



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, D.C. 20590

JUL 14 2009

George H. Williams, Jr.
Attorney for Calais LNG Project Company LLC
Bracewell & Giuliani LLP
2000 K Street NW, Suite 500
Washington, DC 20006-1872

Dear Mr. Williams:

In a letter to the Pipeline and Hazardous Materials Safety Administration (PHMSA) dated December 12, 2008, you requested an interpretation of the Federal pipeline safety regulations in 49 CFR Part 193 as those requirements relate to the activities of Calais LNG Project Company LLC (Calais LNG). Specifically, you requested a written interpretation of §§ 193.2007 and 193.2057 as set forth below:

Calais LNG proposes to construct, own and operate an LNG facility, including an LNG storage and vaporization facility, as well as associated pipeline. The terminal site will be located about six miles southeast of Calais in eastern Maine. Under the current construction plan, the terminal facilities will include two 160,000 m³ insulated tanks with thermal exclusion zones within property owned by Calais LNG. In addition, Calais plans to build a third 160,000 m³ tank at a later unspecified date to accommodate future market conditions. This third tank, however, would have a thermal exclusion zone that overlaps onto property adjacent to the Calais LNG property known as Devil's Head.

The Devil's Head property is owned by the City of Calais and is subject to a conservation easement governing use of the land. The conservation easement provides that the property will be managed by the City of Calais for natural resource conservation, open space preservation, low impact, dispersed public recreation, scenic viewing, shore access, outdoor education, and forestry demonstration. The easement further provides that public access to the land may be limited or controlled for public safety and that the land shall be forever used, operated and maintained in conformity with the easement.

In your letter, you request an interpretation as to whether:

- A. The City of Calais is a government agency under the definition of "exclusion zone" within § 193.2007; and

- B. The City of Calais legally controls all activities on the Devil's Head property, as long as the LNG facility is in operation, in accordance with the thermal exclusion zone requirements of § 193.2057.

Pursuant to 49 U.S.C. 60101 *et seq.*, PHMSA prescribes and enforces standards and regulations that apply to the LNG facilities used in the transportation of gas by pipeline. The regulations in 49 CFR Part 193 govern siting, design, installation, and construction of new and some significantly altered LNG facilities. Section 193.2057 of those regulations states that "[e]ach LNG container and LNG transfer system must have a thermal exclusion zone in accordance with section 2.2.3.2 of NFPA 59A (incorporated by reference, *see* § 193.2013)" with certain exceptions not relevant to this discussion. An "exclusion zone" is defined in § 193.2007 to mean "an area surrounding an LNG facility in which an operator or government agency legally controls all activities in accordance with § 193.2057 [for thermal exclusion zones] and § 193.2059 [for dispersion exclusion zones] for as long as the facility is in operation."

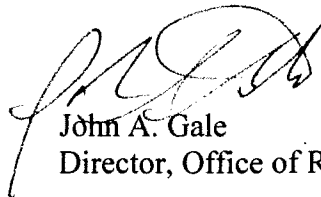
In accordance with 49 CFR § 190.11, PHMSA provides the following written interpretation and guidance concerning these regulations:

Answer to A: Yes, PHMSA considers the City of Calais to be a government agency under the definition of "exclusion zone" within § 193.2007.

Answer to B: Yes, PHMSA finds the City of Calais may control activities on the Devil's Head property in accordance with § 193.2057, but we recognize that the City's authority to legally control all activities on the land is ultimately a matter of State law. Calais LNG is responsible for ensuring compliance with the thermal exclusion zone requirements for its LNG facility and the company is not alleviated from those obligations by virtue of the fact that the City of Calais, and not the operator, controls the activities of Devil's Head. Were certain facts to change in the future, such as a change in ownership of Devil's Head or to usage of the land, Calais LNG would still be responsible for ensuring its facility remains in compliance with 49 CFR Part 193.

I hope that this information is helpful to you. If I can be of further assistance, please contact me at (202) 366-4046.

Sincerely,



John A. Gale
Director, Office of Regulations

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December 12, 2008

John A. Gale
Director, Office of Pipeline Safety Regulations
U.S. Department of Transportation
Office of Pipeline Safety (PHP-30)
East Building, Room E24-312
1200 New Jersey Avenue, SE
Washington, DC 20590-0001

Re: Calais LNG Project Company LLC
FERC Docket No. PF08-24-000
Re: Letter of Interpretation

Dear Mr. Gale:

Attached for your consideration is a request for a letter of interpretation from Calais LNG Project Company LLC concerning the Department of Transportation's regulations at 49 C.F.R. Parts 193.2007 and 193.2057.

Should you have any questions about the instant filing, please feel free to contact me at (202) 828-5815.

Respectfully submitted,



George H. (Greg) Williams, Jr.
M. Andrew McLain, Jr.

