

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

\_\_\_\_\_  
UNITED STATES OF AMERICA, and )  
STATE OF MAINE, )

Plaintiffs, )

v. )

SMITH COVE PRESERVATION TRUST, )

Defendant. )  
\_\_\_\_\_

Civil Action No. \_\_\_\_\_

**CONSENT DECREE**

Callahan Mine Superfund Site Consent Decree  
Page 2

**TABLE OF CONTENTS**

I.	BACKGROUND .....	3
II.	JURISDICTION .....	6
III.	PARTIES BOUND .....	6
IV.	DEFINITIONS.....	7
V.	STATEMENT OF PURPOSE AND GENERAL PROVISIONS .....	11
VI.	PROVISION OF IN-KIND SERVICES.....	11
VII.	ACCESS AND INSTITUTIONAL CONTROLS .....	11
VIII.	FAILURE TO COMPLY WITH CONSENT DECREE .....	16
IX.	COVENANTS NOT TO SUE BY PLAINTIFFS .....	18
X.	RESERVATION OF RIGHTS BY PLAINTIFFS .....	19
XI.	COVENANT NOT TO SUE BY SETTLING DEFENDANT .....	22
XII.	EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION .....	23
XIII.	RETENTION OF RECORDS .....	25
XIV.	NOTICES AND SUBMISSIONS .....	27
XV.	COMMUNITY RELATIONS .....	28
XVI.	RETENTION OF JURISDICTION.....	28
XVII.	INTEGRATION/APPENDICES .....	29
XVIII.	LODGING AND OPPORTUNITY FOR PUBLIC COMMENT .....	29
XIX.	SIGNATORIES/SERVICE.....	30
XX.	FINAL JUDGMENT .....	31

Callahan Mine Superfund Site Consent Decree  
Page 3

## I. BACKGROUND

A. The United States of America (“United States”), on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), together with the State of Maine (the “State”) and the Maine Department of Environmental Protection (“Maine DEP”), filed a joint complaint in this matter against Smith Cove Preservation Trust (“Settling Defendant”).

B. The United States and the State in their joint complaint seek, *inter alia*, reimbursement of response costs incurred or to be incurred for response actions taken or to be taken at or in connection with the release or threatened release of hazardous substances at the Callahan Mine Superfund Site in Brooksville, Hancock County, Maine (“Site”), together with accrued interest, pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. § 9607.

C. The United States in the joint complaint further seeks performance of response actions at the Site, consistent with the National Contingency Plan, 40 C.F.R. Part 300, as amended (“NCP”), pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606.

D. The State in the joint complaint further seeks a declaration of Settling Defendant’s liability pursuant to the Maine Uncontrolled Hazardous Substance Sites Law, 38 M.R.S.A. §§ 1361-1371.

E. By entering into this Consent Decree, Settling Defendant does not admit any liability to Plaintiffs arising out of the transactions or occurrences alleged in the joint complaint, nor does it acknowledge that the release or threatened release of hazardous substances at or from the Site constitutes an imminent and substantial endangerment to the public health or welfare or the environment.

Callahan Mine Superfund Site Consent Decree  
Page 4

F. The United States and the State have reviewed the Financial Information and Insurance Information submitted by Settling Defendant to determine whether Settling Defendant is financially able to pay response costs incurred and to be incurred at the Site. Based upon this Financial Information and Insurance Information, the United States and the State have determined that Settling Defendant has limited financial ability to pay for response costs incurred and to be incurred at the Site.

G. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the *Federal Register* on September 5, 2002, 67 Fed. Reg. 56757.

H. In response to a release or a substantial threat of a release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and will undertake additional response actions in the future. EPA began a Remedial Investigation and Feasibility Study (“RI/FS”) for the Site in 2004 pursuant to 40 C.F.R. § 300.430. In 2005, EPA signed an Administrative Order by Consent to allow the State of Maine to complete the RI/FS (“RI/FS AOC,” U.S. EPA Docket No. CERCLA-01-2005-0022).

I. The Record of Decision for Operable Unit 1 (“OU1 ROD”) at the Site was issued by EPA on September 30, 2009. The OU1 ROD provides for *inter alia* capping of the tailings impoundment; off-site disposal of polychlorinated biphenyl (“PCB”)-contaminated soil; subaqueous disposal of source area material, residential use area soil and contaminated sediment in a confined aquatic disposal (“CAD”) cell; and implementation of institutional controls to prevent disturbance to the components of the remedy and long-term monitoring of compliance

Callahan Mine Superfund Site Consent Decree  
Page 5

with the restrictions. After the OU1 ROD was issued, in 2010, EPA divided the work covered by the OU1 ROD into two separate operable units – OU1 and OU3. The cleanup actions relating to the residential area soil and the PCB-contaminated soil remained as part of OU1, while the remaining components of the OU1 ROD were designated to be performed as part of OU3. EPA issued an Explanation of Significant Differences on September 30, 2013 documenting the above-described changes to the OU1 ROD.

J. In August 2010, EPA entered into a Settlement Agreement with the Maine Department of Transportation (“Maine DOT”) for the implementation of the remedial design of OU1 and OU3. The OU1 remedial design was completed in September 2010, the tailings impoundment component of the OU3 remedial design was completed in August 2015, while the sediment, waste rock, and CAD cell components of the OU3 remedial design are ongoing.

K. Also in August 2010, EPA and Maine DEP entered into a State Superfund Contract for the OU1 ROD selected remedy, including both OU1 and OU3. In September 2010, EPA entered into a Cooperative Agreement to allow Maine DEP to become the lead for the implementation of OU1. The OU1 remedial action began in September 2010, and the cleanup of the residential use area was completed in 2010, while the cleanup of the PCB contaminated soil was completed in 2013.

L. At the time of the OU1 ROD in 2009, EPA determined that additional investigation would be necessary to finalize a cleanup plan for the groundwater and the waste/soil located outside of the OU1 ROD defined source areas and created Operable Unit 2 (“OU2”). The OU2 RI/FS will continue until sufficient data are collected to develop a cleanup plan for those areas, and is being performed by the State of Maine in accordance with the RI/FS AOC. However, an

Callahan Mine Superfund Site Consent Decree  
Page 6

Early Action Memorandum for OU2 was issued on September 30, 2009 and provides for the implementation of land use restrictions at the Site to prevent the installation of water supply wells and to prevent residential development.

M. The United States, the State, and Settling Defendant agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will expedite cleanup of the Site and will avoid prolonged and complicated litigation among the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED.

## **II. JURISDICTION**

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1367, and 42 U.S.C. §§ 9606, 9607 and 9613(b) and also has personal jurisdiction over Settling Defendant and pendent subject matter jurisdiction over the claims arising under the laws of the State. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendant waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District. Settling Defendant consents to and shall not challenge entry or the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

## **III. PARTIES BOUND**

2. This Consent Decree is binding upon the United States, upon the State, and upon Settling Defendant and its heirs, successors and assigns. Any change in ownership or corporate

Callahan Mine Superfund Site Consent Decree  
Page 7

or other legal status, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendant under this Consent Decree, except to the extent provided by Paragraph 11.

#### IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

a. "Borrow Material" shall mean earthen material, such as rock and/or soil encompassing overburden material such as topsoil, sand, silt, clay, gravel, cobbles, and boulders, that is obtained from a location for the sole purpose of providing materials to perform any of the response actions at the Site and that meets the specifications included in EPA or Maine DEP approved design and planning documents, construction specifications and work plans for any such response actions. Borrow Material does not include "Spoils" as defined herein.

b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

c. "Consent Decree" shall mean this Consent Decree and any appendix attached hereto. In the event of conflict between this Consent Decree and any appendix, this Consent Decree shall control.

d. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or state or federal holiday,

Callahan Mine Superfund Site Consent Decree  
Page 8

the period shall run until the close of business (5:00 P.M.) of the next working day.

e. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

f. "Effective Date" shall be the date upon which this Consent Decree is entered by the Court as recorded on the Court docket, or, if the Court instead issues an order approving the Consent Decree, the date such order is recorded on the Court docket.

g. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

h. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

i. "Financial Information and Insurance Information" shall mean those financial documents identified in Appendix C.

j. "Institutional Controls" shall mean the Proprietary Control and state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices that: (i) limit land, water and/or resource use to minimize the potential for human exposure to Waste Materials at the Site; (ii) limit land, water and/or resource use to implement, ensure non-interference with, or ensure the protectiveness of the remedial action; and/or (iii) provide information intended to modify or guide human behavior at the Site.

k. "Maine DEP" shall mean the Maine Department of Environmental Protection and any successor departments or agencies of the State.

l. "OUI ROD" shall mean the EPA Record of Decision for Operable Unit 1, signed on September 30, 2009 by the Director, Office of Site Remediation and Restoration, EPA Region



Callahan Mine Superfund Site Consent Decree  
Page 9

1.

m. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

n. "Parties" shall mean the United States, the State of Maine, and the Settling Defendant.

o. "Plaintiffs" shall mean the United States and the State.

p. "Property" shall mean certain lots or parcels of land situated in the town of Brooksville, Hancock County, Maine, with improvements thereon, bounded and described in a deed from Robert S. Mant to Smith Cove Protection Association, dated December 4, 1987, and recorded in the Hancock County Registry of Deeds in Book 1671, Page 326. A map depicting the Property is attached hereto as Appendix A.

q. "Proprietary Control" shall mean an environmental covenant pursuant to the Maine Uniform Environmental Covenants Act, 38 M.R.S.A. § 3001 *et seq.*, that runs with the land and (i) limits land, water, or resource use and provides access rights and (ii) is created by an instrument that is recorded by the owner in the Hancock County Registry of Deeds. A copy of the Proprietary Control (Declaration of Environmental Covenant) executed by Settling Defendant is attached hereto as Appendix B.

r. "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. § 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).

s. "Remedial Action" or "Remedy" shall mean the response actions at the Site selected by EPA pursuant to the OUI ROD, as modified, the OU2 Early Action Memorandum, and subsequent decision documents issued in accordance with 40 C.F.R. § 300.430(f).

Callahan Mine Superfund Site Consent Decree  
Page 10

- t. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.
- u. "Settling Defendant" shall mean Smith Cove Preservation Trust (*f.k.a.* Smith Cove Protective Association, *a.k.a.* Smith Cove Protection Association).
- v. "Site" shall mean the Callahan Mine Superfund Site, as described in the OUI ROD, located in Brooksville, Hancock County, Maine, and including the Property.
- w. "Spoils" shall mean any material, excluding Borrow Material, generated, removed, excavated, or otherwise obtained as a result of the implementation of any response action at the Site. Any trees that must be removed to implement the response actions at the Site, including trees removed for activities relating to the excavation of Borrow Material, shall be managed as Spoils.
- x. "State" shall mean the State of Maine, including its departments, agencies and instrumentalities.
- y. "Transfer" shall mean to sell, assign, convey, lease, mortgage or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.
- z. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities, including EPA.
- aa. "Waste Material" shall mean (i) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (ii) any "pollutant or contaminant" under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (iii) any "solid waste" under Section 1004(27) of RCRA, 42

Callahan Mine Superfund Site Consent Decree  
Page 11

U.S.C. § 6903(27); and (iv) any “hazardous substance” under the Maine Uncontrolled Hazardous Substance Sites Law, 38 M.R.S.A. § 1362(1).

