

STATE OF MAINE
SUPREME JUDICIAL COURT

Sitting as the Law Court
Docket No. WAL-10-561

Waldo County

RONALD HUBER,
APPELLANT,

v.

MAINE DEPARTMENT OF TRANSPORTATION,
APPELLEE.

APPEAL FROM A JUDGEMENT OF THE
WALDO SUPERIOR COURT.

SUPPLEMENT OF LEGAL AUTHORITIES

Ronald Huber
Pro se.

148 Broadway # 105
Rockland, Maine 04841
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SUPPLEMENT OF LEGAL AUTHORITIES. DOCKET # WAL-10-561

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* **Compact disk recording** of two Maine Legislative hearings that are source of above two transcripts.

[**NOTE:** The above items are supplied to the Law Court **pursuant to Rule 8. Appendix to the Brief, (1) Supplement of Legal Authorities:** *"The parties may, at their discretion, provide the court with a brief supplement, separate from the appendix, containing important, relevant legal authorities such as decisions from other jurisdictions."* They are important and relevant authorities, that were incorporated by reference in five items in the Appendix: my 80-C Petition for Review of Agency Action, MDOT's conservation easement, MDOT's motion to dismiss, my response to that motion and MDOT's reply to my response.

Two of the supplemental items are transcripts of final decisions being made by discussion and vote of the Maine Legislature's Joint Committee on Transportation. One is a letter from the chairs of that committee to the commissioner of Transportation explaining its ruling. Another is an email from the Governor's Office transmitting his decision to a member the Legislature's Transportation committee, and an email from the Commissioner of Transportation to MDOT's Joint Use Planning Committee These documents are supplied in their temporal sequence. Recordings of relevant parts of the two legislative hearings are made available to the Law Court as compact disks.]

TRANSCRIPTION. November 18, 2008 hearing of the Maine Legislature's Joint Committee on Transportation, barring the Baldacci Administration from signing a conservation easement.

Transcript includes statements by Senator Christine Savage, Senator Dennis Damon, Representative Ed Mazurek, Mr. Jon Clark, Office of Policy & Legal Analysis, and Representative Bob Marley.

Transcription by Appellant Ronald Huber from recording of legislative hearing. Hearing recording available in enclosed CD

TRANSCRIPTION START:

SENATOR CHRISTINE SAVAGE: Mr. Chair, I offer a proposal for consideration. I move the compromise agreement, including the conservation easement reached by Sears Island Joint Use Planning Committee, be accepted in principle, but left unsigned by this committee until the port is permitted on Sears Island. The Transportation Committee will submit a bill to the 124th legislature, directing the Maine Department of Transportation to move forward with all practical speed to see that a port is permitted on Sears Island. Once that permit is in hand, the agreement before us today will be signed. Thank you.

SENATOR DENNIS DAMON. That's in the form of a motion?

SENATOR SAVAGE Yes.

SENATOR DAMON. Is there a second?

REPRESENTATIVE ED MAZUREK. "Second."

SENATOR DAMON. It is the responsibility of this committee and indeed of this legislature to set policy. Policy for the entire state of Maine and If we would use this agreement which has been so difficult to craft and so important in that policy If we use that in setting policy. That's the responsibility of this committee.

I can't personally as a member of the legislature and certainly as a member of this Transportation Committee give up my right, my authority and my duty to the entire state in terms of setting policy by being constrained by what I'm told a group of people felt. So whether it's signed or unsigned to me is somewhat immaterial, although I appreciate the concern of those, and respect the compromise being brought forth by Senator Diamond.

MR. JON CLARK, OPLA. I'm Jon Clark deputy director of the Office of Policy and Legal Analysis, and in that capacity serving as council to the committee. It's my understanding that there's no signatory role for this committee as such with regard to the agreement. The committee is then in the role of making its decision under the statute as to whether you approve this or

not and obviously with whatever conditions you might wish to add. Which is obviously within this committee's purview.

