



**City of Biddeford  
Policy Committee**

March 24, 2025 at 6:00 PM  
City Hall Council Chambers & Zoom

[Click to Join Zoom Meeting Online](#)

Or call in by phone: +1 312 626 6799

Meeting ID: 996 6587 7828

Passcode:270803

1. Roll Call
2. Pledge of Allegiance
3. Adjustment(s) to Agenda
4. Approval of Minutes
  - 4.a Minutes -Policy Committee 2.24.25
5. Discussion/Review
  - 5.a Charter Committees: Budget Committee, Finance Committee, Biddeford Fire Advisory Committee, Biddeford Police Advisory Committee
  - 5.b Statutory Committees: Board of Assessment Review, Planning Board, Shellfish Conservation Coimmission, Zoning Board of Appeals
  - 5.c Clifford Park Conservation Easement(s) Review
6. Adjourn

**City of Biddeford**  
**Policy Committee**  
**February 24, 2025 at 6:00 PM**  
**City Hall Council Chambers & Zoom**

**1. Roll Call**

Councilor Belanger – present

Councilor LaFountain – present

Councilor Beaupre – present

Jake Pierson – present

Brian Phinney – present

Rene O’Neil - absent

**2. Pledge of Allegiance**

**3. Adjustment(s) to Agenda**

None

**4. Approval of Minutes**

*4.a Policy Committee Minutes of January 27, 2025*

Motion: Councilor Beaupre

Second: Councilor LaFountain

Vote: Unanimous in favor.

Motion passed.

## **5. Discussion/Review**

### *5.a Amendment Shellfish Ordinance*

Motion: Councilor Beaupre

Second: Councilor LaFountain

Councilor LaFountain asked about the Council Review

Councilor Belanger asked about the nonresident allocation.

City Clerk Patterson answered that the rates haven't changed in several years. The allocation combines the numbers that have been used, these changes were recommended by the DMR.

Vote: Unanimous in favor.

Motion passed.

### *5.b Vacant Building Registration*

Motion: Councilor LaFountain

Second: Councilor Beaupre

Councilors asked questions about the changes from the last version, the definitions and how this would work with seasonal homeowners.

Code Enforcement Director Roby Fecteau explained the changes and definitions.

Councilor Belanger – motion to amend section E, add number 5 “properties under construction that have not been issued an occupancy permit or maintain active permit status”

Second: Councilor LaFountain

Vote on the amendment – Unanimous in favor.

Motion passed.

Mr. Pierson spoke about several emails from the public. They did not want seasonal homes to be exempt, wanted apartment buildings with an empty storefront to qualify as vacant, and recommended higher fees. He did not agree with the first two points.

Councilor Belanger – motion to amend 1. Vacant Buildings add “either” to the first sentence “either of the following criteria” change 1 and 2 to A and B, then 3,4,5 as B 1,2,3.

Second: Councilor Beaupre

Vote: Unanimous in favor.

Motion passed.

Councilor Belanger asked about the exemptions to farm zones. CEO Fecteau explained that the language was similar in other communities and many agricultural buildings are used seasonally.

Councilor LaFountain – motion to amend B - exclusions to include “anything used for agricultural purposes” and strike C. “except for the Rural Farm (RF) and Limited Rural Farm (LRF) zones”.

Second: Councilor Beaupre

Public comment – one person spoke in favor of the amendment.

Vote: Unanimous in favor.

Motion passed.

Councilor LaFountain – motion to double the fees in section D.

Second: Councilor Beaupre

Public comment – one citizen spoke in favor of the increases.

Vote: Unanimous in favor.

Motion passed.

Vote on the order as amended: Unanimous in favor.

Motion passed.

*5.c Amendment Citizens' Advisory Committee Ordinance*

Motion: Councilor Beaupre

Second: Councilor LaFountain

Jessica Wilson, Community Development & Grants Manager, explained that this came before the Policy Committee once before but did not proceed. Current changes are language clarifications in the Purpose section and also a more detailed description of the application process.

Vote: Unanimous in favor.

Motion passed.

#### *5.d Comprehensive Board/Committee/Commission Review*

The committee discussed the different types of committees and will start a review of each committee's language, number of appointments, responsibilities and the possibility of combining some of them if appropriate. Some committees are created in the City Charter, some by State statutes and others by ordinances. The structure and responsibilities are listed in several locations, and they would like to review them with all of the references listed in one document. They would like to start the review at the next meeting with charter and statutory committees.

## **6. Adjourn**

Councilor Beaupre – motion to adjourn at 6:54 pm

Second: Councilor LaFountain

Vote: Unanimous in favor.

Meeting adjourned.



## Policy Committee

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**Meeting** March 24, 2025

**Date:**

**Meeting** 6:00 PM

**Time:**

**Agenda** 5.a

**Item No:**

**Item** Charter Committees: Budget Committee, Finance Committee, Biddeford Fire

**Description:** Advisory Committee, Biddeford Police Advisory Committee

**Submitted** Brian S. Phinney, Acting City Manager

**By:**

**Supporting Information/Documentation:**

Finance Committee - POLICY, Budget Committee -POLICY, Biddeford Fire Advisory Committee - POLICY, Biddeford Police Advisory Committee-POLICY

**Key Terms:**

**Executive Summary:**

Policy Committee review of Charter defined boards/committees/commissions.

**Detailed Review:**

The Policy Committee is in the process of reviewing all boards/committees/commissions. The information for this part of the review includes committees defined by Charter. Each section defined by a horizontal line designates a separate section.

**Funding Source:**

N/A

**Staff Recommendation:**

N/A

## **Finance Committee**

### City Charter, Article XI – Business and Financial Provisions

Sec. 1. The City Council Finance Committee.

The Finance Committee shall be comprised of the Mayor, Council President and two other members of the City Council; one Council member being nominated by the Council President and confirmed by the City Council, the other being nominated by the Mayor and confirmed by the City Council. In addition, the Finance Director and the City Manager shall be nonvoting members.

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### Code of Ordinances, Chapter 2 – Administration, Article III – Officers and Employees

Sec. 2-73 Compensation; retainer. [Code 1975, § 2-68]

The City Solicitor shall receive for services rendered such sums of money as approved by the Mayor and Finance Committee on bills submitted and a retainer in such sum as the City Council shall determine.

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### Division 5 – City Auditor

Sec. 2-101 Duties, responsibilities generally.

[Code 1975, § 2-166]

The City Auditor shall have the following duties and responsibilities:

- (1) Prepare all purchase orders in quadruplicate from the requisitions submitted to him by the heads of departments and present such purchase orders to the Finance Committee for approval.
  - (2) Keep proper records of all authorized purchases.
  - (3) Have custody of all requisition slips, vouchers, manifests and warrants.
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Sec. 2-106 Clerk of Finance Committee.

[Code 1975, § 2-173]

The City Auditor shall be the Clerk of the Finance Committee.

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Article IV -Boards, Commissions,  
Division 3 – Commission on Economic Improvement

Sec. 2-193 Expenditures.

[Code 1975, § 2-114]

No expenditure of any funds pursuant to this division shall be made without the prior approval of the Finance Committee.

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Article V – Finance

Division 2 - Procurement

Sec. 2-348 Competitive sealed bidding.

[Ord. of 4-21-1998(2)]

(g)

The contract shall be awarded with reasonable promptness by appropriate written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids. In the event the low responsive and responsible bid for a construction project exceeds available funds as certified by the Finance Director and such bid does not exceed such funds by more than 10%, the Purchasing Agent is authorized to negotiate an adjustment of the bid price with the low responsive and responsible bidder in order to bring the bid within the amount of available funds. Any such negotiated adjustment shall be based only upon eliminating independent deductive items specified in the invitation for bids. When finalized by the Purchasing Agent, bid results greater than \$5,000 and less than \$50,000 and covered by the budgeted amount can be approved by the City Manager and awarding of the contract to the successful bidder. These results will be reported to the City Council and/or the Finance Committee on a monthly basis. Bid results less than \$50,000 and over the budgeted amount or not the lowest bid will be submitted to the Finance Committee of the City Council for acceptance and awarding of the contract to the successful bidder. Contracts that exceed \$50,000 shall be approved by the City Council prior to signing and executing said contract. Contracts based on units of measure and unit pricing where the total number of units is not specified shall be calculated using a best estimate methodology or prior history to determine the estimated contract value. Approval of such contracts shall be managed under the approval criteria listed above based on the total estimated value.

[Amended 11-1-2011 by Ord. No. 2011.71; 4-16-2019 by Ord. No. 2019.30]

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Sec. 2-349 Competitive sealed proposals.

[Ord. of 4-21-1998(2)]

(g)

Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the City, taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation. The

contract file shall contain the basis on which the award is made. When finalized by the Purchasing Agent, proposal results will be submitted to the Finance Committee of the City Council for acceptance and awarding of the contract to the successful bidder. Contracts that exceed \$30,000 shall be approved by the City Council prior to signing and executing said contract.

[Amended 11-1-2011 by Ord. No. 2011.71]

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Sec. 2-361 Finance Committee may examine and order payments.

[Ord. of 4-21-1998(2)]

The Finance Committee may examine every bill, claim and demand presented for payment by any person or department official and may question its legality and validity. The Finance Committee shall sign a warrant or order directed to the City Treasurer to pay such bill, claim or demand and designate the fund or appropriation to be charged therewith in accordance with the Charter.

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Sec. 2-374 Other provisions.

(d)

Quarterly. The Finance Director shall project the year-end general fund balance and report the projections to the Finance Committee within 30 days of the end of the quarter. Should the forecast predict that the year will end with an operational deficit, a memo shall be given to the entire Council stating how the deficit will be handled.

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## Chapter 18 – Building and Building Regulations

### Article II – Buildings

#### Division 8 – Disorderly Housing

Sec. 18-130 Expenses; hearing.

Any person who objects to the amount of expense demanded from him/her may have a hearing before the Finance Committee of the City Council or such other person or hearing body as it may designate. The hearing shall be limited to the question of the reasonability of the amount of expense demanded. A request for hearing must be in writing and filed with the Code Enforcement Office within 10 days after the date of the finance.

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## Chapter 54 – Social Services

### Article II – Rehabilitation Loan-Grant Program

Sec. 54-35 Procedure for funds disbursement.

[Code 1975, § 18.5-10]

c)

Prior to any disbursement of grant funds, appropriate purchase orders must first be submitted to the City's Finance Committee for final authorization.

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## Chapter 62 – Street, Sidewalks and Other Public Places

### Article II – Director of Public Works

#### Sec. 62-35 Duties. (Public Works)

[Ord. of 12-4-1991, § 20-25; Ord. of 4-18-1995]

(2)

Prepare and provide all budget requests and reports required for his department, and supervise the expenditure of funds allocated for public works operations. He shall file all requests for purchases with the finance committee.

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## Chapter 70 – Utilities

### Article II – Wastewater System

#### Division 2 – Wastewater Management Commission

#### Sec. 70-43 Powers and duties. (Wastewater Management)

[Code 1975, § 19-1(3)]

(b)

The wastewater Management Commission shall formulate a budget for the sewage division of the public works Department for submission to the finance committee on or before February 1 of each year, and recommend to the Mayor and City Council such extensions and/or improvements to the system as it may deem advisable for the benefit and development of the City in accordance with the City's Master Plan.

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## Code of Ordinances

### APPENDIX A - Rules of City Council

[HISTORY: Adopted by the City Council of the City of Biddeford 1-4-2024 by 2023.161.[1]  
Amendments noted where applicable.]

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g. The Mayor shall appoint all standing and special committees of the City Council and the Chairs thereof, except the Chair of the Finance Committee, which shall be chaired by the Council President, and all such mayoral appointments shall receive confirmation by the City Council.

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Code of Ordinances

Part III – Land Development Regulations

Article VI – Performance Standards

Section 73 - Planned unit developments.

[Ord. No. 2006.13, 3-7-2006]

(3) The parks and recreation department, following appropriate City Council/finance committee approvals, shall use such collected funds for capital improvements in recreation facilities nearest to the project from which they were collected.

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Sec. 1. The City Council Finance Committee.

The Finance Committee shall be comprised of the Mayor, Council President and two other members of the City Council; one Council member being nominated by the Council President and confirmed by the City Council, the other being nominated by the Mayor and confirmed by the City Council. In addition, the Finance Director and the City Manager shall be nonvoting members.

Sec. 2. Budget Committee.

- (a) There shall be a Budget Committee convened annually, not later than the first week in March which shall review and propose the Municipal and School Department budgets for the ensuing fiscal year.
- (b) The Budget Committee shall be comprised of the entire City Council. The Mayor shall serve as Chair and shall vote only in case of a tie. The City Manager and the Finance Director shall serve as non-voting staff members to the Committee.
- (c) The Budget shall be submitted to the City Council in two parts, one by the City Manager and one by the Superintendent of Schools. The proposed budget shall be submitted by the Superintendent of Schools in the format outlined in Article V, Section 4.
- (d) The Budget Committee shall, at the latest, by the first Monday in May each year, submit to the City Council a budget showing the proposed expenditures for the various departments, other principal or subordinate departments and a contingent fund.
- (e) A summary of a proposed budget shall be published at least once in a local newspaper of general circulation within the City within 14 days following submission to the City Council.
- (f) The City Council may, before adopting the annual appropriation resolve, make appropriations for current department expenses; however, these appropriations will be included in the annual appropriation resolve.
- (g) At least one public hearing shall be held on the City budget prior to its adoption by the City Council.
- (h) The City budget shall be adopted by the City Council prior to the beginning of the next fiscal year.
- (i) **Capital Improvement Program.** The City Manager and School Committee shall submit to the Budget Committee, Mayor and City Council a Capital Improvement 5-Year Budget Plan at the second regular meeting of the City Council in November of each year. Annually, during the budget process, the City shall appropriate at least five hundredths of one percent (0.05%) of the previous fiscal year's total taxable valuation for the sole purpose of funding the capital improvements. Should the City Council make a determination that unusual circumstances prevent funding at this level; the City Council may override this requirement. To override the requirement, at least six members of the Council must vote in favor of an override order. Said order shall include the determination and explanation of the unusual circumstances. [Added 11-8-2016]

**Sec. 3. Appropriation resolve. [Amended 11-8-2016]**

The City Council shall adopt the annual appropriation resolve for the current fiscal year. Such resolve shall appropriate those amounts deemed necessary for general City purposes and for a contingent fund.

There shall be no subsequent expenditures authorized for any purpose; however, funds may be transferred from one department to another, the contingent fund, or other source of income, provided the resolution authorizing the transfer is adopted by a 2/3rds vote of the full membership of the City Council and the vote is recorded.

**Sec. 4. Accounts and records.**

Accounts and records shall be supervised by the Finance Director, showing transactions of all departments included in the budget of the City, the Fire Department, the Police Department, and the School Department. A general accounting system for the budget shall be recommended by the Finance Director and approved by the Municipal Officers. Accounts shall be kept in such a manner as to show fully at all times the financial condition of the City.

**Sec. 5. Fiscal year.**

The fiscal year of the City shall be July first through June thirtieth of the ensuing year.

**Sec. 6. Borrowing.**

Money may be borrowed, within the limits fixed by the Constitution and Statutes of the State, now or hereafter applying to the City of Biddeford, by the issue and sale of bonds or notes pledged on the credit of the City, the proceeds to be used for the acquisition of land, the construction, reconstruction, major alterations, extraordinary repairs, the equipment of buildings and other permanent public improvements, the purchase of department equipment, and the payment or refunding of bonds, notes, and certificates of indebtedness previously issued.

**Sec. 7. Payments.**

Money shall be paid only in warrants on the City Treasury examined by the City Finance Director and signed by the Mayor.

The Finance Director shall examine all payrolls, bills, and other claims and demands against the City and shall issue no warrant for payment until satisfied that the claim is in proper form, correctly computed, duly certified, and legally due and payable.

**Sec. 8. Collection and custody of City monies.**

All monies received by any officer, employee, or agent of the City belonging to the City, or for or in connection with the business of the City, shall forthwith be paid by the officer, employee, or agent receiving the same into the City Treasury, and shall then be deposited with a federally insured financial institution or institutions to be chosen by the City Council. All interest from all deposits of money belonging to the City shall accrue to the benefit of the City.

Sec. 9. Contributions. [Added 11-8-2016]

The City may invest, lend or otherwise contribute to any private entity for the purposes of assisting that private entity. If there is no exchange of any goods or services, the entity receiving the funds shall provide an annual report to the City regarding the use of the funds which shall be available to the public within 14 days following submission of the proposed budget to the City Council.

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DIVISION 5

UNRESTRICTED FUND BALANCE POLICY

[Ord. of 2-16-1999(1); Ord. No. 2000.91, 10-26-2000; amended 4-1-2014 by Ord. No. 2014.24; 6-5-2018 by Ord. No. 2018.45]

(b)

Goal. It is the goal of the City to maintain an unassigned fund balance approximating 12 1/2% of operating expenditures. Annually, prior to the first reading of the City's appropriation resolves for adoption of the general fund operating budget, the City Manager shall prepare and distribute to the City Council an estimate of the change to the general fund's unassigned fund balance expected at the closing of the fiscal year. This will be updated prior to the second reading of the appropriation resolves. An appropriation from unassigned fund balance for City expenditures when said balance is less than 10% of operating expenditures shall be avoided except during a most dire emergency. An appropriation from unassigned fund balance for City expenditures when said balance is greater than 15% of operating expenditures shall be proposed to the Budget Committee by the Manager prior to the completion of the Budget Committee's deliberations. An appropriation from unassigned fund balance for City expenditures when said balance is greater than 10% but less than 15% of operating expenditures may be proposed to the Budget Committee by the Manager. Any appropriation proposed from unassigned fund balance should be used for a capital project, capital equipment purchase, or infrastructure improvements; it Editor's Note: may be used to offset an increase in property taxes, with City Council approval, but shall require a six-person super majority vote. Funds cannot be spent or moved without a vote and approval of the City Council.

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<b>COMMITTEE</b>	<b>MEMBERS</b>	<b>EXP. DATE</b>	<b>TERM</b>
<b>Biddeford Fire Advisory Committee</b>	Kyle Scully	12/2025	5 YEARS
	Stephani Walsh	12/2025	
	Rick Laverriere	12/2029	Vice Chair until 8/26
	Kenneth Pendleton	12/2028	Chair until 8/26
	Kevin Locke	12/2029	
Staff Liaison	Chief Lawrence Best		

## Biddeford Fire Advisory Committee

### ARTICLE VII

#### FIRE ADVISORY COMMITTEE

[Amended 11-8-2016]

The City Council shall create an ordinance to establish a Fire Advisory Committee in the Code of Ordinances.

[Added 1-3-2017 by Ord. No. 2016.118][1]

[1]

Editor's Note: This ordinance originally added Sections 2-326 through 2-330. These sections were renumbered as Sections 2-315 through 2-319, respectively as the Code already contained Sections 2-326 through 2-330.

#### **Sec. 2-315. Establishment.**

There is hereby created and established the Biddeford Fire Advisory Committee, herein after BFAC, comprised of five members and a member of the Biddeford Fire Department to serve as an ex officio member. All members shall be citizens and reside within the corporate limits of the City of Biddeford, with the exception of the ex officio member who may reside outside of the City. In appointing members to the BFAC, the Mayor and City Council shall seek to appoint members from a cross section of all citizens. The BFAC is established under the authority of the Biddeford City Council and shall serve under the directive of the City Council.

#### **Sec. 2-316. Purpose; responsibilities.**

- (a) The purpose of the Committee is to provide an organized forum for two-way communication between the Biddeford Fire Department and the community.
- (b) Responsibilities shall include:
  - (1) Where appropriate, make recommendations to the City Council and Fire Department on substantive issues, with the goal of improved fire services. For the purpose of this division, "substantive issues" are defined as matters of major or practical importance to all concerned. It shall not include personnel issues involving individual members or officers of the Fire Department or daily fire operations and implementation.
  - (2) Assist in identifying potential Fire Department community partnerships to address public safety related issues within the community.
  - (3) Identify community resources and support for public safety activities (such as parking and traffic); and give input to the City Council and the Fire Department regarding perceived effectiveness.
  - (4) Receive information and comments from citizens at the Committee's open and public meeting forum regarding public safety issues.
  - (5) Make reports to the City Council at such times as may be requested by the City Council or as the BFAC determines is necessary.

