

City of Biddeford
Policy Committee
February 26, 2024 6:00 PM Council Chambers & Zoom

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Status:

- 1. Roll Call**
- 2. Pledge of Allegiance**
- 3. Adjustments to the Agenda**
- 4. Discussion/Review**
 - 4.1. Proposed Solar Farm Ordinance
 - [Proposed Commercial Solar Ordinance Biddeford](#)
 - [Fryeburg Solar Energy Systems](#)
 - [Sanford - Solar energy system](#)
 - [South Portland Solar Energy Systems](#)
 - 4.2. Discussion/Conservation Language for Clifford Park
 - [20240226 Clifford Park - Clifford Park Conservation Easement Language - BRIEF](#)
 - [20240226 Clifford Park - Maine Coast Heritage Trust Conservation Easement - TEMPLATE](#)
 - [20220922 Planning Board Letter-Clifford Park Conservation Easements - REFERENCE](#)
 - [20230925 Clifford Park - Proposed Land Conveyances-MAP.pdf](#)
- 5. Adjourn**

§. Commercial Solar Photovoltaic Installations

- A. Purpose This ordinance is to encourage the use of solar energy systems and protect solar access, to increase our local renewable energy production, to decrease our reliance on fossil fuels to produce electricity, and to improve local air quality.

This promotion of commercial solar photovoltaic installations is to be accomplished pursuant to the standards set forth herein for the placement, design, construction, operation, monitoring, modification and removal of such installations that address public safety, scenic, natural and historic resources, and provide adequate financial assurance for the eventual decommissioning of such installations.

- B. Applicability This ordinance applies to large-scale (minimum 250 kW rated nameplate capacity) solar photovoltaic installations proposed to be constructed after the effective date of this section. This section also pertains to physical modifications that materially alter the type, configuration, or size of these installations or related equipment. The requirements of this ordinance shall apply to a commercial solar photovoltaic installation regardless of whether it is the primary use of property or an accessory use.

- (1) As-of-Right: The following commercial solar photovoltaic installations, as defined herein, are allowed as of right with site plan approval in all zoning districts, except as set forth below:

- a. Any such installation over parking lots.
- b. Any such installation on existing structures.
- c. Any such installation on open non-agricultural land and covering under two acres of area.
- d. Any such installation on reclaimed industrial land, including earth removal sites or landfills.

- (2) Special Permit: Under the following conditions, a commercial solar photovoltaic installation may be permitted by special permit from the planning board:

- (a). Any such installation proposed in the [TBD] zones.

- (b). Any such installation requiring forest clearing. For the purposes of this section of the zoning ordinance, a forest is defined as an area of two contiguous acres consisting of a density of tree canopy of 50% and a tree is defined as woody plant of one or multiple stems with a diameter at breast height of four inches or more and a height of ten feet or more.

- (c). Any such installation on land in agricultural or horticultural use, or soils classified as prime, state-important or unique by the United States Department of Agriculture.

- (e). Any such installation on open non-agricultural land and covering two acres or more of area.

For all special permit applications, site plan approval as described below is required, but shall not require a second public hearing.

- (3) Not Permitted: No commercial solar photovoltaic installation may be permitted as follows:

- (a). Any CSPI of greater than 20 mW of production.
- (b). Any CSPI requiring forest clearing greater than twenty acres.
- (c). Any CSPI on land that has been forested within one year of application.

- (d). Any CSPI on land that has been in active commercial agriculture within one year of application.
- (e). Any CSPI on slopes of 20% or greater as averaged over 50 horizontal feet.

C. Definitions

Commercial Solar Photovoltaic Installation (CSPI): Any solar photovoltaic installation with 250 kW or greater rated nameplate capacity, even if its primary generation is not intended for supplying the grid.

Forest: See definition

Rated Nameplate Capacity: The maximum rated output of electric power production of the commercial solar photovoltaic installation in Direct Current (DC).

Site Plan Approval Authority: The site plan approval authority as designated by the Zoning Ordinance.

Solar Photovoltaic Array: an arrangement of solar photovoltaic panels.

D. Requirements

(1) Site Plan Approval. The construction, installation or modification of a CSPI, whether as-of-right or by special permit, shall be subject to site plan approval in accordance with the zoning ordinances. The Site Plan Approval Authority shall consider and apply the requirements set forth in this ordinance in reviewing and deciding an application for site plan approval.

(a) General. All plans and maps shall be prepared, stamped and signed by a Professional Engineer licensed to practice in Maine.

(b) Required Documents. The project proponent shall provide the following documents:

[1] A site plan showing:

- i. Property lines and physical features, including topography, and proposed roads, for the project site;
- ii. Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, screening vegetation or structures;
- iii. Blueprints or drawings of the solar photovoltaic installation signed by a Professional Engineer licensed to practice in the State of Maine showing the proposed layout of the system and any potential shading from nearby structures;
- iv. One or three line electrical diagram detailing the solar photovoltaic installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and overcurrent devices;
- v. Documentation of the major system components to be used, including the PV panels, mounting system, and inverter;
- vi. Name, address, and contact information for proposed system installer;
- vii. Name, address, phone number and signature of the project proponent, as well as all co-proponents or property owners, if any;
- viii. The name, contact information and signature of any agents representing the project proponent; and

[2] Documentation of actual or prospective access and control of the project site (item (2) below);

[3] An operation and maintenance plan (item (3) below);

[4] Proof of liability insurance; and

[5] Description of financial surety that satisfies Section 9(b)

The Site Plan Approval Authority may waive documentary requirements as it deems appropriate.

(2) Site Control The project proponent shall submit documentation of actual or committed prospective access and control of the project site sufficient to allow for construction and operation of the proposed CSPI.

(3) Operation & Maintenance Plan The project proponent shall submit a plan for the operation and maintenance of the CSPI. This plan shall include measures to maintain safe access to the installation and general procedures for operational maintenance of the installation. Site work shall be performed in a manner to prevent runoff as required by MDEP.

(4) Utility Notification No CSPI shall be constructed until evidence has been given to the Site Plan Approval Authority that the utility company operating the electrical grid the installation is to be connected to has been informed of the CSPI owner or operator's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.

(5) Dimension and Density Requirements

(a) Setbacks

For all CSPI, front, side and rear yard setbacks shall be as follows:

[1] The front yard depth shall be at least 75 feet;

[2] The side yard depth shall be at least 75 feet;

[3] The rear yard depth shall be at least 75 feet;

(b) Appurtenant Structures All appurtenant structures to a CSPI shall be subject to the requirements of the Zoning Ordinance concerning the bulk and height of structures, lot area, setbacks, open space, parking and building coverage requirements. All such appurtenant structures, including but not limited to, equipment shelters, storage facilities, transformers, and substations, shall be architecturally compatible with each other. Whenever reasonable, structures should be shaded from view by vegetation.

(6) Design Standards

(a) Lighting Lighting of CSPI shall be limited to night-time maintenance and inspections by authorized personnel, and shall comply with Dark Sky standards.

(b) Signage A sign shall be erected identifying the owner and providing a 24-hour emergency contact phone number. CSPI's shall not display any advertising.

(c) Utility Connections Reasonable efforts shall be made to place all utility connections from the CSPI underground, depending on appropriate soil conditions, shape, and topography of the site and any requirements of the utility provider. Electrical transformers for utility interconnections may be above ground if required by the utility provider.

(7) Safety and Environmental Standards

(a) Emergency Services The CSPI owner or operator shall provide a copy of the project summary, electrical schematic, and an approved site plan, to the local fire department and the building inspector. Upon request the owner or operator shall cooperate with local emergency services in developing an emergency response

plan, which may include ensuring that emergency personnel have immediate, 24-hour access to the facility. All means of shutting down the CSPI shall be clearly marked. The owner or operator shall identify a responsible person for public inquiries throughout the life of the installation, and shall provide a mailing address and 24-hour telephone number for such person(s).

- (b) Control of Vegetation and Animals, Including Insects Herbicides or pesticides may not be used to control vegetation or animals at a CSPI.
- (c) Project Visibility A CSPI shall be designed to minimize its visibility, including preserving natural vegetation to the maximum extent possible, blending in equipment with the surroundings, adding vegetative buffers to provide an effective visual barrier from adjacent roads and driveways, and to screen abutting dwellings. A diversity of plant species native to New England shall be used for any screens and vegetative erosion controls. Use of exotic plants, as identified by the most recent copy of the "Maine Prohibited Plant List" maintained by the Department of Agricultural, is prohibited. If deemed necessary by the Planning Board, the depth of the vegetative screen shall be 30 feet and will be composed of native trees and shrubs staggered for height and density that shall be properly maintained. The owner of the CSPI shall not remove any naturally occurring vegetation such as trees and shrubs unless it adversely affects the performance and operation of the solar installation. Landscaping shall be maintained and replaced as necessary by the owner of the CSPI.
- (d) Land Clearing, Soil Erosion, and Wildlife Habitat Clearing of natural vegetation shall be limited to what is necessary for the construction, operation, and maintenance of the CSPI or otherwise prescribed by applicable laws, regulations, and ordinances. For any CSPI requiring land clearing, a special permit is required (see B(2)(b)). A CSPI may not be constructed on slopes exceeding 8%, nor may cutting and filling be done to reduce natural slopes.

(8) Monitoring and Maintenance

- (a) Maintenance The CSPI owner or operator shall maintain the facility in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, and integrity of security measures. Site access shall be maintained to a level acceptable to the local emergency services. The owner or operator shall be responsible for the cost of maintaining the solar photovoltaic installation and all access roads that are not public ways.
- (b) Annual Reporting The owner or operator of a CSPI shall submit an annual report demonstrating and certifying compliance with the Operation and Maintenance Plan, the requirements of this Section, and the granted special permit, including but not limited to continued management and maintenance of vegetation, compliance with the approved plans and any special permit conditions, continuation of liability insurance, and adequacy of road access. The annual report shall also provide information on the maintenance completed during the course of the year and the amount of electricity generated by the facility. The report shall be submitted to the Planning Board, Fire Chief, Building Inspector, and Conservation Commission (if a wetlands permit was issued) no later than 45 days after the end of the calendar year.
- (c) Modifications All material modifications to a CSPI made after issuance of the required building permit shall require approval by the Site Plan Approval Authority.

(9) Discontinuance and Removal

- (a) **Removal Requirements** Any CSPI, or any substantial part thereof, not used for a period of one continuous year or more without written permission from the Site Plan Approval Authority, or that has reached the end of its useful life, shall be considered discontinued and shall be removed. Upon written request from the Building Inspector addressed to the contact address provided and maintained by the owner or operator as required above, the owner or operator shall provide evidence to the Building Inspector demonstrating continued use of the CSPI. Failure to provide such evidence within thirty days of such written request shall be conclusive evidence that the installation has been discontinued. Anyone intending to decommission and such an installation shall notify the Site Plan Approval Authority and Building Inspector by certified mail of the proposed date of discontinued operations and plans for removal.

The owner or operator shall physically remove the installation no more than 150 days after the date of discontinued operations. Removal shall consist of:

- [1] Physical removal of all parts of and appurtenances to the CSPI, including structures, equipment, security barriers and transmission lines;
- [2] Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations;
- [3] Stabilization or re-vegetation of the site as necessary to minimize erosion. The Site Plan Approval Authority may allow the owner or operator to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.
- [4] Any site that was deforested for the CSPI shall be restored with to encourage native tree growth, including the planting of seedlings, if necessary to establish growth.

If the owner or operator of the CSPI fails to remove the installation in accordance with the requirements of this section, the City shall have the right, to the extent it is otherwise duly authorized by law, to enter the property and physically remove the installation at the expense of the owner of the installation and the owner(s) of the site on which the facility is located. The City may use the financial surety as stipulated in section (b), below for this purpose.

- (c) **Financial Surety** Proponents seeking to construct and operate a CSPI shall provide to the City, in a form determined by the planning board and prior to construction, a surety, through cash, an escrow account, bond or otherwise, to cover the cost of removal in the event the City must remove the CSPI and remediate the landscape. The amount and form of such surety shall be determined by the Site Plan Approval Authority. This surety will not be required for municipally- or state-owned facilities. The project proponent shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer. The amount shall include a mechanism for calculating increased removal costs due to inflation.

SBT COMMENTS

Need to have expressed conditions of road frontage – minimums and deeded.

use marijuana operation that is the subject of such approval. Furthermore, by accepting a permit issued pursuant to this ordinance, all adult use marijuana operators, agree to indemnify, defend and hold harmless the Town, its officers, elected officials, employees, volunteers and agents, insurers and self- insurance pool from and against all liabilities of any kind that result from any arrest or prosecution of business owners, operators, employees, clients or customers for a violation of federal, state or local laws and regulations. This obligation to indemnify, defend and hold harmless shall include the obligation to reimburse the party so indemnified, defended and held harmless for any and all attorney's fees reasonably incurred by that party in defense of such liabilities, claims and demands.

A.A. Solar Energy Systems

1. Purposes:

- a. Solar energy is a local, renewable energy resource that can reduce fossil fuel dependence and emissions. Energy generated from Solar Energy Systems can be used to offset energy demand on the utility grid, with benefits for system owners and electricity consumers.
- b. The use of solar energy for the purpose of providing electricity and energy for heating and or cooling is an important part of the Town of Fryeburg's sustainability goals.
- c. The standards herein enable the accommodation of Solar Energy Systems in appropriate locations and in a manner that protects the public health, safety, and welfare while still allowing the quiet enjoyment of property and supporting the goals of the Comprehensive Plan, including goals related to natural resources and historical and archeological preservation.

2. Applicability: Notwithstanding the provisions of 1 M.R.S.A. Section 302 or any other law to the contrary, the requirements of this Section 17.AA shall apply to (a) all Roof-Mounted Solar Energy Systems installed on or any time after the date that the legislative body of the Town adopted this Section 17.AA, and (b) all proceedings and applications for the construction or installation of any other Solar Energy Systems (including any expansion, upgrade, modification, or structural change that materially alters the size, placement, or output of such systems) that are pending before any municipal reviewing authority on or any time after the date that the legislative body of the Town adopted this Section 17.AA.

3. Permitting Requirements:

- a. Roof-Mounted Solar Energy Systems and Small-Scale Solar Energy Systems must comply with the Dimensional Requirements applicable to structures within the zoning district in which such systems are to be located and the standards in Section 16 of this Ordinance. Small-Scale Solar Energy Systems must also comply with the standards in Section 17.AA.5 of this Ordinance. Roof-Mounted Solar Energy Systems and Small-Scale Solar Energy Systems must obtain a Building Permit from the Code Enforcement Officer in accordance with the procedures set forth in Section 2.C of this Ordinance.

- b. Medium-Scale Solar Energy Systems and Large-Scale Solar Energy Systems must obtain Land Use Authorization from the Planning Board in accordance with the procedures set forth in Section 2.F of this Ordinance.

4. Additional Application Submissions Required for Medium-Scale Solar Energy Systems and Large-Scale Solar Energy Systems:

An application for Land Use Authorization for a Medium-Scale Solar Energy System or a Large-Scale Solar Energy System must be submitted in accordance with Section 2.D of this Ordinance. In addition to the submission requirements in Section 2.D, the applicant must submit the following:

- a. Written confirmation from the public utility to which the Solar Energy System will be connected confirming that the solar operator has conditional or final approval to interconnect the Solar Energy System to the utility grid.
- b. Evidence of financial capacity to construct, operate, and decommission the Solar Energy System.
- c. Erosion and sedimentation control narrative and plans with details.
- d. Site plans showing all proposed construction and alteration of the project site, including changes to the landscape of the Solar Land Area, filling, grading, earthmoving, vegetation clearing and planting, screening, fencing, Solar Energy System components, utilities (above and/or below ground), and all other aspects of the project.
- e. Site plans showing water bodies, wetlands, flood hazard areas, and vernal pools.
- f. A description of the major components of the Solar Energy System (including arrays) proposed to be used, including manufacturers' specifications and cut sheets if available.
- g. A landscaping plan, prepared by a licensed forester, landscape architect, or arborist, demonstrating compliance with all applicable landscaping and vegetated buffering requirements. At minimum, the landscaping plan must specify the locations, elevations, and height above finished grade of all vegetation, berms and plantings, and must identify the plant species and other materials that will comprise the elements used to establish any vegetated buffers and substantially screen the Solar Energy System from view from abutting residential properties, public roads, and Public Vantage Points.
- h. A long-term operations and maintenance plan providing for ongoing monitoring and inspections of all site improvements. The plan must provide a method for maintaining sufficient financial resources for performing ongoing maintenance and repair of the Solar Energy System.

