

April 8, 2016

Hampden Planning Board  
Attn. Chair Peter Weatherbee  
106 Western Ave.  
Hampden, ME 04444

**Re: MRC/Fiberight Project Application**

Dear Chair Weatherbee and Members of the Planning Board:

On behalf of the Municipal Review Committee, Inc. ("MRC"), I am providing this letter that sets forth why the MRC/Fiberight Project Application is not a subdivision, and why the MRC lot meets frontage requirements under the Hampden Zoning Ordinance, which were both issues raised as part of a preliminary peer review process.

**The MRC/Fiberight Project is Not a Subdivision, and Therefore the Hampden Subdivision Ordinance Does Not Apply**

A "subdivision" only occurs when (i) a tract or parcel of land is divided into three or more lots within a five-year period; (ii) the division of a structure or structures creates three or more dwelling units on a tract or parcel of land within a five-year period; or (iii) three or more dwelling units are constructed or placed on a single tract or parcel of land. 30-A M.R.S. § 4401(4) (enclosed). When conducting a subdivision analysis, all applicable exemptions must be considered (e.g., transfer of land to an abutter).

Here, the MRC/Fiberight Project does not involve any dwelling units of any nature, so categories (ii) and (iii) above are not applicable.

With respect to the consideration of "lots" (category (i) noted above), MRC's Option to Purchase does not divide any tract or parcel of land into three or more lots within a five-year period that would constitute a subdivision. Simply stated, the MRC lot resulting from the Option to Purchase consists of (1) a portion of an existing tract or parcel of land owned by Hickory Development, LLC; and (2) adjacent land from H.O. Bouchard, Inc. and Maine Ground Developers, Inc., who are both abutters to the MRC lot. *See updated Overall Site Plan (April 8, 2016) (enclosed).*<sup>1</sup>

By carving out one lot from Hickory Development, LLC's existing parcel of land, the exercise of MRC's Option to Purchase would only result in two lots: (1) MRC's lot; and (2) the land retained by Hickory Development, LLC.<sup>2</sup> The remaining non-Hickory Development, LLC

<sup>1</sup> The Overall Site Plan was updated to accurately reflect that the owner of the area along the southeasterly portion of the access road as Hickory Development, LLC (not H.O. Bouchard, Inc. as initially identified).

<sup>2</sup> Maine Subdivision Law defines a tract or parcel of land as "all contiguous land in the same ownership, except that lands located on opposite sides of a public or private road are considered each a separate tract or parcel of land unless

land that is part of the MRC lot consists of transfers of land from abutters – namely, H.O. Bouchard, Inc. (the southeasterly portion of the MRC lot) and Maine Ground Developers, Inc. (the northeasterly portion of the MRC lot that includes land for sewer utilities to serve the Project). See *Overall Site Plan* (April 8, 2016). As noted above, under Maine Subdivision Law, land transferred to an abutter is not counted as a “lot”. 30-A M.R.S. § 4401(4)(D-6).<sup>3</sup> Therefore, the transfers of land from H.O. Bouchard, Inc. and Maine Ground Developers, Inc. have no subdivision implications; they are exempt as transfers to an abutter.

As part of MRC’s due diligence, we reviewed the title of all properties that concern MRC’s lot to ensure there were no prior divisions that may have occurred relative to the proposed creation of the MRC lot that would result in the creation of a subdivision. In this respect, based upon an examination of the records of the Penobscot County Registry of Deeds as to all instruments of record affecting these properties for a minimum of forty (40) years prior to the date hereof, there were no recorded conveyances or instruments of record that would result in the creation of a subdivision.

Regarding the Project’s access, construction of the access road will first occur in the easement area prior to creation of the MRC lot. See *Overall Site Plan* (April 8, 2016); see also *Option to Purchase p. 1* (“...together with an easement for a right of way for all purposes, including utility services, along the private road depicted on Exhibit A.”) (emphasis supplied). This access easement is not a “lot” for subdivision purposes either. Moreover, once the access road is constructed, MRC will offer this access road to the Town Council for acceptance as a town way – which is a prerequisite to closing on the MRC lot (i.e., a prerequisite to creating the MRC lot). See *Option to Purchase p. 3* (“It is a condition of Closing that the private road accessing the Property shall be accepted as a public way by the Town of Hampden . . .”).<sup>4</sup>

