

# Town of Brunswick, Maine

INCORPORATED 1739

## MARINE RESOURCES

85 PLEASANT STREET  
BRUNSWICK, MAINE 04011  
TELEPHONE 207-721-4336

### Brunswick Marine Resources Committee Request for Aquaculture Application Review

You are applying for permission to conduct aquaculture activities within the Town of Brunswick shellfish management zone. It is the responsibility of the applicant to conduct and provide an ecological and shellfish resource assessment of the site to the Brunswick Marine Resources Committee and the Marine Resource Office 14 days prior to meeting with the Committee. The Committee meets the first Tuesday of every month at 6:30PM. Completion of the below questionnaire shall meet that purpose of an individual assessment under Town of Brunswick Code of Ordinances Chapter 11 Section 11-167.

A Maine Department of Marine Resources aquaculture application must accompany this form when submitted.

Last Name: Mere Point Oyster Co & Smith First Name: Dana Middle Initial: \_\_\_\_\_  
Address: 1087 Mere Point Rd. Town: Brunswick State: Maine Zip Code: 04011  
Telephone: 207-729-3651 Email Address: chris@merepointoyster.com Cell Phone: N/A

Riparian Owners Notified YES ☒ NO ☐

#### Site Information

Location (GPS): 43.836309 -70.002138 Name of Waterbody: Mere Point Bay (Dana Smith Shoreline)

Date of applicant assessment: 5/23, 7/23, 2/24

Is this area currently being harvested by shellfish or marine worm harvesters? Yes ☐ No ☒ (if yes please explain) \_\_\_\_\_

Is there existing shellfish resources within the site or nearby? Yes ☒ No ☐ (if yes please explain) \_\_\_\_\_

In July & September of 2023 no other shellfish were noted on cursory walk over survey. Based on information received from the BMRC meeting on 2/5. We conducted a more intense survey investigation. We did not locate any softshell clams, or spat. We did locate wild and farmed oysters (ours) along Dana Smiths shoreline and a small and sparse population of hardshell clams.

Is there existing marine worm resources within the site or nearby? Yes ☒ No ☐ (if yes please explain) \_\_\_\_\_

While conducting a more intense survey we also located a couple sandworms.

Are you aware of any historical shellfish resources being harvested from the proposed site? Yes ☐ No ☒ (if yes please explain) \_\_\_\_\_

Is there eel grass within 25' of the proposed site? Yes ☐ No ☒ (if yes please attach map of the location in relation to the site)

Is the proposed site within a mapped essential habitat? Yes ☐ No ☒ (if yes please attach map of the location in relation to the site and explain essential habitats) \_\_\_\_\_

Have you visited the site during all seasons? Yes ☒ No ☐ (if no please explain) \_\_\_\_\_

Do you consent to participate in a site visit with Town of Brunswick Staff or their consultants to verify the above assessment to help determine site feasibility if applicable? Yes ☒ No ☐ (If no please explain) \_\_\_\_\_

LOCAL ORDINANCE Sec. 11-168. - Intertidal aquaculture review.

The marine resource committee shall review and approve by majority vote any intertidal area for which a department of marine resources intertidal aquaculture application is proposed. The review, as prescribed by the Maine Department of Marine Resources Chapter 2 Aquaculture Lease Regulations, shall consist of the following:

- (1) A shellfish inventory to determine existing managed shellfish resources, if any;
  - (2) A survey of existing and historical flora and fauna, including eel grasses, and marine worms; and
  - (3) The applicant shall submit a report detailing the findings of a shellfish inventory and flora and fauna study to the committee at least fourteen (14) business days in advance of the meeting date at which the application is to be reviewed by the committee.
- (b) Aquaculture review fees. A person who has submitted an application to the Maine Department of Marine Resources for an aquaculture lease or license, intertidal or not, pursuant to 12 M.R.S.A. ch. 605, subchapter 2, and who has sought review by the Town of Brunswick shall pay a fee, as set forth in the master schedule of fees, adopted as an appendix to this Code, for the administrative costs associated with the application. The fee shall not exceed the amount as defined in 12 M.R.S.A. § 60

Signature: \_\_\_\_\_ Date: 2/12/2024



## **STANDARD: NON-DISCHARGE** **AQUACULTURE LEASE APPLICATION**



This is an application for a standard aquaculture lease. You are encouraged to review the standard lease regulations to obtain a complete understanding of the standard lease process. Regulations and the application instructions are available at the Maine Department of Marine Resources (DMR) website: [www.maine.gov/dmr/aquaculture](http://www.maine.gov/dmr/aquaculture).

This is a joint application to be used by the (DMR) and the U.S. Army Corps of Engineers (USACE). **Written authorization from both agencies is required before aquaculture activities are conducted.** Information regarding the USACE is available at: <https://www.nae.usace.army.mil/Portals/74/docs/regulatory/StateGeneralPermits/ME/2020-2025-MaineGeneralPermits.pdf>

### **Fee Schedule:**

- **Draft Application Fee:** Prior to holding a scoping session, standard lease applicants must submit a draft application to DMR with a **non-refundable \$500 fee.**
- **Final Application Fee:** After holding a scoping session, standard lease applicants must submit an application to DMR with a **non-refundable \$1,000 fee.**

### **Mailing Instructions:**

Provide one copy of your application to DMR at the appropriate address listed below. DMR will notify the applicant once the application has been received.

If sending via U.S. Post Office:	If sending via email:	If sending by FedEx, UPS or other overnight service (except the U.S. Post Office):
DEPARTMENT OF MARINE RESOURCES ATTN: Aquaculture Division 21 State House Station Augusta, Maine 04333-0021	<a href="mailto:DMRAquaculture@maine.gov">DMRAquaculture@maine.gov</a>	DEPARTMENT OF MARINE RESOURCES ATTN: Aquaculture Division 32 Blossom Lane Augusta, Maine 04333

Provide one copy of your application to the USACE address listed below or email to:

[Cenae-r-me@usace.army.mil](mailto:Cenae-r-me@usace.army.mil)

U.S. ARMY CORPS OF ENGINEERS  
MAINE PROJECT OFFICE  
442 Civic Center Drive, Suite 350  
Augusta, Maine 04330



## APPLICATION INSTRUCTIONS

**The standard lease application process has changed** due to DMR Regulation changes that went into effect on April 1, 2019. For a detailed description of these changes, please refer to the document hosted on DMR’s website titled: Standard Aquaculture Lease Guidance Document

**A notable change** in the standard lease application process is the requirement that applicants submit a draft application to DMR prior to conducting a scoping session. Please use this form for both a draft application, which is submitted prior to a scoping session, and for a final application.

**If your proposed operations would discharge anything into the water** such as feed (pellets, kelp, etc.) or additives (therapeutants, chemical treatments, drugs, etc.) please do not complete this application and complete the “Standard Aquaculture Lease: Discharge” application is instead.

Before submitting your application make sure you have answered all questions and included all of the necessary documents. *Failure to do so may result in significant delays in processing time.*

### General suggestions for completing standard lease applications

- Answer all questions clearly and in detail.
- If a question does not pertain to your proposed operations, please write “**not applicable**” or “**N/A.**” *Leaving questions blank will result in processing delays.*
- If you have questions about the application or leasing process, please contact DMR at (207) 350-7815.
- Please label all maps, diagrams, and images according to the instructions provided.

## APPLICATION SUBMISSION CHECKLIST

**Please note:** This checklist is provided for the applicant's reference and does not need to be returned with the application.

### I. Content

\_\_\_\_\_ **Payment** for non-refundable application fee (\$500 for Draft Applications and \$1,000 for Final Applications). Checks should be included with the application and payable to "Treasurer State of Maine". If paying via credit card, DMR staff will contact you with payment instructions once the application has been received. DO NOT include your credit card information with the application. ***Note:** your application will not be reviewed until payment has been received.*

X **One (1) Vicinity map** with required items shown

X **One (1) Boundary drawing** with required items shown

X **One (1) Gear drawing** for each type of gear proposed

X **One (1) Overhead view** depicting layout of gear from overhead

X **One (1) Cross section view** depicting gear & moorings from the side for each gear configuration

X **Tax map(s)**

X **Riparian list**, certified (*if applicable*)

X **Corporate applicant information document** and articles of incorporation or documentation of partnership (*if applicable*). This form is required and must be submitted if the applicant is a corporation or partnership (available at <https://www.maine.gov/dmr/aquaculture/forms/standard.html>).

#### **If any portion of the proposed lease site is above mean low water:**

X **Written permission** from all riparian landowners of the intertidal land on which the lease is proposed.

\_\_\_\_\_ **Written consent** from the municipal officers (only required if the municipality has a shellfish conservation program per 12 MRSA §6671).

### II. Formatting

X All pages (including attachments) are numbered sequentially

X All attachments are clearly labeled and legible

X Drawings and maps are legible, labeled properly, and include all required elements

X All questions have been answered and signature pages signed

X Please do not staple applications

## STANDARD LEASE APPLICATION: NON-DISCHARGE

### 1. APPLICANT CONTACT INFORMATION

Applicant	Mere Point Oyster Co. & Co-Applicant Dana Smith		
Contact Person	MPOC Chris Hedberg or Dan Devereaux		
Address	1087 Mere Point Rd. & 953 Mere Point Rd.		
City	Brunswick		
State, Zip	Maine 04011		
County	Cumberland		
Telephone	207-841-3129		
Email	dandevereaux@merepointoyster.com coastaldanasmith@hotmail.com		
Type of Application	<input checked="" type="checkbox"/> Draft Application <input type="checkbox"/> Final Application <small>[submitted before scoping session session] [submitted after scoping session]</small>		
Dates	Pre-Application Meeting: 10/17/23	Draft Application Submitted:	Scoping Session:
Payment Type	Draft Application: <input type="checkbox"/> Check (included) <input type="checkbox"/> Credit Card		Final Application: <input type="checkbox"/> Check (included) <input type="checkbox"/> CreditCard

**Note:** The email address you list here will be the primary means by which we will contact you. Please provide an email address that is checked regularly. If you do not use email, please leave this blank.

### 2. PROPOSED LEASE SITE INFORMATION

Location of Proposed Lease Site	
Town	Brunswick
Waterbody	Mere Point Bay
General Description (e.g. south of B Island)	Off the West Shore of 953 Mere Point
Lease Information	
Total acreage requested (100-acre maximum)	12 Acres
Lease term requested (20-year maximum)	20
Type of culture (check all that apply)	<input checked="" type="checkbox"/> Bottom (no gear) <input type="checkbox"/> Suspended (gear in the water and/or on the bottom)
Is any portion of the proposed lease site above mean low water?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

**Note:** If you selected yes, you need to complete the steps outlined in the section titled: "Landowner/Municipal Permission Requirements".

### 3. GROWING AREA DESIGNATION

**Directions:** Information for growing area designations can be found here:

<https://www.maine.gov/dmr/shellfish-sanitation-management/closures/index.html>

Growing Area Designation (e.g. WL):	WJ
Growing Area Section (e.g. "A1"):	A1

**Note:** If you are proposing to grow molluscan shellfish in waters classified as anything other than open/approved, you will need to contact the Bureau of Public Health to discuss your plans at the following email: [DMRPublicHealthDiv@maine.gov](mailto:DMRPublicHealthDiv@maine.gov)

### 4. SPECIES INFORMATION

A. Please complete the table below and add additional rows as needed.

Name of species to be cultivated (include both common and scientific names):	Name and address of the source of seed stock or juveniles	Maximum number (or biomass) of organisms you anticipate on the site at any given time
1. Eastern Oyster <i>Crassostrea virginica</i>	Mook Seafarm 321 ME-129 Walpole Maine 04573  Muscongus Bay 24 Seal Ledge Lane Bremen, Maine 04551	5-10 Million
2. Northern Quahog <i>Mercenaria mercenaria</i>	Muscongus Bay 24 Seal Ledge Lane Bremen, Maine 04551	5-10 Million
3. Atlantic Surf Clam <i>Spisula solidissima</i>	Downeast Institute 39 Wildflower Lane Beals, Maine 04611	2-4 Million
4. Softshell Clam <i>Mya arenaria</i>	Downeast Institute 39 Wildflower Lane Beals, Maine 04611	1-2 Million
5.		