I think as a clarification it would be helpful, to actually have the legislation you're talking about be the final step, in terms of the committee makes its determination with whatever conditions, and that then go forward next session with legislation that says specifically "Here's the authority of the department; here's the conditions in terms of going forward. "

In that sense what you're actually signing off on is the department's actual action going forward with regard to conveying an easement for mitigation bank purposes and the conditions under which they would do that act.

SENATOR DAMON. You mentioned something about the authority to convey an easement for a mitigation bank. And that, as you recognize, ladies and gentlemen, is the second kind of report you have before us. It is an application by the Department to the Corps of Engineers to use an umbrella mitigation bank, for not only the purposes of Sears Island but also for broader services as they may pertain to projects within the Department of Transportation and the rest of the state.

That has not been proven, at this point. There may be some question as to whether or not there is sufficient authority in statute to allow the Department of Transportation to convey such interests.

If for instance this motion were to succeed, I believe that since you said there'd be a bill submitted, it's very conceivable that that bill could include that language which would give the authority to the department. I see it as a reasonable thing."

REPRESENTATIVE BOB MARLEY. How I viewed it that this was that this was an agreement that was coming forward basically for us to vote up and down, but that this would be the end of the process. It seems like people feel like this is the end of the process I'm hearing from you, if I'm correct, that this isn't. This is really kind of the beginning of the process. This is sort of where there's mutual agreement but there's all these other pieces that still need....Am I accurate about that?

OPLA JON CLARK I don't want to say that if you decide that you want to approve this, that you couldn't as a committee make a decision and that the department legally couldn't go forward.

I think there are questions at least in my mind about how clear that is, and, given controversy surrounding this project over the years, the priority is probably a good thing. So I think that the series of events you are describing leading up to legislation which would clearly state 'here's the authority, here's the conditions. If there are going to be any conditions', would provide a good priority in this situation in which I think priority is a needed thing.

SENATOR DAMON The time has come. Motion before us is to accept the - I'm going to paraphrase this, if I leave anything out let me know - to accept the negotiated conservation easement but to leave it unsigned temporarily, and that we this committee seek the authority to report out a bill to the 124th legislature of the State of Maine instructing the Maine Department of Transportation to pursue the permitting of a port on the island of Sears in the port of Searsport; and once that permit is signed, that the conservation easement will then become signed. Is that the essence of your motion?

SENATOR SAVAGE: Yes.

SENATOR DAMON: All those in favor of that motion signify by raising your hand. Voting yea: Representative Mazurek,

Representative Rosen, Senator Diamond, Senator Savage, Senator Damon, Representative Marley, Representative Brown, Representative Fisher, Representative Thomas, Representative Theriault, Representative Hogan and Representative Peoples.

It's unanimous of all those present and voting. Thank you very much, Committee.

END OF TRANSCRIPT.

Tilberg, Karin

From: Tilberg, Karin
Sent: Thursday, November 20, 2008 6:07 PM
To: 'John Piotti'; Piotti, RepJohn
Subject: Sears Island Final Report
Importance: High

John - We are very, very disappointed in the Transportation Committees vote to essentially override (and therefore torpedo) the Sears Island Agreement. Please see below. The Committee's vote will open a new era of conflict, chaos and I think ultimately will ensure there will never be a chance of a port. It was a true slap in the face to the 40 some people, groups, transportation interests, conservation groups and towns of mid-coast Maine who have worked for 3 years to come to a compromise. Senators Dennis Damon and Christine Savage led the charge to undermine the good faith work of 3 years. I would like to speak to you because this is going to consume legislative goodwill if it is not addressed immediately. You may want to chat with Hannah Pingree about this and we will need your help to prevail!

Take care. Karin

From: Cole, David A
Sent: Thursday, November 20, 2008 9:32 AM
Cc: Scott, Duane
Subject: JUPC Final Report

Dear JUPC Members.

