

**TOWN OF OLD ORCHARD BEACH
TOWN COUNCIL WORKSHOP
WEDNESDAY, SEPTEMBER 15, 2010
TOWN HALL CHAMBERS
7:00 p.m.**

A Town Council Workshop of the Old Orchard Beach Town Council was held on Wednesday, September 15, 2010. The purpose of the Workshop was discussion on a (1) Possible Changes to Piping Plover Beach Management Agreement with personnel from Maine Department of Inland Fish and Wildlife; and (2) Review Proposal from Lowell Baseball Team to Relocate to Old Orchard Beach; and (3) Review options to the 2010 FEMA Flood Insurance Rates Map.

The following were in attendance:

**Chair Sharri MacDonald
Vice Chair Michael Tousignant
Councilor Laura Bolduc
Councilor Shawn O'Neill
Councilor Robin Dayton
Town Manager Jack Turcotte
Assistant Town Manager Louise Reid
Planner Gary Lamb
Public Works Director Bill Robertson
Code Enforcement Officer Mike Nugent
Planner Gary Curtis
Members of the Ballpark Commission**

Workshop Number One

Wildlife Biologists Lindsay Tudor and Judy Camuso attended from the Maine Department Inland Fish and Wildlife. They indicated they would be going over the benefits to Old Orchard Beach and the piping plovers; why it is prudent to have a Beach Management Agreement even with Essential Habitat designation; the reason for USFWS as a signatory, communities with BMA's, and the goal to end with a draft that satisfies OOB and MDIF.

A request was received from George J. Matula, Jr., Endangered and Threatened Wildlife Coordinator for the U.S. Fish & Wildlife Services (USFWS) requesting that Lindsay Tudor, their shorebird specialist and he would like an opportunity to meet with the Town Council to address concerns the Council may have with the draft Piping Plover Beach Management Agreement. Our experience with other towns has demonstrated that face-to-face meetings are the most efficient way to identify and resolve major sticking points to the satisfaction of the town, while also fulfilling requirements of Maine's Endangered Species Act. Over the years, Old Orchard Beach has been a key partner in helping to conserve and recover Maine's struggling and Endangered Piping Plover population, and we value that partnership. The beach management agreement is designed to strengthen our partnership,

because it provides protection and predictability to the Town and its visitors by identifying activities on the beach that run a high risk of “taking” or “harassing” piping plovers under Maine’s ESA, and by providing guidelines on how to minimize “taking” or “harassing” piping plovers. Since this is not ordinance, no public hearing is required, although one could be conducted if Council so chooses. Continued debate and vote to edit, reject or approve the Agreement could be conducted on the same night as the public hearing.

Areas of our beach are Essential Habitat for nesting, brood rearing and feeding for the federally threatened and state Endangered Piping Plover. The Town owns this habitat down to the low water mark. Piping plovers are a protected species under the federal Endangered Species Act and Maine Endangered Species Act. Essential Habitat is a legal term and states in part: “any project requiring a permit or license from a state agency or municipal government partly or wholly within an Essential Habitat shall not be permitted, licensed, funded or carried out unless the Commissioner determines that the project will not significantly alter the Essential Habitat.”

Because piping plovers nest and feed on our beach, the Town may risk some liability if some activity that we approve or carry out results in the “take” (death) or “harassment” of these birds, or in the degradation of their habitat. To reduce the risk of violating either federal or state law with beach cleaning, fireworks displays, etc, a Beach Management Agreement (BMA) can be beneficial to the town. Such an agreement can protect the town from federal penalties if an accidental piping plover death occurs during town conducted or endorsed beach activities.

Past DPW practice has been to conduct little or no major beach cleaning during the April 1 – August 31 nesting season when plover nesting activity exists. This is the best way to reduce plover interactions and problems. Our present system of Special Events Permits for beach activities includes my comments to Kim regarding any possible plover interactions that should be noted by Council.

This BMA does have some areas of local concern that need public discussion and possible edits prior to a vote to approve or reject. The first is dogs on the beach. Nothing is more damaging to piping plover nesting success than free ranging dogs on the beach during nesting season. The BMA suggests all dogs be on a leash at all times from April 1 thru August 31. This is a change from the present allowance of unleashed dogs on the beach during the hours of 5pm to 10am between Memorial Day and Labor Day and 24/7 outside the Memorial to Labor Day time frame.

The second issue is post-storm or spring beach cleaning involving large debris volumes. If we continue to clean outside of the nesting season or at times and places that Maine Audubon/IFW biologists confirm no plovers exist, then we virtually eliminate plover interaction problems. Maine Audubon and IFW supplies summer biologists who erect nest enclosures, put up signage, etc with visits once or twice per week as needed.

Discussions continued among the Council and the audience including concerns about plover numbers which were addressed as well as nesting history numbers and statewide numbers. It was noted that it would be expensive to fence all the dune area which would help the dunes however the Plovers do not nest in the dunegrass. They nest between the dune grass and the high tide level so for fencing to protect both the dunes and the Plovers it would have to be installed at the high tide level. The consensus was that this would not be popular to residents. Below in the draft of the Agreement in red are listed the changes that were recommended by Council and by audience participants. It was reiterated that a signed agreement between the Town, the U.S. Fish and Wildlife Service and the Maine Audubon would protect the piping plovers but also a signed agreement in place would also protect the Town from liability should a plover nesting on the beach die. Councilor Dayton requested that the document show changes to the restriction of dogs on the beach and having to be leashed on the entire beach when only a small section may be in restrictive area. Wildlife Biologists Lindsay Tudor indicated that Old Orchard has such a large beach that she didn't think that dogs had to be restricted on the whole beach. Town officials revised the draft to allow dogs off leash on the beach, but would not allow them to be within 100 feet of plover nesting areas. It would also have signs posted informing beachgoers of this rule. Councilor Dayton also said the Town had a great pet committee that could work with the Town in monitoring the situation. Discussion continued on the trash barrels being at a distance as not to attract seagulls.

