Planning and Development Committee
February 22, 2016
6:00 PM
Conference Room
AGENDA

1. Approval of February 3, 2016 Minutes

2. Committee Applications:

3. Updates:

   Planning Board Actions
   Planning Item Target Dates
   Current Development Reviews

4. Old Business:

   A. Discussion of Municipal Solid Waste Disposal Proposals
      - MRC/Fiberight Proposal
      - PERC Proposal

5. New Business:
6. Zoning Considerations/Discussion
7. Citizens Initiatives:
8. Public Comments:
9. Committee Member Comments:
10. Adjourn

Upcoming:

Bangor Chamber of Commerce Discussion
Business Friendly Community Discussion

Planning and Development Committee
February 3, 2016
6:00 PM
Conference Room
DRAFT MINUTES

Attendees:

Committee	Staff
Ivan McPike - Chair	Angus Jennings, Manager
Stephen Wilde	Dean Bennett, Community Dev Director
Dennis Marble	Myles Block, Code Enforcement Officer
Terry McAvoy	Jason Lundstrom, Fire Inspector
David Ryder	
	Guest: Karen Fussell, MRC

1. Approval of January 6, 2016:

   Minutes were approved 5-0.

2. Committee Applications: None

3. Updates: None

4. Old Business:

   A. Dangerous Buildings

   - Maine Municipal Association
     Dangerous Buildings Information Packet

   - Demo Estimate

Manager Jennings distributed the "Dangerous Buildings" information packet received from Maine Municipal Association, and a demolition cost estimate for the structure at 758 Main Road North.
Code Officer Block and Fire Inspector/Health Officer Lundstrom reported to the Committee on their recent training on dangerous buildings. The Committee discussed alternative paths available to municipal governments to address dangerous buildings. Committee opted to explore legal advice in order to ensure a clear, sound, structured enforcement approach, resulting in securing the property and recovering applicable costs.

B. Discussion of Municipal Solid Waste Disposal Proposals

- MRC/Fiberight Proposal
- PERC Proposal

The Committee, in its discussion, on both proposals, focused on technology, cost structure, liability, and production efficiency. It is the desire of the Committee to ensure a thorough review process with great due diligence in making a recommendation to the Town Council. Manager Jennings indicated that he would like to take additional time to review the proposals and report back to the Committee at the next scheduled meeting.

The Committee restructured upcoming Committee meeting dates in order to provide time for Manager Jennings to conduct a review of the proposals yet not prolong a decision any longer than necessary. Manager Jennings will report back to the Planning and Development Committee at the next scheduled meeting (February 22nd), followed by a Special Council Meeting to consider action on the proposals.

5. New Business: None
6. Zoning Considerations/Discussion: None
7. Citizens Initiatives: None
8. Public Comments: None
9. Committee Member Comments: None
10. Adjourn: 7:15pm

Pending: Home Occupations
Business Friendly Community Discussion
Mineral Extraction, Gravel Pit and Quarry, Filling, Grading and Stockpiling
Bangor Chamber of Commerce Discussion

To: **Planning and Development Committee**

From: **Dean Bennett, Director of Community Development**

Date: **February 18, 2016**

Subject: **Updates for 2.22.16 Meeting**

Please note the following updates as of February 18, 2016.

Planning Board Actions:

At their meeting on February 10, 2016, the Planning Board Ordinance Committee recommended back to the full Planning Board, "ought to pass", on the following items:

1. Subdivision Ordinance (Open Space) Amendments
   Repeal of the mandatory set aside and fee in lieu provisions

2. Codification
   Planning Board related questions re: Editorial & Legal Analysis

3. Zoning Amendment pertaining to Open Space.
   Reference to Open Space provisions in Subdivision Ordinance

Public Hearing and Planning Board Action scheduled for March 9, 2016

Planning Board Development Reviews:

1. Dollar General Retail Store
   Site Plan Review scheduled for February 24, 2016 Meeting.

2. Orient Avenue
   Site Plan Review and Subdivision Review scheduled for March 9, 2016 Meeting.

Planning Item Target Dates:

1. Subdivision Ordinance Amendments (Criteria/Private Roads)
   The Planning Board Ordinance Committee, at their February 10, 2016 meeting requested the following:

   A. Restructuring of the proposed Private Road provisions to ensure that the process of Subdivision Review is consistent whether subdivision is proposed to contain public or private streets. (There was no opposition to private road subdivisions)

   B. Simplify the guidelines to require, to the greatest degree possible, the requirement for letters of review and support from the regulatory agencies for which the majority of the guidelines were developed.

   Target Date: April 6, 2016

2. Codification Package
   After the Planning Board public hearing scheduled for March 9, 2016, I will begin collecting the various components of a submittal package for Council consideration to forward to General Code for preparation of next draft of Codification document.

   Target Date: April 18, 2016

3. Mineral Extraction, Gravel Pit and Quarry, Filling, Grading and Stockpiling
   I am finalizing the proposed amendments that were adopted on November 19, 2007. The intent was to create local ordinance provisions for regulating the above listed uses. The effort was unsuccessful. State Law regulates these activities to varying degrees.

   Target Date: March 2, 2016

4. Home Occupations
   In accordance to the recommendation from the town attorney, I have redrafted the proposed amendments creating distinct criteria for different types of Home Occupations.

   Target Date: March 2, 2016

I will keep you posted on any change in schedule.

Dean Bennett <economicdevelopment@hampdenmaine.gov>

Fwd: How 187 towns can help Maine get closer to its recycling goal

Angus Jennings <townmanager@hampdenmaine.gov> Wed, Feb 17, 2016 at 9:21 AM

To: Dean Bennett <economicdevelopment@hampdenmaine.gov>

The email below and the attached file should be included in Monday's P&D packet, thanks.

