AGENDA
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – MARCH 7, 2018
TOWN COUNCIL WORKSHOP RE:
STORMWATER MS4 PERMIT EDUCATION/ WATERSHED PLAN UPDATE – 6:00 P.M.
REGULAR MEETING – 7:00 P.M.

NO NEW BUSINESS SHALL BE TAKEN UP AFTER 10:00 P.M.

Item 1. Call to Order.

Item 2. Pledge of Allegiance.

Item 3. Roll Call.

Item 4. General Public Comments.*

Item 5. Minutes: February 21, 2018 - Regular Town Council Meeting.
March 1, 2018 – Special Town Council Meeting.

Item 6. Adjustment to the Agenda.

Item 7. Items to be signed: a. Treasurer's Warrants.

***Procedure for Addressing Council** [Posted in Chambers.]

Order No. 18-018, 7:00 p.m. Public hearing with the Planning Board and the Town Council on the proposed Contract Zone Request from Patriot Acura Dealership located at the corner of Payne Road and Haigis Parkway. *[Town Planner/Town Manager]*

Order No. 17-109, 7:00 p.m. Public hearing on the request for the Scarborough Town Council to Order the Discontinuance of all portions of Avenue 2 located southerly of King Street with no damages awarded to the abutting landowners; and to file said Order with the Town Clerk. [The second reading is scheduled for Wednesday, March 21, 2018.] *[Town Manager]*

OLD BUSINESS:

Order No. 18-001. Second reading on the proposed amendments to the Higgins Beach Character-Based Zoning Districts. *[Long Range Planning Committee]*

Order No. 18-002. Second reading on the proposed amendments to the Town of Scarborough Zoning Map. *[Long Range Planning Committee]*

Order No. 18-003. Second reading on the proposed amendments to Chapter 405 – Town of Scarborough Zoning Ordinance, Section VIIC. Residential Density and Affordable Housing Provisions, sub-section B. Affordable Housing In Lieu Fee - (f). *[Housing Alliance Committee]*

NEW BUSINESS:

Order No. 18-019. Act to authorize the Town Manager to execute a Temporary Construction Easement to Thomas and Terry Hegerle of 39 Ocean Avenue, to allow access during the construction of a new home on their property, via Town owned land identified as Map U002 , Lot 4, on Scarborough Tax Assessor's Map, subject to the conditions that such access is limited to that portion of the Town owned land on the ocean side of the existing stockade fence and that the area be restored to the pre-construction condition. *[Town Manager]*

Order No. 18-020. Act on the request from the Scarborough Housing Alliance to award a grant from the Affordable Housing Initiative Fund in the amount of $100,000 toward the Avesta Housing Project to offset unexpected environmental remediation costs and authorize the Town Manager to sign any and all documents related to this order. *[Scarborough Housing Alliance]*

Item 8. Non Action Items:

Item 9. Standing and Special Committee Reports and Liaison Reports.

Item 10. Town Manager Report.

Item 11. Council Member Comments.

Item 12. Adjournment.

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SCARBOROUGH TOWN COUNCIL
WEDNESDAY – MARCH 7, 2018
REGULAR MEETING – 7:00 P.M.

Order No. 18-018. 7:00 p.m. Public hearing with the Planning Board and the Town Council on the proposed Contract Zone Request from Patriot Acura Dealership located at the corner of Payne Road and Haigis Parkway. *[Town Planner/Town Manager]*

Motion by Councilor , seconded by Councilor , to move approval pursuant to Chapter 405 Section 4. Procedures – a- iii: advise the applicant: (1) to withdraw the request for contract zoning; or (2) to continue to process the request for contract zoning, with or without modifications suggested by the Council; or (3) to revise and resubmit the application for contract zoning, under Section II(I)(4)(a)(i) above.

Town Planner/Town Manager

Sponsor

Ought to Pass

Recommendation

03/07/18 – Vote:

First Reading/Vote

03/07/18 - Public Hearing

Public Hearing

N/A

Second Reading/Final Approval/Vote

SCARBOROUGH, MAINE INC. 1658

To: Town Council and Planning Board
From: Jay Chace, Planning Director
Date: March 1, 2018
Cc: Tom Hall

RE: Contract Zone Process Orientation memo
Patriot Acura-Contract Zone Proposal
Joint Council and Board meeting, March 8, 2018

The intent of this memorandum is to layout the March 8th meeting processes for the Patriot Acura contract zone proposal that will be jointly considered by the Council and Planning Board. The first meeting, beginning at 7 pm, is a formal public hearing to consider a proposal by Patriot Acura to establish an automobile dealership on the Haigis Parkway. The need for the contract zone request is due to the fact that automobile dealerships are not otherwise permitted in the Haigis Parkway District.

In advance of March 8, Council and Board members may wish to review the Contract Zone requirements as established in Section II.(I) of the Zoning Ordinance. This section of the Ordinance details both the procedures and review criteria for contract zones. Below is an excerpt of the procedural requirements for the joint hearing:

I*n accordance with the Zoning Ordinance, Section II(I)4(a.)iii, the joint Planning Board/Town Council meeting shall be conducted as follows:*

- *Presentation by the applicant.*
- *Comments from Town staff.*
- *Comments from members of the public. (This shall constitute the public hearing by the municipal reviewing authority required by 30-A M.R.S.A. § 4352(8).)*
- *Response or rebuttal from applicant.*
- *Discussion among members of the Planning Board and the Town Council, which may include questions posed to the applicant, staff and the public.*
- *Comments from members of the Planning Board concerning the land use implications of the proposed contract zoning amendment.*
- *Preliminary Town Council discussion of contract zoning amendment.*

The Joint Planning Board/Town Council meeting may be continued from time-to-time by vote of the Town Council until the Council has concluded its discussion and is prepared to give the applicant preliminary direction concerning the further processing of the contract zoning request. At the conclusion of the discussion, the Council shall, by vote, advise the applicant: (1) to withdraw the request for contract zoning; (2) to continue to process the request for contract zoning, with or without modifications suggested by the Council; or (3) to revise and resubmit the application for contract zoning, under Section

II(I)(4)(a)(i) above. The vote of the Town Council shall constitute direction from the Council to the applicant as to how to proceed, but shall not be binding on either the applicant or the Council, which reserves its sole and exclusive judgment as the elected legislative body of the Town of Scarborough until its final vote on the proposed contract zoning amendment.

Attached to this memo is the "Summary of Procedural Steps for Contract Zoning" as established in Zoning Ordinance. As highlighted in the attached "Summary of Procedural Steps" [Appendix B of the Zoning Ord.], the application is in Phase I, Step Three of the review process which, as stated above, is a preliminary review by the Council and Board.

I hope this process oriented memo proves useful for Board and Council members as you move toward the meeting on March 8th.

Attachment A

Appendix B- Summary of Procedural Steps for Contract Zoning

This summary is intended to provide a shorthand guide to the contract zoning process for applicants, Town officials and the public. This summary does not substitute for the text of Section II(I) of the Zoning Ordinance, which governs the process for contract zoning.

Phase 1 – Preliminary Joint Review by Planning Board and Town Council

Step One: The applicant files an application for contract zoning with the Town Planner.

Step Two: The Town Planner evaluates the application for completeness.

Step Three: The Planning Board and Town Council conduct a joint meeting for preliminary review of the contract zoning application. The joint meeting includes:

a. Public hearing under 30-A M.R.S.A. § 4352(8).
b. Planning Board comments on the land use implications of the proposed contract zoning.
c. Council discussion of the proposed contract zoning.
d. Council's preliminary direction to the applicant concerning further proceedings on the contract zoning request.

Phase 2 – Planning Board Plan Review

Step Four: The applicant files the application for site plan approval (and subdivision approval, if required).

Step Five: After public hearing, the Planning Board grants preliminary, provisional approval to the site plan (and subdivision plan, if required).

Phase 3 – Town Council Action

Step Six: The Town Council holds the first reading of the contract zoning amendment.

Step Seven: The Town Council holds a public hearing.

Step Eight: The Town Council holds the second reading and votes on the contract zoning amendment.

Step Nine: The applicant records the contract zoning agreement in the registry of deeds.

Phase 4 – Final Planning Board Action

Step Ten: The Planning Board grants final site plan approval (and subdivision approval, if required).

SEBAGO TECHNICS

CIVIL ENGINEERING ▪ SURVEYING ▪ LANDSCAPE ARCHITECTURE

Contract Zone Application
Patriot Acura

Prepared for
Patriot Realty-Saco, LLC
496 Portland Rd, Saco ME 04072

Prepared by
Sebago Technics
75 John Roberts Rd.
South Portland, ME 04106

February 2018
17465

February 16, 2018
17465

Hand Delivered

Town Councilors and Planning Board Members
Town of Scarborough, Maine
P.O. Box 360
Scarborough, Maine 04070-0360

RE: Patriot Acura Automobile Dealership -1000 Haigis Parkway, Scarborough, ME
Request for Preliminary Joint Review of Application for Contract Zoning

Ladies and Gentlemen:

Patriot Realty-Saco, LLC is pleased to submit the enclosed materials for review and consideration in connection with the proposed development of the approximately 16.52 acre parcel of land located at 285 Payne Road, also known as 1000 Haigis Parkway, within the Haigis Parkway District in Scarborough. The property is identified as Parcel #RO5205 within the Scarborough Tax Map Parcel and recorded at the Cumberland Co. Registry of Deeds in Deed Book/Page 2871/25. The project, referred to as "**Patriot Acura Automobile Dealership**," involves the construction of an Acura Automobile Dealership and Service Facility with outdoor display of car inventory.

The Project consists of a one (1) building, containing the showroom, sales, and service for the first Acura Dealership located in southern Maine. The proposed new Acura Dealership is shown currently with a footprint of approximately 20,000 square feet, however that owner is working to further reduce that square footage, to reduce costs. The building is comprised of two main elements, the showroom / client area and the workshop. The showroom exterior is highlighted by large expanses of glass set between a series columns. The surface of the columns and the showroom exterior walls are synthetic stucco with bands of accent colors. The workshop is synthetic stucco with glass windows to match the showroom in form.

The Project shall include proposed amenities throughout the site to include paved parking/inventory areas at the rear of the site for customers, employees and vehicles for sale/display. Access will be provided from both Payne Road and Haigis Parkway. The site will also include provisions to address stormwater runoff by use of treatment ponds and buffer areas. We intend to include preservation of land for wetland protection, and stream buffering, and landscaping enhancements along the roadside will aide in the visual aesthetics, especially at the West Gateway to Scarborough (Corner of Payne Road and Haigis Parkway). Service utilities are available on both streets and include sewer, water, electrical and telecommunication services.

As set forth below, the Applicant anticipates the project will be corner piece for the Gateway into Scarborough as one would exit the Maine Turnpike off Exit 42 into Scarborough. A draft of the Contract Zone Agreement between the Town of Scarborough and Patriot Realty-Saco, LLC is provided in Exhibit 1. The site plan attached hereto as Exhibit 4 shows a preliminary depiction of The Patriot Acura Dealership property plan and proposed site layout. In addition, the Applicant has attached architectural elevation views, and footprint of the proposed Acura Automobile Dealership as provided by Gawron-Turgeon Architects (see Exhibit 5). The Applicant anticipates construction of this high quality build-out as shown along with landscaping enhancements to further improve the visual quality and public view.

While not addressed in the current development plan for the Project, it is anticipated that the portion of the Property that directly abuts the southern end of the lot along the Haigis Parkway could later be developed for other compatible commercial activities and uses with the automobile dealership.

The Project will utilize the existing infrastructure recently extended to the Haigis Parkway area but it is not anticipated that the Project itself will cause a significant burden to other Town services. This new automobile dealership will utilize private trash removal and recycling services as well as private snow removal and grounds-keeping services. In addition, the applicant does will not place impacts on the school system, or other Town services and will generate high paying jobs and taxes to benefit the community.

SITE ANALYSIS NARRATIVE OF THE PROPOSED PROJECT FOR CONTRACT ZONING

A copy of the current site sketch plan is included herein as Exhibit 4. An analysis of the proposed project site as required following Appendix-C, providing guidelines for preparation of the site analysis, as listed under the Contract Zoning Section of the Zoning Ordinance, is summarized below in Exhibit 3.

We hope you find this summary and the related attachments helpful in your review of this submission. We look forward to discussing this exciting project with you at the Joint Meeting with the Town Council and the Planning Board on March 7, 2017. In the meantime, please do not hesitate to contact us with any questions or comments.

Sincerely,

SEBAGO TECHNICS, Inc.

James R. Seymour

James R. Seymour
Sr. Project Manager
jrs//

cc: Adam Arens - President/Owner- Patriot Realty-Saco LLC
Richard Shinay Esq – Drummond/Woodsum Attorneys

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Exhibit 1

Contract Zone Agreement & Application

TOWN OF SCARBOROUGH, MAINE

Planning Board Application Form

All applications submitted for consideration by the Planning Board shall include:
☑ **this form** ☑ **payment of application fees**
☑ **submission materials** *(see relevant submission checklists and/or ordinance requirements)*

Project Name: Patriot Acura Dealership Project Type: Commercial - Auto Sales and Service
Project Location (physical address): 1000 Hagis Parkway/285 Payne Road
Assessors Map & Lot Number: Map R52 Lot 5 Zoning District: HP2

Applicant: PATRIOT REALTY-SACO, LLC Phone: 207 710-2700 E-mail: adam.arens@patriotsubaru.com
Mailing Address: 496 Portland Road, Saco ME 04072
Evidence of standing?
☐ Ownership ☑ Option ☐ Lease ☑ Purchase and sales contract ☐ Other

Property Owner: Jacqueline Curlew Phone: _____ E-mail: _____
Mailing Address: 285 Payne Road, Scarborough, ME 04074

Consultant/Agent: Sebago Technics, Inc. Phone: 207-200-2083 E-mail: jseymour@sebagotechnics.com
Mailing Address: 75 John Roberts Road, Suite 4A, South Portland, ME 04106

Billing Contact Information
Name: Sebago Technics, Inc. Phone: see above E-mail: jseymour@sebagotechnics.com
Address: 75 John Roberts Road. Bld. 4A South Portland, Maine

Application Authorization
I hereby make application to the Town of Scarborough for the above-referenced property(ies) and the development as described. The Town of Scarborough Planning Board and/or town employees are authorized to enter the property(ies) for purposes of reviewing this proposal and for inspecting improvements as a result of an approval of this proposal.

Signed: _____ **Date:** 2-16-18
Printed name: Adam Arens Owner/Pres. Patriot Realty-Saco,LLC

Please identify yourself (check one): Agent* _____ Applicant/Property Owner ✓
***(If you are an agent, written authorization must be attached to this form.)**

For Official Use:
$_____ **Application Fee Paid** **Received By (Initials):** _____ **Date:** _____

Draft 02/14/18

CONTRACT ZONING AGREEMENT
BETWEEN THE TOWN OF SCARBOROUGH
AND
PATRIOT REALTY – SACO, LLC

This Contract Zoning Agreement (hereinafter, this "Agreement") is made as of the ____ day of _____, 2018 by and between the TOWN OF SCARBOROUGH, a body corporate and politic, located in the County of Cumberland and State of Maine (hereinafter, the "Town"), and PATRIOT REALTY – SACO, LLC, a Maine limited liability company with a mailing address of c/o Adam S. Arens, 702 S. Lakeside Drive, Lake Worth, Florida 33460 (hereinafter, "Patriot Realty"), pursuant to the Contract Zoning provisions of Section II, Subsection I of the Zoning Ordinance of the Town of Scarborough (hereinafter, the "Zoning Ordinance").

WHEREAS, Patriot Realty intends to purchase a certain lot or parcel of land, with the buildings and improvements thereon, situated on the northeasterly side of Haigis Parkway and the southeasterly side of Payne Road in the Town of Scarborough, County of Cumberland, and State of Maine, consisting of the premises currently owned Jacqueline A. Curlew comprising approximately 16.52 acres and located at 285 Payne Road, also known as 1000 Haigis Parkway, being Lot 5 as shown on Town of Scarborough Tax Map R052, and described in a Warranty Deed from Ray L. Littlefield to George E. Curlew and Jacqueline A. Curlew, as joint tenants, dated December 4, 1964 and recorded in the Cumberland County Registry of Deeds in Book 2871, Page 25 (hereinafter, the "Property"), said George E. Curlew having died on November 19, 2015, leaving said Jacqueline A. Curlew as surviving joint tenant and sole owner of the Property; and

WHEREAS, Patriot Realty desires to construct and operate an automobile sales and service facility on the Property selling as its primary brand of automobile those in the Acura line, which facility will include the outdoor display of vehicles, a repair and service facility, and an internal area for washing vehicles sold and/or serviced on site (hereinafter, the "Facility"); and

WHEREAS, the Property is located in the Haigis Parkway District, HP (hereinafter, the "HP District") as described in Section XVIII B. of the Zoning Ordinance; and

WHEREAS, pursuant to Section B of the provisions of the Zoning Ordinance relating to the HP District, uses permitted in the HP District include, among others, retail sales and services excluding, however, "car washes, automobile repair and service facilities, and outdoor sales and services"; and

WHEREAS, "outdoor sales and services" as defined in the Zoning Ordinance includes "new or used car dealerships which are not fully enclosed"; and

WHEREAS, Patriot Realty has requested that, notwithstanding the limitations under Section B of the Zoning Ordinance relating to the HP District, the Town agree to a rezoning of the Property so as to permit Patriot Realty to construct and operate the Facility thereon; and

WHEREAS, the size, location, configuration and topography of the Property permit a level of buffering, landscaping and site design which will mitigate what might otherwise be adverse impacts of the Facility, provided the Facility is restricted to the density, scale and intensity proposed by Patriot Realty and further provided that any restrictions, provisions and conditions of this Agreement and the site plan approval by the Scarborough Planning Board are strictly observed; and

WHEREAS, the Scarborough Planning Board, pursuant to Section II, Paragraph G Subsection 3 of the Zoning Ordinance and 30-A M.R.S.A. §4352(8), and after notice and hearing and due deliberation thereon, recommended that the Property be rezoned to permit Patriot Realty to construct and operate the Facility thereon; and

WHEREAS, the proposed use of the Property, being in accordance with the requirements of the HP District, is consistent with the 2006 Update of the Comprehensive Plan of the Town of Scarborough adopted by the Scarborough Town Council on July 19, 2006 (hereinafter, the "Comprehensive Plan") for the area of the Property; and

WHEREAS, the Town of Scarborough, by and through its Town Council, having determined that the said use is pursuant to and consistent with the Comprehensive Plan and consistent with the permitted uses within the HP District, authorized the execution of this Agreement on _____, 2018.

NOW THEREFORE, in consideration of the mutual promises made by each party to the other, the parties covenant and agree as follows:

1. The Town will amend the Zoning Map of the Town of Scarborough by adopting the map change amendment shown on Attachment 1 hereto.

2. Notwithstanding the limitations under Section B of the Zoning Ordinance relating to the HP District, Patriot Realty shall be permitted to construct and operate an automobile sales and service facility on the Property, which facility will include the outdoor display of vehicles, a repair and service facility, and an internal area for washing vehicles sold and/or serviced on site

3. Patriot Realty is authorized to construct and operate the Facility to be used in accordance with the requirements of the HP District, except as amended by this Agreement.

4. The Property shall be developed and used only in accordance with the site plan as finally approved by the Scarborough Planning Board, and as said approved site plan may be amended from time to time pursuant to the provisions of the Site Plan Review Ordinance of the Town of Scarborough (hereinafter, the "Site Plan Ordinance").

5. The provisions of this Agreement shall be deemed restrictions on the use of the Property except as this Agreement may be amended by future written agreement of the Town of Scarborough and Patriot Realty, or their successors or assigns.

6. Except as the provisions of the HP District of the Zoning Ordinance have been amended by this Agreement, and subject to any other restrictions, provisions and conditions set forth herein regarding the development and use of the Property, all other requirements of the underlying HP District of the Zoning Ordinance shall apply and shall govern the use and development of the Property. Any such restrictions, provisions and conditions are an essential part of the aforesaid modification of the HP District provisions of the Zoning Ordinance as set forth herein, shall run with the Property, shall bind Patriot Realty, its successors and assigns of the Property or any part thereof.

7. Except as expressly modified herein, the use and occupancy of the Property shall be governed by and comply with the provisions of the Zoning Ordinance and any applicable amendments thereto and nothing contained in this Agreement shall be deemed to prohibit or limit the development and use of the Property in any other manner so long as such development and use is in compliance with the applicable provisions of the Zoning Ordinance and otherwise approved pursuant to the Site Plan Ordinance and/or other applicable Scarborough Ordinances and, if applicable, State and Federal laws, ordinances and regulations.

8. Nothing set forth in this Agreement shall be deemed to prohibit or limit the right of Patriot Realty, or any tenant or subsequent owner of the Property, to sell as the primary brand of automobile, one or more brands other than those in the Acura line.

9. The Town of Scarborough shall have the power to enforce all conditions and restrictions of this Agreement, both through enforcement action pursuant to Section IV of the Zoning Ordinance and through legal action for specific performance of this Agreement. In the event that Patriot Realty or it successors or assigns fail to develop and operate the Facility in accordance with this Agreement, or in the event of any other breach hereof, and such failure or breach continues for a period of thirty (30) days after written notice of such failure or breach, or in the event such failure or breach cannot reasonably be remedied or cured within such thirty (30) day period, if Patriot Realty, its successors or assigns, fail to commence to cure or remedy such failure or breach within said thirty (30) day period and thereafter fails to diligently prosecute such cure or remedy to completion in a reasonable time taking into account the nature of such failure or breach and the action necessary to cure or remedy same, then this Agreement may be terminated by vote of the Scarborough Town Council. In that event, the Property may then be used only for such uses and according to such zoning requirements as are otherwise allowed by law.

10. In the event any provision of this Agreement is found to be invalid or unenforceable, such finding shall not affect the validity and enforceability of the remaining provisions of this Agreement. The failure of either party to insist upon strict performance of any of the terms or conditions of this Agreement or to exercise any of its rights under the Agreement shall not waive such rights and such party shall have the right to enforce such rights at any time and take such action as may be lawful and authorized under this Agreement, either in law or in

equity. This Agreement and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the State of Maine.

11. Patriot Realty shall record this Agreement in the Cumberland County Registry of Deeds within thirty (30) days after its approval by the Scarborough Town Council.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

WITNESS:

_____

TOWN OF SCARBOROUGH

By: _____
Thomas J. Hall, its Town Manager (duly authorized by vote of the Scarborough Town Council on _____, 2018)

STATE OF MAINE
COUNTY OF CUMBERLAND, ss. _____, 2018

Personally appeared the above named Thomas J. Hall, Town Manager of the Town of Scarborough, and acknowledged the foregoing instrument to be his free act deed in his said capacity and the free act and deed of said Town of Scarborough.

Before me,

_____
Notary Public/Attorney at Law

_____
Print name

My Commission expires _____

WITNESS:

PATRIOT REALTY – SACO, LLC

_____

By: _____
Adam S. Arens
Its Manager

STATE OF MAINE
COUNTY OF CUMBERLAND, ss. _____, 2018

Personally appeared the above named Adam S. Arens, Manager of Patriot Realty – Saco, LLC, and acknowledged the foregoing instrument to be his free act deed in his said capacity and the free act and deed of said Patriot Realty – Saco, LLC.

Before me,

_____
Notary Public/Attorney at Law

_____
Print name

My Commission expires _____

Attachment 1

Map Change Amendment consisting of one (1) page.

CONTRACT FOR THE SALE OF COMMERCIAL REAL ESTATE

TO BE RECEIVED UPON ACCEPTANCE OF THIS OFFER BY SELLER, from **Patriot Realty-Saco, LLC, and/or its assigns** (hereinafter called "Purchaser"), the sum of Ten Thousand Dollars ($10,000) as earnest money deposit toward the purchase and sale of certain real estate owned by **Jacqueline A. Curlew** (hereinafter called "Seller") and located in Cumberland County at 285 Payne Road, Scarborough, Maine consisting of a single family residence and barn located on 16.52 +/- acres of land which is depicted on the Town of Scarborough Tax Assessor's Map R-52, Lot 5 and being a portion of the property described at said County's Registry of Deeds in Book 2871, Page 25, together with all rights, privileges, easements and appurtenances thereto, including without limitation, all air rights, water rights, rights-of-way or other interests in, on, under or to any land, highway, alley, street or rights-of-way abutting or adjoining said parcel and any and all real property and rights described in or associated with the property described in said deed, upon the terms and conditions indicated below.

1. PERSONAL PROPERTY: The following items of personal property are included in this sale: None.

2. PURCHASE PRICE: The total Purchase Price is [redacted] with payment to be made as follows:

   Earnest money:
   Balance due at closing, in immediately available funds: [redacted] (less additional deposits)

3. EARNEST MONEY/ACCEPTANCE: Upon the full execution of this Contract, Purchaser shall deliver the sum of [redacted] to NAI The Dunham Group ("Escrow Agent") as a refundable earnest money deposit, except that a portion thereof up to [redacted] shall be paid as a credit to Seller for Seller's attorney fees incurred to review this Contract. In addition, on the first day of each month following the month when Purchaser obtains contract zoning approval Purchaser shall pay to Seller an additional deposit in the amount of One Thousand [redacted] which amount shall be nonrefundable but shall be credited against the purchase price at closing.