BELOW, underlined, ARE THE SUGGESTED CHANGES MADE BY THE COUNCIL AND ATTENDEES AT THE WORKSHOP.

Town of Old Orchard Beach

Beach Management Agreement

2011 through 2013

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

This agreement allows the Town of Old Orchard Beach to continue their beach management program without filing federal and state Incidental Take Plan's (ITP) for each Town activity that occurs near or within Piping Plover nesting 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 plovers, because plovers that nest successfully in April will fledge their chicks by mid-to-late June, thus removing restrictions on the beach. However, if April nesting fails, or the plovers are forced to nest late, the nesting and chick rearing season will extend into July and August, the peak summer months for beachgoers.

IMPORTANT! These guidelines are in effect from April 15 through August 31 when nesting activity is occurring, which is defined as when territorial pairs, nests, and chicks of Piping Plovers are present. The Town must keep in weekly communication with Maine Audubon to know when Piping Plover nesting activity is occurring. When nesting activity is not occurring on the Town's beaches, these guidelines are not in effect.

l) Introduction

The Piping Plover (*Charadrius melodus*) is a small sandy-colored shorebird that nests on beaches from Newfoundland to South Carolina and 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 2008, only 22 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, the 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. Continuing development and intense recreational use of nesting beaches is further reducing the capacity of the remaining habitat to support nesting plovers. Ensuring the availability of this limited habitat is essential for the continued existence of Piping Plovers and other coastal wildlife, such as the state listed endangered Least Tern.

Historical records document that Piping Plovers nested on Old Orchard Beach in recent decades. In fact, under ideal conditions, these 3 miles of sand-beach habitat may have once supported as many as 10 pairs of Piping Plovers at densities of 3.5 pairs/mile of beach. Unfortunately, development and associated human disturbance and predation greatly reduced the ability of the habitat to support these rare birds. Piping Plovers were a rare summer resident in Maine in the late 1800s, and in the early 1900s, were extirpated as a breeding bird from the state. With protection from the Migratory Bird Treaty Act in 1918, plovers rebounded, and by 1940, they were common on sandy beaches from Kittery to Cape Elizabeth. Nesting of plovers on Old Orchard Beach resumed in 1993. From 1993 to 2008, one to three pairs of Piping Plovers have consistently nested on Old Orchard Beach; clearly, habitat management of Old Orchard Beach is essential to the recovery of Piping Plovers in Maine.

In 1995, the MDIFW designated a portion of Old Orchard Beach (PPLT04 and PPLT08) as Essential Habitat for Piping Plovers. In 2010, to incorporate recent nesting locations by Piping Plovers on Old Orchard Beach, MDIFW expanded Essential Habitat to include two more areas (PPLT14 and PPLT15).

II) Authority to Enter Agreement

Maine Endangered Species Act of 1975 (MESA)

Federal Endangered Species Act of 1973 (ESA)

III) Geographic Scope of Agreement

The area under this agreement is the entire, Town-owned beachfront commencing from the Saco/Old Orchard Beach town line at Goosefare Brook, north to the Old Orchard Beach/Scarborough town line. The beachfront includes the seaward side of the frontal dune to the mean low water mark.

The intent of this agreement is to provide a means to protect Piping Plovers on Old Orchard Beach. Success of this agreement depends on the participation and cooperation of the Town, Maine Audubon, USFWS, and MDIFW.

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

IMPORTANT! These guidelines are in effect from April 15 through August 31 when *nesting activity* is occurring, which is defined as when territorial pairs, nests, and chicks of Piping Plovers are present. The Town must keep in weekly communication with Maine Audubon to know when Piping Plover *nesting activity* is occurring. When *nesting activity* is not occurring on the Town's beaches, these guidelines are not in effect.

A) Daily Pickup of Trash Barrels on the Town's Beaches and Rights-of-ways.

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 100 feet from a stake and twine symbolic fence.** Any Town vehicle picking up waste from the barrels shall have a trained spotter (trained by Maine Audubon or MDIFW staff) walk in front of the vehicle, which shall proceed no faster than walking speed.

Trash pickup using All Terrain Vehicle (ATV) does not require a spotter if:

1. Personnel picking up trash are in weekly communication with the Town's Plover Monitoring Coordinator and Maine Audubon to know the location of nesting plovers and their chicks;
2. ATV operators are trained by Maine Audubon or MDIFW staff; and
3. ATV vehicles proceed no faster than walking speed.

All vehicles will travel at least 50 ft. from the **dune** grass edge of the beach, close to the mean high water mark, **(or as far away as possible if less than**

100 feet exists), to assure no conflicts between nest initiation and vehicular traffic.

B) Seaweed and Debris Cleanup

The Town agrees not to use mechanical means to clean beaches within stake-and-twine delineated Piping Plover areas. If however, the need arises to use mechanical means to clean the beach, the Town shall follow these guidelines.

