

**MaineDOT Umbrella Mitigation Banking Instrument**  
**for the**  
**Maine Department of Transportation**  
**State-Wide**  
**Aquatic Resource Umbrella Mitigation Bank**

**Sponsor:**

Maine Department of Transportation

**Commenting Federal Agency:**

Federal Highway Administration, Maine Division

**Interagency Review Team:**

U.S. Army Corps of Engineers

U.S. Environmental Protection Agency

U.S. Fish and Wildlife Service

National Marine Fisheries Service

Maine Land Use Regulation Commission

Maine Department of Environmental Protection

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**MaineDOT Umbrella Mitigation Banking Instrument  
for the  
Maine Department of Transportation  
State-Wide Umbrella  
Aquatic Resource Mitigation Bank**

This Maine Department of Transportation Umbrella Mitigation Banking Instrument (MUMBI) has been developed by the Maine Department of Transportation Environmental Office (Sponsor), and reviewed by the U.S. Army Corps of Engineers (Corps) in coordination with an Interagency Review Team composed of: the Environmental Protection Agency (EPA), the U.S. Fish and Wildlife Service (FWS), the National Marine Fisheries Service (NMFS), the Maine Land Use Regulations Commission (LURC), and the Maine Department of Environmental Protection (MDEP). The Corps, together with the State and Federal agencies that execute this MUMBI for the MaineDOT State-Wide Aquatic Resource Umbrella Mitigation Bank (Umbrella Bank), are hereinafter collectively referred to as the Umbrella Mitigation Bank Interagency Review Team (IRT). This MUMBI shall become effective upon agreement and signing of the final banking instrument by the Corps and the Sponsor. .

This MUMBI governs the establishment, use, operation, and maintenance of the Umbrella Bank. This MUMBI sets the framework by which individual mitigation sites (Bank Sites) will be added to this MUMBI through amendments as new sites are identified. This MUMBI also sets the framework by which the IRT for each Bank Site will review Site Specific Mitigation Plans and MUMBI amendments. Changes to the MUMBI will be formatted as amendments (MUMBI Amendments). It is the intent of this agreement to enable the parties hereby to eliminate redundancy in administration and focus review and resources on technical issues related to the development, implementation, and success of Site Specific Mitigation Plans for each Bank Site added as an amendment to this MUMBI.

MaineDOT is making a first deposit in the banking instrument with the Sears Island site. This site will initiate the MUMBI with available credit in a defined service area. Site-specific details associated with this site are in **SECTION 2 – Sears Island Mitigation Site**.

**SECTION 1 – AQUATIC RESOURCE UMBRELLA MITIGATION BANK:**

**I. Preamble**

- A. Purpose: The MUMBI will provide a federal mechanism for the early identification of wetland mitigation projects statewide and make available early planning to locate, assess, quantify, construct and monitor sites before road and bridge projects needing compensatory mitigation are built. The primary goal of the Umbrella Bank is to restore, enhance, create

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and/or preserve tidal and non-tidal wetlands, riparian systems, streams, and contiguous wetland and upland buffer corridors and their functions and values to compensate for unavoidable direct, indirect/secondary, and temporary wetland and stream impacts for proposed Sponsor/private or public transportation-related partnerships (e.g., partnerships with the Maine Turnpike Authority or a municipality building a Locally Administered Project with DOT oversight) for transportation improvement projects (activities)). These transportation activities shall be in accordance with Sections 404/401 of the Clean Water Act, Section 10 of the Rivers and Harbors Act, DEP Chapter 310 of the NRPA, and Land Use Regulation Commission Chapter 10 Land Use Districts and Standards permits and the use of MUMBI-generated credits used in circumstances deemed appropriate by the Corps after consultation, through the permit review process, with resource agencies. The Umbrella Bank should also help streamline the regulatory wetland mitigation protocols by providing agency pre-approved sites with specific service areas for credit withdrawal. Ultimately, the MUMBI will provide superior replacement of wetland functions and values on watershed based wetland resource compensation compared to conventional permittee responsible mitigation. This will be accomplished by in-depth watershed evaluation, mitigation site feasibility studies, early planning for large mitigation projects, careful financial analysis and cost benefit comparisons.

In addition, this MUMBI sets forth guidelines and responsibilities for the establishment, use, operation, maintenance, “close-out” and transition of ownership of the Sponsor’s Umbrella Bank and future Bank Sites added to the instrument through amendments. The Umbrella Bank shall be used primarily for compensatory mitigation for unavoidable direct, indirect/secondary, and temporary impacts to wetlands, streams, and riparian corridors throughout the State of Maine that result from the Sponsor’s transportation improvement activities which are authorized under Sections 404/401 of the Clean Water Act, Section 10 of the Rivers and Harbors Act, DEP Chapter 310 of the NRPA, and Land Use Regulation Commission (LURC) Chapter 10 Land Use Districts and Standards, provided such use has met all applicable requirements and is authorized by the appropriate authority. On a case-by-case basis, impacts to other open waters (aquatic resources) of the United States may be mitigated with credits from the Umbrella Bank. This Umbrella Bank may also provide mitigation for other federal, state, and local mitigation requirements for Sponsor activities provided such use has met all applicable requirements, is authorized by the appropriate authority, and authorized by the IRT. Such use will remove those credits from subsequent use for any other type of project.

- B. Use of Credit: Use of credits from the Umbrella Bank to offset direct, indirect/secondary, and temporary wetland and stream impacts authorized by Clean Water Act permits must be in compliance with the Clean Water Act and implementing regulations, including, but not limited to the 404(b)(1) Guidelines, the National Environmental Policy Act (NEPA), DEP Chapter 310 of the NRPA, LURC Chapter 10 Land Use Districts and Standards, and all other applicable federal and State legislation, rules and regulations. This agreement has been drafted following the guidelines set forth in 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"). This agreement shall incorporate and follow guidelines to be set out in future amendments to these documents as appropriate.

C. IRT: The IRT shall be chaired by a representative of the U.S. Army Corps of Engineers, New England District. The IRT shall monitor the accounting ledger for the Umbrella Bank. The IRT may consist of the following but may be modified in coordination with the IRT Chair:

1. U.S. Army Corps of Engineers, New England District (Chair)
2. U.S. Environmental Protection Agency, Region 1
3. U.S. Fish and Wildlife Service
4. National Marine Fisheries Service
5. Maine Department of Environmental Protection
6. Maine Land Use Regulations Commission

The IRT is responsible for reviewing Site Specific Prospecti, Site Specific Mitigation Plans and any MUMBI Amendments that may be required. The IRT shall also review monitoring and accounting reports for individual Bank Sites as described below. In addition, the IRT shall review proposals for remedial actions proposed by the Sponsor or any of the agencies represented on the IRT. The roles and responsibilities of the IRT are more fully set forth in the Rule, and are incorporated herein by reference. The Chair shall attempt to reach consensus on items submitted by the sponsor for review.

D. Bank Sites/Mitigation Plans: Sponsor retains legal rights to develop or sponsor aquatic resource mitigation projects throughout the State of Maine to satisfy Sections 404/401, Section 10, LURC, and Chapter 310 permitting requirements. Mitigation projects included as part of the Umbrella Bank shall be called *Bank Sites*. A Bank Site may include one or more parcels of land and one or more forms/types of mitigation (wetlands, streams, restoration, creation, enhancement, preservation, etc.). Each Bank Site shall be subject to the terms of the MUMBI as well as a site specific MUMBI Amendment, as necessary.

The need for supplemental site-specific information shall be addressed on a case-by-case basis through individual Site Specific Mitigation Plans and MUMBI Amendments submitted to the IRT for each respective Bank Site for approval. These Site Specific Mitigation Plans shall be prepared per the mitigation guidelines specified in the Rule [CFR 332.4(c)(2)-(14)] and include the following:

- Objectives
- Site Selection
- Site Protection Instrument
- Baseline Information

- Determination of Credits
- Mitigation Work Plan
- Maintenance Plan
- Performance Standards
- Monitoring Requirements
- Long-term Management Plan
- Adaptive Management Plan
- Financial Assurances
- Other Information

Existing mitigation sites established by the Sponsor and subject to the MaineDOT/MDEP Mitigation Bank shall not be subject to this agreement. Through various other agreement mechanisms, such as permit actions, Sponsor and member agencies have already established and are implementing agreements regarding mitigation sites that shall not be subject to or superseded by this agreement.

- E. Location and Ownership: Under this MUMBI, Sponsor shall restore, enhance, create and/or preserve aquatic resources and associated uplands in Maine watersheds, in accordance with the provisions of this MUMBI, and then protect these systems in perpetuity. Sponsor shall ensure each Bank Site reaches its intended condition based on the approved success criteria before the Corps deems the project successful and releases any remaining credits. At a minimum, Sponsor shall record a conservation easement for each Bank Site and manage the site in perpetuity. In the event Sponsor makes an agreement with a conservancy for a Bank Site, the easement shall include provisions that allow the Bank Site to be transferred to a conservancy for protection in perpetuity, upon fulfillment of project objectives.
- F. Baseline Conditions: Each Bank Site (containing appropriate buffers) proposed for inclusion in the Umbrella Bank shall be submitted as an amendment to this document (Site Specific Mitigation Plan/ MUMBI Amendment). A detailed description of the baseline conditions (pre-mitigation) for each Bank Site shall be contained in the Site Specific Mitigation Plans, also referred to as MUMBI Amendments to this document, to be provided to the IRT for approval of Bank Sites. The total existing acreage and/or linear footage for each aquatic resource shall be included in the Site Specific Mitigation Plan along with a description of any adjacent buffers. This information shall include a detailed discussion of areas within the proposed Bank Site that are amenable to restoration, enhancement, creation, or preservation based upon the ecological suitability of a site for achieving the purpose of the Umbrella Bank.

## **II. Authorities**

- A. The establishment, use, operation, and maintenance of the Umbrella Bank are carried out in accordance with the following authorities:

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1. Clean Water Act (33 USC 1251 et seq.)
2. Rivers and Harbors Act (33 USC 403)
3. Fish and Wildlife Coordination Act (16 USC 661 et seq.)
4. National Environmental Policy Act (42 USC 4321 et seq.)
5. Endangered Species Act of 1973 (16 USC 1531 et seq.)  
(Specific proposed bank sites will be reviewed individually for Section 7 compliance at the time of the Sponsor site evaluation and consideration for deposit in the MUMBI)
6. Regulatory Programs of the Corps of Engineers, Final Rule (33 CFR Parts 320-330)
7. Guidelines for Specification of Disposal Sites for Dredged and Fill Material (40 CFR Part 230)
8. Memorandum of Agreement between the Environmental Protection Agency and the Department of the Army concerning the Determination of Mitigation Under the Clean Water Act, Section 404 (b)(1) Guidelines (February 6, 1990)
9. Corps of Engineers (33 CFR Part 332) and Environmental Protection Agency's (40 CFR Part 230) Compensatory Mitigation for Losses of Aquatic Resources
10. DEP Chapter 310 of the NRPA
11. Land Use Regulation Commission Chapter 10 Land Use Districts and Standards
12. Any future applicable revisions, clarifications and updates of the above statutes and guidance documents. That is, as documents are prepared pursuant to this agreement, they shall conform to the standards or guidelines in place at the time of submission, not necessarily at the time the MUMBI was approved.
13. Historic Preservation Act of 1960 as amended.

- B. Authority of the Corps: The Corps, the official lead/chair for the IRT, shall be responsible for establishing the IRT and designating Points of Contact (POCs) for the Corps and IRT. After consultation with the appropriate federal and state review agencies through the permit review process, the Corps shall make final decisions concerning the amount and type of compensatory mitigation to be required for unavoidable, permitted wetland and stream impacts (direct, indirect, and temporary), and whether the use of credits from the Umbrella Bank is appropriate and, if so, the amount and type of credits necessary to offset those impacts.

The IRT members shall review the Site Specific Mitigation Plans and MUMBI Amendments for each Bank Site proposed to be added to the MUMBI. The Corps shall also establish additional technical resources for the IRT, as needed to assist the IRT in performing its technical evaluation of Site Specific Mitigation Plans.

NOW, THEREFORE, the parties agree to the following:

### **III. General Provisions**

#### **A. Establishment of the Umbrella Bank and Bank Sites**

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1. Establishment of the Umbrella Bank: Sponsor shall obtain all appropriate environmental documentation, permits, or other authorizations needed to establish and maintain the Umbrella Bank. This MUMBI does not fulfill or substitute for such authorization. This MUMBI fulfills authorization for establishment, use, operation, and maintenance of an Umbrella Bank to be administered by Sponsor pursuant to the Rule.
2. Establishment of Bank Sites and MUMBI Amendments: Sponsor shall obtain all appropriate environmental documentation, permits, or other authorizations needed to establish and maintain the Bank Sites. This MUMBI does not fulfill or substitute for such authorization. This MUMBI and MUMBI Amendments do fulfill authorization for the establishment, use, operation and maintenance of Bank Sites to be administered via the MUMBI pursuant to the Rule.
3. Perpetual Protection/ Real Estate Provisions: Property subject to the MUMBI and authorized by the Corps as a mitigation bank site, shall be perpetually protected by a conservation easement. Upon written approval by the Corps and/or at the direction of the FHWA planning level environmental documentation (i.e., EA, EIS), the conservation easement shall be recorded in the land records at the Office of the Clerk of the County Registry in which the land lies. A copy of the recorded conservation easement, showing book and page numbers of its recorded location, shall be provided to Corps.

Subsequent to the recording of the conservation easement, should Sponsor convey the Bank Site property identified in the easement either in fee or by granting to a qualified land trust or similar conservation entity, or should Sponsor convey an interest in said property to a third party, or otherwise transfer an interest in the property, the terms and conditions of said conveyance shall not conflict with the intent and provisions of the conservation easement nor shall such conveyance enlarge or modify the uses specified in the easement. A transfer/conveyance of a property from Sponsor to another must be to a group/entity that meets the qualifications developed by the Corps of an approved land trust, conservation and/or stewardship entity. If said terms and conditions do enlarge or modify the uses with respect to the property, then Sponsor shall consult with the IRT and Corps. The Corps, in coordination with the IRT, must approve any transfer to a third party.

Should Sponsor transition/convey a Bank Site or phase of a Bank Site to a land conservancy (trust) group, the conservancy group shall be responsible to meet all remaining required MUMBI, MUMBI Amendments, and/or Site Specific Mitigation Plan(s) conditions for the Bank Site at the time of transition including maintenance, monitoring, perpetual protection, and stewardship, the specifics of which will be detailed in the conveyance, of the Bank Site.

4. Assumption of Legal Responsibility: Sponsor will be responsible for following the protocols and procedures established in this instrument for the development of dedicated bank sites statewide for use on transportation projects. Sponsor will comply with the\_33

CFR Part 332, Compensatory Mitigation for Losses of Aquatic Resources; Final Rule (“Mitigation Rule”) for the establishment and management of mitigation banks.

## **B. Operation of Umbrella Bank and Bank Sites**

1. Umbrella Bank Geographic Service Area [332.8(d)(6)(ii)(A)]: The Umbrella Bank geographic service area shall be statewide within the State of Maine which means that sites may be proposed anywhere within the state. Banking Sites will be sited as needed to compensate for the Sponsor’s future transportation improvement projects that might occur within each biophysical region (See Appendix F – The Nature Conservancy Map of Maine Natural Resource Conservation Program Regions). The service area for each specific bank site will be determined and assigned according to the Biophysical Region in which a Bank Site is located. In some instances multiple Biophysical Regions will be assigned to one site based upon location, watershed, wetland functions and values and biological ecosystem/habitat rarity and/or statewide importance. Service Areas will be defined by the mapped 7 Biophysical Regions of Maine. Each Bank Site will provide mitigation within one or more Service Areas, as defined in each Site Specific Mitigation Plan. Use of a Bank Site to compensate for impacts beyond the geographic Service Area may be considered by the IRT on a case-by-case basis.
  
2. Site Selection Criteria: The following guidelines will be used to determine if a site meets the qualifications for deposit in the Umbrella Bank. A candidate site must be assessed in relation to these requirements in a Pre-Application Prospectus. The more criteria that are met, the more appropriate the site is likely to be for addition to the Umbrella Bank.
  - a) Mitigation site has excellent potential for wetland restoration, enhancement, and/or creation.
  - b) For preservation parcels, the site is under threat from degradation in the next 20 years and contains both aquatic resources and healthy upland buffers.
  - c) Project replaces or protects those wetland types lost in the biophysical region.
  - d) Mitigation parcel is connected to or in close proximity to protected lands held by a stewardship organization in the interest of maintaining and preserving habitat connectivity.
  - e) Mitigation site is in a Maine Beginning with Habitat (BwH) Focus Area or State Wildlife Action Plan (SWAP) Focus Area, has high or unique natural resource value, and/or protects a drinking water supply.
  - f) Site supports regional conservation initiatives, including priorities of NGO's and local land trusts.
  - g) Mitigation site is feasible regarding ease of acquisition, construction, cost, achieving success, and meeting regulatory bank requirements.
  - h) Site provides a wide selection of wetland types and related functions and values, including habitat diversity.
  - i) Project has local support from municipalities, residents, and abutters.

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- j) Parcel will be protected with an easement and/or ownership and a long-term stewardship fund.
  - k) Site is ecologically sustainable – compatible with current and future adjacent land uses.
3. Pre-Application Prospectus: A Pre-application Prospectus shall be developed by Sponsor and submitted to the IRT for each Bank Site. To facilitate the processing of Bank Sites from Pre-application through “close out”, procedures have been developed as part of the Rule.

In summary, a Pre-application Prospectus shall contain information such as:

- a. Location of the site including maps, watershed, bio-physical region.
  - b. Site condition, including present/recent land use and adjacent area land use.
  - c. Current zoning and zoning and ownership for adjacent properties.
  - d. Ownership of the Bank Site, willingness of the seller, status of land exchange/control by MaineDOT, encumbrances, utility easements, etc. on the land.
  - e. Each type of mitigation proposed on the site and an estimate of existing and proposed acreage/linear footage based on wetland criteria and/or brief functional assessment.
  - f. Preliminary Site Plan and explanation of how aquatic functions will be improved.
  - g. Specific objectives for the site.
  - h. Service area for the site.
  - i. Ecological suitability of the site to achieve the objectives.
  - j. Adequate hydrology (for projects with restoration, creation, and enhancement).
4. Site Specific Mitigation Plans/MUMBI Amendments: Site Specific Mitigation Plans and MUMBI Amendments shall be developed by Sponsor and submitted to the IRT for each Bank Site. To facilitate the processing of Bank Sites from Pre-application through “close out,” procedures have been developed as part of the Rule.
5. Phasing: It is possible that, for unforeseen reasons, though not required or desired, the Bank Sites or portions thereof may be developed in several phases that shall be set forth in the Site Specific Mitigation Plans. Such phasing may be proposed in the Site Mitigation Plan to address potential government funding gaps. Scope and timing of each phase shall be at the discretion of Sponsor, subject to IRT approval. However, if the Sponsor develops mitigation areas in excess of the areas for which design has been approved by the IRT, it does so at its own risk. Credit release for a Bank Site or phases of a Bank Site will be based on the credit release schedule (or as modified in MUMBI Amendment) and achievement of the defined Success Criteria contained in the Site Specific Mitigation Plan for the Bank Site or phase of a Bank Site.

Sponsor’s intent is to limit phasing on Bank Sites to the maximum extent practicable to minimize administrative efforts on behalf of the IRT and Sponsor. However, the parties to this agreement recognize that there may be instances where phasing is appropriate and preferred, such as when phased funding is involved, timing of availability of land from property owners on multiple tracts of land is phased, and when multiple types of mitigation

(wetlands, streams) are included in a Bank Site. Should phasing be used on a Bank Site, each phase will individually be reviewed, tracked, monitored and have its credits released.

6. As-Built Report: Sponsor shall submit an as-built report for each Bank Site or phase of a Bank Site that involves restoration, enhancement, and/or creation to the IRT as soon as practical after completion of the implementation of the site but before credits associated with successful completion of construction are released by the IRT. The intent is to have the contractor complete the work and the Sponsor submit the as-built report as soon as possible. This report will provide information on the final construction to include: erosion and sedimentation control (BMPs), clearing operations, soil salvage and source of imported soil, grading and drainage, woody debris placement, plant material used and quantities, seeding mixes and application methods, plant establishment period and replacements, invasive species and control methods, site hydrology and any remediation measures.
7. Access to Bank Sites: The members of the IRT will be allowed reasonable access to the Property of Bank Sites under control of the Sponsor for the purposes of inspection of the Bank Sites and compliance monitoring of the Site Specific Mitigation Plans. The IRT will notify the Sponsor where possible that such access has been gained on a Bank Site. Any document transferring rights such as to a long-term steward must include the right of access for the IRT.
8. Establishment and Use of Credits: Mitigation credit available from the Umbrella Bank and its component Banking Sites (and phases of Bank Sites as appropriate), and debits incurred by applicable projects' direct, indirect/secondary, and temporary wetland and stream impacts shall be computed using a method accepted by the parties to this agreement if so directed by the IRT and agreed to by the Sponsor. Mitigation, including credits generated and utilized, will be tracked and reported separately for each Bank Site added to the Umbrella Bank (See Appendix A for credit tracking sheet). The necessary worksheets will be completed along with an explanation for the selection of those factors included in the calculations for each component Bank Site to determine credits. For each project that proposes to use the Umbrella Bank for mitigation, an individual assessment shall be computed based on, but not limited to, the most current version of the credit establishment guidance (currently the New England District's Mitigation Guidance dated July 20, 2010) at the time of the 404/401/10, LURC Chapter 10 Land Use Districts and Standards, and DEP Chapter 310 permit applications. On a case-by-case basis, revised criteria for quantifying mitigation and credits/debits, if agreed to by the parties to this agreement, may be incorporated for individual Bank Sites through a MUMBI Amendment.

Sponsor is the only identified user of the mitigation (credits) from the Umbrella Bank. Additionally, currently the Sponsor cannot expend funds to develop Bank Sites that may not be used by the Sponsor. Subsequently, in instances where the Sponsor's planned transportation improvements that were used as the basis for determining mitigation needs in the State have been terminated or the need for mitigation in particular biophysical region has

changed due to unforeseen events (project funding changed, planned transportation project terminated or amended to have no impacts requiring the use of the Umbrella Bank), the review/processing of certain Bank Sites may be terminated.

Should the Sponsor determine it necessary to withdraw an approved Bank Site, or approved phases of a Bank Site, from which credits have not been debited from the Umbrella Bank, Sponsor shall notify the IRT of this need. The proposal to withdraw a Bank Site will be discussed by the IRT. Sponsor shall present information leading up to the decision that a withdrawal is needed. The IRT shall provide the final decision regarding the request. Should credits have been withdrawn from a Bank Site, Sponsor agrees to continue to meet the obligations contained in the Site Specific Mitigation Plan/MUMBI Amendment for that Bank Site area containing the credit used and to develop a proposal for how any used credits that are “lost” as a result of the withdrawal will be replaced.

Due to the expected variability in remedial actions that might be required for individual Bank Sites, specific success criteria shall be developed and submitted for each Bank Site, phase of a Bank Site or component added as part of the Site Specific Mitigation Plan/MUMBI Amendment. Final mitigation credit release from a Bank Site or phase of a Bank Site shall be expected to occur following completion of the appropriate monitoring period and achievement of approved success criteria contained in the Site Specific Mitigation Plan. Monitoring, survival, and morphology goals and schedules shall be developed and submitted per each Site Specific Mitigation Plan. Mitigation credit withdrawals from a Bank Site shall cease once an official “close-out” notification letter from the IRT has been issued.

Based upon the Corps’ guidelines, the Sponsor’s State-Wide Umbrella Mitigation Bank may be an appropriate form of compensation for any projects that require Corps authorization.

It is anticipated by the parties to this agreement that use of mitigation shall be “in-kind” to the greatest extent practicable, for example, non-tidal wetland and stream mitigation will be used to offset non-tidal wetland and stream impacts, respectively.

The objective of this umbrella mitigation bank is to help insure no net loss of wetland function for unavoidable direct, secondary, and temporary impacts to aquatic resources in each service area. Generally, preservation-only bank sites will be used to supplement credits from non-preservation-only bank sites, an in-lieu fee payment, and/or permittee-responsible compensation that results in a gain in wetland functions.

Notwithstanding the above, all decisions concerning the appropriateness of using mitigation from the MUMBI to offset impacts to aquatic resources as well as all decisions concerning the quantity and type of such mitigation to be used to offset impacts to wetland, streams, and other waters as authorized by Department of the Army permits, shall be made by the Corps, pursuant to Section 404 of the Clean Water Act and implementing regulations and guidance

and DEP Chapter 310 of the NRPA, after notice of any proposed use of the Umbrella Bank to the members of the IRT, and consultation with the members of the IRT concerning such use.

9. Schedule of Credit Availability: Upon submittal of all appropriate documentation by the Sponsor and subsequent approval by the Corps, in consultation with the other members of the IRT, it is anticipated that the credits generated by Bank Sites will become available for use by the Sponsor in accordance with the following described Standard Umbrella Bank Credit Release Schedules. The following release schedules are conceptual and subject to modification based on project-specific considerations. It may change based upon the existing site conditions; location; confidence in the project design; risk, etc.:

Schedule for WETLANDS (palustrine and marine) restoration/creation/enhancement

- 15 % upon approval of MUMBI Amendment and recording of easement (No credit will be given for notice of intent to proceed.)
- 30 % upon completion of wetland/stream restoration/enhancement actions, submission of as-built(s), and written acceptance by the IRT
- 35 % released incrementally during monitoring period as milestones for success criteria are met, as described in the Site Specific Plan and agreed to by the IRT
- 20 % when final success criteria are met (after 5 years of monitoring or as otherwise agreed to by IRT, if not released as described above)

Schedule for STREAMS restoration/creation (relocation)/enhancement

- 15 % upon approval of MUMBI Amendment and recording of easement
- 30 % upon completion of wetland/stream restoration/enhancement actions (more flexibility in release because not all work is need for increments, i.e., 10 % for reconstruction of banks, 15 % for reconstruction in stream channel and 10 % for planting), submission of as-built(s), and written acceptance by the IRT.
- 35 % released incrementally during monitoring period as milestones for success criteria are met, as described in the Site Specific Plan and agreed to by the IRT
- 20 % when final success criteria are met (after 5 years of monitoring or as otherwise agreed to by IRT, if not released as described above)

Schedule for WETLANDS/STREAMS preservation

When preservation is one component of a Bank Site with multiple forms of mitigation or when preservation is 100% of the Bank Site.

- 100 % of preservation credits upon recording of the easement or signing of the MUMBI Amendment, whichever is later.

The above schedule applies only to the extent the Sponsor documents acceptable survival and growth of planted vegetation, attainment of acceptable wetland/stream hydrology, and acceptable installation of any proposed watershed BMPs, as described under the success criteria in the monitoring section of the Site Specific Mitigation Plan. The final 20% of credits of a Bank Site will be available for withdrawal only upon a determination by the IRT of functional success as defined in the Site Specific Mitigation Plan. All credit releases are at the determination of the IRT.

Sponsor shall initiate or award a construction contract for activities planned for the physical and biological improvements to a Bank Site pursuant to the Site Specific Mitigation Plan, no later than the end of the first full growing season (as defined in the Site Specific Mitigation Plan) following approval of the Site Specific Mitigation Plan. Sponsor shall use its best effort to expedite award of construction contract and initiate mitigation actions, however, under certain circumstances schedule may need to be amended. These circumstances typically could include but are not limited to:

1. Receipt of bid by Sponsor not conforming to State and Federal Guidelines/Laws.
2. Failure of bonding mechanisms.
3. Failure to receive bids from qualified contractors.