4. TITLE: Seller shall convey the property to Purchaser at the closing in fee simple with good, marketable and insurable title, free and clear of liens and encumbrances and other matters of record adversely impacting Purchaser's intended use of the property, together with sufficient rights and easements for vehicular and pedestrian access to the property (including appropriately permitted and approved road openings and curb-outs), and for installation, maintenance, repair and replacement of utilities and communication lines serving the property from a public road. The property shall not be considered to be in compliance with the provisions of this Contract with respect to title unless all structures and improvements on the property shall be wholly within the lot lines of the property and in compliance with all municipal setback, bulk, height and other zoning requirements and shall not encroach upon any property not within such lot lines, and no building, structure, improvements or property of any kind encroaches onto the property. Within forty-five (45) days of the Effective Date (the "Title Review Period"), Purchaser shall notify Seller in writing (the "Title Objection Notice") of any matters affecting title to the property or related to a survey of the property that are objectionable to Purchaser in Purchaser's sole discretion ("Title Defects"). Purchaser shall be deemed to have waived the right to object to any matter affecting title as of the expiration of the Title Review Period, except for any mortgage, tax lien, mechanics' lien, judgment lien, or other liens, encumbering the property (for which no objection is required), if Purchaser fails to specifically identify such matters in the Title Objection Notice (each matter not objected to being a "Permitted Encumbrance"). Within seven (7) days of Seller's receipt of the Title Objection Notice, Seller shall notify Purchaser in writing whether or not

 Purchaser's Initials: ____ Seller's Initials: JAC

Seller elects to cure any of the matters identified in the Title Objection Notice. If Seller elects to cure certain Title Defects, Seller shall use good faith, commercially reasonable efforts to cure such Title Defects and shall have a period of not more than thirty (30) days after notice of Seller's election within which to cure any such Title Defects (the "Title Cure Period"), and the Closing Date shall be extended until five (5) days after the expiration of the Title Cure Period. If Seller elects not to cure any Title Defects or if Title Defects which Seller elects to cure are not cured within the Title Cure Period, Purchaser shall elect, by written notice to Seller on or before the Closing Date, as the same may be extended, either (i) to accept title to the property subject to such uncured Title Defects without reduction of the purchase price and without any liability on the part of Seller therefore, in which case such Title Defects shall be Permitted Encumbrances, or (ii) to terminate this Contract, whereupon the earnest money shall be promptly returned to Purchaser and neither party shall have any further obligations under this Contract, except for those obligations, if any, which by their terms expressly survive. In addition, Purchaser acknowledges and agrees that if Purchaser elects to terminate this Contract pursuant to this Section, Seller shall not be liable to Purchaser for any costs, expenses or damages (consequential or otherwise) incurred by Purchaser in connection with this Contract.

Seller agrees that, after the Effective Date, it shall not permit or suffer encumbrance of the property with (i) any liens resulting from Seller's failure to pay any amount due and payable by Seller in connection with the property, (ii) any mortgage voluntarily entered into by Seller that would survive the Closing Date, or (iii) any easements or leases without, in each instance, obtaining Purchaser's prior written consent; Purchaser agrees that it will not unreasonably withhold or delay its consent to new utility easements or new leases. On or before the Closing Date, Seller shall remove at its sole cost any such matters affecting the title to the property suffered or created by or consented to by Seller after the Effective Date that are not otherwise approved by Purchaser.

Purchaser agrees that Seller may use any portion of the Purchase Price to satisfy any matters affecting title to the property provided that the same shall be fully discharged at or prior to the closing at Seller's expense.

5. DEED: In return for payment in full of the purchase price, Seller shall convey the property on or before August 1, 2018 (the "Closing Date") to Purchaser by Maine Statutory Short-Form Quit Claim Deed with Covenant (the "Deed"), Seller further agrees to execute and deliver to or cause to be delivered to Purchaser and/or its designees at the closing the originals of all permits and licenses relating to the property (if any) in Seller's possession or control, and such documents, affidavits and certificates as are otherwise required by this Agreement, required by law and/or reasonably necessary for Purchaser's acquisition, financing and contemplated development of the property, including without limitation a Certificate of Non-Foreign Status (as required by Internal Revenue Service regulations), an affidavit regarding underground storage tanks (as required by Maine Law), a surface/subsurface waste disposal system certificate (if applicable), a "Seller's Affidavit" regarding mechanics liens and persons in possession in form and substance acceptable to Purchaser's title insurance company, applicable Maine State REW forms. Purchaser shall have three (3) options to extend the Closing Date by up to thirty (30) days each by written notice to Seller. Purchaser to deliver to Seller a non-refundable deposit of [redacted] for each 30 day extension when exercised which will be applied to the Purchase Price. **Unless the Closing shall have occurred, this Contract shall automatically expire upon the later of: (a) August 1, 2018, or (b) the date which is nine (9) months after the Effective Date of Contract specified in Section 20 hereof; or (c) at the end of the most current 30 day extension.** The parties also agree to execute and deliver on the Closing Date such other documents that are customary and/or reasonably necessary to complete the conveyance, provided such other documents are in form and substance reasonably satisfactory to Seller and Purchaser and do not contain any provisions that amend or otherwise expand the parties' respective obligations under this Contract. It is a condition to Purchaser's obligations hereunder that title to the property shall be free

and clear of all liens and encumbrances except for the following matters and otherwise in compliance with the requirements of this Contract: (i) zoning restrictions and land use laws and regulations and permits and approvals issued pursuant thereto; (ii) current taxes and assessments attributable to periods from and after the Closing, which Purchaser shall be liable to pay; and (iii) any Permitted Encumbrance.

6. LEASES/TENANT SECURITY DEPOSITS: Seller represents to Purchaser that there are no leases, occupancies or tenancies affecting the property.

7. POSSESSION/OCCUPANCY: Possession/occupancy of property and all buildings located thereon shall be given to Purchaser on the Closing Date free and clear of all leases, occupancies and tenancies.

8. RISK OF LOSS: Until transfer of title, the risk of loss or damage to the property by fire or otherwise is assumed by Seller. The property shall at closing be in substantially the same condition as of the Effective Date, excepting reasonable use and wear. If the property is materially damaged or destroyed prior to closing, Purchaser may either terminate this Contract and be refunded the earnest money deposit, or close this transaction and accept the property in its as-is condition together with an assignment of the Seller's right to any insurance proceeds relating thereto.

9. PRORATIONS: The following items shall be prorated as of the Closing Date:

   a. Real Estate Taxes based on the municipality's current tax year. Seller is responsible for any unpaid taxes for prior years.
   b. Purchaser and Seller shall each pay one-half of the transfer tax as required by the laws of the State of Maine.

10. MUNICIPAL ASSESSMENT: Seller shall pay in full to the Town of Scarborough at or before the Closing Date, all sums assessed against the property relating to utility (including sewer), road, and other improvements associated with the Haigis Parkway Municipal Development District and Tax Increment Financing District.

11. REPRESENTATIONS AND WARRANTIES OF SELLER. Seller represents and warrants to Purchaser that the following are true as of the date of this Contract and will be true as of the closing:

    a. To the best of seller's knowledge, there are no outstanding pending or threatened liens, claims, rights of first refusal, licenses or encumbrances against or affecting the property, other than the assessment referred to in paragraph 10.

    b. There is no pending, or to the best of Seller's knowledge, threatened action or proceeding (including, but not limited to, any condemnation or eminent domain action or proceeding) before any court, governmental agency or arbitrator relating to or arising out of Seller's ownership of the property or any portion thereof, or which may adversely affect Seller's ability to perform her obligations under this Agreement, or which may affect the property or any portion thereof.

    c. To the best of Seller's knowledge, there are no outstanding claims, losses or demands against Seller by any person respecting Seller's ownership, use or occupancy of the property.

    d. To the best of Seller's knowledge, the property has not been used for any dumping of waste materials or landfilling and is free of special wastes, underground storage tanks (other than the septic tank), radon, asbestos, lead substances, and any hazardous, biomedical, radioactive or toxic, substances, materials or wastes, except that there was a household dump area containing cans and bottles that was there when Seller bought the property 55 years ago. Seller has not added to anything to the household

dump area. Seller makes no representations regarding the contents of this household dump area. The terms used in the foregoing sentences shall include, without limitation, all substances, materials, etc., designated by such terms under any laws, ordinances or regulations, whether federal, state or local.

e. Seller has no knowledge of any boundary disputes or encroachments affecting the property.

Purchaser's performance under this Contract is conditioned upon the truth and accuracy of Seller's warranties and representations expressed herein. All warranties and representations expressed herein shall survive the Closing and any termination of this Contract, in either case for a period of twelve (12) months (the "Survival Period"). Seller agrees to indemnify, defend and hold Purchaser harmless from and against any liability, cost, damage, loss, claim, expense or cause of action (including, but not limited to, attorney fees and court costs) incurred by or threatened against Purchaser as a result of any of Seller's warranties or representations contained in this Contract being untrue in any material respect, so long as Purchaser provides Seller with written notice of a claim hereunder on or before the expiration of the Survival Period.

12. DUE DILIGENCE: Purchaser is advised to seek information from professionals regarding any specific issue of concern. Neither Seller nor the Real Estate Licensees identified below make any representations or warranties regarding the condition, permitted use or value of Seller's real or personal property, except as expressly set forth herein. Purchaser's obligation to close under this Contract is conditioned upon Purchaser's satisfaction with its investigations of the property, which may, without limitation, include survey, appraisal, environmental assessment, engineering studies, test borings, wetlands or soils studies, zoning compliance or feasibility, code compliance, and contract zone approval, all within two hundred seventy (270) days of the Effective Date.

All investigations will be done by professionals chosen and paid for by Purchaser. If the result of an investigation is unsatisfactory to Purchaser, Purchaser may terminate this Contract by written notice given to Seller on or before the expiration of the two hundred seventy (270) day period set forth above, whereupon the earnest money shall be promptly returned to Purchaser and neither party shall have any further obligations under this Contract, except for those obligations, if any, which by their terms expressly survive. In addition, Purchaser acknowledges and agrees that if Purchaser elects to terminate this Contract pursuant to this Section, Seller shall not be liable to Purchaser for any costs, expenses or damages (consequential or otherwise) incurred by Purchaser in connection with this Contract. If Purchaser does not notify Seller that Purchaser's investigations are unsatisfactory within the time period set forth above, this contingency is waived by Purchaser. In the absence of any investigation(s) mentioned above, Purchaser is relying completely upon Purchaser's own opinion as to the condition of the property, except as except as expressly set forth in Section10 above.

Purchaser agrees to restore any disturbance to the property caused by Purchaser's investigations, and Purchaser agrees to indemnify and hold Seller harmless for any claims, damages, losses or costs, including without limitation reasonable attorney fees, incurred or suffered by Seller solely as a result of Purchaser's investigations of the property, which indemnification obligation shall survive termination or closing under this Contract.

If, in connection with the performance of its due diligence, Purchaser and/or its engineers, architects, consultants, contractors, or other representatives require access to the property, Seller agrees to reasonably cooperate with Purchaser and its representatives; provided, however, such access shall be during normal business hours and after reasonable prior oral notice (not less than two (2) business days) to Seller or Seller's agent.

 Purchaser's Initials: _____ Seller's Initials: _____

13. FINANCING: Notwithstanding anything to the contrary in this Contract, Purchaser's obligation to close hereunder is conditioned upon Purchaser's obtaining within forty-five (45) days from the Effective Date of this Contract (the "Commitment Date") a written commitment (the "Commitment") from a lender for a **mortgage loan in an amount that is at least seventy percent (70%) of the purchase price, at an interest rate not to exceed six percent (6%) per annum, amortized over twenty (20) years.** In the event the Purchaser is unable to obtain the Commitment, then Purchaser may terminate this Contract by written notice given to Seller by the Commitment Date, whereupon the earnest money shall be promptly returned to Purchaser and neither party shall have any further obligations under this Contract, except for those obligations, if any, which by their terms expressly survive. This contingency benefits Purchaser only, and only Purchaser may waive it by providing written notice to Seller specifically waiving this condition and contingency or any part thereof.

14. AGENCY DISCLOSURE: Purchaser and Seller acknowledge that Jerry Applebee of Applebee Commercial is representing the Seller in this transaction and Thomas B Dunham of NAI The Dunham Group is representing the Purchaser. The brokerage commission shall be the responsibility of the Seller pursuant to the listing agreement with Applebee Commercial and shall be split between the brokers on a 50/50 basis.

15. CONDITION PRECEDENT TO BUYER'S OBLIGATION TO CLOSE. The obligation of Buyer to close is subject to the satisfaction at or before the closing of all of the following conditions:

    a. All representations and warranties of Seller contained in this Agreement shall be true as of the closing.

    b. Purchaser shall have received the financing referenced in Section in Section 13 above.

    c. The property shall be in substantially the same condition at the time of closing as it is as of the date of this Contract. Specifically and without limitation, no crops, trees, lumber, shrubs, soil, minerals, gravel, rocks, asphalt or other material shall have been removed from the property between the time of the execution of this Contract and the closing and there shall have been during said time no dumping, leaching, spilling or other depositing on, over or under the property, intentional or unintentional, of any chemical, waste, rubbish, garbage, fill, debris or other material of any kind.

    d. The property shall be free of all leases, tenancies, and occupancies.

    e. Purchaser shall have received all governmental permits, licenses and approvals, including a contact zone, which allows the property to be used as a new car Acura Automobile dealership with service facilities (hereinafter collectively the "Approvals"). In the event Purchaser is unable to obtain the Approvals or any Approval which Purchaser has obtained is being appealed, Purchaser may so notify Seller and elect to terminate this Contract, in which case the earnest money shall be immediately returned to Purchaser and neither party shall have any further obligations under this Contract, except for those obligations, if any, which by their terms expressly survive. Purchaser may elect to close notwithstanding the fact that Purchaser may not have obtained the Approvals or notwithstanding the fact that an Approval is being appealed. Seller agrees to fully cooperate with Purchaser to facilitate obtaining the Approvals in a timely manner.

In the event that any of the foregoing conditions is not satisfied, Purchaser shall have the option of terminating this Contract and receiving back the earnest money.

 Purchaser's Initials: TT Seller's Initials:

16. DEFAULT: If the sale of the property as contemplated hereunder is not consummated solely by reason of Purchaser's default hereunder, provided that Seller is then ready, willing and able to consummate the sale of the property as contemplated by this Contract and provided further that all conditions to Purchaser's obligation to consummate such purchase have been satisfied or waived by Purchaser, Seller shall be entitled to terminate this Contract and receive the earnest money as full and complete liquidated damages in lieu of any other legal or equitable remedy. The parties acknowledge that Seller's damages for the breach of Purchaser's obligations hereunder are difficult or impossible to ascertain and/or prove and that the earnest money is a reasonable estimate and forecast of such actual damages. The parties acknowledge that the payment of the earnest money is not intended as a forfeiture or penalty, but is intended to constitute liquidated damages to Seller.

    If the sale of the property as contemplated hereunder is not consummated solely by reason of Seller's default hereunder, provided that Purchaser is then ready, willing and able to consummate the purchase of the property as contemplated by this Contract, Purchaser shall be entitled to either (i) seek specific performance of this Contract or (ii) terminate this Contract and have the earnest money returned to it.

    If this Contract is terminated pursuant to the provisions of this Section 15, then the earnest money shall be promptly delivered to the party entitled to the same and neither party shall have any further obligations under this Contract, except for those obligations, if any, which by their terms expressly survive.

    In the event of an undisputed default by either party, the Escrow Agent may deliver the earnest money to the party entitled to it under this Contract, with written notice to both parties pursuant to Maine Real Estate Commission regulations. If a dispute arises between Purchaser and Seller as of the existence of a default hereunder and said dispute is not resolved by the parties within thirty (30) days, the Escrow Agent may elect to file and action in interpleader and deposit the earnest money in the court to resolve said dispute, or otherwise disburse the earnest money pursuant to Maine Real Estate Commission regulations. Purchaser and Seller, jointly and severally, shall indemnify Escrow Agent for all costs, losses, expenses, and damages, including reasonable attorney fees, incurred by the Escrow Agent in connection with said action and/or in connection with any dispute relating to this Contract and/or the earnest money.

17 MEDIATION: Any dispute or claim arising out of or relating to this Contract or the property addressed in this Contract shall be submitted to mediation in accordance with the Maine Rules of Civil Procedure, "Alternative Dispute Resolution" requirements, and such proceeding shall satisfy any such "ADR" requirement otherwise set forth in such Rules in the event a suit is commenced. This clause shall survive the closing of this transaction.

18. PRIOR STATEMENTS: This Contract sets forth the entire agreement between the parties, and there are no other representations, agreements or understandings with respect to the subject matter of this Contract. This Contract shall be construed according to the laws of the State of Maine.

19. HEIRS/ASSIGNS: This Contract shall extend to and be obligatory upon heirs, personal representatives, successors, and assigns of the respective parties.

20. COUNTERPARTS: This Contract may be signed on any number of identical counterparts, including telefax copies and electronically transmitted copies with the same binding effect as if all of the signatures were on one instrument.

21. EFFECTIVE DATE: The submission of this Contract or a summary of some or all of its provisions does not constitute an offer to sell or to buy the property, it being understood and agreed that neither

Seller nor Purchaser shall be legally obligated with respect to a sale or purchase of the property unless and until this Contract is signed by both Seller and Purchaser and such fact has been communicated to all parties or to their agents. Time is of the essence of this Contract. Seller or Licensees are given permission by the parties to complete the Effective Date blank below with the date of the last signature of the parties, and that date shall be the Effective Date for all purposes under this Contract, and if that blank is not completed then the Effective Date shall be the date of the last signature of the parties. Except as expressly set forth to the contrary in this Contract, the use of the term "days" in this Contract, including all addenda made a part hereof, shall mean calendar days. Deadlines in this Contract, including all addenda, expressed as "within x days" or the like shall be counted from the Effective Date, unless another starting date is expressly set forth, beginning with the first day after the Effective Date, or such other established starting date, and ending at 5:00 pm, Eastern Time, on the last day counted. Any time period provided for in this Contract that ends on a Saturday, Sunday or legal holiday shall extend to 5:00 p.m. (EST) on the next business day.

22. CONFIDENTIALITY: Buyer and Seller authorize the disclosure of the information herein to the real estate licensees, attorneys, lenders, appraisers, inspectors, investigators, and other involved in the transaction necessary for the purpose of closing this transaction. Buyer and Seller authorize the lender and/or closing agent preparing the closing statement to release a copy of the closing statement to the parties and their licensees prior to, at and after the closing.

23. **A copy of this Contract is to be received by all parties and, by signature, receipt of a copy is hereby acknowledged. If not fully understood, consult an attorney.**

24. Seller acknowledges that the laws of the State of Maine provide that every buyer of real property located in Maine must withhold a withholding tax equal to 2 ½% of the consideration unless Seller furnishes to Purchaser a certificate by the Seller stating, under penalty of perjury, that Seller is a resident of the State of Maine or the transfer is otherwise exempt from withholding.

25. LIKE KIND EXCHANGE: In the event that either the Seller or Purchaser are involved in an IRS 1031 Like-Kind tax deferred exchange or similar tax related transaction, all parties agree to cooperate provided that (i) there are no additional costs, obligations, or fundamental changes within the guidelines of this Contract, (ii) the documents are in form and substance reasonably satisfactory to the party not requesting the exchange, (iii) the Closing Date is not postponed, and (iv) the party requesting the exchange reimburses the other party, at the closing, for all out-of-pocket costs and expenses incurred by such other party in connection with its cooperation.

26. NOTICES: Each notice or other communication required or permitted hereby shall be in writing and shall be (a) personally delivered, (b) sent by a reputable overnight delivery service, (c) sent by United States certified mail, return receipt requested, postage prepaid, addressed as set forth herein.

(i) If to Seller:

Jacqueline Curlew
285 Payne Road
Scarborough, ME 04074

With a copy to:
James H. Young, II, Esq.
LeBlanc & Young
P.O. Box 7950
Four Canal Plaza
Portland, ME 04112-7950

 Purchaser's Initials: AA Seller's Initials:

(ii) If to Purchaser:

Patriot Realty-Saco, LLC
c/o Adam Arens
702 S. Lakeside Drive
Lake Worth, FL 33460

With a copy to:
William M. Welch, Esq.
Bernstein Shur
P.O. Box 9729
100 Middle Street
Portland, ME 04104-5029

Any notice or other communication given pursuant to the provisions of this Section 24 shall be deemed effective upon receipt by the addressee or upon the date receipt is refused. Either party may, by notice given as aforesaid, designate other addresses to which or addressees to whom notices shall be given.

Notwithstanding anything to the contrary contained in this Agreement, any notice given by or delivered to a party's attorney shall be deemed given by or delivered to the other party for the purposes of this Agreement.

27. BINDING EFFECT/ASSIGNMENT: This Contract shall not become a binding contract until signed by both parties and that fact has been communicated to all parties or their agents. Purchaser shall have the right to assign its interest hereunder to its nominee or an entity formed by Purchaser prior to closing.

28. MISCELLANEOUS:

The delivery of the Deed by Seller, and the acceptance thereof by Purchaser, shall be deemed the full performance and discharge of every obligation on the part of Seller to be performed hereunder.

This Contract embodies and constitutes the entire understanding between the parties with regard to the transaction contemplated herein, and all prior agreements, understandings, representations and statements, oral or written, are merged into this Contract. Neither this Contract nor any provision hereof may be waived, modified, amended or terminated except by an instrument in writing signed by the party against whom the enforcement of such waiver, modification, amendment or termination is sought.

If any provision of this Contract is determined to be invalid or unenforceable, it shall not affect the validity and enforcement of the remaining provisions hereof.

Neither this Contract nor a memorandum of this Contract shall be recorded in any public records.

This Agreement shall be governed by and interpreted in accordance with the laws of the State of Maine.

The parties agree that none of the above are collateral agreements. It is the intent of the parties that except as expressly set forth in this Contract, all covenants, representations, statements and obligations of both parties herein shall not survive closing.

[Remainder of Page Intentionally Left Blank]

 Purchaser's Initials: _____ Seller's Initials: _____

PATRIOT REALTY-SACO, LLC, PURCHASER

By: _____ 11/10/17
Print Name: Adam S. Arons
Its: Manager
Date

Seller accepts Purchaser's offer and agrees to deliver the property at the price and upon the terms and conditions set forth above and agrees to pay the brokers a brokerage commission as outlined in the listing agreement with Applebee Commercial.

Jacqueline A. Curlew
JACQUELINE A. CURLEW

November 10, 2017
Date

NAI The Dunham Group

By: _____
Signature

_____
Date

EFFECTIVE DATE OF CONTRACT: November 10, 2017.

P:\CLIENTS\C\Curlew, G&J\Patriot Realty -2017 Sale- Saco LLC\P&S Agreement (FINAL 11-10-17).docx

 Purchaser's Initials: AA Seller's Initials: JAC

Exhibit 2

Benefit Impact Analysis

Patriot Acura of Scarborough
Benefit Impact Analysis – Statement of Effects for CZA

Introduction:

The following answers are as required to describe the benefits comparison between the existing use of the property and proposed new use, and how the proposed contract zone will be consistent with the Town of Scarborough Comprehensive Plan, be consistent with the permitted uses within the existing zone district classification of the property, and will be in the public interest having beneficial effects for the Town as a whole. The parcel consists of approximately 16.5 acres of wooded land situated precisely at the corner of Payne Road and Haigis Parkway. The site selected for an Acura car automobile dealership and service facility development is currently a small homestead with the majority of the parcel covered with a combination deciduous and pine vegetation. It is currently located in the Haigis Parkway District bordering a part of the Scarborough Downs parcel zoned as Crossroads Planned Development district (CPD). Below are our narrative points discussing how the proposed Patriot Acura use will comply following the guidance of Appendix A:

1. Once the zone change is accepted, the seller will be settling a large outstanding public works assessment in full (over $200,000) using the proceeds of the sale to do so. Additionally once developed the facility will be a tax payer using virtually no public service from the Town of Scarborough, we will handle most everything on our own including snow removal, landscape and trash. We have asked for no financial assistance from the Town. Patriot Subaru has been voted the #1 Midsize Company to Work for in Maine for the last 4 consecutive years because of our peoples connection to our mission of service, this includes community service.

2. Patriot Acura will be using local construction and architecture, the GC will be using local subcontractors. Once the business is opened we expect a payroll of approximately $2,000,000 spread across 33 local people (average comp $61,000) plus benefits. There will be additional 3rd party spending which we also keep local.

3. There is no housing proposed, and as such will not be a burden on the Town services as compared to a residential development.

4. Patriot Subaru and Patriot Acura, have a policy of employing a diverse group of people. We have the longest tenured team in the auto industry in Saco and are determined to do the same in Scarborough. Our associates live local, raise their families locally and contribute to the local community and non-profits. We are also known for employing a much higher ratio of women than the industry norm (twice as high).

5. We believe Patriot Acura will be a beautiful addition to the community and to the gateway from the Maine Turnpike, it will be functional, efficient and beautiful in every way, the building, lot, lighting and landscape will be something the community will be proud of.

6. Currently our neighbors are all commercial retail properties, we will shine through building, landscape, lighting and overall presentation. We will not make external noise, no outdoor speakers, or paging.

7. We will be developing less than half of the property and will maintain open space, with a consciousness of the environment, our current facilities have received awards for environmentally friendly and we were the first dealer to be Subaru Green Dealer Certified (both facilities).