#### **Sec. 2-317. Membership.**

Members shall be appointed by the Mayor and confirmed by a majority of the City Council for staggered three-year terms. All subsequent appointments, except to fill a vacancy, shall be for three-year terms. A vacancy is created upon the death or written resignation to the BFAC Chair, or upon the vote of the City Council to remove a member. Members of the Committee shall serve without pay and at the discretion of the City Council. The Biddeford Fire Chief, or his designee, shall serve as the administrator, advisor and ex officio member, and shall provide assistance to the BFAC.

**Sec. 2-318. Organization of Committee.**

- (a) The Mayor shall appoint a Chair and a Vice Chair. The Chair shall serve a two-year term. A quorum shall consist of three members. The Chair shall be counted in determining a quorum and shall have one vote.
- (b) The Vice Chair shall serve a two-year term. The Vice Chair shall serve as Chair upon the death or resignation of the Chair, or upon the office of the Chair becoming vacant. The Vice Chair shall discharge the powers of the office of the Chair at any meeting at which the Chair is absent. The Vice Chair shall be counted in determining a quorum and shall have one vote.
- (c) The ex officio member of the BFAC is a nonvoting member and shall serve in an advisory capacity.
- (d) The duties of a secretary responsible for recording meeting minutes shall be rotated sequentially among the Committee's membership for each meeting. The Chair shall be excluded from this responsibility. A roster for secretarial duties shall be established by the Committee.
- (e) A quorum consisting of three members shall be necessary to take any BFAC action authorized or required by this division. An issue shall carry by a majority of those voting.
- (f) Notice of any expired terms and/or vacancies shall be given to the public. The Mayor shall nominate and the City Council shall confirm all appointments to fill expired terms and/or vacancies. The City Council may remove any member for misconduct or nonperformance of duty.
- (g) The BFAC may adopt and amend from time to time rules to govern the conduct of its administrative business, consistent with the provisions of this division.

**Sec. 2-319. Meetings.**

- (a) Meetings of the Biddeford Fire Advisory Committee shall be established by the BFAC. Meetings shall be held at the Biddeford City Hall or at a suitable municipal public location. Prior notice of any change in meeting date, time or place shall be provided to all members, the public, and the administrative staff 48 hours in advance of said meeting.
- (b) All regularly scheduled and special meetings shall have an agenda approved by the Chair.

<b>COMMITTEE</b>	<b>MEMBERS</b>	<b>EXP. DATE</b>	<b>TERM</b>
<b>Biddeford Police Advisory Committee</b>	Carolyn Southwick, Chair	12/2027	5 YEARS
	Andrew Barrs, Vice Chair	12/2025	
	Jake Pierson	12/2026	
	Kelly Seiler	12/2028	
	Frederick Olson	12/2025	
Staff Liaison	Chief JoAnne Fisk		

## Biddeford Police Advisory Committee

### ARTICLE VI POLICE ADVISORY COMMITTEE [Amended 11-8-2016]

The City Council shall create an ordinance to establish a Police Advisory Committee in the Code of Ordinances.

### DIVISION 12 POLICE ADVISORY COMMITTEE [Added 1-3-2017 by Ord. No. 2016.119][1] [1]

Editor's Note: This ordinance originally added Sections 2-341 through 2-345. These sections were renumbered as Sections 2-320 through 2-324, respectively as the Code already contained Sections 2-341 through 2-345.

#### **Sec. 2-320. Establishment. [Amended 12-15-2020 by Ord. No. 2020.84]**

There is hereby created and established the Biddeford Police Advisory Committee, hereinafter BPAC, comprised of five members and a member of the Biddeford Police Department to serve as an ex officio member. All members shall be citizens and reside within the corporate limits of the City of Biddeford, with the exception of the ex officio member who may reside outside of the City. In appointing members to the BPAC, the Mayor and City Council shall seek to appoint members from a cross section of all citizens, taking into consideration the person's expertise, background and other relevant experiences. The BPAC is established under the authority of the Biddeford City Council and shall serve under the directive of the City Council.

#### **Sec. 2-321. Purpose; responsibilities.**

- (a) The purpose of the Committee is to provide an organized forum for two-way communication between the Biddeford Police Department and the community.
- (b) Responsibilities shall include:
  - (1) When appropriate, make recommendations to the Police Department on matters, with a goal of enhancing police-community relations. These recommendations shall not include personnel matters involving individual members or officers of the Police Department, or matters that deal with daily police operational enforcement and implementation strategies. [Amended 12-15-2020 by Ord. No. 2020.84]
  - (2) Assist in identifying potential Police Department community partnerships that focus or address public safety matters within the community. [Amended 12-15-2020 by Ord. No. 2020.84]
  - (3) Identify community resources and support for public safety activities. [Amended 12-15-2020 by Ord. No. 2020.84]
  - (4) Receive information and comments from citizens at the Committee's open and public

meeting forum regarding public safety issues.

- (5) Make reports to the City Council and/or Police Chief at such times as may be requested by the City Council, Police Chief or as the BPAC determines is necessary. Make reports to the City Council at such times as may be requested by the City Council. [Amended 12-15-2020 by Ord. No. 2020.84]

### **Sec. 2-322. Membership.**

Members shall be appointed by the Mayor and confirmed by a majority of the City Council for staggered three-year terms. All subsequent appointments, except to fill a vacancy, shall be for three-year terms. A vacancy is created upon the death or written resignation to the BPAC Chair, or upon the vote of the City Council to remove a member. Members of the Committee shall serve without pay and at the discretion of the City Council. The Biddeford Police Chief, or his designee, shall serve as the administrator, advisor and ex officio member, and shall provide assistance to the BPAC.

### **Sec. 2-323. Organization of Committee.**

Sec. 2-323

Sec. 2-325

- (a) The Mayor shall appoint a Chair and a Vice Chair. The Chair shall serve a two-year term. A quorum shall consist of three members. The Chair shall be counted in determining a quorum and shall have one vote.
- (b) The Vice Chair shall serve a two-year term. The Vice Chair shall serve as Chair upon the death or resignation of the Chair, or upon the office of the Chair becoming vacant. The Vice Chair shall discharge the powers of the office of the Chair at any meeting at which the Chair is absent. The Vice Chair shall be counted in determining a quorum and shall have one vote.
- (c) The ex officio member of the BPAC is a nonvoting member and shall serve in an advisory capacity.
- (d) The duties of a secretary responsible for recording meeting minutes shall be rotated sequentially among the Committee's membership for each meeting. The Chair shall be excluded from this responsibility. A roster for secretarial duties shall be established by the Committee.
- (e) A quorum consisting of three members shall be necessary to take any BPAC action authorized or required by this article. An issue shall carry by a majority of those voting.
- (f) Notice of any expired terms and/or vacancies shall be given to the public. The Mayor shall nominate and the City Council shall confirm all appointments to fill expired terms and/or vacancies. The City Council may remove any member for misconduct or nonperformance of duty.
- (g) The BPAC may adopt and amend from time to time rules to govern the conduct of its administrative business, consistent with the provisions of this division.

### **Sec. 2-324. Meetings.**

- (a) Meetings of the Biddeford Police Advisory Committee shall be at the call of the Chair, and established by the BPAC. Meetings shall be held at the Biddeford City Hall or at a suitable municipal public location. Prior notice of any change in meeting date, time or

place shall be provided to all members, the public, and the administrative staff 48 hours in advance of said meeting. **[Amended 12-15-2020 by Ord. No. 2020.84]**

- (b) All regularly scheduled and special meetings shall have an agenda approved by the Chair.

**Sec. 2-325. (Reserved)**



## Policy Committee

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**Meeting** March 24, 2025

**Date:**

**Meeting** 6:00 PM

**Time:**

**Agenda** 5.b

**Item No:**

**Item** Statutory Committees: Board of Assessment Review, Planning Board, Shellfish

**Description:** Conservation Commission, Zoning Board of Appeals

**Submitted** Brian S. Phinney, Acting City Manager

**By:**

**Supporting Information/Documentation:**

Board of Assessment Review -POLICY, Planning Board -POLICY, Shellfish Commission -POLICY, Zoning Board of Appeals- POLICY

**Key Terms:**

**Executive Summary:**

Policy Committee review of boards/committees/commissions defined or referenced by state statute.

**Detailed Review:**

The Policy Committee is in the process of reviewing all boards/committees/commissions. The information for this part of the review includes committees defined or referenced by state statute. Each section defined by a horizontal line designates a separate section.

**Funding Source:**

N/A

**Staff Recommendation:**

N/A

<b>COMMITTEE</b>	<b>MEMBERS</b>	<b>EXP. DATE</b>	<b>TERM</b>
<b>Board of Assessment Review</b>	Brian Fleurant, Vice Chair	12/2028	5 YEARS
	Ari Brandstein	12/2025	
	Syed Zafar	12/2027	
	Quang Minh Le	12/2028	
	Jessica Johnson	12/2026	
Staff Liaison	Deanne Vail, City Assessor		

## **BOARD OF ASSESSMENT REVIEW**

### **Division 8 Board of Assessment Review**

#### **Sec. 2-296. Adopted. [Code 1975, § 22-33]**

Pursuant to 36 M.R.S.A. § 843, a Board of Assessment Review is hereby established.

#### **Sec. 2-297. Composition. [Code 1975, § 22-34]**

The Board of Assessment Review shall consist of five members.

#### **Sec. 2-298. Appointment of members. [Code 1975, § 22-35; Ord. No. 99.69, 8-17-1999]**

The members of the Board of Assessment Review shall, subject to confirmation by the Council, be nominated by the Mayor.

#### **Sec. 2-299. Terms of office of members. [Code 1975, § 22-36]**

The terms of office of members of the Board of Assessment Review shall not exceed five years and no more than two members' terms of office shall expire in a single year.

#### **Sec. 2-300. Compensation. [Code 1975, § 22-37]**

The members of the Board of Assessment Review shall receive such compensation as determined and approved by the City Council.

#### **Sec. 2-301. Duty to review tax appeals. [Code 1975, § 22-38]**

It shall be the duty of the Board of Assessment Review to review appeals duly filed in writing by taxpayers regarding any tax assessment made by the Tax Assessor.

#### **Sec. 2-302. Authority to review tax assessments. [Code 1975, § 22-39]**

Any member of the Board of Assessment Review shall have authority to initiate an appeal in writing for review of any tax assessment made by the Tax Assessor which he deems to merit review.

#### **Sec. 2-303. Political activities of members restricted. [Code 1975, § 22-40]**

The members of the Board of Assessment Review shall not indulge in City political activity as defined and understood under the Hatch Act.

#### **Sec. 2-304. through Sec. 2-305. (Reserved)**

Title 36: TAXATION

Part 2: PROPERTY TAXES

Chapter 105: CITIES AND TOWNS

Subchapter 8: ABATEMENT

§843-A

§843. Appeals

1. Municipalities. If a municipality has adopted a board of assessment review and the assessors or the municipal officers refuse to make the abatement asked for, the applicant may apply in writing to the board of assessment review within 60 days after notice of the decision from which the appeal is being taken or after the application is deemed to have been denied, and, if the board thinks the applicant is over-assessed, the applicant is granted such reasonable abatement as the board thinks proper. Except with regard to nonresidential property or properties with an equalized municipal valuation of \$1,000,000 or greater either separately or in the aggregate, either party may appeal from the decision of the board of assessment review directly to the Superior Court, in accordance with Rule 80B of the Maine Rules of Civil Procedure. If the board of assessment review fails to give written notice of its decision within 60 days of the date the application is filed, unless the applicant agrees in writing to further delay, the application is deemed denied and the applicant may appeal to Superior Court as if there had been a written denial.

[PL 1995, c. 262, §4 (AMD).]

1-A. Nonresidential property of \$1,000,000 or greater. With regard to nonresidential property or properties with an equalized municipal valuation of \$1,000,000 or greater either separately or in the aggregate, either party may appeal the decision of the local board of assessment review or the primary assessing area board of assessment review to the State Board of Property Tax Review within 60 days after notice of the decision from which the appeal is taken or after the application is deemed to be denied, as provided in subsections 1 and 2. The board shall hold a hearing de novo. If the board thinks that the applicant is over-assessed, it shall grant such reasonable abatement as the board thinks proper. For the purposes of this section, "nonresidential property" means property that is used primarily for commercial, industrial or business purposes, excluding unimproved land that is not associated with a commercial, industrial or business use.

[PL 1995, c. 262, §4 (AMD).]

2. Primary assessing areas. If a primary assessing area has adopted a board of assessment review and the assessors or municipal officers refuse to make the abatement asked for, the applicant may apply in writing to the board of assessment review within 60 days after notice of the decision from which the appeal is being taken or after the application is deemed to have been denied, and if the board thinks the applicant is over-assessed, the applicant is granted such reasonable abatement as the board thinks proper. Except with regard to nonresidential property or properties with an equalized municipal valuation of \$1,000,000 or greater, either separately or in the aggregate, either

party may appeal the decision of the board of assessment review directly to the Superior Court, in accordance with the Maine Rules of Civil Procedure, Rule 80B. If the board of assessment review fails to give written notice of its decision within 60 days of the date the application was filed, unless the applicant agrees in writing to further delay, the application is deemed denied and the applicant may appeal to the Superior Court as if there had been a written denial.

[PL 2001, c. 396, §17 (AMD).]

3. Notice of decision. Any agency to which an appeal is made under this section is subject to the provisions for notice of decision in section 842.

[PL 1991, c. 546, §12 (NEW).]

4. Payment requirements for taxpayers. A taxpayer filing an appeal under this section must pay an amount of current taxes equal to the greater of the amount of taxes paid in the immediately preceding tax year, to the extent that amount does not exceed the amount of taxes due in the current tax year, and the amount of taxes in the current tax year that is not in dispute. If the taxpayer has filed an appeal under this section without paying the appropriate amount of taxes by or after the due date or according to a payment schedule mutually agreed to in writing by the taxpayer and the municipal officers, the appeal process must be suspended until the taxes, together with any accrued interest and costs, have been paid. If an appeal is in process upon expiration of a due date or written payment schedule date for payment of taxes in a particular municipality, without the appropriate amount of taxes having been paid, whether the taxes are due for the year under appeal or a subsequent tax year, the appeal process must be suspended until the appropriate amount of taxes described in this subsection, together with any accrued interest and costs, has been paid. This subsection does not apply to property with a valuation of less than \$500,000.

[PL 2021, c. 531, Pt. B, §4 (AMD).]

#### SECTION HISTORY

PL 1973, c. 536, §24 (AMD). PL 1973, c. 625, §246 (AMD). PL 1977, c. 509, §18 (RPR). PL 1977, c. 694, §693 (AMD). PL 1981, c. 30, §§3,4 (AMD). PL 1981, c. 364, §21 (AMD). PL 1981, c. 698, §180 (AMD). PL 1985, c. 764, §17 (AMD). PL 1991, c. 546, §12 (AMD). PL 1993, c. 242, §1 (AMD). PL 1993, c. 395, §12 (AMD). PL 1995, c. 262, §4 (AMD). PL 2001, c. 396, §17 (AMD). PL 2001, c. 436, §1 (AMD). PL 2001, c. 436, §2 (AFF). PL 2009, c. 434, §16 (AMD). PL 2019, c. 379, Pt. A, §5 (AMD). PL 2021, c. 531, Pt. B, §4 (AMD).

The Revisor's Office cannot provide legal advice or interpretation of Maine law to the public.

If you need legal advice, please consult a qualified attorney.

Office of the Revisor of Statutes · 7 State House Station · State House Room 108 · Augusta, Maine  
04333-0007

<b>COMMITTEE</b>	<b>MEMBERS</b>	<b>EXP. DATE</b>	<b>TERM</b>
<b>Planning Board</b>	Larry Patoine Ward 6	12/2025	3 YEARS
	Roch Angers Ward 6	12/2026	
	Alexa Plotkin Ward 5	12/2027	Chair until 12.31.25
	Susan Deschambault Ward 5	12/2025	
Associate Member 1.7.25	Stephen Beaudette Ward 4	12/2025	
Regular Member 1.7.25	Matthew Dubois Ward 4	12/2026	
Associate Members	Kayla Lewis	12/2027	
Staff	David Galbraith, City Planner		

## PLANNING BOARD

### ARTICLE X

#### Section 1. Planning Board. [Ord. No. 2002.67, 9-3-2002]

- A. Authority. The City of Biddeford Planning Board (hereafter the "board"), originally established under the provisions of 30-A M.R.S.A. § 4326, is hereby continued as provided by law, 30-A M.R.S.A. § 4313 [now repealed]. The powers and responsibilities of the board allowed under the pre-1971 legislation (30 M.R.S.A. § 4964) are maintained.
- B. Duties and responsibilities. The board shall have the following duties and responsibilities:
1. Prepare, and revise a comprehensive plan in accordance with 30-A M.R.S.A.
  2. Review and approve, approve with conditions, or disapprove subdivision and other development plans that deal with specific real estate. This includes site reviews and conditional uses.
  3. Review and approve, approve with conditions, or disapprove development plans in the Shoreland Zone as required by Article XIV of this ordinance. [Amended 2-2-2010 by Ord. No. 2009.98]
  4. Draft for approval by the municipal officers, ordinances and other provisions to facilitate Subsections 1 through 3 above.
- C. Membership.
1. The Board shall consist of seven members, five voting members and two associate members. Each member shall be nominated by the Mayor, confirmed by the City Council, for a three year-term. Members may be reappointed at the end of their terms, not to exceed three consecutive terms. All current appointments shall have a term of office expiring no later than December 31, 2005. The Mayor shall have the discretion of appointing members and associate members to the Planning Board with terms expiring after two years but less than three years for the purpose of staggering appointments throughout a calendar year.
  2. Associate members may be made voting members of the Board upon the retirement or nonappointment of a voting member.
  3. All members of the Board shall be registered voters and residents of the City of Biddeford. No serving municipal officer or official of the City of Biddeford shall serve as a member of the Board.
  4. Members of the Board shall reflect as much as possible several geographic areas of the City, and shall have diverse professional or employment backgrounds. This is to insure as much as possible that the interests of the City and applicants are fairly and reasonably represented. In no case shall more than two members be from the same ward.
  5. Members of the Board are required to sign the Biddeford Planning Board Rules of Procedure and Code of Ethics prior to taking the oath of office. Any individual appointed to the Board shall not be administered the oath of office and shall not be

seated until the Rules of Procedure and Code of Ethics have been signed. Failure to sign will invalidate the appointment and shall require a replacement appointment. **[Added 2-21-2012 by Ord. No. 2012.8**

**D. Term of office.**

1. Members of the Board shall be appointed for a three-year term. No member shall serve more than three consecutive terms, including any term or part of a term served under any predecessor in this section. Any member appointed to fill a vacancy for which more than half of the unexpired term remains, for purposes of this provision, shall be deemed to have served one full term.
2. When there is a permanent vacancy, the Mayor shall nominate with confirmation by the City Council a new member to serve for the remainder of the unexpired term.

**E. Removal from office.**

1. Members of the Board may be removed from office by the municipal officers for the following reasons:
  - a. A member is no longer a resident of the City of Biddeford; or
  - b. A member is absent from three consecutive regular Board meetings without prior satisfactory explanation; or
  - c. A member is absent from six meetings or workshops of the Board without prior satisfactory explanation; or
  - d. A member conducts himself/herself in a manner that is inconsistent with the official position of the Planning Board, i.e. consistent conflicts of interest or unprofessional behavior toward applicants, City employees or members of the public.
2. Removal action may be initiated by the Mayor, the City Council or a member of the Board. A letter shall be submitted to the municipal officers stating the reasons for the removal request.
3. The Board member in question shall be provided a copy of the letter and shall be given the opportunity to reply to the municipal officers.

**F. Board officers.**

1. A Chairperson shall be appointed by the Mayor and confirmed by the Council each January. The Board shall elect from its voting membership the following officers:

Vice Chairman;

Secretary.