**V. STATEMENT OF PURPOSE AND GENERAL PROVISIONS**

4. By entering into this Consent Decree, the mutual objective of the Parties is to protect public health or welfare or the environment by the implementation by Settling Defendant of its obligations under this Consent Decree and to avoid difficult and prolonged litigation by allowing Settling Defendant to provide valuable consideration to resolve its alleged civil liability under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, and under the Maine Uncontrolled Hazardous Substance Sites Law, 38 M.R.S.A. §§ 1361-1371.

**VI. PROVISION OF IN-KIND SERVICES**

5. Settling Defendant gives to EPA and Maine DEP permission to remove and use, without financial charge, Borrow Material, without limitation, located on the real property owned or controlled by Settling Defendant located within the Site, including the Property, for use in implementing response actions at the Site. These response actions include, but are not limited to, the Remedial Action.

6. Spoils excavated from the Site, including the Property, may be placed in any location, including any location within the Property, that EPA and/or Maine DEP, within their sole discretion, determines is necessary to perform any response action taken at the Site.

**VII. ACCESS AND INSTITUTIONAL CONTROLS**

7. With respect to the Site, or any other property owned or controlled by Settling Defendant, where access and/or land/water use restrictions are needed to implement and maintain the effectiveness of response activities at the Site, including the Property:

Callahan Mine Superfund Site Consent Decree  
Page 12

- a. Settling Defendant shall, commencing on the date of lodging of this Consent Decree, provide the United States and the State, and their representatives, contractors, and subcontractors, with access at all reasonable times for the purpose of conducting any activity relating to response action at the Site, including, but not limited to, the following activities:
- i. Monitoring, investigation, removal, remedial or other activities at the Site;
  - ii. Verifying any data or information submitted to the United States or the State;
  - iii. Conducting investigations relating to contamination at or near the Site;
  - iv. Obtaining samples;
  - v. Assessing the need for, planning, or implementing response actions at or near the Site;
  - vi. Assessing Settling Defendant's compliance with this Consent Decree;
  - vii. Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Consent Decree;
  - viii. Designing, implementing, monitoring, and performing operation and maintenance of any response actions at the Site;
  - ix. Excavating and permanently removing Borrow Material, and excavating and permanently placing Spoils, consistent with Section VI (Provision of In-Kind Services) of this Consent Decree; and
  - x. Implementing, monitoring, maintaining, reporting on and enforcing any Institutional Controls.

Callahan Mine Superfund Site Consent Decree  
Page 13

b. Commencing on the date of lodging of this Consent Decree, Settling Defendant shall not use the Site, or such other real property, including the Property, in any manner that EPA or Maine DEP determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Materials or interfere with or adversely affect the implementation, integrity, or protectiveness of the removal or remedial measures to be performed at the Site.

These restrictions shall include, but not be limited to:

i. Not providing public access to third parties without notice and authorization from EPA and Maine DEP during EPA's and Maine DEP's implementation of response actions, including monitoring, operation and maintenance of any response actions;

ii. Avoiding any areas where EPA or Maine DEP is implementing a response action, including monitoring, operation and maintenance of any response actions, unless notice is provided to EPA and Maine DEP in advance and EPA and Maine DEP agree that the presence of Settling Defendant is acceptable; and

iii. Avoiding any activities that would interfere with or compromise the integrity of the land that is subject to response actions, including monitoring, operation and maintenance of any response actions, including, but not limited to: constructing any buildings or facilities; subdivision; drilling well(s) for drinking water; and using or disturbing the groundwater system; and

c. Settling Defendant shall:

i. Within 30 days of the Effective Date, record in the Hancock County Registry of Deeds a Proprietary Control (referred to under Maine law as an "Environmental Covenant") that: (a) grants a right of access to conduct any activity regarding the Consent Decree

Callahan Mine Superfund Site Consent Decree  
Page 14

including, but not limited to, those activities listed in Paragraph 7(a) of this Consent Decree, and (b) grants the right to enforce the land use restrictions set forth in Paragraph 7(b) of this Consent Decree, including, but not limited to, the specific restrictions listed therein.

A. The Proprietary Control grants access rights to the State and the rights to enforce the land use restrictions to Maine DEP on behalf of the State. The Proprietary Control includes a designation of EPA as an “agency,” as defined by 38 M.R.S.A. § 3002(2) of the Maine Uniform Environmental Covenants Act, allowing EPA to enforce the Proprietary Control without acquiring an interest in real property, as well as, *inter alia*, providing EPA and Maine DEP with access to the Property.

B. The Proprietary Control, a copy of which is attached hereto as Appendix B, that is enforceable under state law, was executed by Settling Defendant after providing EPA and Maine DEP a current title insurance commitment or other evidence of title acceptable to EPA, which shows title to the land affected by the Proprietary Control to be free and clear of all prior liens and encumbrances (except when EPA and Maine DEP waive the release or subordination of such prior liens or encumbrances or when, despite best efforts, Settling Defendant is unable to obtain release or subordination of such prior liens or encumbrances).

ii. Within 30 days of recording the Proprietary Control, provide EPA and Maine DEP with a final title insurance policy, or other final evidence of title acceptable to EPA and Maine DEP, and a certified copy of the original recorded Proprietary Control showing the clerk’s recording stamps.

Callahan Mine Superfund Site Consent Decree  
Page 15

8. For purposes of Paragraph 7, “best efforts” includes the payment of reasonable sums of money to obtain an agreement to release or subordinate a prior lien or encumbrance. If EPA determines that evidence of title provided in accordance to Paragraph 7(c)(ii) above shows that Settling Defendant is unable to obtain agreements from the holders of prior liens or encumbrances to release or subordinate such liens or encumbrances to the Proprietary Control, following EPA’s determination, Settling Defendant shall promptly provide the United States, EPA, and Maine DEP in writing a summary of the steps that Settling Defendant has taken to attempt to obtain such agreements. The United States may, as it deems appropriate, assist Settling Defendant in obtaining the release or subordination of a prior lien or encumbrance.

9. Settling Defendant shall not Transfer its Property or any portion thereof without first securing EPA’s and the State’s approval of, and transferee’s consent to, an agreement that: (i) is enforceable by the United States and the State; and (ii) requires the transferee to provide access to and to refrain from using the Property or any portion thereof to the same extent as is provided under Paragraph 7.

10. Notice to Successors-in-Title. Settling Defendant shall, prior to entering into a contract to Transfer its Property or any portion thereof, or 60 days prior to Transferring its Property or any portion thereof, whichever is earlier:

a. Notify the proposed transferee that EPA and the State performed a response action regarding the Site; and

b. Notify EPA and the State of the name and address of the proposed transferee, and provide EPA and the State with a copy of the above notice that it provided to the proposed transferee.

Callahan Mine Superfund Site Consent Decree  
Page 16

11. In the event of any Transfer of the Property or any portion thereof, unless the United States and the State otherwise consent in writing, Settling Defendant shall continue to comply with its obligations under the Consent Decree, except for the prospective obligations in Paragraph 7 to the extent they require Settling Defendant to provide access to, or to abide by any land, water, or other resource use restrictions regarding the Property or portion thereof that was Transferred.

12. If EPA determines that Institutional Controls in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls are needed, Settling Defendant shall cooperate with EPA's and the State's efforts to secure and ensure compliance with such governmental controls.

13. Notwithstanding any provision of this Consent Decree, the United States and the State retain all of their access authorities and rights, as well as all of their rights to require Institutional Controls, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable federal or state statute or regulations.

**VIII. FAILURE TO COMPLY WITH CONSENT DECREE**

14. Stipulated Penalty.

a. If Settling Defendant fails to comply with Section VI (Provision of In-Kind Services) and Section VII (Access and Institutional Controls) of this Consent Decree, Settling Defendant shall be in violation of this Consent Decree and shall pay to EPA, as a stipulated penalty, five thousand dollars (\$5,000.00) per violation per day of such noncompliance.

b. Stipulated penalties are due and payable within 30 days of the date of written demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall



Callahan Mine Superfund Site Consent Decree

Page 17

be identified as “stipulated penalties” and shall be made by official bank check made payable to “EPA Hazardous Substance Superfund.” The check, or letter accompanying the check, shall reference the name and address of Settling Defendant, the Site name, the EPA ID # MED980524128, Site ID # 0101028, DOJ Case Number 90-11-3-09953, the Consolidated Debt Collection System (“CDCS”) Number, and the civil action number for this action, and shall be sent to:

U.S. Environmental Protection Agency  
Superfund Payments  
Cincinnati Finance Center  
PO Box 979076  
St. Louis, MO 63197-9000

c. At the time of each payment, Settling Defendant shall send notice that payment has been made to EPA and DOJ in accordance with Section XIV (Notices and Submissions), and to the EPA Cincinnati Finance Office by email at [acctsreceivable.cinwd@epa.gov](mailto:acctsreceivable.cinwd@epa.gov), or by mail to:

EPA Cincinnati Finance Office  
26 Martin Luther King Drive  
Cincinnati, OH 45268

Such notice shall reference the name and address of Settling Defendant, the Site name, the EPA ID # MED980524128, Site ID # 0101028, DOJ Case Number 90-11-3-09953, the Consolidated Debt Collection System (“CDCS”) Number, and the civil action number for this action.

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Defendant of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after performance is due or the day a violation occurs, and shall continue to accrue through the final day of correction of the noncompliance or completion of the activity. Nothing in this Consent Decree shall prevent the

Callahan Mine Superfund Site Consent Decree  
Page 18

simultaneous accrual of separate penalties for separate violations of this Consent Decree.

15. If the United States or the State brings an action to enforce this Consent Decree, Settling Defendant shall reimburse the United States and the State for all costs of such action, including but not limited to costs of attorney time.

16. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiffs by virtue of Settling Defendant's failure to comply with the requirements of this Consent Decree.

17. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Settling Defendant from performance of any other requirements of this Consent Decree.

#### **IX. COVENANTS NOT TO SUE BY PLAINTIFFS**

18. Covenant Not to Sue by United States. Except as specifically provided in Section X (Reservation of Rights by Plaintiffs), the United States covenants not to sue or to take administrative action against Settling Defendant pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), with regard to the Site. With respect to present and future liability, this covenant shall take effect upon the Effective Date. This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Consent Decree, including those identified in Section VI (Provision of In-Kind Services), Section VII (Access and Institutional Controls), and Section VIII (Failure to Comply with Consent Decree). This covenant is also conditioned upon the veracity and completeness of the Financial Information and the Insurance Information provided to EPA and Maine DEP by

Callahan Mine Superfund Site Consent Decree  
Page 19

Settling Defendant and the financial, insurance, and indemnity certification made by Settling Defendant in Paragraph 34. This covenant not to sue extends only to Settling Defendant and does not extend to any other person.

