

**South Berwick Town Council
Public Hearing
General Assistance Ordinance & Appendices
August 27, 2013**

Chairman Gerald W. MacPherson, Sr. opened the hearing at 6:30pm. Councilors present included Jean Demetracopoulos, David H. Webster, and John C. Kareckas. Town Manager Perry A. Ellsworth was also in attendance. Russell H. Abell arrived late.

The purpose of the hearing was to receive public comment on the annual updates to the General Assistance Ordinance Appendices. The income maximums have increased by 2%, unheated apartment rental maximums are unchanged, and the maximum for 2 bedroom heated apartments increased from \$924 to \$949.

No one in the audience wished to address the Council.

The hearing was closed at 6:34pm.

Attest:

Barbara Bennett, CCM

DRAFT

South Berwick Town Council August 27, 2013

Chairman Gerald W. MacPherson, Sr. called the meeting to order at 6:34pm. Councilors present included Jean Demetracopoulos, David H. Webster, John C. Kareckas, and Russell H. Abell. Town Manager Perry Ellsworth was also in attendance.

Approval of Minutes

1. Assessors 8-13-13: On a motion by Mrs. Demetracopoulos, seconded by Mr. Webster, it was unanimously voted to adopt the minutes as written.
2. Council 8-13-13: On a motion by Mr. Kareckas, seconded by Mrs. Demetracopoulos, it was unanimously voted to adopt the minutes **after adding the word "one" between the words 'no' and 'wished' under Public Comment.**

Treasurer's Warrant – Aug 27, 2013

On a motion by Mr. Abell, seconded by Mrs. Demetracopoulos, it was unanimously voted to sign the warrant in the amount of \$89,265.55.

Public Comment

No one wished to address Council.

Reports & Correspondence

1. John Sylvester (and 4 other members) of the York County Budget Committee presented the **Committee's** request for funding (\$435) to the Council. The Committee is looking for funds to help cover their legal costs related to the dispute with the County Commissioners (*over who ultimately has the final approval of the County Budget*). Mr. Sylvester gave the history of the legislative establishment of the Budget Committee and its functions. Mr. Sylvester added that the Commissioners have censured the Budget Committee and have not responded to requests from the Committee to meet. This issue has been ongoing for many years.
2. Mike Cote, County Commissioner, was present to express his concerns with the issue between the Budget Committee and Commissioners. He stated that he has only been in office January, and **he doesn't feel it was proper for the Commissioners** to censure the Committee. Mr. Cote stated that he could not speak for the other Commission members; however, the general feeling is that the Commissioners are basing their actions on the advice of legal counsel.
3. Matt Peters of Avesta updated the Council on the progress, or lack thereof, of obtaining financing for the senior housing project. He stated that Avesta will not apply for funds through the current round of Maine State Housing because the point system is currently not in our favor. He did state that Avesta is looking at other financing options such as the proposed state bond package and 3rd party grants.

Mr. Ellsworth made note that the current Purchase & Sale Agreement expires February 1, 2014. Mr. Peters formally asked the Council to extend the P & S until 2015.

Town Manager's Report

- Paving on Portland Street should take place Wednesday, with the remainder of paving on Berwick Road and Main Street to be finished Thursday and Thursday night.
- The State has approved the installation of rumble strips on the center line along a portion of Route 4 in Berwick.
- The York County Advisory group met with Chellie Pingree recently to discuss federal funding.
- The Circuit Breaker program has been repealed which will have a significant impact on many tax payers, especially the elderly.
- Will be meeting with the union on Wednesday before a second attempt at arbitration. The Manager stated that he will hire Gary Stenhouse to represent Council.
- Announced that there are numerous board and committee openings for anyone interested.

Unfinished Business

1. On a motion by Mr. Webster, seconded by Mr. Kareckas, it was unanimously voted to approve funds for the York County Budget Committee for its legal fees. (The \$435 to be taken from the legal budget)
2. On a motion by Mr. Abell, seconded by Mrs. Demetracopoulos, it was unanimously voted to table action on the P & S with Avesta Housing until the first meeting in January 2014.
3. Mr. Ellsworth stated that Berwick will be discussing/taking action on the Route 4 Policing Policy at their next meeting. It will then come back to us for action.

New Business

1. On a motion by Mr. Webster, seconded by Mr. Abell, it was unanimously voted to adopt the Maine Municipal Association Model General Assistance Ordinance and the updated Appendices, with Appendix A effective July 1, 2013 and Appendices B-E effective October 30, 2013.

Council Member Comments

1. Mr. Abell:
 - Stated that he was happy to be back in town after being away for most of the month.
 - Commented that he will be happy when the paving is complete.
 - Commented that he was able to end the After Glow for Lantern Fest. It is a very nice event and hopes it will continue.
 - Made note that he will be seeking re-election in November.
2. Mr. Kareckas:
 - Commented that the contractor did a nice job on Vine Street. He is concerned however, about the configuration and potential drainage issues at the Aikman driveway.
 - Expressed his concerns that some of the existing defects are being paved over without being fixed first.
 - Received confirmation of the current paving schedule. He expressed his displeasure with the delayed completion of the project.
 - Announced that he will be running for re-election in November.
 - The paving job on Ogunquit Road looks great. The crew did a nice job.
3. Mr. Webster:
 - Stated that "there is no place like home"; he just returned from driving his daughter to Louisiana for school.**
 - Made note that the Facilities Manager for Public Service will attend the September 10th meeting to discuss the Schiller Station.
4. Mrs. Demetracopoulos:
 - Made note of the upcoming Pumpkinman Triathlon.
 - Encouraged her fellow Councilors to join her on a canoe trip up the Salmon Falls River.
5. Mr. MacPherson:
 - Commented that he is looking forward to the rumple strips on Route 4.

Adjournment

On a motion by Mr. Kareckas, seconded by Mr. Webster, it was unanimously voted to adjourn the meeting at 8:30pm.

Attested:

Barbara Bennett, CCM

TOWN OF SO. BERWICK
CHECK REGISTER

Check Number	Account	Date Paid	Amount
00033206	130670 MAINE RESOURCE/RECOVERY	09/10/2013	-40.00
00033317	132500 SECRETARY OF STATE M/V	09/10/2013	17,045.44
00033318	189999 REFUNDS	09/10/2013	3.84
00033319	011422 KERA ASHLINE	09/10/2013	20.00
00033320	020225 BAKER & TAYLOR	09/10/2013	233.99
00033321	021576 JANETTE BIRCH	09/10/2013	20.84
00033322	021668 BLOW BROS	09/10/2013	56.08
00033323	022150 BOSTON CO.	09/10/2013	100.00
00033324	022250 BOWL-A-RAMA	09/10/2013	490.00
00033325	022300 BOWS AND BALLOONS BY BRINA	09/10/2013	65.00
00033326	022480 ANNE BRADDER	09/10/2013	300.00
00033327	030500 CENTRAL MAINE POWER/CREDIT, COLL	09/10/2013	34.86
00033328	030510 CENTRAL MAINE POWER	09/10/2013	2,197.39
00033329	030725 CITIZENS BANK (CHG)	09/10/2013	230.00
00033330	030920 CLEAN-O-RAMA	09/10/2013	6.96
00033331	031425 COLONIAL LIFE & ACCIDENT INS.	09/10/2013	1,274.96
00033332	031579 CONSTELLATION NEW ENERGY	09/10/2013	1,809.79
00033333	141384 CRITICAL ALERT SYS	09/10/2013	24.16
00033334	031995 RENDY CROSBY	09/10/2013	45.00
00033335	032030 CUMMINS NORTHEAST INC	09/10/2013	609.00
00033336	040505 BRUCE DEVOST	09/10/2013	16.99
00033337	040560 DIXIE GRAPHICS	09/10/2013	90.00
00033338	041100 DOWLING CORPORATION	09/10/2013	356.96
00033339	050214 KEVIN EASTMAN	09/10/2013	2,775.00
00033340	050785 ELIMINATOR INC	09/10/2013	1,025.00
00033341	050802 PERRY ELLSWORTH	09/10/2013	588.00
00033342	050815 EMPLOYEE HEALTH & BENEFITS	09/10/2013	561.89
00033343	060100 HOWARD P FAIRFIELD INC	09/10/2013	182.82
00033344	141000 FAIRPOINT COMMUNICATIONS	09/10/2013	1,315.64
00033346	061203 FOGARTY'S RESTAURANT	09/10/2013	120.00
00033347	070800 W.W.GRAINGER INC.	09/10/2013	46.31
00033348	191330 HANNAFORD'S	09/10/2013	579.71
00033349	080248 HANSCOM'S TRUCK STOP INC	09/10/2013	3,655.76
00033350	080500 BEVERLY HASTY	09/10/2013	27.80
00033351	081055 FERN HOULIARES	09/10/2013	160.80
00033352	090138 INVOICE CLOUD	09/10/2013	70.00
00033353	100150 JANETOS MARKET	09/10/2013	137.60
00033354	022700 KOFIE PRESERVATION	09/10/2013	1,417.00
00033355	120600 JEFF LEE	09/10/2013	784.00
00033356	120970 LIBBY SCOTT INC.	09/10/2013	198.00
00033357	130670 MAINE RESOURCE/RECOVERY	09/10/2013	450.00
00033358	132400 MAINE SAD #35	09/10/2013	589,201.99
00033359	132328 MAINE STATE POLICE	09/10/2013	20.00
00033360	127000 CORRINE J MAHONY	09/10/2013	1,620.00
00033361	140797 NATURE'S WAY MARKET	09/10/2013	65.25
00033362	200700 PIKE INDUSTRIES INC	09/10/2013	1,518.96
00033363	160320 PINE TREE WASTE INC	09/10/2013	1,164.66
00033364	160650 ROBERT KING	09/10/2013	8,517.20
00033365	180185 RCP LLC	09/10/2013	200.00
00033366	180920 JAMES ROBERGE	09/10/2013	144.00
00033367	190094 SANEL AUTO PARTS CO	09/10/2013	419.53
00033368	191200 WM SHAPLEIGH SON CONST CO INC	09/10/2013	27,474.88
00033369	191950 SO BERWICK HOUSE OF PIZZA	09/10/2013	43.00
00033370	192650 SO BERWICK SEWER DISTRICT	09/10/2013	66.00
00033371	193410 SO MAINE REGIONAL PLANNING CM	09/10/2013	2,346.00
00033372	193605 SOUTHWORTH-MILTON INC	09/10/2013	3,007.20