1. All beach-cleaning vehicle entrances/exits to the beach will be at locations agreed upon by the Town, MDIFW, and Maine Audubon.
2. The Town will provide a spotter, trained by Maine Audubon or MDIFW staff, to guide all Town beach-cleaning vehicles on the beach. Failure by the Town to use a spotter is a breach of this agreement and gives MDIFW and USFWS the option to implement other protective management actions as identified by the MESA and the ESA.
3. Spotters will use the map given to them by the Town's Plover Monitoring Coordinator (see Section IV, H). They will record observations of adult birds, nests, eggs, and chicks, 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 those 100 feet while the spotter stands and watches in that zone. Records of these observations will be submitted to MDIFW or Maine Audubon at the end of the nesting season or at any time upon request.
4. The spotter will 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.
5. Beach cleaning will not occur within 100 feet of stake-and-twine symbolic fencing. This gives the birds a buffer from disturbance by vehicles and leaves additional foraging habitat intact.
6. Town personnel conducting beach cleaning will record the *date, time, and location* of each beach cleaning activity in a log kept at the Department of Public Works. Nesting sites and dates will also be noted in the log and submitted to MDIFW or Maine Audubon at the end of the nesting season, or at any time upon request.
7. The Town will clean rights-of-way by hand unless it is clearly outside any area of plover *nesting activity* or conducted outside the plover-nesting season. Instances of need for heavy seaweed removal have historically been few. However, should heavy seaweed removal require using a dump truck and an excavator, a trained spotter will be required on site. No such work will take place within 100 feet of a stake-and-twine symbolic fence.

C) Lifeguards.

Lifeguard stands will be at least 100 feet from a stake-and-twine symbolic fence, or as far as possible if less than 100 feet exists from where a lifeguard stand should be located. In the event that a site does not allow for the required 100-foot buffer, MDIFW, or Maine Audubon, and the Town will

determine an appropriate placement for the lifeguard stand. This mutually agreed upon location will maintain the public safety requirements as well as protect nesting Piping Plovers. When feasible and appropriate, as determined by the Town, lifeguards will assist in educating the public about safeguarding plovers.

D) Police, Emergency, and Non-Emergency Vehicle use

It will be the policy of the Town of Old Orchard Beach that non-emergency vehicle use will not occur within 100 feet of designated Piping Plover nesting areas. Outside nesting areas, essential vehicle use 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. At least two employees shall respond to any non-emergency incident (such as removal of dead or injured marine mammals) within an area of plover *nesting activity*, with one employee acting as the spotter to and from the scene.

All emergency response personnel will account for and avoid nesting areas and chicks to the maximum extent practicable, consistent with the nature and urgency of the emergency. 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 Maine Audubon or MDIFW in the spotting and protection of plover habitat (see Training below). All other personnel shall have training materials and aids available to assist in spotting plover nests, chicks, and fledglings, during their beach management activities. Maine Audubon training workshops shall be available for each nesting season.

E) Recreational Activities

1. Beach parties, clambakes, volleyball, fires, etc.: **Because these activities could seriously threaten plover nests, eggs, and young, the Town should discourage such activities within 100 feet of symbolic stake-and-twine fencing.**
2. Kite, sand surfer (wind-driven sand cart), parasail, or parboard sail. **These activities should not occur within 650 feet of symbolic stake and twine.**
3. Fireworks. **If the Town approves a fireworks display, MDIFW and USFWS require that:**
 - a. The fireworks launch site be located a minimum of 1/2 mile from the nearest Piping Plover nesting and/or foraging area.
 - b. For smaller, weekly fireworks displays, at least one uniformed officer is available to control crowds around nesting areas.
 - c. For the annual 4th of July fireworks display, the Town has adequate law enforcement personnel, as defined by MDIFW, to protect nesting areas and assist IFW and MA staff/volunteers.
 - d. The Town submits a fireworks plan by April 1.

F) Animal Control

Dogs can be a significant source of disturbance and mortality for Piping Plovers. Ideally, dogs should not be allowed on Piping Plover nesting beaches when territorial pairs, nests, and chicks are present. According to Section 14-6 of the Town ordinances, dogs will not be permitted to enter the beach between the hours of 10:00 a.m. and 5:00 p.m. inclusive, from Memorial Day to Labor Day. ~~In addition, the Town agrees that all dogs on the beach must be on leash at all days and times when the ordinance is not in effect from April 15 through August 31, unless MDIFW, USFWS, and Maine Audubon determine that Piping Plovers are no longer attempting to nest on the beach.~~ The Town also agrees not to allow dogs within 100 feet of symbolic stake-and-twine fencing and to erect signs alerting beach-goers of the prohibition on dogs in those areas. Signage used will be agreeable between the Town and MDIFW. The Town, MDIFW, and USFWS enforcement officers will enforce this prohibition.

G) Stake-and-twine Fencing and Nest Enclosures

Plover nests that are not quickly fenced are vulnerable to disturbance. In an effort to afford plovers the immediate protection they require, the Town of Old Orchard Beach grants MDIFW, or Maine Audubon, approval to erect symbolic stake-and-twine fencing and nest enclosures, as needed.

