others or over the Contractor(s) methods of determining prices or over competitive bidding or market conditions. Tighe & Bond cannot and does not guarantee that proposals, bids or actual Total Project or Construction Costs will not vary from this opinion of probable cost.

**Office of the Assistant Secretary of Defense  
Reserve Affairs  
1500 Defense Pentagon  
Washington, DC 20301-1500**

**INNOVATIVE READINESS TRAINING  
REQUEST FOR MILITARY ASSISTANCE**

This application is to be used by all civil organizations or governmental agencies requesting Civil-Military Innovative Readiness Training (IRT) support as authorized by section 2012 of Title 10, United States Code. Applications are to be mailed to:

OASD/Reserve Affairs  
Attn: IRT Director  
1500 Defense, Pentagon  
Room 2E573  
Washington, DC 20301-1500

All IRT applications for support will be reviewed for completeness and eligibility. The applications will be forwarded to the Service IRT Program Managers and the Services will review the event for unit and individual training opportunities. The Services will forward a request to support the training event to the Office of the Assistant Secretary of Defense for Reserve Affairs (OASD/RA) for final review and approval. It is imperative that the information provided by the requesting official(s) be accurate and complete. A requesting official is an individual who submits the request and can sign contracts or commit funds and resources on behalf of the requesting organization. Specific information related to medical (Attachment A), engineering (Attachment B), and transportation and dive (Attachment C) training events must be included with this application. Complete the additional documents as appropriate for the training event. Any additional letters, documents, maps that would provide more information or details to the proposed training event also should be attached to the application as appropriate. Any request for support that will exceed one year must submit an annual request for military participation with all supporting documentation. **The application must be completed annually for the length of the training event.**

Please include copies of documents listed below with this application:

1. 501 C3 letter- required for non-profit organization request, must not be more than 10 years old
2. Articles of Incorporation
3. By-laws
4. Copy of newspaper ads which were published twice on two separate dates. State/Federal/local government entity to use their required process to advertise for this training event; ie: advertisement in FedBizOpps or contract ads. Ad must be published annually for the length of the training event.
5. Affidavit of publication (annual requirement for the length of the training event)
6. Environmental study if appropriate
7. Statement of non-competition (Attachment D)
8. Release of liability (Attachment E)

**The execution of any approved IRT training event is contingent upon the availability of funding and DoD resources.**

1. Name of community, agency, State or Federal entity requesting military support:

Town of Kittery, Maine

1a. Is the requesting agency/organization a military entity, either State or Federal, active, reserve or Guard?

Yes \_\_\_\_\_ No  X

1b. Is the requester a non-profit organization or entity other than city, state, federal entity?

Yes \_\_\_\_\_ No  X

If the answer is yes, attach a copy of the articles of incorporation, 501C3 letter, and organization by-laws with this application.

2. Address of requesting organization:

Nancy Colbert Puff, Kittery Town Manager

200 Rogers Road

City: Kittery

State: ME

Zip: 03904

3a. Will this training event take place at a location different from the address listed above?

Yes  X  No \_\_\_\_\_ If yes, include address in block below.

Wood Island

City: Kittery

State: ME

Zip: 03904

3b. Does the requestor have ownership of real estate or real property where this training is to take place? Yes  X  No \_\_\_\_\_ Property owned by Town of Kittery

4. Will this training event take place on a state or federal military installation, post, fort, base or other facility or property operated/leased/owned by or housing a federal or state military service or component?

Yes \_\_\_\_\_ No  X

5. Information for requesting official submitting request for support:

Name: Nancy Colbert Puff
Title: Town Manager, Town of Kittery Maine
Phone number: 207 475 1329
Email address: NColbertPuff@kitteryme.org
I have authority to enter into a binding agreement/MOU/MOA on behalf of the agency I represent: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
I have authority to commit resources or funds on behalf of the agency I represent: Yes <input type="checkbox"/> No <input type="checkbox"/> Other: Partnership with non-profit is in place

6. Check which community facilities are available (at no expense) for use by military during the training event.

Guard armory	city hall offices	community center	airfield hangar	clinic	school	office trailers
Other: Please indicate what facilities are required						

7. What contributions or resources will be provided by the requesting organization to assist this proposed IRT training event? Place an "x" next to each that applies.

Lodging	Computer/internet access	transportation
Meals	Telephone access	Construction supplies
Office space	Fax machine	Building materials

7a. Other assistance/financial/facilities provided by the requesting agency/community:

The Town of Kittery has entered into a contract with a non-profit, the Wood Island Life Saving Station Association (WILSSA). That non-profit has taken responsibility for all costs related to the repair and maintenance of the historic life saving station and intends to restore it and open it to the public as a maritime museum. They have had some excellent success in raising substantial funding for the clean up and repair of the Station as more than \$750,000 has been collected to date. This work is planned to occur in the spring / summer of 2016. Sources of those funds include federal (National Park Service, \$200,000 and EPA, \$200,000) as well as state (\$200,000) and private \$150,000. WILSSA has the responsibility for providing funds for this sea wall repair project and would prefer that work to begin in early summer 2016. Details from the marine engineer who has been working on the preliminary design and cost estimates for the project are attached.

8. What other funding/support is being contributed to this training event?

Fed/State/Local/Private	Department	Amount of funding Requested	Amount of actual appropriated funds/date appropriated
Federal	Dept of Interior, National Park Service	\$200,000	\$200,000 April 2015
Federal	Environmental Protection Agency	\$200,000	\$200,000 May 2014
State of Maine	General Fund	\$200,000	\$200,000 July 2015
Private			\$150,000

9. Specify and explain three prioritized time frames for the requested IRT support.

TIME FRAME	REASON FOR SPECIFIC TIME PERIOD
June through mid August 2016	Excellent weather, coordination with clean up / repairs
July through late August 2016	Excellent weather, less coordination with clean up / repairs
August through early October 2016	Decent weather, no coordination with clean up / repairs

10. Describe any special events/holidays/activities/ or local issues that may be ongoing during the training period. Include any situations that the military should be aware of that may impact their activities in the community.

There are no special events that would be a detriment to the project.

For the past two years in early August (and again in 2016) WILSSA has hosted a "Flotilla" where all mariners are invited to parade their boats to and from Wood Island and Kittery Point harbor.

For the Maine National Guard to be working on this site during that event would be ideal. The press coverage in 2015 included an aerial photo taken by a drone of the parade on the front page of the Portsmouth Herald.

11. What is the projected length of time needed to complete this training event?

The projected length of time to complete the project is nine week, assuming 5 day work weeks. More detail on this answer is attached.

12. Federal, state, city **engineering training events** - has this training event been listed on the federal/state/county/city websites for engineering projects and advertised according to federal/state/county/city contract law or the contract bid process?  
 Yes \_\_\_ No \_\_\_ **This is an annual request for the length of the event.**  
 If no, please attach an explanation to why this process was not completed.

**All training events-** Please include the public notice ads that were placed in the newspaper for the minimum state required time for public notices.

Will attach when completed....

**Attach a copy of the ads and notarized affidavit stating the ads were published and what was the response to the ads. If this is a multi-year event, a new ad must be published annually.**

12a.

Place of advertisement	Date advertised
Portsmouth Herald	TBD

13. Is the requested support available from a commercial entity? Yes \_\_\_ No \_\_\_  
 A negative response means there are no contractors or companies in the area/community of the training event that conduct this type of business.

13a. If services are available from a commercial entity, has the official submitting this request received a “certificate of non-competition” from the commercial entity that would otherwise provide such services? Yes \_\_\_ No \_\_\_

If applicable, attach a copy of the “certification of non-competition”.

14. Has this training event been presented to any of the following entities: provide name beneath title if applicable.

US Senator	Governor	State Senator	City Mayor
US Congressman	State TAG	State Representative	other

The federal funding for this project included significant written support from both US Senators from Maine, both members of Congress, and the Governor. The State Senator and State Representatives were supporters of the federal funding as well as the state funding. The Town Manager of Kittery supported all of the funding requests.

15. Remarks (attach additional sheet if necessary)

Please see attached.

\_\_\_\_\_  
Printed name of requesting official/civil authority

\_\_\_\_\_  
Signature of requesting official/civil authority

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

Mail application to:  
OASD/Reserve Affairs  
Attn: IRT Director  
1500 Defense, Pentagon  
Room 2E573  
Washington, DC 20301-1500

## Attachment B Engineering Training Event:

1.

Location:
Type of engineering training: Vertical (buildings)                      Horizontal (roads)
Description of training event:  Please see attached memo from Duncan Mellor of Tighe and Bond.

2. Training specifics: other items already completed should be added to the list or attached as addendums to this application.

Descriptive requirements	Completed by requesting entity- on file and submitted with this request	Date completed	Date to be completed	Not applicable
Environmental study	X	Dec 2015		
Land use permits				X
Blue prints/design	X	Dec 2015		
City building permits			When needed	
Right of way permits				X
Training timeline	X	Dec 2015		

3. Please place an "X" beside each service that is anticipated to be needed in completing this training: this is an initial estimate of the work to be done. The military will assess the training and make assignments as needed at the initial planning conference.

Electricians	Project management X	Water purification
Plumbers	Truck drivers X	Fuel farm
Carpenters X	Steelworkers X	Maintenance facility
Brick layers	Welders	Other:
Heavy Equipment operators X	Warehousemen	

4. Has your organization ever received past engineering support from the military? If so, state which community, what type of support, when it occurred and the length of time the military was in the community.

Community	Type of support – brief project description	Dates of engineering support	Length of time in the community
a. None			
b.			
c.			

5.

Additional Comments:
----------------------

## Attachment D

### Statement of Non-Competition

The Innovative Readiness Training (IRT) Event \_\_\_\_\_

(name of event) located in \_\_\_\_\_ (city)  
\_\_\_\_\_ (state) for Fiscal Year 20\_\_\_\_\_, would not compete with the services offered by civilian companies/vendors/entities or private providers. For the reasons set forth below the requested IRT assistance is not reasonably available from a commercial entity.

On two occasions, (date)\_\_\_\_\_ and (date)\_\_\_\_\_ an advertisement for the services/training to be performed by the military has been advertised in (name of publication) \_\_\_\_\_ consistent with the requirements of the IRT Program and the rules, if any, of the requesting organization. Copies of each advertisement are attached to the application.

No responses have been received by the designated deadline specified in the advertisements, and this organization has received no objection to the military participation in this training.

Printed Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Organization: \_\_\_\_\_

Phone: \_\_\_\_\_

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

## Attachment E

### RELEASE AND HOLD HARMLESS AGREEMENT

The \_\_\_\_\_ (name of requesting organization) located in \_\_\_\_\_ (city/state) agrees that its request that DoD military personnel conduct an Innovative Readiness Training (IRT) mission in support of \_\_\_\_\_ (organization) during fiscal year 20 \_\_\_\_\_ is subject to the following conditions:

1. The DoD IRT military support will be limited to that which is approved by the Department of Defense. Support that has not been previously approved will not be provided; IRT mission personnel may not perform activities beyond those previously approved.
2. Support shall be limited to providing personnel and equipment only.
3. All DoD military personnel and equipment will remain under the control and supervision of the officer or noncommissioned officer responsible for the military unit tasked to provide the IRT support.

The \_\_\_\_\_ (name of the requesting organization), in exchange for the DoD IRT military support, also agrees, on behalf of itself and its agents, to:

1. Release the DoD, its subordinate units, its officers, military personnel, employees, agents, and servants from any claim, demand, action, liability, or suit of any nature whatsoever for or on account of any injury, loss, or damage to the requesting organization and its agents arising from or in any way connected with the DoD military personnel support, excluding, however, any injury, loss, or damage arising solely from the intentional torts or gross negligence of the DoD military personnel or its agents.
2. Indemnify, defend and hold harmless the DoD, its subordinate units, officers, military personnel, employees, agents, and servants from any claim, demand, action, liability, or suit of any nature whatsoever for or on account of any injury, loss, or damage to any third person or third person's property arising from or in any way connected with the DoD IRT military support, excluding, however, those arising solely from the intentional torts or gross negligence of the DoD military personnel or its agents.

With full understanding of the conditions and agreements state above, the undersigned representative, who is authorized to execute this document which is binding on his organization and all assigns, heirs, executors, beneficiaries, and derivative claimants, hereby executes this release of liability and hold harmless agreement.

Printed name: \_\_\_\_\_ Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_ Organization: \_\_\_\_\_

12/14



**TOWN OF KITTELY**  
Office of the Town Clerk  
200 Rogers Road, Kittery, Maine 03904  
Telephone: (207) 475-1328 Fax: (207) 439-6806

**APPLICATION FOR VICTUALERS, INNKEEPERS,  
AND LODGING HOUSE OPERATORS LICENSE**

PLEASE PRINT THIS APPLICATION AND FILL IT OUT - DO NOT FILL IT OUT ON THE COMPUTER  
Thank you.

Applicant's name: Vida Cantina LLC  
(please print)

Address: 1 Middle Street, Suite 1, Portsmouth, NH 03801  
(please print)

Applicant's mailing address if different from above: \_\_\_\_\_

Applicant's Date of Birth: 01/24/1967 Applicant's Home Telephone Number: 603-498-6476

Name of Business: Vida Cantina  
(please print)

Business Address: 10 Shaplergh Road, Kittery  
(please print)

Business Telephone Number: 603-501-0648

SIGNATURE OF APPLICANT: \_\_\_\_\_ DATE: 11/09/2015

APPLICANT'S NAME: James McSharry  
(please print)

LICENSE FEE: \$ 50.00

FIRST TIME APPLICATIONS: \$50.00  
RENEWAL OF LICENSE: \$25.00

PLEASE SUBMIT THIS FORM WITH THE APPROPRIATE FEE TO THE TOWN CLERK'S OFFICE



# TOWN OF KITTERY

Office of the Town Clerk

200 Rogers Road, Kittery, Maine 03904

Telephone: (207) 475-1328 Fax: (207) 439-6806

12/14

## APPLICATION FOR VICTUALERS, INNKEEPERS, AND LODGING HOUSE OPERATORS LICENSE

Applicant (Sole Proprietor, Corporation, Limited Liability Co.): Cupcake Charlie's LLC  
(please print)

Applicant Address: PO Box 614 Pocasset MA 02559  
(please print)

Applicant's mailing address if different from above: SAME

Date of Birth (Sole Proprietor): n/a Applicant's Telephone Number: 321-284-6025

Business Name: Cupcake Charlie's  
(please print)

Business Address: 345 US Route 1 Ste 10 Kittery ME 03904  
(please print)

Business Telephone Number: 207-451-9100

Signature of Applicant: *Penny Lessa* DATE: 11/16/15

Applicant's Name: Penny Lessa  
(please print)

LICENSE FEE: \$ 50.00

FIRST TIME APPLICATIONS: \$50.00  
RENEWAL OF LICENSE: \$25.00

PLEASE SUBMIT THIS FORM WITH THE APPROPRIATE FEE TO THE TOWN CLERK'S OFFICE

## REPORT to the KITTERY TOWN COUNCIL – TOWN CODE TITLE 4 – REVISION

RESPONSIBLE INDIVIDUALS: ORC (Beers, Denault)

Date: 12/08/15

Subject: Town Code Title 4, Boards, Commissions, and Committees, Revision Proposal

### BACKGROUND:

The Report of the Committee on Appointments, 03/17/15 (*atch 1*), Item 4 recommends:

*“Term Expirations: We concur with the Town Clerk’s recommendation that seeks to “recalibrate” the end dates of all new appointments to December 31st. More work needs to be done on this as new appointments are made.”*

Proposed revision would insert the following statement: *“For the purpose of aligning term ending dates, the Council may make appointments in excess of three years (but no more than four years).”*

In six sections as follows:

- 4.2.5 F Appointment Exceptions
- 4.4.1B Kittery Community Center Board of Directors
- 4.6.2 Board of Trustees of Trust Funds
- 4.8 Shellfish Conservation Committee
- 4.9 Parks Commission
- 4.8 Conservation Commission

### CURRENT SITUATION:

“Strikeout/underscore” (*encl 1*) draft provided for review is intended to resolve the Town Clerk / Committee recommendation.

No similar revision is recommended for other Boards where provision is made in Title 4, for the Port Authority, Personnel Board, Board of Assessment Review, or Registration Board of Appeals.

**Note:** The only statutory restrictions found to any period of terms for any present Town board, commission, or committee, are those for the Planning Board and Board of Appeals (Town Charter §8.01 and §8.04) which is reflected in the Town Attorney’s opinion, November 20, 2015:

*“Term Expiration Date  
Sec. 8.01 (Planning Board) and Sec. 8 . 04 (Zoning Board of Appeals ) of the Town Charter set the length of the terms to these Boards. The Charter Sections both provide: Members shall serve terms of 3 years until their successors are appointed and qualified. The terms therefore are for three years from appointment date unless a shorter term is involved to fill a resignation, forfeiture, or similar event requiring an unexpired term to be filled.”*

It appears that the proposed revision to Section 4.2.5F, by itself, would achieve the objective of permitting term alignment for all, with a qualifying phrase, *“except where differing statutory provisions apply”*, to appropriately accord the Town Charter provisions for the Planning and Appeals Boards.

Draft is in due form and proper format with enactment findings of fact, basis of law, and legislative intent delineated (*encl 2*) and satisfies all statutory obligations.

**RECOMMENDATION:** Consider revision to Title 4, Boards, Commissions and Committees. Council may wish to entertain enactment as an emergency ordinance, or retroactively.

### ATTCHMENT

Report of the Committee on Appointments

### ENCLOSURES

- e1. Title 4 Revision Proposal
- e2. Title 4 - ORC – Enact



**TOWN OF KITTERY**  
Office of the Town Manager  
200 Rogers Road, Kittery, ME 03904  
Telephone: 207-475-1329 Fax: 207-439-6806  
[ncolbertpuff@kitteryme.org](mailto:ncolbertpuff@kitteryme.org)

Nancy Colbert Puff  
Town Manager

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**INTEROFFICE MEMORANDUM**

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**TO:** TOWN COUNCIL  
**FROM:** COMMITTEE ON APPOINTMENTS  
**SUBJECT:** REPORT OF THE COMMITTEE ON APPOINTMENTS  
**DATE:** MARCH 17, 2015  
**CC:** MARYANN PLACE, GEORGE DOW, ANN GRINNELL

---

As requested by Council at its December 23, 2014 meeting, a Committee comprised of three Councilors (Denault, White, Lemont), Town Clerk Maryann Place, myself, and two current board/committee chairs (George Dow, Economic Development Committee and Ann Grinnell, Planning Board) met four times to consider changes to Section 4 of Town Code regarding appointments. Following is a summary of our recommendations, and attached are proposed changes to the Code:

1. Use of Criteria: We recommend using criteria when considering all appointments. We do not want service to one other "primary" board/committee to be part of the criteria which would give preference to those not serving, but do recommend limiting service to no more than 1 "primary" boards/committees, with the understanding that appointment to more than one presumes that service to the boards/committees does not constitute a conflict of interest (e.g. Board of Appeals (BOA) and Planning Board (PB), Conservation Commission and PB/BOA, etc.). We defined primary vs. secondary as follows:

**Primary**

Kittery Port Authority (KPA)  
Planning Board  
Board of Appeals  
Parks Commission  
Board of Assessment Review  
Capital Improvement Program  
Conservation Commission

**Secondary**

Shared Services  
Shellfish Conservation  
Wood Island Advisory  
Mary Safford Wildes  
Open Space Committee  
Personnel Board  
Comprehensive Plan  
Economic Development  
KCC Board of Directors  
Educational Scholarship  
Energy Advisory

2. Appointment Notification: We recommend the Council send a letter to all interviewed applicants thanking them for their interest, and notifying them of their appointment or rejection. Rejected applicants, upon notification to the Town Clerk, may choose to remain

on the list, but will be placed at the bottom. For Planning Board and Board of Appeals, rejected applicants will automatically remain on the list unless they notify the Town Clerk of their desire to be removed from it.

3. Term Limits: For the purposes of calculating term limits for Boards/Committees which have a “3 consecutive terms of 3 years,” we recommend the Council consider actual service of greater than 2.5 years be counted towards a full term. If an appointee serves longer than the term limit due to no qualified successor being appointed, the next appointment term will begin as of the date of appointment of the successor.
4. Term Expirations: We concur with the Town Clerk’s recommendation that seeks to “recalibrate” the end dates of all new appointments to December 31<sup>st</sup>. More work needs to be done on this as new appointments are made.
5. Conflict of Interest: We recommend all applicants be required to fill out a conflict of interest declaration that they have a) read Maine State Statute on conflict rules, and b) attest that they believe they can serve without conflict. We discussed, at length, whether employees can be considered for appointment, and recommend Council consider this possibility on a case by case basis, as to whether the individual can serve without conflict.
6. Removal Procedure: We recommend applying the removal procedure outlined in Title 16 for the PB, BOA, and KPA for all Council appointed officials to boards and committees.
7. Maintenance of the Lists: Applicant forms are recommended to be amended to indicate only one board/committee per form (thus removing the “ranking 1-3” of preference) to ease record keeping. We also asked the Town Clerk to consider sending a letter out every two years to have people on the lists indicate their continued interest in serving and to update their contact information.
8. Appointment Exceptions: We recommend eliminating positions for Council appointment that conflict with the Town Manager’s authority under our Charter. Maine Municipal Legal Services advised us of this conflict, and Town Counsel Duncan McEachern concurs with this recommendation.
9. New Chapter 4.11 – Kittery Port Authority: We recommend repeating information contained in Title 16 regarding KPA appointments here to consolidate appointment information in Title 4. The Planning Board may choose to remove this information from Title 16 at a later date, as a “housekeeping” amendment.
10. Relocation of Section 4.2 of the Town Code to Council Rules: We recommend these changes be incorporated, and that the Council then consider removing Section 4.2 from the Town Code and relocating it to a new section of the Council’s rules. During our discussion, it seemed there were numerous instances where flexibility for interpretation was desired, and Council could have the ability to act without going through an ordinance change process in instances that warranted immediate action. Prior to 2010, the “Selection Procedures for Council Appointments” were adopted each year by Council upon reorganization in November.

1 **Title 4 BOARDS, COMMISSIONS and COMMITTEES**

2  
3 **4.2.5 Appointment Exceptions.**

4 A. Building Committee – when Council-appointed membership is involved, appointment  
5 procedure is determined by the sitting Council.

6 B. Charter Commission – procedure is determined by the sitting Council.

7 C. Christmas Parade Committee – members recommended by sponsoring group.

8 D. Rice Public Library Board of Trustees – application and interview procedure applies, but  
9 appointment is made by Library Trustees.

10 E. Newly-formed Boards not existing as of November 1, 2000 – procedure is determined by the  
11 sitting Council

12 F. For the purpose of aligning term ending dates, the Council may make appointments in excess  
13 of three years (but no more than four years).

14  
15  
16 **Chapter 4.3 BOARD OF ASSESSMENT REVIEW**

17 **4.3.2 Membership.**

18 Qualifications of members, their appointment and terms, is governed by Article VII of the Town  
19 Charter. Members serve until their successors are appointed and qualified.

20  
21 **Chapter 4.4 KITTERY COMMUNITY CENTER BOARD of DIRECTORS**

22  
23 **4.4.1 Appointment and Composition.**

24  
25 A. Pursuant to the provisions of the Town Charter, Section 2.07(1), the Town Council  
26 establishes a Board of Directors for the Kittery Community Center at Frisbee Common to  
27 oversee those aspects of Center operations and facilities as delineated in this Chapter.

28  
29 B. The Board consists of nine (9) voting members. Seven (7) are Kittery residents, serving  
30 staggered terms of office of three years each, plus the Town Manager and a Council-appointed  
31 Town Councillor. For the purpose of aligning term ending dates, the Council may make  
32 appointments in excess of three years (but no more than four years). The Recreation Director  
33 and Town Planner are ex officio members without voting rights.

34  
35 C. Resident appointments are to be comprised of individuals with demonstrable experience  
36 or association with recreation (3); arts and culture (2); economic or community development (1);  
37 plus a member-at-large (1).

38  
39 D. The initial appointment of one recreation member, one arts and culture member, and the  
40 economic or community development member are for three years. The second recreation and  
41 arts and culture initial appointments are for two years, with the remaining two appointments for  
42 one year. All subsequent resident appointments, or reappointments, are to be for three year  
43 periods, except as provided in 4.4.1 I.

44  
45 E. Members of the Board are appointed by the Town Council.

46  
47 F. Municipal officers or officials, or a spouse thereof, may not serve as a resident member  
48 of the Board.

49  
50 G. Members serve until their successors are appointed and qualified.

51

52 H. A member of the Board may be dismissed for cause by the Town Council before the  
53 expiration of such member's term after notice and hearing.

54  
55 I. Vacancies are filled by Town Council appointment for the unexpired term.

56  
57 4.4.2 Powers and Duties.

58  
59 A. The Board shall elect annually a chairperson, vice chairperson, and secretary from its  
60 membership. It is the duty of the secretary to keep and maintain a permanent record of all  
61 meetings of the Board, and show the vote of each member upon each question.

62  
63 B. A quorum consists of five or more members. All decisions must be made by a minimum  
64 of five like votes, except on procedural matters.

65  
66 C. The Board shall propose bylaws for Town Council adoption to govern routine Board  
67 proceedings.

68  
69 D. The Board shall set agendas and hold meetings to perform duties.

70  
71 E. Any question of whether a particular issue involves a conflict of interest sufficient to  
72 disqualify a member from voting thereon is decided by a majority vote of the members present,  
73 subject to 4.4.2 B above, except the member who is being challenged, who may not vote on the  
74 issue.

75  
76 F. All records of the Board are public records, except as excluded under 1 M.R.S. §402 (3)  
77 (A)-(O), the Maine Freedom of Access (Right to Know) statute.

78  
79 G. The Board is to:

80  
81 1. Prepare and recommend a Long Range (5-Year) Community Center Development Plan for  
82 Council adoption, updated annually, and monitor and report on Plan implementation progress;

83  
84 2. Develop operational policies, and approve operating procedure protocols recommended by  
85 administration;

86  
87 3. Review and endorse an annual operating budget proposal for operations and facilities  
88 maintenance developed by administration;

89  
90 4. Develop and annually recommend a Capital Program to the Capital Improvement Program  
91 Committee; and

92  
93 5. Report quarterly for the first year of operation, then annually or at such intervals as the Town  
94 Council may direct thereafter, on programs, use, growth, and new activity at the Center. Such  
95 report may include elements to satisfy the Plan implementation progress report.

96  
97 **Chapter 4.5 REGISTRATION APPEALS BOARD**

98  
99 **Chapter 4.6 BOARD OF TRUSTEES of TRUST FUNDS**

100  
101 **4.6.2 Membership.**

102 The board consists of five members, the chairperson of the town council and the town clerk to  
103 be ex officio members and the clerk to be treasurer of said fund, and three additional members  
104 to be appointed by the moderator for one, two and three years respectively; and hereafter each  
105 year one member is to be appointed by the Town Council for a three-year term and thereafter  
106 for successive three-year terms. Appointed members serve until their successors are appointed  
107 and qualified. For the purpose of aligning term ending dates, the Council may make  
108 appointments in excess of three years (but no more than four years).  
109 Appointed member vacancies are filled by town council appointment for the unexpired term.  
110

#### 111 **Chapter 4.7 PERSONNEL BOARD**

##### 112 **4.7.1 Established-Composition-Qualifications, Terms, Removal, Compensation of** 113 **Members-Filling of Vacancies-Duties Generally.** 114

115 A Personnel Board is established, consisting of five members appointed by the Town Council. A  
116 personnel board is established, consisting of five members appointed by the Town Council. No  
117 member of the Board may be employed by the town, nor hold or be a candidate for any elective  
118 office. Members of the Board serve terms of three years and until their successors are  
119 appointed and qualified provided, however, that of the members originally appointed, one shall  
120 serve for a term of one year, two for a term of two years, and two for a term of three years. All  
121 terms expire on the same date in their respective years. Members serve conditioned only upon  
122 good behavior and may be removed for cause after notice and hearing. However, no member of  
123 the Board may serve for more than two consecutive three-year terms. Vacancies occurring  
124 during a term are filled by the Town Council for the balance of the term. Members of the Board  
125 serve without compensation, but funds will be provided for reasonable and necessary expenses.  
126 The Board elects its own chairperson. In addition to the duties set forth elsewhere in this  
127 chapter, the Board is to:  
128

- 129 1. Advise the Town Manager on matters of personnel policy and problems of personnel  
130 administration, including the development of personnel rules, a job classification plan, and a  
131 uniform pay plan;
- 132 2. Represent the public interest in the improvement of personnel administration in the Town  
133 service;
- 134 3. Make any inquiry which it may consider desirable concerning personnel administration in the  
135 Town service, and make advisory recommendations to the Town Manager, with respect thereto.  
136

#### 137 **Chapter 4.8 SHELLFISH CONSERVATION COMMITTEE**

138 The shellfish conservation program for the town is administered by the shellfish conservation  
139 committee consisting of seven full members and two alternate members appointed by the Town  
140 Council for terms of three years. Members serve until their successors are appointed and  
141 qualified. For the purpose of aligning term ending dates, the Council may make appointments in  
142 excess of three years (but no more than four years). Vacancies are filled by town council  
143 appointment for the unexpired term.  
144

145 The Committee's responsibilities include:

- 146 A. Establishing annually in conjunction with the department of marine resources the number of  
147 shellfish digging licenses to be issued;
- 148 B. Surveying each clam-producing area at least once every three years to establish size  
149 distribution and density and annually estimating the status of the Town's shellfish resources;
- 150 C. Submitting to the Town Council proposals for the expenditures of funds for the purpose of  
151 shellfish conservation;
- 152 D. Keeping this chapter under review and making recommendations for its amendments;

- 153 E. Securing and maintaining records of shellfish harvest from the Town's managed shellfish  
154 areas and closed areas that are conditionally opened by the department of marine resources;  
155 F. Recommending conservation closures and openings to the Town Council in conjunction with  
156 the area biologists of the department of marine resources;  
157 G. Submitting an annual report to the municipality and the department of marine resources  
158 covering the above topics and all other committee activities.  
159

## 160 **Chapter 4.9 CONSERVATION COMMISSION**

### 161 **4.9.4 Membership.**

- 162 A. The town council may appoint at least three, but not more than seven, conservation  
163 commissioners. The commissioners are selected from the qualified resident voters of the town.  
164 Members are initially appointed for terms of one, two and three years, such that the terms of  
165 approximately one third of the members will expire each year. Their successors are appointed  
166 for terms of three years each. Members serve until their successors are appointed and qualified.  
167 For the purpose of aligning term ending dates, the Council may make appointments in excess of  
168 three years (but no more than four years).  
169 Vacancies are filled by town council appointment for the unexpired term.  
170  
171

- 172 B. The Commission may recommend to the municipal officers that associate members be  
173 appointed to assist the Commission as the Commission requires. Associate members are  
174 nonvoting members, except when a quorum is absent. Their terms of office are to be for one,  
175 two or three years. Associate members are selected from the qualified resident voters of the  
176 Town.  
177

## 178 **Chapter 4.10 PARKS COMMISSION**

### 179 **4.10.4 Membership.**

- 180 A. The Commission consists of seven members, qualified under Section 2.07(2) of the Town  
181 charter, who have demonstrated an interest in the Town parks and facilities. Members are  
182 initially appointed for terms of one, two and three years, such that the terms of approximately  
183 one third of the members will expire each year. Their successors will be appointed for terms of  
184 three years each. Members serve until their successors are appointed and qualified. For the  
185 purpose of aligning term ending dates, the Council may make appointments in excess of three  
186 years (but no more than four years). Vacancies are filled by town council appointment for the  
187 unexpired term.  
188  
189 B. The Commission may recommend to the municipal officers that associate members be  
190 appointed to assist the commission, as the commission requires. Associate members are  
191 nonvoting members except when a quorum is absent. Their terms of office are to be for one,  
192 two or three years. Associate members are selected from the qualified resident voters of the  
193 Town.

1 **AN ORDINANCE** relating to the municipality’s authority for Town governance to give due and  
2 proper attention to its many demands pursuant to Federal law, Maine Revised Statutes, and the  
3 Town Charter; make provision for citizen participation in community affairs to provide for that  
4 range of requirements; and, establish, compose, and appoint members of boards, harbor  
5 authority, commissions, and committees (“Boards”) to serve the Town of the Kittery for those  
6 purposes, as more particularly set forth herein.

7 **WHEREAS**, the Kittery Town Council is authorized to enact this Ordinance, as specified in  
8 Sections 1.01 and 2.07(3) of the Town Charter; and 30-A MRS §3001, pursuant to its powers  
9 that authorize the town, under certain circumstances, to provide for the public health, safety,  
10 morals, and welfare and does not intend for this Ordinance to conflict with any existing state or  
11 federal laws.

12 **WHEREAS**, the Council intends through the adoption of this Ordinance to address the terms  
13 and expiration of Town Board membership; and

14 **WHEREAS**, the Council enacts this ordinance in order that:

15 A. Boards may have available to them candidates for membership who are qualified for the  
16 unique needs of that Board.

17 B. Each Board maintains the independent posture needed to encourage the free and open  
18 dialogue crucial to its function; and

19 C. All volunteers for Boards are shown the appreciation of the community regardless of whether or  
20 not they are appointed to a particular Board.

21 **NOW THEREFORE**, IN ACCORDANCE WITH TITLE 30-A MRS §3001, AND TOWN  
22 CHARTER §2.14, THE TOWN OF KITTELY HEREBY ORDAINS REVISION TO TITLE 4 OF  
23 THE TOWN CODE, AS [ PRESENTED / AMENDED ].

24 **Approved as to form:** \_\_\_\_\_ {NAME}, Town Attorney

25 **INTRODUCED** and read in a public session of the Town Council on the \_\_\_\_ day of \_\_\_\_\_,  
26 20\_\_\_\_, by: \_\_\_\_\_ {NAME} Motion to approve by Councilor  
27 \_\_\_\_\_ {NAME}, as seconded by Councilor \_\_\_\_\_ {NAME} and  
28 passed by a vote of \_\_\_\_\_.

29 **THIS ORDINANCE IS DULY AND PROPERLY ORDAINED** by the Town Council of Kittery,  
30 Maine on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, {NAME}, \_\_\_\_\_, Chairperson

31 **Attest:** {NAME}, \_\_\_\_\_ Town Clerk

32

33 **CONSIDERATION OF EMERGENCY ORDAINMENT**

34 **Kittery Town Charter**

35 **Sec. 2.15. Emergency ordinances.**

36 *To meet a public emergency affecting life, health, property or the public peace, the council*  
37 *may adopt one or more emergency ordinances in the form and manner prescribed for*  
38 *ordinances generally, but such emergency ordinances may not levy taxes or authorize the*  
39 *borrowing of money except as provided in section 6.10, subsection 2. An emergency*  
40 *ordinance may be adopted with or without amendment or rejected, but the affirmative vote of*  
41 *at least 5 members shall be required for adoption. It shall become effective upon adoption or*  
42 *at such later time as it may specify.*

43 *Every emergency ordinance, except one made pursuant to section 6.10, subsection 2, shall*  
44 *automatically stand repealed as of the 61st day following the date on which it was adopted,*  
45 *but this shall not prevent reenactment of the ordinance in the manner specified in this*  
46 *section if the emergency still exists. An emergency ordinance may also be repealed by*  
47 *adoption of a repealing ordinance in the same manner specified in this section for adoption*  
48 *of emergency ordinances.*



**TOWN OF KITTERY**  
Office of the Town Manager  
200 Rogers Road, Kittery, ME 03904  
Telephone: 207-475-1329 Fax: 207-439-6806  
[ncolbertpuff@kitteryme.org](mailto:ncolbertpuff@kitteryme.org)

Nancy Colbert Puff  
Town Manager

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**INTEROFFICE MEMORANDUM**

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**TO:** TOWN COUNCIL  
**FROM:** COMMITTEE ON APPOINTMENTS  
**SUBJECT:** ORC RECOMMENDED CHANGES TO TITLE 4  
**DATE:** DECEMBER 7, 2015;

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On November 30<sup>th</sup> the Committee met to consider changes to Title 4 of Town Code regarding appointments made to its proposal by the Ordinance Review Committee (ORC). The Committee agreed that the proposed changes appeared to modify Title 4 to a degree that effectively translated into an entire rewrite of this section of Town Code. The Committee discussed the procedure by which the significantly-modified proposal came before it, and concluded its discussion with two items for Council's consideration:

1. In the interest of time, the Committee affirmed its recommendation that limited changes to Title 4, which allow Council to align appointment dates to end with the calendar year should move forward. The Committee did not want its review of the additional changes to prolong Council from making appointments in the near term.
2. The Committee seeks direction from the Council as to its desire to rewrite Title 4 in its entirety. With the "date realignment" proposal described above, the Committee perceived its work as completed. Since Council as a whole had not received a copy of the changes proposed by the ORC, the Committee questioned whether this was a priority for the full Council. Attached is the ORC packet. Members of the Committee are available to consider these changes at Council's direction.

# REPORT to the KITTELY TOWN COUNCIL – TOWN CODE TITLE 4 – draft v1 112115

1 **RESPONSIBLE INDIVIDUALS:** ORC (Beers, Denault)

Date: tbd

2 **Subject:** Town Code Title 4, Boards, Commissions, and Committees

## 3 **STATEMENT OF NEED:**

4 To give due and proper attention to its many demands of Town governance pursuant to Federal law,  
5 Maine Revised Statutes, and the Town Charter; make provision for citizen participation in community  
6 affairs to provide for that range of requirements; and, establish, compose, and appoint members of  
7 boards, harbor authority, commissions, and committees (“Boards”) to serve the Town of the Kittery for  
8 those purposes.

9 To address the terms and conditions for the establishment, appointment, composition, powers, duties  
10 and administrative obligations of its Boards; and

11 To address the application, selection procedures, qualifications, terms of service, and dismissal  
12 procedures of members appointed to its Boards; and

13 In order that:

14 A. Boards always have available to them candidates for membership who are qualified for the unique  
15 needs of that Board.

16 B. Each Board maintains the independent posture needed to encourage the free and open dialogue  
17 crucial to its function; and

18 C. All volunteers for Boards are shown the appreciation of the community regardless of whether or not  
19 they are appointed to a particular Board.

## 20 **FACTS BEARING ON THE EQUATION:**

21 **Maine Revised Statutes:** *(not enclosed)*

- 22 • 1 MRS §71 and §402
- 23 • 12 MRS §6621 and §6671
- 24 • 21-A MRS §101 and §103
- 25 • 30-A MRS §2001, §2605, §2691, and §3261
- 26 • 36 MRS §843
- 27 • P&SL 1961, Chapter 163, as amended

28 **Town Charter:**

- 29 • §2.07; §5.02; §7.02; §7.04; §8.01; §8.04; §12.01; and, §12.02

## 30 **BACKGROUND:**

- 31 • Present Title: Ordainment 07/26/2010, Amended 7/25/11, 9/12/11, 11/10/14, 4/27/15 *(atch 1)*
- 32 • Current Boards / Appointments *(atch 2)*
- 33 • Council Committee addressed issues *(atch 3)*
- 34 • Title 16 – Land Use & Development - Board Provisions *(atch 4)*
- 35 • Wildes Trust Ordinance *(atch 5)*
- 36 • Lincoln Memo on Planning Board Appointments *(atch 6)*
- 37 • Equivalency Guide Example *(atch 7)*

38 The present Title 4, as reflected therein *(atch 1)* and displayed the Current Boards listing *(atch 2)*:

39 Does not:

- 40 • address some existing Boards
- 41 • have a consistent approach to Board powers and duties

**REPORT to the KITTELY TOWN COUNCIL – TOWN CODE TITLE 4 – draft v1 112115**

- 42 • provide a similar treatment basis for statutory, charter, and ordinance established boards
- 43 • address/clarify protocols for Boards formed ad hoc or working groups
- 44 • consistently define terms, service, qualifications, dismissal, or disqualification provisions
- 45 • address administrative practices and procedures in common
- 46 • demonstrate statutory bases for purposes in many cases
- 47 • clearly convey the parameters of candidate evaluation criteria

48 Has:

- 49 • repetitive redundant provisions applicable to all included in most sections
- 50 • some inconsistencies in application, interview, and selection procedures
- 51 • an ambiguous interview/selection process for Appeals/ Planning Board appointments
- 52 • inconsistent establishment, appointment, and composition provisions

53 **Note 1:** The Planning Board, Board of Appeals, and Port Authority provisions found in Title 16 (*atch 4*)  
54 were created in 1991’s first unified Land Use Code because Title 4 did not exist at the time, and it was  
55 necessary to ordain the powers and duties of those Boards with regard to land use responsibilities.  
56 Those particular requirements should remain in Title 16, however it is recommended that language  
57 related to their establishment, appointment, and composition, be published in Title 4 where all other  
58 necessary features are found.