2. The terms of these officers shall be one year. The Chairperson may not be reelected for more than two consecutive terms. The Board shall hold elections during the January meeting, the results of which shall be submitted to the municipal officers.
3. Elected officers shall be responsible for the following:
  - a. Chairman: Conduct of meetings, scheduling and announcing meetings, signing

official correspondence for the Board. The Chairman shall vote only in case of a tie.

- b. Vice Chairman: acts in place of the Chairman when he/she is absent or required to leave the Chair because of conflict; acts as Chair for special subcommittees of the Board as needed.
  - c. Secretary: ensures that the records of meetings are accurate and available for the Board's review and reference.
- G. Staff. The Board shall empower the Planning Department to hire professional staff to assist in planning matters and issues as needed. This assistance shall include the hiring of independent engineering and traffic consultants, and legal counsel. Opinions presented by the Board's legal counsel shall not be binding upon the City of Biddeford.
- H. Meetings.
1. The Board shall conduct monthly meetings, or at least regular meetings during a calendar year. Meetings shall convene on the first Wednesday of each month, unless prior arrangement and public (as described elsewhere in the Code) announcement has been made by the Board. **[Amended 3-5-2019 by Ord. No. 2019.14]**
  2. Upon motion by the Board the Chairman may call for special meetings and workshops as needed.
  3. All meetings of the Board shall be open to the public. Materials and records of the meetings shall be maintained and available for public inspection. **[Amended 3-5-2019 by Ord. No. 2019.14]**
  4. The Board shall publish rules for the conduct of meetings to insure orderly conduct and efficient processing of applications and planning matters. The Board shall adopt Roberts Rules of Order.
  5. Board meetings shall be called to order when a quorum of the voting members are present. For this purpose a quorum shall be three voting members. When a regular member of the Board is unable to serve because of conflict of interest, incapacity, absence or lack of confirmed appointment to fill a permanent vacancy, an associate member shall be designated to vote by the Chairman.
  6. The Board shall issue a written decision on matters when determined by the Board to be necessary, appropriately signed by the Chairman. The decisions shall include:
    - a. A statement of findings and conclusions.
    - b. Any conditional actions and the time-table for completion.

In addition to the normal established distribution, a copy of the above shall be given to the Code Enforcement Officer for use when issuing a building permit, or for documentation on appeal or variance request.

7. The Board shall issue a written decision on all matters when determined by the board to be necessary, appropriately signed by the chairperson. The decisions shall include:
  - I. Conflicts. Any questions raised by any interested party of whether a particular issue involves a conflict of interest sufficient to disqualify a member from voting shall be decided by a majority of the members present except the member who is being challenged.

## **Section 2. City Planner.**

### **A. Office of the City Planner. [Amended 6-7-2016 by Ord. No. 2016.41]**

1. The office of the City Planner is hereby created.
2. (Reserved)
3. The City Planner, and his/her assistants as needed, shall be appointed by the Economic Development Director, subject to approval by the City Manager.

### **B. Duties and responsibilities.**

1. The City Planner shall be the primary advisor to the Planning Board and shall act as primary staff for the Board. He/she shall advise the Board concerning the completeness of applications. He/she shall prepare agendas and arrange meetings for the Board. He/she will contact and coordinate between the various departments and applicants to ensure timely resolution of planning issues relating to applications and planning proposals.
2. The City Planner shall advise the Mayor and Council concerning land use and general planning issues affecting the City and comprehensive development. He/she shall provide written position papers and other documents needed to assist City officials in making sound decisions concerning land use and planning issues.
3. The City Planner shall develop a budget for the operation of the Planning Department and Board.
4. The City Planner shall respond to citizen inquiries concerning planning issues and provide information relating to development proposals as much as possible.

Title 30-A: MUNICIPALITIES AND COUNTIES

Part 2: MUNICIPALITIES

Subpart 6-A: PLANNING AND LAND USE REGULATION

Chapter 187: PLANNING AND LAND USE REGULATION

Subchapter 2: GROWTH MANAGEMENT PROGRAM

Article 2: GROWTH MANAGEMENT PROGRAMS

§4326. Growth management program elements

A growth management program must include at least a comprehensive plan, as described in subsections 1 to 4-A, and an implementation program as described in subsection 5. [PL 2019, c. 153, §4 (AMD).]

1. Inventory and analysis. A comprehensive plan must include an inventory and analysis section addressing state goals under this subchapter and issues of regional or local significance that the municipality or multimunicipal region considers important. The inventory must be based on information provided by the State, regional councils and other relevant local sources. The analysis must include 10-year projections of local and regional growth in population and residential, commercial and industrial activity; the projected need for public facilities; and the vulnerability of and potential impacts on natural resources.

The inventory and analysis section must include, but is not limited to:

A. Economic and demographic data describing the municipality or multimunicipal region and the region in which it is located; [PL 2001, c. 578, §15 (AMD).]

B. Significant water resources such as lakes, aquifers, estuaries, rivers and coastal areas and, when applicable, their vulnerability to degradation; [PL 2001, c. 578, §15 (AMD).]

C. Significant or critical natural resources, such as wetlands, wildlife and fisheries habitats, significant plant habitats, coastal islands, sand dunes, scenic areas, shorelands, heritage coastal areas as defined under Title 5, section 3316, and unique natural areas; [PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW).]

D. Marine-related resources and facilities such as ports, harbors, commercial moorings, commercial docking facilities and related parking, and shell fishing and worming areas; [PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW).]

E. Commercial forestry and agricultural land; [PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW).]

F. Existing recreation, park and open space areas and significant points of public access to shorelands within a municipality or multimunicipal region; [PL 2001, c. 578, §15 (AMD).]

G. Existing transportation systems, including the capacity of existing and proposed major thoroughfares, secondary routes, pedestrian ways and parking facilities; [PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW).]

H. Residential housing stock, including housing for low-income and moderate-income households, an assessment of community needs and environmental effects of municipal regulations, an examination of the effect of excessive parking requirements that limit the reuse of upper floors of buildings in downtowns and on main streets and an identification of opportunities for accessory dwelling units; [PL 2021, c. 657, §5 (AMD).]

H-1. Housing that meets the needs of older residents, including housing that is rehabilitated, adapted or newly constructed to help older adults age in place; [PL 2019, c. 38, §5 (NEW).]

I. Historical and archeological resources including, at the discretion of the municipality or multimunicipal region, stone walls, stone impoundments and timber bridges of historical significance; [PL 2001, c. 578, §15 (AMD).]

J. Land use information describing current and projected development patterns; [PL 2021, c. 590, Pt. A, §6 (AMD).]

K. An assessment of capital facilities and public services necessary to support growth and development and to protect the environment and health, safety and welfare of the public and the costs of those facilities and services; and [PL 2021, c. 590, Pt. A, §7 (AMD).]

L. For a municipality or multimunicipal region that has adopted a local climate action plan, a climate vulnerability assessment specific to the municipality or multimunicipal region prepared by the municipality or multimunicipal region. [PL 2021, c. 590, Pt. A, §8 (NEW).]

[PL 2021, c. 590, Pt. A, §§6-8 (AMD); PL 2021, c. 657, §5 (AMD).]

2. Policy development. A comprehensive plan must include a policy development section that relates the findings contained in the inventory and analysis section to the state goals. The policies must:

A. Promote the state goals under this subchapter; [PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW).]

B. Address any conflicts between state goals under this subchapter; [PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW).]

C. Address any conflicts between regional and local issues; and [PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW).]

D. Address the State's coastal policies if any part of the municipality or multimunicipal region is a coastal area. [PL 2001, c. 578, §15 (AMD).]

[PL 2001, c. 578, §15 (AMD).]

3. Implementation strategy. A comprehensive plan must include an implementation strategy section that contains a timetable for the implementation program, including land use ordinances, ensuring that the goals established under this subchapter are met. These implementation strategies must be consistent with state law and must actively promote policies developed during the planning process. The timetable must identify significant ordinances to be included in the implementation program. The strategies and timetable must guide the subsequent adoption of policies, programs and land use ordinances and periodic review of the comprehensive plan.

A. [PL 2001, c. 578, §15 (RP); PL 2001, c. 667, Pt. H, §1 (RP); PL 2001, c. 667, Pt. H, §3 (AFF).]

B. [PL 2001, c. 578, §15 (RP).]

C. [PL 2001, c. 578, §15 (RP).]

D. [PL 2001, c. 578, §15 (RP).]

E. [PL 2001, c. 578, §15 (RP).]

F. [PL 2001, c. 578, §15 (RP).]

G. [PL 2001, c. 578, §15 (RP).]

H. [PL 2001, c. 578, §15 (RP).]

I. [PL 2001, c. 578, §15 (RP).]

J. [PL 2001, c. 578, §15 (RP).]

[PL 2007, c. 247, §2 (AMD).]

3-A. Guidelines for policy development and implementation strategies. In developing its strategies and subsequent policies, programs and land use ordinances, each municipality or multimunicipal region shall employ the following guidelines consistent with the goals of this subchapter:

A. Except as otherwise provided in this paragraph, identify and designate geographic areas in the municipality or multimunicipal region as growth areas and rural areas, as defined in this chapter.

(1) Within growth areas, each municipality or multimunicipal region shall:

(a) Establish development standards;

(b) Establish timely permitting procedures;

(c) Ensure that needed public services are available; and

(d) Prevent inappropriate development in natural hazard areas, including flood plains and areas of high erosion.

(2) Within rural areas, each municipality or multimunicipal region shall adopt land use policies and ordinances to discourage incompatible development. These policies and ordinances may include, without limitation, density limits, cluster or special zoning, acquisition of land or development rights, transfer of development rights pursuant to section 4328 and performance standards. The municipality or multimunicipal region should also identify which rural areas qualify as critical rural areas as defined in this chapter. Critical rural areas must receive priority consideration for proactive strategies designed to enhance rural industries, manage wildlife and fisheries habitat and preserve sensitive natural areas.

(3) A municipality or multimunicipal region may also designate as a transitional area any portion of land area that does not meet the definition of either a growth area or a rural area. Such an area may be appropriate for medium-density development that does not require expansion of municipal facilities and does not include significant rural resources.

(4) A municipality or multimunicipal region is not required to identify growth areas within the municipality or multimunicipal region for residential, commercial or industrial growth if it demonstrates, in accordance with rules adopted by the department pursuant to this article, that:

(a) It is not possible to accommodate future residential, commercial or industrial growth within the municipality or multimunicipal region because of severe physical limitations, including, without limitation, the lack of adequate water supply and sewage disposal services, very shallow soils or limitations imposed by protected natural resources;

(b) The municipality or multimunicipal region has experienced minimal or no residential, commercial or industrial development over the past decade and this condition is expected to continue over the 10-year planning period;

(c) The municipality or multimunicipal region has identified as its growth areas one or more growth areas identified in a comprehensive plan adopted or to be adopted by one or more other municipalities or multimunicipal regions in accordance with an interlocal agreement adopted in accordance with chapter 115 with one or more municipalities or multimunicipal regions; or

(d) The municipality or multimunicipal region has no village or densely developed area.

(6) A municipality or multimunicipal region exercising the discretion afforded by subparagraph (4) shall review the basis for its demonstration during the periodic revisions undertaken pursuant to section 4347-A; [RR 2021, c. 2, Pt. A, §109 (COR).]

B. Develop a capital investment plan for financing the replacement and expansion of public facilities and services required to meet projected growth and development; [PL 2001, c. 578, §15 (NEW).]

C. Protect, maintain and, when warranted, improve the water quality of each water body pursuant to Title 38, chapter 3, subchapter I, article 4-A and ensure that the water quality will be protected from long-term and cumulative increases in phosphorus from development in great pond watersheds; [PL 2001, c. 578, §15 (NEW).]

D. Ensure that its land use policies and ordinances are consistent with applicable state law regarding critical natural resources. A municipality or multimunicipal region, if authorized to enact ordinances, may adopt ordinances more stringent than applicable state law; [PL 2001, c. 578, §15 (NEW).]

E. Ensure the preservation of access to coastal waters necessary for commercial fishing, commercial mooring, docking and related parking facilities. Each coastal area may identify and designate one or more critical waterfront areas and implement policies to ensure protection of those areas or otherwise discourage new development that is incompatible with uses related to the marine resources industry; [PL 2001, c. 578, §15 (NEW).]

F. Ensure the protection of agricultural and forest resources. Each municipality or multimunicipal region shall discourage new development that is incompatible with uses related to the agricultural and forest industries; [PL 2001, c. 578, §15 (NEW).]

G. Ensure that the municipality's or multimunicipal region's land use policies and ordinances encourage the siting and construction of affordable housing within the community and comply with the requirements of section 4358 pertaining to individual mobile home and mobile home park siting and design requirements. The municipality or multimunicipal region shall seek to achieve a level of at least 10% of new residential development, based on a 5-year historical average of residential development in the

municipality or multimunicipal region, that meets the definition of affordable housing. A municipality or multimunicipal region is encouraged to seek creative approaches to assist in the development of affordable housing, including, but not limited to:

- (1) Cluster housing;
- (2) Reduced minimum lot and frontage sizes;
- (3) Increased residential densities;
- (4) Use of municipally owned land;
- (5) Establishment of policies that:
  - (a) Assess community needs and environmental effects of municipal regulations;
  - (b) Lessen the effect of excessive parking requirements for buildings in downtowns and on main streets;
  - (c) Provide for alternative approaches for compliance relating to the reuse of upper floors of buildings in downtowns and on main streets;
  - (d) Promote housing choice and economic diversity in housing; and
  - (e) Address disparities in access to educational and occupational opportunities related to housing;
- (6) Provisions for accessory dwelling units and greater density where such density is consistent with other laws governing health and safety;
- (7) Promotion of housing options for older adults that address issues of special concern, including the adaptation, rehabilitation and construction of housing that helps older adults age in place with adequate transportation and accessibility to services necessary for them to do so in a safe and convenient manner; and
- (8) Establishment of policies that affirmatively advance and implement the federal Fair Housing Act, 42 United States Code, Chapter 45; [PL 2021, c. 657, §6 (RPR).]

H. Ensure that the value of historical, archeological, tribal and cultural resources is recognized and that protection is afforded to those resources that merit it; [PL 2021, c. 657, §7 (AMD).]

I. Encourage the availability of and access to traditional outdoor recreation opportunities, including, without limitation, hunting, boating, fishing and hiking, and encourage the creation of greenbelts, public parks, trails and conservation easements. Each municipality or multimunicipal region shall identify and encourage the protection of undeveloped

shoreland and other areas identified in the local planning process as meriting that protection; [PL 2023, c. 646, Pt. A, §35 (AMD).]

J. Develop management goals for great ponds pertaining to the type of shoreline character, intensity of surface water use, protection of resources of state significance and type of public access appropriate for the intensity of use of great ponds within the municipality's or multimunicipal region's jurisdiction; and [PL 2023, c. 646, Pt. A, §36 (AMD).]

K. [PL 2021, c. 657, §10 (RP).]

L. [PL 2023, c. 646, Pt. A, §37 (RP).]

Revisor's Note: Paragraph L as enacted by PL 2019, c. 145, §9 is REALLOCATED TO TITLE 30-A, SECTION 4326, SUBSECTION 3-A, PARAGRAPH M

M. (REALLOCATED FROM T. 30-A, §4326, sub-§3-A, ¶L) [PL 2023, c. 646, Pt. A, §38 (RP).]

N. Notwithstanding paragraph G, ensure that in a service center community at least 10% of the housing stock is affordable housing. [PL 2021, c. 754, §6 (NEW).]

[PL 2023, c. 646, Pt. A, §§35-38 (AMD).]

4. Regional coordination program. A regional coordination program must be developed with other municipalities or multimunicipal regions to manage shared resources and facilities, such as rivers, aquifers, transportation facilities and others. This program must provide for consistency with the comprehensive plans of other municipalities or multimunicipal regions for these resources and facilities.

[PL 2001, c. 578, §15 (AMD).]

4-A. Addressing sea level rise. A municipality or multimunicipal region that is in the coastal area may include in its comprehensive plan projections regarding changes in sea level and potential effects of the rise in sea level on buildings, transportation infrastructure, sewage treatment facilities and other relevant municipal, multimunicipal or privately held infrastructure or property and may develop a coordinated plan for addressing the effects of the rise in sea level. For the purposes of this subsection, "coastal area" has the same meaning as in Title 38, section 1802, subsection 1.

[PL 2019, c. 153, §5 (NEW).]

4-B. Addressing climate risks and building resilience to natural hazards. A municipality or multimunicipal region may include in its comprehensive plan projections regarding risks posed by climate change as identified in its climate vulnerability assessment prepared pursuant to subsection 1, paragraph L and the potential effects of those risks on buildings,

transportation infrastructure, sewage treatment facilities and other relevant municipal, multimunicipal or privately held infrastructure, property or protected natural resources and may develop a coordinated plan for addressing those risks and for building resilience to natural hazards.

As used in this subsection, "protected natural resource" has the same meaning as in Title 38, section 480-B, subsection 8.

[PL 2021, c. 590, Pt. A, §9 (NEW).]

5. Implementation program. An implementation program must be adopted that is consistent with the strategies in subsection 3-A.

[PL 2001, c. 578, §15 (AMD).]

#### SECTION HISTORY

PL 1989, c. 104, §§A45,C10 (NEW). PL 1989, c. 271, §4 (AMD). PL 1989, c. 562, §6 (AMD). PL 1989, c. 878, §A84 (AMD). PL 1991, c. 79 (AMD). PL 1991, c. 278, §2 (AMD). PL 1991, c. 622, §F29 (AMD). PL 1991, c. 722, §7 (AMD). PL 1991, c. 722, §11 (AFF). PL 1991, c. 838, §§8-11 (AMD). PL 1993, c. 166, §§6,7 (AMD). PL 1993, c. 721, §A3 (AMD). PL 1993, c. 721, §H1 (AFF). PL 1999, c. 776, §8 (AMD). PL 2001, c. 406, §4 (AMD). PL 2001, c. 578, §15 (AMD). PL 2001, c. 592, §1 (AMD). PL 2001, c. 667, §§H1,2 (AMD). PL 2001, c. 667, §H3 (AFF). PL 2007, c. 247, §§2, 3 (AMD). PL 2011, c. 655, Pt. JJ, §17 (AMD). PL 2011, c. 655, Pt. JJ, §41 (AFF). PL 2015, c. 349, §§3-6 (AMD). PL 2019, c. 38, §§5-9 (AMD). PL 2019, c. 145, §§5-9 (AMD). PL 2019, c. 153, §§4, 5 (AMD). RR 2019, c. 1, Pt. A, §§40-42 (COR). PL 2021, c. 590, Pt. A, §§6-9 (AMD). PL 2021, c. 657, §§5-12 (AMD). PL 2021, c. 754, §§4-6 (AMD). RR 2021, c. 2, Pt. A, §109 (COR). PL 2023, c. 646, Pt. A, §§35-38 (AMD).

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## Title 30-A: MUNICIPALITIES AND COUNTIES

### Part 2: MUNICIPALITIES

#### Subpart 6-A: PLANNING AND LAND USE REGULATION

#### Chapter 187: PLANNING AND LAND USE REGULATION

#### Subchapter 2: GROWTH MANAGEMENT PROGRAM

#### Article 1: GENERAL PROVISIONS

#### §4314

#### §4313. Transition; savings clause

(REPEALED)

SECTION HISTORY

PL 1989, c. 104, §§A45,C10 (NEW). PL 1989, c. 562, §2 (AMD). PL 1991, c. 278, §1 (AMD). PL 1991, c. 622, §F21 (AMD).

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§4964. Savings provisions

(REPEALED)

SECTION HISTORY

PL 1971, c. 455, §2 (NEW). PL 1973, c. 536, §21 (AMD). PL 1973, c. 681, §13 (AMD). PL 1975, c. 531, §6 (AMD). PL 1975, c. 623, §§47-B (AMD). PL 1977, c. 78, §175 (AMD). PL 1979, c. 218, §4 (AMD). PL 1987, c. 737, §§A1,C106 (RP). PL 1987, c. 766, §9 (RP). PL 1989, c. 6 (AMD). PL 1989, c. 9, §2 (AMD). PL 1989, c. 104, §§C8,C10 (AMD).