Stake-and-twine Fencing: Temporary, stake-and-twine fencing and signage is for managing recreational use of the beach in the vicinity of Piping Plover nesting areas, and for protecting nesting and feeding habitat for plovers. Ideally, when courtship and nest scraping first occur, biologists erect stake-and-twine fences and signs around the nesting area. Plover nesting areas are fenced using wooden stakes and baling twine; MDIFW, or Maine Audubon, provide the signs. Only persons engaged in Piping Plover monitoring should enter the fenced areas. Fenced areas should extend 150 feet on either side of the nest whenever feasible. If the 150-foot radius is inadequate to protect incubating adults and unhatched chicks, biologists may expand the fenced area. In some instances, fenced areas may encompass more than one nest. Monitoring of nesting territories should occur frequently (daily if possible) until nests are located. Stake-and-twine fencing will remain on the beach until all chicks in the vicinity have fledged.

Nest Enclosures. Predation by crows, gulls, foxes, dogs, and cats is a major source of nest failure for Piping Plovers. Therefore, MDIFW, or Maine Audubon, will erect approximately eight-foot radius nest enclosures around each nest after the birds lay their third egg; this helps protect the eggs and young until hatching is completed. Nest enclosures consist of 2 x 4-inch welded wire fence supported by metal stakes. Biologists string bird netting over the top of the enclosure to help deter avian predators. Guidelines for

constructing and maintaining exclosures are in Appendix F of the federal Piping Plover Revised Recovery Plan (U.S. Fish and Wildlife Service 1996). MDIFW, or Maine Audubon, will remove nest exclosures when territorial pairs, nests, and chicks are no longer present.

H) Monitoring

The goal of monitoring is to establish regular, daily observational walks to maintain an up-to-date account of Piping Plover activity on Old Orchard Beach to better protect them from predation and human activities. Monitoring of Piping Plovers requires frequent visits by plover biologists and volunteer monitors each week throughout the nesting season to ascertain nesting status, nest location, nest success, and success of young. As the season progresses, monitors may discover new nests at any time as renesting occurs, or as new pairs establish nests on the beach. Adult birds and their chicks commonly move 325 to 650 feet away from the nest to preferred foraging areas (wrack line and intertidal flats). Frequent visits are required to track the survival and movements of family groups.

The keystone of the monitoring program is deployment of trained, Volunteer Plover Monitors (Monitors). The Town's Plover Monitoring Coordinator (Coordinator) recruits and supervises these Monitors.

Plover Monitoring Coordinator: the Town will provide the Plover Monitoring Coordinator as needed for the months of April through August. The Coordinator will work under the supervision of the Director of Public Works. In the event the Town cannot find or hire a Plover Monitoring Coordinator, the Town will assume ~~responsibility of fulfilling~~ the duties of this position with another municipal staff person as the responsible party.

The Plover Monitoring Coordinator will be in charge of recruiting and scheduling volunteer plover monitors. The Coordinator will communicate with landowners adjacent to Old Orchard Beach to inform them of Piping Plover biology and management needs, and to solicit their support for the monitoring project. The Coordinator will collect daily reports from the volunteer monitors, compile data, and act as liaison between the Town, Maine Audubon, and MDIFW. At the end of each week, The Coordinator will have all volunteers complete a "Volunteer Time and Activity Record Sheet" provided by MDIFW. The Coordinator is responsible for collecting all Volunteer Time and Activity Record Sheets at the end of the nesting season and delivering them to MDIFW or Maine Audubon. Neither the Coordinator nor the volunteer plover monitors will be involved in enforcement of regulations.

Volunteer Plover Monitors: **Volunteer Plover Monitors must be available for training and should pledge to make at least a weekly commitment of time.** Monitors may also be asked to attend a monthly meeting for program review and reinforcement of training. Monitors shall fill out a standard daily report (provided by MDIFW or Audubon) following their monitoring activities, and deliver it to the established collection point for pick up by the Coordinator. Monitors will report on the location of Piping Plover nests and on adherence to the provisions of this beach management plan. The Town will provide free

parking, if necessary, for Monitors during the time of their monitoring activities.

I) Education and Outreach

Educational efforts will take many forms, and will rely heavily on local organizations to promote proper stewardship of the Piping Plover and other shorebirds on Old Orchard Beach. Local organizations should be encouraged to include educational materials in their newsletters, at meetings, on bulletin boards, and through other forms of communication.

The Plover Monitoring Coordinator and Volunteer Plover Monitors will utilize opportunities for face-to-face contact with adjacent property owners and beach users to educate them about Piping Plovers and the importance of respecting their habitat.

MDIFW or Maine Audubon will develop renter educational packets specifically designed to acquaint renters that use the beach with the guidelines affecting beach use. The Town will encourage landowners and local realtors who handle rental properties, to deliver the educational packets to renters. MDIFW, or Maine Audubon, will put information about regulations governing dogs on the beach in the renters' packet and in the newsletter mailed to landowners. Volunteer Plover Monitors will also distribute copies of the dog regulations on the beach.

J) Training

In support of the volunteer monitoring program, MDIFW, or Maine Audubon, will conduct annual training sessions for the Conservation Commission, Plover Monitoring Coordinator, Volunteer Plover Monitors, lifeguards, police and summer cadets, appropriate Department of Public Works employees, Emergency Responders, and other appropriate employees of the Town. These training sessions will be held in April and May, and will include information regarding Piping Plover biology, conservation/management, monitoring protocol, record keeping, and regulations, including dogs on the beach. When possible, MDIFW, or Maine Audubon, will include enforcement personnel of the USFWS and MDIFW for these training sessions to address issues of "take" under the federal ESA and Maine ESA. Maine Audubon has developed a Volunteer Monitoring Handbook for the Volunteer Plover Monitors, which contains background and training materials, regulations (including those pertaining to dogs on the beach), and daily monitoring check-off sheets.