10. Provisions for the Use of the Mitigation Banking Sites: Sponsor shall not:

1. Grant additional easements, right of way, or any other property interest in or to the project areas of a Bank Site without written consent of the Corps, in consultation with the IRT.
2. Use or authorize the areas within the Umbrella Bank for any purpose that interferes with its conservation purposes other than those specified in the Site Specific Mitigation Plan, Deed, and/or Easement governing the use of each Bank Site.

**C. Maintenance/Monitoring of Bank Sites**

1. Monitoring: Sponsor agrees to perform all necessary work to monitor the Bank Sites (and if appropriate, phases of Bank Sites) and to demonstrate compliance with the Success Criteria established in this MUMBI and the Site Specific Mitigation Plan(s)/MUMBI Amendments. Monitoring goals and schedules, based on the monitoring criteria outlined in the New England District of the Corps' Mitigation Guidance or other methods as agreed to by the IRT at the time the Site Specific Mitigation Plan was developed, shall be developed and submitted for each MUMBI Amendment to the Umbrella Bank. Monitoring procedures, duration, reporting criteria, report development and scope are included in more detail in Appendix C.



2. Long-term Management: Sponsor shall implement the long-term management measures described in the Site Specific Mitigation Plan for each Bank Site.

At the end of the active monitoring period for each Bank Site, Sponsor reserves the right to transfer the easements for the Bank Site lands to a third party (if available and approved by the IRT). Subsequently, this entity shall be responsible for managing the lands in perpetuity. If appropriate to ensure protection and/or management in perpetuity, an endowment to the long-term steward may be required of the Sponsor.

3. Assurance of Success: Sponsor is responsible for assuring, as outlined in the current Corps Regulations and Guidance, the success of the restoration, creation, enhancement and preservation activities at the Bank Sites, and for the overall operation and management of the Umbrella Bank. Should a Bank Site or phase of a Bank Site be transferred to a land trust, non-profit with a conservation mission, or agency with a conservation mission, the organization will be required to assure the success of the Bank Site or phase of the Bank Site per this agreement, with the mechanism of assurance to be determined by the IRT. Financial assurances, other than documentation of adequate funding within the agency, to cover construction, monitoring, and remediation are not typically required, nor anticipated to be required for typical Bank Sites, for the Umbrella Bank MUMBI. However, the need for type of and amount of financial assurance required for an individual Bank Site meeting the unique criteria will be evaluated on a case-by-case basis per the Guidance and incorporated into the Bank Site MUMBI Amendment/Site Specific Mitigation Plan. It will be the responsibility of the Sponsor to secure needed bank site funding through the state biennial work plan to cover all real estate acquisition, preliminary engineering, construction, construction engineering, post-construction monitoring, site remediation, long-term monitoring and potential stewardship costs.
4. Maintenance Provisions: Sponsor agrees to perform all necessary work in accordance with the provisions of the MUMBI and approved Site Specific Mitigation Plans/MUMBI Amendments, to establish and maintain the Bank Sites until (i) credits have been exhausted or banking activity is voluntarily terminated with written notice by the Sponsor provided to the Corps and other members of the IRT; and (ii) it has been determined and agreed upon by the IRT that the debited Bank Site has satisfied all the conditions herein and in the Site Specific Mitigation Plans. Should the conditions described above be met based on Corps and the IRT review (after all comments received from the IRT members), the Corps shall issue a “close-out” letter to the Sponsor for a Bank Site or phase of a Bank Site. Upon receipt of the “close-out” letter, Sponsor will update the accounting ledger to reflect the new status. Following close-out, the Sponsor or an approved third party will conduct annual inspections to ensure performance standards continue to be met. If not, Sponsor or the third party will address site specific problems and remediate after coordination with the IRT and approval from the Corps . During the year following remedial efforts, bi-annual inspections of remediation sites will be implemented to ensure compliance, with reports provided to the IRT for review and approval by the Corps.

5. Accounting Procedures: Sponsor shall track mitigation credits and debits according to the current version of the New England District of the Corps' Mitigation Guidance, annually reporting the Umbrella Bank status to the IRT, as set forth in the Maintenance/Monitoring of Bank Sites (Section III, C, 1) of this MUMBI. Such tracking will include debits resulting from authorized impacts from permitted projects which were compensated for using an Umbrella Bank site, and any mitigation credits accrued when success criteria are met as specified in the MUMBI. A ledger for tracking debits, available credits, and permitted projects will be submitted to the Corps and the IRT. Sponsor shall use its best effort to submit the updated ledger within 60-days of an approved Umbrella Bank transaction. A copy of a sample accounting ledger/tracking format is included as Appendix A.

All reports/ledgers shall identify mitigation debited by type for a particular project/permit (e.g., wetland, stream), and shall identify acres/linear feet, or other units of measure established for an individual Bank Site, as well as the cumulative total of debits used and remaining credits by type. All reports/ledgers shall include, for each reported debit, the Corps Permit ID number for which the mitigation was used.

6. Contingency and Remedial Plans: Contingency and remedial plans, consistent with those outlined in the most recent Guidance or future published revisions as appropriate, shall be developed for each Bank Site. These plans will be included in the Site Specific Mitigation Plans. These plans shall establish the groundwork by which the Sponsor will proceed to correct deficiencies identified on a given Bank Site, as appropriate. In that remedial actions cannot be determined at this time or at the time of the preparation of the Site Specific Mitigation Plan, Sponsor retains the right to propose and use amended remedial action plans, as appropriate, upon identification of remedial needs in the future after review by the IRT and approval by the Corps.

The Corps shall review the annual monitoring reports and may at any time, after consultation with the Sponsor and the IRT, direct the Sponsor to take remedial action at a Bank Site. Remedial action required by the Corps shall be designed to achieve the performance criteria specified above. Sponsor shall use its best effort to initiate the implementation of remedial actions at the first appropriate opportunity (for example, supplemental plantings will be completed during the first appropriate season).

In the event the Sponsor determines that remedial action may be necessary to achieve the required performance criteria at a Bank Site, it shall provide notice of such proposed remedial action to the Corps for distribution to all members of the IRT. No remedial actions shall be taken by the Sponsor, prior to the concurrence of the Corps in consultation with the IRT. Once a need for "major" remedial action is identified by the Sponsor and the IRT, the IRT will respond within 60 days on the plans proposed for remedial actions. "Major" shall be defined as a remedial action that could alter the goals of the Bank Site or require IRT concurrence on the affect the action may have on credits released to date. Should the Sponsor

identify “minor” actions required that would not alter goals set forth in the Site Specific Mitigation Plan (herbicide treatment, invasive species removal, supplemental plantings, etc.), Sponsor shall conduct the work as needed and notify the IRT of the need for the remediation after the action is completed, such as in an annual monitoring report. It is understood that “emergency” remedial actions will be responded to with “urgency” by the parties to this agreement.

Sponsor may determine that adaptive management may be appropriate for individual Bank Sites. Sponsor shall notify the IRT on a case-by-case basis of this potential need. Sponsor and the IRT will discuss the merits of a proposal for adaptive management on a specific site at the next available meeting of the agencies. An adaptive management program will only be carried out by the Sponsor after review by the IRT and approval by the Corps.

7. **Default:** Should the IRT determine that the Sponsor is in material default of any provision of this Agreement, the IRT, acting through the Corps, may notify the Sponsor that the use of any credits will be suspended until the appropriate deficiencies have been remedied. Upon notice of such suspension, Sponsor agrees to immediately cease the transfers of mitigation credits until the IRT informs the Sponsor that transfers may be resumed. Should Sponsor remain in default, the IRT, acting through the Corps, may terminate the MUMBI and any subsequent bank operations. Upon termination, Sponsor agrees to perform and fulfill all obligations under this agreement relating to credits that were transferred prior to termination.

8. **Bank Closure:** Once all the bank credits are debited from a bank site, the Sponsor will notify the Corps and the IRT of its intentions to close the site. The Sponsor will contact the long-term steward, where applicable, and arrange for property title transfer. The protection mechanisms outlined in the bank site’s conservation easement shall remain with the site in perpetuity.

#### **D. Role of the IRT**

1. **Oversight:** In coordination with the Corps, the agencies represented on the IRT agree to provide appropriate oversight in carrying out the provisions of this MUMBI.
2. **Best Efforts:** In coordination with the Corps, the agencies represented on the IRT agree to use their best efforts to review and provide comments on all Pre-application Prospecti, Site Specific Mitigation Plans, monitoring reports, success criteria, credit review reports, and remedial action plans for the Umbrella Bank and Bank Sites within 60 days.
3. **Compliance Inspections:** For each Bank Site, the Corps, in coordination with the IRT and Sponsor (as appropriate), may conduct compliance inspections to verify credits available in the Bank Site and recommend corrective measures (if any) within 60 days of inspection until the terms and conditions of the Site Specific Mitigation Plan/MUMBI Amendment have been determined to be fully satisfied or until all credits have been debited, whichever is later.

4. Other Inspections: In coordination with the long-term steward, inspections may continue to be made by the Sponsor, Corps, and IRT members after the site is “closed”.

#### **E. Miscellaneous**

1. Validity: This MUMBI shall become valid on the date of the last signatory’s signature on the accompanying concurrence memo/letter. This MUMBI may be amended or modified with the written approval of all signatory parties.
2. Dispute Resolution: Should the Sponsor and IRT have any disputes pertaining to the MUMBI and the bank sites contained within, the parties agree to resolve such disputes as follows: (1) reach consensus per the Guidance or (2) avail itself of other remedies that become appropriate in the future through published Corps guidelines (as an example, should the Corps permit appeals process allow for mitigation banks to use this process in the future).
3. Participation Termination: Any agency participant may terminate its participation in the IRT with notice in writing, through the Corps, to all other parties to this agreement. Termination shall be effective fourteen (14) days from placing said notices in the United States mail. Member withdrawal shall not affect any prior issuance of credits and all remaining parties shall continue to implement and enforce the terms of this MUMBI and MUMBI Amendments and Site Specific Mitigation Plans associated with Bank Sites. Except for termination as described above, this agreement may be modified only with the written agreement, through the Corps, of all remaining parties to this agreement at the time of the modification.
4. Force Majeure/Delays: Any delay or failure of the Sponsor shall not constitute a default hereunder if and to the extent that such delay or failure is primarily caused by any act, event, or conditions beyond the Sponsor’s reasonable control and significantly adversely affects its ability to perform its obligations hereunder including: (i) natural events such as; lightning, earthquake, fire, landslide, drought, hurricane, storm, or flood; (ii) condemnation or other taking by any governmental body; (iii) change in applicable law, regulation, rule, ordinance or permit condition, or the interpretation or enforcement thereof; (iv) any order, judgment, action or determination of any federal, state or local court, administrative agency or government body; or (v) the suspension or interruption of any permit, license, consent, authorization or approval. If the performance of the Sponsor is affected by any such event, the Sponsor shall give written notice thereof to the IRT as soon as is reasonably practicable. If such event affects a Bank Site and occurs before the final availability and use of all credits, Sponsor shall take remedial action (Contingency and Remedial Plans Section III, C, 7) to restore the property to its reasonably appropriate and expected condition prior to such issuance of further credit, in a manner sufficient to provide adequate mitigation to cover credits that were issued prior to such delay or failure to compensate for impacts to waters, including wetlands, authorized by Department of the Army permits. Such remedial action shall be taken by Sponsor only to the extent necessary and appropriate, as determined by the IRT. Should such actions be unable to replace any lost functions, they must be replaced in

some other manner to be proposed by Sponsor (e.g., use of ME ILF program, use of another site) and approved by the IRT. Such actions are only necessary if the Bank Site has not received official notification from the Corps that the Bank Site has been “closed-out”.

5. Third Party Beneficiary: No third party shall be deemed a beneficiary hereof and no one except the signatories hereof, their successors and assigns, shall be entitled to seek enforcement hereof.
6. Entire Agreement: This MUMBI constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all prior agreements or undertakings, excepting Mitigation Banking Instruments or other permit actions currently in place which Sponsor has signed and is implementing the Site Specific Mitigation Plan or Mitigation Plans for pursuant to Section 404 and DEP Chapter 310 permits that have been approved by the IRT.
7. Specific Language Controlling: In the event any one or more of the provisions contained in this MUMBI are held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provisions hereof, and this MUMBI shall be construed as if such invalid, illegal, or unenforceable provision had not been contained herein.
8. Governing Laws: This MUMBI shall be governed by and construed in accordance with the laws of the State of Maine and the United States of America as appropriate.
9. One Agreement: This MUMBI may be executed by the parties in any combination, in one or more counterparts, all of which together shall constitute but one and the same instrument/agreement.
10. Binding Terms and Conditions: The terms and conditions of this MUMBI shall be binding upon, and inure to the benefit of the parties hereto and their respective successors/assigns.
11. Amendments: This MUMBI can be amended in the future to reflect changes in regulatory programs, Sponsor needs, or IRT requirements. Amendments must be mutually agreed upon by Sponsor and the IRT. Amendments to the MUMBI must follow the guidelines for amending the MUMBI attached as Appendix B of this document.
12. Assigns: This agreement can be assigned to another party subject to approval by the New England District of the Corps, in consultation with the IRT, and Sponsor. Any future assignee of the Umbrella Bank or a Bank Site shall be subject to the terms and conditions of this agreement and shall be subject to the New England District of the Corps’ Mitigation Guidance. Assignee will be responsible for adherence to all aspects of this agreement and the Corps Guidance.

13. Re-evaluation: Due to the anticipated longevity of the Umbrella Bank, the Sponsor and the IRT agree to re-evaluate this MUMBI and its effectiveness in meeting the parties' mutual objectives of streamlining the Sponsor's mitigation process and developing environmentally favorable mitigation Bank Sites. The re-evaluation shall be conducted only after the process of preparing MUMBI Amendments/Site Specific Mitigation Plans on several Bank Sites has been completed. Any member of the IRT or the Sponsor can request the re-evaluation be initiated, but both parties must agree to the appropriateness of the timing of the re-evaluation (refer to Appendix B for the re-evaluation schedule).

Amendments to the MUMBI must be agreed to by all the parties to this agreement through signature. Should the MUMBI be amended or terminated after the re-evaluation, the Sponsor and the IRT shall continue to be responsible for honoring commitments made to date with respect to the Umbrella Bank and any approved on-going Bank Sites (MUMBI Amendments/Site Specific Mitigation Plans).

Site Specific Mitigation Plans and MUMBI Amendments shall conform to the agency standards or guidelines in place at the time of submission of individual Bank Site documents. This also applies to additional phases or expansions to previously approved Bank Sites.

14. Communications/Contacts: All notices and required reports, except as otherwise noted in the MUMBI, shall be sent to each of the parties (via the Points of Contact) at their respective addresses, provided on page 31 and 32 (should a Point of Contact change, written notice providing the new Point of Contact shall be provided to the IRT Chair).

## SECTION 2 - SEARS ISLAND BANK SITE:

### Objective

The Sears Island bank site is composed of a large, uninhabited preservation area (500.8 acres) (See Appendix C – Survey Map) making up the eastern and southern portions of the 918 acre island. This bank site will provide mitigation credit for transportation related projects in the Penobscot Bay Coast Subsection Biophysical Region. This 500.8 acre site is preserved through a conservation easement with the Maine Coast Heritage Trust (MCHT).

On the Survey Map (see survey plan in Appendix C) there is the designated Education and Maintenance Center Parcel. This subdivided parcel is dedicated for the use and development of an educational and maintenance facility for the island. This area, composed of 98 acres, is not currently considered part of this submission. However, this site may be included in a future submission for inclusion under the umbrella bank once this area is built out and it is determined that there are important aquatic functions to be gained from a new Bank Site in this location . The Protected Property area adjacent to the Transportation Parcel shall have a higher ratio of mitigation credit due to potential future development on the Transportation Parcel. Such development would likely lead to a degradation of aquatic functions on the Protected Property, particularly wildlife habitat functions. There will be a 50:1 credit ratio for the first 50’ from the bank’s boundary with the Transportation Parcel and a 30:1 ratio for the area between 50’ and 250’. This information is listed in Table 1 and delineated on the Survey Map, along with the area square footage and wetland credit calculation.

The remaining 500.8 preservation acres, consisting of the land outside the Education and Maintenance Center Parcel, the Stetson Hill Road and unimproved gravel road footprint and the communication tower, will be immediately available for credit use upon the signing of this MUMBI. See wetland type; acreage; functions; proposed ratios; credit and cover type and proposed credit in Table 1.

Wetland Type	Acreage	Functions & Values	Proposed Credit Ratio	Credit Type	Cover Type	Proposed Credit (acres)
PFO	62	WH, GWD, SS, NR, AQ	15:1	Preservation	HW	4.13
PEM	2	WH, GWD, SS, AQ	15:1	Preservation	OF	0.13
PSS	56	WH, GWD, SS, NR, AQ	15:1	Preservation	SW	3.7
Intertidal	6	WH, AQ, SH	15:1	Preservation	SM/IF	0.43

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Upland	315	WH, GWD, SS	15:1	Preservation	HW/M X	21.0
Upland	12	WH, GWD, SS	50:1	Preservation	HW/M X	0.24
Upland	47.8	WH, GWD, SS	30:1	Preservation	HW/M X	1.59
TOTALS	500.8					31.22

**Table 1:** Wetland Type, Acreage, Functions, Proposed Credit Ratios, Credit Type, Cover Type and Credits Available

**Key: Wetland Type:** PFO – Palustrine Forested Wetland; PEM – Palustrine Emergent Wetland; PSS – Palustrine Scrub Shrub;

**Key: Functions & Values:** groundwater discharge (GWD); floodflow alteration (FF); fish & shellfish habitat (SH); sediment toxicant retention (STR); nutrient removal (NR); production export (PE); sediment/shoreline stabilization (SS); wildlife habitat (WH); recreation (R); education/scientific value (ESV); uniqueness/heritage (UH); and visual quality/aesthetics (AQ).

**Key: Cover Type:** HW – Hardwood; OF – Open field; SW – Scrub wetland; SM – Salt marsh; IF – Intertidal flats; MX – Mixed wood.

The variety of wetland types and functions with the intermixing of forested wetlands and uplands abutting coastal wetland types provides a unique habitat richness. In addition, the Protected Property has 6 acres of intertidal and salt marsh areas consisting of hard and soft substrate areas supporting 29 species of marine fauna, while soft substrate areas support 114 species, including mollusks, bivalves, and marine worms. Although not part of the bank site, the abutting subtidal areas along this shoreline are colonized primarily by mussel beds and red algae, with occasional occurrences of kelp and sea urchins. A baseline report developed by Maine Coast Heritage Trust in 2009 for the 598.8 acre preservation area (which includes the proposed 500.8 acre Bank Site) is included in Appendix D.

## Site Selection

### Local and Regional Context

Mitigation bank sites are ideally selected based upon the needs identified in a watershed assessment. In the State of Maine there has been only two watershed plans developed for major drainages, that being the Sunday River and the Casco Bay Estuary. All other drainage studies have concentrated on small urban impaired tributaries in larger watersheds in southwestern Maine. Given the lack of an available watershed plan for the Penobscot River, the department has reached out to federal and state resource agencies to identify watershed needs based upon local land use practices, field observations and local knowledge.

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One project in particular, the Penobscot River Restoration Project, is underway that will contribute to the restoration of 11 species of sea-run fish to the watershed. This unprecedented collaboration between hydropower companies, the Penobscot Indian Nation, six conservation groups, and state and federal agencies are working together to revive not only native fisheries but social, cultural and economic traditions of New England's second largest river. This effort is ongoing and will likely foster additional watershed-based studies and initiatives to restore, enhance, and preserve fragile and high value ecosystems like Sears Island in the Penobscot River watershed.

The importance of Sears Island in regards to the Lower Penobscot River Watershed includes a number of natural resource elements that are quickly disappearing with the advent of rapid land speculation and development in the Penobscot Bay Coast Subsection. These resources include undeveloped marine and freshwater shoreline, coastal habitat connectivity and public access to the bay. Penobscot Bay is aptly named "The Jewel of the Maine Coast". The region provides exemplary four-season outdoor recreation to visitors and residents making it an extremely popular destination for all age groups. With this popularity comes the increase of human development pressures on all the coastal towns around the Bay. This situation was highlighted in a 2005 report by the U.S. Forest Service that found the lower Penobscot River region was the most threatened by development in the eastern U.S., with over 300,000 acres of privately owned forest predicted to be converted to residential housing in the next 25 years, more than any other watershed in the study. This study did not specifically target coastal property where development pressures far exceed that of inland areas making the uninhabited Sears Island a rare and unique natural resource in the watershed. Sears Island is the largest undeveloped island on the east coast of the continental United States is, in itself, remarkable. The ecological functions that this island contributes to the watershed are vast given it's location at the mouth of the Penobscot River.

Sears Island's regional context (upper Penobscot Bay) is an area characterized by a varied shoreline that includes rocky shores, cobble beaches, headlands, broad mudflats and small pockets of salt marsh. This variety is represented in total on the Sears Island shoreline, where steep escarpments dominate along the exposed southern tip and mid-section of the island, grading to increasingly broad flats with associated salt marsh in the protected coves to the north. This pattern is characteristic of peninsulas and islands in the upper bay, the nearest example of which is Cape Jellison, located less than one mile to the east. Mainland areas that appear to provide a similar range of wildlife habitat types, as indicated by geographic location, soils, topography, land cover and other regional data, include Verona Island, Bowden Point in the Town of Prospect, the Castine peninsula and Cape Rosier. Sears Island may differ from these areas not so much in its wildlife species richness or assemblage of natural communities as in its lack of human inhabitants at the present time. Because Sears Island is essentially undeveloped, the relative abundance of terrestrial wildlife is greater than that found in other coastal areas with more development. The similarity of plant and wildlife communities on Sears Island to those of nearby mainland areas is due to its historical connection to the mainland (by way of a sand bar

prior to the 1989 construction of a 2-lane road and adjacent area for a potential future rail line), geographic location and similar land use, including a long history of agriculture and logging.

Regional wildlife data indicates that many areas in Penobscot Bay support concentrations of wildlife that require marine and estuarine habitat (Fefer and Schettig 1980). Most of the waters adjacent to Sears Island were rated as Class B wildlife concentration areas (of regional significance) by MDIF&W (Woodard *et al.* 1987). Stockton Harbor is rated as a Class A (national significance) wildlife area by MDIF&W. Regionally, fifty percent of the designated shoreline habitats in Penobscot Bay are rated Class A or Class B by MDIF&W. Inner Stockton Harbor is the closest of 71 shorebird feeding and roosting areas identified in the Penobscot Bay region (Woodard *et al.* 1987). Maps included in Fefer and Schettig (1980) identified tidal flats for waterfowl in the upper reaches of Stockton Harbor and Long Cove as well as along the Sears Island causeway.

The Penobscot River Watershed drains nearly one-quarter of the State of Maine (23,180 km<sup>2</sup>). The River's estuary stretches 40 km, from the fall line at present-day Bangor, to Penobscot Bay. Within the region, shorelands are at greatest risk of development due to ready access and high amenity values. In the June 2010 edition of *DownEast* magazine the real estate section advertised 62 coastal properties or land in the towns adjacent to Penobscot Bay. This region hosted 45% of the real estate listings in the magazine. Over the past 5 years in Camden and Rockport, on the western side of Penobscot Bay, these towns have issued 386 new housing starts in a 43 square mile area. Of these, 10% were designated as seasonal structures. With this active and on-going development in this region, the preservation of two thirds of Sears Island is a land stewardship opportunity of great importance to the watershed and eco-region with the advent of quickly diminishing coastal habitats around Penobscot Bay.

### **Contribution to Biodiversity**

A site evaluation reveals a variety and interspersed of habitat types related directly to biodiversity at the ecosystem and community levels. For this evaluation, "habitats" are considered equivalent to broadly-defined "communities" that include an assemblage of interacting plants and animals and their common environment. Ecosystems are, in turn, groups of communities and their environment, held together by physical and biotic connections. An example of an ecosystem under this definition is the Intertidal River Ecosystem, which may include a variety of communities such as freshwater tidal marsh, brackish tidal marsh, high salt marsh, low salt marsh and subtidal estuary.

One community that is known to occur on the Sears Island Site and is classified as less common by the Maine Natural Areas Program (MNAP) is the island's vernal pools.

Vernal pools, as defined by MNAP, are classified as SU (possibly in peril in Maine but status uncertain). Sites on Sears Island that meet MNAP vernal pool definitions include naturally occurring and human intervention sites from past land use practices. All of the amphibian species

known to breed on Sears Island, including those that require vernal pool habitat, are described as common to abundant and widely distributed in Maine (Hunter *et al.* 1992). Concern for vernal pools in Maine stems from their vulnerability to local eradication coupled with their importance to a unique assemblage of species (MDIFW 1993). The intense development pressures on the coastal habitats in the Penobscot River watershed make the protection of existing vernal pools and associated upland forest habitat on the island a preservation priority.

The occurrence of state and federally-listed species adds to the overall diversity of wildlife and plant species on Sears Island. The study area does not contain Federal Critical Habitat or state Essential Habitat for endangered species. The state-listed eastern ribbon snake (Special Concern) was documented on Sears Island in 1977. Sears Island is in the range of the Gulf of Maine Distinct Population Segment of endangered Atlantic salmon, as designated by NOAA and USFWS; Atlantic salmon occur in marine waters around Sears Island but not in streams on the island. The coastal waters around Sears Island are also in the known range for the endangered short-nosed sturgeon. There is an existing, but abandoned, bald eagle nest in the SE quadrant; bald eagles and their nests are protected under the Bald & Golden Eagle Protection Act. Additional residents such as the southern bog lemming and rare sedge species contribute to local biodiversity. The importance of the contribution made by these resident species to the larger scale of biodiversity is directly relational to rare sightings of these species elsewhere in the Penobscot Bay Coast Subsection.

### **Habitat Assessment Summary**

Sears Island and Kidder Point, which serves as the island's access to the mainland, have a long history of intensive land use. While there is little to no human activity now versus in the past, the former owners harvested mature timber and practiced active agricultural farming, including livestock, row crops, apple orchards and haying. Since farming was abandoned in the 1930's, forests have reclaimed many of the old fields. Currently, forest, scrub-shrub (both upland and wetland), and meadow predominate on the island. Coastal wetland, rocky shore, mixed flats and deepwater habitat are located around the island's perimeter. Eelgrass beds have been mapped along the island's west shore and have been observed along the eastern shore although not mapped.

Sears Island is currently an early successional community with second growth forest, forested and scrub-shrub wetlands and coastal marine communities. The island provides terrestrial habitat for a variety of birds, mammals, reptiles and amphibians. The Sears Island shoreline, the causeway area, Long Cove and Stockton Harbor are identified as important coastal wildlife areas by state resource agencies. In a number of studies conducted on the island during the early 1990's the greatest concentration of coastal wildlife were observed in the coves and undisturbed wetland areas around the causeway and inner Stockton Harbor.

The island's habitats and wildlife values are characteristic of the second-growth forests, abandoned farmland and protected coastal waters found in the upper Penobscot Bay region.

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Current ecosystem and community diversity reflect the island’s long history of agriculture and forestry. The abundance and diversity of wildlife species reflects the varied communities of the study area. The island’s proximity and connection to the mainland results in a wildlife community similar to that which would be expected in similar mainland habitats in this part of Maine’s coast, although terrestrial wildlife abundance is greater than in coastal areas that are more developed. Sears Island appears to differ from other areas in the upper bay not so much in richness or habitat types and wildlife species as in lack of human habitation. The preservation of two thirds of the island will ensure these habitats and species will continue to thrive as more human development encroaches and landscape/habitat fragmentation dominates the upper Penobscot Bay region. Undoubtedly, this site will become more valuable as human settlement patterns continue to rapidly populate the coastal areas in and around Penobscot Bay.