**Report of the South Berwick Building Committee
Police Station Space and Location Assessment**

South Berwick Police Department and Emergency Services Dispatch Department

September 2013

Building Committee Members:

- Thomas Harmon, Chair
- Bradford Christo
- Mark Gagnon
- David Stansfield
- Fred Wildnauer

The Town Manager, Public Works Director, Police Chief, and Police Lieutenant were staff resources to the Committee.

On April 9, 2013, the South Berwick Town Council charged the Building Committee with the following tasks:

“Review needs of the Police / Dispatch Department

- Assess present situation and define present and future space needs for policing services
- Assess available space and town owned properties for “best fit” for the future needs of policing services
- If “best fit” displaces space presently in use provide replacement plan for activities displaced.”

The Committee met over the spring and summer of 2013, toured and viewed the existing conditions of the current Police Station, reviewed National facility planning reports and reports from other towns, and discussed needs with South Berwick Police Staff. The results of these discussions are distilled into this report.

The Committee concluded that the present Police Station is inadequate for the Police and Dispatch Department in terms of size, safety, and functionality, and that renovation in the present Town Hall location to meet the needs of the next thirty years would not be cost-effective. The Committee recommends that a Station be constructed at another location.

The following narrative is presented in the same format bullets as the charge listed above.

Assess present situation and define present and future space needs for policing services.

The Police Station is located in the basement of Town Hall at 180 Main Street. The last major renovation was completed in the early nineties. Since then the Police Department has accomplished several minor renovations to improve the operational efficiency of the Station.

The Station occupies the northerly half of the basement, an area of approximately 3350 gross square feet. Net area usable for police and dispatch functions is approximately 2300 square feet. Eight parking spaces are reserved for Police in the parking lot adjacent to the Station. Two additional spaces are occupied by a dog kennel and an ATV trailer. Police staff share common spaces in the Town Hall parking lot. A total of sixteen spaces or 4800 square feet of exterior space is commonly used by the Police Department.

Noted deficiencies of the Station include overcrowding, lack of separation /security between staff and arrestees, no holding cells, no ground-level access, and a general lack of private areas for crisis management and interviews.

To assess future needs, the Committee reviewed the following documents:

1. International Association of Chief of Police (IACP) document entitled: Police Facility Planning Guidelines: A Desk Reference for Law Enforcement Executives
2. Final Report, Sudbury Police Station Blue Ribbon Committee dated 1/27/10 (Sudbury, Massachusetts)
3. Berwick Police Department Outline Program Study by Lassel Architects PA dated 5/2/2006 (Berwick, Maine)

The Committee developed a list of spaces required for the South Berwick Police Station to function efficiently for a thirty year life, including space for a Dispatch Center and an Emergency Operation Center (EOC). Applying required area (square feet) to each of these spaces resulted in the following:

Item	Area	Subtotal	Total
Net building space usable for police functions	6800		
Allowance for walls, corridors, mechanical, and electrical closets of 35%	2400		
Gross (Total) building space		9200	
Exterior space including sally-port (secure, controlled entryway) and parking		11,500	
Total lot coverage			20,700
Open/green space (equal to lot coverage)			20,700
Total lot size required			41,400

A site of a minimum of one acre is required.

Assess available space and town owned properties for “best fit” for the future needs of policing services

Initially, the committee compiled a list of all Town-owned properties using the tax map database. Properties that were clearly not suitable due to location were quickly removed from the list. Of the eleven remaining sites, 3 were ruled out due to size, location, or environmental concerns, leaving eight sites under consideration. Three contiguous properties were then combined for the purpose of this analysis leaving six sites for consideration.

Next, the Committee developed seven criteria deemed important for a Police Station site, and ranked each site based on this criteria. The four highest scoring sites are the:

- Community Center
- Town Hall
- “Day” property(s) combined with the Powderhouse Hill property
- Open Fields west of Willow Drive

Discussion of each of these four sites follows:

Community Center

The Community Center site was a strong contender. Combining Police, Fire, and Rescue into one Public Safety Building offers obvious benefits in terms of shared space and function. Lot size, vehicular access, and location are strong points for the site. Minuses include lack of visibility, and relocation of the current use. The Committee was very sensitive to the current recreation and senior center uses, which have been in place for over fifteen years.

Town Hall

Although the Town Hall scored high in terms of the site attributes, the Committee was in strong agreement that renovating the 1926 building to meet modern building codes for public safety buildings would be cost prohibitive. The Committee was of the opinion, however, that the building in its centralized location could function effectively as a Town Hall for the next thirty years, particularly if the space currently occupied by the Police Station is freed up.

“Day” property(s) combined with Powderhouse Hill property

This site is favorable in terms of size, location, visibility, and current use (vacant building and open space). Drawbacks are configuration (some parts of the lot have steep slopes) and vehicle access (narrow lanes around the monument). Consideration should be given to potential expanded recreational uses of this site that could be precluded by a Police Station.

Open fields west of Willow Drive

Size, configuration, and current use were considered assets of this site. Vehicle access, location, visibility, and environmental concerns were weaknesses. This is the most residential of the four sites considered.

Note: The Committee had considerable discussion regarding privately owned sites, especially along the Route 236 and Route 4 corridors, both within South Berwick and outside of Town. Much discussion has occurred and is currently taking place regarding regionalization. Sites on these arterial roads lend themselves to regionalization as they provide ready access to multiple towns.

If “best fit” displaces space presently in use provide replacement plan for activities displaced.

Two sites require consideration of displacement of the current use: Town Hall and the Community Center.

Town Hall

As previously stated, the Committee believes that renovation of Town hall is cost-prohibitive. If renovation were to occur to accommodate the Police Department, all or portions of the Town Hall function may need to be relocated. Since the Committee removed this option as a recommendation, no further analysis was completed.

Community Center

The Community Center houses the Fire Station, the Rescue Squad, the Senior Center, and the Recreation office. If the Police Station were moved to this site, the Senior Center and the Recreation office would need a new home. The new home would need to accommodate the meals that are regularly served to one hundred or more people, recreation activities including aerobic activities, crafts, and offices. Community groups such as Rotary also regularly use the facility. A building of approximately 7000 square feet would be required to accommodate the senior’s room, craft room, activities room, dining room, kitchen, restrooms, lobby, and two offices.

The Committee considered two replacement sites as good fits with the existing uses: the “Red Barn” Teen Center at Willow Drive, and the “Day” property(s) on Agamenticus Road. One or both of these sites could strengthen the ties with other recreation activities

Footnote: The committee considered that code reviews of existing structures and preliminary cost estimates were beyond the scope of the current charge. No code review or cost estimates were developed.

TOWN OF ELIOT

INCORPORATED 1810

1333 STATE ROAD
ELIOT, MAINE 03903
439-1813

August 22, 2013

Bob Perciasepe, Acting Administrator
United States Environmental Protection Agency
Office of the Administrator
401 M Street, SW
Room 1200 WTW1101
Washington, DC 20460

Curt Spalding
United States Environmental Protection Agency
Region 1 - New England
5 Post Office Square
Mail Code: ORA
Boston, MA 02109-3912

Dear Acting Administrator Perciasepe and Regional Administrator Spalding:

On behalf of the Town of Eliot, Maine, the undersigned Eliot Board of Selectmen encloses a petition pursuant to section 126 of the Clean Air Act, 42 U.S.C. § 7426, seeking a finding that emissions from the coal-fired Schiller Station ("the Schiller Plant" or "the Plant") in Portsmouth, New Hampshire, are causing and significantly contributing to nonattainment of the 1-hour sulfur dioxide ("SO₂") primary National Ambient Air Quality Standard ("NAAQS") in the town of Eliot, Maine. Eliot also requests that, pursuant to section 126, the United States Environmental Protection Agency ("EPA") order the plant to discontinue such emissions.

