



**US Army Corps
of Engineers**®
New England District

PUBLIC NOTICE

696 Virginia Road
Concord, MA 01742-2751

Date: February 3, 2009
Comment Period Ends: March 5, 2009
File Number: NAE-2008-1703
In Reply Refer To: Ruth M. Ladd
Or by e-mail: ruth.m.ladd@usace.army.mil

The District Engineer of the New England District, Corps of Engineers (“Corps”) has received a prospectus dated January 9, 2009 for an umbrella mitigation bank with a specific project site from the Maine Department of Transportation. The site is on **Sears Island in Searsport, Maine (N44° 26.423' W68° 52.855')**. The Corps is soliciting comments on the prospectus.

SPONSOR: Maine Department of Transportation (“MaineDOT”), State House Station 16, Augusta, ME 04333-0016

This is the fourth Public Notice (“PN”) related to the proposed MaineDOT umbrella mitigation bank. On June 10, 2008, a PN was issued for an umbrella bank, but only included the framework, not a specific site. On November 18, 2008, a second PN was issued which included much of the same information as in the first PN but added specific project details on a proposed site, Sears Island, and announced a public meeting would be held. On November 25, 2008 a PN announced that MaineDOT had withdrawn the prospectus and the public meeting was cancelled. This prospectus is a resubmittal including a specific site, Sears Island, to be associated with the proposed umbrella bank. A public meeting has also been rescheduled as noted below.

The process for review of the prospectus and subsequent steps, if appropriate, will follow 33 CFR 332, Compensatory Mitigation for Losses of Aquatic Resources (“Mitigation Rule”). The Mitigation Rule was published in the Federal Register on April 10, 2008.

The umbrella bank could provide an alternative to permittee-responsible mitigation for unavoidable impacts authorized under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899, if:

1. Credits of the appropriate type are available, and
2. It is deemed appropriate during the review process for proposed impacts.

The entire prospectus, entitled **“Maine Department of Transportation Federal Umbrella Wetland Mitigation Bank Prospectus, January 9, 2009”** is attached to this Public Notice.

If the prospectus is deemed sufficient, MaineDOT will be informed that they can draft an umbrella mitigation banking instrument which will be reviewed by the Interagency Review Team. If the draft instrument is deemed acceptable, it will be signed by MaineDOT, the Corps, and other agencies which choose to do so. The decision whether to authorize the sponsor to proceed to drafting a banking instrument will be based on the District Engineer’s determination of the potential of the proposed bank to provide compensatory mitigation for activities authorized by Department of the Army permits.

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The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to allow the sponsor to proceed to develop a draft banking instrument. Comments are also used to determine the need for a public hearing.

Based on his initial review, the District Engineer has determined that little likelihood exists for the proposed work at Sears Island or the much broader umbrella bank to impinge upon properties with cultural or Native American significance, or listed in, or eligible for listing in, the National Register of Historic Places. Therefore, no further consideration of the requirements of Section 106 of the National Historic Preservation Act of 1966, as amended, is necessary. This determination is based upon one or more of the following:

- a. The work area has been extensively modified by previous work.
- b. The work area has been recently created.
- c. The proposed activity is of limited nature and scope.
- d. Review of the latest published version of the National Register shows that no presence of registered properties listed as being eligible for inclusion therein are in the permit area or general vicinity.
- e. Coordination with the State Historic Preservation Officer and/or Tribal Historic Preservation Officer(s)

In order to properly evaluate the proposal, we are seeking public comment. Anyone wishing to comment is encouraged to do so. **Comments should be submitted in writing by March 5, 2009.** If you have any questions, please contact Ruth M. Ladd at (978) 318-8818, (800) 343-4789 or (800) 362-4367, if calling from within Massachusetts.

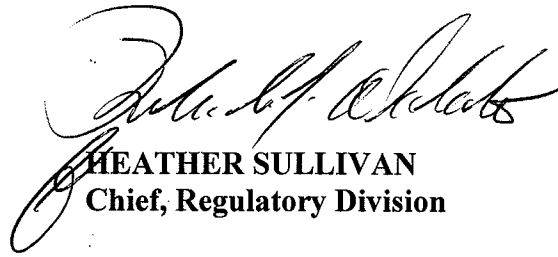
MaineDOT's original proposal was the subject of a June 10, 2008 Corps PN. In accordance with the provisions outlined in that notice, a number of respondents requested that the Corps conduct a public hearing on the proposal. The Corps only holds public hearings for the purpose of obtaining public comments when that is the best means for understanding a wide variety of concerns from a diverse segment of the public. In this case, we believe that a public meeting may offer a less formal but more valuable opportunity for the public to exchange information on the project. The Corps is holding a public meeting to provide information on this prospectus and to entertain questions and hear comments on the proposal. It is scheduled for Monday, February 23 at 2:00 PM in Union Hall at the Searsport Town Hall, Maine. Following the public meeting, any person may still request, in writing and within the comment period specified in this notice, that a public hearing be held to consider the prospectus.

The initial determinations made herein will be reviewed in light of facts submitted in response to this notice. All comments will be considered a matter of public record. Copies of letters of objection will be forwarded to the sponsor who will normally be requested to contact objectors directly in an effort to reach an understanding.

For more information on the New England District Corps of Engineers programs, visit our website at <http://www.nae.usace.army.mil>.

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THIS NOTICE IS NOT AN AUTHORIZATION TO DO ANY WORK NOR DOES THE BANK, IF APPROVED, PREJUDGE FUTURE DEVELOPMENT PROJECTS WITHIN THE SERVICE AREA.



HEATHER SULLIVAN
Chief, Regulatory Division

If you would prefer not to continue receiving Public Notices, please contact Ms. Tina Chaisson at (978) 318-8058 or e-mail her at bettina.m.chaisson@usace.army.mil. You may also check here () and return this portion of the Public Notice to: Bettina Chaisson, Regulatory Division, U.S. Army Corps of Engineers, 696 Virginia Road, Concord, MA 01742-2751.