19. Covenant Not to Sue by the State of Maine. Except as set forth in Section X (Reservation of Rights by Plaintiffs), the State of Maine covenants not to sue or take administrative action against Settling Defendant at the Site pursuant to Sections 106 and 107(a) of CERCLA or state law. With respect to present and future liability, this covenant shall take effect upon the Effective Date. This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Consent Decree, including those identified in Section VI (Provision of In-Kind Services), Section VII (Access and Institutional Controls), and Section VIII (Failure to Comply with Consent Decree). This covenant is also conditioned upon the veracity and completeness of the Financial Information and the Insurance Information provided to EPA and Maine DEP by Settling Defendant and the financial, insurance, and indemnity certification made by Settling Defendant in Paragraph 34. This covenant not to sue extends only to Settling Defendant and does not extend to any other person or entity.

#### **X. RESERVATION OF RIGHTS BY PLAINTIFFS**

20. Reservation of Rights by United States. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all matters not expressly included within the Covenant Not to Sue by United States in Paragraph 18. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendant with respect to:

Callahan Mine Superfund Site Consent Decree  
Page 20

a. liability for failure of Settling Defendant to meet a requirement of this Consent Decree;

b. criminal liability;

c. liability for damages for injury to, destruction of, or loss of natural resources;

d. liability based on the ownership or operation of the Site by Settling Defendant when such ownership or operation commences after signature of this Consent Decree;

e. liability, based upon Settling Defendant's transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of a Waste Material at or in connection with the Site, after signature of this Consent Decree by Settling Defendant; and

f. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site.

21. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action seeking relief other than as provided in this Consent Decree, if the Financial Information or the Insurance Information provided by Settling Defendant, or the financial, insurance, or indemnity certification made by Settling Defendant in Paragraph 34, is false or, in any material respect, inaccurate.

22. Reservation of Rights by the State of Maine. The State of Maine reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all matters not expressly included within the Covenant Not to Sue by the State of Maine in

Callahan Mine Superfund Site Consent Decree  
Page 21

Paragraph 19. Notwithstanding any other provision of this Consent Decree, the State of Maine reserves all rights against Settling Defendant with respect to:

- a. liability for failure of Settling Defendant to meet a requirement of this Consent Decree;
- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources;
- d. liability based on the ownership or operation of the Site by Settling Defendant when such ownership or operation commences after signature of this Consent Decree;
- e. liability, based upon Settling Defendant's transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of a Waste Material at or in connection with the Site, after signature of this Consent Decree by Settling Defendant; and
- f. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site.

23. Notwithstanding any other provision of this Consent Decree, the State of Maine reserves, and this Consent Decree is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action seeking relief other than as provided in this Consent Decree, if the Financial Information or the Insurance Information provided by Settling Defendant, or the financial, insurance, or indemnity certification made by Settling Defendant in Paragraph 34, is false or, in any material respect, inaccurate.

Callahan Mine Superfund Site Consent Decree  
Page 22

**XI. COVENANT NOT TO SUE BY SETTLING DEFENDANT**

24. Settling Defendant covenants not to sue and agrees not to assert any claims or causes of action against the United States or the State, or their contractors or employees, with respect to the Site and this Consent Decree, including but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the State Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, state law, or at common law; or

c. any claims under Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, and any claims under the Maine Uncontrolled Hazardous Substance Site Law, 38 M.R.S.A. §§ 1361-1371, relating to the Site.

25. Except as provided in Paragraph 27 (Waiver of Claims) and Paragraph 31 (Res Judicata and Other Defenses), these covenants not to sue shall not apply in the event the United States or the State brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 20 and 22, but only to the extent that Settling Defendant's claims arise from the same response action or response costs that the United States or the State is seeking pursuant to the applicable reservation.

Callahan Mine Superfund Site Consent Decree  
Page 23

26. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

27. Settling Defendant agrees not to assert any CERCLA claims or causes of action and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that it may have for all matters relating to the Site or against any other person who is a potentially responsible party under CERCLA at the Site. This waiver shall not apply with respect to any defense, claim, or cause of action that Settling Defendant may have against any person if such person asserts a claim or cause of action relating to the Site against such Settling Defendant.

## **XII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION**

28. Except as provided in the preceding Paragraph 27, nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Except as provided in Paragraph 27, each of the Parties expressly reserves any and all rights (including, but not limited to, under Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Consent Decree diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2). Nothing in this Consent Decree diminishes the right of the State of Maine pursuant to Section 113(f)(1)-(3)

Callahan Mine Superfund Site Consent Decree  
Page 24

of CERCLA, 42 U.S.C. § 9613(f)(1)-(3), and 38 M.R.S.A. § 1367, to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2) of CERCLA or 38 M.R.S.A. § 348(4).

29. The Parties agree, and by entering this Consent Decree this Court finds, that this settlement constitutes a judicially-approved settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and 38 M.R.S.A. § 348(4), and that Settling Defendant is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) of CERCLA and 38 M.R.S.A. § 348(4) or as may be otherwise provided by law, for “matters addressed” in this Consent Decree. The “matters addressed” in this Consent Decree are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States, the State, or any other person; provided, however, that if the United States or the State exercises rights under reservations in Paragraphs 20 and 22 (Reservations of Rights by United States and State of Maine), other than in Paragraphs 20(a) and 22(a) (claims for failure to meet a requirement of the Decree) or Paragraphs 20(b) and 22(b) (criminal liability), the “matters addressed” in this Consent Decree will no longer include those response costs or response actions that are within the scope of the exercised reservation.

30. Settling Defendant shall, with respect to any suit or claim brought by it for matters related to this Consent Decree, notify EPA, DOJ, and the State in writing no later than 60 days prior to the initiation of such suit or claim. Settling Defendant shall, with respect to any suit or claim brought against it for matters related to this Consent Decree, notify EPA, DOJ, and the State in writing within 10 days of service of the complaint or claim upon it. In addition, Settling



Callahan Mine Superfund Site Consent Decree  
Page 25

Defendant shall notify EPA, DOJ and the State within 5 days of service or receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

31. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenants Not to Sue by Plaintiffs set forth in Section IX.

### **XIII. RETENTION OF RECORDS**

32. Until 10 years after the entry of this Consent Decree or one year after the Transfer of its Property, Settling Defendant shall preserve and retain all non-identical copies of all records, reports, or information (hereafter referred to as "Records") (including Records in electronic form) now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or the liability of any person under CERCLA or Maine law with respect to the Site, regardless of any corporate retention policy to the contrary.

33. After the conclusion of the document retention period in the preceding paragraph, Settling Defendant shall notify EPA, DOJ, and the State at least 90 days prior to the destruction of any such Records, and, upon request by EPA, DOJ or the State, Settling Defendant shall deliver any such records to EPA and/or Maine DEP. Settling Defendant may assert that certain

Callahan Mine Superfund Site Consent Decree  
Page 26

Records are privileged under the attorney-client privilege or any other privilege recognized by federal or state law. If Settling Defendant asserts such a privilege, it shall provide Plaintiffs with the following: (a) the title of the Record; (b) the date of the Record; (c) the name, title, affiliation (*e.g.* company or firm), and address of the author of the Record; (d) the name and title of each addressee and recipient; (e) a description of the subject of the Record; and (f) the privilege asserted. If a claim of privilege applies only to a portion of a Record, the Record shall be provided to the United States and the State in redacted form to mask the privileged portion only. Settling Defendant shall retain all records that it claims to be privileged until the United States and the State have had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in Settling Defendant's favor. However, no Records created or generated pursuant to the requirements of this or any other settlement with EPA pertaining to the Site shall be withheld on the grounds that they are privileged or confidential.

34. Settling Defendant certifies that, to the best of its knowledge and belief, after thorough inquiry, it has:

a. not altered, mutilated, discarded, destroyed or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since the earlier of notification of potential liability by the United States or the State or the filing of suit against it regarding the Site, and that it has fully complied with any and all EPA and Maine DEP requests for information regarding the Site and Settling Defendant's financial circumstances, including but not limited to insurance and indemnity information, pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and 38 M.R.S.A. § 1364;

Callahan Mine Superfund Site Consent Decree  
Page 27

b. submitted to EPA and the State financial information that fairly, accurately, and materially sets forth its financial circumstances, and that those circumstances have not materially changed between the time the financial information was submitted to EPA and the State and the time Settling Defendant executes this Consent Decree; and

c. fully disclosed any information regarding the existence of any insurance policies or indemnity agreements that may cover claims relating to cleanup of the Site, and submitted to EPA upon request such insurance policies, indemnity agreements, and information.

#### **XIV. NOTICES AND SUBMISSIONS**

35. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified in this Section shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, the State, Maine DEP, and Settling Defendant, respectively.

As to the United States: Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7661  
Washington, D.C. 20044-7611  
Re: DJ # 90-11-3-09953

As to EPA: Ed Hathaway, Remedial Project Manager  
United States Environmental Protection Agency  
Office of Site Remediation & Restoration  
5 Post Office Square, Suite 100  
Mail Code OSRR07-1  
Boston, MA 02109-3912

Callahan Mine Superfund Site Consent Decree  
Page 28

As to the State: Peter B. LaFond  
Assistant Attorney General  
6 State House Station  
Augusta, ME 04333-0006

As to Maine DEP: Naji Akladiss  
Environmental Specialist III  
17 State House Station  
Augusta, ME 04333-0017

As to Settling Defendant: Smith Cove Preservation Trust  
c/o Joseph D. Lonardo  
Vorys, Sater, Seymour and Pease LLP  
1909 K Street, N.W., Suite 900  
Washington, D.C. 20006-1152

#### **XV. COMMUNITY RELATIONS**

36. If requested by EPA or the State, Settling Defendant shall participate in community relations activities. EPA will determine the appropriate role for Settling Defendant. Settling Defendant shall also cooperate with EPA and the State in providing information regarding activities at or relating to the Site. As requested by EPA or the State, Settling Defendant shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA or the State to explain activities at or relating to the Site.

#### **XVI. RETENTION OF JURISDICTION**

37. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

Callahan Mine Superfund Site Consent Decree  
Page 29

**XVII. INTEGRATION/APPENDICES**

38. This Consent Decree and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendices are attached to and incorporated into this Consent Decree: “Appendix A” is a map depicting the Property. “Appendix B” is a copy of the Proprietary Control (Declaration of Environmental Covenant) executed by Settling Defendant. “Appendix C” is a list of the financial documents submitted to EPA and Maine DEP by Settling Defendant.

**XVIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

39. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. The State may withdraw or withhold its consent to the entry of this Consent Decree if comments received disclose facts or considerations showing that the Consent Decree violates state law. The United States reserves the right to challenge in court the State withdrawal from the Consent Decree, including the right to argue that the requirements of state law have been waived, pre-empted, or otherwise rendered inapplicable by federal law. The State reserves the right to oppose the United States’ position taken in opposition to the proposed withdrawal. In addition, in the event of the United States’ withdrawal from this Consent Decree, the State reserves the

Callahan Mine Superfund Site Consent Decree  
Page 30

right to withdraw from this Consent Decree. Settling Defendant consents to the entry of this Consent Decree without further notice.

40. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

#### **XIX. SIGNATORIES/SERVICE**

41. Each undersigned representative of Settling Defendant, the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice, the Assistant Attorney General for the State of Maine, and the Commissioner for Maine DEP, certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

42. Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified Settling Defendant in writing that it no longer supports entry of the Consent Decree.

43. Settling Defendant shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of Settling Defendant with respect to all matters arising under or relating to this Consent Decree. Settling Defendant hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons. The Parties agree that Settling Defendant need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

Callahan Mine Superfund Site Consent Decree  
Page 31

**XX. FINAL JUDGMENT**

44. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between and among the United States, the State, and Settling Defendant. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS \_\_ DAY OF \_\_\_\_\_, 201\_.

\_\_\_\_\_  
United States District Judge

Callahan Mine Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States of America and State of Maine v. Smith Cove Preservation Trust*, relating to the Callahan Mine Superfund Site.

FOR PLAINTIFF UNITED STATES OF AMERICA

JOHN C. CRUDEN  
Assistant Attorney General  
United States Department of Justice  
Environment & Natural Resources Division

1/6/2017  
Date

Keith T. Tashima  
KEITH T. TASHIMA  
Senior Attorney  
United States Department of Justice  
Environment & Natural Resources Division  
Environmental Enforcement Section  
P.O. Box 7611  
Washington, DC 20044-7611  
(202) 616-9643  
keith.tashima@usdoj.gov




Callahan Mine Superfund Site Consent Decree


THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States of America and State of Maine v. Smith Cove Preservation Trust*, relating to the Callahan Mine Superfund Site.

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

9/29/16  
Date

  
\_\_\_\_\_  
H. CURTIS SPALDING  
Regional Administrator, Region I  
U.S. Environmental Protection Agency  
5 Post Office Square, Suite 100  
Boston, Massachusetts 02109-3912

9/27/16  
Date

  
\_\_\_\_\_  
MAN CHAK NG  
Senior Enforcement Counsel  
U.S. Environmental Protection Agency  
5 Post Office Square, Suite 100  
Boston, Massachusetts 02109-3912


Callahan Mine Superfund Site Consent Decree

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FOR PLAINTIFF STATE OF MAINE


JANET T. MILLS  
Attorney General

10/27/16  
Date

  
PETER B. LAFOND  
Assistant Attorney General  
Office of the Attorney General  
6 State House Station  
Augusta, Maine 04333-0006  
207-626-8511  
Peter.LaFond@maine.gov

FOR THE MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION

10/27/2016  
Date

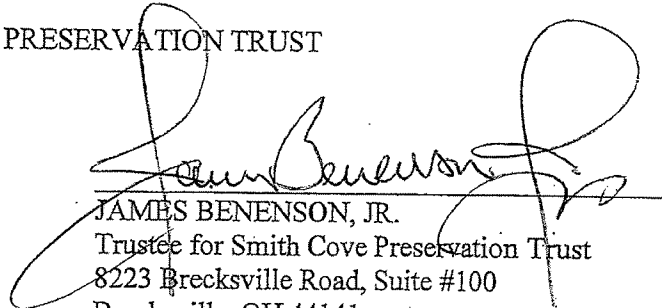
  
PAUL MERCER  
Commissioner  
Maine Department of Environmental Protection  
17 State House Station  
Augusta, Maine 04333-0017

Callahan Mine Superfund Site Consent Decree

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FOR DEFENDANT SMITH COVE PRESERVATION TRUST

9/23/16  
Date

  
\_\_\_\_\_  
JAMES BENENSON, JR.  
Trustee for Smith Cove Preservation Trust  
8223 Brecksville Road, Suite #100  
Brecksville, OH 44141

\_\_\_\_\_  
Date

\_\_\_\_\_  
JOHN V. CURCI  
Trustee for Smith Cove Preservation Trust  
8223 Brecksville Road, Suite #100  
Brecksville, OH 44141

Agent Authorized to Accept Service on Behalf of Smith Cove Preservation Trust:

Name (print): Joseph D. Lonardo  
Title: Attorney  
Address: 1909 K Street, N.W., Suite 900  
Washington, D.C. 20006-1152  
Phone No.: (202) 467-8811

Callahan Mine Superfund Site Consent Decree

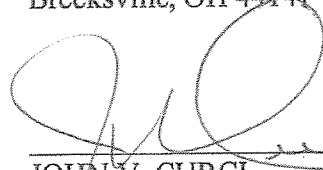
THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States of America and State of Maine v. Smith Cove Preservation Trust*, relating to the Callahan Mine Superfund Site.

FOR DEFENDANT SMITH COVE PRESERVATION TRUST

\_\_\_\_\_  
Date

September 22, 2016  
Date

\_\_\_\_\_  
JAMES BENENSON, JR.  
Trustee for Smith Cove Preservation Trust  
8223 Brecksville Road, Suite #100  
Brecksville, OH 44141



\_\_\_\_\_  
JOHN V. CURCI  
Trustee for Smith Cove Preservation Trust  
8223 Brecksville Road, Suite #100  
Brecksville, OH 44141

Agent Authorized to Accept Service on Behalf of Smith Cove Preservation Trust:

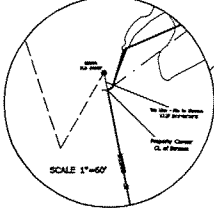
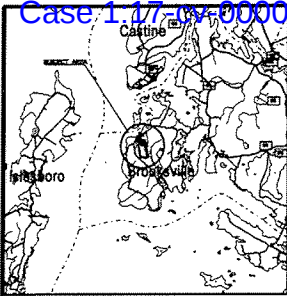
Name (print): \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Phone No.: \_\_\_\_\_

**CALLAHAN MINE SUPERFUND SITE CONSENT DECREE**  
**APPENDIX A**  
**Map Depicting the Property**



**NOTES:**

- Purposes of Survey:** Boundary survey of land now or formerly owned by Callahan Mine Corporation.
- Deed References of Surveyed Parcel:**
  - Quitclaim Deed With Consent to Smith Cove Preservation Trust dated December 4, 1967 and recorded in Book 1571, Page 325 in the Hancock County Registry of Deeds.
- Plan References:**
  - "Plan of Survey for Norton K. Boring, Herkshire (Hancock County), Brooksville, Maine" by Herick and Salsbery Inc. dated December 29, 2008. Not recorded.
  - "Plan of Boundary Survey of Malcolm Gray Property for Carol Evans, Goose Falls Road, Herkshire, Brooksville, Maine" by Eric W. Allen dated January 13, 2004. Not recorded.
  - "Boundary Survey of the Karl M. Sandcock Property 15 Old Mine Lane Road, Brooksville, Hancock County, Maine" by Sage Coltra Surveyors, Inc. dated February 29, 2003. Not recorded.
  - "Callahan Mine Brooksville, ME" by TRC and AS&C Corporation. Preliminary plan developed under aerial maps. Not dated. Not recorded.
  - "Figure 2 - Cape Roster Mine, Hancock County, Maine," by S. Benedict Levin, U.S.G.S. and W.H. Newbome, U.S.G.S. dated September 1942. Not recorded.
  - "Cape Roster Bridge over Goose Falls in the Town of Brooksville - Hancock Co. Survey Plan" by State Highway Commission Bridge Division, dated January 1947. Not recorded.
- Current Tax Map References:** Subject parcel is Map 9, Lot 30 shown on both Tax Map 9 and Tax Map 5 of the Town of Brooksville, April 1997.
- Deeds of Donations:** Donations shown are Grid North as defined by the Maine State Plane Coordinate System, East Zone 1801, NAD83. Distances shown are grid distances; Scale factor is 0.999999500 to ground distance.
- Good Information:** Information found in the Brooksville Maintained Town Road List dated April 26, 1989:
  - Old Mine Road (Radman Road) Gravel road maintained by the town; no written records found for layout acceptance, nor width.
  - Bob Hunt Road: Gravel road maintained by the town; no written records found for layout acceptance, nor width.
- Area Information:** Total area of surveyed parcel: 1222 acres
  - The area is calculated to the shoreline as determined by the aerial mapping. Ownership along the tidal boundary normally extends to low water. The location of low water was not determined by this survey.
- Easements:** Easements affecting the subject parcel:
  - Poles and wire easement for electric and voice from Wilfred N. Radman to Bangor Hydro-Electric Company dated October 22, 1948 and recorded in Book 724, Page 355 in said Registry.
  - Easement for maintaining and controlling a dam located along a common boundary with Albert S. Sandcock and Jean S. Sandcock as described in an Agreement dated March 31, 1968 and recorded in Book 1051, Page 147 in said Registry.
- Mine Shaft Locations:** The four mine shafts are shown based upon the plan referenced in Note 3a. A portion of the "Second Lot" is described as extending to the center of the "Mill Pond". These references to the "Mill Pond" can be found in deeds beginning at least with Book 79, Page 472 (1840). All indications are the area was historically tidal and returned to tidal with the removal of the dam at Goose Falls. If it was originally tidal, then private ownership would extend to normal low water only and not the center of the "Mill Pond".

**LEGEND:**

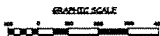
- BOUNDARY LINE OF SURVEYED PARCEL
- OBSERVED EDGE OF DISTURBED SHORE
- OTHER RELEVANT BOUNDARY LINE (APPROX)
- EDGE OF PAVEMENT
- EDGE OF WATER
- THREAD OF STREAM
- IRON SHAF (Depression)
- IRON PIPE/POLE FOLD
- IRON PIPE/POLE SET
- STONE WALL REMAINS
- BARBED WIRE FENCE
- DRILLED WELL
- N/P HOW OR POSSIBLY

Course	Bearing	Distance
1	S82°47'50"W	187.8'
2	S14°42'50"W	66.3'
3	S24°50'00"W	102.6'
4	S70°00'00"W	204.0'
5	S14°50'00"W	115.0' ±

To the best of my knowledge and belief, this survey conforms to the Standards of Practice promulgated by the Maine Board of Licensure for Professional Land Surveyors, 02-360 CMR Chapter 90 Part 2.