B. Do you intend to possess, transport, or sell whole or roe-on scallops? ☐ Yes ☒ No

**If you answered "yes"** please contact the Bureau of Public Health to discuss your plans at the following email: [DMRPublicHealthDiv@maine.gov](mailto:DMRPublicHealthDiv@maine.gov)

**Note:** If you are proposing to grow molluscan shellfish, this application also serves as your written operational plan as required in the National Shellfish Sanitation Program (NSSP) Model Ordinance Chapter 2 and must be maintained in your files. If you wish to submit an operational plan separate from this application, please contact: [DMRPublicHealthDiv@maine.gov](mailto:DMRPublicHealthDiv@maine.gov)

## 5. VICINITY MAP

**Note:** Please label as: 'Vicinity Map'.

**Directions:** Using a NOAA Chart or USGS topographic map, show the area within a minimum of one-half mile of the proposed lease site.

The map needs to display the following:

- The waters, shore lands, and lines of mean high and mean low water within the general area of the lease
- An arrow indicating true north
- A scale bar
- The approximate lease boundaries

## 6. BOUNDARY DRAWING

**Note:** Please label as: 'Boundary Drawing'.

**Directions:** Depict the boundaries of the proposed lease site. Provide a drawing with all corners, directions, and distances labeled. Provide coordinates for each corner as follows:

- Coordinate Description  
Provide geographic coordinates for each corner of the lease site in latitude and longitude in decimal degrees (e.g., 43.123456 N, -69.123456 W) Identify the datum from the map, chart, or GPS unit used to develop these coordinates. The datum will be shown on the map or chart you are using. The Coordinate Description may be provided separately from the Boundary Drawing.

## 7. SITE DEVELOPMENT

**Directions:** If your operations require the use of cages, nets, ropes, trays, or any object (structure) other than the organism to be grown directly on the bottom or buoys to mark the corners of the lease site, you must submit gear drawings and maximum structure schematics (information below). This section is intended to provide accurate plans depicting the physical structures to be placed in the proposed area. All dimensions need to be labeled with the appropriate units (i.e. 10ft, 10in). If you are proposing a bottom lease (no gear), please skip to question “F. Marking”.

**Note:** You may embed the schematics within the document or attach them to the end of your application. If you attach the schematics, please label them according to the instructions provided below.

### A. Gear Information

**Directions:** Include a drawing of an individual piece of gear for each of the gear type(s) you plan to use. Include units referenced (i.e. 10in, 10ft, etc.).

1. Gear Drawing: Please include the following for each gear type that will hold organisms to be cultured (e.g. polar circles, marine algae longlines, oyster cages) and label as “Gear Drawing”. This view must show the following:
  - Length, width, and height of each gear type.
2. Gear Table: List and describe each individual gear type that you will use in the table below. (e.g. polar circles, marine algae longline, oyster cages, moorings, mooring lines, buoys, etc.).

Specific Gear Type (e.g. soft mesh bag)	Dimensions (e.g. 16"x20"x2")	Time of year gear will be deployed (e.g. Spring, Winter, etc.)	Maximum amount of this gear type that will be deployed on the site (i.e. 200 cages, 100 lantern nets, etc.)	Species that will be grown using this gear type
Marker Toggles	4"	March - January	50	N/A



### **B. Maximum Structure and Mooring System Schematic**

**Directions:** Include drawings of your maximum gear layout. Include units referenced (i.e. 10in, 10ft, etc.).

1. Overhead View. Please include the following and label as “Overhead View”:
  - Maximum layout of gear, including moorings.
  - Length and width of project.
  - Approximate spacing between gear.
  - Lease boundaries and the location of proposed corner markers and any additional gear markers that would be present.
  
2. Cross-Section View. Please include the following and label as “Cross-Section View”:
  - The sea bottom.
  - Profile of gear in cross-section as it will be deployed.
  - Label gear with dimensions and materials.
  - Show mooring gear with mooring type, scope, hardware, and line type and size.
  - Depth of gear in relation to the water’s surface at mean low water and mean high water (if applicable).

**Note:** Please include an additional Cross Section View, depicting the elements listed above, if there will be seasonal changes to gear layout (i.e. over wintering).

### **C. On-Site Support Structures**

- |   |
|---|
| 1. Describe structures such as barges, sheds, etc., to be located on-site. Provide a schematic and indicate the dimensions, including height above sea level, materials, etc. |
| N/A   |

- |  |
|--|
| 2. Describe the storage and use of oil, gasoline, or other hazardous materials on site. If petroleum products are to be stored on site, provide a spill prevention plan. |
| N/A  |

**D. Gear Color**

Provide the color of the gear and structures proposed to be used at the lease site.

4" toggles of various colors

**E. Equipment Layout**

Provide schematic or photographic renderings of the generalized layout of the equipment as depicted from two vantage points on the water. Provide the locations of the two vantage points.

**F. Marking**

Will you be able to mark your site in accordance with DMR regulations, Chapter 2.80? In part, this requires marker buoys which clearly display the lease ID and the words SEA FARM to be located at each corner of the lease. Effective January 1, 2023, marker buoys need to be yellow and host reflective material.

☒ Yes ☐ No

If you answered no, explain why and suggest alternate markings.

**Note:** If a lease is granted, you will also be required to mark the site in accordance with appropriate US Coast Guard Regulations. If you have questions about US Coast Guard Regulations contact: 1<sup>st</sup> Coast Guard District, Aids to Navigation Office (617-223-3293).

## 8. PRODUCTION ACTIVITIES

**Directions:** If you are cultivating more than one species, you will need to provide the following information for each species. Please attach additional pages if needed.

**A. Please explain your proposed seeding activities. What months will seeding occur and how often will you be onsite to seed during this time.**

Area may be seeded each year at low tide by foot or high tide by boat in June, July, August, September. During this time 2-5 staff may work 4-5 hours 2-3 days a week planting designated areas. Once areas are seeded they will be marked with a specific color 4" toggle buoy to delineate seeded areas from fallow areas. We expect these efforts to take less time but we are listing maximums in case exigent circumstances arise.

**B. Please explain your proposed tending/maintenance activities.**

Once the farm is planted staff will check the area at least once a month. Co-applicant lives on site and will likely be down on the dock daily in the spring, summer and fall. There are no maintenance activities anticipated.

**C. How frequently will you visit the site for routine tending/maintenance (i.e. flipping cages, etc.)?**

As stated in B. we will visit the site at least once a month to gather information on any crops that have been planted.

**D. Describe the harvesting techniques you will use. If you plan on using a drag, please provide the dimensions.**

We plan to hand harvest with our hands, clam rakes at low tide, or bull rakes at high tide. A small 24-36" drag with 4-6" teeth may be used in the future to increase harvest efficiency. The use of a drag will be determined after collecting annual information on any changes to the bottom characteristics. At high tides Diver hand harvesting may also occur. This would involve a tender boat with a dive flag and a licensed diver filling collection bags with buoys attached to be harvested from a boat."

**E. How often will you be at the site during harvesting periods?**

During this time 2-5 staff may work 4-5 hours 2-3 days a week harvesting from designated harvest areas. Again we anticipate harvesting much less often. Most likely 2-3 people once a week. But we plan for exigent circumstances.

**F. Will gear be on the site year-round? ☐ Yes ☒ No****G. Describe any overwintering or “off season” plans for the site. For example, will you remove gear from the site and/or deploy gear in different areas within the proposed site? Please include where gear or product will be located if removed from the site.**

Shellfish will remain in place. Boundary buoys will be removed and toggles will be short shanked or completely removed depending on conditions.

**H. Please provide details on any predator control techniques you plan to employ.**

We will hand eradicate any known predators that we are licensed to handle, i.e moon snail and green crabs, while conducting routine farm check. No other plans for predator control techniques at this time.

- I.** Suspended culture gear can attract birds that roost on the gear and defecate, potentially creating a pollution source impacting shellfish held within the gear. In order to comply with the National Shellfish Sanitation Program (NSSP) Model Ordinance (MO), DMR is requiring that applications for the suspended culture of shellfish include a description of mitigation or deterrent measures to minimize the potential pollution impacts of birds at the proposed site. If appropriate, include sketches or photos that clearly depict those measures put into practice.

Examples may include:

- Submerging suspended gear and associated product at a depth sufficient to deter roosting for two weeks before harvest
- Attaching physical deterrents (i.e. zip ties) to gear
- The site is proposed for the culture of seed only
- The site is proposed for the culture of adductor-only scallops (i.e. no other shellfish species would be grown on the site)
- Proposed gear would always be suspended below the surface of the water at a depth sufficient to deter roosting (i.e. as is common for scallop lantern nets)

N/A

## 9. NOISE AND LIGHT

**Directions:** If a question does not pertain to your proposed operations, please write “**not applicable**” or “**N/A**”.

- A.** What type of boats will be used on the site? When and how often will these vessels be on the site?

MPOC & Co-Applicant Dana Smith uses 19' to 24' skiffs. Vessels may be used when site is inaccessible by land a maximum of 4 days a week for 4-6 hours.

**B. What type of powered equipment (e.g. generator, power washer, grading equipment, barges, etc.) will be used on the site? When and how often will the equipment be used?**

N/A

**C. Specify how you intend to reduce noise levels from the boats and other powered equipment.**

Site will often be accessed at low tide. If boats are used to access site we will power down or low idle in the area. MPOC uses new 2018-2022 Suzuki 4 stroke outboard motors which are much quieter than other motorboats and air boats in the area.

**D. Provide the number, type (whether fixtures are shielded), wattage and location of lights, other than those used for navigation or marking, that will be used at the proposed lease site.**

N/A

**E. Indicate under what circumstances you might work at your site beyond daylight hours.**

Early morning or early evening moon tides. When days are short in fall and spring.



**10. CURRENT OPERATIONS**

**Directions:** If a question does not pertain to your proposed operations, please write “**not applicable**” or “**N/A**”.

**A.** Describe your existing aquaculture operations, including the acronyms of all active leases and/or licenses.

MAQ-MP DDEV116, DDEV216, DDEV316 & DDEV416 DSMI120,DSMI220 DSMI523

**B.** What are your plans for any existing leases and/or Limited Purpose Aquaculture (LPA) licenses if the lease is granted? Will any existing leases and/or LPA licenses be relinquished if the lease is granted? If so, please indicate which ones.

Keep existing LPA's

**11. ENVIRONMENTAL CHARACTERIZATION**

**Directions:** Using your knowledge of the area, describe the environment of the proposed lease site. Be sure to include units of measurement in your answers (i.e. feet, cm/s).

**A.** What are the approximate depths at mean low water?

0'

**B.** What are the approximate depths at mean high water?

11'

**C.** Provide the approximate current speed and direction during the ebb and flow.

2 Knots North & South

<p><b>D.</b> The following questions (D.1 through D.6) may be answered in writing or by submitting a video. If you plan to submit a video, please contact the Department prior to video collection.</p>
<p><b>1.</b> What are the bottom characteristics (mud, sand, gravel, rock, ledge or some mix, etc.)?</p>
<p>Upon our site evaluation the bottom seemed to be a mixture of mud, shell, rock, and cobble. We are unaware of the distribution of of this material.</p>
<p><b>2.</b> Describe the bottom topography (flat, steep rough, etc.).</p>
<p>Flat</p>
<p><b>3.</b> Describe marine organisms by species or common names. Based on your personal observations or other sources of information, are these species abundant, common, or rare?</p>
<p>MEDMR classifies all intertidal habitat from the mean low water to high water as shellfish habitat, when in reality active commercial and recreational shellfish beds are considerably less in size. Softshell clams, quahogs, and blood worms are very rare in this area. On Feb 7th and 8th we conducted an in depth shellfish survey of the area and located sparse quahog and sand worm throughout. We used Town of Brunswick Public GIS Natural Resources maps to assist in the delineation.</p> <p><a href="https://experience.arcgis.com/experience/d25390b67f374b7986ccabb1554ecfca">https://experience.arcgis.com/experience/d25390b67f374b7986ccabb1554ecfca</a> (Flat Resources Map Included)</p>
<p><b>4.</b> Are there shellfish beds or fish migration routes in the surrounding area? If so, please describe.</p>
<p>There is no shellfish harvesting within the direct vicinity of the proposed site. Shellfish harvesting occurs 3000 feet N of the proposed lease and 1000 feet SE in Smith Cove.</p>
<p><b>5.</b> Describe the presence and extent of submerged aquatic vegetation, i.e. eelgrass, within the proposed lease area. Please include the date of this observation along with the method of observation. If submerged aquatic vegetation is observed, please also describe the abundance below and sketch the limits of the beds in the vicinity map.</p>
<p>Historical eelgrass mapping indicates the presence of eelgrass in 1997,2010, &amp; 2018. In the 2022 Maine DEP eelgrass mapping indicated no presence of eelgrass within the proposed area. On our site assessment in July 2023 eelgrass was not present. Co-applicant Dana Smith (lives on site), and many other neighbors have observed very little eelgrass in all of Mere Point Bay for the least 5 years of eelgrass in area. (See 2022 MEDEP eelgrass maps) <a href="https://maine.hub.arcgis.com/datasets/ca6961a5e23e47cebf4d0370d3e493a0/explore">https://maine.hub.arcgis.com/datasets/ca6961a5e23e47cebf4d0370d3e493a0/explore</a></p>

6. Describe the general shoreline and upland characteristics (rocky shoreline, forested, residential, etc.)

Mainland is forested, fields, residential, boat yard, and marina. Islands consist of forests and some seasonal residents.

