

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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REGION I

EPA ORC
OFFICE OF
REGULATORY CLERK

IN THE MATTER OF)
)
Robert A. Ray,)
Ray Builders, Inc.,)
)
Respondents.)
)
Proceeding under Section 309(g))
of the Clean Water Act,)
33 U.S.C. § 1319(g))
)

DOCKET NO. CWA-01-2008-0028

CONSENT AGREEMENT AND
FINAL ORDER

INTRODUCTION

1. This Consent Agreement and Final Order by the U.S. Environmental Protection Agency ("EPA") is issued to Robert A. Ray and Ray Builders, Inc. (collectively, "Respondents") under the authority granted by Section 309(g)(2)(B) of the Clean Water Act (the "Act"), 33 U.S.C. § 1319(g)(2)(B), and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," at 40 C.F.R. Part 22 (the "Consolidated Rules").
2. Pursuant to 40 C.F.R. § 22.13(b) of the Consolidated Rules, the parties agree to simultaneously commence and conclude this action for civil penalties by the issuance of this Consent Agreement and Final Order.
3. The Complainant is the Director of the Office of Environmental Stewardship, EPA Region 1. Complainant alleges that Respondents discharged pollutants into waters

of the United States without authorization by a permit from the Army Corps of Engineers as required by Section 404 of the Clean Water Act, 33 U.S.C. § 1344, or other authorization, in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

STATUTORY AND REGULATORY AUTHORITY

4. EPA takes this action under the authority of Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), for violations of Section 301(a) of the Act, 33 U.S.C. § 1311(a). Pursuant to Section 309(g)(1) of the Act, 33 U.S.C. § 1319(g)(1), and in accordance with 40 C.F.R. § 22.38(b), the State of Maine has been given an opportunity to consult with EPA regarding the assessment of the administrative penalty against Respondent.

DESCRIPTION OF VIOLATIONS

5. Robert A. Ray resides at 52 Bayside Road, Ellsworth, Maine 04605, and is a "person" under Section 502(5) of the Act, 33 U.S.C. § 1362(5). Ray Builders, Inc., is a Maine corporation with its principal place of doing business in Ellsworth, Maine, and is a person under Section 502(5) of the Act, 33 U.S.C. § 1362(5).

6. On approximately June 21, 1988, Robert A. Ray and his wife Persis Ray acquired a parcel of approximately 72 acres, known as Seavey's Woodlot ("the Site"), off Route 230 in Ellsworth, Maine. Between 1989 and 2003, Robert Ray developed the Site in five phases, resulting in a subdivision of 42 house lots (and possibly more) with associated roads known as Alton's Avenue, Marion's Way and Seavey's Cross Cut. Ray Builders, Inc., a building contracting company controlled by Robert Ray, cleared land and constructed buildings and associated infrastructure at the Site between 1995 and 2003. Between 1995 and 2004, Robert Ray sold approximately 38 of the lots, on which

homes had been constructed, to individual homeowners. Robert and Persis Ray retain ownership of several lots at the Site.

7. As further described below, at all times pertinent to the violations described below, Robert Ray and/or Ray Builders, Inc. have directed, controlled, or supervised activities that occurred on the Site.

8. The Site development occurred in several phases. Between 1989 and 1992, a portion of Alton's Avenue from Route 230 to a cul-de-sac was constructed. Soil from excavation for construction of the road was used to fill the lots along the road to facilitate future site work for the homes to be constructed. Phase I included the preparation of sites, including construction and developments at lots 1-16, and construction of houses on those lots occurred between 1992 and 1994. Lots 17-20 were prepared as part of Phase II., and homes on those lots were constructed between 1995 and 1997. Phase III included the preparation of lots 21-26; homes on those lots were constructed in 2000-2001. The remaining developed lots were prepared as part of Phases IV and V, and homes were built on them between 2001 and 2003. The site preparation and construction work consisted of the construction of driveways, houses, lawns and septic systems, using excavators, backhoes and bulldozers.

9. At the time of the activities described below, the Site contained several areas of forested wetlands (the "Wetlands"), as depicted in Attachment 1.

10. Between 1989 and 2003, Ray, Ray Builders, Inc., and/or persons working for or under their control or supervision, discharged dredged and/or fill material into 3.8 acres of Wetlands at the Site to prepare the Site for development and construction of

homes. The 3.8 acres of Wetlands into which dredged and/or fill material were discharged are depicted on Attachment 1.

11. Robert Ray, Ray Builders, Inc. and/or persons working for or under their control or supervision, used heavy equipment, such as backhoes, excavators and bulldozers, to discharge dredged and/or fill material, consisting of soil, sand, rocks and/or stumps, into 3.8 acres of the Wetlands.

12. The soils, sand, rocks and/or stumps discharged into the Wetlands are "pollutants" under Section 502(6) of the Act, 33 U.S.C. § 1362(6).

13. The heavy equipment used to discharge dredged and/or fill materials into the Wetlands constitutes a "point source" under Section 502(14) of the Act, 33 U.S.C. § 1362(14).

14. The placement of dredged and/or fill materials into the Wetlands by the use of heavy equipment constitutes the "discharge of pollutants" under Section 502(12) of the Act, 33 U.S.C. § 1362(12).

15. At the time of the Respondents' activities between 1989 and 2003, the Wetlands at the Site were wetlands as defined in 40 C.F.R. §§ 122.2 and 232.2.

16. The 3.8 acres of Wetlands that were filled or impacted by the discharges are contained in three areas. The impacted wetlands in Area 1, at the western end of Alton's Avenue, are adjacent to an unnamed stream flowing west into the Union River Bay. The impacted wetlands in Area 2 are further east on Alton's Avenue, and are adjacent to a second unnamed stream which flows west into the Union River Bay. The impacted wetlands in Area 3 are at the east end of Alton's Avenue. The wetlands in Area 3 are contiguous with and part of the Big Heath Bog, which is adjacent to and flows into

several unnamed streams and into Loids Brook, all of which flow into Union River Bay, a tidal estuary of the Atlantic Ocean. The Wetlands, the unnamed streams, Loids Brook, Union River Bay and the Atlantic Ocean, are all "waters of the United States" under the definitions set forth in 40 C.F.R. §§ 122.2, 232.2, and 230.3(s)(1), (5), and (7) and 33 C.F.R. §§ 328.3(a)(1), (5), and (7), and therefore are "navigable waters" under Section 502(7) of the Act, 33 U.S.C. § 1362(7).

