



May 2, 2024

Ms. Donna Fisher
Commander, First Coast Guard District
1 South Street BLDG 1
New York, NT 10004-1466

Colonel Justin R. Pabis
U.S. Army Corps Of Engineers
New England District
696 Virginia Road
Concord, MA 01742-2751

Sent via email to Donna.A.Fisher@uscg.mil and Justin.Pabis@us.army.mil

RE: Sears Island Causeway, Searsport, Maine

Dear Ms. Fisher and Colonel Pabis:

We are writing to you on behalf of Public Employees for Environmental Responsibility (PEER) and Islesboro Islands Trust (IIT) to alert you that the causeway joining Sears Island, Maine to the mainland may be in violation of its permit. The September 1984 permit issued by the U.S. Army Corps of Engineers (Corps) to the Maine Department of Transportation (MEDOT) pursuant to both Section 10 of the Rivers and Harbors Act (33 USC § 403) and Section 404 of the Clean Water Act (33 USC § 1344) to build the 1200' causeway required that a two-foot diameter pipe be included to allow the tide to flow back and forth between Stockton Harbor and Long Cove. This culvert does not appear to exist, and as such, the causeway may be in violation of the permit. The specific facts are laid out below.

Background. Sears Island was naturally connected to the mainland by a gravel bar that was submerged except at low tide. At high tide, it was covered by roughly four feet of water. MEDOT claimed the 1,200-foot solid fill causeway they sought to build was a “bridge” because they included in the plans a two-foot diameter pipe, thereby circumventing stricter requirements under the Rivers and Harbors Act.¹ Specifically, the permit for the causeway required “a 24” x 124’ corrugated aluminum pipe culvert at its midpoint.”

This permit issued for the causeway was revoked by the courts but then reinstated in 1991.² Although the proposed project on Sears Island was never built, the causeway is still in place. Moreover, as you are aware, there is currently another proposal to develop Sears Island into a port, which would make use of the existing causeway.

Environmental damage from solid fill causeway. In 1995, the three federal resource agencies reviewing the permit for the development of Sears Island - the U.S. Environmental Protection

¹ Sierra Club v. Secretary of Transp., 779 F.2d 776, 1985

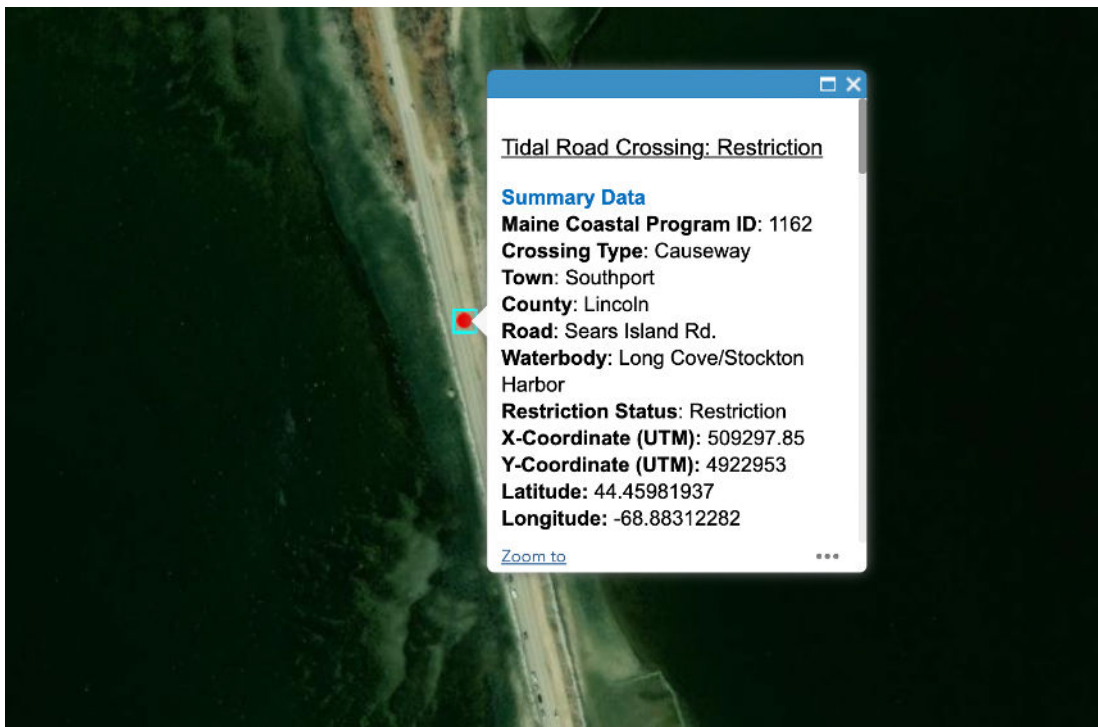
² Sierra Club v. Marsh, 772 F.Supp. 13 (1991)

Agency (EPA), U.S. Fish and Wildlife Service (USFWS), and the National Marine Fisheries Service (NMFS) wrote a [letter](#) evaluating the impacts with the proposed Sears Island development. This letter stated:

Construction of the Sears Island causeway has already changed water circulation and current patterns by blocking tidal exchange between Long Cove and Stockton Harbor. Benthic invertebrates (soft shell clams, blue mussels, marine worms, etc.) and 3.7 acres of their habitat at the causeway site were destroyed...Localized sedimentation patterns have changed as a result of the causeway construction.

