

**SUBMISSION OF THANKS BUT NO TANK
REGARDING THE DCP SEARSPORT, LLC, APPLICATION FOR
LPG STORAGE TANK AND IMPORT TERMINAL**

TO: Searsport Planning Board

FROM: Steve Hinchman, Esq., for Thanks But No Tank

RE: Lack of Completeness of DCP Searsport, LLC's Application for LPG Storage Tank and Import Terminal.

DATE: June 4, 2012

CC: Searsport Board of Selectmen
James Gillway, Searsport Town Manager
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Kim Ervin Tucker, Esq.

The following comments are provided on behalf of Thanks But No Tank ("TBNT") regarding the DCP Searsport, LLC ("DCP") application to the Searsport Planning Board ("SPB" or "Board") to construct a liquified propane gas ("LPG") marine terminal, bulk storage tank and truck/rail facility at Mack Point (the "Terminal").

TBNT is a coalition of residents, small business owners and other town and regional stakeholders impacted by the proposed DCP Terminal. TBNT represents individuals and business owners who will be directly adversely affected by construction and operation of the proposed facility. TBNT opposes siting an LPG storage tank and terminal at Mack Point in Searsport in the absence of proper security, safety, infrastructure (medical, emergency, municipal and transportation), environmental protections, and economic analyses to determine the possible adverse impacts on Searsport and the surrounding communities throughout the Penobscot Bay region. TBNT has challenged in Superior Court the 2011 Department of Environmental Protection ("DEP") permit issued to DCP, and intends to seek full enforcement of all applicable state and federal laws and town ordinances, whether statutory, regulatory or common law, to ensure the protection of the environment and the health, safety and welfare of the public.

On behalf of themselves and similarly adversely impacted individuals and business owners in the Midcoast Maine region, TBNT requests that this Board reject the DCP application as premature and incomplete, and that, once complete, the Board require a comprehensive and independent evaluation of the full breadth of potential impacts of this proposed facility prior to the approval of its construction – as mandated by the Searsport Land Use and Site Plan Review statutes. TBNT has performed an initial evaluation of the DCP application and described below are some, but certainly not all, of the deficiencies of DCP's submission.

TBNT asks that the Board take a cautious and thorough approach to review of the DCP permit application. If this project is approved, the character of Searsport and the entire Penobscot Bay region will be forever changed. Unlike the existing developments on Mack Point, the DCP Terminal will be far more visible and will have far greater – unprecedented – impacts upon Searsport and the surrounding region. This would be the most dangerous and among the largest industrial facilities ever built in the State of Maine. The 24-acre DCP facility will include ship unloading facilities, a mile long elevated pipeline to a 22.7 million gallon cryogenic bulk storage tank surrounded by a 20-foot earthen containment dyke, three truck loading racks, an eight-car train loading station, four ethyl-mercaptan storage tanks, pressurized LPG fuel storage tanks, three propane-fired outdoor heaters, a 75-foot tall emergency propane flare, an emergency diesel-fueled generator, fire water pump, a fire water storage tank, administration building, compressor and motor control center buildings, five electric compressors, an electric air fin cooler, four electric loading pumps, and miles of additional above-ground pipes and valves, security fencing, roads and drives.

The LPG bulk storage tank will be a brilliant white, vertical, insulated domed tank 202 feet in diameter and 138 feet tall, and will rise more than 182 feet above sea level. Propane will be stored at -44°F to -42°F maintained by a multi-stage electric refrigeration system without emergency back-up power. During grid failures, process upsets, and emergencies, a control valve will route tank boil-off vapors to a multi-stage 75-foot tall flare. In the event of catastrophic failure, additional emergency valves will vent LPG directly to the atmosphere. The entire bulk storage facility and terminal will be clear-cut and visible both from Route 1 and from Sears Island, Long Cove, Cape Jellison, and throughout the entire Penobscot Bay region; it will be visible from more distant locations at night. The tank will tower above the landscape and the entire facility will be fenced and fully illuminated at night for safety and security reasons. The Terminal will operate 24 hours per day, 365 days per year, with constant noise levels within 0.4 decibels (and most likely periodic noise levels above) state standards, and will service between 40 to 50 trucks and eight rail cars per day, with a maximum throughput of 144 trucks and 8 rail cars per day. At normal production, this will roughly double existing truck traffic servicing the Mack Point cargo terminal.

