

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

*January* THIS GRANT OF CONSERVATION EASEMENT is made this 22 day of *January*, 2009, by **THE STATE OF MAINE**, by and through its Department of Transportation, having a mailing address of 16 State House Station, Augusta, ME 04333-0016 (hereinafter referred to as "MaineDOT" or the "Grantor"), and in favor of **MAINE COAST HERITAGE TRUST**, a non-profit corporation organized and existing under the laws of the State of Maine, with a mailing address of 1 Bowdoin Mill Island, Suite 201, Topsham, Maine 04086 (hereinafter referred to as the "Holder"), and the **STATE OF MAINE, acting by and through its Department of Environmental Protection** as Third Party Enforcer, having an address of 17 State House Station, Augusta, ME 04333-0017 (hereinafter referred to as the "Third Party Enforcer" or "DEP").

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

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

- 1) Notice of Taking on June 17, 1985 recorded at the Waldo County Registry of Deeds at Book 854 and Page 283 by MaineDOT; and
- 2) Notice of Layout and Taking on February 6, 1986 recorded in said Registry of Deeds at Book 885 and Page 141 and
- 3) Deed from Bangor Investment Company ("BIC") to Maine DOT, dated February 7, 1994 and recorded at said Registry of Deeds at Book 1435 Page 278 and
- 4) Deed from BIC to Maine DOT dated March 28, 1997 and recorded at said Registry of Deeds at Book 1681, Page 324; and
- 5) Release Deed from BIC to MaineDOT dated November 12, 1997, recorded at said Registry of Deeds at Book 1740 Page 78; and
- 6) Corrective Deed from Fieldcrest Cannon, Inc. to Maine DOT dated November 4, 2002 and recorded at said Registry of Deeds at Book 2357, Page 18; and

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

October 4, 2004 (the "Termination") as more specifically set forth in Section 13 of this Conservation Easement; and

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

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

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

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

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

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

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

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

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

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

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

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

**WHEREAS**, MaineDOT wishes to ensure the ability to pursue compensatory mitigation credits for transportation projects on the Protected Property, and has identified two degraded locations on the Protected Property depicted in Exhibit B as "Enhancement/Restoration Areas," as suitable for wetland and upland creation, enhancement and restoration compensatory mitigation (pursuant to 23 M.R.S.A. § 153B(1)(G),) for the environmental effects of as-yet unidentified Maine DOT transportation projects (the "Transportation Projects"); and

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

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

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

**WHEREAS**, the resulting Sears Island Planning Initiative Steering Committee Consensus Agreement of April 12, 2007 as amended April 27, 2007, was supported by the Town of Searsport, the Maine Department of Transportation, and signed by 38 signatories, who determined that "the parties agree that the DOT, with the Town of Searsport and appropriate others will provide for light recreation, education and conservation facilities on a portion of the

island by conveyance of an easement covering that area;" and

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

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

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

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

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

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

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

**1) PURPOSE**

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

To provide a significant public benefit by protecting and preserving in perpetuity the natural and undeveloped character of the Protected Property, including its wetlands and stream corridors, its upland forests and fields, its wildlife habitat, and its scenic character when viewed from Public Vantage Points specifically identified in Section 2.A. herein, and by preserving the opportunity for low impact outdoor recreation, education and nature observation consistent with the purposes of this easement. Accordingly, the Conservation Easement does include opportunities for low impact recreation and education on the Protected Property, including the construction of facilities and structures necessary for these activities.

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

## 2) EXISTING CONDITIONS

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

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

geothermal resources for use on the Protected Property, are permitted on the Protected Property. Without limiting the generality of the foregoing and notwithstanding the reserved rights of Grantor and/or any authorized Land Management Entity, the following uses are prohibited on the Protected Property: residential structures, industrial development, towers and high aspect apparatus for telecommunications (provided that not more than one wind power tower is permitted as described hereinafter), junk yards, and aircraft landing sites, except in emergency.

- C) **Division.** For the purpose of land uses permitted under this Conservation Easement, the Protected Property must remain in its current configuration as a single lot under unified ownership, which may be joint and undivided, subject to minor boundary line adjustments along the perimeter of the Transportation Parcel which may be made by the parties with the prior written consent of the Third Party Enforcer, provided that the Protected Property shall not be reduced by more than ½ acre due to all such boundary line adjustments. Grantor will make a reasonable effort to provide replacement acreage of equal conservation value if practicable. Any such boundary line adjustment shall be documented through an addendum to be filed in the Waldo County Registry of Deeds (the "Addendum"), which Addendum shall identify a new metes and bounds description of the Protected Property, a new survey plan (together representing the "Revised Description"). The Addendum shall be signed by the Grantor, Holder and Third Party Enforcer, acknowledging acceptance of the Revised Description as (i) not materially detracting from the conservation purposes identified in Section 1 herein, and (ii) not increasing the value of the Grantor's estate. Such acknowledgment and acceptance by the parties hereto shall not be unreasonably denied, conditioned or delayed. The Revised Description shall supersede the Protected Property described in Exhibit A and depicted on Exhibit B, both attached to this Conservation Easement. The Addendum shall cross reference the registry recording citation of this Conservation Easement.