NAME: _____
ADDRESS: _____

Maine Department of Transportation Federal Umbrella Wetland Mitigation Bank Prospectus

January 9, 2009



Sears Island,
Searsport, Maine



Prepared by:

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Field Services & Mitigation Division

and

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Maine Department of Transportation
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1.0 Summary

Table 1: Summary Table

| | |
|---|--|
| Ownership | Maine Department of Transportation |
| Type of Bank | Single Client |
| Purpose of Bank | Mitigation of natural resource impacts associated with state transportation projects |
| Location | Sears Island, Town of Searsport |
| Driving Directions | From Belfast, take Route 1/3 north approximately 2.5 miles past Searsport to Sears Island Road. Turn right onto Sears Island Road and proceed across causeway onto Sears Island |
| Land Use | By permission of MaineDOT, the parcel has been used primarily for recreation. |
| Size of Parcel | 601 acres |
| Wetland Area | Approximately 126 acres |
| Type of Wetlands on Site | PEM, PFO, PSS, EEM, Stream, PUB |
| Site Description | Sears Island is the largest uninhabited island on the coast of Maine, encompassing 931 acres above mean high water. Bank site is 601 acres with 19,290 feet of intertidal coastline. |
| Mitigation Bank Goals & Objectives | Initially the preservation and restoration of a unique natural resource; Overall goals and objectives include more effective state-wide mitigation opportunities |
| Service Area | Penobscot Bay Coast Subsection, the Casco Bay Coast Subsection and the Maine Eastern Coastal Subsection |

2.0 Introduction

On the Maine coast, directly offshore of the Town of Searsport, lays the largest uninhabited island on the eastern U.S. seaboard. Although known to earlier inhabitants as "Wassumkeag" or "place of shining sands", the island is now known as Sears Island. This island is quiet and predominantly wild. It comprises 931 acres above mean high water bordered by five miles of coastline. It's high point of land is a central ridge rising to 185 feet above mean sea level, enhancing the island's visibility from numerous vantage points on and around Penobscot Bay. In addition to its unique history and character, Sears Island hosts a rich and diverse natural ecosystem. The ecological diversity that characterizes the island is in effect a microcosm of the unique Penobscot Bay ecosystem. It is Sears Island's unique natural and cultural character and history that makes a substantial portion of the island suitable for preservation.

Figure 1: Location of Sears Island.



2.1 The Agreement

Although discussion of stakeholder agreements and processes is not typical for a mitigation bank prospectus, it is the complex and contentious history of conflict over potential uses of Sears Island that have led to this proposal. As such, without delving too deeply into the history of past conflicts, some recent context is important to understanding the spirit in which MaineDOT requests approval of a federal umbrella mitigation banking instrument with Sears Island as its initial deposit.

In April 2005, the Town of Searsport and MaineDOT jointly resolved through a Memorandum of Understanding (MOU) that MaineDOT, “on behalf of the people of Maine, has both the responsibility and the authority to plan for the island’s use, in consideration of the goals of the town of Searsport, citizens of the larger region, and of the state as a whole” (Town of Searsport, 2005). The Town of Searsport appointed a local committee, known as the Sears Island Alternative Uses Committee (SAIUC), to cooperate with MaineDOT at arriving at a mutually agreeable concept for future use of Sears Island, and to advise its Board of Selectmen and the Searsport Comprehensive Planning Committee. The cooperative process codified in the MOU is also subject to a statewide public participation process. On May 7, 2007, stakeholders working together as the Sears Island Planning Initiative Steering Committee submitted a Consensus Agreement (Appendix A) to Governor John Baldacci. In this Agreement, signed April 17, 2007 as amended April 27, 2007, the stakeholders established the intent of MaineDOT and the Town of Searsport to appoint a Joint Use Planning Committee (JUPC) with balanced representation by conservation and port development interests, and include local, state, and federal government representatives.

Section 3 of the Consensus Agreement states that MaineDOT, the Town of Searsport, and appropriate others will “provide for light recreation, education, and conservation facilities on a portion of the island by conveyance of an easement covering that area.” Under the Agreement, this easement must be finalized by the Joint Use Planning Committee within twelve months of the date of its creation. MaineDOT proposes that the most effective way to provide for these specified uses is to place approximately 601 acres of the 931 acre island under a conservation easement into perpetuity. This area would encompass land on the easterly portion of Sears Island and reserving 330 acres for port development on the northwesterly portion (see Appendix B – Survey Map).

2.2 Anticipation of Need

Both the MOU and the Consensus Agreement recognize that additional marine transportation capacity along this area of the Maine Coast may be needed. Under the Consensus Agreement, MaineDOT is charged with investigating several options for further development of Mack Point, including additional land acquisition and the feasibility of building a marginal pier over Long Cove. Regardless of how development occurs, and the degree of alternatives analyses, avoidance and minimization, impacts to natural resources are likely to occur as a result of potential further development on either site. Given the proximity of potential impacts to the proposed Sears Island preservation area and the ecological uniqueness of the island’s natural character, it seems a suitable match for functions, values and ecotypes. To provide a sampling of projects potentially requiring mitigation, Table 2 lists MaineDOT capital projects undertaken within the last five years, currently underway, or proposed for the next six years. This table includes only those projects located in the coastal region adjacent to Sears Island, from Lincolnville to Castine. Given fiscal and political uncertainties, this list of projects represents neither a commitment to construct nor the limit of possible projects, but provides context for the relative amount of activity expected. Because this bank is

proposed as a state-wide mitigation tool, the entirety of MaineDOT’s capital and maintenance work plan could be considered on a case-by-case basis.

Table 2: Sample of Past, Current and Proposed MaineDOT Capital Projects Coastal Routes from Lincolnville to Castine from 2004 to 2014.

| Town | Project description | Status |
|------------------|---|-------------------|
| Lincolnville | Lincolnville Beach bridge replacement | Current work plan |
| | Ferry slip improvements/replacement | Proposed |
| Belfast | Bike/pedestrian improvements | Current work plan |
| Searsport | Sears Island port development | Proposed |
| Stockton Springs | Prospect-Verona bridge replacement/demolition | Ongoing |
| | Bike/pedestrian improvements | Current work plan |
| Trenton | Route 3 improvements | Proposed |
| | Intermodal facility | Current work plan |
| Bangor-Ellsworth | I-395 connector | Proposed |

2.2.1 Looking to the Future

While the relatively pristine, undeveloped nature of land along the upper bay provides large blocks of habitat for a diverse ecosystem, it also provides opportunity for a number of intensive land uses. Since the development of the state’s Three-Port Strategy in 1978, MaineDOT has anticipated the need to supplement an existing port at Mack Point. Given its proximity to the existing facilities at Mack Point and its near shore deepwater, the possibilities to site a shipping and distribution facility on Sears Island remains a viable proposal.