Peter A. Belanger  
Professional Land Surveyor #1341  
Chief Land Surveyor, MainedOT



STATE OF MAINE  
REGISTRY OF DEEDS

COUNTY: \_\_\_\_\_  
RECORDED: \_\_\_\_\_  
FILE NO.: \_\_\_\_\_  
DATE: \_\_\_\_\_

**REVISIONS**

DESCRIPTION	DATE	BY

STATE OF MAINE  
**MAINEDOT** DEPARTMENT OF TRANSPORTATION  
16 STATE HOUSE STATION - AUGUSTA, ME 04333-0026

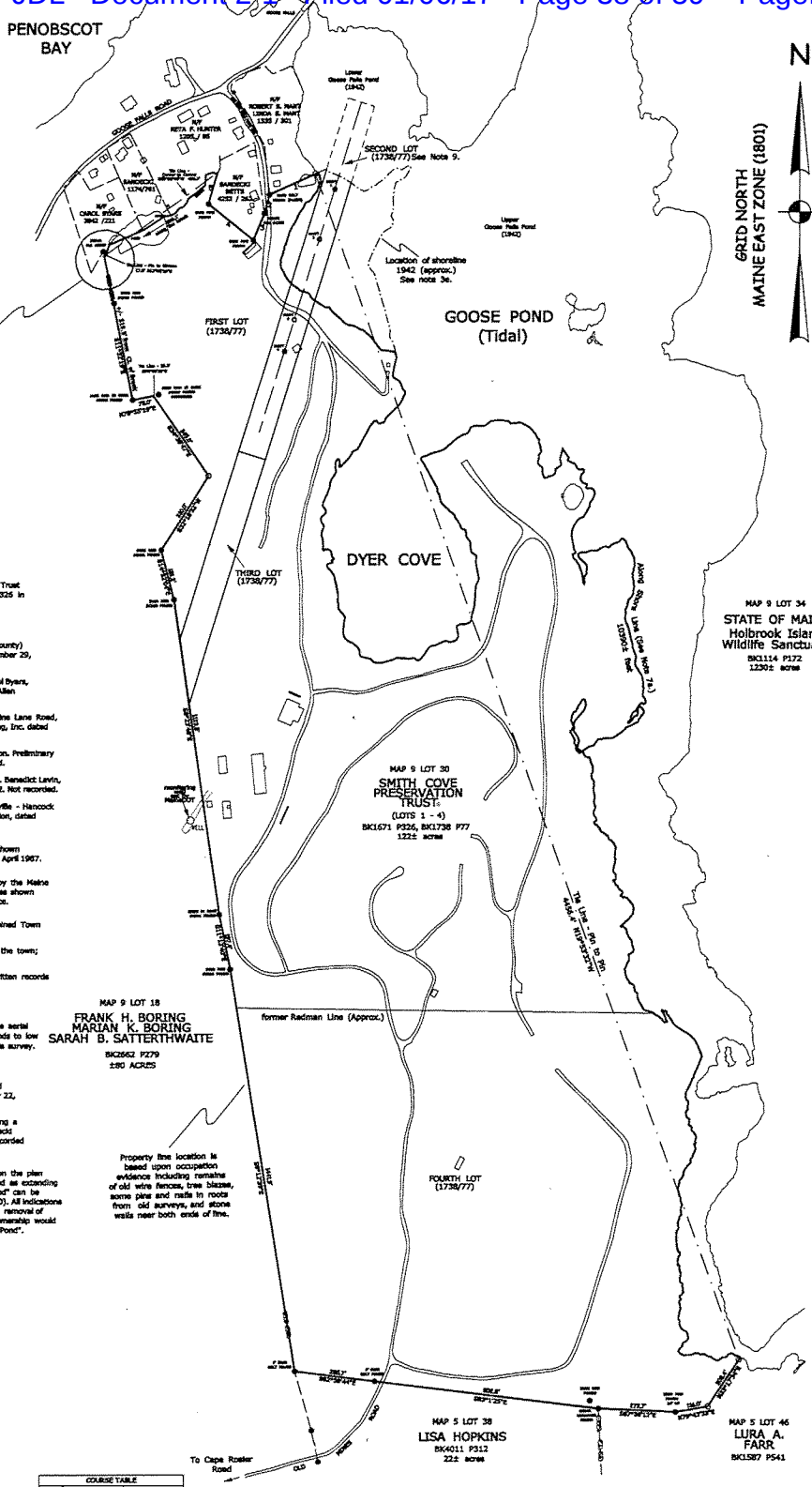
BOUNDARY SURVEY  
OF LAND OWNED BY SMITH COVE PRESERVATION TRUST

**CALLAHAN MINE**  
BROOKVILLE, HANCOCK COUNTY, MAINE

DATE: JULY 19, 2010

PROJECT NUMBER: F21 12521.07 SCALE: 1" = 200'

FIELD WORK: TEG, BAD COMPUTATIONS: TEG MAPPING: TEG



MAP 9 LOT 34  
STATE OF MAINE  
Holdbrook Island  
Wildlife Sanctuary  
BX1114 P122  
12302 acres

MAP 9 LOT 30  
SMITH COVE  
PRESERVATION  
TRUST  
(LOTS 1 - 4)  
BX1671 P324, BX1738 P77  
1222 acres

MAP 9 LOT 18  
FRANK H. BORING  
MARIAN K. BORING  
SARAH B. SATTERTHWAITTE  
BX1662 P279  
230 ACRES

MAP 5 LOT 38  
LISA HOPKINS  
BX4011 P312  
22.2 acres

MAP 5 LOT 46  
LURA A. FARR  
BX1587 P541

**CALLAHAN MINE SUPERFUND SITE CONSENT DECREE**  
**APPENDIX B**  
**Declaration of Environmental Covenant**

## DECLARATION OF ENVIRONMENTAL COVENANT

This DECLARATION OF ENVIRONMENTAL COVENANT is hereby declared and granted as of this 23<sup>rd</sup> day of September, 2016, by **SMITH COVE PRESERVATION TRUST**, a nonprofit corporation organized and existing under the laws of the State of Maine and with a principal address of c/o The Prentice-Hall Corporation System, Inc., Registered Agent, 45 Memorial Circle, Augusta, Maine 04330 (“Grantor”), to the **MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION** (“DEP” or “Holder”) on the real property described below. This Declaration of Environmental Covenant (“Environmental Covenant”) is an *Environmental Covenant* executed pursuant to the Maine Uniform Environmental Covenants Act (“UECA”), 38 M.R.S.A. §§ 3001-3013.

WHEREAS, Grantor is the owner of certain lots or parcels of land situated in the town of Brooksville, Hancock County, Maine, with improvements thereon, bounded and described in a deed from Robert S. Mant to Smith Cove Protection Association dated December 4, 1987, and recorded in the Hancock County Registry of Deeds in Book 1671, Page 326 (the “Property”). Smith Cove Protective Association (*a.k.a.* Smith Cove Protection Association) changed its name to Smith Cove Preservation Trust in 1988. A copy of the deed is attached as Exhibit A and a general depiction of the Property is shown on the map attached as Exhibit B.

WHEREAS, the Property is part of the former Callahan Mining Corporation property, contaminated portions of which are now part of the Callahan Mine Superfund Site (the “Site”), which the U.S. Environmental Protection Agency (“EPA”), pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended (“CERCLA”), 42 U.S.C. § 9605, proposed for inclusion on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 13, 2001 (F.R. Vol. 66, No. 178, pages 47612-47618). The Site was finalized on the NPL on September 5, 2002 (F.R. Vol. 67, No. 172, pages 56757-56765).

WHEREAS, in a Record of Decision, dated September 30, 2009, with the concurrence of DEP, EPA selected a remedial action for the first operable unit (“OU1”) at the Site (“OU1 ROD”). The OU1 remedial action, which together with any other response actions, including any future operable units or any associated operation, maintenance, or monitoring activities, at the Site shall be hereinafter referred to as the “environmental response project.” The OU1 ROD provides, in part, for the following actions:

- Installation of a Tailings Impoundment Cover System with stabilization measures, possibly including a toe shear key or buttress;
- Development of an on-site quarry to supply material for the Tailings Impoundment Cover System;
- Installation of a horizontal drain or other drainage methods (e.g., vertical wells or drains) within Tailings Impoundment, and passive treatment (or other treatment methods) of the discharge from the horizontal drain or other drainage methods (e.g., vertical wells or drains) in a constructed wetland;
- Dredging of Goose Pond and salt marsh sediment exceeding site-specific sediment cleanup levels identified in Table 58 of the OU1 ROD and subaqueous disposal in a



confined aquatic disposal (“CAD”) cell in the submerged former mine pit in Goose Pond;

- Mitigation, restoration, and compensation for wetland impacts, including the dredging and subaqueous disposal of Dyer Cove and Goose Cove sediment that contains mine waste in the CAD cell in the submerged former mine pit, along with other measures that may be identified in remedial design;
- Establishment of institutional controls to protect the components of the remedy (including caps, treatment wetlands, monitoring wells, and the CAD cell);
- Installation of monitoring wells (if warranted);
- Long-term operation and maintenance, and monitoring, including long-term monitoring of the compliance with institutional controls;
- Five-year reviews.

WHEREAS, in a Memorandum re: Early Action for Operable Unit 2, dated September 30, 2009, with the concurrence of DEP, EPA selected an early action for the second operable unit (“OU2”) at the Site (“OU2 Early Action”). The OU2 Early Action addresses, in part, the future potential threat from ingestion of groundwater and direct contact with contaminated soil/waste within the former Callahan Mine property portion of the Site. The OU2 Early Action includes the implementation of land use restrictions on the former Callahan Mine property portion of the Site to:

- Prevent the installation of water supply wells; and
- Prevent future residential use.

WHEREAS, in an OU1 and OU3 Explanation of Significant Differences (“ESD”), dated September 20, 2013, EPA documented the separation of the OU1 ROD components into two operable units, with the redefined OU1 to include the cleanup of the arsenic, lead, and thallium contamination in the Residential Use Area and the PCB contamination in the former Mine Operations Area. In addition, the ESD also redefined OU1 to include the removal of the waste rock from the Ore Pad Area in order to limit the contaminated run-off that drains into the former Mine Operations Area along with the consolidation of the contaminated material removed from the Ore Pad, Mine Operations Area, and Residential Use Area to the Tailings Impoundment for placement under the Tailings Impoundment Cover System. The ESD documented that the remaining components of the OU1 ROD shall be performed as part of OU3. OU3 includes stabilizing the Tailing Impoundment, excavation and removal of sediments and soils from the salt marsh and southern portion of Goose Pond and placement in an on-site CAD cell (former Mine Open Pit), and implementation of institutional controls to prevent disturbance of the components of the OU1 ROD remedy.