Notwithstanding the foregoing, any portion of the Protected Property may be conveyed to an entity that meets the qualifications set forth in Paragraph 15 for permanent conservation ownership. Under no circumstances may the Protected Property or any portion thereof be included as part of the gross tract area of other land not subject to this Conservation Easement, for the purposes of determining density, lot coverage, or land area requirements, under otherwise applicable laws, regulations or ordinances controlling land use, building density or transfer for development rights. This condition should not be construed to prohibit the use of the aforementioned "Enhancement/Restoration Areas" on the Protected Property as mitigation, by creation, enhancement and restoration of previously degraded wetlands and related upland buffers, to compensate for unavoidable wetland impacts to offset the environmental impact of transportation activities on or near Sears Island or other areas of the State of Maine in accordance with Section 5.B.e herein.

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

**3) EDUCATION AND MAINTENANCE CENTER AREA**

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

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

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

**D)** Prior to the commencement of any activities permitted only within the Education and Maintenance Center Area, except for test pits necessary for siting the Education and Maintenance Center Area, a recorded legal description of the final Education and Maintenance Center Area as approved by the Grantor and the Holder must be established by an addendum hereto, signed by Grantor and Holder and recorded at the Registry of Deeds. The addendum shall incorporate the details specified in Section 3.B. above.

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

- A) Currently, within the "Education and Maintenance Center Parcel" as described in Section 3.A., there are only minor existing structures such as boundary markers, remains of foundations, unimproved gravel roads and foot paths.

Once the Education and Maintenance Center Area is established as set forth in Sections 3.A. and 3.B., no additional structures, temporary or permanent, may be located or constructed in the Education and Maintenance Center Area of the Protected Property, and no alterations may be made to the vegetation or to the surface of the earth or wetlands or watercourses in the Education and Maintenance Center Area of the Protected Property, without the prior written consent of Holder; except that any activity permitted in the Natural Area is permitted in the Education and Maintenance Center Area, and the following additional rights are reserved by the Grantor and hereby authorized by the Grantor to be implemented by an approved Land Management Entity in the event the Education and Maintenance Center Area is established as outlined herein:

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



Center Area, not more than one dock or pier with a network of ramps and floats. The size and location of the dock or pier with ramps and floats must be limited so that the depth of the water under the floats does not exceed 12 feet at mean low water. Holder approval shall be based on the consideration that the dock or pier with a network of ramps and floats shall be designed to accommodate small marine craft of not more than approximately 30 feet in length, and the design and siting of the system shall preserve the scenic and conservation values of the Protected Property, in particular the dune grasslands and clam flats.

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

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

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

**a)** An approved Land Management Entity shall notify Holder by certified mail, return receipt requested, as set forth herein, at least thirty (30) days prior to the commencement of site preparation, construction, substantial alteration to the surface other than test pits, or replacement, relocation, or removal of any structure permitted in the Education and Maintenance Center Area, in order to establish the final approved Education and Maintenance Center Area as set forth

herein. Holder will reply within thirty (30) days of receipt of any notice from the Land Management Entity, either approving the Land Management Entity's proposed Education and Maintenance Center Area, or suggesting reasonable modifications that may be necessary to comply with the terms of this grant. With respect to the establishment of the Education and Maintenance Center Area described herein, the parties shall work in good faith to complete and record the description of the approved Education and Maintenance Center Area as an addendum to this Conservation Easement, within thirty (30) days of such reply by Holder.

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

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

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

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

**A) Structures in Natural Area**

- a) **Minor Structures in Natural Area:** The right to construct and maintain within the Natural Area, minor structures to accommodate low-impact outdoor recreation, nature observation and study, to control erosion, to protect public safety, and to control authorized uses. Such structures may include: small unlighted signs, low barriers to discourage unauthorized access or to protect fragile resources, erosion control structures, boundary markers, rustic trail improvements (including benches, bog bridging, fencing, hand rails, steps, and stream bridges), composting toilet facilities, interpretive signs and kiosks, registration boxes, outhauls and canoe launches, minor waterfront access structures, temporary structures to support and protect archeological and scientific investigation, and water supply facilities for consumption on the Protected Property. No structure in the Natural Area may exceed twenty (20) feet in height, measured from the original average, grade of the structure sites.
- b) **Prohibited Structures in the Natural Area:** The following structures are not permitted in the Natural Area: buildings, sheds, storage units, gazebos, screen houses, tent platforms, rip rap, jetties, barns, bleachers, stages, paved platforms, major recreational improvements such as swimming pools, tennis courts, athletic or sports or equestrian fields or courts or courses that require grading of the surface or extensive baring of mineral soils.