---------- Forwarded message ----------
From: **Municipal Review Committee** <municipal.review.committee1@gmail.com>
Date: Wed, Feb 17, 2016 at 9:04 AM
Subject: How 187 towns can help Maine get closer to its recycling goal
To: townmanager@hampdenmaine.gov

MRC
MunicipalReview.Committee, Inc.

In Case You Missed It: The Maine Resource Recovery Association's op-ed in Monday's Bangor Daily News,

How 187 towns can help Maine get closer to its recycling goal

Most Mainers don't question what happens after they put their trash and recycling on the curb or drop it off at the transfer station. At the Maine Resource Recovery Association, however, fostering professional solid waste management practices in the recycling and solid waste arena is the subject of daily conversation.

And lately, that conversation is about the proposed Fiberight project.

For years, we've discussed how to get Maine's stagnant recycling rate moving forward in a cost-effective way. Communities across Maine have instituted programs, such as pay-as-you-throw, local transfer stations have compost programs for food and yard waste, and curbside food waste pickup is available in some areas, but still, for all of our best efforts, we as a state can't seem to get past a 40 percent recycling rate.

As a solid waste professional, nothing is more frustrating than looking at a transfer station's waste stream and seeing, at a glance, that the majority of "waste" is not waste at all, but recyclable, recoverable material - if only we could find a new way, a new cost-effective technology to save Maine communities money by diverting recoverable waste from a landfill,

helping Maine reach its recycling goal.

Now, Maine has the rare opportunity to see this as reality, if we are willing to support the plan to get us there. The fate of this possible reality lies in the hands of the 187 towns that make up the Municipal Review Committee as they decide what to do in 2018 when existing contracts expire with the Penobscot Energy Recovery Center.

Municipal Review Committee has a history of working for the exclusive benefit of its members to provide unbiased and comprehensive representation in the matters of solid waste management. It has dedicated eight years of research, risk analysis and technical knowledge vetting numerous alternatives to ensure the best interests of its member communities are well protected. It chose Fiberight as the best alternative.

An environmentally sound option, Municipal Review Committee's Fiberight project, coupled with existing local programs, may well be how we finally reach 50 percent recycling as Fiberight's technology supports Maine's solid waste hierarchy to a much greater extent than any system proposed thus far in Maine.

It does this by supporting local recycling and existing infrastructure by providing a new regional, single-sort recycling facility.

Additionally, the Fiberight process provides a second pass at household waste for recoverable recyclables, expecting to recover an additional 20 percent by weight of commodities that are currently incinerated. This process ensures capture of resources left behind by even the very best local recycling programs while further exceeding current recovery and recycling strategies by capturing and managing virtually 100 percent of the organics left in the waste stream and converting those food wastes into biogas.

Moreover, the process takes diversion further with the addition of an enzymatic hydrolysis process, which will recover insoluble organics as short chained sugars that initially will be turned back toward biogas production. This product can be used as fuel for transportation, heat and electrical production.

While some promote large-scale composting of food wastes, it is the Maine Resource Recovery Association's experience that, at best, standalone composting solutions would capture only a portion of these materials and require significant local investment. Such programs are quite suitable for our neighbors in southern Maine where curbside pickup is more appropriate but less so in the more rural areas of our region.

The Maine Resource Recovery Association believes that with a project such as the proposed Municipal Review Committee-Fiberight facility in place, beneficial spin-offs will facilitate a higher standard and more profitability for Maine in the areas of waste tire, textile and glass and mineral management, among others. These materials can be more easily separated from the waste stream and directed to various markets other than being incinerated or landfilled.

The Maine Resource Recovery Association encourages Municipal Review Committee's member communities to consider this as a rare opportunity to move Maine forward with a new and cutting edge solid waste management facility. With increased education, strengthened existing recycling and composting programs, Fiberight can serve to be the added boost to facilitate a mission that the Maine Resource Recovery Association shares with many in the state - to reach our as yet unreachable goal of recycling 50 percent of waste.

That's the conversation we all want to have.

-Shelby Wright is director of communications and development at the Maine Resource Recovery Association in Bangor

Upcoming Informational Meetings

Holden Informational Meeting
Tuesday, February 16
6:00 PM
Holden Town Office, 570 Main Street, Holden

Mt. Desert Informational Meeting
Tuesday, February 16
6:30 PM
Mt. Desert Town Office, 21 Sea Street, Northeast Harbor

Chester Informational Meeting
Monday, February 29
6:30 PM
Chester Town Office, 43 S Chester Road, Chester

Rockland Fiberight Informational Meeting
Monday, March 7
5:30 PM
Rockland City Hall, 270 Pleasant Street, Rockland

Lincoln Fiberight Informational Meeting
Tuesday, March 8
6:00 PM
Lincoln Town Office
63 Main Street, Lincoln

Dover-Foxcroft Informational Meeting
Monday, March 14
6:30 PM
Dover-Foxcroft Town Office, 48 Morton Ave., Suite B

Winslow Fiberight Informational Meeting
Monday, March 14
7:00 PM
Winslow Town Office, 114 Benton Ave., Winslow

If you would like an Informational Meeting in your town, please contact Greg Lounder at (207) 664-1700 or glounder@mrcmaine.org or Jessie Pottle at (207) 989-4824 or jpottle@ces-maine.com.

Join Our Mailing List!

