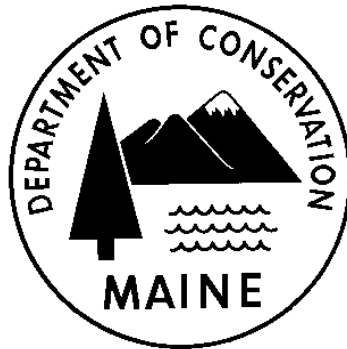


**REPORT TO THE  
AGRICULTURE, CONSERVATION AND FORESTRY  
COMMITTEE ON:**

**Submerged Lands Program  
Proposed Lease Rent Schedule**



**Prepared by:**

**Department of Conservation**

**Bureau of Parks and Lands**

**November 19, 2008**

**Report to the Agriculture, Conservation, and Forestry Committee**

**Submerged Lands Program**

**Proposed Lease Rent Schedule**

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Acknowledgments: The Bureau of Parks and Lands staff sincerely wishes to thank the Working Group members, Submerged Lands Advisory Board, and numerous others who generously offered their time, insights and support in making this report possible.

## **I. Summary**

As directed by Public Law, Chapter 540, the Bureau of Parks and Lands has reviewed its submerged lands lease fee schedule in cooperation with a working group of lease holders, members of the Submerged Lands Advisory Board, the Maine Marine Trade Association, and other interested parties. The Bureau recommends amendments to the fee schedule in conjunction with the repeal of the maximum rental cap scheduled for June 30, 2009. These recommendations significantly improve the fairness and equity for existing and future leaseholders, lower overall lease rates, and will, over time, provide sufficient revenues for the Bureau to meet its obligation to fairly compensate the public for the private use of submerged land held in the public trust. This compensation includes the ability to offer grants to municipalities for projects that improve public access to the State's public waters.

In making these recommendations, the Bureau has considered the current economic stresses on the Maine economy including marine-related businesses and the working waterfront. We also recognize that the recent significant increase in the number of new leases resulting from the conversion of former constructive easements provides a one-time opportunity to significantly reduce rental rates while maintaining a viable leasing program that provides significant tangible benefits to the public, and at the same time improving the fairness and equity of the rent structure.

The Bureau also recognizes that for a number of leaseholders, the reduced rental rates will still result in annual rents above the \$1,200 rental cap when the cap is repealed in June of 2009. This is primarily a result of the relatively large amount of submerged lands under lease rather than the submerged lands rental rate for these facilities. For these leaseholders, the Bureau proposes a 5-year phase-in period until the new fair market rental value is reached.

The recommendations include the following:

1. Amend "Fair Market Rental Value" definition by incorporating a base rental rate for all leases based on current minimum waterfront property values with a reduced municipal upland property value assessment factor to determine the submerged lands rental rates per square foot.
2. Adopt a definition for "Offshore projects" such as wind farms and tidal energy projects to distinguish these uses from shore-based facilities subject to the amended rental rates and authorize the Bureau to negotiate rental terms for off-shore projects.
3. Repeal the definition of "Large-scale projects".
4. Clarify Bureau's authority to adjust rental rates as necessary to be consistent with similar facilities in the vicinity.
5. Adopt a 5-year phase-in period for leases exceeding \$1,200 annual rent upon repeal of the rental cap and provisions for inflation based programmatic cost adjustments to the base rate.
6. Amend public compensation provisions to clarify that a negotiated fee may be used as compensation in lieu of a specific project when a public use is diminished or lost.

7. Implement new rental rates effective July 1, 2009 for new leases and lease renewals and January 1, 2010 for all existing leases.

## **II. Working Group Meeting Summary**

Prior to the initial working group meeting, letters were sent to all existing lease holders advising them of the legislation pertaining to the submerged lands lease schedule and inviting them to participate in the working group. The working group ultimately consisted of 10 to 15 regular participants primarily from midcoast or southern Maine. The working group included representatives of large commercial/industrial leaseholders, marina operators, a yacht club, a trade group, and members of the Submerged Lands Advisory Board. The working group did not include any private residential leaseholders or any leaseholders from downeast. The working group met five times from June through September 2008. These meetings were followed by a presentation of the Bureau's recommendations to the Submerged Lands Advisory Board in mid-October prior to the preparation of this report.

The Bureau recommendations were accepted by the Submerged Lands Advisory Board but are generally not supported by other participants of the working group. While most of the group recognized the need to provide adequate funding for program administration and some level of public benefits for the private use of public lands, there was little consensus on the means to that end.

In general, the majority of the group supported a flat fee schedule, including the possibility of retaining a maximum rental cap that provided adequate program funding while minimizing cost to leaseholders. The main reasons cited in support of a flat rate schedule were increased predictability for leaseholders and ease of administration for Program staff. The group did not support the Bureau's position that submerged lands have real property value and that rental rates should consider the use of the submerged lands in relation to the use and value of the leaseholder's adjacent upland property. The majority also did not support the continued use of municipal property assessments as a basis for determining submerged lands rental rates although there was some recognition of regional property value differences. The working group was successful in identifying areas of common concern including establishing fair and equitable rates, minimizing local rate variability, cost reduction, and providing some level of public compensation.

The working group frequently noted the employment and service benefits provided by marine-related business resulting from the use of submerged lands as part of their operations. The Bureau fully recognizes the contributions of the working waterfront to Maine's economy, and sought to incorporate the key concerns identified by the group in these recommendations while upholding the State's public trust responsibility to manage submerged lands in the public interest. The Bureau believes that the current statutory framework establishing submerged lands rental rates based on property value and proposing reasonable rate reductions is consistent with that trust responsibility.