- i. A proposed decommissioning plan for the removal of the Solar Energy System, disposal of system components, and stabilization of the site, which meets the requirements in Section 17.AA.8 of this Ordinance, and a written statement of the applicant's intent concerning the following:
 - i. Physical removal of any Solar Energy System components, structures, foundations, supports, fencing, or security barriers from the site.
 - ii. Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal laws and rules.
 - iii. Stabilization or re-vegetation of the site as necessary to minimize erosion and return the site to substantially its pre-construction state.
- j. A description of any proposed dual-use or co-location of the property, including but not limited to agrivoltaics. If no dual-use is proposed or intended on the property, an explanation as to why such dual-use or co-location is not practicable.
- k. A visual impact assessment prepared by a landscape architect or other professional with expertise in evaluating visual impacts, which identifies the visual impacts of the Solar Energy System on any Public Vantage Point within a one-mile radius of the project area, and on abutting properties. At minimum, the assessment must include a line-of-sight profile analysis that illustrates what is visible and what is obstructed along a straight line running from the Solar Energy System and each Public Vantage Point. The Planning Board may require additional visual impact assessments, including digital viewshed maps, if it determines in its sole discretion that such assessments are necessary for the Planning Board to evaluate the Solar Energy System's compliance with the scenic impact standards in Section 17.AA.6.f of this Ordinance.

5. Additional Standards for Small-Scale, Medium-Scale, and Large-Scale Solar Energy Systems:

In addition to the standards in Section 16, a Small-Scale, Medium-Scale, or Large-Scale Solar Energy System must comply with the following standards:

- a. The Solar Energy System shall be less than 25 feet in Height.
- b. The Solar Energy System shall be operated and located such that no disruptive electromagnetic or radio frequency interference with signal transmission or reception is caused beyond the property lines of the site.
- c. The Solar Energy System shall be located and designed to avoid, minimize, or mitigate any glare onto abutting properties or roadways.

6. Additional Standards for Medium-Scale and Large-Scale Solar Energy Systems:

In addition to the standards in Section 16 and Section 17.AA.5, a Medium-Scale or Large-Scale Solar Energy System must comply with the following standards:

- a. Minimum Setbacks: The following minimum setback requirements must be met, regardless of the zoning district in which the Solar Energy System is located,

unless the minimum setback requirement in the applicable zoning district is more restrictive, in which case the more restrictive requirement shall apply:

Front Lot Line	75 feet
Side and Rear Lot Line	75 feet
Street Right-of-Way	100 feet

- b. **Wildlife Habitat:** The Solar Energy System shall have no undue adverse effect on any portion of the property designated by the Maine Department of Inland Fisheries and Wildlife as Rare, Threatened, or Endangered Wildlife, Essential Wildlife Habitat, or Significant Wildlife Habitat. The applicant shall assess the potential impacts of the Solar Energy System on any such designated species or habitat, including any adjacent areas that are important to the maintenance of the affected species or habitat, and shall take measures to avoid, minimize, or mitigate impacts of the Solar Energy System on the habitat and the species that the area supports. The Planning Board may require the applicant to consult with the Maine Department of Inland Fisheries and Wildlife or a wildlife biologist preapproved by the Board in conducting such an assessment.
- c. **Natural Areas:** The Solar Energy System shall have no undue adverse effect on any portion of the property designated as a unique natural area or a Rare or Exemplary Plant and Natural Community in the Town's Comprehensive Plan or by the Maine Natural Areas Program. The applicant shall assess the potential impacts of the Solar Energy System on any such designated natural area or community, including any adjacent areas that are important to the maintenance of the affected area or community, and shall take measures to avoid, minimize, or mitigate impacts of the Solar Energy System on the natural area or community. The Planning Board may require the applicant to consult with the Maine Natural Areas Program in conducting such an assessment.
- d. **Historic or Archaeological Resources:** The Solar Energy System shall have no undue adverse effect on any portion of the property that has been identified as containing a significant historic or archaeological resource in the Town's Comprehensive Plan or on the National Register of Historic Places, or is considered by the Maine Historic Preservation Commission or other pertinent authority as likely to contain a significant historic or archaeological resource. The applicant shall assess the potential impacts of the Solar Energy System on any such resource, including any adjacent areas that are important to the preservation of the resource, and shall take measures to protect these resources, including but not limited to, modification of the proposed location and design of the Solar Energy System, timing of construction, limiting the extent of excavation, physical or legal protection, or by archaeological excavation or mitigation. The Planning Board may require the applicant to consult with the Maine Historic Preservation Commission in conducting such an assessment.
- e. **Agricultural Resources:** The Solar Energy System shall have no undue adverse effect on any portion of the property containing prime agricultural soils or soils of statewide importance. The applicant shall assess the potential impacts of the Solar Energy System on any such soils, and shall take measures to avoid or minimize impacts to such soils. The Planning Board may require the applicant to consult

with the Department of Agriculture, Conservation, and Forestry, Agricultural Resource Development Division, in conducting such an assessment. No topsoil or prime agricultural soil shall be removed from the site for installation of the Solar Energy System. All stockpiled topsoil shall be retained on site and reused in the landscaping plan for the site.

- f. Revegetation: Any disturbed ground cover on the site shall be revegetated with pollinator friendly, native, and non-invasive vegetation.
- g. The Solar Energy System must be located and designed for minimal visual impact on the surrounding area, particularly when viewed from abutting residential properties or any Public Vantage Point.
- h. A vegetated buffer that is at least half the width of the minimum setback requirement in Section 17.AA.6.a of this Ordinance shall be maintained along any property boundary line of a Solar Energy System that abuts a residential dwelling or a public road, except where necessary to accommodate a driveway entrance to the site. Existing vegetation must be used to the greatest practical extent. If there is insufficient existing vegetation to create a vegetated buffer, the applicant shall plant and maintain native species of conifers and evergreens to adequately screen the Solar Energy System from view.
- i. Security Fencing: All components of the Solar Energy System, excepting overhead utility and communication lines and poles, shall be completely enclosed by a minimum 6-foot-high fence. The fence shall be elevated a minimum of 6 inches above the ground to accommodate crossings by small terrestrial animals. Functional alternatives to chain-link style fencing is encouraged.
- j. Utility Connections: All on-site utility transmission lines and piping associated with the Solar Energy System shall be placed underground to the greatest extent practicable. The Planning Board may waive this requirement if the applicant can demonstrate that satisfying this requirement is not practicable based on requirements of the utility provider or specific site conditions.
- k. Operations and Maintenance: The applicant must provide for the long-term operation of the Solar Energy System and maintenance of the Solar Land Area, including ensuring that vegetation buffers are maintained, inspections are performed as needed, and the site is accessible to emergency responders in the event of an emergency.

7. Additional Performance Standards for Large-Scale Solar Energy Facilities:

- a. Greenhouse Gas Assessment: The Large-Scale Solar Energy System shall not result in a net increase of greenhouse gas emissions over a 20-year period. The Planning Board may request an independent greenhouse gas assessment including an analysis of on-site, upstream, and downstream emissions from the project.
8. Post-Approval Requirement for Medium-Scale Solar Energy Systems and Large-Scale Solar Energy Systems: Prior to the start of construction of a Medium-Scale Solar Energy System or Large-Scale Solar Energy System, the permit holder must submit to the Code Enforcement Officer a decommissioning plan and financial assurance approved by the Maine Department of Environmental Protection, in accordance with the requirements of

35-A M.R.S.A. Sections 3491-3496, as may be amended, for all costs associated with decommissioning the Solar Energy System.

9. Post-Construction Requirements for Medium-Scale Solar Energy Systems and Large-Scale Solar Energy Systems:

After completion of construction and prior to commercial operation of a permitted Medium-Scale Solar Energy System or Large-Scale Solar Energy System, the permit holder must:

- a. Submit to the Code Enforcement Officer as-built drawings prepared by a Maine licensed professional land surveyor or engineer. The as-built drawings shall include the actual locations of the Solar Energy System and its components, any structures and their components, above and underground utilities, roads, swales, ditches, detention/retention facilities, areas of filling and grading, vegetated buffers, fencing, land and landscaping alterations, and any other infrastructure and facilities, all as actually constructed on the site. The as-built drawings must be accompanied by a letter signed by the surveyor or engineer certifying that the Solar Energy System had been constructed in accordance with all Planning Board approvals, including any conditions of approval and any accompanying plans and specifications.
- d. Provide a written manual to the Fryeburg Fire Department and Code Enforcement Officer, which provides clear response information and instructions, including lock box details and disconnection locations necessary for a fire/emergency response at the site.

§ 280-15-12. Solar energy system. [Added 3-7-2017 by Order No. 17-31.07; amended 4-7-2020 by Order No. 19-772-01]

A. Purpose. The purpose of these provisions is to regulate a solar energy system, allow the City to be informed of the placement of a solar energy system, preserve and protect public health and safety, allow for orderly development of land, and protect property values.

B. Standards.

(1) A residential solar system (RSS) shall:

- (a) Comply with the setback and height requirements of the zoning district in which the system is to be installed.
- (b) Comply with the provisions of all applicable requirements of the City's building, electrical, fire, and other health safety and technical codes, including but not limited to Chapters 90: Building and Building Regulation and 128: Fire Prevention.
- (c) Be installed so as not to cause any wire or wireless communication signal disturbance.
- (d) Be sited to prevent glare onto abutting properties, structures, and roadways.
- (e) Be removed if it has not produced power for a period of twelve (12) consecutive months.

(2) Standards. A commercial solar system (CSS) and utility solar system (USS) shall:

- (a) Comply with the requirements of Article XVI: Site Plan Review.
- (b) Comply with the setback and height requirements of the zoning district in which the system is to be installed; however, the Planning Board may require additional setbacks and buffers from existing abutting residential uses to minimize impacts from the project.
- (c) Comply with the provisions of all applicable requirements of the City's building, electrical, fire, and other health safety and technical codes, including but not limited to Chapters 90: Building and Building Regulation and 128: Fire Prevention.
- (d) Comply with the industrial performance standards specified in § 280-15-3.
- (e) Ground-mounted system.

[1] Secure all ground-mounted electrical and control equipment to prevent unauthorized access. The system shall be enclosed within a minimum seven (7) foot tall fence with locking gate and Knox-Box®

to provide emergency access. The type of fence shall be appropriate for security, screening, and/or other purposes and shall be similar to and/or compatible with the style of fences used within one-thousand (1,000) feet of the property boundary.

- [2] A ground-mounted system in the Rural Residential Zone (RR) shall comply with the standards specified in § 280-15-12B(2)(l).
- [3] A ground-mounted system in the Residential Development Overlay Zone shall comply with the standards specified in § 280-15-12B(2)(m). **[Added 5-3-2022 by Order No. 21-494-01]**
- (f) Install all electrical wire and utility connections, except for transformers and controls, underground to the greatest practical extent. The Planning Board shall consider prohibitive costs and site limitations if asked to waive this standard.
- (g) Limit exterior lighting to that required for safety and operational purposes.
- (h) All signs shall meet the specifications of § 280-14-13.
- (i) Be appropriate to the surroundings and minimize environmental and visual impacts on adjoining properties, including:
 - [1] Screening ground-mounted installations from view by abutting residential properties, using vegetation, topography, and/or fencing.
 - [2] Using a manufactured finish appropriate to and compatible with the surroundings, with reflective characteristics that minimize negative visual impacts to the greatest practical extent.
- (j) Shall plant native, non-invasive groundcover, which is low-maintenance, drought resistant, and non-fertilizer dependent, under and between rows of solar panels to prevent soil erosion. **[Added 5-3-2022 by Order No. 21-494-01¹]**
- (k) Be removed if it has not produced power for a period of twelve (12) consecutive months. In the event of a natural disaster, act of violence, or other event which results in the absence of electrical generation for twelve (12) months, by the end of the twelfth (12th) month of nonoperation the applicant shall demonstrate to the City that the project shall be substantially operational and producing electricity within twenty-four (24) months of the event. If such demonstration is not made to the City's satisfaction, the decommissioning shall be initiated eighteen (18) months after the event.
- (l) A performance guarantee in compliance with Article XVII shall be

1. Editor's Note: This order also redesignated former Subsection B(2)(j) through (l) as Subsection B(2)(k) through (m), respectively.

provided prior to initiating construction. The performance guarantee shall provide adequate funds to cover the total cost of decommissioning. Every five (5) years after the start of construction, updated proof of the cost of decommissioning shall be submitted to the City Engineer. If the amount of the current performance guarantee is inadequate to cover the total cost of decommissioning, the applicant shall provide a new performance guarantee to the Planning Department in an amount which is adequate to cover the total cost of decommissioning.

- (m) A USS in the Rural Residential Zone (RR) shall require conditional use approval by the Planning Board in accordance with Articles XIII and XVI and the following standards:

- [1] Shall not be sited on active farmland.
- [2] Shall minimize impacts on active farmland including, but not limited to, fencing, use of waterways, obstructions created by placement of structures and/or overhead collection lines, division of larger fields into smaller or irregularly shaped fields, need for extensive areas of cut and fill, among other factors that create a burden or unreasonable impact on active farming activities.
- [3] Shall encourage siting on unproductive land and previously disturbed land to the greatest extent possible. All topsoil disturbed during construction shall be stockpiled and returned to the site.
- [4] Shall locate access roads and overhead collection lines along the edge of agricultural fields in areas next to field boundaries and hedgerows and in nonagricultural portions of the site. The width of access roads shall be no larger than that required to meet the fire code. Access roads that are proposed to be constructed through agricultural fields shall be level with the adjacent field surfaces, where possible.
- [5] Shall demonstrate how the site shall be restored to its original state, including surface grade, soil, and vegetation, as part of removal of infrastructure and decommissioning.²

- (n) A USS in the Residential Development Overlay Zone (RDO) shall require conditional use approval by the Planning Board in accordance with Articles XIII and XVI and the following standards: **[Added 11-23-2021 by Order No. 21-494-01; amended 5-3-2022 by Order No. 21-494-01]**

- [1] Shall not be sited on properties where public sewer and water services can be extended and a compact pattern of residential

2. Editor's Note: Former Subsection B(2)(m)[5], which required the planting of certain kinds of plants between rows of solar panels, was repealed 5-3-2022 by Order No. 21-494-01. For current provisions, see Subsection B(2)(j) of this section. Order No. 21-494-01 also renumbered former Subsection B(2)(m)[6] as Subsection B(2)(m)[5].

development can feasibly be developed in conformance with the purpose of the RDO Zone.

- [2] Shall minimize impacts on nearby existing residential development and/or residential zones, including, but not limited to siting, fences, buffers, and/or screens.
- [3] Shall locate access roads and overhead collection lines to minimize impacts on nearby existing residential development and/or residential zones.
- [4] Shall demonstrate that stormwater, erosion control, and landscape plans maintain water quality and minimize export of sediment, phosphorus, and other contaminants from the site in support of the City's efforts to restore Goodall Brook by protecting the headwaters of Goodall Brook and vulnerable water bodies in its watershed.

ARTICLE XVIII. SOLAR ENERGY SYSTEMS**Sec. 27-1801. Purpose.**

- (a) Solar energy is a renewable and non-polluting energy resource that can prevent fossil fuel emissions and reduce energy load. Energy generated from solar energy systems can be used to offset energy demand on the grid where excess solar power is generated.
- (b) The use of solar energy equipment for the purpose of providing electricity and energy for heating and/or cooling is a priority and is a necessary component of the City's current and long-term sustainability agenda.
- (c) The standards that follow enable the accommodation of solar energy systems and equipment in a safe manner with minimal impacts on the quiet enjoyment of property.