To meet its attainment requirements for previous SO₂ NAAQS, the state of Maine has adopted a State Implementation Plan ("SIP"), a component of which effectively controls SO₂ emissions from sources within the town of Eliot, Maine. *See, e.g.*, 06-096-106 ME. CODE R. § 2(B). However, Eliot's ability to attain and maintain the 1-hour SO₂ NAAQS, promulgated by EPA on June 3, 2010, is prevented by the emissions from the Schiller Plant's coal-fired generating units. The stacks venting these emissions are located in Portsmouth, New Hampshire, on the Piscataqua River, right across the border from Eliot, Maine. The Plant, which began operating in 1949, has no SO₂ emission controls, allowing it to emit high levels of SO₂, causing and contributing to NAAQS exceedences in Eliot, Maine, particularly in South Eliot, but also throughout southern Maine, where Eliot residents travel, work, and recreate.

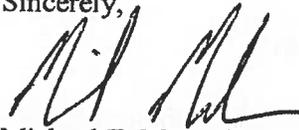
AERMOD modeling analyses demonstrate exceedences of the SO₂ NAAQS in the town of Eliot, Maine. Therefore, according to sections 110 and 126 of the Clean Air Act, the EPA should regulate the Schiller Plant to mitigate the significant impact of its emissions on the town

of Eliot, Maine by requiring reductions in SO₂ emissions at the Schiller Plant sufficient to remedy the Plant's significant contribution to the nonattainment and interference in maintenance of the SO₂ NAAQS. *See* 42 U.S.C. §§ 7410, 7426. It is critical that EPA address the impact of the Plant's emissions on the Town of Eliot's and southern Maine's ability to attain and maintain the SO₂ NAAQS, considering the severe health impacts of this pollutant. Further, any remedy chosen by EPA must ultimately lead to an actual reduction of emissions from the Schiller Plant sufficient to eliminate the facility's interference with Eliot, Maine's ability to attain the NAAQS.

Section 126(b) requires the Administrator to make a finding or deny a petition within 60 days of receipt of the petition and after a public hearing. The Town of Eliot, Maine respectfully requests that any public process related to this petition be held in Eliot. The citizens of Eliot, Maine who are being harmed by the emissions from the Schiller Plant should be accommodated and afforded every opportunity to participate in the associated public process.

I welcome the opportunity to discuss this matter with you. I can be contacted at 207-439-1813.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. T. Moynahan', written in a cursive style.

Michael T. Moynahan
Chairman, Board of Selectmen
Eliot, Maine

Petition Pursuant to Section 126 of the Clean Air Act to the United States Environmental Protection Agency for Abatement of Emissions from Schiller Station in Portsmouth, New Hampshire that Directly Cause or Significantly Contribute to Nonattainment of the One-Hour SO₂ National Ambient Air Quality Standard in the Town of Eliot, Maine

The Town of Eliot, Maine, through the Board of Selectmen of the town of Eliot, Maine, hereby petitions the United States Environmental Protection Agency (“EPA”) pursuant to section 126(b) of the Clean Air Act (“CAA” or “the Act”), 42 U.S.C. § 7426(b), to abate the unlawful transport of emissions from the coal-fired Schiller Station (“the Schiller Plant” or “the Plant”) to Eliot, Maine. The Schiller Plant, located in Portsmouth, New Hampshire just across the border from Eliot, Maine, causes and significantly contributes to exceedences of the 1-hour sulfur dioxide National Ambient Air Quality Standard (“SO₂ NAAQS”) in large swaths of southern Maine, and in particular in the town of Eliot. Specifically, AERMOD modeling analysis predicts that the Schiller Plant’s pollution directly causes and significantly contributes to nonattainment of the SO₂ NAAQS in much of York County, Maine, including the towns of Eliot, Kittery, and York. Indeed, modeling shows that at currently-permitted emission levels, Schiller Plant alone is solely responsible for concentrations of SO₂ *double* the NAAQS in parts of Eliot.

As the Schiller Plant is physically located in the state of New Hampshire, the Town of Eliot, Maine is without recourse to itself directly address the sulfur pollution the facility emits, and so hereby petitions EPA for a finding pursuant to section 126 of the Clean Air Act (“CAA” or “the Act”) that the Schiller Plant is directly causing and significantly contributing to nonattainment of the SO₂ NAAQS in Eliot, Maine. The Eliot Board of Selectmen further seeks an order from EPA directing the operators of the Schiller Plant to reduce SO₂ emissions such that the Plant is no longer causing or significantly contributing to nonattainment of the NAAQS in the town of Eliot, Maine. Such reductions must occur as expeditiously as practicable but in no event later than the maximum timeframe of three years permitted by section 126 of the Act, 42 U.S.C. § 7426.

I. Factual and Legal Background

A. The Schiller Plant and its Impact on the Town of Eliot, Maine.

The Schiller Plant is a nominal 150 megawatt coal-fired power plant which began operation in 1949, with its current boilers coming online between 1952 and 1957. Although one of the three main boilers now combusts biomass, the other two continue to burn coal. The Plant is located on the banks of the Piscataqua River in Portsmouth, New Hampshire, directly across the border from the town of Eliot, Maine. *See* Exhibit 1 (picture of Schiller Station). The Plant's operation is currently governed by the New Hampshire's State Implementation Plan ("SIP") and a Title V Permit issued by the New Hampshire Department of Environmental Services ("DES"), pursuant to EPA's delegation of CAA enforcement.

The Schiller Plant currently has no pollution controls in place to limit the release of SO₂. As a result, the Plant emits extremely high levels of SO₂,¹ which reach Eliot, Maine and cause and significantly contribute to nonattainment of the one-hour SO₂ NAAQS. 42 U.S.C. § 7426(b). More specifically, as discussed further below, modeling attached hereto demonstrates that the Schiller Plant's emissions are causing a significant violation of the SO₂ NAAQS in Eliot. *See* Steven Klafka, *Schiller Station Evaluation of Compliance with the 1-Hour SO₂ NAAQS* (2012) (hereinafter "Schiller Modeling Report"), attached hereto as Exhibit 2.

B. Maine's Efforts to Control SO₂ Air Pollution.

The State of Maine is regulating its air pollution sources to meet its attainment obligations and the Act's interstate transport provisions. EPA has approved, as part of Maine's

¹ In 2010 alone, the Schiller Plant emitted approximately 3256 tons of SO₂. *See* Env'tl. Prot. Agency, *Clean Air Markets Database*, <http://ampd.epa.gov/ampd/>. Similarly, Schiller emitted over 1,700 tons of SO₂ in 2012, and almost a thousand tons in the first half of 2013 alone. *Id.* The Schiller Plant accordingly meets the definition of a "major source" under the Clean Air Act. *See* 42 U.S.C. § 7602(j) (defining the terms "major stationary source" and "major emitting facility" to mean "any stationary facility or source . . . which directly emits, or has the potential to emit, one hundred tons per year or more of any air pollutant . . .").

SIP, regulations promulgated by the state for the control of sulfur dioxide, including limitations on the sulfur content of coal. *See* 06-096-106 ME. CODE R. § 2(B) (2011).²

Air pollution, in general, is an issue of significant concern in the state of Maine, which ranks seventh in the U.S. for adults who currently suffer from asthma. *See* CDC Behavioral Risk Factor Surveillance System, *Prevalence and Trends Data: Adults who have been told they currently have asthma, All U.S. States and Territories* (2010), attached hereto as Exhibit 3. The town of Eliot, Maine, which, as discussed further below, is the site of some of the highest SO₂ concentrations calculated by the AERMOD modeling of the Schiller Plant's emissions, reported lifetime asthma prevalence rates among adults in York County at 14.8%, and current asthma prevalence rates among adults, at 9.7%. *See id.* Asthma rates in York County are higher in children, with 16.2% of 5th and 6th graders reporting a doctor had told them they have asthma in 2009. *See* Maine Department of Health and Human Services, *Asthma York District* (2009), attached hereto as Exhibit 4.

[IF DESIRED, THE TOWN CAN INSERT ANY RELEVANT DISCUSSION OF ELIOT'S PAST EXPERIENCES WITH SCHILLER AND ACCOMPANYING HEALTH ISSUES]

C. EPA's Regulation of SO₂.

EPA has determined that exposure to SO₂ in time periods as short as five minutes causes decrements in lung function, aggravation of asthma, and respiratory and cardiovascular morbidity. *See* Env'tl. Prot. Agency, EPA/600/R-08/047F, *Integrated Science Assessment for Sulfur Oxides—Health Criteria* ch. 5 tbls. 5-1, 5-2 (2008), available at http://ofmpub.epa.gov/eims/eimscomm.getfile?p_download_id=491274; Primary National Ambient Air Quality Standard for Sulfur Dioxide Final Rule, 75 Fed. Reg. 35,520, 35,525 (June 22, 2010) (hereinafter "Final Rule"); *see also* Env'tl. Prot. Agency, *Our Nation's Air: Status and Trends Through 2008* 4 (2010) (noting that the health effects of sulfur dioxide exposure include

² In 1991, Maine amended its limitations on fuel sulfur content, however, these amendments have not yet been adopted into the federally-approved SIP. Under the current SIP, approved by EPA in 1982, the sulfur content of any fuel must be less than or equal to 2.5% by weight. *See* 47 Fed. Reg. 947 (1982); 40 C.F.R. § 52.1030-52.1031 (2012).

aggravation of asthma and chest tightness), available at <http://www.epa.gov/airtrends/2010/report/fullreport.pdf>. SO₂ exposure can also aggravate existing heart disease, leading to increased hospitalizations and premature deaths. *Sulfur Dioxide*, Env'tl. Prot. Agency <http://www.epa.gov/oaqps001/sulfurdioxide/health.html>. SO₂ also interacts with oxides of nitrogen ("NO_x") in the atmosphere with water and oxygen to form nitric and sulfuric acids, commonly known as acid rain. Env'tl. Prot. Agency, *Our Nation's Air: Status and Trends Through 2008* 3 (2010). Children with asthma are especially at risk for adverse health effects from short-term SO₂ exposure. See Final Rule, 75 Fed. Reg. at 35,525. According to EPA, fossil fuel combustion at electric utilities contributes the majority of anthropogenic SO₂ emissions. Env'tl. Prot. Agency, *Our Nations Air: Status and Trends Through 2008* 6 fig. 2 (2010).