59 **Note 2:** The Council Committee’s Item 10 (*atch 3*) suggests removing the selection procedures to a  
60 Council Policy. Although no revisions were made for recodification, they were placed in Title 4 to  
61 preclude random revision that risked inconsistency in legislative application. Council rules require two  
62 weeks to make amendments and the 30-day period for ordinance is not onerous. Should circumstances  
63 dictate, Council has emergency ordinance authority.

64 **CURRENT SITUATION:**

65 “Strikeout/underscore” (*encl 1*) and “accepted” (*encl 2*) drafts provided for review are intended to  
66 resolve those issues.

- 67 • Highlighted passages require attention for resolution
- 68 • Town Attorney providing BoA/PB interview process clarification (*tbd*)
- 69 • The Wildes Trust ordinance provisions should be reviewed and affirmed/revise (*atch 5*)
- 70 • Mr. Lincoln’s recommendation for PB appointments should be considered (*atch 6*)
- 71 • Education, training, experience equivalency should be incorporated (*atch 7*)

72 Drafts are in due form and proper format with enactment findings of fact, basis of law, and legislative  
73 intent delineated (*encl 3*) and satisfy all statutory obligations. A revised index is provided (*encl 4*).

74 **RECOMMENDATIONS:** Consider revision to Title 4, Boards, Commissions and Committees

**ATTACHMENTS**

- a1. Title 4 - Boards, Commissions & Cmttees 4-27-15
- a2. Current Boards / Appointments
- a3. Committee on Appointments Memo 031715
- a4. Title 16 – Land Use - Board Provisions
- a5. Wildes Trust Ordinance
- a6. Lincoln Memo on Planning Board Appointments
- a7. Equivalency Guide Example

**ENCLOSURES**

- e1. Title 4 Boards - ORC v1 - S-0 - 112115
- e2. Title 4 Boards - ORC v1 - Acptd - 112115
- e3. Title 4 - ORC – Enact
- e4. Title 4 Boards - ORC v1 – Index

RECODIFICATION - ORDAINMENT 07/26/2010, AMENDED 7/25/11, 9/12/11, 11/10/14, 4/27/15

## **Title 4 BOARDS, COMMISSIONS and COMMITTEES**

### **Chapter 4.1 ESTABLISHMENT**

Town governance requires attention to many demands pursuant to Federal law, Maine Revised Statutes, and the Town Charter. In order to provide for that range of requirements and make provision for citizen participation in community affairs the Boards, authority, commissions and committees addressed herein, are hereby established.

### **Chapter 4.2 SELECTION PROCEDURES FOR COUNCIL APPOINTMENTS**

#### **4.2.1. Purpose.**

When subject to council appointment, members of Town Boards, which term includes authority, commission, committee (both standing and ad hoc), and trust are selected using the following procedures.

#### **4.2.2 Objectives.**

There are certain general objectives which are critical to the successful functioning of council-appointed Boards among these are:

- A. That Boards always have available to them candidates for membership who are qualified for the unique needs of that Board.
- B. That each Board maintain the independent posture needed to encourage the free and open dialogue crucial to its function; and
- C. That all volunteers are shown the appreciation of the community regardless of whether or not they are appointed to a particular Board.

#### **4.2.3 Procedures.**

To achieve these goals, the following procedures for the selection of Board members are adopted:

- A. A list of applicants will be maintained by the Town Clerk.
- B. Volunteers must complete an application for each Board they wish to serve. Applicants will be listed in order by the date-time of receipt of the completed application by the Town Clerk. Applicants are eligible to serve only one primary board at a time (unless acting as an official designee to another board). Primary boards are defined as follows: Board of Appeals, Board of Assessment Review, Capital Improvement Program, Conservation Commission, Parks Commission, Planning Board, and Port Authority. All other boards are considered secondary. Service on secondary boards is limited to no more than three.
- C. No Town employees may be appointed to a Board, except when attendance is required in their official capacity.

D. A member whose term is expiring is given consideration for reappointment first, subject to term limitations for the position, if any. Service for more than one-half of a term is considered a full term for the purpose of calculating term limits. Alternates or associates on a Board will be given first consideration for appointment when an opening occurs, in order of length of service.

E. Applicants will be polled for interest for serving on a board when an opening occurs. Those refusing declining may opt to remain on the list and will be placed back on the list as of the date of declining.

F. Council may waive the interview requirement for reappointments; alternates applying for full membership; and full members applying for alternate status

G. With the exception of the Planning Board and Board of Appeals, eligible applicants are interviewed for a specific Board appointment prior to consideration by the full Council..

1. The interview is conducted by the Chairperson (or designated regular member) of the applicable Board and by one Council member designated by the Council. Councilor interviewing assignments are rotated so that no one Councilor would be involved in successive interviews for the same Board.

In event neither the Board Chairperson nor designated permanent member is available, the sitting Council may determine an alternate interview protocol.

2. Interviews are considered private.

3. Only one interview is conducted with each applicant for each position.

4. Both interviewers must agree to the acceptability of the candidate in order for that candidate's name to be considered by the full Council.

5. Applicants not recommended to the Council may opt to remain on the list(s) if they so desire. They must notify the Town Clerk in writing of their interest within one week of being notified of the non-appointment, and they will be placed at the bottom of the list. Otherwise, they will be removed from the list.

H. The following criteria are used in evaluating candidates:

1. Education

2. Training and experience

3. Related experiences

4. Any potential for conflict of interest

5. For reappointments or changes from Alternate to Full Member, attendance (rated as 'Excellent', 'Good', or 'Poor' is to be provided by the Chairperson of the Board on the interview form.

I. Any appointed Board member may be dismissed for cause by the Town Council pursuant to Section 2.07 (1) of the Town Charter.

**4.2.4 Planning Board or Board of Appeals Interviews and Appointments.**

- A. Applicants will be interviewed for the Planning Board or Board of Appeals with at least a quorum present at a regular or special Council meeting. If there are multiple applicants for a Board, they will be interviewed by Council as a group including applicant(s) already interviewed.
- B. Criteria listed in Section 4.2.3 H must be used in considering candidates for Planning Board and the Board of Appeals.
- C. After the interviews are completed, Council, in open session, and by the following meeting, shall nominate, with a second, discussion and vote on the candidate(s) for the open vacancy.
- D. A tie vote on an appointment shall be voted on by Council twice. Following the second tie vote the Council Chairperson shall determine the winner by lot by a coin toss.
- E. Interviewed applicants not appointed may remain on the list if they so desire. They must notify the Town Clerk in writing of their interest within one week of being notified of the non-appointment, and they will be placed back on the list. Otherwise, they will be removed from the list.

**4.2.5 Appointment Exceptions.**

- A. Building Committee – when Council-appointed membership is involved, appointment procedure is determined by the sitting Council.
- B. Charter Commission – procedure is determined by the sitting Council.
- C. Christmas Parade Committee – members recommended by sponsoring group.
- D. Rice Public Library Board of Trustees – application and interview procedure applies, but appointment is made by Library Trustees.
- E. Newly-formed Boards not existing as of November 1, 2000 – procedure is determined by the sitting Council.

**4.2.6 Other Appointments.**

- A. Town Manager, including related positions held by Manager: Interview by Council as part of hiring procedure.
- B. Individual positions not enumerated: Procedure determined by sitting Council.

**Chapter 4.3 BOARD OF ASSESSMENT REVIEW**

**4.3.1 Created – Powers.**

The Board of Assessment Review is created pursuant to Article VII of the Town Charter and exercises the powers conferred by that Article.

**4.3.2 Membership.**

Qualifications of members, their appointment and terms, is governed by Article VII of the Town Charter. Members serve until their successors are appointed and qualified.

**Chapter 4.4 KITTERY COMMUNITY CENTER BOARD of DIRECTORS**

**4.4.1 Appointment and Composition.**

A. Pursuant to the provisions of the Town Charter, Section 2.07(1), the Town Council establishes a Board of Directors for the Kittery Community Center at Frisbee Common to oversee those aspects of Center operations and facilities as delineated in this Chapter.

B. The Board consists of nine (9) voting members. Seven (7) are Kittery residents, serving staggered terms of office of three years each, plus the Town Manager and a Council-appointed Town Councilor. The Recreation Director and Town Planner are ex officio members without voting rights.

C. Resident appointments are to be comprised of individuals with demonstrable experience or association with recreation (3); arts and culture (2); economic or community development (1); plus a member-at-large (1).

D. The initial appointment of one recreation member, one arts and culture member, and the economic or community development member are for three years. The second recreation and arts and culture initial appointments are for two years, with the remaining two appointments for one year. All subsequent resident appointments, or reappointments, are to be for three year periods, except as provided in 4.4.1 I.

E. Members of the Board are appointed by the Town Council.

F. Municipal officers or officials, or a spouse thereof, may not serve as a resident member of the Board.

G. Members serve until their successors are appointed and qualified.

H. A member of the Board may be dismissed for cause by the Town Council before the expiration of such member's term after notice and hearing.

I. Vacancies are filled by Town Council appointment for the unexpired term.

#### **4.4.2 Powers and Duties.**

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

B. A quorum consists of five or more members. All decisions must be made by a minimum of five like votes, except on procedural matters.

C. The Board shall propose bylaws for Town Council adoption to govern routine Board proceedings.

D. The Board shall set agendas and hold meetings to perform duties.

E. Any question of whether a particular issue involves a conflict of interest sufficient to disqualify a member from voting thereon is decided by a majority vote of the members present, subject to 4.4.2 B above, except the member who is being challenged, who may not vote on the issue.

F. All records of the Board are public records, except as excluded under 1 M.R.S. §402 (3) (A)-(O), the Maine Freedom of Access (Right to Know) statute.

G. The Board is to:

1. Prepare and recommend a Long Range (5-Year) Community Center Development Plan for Council adoption, updated annually, and monitor and report on Plan implementation progress;

2. Develop operational policies, and approve operating procedure protocols recommended by administration;

3. Review and endorse an annual operating budget proposal for operations and facilities maintenance developed by administration;

4. Develop and annually recommend a Capital Program to the Capital Improvement Program Committee; and

5. Report quarterly for the first year of operation, then annually or at such intervals as the Town Council may direct thereafter, on programs, use, growth, and new activity at the Center. Such report may include elements to satisfy the Plan implementation progress report.

#### **Chapter 4.5 REGISTRATION APPEALS BOARD**

RESERVED

## **Chapter 4.6 BOARD OF TRUSTEES of TRUST FUNDS**

### **4.6.1 Created-Duties.**

A Board of Trustees of trust funds is created to have the care and management of the Mary Stafford Wildes Estate, or any other similar funds.

### **4.6.2 Membership.**

The board consists of five members, the chairperson of the town council and the town clerk to be ex officio members and the clerk to be treasurer of said fund, and three additional members to be appointed by the moderator for one, two and three years respectively; and hereafter each year one member is to be appointed by the Town Council for a three-year term and thereafter for successive three-year terms. Appointed members serve until their successors are appointed and qualified. Appointed member vacancies are filled by town council appointment for the unexpired term.

## **Chapter 4.7 PERSONNEL BOARD**

### **4.7.1 Established-Composition-Qualifications, Terms, Removal, Compensation of Members-Filling of Vacancies-Duties Generally.**

A Personnel Board is established, consisting of five members appointed by the Town Council. A personnel board is established, consisting of five members appointed by the Town Council. No member of the Board may be employed by the town, nor hold or be a candidate for any elective office. Members of the Board serve terms of three years and until their successors are appointed and qualified provided, however, that of the members originally appointed, one shall serve for a term of one year, two for a term of two years, and two for a term of three years. All terms expire on the same date in their respective years. Members serve conditioned only upon good behavior and may be removed for cause after notice and hearing. However, no member of the Board may serve for more than two consecutive three-year terms. Vacancies occurring during a term are filled by the Town Council for the balance of the term. Members of the Board serve without compensation, but funds will be provided for reasonable and necessary expenses. The Board elects its own chairperson. In addition to the duties set forth elsewhere in this chapter, the Board is to:

1. Advise the Town Manager on matters of personnel policy and problems of personnel administration, including the development of personnel rules, a job classification plan, and a uniform pay plan;
2. Represent the public interest in the improvement of personnel administration in the Town service;
3. Make any inquiry which it may consider desirable concerning personnel administration in the Town service, and make advisory recommendations to the Town Manager, with respect thereto.

### **4.7.2 Personnel Board Responsible for Hearing Grievances.**

The Personnel Board is responsible for hearing grievances involving employees covered by this chapter in the manner and under the provisions specified by this chapter.

#### **4.7.3 Opinions and Decisions of Personnel Board.**

All opinions and decisions issued by the Personnel Board are advisory in nature and are issued to the Town Manager and to the employee(s) requesting the grievance hearing or separation/demotion hearing.

#### **4.7.4 Function of Personnel Board Generally.**

It is not the Personnel Board's function to exclusively represent the interests of the employee or the employer; it is the Board's function to fairly and impartially represent the interests of both parties and to clearly and continually work for the development of mutual respect, understanding, and cooperation between the parties.

### **Chapter 4.8 SHELLFISH CONSERVATION COMMITTEE**

The shellfish conservation program for the town is administered by the shellfish conservation committee consisting of seven full members and two alternate members appointed by the Town Council for terms of three years. Members serve until their successors are appointed and qualified. Vacancies are filled by town council appointment for the unexpired term.

The Committee's responsibilities include:

- A. Establishing annually in conjunction with the department of marine resources the number of shellfish digging licenses to be issued;
- B. Surveying each clam-producing area at least once every three years to establish size distribution and density and annually estimating the status of the Town's shellfish resources;
- C. Submitting to the Town Council proposals for the expenditures of funds for the purpose of shellfish conservation;
- D. Keeping this chapter under review and making recommendations for its amendments;
- E. Securing and maintaining records of shellfish harvest from the Town's managed shellfish areas and closed areas that are conditionally opened by the department of marine resources;
- F. Recommending conservation closures and openings to the Town Council in conjunction with the area biologists of the department of marine resources;
- G. Submitting an annual report to the municipality and the department of marine resources covering the above topics and all other committee activities.

### **Chapter 4.9 CONSERVATION COMMISSION**

**4.9.1 Appointment-Purpose.**

Pursuant to the provisions of 30-A, M.R.S. §3261, the Town Council is to appoint a Conservation Commission for the protection and use of the natural resources located within the territorial limits of the Town.

**4.9.2 Duties.**

The commission is to:

A. Keep an index of all open areas within the municipality, whether publicly or privately owned, including open marshlands, swamps and other wetlands, for the purpose of obtaining information relating to the proper protection, development or use of those open areas.

The commission may recommend to the municipal officers or any municipal body or Board, or any body politic or public agency of the state, a program for the better protection, development or use of those areas, which may include the acquisition of conservation easements;

B. Conduct research, in conjunction with the Planning Board, into the local land areas;

C. Keep records of its meetings, finances and activities and make an annual report to the municipality; and

D. Seek to coordinate the activities of conservation bodies organized for similar purposes.

**4.9.3 Powers.**

The Commission may:

A. Make recommendations for use of land to the planning Board and park commission;

B. Prepare and print books, charts, maps, and plans as it deems necessary;

C. Serve as an advisory body to the public works department to review and advise, at least twice a year, at the call of the Town Manager, in conjunction with the management plan and maintenance of public parks and shade trees in public parks;

D. With the approval of the majority of the Town Council, receive gifts in the municipality's name for any of the commission's purposes and administer the gift for those purposes, subject to the terms of the gift; acquire land or easements and trusts, and accept gifts of land or money or easements, for conservation purposes; and

E. Develop and implement a management plan for Rogers Park with approval of the Town Council.

**4.9.4 Membership.**

A. The town council may appoint at least three, but not more than seven, conservation commissioners. The commissioners are selected from the qualified resident voters of the town. Members are initially appointed for terms of one, two and three years, such that the terms of approximately one third of the members will expire each year. Their successors are appointed for terms of three years each. Members serve until their successors are appointed and qualified. Vacancies are filled by town council appointment for the unexpired term.

B. The Commission may recommend to the municipal officers that associate members be appointed to assist the Commission as the Commission requires. Associate members are nonvoting members, except when a quorum is absent. Their terms of office are to be for one, two or three years. Associate members are selected from the qualified resident voters of the Town.

## **Chapter 4.10 PARKS COMMISSION**

### **4.10.1 Purpose.**

The Town Council may appoint a Parks Commission to provide ongoing citizen recommendations relating to the improvements or development of Town-owned property that is or is likely to be developed into Town parks to insure the preservation, beauty and protection of these most valuable sites.

### **4.10.2 Duties.**

The Commission is to:

A. Recommend to the Town Council an overall park management plan for the identification, protection, development or use of park lands and facilities;

B. Meet with the Town Manager to review and advise, at least twice a year, on the status and progress of the park management plan and other pertinent issues;

C. Coordinate its activities with those of the park, recreation, school and conservation bodies organized for similar purposes;

D. Keep records of commission finances and activities, post agendas and minutes of meetings and make an annual report to the municipality;

E. Assure that any recommended changes affecting municipal park properties are made in conjunction with the Conservation Commission;

F. Formulate a commission budget to be presented to the Town Council for approval.

### **4.10.3 Powers.**

The Commission may:

- A. Make recommendations for use of the parks and park facilities to the Town Manager and/or the Planning Board;
- B. Prepare and print books, maps and plans as it deems necessary;
- C. With the approval of the majority of the Town Council, apply for grants or receive gifts in the municipality's name for any of the commission's purposes and to administer these grants or gifts for those stated purposes, as specified by the terms of the grant or gift consistent with all appropriate state statutes;
- D. Make recommendations to the Town Council for revisions to the park fee policy and rate schedules.

#### **4.10.4 Membership.**

- A. The Commission consists of seven members, qualified under Section 2.07(2) of the Town charter, who have demonstrated an interest in the Town parks and facilities. Members are initially appointed for terms of one, two and three years, such that the terms of approximately one third of the members will expire each year. Their successors will be appointed for terms of three years each. Members serve until their successors are appointed and qualified. Vacancies are filled by town council appointment for the unexpired term.
- B. The Commission may recommend to the municipal officers that associate members be appointed to assist the commission, as the commission requires. Associate members are nonvoting members except when a quorum is absent. Their terms of office are to be for one, two or three years. Associate members are selected from the qualified resident voters of the Town.

#### **4.11 Kittery Port Authority.**

##### 4.11.1 Establishment.

The Port Authority is established by Maine Private and Special Law 1961, Chapter 163, as amended, and Town Charter, Article IX.

##### 4.11.2 Appointment and Composition.

- A. The Port Authority consists of seven (7) members, who are Kittery residents serving staggered terms of office of five years.
- B. Six members of the Port Authority are appointed by the Town Council, and the Planning Board Chair appoints one representative to serve on the board.
- C. A municipal officer, or spouse thereof, may not serve as a member of the Port Authority.
- D. Members serve until their successors are appointed and qualified.

E. No member may serve more than 2 consecutive terms of 5 years. Any member who has served 2 consecutive terms of 5 years is ineligible to serve on the Board for a period of 1 year. Computation of term limits commences with the first term of 5 years following the effective date of this provision. Service for more than one-half of a term is considered a full term for the purpose of calculating term limits. Computation of term limits does not include service prior to the effective date of this provision nor to terms of fewer than 5 years after the effective date.

F. Vacancies are filled by Town Council appointments for the unexpired term.

**NOTE: Following included for information only:**

**KITTERY PORT AUTHORITY, PRIVATE AND SPECIAL 1961, Chapter 163**

**AN ACT Creating the Town of Kittery Port Authority**

*Be it enacted by the People of the State of Maine, as follows:*

**Sec. 1. Authority established.** The Town of Kittery Port Authority is established, consisting of and governed by a Board of 7 members, 6 of whom are appointed by the Town Council of the Town of Kittery. At least 3 of the appointive members must be permanent residents of the Town of Kittery, and the members serve for a term of 5 years, providing that of the first appointment 2 are appointed for a term of one year, one for a term of 2 years, one for a term of 3 years, one for a term of 4 years and one for a term of 5 years. The members serve until their successors are appointed and qualified. Any vacancy occurring in the membership of the appointive members is filled by the Town Council for the unexpired term. In addition to the 6 appointive members, a member of the Town Planning Board designated by the chair of the Town Planning Board is a member of the port authority, serving for a term of 5 years or until membership on the planning Board terminates, whichever occurs first. The Board shall elect one of its members as chair, one as a vice-chair and one as secretary. The members of the Board are not entitled to compensation for their services; but their reasonable expenses incurred in the performance of their duties must be paid by the Town of Kittery. The Board has the right to adopt and alter a common seal and to establish bylaws and regulations for the management of its affairs within the meaning of this authority, the laws of the State of Maine and the ordinances of the Town of Kittery.

**Sec. 2. Purposes.** The Town of Kittery Port Authority, in cooperation with the other appropriate planning and development Boards that may exist in the Town of Kittery, shall:

**I.** Plan for the maintenance and development of the port, harbor and navigable tidal waters within the jurisdiction of the Town of Kittery, in order to foster and stimulate commercial and recreational use of these areas.

**II.** Aid in the development of salt water fisheries and associates industries; ship and boat building, repair and storage and associated industries; pleasure boating, swimming and other associated recreational uses of these areas and facilities.

**III.** Be authorized and empowered to appoint and compensate a harbor master, who will enforce the directives of the authority, such as the placement of moorings, the assignments of anchorage areas and the movement of traffic, and the use of municipally-owned wharves, docks, piers and landings.

**Sec. 3. Powers and duties.** In order to enable it to carry out the purposes hereof, the authority shall:

**I.** Have the authority to make all necessary arrangements with other port authorities of the State of Maine, other states and federal departments and agencies for the interchange of business, and for such other purposes as will facilitate and increase the purposes of this authority.

**II.** Establish offices for the transaction of its business at such places as, in the opinion of the authority, shall be advisable and necessary in carrying out the purposes hereof.

**III.** Be authorized and empowered to appoint and compensate a harbor master, who will enforce the directives of the authority, such as the placement of moorings, the assignments of anchorage areas and the movement of traffic.

**IV.** Be authorized to raise funds for defraying the costs of administration and operation of the authority and projects under its supervision, through fund appropriation articles in the Town warrant, submitted for consideration at any Town meeting, and through any and all other sources of revenue authorized by this act.

V. Be custodian of municipally-owned wharves, docks, piers and landings.

**Sec. 4. Rules and regulations.** Said authority may make such ordinances, rules and regulations touching municipally-owned wharves, docks, piers and landings, port captains, pilots and pilotage, harbors and harbor masters, for the areas herein defined as it may deem proper and from time to time may modify, rescind or alter the same. Said rules and regulations shall have the force and effect of law. Said authority shall fix the fees of pilotage and a table of such fees shall be attached to the commission of each pilot.

**Sec. 5. Pilots.** The authority may prescribe the qualifications of pilots, and from time to time appoint and commission, under its hand and seal, as many pilots as it may judge necessary, and remove the same at pleasure, and it shall take from them such security, by bond or otherwise as it may deem proper.

**Sec. 6. Authority of pilot.** Any pilot appointed by the authority who has given security for the faithful discharge of his duties may take charge of any vessel, except pleasure, coasting and fishing vessels of the United States registry of 150 registered or enrolled tons and under, and except as provided in section 7, and shall pilot such vessel into or out of the river and harbor of the Piscataqua, to ports or locations within the jurisdictional area of this authority, first showing to the master thereof his appointment, if requested.

**Sec. 7 Fee an offer.** Any master or owner may pilot his own vessel into the area herein defined, but if a pilot shall speak and offer service to a vessel, excepting registered or enrolled vessels of the United States, bound into said area south of a line drawn east and west from Whale's-back lighthouse, or shall offer service to a vessel bound out of said area excepting registered or enrolled vessels of the United States, before they leave the wharf, he shall be entitled to  $\frac{1}{2}$  of the fee specified in his warrant in case the master declines to employ him, and, on refusal of payment, may sue for and recover same.

**Sec. 8. Harbor master.** The harbor master appointed by the authority shall have the authority, under the supervision of the authority, to oversee the jurisdictional area of this authority, to preserve and regulate navigation within said waters, to assign moorings, require the same to be kept in safe condition, to require the removal of vessels if necessity or an emergency arises, to inquire into and prosecute all offenses occurring within his jurisdiction and to perform such duties and enforce such regulations as the authority shall prescribe. The harbor master shall have authority to make arrests

for offenses under the provisions of this chapter, as other peace officers are authorized to do.

**Sec. 9. Penalty.** Whoever violates any of the rules or regulations of the authority promulgated under the authority of this chapter, or refuses or neglects to obey the lawful and reasonable orders of a harbor master or resists him in to execution of his duties shall be punished by a fine of not more than \$50. All fines collected under this section shall be forwarded to the port authority and by it applied to the salary of the harbor master.

**Sec. 10. Definition.** The word "vessel" as used in this chapter shall include boats of all sizes propelled by said, machinery or hand, scows, dredges, shellfish cars and craft of every kind.

**Sec. 11. Authorization to establish foreign-trade zones and free port areas.**

**I.** Said authority is authorized to make application to the Secretary of Commerce of the United States for the purpose of establishing, operating and maintaining foreign-trade zones in the area herein described, under the Act of Congress passed at the second session, 73rd Congress, providing for the establishment, operation and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes.

**II.** Said authority shall have full power and authority to select and describe the location of the zone for which application to establish may be made and to make such rules and regulations concerning the operation, maintenance and policing of same as may be necessary to comply with the Act of Congress creating said foreign-trade zones, or as may be necessary to comply with such rules and regulations made in accordance with the Acts of Congress, relating to foreign-trade zones.

**III.** Said authority shall have full power and authority to lease the right and erect, maintain and operate any structures or buildings or enclosures as may be necessary or proper for the establishing and operating any such foreign-trade zones that might be established in the area herein described under and by virtue of said act of the 2nd session of the 73rd Congress.

**IV.** The authority hereby granted to said port authority confers on said port authority the right and duty to do all things necessary and proper to carry into effect the establishing, maintaining and

operating of foreign-trade zones within the area herein described to comply in full with the provisions of said Act of Congress and all regulations that might be made thereunder.

V. The Town of Kittery Port Authority shall have the power and the duty to establish in the area herein described an area wherein personal property in transit shall be exempt from the provisions of the stock-in-trade tax and other such taxes and customs as are normally levied in a port of entry. For the purpose of this section, personal property in transit through the areas established by this port authority is defined as follows: Goods, wares and merchandise which is (1) moving in interstate or international commerce through or over the areas hereinbefore established, or (2) which was consigned to a warehouse, public or private, within the Town of Kittery, whether specified when transportation begins or afterward.

Such property shall not be deprived of exemption because while in the warehouse the property is assembled, bound, joined, processed, disassembled, divided, but, broken in bulk, relabeled or repackaged.

The exemption granted shall be liberally construed to effect the purpose of this act. Provided, however, that the warehouse in which said goods, wares or merchandise be stored shall not be owned, in whole, or in part by the consignee or consignor.

**Sec. 12. Severability.** If any provision of this chapter shall be held invalid, the remainder of the chapter shall not be affected thereby.

Amended:

Private and Special 1963, Chapter 97, §2

Private and Special 1993, Chapter 26, §1

C = appointed by Council  
M = appointed by Manager  
E = Elected

EO - Ex Officio  
NV = non-voting

S = appointed by Sch  
R = appointed by Reg  
P = appointed by Por

Position - Name		Date Appointed	Date Term Expires
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**REGISTRAR OF VOTERS**

*21-A MRS §101 (Registrar, 2 year term, Deputies - indefinite terms)*

Place, Maryann, Registrar	C	26-Jan-15	31-Dec-16
Estee, Karen Deputy	R	12-Dec-11	Indefinite
Tackett, Kim, Deputy	R	26-Aug-13	Indefinite
Pridham, Kathryn, Deputy	R	21-Feb-02	Indefinite
Lemont, Gail, Deputy	R	13-Oct-95	Indefinite

**REGISTRATION APPEALS BOARD**

*21-A MRS §103 - Title 4, §4.5 (Chair, 4 year term, nominations from parties 3 year terms)*

Lutts, Sandra, Chair	C	23-Apr-12	23-Apr-16
Sayer, Suzanne - Democrat	C	10-Mar-14	23-Apr-15
Carson, Janice - Republican	C	23-Apr-12	23-Apr-15

**PORT AUTHORITY**

*P&SL 1961, Ch 163 - Title 16, §1.6 (6 Regular members - 5 year terms & 1 PB Rep)*

Crawford, Bruce, Vice Chair	C	11-Feb-15	8-Oct-19
Drummond, Mark A.	C	13-Apr-15	31-Aug-16
Lawrence, Steve	C	9-Sep-13	31-Aug-18
Philbrook, Kelly	C	14-Jul-14	31-Aug-19
Whitman, Peter A., Chair	C	27-May-15	31-Aug-18
Vacant	C		

**BOARD OF APPEALS**

*30-A MRS §2691, Charter §8.04 - Title 16 §1.5 (7 members - cannot serve more than 3 consecutive terms of 3 years)*

Boyle, Brian	C	24-Nov-14	1-Nov-17
Brake, Jeffery	C	22-Dec-14	1-Mar-17
Costa, Brett, Chair	C	27-Feb-12	1-Mar-14
Denault, Charles, III	C	9-Nov-15	1-Dec-17
Pinkham, Niles	C	14-Apr-14	1-Dec-16
Regan, Sean	C	9-Nov-15	25-Mar-16
Wilson, Craig, Secretary	C	28-Jan-13	1-Nov-15

**BOARD OF ASSESSMENT REVIEW**

*Charter §7.02 - Title 4, §4.3 (3 regular members - 2 alternates - 3 year terms)*

Wyman, Robert W., Chair	C	16-Oct-13	1-Dec-16
Bierau, Dudley	C	22-Jul-13	30-Nov-14
Afienko, Joseph	C	8-Apr-13	24-Apr-15
Vacant	C		
Flynn, Jude, Alternate	C	24-Sep-12	30-Nov-14
Vacant, Alternate	C		

**PERSONNEL BOARD***Charter §5.02(3) - Title 4, §4.7 (5 members - 2 or more alternates - cannot serve more than 2 consecutive 3 year terms)*

Linscott, Kenneth	C	27-Oct-14	13-Jun-17
Delio, John J.	C	24-Nov-14	24-Nov-16
Harris, Robert	C	9-Dec-14	13-Jun-17
Lucy, Paul	C	9-Dec-14	24-Nov-16
Vacant	C		
Vacant, Alternate	C		
Vacant, Alternate	C		

**PLANNING BOARD***Charter §8.01 - Title 16, §1.4 (7 members - cannot serve more than 3 consecutive 3 year terms)*

Grinnell, Ann.H., Chair	C	28-Oct-13	30-Nov-16
Lynch, Deborah	C	8-Jun-15	30-Nov-16
Alesse, Mark	C	10-Dec-12	30-Nov-15
Driscoll-Davis, Deborah	C	24-Nov-14	30-Nov-17
Kalmar, Karen	C	28-Oct-13	30-Nov-15
Harris, Robert	C	24-Nov-14	30-Nov-16
Vacant	C		

**MARY SAFFORD WILDES TRUST***Title 4, §4.6 - Trust Ordinance - March 27, 1953 (3 regular members, 2 ex-Officio members - 3 year terms)*

Mann, A. David, Chair	C	7/8/2013	28-Feb-16
Thomson, Jeffrey D.	C	4/22/2013	28-Feb-15
Tobey, Joyce	C	2/10/2014	28-Feb-17
Gary Beers, Council Chair	EO		Annual
Maryann Place, Town Clerk	EO		Indefinite

**SHELLFISH CONSERVATION COMMITTEE***Title 4, §4.8 (7 regular members, 2 alternates - 3 year terms)*

Clapp, Daniel, Chair	C	22-Jul-13	14-Aug-15
Carven, Joseph F., Jr.	C	12-May-14	15-Mar-17
Lemont, Kenneth F.	C	13-May-13	22-Jan-16
McArdle, John	C	24-Mar-14	15-Mar-17
O'Reilly, Daniel M.	C	22-Jul-13	1-Apr-16
Treacy, Jean	C	11-Aug-14	1-Apr-15
Vacancy	C		
Alternate vacancy	C		
Alternate vacancy	C		

**CONSERVATION COMMISSION***Title 4, §4.9 (7 regular members, unlimited associates - 3 year terms)*

Carson, Janice	C	26-Aug-13	27-Aug-16
Hall, Stephen F.	C	8-Jul-13	31-May-16
Kingsbury, Herbert	C	24-Mar-14	31-May-17
Moore, Donald F.	C	27-Jan-14	31-May-16
Saltus, Karen	C	28-Jul-14	31-May-15
Wells, Earldean, Chair	C	25-Mar-13	31-May-15
Bensley, Dean, Assoc.	C	9-Sep-13	31-May-16
Borden, Anne M., Assoc.	C	9-Sep-13	31-May-14

**PARKS COMMISSION***Title 4, §4.10 (7 regular members - unlimited associates - 3 year terms)*

Mead, Page, Co-Chair	C	24-Mar-14	3-May-17
DeMarco, Richard, Co-Chair	C	28-Apr-14	3-May-17
DeMarco, Kristina	C	12-Aug-13	3-May-16
Payne, Denise	C	24-Feb-14	3-May-16
Turner, Gale	C	24-Nov-14	3-May-17
Vacant	C		
Vacant	C		
Morrison, Michael, Assoc.	C	10-Mar-14	26-Mar-17

**KITTERY COMMUNITY CENTER BOARD OF DIRECTORS***Title 4, §4.4 (9 residents: 4 experience/association w/recreation, 3 arts & culture, 1 economic or community development, 1 at-large, Councilor, Town Manager & Rec Director & Planner)*

Thomson, Jeffrey, Councilor	C	27-May-15	26-Mar-18
Downs, Michael, Recreation	C	22-Jun-15	30-May-18
Schremmer, Mark, At Large	C	29-May-13	29-May-16
Stephens, Kent, Arts & Culture	C	22-Apr-13	30-May-16
Lincoln, Jean, Economic Dev.	C	27-May-15	30-May-18
Convery, Maureen Arts Culture	C	28-Apr-14	30-May-17
Vacant, Arts & Culture	C		
Workman, Steve, Chair - Rec.	C	22-Apr-13	30-May-16
Salema, Christie, Recreation	C	22-Apr-13	30-May-16
Avery, Danielle, Recreation	C	12-May-14	30-May-17
Puff, Nancy Colbert, Manager	EO	NV	Indefinite
Grady, Janice, Recreation Director	EO	NV	Indefinite
DiMatteo, Chris, Planner	EO	NV	Indefinite

**EDUCATIONAL SCHOLARSHIP SELECTION COMMITTEE***Council Ad Hoc (2 Councilors, 3 citizens - 3 year terms)*

Brake, Jeffery, Chair	C	13-Mar-06	TBD
Denault, Charles - Councilor	C	9-Nov-15	Annual
Evans, David	C	9-Dec-13	8-Feb-16
Kingsbury, Herbert	C	24-Feb-14	8-Feb-17
Dow, George	C	8-Jun-15	8-Feb-18

**CAPITAL IMPROVEMENT PROGRAM (CIP) COMMITTEE***Council Ad Hoc (2 Citizens, Councilor, School Committee, Superintendent, Finance Director, Planner)*

Clifford, Jeff, Chair-Citizen Rep	C	13-Nov-13	24-Nov-16
Perkins, Chris, Citizen Rep	C	10-Nov-14	8-Dec-17
Thomson, Jeffrey, Council	C		Annual
School	SC		Annual
Colbert Puff, Nancy, Manager	EO		Indefinite
DiMatteo, Chris, Town Planner	EO		Indefinite

**COMPREHENSIVE PLAN UPDATE COMMITTEE***Council Ad Hoc ( 1 Council, 1 Planning Board, 1 Board of Appeals, 1 Port Authority, 1 School Committee, 6 Citizens)*

Gagner, Terry, Citizen Rep	C	14-May-12	End of task
Hibschman, Tom, Citizen Rep	C	8-Dec-14	End of task
Wilson, Craig, Citizen Rep	C	9-Nov-15	End of task
Emerson, Thomas, Citizen	C	9-Nov-15	End of task
Vacancy, Citizen Rep	C		End of task
Bedard, Kim, School Rep	SC		Annual
Driscoll-Davis, Debi PB Rep	PB		Annual
Costa, Brett, BOA Rep	BoA		Annual
Grinnell, Ann, Pt. Authority	PA		Annual
White, Russell, Chair – Council	C		Annual
Colbert Puff, Nancy, Town Manager	EO	NV	Indefinite
Hutton, Allyn, School Superintendent	EO	NV	Indefinite
DiMatteo, Chris, Town Planner	EO	NV	Indefinite

**SHARED SERVICES COMMITTEE***Council Ad Hoc (2 Councilors , Town Manager - 2 School Committee, Superintendent*

Beers, Gary, Council Chair	EO		Annual
Denault, Charles, Council Vice Chair	EO		Annual
Nancy Colbert Puff, Town Manager	EO		Indefinite
Hutton, Allyn, School Superintendent	EO		Indefinite
Batchelder, David, SC Chair	EO		Annual
Dow, Julie, SC Vice Chair	EO		Annual

**ECONOMIC DEVELOPMENT COMMITTEE: Sunset Date 12/31/15***Council Ad Hoc (3 Councilors, 3 Business/industry Reps, 3 Citizens at large, Town Manager, Town Pl*

Carlson, John – Citizen	C	27-Jan-14	31-Dec-15
Trevino, Patrick, Citizen	C	27-Jan-14	31-Dec-15
Vacant, Citizen	C		
Dow, George, Chair Bus	C	10-Feb-14	31-Dec-15
Kosacz, Stephen-NV Bus	C	27-Jan-14	31-Dec-15
Battcock-Emerson, Tom Bus	C	12-Jan-14	31-Dec-15
Lemont, Kenneth Council	C	9-Nov-15	
Thomson, Jeffrey, Council	C		
Denault, Charles, Council	C		
DiMatteo, Chris, Town Planner	EO		
Puff, Nancy Colbert, Town Manager	EO		

**KITTERY OPEN SPACE ADVISORY COMMITTEE - KOSAC***Town Manager Ad Hoc - WG (As determined by manager)*

Connor, Kathy, Chair Citizen	M		Indefinite
Fellows, Ken Citizen	M		Indefinite
Hall, Stephen Cons.Comm	M		Indefinite
Mead, Page Parks	M		Indefinite
Moore, Don Cons. Comm	M		Indefinite
Thomas, Peter Citizen	M		Indefinite
White, Russell Councilor	M		Indefinite
Wells, Earledean Cons.Comm	M		Indefinite
Wilson, Craig Citizen	M		Indefinite
Young, Karen, Mt. Agamenticus to the Sea	M		Indefinite
Bennett, Christine, Kittery Land Trust	M		Indefinite
Ann Grinnell, Planning Board Rep	EO		Indefinite

**KITTERY ENERGY ADVISORY COMMITTEE - KEAC**

*Town Manager Ad Hoc WG (As determined by manager)*

**Executive Committee:**

Brown, Sarah	Indefinite
Wake, Cameron	Indefinite
Lemont, Kennety	Indefinite
Sheppard, Robery	Indefinite
Colbert Puff, Nancy, Town Manager	Indefinite
Kathios, George, Supt. of Sewer Services	Indefinite
Rian Bedard	Anne Morgan
Nancy Farron	Louise Hirshberg
Charlie Case	Mara Lamstien
Brennan Pingree	Lee Perkins
Kelsey Woodward	Martha Petersen
Melissa Paly	Janet Howe



**TOWN OF KITTERY**  
Office of the Town Manager  
200 Rogers Road, Kittery, ME 03904  
Telephone: 207-475-1329 Fax: 207-439-6806  
[ncolbertpuff@kitteryme.org](mailto:ncolbertpuff@kitteryme.org)

Nancy Colbert Puff  
Town Manager

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**INTEROFFICE MEMORANDUM**

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**TO:** TOWN COUNCIL  
**FROM:** COMMITTEE ON APPOINTMENTS  
**SUBJECT:** REPORT OF THE COMMITTEE ON APPOINTMENTS  
**DATE:** MARCH 17, 2015  
**CC:** MARYANN PLACE, GEORGE DOW, ANN GRINNELL

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As requested by Council at its December 23, 2014 meeting, a Committee comprised of three Councilors (Denault, White, Lemont), Town Clerk Maryann Place, myself, and two current board/committee chairs (George Dow, Economic Development Committee and Ann Grinnell, Planning Board) met four times to consider changes to Section 4 of Town Code regarding appointments. Following is a summary of our recommendations, and attached are proposed changes to the Code:

1. **Use of Criteria:** We recommend using criteria when considering all appointments. We do not want service to one other "primary" board/committee to be part of the criteria which would give preference to those not serving, but do recommend limiting service to no more than 1 "primary" boards/committees, with the understanding that appointment to more than one presumes that service to the boards/committees does not constitute a conflict of interest (e.g. Board of Appeals (BOA) and Planning Board (PB), Conservation Commission and PB/BOA, etc.). We defined primary vs. secondary as follows:

**Primary**

Kittery Port Authority (KPA)  
Planning Board  
Board of Appeals  
Parks Commission  
Board of Assessment Review  
Capital Improvement Program  
Conservation Commission

**Secondary**

Shared Services  
Shellfish Conservation  
Wood Island Advisory  
Mary Safford Wildes  
Open Space Committee  
Personnel Board  
Comprehensive Plan  
Economic Development  
KCC Board of Directors  
Educational Scholarship  
Energy Advisory

2. **Appointment Notification:** We recommend the Council send a letter to all interviewed applicants thanking them for their interest, and notifying them of their appointment or rejection. Rejected applicants, upon notification to the Town Clerk, may choose to remain

on the list, but will be placed at the bottom. For Planning Board and Board of Appeals, rejected applicants will automatically remain on the list unless they notify the Town Clerk of their desire to be removed from it.