Just as Sears Island sits at the nexus between coastal ecotypes, Searsport and Upper Penobscot Bay reflect a gradual transition from Maine’s Mid-coast to Downeast areas. While the Mid-coast area extending from Brunswick to Prospect has experienced dramatic growth in those living and vacationing along its shorelines, coastal areas of Upper Penobscot Bay and Downeast Maine remain undeveloped by comparison. By comparing landward views of Searsport to the next harbor town to its south, Belfast, the potential for change to natural environments as waterfront development moves north becomes clear (Figure 2). While waterfront and near coastal properties continue to soar in value, the cost of conservation land also increases. Working together with a diverse coalition of conservation groups, local residents, state and federal agencies, MaineDOT proposes to add certainty to Sears Island’s future by preserving as many as 600 acres of the island in perpetuity through a federal umbrella mitigation banking instrument.

Figure 2: Photo comparison of Stockton and Belfast Harbors.



Long Cove and Stockton Harbor, 2007



Belfast Harbor, 2007

3.0 Establishment of the Bank

MaineDOT proposes that 601 acres of Sears Island become the foundation for a Federal Umbrella Mitigation Bank for Transportation (UMBT) via execution of a conservation easement.

Natural resources found on and around Sears Island have been described in detail through the years. Although the wetland delineations and other characterizations were largely performed in 1994, a comparison of the 1994 data to existing conditions verifies that the extent and condition of resources remains as previously described. Because of the expense of re-delineating 931 acres, MaineDOT proposes to rely primarily on the 1994 report prepared by Normandeau Associates, entitled “Sears Island Cargo Terminal Baseline Wildlife and Wetland Baseline Report: Volume I”. This report contains wetland delineations and characterizations as well as habitat assessments, with more intensive studies undertaken in the northwest area of the island where more intensive development was under consideration.

As described in Section 2.3.1 of this prospectus, the wetland delineation and characterization of Sears Island revealed 73 distinct wetland areas covering 223 acres of the island. Wetlands vary according to type and include palustrine forested, scrub-shrub, emergent, and salt marsh (estuarine emergent). Several small streams and one small freshwater pond are also part of the island's landscape. These wetlands also serve varying functions: groundwater recharge and discharge, shoreline stabilization, creation and exportation of nutrients and organic matter into Penobscot Bay, aquatic diversity, and wildlife/avian habitat. Intermixing of upland and wetland complexes and vegetation types augment the richness of the natural island communities. The diversity of Sears Island's ecosystems extends to its wildlife species as well as its vegetation communities, and its richness is not just land-based but extends to intertidal and subtidal marine environments. Characteristics of the island's associated marine environment are described in more detail in the report entitled "Sears Island Dry Cargo Terminal Marine Resources Baseline Report – Preliminary SEIS Draft" (Normandeau Associates, 1994).

Given the Island's history of limited human activity, there are few wetland restoration and/or enhancement opportunities available. The MaineDOT Field Services Unit conducted a preliminary site search during the fall 2007 for likely mitigation options other than preservation. During this reconnaissance two potential wetland restoration sites were identified along with the possibility of some creation. These sites are described along with the proposed mitigation in Section 9.2 - Site Development Plan.

3.1 Ecological Objectives of the Bank

As noted, Sears Island is ecologically diverse and geographically unique, making management of its values complex. Natural resources of note on the island include amphibian breeding pools, large forested blocks, freshwater wetlands, estuarine wetlands and intertidal habitats. The primary objective of this proposed UMBT is to protect the richness and diversity of the preservation area, while allowing for uses such as recreation and education in a manner that leaves no footprint on sensitive environments or wildlife species.

MaineDOT's goals in establishing the UMBT are: 1) to follow mitigation priorities established by the U. S Corps of Engineers (Corps)(33 CFR Part 332) and Environmental Protection Agency's (EPA)(40 CFR Part 230) Compensatory Mitigation for Losses of Aquatic Resources (hereafter "the Rule"); 2) to formalize the use of high value mitigation based on the ecological/landscape approach that MaineDOT has been following for the past 5 years; 3) to preserve and restore resources based on state-wide priorities; and 4) to streamline the Section 404 permit evaluation process by providing a means of compensating in advance for unavoidable wetland impacts resulting from state transportation projects. This ruling gives priority to mitigation banking followed by in lieu fee and permittee-responsible wetland compensation options. The Rule also improves the planning, implementation and management of mitigation projects by emphasizing a watershed approach along with the ecological benefits derived from mitigation banking.

3.2 Mitigation Banking Instrument

The Banking Instrument (BI) and the development and operation of the UMBT will be in accordance with the Rule. MaineDOT's responsibilities under the program will be administered by MaineDOT's Environmental Office – Field Services and Mitigation Division. The BI will be formulated around the initial deposit of the Sears Island Site.

MaineDOT proposes to use a combination of restoration, creation, enhancement and preservation of a wide variety of aquatic resources and upland buffers for the purpose of generating compensation credits. MaineDOT will provide for long-term preservation and management of the project areas included in the UMBT.

The UMBT will be used for MaineDOT/private or public transportation related partnerships involving compensatory mitigation for unavoidable impacts to waters of the United States in the State of Maine. These activities are authorized under Section 404 and 401 of the Clean Water Act, and/or Section 10 of the River and Harbors Act and the DEP Chapter 310 of the NRPA, provided such use has complied with all applicable requirements and is authorized by the appropriate authority.

3.3 Relationship to State Mitigation Bank and In Lieu Fee Program

Since December 2004, MaineDOT has operated the only state-approved wetland mitigation bank, which is administrated by the Maine Department of Environmental Protection (DEP) under Natural Resource Protection Act permit #L-21760-MB-A-N. This bank currently has 11 site deposits with 12.94 acres of restoration/enhancement and 1082.88 acres of preservation. The proposed Sears Island mitigation areas and any subsequent "deposits" to a federal mitigation bank would also augment MaineDOT's state mitigation bank.

Section 480-Z of Maine's Natural Resources Protection Act (38 M.R.S.A. §§ 480 A-BB) authorizes DEP to establish and operate an in lieu fee program for natural resource mitigation. Extensive input from an interagency workgroup that included representatives from DEP, state and federal resource agencies, ACOE, Maine State Planning Office, Federal Highway Administration and MaineDOT resulted in Maine's in lieu fee program becoming active in 2007. MaineDOT's federal mitigation bank is expected to provide benefits parallel to the in lieu fee program by enhancing its efforts to restore, enhance, replace, and preserve resources based on state-wide priorities established by the workgroup.