### Site Selection Criteria

The umbrella bank site selection criteria are rated based upon how well the proposed site meets the listed criteria. The Sears Island site successfully meets the majority of these selection criteria. See Table 2 - Site Selection Criteria below.

TABLE 2: Site Selection Criteria	Evaluation Results
Mitigation site has excellent potential for wetland restoration, enhancement, and/or creation.	The site is made up of upland and wetland preservation only so does not meet this criterion
For preservation parcels, the site is under threat from degradation in the next 20 years and contains both aquatic resources and healthy upland buffers.	Prior to MaineDOT acquisition, the future use of the island was considered for a nuclear power plant, coal fire plant, a vacation resort and a residential subdivision. There is intense development pressure on lands abutting Penobscot Bay.
Project replaces or protects those wetland types lost in the biophysical region.	The variety of wetland and upland types on the island provide excellent resource match for likely impacts in the Penobscot Biophysical Region.
Mitigation parcel is connected to or in close proximity to protected lands held by a stewardship organization in the interest of maintaining and preserving habitat connectivity.	This site is not connected to other protected lands because it is an island. The criterion is not applicable in this situation.
Mitigation site is in a Maine Beginning with Habitat (BwH) Focus Area or State Wildlife Action Plan (SWAP) Focus Area, has high or unique natural resource value, and/or protects a drinking water supply.	Sears Island is the largest uninhabited island on the east coast of the United States. The MNAP designated dune grassland on the north end of the island is considered an imperiled natural community. The island is not mapped in a BwH or SWAP focus area.
Site supports regional conservation initiatives, including priorities of NGO's and local land trusts.	MCHT holds a CE on the protected property. The NGO - Friends of Sears Island (FOSI) has conducted a biological assessment of the protected property documenting natural resource communities. They are actively working on trail maintenance and policing public access/use.
Mitigation site is feasible regarding ease of acquisition, construction, cost, achieving success, and meeting regulatory bank requirements.	The site selection work has been completed. With the deposit of this site in the MUMBI the bank deposit requirements will be met. On-going site maintenance and management will continue with help from MCHT, FOSI and the MaineDOT.
Site provides a wide selection of wetland types and related functions and values, including habitat diversity.	Yes. See Table 1 for details.
Project has local support from municipalities, residents, and abutters.	The CE and banking arrangement on the protected property was successfully negotiated and accomplished through a series of public outreach meetings and forums in Searsport.

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Parcel will be protected with an easement and/or ownership and a long-term stewardship fund.	Yes. See Long-Term Protection and Long-Term Management Sections.
Site is ecologically sustainable – compatible with current and future adjacent land uses.	The protected property is sustainable through state ownership and the CE with MCHT oversight. IRT approved buffers have been designated along the Transportation Parcel border.

## Baseline Information

See complete baseline report developed by MCHT in Appendix D.

## Long-Term Protection

The Sears Island site is held under a Conservation Easement with Maine Coast Heritage Trust. The Maine Department of Environmental Protection (MDEP) is named the third party enforcer. See Conservation Easement in Appendix E. See Long Term Management Section for details regarding management and long term sustainability of the resources. See Financial Assurance Section for funding mechanisms.

## Determination of Credits

The Sponsor is proposing a deposit of 33.22 acres of preservation credit not including the Education & Maintenance Center Parcel, communication tower, the Stetson Hill Road and unimproved gravel road footprint (using the Corps recommended 15:1 ratio for preservation except as described above).

See Table 1: Wetland Type, Acreage, Functions, Proposed Credit Ratios, Credit Type and Credits Available.

## 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 projects requiring mitigation in the Penobscot Bay Coast Subsection (See Appendix F for Ecoregion Map and location of the Penobscot Bay Coast Subsection).

## Credit Release Schedule

The proposed schedule for credit release is:

**Preservation** credit release:

100 % upon signing of this MUMBI by all signatories.

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## **Schedule**

The Sears Island site is composed of entirely preservation credit with no engineering/construction/monitoring required. Therefore there is no work plan or schedule for this site.

## **Mitigation Work Plan**

The Conservation Easement with MCHT on the Protected Property was signed and filed at the Waldo County Registry on January 22, 2009. Because this site includes only preservation credit there is no formal work plan for completing preliminary engineering, construction or post-construction monitoring.

## **Performance Standards**

Because this site includes only preservation credit, no performance standards are identified. Site will be maintained according to the plan outlined in the Long Term Management Section and the MCHT Conservation Easement.

## **Monitoring Plan**

Preservation credit will not be monitored but maintained under the Long Term Management Plan. See Long Term Management Section.

## **Long Term Management**

Sponsor will be responsible for managing the preservation mitigation site on Sears Island until there is no longer a credit balance. There is a Conservation Easement held by the Maine Coast Heritage Trust (MCHT) which will take over future long term management for the entire parcel once credits are used. It is the general intent of this Conservation Easement to assure that the Protected Property will be retained forever in its substantially undeveloped, open and natural condition, consistent with the terms of this Conservation Easement and to prevent any use of the Protected Property that will impair or interfere with these conditions. The Sponsor and MCHT intend that this Conservation Easement will limit, in perpetuity, the uses of the Protected Property to activities which are compatible with these purposes and the protection of wetlands and aquatic resources, upland resources, wildlife habitat and preservation of its open space, natural values and its scenic character when viewed from the Public Vantage Points. The easement provides for the establishment of a Sears Island Management Advisory Council whose role is to establish land management and maintenance responsibilities and review proposed third party land use options and permit/deny such uses. These uses shall be compatible with the protection of wetlands and aquatic resources and upland resources associated with the bank site. Membership will consist of representatives from MCHT, Town of Searsport, Town of Stockton Springs, Maine Department of Environmental Protection, Maine Department of Conservation, Coastal Mountains Land Trust,

August 2011

Friends of Sears Island and Maine DOT. Refer to this Conservation Easement in Appendix E for specific uses, restrictions and reserved rights.

MCHT determines the long-term stewardship and enforcement expenses of each easement transaction and secures the dedicated or operating funds to cover current and future expenses. If funds are not secured at or before the completion of the transaction, the land trust has a plan to secure these funds and has a policy committing funds to this purpose. Currently, MCHT maintains a pooled stewardship fund that, as of September 30, 2009, was valued at \$11,305,000. This fund can be used for any stewardship expenses related to easements and fee properties, including staff salaries, management expenses, staff training, legal expenses such as drafting amendments, reviewing possible violations. In addition, MCHT has created a Legal Defense Fund that is in addition to and separate from our stewardship fund. It is currently maintained at \$250,000.

The Sponsor's management costs will be met with biennial Work Plan funding for the Environmental Office's Mitigation Banking Program. Funding will be determined based on number of bank sites and their project phase and the number of new and/or proposed sites. Under the current Work Plan (2010-11) the ENV Office has secured \$800,000 for statewide Mitigation Banking, \$50,000 for mitigation site remediation and \$40,000 for mitigation site property management.

### **Contingency and Remedial Plans**

A contingency and remedial plan will not be required for the preservation credit bank deposit for Sears Island. The Conservation Easement held by MCHT provides for the control and removal of invasive species whether or not wetland function is impacted.

### **Financial Assurances**

Sponsor has allocated \$250,000 for FY 2010 – 2011 to cover all costs associated with maintaining and meeting the conditions of the Conservation Easement. This funding may be used for maintaining existing "Natural Area" uses, restrictions and reserved rights as defined in the easement. This will involve controlling structures, surface alterations, vegetation management, securing public access, maintaining marked boundaries, and any required procedures needed to comply with the conservation easement. Vegetation management may involve cutting and trimming, but not the removal of, dead and dying plants unless they pose a safety or disease hazard. Diseased plants or controlling invasive species shall include the removal and appropriate disposal of the vegetation. For additional information on funding uses see Conservation Easement; Natural Area Uses, Restrictions and Reserved Rights; pages 10-14.

Allocation of transportation revenues is directed by the Maine Revised Statutes, The Appropriations Act, Maine Sensible Transportation Act of 2000, Federal Laws and Regulations and the Maine Legislature's Transportation Committee. 23 M.R.S.A. @ 1651 et seq governs the approved uses of Maine's General Highway Fund, which includes the apportionment and expenditure of funds, "for the improvement, construction and maintenance of

August 2011

highway and bridges” and for “administration of office and duties of the department.” The Environmental Office receives an annual allocation from this fund to administer and operate its programs which include wetland and stream banking, design, construction, monitoring, reporting and remediation. The Sponsor commits to maintaining an annual appropriation to address financial needs and assurances with respect to bank site development.

### **Maintenance Provision**

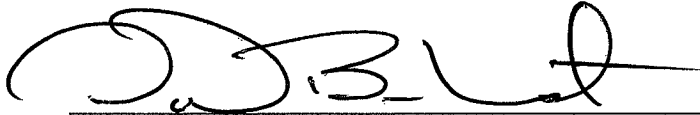
Sponsor agrees to perform all necessary work in accordance with the provisions of the MUMBI and approved Site Specific Mitigation Plan/MUMBI Amendments, to establish and maintain the Sears Island preservation bank until credits have been exhausted or banking activity is voluntarily terminated with written notice by the Sponsor provided to the Corps and other members of the IRT. After all the bank credits are used, the maintenance responsibility of the Protected Property will be decided by the members of the Sears Island Management Advisory Council. See Long Term Management for the roles and responsibilities of this Council. Long-term (past 10 years) maintenance requirements will be determined on a site-specific basis and reviewed with the IRT for approval before implementation. However, any such activities shall be the responsibility of the Sponsor or another entity approved by the Sponsor as the Long-Term Steward. The Sponsor maintains an annual appropriation to provide a funding source (see Section IV D (1)) for any significant repairs necessitated by natural disasters or other catastrophic events as defined in paragraph E below that the Sponsor or another entity approved by the Sponsor as the Long-Term Steward, must address.

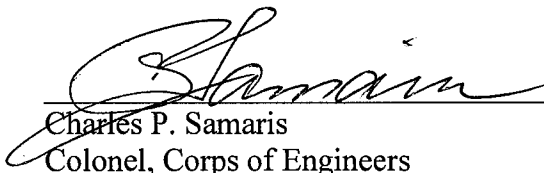
### **Restricted Uses**

It is the intention of the Conservation Easement (CE) that the bank area be used as conservation land for low impact outdoor recreation, nature observation and study, and the uses and improvements within the area be limited to the extent necessary or appropriate to preserve its natural and undeveloped character including preserving its wildlife habitat and natural scenic values, as well as to buffer the shoreline and important conservation values of the property from the impacts of permitted development and uses within the property’s Education and Maintenance Center Area and from the transportation facilities that may be located on the excluded Transportation Parcel. Restrictions include: no structures, temporary or permanent, may be located or constructed on the bank property; no surface alterations on the bank parcel shall be permitted; specifically identified vegetation management will be allowed in coordination with IRT-approved plans. This will include no commercial activities, wind towers or geothermal resource development on the bank property. For detailed restrictive uses see Appendix E – Sears Island Conservation Easement pages 10-14.



**Signatures:**

 Date: 8/19/11  
David Bernhardt, Commissioner  
Maine Department of Transportation

 Date: 11 Aug 11  
Charles P. Samaris  
Colonel, Corps of Engineers  
District Engineer

**APPENDIX A**  
**Credit Tracking Form**

Date	Bank Name	Bank Status	Bank Type	Credits	Acres	Linear Feet	Permit No.	Credit Resource Type	Assessment Method	Release Project Name	Impact Bio Region	Impact Quantity Sq/Ft	TW	BPC	Sponsor Name

**Umbrella Bank Credit Ledger**

**Legend:**

**TW = Total Withdrawn Credits**  
**BPC = Balance of Potential Credits**

**APPENDIX B**  
**Re-evaluation Schedule**

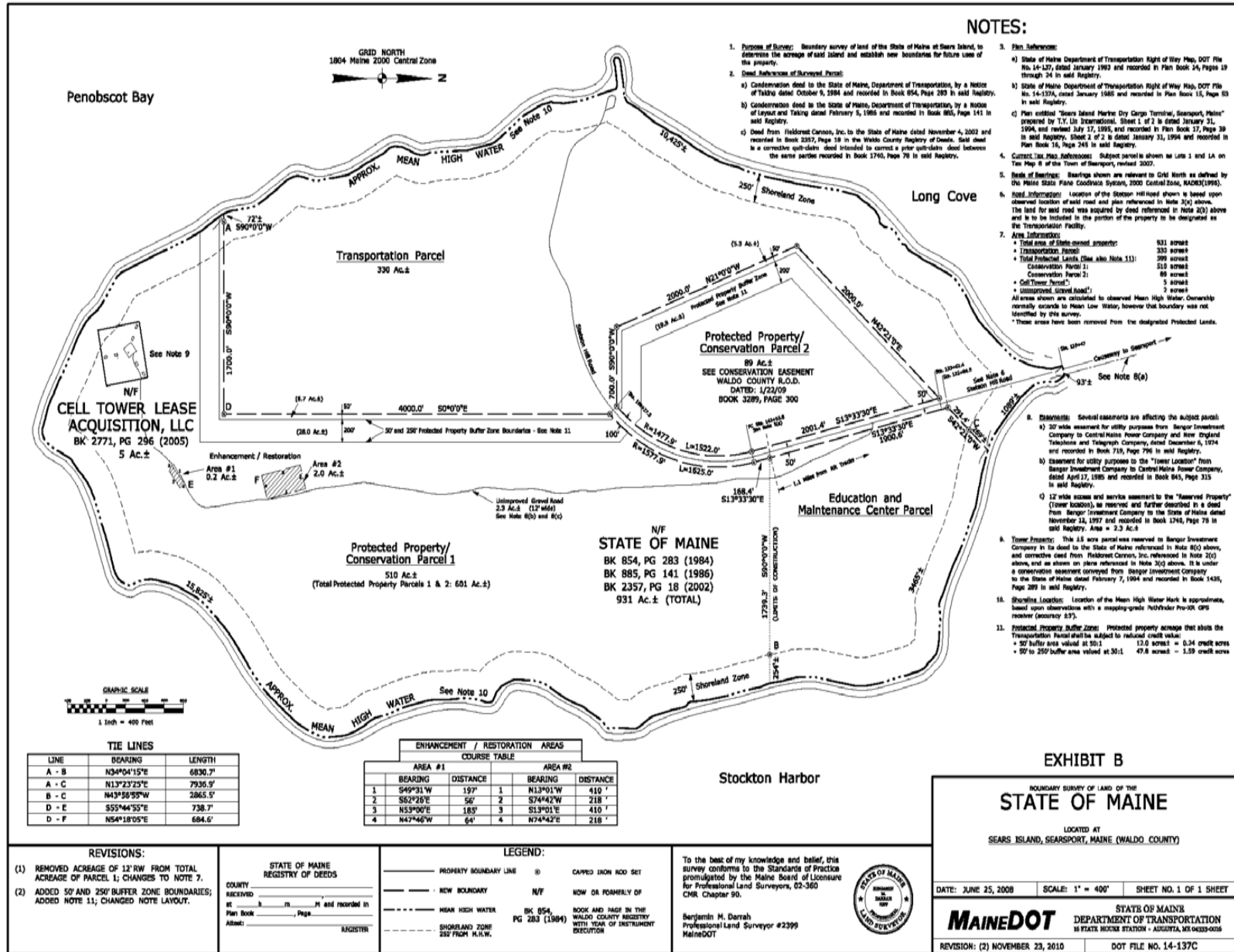
**MUMBI Re-Evaluation Schedule:**

After the successful approval and deposit of the Sears Island site in the MUMBI, the IRT will determine if re-evaluation of the program is required. If at any time during this period the IRT believes a re-evaluation and possible modification of the MUMBI is needed, the IRT Chair will call a special meeting of the IRT to review and determine appropriateness and feasibility of possible modifications and implement as needed.

It is recommended that the IRT meet to review and discuss the re-evaluation of the program, at a minimum, every five years.

**APPENDIX C**  
**Sears Island Survey Map**

Username: benjamin.darrah Date: 11/24/2010  
 Division: ROW  
 Filename: ...\\Seaside\land\_Plan\_Revision2.dgn



- ### NOTES:
- Purpose of Survey:** Boundary survey of land of the State of Maine at Sears Island, to determine the acreage of said island and establish new boundaries for future uses of the property.
  - Deed References of Surveyed Parcel:**
    - Conservation deed to the State of Maine, Department of Transportation, by a Notice of Taking dated October 9, 1984 and recorded in Book 654, Page 293 in said Registry.
    - Conservation deed to the State of Maine, Department of Transportation, by a Notice of Layout and Taking dated February 5, 1985 and recorded in Book 885, Page 141 in said Registry.
    - Deed from Holdcrest Carries, Inc. to the State of Maine dated November 4, 2002 and recorded in Book 2357, Page 18 in the Waldo County Registry of Deeds. Said deed is a corrective quit-deed deed intended to correct a prior quit-deed deed between the same parties recorded in Book 1740, Page 78 in said Registry.
  - Plan References:**
    - State of Maine Department of Transportation Right of Way Map, DOT File No. 14-1374, dated January 1985 and recorded in Plan Book 14, Pages 18 through 24 in said Registry.
    - State of Maine Department of Transportation Right of Way Map, DOT File No. 14-1374, dated January 1985 and recorded in Plan Book 15, Page 83 in said Registry.
    - Plan entitled "Sears Island Marine Dry Cargo Terminal, Searsport, Maine" prepared by T.Y. Lin International, Sheet 1 of 2 is dated January 31, 1994 and recorded July 17, 1995 and recorded in Plan Book 17, Page 38 in said Registry, Sheet 2 of 2 is dated January 31, 1994 and recorded in Plan Book 16, Page 243 in said Registry.
  - Current Tax Map Information:** Subject parcels as shown as Lots 1 and 1A on Tax Map #8 of the Town of Searsport, revised 2007.
  - Beach Easements:** Beaches shown are relevant to Grid North as defined by the Maine State Plane Coordinate System, 2000 Central Zone, NAD83(1995).
  - Right of Information:** Location of the Stockton Hill height shown is based upon observed location of said road and plan referenced in Note 2(c) above. The land for said road was acquired by deed referenced in Note 2(c) above and is to be included in the portion of the property to be designated as the Transportation Facility.
  - Area Information:**
    - Total area of State-owned property: 931 acres
    - Transportation Parcel: 330 acres
    - Total Protected Lands (See also Note 11): 299 acres
    - Conservation Parcel 1: 510 acres
    - Conservation Parcel 2: 89 acres
    - Cell Tower Parcel: 5 acres
    - Unimproved Gravel Road: 2 acres

All areas shown are calculated to observed Mean High Water. Ownership normally accords to Mean Low Water, however that boundary was not identified by the survey.  
 \* These areas have been removed from the designated Protected Lands.
  - Dispositions:** Several easements are affecting the subject parcels:
    - 50' wide easement for utility purposes from Bangor Investment Company to Central Maine Power Company and New England Telephone and Telegraph Company, dated December 6, 1974 and recorded in Book 710, Page 796 in said Registry.
    - Easement for utility purpose to the "Tower Location" from Bangor Investment Company to Central Maine Power Company, dated April 17, 1985 and recorded in Book 845, Page 315 in said Registry.
    - 12' wide access and service easement to the "Reserved Property" (Tower location) as reserved and further described in a deed from Bangor Investment Company to the State of Maine dated November 12, 1997 and recorded in Book 1745, Page 78 in said Registry. Area = 2.3 Ac.±
  - Tower Property:** The 12 acre parcel was reserved to Bangor Investment Company in its deed to the State of Maine referenced in Note 8(c) above, and corrective deed from Holdcrest Carries, Inc. referenced in Note 2(c) above, and as shown on plans referenced in Note 2(c) above. It is under a conservation assessment conveyed from Bangor Investment Company to the State of Maine dated February 7, 1994 and recorded in Book 1435, Page 285 in said Registry.
  - Shoreline Location:** Location of the Mean High Water Mark is approximately based upon observations with a mapping-grade Polhemus Pro-OR GPS receiver (accuracy ±3').
  - Protected Property Buffer Zone:** Protected property acreage that abuts the Transportation Parcel shall be subject to reduced credit value:
    - 50' buffer area valued at 50:1 12.0 acres = 0.24 credit acres
    - 50' to 250' buffer area valued at 30:1 47.8 acres = 1.59 credit acres

**TIE LINES**

LINE	BEARING	LENGTH
A - B	N34°04'15"E	6830.7'
A - C	N13°23'25"E	7936.9'
B - C	N43°56'55"W	2865.5'
D - E	S55°44'55"E	738.7'
D - F	N54°18'05"E	684.0'

**ENHANCEMENT / RESTORATION AREAS COURSE TABLE**

AREA #1				AREA #2			
BEARING	DISTANCE	BEARING	DISTANCE	BEARING	DISTANCE	BEARING	DISTANCE
1	S49°31'W	197'	1	N13°01'W	410'		
2	S62°20'E	56'	2	S74°42'W	218'		
3	N53°00'E	185'	3	S13°01'W	416'		
4	N47°46'W	64'	4	N74°42'E	218'		

**REVISIONS:**

- REMOVED ACREAGE OF 12' RW FROM TOTAL ACREAGE OF PARCEL 1; CHANGES TO NOTE 7;
- ADDED 50' AND 250' BUFFER ZONE BOUNDARIES; ADDED NOTE 11; CHANGED NOTE LAYOUT.

STATE OF MAINE  
 REGISTRY OF DEEDS

COUNTY RECEIVED: \_\_\_\_\_

at \_\_\_\_\_ m \_\_\_\_\_ and recorded in  
 Plan Book \_\_\_\_\_, Page \_\_\_\_\_

Attest: \_\_\_\_\_ REGISTER

**LEGEND:**

PROPERTY BOUNDARY LINE @ CAPPED IRON ROD SET

NEW BOUNDARY N/F NOW OR FORMERLY OF

MEAN HIGH WATER BK 654, PG 283 (1984) NOOK AND PAGE IN THE WALDO COUNTY REGISTRY WITH YEAR OF INSTRUMENT EXECUTION

SHORELAND ZONE 250' FROM H.L.W.

To the best of my knowledge and belief, this survey conforms to the Standards of Practice promulgated by the Maine Board of Licensure for Professional Land Surveyors, 02-360 CMR Chapter 95.

Benjamin M. Darrah  
 Professional Land Surveyor #2399  
 MAINE DOT

**EXHIBIT B**

BOUNDARY SURVEY OF LAND OF THE  
**STATE OF MAINE**

LOCATED AT  
 SEARS ISLAND, SEARSPORT, MAINE (WALDO COUNTY)

DATE: JUNE 25, 2008 SCALE: 1" = 400' SHEET NO. 1 OF 1 SHEET

**MAINE DOT** DEPARTMENT OF TRANSPORTATION  
 16 STATE HOUSE STATION - AUGUSTA, ME 04333-0056

REVISION: (2) NOVEMBER 23, 2010 DOT FILE NO. 14-137C

**APPENDIX D**  
**Sears Island Natural Resource Baseline Report**  
**(Separate PDF)**



# CONSERVATION EASEMENT BASELINE DATA CERTIFICATION

## *Cover Sheet and Acknowledgement of Property Condition*

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**EASEMENT NAME:**

**SEARS ISLAND**

**LOCATION:**

**Coastal islands registry #:**

77-011

**Water body:**

Penobscot Bay

**Town:**

Searsport

**County:**

Waldo

**EASEMENT GRANTOR:**

**STATE OF MAINE**

Maine Department of Transportation

16 State House Station

Augusta, Maine 04333-0016

Tel. (207) 624-3300

**EASEMENT HOLDER:**

**MAINE COAST HERITAGE TRUST**

1 Bowdoin Mill Island– Suite 201

Topsham, ME 04086

Contact: Director of Stewardship

Telephone: (207) 729-7366

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## - INTRODUCTION -

This document describes the condition of the Protected Property at the time of a grant of a conservation easement to Maine Coast Heritage Trust. The Protected Property consists of two land areas totaling 601± acres of land which are a portion of a 934± acre island Sears Island. Sears Island is located near the head of Penobscot Bay in the Town of Searsport, Waldo County, Maine, and is connected to the mainland by a causeway.

The Conservation Easement on the Protected Property is granted exclusively for the following conservation purposes:

To provide a significant public benefit by protecting and preserving in perpetuity the natural and undeveloped character of the Protected Property, including its wetlands and stream corridors, its upland forests and fields, its wildlife habitat, and its scenic character when viewed from Public Vantage Points (areas on the public waters of Stockton Harbor and those areas of Penobscot Bay from which the Protected Property is visible, or from public roadways and land areas on the mainland lying easterly and northerly of the Island), and by preserving the opportunity for low impact outdoor recreation, education and nature observation consistent with the purposes of this easement. Accordingly, the Conservation Easement does include opportunities for low impact recreation and education on the Protected Property, including the construction of facilities and structures necessary for these activities.

It is the general intent of the Conservation Easement to assure that the Protected Property will be retained forever in its substantially undeveloped, open and natural condition, consistent with the terms of the Conservation Easement, including its recitals, and to prevent any use of the Protected Property that will impair or interfere with these conditions. Grantor and Holder intend that the Conservation Easement will limit, in perpetuity, the uses of the Protected Property to activities which are compatible with these purposes and the protection of wildlife habitat and preservation of its open space, natural values and its scenic character when viewed from the Public Vantage Points.

As mentioned above, the Protected Property consists of two parcels of land separated by a roadway. For the purposes of this Conservation Easement, the Protected Property will have two (2) land use areas: an "Education and Maintenance Center Area" and a "Natural Area". The parcel west of the roadway is entirely "Natural Area". The parcel east of the roadway has both an "Education and Maintenance Center Area" and a "Natural Area", which are shown on Exhibit B and the survey plan included herein. Until the specific Education and Maintenance Center Area is established within that parcel, the entire Protected Property shall be treated as the Natural Area, and after the Education and Maintenance Center Area is established, the Natural Area shall be comprised of all of the Protected Property outside of the Education and Maintenance Center Area. There are two sites within the Natural Area depicted on the survey plan as "Enhancement/Restoration Areas" where in accordance with specifications within the easement and after notice in writing to Holder work may include: excavation, surface grading of micro-topography, planting and seeding of sites.

This Baseline Data Certification and attachments were prepared by:

Martie Crone  
GIS/Land Protection Associate  
and  
Ciona Ulbrich  
Project Manager  
Maine Coast Heritage Trust  
P.O. Box 669  
Mount Desert, ME 04660  
(207) 244-5100

## **- CONDITION OF THE PROPERTY –**

At the time of this grant, the Protected Property consists of two parcels totaling approximately 601 acres of mostly undeveloped land, located on the eastern and southern portions of a large coastal island, Sears Island, which is connected to the mainland by a causeway. A Right of Way for public access to the Protected Property has been granted along the causeway and roadway onto the island. The two areas of Protected Property are divided by a corridor of land along and including the existing paved roadway (Stetson Hills Road), which is not part of the Protected Property.

The Protected Property includes most of the island's central ridge that rises to 185 feet above mean sea level, and includes approximately four miles of undeveloped shoreline. The majority of the Protected Property is wooded, but there are several meadow areas, including one roughly ten acres in size. There are two notable areas of fern meadow that slope down to the shore on the eastern side of the Protected Property. Generally, the woods vary in stand type, and include areas of alder scrub shrub, stands of mixed woods including some large hardwoods, at least one large oak grove, and areas of spruce/fir woods. A large area of the island was farmed historically which helped create some of the open areas, and there are still traces of former residential and farm buildings. The nature of the shoreline varies, ranging from sandy shore on the northern areas, to steep shoreline with mud flats, and some rocky areas. One stretch of sandy beach on the northern part of the Protected Property is commonly used for walking and swimming. Most of the land along the shoreline is wooded.