3. Term Limits: For the purposes of calculating term limits for Boards/Committees which have a “3 consecutive terms of 3 years,” we recommend the Council consider actual service of greater than 2.5 years be counted towards a full term. If an appointee serves longer than the term limit due to no qualified successor being appointed, the next appointment term will begin as of the date of appointment of the successor.
4. Term Expirations: We concur with the Town Clerk’s recommendation that seeks to “recalibrate” the end dates of all new appointments to December 31<sup>st</sup>. More work needs to be done on this as new appointments are made.
5. Conflict of Interest: We recommend all applicants be required to fill out a conflict of interest declaration that they have a) read Maine State Statute on conflict rules, and b) attest that they believe they can serve without conflict. We discussed, at length, whether employees can be considered for appointment, and recommend Council consider this possibility on a case by case basis, as to whether the individual can serve without conflict.
6. Removal Procedure: We recommend applying the removal procedure outlined in Title 16 for the PB, BOA, and KPA for all Council appointed officials to boards and committees.
7. Maintenance of the Lists: Applicant forms are recommended to be amended to indicate only one board/committee per form (thus removing the “ranking 1-3” of preference) to ease record keeping. We also asked the Town Clerk to consider sending a letter out every two years to have people on the lists indicate their continued interest in serving and to update their contact information.
8. Appointment Exceptions: We recommend eliminating positions for Council appointment that conflict with the Town Manager’s authority under our Charter. Maine Municipal Legal Services advised us of this conflict, and Town Counsel Duncan McEachern concurs with this recommendation.
9. New Chapter 4.11 – Kittery Port Authority: We recommend repeating information contained in Title 16 regarding KPA appointments here to consolidate appointment information in Title 4. The Planning Board may choose to remove this information from Title 16 at a later date, as a “housekeeping” amendment.
10. Relocation of Section 4.2 of the Town Code to Council Rules: We recommend these changes be incorporated, and that the Council then consider removing Section 4.2 from the Town Code and relocating it to a new section of the Council’s rules. During our discussion, it seemed there were numerous instances where flexibility for interpretation was desired, and Council could have the ability to act without going through an ordinance change process in instances that warranted immediate action. Prior to 2010, the “Selection Procedures for Council Appointments” were adopted each year by Council upon reorganization in November.

## RTC – TITLE 4 – ATTACHMENT 4 – TITLE 16 BOARD PROVISIONS

### TOWN CODE TITLE 16, LAND USE & DEVELOPMENT, EXCERPTS

#### 16.1.4 Planning Board.

##### 16.1.4.1 Appointment and Composition.

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

##### 16.1.4.2 Powers and Duties.

- A. The Board shall elect annually a chairperson and vice chairperson from its membership and a secretary. It is the duty of the secretary to keep and maintain a permanent record of all meetings of the Board, and show the vote of each member upon each question.
- B. A quorum consists of four or more members. All decisions must be made by a minimum of four like votes, except on procedural matters.
- C. Adopt bylaws to govern routine Board proceedings and set agendas and hold meetings to perform duties.
- D. Any question of whether a particular issue involves a conflict of interest sufficient to disqualify a member from voting thereon is decided by a majority vote of the members present, except the member who is being challenged, who may not vote on the issue.
- E. All records of the Board are public records, except as excluded under 1 M.R.S. §402 (3) (A)-(O), the Maine Freedom of Access (Right to Know) statute.
- F. The Board is to:
  - 1. Perform duties as provided by law.
  - 2. Hear and decide on required development plans including special exception use requests that require Planning Board review using the Development Application and Review procedures and criteria and other provisions in this Code.
  - 3. Prepare and recommend for Council adoption a Comprehensive Plan and initiate Plan implementation by zoning ordinance, other land use and development regulations, and other means; and monitor and report on Plan implementation progress.

## RTC – TITLE 4 – ATTACHMENT 4 – TITLE 16 BOARD PROVISIONS

### 16.1.5 Board of Appeals.

#### 16.1.5.1 Appointment and Composition.

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

#### 16.1.5.2 Powers and Duties.

- A. To elect annually a chairperson and vice chairperson from its membership and a secretary. It is the duty of the secretary to keep and maintain a permanent record of all meetings of the Board, and show the vote of each member upon each question.
- B. A quorum consists of four or more members. All decisions must be made by a minimum of four like votes, except on procedural matters.
- C. Adopt bylaws to govern routine Board proceedings and set agendas and hold meetings to perform duties.
- D. Any question of whether a particular issue involves a conflict of interest sufficient to disqualify a member from voting thereon is decided by a majority vote of the members present, except the member who is being challenged, who may not vote on the issue.
- E. All records of the Board are public records, except as excluded under 1 M.R.S. §402 (3) (A)-(O), the Maine Freedom of Access (Right to Know) statute. F. The Board is to:
  - 1. Perform duties as provided by law.
  - 2. Administrative Decision Appeal: Hear and decide on an administrative decision appeal where it is alleged by an aggrieved party that there is an error in any order, requirement, decision or determination made by the Code Enforcement Officer in review of an action on a permit application under this Code.
  - 3. Variance Request: Hear and decide on a variance request within the limitations set forth in this Code and 30-A M.R.S. §4353(4).
  - 4. Miscellaneous Variation Request: To hear and decide on a miscellaneous variation request to permit variation in:
    - a. Nonconformance as prescribed in Article III of Chapter 16.7;
    - b. Standards contained in Article IX of Chapter 16.8, Parking, Loading and Traffic or Section 16.8.10.3 Sign Violation and Appeal; or
    - c. Accessory dwelling unit standards per Article XXV of Chapter 16.8.
    - d. Special Exception Use Request: Hear and decide on a special exception use request not requiring Planning Board review per development and site review thresholds and using the Development Application and Review (Chapter 16.10) procedures and review criteria and other provisions in this Code.

## **RTC – TITLE 4 – ATTACHMENT 4 – TITLE 16 BOARD PROVISIONS**

### **16.1.6 Port Authority.**

#### **16.1.6.1 Appointment and Composition.**

- A. The Port Authority is established by Maine Private and Special law 1961, Chapter 163, as amended, and Town Charter, Article IX.
- B. The Port Authority consists of seven (7) members, who are Kittery residents serving staggered terms of office of five years.
- C. Members of the Port Authority are appointed by the Town Council.
- D. A municipal officer, or spouse thereof, may not serve as a member of the Port Authority.
- E. Members serve until their successors are appointed and qualified.
- F. No member shall serve more than 2 consecutive terms of 5 years. Any member who has served 2 consecutive terms of 5 years is ineligible to serve on the Board for a period of 1 year. Computation of term limits commences with the first term of 5 years following the effective date of this provision. Computation of term limits does not include service prior to the effective date of this provision nor to terms of fewer than 5 years after the effective date.
- G. A member of the Port Authority may be dismissed for cause by the Town Council before the expiration of such member's term after notice and hearing.
- H. Vacancies are filled by Town Council appointment for the unexpired term.

#### **16.1.6.2 Powers and Duties.**

- A. To elect annually a chairperson and vice chairperson from its membership and a secretary. It is the duty of the secretary to keep and maintain a permanent record of all meetings of the Port Authority, and show the vote of each member upon each question.
  - B. A quorum consists of four or more members. All decisions must be made by a minimum of four like votes, except on procedural matters.
  - C. Adopt bylaws to govern routine Port Authority proceedings and set agendas and hold meetings to perform duties.
  - D. Any question of whether a particular issue involves a conflict of interest sufficient to disqualify a member from voting thereon is decided by a majority vote of the members present, except the member who is being challenged, who may not vote on the issue.
  - E. All records of the Port Authority are public records, except as excluded under 1 M.R.S. §402 (3) (A)-(O), the Maine Freedom of Access (Right to Know) statute.
  - F. The Port Authority is to:
    - 1. Perform duties as provided by law.
    - 2. Where Town Council action is required under the Wharves and Weirs statute, the Council may appoint the Port Authority as its designee for on-site inspection and to issue a written report on the same to the Council.
- #### **2. Water Area Development Powers and Duties.**
- a. The Port Authority is to provide advice to the Planning Board on development applications dealing with piers, wharfs, marinas and other uses projecting into water bodies.
  - b. Where Port Authority review is required, such review must be completed prior to Planning Board review.

## RTC – TITLE 4 – ATTACHMENT 4 – TITLE 16 BOARD PROVISIONS

- c. Port Authority review and approval authority under this Code applies to structures extending into a water body beyond the mean high water line or the upland edge of a coastal wetland and extends from the water body to the mean high water line or upland edge of a coastal wetland.
- d. The Port Authority may approve, for convenience of access to a pier from land upland of the mean high water line or the edge of a coastal wetland, an extension of the pier that is the shortest practicable extension at its nominal height and width. All other structures upland of, and abutting or built on or over a structure extending into a water body beyond the mean high water line or the edge of a coastal wetland, require Planning Board approval. Only one pier, ramp and float structure is permitted on any noncommercial or nonindustrial lot.
- e. Where the Planning Board is the lead reviewing authority, a shorefront development plan must be submitted for Planning Board approval. A Port Authority ruling on the shorefront development plan's conformance with Port Authority rules and regulations and navigational aspects of any proposed pier, ramp and float system or principal marine structure is required prior to Planning Board approval.
- f. Only functionally water-dependent uses are allowed on, over, or abutting a pier, wharf, or other structure beyond the normal high-water line. The standards contained in Section 16.8.15.1 are to be met.

Annual Town Meeting, March 7, 1953

Fifty-first: To see if the town will vote to accept the gift of the Mary Safford Wildes Estate as stipulated in her will.

Fifty-second: To see if the town will vote to create a Board of Trust Funds to have the care and management of the Mary Safford Wildes Fund, or any similar fund. The said Board to consist of five members, the Chairman of the Board of Selectmen and the Town Clerk to be ex-officio members and the Clerk to be Treasurer of said fund, and three additional members to be appointed by the Moderator for one, two and three years respectively, and hereafter each year one member is to be elected in the same manner as the town officers. Said Board shall have authority to administer said funds in accordance with the terms of the will or other documents creating such trust.

Fifty-first: It was voted to accept the gift of the Mary Safford Wildes Estate as stipulated in her will.

Fifty-second: It was voted to create a Board of Trustees of Trust Funds to have the care and management of the Mary Safford Wildes Estate, or any other similar fund. The said Board to consist of five members, the Chairman of the Board of Selectmen and the Town Clerk to be ex-officio members and the Clerk to be Treasurer of said fund, and three additional members to be appointed by the Moderator for one, two and three years respectively; and hereafter each year one member is to be elected in the same manner as the town officers. Said Board shall have authority to administer said fund in accordance with the terms of the will or other document creating such trust.

WILL:

This third to finally be used with the remaining third to be given to the Town of Kittery, Maine for some worthy charitable benefit needed in that town not connected with any outside organization and preferably the Town Home for the Poor or assistance of natives of the town, my own family relatives to be considered first if any are living and in need of help.

## PLANNING BOARD EFFICIENCY

D Lincoln 11-12-15

To maximize efficiency the following items are suggested:

- 1/ CANDIDATE POOL: To be allowed into the pool each person desiring to be in the pool is asked to
  - a/ attend at least 4 P/B meetings, to understand the procedures
  - b/ agree to taking the MMA Planning Board seminar within the first year after selection
  - c/ read and understand the organization of Town codes to the satisfaction of the P/B chair or vice chair
  - d/ agree to the Charter and P/B requirements for P/ B membership

### 2/ CANDIDATE SELECTION:

- a/ upon the opening of a P/B position, ALL of the candidates in the pool are interviewed by P/B Chair or Vice Chair to determine if four preparation aspects are complete
- b/ the Chair recommends to the Council those applicants qualified for consideration, suggesting, in writing, that applicant best suited to current P-B composition

3/ The Council will interview applicants under whatever method they have established

By following this procedure the Planning Board vacancies will be filled by the most qualified citizens who are prepared to be productive immediately on their appointment

Proposed by D . Lincoln, Planning Board member



**Section 1: Equivalent Combination of Education and Experience – What does it Mean?**

All City-Parish job specifications include a section listing the Minimum Requirements to qualify for a job. This section further states if substitutions for the education and experience requirements are accepted for that job. Job specifications will have one of the following: no substitutions, a list of specific substitutions, or the following statement:

SUBSTITUTIONS: Any equivalent combination of education and experience.

So, what does this statement mean? Any equivalent combination of education and experience means the applicant can trade related education and/or experience to meet the minimum requirements of a job. The purpose of this guide is to provide examples of how applicants may utilize their education and/or experience to qualify for a job with the City-Parish. These examples are only an illustration and are not a complete list of all substitutions.

MINIMUM REQUIREMENTS	
Required Education and/or Experience	Equivalent Education and/or Experience Substitution
I. High school diploma, GED, or equivalent certificate of competency and completion of an apprenticeship program in a specific building trade	High school diploma, GED, or equivalent certificate of competency and 2 – 5 years of work experience in the specified building trade (years of work experience dependent on building trade – see Section 4)
II. High school diploma, GED, or equivalent certificate of competency and two years of specified work experience	Associate’s degree in a field of study related to the specified work experience OR High school diploma, GED, or equivalent certificate of competency and completion of a 2 year vocational program related to the specified work experience OR Completion of 11 <sup>th</sup> grade and 3 years of the specified work experience
III. High school diploma, GED, or equivalent certificate of competency and four years of specified work experience	Bachelor’s or Master’s degree in a field of study related to the specified work experience OR 90 hours toward a bachelor’s degree with at least 18 hours (equals 3 years) in a field of study related to the specified work experience and 1 year of the specified work experience OR Associate’s degree in a field of study related to the specified work experience and 2 years of the specified work experience



Section 1, Continued: Equivalent Combination of Education and Experience – What does it Mean?

MINIMUM REQUIREMENTS	
Required Education and/or Experience	Equivalent Education and/or Experience Substitution
IV. High school diploma, GED, or equivalent certificate of competency and six years of specified work experience	<p>Bachelor's and Master's degrees in a field of study related to the specified work experience</p> <p style="text-align: center;"><b>OR</b></p> <p>Bachelor's degree in a field of study related to the specified work experience and 2 years of the specified work experience</p>
V. Associate's degree in specific field of study and 2 years of specified work experience	<p>Bachelor's or Master's degree in specified field of study</p> <p style="text-align: center;"><b>OR</b></p> <p>High school diploma, GED, or equivalent certificate of competency and completion of a 2 year vocational program related to the specified field of study and 2 years of the specified work experience</p> <p style="text-align: center;"><b>OR</b></p> <p>30 hours toward a bachelor's degree with at least 6 hours (equals 1 year) in the specified field of study and 3 years of the specified work experience</p> <p style="text-align: center;"><b>OR</b></p> <p>High school diploma, GED, or equivalent certificate of competency and 4 years of the specified work experience</p>
VI. Bachelor's degree in specific field of study	<p>Associate's degree in the specified field and 2 years of work experience such as described in the essential work tasks of the job specification</p> <p style="text-align: center;"><b>OR</b></p> <p>High school diploma, GED, or equivalent certificate of competency and 4 years of work experience such as described in the essential work tasks of the job specification</p> <p style="text-align: center;"><b>OR</b></p> <p>Completion of 10<sup>th</sup> grade and 6 years of work experience such as described in the essential work tasks of the job specification</p>



**Section 1, Continued: Equivalent Combination of Education and Experience – What does it Mean?**

<b>MINIMUM REQUIREMENTS</b>	
<b>Required Education and/or Experience</b>	<b>Equivalent Education and/or Experience Substitution</b>
VII. Bachelor's degree in specific field of study and 1 year of specified work experience	Associate's degree in the specified field of study and 3 years of the specified work experience <p style="text-align: center;"><b>OR</b></p> 60 hours toward a bachelor's degree with at least 12 hours (equals 2 years) in the specified field of study and 3 years of the specified work experience <p style="text-align: center;"><b>OR</b></p> High school diploma, GED, or equivalent certificate of competency and 5 years of the specified work experience
VIII. Bachelor's and Master's degrees in specific field of study	Bachelor's degree in the specified field and 2 years of work experience such as described in the essential work tasks of the job specification <p style="text-align: center;"><b>OR</b></p> High school diploma, GED, or equivalent certificate of competency and 6 years of work experience such as described in the essential work tasks of the job specification
IX. Bachelor's and Master's degrees in specific field of study and two years of specified work experience	Bachelor's degree in the specified field of study and 4 years of the specified work experience <p style="text-align: center;"><b>OR</b></p> High school diploma, GED, or equivalent certificate of competency and 8 years of the specified work experience

1 Title 4 **BOARDS, AUTHORITY, COMMISSIONS and COMMITTEES**

2 **Chapter 4.1 ESTABLISHMENT**

3 Town governance requires attention to many demands pursuant to Federal law, Maine Revised  
4 Statutes, and the Town Charter. In order to provide for that range of requirements and make  
5 provision for citizen participation in community affairs the Boardsboards, authority, commissions,  
6 and committees (hereafter “Boards”), addressed herein, are hereby established and/or defined.

7 **4.1.1 Objectives.**

8 There are certain general objectives critical to the successful functioning of Council-appointed  
9 Boards among these are:

10 A. That Boards always have available to them candidates for membership who are qualified for  
11 the unique needs of that Board.

12 B. That each Board maintain the independent posture needed to encourage the free and open  
13 dialogue crucial to its function; and

14 C. That all volunteers are shown the appreciation of the community regardless of whether or not  
15 they are appointed to a particular Board.

16 **4.1.2 General Provisions.**

17 **4.1.2.1 Terms.**

18 A. The Council has the power to appoint all members of boards created by statute, ordinance,  
19 Town charter, or by Council action unless otherwise provided therein.

20 B. Members of Boards serve terms as established by statute, charter, or this ordinance, and until  
21 their successors are appointed and qualified. Term limits are those set in the Town Charter.

22 C. No member of a Board may be employed by the town, nor hold or be a candidate for any  
23 elective office. Town employees may not be appointed to a Board, except when Council  
24 establishes ex officio membership where an incumbent serves during their tenure in such  
25 position. Municipal officers or officials, or a spouse thereof, may not serve as Board members.

26 D. Member terms are to be staggered for expiration, as established. Service for more than one-  
27 half of a term is considered a full term for the purpose of calculating term limits. Vacancies  
28 occurring during a term are filled by Council for the balance of the term.

29 E. All terms expire on the same date in their respective years. For the purpose of aligning term  
30 ending dates, the Council may make appointments in excess of three years, but no more than  
31 four years, except where differing statutory provisions apply.

32 F. Members of the Boards serve without compensation, but funds will be provided for  
33 reasonable and necessary expenses.

34 G. Pursuant to Town Charter §2.07, Council has the power to remove for cause after notice and  
35 hearing, all members of boards created by statute, ordinance, this charter or by Council action  
36 unless otherwise provided therein. A member of the Board may be dismissed for cause by the  
37 Town Council before the expiration of such member’s term after notice and hearing.

38 **4.1.2.2 Qualifications, Service, Dismissal.**

39 A. All appointments of voting members, regular and/or ad hoc, are made from among the  
40 qualified resident voters of the town and each appointee during term of office must remain a  
41 qualified resident voter in order to retain appointment.

42 B. Non-residents may be appointed to non-statutory boards, committees, or work groups,  
43 without voting privileges; and, the establishment provision of Boards with ex officio membership  
44 is to state whether voting privileges are authorized.

45 C. As defined in as defined by 30-A MRS §2001, Definitions, Board members are municipal  
46 officials of the Town and are obliged to honor Town Charter §12.02, Code of ethics and  
47 prohibited conduct. Any person who violates any of the provisions of §12.02 shall forfeit office or  
48 position and be ineligible for a period of 5 years thereafter to hold any town office or position.

49 D. In addition to provisions set forth in 30-A MRS §2605, Conflicts of interest, pursuant to Town  
50 Charter §12.01. Financial conflict of interest, all town officials shall attempt to avoid an actual or  
51 perceived financial conflict of interest by abstention or disclosure. Any question of whether a  
52 particular issue involves a conflict of interest sufficient to disqualify a member from voting thereon  
53 is decided by a majority vote of the members present, except the member who is being  
54 challenged, who may not vote on the issue.

55 E. Members of Boards with quasi-judicial authority to render decisions which may be appealed  
56 to the judicial system are further constrained, as follows:

57 1. Bias.

58 (a) Bias occurs where a Board member, due to prejudice or a relationship with the applicant, is  
59 considered unable to make a fair and impartial decision in a matter requiring objectivity. A fair  
60 and impartial decision-maker is an integral component of procedural due process and a decision  
61 made in the absence of this component may be constitutionally deficient.

62 (b) 1 MRS §71, Laws, (6) Disqualification, states that Board members must disqualify  
63 themselves if a situation requires that member to be disinterested or indifferent and the member  
64 must make a decision which involves a person to whom the member is related by blood or  
65 marriage within the 6th degree (parents, grandparents, great-grandparents, great-great  
66 grandparents, brothers, sisters, children, grandchildren, great-grandchildren, aunts, uncles, great  
67 aunts/uncles, great-grand aunts/uncles, first cousins, first cousins once removed, first cousins  
68 twice removed, second cousins, nephews, nieces, grand-nephews/nieces, great  
69 grandnephews/nieces).

70 (c) Various court decisions also have established a rule requiring a Board member to abstain  
71 from the discussion and the vote if members are so biased against the applicant or the project  
72 that they could not make an impartial decision, thereby depriving the applicant of the due process  
73 right to a fair and objective hearing.

74 2. Ex Parte Communications.

75 (a) An ex parte communication is a written or oral communication regarding the subject matter of  
76 a proceeding which occurs between the decision-maker and one party to the proceeding without  
77 the other party's presence or notice. 30-A M.R.S. §2691, states "every party ... [has] the right to  
78 present the party's case or defense by oral or documentary evidence, to submit rebuttal evidence  
79 and to conduct any cross-examination that is required for a full and true disclosure of the facts."

80 (b) An ex parte communication interferes with these rights because it deprives the party of the  
81 opportunity to address the evidence which the Board has considered in rendering a decision and

82 must be completely avoided by Board members.

83 **4.1.2.1 Board Administration.**

84 A. Boards shall set and publish agendas and hold meetings to perform duties. Agendas will be  
85 posted seven days in advance and to the Town website. Meeting minutes will be kept and when  
86 approved, copies provided to Council and posted to the Town website.

87 B. Regular and Special meetings, as well as workshops addressing business of the Town, of  
88 [certain] Boards are to be broadcast via live via local cable channel television and/or streaming  
89 video. Ad hoc and work groups are encouraged to have their regular sessions broadcast. Board  
90 sessions for training or “brainstorming” need not be broadcast.

91 C. All records of the Boards are public records, except as excluded under 1 MRS §402,  
92 Definitions, §§(3) (A)-(O), the Maine Freedom of Access (Right to Know) statute.

93 D. Boards are to keep their purpose, powers, and duties under review and make  
94 recommendations for revisions or amendments to Council, as may be appropriate; and, to submit  
95 an annual report covering the above topics and all other committee activities, to Council as well  
96 as to state agencies where appropriate.

97 **Chapter 4.2 SELECTION PROCEDURES FOR COUNCIL APPOINTMENTS**

98 **4.2.1 Purpose.**

99 When subject to ~~council~~Council appointment, members of ~~Town~~Boards, ~~which term includes~~  
100 ~~authority, commission, committee (both standing and ad hoc), and trust~~ are to be selected using  
101 the following procedures.

102 **~~4.2.2 Objectives.~~**

103 ~~There are certain general objectives which are critical to the successful functioning of council-~~  
104 ~~appointed Boards among these are:~~

105 ~~A. That Boards always have available to them candidates for membership who are qualified for~~  
106 ~~the unique needs of that Board.~~

107 ~~B. That each Board maintain the independent posture needed to encourage the free and open~~  
108 ~~dialogue crucial to its function; and~~

109 ~~C. That all volunteers are shown the appreciation of the community regardless of whether or not~~  
110 ~~they are appointed to a particular Board.~~

111 **4.2.3~~2~~ Procedures.**

112 ~~To achieve~~In pursuit of these goals, the following procedures for the selection of Board  
113 members are adopted:

114 **4.2.2.1 Application.**

115 A. A list of applicants for each Board will be maintained by the Town Clerk.

116 B. Volunteers must complete an application for each Board they wish to serve. Applicants will  
117 be listed in order by the date-time of receipt of the completed application by the Town Clerk.

118 C. Applicants are eligible to serve only one primary board at a time (unless acting as an official  
119 designee to another board). Primary boards are defined as follows: Board of Appeals, Board of  
120 Assessment Review, Capital Improvement Program, Conservation Commission, Parks  
121 Commission, Planning Board, and Port Authority. All other boards are considered secondary.  
122 Service on secondary boards is limited to no more than three.

123 | ~~C. No Town employees may be appointed to a Board, except when attendance is required in~~  
124 | ~~their official capacity.~~

125 | D. A member whose term is expiring is given consideration for reappointment first, subject to  
126 | term limitations for the position, if any. ~~Service for more than one-half of a term is considered a~~  
127 | ~~full term for the purpose of calculating~~ Alternates or associates on a Board will be given first  
128 | consideration for appointment when an opening occurs, in order of length of service.

129 | E. Applicants will be polled for interest for serving on a board when an opening occurs. Those  
130 | refusing declining may opt to remain on the list and will be placed back on the list as of the date  
131 | of declining.

#### 132 | 4.2.2.2 Interview and Appointment.

133 | ~~AF.~~ Council may waive the interview requirement for reappointments; alternates applying for  
134 | full membership; and full members applying for alternate status.

135 | ~~BG.~~ With the exception of the Planning Board and Board of Appeals, eligible applicants are  
136 | interviewed for a specific Board appointment prior to consideration by the full Council.

137 | 1. The interview is conducted by the Chairperson (or designated regular member) of the  
138 | applicable Board and by one Council member designated by the Council. Councilor interviewing  
139 | assignments are rotated so that no one Councilor would be involved in successive interviews for  
140 | the same Board.

141 | In event neither the Board Chairperson, nor designated permanent regular member, is available,  
142 | the sitting Council may determine an alternate interview protocol.

143 | 2. Interviews are considered private.

144 | 3. Only one interview is conducted with each applicant for each position.

145 | 4. Both interviewers must agree to the acceptability of the candidate in order for that  
146 | candidate's name to be considered by the full Council.

147 | 5. Applicants not recommended to the Council may opt to remain on the list(s) if they so desire.  
148 | **They must notify the Town Clerk in writing of their interest within one week of being notified of**  
149 | **the non-appointment, and they will be placed at the bottom of the list.** Otherwise, they will be  
150 | removed from the list.

151 | ~~HC.~~ The following criteria are used in evaluating candidates:

152 | 1. Education,

153 | ~~2. Training,~~ and experience: consider any Board-function related experience that will provide  
154 | the candidate the necessary knowledge, skill, and abilities to be able to perform the functions of  
155 | the Board proficiently.

156 | ~~3. Other-~~ Related experiences.

157 | ~~4. Any potential for conflict of interest.~~

158 | ~~5. For reappointments or changes from a~~ Alternate to Full regular mMember, attendance (rated  
159 | as 'Excellent', 'Good', or 'Poor') is to be provided by the Chairperson of the Board on the  
160 | interview form.

161 | ~~I. Any appointed Board member may be dismissed for cause by the Town Council~~  
162 | ~~pursuant to Section 2.07 (1) of the Town Charter.~~

163 | **4.2.42.3 Planning Board or Board of Appeals Interviews and Appointments.**

164 A. Pursuant to Town Charter §2.07(2), applicants for the Planning Board and Board of Appeals  
165 must be interviewed by the Council, at a Regular or Special meeting, with at least a quorum  
166 present, before any vote is taken on the appointment. ~~Applicants will be interviewed for the~~  
167 ~~Planning Board or Board of Appeals with at least a quorum present at a regular or special~~  
168 ~~Council meeting.~~ If there are multiple applicants for a Board, they will be interviewed by Council  
169 as a group including applicant(s) already interviewed.

170 B. Criteria listed in Section 4.2.3 ~~H2.2C, above,~~ must also be used in considering candidates  
171 for the Planning Board and the Board of Appeals.

172 C. After the interviews are completed, Council, in open session, and by the following meeting,  
173 shall nominate, with a second, discussion and vote on the candidate(s) for the open vacancy.

174 D. A tie vote on an appointment shall be voted on by Council twice. Following the second tie vote  
175 the Council Chairperson shall determine the winner by lot by a coin toss. TIE = DATE OF  
176 APPLICATION?

177 E. Interviewed applicants not appointed may remain on the list if they so desire. They must  
178 notify the Town Clerk in writing of their interest within one week of being notified of the non-  
179 appointment, and they will be placed back on the list. ~~Otherwise, they will be removed from the~~  
180 ~~list.~~

#### 181 **4.2.53 Appointment Exceptions.**

182 A. Building Committee – when Council-appointed membership is involved, appointment  
183 procedure is determined by the sitting Council.

184 B. Charter Commission – procedure is determined by the sitting Council.

185 C. Christmas Parade Committee – members recommended by sponsoring group.

186 D. Rice Public Library Board of Trustees – application and interview procedure applies, but  
187 appointment is made by Library Trustees.

188 ~~E. Newly formed Boards not existing as of November 1, 2000 – procedure is determined by the~~  
189 ~~sitting Council.~~

#### 190 **4.2.6 – Other Appointments.**

191 ~~A. Town Manager, including related positions held by Manager: Interview by Council as part of~~  
192 ~~hiring procedure.~~

193 ~~B. Individual positions not enumerated: Procedure determined by sitting Council.~~

### 194 **Chapter 4.3 STATUTORY BOARDS**

#### 195 **4.3.1 REGISTRAR OF VOTERS**

##### 196 **4.3.1.1 Establishment, Appointment, and Composition.**

197 Pursuant to 21-A MRS §101, Registrar, et seq, Council shall appoint in writing a qualified  
198 Registrar of voters by January 1st of each odd-numbered year. The Registrar shall serve for two  
199 years and until a successor is appointed and sworn.

200 The Registrar may appoint one or more deputies sufficient to accomplish necessary tasking who  
201 serve indefinite terms at the will of the registrar.

202 The Registrar must be a citizen of the United States, a resident of the State and at least 18 years  
203 of age. The Registrar may not be an employee of a party or candidate or be an officer of a  
204 municipal, county or state party committee. In the electoral division in which the Registrar is

205 appointed, the Registrar may not:

206 A. Hold or be a candidate for any state or county office;

207 B. Be a treasurer for a candidate; or

208 C. Be a municipal officer as defined by 30-A MRS §2001, Definitions.

209 **4.3.1.2 Powers and Duties.**

210 The Registrar has the exclusive power to determine whether a person who applies for  
211 registration as a voter meets the qualifications prescribed by 21-A MRS Elections, subject to  
212 §103 (see following.

213 **4.3.2 REGISTRATION APPEALS BOARD**

214 **4.3.2.1 Establishment, Appointment, and Composition.**

215 A. Pursuant to 21-A MRS §103, Registration appeals board, et seq, the Board consists of 3  
216 members who must be appointed as follows:

217 The Town committee of each of the major political parties shall nominate one member, who must  
218 be enrolled in the party of the Town committee that nominates the member, and Council shall  
219 appoint the persons nominated by the Town committees and the 3rd member must be nominated  
220 by the Town Clerk AND appointed by the Council.

221 The Town Clerk may give the Town committees of the political parties a list of qualifications  
222 necessary for a person to fulfill the duties of the Board, and the Town committees shall take  
223 those qualifications into consideration when nominating members to the Board.

224 The two members of the Board nominated by the Town committees of the major political parties  
225 may be members of the Town committee nominating them and of the county or state committees  
226 of the political party that nominates them and may be members of a state or county delegation to  
227 a political convention.

228 When a Town committee nominates a member to the Board, it shall also nominate an alternate  
229 member, who serves if the member nominated by the Town committee is or becomes unable to  
230 serve.

231 B. The Town Clerk may not serve as a member or alternate member of the registration appeals  
232 board.

233 C. Each member nominated by the Town committees of the major political parties and appointed  
234 to the Board shall serve for 3 years and the member nominated by the Town Clerk and  
235 appointed to the Board shall serve for 4 years.

236 D. The member nominated by the Town Clerk is chairman of the board.

237 E. When there is a vacancy on the Board, the alternate board member nominated by the Town  
238 committee of the political party of the former incumbent shall serve. If an alternate is not  
239 available, Council shall appoint a qualified person nominated by the Town committee of the party  
240 of the former incumbent to fill the vacancy. If the vacancy is in the office of the chair of the board,  
241 Council shall appoint a qualified person nominated by the Town Clerk to fill the vacancy.

242 **4.3.2.2 Powers and Duties.**

243 A. Appeal hearing. Upon receipt of a complaint by a person aggrieved by the decision of the  
244 Registrar, the Chair of the Board shall immediately fix a time and place for the Board to meet for  
245 a prompt hearing. The voter must be given written notice of the hearing at least 20 days in  
246 advance and must have the opportunity to testify and to present witnesses and other evidence at

247 the hearing. The hearing is de novo. After hearing, the Board may affirm, modify or reverse the  
248 decision of the Registrar of Voters. The Board shall issue the decision to the voter in writing and  
249 provide information on how the voter may appeal the decision. The aggrieved person may  
250 appeal the decision of the Board to the Superior Court in accordance with Rule 80B of the Rules  
251 of Civil Procedure.

252 B. Actions of the registration appeals board. The Board may only act by unanimous or majority  
253 action.

### 254 **4.3.3 BOARD OF ASSESSMENT REVIEW**

#### 255 **4.3.3.1 Establishment, Appointment, and Composition.**

256 The Board of Assessment Review is established pursuant to Town Charter §7.02, consisting of 3  
257 members and two alternates, not otherwise connected with town government, who shall be  
258 appointed as hereinbefore provided for a term of 3 years.

#### 259 **4.3.3.2 Powers and Duties.**

260 A. Pursuant to 36 MRS §843, Appeals, et seq, and Town Charter §7.04, the Board is conferred  
261 upon it such powers of review and abatement as are conferred upon Boards of Assessors by  
262 statute, and has the power to:

263 (1) Review on complaint of property owners, and revise assessments for the purpose of  
264 taxation of real and personal property within the town limits made by the Town assessor;

265 (2) Administer oaths;

266 (3) Hold hearings; and

267 (4) Adopt regulations regarding the procedure of assessment review, not inconsistent with  
268 statutory provisions.

269 B. If the Town Assessor refuses to make the abatement asked for, an applicant may apply in  
270 writing to the Board within 60 days after notice of the decision from which the appeal is being  
271 taken or after the application is deemed to have been denied, and, if the Board thinks the  
272 applicant is over-assessed, the applicant is granted such reasonable abatement as the board  
273 thinks proper.

274 C. Except with regard to nonresidential property or properties with an equalized municipal  
275 valuation of \$1,000,000 or greater either separately or in the aggregate, either party may appeal  
276 from the decision of the Board directly to the Superior Court, in accordance with Rule 80B of the  
277 Maine Rules of Civil Procedure. If the Board fails to give written notice of its decision within 60  
278 days of the date the application is filed, unless the applicant agrees in writing to further delay, the  
279 application is deemed denied and the applicant may appeal to Superior Court as if there had  
280 been a written denial.

### 281 **4.3.4 PERSONNEL BOARD**

#### 282 **4.3.4.1 Establishment, Appointment, and Composition**

283 The Personnel Board is established pursuant to Town Charter §5.02(3)(a), consisting of 5  
284 members and 2 or more alternates appointed as hereinbefore provided for 3 year terms.

#### 285 **4.3.4.2 Powers and Duties.**

286 A. It is not the Personnel Board's function to exclusively represent the interests of an employee  
287 or the employer; it is the Board's function to fairly and impartially represent the interests of both

288 parties and to clearly and continually work for the development of mutual respect, understanding,  
289 and cooperation between the parties.

290 B. The Board is to:

291 1. Advise the Town Manager on matters of personnel policy and problems of personnel  
292 administration, including the development of personnel rules, a job classification plan, and a  
293 uniform pay plan;

294 2. Represent the public interest in the improvement of personnel administration in the Town  
295 service;

296 3. Make any inquiry which it may consider desirable concerning personnel administration in the  
297 Town service, and make advisory recommendations to the Town Manager, with respect thereto.

298 C. As delineated in Town Charter §5.02(3 (b)), the Board shall:

299 1. Assist the personnel director in developing and updating an administrative code;

300 2. Advise the personnel director on issues of personnel management; and

301 3. Act as an appeals or grievance board involving employees covered by Town Code Title 2  
302 in the manner and under the provisions specified therein.

303 4. All opinions and decisions issued by the Board are advisory in nature and are issued to  
304 the Town Manager and to the employee(s) requesting the grievance hearing or  
305 separation/demotion hearing.

