

City of Biddeford
Planning Board
December 01, 2021 6:00 PM City Hall Council Chambers & Zoom
Dec 1, 2021 06:00 PM Eastern Time (US and Canada)
Topic: Planning Board

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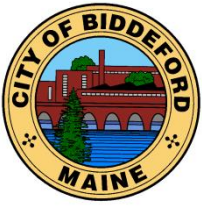
1. **PLEDGE OF ALLEGIANCE**
2. **DECLARATION OF QUORUM/VOTING MEMBERS**
3. **ADJUSTMENTS TO THE AGENDA**
4. **PLANNER'S BUSINESS**
5. **CONSENT AGENDA**
 - 5.A. Approval of Meeting Minutes from November 17, 2021
[PB Minutes 111721-DRAFT.pdf](#)
6. **UNFINISHED BUSINESS**
7. **NEW BUSINESS**
 - 7.A. 2021.08 West Brook Subdivision (Winding Creek Lane extension) - Presentation by Biodiversity Research Institute (BRI) of the Wildlife Study conducted for E&R Development (Tax Map 8, Lots 3-1 & 3).
[FINAL BRI Clifford Park Report 09292021 \(003\).pdf](#)
 - 7.B. 2021.11 Determination of the Setback to the Greatest Practical Extent for Sumi Dolben at 25 Mile Stretch Road (Tax Map 62, Lot 24 & 24-1) in the LR (Limited Residential) Zone.

[Biddeford- 25 Mile Stretch appl revisions complete 11-10-21.pdf](#)
[Survey plan 2011014 10-20-2021 \(2\).pdf](#)
[Board Report - 25 Mile Stretch Rd \(Rev Appl\).pdf](#)
[Draft FOF for 25 Mile Stretch Rd 120121.pdf](#)
 - 7.C. Comp Plan Vision Planning Session Discussion

8. OTHER BUSINESS

9. ADJOURN

The Board reserves the right to halt official business at 9:30 p.m. Items not heard at tonight's meeting shall be rescheduled to the next meeting of the Board. All materials pertaining to items on the agenda are available for public review at the Biddeford Planning Department, second floor, Biddeford City Hall during normal business hours.



CITY OF BIDDEFORD

Planning and Development Department

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Planning Board Meeting Minutes **DRAFT**

Date: November 17, 2021
Time: 6:00 PM
Location: City Hall Council Chambers & REMOTE ACCESS MEETING (1MRSA § 403-A permits public proceedings through remote access during the declaration of state of emergency due to COVID-19).

1. Pledge of Allegiance
2. Declaration of Quorum/Voting Members
Quorum Present: Bill Southwick (chair), Roch Angers, Sean Tarpey, Spiros Droggitis, Alexa Plotkin (alternate) and Michael Cantara (voting alternate)
Chair Southwick opened the meeting at 6:01 PM
3. Adjustments to the Agenda
4. Planner's Business
Planner, Greg Tansley announced that the Board would be discussing the survey results at the end of the meeting.
5. Consent Agenda
 5. A. Approval of Planning Board Meeting Minutes from November 3, 2021
MOTIONS: 6:03 PM
Tarpey-Motion- to approve the Meeting Minutes for November 3, 2021
Droggitis-Second
Chair Southwick-Roll Call for Vote-Motion Passed, Unanimous Approval 4-0 (Angers Tarpey, Droggitis & Cantara)
6. Unfinished Business
7. New Business
 7. A. 2021.55 Review of Amended Subdivision for Indian Cliff Development to add Lot 6 as a house lot off McKenney Drive (Tax Map 7, Lots 18-13 & 15-2) in the R1A Zone.
 - Consulting Planner, Chris Di Matteo briefed the Board on the project.
 - Mike Eon (applicant/President of Indian Cliff Development) represented himself
 - Bill Thompson from BH2M was on hand as part of the applicant's team.
 - Mr. Eon spoke of the trail system he has had in mind for years, the existing trails and plans for future trails as well as conservation land.
 - Mr. Eon requested some of the Conditions of Approval by waived as he considers them moot.
 - There were no comments from the public
 - The issue was brought back to the Board

- Planner Tansley was asked to comment on the requested waivers, his opinion was to leave them in, Mr. Di Matteo concurred.

MOTIONS: 6:32 PM

Cantara-Motion- to approve the amendment to the previously approved subdivision for Indian Cliff Development at the end of McKenney Drive, approve the Findings of Fact with the Conditions presented therein,(provided no moot point be a stumbling block) and authorize the City Planner to sign the final plan on behalf of the Planning Board
Angers-Second

Chair Southwick-Roll Call for Vote-Motion Passed, Unanimous Approval 4-0 (Angers, Tarpey, Droggitis & Cantara)

7B. 2021.48 Review of the Setback to the Greatest Practical Extent (Shoreland Zone) for Eric Ewald & Stephenie Lenzi at 1 Edgewater Place (Tax Map 55, Lot 23) in the CR Zone.

- Mr. Di Matteo described the project to the Board
- Tony Covino of Saco Bay Builders represented the applicant.
- There were no comments from the public

MOTIONS: 6:37 PM

Cantara-Motion- To approve the Setback to the Greatest Practical Extent for Eric Ewald and Stephanie Lenzi, approve the Findings of Fact and the Conditions presented therein, and authorize the City Planner to sign the plan on behalf of the Planning Board.

Angers- Second

Chair Southwick-Roll Call for Vote-Motion Passed, Unanimous Approval 4-0 (Angers, Tarpey, Droggitis & Cantara)

7C. 2021.51 Sketch Plan Review for Lord & Harrington, LLC on Diamond Street (Tax Map 40, Lots 25-1

- Planner Tansley introduced the project to the Board
- Phil Chaney from Barrett Made & David Latham from Trillium represented the applicant.
- The fact that the JDA was an outline and not a full Agreement was discussed.
- The presentation of this project was described as conceptual at this point.
- The residential focus with an urban overlay and ground floor amenities were discussed.
- Robert Demello of 10 Horrigan CT spoke from the public
- Mr. Tansley will speak with Mr. Demello tomorrow.
- The Board discussed several points with the applicants including the following:
The fact that this is the gateway to Biddeford, the developers should incorporate the access to the river in the plans and set a sign inviting people to use the park, riverwalk and river. A neighborhood meeting was suggested. Affordable housing, handicap accessible units, parking, traffic counts, other projects in the area in the pipeline, the traffic survey looking at Main Street as well. Incorporating the access road with the railroad line, Fee ownership (condominiums) vs rentals, distribution of buildings, public transportation friendly. Using solar panels and planting vegetation on the flat roofs. High water of river and the impact on proposed subgrade parking. Enclosure of the railroad trestle.

8. Other Business

- Assistant City Planner Hannah Bonine went over the survey results with the Board.
- The next Board meeting will be December 1, 2021.
- There will be Comp Plan events (Open Charrette) on December 10 from 5-8 PM and December 11 in the morning at the Community Center.
- Consultants will attend the Saturday session rotating through
- Board members are asked to attend floating through the groups.
- Emailed information to follow

9. Adjourn

MOTIONS: 8:10

Cantara-Motion-to adjourn

Angers-Second

Vice Chair Angers-Roll Call for Vote- Motion Passed, Unanimous Approval 4-0 (Angers, Tarpey, Droggitis & Cantara)

Meeting adjourned at 8:10 PM

Planning Board Chair/Vice Chair

Date

These minutes are summary and are not intended to be verbatim. Archived meetings are viewable on the City's website: www.biddefordmaine.org.

Clifford Park Habitat Connectivity Report

City of Biddeford



Prepared by BRI Environmental
September 2021



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Exhibits

Exhibit A: Location Map

Exhibit B: Resource Map

Exhibit C: Photo Log

Exhibit D: Agency Consultation

Exhibit E: Plant List

1.0 Introduction

On May 24, 2021 Biodiversity Research Institute (BRI) was retained by the City of Biddeford (City) to review potential impacts of a proposed residential development on wildlife and wildlife habitat in the vicinity of Clifford Park in Biddeford. Since the City was particularly interested in perspectives on how the Proposed Area of Development (PAD) might potentially be used by wildlife travelling between Clifford Park and the larger area to the south, BRI selected a Survey Area that is larger than the PAD to better ascertain the potential impacts that may result from the project under review. The review area included an approximately 264-acre area located near Winding Creek Road, in Biddeford Maine (Site). The Proposed Area of Development (PAD) included approximately 22 acres. **Exhibit A** shows the location of the Survey area and the PAD. This report summarizes the results of BRI's desktop review and a site walk conducted in the survey area.

2.0 Geographic Setting

The Survey Area is characterized by forested uplands which reach approximately 180 Feet in elevation. Just east of the Survey Area is Thunder Island. The closest waterbody is the Saco River, that is approximately 0.1 miles to the east at its nearest point. The Site is surrounded by residential development to the north and west. The remainder of the Site is surrounded by forested land.

The Site falls within the US Environmental Protection Agency's (EPA) Eco-region of the Northeastern Coastal Zone within the Gulf of Maine Coastal Lowland. The EPA's description of the region is as follows:

The Northeastern Coastal Zone ecoregion covers most of southern New England and the coastal areas of New Hampshire and southern Maine. Its landforms include irregular plains and plains with low to high hills. Appalachian oak forests and northeastern oak-pine forests are the natural vegetation types, with mostly mesic Inceptisol soils. The Northeastern Coastal Zone contains relatively nutrient-poor soils and concentrations of continental glacial lakes, some of which are sensitive to acidification. Although attempts were made to farm much of the Northeastern Coastal Zone after the region was settled by Europeans, land use now mainly consists of forests, woodlands, and urban and suburban development, with only some minor areas of pasture and cropland.

The Gulf of Maine Coastal Lowland ecoregion is a 10- to 20-mile wide coastal strip, stretching from Casco Bay in Maine to Plymouth Bay in Massachusetts. It is mostly an arcuate embayment type of coast with extensive glacial sand, silt, and clay deposits blanket this region, with a coastal pattern typified by plutonic capes and intervening sand beaches that front the region's largest salt marshes. The ecoregion has relatively low relief, and elevations are mostly from sea level to 250 feet. Mt. Agamenticus, west of Ogunquit, Maine, is the atypical high spot at 691 feet. Bedrock geology consists mostly of metasedimentary rocks, intruded by several Paleozoic and Mesozoic plutonic bodies. Soils have a mesic temperature regime in most of the region, although frigid soils

occur in the Maine portion. The vegetation mosaic includes white oak and red oak forests, some isolated chestnut oak woodlands, extensive post-settlement white pine, pitch pine in sandy areas, pitch pine bogs, some Atlantic white cedar swamps, red maple swamps, and *Spartina* saltmarsh. The vegetation contains some southern hardwood species (e.g., shagbark hickory, flowering dogwood, and chestnut oak) that reach the northern limit of their range within this ecoregion. There are also some subarctic maritime species that reach their southern limit, such as crowberry, golden heather, and oysterleaf. The region's forests and farms are being rapidly converted to residential developments and bedroom communities of larger nearby cities.¹

3.0 Methods

Prior to the site visit, BRI conducted a desktop review of publicly available data, which included the National Wetlands Inventory (NWI)², Natural Resources Conservation Service (NRCS) Soil Survey³, Beginning with Habitat data (BWH)⁴, topographic maps, and aerial photos.

Identified wetlands and waterbodies within the review area were not delineated, but mapped based in part on the Routine On-site Determination method described in the 1987 USACE Wetlands Delineation Manual⁵ (1987 Manual) and the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Northcentral and Northeast Region⁶ (Regional Supplement). Wetlands are classified by type in accordance with *Classification of Wetlands and Deepwater Habitats of the United States*⁷ (Cowardin et al. 1979).