3.4 Financial Assurances

MaineDOT spends on average approximately \$2 million/year on wetland compensation projects. Most of this funding has Federal Highway Administration participation. The financial abilities of MaineDOT to meet the mandated compensatory mitigation obligations have always been a top priority when obtaining and meeting the requirements of a project permit. MaineDOT will continue to provide successful planning, implementation and monitoring to meet the required performance standards for each banked mitigation site.

MaineDOT has allocated \$800,000 for FY 2010 – 2011 to cover preliminary engineering, ROW acquisition, construction, construction engineering, and post-construction monitoring on Sears Island and another potential bank site in the mid-coast area. An additional \$300,000 for FY 2012 – 2013 and \$300,000 for FY 2014 – 2015 has been dedicated for site search and preliminary engineering on bank sites associated with specific transportation projects. It is anticipated that bank projects started during the 2012-2013 Biennial Transportation Program and thereafter, will have dedicated transportation project funding.

3.5 Real Estate Provisions

MaineDOT will provide for the perpetual protection and preservation of each bank site through management agreements, restrictive covenants with 3rd party enforcement or conservation easements. These provisions will conform to the Rule with the language modified on a case-by-case basis to allow for existing elements such as road easements, road/bridge crossings, hike/bike trails and other activities.

4.0 Operation of the Bank

4.1 Crediting and Debiting Procedures

MaineDOT will be responsible for accounting for credits and debits in the UMBT. MaineDOT will use a separate ledger for each mitigation bank site. The accounting ledger will be developed in consultation with the Interagency Review Team (IRT). The MaineDOT and IRT will follow the guidelines established by the Corps and EPA in the Rule for accounting procedures.

Each credit for mitigation will be comprised of the appropriate accounting metric determined via the IRT consistent with the terms of the BI or plan addenda, unless modified in future guidelines established through mitigation guidance documents prepared by the permitting agencies.

Because this federal bank is proposed for single client use, no credits will be sold to entities outside of MaineDOT.

4.2 Use of Credits

The following types of projects may be eligible to use the UMBT:

MaineDOT projects that require authorization under the Corps with a Category II or Individual Permit (IP) under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act and/or Permit-by-Rule (PBR), Tier II, IP under DEP Chapter 310 of NRPA, and a Land Use Regulations Commission (LURC) Full Permit under Section 10.25,P,1,b,(2), in consultation with the other regulatory and resource agencies. These regulatory agencies will determine the eligibility of such projects to use the UMBT on a case-by-case basis. Once the Corps and/or DEP have determined that mitigation in the UMBT is ecologically preferable to other options, mitigation may be provided by the use of the mitigation credit from the UMBT.

5.0 Maintenance and Monitoring of the Bank

5.1 Monitoring Requirements

Any restoration, enhancement or creation sites incorporated into the federal mitigation bank will be monitored according to the standard protocol of five years following project completion, with a final year assessment following the last year of monitoring. All banked sites will continue to be monitored once every five years or until all performance criteria are satisfied. If sites are developed in phases, each phase will be monitored and assessed separately; however, one monitoring report summarizing findings will be submitted to the appropriate regulatory agencies. Preservation parcels wholly owned by MaineDOT will be assessed every five years to assure that target functions and values are being met and agencies will be consulted on any necessary remediation (e.g., removal of storm debris).

Monitoring will include: establishing photo-points, measuring wetland areas using GPS, documenting water depths, noting presence or absence of wildlife, and collecting vegetation data. Methodologies proposed to assess restored, created, or enhanced wetland areas include point-intercept, frequency sampling, and stem counts.

5.2 Long-term Maintenance Requirements & Stewardship

The MaineDOT federal mitigation bank is proposed as an inclusive state-wide banking program. On completion of all phases of mitigation construction, MaineDOT may opt to donate conserved land to a non-profit entity or state agency with a conservation mission. Several active land trusts, the Land for Maine's Future Program, The Nature Conservancy, and the Maine Department of Inland Fisheries and Wildlife are a few, but not all, examples of such entities that have demonstrated long-term restoration and land-stewardship goals.

6.0 Responsibilities of the IRT

The IRT agrees to follow the time frames defined in the Rule on regulations governing compensatory mitigation.

7.0 Responsibilities of the Site Ownership

MaineDOT agrees to:

1. Establish and/or maintain the mitigation sites and ownership until:
 - a. Banking activity is voluntarily terminated through written notice by MaineDOT with the approval of the IRT, or
 - b. A third party stewardship organization adopts the responsibilities of long-term site management/maintenance with the Corps District Engineer's approval.
2. Submit to the IRT an annual report describing the condition of each mitigation site in relation to the success criteria outlined in the final plan and credit/debit ledgers for each bank site.
3. Develop necessary adaptive management plans and/or implement appropriate remedial actions for mitigation sites in coordination with the IRT in the event a mitigation site fails to achieve the success criteria specified in the final plan.

8.0 MaineDOT's Qualifications

MaineDOT is the largest development and maintenance entity in the state with 25 years of experience in wetland mitigation project development. The department has built some 95+ sites during its tenure ranging in size from 158 s/f to 1050 acres. Dedicated Mitigation Unit staff have consistently provided high quality technical/scientific expertise in all project phases involving wetland restoration, creation, enhancement and preservation. The Unit understands the role wetland functions and values play in natural ecosystems and how they affect the quality of life for all living things. The staff's combined mitigation experience is 52 years and it has a highly successful track record for meeting or exceeding regulatory performance standards and permit requirements.

The Mitigation Unit was instrumental in helping to develop the state's wetland banking program through the Maine Department of Environmental Protection (MDEP) and was the first to permit a bank under this program. That program originated in 2003 and MaineDOT currently has 11 sites with 13.1 acres of restoration/enhancement credit and 1082.84 acres of preservation credit. This credit is available for state (MDEP) only wetland compensation. MaineDOT maintains a credit balance summary listing site location with watershed, wetland type, functions and values, year acquired, owner, manager, credit used and credit balance.

MaineDOT understands the importance of delivering successful, highly productive, cost efficient mitigation projects and is accountable for the functional replacement of unavoidable wetland impacts caused by MaineDOT projects. The Mitigation Unit is dedicated to providing the most up-to-date methodologies and cutting edge technology in setting the standards for wetland compensation in New England. The Unit is prepared to begin wetland banking in the state and understands the challenges and long-term environmental benefits it will provide.