#### 306 **4.3.5 PLANNING BOARD**

##### 307 **4.3.5.1 Establishment, Appointment, and Composition.**

308 A. The Planning Board is established pursuant to Town Charter §8.01, consisting of 7 members  
309 appointed as hereinbefore provided and serve terms of 3 years.

310 B. No member may serve more than 3 consecutive terms of 3 years. Any member who has  
311 served 3 consecutive terms of 3 years is ineligible to serve on the board for a period of 1 year.  
312 Computation of term limits does not include terms of fewer than 3 years after their effective date.

##### 313 **4.3.5.2 Powers and Duties.**

314 The Board has such powers and performs such duties as provided by law and as delineated in  
315 Town Code Title 16 §1.4.

#### 316 **4.3.6 BOARD OF APPEALS**

##### 317 **4.3.6.1 Establishment, Appointment, and Composition.**

318 A. The Board of Appeals is established pursuant to Town Charter §8.04, consisting of 7  
319 members appointed as hereinbefore provided and serve terms of 3 years.

320 B. No member may serve more than 3 consecutive terms of 3 years. Any member who has  
321 served 3 consecutive terms of 3 years is ineligible to serve on the board for a period of 1 year.  
322 Computation of term limits does not include terms of fewer than 3 years after their effective date.

##### 323 **4.3.6.2 Powers and Duties.**

324 The Board has such powers and performs such duties as provided by law and as delineated in  
325 Town Code Title 16 §1.5.

#### 326 **Chapter 4.34 MUNICIPAL BOARDS**

327 **4.4.1 Boards Established.**

328 Some advisory committees are formed by a board of directors to work on a specific issue or  
329 challenge. Such working groups may serve only until the specific issue is resolved, at which  
330 point recommendations are made to board and staff, and the group dissolves. However,  
331 organizations often see the benefit of establishing a permanent advisory board or committee to  
332 provide ongoing support

333 **4.4.2 Ad Hoc Committees, Working Groups, and Other Appointments.**

334 **4.4.2.1 Ad Hoc Committees**

335 Non-statutory Ad Hoc Boards established herein (dealing with a specific subject, purpose, or  
336 end) are considered permanent advisory boards to provide ongoing support, strategic direction,  
337 and to be advocates for the initiatives involved.

338 Committees formed Ad Hoc (for a special purpose or end presently under consideration) to deal  
339 with particular matters such as an Educational Scholarship Selection Program; a Capital  
340 Improvement Program; a Comprehensive Plan Update; Shared Services; or Economic  
341 Development, are to be established and charged with appropriate provisions similar to those  
342 found herein and contain an end of task ‘sunset’ clause.

343 Committees formed ad hoc of longstanding service should be considered for permanent  
344 codification in this code.

345 **4.4.2.2 Working Groups**

346 Council may from time to time determine a need for a small group of individuals to review and  
347 report, which may include recommendations, on particular issues, usually of short-term interest.  
348 The procedure for creating and direction such is to be determined by the sitting Council and on  
349 completion of its charge the group dissolves. The Town Manager may establish similar advisory  
350 bodies for dedicated purposes, such as an Open Space or Energy Advisory Committee.

351 **BOARD OF ASSESSMENT REVIEW**

352 **4.3.1 Created Powers.**

353 ~~The Board of Assessment Review is created pursuant to Article VII of the Town Charter and~~  
354 ~~exercises the powers conferred by that Article.~~

355 **4.3.2 Membership.**

356 ~~Qualifications of member, their appointment and terms, is governed by Article VII of the Town~~  
357 ~~Charter. Members serve until their successors are appointed and qualified.~~

358 **Chapter 4.45 KITTEERY COMMUNITY CENTER BOARD of DIRECTORS**

359 **4.45.1 Establishment, Appointment, and Composition.**

360 A. ~~Pursuant to the provisions of the Town Charter, Section 2.07(1),~~ The Town Council  
361 establishes a Board of Directors for the Kittery Community Center at Frisbee Common is  
362 established to oversee those aspects of Center operations and facilities as delineated in this  
363 Chapter.

364 B. The Board consists of nine (9) voting members appointed as hereinbefore provided.  
365 Seven (7) are Kittery residents, serving ~~staggered~~ terms of office of three years each, plus the  
366 Town Manager and a Council-appointed Town Councilor. The Recreation Director and Town  
367 Planner are ex officio members without voting rights.

368 C. Resident appointments are to be comprised of individuals with demonstrable experience  
369 or association with recreation (3); arts and culture (2); economic or community development (1);  
370 plus a member-at-large (1).

371 ~~D. The initial appointment of one recreation member, one arts and culture member, and the~~  
372 ~~economic or community development member are for three years. The second recreation and~~  
373 ~~arts and culture initial appointments are for two years, with the remaining two appointments for~~  
374 ~~one year. All subsequent resident appointments, or reappointments, are to be for three year~~  
375 ~~periods, except as provided in 4.4.1 I.~~

376 ~~E. Members of the Board are appointed by the Town Council.~~

377 ~~F. Municipal officers or officials, or a spouse thereof, may not serve as a resident member~~  
378 ~~of the Board.~~

379 ~~G. Members serve until their successors are appointed and qualified.~~

380 ~~H. A member of the Board may be dismissed for cause by the Town Council before the~~  
381 ~~expiration of such member's term after notice and hearing.~~

382 ~~I. Vacancies are filled by Town Council appointment for the unexpired term.~~

#### 383 **4.54.2 Powers and Duties.**

384 A. The Board shall elect annually a chairperson, vice chairperson, and secretary from its  
385 membership. It is the duty of the secretary to keep and maintain a permanent record of all  
386 meetings of the Board, and show the vote of each member upon each question.

387 B. A quorum consists of five or more members. All decisions must be made by a minimum  
388 of five like votes, except on procedural matters.

389 C. The Board shall propose bylaws for Town Council adoption to govern routine Board  
390 proceedings.

391 ~~D. The Board shall set agendas and hold meetings to perform duties.~~

392 ~~E. Any question of whether a particular issue involves a conflict of interest sufficient to~~  
393 ~~disqualify a member from voting thereon is decided by a majority vote of the members present,~~  
394 ~~subject to 4.4.2 B above, except the member who is being challenged, who may not vote on the~~  
395 ~~issue.~~

396 ~~F. All records of the Board are public records, except as excluded under 1 M.R.S. §402 (3)~~  
397 ~~(A)-(O), the Maine Freedom of Access (Right to Know) statute.~~

398 G. The Board is to:

399 1. Prepare and recommend a Long Range (5-Year) Community Center Development Plan for  
400 Council adoption, updated annually, and monitor and report on Plan implementation progress;

401 2. Develop operational policies, and approve operating procedure protocols recommended by  
402 administration;

403 3. Review and endorse an annual operating budget proposal for operations and facilities  
404 maintenance developed by administration;

405 4. Develop and annually recommend a Capital Program to the Capital Improvement Program  
406 Committee; and

407 5. Report ~~quarterly for the first year of operation, then~~ annually or at such intervals as ~~the Town~~  
408 Council may direct thereafter, on programs, use, growth, and new activity at the Center. Such

409 report may include elements to satisfy the Plan implementation progress report.

410 **Chapter 4.5—REGISTRATION APPEALS BOARD**

411 **RESERVED**

412 **Chapter 4.6 BOARD OF TRUSTEES of TRUST FUNDS**

413 **4.6.1 Establishment, Appointment, and Composition.Created-Duties.**

414 A Board of Trustees of trust funds is ~~created~~established to have the care and management of  
415 the Mary

416 Stafford\_Wildes Estate, or any other similar funds.

417 **4.6.2—Membership.**

418 The ~~B~~Board consists of five members, the ~~C~~Chairperson of the ~~town council~~Council and the ~~T~~Town  
419 ~~C~~Clerk to be ex officio members and the ~~-e~~-eClerk to be treasurer of said fund, and three additional  
420 members to be appointed ~~as hereinbefore provided by the moderator for one, two and three years~~  
421 ~~respectively;~~ and hereafter each year one member is to be appointed by the Town Council for a  
422 three-year term and thereafter for successive three-year terms. Appointed members serve until  
423 their successors are appointed and qualified. Appointed member vacancies are filled by town  
424 council appointment for the unexpired term.

425 **4.6.2 Powers and Duties.**

426 The Board has the authority to administer said trust funds in accordance with the terms of the  
427 will, as follows, or other document creating such trust.

428 **Accepted by Annual Town Meeting voters, 51<sup>st</sup> Item, March 7, 1953:**

429 “WILL: This third to finally be used with the remaining third to be given to the Town of Kittery,  
430 Maine for some worthy charitable benefit needed in that town not connected with any outside  
431 organization and preferably the Town Home for the Poor or assistance of natives of the town, my  
432 own family relatives to be considered first if any are living and in need of help.”

433 **Chapter 4.7—PERSONNEL BOARD**

434 **4.7.1—Established-Composition-Qualifications, Terms, Removal, Compensation**  
435 **ofMembers-Filling of Vacancies-Duties Generally.**

436 A Personnel Board is established, consisting of five members appointed by the Town Council. A  
437 ~~personnel board is established, consisting of five members appointed by the Town Council. No~~  
438 ~~member of the Board may be employed by the town, nor hold or be a candidate for any elective~~  
439 ~~office. Members of the Board serve terms of three years and until their successors are~~  
440 ~~appointed and qualified provided, however, that of the members originally appointed, one shall~~  
441 ~~serve for a term of one year, two for a term of two years, and two for a term of three years. All~~  
442 ~~terms expire on the same date in their respective years. Members serve conditioned only upon~~  
443 ~~good behavior and may be removed for cause after notice and hearing. However, no member of~~  
444 ~~the Board may serve for more than two consecutive three-year terms. Vacancies occurring~~  
445 ~~during a term are filled by the Town Council for the balance of the term. Members of the Board~~  
446 ~~serve without compensation, but funds will be provided for reasonable and necessary expenses.~~  
447 ~~The Board elects its own chairperson. In addition to the duties set forth elsewhere in this~~  
448 ~~chapter, the Board is to:~~

449 ~~1. Advise the Town Manager on matters of personnel policy and problems of personnel~~  
450 ~~administration, including the development of personnel rules, a job classification plan, and a~~  
451 ~~uniform pay plan;~~

452 ~~2. Represent the public interest in the improvement of personnel administration in the Town~~  
453 ~~service;~~

454 ~~3. Make any inquiry which it may consider desirable concerning personnel administration in the~~  
455 ~~Town service, and make advisory recommendations to the Town Manager, with respect thereto.~~

456 **4.7.2 Personnel Board Responsible for Hearing Grievances.**

457 ~~The Personnel Board is responsible for hearing grievances involving employees covered by this~~  
458 ~~chapter in the manner and under the provisions specified by this chapter.~~

459 **4.7.3 Opinions and Decisions of Personnel Board.**

460 ~~All opinions and decisions issued by the Personnel Board are advisory in nature and are issued~~  
461 ~~to the Town Manager and to the employee(s) requesting the grievance hearing or~~  
462 ~~separation/demotion hearing.~~

463 **4.7.4 Function of Personnel Board Generally.**

464 ~~It is not the Personnel Board's function to exclusively represent the interests of the employee or~~  
465 ~~the employer; it is the Board's function to fairly and impartially represent the interests of both~~  
466 ~~parties and to clearly and continually work for the development of mutual respect,~~  
467 ~~understanding, and cooperation between the parties.~~

468 **Chapter 4.87 SHELLFISH CONSERVATION COMMITTEE**

469 **4.7.1 Establishment, Appointment, and Composition.**

470 ~~Pursuant to 12 MRS §6671, Municipal shellfish conservation programs, et seq, t~~The Sshellfish  
471 C~~onservation program for the town is administered by the shellfish conservation C~~ommittee is  
472 established ~~consisting of seven full-regular members and two alternate members appointed as~~  
473 hereinbefore provided ~~by the Town Council for terms of three years. Members serve until their~~  
474 ~~successors are appointed and qualified. Vacancies are filled by town council appointment for~~  
475 ~~the unexpired term.~~

476 **4.7.2 Powers and Duties.**

477 Amongst other statutory powers and duties, ~~T~~the Committee's responsibilities include:

478 A. Establishing annually, in conjunction with the department of marine resources, the number of  
479 shellfish digging licenses to be issued;

480 B. Surveying each clam-producing area at least once every three years to establish size  
481 distribution and density and annually estimating the status of the Town's shellfish resources;

482 C. Submitting to the Town Council proposals for the expenditures of funds for the purpose of  
483 shellfish conservation;

484 ~~D. Keeping this chapter under review and making recommendations for its amendments;~~

485 ED. Securing and maintaining records of shellfish harvest from the Town's managed shellfish  
486 areas and closed areas that are conditionally opened by the department of marine resources;

487 FE. Recommending conservation closures and openings to the ~~T~~own Council in conjunction  
488 with the area biologists of the department of marine resources;

489 ~~G. Submitting an annual report to the municipality and the department of marine resources~~  
490 ~~covering the above topics and all other committee activities.~~

491 F. Within any area of the Town, a shellfish conservation ordinance may:

492 (1) Regulate or prohibit the possession of shellfish;

493 (2) Fix the amount of shellfish that may be taken;

494 (3) Provide for protection from shellfish predators;

495 (4) Authorize the municipal officials to open and close flats under specified conditions; and

496 (5) Specify areas of the intertidal zone in which the dragging of mussels may be limited to the  
497 degree necessary to support a municipal shellfish conservation program; and

498 (6) Must limit the size of soft-shell clams in accordance with article 5: and

499 (7) Except as provided in 12 MRS §6621, Closed areas, §§3.C, not allow surveying, sampling  
500 or harvesting of shellfish in areas closed by regulation of the commissioner.

## 501 **Chapter 4.98 CONSERVATION COMMISSION**

### 502 **4.98.1 Establishment, Appointment and Composition~~Appointment-Purpose.~~**

503 Pursuant to the provisions of 30-A, ~~M.R.S.~~MRS §3261, Conservation commissions, the ~~Town~~  
504 ~~Council is to appoint a~~ Conservation Commission is established consisting of at least three, but  
505 not more than seven, members appointed as hereinbefore provided, for the protection and use  
506 of the natural resources located within the territorial limits of the Town.

507 The Commission may recommend to Council that associate members be appointed to assist the  
508 Commission as the Commission may require. Associate members are nonvoting members,  
509 except when a quorum is absent.

### 510 **4.98.2 Powers and Duties.**

#### 511 **4.8.2.1 Powers.**

512 The Commission may:

513 A. Make recommendations for use of land to the planning Board and park commission;

514 B. Prepare and print books, charts, maps, and plans as it deems necessary;

515 C. Serve as an advisory body to the public works department to review and advise, at least  
516 twice a year, at the call of the Town Manager, in conjunction with the management plan and  
517 maintenance of public parks and shade trees in public parks;

518 D. With the approval of Council, apply for grants or receive gifts in the Towns name for any of  
519 the Commission’s purposes and to administer these grants or gifts for those stated purposes, as  
520 specified by the terms of the grant or gift consistent with all appropriate state statutes

521 E. Develop and implement a management plan for Rogers Park with approval of the Town  
522 Council.

#### 523 **4.8.2.2 Duties.**

524 The commission is to:

525 A. Keep an index of all open areas within the ~~municipality~~Town, whether publicly or privately  
526 owned, including open marshlands, swamps and other wetlands, for the purpose of obtaining  
527 information relating to the proper protection, development or use of those open areas.

528 | The ~~C~~ommission may recommend to ~~the municipal officers~~Council, or any municipal body or  
529 Board, or any body politic or public agency of the state, a program for the better protection,  
530 development or use of those areas, which may include the acquisition of conservation  
531 easements;

532 | B. Conduct research, in conjunction with the Planning Board, Parks Commission, or Open  
533 Space Advisory Committee, into the local land areas; and

534 ~~C. Keep records of its meetings, finances and activities and make an annual report to the~~  
535 ~~municipality; and~~

536 ~~DC.~~ Seek to coordinate the activities of conservation bodies organized for similar purposes.

537 **~~4.9.3 Powers.~~**

538 ~~The Commission may:~~

539 ~~A. Make recommendations for use of land to the planning Board and park commission;~~

540 ~~B. Prepare and print books, charts, maps, and plans as it deems necessary;~~

541 ~~C. Serve as an advisory body to the public works department to review and advise, at least~~  
542 ~~twice a year, at the call of the Town Manager, in conjunction with the management plan and~~  
543 ~~maintenance of public parks and shade trees in public parks;~~

544 ~~D. With the approval of the majority of the Town Council, receive gifts in the municipality's~~  
545 ~~name for any of the commission's purposes and administer the gift for those purposes, subject~~  
546 ~~to the terms of the gift; acquire land or easements and trusts, and accept gifts of land or money~~  
547 ~~or easements, for conservation purposes; and~~

548 ~~E. Develop and implement a management plan for Rogers Park with approval of the Town~~  
549 ~~Council.~~

550 **~~4.9.4 Membership.~~**

551 ~~A. The town council may appoint at least three, but not more than seven, conservation~~  
552 ~~commissioners. The commissioners are selected from the qualified resident voters of the town.~~  
553 ~~Members are initially appointed for terms of one, two and three years, such that the terms of~~  
554 ~~approximately one third of the members will expire each year. Their successors are appointed for~~  
555 ~~terms of three years each. Members serve until their successors are appointed and qualified.~~  
556 ~~Vacancies are filled by town council appointment for the unexpired term.~~

557 ~~B. The Commission may recommend to the municipal officers that associate members be~~  
558 ~~appointed to assist the Commission as the Commission requires. Associate members are~~  
559 ~~nonvoting members, except when a quorum is absent. Their terms of office are to be for one,~~  
560 ~~two or three years. Associate members are selected from the qualified resident voters of the~~  
561 ~~Town.~~

562 **~~Chapter 4.10-9~~ PARKS COMMISSION**

563 **~~4.109.1~~ \_\_\_\_\_ -Establishment, Appointment, and Composition~~Purpose.~~**

564 The ~~Town Council may appoint a~~ Parks Commission is established, consisting of seven  
565 members appointed as hereinbefore provided, who have demonstrated an interest in the Town  
566 parks and facilities, to provide ongoing citizen recommendations relating to the improvements or  
567 development of Town-owned property that is or is likely to be developed into Town parks to  
568 insure the preservation, beauty and protection of these most valuable sites.

569 B. The Commission may recommend to Council that associate members be appointed to assist  
570 the Commission, as the Commission may require. Associate members are nonvoting members  
571 except when a quorum is absent.

572 **4.9.10.2 Powers and Duties.**

573 The Commission is to:

574 A. Recommend to the Town Council an overall park management plan for the identification,  
575 protection, development or use of park lands and facilities;

576 B. Meet with the Town Manager to review and advise, at least twice a year, on the status and  
577 progress of the park management plan and other pertinent issues;

578 C. Coordinate its activities with those of the park, recreation, school and conservation bodies  
579 organized for similar purposes;

580 D. Keep records of commission finances and activities, post agendas and minutes of meetings  
581 and make an annual report to the municipality;

582 E. Assure that any recommended changes affecting municipal park properties are made in  
583 conjunction with the Conservation Commission;

584 F. Formulate a commission budget to be presented to the Town Council for approval.

585 **4.10.39.2.1 Powers.**

586 The Commission may:

587 A. Make recommendations for use of the parks and park facilities to the Town Manager and/or  
588 the Planning Board;

589 B. Prepare and print books, maps and plans as it deems necessary;

590 C. With the approval of the majority of the Town Council, apply for grants or receive gifts in the  
591 municipality's Town's name for any of the Commission's purposes and to administer these  
592 grants or gifts for those stated purposes, as specified by the terms of the grant or gift consistent  
593 with all appropriate state statutes;

594 D. Make recommendations to the Town Council for revisions to the park fee policy and rate  
595 schedules.

596 **4.9.2.2 Duties.**

597 The Commission is to:

598 A. Recommend to Council an overall park management plan for the identification, protection,  
599 development or use of park lands and facilities;

600 B. Meet with the Town Manager to review and advise, at least twice a year, on the status and  
601 progress of the park management plan and other pertinent issues;

602 C. Coordinate its activities with those of the park, recreation, school, and conservation bodies  
603 organized for similar purposes;

604 E. Assure that any recommended changes affecting Town park properties are made in  
605 conjunction with the Conservation Commission;

606 F. Make budget recommendations to the Commissioner of Public Works related to parks.

607 **4.10.4 Membership.**

608 A. The Commission consists of seven members, qualified under Section 2.07(2) of the Town

609 ~~charter, who have demonstrated an interest in the Town parks and facilities. Members are initially~~  
610 ~~appointed for terms of one, two and three years, such that the terms of approximately one third of~~  
611 ~~the members will expire each year. Their successors will be appointed for terms of three years~~  
612 ~~each. Members serve until their successors are appointed and qualified. Vacancies are filled by~~  
613 ~~town council appointment for the unexpired term.~~

614 ~~B. The Commission may recommend to the municipal officers that associate members be~~  
615 ~~appointed to assist the commission, as the commission requires. Associate members are~~  
616 ~~nonvoting members except when a quorum is absent. Their terms of office are to be for one, two~~  
617 ~~or three years. Associate members are selected from the qualified resident voters of the Town.~~

618 **4.104 KITTERY PORT AUTHORITY.**

619 **4.104.1 Establishment, Appointment and Composition.**

620 The Port Authority is established by Maine Private and Special Law 1961, Chapter 163, as  
621 amended, and Town Charter, Article IX, consisting of 7 members appointed as hereinbefore  
622 provided and serve terms of 5 years.

623 **4.11.2 Appointment and Composition.**

624 ~~A. The Port Authority consists of seven (7) members, who are Kittery residents serving~~  
625 ~~staggered terms of office of five years.~~

626 B. Six members of the Port Authority are appointed by the Town Council, and the Planning  
627 Board Chair appoints one representative to serve on the board.

628 C. No member shall serve more than 2 consecutive terms of 5 years. Any member who has  
629 served 2 consecutive terms of 5 years is ineligible to serve on the board for a period of 1 year.  
630 Computation of term limits does not include terms of fewer than 5 years after their effective date.

631 ~~C. A municipal officer, or spouse thereof, may not serve as a member of the Port Authority.~~

632 ~~D. Members serve until their successors are appointed and qualified.~~

633 ~~E. No member may serve more than 2 consecutive terms of 5 years. Any member who has~~  
634 ~~served 2 consecutive terms of 5 years is ineligible to serve on the Board for a period of 1 year.~~  
635 ~~Computation of term limits commences with the first term of 5 years following the effective date~~  
636 ~~of this provision. Service for more than one-half of a term is considered a full term for the~~  
637 ~~purpose of calculating term limits. Computation of term limits does not include service prior to~~  
638 ~~the effective date of this provision nor to terms of fewer than 5 years after the effective date.~~

639 ~~F. Vacancies are filled by Town Council appointments for the unexpired term.~~ **4.10.2**

640 **Powers and Duties.**

641 The Board has such powers and performs such duties as provided by law and as delineated in  
642 Town Code Title 16 §1.6.

643 **NOTE: Following included for information only:**

644 **KITTERY PORT AUTHORITY, PRIVATE AND SPECIAL 1961, Chapter 163**

645 **AN ACT Creating the Town of Kittery Port Authority**

646 *Be it enacted by the People of the State of Maine, as follows:*

647 **Sec. 1. Authority established.** The Town of Kittery Port Authority is  
648 established, consisting of and governed by a Board of 7 members, 6 of  
649 whom are appointed by the Town Council of the Town of Kittery. At  
650 least 3 of the appointive members must be permanent residents of the  
651 Town of Kittery, and the members serve for a term of 5 years,  
652 providing that of the first appointment 2 are appointed for a term of  
653 one year, one for a term of 2 years, one for a term of 3 years, one  
654 for a term of 4 years and one for a term of 5 years. The members  
655 serve until their successors are appointed and qualified. Any vacancy  
656 occurring in the membership of the appointive members is filled by the  
657 Town Council for the unexpired term.

658 In addition to the 6 appointive members, a member of the Town  
659 Planning Board designated by the chair of the Town Planning Board is a  
660 member of the port authority, serving for a term of 5 years or until  
661 membership on the planning Board terminates, whichever occurs first.  
662 The Board shall elect one of its members as chair, one as a vice-chair  
663 and one as secretary. The members of the Board are not entitled to  
664 compensation for their services; but their reasonable expenses  
665 incurred in the performance of their duties must be paid by the Town  
666 of Kittery. The Board has the right to adopt and alter a common seal  
667 and to establish bylaws and regulations for the management of its  
668 affairs within the meaning of this authority, the laws of the State of  
669 Maine and the ordinances of the Town of Kittery.

670 **Sec. 2. Purposes.** The Town of Kittery Port Authority, in  
671 cooperation with the other appropriate planning and development Boards  
672 that may exist in the Town of Kittery, shall:

673 **I.** Plan for the maintenance and development of the port, harbor and  
674 navigable tidal waters within the jurisdiction of the Town of Kittery,  
675 in order to foster and stimulate commercial and recreational use of  
676 these areas.

677 **II.** Aid in the development of salt water fisheries and associates  
678 industries; ship and boat building, repair and storage and associated  
679 industries; pleasure boating, swimming and other associated  
680 recreational uses of these areas and facilities.

681 **III.** Be authorized and empowered to appoint and compensate a harbor  
682 master, who will enforce the directives of the authority, such as the  
683 placement of moorings, the assignments of anchorage areas and the  
684 movement of traffic, and the use of municipally-owned wharves, docks,  
685 piers and landings.

686 **Sec. 3. Powers and duties.** In order to enable it to carry out the  
687 purposes hereof, the authority shall:

688 I. Have the authority to make all necessary arrangements with other  
689 port authorities of the State of Maine, other states and federal  
690 departments and agencies for the interchange of business, and for such  
691 other purposes as will facilitate and increase the purposes of this  
692 authority.

693 II. Establish offices for the transaction of its business at such  
694 places as, in the opinion of the authority, shall be advisable and  
695 necessary in carrying out the purposes hereof.

696 III. Be authorized and empowered to appoint and compensate a harbor  
697 master, who will enforce the directives of the authority, such as the  
698 placement of moorings, the assignments of anchorage areas and the  
699 movement of traffic.

700 IV. Be authorized to raise funds for defraying the costs of  
701 administration and operation of the authority and projects under its  
702 supervision, through fund appropriation articles in the Town warrant,  
703 submitted for consideration at any Town meeting, and through any and  
704 all other sources of revenue authorized by this act.

705 V. Be custodian of municipally-owned wharves, docks, piers and  
706 landings.

707 **Sec. 4. Rules and regulations.** Said authority may make such  
708 ordinances, rules and regulations touching municipally-owned wharves,  
709 docks, piers and landings, port captains, pilots and pilotage, harbors  
710 and harbor masters, for the areas herein defined as it may deem proper  
711 and from time to time may modify, rescind or alter the same. Said  
712 rules and regulations shall have the force and effect of law. Said  
713 authority shall fix the fees of pilotage and a table of such fees  
714 shall be attached to the commission of each pilot.

715 **Sec. 5. Pilots.** The authority may prescribe the qualifications of  
716 pilots, and from time to time appoint and commission, under its hand  
717 and seal, as many pilots as it may judge necessary, and remove the  
718 same at pleasure, and it shall take from them such security, by bond  
719 or otherwise as it may deem proper.

720 **Sec. 6. Authority of pilot.** Any pilot appointed by the authority who  
721 has given security for the faithful discharge of his duties may take  
722 charge of any vessel, except pleasure, coasting and fishing vessels of  
723 the United States registry of 150 registered or enrolled tons and  
724 under, and except as provided in section 7, and shall pilot such  
725 vessel into or out of the river and harbor of the Piscataqua, to ports  
726 or locations within the jurisdictional area of this authority, first  
727 showing to the master thereof his appointment, if requested.

728 **Sec. 7 Fee an offer.** Any master or owner may pilot his own  
729 vessel into the area herein defined, but if a pilot shall speak and  
730 offer service to a vessel, excepting registered or enrolled vessels of  
731 the United States, bound into said area south of a line drawn east and  
732 west from Whale’s-back lighthouse, or shall offer service to a vessel  
733 bound out of said area excepting registered or enrolled vessels of the  
734 United States, before they leave the wharf, he shall be entitled to ½

735 of the fee specified in his warrant in case the master declines to  
736 employ him, and, on refusal of payment, may sue for and recover same.

737 **Sec. 8. Harbor master.** The harbor master appointed by the  
738 authority shall have the authority, under the supervision of the  
739 authority, to oversee the jurisdictional area of this authority, to  
740 preserve and regulate navigation within said waters, to assign  
741 moorings, require the same to be kept in safe condition, to require  
742 the removal of vessels if necessity or an emergency arises, to inquire  
743 into and prosecute all offenses occurring within his jurisdiction and  
744 to perform such duties and enforce such regulations as the authority  
745 shall prescribe. The harbor master shall have authority to make arrests  
746 for offenses under the provisions of this chapter, as other peace  
747 officers are authorized to do.

748 **Sec. 9. Penalty.** Whoever violates any of the rules or regulations of  
749 the authority promulgated under the authority of this chapter, or  
750 refuses or neglects to obey the lawful and reasonable orders of a  
751 harbor master or resists him in to execution of his duties shall be  
752 punished by a fine of not more than \$50. All fines collected under  
753 this section shall be forwarded to the port authority and by it  
754 applied to the salary of the harbor master.

755 **Sec. 10. Definition.** The word “vessel” as used in this chapter shall  
756 include boats of all sizes propelled by said, machinery or hand,  
757 scows, dredges, shellfish cars and craft of every kind.

758 **Sec. 11. Authorization to establish foreign-trade zones and free port**  
759 **areas.**

760 **I.** Said authority is authorized to make application to the Secretary of  
761 Commerce of the United States for the purpose of establishing,  
762 operating and maintaining foreign-trade zones in the area herein  
763 described, under the Act of Congress passed at the second session,  
764 73rd Congress, providing for the establishment, operation and  
765 maintenance of foreign-trade zones in ports of entry of the United  
766 States, to expedite and encourage foreign commerce, and for other  
767 purposes.

768 **II.** Said authority shall have full power and authority to select and  
769 describe the location of the zone for which application to establish  
770 may be made and to make such rules and regulations concerning the  
771 operation, maintenance and policing of same as may be necessary to  
772 comply with the Act of Congress creating said foreign-trade zones, or  
773 as may be necessary to comply with such rules and regulations made in  
774 accordance with the Acts of Congress, relating to foreign-trade zones.

775 **III.** Said authority shall have full power and authority to lease the  
776 right and erect, maintain and operate any structures or buildings or  
777 enclosures as may be necessary or proper for the establishing and  
778 operating any such foreign-trade zones that might be established in  
779 the area herein described under and by virtue of said act of the 2nd  
780 session of the 73rd Congress.

781 **IV.** The authority hereby granted to said port authority confers on  
782 said port authority the right and duty to do all things necessary and  
783 proper to carry into effect the establishing, maintaining and  
784 operating of foreign-trade zones within the area herein described to  
785 comply in full with the provisions of said Act of Congress and all  
786 regulations that might be made thereunder.

787 **V.** The Town of Kittery Port Authority shall have the power and the duty  
788 to establish in the area herein described an area wherein personal  
789 property in transit shall be exempt from the provisions of the stock-  
790 in-trade tax and other such taxes and customs as are normally levied  
791 in a port of entry. For the purpose of this section, personal

792 property in transit through the areas established by this port  
793 authority is defined as follows: Goods, wares and merchandise which is  
794 (1) moving in interstate or international commerce through or over the  
795 areas hereinbefore established, or (2) which was consigned to a  
796 warehouse, public or private, within the Town of Kittery, whether  
797 specified when transportation begins or afterward.

798 Such property shall not be deprived of exemption because while in the  
799 warehouse the property is assembled, bound, joined, processed,  
800 disassembled, divided, but, broken in bulk, relabeled or repackaged.

801 The exemption granted shall be liberally construed to effect the  
802 purpose of this act. Provided, however, that the warehouse in which  
803 said goods, wares or merchandise be stored shall not be owned, in  
804 whole, or in part by the consignee or consignor.

805 **Sec. 12. Severability.** If any provision of this chapter shall be held  
806 invalid, the remainder of the chapter shall not be affected thereby.

807 Amended:

808 Private and Special 1963, Chapter 97, §2

809 Private and Special 1993, Chapter 26, §1

1 **Title 4 BOARDS, AUTHORITY, COMMISSIONS and COMMITTEES**

2 **Chapter 4.1 ESTABLISHMENT**

3 Town governance requires attention to many demands pursuant to Federal law, Maine Revised  
4 Statutes, and the Town Charter. In order to provide for that range of requirements and make  
5 provision for citizen participation in community affairs the boards, authority, commissions, and  
6 committees (hereafter “Boards”), addressed herein, are hereby established and/or defined.

7 **4.1.1 Objectives.**

8 There are certain general objectives critical to the successful functioning of Council-appointed  
9 Boards among these are:

10 A. That Boards always have available to them candidates for membership who are qualified for  
11 the unique needs of that Board.

12 B. That each Board maintain the independent posture needed to encourage the free and open  
13 dialogue crucial to its function; and

14 C. That all volunteers are shown the appreciation of the community regardless of whether or not  
15 they are appointed to a particular Board.

16 **4.1.2 General Provisions.**

17 **4.1.2.1 Terms.**

18 A. The Council has the power to appoint all members of boards created by statute, ordinance,  
19 Town charter, or by Council action unless otherwise provided therein.

20 B. Members of Boards serve terms as established by statute, charter, or this ordinance, and until  
21 their successors are appointed and qualified. Term limits are those set in the Town Charter.

22 C. No member of a Board may be employed by the town, nor hold or be a candidate for any  
23 elective office. Town employees may not be appointed to a Board, except when Council  
24 establishes ex officio membership where an incumbent serves during their tenure in such  
25 position. Municipal officers or officials, or a spouse thereof, may not serve as Board members.

26 D. Member terms are to be staggered for expiration, as established. Service for more than one-  
27 half of a term is considered a full term for the purpose of calculating term limits. Vacancies  
28 occurring during a term are filled by Council for the balance of the term.

29 E. All terms expire on the same date in their respective years. For the purpose of aligning term  
30 ending dates, the Council may make appointments in excess of three years, but no more than  
31 four years, except where differing statutory provisions apply.

32 F. Members of the Boards serve without compensation, but funds will be provided for  
33 reasonable and necessary expenses.

34 G. Pursuant to Town Charter §2.07, Council has the power to remove for cause after notice and  
35 hearing, all members of boards created by statute, ordinance, this charter or by Council action  
36 unless otherwise provided therein. A member of the Board may be dismissed for cause by the  
37 Town Council before the expiration of such member’s term after notice and hearing.

38 **4.1.2.2 Qualifications, Service, Dismissal.**

39 A. All appointments of voting members, regular and/or ad hoc, are made from among the  
40 qualified resident voters of the town and each appointee during term of office must remain a  
41 qualified resident voter in order to retain appointment.

42 B. Non-residents may be appointed to non-statutory boards, committees, or work groups,  
43 without voting privileges; and, the establishment provision of Boards with ex officio membership  
44 is to state whether voting privileges are authorized.

45 C. As defined in as defined by 30-A MRS §2001, Definitions, Board members are municipal  
46 officials of the Town and are obliged to honor Town Charter §12.02, Code of ethics and  
47 prohibited conduct. Any person who violates any of the provisions of §12.02 shall forfeit office or  
48 position and be ineligible for a period of 5 years thereafter to hold any town office or position.

49 D. In addition to provisions set forth in 30-A MRS §2605, Conflicts of interest, pursuant to Town  
50 Charter §12.01. Financial conflict of interest, all town officials shall attempt to avoid an actual or  
51 perceived financial conflict of interest by abstention or disclosure. Any question of whether a  
52 particular issue involves a conflict of interest sufficient to disqualify a member from voting thereon  
53 is decided by a majority vote of the members present, except the member who is being  
54 challenged, who may not vote on the issue.

55 E. Members of Boards with quasi-judicial authority to render decisions which may be appealed  
56 to the judicial system are further constrained, as follows:

57 1. Bias.

58 (a) Bias occurs where a Board member, due to prejudice or a relationship with the applicant, is  
59 considered unable to make a fair and impartial decision in a matter requiring objectivity. A fair  
60 and impartial decision-maker is an integral component of procedural due process and a decision  
61 made in the absence of this component may be constitutionally deficient.

62 (b) 1 MRS §71, Laws, (6) Disqualification, states that Board members must disqualify  
63 themselves if a situation requires that member to be disinterested or indifferent and the member  
64 must make a decision which involves a person to whom the member is related by blood or  
65 marriage within the 6th degree (parents, grandparents, great-grandparents, great-great  
66 grandparents, brothers, sisters, children, grandchildren, great-grandchildren, aunts, uncles, great  
67 aunts/uncles, great-grand aunts/uncles, first cousins, first cousins once removed, first cousins  
68 twice removed, second cousins, nephews, nieces, grand-nephews/nieces, great  
69 grandnephews/nieces).

70 (c) Various court decisions also have established a rule requiring a Board member to abstain  
71 from the discussion and the vote if members are so biased against the applicant or the project  
72 that they could not make an impartial decision, thereby depriving the applicant of the due process  
73 right to a fair and objective hearing.

74 2. Ex Parte Communications.

75 (a) An ex parte communication is a written or oral communication regarding the subject matter of  
76 a proceeding which occurs between the decision-maker and one party to the proceeding without  
77 the other party's presence or notice. 30-A M.R.S. §2691, states "every party ... [has] the right to  
78 present the party's case or defense by oral or documentary evidence, to submit rebuttal evidence  
79 and to conduct any cross-examination that is required for a full and true disclosure of the facts."

80 (b) An ex parte communication interferes with these rights because it deprives the party of the  
81 opportunity to address the evidence which the Board has considered in rendering a decision and

82 must be completely avoided by Board members.

83 **4.1.2.1 Board Administration.**

84 A. Boards shall set and publish agendas and hold meetings to perform duties. Agendas will be  
85 posted seven days in advance and to the Town website. Meeting minutes will be kept and when  
86 approved, copies provided to Council and posted to the Town website.

87 B. Regular and Special meetings, as well as workshops addressing business of the Town, of  
88 [certain] Boards are to be broadcast via live via local cable channel television and/or streaming  
89 video. Ad hoc and work groups are encouraged to have their regular sessions broadcast. Board  
90 sessions for training or “brainstorming” need not be broadcast.

91 C. All records of the Boards are public records, except as excluded under 1 MRS §402,  
92 Definitions, §§(3) (A)-(O), the Maine Freedom of Access (Right to Know) statute.

93 D. Boards are to keep their purpose, powers, and duties under review and make  
94 recommendations for revisions or amendments to Council, as may be appropriate; and, to submit  
95 an annual report to Council covering the above topics and all other committee activities, as well  
96 as to state agencies where appropriate.

97 **Chapter 4.2 SELECTION PROCEDURES FOR COUNCIL APPOINTMENTS**

98 **4.2.1 Purpose.**

99 When subject to Council appointment, members of Boards are to be selected using the following  
100 procedures.

101 **4.2.2 Procedures.**

102 In pursuit of these goals, the following procedures for the selection of Board members are  
103 adopted:

104 **4.2.2.1 Application.**

105 A. A list of applicants for each Board will be maintained by the Town Clerk.

106 B. Volunteers must complete an application for each Board they wish to serve. Applicants will  
107 be listed in order by the date-time of receipt of the completed application by the Town Clerk.

108 C. Applicants are eligible to serve only one primary board at a time (unless acting as an official  
109 designee to another board). Primary boards are defined as follows: Board of Appeals, Board of  
110 Assessment Review, Capital Improvement Program, Conservation Commission, Parks  
111 Commission, Planning Board, and Port Authority. All other boards are considered secondary.  
112 Service on secondary boards is limited to no more than three.

113 D. A member whose term is expiring is given consideration for reappointment first, subject to  
114 term limitations for the position, if any. Alternates or associates on a Board will be given first  
115 consideration for appointment when an opening occurs, in order of length of service.