Sec. 27-1802. Definitions.

The following definitions pertain to terms used in this Article:

Building-Integrated Photovoltaic (BIPV) Systems. A solar energy system that consists of integrating photovoltaic modules into the building structure, such as the roof or the façade and which does not alter the relief of the roof.

Electricity Generation (production, output). The amount of electric energy produced by transforming other forms of energy, commonly expressed in kilowatt-hours (kWh) or megawatt-hours (MWh).

Electrical Equipment. Any device associated with a solar energy system, such as an outdoor electrical unit/control box, that transfers the energy from the solar energy system to the intended location.

Mounting. The manner in which a solar PV system is affixed to the roof or ground (i.e., roof mount, ground mount, pole mount).

Photovoltaic (PV) System. A solar energy system that produces electricity by the use of semiconductor devices, called photovoltaic cells, which generate electricity when exposed to sunlight. A PV system may be roof-mounted, ground-mounted, or pole-mounted.

Pole-Mount System. A solar energy system that is directly installed on specialized solar racking systems, which are attached to pole, which is anchored and firmly affixed to a foundation in the ground, and wired underground to an attachment point at the building's meter. Pole-mounted systems can be designed to track the sun (with single-axis or dual-axis tracking motors) and maximize solar output throughout the year.

Power. The rate at which work is performed (the rate of producing, transferring, or using energy). Power is measured in Watts (W), kilowatts (kW), Megawatts (MW), etc.

Solar Array. Multiple solar panels combined together to create one system.

Solar Collector. A solar PV cell, panel, or array, or solar thermal collector device, that relies upon solar radiation as an energy source for the generation electricity or transfer of stored heat.

Solar Energy System. See Sec. 27-201.

Solar Energy System, Active. See Sec. 27-201.

Solar Energy System, Grid-Intertie. A photovoltaic system that is connected to an electric circuit served by an electric utility.

Solar Energy System, Ground-Mounted. See Sec. 27-201.

Solar Energy System, Large-Scale. See Sec. 27-201.

Solar Energy System, Medium-Scale. See Sec. 27-201.

Solar Energy System, Roof-Mounted. See Sec. 27-201.

Solar Energy System, Small-Scale. See Sec. 27-201.

Solar Glare: The potential for solar panels to reflect sunlight, with an intensity sufficient to cause annoyance, discomfort, or loss in visual performance and visibility.

Solar Photovoltaic (Solar PV) System. Solar systems consisting of photovoltaic cells, made with semiconducting materials, that produce electricity (in the form of direct current (DC)) when they are exposed to sunlight. A typical PV system consist of PV panels (or modules) that combine to form an array; other system components may include mountain racks and hardware, wiring for electrical connections, power conditioning equipment, such as an inverter and/or batteries.

Solar Panel (or module). A device for the direct conversion of sunlight into useable solar energy (including electricity or heat).

Solar Thermal System (Solar Hot Water or Solar Heating Systems). A solar energy system that directly heats water or other liquid, or air, using sunlight.

Tilt. The angle of the solar panels and/or solar collector relative to horizontal. The optimal tilt to maximize solar production is perpendicular, or 90 degrees, to the sun's rays at true solar noon. True solar noon is when the sun is at its highest during its daily east-west path across the sky (this is also known as 0° Azimuth). Solar energy systems can be manually or automatically adjusted throughout the year. Alternatively, fixed-tilt systems remain at a static tilt year-round

Sec. 27-1803. Applicability.

- (a) Notwithstanding the provisions of 1 M.R.S.A. § 302 or any other law to the contrary, the requirements of this Article shall apply to all roof-mounted,

small-, medium-, and large-scale ground-mounted solar energy systems modified or installed after January 1, 2017.

- (b) All solar energy systems shall be designed, erected and installed in accordance with all applicable codes, regulations and standards.
- (c) Any upgrade, modification or structural change that materially alters the size, placement or output of an existing solar energy system shall comply with the provisions of this Article.
- (d) For purposes of this Article, the City's zoning districts are categorized as follows:
 - (1) **Residential Zoning Districts.** Residential zoning districts include: RF, AA, A, G, VR, RT, A-1, S-1, G-1, G-2, G-3, and G-4.
 - (2) **Mixed-Use Zoning Districts.** Mixed-use zoning districts include: LB, VC, VCW, SP, CS, PO, C, I, MSCC, VE, BC, and MCC.
 - (3) **Non-Residential Commercial/Industrial Zoning Districts.** Non-residential commercial/industrial districts include: CG, CCRT, CCR, S, IL, INR, CAZ, CPCCR, INR-MSW-1.

Sec. 27-1804. Permitting.

- (a) No solar energy system or device shall be installed or operated in the City except in compliance with this Article Ordinance.
- (b) Solar-thermal, building-integrated, roof-mounted, and small-scale ground-mounted solar energy systems are permitted in all zoning districts subject to the dimensional standards of Sec. 27-1805. All such systems must obtain building permits.
- (c) Medium- and large-scale ground-mounted solar energy systems are permitted or special exception uses in some of the City's zoning districts, as found in the regulations for the individual zoning districts, subject to the requirements of this Article.

Sec. 27-1805. Dimensional Standards.

- (a) Height
 - (1) In residential zoning districts, building integrated and roof-mounted solar energy systems shall be included in the building height measurement, and the height of the building shall not exceed the maximum building height. In mixed-use and non-residential commercial/industrial zones, notwithstanding and other provision of this ordinance to the contrary, building integrated and roof-mounted solar energy systems shall not be included in the building height measurement.

- (2) Ground-mounted solar energy systems in residential and mixed-use zoning districts shall not exceed twelve (12) feet in height when oriented at maximum tilt, except that the maximum height is twenty (20) feet for systems set back at least thirty (30) feet from any property line. Ground-mounted solar energy systems in all other zoning districts shall conform to the building height requirements of the zoning districts in which they are located.

(b) Setbacks for Ground-Mounted Solar Energy Systems

Notwithstanding any other provision in this Ordinance to the contrary, the setbacks for ground-mounted solar energy systems shall be as follows:

Minimum front yard: In residential zoning districts, one hundred (100) feet. In mixed use and non-residential zoning districts, whatever the front yard setback is for that zoning district, but in no event less than thirty (30) feet.

Minimum rear yard: Whatever the rear yard setback is for accessory buildings in that zoning district.

Minimum side yard: Thirty (30) feet.

(c) Lot Coverage

Only the paved or otherwise impervious areas of sites on which ground-mounted solar energy systems are installed shall be counted in the lot coverage calculation.

(Ord. No. 14 16/17, 3/6/17 [Fiscal Note: Less than \$1,000])

Sec. 27-1806. Standards for Roof-Mounted and Small-Scale Ground-Mounted Solar Energy Systems.

- (a) Roof-mounted and building-mounted solar energy systems and equipment shall be permitted only if they are determined by the Code Enforcement Officer, with input from the City Engineer and the Fire Chief, not to present any unreasonable safety risks, including, but not limited to, the following:
 - (1) Weight load;
 - (2) Wind resistance;
 - (3) Ingress or egress in the event of fire or other emergency; and
 - (4) Proximity of a ground-mounted system relative to buildings.
- (b) All solar energy system installations shall be installed in compliance with the photovoltaic systems standards of the latest edition of National Fire Protection Association (NFPA) 1, Fire Prevention Code.
- (c) All wiring shall be installed in compliance with the photovoltaic systems standards of the latest edition of the National Electrical Code (NFPA 70).
- (d) Prior to operation, electrical connections must be inspected and approved by the Electrical Inspector.

- (e) Any connection to the public utility grid must be inspected and approved by the appropriate public utility.
- (f) Notwithstanding any other provision of this Article to the contrary, any solar energy system installation on non-residential or multi-family properties completed prior to January 1, 2017 shall be required to comply with the photovoltaic system "marking" requirements contained in the latest edition of NFPA 1, Fire Prevention Code, on or before April 1, 2018. The Code Enforcement Officer shall endeavor to notify all affected property owners of this requirement on or before April 1, 2017, but failure of an affected property owner to receive such notice shall not relieve the property owner from compliance with this subsection.
- (g) If a solar collector ceases to perform its originally intended function for more than 12 consecutive months, the property owner shall remove the collector, mount and associated equipment by no later than 90 days after the end of the twelve-month period.
- (h) Each solar energy installation shall be maintained as necessary to ensure that it is operating safely and as designed over its useful lifetime.

Sec. 27-1807. Additional Standards for Medium- and Large-Scale Ground-Mounted Solar Energy Systems.

In addition to the standards in Sec. 27-1806, medium- and large-scale ground-mounted solar energy systems shall comply with the following:

- (a) Utility Connections - Reasonable efforts, as determined by the Planning Board, shall be made to place all utility connections from the solar photovoltaic installation underground, depending on appropriate soil conditions, shape, and topography of the site and any requirements of the utility provider. Electrical transformers for utility interconnections may be above ground if required by the utility provider.
- (b) Safety - The solar system owner shall provide a copy of the site plan review application to the Fire Chief for review and comment. The Fire Chief shall base any recommendation for approval or denial of the application upon review of the fire safety of the proposed system.
- (c) Visual Impact - Reasonable efforts, as determined by the Planning Board, shall be made to minimize visual impacts by preserving natural vegetation, screening abutting properties, or other appropriate measures.
- (d) Glare - Solar panels are designed to absorb (not reflect) sunlight; and, as such, solar panels are generally less reflective than other varnished or glass exterior housing pieces. However, solar panel placement should be prioritized to minimize or negate any solar glare onto nearby properties or roadways, to the extent practical.
- (e) Additional Standards for Large-Scale Solar Energy Systems
 - (1) Operations & Maintenance Plan - the project proponent shall submit a plan for the operation and maintenance of the large-scale ground-

mounted solar energy system, which shall include measures for maintaining safe access to the installation as well as other general procedures for operational maintenance of the installation.

- (2) Signage - Signs on large-scale ground-mounted solar energy systems shall comply with the regulations in Sec. 27-1561 *et. seq.* of this Chapter. A sign meeting those regulations shall be required to identify the owner and provide a 24-hour emergency contact phone number.
- (3) Emergency Services - The large-scale ground-mounted solar energy system owner or operator shall provide a copy of the project summary, electrical schematic, and site plan to the Fire Chief. Upon request the owner or operator shall cooperate with the Fire Department in developing an emergency response plan. All means of shutting down the system shall be clearly marked. The owner or operator shall provide to the Code Enforcement Officer the name and contact information of a responsible person for public inquiries throughout the life of the installation.
- (4) Installation Conditions - The large-scale ground-mounted solar energy system owner or operator shall maintain the facility in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, and integrity of security measures. Site access shall be maintained to a level acceptable to the Fire Chief. The owner or operator shall be responsible for the cost of maintaining the solar energy system and any access road(s), unless accepted as a public way.
- (5) Removal - Any large-scale ground-mounted solar energy system which has reached the end of its useful life or has been abandoned consistent with this ordinance shall be removed. The owner or operator shall physically remove the installation no more than 150 days after the date of discontinued operations. The owner or operator shall notify the Code Enforcement Officer by certified mail of the proposed date of discontinued operations and plans for removal. Decommissioning shall consist of:
 - (a) Physical removal of all solar energy systems, structures, equipment, security barriers and transmission lines from the site.
 - (b) Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations.
 - (c) Stabilization or re-vegetation of the site as necessary to minimize erosion. The Code Enforcement Officer may allow the owner or operator to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.
- (6) Abandonment, Guarantee.
 - (a) Absent notice of a proposed date of decommissioning or written notice of extenuating circumstances, a large-scale ground-mounted solar energy system shall be considered abandoned when it fails to operate for more than one year

without having first obtained the written consent of the Code Enforcement Officer.

- (b) At the time of approval, the applicant for a new large-scale ground-mounted solar energy system shall submit to the City an evergreen performance guarantee, to be approved by Corporation Counsel, in the amount of 150% of the estimated demolition cost of the system, such cost to be determined by the City Engineer or other duly designated person. The owner may apply to the Planning Board for release of the guarantee at such time that it or its assigns remove the system and associated abandoned structures, and such completed removal is found to be satisfactory by the City Engineer.
- (c) If the owner or operator of the solar energy system fails to remove the installation in accordance with the requirements of this section within 150 days of abandonment or the proposed date of decommissioning, the City retains the right to use the performance guarantee and all other available means to cause an abandoned, hazardous, or decommissioned large-scale ground-mounted solar energy system to be removed.

(Ord. No. 12-16/17, 2/6/17 [Fiscal Note: Less than \$1,000])

Secs. 27-1808 - 27-1900. Reserved.



Policy Committee

Meeting Date: February 26, 2024

Meeting Time: 6:00 PM

Agenda Item No: 4.2.

Item Description: Discussion/Conservation Language for Clifford Park

Submitted by: Brian S. Phinney, COO

Supporting Information/Documentation:

Maine Coast Heritage Trust Conservation Easement - TEMPLATE

2020 Map of Proposed Land Conveyances - MAP

20220922 Planning Board Letter – Clifford Park Conservation Easements - REFERENCE

Key Terms:

N/A

Executive Summary:

This item is a follow-up from prior discussions of the Policy Committee. Specifically, should there be additional formal easements at Clifford Park to ensure the park is preserved in its current form for public use? A conservation easement template was provided by Maine Coast Heritage Trust. The template will serve as the basis for further discussion/review of this topic.

Detailed Review:

The original Clifford Park parcel was purchased by the City of Biddeford from the Clifford family circa 1894 and has subsequently expanded to ±184 acres through 2019. The area of Clifford Park recently expanded by an additional ±100 acres as a result of a land gift and land swap coinciding with the Gervais Dube/E&R Development Winding Creek Project from 2020.

In 2022, at the conclusion of the Planning Board review process for the associated Winding Creek Project, the Planning Board submitted a letter to Mayor Casavant and the City Council recommending designation of conservation and access easements for the newly acquired property. Although there were no prescriptive recommendations, the Planning Board letter contained a general request that, "...the City guarantee public access for low-impact recreational activity, consistent with what is currently permitted within Clifford Park proper...", and "...The Board is aware that the approximately 42.7 acres being conveyed by Mr. Dube is restricted to recreational uses, but that there are no such restrictions on the remaining approximately 60 acres being conveyed by E&R Development Corp." The Planning Board recommended, "...extending this same level of land-use restriction to all property being acquired."

The original Clifford Park deed contained the following restriction:

..., and said land is conveyed upon the following conditions, that it shall be forever kept & held as a public park and shall be named and known as “Clifford Park”, that it shall be forever inalienable by said City – a breach of any of these conditions shall revoke and annul this deed and said City shall thereby forfeit all right and claim under the same.

At the April 25, 2023 regular Policy Committee meeting the Committee reviewed a proposal to amend Chapter 46-Parks, Sec. 46-5. The proposal recommended adding the parcel numbers of the newly acquired land to the codified list of parks. Once added, the various park rules and limitations would apply to the new parcels. The Committee supported the amendment. The parcels were added to Chapter 46 at the July 18th council meeting with the second reading on August 1, 2023. As a result the parcels are now designated as Clifford Park and subject to all codified park rules and restrictions.

The codified sections of Chapter 46-Parks, are included with this packet for reference with relevant section highlights. As a summary, the codified rules include:

- Authority of the Recreation Director, under the guidance and guidance the Recreation Commission, to establish rules and regulations for parks not in conflict with the ordinances.
- Prohibition on damaging park property.
- Prohibition on pollution of waters.
- Prohibition on depositing trash or refuse.
- Requirement to remove pet waste.
- Requirements for vehicle traffic, parking, bicycles.
- Rules and restrictions on bathing/swimming, hunting and firearms, camping, alcoholic beverages, tobacco and smoking.
- Limits on hours of access.
- Limits on merchandising and signs.
- General park operating policies including closed areas, entry prohibitions, access and use by dogs and horses.