Existing vernal pools, which have been previously identified within Survey Area, were observed and a review of the Site for additional vernal pools was also completed. While the Site walk occurred outside of the recommended survey season, potential pools were reviewed for potential significance. Significance is defined within Chapter 335 of the Natural Resources Protection Act (NRPA):

“A vernal pool, also referred to as a seasonal forest pool, is a natural, temporary to semi-permanent body of water occurring in a shallow depression that typically fills during the spring or fall and may dry during the summer. Vernal pools have no permanent inlet or outlet and no viable

¹ Ecoregions of New England http://ecologicalregions.info/data/vt/new_eng_front.pdf

² U.S. Fish and Wildlife Service National Wetland Inventory Mapper <https://www.fws.gov/wetlands/data/mapper.html>

³ U.S. NRCS Web Soil Survey <https://websoilsurvey.sc.egov.usda.gov/App/HomePage.htm>

⁴ Maine Beginning with Habitat Online Mapper <https://webapps2.cgis-solutions.com/beginningwithhabitat/>

⁵ USACE. 1987. Wetlands Delineation Manual. January 1987. Wetlands Research Program Technical Report Y-871. 143 pp. Available online at: <http://www.cpe.rutgers.edu/Wetlands/1987-Army-Corps-Wetlands-Delineation-Manual.pdf>

⁶ USACE. 2012. Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Northcentral and Northeast Region (Version 2.0). January 2012. 176 pp. Available online at: [http://www.usace.army.mil/Portals/2/docs/civilworks/regulatory/reg supp/NCNE suppv2.pdf](http://www.usace.army.mil/Portals/2/docs/civilworks/regulatory/reg%20supp/NCNE%20suppv2.pdf)

⁷ Cowardin, L.M., V. Carter, F.C. Golet, and E.T. Roe. 1979. *Classification of Wetlands and Deepwater Habitats of the United States*. December 1979. 142 pp. Available online at: <https://www.fws.gov/wetlands/documents/Classification-of-Wetlands-and-Deepwater-Habitats-of-the-United-States.pdf>

*populations of predatory fish. A vernal pool may provide the primary breeding habitat for wood frogs (*Rana [Lithobates] sylvatica*), spotted salamanders (*Ambystoma maculatum*), blue-spotted salamanders (*Ambystoma laterale*), and fairy shrimp (*Eubranchipus* sp.), as well as valuable habitat for other plants and wildlife including several rare, threatened, and endangered species. A vernal pool intentionally created for the purposes of compensatory mitigation is included in this definition.”*

Bird species occurring within the Survey Area were identified on a site walk survey completed throughout the entire Survey Area, including the PAD (**Exhibit A**). The survey was completed by two biologists walking slowly through the area while intermittently stopping to scan the area with binoculars and to listen for calls. Walking routes emphasized maximizing survey area coverage and adjacent areas of interest. Individual birds detected visually or aurally during our survey were identified and recorded as present. Lastly, to provide additional perspectives on the bird species that could be expected within the Survey Area and the PAD during the breeding season, we reviewed and summarized bird observation records reported by the general public and others on eBird (www.eBird.org).

Mammalian species were identified through a site walk (i.e., area search) throughout the entire Survey Area, including the PAD (**Exhibit A**). The survey was completed by a biologist walking slowly through the area while intermittently stopping to scan the area for mammal sign. Walking routes emphasized maximizing survey area coverage and adjacent areas of interest. Individual mammals detected visually or using tracks or scat during the survey were identified and recorded as present. For presence of bats, we looked for good foraging and roosting habitat within the Survey Area.

Generalized habitat types were characterized in the field using standard accepted terminology and mapped as necessary to supplement habitat type characterizations available from state databases.

4.0 Results

Field surveys were completed on July 23, 28, and August 4, 2021. Weather at the time of surveys ranged from sunny to partly cloudy. The survey area included approximately 264 acres as shown in **Exhibit A**. A natural resources map is included as **Exhibit B**, a photo log is included as **Exhibit C**, and a plant list is included as **Exhibit E**.

4.1 Habitats

Upland and wetland habitats on the Site are predominantly forested with some areas of open canopy associated with large boulders or bedrock outcrops. Forests on Site are primarily Oak-Pine Forest or Oak-Pine Woodlands. In areas of lower elevation and near streams, forests are predominantly Hemlock Forests. Several wetlands were found on Site, some associated with both perennial and intermittent streams. In general, most wetlands on the Site are forested with small inclusions of open water, emergent or shrub vegetation. Commonly occurring forested wetland habitats on the Site include Hemlock-Harwood Pocket Swamps, Upper Floodplain Hardwood Forests, and Red Maple-Sensitive Fern Swamps (Gawler and Cutko 2010). A total of 58 plant species were identified during the survey. The MDIFW identified the presence of Deer Wintering Areas (DWA) within the vicinity of the Survey Area (Section 5). Based on the results of the survey there are some areas within the Survey Area which may be used for shelter, but nothing that appears to be a traditional wintering habitat (i.e., cedar swamp). **Exhibit E** includes a plant list along with Latin names for all observed species. General descriptions of these habitat types are described below.

Oak-Pine Forests and Woodlands

Oak-Pine Forests, as described in Gawler and Cutko (2010), are closed canopy forests dominated by a mixture of red oak and white pine. Oak-Pine Woodlands are very similar to Oak-Pine Forests and are contiguous on Site. Oak-Pine Woodlands include similar diagnostic species to the forest, with a more open canopy. Herbaceous cover is sparse due to the closed canopy, and often includes species such as bracken fern and lowbush blueberry. In Oak-Pine Woodlands, herbaceous vegetation is more prominent and includes species such as bracken fern, starflower, and wintergreen. Both forests and woodlands occur on low to mid slopes, and occasionally on upper slopes. Soils in these communities are typically well-drained and often shallow, as is the case on this Site as a result of the bedrock and boulders. Mature habitats offer cavity nesting wildlife excellent potential for nesting habitat and the presence of oaks provide forage for several species of mammals and birds. Photo 1 includes a representative view of an Oak-Pine Forested upland.



Photo 1: A representative view of a forested Oak-Pine forested upland on Site.

Hemlock Forest

Hemlock Forests, as described in Gawler and Cutko (2010), are closed canopy forests dominated by more than 50% hemlock. In most cases, hemlock is co-dominant with species such as yellow birch, red oak, red spruce, red maple, or sugar maple. White pine is also commonly found within these forests. These forests are characterized by dense canopy cover, which allows little light penetration to sub-strata, and



Photo 2: A representative view of a forested Hemlock forested upland on Site.

therefore the shrub and herbaceous layers are sparse. Common shrubs include American beech and saplings of hemlock or balsam fir. Herbaceous species are limited, but include sparse coverage by species such as Canada mayflower, starflower, partridge berry, wild sarsaparilla, and wintergreen. This forest type is ranked as S4, and historically was impacted by the high demand for hemlock. Today these forests are often quite old and provide high ecological quality as the demand for hemlock by the timber industry has waned. These forests often provide habitat for coniferous forest specialist birds such as the black-throated green warbler, yellow-bellied flycatcher, blackburnian warbler, Red Crossbill, and northern parula. Maintaining surrounding lands as forest is important in the conservation of hemlock stands of this type.

Hemlock-Hardwood Pocket Swamp

These forested wetland types include both coniferous and deciduous species, typically (and as observed on the Site), these wetlands are small isolated pocket depressions with upland dominated landscapes. Trees commonly include hemlock and red maple, with an occasionally dense shrub community including highbush blueberry and winterberry. Herbaceous vegetation is variable, but often includes dense patches of ferns such as marsh fern. These wetlands commonly occur in isolated basins and sometimes occur perched on hillsides. Soils are generally acidic and include shallow layers of peat over depleted mineral soils. These swamps are often associated with vernal pools, as they tend to be isolated with no inlet or outlet. Although our survey was completed outside of the vernal pool season, we suspect several of these pocket swamps likely provide vernal pool habitat in the spring. This habitat type is rare in Maine, S2⁸, and while no rare species were observed within these features during the survey, these pocket wetlands often provide habitat to Blanding's turtles and spotted turtles. These species are known to the area, based on input from the Maine Department of Inland Fisheries and Wildlife (MDIFW) (Section 5.0). These wetlands occur as small forest patches and the conservation of these habitats depends on maintaining surrounding forested buffers.



Photo 3: A representative view of a Hemlock-Hardwood Pocket Swamp on Site.

⁸ S1-Critically Imperiled; S2-Imperiled; S3-Rare; S4-Aparently Secure; S5-Demonstratably Secure

Upper Floodplain Hardwood Forests

These wetlands occur along mapped streams within the Site. This community has almost complete canopy cover and is dominated by yellow birch, red maple, and occasionally green ash. Shrubs are generally limited as a result of frequent flooding, but the herbaceous layer is lush and transitions from spring ephemerals early in the growing season to ferns and forbs such as sensitive fern, ostrich fern, tall meadow rue, and Jack-in-the-pulpit later in the summer. These habitats provide refuge and foraging opportunities for several species such as barred owl and belted kingfishers. While none were observed during the field work, wood turtles often over winter in stream habitats and occupy upper floodplain forests during their active season to forage. Upper Floodplain Hardwood Forests are rare (S2) in Maine, and have been degraded by past timber harvest or the presence of invasive species such as Asiatic bittersweet, Japanese knotweed, or Japanese barberry.



Photo 4: A representative view of an Upper Floodplain Hardwood Forest on Site

Red Maple-Sensitive Fern Swamp

Red Maple-Sensitive Fern Swamps occur in level flats, terraces, and along smaller streams on the Site. These wetlands are dominated by red maple with a nearly closed canopy. Green ash and yellow birch occur, and occasionally. Shrub species include winterberry, arrowwood, and alder. The herbaceous layer is well developed and is dominated by sensitive fern and interrupted fern, along with sedges and rushes. These habitats are often on flats or near streams and soils are mineral and often very deep. These habitats are seasonally flooded, but maintain saturated conditions for much of the growing



Photo 5: A representative view of a Red Maple-Sensitive Fern Swamp on Site.

season. While no rare species were observed during the field visit, spotted turtles often overwinter in these habitats. These wetlands, when adjacent to streams, also provide important habitat for wood turtles as the turtles overwinter in the stream and utilize the floodplain for foraging. Overall, this wetland type is common in the state (S4).

4.3 Streams and Aquatic Habitats

Eight streams are present on the Site and all drain of them into West Brook, a tributary of the Saco River. West Brook is a large, perennial stream that consists of a bedrock, cobble, and gravel bottom. Fish and macroinvertebrates are present within West Brook. Photo 6 shows a representative view of West Brook. Higher order tributaries to West Brook have mineral substrates and macroinvertebrates while several of the smaller streams have sandy and silty substrates.



Photo 6: A representative view of West Brook in the Survey Area.

4.4 Vernal pools

The site walk was completed outside of the active breeding season for obligate species, and therefore we cannot determine the significance of vernal pools on Site. Nine potentially significant vernal pools were identified within the Survey Area, and none of these were identified within the PAD. Most of the observed potential vernal pools (PVP) were identified within pocket wetlands, which appear to provide high quality habitat. A wood frog (*Lithobates sylvaticus*) was observed within the survey area (Photo 7).



Photo 7: A wood frog observed within the Survey Area.

4.5 Mammals

A qualitative mammal survey was completed on August 4, 2021. The survey route covered approximately 4 miles. A total of 6 mammal species were detected in the Survey Area (Table 1). Based on the habitat present, species that may occur within the Survey Area are provided in the

Table 1 with an asterisk. These species were not observed, and are assumed present based on the habitat within the Survey Area.

Mammal habitat within Clifford Park and the Survey Area includes older-growth, upland forest and areas of exposed bedrock and boulders. The areas of upland forest provide excellent shelter and forage opportunities for a variety of mammals, and many of the dominant overstory species (i.e., oak) are mast producing and excellent food sources. Bats in particular may utilize these forests, which include large diameter trees that can provide summer roosting opportunities and provides great foraging habitat for bats to feed while protected under the canopy to avoid predators. The forested habitat within the Survey Area provide prime habitat for bats and other mammals within suburban environment and it provides forage and shelter during all seasons. Large diameter trees provide shelter from wind and heavy snow and may provide summer roosting and nesting habitat. Importantly, there are small caves and boulders that give mammals dens and shelter for winter hibernation. A number of snags were observed during the survey. These standing dead trees can provide critical solar heating sites for bat maternity colonies. Overall, the Site likely provides refuge for numerous mammals from the surrounding municipal area. Some of mammals present likely use both the Survey Area and adjacent urban setting for foraging, but some rely solely on the property in the Survey Area.

Table 1. List of mammal species detected or potentially occurring in the Survey Area during the site walk survey conducted on August 4th, 2021.

Common Name	Scientific Name
Coyote	<i>Canis latrans</i>
Star-nosed mole*	<i>Condylura cristata</i>
Opossum*	<i>Didelphis virginiana</i>
Porcupine	<i>Erethizon dorsatum</i>
Flying squirrel*	<i>Glaucomys spp</i>
Snowshoe hare*	<i>Lepus americanus</i>
Stripped Skunk	<i>Mephitis mephitis</i>
Short-tailed weasel*	<i>Mustela erminea</i>
Whitetail Deer	<i>Odocoileus virginianus</i>
Raccoon	<i>Procyon lotor</i>
Squirrel Sp.	<i>Sciurus sp.</i>
Masked shrew*	<i>Sorex cinereus</i>
Black bear*	<i>Ursus americanus</i>
Red Fox	<i>Vulpes vulpes</i>

*Assumed potentially present based on habitat

4.6 Birds

BRI conducted a bird survey on July 23, 2021. The survey route covered roughly 6 miles. A comprehensive list of the 27 bird species detected in the entire survey area is presented in Table 2.