E. Is your proposed lease located within a Maine Department of Inland Fisheries and Wildlife designated Essential Habitat?

☐ Yes ☒ No

**Note:** The location of Essential Habitats in the State of Maine, along with information on how projects within these areas are reviewed, can be found here: <https://www.maine.gov/ifw/fish-wildlife/wildlife/endangered-threatened-species/essential-wildlife-habitat/index.html>

*If a project is located within an Essential Habitat*, applicants are strongly encouraged to contact the MDIFW Environmental Review Coordinator ([John.Perry@maine.gov](mailto:John.Perry@maine.gov), phone: 207-287-5254) prior to application submission.

F. Describe ice formation in the winter months at the proposed site.

Ice develops on occasion in this area, less in the last 10 years.

**Note:** Description of ice should incorporate data such as water temperature or ice out date over a ten-year period or observations over several (no less than 5) recent winters from the harbormaster, a municipal official such as a shellfish warden, local harbor committee, Marine Patrol Officer, fishing/aquaculture industry members, or the applicant.

Stating “no ice observed last year” will not be accepted as a complete answer.

## 12. EXISTING USES

<p><b>A.</b> Describe the existing uses of the proposed area in questions A.1 through A.5 below. Please include the a) type b) time of year c) frequency and d) proximity to the lease site for each existing use.</p>
<p><b>1. Commercial Fishing</b></p> <p>This area is intertidal, we have not witnessed any shellfishing or lobstering in the proposed area. There are a few lobster buoys in the shallow channel east of the proposed site. There is clamming that occurs at least weekly along the shores of Smith Cove (1000') and more frequently (3000') north of the proposed area.</p>
<p><b>2. Recreational Fishing</b></p> <p>Recreational fishing occurs at high tide and during the summer and fall in the the channel to the east of this site on a daily basis.</p>
<p><b>3. Boating Activities (please also include the distance to any navigable channel(s) from your proposed site at low water)</b></p> <p>The closest "navigable channel" which dead ends at low tide in upper Mere Point Bay is 250' from the NE boundary of the proposed site. Boat traveling N &amp; S typically follow the channel to avoid grounding out. Boats used more frequently at high tide are residents N of the site or patrons of Smiths Boatyard or Paul's Marina.</p>
<p><b>4. Ingress and egress (i.e. coming and going) of shorefront property owners within 1,000 feet of the proposal (e.g. docks, moorings, landing boats on shore, etc.)</b></p> <p>Dana Smith (MP4-5) dock is located on the shore within the proposed area. Welsh &amp; Young (MP4-6) dock is located 150' N of the site boundary, Adams (MP4-4) is 800' N of the site. Smith Boatyard (MP3-4) dock is 950 SW. There are Harpswell properties across the channel on the SW portion of Whites Island with docks 325' apart that are 815' and 835' away from the easterly boundary. BOTTOM PLANTING SHOUD NOT IMPACT INGRESS &amp; EGRESS.</p>
<p><b>5. Other uses (kayaking, swimming, etc.)</b></p> <p>People kayak the area in the spring summer and fall weekly and the smith swim near the proposed area all the time.</p>

- B.** Are there private docks, moorings, or other access points within 1,000 feet of the proposed lease? If yes, please include approximate distance from the proposed lease.

Dana Smith (MP4-5) dock is located on the shore within the proposed area. Welsh & Young (MP4-6) dock is located 150' N of the site boundary, Adams (MP4-4) is 800' N of the site. Smith Boatyard (MP3-4) dock is 950 SW. There are Harpswell properties across the channel on the SW portion of Whites Island with docks 325' apart that are 815' and 835' away from the easterly boundary.

- C.** Are there public beaches, parks, docking facilities or federally, state, or municipally conserved lands within 1,000 feet of the proposed lease site? If yes, please describe and include approximate distances from proposed lease.

NO

- D.** Are there any Limited Purpose Aquaculture (LPA) licenses or aquaculture leases within 1,000 feet of your proposed lease site? If yes, please list their acronyms below.

Current and pending aquaculture leases and active LPA licenses may be found here:  
<https://www.maine.gov/dmr/aquaculture/leases/index.html>

DSMI 523, DSMI120, DSMI220, JDEV419, JDEV319

### 13. RIPARIAN LANDOWNERS AND SITE ACCESS

**A.** If your lease is within 1,000ft of shorefront land (**which extends to mean low water or 1,650 ft. from shore, whichever is less, according to NOAA charts**), the following supporting documents are required:

1. A labeled copy of a tax map(s) depicting the location of the proposed lease site and including the following elements:
  - Label the map “Tax Map: Town of (name of town).”
  - Legible scale
  - Tax lot numbers clearly displayed
  - The boundaries of the proposed lease
2. Please use the Riparian Landowner List (included on the next page) to list the name and address of every shorefront landowner within 1,000ft of the proposed lease site. Have the tax collector or clerk of the municipality certify the list. Refer to the riparian determination guidance document to ensure all riparian landowners are included: <https://www.maine.gov/dmr/aquaculture/forms/documents/RiparianDetermination.pdf>

*Note:* When the application and riparian list are both ready to be submitted, you may choose to email a copy of the riparian list and proposed lease coordinates to [DMRAquaculture@maine.gov](mailto:DMRAquaculture@maine.gov) for staff to verify that all required parcels are included on the list *before* having it certified by the municipality. DMR will not verify a riparian list multiple times, so please ensure there will be no additional changes to the application before emailing the riparian list for verification.

3. If any portion of the site is intertidal, you need to complete the steps outlined in the section titled: “Landowner/Municipal Permission Requirements”.

**B.** Will your access to the lease area be across riparian land?

☒ Yes    ☐ No

**Note:** If you selected yes, you will need to complete the landowner permission requirements included in “Landowner/Municipal Permission Requirements” of this application.

**C.** How will you access the proposed site?

Through 1003 Mere Point Rd. or by vessels moored in Mere Point Bay

**D.** How will your proposed activities affect riparian ingress and egress?

I dont see bottom planting impacting ingress and egress



## RIPARIAN LANDOWNER LIST

*\*THIS LIST MUST BE **CERTIFIED**\**

On this list, please show the current landowners' names and mailing addresses as listed in the municipal tax records for all riparian shorefront parcels within 1,000 feet of the proposed lease site along with the map and lot number for each parcel. **It is the applicant's responsibility to assemble the information for the Town Clerk to certify.** The Town Clerk only certifies that the information is correct according to the Town's records. Once you have completed the form, ask the Town Clerk to complete the certification section below. If the parcels are within more than one municipality, provide a separate, certified riparian list for each municipality.

**TOWN OF:** \_\_\_\_\_

MAP #	LOT #	Landowner name(s) and address(es)
MP4	5	Smith, Dana & Bettina 953 Mere Point Rd. Brunswick Maine 04011
MP4	6	Walsh, Wendy B & Young, Jerielle 941 Mere Point Rd. Brunswick Maine 04011
MP3	4	Smith Bettina 1003 Mere Point Rd. Brunswick, Maine 04011
MP4	11	Walsh, Wendy B & Young, Jerielle 941 Mere Point Rd. Brunswick Maine 04011

**Please use additional sheets if necessary and attach hereto.**

### **CERTIFICATION**

I, \_\_\_\_\_, Town Clerk for the Town of \_\_\_\_\_ certify that the names and addresses of the property owners listed above, as well as the map and lot numbers, are those listed in the records of this municipality and are current as of this date.

**SIGNED:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

#### 14. TECHNICAL CAPABILITY

Provide information regarding professional expertise. Attaching resume or documentation of practical experience necessary to accomplish the proposed project would satisfy this requirement.

Dana Smith is the riparian owner and has owned this land for generations: He is an master mariner with decades of experience. He has also successfully been farming oysters since 2020. Mere Point Oyster Company is an established oyster farm since 2016. Dan Devereaux is one of the owners and principal on this applicaiton. He has recorded thousands of hours of experience in the shellfish industry. He is a retired Harbormaster and Marine Warden.

#### 15. FINANCIAL CAPABILITY

##### A. Financial Capability

Please provide a letter from a financial institution indicating the applicant has an account in good standing.

**Note:** Any financial information you submit with your application is part of the public record. Please exercise discretion when submitting financial information.

See attached

##### B. Cost Estimates

Please provide cost estimates of the proposed aquaculture activities.

Seed \$10,000- 50,000

## 16. ESCROW ACCOUNT OR PERFORMANCE BOND

Check the category that describes your operation:

Check Here	Lease Category	Amount of Required Escrow or Performance Bond
<input checked="" type="checkbox"/>	No gear/structure, no discharge	\$500.00
<input type="checkbox"/>	No gear/structure, discharge	\$500.00
<input type="checkbox"/>	≤ 400 square feet of gear/structure, no discharge	\$1,500.00
<input type="checkbox"/>	>400 square feet of gear/structure, no discharge	\$5,000.00*
<input type="checkbox"/>	Gear/Structure, discharge	\$25,000.00

\*DMR may increase the bond/escrow requirements for leases with more than 2,000 square feet of structure.

I, (printed name of applicant) Dana Smith have read DMR Aquaculture Regulations Chapter 2.64(10) (D) and if this proposed lease is granted by DMR, I will either open an escrow account or obtain a performance bond, in the amount determined by the lease category.

\_\_\_\_\_  
**Applicant Signature**

*Note: Add title if signing on behalf of a corporate applicant.*

\_\_\_\_\_  
**Date**

**ADDITIONAL APPLICANTS:** Each applicant must sign this section indicating that they will open an escrow account or obtain a performance bond. Use the space below for additional persons listed on the application. You may attach additional pages, if necessary.

I, (printed name of applicant) Mere Point Oyster Co. have read DMR Aquaculture Regulations Chapter 2.64(10) (D) and if this proposed lease is granted by DMR, I will either open an escrow account or obtain a performance bond, in the amount determined by the lease category.

\_\_\_\_\_  
**Applicant Signature**

*Note: Add title if signing on behalf of a corporate applicant.*

\_\_\_\_\_  
**Date**

**17. APPLICANT SIGNATURE PAGE**

I hereby state that the information included in this application is true and correct. I have also read and understand the requirements of the Department's rules governing aquaculture and the application instructions pertaining to the standard lease process.

Printed name: Doug Niven

Title (*if corporate applicant*): MPOC Owner

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

18 U.S.C. Section 1001 provides that: Whoever, in any manner within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals, or covers up any trick, scheme, or disguises a material fact or makes any false, fictitious or fraudulent statements or representations or makes or uses any false writing or document knowing same to contain any false, fictitious or fraudulent statements or entry, shall be fined not more than \$10,000 or imprisoned not more than five years or both.