It bears emphasis that construction and placement of utilities along the access road are proposed for a single reason: to provide utilities to the MRC/Fiberight Project. MRC/Fiberight is not proposing any other development to be served by these utilities. See, e.g., *Overall Site Plan* (April 8, 2016). Preliminary comments on the MRC/Fiberight Project misconstrue these utilities to somehow indicate “an intent to further divide adjacent parcels.”<sup>5</sup> MRC and Fiberight have no such intent, and to suggest so is purely speculative. It is also speculative to suggest the adjacent owner even has intent to create a subdivision. There is simply no basis to expand the MRC/Fiberight Project, a single facility project, to speculative future development plans of unrelated individuals or entities that may or may not involve the division of parcel into three or more lots within a five-year

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the road was established by the owner of land on both sides of the road after September 22, 1971.” 30-A M.R.S. § 4401(6). Because Hickory Development, LLC holds title to the various areas depicted as separate tax lots in the same ownership on the Overall Site Plan, they are collectively considered one tract or parcel of land for subdivision purposes.

<sup>3</sup> Notably, a “subdivision” is not created by division of a lot from the middle of a parcel that only involves two legal interests in the land, such as the portion of MRC’s lot adjacent to Maine Ground Developers. See *Bakala v. Town of Stonington*, 647 A.2d 85 (Me. 1994).

<sup>4</sup> The Option to Purchase obligates the Seller to cooperate with MRC in connection with any applications required for construction and acceptance of the access road as a town way, as contemplated by the Town Ways Ordinance and 23 M.R.S. § 3025.

<sup>5</sup> As depicted on the Overall Site Plan (April 8, 2016), these asserted “parcels”, as reflected in the Town’s tax records, are all owned by the same entity.

period or the construction or placement of three or more dwelling units within a five-year period. For example, this owner may choose not to develop its land, or could propose a development that is not even a subdivision (e.g., a commercial building or buildings). Of course, if any individual or entity does at some future time decide to pursue a development that constitutes a subdivision, then they would have to ensure all applicable laws and regulations are satisfied, including those pertaining to subdivisions, especially the Hampden Subdivision Ordinance. Those future plans, if any should ever arise, are not intended by the MRC/Fiberight Project, and the time to address them is whenever, if ever, they are proposed.

Accordingly, for each of the above reasons, the MRC/Fiberight Project is not a "subdivision" under Maine law, and therefore the Hampden Subdivision Ordinance is not applicable.

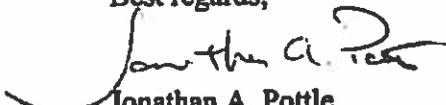
**The MRC Lot Will Have Sufficient Road Frontage**

As stated above, the MRC lot will not be created until the closing of the Option Agreement, which contemplates as a prerequisite the acceptance of the access way as a town way by the Town Council.<sup>6</sup> Construction of the proposed solid waste facility on the MRC lot will subsequently follow creation of the new town way. Thus, before construction of the proposed solid waste facility occurs, a new town way will exist and the resulting MRC lot will meet the Industrial Zoning District's road frontage requirement of 150 feet.<sup>7</sup> *See Overall Site Plan (April 8, 2016).*

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I appreciate the Planning Board's consideration of this letter that addresses the subdivision and frontage questions raised as part of the preliminary peer review process, and look forward to addressing these matters and any questions the Board may have at its meeting scheduled on Wednesday, April 13, 2016.

Best regards,



Jonathan A. Pottle

Encl. (2)  
Cc: Dean Bennett, Director of Community and Economic Development  
Edmond Bearor, Esq.  
Greg Lounder  
Denis St. Peter, P.E.  
Sean Thies, P.E.

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<sup>6</sup> MRC understands that the Planning Board may wish to include a condition of approval regarding Town Council acceptance of the proposed access way as a town way.

<sup>7</sup> Prior to the closing of the Option to Purchase, the land now owned by Hickory Development, LLC where the MRC/Fiberight Project is proposed has sufficient frontage on Coldbrook Road since the various "tax" parcels are all in the same ownership. *See Overall Site Plan (April 8, 2016), and Hampden LUO § 7.2 (definition of "lot").*