## **- STRUCTURES AND IMPROVEMENTS ON THE PROTECTED PROPERTY –**

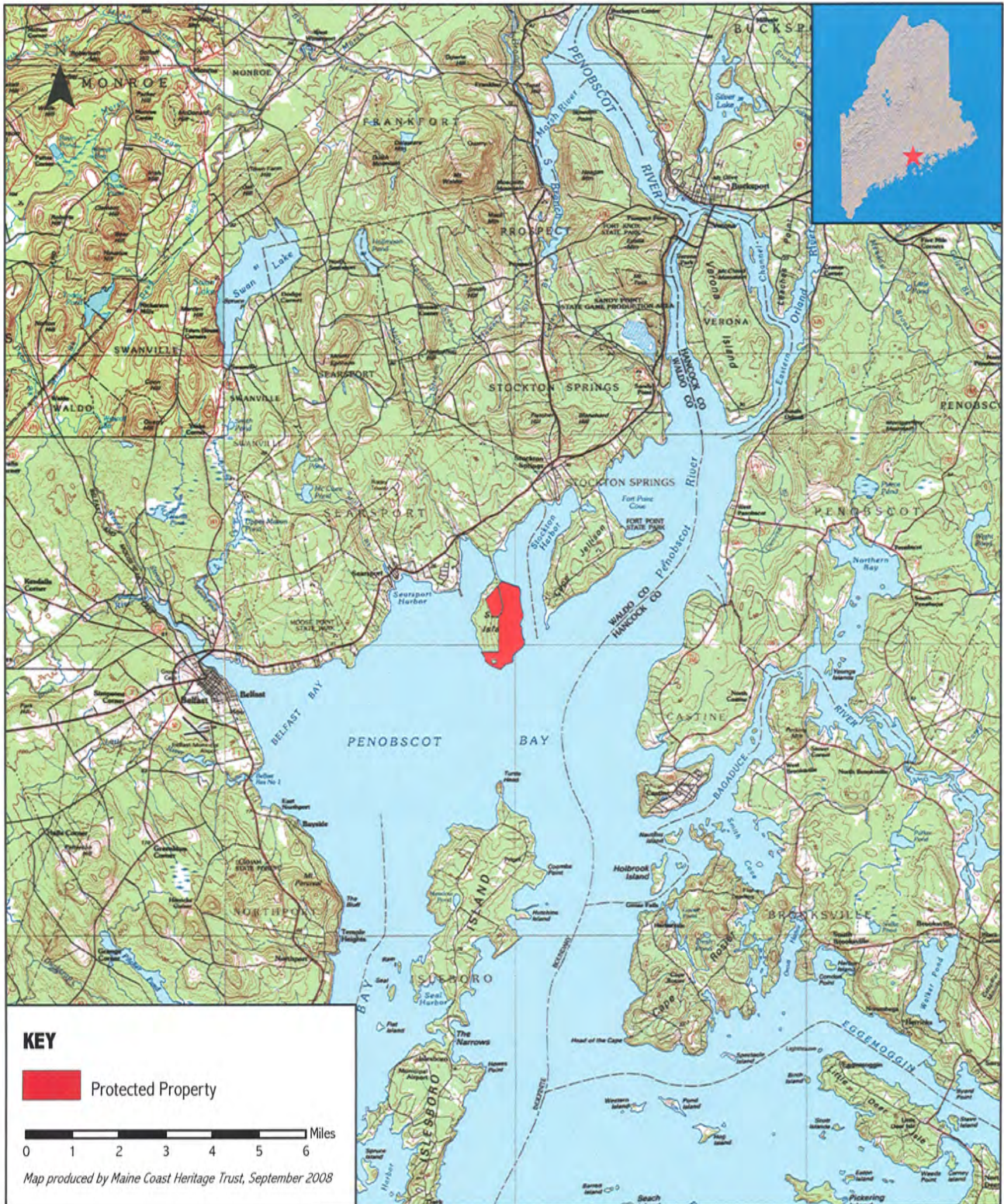
At the time of the grant there are no structures on the Protected Property except for boundary markers, the remains of old foundations, gates, remains of fencing, signs, unimproved gravel roads and foot paths. As of the date of the Conservation Easement, there are no surface alterations on the Protected Property other than those associated with existing structures listed herein, the Stetson Hills Road that traverses the Protected Property, a network of rustic footpaths, two sites of altered wetlands from prior construction activity, and an existing unpaved woods roadway with an average tread width and side clearance of 10 feet over a right of way leading to the Tower Lot.

- ATTACHMENTS -

1. Area Map
2. USGS Topographic Map
3. Map of Nearby Conservation Lands
4. Sears Island Conservation Easement – Sketch Map
5. Topographic Map
6. Land Cover Map
7. Map and Classification of Coastal Bluffs
8. Bathymetry Map of Sears Island
9. Water Resources Map
10. Other Features Map
11. Photographic Documentation
12. Photographic Documentation – Photo Map A & Photos
13. Photographic Documentation – Photo Map B & Photos

SEARS ISLAND CONSERVATION EASEMENT BASELINE DATA

AREA MAP — Augusta, Skowhegan, Bar Harbor & Bangor — 15 Minute Series USGS Topographic Maps from Terrain Professional Software, Maptech, Inc. — Showing approximate location of the Protected Property — Original Scale 1:100,000 — Map Scale 1 inch = 3 miles



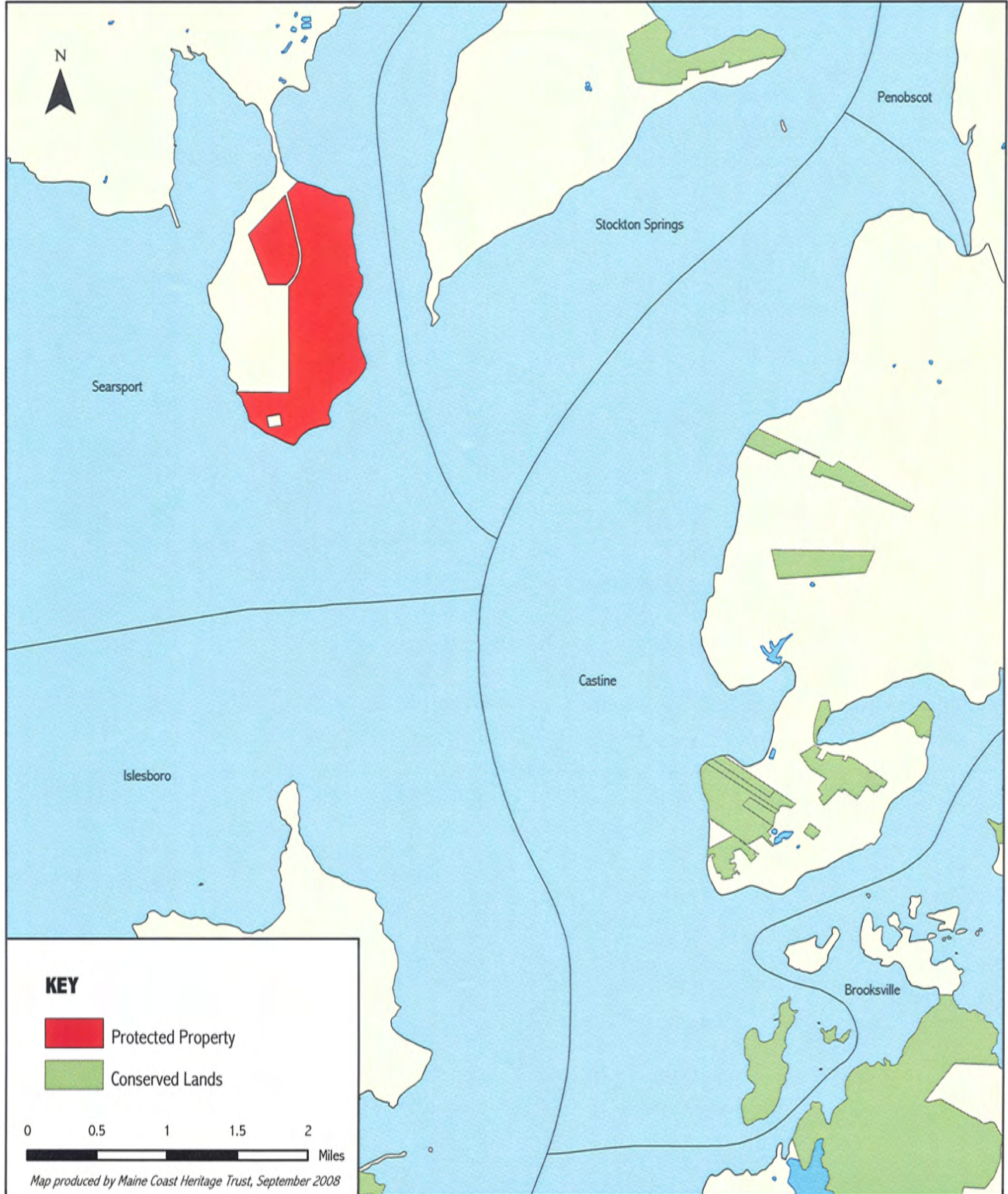
SEARS ISLAND CONSERVATION EASEMENT BASELINE DATA

USGS TOPOGRAPHIC MAP – Castine & Searsport – 7.5 Minute Series USGS Topographic Maps from Terrain Professional Software, Maptech, Inc.  
Showing approximate location of the Protected Property – Original Scale 1:24,000 – Map Scale 1 inch = 1500 feet



SEARS ISLAND CONSERVATION EASEMENT BASELINE DATA

MAP OF NEARBY CONSERVATION LANDS – Showing approximate location of the Protected Property in relation to other conserved lands – Roads, hydrological, political boundaries & state lands from ME OGIS 1:24K Library – Conserved lands from MCHT, accurate as of September 2008 – Scale 1 inch = 1 mile





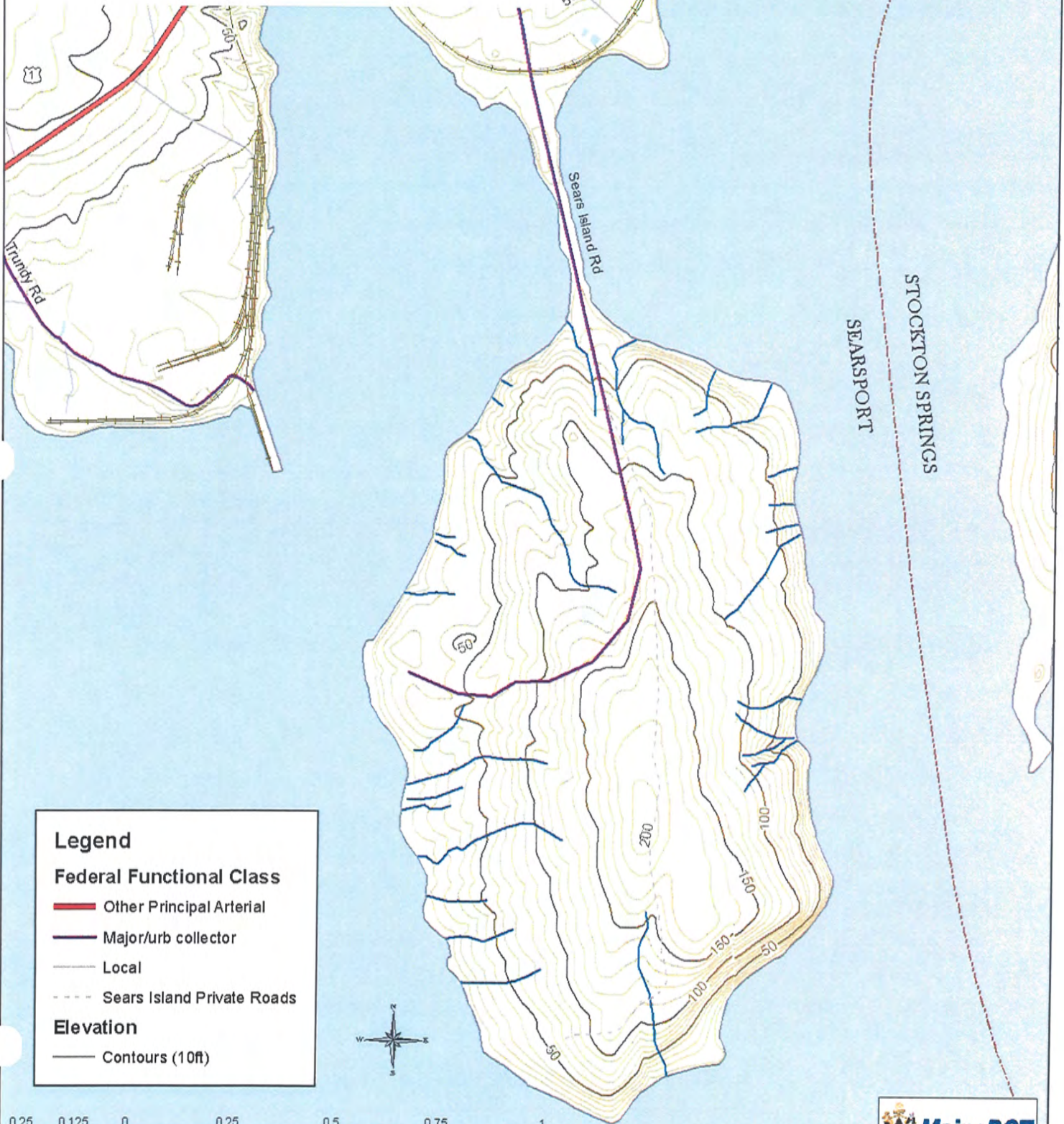


Sears Island Conservation Easement  
BASELINE DATA

9. TOPOGRAPHY MAP

Showing 10 foot contour lines on Sears Island; map produced by Maine DOT, 10/23/2007.

Topography  
Sears Island



**Legend**

**Federal Functional Class**

- Other Principal Arterial
- Major/urb collector
- Local
- Sears Island Private Roads

**Elevation**

- Contours (10ft)

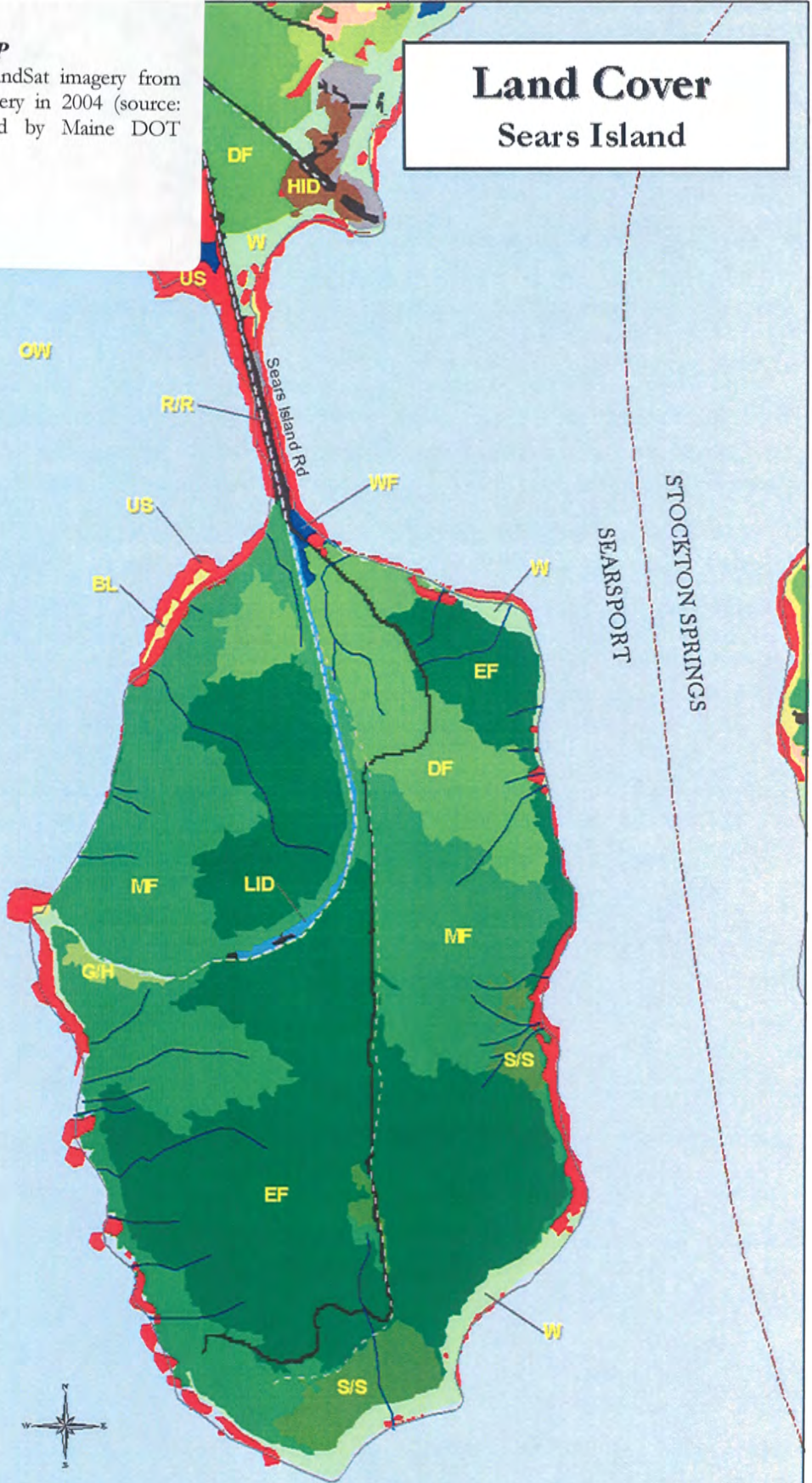


Sears Island Conservation Easement  
**BASELINE DATA**

**10. LAND COVER MAP**

Showing land cover classifications from LandSat imagery from 1999-2001 and refined from SPOT 5 imagery in 2004 (source: MEGIS) on Sears Island; map produced by Maine DOT 10/23/2007.

**Land Cover  
 Sears Island**



**Legend**

- Present Day Roads
- Streams
- Land Cover**
- BL - Bare land
- CC - Cultivated crops
- DF - Deciduous forest
- EF - Evergreen forest
- G/H - Grassland/herbaceous
- HID - High intensity developed
- LPC - Light partial cut
- LID - Low intensity developed
- MID - Medium intensity developed
- MF - Mixed forest
- OSD - Open space developed
- OW - Open water
- P/H - Pasture/hay
- R/R - Roads/runways
- S/S - Scrub/shrub
- US - Unconsolidated shore
- WF - Wetland forest
- W - Wetlands



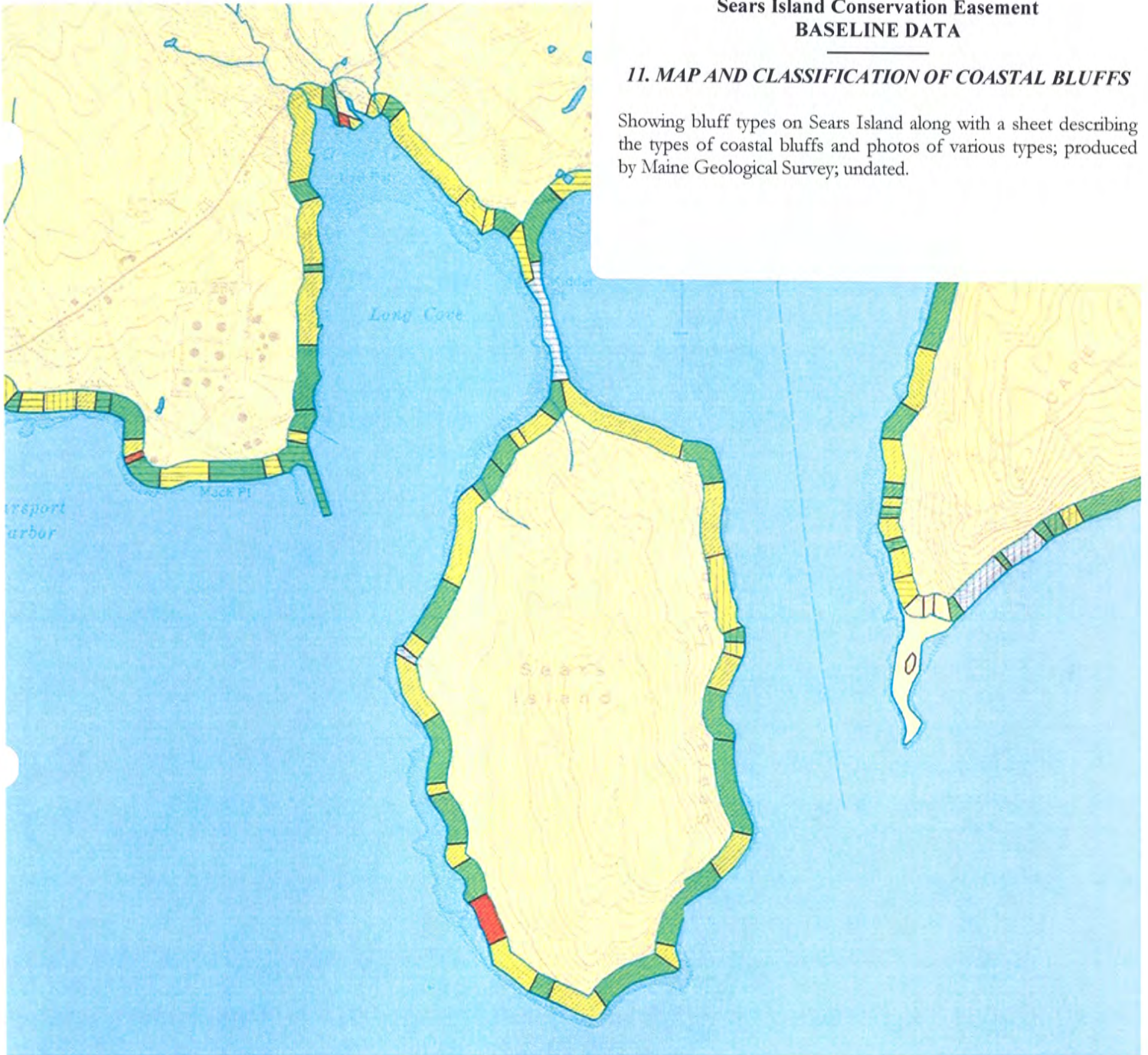
NOTE: Classifications based on LandSat imagery from 1999-2001 and refined from SPOT 5 imagery in 2004. Source: MEGIS



Sears Island Conservation Easement  
BASELINE DATA

11. MAP AND CLASSIFICATION OF COASTAL BLUFFS

Showing bluff types on Sears Island along with a sheet describing the types of coastal bluffs and photos of various types; produced by Maine Geological Survey; undated.



Classification and Mapping of Maine's Coastal Bluffs

Geologists classified the coastal bluffs on this quadrangle map by observing the shoreline from small boats. They assigned one of the following categories to the type of shoreline seen below the high tide line: (1) ledge (exposed bedrock outcrop); (2) armored (seawall, riprap, gabion bulkhead etc.); (3) salt marsh; or (4) beach / mud flat, or other loose sediment. Red patterns on the map indicate the shoreline type. Gray areas on the map indicate segments of the shoreline without significant coastal bluffs. Where significant bluffs were present, geologists noted various characteristics of the bluff face such as the slope of the bluff (steep to gentle), features on the bluff face indicating recent movement of material down the slope (clumped blocks of sediment, landslides, fallen trees), and the amount and type of vegetation (bare sediment, grass, shrubs, mature trees). From this information, geologists assessed the relative stability of each bluff face as being: (1) stable (green); (2) unstable (yellow); or (3) highly unstable (red). This classification is based on observed features that reflect recent activity on the bluff face. Examples of bluff faces with different stabilities are shown in the panel of photographs to the right.

Map Resolution

Since these are regional maps, some shores mapped as stable may contain small areas that are unstable. A bluff too small to appear on the map is shown in the photo. This bluff exhibits the characteristics of an unstable bluff: curved tree trunks, exposed roots, and bare ground on a steep slope. It is an area to be concerned about on a local scale. However, the degree of detail is not shown on the map above.



Limitations of the Data

This map is intended to provide only general information on the overall stability of bluffs. It is not intended to be the sole basis upon which specific shoreline decisions are made. The information portrayed on this map is based on a visual inspection of the coast from offshore, and parts of the shoreline may have changed slightly since the field work was completed. Because of the large-scale, shoreline characteristics are generalized into 150-foot segments. It is important to realize that the bluff classification only shows the average stability inferred for each section of the shoreline (see Map Resolution section above). For an evaluation of specific shoreline erosion risks, landslide potential, or historical trends, certified geologists or professional engineers should conduct site-specific studies.

Neither the Department of Conservation nor its employees or agents: (1) make any warranty, either expressed or implied for merchantability or fitness for a particular purpose, as to the accuracy or reliability of the information shown on the map; nor (2) liable for any damages including consequential damages, from using the map or the information shown on the map.

Classification of Coastal Bluffs

SHORELINE TYPE				BLUFF FACE
Ledge	Armored	Salt marsh	Beach / flat	
				Highly unstable
				Unstable
				Stable
				NO BLUFF

Note: The classification of the bluff is indicated by a colored, patterned box (see legend) and color of the shoreline (dark blue line). The width of the line is NOT related to the width of the bluff. Symbols in dark red refer to RECENT Bluff Face activity.

Shoreline Type	Description of Shoreline at or Below the High-Tide Line
	Greater than 50% bedrock. May include minor accumulations of sediment that occur in small coves or other sheltered areas (see photo at left).
	Consists of riprap, seawalls, jetties, and other engineered structures. Condition of armor may indicate degree of stability of bluff face.
	Mostly to fully vegetated salt marsh with minor tidal flat environments. May include small rocky outcrops.
	Sediment, ranging in texture from mud (tidal flats) to cobbles (gravel beaches). May include small rocks, outcrops or small patches of vegetation.
Bluff Face	Typical Characteristics of Bluff Face (above high-tide line)
	Near vertical or very steep bluff with little vegetation and common exposure of bare sediment. Landslides and displaced blocks of sediment common on bluff face and at base of bluff.
	Steep to gently sloping bluff mostly covered by shrubs with a few bare spots. Bent and tilted trees may be present.
	Gently sloping bluff with continuous cover of grass, shrubs or mature trees. Relatively wide zone of ledge or sediment occurs at the base of the bluff.
	Broad, gently sloping vegetated land or bare ledge with less than three feet of sediment cover.
	Some portions of the shoreline have not been mapped for bluff type.

Shoreline Processes and Bluff Hazards

Bluffs are formed in a dynamic coastal environment by terrestrial and marine processes. Bluff erosion is part of a natural cycle with consequences for the land below and above the bluff. Fine-grained silt and clay eroded from bluffs may be deposited on mud flats or salt marshes which help reduce wave energy at the base of a bluff and slow the overall rate of bluff erosion. Coarse-grained sediments, such as sand and gravel, eroded from bluffs become part of a beach at the base of the bluff and help stabilize the shoreline position. Transfer of sediment from the land to the sea is natural and sometimes essential to sustain beaches, flats, or salt marshes.

Bluff erosion can result in a landward shift of the top edge of the bluff. This shoreline change is a natural process that by itself is not a coastal hazard. Only when erosion threatens something of value, such as a building near the bluff edge, does bluff retreat become a hazard. Understanding local erosion rates can help determine the severity and perhaps longevity of coastal development along a bluff edge.