Town of Hampden
RECEIVED

FEB 1 8 2016

Office of the
Town Manager

To: MRC Member Communities
From: Greg Lounder, MRC Executive Director
Date: February 9, 2016
RE: Simplified Model Warrant Article and Two Contract Document Replacement Pages

MRC wanted to thank all of the communities for their overwhelming response to the mailing of the MRC Plan For 2018 Municipal Consent Package. The City of Brewer was the first MRC member to approve the MRC Plan For 2018 and other town/city council forms and regional associations are scheduled to vote in February and early March. For town meeting forms of government, as of this writing, the towns of Brownville, Clifton, Cushing, China, Exeter, Corinna, Franklin, Freedom, Cranberry Isles, Friendship, Dixmont, Guilford, Lee, Palmyra, Knox, Montville, Mariaville, Penobscot, Troy, Sherman, Steuben, Swans Island and Saint Albans have placed the warrant article question to consider approval of the MRC Plan for 2018 on their March Town meeting warrants. MRC is available to help your community with this process and can send a representative to your community on or before your annual town meeting.

Item 1. Simplified Model Warrant Article to avoid need to Post Full copies of the Joinder Agreement, MRC Restated Articles of Incorporation and Bylaws

As a follow-up to the Municipal Review Committee ("MRC") Plan For 2018 Municipal Consent Package that you recently received, enclosed is an alternative version of the Model Warrant Article written so as to avoid the need to post full copies of the contract documents when the town meeting warrants are physically posted in advance of your upcoming town meetings.

The Model Warrant Article in the MRC Plan For 2018 Municipal Consent Package stated that the Municipal Joinder Agreement, MRC Restated Articles of Incorporation, and MRC Restated Bylaws are posted along with the Warrant. As an alternative to this approach, I have enclosed a second, alternative Sample Warrant Article (a version for existing MRC member municipalities and another version for new MRC member municipalities) that states these documents are instead on file at the Town Office, which you may prefer for administrative purposes in terms of posting the Warrant for your Town Meeting.

Both Model Warrant Articles address the same substance. The only difference is whether your town prefers to post the Municipal Joinder Agreement, MRC Restated Articles of Incorporation, and MRC Restated Bylaws with the Warrant (the version sent in the MRC Packet); or whether your Town prefers to have these documents on file at the Town Office (the alternative version enclosed with this memo).

If you choose to use the Sample Warrant Article that states these documents are attached to the posted Warrant, please ensure they are properly posted. If you choose to use the alternative Sample Warrant Article that states these documents are on file at the Town Office, please ensure these documents are filed and available at the Town Office. All three of these documents (the Municipal Joinder Agreement, MRC Restated Articles of Incorporation, and MRC Restated Bylaws) are in the previously sent MRC Packet.

Item 2. MRC Restated Bylaws and a Replacement Page for the MRC Restated Articles of Incorporation, & MRC Restated Bylaws

The MRC recently provided a summary of the numerous changes that were made to draft contract documents as a result of constructive feedback from member communities over the last three months of 2015. Additional comments were incorporated as a result of an independent legal review completed by the middle of January of 2016. One of the final changes to the Articles of Incorporation and Bylaws to accommodate a request that the existing board size provision of 3 to 9 directors be changed to require 9 directors was made, but not included in the MRC Plan For 2018 Municipal Consent Package mailing sent around January 22, 2016. The two replacement pages are attached.

MRC appreciates your consideration of the Municipal Joinder Agreement and partnering with MRC to provide sustainable, cost-effective disposal of municipal solid waste. If you should have any questions, please contact me directly at 207-664-1700 or glounder@mrcmaine.org.

Encl.

TOWN MEETING FORM OF WARRANT
(Existing Members)

To see if the Town of _____ will vote:

(i) to authorize the Town to continue as a member of the Municipal Review Committee, Inc. ("MRC"), organized as a Maine nonprofit corporation and acting as a regional association pursuant to Title 13-B and Title 38 of the Maine Revised Statutes, as amended (and specifically Section 1304-B(5-A) of Title 38) for the purposes of managing and facilitating solid waste disposal;

(ii) to adopt, ratify and confirm the Restated Articles of Incorporation and the Restated Bylaws of the MRC in substantially the form on file with the Town Clerk at the Town Office;

(iii) to authorize the Town to execute and deliver a Municipal Joinder Agreement with the MRC in substantially the form on file with the Town Clerk at the Town Office (the "Municipal Joinder Agreement") pursuant to which the Town will become a Joining Member of the MRC (as defined therein) and deliver its municipal solid waste for disposal to a waste management facility being developed by Fiberight, LLC and/or its affiliates (collectively, "Fiberight") in Hampden, Maine, or other waste disposal facility;

(iv) to authorize the MRC to take certain actions on behalf of the Town as set forth in the Municipal Joinder Agreement; and

(v) to authorize a majority of the Selectmen or their duly authorized designee or designees as a representative of the Town to execute and deliver the Municipal Joinder Agreement on behalf of the Town and to execute and deliver on behalf of the Town in conjunction therewith such other documents and to take such further actions as they may deem necessary or appropriate in order to effect the transactions contemplated by the Municipal Joinder Agreement.

Section 4.8 Quorum. A majority of the total membership determined by the presence of members representing fifty percent (50%) of the aggregate actual tonnage delivered during the immediately preceding contract year under any Municipal Joinder Agreement or otherwise under the aegis of the Corporation shall constitute a quorum for any meeting of the Members. The act of a majority of the tonnage represented by Members present at a meeting at which a quorum is present shall be the act of the membership. If a quorum is not present at any meeting of Members, Members present representing a majority of the tonnage represented by all Members present may adjourn the meeting from time to time without further notice.

Section 4.9 Designation of Member Representatives. Each member shall designate a representative (the "Designated Representative") who shall be the individual, or his or her successor, listed on the MRC membership mailing list unless the member notifies the MRC Clerk of a different Designated Representative. Unless otherwise set forth in a notice to the MRC Clerk by an authorized person, the Designated Representative is entitled to vote or otherwise respond to MRC correspondence on behalf of the member.