9.0 Sears Island Bank

9.1 Existing Site Conditions

9.1.1 Property Description

Penobscot Bay lies within a vegetative transition zone between the coastal spruce-fir ecosystem to the northeast and the northern hardwood-spruce forest region along the southwest coastal plain. Both types of forest communities are present on Sears Island, contained within both large, unfragmented blocks of forest and in smaller areas of forest interspersed with fields and open areas. While the large, unfragmented blocks are much

larger than those typically found along the Maine coast, the mixed cover provides edge habitat and niche habitats for an unusually large array of wildlife.



Due to its location so near the mainland, Sears Island supports both mainland and island vegetation. Approximately 687.8 acres of the island is colonized by hardwood, softwood, and mixed wood forests, while alder swamps and shrub areas occupy approximately 70.2 acres. Other areas of the island are characterized by scrub and low shrub coastal communities (5.1 acres), upland herbaceous communities (38.7 acres), fern meadows (66.8 acres), salt marsh areas (7 acres), rocky shoreline and beach (17.5 acres), and two small areas of dune grassland (9.3 acres) on the northern edge of the island. Only approximately 38 acres of the island is developed land.

A wetland delineation and characterization of Sears Island revealed 73 distinct wetland areas covering 223 acres of the island. Wetlands vary according to type and include palustrine forested, scrub-shrub, emergent, and salt marsh (estuarine emergent). Several small streams and one small freshwater pond are also part of the island's landscape. These wetlands also serve varying functions: groundwater recharge and discharge, shoreline stabilization, creation and exportation of nutrients and organic matter into Penobscot Bay, aquatic diversity, and wildlife/avian habitat. Intermixing of upland and wetland complexes and vegetation types augment the richness of the natural island communities. Offshore of the island, a strong correlation was noted between wetland discharge and eelgrass beds, with near sub-tidal beds thriving where wetland discharges reach the bay.



The intertidal zone surrounding Sears Island is a mix of coarse cobble, sand, and sand and gravel beaches. Hard substrate areas support 29 species of marine fauna, while soft substrate areas support 114 species, including mollusks, bivalves, and marine worms. Subtidal areas around the island are colonized primarily by mussel beds and red algae, with occasional occurrences of kelp and sea urchins.

Eelgrass beds are found around the entire perimeter of the island and play an important role in the benthic community associated with Sears Island. These beds serve as habitat for several invertebrate and fish species as well as food sources for migratory waterfowl and shorebirds. Eelgrass beds stabilize sediments and other features that comprise the

subtidal substrates; play a key role in the nutrient cycle and the production of biomass; and mediate both short and long-term biological and chemical interactions within the marine ecosystem. The marine area around Sears Island is designated by the National Marine Fisheries Service as Essential Fish Habitat (EFH) for spawning, nursery and feeding of Atlantic salmon, Atlantic herring, Atlantic mackerel, winter flounder, Atlantic menhaden, alewife, striped bass, rainbow smelt, and other finfish. Historically the eelgrass beds surrounding the island served as nursery habitat for cod and haddock, and despite their decline in numbers these species remain on the list of EFH species.



The aesthetic appeal of Sears Island can be appreciated from the island or looking toward the island from various public vantage points around upper Penobscot Bay. Sears Island is a central feature of views from the City of Belfast's City Park and Moose Point State Park as well as from Sprague's Beach in the Town of

Islesboro, itself an island. There are innumerable public vantages from which Sears Island adds to the unique character of the Maine Coast, whether viewed from U.S. Route 1 or the open water of the Penobscot Bay.

Within the context of its larger geographic setting, protection of parts of Sears Island would add a significant jewel into the conservation efforts already underway to protect the scenic and natural character of the upper bay. Some of the largest tracts of protected acres around Penobscot Bay are located in close proximity to Sears Island, including the Holbrook Island Sanctuary on Cape Rosier (1400 acres); Turtle Head Environmental Education Sanctuary owned by the Islesboro Islands Trust just south of Sears Island (27 acres); Maine Coast Heritage Trust's Hatch Natural Area (96.5 acres) and the Castine Land Trust's Henderson Natural Area (90 acres).

9.1.2 Threatened and Endangered Species



The diversity of Sears Island's natural ecosystems extends to its wildlife species as well as its vegetation communities. At least 168 species of birds, nine species of herptiles, and 28 of the 39 mammal species resident in New England have been documented on the island. At least six different species listed as state threatened or endangered, or federally endangered, have been recorded from, or in proximity to, the island (see Table 3).

Table 3: List of State or Federal Endangered Species with documented presence on Sears Island.

| Species type | Species Name | Status |
|--------------|---|--|
| Bird | Bald Eagle <i>Haliaeetus leucocephalus</i> | State, threatened Federal, endangered |
| Fish | Atlantic salmon <i>Salmo salar</i> | Federal, endangered |

Peregrine Falcon (*Falco peregrinus*), Great cormorant (*Phalacrocorax carbo*), Barrow’s goldeneye (*Bucephala islandica*) and Least tern (*Sterna antillarum*) have all been observed near Sears Island. Northern Ribbon Snake (*Thamnophis sauritus septentrionalis*) a state listed special concern species has been found on the island.

9.1.3 Cultural Character & History

Although preservation of a large portion of Sears Island is proposed as mitigation for future wetland impacts, MaineDOT recognizes that a significant function of both the wetland and upland areas on the island is scenic and cultural value. And so it seems appropriate to devote a section of this prospectus to describing the cultural value and historical significance of the island.



Despite being the largest undeveloped island left on the east coast, archeological evidence suggests that Sears Island has known human use for at least 3,600 years. Around 1730, the island was christened Brigadier’s Island by its first recorded colonial owner, Samuel Waldo. Settlers raised cattle and sheep, built boats and even reportedly ran rum from the island, practices that continued after Henry Knox acquired the island in 1794 and transferred ownership to David Sears in 1813. In 1845 the town of Searsport was incorporated and the island was renamed Sears Island. At its agricultural peak in 1880, Sears Island had 140 acres of tilled land, 600 acres of pasture and orchard, and 200 acres of woodland. There are remnants of fieldstone foundations from an early 19th century farm and out-buildings in the north-central area of the island. Another foundation related to the Sears family’s Victorian summer house is found on the south end of the island. Descendants of David Sears, the founder of Searsport, continued to occupy the island until the end of the 19th century, at which point local mainland residents began using Sears Island for recreation, hunting, and fishing. The Bangor and Aroostook Railroad acquired the island in 1905 and it reverted to a mostly natural condition under their ownership while different uses of the island were debated. Many of those uses would have involved extensive conversion of the island to commercial uses, such as an

oil refinery, nuclear power plant, or coal fired power plant. Then, as now, each development proposal for Sears Island spawned vigorous and contentious public debate.