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COMMITTEE	MEMBERS	EXP DATE	TERM
Shellfish Conservation Committee	Peter Bouthillette, Chair*	12/2024	3 YEARS
	David Morissette*	12/2023	
	Paul Lariviere	12/2025	
	John Schafer	12/2025	resigned 6.24
	VACANT*		
	VACANT *		
	William Stepchew	12/2025	
Staff Liaison	Robert Simmons- Shellfish Warden, BPD		

## SHELLFISH CONSERVATION COMMISSION

### Division 5

**Sec. 74-101. Authority.** [Ord. No. 2000.20, § 1, 4-4-2000; Ord. No. 2002.33, 4-2-2002]

This division is enacted in accordance with 12 M.R.S.A. § 6671.

**Sec. 74-102. Purpose.** [Ord. No. 2000.20, § 2, 4-4-2000; Ord. No. 2002.33, 4-2-2002; amended 4-7-2009 by Ord. No. 2009.11]

To establish a shellfish conservation program for the City that will insure the protection and optimum utilization of shellfish resources within its limits. These goals will be achieved by means that may include:

- (a) Licensing and recommendation of any changes to licensing fees to the City Council annually. [Amended 11-17-2015 by Ord. No. 2015.75]
- (b) Limiting the number of shellfish harvesters.
- (c) Restricting the time and area where digging is permitted.
- (d) Limiting the minimum size of clams taken.
- (e) Limiting the amount of clams taken daily by a harvester.

**Sec. 74-103. Shellfish Conservation Committee.** [Ord. No. 2000.20, § 3, 4-4-2000; Ord. No. 2002.33, 4-2-2002; amended 4-7-2009 by Ord. No. 2009.11]

The Shellfish Conservation Program for the City of Biddeford will be administered by the Shellfish Conservation Committee consisting of seven members to be appointed by the Mayor and confirmed by the Council for terms of three years.

The Committee's responsibilities include:

- (a) Establishing annually in conjunction with the Department of Marine Resources the number of shellfish digging licenses to be issued.
- (b) Reviewing annually the status of the resource using the results of clam flat, harvester or dealer surveys and other sources of information and preparing in conjunction with and subject to the approval of the Department a plan for implementing conservation measures.
- (c) Submitting to the City Council proposals for the expenditures of funds for the purpose of shellfish conservation.
- (d) Keeping this division under review and making recommendations for its amendments.
- (e) Securing and maintaining records of shellfish harvest from the City's managed shellfish areas and closed areas that are conditionally opened by the Department of Marine Resources.
- (f) Recommending conservation closures and openings to the City Council in conjunction with the area biologists of the Department of Marine Resources.
- (g) Submitting an annual report to the municipality and the Department of Marine Resources

covering the above topics and all other committee activities.

**Sec. 74-104. Definitions. [Ord. No. 2000.20, § 4, 4-4-2000; Ord. No. 2002.33, 4-2-2002; amended 4-7-2009 by Ord. No. 2009.11]**

As used in this division, the following terms shall have the meanings indicated:

**GUEST** — Any person invited to assist a recreational license holder in harvesting a combined total that does not exceed one peck of shellfish per license per any one day.

**MUNICIPALITY** — Refers to the City of Biddeford, Maine.

**NONRESIDENT** — Anyone not qualified as a resident under this division.

**RESIDENT** — Refers to a person who is domiciled in this municipality. Proof of residency shall be by one of the following criteria:[**Amended 11-17-2015 by Ord. No. 2015.75]**

- (1) A person who pays real estate property taxes to the City or can provide a rent receipt within the jurisdiction of the City;
- (2) A person who is a registered voter in the City;
- (3) A person who can provide a vehicle registration from the City of Biddeford, Maine;
- (4) A person who can provide a valid motor vehicle license showing an address within the jurisdiction of the City;
- (5) A person who can provide a valid school ID showing an address within the jurisdiction of the City. Proof of eligibility will be the burden of the applicant.

**SHELLFISH, CLAMS and INTERTIDAL SHELLFISH RESOURCES** — In the context of this division the words "shellfish," "clams," and "intertidal shellfish resources" mean soft shell clams (*Mya arenaria*).

**Sec. 74-105. Licensing. [Ord. No. 2000.20, § 5, 4-4-2000; Ord. No. 2002.33, 4-2-2002; Ord. No. 2004.8, 3-2-2004; amended 4-7-2009 by Ord. No. 2009.11]**

It is unlawful for any person to dig or take shellfish from the shores and flats of this municipality without having a current license issued by this municipality as provided by this division. A commercial digger must also have a valid State of Maine Commercial Shellfish License issued by the Department of Marine Resources.

(a) Designation, scope and qualifications:

1. Resident commercial shellfish license. The license is available to residents of the municipality and entitles the holder to dig and take any amount of shellfish from the shores and flats of this municipality and reciprocating municipalities.
2. Resident commercial over 62 shellfish license. The license is available to residents of the municipality who can and do provide age verification legally attaining the age of older than 62 years of age at the time of purchase, and entitles the holder to dig and take any amount of shellfish from the shores and flats of this municipality and reciprocating municipalities. [**Added 11-17-2015 by Ord. No. 2015.75<sup>1</sup>**]

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1. Editor's Note: This ordinance also redesignated of former Subsection (a)(2) through (5) as Subsection (a)(3) through (6), respectively.

3. Nonresident commercial shellfish license. The license is available to nonresidents of this municipality and entitles the holder to dig and take any amount of shellfish from the shores and flats of this municipality.
4. Residential recreational shellfish license. The license is available to residents and real estate taxpayers of this municipality and entitles the holder and guest(s) to dig and take no more than one peck of shellfish per any one day from the shores and flats of this municipality.
5. Nonresident recreational shellfish license. The license is available to any person not a resident of this municipality and entitles the holder and guest(s) to dig and take not more than one peck of shellfish per any one day from the shores and flats of this municipality.
6. Resident/nonresident one-day recreational shellfish license. The license is available to any resident or nonresident, and entitles the holder to dig and take not more than one peck of shellfish during the one and only day, or any part thereof, for which the license has been purchased.
7. Resident student commercial shellfish license. The student must be at least 16 years of age or older and under 23 years of age, based upon the May 1 of the year of application. A person issued a student license is enrolled: **[Added 11-17-2015 by Ord. No. 2015.75]**
  - a. A person must show proof of age and proof of school attendance, except that students attending college must show proof of 12 credit hours per semester by a state-recognized accrediting agency or body.
  - b. A person attending a public day school in accordance with the attendance requirement of 20-A M.R.S.A. § 5001-A, Subsection 1.
  - c. A person meeting the requirements of an alternative to attendance at public day school in accordance with 20-A M.R.S.A. § 5001-A, Subsection 3.
  - d. A person under the age of 18 as of May 1 of the year of application must have a parent or legal guardian signature on the shellfish application.
  - e. A person may not be considered to have ceased to be a student during any interim between school years if the interim does not exceed five months and if it is shown that the person has a bona fide intention of continuing to pursue a full-time course of study during the semester or other enrollment period immediately following the interim period. For purposes of this subsection, "full-time course of study" means at least 60% of the usual course load for the program in which the person is enrolled.
  - f. The Shellfish Committee may revoke a student license if the licensee fails to maintain required student status
8. Nonresident student commercial shellfish license. The student must be at least 16 years of age or older and under 23 years of age, based upon the May 1 of the year of application. A person issued a student license is enrolled: **[Added 11-17-2015 by Ord. No. 2015.75<sup>2</sup>]**

- a. A person must show proof of age and proof of school attendance, except that students attending college must show proof of 12 credit hours per semester by a state-recognized accrediting agency or body.
  - b. A person attending a public day school in accordance with the attendance requirement of 20-A M.R.S.A. § 5001-A, Subsection 1.
  - c. A person meeting the requirements of an alternative to attendance at public day school in accordance with 20-A M.R.S.A. § 5001-A, Subsection 3.
  - d. A person under the age of 18 as of May 1 of the year of application must have a parent or legal guardian signature on the shellfish application.
  - e. A person may not be considered to have ceased to be a student during any interim between school years if the interim does not exceed five months and if it is shown that the person has a bona fide intention of continuing to pursue a full-time course of study during the semester or other enrollment period immediately following the interim period. For purposes of this subsection, "full-time course of study" means at least 60% of the usual course load for the program in which the person is enrolled.
  - f. The Shellfish Committee may revoke a student license if the licensee fails to maintain required student status
9. License must be signed. The licensee must sign the license to make it valid.
- (b) Application procedure. Any person may apply to the Clerk for the licenses required by this division on forms provided by the municipality.
1. Contents of application. The application must be in the form of an affidavit and must contain the applicant's name, current address, birth date, height, weight, signature and whatever information the municipality may require.
  2. Misrepresentation. Any person who gives false information on a license application will cause said license to become invalid and void.
- (c) Fees. The fees for the licenses are as stated below and must accompany in full the application for the respective license. The Clerk shall pay all fees received to the Treasurer except for \$3 of each license that will be retained by the Clerk as payment for issuing the license. Shellfish license fees and fines shall be used by the municipality for shellfish management, conservation and enforcement. **[Amended 11-17-2015 by Ord. No. 2015.75]**
1. Resident commercial: determined annually.
  2. Resident commercial over 62: determined annually.
  3. Nonresident commercial: determined annually.
  4. Resident student commercial: determined annually.

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2. Editor's Note: This ordinance also redesignated former Subsection (a)(6) as Subsection (a)(9).

5. Nonresident student commercial: determined annually.
  6. Resident recreational: determined annually.
  7. Resident recreational 65 to 69 years old: determined annually.
  8. Nonresident recreational: determined annually.
  9. Nonresident recreational 65 to 69 years old: determined annually.
  10. Resident recreational 70 years old or older: free.
  11. Nonresident recreational 70 years old or older: free.
  12. Resident/nonresident one day only license: determined annually.
- (d) Limitation of diggers. Clam resources vary in density and size distribution from year to year and over the limited soft clam producing area of the municipality. It is essential that the municipality carefully husband its shellfish resources. If, following the annual review of the municipality's clam resources, its size distribution, abundance and the warden's reports, as required by Section 74-103, the Shellfish Conservation Committee, in consultation with the DMR area biologist, determines limiting commercial or recreational shellfish licenses is an appropriate shellfish management option for the following year:
1. Prior to April 1, the Committee shall report its findings and document recommendations for the allocation of commercial and recreational licenses to be made available for the following license year to the Commissioner of Marine Resources for concurrence.
  2. After receiving approval of proposed license allocations from the Commissioner of Marine resources and prior to May 1, the Shellfish Conservation Committee shall notify the Clerk in writing of the number and allocation of shellfish licenses to be issued.
  3. Notice of the number of licenses to be issued and the procedure for application shall be published in a trade or industry publication, or in a newspaper or combination of newspapers with general circulation, which the municipal officers consider effective in reaching persons affected, not less than 10 days prior to the period of issuance and shall be posted in the municipal offices until the period concludes.
  4. The Clerk shall issue licenses to residents and nonresidents as allocated starting June 1 to residents and nonresidents on a first-come, first-served basis. **[Amended 11-17-2015 by Ord. No. 2015.75]**
  5. Licenses may be returned to the municipality voluntarily, and reissued to another person at the current fee according to the priorities established in this section. Any license returned is nonrefundable.
  6. Members of the Shellfish Conservation Committee shall be entitled to apply for a recreational shellfish license 30 days in advance of general license sales.
  7. All clam diggers/harvesters must use hand implements only – no assisted air harvesting (scuba diving). **[Amended 11-17-2015 by Ord. No. 2015.75]**

8. There shall be no night digging of shellfish. "Night" is defined as 1/2 hour after sunset and 1/2 hour before sunrise. **[Added 11-17-2015 by Ord. No. 2015.75<sup>3</sup>]**
  9. All recreational clam diggers/harvesters shall not possess more than one container while harvesting. The container must have a maximum volume of not more than 10 quarts. NOTE: A ten-quart pail filled to within one inch of the rim is approximately one peck of clams.
- (e) Open license sales. When the Shellfish Conservation Committee determines limiting shellfish licenses is not an appropriate shellfish management option for one or more license categories for the following year:
1. Notice of the dates, places, times and the procedures for the license sales shall be published in a trade or industry publication, or in a newspaper or combination of newspapers with general circulation, which the municipal officers consider effective in reaching persons affected, not less than 10 days prior to the initial sale date and shall be posted in the municipal offices. A copy of the notice shall be provided to the Commissioner of Marine Resources.
  2. For each commercial license category, the Clerk shall issue one license to nonresidents when six licenses are issued to residents and one more to nonresidents when five more are issued to residents; thereafter, one nonresident license will be issued for every 10 additional resident licenses issued. **[Amended 11-17-2015 by Ord. No. 2015.75]**
- (f) License expiration date. Each license issued under authority of this article expires at midnight on the last day of May next following the date of issuance.
- (g) Fee waivers. Recreational shellfish license fees will be waived for license holders 70 years or older. Individuals 12 years or younger do not need a license to assist a recreational shellfish license holder in harvesting not more than one peck of shellfish in total per any one day.
- (h) Suspension. Any shellfish licensee having three convictions for a violation of this division shall have his shellfish license automatically suspended for a period of 30 days.
1. A licensee whose shellfish license has been suspended pursuant to this division may reapply for a license only after the suspension period has expired.
  2. The suspension shall be effective from the date of mailing of a notice of suspension by the Clerk to the licensee.
  3. Any licensee whose shellfish license has automatically been suspended pursuant to this section shall be entitled to a hearing before the Shellfish Conservation Committee upon the filing of a written request for hearing with the Clerk within 30 days following the effective date of suspension. The licensee may appeal the decision of the Shellfish Conservation Committee before the Council by filing a written request for appeal with the Clerk within seven days of the decision of the Shellfish Conservation Committee.

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3. Editor's Note: This ordinance also redesignated former Subsection (d)(8) as Subsection (d)(9).

- (i) Shellfish harvesting log. Commercial shellfish license holders shall be required to keep a shellfish harvesting log which must be submitted to the Shellfish Conservation Committee Secretary no later than the 15th of the following month. The log will include the date, location and number of bushels harvested during each day; failure to maintain and submit monthly shellfish harvesting logs shall cause the harvester to lose automatic license retention. **[Amended 11-17-2015 by Ord. No. 2015.75]**
- (j) Conservation benefit. Biddeford commercial shellfish license holders who have purchased their licenses during the period of issuance for the previous license year and who have completed 12 hours of conservation work under the supervision of the Shellfish Conservation Committee shall be permitted to purchase a shellfish license the next year for a reduced fee, to be set by the Shellfish Committee annually, and purchased during the first week preceding the regular sale date. The Shellfish Conservation Committee will preapprove all accepted conservation projects by a majority vote. These records will be kept by the Secretary. In the event all commercial license holders complete their conservation obligation and it is deemed that licenses must be reduced for the following year, licenses will be issued by seniority. "Seniority" is defined as number of years a license has been held. If a tie in seniority occurs, the City Clerk will conduct a lottery to break the tie. **[Amended 11-17-2015 by Ord. No. 2015.75]**

**Sec. 74-106. Opening and closing of flats. [Ord. No. 2000.20, § 6, 4-4-2000; Ord. No. 2002.33, 4-2-2002; amended 4-7-2009 by Ord. No. 2009.11]**

- (a) The municipal officials, upon the approval of the Commissioner of Marine Resources, may open and close areas for shellfish harvest. Upon recommendations of the Shellfish Conservation Committee and concurrence of the Department of Marine Resources area biologist that the status of shellfish resources and other factors bearing on sound management indicate that an area should be opened or closed, the municipal officials may call a public hearing, and shall send a copy of the notice to the Department of Marine Resources. The decision of the municipal officials made after the hearing shall be based on findings of fact.
- (b) It shall be unlawful for any person to harvest, take or possess shellfish from any areas closed by the City of Biddeford in accordance with the Department of Marine Resources (DMR) Regulation Chapter 7. Harvesting shellfish in a closed area is a violation of this municipality's ordinance and is punishable under 12 M.R.S.A. § 6671. **[Added 9-6-2016 by Ord. No. 2016.75]**
- (c) Boundaries of conservation closures are explicitly defined in the conservation closure application submitted by the City of Biddeford to DMR and are part of the resulting permit issued by DMR. These permits are posted at the City Clerk's Office and on the DMR website. **[Added 9-6-2016 by Ord. No. 2016.75]**

**Sec. 74-107. Minimum legal size of soft shell clams. [Ord. No. 2000.20, § 7, 4-4-2000; Ord. No. 2002.33, 4-2-2002; amended 4-7-2009 by Ord. No. 2009.11]**

It is unlawful for any person to possess soft shell clams within the municipality which are less than two inches in the longest diameter except as provided by Subsection (b) of this section

- (a) Definitions:

1. Lot. The word "lot" as used in this division means the total number of soft shell clams in any bulk pile. Where soft shell clams are in a box, barrel, or other container, the contents of each box, barrel, or other container constitutes a separate lot.
  2. Possess. For the purpose of this section, "possess" means dig, take, harvest, ship, transport, hold, buy and sell retail and wholesale soft shell clam shell stock.
- (b) Tolerance. Any person may possess soft shell clams that are less than two inches if they comprise less than 10% of any lot. The tolerance shall be determined by count of not less than one peck nor more than four pecks taken at random from various parts of the lot or by a count of the entire lot if it contains less than one peck.
- (c) Penalty. Whoever violates any provision of this section shall be punished as provided by 12 M.R.S.A. § 6681.

**Sec. 74-108. Penalty.** [Ord. No. 2000.20, § 8, 4-4-2000; Ord. No. 2002.33, 4-2-2002; amended 4-7-2009 by Ord. No. 2009.11]

A person who violates this division shall be punished as provided by 12 M.R.S.A. § 6671(10).

**Sec. 74-109. Effective date.** [Ord. No. 2000.20, § 9, 4-4-2000; Ord. No. 2002.33, 4-2-2002; amended 4-7-2009 by Ord. No. 2009.11]

This division, which has been approved by the Commissioner of Marine Resources, shall become effective after its adoption by the municipality, provided that a certified copy of the ordinance from which this division is derived is filed with the Commissioner within 20 days of its adoption.

**Sec. 74-110. Period of ordinance.** [Ord. No. 2000.20, § 10, 4-4-2000; Ord. No. 2002.33, 4-2-2002; amended 4-7-2009 by Ord. No. 2009.11]

This article shall remain in effect until eliminated or amended.

**Sec. 74-111. Separability.** [Ord. No. 2000.20, § 11, 4-4-2000; Ord. No. 2002.33, 4-2-2002]

If any section, subsection, sentence or part of this division is for any reason held to be invalid or unconstitutional, such decisions shall not affect the validity of the remaining portions of this division.

**Sec. 74-112. Repeal.** [Ord. No. 2000.20, § 12, 4-4-2000; Ord. No. 2002.33, 4-2-2002]

Any ordinance regulating the harvesting or conservation of shellfish in the municipality and any provisions of any other municipal ordinance that is inconsistent with this division is hereby repealed.

## **Guidance document regarding intertidal mussel harvesting for municipalities with a shellfish conservation program**

### **Law and Regulations:**

12 M.R.S. §6671 sub-§3A(5): Within any area of the municipality, a shellfish conservation ordinance may specify areas of the intertidal zone in which the dragging of mussels may be limited to the degree necessary to support a municipal shellfish conservation program.

12 M.R.S. §6671 sub-§12: With the advice of the municipality, the Commissioner may issue a permit that authorizes the permit holder to fish for and take mussels from an area designated by the municipality under the shellfish conservation program. The permit may specify limits on the amount of mussels taken, when the mussels may be taken and gear usage and any other conditions necessary for consistency with the shellfish conservation program.