116 E. Applicants will be polled for interest for serving on a board when an opening occurs. Those  
117 refusing declining may opt to remain on the list and will be placed back on the list as of the date  
118 of declining.

119 **4.2.2.2 Interview and Appointment.**

120 A. Council may waive the interview requirement for reappointments; alternates applying for full  
121 membership; and full members applying for alternate status.

122 B. With the exception of the Planning Board and Board of Appeals, eligible applicants are  
123 interviewed for a specific Board appointment prior to consideration by the full Council.

124 1. The interview is conducted by the Chairperson (or designated regular member) of the  
125 applicable Board and by one Council member designated by the Council. Councilor interviewing  
126 assignments are rotated so that no one Councilor would be involved in successive interviews for  
127 the same Board.

128 In event neither the Board Chairperson, nor designated regular member, is available, the sitting  
129 Council may determine an alternate interview protocol.

130 2. Interviews are considered private.

131 3. Only one interview is conducted with each applicant for each position.

132 4. Both interviewers must agree to the acceptability of the candidate in order for that  
133 candidate’s name to be considered by the full Council.

134 5. Applicants not recommended to the Council may opt to remain on the list(s) if they so desire.  
135 They must notify the Town Clerk in writing of their interest within one week of being notified of  
136 the non-appointment, and they will be placed at the bottom of the list. Otherwise, they will be  
137 removed from the list.

138 C. The following criteria are used in evaluating candidates:

139 1. Education, training, and experience: consider any Board-function related experience that  
140 will provide the candidate the necessary knowledge, skill, and abilities to be able to perform the  
141 functions of the Board proficiently.

142 2. Other Related experiences.

143 3. Any potential for conflict of interest.

144 4. For reappointments or changes from alternate to regular member, attendance (rated as  
145 ‘Excellent’, ‘Good’, or ‘Poor’) is to be provided by the Chairperson of the Board on the interview  
146 form.

147 **4.2.2.3 Planning Board or Board of Appeals Interviews and Appointments.**

148 A. Pursuant to Town Charter §2.07(2), applicants for the Planning Board and Board of Appeals  
149 must be interviewed by the Council, at a Regular or Special meeting, with at least a quorum  
150 present, before any vote is taken on the appointment. If there are multiple applicants for a  
151 Board, they will be interviewed by Council as a group including applicant(s) already interviewed.

152 B. Criteria listed in Section 4.2.2.2C, above, must also be used in considering candidates for  
153 the Planning Board and the Board of Appeals.

154 C. After the interviews are completed, Council, in open session, and by the following meeting,  
155 shall nominate, with a second, discussion and vote on the candidate(s) for the open vacancy.

156 D. A tie vote on an appointment shall be voted on by Council twice. Following the second tie vote  
157 the Council Chairperson shall determine the winner by lot by a coin toss. TIE = DATE OF  
158 APPLICATION?

159 E. Interviewed applicants not appointed may remain on the list if they so desire. They must  
160 notify the Town Clerk in writing of their interest within one week of being notified of the non-  
161 appointment, and they will be placed back on the list.

162 **4.2.3 Appointment Exceptions.**

163 A. Building Committee – when Council-appointed membership is involved, appointment  
164 procedure is determined by the sitting Council.

165 B. Charter Commission – procedure is determined by the sitting Council.

166 C. Christmas Parade Committee – members recommended by sponsoring group.

167 D. Rice Public Library Board of Trustees – application and interview procedure applies, but  
168 appointment is made by Library Trustees.

169 **Chapter 4.3 STATUTORY BOARDS**

170 **4.3.1 REGISTRAR OF VOTERS**

171 **4.3.1.1 Establishment, Appointment, and Composition.**

172 Pursuant to 21-A MRS §101, Registrar, et seq, Council shall appoint in writing a qualified  
173 Registrar of voters by January 1st of each odd-numbered year. The Registrar shall serve for two  
174 years and until a successor is appointed and sworn.

175 The Registrar may appoint one or more deputies sufficient to accomplish necessary tasking who  
176 serve indefinite terms at the will of the registrar.

177 The Registrar must be a citizen of the United States, a resident of the State and at least 18 years  
178 of age. The Registrar may not be an employee of a party or candidate or be an officer of a  
179 municipal, county or state party committee. In the electoral division in which the Registrar is  
180 appointed, the Registrar may not:

181 A. Hold or be a candidate for any state or county office;

182 B. Be a treasurer for a candidate; or

183 C. Be a municipal officer as defined by 30-A MRS §2001, Definitions.

184 **4.3.1.2 Powers and Duties.**

185 The Registrar has the exclusive power to determine whether a person who applies for  
186 registration as a voter meets the qualifications prescribed by 21-A MRS Elections, subject to  
187 §103 (see following).

188 **4.3.2 REGISTRATION APPEALS BOARD**

189 **4.3.2.1 Establishment, Appointment, and Composition.**

190 A. Pursuant to 21-A MRS §103, Registration appeals board, et seq, the Board consists of 3  
191 members who must be appointed as follows:

192 The Town committee of each of the major political parties shall nominate one member, who must  
193 be enrolled in the party of the Town committee that nominates the member, and Council shall  
194 appoint the persons nominated by the Town committees and the 3rd member must be nominated  
195 by the Town Clerk AND appointed by the Council.

196 The Town Clerk may give the Town committees of the political parties a list of qualifications  
197 necessary for a person to fulfill the duties of the Board, and the Town committees shall take  
198 those qualifications into consideration when nominating members to the Board.

199 The two members of the Board nominated by the Town committees of the major political parties  
200 may be members of the Town committee nominating them and of the county or state committees  
201 of the political party that nominates them and may be members of a state or county delegation to  
202 a political convention.

203 When a Town committee nominates a member to the Board, it shall also nominate an alternate  
204 member, who serves if the member nominated by the Town committee is or becomes unable to  
205 serve.

206 B. The Town Clerk may not serve as a member or alternate member of the registration appeals  
207 board.

208 C. Each member nominated by the Town committees of the major political parties and appointed  
209 to the Board shall serve for 3 years and the member nominated by the Town Clerk and  
210 appointed to the Board shall serve for 4 years.

211 D. The member nominated by the Town Clerk is chairman of the board.

212 E. When there is a vacancy on the Board, the alternate board member nominated by the Town  
213 committee of the political party of the former incumbent shall serve. If an alternate is not  
214 available, Council shall appoint a qualified person nominated by the Town committee of the party  
215 of the former incumbent to fill the vacancy. If the vacancy is in the office of the chair of the board,  
216 Council shall appoint a qualified person nominated by the Town Clerk to fill the vacancy.

#### 217 4.3.2.2 Powers and Duties.

218 A. Appeal hearing. Upon receipt of a complaint by a person aggrieved by the decision of the  
219 Registrar, the Chair of the Board shall immediately fix a time and place for the Board to meet for  
220 a prompt hearing. The voter must be given written notice of the hearing at least 20 days in  
221 advance and must have the opportunity to testify and to present witnesses and other evidence at  
222 the hearing. The hearing is de novo. After hearing, the Board may affirm, modify or reverse the  
223 decision of the Registrar of Voters. The Board shall issue the decision to the voter in writing and  
224 provide information on how the voter may appeal the decision. The aggrieved person may  
225 appeal the decision of the Board to the Superior Court in accordance with Rule 80B of the Rules  
226 of Civil Procedure.

227 B. Actions of the registration appeals board. The Board may only act by unanimous or majority  
228 action.

### 229 4.3.3 BOARD OF ASSESSMENT REVIEW

#### 230 4.3.3.1 Establishment, Appointment, and Composition.

231 The Board of Assessment Review is established pursuant to Town Charter §7.02, consisting of 3  
232 members and two alternates, not otherwise connected with town government, who shall be  
233 appointed as hereinbefore provided for a term of 3 years.

#### 234 4.3.3.2 Powers and Duties.

235 A. Pursuant to 36 MRS §843, Appeals, et seq, and Town Charter §7.04, the Board is conferred  
236 upon it such powers of review and abatement as are conferred upon Boards of Assessors by  
237 statute, and has the power to:

238 (1) Review on complaint of property owners, and revise assessments for the purpose of  
239 taxation of real and personal property within the town limits made by the Town assessor;

240 (2) Administer oaths;

241 (3) Hold hearings; and

242 (4) Adopt regulations regarding the procedure of assessment review, not inconsistent with  
243 statutory provisions.

244 B. If the Town Assessor refuses to make the abatement asked for, an applicant may apply in  
245 writing to the Board within 60 days after notice of the decision from which the appeal is being  
246 taken or after the application is deemed to have been denied, and, if the Board thinks the  
247 applicant is over-assessed, the applicant is granted such reasonable abatement as the board  
248 thinks proper.

249 C. Except with regard to nonresidential property or properties with an equalized municipal  
250 valuation of \$1,000,000 or greater either separately or in the aggregate, either party may appeal  
251 from the decision of the Board directly to the Superior Court, in accordance with Rule 80B of the  
252 Maine Rules of Civil Procedure. If the Board fails to give written notice of its decision within 60  
253 days of the date the application is filed, unless the applicant agrees in writing to further delay, the  
254 application is deemed denied and the applicant may appeal to Superior Court as if there had  
255 been a written denial.

#### 256 **4.3.4 PERSONNEL BOARD**

##### 257 **4.3.4.1 Establishment, Appointment, and Composition**

258 The Personnel Board is established pursuant to Town Charter §5.02(3)(a), consisting of 5  
259 members and 2 or more alternates appointed as hereinbefore provided for 3 year terms.

##### 260 **4.3.4.2 Powers and Duties.**

261 A. It is not the Personnel Board's function to exclusively represent the interests of an employee  
262 or the employer; it is the Board's function to fairly and impartially represent the interests of both  
263 parties and to clearly and continually work for the development of mutual respect, understanding,  
264 and cooperation between the parties.

265 B. The Board is to:

266 1. Advise the Town Manager on matters of personnel policy and problems of personnel  
267 administration, including the development of personnel rules, a job classification plan, and a  
268 uniform pay plan;

269 2. Represent the public interest in the improvement of personnel administration in the Town  
270 service;

271 3. Make any inquiry which it may consider desirable concerning personnel administration in the  
272 Town service, and make advisory recommendations to the Town Manager, with respect thereto.

273 C. As delineated in Town Charter §5.02(3 (b), the Board shall:

274 1. Assist the personnel director in developing and updating an administrative code;

275 2. Advise the personnel director on issues of personnel management; and

276 3. Act as an appeals or grievance board involving employees covered by Town Code Title 2  
277 in the manner and under the provisions specified therein.

278 4. All opinions and decisions issued by the Board are advisory in nature and are issued to  
279 the Town Manager and to the employee(s) requesting the grievance hearing or  
280 separation/demotion hearing.

281 **4.3.5 PLANNING BOARD**

282 **4.3.5.1 Establishment, Appointment, and Composition.**

283 A. The Planning Board is established pursuant to Town Charter §8.01, consisting of 7 members  
284 appointed as hereinbefore provided and serve terms of 3 years.

285 B. No member may serve more than 3 consecutive terms of 3 years. Any member who has  
286 served 3 consecutive terms of 3 years is ineligible to serve on the board for a period of 1 year.  
287 **Computation of term limits does not include terms of fewer than 3 years after their effective date.**

288 **4.3.5.2 Powers and Duties.**

289 The Board has such powers and performs such duties as provided by law and as delineated in  
290 Town Code Title 16 §1.4.

291 **4.3.6 BOARD OF APPEALS**

292 **4.3.6.1 Establishment, Appointment, and Composition.**

293 A. The Board of Appeals is established pursuant to Town Charter §8.04, consisting of 7  
294 members appointed as hereinbefore provided and serve terms of 3 years.

295 B. No member may serve more than 3 consecutive terms of 3 years. Any member who has  
296 served 3 consecutive terms of 3 years is ineligible to serve on the board for a period of 1 year.  
297 **Computation of term limits does not include terms of fewer than 3 years after their effective date.**

298 **4.3.6.2 Powers and Duties.**

299 The Board has such powers and performs such duties as provided by law and as delineated in  
300 Town Code Title 16 §1.5.

301 **Chapter 4.4 MUNICIPAL BOARDS**

302 **4.4.1 Boards Established.**

303 Some advisory committees are formed by a board of directors to work on a specific issue or  
304 challenge. Such working groups may serve only until the specific issue is resolved, at which  
305 point recommendations are made to board and staff, and the group dissolves. However,  
306 organizations often see the benefit of establishing a permanent advisory board or committee to  
307 provide ongoing support

308 **4.4.2 Ad Hoc Committees, Working Groups, and Other Appointments.**

309 **4.4.2.1 Ad Hoc Committees**

310 Non-statutory Ad Hoc Boards established herein (dealing with a specific subject, purpose, or  
311 end) are considered permanent advisory boards to provide ongoing support, strategic direction,  
312 and to be advocates for the initiatives involved.

313 Committees formed Ad Hoc (for a special purpose or end presently under consideration) to deal  
314 with particular matters such as an Educational Scholarship Selection Program; a Capital  
315 Improvement Program; a Comprehensive Plan Update; Shared Services; or Economic  
316 Development, are to be established and charged with appropriate provisions similar to those  
317 found herein and contain an end of task ‘sunset’ clause.

318 Committees formed ad hoc of longstanding service should be considered for permanent  
319 codification in this code.

320 **4.4.2.2 Working Groups**

321 Council may from time to time determine a need for a small group of individuals to review and  
322 report, which may include recommendations, on particular issues, usually of short-term interest.  
323 The procedure for creating and direction such is to be determined by the sitting Council and on  
324 completion of its charge the group dissolves. The Town Manager may establish similar advisory  
325 bodies for dedicated purposes, such as an Open Space or Energy Advisory Committee.

326 **Chapter 4.5 KITTELY COMMUNITY CENTER BOARD of DIRECTORS**

327 **4.5.1 Establishment, Appointment, and Composition.**

328 A. The Board of Directors for the Kittery Community Center at Frisbee Common is  
329 established to oversee those aspects of Center operations and facilities as delineated in this  
330 Chapter.

331 B. The Board consists of nine (9) voting members appointed as hereinbefore provided.  
332 Seven (7) are Kittery residents, serving terms of three years each, plus the Town Manager and  
333 a Council-appointed Town Councilor. The Recreation Director and Town Planner are ex officio  
334 members without voting rights.

335 C. Resident appointments are to be comprised of individuals with demonstrable experience  
336 or association with recreation (3); arts and culture (2); economic or community development (1);  
337 plus a member-at-large (1).

338 **4.5.2 Powers and Duties.**

339 A. The Board shall elect annually a chairperson, vice chairperson, and secretary from its  
340 membership. It is the duty of the secretary to keep and maintain a permanent record of all  
341 meetings of the Board, and show the vote of each member upon each question.

342 B. A quorum consists of five or more members. All decisions must be made by a minimum  
343 of five like votes, except on procedural matters.

344 C. The Board shall propose bylaws for Town Council adoption to govern routine Board  
345 proceedings.

346 G. The Board is to:

347 1. Prepare and recommend a Long Range (5-Year) Community Center Development Plan for  
348 Council adoption, updated annually, and monitor and report on Plan implementation progress;

349 2. Develop operational policies, and approve operating procedure protocols recommended by  
350 administration;

351 3. Review and endorse an annual operating budget proposal for operations and facilities  
352 maintenance developed by administration;

353 4. Develop and annually recommend a Capital Program to the Capital Improvement Program  
354 Committee; and

355 5. Report annually or at such intervals as Council may direct thereafter, on programs, use,  
356 growth, and new activity at the Center. Such report may include elements to satisfy the Plan  
357 implementation progress report.

358 **Chapter 4.6 BOARD of TRUSTEES of TRUST FUNDS**

359 **4.6.1 Establishment, Appointment, and Composition..**

360 A Board of Trustees of trust funds is established to have the care and management of the Mary  
361 Safford Wildes Estate, or any other similar funds.

362 The Board consists of five members, the Chairperson of the Council and the Town Clerk to be ex  
363 officio members and the -Clerk to be treasurer of said fund, and three additional members to be  
364 appointed as hereinbefore provided.

365 **4.6.2 Powers and Duties.**

366 The Board has the authority to administer said trust funds in accordance with the terms of the  
367 will, as follows, or other document creating such trust.

368 **Accepted by Annual Town Meeting voters, 51<sup>st</sup> Item, March 7, 1953:**

369 **“WILL:** This third to finally be used with the remaining third to be given.to the Town of Kittery,  
370 Maine for some worthy charitable benefit needed in that town not connected with any outside  
371 organization and preferably the Town Home for the Poor or assistance of natives of the town, my  
372 own family relatives to be considered first if any are living and in need of help.”

373 **Chapter 4.7 SHELLFISH CONSERVATION COMMITTEE**

374 **4.7.1 Establishment, Appointment, and Composition.**

375 Pursuant to 12 MRS §6671, Municipal shellfish conservation programs, et seq, the Shellfish  
376 Conservation Committee is established consisting of seven regular members and two alternate  
377 members appointed as hereinbefore provided for terms of three years.

378 **4.7.2 Powers and Duties.**

379 Amongst other statutory powers and duties, the Committee’s responsibilities include:

- 380 A. Establishing annually, in conjunction with the department of marine resources, the number of  
381 shellfish digging licenses to be issued;
- 382 B. Surveying each clam-producing area at least once every three years to establish size  
383 distribution and density and annually estimating the status of the Town’s shellfish resources;
- 384 C. Submitting to the Town Council proposals for the expenditures of funds for the purpose of  
385 shellfish conservation;
- 386 D. Securing and maintaining records of shellfish harvest from the Town’s managed shellfish  
387 areas and closed areas that are conditionally opened by the department of marine resources;
- 388 E. Recommending conservation closures and openings to the Council in conjunction with the  
389 area biologists of the department of marine resources;
- 390 **F. Within any area of the Town, a shellfish conservation ordinance may:**
  - 391 **(1) Regulate or prohibit the possession of shellfish;**
  - 392 **(2) Fix the amount of shellfish that may be taken;**
  - 393 **(3) Provide for protection from shellfish predators;**
  - 394 **(4) Authorize the municipal officials to open and close flats under specified conditions; and**

- 395 (5) Specify areas of the intertidal zone in which the dragging of mussels may be limited to the  
396 degree necessary to support a municipal shellfish conservation program; and
- 397 (6) Must limit the size of soft-shell clams in accordance with article 5: and
- 398 (7) Except as provided in 12 MRS §6621, Closed areas, §§3.C, not allow surveying, sampling  
399 or harvesting of shellfish in areas closed by regulation of the commissioner.

## 400 **Chapter 4.8 CONSERVATION COMMISSION**

### 401 **4.8.1 Establishment, Appointment and Composition.**

402 Pursuant to the provisions of 30-A MRS §3261, Conservation commissions, the Conservation  
403 Commission is established consisting of at least three, but not more than seven, members  
404 appointed as hereinbefore provided, for the protection and use of the natural resources located  
405 within the territorial limits of the Town.

406 The Commission may recommend to Council that associate members be appointed to assist the  
407 Commission as the Commission may require. Associate members are nonvoting members,  
408 except when a quorum is absent.

### 409 **4.8.2 Powers and Duties.**

#### 410 **4.8.2.1 Powers.**

411 The Commission may:

- 412 A. Make recommendations for use of land to the planning Board and park commission;
- 413 B. Prepare and print books, charts, maps, and plans as it deems necessary;
- 414 C. Serve as an advisory body to the public works department to review and advise, at least  
415 twice a year, at the call of the Town Manager, in conjunction with the management plan and  
416 maintenance of public parks and shade trees in public parks;
- 417 D. With the approval of Council, apply for grants or receive gifts in the Towns name for any of  
418 the Commission’s purposes and to administer these grants or gifts for those stated purposes, as  
419 specified by the terms of the grant or gift consistent with all appropriate state statutes
- 420 E. Develop and implement a management plan for Rogers Park with approval of the Town  
421 Council.

#### 422 **4.8.2.2 Duties.**

423 The commission is to:

- 424 A. Keep an index of all open areas within the Town, whether publicly or privately owned,  
425 including open marshlands, swamps and other wetlands, for the purpose of obtaining  
426 information relating to the proper protection, development or use of those open areas.
- 427 The Commission may recommend to Council, or any municipal body or Board, or any body  
428 politic or public agency of the state, a program for the better protection, development or use of  
429 those areas, which may include the acquisition of conservation easements;
- 430 B. Conduct research, in conjunction with the Planning Board, Parks Commission, or Open  
431 Space Advisory Committee, into the local land areas; and
- 432 C. Seek to coordinate the activities of conservation bodies organized for similar purposes.

433 **Chapter 4.9 PARKS COMMISSION**

434 **4.9.1 Establishment, Appointment, and Composition.**

435 The Parks Commission is established, consisting of seven members appointed as hereinbefore  
436 provided, who have demonstrated an interest in the Town parks and facilities, to provide  
437 ongoing citizen recommendations relating to the improvements or development of Town-owned  
438 property that is or is likely to be developed into Town parks to insure the preservation, beauty  
439 and protection of these most valuable sites.

440 B. The Commission may recommend to Council that associate members be appointed to assist  
441 the Commission, as the Commission may require. Associate members are nonvoting members  
442 except when a quorum is absent.

443 **4.9.2 Powers and Duties.**

444 **4.9.2.1 Powers.**

445 The Commission may:

446 A. Make recommendations for use of the parks and park facilities to the Town Manager and/or  
447 the Planning Board;

448 B. Prepare and print books, maps and plans as it deems necessary;

449 C. With the approval of Council, apply for grants or receive gifts in the Town’s name for any of  
450 the Commission’s purposes and to administer these grants or gifts for those stated purposes, as  
451 specified by the terms of the grant or gift consistent with all appropriate state statutes;

452 D. Make recommendations to the Town Council for revisions to the park fee policy and rate  
453 schedules.

454 **4.9.2.2 Duties.**

455 The Commission is to:

456 A. Recommend to Council an overall park management plan for the identification, protection,  
457 development or use of park lands and facilities;

458 B. Meet with the Town Manager to review and advise, at least twice a year, on the status and  
459 progress of the park management plan and other pertinent issues;

460 C. Coordinate its activities with those of the park, recreation, school, and conservation bodies  
461 organized for similar purposes;

462 E. Assure that any recommended changes affecting Town park properties are made in  
463 conjunction with the Conservation Commission;

464 F. Make budget recommendations to the Commissioner of Public Works related to parks.

465 **4.10 KITTELY PORT AUTHORITY.**

466 **4.10.1 Establishment, Appointment and Composition.**

467 The Port Authority is established by Maine Private and Special Law 1961, Chapter 163, as  
468 amended, and Town Charter, Article IX, consisting of 7 members appointed as hereinbefore  
469 provided and serve terms of 5 years.

470 B. Six members of the Port Authority are appointed by the Town Council, and the Planning  
471 Board Chair appoints one representative to serve on the board.

472 C. No member shall serve more than 2 consecutive terms of 5 years. Any member who has  
473 served 2 consecutive terms of 5 years is ineligible to serve on the board for a period of 1 year.  
474 Computation of term limits does not include terms of fewer than 5 years after their effective date.

475 .Service for more than one-half of a term is considered a full term for the purpose of calculating  
476 term limits. Computation of term limits does not include service prior to the effective date of this  
477 provision nor to terms of fewer than 5 years after the effective date.

#### 478 4.10.2 Powers and Duties.

479 The Board has such powers and performs such duties as provided by law and as delineated in  
480 Town Code Title 16 §1.6.

#### 481 NOTE: Following included for information only:

482 KITTERY PORT AUTHORITY, PRIVATE AND SPECIAL 1961, Chapter 163  
483 Amended:  
484 Private and Special 1963, Chapter 97, §2  
485 Private and Special 1993, Chapter 26, §1  
486 199?? amendment

#### 487 AN ACT Creating the Town of Kittery Port Authority

488 *Be it enacted by the People of the State of Maine, as follows:*

489 **Sec. 1. Authority established.** The Town of Kittery Port Authority is  
490 established, consisting of and governed by a Board of 7 members, 6 of  
491 whom are appointed by the Town Council of the Town of Kittery. At  
492 least 3 of the appointive members must be permanent residents of the  
493 Town of Kittery, and the members serve for a term of 5 years,  
494 providing that of the first appointment 2 are appointed for a term of  
495 one year, one for a term of 2 years, one for a term of 3 years, one  
496 for a term of 4 years and one for a term of 5 years. The members  
497 serve until their successors are appointed and qualified. Any vacancy  
498 occurring in the membership of the appointive members is filled by the  
499 Town Council for the unexpired term.

500 In addition to the 6 appointive members, a member of the Town  
501 Planning Board designated by the chair of the Town Planning Board is a  
502 member of the port authority, serving for a term of 5 years or until  
503 membership on the Planning Board terminates, whichever occurs first.  
504 The Board shall elect one of its members as chair, one as a vice-chair  
505 and one as secretary. The members of the Board are not entitled to  
506 compensation for their services; but their reasonable expenses  
507 incurred in the performance of their duties must be paid by the Town  
508 of Kittery. The Board has the right to adopt and alter a common seal  
509 and to establish bylaws and regulations for the management of its  
510 affairs within the meaning of this authority, the laws of the State of  
511 Maine and the ordinances of the Town of Kittery.

512 **Sec. 2. Purposes.** The Town of Kittery Port Authority, in  
513 cooperation with the other appropriate planning and development Boards  
514 that may exist in the Town of Kittery, shall:

515 I. Plan for the maintenance and development of the port, harbor and  
516 navigable tidal waters within the jurisdiction of the Town of Kittery,  
517 in order to foster and stimulate commercial and recreational use of  
518 these areas.

519 **II.** Aid in the development of salt water fisheries and associates  
520 industries; ship and boat building, repair and storage and associated  
521 industries; pleasure boating, swimming and other associated  
522 recreational uses of these areas and facilities.

523 **III.** Be authorized and empowered to appoint and compensate a harbor  
524 master, who will enforce the directives of the authority, such as the  
525 placement of moorings, the assignments of anchorage areas and the  
526 movement of traffic, and the use of municipally-owned wharves, docks,  
527 piers and landings.

528 **Sec. 3. Powers and duties.** In order to enable it to carry out the  
529 purposes hereof, the authority shall:

530 **I.** Have the authority to make all necessary arrangements with other  
531 port authorities of the State of Maine, other states and federal  
532 departments and agencies for the interchange of business, and for such  
533 other purposes as will facilitate and increase the purposes of this  
534 authority.

535 **II.** Establish offices for the transaction of its business at such  
536 places as, in the opinion of the authority, shall be advisable and  
537 necessary in carrying out the purposes hereof.

538 **III.** Be authorized and empowered to appoint and compensate a harbor  
539 master, who will enforce the directives of the authority, such as the  
540 placement of moorings, the assignments of anchorage areas and the  
541 movement of traffic.

542 **IV.** Be authorized to raise funds for defraying the costs of  
543 administration and operation of the authority and projects under its  
544 supervision, through fund appropriation articles in the Town warrant,  
545 submitted for consideration at any Town meeting, and through any and  
546 all other sources of revenue authorized by this act.

547 **V.** Be custodian of municipally-owned wharves, docks, piers and  
548 landings.

549 **Sec. 4. Rules and regulations.** Said authority may make such  
550 ordinances, rules and regulations touching municipally-owned wharves,  
551 docks, piers and landings, port captains, pilots and pilotage, harbors  
552 and harbor masters, for the areas herein defined as it may deem proper  
553 and from time to time may modify, rescind or alter the same.

554 Said rules and regulations shall have the force and effect of  
555 law. Said authority shall fix the fees of pilotage and a table of such  
556 fees shall be attached to the commission of each pilot.

557 **Sec. 5. Pilots.** The authority may prescribe the qualifications of  
558 pilots, and from time to time appoint and commission, under its hand  
559 and seal, as many pilots as it may judge necessary, and remove the  
560 same at pleasure, and it shall take from them such security, by bond  
561 or otherwise as it may deem proper.

562 **Sec. 6. Authority of pilot.** Any pilot appointed by the authority who  
563 has given security for the faithful discharge of his duties may take  
564 charge of any vessel, except pleasure, coasting and fishing vessels of  
565 the United States registry of 150 registered or enrolled tons and  
566 under, and except as provided in section 7, and shall pilot such  
567 vessel into or out of the river and harbor of the Piscataqua, to ports  
568 or locations within the jurisdictional area of this authority, first  
569 showing to the master thereof his appointment, if requested.

570 **Sec. 7 Fee an offer.** Any master or owner may pilot his own  
571 vessel into the area herein defined, but if a pilot shall speak and  
572 offer service to a vessel, excepting registered or enrolled vessels of  
573 the United States, bound into said area south of a line drawn east and  
574 west from Whale’s-back lighthouse, or shall offer service to a vessel  
575 bound out of said area excepting registered or enrolled vessels of the  
576 United States, before they leave the wharf, he shall be entitled to ½  
577 of the fee specified in his warrant in case the master declines to  
578 employ him, and, on refusal of payment, may sue for and recover same.

579 **Sec. 8. Harbor master.** The harbor master appointed by the  
580 authority shall have the authority, under the supervision of the  
581 authority, to oversee the jurisdictional area of this authority, to  
582 preserve and regulate navigation within said waters, to assign  
583 moorings, require the same to be kept in safe condition, to require  
584 the removal of vessels if necessity or an emergency arises, to inquire  
585 into and prosecute all offenses occurring within his jurisdiction and  
586 to perform such duties and enforce such regulations as the authority  
587 shall prescribe. The harbor master shall have authority to make arrests  
588 for offenses under the provisions of this chapter, as other peace  
589 officers are authorized to do.

590 **Sec. 9. Penalty.** Whoever violates any of the rules or regulations of  
591 the authority promulgated under the authority of this chapter, or  
592 refuses or neglects to obey the lawful and reasonable orders of a  
593 harbor master or resists him in to execution of his duties shall be  
594 punished by a fine of not more than \$50. All fines collected under  
595 this section shall be forwarded to the port authority and by it  
596 applied to the salary of the harbor master.

597 **Sec. 10. Definition.** The word “vessel” as used in this chapter shall  
598 include boats of all sizes propelled by said, machinery or hand,  
599 scows, dredges, shellfish cars and craft of every kind.

600 **Sec. 11. Authorization to establish foreign-trade zones and free port**  
601 **areas.**

602 **I.** Said authority is authorized to make application to the Secretary of  
603 Commerce of the United States for the purpose of establishing,  
604 operating and maintaining foreign-trade zones in the area herein  
605 described, under the Act of Congress passed at the second session,  
606 73rd Congress, providing for the establishment, operation and  
607 maintenance of foreign-trade zones in ports of entry of the United  
608 States, to expedite and encourage foreign commerce, and for other  
609 purposes.

610 **II.** Said authority shall have full power and authority to select and  
611 describe the location of the zone for which application to establish  
612 may be made and to make such rules and regulations concerning the  
613 operation, maintenance and policing of same as may be necessary to  
614 comply with the Act of Congress creating said foreign-trade zones, or  
615 as may be necessary to comply with such rules and regulations made in  
616 accordance with the Acts of Congress, relating to foreign-trade zones.

617 **III.** Said authority shall have full power and authority to lease the  
618 right and erect, maintain and operate any structures or buildings or  
619 enclosures as may be necessary or proper for the establishing and  
620 operating any such foreign-trade zones that might be established in  
621 the area herein described under and by virtue of said act of the 2nd  
622 session of the 73rd Congress.

623 **IV.** The authority hereby granted to said port authority confers on  
624 said port authority the right and duty to do all things necessary and  
625 proper to carry into effect the establishing, maintaining and  
626 operating of foreign-trade zones within the area herein described to  
627 comply in full with the provisions of said Act of Congress and all  
628 regulations that might be made thereunder.

629 **V.** The Town of Kittery Port Authority shall have the power and the duty  
630 to establish in the area herein described an area wherein personal  
631 property in transit shall be exempt from the provisions of the stock-  
632 in-trade tax and other such taxes and customs as are normally levied  
633 in a port of entry. For the purpose of this section, personal  
634 property in transit through the areas established by this port  
635 authority is defined as follows: Goods, wares and merchandise which is  
636 (1) moving in interstate or international commerce through or over the  
637 areas hereinbefore established, or (2) which was consigned to a  
638 warehouse, public or private, within the Town of Kittery, whether  
639 specified when transportation begins or afterward.

640 Such property shall not be deprived of exemption because while in the  
641 warehouse the property is assembled, bound, joined, processed,  
642 disassembled, divided, but, broken in bulk, relabeled or repackaged.

643 The exemption granted shall be liberally construed to effect the  
644 purpose of this act. Provided, however, that the warehouse in which  
645 said goods, wares or merchandise be stored shall not be owned, in  
646 whole, or in part by the consignee or consignor.

647 **Sec. 12. Severability.** If any provision of this chapter shall be held  
648 invalid, the remainder of the chapter shall not be affected thereby.

1 **AN ORDINANCE** relating to the municipality’s authority for Town governance to give due and  
2 proper attention to its many demands pursuant to Federal law, Maine Revised Statutes, and the  
3 Town Charter; make provision for citizen participation in community affairs to provide for that  
4 range of requirements; and, establish, compose, and appoint members of boards, harbor  
5 authority, commissions, and committees (“Boards”) to serve the Town of the Kittery for those  
6 purposes, as more particularly set forth herein.

7 **WHEREAS**, the Kittery Town Council is authorized to enact this Ordinance, as specified in  
8 Sections 1.01 and 2.07(3) of the Town Charter; and 30-A MRS §3001, pursuant to its powers  
9 that authorize the town, under certain circumstances, to provide for the public health, safety,  
10 morals, and welfare and does not intend for this Ordinance to conflict with any existing state or  
11 federal laws.

12 **WHEREAS**, the Council is enacting this Ordinance in order to implement its authority pursuant  
13 to 1 MRS §71 and §402; 12 MRS §6621 and §6671; 21-A MRS §101 and §103; 30-A MRS  
14 §2001, §2605, §2691, and §3261; 36 MRS §843; P&SL 1961, Chapter 163, as amended; the  
15 Town Charter §2.07; §5.02; §7.02; §7.04; §8.01; §8.04; §12.01; and, §12.02; and, its home rule  
16 authority to govern its internal affairs.

17 **WHEREAS**, the Council intends, through the adoption of this Ordinance, to address the terms  
18 and conditions for the establishment, appointment, composition, powers, duties and  
19 administrative obligations of its Boards; and

20 **WHEREAS**, the Council also intends, through the adoption of this Ordinance, to address the  
21 application, selection procedures, qualifications, terms of service, and dismissal procedures of  
22 members appointed to its Boards; and

23 **WHEREAS**, the Council enacts this ordinance in order that:

24 A. Boards always have available to them candidates for membership who are qualified for the  
25 unique needs of that Board.

26 B. Each Board maintains the independent posture needed to encourage the free and open  
27 dialogue crucial to its function; and

28 C. All volunteers for Boards are shown the appreciation of the community regardless of whether or  
29 not they are appointed to a particular Board.

30 **NOW THEREFORE**, IN ACCORDANCE WITH TITLE 30-A MRS §3001, AND TOWN  
31 CHARTER §2.14, THE TOWN OF KITTEERY HEREBY ORDAINS REVISION TO TITLE 4 OF  
32 THE TOWN CODE, AS PRESENTED FOLLOWING.

33 **Approved as to form:** \_\_\_\_\_ {NAME}, Town Attorney

34 **INTRODUCED** and read in a public session of the Town Council on the \_\_\_\_ day of \_\_\_\_\_,

35 20\_\_\_\_, by: \_\_\_\_\_ {NAME} Motion to approve by Councilor

36 \_\_\_\_\_ {NAME}, as seconded by Councilor \_\_\_\_\_ {NAME} and

37 passed by a vote of \_\_\_\_\_.

38 **THIS ORDINANCE IS DULY AND PROPERLY ORDAINED** by the Town Council of Kittery,  
39 Maine on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, {NAME}, \_\_\_\_\_, Chairperson

40 **Attest:** {NAME}, \_\_\_\_\_ Town Clerk

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58	<b>4.10 KITTELY PORT AUTHORITY.</b> .....
59	4.10.1 Establishment, Appointment and Composition.
60	4.10.2 Powers and Duties.
61	<b>NOTE: Following included for information only:</b>
62	KITTELY PORT AUTHORITY, PRIVATE AND SPECIAL 1961, Chapter 163
63	AN ACT Creating the Town of Kitterly Port Authority

**FY15 AND FY16 DONATIONS TO THE THRESHER MEMORIAL FUND  
FOR COUNCIL APPROVAL  
DECEMBER 14, 2015**

YEAR	PER	JOURNAL	EFF DATE	AMOUNT	VDR NAME/ITEM DESC	COMMENTS			
2015	'05	' 387	'11/20/2014	\$ 5,000.00	'KITTEY MAINE IMP FNDN	'KITTEY ME IMP FNDN			
				\$ 5,000.00					
2015	'05	' 59	'11/04/2014	\$ 10.00	'KENNETH M BONNELL / THRES	'K BONNELL			
2015	'06	' 138	'12/08/2014	\$ 10.00	'KENNETH BONNELL	'THRESHER MEMORIAL			
2015	'07	' 28	'01/05/2015	\$ 10.00	'KENNETH BONNELL	'K BONNELL			
2015	'08	' 100	'02/05/2015	\$ 20.00	'KENNETH BONNELL	'BONNELL			
2015	'09	' 118	'03/05/2015	\$ 20.00	KENNETH BONNELL	KENNETH BONNELL 3/5/15			
2015	'10	' 104	'04/06/2015	\$ 20.00	'BONNELL	KENNETH M.	'BONNELL	KENNETH	
2015	'11	' 61	'05/05/2015	\$ 20.00	'BONNELL	KENNETH M.	'BONNELL-5/1/15		
2015	'12	' 104	'06/04/2015	\$ 20.00	'BONNELL	KENNETH MYRON	'BONNELL; 6/1/15		
				\$ 130.00					
2015	'06	' 160	'12/09/2014	\$ 475.00	'D KERR	'THRESER MEMORIAL			
2015	'10	' 159	'04/08/2015	\$ 370.00	'DONALD KERR	'D. KERR CONTRIBUTION			
2015	'10	' 333	'04/15/2015	\$ 90.00	'KERR	DONALD	'KERR; 4/4/15		
				\$ 935.00					
2015	'05	' 431	'11/24/2014	\$ 60.00	'KATHY RACQUER	'K RACQUER	THRESHER MEMOR		
2015	'05	' 431	'11/24/2014	\$ 615.00	'NICOLE KERR	'N KERR	THRESHER MEMORIAL		
2015	'10	' 159	'04/08/2015	\$ 30.00	'JAKE RODDEN STATE FARM IN	'RODDEN STATE FARM-CONTRIB			
2015	'12	' 438	'06/23/2015	\$ 150.00	'MARC J. ALTERIO	'6/18/15 DONATION			
2015	'10	' 333	'04/15/2015	\$ 30.00	'MORRISON	DEXTER	'MORRISON; 4/10/15		
2015	'10	' 571	'04/28/2015	\$ 34.00	'B. HANNON	'B. HANNON - 4/14/15			
				\$ 244.00					
			<b>TOTAL</b>	\$ 1,309.00	<b>FY15 DONATIONS</b>				
2016	'01	' 214	'07/07/2015	\$ 20.00	'BONNELL	KENNETH	'BONNELL; CONTRIBUTION		
2016	'02	' 45	'08/04/2015	\$ 20.00	'KENNETH MYRON BONNELL	'BONNELL; AUG 2015			
2016	'03	' 105	'09/08/2015	\$ 20.00	'KENNETH BONNELL	'BONNELL			
2016	'04	' 674	'10/05/2015	\$ 20.00	'BONNELL	KENNETH	'KENNETH BONNELL		
2016	'05	' 121	'11/05/2015	\$ 20.00	'BONNELL	KENNETH	'BONNELL DONATION		
2016	'06		12/7/2015	\$ 20.00	'BONNELL	KENNETH	'BONNELL DONATION		
				\$ 100.00					
2016	'02	' 248	'08/17/2015	\$ 150.00	'D ALLAN KERR	'KERR; SILENT STRENGTH			
2016	'04	' 375	'10/21/2015	\$ 20.00	'KERR	DONALD & NICOLE	'BOOK; SILENT STRENGTH		
				\$ 170.00					
2016	'01	' 611	'07/28/2015	\$ 451.50	'KITTEY MAINE IMPROVEMENT	'LANGS CONTR-THRESHER			
2016	'04	' 375	'10/21/2015	\$ 350.00	'ST MARY'S SUBMARINE MUSEU	'BOOKS; SILENT STRENGTH			
2016	'04	' 375	'10/21/2015	\$ 30.00	'SUTTON	DAVID & sYLVIA	'BOOK; SILENT STRENGTH		
2016	'05	' 459	'11/25/2015	\$ 350.00	'ST MARYS SUBMARINE MUSEUM	'ST MARYS SUB MUSEUM			
				\$ 1,181.50					
			<b>TOTAL</b>	\$ 1,451.50	<b>FY16 DONATIONS AS OF 11-25-15</b>				
			<b>TOTAL</b>	\$ 2,760.50	<b>DONATIONS</b>				

THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER

CHECK NO. 449025 CHECK DATE 12/01/15 VENDOR NO. 4620 K



York Hospital  
15 HOSPITAL DRIVE  
YORK, MAINE 03909

CHECK NO. 449025

52-7445/2112  
CHECK AMOUNT  
9,250.00

PAY TO THE ORDER OF  
Nine Thousand Two Hundred Fifty And 00/100 Dollars \*\*\*\*\*  
KITTEERY RECREATION DEPARTMENT  
120 ROGERS RD  
KITTEERY, ME 03904

TWO SIGNATURES REQUIRED FOR AMOUNTS OVER \$5000

*[Handwritten Signature]*  
*[Handwritten Signature]*  
MP MP

SECURITY FEATURES INCLUDED. DETAILS ON BACK. 449025 12112744501 7999031013



**BUREAU OF ALCOHOLIC BEVERAGES  
DIVISION OF LIQUOR LICENSING & ENFORCEMENT  
8 STATE HOUSE STATION  
AUGUSTA, ME 04333-0008**



Promise by any person that he or she can expedite a liquor license through influence should be completely disregarded.