Considering the existence of rules and prohibitions that extend across all parks and the recreation director's ability to establish new rules and regulation with certain limitations, the only covenant that applies to the original Clifford Park parcel that does not apply to the newly acquired parcels is the original covenant that the property be forever kept and held as a public park.

In September of 2023 the Policy Committee may consider whether it is desirable to:

- Consider a designation as a permanent conservation area by deed; or
- consider restrictions on subdivision or land swaps with or without conditions by deed; or

- a combination of these and other restrictions intended to preserve the land as a park such as within a land trust.

The City Manager indicated that there could be a search of one or more area conservations groups to obtain language for review related to conservation easements rather than start from scratch. The Policy Committee agreed. The attached conservation easements template was obtained from the Maine Coast Heritage Trust (MCHT) as a member of the Maine Land Trust Network. MCHT made it known that the template is designed to suit their purposes but may be modified as needed to suit other interests.

Funding Source:

N/A

Staff Recommendation:

This is a policy discussion based on availability of conservation easement language. Staff will take direction from then Committee.

Maine Coast Heritage Trust staff uses this document in its land conservation efforts. It is designed for internal MCHT use, and is provided here as a reference or guide. Each land trust has its own mission, priorities, and organizational characteristics that should direct how it does its work and what documents it uses. Please feel free to use the ideas, processes, and even specific text contained in this document, but be sure to tailor them for your organization. Land trusts should always use a lawyer knowledgeable in land transactions when working on a conservation easement or preserve acquisition. MCHT does not guarantee or provide advice as to the tax consequences of any project or action.

MCHT CONSERVATION EASEMENT
Drafting Template

REVISION 09162021-TRIBAL USES FOR CEREMONY AND HARVESTING

(See yellow highlighted)

With MLCAN BOILERPLATE CHANGES 11122021

WE, _____ and _____ [husband and wife or other relationship] as [joint tenants/tenants in common] having a mailing address of _____ (hereinafter referred to as the "Landowner(s), [Check Landowner vs. Landowners throughout along with verb number (is or are)]" which word is intended to include, unless the context clearly indicates otherwise, the above-named Landowner(s), jointly and severally, their personal representatives, heirs and assigns, and any successors in interest to the Protected Property), [[for consideration paid OR in consideration of the gifts of others]]

GRANT [[AS A GIFT - Delete if not Gift] to MAINE COAST HERITAGE TRUST, a non-profit corporation organized and existing under the laws of the State of Maine, with a mailing address of Bowdoin Mill, 1 Bowdoin Mill Island, Suite 201, Topsham, Maine 04086 (hereinafter referred to as the "Holder," which word shall, unless the context clearly indicates otherwise, include the Holder's successors and/or assigns),

with WARRANTY COVENANTS [or Quitclaim Covenant], in perpetuity, this Conservation Easement on [A Portion of?] a lot of approximately _____ acres located on _____ Road and _____ Cove in _____, _____ County, Maine, being [the same/a portion of the] real estate described in a deed from _____ to _____, Landowner hereunder, dated _____, and recorded at the _____ County Registry of Deeds at Book _____, and Page _____; and being more particularly described in Exhibit A and depicted on Exhibit B, both attached hereto and made a part hereof by reference (hereinafter referred to as the "Protected Property"); as follows:

- CONSERVATION PURPOSES -

This Conservation Easement on the Protected Property is granted exclusively for the following conservation purposes (hereinafter the "Conservation Purposes"):

This Conservation Easement is intended to provide a significant public benefit by protecting and preserving in perpetuity the natural and undeveloped character of the Protected Property, including its[*PM* will provide details, values, including historic cultural values and if scenic where it can be viewed from*]

. **Purpose.** It is the purpose of this Conservation Easement to assure that the Conservation Property will be retained forever in its substantially undeveloped, open space, scenic, and natural condition, consistent with

the terms of this Conservation Easement, including its recitals, and to prevent any use of the Conservation Property that will impair or interfere with this condition. Landowner and Holder intend that this Conservation Easement will confine, in perpetuity, the uses of the Conservation Property to activities which are compatible with these purposes and the protection of wildlife habitat and preservation of its scenic, open space and natural values.

- Conservation Values –

The following recitals more particularly describe the conservation values (hereinafter the “Conservation Values”) of the Protected Property and the significance of this grant.

WHEREAS, [PM* will provide list] *(PM is the Project Manager, or Holder’s negotiator)

For land important for tribal cultural uses, here are a few sample recitals:

WHEREAS, the Protected Property is in Maine, and according to the Maine Memory Network of the Maine Historical Society (accessed July 09, 2021 via <https://www.mainememory.net/>) "Wabanaki people, including the Maliseet, Micmac, Passamaquoddy, Penobscot, and Abenaki Nations, have inhabited what is now northern New England, the Canadian Maritimes, and Quebec, since time immemorial according to oral histories, and for at least 13,000 years according to the archaeological record....The Wabanaki adapted to the changing ecosystem, becoming expert stone and toolmakers, weaving baskets and snowshoes, and creating other cultural items that enabled successful hunting and fishing. Lifestyles were mobile, and people traveled and traded over long distances"; and

WHEREAS, this Protected Property is likely to include natural and cultural resources that are of importance to Wabanaki people for continued harvesting for medicinal, craft and ceremonial uses, and the Protected Property may be used for tribal ceremonial purposes with Landowner’s permission; and

WHEREAS, “According to Wabanaki oral histories, ... the People of the Dawn, have lived in the area now known as Maine and the Maritimes since time immemorial. Archaeological studies show that the Wabanaki have lived in this area for at least twelve thousand years—making [Wabanaki] the first residents of this land after the Laurentide ice sheet retreated.” (“Naming the Dawnland: Wabanaki Place Names on Mount Desert Island”, George Neptune, 2015, p. 94); and

WHEREAS, Wabanaki have traditionally accessed and harvested lands, plants, minerals and animals throughout the state, and “Traditionally, these swift, lightweight vessels (birchbark canoes) were among the most essential items in Wabanaki culture, making it possible to travel Maine’s vast network of inland and coastal waterways and gain access to nature’s seasonally shifting bounty” (*Asticou’s Island Domain - Wabanaki Peoples at Mt Desert Island 1500-2000* Vol. 1, Prins & McBride, 2007 p. 393); and

WHEREAS, “The Wabanaki have inherent and retained rights to hunt moose, spear salmon, fish for eels or lobster, harvest ash, gather plant foods and medicines (“Traditional Lifeways and Storytelling: Tools for Adaptation and Resilience to Ecosystem Change”,

Daigle, et al., 2019, p. 779); and

WHEREAS, in addition to baskets, Wabanakis sold and traded a range of other goods, finding innovative and marketable ways to use the flora and fauna that had sustained them in their traditional lifeways before Europeans arrived on their shores (*Asticou's Island Domain - Wabanaki Peoples at Mt Desert Island 1500-2000* Vol. 1, Prins & McBride, 2007 p. 399); and

NOW, THEREFORE, the Landowner and Holder have established this Conservation Easement on, over, and across the Protected Property consisting of the foregoing recitals and Conservation Purposes, and the following terms, covenants, restrictions and affirmative rights granted Holder, its successors and assigns, which shall run with and bind the Protected Property and Landowner (s), (his/her/their) personal representatives, heirs and assigns, in perpetuity:

1. LAND USE & DIVISION:

A. Land Use. The Protected Property may be used only for conservation, low-impact outdoor recreation, and natural resource management activities [PM could add to or subtract from this list] that do not adversely affect its important historic, cultural, natural, ecological and habitat values, nor detract from its [PM to list important features etc.] character when viewed from _____ (hereinafter “public vantage points”).

B. Specific Prohibitions. No industrial, quarrying, or surface mining activities, are permitted on the Protected Property. Without limiting the generality of the foregoing and notwithstanding the reserved rights of Landowner herein, the following uses are prohibited: , [PM will list other prohibited uses if relevant apartment buildings, motels or hotels, towers, antennae or other apparatus for telecommunications outside of the building envelope, bridges or causeways, docks and piers, which include ramps and other structures that extend alongshore or out from the shore into a body of water, solid waste disposal or transfer areas, junk yards, and aircraft landing sites, except in emergency.].

[Add in “*de minimis* use” clause if relevant for very high net-worth donors who may face a federal estate tax (as of 2021 over \$11.7 million worth per individual upon their death): In addition, the use of the Protected Property for commercial outdoor recreation is prohibited, other than *de minimis* use in accordance with Internal Revenue Code § 2031(c), and as interpreted by regulations promulgated thereunder.].

C. Division. For the purpose of land uses permitted under this Conservation Easement, the Protected Property must remain in its current configuration as a single lot under unified ownership, which may be joint and undivided. Subdivision, division, partition or creation of other parcels or lots, whether by lot division,[long term lease of structures (in excess of one year), condominium, time share,] [keep or remove according to PM instructions] or other legal or *de facto* manner of ownership which creates discrete parcels or separate ownership or control of portions of the Protected Property, shall be prohibited. Notwithstanding the foregoing, any portion of the Protected Property may be conveyed to an entity that meets the qualification set forth in Paragraph 10 D for permanent conservation ownership, including Holder. Under no circumstances may the Protected Property or any portion thereof be included as part of the gross tract area of other land not subject to this Conservation Easement, for the purposes of determining density, lot coverage, or land area requirements, under otherwise applicable laws, regulations or ordinances controlling land use, building

density or transfer for development rights.

D. Land Use Areas. For the purpose of the restrictions and reserved rights hereunder, the Protected Property is treated as two (2) land use areas: the "Natural Area" and a ____-Acre "Building Area", each hereinafter so called. The Building Area shall be a contiguous land area of not more than ____ (____) acres in total, which must be sited by the prior written agreement of Landowner and Holder in accordance with Paragraph 1E hereinbelow, from within the area designated on Exhibit B as "Possible Locations for Building Area," which is generally depicted thereon based upon a set back of at least ____ () feet from the normal high watermark of the shore of _____. Until the Building Area is finally established as required in Paragraph 1E, hereinbelow, the entire Protected Property shall be treated as the Natural Area, and after the Building Area is established, the Natural Area shall be comprised of all of the Protected Property outside of the final Building Area. OPTION: In the event that the land area occupied by the Building Area becomes inundated due to a rise in sea level, or the structures permitted only therein become unbuildable or uninhabitable due to a rise in sea level, Landowner and Holder agree to relocate the Building Area to an alternative site that Holder has determined, in its sole and exclusive discretion, meets the general intent of this Conservation Easement, is not detrimental to the conservation purposes hereof, and permits Landowner the reasonable exercise of its rights reserved under Paragraph 4. In such event, the existing Building Area, or relevant parts thereof, will be reassigned as a part of the Natural Area for the purposes of land uses under this Conservation Easement.

[[consider establishing a cultural use area if there are specific locations of importance for cultural uses by the Wabanaki]]

In the event that changing water levels or water courses or water action such as accretion or reliction leads to the emergence of new land within the external boundaries of the Protected Property, or if the external boundaries change as a result of the emergence of "new" land, it is the intention of the Landowner(s) and Holder that such land shall be subject to the terms of this Conservation Easement to the extent that Landowner(s) becomes owner or has management rights in such land.

E. Establishment of Building Area. [Add only if building area will be established after CE is finished as opposed to beforehand by survey]
Prior to the commencement of any activities permitted only within the Building Area pursuant to Paragraph 3, 4 and 5, except for test pits necessary for siting the Building Area, a recorded legal description of the final Holder-approved Building Area must be established by an addendum hereto, signed by Landowner and Holder and recorded at the Registry of Deeds. In order to establish the Building Area, Landowner shall provide written notice to Holder of its proposed location by certified mail, return receipt requested. Such notice shall include a proposed revision to Exhibit B showing the Building Area, a survey map showing boundary markers of the proposed Building Area, and a metes and bounds description of the proposed Building Area prepared in accordance with the survey, together with sufficient information to demonstrate compliance with the size, configuration, setbacks and other location requirements for the Building Area established under Paragraph 1.D. and in accordance with the procedures set forth in Paragraph 7. Landowner must clearly and accurately mark the boundaries of the Building Area, and maintain such boundaries in a clear and accurate condition for Holder's monitoring and enforcement purposes, as noted in Paragraph _____. [[insert P# for holder's affirmative rights, survey right]].

2. EXISTING CONDITIONS:

At the time of this grant there are no structures on the Protected Property except for__[PM to

provide a list of all existing structures, divided by land use area if already established] , located generally as depicted in Exhibit B. As of the date of this Conservation Easement, there are no surface alterations on the Protected Property other those associated with existing structures listed hereinabove and ___[PM will list surface alts.]___located as generally depicted on Exhibit B. As of the date of this grant the Protected Property is [PM will describe vegetation]. All existing conditions are documented in Baseline Data, a compilation of the conditions of the Protected Property as of the date of this grant, certified as accurate by Landowner and Holder, and on file at the offices of Holder. Landowner reserves the right to maintain, repair, and replace all existing structures and surface alterations with substantially similar structures and improvements in substantially the same locations.

3. NATURAL AREA RESTRICTIONS AND RESERVED RIGHTS:

It is the intention of this conservation easement that the Natural Area be used as conservation land for low impact outdoor recreation, nature observation and study, and that uses and improvements within the Natural Area be limited to the extent necessary or appropriate to preserve its natural and undeveloped character including preserving its [LIST CONSERVATION VALUES] as well as to buffer the shoreline and important conservation attributes of the Protected Property from the impacts of permitted development and uses within the Protected Property's Building Area. No structures, temporary or permanent, may be located or constructed on the Natural Area of the Protected Property, and no alterations may be made to the vegetation or to the surface of the earth or to wetlands or watercourses on the Natural Area of the Protected Property, without the prior written approval of Holder; except that Landowner reserves the following rights:

A. Structures in Natural Area

(i). Minor Structures in Natural Area. Landowner reserves the right to construct and maintain within the Natural Area, only minor structures to accommodate low-impact outdoor recreation, nature observation and study, such as: small unlighted signs; low barriers to discourage unauthorized access or to protect fragile resources; support and erosion control structures necessary for permitted roads and trails; boundary markers; temporary structures for outdoor ceremony and harvesting of resources important for medicine, craft or ceremony by the Wabanaki, grave markers no higher than three feet above ground surface; rustic trail improvements, including benches, hand rails, steps, and stream bridges; temporary tents and rustic child-scale tree houses. Notwithstanding the generality of the foregoing, the following structures are not permitted in the Natural Area: buildings, sheds, storage units, gazebos, screen houses, tent platforms, docks, piers, barns, bleachers, stages, paved platforms, major recreational improvements such as swimming pools, tennis courts, athletic or sports or equestrian fields or courts or courses that require grading of the surface or extensive baring of mineral soils.

[PM to add or subtract minor structures as appropriate]

(ii). Major (IF ANY; IF NOT REMOVE AND RENUMBER ACCORDINGLY):
[list, describe and restrict any if appropriate – consider in particular docks, seawalls or rip rap, etc.]

B. Surface Alterations in Natural Area

(i). Landowner reserves the right to alter the surface of the land, excavate and/or fill the Natural Area to the minimum extent necessary to exercise the reserved rights at Paragraphs 3.A. and 3.C. [, subject to the rights of others over _____ Road, as documented in Exhibit A] PM will list utility rights and established easements where appropriate]_provided that in every case the disturbed surrounding area must be restored as soon as reasonably possible to a state consistent with the scenic and ecological character of the Natural Area to be protected by this Conservation Easement.

(ii). [Add if PM says necessary]:Landowner reserves the right to establish and maintain one [[PM decide on this: paved or]]unpaved driveway between the nearest public roadway or private right of way and the Building Area,] which shall not exceed sixteen (16) feet in graded width or any greater minimum width required under then-applicable zoning ordinances. Through roads to abutting land are prohibited.

(iii). Landowner reserves the right to establish and maintain, anywhere on the Protected Property, unpaved footpaths of not more than four (4) feet in combined tread width and side clearance, designed and located to prevent erosion and protect the other Conservation Values of the conservation easement.