It should be noted that some of the recommendations contained in this report concerning offshore leasing and negotiated rental terms were not discussed in detail with the working group which focused primarily on leases adjacent to shore-based commercial and private properties.

A copy of the Submerged Lands Advisory Board's Report to the Bureau and additional comments from working group participants is appended to this report.

### III. Existing Lease Schedule

The current lease schedule includes several factors used in calculating annual rental rates depending on the type of use of the facility, the value of the adjacent upland parcel, and whether the facility includes boat slips that are rented. Lease fees are currently calculated using a formula based on the municipal assessed value per square foot (MAV) multiplied by a reduction factor to determine a rental rate per square foot for the adjacent submerged lands which is then multiplied by the area to be leased (in square feet) to determine the annual rent. A minimum annual rent is set at \$100/year and would remain unchanged under this proposal.

The existing reduction factors are:	Reduction Factor for the MAV
A. Facilities providing free public access:	0 % (exempt from lease fees)
B. Commercial Fishing Use:	1 %
C. All other water dependent and upland uses:	2 %

Lease fees for marinas and other entities that rent slips are calculated by a formula that combines the MAV and reduction factors above for the service area portion of the facility with a percentage of the facility's income from the rented slips. Currently the submerged lands lease fee for rented slips is 2% of the income from slips rented to commercial fishing vessels and 4% of the income from slips rented to all other vessels.

### IV. Proposed Lease Schedule

Fair Market Rental Value: The proposed lease schedule continues to use the municipally assessed property value (MAV) as a reasonable estimate of fair market value of the leaseholder's upland property to establish rental rates for the submerged lands adjacent to that upland property, but significantly reduces the effect of the MAV on rental rates. This methodology avoids the need or expense for individual property appraisals. The proposed amendments recognize the broad range of waterfront property values both statewide and at the local level.

As proposed, the submerged lands rental rate per square foot is established by combining a minimum base rate per square foot (sf) with an adjustment based on the MAV of the leaseholder's property multiplied by a reduction factor. This rate is then multiplied by the area of submerged lands leased to determine the annual rental rate.

The base rate of five cents per square foot (\$0.05/sf) was selected based on our review of current minimum waterfront property values statewide (roughly \$100,000 per acre) and applying the current 2% submerged lands rent reduction factor for water dependent uses. Consistent with the current rent schedule, the rate for commercial fishing uses is reduced by half or 2.5 cents/sf.

The proposed base rates and reduction factors are:	Base Rate	Reduction Factor for the MAV
A. Facilities providing free public access:	\$0.00/sf	0 %
B. Commercial Fishing Use:	\$0.025/sf	0.1 %
C. Water dependent and existing upland uses:	\$0.05/sf	0.2 %
D. New upland uses and fill after July 1, 2009:	\$0.05/sf	0.4 %

To maintain fair market rental value under the existing lease schedule, rental rates are examined at 5-year intervals and adjusted if necessary based on changes to the municipal assessed property value.

Under the proposed schedule, municipal assessments and the base rate would also be examined at 5-year intervals. Rental adjustments would consider changes in the municipal assessed value and as well as adjustments to the base rate due to program cost increases not to exceed 4 percent per year. The reduction factor percentages would remain fixed.

**Boat Slip Rental Rates:** For marinas and other facilities that offer slip space rented or otherwise made available for private use for a fee, the submerged lands rental rate is based on a percentage of the rental income. This allows marinas to pay rent for only the slips that are rented which may vary from year to year. The Bureau proposes to reduce the rate from 2% to 1.5 % for slips rented to commercial fishing vessels, and from 4% to 3% of slip rental income for all other rented slip space.

## **V. Impact of Proposed Lease Schedule**

**Range of Fees:** Under the current lease schedule, rental rates range from a few cents up to \$2.00 per square foot (sf) based on the range of the waterfront property values statewide. Under the proposed schedule, the rental range would be greatly reduced to between 5 cents to 25 cents per square foot. At this range more than half of leases would be at the minimum 5 cent/sf rate and 95% less than 10 cents/sf. This compression of the rental range also greatly reduces the rate variability within a community such that a typical range may be 5 to 8 cents/sf depending on location, property value, and date of most recent property assessment.

**Lease Fees over current rental cap:** For approximately 70 leaseholders, the proposed reduction in rental rates will significantly reduce the annual rent as compared to current uncapped rental rates, but will still exceed the \$1,200 capped annual payment, primarily due to the amount of submerged lands leased, not higher valuations. For example, an existing wharf owner in Portland leases approximately 69,000 square feet of submerged lands with a current rent of \$16,275 or approximately 23 cents/sf, but capped at \$1,200 per year. Under the proposed schedule, the annual rent would decrease to roughly \$5,000 per year or 7 cents/sf. To address these effective increases, the Bureau proposed to phase-in the annual rent for these larger leaseholders over a five year period.

**Revenue Impacts:** Under the current capped lease schedule, annual revenues are approximately \$320,000. With the cap removed using existing rates, revenues would be approximately \$1,000,000 annually. With the proposed reduction of rental rates and phased increases for some leases, the annual lease revenues to the Bureau are estimated to remain initially unchanged or slightly reduced at approximately \$310,000 per year in 2010 but will gradually increase to approximately \$780,000 annually over 10 years. (Appendix A)

The Bureau recognizes that this approach will result in lost revenues and delayed opportunities to provide funding for public access improvements at a time when there is an increasing need to maintain and expand public access. However, we also recognize the difficult current economy conditions and stresses on the working waterfront and believe that reducing rental rates at this point with potential growth as economic conditions improve is appropriate.

