BEACH MANAGEMENT AGREEMENT
BETWEEN MAINE DEPARTMENT OF INLAND FISHERIES AND WILDLIFE, U.S. FISH AND WILDLIFE SERVICE
AND
TOWN OF SCARBOROUGH, MAINE

June 2015



Town of Scarborough
Beach Management Agreement
2015 through 2017

In 2009, representatives of The Town of Scarborough (The Town), the U.S. Fish & Wildlife Service (USFWS), the Maine Department of Inland Fisheries and Wildlife (MDIFW), and Maine Audubon developed the initial Beach Management Agreement (BMA) for the Town of Scarborough.

IMPORTANT! This agreement is in effect from April 1st through the day after Labor Day when ***nesting activity*** is occurring, *which is defined as when territorial pairs, nests, and chicks of piping plovers are present.* **When nesting activity is not occurring on The Town's beaches, these guidelines are not in effect.** The Town must keep in weekly communication with MDIFW or its designee to know when piping plover ***nesting activity*** is occurring. MDIFW will verify when nesting activity is occurring and will make the final determination when nesting activity is not occurring.

In 1998, the MDIFW designated Pine Point Beach, Scarborough Beach, Ferry Beach, Western Beach, and Higgins Beach as Essential Habitat for nesting piping plovers and least terns under the Maine Endangered Species Act, which requires that municipal activities on these beaches be reviewed by the MDIFW. This agreement allows the Town of Scarborough to continue their beach management program without filing state Incidental Take Plan's (ITP) for each Town activity that occurs near or within piping plover nesting and foraging areas, as long as The Town implements protection measures outlined in this agreement.

There is an incentive for The Town to promote the nesting success of piping plovers because the birds that nest successfully in April or May will fledge their chicks by mid-to-late June or early July, thus removing restrictions on the beach. However if earlier nesting fails, or the birds are force to nest late, the nesting and chick rearing season will extend into July and August, the peak summer months for beachgoers.

I) Introduction

The piping plover is a small, sandy-colored shorebird that nests on beaches from Newfoundland to South Carolina. This species is imperiled throughout much of its range in the United States and Canada. Once common on sandy beaches in southern Maine, the piping plover is listed as Endangered under the Maine Endangered Species Act (MESA), and the east coast population is listed as Threatened under the federal Endangered Species Act (ESA). In Maine the total number of pairs has ranged from a low of 6 pairs in 1983 to a high of 66 pairs in 2002. In 2014 only 50 pairs of piping plovers nested in the entire state of Maine.

Habitat loss and lack of undisturbed nest sites are two of the primary factors jeopardizing populations of Piping Plovers. Historically, Maine had more than 30 miles of suitable nesting beaches that may have supported up to 200 pairs of piping plovers. However, construction of seawalls, jetties, piers, homes, parking lots, and other structures along Maine's sand-beaches has dramatically reduced the extent of suitable nesting habitat. The capability of the remaining habitat to support nesting plovers has been further reduced by continued development and intense recreational use. Ensuring availability of this

limited habitat is essential for the continued existence of piping plovers and other coastal wildlife, such as the state-endangered least tern.

II) Authority to Enter Agreement

Maine Endangered Species Act of 1975

Federal Endangered Species Act of 1973

III) Geographic Scope of Agreement

The intent of this agreement is to provide a means to protect piping plovers on Higgins Beach, Pine Point, Ferry Beach and Western Beach. The success of this agreement depends on the voluntary participation and cooperation of private landowners, the Town of Scarborough, USFWS, and MDIFW. Private property owners will be encouraged to take advantage of the Town of Scarborough's willingness to assist them with resource management applicable to their property.

This agreement does not supersede or replace any local, state, or federal statutes, regulations, or guidelines that apply to private properties.

IV) Beach Management Guidelines for Piping Plovers

Beach Infrastructure and Maintenance

A) Daily trash pickup of waste in town barrels located on the beaches and rights of way.

The Town does not place trash barrels on the beach near plover nest sites. If The Town does decide to place trash barrels on the beach, the Town must place them as far away from areas of plover ***nesting activity*** as possible but no closer than 250 feet from a nest exclosure. Any Town vehicle picking up waste from the barrels each day shall have a trained spotter (trained by MDIFW or its designee) walk in front of the vehicle which shall proceed no faster than walking speed.

Trash pickup can be done by All Terrain Vehicle (ATV) without a spotter if:

1. Personnel picking up trash are in weekly communication with The Town's piping plover coordinator and MDFIW or its designee to know the location of nesting plovers and their chicks;
2. ATV operators are trained by MDIFW or its designee; and
3. ATV vehicles proceed not faster than walking speed.

B) Seaweed and Debris Cleanup.

Seaweed and debris cleanup may be conducted from April 1st through the day after Labor Day. Beach cleaning shall not occur within 250 feet on either side of nest exclosures or chicks. Wrack should remain on the beach within 250 feet of either side of nest exclosures. This gives the birds a buffer from disturbance by the vehicles and leaves important foraging habitat intact.

Guidelines for Beach Cleaning Vehicles:

1. All vehicle entrances/exits to the beach shall be at public ways.
2. A spotter shall be present with all moving vehicles on the beach between April 1st and day after Labor Day.
3. Between April 1st and day after Labor Day, all vehicles entering the beach shall travel at least 50 ft. from the grass edge of the beach, close to the high water mark, to assure no conflicts between nest initiation and vehicular traffic.
4. No spotter is needed after the nesting season is complete as confirmed by MDIFW.

