

**Response of Intervenor City of Old Town to DEP Staff and Attorney General Office's  
Comments on Draft Declaration of Covenants and Restrictions**

**May 13, 2016**

Set forth below is the response of the Intervenor City of Old Town to the Maine Department of Environmental Protection (DEP) Staff and Attorney General Office's March 26, 2016 comments on the draft Declaration of Covenants and Restrictions prepared and submitted by applicants Maine Bureau of General Services (BGS) and NEWSME Landfill Operations (NEWSME) as Attachment 13 to the Natural Resources Protection Act (NRPA) application; the responses of BGS and NEWSME dated April 16, 2016; and the DEP comments dated April 5, 2016.

**Comment:**

*As a preliminary matter, in the Wetland Compensation Plan submitted as Attachment 13 to the NRPA permit application for the Juniper Ridge Landfill expansion, section 5.0 contains conflicting language with regard to the mechanism the applicants are proposing to use to protect the proposed preservation site. It states:*

*BGS and NEWSME are working with potential qualified third parties to establish a conservation easement to provide long-term protection to the proposed preservation area (see Appendix B for an example of conservation easement language). ... BGS and NEWSME are proposing to use a Declaration of Covenants and Restrictions to provide long-term protection to the proposed preservation site. Within of the date permits are issued, BGC and NEWSME will submit to MDEP and the Corps a completed draft conservation easement for the proposed site. Within 30 days of the date MDEP and the Corps approve the draft conservation easement in writing, BGS and NEWSME will execute it and record it with the Registry of Deeds for Penobscot County ... .*

*This should be clarified.*

**Response:**

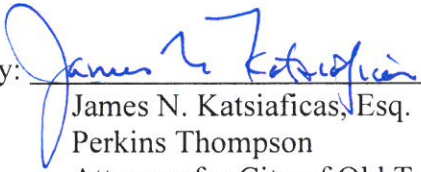
The discussions by all parties on the draft Declaration of Covenants and Restrictions prepared, revised and submitted by applicants BGS and NEWSME presume that the City of Old Town agrees to serve as the third-party under that Declaration, with rights, duties, and obligations of administration and enforcement.

The comments and responses of DEP, BGS and NEWSME make it clear that the applicants are providing a Declaration of Covenants and Restrictions rather than a conservation easement in order to provide long-term protection to the proposed preservation area (the "Protected Property"). The draft Declaration of Covenants and Restrictions as revised by BGS and NEWSME includes the City of Old Town as third party, with rights, duties, and obligations of

administration and enforcement similar to those that accompany a third-party under a conservation easement. Such third party rights, duties, and obligations of administration and enforcement impose costs upon the City of Old Town, and since the Declaration of Covenants and Restrictions is in perpetuity, those costs will remain even after such time as NEWSME ceases to operate the Juniper Ridge Landfill and its expansion.

Therefore, the City of Old Town has been discussing the reimbursement by NEWSME and BGS (and ultimately, the State of Maine) of its reasonable costs of its third party administration and enforcement under the Declaration of Covenants and Restrictions; these parties have reached agreement in principle on such reimbursement, which agreement is being reduced to writing and is subject to approval by the Old Town City Council.

Dated: May 13, 2016

By:  \_\_\_\_\_  
James N. Katsiaficas, Esq.  
Perkins Thompson  
Attorney for City of Old Town

cc: Service List