If built, Searsport will no longer be known as the historic small town of Maine sea captains, but will forever be known as “the town with the tank.” The LPG tank, terminal, and truck traffic will severely and adversely impact the tourism, second home and retiree economy that currently supports the town and the region. It will repel tourists rather than attract them – both because of its industrial appearance and purpose, as well as the traffic congestion generated by the 80 to 300 LPG tanker truck *trips* per day, carrying pressurized LPG on the narrow roads in and around Searsport. No one will want to be stuck on a 2-lane, rural road behind these heavy-duty diesel vehicles, which may lead to tourists using alternative routes that bypass Searsport (and adjacent communities along Route 1). People from Maine and “from away” will avoid this portion of the Penobscot Bay region altogether, in favor of less congested traffic areas and more pristine coastal views. People do not go out of their way to visit, camp, hike or boat in the shadow of a 24-acre industrial site with a 14-story LPG tank and flare. People do not come to the Coast of Maine to see a 14-story LPG tank – and when they come to the Coast of Maine they do not want to see a 14-story LPG tank.

The high degree of impact warrants an equally high degree of review. As described below, the application submitted by DCP is woefully incomplete and fails to provide the SPB and the community with the information necessary to determine whether the facility will comply with the criteria established by the Searsport Land Use and Site Plan Review Ordinances and whether it is consistent with the Searsport Comprehensive Plan.

I. THE DCP APPLICATION IS PREMATURE BECAUSE DCP HAS NOT OBTAINED ALL REQUIRED PERMITS.

Pursuant to the Searsport Land Use Ordinance Section VI.F, an application is not “considered complete for processing until all other required local, state and federal permits and licenses have been secured and evidence that they have been secured has been provided unless state or federal regulations require local approval first.” Under Maine law, aboveground propane and natural gas storage facilities require a permit from the Maine Fuel Board, 32 M.R.S.A. § 18109. *See also*, Maine Fuel Board Rules, 02 CMR 658, ch. 208 § 1(1). DCP has failed to provide evidence that it has obtained a permit from the Maine Fuel Board, required prior to installation of a new propane storage facility.

Pursuant to the Fuel Board's rules:

An application for a permit shall be made on a form supplied by the Board together with payment of the permit fee. Said application shall be accompanied by detailed plans including a cross-sectional view, front and side elevations, and plot plans. *A permit must be obtained prior to commencement of the installation or alteration.*

02 CMR 658, ch. 208 § 2 (emphasis added).

State regulations require that any LPG storage facility comply with the 2008 edition of the NFPA Rule 58 for installation of aboveground LPG storage tanks. *See* Department of Public Safety, Office of the State Fire Marshall, Rules, 16 CMR 219, ch. 16 § 1. This is also reflected in the Maine Fuel Board application, which states that an LPG storage facility must comply with NFPA Rule 58 for aboveground LPG storage tanks, and must include a Fire Safety Analysis as well as a Site Plan and a Piping Plan. *See*:

<http://www.maine.gov/pfr/professionallicensing/professions/fuel/pdf/lpgpermit.pdf>

Failure of DCP to obtain this permit prior to submitting an application to the Searsport Planning Board violates the requirements of the Site Plan Review Ordinance and renders this pending application *premature*. This defect must be cured *before* the Searsport Planning Board can legally consider DCP's application.

II. THE DCP APPLICATION IS INCOMPLETE.

The lack of the required Maine Fuel Board permit and accompanying plans and fire safety analysis, however, is just one of the fundamental inadequacies of the DCP Application. Other omissions include information regarding the following critical areas of concern:

- Worst case and alternative release scenarios;
- Public safety and risk zones;
- Environmental risk zones;
- Emergency response plan and requirements, including capital equipment and operating budgets, alarm/notification and emergency communications plan, emergency and first responders' plan, and an evacuation plan and routes;
- Impacts to municipal infrastructure (Searsport and region);
- Impacts on nearby property values and use and enjoyment of nearby properties;
- Noise and air pollution;
- Economic impact and impact on tax revenues.

Without the Maine Fuel Board permit and the above information, it is impossible to determine whether the proposed project will comply with the Land Use Ordinance (“*Land*”) or the Site Plan Review Ordinance (“*Site*”), including protection of the general welfare, *Land* § I.C.2; preservation of the town character, *Land* § I.C.3; protection of the environment, *Land* § I.C.4; promotion of community development, *Land* § I.C.5; reduction of traffic congestion, *Land* § I.C.6; balancing of property rights, *Land* § I.C.7; reduction of fiscal impact, *Land* § I.C.8; or to determine the

impact upon the cost and efficiency of municipal services and upon the environment of the town... [including impacts to] police and fire protection; open space; road systems and circulation; traffic congestion; placement of building(s) and structure(s); property values; water quality; the aesthetic and visual characteristics of the neighborhood and town, and the general health, safety and welfare of the community.

