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RESPONSIBILITY



**SIERRA CLUB**  
MAINE CHAPTER



**Friends of Sears Island**



September 28, 2022

Bruce A. Van Note  
Commissioner, Maine Department of Transportation  
16 State House Station  
Augusta, ME 04333-0016

Dear Commissioner Van Note:

We, a coalition of interested parties, are writing to urge the Maine Department of Transportation (MEDOT) to begin a transparent and inclusive National Environmental Policy Act (NEPA) scoping process on the proposed Port of Searsport floating offshore wind facility as soon as possible.<sup>1</sup> We are concerned that the Moffatt & Nichol study entitled “Maine Department of Transportation: Offshore Wind Port Infrastructure Feasibility Study Concept Design Report” (hereinafter “[the Report](#)”) dated November 17, 2021, is leading you to believe that Sears Island is a viable alternative. It is not, and our reasoning for this is set forth below.

**Mack Point versus Sears Island.** Sears Island is one of the largest undeveloped islands on the east coast of the United States. It is a relatively intact ecosystem (other than the unauthorized causeway and wetland filling that took place in the 1980s and 1990s), with a mosaic of uplands, wetlands, vernal pools, and a valuable marine ecosystem with acres of eelgrass. Currently, the island is used for educational programs and recreation, and people flock to the island for hiking, biking, birdwatching, fishing, and boating. Mack Point, across Penobscot Bay from Sears Island, has been an industrial port for decades. While there are some relatively undisturbed forests adjacent to the port on Mack Point, the wetlands do not provide the same functions or values as those on Sears Island.

**The port would initially be used for a demonstration project.** The Report concedes that there are currently no sanctioned offshore wind (OSW) leases off the coast of Maine, but that due to the depth of water in Maine, floating OSW turbines are necessary. The Report states, “Floating turbine technology is in its early stages and there are no existing commercial scale floating OSW

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<sup>1</sup> The Offshore Wind Port Advisory Group (OSWPAG), which MEDOT considers a “robust stakeholder process,” has yet to provide any meaningful discussion or comparison of environmental characteristics at Mack Point and Sears Island. We also note that MEDOT may have begun some type of pre-scoping with the U.S. Army Corps of Engineers, but it is important that a comprehensive interagency review that examines environmental impacts commence without delay.

installations anywhere in the world.”<sup>2</sup> Moreover, the Report states that, “there are currently no purpose designed and built ports to support the floating OSW industry anywhere in the world.”<sup>3</sup>

Maine has filed an application with the Bureau of Ocean Energy Management (BOEM) to open a floating OSW demonstration array off the coast of Maine. Because these OSW components, when fully assembled, are too large to be transported by road or rail, they must be manufactured or assembled on the waterfront. Specifically, the Report states:

The purpose of this study is to evaluate the Port of Searsport to support the floating OSW industry in Maine and beyond. When fully assembled, OSW components are too large to be transported by road or rail. Ports are, therefore, an essential part of the supply chain. Each component must be manufactured and/or assembled at a waterfront fabrication facility, transited via vessel or barge to a marshalling facility where they are assembled, and then brought to the installation site.<sup>4</sup>

So, once again, Maine is considering the development of Sears Island into a port for this demonstration project.<sup>5</sup> Because we do not know whether these floating arrays will be successful, Maine has proposed a two-phase project; Phase I would accommodate the pilot project, and Phase II would be built if the array is successful.

**The Moffatt & Nichol report appears skewed in favor of Sears Island.** The Moffatt & Nichol report states, “In their existing condition, neither site meets the required criteria to serve as a port facility to support the floating OSW industry. However, with modifications, *both the Mack Point and Sears Island sites can achieve or surpass the minimum required criteria*”<sup>6</sup> (emphasis added). However, the Report repeatedly suggests that development of Mack Point will be more expensive, require more dredging, and be more constrained due to existing businesses on site. We fear that Sears Island will be, once again, MEDOT’s preferred alternative. Indeed, crews have already cut trees and cleared a path on Sears Island for geotechnical drilling and testing. However, as we know, the designation of a least environmentally practicable alternative (LEDPA) pursuant to Section 404 of the federal Clean Water Act is not MEDOT’s decision. The U.S. Army Corps of Engineers (Corps), after consulting with the U.S. Environmental Protection Agency (EPA), U.S. Fish and Wildlife Service (USFWS), and National Oceanic and Atmospheric Administration (NOAA), makes that decision.

While we understand that MEDOT is eager to turn Sears Island into a port, it is important to remember that Mack Point is a viable alternative; in fact, it is likely the LEDPA. Unless and until the Corps prepares an EIS under NEPA<sup>7</sup> and conducts a comprehensive Section 404 of the Clean

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<sup>2</sup> Report, page 3

<sup>3</sup> Report, page 10

<sup>4</sup> Report, page 12

<sup>5</sup> Note that if the floating solar array project is not successful, it is likely that MEDOT would continue to use the new port for other commodities. If this is true, cumulative impacts associated with this reasonably foreseeable use must be assessed in order to comply with federal environmental laws.

<sup>6</sup> Report, page 39

<sup>7</sup> Given the significant impacts to waters of the U.S. associated with the proposed project, it is highly unlikely that an Environmental Assessment/Finding of No Significant Impact (EA/FONSI) would suffice.

Water Act alternatives analysis, MEDOT should not assume that Sears Island will be the site for the new port. Indeed, it is hard to fathom how Sears Island could ever be the LEDPA.