(iv). Landowner reserves the right to permit limited archeological and ecological study of the Protected Property, including excavation of sites, as well as limited excavation and harvesting of natural resources for craft, medicinal and ceremonial use by the Wabanaki; provided that all such work must be conducted in accordance with applicable then-current professional or Tribal standards, and the disturbed area must be restored to it natural appearance as soon as reasonably possible after completion.

OPTION: (v) Nothing in this paragraph shall prevent Landowner from developing ecosystem functions on the Protected Property including, but not limited to, carbon sinks, stream bank restoration, biodiversity mitigation, carbon sequestration and wetland and stream mitigation (other than creation of wetlands from historically upland property, such as hillsides or sites with no more than one of the following: current or historical evidence of hydric soils, hydrophytic vegetation, or wetland hydrology), provided that such developments are not in conflict or inconsistent with the Conservation Purposes of or the restrictions set forth in this Easement and that prior written approval for same shall have been obtained from Holder. Holder is not responsible for monitoring any such activities for compliance with permit(s) therefore, and Holder has no obligation to enforce said permits.[Use of this clause may have a significant downward impact on the deductible value of the easement gift, as it is a valuable property right retained.] Notwithstanding the foregoing, Holder shall not approve practices that negatively impact marsh migration, and are inconsistent with living shorelines practices, such as creation of new dikes, levees, seawalls, gambions, riprap, groins, jetties, or tombolos.)

OPTION: (vi) Easements and Rights of Way. Landowner may not grant additional easements, rights of way, licenses or permits over the Protected Property, nor increase the scope of existing easements, rights of way, licenses or permits without the prior written approval of Holder, based on a determination, in Holder's sole discretion, that said right or interest does not materially detract from the

Conservation Values. Notwithstanding the foregoing, Cultural Use Agreement for harvesting and use on the Protected Property by the Wabanaki are permitted. Notwithstanding the foregoing, new through roads shall not be permitted on the Protected Property.

OPTION: (vii) Burial Grounds. Landowner has the right to establish a Burial Ground of not more than ¼ acre, in accordance with Title 13 MRS Section 1142, or successors provisions thereof, anywhere within the Protected Property, except... (ID important resources, setbacks, etc.).

C. Vegetation Management In Natural Area.

Within forested areas of the Natural Area, it is the intention of this Conservation Easement to foster an intact, healthy forested area, and to limit the removal of wood and non-wood forest products to preserve healthy soils and habitat for wildlife, including current and future threatened, rare or endangered species such as [PM to add specifics] and the scenic character of forested areas of the Protected Property, in particular [PM will describe any special scenic features, add this section only if scenic], and to preserve the ecological integrity of streams, brooks, rivers, waterbodies, vernal pools and wetlands on the Protected Property, as well as to recognize and foster ongoing cultural values and uses of the land, water, wildlife and plants by Wabanaki.

(i). Natural Area - Generally: Landowner reserves the right to alter vegetation anywhere in the Natural Area, to the extent necessary to exercise the rights reserved in Paragraph 3.A. and 3.B., provided that in every case the disturbed surrounding area must be restored as soon as reasonably possible to a state consistent with the scenic and ecological character of the Natural Area to be protected by this Conservation Easement.

(ii). [Add if appropriate, see drafting guidelines]: Natural Area – Unforested Areas: [EXISTING FIELDS ONLY] Landowner reserves the right to maintain the existing unforested areas, not including wetlands, in the Natural Area, including the right to mow, graze, and bush hog and otherwise remove woody regeneration or standing timber thereon, and to permit harvesting of woody and non woody vegetation in open and unforested areas for medicinal, craft and ceremonial purposes important to the Wabanaki. No such mowing, grazing, or bush hogging shall be permitted within [LP: consider best buffer] (50-100) feet of the normal high water line of any saltwater shore, river, perennial stream or brook, vernal pool, pond, lake or wetland*. [consider other specifics depending on property features: Mowing of vegetation or harvesting of peat is not permitted on the then-existing heath, vernal pools, and wetlands. [Add language about ceremony if appropriate: harvesting for medicinal or craft or ceremonial purposes and] [Add livestock grazing if appropriate: grazing of livestock shall be sufficiently limited to avoid erosion of the soils.] [PMs, remember to consider whether you really need to limit fields/meadows to existing areas (and GPS and show them on Exhibit B, and make stewardship uphold that over time) or can you allow for additional areas, and how, and help tailor this clause.] *[[if buffer is less than applicable Shoreland zoning, add this clause: These restrictions are not intended to take the place of more restrictive requirements of Maine Shoreland Zoning or any other federal, state or local laws and regulations governing vegetation management that may be applicable to the Protected Property or parts thereof. It is Landowner's sole responsibility to be knowledgeable about and to abide by these laws and regulations.]]

OR

(ii). [Add if appropriate, see drafting guidelines]: Natural Area – Fields: [ADDITIONAL FIELDS ALLOWED] Landowner reserves the right to maintain the existing open fields on the Protected Property depicted generally in Exhibit B, and the right to establish additional open and unforested areas, including the right to mow and bush hog and otherwise remove woody regeneration or standing timber thereon, and to use all such permitted open areas for agricultural purposes including hay, row crops, horticulture, bee keeping, orchards, gardens, and meadows, harvesting in open and unforested areas for medicinal, craft and ceremonial purposes important to the Wabanaki, and for the grazing of livestock which may also occur in forested areas; provided that livestock must be fenced so that they do not enter the Protected Property within seventy-five (75) feet of the normal high watermark of the shore or the upland edge of streams, wetlands, or waterbodies; and further provided that all such agricultural and tribal harvesting activities shall be conducted in accordance with best management practices for the prevention of erosion and run-off into coastal waters, wetlands, water bodies, and streams on the Protected Property. Sod farming and other agricultural practices that are extractive of soils are prohibited.

(iii). [Add if appropriate see drafting guidelines]: Natural Area - Forested Areas: Landowner reserves the right to manage vegetation in forested areas on the Protected Property [Natural Area] including the right to cut, remove, or otherwise harvest forest products in accordance with this Paragraph 3.C.(iii) for commercial or non-commercial purposes, to remove exotic or invasive species, and to thin, weed, clean, cut, prune and practice other measures to achieve silvicultural objectives, including harvesting vegetation, trees and woody and non woody vegetation, in forested areas for craft, medicinal and ceremonial purposes important to the Wabanaki. All such forest management shall be conducted in accordance then current Best Management Practices published by the Maine Forest Service, or a future equivalent approved by Holder, and in accordance with then-current habitat management guidelines, such as “Focus Species Forestry” (by Robert Bryan; Third Edition 2007, Maine Audubon) and “Biodiversity in the Forests of Maine: Guidelines for Land Management” (by Flatebo, UMCE Bulletin 7147, 1999), or other forestry best practices or standards then current and approved by Holder; and by using silviculture methods designed to retain the natural forested character of the area [[PM modify if appropriate]]

[PM should be aware of current landowner practices and modify if appropriate]; In addition, all forest management practices shall be conducted in a manner to

- (a) maintain and/or foster vertical and age diversity of forest stands;
- (b) minimize disturbance to naturally occurring seedlings and saplings as necessary to assure adequate regeneration of native species;
- (c) preserve intact, fully functional riparian areas and wetlands;
- (d) Maintain adequate vegetated buffers along streams, vernal pools, waterbodies, and wetlands in order to provide shading and prevent erosion;
- (e) foster species native to the area and soils;
- (f) protect the hydrological systems, especially surface water bodies and fish passage;
- (g) avoid disturbance to known threatened, rare or endangered plant or animal species and their habitat;

- (h) minimize disturbance to organic and mineral soils on the Protected Property by conducting harvesting and removal on frozen or stable ground; and
- (i) [PM-Optional for Special Areas] - Avoid disturbance to the [[rare pitch pine stands, maple grove, talus slope feature, (etc)]] depicted in Exhibit B and documented in Baseline Data, without the prior written approval of Holder.

In the event of failure to comply with the above standards of Paragraph 3.C.(iii) Holder shall have the right to require, in its sole discretion and in addition to any other remedies at law and in equity, replanting of indigenous tree species, or fostering of natural regeneration to maturity, the requirement of marking all trees at least 30 days prior to harvest, and/or, Holder's prior written approval of a Forest Management Plan designed and written by a licensed professional forester in accordance with the terms of Paragraph 3.C.(vi), prior to additional harvesting.

These restrictions are not intended to take the place of more restrictive cutting requirements of Maine Shoreland Zoning or any other federal, state or local laws and regulations governing vegetation management that may be applicable to the Protected Property or parts thereof. It is Landowner's sole responsibility to be knowledgeable about and to abide by these laws and regulations.

OPTIONAL: (iv) Access Systems. Existing access systems (in the Natural Area), documented in Baseline Data and depicted on Exhibit B may be maintained [PM – Consider limitations on existing access if harmful, such as if an existing culvert needs replacement or a road goes through a stream]. Creation of any additional access systems, or improvement of existing access systems, such as land management roads, curb cuts, and log landing and yarding areas on the Protected Property, is permitted only with prior written approval by Holder, upon review of the access systems as part of the notification of harvesting to Holder required below, or as part of a required Forest Management Plan if applicable. New skid trails and other temporary breaks in the forest created by removal of forest products are allowed without prior approval as long as any resulting rutting is promptly repaired and stabilized to prevent or minimize erosion. All such access systems shall be constructed, maintained and improved in accordance with then-current Best Management Practices published by the Maine Forest Service, or a future equivalent approved by Holder. Holder shall base its review of access systems on the following criteria: prevention of exposure of mineral soils on the Protected Property, prevention of damage to nearby productive forest soils, preservation of intact hydrology and hydrological systems, preservation of intact wetlands and riparian areas, impact on fish passage, and preservation of intact habitat for known threatened, endangered or rare species.

OPTIONAL: (v) Notice of Harvest. The Landowner, not less than 30 days prior to commencement of commercial harvesting activities permitted under this Paragraph, shall notify the Holder of the proposed activities and shall provide the Holder with sufficient information concerning the nature, location, extent and timing of the proposed activities to enable the Holder to determine whether such activities are consistent with the terms of this Conservation Easement and the requirements of this Section 3.C.(iii).

Within 30 days of completion of harvesting activities, the Landowner shall notify the Holder in writing of such completion and shall include confirmation of the nature, location, extent and timing of harvesting activities.

OPTIONAL: (vi). Forest Management Plan. [usually makes sense on properties with a natural area of over 20 acres in size, and depending on surrounding property sizes, types and conditions, and CE goals and property specifics)] [Add this only if the property is forested and cutting is allowed see drafting guidelines]

[use this phrase if a plan is not generally required: If a Forest Management Plan is required as set forth in Paragraph 3.C.(iii)], no forest management shall be conducted on the (Natural Area of the) Protected Property until there is a written Cultural Use Agreement or Forest Management Plan (Plan), designed in accordance with the above stated Paragraph 3.C.(iii), and approved in advance and in writing by Holder, who shall respond within 45 days of receipt of the Plan. The Plan shall be updated or revised by the Landowner as necessary but at least every ten years if active forest management is undertaken.

Holder may approve certain forest management practices without a Plan provided that Landowner's request for approval meets the requirements of Paragraph 3.C.(iii) above and such management is intended to control insect and disease conditions, remove exotic or invasive species, rectify natural damage or destruction, prevent personal injury or property damage, or to permit harvesting for ceremonial, craft or medicinal purposes by the Wabanaki; or harvest not more than [PM to decide on a reasonably small number]_____ cords each year. Forest management practices and prescriptions that are not in an approved Plan may be applied only with the prior written approval of Holder.

Each Plan, update or revision shall be subject to the approval by the Holder that the Plan is consistent with the requirements of this Paragraph and Paragraph 3.C.(iii). Each Plan shall include, at a minimum, the following:

1. Landowner's short and long term forest management objectives.
2. A description of and an appropriately scaled and accurate map identifying the natural and physical features of the Protected Property. The description and/or map should include:
 - (a) Property boundary lines
 - (b) Forest type, stocking, age and stand history;
 - (c) Wetlands and waterbodies, including rivers, streams, vernal pools, ponds and lakes, both intermittent and year-round;
 - (d) Roads, trails, or other unforested areas;
 - (e) Special plant and wildlife habitats, including exemplary natural communities or rare or endangered plant or wildlife species, to the extent identified or known by the Maine Natural Areas Program, the Maine Department of Inland Fisheries and Wildlife, or other similar agency then recognized by the State of Maine or the U.S. Government as having responsibility for identification and/or conservation of such species
 - (f) Cultural features, including, but not limited to, cultural features important to Wabanaki, stone walls, cemeteries, cellar holes, or other features known to exist on the Protected Property, as well as habitats special to the Wabanaki including cedar swamps, riverine habitat with ash, sweetgrass meadows, and other habitats;
 - (g) Other features known to exist on the Protected Property requiring protection.
3. An access plan (map plus narrative) indicating principal routes of ingress and egress

for all areas in which Forest Management is to be conducted, including roads, trails and log landing areas, which minimizes new forest openings, and minimizes impacts to streams, in accordance with then-current Best Management Practices published by the Maine Forest Service, or a future equivalent approved by Holder.

4. A description of erosion control measures to be employed during Forest Management and at the completion of each Forest Management activity to ensure soil stabilization and to prevent erosion and sediment run off adjacent to wetlands and water bodies, in accordance with the best management practices of Maine Forest Service or other entity as agreed upon by the Holder.
5. A statement that any use of herbicides, pesticides, fungicides, insecticides, rodenticide and fertilizers will be conducted in accordance with best management practices of the Maine Forest Service or other entity as agreed upon by the Holder.
6. A description of harvesting practices and silvicultural techniques to be employed, and how they meet the requirements of Paragraph 3.C.(iii).
7. Proposed setbacks from wetlands and waterbodies of forest management activities as appropriate based on conditions and circumstances of the Protected Property.

(vii) Notice and Approval of Required Plans. If a Forest Management Plan is required as described in 3.C.(iii) or (vi), Landowner agrees to notify Holder and provide a Forest Management Plan at least sixty (60) days before commencing any cutting that requires a Forest Management Plan. Holder must within thirty (30) days of receipt of Landowner's notice and proposed Forest Management Plan, either request a meeting to provide specific input on said plan, or issue written approval of said plan. Failure to respond shall be deemed a constructive denial under Paragraph 11.C.(ii). In determining whether to approve the plan, the Holder must consider whether the plan clearly demonstrates compliance with the standards for vegetation management and conservation protection set forth in Paragraph 3(C)(iii) and whether Landowner has provide Holder with a sufficient written data as required in Paragraph 3.C.(vi).

NOTES for PMs on this section:

A forest plan by a forester should cost in the range of \$800-3,000 depending

State income tax credits exist for forestry plans, any plans can get tax credit of \$200

If LO is talking to a forester, tell them that proof of a good forester is in the pudding. Ask for a sample plan, or location of harvests they have done. Ask how much field work they are doing for the plan (big part of cost). That is all OK to do.

If under 120 acres, can sometimes get enough reimbursements and credits to pay 80% of their plan. Can use USDA and NRCS funding, with hoops.

Goal: Let's use easements to help raise level of forest management in Maine (with as little added cost as possible, to LT and to LO). PMs can use opportunity of visit and discussion to educate about foresters and plans, too.