ARTICLE V
Board of Directors

Section 5.1 General Powers. Subject to the limitations set forth in Section 4.5 of these Bylaws, the affairs of the Corporation, including all functions, powers and authority delegated by the members to the Corporation, shall be managed by its Board of Directors which shall consist of nine (9) members. Such functions, powers and authority shall include, but not be limited to, those functions, powers and authority enumerated herein and those functions, powers and authority delegated to the Corporation by the provisions and terms of each member's Municipal Joinder Agreement or other similar agreement. Except as provided in Section 5.10 herein, the Board of Directors shall be elected annually by the Members. In order to be eligible for election as a director, a person must, at the time of his or her election, be a Member, or an elected or appointed official, an employee, or a legal resident of a Member.

Section 5.2 Voting Rights. The Members shall elect each year one-third of the total number of directors, as nearly as may be, for a term of three years. Directors elected at the annual meeting shall assume office as of January 1 of the calendar year immediately following their election. The Members shall also have the right to vote to approve or disapprove any matter submitted to the membership pursuant to Section 4.5 hereof and to vote with respect to any other matter specifically submitted to the membership for a vote by the Board of Directors.

Section 5.3 Nominations. The Clerk shall solicit in writing from Members no less than sixty (60) days before the annual meeting date nominees for election as directors. The nominations of Members must be submitted in writing to the Clerk by the Member's Designated Representative no later than forty-five (45) days before the annual meeting in order to be included in the final slate of nominees. The Board shall

EXHIBIT A

FIRST: The name of the corporation is Municipal Review Committee, Inc.

SECOND: The Corporation is a public benefit corporation organized exclusively for charitable purposes, including, for such purposes, the promotion of the common good and general welfare of the residents of the member municipalities and the reduction of the burdens of the member municipalities by ensuring the continuing availability to its members of long-term, reliable, safe and environmentally sound methods of solid waste disposal at a stable and reasonable cost. Notwithstanding any other provision of these Articles, this Corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the purposes of this Corporation.

THIRD: The Registered Agent is a Noncommercial Registered Agent who is a Maine resident and whose office is identical with the registered office. . The name and registered office of the Registered Agent are:

Greg Lounder
395 State Street
Ellsworth, Maine 04605

FOURTH: Pursuant to 5 M.R.S.A. §108.3, the registered agent as listed above has consented to serve as the registered agent for this nonprofit corporation.

FIFTH: The number of directors constituting the Board of Directors of the Corporation shall be nine (9).

SIXTH: There shall be one or more classes of members and the information required by 13-B MRSA § 402 is as follows:

The Corporation shall have two classes of members: (a) Charter Members; and b) Non-Charter Members.

Charter Members shall be those members that were members of the Corporation as of the earlier of March 31, 2018 or the date upon which the existing waste disposal agreements between each member of the Corporation and the Penobscot Energy Recovery Company Limited Partnership terminate (the "PERC Termination Date") and that have elected to continue as members by entering into an agreement with the Corporation ("Municipal Joinder Agreement") under which they have

Perkins Thompson Comparison of Major Provisions of MRC and PERC Agreements

Topic	MRC Agreement	PERC Agreement
Parties	"Joining Member" and MRC	"Municipality" and PERC
1. Term of Agreement	Section 2.1. 15-year Initial Term with up to five 5-year Extension Terms (on 12 months' notice, subject to MRC termination or Fiberight decision not to extend) for up to 40 years total.	Section 6 and Schedule A. Begins April 1, 2018 and there are two options: 10 years or 15 years, with an automatic renewal for the same duration unless terminated by either party with at least 12 months' notice.
2. Waste Delivery Commitment	Section 3.1. "Joining Member shall deliver, or cause to be delivered, to the [Fiberight] Facility under the Master Waste Supply Agreement on an exclusive basis all Acceptable Waste generated within its borders the collection and disposition of which is under its control." Joining Member and MRC discuss and arrive at an "Estimated Delivery Amount" for annual delivery of Acceptable Waste. No penalty for failure to deliver Estimated Delivery Amount of Acceptable Waste itself, but: -Penalty if Acceptable Waste is diverted to other facilities (Delivery Diversion charge). -If MRC does not deliver 150,000 TPY to Facility, it owes a Delivery Sufficiency Payment to Fiberight and can assess a Delivery Diversion charge on Joining Member. Joinder Agreement calls this a "commitment."	Two differing obligations and an estimate: Section 3.)(a) "The Municipality shall deliver all Acceptable Waste that is generated within the Municipality to the PERC Facility." Section 3.)(c) "The Municipality shall deliver to the PERC Facility the available estimated tonnage of Solid Waste under its direct control; and (2) pay to PERC the tipping fee (the "Tipping Fee") for each ton of Solid Waste delivered by the Municipality to the PERC Facility ...." Schedule A 3.) Requires Municipality to state an "Estimated Tonnage" – annual tonnage of MSW to be delivered by the Municipality. Parties acknowledge and agree not a guarantee Municipality will deliver minimum tonnage annually. "Estimated tonnage" a "good faith estimate of annual tonnage Municipality believes will be generated within it and is under Municipality's direct control, and is subject to change due to increased recycling." However,