Site, § I. See also *Land*, § VI.G (positive findings required). The Board must deny the application as incomplete until and unless this information is provided.

A. *The DCP Application Lacks Critical Safety Information.*

As DCP has acknowledged, the proposed facility will be subject to numerous federal safety and security requirements.¹ Pursuant to the federal 1999 Chemical Safety Information, Site Security and Fuels Regulatory Relief Act, 42 U.S.C. § 7412(r), an operator of a new LPG bulk storage facility must submit a Risk Management Plan (“RMP”) to the Environmental Protection Agency (“EPA”).² The RMP must map the geographic area at risk from a potential alternative and worst-case release scenario (defined as a 1 psi overpressure blast zone) caused by loss of containment of an explosive gas, 40 C.F.R. § 68.25, map and identify the population at risk from such an event (including the residential population and any institutions, schools,

¹ See Application at 23.

² Coast Guard jurisdiction over LHG waterfront facilities ends at the first valve inland on the send out pipeline after the unloading manifold. 33 C.F.R. § 127.005.

hospitals, prisons, parks and recreational areas, major commercial, office, or industrial building), *id.* § 68.30, map and identify environmental receptors within the blast zone, *id.* § 68.33, and develop an emergency response and contingency plan, including preparedness, training, emergency communications, evacuation, first aid and medical response. *Id.*, § 68.95. The EPA has published designated distances for a 1-psi blast zone for LPG tanks, however the maximum tank included in EPA's published table is 120,000 gallons and a distance of 0.6 miles.³ To calculate the 1-psi blast zone for larger tanks (such as the proposed 22.7 million gallon DCP bulk storage tank) requires use of the RMP*Comp software system developed by EPA and the National Oceanic and Atmospheric Administration. *Id.* None of the above information has yet been made available. Given its size, the DCP Terminal blast zone will at a minimum extend 0.6 miles and likely much farther – likely several miles beyond the property boundaries – and will present a clear hazard to the environment and the public safety and welfare in the affected zone.⁴

As noted by the Army Corps of Engineers, unless and until DCP submits the RMP and receives approval from EPA, it cannot operate.⁵ Accordingly, EPA approval of the RMP is legally and effectively a “permit” – i.e., “a written warrant or license by one having authority” Merriam-Webster Online Dictionary.⁶ Without this license in hand, DCP's application is premature and cannot be considered at this time. *Land*, § VI.F. More importantly, without the information included in the RMP, the application is substantially incomplete and the applicant cannot meet its burden to demonstrate compliance with the performance standards in the Land Use or Site Review ordinances.⁷

For instance, DCP has yet to define or map risk levels both inside and outside the facility boundary from either a worst case or an alternative release scenario. DCP's application does not identify the population and private and public buildings, lands and waters or other environmental

³ EPA, *Risk Management Program Guidance for Propane Storage Facilities* (40 CFR Part 68), EPA 550-B-00-001, Washington, D.C. 2009.

⁴ As noted by Dr. James Fay, the potential impact zone could exceed three miles in radius from the tank or other release point. *See Public Safety Issues*, Dr. James A. Fay, Massachusetts Institute of Technology.

⁵ New England Army Corps of Engineers, *Environmental Assessment/Statement of Findings for Application NAE-2010-02347* at 49.

⁶ *See* <http://www.merriam-webster.com/dictionary/permit>. Pursuant to *Land*, § VII.A.2, “Terms not defined shall have the customary dictionary meaning.”

⁷ To the extent that DCP contends that it cannot release the actual RMP due to federal security requirements, that is no bar upon provision of the underlying information about risk, public safety, emergency preparedness and economic impact that is required in order to process the applications for permits under the Town ordinances. Moreover, any potential concerns about public disclosure of critical information can be handled, and are regularly handled in state and local permitting cases such as this, through issuance of confidentiality orders and confidentially agreements executed by the parties.

receptors within the hazard zone. DCP has not provided an emergency response and contingency plan or otherwise detailed requirements for preparedness, training, emergency communications, evacuation, first aid and medical response or an emergency evacuation of the area. Nor has DCP identified the gaps in current infrastructure – such as necessary fire, emergency and medical response and communications equipment, training and personnel; the lack of a town or regional emergency notification system; the lack of nearby level one medical and trauma facilities, equipment and personnel; or evacuation plans and routes. DCP has not described who will fund or provide these services, personnel, capital equipment needs, operating budgets, fire, security, and emergency medical training programs, etc.