17. Section 301(a) of the Act, 33 U.S.C. § 1311(a), makes it unlawful for any person to discharge pollutants from a point source into waters of the United States, except in compliance with, among other things, the terms and conditions of a permit issued by the Secretary of the Army pursuant to Section 404 of the Act, 33 U.S.C. § 1344.

18. Respondents did not apply for or receive a permit authorizing such discharge under Section 404 of the Act, nor were the discharges of pollutants into the Wetlands authorized under any other provision of the Act.

19. The discharges described above violated Section 301(a) of the Act.

20. Each day the fill material remains in the Wetlands without authorization from a permit issued under Section 404 of the Act, 33 U.S.C. § 1344, constitutes an additional day of violation of Section 301 of the Clean Water Act, 33 U.S.C. § 1311.

21. Prior to the discharges of dredged and/or fill material, the Wetlands consisted of palustrine forested wetlands. The Wetlands provided groundwater discharge/recharge, wildlife habitat and nutrient production export.

22. The discharges of fill materials into the Wetlands, as described above, have destroyed wetland vegetation, and generally destroyed or impaired approximately

3.8 acres of wetland by removing the hydrophytic vegetation, burying hydric soils, and by altering the hydrology. The discharges likely destroyed or impaired habitat for small mammals, and food sources, cover, water and nesting sites for wildlife.

23. In September of 2004, after having been notified by the Maine Department of Environmental Protection that Respondents had discharged fill into wetlands, EPA requested the disclosure of information from Respondents under Section 308(a) of the Act, 33 U.S.C., § 1318(a). Respondents responded to requests for information from EPA on October 4, 2004, March 21, 2005 and October 5, 2005. On December 1, 2004, EPA inspected the Site with Robert Ray. At all times from 2004 to the date of this Consent Order, Respondents have voluntarily cooperated with EPA's investigation.

CONSENT AGREEMENT

24. EPA and Respondents agree that the above matter constitutes a disputed claim and that settlement of the above matter is in the public interest, and that entry of this Consent Agreement and Final Order is the most appropriate means of resolving this matter.

Terms of Settlement

25. The provisions of this Consent Agreement and Final Order shall be binding upon EPA and upon each Respondent, its officers, directors, agents, servants, employees, and successors or assigns.

26. For purposes of this Consent Agreement and any related action, including a related enforcement proceeding if necessary, Respondents admit the jurisdictional allegations contained in this agreement, neither admit nor deny the specific factual

allegations herein, and consent to the assessment of the administrative penalty set forth herein.

27. For purposes of this Consent Agreement only, Respondents waive their right to a judicial or administrative hearing or appeal on any issue of law or alleged fact set forth in this Consent Agreement and Final Order.

28. The civil penalty agreed upon herein has been determined in accordance with Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3). In developing the settlement penalty in this Consent Agreement and Final Order, Complainant has considered the nature, circumstances, extent and gravity of the violations, the Respondents' prior compliance history, the degree of culpability, the economic benefit or savings accruing to the Respondents by virtue of the violations, Respondents' ability to pay the settlement penalty, and such other matters as justice may require.

29. Respondents consent to the issuance of this Consent Agreement and Final Order and agree, jointly and severally, to the payment of the civil penalty and performance of the Supplemental Environmental Project (SEP) described below.

30. Based upon the nature of the violations, Respondents' agreement to perform a Supplemental Environmental Project (SEP), and other relevant factors identified in paragraph 28 above, EPA has determined that an appropriate civil penalty to settle this action is in the amount of **sixteen thousand and seventeen dollars (\$16,017)**.

31. Not more than thirty (30) days after the effective date of this Consent Agreement and Final Order, Respondents shall submit a cashier's or certified check, payable to the order of the "Treasurer, United States of America," in the amount of **sixteen thousand and seventeen dollars (\$16,017)** to:

United States Environmental Protection Agency
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

Respondents shall simultaneously submit copies of the penalty payment check to:

Wanda Rivera
Acting Regional Hearing Clerk
U.S. Environmental Protection Agency
Region I
One Congress Street
Boston, MA 02114-2023

and

Margery L. Adams
Office of Environmental Stewardship
U.S. Environmental Protection Agency
Region I
One Congress Street
Boston, MA 02114-2023

32. The check shall bear the case name and docket number (CWA-01-2008-0028).

Interest and late charges shall be paid as specified in Paragraph 43 herein.

33. The penalty specified in Paragraph 30 above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

34. Respondents shall complete the following supplemental environmental project ("SEP"), which the parties agree is intended to secure significant environmental benefits. The SEP consists of preservation of a wetland and upland habitat consisting of approximately 17.3 acres, in the area of two bald eagle nesting zones, and known as the Hillside Road development (and more particularly described in Attachment 2), by granting a conservation easement enforceable under Maine law in favor of Frenchman Bay Conservancy, Inc., or other land preservation entity approved by EPA. Based on

information provided by the Respondents, among other things, Complainant has concluded that the value of the SEP amounts to or exceeds \$57,000.

35. Respondents shall grant the conservation easement in a form enforceable under Maine law, and generally in the form provided in Attachment C, and shall record such easement with the appropriate land registry **within six months of the effective date** of this Consent Order and Final Agreement, unless Complainant agrees to an extension of time for granting the easement.