To avoid possible financial loss an applicant, or prospective applicant, should consult with the Division before making any substantial investment in an establishment that now is, or may be, attended by a liquor license.

**DEPARTMENT USE ONLY**

**LICENSE NUMBER:** \_\_\_\_\_ **CLASS:** \_\_\_\_\_

**DEPOSIT DATE**  
**AMT. DEPOSITED:** \_\_\_\_\_ **BY:** \_\_\_\_\_

**CK/MO/CASH:** \_\_\_\_\_

**PRESENT LICENSE EXPIRES** 2-26-2016

**INDICATE TYPE OF PRIVILEGE:**  MALT     SPIRITUOUS     VINOUS

**INDICATE TYPE OF LICENSE:**

- RESTAURANT (Class I,II,III,IV)
- HOTEL-OPTINONAL FOOD (Class I-A)
- CLASS A LOUNGE (Class X)
- CLUB (Class V)
- TAVERN (Class IV)

- RESTAURANT/LOUNGE (Class XI)
- HOTEL (Class I,II,III,IV)
- CLUB-ON PREMISE CATERING (Class I)
- GOLF CLUB (Class I,II,III,IV)
- OTHER: \_\_\_\_\_

**REFER TO PAGE 3 FOR FEE SCHEDULE**

**ALL QUESTIONS MUST BE ANSWERED IN FULL**

<b>1. APPLICANT(S) –(Sole Proprietor, Corporation, Limited Liability Co., etc.)</b>			<b>2. Business Name (D/B/A)</b>		
THE ARES LLC      DOB: 09.04.1984			AS'S WOOD GRILL PIZZA		
EIDE ARES      DOB: 05.13.1968					
HENRY ARES      DOB:			Location (Street Address)		
Address			68 Wallingford Square		
			City/Town		State
			Kittery		ME
			Zip Code		
			03904		
68 Wallingford Square			Mailing Address		
City/Town		State	City/Town		State
Kittery		ME	Kittery		ME
Zip Code		Zip Code	Zip Code		Zip Code
03904		03904	03904		03904
Telephone Number		Fax Number	Business Telephone Number		Fax Number
207.439.9700		cell 603.988.7332	207.439.9700		
Federal I.D. # 463 905 045			Seller Certificate #		

- 3. If premises is a hotel, indicate number of rooms available for transient guests: N/A
- 4. State amount of gross income from period of last license: ROOMS \$ \_\_\_\_\_ FOOD \$ 98,000.00 LIQUOR \$ 46,227.00
- 5. Is applicant a corporation, limited liability company or limited partnership? YES  NO

**If YES, complete Supplementary Questionnaire**

- 6. Do you permit dancing or entertainment on the licensed premises? YES  NO
- 7. If manager is to be employed, give name: EIDES ARES

8. If business is NEW or under new ownership, indicate starting date: \_\_\_\_\_  
Requested inspection date: Any day Available Business hours: 11-9 Sun-thur/11-10 fri/sat

9. Business records are located at: 68 Wallingford square Kittery-me 03904

10. Is/are applicants(s) citizens of the United States? YES  NO

11. Is/are applicant(s) residents of the State of Maine? YES  NO

12. List name, date of birth, and place of birth for all applicants, managers, and bar managers. Give maiden name, if married:  
Use a separate sheet of paper if necessary.

Name in Full (Print Clearly)	DOB	Place of Birth
EIDES ARES	09.04.1984	Brazil
HENRY ARES	05.13.1968	Philippines

Residence address on all of the above for previous 5 years (Limit answer to city & state)  
\_\_\_\_\_  
\_\_\_\_\_

13. Has/have applicant(s) or manager ever been convicted of any violation of the law, other than minor traffic violations, of any State of the United States? YES  NO

Name: \_\_\_\_\_ Date of Conviction: \_\_\_\_\_  
Offense: \_\_\_\_\_ Location: \_\_\_\_\_  
Disposition: \_\_\_\_\_

14. Will any law enforcement official benefit financially either directly or indirectly in your license, if issued?  
Yes  No  If Yes, give name: \_\_\_\_\_

15. Has/have applicant(s) formerly held a Maine liquor license? YES  NO

16. Does/do applicant(s) own the premises? Yes  No  If No give name and address of owner:  
Polar Bear Realty Trust, 13 Bridge St. Kittery Me 03904

17. Describe in detail the premises to be licensed: (Supplemental Diagram Required) 25 Seats  
Pizza Restaurant.

18. Does/do applicant(s) have all the necessary permits required by the State Department of Human Services?  
YES  NO  Applied for: \_\_\_\_\_

19. What is the distance from the premises to the NEAREST school, school dormitory, church, chapel or parish house, measured from the main entrance of the premises to the main entrance of the school, school dormitory, church, chapel or parish house by the ordinary course of travel? 300 yards Which of the above is nearest? church

20. Have you received any assistance financially or otherwise (including any mortgages) from any source other than yourself in the establishment of your business? YES  NO   
If YES, give details: the Provident Bank

The Division of Liquor Licensing & Inspection is hereby authorized to obtain and examine all books, records and tax returns pertaining to the business, for which this liquor license is requested, and also such books, records and returns during the year in which any liquor license is in effect.

5. (TEXT EFFECTIVE 3/15/01) Appeal to District Court. Any person or governmental entity aggrieved by a bureau decision under this section may appeal the decision to the District Court within 30 days of receipt of the written decision of the bureau. An applicant who files an appeal or who has an appeal pending shall pay the annual license fee the applicant would otherwise pay. Upon resolution of the appeal, if an applicant's license renewal is denied, the bureau shall refund the applicant the prorated amount of the unused license fee.



**State of Maine**  
**Bureau of Alcoholic Beverages**  
**Division of Liquor Licensing and Enforcement**

<b>For Office Use Only:</b>
License #: _____
Date Filed: _____

**Supplemental Information Required for  
 Business Entities Who Are Licensees**

For information required for Questions 1 to 4, this information is on file with the Maine Secretary of State's office and must match their record information. Please clearly complete this form in its entirety.

1. Exact legal name:  
THE ARES LLC
2. Other business name for your entity (DBA), if any:  
AJ'S WOOD GRILL PIZZA
3. Date of filing with the Secretary of State: \_\_\_\_\_
4. State in which you are formed: Maine
5. If not a Maine business entity, date on which you were authorized to transact business in the State of Maine: \_\_\_\_\_
6. List the name and addresses for previous 5 years, birth dates, titles of officers, directors and list the percentage ownership: (attached additional sheets as needed)

Name	Address for Previous 5 years	Date of Birth	Ownership %
EIDES ARES	87 Whipple Road Kittery Me	09/04/1984	50% President
HENRY ARES	87 Whipple Road Kittery Me	05.13.1968	50% Member

7. Is any principal person involved with the entity a law enforcement official?

Yes

No

8. If Yes to Question 7, please provide the name and law enforcement agency:

Name: \_\_\_\_\_ Agency: \_\_\_\_\_

---

**BUREAU OF ALCOHOLIC BEVERAGES  
DIVISION OF LIQUOR LICENSING & ENFORCEMENT  
8 STATE HOUSE STATION  
AUGUSTA, ME 04333-0008**

9. Has any principal person involved in the entity ever been convicted of any violation of the law, other than minor traffic violations, in the United States?

Yes  No

10. If Yes to Question 9, please complete the following: (attached additional sheets as needed)

Name: \_\_\_\_\_

Date of Conviction: \_\_\_\_\_

Offense: \_\_\_\_\_

Location of Conviction: \_\_\_\_\_

Disposition: \_\_\_\_\_

**Signature:**

Eldes Ares  
Signature of Duly Authorized Person

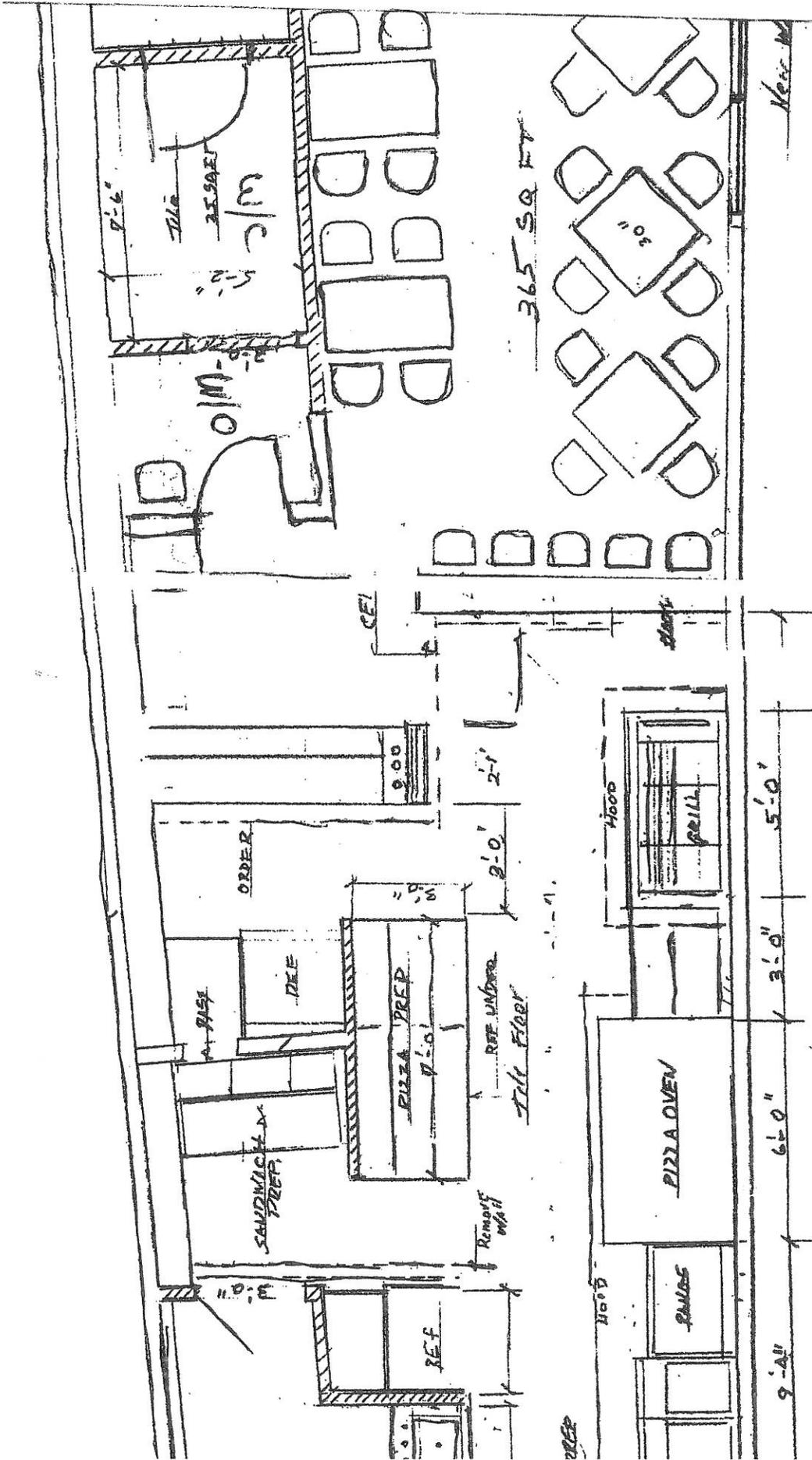
11.23.2015  
Date

EIDES ARES  
Print Name of Duly Authorized Person

---

If you have questions regarding the legal name or assumed (DBA) name on file with the Secretary of State's office, please call (207) 624-7752. The SOS can only speak to the information on file with their office, not the filing of this supplemental information – please direct any questions about this form to our office at the number below.

Submit Completed Forms To: Bureau of Alcoholic Beverages and Lottery  
Operations Division of Liquor Licensing Enforcement  
8 State House Station Augusta, Me 04333-0008  
Telephone Inquiries: (207) 624-7220  
Fax: (207) 287-3434  
Email Inquiries: [MaineLiquor@Maine.gov](mailto:MaineLiquor@Maine.gov)



Jo  
RE  
SC

**NOTE:** "I understand that false statements made on this form are punishable by law. Knowingly supplying false information on this form is a Class D offense under the Criminal Code, punishable by confinement of up to one year or by monetary fine of up to \$2,000 or both."

Dated at: Kittery, ME on November 23, 2015  
Town/City, State Date

Eides Ares  
 Signature of Applicant or Corporate Officer(s)  
EIDES ARES  
 Print Name

**Please sign in blue ink**

Henry Ares  
 Signature of Applicant or Corporate Officer(s)  
HENRY ARES  
 Print Name

**NOTICE – SPECIAL ATTENTION**

All applications for NEW or RENEWAL liquor licenses must contact their Municipal Officials or the County Commissioners in unincorporated places for approval of their application for liquor licenses prior to submitting them to the bureau.

**THIS APPROVAL EXPIRES IN 60 DAYS.**

**FEE SCHEDULE**

<b>Class I</b>	Spirituos, Vinous and Malt .....	\$ 900.00
	<b>CLASS I:</b> Airlines; Civic Auditoriums; Class A Restaurants; Clubs with catering privileges; Dining Cars; Golf Clubs; Hotels; Indoor Ice Skating Clubs; Indoor Tennis Clubs; Vessels; Qualified Caterers; OTB.	
<b>Class I-A</b>	Spirituos, Vinous and Malt, Optional Food (Hotels Only) .....	\$1,100.00
	<b>CLASS I-A:</b> Hotels only that do not serve three meals a day.	
<b>Class II</b>	Spirituos Only .....	\$ 550.00
	<b>CLASS II:</b> Airlines; Civic Auditoriums; Class A Restaurants; Clubs with catering privileges; Dining Cars; Golf Clubs; Hotels; Indoor Ice Skating Clubs; Indoor Tennis Clubs; and Vessels.	
<b>Class III</b>	Vinous Only .....	\$ 220.00
	<b>CLASS III:</b> Airlines; Civic Auditoriums; Class A Restaurants; Clubs with catering privileges; Dining Cars; Golf Clubs; Hotels; Indoor Ice Skating Clubs; Indoor Tennis Clubs; Restaurants; Vessels; Pool Halls; and Bed and Breakfasts.	
<b>Class IV</b>	Malt Liquor Only .....	\$ 220.00
	<b>CLASS IV:</b> Airlines; Civic Auditoriums; Class A Restaurants; Clubs with catering privileges; Dining Cars; Golf Clubs; Hotels; Indoor Ice Skating Clubs; Indoor Tennis Clubs; Restaurants; Taverns; Pool Halls; and Bed and Breakfasts.	
<b>Class V</b>	Spirituos, Vinous and Malt (Clubs without Catering, Bed & Breakfasts) .....	\$ 495.00
	<b>CLASS V:</b> Clubs without catering privileges.	
<b>Class X</b>	Spirituos, Vinous and Malt – Class A Lounge .....	\$2,200.00
	<b>CLASS X:</b> Class A Lounge	
<b>Class XI</b>	Spirituos, Vinous and Malt – Restaurant Lounge .....	\$1,500.00
	<b>CLASS XI:</b> Restaurant/Lounge; and OTB.	

**FILING FEE**.....\$ 10.00

**UNORGANIZED TERRITORIES** \$10.00 filing fee shall be paid directly to County Treasurer. All applicants in unorganized territories shall submit along with their application evidence of payment to the County Treasurer.

All fees must accompany application, made payable to the **Treasurer of Maine**. This application must be completed and mailed to Bureau of Alcoholic Beverages and Lottery Operations, Division of Liquor Licensing and Enforcement, 8 State House Station, Augusta ME 04333-0008. Payments by check subject to penalty **provided** by Title 28A, MRS, Section 3-B.



STATE OF MAINE

Dated at: November 23/2015, Maine YORK ss  
City/Town (County)

On: \_\_\_\_\_ Date

The undersigned being:  Municipal Officers  County Commissioners of the  
 City  Town  Plantation  Unincorporated Place of: Kittery, Maine

Hereby certify that we have given public notice on this application and held public hearing thereon as required by Section 653 Title 28A, Maine Revised Statutes and hereby approve said application.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

THIS APPROVAL EXPIRES IN 60 DAYS

NOTICE – SPECIAL ATTENTION

§ 653. Hearings; bureau review; appeal

1. **Hearing.** The municipal officers or, in the case of unincorporated places, the county commissioners of the county in which the unincorporated place located, shall hold a public hearing for the consideration of applications for new on-premise licenses and applications for transfer of location of existing on-premise licenses. The municipal officers or county commissioners may hold a public hearing for the consideration of requests for renewal of licenses, except that when an applicant has held a license for the prior 5 years and a complaint has not been filed against the applicant within that time the applicant may request a waiver of the hearing.
    - A. The bureau shall prepare and supply application forms. [1993, c.730, §27(amd).]
    - B. The municipal officers or the county commissioners, as the case may be, shall provide public notice of any hearing held under this section causing a notice, at the applicant's prepaid expense, stating the name and place of hearing, to appear on at least 3 consecutive days before the date of hearing in a daily newspaper having general circulation in the municipality where the premises are located or one week before the date of the hearing in a weekly newspaper having general circulation in the municipality where the premises are located. [1995, c.140, §4 (amd)]
    - C. If the municipal officers or the county commissioners, as the case may be, fail to take final action on an application for a new on-premise license, for transfer of the location of an existing on-premise license or for renewal of an on-premise license within 60 days of the filing of the application, the application is deemed approved and ready for action by the bureau. For purposes of this paragraph, the date of filing of the application is the date the application is received by the municipal officers or county commissioners. This paragraph applies to all applications pending before municipal officers or county commissioners as of the effective date of this paragraph as well as all applications filed or after the effective date of this paragraph. This paragraph applies to an existing on-premise license that has been extended pending renewal. The municipal officers or the county commissioners shall take final action on an on-premise license that has been extended pending renewal within 120 days of the filing of the application. [1999, c.589, §1 (amd).]
  2. **Findings.** In granting or denying an application, the municipal officers or the county commissioners shall indicate the reasons for their decision and provide a copy to the applicant. A license may be denied on one or more of the following grounds:
    - A. Conviction of the applicant of any Class A, Class B or Class C crime: [1987, c.45, Pt.A§4 (new).]
    - B. Noncompliance of the licensed premises or its use with any local zoning ordinance or other land use ordinance not directly related to liquor control; [1987, c.45, Pt.A§4(new).]
    - C. Conditions of record such as waste disposal violations, health or safety violation or repeated parking or traffic violations on or in the vicinity of the licensed premises and caused by persons patronizing or employed by the licensed premises or other such conditions caused by persons patronizing or employed by the licensed premises that unreasonably disturb, interfere with or affect the ability of persons or businesses residing or located in the vicinity of the licensed premises to use their property in a reasonable manner; [1993, c.730, §27 (amd).]
    - D. Repeated incidents of record of breaches of the peace, disorderly conduct, vandalism or other violations of law on or in the vicinity of the licensed premises and caused by persons patronizing or employed by the licensed premises; [1989, c.592, §3 (amd).]
    - E. A violation of any provision of this Title; and [1989, c.592, §3 (amd).]
    - F. A determination by the municipal officers or county commissioners that the purpose of the application is to circumvent the provisions of section 601. [1989, c.592, §4 (new).]
- [1993, c.730, §27 (amd).]
3. **Appeal to bureau.** Any applicant aggrieved by the decision of the municipal officers or county commissioners under this section may appeal to the bureau within 15 days of the receipt of the written decision of the municipal officers or county commissioners. The bureau shall hold a public hearing at the city, town or unincorporated place where the premises are situated. In acting on such an appeal, the bureau may consider all licensure requirements and findings referred to in subsection 2.
    - A. [1993, c.730, §27 (rp).]
  4. **No license to person who moved to obtain a license. (REPEALED)**

Department of Public Safety  
Division

Liquor Licensing & Inspection



Promise by any person that he or she can expedite a liquor license through influence should be completely disregarded. To avoid possible financial loss an applicant, or prospective applicant, should consult with the Division before making any substantial investment in an establishment that now is, or may be, attended by a liquor license.

BUREAU USE ONLY	
License No. Assigned:	
Class:	
Deposit Date:	
Amt. Deposited:	

PRESENT LICENSE EXPIRES 1-16-16

INDICATE TYPE OF PRIVILEGE:  MALT  SPIRITUOUS  VINOUS

INDICATE TYPE OF LICENSE:

- RESTAURANT (Class I,II,III,IV)
- HOTEL-OPTIONAL FOOD (Class I-A)
- CLASS A LOUNGE (Class X)
- CLUB (Class V)
- TAVERN (Class IV)

- RESTAURANT/LOUNGE (Class XI)
- HOTEL (Class I,II,III,IV)
- CLUB-ON PREMISE CATERING (Class I)
- GOLF CLUB (Class I,II,III,IV)
- OTHER: \_\_\_\_\_

REFER TO PAGE 3 FOR FEE SCHEDULE

ALL QUESTIONS MUST BE ANSWERED IN FULL

1. APPLICANT(S) - (Sole Proprietor, Corporation, Limited Liability Co., etc.)			2. Business Name (D/B/A)		
WEATHERLINE SEAFOODS			WEATHERLINE SEAFOODS		
DOB: _____			DOB: _____		
DOB: _____			Location (Street Address)		
Address			City/Town State Zip Code		
31 BADGERS ISLAND WEST			KITTEERY ME 03904		
Mailing Address			Mailing Address		
31 BADGERS ISLAND WEST			31 BADGERS ISLAND WEST		
City/Town State Zip Code			City/Town State Zip Code		
KITTEERY ME 03904			KITTEERY ME 03904		
Telephone Number Fax Number			Business Telephone Number Fax Number		
439-0335 439-7154			439-0330 439-7463		
Federal I.D. #			Seller Certificate #		
521153457					

3. If premises are a hotel, indicate number of rooms available for transient guests: \_\_\_\_\_
4. State amount of gross income from period of last license: ROOMS \$ \_\_\_\_\_ FOOD \$ 316,528.41 LIQUOR \$ 341,358
5. Is applicant a corporation, limited liability company or limited partnership? YES  NO

complete Supplementary Questionnaire, If YES

6. Do you permit dancing or entertainment on the licensed premises? YES  NO
7. If manager is to be employed, give name: SEAN MELTON
8. If business is NEW or under new ownership, indicate starting date: \_\_\_\_\_
- Requested inspection date: \_\_\_\_\_ Business hours: \_\_\_\_\_
9. Business records are located at: 31 BADGERS ISLAND WEST, KITTEERY, ME
10. Is/are applicants(s) citizens of the United States? YES  NO

11. Is/are applicant(s) residents of the State of Maine? YES  NO

12. List name, date of birth, and place of birth for all applicants, managers, and bar managers. Give maiden name, if married:  
Use a separate sheet of paper if necessary.

Name in Full (Print Clearly)	DOB	Place of Birth
SEAN MELTOD	7-6-71	Baton Rouge, LA

Residence address on all of the above for previous 5 years (Limit answer to city & state)  
York, ME

13. Has/have applicant(s) or manager ever been convicted of any violation of the law, other than minor traffic violations, of any State of the United States? YES  NO

Name: \_\_\_\_\_ Date of Conviction: \_\_\_\_\_  
Offense: \_\_\_\_\_ Location: \_\_\_\_\_  
Disposition: \_\_\_\_\_

14. Will any law enforcement official benefit financially either directly or indirectly in your license, if issued?  
Yes  No  If Yes, give name: \_\_\_\_\_

15. Has/have applicant(s) formerly held a Maine liquor license? YES  NO

16. Does/do applicant(s) own the premises? Yes  No  If No give name and address of owner: \_\_\_\_\_

17. Describe in detail the premises to be licensed: (Supplemental Diagram Required) a single-story restaurant with 5 dining rooms

18. Does/do applicant(s) have all the necessary permits required by the State Department of Human Services?  
YES  NO  Applied for: \_\_\_\_\_

19. What is the distance from the premises to the NEAREST school, school dormitory, church, chapel or parish house, measured from the main entrance of the premises to the main entrance of the school, school dormitory, church, chapel or parish house by the ordinary course of travel? .5 mi Which of the above is nearest? church

20. Have you received any assistance financially or otherwise (including any mortgages) from any source other than yourself in the establishment of your business? YES  NO

If YES, give details: MORTGAGE w/ TD BANK

The Division of Liquor Licensing & Inspection is hereby authorized to obtain and examine all books, records and tax returns pertaining to the business, for which this liquor license is requested, and also such books, records and returns during the year in which any liquor license is in effect.

NOTE: "I understand that false statements made on this form are punishable by law. Knowingly supplying false information on this form is a Class D offense under the Criminal Code, punishable by confinement of up to one year or by monetary fine of up to \$2,000 or both."

Dated at: Kittery, ME on Nov 2, 2015  
Town/City, State Date

Please sign in blue ink

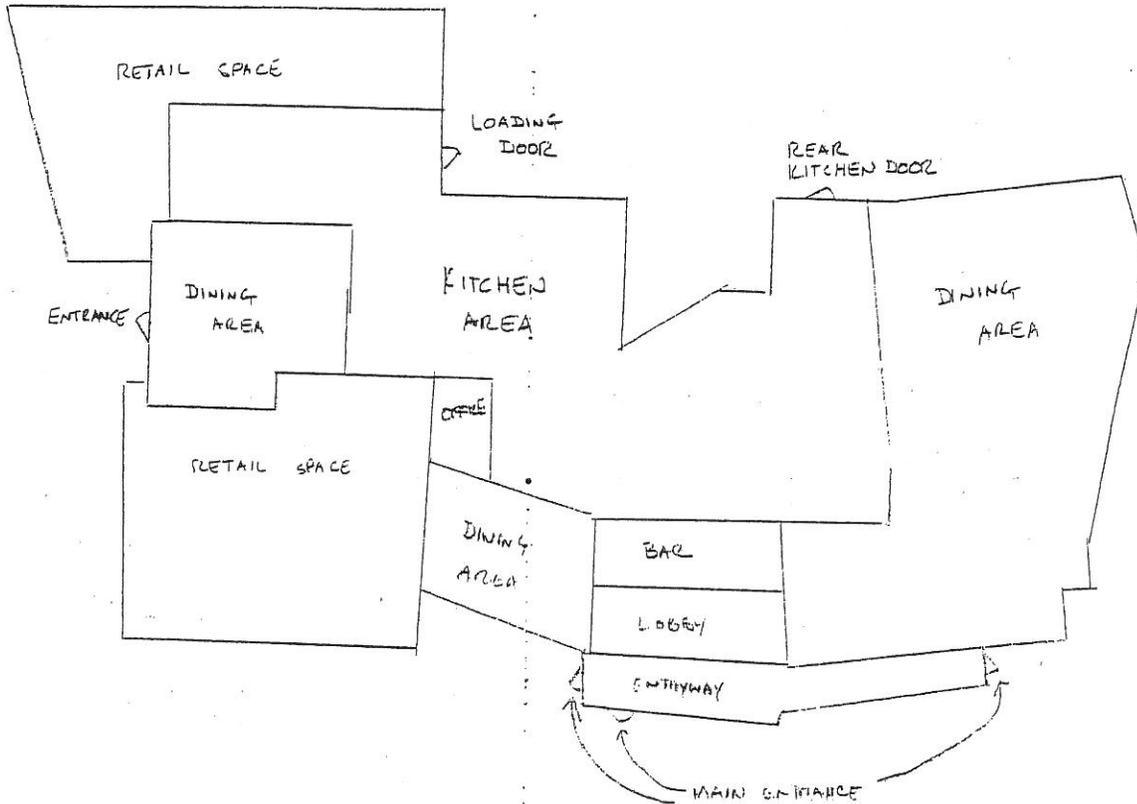
Signature of Applicant or Corporate Officer(s)  
TERRY GAWLER

Signature of Applicant or Corporate Officer(s)  
\_\_\_\_\_



PREMISE DIAGRAM

KITERI



STATE OF MAINE

Dated at: \_\_\_\_\_, Maine \_\_\_\_\_ SS  
City/Town (County)

On: \_\_\_\_\_  
Date

The undersigned being: \_\_\_\_\_ Municipal Officers \_\_\_\_\_ County Commissioners of the  
\_\_\_\_\_ City \_\_\_\_\_ Town \_\_\_\_\_ Plantation \_\_\_\_\_ Unincorporated Place of: \_\_\_\_\_, Maine

Hereby certify that we have given public notice on this application and held public hearing thereon as required by Section 653 Title 28A. Maine Revised Statutes and hereby approve said application.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

THIS APPROVAL EXPIRES IN 60 DAYS

NOTICE – SPECIAL ATTENTION

§ 653. Hearings; bureau review; appeal

1. **Hearing.** The municipal officers or, in the case of unincorporated places, the county commissioners of the county in which the unincorporated place is located, shall hold a public hearing for the consideration of applications for new on-premise licenses and applications for transfer of location of existing on-premise licenses. The municipal officers or county commissioners may hold a public hearing for the consideration of requests for renewal of licenses, except that when an applicant has held a license for the prior 5 years and a complaint has not been filed against the applicant within that time, the applicant may request a waiver of the hearing.

- A. The bureau shall prepare and supply application forms. [1993, c.730, §27(amd).]
- B. The municipal officers or the county commissioners, as the case may be, shall provide public notice of any hearing held under this section by causing a notice, at the applicant's prepaid expense, stating the name and place of hearing, to appear on at least 3 consecutive days before the date of hearing in a daily newspaper having general circulation in the municipality where the premises are located or one week before the date of the hearing in a weekly newspaper having general circulation in the municipality where the premises are located. [1995, c.140, §4 (amd).]
- C. If the municipal officers or the county commissioners, as the case may be, fail to take final action on an application for a new on-premise license, for transfer of the location of an existing on-premise license or for renewal of an on-premise license within 60 days of the filing of an application, the application is deemed approved and ready for action by the bureau. For purposes of this paragraph, the date of filing of the application is the date the application is received by the municipal officers or county commissioners. This paragraph applies to all applications pending before municipal officers or county commissioners as of the effective date of this paragraph as well as all applications filed on or after the effective date of this paragraph. This paragraph applies to an existing on-premise license that has been extended pending renewal. The municipal officers or the county commissioners shall take final action on an on-premise license that has been extended pending renewal with 120 days of the filing of the application. [1999, c589, §1 (amd).]

2. **Findings.** In granting or denying an application, the municipal officers or the county commissioners shall indicate the reasons for their decision and provide a copy to the applicant. A license may be denied on one or more of the following grounds:

- A. Conviction of the applicant of any Class A, Class B or Class c crime: [1987, c45, Pt.A§4 (new).]
- B. Noncompliance of the licensed premises or its use with any local zoning ordinance or other land use ordinance not directly related to liquor control; [1987, c.45, Pt.A§4(new).]
- C. Conditions of record such as waste disposal violations, health or safety violation or repeated parking or traffic violations on or in the vicinity of the licensed premises and caused by persons patronizing or employed by the licensed premises or other such conditions caused by persons patronizing or employed by the licensed premises that unreasonably disturb, interfere with or affect the ability of persons or businesses residing or located in the vicinity of the licensed premises to use their property in a reasonable manner; [1993, c.730, §27 (amd).]
- D. Repeated incidents of record of breaches of the peace, disorderly conduct, vandalism or other violations of law on or in the vicinity of the licensed premises and caused by persons patronizing or employed by the licensed premises; [1989, c.592, §3 (amd).]
- E. A violation of any provision of this Title; and [1989, c.592, §3 (amd).]
- F. A determination by the municipal officers or county commissioners that the purpose of the application is to circumvent the provisions of section 601. [1989, c.592, §4 (new).]

[1993, c730, §27 (amd).]

3. **Appeal to bureau.** Any applicant aggrieved by the decision of the municipal officers or county commissioners under this section may appeal to the bureau within 15 days of the receipt of the written decision of the municipal officers or county commissioners. The bureau shall hold a public hearing in the city, town or unincorporated place where the premises are situated. In acting on such an appeal, the bureau may consider all licensure requirements and findings referred to in subsection 2.

A. [1993, c.730, §27 (rp).]

4. **No license to person who moved to obtain a license. (REPEALED)**

5. **(TEXT EFFECTIVE 3/15/01) Appeal to District Court.** Any person or governmental entity aggrieved by a bureau decision under this section may appeal the decision to the District Court within 30 days of receipt. Upon resolution of the appeal, if an applicant's license renewal is denied, the bureau shall refund the applicant the prorated amount of the unused license fee.

## **Economic Development Committee**

The Economic Development Committee through the Economic Development Plan endeavors to assure sustainability in our economy and our environment, thus supporting a community that nurtures our youth, educates all residents, and attracts and welcomes visitors. Kittery, Maine is itself a destination that thrives by design and is our home.

### **Kittery Economic Development Committee - Mission**

Within the context of the Kittery Comprehensive Plan and the Economic Development Plan, the mission of the Town of Kittery Economic Development Committee (EDC) is to enhance the many attributes that the Town of Kittery has to offer. The Council-established committee was given the charge of economic development planning, municipal site identification and development, and working with new business opportunities as they present themselves. The EDC is dedicated to helping create opportunities for economic development through desirable business growth, expansion, retention and attraction by working as partners to develop a climate conducive to maintaining the quality of life in this great community of Kittery, Maine.

In the endeavor to meet the Charge of the Council, the EDC has worked to establish an avenue that provides information on Kittery, as well as current and potential business growth areas of town. While many inquiries are normally directed through the Planning Department, the EDC has developed a website, accessible through the Town of Kittery website, for web inquisitive prospects. To date there has been little activity generated from this avenue to our knowledge. In addition, there has been no update to the website due to the lack of experienced or simply available, EDC members knowledgeable on web design. As a result, we have looked to the Town to aid in updating the EDC website as part of their normal website management.

### **Kittery Economic Development Committee – 2015**

Throughout 2015 the EDC has worked to meet monthly. As would be expect from volunteers we didn't meet every month due to the lack of quorums, but did achieve the following:

- Responsibly assisting in developing properties within Kittery, Maine in an effort to improve the aesthetics of the town/community while providing additional revenue – Met with (1) business owner in the Business Park to discuss their considered opportunities and await their lead in business growth

## Town of Kittery Maine - Economic Development Committee – Executive Summary

- Reviewing Town ordinances, policies, and practices to determine their impact on existing and proposed commercial businesses – Began to look at TIF's and their relevance to business growth in the areas they cover
- Encouraging the economic well-being and expansion of the existing commercial businesses located within Kittery, Maine - reviewing what development, and current activity has been done in the Foreside, Northern Route 1; Route 1 By-Pass, and Business Park, and potential for the intersection of Walker Street and State Road.

### **Kittery Economic Development Committee 2016 Goals**

As stated previously, the Kittery Town Council established the EDC with a charge of economic development planning, municipal site identification and development, and working with new business opportunities as they present themselves. The EDC is dedicated to helping create opportunities for economic development through desirable business growth, expansion, retention and attraction by working as partners to develop a climate conducive to maintaining the quality of life in this great community of Kittery, Maine.

Under the proposed charge, the EDC will focus its attention for potential business development opportunities performing the following:

1. Identify to the PB the (3) distinct areas of business growth focus
  - a. Route 1 By-Pass –
  - b. Kittery Foreside/Walker & State Street Intersection
  - c. Business Park
  - d. Northern Kittery – Route 1
2. Speak to aspects within each of these areas that we believe under current zoning ordinances may potentially limit business development, or with changes provide greater opportunity for business growth
3. Establish a go forward working relationship with the PB, as well as the Comprehensive Planning Commission and Foreside Design Team, to help achieve our charge of ensuring sustainable business growth that offers value and enriches the standard of living of the citizens of Kittery
4. Serve as advocates to business projects, and or projects under consideration, i.e. recent Hampton Inn business project; implementation of Foreside Design changes developed from the Foreside Forums; advancement of current businesses through monthly interviews to gain greater insight of business needs

**Kittery Economic Development Committee 2016 Goals**

The Kittery Economic Development Committee, with support from the Kittery Planning Board, is requesting the Kittery Town Council extend the existence of the EDC past its current sunset date of 12/31/2015 to a future date certain of December 31, 2016 at which time we will review the status of the Economic Development Committee and its continued need. In conjunction with the Economic Development Plan, the Town Citizenry, and the various community boards, it is believed we can continue to provide value, and thoughtful discussion and direction to the Town of Kittery’s quality of life and place.

With respect,

George Dow  
Chairperson  
Economic Development Committee  
Town of Kittery, Maine

cc: Economic Development Committee  
Planning Board Chairperson – Ann Grinnell

End

## REPORT to THE KITTERY TOWN COUNCIL – OPEN SPACE CONSERVATION EASEMENT

1 **Date:** November 17, 2015

2 **Responsible Individual:** Stephen A. Hynes Real Property Trust Agreement, Owner’s Agent,  
3 Gary Beers

4 **Subject:** Open Space – Conservation Easement Cession Offer to the Town of Kittery

### 5 **EXECUTIVE SUMMARY:**

6 Stephen A. Hynes Real Property Trust Agreement has proposed a mobile home park expansion  
7 on Kittery Map 66 Lots 24 & 25, adjacent to the existing Yankee Commons Mobile Home Park  
8 on Idlewood Lane, presently under review by the Planning Board. Final approval and  
9 development would leave approximately 34.5 acres available offered as a gift to the Town and  
10 placed in a maintained conservation easement in perpetuity.