In 1978, the State of Maine adopted a Three Port Strategy that would concentrate public investment in the deep water ports of Portland, Searsport, and Eastport. Following several takings by eminent domain and in light of the strategy, MaineDOT constructed an access road to a proposed port location on Sears Island, but following minor site work the proposal was withdrawn in early 1996 under a cloud of controversy. Despite the failure of this port proposal, Governor Angus King continued to advocate for state purchase of the remainder of the island, noting its unique natural character as well as its strategic location. In 1997, the Maine legislature voted to enact LD 1137- HP 0832, which provided for half of the \$4 million dollar purchase price from surplus balance of the state's General Fund. With the Federal Highway Administration providing the remainder of the funds in the form of a loan to MaineDOT, which was named as the island's steward, Sears Island once again transferred ownership without a clear vision for its future.

MaineDOT proposes that its federal mitigation bank operate in a similar manner to its state-approved bank to ensure consistency in monitoring and administration.

9.2 Site Development Plan

The Sears Island mitigation site is composed of two degraded wetland/upland areas (2.2 acres) and a large preservation area (598.8 acres) (See Appendix B – Survey Map). The two areas where on-the-ground mitigation work will be implemented are described below:

Sear's Family Summer Cottage Site – This site is located at the south end of the island and is across Stetson Hill Road (Tower Road) from the cellar hole of the Sear's Family summer cottage. The site is approximately ¼ acre and is composed of approximately 8500 s/y of fill. The abutting land is forested wetland made up of red maple, speckled alder, viburnum and winterberry. This site offers good possibilities for removal of the excess fill and restoring the forested wetland. This area was disturbed in the early 1970's for soil/substrate analysis in connection with exploratory nuclear power purposes.

Expansion of Existing Mitigation Site – On the Stetson Hill Road (Tower Road) there is a restoration site that was developed in 1996 as part of the mitigation for the Consent Decree. The site is located in the middle of the island and is made up of scrub-shrub wetland. There are restoration expansion possibilities on this site of approximately 1/8 acre. An area immediately adjacent to this proposed restoration area is a 2 acre parcel that was cleared and grubbed sometime during the 1970's. Site inspections of this area conducted during the field season has revealed the possibility of adequate hydrology to sustain the creation of forested and/or scrub-shrub wetlands. A more in-depth hydrologic analysis will need to be completed to ensure that this potential creation opportunity exists and is feasible.

The remaining 598.8 acres on the Protected Property will be set aside for preservation mitigation credit. This area is made up of 126 acres of wetland consisting of 62 acres of PFO, 56 acres of PSS, 2 acres of PEM and 6 acres of intertidal hard and soft substrate below mean high water. The wetland functions of these systems are groundwater recharge and discharge, shoreline stabilization, creation and exportation of nutrients and organic matter into Penobscot Bay, aquatic diversity, and wildlife/avian/marine shellfish habitat. The acres of upland intermixing with the wetland complexes and vegetation types augment the richness of the natural island communities. In addition, the Protected Property has 19,290 linear feet of intertidal shoreline consisting of hard substrate areas support 29 species of marine fauna, while soft substrate areas support 114 species, including mollusks, bivalves, and marine worms. Subtidal areas along this shoreline are colonized primarily by mussel beds and red algae, with occasional occurrences of kelp and sea urchins.

9.3 Proposed Credit

MaineDOT is proposing a credit balance for the Sears Island deposit of 1.1 acres of restoration/creation credit (using the Corps recommended 2:1 ratio for restoration and creation) and 39.92 acres of preservation credit (using the Corps recommended 15:1 ratio for preservation). This bank site warrants these low ratios due to it being unique in the landscape as an uninhabited island in Penobscot Bay with 19,290' of high value intertidal shoreline along with freshwater wetlands and upland buffers.

9.4 Service Area

The Sears Island site is located in the Penobscot Bay Coast Subsection defined in the Bailey Ecoregions Map (ECOMAP 1993). The credit from this site may be used for both coastal and non-coastal impacts in the Penobscot Bay Coast Subsection, the Casco Bay Coast Subsection and the Maine Eastern Coastal Subsection. The use of the Sears Island credit for impacts outside of these three Subsections will be determined by the Corps on a permit by permit basis.

9.5 Funding

MaineDOT has allocated \$800,000 for FY 2010 – 2011 to cover preliminary engineering, ROW acquisition, construction, construction engineering, and post-construction monitoring on Sears Island and another potential bank site in the mid-coast area.

9.6 Long-Term Protection

The Sears Island site will be held under a Conservation Easement with Maine Coast Heritage Trust. The Maine Department of Environmental Protection (MDEP) will be named as the third party enforcer.

APPENDIX A

SEARS ISLAND PLANNING INITIATIVE

DRAFT STEERING COMMITTEE CONSENSUS AGREEMENT

April 12, 2007 version* (as amended at the April 27 SC meeting)

Introduction

In addressing its mission to develop a consensus report of recommended future land use activities for the 941-acre Sears Island, the Steering Committee has determined that appropriate uses for Mack Point and Sears Island are compatibly managed marine transportation, recreation, education and conservation.

Steering Committee members agree that the following elements and mechanisms are ways in which those uses should be implemented. All of these elements should be given equal weight and attention, and all should be vigorously pursued. They are numbered for identification purposes only, and the numbering implies no sequential ordering of timing or priority.

The undersigned Steering Committee stakeholders agree as follows:

1) Appropriate and Inappropriate Uses for Sears Island: The Steering Committee has determined that appropriate uses for Mack Point and Sears Island are compatibly managed marine transportation, recreation, education and conservation.

The Steering Committee acknowledges the position of Governor Baldacci that no LNG facility will be sited over the objection of local residents, and acknowledges that the majority of Searsport residents have clearly objected to siting such a facility within their community. The Steering Committee therefore agrees that no LNG facility of any kind would be an appropriate use for Sears Island.