**B) Surface Alterations in Natural Area**

- a) **Maintenance of Stetson Hills Road and Road along ROW to Tower:** the right to maintain and improve the existing Stetson Hills Road, and the approximately 10-foot wide gravel roadway over the right of way to the Tower; each located as generally depicted on Exhibit B. Stetson Hills Road is not a part of the Protected Property, but any maintenance of the Stetson Hills Road may require entry on the Protected Property to the minimum extent necessary to accomplish the necessary maintenance and improvements.
- b) **Maintenance Roadway:** the right to establish and maintain a roadway from the Stetson Hills Road to facilities located on the Education and Maintenance Center Area as necessary.
- c) **Footpaths and Trails:** the right to establish and maintain, anywhere on the Protected Property, unpaved footpaths and trails of not more than eight (8) feet in average combined tread width and side clearance, designed and located to prevent erosion and protect the other Conservation Values of the Conservation Easement.

- d) **Study:** the right to permit archeological and ecological study of the Protected Property, including excavation of sites, and to erect temporary structures to protect and identify sitework, after prior written notice to Holder, provided that all such work must be conducted in accordance with applicable then-current professional standards, and the disturbed area must be restored to its natural appearance as soon as reasonably possible after completion.
- e) **Wetland Mitigation:** the Grantor may implement the creation, enhancement, and restoration of wetlands, hydrologic features, and wetland habitat features on the Protected Property only within those two sites in the Natural Area that are depicted in Exhibit B, as "Enhancement/Restoration Areas," to compensate for unavoidable wetland impacts of transportation activities on or near Sears Island or other areas of the State of Maine by the Maine Department of Transportation, after notice in writing to Holder specifying the scope of work and a timeline for completion. This work may include: excavation, surface grading of micro-topography, planting and seeding of sites, provided that all such work must be conducted in accordance with mitigation priorities established by the U. S Corps of Engineers (Corps) (33 CFR Part 332) and Environmental Protection Agency's (EPA) (40 CFR Part 230) Compensatory Mitigation for Losses of Aquatic Resources and the DEP Chapter 310 of the Wetland Protection Rules for the Natural Resource Protection Act. These restored sites may require up to 10 years of post-construction monitoring of performance standards.

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

Within forested areas of the Natural Area, it is the intention of this Conservation Easement to foster an intact, healthy forested area, and to limit the removal of vegetation to preserve healthy soils and habitat for wildlife, including current and future threatened, rare or endangered species, to assure biological diversity, to preserve the scenic character of forested areas of the Protected Property from Public Vantage Points, and to protect, maintain and/or restore those wetlands, as well as open and unforested areas, in the Natural Area that provide habitat for wildlife including current and future threatened, rare or endangered species or that provide a scenic benefit from the Public Vantage Points.. It is the intention of this grant to help preserve the ecological integrity of streams, brooks, rivers or water bodies on or about the Protected Property by encouraging maintenance of vegetated buffers in order to provide shading and prevent erosion, thereby maintaining habitat value and water quality.

The following rights are reserved by the Grantor and are hereby authorized by the Grantor to be implemented by an approved Land Management Entity, given the

goals of vegetation management set forth above:

**a) Natural Area – Generally:**

- (i) the right to alter vegetation anywhere in the Natural Area to the extent necessary to exercise the rights reserved herein provided that in every case the disturbed surrounding area must be restored as soon as reasonably possible to a state consistent with the ecological character of the Natural Area to be protected by this Conservation Easement.
- (ii) the right to manage vegetation on the Natural Area of the Protected Property without prior approval by Holder only in order to remove hazards to public safety and to combat active fire.
- (iii) the right, subject to the prior written approval of the Holder that may be granted with limitations to preserve the Conservation Values of the Protected Property, to manage vegetation on the Natural Area of the Protected Property for the following purposes: to establish and maintain additional open area, fields and meadows for habitat and biodiversity purposes, to control or prevent the spread of disease and exotic intrusion to preserve biological diversity, for archeological and scientific investigation and education, and to rehabilitate and enhance habitat for native flora and fauna; but in each case in accordance with a plan approved by the Maine Department of Conservation's Maine Natural Areas Program or successor agency.
- (iv) The right to create, maintain, enhance, restore and rehabilitate wetlands and hydrological systems as permitted in Section 5.B.(e) hereinabove.
- (v) the right to manage vegetation on the Natural Area of the Protected Property to reduce the threat of fire as necessary for public safety with the prior written approval of Holder in accordance with a plan approved by the Maine Forest Service, or successor Agency.

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

250' from the mean high water mark. Mowing of vegetation or harvesting of peat is not permitted on the existing wetlands.