Attorneys for Calais LNG Project Company LLC

Enclosures

cc: Frank Licari
Carl Myers
Alex Dankanich

REQUEST OF CALAIS LNG PROJECT COMPANY LLC FOR LETTER OF INTERPRETATION

I. INTRODUCTION

Calais LNG Project Company LLC ("Calais LNG") hereby requests a formal written letter of interpretation pursuant to 49 C.F.R. Part 190.11(b)(1) concerning the applicability of the Department of Transportation's ("DOT") regulations at 49 C.F.R. Parts 193.2007 and 193.2057 to Calais LNG's proposed liquefied natural gas ("LNG") storage terminal to be located in Calais, Maine. We request expedited treatment of this request in order to accommodate the permitting processes currently underway before FERC and soon to be initiated before various State of Maine agencies, as well as the anticipated financing horizons for the proposed project.

As discussed below, Calais LNG respectfully requests clarification that the City of Calais is a government agency that legally controls all activities in accordance with thermal exclusion zone requirements for as long as the LNG facility is in operation. While Calais LNG believes this issue to be straight-forward, DOT guidance is sought, in an abundance of caution, to resolve any potential ambiguity with respect to Calais LNG's conformity with DOT safety rules.

II. BACKGROUND

A. The proposed facilities and related exclusion zones at issue

Calais LNG is proposing to construct, own and operate an LNG project that will include an LNG receiving, storage, and vaporization facility as well as associated pipeline facilities.¹ The terminal site will be located in eastern Maine, approximately six miles southeast of Calais, Maine. *Id.* Under current construction plans, the terminal facilities will include two 160,000 m³ insulated tanks and planned space for a third tank ("Tank Three") of equal dimension which may be built at a later, unspecified date to

¹ Calais LNG initiated pre-filing procedures at the Federal Energy Regulatory Commission ("FERC") on June 2, 2008 in FERC Docket No. PF08-24-000. A copy of Preliminary Resource Report 1 is available http://elibrary.ferc.gov/idmws/docket_search.asp.

accommodate future market conditions. *Id.* The exclusion zones applicable to Tank Three give rise to this letter.

B. The property that is the subject of the exclusion zones

Devil's Head is a remote coastal headland of approximately 318 acres that borders the Calais LNG site immediately to the north and is owned by the City of Calais under three deeds, each of which subjects the land in question to a conservation easement (entitled "Land For Maine's Future Fund Project Agreement") ("Conservation Easement").² The Deed and related Conservation Easement for the portion of Devil's Head that would be affected by the thermal exclusion zone for Tank Three are attached hereto as Exhibit A.³ The attached Devil's Head Conservation Easement is a land preservation agreement between the City of Calais and the Land for Maine's Future Fund. The Land for Maine's Future Fund is a conservation fund financed by the State of Maine and the federal government to preserve natural resource lands in Maine for individual recreational purposes, such as hunting, fishing, snowmobiling, and boating.⁴

C. The Conservation Easement governing use of the subject property

In keeping with the general purpose of conservation easements to encumber land from future development, the Devil's Head Conservation Easement restricts the future use of Devil's Head as follows:

the site will be managed by the City of Calais for natural resource conservation; open space preservation; low impact, *dispersed* public recreation; scenic viewing; shore access; outdoor education; and forestry demonstration.

Exhibit A-4 (emphasis added). This Conservation Easement also recognizes that "public access [to Devil's Head] may be limited or controlled . . . for public safety" and that Devil's Head "shall be forever used, operated and maintained" in conformity with the restrictions and covenants contained in the Conservation Easement. Exhibit A-4, A-7, A-8.

² See Exhibit C which shows the entirety of Devil's Head (lots 21-3, 21-4, 21-5, 21-6 and 21-8). This land mass was acquired by the City of Calais by virtue of three separate deeds identified in the Legend on Exhibit C.

³ The deeds and conservation easements for the remaining portions of Devil's Head contain identical restrictions to those set forth in Exhibit A.

⁴ See <http://maine.gov/spo/lmf/docs/finallmfbrochure2007.pdf>.

III. DISCUSSION

A. Statement of the Issue

Part 193.2057 of DOT's regulations provides:

Each LNG container must have a thermal exclusion zone in accordance with Section 2.2.3.2 of NFPA 59A.⁵

An exclusion zone is defined as “an area surrounding an LNG facility in which an operator or government agency legally controls all activities in accordance with [thermal exclusion zone requirements] for as long as the facility is in operation.” 49 C.F.R. § 193.2007 (2007).

Essentially, the Thermal Zone Table specifies radial distances from the LNG facility, creating concentric circular exclusion zones, inside of which certain property-use restrictions apply for public safety purposes. The thermal exclusion zones for Calais LNG's tanks 1 and 2 are contained within property controlled by Calais LNG. However, the thermal exclusion zones applicable to Tank Three overlap, slightly, onto the Devil's Head property controlled by the City of Calais.⁶ The two property-use restricted zones, as set forth in the Thermal Zone Table,⁷ are as follows:

1. The nearest point located outside the owner's property line that, at the time of plant siting, is used for outdoor assembly by groups of 50 or more persons. . . .
2. The nearest point of the building or structure outside the owner's property line that is in existence at the time of plant siting. . . .⁸

Based on the foregoing, the relevant inquiries here are whether:

⁵ Section 2.2.3.2 of NFPA 59A, as codified in the 2001 Edition, has been superseded by NFPA 59A, 2006 Edition, section 5.2.3.2, which references table 5.2.3.2. ("Thermal Zone Table").