4. RESTRICTIONS AND RESERVED RIGHTS IN THE BUILDING AREA.

No [[additional]] structures, temporary or permanent, may be located or constructed in the Building Area of the Protected Property, and no alterations may be made to the vegetation or to the surface of the earth or wetlands or watercourses in Building Area of the Protected Property, without the prior written approval of Holder; except that Landowner(s) reserve (s) the right to undertake within the Building Area any activity permitted in the Natural Area as set forth in Paragraph 3, hereinabove, and Landowner(s) reserve the following additional rights with respect to the Building Area only, and only after the Building Area is established as required under Section 1E:

A. Structures – Building Area. Landowner(s) reserve the right, in the Building Area only, to construct, maintain and replace structures, including buildings such as residences and outbuildings, septic systems and domestic fresh water facilities (see also Paragraph ____), and power and communication facilities, OPTION: (including wind and solar collection and transmission devices,) to serve permitted uses of the Protected Property only; provided that no structure may exceed ____ (____) feet in height, excluding chimneys, measured from the original average grade of the lowest side of the building(s) to the highest point of the roof [PM may add further restrictions]__ The “footprint” of a structure shall mean its size measured along the outermost perimeter of the structure, whether at ground level or higher, including any overhanging roofs or balconies, and any associated decks, porches, and steps, provided that water permeable grade-level patios constructed with pavers or sand laid stone or the like, conventional eaves, boardwalks, barbeque pits, and subsurface septic waste disposal structures shall not be counted in determining footprint.

OPTIONS Sustainable Energy Generation. The construction, use, maintenance, repair and replacement of not more than one (1) turbine for the generation of wind energy may be permitted upon receipt of the Holder’s prior written approval (to be granted in its sole discretion). When considering whether to issue such approval, Holder shall weigh and evaluate, among other relevant factors, the overall aesthetic impacts of the proposed turbine in the context of the surrounding landscape, the environmental impacts, and the scope of its anticipated energy benefits, and, upon Holder’s request, Landowner shall be required to provide Holder with written documentation addressing these and other matters deemed relevant by the Holder.

OPTION: No use shall be made of the Protected Property, and no activity thereon shall be permitted which is or is likely to become inconsistent with the Conservation Purposes of this Grant. Landowners and Holder acknowledge that, in view of the perpetual nature of this Grant, they are unable to foresee all potential future land uses, future technologies, and future evolution of the land and other natural resources, and other future occurrences affecting the Conservation Purposes of this Grant. Holder therefore, in its sole discretion, may determine whether (a) proposed uses or proposed improvements not contemplated by or addressed in this Grant or (b) alterations in existing uses or structures, are consistent with the Conservation Purposes of this Grant, subject to the terms of Paragraph 15.F.

OPTION: In order to minimize any degradation of the nighttime visual environment and the night sky, minimize glare, conserve energy resources and protect the natural environment and scenic character of the Protected Property from the damaging effects of excessive or improper night lighting, any new outdoor lighting fixture, including any outdoor lighting associated with the dock and float, if any, shall be designed and installed to be fully shielded (full cutoff) and shall have a maximum lamp size of 100 watts incandescent and 25 watts compact fluorescent (or approximately 1,600 lumens).

B. Surface Alterations – Building Area. Landowner(s) reserve the right, within in the Building Area only, to alter the surface as necessary or convenient to accomplish the rights reserved by Landowner at Paragraphs 4.A. and 4.C, and to excavate, grade and fill to establish lawns, gardens and ponds and to establish paved or unpaved driveways and parking areas and platforms, a burial ground as permitted under Paragraph 3.B.; trails and woods roads, septic systems and fresh water supplies to serve only the Protected Property. [[Landowner reserves the right to install septic waste disposal systems and fresh water wells and pumping and piping outside of the Building Area to the minimum extent necessary, with the prior written approval of Holder after notice in writing demonstrating necessity in accordance with the provisions of Paragraph 7.

C. Vegetation Management – Building Area. Landowner reserves the right, within the Building Area only, to alter vegetation to create and maintain open areas around permitted structures, to cultivate, plant, harvest vegetation for lawns, gardens and woodlands, and to accomplish the rights reserved by Landowner at Paragraph 4A and 4.B.

D. Notices and Approvals for the Building Area. Landowner(s) agree to notify Holder by certified mail, return receipt requested, as set forth in Paragraph 1.E., at least thirty (30) days prior to the commencement of site preparation, construction, substantial alteration to the surface other than test pits, or replacement, relocation, or removal of any structures permitted only in the Building Area, in order to establish the final approved Building Area as set forth in Paragraph 1.D. and 1.E.. Holder will reply within thirty (30) days of receipt of any notice from Landowner, either approving Landowner's proposed Building Area, or suggesting reasonable modifications that may be necessary to comply with the terms of this grant. Failure to respond shall be deemed a constructive denial under Paragraph 11.C.(ii). With respect to the establishment of the Building Area described in Paragraph 1 E the parties shall work in good faith to complete and record the description of the approved Building Area as an addendum to this Conservation Easement, within thirty (30) days of such reply by Holder.

5. WATER PROTECTION, POLLUTION CONTROL AND WASTE DISPOSAL.

A. The direct discharge of treated or untreated sewage into surface waters on or about the Protected Property is strictly prohibited, and any such waste shall be disposed of in accordance with applicable laws and regulations.

B. It is forbidden to dispose of or store unserviceable or abandoned equipment, such as appliances, vehicles and parts thereof, or any other waste material in the Natural Area on the Protected Property, except that vegetative slash and debris may be allowed to remain on the Protected Property, manure, compost and vegetative waste may be stored and/or used on the Protected Property in accordance with applicable laws and regulations, and other waste generated by permitted uses on the Protected Property may be stored temporarily in appropriate receptacles for removal at reasonable intervals. Nothing herein should be interpreted to prohibit the proper and legal burial of animals or humans within an area of the Protected Property designated by Landowner as a burial ground in accordance with Title 13 MRS Section 1142, as amended or successors thereof.

C. The use, storage, discharge or runoff of chemical herbicides, pesticides, fungicides, soaps, detergents or highly acidic or alkaline agents, fertilizers and other toxic agents, including discharge of

potentially toxic waste water or other toxic by products of permitted uses, must be limited to prevent any demonstrable adverse impact on wildlife, waters and other Conservation Values to be protected by this grant, unless more intensive use is approved in advance and in writing by Holder as appropriate, in its sole and exclusive discretion, to prevent or mitigate harm to the inhabitants, natural resources or permitted uses of the Protected Property.

6. PUBLIC ACCESS.

(Sample for when no public access is granted)

Landowner has no obligation to grant public access across the Protected Property. Landowner retains the right to grant such access to the Protected Property for low impact outdoor recreation, nature observation and study exercised in accordance with the terms of this grant, [add the following only if necessary:] provided that more than a *de minimis* use of the Protected Property for commercial outdoor recreation is prohibited as aforesaid.

(Sample for when public access is granted)

Landowner(s) agree to permit, and will refrain from prohibiting or discouraging, use of the Natural Area of the [[PM will identify other land use site]] Protected Property by the general public for daytime low-impact outdoor recreational uses, such as walking, hiking, nature observation, and for pedestrian access to the intertidal area of the shore, exercised in a manner that is consistent with the protection and preservation of the natural and ecological character of the Protected Property and the terms hereof. Landowner has the right to prohibit or limit camping, night use, fires, vehicular uses, and the right, after approval in advance and in writing by Holder in accordance with Paragraph 7, to temporarily or permanently limit or restrict, such public recreational use of the Natural Area of the Protected Property, or any part thereof, that is detrimental to the Conservation Values of the Protected Property to the extent necessary for [PMs will add list of reasons such as to protect wildlife habitat etc.]

Landowner(s) and Holder claim all of the rights and protections against liability for injury to the public to the fullest extent of the law under Title 14 M.R.S.A. Section 159-A, *et seq.* as amended and successor provision thereof (The Maine Recreational Use Statute), and under any other applicable provision of law and equity.

7. DEFINITIONS

8. Intentionally left blank

9. Intentionally left blank

10. HOLDER'S AFFIRMATIVE RIGHTS

10.A. Entry and Inspection. Holder shall have the right to enter the Protected Property for inspection and monitoring purposes and for enforcement, at a reasonable time and in a reasonable manner that is consistent with the Conservation Purposes hereof. Except in emergency circumstances, Holder will make reasonable efforts to contact Landowner [option: and/or persons in residence on the Protected Property and/or Landowner's adjacent property], prior to entry onto any area of the Protected Property that is not then open to the public. "Emergency circumstances" shall mean that the Holder has a good-faith basis to believe a violation of the easement is occurring or is

1 imminent.

3 10.B. Enforcement.

5 10.B.1. General Enforcement Rights. Holder shall have the right to enforce this Conservation
 6 Easement by proceedings at law and in equity, including the right to enjoin the violation, *ex parte* as
 7 necessary, by temporary or permanent injunction, to recover any damages to which it may be
 8 entitled for violation of the terms of this Easement and to require the restoration of the Protected
 9 Property to the condition that existed prior to any such injury. Landowner agrees that Holder's
 10 remedies at law for any violation of the terms of this Conservation Easement are inadequate, and
 11 that Holder shall be entitled to injunctive and equitable relief, both prohibitive and mandatory,
 12 temporary and permanent, in addition to such other relief to which Holder may be entitled,
 13 including damages and specific performance of the terms of this Conservation Easement, all
 14 without posting of any bond or other security and without the necessary of proving either actual
 15 damages or the inadequacy of otherwise available legal remedies.

17 10.B.2. Notice of Violation. Prior to initiation of an enforcement action, Holder shall provide
 18 Landowner with prior notice and reasonable opportunity to cure any breach, except where
 19 emergency circumstances require more immediate enforcement action.

21 10.B.3. Enforcement Costs and Fees. Recognizing that Holder is a charitable organization that has
 22 a duty to protect the Protected Property in the public interest, in the event of a violation, Landowner
 23 shall reimburse Holder for all reasonable costs incurred by Holder in enforcing this Conservation
 24 Easement or in taking reasonable measures to prevent, remedy, or abate any violation hereof by
 25 Landowner or any third party, including without limitation the costs of litigation, administrative
 26 proceeding, and restoration, including reasonable expert, consultant, and attorneys' fees. Any such
 27 costs and fees reimbursement shall apply whether any formal action is filed, whether Holder is a
 28 plaintiff or defendant in a judicial or administrative action or proceeding, and regardless of whether the
 29 action is styled as a declaratory judgment action or some other kind of action.

31 10.B.4. Force Majeure. Landowner is not responsible for injury to or change in the Protected
 32 Property resulting from natural causes or environmental catastrophe beyond Landowner's control,
 33 such as fire, flood, storm, and earth movement, or from any prudent action taken by Landowner
 34 under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property
 35 resulting from such causes.

37 10.B.5. Violations by Third Parties. Landowner shall take all reasonable actions, consistent with
 38 customary standards for the management of comparable areas utilized for the same purposes as the
 39 Protected Property, to prevent or halt third parties from violating this Easement. Landowner and
 40 Holder, together or unilaterally, may take such action as may be reasonably necessary to remedy acts of
 41 authorized or unauthorized third parties that constitute a violation of this Easement. Furthermore, in
 42 the event of violations of this Easement caused by acts of third parties, at Holder's option, Landowner
 43 agrees to assign their rights of action to Holder, to join in any suit, and/or to appoint Holder its
 44 attorney-in-fact for the purposes of pursuing enforcement action. Landowner shall remain responsible
 45 for violations of this Easement caused by acts of Landowner's employees, contractors, agents, invitees,
 46 guests, licensees, and other expressly or impliedly authorized third parties. As to violations arising from
 47 the acts or omissions of unauthorized third parties, the Landowner shall remain responsible for
 48 restoration of the Protected Property to a condition of compliance with this Easement, and Holder
 49 shall have a right to enforce this Easement directly against the Landowner if the Landowner fails to
 50 cooperate with the Easement Holder in all reasonable respects to halt or abate the violation resulting

from such acts or omissions, or fails to promptly report a known or suspected violation to the Holder.

The terms of this conservation easement may differ from, and do not supersede or waive, more restrictive applicable laws and regulations, such as shoreline zoning or any other federal, state or local laws and regulations governing current use tax classifications, waste disposal, subdivision, structures, surface alterations, vegetation management, or other activities on the Protected Property. It is Landowner's sole responsibility to be knowledgeable about and to abide by these laws and regulations.

10.C. Boundaries.

[option: The Protected Property and its land use areas have been professionally surveyed.] It shall be Landowner's obligation to keep the boundaries of the Protected Property, [[IF APPLICABLE: and any land use areas therein,]] clearly marked. In the event boundaries are not adequately clear or marked and Landowner fails to accurately mark within a reasonable time after notice by Holder, Holder shall have the right to engage a professional surveyor to re-establish and re-mark boundaries of the Protected Property or any part thereof. The costs associated with such survey work shall be paid by the Landowner only if and to the extent necessary to determine if a breach of this Conservation Easement has occurred on the Protected Property or a land use area thereof.

10.D. Holder Acknowledgement Signs. Holder shall have the right to install and maintain small unlighted signs visible from public vantage points and along boundary lines, to identify Holder and inform the public and abutting property owners that the Protected Property is under the protection of this grant.

10.E. Exercise of Reserved Rights. Holder has the right to require that Landowner's reserved rights be exercised in a manner that avoids adverse impact to the Conservation Values to be protected by this Easement. Landowner agrees to notify Holder prior to undertaking any activity or exercising any reserved right that may impair the conservation interests associated with this Conservation Easement, as required under Treasury Regulation 1.170A-14(g)(5)(ii), and as specifically required in Paragraph [[INSERT paragraphs that impose a prior notice provision]].

10.F. [Optional. Affirmative Management Rights. Example, the right to mow, the right to manage public access, the right to build a trail]]

11. NOTICES AND REQUESTS FOR APPROVAL

11.A. Notice and Approval Requirements. Landowner agrees to notify Holder prior to undertaking any activity or exercising any reserved right that may have an adverse impact on the conservation interests associated with this grant as required under Treasury Regulation 1.170A-14(g)(5)(ii), and where prior notice or approval is specifically required in this Conservation Easement.] Landowner's notices must include sufficient information to enable Holder to determine whether Landowner's plans are consistent with the terms of this Easement and the conservation purposes hereof. Holder approval shall be conditioned on compliance with the terms of Paragraph 15.F.

11.B. Method for Notice. Any notices or requests for approval required by this Easement shall be in writing and shall be personally delivered or sent certified mail, return receipt requested, or by such commercial delivery service as provides proof of delivery, to Landowner and Holder, at the following addresses, unless one has been notified by the other of a change of address or change of ownership:

To Landowner: At the address of the owner(s) of record as noted hereinabove or as provided by Landowner in writing, or if not provided, as set forth below.

To Holder: [Insert mailing address]

In the event that notice mailed to Landowner at the last address on file with Holder is returned as undeliverable, the sending party shall provide notice by regular mail to Landowner's last known address on file with the municipality of *[municipality in which property is located]*, Maine, or the State Tax Assessor in the case of land in the unorganized territories; or in the case of Holder or in the case of a corporate owner, to the address on file with the Secretary of State, State of Maine, and the mailing of such notice shall be deemed compliance with the notice provisions of this Easement.

11.B.2. In addition to the methods set forth in Paragraph 11.B.1, a notice or request for approval or any other communication may be sent by electronic mail or other electronic communication ("email") only if an authorized agent of the receiving party has approved of receiving notice by email at a specific address and the recipient, by an email sent to the email address for the sender or by the same email returned to the originating address for the sender, or by a notice delivered by another method in accordance with Paragraph 11.B.1, acknowledges having received that email. An automatic "read receipt" shall not constitute acknowledgment of an email for purposes of this Paragraph 11.B.2.

11.C. Time for Notice and Reply, Constructive Denial

(i) Where Landowner is required to provide notice to Holder pursuant to this Easement, such notice as described hereinabove shall be delivered to Holder in writing at least thirty (30) days prior to the anticipated start date of the activity or use giving rise to the need to give notice.

(ii) In cases where Landowner is required to obtain Holder's prior written approval, such request as described hereinabove shall be given in writing thirty (30) days prior to undertaking the proposed activity except as otherwise specifically provided herein. Holder, upon receipt of Landowner's request, shall acknowledge receipt of the same. Following such review, Holder, shall grant, grant with conditions, or withhold its approval. Failure to respond or approve Landowner's request within thirty (30) days shall be deemed a constructive denial, without prejudice. A constructive denial is not a decision by Holder based on the merits of Landowner's request, and Landowner may resubmit the same or a similar request for approval. No proposed activity may proceed without Holder's written approval as provided herein.