DMR Procedural Rules, Chapter 7: Requirements for Municipalities Having Shellfish Conservation Programs; outlines the regulation of intertidal mussel harvest by drag or dredge in section 7.70. It states that a municipality with an approved shellfish conservation program may specify intertidal areas to be limited for mussel harvesting by drag.

### **Definitions:**

*Intertidal Zone:* means the shores, flats or other land between high and low water mark.

*Shellfish Conservation Program:* requires a shellfish management plan which consists of a written statement of goals and objectives and a description of the various conservation measures the town intends to employ to reach those goals. For the purposes of this document it is important to note that conservation measures are not limited to seeding activities.

*Shellfish:* “shellfish” means shellstock clams, quahogs, other than mahogany quahogs and oyster shellstock.

### **Municipal Responsibilities:**

1. Municipalities must actively and vigorously pursue their shellfish conservation program. The municipality must establish the number of licenses to be issued annually, review the status of the resource annually, enforce municipal ordinances and submit annual reports to DMR.

*This means that if a municipality fails to meet these performance standards the Commissioner may rescind approval of that municipality's shellfish conservation program.*

2. Municipalities shall review the status of the resource affected prior to closing or opening an area to shellfish harvesting.

*For the purpose of this guidance document, this means that if an area is closed as a conservation measure and also an area specified by the municipality to be limited for mussel harvest by drag (in order to protect the shellfish resource), the status of the shellfish resource must be established prior to closing. The DMR Shellfish Management Program(Area Biologists) should be consulted for this process in order to ensure proper evaluation methods are being used.*

3. Municipalities may request approval from the Commissioner for intertidal areas to be limited to mussel harvest by drag. When requesting an area to be limited to mussel harvest, the municipality must provide an explanation as to why they believe these areas require additional protections.

*DMR expects municipalities to include in their request detailed mapping of the specified areas, the explanation regarding the importance of the area(s), and supporting resource assessment documentation. Electronic maps should be developed that include GPS coordinates for the requested area. Mapping assistance can be requested from the staff of the DMR Shellfish Management Program.*

4. Municipalities shall provide written recommendations to the applicant for Intertidal Mussel Harvest Permits within 21 days of the receipt of the application.

*An applicant that wishes to harvest mussels from an area that is specified in a municipal shellfish conservation program must obtain a permit from the DMR. When submitting their application, the applicant must include the written comments of the municipality. In determining whether or not to issue the requested permit, the DMR will consider, but is not bound by, the municipal recommendation. Other Department considerations include if the status of the managed resource (e.g. soft shelled clams) has changed, if the municipal performance has not met expectations, the abundance of the mussel resource and the likelihood of the requested activity impacting the resource. If competing permits are requested DMR will allocate appropriate access.*

5. Municipalities may recommend mussel harvest controls for consideration by the Commissioner when a permit is requested, including but not limited to: gear used, time of harvest, area of harvest, and volume of harvest.

*Recommendations regarding the amount of mussels taken should be defined by weight in pounds or bushels and an explanation should accompany why limiting volume supports the shellfish conservation program. Time of harvest needs to be defined in seasons (months) not days or hours and accompanied by an explanation on how this supports the shellfish conservation program. Gear usage recommendations are limited to dragging (not hand harvest etc) and needs to be clearly and precisely defined and be accompanied by an explanation on how this supports the shellfish conservation program. Any other conditions necessary must be consistent with other marine resources laws and*

*regulations and also provide an explanation on how they support the shellfish conservation program.*

**Permit Applications:**

A standard permit application can be found on the DMR website:  
or requested by mail: 60 Harborview Drive Sullivan, ME 04664  
or requested by email: [denis-marc.nault@maine.gov](mailto:denis-marc.nault@maine.gov)  
or requested by phone: 207-422-2092

**DMR evaluation of areas proposed for limitations on intertidal mussel harvesting:**

The DMR evaluation of areas requested by municipalities for limitations on intertidal mussel harvesting will include a review of the successful implementation of the overall municipal shellfish conservation program. Does the requesting municipality have adequate enforcement, are they actively pursuing conservation and management of their intertidal resources, do they regulate licensing properly, etc.? The specified areas must be part of the town's conservation program. The areas should be clearly established and explained so applicants can make appropriate requests. If approved, the areas will be posted online at the Department's website.

COMMITTEE	MEMBERS	EXP DATE	TERM
Zoning Board of Appeals	Don Furman, Chair      Ward 1	12/2026	3 YEARS
	Syed Zafar                      Ward 5	12/2025	
	Carolyn Schmidtke	12/2025	
	VACANT	12/2026	
	Ari Brandstein              Ward 2	12/2024	
	VACANT	12/2025	
	Associate Member		
	Associate Member		
	Roby Fecteau, Code Enforcement Officer		
	Staff		

\* no more than two members from one Ward\*

## Board of Appeals

### Article IX

#### Section 1. Establishment and organization. [Ord. of 7-7-1992; Ord. No. 2002.68, 9-3-2002]

A. A Board of Appeals is a quasijudicial body which shall consist of five voting members plus two associate members, all of whom shall be resident of the City of Biddeford. Members of the Board of Appeals shall reflect as much as possible several geographic areas of the City, and shall have diverse professional and/or employment backgrounds. In no case shall more than two members be from the same ward. Current members whose terms expire after 12/ 2005 shall have their term reduced to 12/2005. The term of office of a member and an associate member shall be three years, provided that those members and associate members appointed pursuant to this section shall continue in such capacity until the expiration of the term to which they are appointed, so long as they meet the qualifications of membership imposed by this section. In order to comply with the provisions of this ordinance requiring geographical balance, any current members of the Zoning Board of Appeals who reside in the same ward with more than two other members shall have their terms of office reduced to expire on June 30, 2003.

B. A municipal officer or his spouse may not be a member or associate member of the Board of Appeals. No member shall serve more than three consecutive terms, including any term or part of a term served under any predecessor to this section. Any member appointed to fill a vacancy for which more than half of the unexpired term remains, for purposes of this provision shall be deemed to have served one full term.

C. Three members of the board shall constitute a quorum for purposes of conducting a meeting and taking action. When a regular member of the board is unable to act because of interest, incapacity or absence, an associate member shall be designated by the Chairman to act in his/ her stead. Members of the Board of Appeals shall be nominated by the Mayor and confirmed by the Council. When there is a permanent vacancy, a new member shall be appointed to serve for the remainder of the unexpired term. A permanent vacancy arises upon the death, resignation or removal of a member, or upon the failure of a member at any time during his term to meet any of the qualifications herein provided for appointment as a member. Members of the Board of Appeals may be removed from office by the Mayor, Council or board for cause after notice and hearing before the expiration of their term. Failure to attend three or more consecutive meetings of the board without excuse shall constitute cause for removal of a member.

D. The chairman shall be appointed by the Mayor and confirmed by the Council. Annually, at its first meeting in January, the Board of Appeals shall elect a vice chairman

and secretary from its own membership. The term of these officers shall be one year. The chairman may not be appointed for more than two consecutive terms. The results of the annual election shall be submitted to the municipal officers. The Chairman of the Board of Appeals is a voting member and his/her vote shall be cast at the same time as other members of the board.

Section 2. Proceedings of the Board of Appeals. [Ord. No. 2002.68, 9-3-2002]

The Board of Appeals shall adopt rules necessary to the conduct of its affairs, and in keeping with the provisions of this ordinance, and shall also adopt Roberts Rules of Order. Meetings shall be held at the call of the chairman and at such other times as the board may determine. The Chairman, or in his absence, the acting Chairman, may administer oaths and compel the

attendance of witnesses. All meetings shall be open to the public. The Board of Appeals shall keep minutes of its proceedings, showing the vote of each member upon each question, or of absence or failure to vote, and shall keep records of its examinations and other official actions, all of which shall be a public record and be immediately filed in the offices of the Board.

Section 3. Conflicts. [Ord. No. 2002.68, 9-3-2002]

Any questions raised by any interested party of whether a particular issue involves a conflict of interest sufficient to disqualify a member from voting shall be decided by a majority of the members present except the member who is being challenged.

Section 4. Powers and duties. [Ord. of 12-19-1995; Ord. No. 2002.68, 9-3-2002]

Appeals shall be from decisions of the Building Inspector or Planning Board to the Board of Appeals. The Department of Environmental Protection shall be notified of the results of the appeals hearing involving land within the Shoreland Zone. Any appeal denied by the Board of Appeals may be appealed to the superior court in accordance with Maine State Rules of Civil Procedures, Rule 80B.

The Board of Appeals shall have the following powers:

A. Administrative appeals. To hear and decide appeals where it is alleged there is a zoning violation or error in any order, requirement, decision, or determination made by the Building Inspector or Planning Board in the enforcement of this ordinance. The following procedure governs administrative appeals:

1. When errors of administrative procedures or interpretation are found, the case shall be remanded back to the Building Inspector or Planning Board for correction.

B. Variance appeals.

1. The board shall hear and decide cases where a relaxation of this ordinance may be sought. Additional conditions and safeguards may be prescribed by the Board upon the applicant so as to minimize any adverse impact as a result of granting the variance. The burden of proof rests with the applicant to demonstrate that the conditions for a variance exists. A variance may be granted by the Board for undue hardship which shall be interpreted only in strict compliance with all of the following criteria and with the criteria of 30-A M.R.S.A. § 4353:

- a. That the land in question cannot yield a reasonable return unless a variance is granted; and
- b. That the need for a variance is due to the unique circumstances of the property (not desired use or personal hardship) and not to the general conditions in the neighborhood; and
- c. That the granting of a variance will not alter the essential character of the locality; and
- d. That the hardship is not the result of action taken by the applicant or a prior owner; and
- e. Relief, if granted, would not cause substantial detriment to the public good, or impair the purposes and intent of this ordinance.

2. A variance is not justified unless all of the foregoing five criteria are present in the case. A variance is a relaxation of the dimensional requirements of this ordinance that may be granted by the Board of Appeals only where strict application of this ordinance, or a provision thereof, to the petitioner or his property, would cause undue hardship. A variance may only be granted for a permitted use or legal nonconforming use in that particular district. The Board of Appeals is prohibited from issuing a variance for a new use that is not permitted by this ordinance.

3. In order to preserve the terms of this ordinance as much as possible, the board may impose such conditions to a variance as it deems necessary. Variances shall be the exception, not the rule. Variances which are granted shall be the minimum necessary to relieve hardship.

Section 5. Appeals to the Board of Appeals. [Ord. No. 2002.68, 9-3-2002]

A. Making an appeal.

1. An appeal may be taken by any person aggrieved by a decision of the Building Inspector or Planning Board to the Board of Appeals within 30 days of such decision, and not otherwise, except that the Board, upon a showing of good cause, may waive the thirty-day requirement.

2. Such appeal shall be made by filing with the Board of Appeals a written notice of appeal, specifying the grounds for such appeal.

3. For a variance appeal the applicant shall submit:

(a) A sketch drawn to scale showing lot lines, location of existing building and other physical features pertinent to the variance request.

(b) A concise written statement stating what variance is requested.

(c) A written response to the five criteria which determine undue hardship.

(d) All documentary evidence shall be submitted at the time of application. Such documentary evidence, along with oral testimony, shall constitute the record of the board's hearing. No documentary material submitted at the hearing shall be reviewed by the board or made part of the record.

4. Upon being notified of an appeal, the Building Inspector shall forthwith transmit to the Board and Planning Board all the papers specifying the record of the decision under appeal. Each appeal shall be accompanied by a check for \$50 to cover advertising and administrative costs. If the actual cost of advertising exceeds \$50, the applicant shall pay the balance. The Board of Appeals shall hold a public hearing on the appeal. For appeals involving the issuance of a building permit, the Building Inspector shall issue a cease and desist order.

B. Procedure on appeal.

1. At least 10 days prior to the date of the hearing the Board shall cause written notice be provided to all property owners of record whose properties lie within 200 feet of the affected property, and/or immediate abutters and property owners across the street or stream; the person making the appeal; and the Planning Board and any other parties of record. Such written notice shall include: [Amended 3-5-2019 by Ord. No. 2019.14]

(a) The name of the person appealing;

(b) A brief description of the property involved;

(c) A brief description of the decision under appeal, or the nature of the variance appeal; and

(d) The time and place of the Board's hearing.

The failure of a property owner to receive notice of the hearing shall not invalidate the hearing or the decision of the Board of Appeals.

2. (Reserved)<sup>1</sup>

3. Hearings.

(a) The Board may receive any oral or documentary evidence but shall provide as a matter of policy for the exclusion of irrelevant, immaterial or unduly repetitious evidence or hearsay evidence. Every party shall have the right to present his case or defense by oral or documentary evidence, and to submit rebuttal evidence.

(b) The appellant's case shall be heard first. To maintain orderly procedure, each side shall proceed without interruption. All persons at the hearing shall abide by the order of the Chairman.

(c) At any hearing, a party may be represented by agent or attorney. Hearings shall not be continued to other times except for good cause as determined by the Board. If a hearing is tabled and rescheduled, proper notice shall be sent to the appellant and abutters and/or property owners of record within 200 feet.

(d) The Building Inspector or his designated assistant shall attend all hearings and may present to the Board of Appeals all plans, photographs, or other material he deems appropriate for an understanding of the appeal.

(e) The transcript of testimony, if any, and exhibits, together with all papers and requests filed in the proceedings, shall constitute the record. Proposed findings of fact may be submitted by any party, but shall not be considered as evidence.

(f) The Board of Appeals may go into executive session only upon a three-fifths vote of the members present and voting. A motion to go into executive session shall indicate the precise nature of the business of the executive session. No other

1. Editor's Note: Former Subsection 2, regarding written notice, was repealed 3-5-2019 by Ord. No. 2019-14.

matters may be considered in that particular executive session. An executive session may be held only for the following purposes. No other matters may be considered in executive session.

(1) Consultations between the Board of Appeals and its attorney concerning the legal rights and duties of the Board, pending or contemplated litigation, settlement offers and matters where the duties of the Board's counsel to his client pursuant to the code of professional responsibility clearly conflict with the requirements of the Public Right to Know Law, 1 M.R.S.A. §§ 401 through 410, or where premature general public knowledge would clearly place the board at a substantial disadvantage.

(2) Discussions of information contained in records made, maintained or received by a body or agency when access by the general public to those records is prohibited by statute.

Section 6. Decisions of the Board of Appeals. [Ord. No. 2002.68, 9-3-2002]

A. The concurring vote of a majority of the membership of the Board shall be necessary to reverse any order, requirement, decision, or determination of Building Inspector, or to decide in favor of the applicant on any matter on which it is required to pass under this ordinance, or to affect any variation in the application of this ordinance.

B. The Board shall decide all appeals within 30 days after the conclusion of the hearing, and shall issue a written decision on all appeals. A two-to-two vote is a denial.

C. All decisions shall become a part of the record. The decisions shall include:

1. A statement of findings and conclusions;
2. The reasons or basis therefor, upon all the material issues of fact, law or discretion presented; and
3. The appropriate order, relief or denial thereof.

D. Notice of any decision shall be mailed or hand delivered to the petitioner, his representative or agent, the Planning Board, agency or office and the municipal officers within seven days of the decision date.

E. Upon notification of the granting of an appeal by the Board of Appeals, the Building Inspector shall immediately issue a permit in accordance with the conditions of the approval, unless the applicant needs a conditional use permit.

F. All decisions of the Board of Appeals are final. Appeals may be taken as permitted by law from any decision of the Board of Appeals to superior court.

G. When a variance is granted, the recipient must apply within one month for a building permit to carry out the terms of the variance, or the variance becomes void.

**Section 7. Stay of proceedings. [Ord. No. 2002.68, 9-3-2002]**

An appeal stays all legal proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life and property. In such case proceedings shall not be stayed otherwise than by a court of record on application, on notice to the officer from whom the appeal is taken, and on due cause shown.

**Section 8. Rehearing. [Ord. No. 2002.68, 9-3-2002]**

The Zoning Board of Appeals shall not entertain a second application for a variance, conditional use or administrative appeal concerning the same property after the previous application was denied unless two years have passed or there is substantial change in the relief requested. The board shall determine if the requested relief in the second application is substantially different from that requested in the first. The determination shall be made by looking at the physical dimensions of the request only.



## Policy Committee

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**Meeting Date:** March 24, 2025  
**Meeting Time:** 6:00 PM  
**Agenda Item No:** 5.c  
**Item Description:** Clifford Park Conservation Easement(s) Review  
**Submitted By:** Brian S. Phinney, Acting City Manager

### **Supporting Information/Documentation:**

20250325 Clifford Park Conservation Easement - WORKING DRAFT, 1894\_Clifford\_Park\_Deed\_-\_REFERENCE, 20110224 MCHT Clifford Park Easement - EXISTING, 20201020\_Clifford\_Park\_Land\_Conveyance-MAP City Council - REFERENCE, 20220907 Clifford Park Land Swap Visual - Planning Board - REFERENCE, 20250325 Trail Map Plan - Conservation Commission - Jan 20, 2025

### **Key Terms:**

### **Executive Summary:**

This is a continuation of the review of potential conservation easements for the Clifford Park properties.

### **Detailed Review:**

The City of Biddeford entered into a land swap deal with E&R Development and Gervais Dube to significantly expend the acreage of Clifford Park in exchange for a small land conveyance for a new home development. Once the land swap was underway and the development was in the final stages of Planning Board approval, the Planning Board submitted a letter to the Policy Committee, dated September 22, 2022. The Conservation Commission and Recreation Commission also acknowledged support from the assignment of a conservation easement.

The Policy Committee first reviewed the concept of environmental covenants for the newly acquired property at Clifford Park in April 2023. Subsequently, the new parcels Mblu 30-58 and Mblu 8-3 were formally added to Sec. 46-5 City Parks, Beaches, and Athletic Fields. Adding these parcels served to ensure that the parcels are identified as "parks" and that existing and future park rules apply to all land collectively identified as Clifford Park.

The Policy Committee also requested consideration of conservation easements for the park. In

February 2024, the Policy Committee received and reviewed a conservation easement template available on the Maine Coast Heritage website. The discussion at the February meeting resulted in consensus on two general items.

- (1) Overall control of the park area placed under conservation easement(s) be assigned to an outside entity suited to ensure conservation.
- (2) Staff prepare general recommendations to serve as a starting point for conservation easements and property use/services such as trails, parking, access points, etc.

A draft conservation easement is provided in the packet for review and discussion. It follows the original conservation easement with discussion point flagged for review and deliberation. The discussion points are listed below. The draft conservation easement is formatted to show line numbers for ease of reference as the Committee deliberates. There are also superscript numbers placed at the discussion points for added reference. The bulleted items below provide reference to the line or lines as "Line 65-67". The number in parentheses is the superscript reference, example "(2)".

#### Review of Draft Conservation Easement

- Line 10, (1) - The agreement includes placeholders for the entity that will eventually accept assignment of the conservation easement flagged as "".
- Line 65-67 (2) - During deliberations, consider the implication of the inability to subdivide the parcels. This restriction would otherwise have prohibited the land swap.
- Line 84 (3) - During deliberations, consider whether the restrictions on structures is in the best interest of the park.
- Line 95-97 (4) - Would it be best to leave this restriction out or better define the restriction to allow, but not mandate, that future plans may include a pavilion, gazebo, new entrances, some sort of seasonal structure for classrooms or other instructional venues in accordance with the overarching intent of the easement?
- Line 106-109 and 156-157 (5) - During deliberations, consider whether seasonal vehicles like snowmobiles should be allowed - motorized.
- Line 116-118 - (6) - During deliberations, this is flagged to highlight that if structures are allowed (or not restricted), the current wording is such that the cutting of trees and vegetation would be allowed for the construction.
- Line 129-131 (7) - During deliberations, consider whether the provision restricts the use of any proceeds to just Clifford Park or for the use of all parks.
- Line 138 (8) - During deliberations, consider whether to retain the "day-time" reference. Park rules limit access. The absence of the day-time reference does not impact the City's ability to control the time of access via park rules but does limit access to other than daytime hours in the future. For example, future nighttime guided walks to observe spring peepers or fireflies.
- Line 168-171 (9) - During deliberations, consider whether there should be express

permission from the City to assign the rights and interests under the easement.