DCP must supply a safety analysis of the impact of its proposed facility with information needed to determine if Searsport has the necessary public safety resources to ensure that DCP can safely and securely operate its facility and, in the event of a catastrophe, that the public safety and security can be protected. The Searsport fire and emergency medical services departments lack the personnel, equipment, plans or training to respond to the type of emergencies that could occur in a facility of this size and nature. Accordingly, DCP’s application relies upon statements from the Fire Department and other Searsport emergency services providers that any needed services will be provided pursuant to existing non-binding mutual-aid agreements with other communities in the state.⁸ It is an abuse of the concept of mutual-aid to attempt to rely on the public safety assets of other municipalities to supplement the lack of adequate public safety resources in Searsport to handle an extraordinary new burden. Searsport cannot legally encumber or appropriate the police and fire departments of every other municipality and government entity in Waldo County or the Penobscot Bay, through the guise of “mutual-aid.” The taxpayers of other municipalities in the region have not provided consent to the use of their limited resources for the benefit of Searsport, and Searsport lacks the legal authority to appropriate the resources of other towns to enable it to approve a use it cannot handle within its own means and assets. *See* 37-B M.R.S.A § 784-B (allowing towns to withdraw from mutual aid agreement by enacting an ordinance to that effect). In addition, the fire, emergency medical and police resources of the surrounding communities in Penobscot Bay also lack the personnel, specialized equipment and training to fully respond to the type of emergencies that could occur in a facility of this size and nature. Thus, blanket representations that, based upon mutual-aid agreements, Searsport has adequate resources to handle the emergency response and public safety burdens this facility would or could generate are misleading and inadequate to meet the public safety criteria in the Site Review and Land Use Ordinances. The plain fact is that there are not sufficient regional emergency response assets (fire, police, emergency medical, hospital or morgue) to handle a catastrophic event at this proposed facility.

To the extent that certain emergency services will be provided by DCP or by other communities pursuant to a mutual aid agreement, DCP must demonstrate that such aid will in

⁸ DCP has not disclosed for public review the actual risks posed by this facility in the town, state or federal permit applications; nor has DCP provided a comprehensive emergency response and contingency plan. Searsport services providers and the heads of the municipal departments cannot, nor should they be expected to, provide an adequate assessment of their ability to respond to unstated risks. *See* DCP Application, Appendix H.

fact be available, for example, by providing a binding commitment. Even then, DCP must also account for distance and travel time needed for equipment and personnel to arrive on site to ensure that emergency responders can timely respond to an accident and keep it from spreading to adjacent industrial facilities (including the existing oil terminals and the GAC facility) or to commercial and residential areas.

Without such information, the SPB cannot make positive findings, as required by the Land Use Ordinance, that the development “is in conformance with the applicable performance standards of Section V of this Ordinance;” and “will not result in unsafe or unhealthful conditions;” “will not result in undue land, water or air pollution;” “will not result in damage to spawning grounds, fish, aquatic life, bird and other wildlife habitat;” “will not adversely impact the public infrastructure;” and will “be consistent with the long-range goals of the Comprehensive Plan, other adopted plans of the town, and the goals and purposes of the established districts.” *Land*, § VI.G. Nor can the SPB determine compliance with the Comprehensive Plan or the Site Review Ordinance criteria, including specifically, the impact on municipal services or upon Searsport’s mutual aid agreement with other towns. *Site*, § VI.11

TBNT recognizes that DCP and everyone involved with this project will do their utmost to avoid an accident; and that the goal of the LPG licensing and construction standards is to minimize the chance of an accident occurring and to contain any accident that does occur. Nonetheless, that does not obviate the SPB’s legal obligation to consider potential impacts to the public welfare, town infrastructure and private property from accidents, ranging from small-scale events (such as the oil terminal fire last summer) to a catastrophic release. The reality is, accidents do happen. For example, just last month a nuclear submarine caught on fire and burned in the Portsmouth Navy Shipyard despite the Navy’s extensive safety protocols, criteria, training, system redundancies, and other precautions.

Another highly relevant example is the 1984 PEMEX LPG Terminal disaster in Mexico, in which accidental releases from an LPG bulk storage tank *feeder pipeline* led to a series of fires and explosions in a series of pressurized tanks storing less than 3 million gallons of LPG. The disaster killed over 500, left 600 missing, burned and maimed 6,000 to 7,000 nearby residents, destroyed the terminal and adjacent oil and chemical tanks, and devastated a large portion of a suburb of Mexico City, leaving over 60,000 homeless.⁹ While DCP will use cryogenic rather than pressurized storage for its main tank, given the 6,000 gallon pressurized tank attached to the 22.7 million gallon cryogenic tank, the large volume of traffic daily from pressurized tanker trucks (80 to 300 trips per day), the many miles of pipeline, much larger storage volumes proposed here and DCP’s election not to provide a backup to the facility’s grid-tied electrical refrigeration system (so as to avoid the obligation to obtain a more comprehensive air emissions permit),¹⁰ the PEMEX disaster is still highly relevant. Moreover, a fundamental problem that

⁹ For more information on the disaster, see http://en.wikipedia.org/wiki/San_Juanico_Disaster; <http://www.hse.gov.uk/comah/sragtech/casemex84.htm>; <http://ecperez.blogspot.com/2009/11/gas-explosions-at-san-juanico-25-years.html>, each of which are hereby incorporated by reference.