8. We will always be open to the public and have used our facilities for public meeting space in Saco.

9. Any and all events will be open to the public and while we don't anticipate recreational events on the property we have not determined what will be developed on the other half of the property at this time.

10. The development proposal will preserve sensitive areas by preservation of the land or by use of buffers to protect areas such as the stream crossing along the southerly end of the site, and throughout the site utilizing buffers to protect existing wetland areas.

11. The proposed development and currently the existing site do not have any scenic vistas from the subject parcel. The site does reside at a highly visible corner on two highly traveled streets. Currently the site is undeveloped and wooded. The proposed use will develop the parcel in manner to maximize the buildings prominence, and enhance the blending of architecture and landscaping to present a business and facility that will be a cornerstone for introducing development along the Haigis Parkway, and setting the marketability of the remaining land for smart development within the district as has been the goal for over a decade.

12. Based on our initial findings and review of the property there are no historical or archeological or agricultural uses of the land. It appears that the land has fully reverted to woodlands and overgrown shrubs.

13. The property has not in near history been utilized for agricultural uses or lands, and there is no request to reserve there uses.

14. The property does include some sensitive features such as wetlands and small stream. The proposed use will be filling and disturbing various portions of wetland areas, however we anticipate that it will under Maine DEP threshold of 15,000 SF impact, and thereby will not rely on off-site compensation or contributions to adjoining waterbodies or protected resource areas. The project has adequate developable land space to meet its needs and density for the proposed Acura Dealership. It is anticipated that the near 20,000 SF structure, and site layout for vehicle inventory, will meet the goals of Acura for the foreseeable future. However we will

be very conscious to preserve wetland areas remaining, especially those associated with streams by use of deeded preservation or conservation restrictions.

15. We will be the only Acura dealer in Maine and it's first. Acura (owned by American Honda) has high desirability due to it’s corporate leadership, quality product and partnerships with it’s customer's and dealers. Acura, interviewed many auto dealers in Maine and chose Adam Arens and Patriot Subaru as the dealer that had a shared view with them and the community. Patriot Acura will be a tremendous benefit to the Town of Scarborough, without making headaches!

Exhibit 3

Site Analysis Narrative & Supporting Graphics

Patriot Acura of Scarborough
Site Analysis - Compliance to Section II (I)(4)(a)(i)

Introduction:

The following summary analysis has been provided to describe the site conditions and proposed uses at the subject parcel located at 285 Payne Road and 1000 Haigis Parkway. The parcel consists of approximately 16.5 acres of wooded land situated precisely at the corner of Payne Road and Haigis Parkway or otherwise referred to as the Western Gateway to Scarborough and the Haigis Parkway. The site selected for an Acura car automobile dealership and service facility development is currently a small homestead with the majority of the parcel covered with a combination deciduous and pine vegetation, and is currently located Haigis Parkway District. The parcel does border with a part of the Scarborough Downs parcel which is zoned differently, the as Crossroads Planned Development (CPD) district. Below is our narrative discussing specific features of property for the Town Council and Planning Board review.

A. Natural Features:

The land is mainly rural woodland with a small modest home located off Payne Road known as the Curlew lot. The family homestead consists of a small open yard area with a small detached garage, all sitting on approximately one acre of open to sparse vegetated lawn area. The remainder of the property is a bordered by the corner of Payne Road extending 400 feet to the north, and Haigis Parkway extending approximately 1110 feet to the east. The parcel is also marked with areas of finger shaped wetlands through the central portion of the lot which extend into a larger wooded wetland areas in the rear northeastern corner. Additionally the southeastern corner of the lot is traversed by a stream thread originating from the western side of Payne Road, and from tributaries southwesterly of the Cabela Shopping Center propert, From those origins it meanders easterly and crosses Payne Road and continues northeasterly to cross Haigis Parkway at the southeastern corner of the subject parcel. With the stream area there are associated wetlands near this sluggish stream's banks.

The Curlew lot is sloped with a very shallow slope such it drains runoff in a southeasterly direction to ultimately join with the stream thread mentioned above. The land is very level along Payne Road and remains very level until the southeastern corner where it gently slopes into the stream. The vegetation cover is mainly woodland consisting of maple, birch, and oak with mixed pine growth.

The soils are consistent silty clay soils with shallow topsoil to support limited tree growth. The soils consist of shallow groundwater levels and stiff to soft clays in deep sections under the surface stratum.

Although the woodlands are dense in some a sections, the area is not subject to any significant wildlife habitat, deer yard areas or endangered species(we have provided a map in the Exhibits attached. Wetlands were delineated in 2003 and reviewed again in 2013, and will be again reviewed this spring following the snow melt. Based on previous investigations there was no evidence of vernal pools. Nor was there evidence of aquatic wetlands, beyond those attached with the stream crossing. Wetlands appeared to be mainly forested wetlands consisting of potential manmade drainage courses or of natural threads that sluggishly meandering to areas offsite and downgradient. Based on our initial evaluations it appears the only area requiring setback buffers are the areas associated with the stream.

The proposed development will include filling a small thread of what appears to be a manmade drainage course near the Payne and Haigis intersection, and a section of wooded wetland finger across the central portion of the site. All other wetlands remaining will be buffered with a 25 foot wooded buffer to be used for protective buffer and stormwater treatment. The portion of the parcel in the Southeast corner, and closest to the stream will not be disturbed at this time. Within that sector of the parcel there is an area that will be left for future development consisting of about 3 + acres for potential commercial growth.

The Site will be access through two existing driveway curb openings. One driveway opening services the existing residence off Payne Road, and the other is located approximately 550 feet easterly from the intersection and utilizes an existing driveway apron provided by the MDOT. These will provide optimum distance from the intersection to allow for safe turning movements in and out of existing traffic flows.

B. <u>Cultural Features:</u>

The project is located on a prime commercial lot with high visibility coming off the Maine Turnpike Exit 42. However the collector roads bordering the northerly side and westerly side of the parcel are highly traveled major roads serving connector to US route 1 to the south and the Maine Mall area to the north. Neither road would be considered a scenic route nor local minor street, and would fall into the definition of a connector access.

Additionally the site offers no pedestrian access nor is there an opportunity for pedestrian access nearby. The property offers no hiking trails nor is currently designated as part of any trails. Given the level terrain, wetlands, and dense vegetation the site would not offer much diversity to be of interest given the lack of current connections within the adjacent area. The site has really no monuments, or special structures of interest. There are no cemeteries noted, no stonewalls, or items of significance located on the parcel.

Based on evidence the parcel may have been used for some agricultural purposes but has been allowed to overgrow now for decades and has reverted to a dense woodland.

There is also no evidence that the land was ever stripped, or mined for soil deposits or topsoil. Given the land is consistent with silt and clay based soils it can be assumed there was little interest to extract aggregates or soils.

C. Community Relationships

The Curlew Lot of 16.5 acres has tremendous opportunity for commercial development due to its prominence on a major connector access corner, with driveway access to Payne Road heading northbound, and Haigis Parkway to gain immediate access to the Maine Turnpike Exit 42.

The parcel also abuts the current Scarborough Downs property to the northeast, and depending how future plans unveil for that properties future, there may be opportunity to connect pedestrian trails or access, or preserve future open and conservation spaces. The owner is open to discussion of offering opportunities for such connection should they become evident in the immediate future.

The site currently is not serviced by any public transportation, and given the type of use proposed for an automobile dealership we see little benefit to bring that service or amenities to the property.

We do feel that there is a great opportunity to work with the Town to make the corner an attractive landmark and attractive appearance for visitors approaching this western gateway into Scarborough off the Maine Turnpike. We intend to work closely with the Town to present an attractive landscape setting at the corner that will enhance appearances with the striking architecture of the main building's façade and potentially provide a notable landmark for entering a Scarborough Gateway.

D. Institutional Factors:

The property is located in the Haigis Parkway District and based on the sketch plans for the proposed structure, parking lots, and areas necessary for current and future automobile inventory needs. The site will likely encompass more than the 5 acre development threshold to require the project to be considered a Planned Development. Thereby the project under the proposed contract zone agreement for automobile repair and service facility, outdoor display for vehicles, and use with a carwash will need to follow additional requirements for a Planned Development.

The site will also have to meet the requirements for the Maine Department of Environmental Protection (Maine DEP) under the Site Location of Development Application Permit since the site will include more than 3 acres of new impervious surfaces. The Town of Scarborough will have delegated authority to review the site plan requirements for the planned development, but the stormwater management

plan portion will still be required to be submitted to, reviewed by, and approved by the Maine DEP.

The site layout will include a 1 to 1.5 story structure that will be centered on the curve of the intersection giving strong curb appeal and visibility. As noted by the architectural plans included there is modern appeal as required by the Acura Dealership with reliance on glass and multi textured surfaces, and colored banning to promote attractive frontage appearance for the public view from the street approach from the south along Haigis. Substantive Landscaping will be included to promote shading, and attractiveness of colors and shaping. Efforts will be made to preserve some mature specimen trees along the Haigis Parkway frontage, and incorporate various ponds serving multiple roles to serve as for natural settings and provide necessary stormwater runoff quality.

The setbacks of the structure, and height will fall into those of the underlying Haigis Parkway District of 25 feet from street property lines, and 15 feet for rear and side setbacks, of which all will be either designed or preserved in natural buffers as required by the Landscaping Buffer requirements. Between frontage on Payne and Haigis Parkway the property offers over 1500 LF of available frontage well exceeding the district minimum of 200 feet.

HPD Haigis Parkway District space and Bulk Standards:

Min Lot Size:	**40,000Sf**
Min. Street Frontage:	**200 LF**
Min Front Yard setback:	**25 feet from Haigis and Payne**
Min Side & Rear Setback	**15 feet**
Min Landscape Buffer	**25 feet from Haigis Parkway**
Max % Lot Coverage, Building:	**50%**
Max Impervious Surface Coverage:	**75%**
Max Structural Height:	**75 feet**

Due to the marketing demands to display vehicles the site was orientated to maximize building and display to match the curved lines of the street corner. The intention is to elevate the site slightly to give a prominent effect. The access road system will include the main deliverable access off Payne Road allowing for a linear unloading and loading area once internal to the site on the northern portion of the lot. A second access will utilize a sweeping approach with a radial access along the building frontage, and through the rear where the majority of vehicle inventory will be stored. This area is intended to be well screened from Haigis and will be positioned to the rear of the proposed structure. Inventory for display purposes will mainly be located along Payne Road frontage.

At this time only internal sidewalk systems are proposed, as there are no external sidewalks or trails in proximity of the planned development, The owner is amenable to provide access for trails over other undeveloped parts of the site, but due to concerns of security with high end value vehicles on the site, providing public pedestrian access through the lot is discouraged for concerns of vandalism.

The site will be lit with LED low profile lighting fixtures to conserve energy and glow impacts to adjacent skies. In fact, the site will intend to utilize environmentally friendly materials, and measures to mitigate stormwater impacts, and reduce thermal impacts. Plaza display areas will incorporate permeable materials to reduce runoff impacts. Mature trees will be saved in front areas where grading or soil disturbance can be avoided to maximize shading and visual buffering. All service area metal materials and vehicle fluids will be contained in secure tanks and holding areas with alarm systems and full concealment and containments meeting the strictest of environmental standards.

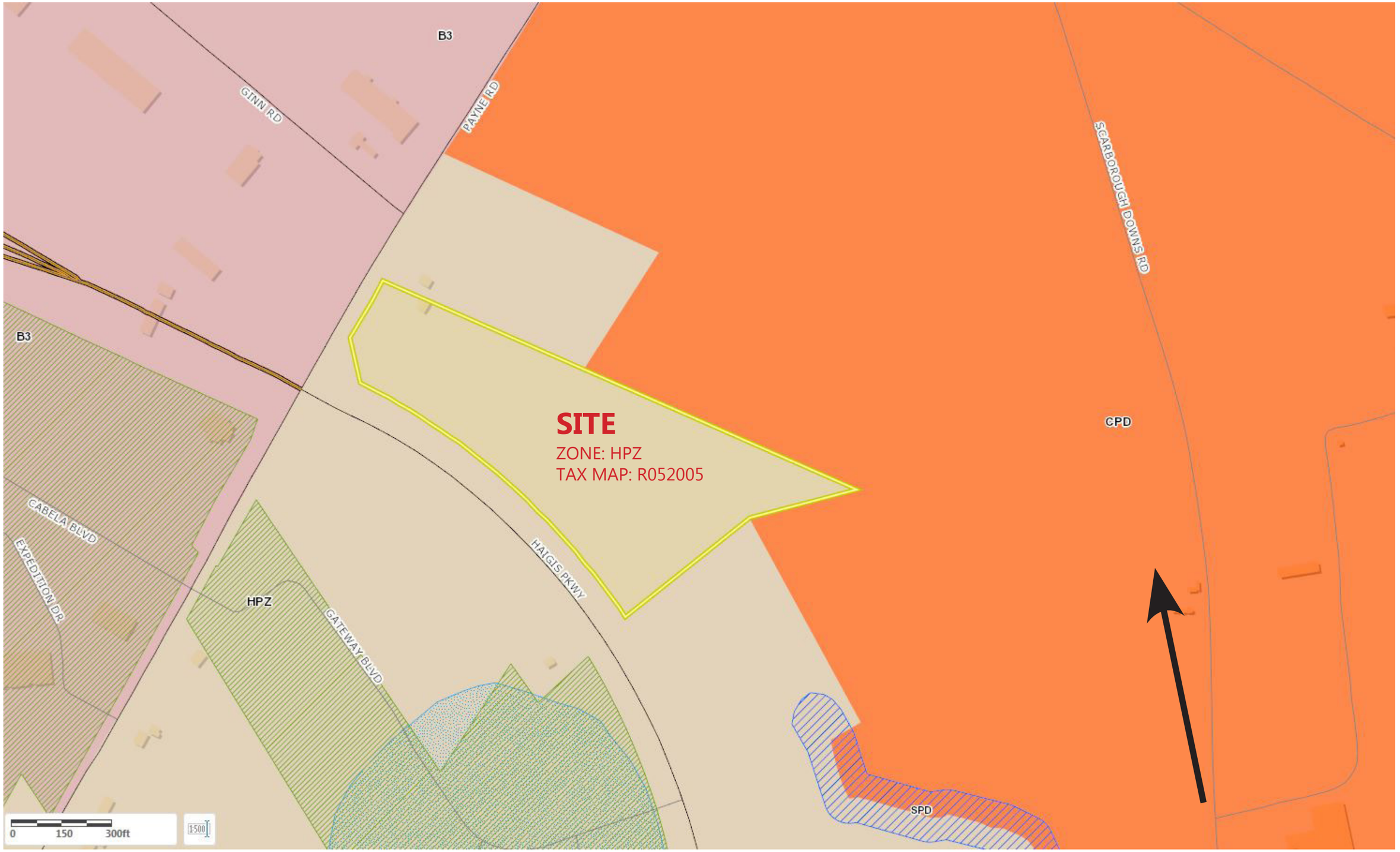
The site is currently served by public sewer and water, and has excellent connectivity to electrical, telecommunication and fiber services off Payne Road. All utilities will be installed underground to avoid overhead lines, and all pads and utility boxes will be screened from public view.

The traffic impacts anticipated by employees and customers trips will be well below those warranting a Traffic Movement Permit by the Maine DOT. We do expect that we will be required to provide a Traffic Impact Analysis to the Town of Scarborough as the projected peak hourly trip generation will exceed 35 trip/hour. All entrances and main internal access corners have been designed to accommodate vehicle deliver trucks and fire apparatus with larger turning radii.

E. Composite Analysis

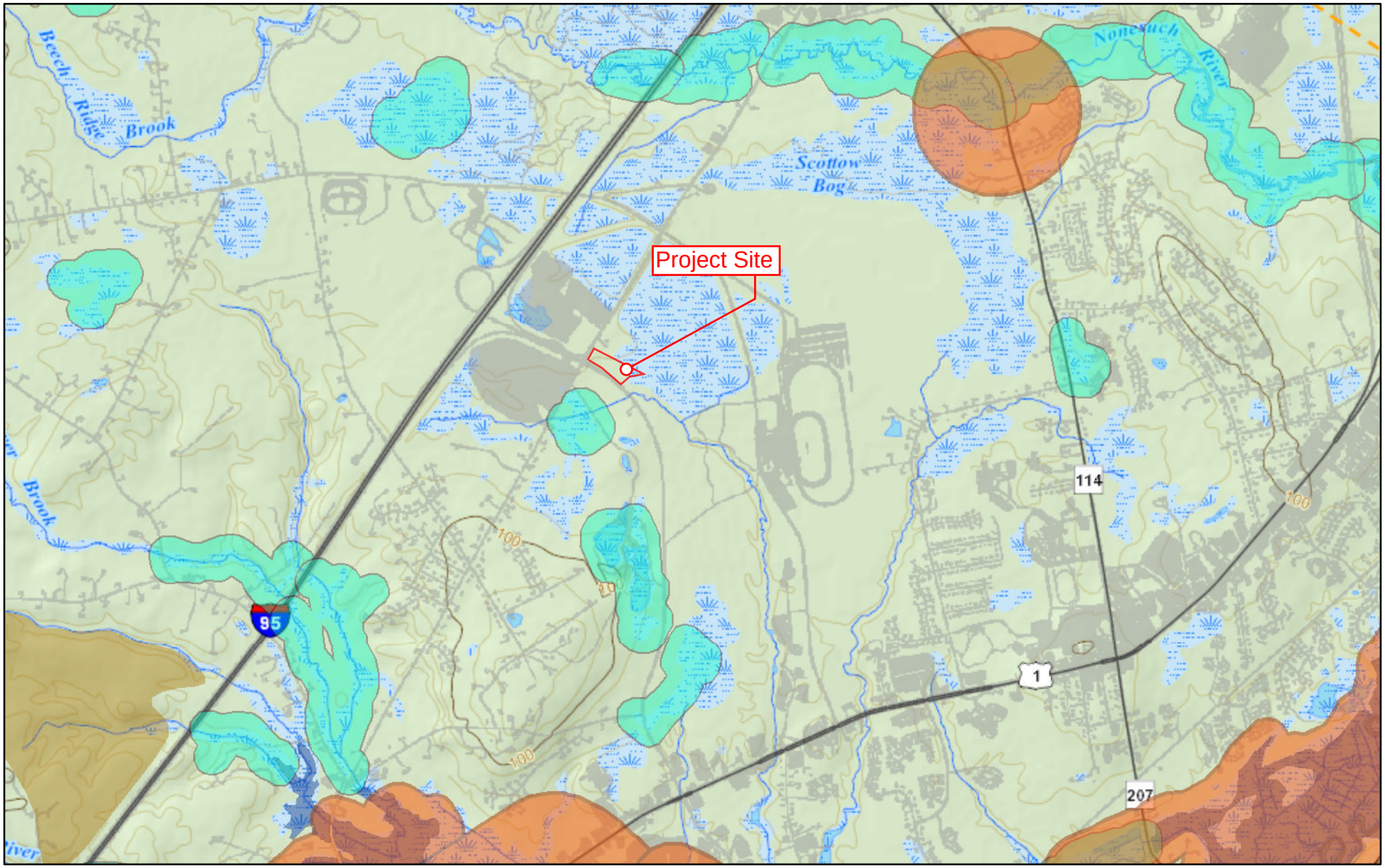
The shape of the Curlew lot is such that there is very little of the site that is severely restricted. Only the section where the stream crosses the southeast corner, meets this criteria. Other wetlands on the parcel offer restrictions and moderate constraints, and as such we the applicant will be required to obtain Wetland Alteration permits for the wetland areas proposed to be disturbed. With the current proposal and sketch layout the project would require a Tier 1 permit jointly reviewed by the Maine DEP and US Army Corps of Engineers for just under 15,000 SF of impact.

A colored diagram featuring the areas of severe and moderate constraint has been attached for review.



ZONING EXHIBIT- PATRIOT ACURA

Wildlife Corridors



February 16, 2018

Deer Wintering Areas

ETSC Animal Habitat Buffers

Inland Wading Bird and Waterfowl Habitat

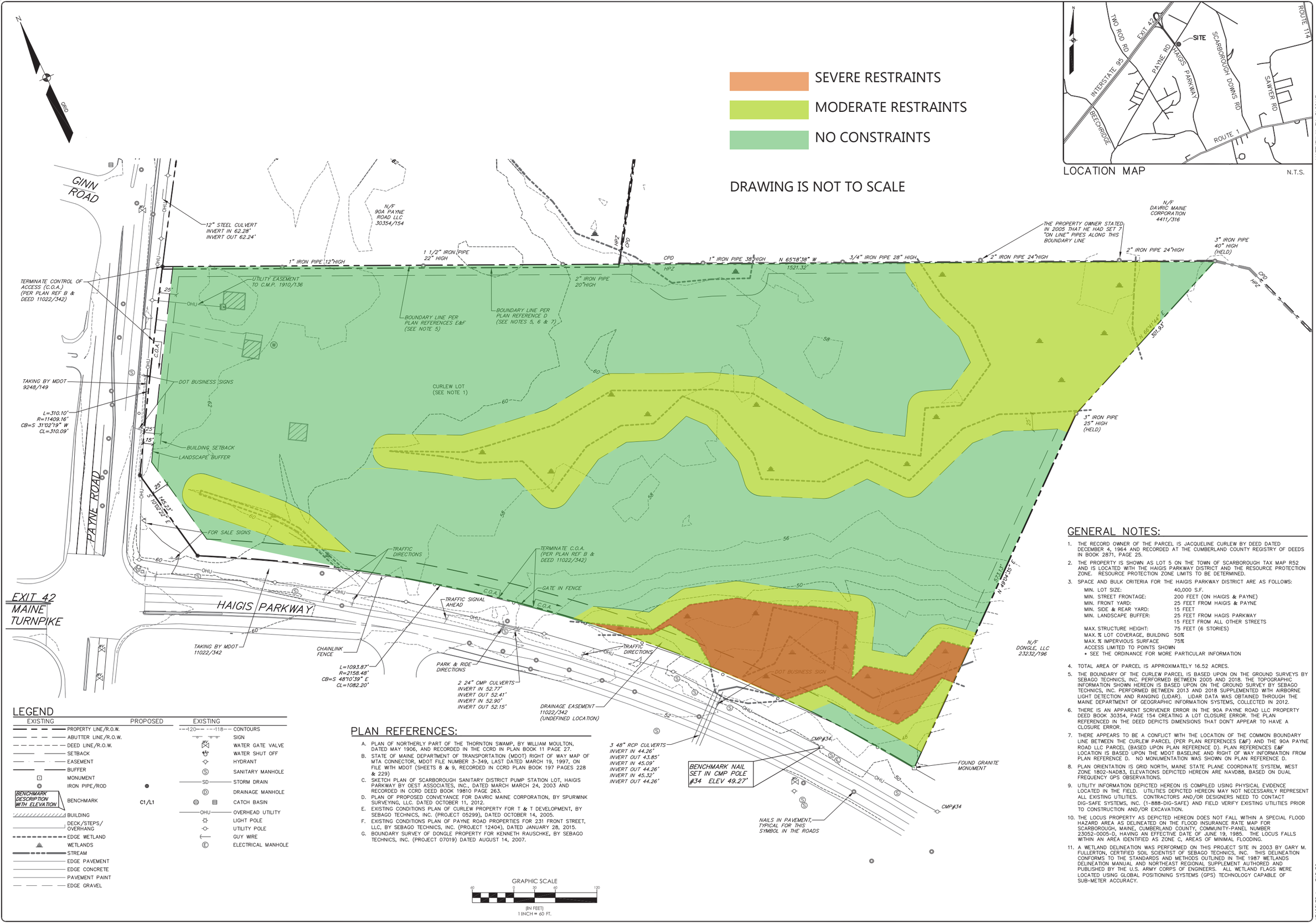
Tidal Wading Bird and Waterfowl Habitat

1:36,112

0 0.3 0.6 1.2 mi

0 0.35 0.7 1.4 km

Beginning with Habitat
Copyright 2016



LEGEND

EXISTING	PROPOSED	EXISTING
PROPERTY LINE/R.O.W.		CONTOURS
ABUTTER LINE/R.O.W.		SIGN
DEED LINE/R.O.W.		WATER GATE VALVE
SETBACK		WATER SHUT OFF
EASEMENT		HYDRANT
BUFFER		SANITARY MANHOLE
MONUMENT		STORM DRAIN
IRON PIPE/ROD	●	DRAINAGE MANHOLE
BENCHMARK DESCRIPTION WITH ELEVATION	C1/L1	CATCH BASIN
BUILDING		OVERHEAD UTILITY
DECK/STEPS/ OVERHANG		LIGHT POLE
EDGE WETLAND		UTILITY POLE
WETLANDS		GUY WIRE
STREAM		ELECTRICAL MANHOLE
EDGE PAVEMENT		
EDGE CONCRETE		
PAVEMENT PAINT		
EDGE GRAVEL		

PLAN REFERENCES:

A. PLAN OF NORTHERLY PART OF THE THORNTON SWAMP, BY WILLIAM MOULTON, DATED MAY 1906, AND RECORDED IN THE CCRD IN PLAN BOOK 11 PAGE 27.
B. STATE OF MAINE DEPARTMENT OF TRANSPORTATION (MDOT) RIGHT OF WAY MAP OF MTA CONNECTOR, MDOT FILE NUMBER 3-349, LAST DATED MARCH 19, 1997, ON FILE WITH MDOT (SHEETS 8 & 9, RECORDED IN CCRD PLAN BOOK 197 PAGES 228 & 229)
C. SKETCH PLAN OF SCARBOROUGH SANITARY DISTRICT PUMP STATION LOT, HAIGIS PARKWAY BY OEST ASSOCIATES, INC., DATED MARCH MARCH 24, 2003 AND RECORDED IN CCRD DEED BOOK 19810 PAGE 263.
D. PLAN OF PROPOSED CONVEYANCE FOR DAVRIC MAINE CORPORATION, BY SPURWINK SURVEYING, LLC. DATED OCTOBER 11, 2012.
E. EXISTING CONDITIONS PLAN OF CURLEW PROPERTY FOR T & T DEVELOPMENT, BY SEBAGO TECHNICS, INC. (PROJECT 05299), DATED OCTOBER 14, 2005.
F. EXISTING CONDITIONS PLAN OF PAYNE ROAD PROPERTIES FOR 231 FRONT STREET, LLC, BY SEBAGO TECHNICS, INC. (PROJECT 12404), DATED JANUARY 28, 2015.
G. BOUNDARY SURVEY OF DONGLE PROPERTY FOR KENNETH RAUSCHKE, BY SEBAGO TECHNICS, INC. (PROJECT 07019) DATED AUGUST 14, 2007.