- Line 234-235 (10) - This is a placeholder for editing to reflect the subject parcels.
- Line 238-296 (11) - This is a placeholder for editing to reflect the new property description.
- Line 33 and 297 (12) - This is a placeholder for editing to reflect new referenced acreage.
- Line 300-302 (13) - This is a placeholder for editing to reflect appropriate property references.
- Line 303-309 (14) - This reference may or may not remain depending on the appropriate property description.
- Line 320 (15) - A new property map will be attached based on the final determination of acreage.

**Funding Source:**

N/A

**Staff Recommendation:**

This is a policy matter. Staff will support the decision(s) of the Policy Committee.

1 **Information necessary to complete draft:**

- 2 1. Acreage (?) Confirm number
- 3 2. Do the covenants apply to the entirety of the new parcels?
- 4 3. Provisions for development and expansion related to the park? For example
- 5 parking, entrances, new trails, construction of gazebos, pavilions, seasonal screen
- 6 houses, etc?

7

8

9

CONSERVATION EASEMENT

10 Inhabitants of the City of Biddeford to [HOLDER]<sup>1</sup>

11 The INHABITANTS OF THE CITY OF BIDDEFORD, a municipal body corporate and politic,  
12 organized and existing under the laws of the State of Maine, with a mailing address of P.O.  
13 Box 586, Biddeford, Maine 04005, (hereinafter "Grantor"), for consideration paid, GRANT,  
14 without covenants, this Conservation Easement in perpetuity, pursuant to 33 M.R.S.  
15 §476et seq., as amended, to [HOLDER], a nonprofit corporation organized and operating in  
16 the State of Maine and whose mailing address is One Bowdoin Mill Island, Suite 201,  
17 Topsham, Maine 04086, its successors and permitted assigns (hereinafter referred to as  
18 the "Holder") the following described Protected Property: Over, through, under and across  
19 certain parcels of land adjacent to or near Clifford Park off West Street, in the City of  
20 Biddeford, County of York, and State of Maine, being more particularly described in Exhibit  
21 A, and depicted in the sketch map entitled Exhibit B, both attached hereto and made a part  
22 hereof, (hereinafter referred to as the "Property" or the "Protected Property"), exclusively  
23 for conservation purposes as follows:

24

25 A CONSERVATION EASEMENT which shall run with the Protected Property and be binding  
26 in perpetuity upon Grantor, and its successors and assigns, pursuant to the Maine Uniform  
27 Conservation Easement Act, Title 33 M.R.S. Section 476 et seq., as amended and  
28 successor provisions thereof, for the benefit of the general public, consisting of the  
29 following purposes, recitals, terms, and reserved restrictions and affirmative rights of  
30 Grantor herein, and the exhibits attached hereto, and the Baseline Documentation  
31 described hereinafter; all as hereinbelow set forth:

32

33 WHEREAS, the Protected Property consists of approximately ~~fifty-three (53)~~<sup>12</sup> acres of  
34 undeveloped and predominantly forested coastal upland within and at the western edge of  
35 the Biddeford-Kennebunkport Vernal Pool Complex, important to Blandings turtles and  
36 spotted turtles; and

37

38 WHEREAS, the Protected Property has been acquired by Grantor with funding from Holder  
39 and with a grant from the Maine Natural Resources Conservation Program of The Nature  
40 Conservancy, a District of Columbia nonprofit corporation with a Maine office in  
41 Brunswick, Maine, in order to protect it as part of the Biddeford-Kennebunkport Vernal  
42 Pool Complex.

43

44 WHEREAS, the Protected Property remains in a highly scenic and entirely undeveloped  
45 condition that provides (1) important wildlife habitat values; (2) important traditional  
46 access to the forest and recreational opportunities for the general public in an area of  
47 increasing development pressure and closure of public access; and (3) scenic enjoyment  
48 to the general public when viewed in its existing entirely undeveloped state;

49

50 NOW THEREFORE, it is the purpose of this Conservation Easement to provide significant  
51 public benefit by protecting and preserving in perpetuity the scenic and ecological  
52 character of the Protected Property, while assuring continuing opportunities for daytime  
53 non-motorized low-impact outdoor recreation, nature observation and study by the  
54 general public that are consistent with the protection of its scenic, habitat and ecological  
55 values, as follows:

56 1. EXISTING CONDITIONS.

57 As of the date of this grant, there are no structures on the Protected Property, other than  
58 culverts in streams and an asphalt platform in a stream crossing, and no surface  
59 alterations except for rustic unpaved footpaths and the easement for a right of way  
60 described in a deed recorded at the York County Registry of Deeds at Book 6974, Page 244,  
61 and depicted generally in Exhibit B. The Protected Property is substantially forested except  
62 for vernal pools and natural open areas important to wildlife habitat.

63 2. LAND USE RESTRICTIONS.

64 A. The Protected Property shall be held as one undivided parcel as described in Exhibit A  
65 and shown on Exhibit B, [without further division, subdivision, partition, or other creation of

66 parcels or lots. The Protected Property may not be conveyed or transferred except in its  
67 entirety,]<sup>2</sup> provided however, that any portion thereof may be conveyed to an entity that  
68 meets the requirements of a qualified assignee as set forth in subparagraph 3.C herein.  
69 The Protected Property may not be used to calculate or increase the permitted  
70 development density of land not subject to this Conservation Easement. Nothing herein  
71 should be construed to limit or prevent the Grantor from entering into additional  
72 restrictions on the Protected Property for the purpose of grant agreements with funders,  
73 provided all such restrictions are consistent with the conservation purposes hereof.

74

75 B. The Protected Property shall be used for conservation, education and low-impact  
76 outdoor recreation, nature observation and study by the general public; and shall not be  
77 used for, industrial, mining, or residential uses, nor to provide access, utilities, views, or  
78 other services for the benefit of other property, except to the extent that such rights already  
79 exist for the benefit of other property by deed or operation of law as of the date of this  
80 grant, in particular the access and utility easement described in Exhibit A and depicted in  
81 Exhibit B (Book 6974, Page 244), which shall not be altered, or increased in size or scope  
82 without the prior written consent of Holder.

83

84 C. [No additional structures may be placed or constructed]<sup>3</sup> on the Protected Property  
85 except for boundary markers, commemorative or memorial plaques, and other minor and  
86 rustic structures designed to enhance the opportunity for low impact outdoor recreation,  
87 nature observation and study and to preserve the conservation values of the Protected  
88 Property, such as small unlighted directional and informational signs; minor habitat  
89 improvements; observation blinds; platforms, temporary structures for non-commercial  
90 camping and events; temporary privies, waste receptacles, and tents for events; storage  
91 sheds or boxes for equipment; and rustic trail improvements as necessary to minimize  
92 erosion, discourage unauthorized use by the general public, and protect fragile areas from  
93 over use. Utility and access structures and roadway improvements are permitted to the  
94 extent of the rights of others in the access easement described in a deed at Book 6974,  
95 Page 244, depicted in Exhibit B. In furtherance of the foregoing, [the following structures  
96 are strictly prohibited: residential structures, outbuildings, gazebos, screen houses,  
97 docks, piers, barns, bleachers, permanent stages, paved platforms,]<sup>4</sup> major recreational  
98 improvements such as swimming pools, tennis courts, mud runs, athletic or sports or  
99 equestrian fields or courts or courses that require grading of the surface or extensive  
100 barring of mineral soils.

101 D. No excavation, filling, dredging, grading or other alteration may be made to the  
102 surface of the Protected Property except those caused by the forces of nature, except that  
103 Grantor shall have the right to alter the surface as necessary to:

- 104 - install and maintain the structures permitted in subparagraph 2.C above; and
- 105 - establish and maintain additional "rustic unpaved foot trails," which are defined as  
106 paths no wider than eight (8) feet in average tread width, that are [designed to prevent  
107 rutting erosion or siltation into surface waters with appropriate signage and barriers to  
108 discourage use and access by the general public in motorized vehicles, other than  
109 seasonal snowmobiles and Grantor's maintenance vehicles.]<sup>5</sup>

110

111 All such surface alteration activity must be designed to preserve the scenic and natural  
112 appearance of the Protected Property, must be conducted in a manner to minimize erosion  
113 and run-off into the seasonal stream and vernal pools, and the disturbed surrounding area  
114 must be restored to a condition that blends with the undisturbed surrounding land.

115

116 E. [No standing timber or live vegetation may be cut or removed on the Protected  
117 Property except (1) cutting necessary to install the structures permitted in subparagraph  
118 2.C.]<sup>6</sup> and to conduct surface alteration activity permitted in subparagraph 2.D.; (2) cutting  
119 necessary to remove hazards to human safety and control active fire; and (3) pursuant to a  
120 forest management plan approved in advance and in writing by Holder, cutting necessary  
121 and appropriate to improve the scenic character of the Protected Property, enhance  
122 wildlife habitat and opportunities for wildlife observation, enhance the health of the forest,  
123 and to prevent or treat disease or exotic intrusion or reduce fire danger, which may include  
124 the removal of blowdowns and diseased or damaged vegetation, the establishment of  
125 firebreaks, and the natural regeneration or replanting and cultivation to maturity of  
126 indigenous forest plant species. Grantor shall endeavor in all such cutting and vegetation  
127 management activities to preserve the scenic forested landscape of the Protected  
128 Property when viewed from public roadways and trails on the Protected Property and  
129 Clifford Park, and to avoid disturbance of or intrusion into streams and vernal pools.  
130 [Proceeds from permitted forest management will be used to manage the Protected  
131 Property for its conservation and public access uses.]<sup>7</sup>

132

133 F. No dumping, storage, or burial of waste materials of any nature is permitted on the  
134 Protected Property, except that slash and debris from permitted activities may be left on

135 the Protected Property and other waste resulting from permitted uses shall be stored in  
136 appropriate containment for removal at reasonable intervals.

137

138 G. [The Protected Property shall remain available to the general public for day-time]<sup>8</sup>  
139 pedestrian low-impact outdoor recreation, nature observation and study, provided  
140 however, Grantor and Holder may mutually agree to close the Protected Property to public  
141 use, temporarily or permanently, in part or in whole, or for certain uses, in the interest of  
142 protecting the scenic, habitat, and ecological values of the Protected Property consistent  
143 with the purposes of this Conservation Easement. In particular, any public use that results  
144 in rutting of the surface, erosion, or siltation into surface waters must be curtailed. Grantor  
145 and Holder claim all of the rights and immunities against liability for injury to the public to  
146 the fullest extent of the law under Title 14 M.R.S.. section 159-A, et seq. as amended and  
147 successor provision thereof (The Maine Recreational Use Statute), the Maine Tort Claims  
148 Act, and under any other applicable provision of law and equity. Nothing herein shall be  
149 construed to grant the general public or any member thereof standing to enforce this  
150 conservation easement.

151

152 H. Grantor shall not grant permission to use the Protected Property for motorized  
153 vehicular use, except for their own and Holder's management purposes, wheelchair  
154 access, and access in emergency circumstances. If a trail is built as contemplated  
155 hereunder, Grantor agrees to install signage at the trail heads to prohibit motorized  
156 vehicular use and reasonable barriers to discourage motorized access, [other than  
157 seasonal snowmobiles and Grantor's maintenance equipment.]<sup>5</sup>

158

159 3. AFFIRMATIVE RIGHTS GRANTED TO HOLDER

160 A. Holder shall have the right to prohibit or limit any use of the Protected Property,  
161 otherwise permitted hereby, that is conducted in a manner detrimental to the conservation  
162 purposes of this Easement, including those rights set out in 2(G), above.

163 B. Holder shall have the right to enter the Protected Property by any reasonable  
164 means, at any time, for the purposes of monitoring the condition and uses of the Protected  
165 Property for compliance with this Conservation Easement, Holder shall have the right to  
166 enforce this Conservation Easement at law or in equity, including the right to require  
167 restoration in the event of a breach, subject to naturally occurring changes.

168 C. [Holder shall have the right, after notice to Grantor and an opportunity to confer, to  
169 assign its rights and interests under this Conservation Easement to another qualified  
170 Holder, defined at Title 33 M.R.S, section 476(2), as amended, that commits to carrying out  
171 the purposes of this Easement.]<sup>9</sup>

172 D. Holder shall have the right to have its name and its conservation role in preserving  
173 the Protected Property acknowledged in any signs or publicity identifying the Protected  
174 Property, or part thereof, as a nature preserve open to the public. Holder may install such  
175 signs at the entrance to the Protected Property and at the entrance to Clifford Park off  
176 West Street, or at Grantor's request, may approve signs installed by Grantor.

177 E. After consultation with and written notice to Grantor, and at reasonable times  
178 Holder has the right, but not the obligation, to (1) conduct ecological and other natural  
179 resource inventories to identify occurrences of rare, threatened, endangered, or listed  
180 species, and exemplary natural communities, (2) conduct research studies and establish  
181 scientific monitoring plots or equipment, and (3) manage invasive or nuisance non-native  
182 species and improve wildlife habitat.

183 F. Holder and Grantor have the right to amend this conservation easement in  
184 accordance with Title 33 M.R.S., section 477-A(2).

185 4. GENERAL TERMS AND PROVISIONS.

186 A. Holder is not responsible for control maintenance and upkeep of the Protected  
187 Property nor for payment of taxes or any other charges attributable to the Protected  
188 Property, and Grantor shall defend and indemnify Holder therefrom.

189 B. If uncertainty should arise in the interpretation of these easements and restrictions,  
190 judgment should be made in favor of preserving the Protected Property in its natural and  
191 scenic condition, and as wildlife habitat, and in favor of preserving the opportunity for  
192 public use to the extent that such use is consistent with protection of its scenic, wildlife  
193 habitat and ecological values.

194 C. By execution and delivery of this deed and the reserved Conservation Easement  
195 herein, the Grantor agrees to be bound by the terms of this Conservation Easement.

196 D. By acceptance of this deed, [HOLDER]<sup>1</sup>, on behalf of itself, its successors and  
197 permitted assigns; to accept the rights and obligations as Holder thereof, pursuant to Title  
198 33 M.R.S.A. Section 476 et seq. and successor provisions.

199

200 IN WITNESS WHEREOF, the Inhabitants of the City of Biddeford, have caused this  
201 Conservation Easement to be signed in its corporate name, by \_\_\_\_\_, its City Manager,  
202 duly authorized, on this day of \_\_\_\_\_, .

203

204 STATE OF MAINE

205 COUNTY OF YORK. Date: \_\_\_\_\_

206

207 Then personally appeared the above named municipal officer of the City of Biddeford, and  
208 acknowledged the foregoing instrument to be his free act and deed in his said capacity and  
209 the free act and deed of the Inhabitants of said municipality.

210

211 Before me,

212

213 My commission expires:

214 HOLDER ACCEPTANCE

215 The above and foregoing Conservation Easement was authorized to be accepted by the  
216 [HOLDER]<sup>1</sup> and [HOLDER]<sup>1</sup> does hereby accept the foregoing Conservation Easement, by  
217 and through [name of representative] this day of \_\_\_\_\_.

218

219 [HOLDER]<sup>1</sup>

220 [Title]

221 ACKNOWLEDGMENT

222 STATE OF MAINE

223 COUNTY OF [name]

224 Personally appeared [name of representative], [title] of the above-named [HOLDER]<sup>1</sup> and  
225 acknowledged the foregoing instrument to be his free act and deed in his said capacity,  
226 and the free act and deed of said corporation.

227

228 EXHIBIT A

229 Legal Description of the Protected Property

230 Page 1 of 3

231 The Protected Property is a certain lot or parcel of land situated in the City of Biddeford,  
232 County of York and State of Maine, bounded and described as follows:

233

234 A certain portion of a lot or parcel of land, with any improvements thereon, situated off but  
235 not adjacent to Atlantic Street and Pool Street<sup>10</sup> in the City of Biddeford, County of York and  
236 State of Maine, being more particularly described as follows:

237

238 Beginning at the most northwesterly property corner of the herein described parcel of land,  
239 being a portion of the land described in a deed recorded in the York County Registry of  
240 Deeds in Deed Book 1804, Page 118 and the most southwesterly property corner of the  
241 land now or formerly of Peter P. Kolar Jr. as described in a deed recorded in the registry in  
242 Deed Book 15477, Page 341 and along the easterly property line of the land now or formerly  
243 of the City of Biddeford as described in a deed recorded in the Registry in Deed Book 473,  
244 Page 14;

245 Thence, by and along the land of said Kolar, following a magnetic bearing of South 69° 19'  
246 37" East, a distance of 499.21 feet to the land now or formerly of Stacy L. Fortier and Troy  
247 C. Fortier as described in a deed recorded in the Registry in Deed Book 8663, Page 81;

248 Thence, by and along the land of said Fortier, South 44° 33' 32" West, a distance of 730.68  
249 feet to the most southwesterly property corner of the said land of Fortier;

250 Thence, by and along the land of said Fortier, South 45° 13' 28" East, a distance of 264.04  
251 feet to the land now or formerly of the City of Biddeford as described in a deed recorded in  
252 the Registry in Deed Book 601, Page 397;

253 Thence, by and along the land of said City of Biddeford, South 46° 01' 32" West,

254 a distance of 2278.34 feet to the land now or formerly of Gervais Dube Properties as  
255 described in a deed recorded in the Registry in Deed Book 10746, Page 109;

256 Thence, by and along the land of said Gervais Dube Properties and the land now of  
257 formerly of Sarah Lefferts and Steven Lefferts as described in a deed recorded in the  
258 Registry in Deed Book 15719., Page 820, South 47° 09' 25" West, a distance of 311.26 feet

259 to the land now or formerly of Michele A. Kroeze and Edgar A. Kroeze as described in a  
260 deed recorded in the Registry in Deed Book 14384, Page 125;

261

262 Thence, by and along the land of said Kroeze and the land of the following abutters,  
263 Michael J. Hoctor and Lorraine B. Hoctor Deed Book 15480, Page 306, Robert F. Gaudette  
264 Jr. Deed Book 5370, Page 54, and Brian R. Lajeunesse as described in Deed Book 6166,  
265 Page 176, North 44°-38'-57" West, a distance of 421.93 feet to the land now or formerly of  
266 Joseph K. Gobiell and Margaret M. Gobeil as described in a deed recorded in the Registry in  
267 Deed Book 3359, Page 229;

268 Exhibit A

269 Thence, by and along the land of said Gobeil, North 40°-13'-29" West, a distance of 238.26  
270 feet to the land to be retained by the herein Grantor Alfred R. Boutin Jr;

271 Thence, by and along the retained land of Boutin, North 45°-36'-18" East, a distance of  
272 957.74 feet;

273 .Thence, by and along the land of said retained land of Boutin, North 43°-39'-10" West, a  
274 distance of 167.82 feet;

275 Thence, continuing by and along the retained land of Boutin, South 46°-20'-50" West, a  
276 distance of 170.00 feet;

277 Thence, continuing by and along the retained land of Boutin, North 43°-39'-10" West, a  
278 distance of 100.00 feet to the southerly sideline of Atlantic Street and a position on a curve  
279 to the left in said streetline of Atlantic Street;

280 Thence, by and along the curve in said streetline, having a radius of 50.00 feet, a arc  
281 distance of 71.11 feet to the land now or formerly of to the land now or formerly of Janet P.  
282 Michaud and Daniel R. Michaud as described in a deed recorded in the Registry in Deed  
283 Book 7488, Page 80;

284 Thence, by and along the land of said Michaud, North 57°-37'-39" East, a distance of 40.00  
285 feet;

286 Thence, continuing by and along the land of said Michaud, North 17°-55'-43" East, a  
287 distance of 129.38 feet to the land now or formerly of Lisa M. Hout and Conrad R. Hout as  
288 described in Deed Book 8167, Page 203;

289 Thence, by and along the land of said Hout and the land now or formerly of Dianne P.  
290 Gaddigan as described in Deed Book 8150, Page 98, North 46°-22'-47" East, a distance of

291 622.57 feet to the land now or formerly of the City of Biddeford, as described in a deed  
292 recorded in the Registry in Deeds in Book 473, Page 14;

293 Thence, by and along the land of said City of Biddeford, South 43° 37' 13" East, a distance  
294 of 164.81 feet;

295 Thence, by and along the land of said City of Biddeford, North 46° 04' 22" East, a distance  
296 of 1463.77 feet to the Point of Beginning.<sup>11</sup>

297 The above described parcel of land contains 2326892.1 square feet or 53.82<sup>12</sup> acres of  
298 land.

299 Bearings are based upon Magnetic North 2010.

300 The above described parcel of land is subject to an access easement benefitting the  
301 inhabitants of Biddeford as described in a deed recorded in the York County Registry of  
302 Deeds in Deed Book 6974, Page 246.<sup>13</sup>

303 [The above described parcel of land is a portion of the land conveyed from George E.  
304 Brickates to Alfred L. Boutin by virtue of a deed recorded in the York County Registry of  
305 Deeds in Deed Book 1804, Page 118.