Coastal bluff erosion is cyclical. Some bluffs may not change much over many years, even though there are steep banks along the shore. Bluffs may not lose much ground in any one year, but the bluff may slump a large amount of sediment once every few years. The bluff erosion rate will vary from year to year much like the weather. A long-term average erosion rate is the most meaningful measure of the bluff retreat rate. The hazard to development on or above the bluff can be better evaluated using long-term erosion rates. Once the risk is evaluated, then appropriate solutions to reduce the risk can be considered and balanced with cost and environmental consequences.

Landslide Risk

This map of Coastal Bluffs describes the processes and stability of the face of a bluff. A companion map, Coastal Landslide Hazards, describes the internal stability of sediment bluffs and their potential to rapidly move large amounts of land downslope under the influence of gravity. In general, landside-prone bluffs have (a) high and steep faces, (b) clay sediment, (c) erosion near the high-tide line, and (d) a high ground water table. As with processes on the bluff face, landslide movement is cyclical. To determine the risk of a landslide, a site-specific study of the geology and strength characteristics of the bluff should be made by certified geologists or geotechnical engineers.

A 1996 landslide, in Rockland Harbor (photo below) occurred in an area where the bluff face is classified as unstable.

In addition, the bluff had all the characteristics (a-d) listed above. This fact is emphasized by the map above does not indicate sites with a potential for catastrophic landslides. Additional factors need to be considered beyond the appearance of the bluff face and type of shoreline below the bluff. Maps of topographic surficial sediments and Coastal Landslide Hazards are available from the Maine Geological Survey to help assess the landslide potential in an area.



## Types of Bluffs Along Maine's Coast

This map shows the shoreline type and relative stability of bluffs along a section of the Maine coast. The slope, shape, and amount of vegetation covering a coastal bluff and the adjacent shoreline are directly related to the susceptibility of the bluff face to ongoing erosion. As might be expected, less vegetated bluffs are more likely to be eroding than completely vegetated bluffs. Another important factor related to bluff stability is the material which makes up the bluff. Materials such as clay, gravel, and sand react differently to erosion and, when combined with variations in vegetation and slope, affect the rate of erosion for an individual bluff. When planning to reduce the risks of coastal erosion, it is important to take vegetation, slope, erosion rate, and sediment types into consideration.

On this map, a bluff is defined as a steep-shoreline slope formed in sediment (those materials such as clay, sand, and gravel) that has three feet or more of vertical elevation just above the high tide line. Cliffs or slopes in bedrock (bed) surfaces are not bluffs and are not subject to significant erosion in a century or more. Beaches and dunes do not form bluffs, except along the seaward dune edge as a result of erosion. This map does NOT identify erosion trends on beaches or sand dunes.

Coastal environments are dynamic and subject to continuous change. Gravitational processes of creep, slumping, and occasional landsliding modify the shape of coastal bluffs. Rising sea level along Maine's coast (at a rate of about 2 mm/year, slightly less than a foot per century) allows storms and coastal flooding to reach further inland and erode sediments at the base of bluffs. Stepping of bluffs by erosion at their base may lead to increased slumping and deposition of clay, sand, or

gravel in the intertidal zone which then acts to stabilize the bluff for a period of several years to decades as coastal processes rework and remove the slumped material. Once the material at the base of the bluff is removed entirely, the bluff may then be undercut again and the cycle of slumping followed by protection of the bluff base will be repeated. Most bluffs erode erratically, perhaps losing ground one year and not the next. Over a period of many years a bluff may permanently retreat inland.

Historical analysis can help determine the average rate of bluff retreat. Over time, the appearance of bluffs will change. Coastal flooding, ground-slumping, creep, deposition in the intertidal zone, ice action, ground-water drainage, and human alteration will change bluff appearance. For example, unvegetated beaches are more easily eroded than salt marshes, armored shorelines, or ledges. Also, bluffs covered with vegetation and having a gentle slope have been more stable than those with steep slopes and little vegetation. Understanding the processes that erode bluffs can help determine what solutions are appropriate to reduce future rates of property loss.

This map can help identify shorelines with increased risk of coastal erosion. Review the legend below in order to understand what the map shows and does not show. The colored categories correspond to field conditions when the map was made. Conditions may have changed in the last few years. Comparison of the information on a map with current conditions may indicate that a stability category is different now. Since bluff erosion may be cyclical, the change may only be temporary. If coastal development is near any bluff we recommend a professional evaluation be made to determine threat to structures.



**Highly unstable bluff with an unvegetated bluff face and a salt marsh shoreline.** Sediments on the bluff face are exposed and fallen tree trunks lie at the base of the bluff. A salt marsh has recently formed on the tidal flat, partly on the top of an old landslides deposit.



**Unstable bluff with a partially vegetated bluff face and a salt marsh shoreline.** This bluff, protected by a salt marsh, remains unstable. There are small bushes on the bluff as well as small non-vegetated areas that indicate continuing bluff retreat.



**Highly unstable bluff with an unvegetated bluff face and a beach/gravel flat shoreline.** The bluff face is too unstable to support vegetation. This bluff, a glacial esker, is eroded by waves to create a mixed sand and gravel beach in front of the bluff.



**Unstable bluff with a partially vegetated bluff face and a beach/gravel flat shoreline.** Slung scans on the bluff face expose sand, gravel, and roots. Fine sediments are removed by waves and currents, leaving gravel to form a beach at the base of the bluff.



**Stable bluff with a vegetated bluff face and an armored shoreline.** The bluff face is fully vegetated and supports a mature stand of trees with vertical trunks. The presence of a wooden bulkhead suggests that erosion has occurred in the past.



**No bluff with a ledge shoreline.** A steep slope on the bedrock surface is not a bluff. On this map, bluffs must be made of sedimentary material, generally with 3 feet or more relief. This shoreline type is very slow to change.



**Highly unstable bluff with an unvegetated bluff face and an armored shoreline.** This armored bluff is eroding despite an effort to shore it up with riprap, or loosely piled stone blocks. Maintenance at this site could improve bluff stability.



**Stable bluff with a vegetated bluff face and a salt marsh shoreline.** A low bluff face is covered by shrubs and a mature marsh protects the base of the bluff from rapid erosion and slows bluff recession or retreat.



## Maine Geological Survey

Address: 22 State House Station, Augusta, Maine 04333  
 Telephone: 207-287-2801 E-mail: [mgs@maine.gov](mailto:mgs@maine.gov)  
 Home page: <http://www.maine.gov/doc/nr/mc/nr/mc.htm>

Sample sidebar from Coastal Bluffs Map

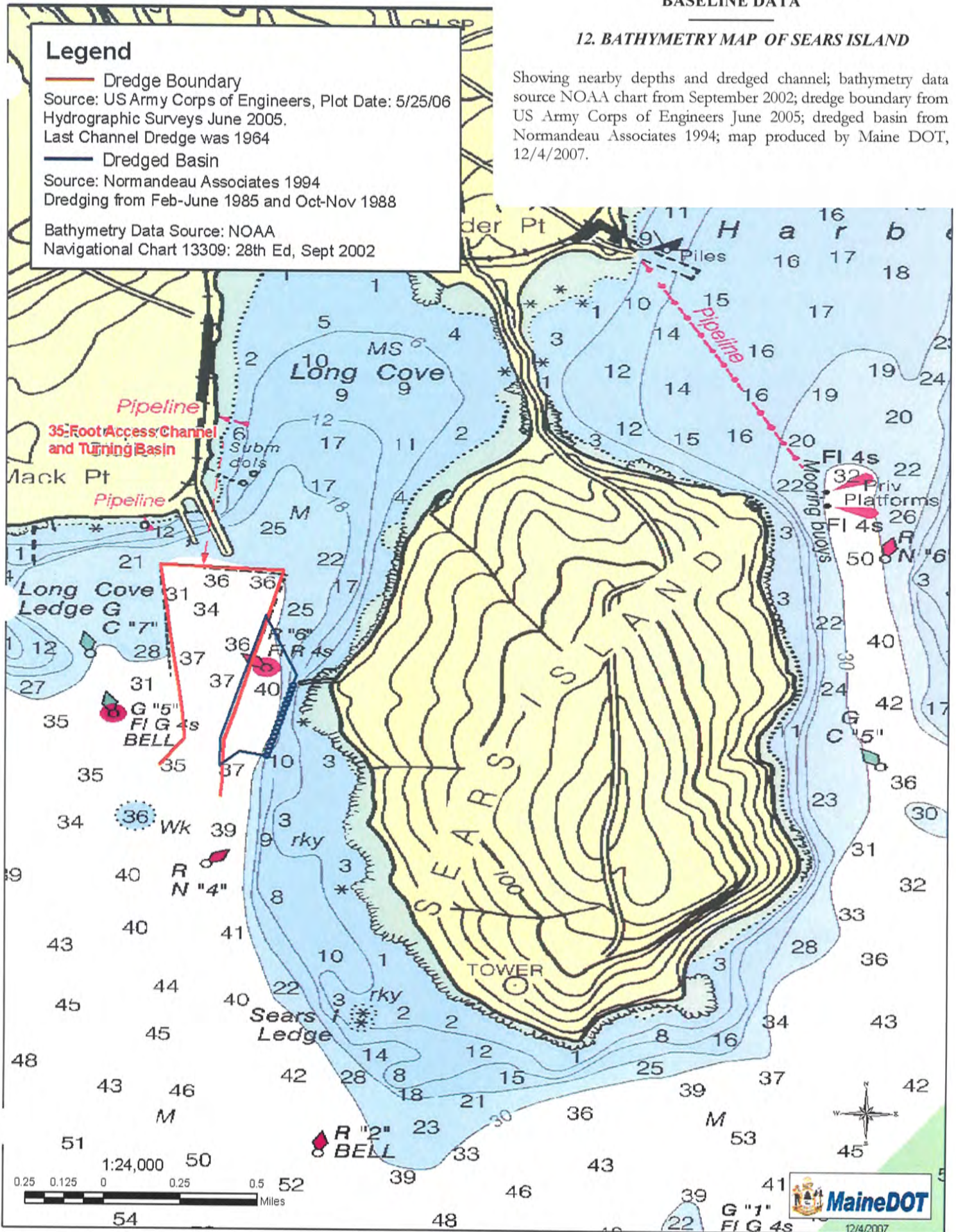
Sears Island Conservation Easement  
 BASELINE DATA

12. BATHYMETRY MAP OF SEARS ISLAND

Showing nearby depths and dredged channel; bathymetry data source NOAA chart from September 2002; dredge boundary from US Army Corps of Engineers June 2005; dredged basin from Normandeau Associates 1994; map produced by Maine DOT, 12/4/2007.

**Legend**

- Dredge Boundary
- Source: US Army Corps of Engineers, Plot Date: 5/25/06  
 Hydrographic Surveys June 2005.  
 Last Channel Dredge was 1964
- Dredged Basin
- Source: Normandeau Associates 1994  
 Dredging from Feb-June 1985 and Oct-Nov 1988
- Bathymetry Data Source: NOAA  
 Navigational Chart 13309: 28th Ed, Sept 2002



Sears Island Conservation Easement  
BASELINE DATA

13. WATER RESOURCES MAP

Showing streams, amphibian breeding pools, wetlands, hydric soil, riparian buffers and hydrography on Sears Island; map produced by Maine DOT, 10/23/2007.

Water Resources  
Sears Island



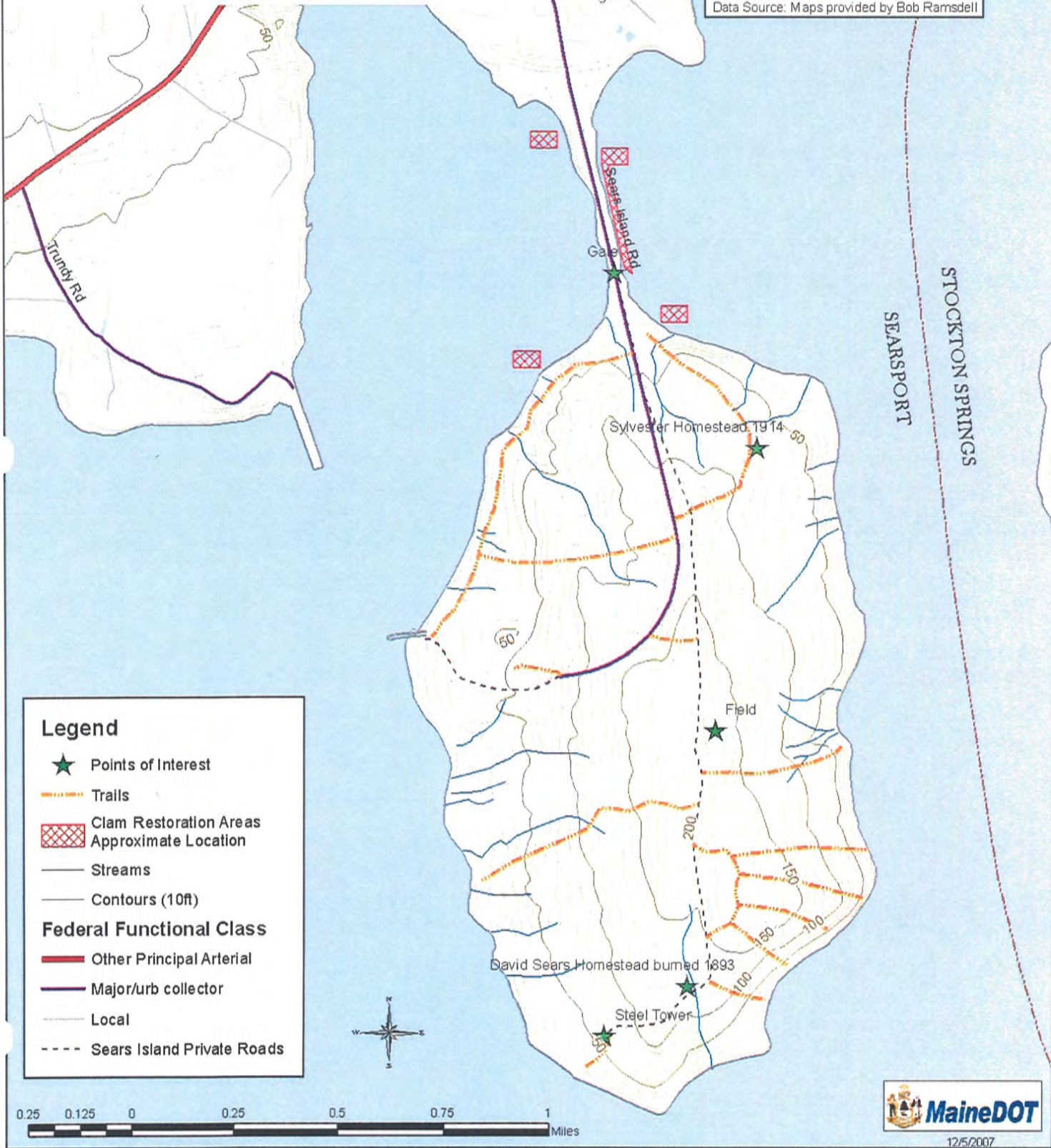
Sears Island Conservation Easement  
**BASELINE DATA**

**14. OTHER FEATURES MAP**

Showing trails, clam restoration areas and other points of interest on Sears Island; maps provided Bob Ramsdell and Maine DOT, 12/5/2007.

**Other Features**  
**Trails, Clam Restoration Sites,**  
**Other Points of Interest**  
**Sears Island**

Data Source: Maps provided by Bob Ramsdell





**Sears Island Conservation Easement Baseline Data  
PHOTOGRAPHIC DOCUMENTATION**

30a.

Photo #	File Image Name on CD-R	Description	Compass Direction	Photographer	Date of Photo
Canon Powershot SD750 (Digital)					
CD-R Serial # 7291 2121 0490					
File Location: P:\Baseline_Photo_Library\Waldo_County\Searsport\Sears_Island					
Photo A1	Sears_Isl2_0055	Nature of shoreline as seen from public waters	ENE	Ciona Ulbrich	7/16/2008
Photo A2	Sears_Isl2_0057	Nature of shoreline as seen from public waters, including Tower Lot	ESE	Ciona Ulbrich	7/16/2008
Photo A3	Sears_Isl2_0061	Nature of shoreline as seen from public waters, including Tower Lot	N	Ciona Ulbrich	7/16/2008
Photo A4	Sears_Isl2_0060	Nature of shoreline as seen from public waters	NE	Ciona Ulbrich	7/16/2008
Photo A5	Sears_Isl2_0064	Nature of shoreline as seen from public waters, including Tower Lot	W	Ciona Ulbrich	7/16/2008
Photo A6	Sears_Isl2_0065	Nature of shoreline as seen from public waters	NW	Ciona Ulbrich	7/16/2008
Photo A7	Sears_Isl2_0066	Nature of shoreline as seen from public waters	NNE	Ciona Ulbrich	7/16/2008
Photo A8	Sears_Isl2_0067	Nature of shoreline as seen from public waters	SW	Ciona Ulbrich	7/16/2008
Photo A9	Sears_Isl2_0068	Nature of shoreline as seen from public waters	W	Ciona Ulbrich	7/16/2008
Photo A10	Sears_Isl2_0070	Nature of shoreline as seen from public waters	NNW	Ciona Ulbrich	7/16/2008
Photo A11	Sears_Isl2_0072	Shoreline as seen from public waters, including fern meadow areas	W	Ciona Ulbrich	7/16/2008
Photo A12	Sears_Isl2_0076	Nature of shoreline as seen from public waters	SW	Ciona Ulbrich	7/16/2008
Photo A13	Sears_Isl2_0078	Nature of shoreline as seen from public waters	WNW	Ciona Ulbrich	7/16/2008
Photo A14	Sears_Isl2_0081	Nature of shoreline as seen from public waters, GAC industrial facility in background (not on Protected Property)	NNW	Ciona Ulbrich	7/16/2008
Photo A15	Sears_Isl2_0088	Nature of sandy point as seen from public waters	W	Ciona Ulbrich	7/16/2008
Photo A16	Sears_Isl2_0095	Nature of Stetson Hills Road across causeway for access, (not part of Protected Property)	NW	Ciona Ulbrich	7/16/2008
Photo A17	Sears_Isl2_0100	Nature of sandy point as seen from public waters	ESE	Ciona Ulbrich	7/16/2008
Photo A18	Sears_Isl2_0101	Nature of shoreline as seen from public waters	SE	Ciona Ulbrich	7/16/2008
Photo A19	Sears_Isl2_0104	Nature of shoreline at head of island (not all part of Protected Property) with Sprague Energy industrial facilities in background	SW	Ciona Ulbrich	7/16/2008
Photo A20	Sears_Isl2_0109	Nature of Stetson Hills road, utility lines and elevations at head of island (not all part of Protected Property)	SW	Ciona Ulbrich	7/16/2008
Photo A21	Sears_Isl1_035	Popular stretch of beach on East side	143°	Ciona Ulbrich	4/28/2008
Photo A22	Sears_Isl1_036	Nature of Stetson Hills Road, looking south	200°	Ciona Ulbrich	4/28/2008
Photo A23	Sears_Isl1_037	Nature of Stetson Hills Road along causeway as access road, with existing entrance gate	7°	Ciona Ulbrich	4/28/2008
Photo A24	Sears_Isl1_039	Where State Highway 252/Stetson Hills Road crosses the Montreal, Maine and Atlantic Railway tracks on the mainland	195°	Ciona Ulbrich	4/28/2008
Photo A25	Sears_Isl3_007	From intersection of Middle & School Streets in Stockton Springs; Protected Property in center background	220°	Ciona Ulbrich	9/30/2008
Photo A26	Sears_Isl3_001	From Stockton Springs public boat landing; Protected Property in center background	225°	Ciona Ulbrich	9/30/2008
Photo A27	Sears_Isl3_004	From Cape Jellison road; Protected Property in center background	250°	Ciona Ulbrich	9/30/2008
Photo B1	Sears_Isl2023	Nature of rocky shoreline, looking towards causeway	315°	Ciona Ulbrich	5/6/2008
Photo B2	Sears_Isl2022	Nature of shoreline & sandy point	135°	Ciona Ulbrich	5/6/2008
Photo B3	Sears_Isl2024	Nature of sandy point; with brackish pool behind it	140°	Ciona Ulbrich	5/6/2008
Photo B4	Sears_Isl2026	Nature of brackish pool behind sandy point	145°	Ciona Ulbrich	5/6/2008
Photo B5	Sears_Isl2027	Nature of shoreline looking northwest	300°	Ciona Ulbrich	5/6/2008
Photo B6	Sears_Isl2020	Nature of existing wet area (spring or vernal pool) alongside rustic footpath	270°	Ciona Ulbrich	5/6/2008
Photo B7	Sears_Isl1_034	Existing rustic footpath & nature of woods around it	2°	Martie Crone	4/28/2008
Photo B8	Sears_Isl1_033	Existing rustic footpath & nature of woods around it	160°	Martie Crone	4/28/2008
Photo B9	Sears_Isl1_012	Existing foundation remains, within Education and Maintenance Center Parcel	221°	Ciona Ulbrich	4/28/2008

**Sears Island Conservation Easement Baseline Data**  
**PHOTOGRAPHIC DOCUMENTATION**

30a.

Photo B57	Sears_Isl3_027	Board bridging stream along existing rustic footpath	340°	Ciona Ulbrich	9/30/2008
Photo B58	Sears_Isl3_030	Nature of stream	180°	Ciona Ulbrich	9/30/2008
Photo B59	Sears_Isl3_031	Existing rustic footpath	275°	Ciona Ulbrich	9/30/2008
Photo B60	Sears_Isl3_036	Existing rustic footpath	85°	Ciona Ulbrich	9/30/2008
Photo B61	Sears_Isl3_033	Nature of woods & existing rustic footpath	90°	Ciona Ulbrich	9/30/2008
Photo B62	Sears_Isl3_039	Nature of Protected Property along Stetson Hills Road	10°	Ciona Ulbrich	9/30/2008
Photo B63	Sears_Isl3_040	Nature of Protected Property along Stetson Hills Road	205°	Ciona Ulbrich	9/30/2008
Photo B64	Sears_Isl3_038	Nature of Protected Property along Stetson Hills Road	45°	Ciona Ulbrich	9/30/2008

SEARS ISLAND CONSERVATION EASEMENT BASELINE DATA

30b.

PHOTOGRAPHIC DOCUMENTATION - Photo Map A – Showing approximate location of the Protected Property, along with the location of twenty-seven (27) photo points taken from outside of the Protected Property – Based on Exhibit B & GPS points taken by MCHT staff on April 28, 2008, July 16, 2008 & September 30, 2008 – Background is 2007 orthophoto – Scale 1 inch = 2500 feet





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Sears\_Is13\_001.JPG 2008-09-30 (42)  
Ordered at Shutterfly (shutterfly.com)

SEARS ISLAND CONSERVATION EASEMENT BASELINE DATA

30c.

PHOTOGRAPHIC DOCUMENTATION – Photo Map B – Showing approximate location of the Protected Property, along with the location of sixty-four (64) photo points taken on the Protected Property – Based on Exhibit B & GPS points taken by MCHT staff on April 28, 2008, May 6, 2008 & September 30, 2008 – Background is 2007 orthophoto – Scale 1 inch = 700 feet







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**APPENDIX E**  
**Sears Island Conservation Easement**  
**(Separate PDF)**

BUFFER CONSERVATION EASEMENT  
ON SEARS ISLAND, SEARSPORT, WALDO COUNTY, MAINE

THIS GRANT OF CONSERVATION EASEMENT is made this 22<sup>nd</sup> day of January 2009, by THE STATE OF MAINE, by and through its Department of Transportation, having a mailing address of 16 State House Station, Augusta, ME 04333-0016 (hereinafter referred to as "MaineDOT" or the "Grantor"), and in favor of MAINE COAST HERITAGE TRUST, a non-profit corporation organized and existing under the laws of the State of Maine, with a mailing address of 1 Bowdoin Mill Island, Suite 2011, Topsham, Maine 04086 (hereinafter referred to as the "Holder"), and the STATE OF MAINE, **acting by and through its Department of Environmental Protection** as Third Party Enforcer, having an address of 17 State House Station, Augusta, ME 04333-0017 (hereinafter referred to as the "Third Party Enforcer" or "DEP").