		"Notwithstanding the fact the Estimated Tonnage is not a commitment" to deliver a minimum amount of MSW to EPRC Facility, "the Municipality acknowledges and agrees" it is signing the Agreement in good faith "and that PERC is relying upon the Municipality's commitment to deliver to the PERC Facility the Solid Waste generated within the Municipality and under its direct control."
3. Tipping Fees and Adjustments	Section 4.1. $70 per ton plus annual CPI adjustment. No amendment to Tipping Fee without Joining Member authorizes MRC to amend it by amending this Joinder Agreement	Schedule A. 2.) and 4.) 15 years (2018-2033), $84.36; 10 years (2018-2028), $89.57, adjust annually by change in CPI; renewal terms are on same basis Contract for fewer than 10 years priced on case-by-case basis at market rate.
4. Existing and New or Expanded MSW Recycling and Reduction Programs	Section 3.4. May continue existing MSW recycling and reduction programs. Must provide notice of new and expanded MSW recycling, reuse or reduction programs to MRC, and consult with MRC; if program involves organic MSW, may continue existing programs "substantially" as now, but must obtain prior consent of Fiberight for new and expanded programs. May institute "pay as you throw" without prior approval of MRC so long as maintain MSW commitment.	Schedule A. 3.)(a) Ungrammatically recognizes that Municipality may engage in "increased recycling, repurposing and composting" in accordance with the State's solid waste hierarchy, but does not explicitly approve the resulting reduction in Solid Waste Estimated Tonnage

5. Unacceptable Waste	Section 3.5. Joining Member shall not deliver Unacceptable Waste to the Facility and shall use reasonable efforts to offer local options for household hazardous waste disposal. Joining Member shall pay its full cost for and indemnify and hold harmless MRC and Fiberight from any liability, claim or damage arising from its delivery of Unacceptable Waste to the Facility.	Section 3.)(a) "The Municipality agrees to use its best efforts to avoid delivering any Unacceptable Waste to the PERC Facility and shall not knowingly mix any Unacceptable Waste with Acceptable Waste."
6. Alternative Waste Disposal Arrangements	Section 6.2. Acceptable Waste that cannot be accepted at Fiberight Facility: 1) between expiration of PERC Agreement and Fiberight Commercial Operation Date is called "Bridge Capacity Waste"; and 2) after Commercial Operation Date, is called "Bypass Waste." Both go to Backup Facility, Crossroads Landfill in Norridgewock, under 10-year agreement with Waste Management. Tipping Fee for Bypass is same as for Acceptable Waste; for Bridge Capacity, in accordance with Agreement at MRC's direction.	Bypass Waste goes to Juniper Ridge Landfill ("JRL") in Old Town; if for temporary EPRC shutdown for maintenance repair, at regular MSW tipping fee; if for PERC permanent closure then at $60/ton. (However, if MSW goes to JRL because of PERC's permanent closure, not "bypass" and can only go to JRL if Casella seeks and DEP grants amendment of 81,800 TPY permit limit on MSW or Casella refuses other waste – amount of MSW Casella can accept at JRL is capped.)
7. Conditions to Commencement of Operations -- What happens if insufficient commitment of waste or lack of financing? When?	MRC asks for commitment by May 1, 2016; under site lease, date for closing on construction financing and for commencement of construction is no later than January 1, 2017. Under Master Waste Supply Agreement, if Fiberight fails to commence Commercial Operation before January 1, 2020, that Agreement terminates automatically unless parties agree to extension.	Section 5.) recites that "After signing this Agreement," such parties acknowledge and agree that PERC requires commitment from other municipalities and private businesses to assure continued operation of PERC Facility. Section 7.) (c). Either party may terminate PERC Agreement if PERC receives insufficient written commitments to deliver Acceptable Waste (but no date by which PERC must secure sufficient commitments).
8. Oversight	MRC is to oversee Fiberight operation.	No MRC oversight role contemplated.

9. Indemnification, Dispute Resolution	Section 8.1 and 8.2. Reciprocal indemnifications. Joining Member to defend, indemnify and hold harmless MRC, each other Joining Member and their members, directors, elected officials, officers, agents and employees against claims resulting directly from any failure by Joining Member to perform fully in any respect, its obligations under the Joinder Agreement. MRC to defend, indemnify and hold harmless Joining Member and its elected and appointed officials, officers, agents and employees from claims resulting directly from MRC's willful or negligent act or omission, and its failure to perform fully, in any respect, its obligations under the Joinder Agreement. Section 8.5 requires the parties to resolve disputes by good faith informal resolution during 14 days following written notice of dispute, followed by submittal of the dispute to binding arbitration under the American Arbitration Association's commercial arbitration rules before a single arbitrator, unless they cannot agree, in which case there will be a panel of three arbitrators. Section 8.7 contains a limitation of liability provision that bars a party's recovery of indirect and consequential damages except for fraud.	Section 8.) Broad reciprocal indemnity; PERC and Municipality each mutually agrees to indemnify, defend and hold harmless the other from all loss, liability, damage and expense caused by breach of Agreement, negligent or willful act or omission, or violation of applicable laws, regulations, permits or licenses. Indemnifying party controls conduct of litigation, but no settlement can be entered into without written consent of both parties. Section 9.) (d) limitation on liability - excludes liability for special, incidental, exemplary, punitive or consequential damages

10. Termination	Section 10. Agreement terminates upon expiration of the Master Waste Supply Agreement, but could terminate sooner. Either party may terminate upon event of default of other party that is not cured within 30 days. MRC has a right to terminate on 9 months' notice at end of Initial Term or any Extension Term.	Section 7.) Agreement terminates at end of term as stated in Schedule A unless automatically renewed upon expiration of term; or: -Upon parties' mutual agreement; -Upon a party's material breach not cured within 60 days after receipt of notice of breach; -Upon "Deemed Termination" by the Municipality (for failure to deliver all solid waste to PERC Facility); -By either party if PERC receives insufficient written commitments to deliver Acceptable Waste; or -By either party in event of bankruptcy or insolvency proceedings. Schedule A. 6.) also provides for early termination by Municipality on 90 days' notice to PERC, but in case of such Municipality Termination or Deemed Termination, but within 30 days must pay amount equal to three times the average annual amount of Tipping Fees paid in e two years immediately preceding termination.
11. Sharing of Rebates	Section 4.0. Under the Master Waste Supply Agreement, Fiberight pays a rebate based on revenues that exceed the revenue attributable to a baseline of 150,000 tons per year; the rebate is paid quarterly to MRC, which, under the Joinder Agreement, manages payment of rebates to Joining Members or offsets rebates against any amounts owed by Joining Members.	None under PERC Agreement, but separate Limited Partnership would be available.