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

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

- A) The direct discharge of treated or untreated sewage into surface waters on or about the Protected Property is strictly prohibited, and any such waste shall be disposed of in accordance with applicable laws and regulations.
- B) It is forbidden to dispose of or store unserviceable or abandoned equipment, such as appliances, vehicles and parts thereof, or any other waste material in the Natural Area on the Protected Property, except that vegetative slash and debris may be allowed to remain on the Protected Property, and manure, compost and vegetative waste may be stored and/or used on the Protected Property in accordance with applicable laws and regulations. Other waste generated by permitted uses on the Protected Property may be stored temporarily in the Education and Maintenance Center Area within appropriate receptacles for removal at reasonable intervals.
- C) The use, storage, discharge or runoff of chemical herbicides, pesticides, fungicides, soaps, detergents or highly acidic or alkaline agents, fertilizers and other toxic agents, including discharge of potentially toxic waste water or other toxic byproducts of permitted uses, must be limited to prevent any demonstrable adverse impact on wildlife, waters and other important conservation values to be protected by this Conservation Easement, unless more intensive use is approved in advance and in writing by Holder as appropriate in its sole and exclusive discretion, to prevent or mitigate harm to the inhabitants, natural resources or permitted uses of the Protected Property.

**7) PUBLIC ACCESS**

- A) Grantor hereby permits, and will refrain from prohibiting or discouraging, use of the Protected Property by the general public for low-impact outdoor recreational uses, such as walking, hiking, nature observation, and for pedestrian access to the intertidal area of the shore, exercised in a manner that is consistent with the protection and preservation of the natural and ecological character of the Protected Property and the terms hereof. An approved Land Management Entity has the right to prohibit, limit or charge a fee for off-hours use, fires, vehicular uses, and special events, and the right to temporarily limit or restrict such public recreational use of the Protected Property, or any part thereof, that is detrimental to the Conservation Values of the Protected Property, or to the extent necessary for construction and maintenance, mitigation and management activities or other activities of the Grantor or an approved Land Management Entity permitted hereunder that may pose a hazard to human safety. For such purposes, the general public will be allowed to access the Protected Property over the Stetson Hills Road as depicted generally on Exhibit B and/or over a road to be constructed connecting the Stetson Hills Road to the Educational and Maintenance Center Area.
- B) Grantor hereby conveys to the Holder, any approved Land Management Entity and the general public a right of way over Stetson Hills Road for ingress and egress for the purposes of accessing the Protected Property for any purposes not prohibited by this Conservation Easement.
- C) Grantor, Holder and any approved Land Management Entity claim all applicable rights and protections against liability for injury to the public to the fullest extent of the law under Title 14 M.R.S.A. Section 159-A, et seq. as amended and successor provision thereof (The Maine Recreational Use Statute), under the Maine Tort Claims Act, and under any other applicable provision of law and equity.

**8) HOLDER'S AFFIRMATIVE RIGHTS**

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

**B) Enforcement:**

- a) Holder shall have the right to enforce this Conservation Easement by proceedings at law and in equity, including the right to enjoin the violation, ex parte as necessary, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Easement and to require the restoration of the Property to the condition that existed prior to any such injury.
- b) Prior to initiation of an enforcement action, Holder shall provide Grantor and any appropriate Land Management Entity with prior notice and reasonable opportunity to cure any breach for which they are responsible except where emergency circumstances require more immediate enforcement action. If a court determines that this Conservation Easement has been breached by the Grantor, or by Grantor's agents, employees, lessees, guests, or others for whose actions on the Protected Property the Grantor is responsible, Grantor shall reimburse Holder for any reasonable costs of enforcement, including court costs, mediation and, if applicable, arbitration costs, reasonable attorneys' fees, and any other payments ordered by such court.
- c) Neither the Grantor nor any Land Management Entity are responsible for injury to or change in the Protected Property resulting from natural causes or environmental catastrophe beyond Grantor's and/or the Land Management Entity's control, such as fire, flood, storm, and earth movement, or from any prudent action taken by Grantor and/or the Land Management Entity under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes.

**9) BOUNDARIES**

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

**10) HOLDER ACKNOWLEDGEMENT SIGNS**

Holder shall have the right to have its name and role acknowledged in a reasonable



number of signs within the Education and Maintenance Center Area, and at areas within the Natural Area that are visible along boundary lines, to identify Holder and inform the public and abutting property owners that the Protected Property is under the protection of this Conservation Easement.