No bird species listed as Threatened or Endangered on the Maine State List of Threatened and Endangered Species were detected during the survey. Two species considered Species of Special Concern (Eastern Wood-pewee and American Redstart) in Maine were detected. Neither of these species were detected within the PAD.

Additional bird observations reported in the citizen science platform eBird (www.ebird.org) detected 20 species in the Survey Area that were not encountered during our site walk survey. These include six species listed as Species of Special Concern (Black-and-White Warbler, Canada Warbler, Chimney Swift, Eastern Kingbird, Tennessee Warbler, and Chestnut-sided Warbler) and none listed as Threatened or Endangered. Based on the habitat types present at the Site, the Site would be unlikely to support bird species listed as Threatened or Endangered on the Maine State List. While the timing of our survey took place after breeding bird surveys are typically conducted, we detected many of the species that would be expected at the Site given the habitat characteristics.

Table 2. Comprehensive list of bird species detected in the Survey Area during the site walk survey conducted on July 23, 2021.

Common Name	Scientific Name
American Crow	<i>Corvus brachyrhynchos</i>
American Goldfinch	<i>Spinus tristis</i>
American Redstart	<i>Setophaga ruticilla</i>
American Robin	<i>Turdus migratorius</i>
Black-capped Chickadee	<i>Poecile atricapillus</i>
Black-throated Green Warbler	<i>Dendroica virens</i>
Blue Jay	<i>Cyanocitta cristata</i>
Brown Creeper	<i>Certhia americana</i>
Cedar Waxwing	<i>Bombycilla cedrorum</i>
Chestnut-sided Warbler	<i>Setophaga pensylvanica</i>
Chimney Swift	<i>Chaetura pelagica</i>
Downy Woodpecker	<i>Dryobates pubescens</i>
Eastern Phoebe	<i>Sayornis phoebe</i>
Eastern Wood-pewee	<i>Contopus virens</i>
Gray Catbird	<i>Dumetella carolinensis</i>
Great Crested Flycatcher	<i>Myiarchus crinitus</i>
Hairy Woodpecker	<i>Dryobates villosus</i>
Hermit Thrush	<i>Catharus guttatus</i>

Common Name	Scientific Name
Herring Gull	<i>Larus argentatus</i>
Northern Cardinal	<i>Cardinalis cardinalis</i>
Northern Flicker	<i>Colaptes auratus</i>
Ovenbird	<i>Seiurus aurocapilla</i>
Pileated Woodpecker	<i>Dryocopus pileatus</i>
Red-eyed Vireo	<i>Vireo olivaceus</i>
Song Sparrow	<i>Melospiza melodia</i>
Tufted Titmouse	<i>Baeolophus bicolor</i>
White-breasted Nuthatch	<i>Sitta carolinensis</i>

4.7 Amphibians and Reptiles

Amphibians and reptiles were observed qualitatively during the wetland and natural resource site walk. Several common species were observed within the Survey Area including wood frog, redback salamander, green frog, and leopard frog (Maine Special Concern Species). Table 3 includes species observed, along with those that may occur based on habitat within the Survey Area. Species that may occur, but were not observed are indicated with an asterisk.

Table 3. Comprehensive list of reptiles and amphibians detected or potentially occurring in the Survey Area during the site walk survey conducted on July 28, 2021.

Common Name	Scientific Name
Blue-spotted salamander*	<i>Ambystoma laterale</i>
Spotted salamander*	<i>Ambystoma maculatum</i>
American toad*	<i>Anaxyrus americanus</i>
Painted turtle*	<i>Chrysemys picta</i>
Spotted turtle*	<i>Clemmys guttata</i>
Blanding's turtle*	<i>Emydoidea blandingii</i>
Wood turtle*	<i>Glyptemys insculpta</i>
Gray treefrog*	<i>Hyla versicolor</i>
Eastern milksnake*	<i>Lampropeltis triangulum</i>
Green frog	<i>Lithobates clamitans</i>
Pickerel frog*	<i>Lithobates palustris</i>
Northern leopard frog	<i>Lithobates pipiens</i>
Wood frog	<i>Lithobates sylvaticus</i>
Eastern newt*	<i>Notophthalmus viridescens</i>
Eastern red-backed salamander	<i>Plethodon cinereus</i>
Spring peeper*	<i>Pseudacris crucifer</i>
Eastern ribbon snake*	<i>Thamnophis sauritus</i>
Common garter snake*	<i>Thamnophis sirtalis</i>

*Assumed potentially present based on habitat

5.0 Agency Consultation

A desktop review of publicly available data from the Maine Department of Environmental Protection and the Maine Department of Inland Fisheries and Wildlife (MDIFW) showed no mapped habitats or known occurrence of Rare, Threatened or Endangered Species. Species inquiries were sent to the Maine Natural Areas Program (MNAP) and the MDIFW on May 21, 2021.

The response from the MDIFW identified several species as potentially being present within the Site. **Exhibit D** includes the response from the MDIFW. Four rare reptiles may occur within the area: Blanding's turtle, spotted turtle, wood turtle, and eastern ribbon snake. Table 4 includes a summary of the preferred habitats of these species, their State protection status and the Buffer distance recommended by MDIFW.

Table 4. Summary of Protected Wildlife Identified as Potentially Occurring within the Survey Area.

Common Name	Latin Name	Habitat Preferences	State Protection Status	Recommended Buffer Distance
Blanding's turtle	<i>Emydoidea blandingii</i>	vernal pools, acidic wetlands small wetland complexes and larger marsh complexes in large blocks of forested habitat.	Endangered	250' undisturbed vegetative buffer from potential habitats.
Spotted turtle	<i>Clemmys guttata</i>	small streams, shrub swamps, wet meadows, bogs, and forested swamps	Threatened	250' undisturbed vegetative buffer from potential habitats.
Wood turtle	<i>Glyptemys insculpta</i>	riparian meadows, shrub thickets, farmland, and deciduous forests as well as bogs, forested wetlands, vernal pools, and streams	Special Concern	300-foot undisturbed, intact vegetative cover
Eastern Ribbon Snake	<i>Thamnophis sauritus</i>	edges of emergent marshes, wet meadows, scrub-shrub wetlands, beaver impoundments, bogs, river and stream floodplains,	Special Concern	None provided

6.0 Regulatory Implications

Development projects in the State of Maine are regulated by the Maine Department of Environmental Protection (MDEP). Developments that include 20 or more acres of single or common scheme of development (i.e., large projects completed over multiple stages with the same owner or shared infrastructure) require a Site Location of Development Act (SLODA) permit. These permits often take anywhere from 6 months to 1 year to complete based on the complexity of the project. The purpose of SLODA is to permit large projects and mitigate potential environmental impact from developments such as subdivisions and large commercial projects. The SLODA permit also requires that the permittee consult with the Maine Department of Inland Fisheries and Wildlife (MDIFW) as well as the Maine Historic Preservation Commission (MHPC) to avoid potential impacts to rare species or habitats as well as avoid impacts to historic resources. The SLODA process also involves input from the general public through required notices in public papers along with public informational meetings.

In addition, the Maine Natural Resource Protection Act (NRPA) regulates impacts to resources such as fresh water wetlands, vernal pools, and streams. For impacts (i.e., fill or clearing) greater than 4,300 sq. ft., a NRPA permit must be obtained from the MDEP. The state also protects Significant Habitat through Chapter 335 of NRPA. Significant Vernal Pools along with a 250-foot buffer are protected under NRPA. Certain wetlands (those within 25 feet of a stream, or those that contain significant wildlife habitat) are considered Wetlands of Special Significance, and are protected from impacts to a greater extent.

Development within Maine that disturbs more than one acre of land requires the permittee to obtain a Maine Stormwater Permit as described in Chapter 500, Maine's Stormwater Rules. These permits vary based on the size and complexity of the project and the intent is to manage stormwater, which results from impervious surfaces.

Federal oversight of natural resources is triggered by projects with a Federal Nexus. Most commonly, developments such as the proposed, trigger federal jurisdiction through impacts to Waters of the United States. Temporary or permanent fill, for roads or bridges, across jurisdictional wetlands are permitted by the U.S. Army Corps. of Engineers (USACE). These impacts require a Section 404, and sometimes Section 410, permit. Projects regulated by the USACE also require compliance with the Endangered Species Act (ESA) which involves coordination with the U.S. Fish and Wildlife Service (USFWS) and the Environmental Protection Agency (EPA). Most commonly in Maine, there is one federally listed species of bat known to occur in Maine, the northern long-eared bat, which is protected under the ESA. This species is non-migratory and are expected to occur within the state year-round.

The northern long-eared bat hibernates in caves and mines during winter. During summer, these bats roost singly or in colonies underneath bark, in cavities or in crevices of both live trees and dead trees, and rock structures. Males and non-reproductive females may also roost in cooler places, like caves and mines, during summer. The northern long-eared bat is also known to occasionally roost in anthropogenic structures, such as barns and sheds.

The northern long-eared bat was listed as threatened under the ESA on April 2, 2015. A final 4(d), rule was subsequently published in the Federal Register on January 14, 2016. The 4(d) rule specifically defines the "take" prohibitions for this species. "Take" is defined by the ESA as 'to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect' any endangered species. Purposeful take is when the reason for the activity or action is to conduct some form of take. Intentionally killing or harming bats is also purposeful take and is prohibited. "Incidental take" is defined by the Endangered Species Act as take that is "incidental to, and not the purpose of, the carrying out of an otherwise lawful activity." For example, harvesting trees can kill bats that are roosting in the trees, but the purpose of the activity is not to kill bats.

7.0 Discussion

Based on our desktop review and field surveys, the Clifford Park area and the PAD provide excellent wildlife habitat for a variety of species. The field work confirmed that several common birds and mammals utilize the area, and more importantly the PAD and larger Survey Area likely provide habitat to several protected reptiles and amphibians. The consultation response from the MDIFW identified that spotted turtles, Blanding's turtles, wood turtles, and ribbon snakes may occur within the Survey Area. The review of the habitat present within the Survey Area and the PAD confirm that habitat used by these species is present. In addition, while the survey was completed outside the breeding season, there are several features that are likely vernal pools. During the fieldwork, biologists observed wood frogs in upland areas which indicate that these species are present within both the Survey Area and PAD.

Habitat within the Survey Area accounts for approximately 1.4 square miles (~920 acres) of intact and unfragmented forested habitat within the City of Biddeford. Habitat connectivity is defined as the degree to which the landscape facilitates or impedes animal movement and other ecological processes. Maintaining habitat connectivity (i.e. unfragmented habitat) allows wildlife to migrate and disperse throughout changing seasons, boost biodiversity and resilience in degraded ecosystems, safeguards genetic flow between populations, and ensure species are better able to adapt to changes. The Survey Area may include species which require intact upland and wetland habitats within close proximity. Several mapped significant vernal pools occur adjacent to the subject parcels (within Clifford Park) and several potential pools were observed within the Survey Area. Vernal pools provide important habitat for several obligate species including the yellow spotted salamander, blue spotted salamander, and wood frog. These species

require not only seasonal pools for breeding, but spend much of their time within adjacent upland and wetland habitats. In the case of the yellow and blue spotted salamander, these species may disperse hundreds or even thousands of feet from the breeding pool. Recent studies completed have identified direct loss of vernal pools as well as loss of critical upland and terrestrial habitat as significant drivers for the loss of obligate vernal pool species (Calhoun 2008). The state of Maine protects terrestrial habitats within 250 feet of a significant pool, but connectivity to a larger intact forested habitat is best to maintain a healthy vernal pool ecosystem.

To the southeast there is an area of mapped Deer Wintering Habitat (DWA). Deer wintering areas include a variety of habitat components that may change with forest condition and management strategy. These habitat components contribute to the long-term functioning of a DWA as a source of winter shelter and food. White-tailed deer utilize predominantly mature coniferous forest habitat during critical winter conditions. Biologists did not identify any significant wintering habitat (i.e., dense stands of northern white cedar or similar). There are some areas of hemlock forest which are commonly used for shelter from passing storms or some temperature refuge due to dense overstory cover, but these forests are not typically considered “yards” or wintering areas. There is however significant deer sign throughout the Survey Area, likely a result from the mast producing species of oak, which are prevalent throughout the area.

The Survey Area includes several streams, both perennial and intermittent. In general, wider riparian and habitat corridors provide overall higher habitat quality and diversity. However, a balance must be struck between the need for development and the need to maintain habitat corridors. The U.S. Department of Agriculture (USDA) made recommendations on the minimum riparian corridor based on several species (i.e., large mammals, small mammals, birds, and herptiles). While recommendations may vary, generally larger mammals require a minimum of 330-foot corridors and smaller species such as reptiles and amphibians or small mammals require 200-foot corridors. This is general guidance, and corridor widths often vary by species. In most cases, the recommended corridor width is much larger than the minimum standard (Bentrop 2008).