## **VI. Shore and Harbor Fund**

This fund was established in 1996 to receive funds from the leasing of public submerged lands above those necessary to administer the program. The funds are used to provide grants to municipalities and state agencies to improve harbor management, develop public access facilities, and manage state-owned coastal islands. The implementation of the \$1,200 rental cap restricted lease revenues to a level sufficient to administer the program but not generate enough revenue to provide public compensation through the Shore and Harbor Fund. With the repeal of the lease rental cap, the proposed lease schedule and phase-in of larger lease fees will enable the Bureau to gradually improve funding to the Shore and Harbor Fund.

An example of the types of projects that would be funded with lease revenues is attached to this report (Appendix B). Support funding for the listed projects was provided in part from the sale of submerged lands for the Bath Iron Works shipyard expansion a number of years ago.

## **VII. Offshore Projects**

In 2005, the submerged lands statute was amended to define “Large-scale projects” and exempt such projects from the \$1,200 maximum rental cap. This was done in anticipation that wind farms and similar large projects then being considered in southern New England may be proposed in Maine waters in the near future.

With the repeal of the maximum rental cap and proposed lease schedule, the Bureau now recommends that the definition of “Large-scale project” be repealed and replaced with a definition for “Off-shore projects”. The goal is to distinguish between shore-based facilities, regardless of size, that would be included under the proposed lease schedule from those projects that are unrelated or minimally associated with a shore-based facility such as a wind farm, tidal energy project, or offshore ship berthing or terminal facility.

As a practical matter, many of these types of facilities are in the very early stages of development and design with current discussions focusing on feasibility testing and pilot projects. The potential size and public trust impacts from a full-scale facility remain very uncertain. For these reasons and the fact that the project locations may be wholly unrelated to a shore-based facility and land market values, the Bureau recommends that the lease agreements for offshore facilities be determined through negotiations between the Bureau and the applicants.

## **VIII. Public Compensation**

Under the current statute, as a condition of lease approval, the Bureau may require public compensation for the loss or diminution of traditional or customary public uses resulting from the activities of a leaseholder. That compensation is determined through negotiation and may include specific public improvements such as walkways, boat launch ramps or other appropriate compensation developed in consultation with the local municipal officials. The Bureau recommends that this provision be amended to clarify that appropriate compensation may include a negotiated fee in lieu of a specific project. Those funds could then be held and directed toward the most appropriate need.

## IX. Proposed Legislation

### An Act to Amend Provisions of the Submerged Lands Law

Be it enacted by the People of the State of Maine as follows:

**Section 1. 12 M.R.S.A. § 1862. Subsection 1, C is amended to read:**

C. "Fair market rental value," for all uses of submerged lands except slip space rented or otherwise made available for private use for a fee, means the municipally assessed value per square foot for the adjacent upland multiplied by a reduction factor plus a base rate based on the use of the leased submerged land as specified in this section. This value is then multiplied by the square foot area of the proposed lease area to determine the annual rental rate. For slip space rented or otherwise made available for private use for a fee, the fair market rental value is the gross income from that space multiplied by a reduction factor as specified in this section based on the use of the leased submerged land.

**Section 2. 12 M.R.S.A. § 1862. Subsection 1, D-1, is amended to read:**

D-1. "~~Large-scale~~ Offshore project" means a project that extends beyond localized development adjacent to a single facility or property. "Offshore ~~Large-scale~~ project" does not include a shore-based ~~project such as a pier, marina, or boatyard~~ or utility cable and pipelines serving neighboring communities or islands. "Offshore ~~Large-scale~~ project" includes, but is not limited to, ~~an offshore~~ wind farms, tidal energy facilities, and offshore tanker ports, ship berthing platforms requiring secondary transport to shore, an interstate or international pipeline or cable and similar projects.

**Section 3. 12 M.R.S.A. § 1862. Subsection 2, A (1) and (2) is amended to read:**

2. **Submerged lands leasing program.** The director may conduct a submerged lands leasing program under which the director may lease, for a term of years not exceeding 30 and with conditions the director considers reasonable, the right to dredge, fill or erect permanent causeways, bridges, marinas, wharves, docks, pilings, moorings or other permanent structures on submerged and intertidal land owned by the State. The director may refuse to lease submerged lands if the director determines that the lease will unreasonably interfere with customary or traditional public access ways to or public trust rights in, on or over the intertidal or submerged lands and the waters above those lands.

A. For fill, permanent causeways, bridges, marinas, wharves, docks, pilings, moorings or other permanent structures and for nonpermanent structures occupying a total of 500 square feet or more of submerged land or occupying a total of 2,000 square feet or more of submerged land if used exclusively for commercial fishing activities:

(1) The director shall charge the lessee a ~~base~~ rent that practically approximates the fair market rental value of the submerged land. The reduction factors and base rates for use categories are as follows:

(a) A reduction factor of 0% with no base rate, or ~~no~~ rental fee, for nonprofit organizations or publicly owned facilities that offer free public use or public



use with nominal user fees. Public uses include, but are not limited to, municipal utilities and facilities that provide public access to the water, town wharves, walkways, fishing piers, boat launches, parks, nature reserves, swimming or skating areas and other projects designed to allow or enhance public recreation, fishing, fowling and navigation and for which user fees are used exclusively for the maintenance of the facility;