⁶ As seen on the attached map (Exhibit C), the thermal exclusion zones overlap onto Devil's Head at Map 21, Lot 8.

⁷ NFPA 59A Section 5.2.3.2, Table 5.2.3.2

⁸ There are not any structures on Devil's Head property, and no buildings are contemplated under the Conservation Easement. Accordingly, this property-use restriction is not in question and not discussed herein.

- (1) the City of Calais is a "government agency" that may control exclusion zones;
- (2) the City of Calais legally controls all activities on Devil's Head;
- (3) such activities at Devil's Head are consistent with the property-use restrictions of the Thermal Zone Table noted above; and
- (4) the City of Calais will exercise such control for as long as the LNG facility is in operation.

B. The City of Calais is a government agency that may control exclusion zones

The first question is whether the City of Calais is a "government agency" for purposes of 49 C.F.R. Part 193.2007. The DOT's regulations do not expressly define "government agency."⁹ However, the commonly understood meaning of "government agency" is a "governmental body with the authority to implement and administer particular legislation."¹⁰

The City of Calais is clearly a "government agency" within that plain meaning of the term. The city charter makes clear that the City of Calais "shall have all powers possible for a municipality to have under the Constitution and laws of Maine."¹¹ Calais City Charter at 1. The City Charter further authorizes the City of Calais to conduct other governmental functions such as the performance of intergovernmental relations, the composition of a governing body, and the establishment of a mayor. *Id.* at 1-2.

⁹ The term "government agency" is not defined in the definition section or in any other chapter of Title 49 of the Code of Federal Regulations. The phrase is used (but not defined) in 49 C.F.R. Part 15 (which deals with protection of security sensitive information). At 49 C.F.R. 15.19(b)(2), the DOT's regulations provide an exception to the requirement that secret security information be destroyed, when it states: "Exception: Paragraph (b)(1) of this section does not require a State or local government agency to destroy information that agency is required to preserve under State or local law." The implication of this language is that a governmental agency can include both state agencies and local agencies (i.e., municipalities or departments thereof).

¹⁰ BLACKS LAW DICTIONARY (8th ed. 2004) (defining "government agency").

¹¹ The Calais City Charter is *available at* <http://www.calaismaine.gov/office.com/vertical/sites/{76D4701A-BEEE-43C9-BA4E-AED8EE3D2757}/uploads/{38D7C87F-FBC1-4074-9631-5CE5931095AB}.PDF> ("City Charter").

DOT has made it clear beyond any question that a "government agency," as well as the project operator, can control exclusion zone property. As noted above, an "exclusion zone is defined in DOT's regulations to be "an area . . . in which an operator **or government agency** legally controls all activities. . . ." 49 C.F.R. § 193.2007 (2007). Moreover, in the preamble of its rule in which "government agency" was added to Part 193, DOT states: "'exclusion zone' is revised to permit government control as well as control by an operator of activities within the zone. . . . This change [will] allow means **[other] than ownership by an operator** to provide the required restrictions on land development around an LNG facility." 44 Fed. Reg. 8142, 8148 (February 8, 1979) (emphasis added). Thus, DOT's regulations contemplate that a government agency (like the City of Calais)—not just the project operator—may oversee restricted-use exclusion zones, if that government agency possesses the ability to restrict the property's use consistent with the Thermal Exclusion Zone Table.

C. The City of Calais has the authority to control all activities at Devil's Head

The Deed (attached at Exhibit A) evidences that all ownership interests in Devil's Head vest in the City of Calais. *See* Exhibit A-3. As the Deed makes clear, the Conservation Easement restricts the use of the property, and it is within the legal authority of the City of Calais to control the property within those restricted uses. The Conservation Easement states that Devil's Head "will be owned and managed by the City of Calais" and further that "public access may be limited or controlled . . . for public safety." Exhibit A-4. Accordingly, the City of Calais has authority to control all activities at Devil's Head, and to do so with an overarching purpose of ensuring public safety.

D. The City of Calais-controlled activities at Devil's Head are consistent with NFPA 59A

DOT's prior letters of interpretation provide some context for addressing this issue. In one instance, DOT determined that the restriction on public assembly by groups of 50 or more persons was measured by the "routine or usual use of the area[.]" rather than occasional uses which may conflict with NFPA 59A. *See* Letter of Interpretation from Cesar De Leon, Director Regulatory Programs, Office of Pipeline Safety to James S. Stites (July 13, 1992). DOT offered the following as examples of "routine" uses which would implicate assembly by groups of 50 or more persons: "beaches, playgrounds, outdoor theaters, other recreation areas or other places of public assembly." *Id.* at 1.

The Conservation Easement restricts the use of Devil's Head by requiring the property to be:

Managed to preserve [the property's] natural values, to enhance public accessibility to the shore and to provide opportunities for *dispersed*, low intensity public recreation and natural history and outdoor skills educations.