36. Respondents hereby certify that, as of the date of this Consent Agreement, Respondents are not required to perform or develop the SEP by any federal, state or local law or regulation, nor are Respondents required to perform or develop the SEP under any grant or agreement with any governmental or private entity, as injunctive relief in this or any other case, or in compliance with state or local requirements. Respondents further certifies that they have not received, and are not presently negotiating to receive, credit in any other enforcement action for the SEP.

37. Respondents hereby agree that any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEP shall include the following language, "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of the Clean Water Act."

38. Respondents hereby agree not to claim any funds expended in the performance of the SEP as a deductible business expense for purposes of Federal taxes. In addition, Respondents hereby agree that, within thirty (30) days of the date it submits its Federal tax reports for the calendar year in which the above-identified SEP is

completed, they will submit to EPA certification that any funds expended in the performance of the SEP have not been deducted from Federal taxes.

39. Respondents agree that EPA may enter and inspect the SEP property at all reasonable times in order to confirm that the SEP is being undertaken in conformity with the representations made herein.

40. Respondents shall submit a SEP Completion Report to EPA within 60 days following the recording of the conservation easement for the SEP. The SEP Completion Report shall contain the following information:

- (i) A detailed description of the SEP as implemented;
- (ii) A description of any implementation problems encountered and the solutions thereto; and
- (iii) Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement and Order.

Respondents shall, by their officers, sign and certify under penalty of law that the information contained in the SEP Completion Report is true, accurate, and not misleading by signing the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

Respondents agree that failure to submit the SEP Completion Report shall be deemed a violation of this Consent Agreement and Order and Respondents shall become liable for stipulated penalties pursuant to paragraph 42 below.

41. After receipt of the SEP Completion Report described in paragraph 40 above, EPA will notify the Respondents in writing, either: (i) that EPA concludes that the SEP has been completed satisfactorily; (ii) that EPA has determined that the project has not been completed satisfactorily and specifying a reasonable schedule for correction of the SEP or the SEP Completion Report; or (iii) that EPA has determined that the SEP does not comply with the terms of this Consent Agreement and Final Order and seeking stipulated penalties in accordance with paragraph 42 herein. If EPA notifies Respondents pursuant to clause (ii) above that the SEP itself or the SEP Completion Report does not comply with the requirements of this Consent Agreement and Final Order, Respondents shall make such corrections to the SEP and/or modify the SEP Completion Report in accordance with the schedule specified by EPA. If EPA notifies Respondents pursuant to clause (iii) above that the SEP itself does not comply with the requirements of this Consent Agreement and Final Order, Respondents shall pay stipulated penalties to EPA in accordance with paragraph 42 herein.

42.a. In the event that Respondents fail to complete the SEP in accordance with the terms of this Consent Agreement and Final Order, Respondents shall be liable, jointly and severally, for a stipulated penalty of **fifty-seven thousand dollars (\$57,000)**. In the event that Respondents fail to submit the SEP Completion Report required by paragraph 40 above, Respondents shall pay a stipulated penalty in the amount of \$100 for each day after the SEP Completion Report was originally due until the date that the report is submitted.

b. The determination of whether the SEP has been satisfactorily completed and

whether the Respondents have made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.

c. Stipulated penalties shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity.

d. Respondents shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of paragraph 31 above. Interest and late charges shall be paid as stated in paragraph 43 herein.

43.a.. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on a civil or stipulated penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 4 C.F.R. §901.9(b)(2).

b. Pursuant to Section 309(g)(9), 33 U.S.C. § 1319(g)(9), a failure by the Respondents to pay the penalty assessed by this Consent Agreement and Final Order in full by its due date shall subject the Respondents to a civil action to collect the assessed penalty, plus interest at current prevailing rates from the date of this Consent Agreement and Final Order. Any person who fails to pay on a timely basis the amount of an assessed penalty, unless such failure results from causes beyond the reasonable control of Respondents, shall be required to pay in addition to such amount and interest, attorney's fees, costs for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in

an amount equal to twenty percent of the aggregate amount of such person's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter. In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

44. Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondents' violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondents' violation of any applicable provision of law.

REQUIRED NOTICE

45. Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), provides that, prior to issuing an order assessing a penalty under Section 309(g) of the Act, 33 U.S.C. § 1319(g), EPA must provide public notice of, and reasonable opportunity to comment on, the proposed issuance of such order. EPA will satisfy this requirement for notice by providing public notice of, and reasonable opportunity to comment on, this Consent Agreement prior to the issuance of the Final Order.

ADDITIONAL PROVISIONS

46. Issuance of this Consent Agreement and Final Order constitutes a final settlement by EPA of all claims for judicial and administrative civil penalties pursuant to Sections 309(d) and (g) of the Act, 33 U.S.C. §§ 1319(d) and (g), for all past violations of the Act specifically alleged herein. This Consent Agreement and Order is not intended to nor shall it be construed to operate in any way to resolve any criminal liability of the Respondents.

47. Issuance of this Consent Agreement and Final Order does not constitute a settlement by EPA of its right to enforce the substantive legal requirements underlying this administrative penalty assessment, whether administratively or judicially pursuant to Sections 309(a), (b) and (c) of the Act, 33 U.S.C. §§ 1319(a), (b) and (c), or Section 504 of the Act, 33 U.S.C. § 1364.

48. Neither assessment nor payment of an administrative civil penalty pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319, shall affect each Respondent's continuing obligation to comply with the Act, or with other applicable federal, state or local laws, regulations or requirements, including any separate compliance order issued under Section 309(a) of the Act, 33 U.S.C. § 1319(a), concerning the violations alleged herein. Full payment of the penalty required in this Consent Agreement and Final Order shall not affect the right of the United States to pursue appropriate injunctive or other relief for any violations of law.

49. This Consent Agreement and Final Order does not constitute a waiver, suspension or modification of the requirements of the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.*, or any regulations promulgated thereunder.

50. This Consent Agreement and Order shall not relieve Respondents of their obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.