**11) NOTICES AND REQUESTS FOR APPROVAL**

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

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

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

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

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

Where Grantor and/or a Land Management Entity are required to obtain Holder's prior written consent and approval, such request as described hereinabove shall be given in writing thirty (30) days prior to undertaking the

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

**12) COSTS, TAXES, LIABILITY**

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

**13) CONSENT DECREE**

- A) The Parties hereto acknowledge the aforementioned Consent Decree, the associated Recorded Abstract, and the Termination, attached hereto as Exhibit C. Accordingly, this grant of Conservation Easement is conveyed subject to the condition that MaineDOT hereby reserves all rights necessary to allow MaineDOT to comply with the conditions of paragraphs 5 (to the extent specifically outlined in the Termination), 8, 16(a), 16(b), and 17 of the Consent Decree (the "Termination Conditions").
- B) This grant of Conservation Easement is conveyed subject to the condition that the Holder shall comply with paragraphs 16(a) and 16(b) of the Consent Decree.
- C) In addition, as specified by the Termination Conditions, MaineDOT shall have notified the Environmental Protection Agency, the United States Department of Justice, the Conservation Law Foundation, and the Sierra Club at least 30 days prior to MaineDOT's grant of this Conservation Easement.
- D) Nothing in this grant of Conservation Easement shall be construed to limit or preclude the Grantor's ability to comply with the requirements of the Consent Decree.

**14) STANDARD PROVISIONS**

- A) Maine Conservation Easement Act:** This Conservation Easement is established pursuant to the Maine Conservation Easement Act at 33 M.R.S. §§ 476 through 479-C, inclusive, as amended, and shall be construed in accordance with the laws of the State of Maine.
- B) Conservation Purposes:** This Conservation Easement is established exclusively for conservation purposes pursuant to the Internal Revenue Code, as amended (hereinafter referred to as the “Code”) at Title 26, USCA, Section 170(h)(1)–(6) and Sections 2031(c), 2055, and 2522, and under Treasury Regulations at Title 26 CFR §1.170A-14 et seq., as amended.
- C) Qualified Holder:** The Holder is qualified to hold conservation easements pursuant to 33 M.R.S. § 476(2)(B), as amended, and is a qualified donee under Internal Revenue Code Section 170(h)(3), a publicly supported, nonprofit 501(c)(3) organization with the authority to accept lands, easements, and buildings for the purpose of preserving and protecting natural, scenic, educational, recreational or open-space values of real property, and with the commitment to preserve the conservation values of the Protected Property.

**15) ASSIGNMENT LIMITATION**

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

**16) BASELINE DOCUMENTATION**

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

**17) LIENS SUBORDINATED**

Grantor represents that as of the date of this grant there are no liens or mortgages or future interests outstanding against the Protected Property. Grantor has the right to use the Protected Property as collateral to secure the repayment of debt,

provided that any lien or other rights granted for such purpose, regardless of date, are subordinate to Holder's rights under this Conservation Easement. Under no circumstances may Holder's rights be extinguished or otherwise affected by the recording, foreclosure or any other action taken concerning any lien or other interest in the Protected Property.

**18) TERMINATION AND PROCEEDS**

- A) This Conservation Easement may only be extinguished or terminated by judicial order in a court of competent jurisdiction. It is the intention of the parties that an extinguishment or termination, including a partial termination under the powers of eminent domain, be approved by a court only if all of the conservation purposes of this Conservation Easement are impossible to accomplish, and if both Grantor and Holder agree.
- B) Grantor and Holder agree that the donation of this Conservation Easement gives rise to a property right which vests immediately in Holder and which has a fair market value equal to the amount by which the fair market value of the unrestricted Protected Property is reduced by the restrictions imposed by this Conservation Easement, as of the date of the execution of this Conservation Easement. Should this Conservation Easement be extinguished, in whole or in part, any increase in value of the Grantor's estate must be paid by Grantor to Holder, or to another entity selected by the court, referred to herein as Holder's successor, as required under 33 M.R.S. § 477-A(2)(B).

**19) GENERAL PROVISIONS**

- A) **Controlling Law and Interpretation:** The interpretation and performance of this Conservation Easement shall be governed by the laws of the State of Maine. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the conservation purposes of this Conservation Easement and the policy and purpose of the Maine Conservation Easement Act at 33 M.R.S. §§ 476 through 479-C, inclusive, as amended. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the conservation purposes of this Conservation Easement shall govern.
- B) **Owner's Rights and Obligations, Joint Obligation:** A person's or entity's obligation hereunder as Grantor or successor owner of the Protected Property, shall be joint and several, and will cease, only if and when such person or entity ceases to have any ownership interest in the Protected Property, (or relevant portion thereof) but only to the extent that the Protected Property (or relevant portion thereof), is then in compliance herewith, and provided such person or entity shall have fulfilled the requirements of Paragraph 19.C.

below. Responsibility of owners for breaches of this Conservation Easement that occur prior to transfer of title will survive such transfer; provided that the new owner shall also be responsible for bringing the Protected Property into compliance.