11 Such open space preservation easements are addressed in Kittery Town Code Title 16. This  
12 Report includes draft documents for Council consideration of an offer for the Conservation  
13 Easement Cession and Management Plan. Those documents were reviewed and endorsed by the  
14 Open Space Advisory Committee [ *At it's Nov. meeting, KOSAC decided to support and comment*  
15 *on that proposal.*]; and, an opinion from the Town Attorney as to the legal sufficiency of the  
16 documents would be necessary.

17 Agreement by Council that it is satisfied with the sufficiency of the written evidence is sought  
18 and concurrence for Council to give reasonable consideration, contingent on final plan approval,  
19 and presentation of final documents, for the Easement Cession and Management Plan.

### 20 **FACTS BEARING ON THE EQUATION:**

- 21
- **Yankee Commons Location**
    - Development Plan Aerial View (*atch 1*)
    - Project Proposed Open Space and Easement Layout (*atch 2*)
    - Kittery Open Space Map (*atch 3*)
    - Kittery Vernal Pool 012 (*atch 4*)
  - **Kittery Comprehensive Plan, Town Code, Open Space Map:**
    - Pursuant to Comprehensive Plan (*atch 5*)
    - Consistency with Title 16 (*atch 6*)
    - Kittery Title 16 Open Space Excerpts (*atch 7*)
  - **Maine Revised Statutes:**
    - 33 MRS §476-479 Conservation Easement (*atch 8*)
- 22

### 23 **BACKGROUND:**

24 Hynes purchased Yankee Mobile Home Parks in 1996, which includes the 120-lot park on Cutts  
25 Road (Yankee Green); the 64-lot and 12-apartment complex on Idlewood Lane (Yankee  
26 Commons); and, the two undeveloped parcels (Map 66 Lots 24 & 25) adjacent and abutting US  
27 Route 1 and Wilson Lane (50+ acres). Aerial site view and proposed project layout (*atch 1*); the  
28 proposed open space and easement layout (*atch 2*); and, the site locus on Kittery’s Open Space  
29 Map are provided (*atch 3*).

30

## REPORT to THE KITTERY TOWN COUNCIL – OPEN SPACE CONSERVATION EASEMENT

31 Also noted in that area in the US Route 1 ROW and extending into adjacent parcels, is an aerial  
32 view of Kittery's MDEP Vernal Pool 012 (*atch 4*).

33 *NOTE: With no migratory species (e.g., wood frog, salamander), the USA Corps of*  
34 *Engineers requires only a 100' non-disturbance setback and that area will be considered for*  
35 *future easement consideration.*

36 The current expansion project was conceived in June of 2011. Initial cursory review indicated  
37 that 138 mobile home lots were readily possible under the net residential density standards. The  
38 project sketch plan was filed on 20 December 2011, proposing 83 home lots and a community  
39 center. A Maine Department of Transportation approved US Route 1 curb cut was centered on  
40 parcel 25 and crossed a wetland to access the rear (northerly) section.

41 The development design objectives were to be compliant with: (1) all Federal Housing & Urban  
42 Development (HUD) requirements; (2) Maine Manufactured Housing Board (MHB) park  
43 standards regulations; (3) Maine Department of Environmental (DEP) regulations (including  
44 Inland Fisheries & Wildlife); (4) USA Corps of Engineers regulations; and, (5) Town Code Title  
45 16, Land Use and Development.

46 Recognizing that there are conflicts between state statutes (*30-A M.R.S. §4358, Regulation of*  
47 *manufactured housing*); Maine Manufactured Housing Board standards; and, Kittery Title 16, the  
48 primary plan objectives included efforts to be consistent with and pursuant to Kittery's  
49 Comprehensive Plan (*atch 5*); and, the concepts in Title 16 related to elderly housing, clustered  
50 residential development, and the mixed use zone (*atch 6*).

51 The Planning Board asked, during the initial site walk in January 2012, if it was possible to  
52 eliminate that curb cut/roadway, as Title 16 suggests there should be no more on Route 1 than  
53 absolutely necessary. In response to the Board's request, the plan was redesigned to provide  
54 access from Route 1 via Idlewood Lane. That resulted in a reconfiguration plan for Wilson Lane;  
55 a reduction of five lots to 78 (77 home lots and a community center); and, resulting in no more  
56 than 900sf wetland impact to reconfigure the access roadway to better avoid an emergent  
57 wetland.

58 The owner has committed to a plan Condition of Approval to maintain the housing as age-  
59 restricted (55+) and the project plans eight mixed use zone permitted uses. Those include a  
60 community garden; walking trail, active and passive recreation space. The Community Center  
61 facility will contain business and sales offices; meeting rooms; a medium size (125 seating)  
62 function room; and, an accessory maintenance shop/garage. There is also the potential for future  
63 provision for personal services, such as OT/PT and equipment; hair care; etc., although these  
64 must be viable for the provider.

65 Also noted is the net positive fiscal impact to the town. The project must pay for a Water District  
66 pumping station benefitting that system. Significant public safety impact and sewer  
67 betterment/impact fees will be paid. The owner will maintain on-site roads, street lighting, utility  
68 infrastructure, and provide curbside waste disposal for residents. With prospectively no school  
69 students the project foresees very limited financial cost (police-fire response, ambulance) to the  
70 Town. The estimated added valuation, when completed, would contribute more than \$230,000  
71 annually in new taxes, along with the sewer department and water district added revenues.

## REPORT to THE KITTERY TOWN COUNCIL – OPEN SPACE CONSERVATION EASEMENT

72 As a “good neighbor” gesture, permanent Rectangular Rapid Flashing Beacons are proposed at  
73 applicant’s expense for the unsignalized crosswalks on US Route 1 in the outlet area to promote  
74 better pedestrian safety.

75 The current development plan was submitted to Maine Department of Environmental Protection  
76 (MDEP) for Site Location of Development review and approval, a process that includes  
77 professional staff review of multiple environmental regulations, including impacts to natural  
78 resources, storm water, groundwater, sensitive wildlife habitat, and scenic character. MDEP  
79 approved the plan as presented (including review and approval by Maine Department of Inland  
80 Fisheries & Wildlife) in June 2013.

81 The nearby vernal pool was assessed by the US Army Corps of Engineers to have non-migratory,  
82 fairy shrimp requiring only a 100’ non-disturbance area. MDEP’s 250’ area will have only 4.5%  
83 disturbed for the side slope of a stormwater filtration basin where 25% is allowed. All wetlands  
84 and a stream are mapped and categorized. Mapped wetland areas total approximately 6.6 acres,  
85 0.8 acres of which are designated as emergent wetlands. 900sf of wetland would be impacted  
86 which requires a Corps of Engineers Category 1 permit requiring only start-work notice two  
87 weeks before commencement. The plan is currently under review by the Planning Board.

88 Title 16 open space requirements for mobile home parks are:

89 **16.8.12.3 Mobile Home Parks.** *O. Open space calculations are as follows: 1. For mobile*  
90 *home parks served by a public sewer, an area amounting to ten (10) percent of the total area*  
91 *devoted to individual lots must be set aside for open space and/or recreation.*

92 That result for the proposed plan open space requirement would be less than two acres. Title 16  
93 requires developed open space to be designed and landscaped for the use and enjoyment of the  
94 park residents and maintained for their long-term use. Low- intensity recreation improvements  
95 (walking trail), picnic areas, and community garden plots are planned.

96 To the maximum extent possible, undeveloped open space must be left in its natural state.  
97 Contingent upon a final plan approval, the owner proposes to place all of the parcel’s  
98 undeveloped areas (approximately 34.5 acres) into a Conservation Easement with a supported  
99 future Management Plan.

100 Town Code Title 16 provisions that apply to this proposal are (*more at atch 7*):

101 **16.8.11.7 Open Space Dedication and Maintenance.**

102 *A. Prior to approval of the final plan by the Planning Board, documents for open space must*  
103 *be submitted to the Town for review by legal counsel. Subsequent to approval, there may be*  
104 *no further division of the open space; however, tracts or easements dedicated for public*  
105 *utilities, public access or structures accessory to noncommercial recreation, agriculture or*  
106 *conservation may be permitted within the open space.*

107 **16.9.2.3 Land Dedication.**

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

110 **16.10.7.2 Final Plan Application Submittal Content.**

111 *N. Open Space Land Cession Offers. Written offers of cession to the municipality of all public*  
112 *open space shown on the plan, and copies of agreements, or other documents showing the*  
113 *manner in which space(s), Code to which is reserved by the subdivider, are to be maintained.*

**REPORT to THE KITTELY TOWN COUNCIL – OPEN SPACE CONSERVATION EASEMENT**

114 *O. Open Space Land Cession Offers Acknowledgement by Town. Written evidence that the*  
 115 *municipal officers are satisfied with the legal sufficiency of the documents referred to in*  
 116 *Section 16.10.7.2O. Such written evidence does not constitute an acceptance by the*  
 117 *municipality of any public open space referred to in Section 16.10.7.2O.*

118 **16.10.9.1.3 Approval Not Acceptance of Property.**

119 *The approval by the Planning Board of a plan, a master site development plan or any other*  
 120 *subsequent development plan does not constitute, nor is it evidence of any acceptance by the*  
 121 *municipality of any street, easement, or other open space shown on the plan. When a park,*  
 122 *playground, or other recreation area is shown on the plan, approval of the plan does not*  
 123 *constitute an acceptance by the municipality of such areas. The Planning Board must require*  
 124 *the plan to be endorsed with appropriate notes to this effect. The Planning Board may also*  
 125 *require the filing of a written agreement between the applicant and the municipal officials*  
 126 *covering future deed and Code, dedication, and provision for the cost of grading,*  
 127 *development, equipment, and maintenance of any such recreation area.*

128 **CURRENT SITUATION:**

129 Of the 50+ acres in the parcels, the Net Residential Acreage is 755,454 sf, which would allow  
 130 151 lots at 5,000 sf. (Lot size allowed by Maine law – 755,000sf). We are proposing 78 lots  
 131 which would take up 390,000 sf (leaving 8.4 unused residential area acres remaining) and  
 132 propose no additional future development.

<b>Gross Land Area</b>	<b>2,185,044</b>	<b>sq. ft.</b>
Cemetery	-7,290	sq. ft.
Wetland/Floodplain	-1,128,513	sq. ft.
Street/Access (20%)	-209,848	sq. ft.
Open Space (10%)	-83,939	sq. ft.
<b>Net Residential Acreage</b>	<b>755,454</b>	<b>sq. ft.</b>
Possible Lots @ 5,000sf	151	each
Possible Lots @ 6,500sf	116	each
Proposed Lots	78	each

133 This table shows the approximately 34.5 acres available for this environmental protection  
 134 consideration. The owner also proposes to maintain the conservation areas; permit public access;  
 135 and, create/maintain a low-intensity recreation walking trail.

<b>Gross Land Area</b>	<b>2,185,044</b>	<b>sq. ft.</b>
Housing Lots	-390,000	sq. ft.
Street/Access (20%)	-209,848	sq. ft.
<b>Net Undeveloped</b>	<b>1,585,196</b>	<b>sq. ft.</b>
Cemetery	7,290	sq. ft.
Wetland/Floodplain	1,128,513	sq. ft.
Other Undeveloped	365,454	sq. ft.
<b>Conservation Easement</b>	<b>34.5</b>	<b>acres</b>

136 Essential Maine statute requirements are found in 33 MRS §476-479 Conservation Easement  
 137 (atch 8).

138

## REPORT to THE KITTERY TOWN COUNCIL – OPEN SPACE CONSERVATION EASEMENT

139 The agreement for the proposed offer of conservation easement cession (*encl I*) is the MDEP  
140 standard and is consistent with, and pursuant to, Kittery’s Comprehensive Plan and the Open  
141 Space Reservation concepts in Title 16, supporting the public benefit in the following areas:

- 142 • *The importance of the land by virtue of its size or uniqueness in the vicinity or proximity*  
143 *to extensive development or comprising an entire landscape feature;*
- 144 • *The likelihood that development of the land would contribute to degradation of the*  
145 *scenic, natural, historic or archeological character of the area;*
- 146 • *The opportunity for regular and substantial use of the land by the general public for*  
147 *recreational or educational use;*
- 148 • *The likelihood that the preservation of the land as undeveloped open space will provide*  
149 *economic benefit to the town by limiting municipal expenditures required to service*  
150 *development;*
- 151 • *The existence of a conservation easement, other legally enforceable restriction, or*  
152 *ownership by a nonprofit entity committed to conservation of the property that will*  
153 *permanently preserve the land in its natural, scenic or open character;*
- 154 • *Whether the land is maintained in accordance with criteria that are adopted under local*  
155 *ordinance that provide for preserving the integrity of historically important structures.*

### 156 **Key Features of the Proposed Offer and Agreement are:**

157 Cession is an irrevocable offer of dedication of undeveloped land in Tax map 66 Lots 24 &25 to  
158 be gifted to the Town. The offer continues indefinitely and may be accepted by the Town at any  
159 time, it being the intent that if said offer is to be accepted, it will be accepted, at the discretion of  
160 the Town Council, only upon delivery by Grantor of such other documents, certifications and  
161 securities as the Town requires pursuant to its Code for the acceptance of the dedication of public  
162 reserved open space lands.

### 163 **Purpose:**

164 It is the purpose of the Easement to protect the property to safeguard biological diversity by  
165 protecting the environments and ecological processes including those described in the Whereas  
166 Clauses, that support viable populations of native plants, animals and other organisms, and to  
167 preserve and maintain the property as free from human disturbance, noise, artificial light and  
168 pollution as practicable.

### 169 **Prohibited Acts and Uses, Exceptions Thereto, and Permitted Uses:**

170 To ensure the continued character of the property, a number of acts and uses would be prohibited  
171 on, above, through or below the property. Notwithstanding the prohibitions, certain acts and uses  
172 may be permitted to the extent that do not materially impair the conservation values and interests  
173 of the property and are not inconsistent with the conservation easement purpose. Any such act or  
174 use must be part of an approved Management Plan. The exercise of any right reserved by the  
175 Grantor shall be in compliance with all applicable federal, state, and local laws.

176

## REPORT to THE KITTERY TOWN COUNCIL – OPEN SPACE CONSERVATION EASEMENT

### 177 **Management Plan:**

178 The depth and extent of inquiry of the Plan and its level of specificity will be appropriate to the  
179 proposed activity and any ecological disturbance which might occur as a result of the proposed  
180 actions. The Plan may consider the surrounding landscape context of the property as well as the  
181 property itself. It will include specific provisions for approval procedures, monitoring,  
182 evaluation, updates, notices, time frames and dispute resolution.

### 183 **CONCLUSION**

#### 184 **Kittery Open Space Advisory Committee Caveats** (*encl 2*)

185 “The easements need to be vetted by some legal authority versed in easements to  
186 guarantee that they accomplish the goal of preservation. Some individual/dept./or  
187 committee within the Town infrastructure should be designated as the steward/enforcer  
188 of the easement. There should be an appropriate sum of money placed in a trust  
189 controlled by the Town for any stewardship and enforcement actions that may  
190 arise. Lastly, there should be a management plan submitted by the applicant for the OS-  
191 especially the trail corridor- ie best management practices used in construction, rules for  
192 the use of the trail, enforcement responsibilities for those rules, signage at the property  
193 boundaries of the OS noting it designation, etc.”

194 We would be pleased to work with that group or others, as Council may desire, to complete  
195 mutually agreeable covenants for this proposal. The proposed offer and agreements and final  
196 documents would need to be reviewed by the Town Attorney as required by Title 16, Section  
197 8.11.7 (paid for by owner under Title 3 Applicant Service Agreement).

### 198 **REQUEST:**

199 Council agree by motion that it is satisfied with the legal sufficiency of the written evidence  
200 documents; and, to give reasonable consideration to the Conservation Easement offer and  
201 Management Plan when presented, contingent upon final development plan approval.

### **Enclosures**

1. Draft Deed of Conservation Easement
2. Kittery Open Space Advisory Committee, e-mail 11-16-15

### **Town Council Attachments (Previously provided to Planning Board)**

1. Development Plan Aerial View
2. Project Proposed Open Space and Easement Layout
3. Kittery Open Space Map 0328061
- 4a. Kittery Vernal Pool 012
- 4b. Vernal Pool 012 – Close up
5. Pursuant to Comprehensive Plan
6. Consistency with Title 16
7. Kittery Title 16, Open Space Excerpts
8. 33 MRS §476-479, Conservation Easement

**REPORT to THE KITTERY TOWN COUNCIL – OPEN SPACE CONSERVATION EASEMENT**

**202 SUGGESTED AGENDA ITEM & MOTION:**

203 **AGENDA:** The Kittery Town Council moves to discuss the offer of a conservation easement  
204 gift of land the Town by owner Stephen A. Hynes Real Property Trust Agreement.

205 **MOTION TO APPROVE:** The Kittery Town Council moves to affirm that it is satisfied with  
206 the legal sufficiency of the written evidence documents for a conservation easement of a portion  
207 of Kittery Map 66 Lots 24 & 25 to be gifted to the Town by Stephen A. Hynes Real Property  
208 Trust Agreement (Owner); and, to also affirm it will give reasonable consideration to the  
209 Conservation Easement offer and Management Plan when completed and presented for action;  
210 and, that such consideration is contingent upon a final development plan approval.

**DEED OF CONSERVATION EASEMENT Form I 04/06**

**THIS GRANT DEED OF CONSERVATION EASEMENT** is made this \_\_\_\_\_ day of 20\_\_\_, by Stephen A. Hynes Real Property Trust Agreement of West Vancouver, British Columbia, Canada, (hereinafter referred to as the "GRANTOR"), in favor the Town of Kittery, Maine (hereinafter referred to as the "HOLDER") and the State of Maine by and through its Department of Environmental Protection, (hereinafter referred to as the "THIRD PARTY").

**WITNESSETH**

**WHEREAS** this Indenture is created pursuant to Title 33, Maine Revised Statutes, Sections 476 through 479-B, inclusive, as amended; and

**WHEREAS** the GRANTOR holds title to certain real property situated on Tax Map 66, Lots 24 and 25, in Kittery, York County, Maine (hereinafter referred to as the "Property") described [on recorded plan #####, date, Book, page ] at the York County Registry of Deeds and further described [ in exhibit A attached hereto. ]

**WHEREAS** the Property remains in a substantially undisturbed natural state and has significant aesthetic and ecological value, in particular, [ here describe the conservation purposes of the easement ]; and

**WHEREAS**, the GRANTOR and the HOLDER, recognizing the value of the Property as described above, have the common purpose of conserving the natural values of the Property by the conveyance of a Conservation Easement over the Property, which easement is to benefit, protect and conserve the natural values of the Property; conserve and protect the indigenous animal and plant populations; and, prevent the use or development of the Property for any purpose or in any manner that would conflict with its natural, scenic condition; and

**WHEREAS** the THIRD PARTY will receive THIRD PARTY Rights of Enforcement under this Deed;

**NOW, THEREFORE**, in consideration of the foregoing and the covenants, terms, conditions, and restrictions herein contained, the GRANTOR hereby GRANTS to the HOLDER, its successors and assigns, as an absolute and unconditional gift, forever and in perpetuity, with Warranty Covenants, a Conservation Easement in gross over the Property as set forth herein (the "Conservation Easement"); and to the THIRD PARTY, its successors and assigns, as an absolute and unconditional gift, forever and in perpetuity, rights of enforcement hereunder.

**I. PURPOSE:** It is the purpose of this Easement to assure that the Property will be retained forever in its natural undeveloped condition and to prevent any use of the Property that will significantly impair or interfere with the conservation values of the Property. GRANTOR intends that this Easement will confine the use of the Property to such activities as are consistent with the purpose of this Easement.

**2. RIGHTS OF HOLDER:** To accomplish the purpose of this Easement the following rights are conveyed to the HOLDER by this easement:

- a. the right to preserve and protect the conservation values of the Property;
- b. the right to enter and inspect the Property over other lands of the GRANTOR at any reasonable time and in any reasonable manner provided that the time and manner of such entry does not unreasonably interfere with the uses of the Property permitted hereunder or the quiet enjoyment of other lands of GRANTOR, and to enforce by proceedings at law or in equity the covenants hereinafter set forth, including the right to require restoration of the Property to its condition prior to any breach hereof; and
- c. the right to prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use, pursuant to paragraph 6.

**3. USE OF THE PROPERTY:** The Property may be used for limited recreational and conservation purposes only. No commercial, industrial, quarrying or mining activities are permitted on the Property. No structures or facilities of any kind whatsoever may be constructed on the Property, except walking paths designed in keeping with the natural scenic quality of the Property. No motor vehicles of any kind, including recreational vehicles, all-terrain vehicles, motorcycles, dirt bikes, and snowmobiles may be permitted on the Property, except in emergency and when necessary to accomplish the rights reserved by GRANTOR and HOLDER, their successors and assigns. No filling, paving, dumping, excavation, or other alteration, may be made to the surface of the Property other than that caused by the forces of nature. Any activity on or use of the Property inconsistent with the purposes of this Easement is prohibited.

**4. RESERVED RIGHTS:** GRANTOR reserves to itself, and to their personal representatives, heirs, successors, and assigns, all rights accruing from its ownership of the Property, including the right to engage in, or permit, or invite others to engage in, all uses of the Property that are not expressly prohibited herein and are not inconsistent with the purpose of this Easement. Without limiting the generality of the foregoing, the following rights are expressly reserved:

- a. The right of the GRANTOR, its guests, employees and invitees, to use the Property for recreational purposes which may include hiking, picnicking, bird watching, camping, tenting and any other use that is not expressly prohibited above or destructive to the natural values to be conserved herein.
- b. The right to advertise the Property for sale and to convey the Property, always subject to the terms of this Conservation Easement.

**5. CUTTING OF TIMBER AND VEGETATION:** The destruction or removal of standing timber, plants, shrubs or other vegetation is not permitted, except however, there are retained in the GRANTOR the following rights:

- a. The right to clear and restore forest cover and other vegetation that is damaged or destroyed by the forces of nature, such as fire or disease and, with the prior written approval of the HOLDER and the THIRD PARTY, when necessary to prevent the spread of disease.
- b. The right to clear and restore forest cover and other vegetation, in the event of an emergency, when necessary to prevent the spread of fire.
- c. The right to gather, use or remove dead wood.

**6. RIGHTS OF THE THIRD PARTY:** The GRANTOR hereby grants to the THIRD PARTY the same inspection and enforcement rights as are granted to the HOLDER under this easement. However, the Parties hereto intend that the HOLDER be primarily responsible for the enforcement of this Easement, and that the THIRD PARTY will assume such responsibility only if the HOLDER fails to enforce it. If the THIRD PARTY determines that the HOLDER is failing in such enforcement, the THIRD PARTY may give notice of such failure to the HOLDER and the GRANTOR, and if such failure is not corrected within a reasonable time thereafter, the THIRD PARTY may exercise, in its own name and for its own account, all the rights of enforcement granted the HOLDER under this Easement.

The THIRD PARTY also has reasonable access to any and all records of the HOLDER relevant to the Protected Property.

**7. CONSTRUCTION:** If uncertainty should arise in the interpretation of these restrictions, judgment should be made in favor of conserving the Property in its natural, open, and scenic condition.

The GRANTOR agrees to bear all costs and responsibility of operation, upkeep, and maintenance of the Property and to pay any and all real property taxes and assessments levied by competent authority on the Property and does hereby relieve, indemnify and hold harmless the HOLDER therefrom.

The GRANTOR has provided the HOLDER with sufficient information to determine the condition of the Property as of the effective date hereof and has certified that such information is an accurate representation of the same.

**8. SUCCESSORS:** The covenants, terms, conditions, and restrictions of this Easement are binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and continue as a servitude running in perpetuity with the Property.

**9. TERMINATION OF RIGHTS AND OBLIGATIONS:** A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to any transfer, survive said transfer.

**TO HAVE AND TO HOLD** the said Conservation Easement unto the said HOLDER and its successors and assigns forever and the said THIRD PARTY rights unto the said THIRD PARTY and its successors and assigns forever.

**GRANTOR'S SIGNATURE**

**IN WITNESS WHEREOF**, the said GRANTOR, has hereunto set his hand this \_\_\_\_ day of 20\_\_.

By: \_\_\_\_\_

Its: Owner

**NOTARIZATION OF GRANTOR'S SIGNATURE**

**HOLDER'S ACCEPTANCE**

The above and foregoing Conservation Easement was authorized to be accepted by HOLDER as aforesaid, and the said HOLDER does hereby accept the foregoing Conservation Easement, by and through \_\_\_\_\_, its \_\_\_\_\_, hereunto duly authorized, this \_\_\_\_ day of 20\_\_.

By: \_\_\_\_\_

Its: tbd

**NOTARIZATION OF HOLDER'S SIGNATURE**

**THIRD PARTY ENFORCER ACCEPTANCE**

The third party rights of enforcement granted under the above and foregoing Conservation Easement, pursuant to Title 33 M.R.S Section 476 et seq., were authorized to be accepted by the State of Maine Department of Environmental Protection by \_\_\_\_\_, its Director of the Bureau of Land & Water Quality, hereunto duly authorized and the said \_\_\_\_\_ does hereby accept the foregoing Conservation Easement this \_\_\_\_ day of 20\_\_.

STATE OF MAINE

DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: \_\_\_\_\_

Its: Director, Bureau of Land & Water Quality

**Exhibit A – Property Description**



Gary Beers &lt;gbeers.ktc@gmail.com&gt;

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**Re: Yankee Commons Eppansion's Open Space proposal**

1 message

---

**cwilson515@aol.com** <cwilson515@aol.com>

Mon, Nov 16, 2015 at 8:48 PM

To: Ncolbertpuff@kitteryme.org, cdimatteo@kitteryme.org, gbeers.ktc@gmail.com

Cc: gb-pksvc@hotmail.com

Memo:

From: KOSAC

To: Town Manager, Planner, Town Council Chair, Mr. G. Beers, representative for the YCMHP expansion proposal

Re: Comments on the Open Space Proposal that is part of the application to expand YCMHP.

First a brief history about KOSAC's involvement with the proposal. In May of 2015, Mr. Beers made a presentation at a KOSAC meeting about the proposal to preserve approx. 36 acres of land adjacent to the proposed expansion of the MHP. He was asking the committee's opinion as to how best to structure the preservation. Subsequently, the PB invited the Committee to participate in their site walk and at a later date 2 committee members walked the Open Space

Over the following months, the Committee continued to discuss the proposal but could not come to a consensus as to the best form the preservation should take.

In the meantime, lacking guidance from KOSAC, the applicant developed the current proposal that's before the PB and TC.

At it's Nov. meeting, KOSAC decided to support and comment on that proposal.

The committee recognizes that the proposal has features that KOSAC favors OS set asides. First and foremost, the general public will have access to the trail that will be built and maintained by YCMHP management. All others have restricted access to only development members. As well as access, the Park will construct and maintain parking for the general public for trail use. The area outside of the trail will be preserved as per the proposed easements. Habitat for flora and fauna is to be protected The existing tree line along I-95 will be maintained to mitigate the nuisances inherent in that corridor. Additionally, maintaining the OS as forested will act as a sink for some of the greenhouse gases we as a community produce.

The committee's support comes with several caveats. The easements need to be vetted by some legal authority versed in easements to guarantee that they accomplish the goal of preservation. Some individual/dept./or committee within the Town infrastructure should be designated as the steward/enforcer of the easement. There should be an appropriate sum of money placed in a trust controlled by the Town for any stewardship and enforcement actions that may arise. Lastly, there should be a management plan submitted by the applicant for the OS-especially the trail corridor- ie best management practices used in construction, rules for the use of the trail, enforcement responsibilities for those rules, signage at the property boundaries of the OS noting it designation, etc.

Respectfully submitted

Steve Hall, Megan Kline, Page Mead, Craig Wilson

For the Kittery Open Space Advisory Comittee

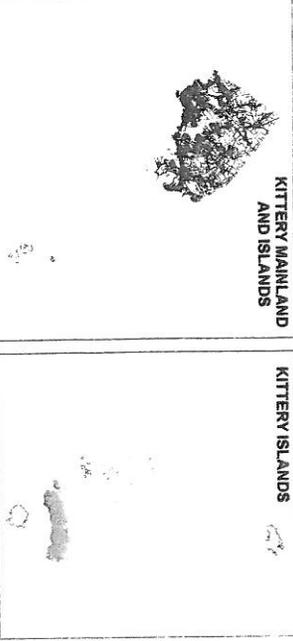




# KITTERY MAINLAND OPEN SPACE

**LAND CLASSIFICATION**

[Dark Gray Box]	Town Owned
[Medium-Dark Gray Box]	Current Use - Farm
[Medium Gray Box]	Current Use - Tree Growth
[Light Gray Box]	Non-Profit Easement
[White Box]	Non-Profit Fee
[Lightest Gray Box]	State
[Medium-Light Gray Box]	Federal
[White Box]	Tax Parcels





**Kittery 012**

PoolID	1602
ExportDate	4/9/2015
CenterLat	43.130524
CenterLong	-70.705087
CenterX	361314
CenterY	4776720
IFWPoolID	1602
SurveyDate	4/16/2009
ProjectID	85
Township	Kittery
SiteName	Kittery 012
ObsSiteName	VP-01
PoolMapMethod	Pool outline was delineated in the field with a GPS
GISSharing	Public
PubReview	Y
SVPStatus	SIGNIFICANT
Status_General	Significant
SHAPE	Point

Image modified 22 July 2015 to show approximate site boundaries

**REPORT TO THE KITTERY TOWN COUNCIL – OPEN SPACE – CONSERVATION EASEMENT  
ATTACHMENT 4b, KITTERY SIGNIFICANT VERNAL POOL 012 – 06/14/15 - CLOSEUP**

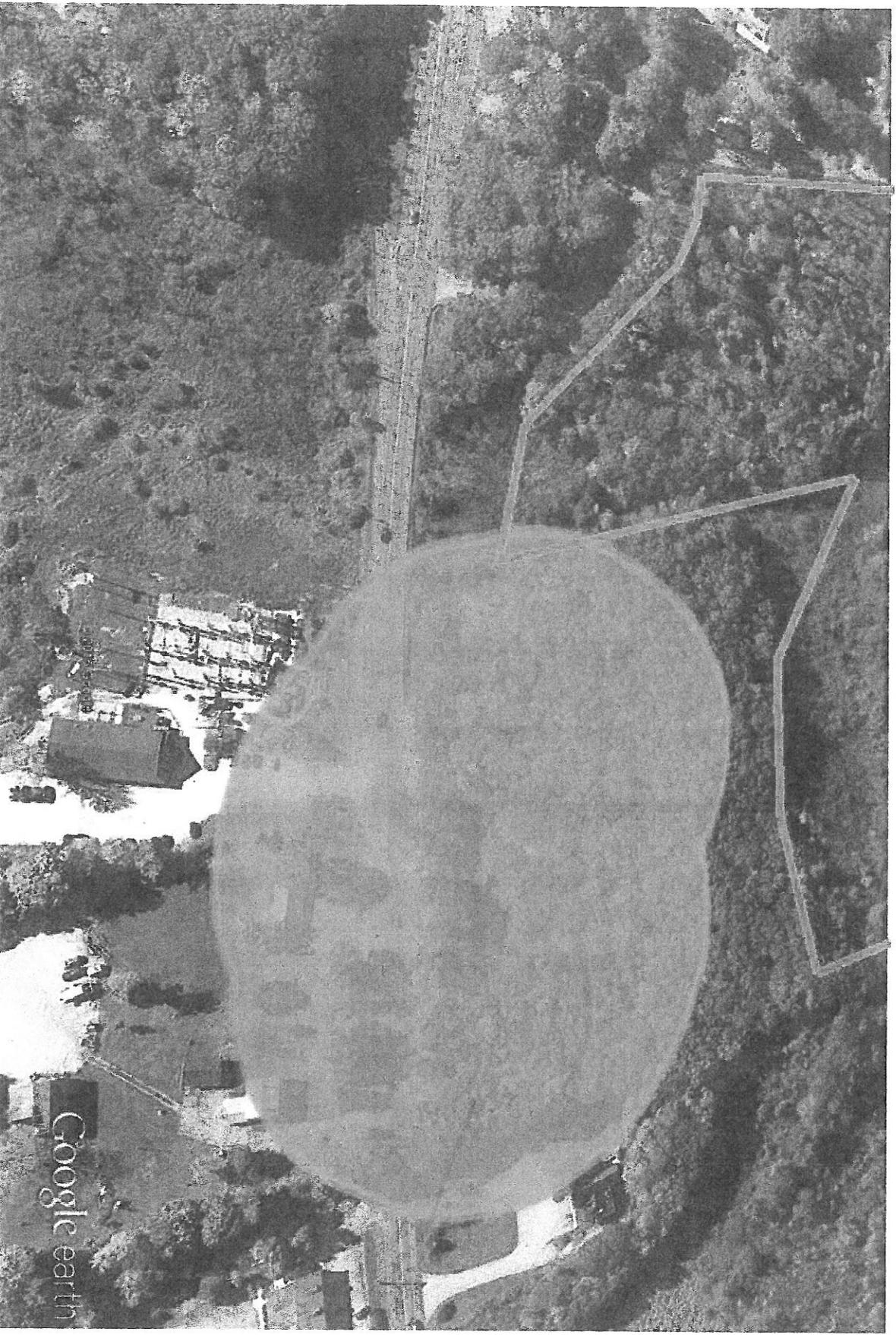


Image modified 22 July 2015 to show approximate site boundaries

**REPORT to THE KITTERY TOWN COUNCIL – OPEN SPACE – CONSERVATION EASEMENT  
Attachment 5**

1 **PURSUANT TO KITTERY COMPREHENSIVE PLAN**

2 **1999 Update of the Kittery Comprehensive Plan / Revised 11/10/00**  
3 **ADOPTED BY COUNCIL 3/25/02**

4 As is seen following, the project overall meets many goals of the current plan:

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5 **SECTION C. NATURAL RESOURCES**

6 **12. GOALS AND POLICIES (pg 63)**

7 **State Goals:** To protect the quality and manage the quantity of the State's water resources, including  
8 lakes, aquifers, great ponds, estuaries, rivers and coastal areas. (Growth Management Act)  
9 To protect the State's other critical natural resources, including without limitation, wetlands, wildlife and  
10 fisheries habitat, sand dunes, shorelands, scenic vistas and unique natural areas. (Growth Management  
11 Act)

12 **Local Goals:**

13 To protect and improve the quality of the surface waters within Kittery.

14 To protect and preserve the quality and supply of groundwater resources.

15 To protect wetlands that have significant functional value and adjacent uplands from encroachment and  
16 degradation.

17 To manage the use of flood prone areas to reduce the risk of property and environmental damage.

18 To protect significant wildlife and fisheries habitat and critical and unique areas.

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19 **SECTION I. NATURAL RESOURCES**

20 **6. GOALS AND POLICIES (pg 184)**

21 **State Goal:** To encourage and promote affordable, decent housing opportunities for all Maine citizens.  
22 (Growth Management Act)

23 **Local Goals:**

24 To encourage a diversity of housing to meet the needs of a wide range of residents.

25 To assure that as new housing is built in Kittery, at least 10% of the new units are affordable to lower or  
26 moderate income households.

**REPORT to THE KITTERY TOWN COUNCIL – OPEN SPACE – CONSERVATION EASEMENT  
Attachment 5**

27 Pursuant to these goals, the Town’s policies are:

28 2. The Town will continue to allow housing for the elderly to be built at higher densities than other types  
29 of housing in areas that are currently zoned Urban Residential and will explore providing an elderly  
30 housing density bonus in other areas that are residentially zoned and served by public sewerage in  
31 recognition of the lower impact that this type of housing has on the community.

32 4. The Town should work with nonprofit organizations and private developers to encourage that a balance  
33 is maintained in the supply of housing so that a range of lower, mid, and higher cost housing is available  
34 in Kittery including housing that is affordable to low and moderate income households.

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35 **SECTION K. RECREATION AND OPEN SPACE**

36 **11. GOALS AND POLICIES (pp 209-211)**

37 **State Goal:** To promote and protect the availability of outdoor recreation opportunities for all Maine  
38 citizens, including access to surface waters. (Growth Management Act)

39 **Local Goals:**

40 To provide recreational facilities to adequately meet the needs of the Town’s current population and to  
41 provide facilities for the growing population.

42 To maintain the current level of public access to the Atlantic Ocean and Piscataqua River and to expand  
43 and improve access as opportunities arise.

44 To maintain the rural, open landscape in designated nongrowth areas.

45 Pursuant to these goals, the Town’s policies are:

46 1. The Town will continue to require that new subdivisions address the need for recreation and open space  
47 resulting from the development but the Town should revise its system to allow either the provision of on-  
48 site facilities or financial participation in off-site facilities through the payment of in-lieu of or impact  
49 fees.

50 4. The Town should work to develop interconnections between the existing trails and begin developing  
51 information about the nature trails within the Town and promoting usage of them for recreational  
52 purposes.

53 6. The Town should have the Planning Board and Conservation Commission develop an open space plan  
54 for the Town that identifies important areas that are suitable for open space and recreational use and  
55 establishes priorities for the protection or acquisition of a land. This plan should encourage the linkage of  
56 open spaces to create a continuous open space network that can also function as a contiguous wildlife  
57 corridor. The Town should continue to explore and support opportunities to purchase and acquire open  
58 space/conservation easements and land. The Town should also explore creating a land acquisition fund to  
59 be used for acquiring key open space that is identified in the plan that is threatened by change in  
60 ownership or potential development.

**REPORT to THE KITTERY TOWN COUNCIL – OPEN SPACE – CONSERVATION EASEMENT  
Attachment 5**

61 7. The Town should explore requiring developers to contribute to a fund for the purchase of recreation  
62 and/or conservation land or creating an impact fee for this purpose.

63 8. The Town should support efforts by the Kittery Land Trust to privately acquire key parcels of open  
64 space.

65 9. The Town should actively work with the owners of large parcels of open land to educate them about  
66 non development options and to find ways that the owners' interests can be met without developing the  
67 land.

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68 **SECTION M. HISTORIC AND ARCHAEOLOGICAL RESOURCES**

69 **5. GOALS AND POLICIES (pp 226-228)**

70 **State Goal:** To preserve the State's historic and archaeological resources. (Growth Management Act)

71 **Local Goals:**

72 To preserve the community's historic buildings, sites, and neighborhoods.

73 To assure that the community's archaeological resources are identified and protected from inadvertent  
74 damage or destruction.

75 To preserve and promote Kittery's historic and archaeological resources.

76 Pursuant to these goals, the Town's policies are:

77 4. As part of its development review process, the Town will require applicants for subdivision or site plan  
78 approval to document any identified historic resources that may be impacted by the project and to address  
79 the impact of the project on these resources.