**Note:**

- All applicants must sign and date this page. Please use the space below, if additional signatures are required.
- Corporate applicants, please be sure to include the title(s) (i.e. President, Treasurer, etc.) of the individual(s) signing on the company's behalf.

**Additional Applicant:**

Printed name: Dana Smith

Title (*if corporate applicant*): \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**18. LANDOWNER/MUNCIPAL PERMISSION REQUIREMENTS (if applicable)**

**Directions:** If any portion of the site is intertidal, you need to complete the steps outlined below.

**Step I: Obtain written permission from all intertidal landowners.**

Pursuant to DMR Regulations Chapter 2.10(3)(G) the Department requires *written permission of every owner of intertidal land in, on, or over which the activity will occur*. It is your responsibility to obtain written permission and include it with your application materials. Please note that the Department does not provide forms for landowner permission.

**Step II: Determine if the municipality where your site is located has a shellfish conservation program.**

Pursuant to 12 MRSA §6072(3) *In any municipality with a shellfish conservation program under section 6671, the Commissioner may not lease areas in the **intertidal zone** within the municipality without the consent of the municipal officers.*

If the municipality where the proposed lease site is located has a shellfish conservation program, it is your responsibility to obtain consent for the proposed lease site from the municipal officers (i.e. the selectmen or councilors of the town, or the mayor and aldermen or councilors of a city.) Consent means a majority vote of the municipal officers as recorded in a public meeting.

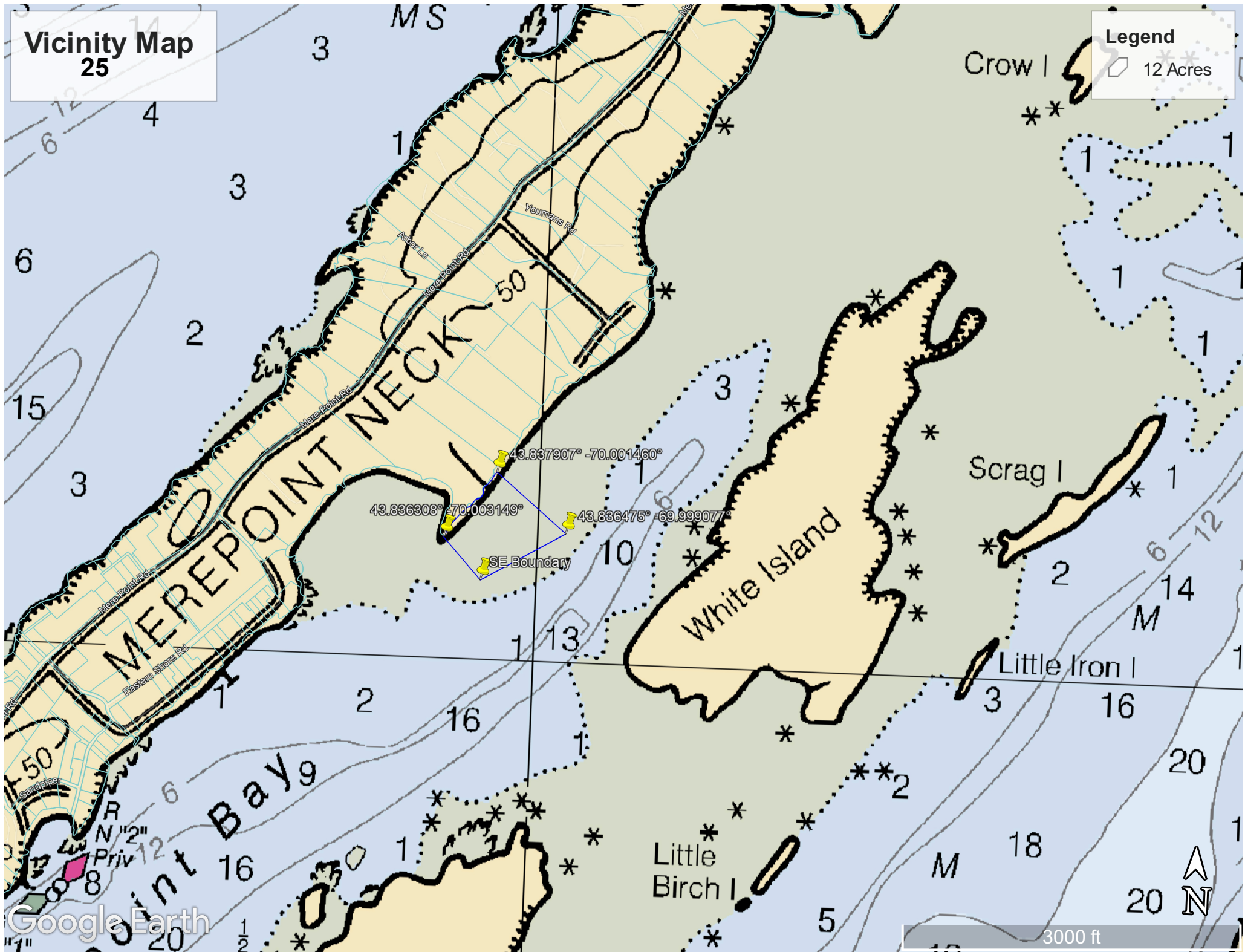
It is your responsibility to contact the municipality and determine if they have a shellfish conservation program. Best practices would include discussing your plans with shellfish committee members, but only the consent of municipal officers is required.

Does the municipality, where the proposed site is located, have a shellfish conservation program? ☒ Yes ☐ No

**If you answered yes**, please attach documentation from a public meeting demonstrating that a majority of municipal officers have consented to your proposal.

Vicinity Map  
25

Legend  
□ 12 Acres





# Boundary Drawing 26

## Legend

12 Acres

43.836308° -70.003149°

43.837907° -70.001460°

43.836475° -69.999077°

43.835294° -70.001883°

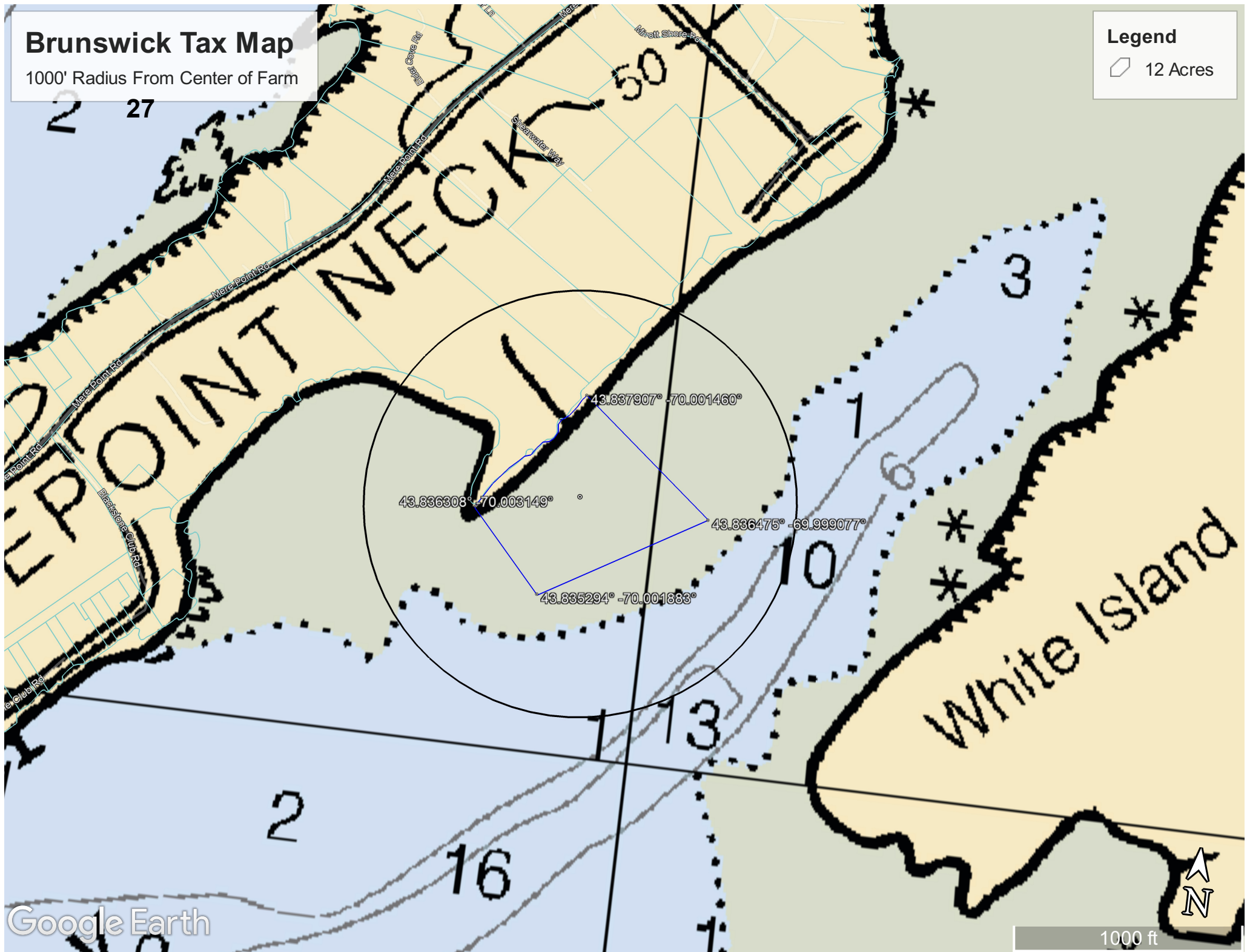


# Brunswick Tax Map

1000' Radius From Center of Farm

## Legend

12 Acres



28

Brunswick  
maine

Public  
GIS Mapping

Brunswick Maine GIS

MP4-11

MP4-6

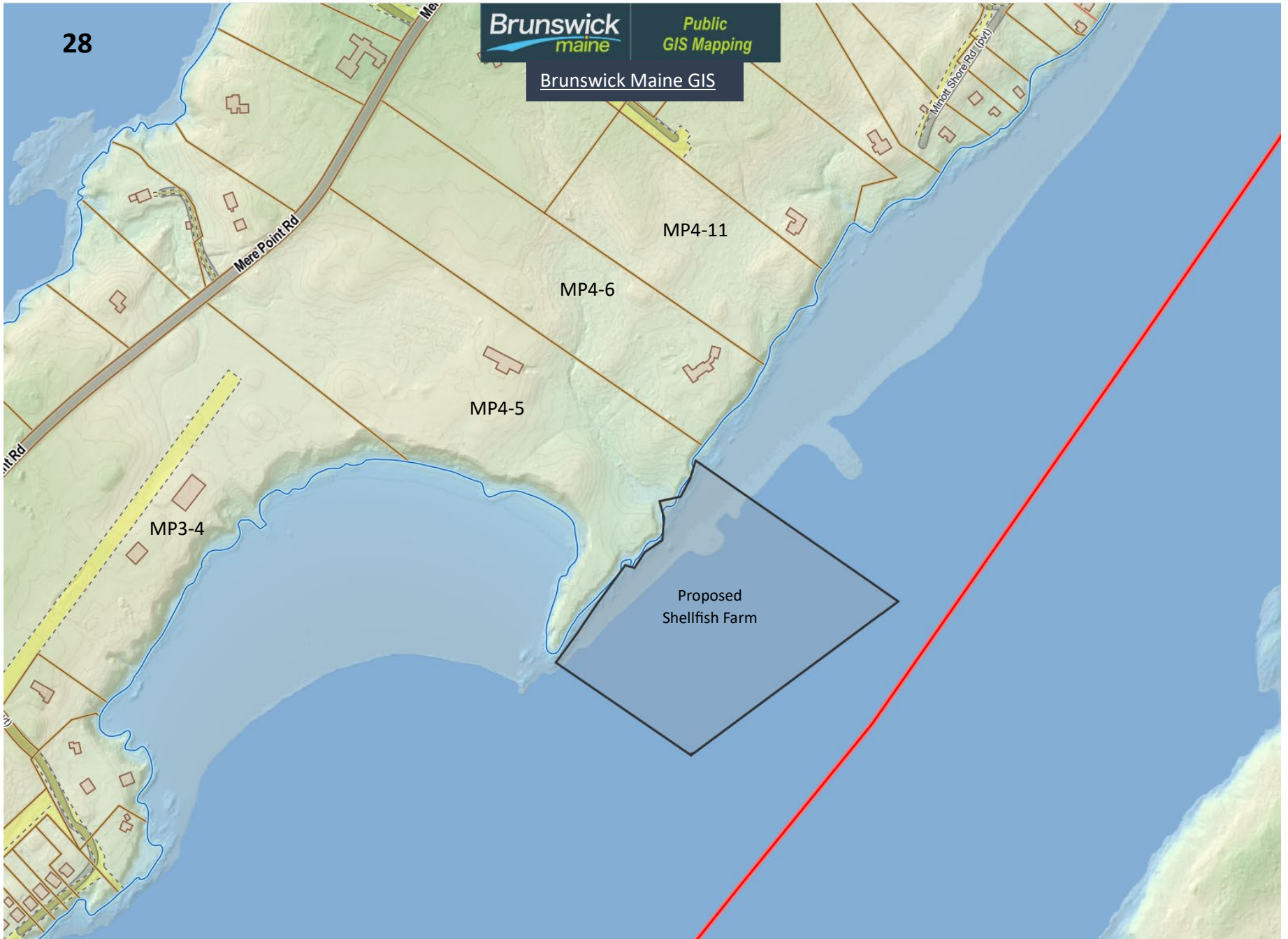
MP4-5

MP3-4

Proposed  
Shellfish Farm

Mere Point Rd


Mere Point Shore Rd (priv)