Frequency and Reporting of Beach Cleaning Activities:

1. Cleaning crew Supervisor shall maintain a simple logbook or sheet to record the date, time, and location of each beach cleaning activity.
2. The Public Works Department shall maintain records of cleaning activities in their offices.
3. Beach cleaning may be conducted as needed up to March 31st. Beach cleaning shall be conducted only once per week from April 1st through day after Labor Day, unless authorized by the Town Manager for a specific reason.

Guidelines for Spotters during Beach Cleaning Activity:

The following guidelines shall be followed wherever territorial pairs, nests, or chicks of piping plovers are present.

1. One spotter shall guide all vehicle traffic on the beach.
2. All vehicles shall proceed at "walking speed."
3. Spotters shall use the map provided by the piping plover coordinator prior to commencing beach cleaning activities.
4. Spotters shall record observations of eggs, birds, and nests every 100 feet of the beach prior to vehicular access to that section. If the spotter does not observe plover activity, the cleaner will rake that 100 foot section while the spotter stands and watches in that zone.
5. The spotter shall proceed to the next area (approximately 100 feet down the beach), spotting, locating, and watching before giving the signal to allow the vehicles to enter the area.

C) Police, Emergency, and Non-Emergency Vehicle use.

All Public Safety or Town personnel assigned or normally required to use vehicles, including ATV's, on the beach shall annually receive specialized education and training from MDIFW or its designee in the spotting and protection of plover habitat. All other personnel shall have training materials and aids available to assist in spotting plover habitat when required to respond to either an emergency or a non-

emergency incident. At least two employees shall respond to any non-emergency incident within a plover nesting area, with one employee acting as the spotter. Training workshops shall be available for the 2015 nesting season and each year thereafter.

Non-emergency activities, such as removal of dead or injured marine mammals, shall require at least two responders, one of which will act as the spotter to and from the scene. All emergency response personnel will account for and avoid nesting sites and chicks to the maximum extent practicable, consistent with the nature and urgency of the emergency. However, it is the policy of the Town of Scarborough that such essential vehicles will avoid driving on the wrack line whenever possible and will avoid frequent driving on the beach in a way that would create deep ruts that could impede movement of piping plover chicks.

D) Recreational Activities

Homeowners are responsible for the protection of any piping plover present on their property and to ensure that their family members and guests are aware of the precautions that must be observed. If plovers are located in the property owners' area, the piping plover coordinator will notify the property owner that such activities as fireworks, beach parties, clam bakes, volleyball, fires, etc., could seriously threaten the birds' survival and must be avoided. Refer to Appendix 1 for additional restrictions.

1) No person shall engage in kite flying within 650 feet of an exclosure or symbolic stake and twine fencing from April 1st through day after Labor Day.

2) No person shall discharge or cause the discharge of any fireworks on any beach on which piping plovers are nesting from April 1st until all chicks are fledged.

3) No person shall utilize a sand surfer (wind-driven sand cart), parasail, or para board sail within 650 feet of an exclosure or symbolic stake and twine fencing from April 1st through day after Labor Day.

Source: Chapter 610, Town Ordinances, Piping Plover Ordinance. (see Appendix 1).

E) Animal Control

Dogs and cats can be a significant source of disturbance and mortality for piping plovers. It is in the best interest for pet owners to keep dogs and cats off beaches during the nesting season to prevent violating the state and federal Endangered Species Acts should their pet kill, harm, or harass a piping plover. Violations will result in State and Federal prosecution of responsible parties.

The Town of Scarborough is responsible for enforcing their Animal Control and Piping Plover Ordinances. Failure to do so will be considered a breach of this agreement and gives MDIFW the option to implement other protective management actions as identified by the Maine Endangered Species Act. Other protective management actions include formal MDIFW evaluation for all beach management projects (trash pickup, seaweed and debris cleanup etc.) within mapped Essential Habitats as authorized under MESA (12 M.R.S. Section 12808) and/or filing state Incidental Take Plan's for each Town activity that occurs near or within piping plover nesting and foraging areas.

See Appendix 2 for Town's Animal Control Ordinance, Chapter 604.

Horses are prohibited on the beaches from April 1st to September 30th.

Source: Chapter 604a, Town Ordinances, Horse Beach Permit Ordinance. (See Appendix 3)

F) Symbolic Stake-and-Twine Fencing and Exclosures

Symbolic Stake-and-Twine Fencing: Symbolic Fencing is temporary fencing and signage used to manage recreational use of the beach in the vicinity of plover nesting areas to protect nesting and feeding habitat for the plovers. Ideally, plover nesting areas will be fenced and signed as soon as courtship and nest scraping activity are observed.

a) Plover nesting areas are fenced using wooden stakes, baling twine, and signs erected by MDIFW or its designee. Only persons engaged in piping plover monitoring should enter the fenced areas. Ideally, fenced areas should extend 150 feet along the wrack line on either side of the nest.

b) Fenced areas around nests may be smaller than 150 feet if MDIFW or its designee, determines that the birds are accepting of human activity. In other instances, fencing may be expanded if the 150-foot radius is deemed inadequate to protect incubating adults and unhatched eggs. In many instances, fenced areas may encompass more than one nest.

c) Nesting territories shall be monitored frequently (daily if possible) until nests are located. Symbolic fencing shall remain on the beach until all chicks in the vicinity have fledged.

c) Once nesting areas have been identified and staked, town crews will post signage that reads: "Protected Habitat, Dogs Prohibited."

Nest Exclosures: Nest exclosures consist of 2 x 4 inch welded, wire fence supported by metal stakes placed around piping plover nests in an eight-foot radius. Plover nests that are not quickly fenced are vulnerable to predation and disturbance. When piping plover nests are present, the Town of Scarborough, in conjunction with MDIFW or its designee, will create or arrange for the placement of an exclosure around such nests in accordance with USFWS guidelines and authorization issued by MDIFW. In an effort to afford plovers the immediate protection they require, The Town of Scarborough, or MDIFW, will offer landowners the option to sign a blanket permission form approving fencing of plover nests. Nest exclosures shall be removed by MFDIFW or its designee, when plover nesting is completed.

[This is an incentive for managers (and landowners) to promote the nesting success of plovers. Plovers that initiate nesting successfully in April will have fledged chicks by mid-to-late June. The nesting and chick rearing season of re-nesting or late nesting plovers will extend into July and August, the peak summer months for beachgoers.]

Once such exclosures have been erected, the following prohibitions shall apply: See Appendix 1 for Town's Piping Plover Ordinance, Chapter 610.

G) Responsibility

Activities within the sand dune system at Scarborough Beaches occur within a protected resource area under the jurisdiction of the Maine Department of Environmental Protection (DEP). The U.S. Army Corps of Engineers (Corps) has federal jurisdictional responsibilities within the sand dune system. Many projects and activities (such as moving sand, altering vegetation, repairs to jetties and seawalls) require a permit from DEP and/or the Corps. Therefore, all proposed beach nourishment, sand fencing, planting, and trail plans should be coordinated with the Town of Scarborough and reviewed by the MDIFW, DEP, USFW and the Corps to ensure that state and federal regulations are adhered to and that piping plovers are not adversely affected.

H) Monitoring

Piping plover nesting areas shall be monitored by town employees or volunteers each week throughout the nesting season to ascertain nesting status, number and location of nests, nest success, the success of young, and any re-nesting. Frequent visits will track the survival and movements of family groups.

The position of piping plover coordinator shall be incorporated into Community Services Programs and funded as part of that budget for the period April 1st through day after Labor Day, annually.

Responsibilities of the Coordinator include:

- Coordinate activities and communicate notable occurrences with the MDIFW who will communicate with USFW as needed (See Appendix 4 for contact information).
- Visit each beach at least 3 times/week from April 1 until plovers complete nesting (usually mid- to late-August).
- Document the number and location of nests, nest attempts, nest success, number of chicks fledged, and causes of egg or chick mortality if known.
- Maintain temporary fencing and signs and help erect nest exclosures.
- Recruit and train volunteers to regularly monitor the beaches and document piping plover nesting activities.
- Insure observations by volunteers are recorded on the data sheets provided by MDIFW or its designee.
- The Coordinator will collect weekly reports from volunteer monitors, compile data, and act as liaison with The Town and state officials.
- Provide an end-of-season summary and copies of field data sheets from volunteers and forward them to MDIFW or its designee no later than September 30th.
- With respect to Western Beach, implement "no dog" restriction through public outreach, provide outreach materials to the gatehouse at Ferry Beach, placement and maintenance of signage, and inform pet owners observed on Western Beach of the restriction. Immediately report and document violators to MDIFW or its designee.

- Document disturbance from dogs, pedestrians, or predators and report to MDIFW or its designee.
- Participate in training volunteers.
- If possible, attend the statewide pre- and post-season planning sessions for piping plover coordinators hosted by MDIFW.
- The Coordinator will communicate with landowners as to what is planned and will solicit their support for the monitoring project. For Scarborough beaches, letters will be the primary means of communication.

MDFIW or its designee will:

- train the Piping Plover Coordinator and volunteers
- provide stake, twine, signs, and materials for nest exclosures
- provide outreach materials as available
- provide enforcement as needed.

Neither the Coordinator nor volunteer monitors will be involved in enforcement of regulations. The task of negotiating for the purchase and installation of protective fencing will remain the responsibility of MDIFW.

Volunteer monitors shall be required to commit to training and a weekly commitment of time. They shall attend periodic meetings for program review and reinforcement of training. Monitors shall fill out a standardized, daily report including the number of hours spent on the beach and deliver it to established collection point for pick up by the Coordinator. Monitors shall report on the location of piping plover nests and on adherence to the provisions of this beach management plan. Monitors shall be provided free parking in town parking lots while conducting their monitoring duties.

I) Education and Outreach

Educational efforts will take many forms and will be coordinated with MDIFW or its designee. The Scarborough Leader and Current will be the primary newspapers for dissemination of information as well as local public service TV. Information regarding piping plovers will be posted on The Town website and Facebook page:

http://www.scarboroughmaine.org/ https://www.facebook.com/ScarboroughPipingPloverMonitoring

Through opportunistic, face-to-face meetings with property owners and beach users, volunteer monitors, the piping plover coordinator, MDIFW or its designee, The Town personnel who work on the beaches, USFW and others, will help educate the public about piping plover conservation and management and the importance of respecting piping plover nesting habitat.

In support of the volunteer monitoring program, MDIFW or its designee will conduct annual training sessions for beach volunteer monitors and seasonal plover biologists in May; this training will include information regarding plover biology, plover conservation/management, monitoring protocol, recordkeeping, and regulations, including dogs on the beach. Maine Audubon's "Volunteer Monitoring Handbook", which contains background and training materials, regulations, and daily monitoring check-off sheets, will be the primary resource for training.

V) Permit Review Process

Landowners and the Town of Scarborough must apply for and obtain all appropriate, necessary environmental permits before conducting activities or projects that require environmental review. This Agreement does not negate this responsibility and legal requirement, nor does it supersede or replace state and federal laws.

This Agreement does facilitate state and federal environmental review and permitting provided such activities and projects are consistent with other federal and state statutes. Concurrence from the USFWS on any future project that could affect plovers or their habitat within the geographic area subject to this Agreement is contingent upon the successful implementation of all piping plover protection measures described in this Agreement and demonstration that these protection measures have proven adequate in avoiding "take" (harass, harm, pursue, hunt, shoot, kill, trap, capture, or collect) of the federally-threatened piping plover (U.S. Fish and Wildlife Service 1973).

Situations, activities, or projects may arise that were not addressed in this Agreement that affect piping plovers on Scarborough beaches. Successful resolution of such eventualities requires communication and coordination – landowners and the Town of Scarborough are encouraged to seek early and frequent consultation with MDIFW and USFWS prior to initiating activities or projects that may affect piping plovers.

VI) Time Frame of Agreement

Recognizing that habitat issues may arise that could require additional management, The Town, MDIFW, and USFWS will meet annually to review this agreement. This Agreement will commence April 1st, 2015 and terminate on day after Labor Day, 2017.

VII) Amendments

Amendments to this agreement can be made with the concurrence of all signatory parties to the agreement. Amendments shall be documented in writing, dated, signed by all parties, and attached to the agreement. Amendments will be considered annually at the pre-nesting season meeting.

Signatories to the Agreement

Scarborough Town Manager — Date: 7/20/15

U. S. Fish and Wildlife Service — Date: 07.09.2015

We the U.S. Fish and Wildlife Service approve of the Agreement except for Section IV (E) which references the 2014 Animal Control Ordinance, (Appendix 2). Specifically, the Animal Control Ordinance, Chapter 604-10 specifies that on all Scarborough beaches not designated as Restricted Areas, where piping plovers also nest, dogs are allowed off leash and under voice control all day prior to May 15. From May 15 to Labor Day dogs on these beaches may not be on the beach from 9:00 a.m. to 5:00 p. m., must be on a leash from 5:00 p.m. to dusk, and may be off leash and under voice control from dusk to 9:00 a.m. the following morning. This does not meet the Service's piping plover Guidelines because the Service believes that voice control is not effective at controlling dog behavior, and piping plovers are at risk of take from dogs on these beaches. We clarify our concerns in a letter to the Town dated March 23, 2015.

Please note that we recognize that the Animal Control Ordinance, Chapter 604-2, Section 11 (appendix 2), specifies Restricted Areas where piping plovers nest and no dogs are allowed during the nesting season (Higgins and Ferry/Western Beach) or dogs are allowed during the nesting season on a leash only (Pine Point Beach) from April 1 to the day after Labor Day. Section 11 meets or exceeds the Service's Guidelines.

aine Department of Inland Fisheries & Wildlife — Date: 07/21/15

Appendix 1

CHAPTER 610
TOWN OF SCARBOROUGH
PIPING PLOVER PROTECTION ORDINANCE

1. Purpose.

The purpose of this Ordinance is to avoid or minimize adverse effects on Piping Plovers and their young by protecting their nesting, brooding, fledging, roosting and foraging activities on beaches within the Town of Scarborough.

2. Definitions.

Beach means any beach area within the Town of Scarborough, which is used by the general public.

Exclosure means an area from which pedestrians and vehicles are excluded by means of symbolic fencing.

Owner of a dog (or owner) means any person having custody, possession or control of a dog.

Piping Plover means the Atlantic Coast Piping Plover (Charadrius melodus), identified as a threatened species pursuant to the Federal Endangered Species Act of 1973, as amended, 16 U.S.C. §§ 1531 et seq.

Sand surfer means a recreational device consisting of a board on wheels attached to a large kite or sail and propelled by wind power.

Symbolic fencing means one or two strands of lightweight string, tied between posts to delineate areas where pedestrians and vehicles should not enter.

Wrack line means the line of dried seaweed, marine vegetation and other debris left on the beach by the action of the tides.

3. Piping Plover nesting habitat to be identified.

On or before April 1st of each year, the Town of Scarborough, in conjunction with the Maine Department of Inland Fisheries and Wildlife, the United States Fish and Wildlife Service and/or the Maine Audubon Society, will identify Piping Plover nesting habitat and will mark or arrange for the marking of such habitat with posts and warning signs.

4. Nests and broods protected.

When Piping Plover nests are present, the Town of Scarborough, in conjunction with the Maine Department of Inland Fisheries and Wildlife, the United States Fish and Wildlife Service and/or the Maine Audubon Society, will create or arrange for the creation of an exclosure around such nests in accordance with the guidelines of the United States Fish and Wildlife Service and authorization issued by the Maine Department of Inland Fisheries and Wildlife. Once such exclosures have been created, the following prohibitions shall apply:

(1) No person shall enter into an exclosure, except for wildlife management purposes authorized by the Maine Department of Inland Fisheries and Wildlife or the United States Fish and Wildlife Service.

(2) No person shall remove or disturb the wrack line located in front of an exclosure located within 330 feet of a Piping Plover brooding site, unless such activity is approved by the Maine Department of Inland Fisheries and Wildlife or the United States Fish and Wildlife Service.

(3) No owner of a dog shall cause or permit that dog to enter the exclosure or shall fail to prevent that dog from entering the exclosure. All dogs shall be leashed in accordance with the Animal Control Ordinance, Chapter 604.

(4) No person shall drive or operate a vehicle, including a non-motorized vehicle, on the wrack line. (a) Non-emergency activities such as removal of dead or injured sea mammals shall require at least two responders, one of which will act as the spotter to and from the scene. (b) All emergency response personnel will account for and avoid nesting sites and chicks to the maximum extent practicable, consistent with the nature and urgency of the emergency. However, it is the policy of the Town of Scarborough that such essential vehicles will avoid driving on the wrack line where possible and will avoid frequent driving on the beach in a way which would create deep ruts that could impede movement of Piping Plover chicks.

(5) No person shall engage in kite flying, kitesurfing or parasailing within 650 feet of nesting or territorial adult or unfledged juvenile Piping Plovers between April 1st and August 31st.

(6) No person shall discharge or cause the discharge of any fireworks on any beach on which Piping Plovers are nesting from April 1st until all chicks are fledged.

(7) No person shall utilize a sand surfer within 650 feet of nesting or territorial adult or unfledged juvenile Piping Plovers between April 1st and August 31st.

5. **Enforcement and penalties.**

Any person who violates any provision of this Ordinance commits a civil violation for which a civil penalty of no less than $50.00 and no greater than $250.00 shall be imposed. This Ordinance may be enforced by any officer of the Scarborough Police Department.

6. **Relation to state and federal laws.**

This Ordinance is intended to be consistent with state and federal protections of Piping Plovers and Piping Plover habitat. In the event of any inconsistency between this Ordinance and state or federal laws or regulations, the more stringent provisions shall control.

7. **Relation to private protection efforts.**

This Ordinance is not intended to supersede or displace any efforts or activities of private individuals or organizations or any protections afforded to Piping Plovers and

their habitat by deed restrictions, conservation easements and other types of private covenants. To the extent any such private covenants are more restrictive than the provisions of this Ordinance, this Ordinance does not authorize any departure from the requirements of such covenants.

Appendix 2

CHAPTER 604
TOWN OF SCARBOROUGH
ANIMAL CONTROL ORDINANCE

604-1 Purpose

The purpose of this ordinance is to require that all animals in the Town of Scarborough be kept under the control of their owner or keeper at all times so that they will not injure persons or other animals, damage property or create a public health threat.

The provisions of this ordinance that apply to the owner of an animal apply equally to any person keeping, or having control, custody, or possession of that animal.

604-2 Definitions

1. ABANDONED ANIMAL:

An animal that has been deserted by its owner or keeper.

2. ANIMAL:

Every living, sentient creature not a human being.

3. ANIMAL CONTROL:

Control of dogs, cats and domesticated or undomesticated animals.

4. ANIMAL CONTROL OFFICER:

Any person appointed by the Town of Scarborough to enforce animal control laws.

5. ANIMAL SHELTER:

A facility that includes a physical structure, or part of a physical structure, that provides temporary or permanent shelter to stray, abandoned, abused or owner-surrendered animals.

6. AT LARGE:

off the premises of the owner and not under the control of any person whose personal presence and attention would reasonably control the conduct of the dog.

7. BEACH:

Any beach area within the Town of Scarborough which is used by the general public.

8. DOG:

Any of large and varied groups of domesticated animals in the canine family.

9. LEASH:

Hand held device, 30 feet or less in length, which can be used to restrain a dog if the dog fails to respond to voice commands or if the owner or responsible party is ordered by the Animal Control Officer and a law enforcement officer to leash the dog and at all times when this Ordinance requires dogs to be leashed. A leash of a length no longer than 12 feet shall be used at all time on Beaches of Scarborough from April 1 to Labor Day, unless otherwise stated herein. A failure to comply with this definition shall constitute a violation of this ordinance. (amended 05/19/2004; amended 05/07/2014)

10. OWNER:

Owner or any person or persons, firm, association or corporation owning, keeping or harboring an animal or any person having custody, possession, or control of an animal.

11. RESTRICTED AREAS: Restricted Areas are beach areas that may be designated for special protection for piping plovers or other endangered species based upon scientific and historical data. The following are Restricted Areas and restrictions applying thereto from April 1st to the day after Labor Day [Adopted 05/07/2014]:

a) **Higgins Beach** – The Restricted Area is defined as that part of the beach from Champion Street to the Spurwink River-**no dogs allowed**. See aerial map appended hereto for further details. [Exhibit A]

b) **Ferry/Western Beach** – The Restricted Area is defined as that portion of the beach commonly known as Ferry Beach, beginning at the southerly end of the municipal parking lot and extending south to Ferry Rock and thence southeast the full length of the beach commonly known as Western Beach – **no dogs allowed.** See aerial map appended hereto for further details. [Exhibit B]

c) **Pine Point Beach** – The Restricted Area is defined as that portion of the beach from the main beach access path at Hurd Park north to the Scarborough River-**dogs on leash only**. See aerial map appended hereto for further details. [Exhibit C]

12. RESPONSIBLE DOG OWNER: Is an individual who has possession or custody of a dog and has read and affirmed [at the time of licensure], that they will 1) Maintain control of their dog(s) at all times; 2) They will not allow the dog(s) to charge, chase or display aggression towards any person, other dogs or wildlife; and, 3) Behave in any way that a reasonable person would find disturbing or harassing. Except for hunting purposes a Responsible Dog Owner shall not have more than two dogs under Voice and Sight Control at the same time. A responsible party shall have a leash in his or her possession for each dog off leash. A failure to comply with this definition shall constitute a violation of this ordinance.

13. RESPONSIBLE PARTY:

As used in this ordinance, the term "responsible party" means any person who has possession or custody of a dog. If a dog is present on a beach in violation of the

restrictions of this section, the owner of the dog and the responsible party are jointly and severally liable for the violation. (amended 05/19/2004)

14. VOICE AND SIGHT CONTROL:

As used in this ordinance, the term "voice control" means that the dog returns immediately to and remains by the side of the responsible party in response to the responsible party's verbal command. "Sight Control" means that a dog is always within sight of the Responsible Pary and the dog is capable of complying with Voice Control. A violation of this Ordinance occurs upon a failure to comply with the definition of either Voice Control or Sight Control. If a dog approaches or remains within 10 feet of any person other than the responsible party, that dog is not under voice control and a violation of this Ordinance occurs unless such person (or in the case of a minor child, an adult present with the child) has communicated to the responsible party by spoken word or gesture that such person consents to the presence of the dog. (amended 05/19/2004)

604-3 Animal Control Officer

A qualified person shall be employed by the police department who shall be known as and perform the duties of Animal Control Officer. The Animal Control Officer shall be principally responsible for the enforcement of all laws related to dogs, cats, and other domesticated animals and also to undomesticated animals.

604-4 At Large Dogs

Dogs shall be considered at-large unless leashed or under Voice and Sight Control. It is unlawful for any dog, licensed or unlicensed, to be at large, except when used for hunting. The owner of any dog found at large shall be subject to the civil penalties provided in this ordinance.[Amended 05/07/2014]

604-5 Impoundment or Return of At Large Dogs

All dogs found at large in violation to Title 7, M.R.S.A., Section 3911 may be impounded at the animal shelter or returned to the owner, at the discretion of the Animal Control Officer. If the Animal Control Officer returns the dog to its owner, the owner shall pay a $15.00 (fifteen dollars) return fee to the Town of Scarborough before the dog is returned. The payment must be made at the police dispatch center, which shall issue a receipt therefor.

604-6 Disposition of Impounded Animal

An owner is entitled to resume possession of any impounded animal provided that all provisions of this ordinance have been met, and that all impoundment fees due under the provisions of this ordinance have been paid. Any animal not claimed after the owner has been notified may be classified as an abandoned animal, and the animal's owner may be subjected to all civil penalties authorized by this ordinance.

604-7 Impoundment Fee

An owner may reclaim an impounded animal by first paying to the Town of Scarborough at the Town Clerk's Office, a fee of $30.00 (thirty dollars) for each animal impounded. If the Town Clerk's Office is closed, the fee shall be paid at the Police Dispatch Center. Fees

must be paid and a receipt from the Town must be presented to the animal shelter before the release of an animal. All fees will be deposited in the separate account required by Title 7, M.R.S.A. 3945.

604-8 Animal Noise

a. Except as provided in subparagraph (b) and (c) below, no owner shall permit or allow any animal to bark, howl or make other sounds common to its species if such sounds recur in steady, rapid succession for 20 minutes or more or recur intermittently for one hour or more.
b. Section 604-8(a) shall not apply if any animal is provoked by trespassing people or animals on private property on which the animal is situated or by other legitimate cause for provocation.
c. Section 604-8(b) shall not apply to farm animals kept on a property located in the R-F or R-F-M Districts under the Scarborough Zoning Ordinance. In all other zoning districts, Section 604-8(a) shall not apply to farm animals kept on a property [the principal use of which is] [a use of which is] the commercial production of farm products and is either a conforming use or a lawful nonconforming use under the Scarborough Zoning Ordinance. For purposes of this exception, dogs are not "farm animals" and kennels are not "farms."

604-9 Control of Animal Waste

An owner must remove and dispose of any feces left by his/her animal on any sidewalk, street, beach, public property or private property (other than the property of the owner of the animal or of a person who has consented to the presence of the animal on his or her property) and deposit such feces into appropriate litter receptacle. An owner whose animal is present on any property from which the animal's feces is required to be removed pursuant to this section must have in his or her possession a plastic bag or similar utensil not part of the human body for collecting and removing the feces. This regulation shall not apply to any person who, by reason of physical handicap, is unable to comply with the requirement.

604-10. Public Beaches and Shores (amended 05/19/2004; [Amended 05/07/2014])

The following restrictions apply to dogs on beaches:

The following restrictions apply to dogs on beaches:

a. From April 1 to Labor Day dogs shall be restricted in the Restricted Areas of each Beach as set forth in Section 604.2(11).
b. From May 15th to Labor Day (i) no dogs on any Beach from 9:00 a.m. to 5:00 p.m.; and (ii) dogs on leash from 5:00 p.m. to dusk.
c. From the day after Labor Day to May 14th dogs on leash from 1:00 p.m. to 3:00 p.m.
d. If directed by the Animal Control Officer or a law enforcement officer a Responsible Party may be required to leash their dog.
e. No dogs on any beach from 30 minutes after sunset (dusk) to 30 minutes before sunrise (dawn).

f. Whenever a portion of a beach has been roped off, fenced off or otherwise demarcated or posted as a protected area in order to protect the nesting site of a piping plover or of any other endangered species protected under federal law, no dog shall approach within 200 feet of such protected area.
g. Dogs shall be on leash while entering or exiting vehicles and the Beach.
h. At all times not otherwise addressed above, dogs shall be under Voice and Sight Control.

604-11 Dangerous Dogs

Any person who is assaulted by a dog or any person witnessing an assault against a person or domesticated animal or a person with knowledge of an assault against a minor, within thirty days of the assault, may make a written complaint to the Animal Control Officer that the dog is a dangerous dog. The Animal Control Officer may issue a civil violation citation for keeping a dangerous dog pursuant to 7 M.R.S.A. §3952. After issuing the citation and before hearing in court, if the dog poses an immediate or continuing threat to the public, the Animal Control Officer shall order the owner of the dog to muzzle, restrain or confine the dog to the owner's premises or to have the dog at the owner's expense at a place determined by the Animal Control Officer. If the owner fails to comply with such order, the Animal Control Officer may apply to the District Court, Superior Court or a Justice of the Peace pursuant to 7 M.R.S.A. §3952 for an ex parte order for authorization to take possession of the dog that poses an immediate or continuing threat to the public.

604-12 Trespass

An owner of an animal may not allow that animal to enter onto the property of another after the owner has been warned by the property owner or a representative of the property owner or by the Animal Control Officer or a law enforcement officer that the animal was found on the property of another.

The owner of an animal is responsible, at the owner's expense, for removing such animal found trespassing. The Animal Control Officer, may, at the owner's expense, remove and control the animal if:

> the owner fails to remove the animal after having been notified by the Animal Control Officer that the animal was trespassing; or the animal is an immediate danger to itself, to persons or to another's property.

Any animal so removed shall be subject to the provisions of Sections 604-5, 604-6 and 604-7 in the same manner as an at large dog.

604-13 Licenses[Amended 04/20/2011; Amended 05/07/2014]

No dog shall be kept within the limits of the Town of Scarborough unless such dog is licensed by its owner in accordance with Maine Law and has acknowledged receipt and affirmation of the requirements of a "Responsible Dog Owner" as defined in Section 604-2-11. The Town Clerk shall provide with each new license issued for a dog a tag indicating

the year the license is issued and such other information as may be required under Title 7 M.R.S.A. Part 9 - Chapter 721. Dog Licensing.

604-14 Rabies Tags

Rabies tags obtained from a veterinarian for immunization against rabies must be securely attached to a collar of leather, metal or material of comparable strength that must be worn by the dog for which the tag was issued except when the dog is hunting, in training or in an exhibition or on the premises of the owner. When the dog is hunting, in training or in an exhibition, its owner shall produce proof of licensure and proof of rabies immunization within twenty-four hours upon request for the Animal Control Officer.

604-15 Violations/Penalties

Any persons who violates Section 604-8 (Animal Noise) or Section 604-9 (Control of Animal Waste) shall be subject to civil penalties for each violation, as follows:

> First violation: not less than $50.00 and not more than $100.00, plus costs.
> Second violation: not less than $100.00 and not more than $250.00, plus costs.
> Third and subsequent violations: not less than $250.00 and not more than $500.00, plus costs.

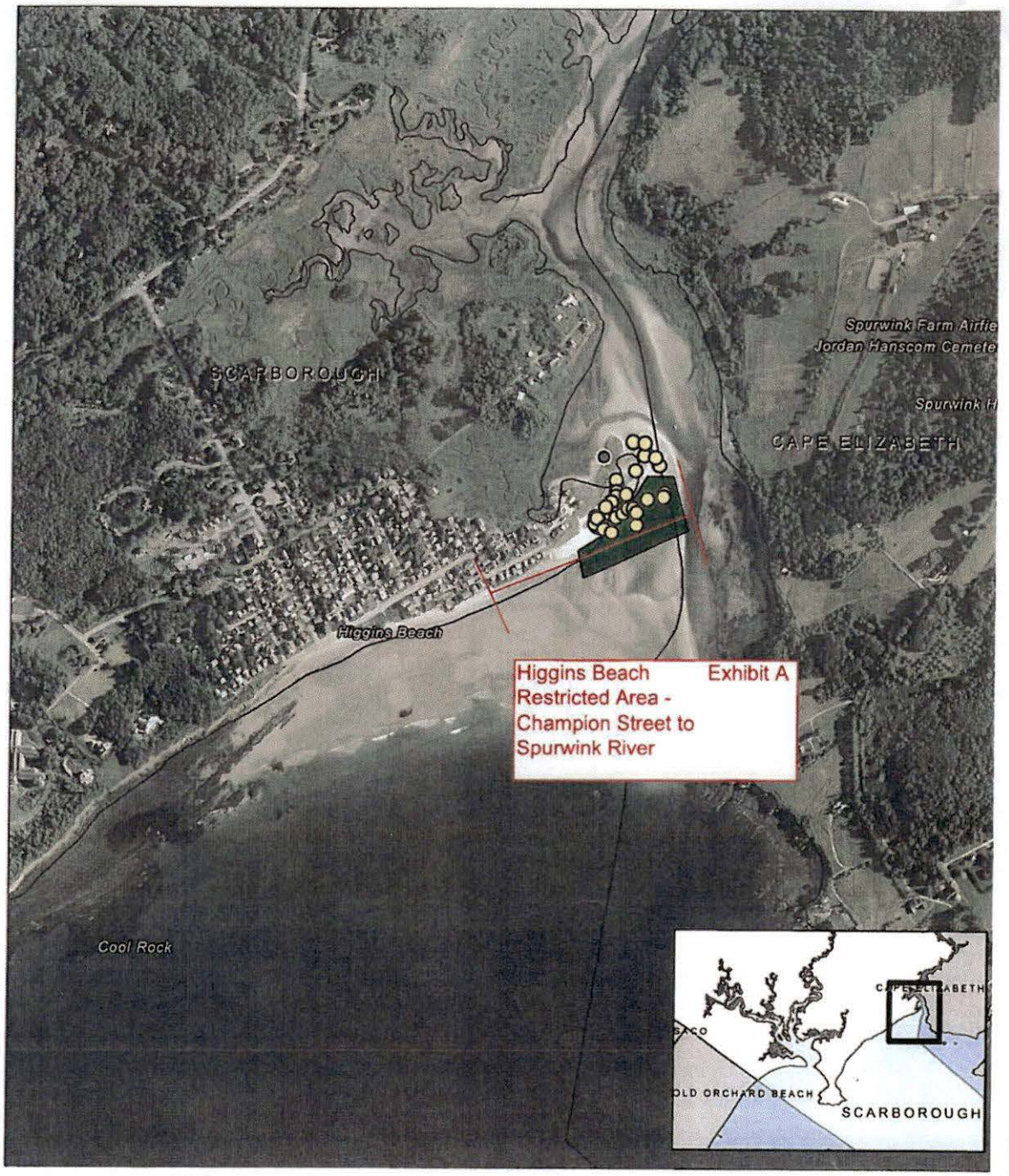
Any person who violates any other Section of this ordinance shall be subject to a civil penalty of not less than $100.00 and not more than $500.00 plus costs for each offense.

All civil penalties collected pursuant to this Ordinance shall be recovered to the use of the Town of Scarborough and deposited in the separate account required by 7 M.R.S.A. Section 3945.

A person issued a civil violation citation for violating this Ordinance may elect to pay the minimum penalty specified above for each violation alleged in the citation, in lieu of appearing in court to answer the citation. Such payment must be received at the Office of the Town Clerk in the amount specified by the Animal Control Officer by the seventh day prior to the court appearance date specified in the citation. Upon receipt of such payment by the Clerk, the Animal Control Officer shall cause the citation to be dismissed. However, the violations alleged in the citation shall be deemed admitted for purposes of assessing any future penalties under this section.

604-16 Severability Clause

If any part of this ordinance shall be held valid, such part shall be deemed severable and the invalidity thereof shall not affect the remaining parts of this ordinance.



Piping Plover Nest Locations - Town of Scarborough (Higgins Beach)

Maine Department of
Inland Fisheries and Wildlife

- Piping Plover Nest Locations *2000-2013*
- Piping Plover Brood Locations *2011 & 2012*
- Historic Piping Plover Nest Locations

Miles

Projection: UTM, NAD83, Zone 19

Date: 9/11/2013



Piping Plover Nest Locations - Town of Scarborough (Ferry Beach & Western Beach)

Maine Department of Inland Fisheries and Wildlife

- Piping Plover Nest Locations *2000-2013*
- Piping Plover Brood Locations *2011 & 2012*
- Historic Piping Plover Nest Locations

0 0.1 0.2 0.3 0.4 0.5 Miles

Projection: UTM, NAD83, Zone 19

Date: 9/11/2013



Piping Plover Nest Locations - Town of Scarborough (Pine Point Beach)

Maine Department of
Inland Fisheries and Wildlife

- Piping Plover Nest Locations *2000-2013*
- Piping Plover Brood Locations *2011 & 2012*
- Historic Piping Plover Nest Locations

0 0.1 0.2 0.3 0.4 0.5 Miles

Projection: UTM, NAD83, Zone 19

Date: 9/11/2013

Appendix 3

CHAPTER 604A
TOWN OF SCARBOROUGH
HORSE BEACH PERMIT ORDINANCE

1. "Pine Point Beach" means the sand beach bordering the Atlantic Ocean from the mouth of the Scarborough River to the Old Orchard Beach town line.
2. "Rider" means any person who rides, leads or drives a horse.
3. "Town of Old Orchard Beach" means the municipality so named.

604A-1. Permit Required

No rider shall bring a horse onto the beach without having a permit and displaying on the rider a permit number tag issued by the Town Clerk of either the Town of Scarborough or the Town of Old Orchard Beach. Every rider must have an individual permit and permit number tag.

604A-2. Procedure for Obtaining a Permit

A rider seeking a permit to bring a horse onto the beach must apply in writing to the Town Clerk of the Town of Scarborough or the Town Clerk of the Town of Old Orchard Beach, using forms supplied by such clerk. The application must be accompanied by identification issued by a government agency and by the application fee required by the Schedule of License, Permit and Application Fees in the municipality where the application is made. If the applicant is a minor, the application must be signed by a parent or guardian, who must supply the required identification (the minor need not supply identification). Along with the permit, the Town Clerk shall also issue a permit number tag, designed to be worn by the rider and visible at a distance, which shall contain the permit number in numerals at least two and one half (2½) inches high, the name of the permit holder and the name of the issuing municipality, and may contain such other information concerning the permit as the Clerk deems appropriate. A permit issued by either municipality shall be valid in both municipalities. Permits are valid only between October 15th and May 1st. All permits, whenever issued, expire on May 1st. The Town Clerk who issues the permit may suspend or revoke the permit if the rider violates any provision of this ordinance and may decline to issue a subsequent permit to a rider who has violated any provision of this ordinance.

604A-3. Regulation of Horses on the Beach

1. Horses are allowed on the beach only from October 15th through May 1st.

2. Except for gaining access to and egress from the beach, horses are allowed only in the intertidal zone (between the mean high tide line and the mean low water line).

3. Parking of horse trailers is limited to Hurd Park in the Town of Scarborough and the Milliken Street Municipal Parking Lot in the Town of Old Orchard Beach.

4. Any rider or owner who allows a horse to be present on the beach must remove and dispose of animal waste as required by Section 604-9 of the Town of Scarborough Animal Control Ordinance. Violation of Section 604-9 constitutes a violation of this Ordinance.

604A-4. Violation/Penalties

Any person who violates this Ordinance within the Town of Scarborough shall be subject to civil penalties for each violation as follows:

First violation: not less than $50.00 and not more than $100.00, plus costs.
Second violation: not less than $100.00 and not more than $250.00, plus costs.
Third and subsequent violations: not less than $250.00 and not more than $500.00, plus costs.

A person issued a civil violation citation for violating this Ordinance may elect to pay the minimum penalty specified above for each violation alleged in the citation, in lieu of appearing in court to answer the citation. Such payment must be received at the Office of the Scarborough Town Clerk in the amount specified in the citation prior to the court appearance date specified in the citation. Upon receipt of such payment by the Clerk, the Town shall cause the citation to be dismissed. However, the violations alleged in the citation shall be deemed admitted for purposes of assessing any future penalties under this section.

If a horse is present on the beach in violation of this Ordinance and the rider is not the owner, the owner shall be jointly and severally liable with the rider for civil penalties.

604A-5. Enforcement

This Ordinance may be enforced by any officer of the Police Department of the Town of Scarborough.

604A-6. Severability Clause

If any part of this Ordinance shall be held invalid, such part shall be deemed severable and the invalidity thereof shall not affect the remaining parts of this Ordinance.

Appendix 4

WEEKLY CONTACT INFORMATION

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