Perkins Thompson PERC Waste Disposal Agreement/Schedule Summary and Comments

Section	*Description*	*PT Comments*
Agreement		
Parties	PERC, Limited Partnership and the Municipality	Under the (Fifth Amended and Restated) Agreement of Limited Partnership, PERC, Limited Partnership terminates on Dec. 31, 2018 unless sooner terminated, and yet it is proposing to enter into a multi-year agreement beyond 2018.
Section 2.) Representations and Warranties	Each party represents and warrants that it is a validly existing entity, able to execute the Agreement; that execution and delivery of the Agreement is authorized and its performance is lawful, that the parties have necessary permits, licenses and training	
Section 3.) Municipal Delivery Obligations		
3.)(a)	"The Municipality shall deliver all Acceptable Waste that is generated within the Municipality to the PERC Facility, even if a transfer station is used in delivery. PERC will be exclusive disposal facility; Municipality will not deliver Acceptable Waste to any other solid waste disposal facility without PERC's prior written consent. Municipality to use best efforts to avoid delivering Unacceptable Waste to PERC Facility and will not knowingly mix any Unacceptable Waste with Acceptable Waste.	The Municipality does not have control over all Acceptable Waste generated within it – only that which it collects or has collected – and cannot use solid waste flow control to ensure MSW delivery to a privately owned facility. Also, Agreement does not clearly authorize delivery on behalf of the Municipality, but "by" the Municipality. No specific indemnification required for Unacceptable Waste that might be delivered. (Also, see discussion below of waste delivery estimate – "Estimated Tonnage" - in Schedule A 3.).)

3.)(b)	PERC Facility may deny access if MSW delivered after hours, Municipality has not paid tipping fee or Unacceptable Waste is suspected.	
3.)(c)	Municipality shall deliver to PERC Facility "the available estimated tonnage of Solid Waste under its direct control" and pay the Schedule A tipping fee to PERC for each ton of MSW delivered to the PERC Facility.	Restates the Section 3.)(a) obligation differently, like the MRC Agreement. What is "available" MSW? How is "under its direct control" determined? Terms are undefined.
Section 4.) PERC Obligations		
4.)(a)	PERC agrees to accept all Acceptable Waste delivered by Municipality to PERC Facility.	Again, what happens if the waste is delivered by the Municipality's contractor?
4.)(b)	PERC agrees it has and will have throughout the term of the Agreement, the ability and capacity to accept the Acceptable Waste.	
4.)(c)	PERC will record deliveries of Acceptable Waste by the Municipality by labeling each vehicle with a unique number and hauler code, and will weigh each truck loaded and unloaded.	
4.)(d) and (e)	PERC to produce multi-part weigh tickets for each vehicle; PERC and driver each receives copy; PERC retains its copy for at least three years; and PERC uses these as basis for billing. Municipality has right to inspect PERC weight records on reasonable request during normal business hours so as not to unreasonably interfere with business operations.	Municipality may wish to also allow MRC to inspect weight records on its behalf.

4.)(f)	PERC to invoice Municipality weekly showing amounts of Acceptable Waste delivered in prior month, and fee, payable within 30 days.	This seems confusing -- is invoice for billing weekly or monthly amounts of Acceptable Waste delivered?
Section 5.) Necessity of Delivery Obligations	Parties acknowledge and agree Agreement exists so that Municipality can be sure of ability to continue environmentally sound disposal of MSW that is under its direct control, and so that PERC can be assured of steady stream of post-recycled MSW for a fixed period. Both parties acknowledge PERC needs to receive similar commitments from other municipalities and private businesses to assure PERC Facility will continue to operate.	How long should PERC be given to obtain sufficient assurances of sufficient amounts of Acceptable Waste from other Municipalities and other private businesses? What is sufficient to assure continued operation of PERC Facility?
Section 6.) Term	Schedule A provides the term, to begin April 1, 2018.	
Section 7.) Termination		
7.)(a)	Agreement terminates when stated in Schedule A unless automatically renewed upon expiration of term;	
7.)(b)	Upon parties' mutual agreement;	
7.)(c)	Upon a party's material breach not cured within 60 days after receipt of notice of breach;	
7.(d)	Upon "Deemed Termination" by the Municipality (for failure to deliver all solid waste to PERC Facility);	
7.(e)	By either Party if PERC receives insufficient written commitments to deliver Acceptable Waste; or	The Agreement contains no specific date by which PERC must receive sufficient written commitments, and does not define "sufficient."

7.)(f)	By either party in event of bankruptcy or insolvency proceedings.	
Section 8.) Indemnification	PERC and Municipality each mutually agrees to indemnify, defend and hold harmless the other from all loss, liability, damage and expense caused by breach of Agreement, negligent or willful act or omission, or violation of applicable laws, regulations, permits or licenses. Indemnifying party controls conduct of litigation, but no settlement can be entered into without written consent of both parties.	This is a broad reciprocal indemnity.
Section 9.) Miscellaneous		
9.)(b)	Agreement governed by laws of Maine.	
9.)(d)	Liability is limited to exclude liability for special, incidental, exemplary, punitive or consequential damages.	May want to remove limit for fraud.
9.)(f)	In event of Force Majeure, neither party is liable to other, the nonperforming party is under a duty to mitigate or limit damages, try to overcome event, continue to perform obligations, and limit duration of any suspension, but if delay lasts 60 days or more, other party may terminate agreement.	Should include Force Majeure under the Section 7) Termination list of events of termination.
9.)(o)	No third party beneficiaries.	As this Agreement is directly between PERC and the Municipality, PERC does not need to be a third-party beneficiary (as Fiberight is under the MRC Joinder Agreement).