¹⁰ DCP has stated to the Army Corps of Engineers that it *elected* not to provide a backup to the facility’s grid-tied electrical refrigeration system so as to avoid the obligation to obtain a more

exacerbated the PEMEX disaster is the lack of backup safety systems and the traffic chaos from the flood of evacuees that blocked emergency responders' access. The SPB must ensure that the same lack of backup systems and planning does not endanger the public here, particularly given the region's periodic extreme weather events and ice storms, and the limited evacuation routes and the emergency agencies' express acknowledgment that they will have to rely upon mutual-aid from away in the event of an accident.

In sum, without identification of potential hazard zones and emergency response plans and needs, the SPB cannot conduct the required evaluation of impacts to the environment, landscape, and wildlife from an accidental release of pollutants or an explosion; nor can it evaluate impacts to public safety and welfare, conduct a balancing of property rights, or consider adverse changes to the town's character and sustainability of its economy. Without this information there is simply no way to identify the extent of potential impacts on or cost to the town, its residents or owners of nearby private properties, as required by the relevant ordinances. Nor can the SPB perform its obligation to "protect property rights and values by balancing the rights of landowners to use their land with the corresponding rights of abutting and neighboring landowners to enjoy their property without undue disturbance from abutting or neighboring uses." *Land*, §§ I.C.7 and VI.G. Accordingly, the application should be denied as incomplete.

B. The DCP Application also lacks critical information regarding noise, air pollution, economic and tax impacts, and cumulative impacts.

The application's lack of required information goes well beyond safety. For instance, the noise models provided by DCP are so close to the state limits that they are statistically invalid and DCP has failed to address any noise generated by trucks, which, if on site for over 60 minutes, are subject to minimum state noise standards. More importantly, as noted in TBNT's briefs to the Superior Court in the appeal of the DEP permits, the applicant has not provided a verifiable noise study, nor has it submitted its actual noise control plan. Rather, it has simply promised to do so in the future. For the reasons stated in TBNT's appeal, which are hereby incorporated by reference, DCP's current noise control proposal is insufficient to meet its burden to demonstrate that "[o]ffensive noise shall not be transmitted beyond lot lines so as to cause unreasonable disturbance to neighboring residential properties." *Land*, § V.F.4. A legitimate, assessment of the noise level that will be generated at this facility must be provided. In addition to correcting errors in the theoretical model, such an assessment should include actual noise level

comprehensive air emissions permit. This choice, however, puts the citizens and community of Searsport at unnecessary risk. In the event of a prolonged grid outage, for example due to an ice storm (not an infrequent event), loss of cryogenic temperatures could trigger emergency valves releasing massive amounts of LPG to the atmosphere and risking a fire or explosion.

The SPB has the authority to demand that a redundant grid-tied electrical refrigeration system be included in the design of this facility and that the necessary permits for such a system be obtained before this application proceeds. Failing to impose such a requirement before this application proceeds is contrary to the spirit and letter of the SPB's obligations to safeguard the public in the Land and Site Ordinances, and will imperil Searsport, its residents, its visitors, and the region without any conceivable justification for doing so.

measurements at other LPG tank and terminal facilities, including the Tampa, Florida, facility that DCP asserts is most closely analogous to the proposed facility it seeks to locate at Mack Point.

Similarly, DCP's application failed to address or acknowledge the air pollution performance standard under the Site Review Ordinance, § VI.18. As described in TBNT's appeal, DCP's existing Site Law and Air Emission permits from Maine DEP failed to evaluate air quality impacts from non-point sources on site. Moreover, with regard to the Town permits, DCP has failed to address the impact of emissions from increased truck traffic (up to 144 per day, 288 trips) through downtown Searsport and air quality impacts from slowed traffic (including exhaust fumes from heavy duty LPG tanker trucks) upon the health of the people of Searsport. Accordingly, DCP's application is insufficient to demonstrate that the project will not significantly add to existing air pollution. *Site*, § VI.18.