The Act requires EPA to promulgate NAAQS for SO₂ and other pollutants to protect the public health and welfare from the adverse effects of air pollutants. 42 U.S.C. § 7409. After promulgating a NAAQS standard, EPA and other stakeholders then engage in a process of designating areas of the nation as attainment, nonattainment, or unclassifiable with respect to the NAAQS. 42 U.S.C. § 7407(c)-(d). States must submit for approval by EPA State Implementation Plans ("SIPs") for implementing, maintaining, and enforcing the NAAQS. *Id.* at § 7410.

EPA first set the SO₂ NAAQS in 1971, establishing the primary annual SO₂ NAAQS at 0.03 ppm (80 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$), primary 24-hour SO₂ NAAQS at 365 $\mu\text{g}/\text{m}^3$ (140 parts per billion (ppb)), and secondary 3-hour SO₂ NAAQS at 1300 $\mu\text{g}/\text{m}^3$ (500 ppb). 36 Fed. Reg. 8,186 (April 30, 1971). Under Section 109 of the Act, national primary ambient air quality standards are standards requisite to protect the public health, allowing an adequate margin of safety. 42 U.S.C. § 7409(b). Recognizing that the prior 24-hour and annual SO₂ standards did not adequately protect the public against adverse respiratory effects associated with short term (5 minutes to 24 hours) SO₂ exposure, EPA revoked the annual and 24-hour NAAQS on June 3, 2010 (keeping the prior standards in place for one year). In doing so, EPA set a new

1-hour standard at 196 micrograms per cubic meter (75 ppb). 40 C.F.R. § 50.17(a). The new standard was established in the form of the 99th percentile of the annual distribution of the daily maximum 1-hour average concentrations. *Id.* § 50.17(b).

The new 1-hour SO₂ NAAQS is more stringent than the prior SO₂ NAAQS, considering both the shorter averaging time and the numerical difference. In the final rule, EPA further recognized the “strong source-oriented nature of SO₂ ambient impacts.” Final Rule, 75 Fed. Reg. at 35,370. EPA estimated that this new 1-hour SO₂ standard would prevent 2,300-5,900 premature deaths and 54,000 asthma attacks a year. Env’tl. Prot. Agency, *Final Regulatory Impact Analysis (RIA) for the SO₂ National Ambient Air Quality Standards (NAAQS)*, tbl. 5.14 (2010), available at <http://www.epa.gov/ttnecas1/regdata/RIAs/fso2ria100602full.pdf>.

In addition, EPA has determined that modeling is an appropriate methodology for determining attainment, nonattainment, and compliance with the new NAAQS. *See* Final Rule, 75 Fed. Reg. at 35,551 (describing dispersion modeling as “the most technically appropriate, efficient, and readily available method for assessing short-term ambient SO₂ concentrations in areas with large point sources.”). Conversely, EPA described monitoring as being “less appropriate, more expensive, and slower to establish,” and noted that “even if monitoring does not show a violation,” that absence of data is not determinative of attainment status absent modeling. *Id.* Accordingly, in promulgating the new SO₂ NAAQS, EPA explained that, for the 1-hour standard, “it is more appropriate and efficient to principally use modeling to assess compliance for medium to larger sources” *Id.* at 35,570.

E. The Clean Air Act and Cross-Boundary Air Pollution.

Section 110(a)(2)(D)(i)(I) requires that a SIP contain adequate provisions prohibiting “any source” of emissions from emitting an air pollutant in amounts which will “contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to [a] national primary or secondary ambient air quality standard.” *Id.* at § 7410(a)(2)(D)(i)(I). The Act permits a state to petition the EPA Administrator for a finding that a stationary source in

another state emits or would emit an air pollutant in violation of section 110(a)(2)(D)(i)(I) of the Act. 42 U.S.C. § 7426(b). More specifically, section 126 provides that

Any State **or political subdivision** may petition the Administrator for a finding that any major source or group of stationary sources emits or would emit any air pollutant in violation of the prohibition of section 7410(a)(2)(D)(ii) of this title or this section. Within 60 days after receipt of any petition under this subsection and after public hearing, the Administrator shall make such a finding or deny the petition.

Id. (emphasis added)³

The section 126 petition process operates independently of the SIP promulgation process. *GenOn Rema, LLC v. EPA*, --- F.3d --- (3rd Cir. 2013), 2013 WL 348146 at *7 (“Congress intended Section 126(b) as a means for the EPA to take immediate action when downwind states are affected by air pollution from upwind states”); *see also* Response to Petition From New Jersey Regarding SO₂ Emissions From the Portland Generating Station, 76 Fed. Reg. 19,662, 19,665 (Apr. 7, 2011) (proposing that EPA grant New Jersey’s petition under section 126 of the Act to abate NAAQS violations from a Pennsylvania coal-fired power plant). Section 126 establishes clear deadlines for action by the Administrator in response to a petition under that section. 42 U.S.C. § 7426. The Administrator must make the requested finding or deny the petition within 60 days after receipt of the petition, and after a public hearing. 42 U.S.C. § 7426(b). Once EPA makes a finding under section 126(b), section 126(c) requires that the violating source shall not operate three months after the finding regardless of whether the source has been operating under a duly issued state operating permit. 42 U.S.C. § 7426(c).

The Administrator may allow the source to operate beyond such time only if the source complies with emission limitations and compliance schedules (containing increments of progress) as the Administrator may direct to bring about compliance.⁴ *Id.* Such compliance

³ Section 126(b) contains a circular reference determined to be a “scrivener’s error.” The text should refer to section 110(a)(2)(D)(i), not section 110(a)(2)(D)(ii). *Appalachian Power Co. v. EPA*, 249 F.3d 1032, 1041-44 (D.C. Cir. 2001).

⁴ The term “emission limitation” means a requirement established by the state or the Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction, and any design, equipment, work practice or operational standard promulgated under the Act. 42 U.S.C. § 7602(k). The term

must be brought about “as expeditiously as practicable,” and in no case later than three years after the date of the Administrator’s finding. *Id.*

F. The Portland 126 Petition

EPA recently evaluated and granted a petition pursuant to Section 126 of the Clean Air Act concerning SO₂ pollution from the Portland plant in Pennsylvania that flowed into New Jersey. U.S. EPA, Final Response to Petition from New Jersey Regarding SO₂ Emissions from the Portland Generating Station, 76 Fed. Reg. 69,052 (Nov. 7, 2011) (“Portland Rule”). In September of 2010, New Jersey filed a 126 petition with EPA, requesting that it find that SO₂ emissions “from the nearby Portland plant significantly contribute to nonattainment and/or interfere with maintenance of the 1-hour SO₂ NAAQS in New Jersey.” *GenOn Rema, LLC v. EPA*, --- F.3d --- (3rd Cir. 2013), 2013 WL 348146 at *3. New Jersey submitted “air quality and aerial dispersion modeling analyses to show that emissions from Portland cause violations” of the NAAQS in widespread portions of New Jersey, in support of its petition. *Id.*

This modeling consisted of an evaluation of the permitted SO₂ emissions from the Portland facility, using the AERMOD modeling application. *Id.*; U.S. Portland Rule, 76 Fed. Reg. at 69,053. This modeling determined that Portland was, by itself, responsible for nonattainment and interference with maintenance of the NAAQS in New Jersey. Accordingly, EPA determined that “the AERMOD analysis, submitted by NJDEP and modeled by the EPA, provides a reasonable basis for making a finding that emissions from Portland significantly contribute to nonattainment and interfere with maintenance in New Jersey and for quantifying the SO₂ emissions reductions needed to establish the final remedy emission limits.” Portland Rule, 76 Fed. Reg. at 69,063. Based on this finding, EPA required Portland to reduce its

“compliance schedule” means a schedule of required measures including an enforceable sequence of actions or operations leading to compliance with an emission limitation, other limitation, prohibition, or standard. 42 U.S.C. § 7602(p).

permitted emissions of SO₂ by roughly 81%, so as to resolve the cross-border pollution. *Id.* at 69,066.