51. Each party shall bear its own costs and attorneys' fees in this proceeding.

EXECUTION

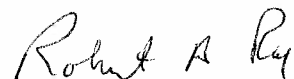
52. Each undersigned representative of the parties to this Consent Order certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Consent Order and to execute and legally bind that party to it.

FOR U.S. EPA REGION 1

Susan Studlien
Susan Studlien, Director
Office of Environmental Stewardship
U.S. ENVIRONMENTAL PROTECTION AGENCY
NEW ENGLAND
One Congress Street, Suite 1100
Boston, Massachusetts 02114

Dated: 01/08/08

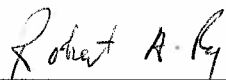
ROBERT A. RAY



Robert A. Ray
52 Bayside Road
Ellsworth, ME 04605

Dated: DECEMBER 24, 2007

FOR RAY BUILDERS, INC.



Robert A. Ray, President
Ray Builders, Inc.
52 Bayside Road
Ellsworth, ME 04605


Dated: DECEMBER 24, 2007

FINAL ORDER

Pursuant to Section 309(g)(2)(B) of the Act, 33 U.S.C. § 309(g)(2)(B), and in accordance with 40 C.F.R. Part 22, the forgoing Consent Agreement is hereby approved and incorporated by reference into this Final Order.

The Respondents are ordered to comply with the terms of the referenced Consent Agreement. This Consent Order shall become effective thirty (30) days after the date of issuance noted below unless a petition to set aside the Order is filed by a commenter pursuant to Section 309(g)(4)(C) of the Act, 33 U.S.C. §§ 1319(g)(4)(C), and 40 C.F.R. Part 22. If the petition is denied, this Consent Agreement and Final Order shall become effective thirty (30) days after such denial. If the petition is granted, the Consent Order will be set aside and a hearing in accordance with Section 309(g)(2)(B) of the Act shall be held.

U.S. ENVIRONMENTAL PROTECTION AGENCY
Region I


Regional Judicial Officer
U.S. EPA, Region I

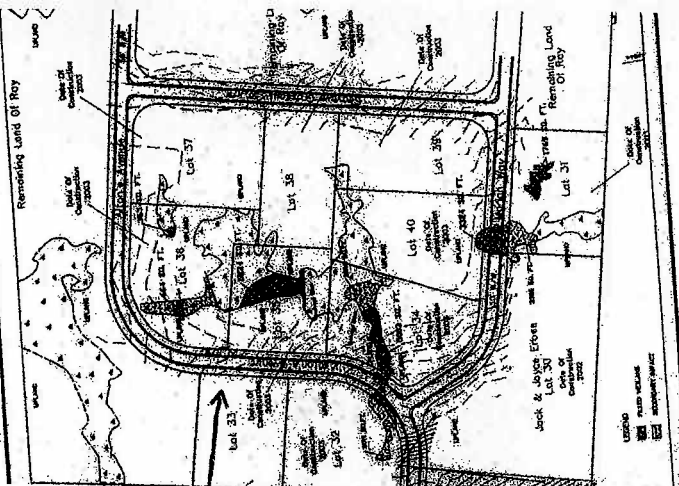
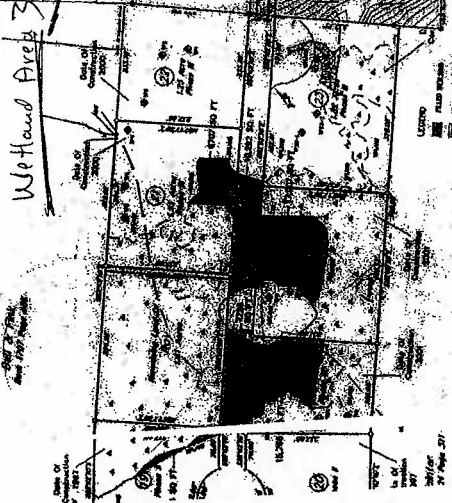
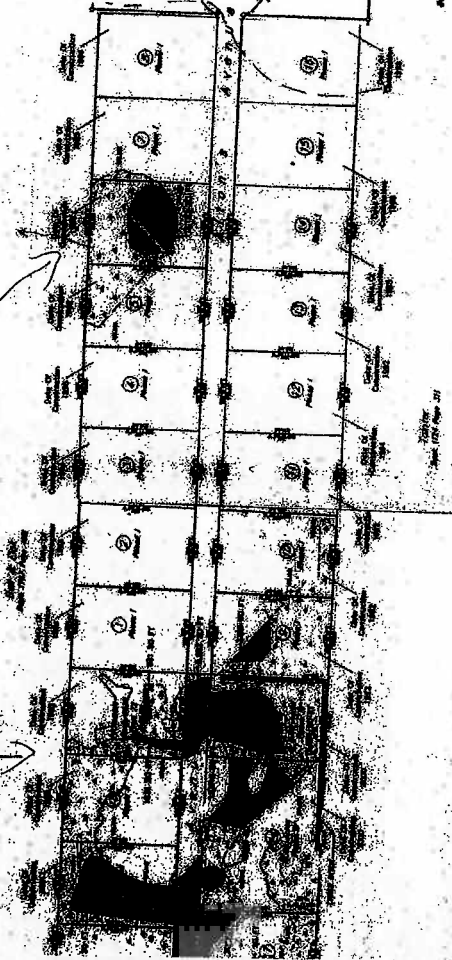
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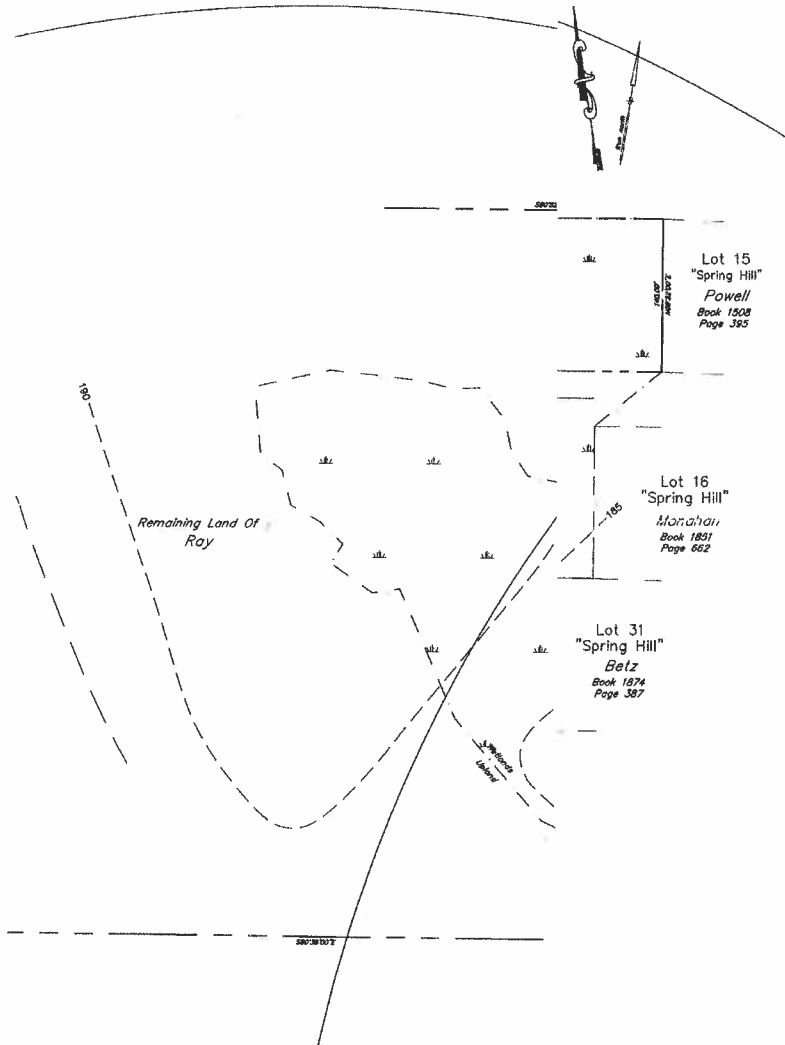
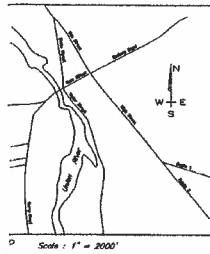
Attachment 1: Impacted Wetlands at Seavey's Woodlot
Attachment 2: SEP Property at Hillside Ave., Ellsworth, Maine
Attachment 3: Form of Easement