- C) Subsequent Deeds and Transfers:** This Conservation Easement must be incorporated by reference in any deed or other legal instrument by which Grantor conveys any interest in the Protected Property, including, without limitation, a leasehold or mortgage interest. Grantor further agrees to give written notice to Holder within thirty (30) days of the transfer or conveyance of any interest in the Protected Property. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of this Conservation Easement or limit its enforceability in any way.
- D) Compliance/Estoppel Certificates:** Upon written request by Grantor, Holder will provide Compliance/Estoppel Certificates to Grantor or third parties, indicating the extent to which, to Holder's knowledge after due inquiry, the Protected Property is in compliance with the terms of this grant. The inspection of the Protected Property for this purpose will be made by Holder at Grantor's cost within a reasonable time after Grantor's written request.
- E) Discretionary Approvals and Amendments:**
- a) **Discretionary Approvals:** Grantor and Holder recognize that certain activities by the Grantor and/or an approved Land Management Entity may warrant the prior discretionary approval of Holder, and that Holder has the right to issue such discretionary approvals without prior notice to any other party. Nothing in this paragraph shall require the Holder to agree to any discretionary approval.
  - b) **Amendments:** Grantor and Holder recognize that rare and extraordinary circumstances could arise which warrant modification of certain provisions of this Conservation Easement. To this end, subject to more restrictive laws and regulations, if any, Grantor, Holder and any approved Land Management Entity shall have the right to agree to amendments to this Conservation Easement without prior notice to any other party, provided that in the reasonable judgment of Holder, such amendment enhances or does not materially detract from the conservation values intended to be protected by this Conservation Easement. Amendments will become effective upon recording at the Waldo County Registry of Deeds. Nothing in this paragraph shall require the Grantor or the Holder or a Land Management Entity to agree to any amendment or to consult or negotiate regarding any amendment.
  - c) **Further Limitations on Discretionary Approval and Amendments:**

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

- (I) impair the conservation purposes of this Conservation Easement;
- (II) materially detract from the Conservation Values intended to be protected by this Conservation Easement;
- (III) limit the term or result in termination of this Conservation Easement; or
- (IV) adversely affect the qualification of this Conservation Easement or the status of the Holder under applicable laws, including the Maine Conservation Easement Act at 33 M.R.S.A. § 476 et seq., and Sections 170(h), 501(c)(3), 2522, and 2031(c) of the Internal Revenue Code, successor provisions thereof and regulations issued pursuant thereto.

**20) ECONOMIC HARDSHIP**

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

**21) NONWAIVER**

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

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

If any provision of this Conservation Easement or the application of any provision to a particular person or circumstance is found to be invalid, the remainder of this Conservation Easement and the application of such provision to any other person or in any other circumstance shall remain valid. This instrument and the Baseline Documentation set forth the entire agreement of the parties with respect to the Conservation Easement and supersede all prior discussions, negotiations,

understandings, or agreements relating to the Conservation Easement, all of which are merged herein. Nothing contained herein will result in a forfeiture of this Conservation Easement or reversion to Grantor of any rights extinguished or conveyed hereby.

**23) STANDING TO ENFORCE**

Only Holder, Grantor and Third Party Enforcer may bring an action to enforce this grant, except as provided in 33 M.R.S.A. § 478, and nothing herein should be construed to grant any other individual or entity standing to bring an action hereunder, unless otherwise provided by law; nor to grant any rights in the Protected Property by adverse possession or otherwise, provided that nothing in this Easement shall affect any public rights in or to the Protected Property acquired by common law, adverse possession, prescription, or other law, independently of this grant.

**24) CAPTIONS**

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

**25) RECORDING**

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

**26) THIRD PARTY ENFORCER**

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

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

**27) SUCCESSORS AND ASSIGNS**

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

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

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

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

Signed, sealed and delivered  
in the presence of:

*Cheryl C. Martin-Hunt*  
Witness

**STATE OF MAINE  
Department of Transportation**

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

STATE OF MAINE  
COUNTY OF *Kennebec*, *January 22*, 2009

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

Before me,  
*Cheryl C. Martin-Hunt*  
~~Attorney~~ Notary Public  
Printed name:  
My commission expires:



*Signatures to continue on following page*  
**CHERYL C. MARTIN-HUNT**  
Notary Public State of Maine  
My commission expires December 5, 2010



HOLDER ACCEPTANCE

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

Signed, sealed and delivered  
in the presence of:

Cheryl Martin-Hunt  
Witness

MAINE COAST HERITAGE TRUST

By: Paul Gallay  
Paul Gallay  
Its President, Duly authorized

STATE OF MAINE  
COUNTY OF Kennebec

January 22, 2009

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

Before me,

Cheryl Martin-Hunt  
~~Attorney~~/Notary Public

Printed name:

My commission expires:



THIRD PARTY ENFORCER ACCEPTANCE  
THIRD PARTY ENFORCER:

Cheryl Martin-Hunt  
Witness

STATE OF MAINE  
Department of Environmental Protection

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

## EXHIBIT A

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

### **Protected Property/Conservation Parcel 1:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Protected Property/Conservation Parcel 2:**

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

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

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

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

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

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

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

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

The Protected Property that is the subject of this Conservation Easement shall not include any portion of the property designated on said Exhibit B as the Transportation Parcel, nor does it

include the flats between low and high water mark in any area adjacent and appurtenant to the said Transportation Parcel, nor does it include any portion of said Stetson Hills Road.