# 2022 Maine DEP Eelgrass

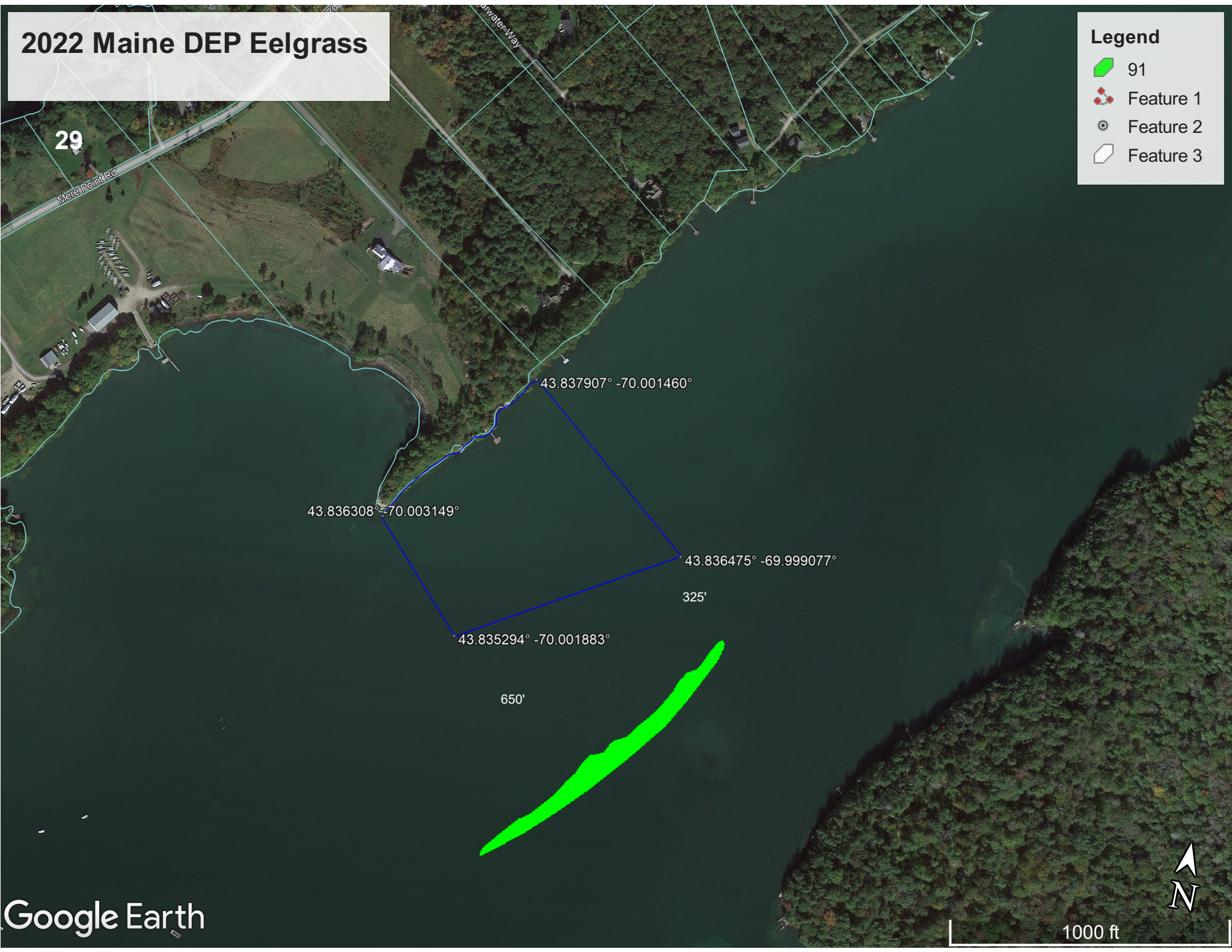
Legend

 91

 Feature 1

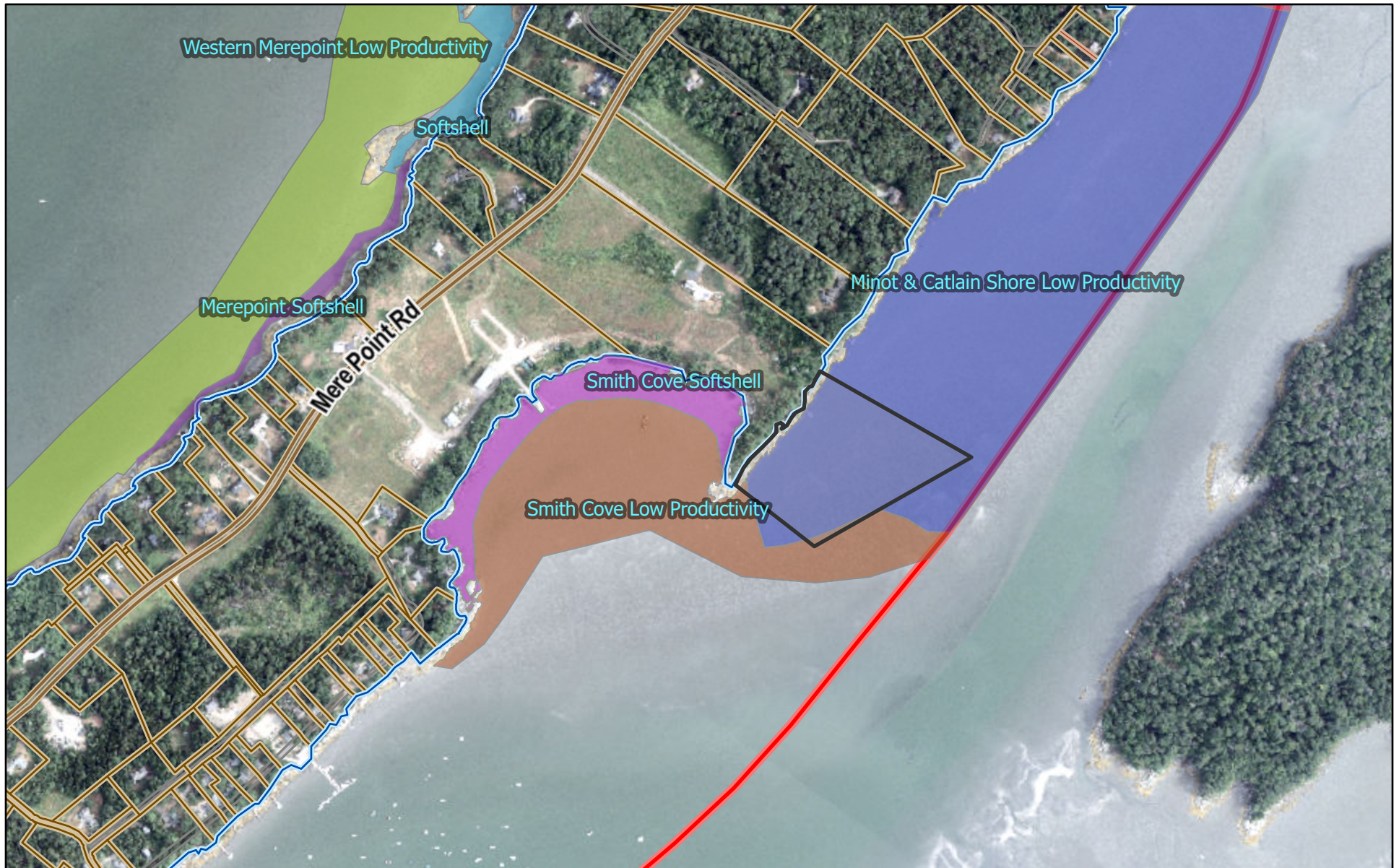
 Feature 2

 Feature 3

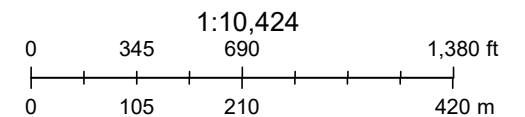




## Flat Resources



2/13/2024, 1:02:44 PM



Orthophotos were produced for the State of Maine Department of Environmental Protection. James W. Sewall and Normandeau Associates






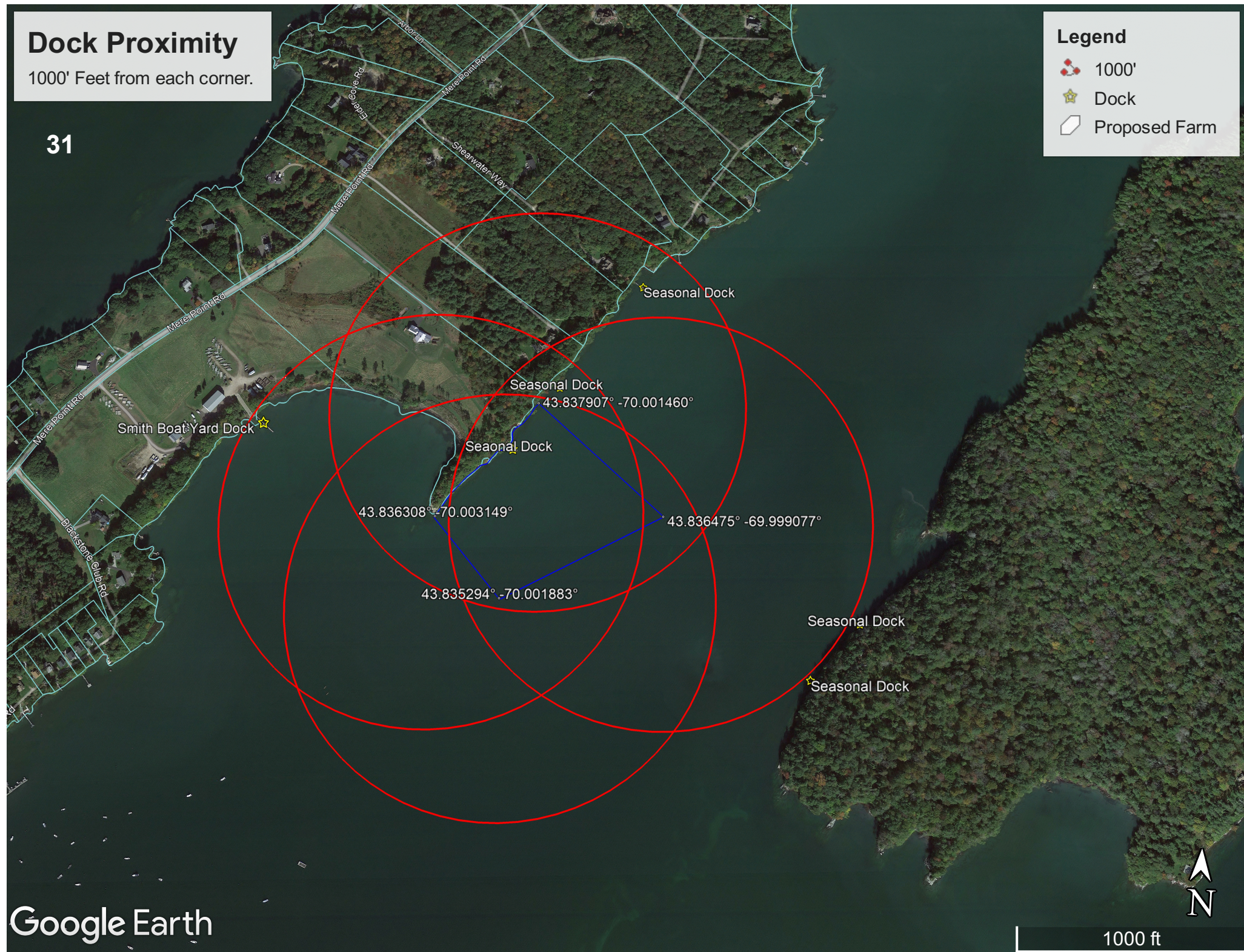
# Dock Proximity

1000' Feet from each corner.