Another fundamental gap is the lack of a fair, balanced and comprehensive economic study that reviews and documents potential adverse impacts of this facility on the tourism, fishing and real estate industries. These industries are the engines that drive the existing economy of Searsport and Penobscot Bay. According to the Maine State Planning Office, tourism directly and indirectly generates one in five dollars of sales throughout Maine's economy and it supports one in six Maine jobs. In Searsport, that number is likely higher. Tourists come to Searsport and the Penobscot Bay region to enjoy the natural beauty of the area; the unparalleled cruising waters; the night sky; the "aesthetic and visual characteristics of the neighborhoods and towns;"¹¹ the historic buildings, the Penobscot Marine Museum; and unfettered access to Sears Island, which is host to thousands of birders and nature lovers.¹² These priorities are reflected in the purposes underlying the Land Use and Site Plan Review Ordinances, which require that the SPB preserve the town character of Searsport, *Land* § I.C.3, and protect the environment. *Land* § I.C.4.

The above safety considerations – combined with visual, light, air and noise pollution, and traffic (see below) generated by the DCP Terminal – will significantly affect each of these economic sectors. Losses in any one could more than offset any gains in employment or tax revenue from the Terminal. The applicant's limited economic analysis, however, fails to consider these issues. For example, the largest portion of Searsport's tax revenue is derived from residential properties. DCP's contribution of an estimated \$500,000 annually in property tax revenues will mean little savings to the residents of Searsport, if every other private, residential and business property in Searsport is diminished in value and marketability by the presence of the DCP facility.¹³ Permitting an unprecedented, new, hazardous use to damage the marketability of the private property values and economic uses of all other Searsport properties

¹¹ Searsport Site Plan Review Ordinance, § I, Purpose.

¹² Birding has become one of the fastest growing segments of the tourism industry, and tourism is Maine's number one economic engine.

¹³ Small businesses provide the largest portion of our tax revenue outside of residential properties.

and small businesses would violate the mandate in the Land Use Ordinance to promote the development of an economically sound and stable community, *Land* § I.C.5; protect property rights and values by balancing the rights of landowners to use their land with the corresponding rights of abutting and neighboring landowners to enjoy their property without undue disturbance from abutting or neighboring uses, *Land* § I.C.7; and to assure the comfort, convenience, safety, health and welfare of the present and future inhabitants of the Town of Searsport. *Land* § I.C.2.

Accordingly, the Board should require the applicant to fund an independent, full, and fair economic analysis prior to accepting this application as complete. Additionally, due to the sensitivity of the tourist trade along the coastal corridor to traffic congestion, detours or delays, a traffic study is required. The wear and tear on the already compromised roadbed and the additional vibration damage to the integrity of historic buildings needs to be assessed. For this reason, the Searsport Ordinances require the SPB “[t]o lessen the danger and congestion of traffic on roads and highways, limit excessive numbers of intersections, driveways, and other friction points, minimize hazards, and ensure the continued usefulness of all elements of the existing transportation systems for their planned function.” *Land* § I.C.6.

Finally, the impact on clamming also needs to be considered. Clamming brings people and revenue to Searsport and there is no assurance that the clam flats will not be shut down, either for pollution or due to security concerns.

III. NEED FOR INDEPENDENT CONSULTANTS.

The pending application seeks the construction of a facility that is unprecedented in Searsport, Waldo County, the Penobscot Bay Region, or Maine, and which would be the largest facility of its kind on the East Coast of the United States. The potential risks posed by this facility to the environment, economy, safety, security, accessibility, and quality of life for the residents of Searsport, and the entire Penobscot Bay region, are likewise unprecedented. Accordingly, DCP has a greater burden of demonstrating that its proposed facility will not threaten the health, safety and welfare of Searsport and the entire Penobscot Bay community. Furthermore, the SPB has a greater obligation to determine whether *any* LPG facility can be safely built and operated within the limits of Searsport’s existing public safety personnel, training and infrastructure, and, because this facility has a regional impact, the SPB must also consider whether the adverse impacts of this facility on the Penobscot Bay region outweigh any possible benefits this facility offers Searsport.

Pursuant to the Searsport Land Use and Site Plan Review Ordinances, the burden of proof is at all times placed on the applicant and the applicant has the express responsibility of paying, in advance, for *independent* consultants to report to the SPB and facilitate a thorough assessment of the risks and benefits of a proposed project. *See, e.g., Land* § V (“In all instances, the burden of proof shall be upon the applicant.”). As noted in the Site Review Ordinance,

When the Planning Board determines it is necessary, it may, after notification to, and at the expense of the applicant, employ one or more independent consultants. The estimated costs of such consultants must be

deposited with the Town of Searsport prior to employing any independent consultant. Any money not spent must be reimbursed to the applicant. If the cost of the review exceeds the amount deposited, the applicant must deposit additional funds with the Town of Searsport before the Site Plan approval may be granted.