8.0 Recommendations

Based on our site work and a review of supplemental information, we have prepared the following list of recommendations for either additional work or questions to be answered by the applicant to better understand the potential impacts as they relate to the proposed project.

Questions That the Developer Should Answer for the Planning Board:

- Does this proposed development require 20 or more acres of disturbance? Is this development within a common scheme of development (i.e., same owner or utilize common infrastructure) as adjacent developments such that it exceeds 20 acres?
- Is there more than one (1) acre of disturbance and has the applicant obtained or plan to obtain a Stormwater Permit?
- Has the applicant completed a natural resource survey (i.e., wetland delineation and vernal pool survey) of the Survey Area (entire parcel)? If so are there any mapped significant vernal pools within 250' of the PAD?
- Is there a proposed impact within protected resource (i.e., within 250' of a significant vernal pool, freshwater wetland, or stream)?
- Is there proposed fill (temporary or permanent) within jurisdictional wetlands?
- Has the applicant coordinated with the MDIFW with regard to potential impacts to protected species or habitats?
- Based on our review of the development layout, it appears that buffers to streams and associated habitats are inadequate (i.e., narrower than recommended). Has an alternatives analysis been completed to ensure that the development focuses on areas, which would avoid fragmentation and reduce impacts on natural resources?

Recommendations:

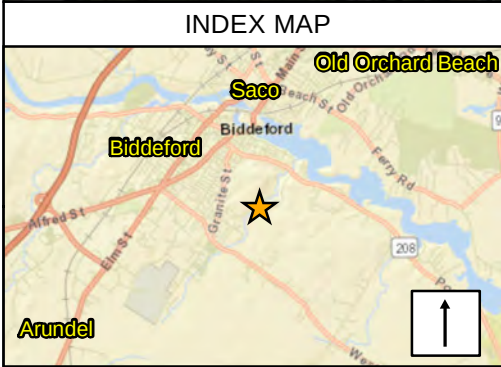
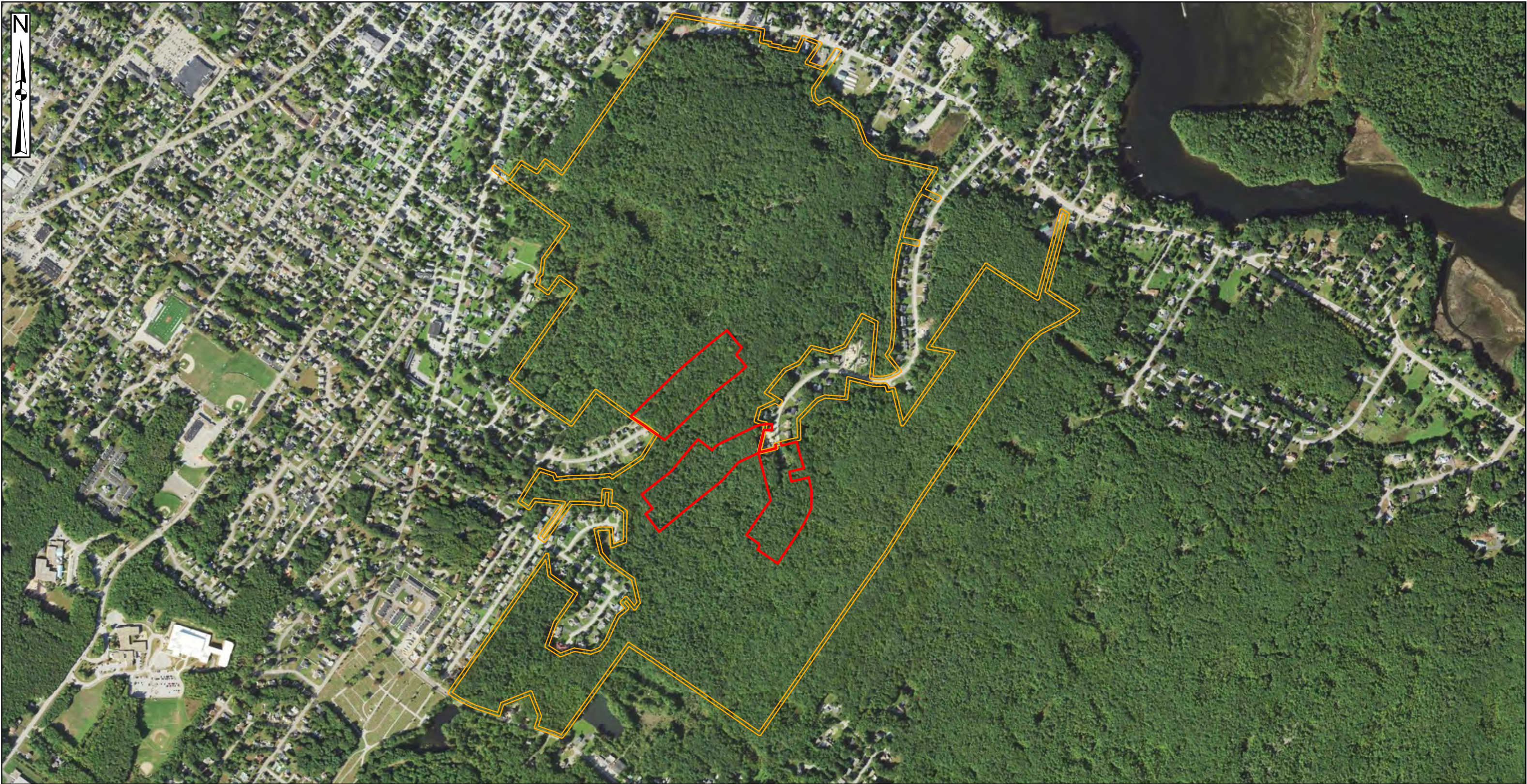
- We recommend that the development better utilize the property to cluster development in order to reduce fragmentation and increase riparian corridors in size. Based on the current layout we have reviewed the riparian buffer provided in some locations is less than 100 feet, and does not include any buffer on wetlands adjacent to streams.
- We recommend including recommended buffers on habitat for rare species (i.e., spotted turtles, Blanding's turtles, wood turtles, and ribbon snakes), which would include up to 300 feet from habitats used by these species. These buffers would extend into currently proposed areas of development. At the very least, if these buffers are not included, a survey for these species should be completed by a qualified biologist.
- Consultation with the MDIFW should occur, given the proximity of rare reptiles and amphibians and the habitats present within the Survey Area. Any survey for rare species should involve coordination with the MDIFW.

- Given the presence of potential habitat for the northern long-eared bat, we recommend consultation with MDIFW. Restrictions stemming from the presence of this species often entail avoidance of tree clearing during the bat's active season. If these conditions cannot be met, we would recommend acoustic surveys to evaluate use of the PAD by target bat species.

9.0 Literature Cited

- Bentrup, G. 2008. Conservation buffers: design guidelines for buffers, corridors, and greenways. Gen. Tech. Rep. SRS-109. Asheville, NC: Department of Agriculture, Forest Service, Southern Research Station. 110 p.
- Calhoun, A. and P. deMaynadier. 2008. Science and Conservation of Vernal Pools in Northeastern North America. CRC Press; Boca Raton, FL.
- Gawler, S. and A. Cutko. 2010. Natural Landscapes of Maine: A Guide to Natural Communities and Ecosystems. Augusta, ME: Maine Department of Conservation, Maine Natural Areas Program. 277 p.

Exhibit A:
Location Map

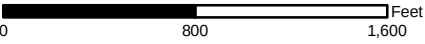


LEGEND

- Proposed Area of Development
- Project Survey Boundary


Biodiversity Research Institute
innovative wildlife science

SCALE:



0 800 1,600 Feet
1 inch = 800 feet

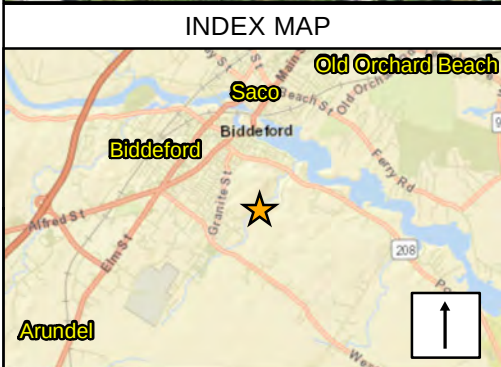


**PROJECT LOCATION MAP - AERIAL
BIDDEFORD, MAINE**

SEPTEMBER 28, 2021

Exhibit B:

Natural Resource Map



LEGEND

- Photograph Location
- ▲ Potential Vernal Pool
- Stream
- ▭ Wetland
- Proposed Area of Development
- Project Survey Boundary


BIODIVERSITY RESEARCH INSTITUTE
innovative wildlife science

SCALE:
0 800 1,600 Feet
1 inch = 800 feet



**RECON NATURAL RESOURCES &
PHOTOGRAPHIC LOCATION MAP
BIDDEFORD, MAINE**

SEPTEMBER 29, 2021

Exhibit C:
Photo Log

HABITAT SURVEY PHOTO LOG (PHOTOS TAKEN 7/28/2021)

Photo Point 1



Photo Point 2



Photo Point 3



Photo Point 4



Photo Point 5



Photo Point 6



Photo Point 7



Photo Point 8



Photo Point 9



Photo Point 10



Photo Point 11



Photo Point 12



Photo Point 13



Photo Point 14



Photo Point 15



Photo Point 16



Photo Point 17



Photo Point 18



Photo Point 19



Photo Point 20



Exhibit D:
Agency Consultation



STATE OF MAINE
DEPARTMENT OF
INLAND FISHERIES & WILDLIFE
284 STATE STREET
41 STATE HOUSE STATION
AUGUSTA ME 04333-0041



June 22, 2021

Steve Knapp
Biodiversity Research Institute
276 Canco Road
Portland, ME 04103

RE: Information Request – Winding Creek Lane Project, Biddeford

Dear Steve:

Per your request received on May 21, 2021, we have reviewed current Maine Department of Inland Fisheries and Wildlife (MDIFW) information for known locations of Endangered, Threatened, and Special Concern species; designated Essential and Significant Wildlife Habitats; and inland fisheries habitat concerns within the vicinity of the *Winding Creek Lane Solar* project in Biddeford. Note that as project details are lacking, our comments are non-specific and should be considered preliminary.

Our Department has not mapped any Essential Habitats that would be directly affected by your project.

Endangered, Threatened, and Special Concern Species

Bats - Of the eight species of bats that occur in Maine, the three *Myotis* species are afforded special protection under Maine's Endangered Species Act (MESA, 12 M.R.S §12801 et. seq.): little brown bat (State Endangered), northern long-eared bat (State Endangered), and eastern small-footed bat (State Threatened). The five remaining bat species are designated as Species of Special Concern: big brown bat, red bat, hoary bat, silver-haired bat, and tri-colored bat. While a comprehensive statewide inventory for bats has not been completed, based on historical evidence it is likely that several of these species occur within the project area during migration and/or the breeding season. However, our Agency does not anticipate significant impacts to any of the bat species as a result of this project.

Blanding's Turtle - Multiple occurrences of Blanding's turtles, a State Endangered species, have been documented in the immediate vicinity and within the proposed project area. In Maine, Blanding's turtles are found most frequently in complexes of small, vernal pools, acidic wetlands and larger marsh complexes in large blocks of forested habitat. Development activity that compromises riparian integrity or migration permeability among seasonally critical wetlands can lead to degradation of habitat quality and potential loss of local populations. Additionally, development projects that lead to significant increases in local traffic volume will likely lead to increased roadkill and possible extirpation of the local population. If these habitats are present in the project area, we recommend that they be avoided and adequately buffered with a 250-foot undisturbed, intact vegetative cover.

Spotted Turtle - Occurrences of spotted turtle, a State Threatened species, have been documented within the vicinity of the search area of the proposed project. Spotted turtles are most frequently associated with complexes of small, acidic wetlands and vernal pools located in large, intact landscapes. They also use small streams, shrub swamps, wet meadows, bogs, and forested swamps. Similar to Blanding's turtle, if

these habitats are present in the project area, we recommend that they be avoided and adequately buffered with a 250-foot undisturbed, intact vegetative cover.

Wood Turtle - Occurrences of wood turtle, a State Species of Special Concern, have been documented within the vicinity of the search area of the proposed project. Wood turtles use a mix of aquatic and terrestrial habitats throughout the year including riparian meadows, shrub thickets, farmland, and deciduous forests as well as bogs, forested wetlands, vernal pools, and streams. If these habitats are present in the project area, we recommend that they be avoided and adequately buffered with a 300-foot undisturbed, intact vegetative cover.