**REPORT to THE KITTELY TOWN COUNCIL – OPEN SPACE – CONSERVATION EASEMENT  
Attachment 6**

**1 CONSISTENCY with TITLE 16**

**2 A. CONSISTENT with CLUSTERED DEVELOPMENT CONCEPTS**

*3 Article XI. Cluster Residential and Cluster Mixed-Use Development.*

*4 16.8.11.1 Purpose.*

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

- 11 A. efficient use of the land and water, with small networks of utilities and streets; B. preservation of*
- 12 open space and creation of recreation areas;*
- 13 C. maintenance of rural character, preserving farmland, forests and rural viewsapes;*
- 14 D. preservation of areas with the highest ecological value;*
- 15 E. location of buildings and structures on those portions of the site most appropriate for*
- 16 development;*
- 17 F. creation of a network of contiguous open spaces or ‘greenways’ by linking the common open*
- 18 spaces within the site and to open space on adjoining lands wherever possible;*
- 19 G. reduction of impacts on water resources by minimizing land disturbance and the creation of*
- 20 impervious surfaces and stormwater runoff;*
- 21 H. preservation of historic, archaeological, and cultural features; and*
- 22 I. minimization of residential development impact on the municipality, neighboring properties, and*
- 23 the natural environment.*

*24 Cluster Development also known as conservation development is a site planning approach that is an*  
*25 alternative to conventional subdivision development. It is a practice of Low Impact Development that*  
*26 groups residential properties in a proposed subdivision closer together in order to utilize the rest of the*  
*27 land for open space, recreation or agriculture.*

*28 The benefits of cluster development as opposed to a conventional subdivision include: more preserved*  
*29 land for open/recreational space, a better setting for community building, possible local agriculture*  
*30 production, and an optimal arrangement in storm water management. Furthermore cluster development*  
*31 makes more ecological and economical sense.*

*32 By clustering residential properties there is less impervious surface and more natural drainage which*  
*33 reduces storm water flooding, and soil erosion. As well, strategic areas in the extra space can be used trap*  
*34 nutrients and suspend runoff. Economical benefits include having fewer roads, sewer/drainage, and*  
*35 electric/gas utility infrastructure to construct. Higher density means reduced travel time for services as*  
*36 well as the possibility for public transportation, increased bicycle usage, and pedestrianism. This*  
*37 subsequently would mean less petroleum usage, and Co2 emission. There is the possibility of having*  
*38 community-supported agriculture (CSA) which decreases food miles and supports local economy. Higher*  
*39 density also has implications for an increase in recreation and community.*

**REPORT to THE KITTELY TOWN COUNCIL – OPEN SPACE – CONSERVATION EASEMENT  
Attachment 6**

**40 B. CONSISTENT with ELDERLY HOUSING CONCEPTS**

**41 16.2.2 Definitions.**

42 *Elderly housing means a residential use occupied principally by residents who are at least fifty-five*  
43 *(55) years of age (or in the case of a couple, at least one of whom is at least fifty-five) years of age) in*  
44 *which the accommodations are all dwelling units with private bathrooms and cooking facilities.*  
45 *Occupants of this residential use may also include handicapped individuals of any age. This housing*  
46 *does not provide a regular program of services to all of its residents although individual residents*  
47 *may arrange for the provision of services within the facility. Elderly housing includes very limited*  
48 *shared community space and shared dining and kitchen facilities but may include limited facilities for*  
49 *allied health services, social services, and personal services such as physical and occupational*  
50 *therapy, a beauty shop, recreational programs, elderly day care, and similar programs. The use of*  
51 *these facilities must be accessory to the primary residential use of the facility but may be open to*  
52 *nonresidents of the facility. Elderly housing does not include eldercare facilities that are typically*  
53 *referred to as independent living units, congregate care units, assisted living units, dementia or*  
54 *Alzheimer’s units, or hospice units, or a nursing care or convalescent care facility that provides*  
55 *nursing services.*

56 Maine is aging and Kittery is increasingly gentrifying. A great many local homeowners of 30-40-50  
57 years are approaching, or in, retirement with reduced income. They are finding taxes and upkeep of their  
58 highly valued property moving out of their reach. Reasonably affordable alternatives mainly exist in  
59 other towns some distance inland. Selling and moving elsewhere uproots folks from the town where they  
60 have a long history they would prefer to maintain.

61 With EnergyStar-certified quality-built homes and garages in the \$125-\$175K range, they could sell and  
62 live comfortably right in this town with all it means to them. Additionally, the project becomes  
63 something of a “walkable community” (4/10ths of a mile furthest to the Community Center; a half-mile  
64 to Rte 1; 3/4ths to Landmark Hill businesses; a mile to Three Buoys restaurant). With a community  
65 garden; community center group activities, meeting spaces, and personal services (potentially); and,  
66 walking trails in an out-of-the-way quiet setting.

**67 C. COMPLIANT for MIXED USES**

**68 16.3.2.13 Mixed Use MU.**

69 “.....A mix of uses on a site is desired and in some cases, required....”

*Permitted Use*

- 5. Business and professional offices;
- 19. Personal services;
- 20. Public open space or recreation;
- 29. Accessory buildings and uses including minor or major home occupations;
- 32. Specialty food and/or beverage facility.  
[Function Hall]

*Special Exception Use*

- 6. Housing for elderly as part of a mixed use project;
- 11. Public utility facilities including substations, pumping stations, and sewage treatment facilities;

**REPORT to THE KITTELY TOWN COUNCIL – OPEN SPACE – CONSERVATION EASEMENT  
Attachment 6**

70 The project includes all the above listed uses. The Community Center facility will contain business and  
71 sales offices; meeting rooms; a medium size (125 seating) function room; and an accessory maintenance  
72 shop/garage. The prospect of personal services will be addressed (OT/PT and equipment; hair care; etc.),  
73 (must be viable for the provider). The non-developed 30+ acres is proposed to the Kitterly Land Trust for  
74 a conservation easement with public access walking trails. The project must pay for a water department  
75 pumping station benefitting its system and may have to provide a similar system for the sewer  
76 department.

77 Also noted is the net positive fiscal impact to the town. Significant Public Safety Impact Fees will be  
78 paid. With the owner taking care of roads, water, sewer, street lighting, waste disposal, and so on; and, no  
79 school students. The estimated added valuation, when completed, would contribute more than \$200,000  
80 annually in new taxes, along with the sewer and water department added revenues.

1 **EXCERPTS RELATED TO OPEN SPACE – CONSERVATION EASEMENT**

2 **16.2 Definitions**

3 **Open space** means and includes all dedicated portions of a parcel that has vegetated surfaces or is in an  
4 undisturbed natural state. "Open space" does not include areas occupied by a building or a parking area except  
5 where required by the management plan in place to govern the open space and as approved by the Planning  
6 Board. Vegetated surfaces of outdoor commercial uses may be used to satisfy up to fifty percent (50%) of the  
7 required open space on any parcel except those parcels within a cluster residential or cluster mixed-use  
8 development. (Ordained 9/24/12; effective 10/25/12)

9 **Open Space, Common** means useable land within or related to a development, not individually owned, which is  
10 designed and intended for the common use or enjoyment of the residents of the development and may include  
11 such complementary structures, improvements and uses approved by the Planning Board. Such uses may  
12 include active or passive recreation or agriculture, where permitted. (Ordained 9/24/12; effective 10/25/12)

13 **Open Space, Reserved** means dedicated land that is permanently protected from further development and  
14 remains in a natural condition or is managed according to an approved management plan for natural resource  
15 functions, e.g. forestry, agriculture, habitat protection, passive recreation, or limited uses as approved by the  
16 Planning Board as part of cluster residential and cluster mixed-use developments. (Ordained 9/24/12;  
17 effective 10/25/12)

18 **Open Space, Public** means land accessible or dedicated for public use. (Ordained 9/24/12; effective  
19 10/25/12)

20 **Wetland preservation** means the maintenance of an area of wetlands or adjacent upland so that it remains in  
21 a natural or undeveloped condition. Preservation measures include, but are not limited to, conservation  
22 easements and land trusts.

23 **16.3.2.13 Mixed Use MU.**

24 **D. Standards.**

25 **8. Open Space Standards.**

26 Open space must be provided as a percentage of the total area of the lot, including freshwater wetlands, water  
27 bodies, streams, and setbacks. Thirty-five percent (35%) of each lot must be designated as open space.  
28 Required open space must be shown on the plan with a note dedicating it as "open space."

29 a. An objective of the open space standard is to encourage the integration of open space throughout the  
30 entire development and with the open space on adjoining properties in order to alter the pattern of commercial  
31 activity along Route 1. To this end, a minimum of twenty-five percent (25%) of the required open space must  
32 be located in the front fifty percent (50%) of the lot area closest to U.S. Route 1, or if not fronting Route 1,  
33 closest to the public street used to enter the lot.

34 b. The open space must be located to create an attractive environment on the site, minimize environmental  
35 impacts, protect significant natural features or resources on the site, and maintain wildlife habitat. Where  
36 possible, the open space must be located to allow the creation of continuous open space networks in  
37 conjunction with existing or potential open space on adjacent properties.

38 **c. Special Situations**

39 **i. Cases Where Integrating Open Space Would Require Exceeding the Open Space Standards.**

40 In cases where the topography, wetlands, and existing development on the lot dictates that more than seventy-  
41 five percent (75%) of the required open space be located outside the front portion of the lot, a percentage of  
42 the open space normally required in the front portion of the lot may be shifted to the rear portion of the lot in  
43 order to achieve the required amount of vegetated open space and not reduce the allowable developable area  
44 on the lot, provided minimum landscaping standards are satisfied.

**45 Article XI. Cluster Residential and Cluster Mixed-Use Development.**

**46 16.8.11.5 Application Procedure.**

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

49 A. In addition to the requirements of Chapter 16.10, the following are required at submittal of the Sketch  
50 Plan:

51 1. Calculations and maps to illustrate:

52 a. proposed dimensional modifications and the dimensional standards required in the zone in which the  
53 development will be located;

54 b. non-buildable area (land not suitable for development as defined in Article VIII of Chapter 16.7);

55 c. net residential acreage and net residential density; and

56 d. open space as defined in Section 16.8.11.6.D.2 of this Article.

57 2. A map showing constraints to development, such as, but not limited to, wetlands, resource protection  
58 zones, shoreland zones, deer wintering areas, side slopes in excess of thirty-three percent (33%), easements,  
59 rights-of-way, existing roads, driveway entrances and intersections, existing structures, and existing utilities.

60 3. A written statement describing the ways the proposed development furthers the purpose and objectives of  
61 this Article, including natural features which will be preserved or enhanced. Natural features include, but are  
62 not limited to, moderate-to-high value wildlife and waterfowl habitats, important agricultural soils, moderate-to-  
63 high yield aquifers and important natural or historic sites worthy of preservation.

64 4. The location of each of the proposed building envelopes. Only developments having a total subdivision or  
65 site plan with building envelopes will be considered.

66 B. An applicant with a project that includes proposed public open space must obtain Town Council  
67 acceptance for the public land or easement following Preliminary Plan approval. Town Council acceptance is  
68 contingent upon receipt of Final Plan approval by the Planning Board.

**69 16.8.11.6 Standards.**

70 E. Open Space Requirements:

71 1. Open space must contain at least 50% of the total area of the property, and no less than 30% of the total  
72 net residential acreage, as defined.

73 2. Total calculated open space must be designated as follows (See Open Space definitions Section 16.2):

74 a. Open Space, Reserved; b. Open Space, Common; and/or c. Open Space, Public.

75 3. The use of any open space may be further limited or controlled by the Planning Board at the time of final  
76 approval, where necessary, to protect adjacent properties or uses.

77 4. Open space must be deeded in perpetuity for the recreational amenity and environmental enhancement of  
78 the development and be recorded as such. Such deed provisions may include deed/plan restrictions, private  
79 covenants, or arrangements to preserve the integrity of open spaces and their use as approved by the  
80 Planning Board.

81 5. Open space must also be for preserving large trees, tree groves, woods, ponds, streams, glens, rock  
82 outcrops, native plant life, and wildlife cover as identified in applicant's written statement. In the Business Park  
83 (BP) zone, open space may be both man-made and natural. Man-made open space must be for the  
84 development of recreational areas, pedestrian ways and aesthetics that serve to interconnect and unify the  
85 built and natural environments.

**RTC - KITTELY TOWN CODE TITLE 16 – LAND USE and DEVELOPMENT ZONING ORDINANCE, 2/28/15  
ATTACHMENT 7**

86 6. Open space should be in a contiguous form of unfragmented land to protect natural resources, including  
87 plant and wildlife habitats.

88 7. A portion of the open space should be in close proximity to other open spaces used for recreation (e.g. a  
89 common green, multi-purpose athletic field, gardens, and playgrounds).

90 **16.8.11.7 Open Space Dedication and Maintenance.**

91 A. Prior to approval of the final plan by the Planning Board, documents for open space must be submitted to  
92 the Town for review by legal counsel. Subsequent to approval, there may be no further division of the open  
93 space; however, tracts or easements dedicated for public utilities, public access or structures accessory to  
94 noncommercial recreation, agriculture or conservation may be permitted within the open space.

95 B. The open space(s) must be shown on the development plan with appropriate notation on the face thereof  
96 to indicate that:

97 1. The open space must not be used for future building lots; and

98 2. A part or all of the open space may be dedicated for acceptance by the Town.

99 C. If any, or all, of the open space is to be reserved for ownership by the residents and/or by commercial  
100 entities, the bylaws of the proposed homeowner's or similar governing association for commercial owners (in  
101 the Business Park zone), and/or the recorded covenants must specify maintenance responsibilities and be  
102 submitted to the Planning Board prior to approval. See subsection A above.

103 D. Association Responsibilities.

104 1. Maintenance: The homeowner's association or similar association for commercial owners is responsible  
105 for the maintenance of open space(s), and other common facilities unless and until accepted by the Town. The  
106 stormwater management system must be maintained in accordance with Section 16.8.8.2, Post- construction  
107 Stormwater Management. Associations must maintain adequate funds to defray these expenses. The  
108 Planning Board shall require an initial capital fund for associations to be paid by the developer to cover these  
109 expenses.

110 2. Inspection: Annually, by June 30, the developer or association must complete and submit to the Code  
111 Enforcement Officer a Maintenance Compliance Report on a form prepared by the Code Enforcement Officer  
112 certifying compliance with any open space use and protection requirements. Said report must be completed  
113 by a Maine licensed civil engineer or certified soil scientist.

114 E. Transition of Responsibility. The developer must maintain control of such open space(s) and be  
115 responsible for maintenance until development, sufficient to support any and all associations, residential or  
116 commercial, has taken place. Responsibility and authority must be clearly defined and described in the  
117 recorded covenants, and such information must be distributed to any and all associations in a timely manner  
118 so the transition of responsibilities is seamless.

119 **16.8.12.3 Mobile Home Parks.**

120 O. Open space calculations are as follows:

121 1. For mobile home parks served by a public sewer, an area amounting to ten (10) percent of the total area  
122 devoted to individual lots must be set aside for open space and/or recreation. Such space is to be accessible  
123 and usable by all residents of the park. Parking space, driveways and streets and buffer areas are not  
124 considered usable open space but community recreation buildings, pools and courts are considered as open  
125 space.

**RTC - KITTELY TOWN CODE TITLE 16 – LAND USE and DEVELOPMENT ZONING ORDINANCE, 2/28/15  
ATTACHMENT 7**

- 126 2. At least fifty (50) percent of the required open space must consist of land that is suitable for active  
127 recreation.
- 128 3. All developed open space is to be designed and landscaped for the use and enjoyment of the park  
129 residents and maintained for their long-term use. Plans for these areas must be submitted by the developer.
- 130 4. To the maximum extent possible, undeveloped open space must be left in its natural state. Improvements  
131 to make trails for walking and jogging or to make picnic areas are permitted.
- 132 5. The developer must submit, as part of the application, a copy of that portion of the proposed park rules and  
133 a plan which specify how the open space is to be used and maintained and what conditions apply to its use.  
134 The plan must specify the area to be dedicated open space or recreation.
- 135 6. Open space must be maintained and used for its approved purposes.
- 136 W. The owner or operator of a mobile home park is responsible for ensuring the maintenance of all park-  
137 owned structures, open space areas, roads and pedestrian ways/sidewalks. Park management must comply  
138 with state laws. Compliance with this Code does not exempt the park owner, developer, or manager from  
139 complying with other applicable local, state and federal codes and regulations. (Ordained 9/26/11; effective  
140 10/27/11)
- 141 **16.9.2.3 Land Dedication.**  
142 Reserved land acceptable to the Planning Board and applicant may be gifted to the municipality as a condition  
143 of approval, only when Council has agreed to the gifting.
- 144 **16.9.3.12 Submission Requirements for a Wetland Alteration Application.**  
145 C. Wetlands mitigation plan and report. A wetlands mitigation plan and report is required for activities which,  
146 in total, affect or fill more than five hundred (500) square feet of wetlands.
- 147 5. For projects involving preservation of wetlands or adjacent uplands, a conservation easement must be  
148 conveyed or deed restriction imposed so that the parcel will remain undeveloped in perpetuity.
- 149 **16.10.7.2 Final Plan Application Submittal Content.**
- 150 N. Open Space Land Cession Offers. Written offers of cession to the municipality of all public open space  
151 shown on the plan, and copies of agreements, or other documents showing the manner in which space(s),  
152 Code to which is reserved by the subdivider, are to be maintained.
- 153 O. Open Space Land Cession Offers Acknowledgement by Town. Written evidence that the municipal officers  
154 are satisfied with the legal sufficiency of the documents referred to in Section 16.10.7.2O. Such written  
155 evidence does not constitute an acceptance by the municipality of any public open space referred to in Section  
156 16.10.7.2O.
- 157 **16.10.9.1.3 Approval Not Acceptance of Property.**  
158 The approval by the Planning Board of a plan, a master site development plan or any other subsequent  
159 development plan does not constitute, nor is it evidence of any acceptance by the municipality of any street,  
160 easement, or other open space shown on the plan. When a park, playground, or other recreation area is  
161 shown on the plan, approval of the plan does not constitute an acceptance by the municipality of such areas.  
162 The Planning Board must require the plan to be endorsed with appropriate notes to this effect. The Planning  
163 Board may also require the filing of a written agreement between the applicant and the municipal officials  
164 covering future deed and Code, dedication, and provision for the cost of grading, development, equipment, and  
165 maintenance of any such recreation area.

**Maine Revised Statutes**

**Title 33: PROPERTY**

**Chapter 7: CONVEYANCE OF REAL ESTATE**

**Subchapter 8-A: CONSERVATION EASEMENTS**

1 **§476. Definitions**

2 As used in this subchapter, unless the context otherwise indicates, the following terms have the  
3 following meanings.

4 **1. Conservation easement.** "Conservation easement" means a nonpossessory interest of a holder in  
5 real property imposing limitations or affirmative obligations the purposes of which include retaining  
6 or protecting natural, scenic or open space values of real property; assuring its availability for  
7 agricultural, forest, recreational or open space use; protecting natural resources; or maintaining or  
8 enhancing air or water quality of real property.

9 **2. Holder.** "Holder" means:

10 A. A governmental body empowered to hold an interest in real property under the laws of this State  
11 or the United States; or

12 B. A nonprofit corporation or charitable trust, the purposes or powers of which include retaining or  
13 protecting the natural, scenic or open space values of real property; assuring the availability of real  
14 property for agricultural, forest, recreational or open space use; protecting natural resources; or  
15 maintaining or enhancing air or water quality or preserving the historical, architectural,  
16 archaeological or cultural aspects of real property.

17 **3. Real property.** "Real property" includes without limitation surface waters.

18 **4. Third-party right of enforcement.** "Third-party right of enforcement" means a right provided in  
19 a conservation easement to enforce any of its terms granted to a governmental body, nonprofit  
20 corporation or charitable trust, which, although eligible to be a holder, is not a holder.

21 **§477. Creation, conveyance, acceptance and duration**

22 **1. Conservation easement.** Except as otherwise provided in this subchapter, a conservation  
23 easement may be created, conveyed, recorded, assigned or partially released in the same manner as  
24 other easements created by written instrument. A conservation easement may be terminated or  
25 amended by the parties only as provided in section 477-A, subsection 2.

26 **2. Right or duty.** No right or duty in favor of or against a holder arises under a conservation  
27 easement unless it is accepted by the holder and no right in favor of a person having a 3rd-party right  
28 of enforcement arises under a conservation easement unless it is accepted by any person having a  
29 3rd-party right of enforcement.

30 **3. Limitation.** Except as provided in this subchapter, a conservation easement is unlimited in  
31 duration unless:

32 A. The instrument creating it otherwise provides; or

33 B. Change of circumstances renders the easement no longer in the public interest as determined by  
34 the court as provided in section 477-A, subsection 2, paragraph B in an action under section 478.

**REPORT to THE KITTELY TOWN COUNCIL – OPEN SPACE – CONSERVATION EASEMENT  
ATTACHMENT 8**

35 **4. Interest.** An interest in real property in existence at the time a conservation easement is created  
36 shall not be impaired by it unless the owner of the interest is a party to the conservation easement or  
37 consents to it.

38 **5. Entitled to enter land.** The instrument creating a conservation easement must provide in what  
39 manner and at what times representatives of the holder of a conservation easement or of any person  
40 having a 3rd-party right of enforcement shall be entitled to enter the land to assure compliance.

41 **§477-A. Conservation easement standards**

42 **1. Conservation values.** A conservation easement executed on or after the effective date of this  
43 section must include a statement of the conservation purposes of the easement, the conservation  
44 attributes associated with the real property and the benefit to the general public intended to be served  
45 by the restriction on uses of the real property subject to the conservation easement.

46 **2. Amendment and termination.** Amendments and termination of a conservation easement may  
47 occur only pursuant to this subsection.

48 A. A conservation easement executed on or after the effective date of this section must include a  
49 statement of the holder's power to agree to amendments to the terms of the conservation easement in  
50 a manner consistent with the limitations of paragraph B.

51 B. A conservation easement may not be terminated or amended in such a manner as to materially  
52 detract from the conservation values intended for protection without the prior approval of the court in  
53 an action in which the Attorney General is made a party. In making this determination, the court shall  
54 consider, among other relevant factors, the purposes expressed by the parties in the easement and the  
55 public interest. If the value of the landowner's estate is increased by reason of the amendment or  
56 termination of a conservation easement, that increase must be paid over to the holder or to such  
57 nonprofit or governmental entity as the court may designate, to be used for the protection of  
58 conservation lands consistent, as nearly as possible, with the stated publicly beneficial conservation  
59 purposes of the easement.

60 **3. Monitoring.** The holder of a conservation easement shall monitor the condition of the real  
61 property subject to the conservation easement at least every 3 years and shall prepare and retain a  
62 written monitoring report in its permanent records. The holder shall make available to the landowner,  
63 upon request, a copy of the monitoring report.

64 **4. Failure to comply.** Failure to comply with the requirements of subsection 1, subsection 2,  
65 paragraph A or subsection 3 does not invalidate a conservation easement otherwise entitled to the  
66 protections of this subchapter.

67 **§478. Judicial actions**

68 **1. Action or intervention.** An action affecting a conservation easement may be brought or  
69 intervened in by:

70 A. An owner of an interest in the real property burdened by the easement;

71 B. A holder of the easement;

72 C. A person having a 3rd-party right of enforcement; or

**REPORT to THE KITTELY TOWN COUNCIL – OPEN SPACE – CONSERVATION EASEMENT  
ATTACHMENT 8**

73 D. The Attorney General; except that the Attorney General may initiate action seeking enforcement  
74 of a conservation easement only when the parties designated as having the right to do so under the  
75 terms of the conservation easement:

- 76 (1) Are no longer in legal existence;
- 77 (2) Are bankrupt or insolvent;
- 78 (3) Cannot be contacted after reasonable diligence to do so; or
- 79 (4) After 90 days' prior written notice by the Attorney General of the nature of the asserted failure,  
80 have failed to take reasonable actions to bring about compliance with the conservation easement

81 **2. Intervention only.** An action affecting a conservation easement may be intervened in by a  
82 political subdivision of the State in which the real property burdened by the easement is located, in  
83 accordance with court rules for permissive intervention.

84 **3. Power of court.** The court may permit termination of a conservation easement or approve  
85 amendment to a conservation easement that materially detracts from the conservation values it  
86 serves, as provided in section 477-A, subsection 2, paragraph B, and may enforce a conservation  
87 easement by injunction or proceeding at law and in equity. A court may deny equitable enforcement  
88 of a conservation easement only when it finds that change of circumstances has rendered that  
89 easement no longer in the public interest or no longer serving the publicly beneficial conservation  
90 purposes identified in the conservation easement. If the court so finds, the court may allow damages  
91 as the only remedy in an action to enforce the easement.

92 **4. Confidentiality of records.** Documents and records obtained by the Attorney General, which  
93 would otherwise not legally be subject to public disclosure, may be shared with other public agencies  
94 but must be held as legally confidential under Title 1, section 402, unless disclosed in the course of a  
95 public proceeding in court.

No comparative economic test may be used to determine under this subchapter if a conservation  
easement is in the public interest or serves a publicly beneficial conservation purpose.

96  
97 **§479. Validity**

98 A conservation easement is valid even though:

99 **1. Not appurtenant to interest in real property.** It is not appurtenant to or does not run with an  
100 interest in real property;

101 **2. Assigned to another holder.** It can be or has been assigned to another holder;

102 **3. Not recognized at common law.** It is not of a character that has been recognized traditionally at  
103 common law;

104 **4. Negative burden.** It imposes a negative burden;

105 **5. Affirmative obligations.** It imposes affirmative obligations upon the owner of an interest in the  
106 burdened property or upon the holder;

107 **6. Benefit does not touch or concern real property.** The benefit does not touch or concern real  
108 property;

109 **7. No privity of estate or of contract.** There is no privity of estate or of contract;

110 **8. Does not run to successors or assigns.** It does not run to the successor and assigns of the holder;

**REPORT to THE KITTELY TOWN COUNCIL – OPEN SPACE – CONSERVATION EASEMENT  
ATTACHMENT 8**

111 **9. Acquired for tax delinquency.** A lien has been established for property tax delinquency under  
112 Title 36, section 552, or title to the real property subject to the conservation easement has been  
113 acquired by procedures for enforcement and foreclosure of delinquent taxes under Title 36, chapter  
114 105, subchapter 9; or

115 **10. Merger.** The title to the real property subject to the conservation easement has been acquired by  
116 the holder, unless the holder, with the consent of any 3rd party with rights of enforcement, replaces  
117 the conservation easement with legally binding restrictions under a conservation easement or  
118 declaration of trust at least as protective of the conservation values of the protected property as  
119 provided by the replaced easement.

120 **§479-A. Applicability**

121 **1. Interest created after effective date.** This subchapter applies to any interest created after its  
122 effective date which complies with this subchapter, whether designated as a conservation easement  
123 or as a covenant, equitable servitude, restriction, easement or otherwise.

124 **2. Conservation easement created before effective date.** This subchapter applies to any  
125 conservation easement created before the effective date of this subchapter if the conservation  
126 easement would have been enforceable had it been created after the effective date of this subchapter,  
127 unless retroactive application contravenes the Constitution of Maine or the United States  
128 Constitution.

129 **3. Subchapter does not invalidate interest.** This subchapter does not invalidate any interest,  
130 whether designated as a conservation or preservation easement or as a covenant, equitable servitude,  
131 restriction, easement or otherwise, that is enforceable under other laws of this State.

132 **§479-B. Uniformity of application and construction**

133 This subchapter shall be applied and construed to effectuate its general purpose to make uniform the  
134 laws with respect to the subject of the subchapter among states enacting it.

135 **§479-C. Conservation easement registry**

136 A holder of a conservation easement that is organized or doing business in the State shall annually  
137 report to the Department of Agriculture, Conservation and Forestry the book and page number at the  
138 registry of deeds for each conservation easement that it holds, the municipality and approximate  
139 number of acres protected under each easement and such other information as the Department of  
140 Agriculture, Conservation and Forestry determines necessary to fulfill the purposes of this  
141 subchapter. The filing must be made by a date and on forms established by the Department of  
142 Agriculture, Conservation and Forestry to avoid duplicative filings when possible and otherwise  
143 reduce administrative burdens. The annual filing must be accompanied by a \$30 fee. The Department  
144 of Agriculture, Conservation and Forestry shall maintain a permanent record of the registration and  
145 report to the Attorney General any failure of a holder disclosed by the filing or otherwise known to  
146 the Department of Agriculture, Conservation and Forestry. The fees established under this section  
147 must be held by the Department of Agriculture, Conservation and Forestry in a nonlapsing, special  
148 account to defray the costs of maintaining the registry and carrying out its duties under this section.

## Rebecca Spitko

---

**From:** Chris DiMatteo  
**Sent:** Thursday, December 03, 2015 12:52 PM  
**To:** Steve Hall  
**Cc:** Karen Kalmar; Nancy Colbert Puff; Christine Bennett; Rebecca Spitko  
**Subject:** RE: Yankee Commons Expansion Open Space proposal

Thank you Steve.  
I will include it in our packets.

Chris

**From:** Steve Hall [mailto:stehall@comcast.net]  
**Sent:** Thursday, December 03, 2015 11:55 AM  
**To:** Chris DiMatteo <CDiMatteo@kitteryme.org>; Karen Kalmar <those7@comcast.net>; Nancy Colbert Puff <NColbertPuff@kitteryme.org>  
**Subject:** Fwd: Yankee Commons Expansion Open Space proposal

I am forwarding Christine's letter because I feel it is important for the Planning Board to know that KOSAC was not unanimous in approving Craig's memo. Craig was under pressure to get a KOSAC response out right away. I thank him for getting out a well worded response under difficult constraints.

Steve Hall  
Conservation Commission representative on KOSAC

Begin forwarded message:

**From:** Christine Bennett <[cbennett@kitterylandtrust.org](mailto:cbennett@kitterylandtrust.org)>  
**Subject:** Re: Yankee Commons Expansion Open Space proposal  
**Date:** November 13, 2015 at 10:45:24 AM EST  
**To:** [ewilson515@aol.com](mailto:ewilson515@aol.com), [clayton@5devonwoods.com](mailto:clayton@5devonwoods.com)  
**Cc:** [mlrkline@comcast.net](mailto:mlrkline@comcast.net), [krconnor@comcast.net](mailto:krconnor@comcast.net), [stehall@comcast.net](mailto:stehall@comcast.net), [rbwhite@gmail.com](mailto:rbwhite@gmail.com), [kyoung@mta2c.org](mailto:kyoung@mta2c.org), [pagemead@comcast.net](mailto:pagemead@comcast.net), [earldeanwells@myfairpoint.net](mailto:earldeanwells@myfairpoint.net)

Dear Craig,

I have to respectfully disagree about your three points below.

1.) At the KOSAC meeting prior to this Tuesday's I shared input with Mr. Beers from my perspective that a deed restriction would be the best tool, followed by a fee donation and that I could not recommend an easement, because of liability, cost, complication and the town's inexperience with this conservation tool. I'm pretty certain that under IRS code, the town will need to establish a stewardship endowment fund and stewardship program in order to be deemed a "qualified holder of conservation easements".

2.) I recall the applicant's response vis a vis their legal counsel's advice about a fee donation adversely affecting the density calculations. There is precedent of this being overcome by Planning Board assent, namely in the Clayton Lane subdivision. Our code clearly states that fee simple interest of the land can be offered to the town as part of the cluster ordinance without any effect on net buildable calculations. This proposal is exempt from cluster, but unless there is some state regulation that is superceding/prohibiting this treatment, it seems like a simple route for the Planning Board to take.

3.) Just because the applicant will not consider any of our recommendations or address our concerns, does not mean we should alter them.

Nonetheless, it appears that the train has left the station and that a recommendation from KOSAC to the planning board for a conservation easement on the remainder land will be made.

I'm sorry that I was not able to attend the meeting on Tuesday. I will be willing to sign this letter under two conditions. Those are that a stewardship contribution of no less than \$50,000 be made to the Town for the perpetual stewardship, legal fees and other transaction costs along with covering the salary or salaries of those town employees who will be tasked with monitoring and enforcing the easement. They will have extra duties and need training.

The letter should also include a statement that cautions the applicant, Planning Board and eventually the Town Council that the donation of this easement is highly unlikely to qualify for a federal income tax credit because it is not a voluntary donation but a "quid pro quo" transaction as part of the permitting process. We can not give legal advice, the applicant should solicit their own tax attorney, but this standard caution is a best practice in the land conservation field.

Best regards,  
Christine



**TOWN OF KITTERY, MAINE** **RECEIVED**  
**TOWN CLERK'S OFFICE**  
 200 Rogers Road, Kittery, ME 03904  
 Telephone: (207) 475-1328 Fax: (207) 439-6806

NOV 18 2015  
 5:50

**APPLICATION FOR APPOINTMENT TO TOWN BOARDS**

NAME: Eric Lemont  
 RESIDENCE: 11 Park Ave., Kittery  
 MAILING (if different) \_\_\_\_\_

E-MAIL ADDRESS: elemont@comcast.net PHONE #: (Home) (603)502-0548 (Work) \_\_\_\_\_

**Please check your choices:**

- |  |  |
|--|--|
| <input type="checkbox"/> Board of Appeals                          | <input type="checkbox"/> Board of Assessment Review                                  |
| <input type="checkbox"/> Conservation Commission                   | <input type="checkbox"/> Mary Safford Wildes Trust                                   |
| <input type="checkbox"/> Comprehensive Plan Update Committee       | <input type="checkbox"/> Shellfish Conservation Committee                            |
| <input type="checkbox"/> Recycling Scholarship Selection Committee | <input type="checkbox"/> Economic Development Committee                              |
| <input type="checkbox"/> Parks Commission                          | <input type="checkbox"/> Open Space Committee  |
| <input type="checkbox"/> Port Authority                            | <input type="checkbox"/> Planning Board  |
| <input type="checkbox"/> Personnel Board                           | <input checked="" type="checkbox"/> Other <u>Community Center Board of Directors</u> |

EDUCATION/TRAINING: BS Finance, Bentley University 2005, Executive MBA, University of New Brunswick 2013  
 RELATED EXPERIENCE (Including other Boards and Commissions) Life long Kittery resident and  
long time user of community center programs and facilities. Youth soccer and basketball coach. Collaborator, champion of  
continuous improvement, and project manager in professional life.

PRESENT EMPLOYMENT: Sr. Wholesale Analyst at Irving Oil  
 ARE YOU A REGISTERED VOTER OF THE TOWN OF KITTERY  Yes  No

ANY KNOWN CONFLICT OF INTEREST: None

REASON FOR APPLICATION TO THIS BOARD: Give back to the community/shape programming for Kittery youth  
 I HAVE  HAVE NOT  ATTENDED AT LEAST TWO MEETINGS OF THE BOARD FOR WHICH APPLICATION IS BEING MADE. I AGREE TO ATTEND ALL MEETINGS, EXCEPT FOR SICKNESS OR EMERGENCY, AND WILL ADVISE THE CHAIRPERSON WHEN I AM UNABLE TO ATTEND, IF APPOINTED.

Please read the back of this application before signing.

  
 SIGNATURE OF APPLICANT

11/18/15  
 DATE



# TOWN OF KITTERY, MAINE

TOWN CLERK'S OFFICE

200 Rogers Road, Kittery, ME 03904

Telephone: (207) 475-1328 Fax: (207) 439-6806

RECEIVED  
DEC 06 2015

BY: Li Zapor

## APPLICATION FOR APPOINTMENT TO TOWN BOARDS

NAME: HOLLY ZURER

RESIDENCE: 113 GOVERNMENT ST., KITTERY, ME 03904

MAILING (if different) \_\_\_\_\_

E-MAIL ADDRESS: \_\_\_\_\_ PHONE #: (Home) \_\_\_\_\_ (Work) \_\_\_\_\_

### Please check your choices:

- |   |   |
|---|---|
| <input type="checkbox"/> Board of Appeals                               | <input type="checkbox"/> Board of Assessment Review       |
| <input type="checkbox"/> Conservation Commission                        | <input type="checkbox"/> Mary Safford Wildes Trust        |
| <input checked="" type="checkbox"/> Comprehensive Plan Update Committee | <input type="checkbox"/> Shellfish Conservation Committee |
| <input type="checkbox"/> Recycling Scholarship Selection Committee      | <input type="checkbox"/> Economic Development Committee   |
| <input type="checkbox"/> Parks Commission                               | <input type="checkbox"/> Open Space Committee             |
| <input type="checkbox"/> Port Authority                                 | <input type="checkbox"/> Planning Board                   |
| <input type="checkbox"/> Personnel Board                                | <input type="checkbox"/> Other _____                      |

EDUCATION/TRAINING: BS HEALTH MANAGEMENT & POLICY

RELATED EXPERIENCE (Including other Boards and Commissions) \_\_\_\_\_

ADVISORY COUNCIL JOAN G. LOVERING HEALTH CENTER'S BOARD MEMBER

WOMEN AID OF GREATER PORTSMOUTH

PRESENT EMPLOYMENT: ADMINISTRATIVE CONSULTING & DOULA

ARE YOU A REGISTERED VOTER OF THE TOWN OF KITTERY  Yes  No

ANY KNOWN CONFLICT OF INTEREST: NONE

REASON FOR APPLICATION TO THIS BOARD: I WANT TO SERVE MY COMMUNITY

I HAVE  HAVE NOT  ATTENDED AT LEAST TWO MEETINGS OF THE BOARD FOR WHICH APPLICATION IS BEING MADE. I AGREE TO ATTEND ALL MEETINGS, EXCEPT FOR SICKNESS OR EMERGENCY, AND WILL ADVISE THE CHAIRPERSON WHEN I AM UNABLE TO ATTEND, IF APPOINTED.

Please read the back of this application before signing.

Holly Zurer  
SIGNATURE OF APPLICANT

12/1/2015  
DATE



# TOWN OF KITTERY, MAINE

TOWN CLERK'S OFFICE

200 Rogers Road, Kittery, ME 03904

Telephone: (207) 475-1328 Fax: (207) 439-6806

RECEIVED  
OCT 09 2014  
1:12 pm

## APPLICATION FOR APPOINTMENT TO TOWN BOARDS

NAME: Capt. Peter "PJ" Johnson

RESIDENCE: 14 TENNEY HILL RD, Kittery Point ME 03905

MAILING (if different) \_\_\_\_\_

E-MAIL ADDRESS: tugsaks@comcast.net PHONE #: (Home) 439-9904 (Work) 603-498-0271

### Please check your choices and list in order of priority by marking 1,2,3, etc.:

- |  |   |
|--|---|
| <input type="checkbox"/> Board of Appeals                          | <input type="checkbox"/> Board of Assessment Review       |
| <input type="checkbox"/> Conservation Commission                   | <input type="checkbox"/> Mary Safford Wildes Trust        |
| <input type="checkbox"/> Comprehensive Plan Update Committee       | <input type="checkbox"/> Shellfish Conservation Committee |
| <input type="checkbox"/> Recycling Scholarship Selection Committee | <input type="checkbox"/> Economic Development Committee   |
| <input type="checkbox"/> Parks Commission                          | <input type="checkbox"/> Open Space Committee             |
| <input checked="" type="checkbox"/> Port Authority                 | <input type="checkbox"/> Planning Board                   |
| <input type="checkbox"/> Personnel Board                           | <input type="checkbox"/> Other _____                      |

EDUCATION/TRAINING: Graduate Maine Maritime Academy 1994 BS Nautical Science

RELATED EXPERIENCE (Including other Boards and Commissions) Harbor Pilot, Portsmouth

Pilots. Master <sup>mariner</sup> ~~mariner~~ Unlimited Tons, Capt of Ships, Tugs & Commercial Fishing Vessels. Kittery Fire Dept 1995-2012

PRESENT EMPLOYMENT: Harbor Pilot, Portsmouth Pilots Inc, 603-436-1209

ARE YOU A REGISTERED VOTER OF THE TOWN OF KITTERY  Yes  No

ANY KNOWN CONFLICT OF INTEREST: No

REASON FOR APPLICATION TO THIS BOARD: To provide town with experience and resources with waterfront activities

I HAVE   /HAVE NOT  ATTENDED AT LEAST TWO MEETINGS OF THE BOARD FOR WHICH APPLICATION IS BEING MADE. I AGREE TO ATTEND ALL MEETINGS, EXCEPT FOR SICKNESS OR EMERGENCY, AND WILL ADVISE THE CHAIRPERSON WHEN I AM UNABLE TO ATTEND, IF APPOINTED.

[Signature]  
SIGNATURE OF APPLICANT

10/09/14  
DATE

## **2015 TENTATIVE AGENDA ITEMS**

**December 15, 2015** – 6:00 pm Workshop with School Committee

**December 28, 2015** – 6:00 pm Workshop with Board of Appeals

- Disbursement warrants
- Re-appointments?

**January 4, 2016** – 6:00 pm Workshop with Planning Board followed by Council Goals

**January 11, 2016** – 6:00 pm Workshop with Port Authority

- Disbursement warrants
- Town Council to act on Town Manager's salary increase

**January 25, 2016**

- Disbursement warrants