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M E M O R A N D U M

TO: Kathy Connor, Project Planner, Town of Kittery

FROM: Kristin M. Collins, Town Attorney

DATE: October 19, 2022

RE: **Proposed expansion at 35 Badgers Island West**

You have asked for a legal opinion regarding whether the above-referenced building located in the MU-BI zone may be expanded within the 75-foot setback. My opinion is that it may be expanded, so long as the development plan meets the waterfront activity incentives set forth in Section 16.4.24.D(3).

My understanding is that this building is nonconforming because a portion of it lies within the 75-foot shoreland setback. It was expanded by 40% prior to enactment of the MU-BI zone, though it is unclear what portion of that expansion was conducted within the setback. If the portion within the setback was expanded by more than 30% in area, then under standard zoning regulations, it could not be further expanded within the setback. However, Section 16.4.24.D(3) provides for the standard setback to be reduced to 25' if the development plan provides public access, retains or expands commercial water-dependent uses, or preserves coastal resources. If the Planning Board finds that the development plan meets the criteria for this incentive, the setback line would effectively be moved to 25' and the existing building would no longer be nonconforming. The building could therefore be expanded setback line by any percentage so long as it meets the 25' setback and other standards for minimum area per dwelling unit, front and side setbacks, and open space requirements.

KMC: