

M E M O R A N D U M

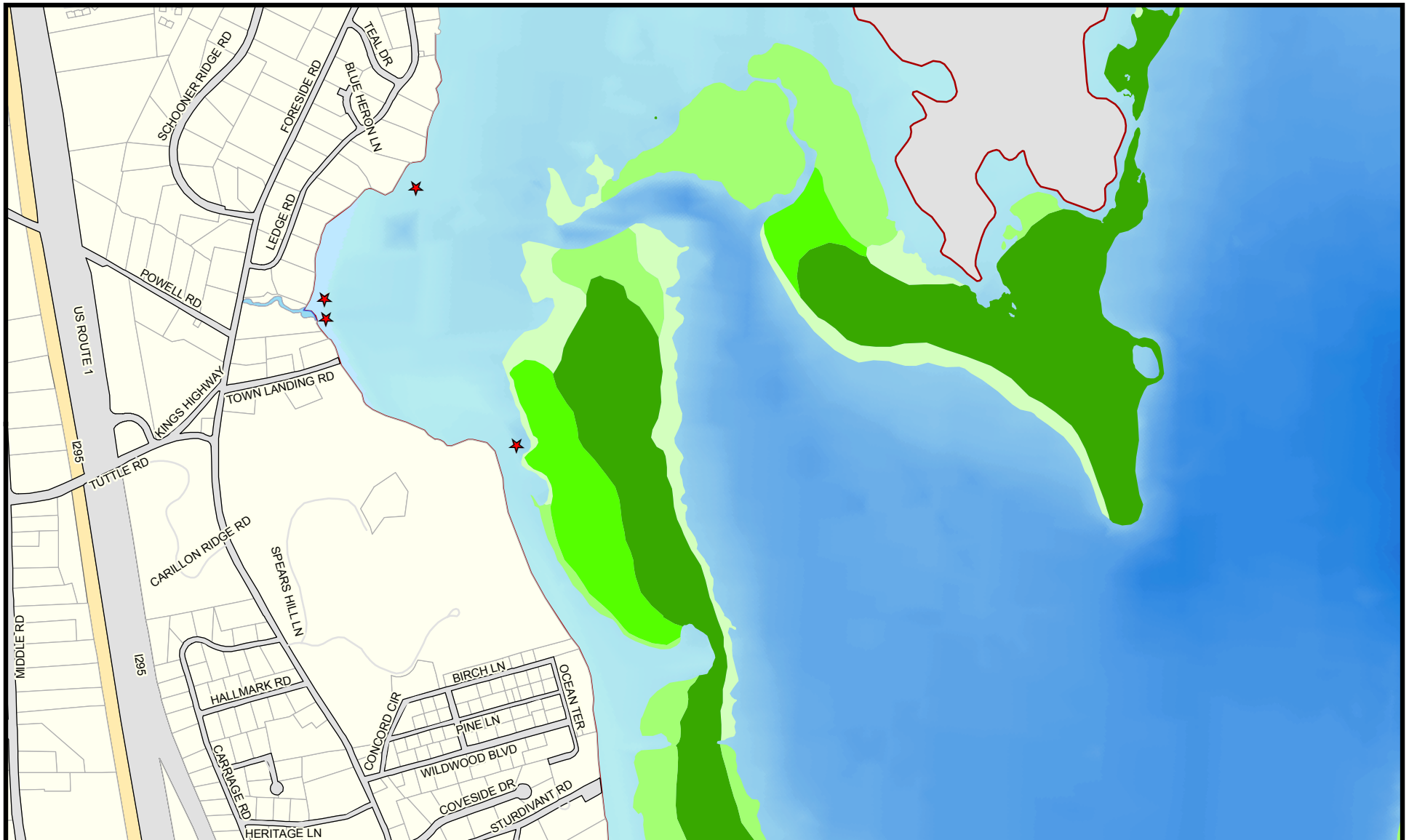
TOWN OF CUMBERLAND, MAINE
290 TUTTLE ROAD
CUMBERLAND, MAINE 04021
TEL: 207-829-2205 FAX: 829-2224

To: Town Council
From: William R. Shane, Town Manager
Date: June 11, 2015
Re: Public Hearing on 179 Foreside LLC Pier Agreement

This is really a continuation of the Broad Cove Management Plan discussion and my recommendation Below is the same:

With all the moving pieces now in play, it may be advisable to send this documents to the Coastal Water Commission for their recommendation regarding the feasibility of moorings in the area. We have received calls at Town Hall inquiring if there will be mooring space along the Town's property. At this time we do not know, but are developing maps with the eel grass beds and water depths from the shore to the channel to determine what if anything can be done with our water frontage. Perhaps a joint meeting of the CWC and the OAC may be advisable once the CWC has completed their work to better explain their findings.

I would recommend that the Town Council adopt the rules as written and re-visit the boating restrictions once additional meetings and reports can be given from the CWC. I believe the CWC will complete their work by early fall in time for next season's mooring and boating season.



Data Sources:
Town of Cumberland
Maine Office of GIS
MaineDMR

Map Prepared by:



Map Produced: June, 2015

Town of Cumberland, Maine Eel Grass Beds



1,500
Feet

★ Docks

Eel Grass Beds

Very Sparse (< 10%)
Sparse (10-40%)
Moderate (40-70%)
Dense (70-100%)

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement made this _____ day of June, 2015, by and between the **Town of Cumberland**, a municipal corporation, of the Town of Cumberland, County of Cumberland and State of Maine (“Town”), and **179 Foreside, LLC**, a Maine limited liability company, with its principal place of business in Portland, County of Cumberland and State of Maine.

W I T N E S S E T H:

WHEREAS, the Town of Cumberland has purchased a waterfront portion of the former Payson Estate, so-called, on Cumberland Foreside and with it the existing two hundred foot (200') pier (“Pier”); and

WHEREAS, 179 Foreside, LLC is the owner of abutting upland premises that are being developed into a ten (10) lot subdivision known as “Spears Hill Subdivision” to be governed by the association entitled 179 Foreside Homeowners Association (“Association”) which may also include a pre-existing lot known as the “Robbins lot” containing 2.21 acres within the subdivision; and

WHEREAS, the Pier needs major repairs and 179 Foreside, LLC is prepared to contribute to the same if its lot owners are permitted various use rights in regard to the Pier and adjacent Beach; and

WHEREAS, the parties wish to agree upon a process for evaluating and funding the repairs, leading to final agreements which preserve and enhance the use of the Pier and Beach by Association members and Cumberland residents.

NOW, THEREFORE, the parties hereto agree as follows:

1. The Town shall grant an assignable, non-exclusive license to 179 Foreside, LLC for the use of the Pier by its ten (10) lot owners and the Association in common with the Town but, except as set forth herein, said license shall be subject to all reasonable rules and regulations that the Town may apply to the use of the Pier. The license shall be revocable by mutual consent of the parties, or by the Town for cause following reasonable notice, which cause shall include failure by the Association to pay all sums due hereunder,

or failure to timely cure any other material breaches of the license agreement following notice thereof to the Association. Said license shall be assignable only to the actual owners of each of said lots, and their secured lenders, and shall be conditional upon the Association's annual payments to the Town of fifty percent (50%) of the costs of maintaining the Pier, including winter float storage, which costs shall be established by the Town in consultation with the Association, but which shall not exceed \$5,000 per year for the first five years hereof and which the Town shall annually match. Following the initial five (5) year period of the license agreement, in the event the Town chooses not to make its annual contributions, the license agreement shall be revocable by the Town or Association. Any excess funds shall be held in a Pier Reserve Account by the Town, with the annual funding level renegotiated in five (5) year cycles from the date of completion of the Pier restoration. In addition, the Association shall annually pay a capital improvement assessment of \$5,000, which amount shall be matched by the Town and deposited in a Pier Reserve Capital Account to be expended by order of the Town Council. The annual amounts due for said capital reserve shall be re-evaluated in 5 year cycles following the initial Pier restoration, or at such earlier time as capital expenditures are made pursuant to a Pier Capital Improvements plan. All maintenance and capital improvement payments shall be made on or before March 1 of each year the license agreement remains in force, commencing on the March 1 of the year immediately following substantial completion of the agreed Pier reconstruction.

2. 179 Foreside, LLC agrees to deploy, at its sole expense, its waterfront engineering consultant to conduct an analysis of current repairs and upgrades needed for the Pier and will pay fifty percent (50%) of the costs of said Pier repairs and/or upgrades, which final cost shall be mutually agreed upon between 179 Foreside, LLC and the Town, but 179 Foreside, LLC's contribution shall not exceed \$150,000.00 and be deposited at the time the parties enter into the final license agreement and the Town approves the proposed reconstruction contract.

3. The Town reserves the right to grant other parties rights to the Pier for public recreational and commercial fishing purposes and to limit 179 Foreside, LLC's and/or its assigns use during maintenance or public functions on the Pier.

4. No separate storage shall be allowed on the Pier or on adjoining Town land and any Association moorings shall be obtained from the Harbor Master, but 179 Foreside, LLC shall be entitled to two (2) dinghy tie-ups on the Pier, with the possibility of up to five (5) tie-ups if that is deemed practicable by the Town at a later date.

5. The Town further grants to the Association and its member lot owners, as a part of said license, a right to use the beach adjoining the Pier, subject to all rules and regulations that the Town may apply as to the public's use thereof, but shall specifically include the right to pass on foot from their lots and/or Association land across land of the Town to said beach and Pier.

6. The Town may require said lot owners to accompany their guests and invitees who use the Pier, float and/or beach and may limit their use of the limited public parking at the overall site for access to the same. No dogs shall be permitted on the Pier, beach or adjoining Town property.

7. 179 Foreside, LLC and the Association agree by the acceptance of the final License Agreement to defend, indemnify and hold the Town harmless from all claims or causes of action for property damage or personal injury attributable to the use of the Pier by 179 Foreside, LLC, or the Association, their assigns, lot owners and/or their guests and invitees; provided, however, that nothing herein shall negate or reduce the Town's statutory governmental immunity to such claims.

8. The license shall be revocable in the event that the Association does not timely pay its share of the annual maintenance and capital improvements for the Pier and/or 179 Foreside, LLC does not timely pay for its share of cost of repair agreed between the parties and/ or for any other material, uncured breach of the terms of this Agreement following notice thereof to the Association. Further, the Town reserves the right to suspend the rights granted by the license to any individual lot owner whom the Town deems has materially abused and/or violated the terms hereof. Any such suspension shall be appealable to the Cumberland Town Council.

9. This Memorandum of Agreement shall be subject to final approval by the Cumberland Town Council and to approval by the Cumberland Chebeague Land Trust, to the extent required.

10. This Agreement shall be construed according to the laws of the State of Maine and shall be binding on the successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as a sealed instrument as of the date first set forth above and the Association joins herein to acknowledge and accept the conditions of this Agreement.

Witness:

TOWN OF CUMBERLAND

By: William R. Shane
Town Manager

179 FORESIDE, LLC

By: _____
Print Name: _____
Its: _____

SEEN AND AGREED TO BY:

Witness:

179 FORESIDE HOMEOWNERS
ASSOCIATION

By: _____
Print Name: _____
Its: _____