31

## Legend

-  1000'
-  Dock
-  Proposed Farm





Dana Lane Smith  
Bettina Otte Smith  
953 MerePoint Road  
Brunswick, ME 04011  
207-841-3129

December 12, 2023

State of Maine  
Department of Marine Resources  
State House  
Augusta Maine 04333

To Whom It May Concern,

Attached is the documentation we received from Bank of America to show that we have been customers of excellent standing at the Brunswick Bank of America branch for many years. The printout only shows our personal checking account, but we have other personal and business accounts that are all in good standing.

If you need additional information please contact the Brunswick Financial Center manager, David Noonan, at 207-721-8330 X4.

Thank you.

Dana and Bettina Smith

## Customer Information

33

rtle:/Ad(J'es...:

6 EliffiA OTTI: SMITH

D A LA E SMITii

953 MERE'POINT D

6RU svl,1c K ME 04011 -/ 32

UNH7ED, STATES

Tie Type: Co Qwr,er

Add r-es s Up d a t e d : 8/7/2018

R ii I t l i V U 'ion5 : OOt ESTIC MAil

C... emu

## Account Information -

A-ccou n t Ty p e : AOV PLUS BA i&lt; G

A ccou n t u m b e r : 9888

AC K Ro u t m g .u b e r ; 01 20 036 5 h a n t

Services:: NA

st a t u s : OPEN

Opened D.lte: 3/26/1985

S .lit e: Opened:

C05t Ce:nt e r:

A-ss,o i,i,t,e: U ):

Closed Dait :

Clo =-n g Rea::o n :

Affi nTy N a m e ;

G r o t i p B a n k i n g Ty p e ;

n'lplo y e l' :

Sp e d a f P r i c : g :

O-vi!!!r"Ch-&lt;1ft Setti : Dcd in e ,...n ,1J/o e C e POS Tra n S&lt;ic ti on s,

Purpos of Acount: Daily Fi ncial eeds

## Ballan-c Information

- - :::

i:lr1d ing , B:aJ• .:is of 12 / 1. 1 / 2 3 :

Holds ( \* );

M.lemo iCR, ( + ) :

ATM / D e b i t H o l d s ( \* ) :

ATM / I e b i t \* 1 e m o - C R ( + ) :

Electrom, Check Ho ds { : ) :

Ava able: Ba lanc;;ec

TD Aver e Balanc;e:

! : up: tilln Avg. Ccf.

XXXXXXXXXX

\$0.00

\$0.00

\$0.00

\$0.00

\$0.00

XXXXXX

XXXXXX

\$9,515.32

## Account Details

Deposit Holds Pending:

JO

exces i. vu Act iv ity :

NO

bst Dep os it l&gt;atel

12/8/ 2023

l;aslt; Depos it Amount:

\$0. 18

bsl: Statetment li&gt;are

11/ 30/ 2023

La.st r-tonetary' Oate :

. 2/ 1/ 2023

## Keep The Change


'Opti on Ty p e:

Aco o un t:

Aa::o t. yp,e:

S - tll&lt;!

Bani( of America  
Brunswick  
110 Maine Street  
BrunsWick, Maine 04011

  
David S Noonan  
FCM 12/12/23



•  
*&ni F Packard*

## Bath Savings Institution

*Since 1852*

November 17, 2023

Commissioner Patrick Keliher  
State of Maine, Department of Marine Resources  
State House  
Augusta, ME 04333

Dear Commissioner Keliher:

Mere Point Oyster has discussed their intentions to submit an application for lease with Bath Savings Institution.

Bath Savings Institution has a long-standing relationship with Mere Point Oyster dating back to 2021. The business currently has a variety of deposit and loan products at our bank with an aggregate deposit account balance in the mid five-figure range. The bank has made multiple loans to the company and considers them an excellent credit risk. Their loans require regular monthly payments that have always been made as agreed and they have always demonstrated an ability to handle all accounts satisfactorily.

Based on this relationship and their track record of success, we would be pleased to consider future financing requests with them.

Please feel free to contact me at 207-371-4218 if any further information is needed.

Regards,



Mara K Pennell  
Vice President - Commercial Lending



## MAINE DEPARTMENT OF MARINE RESOURCES

*Aquaculture Division, 21 State House Station, Augusta, ME 04333-0021 (207) 624-6567*

### **CORPORATE APPLICANT FORM** **For Standard and Experimental Aquaculture Lease Applications**

Corporations or partnerships that apply for aquaculture leases in the State of Maine must complete this form. Corporations must submit information as requested under A. Corporate Applicant. Partnerships must submit information as requested under B. Partnership Applicant.

#### **A. Corporate Applicant**

**Note:** You must attach a copy of the Articles of Incorporation (Inc.) or Certificate of Formation (LLC) to your application.

1. Name of Corporation: Mere Point Oyster Co.

2. Date of incorporation: 01/01/2018 State of incorporation: Maine

3. List the names, addresses, and titles of all officers:

Name	Address	Title
Doug Niven	37 West Marginal Rd. Brunswick Maine 04011	President

**Please use additional sheets if necessary and attach to the application.**

4. List the names and addresses of all directors/members:

Name	Address
Doug Niven	37 West Marginal Rd. Brunswick Maine 04011
Daniel Devereaux	362 Maquoit Rd. Brunswick Maine 04011
Bill Floyd	64 East Marginal Rd. Brunswick Maine 04011

**Please use additional sheets if necessary and attach to the application.**

5. Has the corporation, or any stockholder, director, or officer applied for an aquaculture lease for Maine lands in the past? ☒ Yes ☐ No

If you selected “yes,” please indicate who applied for the lease and the status of the application or lease. [Mere Point Oyster Co. MAQ-MP was approved](#)

6. List the names and addresses of all stockholders who own or control at least 5% of the outstanding stock and the percentage of outstanding stock currently owned or controlled by each stockholder.

Name	Address	Percentage of Owned Stock
<a href="#">Doug Niven</a>	<a href="#">37 West Marginal Rd. Brunswick Maine 04011</a>	<a href="#">53.5</a>
<a href="#">Daniel Devereaux</a>	<a href="#">362 Maquoit Rd. Brunswick Maine 04011</a>	<a href="#">44.5</a>

**Please use additional sheets if necessary and attach to the application.**

7. List the names and addresses of stockholders, directors, or officers owning an interest, either directly or beneficially, in any other Maine aquaculture leases, as well as the quantity of acreage from existing aquaculture leases attributed to each such person based on the percentage of owned stock listed in question 6. If none, write, “None.”

Name	Address	Lease Acronym	Acreage
<a href="#">None</a>			

**Please use additional sheets if necessary and attach to the application.**

8. Has the corporation or any officer, director, member, or shareholder listed in item 5 above ever been arrested, indicted, convicted of, or adjudicated to be responsible for any violation of any marine resources or environmental protection law, whether state or federal?

☒ Yes ☐ No

If you selected “yes”, please provide details. [Shellfish Tagging Violation](#)

### **B. Partnership Applicant**

**Note:** You must attach a copy of either the Certificate of Limited Partnership or documentation of the formation of a General Partnership to your application.

1. Name of Partnership: \_\_\_\_\_
2. Date of formation: \_\_\_\_\_ State of partnership: \_\_\_\_\_
3. List the names, addresses, and ownership shares of all partners:

Name	Address	Ownership Shares

**Please use additional sheets if necessary and attach to the application.**

4. Has the partnership, or any partner applied for an aquaculture lease for Maine lands in the past? ☐ Yes ☐ No

If you selected “yes,” please indicate who applied for the lease and the status of the application or lease.

5. List the names and addresses of any partner owning an interest, either directly or beneficially, in any other Maine aquaculture leases, as well as the quantity of acreage from existing aquaculture leases attributed to each such person, based on their ownership shares from question 3.

Name	Address	Lease Acronym	Acreage

**Please use additional sheets if necessary and attach to the application.**

6. Has the partnership or any partner been arrested, indicted or convicted of or adjudicated to be responsible for any violation of marine resources or environmental protection law, whether State or Federal?

☒ Yes ☐ No

If you selected "yes", please provide details.

Shellfish Tagging Violation

**OPERATING AGREEMENT  
OF  
MERE POINT OYSTER COMPANY LLC**

( A Maine Limited Liability Company)

This Operating Agreement ("Agreement") of the Maine limited liability company known as "Mere Point Oyster Company LLC" (the "Company"), formed under the Maine Limited Liability Company Act 31 **M.R.S.** § 1501 et seq. (the "Act"), is made and entered into by and among the undersigned parties for the purpose of defining their respective rights and obligations in the Company. This Agreement is to take effect as of the 1st day of January, 2018 ("Effective Date").

**ARTICLE 1**

**Business**

The Company is formed for the purpose of engaging in the business of aquaculture and retail and wholesale marketing of shellfish, and any other business permitted under Maine law and approved by the Managers ("Business"). The Managers shall be vested with all power and authority necessary or convenient to carry out the Business. The Company's principal business location shall be Brunswick, Maine. The Company may relocate its principal place of business from time to time as the Members deem advisable.

**ARTICLE 2**

**Members; Voting; Meetings; Outside Activities**

2.1 **Members.** The initial Members shall be as listed on ***Schedule A*** attached hereto. Additional or substitute Members may be admitted in accordance with Article 8. The Company shall not issue or grant additional Membership Interests (as defined in Article 3.1) without complying with Article 8.

2.2 **Voting; Disputed Matters.** The affirmative vote in person or by proxy or the written consent of the Members who collectively own a majority in interest of the Company's Membership Interests shall be the act of the Members for all purposes, unless a greater or different vote is specifically required under this Agreement.

In the event of a deadlock or dispute arising between or among the Members relating to this Agreement or the Company's affairs, the Members will use all reasonable efforts to resolve the dispute on an amicable basis. If the dispute is not resolved on that basis within sixty (60) days after a Member first brings the dispute to the attention of the other Members, any Member may serve on the others a written demand for arbitration of the dispute. Thereafter, the dispute shall be settled by arbitration before a single arbitrator in accordance with the Expedited Procedures under the Commercial Arbitration Rules of the American Arbitration Association, or such other rules and procedures as the Members may hereafter consent to in writing. Any such arbitration shall be held in Brunswick, Maine, or such other location as is mutually acceptable to the Members. Any award or decision obtained from any such arbitration proceeding shall be final and binding on the parties, and judgment upon any award thus obtained may be entered in any court having jurisdiction thereof. To the fullest extent permitted by law, no action at law or in

equity based upon any claim arising out of or related to this Agreement shall be instituted in any court by any Member except (a) an action to compel arbitration pursuant to this Article 2.2 or (b) an action to enforce an award obtained in an arbitration proceeding in accordance with this Article 2.2.

2.3 Meetings. The Members may, but are not required to, hold formal meetings for the purpose of transacting business. Meetings of the Members may be called by the Managers or by any Member. Member meetings may be conducted by and Members may participate in any meeting by means of telephone conference or similar communications equipment through which all persons participating in the meeting can hear one another, and any such participation shall constitute a Member's presence in person at such meeting.