- (b) A reduction factor of 0.1% plus a base rate of \$0.025 per square foot for commercial fishing uses of renewable aquatic resources. Commercial uses of renewable aquatic resources include, but are not limited to, facilities which are directly involved in commercial fishing activities. Such facilities include, but are not limited to, fish piers, lobster impoundments, fish processing facilities and floats or piers for the storage of gear;
- (c) A reduction factor of 1.52% for any slip space rented or otherwise made available for private use by commercial fishing boats for a fee;
- (d) A reduction factor of 0.2% plus a base rate of \$0.05 per square foot for water-dependent commerce, industry and private uses. Water-dependent commerce, industry and private uses other than commercial uses of renewable aquatic resources include, but are not limited to, all facilities that are functionally dependent upon a waterfront location, can not reasonably be located or operated on an upland site or are essential to the operation of the marine industry. Such facilities include, but are not limited to, privately owned piers and docks, cargo ports, private boat ramps, shipping and ferry terminals, tug and barge facilities, businesses that are engaged in watercraft construction, maintenance or repair, aquariums and the area within marinas occupied by service facilities, gas docks, breakwaters and other structures not used for slip space;
- (e) A reduction factor of 3-4% for any slip space rented or otherwise made available for private use for recreational boats for a fee. For facilities that include slip space under constructive easement, the rental fee may be reduced proportionally by the ratio of linear length of slip space within the area under constructive easement to the total linear length of all slip space within the facility; and
- (f) A reduction factor of 0.2% for upland uses and fill located on submerged lands prior to July 1, 2009 and 0.4% for new upland uses and fill after that date plus a base rate of \$0.05 per square foot. Upland uses include, but are not limited to, all uses that can operate in a location other than on the waterfront or that are not essential to the operation of the marine industry. These facilities include, but are not limited to, residences, offices, restaurants and parking lots. Fill must include the placement of solid material other than pilings or other open support structures upon submerged lands.
- (g) When the director determines that the municipally assessed value of the adjacent upland is not an accurate indicator of the value of submerged land, the director may adjust the submerged lands rent consistent with similar facilities and leases in the vicinity or require the applicant to provide an

appraisal of the submerged land. The appraisal must be approved by the director;

**(h)** For offshore and other projects where municipally assessed value or land based appraisals are unavailable or may not accurately reflect the submerged lands value as determined by the director, the annual rental rate and other public compensation as appropriate may be established by negotiation between the bureau and the applicant.

- (2)** After October 1, 1990, the director may revalue all existing rents to full fair market rental value. Rents for all uses except slip space may be adjusted annually as needed over a period not to exceed 5 years until the full fair market rental value is reached. Thereafter, the director may revalue rents for all uses except slip space every 5 years based on changes in municipally assessed value and programmatic cost adjustments to the base rate. However, adjustments to the base rate may not exceed 4 percent per year. Rents for slip space may fluctuate annually depending on the gross income of the facility;

**Section 4, 12 M.R.S.A. §1862. Subsection 9, is amended to read:**

- 9. Public compensation.** When the director determines that the public should be compensated for the loss or diminution of traditional and customary public uses resulting from the activities proposed by the lessee, the director may negotiate with the lessee to provide walkways, boat launching ramps, parking space or other facilities or negotiate a fee in lieu of such facilities as a condition of the lease. The determination of loss or diminution of traditional and customary public uses and appropriate public compensation must be made in consultation with local municipal officials.

**Section 5,** The above provisions become effective on July 1, 2009 for new and renewal leases issued after that date and for all leases after December 31, 2009.

### **SUMMARY**

This bill amends the definition of “fair market rental value” and adjusts rental rates for submerged lands leases to be more fair and equitable, reduces submerged lands rental rates overall, and provides for gradual adjustments to rental rates based on changes in assessed property values and programmatic cost increases over time. The bill provides for the phase-in of rental increases for leaseholders starting in 2010 whose adjusted rent will increase above \$1,200 following the repeal of the \$1,200 maximum rental cap on June 30, 2009.

The bill also replaces the definition of “Large-scale projects” with a new definition for “Offshore projects” and authorizes the director to negotiate rental terms for the leasing of those facilities.

## **X. Appendix**

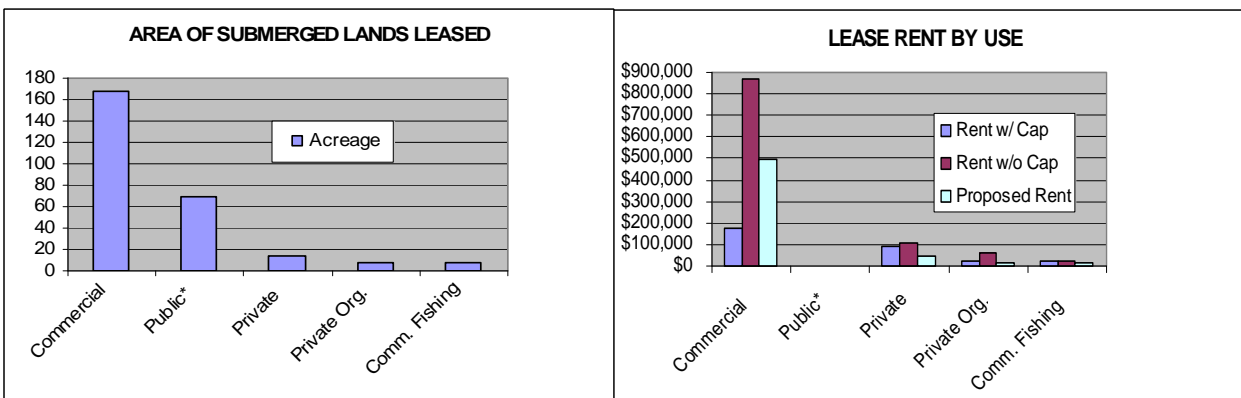
- A. Table and Charts Current and Proposed Lease Schedule with example
- B. List of Shore & Harbor Fund Projects
- C. List of Working Group members and other commenters
- D. Report of Submerged Lands Advisory Board and Comments from Working Group