WHEREAS, this Indenture is created pursuant to the provisions of 33 M.R.S.A §476 through 479-C inclusive, as amended; and

WHEREAS, the Grantor holds title to certain real property situated on Sears Island in Searsport, County of Waldo, State of Maine, being the real estate acquired through the following documents:

- 1) Notice of Taking on June 17, 1985 recorded at the Waldo County Registry of Deeds at Book 854 and Page 283 by MaineDOT; and
- 2) Notice of Layout and Taking on February 6, 1986 recorded in said Registry of Deeds at Book 885 and Page 141 and
- 3) Deed from Bangor Investment Company ("BIC") to Maine DOT, dated February 7, 1994 and recorded at said Registry of Deeds at Book 1435 Page 278 and
- 4) Deed from BIC to Maine DOT dated March 28, 1997 and recorded at said Registry of Deeds at Book 168 1, Page 324; and
- 5) Release Deed from BIC to MaineDOT dated November 12, 1997, recorded at said Registry of Deeds at Book 1740 Page 78; and
- 6) Corrective Deed from Fieldcrest Cannon, Inc. to Maine DOT dated November 4, 2002 and recorded at said Registry of Deeds at Book 2357, Page 18; and

WHEREAS, Grantor's ownership in Sears Island as outlined above is subject to a Consent Decree dated March 19, 1997, between Maine DOT and the U.S. Department of Environmental Protection, under U.S. District Court, District of Maine, Civil Action docket # 96-0249-B, (the "Consent Decree"), an abstract of which is recorded at said Registry of Deeds in Book 2542, Page 221 (the "Recorded Abstract"). The remaining obligations of the Consent Decree are outlined in a Notice of Termination of Consent Decree dated September 30, 2004 and October 4, 2004 (the "Termination") as more specifically set forth in Section 13 of this Conservation Easement; and

WHEREAS, a portion of Sears Island consisting of an approximately 500' by 500' square parcel on the south end of Sears island was retained by BIC and is now or formerly owned in fee by Cell Tower Lease Acquisition, LLC (the "Tower Parcel"). The Tower Parcel is held subject to a Conservation Easement conveyed by BIC to MaineDOT on the Tower Parcel restricting the Tower Parcel to telecommunications purposes, recorded at said Registry of Deeds at Book 2771, Page 296; and,

WHEREAS, the premises described by the deed references above, subject to the restrictions referenced above, represent all of MaineDOT's property interests on Sears Island (the "Island"); and

WHEREAS, the subject of this Conservation Easement includes two parcels of land on the Island, together consisting of approximately six hundred and one (601±) acres more particularly described in Exhibit A based on a surveyed description and depicted on Exhibit B, both attached hereto and made part hereof by reference, subject to revision by any addendum filed in accordance with Section 2.c. herein (the "Protected Property"); and

WHEREAS, the remainder of the Island not included within the limits of the Protected Property and the Tower Parcel consists of approximately three hundred thirty (330±) acres and is identified herein as the "Transportation Parcel"; and

WHEREAS, the Transportation Parcel is being reserved by MaineDOT for future transportation use and 23 CFR § 774.11(i) allows for joint or concurrent development of a transportation facility such that future development of that reserved land does not constitute a use under 23 § 774.17; and

WHEREAS, the existing causeway and access road (collectively the "Stetson Hills Road" and/or "State Highway 252") on the Island are intended to be included within the Transportation Parcel; and

WHEREAS, the Protected Property comprises undeveloped land with significant natural and wildlife values (the "Conservation Values"); and

WHEREAS, the Protected Property includes a stretch of beach that is popular for swimming and walking by the general public and has been used for such for over decades; and

WHEREAS, the Grantor has allowed community nature observation and recreation on the Protected Property for a number of years; and

WHEREAS, the Protected Property includes much of the only area of open, productive clam flats in the entire town of Searsport, which has been seeded and studied for a number of years; and

WHEREAS, Sears Island frames part of Stockton Harbor and lies very centrally on Penobscot Bay, and Penobscot Bay is Maine's largest bay, and which has seaports, manufacturing centers, farms, rocky headlands and well over 100 islands on its waters and shores. The Bay serves as the economic domain of a thousand or more working fishing and lobstering boats, includes a major shipping channel, and is a recreational and ecological location of world class standing with a long history of sailboat cruising and recreational boating; and

WHEREAS, according to the Wildlife Habitat Evaluation of Sears Island, Maine by the US Fish and Wildlife Service in November 1992 and other wildlife inventories as reported in a Draft Supplemental Environmental Impact Statement dated July 1995, surveys of mammals, birds, reptiles and amphibians were done on Sears Island from January to November of 1992 which found a diversity of terrestrial and coastal wildlife species utilizing Sears Island including 28 species of mammals, 9 species of herpetiles, and 168 species of birds. At least seven vernal pools were identified on the Protected Property, as well as a large area of woodcock courtship activity and a wide variety of neotropical migrants were observed; and

WHEREAS, MaineDOT wishes to ensure the ability to pursue compensatory mitigation credits for transportation projects on the Protected Property, and has identified two degraded locations on the Protected Property depicted in Exhibit B as "Enhancement/Restoration Areas," as suitable for wetland and upland creation, enhancement and restoration compensatory mitigation (pursuant to 23 M.R.S.A. § 153B(I)(G),) for the environmental effects of as-yet unidentified Maine DOT transportation projects (the "Transportation Projects"); and

WHEREAS, Grantor has agreed to convey and Holder has agreed to accept a Conservation Easement over the Protected Property, being all that property comprising MaineDOT's ownership in Sears Island except for the Transportation Parcel and the Tower Parcel as described in Exhibit A, together with rights to access the Protected Property; and

WHEREAS, the Grantor and the Holder, recognizing the Conservation Values of the Protected Property as described above, have the common purpose of conserving the values of the Protected Property by this conveyance of a Conservation Easement over the Protected Property, which easement shall benefit, protect and conserve the Conservation Values of the Protected Property, conserve and protect the indigenous plant and animal populations., and prevent the use or development of the Protected Property for any purpose or in any manner that would conflict with this Conservation Easement, for the benefit of Waldo County and the State of Maine; and

WHEREAS, The future of Sears Island is of statewide importance, as demonstrated in Maine Public Law 2005, Chapter 277, H.P. 202 - L.D. 277, titled "An Act Regarding the Management and Use of Sears Island"; and

WHEREAS, the resulting Sears Island Planning Initiative Steering Committee Consensus Agreement of April 12, 2007 as amended April 27, 2007, was supported by the Town of Searsport, the Maine Department of Transportation, and signed by 38 signatories, who

determined that "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;" and

WHEREAS, the Joint Use Planning Process for Sears Island formed a 'Sears Island Conservation Area Advisory Council' to provide public input on future land use and management decisions, based on the "Concept Paper for a Sears Island Protected Property Advisory Group" approved and dated October 27, 2008, as documented in the Baseline Data; And

WHEREAS, the Grantor intends through this document to outline limitations on the use and development of the Protected Property; and

WHEREAS, the Holder will ensure that such use restrictions remain in place in cooperation with a designated land management entity or entities (collectively being the "Land Management Entity") selected by Grantor and approved by Holder in writing. The Land Management Entity will advise, oversee and manage the Protected Property in accordance with this Conservation Easement and any uses permitted herein; and

WHEREAS, the Grantor intends as owner of the Protected Property, to convey to the within Third Party Enforcer the Third Party Enforcement Rights contained herein; and

WHEREAS, the Grantee and Third Party Enforcer agree, by accepting this grant, to honor the intentions of Grantor stated herein and to preserve and protect in perpetuity the Conservation Values of the Protected Property for the public benefit of this generation and the generations to come; and

WHEREAS, the preservation of the Protected Property is consistent with federal, state and local governmental conservation policy;

NOW THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, Grantor does hereby give, grant, bestow, and convey unto the Holder, its successors and assigns forever, a CONSERVATION EASEMENT in perpetuity over the Protected Property as set forth below.

## **1) PURPOSE**

This Conservation Easement on the Protected Property is granted exclusively for the following conservation purposes:

To provide a significant public benefit by protecting and preserving in perpetuity the natural and undeveloped character of the Protected Property, including its wetlands and stream corridors, its upland forests and fields, its wildlife habitat, and its scenic character when viewed from Public Vantage Points specifically identified in Section 2.A. herein, and by preserving the opportunity for low impact outdoor recreation, education and nature observation consistent with the purposes



of this easement. Accordingly, the Conservation Easement does include opportunities for low impact recreation and education on the Protected Property, including the construction of facilities and structures necessary for these activities.

It is the general intent of this Conservation Easement to assure that the Protected Property will be retained forever in its substantially undeveloped, open and natural condition, consistent with the terms of this Conservation Easement, including its recitals, and to prevent any use of the Protected Property that will impair or interfere with these conditions. Grantor and Holder intend that this Conservation Easement will limit, in perpetuity, the uses of the Protected Property to activities which are compatible with these purposes and the protection of wildlife habitat and preservation of its open space, natural values and its scenic character when viewed from the Public Vantage Points.

## **2) EXISTING CONDITIONS**

At the time of this grant there are no structures on the Protected Property except for boundary markers, the remains of old foundations, unimproved gravel roads and foot paths. As of the date of this Conservation Easement, there are no surface alterations on the Protected Property other than those associated with existing structures listed herein, the Stetson Hills Road that traverses the Protected Property, a network of rustic footpaths, two sites of altered wetlands from prior construction activity, and an existing unpaved woods roadway with an average tread width and side clearance of 10 feet over a right of way leading to the Tower Lot, located as generally depicted on Exhibit B. As of the date of this grant the Protected Property is substantially forested with small areas of open fields and meadows, and some areas of blowdowns. All existing conditions are documented in Baseline Data, a compilation of the conditions of the Protected Property as of the date of this grant, certified as accurate by the Grantor and the Holder, and on file at the offices of Holder. Grantor reserves the right and hereby authorizes an approved Land Management Entity to maintain and replace all existing structures and surface alterations with substantially similar structures and improvements in substantially the same locations.

**A) Land Use.** The Protected Property may be used for conservation, low impact recreation, and natural resource management and educational activities, together with limited commercial activities related thereto that do not adversely affect its Conservation Values. The Protected Property itself shall not be used in any manner that will detract from its substantially natural and undeveloped character when viewed from areas on the public waters of Stockton Harbor and those areas of Penobscot Bay from which the Protected Property is visible, or from public roadways and land areas on the mainland lying easterly and northerly of the Island (hereinafter Public Vantage Points). Notwithstanding the foregoing, any restrictions in this Conservation Easement intending to safeguard the scenic character of the Protected Property shall apply only to activities occurring on the Protected Property and shall in no way be construed to prohibit or limit any type of activity or infrastructure on the Transportation Parcel.

**B) Specific Prohibitions.** No industrial or residential development, and no quarrying or surface mining activities, or exploration for or development and extraction of water resources for consumption offsite, or extraction of minerals, hydrocarbon substances, soils or other substances, except for geothermal resources for use on the Protected Property, are permitted on the Protected Property. Without limiting the generality of the foregoing and notwithstanding the reserved rights of Grantor and or any authorized Land Management Entity, the following uses are prohibited on the Protected Property: residential structures, industrial development, towers and high aspect apparatus for telecommunications (provided that not more than one wind power tower is permitted as described hereinafter), junk yards, and aircraft landing sites, except in emergency.

**C) Division.** For the purpose of land uses permitted under this Conservation Easement, the Protected Property must remain in its current configuration as a single lot under unified ownership, which may be joint and undivided, subject to minor boundary line adjustments along the perimeter of the Transportation Parcel which may be made by the parties with the prior written consent of the Third Party Enforcer, provided that the Protected Property shall not be reduced by more than 1/2 acre due to all such boundary line adjustments. Grantor will make a reasonable effort to provide replacement acreage of equal conservation value if practicable. Any such boundary line adjustment shall be documented through an addendum to be filed in the Waldo County Registry of Deeds (the "Addendum"), which Addendum shall identify a new metes and bounds description of the Protected Property, a new survey plan (together representing the "Revised Description"). The Addendum shall be signed by the Grantor, Holder and Third Party Enforcer, acknowledging acceptance of the Revised Description as (i) not materially detracting from the conservation purposes identified in Section 1 herein, and (ii) not increasing the value of the Grantor's estate. Such acknowledgment and acceptance by the parties hereto shall not be unreasonably denied, conditioned or delayed. The Revised Description shall supersede the Protected Property described in Exhibit A and depicted on Exhibit B, both attached to this Conservation Easement. The Addendum shall cross reference the registry recording citation of this Conservation Easement. Notwithstanding the foregoing, any portion of the Protected Property may be conveyed to an entity that meets the qualifications set forth in Paragraph 15 for permanent conservation ownership. Under no circumstances may the Protected Property or any portion thereof be included as part of the gross tract area of other land not subject to this Conservation Easement, for the purposes of determining density, lot coverage, or land area requirements, under otherwise applicable laws, regulations or ordinances controlling land use, building density or transfer for development rights. This condition should not be construed to prohibit the use of the aforementioned "Enhancement/Restoration Areas" on the Protected Property as mitigation, by creation, enhancement and

restoration of previously degraded wetlands and related upland buffers, to compensate for unavoidable wetland impacts to offset the environmental impact of transportation activities on or near Sears Island or other areas of the State of Maine in accordance with Section 5.B.e herein.

**D) Land Use Areas.** For the purpose of the restrictions and reserved rights hereunder, the Protected Property will be treated as two (2) land use areas: an "Education and Maintenance Center Area" to be established in accordance herewith, and the "Natural Area" as further described below. Until the Education and Maintenance Center Area is established, the entire Protected Property shall be treated as the Natural Area, and after the Education and Maintenance Center Area is established, the Natural Area shall be comprised of all of the Protected Property outside of the Education and Maintenance Center Area.

### **3) EDUCATION AND MAINTENANCE CENTER AREA**

**A)** The Education and Maintenance Center Area shall be a single contiguous land area sited by the prior written agreement of Grantor and, Holder as outlined herein, from within the area designated on Exhibit B as the "Education and Maintenance Center Parcel" generally depicted thereon based upon a location entirely east of the current paved Stetson Hills Road, and within 1.1 miles south of where State Highway 252 crosses the Montreal, Maine and Atlantic Railway tracks on the mainland.

**B)** To establish the Education and Maintenance Center Area, an approved Land Management Entity shall provide written notice to Holder and Grantor of the proposed location of the Education and Maintenance Center Area by certified mail, return receipt requested. Such notice shall include a proposed sketch plan showing the Education and Maintenance Center Area, a survey map showing boundary markers of the proposed Education and Maintenance Center Area, and a metes and bounds description of the proposed Education and Maintenance Center Area prepared in accordance with the survey, together with sufficient information to demonstrate compliance with the contiguous configuration, distance from the rail line and other location requirements for the Education and Maintenance Center Area established herein and in accordance with the procedures set forth in herein.

**C)** The Land Management Entity shall clearly and accurately mark the boundaries of the Education and Maintenance Center Area, and maintain such boundaries in a clear and accurate condition for Holder's monitoring and enforcement purposes, as noted in herein.

**D)** Prior to the commencement of any activities permitted only within the Education and Maintenance Center Area, except for test pits necessary for

siting the Education and Maintenance Center Area, a recorded legal description of the final Education and Maintenance Center Area as approved by the Grantor and the Holder must be established by an addendum hereto, signed by Grantor and Holder and recorded at the Registry of Deeds. The addendum shall incorporate the details specified in Section 3.B. above.

#### **4) EDUCATION AND MAINTENANCE CENTER AREA USES, RESTRICTIONS AND RESERVED RIGHTS**

A) Currently, within the "Education and Maintenance Center Parcel" as described in Section 3.A., there are only minor existing structures such as boundary markers, remains of foundations, unimproved gravel roads and foot paths. Once the Education and Maintenance Center Area is established as set forth in Sections 3.A. and 3.B., no additional structures, temporary or permanent, may be located or constructed in the Education and Maintenance Center Area of the Protected Property, and no alterations may be made to the vegetation or to the surface of the earth or wetlands or watercourses in the Education and Maintenance Center Area of the Protected Property, without the prior written consent of Holder; except that any activity permitted in the Natural Area is permitted in the Education and Maintenance Center Area, and the following additional rights are reserved by the Grantor and hereby ;authorized by the Grantor to be implemented by an approved Land Management Entity in the event the Education and Maintenance Center Area is established as outlined herein:

**a) Structures in Education and Maintenance Center Area:** the right to construct, maintain and replace structures, including buildings such as interpretive centers, barns, solar arrays, utility and storage boxes and outbuildings, recreational facilities or facilities for educational games and activities, temporary recreation structures, educational and maintenance facilities, parking areas and lighting, septic systems and domestic fresh water facilities for use on the Protected Property, and power and communication facilities, including solar collection and transmission devices, and not more than one wind power turbine tower and energy storage facility used primarily to serve permitted uses of the Protected Property only. No structure permitted by this section may exceed thirty (30) feet in height, excluding chimneys, measured from the original average grade of the lowest side of the building(s) to the highest point of the roof, except for the single wind power turbine tower, which may exceed that limitation after notice in writing by an approved Land Management Entity to the Holder. All buildings combined within the Education and Maintenance Center Area shall be limited to not more than ten thousand (10,000) square feet in aggregate gross covered ground area, defined as the exterior footprint at ground level. Buildings to be measured shall include only structures designed with both roof and walls.

**b) Dock and Pier:** The right, after notice in writing to the Holder by an approved Land Management Entity, and after Holder approval, to establish and maintain at the shore of the Education and Maintenance Center Area, not more than one dock or pier with a network of ramps and floats. The size and location of the dock or pier with ramps and floats must be limited so that the depth of the water under the floats does not exceed 12 feet at mean low water. Holder approval shall be based on the consideration that the dock or pier with a network of ramps and floats shall be designed to accommodate small marine craft of not more than approximately 30 feet in length, and the design and siting of the system shall preserve the scenic and conservation values of the Protected Property, in particular the dune grasslands and clam flats.

**c) Surface Alterations in Education and Maintenance Center Area:** the right to alter the surface as necessary or convenient to accomplish the authorized actions of any Land Management Entity outlined herein, and to excavate, grade and fill to establish lawns and gardens, paved or unpaved driveways and parking areas, staging areas, an outdoor amphitheatre designed to primarily utilize existing topography and provide for a circle of seats or benches upon a berm, platforms, trails and woods roads, storm water management and drainage structures for permitted buildings, roadways and parking structures, septic systems, and fresh water wells with piping and transmission facilities to serve only the Protected Property, and the right to grade the surface to establish and maintain recreational fields for events and camping.

**d) Vegetation Management in Education and Maintenance Center Area:** the right to alter vegetation to create and maintain open areas around permitted structures, to cultivate, plant, harvest vegetation for lawns, gardens and woodlands, and as necessary or convenient to accomplish the reserved rights of Grantor and the authorized actions of any Land Management Entity outlined herein. Any activities within forested land within the Education and Maintenance Center Area shall abide by the limitations on forest management for the Natural Area as set forth herein to the extent practicable, provided that as an additional use, demonstration forests and habitat types may be established and managed for scientific and conservation educational purposes.

**B) Notices and Approvals for the Education and Maintenance Center Area:**

**a)** An approved Land Management Entity shall notify Holder by certified mail, return receipt requested, as set forth herein, at least thirty (30) days prior to the commencement of site preparation,

construction, substantial alteration to the surface other than test pits, or replacement, relocation, or removal of any structure permitted in the Education and Maintenance Center Area, in order to establish the final approved Education and Maintenance Center Area as set forth herein. Holder will reply within thirty (30) days of receipt of any notice from the Land Management Entity, either approving the Land Management Entity's proposed Education and Maintenance Center Area, or suggesting reasonable modifications that may be necessary to comply with the terms of this grant. With respect to the establishment of the Education and Maintenance Center Area described herein, the parties shall work in good faith to complete and record the description of the approved Education and Maintenance Center Area as an addendum to this Conservation Easement, within thirty (30) days of such reply by Holder.

b) An approved Land Management Entity also shall notify Holder by certified mail, return receipt requested, at least thirty (30) days prior to the commencement of construction or site preparation for any proposed dock or pier with ramp and float as permitted herein, and for each and every building, and the wind tower as permitted herein. Holder will reply within thirty (30) days of receipt of any notice from the Land Management Entity, either approving or suggesting modifications to the plans for such buildings, dock facility, and wind tower that may be necessary to comply with the terms of this grant. Approval for the buildings in the Education and Maintenance Center Area will be based solely on the gross covered ground area and height of such structures, as required in this Conservation Easement.

## **5.) NATURAL AREA USES, RESTRICTIONS AND RESERVED RIGHTS**

It is the intention of this Conservation Easement that the Natural Area be used as conservation land for low impact outdoor recreation, nature observation and study, and that uses and improvements within the Natural Area be limited to the extent necessary or appropriate to preserve its natural and undeveloped character including preserving its wildlife habitat and natural scenic values, as well as to buffer the shoreline and important Conservation Values of the Protected Property from the impacts of permitted development and uses within the Protected Property's Education and Maintenance Center Area and from the transportation facilities that may be located on the Excluded Transportation Parcel.

No structures, temporary or permanent, may be located or constructed on the Natural Area of the Protected Property, and no alterations may be made to the vegetation or to the surface of the earth or to wetlands or watercourses on the Natural Area of the Protected Property, without the prior written consent of Holder, except that the following rights are reserved by Grantor and are hereby authorized by the Grantor to be implemented by an

approved Land Management Entity:

#### **A) Structures in Natural Area**

a) **Minor Structures in Natural Area:** The right to construct and maintain within the Natural Area, minor structures to accommodate low-impact outdoor recreation, nature observation and study, to control erosion, to protect public safety, and to control authorized uses. Such structures may include: small unlighted signs, low barriers to discourage unauthorized access or to protect fragile resources, erosion control structures, boundary markers, rustic trail improvements (including benches, bog bridging, fencing, hand rails, steps, and stream bridges), composting toilet facilities, interpretive signs and kiosks, registration boxes, outhauls and canoe launches, minor waterfront access structures, temporary structures to support and protect archeological and scientific investigation, and water supply facilities for consumption on the Protected Property. No structure in the Natural Area may exceed twenty (20) feet in height, measured from the original average, grade of the structure sites.

b) **Prohibited Structures in the Natural Area:** The following structures are not permitted in the Natural Area: buildings, sheds, storage units, gazebos, screen houses, tent platforms, rip rap, jetties, barns, bleachers, stages, paved platforms, major recreational improvements such as swimming pools, tennis courts, athletic or sports or equestrian fields or courts or courses that require grading of the surface or extensive baring of mineral soils.

#### **B) Surface Alterations in Natural Area**

a) **Maintenance of Stetson Hills Road and Road along ROW to Tower:** the right to maintain and improve the existing Stetson Hills Road, and the approximately 10-foot wide gravel roadway over the right of way to the Tower; each located as generally depicted on Exhibit B. Stetson Hills Road is not a part of the Protected Property, but any maintenance of the Stetson Hills Road may require entry on the Protected Property to the minimum extent necessary to accomplish the necessary maintenance and improvements.

b) **Maintenance Roadway:** the right to establish and maintain a roadway from the Stetson Hills Road to facilities located on the Education and Maintenance Center Area as necessary.

c) **Footpaths and Trails:** the right to establish and maintain, anywhere

on the Protected Property, unpaved footpaths and trails of not more than eight (8) feet in average combined tread width and side clearance, designed and located to prevent erosion and protect the other Conservation Values of the Conservation Easement.

d) **Study:** the right to permit archeological and ecological study of the Protected Property, including excavation of sites, and to erect temporary structures to protect and identify sitework, after prior written notice to Holder, provided that all such work must be conducted in accordance with applicable then-current professional standards, and the disturbed area must be restored to its natural appearance as soon as reasonably possible after completion.

e) **Wetland Mitigation:** the Grantor may implement the creation, enhancement, and restoration of wetlands, hydrologic features, and wetland habitat features on the Protected Property only within those two sites in the Natural Area that are depicted in Exhibit B, as "Enhancement/Restoration Areas," to compensate for unavoidable wetland impacts of transportation activities on or near Sears Island or other areas of the State of Maine by the Maine Department of Transportation, after notice in writing to Holder specifying the scope of work and a timeline for completion. This work may include: excavation, surface grading of micro-topography, planting and seeding of sites, provided that all such work must be conducted in accordance with 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 and the DEP Chapter 310 of the Wetland Protection Rules for the Natural Resource Protection Act. These restored sites may require up to 10 years of post-construction monitoring of performance standards.

### **C) Vegetation Management In Natural Area**

Within forested areas of the Natural Area, it is the intention of this Conservation Easement to foster an intact, healthy forested area, and to limit the removal of vegetation to preserve healthy soils and habitat for wildlife, including current and future threatened, rare or endangered species, to assure biological diversity, to preserve the scenic character of forested areas of the Protected Property from Public Vantage Points, and to protect, maintain and/or restore those wetlands, as well as open and unforested areas, in the Natural Area that provide habitat for wildlife including current and future threatened, rare or endangered species or that provide a scenic benefit from the Public Vantage Points.. It is the intention of this



grant to help preserve the ecological integrity of streams, brooks, rivers or water bodies on or about the Protected Property by encouraging maintenance of vegetated buffers in order to provide shading and prevent erosion, thereby maintaining habitat value and water quality.

The following rights are reserved by the Grantor and are hereby authorized by the Grantor to be implemented by an approved Land Management Entity, given the goals of vegetation management set forth above:

**a) Natural Area - Generally:**

**i)** the right to alter vegetation anywhere in the Natural Area to the extent necessary to exercise the rights reserved herein provided that in every case the disturbed surrounding area must be restored as soon as reasonably possible to a state consistent with the ecological character of the Natural Area to be protected by this Conservation Easement.

**(ii)** the right to manage vegetation on the Natural Area of the Protected Property without prior approval by Holder only in order to remove hazards to public safety and to combat active fire.

**(iii)** the right, subject to the prior written approval of the Holder that may be granted with limitations to preserve the Conservation Values of the Protected Property, to manage vegetation on the Natural Area of the Protected Property for the following purposes: to establish and maintain additional open area, fields and meadows for habitat and biodiversity purposes, to control or prevent the spread of disease and exotic intrusion to preserve biological diversity, for archeological and scientific investigation and education, and to rehabilitate and enhance habitat for native flora and fauna; but in each case in accordance with a plan approved by the Maine Department of Conservation's Maine Natural Areas Program or successor agency.

**(iv)** The right to create, maintain, enhance, restore and rehabilitate wetlands and hydrological systems as permitted in Section 5.B.(e) hereinabove.

**(v)** the right to manage vegetation on the Natural Area of the Protected Property to reduce the threat of fire as necessary for

public safety with the prior written approval of Holder in accordance with a plan approved by the Maine Forest Service, or successor Agency.

**b) Natural Area - Unforested Areas:** the right to maintain the existing unforested areas, not including wetlands, in the Natural Area , including the right to mow and bush hog and otherwise remove woody regeneration or standing timber thereon. No such mowing or bush hogging shall be permitted within 75 feet of the normal high water line of any perennial river, stream, brook, pond or other water body, and 250' from the mean high water mark. Mowing of vegetation or harvesting of peat is not permitted on the existing wetlands.

**c) Natural Area - Forested Areas:** the right to use vegetation management methods that may include cutting, thinning, weeding, cleaning, sanitation, pruning and other such measures to exercise only those reserved rights and those actions approved by Holder as described above. Vegetation management within forested areas shall be conducted in a manner to (a) prevent erosion, siltation, or other adverse impact on surface waters on or about the Protected Property; (b) avoid disturbance to known rare or endangered plant or animal species; and (c) protect topsoil on the Protected Property from degradation, removal, or erosion, by conducting vehicular or mechanical methods only on sufficiently stable or frozen ground and by promptly stabilizing the soil, grading ruts, and replanting bared soils, that may result from such vegetation management.

## **6) WATER PROTECTION, POLLUTION CONTROL AND WASTE DISPOSAL**

**A)** The direct discharge of treated or untreated sewage into surface waters on or about the Protected Property is strictly prohibited, and any such waste shall be disposed of in accordance with applicable laws and regulations.

**B)** It is forbidden to dispose of or store unserviceable or abandoned equipment, such as appliances, vehicles and parts thereof, or any other waste material in the Natural Area on the Protected Property, except that vegetative slash and debris may be allowed to remain on the Protected Property, and manure, compost and vegetative waste may be stored and/or used on the Protected Property in accordance with applicable laws and regulations. Other waste generated by permitted uses on the Protected Property may be stored temporarily in the Education and Maintenance Center Area within appropriate receptacles for removal at reasonable intervals.

C) The use, storage, discharge or runoff of chemical herbicides, pesticides, fungicides, soaps, detergents or highly acidic or alkaline agents, fertilizers and other toxic agents, including discharge of potentially toxic waste water or other toxic byproducts of permitted uses, must be limited to prevent any demonstrable adverse impact on wildlife, waters and other important conservation values to be protected by this Conservation Easement, unless more intensive use is approved in advance and in writing by Holder as appropriate in its sole and exclusive discretion, to prevent or mitigate harm to the inhabitants, natural resources or permitted uses of the Protected Property.

## **7) PUBLIC ACCESS**

A) Grantor hereby permits, and will refrain from prohibiting or discouraging, use of the Protected Property by the general public for low-impact outdoor recreational uses, such as walking, hiking, nature observation, and for pedestrian access to the intertidal area of the shore, exercised in a manner that is consistent with the protection and preservation of the natural and ecological character of the Protected Property and the terms hereof. An approved Land Management Entity has the right to prohibit, limit or charge a fee for off-hours use, fires, vehicular uses, and special events, and the right to temporarily limit or restrict such public recreational use of the Protected Property, or any part thereof, that is detrimental to the Conservation Values of the Protected Property, or to the extent necessary for construction and maintenance, mitigation and management activities or other activities of the Grantor or an approved Land Management Entity permitted hereunder that may pose a hazard to human safety. For such purposes, the general public will be allowed to access the Protected Property over the Stetson Hills Road as depicted generally on Exhibit B and/or over a road to be constructed connecting the Stetson Hills Road to the Educational and Maintenance Center Area.

B) Grantor hereby conveys to the Holder, any approved Land Management Entity and the general public a right of way over Stetson Hills Road for ingress and egress for the purposes of accessing the Protected Property for any purposes not prohibited by this Conservation Easement.

C) Grantor, Holder and any approved Land Management Entity claim all applicable rights and protections against liability for injury to the public to the fullest extent of the law under Title 14 M.R.S.A. Section 159-A, et seq. as amended and successor provision thereof (The Maine Recreational Use Statute), under the Maine Tort Claims Act, and under any other applicable provision of law and equity.

## **8) HOLDER'S AFFIRMATIVE RIGHTS**

**A) Entry and Inspection:** Holder shall have the right to enter the Protected Property for inspection and monitoring purposes and for enforcement at a reasonable time and in a reasonable manner that is consistent with the conservation purposes hereof. Except in emergency circumstances, Holder will make reasonable efforts to contact the appropriate Land Management Entity prior to entry onto any area of the Protected Property that is not then open to the public. "Emergency circumstances" shall mean that the Holder has a good-faith basis to believe a violation of the easement is occurring or is imminent.