11.D. Notice to Landowner. Should it be necessary for Holder to provide notice to Landowner in connection with any matter relating to this Conservation Easement, notice to the record owner or owners, who are of full age and competent, of a majority interest in the Protected Property, shall be deemed notice to all the owners of the Protected Property. In the event that the Protected Property is owned by more than one person, the owners shall designate one representative to act on behalf of all such owners, for the purposes of sending and receiving any notice or other communication required or authorized under this Easement. If the Protected Property is owned by a partnership, trust, limited liability company, association, or corporate entity, notice to one general partner, one trustee, one manager, or the registered agent, shall be deemed notice to all owners. Any agreement or approval made in writing by the person or persons to whom notice is required as

1 aforesaid shall be deemed the agreement or approval of Landowner and be binding on all owners of
2 the Protected Property.

3 4 12. COSTS, TAXES, LIABILITY

5
6 12.A. Taxes and Liens. Landowner shall pay and discharge when due all property taxes and
7 assessments imposed upon the Protected Property and any uses thereof, and shall avoid the
8 imposition of any liens that may impact Holder's rights hereunder. Landowner shall also promptly
9 notify Holder of the filing or recording of any such lien or encumbrance against the Protected
10 Property. Holder may, at its discretion, pay any such outstanding taxes, assessments, liens or
11 encumbrances, and shall then be entitled to reimbursement by Landowner, together with interest at
12 the then-prevailing statutory post-judgment interest rate in Maine under Title 14 MRSA Section
13 1602-C or successor provisions thereof, calculated from the date of Holder's payment. Landowner
14 and Holder agree that Holder shall have a lien on the Protected Property to secure Holder's right to
15 reimbursement and that Holder may record such lien at any time. In any collection process or court
16 action brought by Holder for reimbursement, Holder shall be entitled to recover its costs and
17 expenses, including, without limitation, reasonable attorneys fees.

18
19 12.B. Responsibility of Owners. Landowner acknowledges that Holder has neither possessory
20 rights in the Protected Property, nor any responsibility or right to control, maintain, or keep up the
21 Protected Property *[option if holder acquires affirmative management rights: other than as set forth in*
22 *Paragraph 10.____.].* Landowner shall retain all responsibilities and shall bear all costs and liabilities
23 of any nature related to the ownership, operation, upkeep, improvement and maintenance of the
24 Protected Property. Landowner shall indemnify, defend and hold Holder harmless from and against
25 any and all liabilities, costs, damages, or expenses of any kind including, without limitation,
26 reasonable attorneys fees, that Holder may suffer or incur as a result of or arising out of the activities
27 of Landowner or any other person on the Protected Property, other than those caused by the
28 negligent acts or acts of misconduct of Holder, and except those arising out of Holder's workers'
29 compensation obligations. Holder's right to be defended, held harmless and indemnified by
30 Landowner shall extend without limitation to any action based upon the presence of toxic and/or
31 hazardous substances upon or emanating from the Protected Property.

32 33 13. OPTIONAL DISPUTE RESOLUTION.

34
35 This Easement is in accordance with Maine's established public policy that encourages the use of
36 non-litigative methods of dispute resolution. When a dispute arises between the Landowner and the
37 Holder concerning uses or activities on the Protected Property, which they cannot resolve by
38 informal means, the following dispute resolution procedures may be followed:

39
40 13.A. Conditions for Required Alternative Dispute Resolution ("ADR"). Prior to
41 bringing an action at law or in equity in a court of competent jurisdiction to enforce the terms of
42 this Conservation Easement, the parties may seek to resolve the dispute through mediation if the
43 Holder determines that the following conditions (the "ADR Conditions") are met:

- 44 i. The Landowner agrees not to proceed with the disputed use or activity pending
45 resolution of the dispute, and
- 46 ii. No injury to the Protected Property has occurred or will occur while the parties are
47 engaging in the ADR process.

48
49 13.B. Conditional Waiver of Right to Litigate. In submitting the dispute to mediation, the
50 parties acknowledge they are temporarily, voluntarily waiving their rights to litigate the dispute in a

1 court of law, so long as the ADR Conditions are being met. In the event either of the ADR
 2 Conditions is violated, the Holder shall have the immediate right to bring an action at law or in
 3 equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement, as is
 4 more fully set forth in Section 10.B. above.

5
 6 13.C. Conditions for ADR By Mutual Agreement of the Holder and Landowner.
 7 Regardless of whether the ADR Conditions are met, the parties by mutual agreement may, in
 8 addition to mediation, submit the dispute to other forms of ADR such as binding or non-binding
 9 arbitration. By mutual agreement, other conditions may be set under which the process of ADR
 10 would proceed. The violation of these additional conditions by one of the parties, would give the
 11 other party the right to immediately proceed with an action in law or equity.

12
 13 13.D. Dispute Resolution. The procedure the parties shall use for mediation is as follows:

14 i. Either party may serve the other with a written request for mediation. A mediation
 15 session shall be scheduled no later than sixty (60) days after the date of the request if the Holder
 16 determines that the ADR Conditions are met or unless the parties agree otherwise.

17 ii. Mediation shall be conducted by a mediator mutually agreeable to Holder and
 18 Landowner who is on the Superior Court roster maintained by the Maine Court Alternative Dispute
 19 Resolution Service (CADRES) (or successor or alternative entity that meets mediation standards
 20 recognized under state law.)

21 iii. If the parties cannot agree on a mediator, they shall each pick a mediator, and those two
 22 mediators shall select a third mediator who alone shall actually conduct the mediation.

23 iv. The costs of mediation shall be shared equally by the parties unless otherwise agreed or
 24 unless reimbursement to Holder is applicable under Paragraph 10.B. herein.

25 26 14. STANDARD PROVISIONS

27
 28 14.A. Maine Conservation Easement Act. This Conservation Easement is established pursuant to
 29 the Maine Conservation Easement Act at Title 33, Maine Revised Statutes, Sections 476 through 479-
 30 C, inclusive, as amended, and shall be construed in accordance with the laws of the State of Maine.
 31 *OPTIONAL:* The recreational trail easement established hereunder is further authorized under Title
 32 33 Maine Revised Statutes, Section 1581, et seq.

33
 34 14.B. Conservation Purposes. This Conservation Easement is established exclusively for
 35 conservation purposes pursuant to the Internal Revenue Code, as amended (hereinafter referred to as
 36 the “Code”) at Title 26, USCA, Section 170(h)(1)–(6) and Sections 2031(c), 2055, and 2522, and under
 37 Treasury Regulations at Title 26 CFR §1.170A-14 *et seq.*, as amended.

38
 39 14.C. Qualified Holder. The Holder is qualified to hold conservation easements pursuant to Title
 40 33, Maine Revised Statutes, Section 476(2)(B), as amended, and is a qualified donee under Internal
 41 Revenue Code Section 170(h)(3): a publicly supported, nonprofit 501(c)(3) organization with the
 42 authority to accept lands, easements, and buildings for the purpose of preserving and protecting
 43 natural, scenic, educational, recreational or open-space values of real property, and with the
 44 commitment to preserve the Conservation Values of the Protected Property.

45
 46 14.D. Assignment Limitation. This Conservation Easement is assignable, but only to an entity
 47 that satisfies the requirements of Section 170(h)(3) of the Internal Revenue Code (or successor
 48 provisions thereof) and the requirements of Section 476(2) of Title 33 of the Maine Revised Statutes,
 49 as amended (or successor provisions thereof), and that as a condition of transfer, agrees to uphold the
 50 Conservation Purposes of this grant.

14.E. Baseline Documentation. In order to establish the present condition of the Protected Property and its conservation attributes protected by this conservation easement, and its natural and scenic resources, so as to be able to monitor properly future uses of the Protected Property and assure compliance with the terms hereof, Holder and Landowner have prepared an inventory of the Protected Property's relevant features and conditions (the "Baseline Documentation") and have certified the same as an accurate representation, to the extent known, of the condition of the Protected Property as of the date of this grant, as required under Treasury Regulations §1.170A-14, for tax deductible conservation easement gifts.

14.F. Liens Subordinated. Landowner represents that as of the date of this grant there are no liens or mortgages or future interests outstanding against the Protected Property [CONFIRM; except any listed in Exhibit A, which are subordinated to Holder's rights under this Conservation Easement, as required under Treasury Regulations §1.170A-14]. Landowner has the right to use the Protected Property as collateral to secure the repayment of debt, provided that any lien or other rights granted for such purpose, regardless of date, are subordinate to Holder's rights under this Conservation Easement. Under no circumstances may Holder's rights be extinguished or otherwise affected by the recording, foreclosure or any other action taken concerning any lien or other interest in the Protected Property.

14.G. Value of Conservation Easement, Extinguishment, Proceeds

14.G.1. The parties agree that conveyance of this Conservation Easement gives rise to a property right that vests immediately in Holder. The parties further agree that this property right as of the date of its creation has a fair market value at least equal to the proportionate value that the Conservation Easement bears at the time of the gift to the value of the property as a whole at that time, in accordance with IRS Regulations at 1.170A-14(g)(6)(ii) (hereinafter the "Proportionate Value"). The Proportionate Value shall remain constant.

14.G.2. If either Holder or Landowner receives notice of the actual or threatened exercise of the power of eminent domain (hereinafter a "Taking") with respect to any interest in or any part of the Protected Property, the party who receives the notice shall promptly notify the other and the parties may proceed jointly or either party may at its discretion take such legal action as it deems necessary to: (i) challenge the Taking; (ii) challenge the amount of allocation of any award tendered by the Taking authority; or (iii) otherwise participate in, challenge or appeal such proceedings, findings or awards. Any third party counsel and consultants (including appraisers) hired by either party shall be reasonably acceptable to the other party. Each party shall be responsible for its own costs and legal fees, absent written agreement of the parties.

14.G.3. This Conservation Easement may be extinguished or terminated only by judicial order in a court of competent jurisdiction, including a Taking in accordance with subsection 14.G.2. above. It is the intention of the parties that an extinguishment or termination be approved by a court only if all of the Conservation Purposes of this Conservation Easement are impossible to accomplish, and if both Landowner and Holder (and any Third Party Enforcer, if existing) agree. Should this Conservation Easement be terminated or extinguished as provided in this paragraph, in whole or in part, Holder shall be entitled to be paid no less than *the greater of* (1) in accordance with § 1.170A-14(g)(6)(ii), a portion of any proceeds of a subsequent sale, exchange, or involuntary conversion computed as to the Proportionate Value[]; or (2) in accordance with 33 M.R.S. § 477-A(2)(B), the increase in value to the Landowner's estate resulting from such extinguishment of this Conservation Easement as determined by the court, or in the absence of such court determination,

by the agreement of the parties or, in the absence of such agreement, by an independent appraiser mutually selected by Landowners and Holder. Holder shall use its share of the proceeds or other moneys received under this paragraph in a manner consistent with the Conservation Purposes of this Conservation Easement. Landowner agrees and authorizes Holder to record a notice of a lien on the Protected Property which lien will be effective as of the date of such extinguishment, to secure its rights under this Paragraph.

[[[] FOR NON DEDUCTIBLE EASEMENTS, SEEK LEGAL ADVICE ON CHANGES TO THIS SECTION TO ALLOCATE EXCLUSIVELY TO THE OWNER THE VALUE OF THEIR IMPROVEMENTS.]].

14.H. Contemporaneous Written Acknowledgment. In compliance with I.R.C. Section 170(f)(8), Holder acknowledges receipt of this conservation easement on the date hereof, and states that it has not provided Landowner(s) with any goods or services in consideration, in whole or in part, for Landowner(s)' [bargain sale] contribution of this easement. *[CAUTION: must add an exception if Holder paid any amount as compensation, including paying for Landowner's appraisal or other transaction costs usually paid by Landowner or the bargain sale purchase price].*

15. GENERAL PROVISIONS

15.A. Controlling Law and Interpretation. The interpretation and performance of this Easement shall be governed by the laws of the State of Maine. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the Conservation Purposes of this Easement and the policy and purpose of the Maine Conservation Easement Act at Title 33, Maine Revised Statutes Annotated, Sections 476 through 479-C, inclusive, as amended. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the Conservation Purposes of this Easement shall govern.

15.B. Landowner and Holder Definitions. The term "Landowner" or "Landowners" as used in this easement shall include, unless the context clearly indicates otherwise, the within-named Landowner(s), jointly and severally, their personal representatives, heirs, successors and assigns and any successors in interest to the Protected Property. The term "Holder" as used in this easement shall, unless the context clearly indicates otherwise, include the Holder's successors and assigns.

15.C. Owner's Rights and Obligations, Joint Obligation. A person's or entity's obligation hereunder as Landowner, or successor owner of the Protected Property, shall be joint and several, and will cease, only if and when such person or entity ceases to have any ownership interest in the Protected Property, (or relevant portion thereof) but only to the extent that the Protected Property (or relevant portion thereof), is then in compliance herewith, and provided such person or entity shall have fulfilled the requirements of Paragraph 15.D. below. Responsibility of owners for breaches of this Conservation Easement that occur prior to transfer of title will survive such transfer; provided that the new owner shall also be responsible for bringing the Protected Property into compliance.

15.D. Subsequent Deeds and Transfers. This Easement must be incorporated by reference in any deed or other legal instrument by which Landowner conveys any interest in the Protected Property, including, without limitation, a leasehold or mortgage interest. Landowner further agrees to give written notice to Holder within thirty (30) days of the transfer or conveyance of any interest in the Protected Property. The failure of Landowner to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

15.E. Compliance/Estoppel Certificates. Upon written request by Landowner, Holder will provide Compliance/Estoppel Certificates to Landowner or third parties, indicating the extent to which, to Holder's knowledge after due inquiry, the Protected Property is in compliance with the terms of this grant. The inspection of the Protected Property for this purpose will be made by Holder at Landowner's cost within a reasonable time after Landowner's written request.

15.F. Discretionary Approvals and Amendments.

15.F.1. Discretionary Approvals. Landowner and Holder recognize that certain activities by the Landowner may warrant the prior discretionary approval of Holder, and that Holder has the right to issue such discretionary approvals subject to the restrictions in Paragraph 15.F.3. Nothing in this paragraph shall require either party to agree to any discretionary approval.

15.F.2. Amendments. Landowner and Holder recognize that rare and extraordinary circumstances could arise which warrant modification of certain of the provisions of this Conservation Easement. To this end, subject to more restrictive laws and regulations, if any, Landowner and Holder have the right to agree to amendments to this Conservation Easement , provided that in the sole and exclusive judgment of Holder, such amendment does not violate the restrictions in Paragraph 15.F.3. Amendments will become effective upon recording at the _____ County Registry of Deeds. Nothing in this paragraph shall require the Landowner or the Holder to agree to any amendment or to negotiate regarding any amendment. *OPTIONAL*: All rights of Holder to amend this Conservation Easement shall require the approval of the Third Party Enforcer.

15.F.3. Further Limitations on Discretionary Approval and Amendments. Notwithstanding the foregoing, except as provided by 33 M.R.S. § 477-A(2), as amended, by which a Conservation Easement may be amended by court approval in an action in which the Attorney General is made a party, Holder and Landowner have no right or power to approve any action or agree to any discretionary approval or amendment that would:

(a) materially detract from the Conservation Values intended for protection under this Conservation Easement;(b) limit the term or result in the partial or complete termination of this Conservation Easement; or

(c) adversely affect the qualification of this Conservation Easement or the status of the Holder under applicable laws, including the Maine Conservation Easement Act at 33 M.R.S. §476 *et seq.*, and Sections 170(h), 501(c)(3), 2522, and 2031(c) of the Internal Revenue Code, successor provisions thereof and regulations issued pursuant thereto.

[*OPTIONAL*: (d) enlarge the area for residential or other building development, or the number of residences, if any, permitted by the express terms of this Conservation Easement,]

[(d) *OPTIONAL*: insert standards based on the specific Conservation Purposes of the easement, for example, for forever wild easements.]