GenOn Rema, LLC,⁵ operator of the Portland plant, challenged EPA's determination and emission reduction requirements before the Third Circuit Court of Appeals, arguing, in part, that EPA could not address a petition pursuant to Section 126 until the state housing the plant—here, Pennsylvania—had exhausted its process for internally controlling SO₂ pollution in response to the new 2010 NAAQS. *GenOn Rema, LLC v. EPA*, --- F.3d --- (3rd Cir. 2013), 2013 WL 348146 at *4. The Third Circuit rejected this argument, however, observing that “Section 126(b) contains no temporal limitation on a state’s right to petition the EPA” and that the Section “obligates the EPA to grant or deny a Section 126(b) petition within 60 days . . . and after a public hearing.” *Id.* at *5 (internal citations omitted). Further, the Court noted that “EPA thoroughly examined the relevant scientific data,” including the “dispersion modeling results that New Jersey submitted” as well as “its own modeling results” and “carefully calculated the emissions reductions that were needed to eliminate Portland’s contribution to nonattainment in New Jersey” in promulgating its finding. *Id.* at *11. As such, the Court upheld EPA’s finding and the emission reduction requirements. *Id.* at *12.

G. New Hampshire’s Failure to Address Schiller’s Impacts on Maine

Schiller Station is located in Portsmouth, New Hampshire, and thus its emissions—including its emissions of SO₂—are, as indicated above, regulated by New Hampshire Department of Environmental Services (“DES”). However, DES has repeatedly indicated unwillingness to set SO₂ emission limits for Schiller sufficient to ensure that air quality in Maine is protected.

In October of 2012, DES modified the emission limits governing Schiller, altering them from 2.9 pounds of SO₂ to million British thermal units of heat (“MMBtu”) to 2.4 pounds per

⁵ Now NRG.

MMBtu, as evaluated on a 24-hour average. Schiller Station Temporary Permit at 5, attached hereto as Exhibit 5. At the time, comments submitted to DES argued that these limits, as demonstrated by AERMOD modeling, were completely insufficient to protect air quality within Maine, and that DES should use modeling to determine and set adequate limits. DES declined to do so, however stating that it would “not require stationary sources to demonstrate modeled compliance with the updated NAAQS.” Findings of Fact and Director’s Decision, In the Matter of the Issuance of a Temporary Permit To Public Service Company of New Hampshire - Schiller Station (October 30, 2012) at 3, attached hereto as Exhibit 6. Instead, DES suggested that issues with Schiller’s SO₂ pollution and the 2010 NAAQS might be addressed later as “as part of [New Hampshire’s] State Implementation Plan requirements for the implementation of this new standard.” *Id.* at 4.

However, when DES recently prepared its draft State Implementation Plan (“SIP”) setting forth how it would attain and maintain the 2010 SO₂ NAAQS, including how it would address SO₂ emissions from Schiller, this SIP contained no new provisions limiting emissions from Schiller at all. *See* New Hampshire Draft State Implementation Plan (April 22, 2013), available at <http://des.nh.gov/organization/divisions/air/do/sip/documents/so2-infra-sip-2010.pdf>. Instead, the draft SIP pointed to already-existing statutes concerning solid waste combustion and the general but undefined “need for substantial reductions in emissions” from power plants, but did not identify any new regulations setting emission limits in light of the SO₂ NAAQS. *Id.* at 4-5. Likewise, regarding interstate transport of pollution, such as that of SO₂ flowing from Schiller into Maine, DES’s draft SIP pointed to existing regulations concerning the Prevention of Significant Deterioration (dealing with new sources of pollution or major modifications to existing sources) and Regional Haze (dealing with atmospheric visibility); neither of these sets of regulations address Schiller’s SO₂ emissions with respect to the 2010 SO₂ NAAQS. *Id.* at 6-7. Thus, New Hampshire has taken no steps to address Schiller’s SO₂ impacts on Eliot, or on the wider southern Maine region.

II. The EPA Should Issue a Finding that the Schiller Plant's SO₂ Pollution is Causing or Significantly Contributing to Nonattainment of the SO₂ NAAQS in the Town of Eliot, Maine and Direct the Plant's Operators to Either Reduce Emissions or Cease Operations

The Town of Eliot, Maine petitions EPA under section 126 of the Act to find that SO₂ emissions from the Schiller Plant cause and contribute to nonattainment and interference with maintenance of the SO₂ NAAQS. Further, the Town of Eliot requests that EPA order the Plant to reduce its SO₂ emissions sufficiently such that the Plant no longer causes or contributes to exceedences of the NAAQS in the town of Eliot, Maine and in southern Maine.

A. Modeling Demonstrates that the Schiller Plant's Emissions Cause and Significantly Contribute to Nonattainment of the SO₂ NAAQS in the Town of Eliot, Maine

As discussed above, EPA has established a primary SO₂ NAAQS standard of 75 parts per billion, or 196 micrograms per cubic meter. 40 C.F.R. § 50.17(a). EPA has specifically stated that air dispersion modeling is “the most technically appropriate, efficient, and readily available method for assessing short-term ambient SO₂ concentrations in areas with large point sources,” and that for the 1-hour SO₂ standard, “it is more appropriate and efficient to principally use modeling to assess compliance for medium to larger sources” Final Rule, 75 Fed. Reg. at 35,551, 35,570.

In this case, AERMOD dispersion modeling of the SO₂ emissions from the Schiller Plant was conducted to ascertain the impact of the facility's operation on the air quality of the town of Eliot, Maine. Modeling was performed using the most recent version of the American Meteorological Society/Environmental Protection Agency Regulatory Model (“AERMOD”) dispersion modeling software, and performed in accordance with the March 24, 2011 guidance provided by EPA for designating areas as in attainment or nonattainment with the SO₂ NAAQS. *See* Schiller Modeling Report;⁶ *see also* March 2011 Guidance; 40 C.F.R. § 51 app. W. EPA has stated that AERMOD employs the best state-of-practice parameterizations for characterizing

⁶ For a detailed discussion of the precise methodology and inputs used to generate the modeling, please see Schiller Modeling Report at §§ 3-4.

meteorological influences and dispersion. *Id.* Furthermore, AERMOD is EPA’s “preferred near-field dispersion modeling for a wide range of regulatory applications in all types of terrain based on extensive developmental and performance evaluation.” March 2011 Guidance at 3.

The AERMOD modeling conducted shows that Schiller’s emissions have a significant adverse impact on the town of Eliot, Maine’s air quality, and its ability to attain and maintain the SO₂ NAAQS. *See* Schiller Modeling Report at 4-5, Figures 3 and 4. Ultimately, modeling shows that Schiller—taken alone and with consideration of background levels of SO₂—is predicted to cause peak impacts of *nearly triple* the NAAQS. *See id.*; *see also* Steven Klafka, *Schiller Station Evaluation of Compliance with the 1-Hour SO₂ NAAQS* (2013) (“Schiller Modeling Supplement”) attached hereto as Exhibit 7 (showing peak modeled concentrations in Eliot, Maine).

Table 1: Peak Ambient Air Impacts from Schiller Allowable Emissions
(*see* Schiller Modeling Report at 4)

Jurisdiction	Schiller's H4H Conc. (µg/m ³)	Background H4H Conc. (µg/m ³)	Total H4H Conc. (µg/m ³)	1-Hr SO ₂ NAAQS (µg/m ³)
Maine	652.5	10.5	553.0	196.2
New Hampshire	459.5	130.8	492.3	196.2

Table 2: Peak Ambient Air Impacts from Schiller Maximum Emissions
(*see* Schiller Modeling Report at 4)

Jurisdiction	Schiller's H4H Conc. (µg/m ³)	Background H4H Conc. (µg/m ³)	Total H4H Conc. (µg/m ³)	1-Hr SO ₂ NAAQS (µg/m ³)
Maine	444.8	10.5	455.3	196.2
New Hampshire	316.9	130.8	447.7	196.2

More specifically, the modeling shows that the emissions of the Schiller Plant as currently permitted result in significant violations of the current SO₂ NAAQS in portions of the town of Eliot, Maine. In fact, in the town of Eliot and elsewhere, the model shows Schiller’s

emissions causing average 99th percentile SO₂ concentrations well over the NAAQS across a wide area, in both Maine and New Hampshire. *See id.*, Figures 3 and 4.

Supplemental modeling analyses provide additional support. AERMOD modeling using as an input not just Schiller's permitted emission rates but also historical hourly emission rates of SO₂ by the facility, as reported to and recorded by EPA, demonstrates that the plant causes significant exceedences of the SO₂ NAAQS in southern Maine and in Eliot. *See* Schiller Modeling Supplement at 4, Attachment A. Even during recent periods of low capacity factors for its coal-fired, SO₂-emitting boilers, Schiller Station is thus either solely or overwhelmingly responsible for ambient concentrations of SO₂ in Eliot and southern Maine that cause nonattainment and interference with maintenance of the NAAQS. *Id.*⁷

B. EPA Should Grant the Eliot Board of Selectmen's Section 126 Petition and Order the Schiller Plant to Reduce Its Emissions to Levels Sufficient to Resolve NAAQS Attainment and Maintenance Issues in the Town of Eliot, Maine.