MDIFW is willing to work closely with the applicant to design a project that attempts to limit potential impacts to any of the turtle species listed above.

Eastern Ribbon Snake - There is a potential for occurrences of Eastern ribbon snake, a state Species of Special Concern, within the proposed project. This rare species is a slender, semiaquatic snake often observed near the edges of emergent marshes, wet meadows, scrub-shrub wetlands, beaver impoundments, bogs, river and stream floodplains, and vegetated shorelines of ponds and lakes.

Significant Wildlife Habitat

Deer Wintering Areas (DWAs) – The project search area intersects with a DWA. DWAs contain habitat cover components that provide conditions where deer find protection from deep snow and cold wind, which is important for overwinter survival. MDIFW recommends that development projects be designed to avoid losses or impacts to the continued availability of coniferous winter shelter. Any removal of vegetation should be conducted in such a way that improves the quality and vigor of the coniferous species providing this winter shelter.

Significant Vernal Pools - At this time, MDIFW Significant Wildlife Habitat maps indicate no known presence of Significant Vernal Pools in the project search area; however, a comprehensive statewide inventory for Significant Vernal Pools has not been completed. Therefore, we recommend that surveys for vernal pools be conducted within the project boundary by qualified wetland scientists prior to final project design to determine whether there are Significant Vernal Pools present in the area. These surveys should extend up to 250 feet beyond the anticipated project footprint because of potential performance standard requirements for off-site Significant Vernal Pools, assuming such pools are located on land owned or controlled by the applicant. Once surveys are completed, survey forms should be submitted to our Agency for review well before to the submission of any necessary permits. Our Department will need to review and verify any vernal pool data prior to final determination of significance.

Fisheries Habitat

We recommend that 100-foot undisturbed vegetated buffers be maintained along streams. Buffers should be measured from the edge of stream or associated fringe and floodplain wetlands. Maintaining and enhancing buffers along streams that support coldwater fisheries is critical to the protection of water temperatures, water quality, natural inputs of coarse woody debris, and various forms of aquatic life necessary to support conditions required by many fish species. Stream crossings should be avoided, but if a stream crossing is necessary, or an existing crossing needs to be modified, it should be designed to provide full fish passage. Small streams, including intermittent streams, can provide crucial rearing habitat, cold water for thermal refugia, and abundant food for juvenile salmonids on a seasonal basis and undersized crossings may inhibit these functions. Generally, MDIFW recommends that all new,

modified, and replacement stream crossings be sized to span at least 1.2 times the bankfull width of the stream. In addition, we generally recommend that stream crossings be open bottomed (i.e. natural bottom), although embedded structures which are backfilled with representative streambed material have been shown to be effective in not only providing habitat connectivity for fish but also for other aquatic organisms. Construction Best Management Practices should be closely followed to avoid erosion, sedimentation, alteration of stream flow, and other impacts as eroding soils from construction activities can travel significant distances as well as transport other pollutants resulting in direct impacts to fish and fisheries habitat. In addition, we recommend that any necessary instream work occur between July 15 and October 1.

This consultation review has been conducted specifically for known MDIFW jurisdictional features and should not be interpreted as a comprehensive review for the presence of other regulated features that may occur in this area. Prior to the start of any future site disturbance we recommend additional consultation with the municipality, and other state resource agencies including the Maine Natural Areas Program, Maine Department of Marine Resources, and Maine Department of Environmental Protection in order to avoid unintended protected resource disturbance.

Please feel free to contact my office if you have any questions regarding this information, or if I can be of any further assistance.

Best regards,

A handwritten signature in black ink, appearing to read 'Becca Settele', with a stylized, flowing script.

Becca Settele
Wildlife Biologist

382000

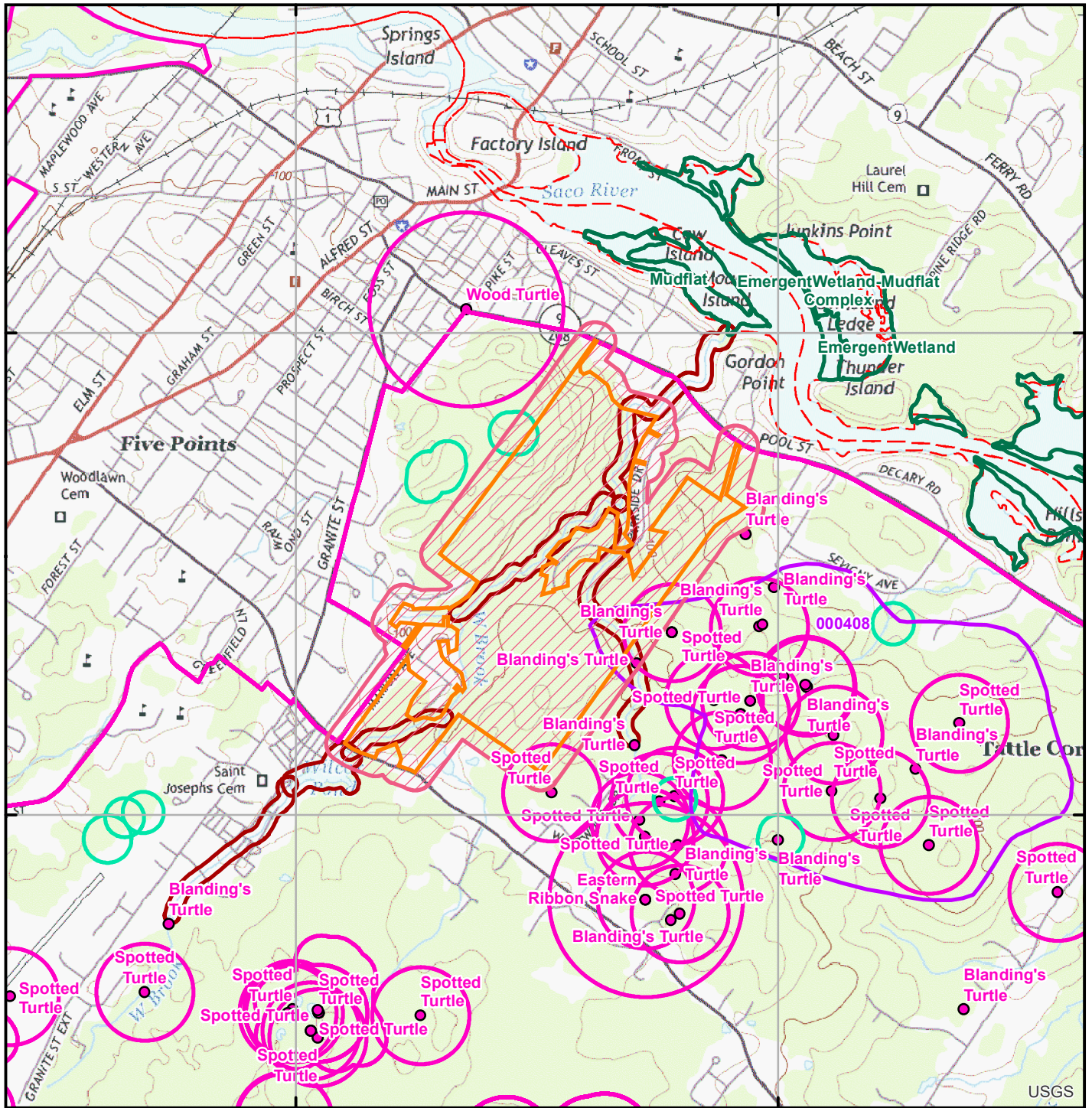
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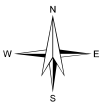
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Environmental Review of Fish and Wildlife Observations and Priority Habitats

Project Name:

Project Name: Winding Creek Lane, Biddeford
(Version 1)Maine Department of
Inland Fisheries and Wildlife

0 0.125 0.25 0.5 0.75 1 Miles

Projection: UTM, NAD83, Zone 19N

Date: 6/22/2021

- ▬ ProjectSearchAreas - All Versions
- ▬ Maine Cliff and Talus Areas

- ▬ Deer Winter Area
- ▬ LUPC p-fw
- ▬ Cooperative DWAs
- ▬ Seabird Nesting Islands
- ▬ Shorebird Areas
- ▬ Inland Waterfowl and Wading Bird
- ▬ 2008 Iwwh - Shoreland Zoning
- ▬ Tidal Waterfowl and Wading Bird
- ▬ Significant Vernal Pools
- ▬ Environmental Review Polygons

- ▬ Roseate Tern
- ▬ Piping Plover and Least Tern
- ▬ Aquatic ETSc - 2.5 mi review
- ▬ Rare Mussels - 5 mi review
- ▬ Maine Heritage Fish Waters
- ▬ Arctic Charr Habitat
- ▬ Redfin Pickerel and Swamp Darter Habitats - buffer100ft
- ▬ Special Concern occupied habitats - 100ft buffer
- ▬ Wild Lake Trout Habitats

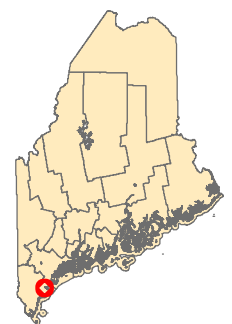


Exhibit E:
Plant List

Common Name	Latin Name
Striped Maple	<i>Acer pensylvanicum</i>
Red Maple	<i>Acer rubrum</i>
Sugar Maple	<i>Acer saccharum</i>
Speckled Alder	<i>Alnus incana</i>
Service Berry (Shadbush)	<i>Amelanchier arborea</i>
Wild Sarsaparilla	<i>Aralia nudicaulis</i>
Jack-in-the-pulpit	<i>Arisaema triphyllum</i>
Japanese Barberry	<i>Berberis thunbergii</i>
Paper Birch	<i>Betula papyrifera</i>
Fringed Sedge	<i>Carex crinita</i>
Hop Sedge	<i>Carex lupulina</i>
Tussock Sedge	<i>Carex stricta</i>
Oriental Bittersweet	<i>Celastrus orbiculatus</i>
Bluebead Lily	<i>Clintonia borealis</i>
Sweet Fern	<i>Comptonia peregrina</i>
Goldthread	<i>Coptis trifolia</i>
Bunchberry	<i>Cornus canadensis</i>
Three-way Sedge	<i>Dulichium arundinaceum</i>
Narrow Leaved Goldenrod	<i>Euthamia graminifolia</i>
Green Ash	<i>Fraxinus pennsylvanica</i>
Checkerberry	<i>Gaultheria procumbens</i>
Witch Hazel	<i>Hamamelis ovalis</i>
Common St. Johnswort	<i>Hypericum perforatum</i>
Winterberry	<i>Ilex verticillata</i>
Soft Rush	<i>Juncus effusus</i>
Northern Water-horehound	<i>Lycopus americanus</i>
Maleberry	<i>Lyonia ligustrina</i>
Swamp Candle	<i>Lysimachia terrestris</i>
False Lily-of-the-Valley	<i>Maianthemum dilatatum</i>
False Solomon Seal	<i>Maianthemum racemosum</i>
Ostrich Fern	<i>Matteuccia struthiopteris</i>
Partridgeberry	<i>Mitchella repens</i>
Ghost Pipe	<i>Monotropa uniflora</i>
Interrupted Fern	<i>Osmunda claytoniana</i>
Royal Fern	<i>Osmunda regalis</i>
Cinnamon Fern	<i>Osmundastrum cinnamomeum</i>
Red Pine	<i>Pinus resinosa</i>
White Pine	<i>Pinus strobus</i>

Common Name	Latin Name
Christmas Fern	<i>Polystichum acrostichoides</i>
Bracken fern	<i>Pteridium aquilinum</i>
White Oak	<i>Quercus alba</i>
Red Oak	<i>Quercus rubra</i>
Swamp dewberry	<i>Rubus hispidus</i>
Common Elderberry	<i>Sambucus nigra</i>
Darkgreen Bulrush	<i>Scirpus atrovirens</i>
Woolgrass	<i>Scirpus cyperinus</i>
Steeplebush	<i>Spiraea tomentosa</i>
Meadowsweet	<i>Spiraea latifolia</i>
New York Fern	<i>Thelypteris noveboracensis</i>
Marsh Fern	<i>Thelypteris palustris</i>
Northern White Cedar	<i>Thuja occidentalis</i>
Eastern Hemlock	<i>Tsuga canadensis</i>
Broadleaved Cattail	<i>Typha latifolia</i>
Lowbush Blueberry	<i>Vaccinium angustifolium</i>
Highbush Blueberry	<i>Vaccinium corymbosum</i>
Highbush Blueberry	<i>Vaccinium corymbosum</i>
Arrowwood	<i>Viburnum dentatum</i>
Wild Raisin	<i>Viburnum nudum</i>

Morse Environmental Consulting, LLC

November 9, 2021

Planning Board
City of Biddeford
P.O. Box 586
Biddeford, Maine 04005

RE: Sumi Dolben, 25 Mile Stretch Road, Non-Conforming Structure Relocation

Dear Members of the Biddeford Planning Board:

On July 7, 2021, the Planning Board considered a non-conforming structure relocation proposal for the above-referenced parcel. During the Board's meeting several concerns were raised by Board members and members of the public during a public hearing. I address the main concerns as follows:

- 1) A question was raised whether the proposed structure's use as a residential dwelling unit constituted a change of use of the structure. City staff were charged with investigating this question with the Department of Environmental Protection staff. Their conclusion is that a residential dwelling unit does represent a change of use of the structure. Despite our disagreement with this conclusion as it is not clearly predicated by regulation, State or City, the applicant now proposes that the replacement structure will not be a residential dwelling unit and that there will not be a change of use under the City Code.
- 2) Several comments were made at the meeting with respect to largely anecdotal accounts of flooding in this area. We do not necessarily dispute that flooding may occur along this area of shoreline, however, the Board's relocation review in this matter does not consider compliance with the City's floodplain regulations. In order to eventually obtain a building permit from the City's Code Enforcement Officer, the replacement building must be designed in accordance with specific floodplain requirements and such standards will be applicable to the project at that time. For the purposes of determining relocation of a non-conforming structure, flooding is not a consideration by the Board under the City's Code.