When feasible and appropriate, MDIFW, and/or Maine Audubon, will train all Town personnel at the same time, unless it is not reasonable to do so.

K) Beach Restoration, Maintenance, Nourishment, and Dune Creation

Activities within the sand dune system at Old Orchard Beach 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; however, all federal activities are subject to review by the USFWS under the

Endangered Species Act. 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 by the Town of Old Orchard Beach and reviewed by MDIFW, DEP, USFWS, and the Corps to ensure that state and federal regulations are adhered to and that Piping Plovers are not adversely affected.

L) Permit Review Process

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

This Cooperative Beach Management Agreement can facilitate state and federal environmental review and permitting provided that such activities and projects are consistent with other federal and state statutes. Concurrence from the USFWS and MDIFW 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" as defined under the federal Endangered Species Act (harass, harm, pursue, hunt, shoot, kill, trap, capture, or collect) of the federal Threatened Piping Plover (U.S. Fish and Wildlife Service 1973), or "take" as defined under the Maine Endangered Species Act (...the act or omission that results in the death of any endangered or threatened species.) (12 MRSA §12808) and "harass" as defined under state statute as any "intentional or negligent act or omission that creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavior patterns." (12 MRSA §10001(29)) of the state Endangered Piping Plover.

Situations, activities, or projects may arise that are not addressed in this Agreement that affect the Piping Plovers on Old Orchard Beach. Successful resolution of such eventualities requires communication and coordination-- landowners and the Town of Old Orchard Beach are encouraged to seek early and frequent consultation with MDIFW and the USFWS prior to initiating activities or projects that may affect Piping Plovers.

V) Time Frame of Agreement

Recognizing that habitat and other management issues may arise that could require modified management, the Town, Maine Audubon, USFWS, and MDIFW will meet annually in the winter to review this agreement. This Agreement will commence April 1, 2011 and terminate on October 1, 2013.

VI) Amendments

Amendments to this agreement can be made with the concurrence of all signatory parties to the agreement. Amendments shall not be effective unless documented in writing, dated, signed by all parties, and attached to the agreement. Amendments will be considered annually at the winter meeting of relevant Old Orchard Beach staff and volunteers.

The Council received the following e-mail from Tina Morrison:

The issue of the Piping Plovers and dogs being leashed on the beach will be discussed on 9/13 via the Conservation Committee (see email below). I emailed you last April as this was a discussion that was proposed via the Town Council and later tabled.

I am opposed to leashing dogs during the plover season as I believe this may be the beginning of a). banning dogs on the beach permanently or b). requiring leashing 24/7/365 of which I am opposed.

Although I absolutely support the habitat of these birds, I believe alternative methods could be utilized for their protection including signage and beach fencing. There were only 27 PAIRS of Plovers in 2009 of which NONE were in OOB. Requiring leashes for what "may" happen seems futile in my opinion.

If you enjoy walking your dogs off leash on the beach, and share similar concerns, please join me on Monday, September 13. I am waiting on the time and location of this meeting.

Thank you, Tina

Tina Morrison, CI/CT, NAD V, SC:L
Sign Language Interpreter
TerpTina@aol.com
207-838-8462 - Cell
866-326-1908 - VP

She also sent another e-mail on September 15, 2010 which she requested by in the Minutes:

Good Morning Councilors:

Last April, 2010, you received several letters of opposition requiring leashes on dogs during the nesting season of the Piping Plovers. Once again, I believe the issue is before us and to be voted on next Tuesday, September 21, 2010 at the Town Council Meeting and to be discussed tonight at the Workshop. Unfortunately I am unable to attend the meeting tonight but I do plan to attend September 21st. Regarding the proposal, once again, I'd like to stress several points:

1. There have only been 1-3 nests sighted between 1993-2008;
2. Only 27 pairs have been sighted in 2009 for the entire State of Maine;
3. Signage and fencing should be a sufficient way to protect the birds.

I strongly believe leashing the dogs from April to August annually is a drastic measure for the “potential” of a nesting bird.

While I support the habitat of these birds and hop for their continued survival, I hope you will consider the impact this ordinance will have on the hundreds of dog owners on our beaches. This ordinance will directly affect my seasonal business of renting to dog owners who choose Old orchard Beach for their friendly off-leash policy on the beaches.

Please reconsider the language associated with this policy, and adopt a measure of signage and fencing only to protect the Piping Plovers.

Thank you for your consideration. See you next Tuesday, September 21.

Tina Morrison

The Conservation Commission presented to the Council the following letter:

Members of the Council:

I am unfortunately unable to attend tomorrow’s meeting regarding the proposed Beach Management Agreement with the Maine Department of Inland Fisheries and Wildlife to hopefully increase the nesting success of endangered piping plovers on Old Orchard Beach.

At its meeting last night, the Conservation Commission (with 4 of 5 members present) unanimously supported this agreement. We agree with its provisions for beach management activities and the leashing of pets on the beach from early April, when plovers are attempting to establish nesting sites, until nesting activity has been determined to be unsuccessful or until nesting activity ends.

We recognize that Old Orchard Beach is very heavily used for human recreation, and that compromises such as this are not easy. According to Maine Audubon, piping plover and least tern suitable habitat in Maine has been reduced by 75% since World War II, leaving our beach as one of the few viable areas where they are able to reproduce. The Conservation Commission is hopeful that the town can accommodate both its visitors and the natural processes that occur on the beach.

