

DRAFT – For Discussion

Maine Department of Transportation Federal Wetland Mitigation Bank Prospectus

State-wide, Single-Client



**Sears Island,
Searsport, Maine**



Prepared by: Judy C. Gates, Acting Director
Environmental Office
Maine Department of Transportation
16 State House Station
Augusta, Maine 04333

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1.0 Summary

Table 1: Summary Table

Ownership	Maine Department of Transportation
Type of Bank	Single Client
Purpose of Bank	Mitigation of natural resource impacts associated with state transportation projects
Location	Sears Island, Town of Searsport
Driving Directions	From Belfast, take Route 1/3 north approximately 2.5 miles past Searsport to Road. Turn right onto Road and proceed across causeway onto Sears Island
Land Use	By permission of MaineDOT, the parcel has been used primarily for recreation.
Size of Parcel	941 acres
Wetland Area	Approximately 223 acres
Type of Wetlands on Site	PEM, PFO, SS, EEM, S, LUC
Site Description	Sears Island is the largest uninhabited island on the coast of Maine, encompassing 941 acres above mean high water, with five miles of coastline. Central ridge elevation is 185 feet.
Mitigation Bank Goals & Objectives	Initially the preservation and restoration of a unique natural resource; Overall goals and objectives include more effective state-wide mitigation opportunities
Service Area	State-wide

2.0 Introduction

On the Maine coast, directly offshore of the Town of Searsport, lays the largest uninhabited island on the eastern U.S. seaboard. Although known to earlier inhabitants as "Wassumkeag" or "place of shining sands", the island is now known as Sears Island. This island is quiet and predominantly wild. It comprises 941 acres above mean high water bordered by five miles of coastline. It's high point of land is a central ridge rising to 185 feet above mean sea level, enhancing the island's visibility from numerous vantage points on and around Penobscot Bay. In addition to its unique history and character, Sears Island hosts a rich and diverse natural ecosystem. The ecological diversity that characterizes the island is in effect a microcosm of the unique Penobscot Bay ecosystem. It is Sears Island's unique natural and cultural character and history that makes a substantial portion of the island suitable for preservation.

Figure 1: Location of Sears Island.



2.1 Justification for Site Selection

2.1.1 Natural Character

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

interspersed with fields and open areas. While the large, unfragmented blocks are much larger than those typically found along the Maine coast, the mixed cover provides edge habitat and niche habitats for an unusually large array of wildlife.



Due to its location so near the mainland, Sears Island supports both mainland and island vegetation. Approximately 672.8 acres of the island is colonized by hardwood, softwood, and mixed wood forests, while alder swamps and shrub areas occupy approximately 70.2 acres. Other areas of the island are characterized by scrub and low shrub coastal communities (5.1 acres), upland herbaceous communities (38.7 acres), fern meadows (66.8 acres), salt marsh areas (7 acres), and rocky shoreline and beach (17.5 acres). Only approximately 38 acres of the island is developed land.

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



The diversity of Sears Island's natural ecosystems extends to its wildlife species as well as its vegetation communities. At least 168 species of birds, nine species of herptiles, and 28 of the 39 mammal species resident in New England have been documented on the island. At least six different species listed as state threatened or endangered, or federally endangered, inhabit the island (Table 2).

Table 2: List of State or Federal Endangered Species with documented presence on Sears Island.

Species type	Species Name	Status
Bird	Bald Eagle <i>Haliaeetus leucocephalus</i>	State, threatened Federal, endangered
	Peregrine Falcon <i>Falco peregrinus</i>	State, endangered (breeding population only)
	Great cormorant <i>Phalacrocorax carbo</i>	State, threatened (breeding population only)
	Barrow's goldeneye <i>Bucephala islandica</i>	State, threatened
	Least tern <i>Sterna antillarum</i>	State, endangered
Fish	Atlantic salmon <i>Salmo salar</i>	Federal, endangered
Plant	<i>Carex Silicea</i>	State, rare



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

Eelgrass beds are found around the entire perimeter of the island and play an important role in the benthic community associated with Sears Island. These beds serve as habitat for several invertebrate and fish species as well as food sources for migratory waterfowl and shorebirds. Eelgrass beds stabilize sediments and other features that comprise the subtidal substrates; play a key role in the nutrient cycle and the production of biomass; and mediate both short and long-term biological and chemical interactions within the marine ecosystem. The marine area around Sears Island is designated by the National Marine Fisheries Service as Essential Fish Habitat (EFH) for spawning, nursery and feeding of Atlantic salmon, Atlantic herring, Atlantic mackerel, winter flounder, Atlantic menhaden, alewife, striped bass, rainbow smelt, and other finfish. Historically the

eelgrass beds surrounding the island served as nursery habitat for cod and haddock, and despite their decline in numbers these species remain on the list of EFH species.