Exhibit A-4 (emphasis added). The expressed limitations of the Conservation Easement contemplate "dispersed" activity, not large assemblages of people, such as "assembly by groups of 50 or more people."

And even if such assemblages would occur, it is in all events evident that such assemblages would not be routine. The routine activities at Devil's Head are not the kinds of activities that, in DOT's view as noted above, are contemplated by NFPA 59A. As indicated by the letter from the City of Calais, the routine uses of Devils' Head consist of dispersed outdoor activities such as individual and small group hiking and wildlife viewing during the warmer months (May through September) and virtually no public use during the colder months (October through April).¹² There are no beaches, no playgrounds, no outdoor theatres, or the like.

The generally sparse¹³ and dispersed nature of use at Devil's Head is much less intense and concentrated than uses that have previously been considered permissible activities within an exclusion zone. In a prior letter of interpretation, DOT indicated that travel by fishing boats or cruise ships were permissible in exclusion zones. *See* Comments of George W. Tenley, Jr., Associate Administrator for Pipeline Safety on Yukon Gold DEIS, Docket No. CP88-105-000 (August 9, 1993). The Commission subsequently adopted this reasoning in its analysis of Weaver's Cove LNG Project (Docket No. CP04-36-000) to conclude that a portion of a state highway over which Weaver Cove's 5 kW exclusion zone extended, "[did] not fall within the restricted usage for this zone, which is for outdoor assembly by groups of 50 or more persons."¹⁴ Compared to cruise ships and public highways, the sparse and dispersed recreational use at Devil's Head is even more consistent with DOT's safety goals under 193 C.F.R. Part 193.2057 and NFPA 59A.

¹² Enclosed as Exhibit B is a draft letter which, for purposes of this request for letter of interpretation, DOT may assume will be executed by the City of Calais.

¹³ The City of Calais has a population of less than 4,000 and is the largest city in Washington County. *See* http://www.calaismaine.govoffice.com/index.asp?Type=B_LOC&SEC=%7BBFC3477D-48B8-45B0-BBED-73252020243F%7D.

¹⁴ Weaver's Cove Final Environmental Impact Statement, FERC Docket No. CP04-36-000 at p 4-248.

Furthermore, the Conservation Easement expressly provides that "public access maybe be limited or controlled . . . for public safety." Exhibit A-4. Accordingly, as noted in the attached letter, the City of Calais is well acquainted with the exclusion zone responsibilities, and is positioned to limit access to Devil's Head as necessary to ensure public safety. *See* Exhibit B.

E. The City of Calais will control all activities in accordance with the applicable thermal zone requirements for as long as the LNG facility is in operation

The Conservation Easement states that Devil's Head "shall be **forever** used, operated and maintained" in conformity with the restrictions and covenants contained in the Conservation Easement. Exhibit A at 2, 5-6, emphasis added. Because there is no temporal limit to the restrictions of the Conservation Easement, the City of Calais will be governed by those restrictions "for as long as the LNG facility is in operation."

Further, as noted above, the City of Calais appreciates the existence of the exclusion zone at Devil's Head and has committed to managing the property in conformity with DOT safety standards in perpetuity. *See* Exhibit B. Calais LNG submits that this letter from the City of Calais, in conjunction with the Conservation Easement restrictions, satisfies the requirement that the exclusion zone activities be controlled for as long as the facility is in operation under 193 C.F.R. Part 2007.¹⁵

IV. SUMMARY AND REQUEST FOR INTERPRETATION

Calais LNG proposes to construct, own and operate an LNG storage and regasification terminal in Calais, Maine. The terminal design contemplates a possible future third storage tank for which the exclusion zone under DOT's regulations would extend onto the Devil's Head property that adjoins the terminal site owned by Calais LNG. The Devil's Head property is owned and controlled by the City of Calais, and it is subject to a conservation easement that both requires and empowers the City of Calais to manage the property in perpetuity for "dispersed, low intensity public recreation and natural history and outdoor skills education." These limited uses, and the City of Calais's legal authority to enforce these limitations as owner and manager of the property, ensure

¹⁵ Even in the event that Devil's Head property is sold, the Conservation Easement makes clear that its encumbrances on the property will run with the land and remain in effect in perpetuity. Exhibit A-8 (stating that the City of Calais "shall incorporate the terms of the Agreement by reference in any deed or other instrument by which the Cooperating Entity sells or transfers any interest.").

that the third tank's exclusion zone falls entirely within an area legally controlled by the terminal operator (Calais LNG) or a government agency (City of Calais) for as long as the LNG facility is in operation.

In light of the foregoing, Calais LNG respectfully requests a formal written letter of interpretation pursuant to 49 C.F.R. Part 190.11(b)(1) confirming that the City of Calais is a government agency that legally controls all activities on the Devil's Head property in accordance with thermal exclusion zone requirements for as long as Calais LNG's facility will be in operation, within the meaning of the DOT regulations at 49 C.F.R. Parts 193.2007 and 193.2057.