## Appendix A Submerged Lands Leases and Revenue Projections

### Submerged Lands Leases

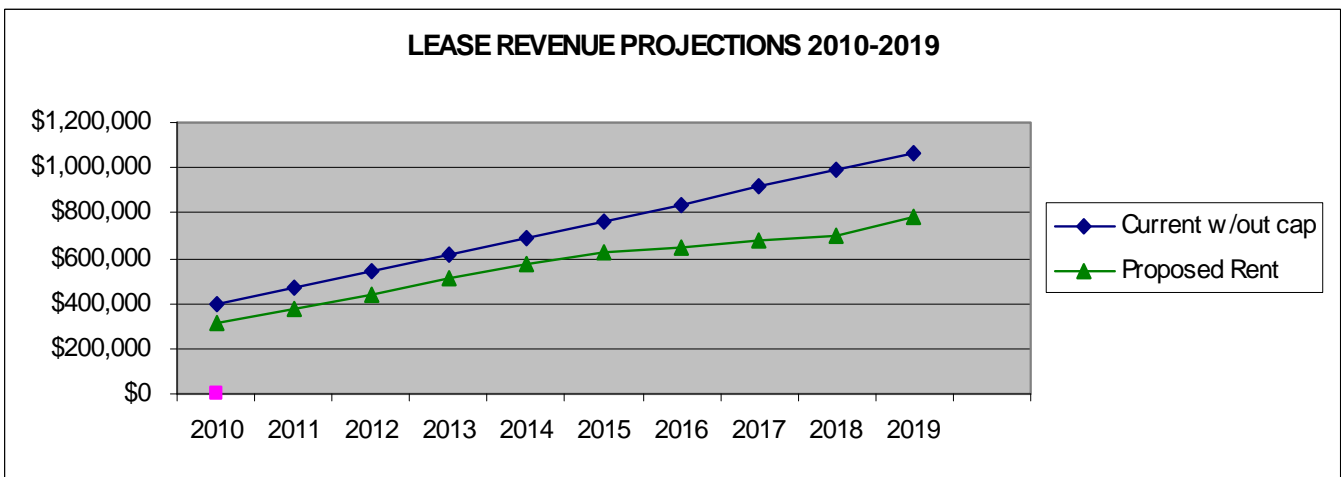
Owner type	Acreage	Rent w/ Cap	Rent w/o Cap	Proposed Rent	Percent	# leases
Commercial	167	\$174,000	\$870,000	\$495,022	82.3	274
Public*	70	\$0	\$0	\$0	0	200
Private	14	\$92,000	\$108,240	\$47,095	10.2	383
Private Org.	8	\$24,000	\$57,550	\$12,559	5.4	51
Comm. Fishing	8	\$22,000	\$22,200	\$15,736	2.1	59
<b>Totals</b>	<b>267</b>	<b>\$312,000</b>	<b>\$1,057,990</b>	<b>\$570,412</b>	<b>100</b>	<b>967</b>

- Public and other facilities that provide free public access are not charged lease fees



### Lease Revenues 10-year Phase-in Projections

Year	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Current	\$394,240	\$468,482	\$542,720	\$616,960	\$691,200	\$765,442	\$839,682	\$913,922	\$988,162	\$1,062,422
Proposed	\$309,600	\$376,446	\$443,292	\$510,138	\$570,412	\$624,454	\$649,432	\$675,409	\$702,425	\$780,000





## Appendix B

### Sample of Projects Supported by Shore and Harbor Funds

<b>Municipality</b>	<b>Project Title</b>	<b>Matching Grant Award</b>
Bath	Waterfront Public Land and Harbor Operations Plan	\$20,000
Cranberry Isles	Harbor Ordinance Development	\$11,000
Machias	Piling Replacement	\$13,500
Richmond	Waterfront Development Planning and Improvements	\$8,100
Southern Maine Community College	Pier Design	\$20,000
Stockton Springs	Harbor Management Plan	\$10,000
Surry	Boat Ramp Rehabilitation	\$12,000
Stonington	Harbor Ledge Removal	\$46,500
Thomaston	Float Construction	\$12,000

## Appendix C: Lease Fee Work Group

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## Appendix D

**REPORT of SUBMERGED LANDS ADVISORY BOARD**  
**to**  
**MAINE BUREAU OF PUBLIC LANDS**  
**on**  
**THE PROPOSED RATE STRUCTURE FOR THE LEASING OF PUBLIC TRUST**  
**SUBMERGED LANDS**

October 30, 2008

**HISTORY:** The Maine State Legislature as a result of LD 2023 (PL 12 MRSA Sec 2, Chap 540, 2008) directed the Bureau of Public Lands to review and propose a “fair and equitable” rent structure for the leasing of submerged lands under the Bureau’s jurisdiction. The legislation furthermore directed the Bureau to convene a Working group to advise and assist the Bureau in said effort.

Over the summer of 2008 the Working group was convened and labored through September, 2008 when it was decided that what had been accomplished was the best that could be achieved. The Bureau then produced the “so called “Base 5 Rental Rate” summary and indicated that the “Base 5” was its preferred rent structure and desired to present it to the Legislature as mandated. Prior to the submission, the Bureau stated to the Working group that it would request the Submerged Lands Advisory Board to comment on the proposed structure and invited the Working group to attend that meeting.

**THE MEETING:** The Submerged Lands Advisory Board meeting was convened at 1:10 PM in Room 126 of the Maine State House by its chair, Frederick J. Muehl. Submerged Lands Advisory Board members present were: Carl Stinson, Kathy Messier, Sidney Lindsay, and Robert Ramsdell. Bureau Staff was composed of: Will Harris, Dan Prichard, Carol DiBello, and Sara Brusila. Members of the Working group present were: Patricia Aho, Susan Swanton, Ken Gallant, Dan Walker, and Chris Gillies. Others present were Dustin Brook and Rep. Patrick Flood.