2.4 Actions by Members Without a Meeting. Whenever the Members are required or permitted to take any action by vote, such action may be taken without a meeting, prior notice or a vote if a written consent or consents setting forth the action so taken shall be signed by Members holding a majority in interest of the Membership Interests (unless a specific action requires unanimous approval under this Agreement) and shall be delivered to the office of the Company. Prompt notice of the taking of an action without a meeting by less than a unanimous written consent shall be given to each Member who has not consented in writing to such action, but who would have been entitled to vote thereon had such action been taken at a meeting.

2.5 Outside Activities. Subject to the terms of any written agreement by any Member to the contrary, a Member may have business interests and engage in business activities in addition to those relating to the Company. Subject to the terms of any written agreement by any Member to the contrary, neither the Company nor any other Member shall have any rights by virtue of this Agreement in any business interests or activities of any Member.

### ARTICLE3

#### Membership Interests; Capital Contributions

3.1 Membership Interests. *Schedule A* shall set forth the name and address of each Member of the Company, along with each Member's contribution to the capital of the Company ("Capital Contribution") and each Member's "Membership Interest" in the Company, which is defined herein to include such Member's right (a) to a distributive share of Profits, Losses, and other items of income, gain, loss, deduction and credits of the Company; (b) to a distributive share of the assets of the Company upon its dissolution; (c) to vote on, consent to or otherwise participate in any decision of the Members and (d) to any and all other benefits to which such Member may be entitled as provided in this Agreement or the Act. The Company may issue membership certificates to the Members reflecting their respective Membership Interests. The Managers shall from time to time amend *Schedule A* to reflect the admission and dissociation of Members and any changes in the Membership Interest of a Member arising from the transfer of a Membership Interest or any portion thereof.

3.2 Capital Contributions. The Members shall make the initial Capital Contributions to the Company in the amounts and forms set forth in *Schedule A*. No Member shall be obligated to make any additional contribution to the Company beyond the amount stated in Schedule A. No Member shall be liable to any other Member for the repayment of all or any portion of the other

Member's Capital Contribution. No Member shall have priority over any other Member with respect to a return of his, her or its Capital Contribution. No Member shall be entitled to seek partition of the Company's assets. No Member shall be paid interest on his, her or its Capital Contribution.

#### **ARTICLE 4**

##### **Liability of Members; Loans**

4.1 Liability of Members. No Member shall have any liability for the debts and obligations of the Company solely by reason of his/her/its status as Member. The failure of the Company to observe any formalities or requirements relating to the exercise of its powers or management of the Business and affairs under this Agreement or the Act shall not be grounds for imposing personal liability on the Member for liabilities of the Company.

4.2 Loans. The Members may make loans to the Company on such terms as the Managers shall determine.

#### **ARTICLES**

##### **Allocations; Profits, Losses and Distributions; Capital Accounts**

##### 5.1 Tax Law Compliance.

(a) The LLC shall be classified as a partnership for federal and state income tax purposes and shall not take any actions inconsistent with that classification. All provisions of this LLC Agreement as they relate to the maintenance of Capital Accounts and to the allocation of profits, losses, income, gain or credit are intended to have substantial economic effect within the meaning of Section 704(b) of the Internal Revenue Code of 1986 as amended (the "Code"). To the extent such provisions are deemed not to have substantial economic effect, they shall be modified in such manner as the Managers may direct so as to be in compliance with the substantial economic effect requirements of Section 704(b) and the regulations thereunder.

(b) On their respective shares of LLC income, losses, deductions, credits and other tax items, the Members shall be subject to federal income tax treatment as partners under Subchapter K of the Internal Revenue Code ("Code"). The Members shall not take any action inconsistent with the continued characterization of the LLC as such.

(c) To the extent it constitutes self-employment income, individuals who are Members of the LLC shall be subject to self-employment tax on their allocable shares of LLC income as provided in IRC §§ 1401 and 1402 and Internal Revenue Service Prop. Reg. § 1.1402(a)-2.

##### 5.2 Allocation of Profits and Losses.

(a) The profits and losses of the Company for each Fiscal Year shall be allocated to the Members in accordance with applicable tax law and the agreement of the Members.

**(b)** The Company shall comply with the Regulatory Allocations set forth on *Schedule B*.



5.3 Distributions. All distributions by the Company to the Members shall be made in accordance with applicable tax law and the agreement of the Members. All distributions shall be made at such time as determined by the Managers.

5.4 Limitation Upon Distributions. No distribution shall be declared and paid if, in the determination of the Members, after giving effect to the distribution:

(a) The Company would not be able to pay its debts as they become due in the usual course of business; or

(b) All liabilities of the Company (other than liabilities to Members on account of their capital contributions and liabilities for which the recourse of creditors is limited to specified property of the Company) would exceed the fair value of the Company's assets, except that the fair value of property that is subject to a liability for which the recourse of creditors is limited shall be included in the Company's assets only to the extent the fair value of that property exceeds that liability.

5.5 Interest On and Return of Capital Contributions. No Member shall be entitled to interest on the Member's capital contribution or to return of the Member's capital contribution, except as otherwise specifically provided for herein.

5.6 Accounting Period. The Company's accounting period shall be the calendar year.

5.7 Capital Accounts. A capital account shall be maintained for each Member, in accordance with tax accounting principles, which shall reflect the Member's initial capital contribution as set forth in Schedule A and shall be adjusted and maintained as follows:

(a) As of the end of each fiscal year of the Company, each Member's opening capital account for such year shall be increased by an amount equal to (i) the cash and the agreed fair market value of property (net of any liabilities assumed by the Company or to which such property is subject) contributed to the capital of the Company by such Member for such year, and (ii) such Member's share of Company taxable income for such year, including income and gain exempt from tax; and

(b) As of the end of the fiscal year of the Company, each Member's opening capital account for such year shall be decreased by an amount equal to (i) the aggregate amount of cash distributions and the agreed fair market value of any property (net of any liabilities assumed by such Member or to which such property is subject) distributed to such Member during such year; (ii) such Member's share of expenditures of the Company not deductible and not properly chargeable as a capital expenditure; and (iii) such Member's share of Company losses for such year, provided, however, that if it is necessary to determine the capital account of any Member during the fiscal year, the capital account of the Member shall be determined after giving effect to allocations of taxable income, gain and loss attributable to transactions effected prior to the time such determination is made and all distributions of cash theretofore made for such year.

(c) The requirements of this Article 5.7 are intended to comply with the requirements of Section 704(b) of the Internal Revenue Code of 1986 (the "Code") and related regulations. If in

the opinion of the Company's accountant's the manner in which the capital accounts are being maintained under this Article 5.7 should be modified in order to comply with Section 704(b) of the Code and the related regulations, then the Managers shall have the authority (without further approval of the Members) to adopt such modifications, but only if such modifications do not materially alter the economic agreement among the Members.

## **ARTICLE 6**

### **Management of the Company**

6.1 **Managers.** The LLC shall be managed by a Board of Managers elected by a unanimous vote of the Members. A Manager need not be a Member, a natural person or a resident of Maine. Douglas Niven and Dan Devereaux shall serve as the initial Managers of the Company.

6.2 **Number, Tenure and Qualifications.** The Board of Managers of the LLC shall consist of not less than one (1) nor more than three (3) Managers. The number of Managers constituting the Board of Managers may be increased or decreased from time to time by a unanimous vote of the Members. Each Manager shall hold office until the Manager's successor shall have been elected and qualified or until such earlier time as the Manager resigns or is removed pursuant to the terms of this Article.

6.3 **Authority; Decision Making; Third Parties.** Subject at all times to the limitations in this Agreement, the Managers shall have full and exclusive power and authority to manage the Company's Business and act on the Company's behalf in dealings with third parties, including without limitation the power and authority to purchase, sell, mortgage, lease and dispose of real, personal and intangible property, hire employees, contract with third parties, including affiliates, borrow money and pledge the assets of the Company. All management decisions shall be determined by a unanimous vote of the Managers.

The Managers may act by written consent in lieu of a formal meeting, provided that written consents approving the action taken or to be taken, at any time before or after the intended effective date of such action, are signed by at least the number of Managers necessary to approve such action.

No person dealing with a Manager need inquire regarding the Manager's authority to bind the Company, and any person dealing with the Company may rely (without duty of further inquiry) upon a certificate signed by any Manager as to the identity and authority of any Manager or any Member and any other matter whatsoever involving the Company or any Member. The act of a Manager, within the ordinary course of the Business, shall bind the Company unless the acting Manager has no authority to act for the Company in a particular matter and the person with whom the Manager is dealing has knowledge of the fact that the Manager has no such authority.

6.3 **Delegation of Authority of Managers: Officers.** The Managers may elect officers, with such titles as they determine appropriate, to whom they may delegate such rights, duties and responsibilities as they shall from time to time determine. Such delegation shall not relieve the Managers of their responsibility for managing the Company's Business or affect their ability to bind the Company in dealing with third parties. The officers may, but need not, be Managers of

the Company. The Managers shall have the right to elect any successor or additional officer or remove any officer. An officer shall hold office until a new election is held, unless the officer resigns or is removed.

6.4 Limitation on Authority of Managers and Officers. The Managers and Officers may not take the following actions without the prior vote of the Members:

(a) dispose or contract for a disposition of all of substantially all of the Company's property;

(b) incur or refinance any indebtedness on behalf of the Company in excess of Thirty Thousand Dollars (\$30,000);

(c) cause the Company to incur any obligation or make any capital expenditure in any single transaction or series of related transactions in excess of Twenty Thousand Dollars (\$20,000.00);

(d) lend money to or guaranty or become surety for the obligations of any person;

(e) compromise or settle any claim against or inuring to the benefit of the Company involving an amount in controversy in excess of Ten Thousand Dollars (\$10,000.00);

(f) cause or permit the Company to engage in any activity that is not consistent with the purposes of the Company as set forth in this Agreement;

(g) enter into any transactions, or series of related transactions, as the result of which there is a change in the majority ownership of the LLC; provided that a transfer to an entity controlled by or under common control with the transferor shall not be deemed to effect a change in majority ownership for this purpose; or

(h) issue any additional membership interests.

6.5 Duties; Compensation. Each Manager shall exercise powers and discharge duties in good faith with a view to the interests of the Company and its Members and with that degree of diligence, care and skill that ordinarily prudent persons would exercise under similar circumstances in like positions. The Managers may be paid such reasonable compensation as shall be approved by vote of the Managers.

6.6 Resignation. Any Manager of the LLC may resign at any time by giving written notice to the Members at least thirty (30) days in advance of his/her resignation. The resignation of any Manager shall take effect upon the date specified in the notice. The resignation of a Manager shall not absolve the Manager from any liabilities to the LLC or to the Members arising on or before the effective date of the resignation.

6.7 Removal. Any Manager may be removed with or without cause, by a unanimous vote of the Members. The removal of a Manager who is also a Member shall not affect the Manager's rights as a Member and shall not constitute a disassociation of a Member.

6.8 Members' Limited Role. Except as provided in this Agreement or as required by the Act, the Members shall have no voting or management rights. No Member, except in his, her or its capacity as a Manager, may participate in the management of the Business or affairs of the Company or bind the Company.

## **ARTICLE 7**

### **Term; Dissolution**

7.1 Term; Dissolution. The Company shall exist perpetually until dissolved upon the happening of one or more of the following events:

(a) the death or dissolution of the last surviving Member unless his, her or its successor in interest becomes a Member;

(g) the unanimous vote of the Members to terminate the Company;

(c) the sale or other disposition of all or substantially all of the assets of the Company or permanent cessation of the Company's business operations; or

(d) the entry of a decree of judicial dissolution under the Act.

Upon the occurrence of any dissolution event hereunder, the affairs of the Company shall be wound up in accordance with Article 7.2 and immediately thereafter the Company shall terminate.