EXHIBIT A

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WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS:

That, we, RICHARD SCOTT OBEAR; ELIZABETH C. OBEAR; KATHRYN H. OBEAR and JEAN O. DEAFENBAUGH, whose mailing address is c/o RICHARD SCOTT OBEAR of Crofton, Maryland, for consideration paid, GRANT with WARRANTY COVENANTS, to the City of Calais, a municipality with a mailing address of P.O. Box 413, Calais, ME 04619, the land in Calais, Washington County, Maine, bounded and described as follows:

A certain lot or parcel of land at Devil's Head, in Calais, County of Washington and State of Maine, bounded north by Round lot; east by St. Croix River; south by Round lot and west by County Road. Being Tax Map 21, Lot 5, on the City of Calais tax maps. The property is now more particularly described as bounded on the north by land of the City of Calais, being Tax Map 21, Lot 4 and on the south by land of the City of Calais, being Tax Map 21, Lot 6 on the City of Calais tax maps.

TRANSFER TAX PAID

ALSO, a certain lot or parcel of land at Devil's Head, being the Lorenzo Gardner lot, so-called, and described as Tax Map 21, Lot 3 on the City of Calais tax maps, bounded and described as follows: north by land formerly owned by Calais National Bank now of Welch; east by the St. Croix River; south by the Bank and Rounds lots, later of Giffune and now of the City of Calais, and west by the County Road now known as Route No. 1, leading from Calais to Robbinston.

ALSO, a certain lot or parcel of land at Devil's Head described as being 100 acres of land, more or less, on the County Road bounded north by the Brown lot; east by St. Croix River; south by Whalen Brothers and Mitchell lots and west by the County Road. Being Tax Map 21, Lot 6, on the City of Calais tax maps.

The property is currently more accurately described as being bounded on the north by land of the City of Calais, being Tax Map 21, Lot 6 on the City of Calais tax maps, and on the South by land of Caroliers and Roberts. The south line is the north line of Lot 7 of the River lots as set forth on the B.R. Jones Plan of the City of Calais.

Excepting, however, that portion now or formerly owned by Robert Adamonis by virtue of a deed of record in the Washington County Registry of Deeds, Book 1128, Page 63 and Lot 21.7-1, formerly of Frank Obear.

The premises herein conveyed is being acquired by Grantee with funds, in part, from the Land for Maine's Future Fund in accordance with the Land for Maine's Future Act, at Title 5, Maine Revised Statutes Annotated, Chapter 363.

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as amended, and P.L. 1999, c 514, Sec. A-6, and pursuant to a Project Agreement between the Land for Maine's Future Board, the State of Maine, acting by and through its Department of Conservation, and the Grantee, said Project Agreement to be recorded. The premises is being acquired by the Grantee, a cooperating entity designated by the Land for Maine's Future Board, to assure permanent preservation of the premises and its availability for public outdoor recreation in accordance with the foregoing statutory purposes and the express conditions and limitations set forth in said Project Agreement.

For title reference, see deed of John Gardner to the grantors dated April 7, 1995 of record in the Washington County Registry of Deeds in Book 1995, Page 76. See also abstract of the Will of George Obear of record in the Registry in Book 1332, Page 24. June Obear is deceased and the grantors are all her children and her only heirs.

Witness our hands and seals this 1st day of February, 2003.

George J. Obear
WITNESS

June Obear
WITNESS

George J. Obear
WITNESS

John Obear
WITNESS

Richard Scott Obear
RICHARD SCOTT OBEAR

Elizabeth C. Obear
ELIZABETH C. OBEAR

Kathryn H. Obear
KATHRYN H. OBEAR

Jean O. Deafenbaugh
JEAN O. DEAFENBAUGH

State of Maryland, ss.

1st Feb., 2003

SEAL

Personally appeared the above named

ELIZABETH C. OBEAR

and acknowledged the foregoing instrument to be his free act and deed.

STATE OF MAINE
WASHINGTON CO.
REGISTRY OF DEEDS

Received **FEB - 5 2003**

at 9 10 A M by Subatu Wapre Notary Public, State of Maryland
My Commission Expires Sept. 6, 2005
In Book Page
Attest:

Before me, June
NOTARY PUBLIC
(typed or printed name)

Registrar

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**LAND FOR MAINE'S FUTURE FUND
PROJECT AGREEMENT**

(Pursuant to P.L. 1999 c. 514, Sec. A-6)

Cooperating Entity: *City of Calais*

Project Name and Location: *Devil's Head, Calais, Maine*

Designated State Agency: *Department of Conservation, Bureau of Parks and Lands*

Premises Covered by this Agreement: Being real estate now or formerly owned by Richard Scott Obeir, Elizabeth C. Obeir, Jean O. Deasentbaugh and Kathryn R. Obeir and identified by the City of Calais as Tax Map 21, Lots 3, 5, and 8 ("Premises") said Premises are described in certain deeds as follows:

- 1.) deed from John Gardner to Richard Scott Obeir, et al dated April 7, 1995 and recorded in the Washington County Registry of Deeds at Book 1995, Page 75; and
- 2.) two parcels described in the Abstract of Probate concerning the Estate of George Obeir recorded in said Registry of Deeds at Book 1332, Page 24; the current owners being the only heirs at law of June Obeir.