The Chair opened the meeting by stating the purpose of the Submerged Lands Advisory Board was to advise the Bureau on the management of submerged lands. He further emphasized that the Board was advisory only and the Bureau had authority to make the final decision although, in his opinion, past discussions on other topics usually resulted in a consensus between the Board and the Bureau. The chair also stated the only agenda item was the Board’s review and comment on the Bureau’s “Base 5 Rental Rate” proposal.

The chair then asked all to introduce themselves.

The chair because of his involvement with the Working group request that he be allowed to step down and requested that Carl Stinson become chair for the meeting. Said was done.

New chair Stinson then asked the Bureau staff to give the Submerged Lands Advisory Board a history of the Working group and the evolution of the “Base 5 Rental Rate Proposal.” During that presentation the Board asked a number of clarifying question and offered comments. Upon completion of the Bureau’s presentation, members of the Working group were asked to comment and the Board noted their particular positives and negatives of the Bureau’s proposal. A general Board discussion involving issues such as flat rates, upland assessed values, categories of uses in relation to degree of impact on public trust were put forth and deliberated.



After all sides had commented, the Board, by consensus advised that Bureau that the Bureau's plan was acceptable and the plan as drafted should be submitted to the Legislature.

Prior to adjourning, members of the Working group requested to send comments to the Submerged Lands Advisory Board as part of the Board's report to the Bureau. The Board indicated it would receive such and submit them along with its report. Comments should be sent to Fred Muehl.

The Board authorized Stinson and Muehl to prepare a meeting report to be reviewed by Submerged Lands Advisory Board members prior to its submission to the Bureau. Mr. Muehl indicated he wanted to submit the report to the Bureau on or about October 29, 2008.

The Board also received three comments from the Working group:

Patricia Aho, Pierce Atwood LLP

Chris Giles, Portland Pipeline

Kenneth Gallant, Verso Paper

These are attached.

Submitted by Frederick Muehl with the assistance of Carl Stinson

Comments to Submerged Lands Advisory Board  
October 28, 2008

To Members of the Submerged Lands Advisory Board:

Thank you for the opportunity to attend your October 22, 2008 meeting and for the additional opportunity to provide written comments regarding the Department of Conservation's proposal to make changes to the submerged land lease rental formula.

By way of introduction, I served on the Submerged Land Lease Rental Formula Task Force, by virtue of my interest in the rental formula for a number of clients who are leaseholders within the submerged lands program. I am a lawyer and registered lobbyist and the focus of my practice since 1984 has been on governmental relations and regulatory issues, primarily on behalf of members of the business community. Throughout my years of representing businesses, one theme has been overarching in their discussions with policy makers and legislators: regulations should be predictable, consistent, and transparent.

I brought these guiding principles with me to the discussions of the Task Force regarding how best to re-vamp the current lease rental formula into a system which is fair, equitable, and easy to understand.

At the Task Force meetings an overwhelming majority of attendees, believed that the current rental formula needed to be changed into a system which provided greater efficiency, ease of understanding, and simplicity. We reviewed the difference in the leasing program of aquaculture versus the leasing program for other submerged lands. The difference was startling. For example, the aquaculture program has approximately 1,300 acres leased at \$100 per acre versus the submerged lands program which only has 267 acres under a much more complicated and variable formula. Most members of the Task Force believed the rental formula should be amended to create a less variable and more efficient formula by:

- Uncoupling the formula from its use of municipally assessed valuation;
  - Reduces variability on differences in assessed value, creates efficiency and ease of understanding;
  - Uncoupling the formula from a dependence on municipal valuation, it in essence creates a flat fee.

The Department chooses not to pursue the recommendation of most of the Task Force members, but rather to propose a new formula which attempts to incorporate a reduced dependence on municipal valuation, coupled with a fee on the square footage of submerged lands. To date, the recommendation by the Department has been presented graphically, but none of the important details relating to the inflation index, automatic fee escalation, or other details have been presented in written format. As in any funding formula, the details are critical.

It is still unclear to me, what the "programmatic inflationary factor" will be; whether it is an annual automatic increase, or an increase in the fee per square foot calculated every five years.

Also, it is unclear why the Department chosen the "Base 5" proposal, which doubles the rental revenues, during a time of fiscal crisis for many consumers and businesses in Maine. It seems a more modest change to the rental formula (in recognition of the need to help our marine related industry) would be preferential than immediately jumping to the "Base 5" formula. The more modest proposal would be the

“Base 3” formula which has also been presented by the Department, but not proposed at the Advisory Board meeting.

We were also surprised to hear that other changes to the rental formula are being proposed by the Department. The information relating to the granting of broad authority for the Department to “negotiate rates” with off-shore projects is again unclear regarding the definitional applicability to projects, the criteria, the guiding principles for the negotiated authority, the parameters for the negotiated rates, and whether such rates will be fair to other leaseholders under the current program.

Again, I appreciate the Advisory Board’s opportunity you provided to us to share our concerns with both the process, and the ultimate recommendation. Further, I appreciate the opportunity to provide you written comments for ultimate submission to the Department. I encourage the Department to add as an appendix to its report to the Legislature a copy of the comments which are submitted to the Advisory Board.