The Steering Committee has also agreed that the following uses and activities are not appropriate for Sears Island:

- No demolition of the causeway.

- No unauthorized motor vehicle traffic.
- No residential development
- No nuclear power plants
- No coal-fired power or industrial plants
- No commercial retail or restaurants
- No casinos
- No chemical manufacturing
- No international airport, airstrip or helicopter landing area
- No overnight camping without a permit
- No gate fees for Maine residents.
- No permanent religious buildings
- No unauthorized cutting or harvesting of wood
- No marine transport of out-of-state or domestic garbage or construction waste to or from the island
- No incinerator
- No unlawful destruction of wetlands or habitat
- No soil harvesting

2) **Build out of Mack Point:** Mack Point shall be given preference as an alternative to port development on Sears Island. MaineDOT in conjunction with interested parties, shall investigate and share factual information (which is not confidential or proprietary) on the extent to which Mack Point can, in fact, accommodate future marine transportation needs, including investigating the possibilities for acquisition and/or development of additional acreage for such use. This investigation will include exploring the feasibility of building a marginal pier at Mack Point, including Long Cove, for use as part of an expanded marine cargo port.

MaineDOT will actively work, collaboratively and in good faith, with interested parties to evaluate a cargo/container port for Mack Point and/or Sears Island, as part of any planning process. As part of this agreement, MaineDOT will actively market, solicit proposals and create partnerships for a cargo/container port on Mack Point and/or Sears Island.

3) **Establish outdoor recreation, education, and conservation opportunities on Sears Island by creation of a buffer easement:** The parties agree that the DOT, with the Town of Searsport and appropriate others will provide for light recreation, education and conservation facilities on a portion of the island by conveyance of an easement covering that area.

The terms of that easement will be finalized by the Joint Use Planning Committee within twelve months of the date of its creation (see paragraph 7 below). MaineDOT, the Town of Searsport, the easement holder, the DOC and other interested parties will enter into a Management Agreement consistent with the terms of the buffer easement.

The buffer easement shall initially be applied to 600 acres of the Island, simultaneously reserving 341 acres on the westerly side of the Island for a potential port development. The Joint Use Planning Committee, working with MaineDOT, shall simultaneously delineate the precise boundaries of the two areas within twelve (12) months of the date of this Agreement's approval by the Governor and the Transportation Committee of the Legislature. Those boundaries will be based, in part, on a baseline natural resource analysis of the two areas. Along with the easement terms, the boundaries will be set forth in a Memorandum of Understanding to be drafted by the Joint Use Planning Committee.

The Joint Use Planning Committee will determine whether any portion of the 341-acre area reserved for port development is not required for such a port, in which case that portion will be added to the land subject to the buffer easement under the same terms as the buffer easement. The transportation and utility corridors on Sears Island necessary for any port development are to be included in the set-aside acreage for the potential port.

Uses currently occurring in the area reserved for the port development shall continue to be allowed in that area until such time as a port proposal completes the regulatory process.

The buffer easement will be held by a legally-designated third party with no conflict of interest between administering the easement and any potential port development.

Any prospective Education and Maintenance Center will be located on Sears Island east of the current paved access road. The Center will present several themes, including but not limited to the natural history of the island and upper Penobscot Bay and issues related to transportation and the environment. Such a center is intended to complement the offerings of the Penobscot Marine Museum, the Maine Maritime Academy, and other private and public educational programs. The Center and other public recreation

improvements may be built as soon as the buffer easement is approved by the Joint Use Planning Committee and accepted by the easement holder.

The parties agree that nothing in the above plans for the island is intended to either raise or lower any bars to either development of a cargo/container port or conservation of the remainder of the island. Specifically, any buffer easement and associated educational and recreational facilities and activities are not intended to cause denial of federal funding for development of a potential cargo/container port.

4) Permitting for a Cargo Port: It is understood that none of the parties are endorsing in advance any proposal for a marine transportation facility. They will not, however, oppose such a facility for “non-substantive” reasons. If any cargo/container port proposal is determined to meet applicable environmental standards, including an alternatives analysis which documents that the need could not be met elsewhere, all parties agree they would not object to or oppose fulfillment of a cargo/container port on Sears Island once such development has satisfied all regulatory requirements. All stakeholders reserve the right to object to certain kinds of proposed facilities (e.g. LNG or oil terminal).

5) Jurisdiction: The jurisdiction over Sears Island will remain with the MaineDOT. MaineDOT is expected to collaborate with the Town of Searsport and other interested parties in implementing the terms of this Consensus Agreement in ways which: 1) Meet the transportation needs of the State of Maine, 2) Enhance opportunities for nature-based Eco-Tourism, 3) Generate revenue for the Town of Searsport and the surrounding region, and 4) comply with the terms of the buffer easement.

6) Tax revenues for the Town of Searsport: The parties agree that the entirety of this Consensus Agreement, by preserving the potential for enhanced marine transportation, and by defining permissible uses for education, recreation and conservation is likely to provide the Town of Searsport tax revenues which will benefit its citizenry.

7) Implementation: The parties agree to publicly support this Consensus Agreement and to use their best faith efforts to persuade others to support it. The undersigned parties will jointly deliver this Agreement to the Governor, the Transportation Committee of the Legislature, and the Town of Searsport for their consideration.

The parties intend that this Agreement will supersede the previous Memorandum of Understanding between the Town of Searsport and DOT.

Within 15 days after presentation and acceptance of this Agreement to the Governor, the Transportation Committee of the Legislature, and the Town of Searsport, MaineDOT and the Town of Searsport will create a Joint Use Planning Committee, comprised of no more than 15 people, with balanced representation of port development and conservation perspectives, representation from the Town of Searsport, as well as relevant local, state and federal agencies. Only individuals and representatives who are committed to implementing the terms of this Agreement may serve on the Joint Use Planning Committee. Subject to Town plans and state and federal regulations, the Joint Use Planning Committee will: 1) draft mutually acceptable buffer easement language which references a baseline natural resource inventory, 2) fix the boundaries of the two areas in a way which reserves adequate acreage for a potential port while creating a functional area for conservation, recreation and education, 3) help convey a deed with easement restrictions to the buffer easement holder, 4) determine appropriate access issues, 5) develop a plan for annual revenues to be paid to the Town of Searsport, 6) Identify options for mitigation for a potential port, and 7) consider any other issues necessary to effectuate this Consensus Agreement, and incorporate them into a Memorandum of Agreement.

