



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region 1  
1 Congress Street, Suite 1100  
BOSTON, MA 02114-2023

March 18, 2009

Heather Sullivan, Chief  
Regulatory Division, Operations Directorate  
U.S. Army Corps of Engineers  
New England District  
696 Virginia Road  
Concord, MA 01742

RE: Public Notice 2008-1703 Sears Island Mitigation Bank

Dear Ms. Sullivan:

The Maine Department of Transportation (MEDOT) proposes to preserve 601 acres of Sears Island, Maine (931 acres total) as a mitigation bank. The remaining 330 acres would be reserved for a potential marine cargo port facility. If the Corps finds this prospectus complete, MEDOT would then be asked to develop a draft mitigation banking instrument. The draft banking instrument would be reviewed by an Interagency Review Team, of which EPA New England would be a member.

The EPA fully supports both compensatory mitigation banks and in-lieu-fee (ILF) programs as effective approaches to provide compensation for adverse impacts to aquatic resources, including wetlands and streams. Notwithstanding our general support, this Sears Island proposal presents several concerns that make it a difficult choice as New England's first potential compensatory mitigation bank. As the prospectus is currently written, EPA recommends that the Corps not accept Sears Island as a suitable compensatory mitigation bank site. Our reasons follow.

1) Aquatic resource restoration. The proposal contains little potential wetland or other aquatic resource restoration – approximately 2 acres at most. Roughly 599 acres would be simple preservation. Of that total, approximately 126 acres are wetlands. As such, the proposed bank would not address the overarching national goal of no-net-loss of wetland ecological functions.

2) Watershed Process. The selection of the Sears Island as a potential compensatory mitigation bank site did not evolve from the watershed approach – that is, using an ecologically based evaluation to locate promising aquatic resource restoration and preservation sites and to set priorities. The 2008 Corps/EPA compensatory mitigation rule strongly emphasizes that the process of selecting a location for compensation sites should be driven by assessments of watershed needs and how specific wetland restoration and protection projects can best address those needs. For example, the Maine Natural Areas Program, in conjunction with, among others, the Maine Departments of Environmental Protection and Inland Fisheries and Wildlife, currently is developing such an approach in several coastal Maine watersheds.

3) Long term ecological integrity. The concomitant proposal to reserve 330 acres of the island for potential development as a marine cargo port or other marine related transportation facility creates a high degree of uncertainty regarding the long term ecological integrity of the proposed compensatory mitigation bank. Were such a facility to be constructed and operated, it would likely have a highly disruptive presence on the island as a result of habitat loss; noise; lighting; air emissions from ships and vehicles; and storm water discharges, among other effects. The overall ecological value of the compensatory mitigation bank site would be substantially diminished.

That said, the EPA could potentially support the Sears Island proposal as a compensatory mitigation bank under the following conditions.

1) This site could not serve as a first choice for compensatory mitigation in the manner intended by the Corps/EPA compensatory mitigation rule. It also could not serve as a preferred choice over ILF or other sites that were selected using an ecologically based, landscape type process, such as the watershed approach. This hierarchy would have to be explained explicitly in the prospectus and banking instrument.

2) The Sears Island compensatory mitigation bank would be used only

a) to compensate for secondary (indirect) impacts, which often result and can be of great concern when building highway projects on new locations. There also will be challenges in determining an appropriate way to calculate and keep track of secondary impacts and credits withdrawn from the bank; or

b) as an "add-on" or "finishing touch" for an overall and otherwise suitable compensatory mitigation package that needed such an additional feature to make it complete. If used in this manner for a specific project, preservation at Sears Island could only constitute a small or minor component of the features of the overall compensation plan, making up no more than 15% of the compensation credit for any one project. For example, for a particular project, MEDOT could decide to expend 85% of its compensatory effort under ILF and 15% at the Sears Island Umbrella Wetland Mitigation Bank.

We also offer the following specific comments on the prospectus.

If a marine transportation facility or other similarly extensive development remains as a possible project on the reserved portion of Sears Island, for the reasons explained above, we believe that the ratio for preservation credit at the bank in portions that are situated along the boundary of the reserved area should be reduced accordingly. We recommend ratios of 50:1 for the first 200 feet of the bank area inward from the boundary with the future development parcel (which would be especially important for any part of the bank abutting any cleared or otherwise disturbed land), and 35:1 for the next 200 feet. A ratio of 20:1 for the remainder of the bank site would be appropriate. We recognize that MEDOT has offered to include an appropriate buffer within the reserved future development parcel. However, such a provision is speculative and uncertain, and would prove difficult to track and enforce.

Over 9 acres of dune grasslands, a rare community along coastal Maine, are found on the shoreline of the Island, one to the west and one to the east of the causeway. Only the portion east of the causeway appears to be within the preserved bank area (and therefore protected), while the western portion appears to be within the reserved area proposed for development. Because of their rarity and ecological value, the western grasslands area should be sufficiently buffered and protected as well. A challenge in protecting these grassland areas is that this community can migrate somewhat over time, based on a variety of physical and biological factors (analogous to the way that eelgrass beds shift location over time). The protected areas should be large enough to account for this pattern of change.

We are concerned by the proposal to include an education center within a 75 acre portion of the preserved area of the compensatory mitigation bank (as opposed to such a facility being located along its border or just outside of its boundaries). Including a constructed facility within a bank site is somewhat unusual and would likely have adverse effects upon the preserved area. We recommend that the Corps require MEDOT to relocate this facility to the boundary of the bank area along the spine road.

MEDOT has proposed the Penobscot Bay Coast Subsection, Casco Bay Coast Subsection, and Maine Eastern Coastal Subsection as the watersheds that would comprise the service area for using this bank. No sound ecological justification was provided by MEDOT to support its proposed service area, and we do not believe that such a justification can be made. The Penobscot Bay Coast Subsection is the only watershed that has a direct ecological link to Sears Island. If this bank proposal moves forward, the Corps should limit the proposed service area to include only the Penobscot Bay Coast Subsection.

In summary, we have substantial concerns about MEDOT's current proposal. At a minimum we believe the prospectus must be changed consistent with our comments above, and even in that case we urge the Corps to proceed cautiously with its review, as this compensatory mitigation bank prospectus is New England's first. We offer our assistance and support. Please call Mark Kern at 617-918-1589 or Matt Schweisberg at 617-918-1628 if further coordination is needed.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. DeLoi', written in a cursive style.

Carl DeLoi, Chief  
Wetlands and Information Branch

cc: (electronically)  
J. Clement, USACE  
R. Ladd, USACE  
W. Mahaney, USFWS  
M. Scott, USNMFS  
D. Van Dusen, MEDOT  
J. Gates, MEDOT  
J. Cassida, MEDEP