Sincerely,

Patricia W. Aho, Esq.  
Pierce Atwood LLP

cc: S. Swanton, Maine Marine Trades Association  
J. Fitzgerald, BIW  
C. Gillies, Portland Pipeline Corporation  
D. Walker, Preti, Flaherty  
K. Gallant, Verso Paper, Bucksport  
N. Blake, Blake’s Boatyard



October 28, 2008

To Members of the Submerged Lands Advisory Committee:

Subject: Comments on Submerged Lands Rental Fee Proposal - Base 5

Thank you for providing Portland Pipe Line with the opportunity to attend your October 22<sup>nd</sup> meeting and allowing us to provide comments regarding the Bureau of Parks and Lands proposal for a new submerged land lease rental fee structure. As a member of the Submerged Lands Rental Rates Working Group that has met on several occasions over the last five months, we have participated in discussions with the Bureau regarding the proposed fee rates and design.

In general, Portland Pipe Line supports the proposed formula design for lease rent on submerged lands. Many of the components of a fair and equitable fee structure that we felt were necessary in developing the new funding formula have been incorporated by the Bureau. However, Portland Pipe Line does believe the cost of the Bureau's "Base 5" proposal is too high and that a balance between recovery of fees and economic impact to working waterfront could better be achieved through a "Base 4" formula.

When we were first advised of the legislation to remove the \$1,200 cap on fees we were very concerned with the significant impact that this legislation was going to have on Portland Pipe Line and the cost that the change will impose on commercial interests located on the waterfront. As one of the State's largest leaseholders, the removal of the cap has the potential of increasing Portland Pipe Line's fees for use of submerged lands from \$1,200 to approximately \$150,000 annually. This is a very substantial increase in cost for any organization, but it is especially challenging under the current economic conditions. Having said this, Portland Pipe Line recognizes that \$1,200 is insufficient compensation for use of the State's submerged lands in and around our facilities and we welcomed the opportunity to provide input to the new fee design.

The Bureau's proposal of "Base 5" would increase Portland Pipe Line's rental to approximately \$65,000 annually with additional increases over time for inflation. Although we support many of the changes in the new rental fee structure proposed by the Bureau, we believe the "Base 5" proposal is high especially given that the new formula allows for indexed growth in revenues. Our position has been that a "Base 3" rate balances the need to compensate the State for use of submerged lands with the need to promote and encourage the economic benefits of a working waterfront. Given the differences in our positions, Portland Pipe Line would not object to a compromised "Base 4" formula which would cost Portland Pipe Line approximately \$55,000 annually. This fee level would generate more than \$250,000 a year in program grant funding by 2015 with significant future growth potential through indexing and new leases.

At the start of the working committee process, Portland Pipe Line had several key areas of concern with the existing fee design. We felt it was important that any new fee structure be designed with consideration of the following:

- *Formula not tied to municipally assessed values:* Portland Pipe Line supports a flat fee rate schedule that is not tied to municipal values. Municipal values can vary significantly within towns and regions for reasons that are unique to the upland characteristics and have very little to do with the value of submerged lands in front of the property. The Bureau's proposal incorporates a fixed rate fee with a modified municipal value adder that reasonably addresses the concerns of upland valuation. Although Portland Pipe Line believes that a pure flat fee would have been the most equitable, we don't object to the rate design as proposed.

- *Phased increases to allow organizations ability to plan for increases:* The proposed fee provides for a five year phase-in period. Portland Pipe Line supports this component of the proposal as it allows businesses to plan for the increased fees as part of strategic initiatives for competitiveness.
- *Reasonably simple to understand and calculate:* The Bureau's proposal includes different rates for upland, water dependant and commercial fishing uses, adders for municipal assessed values, and a percentage of slip rental fees for marinas. Portland Pipe Line's view is that a simpler formula (ie. flat rate) would have provided equitability in funding and allowed for potential cost reductions in the administration of the program. Although the proposed formula is still relatively complicated and potentially increases administrative costs, Portland Pipe Line does not object to the proposed lease formula.
- *Allowance for inflation adjustments:* Although the Bureau has not specifically defined how or what inflation index will be implemented, Portland Pipe Line supports the Bureau's inclusion of an inflation index provided that it is based on the producer or consumer product index applied to the base component of the fee and not the municipal adder as this is already adjusted for current market conditions over time.
- *Predictability and transparency of rates:* The Bureau's proposal has satisfied Portland Pipe Line's concerns for predictability and transparency of rates. The inclusion of indexing, limited use of municipal assessed values and clear methodology provides business the ability to forecast rates with reasonable accuracy.
- *Funds are used to support public access to water related activities:* Portland Pipe Line supports the Bureau's recommendation to fund public access improvements with revenues that exceed program costs through the Shore and Harbor Grant Program. We were pleased that the Bureau chose to fund projects through an existing program that has similar objectives and did not try to develop a new layer of administration within the Submerged Lands Program to fund future programs. We would expect the program to have clear guidelines and accountability for managing the funds.

Portland Pipe Line appreciates the Advisory Board allowing us to provide our comments regarding the new fee structure proposed by the Bureau and we would encourage the Bureau to include these comments in their final report to the Legislature.

Sincerely,



Chris Gillies

Verso Paper, Bucksport  
Comments to Submerged Lands Advisory Board  
October 24, 2008

To: Members of the Submerged Lands Advisory Board

I appreciate the opportunity to have served on the Submerged Lands Working Group, and the opportunity to attend the October 22, 2008 advisory board meeting, I also appreciate the opportunity to provide written comments.

Verso Paper Bucksport currently holds a submerged lands lease for approximately 260,000 square feet of submerged lands on the Penobscot River in the Town of Bucksport. These submerged lands consist of a complex mix of fill area, bank riprap, submerged outfalls and intakes, a wharf, and a dock facility with berthing area.