ATTACHMENT 1

Wetland Area 1

Wetland Area 2





General Notes

GENERAL NOTES:

1. EXISTING SURVEY AND TOPOGRAPHIC INFORMATION SHOW ON THE PLAN WAS OBTAINED FROM A DIGITAL FILE TITLED "FINAL SUBDIVISION PLAN OF: SPRING HILL II, ELLSWORTH, MAINE" SCALE: 1"=50', FEBRUARY 12, 1997 BY HERRICK AND SALSBURY INC., ELLSWORTH, MAINE.
2. THE SUBJECT PROPERTY SHOWN LIES IN THE R1 ZONE ON TAX MAP #20, LOT 28, CITY OF ELLSWORTH, ELLSWORTH, MAINE. THE DEED IS RECORDED IN BOOK 1345, PAGE 573.
3. THE RIGHT-OF-WAY WIDTH OF ROUTE 1 & ROUTE 3 IS 100 FEET.
4. OWNER OF RECORD IS ROBERT RAY, ELLSWORTH, MAINE.
5. AREA OF CONSERVATION EASEMENT IS 17.3 ACRES.

No.	Revision/Issue	Date

Firm Name and Address

Andrew McCullough
Engineering Consultants
93 Bucksport Road
Ellsworth, ME
207-667-6551

Project Name and Address

PLAN OF
CONSERVATION EASEMENT
Prepared For:
Robert Ray
Spring Hill
Ellsworth, Maine

Project RAY BUILDERS	Sheet SP-1
Date 9/18/07	SP-1
Scale 1"=80'	

Attachment 3
FORM OF CONSERVATION EASEMENT
ON PROPERTY ON HILLSIDE ROAD, ELLSWORTH, HANCOCK COUNTY, MAINE TO
THE FRENCHMAN BAY CONSERVANCY

THIS INDENTURE is made this ___ day of ___, 2008, by and between Ray Builders, Inc. having an address at 52 Bayside Road, Ellsworth, Maine 04605 (hereinafter referred to as the "Grantor") and the Frenchman Bay Conservancy, Inc., a non-profit corporation organized and existing under the laws of the State of Maine (hereinafter referred to as the "Grantee" or "Holder") with a mailing address of P.O. Box 150, Hancock, Maine 04640.

WITNESSETH:

WHEREAS, the Grantor holds title to a certain parcel of land situated on Hillside Road, Ellsworth, Maine described in a deed to the Grantor from _____, dated ___20___, and recorded at Book ___ and Page ___ at Hancock County, Maine, Registry of Deeds, a 17-acre portion of which property, (hereinafter referred to as the "Protected Property"), as depicted on Exhibit A - which is attached hereto and made a part hereof by reference, reference is also made to a survey of the Protected Property entitled "_____", dated ___, and recorded at said Registry in File # ___, Plan # ___; and

WHEREAS, this indenture is created pursuant to the Uniform Conservation Easement Act at Title 33, Maine Revised Statutes, 1989, Sections 476 through 479-B, inclusive, as amended; and

WHEREAS, the Holder is qualified to hold conservation easements pursuant to Title 33, Maine Revised Statutes Annotated, 1989, Section 476(2)B., as amended, and is a publicly funded, non-profit organization operated primarily to accept lands, easements and buildings for the purpose of preserving and protecting natural, scenic, educational, recreational and open space values of real property; and