As most of you are aware, the Transportation Committee of the Maine Legislature met Tuesday in Augusta to review and act upon the JUPC Final Report, as well as the proposed 601 acre Conservation Easement (CE) that was central to the 2007 Consensus Agreement. The Committee unanimously endorsed the recommendations of the JUPC report, but, quite unexpectedly, the Committee decided to condition the implementation of the Final Report and execution of the CE with the successful permitting of a cargo port on the Island, thereby effectively delaying the CE until that time. The Committee also voted to request a bill for the next Legislative Session that would direct the Department to go forth and solicit a port developer and secure a permit for a cargo port.

I have discussed this matter with the Governor, and he remains firmly committed to the existing framework as laid out in the JUPC Final Report, which allows for the CE to go forward and would not be contingent on securing necessary permits for a port. Accordingly, the Governor will be submitting legislation for the next session that will allow for the implementation of the recommendations of the JUPC Final Report including enabling language for the Conservation Easement.

I do want to thank all members of the JUPC who have volunteered countless hours to this effort. We have come so far over the past 18 months, and I sincerely hope everyone will continue to support this effort over the coming months as it works its way through the legislative process. Hopefully this is just one more bump in the long road of charting a positive and productive future for Sears Island.

Sincerely,

David Cole
Commissioner

11/12/2008

SENATE

DENNIS S. DAMON, DISTRICT 28, CHAIR
BILL DIAMOND, DISTRICT 12
CHRISTINE R. SAVAGE, DISTRICT 22

KAREN NADEAU-DRILLEN, LEGISLATIVE ANALYST
LOCK KIERMAIER, LEGISLATIVE ANALYST (OFPR)
KATHIE BILODEAU, COMMITTEE CLERK



STATE OF MAINE

HOUSE

BOYD P. MARLEY, PORTLAND, CHAIR
CHARLES D. FISHER, BREWER
GEORGE W. HOGAN, SR., OLD ORCHARD BEACH
EDWARD J. MAZUREK, ROCKLAND
ANN E. PEOPLES, WESTBROOK
CHARLES KEN THERIAULT, MADAWASKA
WILLIAM P. BROWNE, VASSALBORO
DOUGLAS A. THOMAS, RIPLEY
RICHARD M. CEBRA, NAPLES
KIMBERLEY C. ROSEN, BUCKSPORT

ONE HUNDRED AND TWENTY-THIRD LEGISLATURE

COMMITTEE ON TRANSPORTATION

November 21, 2008

Commissioner David A. Cole
Maine Department of Transportation
16 State House Station
Augusta, ME 04333-0016

RE: Final Report of the Sears Island Planning Initiative's Joint Use Planning Committee

Dear Commissioner Cole:

First and foremost, on behalf of the Joint Standing Committee on Transportation, we would like to express our deepest gratitude for the earnest and persistent efforts of the Joint Use Planning Committee (JUPC) and its predecessors, the Sears Island Alternative Uses Committee (SIAUC) and the Sears Island Planning Initiative Steering Committee (SIPISC). The Transportation Committee recognizes the often controversial and difficult nature of the JUPC's charge, but congratulates you and your fellow members of the JUPC on your positive outcome, which is the "Final Report and Recommendations for Implementation of the Sears Island Planning Initiative."

We are also writing this letter to memorialize the Transportation Committee's unanimous vote in favor of accepting and supporting the JUPC's recommendations, including the draft of the conservation easement, as presented to the Transportation Committee on November 18, 2008.

The next phase for the Transportation Committee, and the Maine Legislature as a whole, will be to introduce and deliberate legislation to clarify the Maine Department of Transportation's next steps before implementing the JUPC's recommendations including, but not limited to, pursuing and obtaining the necessary permits for a marine transportation facility on Sears Island.

Again, we sincerely thank you and the JUPC for your considerable efforts on this matter.

Sincerely,

Handwritten signature of Dennis S. Damon in black ink.

Dennis S. Damon
Senate Chair

Handwritten signature of Boyd P. Marley in black ink, with "KN-D" written above it.