Verso Paper, Bucksport appreciates and understands the need to comprehensively review the submerged lands fee structure. I appreciated the professionalism and passion that the staff has for the submerged lands program. Throughout the process, although there may have been differences of opinion, discussions were civil and respectful.

Verso has these primary comments for the Boards review.

- **The funding formula proposed by the staff is unnecessarily complicated.** The staff as represented by Mr. Prichard obviously felt strongly that any fee structure, in addition to a flat rental fee rate, should take into account, and incorporate, adjustments for individual property values. Mr. Prichard did a commendable job in laying forth the staff's recommendation of utilizing a formula that incorporates a combination of upland municipal assessed value and square footage of submerged lands – known as the Base 5 option. Incorporating municipal assessed value (MAV), value in determining a facility submerged lands rental fee adds a layer of complexity that will burden the staff, create a degree of confusion and uncertainty, and add to administrative costs. A flat fee based on square footage only would be much more simplistic, understandable and predictable. This is particularly true in the case of Verso Paper where the submerged lands consist of such a complex mix and the municipally assessed value determination may be more difficult to determine.
- **Substantial increase in funding.** The Base 5 model as proposed would fund the Department's administrative budget at roughly twice the current operating expense. The difference would go toward fulfilling the mission of the submerged lands program to compensate the public for the private use of public lands. Virtually all were in agreement with this concept, however there was virtually no, or at the very least, very limited discussion on what is considered fair and equitable compensation. In these very difficult and uncertain economic times it seems that a more modest option, if not a flat fee, would be the Base 3 model which was reviewed by the working group, but not proposed to the board.
- **Consideration for Public Good.** In many cases private use of submerged lands does in fact provide a public good. This can come in many forms, including public access, economic well being, providing well paying jobs, and the allowance of State Government to utilize private property free of charge.

I appreciated the opportunity to participate in this process and look forward to the final outcome.

Sincerely,  
Kenneth R. Gallant  
Environmental Manager  
Verso Paper, Bucksport



## **MAINE MARINE TRADES ASSOCIATION**

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October 28, 2008

To Members of the Submerged Lands Advisory Board:

Thank you for providing members of the Submerged Lands working group with an opportunity at your October 22<sup>nd</sup> meeting to share our thoughts about the process and our concerns about the Bureau of Parks and Lands draft recommendations to the Legislative Committee on Agriculture Conservation and Forestry.

The Maine Marine Trades Association represents approximately 185 companies statewide. The majority of these companies are boat yards, boat builders and marinas. These companies provide good, stable jobs for thousands of Maine citizens on a year round basis. MMTA is strongly committed to working with a wide variety of partners including state and federal agencies, other non-governmental organizations and individuals to promote the growth and prosperity of our industry, to ensure a pipeline of highly skilled workers for our industry and to assist with the implementation of best practices relevant to environmental and health and safety compliance. MMTA is the sponsor of the Maine Clean Boatyards & Marinas Program – a voluntary, beyond compliance program that helps boat yard and marina operators meet and exceed their environmental compliance obligations.

As a participant in the working group I was hopeful that the official report of the group's activities would truly reflect the majority of the group's opinion with regard to a new funding formula. It appears now that the final report will not reflect what a majority of the participants felt would be a fair and equitable formula for determining lease fees. And so I am especially grateful that you have agreed to accept comments from us and hope that you will recommend they be attached to the agency's final report to the Legislature.

Businesses – especially small businesses - need to have some assurances about their costs of doing business. Taxpayers need to feel that government is doing all that it can to manage programs in the most efficient, cost effective manner possible. And we all need to feel that our rights are being protected in ways that are fair and equitable. We are not convinced that the Bureau's report and recommendations will achieve these goals.

The "base 5" proposal is as convoluted a formula as the one we have had for the past dozen years. It continues to base the fees, at least in part, on municipally assessed upland values. Not only are these values irrelevant – the state does not require that private property owners provide public access to their private lands, but they are often quite volatile and frequently vary significantly from one end of a harbor to the other. Bureau staff continually referred to a decrease in fees that would be afforded to all but 70 leaseholders. However in reality because there was a \$1,200.00 cap on leases there will not be a decrease in the

amount of the check that actually has to be written each year to pay the new lease fee. If you wrote a check for \$1,200 in 2008 and in 2010 you have to write a check for \$10,000 that's an increase – no matter what you want to call it.

As business people we have to question the efficiency of using a complicated formula to raise significant monies that are supposed to compensate us for the loss of access to land that for most of us could not be accessed unless someone (namely the local marina) was providing us with a way to get to it. Maine likes to boast about its 3500 mile coastline – as it should. Of that 3500 MILES there are only 267 ACRES that are required to have leases. As taxpayers we have to wonder exactly how much our rights are being infringed upon and why it takes such a costly effort to 'protect' them. A simple flat rate formula, without all the special considerations for upland value, type of use, percentage of slip rental income, etc. would undoubtedly be easier to administer and easier for businesses to understand and plan for.

The revelation at your October 22<sup>nd</sup> meeting regarding the Department's intent to include additional changes that would allow them authority to negotiate rates with other types of users was totally unexpected as this had not been discussed in working group meetings. Broad based authorities to negotiate and make changes that could have an effect on current leaseholders are disconcerting.

Despite the fact that Maine's marinas are the primary access points – both to and from the water for many, many thousands of people – we do not dispute the need for a program that compensates for our private use of land that is held in trust for Maine citizens. We would only ask that it be simple, fair and cost effective.

Thank you again for giving us the opportunity to address you in person and to provide you with additional written comment. I do hope that these comments will in fact become a part of the final report as an addendum.

Sincerely,  
MAINE MARINE TRADES ASSOCIATION

*Susan Swanton*

Susan Swanton  
Executive Director  
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