7.2 Winding Up; Liquidation; Distribution of Assets. Upon the Company's dissolution, the Managers shall take all necessary actions to wind up the Company's affairs in an orderly manner. In furtherance of the winding up process, the Managers shall, in accordance with applicable law, distribute or apply the Company's assets as follows:

(a) sell or otherwise liquidate all of the Company's assets as promptly as practicable (except to the extent the Managers may decide to distribute any assets in kind);

(b) discharge or make reasonable provision for all liabilities of the Company, including liabilities to Members who are also creditors (other than liabilities to Members for distributions and the return of capital) and establish such reserves as may be reasonably necessary to provide for contingent liabilities of the Company; and

(c) after discharging or making reasonable provision for all liabilities of the Company, distribute the remaining assets of the Company to the Members in accordance with the positive balances in their Capital Accounts after taking into account all Capital Account adjustments for the taxable year of the dissolution.

Upon completion of the winding up process, the Managers shall file a Certificate of Cancellation with the Secretary of State of the State of Maine.

7.3 Return of Capital Contributions - Nonrecourse. Except as provided by law or as expressly provided in this Agreement, upon dissolution, each Member shall look solely to the assets of the Company for the return of his, her or their Capital Contribution. If the Company property remaining after the payment or discharge of the debts and liabilities of the Company is insufficient to return the Capital Contribution of a Member, such Member shall have no recourse against any other Member.

## **ARTICLES**

### **Transferability**

8.1 General. No Member shall gift, sell, assign, pledge, hypothecate, exchange or otherwise transfer to another person any portion of its Membership Interest without the prior unanimous written consent of all of the other Members. Notwithstanding the foregoing, transfers to children of Members, or to trusts for the benefit of children, shall not require the consent of the other Members.

8.2 Transferee's Interest. No person acquiring a Membership Interest pursuant to this Article shall become a Member unless such person agrees to become a party and executes this Agreement.

## **ARTICLE 9**

### **Indemnity**

9.1 Mandatory Indemnification. The Company shall, to the full extent of its power to do so under law, indemnify any person who was or is a Manager or officer of the Company or is or was serving at the request of the Company as a member, manager, director, officer, trustee, partner or fiduciary of another company, corporation, partnership, joint venture, trust, pension or other employee benefit plan or other enterprise, against expenses, including attorneys' fees, judgments, fines and amounts paid and actually and reasonably incurred by such person in the settlement of or in connection with any threatened, pending or completed civil, criminal, investigative or administrative suits, actions or proceedings to which such person is or was a party or is or was threatened to be made a party because of or in connection with such person's service to or on behalf of this Company.

9.2 Elective Indemnification. The Company, by action of its Members or by action of disinterested Managers, may indemnify any person, including without limitation a member, employee or an agent of this Company, in any particular case, against reasonable expenses, including attorneys' fees, judgments, fines and amounts paid, if in their judgment such indemnification should be made. The determination that indemnification under this Article 9.2 is permissible and the evaluation as to the reasonableness of expenses in a specific case shall be made by disinterested Managers or, if such Managers direct, by independent counsel or the members all as provided by law; provided however, if a majority of the Managers has changed after the date of the alleged conduct giving rise to a claim for indemnification, such determination and evaluation shall be made by special legal counsel agreed upon by the new Managers and the person seeking indemnification.

9.3 Exceptions. Notwithstanding anything in this Article 9 to the contrary, (i) the

Company shall not have the power to indemnify any person with respect to any claim, issue or matter asserted by or in the right of the Company as to which that person is finally adjudicated to be liable to the Company unless the court in which the action, suit or proceeding was brought shall determine that, in view of all the circumstances of the case, that person is fairly and reasonably entitled to indemnity for such amounts as the court shall deem reasonable, (ii) no indemnification shall be provided to any person whose conduct shall have been finally adjudicated to have constituted fraud, bad faith, intentional misconduct or a material breach of this Agreement or, with respect to criminal proceedings, if such person is finally adjudicated to have committed a crime, an element of which is the reasonable cause to believe that such person's action was unlawful and (iii) the Company shall not indemnify any person in connection with a proceeding initiated by such person unless the proceeding was authorized by the Managers.

9.4 Expenses Paid in Advance. Any person eligible for indemnification under this Article 9 shall in all cases be entitled to payment in advance for expenses, except that the Company shall not be required to advance such expenses to a person who is a party to an action, suit or proceeding brought by the Company and approved by the Managers that alleges willful misappropriation of Company assets by such person, disclosure of confidential information in violation of such person's fiduciary or contractual obligations to the Company or any other willful and deliberate breach in bad faith of such person's duty to the Company or its members.

9.5 Scope and Application. It is intended that this Article 9 be construed so as to maximize the indemnification of the persons covered hereby and shall inure to the benefit of the heirs and personal representatives of such persons. Indemnification under this Article 9 shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any other agreement or otherwise. The rights of indemnification under this Article 9 are contract rights that may be enforced in any manner desired by such person and that may not be abridged or impaired in any manner.

9.6 Insurance. The Managers may cause the Company to purchase and maintain insurance on behalf of any person who is or was a Manager, officer, member, employee or agent of the Company, or is or was serving at the request of the Company as a member, manager, director, officer, partner, trustee or fiduciary of another company or corporation or as the Company's representative in a partnership, joint venture, trust or other enterprise, against a liability asserted against such person and incurred in any such capacity or arising out of such status, whether or not the Company would have the power to indemnify such person.

9.7 Vested Rights. Any amendment, modification or repeal of this Article 9 shall not deny, diminish or otherwise limit the rights of any person to indemnification or advance under this Article 9 with respect to any action, suit or proceeding arising out of any conduct, act or omission occurring or allegedly occurring at any time prior to the date of such amendment, modification or repeal.

## **ARTICLE 10**

### **Miscellaneous**

10.1 Registered Agent and Office. The Company shall have the registered agent and office determined from time to time by the Managers and as reported on filings made with the

Maine Secretary of State as required by the Act.

10.2 Ratification. All actions taken on behalf of the Company by the Organizer identified in the Certificate of Formation up to and including the date hereof are hereby ratified and confirmed.

I 0.3 Records. The Company shall maintain complete and accurate books and records of the Company's affairs. At a minimum, the Company shall maintain copies of its Certificate of Formation and any Operating Agreement, with all amendments, current and past lists of all members and their addresses, tax returns and financial statements for the past six years, consents or minutes of all meetings of the Managers and Members and all documents relative to any Member's obligation to contribute cash, property or services.

I 0.4 No Exclusive Duty. Managers need not devote their full time and attention to the Business, but, subject to their duty of loyalty to the Company, may engage in other business ventures. Neither the Company nor any Member shall have any right to the profits derived from such other ventures, except to the extent the Company or its Members may have an independent interest in such other ventures.

10.5 Governing Law; Binding Effect. This Agreement shall be governed by and construed in accordance with the laws of the State of Maine. This Agreement is binding upon and inures to the benefit of the parties' heirs, successors and assigns.

10.6 Notice. Any notice required under this Agreement shall be in writing and shall be deemed given when delivered in person or by fax, the next day after being sent by overnight delivery or three (3) days after being mailed, postage prepaid, by first-class, U.S. mail, registered or certified, with return receipt requested, addressed to the Company at its principal office and to any Member as reflected in the record books of the Company.

10.7 Amendments. This Agreement and the Company's Certificate of Formation may only be amended by written consent of the Members. This Agreement constitutes an operating agreement under Maine law.

10.8 Counterparts; Severability. This Agreement may be signed in several counterparts. The invalidity, unenforceability or waiver of any provision of this Agreement shall not affect the other provisions of this Agreement.

*The remainder of this page is intentionally left blank.*

In witness whereof, the Company Operating Agreement has been executed by the parties as of the date written next to their signatures below.

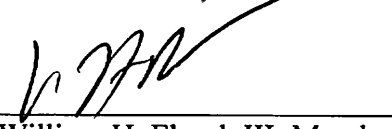
Date: /b/z1--/ !!)

  
Douglas Niven, Member

Date: /0/2-1... /,e

  
Dan Devereaux, Member

Date: /"}ii)1'3

  
William H. Floyd, III, Member



**Schedule A****MEMBERS**

As of January 1, 2018

Member and Address	Membership Interest	Capital Contribution
Douglas Niven 37 W. Marginal Rd. Brunswick, ME 04011	52%	
Dan Devereaux 48 Elm St. Topsham, Maine 04086	43%	
William H. Floyd, III 7 Willow Street Boston, ME 02108	5.00%	

## Schedule B

### REGULATORY ALLOCATIONS

In accordance with Section 704(c) of the Internal Revenue Code of 1986, as amended (the "Code") and the regulations issued under the Sections 704 of the Code ("Treasury Regulations"), taxable income, gain, loss and deduction with respect to any property contributed to the capital of the Company shall, solely for Federal income tax purposes, be allocated among the Members so as to take into account any variation between the adjusted basis of such property for Federal income tax purposes and its fair market value, as recorded on the books of the Company. As provided in Section 1.704-1 (b)(2)(iv)(f) of the Treasury Regulations, in the event that the capital accounts of Members are adjusted to reflect the revaluation of Company property on the Company's books, then subsequent allocations of taxable income, gain, loss and deduction with respect to such property shall take into account any variation between the adjusted basis of such property for Federal income tax purposes and its adjusted fair market value; as recorded on the Company's books. Allocations under this paragraph shall be made in accordance with Section 1.704-1 (b)(4)(i) of the Treasury Regulations and, consequently, shall not be reflected in the Members' capital accounts.

In the event there is a change in any Member's interest in the Company during a fiscal year (e.g., as a result of a valid transfer of all or part of a Member's Membership Interest), the profits and losses of the Company shall be appropriately allocated among the Members to take into account the varying interests of the Members so as to comply with Section 706(d) of the Code.

Notwithstanding any other provision in the Agreement to the contrary, in order to comply with the rules set forth in the Treasury Regulations for (i) allocations of income, gain, loss and deductions attributable to nonrecourse liabilities, and (ii) partnership allocations where partners are not liable to restore deficit capital accounts, the following rules shall apply:

(1) "Partner nonrecourse deductions" as described and defined in Section 1.704-2(i)(1) and (2) of the Treasury Regulations attributable to a particular "partner nonrecourse liability" (as defined in Section 1.704-2(b)(4); e.g., a Company liability which one or more Members have guaranteed) shall be allocated among the Members in the ratio in which the Members bear the economic risk of loss with respect to such liability;

(2) Items of Company gross income and gain shall be allocated among the Members' to the extent necessary to comply with the minimum gain charge back rules for nonrecourse liabilities set forth in Sections 1.704-2(f) and 1.704-2(i)(4) of the Treasury Regulations; and

(3) Items of Company gross income and gain shall be allocated among the Members to the extent necessary to comply with the qualified income off set provisions set forth in Section 1.704-1 (b)(2)(ii)(d) of the Treasury Regulations, relating to unexpected deficit capital account balances (after taking into account (i) all capital account adjustments prescribed in Section 1.704-1(b)(2)(ii)(d) of the Regulations and (ii) each Member's share, if any, of the Company's partnership minimum gain and partner nonrecourse minimum gain as provided in Sections 1.704-2(g)(1) and 1.704-2(i)(5) of the Treasury Regulations.

Since the allocations set forth in this Schedule B (the "Regulatory Allocations") may effect results not consistent with the manner in which the Members intend to divide Company distributions, the Members are authorized to divide other allocations of net profits, net losses, and other items among the Members so as to prevent the Regulatory Allocations from distorting the manner in which distributions would be divided among the Members under the Agreement but for application of the Regulatory Allocations. The Member shall have discretion to accomplish this result in any reasonable manner that is consistent with Section 704 of the Code and the related Treasury Regulations. The Members may agree, by unanimous written consent, to make any election permitted by the Treasury Regulations under Section 704 of the Code that may reduce or eliminate any Regulatory Allocation that would otherwise be required.

The determination of each Member's share of each item of income, gain, loss, deduction or credit of the Company for any period of fiscal year shall, for purposes of Sections 702 and 704 of the Code, be made in accordance with the allocations set forth in Article 5. The Member shall have no liability to the Members or the Company if the Member relies upon tax counselor accountants retained by the Company with respect to all matters (including disputes) relating to computations and determinations required to be made under this Article or other provisions of this Agreement.