Thank you for your consideration.

Respectfully,

**Ginger McMullin
Chair, OOB Conservation Commission**

Another e-mail was received and asked to be considered in the Minutes:

Dear Louise, I am a property owner in Pine Point Beach who has been walking dogs on the beach for the past 27 years. I am a huge animal lover and respect the fact that the Town Council is concerned about the welfare of the Piping Plovers and comment you for your efforts to protect these magnificent birds. However, I do not support a mandatory leash law for dogs from April to August. I believe this is a drastic measure considering that only 1-3 nests have been sited between 1993 to 2008 and only 22 pairs total in the entire State of Maine. I happen to pay a lot of taxes to live n the beach in Pine Point. The way I like to enjoy the beach is giving exercise and pleasure to both my dog and me. If I actually believed that leashing dogs was a viable solution to helping increase the presence of Plovers I would support this. However, given the current situation I believe that fencing and signs are much more adequate solutions to ensure their protection. If this leash law goes into effect many people and dogs will be directly affected. The beach is one of the very few places in the entire State of Maine where dogs for a certain period of time can roam free. Please don't take this privilege away from us for reasons that aren't merited.

Sincerely,

Rachel Speed

Workshop Number Two

The second discussion was related to a proposal from the Lowell Baseball Team to Relocate to Old Orchard Beach. The following proposal was received from Doug Ayotte, General Manager, Lowell All Americans – NECB. The Ballpark Commission submitted the following recommendation of this proposal which was presented by the Town Manager, Jack Turcotte, and the Ballpark Commission Chair, Paul Crossman:

The Ballpark Commission has spent many hours in discussion with the General Manager of the team in preparation to seeking approval from the Town Council to bring the team here for next year's season. It is the wishes of the Commission to partner with a collegiate league of this caliber which is a duplicate of the very successful team in Sanford, called the "Sanford Mainers." The community connection to house a home town collegiate team is very advantageous to a community both in spirit and in producing a feeling of community ownership and involvement. The details of the potential agreement are being worked on daily; a recent adjustment was made last Wednesday night at a Ballpark Commission meeting. We are awaiting adjusted draft documents in preparation for the Council presentation at the Workshop on Wednesday night. Simultaneously I have been asking our legal counsel, Chris Vaniotis, Esquire, (Bernstein & Shur) to review the documents as they have been progressing to try to pre-identify any possible conflicts, red flags, and other issues, etc. The Town Manager indicated that he expected our legal counsel to have a final contract document ready for the Workshop for the Council to review and understand that the Council prior to an official vote would want clearance in a document from Bernstein & Shur. Timing is difficult because of the league's schedule to approve their request for a new location and our time schedule is very tight and requires us to do a lot in a very short time.

The Town Manager said he has been very pleased at the attentiveness and interest of the Commission, and have attended all the discussions that have occurred between the Commission and the General Manager. Pending final legal approval I am excited and definitely support the request to allow this Agreement to move forward. It is the strong desire of the current board of directors of the Lowell All American franchise of the New England Collegiate Baseball League (NECBL) and the Ballpark Commission to relocate the All Americans to Old Orchard Beach and play all home games (consisting of 21 regular season + playoffs and/or exhibition games) at the Ballpark at Old Orchard Beach for the 2011 season beginning in June of 2011. A payment of \$10,000 will be paid to the Ballpark (Town of Old Orchard) in exchange for 25 scheduled games and is final and will be non-refundable. The following will outline the benefits to all parties and additional details that require consideration.

- 1. Benefits – The NECBL and all of its member teams are non-profit 501(c3) organizations. As such our goals are not to maximize profits but to provide the following services to the community, the fans and the college players looking to improve their skills and potentially aspire to playing professional baseball after graduation**
 - a. Community – our mission is to provide fun family sports entertainment at a low cost that can be enjoyed by all ages regardless if they are ardent baseball fans or just enjoying a day of family entertainment. In addition we will be providing baseball clinics and helping with fund raising events for local organizations that support the town and its citizens. Our hope is that the team will become engrained in the community and work with local businesses to bring additional revenue through direct purchases of goods and services by the team or in conjunction with sponsors to bring even more exposure to the Ballpark and the Town of Old Orchard. The team has a marketing plan already in progress that incorporates the involvement and increased business to local merchants and service providers**
 - b. Fans – It is critical to our (Old Orchard Beach and the team) joint success that we provide a quality event at every game. This is a very high level of competitive college baseball. We don't expect to win every game but the players will demonstrate those qualities of hard work, talent and sportsmanship that have allowed them the success they have achieved to date. We expect the players to be exemplary role models for our younger fans. Refreshments and between inning activities involving the fans are a regular part of the event to elevate the fan experience in addition to seeing some great baseball. Although ticket prices are still to be determined we will be in the range of \$5-\$6 with Seniors over 65 and kids 12 and under are 1/2 price and active military free. We will also be providing reduced season ticket prices and MANY giveaways as promotions and fund raisers for charity**
 - c. Players – The NECBL was established to provide an additional avenue for players (a high focus on New England players) with at least one year of college baseball eligibility to showcase their talent to pro scouts. We are obligated to the players to provide this opportunity. We will therefore make every effort to allow playing conditions and level of competition to the standards equal to and exceeding the existing charter.**