The extent of the 100-year floodplain is separate and distinct and has no bearing on the upland edge of the coastal wetland, which is the controlling regulatory demarcation for establishing structure setback. As previously described, the upland edge of the coastal wetland, as defined within the City of Biddeford Code, has been properly delineated by an extremely well-qualified wetland scientist. This starting point for measuring structure setback is not affected by the 100-year floodplain or any anecdotal

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16 Liberty Road, Falmouth, Maine 04105

information related to historic flooding events. The coastal wetland has been established in accordance with the strict terms of the City of Biddeford Code and has been accepted by the City's Director of Code Enforcement, Roby Fecteau, as having been properly established for this purpose.

- 3) Several people commented on the septic system that is depicted on the site plans submitted with the application. The City's Code clearly outlines the specific and exclusive list of criteria that the Board considers when determining the relocation of the structure. Article XIV, Section 12(C)(3) of the Code, "Relocation", contains these specific criteria that the Board considers. Among these criteria is the location of on-site soils that are suitable for septic systems. Additionally, this Code provision requires that the applicant demonstrate that a new septic system can be installed in compliance with the law and rules for septic systems. The application and supporting plans precisely adhere to this requirement and establish the only location on the property that contains on-site soils suitable for a septic system, and demonstrates that a new septic system can in fact be installed in compliance with State law and rules associated with septic systems. The septic system was designed by a State of Maine Licensed Site Evaluator and the design meets both State and City standards. The septic system design is a City Code requirement.

Sections of the application have been revised to eliminate the use of the structure as a residential dwelling unit and have been further revised to address some of the concerns that have been raised and discussed above. We respectfully request that the Board's review be limited to the City Code requirements affecting the relocation of the structure footprint. Accordingly, please find enclosed the application sections that have been revised, for the relocation of a non-conforming structure footprint located at 25 Mile Stretch Road.

I have enclosed 10 copies of the revised application sections along with 3 additional copies of the corresponding proposed relocation plan sheet that has also been modified- one of the additional copies is intended for signature and recordation at the Registry of Deeds.

Please don't hesitate to contact me with any questions. Thank you in advance for your consideration of this matter. I look forward to discussing this with you in the near future.

Sincerely,



Mike Morse
Morse Environmental Consulting, LLC

Size of lot: 48,563 ☐ acres ☒ s.f. Lot Frontage: Road: 182.66' / Shore: 182'

Existing Use of Property: The property contains an existing residential garage/storage building that compliments 26 Mile Stretch Road, which contains a residential dwelling that is also owned by the applicant.

Property currently serviced by:

☒ City Road	☐ Private Road
☐ Public Sewer	☐ Septic System
☐ Public Water	☐ Private Well
☐ Public Trash	☐ Private Hauler

Slope Conditions in Area of Construction (if applicable):

☒ Flat (0-3 % slope) ☐ Rolling (3-8% slope) ☐ Hilly (8-15% slope) ☐ Steep (15% + slope)

Are there any wetlands or waterbodies on the site? ☒ Yes ☐ No If yes, attach information

Do you plan to bring fill onto the lot? ☒ Yes ☐ No If yes, attach information

Description of proposed use of property:

Project/Proposed Use Description: The property is developed with a residential garage and storage building. The structure is considered a non-conforming structure. The application is submitted in accordance with Article XIV, Section 12(C)(4), for determination of relocation of the existing footprint in compliance with the shoreline setback to the greatest practical extent.

The structure's footprint will also be relocated to be fully on the subject parcel. A change of use is not proposed in this application.

Property to be serviced by:

☒ City Road	☐ Private Road
☐ Public Sewer	☒ Septic System
☒ Public Water	☐ Private Well
☒ Public Trash	☐ Private Hauler

Is this project part of a larger project? ☐ Yes ☒ No

Fees (due at time of application): \$140.00

Refer to "Attachment A Fees and Charges" of the Land Development Regulations for more information. Consult with Planning Staff if you have questions.

Required Signatures:

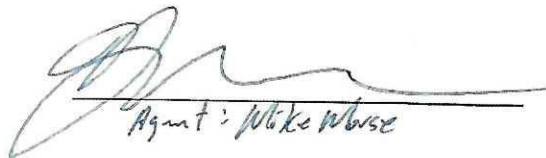
By signing this application, as the foresaid applicant or authorized agent:

- I certify that I have read and completely understand the application;
- I certify that the information contained in this application and it's attachments are true and correct;
- I understand that all information provided on this form and all other documents submitted as part of my proposal is a matter of public record;
- I understand that copies of this information may be supplied upon request to an interested party.
- I understand that additional funds may be required through the course of review for special studies, legal review costs, and/or engineering review.
- I understand that by submitting this application I am not guaranteed a place on any particular agenda. I further understand that the City Planner will place me on an agenda for review when the application is deemed substantially complete.

☐ Project proposed to have 1 acre or more of site disturbance:

-Project may need to apply for a Maine Construction General Permit and shall comply with the requirements of DEP Chapter 500 Stormwater Regulations, as they apply.

Signature of applicant:


Agent: Mike Morse

Date: 6/4/21

REV-10/26/2021


Signature of owner of property:

Date: _____

Morse Environmental Consulting, LLC

www.morseenvironmental.com
mike@morseenvironmental.com
207-558-0842

June 4, 2021
(Revised November 9, 2021)

Sumi Dolben

Non-conforming Structure Relocation Review
25 Mile Stretch Road, Biddeford

Project Description

The applicant purchased the subject property in May 2020. The parcel is developed with a residential use structure (garage/storage) and a driveway. The structure is located 87.29 feet from the coastal wetland edge as delineated by Albert Frick Associates, Inc. on April 9, 2021, and therefore it is considered to be a non-conforming structure under the Code. It is unclear exactly when the structure was constructed, however it is an older structure that has been maintained. The structure is present in a 1956 aerial photograph.

The structure is 784 square feet in area and an approximately 110 square foot portion of the structure is located within the Mile Stretch Road right-of-way.

The project proposes to remove the existing non-conforming structure and reconstruct it in a more conforming location. Such projects are allowed, subject to City Code, Article XIV, Section 12(C)(4), Reconstruction or Replacement. Specifically, City Code allows the removal and reconstruction of a non-conforming structure within the shoreland zone provided that the structure's footprint is relocated to be in compliance with the shoreline setback to the greatest practical extent, as determined by the Planning Board. Greatest practical extent relocation determination by the Planning Board is the exclusive purpose of this application. This application does not propose a residential dwelling unit within the proposed structure.

Pursuant to the City's Code, when relocating a non-conforming structure in compliance with the shoreline setback to the greatest practical extent, the Planning Board shall consider 6 specific criteria (see Article XIV, Section 12 (C)(3)). These criteria include, and are limited to the following:

- 1) Size of the lot
- 2) Slope of the land
- 3) Potential for soil erosion
- 4) Location of other structures on the property and on adjacent properties
- 5) Location of the septic system and other on-site soils suitable for septic systems
- 6) The type and amount of vegetation to be removed to accomplish the relocation

Discussion

The subject lot is 48,563 square feet total, but due to the presence of coastal wetland on the lot the effective lot area (Ref. Section 15.A.1 of the City's Code) landward of the coastal wetland line is 24,238 square feet. The existing and proposed structure locations are affected by the minimum shoreline setback and the minimum front line/ road setback requirements.

For the purposes of this project the upland edge of the coastal wetland as defined in the City Code, was identified by field analysis and GPS-located by a Certified Wetland Scientist and Maine Licensed Soil Scientist. Roby Fecteau, City of Biddeford CEO, recommended that this delineation be conducted, and a survey plan that includes the coastal wetland delineation was emailed to Mr. Fecteau on May 26, 2021. Soils on the lot were analyzed by a Maine Licensed Site Evaluator to determine whether the lot contained soils suitable for a septic system under State and City subsurface wastewater disposal system regulations.

With respect to the 6 relocation criteria outlined in the Code, we provide the following:

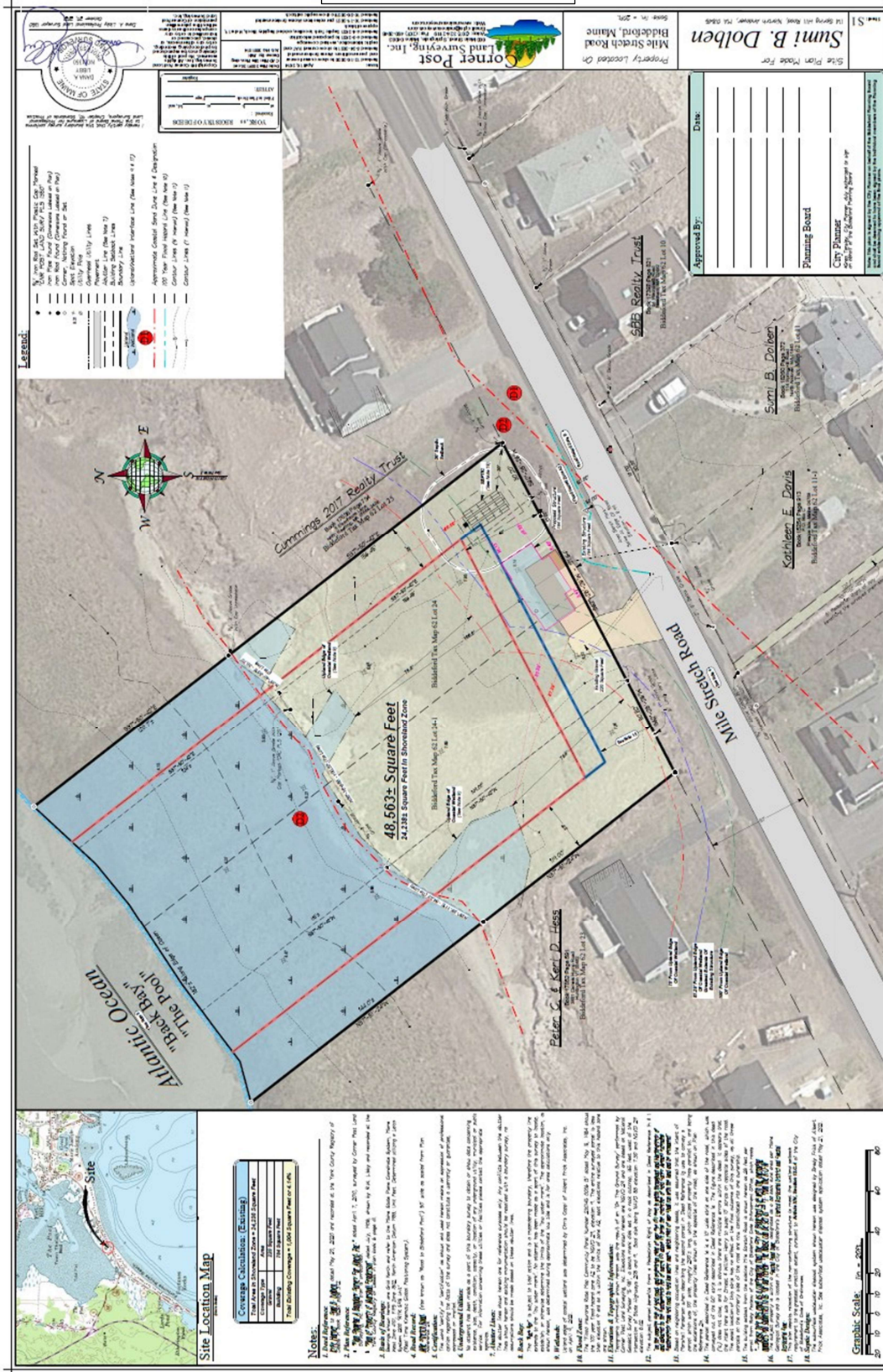
- 1) Size of the lot: Considering the modest lot size and multiple minimum setback restrictions, there is a very limited location for the structure footprint to be relocated. In the attached site plan prepared by Corner Post Land Surveying, Inc, dated October 20, 2021, we propose to relocate the structure in a northeasterly direction. While the shoreline setback for the proposed footprint remains at the same distance as the existing structure (87.29'), the structure has been relocated entirely out of the roadway right-of-way and fully onto the subject parcel.
- 2) Slope of the land: the land is very gently sloping and the slope of the land provides no limitation on the relocation of the structure footprint.
- 3) Potential for soil erosion: There are no unique soil conditions or other soil features such that the relocation of the structure footprint would create risk of soil erosion from the lot.
- 4) Location of other structures on the property and on adjacent properties: There are no other structures that are located on the property. There are residential dwellings located on the adjacent properties to the east and west of the subject lot, however, the locations of structures on the two adjacent lots are immaterial to the proposed structure footprint relocation- those structures do not limit footprint relocation on the subject lot.