Almost 40 years later, the failure to provide adequate water circulation has exacerbated the damage done by the causeway. Indeed, Maine’s Department of Marine Resources’ (DMR) “Maine Tidal Restriction Atlas” clearly shows the restriction today (see Figure 1, below).³

Figure 1



The DMR points out that these restriction points, “limit the delivery of saltwater, sediment, and other materials that tidal wetlands need to provide important ecological and communality benefits....[and] impair the resilience of wetlands to sea level rise.

Possible failure to adhere to permit requirements must be investigated. The permit issued by the Corps contains the standard language advising MEDOT that:

...the Government has relied on the information and data which the permittee has provided in connection with his permit application. If, subsequent to the issuance of this permit, such information and data prove to be materially false, materially incomplete or

³ <https://www.maine.gov/dmr/programs/maine-coastal-program/habitat-restoration-tools/tidal-restriction-atlas>

inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Government may, in addition, institute legal proceedings.

The Corps relied on the fact that MEDOT stated it would include a 2' culvert to allow tidal exchange; if the causeway was constructed without the requisite culvert, the existing permit may be suspended, modified, or revoked.

It should be fairly simple for MEDOT to determine whether the culvert was installed. Special conditions in the Corps permit required “color and color infrared photographs ... on completion of the causeway and annually each July or August at low tide...” It is likely that these photographs captured the culvert if it was constructed. Moreover, it is possible there are as-built plans on file with the MEDOT.

Unfortunately, PEER and IIT do not believe that the requisite culvert was constructed. Although one 16" culvert is used for stormwater runoff from the road, there appears to be no functioning culvert through the middle of the causeway as required by the permit. As can be seen in this [video](#), taken in April of 2024, the two-foot diameter pipe required to provide water circulation through the causeway does not appear to exist; if it does exist, it is no longer functioning. Moreover, the author of this [article](#), written in 2004, states that in 1988, when the injunction for construction was lifted, “I took a photo that documented the beginning of the construction of the causeway which, to this day, *fails to include culverts* to allow the tide to flow through, thereby turning Stockton Harbor into a less biologically productive body of water” (emphasis added). Finally, on September 2, 2006, MEDOT’s Amy Hughes wrote to the Sears Island Planning Initiative Steering Committee (SIPI):

When we discussed the culvert issue with staff here, they suggested that since the causeway has been in place for so long it is likely that it might be necessary to do some form of environmental study before any changes could be made. Affects (sic) on changing the existing long shore (sic) currents, silt deposition, impacts on clam flats, and containment of an oil spill at Mack Point would be issues that would need to be addressed. They believe that clam flats in Long Cove (Mack Point side of the causeway) are not open to fishing, but the Stockton Harbor side is open. Any changes in the tidal flows that might impact these areas would have to be reviewed. At present the causeway probably does more to protect the clam flats in Stockton harbor than if the tidal flow were allowed through it, especially if there were ever a spill at Mack Point. There is also the issue of, if it (the culvert installation) can be done, should it be done, funding for the project, etc.

This email appears to be an admission that the culvert was never constructed.

If the culvert was not installed, the environmental damage resulting from the failure to include it must be remedied. If MEDOT failed to construct the culvert, the Corps should act to remedy the situation as soon as possible. Specifically, the Corps can revoke the permit, enforce against the permit violation, or require MEDOT to install a culvert to allow adequate tidal exchange. While MEDOT would likely prefer an after-the-fact permit or modification of the existing permit, it should be noted that an after-the-fact permit would not be simple since these

environmental impacts to waters of the United States (WOTUS) are significant. Indeed, it is highly unlikely that such a permit would issued today; it is surprising that it was allowed 40 years ago.

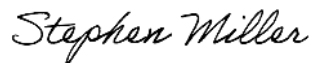
We note that even if the culvert was installed, it is not functioning as envisioned, and the Corps should address this to prevent additional environmental damage. Specifically, MEDOT should have to compensate for the adverse effects it caused by blocking tidal exchange between Long Cove and Stockton Harbor. As described by the three federal resource agencies in 1995, the changed water circulation and current patterns caused by the causeway negatively impacted benthic invertebrates and directly destroyed 3.7 acres of their habitat along the causeway's length.

Conclusion. We respectfully request that you provide evidence that the culvert was installed as required by the 1984 permit. If it was not constructed, we urge you to address what appears to be a serious omission. If it was, we ask that you take steps to mitigate the environmental damage that resulted from an inadequate method for tidal exchange.

Sincerely,



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cc: Governor Janet Mills

MEDOT Commissioner Bruce Van Note
U.S. Environmental Protection Agency (EPA) Region 1
U.S. Fish & Wildlife Service,
National Marine Fisheries Service