2. **Financial Considerations – In addition to the \$10,000 usage fee the Ballpark commission will:**
 - a. **Operate food and beverage concessions (excluding beer) and will maintain 75% of the gross receipts. 25% will go to the team to help offset operating costs. The team will also donate various appliances for use at the concession stand including but not limited to – oven and cooktop, freezer, large popcorn maker and warming oven**
 - b. **Pending approval of a Beer Garden, The Ballpark will also receive a payment by the team equal to 10% of gross revenue from the sale of beer which will be operated by the team.**
 - c. **Receive 10% of all ticket sales.**
 - d. **The team will assist in the procurement of a new scoreboard through sponsorships programs. Final determination will be made by the ballpark commission as to acceptance of the sponsors conditions**
 - e. **The team will assist various youth and community organization with fund raising activities.**
3. **Stadium condition and repairs – At this time there appear to be no conditions that would preclude playing of games at the “Ballpark” by the NECBL teams (an inspection by NECBL officials will have to be done to confirm). There are some improvements and maintenance standards that have recently been made or are in process to provide and even better playing and spectator experience**
 - a. **Enclosure and general repair of the press boxes – currently slated to be completed**
 - b. **Internet connectivity – slated for completion**
 - c. **Electronic scoreboard – have one available and procurement of a modern board through sponsorship will be explored**
 - d. **Repair of seams in stadium flooring – in process**
 - e. **Seating capacity of 3000+ - already at 4000 with plans to hopefully have all seats available for the 2011 season**
 - f. **Not required but highly desirable - purchase of a full infield tarp. Team will assist in fund raising for this item which will become the property of the ballpark and therefore can be used for all teams and events.**
 - g. **General maintenance and cleanliness suitable to proper play and appearance that has already been demonstrated in past games played at the Ballpark (e g grass cut, foul lines painted and chalked, field watered as necessary, field dragged as necessary, general cleaning etc.**
4. **Physical Access – the team requests and will be granted access to the locker rooms and clubhouse throughout the season and off season as is necessary to carry out team business.**
5. **Player host housing – Many players will not reside close enough to be able to “commute” to the Ballpark. The norm in the league is that the hometown (in this case not just OOB but surrounding communities as well) provide the players with host housing. Hosts typically receive a \$50 per week payment by the player.**
6. **Team management accommodations – there is no expectation that the Ballpark commission or town provide or pay for any team management accommodations. The Team would however appreciate help in finding affordable (reduced rate, donations etc.) arrangements as is necessary. Off season would need overnight**

accommodations sporadically. (eg 5-8 per month as necessary). In season full time accommodations for June and July.

7. Assistance with access and introductions to business, political, school and press personnel in order to promote sponsorships, game attendance and positive media exposure - Although it is understood that this is not a quantitative process and will require time and experience to develop these relationships, it is CRITICAL to our joint success that the team be “adopted” by the community – business people, town administrators, school officials and media personnel. We will work diligently to earn the trust and partnerships that will eventually make this a tremendous success.
8. Promotional Materials/Signage -The Team would have rights to sell hats, T-Shirts Etc, at the souvenir stand and to include local shops and vendors to participate in the marketing and sale of such Materials should they wish to be involved. The Ballpark Commission also grants permission to the team to sell signage for the outfield fence. Such signs to meet the approval of the Ballpark Commission for content, size and design

The Ballpark Commissions desire is to achieve two goals 1) Make it a clear cut, easily accountable and transparent win/win for all parties. 2) Mitigate risk on the part of the Ballpark and the town. It is firmly believed that there is a strong likelihood of this joint partnership – Ballpark/town, business, fans and team being the envy of every organization in the league and that working together we can set the standard in our first year and continue that progress for years to come. The purpose of coming to Council is to present this proposal for your review and hopefully your approval.

There was an enormous amount of discussion on this issue; some very positive and some with considerable concerns expressed. Conversation participants including Council members but also Jerome Begard, Michael Bouffard, Dana Furtado, Sheila Flathers and John Bird. Councilors Dayton and O’Neill questioned the timing of this information not being shared with the Council before this Workshop. It was explained by several on the Ballpark Committee that it was their understanding that the Council’s direction to them was to come back to the Council in a setting such as this Workshop and present plans for use and funding of the Ballpark. A number of questions were raised on the funding of the Ballpark including the recording of the money provided by the Council in the amount of \$50,000 and \$25,000 for a total of \$75,000; up-to-date amounts of gate receipts; and concern that the amount noted in the July Town Financials shows a negative balance. The Commission assured the Council that there is not a negative balance with the Ballpark and will present at the next meeting a financial statement prepared by and signed off by the Finance Director. Councilor O’Neill indicated that he would approve for an item on the next agenda approving a Letter of Intent for the Lowell Baseball Team to Relocate to Old Orchard Beach and authorize the Town’s legal counsel to prepare final legal documents for approval by the Town Council at the October 5, 2010 meeting. The Commission members encouraged the Council to support this and to make possible a more positive working relationship to be maintained. In the audience and participating was Doug Ayotte, the son of the current owner of the General Manager of NECBL who indicated there is definitely an “drop dead date” at the end of the month for the Town to decide if they want NECBI baseball in Old Orchard Beach as any decision after that might have the ramifications of losing potential coaches, players and business marketers, meaning the change for the next

season would be slim-to-none. Paul Crossman said that he and Doug Ayotte have been in talks for approximately six weeks and defended the reason for the negotiation process and the fact that the Commission believed the Workshop process was how to bring this to the attention of the Town Council. The major concern raised was the lack of an understanding of the finances of the Ballpark and the sense of rushing through this process. The other issue which was raised and the offer to remove was the question of a beer tent. It should be noted that the NECBI and all of its teams are 501(c3) non-profit organizations meaning the team would only use money used for operating costs and upkeep of the ballpark and not for any potential profit.