306 With the benefit of an access easement for its monitoring and enforcement purposes over  
307 the access right of way depicted in Exhibit B, conveyed by Alfred L. Boutin to the  
308 Inhabitants of the City of Biddeford, by a deed dated March 10, 1994, and recorded at the  
309 York County Registry of Deeds at Book 6974, Page 244.]<sup>14</sup>

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# EXHIBIT B<sup>15</sup>

## 321 Sketch Map of the Protected Property

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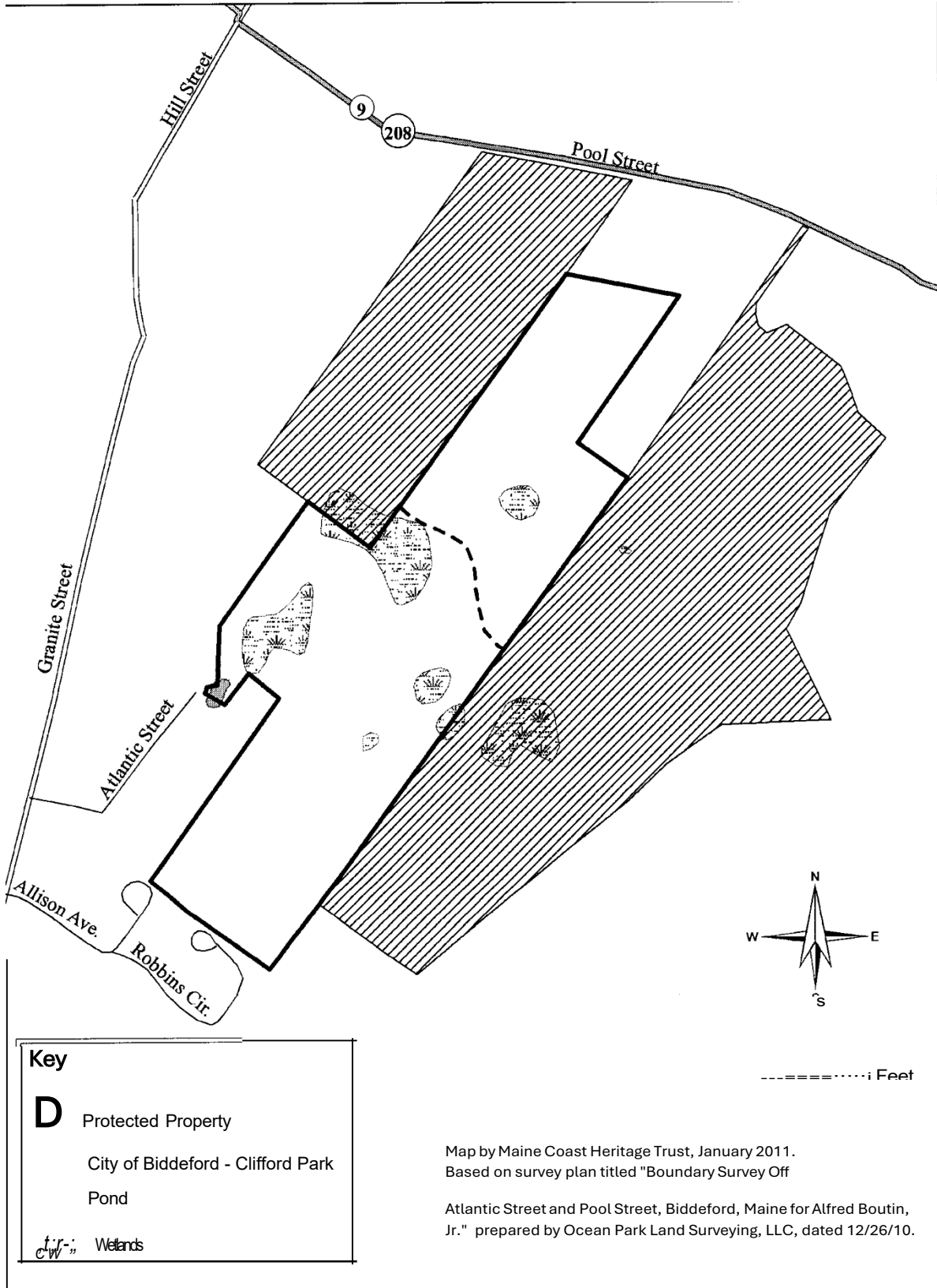
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327

328



# Know all Men by these Presents, That

The Mary Ann Clifford and Achsah S. Clifford both of Biddeford in the County of York and State of Maine

In consideration of fifteen hundred dollars, paid by The City of Biddeford in said County of York

the receipt whereof we do hereby acknowledge, do hereby give, grant, bargain, sell and convey unto the said City of Biddeford

\_\_\_\_\_ Heirs and Assigns forever, a certain lot or parcel, of, land situated on the South West side of Pool Street in said City of Biddeford bounded as follows, viz: on the South East by land of Charles W. Woodwin and Alfred Woodwin and land of William P. Freeman; - on the South-west by land of Charles W. Bragdon and Son; on the North West by land of Margaret J. Kilpatrick and on the North East by said Pool Street - 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.

To Have and to Hold the above granted and conveyed premises with all the privileges and appurtenances thereof to the said City of Biddeford for the purpose <sup>specified to</sup> Heirs and Assigns to their use and behoof forever. And we do covenant with the said Grantee Heirs and Assigns, that we are lawfully seised in fee of the premises; that they are free of all incumbrances;

that we have good right to sell and convey the same to the said Grantee to hold as aforesaid; and that we and our Heirs shall and will WARRANT AND DEFEND the same to the said Grantee for the above named purpose Heirs and Assigns forever, against the lawful claims and demands of all persons.

In Witness Whereof, We the said Grantors,

have hereunto set our hand and seal this first day of September in the year of our Lord one thousand eight hundred and ninety four.

S. W. Louques

Mary A. Clifford (Seal)  
Achsah S. Clifford (Seal)

State of Maine, York, ss. September 1st 1894. Personally appeared the above named Mary Ann Clifford & Achsah S. Clifford and acknowledged the above instrument to be their free act and deed.

Before me, Samuel W. Louques JUSTICE OF THE PEACE.

Recorded according to the original received January 8, 1895 at 12 h. 50 m. P. M.

Attest: Martin M. Leavitt REGISTER.

# CONSERVATION EASEMENT

## Inhabitants of the City of Biddeford to Maine Coast Heritage Trust

The **INHABITANTS OF THE CITY OF BIDDEFORD**, a municipal body corporate and politic, organized and existing under the laws of the State of Maine, with a mailing address of P.O. Box 586, Biddeford, Maine 04005, (hereinafter "Grantor"), for consideration paid,

GRANT, without covenants, this Conservation Easement in perpetuity, pursuant to 33 M.R.S. §476 *et seq.*, as amended,

to **MAINE COAST HERITAGE TRUST**, a nonprofit corporation organized and operating in the State of Maine and whose mailing address is One Bowdoin Mill Island, Suite 201, Topsham, Maine 04086, its successors and permitted assigns (hereinafter referred to as the "Holder")

the following described Protected Property: Over, through, under and across certain parcels of land adjacent to or near Clifford Park off West Street, in the City of Biddeford, County of York, and State of Maine, being more particularly described in **Exhibit A**, and depicted in the sketch map entitled **Exhibit B**, both attached hereto and made a part hereof, (hereinafter referred to as the "Property" or the "Protected Property"), exclusively for conservation purposes as follows:

a CONSERVATION EASEMENT which shall run with the Protected Property and be binding in perpetuity upon Grantor, and its successors and assigns, pursuant to the Maine Uniform Conservation Easement Act, Title 33 M.R.S. Section 476 *et seq.*, as amended and successor provisions thereof, for the benefit of the general public, consisting of the following purposes, recitals, terms, and reserved restrictions and affirmative rights of Grantor herein, and the exhibits attached hereto, and the Baseline Documentation described hereinafter; all as hereinbelow set forth:

*WHEREAS, the Protected Property consists of approximately fifty-three (53) acres of undeveloped and predominantly forested coastal upland within and at the western edge of the Biddeford-Kennebunkport Vernal Pool Complex, important to Blandings turtles and spotted turtles; and*

*WHEREAS, the Protected Property has been acquired by Grantor with funding from Holder and with a grant from the Maine Natural Resources Conservation Program of The Nature Conservancy, a District of Columbia nonprofit corporation with a Maine office in Brunswick, Maine, in order to protect it as part of the Biddeford-Kennebunkport Vernal Pool Complex.*

*WHEREAS, the Protected Property remains in a highly scenic and entirely undeveloped condition that provides (1) important wildlife habitat values; (2) important traditional access to the forest and recreational opportunities for the general public in an area of increasing development pressure and closure of public access; and (3) scenic enjoyment to the general public when viewed in its existing entirely undeveloped state;*

NOW THEREFORE, it is the purpose of this Conservation Easement to provide significant public benefit by protecting and preserving in perpetuity the scenic and ecological character of the Protected Property, while assuring continuing opportunities for daytime non-motorized low-impact outdoor recreation, nature observation and study by the general public that are consistent with the protection of its scenic, habitat and ecological values, as follows:

CliffordParkExp.Biddeford.CE.sigfinal 013111

**1. EXISTING CONDITIONS.**

As of the date of this grant, there are no structures on the Protected Property, other than culverts in streams and an asphalt platform in a stream crossing, and no surface alterations except for rustic unpaved footpaths and the easement for a right of way described in a deed recorded at the York County Registry of Deeds at Book 6974, Page 244, and depicted generally in Exhibit B. The Protected Property is substantially forested except for vernal pools and natural open areas important to wildlife habitat.

**2. LAND USE RESTRICTIONS.**

A. The Protected Property shall be held as one undivided parcel as described in Exhibit A and shown on Exhibit B, without further division, subdivision, partition, or other creation of parcels or lots. The Protected Property may not be conveyed or transferred except in its entirety, provided however, that any portion thereof may be conveyed to an entity that meets the requirements of a qualified assignee as set forth in subparagraph 3.C herein. The Protected Property may not be used to calculate or increase the permitted development density of land not subject to this Conservation Easement. Nothing herein should be construed to limit or prevent the Grantor from entering into additional restrictions on the Protected Property for the purpose of grant agreements with funders, provided all such restrictions are consistent with the conservation purposes hereof.

B. The Protected Property shall be used for conservation, education and low-impact outdoor recreation, nature observation and study by the general public; and shall not be used for, industrial, mining, or residential uses, nor to provide access, utilities, views, or other services for the benefit of other property, except to the extent that such rights already exist for the benefit of other property by deed or operation of law as of the date of this grant, in particular the access and utility easement described in Exhibit A and depicted in Exhibit B (Book 6974, Page 244), which shall not be altered, or increased in size or scope without the prior written consent of Holder.

C. No additional structures may be placed or constructed on the Protected Property except for boundary markers, commemorative or memorial plaques, and other minor and rustic structures designed to enhance the opportunity for low impact outdoor recreation, nature observation and study and to preserve the conservation values of the Protected Property, such as small unlighted directional and informational signs; minor habitat improvements; observation blinds; platforms, temporary structures for non-commercial camping and events; temporary privies, waste receptacles, and tents for events; storage sheds or boxes for equipment; and rustic trail improvements as necessary to minimize erosion, discourage unauthorized use by the general public, and protect fragile areas from over use. Utility and access structures and roadway improvements are permitted to the extent of the rights of others in the access easement described in a deed at Book 6974, Page 244, depicted in Exhibit B. In furtherance of the foregoing, the following structures are strictly prohibited: residential structures, outbuildings, gazebos, screen houses, docks, piers, barns, bleachers, permanent stages, paved platforms, major recreational improvements such as swimming pools, tennis courts, mud runs, athletic or sports or equestrian fields or courts or courses that require grading of the surface or extensive barring of mineral soils.

D. No excavation, filling, dredging, grading or other alteration may be made to the surface of the Protected Property except those caused by the forces of nature, except that Grantor shall have the right to alter the surface as necessary to:

- 1) install and maintain the structures permitted in subparagraph 2.C above; and
- 2) establish and maintain additional "rustic unpaved foot trails," which are defined as paths no wider than eight (8) feet in average tread width, that are designed to prevent rutting erosion or siltation into surface waters with appropriate signage and barriers to discourage use and access by the general public in motorized vehicles, other than seasonal snowmobiles and Grantor's maintenance vehicles.

All such surface alteration activity must be designed to preserve the scenic and natural appearance of the Protected Property, must be conducted in a manner to minimize erosion and run-off into the seasonal stream and vernal pools, and the disturbed surrounding area must be restored to a condition that blends with the undisturbed surrounding land.

E. No standing timber or live vegetation may be cut or removed on the Protected Property except (1) cutting necessary to install the structures permitted in subparagraph 2.C. and to conduct surface alteration activity permitted in subparagraph 2.D.; (2) cutting necessary to remove hazards to human safety and control active fire; and (3) pursuant to a forest management plan approved in advance and in writing by Holder, cutting necessary and appropriate to improve the scenic character of the Protected Property, enhance wildlife habitat and opportunities for wildlife observation, enhance the health of the forest, and to prevent or treat disease or exotic intrusion or reduce fire danger, which may include the removal of blowdowns and diseased or damaged vegetation, the establishment of firebreaks, and the natural regeneration or replanting and cultivation to maturity of indigenous forest plant species. Grantor shall endeavor in all such cutting and vegetation management activities to preserve the scenic forested landscape of the Protected Property when viewed from public roadways and trails on the Protected Property and Clifford Park, and to avoid disturbance of or intrusion into streams and vernal pools. Proceeds from permitted forest management will be used to manage the Protected Property for its conservation and public access uses.

F. No dumping, storage, or burial of waste materials of any nature is permitted on the Protected Property, except that slash and debris from permitted activities may be left on the Protected Property and other waste resulting from permitted uses shall be stored in appropriate containment for removal at reasonable intervals.

G. The Protected Property shall remain available to the general public for day-time pedestrian low-impact outdoor recreation, nature observation and study, provided however, Grantor and Holder may mutually agree to close the Protected Property to public use, temporarily or permanently, in part or in whole, or for certain uses, in the interest of protecting the scenic, habitat, and ecological values of the Protected Property consistent with the purposes of this Conservation Easement. In particular, any public use that results in rutting of the surface, erosion, or siltation into surface waters must be curtailed. Grantor and Holder claim all of the rights and immunities against liability for injury to the public to the fullest extent of the law under Title 14 M.R.S. section 159-A, et seq. as amended and successor provision thereof (The Maine Recreational Use Statute), the Maine Tort Claims Act, and under any other applicable provision of law and equity. Nothing herein shall be

construed to grant the general public or any member thereof standing to enforce this conservation easement.

H. Grantor shall not grant permission to use the Protected Property for motorized vehicular use, except for their own and Holder's management purposes, wheelchair access, and access in emergency circumstances. If a trail is built as contemplated hereunder, Grantor agrees to install signage at the trail heads to prohibit motorized vehicular use and reasonable barriers to discourage motorized access, other than seasonal snowmobiles and Grantor's maintenance equipment.

### **3. AFFIRMATIVE RIGHTS GRANTED TO HOLDER**

A. Holder shall have the right to prohibit or limit any use of the Protected Property, otherwise permitted hereby, that is conducted in a manner detrimental to the conservation purposes of this Easement, including those rights set out in 2(G), above.

B. Holder shall have the right to enter the Protected Property by any reasonable means, at any time, for the purposes of monitoring the condition and uses of the Protected Property for compliance with this Conservation Easement, Holder shall have the right to enforce this Conservation Easement at law or in equity, including the right to require restoration in the event of a breach, subject to naturally occurring changes.

C. Holder shall have the right, after notice to Grantor and an opportunity to confer, to assign its rights and interests under this Conservation Easement to another qualified Holder, defined at Title 33 M.R.S, section 476(2), as amended, that commits to carrying out the purposes of this Easement.

D. Holder shall have the right to have its name and its conservation role in preserving the Protected Property acknowledged in any signs or publicity identifying the Protected Property, or part thereof, as a nature preserve open to the public. Holder may install such signs at the entrance to the Protected Property and at the entrance to Clifford Park off West Street, or at Grantor's request, may approve signs installed by Grantor.

E. After consultation with and written notice to Grantor, and at reasonable times Holder has the right, but not the obligation, to (1) conduct ecological and other natural resource inventories to identify occurrences of rare, threatened, endangered, or listed species, and exemplary natural communities, (2) conduct research studies and establish scientific monitoring plots or equipment, and (3) manage invasive or nuisance non-native species and improve wildlife habitat.

F. Holder and Grantor have the right to amend this conservation easement in accordance with Title 33 M.R.S., section 477-A(2).

### **4. GENERAL TERMS AND PROVISIONS.**

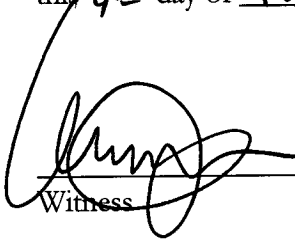
A. Holder is not responsible for control, maintenance and upkeep of the Protected Property nor for payment of taxes or any other charges attributable to the Protected Property, and Grantor shall defend and indemnify Holder therefrom.

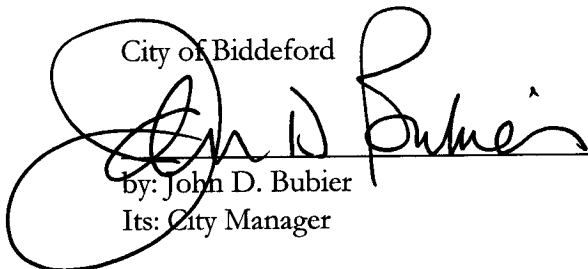
B. If uncertainty should arise in the interpretation of these easements and restrictions, judgment should be made in favor of preserving the Protected Property in its natural and scenic condition, and as wildlife habitat, and in favor of preserving the opportunity for public use to the extent that such use is consistent with protection of its scenic, wildlife habitat and ecological values.

C. By execution and delivery of this deed and the reserved Conservation Easement herein, the Grantor agrees to be bound by the terms of this Conservation Easement.

D. By acceptance of this deed, Maine Coast Heritage Trust, on behalf of itself, its successors and permitted assigns, to accept the rights and obligations as Holder thereof, pursuant to Title 33 M.R.S.A. Section 476 et seq. and successor provisions.

IN WITNESS WHEREOF, the Inhabitants of the City of Biddeford, have caused this Conservation Easement to be signed in its corporate name, by John D. Bubier, its City Manager, duly authorized, on this 4<sup>th</sup> day of February, 2011.

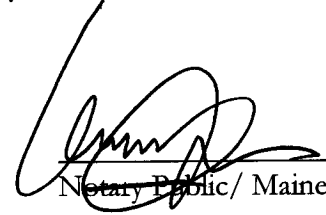
  
\_\_\_\_\_  
Witness

City of Biddeford  
  
\_\_\_\_\_  
by: John D. Bubier  
Its: City Manager

STATE OF MAINE  
COUNTY OF YORK.

Date: 2/4, 2011

Then personally appeared the above named municipal officer of the City of Biddeford, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of the Inhabitants of said municipality.