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

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

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

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

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

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

**IN ACCORDANCE WITH THE CONDITIONS OF THIS CONSERVATION**

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



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

Doc# 179  
Bk: 2542 Pg: 221

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

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

UNITED STATES OF AMERICA,  
Plaintiff

v.

MAINE DEPARTMENT OF  
TRANSPORTATION, et al.,  
Defendant

**NOTICE AND ABSTRACT  
OF CONSENT DECREE**

**POOR ORIGINAL**

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

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

6. The following terms of the Consent Decree apply to the Terminal Site or the 3.2 acre wetland restoration parcels at the Terminal Site:

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

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

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

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

-3-

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

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

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

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

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

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



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

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

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

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

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

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

E. Paragraph 39, summarized as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

C. Paragraph 17 as follows:

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

D. Paragraph 39 summarized as follows:

Doc# 580  
BK: 3289 Pg: 336

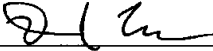
Doc#: 179  
Bk: 2542 Ps: 228

-8-

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

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

State of Maine  
Department of Transportation

  
By: David A. Cole  
Commissioner

State of Maine  
KENNEBEC, ss.

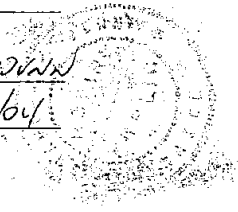
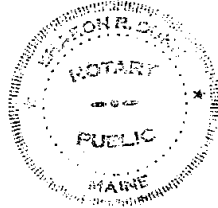
January 6, 2004