Said Premises encompass approximately 230 acres and constitute three of several parcels to be owned by the City of Calais and comprising the Devil's Head Project.

Scope (Description of Project): *The Devil's Head Project is currently contemplated to be comprised of at least five separately-owned parcels totaling 318 acres of land; one mile of frontage on the St Croix estuary; 6/10 of a mile of frontage on Coastal U.S. Route One; and having a variety of significant features, including: a 340' high granite headland towering over the estuary; low tide sand and boulder beach; upland forest of a variety of species rejuvenating after harvest of budworm killed trees in the 1980's; grouse, woodcock, deer and moose; a traditional nesting site for bald eagles and osprey; a stream supporting a beaver pond, wetlands, and a small brook trout population.*

The site will be owned and managed by the City of Calais for natural resource conservation; open space preservation; low impact, dispersed public recreation; scenic viewing; shore access; outdoor education; and forestry demonstration projects.

Project Cost:

LMF Contribution to Cooperating Entity:	\$146,499.00
Cooperating Entity Match as of 12/12/2002:	\$112,811.15 for the entire project

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The following are hereby incorporated into this Agreement:

1. General Provisions
2. Project Application and Attachments
3. Project Boundary Map
4. Other: _____

The Land for Maine's Future Board, represented by its Chair, (hereinafter LMFB), and the State of Maine, Department of Conservation, represented by its Commissioner, as the Designated State Agency (hereinafter DSA), and the Cooperating Entity, mutually agree to perform this Agreement in accordance with Title 5, Maine Revised Statutes Annotated, Section 6200 et seq., as amended, and augmented by P.L. 1999 c. 514, Sec. A-6, and with the terms, promises, conditions, plans, specifications, estimates, procedures, project proposals, maps, assurances, and certifications incorporated herein by reference and hereby made a part hereof.

Subject to the terms hereof and to the availability of funds for this purpose, LMFB hereby promises, in consideration of the promises made by the Cooperating Entity herein, to obligate to the Cooperating Entity the amount of money referred to above, and to tender to the Cooperating Entity that portion of the obligation which is required to pay the LMFB's share of the costs of the above project stage, based upon the above percentage of assistance. The Cooperating Entity hereby promises, in consideration of the promises made by the LMFB herein, to provide the matching funds and implement the project described above in accordance with the terms of this Agreement.

The following special project terms and conditions were added to this Agreement before it was signed by the parties hereto:

The Devil's Head Project real estate (of which the Premises is a part) will be owned and managed by the City of Calais, and managed to preserve its natural values, to enhance public accessibility to the shore and to provide opportunities for dispersed, low intensity public recreation and natural history and outdoor skills education. The forest stands may be managed through activities to improve wildlife habitat or provide resource education opportunities, if such activities will not have an adverse impact on the recreational quality of the forest and are approved by the DSO. Parking and trails will be provided and maintained for public use.

The Cooperating Entity shall ensure that the project area is open to the general public, provided that public access may be limited or controlled in an equitable manner for public safety, resource protection or other good and reasonable cause, including but not limited to accommodation of special events, educational outings, or scientific research.

The Cooperating Entity shall cause to be erected at the site a permanent plaque or sign, acceptable to the National Oceanic and Atmospheric Administration's Office of Ocean and Coastal Resource Management ("NOAA/OCRM") that identifies the project area and indicates that, in conjunction with the Maine Coastal Program, NOAA/OCRM partly

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funded acquisition of the project area under the federal Coastal Zone Management Act ("CZMA").

In the event that NOAA or another party identifies title discrepancies or encumbrances, other than those identified in the Certificate of Title for Lot 8 on Calais Tax Map 21 dated September 23, 2002, that NOAA deems to interfere with the purpose for which federal funds were provided pursuant to Section 306-A of the CZMA for acquisition of the project area, or if NOAA determines that the above-mentioned property is no longer used for the original purposes identified in this agreement, the Cooperating Entity shall reimburse NOAA for the federal funds provided pursuant to Section 306-A of the CZMA.

The Cooperating Entity shall provide the Maine State Planning Office, Maine Coastal Program, a copy of any required local, State, or federal permit obtained for purposes of development of the project area.

The City of Calais, Maine agrees to assume any costs which may be associated with clarifying boundary lines or resolving any boundary disputes relating to the Project which may arise after its acquisition of the Premises; such costs shall not be used as "match" for purposes of LMF funding.

In witness whereof, the parties hereto have executed this Agreement as of the 27th day of January, 2003.

THE LAND FOR MAINE'S FUTURE BOARD

By: George Lapointe
George Lapointe, Its Chair

**STATE OF MAINE
Department of Conservation**

By: Ronald B. Lovaglio
Ronald B. Lovaglio,
Its Commissioner

**COOPERATING ENTITY:
City of Calais**

By: Linda S. Pagels
Linda S. Pagels
Its City Manager

BK2707PG215

STATE OF MAINE
County of WASHINGTON

Date: January, 22, 2003

Then personally appeared the above-named Linda S. Pagels, duly authorized
City Manager of the City of Calais, Maine and acknowledged the foregoing to be her free
act and deed in her capacity and the free act and deed of said City of Calais, Maine.