Before me,   
\_\_\_\_\_  
Notary Public / Maine Attorney

KEITH R. JACQUES  
\_\_\_\_\_  
Print name  
My commission expires:

**HOLDER ACCEPTANCE**

The above and foregoing Conservation Easement was authorized to be accepted by the **Maine Coast Heritage Trust** and **Maine Coast Heritage Trust** does hereby accept the foregoing Conservation Easement, by and through David MacDonald its Director of Land Protection this 1st day of February, 2011.

**MAINE COAST HERITAGE TRUST**

David MacDonald  
David MacDonald  
Director of Land Protection

**ACKNOWLEDGMENT**

STATE OF MAINE  
COUNTY OF HANCOCK

February 1, 2011

Personally appeared David MacDonald, the Director of Land Protection of the above-named **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,  
Heidi K. Smallidge

Notary Public  
**HEIDI K. SMALLIDGE**  
~~Notary Public, Maine~~  
**My Commission Expires June 15, 2012**

Typed or printed name of Notary \_\_\_\_\_  
My commission expires: \_\_\_\_\_

**SEAL**

**EXHIBIT A**  
**Legal Description of the Protected Property**  
**Page 1 of 3**

The Protected Property is a certain lot or parcel of land situated in the City of Biddeford, County of York and State of Maine, bounded and described as follows:

A certain portion of a lot or parcel of land, with any improvements thereon, situated off but not adjacent to Atlantic Street and Pool Street in the City of Biddeford, County of York and State of Maine, being more particularly described as follows:

Beginning at the most northwesterly property corner of the herein described parcel of land, being a portion of the land described in a deed recorded in the York County Registry of Deeds in Deed Book 1804, Page 118 and the most southwesterly property corner of the land now or formerly of Peter P. Kolar Jr. as described in a deed recorded in the registry in Deed Book 15477, Page 341 and along the easterly property line of the land now or formerly of the City of Biddeford as described in a deed recorded in the Registry in Deed Book 473, Page 14;

Thence, by and along the land of said Kolar, following a magnetic bearing of South 69°-19'-37" East, a distance of 499.21 feet to the land now or formerly of Stacy L. Fortier and Troy C. Fortier as described in a deed recorded in the Registry in Deed Book 8663, Page 81;

Thence, by and along the land of said Fortier, South 44°-33'-32" West, a distance of 730.68 feet to the most southwesterly property corner of the said land of Fortier;

Thence, by and along the land of said Fortier, South 45°-13'-28" East, a distance of 264.04 feet to the land now or formerly of the City of Biddeford as described in a deed recorded in the Registry in Deed Book 601, Page 397;

Thence, by and along the land of said City of Biddeford, South 46°-01'-32" West, a distance of 2278.34 feet to the land now or formerly of Gervais Dube Properties as described in a deed recorded in the Registry in Deed Book 10746, Page 109;

Thence, by and along the land of said Gervais Dube Properties and the land now or formerly of Sarah Lefferts and Steven Lefferts as described in a deed recorded in the Registry in Deed Book 15719, Page 820, South 47°-09'25" West, a distance of 311.26 feet to the land now or formerly of Michele A. Kroeze and Edgar A. Kroeze as described in a deed recorded in the Registry in Deed Book 14384, Page 125;

Thence, by and along the land of said Kroeze and the land of the following abutters, Michael J. Hocter and Lorraine B. Hocter Deed Book 15480, Page 306, Robert F. Gaudette Jr. Deed Book 5370, Page 54, and Brian R. Lajeunesse as described in Deed Book 6166, Page 176, North 44°-38'-57" West, a distance of 421.93 feet to the land now or formerly of Joseph K. Gobel and Margaret M. Gobeil as described in a deed recorded in the Registry in Deed Book 3359, Page 229;

**Exhibit A Page 2 of 3**

Thence, by and along the land of said Gobeil, North 40°-13'-29" West, a distance of 238.26 feet to the land to be retained by the herein Grantor Alfred R. Boutin Jr;

Thence, by and along the retained land of Boutin, North 45°-36'-18" East, a distance of 957.74 feet;

Thence, by and along the land of said retained land of Boutin, North 43°-39'-10" West, a distance of 167.82 feet;

Thence, continuing by and along the retained land of Boutin, South 46°-20'-50" West, a distance of 170.00 feet;

Thence, continuing by and along the retained land of Boutin, North 43°-39'-10" West, a distance of 100.00 feet to the southerly sideline of Atlantic Street and a position on a curve to the left in said streetline of Atlantic Street;

Thence, by and along the curve in said streetline, having a radius of 50.00 feet, a arc distance of 71.11 feet to the land now or formerly of to the land now or formerly of Janet P. Michaud and Daniel R. Michaud as described in a deed recorded in the Registry in Deed Book 7488, Page 80;

Thence, by and along the land of said Michaud, North 57°-37'-39" East, a distance of 40.00 feet;

Thence, continuing by and along the land of said Michaud, North 17°-55'-43" East, a distance of 129.38 feet to the land now or formerly of Lisa M. Hout and Conrad R. Hout as described in Deed Book 8167, Page 203;

Thence, by and along the land of said Hout and the land now or formerly of Dianne P. Caddigan as described in Deed Book 8150, Page 98, North 46°-22'-47" East, a distance of 622.57 feet to the land now or formerly of the City of Biddeford, as described in a deed recorded in the Registry in Deeds in Book 473, Page14;

Thence, by and along the land of said City of Biddeford, South 43°-37'-13" East, a distance of 164.81 feet;

Thence, by and along the land of said City of Biddeford, North 46°-04'-22" East, a distance of 1463.77 feet to the Point of Beginning.

The above described parcel of land contains 2326892.1 square feet or 53.82 acres of land.

Bearings are based upon Magnetic North 2010.

The above described parcel of land is subject to an access easement benefitting the inhabitants of Biddeford as described in a deed recorded in the York County Registry of Deeds in Deed Book 6974, Page 246.

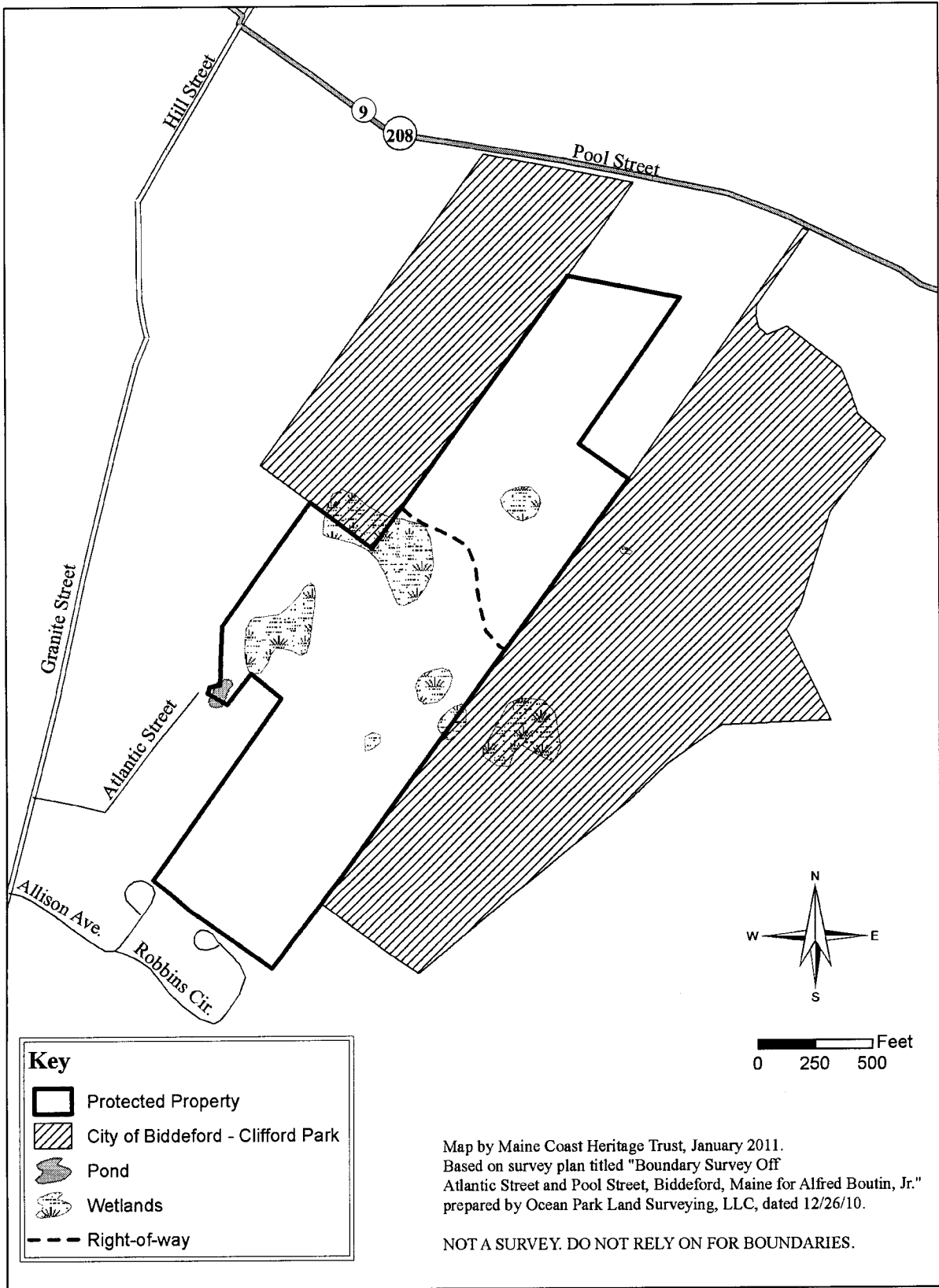
**Exhibit A**  
**Page 3 of 3**

The above described parcel of land is a portion of the land conveyed from George E. Brickates to Alfred L. Boutin by virtue of a deed recorded in the York County Registry of Deeds in Deed Book 1804, Page 118.

With the benefit of an access easement for its monitoring and enforcement purposes over the access right of way depicted in Exhibit B, conveyed by Alfred L. Boutin to the Inhabitants of the City of Biddeford, by a deed dated March 10, 1994, and recorded at the York County Registry of Deeds at Book 6974, Page 244.

# EXHIBIT B

## Sketch Map of the Protected Property



Keith Fletcher  
 Maine Coast Heritage Trust  
 1 Bowdoin Mill Island, Suite 201  
 Topsham ME 04086

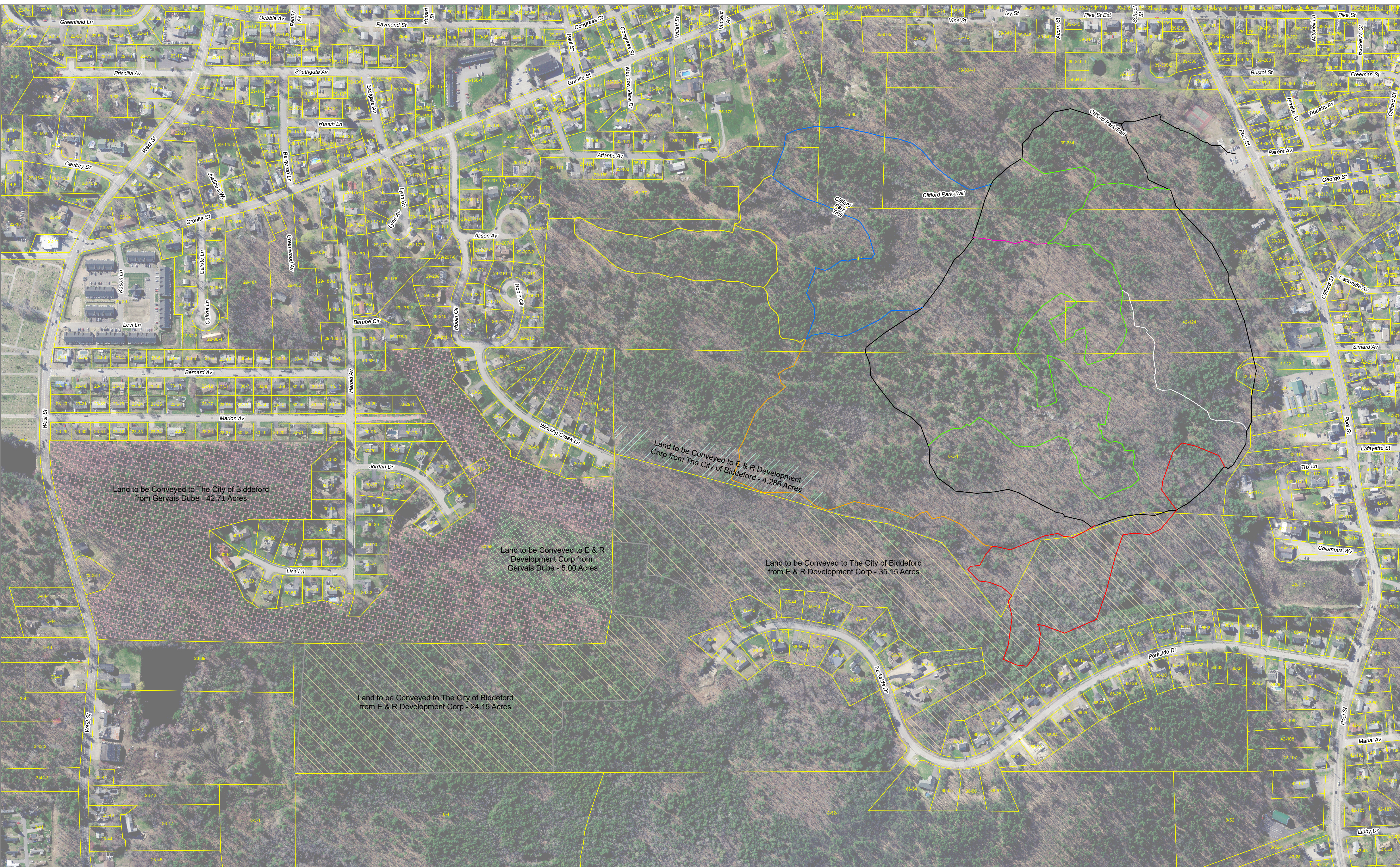
10p97

Key	
	Protected Property
	City of Biddeford - Clifford Park
	Pond
	Wetlands
	Right-of-way

Map by Maine Coast Heritage Trust, January 2011.  
 Based on survey plan titled "Boundary Survey Off  
 Atlantic Street and Pool Street, Biddeford, Maine for Alfred Boutin, Jr."  
 prepared by Ocean Park Land Surveying, LLC, dated 12/26/10.  
 NOT A SURVEY. DO NOT RELY ON FOR BOUNDARIES.

**END OF DOCUMENT**

CliffordParkExp.Biddeford.CE.sigfinal 013111



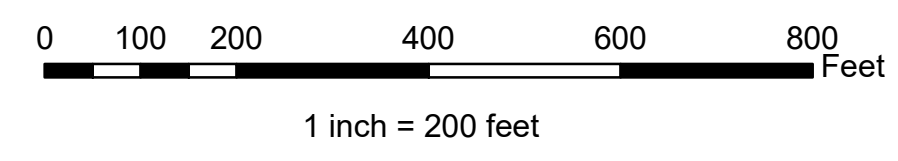
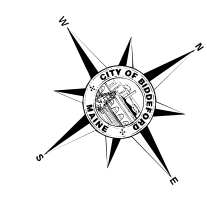
Land to be Conveyed to The City of Biddeford from Gervais Dube - 42.71 Acres

Land to be Conveyed to E & R Development Corp from Gervais Dube - 5.00 Acres

Land to be Conveyed to E & R Development Corp from The City of Biddeford - 4.286 Acres

Land to be Conveyed to The City of Biddeford from E & R Development Corp - 35.15 Acres

Land to be Conveyed to The City of Biddeford from E & R Development Corp - 24.15 Acres

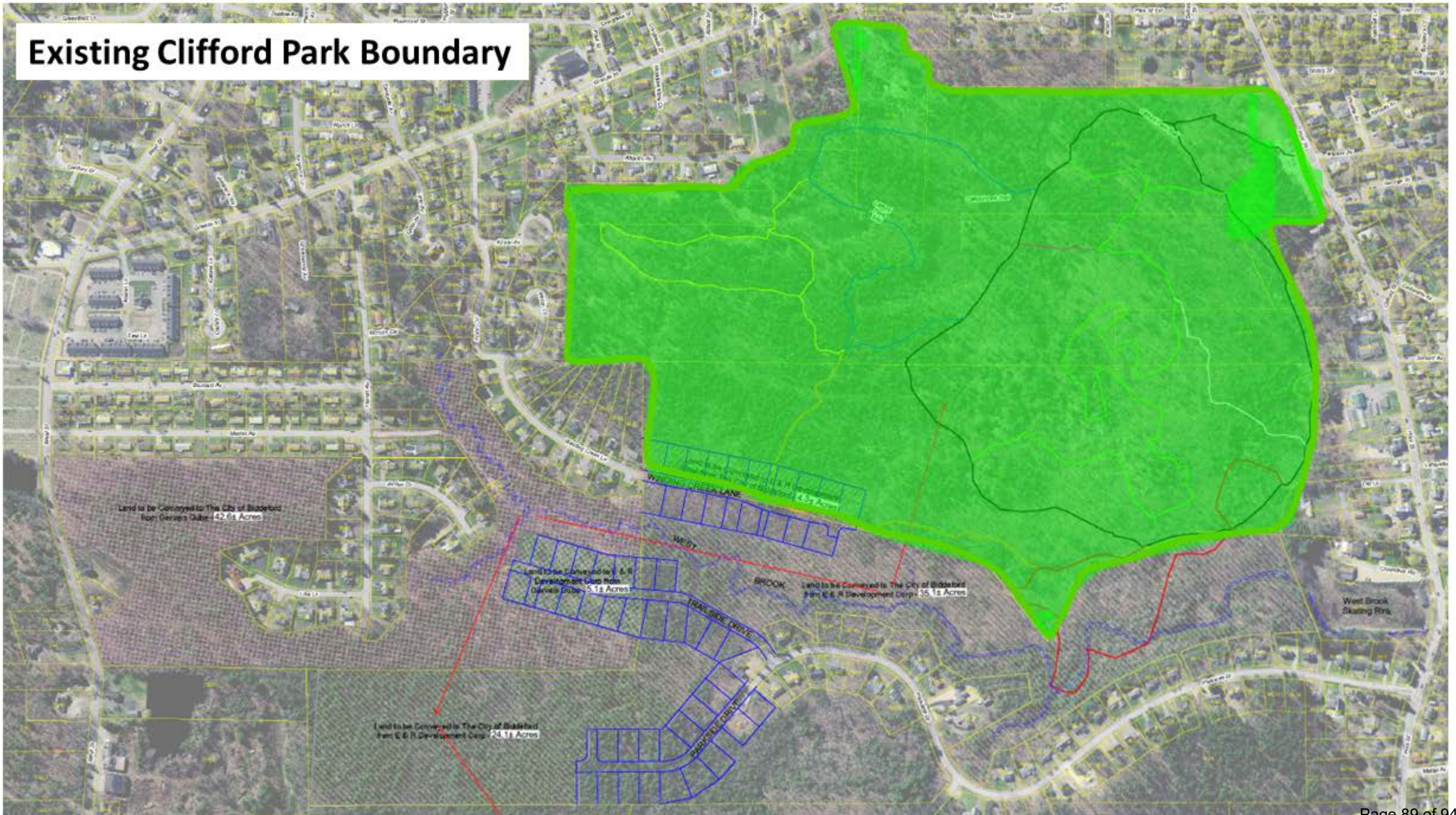


## Proposed Land Conveyances

### Legend

- |  |   |  |              |  |              |
|--|---|--|--------------|--|--------------|
|  | Gervais Dube to E&R Development Corp          |  | Blue Trail   |  | Pink Trail   |
|  | City of Biddeford to E&R Development Corp     |  | Green Trail  |  | Red Trail    |
|  | E&R Development Corp to the City of Biddeford |  | Orange Trail |  | White Trail  |
|  |   |  | Black Trail  |  | Yellow Trail |

# Existing Clifford Park Boundary





# Property Being Conveyed to City of Biddeford for Clifford Park