WHEREAS, the parties hereto have agreed that it is appropriate and necessary, pursuant to the UECA to (1) impose on the Property use restrictions as covenants that run with the land for the purposes of maintaining or enhancing the soil, air or water quality of the Property, protecting human health and the environment, and/or protecting the environmental response project that has been and will be performed at the Site; and (2) grant a permanent right of access over the Property to the Holder and to EPA for purposes of implementing, facilitating and monitoring the environmental response project and monitoring and enforcing the Environmental Covenant.

WHEREAS, the United States of America (“United States”), on behalf of EPA, the State of Maine, and Grantor entered into a Consent Decree to protect public health or welfare or the environment and to avoid difficult and prolonged litigation by allowing Grantor to provide valuable consideration to resolve its alleged civil liability under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, and under the Maine Uncontrolled Hazardous Substance Sites Law, 38 M.R.S.A. §§ 1361-1371, subject to certain reservations of rights by the United States and the State of Maine (“Consent Decree”).

WHEREAS, EPA, having an address at 5 Post Office Square, Boston, Suite 100, Mail Code: OSRR07-1, Boston, MA 02109-3912, has determined and approved and will continue to determine and approve the environmental response project, and is therefore an “agency,” pursuant to the UECA, 38 M.R.S.A. § 3002(2).

WHEREAS, EPA therefore has the right of an agency to enforce this Environmental Covenant pursuant to the UECA, but this right is not an interest in real property.

WHEREAS, DEP is the only “holder” of this Environmental Covenant, as that term is defined in the UECA.

WHEREAS, DEP is therefore entitled to exercise the rights of a holder including enforcing this Environmental Covenant, pursuant to the UECA.

WHEREAS, Grantor wishes to cooperate fully with the Holder and EPA in the implementation of the environmental response project.

NOW, THEREFORE, Grantor **SMITH COVE PRESERVATION TRUST**, for and in consideration of the facts above recited and the covenants herein contained, and intending to create and be legally bound by a perpetual covenant running with the land, subject to the terms hereof, hereby declares, covenants and agrees as follows:

1. Declaration of Covenant: This instrument is an Environmental Covenant executed pursuant to the UECA.
2. Property: This Environmental Covenant concerns the Property as described herein.
3. Activity and Use Limitations: The following covenants, conditions, and restrictions apply to the use of the Property run with the land, and are binding on Grantor and Grantor’s successors, successors in title and assigns in perpetuity, during their respective periods of ownership:
  - a. Groundwater underlying the Property shall not be extracted, consumed, exposed, or utilized in any way, except for the limited purpose of extracting, treating, and/or monitoring groundwater contamination levels in accordance with plans approved by the Holder and EPA. Groundwater supply wells shall not be installed or utilized on any part of the Property, nor shall the hydrology of such groundwater be altered in any way.

- b. No use or activity shall be permitted on the Property unless otherwise provided herein, which may impede the construction or implementation of the environmental response project or which will disturb any of the remedial measures implemented for OU1, OU3 or subsequent operable units or damage any of the structures, equipment, machinery, or other features of the cleanup installed at the Property in connection therewith. Such remedial measures include, without limitation: excavation of waste rock and soil and placement in a CAD cell; excavation of waste rock and soil and placement in the Tailings Impoundment; installation of surface water drainage controls; groundwater drainage controls; a cover system for the Tailings Impoundment; excavation and off-site disposal of PCB and petroleum contaminated soil; on-site containment of low-level PCBs; treatment systems; stormwater and sediment control structures; and the monitoring of air, ground water, surface waters, soil, sediment and biota. Such structures, equipment, machinery, and other features of the cleanup include, without limitation, horizontal wells, survey benchmarks, monitoring points, access roads, established vegetation, sediment and erosion control features, stormwater control features, treatment systems, Tailing Impoundment Cover System, and Tailing Impoundment stabilization measures
  - c. No building for residential use shall be constructed on the Property.
  - d. Soil on the Property shall not be dug or disturbed without DEP approval.
  - e. Edible vegetables for human consumption shall not be grown in the soils on the Property without DEP approval.
  - f. Monitoring wells, survey controls points, or any other component of the environmental response project within the Property or the buried components from the environmental response project shall not be destroyed, obstructed, tampered with, or otherwise disturbed.
4. Notice Requirement: Grantor, its successors and assigns, and all future owners and land users of the Property during the period of their respective ownership of the Property shall include in any instrument conveying any interest in any portion of the Property including but not limited to deeds, leases and mortgages, a notice, prior to such occupancy or activity, which is in substantially the following form:

**NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO A DECLARATION OF ENVIRONMENTAL COVENANT RECORDED IN THE HANCOCK COUNTY REGISTRY OF DEEDS ON \_\_\_\_\_, 2016 IN BOOK \_\_\_\_\_, PAGE \_\_\_\_\_, IN FAVOR OF AND ENFORCEABLE BY THE STATE OF MAINE AND THE UNITED STATES OF AMERICA.**

Within thirty (30) days of the date any such instrument of conveyance is executed, such instrument shall be recorded in the Hancock County Registry of Deeds, and the grantor of

such instrument shall notify DEP and EPA in writing of such recording by delivery of a copy of the recorded instrument, duly certified by the Registry of Deeds.

5. Recording Requirement: Grantor shall cause this Environmental Covenant to be duly recorded in the Hancock County Registry of Deeds within thirty (30) days of the effective date of the Consent Decree, and shall, within thirty (30) days of the recording of this Environmental Covenant, notify DEP and EPA of the book and page at which it is recorded, and submit to DEP and EPA a certified copy of the recorded, signed Environmental Covenant date-stamped by the Register of Deeds.
6. Administrative Record: The environmental response project described in this Environmental Covenant is based on the Callahan Mine Superfund Site Administrative Record, which has been developed in accordance with Section 113(k) of CERCLA, and which is available for review at the Town Office in Brooksville, Maine, and at the United States Environmental Protection Agency, Region 1, OSRR Records Center, 5 Post Office Square, Boston, Massachusetts.
7. Right of Access to Property: Grantor, its successors and assigns, and all future owners and land users of the Property shall provide, without cost, access to the Property to the State of Maine and EPA, including their authorized employees, agents, representatives, and independent contractors, upon presentation of credentials, for the purposes of conducting visual inspections of the condition of the Property, monitoring and enforcing this Environmental Covenant, and implementing, facilitating and monitoring the environmental response project tasks/activities. Such environmental response project tasks/activities include, but are not limited to:
  - Taking soil, waste, sediment, building material or any other samples as may be determined necessary;
  - Survey;
  - Site visits;
  - Excavation of contaminated soil/waste material;
  - Placement of contaminated soil/waste material from the Residential Use Area onto the Tailings Impoundment or other suitable location;
  - Creation of a stockpile on the Tailings Impoundment;
  - Installation of a low-permeability cover system to contain and isolate the Tailings Impoundment (cover material to be quarried from the Property);
  - Excavating and permanently removing Borrow Material (earthen material, such as rock and/or soil encompassing overburden material such as topsoil, sand, silt, clay, gravel, cobbles, and boulders, that is obtained from a location for the sole purpose of providing materials to perform the environmental response project at the Site and that meets the specifications included in EPA or DEP approved design and planning documents, construction specifications and work plans for the environmental response project);
  - Excavating and permanently placing Spoils (any material, excluding Borrow Material, generated, removed, excavated, or otherwise obtained as a result of the implementation of the environmental response project at the Site);
  - Grading of waste rock and soil;

- Installation of sediment basins;
  - Improvement of access roads;
  - Installation of Site facilities;
  - Excavation of soil/sediment material stockpile on, within and adjacent to Waste Rock Pile 1;
  - Designing, implementing, monitoring, and performing operation and maintenance; and
  - All other actions and activities related to the environmental response project.
8. Amendment or Termination by Consent: The terms and conditions herein may not be amended or terminated except by a written instrument duly executed by Grantor, the current owner of the Property at the time of the amendment or termination, and DEP and EPA or their successors in legal function, which instrument is duly recorded in the Hancock County Registry of Deeds, pursuant to the UECA. In the event that it no longer owns the Property, Grantor waives its right to consent.
9. Petition to Amend: Grantor or current owner of the Property may petition DEP and EPA to amend (including, without limitation to, remove) some or all of the covenants, restrictions, agreements and obligations herein. The burden is upon the party seeking DEP and EPA approval of the amendment or removal of a restriction to show that the restriction is no longer necessary to protect the public health and safety and the environment. DEP and EPA may agree to remove or amend restrictions that in the exercise of their sole discretion, DEP and EPA determine to be no longer necessary to protect the public health and safety and the environment. Any such amendment or termination of the Environmental Covenant must comply with the UECA, the provisions of this Environmental Covenant, the environmental response project, and all other applicable laws.
10. Transfer of Property: Grantor, its successors and assigns, and all future owners and land users of the Property shall notify DEP and EPA in writing prior to entering into a contract to transfer any interest in the property, or sixty (60) days before the transfer of any interest in the Property, whichever is earlier.
11. Duration and Binding Nature of Covenant: This Environmental Covenant and each and every covenant herein shall be a covenant running with the land in perpetuity and shall be binding on Grantor and its successors and assigns, including any transferee acquiring or owing any right, title or interest in the Property, and all those acting by, through, or under any of them forever. The term "transferee," as used in this paragraph, shall mean any future owner of any interest in the Property or any portion thereof, including, but not limited to, owners of an interest in fee simple, mortgagees, easement holders, lessees, and lien holders. By the acceptance of a deed of conveyance of all or any part of the Property or any interest therein, whether or not the deed shall so express, all successors, assignees, and transferees shall be deemed to have accepted the Property subject to the restrictions contained herein and shall be deemed bound by, obligated to comply with, and otherwise subject to the restrictions herein and this Environmental Covenant.