Schedule A		
1.) Statement of Intent	Municipality states its willingness to commit to deliver the solid waste generated within the Municipality under its direct control for a fixed period of time.	The Schedule does express a "commitment" on the part of the Municipality
2.) Term of Agreement and Tipping Fee	Municipality may select 10 or 15-year term with automatic renewal for same duration on same basis unless terminated in writing by either party with at least 12 months' notice. Tipping Fee for 10-year term - $89.57 Tipping Fee for 15-year term - $84.36	
3.) Estimated Delivery Amount		
3.)(a)	Requires Municipality to state an "Estimated Tonnage" – annual tonnage of MSW to be delivered by the Municipality. However, Parties acknowledge and agree this is not a guarantee Municipality will deliver a minimum tonnage annually. "Estimated tonnage" is a "good faith estimate of annual tonnage that the Municipality believes will be generated within the Municipality" and is under Municipality's direct control, and is subject to change due to "increased recycling, repurposing and composting."	While language indicates this is not a guarantee but is a "good faith estimate," it also states that "Notwithstanding the fact the Estimated Tonnage is not a commitment" to deliver a minimum amount of MSW to EPRC Facility, "the Municipality acknowledges and agrees" it is signing the Agreement in good faith "and that PERC is relying upon the Municipality's commitment to deliver to the PERC Facility the Solid Waste generated within the Municipality and under its direct control." Ungrammatically recognizes that Municipality may engage in "increased recycling, repurposing and composting" in accordance with the State's solid waste hierarchy, but does not explicitly approve that reduction in Solid Waste Estimated Tonnage.
3.)(c)	Upon becoming aware that Municipality is not delivering all MSW within its direct control to the PERC Facility, PERC to give notice and meet	

	with Municipality within 30 days of notice. If unable to resolve dispute, PERC has right but not obligation to declare Agreement terminated ("Deemed Termination").	
4.) Changes to Tipping Fee	At end of first 12-months and each year thereafter, the Tipping Fee is adjusted by percentage equal to percentage change in CPI.	This is odd, since Agreement begins April 1, 2018 – does Tipping Fee adjust twice in 2019?
5.) Bypass Waste	Bypass waste will be disposed of at Juniper Ridge Landfill. If bypass occurs temporarily for service, maintenance, repair or Force Majeure, Tipping Fee remains the same; if bypass occurs because of permanent closure of PERC Facility, Tipping Fee shall be $60 per ton as in contract between PERC and Casella. Bypass Tipping Fee adjusted for CPI at same intervals as regular Tipping Fees.	"Bypass Tipping Fee" is undefined, but appears to be the tipping fee in event of permanent closure of PERC Facility.
6.) Early Termination	Municipality may terminate Agreement early upon 90 days' prior written notice to PERC and upon payment within 30 days of amount equal to three times the average annual amount of Tipping Fees paid in the two years immediately preceding termination; same payment is required if there is a Deemed Termination by a Municipality.	

Penobscot Area Manager Meeting

Location: Hampden
Feb 18th 10:00 am

Accepting invitation

Bangor	Cathy Conlow
Bradley	Melissa Doane
Brewer	Steve Bost
Bradford	Vittoria J. Stevens
Carmel	Tom Richmond
Town of Clinton	Pamela Violette
Corinna	Serena Bemis-Goodall
Corinth	Travis Gould
Dedham	Michelle C. Begin
Dexter	Shelley Watson
Eddington	Russell Smith
Ellsworth	Amanda
Enfield	Theresa Thurlow
Exeter	Tressa Smith
Glenburn	Michael Crooker
Greenbush	Jerry Davis
Hampden	Angus Jennings
Hermon	Roger Raymond
Holden	Ben Breadmore
Howland	William (Bill) Lawrence
Lincoln	Ronald Weatherbee
Milford	Scott Adkins
Old Town	William Mayo
Owl's Head	Paul Gibbons
Orono	Sophie Wilson
Millinocket	John Davis & DPW Director
Newburg	Cynthia Grant
Stonington	Kathleen Billings
Thomaston	Louis Demers
Thomaston	Valmore Blastow, Jr
Thomaston	Bill Hahn
Thomaston	Peter Lammert
Thorndike	Mary Ann Hayes
Winterport	Phillip Pitula
Veazie	Mark Leonard

Comparison of MRC and PERC Agreements

Town of Hermon
February 18, 2016

James N. Katsiaficas, Esq.

PERKINS | THOMPSON

ATTORNEYS & COUNSELORS AT LAW

One Canal Plaza • PO Box 426

Portland, Maine 04112-0426

Comparison of MRC and PERC Agreements

1. Term

MRC - 15-year Initial Term with up to five 5-year Extension Terms for up to 40 years total.

PERC - Begins April 1, 2018 and may be for 10 years or 15 years, and automatic renewal for same term unless terminated by either party for up to 30 years total.

Comparison of MRC and PERC Agreements.

2. Waste Delivery Requirement.

MRC -3.1. Delivery. Joining Member agrees to deliver or cause to be delivered to Fiberight "all Acceptable Waste generated within its borders the collection and disposition of which is under its control." A "commitment."

PERC – 3.) (a)"The Municipality shall deliver all Acceptable Waste that is generated within the Municipality to the PERC Facility," and (c)"Municipality shall deliver to PERC Facility "the available estimated tonnage of Solid Waste under its direct control." Not "guarantee" but acknowledgement and agreement that PERC is relying on commitment in Section 3.)(c)

Comparison of MRC and PERC Agreements.