- 5) Location of the septic system and other on-site soils suitable for septic systems: Albert Frick Associates, Inc. (AFA) has evaluated soils on the property in accordance with State and City subsurface wastewater disposal system design standards and has determined that there are on-site soils that are suitable for a septic system. Article XIV, Section 12(C)(3) of the Code requires that the applicant demonstrate that a new septic system can be installed in compliance with the law and rules for septic systems. Accordingly, AFA designed a septic system in compliance with those regulations and this system is depicted on the attached relocation plan. It is located in the only possible area on the lot, within the southeasterly corner of the lot.
- 6) The type and amount of vegetation to be removed to accomplish the relocation: Vegetation removal does not impede structure footprint relocation under the City Code. The existing location from where the structure will be relocated will be replanted with grass vegetation as specified in the Code.

Relocation Summary

Due to the relatively small lot size and minimum setback requirements from multiple directions, and as otherwise discussed above, it is our opinion that the proposed footprint relocation of the non-conforming structure footprint establishes the minimum shoreline setback to the greatest practical extent. Accordingly, the applicant respectfully requests the Planning Board's concurrence that the structure footprint's greatest practical extent relocation on the lot is 87.29 feet from the upland edge of the coastal wetland, and that the structure footprint would be fully relocated outside of the road right-of-way and onto the lot.

Proposed Conditions

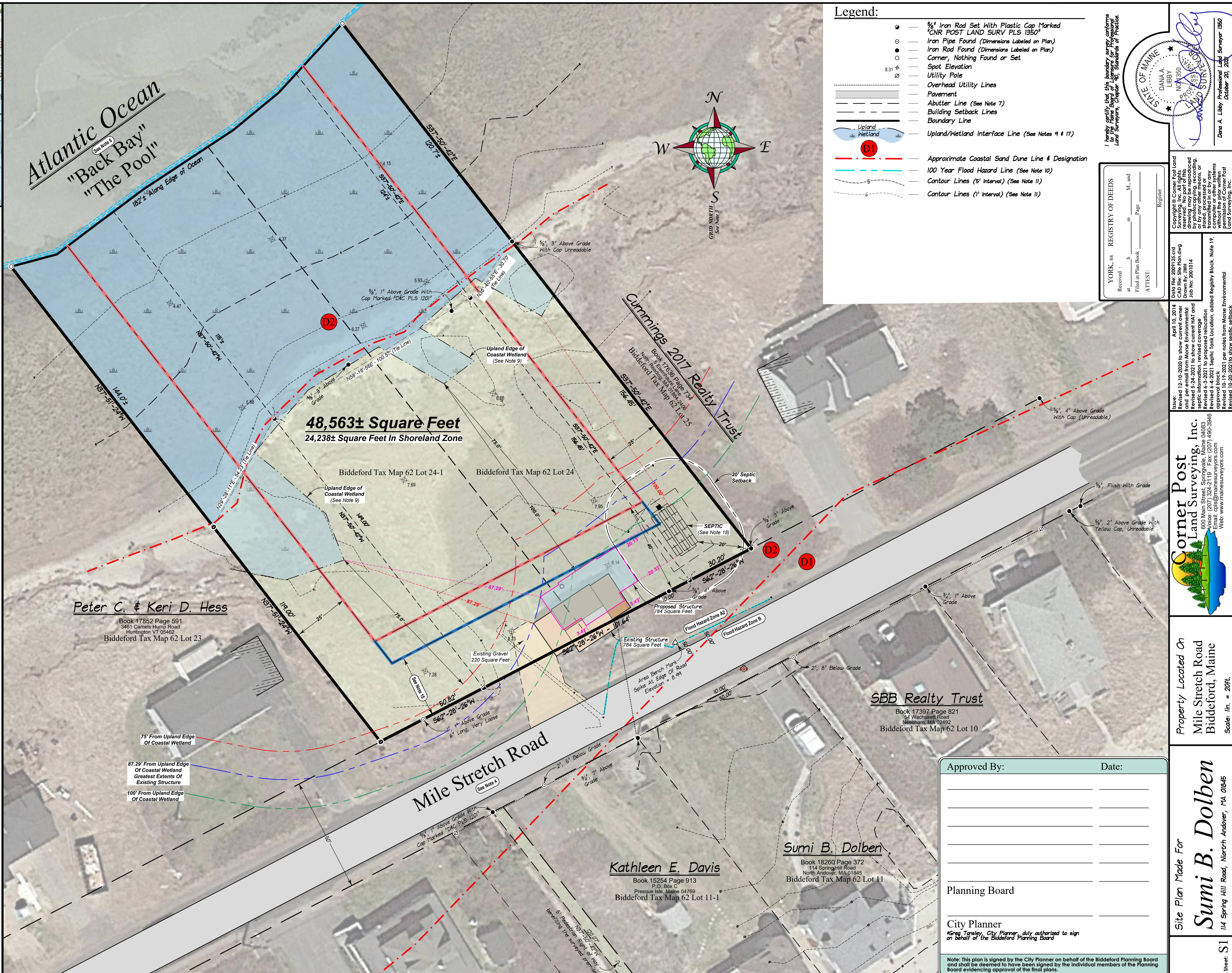
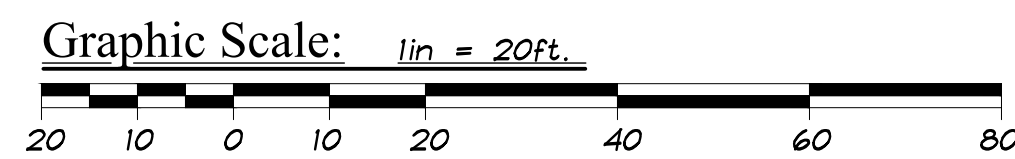




Coverage Calculation: (Existing)	
Total Area In Shoreland Zone = 24,238 Square Feet	
Coverage Type	Area
Gravel	220 Square Feet
Building	784 Square Feet
Total Existing Coverage = 1,004 Square Feet or 4.14%	

Notes:

1. **Deed Reference:**
Kyle Harper to Sumi B. Dolben dated May 20, 1920 and recorded at the York County Registry of Deeds in book 1826/60 page 372.
2. **Plan Reference:**
 a. **"Plan Showing A Boundary Survey For Almed, Inc."** dated April 7, 2010, surveyed by Corner Post Land Surveying, Inc. This plan is unrecorded.
 b. **"Plan of Property of Marshall Fenderson"** dated July, 1908, drawn by R.W. Libby and recorded at the York County Registry of Deeds in plan book 6 page 41.
3. **Basis of Bearings:**
 Bearings shown herein are Grid North and refer to the "Maine State Plane Coordinate System, 'Maine West Zone 400', FIPS Zone 1802, North American Datum 1983; Unit Feet. Determined utilizing a Leica System 1200 "RTK GPS Unit," (Real Time Kinematic Global Positioning System).
4. **Road Record:**
1/4 Mile Stretch Road, (also known as "Road to Bliddeford Pool") 50' wide as scaled from Plan Reference 2b.
5. **Certification:**
 The "word 'certify' or 'certification'" as shown and used herein means an expression of professional opinion regarding the facts of the survey and does not constitute a warranty or guarantee, expressed or implied.
6. **Underground Utilities:**
 No attempt has been made as a part of this boundary survey to obtain or show data concerning existence, size, depth, condition, capacity, or location of any underground utility, municipal or public service. For information concerning these utilities or facilities please contact the appropriate agency.
7. **Abutter Lines:**
 The abutter lines shown herein are for reference purposes only. Any conflicts between the abutter lines shown herein and existing monumentation should be resolved with a boundary survey, no assumptions should be made based on these abutter lines.
8. **Back Bay:**
 The "Back Bay" is subject to tidal action and is a meandering boundary, therefore the property line extends to the "low water mark". No attempt has been made as a part of this survey to locate, establish, or otherwise determine the limits of the "low water mark". The approximate location, as shown herein, was determined during approximate low tide and is for area calculations only.
9. **Wetlands:**
 Upland edge of coastal wetland was determined by Chris Coppi of Albert Frick Associates, Inc. on April 1, 2021.
10. **Flood Zone:**
 The "Flood Insurance Rate Map Community Plan Number 230145 0006 B" dated May 15, 1984 shows the "100 year flood hazard zone A2" to be NGVD 29, elevation 9. The entire surveyed parcel is less than elevation 9 and so is within the limits of zone A2, spot elevations relative to this hazard zone are shown.
11. **Elevation & Topographic Information:**
 Topographic information shown herein was the result of an "On The Ground Survey" performed by Corner Post Land Surveying, Inc. Elevations shown are NGVD 29 and are based on National Geodetic Survey Marker "5 98", a bench mark disk set in a rock outcrop, 165 feet west of the intersection of State Highways 208 and 9. Said disk being in NAVD 88 elevation 7.30 and NGVD 29 elevation 8.02.
12. The subject parcel benefits from a Pedestrian Right of Way as described in Deed Reference 11 & 12. The subject side of said road, and pedestrian right of way 5' (feet) is within throughout and Northeasterly of and adjacent to the Southerly line of parcel (2) above (in being the centerline of said Carley Avenue) extending Southeasterly from said road to said low water mark, which right of way shall run with the land and be permanent."
13. Based on neighboring occupation lines and neighboring deeds, it was assumed that the intent of Marshall Fenderson when describing the second parcel in Deed Reference 1b was to convey a parcel which was 100' wide, roughly 200' long, which utilized property lines parallel to, and being the extensions of, the property lines shown on the opposite of the road, as shown on Plan Reference 2b.
14. The parcel described in Deed Reference 1c is a 10' wide strip on one side of the road, which was conveyed out of the 50' strip described in Deed Reference 1b. The figure described in this deed (1c) does not close, and it is obvious there are multiple errors within the deed. It appears that the intent here was for Ernest & William Henry to swap 10' strips on opposite sides of the road. The description of this strip has no effect on the final outcome of this survey, as all three parcels on the northerly side of the road are now consolidated into one ownership.
15. The building setback from the sideline Mile Stretch Road is shown herein as 25 feet per email from Roby Festeau of the City of Bliddeford Code Enforcement Office, which reads "....Please take this email as a confirmation that the City of Bliddeford is ok with the averaging numbers you submitted to us for our review. The house can be set at 28 ft. from the R.O.W"
16. The subject property is within a Coastal Sand Dune designated as a 02 back dune area per Maine Geological Survey and is located in the City of Bliddeford's Limited Residential and Coastal Residential Zone.
17. This plan depicts relocation of the non-conforming structure to meet the wetland setback requirement to the greatest practical extent, pursuant to Article XIV, Section 12.C.4 of the City of Bliddeford's Code of Ordinances.
18. **Septic Design:**
 The subsurface wastewater disposal system shown herein was designed by Brady Frick of Albert Frick Associates, Inc. See subsurface wastewater disposal system application dated May 21, 2021.