As discussed above, section 126 provides the Town of Eliot, Maine the right to "petition the Administrator for a finding that any major source . . . emits or would emit any air pollutant" that "contribute[s] significantly to nonattainment in, or interfere with maintenance by, any other State with respect to [a] national primary or secondary ambient air quality standard." *See* 42 U.S.C. § 7426(b), § 7410(a)(2)(D)(i)(I) (noting that downwind states or "political subdivision[s]" may petition EPA).⁸

In this case, the Town of Eliot has submitted air quality evidence showing that the Schiller Plant's emissions are *by themselves* predicted to cause nonattainment in Eliot, requiring

⁷ These modeling analyses are consistent with data from the New Hampshire air quality monitor at Peirce Island. This monitor is located in New Hampshire on an island in the bay into which the Piscataqua empties (Lat. 43.0753°, Long. -70.748°). At this location, the Schiller AERMOD modeling analyses do not predict particularly high concentrations of SO₂. *See* Schiller Modeling Report, Figures 3 and 4. Nonetheless, the Peirce Island monitor has recorded numerous hours with ambient SO₂ concentrations exceeding or nearly exceeding the 75 parts per billion level in the NAAQS. *See* Peirce Island Monitor Data, attached hereto as Exhibit 8, (showing peak concentrations of 70 ppb in 2011, 73 ppb in 2009, and 85 ppb in 2008, as compared with the 75 ppb/196.2 micrograms per cubic meter NAAQS) (data taken from U.S. EPA Interactive Map, at http://www.epa.gov/airdata/ad_maps.html). Notably, there are no SO₂ monitors for Maine near the Schiller plant.

⁸ As noted above, because the Schiller Plant emits greatly in excess of 100 tons per year of SO₂, it qualifies as a "major source" under Section 126 of the Clean Air Act. *See* 42 U.S.C. § 7602(j).

EPA's finding of a section 126 violation. *See Michigan v. EPA*, 213 F.3d 663, 684 (D.C. Cir. 2000). Again, impacts of approximately 400 micrograms of SO₂ per cubic meter of air are modeled to occur within Eliot from the Schiller Plant's emissions, even without consideration of background levels of SO₂. *See* Schiller Modeling Report at 4; *id.* at Figures 3 and 4; Schiller Modeling Supplement.

As noted above, and as detailed in the accompanying Schiller Modeling Report, other particularly serious violations occur in Kittery and elsewhere in York County and southern Maine, where the modeling results show significant exceedences of the levels permitted by the NAAQS. These violations of the SO₂ NAAQS can have severe adverse public health effects on the people in Eliot and others in the region, including those who live, work, travel, or recreate in the impacted areas.

Thus, the AERMOD modeling results for the Schiller Plant more than meet the standard of a section 126 Petition and trigger EPA's duty to grant the petition. Indeed, the D.C. Circuit has explained that a source's or state's significant contribution to downwind nonattainment must only be identified by some "measurable contribution." *Michigan v. EPA*, 213 F.3d at 684. Here, the Eliot Board of Selectmen has shown that the Schiller Plant's emissions are predicted to cause, on their own, an actual exceedence or violation of the SO₂ NAAQS standard, which more than demonstrates mere significant contribution to nonattainment or interference with maintenance of the NAAQS standard. *See, e.g.*, Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_x SIP Call, 70 Fed. Reg. 25,162, 25,191 (May 12, 2005) (explaining that "the threshold for evaluating the air quality component of determining whether an individual State's emissions 'contribute significantly' to downwind nonattainment of the annual PM_{2.5} standard, under CAA section 110(a)(2)(D) should be very small compared to the NAAQS").

In short, the Eliot Petition and the evidence submitted herewith regarding the Schiller Plant's SO₂ emissions demonstrate that the facility is causing and contributing to nonattainment

of the NAAQS in the town of Eliot, Maine. As such, EPA must grant the Petition. *See* Portland Rule, 76 Fed. Reg. at 69,063.

C. Section 126 of the Act Requires EPA to Act Within 60 Days of this Petition, and Requires the Plant to Reduce Its Emissions as Expeditiously as Practicable And Within Three Years.

Section 126 establishes clear deadlines for action by the Administrator in response to a petition under that section. 42 U.S.C. § 7426; *GenOn Rema, LLC v. EPA*, --- F.3d --- (3rd Cir. 2013), 2013 WL 348146 at *5. The Administrator must make the requested finding or deny the petition within 60 days after receipt of the petition, and after a public hearing. 42 U.S.C. § 7426(b).

Once EPA makes a finding under section 126(b), section 126(c) requires that the violating source shall not operate three months after the finding regardless of whether the source has been operating under a duly issued state operating permit. 42 U.S.C. § 7426(c). The Administrator may allow the source to operate beyond such time only if the source complies with emission limitations and compliance schedules (containing increments of progress) as the Administrator may direct to bring about compliance.⁹ *Id.* Such compliance must be brought about “as expeditiously as practicable,” and in no case later than three years after the date of the Administrator’s finding. *Id.*

Accordingly, EPA must act on this petition within 60 days and must provide for a public hearing as per the deadlines set forth in section 126 of the Act. Moreover, EPA must require the Plant to either shut down within three months, or require emissions reductions sufficient to

⁹ The term “emission limitation” means a requirement established by the state or the Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction, and any design, equipment, work practice or operational standard promulgated under the Act. 42 U.S.C. § 7602(k). The term “compliance schedule” means a schedule of required measures including an enforceable sequence of actions or operations leading to compliance with an emission limitation, other limitation, prohibition, or standard. 42 U.S.C. § 7602(p).

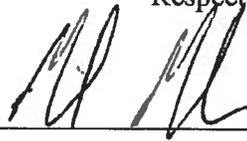
eliminate the facility's interference with the town of Eliot, Maine's ability to attain the NAAQS as expeditiously as practicable, but at most within three years.¹⁰

III. Conclusion

AERMOD modeling shows that the Schiller Plant is causing and significantly contributing to SO₂ impacts well in excess of the NAAQS in the town of Eliot, Maine, as evaluated according to best practices and all available EPA guidance. As such, EPA should grant the Eliot Board of Selectmen's petition and issue a finding that the Schiller Plant is causing and significantly contributing to nonattainment of the one-hour SO₂ NAAQS in the town of Eliot. Consequent to that finding, EPA should direct the Schiller Plant to—as expeditiously as practicable but in no case within longer than three years—reduce its SO₂ emissions sufficiently to prevent interference with Eliot's ability to attain the NAAQS.

Dated: August 22, 2013

Respectfully Submitted,



Michael T. Moynahan

Chairman, Board of Selectmen

Eliot, Maine

¹⁰ The fact that the New Hampshire SIP implementing the new SO₂ NAAQS for Schiller has not yet been finalized does not impact this requirement. Congress intended that section 126 process operate independently of the Section 110 SIP process, H.R. Rep. 95-249 at 331 (1977), EPA has interpreted these sections as operating independently of one another in proposing to grant previous petitions under section 126, *see* 76 Fed. Reg. at 19,665, and the federal courts have ratified EPA's interpretation. *GenOn Rema, LLC v. EPA*, --- F.3d --- (3rd Cir. 2013), 2013 WL 348146 at *4 (rejecting argument that Section 126 was subordinate to the SIP process, and instead finding that "Section 126(b) contains no temporal limitation on a state's right to petition the EPA"); *see also Appalachian Power Co. v. EPA*, 249 F.3d 1032, 1038, 1047-48 (D.C. Cir. 2001) (upholding EPA's decision to move forward with a proceeding under section 126 of the Act against twelve states for causing violation of Ozone NAAQS in several downwind states in spite of the fact that a proceeding under section 110 was pending against the same downwind states, requiring them to revise their SIPs to prevent further contribution to downwind NAAQS violations; noting also that EPA's interpretation that sections 110 and 126 "operate independently" is accorded deference). At any rate, as discussed above, New Hampshire's proposed SIP does not place hourly emission limits on Schiller Station sufficient to ensure that the NAAQS is not exceeded in Maine; indeed, it does not place any new operating requirements on Schiller at all.

RESTATED MUNICIPAL ASSISTANCE COMPACT FOR POLICE PROTECTION

1. Authority

This agreement is entered into pursuant to Title 30-A, Section 2674 of the Maine Revised Statutes.

2. Parties

This agreement is entered into by and between Town of Berwick and Town of South Berwick (hereinafter, the "Participating Communities").

2. Supersession

This agreement restates and supersedes the document entitled "MUNICIPAL ASSISTANCE COMPACT FOR POLICE PROTECTION MEMORANDUM OF UNDERSTANDING" entered into by and between Town of Berwick and Town of South Berwick on December 17, 2013.

3. General Terms

The Participating Communities agree to provide mutual and reciprocal aid to their law enforcement agencies for the following purposes and in accordance with the following terms and provisions.