Site § V.C.2.

Consistent with standard government contracting procedures, the selection of consultants to perform these evaluations should be open to the public, subject to a competitive and open selection process, independent of any influence by DCP or its counsel, and devoid of any prior affiliation with DCP. Consultants that have worked for or who have done prior reports or evaluations for DCP or its parent company, ConocoPhillips, should be disqualified from participating in this process.

Because this proposed facility involves storing and transporting an extremely dangerous substance capable of resulting in a catastrophic accident, the Board must carefully evaluate the publicly borne, public safety costs and resources required to operate and support a facility of this unprecedented size and nature. Given the magnitude of this task, the Board should exercise its authority to retain independent consultants at the expense of the applicant. *Site § V.C.2.* Such independent analyses are essential to permit the Board to perform its duties and should include:

- Public safety and security evaluation to determine the fire safety personnel and equipment, emergency medical resources, and security assets that would be required to safely and securely operate the proposed facility and respond to a worst case scenario emergency, including a thorough review of the resources required to maintain an existing facility of similar size and scale, such as the LPG terminal and bulk storage tank facility in Tampa, Florida;¹⁴
- Evaluation of the existing emergency response infrastructure and resources currently available *in Searsport* to determine if adequate resources exist to safely and securely operate the proposed facility and respond to a worst case scenario emergency without resorting to use of mutual-aid agreements to supplement inadequate public safety assets in Searsport. **If the emergency resources of surrounding communities are considered in evaluating the current resources available for response to an emergency, those communities must be afforded the opportunity to weigh in on whether they consent to the commitment of their limited public safety resources to respond to an LPG facility emergency;**¹⁵

¹⁴ Such an assessment must consider the resources needed to safely operate the Tampa, Florida facility as well as analogous LNG facilities, including the number of and training for fire, EMT and police personnel, ambulances, morgue, and hospital facilities.

¹⁵ *See, e.g.,* letter from Islesboro Selectboard seeking opportunity to comment to the SPB regarding the proposed use of mutual aid agreements to meet public safety criteria and to protect the public health and welfare.

- Assessment of the costs of upgrading and maintaining existing infrastructure (including: roads, water, fire safety, law enforcement, emergency response training etc.) and increasing the number of full time municipal personnel and their training and equipment, to handle the added burdens created by siting this LPG facility at Mack Point. In addition, the study must assess the cost to designate and mark an alternative to the Route 1 corridor for access of emergency vehicles or for evacuation of townspeople, schools and visitors;¹⁶
- Assessment of the need for and the safest configuration of an LPG facility at Mack Point – including making a determination whether *any* LPG storage and import facility can be safely constructed at this location given the proximity to population centers and the variety of public and private uses in the area – and determining if a cryogenic tank increases or decreases the threat to local populations of a catastrophic incident at this facility;¹⁷
- Study of the impact of the proposed increased truck traffic, especially heavy-duty hazardous materials trucks, on the integrity of the roads in Searsport and the surrounding communities and on tourism;¹⁸
- Analysis of the unprecedented level of exterior lighting that is proposed, which will adversely impact the environment and quality of life and health of residents and guests alike in Searsport and communities in and around the Bay.
- Evaluation of the noise and emissions that the proposed facility will likely generate;
- Study of the economic impact (positive and/or adverse) of this proposed facility on the

¹⁶ A determination needs to be made as to whether a volunteer fire fighting force has the training and manpower and equipment required to respond to emergencies at a facility containing the combination of hazardous materials that Mack Point will contain if this proposed facility is built. If a volunteer force is not adequate for such a daunting task, the cost that a full-time, adequately trained and equipped force would impose on the citizens of Searsport must be determined by the SPB now, prior to granting a permit to DCP. The significant cost of such a radical change in the public safety structure and needs in Searsport would far exceed the anticipated tax revenues that DCP's facility would bring to Searsport, effectively forcing Searsport taxpayers (and possibly the surrounding communities through the mutual-aid agreement) to subsidize DCP. This is why the ordinances require that this analysis must be done by the SPB prior to approval of any permit.

¹⁷ The SPB has the duty to place any and all necessary limits on the construction of any LPG facility to ensure that the facility built is the *safest* possible design *not the most cost efficient* design for the applicant. This includes evaluating the potential public risk created by DCP's determination to forgo installation of back-up electrical generation for the cryogenic refrigeration system in order to avoid having to permit (and reduce the impact of) additional air emissions.