**PLANNING
BOARD REPORT**

November 23, 2021

Biddeford Planning Board
Greg Tansley, City Planner
City of Biddeford
205 Main Street
Biddeford, Maine 04005

Application: Sumi B. Dolben

25 Mile Stretch Road (Tax Map 62 Lot 24 and 24-1)

Reconstruction of a Nonconforming Structure in the Shoreland Zone

Review Status: Revised Application

Board members and Mr. Tansley,

The following application information has been provided for review:

1. Cover letter Morse Environmental Consulting, LLC, dated 9/8/2021
2. Revised Application, narrative, and map/photo exhibits, prepared by Morse Environmental Consulting, LLC, dated 10/26/2021.
3. Plan entitled: *Site Plan made for Sumi B. Dolben...Property located on Mile Stretch Road, Biddeford, Maine*. Prepared by Corner Post Land Surveying, dated 5/24/2021 (Depicts location of existing garage) (previously submitted)
4. Plan entitled: *Site Plan made for Sumi B. Dolben...Property located on Mile Stretch Road, Biddeford, Maine*. Prepared by Corner Post Land Surveying, dated 10/20/2021 (Depicts location of proposed reconstructed building)

With review of the above information and the City's Land Development Regulations I offer the following comments on compliance with the Town's ordinances.

PROJECT DESCRIPTION

The project site is a developed lot located within the Shoreland Zone (Limited Residential) and Coastal Residential base zone. The applicant is seeking to replace the existing garage, a nonconforming structure, with a new building which requires the Planning Board to determine the setback from the shoreline *to the greatest practical extent*. The proposed development will include a new septic system to be approved by the City's Code Enforcement Officer/Local Plumbing Inspector.

APPLICATION COMPLETENESS REVIEW

The application is before the Planning Board for reconstruction/replacement of a nonconforming building within the shoreland zone per Article XIV Shoreland Zoning Ordinance, Section 12.C.4 Reconstruction. As outlined in this provision, the Planning Board is required to determine to the greatest practical extent the distance the new structure can be located from the shoreline, as directed in Section 12.C.3 Relocation.

When considering the sections above and Section 16 Administration, **the application submitted appears be complete.**

COMPLIANCE WITH THE CITY'S ORDINANCES

LAND USE REGULATIONS

The Planning Board, at its review in July of this year, requested that Maine DEP review and provide an opinion on if reconstructing the nonconforming garage as a new dwelling constituted a change of use as anticipated by Sec. 12.C.5. DEP found it did and the applicant has revised their proposal to not include a dwelling unit. A suggested plan note addresses the status of the building.

Section 12.C.4 allows the reconstruction/replacement of a nonconforming structure in the Shoreland Zone when the Planning Board determines the new location is at a distance *to the greatest practical extent* from the shoreline. The existing building is within the 100-foot Limited Residential (LR) District Setback. When determining the greatest practical extent, the Board considers factors outlined in Section 12.C.3 and included below:

- *the size of the lot,*
- *the slope of the land,*
- *the potential for soil erosion,*
- *the location of other structures on the property and on adjacent properties,*
- *the location of the septic system and other on-site soils suitable for septic systems, and*
- *the type and amount of vegetation to be removed to accomplish the relocation.*

The applicant addresses each of the above factors in the submitted review narrative. It is suggested that due primarily to the property having a limited building envelope as a result of the minimum setbacks from the shoreline and the street ROW, and the location of a new septic system, there is no suitable location other than no closer than 87.29 feet from the Highest Annual Tide (HAT) line. The applicant has depicted this line, referenced as the *Greatest Extents of Existing Structure* (dashed blue line), on the plan prepared for recording, Sheet S1 (dated 10/20/2021).

ADDITIONAL COMMENTS

The Plan (Sheet S1) needs the following revisions:

1. Note 17 be moved to the beginning of the plan notes and renumbered to #1 and revised to read: *Purpose of this Plan: This plan depicts reconstruction of the non-conforming structure*

to meet the wetland setback requirement to the greatest practical extent, pursuant to Article XIV Shoreland Zoning Ordinance, Section 12.C.4 of the City of Biddeford's Land Development Regulations. The new building shall be no closer than 87.29 feet from the Highest Annual Tide (HAT), as denoted on this plan.

2. An additional plan note to address the use of the new building should be added to the plan, and read: *The existing accessory residential use (includes no dwelling unit) of the nonconforming structure shall remain the use for the reconstructed building, unless the Planning Board grants a change of use pursuant to Article XIV Shoreland Zoning Ordinance, Section 12.C.5 of the City of Biddeford's Land Development Regulations.*
3. Plan note #15 should specify the date and sender of subject email after submitting to Planning Department for review and file.
4. Plan note #8 refers to 'Back Bay'. The applicant should confirm this is accurate and why reference to *Biddeford Pool* would not be more appropriate.
5. Title of the Plan should read: *Shoreland Zone Setback Requirement to the Greatest Practical Extent – Site Plan.*
6. Conditions of approval, when finalized, to be placed on the plan.

WAIVER REQUESTS

None requested.

CONCLUSION

The Planning Board should review Section 12.C.4 and 12.C.3 for the determination to locating a reconstructed nonconforming structure from the shoreline to the greatest practical extent and determine if it concurs with the required setback from the shoreline proposed.

Considering the submitted application appears to address the applicable provisions in the City's Shoreland Zoning Ordinance (Article XIV) a conditional approval (conditioned to recommended plan revisions) appears to be in order. Suggested conditions of approval can be found in the draft Findings of Fact.

Feel free to contact me with questions.

Best regards,



Christopher Di Matteo

Contract Planner for the City of Biddeford

cdimatteo@longmeadowpla.com

207.604.4245

**FINDINGS OF FACT AND CONCLUSIONS OF LAW
RECONSTRUCTION OF A NONCONFORMING STRUCTURE
WITHIN THE SHORELAND ZONE**

Determination of the Required Setback to the Greatest Practical Extent

Pursuant to the provisions of the City of Biddeford Land Development Regulations Article XIV, Shoreland Zoning, the Biddeford Planning Board has considered the application by **Sumi B. Dolben**, including supportive data, public hearing testimony and related materials contained in the record. Based on Public Comment and Staff's review and recommendation, the Planning Board makes the following Findings of Fact and Conclusions of Law:

Findings of Fact:

1.	Applicant:	Sumi B. Dolben 114 Spring Hill Road, North Andover, MA 01845
2.	Owner of Property:	Sumi Dolben
3.	Agent:	Morse Environmental Consulting LLC 16 Liberty Road, Falmouth, ME 04105
4.	Surveyor:	Corner Post Land Surveying, Inc. 600 Main St. Springvale, ME 04083
4.	Project Location:	25 Mile Stretch Road Biddeford, ME 04005
5.	Project Tax Map #/Lot #:	Tax Map 62 Lot 24 thru 24-1
6.	Lot Size:	23,710 SF +/- (area above the HAT)
7.	Base Zoning:	Coastal Residential
8.	Overlay Zoning:	Limited Residential (LR) Shoreland Zone
9.	Designations:	Back Coastal Dune Boundary (D2 Back Dune Area)
10.	Existing Use:	Garage/Storage
11.	Proposed Use:	No change (no dwelling unit)
12.	Floodplain Status:	Within the A2 Flood hazard area (Elev. 9')
13.	Approvals Required:	Determination of the Required Setback to the Greatest Practical Extent
14.	Uses in the Vicinity:	Residential - Single family dwelling
15.	Dimensional Requirements (Base Zone):	
	Min. Setback from R.O.W: 25 FT	Minimum Rear Setback: 25 FT
	Minimum Side Setback: 25 FT	Maximum Height: 3 stories / 35 FT
16.	Shoreland Zoning Setback to the Greatest Practical Extent:	
	Minimum Setback from the normal high-water line (Highest Annual Tide) of other water bodies, tributary streams, or the upland edge of a wetland: 100 FT.	

	Reconstruction of a nonconforming structure located less than the required setback for a new structure is to be located to the greatest practical extent from the shoreline (HAT) as depicted on the approved plans (referenced below) and signed by the Planning Board considering all factors outlined in Section 12.C.3 and 12.C.4 of Article XIV (Shoreland Zoning Ordinance) of the City's Land Development Regulations and subject to the Board's Conditions of Approval.	
17.	Waivers Needed:	a. None
18.	Waivers Granted:	a. None
19.	Variances Needed for Approval:	None.
20.	Other Approvals Required:	Building Permits from the Biddeford Code Enforcement Office.
21.	Other Permits Obtained:	None.
22.	Other Non-City Permits Required:	Maine DEP NRPA Permit – Coastal Dune
23.	LDR Attachment A: Fees Paid:	Yes
24.	Application Materials Submitted: 1. Cover letter Morse Environmental Consulting, LLC, dated 9/8/2021 2. Revised Application, narrative, and map/photo exhibits, prepared by Morse Environmental Consulting, LLC, dated 10/26/2021. 3. Plan entitled: <i>Site Plan made for Sumi B. Dolben...Property located on Mile Stretch Road, Biddeford, Maine.</i> Prepared by Corner Post Land Surveying, dated 5/24/2021 (Depicts location of existing garage) (previously submitted) 4. Plan entitled: <i>Site Plan made for Sumi B. Dolben...Property located on Mile Stretch Road, Biddeford, Maine.</i> Prepared by Corner Post Land Surveying, dated 10/20/2021 (Depicts location of proposed reconstructed building)	
25.	Planning Board Review History:	
	Initial review on July 7, 2021. Final review and approval of the required setback to the greatest practical extent on December 1, 2021.	

Conclusions of Law:

The Planning Board concludes based on the following that the proposed location of the nonconforming structure at 49 Mile Stretch Road, being no closer than 87.29 feet from the Highest Annual Tide (HAT) line and as depicted on the approved plan for Sumi Dolben, signed by the Planning Board (or its designee), is in compliance with the required setback from the shoreline to the greatest practical extent.

1. Pursuant to the City's Land Use Regulations, Article XIV, Section 12.C, when considering the relocation, reconstruction or replacement of a nonconforming structure located less than the required setback from the shoreline, the Planning Board shall consider the following:

- a. ***The size of the lot:*** Modest lot size and required minimum setbacks limits locating the structure further from the Highest Annual Tide elevation than shown on the plan;
- b. ***The slope of the land:*** The topography is modest in relief and does not limit the location of the structure;
- c. ***The potential for soil erosion:*** The property does not include any soil conditions that would limit the location of the structure due to soil erosion.
- d. ***The location of other structures on the property and on adjacent properties:*** There are no other structures on the property to remain and the structures located adjacent to the property do not limit the location of the structure.
- e. ***The location of the septic system and other on-site soils suitable for septic systems:*** The proposed septic system is located in the southeasterly corner of the lot, northeast of the building location and must be a minimum of 100 feet from the Highest Annual Tide line and a minimum of 20 feet from the building; and
- f. ***The type and amount of vegetation to be removed to accomplish the relocation:*** The type and amount of vegetation likely to be removed is not significant and does not limit locating the structure further away from the protected resource.

Determination:

Based on the evidence available and the conclusions above, the Biddeford Planning Board approves the application with the following conditions:

Conditions of Approval:

1. Standard Condition's
2. Prior to signing the final plan, a revised plan per staff and Board comments shall be submitted to the City Planner for his review and approval
3. No new (reconstruction) structure is permitted closer to the shoreline as what is depicted on the approved plan entitled: *Shoreland Zone Setback Requirement to the Greatest Practical Extent – Site Plan 25 Mile Stretch Road, Biddeford... prepared for Sumi B. Dolben*, Prepared by Corner Post Surveying, Inc. and signed by the Planning Board (or its designee).
4. No portion of the structure shall be reconstructed within the City Right-Of-Way.
5. The Code Enforcement Officer shall review and approve conformance to provisions of Article XIV of the Land Development Regulations (Shoreland Zoning Ordinance) that are required in addition to the Planning Board's approval of the required setback to the greatest practical extent.
6. Trees removed in order to relocate a structure must be replanted with at least one native tree, three feet in height, for every tree removed. If more than five trees are planted, no one species of tree shall make up more than 50% of the number of

trees planted. Replaced trees must be planted no further from the water or wetland than the trees that were removed. Other woody and herbaceous vegetation and ground cover that are removed or destroyed in order to relocate a structure must be reestablished. An area at least the same size as the area where vegetation and/or ground cover was disturbed, damaged, or removed must be reestablished within the setback area. The vegetation and/or ground cover must consist of similar native vegetation and/or ground cover that was disturbed, destroyed or removed.

- 7. Where feasible, when a structure is relocated on a parcel, the original location of the structure shall be replanted with vegetation which may consist of grasses, shrubs, trees, or a combination thereof.**
- 8. Obtain all required permits from Maine Department of Environmental Protection and the Biddeford Code Enforcement Office.**
- 9. This approval shall expire one year from the date below if a substantial start is not made in construction. If a substantial start is made within one year of the date below, the applicant shall have one additional year to complete the project, thereafter this approval shall expire.**

Planning Board Chairman

Date