WHEREAS, the Participating Communities have police forces; and

WHEREAS, the need may arise for additional police manpower in each community; and

WHEREAS, the Participating Communities desire to protect the life and property of their citizens; and

WHEREAS, the Participating Communities are interested in entering into a mutual aid contract

NOW THEREFORE, the municipal officers of the Participating Communities agree as follows:

1. Except as otherwise noted in Section 4 of this agreement, the request for assistance under this compact shall be made only when the requesting police agency has exhausted or fully committed its available manpower and/or resources are required to protect life or property, to maintain order, to prevent the commission of criminal acts, or to prevent the escape of a person who has committed a criminal act;
2. Except as otherwise noted in Section 4 of this agreement, the request for assistance under this compact will be made only by the Chief of Police, or in the Chief's absence, by the sworn officer who has been authorized to act on the Chief's behalf. Except as

otherwise noted in Section 4 of this agreement, the request must be made to only the Chief of the assisting department or his or her designee;

3. The amount of police resources to be provided shall be the sole discretion of the Chief of Police of the assisting department, or his or her designee. The level of police protection required within the assisting jurisdiction will be a consideration;

4. Police officers of the assisting department will have full authority as granted under Title 30-A M.R.S. Section 2674. Such officers shall have authority to exercise police powers in the jurisdiction of a party to this compact only when their assistance is officially requested by the Chief of Police or the Chief's authorized representative, except as otherwise provided in Section 4 of this agreement;

5. When assistance is requested under this compact, the Chief of Police of the requesting department, or his or her designee, shall be in command of police operations;

6. While on duty, officers rendering aid to a requesting department shall have the same powers, duties and privileges as members of the requesting police department;

7. Each Participating Community shall pay the salaries and fringe benefits of its own officers at all times during which mutual aid is rendered pursuant to this agreement;

8. All equipment of the responding department that is lost, damaged or destroyed will be the responsibility of the assisting department;

9. All personnel of the responding department injured while in the process of providing aid shall be compensated, if at all, by the responding department;

10. Each Participating Community will continue to assume its own liability, subject to applicable law;

11. Mutual assistance shall also mean the sharing of electronic and/or written criminal or statistical data transmitted by computer or by any other agreed upon format between law enforcement agencies. The transmittal of electronic data shall be in a method and format arranged by the agencies. A communication cost arrangement of electronic data sharing shall be provided prior to the transmittal of any data between departments;

12. Each municipality has the right to unilaterally withdraw from this compact upon seven (7) days written notice to all other parties to the agreement, and thereafter the compact shall be null and void with respect to the withdrawing municipality;

13. Any unforeseen problems developing as a result of this compact shall be resolved by the joint actions of the Chiefs of Police or their authorized agents insofar as permitted by the terms of this agreement and any other applicable law. To the extent modifications to this agreement are necessary, paragraph 14 controls;

14. This agreement constitutes the entire understanding between the Participating Communities. Any modifications or additions to the terms or provisions hereof shall be in writing and executed in the same manner and with the same formality as this agreement;

15. This agreement shall remain in full and perpetual force and effect until replaced by a subsequent agreement or otherwise nullified or voided;

4. Traffic Law Enforcement Assistance

A. Intent: The general terms listed in Section 3 of this agreement are hereby modified, exclusively for the specific circumstances noted below, as follows. Where applicable, this section is intended to enable traffic law enforcement assistance by police officers of the Participating Communities in a continuous manner and without the need for specific case-by-case requests from police chiefs. Where not specifically altered, all of the above-stated general terms and provisions of this agreement remain in full force and effect for all of the below-listed circumstances.

B. Mutual Aid in Traffic Law Enforcement: Notwithstanding Sections 3(1)&(2) of this agreement, the Participating Communities agree that reciprocal requests for assistance for the specific purpose of traffic law enforcement are hereby made by the municipal officers of each community, in a manner intended to be continuing in nature for the length of this agreement, for any and all times during which officers from any Participating Community outside of the requesting community shall be traveling or otherwise present along the below-listed roads, as elaborated through and subject to the following provisions. Such requests are intended to apply to and enable enforcement of traffic laws, regardless of native jurisdiction, when officers from assisting communities are present along any of the below-listed roads in a requesting community and observe a traffic violation. The roads subject to this provision, and for which the above-stated reciprocal requests are made, include the following:

(1.) **Berwick:** State Route 4 as it traverses Town of Berwick from The North Berwick municipal boundary to the South Berwick municipal boundary.

(2.) **South Berwick:** State Routes 236 and 4 as follows:

(a.) State Route 236 as it traverses Town of South Berwick from the Berwick municipal boundary to State Route 4; and

(b.) State Route 4 as it traverses Town of South Berwick from the Berwick municipal boundary to State Route 236.

C. Criminal Infractions: Any officer acting outside his or her native jurisdiction in accordance with this section on any matter which involves the real, potential or suspected violation of laws other than those related solely to traffic control, shall immediately notify the Police Department

of the requesting community and turn such matter over to that Department upon its arrival and control of the situation.

5. Execution

This agreement may be executed in counterparts.

This Agreement is hereby adopted as amended by vote of the undersigned municipal officers of the Participating Communities:

Date: _____

Town of Berwick
Board of Selectmen

Date: _____

Town of South Berwick
Town Council

Purchase and Sale Agreement

THIS AGREEMENT is made by and between **Great Works Regional Land Trust**, a duly organized non-profit conservation trust with a mailing address of Post Office Box 151, South Berwick, Maine, hereinafter called the **Buyer**, and the **Town of South Berwick**, a Maine municipality with a mailing address of 180 Main Street, South Berwick, Maine, hereinafter called the **Seller**, effective as of the date written above the Seller's signature.

In consideration of the mutual promises and covenants herein contained, the parties hereto agree as follows:

1. **Real Estate:** The Seller agrees to sell and the Buyer agrees to purchase from the Seller for the price and upon the terms and conditions hereafter stated three parcels of land off of, but not adjacent to, York Woods Road in South Berwick, Maine, shown on municipal assessor's plans as **Map 2 Lot 37, Map 2 Lot 39, and Map 2 Lot 39A**, hereinafter referred to as the Premises; together with all rights, easements, rights of way, and other appurtenances thereto.

Seller acquired the Premises by foreclosing on municipal tax lien certificates. Map 2, Lot 37 was assessed to Roberta C. Hatch and Laurie L. Davidson. Map 2, Lot 39A was assessed to owner unknown, a/k/a John Doe. See York County Registry of Deeds Book 7447, Page 130, Book 7879, Page 57, for Map 2, Lot 37. See York County Registry of Deeds, Book 6665, Page 247 and Book 6146, Page 191 for Map 2, Lot 39A.

2. **Purchase Price:** The Buyer agrees to pay to the Seller as the total purchase price the sum of \$500 per acre. The acreage will be determined by a boundary survey paid for by the Buyer. Funds shall be paid as follows: \$10,000.00 by the time of closing as follows:

(A) **\$500** to be paid at the time this contract is signed, said sum hereinafter referred to as the Deposit, delivered to Seller.

(B) The balance of the purchase price, ~~\$9,500~~ shall be delivered by Certified or Cashier's check at closing.

3. **Closing:** **This transaction shall be closed no later than November 15, 2014~~August 30, 2013~~** at the Buyer's attorney's office, at a time and date to be agreed upon by Seller and Buyer. Seller will cooperate with the Buyer in executing the standard closing and title insurance affidavits and documents.

4. **Risk of Loss:** Seller assumes the risk of loss or damage to the Premises until closing. Should any portion of the Premises be damaged or destroyed or become subject to condemnation or eminent domain, then Buyer may elect to terminate this agreement and have the Deposit returned by Seller or they may elect to accept any insurance or condemnation proceeds as may be offered by Seller to Buyer and to proceed with the closing.

5. **Deed and Title:** Seller shall convey to Buyer whatever right, title, and interest Seller owns in the premises. Said title is not currently marketable in accordance with the Maine Title Standards.

6. **Possession:** The Buyer shall be given possession of the Premises, free of any tenants at the time of closing. Buyer, for itself, its agents, employees and contractors, shall have reasonable access to the Premises prior to closing, upon reasonable notice to Seller, for the tests and inspections provided herein, if any.

7. **Prorated Taxes:** Municipal real estate taxes will be prorated at closing.

8. **Inspection Contingency:** Buyers may conduct any inspections or soil tests of the premises they wish at Buyer's own expense, within 30+4 days of the date of this contract. If Buyer is unsatisfied with the results of any inspections or test it shall notify Seller within said 30+4 days in writing. This contract shall then be null and void. If Buyer fails to notify Seller in writing within the 30+4 days, this contingency shall be deemed to have been waived.

8-9. Title Contingency. Buyer may, at Buyer's expense, seek title insurance on the property. If title is not sufficiently perfected to obtain title insurance, Buyer may notify seller within 30 days in writing. This contract shall then be null and void. If Buyer fails to notify Seller in writing within 14 days, this contingency shall be deemed to have been waived.

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9-10. **Default:** If Buyer fails to meet its obligations under this Agreement, then Seller may retain the Deposit as full liquidated damages in place of all other remedies and without further recourse to Buyer. Seller and Buyer agree that the damages that would be caused to Seller by Buyer's breach of this Agreement would be difficult to estimate accurately and that the Deposit amount is a reasonable forecast of the minimum necessary to justly compensate Seller for Buyer's breach. If Seller fails to meet its obligations under this Agreement, thence Buyer shall have all available legal and equitable remedies, including the right of specific performance.