Before me,

SEAL

Carol A. Stone
Notary Public/Attorney at Law
Print Name: _____
My Commission Expires: _____
Seal: _____

CAROL A. STONE
Notary Public, Maine
My Commission Expires October 28, 2007

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**LAND FOR MAINE'S FUTURE FUND
PROJECT AGREEMENT GENERAL PROVISIONS**

PART I - DEFINITIONS

1. The term "DSA" or "Agency" as used herein means the Designated State Agency as shown on Page 1 of the Project Agreement.
2. The term "Director" as used herein means the Commissioner or agency head of the DSA or any representative lawfully delegated the authority to act for such Director.
3. The term "Premises" as used herein means the lot or parcel or parcels of land as described and shown on Page 1 of the Project Agreement.
4. The term "Project" as used herein means a single project, a consolidated grant, a project element of a consolidated grant, or project stage which is subject to the Project Agreement, and as described on Page 1 of the Project Agreement.
5. The term "Cooperating Entity" as used herein means a political subdivision of the State of Maine or a non-profit corporation which will implement the Project as provided in this agreement.

PART II - CONTINUING ASSURANCES

The Cooperating Entity specifically recognizes that Land for Maine's Future Fund assistance project creates an obligation to acquire, use and maintain the property described in the Project Agreement consistent with Title 5, M.R.S.A., Section 6208 et seq, as amended, and augmented by P.L. 1999 c. 514, Sec. A-6, and the following requirements:

- A. **LEGAL AUTHORITY:** The Cooperating Entity warrants and represents that it possesses the legal authority to supply for the grant and to otherwise carry out the project in accordance with the terms of this Agreement, and has either marketable title to the Premises or a binding agreement to acquire the same. A resolution or similar action has been duly adopted by the governing body of the Cooperating Entity authorizing the filing of the application and implementation of the Project, including all understandings and assurances contained herein, and directing and authorizing the person identified as the official representative of the Cooperating Entity to act in connection with the application and to provide such additional information as may be requested by the LMFB or the DSA and to enter into this Agreement.
- B. **FINANCIAL ABILITY:** The Cooperating Entity warrants and represents that it has the funds, and the commitment to finance the cost share of acquisition together with all other costs of the Project except the Land for Maine's Future Fund share stated on the cover page of this Agreement.
- C. **USE OF FUNDS:** The Cooperating Entity shall use monies granted by LMFB hereunder only for the purposes of acquisition/development improvement of the Project as approved by LMFB and provided for herein.

- D. **USE AND MAINTENANCE OF PREMISES:** The Cooperating Entity shall assure that

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the Premises shall be forever used, operated and maintained as prescribed in this Agreement and all applicable laws, including without limitation Title 5, M.R.S.A. Section 6500 et seq., as amended and augmented by P.L. 1999 c. 514, Sec. A-6. Permits and licenses necessary for the implementation of this Agreement or use of this property shall be obtained and complied with by the Cooperating Entity. All costs of acquisition or implementation of the project and ownership and management of the Premises shall be paid by the Cooperating Entity, except as to the cost share to be provided by LMFB as specified herein.

I. ATTENTION AND CUSTODIAL REQUIREMENTS FOR RECORDS: The Cooperating Entity shall keep a permanent record in the Cooperating Entity's public property records, available for public inspection, to the effect that the property described in the scope of the Project Agreement, and the signed and dated project boundary map made part of this Agreement has been acquired with Land for Maine's Future Fund assistance and that it cannot be converted to other than public outdoor recreational use as specifically provided by this Agreement without the prior written approval of the LMFB and the Director of the DSA.

Financial records, supporting documents, statistical records, monitoring records and all other records pertinent to this grant and the project shall be retained by the Cooperating Entity and may be inspected by representatives of LMFB and the DSA during normal business hours.

K. ANNUAL REPORTING REQUIREMENTS: On each anniversary of this Agreement, the Cooperating Entity shall report on an annual basis on a monitoring form as approved by LMFB. The form shall be sent to: 1) the Director of the DSA; and 2) the Director of LMFB.

G. RIGHT OF ENTRY: The DSA or LMFB, its employees, agents and representatives, shall have the right to enter the Premises at all times and in all manner without prior notice to ensure compliance with the terms of this Agreement and any applicable laws.

H. PROVISIONS IN THE EVENT OF TRANSFER:

1. PRIOR NOTICE AND APPROVAL: In the event of any intended sale or transfer, in whole or in part, of the Premises or any interest therein, the Cooperating Entity shall provide at least sixty (60) days prior written notice of the same to the DSA and LMFB and shall obtain written consent from this same prior to such transfer.

I. SUBSEQUENT OWNERS: The Cooperating Entity shall incorporate the terms of this Agreement by reference in any deed or other instrument by which the Cooperating Entity sells or transfers any interest (including leasehold interest) in all or a portion of the Premises. Any transferee of the Premises or any interest therein must hold, manage and use the Premises as provided in this Agreement.