**The Report fails to mention that NEPA requires an Environmental Impact Statement (EIS).** The Report states that:

Acquiring the required permits and approvals for a complex marine-based project can quite often be the critical path in the overall project schedule. This project will likely require a Joint Permit Application that is submitted to and reviewed simultaneously by both the Maine DEP and the ACOE. The state environmental agency reviews the proposed work and will establish its impacts on local environmental resources. The ACOE will review the proposed work to establish its effects on navigable waterways as well as federal environmental guidelines. This permit will also pull in numerous other agencies such as national marine fisheries and the US Coast Guard that will also review the proposed work.<sup>8</sup>

The undersigned organizations believe it is critical to start the NEPA scoping process as soon as possible. There is no doubt that a Section 404 permit is a major federal action that will significantly affect the quality of the human environment under NEPA, and an EIS will be necessary. While the other permits mentioned in the Report are also important, the NEPA process will provide a roadmap for finding a permissible alternative.

**The Report neglects to consider wetland mitigation feasibility or costs.** The Report states:

VHB Environmental<sup>9</sup> performed an initial environmental and permitting review of the Mack Point and Sears Island facilities. Each site was reviewed to identify known and potential resource concerns, including wetlands, dredging, fill areas, eel grass, sensitive species, and navigational constraints. The permitting review identifies the federal, state, and local permits that are likely to be required to move forward with development at either site. Further coordination with state and federal agencies will be required to fully assess environmental impacts. Pursuant to federal and state environmental laws, an assessment of impacts and an evaluation of alternatives will be conducted before selection of the least environmentally damaging practicable alternative. As part of this to these processes, MaineDOT has directed that a robust stakeholder and public communication process occur.<sup>10</sup>

While the Report does not specify what those impacts are, or what permits they think will be needed, we know from experience that the Sears Island wetlands and marine resources are so valuable and that the destruction of these resources is likely to cause or contribute to significant degradation of waters of the U.S., contrary to the Section 404(b)(1) guidelines, the regulations

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<sup>8</sup> Report, p. 62

<sup>9</sup> It is worth noting that the same consultant that pushed Sears Island as a viable alternative in the 1990s is currently working for VHB, the consultant looking at environmental impacts for this project. A significant amount of time and money was wasted pursuing an unpermissible project on Sears Island, and we hope to avoid a similar situation today.

<sup>10</sup> Report, p. 34

pursuant to the Clean Water Act. In addition, it is curious that the Report does not mention wetland mitigation feasibility or costs, as these may play a large factor in determining whether Sears Island is a viable alternative or not.

**History Is Instructive.** As you are aware, we have been in this situation before, where MEDOT is professing to be looking at both Sears Island and Mack Point for a proposed port. In 1983, the Corps erroneously issued an Environmental Assessment (EA) under NEPA, instead of completing the necessary Environmental Impact Statement (EIS). In 1984, the Sierra Club sued to force the Corps to write an EIS, and won that lawsuit in 1985. A faulty EIS was written, and approved by the Corps, and Sierra Club sued again. A causeway to the island was constructed while Sierra Club battled in court, and in 1989, the court halted construction and forced MEDOT to prepare a Supplemental EIS to augment the faulty EIS written earlier. In 1991, MEDOT “discovered” over 200 acres of wetlands on the island that were previously ignored. The EPA opened a criminal enforcement case, which, due to extreme political pressure, eventually became a civil enforcement case in which MEDOT was forced to restore the illegally filled wetlands.

In 1996, the State of Maine ultimately abandoned its efforts to develop Sears Island into a port due to the EPA’s, USFWS’, and National Marine Fisheries Service’s (NMFS, now referred to as NOAA Fisheries) concerns that the proposed project could not possibly comply with the Clean Water Act Section 404(b)(1) guidelines. Very little has changed since that day 26 years ago; although climate change is more of a reality, and the search for green energy has escalated considerably, this does not obviate the need to protect forests, wetlands, vernal pools, eelgrass, and wildlife habitat. Indeed, protection of these resources is critical for a healthy and livable planet.

**Conclusion.** As environmental organizations, we are eager to explore floating OSW as potential sources of energy for the State of Maine. However, an attempt to develop OSW on Sears Island, when Mack Point is clearly a less environmentally damaging alternative than Sears Island, will generate considerable public opposition and legal challenges under both NEPA and the federal Clean Water Act.<sup>11</sup> As such, we believe the commencement of the NEPA process, together with an interagency review examining environmental impacts of Sears Island versus Mack Point (or possibly other locations in Maine outside of the Searsport area), commence as soon as possible.

Sincerely,

Kyla Bennett, PhD, JD, Director of Science Policy  
Public Employees for Environmental Responsibility

Matt Cannon, State Conservation & Energy Director  
Sierra Club Maine

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<sup>11</sup> In the 1990s, EPA correctly argued that development of Sears Island would cause or contribute to significant degradation of waters of the U.S., contrary to the Section 404(b)(1) guidelines. Moreover, EPA did not believe that the proposed impacts to Sears Island’s wetlands and waters could be adequately mitigated. Both of these facts likely remain true today.

Scott Dickerson  
retired Executive Director of Coastal Mountains Land Trust

Stephen Miller, Founder  
Islesboro Islands Trust

Rolf E. Olsen and Susan White  
Friends of Sears Island

cc:

Corps  
USFWS  
NOAA  
EPA