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

  
Notary Public/Attorney at Law

Printed Name: SHARON R. BROWN

Date commission expires: 12/1/04



-9-

Doc#: 179  
Bk: 2542 Pg: 229

EXHIBIT 1

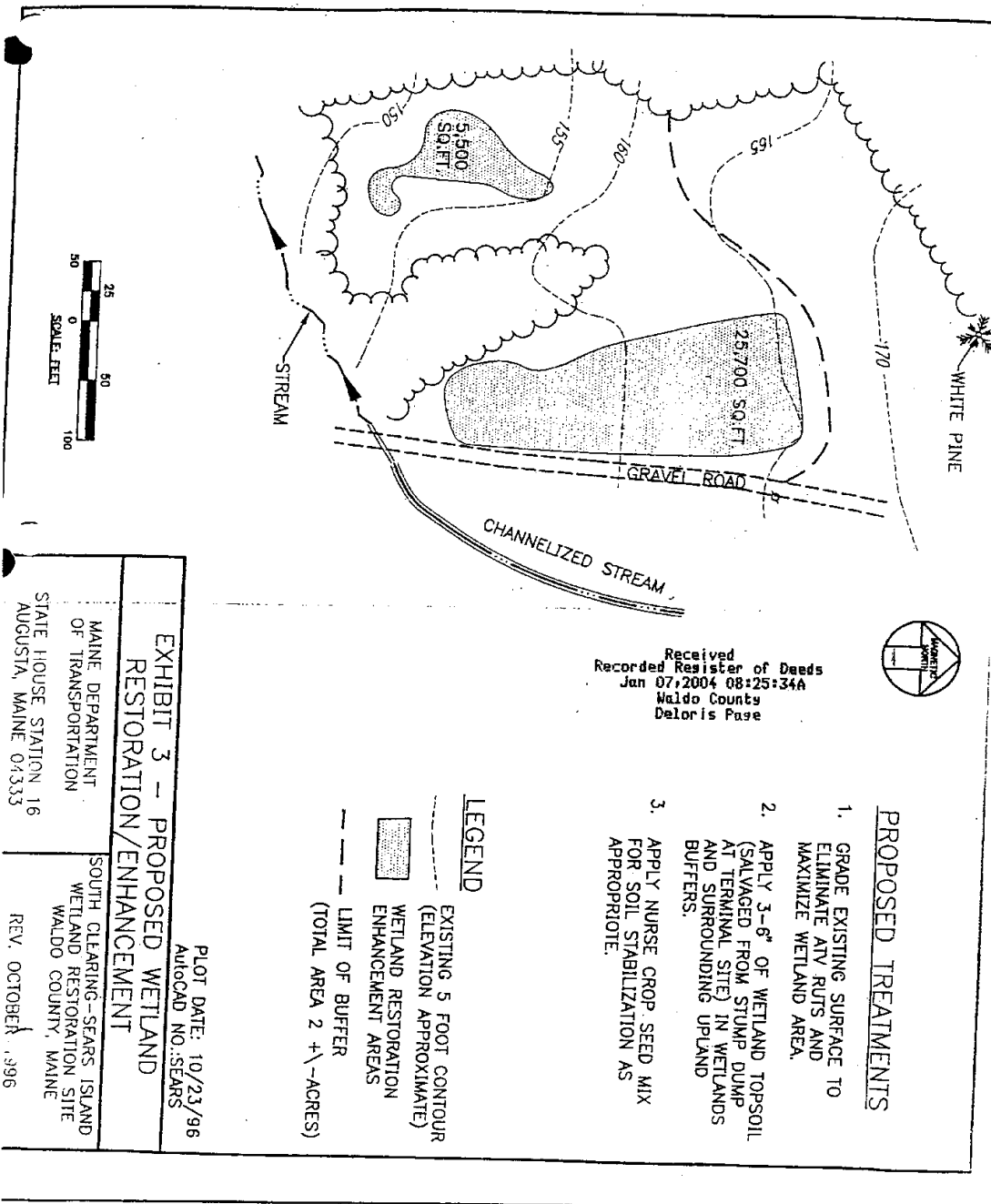
Intentionally Omitted

HALEGALSHARED/KEMMERLE/SEARSISLAND/CONSENT DECREE

*done*  
5/8/14  
169

Doc# 179  
 Bk: 2542 Ps: 230





Received  
 Recorded Register of Deeds  
 Jan 07, 2004 08:25:34A  
 Waldo County  
 Deloris Page

**PROPOSED TREATMENTS**

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

**LEGEND**

- EXISTING 5 FOOT CONTOUR (ELEVATION APPROXIMATE)
- WETLAND RESTORATION ENHANCEMENT AREAS
- LIMIT OF BUFFER
- (TOTAL AREA 2 + \--ACRES)

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

MAINE DEPARTMENT OF TRANSPORTATION  
 STATE HOUSE STATION 16  
 AUGUSTA, MAINE 04333

SOUTH CLEARING-SEARS ISLAND WETLAND RESTORATION SITE  
 WALDO COUNTY, MAINE  
 REV. OCTOBER, 1996

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



UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

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

NOTICE OF TERMINATION OF CONSENT DECREE

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

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

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

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

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

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

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

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

7. Paragraph 44 of the Consent Decree states that

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

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

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

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

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

Respectfully submitted,

FOR PLAINTIFF UNITED STATES OF AMERICA

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

Dated: 9/30/08

By: 

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

Of Counsel:

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

FOR DEFENDANT MAINE DEPARTMENT  
OF TRANSPORTATION

Dated: 10/4/04



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

P:\jkilbreth\MDOT\termination notice2.doc

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

UNITED STATES OF AMERICA, )

Plaintiff, )

v. )

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

Defendants, )

and )

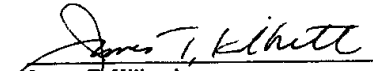
SIERRA CLUB and CONSERVATION LAW )  
FOUNDATION )

Plaintiff-Intervenors. )

Civil Action No.: 96-0249-B

**CERTIFICATE OF SERVICE**

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

  
James T. Kilbreth

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

Attorney for Defendant  
Maine Department of Transportation

Sierra Club

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

Edward F. Lawson, Esq.  
Weston, Patrick, Willard & Redding  
84 State Street  
Boston, MA 02109

Conservation Law Foundation

Robert Gardiner  
Conservation Law Foundation  
14 Main Street, Suite 200  
Brunswick, ME 04011

Bridgecorp

Deirdre M. O'Callaghan, Esq.  
Preti, Flaherty, Beliveau & Pachios  
P.O. Box 1058  
Augusta, ME 04332-1058

Robert W. Wardwell & Sons, Inc.

Joel D. Wardwell  
Robert Wardwell & Sons, Inc.  
P.O. Box 730  
Bucksport, ME 04416

T.Y. Lin International

Robert E. Mittel, Esq.  
Mittel, Asen, Eggert, Hunter & Cary  
97 State Street  
Portland, ME 04101

United States

Daniel W. Pinkston, Esq.  
Senior Trial Attorney  
Environmental Defense Section  
Environment and National Resources Division  
U. S. Department of Justice  
999-18<sup>th</sup> Street, Suite 945 North  
Denver, CO 80202

---

Margery Adams, Esq.  
Senior Assistant Counsel  
United States Environmental Protection Agency - Region I  
One Congress Street (SEL)  
Boston, MA 02114

P:\jklbreth\DS4205\cert 100504.doc

WALDO SS: RECEIVED

Jan 22, 2009  
at 03:31:47P  
ATTEST: Deloris Page  
REGISTER OF DEEDS