Boyd P. Marley
House Chair

CC: Members of the Joint Standing Committee on Transportation
Members of the Sears Island Planning Initiative's Joint Use Planning Committee
Karin Tilberg, Governor's Office
Theresa Savoy, Maine Department of Transportation

SUPPLEMENT OF LEGAL AUTHORITIES

TRANSCRIPTION. January 13, 2009 meeting of the Maine Legislature's Joint Committee on Transportation. Statement by Committee Co-chair Senator Dennis Damon invoking Public Law 277 to allow the Baldacci Administration to sign a conservation easement.

Transcription by Appellant Ronald Huber from recording of legislative hearing. Hearing recording available in enclosed CD

TRANSCRIPTION START:

"Now to the final item on today's agenda. It's listed as the Sears Island Agreement. I want to first apologize to members of the committee because I understand that some of you were contacted maybe today or maybe recently and asked how you felt about accepting something you know nothing about or very little about. And that's kind of an unfair question.

So I want to give you a bit of history about what has gone on since we met in the last meeting of the Joint Standing Committee on Transportation of the 123rd Legislature and that was, if memory serves correctly, November 18, 2008.

It was at that time that the so called Sears Island Agreement - we have copies if new members of the committee would like to have one. It was an agreement that was labored over in the latest iteration for close to 24 months. In that agreement there's included a division of the island called Sears Island.

A portion of it, a substantial portion, was to be set aside for uses of recreation, education and conservation; another portion was to be set aside for the use of transportation and in particular port development.

It was - it is - an extraordinary document that in terms of the work that went into it by a number of people.

In addition to the delineation of that work, there was an accompanying easement that was to be held by - is to be held by - the Maine Coast Heritage Trust. It deals specifically with what can and can't happen on that conserved piece of the island. Again, very meticulously negotiated and developed agreement. When that came before us, this committee excepted it we accepted it without change.

And then is where the ... something hit the fan.

The committee felt very strongly that the interests of transportation needed to be held at the same level that the interests of conservation did with regards to Sears Island. And so though we accepted that agreement, we deferred signing it until...I think the committee vote was "until such time as a port is permitted".

That doesn't mean a port is built, because there's a long process between those times. And voted that as a unanimous report, that came out of this committee.

Now this committee, as regards Sears Island, has some very unique authority in terms of the legislature. Authority that some people are now wondering...

But it is authority nonetheless that exists in statute. And it says that "any change in ownership or use in Sears Island must have the review and approval of the joint standing committee having jurisdiction - that being the transportation committee. Doesn't say the entire legislature It says this committee. So that's where we are.

The chief executive felt that the action of the committee was perhaps being too restrictive, too limiting and announced publicly that he would be moving a piece of legislation forward to undo essentially the action of the committee.

At the same time the committee had said to its chair - to me - that we need to be able to have a piece of legislation to move forward to. So I have filed a title without much text - a placeholder.

I had been asked and agreed to meet with the Chief Executive. My concern was I didn't know for sure whether or not he wished that there be a port built on Sears island. So I asked him that question directly. And he answered that question directly. Yes. He felt that a port on Sears Island was a good thing and that a container cargo port and that it would add to Maine's economic growth.

If the answer had been other than that, I'm going to tell you now that there wouldn't have been much discussion, because we would have had to go our separate ways and battle it out.

But, given that that was the answer, and that that was my concern, and I think yours, I said, "what can we do, short of going down this legislative route?"

We had frank discussions - just he and I. It was decided that perhaps an executive order being issued by him, in the power and capacity that he has, to the Department of Transportation and its commissioner to move forward with... actively and aggressively work with the Maine Port Authority and the other interested parties to initiate the process of marketing and developing a cargo/container port on Mack Point and Sears

Island. Mack Point: while I view it within the Harbor of
Searsport. It is a separate piece from Sears Island."

-Senator Dennis Damon, co-Chair, ME Legislature's Joint
Committee on Transportation 1/13/09

END OF TRANSCRIPT

END OF SUPPLEMENT OF LEGAL AUTHORITIES