The parties currently share a good faith belief that opportunities to pursue a possible container port and conservation, recreation and educational uses are herein provided.

If the terms of this Agreement are changed after the parties have signed it, it is understood that those parties are released from adherence to its terms.

Signed this day of April, 2007.
See Final Tally (attached).

APPENDIX C

EXHIBIT A

The following described parcels shall represent the Protected Property that is the subject of this Conservation Easement:

Protected Property/Conservation Parcel 1:

A certain parcel of land located on Sears Island, said Sears Island being located about 0.25 miles southerly of the mainland portion of the town of Searsport and connected to the mainland by a causeway and state road known as Stetson Hill Road, in the town of Searsport, Waldo County, Maine designated as the “Protected Property/Conservation Parcel 1” as shown on a plan entitled “Boundary Survey of Land of the State of Maine located at Sears Island, Searsport, Maine (Waldo County)” attached hereto as **Exhibit B**, dated June 25, 2008, DOT File No. 14-137C, on file at MaineDOT’s offices at 16 State House Station, Augusta, Maine, being more particularly described as follows:

BEGINNING at a capped iron rod to be set on the easterly right-of-way line of the Stetson Hill Road, so-called, at Station 122+84.8, more or less, of said Stetson Hill Road according to stationing shown on State of Maine Department of Transportation Right of Way Map, File No. 14-137, dated January 1983 and recorded in Plan Book 14, Pages 19 through 24 in the Waldo County Registry of Deeds (the “Right of Way Map 140-137”);

THENCE (S 13°-33’-30” E) along the easterly right-of-way line of Stetson Hill Road a distance of 1,900.6 feet to a capped iron rod to be set;

THENCE (S 13°-33’-30” E) continuing along the easterly right-of-way line of Stetson Hill Road a distance of 168.4 feet to a capped iron rod to be set at a point of curve at Station 143+53.8, more or less, on said Right of Way Map 14-137;

THENCE following a horizontal curve to the right having a radius of 1,577.9 feet, along the easterly right-of-way line of Stetson Hill Road, a distance of 1,625.0 feet to a capped iron rod to be set at Station 159+27.3, more or less, on said Right of Way Map 14-137;

THENCE (S 0°-0’-0” E) a distance of 4,000.0 feet to a capped iron rod to be set;

THENCE (S 90°-0’-0” W) a distance of 1,700.0 feet to a capped iron rod to be set, labeled as Point “A” on said Exhibit B;

THENCE continuing (S 90°-0’-0” W) a distance of 72 feet, more or less, to the apparent mean high water mark of Penobscot Bay;

THENCE southerly, easterly, and northerly along the apparent mean high water mark of Penobscot Bay and Stockton Harbor, a distance of 15,825 feet, more or less, to a point;

THENCE (S 42°-21'-0" W) a distance of 269 feet, more or less, to a capped iron rod set; labeled as Point "C" on said Exhibit B; said Point "C" being N 13°-23'-25" E of and 7,936.9 feet from said Point "A", and being designated as "Tie Line A – C" on said Plan;

THENCE continuing (S 42°-21'-0" W) a distance of 291.4 feet to the POINT OF BEGINNING.

TOGETHER WITH the flats between the low and high water marks of said Sears Island adjacent to the within described Protected Property/Conservation Parcel 1.

EXCEPTED from this description is a parcel of land containing approximately 5 acres as described in a deed to Cell Tower Lease Acquisition, LLC, and recorded in Book 2771, Page 296 (the "Tower Parcel").

The above described "Protected Property/Conservation Parcel 1" contains 512 acres, more or less.

Protected Property/Conservation Parcel 2:

A certain parcel of land located on said Sears Island, in the town of Searsport, Waldo County, Maine designated as the "Protected Property/Conservation Parcel 2" as shown on said Exhibit B, being more particularly described as follows:

BEGINNING at a capped iron rod to be set on the westerly right-of-way line of the Stetson Hill Road, so-called, at Station 123+52.4, more or less, of said Stetson Hill Road according to stationing shown on Right of Way Map 14-137;

THENCE (S 13°-33'-30" E) along the westerly right-of-way line of Stetson Hill Road a distance of 2,001.4 feet to a capped iron rod to be set at a point of curve at Station 143+53.8, more or less, on said Right of Way Map 14-137;

THENCE following a horizontal curve to the right having a radius of 1,477.9 feet, along the westerly right-of-way line of Stetson Hill Road, a distance of 1,522.0 feet to a capped iron rod to be set at Station 159+27.3, more or less, on said Right of Way Map 14-137;

THENCE (S 90°-0'-0" W) a distance of 700.0 feet to a capped iron rod to be set;

THENCE (N 21°-0'-0" W) a distance of 2,000.0 feet to a capped iron rod to be set;

THENCE (N 42°-21'-0" E) a distance of 2,000.0 feet to the POINT OF BEGINNING.

The above described "Protected Property/Conservation Parcel 2" contains 89 acres, more or less.

The Protected Property that is the subject of this Conservation Easement shall not include any portion of the property designated on said Exhibit B as the Transportation Parcel, nor does it include the flats between low and high water mark in any area adjacent to the said Transportation Parcel, nor does it include any portion of said Stetson Hill Road.

ALL RIGHTS CONVEYED HEREIN ARE SUBJECT TO all easements of record including, but not limited to, the following:

A twenty foot wide easement for utility purposes granted to Central Maine Power Company and New England Telephone and Telegraph by the deed dated December 6, 1974 and recorded in Book 719, Page 796 of said Registry of Deeds;

An Easement for utility purposes to the Tower Parcel granted to Central Maine Power Company by the deed dated April 17, 1985 and recorded in Book 1740, Page 315 of said Registry of Deeds;

A twelve foot wide easement for access and service to the Tower Parcel as described in the deed to the State of Maine dated November 12, 1997 and recorded in Book 1740, Page 78 of said Registry of Deeds.

The within described parcels of land are portions of the land acquired by the State of Maine by three deeds recorded in the Waldo County Registry of Deeds in Book 854, Page 283, Book 885, Page 141 and Book 2357, Page 18.

All capped iron rods to be set are 3/4 inch iron rods (rebar) topped with a aluminum cap reading "MAINE DOT PLS 2399 TEL. 624-3460". Bearings used above are in reference to grid north according to the Maine 2000 State Plane Coordinate System, 1804 Central Zone, NAD83(1996).