WHEREAS, Grantor and the Holder agree that the United States Environmental Protection Agency (the "Third Party Enforcer"), having an address at One Congress Street, Boston, MA 02114, shall have a third party right of enforcement pursuant to the Uniform Conservation Easement Act, Title 33 Maine Revised Statutes Annotated, 1989, Section 476(4); and

WHEREAS, the United States Environmental Protection Agency is a qualified third party enforcer pursuant to the Uniform Conservation Easement Act, Title 33 Maine Revised Statutes Annotated, 1989, Section 476(4); and

WHEREAS, [_____] , which holds an interest in the Protected Property, to wit: an Drainage Easement allowing Easement Holder to maintain drainage (a pipe), as described in a deed to the ___ from the Grantor dated ___20___, and recorded at Book ___ and Page ___ at Hancock County, Maine, Registry of Deeds Page ___, has consented to this Conservation Easement as required by the Maine Uniform Conservation Easement Act, and has agreed that its

easement is subject to and bound by the terms of this Conservation Easement, as required by applicable Treasury Regulations; and

WHEREAS, the Protected Property constitutes a mosaic of uplands and wetlands, is adjacent to two bald eagle nesting zones, and possesses ecological, natural, scientific and aesthetic values, and provides significant habitat for wildlife and plants, sediment removal, and nutrient removal and transformation; and

WHEREAS, development of the Protected Property beyond that permitted in this Conservation Easement would have an adverse effect on the ecological, natural, scientific, and aesthetic values; and

WHEREAS, this Conservation Easement reserves as a permanent natural area the 17-acre Protected Property, as having the greatest scenic and habitat importance, in order to preserve the ecology of the Protected Property; and

WHEREAS, the Grantor and Holder wish to provide to the public, access and use on, over and through the Protected Property; and

WHEREAS, the Grantor and Holder, recognizing the importance of the Protected Property for conservation, as demonstrated by the aforementioned facts, have the common purpose of conserving the wildlife values and other natural and scenic values of the Protected Property by the conveyance of a Conservation Easement on, over, and across the Protected Property; and

WHEREAS, preservation of the Protected Property is consistent with federal, state, and local governmental conservation policy, and will yield a significant public benefit to the people of Hancock County and the people of the State of Maine,

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS, in consideration of the facts above recited, and the covenants herein contained, the Grantor does hereby grant with WARRANTY COVENANTS to the Holder, its successors and assigns forever and in perpetuity, as an absolute and unconditional gift a Conservation Easement over the Protected Property, consisting of the following affirmative rights, terms, covenants and restrictions, that will run with the Protected Property in perpetuity and be binding on Grantor, its successors and assigns forever:

AFFIRMATIVE RIGHTS OF THE HOLDER

- A. The Holder has the right to identify, to preserve, and to protect in perpetuity the natural, open space, scenic, and wildlife habitat features of the Protected Property.
- B. The Holder has the right to enforce by proceedings at law and in equity the terms of this Conservation Easement, (including the right to require the restoration of the Protected Property, at Grantor's cost, to its condition as of the date of this grant, subject to any permitted changes made subsequently).
- C. The Holder has the right to enter upon the Protected Property, for inspection and enforcement purposes, after making reasonable efforts to provide advance notice to owners and residents, if any, of the Protected Property, at any reasonable time and in any reasonable manner not inconsistent with the conservation purposes hereof.
- D. The Holder has the right to restrict or limit any activity or use of the Protected Property not otherwise prohibited hereunder which is exercised in a manner that is unnecessarily detrimental to the conservation values to be protected by this Conservation Easement.
- E. The Holder has the right to hold this Conservation Easement in perpetuity and to assign the same, but only to an entity that satisfies the requirements of Section 170(h)(3) of the Internal Revenue Code of 1986 and Treasury Regulations of Section 1.170A-14(c)(1), as amended (or successor provisions thereof) and the requirements of Section 476(2) of Title 33 of the Maine Revised Statutes Annotated (1989) as amended (or successor provisions thereof).
- F. The Holder has the right to conduct, at Grantor's cost, a professional survey on the Protected Property, to the minimum extent necessary to determine compliance herewith, if proof of a boundary of land use demarcation line is a material issue to such a determination.

TERMS, COVENANTS AND RESTRICTIONS

1. LAND USE

It is the dominant purpose of this Conservation Easement to preserve and protect in perpetuity the natural, scenic, and wildlife and other ecological values of the Protected Property, as identified herein above, and to foster responsible conservation practices for the protection of these values.

- A. Without limiting the general restrictions of this grant, neither the Grantor nor its successors and assigns will perform the following acts or authorize or allow others to perform them, except as may be required in the course of any permitted activity,
1. No soil, loam, peat, sand, gravel, concrete, rock or other mineral substance, refuse, trash, solid waste, vehicle bodies or parts, rubbish, debris, junk, waste, pollutants or other fill

material will be placed, stored or dumped on the Protected Property and the surface waters contained thereon, nor shall the topography of the Protected Property be altered or manipulated in any way;

2. No trees, grasses, shrubs, vines, or other vegetation shall be cut, destroyed, or sprayed with biocides, except that de minimis flower picking shall be allowed, and clearing will be allowed for the removal of dead wood and blow-downs, for the protection of human safety, for the establishment and maintenance of any path or trail, and as necessary for ensuring the health of forested areas;
3. No ditches shall be dug, and no draining of the Protected Property shall take place, and no pumping or any other removal of water shall occur on the Protected Property, nor shall the manipulation or alteration of natural water courses or hydrology occur; provided, however, that:
 - a. _____ [Drainage easement holder] or its successors or assigns, shall be permitted to maintain the Drainage Easement on the Protected Property, as described in a deed to _____ from the Grantor dated _____, and recorded at Book ___ and Page ___ at the Hancock County, Maine, Registry of Deeds, which provides drainage for basements on houses on Mountain View Drive, but _____ [Drainage Easement holder], its successor and assigns, shall not construct any structure that will drain wetlands or alter existing hydrology on the Protected Property.
 - b. In maintaining said Drainage Easement, [Drainage Easement Holder], on behalf of itself, its successors and assigns agree that access to the Drainage Easement shall be obtained from _____ on the north of the Protected Property, that any and all work to maintain the Drainage Easement shall occur totally within the boundaries of the Drainage Easement, that there shall be no impact to areas outside the Drainage Easement, and that following maintenance of the Drainage Easement, any disturbed areas will be regraded and planted or seeded so as to minimize erosion and other environmental damage.
4. No trucks, cars, bulldozers, backhoes, or mechanical equipment shall be permitted on the Protected Property, except as permitted in Section 3.b. above; and
5. No building, sign (other than signs erected by Grantor or Holder identifying the Holder as the holder of this Conservation Easement or signs limiting public access to the Protected Property), fence (other than fences that do not interfere with the purpose of this Conservation Easement), utility pole, exterior high intensity lights, antenna or apparatus for telecommunication or radar, or other temporary or permanent structure will be constructed, placed or permitted to remain on the Protected Property.