Workshop Three

The third item for discussion was the Review options to the 2010 FEMA Flood Insurance Rates Map. This fall Old Orchard Beach will enter into a new era. A multi-year project to re-examine flood zones and develop detailed, digital flood hazard maps is nearing completion. The new maps reflect current flood risks and areas of recent growth, replacing maps that are up to twenty-five years old. As a result, property owners throughout Old Orchard Beach will have up-to-date, reliable, internet-accessible information about their flood risk, on a property-by-property basis. And owners of more than 1,550 properties will learn that their risk is higher, or lower, than they thought. As someone with a stake in Old Orchard Beach's future, it is imperative that all citizens and owners should be aware of how the maps are changing and why, and how the changes will affect residents and business owners alike.

Below is the letter that was received by property owners affected by these changes:

August 31, 2010

Dear Property Owner,

In June of 2009 and May of 2010, the Town of Old Orchard Beach received new Flood Insurance Rate Maps from the Federal Emergency Management Agency. You are receiving this mailing because your property's flood hazard designation will change as a result of the new mapping.

Please read the attached brochure that our staff has prepared for you, as it has helpful information. There are regulations that change the way properties are developed or substantially improved within a designated flood hazard area. These regulations will be updated in 2011 as well.

The following are some recommendations:

- Go to the Town's Web Based GIS maps (<http://eisweb.woodardcurran.com/oob/>) and select your address or Map-Block-Lot number ; choose "FEMA Draft 2010" and you can see what zone your will be in.. If you need to know how your property is currently designated or have other questions, contact Mike Nugent at 934-5714 ext 237 or email mnugent@oobmaine.com

- **Once you know how you will be designated, contact your insurance company and discuss flood insurance. VERY IMPORTANT*** IF YOU PURCHASE FLOOD INSURANCE PRIOR TO THE EFFECTIVE DATE OF THE FLOOD MAPS (estimated effective date June/July 2011) THE RATES WILL BE LOWER THAN IF YOU WAIT UNTIL AFTER THE EFFECTIVE DATE!!!! Contact your insurance provider for rate information.**
- **If you feel that the mapping is WRONG, and you have scientific or technical data that indicates that the flood zones or elevations are incorrect, YOU HAVE THE RIGHT TO APPEAL.**

The Town of Old Orchard Beach has staff that has been trained specifically by FEMA to assist you. PLEASE READ THE ATTACHED MATERIALS CAREFULLY and feel free to contact our office at 934-5714 ext. 237.

Yours truly,

**Michael J. Nugent C.B.O.
Code Enforcement Officer**

Flood hazard maps also known as Flood Insurance Rate Maps (FIRMs), are important tools in the effort to protect lives and properties in Old Orchard Beach. By showing the extent to which areas of Old Orchard Beach – and individual properties – are at risk for flooding, flood maps help business and property owners make better financial decisions about protecting their property. These maps also allow community planners, local officials, engineers, builders and others to make important determinations about where and how new structures and developments should be built. To ensure that everyone within our community has access to the most accurate and up-to-date information about flood hazards, the new maps are being made available for public view and review.

Over time, water flow and drainage patterns have changed dramatically due to surface erosion, land use and natural forces. The likelihood of inland, riverine and coastal flooding in certain areas has changed along with these factors. New digital mapping techniques will provide more detailed, reliable and current data on county flood hazards. The result: a better picture of the areas most likely to be impacted by flooding and a better foundation from which to make key decisions. The flood map modernization project is a joint effort between Old Orchard Beach and the Federal Emergency management Agency (FEMA), in cooperation with association and private sector partners.

There was discussion by the Council on this issue and whether the Council would move forward at the September 21st agenda with a motion to contract with Sebago Technics to provide an analysis of the 2010 FEMA Flood Insurance Study to ascertain if there is a Basis for Appeal in the amount of \$13,000 which originally was to come out of the Comprehensive Plan Committee budget. Councilor Dayton argued this was not the correct account and Vice Chair Tousignant indicated it should come out of the Contingency Fund, Account Number 20118-50350 – Contingency, with a balance of \$25,000. It should be noted that discussions with Council and individuals such as Bud Harmon, Pat Brown and John Bird added to the positive of the agenda item.

The schedule presented was:

June 9, 2009 – Preliminary maps released.

September 2, 2010 – Start the 90-day Public Comment period (for filing of appeals and protests)

Mid January, 2011 – Letter of final determination will be sent to communities.

Mid July – 2011 – New Map Effective date; new insurance requirements take effect.

Visit: <http://eisweb.woodardcurran.com/oob> to see the preliminary maps and when map changes take effect.

The Chair closed the workshop at 10:25 p.m.

Respectfully Submitted,

**V. Louise Reid
Town Council Secretary**

I, V. Louise Reid, Secretary to the Town Council of Old Orchard Beach, Maine, do hereby certify that the foregoing document consisting of twenty (20) pages is a true copy of the original Minutes of the Town Council Workshop of September 15, 2010.

Louise Reid