### **B) Enforcement:**

a) Holder shall have the right to enforce this Conservation Easement by proceedings at law and in equity, including the right to enjoin the violation, ex parte as necessary, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Easement and to require the restoration of the Property to the condition that existed prior to any such injury.

b) Prior to initiation of an enforcement action, Holder shall provide Grantor and any appropriate Land Management Entity with prior notice and reasonable opportunity to cure any breach for which they are responsible except where emergency circumstances require more immediate enforcement action. If a court determines that this Conservation Easement has been breached by the Grantor, or by Grantor's agents, employees, lessees, guests, or others for whose actions on the Protected Property the Grantor is responsible, Grantor shall reimburse Holder for any reasonable costs of enforcement, including court costs, mediation and, if applicable, arbitration costs, reasonable attorneys' fees, and any other payments ordered by such court.

c) Neither the Grantor nor any Land Management Entity are responsible for injury to or change in the Protected Property resulting from natural causes or environmental catastrophe beyond Grantor's and/or the Land Management Entity's control, such as fire, flood, storm, and earth movement, or from any prudent action taken by Grantor and/or the Land Management Entity under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes.

## **9) BOUNDARIES**

The Transportation Parcel has been professionally surveyed. It shall be Grantor's obligation to keep the boundaries between the Transportation Parcel and the Protected Property clearly marked. In the event boundaries are not adequately clear or marked and Grantor fails to accurately mark within a reasonable time after notice by Holder, Holder shall have the right to engage a professional surveyor to re-establish and re-mark boundaries of the Protected Property or any part thereof. The costs associated with such survey work shall be paid by the Grantor only if and to the extent necessary to determine if a breach of this Conservation Easement has occurred on the Protected Property or a land use area thereof.

## **10) HOLDER ACKNOWLEDGEMENT SIGNS**

Holder shall have the right to have its name and role acknowledged in a reasonable number of signs within the Education and Maintenance Center Area, and at areas within the Natural Area that are visible along boundary lines, to identify Holder and inform the public and abutting property owners that the Protected Property is under the protection of this Conservation Easement.

## **11) NOTICES AND REQUESTS FOR APPROVAL**

**A) Notice and Approval Requirements:** Any approved Land Management Entity or the Grantor, as the case may be, shall notify Holder prior to undertaking any activity or exercising any reserved right that may have a material adverse effect on the conservation purposes of this grant, as specifically required in this Conservation Easement. Notices must include sufficient formation to enable Holder to determine whether plans are consistent with the terms of this Easement and the conservation purposes hereof. Holder shall not give its written consent and approval, if required, unless the plans demonstrate that the proposed use or facilities are consistent with the terms, conditions, and purposes of this Easement and will not diminish or impair the conservation values of the Protected Property.

**B) Method for Notice:** Any notices or requests for approval required by this Easement shall be in writing and shall be personally delivered or sent certified mail, return receipt requested, or by such commercial delivery service as provides proof of delivery, to Grantor, Holder and the appropriate Land Management Entity, at the following addresses, unless one has been notified by the other of a change of address or change of ownership:

To Grantor: Environmental Office  
Maine Department of Transportation  
16 State House Station  
Augusta, ME 04333-0016

To Holder: Stewardship Director  
Maine Coast Heritage Trust  
1 Bowdoin Mill Island, Suite 201  
Topsham, Maine 04086

**C) Time for Notice and Reply:** Where Grantor and/or a Land Management Entity are required to provide notice to Holder pursuant to this Easement, such notice as described hereinabove shall be given in writing at least thirty (30) days prior to the event giving rise to the need to give notice except as otherwise specifically provided herein.

Where Grantor and/or a Land Management Entity are required to obtain Holder's prior written consent and approval, such request as described hereinabove shall be given in writing thirty (30) days prior to undertaking the proposed activity except as otherwise specifically provided herein. Holder, upon receipt of Grantor's and/or a Land Management Entity's request, shall acknowledge receipt of the same. Following such review, Holder, shall grant, grant with conditions, or withhold its approval. Failure to approve Grantor's and/or a Land Management Entity's request within thirty (30) days shall be deemed a denial of any element of such request that is not expressly permitted under the terms of this easement. No proposed activity that requires Holder approval may proceed without Holder's written consent and approval as provided herein.

## **12) COSTS, TAXES, LIABILITY**

Grantor acknowledges that Holder has neither possessory rights in the Protected Property, nor any responsibility nor right to control, maintain, pay taxes on or keep up the Protected Property. Grantor (or Grantor's agents, tenants, and licensees, as the case may be) and any Land Management Entities, and not Holder, shall retain all responsibilities and shall bear all costs and liabilities of any nature related to the ownership, operation, upkeep, improvement and maintenance of the Protected Property, including but not limited to hazardous waste and other environmental compliance obligations and liability.

## **13) CONSENT DECREE**

**A)** The Parties hereto acknowledge the aforementioned Consent Decree, the

associated Recorded Abstract, and the Termination, attached hereto as Exhibit C. Accordingly, this grant of Conservation Easement is conveyed subject to the condition that MaineDOT hereby reserves all rights [necessary to allow MaineDOT to comply with the conditions of paragraphs 5 (to the extent specifically outlined in the Termination), 8, 16(a), 16(b), and 17 of the Consent Decree (the "Termination Conditions").

**B)** This grant of Conservation Easement is conveyed subject to the condition that the Holder shall comply with paragraphs 16(a) and 16(b) of the Consent Decree.

**C)** In addition, as specified by the Termination Conditions, MaineDOT shall have notified the Environmental Protection Agency, the United States Department of Justice, the Conservation Law Foundation, and the Sierra Club at least 30 days prior to MaineDOT's grant of this Conservation Easement.

**D)** Nothing in this grant of Conservation Easement shall be construed to limit or preclude the Grantor's ability to comply with the requirements of the Consent Decree.

#### **14) STANDARD PROVISIONS**

**A) Maine Conservation Easement Act:** This Conservation Easement is established pursuant to the Maine Conservation Easement Act at 33 M.R.S. §§ 476 through 479-C, inclusive, as amended, and shall be construed in accordance with the laws of the State of Maine.

**B) Conservation Purposes:** This Conservation Easement is established exclusively for conservation purposes pursuant to the Internal Revenue Code, as amended (hereinafter referred to as the "Code") at Title 26, USCA, Section 170(h)(1)-(6) and Sections 2031(c), 2055, and 2522, and under Treasury Regulations at Title 26 CFR §1.170A-14 et seq., as amended.

**C) Qualified Holder:** The Holder is qualified to hold conservation easements pursuant to 33 M.R.S. § 476(2)(B), as amended, and is a qualified donee under Internal Revenue Code Section 170(h)(3), a publicly supported, nonprofit 501(c)(3) organization with the authority to accept lands, easements, and buildings for the purpose of preserving and protecting natural, scenic, educational, recreational or open-space values of real property, and with the commitment to preserve the conservation values of the Protected Property.

## **15) ASSIGNMENT LIMITATION**

This Conservation Easement is assignable, but only to an entity that satisfies the requirements of Section 170(h)(3) of the Internal Revenue Code (or successor provisions thereof and the requirements of Section 476(2) of Title 33 of the Maine Revised Statutes, as amended (or successor provisions thereof), and that, as a condition of transfer, agrees to uphold the conservation purposes of this grant.

## **16) BASELINE DOCUMENTATION**

In order to establish the present condition of the Protected Property and its conservation attributes protected by this Conservation Easement, and its natural and scenic resources, so as to be able to monitor properly future uses of the Protected Property and assure compliance with the terms hereof, Holder and Grantor have prepared an inventory of the Protected Property's relevant features and conditions (the "Baseline Documentation") and have certified the same as an accurate representation, to the extent known, of the condition of the Protected Property as of the date of this grant, as required under Treasury Regulations § 1.170A-14, for tax deductible conservation easement gifts.

## **17) LIENS SUBORDINATED**

Grantor represents that as of the date of this grant there are no liens or mortgages or future interests outstanding against the Protected Property. Grantor has the right to use the Protected Property as collateral to secure the repayment of debt, provided that any lien or other rights granted for such purpose, regardless of date, are subordinate to Holder's rights under this Conservation Easement. Under no circumstances may Holder's rights be extinguished or otherwise affected by the recording, foreclosure or any other action taken concerning any lien or other interest in the Protected Property.

## **18) TERMINATION AND PROCEEDS**

**A)** This Conservation Easement may only be extinguished or terminated by judicial order in a court of competent jurisdiction. It is the intention of the parties that an extinguishment or termination, including a partial termination under the powers of eminent domain, be approved by a court only if all of the conservation purposes of this Conservation Easement are impossible to accomplish, and if both Grantor and Holder agree.

**B)** Grantor and Holder agree that the donation of this Conservation Easement gives rise to a property right which vests immediately in Holder and which has a fair market value equal to the amount by which the fair market value of



the unrestricted Protected Property is reduced by the restrictions imposed by this Conservation Easement, as of the date of the execution of this Conservation Easement. Should this Conservation Easement be extinguished, in whole or in part, any increase in value of the Grantor's estate must be paid by Grantor to Holder, or to another entity selected by the court, referred to herein as Holder's successor, as required under 33 M.R.S. § 477-A(2)(B).

## **19) GENERAL PROVISIONS**

**A) Controlling Law and Interpretation:** The interpretation and performance of this Conservation Easement shall be governed by the laws of the State of Maine. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the conservation purposes of this Conservation Easement and the policy and purpose of the Maine Conservation Easement Act at 33 M.R.S. §§ 476 through 479-C, inclusive, as amended. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the conservation purposes of this Conservation Easement shall govern.

**B) Owner's Rights and Obligations, Joint Obligation:** A person's or entity's obligation hereunder as Grantor or successor owner of the Protected Property, shall be joint and several, and will cease, only if and when such person or entity ceases to have any ownership interest in the Protected Property, (or relevant portion thereof) but only to the extent that the Protected Property (or relevant portion thereof), is then in compliance herewith, and provided such person or entity shall have fulfilled the requirements of Paragraph 19.C. below. Responsibility of owners for breaches of this Conservation Easement that occur prior to transfer of title will survive such transfer; provided that the new owner shall also be responsible for bringing the Protected Property into compliance.

**C) Subsequent Deeds and Transfers:** This Conservation Easement must be incorporated by reference in any deed or other legal instrument by which Grantor conveys any interest in the Protected Property, including, without limitation, a leasehold or mortgage interest. Grantor further agrees to give written notice to Holder within thirty (30) days of the transfer or conveyance of any interest in the Protected Property. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of this Conservation Easement or limit its enforceability in any way.

**D) Compliance/Estoppel Certificates:** Upon written request by Grantor, Holder will provide Compliance/Estoppel Certificates to Grantor or third parties, indicating the extent to which, to Holder's knowledge after due inquiry, the

Protected Property is in compliance with the terms of this grant. The inspection of the Protected Property for this purpose will be made by Holder at Grantor's cost within a reasonable time after Grantor's written request.

**E) Discretionary Approvals and Amendments:**

**a) Discretionary Approvals:** Grantor and Holder recognize that certain activities by the Grantor and/or an approved Land Management Entity may warrant the prior discretionary approval of Holder, and that Holder has the right to issue such discretionary approvals without prior notice to any other party. Nothing in this paragraph shall require the Holder to agree to any discretionary approval.

**b) Amendments:** Grantor and Holder recognize that rare and extraordinary circumstances could arise which warrant modification of certain provisions of this Conservation Easement. To this end, subject to more restrictive laws and regulations, if any, Grantor, Holder and any approved Land Management Entity shall have the right to agree to amendments to this Conservation Easement without prior notice to any other party, provided that in the reasonable judgment of Holder, such amendment enhances or does not materially detract from the conservation values intended to be protected by this Conservation Easement. Amendments will become effective upon recording at the Waldo County Registry of Deeds. Nothing in this paragraph shall require the Grantor or the Holder or a Land Management Entity to agree to any amendment or to consult or negotiate regarding any amendment.

**c) Further Limitations on Discretionary Approval and Amendments:**

Notwithstanding the foregoing, neither the Holder, Grantor nor any Land Management Entity shall have the right or power to approve any action or agree to any amendment, without a court order, if such approval or amendment would:

- (I) impair the conservation purposes of this Conservation Easement;
- (II) materially detract from the Conservation Values intended to be protected by this Conservation Easement;
- (III) limit the term or result in termination of this Conservation Easement; or
- (IV) adversely affect the qualification of this Conservation Easement or the status of the Holder under applicable laws, including the Maine Conservation Easement Act at 33

M.R.S.A. § 476 et seq., and Sections 170(h), 501(c)(3), 2522, and 203 1 (c) of the Internal Revenue Code, successor provisions thereof and regulations issued pursuant thereto.

## **20) ECONOMIC HARDSHIP**

In making this grant, Grantor has considered the possibility that uses prohibited by the terms of this Easement may become more economically valuable than permitted uses, and that neighboring properties may in the future be put entirely to such prohibited uses. In addition, the unprofitability of conducting or implementing any or all of the uses permitted under the terms of this Conservation Easement shall not impair the validity of this Conservation Easement or be considered grounds for its termination or extinguishment. It is the intent of the Grantor and the Holder that any such economic changes shall not be deemed to be changed conditions or a change of circumstances justifying the judicial termination, extinguishment or amendment of this Conservation Easement.

## **21) NONWAIVER**

The failure or delay of the Holder, for any reason whatsoever, to do any action required or contemplated hereunder, or to discover a violation or initiate an action to enforce this Conservation Easement shall not constitute a waiver, laches, or estoppel of its rights to do so at a later time.

## **22) SEVERABILITY, ENTIRE AGREEMENT, NO FORFEITURE**

If any provision of this Conservation Easement or the application of any provision to a particular person or circumstance is found to be invalid, the remainder of this Conservation Easement and the application of such provision to any other person or in any other circumstance shall remain valid. This instrument and the Baseline Documentation set forth the entire agreement of the parties with respect to the Conservation Easement and supersede all prior discussions, negotiations, understandings, or agreements relating to the Conservation Easement, all of which are merged herein. Nothing contained herein will result in ;a forfeiture of this Conservation Easement or reversion to Grantor of any rights extinguished or conveyed hereby.

## **23) STANDING TO ENFORCE**

Only Holder, Grantor and Third Party Enforcer may bring an action to enforce this grant, except as provided in 33 M.R.S.A. § 478, and nothing herein should be construed to grant any other individual or entity standing to bring an action

hereunder, unless otherwise provided by law; nor to grant any rights in the Protected Property by adverse possession or otherwise, provided that nothing in this Easement shall affect any public rights in or to the Protected Property acquired by common law, adverse possession, prescription, or other law, independently of this grant.

#### **24) CAPTIONS**

The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

#### **25) RECORDING**

Grantor shall record this instrument in timely fashion in the official records of Waldo County, Maine, and may re-record it at any time as may be required to preserve its rights in the Easement.

#### **26) THIRD PARTY ENFORCER**

DEP, pursuant to its said Wetland Protection Rules, Code of Maine Rules, Chapter 310 as Third Party Enforcer, is hereby granted the right to enforce the terms of this Conservation Easement by proceedings at law and in equity, including the right to require the restoration of the Protected Property to its prior condition after reasonable prior written notice of any concerns or apparent violations to afford the Grantor and/or a Land Management Entity a reasonable opportunity to correct any infringements on the restrictions herein that are the result of actions or omissions on the part of the Grantor and/or a Land Management Entity. The parties hereto intend that the Holder shall be primarily responsible for the enforcement of this Easement, and that the Third Party Enforcer will assume such responsibility only if the Holder shall fail to enforce such. The Holder, Grantor and Land Management Entity shall not be responsible for any injury to or changes in the Protected Property resulting from the following causes: natural causes or environmental catastrophe beyond the Holder's, Grantor's and/or Land Management Entity's control, such as changes caused by fire, flood, storm, and earth movement; the unauthorized wrongful acts of a third

party; or any prudent action taken by the Holder, Grantor and/or Land Management Entity under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes.

**27) SUCCESSORS AND ASSIGNS**

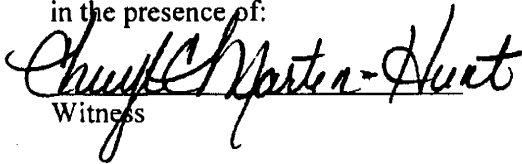
All references to the parties hereto, namely the State of Maine Department of Transportation, the State of Maine Department of Environmental Protection, the Sears Island Management Advisory Council and the Maine Coast Heritage Trust shall, unless specifically otherwise indicated, include the successors and/or assigns of each respective party.

**BY EXECUTION HEREOF**, Holder and the Third Party Enforcer hereby accept the rights and duties set forth in this instrument.


**TO HAVE AND TO HOLD** the said Conservation Easement unto the said Holder, its successors and assigns forever.

**IN WITNESS WHEREOF**, I, David A. Cole, Commissioner of the State of Maine Department of Transportation, hereunto duly authorized, have set my hand and seal on the day and year first above written.

Signed, sealed and delivered  
in the presence of:


  
Witness

**STATE OF MAINE**  
**Department of Transportation**

By:   
David A. Cole  
It's Commissioner,  
Duly Authorized

STATE OF MAINE  
COUNTY OF Kennebec, January 22, 2009

Then personally appeared the above-named David A. Cole, Commissioner of the State of Maine Department of Transportation, and acknowledged the foregoing instrument to be his free act and deed in his said capacity, and the free act and deed of the State of Maine, Department of Transportation.

Before me,  
  
Attorney/Notary Public  
Printed name:  
My commission expires:

*Signatures to continue on following page*

CHERYL C. MARTIN-HUNT  
Notary Public State of Maine  
My commission expires December 5, 2010

HOLDER ACCEPTANCE

The above and foregoing Conservation Easement was authorized to be accepted by MAINE COAST HERITAGE TRUST, Holder as aforesaid, and the Holder does hereby accept the foregoing Conservation Easement, by and through Paul Gallay, its President, hereunto duly authorized, this 22 day of January, 2009.

Signed, sealed and delivered in the presence of:

Cheryl Martin Hunt  
Witness

MAINE COAST HERITAGE TRUST

By: Paul Gallay  
Paul Gallay  
Its President, Duly authorized

STATE OF MAINE  
COUNTY OF

Kennebec

January 22, 2009

Personally appeared Paul Gallay, the President and authorized representative of MAINE COAST HERITAGE TRUST, and acknowledged the foregoing instrument to be his free act and deed in his said capacity, and the free act and deed of said Maine Coast Heritage Trust.

Before me,

Cheryl Martin Hunt  
Attorney/Notary Public

Printed name:

My commission expires:

THIRD PARTY ENFORCER ACCEPTANCE  
THIRD PARTY ENFORCER:

Cheryl Martin Hunt  
Witness

STATE OF MAINE  
Department of Environmental Protection

By: Deborah N. Garrett  
David P. Littell, DEBORAH N. GARRETT  
Its Commissioner, Duly authorized  
DEPUTY

## 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 Hills 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 Hills Road, so-called, at Station 122+84.8, more or less, of said Stetson Hills 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 Hills 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 Hills 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 Hills 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 and appurtenant 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 Hills Road, so-called, at Station 123+52.4, more or less, of said Stetson Hills 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 Hills 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 Hills 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 and appurtenant to the said Transportation Parcel, nor does it include any portion of said Stetson Hills 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).

**IN ACCORDANCE WITH THE CONDITIONS OF THIS CONSERVATION EASEMENT** the boundaries of the within described Protected Properties/Conservation Parcels are subject to minor boundary line adjustments along the perimeter of the Transportation Parcel which may be made by the parties with the prior written consent of the Third Party Enforcer, provided that the Protected Property shall not be reduced by more than 1/2 acre due to all such boundary line adjustments. Grantor will make a reasonable effort to provide replacement acreage of equal conservation value if practicable. Any such boundary line adjustment shall be documented through an addendum to be filed in the Waldo County Registry of Deeds (the "Addendum"), which Addendum shall identify a new metes and bounds description of the Protected Property, a new survey plan (together representing the "Revised Description"). The Addendum shall be signed by the Grantor, Holder and Third Party Enforcer, acknowledging acceptance of the Revised Description as (i) not materially detracting from the conservation purposes identified in Section I herein, and (ii) not increasing the value of the Grantor's estate. Such acknowledgment and acceptance by the parties hereto shall not be unreasonably denied, conditioned or delayed. The Revised Description shall supersede the Protected Property described in this Exhibit A and depicted on the attached Exhibit B. The Addendum shall cross reference the registry recording citation of this Conservation Easement.



**EXHIBIT C**  
**Consent Decree Recorded Abstract and Termination**

Doc#: 179  
Ek: 2542 Ps: 221

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

Civil Action \_\_\_\_\_  
Docket No. 96-0249-B

UNITED STATES OF AMERICA,  
Plaintiff

v.

MAINE DEPARTMENT OF  
TRANSPORTATION, et al.,  
Defendant

NOTICE AND ABSTRACT  
OF CONSENT DECREE

The following is an abstract of certain provisions of the Consent Decree entered April 11, 1997, in the matter of United States of America v. Maine Department of Transportation, et al., United States District Court, District of Maine, Civil Action, Docket No. 96-0249-B. This Notice and Abstract is filed pursuant to Section 5 of said Consent Decree. The provisions included herein relate to certain real property held by the State of Maine, Department of Transportation, at Sears Island, Searsport, Waldo County, Maine (the "Sears Island Property"):

1. The Consent Decree involves a program of wetland restoration of three parcels of land on Sears Island (the "Wetland Restoration Sites") consisting of (a) two parcels comprising 3.2 acres located within and adjacent to the 50 acre parcel identified in the Consent Decree as the "Terminal Site;" and (b) a .75 acre parcel identified in the Consent Decree as the "Additional Restoration Site," the "south clearing site" or "south-central site."
  2. The Sears Island Property was acquired by the State of Maine in part by Notice of Taking dated October 9, 1984, recorded in the Waldo County Registry of Deeds in Book 854, Page 283, and a Notice of Layout and Taking dated February 5, 1986, recorded in Book 885, Page 141 in said Registry, and in part by Quitclaim Deed With Possibility of Reverter dated February 7, 1994, and recorded in Book 1435, Page 278, as modified by Quitclaim Deed With Possibility of Reverter dated March 28, 1997, recorded in Book 1681, Page 324 and by Confirmatory Quitclaim Deed dated November 12, 1997, recorded in Book 1740, Page 78, all as recorded in said Registry.
  3. The two parcels comprising the 3.2 acres referenced above are depicted on "Exhibit 2" to the Consent Decree, a copy of which is attached as "Exhibit 2" to this Abstract of Consent Decree.
  4. The .75 acre "Additional Restoration Site" is depicted on "Exhibit 3" to the Consent Decree, a copy of which is attached as "Exhibit 3" to this Notice and Abstract of Consent Decree.
  5. The Wetland Restoration Sites are depicted on a plan entitled Sears Island Wetland Restoration and Enhancement Sites, Terminal Site and South-Central Clearing Site, Figure 2 Jated June, 1997.
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6. The following terms of the Consent Decree apply to the Terminal Site or the 3.2 acre wetland restoration parcels at the Terminal Site:

A. Paragraph 5 of the Consent Decree, as follows:

"5. The transfer of ownership or other interest in the Terminal Site, Access Road Site, or the Additional Restoration Site, as defined in paragraph 14.a of this Consent Decree, shall not alter or relieve the Defendants of their respective obligations to comply with the terms of this Consent Decree as applicable to them. At least thirty (30) days prior to Maine DOT's transfer of ownership or other interest in any such property, whether by sale, lease, or otherwise, Maine DOT shall notify the EPA, the United States Department of Justice and the Intervenor in writing that a transfer is scheduled to occur. In the event such property is transferred by reverter, Maine DOT shall notify EPA, the United States Department of Justice, and the Intervenor within thirty (30) days after such transfer. As a condition of any transfer of ownership or other interest in such property, Maine DOT shall reserve all rights necessary to allow it to comply successfully with Section IV of this Consent Decree and to allow EPA to have access to such property for purposes of ensuring compliance with Section IV of this Consent Decree, Maine DOT shall condition such transfer on the transferee's compliance with paragraphs 16 and 39 of this Consent Decree, and shall file with the Registry of Deeds for Waldo County a Notice with an abstract summarizing the requirements of this Decree relating to such property. In the event there is no other mechanism to assure compliance with this paragraph, Maine DOT agrees to exercise its eminent domain authority pursuant to 23 M.R.S.A. §153 or other authority and to condition any transfer of the property on compliance with this Decree."

B. Paragraphs 13.a and 13.b of the Consent Decree, as follows:

"13.a. Within three hundred twenty-two (322) days of entry of this Decree, Maine DOT shall prepare and submit to EPA for its review and approval a preliminary (30% design level) workplan ("the Preliminary Workplan") for the approximately 3.2 acre fill removal and wetlands restoration at the Terminal Site, as indicated on Exhibit 2 (the "Wetlands Restoration"). Maine DOT shall use the document entitled U.S. Environmental Protection Agency Region I Wetlands Program: General Guidelines for Wetland Restoration and Creation Plans (October 1996), to the extent appropriate, in preparing the Preliminary Workplan. Upon EPA approval of the Preliminary Workplan, Maine DOT shall collect final site data, conduct a boundary survey, and develop detailed construction plans, specifications, and estimates for the approximately 3.2 acre fill removal and restoration and vernal pool creation (the "Final Removal and Restoration Workplan") to be submitted to EPA within two hundred (200) days of Maine DOT's receipt of notice of EPA approval of the Preliminary Workplan. The Final Removal and Restoration Workplan shall contain a detailed schedule and measures for success. The measures of success shall be that (i) at the end of the third full growing season following Certification, as set forth in paragraph 15.c, the wetland restoration area must exhibit 70% areal cover of vegetation, and the plant community that exists in the wetland restoration area must be dominated by hydrophytes (i.e., greater than 50% of the dominant plants inhabiting the newly restored wetland area must be plants typically adapted to life in saturated soil conditions); and (ii) at the end of the amphibian breeding season in

each of the second, third, and fourth years following Certification, amphibian breeding, egg laying, hatching of young, and emergence and dispersal of young have occurred.

"13.b. The Final Removal and Restoration Workplan shall show final elevations and grades to be achieved through the removal of the fill, provide for elevation spotchecks during and after construction to assure that the area is restored to the desired elevations, and provide for plantings consisting of wetland grasses and/or herb seed mix and approximately six (6) shrub planting groups (4-5 plants per group) to be scattered throughout the restored area. The Final Removal and Restoration Plan shall provide for completion of construction work and plantings for the restoration no later than twenty-four (24) months after approval, or approval with conditions, of the Final Removal and Restoration Workplan by EPA and the issuance of any final permits needed for such construction. Maine DOT shall timely apply for, and shall use best efforts to obtain, any permits that may be needed to implement the Final Removal and Restoration Workplan. Maine DOT shall implement the Final Removal and Restoration Workplan, as approved by EPA and subject to the requirements of any necessary permits, in accordance with the schedule in that Workplan. The Final Removal and Restoration Workplan, as approved, shall be an enforceable obligation of this Consent Decree."

C. Paragraphs 15.a through 15.d as follows:

"15.a. Following EPA approval of the Final Removal and Restoration Workplan, the Final Additional Restoration Workplan, and the Final Dyer Creek Restoration Workplan (for purposes of this paragraph 15, collectively the "Workplan"), Maine DOT shall provide notices and opportunity for inspection by EPA. The notices shall include a brief description of the actions taken to implement the Workplan since the previous notice or approval of the Workplan; information regarding problems or unresolved delays encountered or anticipated that may affect the schedule for implementation; and efforts made to mitigate any actual or anticipated delays. The notices shall be submitted in accordance with the following schedule, as applicable:

(i) With respect to the Terminal Site Restoration:

a. Twenty-one (21) days before the anticipated completion of installation of all sediment and erosion controls (e.g. silt fences and hay bales), but before the removal of fill, excavation or grading has begun;

b. Twenty-one (21) days before the anticipated completion of the removal of fill material, excavation and final grading, including the vernal pool creation, but before seeding and planting has begun; and

c. Within two weeks after the completion of seeding and planting required by the approved Workplan."