GRAPHIC SCALE
60 0 30 60 120
(IN FEET)
1 INCH = 60 FT.

LOCATION MAP N.T.S.

MATTHEW W. EK, PLS2117

STATE OF MAINE MATTHEW W. EK 2117 PROFESSIONAL LAND SURVEYOR

DRAWN	CHECKED
MWE	CDM

REV:	BY:	DATE:	STATUS:
A	MWE	1/15/18	RELEASED FOR CLIENT REVIEW

THIS PLAN SHALL NOT BE MODIFIED WITHOUT WRITTEN PERMISSION FROM SEBAGO TECHNICS, INC. ANY ALTERATIONS, AUTHORIZED OR OTHERWISE, SHALL BE AT THE USER'S SOLE RISK AND WITHOUT LIABILITY TO SEBAGO TECHNICS, INC.

GENERAL NOTES:

1. THE RECORD OWNER OF THE PARCEL IS JACQUELINE CURLEW BY DEED DATED DECEMBER 4, 1964 AND RECORDED AT THE CUMBERLAND COUNTY REGISTRY OF DEEDS IN BOOK 2871, PAGE 25.
2. THE PROPERTY IS SHOWN AS LOT 5 ON THE TOWN OF SCARBOROUGH TAX MAP R52 AND IS LOCATED WITH THE HAIGIS PARKWAY DISTRICT AND THE RESOURCE PROTECTION ZONE. RESOURCE PROTECTION ZONE LIMITS TO BE DETERMINED.
3. SPACE AND BULK CRITERIA FOR THE HAIGIS PARKWAY DISTRICT ARE AS FOLLOWS:

MIN. LOT SIZE:	40,000 S.F.
MIN. STREET FRONTAGE:	200 FEET (ON HAIGIS & PAYNE)
MIN. FRONT YARD:	25 FEET FROM HAIGIS & PAYNE
MIN. SIDE & REAR YARD:	15 FEET
MIN. LANDSCAPE BUFFER:	25 FEET FROM HAGIS PARKWAY 15 FEET FROM ALL OTHER STREETS
MAX. STRUCTURE HEIGHT:	75 FEET (6 STORIES)
MAX. % LOT COVERAGE, BUILDING	50%
MAX. % IMPERVIOUS SURFACE	75%

ACCESS LIMITED TO POINTS SHOWN
• SEE THE ORDINANCE FOR MORE PARTICULAR INFORMATION

4. TOTAL AREA OF PARCEL IS APPROXIMATELY 16.52 ACRES.
5. THE BOUNDARY OF THE CURLEW PARCEL IS BASED UPON ON THE GROUND SURVEYS BY SEBAGO TECHNICS, INC. PERFORMED BETWEEN 2005 AND 2018. THE TOPOGRAPHIC INFORMATION SHOWN HEREON IS BASED UPON ON THE GROUND SURVEY BY SEBAGO TECHNICS, INC. PERFORMED BETWEEN 2013 AND 2018 SUPPLEMENTED WITH AIRBORNE LIGHT DETECTION AND RANGING (LIDAR). LIDAR DATA WAS OBTAINED THROUGH THE MAINE DEPARTMENT OF GEOGRAPHIC INFORMATION SYSTEMS, COLLECTED IN 2012.
6. THERE IS AN APPARENT SCRIVENER ERROR IN THE 90A PAYNE ROAD LLC PROPERTY DEED BOOK 30354, PAGE 154 CREATING A LOT CLOSURE ERROR. THE PLAN REFERENCED IN THE DEED DEPICTS DIMENSIONS THAT DON'T APPEAR TO HAVE A CLOSURE ERROR.
7. THERE APPEARS TO BE A CONFLICT WITH THE LOCATION OF THE COMMON BOUNDARY LINE BETWEEN THE CURLEW PARCEL (PER PLAN REFERENCES E&F) AND THE 90A PAYNE ROAD LLC PARCEL (BASED UPON PLAN REFERENCE D). PLAN REFERENCES E&F LOCATION IS BASED UPON THE MDOT BASELINE AND RIGHT OF WAY INFORMATION FROM PLAN REFERENCE D. NO MONUMENTATION WAS SHOWN ON PLAN REFERENCE D.
8. PLAN ORIENTATION IS GRID NORTH, MAINE STATE PLANE COORDINATE SYSTEM, WEST ZONE 1802-NAD83, ELEVATIONS DEPICTED HEREON ARE NAVD88, BASED ON DUAL FREQUENCY GPS OBSERVATIONS.
9. UTILITY INFORMATION DEPICTED HEREON IS COMPILED USING PHYSICAL EVIDENCE LOCATED IN THE FIELD. UTILITIES DEPICTED HEREON MAY NOT NECESSARILY REPRESENT ALL EXISTING UTILITIES. CONTRACTORS AND/OR DESIGNERS NEED TO CONTACT DIG-SAFE SYSTEMS, INC. (1-888-DIG-SAFE) AND FIELD VERIFY EXISTING UTILITIES PRIOR TO CONSTRUCTION AND/OR EXCAVATION.
10. THE LOCUS PROPERTY AS DEPICTED HEREON DOES NOT FALL WITHIN A SPECIAL FLOOD HAZARD AREA AS DELINEATED ON THE FLOOD INSURANCE RATE MAP FOR SCARBOROUGH, MAINE, CUMBERLAND COUNTY, COMMUNITY-PANEL NUMBER 23052-0005-D, HAVING AN EFFECTIVE DATE OF JUNE 19, 1985. THE LOCUS FALLS WITHIN AN AREA IDENTIFIED AS ZONE C, AREAS OF MINIMAL FLOODING.
11. A WETLAND DELINEATION WAS PERFORMED ON THIS PROJECT SITE IN 2003 BY GARY M. FULLERTON, CERTIFIED SOIL SCIENTIST OF SEBAGO TECHNICS, INC. THIS DELINEATION CONFORMS TO THE STANDARDS AND METHODS OUTLINED IN THE 1987 WETLANDS DELINEATION MANUAL AND NORTHEAST REGIONAL SUPPLEMENT AUTHORED AND PUBLISHED BY THE U.S. ARMY CORPS OF ENGINEERS. ALL WETLAND FLAGS WERE LOCATED USING GLOBAL POSITIONING SYSTEMS (GPS) TECHNOLOGY CAPABLE OF SUB-METER ACCURACY.

SEBAGO TECHNICS
WWW.SEBAGOTECHNICS.COM
75 John Roberts Rd.
Suite 4A
South Portland, ME 04106
Tel. 207-200-2100

EXISTING CONDTIONS PLAN
OF:
CURLEW PROPERTY
PAYNE ROAD AND HAIGIS PARKWAY
SCARBOROUGH, MAINE
FOR:
PATRIOT REALTY-SACO, LLC
496 PORTLAND ROAD
SACO, MAINE 04072

PROJECT NO.	SCALE
17465	1" = 60'

SHEET 1 OF 1

17465LTS.dwg, 24B EC



AERIAL OF SITE



EXISTING CURB CUT ON HAIGIS PARKWAY



INTERSECTION OF HAIGIS PARKWAY AND PAYNE ROAD



SITE ON PAYNE RD



RESIDENCE ON PAYNE RD



VIEW FROM EXIT 42

Exhibit 4

Plans

RECORD METES AND BOUNDS DESCRIPTION

A certain lot or parcel of land with the buildings thereon, containing about 14 acres of land situated in said Scarborough on the southerly side of Payne Road and bounded and described as follows: Beginning at the northeasterly corner of land, now or formerly, of William Emery, thence running on said Payne Road northeasterly eight and one-half (8 ½) rods; thence southeasterly in a straight line about ninety-five (95) rods to the northeasterly corner of land, now or formerly, of Nathaniel Moses; thence westerly by land of said Moses to the northwesterly corner of land of said Moses; thence southerly sixty-nine degrees (69°) West twenty-nine and one-half (29 ½) rods to the southeasterly corner of land of said William Emery; thence northwesterly about eighty (80) rods by land of said Emery to said Payne Road and first mentioned bounds.

Also a certain other lot or parcel of land, with the buildings thereon situated in said Scarborough and bounded and described as follows: Beginning at the northeasterly corner of land, now or formerly, of John E. Libby (formerly land of James Libby Heirs) on the Payne Road, so called, thence running along said land south sixteen degrees (16°) East seventy-one (71) rods; thence running north sixty-nine degrees (69°) East twenty-two and one-half (22 ½) rods; thence north seventeen degrees (17°) fifty-one minutes (51') West seventy-nine and six tenths (79.6) rods or fifteen links to the Payne Road so-called; thence running along said Highway south forty-six (46) degrees West twenty-two and one-half (22 ½) rods to the place of beginning, containing ten acres and eight square rods, more or less.

SURVEYED METES AND BOUNDS DESCRIPTION:

A certain lot or parcel of land situated on the southeasterly side of and adjacent to Payne Road and the northeasterly side of adjacent to Haigis Parkway, in the Town of Scarborough, County of Cumberland, and State of Maine as shown on the ALTA/NSPS Land Title Survey, of Curlew Property, for Patriot Realty-Saco, LLC, by Sebago Technics, Inc. (project number 17465) dated January 15, 2018, and being more particularly bounded and described as follows:

Beginning at a found granite monument on the northeasterly sideline of Haigis Parkway at the westerly corner of land now or formerly of Dongle, LLC as described in deed book 23232 page 196;

Thence N 49°-04'-35" E along land of Dongle, LLC, a distance of 573.13 feet to a 3-inch iron pipe 25 inches high;

Thence N 66°-41'-44" E continuing along land of Dongle, LLC, a distance of 301.93 feet to a 3-inch iron pipe 40 inches high at land now or formerly of Davric Maine Corporation, as described in deed book 4411 page 316;

Thence N 65°-18'-38" W along land of Davric Maine Corporation and land now or formerly of 90 A Payne Road, LLC described in deed book 30354 page 154, a distance of 1521.32 feet to a 5/8-inch rebar set on the southeasterly sideline of Payne Road;

Thence along the southeasterly sideline of Payne Road along a non-tangential curve to the left having an arc length of 310.10 feet, a radius of 11409.16 feet, and a chord of S 31°-02'-19" W 310.09 feet to a 5/8-inch rebar set at the northeasterly sideline of Haigis Parkway;

Thence S 10°-02'-22" E along northeasterly sideline of Haigis Parkway, a distance of 145.23 feet to 5/8-inch rebar set;

Thence along the northeasterly sideline of Haigis Parkway along a non-tangential curve to the right having an arc length of 1093.87 feet, a radius of 2158.48 feet, and a chord of S 48°-10'-39" E 1082.20 feet to the Point of Beginning.

Subject to Control of Access granted to the State of Maine as described in deed book 11022 page 342

Subject to a drainage easement granted to the State of Maine as described in deed book 11022 page 342.

Subject to Control of Access granted to the State of Maine as described in deed book 9248 page 149.

Subject to a utility easement granted to Central Maine Power in deed book 1910 page 136.

Meaning and intending to describe the remaining land of the grantor from deed book 2871 page 25 being approximately 16.52 Acres.

The bearings shown hereon are Grid North, Maine State Plane Coordinate System, West Zone 1802, NAD83.

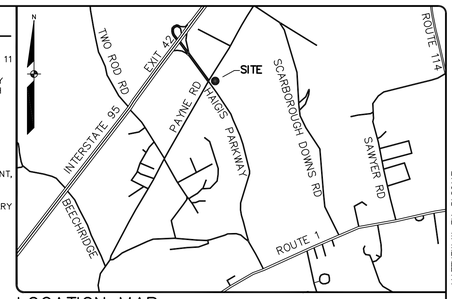
TITLE EXCEPTIONS:

SURVEY RELATED TITLE EXCEPTIONS FROM TITLE COMMITMENT BY CHICAGO TITLE INSURANCE COMPANY, TITLE NO. 112117-01, FILE NO. 17010190, WITH EFFECTIVE DATED NOVEMBER 20, 2017 AT 8:00 AM.

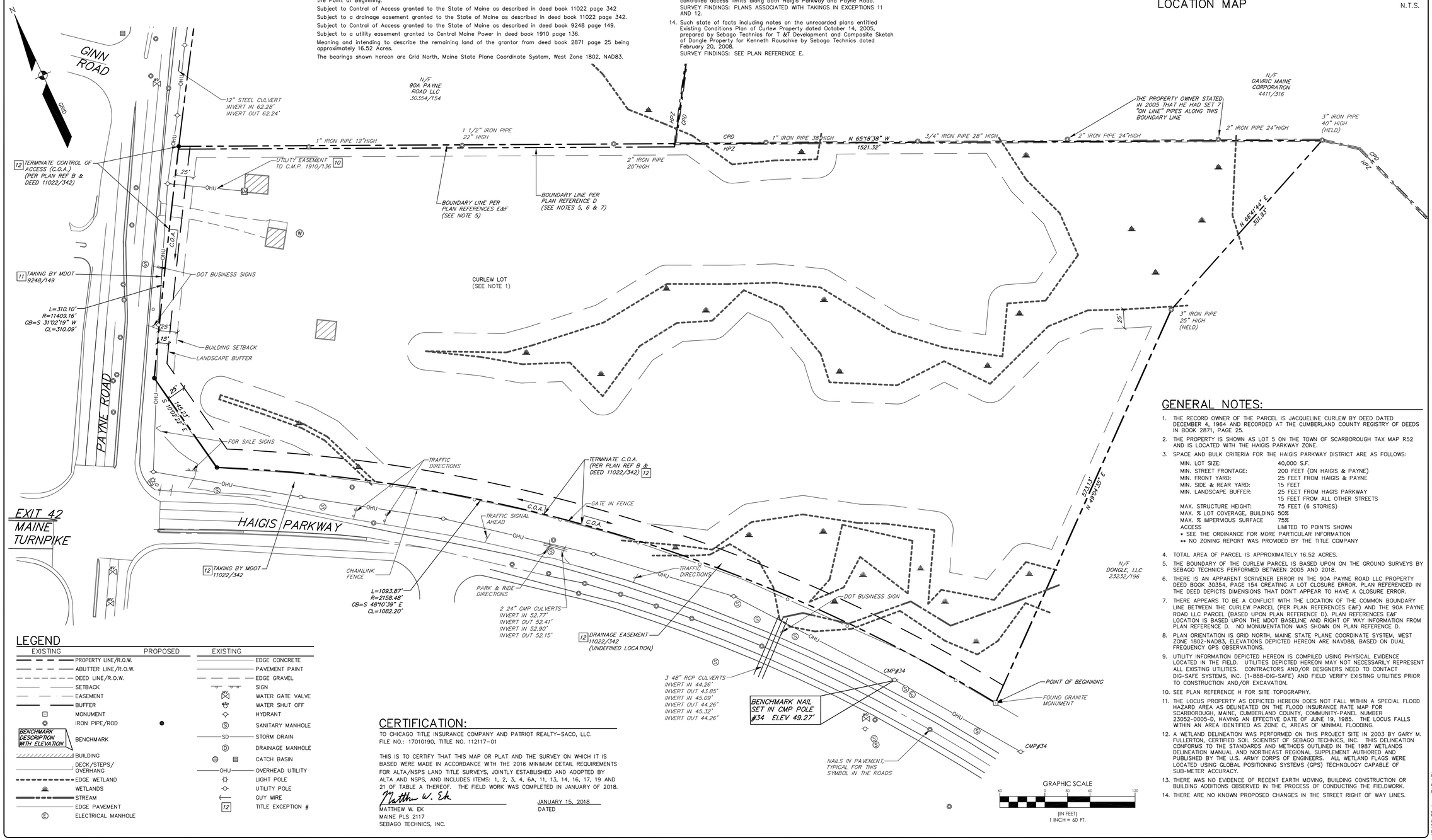
10. Rights and easements granted by Henry Quinn to Central Maine Power Company by instrument dated March 25, 1948 and recorded at the Cumberland County Registry of Deeds in Book 1910, Page 136.
    SURVEY FINDINGS: ASSUMED TO BE THE UTILITY LINE SHOWN IN THE NORTHERLY CORNER AS SHOWN HEREON. NO POLE NUMBERS WERE PROVIDED IN THE EASEMENT.
11. Notice of Layout and Taking from the State of Maine Department of Transportation dated July 10, 1990 and recorded at the Cumberland County Registry of Deeds in Book 9248, Page 149.
    SURVEY FINDINGS: TAKING ALONG PAYNE ROAD AS SHOWN INCLUDING CONTROL OF ACCESS.
12. Notice of Layout and Taking from the State of Maine Department of ransportation dated October 05, 1993 and recorded at the Cumberland County Registry of Deeds in Book 11022, Page 342, including drainage easement.
    SURVEY FINDINGS: TAKING ALONG HAIGIS PARKWAY AS SHOWN INCLUDING CONTROL OF ACCESS, AND DRAINAGE EASEMENT.
13. Such state of facts disclosed including notes on plan entitled State of Maine Department of Transportation Right of Way Map M.T.A. Connector, Scarborough, Maine dated March 19, 1997 and recorded at Cumberland County Registry of Deeds in Plan Book 197 Pages 228 & 229, including controlled access limits along both Haigis Parkway and Payne Road.
    SURVEY FINDINGS: PLANS ASSOCIATED WITH TAKINGS IN EXCEPTIONS 11 AND 12.
14. Such state of facts including notes on the unrecorded plans entitled Existing Conditions Plan of Curlew Property dated October 14, 2005, prepared by Sebago Technics for T &T Development and Composite Sketch of Dongle Property for Kenneth Rauschke by Sebago Technics dated February 20, 2008.
    SURVEY FINDINGS: SEE PLAN REFERENCE E.

PLAN REFERENCES:

A. PLAN OF NORTHERLY PART OF THE THORNTON SWAMP, BY WILLIAM MOULTON, DATED MAY 1906, AND RECORDED IN THE CCRD IN PLAN BOOK 11 PAGE 27.
B. STATE OF MAINE DEPARTMENT OF TRANSPORTATION (MDOT) RIGHT OF WAY MAP OF MTA CONNECTOR, MDOT FILE NUMBER 3-349, LAST DATED MARCH 19, 1997, ON FILE WITH MDOT (SHEETS 8 & 9, RECORDED IN CCRD PLAN BOOK 197 PAGES 228 & 229)
C. SKETCH PLAN OF SCARBOROUGH SANITARY DISTRICT PUMP STATION LOT, HAIGIS PARKWAY BY OEST ASSOCIATES, INC., DATED MARCH MARCH 24, 2003 AND RECORDED IN CCRD DEED BOOK 19810 PAGE 263.
D. PLAN OF PROPOSED CONVEYANCE FOR DAVRIC MAINE CORPORATION, BY SPURWINK SURVEYING, LLC. DATED OCTOBER 11, 2012.
E. EXISTING CONDITIONS PLAN OF CURLEW PROPERTY FOR T & T DEVELOPMENT, BY SEBAGO TECHNICS, INC. (PROJECT 05299), DATED OCTOBER 14, 2005.
F. EXISTING CONDITIONS PLAN OF PAYNE ROAD PROPERTIES FOR 231 FRONT STREET, LLC, BY SEBAGO TECHNICS, INC. (PROJECT 12404), DATED JANUARY 28, 2015.
G. BOUNDARY SURVEY OF DONGLE PROPERTY FOR KENNETH RAUSCHKE, BY SEBAGO TECHNICS, INC. (PROJECT 07019) DATED AUGUST 14, 2007.
H. EXISTING CONDITIONS SURVEY OF THE CURLEW PROPERTY FOR PATRIOT REALTY-SACO, LLC, BY SEBAGO TECHNICS, INC. (PROJECT 17465) DATED JANUARY 12, 2018.



LOCATION MAP N.T.S.



LEGEND

EXISTING	PROPOSED	EXISTING
PROPERTY LINE/R.O.W.		EDGE CONCRETE
ABUTTER LINE/R.O.W.		PAVEMENT PAINT
DEED LINE/R.O.W.		EDGE GRAVEL
SETBACK		SIGN
EASEMENT		WATER GATE VALVE
BUFFER		WATER SHUT OFF
MONUMENT		HYDRANT
IRON PIPE/ROD	●	SANITARY MANHOLE
BENCHMARK DESCRIPTION WITH ELEVATION	BENCHMARK	STORM DRAIN
BUILDING		DRAINAGE MANHOLE
DECK/STEPS/ OVERHANG		CATCH BASIN
EDGE WETLAND		OVERHEAD UTILITY
WETLANDS		LIGHT POLE
STREAM		UTILITY POLE
EDGE PAVEMENT		GUY WIRE
ELECTRICAL MANHOLE		TITLE EXCEPTION #

CERTIFICATION:

TO CHICAGO TITLE INSURANCE COMPANY AND PATRIOT REALTY-SACO, LLC.
FILE NO.: 17010190, TITLE NO. 112117-01

THIS IS TO CERTIFY THAT THIS MAP OR PLAT AND THE SURVEY ON WHICH IT IS BASED WERE MADE IN ACCORDANCE WITH THE 2016 MINIMUM DETAIL REQUIREMENTS FOR ALTA/NSPS LAND TITLE SURVEYS, JOINTLY ESTABLISHED AND ADOPTED BY ALTA AND NSPS, AND INCLUDES ITEMS: 1, 2, 3, 4, 6A, 11, 13, 14, 16, 17, 19 AND 21 OF TABLE A THEREOF. THE FIELD WORK WAS COMPLETED IN JANUARY OF 2018.

Matthew W. Ek
MATTHEW W. EK
MAINE PLS 2117
SEBAGO TECHNICS, INC.

JANUARY 15, 2018
DATED

GENERAL NOTES:

1. THE RECORD OWNER OF THE PARCEL IS JACQUELINE CURLEW BY DEED DATED DECEMBER 4, 1964 AND RECORDED AT THE CUMBERLAND COUNTY REGISTRY OF DEEDS IN BOOK 2871, PAGE 25.
2. THE PROPERTY IS SHOWN AS LOT 5 ON THE TOWN OF SCARBOROUGH TAX MAP R52 AND IS LOCATED WITH THE HAIGIS PARKWAY ZONE.
3. SPACE AND BULK CRITERIA FOR THE HAIGIS PARKWAY DISTRICT ARE AS FOLLOWS:

MIN. LOT SIZE:	40,000 S.F.
MIN. STREET FRONTAGE:	200 FEET (ON HAIGIS & PAYNE)
MIN. FRONT YARD:	25 FEET FROM HAIGIS & PAYNE
MIN. SIDE & REAR YARD:	15 FEET
MIN. LANDSCAPE BUFFER:	25 FEET FROM HAGIS PARKWAY
	15 FEET FROM ALL OTHER STREETS
MAX. STRUCTURE HEIGHT:	75 FEET (6 STORIES)
MAX. % LOT COVERAGE, BUILDING	50%
MAX. % IMPERVIOUS SURFACE	75%
ACCESS	LIMITED TO POINTS SHOWN

* SEE THE ORDINANCE FOR MORE PARTICULAR INFORMATION
** NO ZONING REPORT WAS PROVIDED BY THE TITLE COMPANY

4. TOTAL AREA OF PARCEL IS APPROXIMATELY 16.52 ACRES.
5. THE BOUNDARY OF THE CURLEW PARCEL IS BASED UPON ON THE GROUND SURVEYS BY SEBAGO TECHNICS PERFORMED BETWEEN 2005 AND 2018.
6. THERE IS AN APPARENT SCRIVENER ERROR IN THE 90A PAYNE ROAD LLC PROPERTY DEED BOOK 30354, PAGE 154 CREATING A LOT CLOSURE ERROR. PLAN REFERENCED IN THE DEED DEPICTS DIMENSIONS THAT DON'T APPEAR TO HAVE A CLOSURE ERROR.
7. THERE APPEARS TO BE A CONFLICT WITH THE LOCATION OF THE COMMON BOUNDARY LINE BETWEEN THE CURLEW PARCEL (PER PLAN REFERENCES E&F) AND THE 90A PAYNE ROAD LLC PARCEL (BASED UPON PLAN REFERENCE D). PLAN REFERENCES E&F LOCATION IS BASED UPON THE MDOT BASELINE AND RIGHT OF WAY INFORMATION FROM PLAN REFERENCE D. NO MONUMENTATION WAS SHOWN ON PLAN REFERENCE D.
8. PLAN ORIENTATION IS GRID NORTH, MAINE STATE PLANE COORDINATE SYSTEM, WEST ZONE 1802-NAD83, ELEVATIONS DEPICTED HEREON ARE NAVD88, BASED ON DUAL FREQUENCY GPS OBSERVATIONS.
9. UTILITY INFORMATION DEPICTED HEREON IS COMPILED USING PHYSICAL EVIDENCE LOCATED IN THE FIELD. UTILITIES DEPICTED HEREON MAY NOT NECESSARILY REPRESENT ALL EXISTING UTILITIES. CONTRACTORS AND/OR DESIGNERS NEED TO CONTACT DIG-SAFE SYSTEMS, INC. (1-888-DIG-SAFE) AND FIELD VERIFY EXISTING UTILITIES PRIOR TO CONSTRUCTION AND/OR EXCAVATION.
10. SEE PLAN REFERENCE H FOR SITE TOPOGRAPHY.
11. THE LOCUS PROPERTY AS DEPICTED HEREON DOES NOT FALL WITHIN A SPECIAL FLOOD HAZARD AREA AS DELINEATED ON THE FLOOD INSURANCE RATE MAP FOR SCARBOROUGH, MAINE, CUMBERLAND COUNTY, COMMUNITY-PANEL NUMBER 23052-0005-D, HAVING AN EFFECTIVE DATE OF JUNE 19, 1985. THE LOCUS FALLS WITHIN AN AREA IDENTIFIED AS ZONE C, AREAS OF MINIMAL FLOODING.
12. A WETLAND DELINEATION WAS PERFORMED ON THIS PROJECT SITE IN 2003 BY GARY M. FULLERTON, CERTIFIED SOIL SCIENTIST OF SEBAGO TECHNICS, INC. THIS DELINEATION CONFORMS TO THE STANDARDS AND METHODS OUTLINED IN THE 1987 WETLANDS DELINEATION MANUAL AND NORTHEAST REGIONAL SUPPLEMENT AUTHORED AND PUBLISHED BY THE U.S. ARMY CORPS OF ENGINEERS. ALL WETLAND FLAGS WERE LOCATED USING GLOBAL POSITIONING SYSTEMS (GPS) TECHNOLOGY CAPABLE OF SUB-METER ACCURACY.
13. THERE WAS NO EVIDENCE OF RECENT EARTH MOVING, BUILDING CONSTRUCTION OR BUILDING ADDITIONS OBSERVED IN THE PROCESS OF CONDUCTING THE FIELDWORK.
14. THERE ARE NO KNOWN PROPOSED CHANGES IN THE STREET RIGHT OF WAY LINES.