B. Grantor shall post the Protected Property with signs to discourage the use of mechanized vehicles, including ATVs, dirt bikes and snowmobiles.

C. Grantor shall take no action to prohibit public physical access and use on, over and through the Protected Property provided such use is limited to low-impact outdoor recreation, including but not limited to hiking, swimming, navigation, horseback riding, fishing, skiing and other forms of outdoor recreation which have minimal impact on the natural and scenic character of the Protected Property conducted in conformance with all applicable laws and regulations

concerning such activities. Grantor and/or Holder may control and prohibit, by posting and other means, overnight camping, open fires, and any use by the public which may have an adverse impact on the natural values to be conserved by this Conservation Easement, and any use which is destructive or offensive to other members of the public using the public access areas, or to the reasonable quiet enjoyment and use of private property by the owners, residents, guests, and invitees of the Protected Property and neighboring lands. Notwithstanding any public use of the Protected Property and any insurance coverage therefore, neither Grantor nor Holder assumes any obligation to the public to maintain this Conservation Easement nor shall any acquiescence, or permission to enter the Protected Property by Grantor or by Holder be construed an invitation or license, and neither Grantor nor Holder assumes any liability to the general public for accidents, injuries, acts, or omissions beyond the standard of care owed or beyond the limitations of liability for injury to the public under Title 14 M.R.S.A. Section 159A, or successor provisions thereof.

D. Holder shall have the right to establish and maintain an unpaved rustic footpath within the Protected Property, after prior written notice to and consultation with Grantor as to specific location and the time and manner of entry and construction. Any such footpath shall be established and maintained at Holder's expense and once established, public access thereto shall be subject to the limits identified in Paragraph 1.C. above.

E. Any activity on or use of the Protected Property inconsistent with the purpose of this Conservation Easement is prohibited.

2. BOUNDARIES

Grantor and Holder acknowledge that the Protected Property has been surveyed in advance of this grant.

3. RESERVED RIGHTS OF THE GRANTOR

Grantor reserves to itself, and to its successors, and assigns, all rights accruing from its ownership of the Protected Property, including the right to engage in all lawful uses of the Protected Property that are not expressly prohibited herein and are not inconsistent with the purposes of this Conservation Easement. Grantor reserves the right to sell, give, or otherwise convey the Protected Property, provided such conveyance is subject to the terms of this Conservation Easement, and the terms, conditions, restrictions and purposes imposed with this grant shall continue as a servitude running with the Protected Property in perpetuity. The Grantor shall not be liable for any duties or obligations under this Conservation Easement after conveyance of the Protected Property, except for harm caused by the Grantor during its ownership of the Protected Property.

4. MONITORING AND ENFORCEMENT

The Holder has the right to assure that the condition of the Protected Property complies with all of the terms, covenants and restrictions herein. In connection with such efforts, Holder has the right, after making reasonable efforts to provide advance written notice to owners and to residents, if any, of the Protected Property, to enter the Protected Property at reasonable times and in a reasonable manner to make periodic inspections. Holder agrees to keep on file and make available to the Grantor any notes or reports made in connection with inspections of the Protected Property.

If Holder determines, in its sole discretion, that a violation of this Conservation Easement has occurred or is about to occur, Holder has the right to notify Grantor, its successors or assigns, at their last known mailing address, via certified mail, return receipt requested, and to demand that the violation be stopped and that steps be taken to restore the Protected Property to its condition at the time of this grant, subject to permitted changes made subsequently and changes resulting from "acts of God," "acts of war," unauthorized wrongful acts of a third party, or any prudent action taken by Grantor under emergency conditions to prevent, abate or mitigate significant injury to the Protected Property resulting from such causes.

If Grantor fails with reasonable dispatch to comply with the requirement of Holder's notice, Holder is entitled to pursue its remedies at law and in equity to enforce the terms of this Conservation Easement, to recover damages and to obtain injunctive relief, including an order requiring restoration, at Grantor's cost. Requirement of written notice is waived in matters threatening imminent harm to the conservation purposes of this grant, in which case Holder is entitled immediately to pursue its remedies at law or in equity, after making reasonable efforts to contact Grantor. If a Court determines that this Conservation Easement has been breached, Grantor will reimburse Holder for any reasonable costs of enforcement, including court costs, reasonable attorney's fees and any other payments ordered by such Court. Damages, if recovered, shall be applied by the Holder, to corrective action on the Protected Property, if necessary. Nothing herein should be construed to preclude Grantor's and Holder's rights to recover damages from a third party for trespass or other violation of their respective rights in this Conservation Easement and the Protected Property. The failure or delay of the Holder, for any reason whatsoever, to enforce any of the provisions of this Conservation Easement is not a waiver of its right to enforce the same or any other provision hereof.