~~10-11.~~ **Real Estate Broker:** Seller and Buyer each represent and warrant to the other that there are no real estate agents or brokers involved in this transaction, nor is there any commission due to any person on the sale of this property.

~~11-12.~~ **Miscellaneous:** This Agreement shall be governed by Maine law, and shall be binding on and for the benefit of all parties, their respective heirs,

successors, and assigns. This Agreement may be signed in any number of identical counterparts bearing original signatures and faxed signatures shall be effective as if original.

~~12-13~~. **Legal Advice:** SELLER AND BUYER ACKNOWLEDGE THAT THIS IS A LEGAL DOCUMENT THAT CREATES BINDING OBLIGATIONS AND THAT ONLY BY CONSULTING THEIR OWN LAWYERS BEFORE SIGNING CAN THE PARTIES FULLY UNDERSTAND IT AND FULLY PROTECT THEMSELVES.

~~13-14~~. **Effective Date:** Seller and Buyer have signed this Agreement, the Effective Date of this Agreement being the latest date following their signatures below.

Town of South Berwick, Seller

Great Works Regional Land Trust, Buyer

By: _____

By: _____

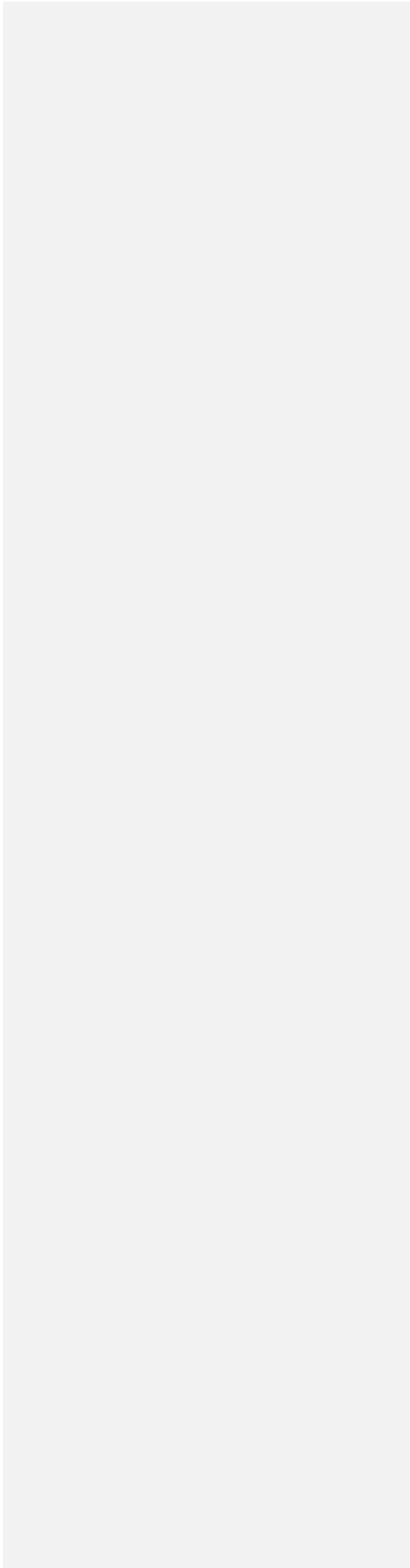
Its: _____

Its: _____

Dated: ~~September~~~~August~~ ____, 2013
____, 2013

Dated: ~~September~~~~August~~ ____

Town of South Berwick to GWRLT P & S @ contracts



Page 2 of 3 Buyers' Initials: _____

Sellers' Initials: _____



South Berwick Strawberry Festival

P.O. Box #371, South Berwick, Maine 03908

Sharon Brassard
South Berwick Recreation Dept.
180 Main Street
South Berwick, ME 03908

Grant Project: To fund 5 sessions of the educational Granite State Zoo program

Dear Sharon Brassard,

Please find enclosed a check in the amount of \$1200 from the Strawberry Festival Committee for your 2013 grant.

Please remember reports are due the Committee by February 28, 2014. If you have any questions about the grant or the terms of the award please contact me at 384-4436.

Sincerely,

Scarlett Hanson
Grant Coordinator
Strawberry Festival Committee

Portland St.

28-165

28-166

28-164

28-1

28-167

28-168

28-142

28-143

28-144

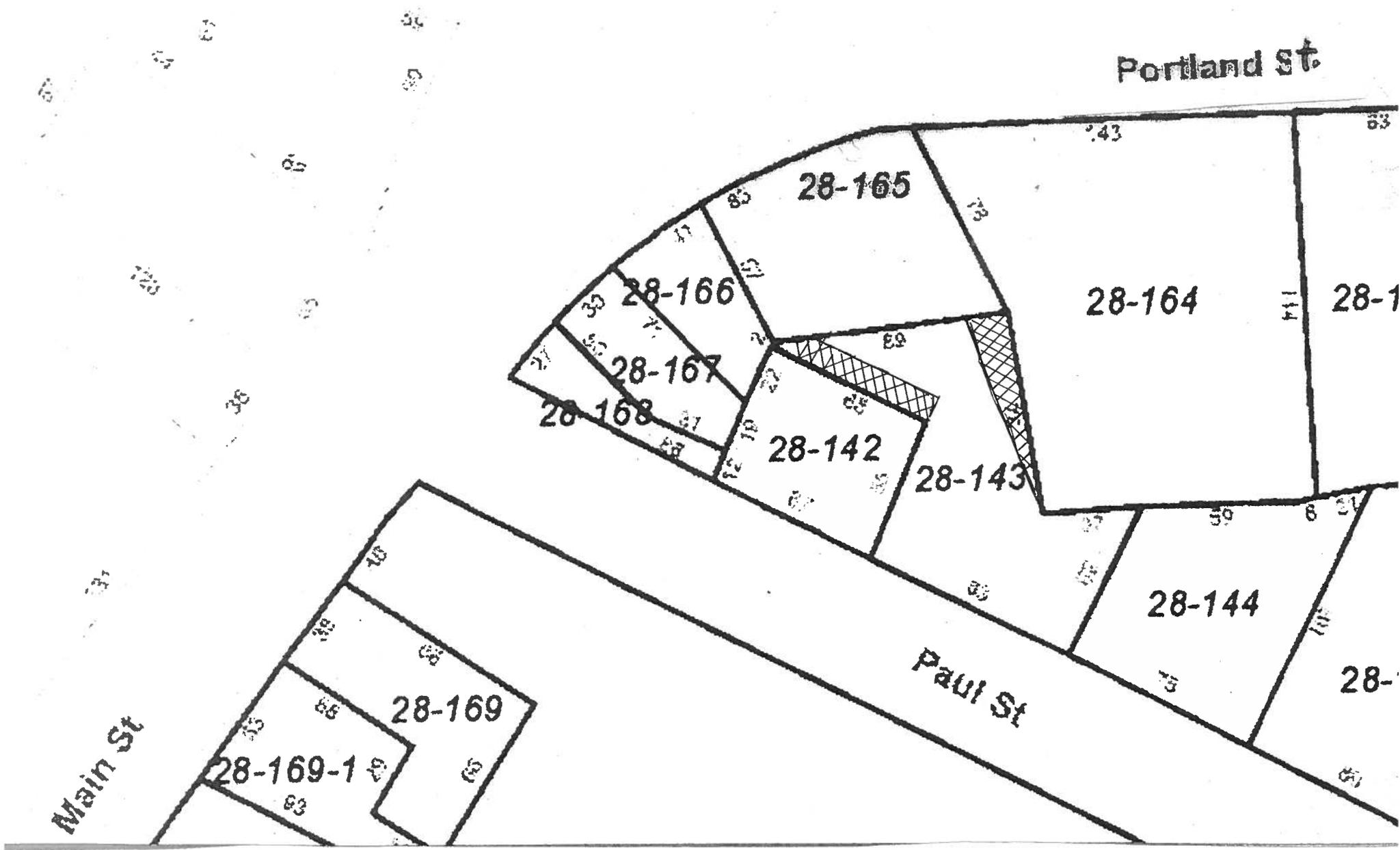
28-

28-169

28-169-1

Paul St

Main St



**MAINE MUNICIPAL ASSOCIATION
VOTING DELEGATE CREDENTIALS**

_____ is hereby designated as the official Voting Delegate and
(name)

_____ as the alternate voting delegate for _____
(name) (municipality)

to the Maine Municipal Association Annual Business Meeting which is scheduled to be held,
Wednesday, October 2, 2013, 1:30 p.m., at the Augusta Civic Center, Augusta, Maine.

The Voting Delegate Credentials may be cast by a majority of the municipal officers, or a municipal official designated by a majority of the municipal officers of each Municipal member.

Date: _____ Municipality: _____

Signed by a Municipal Official designated by a majority of Municipal Officers:

Name: _____ Position: _____

Or Signed by a Majority of Municipal Officers:

_____	_____
_____	_____
_____	_____
_____	_____

Please return this form no later than **Monday, September 30, 2013** or bring it with you to the MMA Annual Business Meeting. If mailing, send to:

*MMA Annual Business Meeting
Maine Municipal Association
60 Community Drive
Augusta, Maine 04330
FAX: 207-626-3358*