STATE OF MAINE — MATTHEW W. EK — 2117 — PROFESSIONAL LAND SURVEYOR

MATTHEW W. EK PLS2117

DRAWN	CHECKED
MWE	CDM

REV.	BY:	DATE:	STATUS
A	MWE	1/15/18	RELEASED FOR CLIENT REVIEW

THIS PLAN SHALL NOT BE MODIFIED WITHOUT WRITTEN PERMISSION FROM SEBAGO TECHNICS, INC. ANY ALTERATIONS, AUTHORIZED OR OTHERWISE, SHALL BE AT THE USER'S SOLE RISK AND WITHOUT LIABILITY TO SEBAGO TECHNICS, INC.

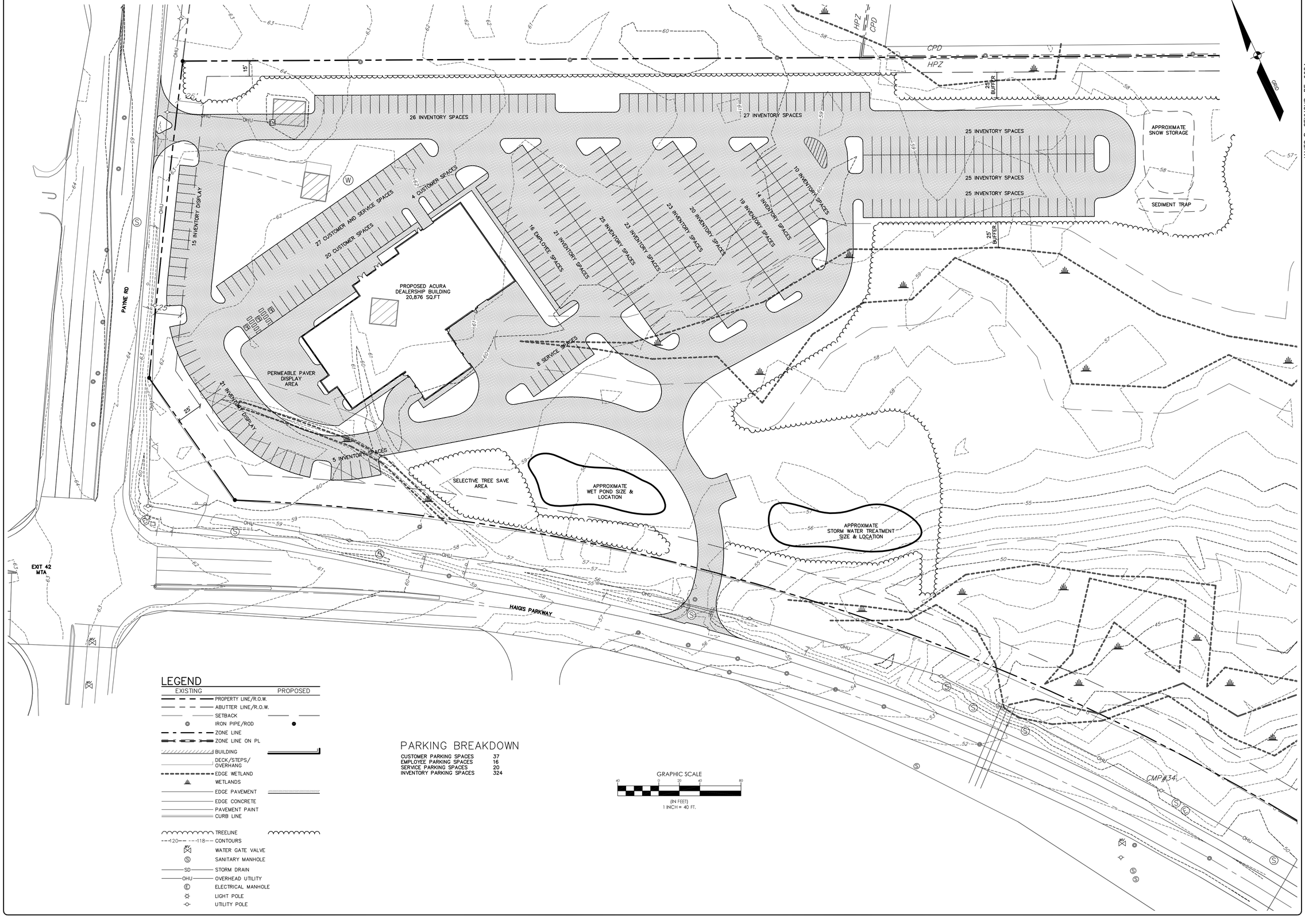
SEBAGO TECHNICS
WWW.SEBAGOTECHNICS.COM
75 John Roberts Rd.
Suite 4A
South Portland, ME 04106
Tel: 207-200-2100

ALTA/NSPS LAND TITLE SURVEY
OF:
CURLEW PROPERTY
PAYNE ROAD AND HAIGIS PARKWAY
SCARBOROUGH, MAINE
FOR:
PATRIOT REALTY-SACO, LLC
496 PORTLAND ROAD
SACO, MAINE 04072

PROJECT NO.	SCALE
17465	1" = 60'

SHEET 1 OF 1

17465LTS.dwg, TAB:LT1



LEGEND

EXISTING		PROPOSED
	PROPERTY LINE/R.O.W.	
	ABUTTER LINE/R.O.W.	
	SETBACK	
	IRON PIPE/ROD	
	ZONE LINE	
	ZONE LINE ON PL	
	BUILDING	
	DECK/STEPS/ OVERHANG	
	EDGE WETLAND	
	WETLANDS	
	EDGE PAVEMENT	
	EDGE CONCRETE	
	PAVEMENT PAINT	
	CURB LINE	
	TREELINE	
-120-	CONTOURS	-118-
	WATER GATE VALVE	
S	SANITARY MANHOLE	
SD	STORM DRAIN	
OHU	OVERHEAD UTILITY	
E	ELECTRICAL MANHOLE	
	LIGHT POLE	
	UTILITY POLE	

PARKING BREAKDOWN

CUSTOMER PARKING SPACES	37
EMPLOYEE PARKING SPACES	16
SERVICE PARKING SPACES	20
INVENTORY PARKING SPACES	324

GRAPHIC SCALE

40 0 20 40 80

(IN FEET)
1 INCH = 40 FT.

PROGRESS PRINT

JAMES R. SEYMOUR, PE. 9984

DESIGNED	CHECKED
JRS	JRS

REV:	BY:	DATE:	STATUS:
-	-	-	-

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SEBAGO TECHNICS
WWW.SEBAGOTECHNICS.COM
75 John Roberts Rd. Suite 1A South Portland, ME. 04106 Tel. 207-200-2100
250 Goddard Rd. Suite B Lewiston, ME. 04240 Tel. 207-795-3585

SKETCH PLAN
OF:
ACURA DEALERSHIP
PAYNE ROAD AND HAIGIS PARKWAY
SCARBOROUGH, MAINE
FOR:
PATRIOT REALTY-SACO, LLC
496 PORTLAND ROAD
SACO, MAINE 04072

PROJECT NO.	SCALE
17465	1"=40'

SHEET 2 OF 2

174655K.dwg, TAB: 24x36

Exhibit 5

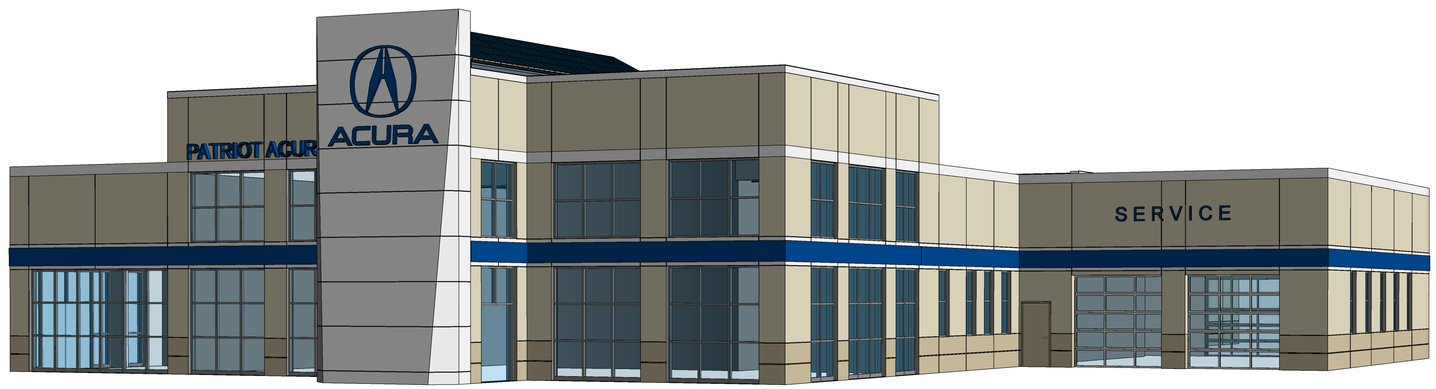
Renderings



K1 | PROPOSED SKETCH RENDERING 1

F2 | PROPOSED SKETCH RENDERING 2

F11 | PROPOSED SKETCH RENDERING 3



A1 | PROPOSED SKETCH RENDERING 4

29 BLACK POINT ROAD
SCARBOROUGH, MAINE 04074
207-883-6307
WWW.GAWRONTURGEON.COM
GAWRON TURGEON ARCHITECTS, P.C.

PATRIOT ACURA
...
SCARBOROUGH, MAINE

REVISIONS

#	DATE	DESCRIPTION

DATE:	01.23.18
PROJECT #	010118
DRAWN BY:	DMR
CHECKED BY:	DMR
DRAWING SCALE	

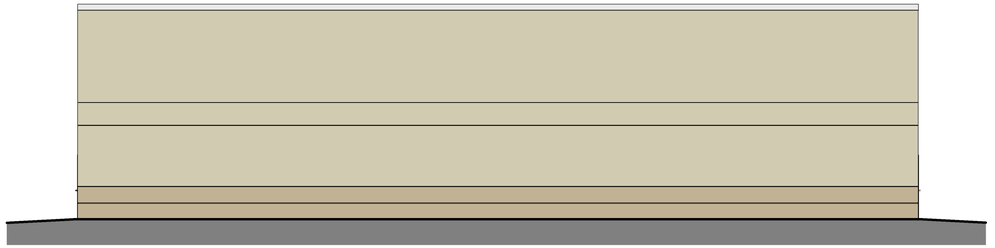
SHEET TITLE

RENDERINGS

A102

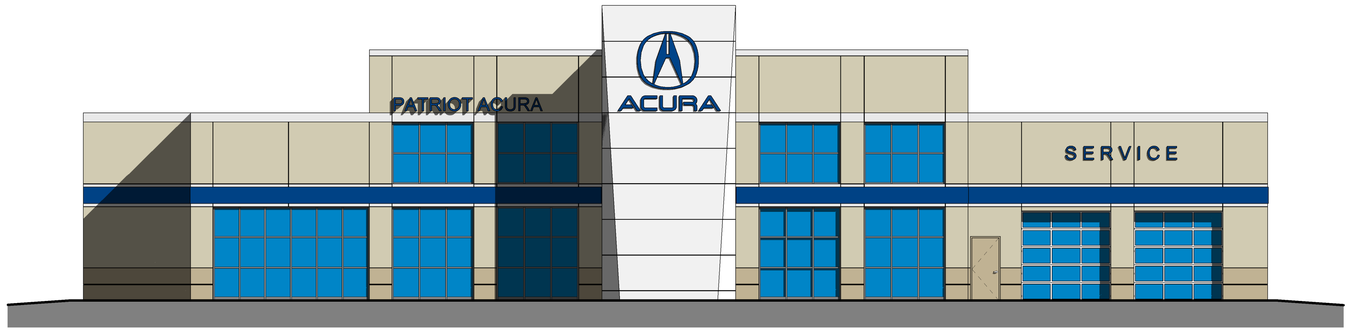
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1/23/2018 105353 AM1 DMR



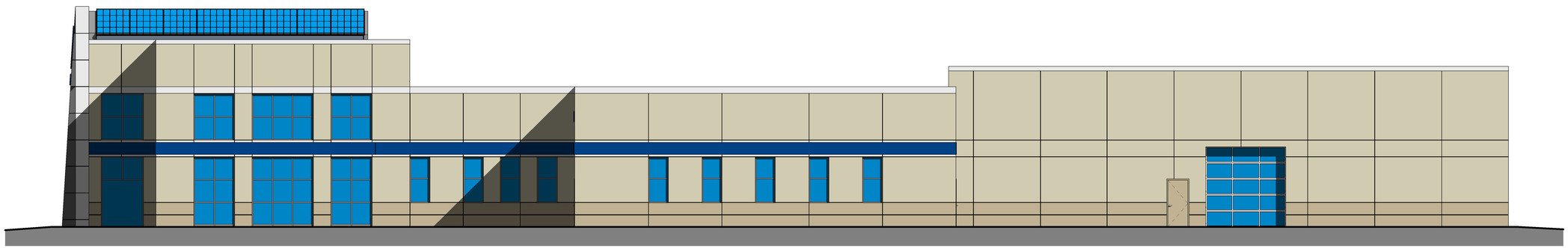
N8 PROPOSED EXTERIOR ELEVATION - EAST

1/8" = 1'-0"



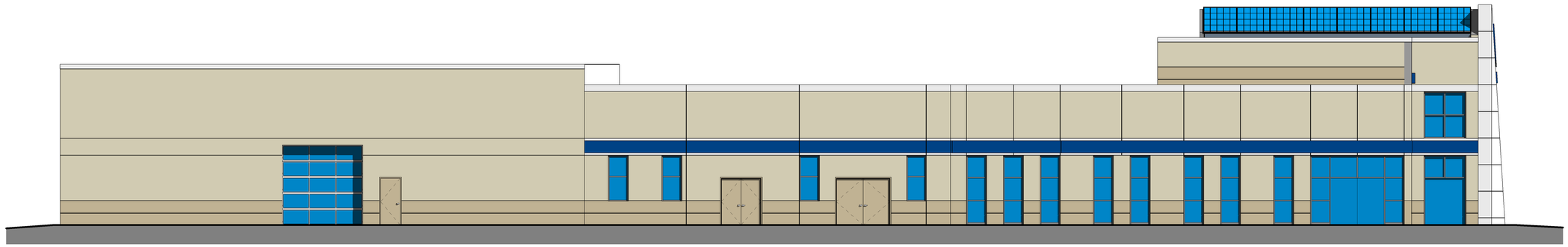
J8 PROPOSED EXTERIOR ELEVATION - WEST

1/8" = 1'-0"



E1 PROPOSED EXTERIOR ELEVATION - SOUTH

1/8" = 1'-0"



A1 PROPOSED EXTERIOR ELEVATION - NORTH

1/8" = 1'-0"

1/23/2018 10:53:57 AM DMR

29 BLACK POINT ROAD
SCARBOROUGH, MAINE 04074
207-883-6307
WWW.GAWRONTURGEON.COM

GAWRON TURGEON ARCHITECTS, P.C.

PATRIOT ACURA

...

SCARBOROUGH, MAINE

REVISIONS

#	DATE	DESCRIPTION

DATE:	01.23.18
PROJECT #	010118
DRAWN BY:	DMR
CHECKED BY:	DMR
DRAWING SCALE	1/8" = 1'-0"

SHEET TITLE

BUILDING ELEVATIONS

A401

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AGENDA
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – MARCH 7, 2018
REGULAR MEETING – 7:00 P.M.

Order No. 17-109. The second reading on the request for the Scarborough Town Council to Order the Discontinuance of all portions of Avenue 2 located southerly of King Street with no damages awarded to the abutting landowners; and to file said Order with the Town Clerk, is scheduled for Wednesday, March 21, 2018. *[Town Manager]*

Town Manager

Sponsor

Ought to Pass

Recommendation

10/18/17 - Vote to Table to 12/06/17
12/06/17 - Vote to Table to 01/17/18
01/17/18 - Vote to Table to 02/07/18
02/07/18 - Scheduled two public hearings

First Reading/Vote

02/21/18 - Public Hearing #1
03/07/18 - Public Hearing #2

Public Hearing

03/21/18

Second Reading/Final Approval/Vote

ORDER OF DISCONTINUANCE PURSUANT TO 23 M.R.S.A. § 3026-A

WHEREAS, the Town Council of the Town of Scarborough, Maine (hereafter the "Municipal Officers") have given best practicable notice of the proposed discontinuance of all portions of Avenue 2 located southerly of King Street (hereafter the "Way") to all owners of property abutting the Way (hereafter the "Abutters"); and

WHEREAS, the Municipal Officers have met to discuss the proposed discontinuance of the Way at public meetings held on February 1, 2017, May 3, 2017, October 4, 2017, October 18, 2017, January 17, 2018, and February 8, 2018;

NOW, THEREFORE, the Municipal Officers hereby Order the discontinuance of all portions of Avenue 2 located southerly of King Street as follows:

A. Discontinuance of the Way.

Pursuant to the provisions of 23 M.R.S.A. § 3026-A, the Town does hereby discontinue and terminate all its interests in the Way, the location of which is described in Exhibits A and B attached to this Order, excepting and reserving the public easements and public utility easement described in Part D of this Order.

B. Names of Abutters.

The names of the Abutters are as follows:

Charles P. Gendron;

The Gables on the Sea Condominium Association; and

The following owners of each unit within The Gables on the Sea, A Condominium:

Unit 1:	Craig Garbarini, Doug Garbarini, Jan Garbarini, Karen Leventis, and Lynn Willscher;
Unit 2:	Jere L. Dearborn and Sally S. Dearborn;
Unit 3:	Harold F. Hutchinson, III and Jeffrey Hutchinson in their capacity as Trustees of the Harold F. Hutchinson, Jr. Trust;
Unit 4:	Mary Ann D. Scaccia;
Unit 5:	Joan A. Payden in her capacity as the Trustee of the Joan A. Payden Trust;
Unit 6:	Richard Iovino and Cynthia Iovino; and
Unit 7:	James P. Karen and Jayme P. Karen

C. Amount of Damages, if Any to be Paid to Each Abutter; Future Valuation.

The Municipal Officers find as a fact, with respect to each and every one of the Abutters named in Part B of this Order, that the fair market value of the Abutter's property immediately after the discontinuance of the Way will be no less than the fair market value of the Abutter's property immediately before the discontinuance of the Way. Therefore, the Municipal Officers award no damages to any Abutter and appropriate no money to pay any such damages.

The Town's decision to not award damages due to the discontinuance of the Way shall have *no effect* on the ability of the Town's assessor to assess any private property resulting from said discontinuance in the legally prescribed manner.

D. Retention of Public Easement.

In lieu of retaining any other public easement in the Way, as allowed pursuant to 23 M.R.S.A. § 3026-A(2)(D), the Municipal Officers hereby accept the delivery of:

1. the Deed of Public Path Easement and Public Conservation Easement from Charles P. Gendron to the Town of Scarborough, a copy of which is attached to this Order as **Exhibit A**, and

2. the Deed of Public Path Easement and Public Conservation Easement from the Gables on the Sea Condominium Association to the Town of Scarborough, a copy of which is attached to this Order as **Exhibit B**,

The areas of the Public Path Easements and the Public Conservation Easements attached to this Order as Exhibits A and B are shown on the "Discontinuance Plan of P/O Avenue 2, Lots 37 and 47 King Street, Scarborough," by Northeast Civil Solutions dated October 4, 2017 attached to this Order as **Exhibit C**.

Except for the interests granted to the Town by the Public Path Easements and the Public Conservation Easements attached to this Order as Exhibits A and B, all interests of the Town in the discontinued Way hereby pass to the Abutters in fee simple to the center of the Way.

E. Public Hearing; Final Vote; Execution of Documents; Certificate of Discontinuance.

Two public hearings regarding this Order shall be scheduled. A final vote of the Town Council shall be scheduled no fewer than ten (10) business days following the conclusion of the second public hearing.

Should the Town Council, acting as the Town's duly-authorized legislative body, vote in the affirmative to approve this Order of Discontinuance, the Deeds of Public Path

Easement and Public Conservation Easement from Charles P. Gendron and from the Gables on the Sea Condominium, referred to in Part D above, (the "Deeds") shall be executed and delivered to the Municipal Clerk contemporaneously thereto.

Further, upon the receipt of the Deeds the Municipal Clerk shall promptly:

1. record at the Cumberland County Registry of Deeds an attested certificate of discontinuance describing the Way, the Deeds of Public Path Easement and Public Conservation Easement from Charles P. Gendron and from the Gables on the Sea Condominium; and

2. provide a photocopy of the certificate to the Department of Transportation, Bureau of Maintenance and Operations.

Dated: February 8, 2018

MUNICIPAL OFFICERS OF THE
TOWN OF SCARBOROUGH

DEED OF PUBLIC PATH EASEMENT AND PUBLIC CONSERVATION EASEMENT

KNOW ALL PERSONS BY THESE PRESENTS THAT **GABLES ON THE SEA CONDOMINIUM ASSOCIATION**, a Maine nonprofit corporation with an office at Scarborough, County of Cumberland, and State of Maine ("Grantor"), grants to **THE TOWN OF SCARBOROUGH,** a Maine municipal corporation located in the County of Cumberland and State of Maine ("Grantee"), the Public Path Easement and Public Conservation Easement more particularly described in **Exhibit A** attached hereto and made a part hereof.

IN WITNESS WHEREOF, **GABLES ON THE SEA CONDOMINIUM ASSOCIATION** has signed this instrument on this ____ day of _____, 2018.

GABLES ON THE SEA CONDOMINIUM ASSOCIATION

DRAFT

_____ _____

Witness By: Nicholas C. Scaccia
Its President, hereunto duly authorized

The undersigned municipality hereby accepts this Deed rights set forth in Section II of Exhibit A

TOWN OF SCARBOROUGH

_____ _____

Witness By: Thomas Hall
Its Town Manager, hereunto duly authorized

STATE OF MAINE
Cumberland, ss. _____, 2018

Then personally appeared before me the above named Nicholas C. Scaccia, President of the Gables on the Sea Condominium Association and acknowledged the foregoing instrument to be his free act and deed in said capacity and the free act and deed of the corporation.

Before me,

_____
Attorney at Law/Notary Public

_____
Printed Name

DRAFT

STATE OF MAINE
Cumberland, ss. _____, 2018

Then personally appeared before me the above named Thomas Hall, Manager of the Town of Scarborough and acknowledged the foregoing instrument to be his free act and deed in said capacity and the free act and deed of said Town

Before me,

_____
Attorney at Law/Notary Public

_____
Printed Name

EXHIBIT A

I. PURPOSE OF THE PUBLIC PATH EASEMENT AND PUBLIC CONSERVATION EASEMENT.

It is the purpose of the Public Path Easement and Public Conservation Easement set forth in this instrument to clarify the legal status of Avenue 2, located within the Town of Scarborough, County of Cumberland, State of Maine, to protect in perpetuity the right of the public to utilize a portion of Avenue 2 as a means of access to Pine Point Beach and the Atlantic Ocean, and to both clarify and perpetually restrict the right of the Grantor, its members and assigns, to develop or otherwise augment the natural state of Avenue 2 as it currently exists.