III. SHARE IN PROCEEDS:

(a) In the event of any sale or transfer of the Premises for consideration, the Cooperating Entity shall pay to the Land for Maine's Future Fund, or to another fund designated by the LMFB, that share of the agreed-upon value of the Premises as represents the proportion of the Fund's participation in the cost of acquisition under this Agreement. The LMFB may waive receipt of any proceeds, provided that the said funds are applied to a substitute property as approved by the LMFB. This payment to the Fund shall not relieve the transferee of the continuing obligations to hold, manage and use the Premises under the terms of this Agreement.

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- (b) In the event of condemnation of any or all of the Premises, the State of Maine, by and through its Land for Maine's Future Fund or another fund designated by the LMF, shall receive that share of the proceeds of such condemnation as represents the proportion of the fund's participation in the cost of acquisition under this Agreement.
- (c) In the event of dissolution of the Cooperating Entity, at least sixty (60) days prior written notice of such shall be provided for (1) the Director, DSA; and (2) Director, LMF, and prior written consent to the transfer and disposal of the Premises shall be obtained from LMF, so with a conveyance of the Premises under Subsection H(2) unless the DSA requires that the Cooperating Entity transfer title to the Premises to the DSA or a successor designated by the DSA under Subsection H(3).

1. ENFORCEMENT ALTERNATIVES: In the event that the Cooperating Entity does not meet one or more of its obligations under this Agreement or the deed restrictions and covenants by which it holds title to the Premises, or to the event of dissolution of the Cooperating Entity, the DSA may exercise, in its sole discretion, any of the following remedies following written notice and thirty (30) days opportunity for the Cooperating Entity to cure the default: (a) any of the remedies or rights set forth in the Cooperating Entity's deed to the Premises; (b) the right to require specific performance on the part of the Cooperating Entity (c) the right to a return of a sum equivalent to the LMF's proportional contribution to protection of the Protected Property, which sum shall be derived by multiplying the then fair market value of the Protected Property, as established by this Agreement or other circumstances recorded after the date of this agreement (excluding value attributable to authorized improvements to the Protected Property made after the date of this grant) by the ratio of the value of the LMF's aggregate contribution to the value of the aggregate Protected Property in the Devil's Head Project as of the date of this agreement, hereby established as 66.666666%, the sum of which shall be paid by the Cooperating Entity to the LMF within fifteen (15) days of its written demand; and (d) any other rights or remedies available at law or in equity including, but not limited to, the right to require that the Cooperating Entity transfer title to the Premises to the DSA or a successor designated by the DSA under such terms and conditions as the court may require. In the event that the DSA exercises any of the rights available to it upon default of the Cooperating Entity, the Cooperating Entity shall reimburse the DSA for its costs of enforcement and collection, including reasonable attorneys fees.

J. SUCCESSION AND ASSIGNING: Except as otherwise provided herein, this Agreement shall be binding upon and issue to the benefit of the successors and assigns of the parties herein. In the event that the LMF or the DSA ceases to exist, the rights and responsibilities of that party shall automatically be vested in any successor agency designated by the Legislature. Felling legislative designation, the successor agency shall be as determined by the Governor.

K. AMENDMENT: This Agreement may not be amended, in whole or in part, except with the written consent of all of the parties herein.

STATE OF MAINE
WASHINGTON CO.
REGISTER OF DEEDS
Recorded FEB - 5 2003
at 9:16 AM AM recorded
in Book _____ Page _____
Attest:

Register

EXHIBIT B

Exhibit B

Proposed Letter from City of Calais, Maine

The City of Calais understands that property it owns and operates, known as the Devil's Head Project or Devil's Head, borders on the northern edge of a parcel of land that Calais LNG Project Company LLC intends to use for an LNG terminal. By Warranty Deed, dated February 1, 2003 (Washington County Registry of Deeds, Book 2707, page 210), property known as Devil's Head was conveyed to the City of Calais, Maine, subject to a Conservation Easement. That Conservation Easement "forever" obligates the City of Calais "to assure permanent preservation of the premises." The Conservation Easement further provides that:

The Devils Head Project real estate will be owned and managed by the City of Calais, and managed to preserve its natural values, to enhance public accessibility to the shore and to provide opportunities for dispersed, low intensity public recreation and natural history and outdoor skills education. . . .[The City of Calais] shall ensure that the project area is open to the general public, provided that public access maybe limited or controlled for public safety, resource protection or other good and reasonable cause

The City of Calais has managed, and will continue to manage, Devil's Head, not in contemplation of large public assemblages, buildings or structures on the property, but rather in contemplation of recreational activities, normally seasonal, such as hiking and wildlife observation. Furthermore, the City of Calais is mindful of the Conservation Easement's proviso that "public access may be limited or controlled for public safety" in representing that it intends to manage Devil's Head Project in keeping with the thermal exclusion zone provisions of 49 C.F.R. Part 193.

Yours Very Truly,

City of Calais

EXHIBIT C

Exhibit C