12. Representation of Ownership and Encumbrances: By its execution hereof, Grantor hereby represents that it is the sole fee simple owner of the Property and that there are no mortgages, easements, or other encumbrances on the Property that would materially adversely affect the effectiveness or enforceability of this Environmental Covenant.
13. Identity of Holder of Environmental Covenant: DEP is the environmental agency with enforcement authority pursuant to the UECA, and is also the only holder of this Environmental Covenant granted by Grantor in this Environmental Covenant. The administrative record for the Property is located at DEP headquarters, whose mailing address is 17 State House Station, Augusta, ME 04333-0017, with a street address of the Ray Building, 28 Tyson Drive, Augusta, Maine. The administrative record is DEP's facility file for the Property. Additionally, EPA is an environmental agency with enforcement authority pursuant to the UECA. EPA maintains an administrative record for the Site. EPA's mailing address is 5 Post Office Square, Suite 100, Mail Code: OSRR07-1, Boston, MA 02109-3912.
14. Grant of Environmental Covenant Pursuant to Law: This Environmental Covenant grants an Environmental Covenant subject to the UECA and no defenses waived by the UECA may be raised in any action to enforce any of this Environmental Covenant.
15. Enforcement of Covenant: This Environmental Covenant shall be enforceable as authorized by the UECA. Any forbearance as to enforcement of any of the terms hereof shall not be deemed a waiver of the right to seek and obtain enforcement at any time thereafter as to the same violation or as to any other violations.
16. Inspection and Reporting: Grantor, its successors and assigns, and all future owners and land users of the Property shall conduct inspections of the Property annually for compliance with the terms of this Environmental Covenant, and shall report the results to DEP and EPA, the first such inspection to be conducted by June 30 following the date of recording of this Environmental Covenant, and a written report of the findings submitted to DEP and EPA within thirty (30) days after the inspection date.
17. Notice of Noncompliance: Grantor, its successors and assigns, and all future owners and land users of the Property shall provide written notice to DEP and EPA within ten (10) working days of discovery of any noncompliance with the terms of this Environmental Covenant.
18. Changes in Use: Grantor, its successors and assigns, and all future owners and land users of the Property shall notify DEP and EPA in writing thirty (30) days before any proposed change in the use of the Property or any proposed work that could affect any contamination on the Property subject to this Environmental Covenant.
19. No Limitation on Access: Nothing in this document shall limit or otherwise affect the Holder's or EPA's rights of entry and access provided by law or regulation.
20. Notices: Any notice required pursuant to this instrument shall be in writing and shall be sent by certified mail, return receipt requested, or by any commercial carrier as provides

proof of delivery, and shall be sent to the following addresses, or such other addresses as each entity may designate from time to time in a written notice to the other entities:

If to Grantor, to:

Smith Cove Preservation Trust  
c/o The Prentice-Hall Corporation System, Inc., Registered Agent  
45 Memorial Circle  
Augusta, ME 04330

With a copy to:

Smith Cove Preservation Trust  
c/o Sally N. Mills, Esq.  
Hale & Hamlin, LLC  
PO Box 729  
4 State Street  
Ellsworth, ME 04605

If to DEP, to:

David Wright, Director, Division of Remediation  
Maine Department of Environmental Protection  
17 State House Station  
Augusta, ME 04333-0017

If to EPA, to:

Edward Hathaway, Remedial Project Manager  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square  
Suite 100, Mail Code: OSRR07-1  
Boston, MA 02109-3912

21. General Provisions:

- a. Governing Law: This Environmental Covenant shall be governed and interpreted in accordance with the laws of the State of Maine.
- b. Liberal Construction: It is intended that this Environmental Covenant shall be construed liberally to protect the health and welfare of the public and the quality of the environment from the risk of adverse effects of exposure to hazardous substances or contaminants.
- c. Effect of Failure to Provide Notice: The validity of this Environmental Covenant is not affected by any failure of Grantor or subsequent owners to provide notice as required in this Environmental Covenant.

- d. Severability: If any part of this Environmental Covenant shall be decreed to be invalid by any court of competent jurisdiction, all of the other provisions hereof shall not be affected thereby and shall remain in full force and effect.
- e. Captions: The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.



IN WITNESS WHEREOF, Grantor has caused this Environmental Covenant to be signed by its duly authorized officers as of the day and year first above written.

GRANTOR SMITH COVE PRESERVATION TRUST,

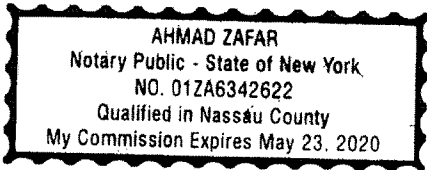
By: [Signature]  
JAMES BENENSON, JR.  
Trustee for Smith Cove Preservation Trust

Witness: [Signature]  
Wilda Mesa  
Type or Print Name

STATE OF New York  
Nassau COUNTY, ss.

Date: 9/23, 2016

Then personally appeared the above-named James Benenson Jr. in his/her capacity as Trustee and acknowledged the foregoing to be his/her free act and deed and the free act and deed of Smith Cove Preservation Trust.



Before me, [Signature]  
NOTARY PUBLIC  
Ahmad Zafar  
Type or Print Name

By: \_\_\_\_\_  
JOHN V. CURCI  
Trustee for Smith Cove Preservation Trust

Witness: \_\_\_\_\_  
Type or Print Name

STATE OF \_\_\_\_\_  
\_\_\_\_\_ COUNTY, ss.

Date: \_\_\_\_\_, 2016

Then personally appeared the above-named \_\_\_\_\_ in his/her capacity as \_\_\_\_\_ and acknowledged the foregoing to be his/her free act and deed and the free act and deed of Smith Cove Preservation Trust.

Before me,  
\_\_\_\_\_  
NOTARY PUBLIC  
\_\_\_\_\_  
Type or Print Name

IN WITNESS WHEREOF, Grantor has caused this Environmental Covenant to be signed by its duly authorized officers as of the day and year first above written.

GRANTOR SMITH COVE PRESERVATION TRUST,

By: \_\_\_\_\_ Witness: \_\_\_\_\_  
JAMES BENENSON, JR. \_\_\_\_\_  
Trustee for Smith Cove Preservation Trust Type or Print Name

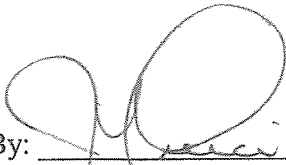
STATE OF \_\_\_\_\_ COUNTY, ss. Date: \_\_\_\_\_, 2016


Then personally appeared the above-named \_\_\_\_\_ in his/her capacity as \_\_\_\_\_ and acknowledged the foregoing to be his/her free act and deed and the free act and deed of Smith Cove Preservation Trust.

Before me,

\_\_\_\_\_  
NOTARY PUBLIC

\_\_\_\_\_  
Type or Print Name

By:   
JOHN V. CURCI  
Trustee for Smith Cove Preservation Trust

Witness:   
Nancy S. Lenhart  
Type or Print Name

STATE OF Ohio COUNTY, ss. Date: Sept 26, 2016

Then personally appeared the above-named John V. Curci in his/her capacity as Trustee and acknowledged the foregoing to be his/her free act and deed and the free act and deed of Smith Cove Preservation Trust.

Before me,

  
NOTARY PUBLIC

Leo M. Johnson  
Type or Print Name

Leo M. Johnson  
Notary Public for the State of Ohio  
My Commission Expires 09/28/2017

ACKNOWLEDGED AND AGREED TO BY:  
MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION



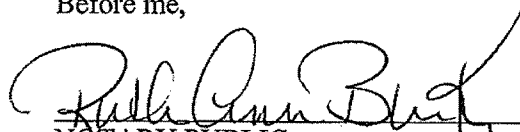
\_\_\_\_\_  
PAUL MERCER  
Commissioner

STATE OF MAINE  
KENNEBEC COUNTY, ss.

Date: 10/24/2016, 2016

Then personally appeared the above-named Paul Mercer, Commissioner of the Maine Department of Environmental Protection and acknowledged the foregoing instrument to be his/her free act and deed in his/her said official capacity and the free act and deed of the Maine Department of Environmental Protection.

Before me,

  
\_\_\_\_\_  
NOTARY PUBLIC

Ruth Ann Burke  
Notary Public, State of Maine  
My Commission Expires February 21, 2022  
Type or Print Name

ACKNOWLEDGED AND AGREED TO BY:  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Michael P. Kenyon, acting for  
H. CURTIS SPALDING  
Regional Administrator, Region 1

COMMONWEALTH OF MASSACHUSETTS  
COUNTY OF SUFFOLK

Then personally appeared the above-named Michael P. Kenyon of the U.S. Environmental Protection Agency this 28<sup>th</sup> day of September, 2016, and acknowledged to be his/her free act and deed in his/her said official capacity and the free act and deed of the U.S. Environmental Protection Agency.

Before me,



SUSAN J. SCHMIDT  
Notary Public  
Commonwealth of Massachusetts  
My Commission Expires September 8, 2017

Susan J. Schmidt  
NOTARY PUBLIC

Susan J. Schmidt  
Type or Print Name

**DECLARATION OF ENVIRONMENTAL COVENANT**

**Exhibit A**

**Copy of December 4, 1987 Deed**

BOOK 1671 PAGE 326

16210

QUITCLAIM DEED WITH COVENANT

ROBERT S. MANT, whose mailing address is P.O. Box 584W, Waquoit, MA 02536, for consideration paid, grants to SMITH COVE PROTECTION ASSOCIATION, a non-profit Maine corporation with a principal address of c/o Hale & Hamlin, 121 Main Street, P.O.Box 729, Ellsworth, ME 04605, with QUITCLAIM COVENANT, four certain lots or parcels of land, <sup>Situated in the Town of Brooksville, Hancock Co., Maine</sup> with the buildings thereon, bounded and described in deed from Callahan Mining Corporation to Maine Sea Farms dated September 1, 1976, recorded with Hancock County Registry of Deeds in Book 1268, Page 630, as follows:

"FIRST LOT: Starting at a bolt in the ledge at Goose Falls pond, on the south line of land formerly owned by William Counce; thence westerly along said Counce line to a bolt in ledge near road and land now or formerly of Marjorie Gray, following the south line of said land now or formerly of Marjorie Gray to her westerly line; thence northerly along land now or formerly of said Marjorie Gray to the brook; thence westerly along said brook to land now or formerly of Lucy Boring; thence south along land now or formerly of said Boring to land now or formerly of W. N. Redman Heirs; thence east along land now or formerly of said Redman Heirs to the shore of Goose Falls pond; thence northerly following the shore line of said pond to the point of beginning.

EXCEPTING AND RESERVING, however, from the within conveyance the mineral rights conveyed by David Dyer to E. B. Cram by deed dated April 6, 1880 and recorded in the Hancock County, Maine, Registry of Deeds in Book 173, Page 161 and in deed of David Dyer to Edward B. Cram dated April 5, 1881 and recorded in said Registry in Book 176, Page 299, together with any and all other mineral rights pertaining to the above premises and previously conveyed.

MAINE REAL ESTATE  
TRANSFER TAX PAID

POOR ORIGINAL WHEN RECORDED

See *af* hereof  
Book 1738 Page 77

BOOK 1671 PAGE 328

Beginning on the center of the vein or veins of mineral eight hundred (800) feet southwesterly from the shaft upon the shore of Goose Falls Mill Pond referred to in the above described parcel as shaft number two; thence from said center and at right angles with the same a distance of three (3) rods upon either side of the same thereby making a strip of land of the entire width of six (6) rods and holding its width of six (6) rods throughout the entire length of said vein or veins of mineral from said point of beginning so far as the same may continue upon the following described land, holding the center of said vein or veins as the center of said six (6) rods hereby conveyed at all points, viz: all the land which was conveyed to Edward B. Cram by David Dyer by deed dated April 5, 1881 and recorded in the Hancock County, Maine, Registry of Deeds in Book 176, Page 299 and which was conveyed to said Dyer by Joseph Dennett by deed dated December 21, 1850 and recorded in said Registry in Book 90, Page 24, and also the land conveyed to said David Dyer by Robert Redman by deed dated July 6, 1843 and recorded in said Registry in Book 85, Page 199, including all dips, spurs and angles of said vein or veins upon said line. Being the same premises described in a deed from Edward B. Cram to Rosier Copper Company dated April 6, 1881 and recorded in said Registry in Book 176, Page 442.