II. GRANTEE'S RELEASE OF EXISTING INTERESTS.

By acceptance of this instrument, Grantee releases to Grantor all right, title, or interest, if any, of the Grantee in any and all land within the boundaries of the way currently known as "Avenue 2" located east of the centerline of Avenue 2 and south of the southerly sideline of King Street as shown on the "Discontinuance Plan of P/O Avenue 2, 17 and 47 King Street, Scarborough," by Northeast Civil Solutions dated October 4, 2017 to be recorded at the Cumberland County Registry of Deeds herewith (hereafter the "Plan"), a reduced copy of which is attached hereto as Exhibit B that Grantee may previously have acquired, as of the date of this deed, by dedication and acceptance, layout and taking, grant, prescription, custom, or any other means.

DRAFT

III. THE PUBLIC PATH EASEMENT.

A. Boundaries of the Public Path Easement.

The Public Path Easement shall be more particularly described as follows:

Beginning at a point on the southerly sideline of King Street located N71°50'16"E 5' from the centerline of "Old Avenue 2" as shown on the Plan;

Thence S18°09'44"E 886'± to the low water mark of the Atlantic Ocean;

Thence generally westerly along the low water mark of the Atlantic Ocean 5' ± to the centerline of "Old Avenue 2" as shown on the Plan;

Thence S18°09'44"E 886'± along the centerline of "Old Avenue 2" as shown on the Plan to the southerly sideline of King Street as shown on the Plan;

Thence N71°50'16"E along the southerly sideline of King Street as shown on the Plan 5' to the point of beginning.

B. Grantor's Rights and Responsibilities Concerning the Public Path Easement.

Except as may be otherwise expressly provided in this instrument, Grantor shall neither place structures of any kind on, nor alter in any way, the existing surface of any portion of the Public Path Easement.

1. Construction of travelled way over Public Path Easement.

Grantor grants to Grantee and/or its agents or assigns (including, but not limited to, Charles P. Gendron, his heirs and assigns, acting pursuant to Paragraph III(B) of a Deed of Public Path Easement and Public Conservation Easement from Charles P. Gendron to the Town of Scarborough of near or even date) a perpetual and irrevocable license to construct, repair, maintain, and replace, at their sole cost, a travelled way within the boundaries of the Public Path Easement established under this instrument. Any such travelled way shall not be considered a "structure" for the purposes of this Public Path Easement. After completion of the travelled way, Grantor shall not alter that travelled way in any respect.

DRAFT

C. Grantee's Additional Rights Under the Public Path Easement.

1. Signage.

Grantee shall post at the intersection of the Public Path Easement with the southerly sideline of King Street a sign stating, in substance, the following: "PUBLIC WAY TO PINE POINT BEACH / Use of Motorized Vehicles Is Strictly Prohibited."

2. Remedial Action.

Should Grantor place any structures of any kind on the Public Path Easement or alter in any respect any travelled way constructed within the Public Path Easement as determined by the duly-elected officers of the Town of Scarborough, Grantee may, upon giving adequate notice to Grantor, enter upon the Public Path Easement for the purposes of (1) removing any such structures; and (2) restoring to its original condition any portion of the travelled way within the Public Path Easement that Grantor has altered in any respect; and may charge Grantor the reasonable costs of such activities, including but not limited to the cost of labor and all needed materials, as well as reasonable attorney's fees incurred by Grantee while exercising the aforementioned rights.

D. Use of the Public Path Easement.

Use of the Public Path Easement by the Grantee and the public shall comply with all applicable town ordinances, including but not limited to Chapter 612 of the Town of Scarborough Code of Ordinances, and shall be limited to: (a) foot traffic by pedestrians, in common with Grantor, its members and assigns, directly between the southerly sideline of King Street and the low water mark of the Atlantic Ocean as shown on the Plan; and (b) travel by emergency vehicles owned and operated by Grantee, while the emergency vehicles are being operated for the purpose of providing emergency services authorized by Grantee, directly between the southerly sideline of King Street and the low water mark of the Atlantic Ocean as shown on the Plan, which emergency vehicles shall be limited to vehicles in the nature of ATV's or other similarly small vehicles that are capable of travelling on sand and/or other unpaved surfaces. Grantee's law enforcement officers shall retain the sole and exclusive responsibility and right to eject from the Public Path Easement any person or persons using the Public Path Easement for any unauthorized purpose.

After the travelled way within the bounds of the Public Path Easement is completed, Grantee shall neither place structures of any kind within that travelled way nor alter that travelled way except for the purpose of maintaining and/or repairing that travelled way.

DRAFT

E. Protection of Grantor from Liability Arising from Public Use of the Public Path Easement.

By acceptance of this deed, Grantee agrees on behalf of itself, its agents, employees, invitees, and the public that all public use of the Public Path Easement (including, but not limited to, use of the Public Path Easement by emergency vehicles as authorized above) shall be deemed a "recreational activity" within the meaning of 14 M.R.S.A. § 159-A as now and hereafter amended; that Grantor, its members and assigns shall be deemed "an owner, lessee, manager, holder of an easement or occupant of premises" within the meaning of 14 M.R.S.A. § 159-A as now and hereafter amended; and that Grantor, its members and assigns are entitled to all protections extended to such an "owner, lessee, manager, holder of an easement or occupant of premises" under 14 M.R.S.A. § 159-A as now and hereafter amended.

Without limiting the generality of the foregoing, by acceptance of this Deed, Grantee further agrees on behalf of itself, its agents, employees, invitees, and the public (hereafter the "Indemnifying Parties") to save, indemnify, protect, and hold Grantor, its members and assigns, harmless from any and all claims, demands, causes of action, and/or defense costs arising, directly or indirectly or in whole or in part, from the condition or the use of the Public Path Easement, although such indemnification shall be limited to injuries arising out

of uses expressly allowed on the Public Path Easement under Paragraph III(D) of this instrument; that the Indemnifying Parties expressly assume all risks associated with their use of the Public Path Easement; that Grantor, its members and assigns make no representations or warranties whatsoever, express or implied, as to the use or suitability of the Public Path Easement for pedestrian or vehicular travel and hereby disclaim any and all such warranties; and that Grantor, its members and assigns shall have no duty to maintain the Public Path Easement either in a reasonably safe condition or in any other condition.

IV. THE PUBLIC CONSERVATION EASEMENT

The Public Conservation Easement granted by this instrument shall be divided into two areas: the "Northerly Public Conservation Easement" and the "Southerly Public Conservation Easement."

A. The Northerly Public Conservation Easement.

1. Boundaries of the Northerly Public Conservation Easement.

DRAFT

The boundaries of the Northerly Public Conservation Easement are more particularly described as follows:

Beginning at a point on the southerly sideline of King Street located N71°05'16"E 5' from the centerline of "Old Avenue 2" as shown on the Plan, which point also marks the intersection between the southerly sideline of King Street and the easterly sideline of the Public Path Easement;

Thence S18°09'44"E along the easterly sideline of the Public Path Easement 311'± to the intersection of the easterly sideline of the Public Path Easement with the Junction as shown on the Plan;

Thence N77°39'37"E 19.97' along the Junction as shown on the Plan to the westerly boundary of the land described in the deed from Nicholas C. Scaccia and Clinton I. Strout to Gables on the Sea, Inc. dated December 20, 1988 and recorded at the Cumberland County Registry of Deeds in Book 8598, Page 129 (hereafter the "Condominium Parcel") as shown on the Plan;

Thence N18°09'44"W along the westerly boundary of the Condominium Parcel 315'± to the intersection of the westerly boundary of the Condominium Parcel and the southerly sideline of King Street as shown on the Plan;

THENCE S71°50'16"W along the southerly sideline of King Street 19.75 ' to the point of beginning.

2. Limitations on Grantor's use of the Northerly Public Conservation Easement.

Within the Northerly Public Conservation Easement, Grantor shall place no permanent man-made structures of any kind either on or in the ground, with the exception that Grantor may construct, maintain, repair, and replace one wooden, post-and-rail style fence along the easterly sideline of the Northerly Public Path Easement. The Grantee shall place, at Grantee's expense, two small signs within the Northerly Public Conservation Easement indicating that the area within said easement is "Sensitive Dune Area."

Notwithstanding the foregoing, Grantor reserves within the Northerly Public Conservation Easement: (a) the right to remove, replace, and plant trees, shrubs, grasses, and other vegetation, provided that no such vegetation is be planted as to construct a natural hedge, and to install other forms of landscaping and vegetative buffers (none of which vegetation, landscaping, or buffers shall be deemed a "permanent man-made structure" within the meaning of this paragraph) so long as such work is substantially consistent with the (i) plan entitled "Planting Plan, Discontinuance of Avenue 2 Southerly of King Street, by Terrence J. DeWan & Associates dated January 11, 2018 (hereafter the "Planting Plan"), a reduced copy of which is attached to this instrument as Exhibit C and incorporated by reference herein; (b) the right, but not the obligation, to replace any of that vegetation that dies or becomes diseased or damaged after initial planting; (c) to engage in customary residential uses of the land, including but not limited to light recreation, light horticulture, and other similar low-impact activities, provided that such uses shall include neither the placement of permanent man-made structures of any kind either on or in the ground nor the storage of personal property of any kind; and (d) all other rights as the fee owner of the land within the bounds of the Northerly Public Conservation Easement that are not specifically prohibited or by this instrument.

DRAFT

If Grantor hereafter proposes to make a customary residential use of the Northerly Public Conservation Easement, not specifically allowed by this instrument, that would be materially inconsistent with the Planting Plan, then at least 30 days before Grantor commences such use, Grantor shall deliver to Grantee written notice of Grantor's intention to commence such proposed use, which notice shall include a reasonably detailed description of the nature of such proposed use and the area within the Northerly Public Conservation Easement in which such proposed use would take place. If Grantee does not, within 30 days after receiving such written notice, notify Grantor in writing that Grantee intends to prohibit such proposed use, such proposed use shall be deemed authorized by this instrument.

3. Grantee's limited right of access to the Northerly Public Conservation Easement.

Except as provided below, neither the Grantee nor the public may enter upon, occupy, or use any portion of the Northerly Public Conservation Easement. Grantee's law enforcement officers shall retain the sole and exclusive responsibility and right to eject from the Northerly Public Conservation Easement any person or persons using the Northerly Public Conservation Easement for any unauthorized purpose.

Should Grantor place any permanent man-made structures of any kind, other than the above-described wooden, post-and-rail style fence and signage as set forth above, either on or in the ground within the Northerly Public Conservation Area; or if Grantor installs the above-described wooden, post-and-rail style fence so that it is westerly of the easterly sideline of the Public Path Easement, Grantee may, upon giving adequate notice to Grantor: (1) enter into said Northerly Public Conservation area; (2) remove any such permanent man-made structures and/or any portion of the above-described wooden, post-and-rail style fence that is located westerly of the easterly sideline of the Public Path Easement; and (3) charge Grantor the reasonable costs of such activities, including but not limited to the cost of labor and all needed materials, as well as reasonable attorney's fees incurred by Grantee while exercising the aforementioned rights.

DRAFT

In the event that Grantee exercises any or all of the above rights, Grantee shall keep an accurate accounting of the expenses incurred in performing the above-described actions and shall send to Grantor an invoice for the payment of said expenses.

If Grantor fails to make adequate payment of said expenses within sixty (60) days of receiving notice of the same, then Grantee shall retain the right to place and record a lien on Grantor's real property equal to the amount of said expenses, consistent with the requirements laid out in 36 M.R.S.A. § 942, *et seq*.

B. The Southerly Public Conservation Easement.

1. Boundaries of the Southerly Public Conservation Easement.

The area of this Public Conservation Easement hereafter referenced as the "Southerly Public Conservation Easement" is more particularly described as follows:

Beginning at the intersection of the westerly boundary of the Condominium Parcel with the Junction as shown on the Plan;

Thence S18°09'44"E along the westerly boundary of the Condominium Parcel 575'± to the low water mark of the Atlantic Ocean;

THENCE generally westerly along the low water mark of the Atlantic Ocean 20± to the easterly sideline of the Public Path Easement;

THENCE N18°09'44"W along the easterly sideline of the Public Path Easement 575'± to the intersection of the easterly sideline of the Public Path Easement with the Junction as shown on the Plan;

THENCE N77°39'37"E along the Junction 19.97' to the point of beginning;

2. Limitations on Grantor's use of the Southerly Public Conservation Easement.

Within the Southerly Public Conservation Easement, Grantor shall neither place any permanent man-made structures of any kind nor alter the existing natural topography and/or vegetation in any manner except as may be necessary either to (a) prevent or repair damage, to areas within the boundaries of the Southerly Public Conservation Easement and/or the Condominium Parcel caused by storms, flooding, sea-level rise, or other natural forces; and/or (b) vegetate or revegetate with dune grass any portion of the Southerly Public Conservation Easement.

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Notwithstanding the foregoing, Grantor reserves within the Southerly Public Conservation Easement the rights (a) to engage in customary residential uses of the Southerly Public Conservation Easement, provided that such uses shall include neither the placement of permanent man-made structures except signage as provided above, the storage of personal property of any kind, nor alterations to the existing topography or vegetation except to the extent permitted by Paragraph IV(B)(2) of this instrument; and (b) all other rights as the fee owner of the land within the boundaries of the Southerly Public Conservation Easement that are not specifically prohibited by this instrument.

3. Grantee's Limited Right of Access to the Southerly Public Conservation Easement.

Except as provided below, neither the Grantee nor the public may enter upon, occupy, or use any portion of the Southerly Public Conservation Easement. Grantee's law enforcement officers shall retain the sole and exclusive responsibility and right to eject from the Southerly Public Conservation Easement any person or persons using the Southerly Public Conservation Easement for any unauthorized purpose.

Should Grantor fail to abide by the restrictions set forth in Paragraph IV(B)(2) of this instrument, as determined by the duly-elected officers of the Town of Scarborough, Grantee may, upon giving adequate notice to Grantor: (1) enter into said Southerly Public Conservation Easement; and (2) remove any such permanent man-made structures and/or prevent or repair any alterations to the existing natural topography and/or vegetation within the Southerly Public Conservation Easement. Should Grantee resort to its limited right of access in this regard, Grantee shall abide by the procedure and be entitled to reimbursement according to the terms set forth in Paragraph IV(A)(3) of this instrument.

V. GENERAL

A. This Public Easement shall be binding in perpetuity on the parties, their heirs, assigns, and successors in interest.

B. Notwithstanding the use of the term "conservation" within this instrument, this instrument shall not create, or be considered to be, a "conservation easement" created under and governed by 33 M.R.S.A. § 476, *et seq*.

C. Grantee shall retain the right to clean, maintain, and patrol all areas of the beach that are located within the area forming part of the Southerly Public Conservation Easement area and the Southerly Public Path Easement seaward of the line shown on the Plan as dividing the "Edge of Dune Grass" and the "Edge of Sand Beach."

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D. Within all areas of the beach located within the area forming part of the Southerly Public Conservation Easement area and the Southerly Public Path Easement seaward of the line shown on the Plan as dividing the "Edge of Dune Grass" and the "Edge of Sand Beach," the Grantee and the Public shall have the right to continue in perpetuity the historical use of those areas for normal beach-going activities.

E. Except for the restrictions and conditions above, including the sole and exclusive right of Grantee's law enforcement officers to eject users from the easement, Grantor retains the usual and customary right to enforce all other aspects of this easement in all manners prescribed by applicable law.

VI. EFFECT OF THIS INSTRUMENT ON PRIVATE RIGHTS AND BEACH OWNERSHIP

This instrument, along with the attached maps, plans, and other visual depictions shall *not affect in any way*:

A. The existence, lack of existence, or availability of any legal or equitable remedy to protect private rights associated with Avenue 2, including the right to access, use, or otherwise exercise any legal interest in, on, or over, the area of said Avenue 2; or

B. The determination or establishment of any legal interest in Pine Point Beach, including but not limited to title in fee or any easement held by Gables on the Sea Condominium Association, the public at large, or by any other party.

Notwithstanding the foregoing, it is Grantor's express intention that the Public Path Easement granted in Paragraph III of this instrument shall and does hereby convey to Grantee and the public at large a perpetual, irrevocable right of access (subject to the use limitations expressly set forth in Paragraph III of this instrument) to Pine Point Beach as far as the low water mark of the Atlantic Ocean.

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EXHIBIT B

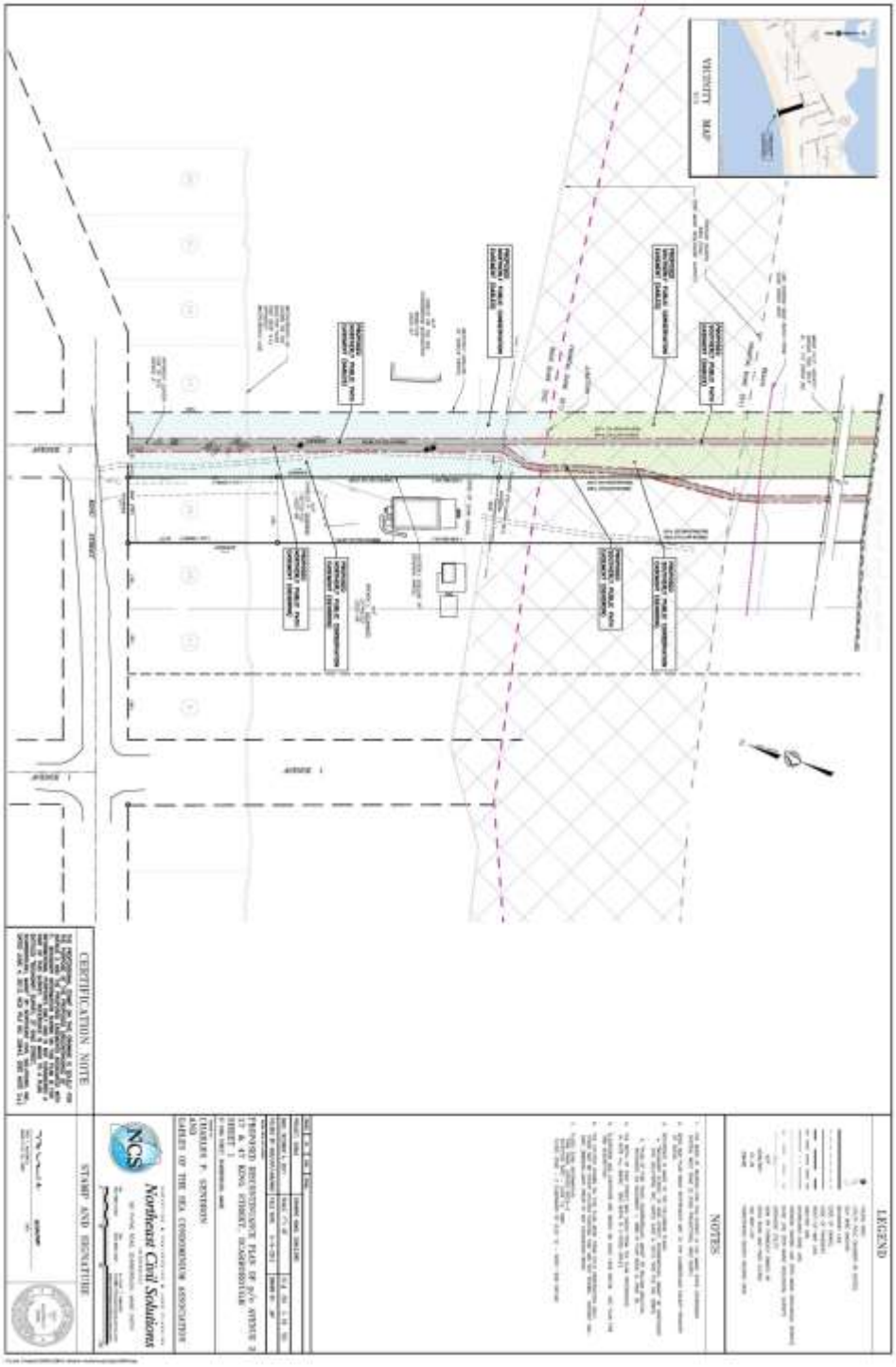


EXHIBIT C


S-1
Planting Plan
KING STREET
RELOCATED PATH ENTRANCE
EXISTING DRIVEWAY
PROPOSED 10' EASEMENT
RELOCATED PATH (NATURAL SAND SURFACE)
APPROXIMATE LOCATION OF EXISTING MEANDERING SAND PATH
EXISTING VEGETATION TO REMAIN FOR BUFFER
STRUCTURE FREE AREA
8 TRANSPLANTED TREES FROM GENDRON SIDE OF THE PATH EASEMENT
3 SMALL PINES
4 SMALL SPRUCE
1 ORNAMENTAL APPLE
tjdka

DEED OF PUBLIC PATH EASEMENT AND PUBLIC CONSERVATION EASEMENT

KNOW ALL PERSONS BY THESE PRESENTS THAT **CHARLES P. GENDRON** of Scarborough, County of Cumberland, and State of Maine ("Grantor"), grants to **THE TOWN OF SCARBOROUGH,** a Maine municipal corporation located in the County of Cumberland and State of Maine ("Grantee"), the Public Path Easement and Public Conservation Easement more particularly described in **Exhibit A** attached hereto and made a part hereof.

IN WITNESS WHEREOF, **CHARLES P. GENDRON** has signed this instrument on this ____ day of _____, 2018.

_____ _____
Witness Charles P. Gendron

TOWN OF SCARBOROUGH

_____ _____
Witness By: Thomas Hall
Its Town Manager, hereunto duly authorized

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STATE OF MAINE
Cumberland, ss. _____, 2018

Then personally appeared before me the above named CHARLES P. GENDRON and acknowledged the foregoing instrument to be his free act and deed.

Before me,

_____
Attorney at Law/Notary Public

_____
Printed Name

STATE OF MAINE
Cumberland, ss. _____, 2018

Then personally appeared before me the above named Thomas Hall, Manager of the Town of Scarborough and acknowledged the foregoing instrument to be his free act and deed in said capacity and the free act and deed of said Town

Before me,

_____
Attorney at Law/Notary Public

_____
Printed Name

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EXHIBIT A

I. PURPOSE OF THE PUBLIC PATH EASEMENT AND PUBLIC CONSERVATION EASEMENT.

It is the purpose of the Public Path Easement and Public Conservation Easement set forth in this instrument to clarify the legal status of Avenue 2, located within the Town of Scarborough, County of Cumberland, State of Maine, to protect in perpetuity the right of the public to utilize a portion of Avenue 2 as a means of access to Pine Point Beach and the Atlantic Ocean, and to both clarify and perpetually restrict the right of the Grantor, his heirs and assigns, to develop or otherwise augment the natural state of Avenue 2 as it currently exists.

II. GRANTEE'S RELEASE OF EXISTING INTERESTS.

By acceptance of this instrument, Grantee releases to Grantor all right, title, or interest, if any, of the Grantee in any and all land within the boundaries of the way currently known as "Avenue 2" located west of the centerline of "Old Avenue 2" and south of the southerly sideline of King Street as shown on the "Discontinuance Plan of P/O Avenue 2, 17 and 47 King Street, Scarborough," by Northeast Civil Solutions dated October 4, 2017, as amended, to be recorded at the Cumberland County Registry of Deeds herewith (hereafter the "Plan"), a reduced copy of which is attached hereto as Exhibit B that Grantee may previously have acquired, as of the date of this deed, by dedication and acceptance, layout and taking, grant, prescription, custom, or any other means.

III. THE PUBLIC PATH EASEMENT.

A. Boundaries of the Public Path Easement.

The Public Path Easement shall have a uniform width of 5' and a centerline more particularly described as follows:

Beginning at a point on the southerly sideline of King Street located S71°50'16"W 5' from the centerline of "Old Avenue 2" as shown on the Plan,

Thence S18°09'44"E 286'± to a point located N77°39'37"W 22.47' from a #5 rebar with plastic cap stamped "NCS, INC. PLS 1314" on the easterly boundary of land of Charles P. Gendron described in the deed from Lorraine R. Johnson to Charles P. Gendron dated June 6, 2013 and recorded at the Cumberland County Registry of Deeds in Book 30715, Page 193 (hereafter the "Gendron Parcel") as shown on the Plan;

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Thence in a generally southeasterly direction 30' ± to the point on the centerline of the "Sand Path to Beach" as shown on the Plan (hereafter the "Southerly Sand Path") where the centerline of the Southerly Sand Path intersects the boundary between the "Frontal Dune (D1)" and the "Back Dune (D2)" as shown on the Plan (hereafter the "Junction");

Thence in a generally southerly direction along the centerline of the Southerly Sand Path extended 575'± to the low water mark of the Atlantic Ocean;

PROVIDED, that if, in compliance with Paragraph III(B)(2) of this instrument, Grantor elects to apply for and in fact obtains all federal, state, or municipal governmental permits, licenses, or other approvals necessary to move the Southerly Sand Path from its present location so that it is adjacent to the centerline of "Old Avenue 2" as shown on the Plan, thereafter the Public Path Easement shall be more particularly described as follows:

Beginning at a point on the southerly sideline of King Street located S71°50'16"W 5' from the centerline of "Old Avenue 2" as shown on the Plan,

Thence S18°09'44"E 886'± to the low water mark of the Atlantic Ocean;

Thence generally easterly along the low water mark of the Atlantic Ocean 5' ± to the centerline of "Old Avenue 2" as shown on the Plan;

Thence S18°09'44"E 886'± along the centerline of "Old Avenue 2" as shown on the Plan to the southerly sideline of King Street as shown on the Plan;

Thence S71°50'16"W 5' along the southerly sideline of King Street as shown on the Plan to the point of beginning.