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

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

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

2.1.2 Cultural Character & History

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



Despite being the largest undeveloped island left on the east coast, archeological evidence suggests that Sears Island has known human use for at least 3,600 years. Around 1730, the island was christened Brigadier's Island by its first recorded colonial owner, Samuel Waldo. Settlers raised cattle and sheep, built boats and even reportedly ran rum from the island, practices that continued after Henry Knox acquired the island in 1794 and transferred ownership to David Sears in 1813. In 1845 the town of Searsport was incorporated and the island was renamed Sears Island. At its agricultural peak in 1880, Sears Island had 140 acres of tilled land, 600 acres of pasture and orchard, and 200 acres of woodland. There are remnants of fieldstone foundations from an early 19th

century farm and out-buildings in the north-central area of the island. Another foundation related to the Sears family's Victorian summer house is found on the south end of the island. Descendants of David Sears, the founder of Searsport, continued to occupy the island until the end of the 19th century, at which point local mainland residents began using Sears Island for recreation, hunting, and fishing. The Bangor and Aroostook Railroad acquired the island in 1905 and it reverted to a mostly natural condition under their ownership while different uses of the island were debated. Many of those uses would have involved extensive conversion of the island to commercial uses, such as an oil refinery, nuclear power plant, or coal fired power plant. Then, as now, each development proposal for Sears Island spawned vigorous and contentious public debate.

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

2.1.3 Looking to the Future

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



Just as Sears Island sits at the nexus between coastal ecotypes, Searsport and Upper Penobscot Bay reflect a gradual transition from Maine's Mid-coast to Downeast areas. While the Mid-coast area extending from Brunswick to Prospect has experienced dramatic growth in those living and vacationing along its shorelines, coastal areas of Upper Penobscot Bay and Downeast Maine remain undeveloped by comparison. By

comparing landward views of Searsport to the next harbor town to its south, Belfast, the potential for change to natural environments as waterfront development moves north becomes clear (Figure 2). While waterfront and near coastal properties continue to soar in value, the cost of conservation land also increases. Working together with a diverse coalition of conservation groups, local residents, state and federal agencies, MaineDOT proposes to add certainty to Sears Island's future by preserving as many as 600 acres of the island in perpetuity through a federal mitigation banking instrument.

Figure 2: Photo comparison of Stockton and Belfast Harbors.



Long Cove and Stockton Harbor, 2007



Belfast Harbor, 2007

2.2 The Agreement

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

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

(JUPC) with balanced representation by conservation and port development interests, and include local, state, and federal government representatives.

Section 3 of the Consensus Agreement states that MaineDOT, the Town of Searsport, and appropriate others will “provide for light recreation, education, and conservation facilities on a portion of the island by conveyance of an easement covering that area.” Under the Agreement, this easement must be finalized by the Joint Use Planning Committee within twelve months of the date of its creation. MaineDOT proposes that the most effective way to provide for these specified uses is to place approximately 600 acres of the 941 acre island under a conservation easement into perpetuity. This area would encompass land on the easterly portion of Sears Island, initially reserving 341 acres for port development.

2.3 Anticipation of Need

Both the MOU and the Consensus Agreement recognize the continued need for additional marine transportation capacity along this area of the Maine Coast. MaineDOT continues to actively work collaboratively with interested parties to evaluate Mack Point and/or Sears Island for a cargo/container port. Under the Consensus Agreement, MaineDOT is charged with investigating several options for further development of Mack Point, including additional land acquisition and the feasibility of building a marginal pier over Long Cove. Regardless of how development occurs, and the degree of alternatives analyses, avoidance and minimization, impacts to natural resources are likely to occur as a result of further development on either site. Given the proximity of potential impacts to the proposed Sears Island preservation area and the ecological uniqueness of the island’s natural character, it seems a suitable match for functions, values and ecotypes. To provide a sampling of projects potentially requiring mitigation, Table 3 lists MaineDOT capital projects undertaken within the last five years, currently underway, or proposed for the next six years. This table includes only those projects located in the coastal region adjacent to Sears Island, from Lincolnville to Castine. Given fiscal and political uncertainties, this list of projects represents neither a commitment to construct nor the limit of possible projects, but provides context for the relative amount of activity expected. Because this bank is proposed as a state-wide mitigation tool, the entirety of MaineDOT’s capital and maintenance work plan could be considered on a case-by-case basis.