15.G. Economic Hardship. In making this grant, Landowner has considered the possibility that uses prohibited by the terms of this Easement may become more economically valuable than permitted uses, and that neighboring properties may in the future be put entirely to such prohibited uses. In addition, the unprofitability of conducting or implementing any or all of the uses permitted under the terms of this Conservation Easement shall not impair the validity of this Conservation

Easement or be considered grounds for its termination or extinguishment. It is the intent of both Landowner and Holder that any such economic changes shall not be deemed to be changed conditions or a change of circumstances justifying the judicial termination, extinguishment or amendment of this Conservation Easement.

15.H. Nonwaiver. The failure or delay of the Holder, for any reason whatsoever, to do any action required or contemplated hereunder, or to discover a violation or initiate an action to enforce this Conservation Easement shall not constitute a waiver, laches, or estoppel of its rights to do so at a later time.

15.I. Severability, Entire Agreement, No Forfeiture. If any provision of this Conservation Easement or the application of any provision to a particular person or circumstance is found to be invalid, the remainder of this Conservation Easement and the application of such provision to any other person or in any other circumstance, shall remain valid. This instrument and the Baseline Documentation set forth the entire agreement of the parties with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Conservation Easement, all of which are merged herein. Nothing contained herein will result in a forfeiture of this Conservation Easement or reversion to Landowner of any rights extinguished or conveyed hereby.

15.J. Standing to Enforce. Only Holder and Landowner, {OPTIONAL: and third party enforcer] may bring an action to enforce this grant, except as provided in Title 33 M.R.S.A. Section 478, and nothing herein should be construed to grant any other individual or entity standing to bring an action hereunder, unless otherwise provided by law; nor to grant any rights in the Protected Property by adverse possession or otherwise, provided that nothing in this Easement shall affect any public rights in or to the Protected Property acquired by common law, adverse possession, prescription, or other law, independently of this grant.

15.K. Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

15.L. Independent Representation. Landowner has retained legal counsel *[[Optional: Insert name and address of attorney]]* to represent only his/her/their interest in this transaction. Landowner and Holder acknowledge and agree that they have not received and are not relying upon legal, tax, financial or other advice from each other. Landowner acknowledges that Holder has recommended that it/she/he/they keep independent counsel.

15.M. Accretion and Reliction. In the event that changing water levels or water courses or geological action such as accretion or reliction leads to the emergence of new land within or changes to the boundaries of the Protected Property, it is the intention of Landowner and Holder that such new land shall be subject to the terms of this Conservation Easement to the extent that Landowner is the owner or has management rights in such land as a result of such changing water levels or water courses or geological action.

15.N. Other Laws. This Conservation Easement does not supersede any federal, state, municipal, and other governmental laws or the need for any permits or approvals.

OPTION: 16. HOLDER'S RIGHT OF FIRST REFUSAL.

In the event that Landowner wishes to sell the Conservation Property or, if permitted by the terms of this Conservation Easement any portion thereof, Landowner shall first offer the premises to Holder by written notice containing an offer to sell in accordance with the same terms as set forth in a binding purchase and sale contract with a third party (proposed transferee) that is contingent on Holder's release of this Right of First Refusal, a copy of which shall be included in such notice, and specifically including the name of the proposed transferee, the proposed selling price and the relevant terms of sale. Holder may elect to purchase the Protected Property at the offered price and upon such other terms and conditions not less favorable to Landowner than those contained in the conditionally accepted offer by giving to Landowners notice in writing of such election within thirty (30) days after delivery of the offer to Holder.

In the event said offer includes personal property or land and premises other than the Protected Property, then, in addition to the copy of the conditionally accepted offer, Landowners shall deliver to Holder an allocation (the "Allocation") of the offered purchase price broken down between the Protected Property and any structures thereon ("the Price") and the balance of the property subject to the offer. Holder may elect to purchase only the Protected Property and any structures thereon for the Price, or may elect to purchase the entire package, by giving notice to Landowners within thirty (30) days after delivery of the offer and the Allocation to Holder. In lieu of said election, Holder may give notice within the same time of their intent to obtain an independent appraisal of the Allocation. In the event that that Holder gives such notice to Landowners, then Landowners and Holder shall retain a mutually acceptable qualified appraiser whose fee shall be shared equally by Landowners and Holder, who shall then determine the Allocation. The Holder may elect to purchase only the Protected Property and any structures thereon for the price determined by the appraiser by giving notice to Landowners within thirty (30) days after deliver of the allocation by said appraiser to the Holder. . If accepted, an additional 30 days shall be permitted for closing with Holder; if rejected by Holder, Landowner may convey only to the same person and only on the same terms as offered to Holder. Upon such conveyance this right of first refusal [[*OPTION 1*: shall continue and be binding on the transferee.]] [[*OPTION 2*: shall terminate.]]

This right of first refusal shall not apply to the following transactions:

- A. A gift or sale of the Protected Property or any part thereof to a relative by blood or marriage in which case this right of first refusal shall continue and be binding upon the donee and upon the donee's heirs and assigns.
- B. Descent or devise of the property or any part thereof upon death in which case this right of first refusal shall continue and be binding upon the heirs and/or devisees and their heirs and assigns.
- C. A bonafide mortgage to a financial institution. A transfer of the Protected Property or, if permitted by the terms of this Conservation Easement any portion thereof, pursuant to foreclosure of a bonafide mortgage to a financial institution shall free the interest so transferred from this right of first refusal, provided that this right of first refusal shall continue and be binding upon the successors and assigns of said financial institution.

This Right of First Refusal shall apply to all other sales and conveyances of the Protected Property, or any part thereof, including any conveyance by, or conveyance of any interest in a family corporation, partnership or other holding entity.

The recording of an affidavit by Landowner stating that notice has been given to Holder, that Landowner has not received written notice of election to purchase in accordance with the time

frame herein provided, and that the conveyance will be made to the proposed transferee and on the terms provided to Holder, shall be prima facie evidence of compliance with the provisions hereof.

TO HAVE AND TO HOLD the said Conservation Easement unto the said Holder, its successors and assigns forever.

IN WITNESS WHEREOF, I, _____, being unmarried, have hereunto set my hand and seal this (____) day of _____, (____) [year].

Signed, sealed and delivered
in the presence of:

Witness

[Landowner's name]

For use by married Landowners, both of whom are record owners:

IN WITNESS WHEREOF, We, _____, husband and wife, have hereunto set our hands and seals this (____) day of _____, (____) [year].

For use when easement is a gift or partial gift being granted by married person. Non-owner spouse should join in gift.

IN WITNESS WHEREOF, _____, Grantor herein, and _____, his/her spouse, joining in this deed and relinquishing all rights herein by descent or otherwise, have hereunto set their hands and seals, this (____) day of _____, (____) [year].

For use by Trust:

IN WITNESS WHEREOF, I, _____, Trustee of [insert name of trust], hereunto duly authorized, have hereunto set my hand and seal this (____) day of _____, (____) [year].

For use by corporation:

[Note: if other corporate entity such as a partnership or LLC is the Landowner, consult Landowner's counsel as to format]

IN WITNESS WHEREOF, Landowner, _____ [insert corporate name] _____ has caused these presents to be signed and sealed in its corporate name and behalf by _____ [insert person's name] _____, its [insert title] _____, hereunto duly authorized, this (____) day of _____, (____) [year].

Signed, sealed and delivered
in the presence of:

Witness

[corporation name]

By: _____

Its: _____

STATE OF MAINE

COUNTY OF _____, 20____.

Then personally appeared the above-named _____ and acknowledged the foregoing instrument to be his/her/their free act and deed.

Before me,

Notary Public

Printed name of notary

My commission expires: _____

HOLDER ACCEPTANCE.

The above and foregoing Conservation Easement was authorized to be accepted by MAINE COAST HERITAGE TRUST, Holder as aforesaid, and the said Holder does hereby accept the foregoing Conservation Easement, by and through _____, its President, hereunto duly authorized, this ____ day of _____, 20__.

MAINE COAST HERITAGE TRUST

by: .
its President

STATE OF MAINE
COUNTY OF SAGadahoc, ss.

Date:

Personally appeared _____, President, and authorized representative of the above-named Holder, MAINE COAST HERITAGE TRUST, and acknowledged the foregoing instrument to be his free act and deed in his said capacity, and the free act and deed of said corporation.

Before me,

Notary Public

Please type or print name
My commission expires:

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EXHIBIT A

Legal Description of the Protected Property

[Include relevant surveys, reference to prior recorded deeds, and existing easements and rights of way that burden or benefit the Protected Property.]

EXHIBIT B

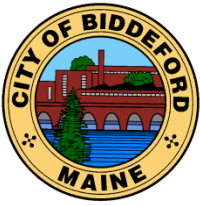
Sketch Plan

[Include perimeter of Protected Property, land use areas, and location of items noted in the easement.]

EXHIBIT C

Description or Map of Land Use Areas

[Can be combined with Exhibit B, but separate descriptions may require additional exhibits.]



CITY OF BIDDEFORD

Planning Board

TO: Mayor Casavant and the Biddeford City Council

FROM: Chair Southwick and the Biddeford Planning Board

PREPARED BY: Matthew Grooms, AICP, City Planner

RE: Designation of Conservation and Access Easements on City Acquired Property from E&R Development and Gervais Dube

September 22, 2022

Dear Mayor Casavant and City Council,

The City of Biddeford Planning Board, in its advisory capacity to the City Council regarding matters of land use, respectfully requests that the City establish conservation easements to encompass all of the approximately 102.7 acres of soon to be acquired City property in the vicinity of Clifford Park, being conveyed to the City by E&R Development Corp. and Gervais Dube. Further, the Board would request that the City guarantee public access for low-impact recreational activity, consistent with what is currently permitted within Clifford Park proper.

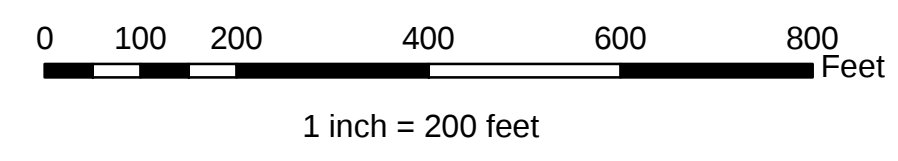
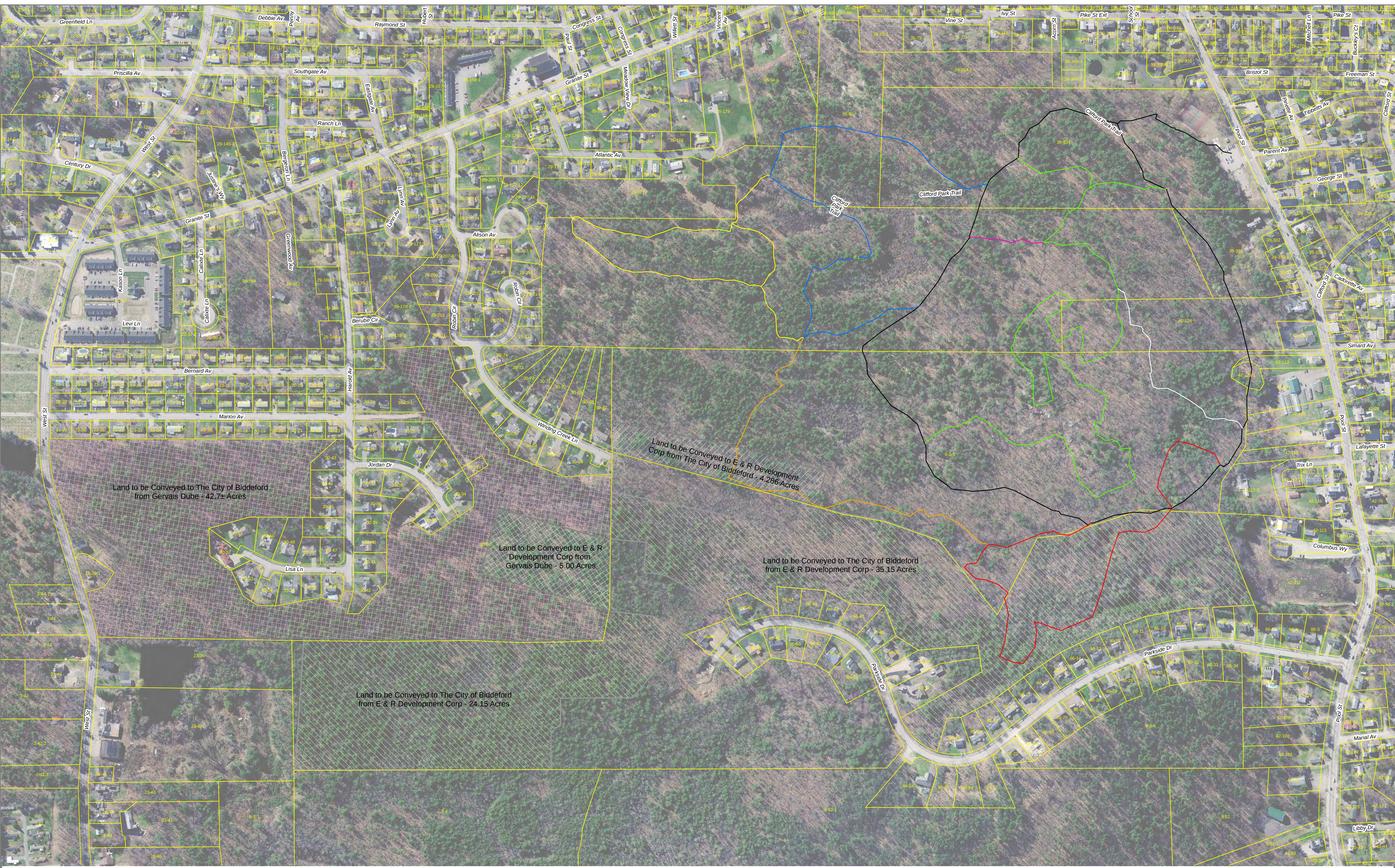
As the Council is likely aware, on Wednesday, September 21, 2022, the Planning Board took final action on a proposed 19-lot single-family subdivision at the terminus of Winding Creek Lane. This project is contingent upon the land exchange between the City of Biddeford, E&R Development Corp. and Gervais Dube, as approximately 4.2 acres of City property is being provided to E&R Development Corp. to complete this subdivision. While the Board understands that the land exchange and subdivision approval are two separate and distinct items, the fact that the project is contingent upon this land exchange occurring, resulted in this exchange being discussed in detail as part of the project review.

In evaluating this proposal against Biddeford's subdivision regulations, the Planning Board carefully considered the potential for environmental impacts associated with this particular project, while simultaneously acknowledging the tremendous public benefit of having the City acquire significant (in terms of both size and quality) new property directly adjacent to Clifford Park for conservation and recreational use. The Board is aware that the approximately 42.7 acres being conveyed by Mr. Dube is restricted to recreational uses, but that there are no such restrictions on the remaining approximately 60 acres being conveyed by E&R Development Corp. In light of this, and in support of creating a larger contiguous Clifford Park, the Planning Board kindly asks that the Council consider extending this same level of land-use restriction to all property being acquired.

Regards,

William Southwick

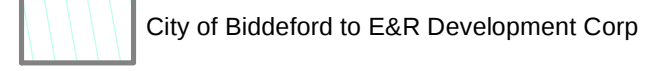
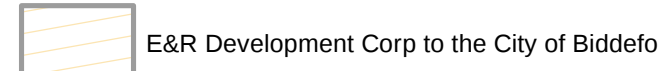
Chair, Biddeford Planning Board



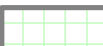
Proposed Land Conveyances

Legend

Proposed Parcels to be Transferred

-  Gervais Dube to E&R Development Corp
-  City of Biddeford to E&R Development Corp
-  E&R Development Corp to the City of Biddeford

Clifford Park Trails

-  Blue Trail
-  Green Trail
-  Black Trail
-  Pink Trail
-  Red Trail
-  White Trail
-  Yellow Trail