B. Grantor's Rights and Responsibilities Concerning the Public Path Easement.

Except as may be otherwise expressly provided in this instrument, Grantor shall neither place structures of any kind on, nor alter in any way, the existing surface of any portion of the Public Path Easement located southerly of the Junction (hereafter the "Southerly Public Path Easement"). Grantor shall place no structures of any kind within any portion of the Public Path Easement located northerly of the Junction (hereafter the "Northerly Public Path Easement").

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1. Construction of travelled way over Northerly Public Path Easement

Grantor shall construct a travelled way within the boundaries of (a) the Northerly Public Path Easement described in this instrument and/or the (b) Public Path Easement described in the Deed of Public Path Easement and Conservation Easement from The Gables On the Sea Condominium Association to the Grantee of near or even date; provided, that Grantor shall construct all portions of that travelled way of natural earth materials and shall not apply bituminous or similar manufactured paving materials to any portion of that traveled way. That travelled way shall not constitute a "structure" for the purposes of this Northerly Public Path Easement. After completing construction of that travelled way, Grantor shall have the right, but not the obligation, to maintain and repair that travelled way. Grantor shall be solely responsible for (a) obtaining all federal, state, or municipal governmental permits, licenses, or other approvals necessary to construct or otherwise establish that travelled way; (b) all costs of obtaining those permits, licenses, or other approvals, and (c) all costs of initially constructing that travelled way.

Grantor grants to Grantee and the public a temporary license to continue using the existing sandy path located outside the bounds of the Northerly Public Path Easement until Grantor completes construction of a travelled way within the bounds of the Northerly Public Path Easement, at which time all public use of the existing sandy path located outside the bounds of the Northerly Public Path Easement shall cease.

2. Relocation of Southerly Public Path Easement.

Grantor shall have the right, but not the obligation, to relocate the Southerly Public Path Easement from its present location so that its centerline is located 2.5' westerly of the centerline of "Old Avenue 2" as shown on the Plan.

If Grantor so relocates the Southerly Public Path Easement, Grantor shall construct a travelled way within the relocated boundaries of the Southerly Public Path Easement described in this instrument and/or the Public Path Easement described in the Public Path and Conservation Easement Deed from The Gables On the Sea Condominium Association to the Grantee of near or even date; provided, Grantor shall construct all portions of that travelled way of natural earth materials and shall not apply bituminous or similar manufactured paving materials to any portion of that traveled way. That travelled way shall not constitute a "structure" for the purposes of this Southerly Public Path Easement. After completing construction of that travelled way, Grantor shall have the right, but not the obligation, to maintain and repair that travelled way.

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Grantor shall be solely responsible for (a) obtaining all federal, state, or municipal governmental permits, licenses, or other approvals necessary to relocate, construct, or otherwise establish that travelled way; (b) all costs of obtaining those permits, licenses, or other approvals, and (c) all costs of initially constructing that travelled way.

Unless and until Grantor obtains all federal, state, or municipal governmental permits, licenses, or other approvals necessary to relocate, construct, or otherwise establish a travelled way over the relocated Southerly Public Path Easement, Grantor shall not alter the initial location of the Southerly Public Path Easement described in Paragraphs III(A) and (B) of this instrument in any way.

C. Grantee's Additional Rights Under the Public Path Easement.

1. Signage.

Grantee shall post at the intersection of the Northerly Public Path Easement with the southerly sideline of King Street a sign stating, in substance, the following: "PUBLIC WAY TO PINE POINT BEACH / Use of Motorized Vehicles Is Strictly Prohibited."

2. Remedial Action.

Should Grantor place any structures of any kind on the Public Path Easement; alter, in any way not expressly authorized by this instrument, the existing surface of any portion of the Southerly Public Path Easement; and/or fail to construct a travelled way over the Public Path Easement in compliance with all conditions set forth Paragraphs III(B)(1) and/or III(B)(2) of this instrument, as determined by the duly-elected officers of the Town of Scarborough, Grantee may, upon giving adequate notice to Grantor, enter upon the Public Path Easement for the purposes of (1) removing any such structures; (2) restoring to its original condition any portion of the surface of the Southerly Public Path Easement that Grantor has altered in a manner not authorized by Paragraph III(B)(2) of this instrument; and (3) constructing a travelled way over the Public Path Easement in compliance with all conditions set forth in Paragraphs III(B)(1) and III(B)(2) of this instrument; and may charge Grantor the reasonable costs of such activities, including but not limited to the cost of labor and all needed materials, as well as reasonable attorney's fees incurred by Grantee while exercising the aforementioned rights.

D. Use of the Public Path Easement.

Use of the Public Path Easement by the Grantee and the public shall comply with all applicable town ordinances, including but not limited to Chapter 612 of the Town of Scarborough Code of Ordinances, and shall be limited to: (a) foot traffic by pedestrians, in

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common with Grantor, his heirs and assigns, directly between the southerly sideline of King Street and the low water mark of the Atlantic Ocean as shown on the Plan; and (b) travel by emergency vehicles owned and operated by Grantee, while the emergency vehicles are being operated for the purpose of providing emergency services authorized by Grantee, directly between the southerly sideline of King Street and the low water mark of the Atlantic Ocean as shown on the Plan, which emergency vehicles shall be limited to vehicles in the nature of ATV's or other similarly small vehicles that are capable of travelling on sand and/or other unpaved surfaces. Grantee's law enforcement officers shall retain the sole and exclusive responsibility and right to eject from the Public Path Easement any person or persons using the Public Path Easement for any unauthorized purpose.

After Grantor completes construction of any travelled way within the bounds of the Public Path Easement, Grantee shall neither place structures of any kind within that travelled way nor alter that travelled way except for the purpose of maintaining and/or repairing that travelled way.

E. Protection of Grantor from Liability Arising from Public Use of the Public Path Easement.

By acceptance of this instrument, Grantee agrees on behalf of itself, its agents, employees, invitees, and the public that all public use of the Public Path Easement (including, but not limited to, use of the Public Path Easement by emergency vehicles as authorized above) shall be deemed a "recreational activity" within the meaning of 14 M.R.S.A. § 159-A as now and hereafter amended; that Grantor, his heirs and assigns shall be deemed "an owner, lessee, manager, holder of an easement or occupant of premises" within the meaning of 14 M.R.S.A. § 159-A as now and hereafter amended; and that Grantor, his heirs and assigns are entitled to all protections extended to such an "owner, lessee, manager, holder of an easement or occupant of premises" under 14 M.R.S.A. § 159-A as now and hereafter amended.

Without limiting the generality of the foregoing, by acceptance of this Deed, Grantee further agrees on behalf of itself, its agents, employees, invitees, and the public (hereafter the "Indemnifying Parties") to save, indemnify, protect, and hold Grantor, his heirs and assigns, harmless from any and all claims, demands, causes of action, and/or defense costs arising, directly or indirectly or in whole or in part, from the condition or the use of the Public Path Easement, although such indemnification shall be limited to injuries arising out of uses expressly allowed on the Public Path Easement under Paragraph III(D) of this instrument; that the Indemnifying Parties expressly assume all risks associated with their use of the Public Path Easement; that Grantor, his heirs and assigns make no representations or warranties whatsoever, express or implied, as to the use or suitability of the Public Path Easement for pedestrian or vehicular travel and hereby disclaim any and all such warranties;

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and that Grantor, his heirs and assigns shall have no duty to maintain the Public Path Easement either in a reasonably safe condition or in any other condition.

IV. THE PUBLIC CONSERVATION EASEMENT.

The Public Conservation Easement granted by this instrument shall be divided into two areas: the "Northerly Public Conservation Easement" and the "Southerly Public Conservation Easement."

A. The Northerly Public Conservation Easement.

1. Boundaries of the Northerly Public Conservation Easement.

The boundaries of the Northerly Public Conservation Easement are more particularly described as follows:

AREA 1

Beginning at a #5 rebar with plastic cap stamped "NCS, INC. PLS 1314" located at the intersection of the southerly sideline of King Street and the easterly sideline of the Gendron Parcel as shown on the Plan;

Thence S18°09'44"E along the easterly boundary of the Gendron Parcel 308'± to the intersection between easterly boundary of the Gendron Parcel and the Junction;

Thence N77°39'37"E 5'± along the Junction to the westerly sideline of the Northerly Public Path Easement;

Thence generally northerly along the westerly sideline of the Northerly Public Path Easement 20'± to a point on the westerly sideline of the Northerly Public Path Easement, which point is located S18°09'44"E 169.03' from the southerly sideline of King Street as shown on the Plan;

Thence N18°09'44"W 169.03' along the westerly sideline of the Northerly Public Path Easement to the intersection of Northerly Public Path Easement and the southerly sideline of King Street as shown on the Plan;

Thence S71°50'16"W 19.75' to the point of beginning.

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AREA 2

Beginning at the intersection between the easterly sideline of the Northerly Public Path Easement and the Junction as shown on the Plan;

Thence N77°39'37"E 15'± along the Junction to the centerline of "Old Avenue 2" as shown on the Plan;

Thence N18°09'44"W 25'± to a point on the centerline of "Old Avenue 2" where the easterly sideline of the Northerly Public Path Easement joins the centerline of "Old Avenue 2" as shown on the Plan;

Thence generally southerly along the easterly sideline of the Northerly Public Path Easement to the point of beginning.

2. Limitations on Grantor's use of the Northerly Public Conservation Easement.

Within the Northerly Public Conservation Easement, Grantor shall place no permanent man-made structures of any kind either on or in the ground.

Notwithstanding the foregoing, Grantor reserves within the Northerly Public Conservation Easement: (a) the right to remove, replace, and plant trees, shrubs, grasses, and other vegetation, provided that no such vegetation is be planted as to construct a natural hedge, and to install other forms of landscaping and vegetative buffers (none of which vegetation, landscaping, or buffers shall be deemed a "permanent man-made structure" within the meaning of this paragraph) so long as such work is substantially consistent with the plan entitled "Planting Plan, Discontinuance of Avenue 2 Southerly of King Street, by Terrence J. DeWan & Associates dated January 11, 2018 (hereafter the "Planting Plan"), a reduced copy of which is attached to this instrument as Exhibit C and incorporated by reference herein; (b) the right, but not the obligation, to replace any of that vegetation that dies or becomes diseased or damaged after initial planting; (c) the right to engage in customary residential uses of the land, provided that such uses shall not include the placement of permanent man-made structures of any kind either on or in the ground, the storage of personal property of any kind, or landscaping that is not substantially consistent with the Planting Plan; and (d) all other rights as the fee owner of the land within the boundaries of the Northerly Public Conservation Easement that are not specifically prohibited by this instrument.

If Grantor hereafter proposes to make a customary residential use of the Northerly Public Conservation Easement, not specifically allowed by this instrument, that would be

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materially inconsistent with the Planting Plan, then at least 30 days before Grantor commences such use, Grantor shall deliver to Grantee written notice of Grantor's intention to commence such proposed use, which notice shall include a reasonably detailed description of the nature of such proposed use and the area within the Northerly Public Conservation Easement in which such proposed use would take place. If Grantee does not, within 30 days after receiving such written notice, notify Grantor in writing that Grantee intends to prohibit such proposed use, such proposed use shall be deemed authorized by this instrument.

3. Grantee's Limited Right of Access to the Northerly Public Conservation Easement.

Except as provided below, neither the Grantee nor the public may enter upon, occupy, or use any portion of the Northerly Public Conservation Easement. Grantee's law enforcement officers shall retain the sole and exclusive responsibility and right to eject from the Northerly Public Conservation Easement any person or persons using the Northerly Public Conservation Easement for any unauthorized purpose.

Should Grantor place any permanent man-made structures of any kind either on or in the ground within the Northerly Public Conservation Easement, Grantee may, upon giving adequate notice to Grantor: (1) enter into said Northerly Public Conservation Easement; (2) remove any such permanent man-made structures; and (3) charge Grantor the reasonable costs of such activities, including but not limited to the cost of labor and all needed materials, as well as reasonable attorney's fees incurred by Grantee while exercising the aforementioned rights.

In the event that Grantee exercises any or all of the above rights, Grantee shall keep an accurate accounting of the expenses incurred in performing the above-described actions and shall send to Grantor an invoice for the payment of said expenses.

If Grantor fails to make adequate payment of said expenses within sixty (60) days of receiving notice of the same, then Grantee shall retain the right to place and record a lien on Grantor's real property equal to the amount of said expenses, consistent with the requirements laid out in 36 M.R.S.A. § 942, *et seq*.

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B. The Southerly Public Conservation Easement.

1. Boundaries of the Southerly Public Conservation Easement.

The area of this Public Conservation Easement hereafter referenced as the "Southerly Public Conservation Easement" is more particularly described as follows:

AREA 1

Beginning at the intersection of the centerline of "Old Avenue 2" as shown on the Plan with the Junction as shown on the Plan;

Thence S18°09'44"E along the centerline of "Old Avenue 2" as shown on the Plan 575'± to the low water mark of the Atlantic Ocean as shown on the Plan;

Thence generally westerly along the low water mark of the Atlantic Ocean 25'± to the easterly boundary of the Gendron Parcel as shown on the Plan;

Thence N18°09'44"W along the centerline of "Old Avenue 2" as shown on the Plan 485"± to the intersection between the easterly sideline of Gendron Parcel as shown on the Plan and the easterly sideline of the Southerly Public Path Easement;

Thence generally north along the easterly sideline of the Southerly Public Path Easement 90'± to the intersection between the easterly sideline of the Southerly Public Path Easement and the Junction as shown on the Plan;

Thence N77°39'37"E 15'± to the point of beginning.

AREA 2

Beginning at the intersection of the easterly boundary of the Gendron Parcel with the Junction as shown on the Plan;

Thence S18°09'44"E along the easterly boundary of the Gendron Parcel 82'± to the intersection of the easterly boundary of the Gendron Parcel with the westerly sideline of the Southerly Public Path Easement;

Thence generally northerly along the westerly sideline of the Southerly Public Path Easement to the Junction as shown on the Plan;

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Thence S77°39'37"W along the Junction as shown on the Plan a distance of 5'± to the point of beginning;

PROVIDED, that if, in compliance with Paragraph III(B)(2) above, Grantor elects to apply for and in fact obtains all federal, state, or municipal governmental permits, licenses, or other approvals necessary to move the Southerly Public Path Easement from its present location to a location adjacent to the centerline of "Old Avenue 2" as shown on the Plan, the boundaries of the entire Southerly Public Conservation Easement shall be as follows:

Beginning at the intersection between the easterly boundary of the Gendron Parcel and the Junction as shown on the Plan;

Thence S18°09'44"E along the easterly boundary of the Gendron Parcel 575'± to the low water mark of the Atlantic Ocean;

Thence generally easterly along the low water mark of the Atlantic Ocean 20'± to the westerly sideline of the Southerly Public Path Easement;

Thence N18°09'44"W along the westerly sideline of the Southerly Public Path Easement 570'± to the Junction as shown on the Plan;

Thence S77°39'37"W along the Junction as shown on the Plan 19.97'± to the point of beginning.

2. Limitations on Grantor's use of the Southerly Public Conservation Easement.

Within the Southerly Public Conservation Easement, Grantor shall neither place any permanent man-made structures of any kind nor alter the existing natural topography and/or vegetation in any manner except as may be necessary either to (a) prevent or repair damage, to areas within the boundaries of the Southerly Public Conservation Easement and/or the Gendron Parcel caused by storms, flooding, sea-level rise, or other natural forces; (b) vegetate or revegetate with dune grass any portion of the Southerly Public Conservation Easement; or (c) relocate and/or construct a travelled way over any relocation of the Southerly Public Path Easement made in compliance with Paragraph III(B)(2) of this instrument.

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Notwithstanding the foregoing, Grantor reserves within the Southerly Public Conservation Easement the rights (a) to engage in customary residential uses of the Southerly Public Conservation Easement provided that such uses shall include neither the placement of permanent man-made structures, the storage of personal property of any kind, or alterations to the existing topography or vegetation except to the extent permitted by Paragraph IV(B)(2) of this instrument; and (b) all other rights as the fee owner of the land within the boundaries of the Southerly Public Conservation Easement that are not specifically prohibited by this instrument.

3. Grantee's Limited Right of Access to the Southerly Public Conservation Easement.

Except as provided below, neither the Grantee nor the public may enter upon, occupy, or use any portion of the Southerly Public Conservation Easement. Grantee's law enforcement officers shall retain the sole and exclusive responsibility and right to eject from the Southerly Public Conservation Easement any person or persons using the Southerly Public Conservation Easement for any unauthorized purpose.

Should Grantor fail to abide by the restrictions set forth in Paragraph IV(B)(2) of this instrument, as determined by the duly-elected officers of the Town of Scarborough, Grantee may, upon giving adequate notice to Grantor: (1) enter into said Southerly Public Conservation Easement and (2) remove any such permanent man-made structures and/or prevent or repair any alterations to the existing natural topography and/or vegetation within the Southerly Public Conservation Easement not authorized by Paragraph IV(B)(2) of this instrument. Should Grantee resort to its limited right of access in this regard, Grantee shall abide by the procedure and be entitled to reimbursement according to the terms set forth in Paragraph IV(A)(3) of this instrument.

V. GENERAL

A. This Public Easement shall be binding in perpetuity on the parties, their heirs, assigns, and successors in interest.

B. Notwithstanding the use of the term "conservation" within this instrument, this instrument shall not create, or be considered to be a "conservation easement" created under and governed by 33 M.R.S.A. § 476, *et seq.*

C. Grantee shall retain the right to clean, maintain, and patrol all areas of the beach that are located seaward of the line shown on the Plan as dividing the "Edge of Dune Grass" and the "Edge of Sand Beach."

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D. Within all areas of the beach located seaward of the line shown on the Plan as dividing the "Edge of Dune Grass" and the "Edge of Sand Beach," the Grantee and the public shall have the right to continue in perpetuity the historical use of those areas for normal beach-going activities.

E. Except for the restrictions and conditions above, including the sole and exclusive right of Grantee's law enforcement officers to eject users from the easement, Grantor retains the usual and customary right to enforce all other aspects of this easement in all manners prescribed by applicable law.

VI. EFFECT OF THIS INSTRUMENT ON PRIVATE RIGHTS AND BEACH OWNERSHIP.

This instrument, along with the attached maps, plans, and other visual depictions shall *not affect in any way*:

A. The existence, lack of existence, or availability of any legal or equitable remedy to protect private rights associated with Avenue 2, including the right to access, use, or otherwise exercise any legal interest in, on, or over, the area of said Avenue 2; or

B. The determination or establishment of any legal interest in Pine Point Beach, including but not limited to title in fee or any easement held by Charles P. Gendron, the public at large, or by any other party.

Notwithstanding the foregoing, it is Grantor's express intention that the Public Path Easement granted in Paragraph III of this instrument shall and does hereby convey to Grantee and the public at large a perpetual, irrevocable right of access (subject to the use limitations expressly set forth in Paragraph III of this instrument) to Pine Point Beach as far as the low water mark of the Atlantic Ocean.

EXHIBIT B

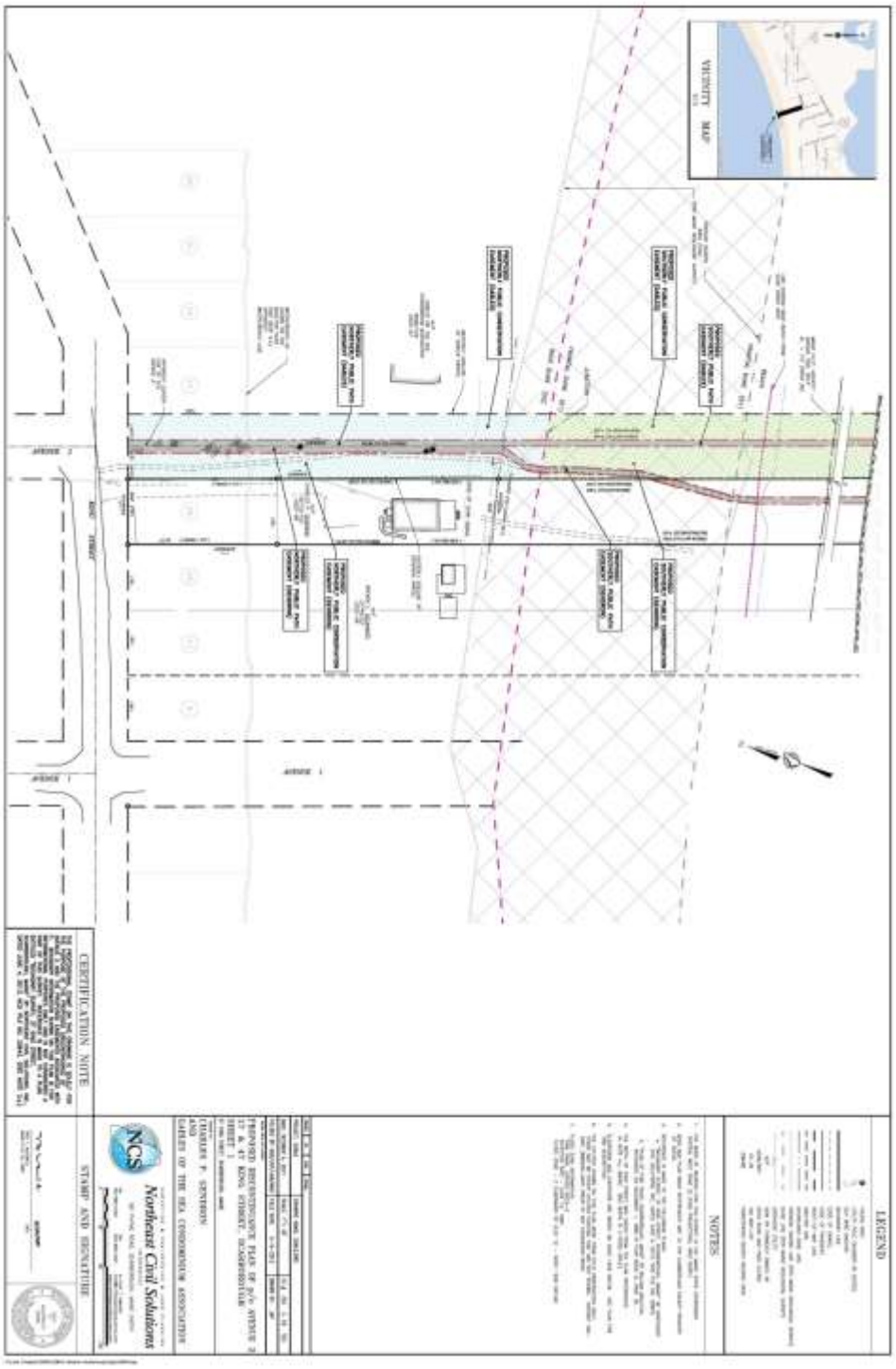

LEGEND
NOTES
CERTIFICATION NOTE
STAMP AND SIGNATURE
Northeast Civil Solutions
PROPOSED RIGHT-OF-WAY DEDICATION
PROPOSED PUBLIC PATH EASEMENT
PROPOSED PUBLIC DRAINAGE EASEMENT
AVENUE 1
AVENUE 2
BAY STREET

EXHIBIT C


S-1
Planting Plan
tjdka
KING STREET
RELOCATED PATH ENTRANCE
EXISTING DRIVEWAY
PROPOSED 10' EASEMENT
RELOCATED PATH (NATURAL SAND SURFACE)
APPROXIMATE LOCATION OF EXISTING MEANDERING SAND PATH
EXISTING VEGETATION TO REMAIN FOR BUFFER
STRUCTURE FREE AREA
5 TRANSPLANTED TREES FROM GENDRON SIDE OF THE PATH EASEMENT
2 SMALL PINE
1 SMALL SPRUCE
1 CRABAPPLE
1 ONAP APPLE

AGENDA
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – MARCH 7, 2018
REGULAR MEETING – 7:00 P.M.

Order No. 18-001. Move approval of the second reading on the proposed amendments to the Higgins Beach Character-Based Zoning Districts. *[Long Range Planning Committee]*

Long Range Planning Committee — Sponsor

Ought to Pass — Recommendation

01/17/18 – Vote: 7 Yeas on first reading and refer to Planning Board

First Reading/Vote

02/21/18 – Public Hearing

Public Hearing

03/07/18 – Vote:

Second Reading/Final Approval/Vote

To: Tom Hall
From: Jay Chace, Planning Director
Subject: Higgins Beach Audit— Zoning Language Amendment
Date: December 26, 2017

The audit process identified that applying the Higgins Beach District requirements to existing non-conforming structures had been challenging because the Code did not have any built-in provisions for enabling modest improvements to these structures without the need to comply entirely with the Code or otherwise require approval from the Board of Appeals.

To address this issue, new language was adopted in the Fall of 2017 as part of the Audit process which enables these structures to become more conforming, but perhaps not entirely conforming, through an administrative review process and without needing Board of Appeals approval.