3. Tipping Fee

MRC – $70 per ton plus annual CPI adjustment. No amendment to Tipping Fee without Joining Member authorizes MRC to amend it by amending this Joinder Agreement

PERC -15 years (2018-2033), $84.36; 10 years (2018-2028), $89.57, adjust annually by change in CPI; renewal terms are on same basis. Contract for fewer than 10 years priced on case-by-case basis at market rate.

Comparison of MRC and PERC Agreements.

4. Existing and New or Expanded Recycling, Reuse and Reduction Programs

MRC – May continue existing MSW recycling, reuse and reduction programs. Must provide prior notice of new and expanded MSW recycling, reuse or reduction programs to, and consult with, MRC; if program involves organic MSW, may continue existing programs "substantially" as now, but also must obtain Fiberight's prior consent for new and expanded programs. May institute "pay as you throw" without prior approval of MRC so long as maintain MSW commitment.

PERC -recognizes Municipality may engage in "increased recycling, repurposing and composting" in accordance with State's solid waste hierarchy, but does not explicitly approve.

Comparison of MRC and PERC Agreements.

5. Unacceptable Waste.

MRC – Section 3.5. Joining Member shall not deliver Unacceptable Waste to the Facility and to use reasonable efforts to offer local options for household hazardous waste disposal. Joining Member shall pay its full cost for and indemnify and hold harmless MRC and Fiberight for liability, claims or damage arising from its delivery of Unacceptable Waste to the Facility.

PERC – "The Municipality agrees to use its best efforts to avoid delivering any Unacceptable Waste to the PERC Facility and shall not knowingly mix any Unacceptable Waste with Acceptable Waste."

Comparison of MRC and PERC Agreements.

6. Alternative Waste Disposal Arrangements

MRC - Acceptable Waste that cannot be accepted at Fiberight Facility: 1) between expiration of PERC Agreement and Fiberight Commercial Operation Date is "Bridge Capacity Waste"; and 2) after Commercial Operation Date, is "Bypass Waste." Both go to Backup Facility, Crossroads Landfill in Norridgewock, under 10-year agreement with Waste Management. Tipping Fee for Bypass is same as Acceptable Waste; for Bridge Capacity, in accordance with agreement at MRC's direction.

PERC - Bypass Waste goes to Juniper Ridge Landfill ("JRL") in Old Town; if temporary PERC shutdown for maintenance or repair, at regular MSW tipping fee; if for PERC permanent closure then at $60/ton. (However, if MSW goes to JRL because of PERC's permanent closure, not "bypass" and can only go to JRL if Casella seeks and DEP grants amendment of 81,800 TPY permit limit on MSW or Casella refuses other waste – amount of MSW Casella can accept at JRL is capped.)

Comparison of MRC and PERC Agreements.

7. **Conditions to Commencement of Operations -- What happens if insufficient commitment of waste or lack of financing? When?**

MRC – Joinder Agreement silent on this; Site Lease sets Jan. 1, 2017 financial close/construction date, Master Waste Supply Agreement automatically terminates if Commercial Operation Date does not occur by Jan. 1, 2020

PERC –Agreement states that the parties agree and acknowledge PERC requires commitments from other municipalities and private businesses to operate, and cause for termination, but no deadline.

Comparison of MRC and PERC Agreements.

8. Oversight

MRC – MRC Agreement and MRC corporate documents revised to provide Fiberight oversight role.

PERC – PERC Agreement and MRC corporate documents do not include a MRC oversight role in continued PERC operation.

Comparison of MRC and PERC Agreements.

9. Indemnification.

MRC – Reciprocal indemnification for failure to perform fully its obligations under the Joinder Agreement.

PERC – Reciprocal indemnification for damages and liability caused by breach of the Agreement, negligent or willful act or omission, or violation of applicable laws, regulations, permits or licenses.

Comparison of MRC and PERC Agreements.

10. Termination

MRC – Agreement terminates upon termination of Master Waste Supply Agreement, but could terminate sooner if termination by either party for uncured event of default or if MRC terminates.

PERC – Agreement terminates at end of term unless renewed or if: the parties' mutual agreement; a party's uncured material breach; deemed termination (penalty); either party wishes to if PERC receives insufficient waste commitment; bankruptcy or insolvency; or by Municipality on 90 days' notice (penalty).

Comparison of MRC and PERC Agreements.

11. Sharing of Profits/Rebates

MRC – Fiberight pays rebate to MRC for revenues that exceed baseline revenue, and these rebate amounts are paid quarterly to (or used to offset amounts owed by) Joining Members.

PERC – None under PERC Agreement; Limited partnership interest available.

Comparison of MRC and PERC Agreements.

12. For Charter Municipalities, fate of current PERC Funds (1) if leave MRC; (2) If remain in MRC; PERC Limited Partnership Interests.

MRC – Now, Reserve Accounts with $26.6 million and Operating Accounts with less than $1 million to be allocated by MRC:

- Site Capital Costs ($5 million);
- Departing Municipalities (Equity Charter Municipalities);
- Building Reserve ($7 million);
- Delivery Sufficiency Reserve Fund ($3 million)
- Reserve Fund (PERC Partnership costs, $1.167 million);
- Bridge Waste Transportation Fund ($1 million);
- Target Value Reserve Fund (remaining amounts to reduce Tipping Fees for 36 months).

(PERC information next page ...)

Comparison of MRC and PERC Agreements.

12. For Charter Municipalities, fate of current PERC Funds (1) if leave MRC; (2) If remain in MRC; PERC Limited Partnership Interests

PERC – Sixth Amended and Restated Agreement of Limited Partnership:

- Extends partnership by 50 years (to Dec. 31, 2068);
- Capital Accounts maintained for each partner;
- General Partners may make Quarterly Distributions;
- Partnership may make Tax Distributions and Liquidating Distributions.