"15.b. Following EPA's receipt of a notice of completion of a milestone event as required in Paragraph 15.a, EPA shall have thirty (30) days to conduct an inspection. Maine DOT agrees that it will not continue with any subsequent steps required by the Workplan until EPA has performed its inspection and has approved the work; provided, however, that if EPA has not conducted an inspection or has not notified Maine DOT in writing of rejection of any of the work within thirty (30) days of its receipt of the notice, then Maine DOT may proceed to the next step of the approved Workplan."

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"15.c. Following EPA's inspection after the completion of seeding and planting, if EPA agrees that the Workplan has been completed as approved, EPA will issue a Certification of Completion. Following Certification, EPA shall conduct inspections near the end of the first full growing season and for four (4) successive growing seasons to monitor the progress of the wetland restoration. The monitoring inspection which occurs near the end of the third full growing season following Certification will also be used to determine whether the measures of success for the Terminal Restoration Site, the Additional Restoration Site and the Dyer Creek Restoration Project have been achieved, except for the vernal pools; whether the measures of success for the vernal pools have been achieved shall be determined during the monitoring inspection that occurs in the fourth year following Certification. Defendant Maine DOT shall perform all operation and maintenance activities required under the Workplan as approved for a period not to exceed five years following Certification."

"15.d. If the measures of success identified in the Workplan are not achieved (although Maine DOT complies with all of the terms and conditions of the applicable Workplan), EPA shall notify Maine DOT of the need for subsequent steps no later than June 1 of the year of the fourth full growing season following Certification. Within 30 days of receiving such notice from EPA, Maine DOT and the United States shall meet to develop the subsequent steps necessary to achieve the objectives of the applicable Workplan and a schedule for completing the subsequent steps ("Subsequent Steps"). If Maine DOT and the United States are able to establish mutually agreeable Subsequent Steps, then within ninety (90) days of such notice from EPA, Maine DOT shall incorporate the Subsequent Steps into an amended Workplan. Maine DOT shall implement the amended Workplan, as approved by EPA, in accordance with the schedule in that Workplan, and the amended Workplan shall be an enforceable obligation of this Consent Decree. If Maine DOT and the United States are unable to establish mutually agreeable Subsequent Steps within the time frame set forth above, then either party may petition the Court for resolution in accordance with the dispute resolution provision in Section IX (Dispute Resolution) of this Consent Decree."

D. Paragraphs 16.a and 16.b, as follows:

"16.a. Nothing in this Decree requires Maine DOT to undertake a program of removal and restoration at the Access Road Site. Maine DOT, EPA and the Intervenor agree that, in any future section 404 permit application to discharge additional dredged or fill materials into wetlands or other waters of the United States at Sears Island in connection with a project that includes use of any property where fill remains in place at the Terminal Site, Maine DOT or its successors will, as part of such permit application, seek after-the-fact authorization for the Discharge at the Terminal Site and Access Road Site. In such a future permit application process, the determination of whether the overall impacts of the project would comply with the Section 404(b)(1) Guidelines (40 C.F.R. Part 230) (or the then applicable comparable provisions of law) will include an evaluation of the impacts of the fill that remains in place on the functions and values of the original (pre-filled) wetlands at the Terminal Site and Access Road, along with the restoration work that is performed pursuant to paragraphs 13 and 14 of this Decree. Maine DOT reserves

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the right to argue to the Corps that no additional compensatory mitigation should be required with respect to offsetting the impacts of the fill that remains in place. EPA reserves the right to argue to the Corps that additional compensatory mitigation with respect to offsetting the impacts of the fill that remains in place is necessary to ensure compliance with the Guidelines. The parties agree that nothing in this Decree shall be interpreted or construed as changing any party's position, as previously expressed during the marine cargo terminal permit application process, regarding the impacts of and mitigation requirements for filling waters of the United States at Sears Island, nor shall it be construed as limiting the parties' positions on impacts and mitigation requirements in future permit proceedings.

"16.b. Maine DOT or its successors may submit a subsequent permit application (a "Subsequent Application") seeking authorization for the discharge of dredged or fill material at the approximately 3.2 acres at the Terminal Site after they have been restored. Maine DOT agrees that, for any subsequent Application filed within thirty (30) years after issuance of the Certificate of Completion pursuant to paragraph 15.c, such application shall propose compensatory mitigation designed to replace or compensate for the functions and values of the forested wetland that originally existed prior to the Discharge which is the subject of this action. No inference shall be drawn from this paragraph 16.b regarding the analysis of alternatives for any Subsequent Application under 40 C.F.R. 230.10(a) of the guidelines under 404(b)(1) of the Clean Water Act."

E. Paragraph 39, summarized as follows:

The United States, its contractors, consultants, attorneys or other employees or representatives, shall have the authority to enter the property at all reasonable times for the purpose of monitoring the progress of restoration required under the Consent Decree, verifying data or information submitted to the United States, and for taking samples.

7. The following terms of the Consent Decree apply to the Additional Restoration or "south clearing site":

A. Paragraph 14.a of the Consent Decree, as follows:

"14. In addition to the Wetlands Restoration described in Paragraph 13 above, Maine DOT shall conduct and complete a program of wetlands restoration at the sites indicated on [Exhibit 3]... attached hereto and incorporated herein by reference. To satisfy the obligation of this Paragraph 14, Maine DOT shall do the following:

a. Within three hundred twenty-two (322) days of entry of this Decree, Maine DOT shall prepare and submit to EPA for its review and approval a preliminary (30% design level) workplan for topsoil restoration and wetland enhancement of approximately .75 acres of currently degraded wetlands at the south-central site on Sears Island, as indicated on Exhibit 3 (the "Additional Restoration"). Maine DOT shall use the document entitled the U.S. Environmental Protection Agency Region I Wetlands Program: General Guidelines for Wetland Restoration and Creation Plans (October 1996), to the extent appropriate, in preparing the Preliminary Additional Restoration Workplan. Within two hundred (200) days of Maine DOT's receipt of notice of

EPA's approval of the Preliminary Workplan, Maine DOT shall submit a Final Additional Restoration Workplan to EPA for review and approval. The Final Additional Restoration Workplan shall contain a detailed schedule and measures for success. The measures for success shall be that (i) at the end of the third full growing season following Certification, as set forth in paragraph 15.c, the wetland restoration area must exhibit 70% areal cover of vegetation, and the plant community that exists in the wetland restoration area must be dominated by hydrophytes (i.e., greater than 50% of the dominant plants inhabiting the newly restored wetland area must be plants typically adapted to life in saturated soil conditions). The Final Additional Restoration Workplan shall provide for completion of construction work and plantings for the restoration no later than twenty-four (24) months after approval, or approval with conditions, of the Final Additional Restoration Workplan by EPA and the issuance of any final permits needed for such construction. Maine DOT shall timely apply for, and shall use best efforts to obtain, any permits that may be needed to implement the Final Additional Restoration Workplan. Maine DOT shall implement the Final Additional Restoration Workplan as approved by EPA, in accordance with the schedule in that Workplan, subject to the terms of any permits required for the work. The parties acknowledge and agree that the objective of the Additional Restoration is to compensate for a portion of the wetlands functions and values that were lost and impaired as a result of the Terminal Site Discharge. The Final Additional Restoration Workplan, as approved, shall be an enforceable obligation of this Consent Decree."

B. Paragraph 15.a through 15.d as follows:

"15.a. Following EPA approval of the Final Removal and Restoration Workplan, the Final Additional Restoration Workplan, and the Final Dyer Creek Restoration Workplan (for purposes of this Paragraph 15, collectively the "Workplan"), Maine DOT shall provide notices and opportunity for inspection by EPA. The notices shall include a brief description of the actions taken to implement the Workplan since the previous notice or approval of the Workplan; information regarding problems or unresolved delays encountered or anticipated that may affect the schedule for implementation; and efforts made to mitigate any actual or anticipated delays. The notices shall be submitted in accordance with the following schedule, as applicable:

- (ii) With respect to the Additional Restoration Site:
  - (a) Twenty-one (21) days before the anticipated completion of installation of all sediment and erosion controls (e.g. silt fences and hay bales), but before excavation or grading has begun;
  - (b) Twenty-one (21) days before the anticipated completion of excavation and final grading, but before seeding and planting has begun; and
  - (c) Within two weeks after the completion of seeding and planting required by the approved Workplan."

"15.b. Following EPA's receipt of a notice of completion of a milestone event as required in Paragraph 15.a, EPA shall have thirty (30) days to conduct an inspection. Maine DOT agrees that it will not continue with any subsequent steps required by the Workplan until EPA has performed its inspection and has approved

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the work; provided, however, that if EPA has not conducted an inspection or has not notified Maine DOT in writing of rejection of any of the work within thirty (30) days of its receipt of the notice, then Maine DOT may proceed to the next step of the approved Workplan."

"15.c. Following EPA's inspection after the completion of seeding and planting, if EPA agrees that the Workplan has been completed as approved, EPA will issue a Certification of Completion. Following Certification, EPA shall conduct inspections near the end of the first full growing season and for four (4) successive growing seasons to monitor the progress of the wetland restoration. The monitoring inspection which occurs near the end of the third full growing season following Certification will also be used to determine whether the measures of success for the Terminal Restoration Site, the Additional Restoration Site and the Dyer Creek Restoration Project have been achieved, except for the vernal pools; whether the measures of success for the vernal pools have been achieved shall be determined during the monitoring inspection that occurs in the fourth year following Certification. Defendant Maine DOT shall perform all operation and maintenance activities required under the Workplan as approved for a period not to exceed five years following Certification."

"15.d. If the measures of success identified in the Workplan are not achieved (although Maine DOT complies with all of the terms and conditions of the applicable Workplan), EPA shall notify Maine DOT of the need for subsequent steps no later than June 1 of the year of the fourth full growing season following Certification. Within 30 days of receiving such notice from EPA, Maine DOT and the United States shall meet to develop the subsequent steps necessary to achieve the objectives of the applicable Workplan and a schedule for completing the subsequent steps ("Subsequent Steps"). If Maine DOT and the United States are able to establish mutually agreeable Subsequent Steps, then within ninety (90) days of such notice from EPA, Maine DOT shall incorporate the Subsequent Steps into an amended Workplan. Maine DOT shall implement the amended Workplan, as approved by EPA, in accordance with the schedule in that Workplan, and the amended Workplan shall be an enforceable obligation of this Consent Decree. If Maine DOT and the United States are unable to establish mutually agreeable Subsequent Steps within the time frame set forth above, then either party may petition the Court for resolution in accordance with the dispute resolution provision in Section IX (Dispute Resolution) of this Consent Decree."

C. Paragraph 17 as follows:

"17. With respect to the restoration sites restored under paragraph 14, Maine DOT agrees to preserve such sites in perpetuity and shall protect in perpetuity the wetlands functions and values restored and/or created there. Maine DOT shall include in the Workplans submitted for EPA review and approval effective measures to ensure such preservation and protection."

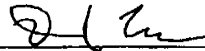
D. Paragraph 39 summarized as follows:

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The United States, its contractors, consultants, attorneys or other employees or representatives, shall have the authority to enter the property at all reasonable times for the purpose of monitoring the progress of restoration required under the Consent Decree, verifying data or information submitted to the United States, and for taking samples.

EXECUTED this 6<sup>TH</sup> day of January, 2004.

State of Maine  
Department of Transportation



By: David A. Cole  
Commissioner

State of Maine  
KENNEBEC, ss.

January 6, 2004

Personally appeared before me the above-named David A. Cole in his aforesaid capacity and acknowledged the foregoing to be his free act and deed and the free act and deed of the State of Maine, Department of Transportation.



Notary Public/Attorney at Law

Printed Name: SHARON R. DOWN

Date commission expires: 12/1/04

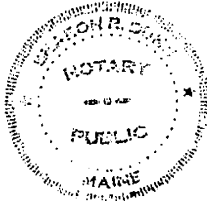


EXHIBIT 1

Intentionally Omitted

WLEGALSHAREDWEMMERLE/SEARSISLAND/CONSENT DECREE

*done*  
5  
16  
169  
-1



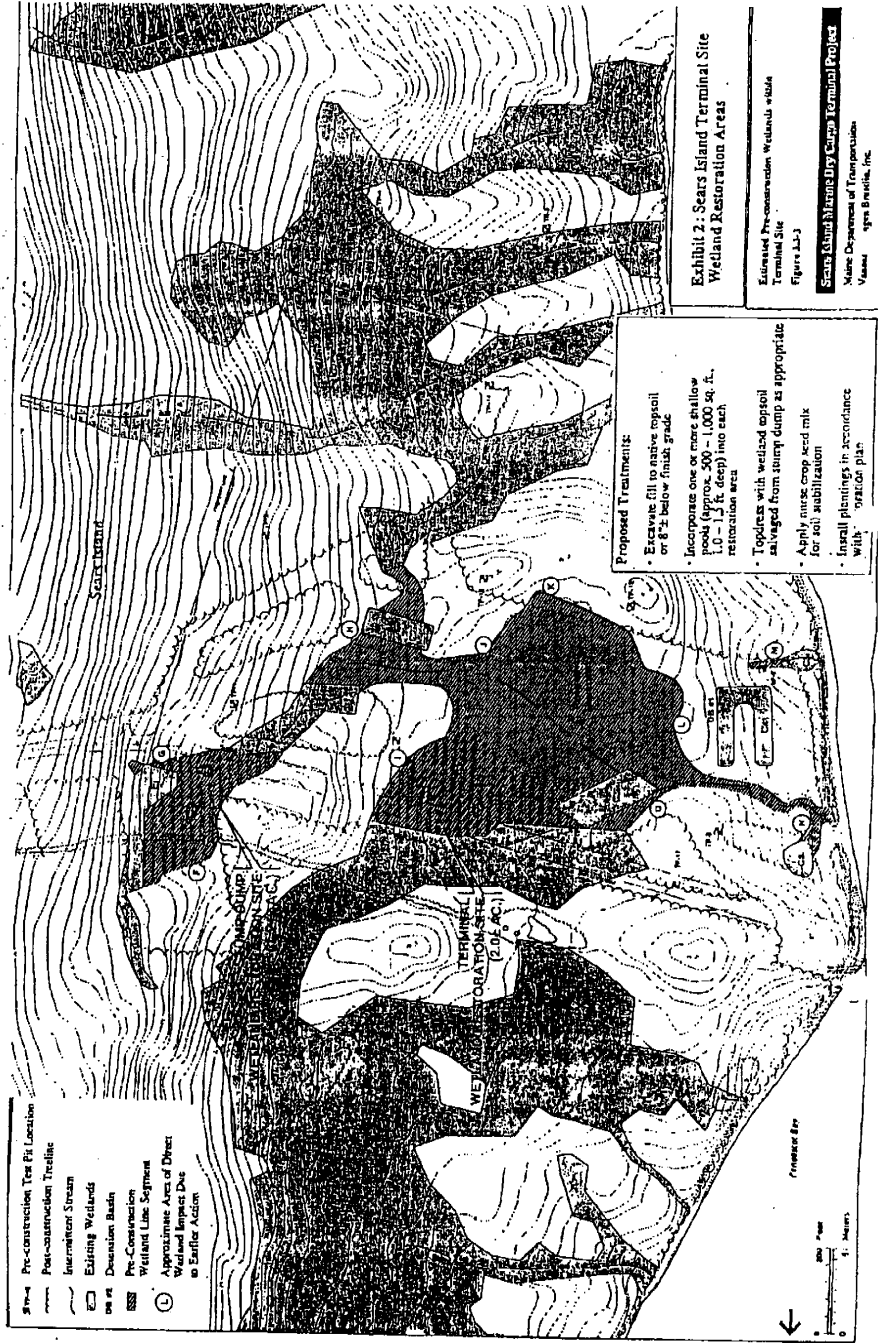
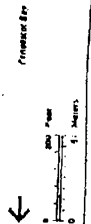


Exhibit 2: Sears Island Terminal Site  
 Wetland Restoration Areas

Estimated Pre-construction Wetlands within  
 Terminal Site  
 Figure 2-3

**Sears Island Marine Dry Cargo Terminal Project**  
 Maine Department of Transportation  
 Vassal  
 1998 Bristol, Inc.



**PROPOSED TREATMENTS**

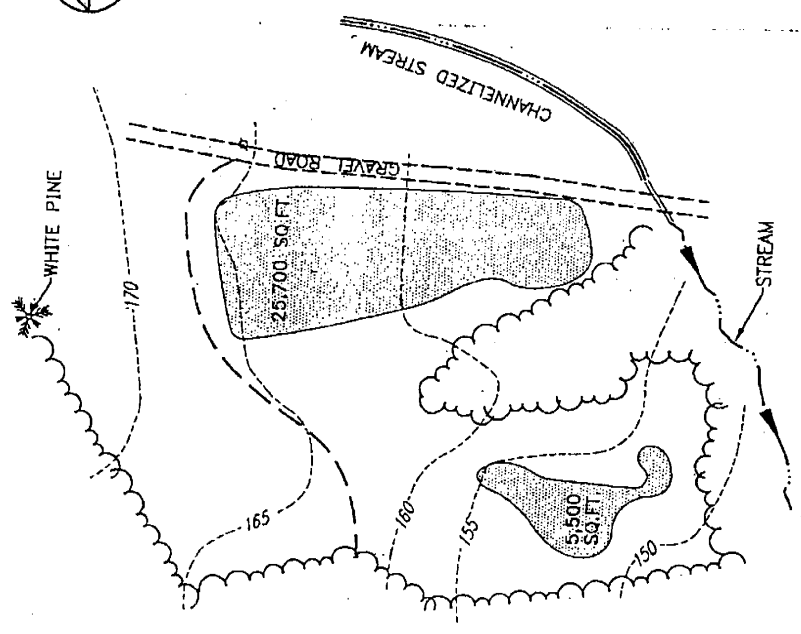
1. GRADE EXISTING SURFACE TO ELIMINATE ANY RUTS AND MAXIMIZE WETLAND AREA.
2. APPLY 3-6" OF WETLAND TOPSOIL (SALVAGED FROM STUMP DUMP AT TERMINAL SITE) IN WETLANDS AND SURROUNDING UPLAND BUFFERS.
3. APPLY NURSE CROP SEED MIX FOR SOIL STABILIZATION AS APPROPRIATE.

**LEGEND**

- - - - - EXISTING 5 FOOT CONTOUR (ELEVATION APPROXIMATE)
- [Hatched Box] WETLAND RESTORATION ENHANCEMENT AREAS
- - - - - LIMIT OF BUFFER (TOTAL AREA 2 +/- ACRES)



Received Resister of Deeds  
 Recorded Jan 07, 2004 08:25:34A  
 Waldo County  
 Deeds Office



PLOT DATE: 10/23/96  
 AutoCAD NO.: SEARS

**EXHIBIT 3 - PROPOSED WETLAND RESTORATION/ENHANCEMENT**

MAINE DEPARTMENT OF TRANSPORTATION  
 SOUTH CLEARING-SEARS ISLAND WETLAND RESTORATION SITE  
 WALDO COUNTY, MAINE  
 STATE HOUSE STATION 16  
 AUGUSTA, MAINE 04333  
 REV. OCTOBER 1996

Doc#: 179  
 BK: 2542 Pg: 231

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

UNITED STATES OF AMERICA, )  
)  
Plaintiff, )  
)  
v. ) Civil Act. No. 96-0249-B  
)  
MAINE DEPARTMENT OF )  
TRANSPORTATION, BRIDGECORP, )  
f/k/a Bridge Construction Corp., )  
ROBERT WARDWELL & SONS, INC., )  
and T.Y. LIN INTERNATIONAL, )  
successor to HUNTER BALLEW )  
ASSOCIATES, )  
)  
Defendants, )  
)  
and )  
)  
SIERRA CLUB and CONSERVATION )  
LAW FOUNDATION, )  
)  
Plaintiff-Intervenors. )  
\_\_\_\_\_ )

NOTICE OF TERMINATION OF CONSENT DECREE

Plaintiff United States of America and Defendant Maine Department of Transportation, pursuant to Paragraph 44 of the Consent Decree entered in this matter on March 19, 1997, submit the following notice:

1. This action was brought by Plaintiff United States against Defendants Maine Department of Transportation ("Maine DOT"), Bridgecorp, Robert Wardwell & Sons, Inc., and T.Y. Lin International by Complaint filed on November 13, 1996. Sierra Club and Conservation Law Foundation filed a motion to intervene as Plaintiff-Intervenors on the same day.

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2. The Complaint alleged that Defendants participated in the unauthorized discharge of dredged or fill material in waters of the United States in violation of the Clean Water Act, 33 U.S.C. §§ 1311(a) and 1344(a), and sought civil penalties and injunctive relief. Defendants denied the allegations of the Complaint and asserted numerous defenses.

3. Concurrently with the filing of the Complaint, the parties lodged a proposed Consent Decree, which was entered by the Court on March 19, 1997.

4. Pursuant to the Consent Decree, Defendants Bridgecorp, Robert Wardwell & Sons, Inc., and T.Y. Lin International (the "Contractor Defendants") were enjoined from discharging fill materials into waters of the United States except in compliance with applicable federal, state, and local laws and regulations. Consent Decree, ¶ 8. In addition, the Defendants were required to pay a civil penalty of \$10,000, which was remitted by the Contractor Defendants. *Id.* at ¶ 18. The Consent Decree provided that "Once this civil penalty has been paid to the United States, the Contractor Defendants shall not have any further obligations under this Consent Decree, except with respect to their obligations under Paragraph 8." *Id.*

5. Defendant Maine DOT was enjoined from discharging fill materials into waters of the United States except in compliance with applicable federal, state and local laws and regulations. *Id.* at ¶ 8. Defendant Maine DOT was also required to successfully perform certain wetland restoration activities at the Sears Island Terminal Site, the location of the violations, *id.* at ¶ 13, as well as wetland restoration and enhancement activities at Dyer Creek and at other locations on Sears Island. *Id.* at ¶ 14. Defendant Maine DOT was required to perform a "Supplemental Environmental Project" relating to acquisition and conservation of properties located in the Ducktrap River watershed. *Id.* at ¶ 19. Finally, Defendant Maine DOT was required to provide the United States Environmental Protection Agency ("EPA") with an accounting of the costs of

the wetland restoration/mitigation work on Sears Island and at Dyer Creek. *Id.* at ¶ 19(c). To the extent that the monies expended by Maine DOT on those projects were less than \$700,000, Maine DOT was required to pay the difference between that figure and the actual expenditures to the Land for Maine's Future Fund ("LMFF") solely for purchasing acquiring additional property in the Ducktrap River watershed for conservation purposes. *Id.*

6. On or about December 2, 2003, Defendant Maine DOT provided EPA with the accounting required by Paragraph 19(c) of the Consent Decree, indicating that the sum of \$371,521 would be transferred to the LMFF by Maine DOT in compliance with Paragraph 19(c). EPA approved that accounting by letter to Maine DOT dated December 30, 2003. Maine DOT transferred the sum of \$371,521 to the LMFF on January 9, 2004.

7. Paragraph 44 of the Consent Decree states that

The obligations of this Decree and this Court's jurisdiction over this matter shall terminate upon completion of all requirements of this Decree or the passage of five (5) years, whichever is later. The parties shall file the appropriate notice with the Court so that the Clerk may close the file.

8. Plaintiff United States and Defendant Maine DOT agree that Defendant Maine DOT and the Contractor Defendants have complied with all requirements of the Consent Decree. Certain obligations under the Consent Decree, set forth in Paragraphs 5 (relating to provision of notice prior to any transfer of ownership or other interest in the Terminal Site, Access Road Site, or the Additional Restoration Site and the conditioning of such transfer on the transferor's compliance with paragraph 16), 8, 16(a), 16(b), 17, and 19(e) survive the termination of the Consent Decree.

9. Plaintiff United States and Defendant Maine DOT hereby give notice, pursuant to Paragraph 44 of the Consent Decree, that the obligations of the Decree, and the Court's



jurisdiction over the Decree, are terminated, subject to the continuing obligations of Paragraphs 5 (relating to provision of notice prior to any transfer of ownership or other interest in the Terminal Site, Access Road Site, or the Additional Restoration Site and the conditioning of such transfer on the transferor's compliance with paragraph 16), 8, 16(a), 16(b), 17, and 19(e) of the Consent Decree.

WHEREFORE, Plaintiff United States and Defendant Maine DOT give notice that the obligations of the Consent Decree, except as set forth in Paragraphs 5 (relating to provision of notice prior to any transfer of ownership or other interest in the Terminal Site, Access Road Site, or the Additional Restoration Site and the conditioning of such transfer on the transferor's compliance with paragraph 16), 8, 16(a), 16(b), 17, and 19(e) of the Consent Decree, and the jurisdiction of this Court over the Consent Decree, are terminated.

Respectfully submitted,

FOR PLAINTIFF UNITED STATES OF AMERICA

THOMAS L. SANSONETTI  
Assistant Attorney General  
Environment and Natural Resources Division

Dated: 9/30/05

By: 

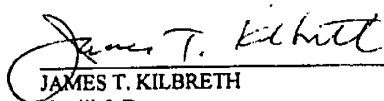
DANIEL W. PINKSTON  
Environmental Defense Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
999-18th Street, Suite 945 North  
Denver, Colorado 80202  
Phone: (303) 312-7397  
Fax: (303) 312-7331  
[daniel.pinkston@usdoj.gov](mailto:daniel.pinkston@usdoj.gov)

Of Counsel:

MARGERY ADAMS  
Senior Assistant Enforcement Counsel  
U.S. Environmental Protection Agency  
Region I  
One Congress Street (SEL)  
Boston, Massachusetts 02114

FOR DEFENDANT MAINE DEPARTMENT  
OF TRANSPORTATION

Dated: 10/4/04

  
\_\_\_\_\_  
JAMES T. KILBRETH  
Verrill & Dana  
One Portland Square  
P.O. Box 586  
Portland, Maine 04112-0886  
Phone: (207) 774-4000  
Fax: (207) 774-7499

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UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

UNITED STATES OF AMERICA, )

Plaintiff, )

v. )

MAINE DEPARTMENT OF )  
TRANSPORTATION, BRIDGECORP., )  
f/k/a Bridge Construction Corp., )  
ROBERT WARDWELL & SONS, INC., )  
and T.Y. LIN INTERNATIONAL, )  
successor to HUNTER BALLEW ASSOCIATES, )

Defendants, )

and )

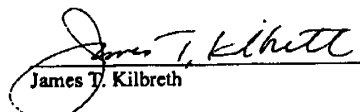
SIERRA CLUB and CONSERVATION LAW )  
FOUNDATION )

Plaintiff-Intervenors. )

Civil Action No.: 96-0249-B

**CERTIFICATE OF SERVICE**

I hereby certify that on this 5th day of October, 2004, I caused copies of the foregoing Notice of Termination of Consent Decree to be delivered by mail, first class, postage prepaid, to the individuals listed below.

  
James T. Kilbreth

VERRILL & DANA  
One Portland Square  
P. O. Box 586  
Portland, ME 04112-0586  
(207) 774-4000

Attorney for Defendant  
Maine Department of Transportation

---

**Sierra Club**

Jeffrey A. Thaler, Esq.  
Bernstein, Shur, Sawyer & Nelson  
100 Middle Street, 6<sup>th</sup> Floor  
P.O. Box 9729  
Portland, ME 04104-5029

Edward F. Lawson, Esq.  
Weston, Patrick, Willard & Redding  
84 State Street  
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**APPENDIX F**  
**Umbrella Bank Biophysical Region Map**

# Map of Biophysical Regions