Reference is hereby made to a deed of recent date from Penobscot Mining Corporation to Callahan Mining Corporation to be recorded in the Hancock County, Maine, Registry of Deeds.

FOURTH LOT: Beginning at Mill Pond, thence running westerly by land now or formerly of Hugh Manson about fifteen (15) rods, more or less, to a stone; thence northwesterly by land now or formerly of Alfred Blake about sixty (60) rods, more or less, to stone; thence southwesterly about eight (8) rods to stone; thence by said Blake's land about twenty (20) rods to stone to land now or formerly of Benjamin R. Dyer; thence northerly by said Dyer's land ninety-two (92) rods to stone to land now or formerly of David L. Dyer; thence easterly ninety (90) rods to said Mill Pond; thence southerly around the shore of said Pond to first mentioned bound, containing forty (40) acres, more or less.

EXCEPTING HEREFROM all land described as conveyed by Callahan Mining Corporation to Clifford Leach by Indenture dated December 21, 1967 and recorded in the Hancock County, Maine, Registry of Deeds in Book 1055, Page 109, but hereby expressly conveying all land which was conveyed by Clifford Leach to Callahan Mining Corporation by said Indenture dated December 21, 1967 and recorded as aforesaid.

BOOK 1671, PAGE 330

COMMONWEALTH OF MASSACHUSETTS  
, ss.

December 4, 1987

Personally appeared before me the above-named ROBERT S. MANT and acknowledged the foregoing instrument to be his free act and deed.

*Dale L. Worthen*

Notary Public

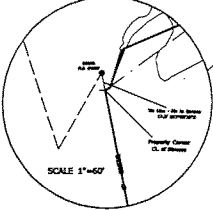
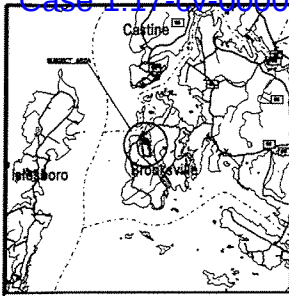
DALE L. WORTHEN

Type or print name of official

HANCOCK, SS REC'D DEC 4 1987 AT 1 16 P M



**DECLARATION OF ENVIRONMENTAL COVENANT**  
**Exhibit B**  
**Map Depicting the Property**



**NOTES:**

- Purpose of Survey:** Boundary survey of land now or formerly owned by Callahan Mine Corporation.
- Dead References of Survived Parcel:**
  - Quitclaim Deed With Covenant to Smith Cove Preservation Trust dated December 4, 1987 and recorded in Book 1671, Page 325 in the Hancock County Registry of Deeds.
- Other References:**
  - "Plan of Survey for Marion K. Boring, Harborside (Hancock County) Brooksville, Maine" by Herrick and Seabury Inc. dated December 29, 2006. Not recorded.
  - "Plan of Boundary Survey of Malcolm Gray Property for Carol Myers, Goose Falls Road, Harborside, Brooksville, Maine" by Eric W. Allen dated January 13, 2004. Not recorded.
  - "Boundary Survey of the Karl H. Sandford Property 15 Old Mine Lane Road, Brooksville, Hancock County, Maine" by Sage Collins Surveying, Inc. dated February 25, 2003. Not recorded.
  - "Callahan Mine Brooksville, ME" by TRC and ASEC Corporation. Preliminary plan developed using aerial mapping. Not dated. Not recorded.
  - "Figure 2 - Cape Roarer mine, Hancock County, Maine," by S. Benedict Levin, U.S.B.M. and W.H. Newhouse, U.S.G.S. dated September 1942. Not recorded.
  - "Cape Roarer bridge over Goose Falls in the Town of Brooksville - Hancock Co. Survey Plan" by State Highway Commission Bridge Division, dated January 1947. Not recorded.
- Current Tax Map Reference:** Subject parcel is Map 9, Lot 30 shown on both Tax Map 9 and Tax Map 5 of the Town of Brooksville, April 1987.
- State Plane Coordinate System:** Bearings shown are Grid North as defined by the Maine State Plane Coordinate System, East Zone 1801, NAD83. Distances shown are grid distances; Scale factor is 0.99990000 to ground distance.
- Road Information:** Information found in the Brooksville Maintained Town Road List dated April 26, 1989
  - Old Mine Road (Radman Road) Gravel road maintained by the town; no written records found for layout acceptance, nor width
  - Bob Manz Road: Gravel road maintained by the town; no written records found for layout acceptance, nor width
- Area Information:** Total area of surveyed parcel: 122.2 acres
  - The area is calculated to the shoreline as determined by the aerial mapping. Ownership along the tidal boundary normally extends to low water. The location of low water was not determined by this survey.
- Easements:** Easements affecting the subject parcel:
  - Pole and wire easement for electric and voice from Wilfred N. Radman to Bangor Hydro-Electric Company, dated October 22, 1948 and recorded in Book 724, Page 355 in said Registry.
  - Easement for maintaining and controlling a dam located along a common boundary with Albert E. Sandford and Jean S. Sandford as described in an Agreement dated March 31, 1968 and recorded in Book 1061, Page 147 in said Registry.
- Mine Shaft Location:** The four mine shafts are shown based upon the plan referenced in Note 3a. A portion of the "Second Lot" is described as extending to the center of the "Mill Pond". These references to the "Mill Pond" can be found in deeds beginning at least with Book 79, Page 472 (1846). All indications are this area was historically tidal and returned to tidal with the removal of the dam at Goose Falls. It was originally tidal, then private ownership would extend to normal low water only and not the center of the "Mill Pond".

**LEGEND:**

- BOUNDARY LINE OF SURVEYED PARCEL
- CHAINED SURVEY OF EXISTING SHARVE
- OTHER RELEVANT BOUNDARY LINE (APPROX.)
- EDGE OF PAVEMENT
- EDGE OF WATER
- THRESHOLD OF STREAM
- BENCH MARK (Approximate)
- 3/4" INCH PIPE / 1/4" INCH SET
- 3/4" INCH PIPE / 1/4" INCH SET
- STONE WALL REMNANTS
- BARBED WIRE FENCE
- DRILLED WELL
- NVP
- NOW OR FORMERLY

COURSE TABLE		
Order	Bearing	Distance
1	S80°46'59"W	187.2'
2	S12°42'52"W	86.3'
3	S2°25'07"W	155.2'
4	N50°59'40"W	204.0'
5	N12°40'57"E	113.0'

To the best of my knowledge and belief, this survey conforms to the Standards of Practice promulgated by the Maine Board of Licensure for Professional Land Surveyors, 02-360 CMR Chapter 90 Part 2



Peter A. Belanger  
Professional Land Surveyor #1341  
Chief Land Surveyor, MainedOT



STATE OF MAINE  
REGISTRY OF DEEDS  
COUNTY: \_\_\_\_\_  
BOOK: \_\_\_\_\_  
PAGE: \_\_\_\_\_  
FILE NO: \_\_\_\_\_

**REVISIONS**

DESCRIPTION	DATE	BY

STATE OF MAINE  
**MAINEDOT** DEPARTMENT OF TRANSPORTATION  
16 STATE HOUSE STATION - AUGUSTA, ME 04333-0016

BOUNDARY SURVEY  
OF LAND OWNED BY SMITH COVE PRESERVATION TRUST

**CALLAHAN MINE**  
BROOKSVILLE, HANCOCK COUNTY, MAINE

DATE: JULY 15, 2010

PROJECT NUMBER: PIN 1252107 SCALE: 1" = 200'

FIELD WORK: TEG, BAD COMPUTATIONS: TEG MAPPING: TEG

**CALLAHAN MINE SUPERFUND SITE CONSENT DECREE  
APPENDIX C**

**Financial Information and Insurance Information Submitted by Settling Defendant**

1. Letter, July 23, 2002, from Douglas F. Schleicher, Esq. of Klehr, Harrison, Harvey, Branzburg & Ellers LLP to U.S. Environmental Protection Agency, Subj: Callahan Mine Request for Information, with enclosure:
  - a. Letter, July 23, 2002, from John V. Curci, Smith Cove Preservation Trust, to EPA, Subj: Callahan Mine Superfund Site, in response to EPA's May 15, 2002 CERCLA § 104(e) letter, with the following *inter alia* exhibits:
    - i. Exhibit A—legal descriptions and appraisals of certain properties
    - ii. Exhibit B—Private Foundation Form 990-PF Internal Revenue Service Tax Returns for 1997, 1998, 1999, 2000, and 2001; and completed “EPA Financial Statement for Business,” signed on July 10, 2002, which contained the response of “None” for “Insurance policies owned with business as beneficiary”
2. Letter, July 12, 2004, from John V. Curci, Smith Cove Preservation Trust, to U.S. Environmental Protection Agency, Subj: Callahan Mine Superfund Site—Response to Supplemental Request for Information, in response to EPA's May 14, 2004 CERCLA § 104(e) letter, with the following *inter alia* enclosures:
  - a. Private Foundation Form 990-PF Internal Revenue Service Tax Returns for 1997, 1998, 1999, 2000, 2001, 2002, and 2003
3. Letter, February 26, 2009, from Joseph D. Lonardo, Esq. of Vorys, Sater, Seymour and Pease LLP to State of Maine Department of Environmental Protection, Subj: Response to Request for Information Pursuant to 38 M.R.S.A. § 1364(3) for the Callahan Mine Superfund Site, Brooksville, Maine, with the following *inter alia* attachments:
  - a. Private Foundation Form 990-PF Internal Revenue Service Tax Returns for 1995, 1996, 2004, 2005, and 2006
4. Smith Cove Preservation Trust's 2007 Private Foundation Form 990-PF Internal Revenue Service Tax Return
5. Smith Cove Preservation Trust's 2008 Private Foundation Form 990-PF Internal Revenue Service Tax Return
6. Smith Cove Preservation Trust's 2009 Private Foundation Form 990-PF Internal Revenue Service Tax Return
7. Smith Cove Preservation Trust's 2010 Private Foundation Form 990-PF Internal Revenue Service Tax Return
8. Smith Cove Preservation Trust's 2011 Private Foundation Form 990-PF Internal Revenue Service Tax Return
9. Smith Cove Preservation Trust's 2012 Private Foundation Form 990-PF Internal Revenue Service Tax Return
10. Smith Cove Preservation Trust's 2013 Private Foundation Form 990-PF Internal Revenue Service Tax Return
11. Smith Cove Preservation Trust's 2014 Private Foundation Form 990-PF Internal Revenue Service Tax Return