¹⁸ This is particularly necessary after MDOT failed to secure a federal grant to upgrade the roads and the Legislature failed to provide the needed funds. Mandating an annual contribution for road maintenance from DCP and an up-front payment to fund the upgrade that the Legislature failed to pay should be evaluated as preconditions for granting this permit.

existing regional industries, especially: tourism, real estate, and fishing;¹⁹ and

- A scale model of the entire proposed facility sufficient to provide the SPB and residents with a realistic, real life simulation of the proposed facility in comparison to existing conditions.²⁰

TBNT acknowledges that this is a substantial list. However, it is fully commensurate with the size, scale, and nature of the project and the potentially significant impacts it will have on the lives and livelihoods of everyone who lives in or visits Searsport and the Penobscot Bay region. The Land Use and Site Plan Review Ordinances place the responsibility on the SPB to conduct this assessment *now*, prior to approval of any permit. Failure to assess the impact of this facility on the health, safety and welfare of the community would constitute an abdication of the most fundamental responsibility that the SPB has under these ordinances. Without this information, it is impossible to make determinations regarding compliance with Land Use standards related to protection of the public welfare; balancing of property values; promotion of community development; protection of special, natural and historic areas; and the fiscal impact on the town; or the site plan standards related to preservation of the landscape; the adequacy of municipal services or adverse effects to scenic character, special natural areas, historic districts and traffic congestion.²¹

Additionally, the SPB must consider and allow for comment regarding regional impacts. Pursuant to the purposes of the Searsport Land Use and Site Plan Review Ordinances, the Searsport Planning Board (“SPB”) is required to protect the “general health, safety and welfare of the community.”²² Given the scale of this project, “community” should, does and must

¹⁹ DCP has submitted an expert report indicating that 12 full-time jobs will be created by this facility; however, how many jobs will be lost in the existing industries as a result of this facility being constructed – will tourism be lost leading to a loss of jobs in industries dependent on tourism? Will the construction of this tank diminish the property values or damage the marketability of existing properties in and around Searsport?

²⁰ Any suggestion by counsel that this should not be requested from DCP because it was not required of prior applicants is patently absurd. No other applicant has ever sought to construct a facility of the height, size, scale and public safety threat that DCP proposes. With an unprecedented request, come unprecedented obligations to fully illustrate and disclose to the public the full range of potential impacts.

²¹ In Maine, private property rights are *not absolute* and are subject to the implied condition that property shall not be used for any purpose that injures or impairs public health, morals, safety, order or welfare. *Town of Windham v. LaPointe*, 308 A.2d 286 (Me. 1973). This principle forms the foundation of all land use statutes and ordinances in this State. The Searsport Land Use and Site Plan Review Ordinances exist to protect these public interests.

²² Searsport Site Plan Review Ordinance, Section 1, Purpose, p.1; *see also*, Searsport Land Use Ordinance, Section I.C.2, p. 1 (“PROTECTION OF THE GENERAL WELFARE: To assure the comfort, convenience, safety, health and welfare of the present and future inhabitants of the Town of Searsport”)

include the broader Midcoast region that will be impacted by this proposed facility.

IV. PUBLIC PARTICIPATION IS CRITICAL TO THE INTEGRITY OF THE SPB REVIEW PROCESS AND TO THE PRESERVATION OF THE DUE PROCESS AND PROPERTY RIGHTS OF ALL IMPACTED PARTIES

The barring by the SPB of public comment during the review for completeness of the application is neither helpful nor productive and raises the greater likelihood of an appeal. There should be time allowed for pertinent input from the public and reasonable time constraints can be set by the planning board; but to disallow public comment flies in the face of due process. We request the opportunity for members of the public to address the Board regarding the completeness determination, hiring of experts, and additional information requirements, consistent with Section 1.C.9 of the Land Use Standard.

Additionally, TBNT requests that the SPB provide a public hearing. To date, state and federal regulatory agencies have refused to hold a single public hearing to consider the concerns of adversely impacted property and business owners. TBNT requests that this Board provide for public hearings to allow for comment by all interested parties (including non-residents and neighboring municipalities whose citizens and resources will be adversely impacted by construction of this facility) to present evidence regarding potential impacts.

V. CORRECTIONS TO THE OFFICIAL COPY OF THE SITE PLAN ORDINANCES

Finally, TBNT questions the removal of the phrase, "The Planning Board may waive items not applicable to the development or may require information not specified below but which is pertinent to the development," from the Searsport Site Plan Review Ordinance sections V.A and V.B. This provision was adopted January 31, 2006, yet is inexplicably omitted from the March 10, 2012 version posted online. This error should be corrected, and this provision should be recognized as an additional basis to require additional information from the developer.

Your consideration of the foregoing comments is appreciated.

Respectfully submitted, June 4, 2012



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