However as Staff has continued to work with the language it has been noted that there is a distinct difference within the adopted Code which has made the Higgins Beach Districts more restrictive than any other zoning district.

Article 5.C.2.h states that if any non-conforming structure were damaged or destroyed to the extent of more than 50% of replacement value, the structure would not be able to be rebuilt or restored under any circumstance without coming into conformance. The Zoning Ordinance enables all other properties, outside the H.B. districts, the opportunity to rebuild or restore non-conforming structures within one year if the structure is damaged by causes outside the owners control.

Upon reviewing the provisions of Zoning and Shoreland Ordinances, the Long Range Planning Committee is recommending the Council consider deleting Article 5.C.2.h from the H.B District, thereby treating all non-conforming structures which are damaged or destroyed by any means beyond the act of the property owner similarly throughout the community. The remainder of Article 5.C.2 would remain as previously adopted which would continue to meet the intent of the amendments adopted in the Fall.

AMENDMENTS TO CHAPTER 405 THE ZONING ORDINANCE

BE IT HEREBY ORDAINED by the Town Council of the Town of Scarborough, Maine, in Town Council assembled, that Chapter 405 - the Zoning Ordinance of the Town of Scarborough, Maine is amended as follows

Amend SECTION XVI.B. HIGGINS BEACH CHARACTER-BASED ZONING DISTRICTS AND BUILDING STANDARDS, by deleting the text as shown below:

Article 5.C.2

~~h. Restoration of Damaged Structures is permitted as follows:~~

~~i. When a nonconforming structure is damaged or destroyed to the extent of 50% or more of its replacement value, the structure may be repaired or rebuilt only if it conforms to the provisions of this Ordinance.~~

~~ii. When a nonconforming structure is damaged or destroyed to the extent of less than 50% of its replacement value, it may be repaired and rebuilt to its previous condition, so long as the cause of damage was not by any means within the control of the owner, the nonconformity is not expanded, and no new nonconformity is created.~~

~~iii. A Zoning Permit for repairs or reconstruction must be granted within one year of the date of damage or destruction, unless an additional one year extension is granted by the Zoning Administrator.~~

~~iv. When a structure containing a nonconforming use is damaged or destroyed, and the cause of damage was not by any means within the control of the owner, the nonconforming use may be reestablished provided that the above standards are met and the degree of the previous nonconforming use is not increased.~~

AGENDA
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – MARCH 7, 2018
REGULAR MEETING – 7:00 P.M.

Order No. 18-002. Move approval of the second reading on the proposed amendments to the Town of Scarborough Zoning Map. *[Long Range Planning Committee]*

Long Range Planning Committee — *Ought to Pass*

Sponsor — Recommendation

01/17/18 – Vote: 7 Yeas on first reading and refer to Planning Board

First Reading/Vote

02/21/18 – Public Hearing

Public Hearing

03/07/18 – Vote:

Second Reading/Final Approval/Vote

To: Tom Hall
From: Jay Chace, Planning Director
Subject: Higgins Beach Audit—Zoning Map Amendment
Date: December 26, 2017

Based on feedback at the Public Open House and further inspection of the properties, the LRPC and has expressed interest in exploring updates to the standards that apply specifically to the properties along Ocean Ave, between Spurwink and Kelly Ln. These properties have been identified has being unique from the area of the neighborhood beyond Kelly Ln. in that these properties have a different development pattern, larger lot sizes, as well as being along a more heavily travelled corridor serving as the entrance to the inner neighborhood.

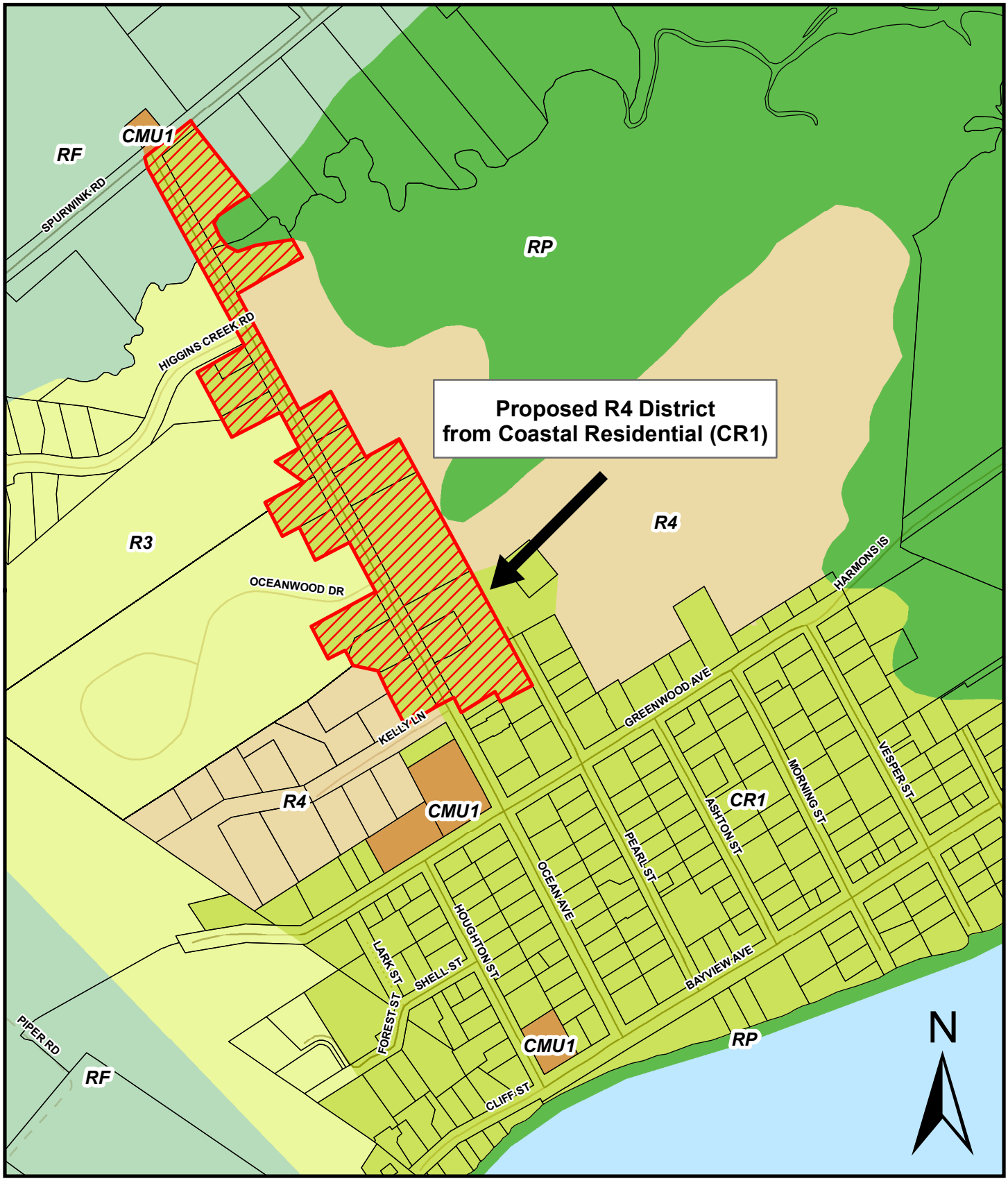
The majority of the homes were originally developed prior to the current Character Code, but unlike the properties beyond the Kelly Ln., the primary design and pattern seems to have been developed more in keeping with the prior zoning standards of the R4 District. The structures sit deeper on the lots and the design is more typically of suburban home pattern. By in large, the development pattern in this area conflicts with the space and bulk standards of the Code, particularly as related to front and rear yard setbacks. Also, most of the homes are not served by public sewer, which more greatly impacts utilization of the space on the parcel.

Also as mentioned, the utilization of the street and the public space along this stretch of Ocean Ave. differs from the rest of the neighborhood. The road is the primary/only way in and out of Higgins Beach, so expectedly traffic is heavier and moves at a greater speed.

In reviewing the information and public feedback, it appears as though goal of the Higgins Beach Code to align the zoning with the prevailing development pattern was not achieved on these properties. Rather than making more homes conforming, the Code has essential converted conforming structures into non-conforming structures.

Based on residents' feedback and further inspection of the properties, the LRPC is proposing the Ocean Ave. area zoning be reverted back to the R-4 District as it was previously zoned prior to December 2015 when the zoning map amendments associated with the adoption of the Code were established. See accompanying zoning map amendment document.

A letter has been sent to all property owners informing them of the proposed amendments and, to date, the Committee has received only positive feedback.



Proposed Amendment to the Town of Scarborough Zoning Map Establishing the Boundaries for the R4 District at Higgins Beach For Council Consideration 2018

AGENDA
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – MARCH 7, 2018
REGULAR MEETING – 7:00 P.M.

Order No. 18-003. Move approval of the second reading on the proposed amendments to Chapter 405 – Town of Scarborough Zoning Ordinance, Section VIIC. Residential Density and Affordable Housing Provisions, sub-section B. Affordable Housing In Lieu Fee - (f). *[Housing Alliance Committee]*

Housing Alliance Committee — Sponsor

Ought to Pass — Recommendation

01/17/18 – Vote: 7 Yeas on first reading and refer to Planning Board

First Reading/Vote

02/21/18 – Public Hearing

Public Hearing

03/07/18 – Vote:

Second Reading/Final Approval/Vote

AMENDMENTS TO CHAPTER 405 THE ZONING ORDINANCE

BE IT HEREBY ORDAINED by the Town Council of the Town of Scarborough, Maine, in Town Council assembled, that Chapter 405 - the Zoning Ordinance of the Town of Scarborough, Maine is amended as follows

Amend SECTION XIIC. RESIDENTIAL DENSITY AND AFFORDABLE HOUSING PROVISIONS, by adding the text as shown below:

B. AFFORDABLE HOUSIN IN LIEU FEE [adopted 11/06/2013]

This mechanism enables developments in designated zoning districts to contain additional residential density if a fee is paid per additional dwelling unit to support the creation of affordable housing within the community. These provisions may only be applied to residential developments that require subdivision and/or site plan review by the Planning Board within zoning districts that explicitly allow for the affordable housing in-lieu fee.

The use of this mechanism requires Planning Board review and approval in accordance with the following provisions:

1. An application for use of the affordable housing in-lieu fee shall be submitted by the applicant as an element of their overall submission for subdivision and/or site plan review and approval. This submission shall include the number of additional dwelling units proposed utilizing the affordable housing in-lieu fee, the proposed dwelling unit types, and the overall residential density.

2. The payment of an in-lieu fell shall be required for each additional dwelling unit permitted through this provision, unless the zoning district in which the project is located allows for density to be determined on a bedroom and square footage basis in accordance with Section VII.C.(A) Residential Density. In these cases, the payment of a fraction of the fee shall be required for each unit in the same proportion as the density requirement for the type and size of the unit proposed (For example, a unit that is counted as half (0.5) a dwelling unit for density purposed required half (0.5) the fee amount as a full dwelling unit). The affordable housing in-lieu fee amount is listed in the Town of Scarborough Schedule of License, Permit and Application Fees (Chapter 311).

3. The total amount of the affordable housing in-lieu fees for the development may either be apportioned to each development phase for multi-phase projects or each dwelling unit or residential building lot within the development. In these cases the fees shall be paid prior to the commencement of construction of each phase of development or prior to the issuance of a building permit for each unit or lot. This scheduled of payment shall be established as part of the Planning Board approval for the development

4. These fees shall be paid to the Town of Scarborough.

5. Affordable housing in-lieu fees collected by the Town shall be deposited into a specific account, segregated from the Town's general revenue, and created for supporting the

creation of affordable housing with Scarborough. These funds shall be used in accordance with the following:

a. The funds contributed to the specific account, entitled the Affordable Housing Initiative Fund, shall be used to further the establishment of affordable housing within the Town. More specifically, these funds may be used for the land acquisition, infrastructure, and/or building construction costs of an affordable housing project.

b. A portion of these funds may also be used for administrative, legal, engineering or other costs related to the planning, design, permitting, and property acquisition for an affordable housing project.

c. A portion of these funds may also be used to establish a revolving loan program to provide direct financial assistance to qualified homebuyers with down payments and other financing needs for purchasing affordable housing units.

d. The Affordable Housing Trust Fund may be used in combination with other Town funds, and other private, non-profit, and government funding for establishing affordable housing within the community.

e. The in-lieu fees contributed by a development shall not be used by the same or other developments to fund the construction of affordable housing required to meet a residential density bonus for the creation of affordable housing.

f. The in-lieu fees collected by the Town shall not be utilized to fund affordable housing portions of a development which are otherwise required to include affordable housing in order to meet minimum zoning standards.

AGENDA
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – MARCH 7, 2018
REGULAR MEETING – 7:00 P.M.

Order No. 18-019. Move approval to authorize the Town Manager to execute a Temporary Construction Easement to Thomas and Terry Hegerle of 39 Ocean Avenue, to allow access during the construction of a new home on their property, via Town owned land identified as Map U002 , Lot 4, on Scarborough Tax Assessor's Map, subject to the conditions that such access is limited to that portion of the Town owned land on the ocean side of the existing stockade fence and that the area be restored to the pre-construction condition. *[Town Manager]*

Town Manager — Sponsor

Ought to Pass — Recommendation

03/07/18 – Vote:

First Reading/Vote

N/A

Public Hearing

N/A

Second Reading/Final Approval/Vote

The Design Company, Inc
PO Box 188
Saco, ME 04072
t. 207-284-5504

May 30, 2017

Scarborough Town Hall
Route 1
Scarborough, ME

ATTN: Thomas Hall, Town Manager

I am in the process of preparing architectural plans to renovate the residential property at 39 Ocean Ave for Tom & Terry Hegerle. This property is adjacent to the parking lot owned by The Town of Scarborough at Higgins Beach.

This property was purchased from Richard and Susan Napolitano after the property was created by a functional division of the Napolitano property. The Hegerle property is 25 feet wide and 100 feet in depth and is improved with a 1-1/2 story cottage style residence. The foundation is an open wood post support system.

As shown on the site plan prepared by Northeast Civil Solutions, the Hegerle residence is located almost on the property of the parking lot owned by the Town of Scarborough. When the parking lot was developed the Town of Scarborough erected a wood fence (approx. 6 foot 6 inches high) on this side of the Town's property. This fence was held back approx. 5 feet from the property line. The town installed landscaping on the parking lot side of the new fence. Between the fence and the Hegerle residence a walkway with brick pavers has been installed by the Hegerle's.

The Hegerle's are proposing a two story home to replace the existing cottage. This will include a new concrete foundation to be installed under the structure. The width of the Hegerle property is 25 foot 6 inches. This means that the foundation will need to be placed under the structure in the same location of the existing building. The foundation cannot be placed further from the property line due to the width of the property.

As per our conversation I am asking the Town of Scarborough to consider the sale and transfer of this strip of land between the offset fence line and the existing property line between the parking lot and the Hegerle property. The exact line will need to be surveyed to determine the actual size but is approximately 5'-0" wide and 49 foot deep, as shown on the "existing condition" sketch plan that I have enclosed.

This transfer would allow the Town of Scarborough all rights of way to maintain, repair and or replace the existing fence. It would also allow the Hegerle property to have a "side yard" setback that is more conducive to the use of their property, allow for building maintenance on this side of their house and reduce the problem of installing the new concrete foundation.

NOTE:
IF A SALE & TRANSFER CANNOT BE DONE THIS REQUEST COULD BE A CONSTRUCTION EASEMENT THAT COULD EXTEND TO A RIGHT OF WAY EASEMENT FOR THE OWNER THAT ALLOWS FOR MAINTENANCE & REPAIR OF THE NEW BUILDING WLW - 2/12/18

Due to the configuration of the town's fence and the location of the residence on the Hegerle property this "strip" of land has no practical use to any of the inhabitants of the community or the established use of the parking lot and would only create a better condition for Tom and Terry Hegerle.

I understand the complexity of this request and the steps required to implement this type of land transfer.

On behalf of Tom and Terry Hegerle I am requesting that you look at this proposal and let me know what the town may think of it and if it is at all possible.

Thank you very much for your time and consideration of this request.

Walter Wilson
The Design Company, Inc.

SCARBOROUGH, MAINE INC. 1658

September 14, 2017

Thomas and Terry Hegerle
8212 N.E. 99th Circle
Vancouver, WA 98662

Z.B.A APPROVAL

Subject: Practical Difficulty Variance
Appeal No. 2613

Dear Thomas & Terry,

By vote 5-0 the Scarborough Zoning Board of Appeals approved on September 13, 2017 your appeal to

Demolish the existing dwelling and foundation, and then replace the structure with a new principal building 20.25 ft. x 30.33 ft., and a 15 ft. x 13.25 ft. rear addition meeting front and rear yard setbacks. Relief from the minimum required side yard setback of 8 feet as follows: a variance of 4.5 feet on the south (right) side yard, and a variance of 7.07 feet on the north (left) side yard in order to place the proposed new structure. The structure will be located a minimum of 3.5 feet from the south side property line and a minimum of 0.93 feet from the north side property line.

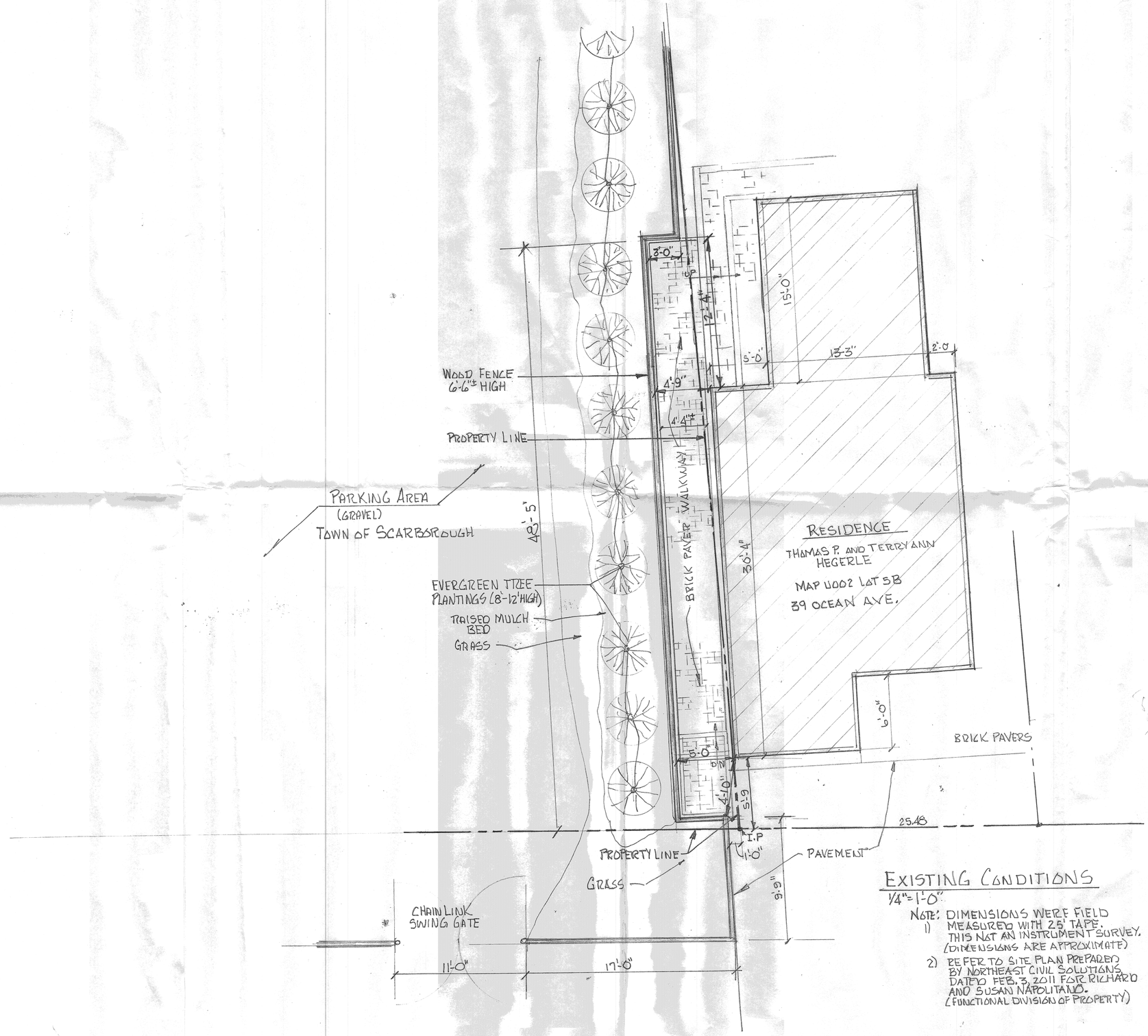
The Maine State Legislature on June 3, 1987 passed legislation requiring all a approved variances to be recorded at the Registry of Deeds located at 25 Pearl Street in Portland, Maine within 90 days of your approval. Enclosed is a notarized form to present to the Registry of Deeds. When obtaining your building permits from the Code Enforcement office, please bring a copy of the recorded form from the Registry of Deeds. Please do not start any construction until you have obtained your permits.

According to the Scarborough Zoning Ordinance, Section IV. K. and Section V., your rights granted by this appeal shall expire if the construction or commencement of the use is not begun within six (6) months of the date on which this approval was issued.

Respectfully,

Mark Maroon, Chair
Zoning Board of Appeals

COPY



EXISTING CONDITIONS

1/4"=1'-0"

NOTE:
1) DIMENSIONS WERE FIELD MEASURED WITH 25' TAPE. THIS NOT AN INSTRUMENT SURVEY. (DIMENSIONS ARE APPROXIMATE)
2) REFER TO SITE PLAN PREPARED BY NORTHEAST CIVIL SOLUTIONS DATED FEB. 3, 2011 FOR RICHARD AND SUSAN NAPOLITANO. (FUNCTIONAL DIVISION OF PROPERTY)

DESIGNED FOR: THOMAS & TERRY HEGERLE	LOCATION: 39 OCEAN AVE SCARBOROUGH, ME
DATE: 5-26-17	SCALE: 1/4"
REVISED:	PLAN NO:
REVISED:	PAGES: 1 OF 1
DRAWN BY: WCW	
SHEET STYLE: EXIST'G SITE CONDITION	

THE DESIGN COMPANY INC.
P.O. Box 188
Saco, Maine 04072
207-284-5504

AGENDA
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – MARCH 7, 2018
REGULAR MEETING – 7:00 P.M.

Order No. 18-020. Move approval on the request from the Scarborough Housing Alliance to award a grant from the Affordable Housing Initiative Fund in the amount of $100,000 toward the Avesta Housing Project to offset unexpected environmental remediation costs and authorize the Town Manager to sign any and all documents related to this order. *[Scarborough Housing Alliance]*

Scarborough Housing Alliance	*Ought to Pass*
Sponsor	Recommendation

03/07/18 – Vote:

First Reading/Vote

N/A

Public Hearing

N/A

Second Reading/Final Approval/Vote

March 7, 2018

To: Scarborough Town Council

From: Scarborough Housing Alliance

In our report of October 4, 2017, SHA had outlined our plans for the coming year. We had carved out two projects that were already in process; Avesta Southgate Project and Bessey Commons II Expansion Project.

The SHA also reported that we would use the funds in the Scarborough Housing Fund from the collection of In-Lieu fees to assist projects for affordable housing.

We have determined that a grant of $100,000 toward Avesta Southgate Project would assist with the over-budget environmental cost. This is basically a 50/50 split of the total environmental cost. This support is needed to complete development of 38 high quality, safe homes in Scarborough and supports our goals of advancing affordable housing, environmental efforts an historical preservation.

We ask for your approval to confirm this grant.

Including the grant to Bessey Commons, the Fund currently has a balance of $335,225.

Thank you, Marj DeSanctis, Chair SHA

AVESTA
HOUSING

February 8, 2018

Thomas Hall
259 U.S. Route 1
Scarborough, ME 04070-0360

Dear Mr. Hall,

Building on previous conversations and communications with the Town of Scarborough regarding redeveloping Southgate House on U.S. Route 1 into 38 homes for low-income families, Avesta Housing requests a $100,000 grant to support unforeseen environmental costs incurred in preparing the site for redevelopment.

In preparing the site, Avesta Housing has removed lead-contaminated soils around the existing historic home and asbestos and lead covered materials located in the historic home and several outbuildings. In addition, Avesta Housing placed Environmental Covenants on the property using the Maine Department of Environmental Protection's Voluntary Response Action Program (VRAP).

If the Town of Scarborough is willing, Avesta Housing proposes to split the costs related to environmental remediation and site preparation. The following is a breakdown of the costs:

Soil Removal, Remediation, and Disposal	$103,065
Asbestos Removal and Disposal	$28,274
Building Demolition and Disposal	$47,750
Environmental Consultants	$21,091
Total	**$200,180**
Grant Request: Town of Scarborough	$100,000
Amount to be covered by Avesta Housing	$100,180

I appreciate your consideration of this request and the continued community support needed to complete this development of 38 high quality, safe homes in Scarborough. Please let me know if you have any questions related to this request.

Sincerely,

Matthew Peters
Vice President of Real Estate Services

307 Cumberland Avenue • Portland, Maine 04101
207-553-7777 • 1-800-339-6516 Voice/TTY
207-553-7778 Fax • www.avestahousing.org

NeighborWorks CHARTERED MEMBER