Table 3: Sample of Past, Current and Proposed MaineDOT Capital Projects Coastal Routes from Lincolnville to Castine from 2004 to 2014.

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

3.0 Establishment of the Bank

MaineDOT proposes that as many as 600 acres of Sears Island become the foundation for a federal mitigation bank via execution of a conservation easement.

Natural resources found on and around Sears Island have been described in detail through the years. Although the wetland delineations and other characterizations were largely performed in 1994, a comparison of the 1994 data to existing conditions verifies that the extent and condition of resources remains as previously described. Because of the expense of re-delineating 941 acres, MaineDOT proposes to rely primarily on the 1994 report prepared by Normandeau Associates, entitled “Sears Island Cargo Terminal Baseline Wildlife and Wetland Baseline Report: Volume I”. This report contains wetland delineations and characterizations as well as habitat assessments, with more intensive studies undertaken in the northwest area of the island where more intensive development was under consideration.

As described in Section 2.1.1 of this prospectus, the wetland delineation and characterization of Sears Island revealed 73 distinct wetland areas covering 223 acres of the island. Wetlands vary according to type and include palustrine forested, scrub-shrub,

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

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

Sear's Family Summer Cottage Site – This site is located at the south end of the island and is across the center line road from the cellar hole of the Sear's Family summer cottage. The site is approximately ¼ acre and is composed of approximately 8500 s/y of fill. The abutting land is forested wetland made up of red maple, speckled alder, viburnum and winterberry. This site offers good possibilities for removal of the excess fill and restoring the forested wetland. This area was excavated in the early 1980's for soil/substrate analysis in connection with a nuclear power plant.

Expansion of Existing Mitigation Site – On the center line road there is a restoration site that was developed in 1996 as part of the mitigation for the Consent Decree. The site is located in the middle of the island and is made up of scrub-shrub wetland. There are restoration expansion possibilities on this site of approximately 1/8 acre. Depending upon the site's hydrology, there may be potential creation opportunities of 2-4 acres of forested and/or scrub-shrub wetland. This proposed creation site would need to be monitored with groundwater wells to determine adequate hydrology and the probability of success.

3.1 Ecological Objectives of the Bank

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

3.2 Proposed Service Area

Because on the whole, Maine is relatively rural and its highways span significant distances, watershed or bioregion specific mitigation banks are not practical. In addition, functions and values of impacted resources, particularly coastal resources, can be difficult to match to mitigation within any pre-specified distance. Considering these two conundrums, MaineDOT proposes that the service area for this federal mitigation bank be state-wide. Withdrawals for impact-specific mitigation will be determined at the time those impacts are under consideration through an application process or pre-application discussions with administrating and consulting federal agencies.

3.3 Relationship to State Mitigation Bank and In Lieu Fee Program

Since December 2004, MaineDOT has operated the only state-approved wetland mitigation bank, which is administrated by the Maine Department of Environmental Protection (DEP) under Natural Resource Protection Act permit #L-21760-MB-A-N. Sears Island preservation area and any subsequent “deposits” to a federal mitigation bank would also augment MaineDOT’s state mitigation bank.

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

4.0 Operation of the Bank

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

4.1 Crediting and Debiting Procedures

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

4.2 Monitoring Requirements

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

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

4.3 Long-term Maintenance Requirements & Stewardship

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

Appendix A

SEARS ISLAND PLANNING INITIATIVE

DRAFT STEERING COMMITTEE CONSENSUS AGREEMENT

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

Introduction

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

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

The undersigned Steering Committee stakeholders agree as follows:

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

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

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

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

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

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

3) Establish outdoor recreation, education, and conservation opportunities on Sears Island by creation of a buffer easement: The parties agree that the DOT, with the Town of Searsport and appropriate

others will provide for light recreation, education and conservation facilities on a portion of the island by conveyance of an easement covering that area. The terms of that easement will be finalized by the Joint Use Planning Committee within twelve months of the date of its creation (see paragraph 7 below). MaineDOT, the Town of Searsport, the easement holder, the DOC and other interested parties will enter into a Management Agreement consistent with the terms of the buffer easement.

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

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

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

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

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

Penobscot Marine Museum, the Maine Maritime Academy, and other private and public educational programs. The Center and other public recreation improvements may be built as soon as the buffer easement is approved by the Joint Use Planning Committee and accepted by the easement holder.

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

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

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

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

7) Implementation: The parties agree to publicly support this Consensus Agreement and to use their best faith efforts to persuade others to support it. The undersigned parties will jointly deliver this Agreement to the Governor,

the Transportation Committee of the Legislature, and the Town of Searsport for their consideration.

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

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

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

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

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