5. RIGHTS OF THIRD PARTY ENFORCER

The Third Party Enforcer shall have the right, in a reasonable manner and at reasonable times, after giving reasonable notice to the Grantor, its successors or assigns, to access the Protected Property to ensure compliance with this Conservation Easement. The Third Party Enforcer shall also have the right to enforce by proceedings at law or in equity the covenants in this instrument, including but not limited to the right to require the restoration of the Protected Property to its previous condition. If a Court determines that this Conservation Easement has been breached, Grantor will reimburse Third Party Enforcer for any reasonable costs of enforcement, including court costs, reasonable attorney's fees and any other payments ordered by such Court.

Nothing herein shall be construed to permit the Third Party Enforcer to bring an action against the Grantor or its successors or assigns for any changes to the Protected Property due to causes beyond the Grantor's control, such as changes resulting from "acts of God," "acts of war," unauthorized wrongful acts of a third party, or any prudent action taken by Grantor under emergency conditions to prevent, abate or mitigate significant injury to the Protected Property resulting from such causes. Notwithstanding the foregoing, nothing herein shall be construed to limit Third Party Enforcer's ability to exercise its authority pursuant to applicable law, including bringing an action against Grantor pursuant to such law.

The Third Party Enforcer's discretionary decision not to enforce the terms of this Conservation Easement will not be construed as a waiver of its right to enforce the same or any other provision thereof. The Third Party Enforcer does not waive or forfeit the right to take action to ensure compliance with the covenants and purposes of this grant by any prior failure to act.

6. GRANT IN PERPETUITY AND TRANSFERS OF OWNERSHIP

This Conservation Easement is a burden upon the Protected Property that will run with the Protected Property in perpetuity and bind the Grantor, its successors and assigns forever. This Conservation Easement and any amendment or assignment hereof must be recorded at the York County Registry of Deeds.

Grantor, its successors and assigns, shall have the right to transfer, lease or sell the Protected Property. Grantor must advise Holder and Third Party Enforcer in writing at least thirty (30) days in advance of any such transfer. Any costs incurred by Holder as a result of Grantor's failure to notify Holder of transfer, sale, assignment, or lease of the Protected Property will be paid by Grantor. The failure of Grantor, its successors or assigns, to give the notice required by this paragraph shall not impair the validity of such transfer or limit its enforceability in any way. This Conservation Easement must be incorporated by reference in any subsequent deed or legal instrument by which Grantor conveys any interest (including a leasehold) in the Protected Property.

7. AMENDMENTS

Prior to undertaking any amendments in the use of the Protected Property, the Grantor, its successors and assigns, shall consult with the Holder regarding the proposed amendments to determine the effect of such amendments on the conservation values of the Protected Property. Holder, in consultation with the Third Party Enforcer, shall have the right to approve such amendments in use if such uses do not impair or impede the conservation values of the Protected Property or the purpose of this Conservation Easement, or to disapprove such amendments, such approval or disapproval to be in writing and not to be unreasonably withheld. Amendments will become effective upon recording at the York County Registry of Deeds. Notwithstanding the foregoing, the Holder and Grantor have no right or power to agree to any amendment that would limit the term or result in termination of this Conservation Easement or that would cause it to fail to qualify as a valid easement under the Uniform Conservation Easement Act at Title 33, Maine Revised Statutes, 1989, Sections 476 *et seq.*

8. BASELINE DATA

The Holder shall prepare a conservation plan, documenting the specific conservation values of the Protected Property and containing an inventory of important features of the Protected Property, including reports, studies, maps, photographs, and other documentation that the parties agree collectively provide an accurate representation of the Protected Property at the time of this grant and which is intended to serve as an objective baseline for monitoring compliance with the terms of this grant.

9. COSTS AND TAXES; INDEMNIFICATION

Grantor, its successors and assigns, remain obligated to pay any real estate taxes or other assessments levied by competent authorities on the Protected Property and to relieve the Holder and the Third Party Enforcer from any duty or responsibility to maintain the Protected Property. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and/or maintenance of the Protected Property, including the maintenance of adequate comprehensive general liability insurance coverage.

Grantor recognizes that Holder has not, by accepting this Conservation Easement, acquired any management rights or obligations for the land. Grantor will defend Holder and does hereby, to the fullest extent permitted by law, release, relieve, hold harmless and indemnify Holder, its officers, directors, agents, and employees therefrom, and from any claims for damages which may be brought against Holder, and from any losses, expenses, damages, penalties, fees or costs (including legal fees) imposed upon or incurred by Holder by reason of loss of life, personal injury and/or damage to property occurring in or around the Protected Property, except as may arise from the negligence or misconduct of the Holder, its officers, directors, agents, employees, successors or assigns arising out of and occurring in the discharge of the Holder's obligations hereunder.

10 SUBSEQUENT TRANSFEREES

The Holder has the right to hold this Conservation Easement in perpetuity and to assign the same, but only to an entity that satisfies the requirements of Section 170(h) of the Internal Revenue Code of 1986 and Treasury Regulations of Section 1.170A-14(c)(1), as amended (or successor provisions thereof), and the requirements of Section 476(2) of Title 33 of the Maine Revised Statutes Annotated (1989), as amended (or successor provisions thereof). If a Holder should cease to exist as an organization or cease to be an organization that meets the foregoing criteria, it is the intention of Grantor that this Conservation Easement be transferred to such other organization, that meets the foregoing criteria, as may be designated by the Attorney General of the State of Maine, in the capacity of custodian of charitable trusts, in consultation with the Third Party Enforcer, or as designated under the doctrine of *cy pres* by a court of competent jurisdiction.

11. DEFINITIONS

A. The term "Grantor," where ever used herein, and any pronouns used in place thereof, means and includes, unless repugnant to the context, the above-named Grantor and its successors and assigns whether or not such persons signed this Conservation Easement or had an interest in the Protected Property on the execution of this Conservation Easement.

B. The term "Holder," whenever used herein, and any pronouns used in place thereof, means and includes, unless repugnant to the context, the above named "Holder" and its representatives, successors, and assigns.

C. The term "Third Party Enforcer," whenever used herein, and any pronouns used in place thereof, means and includes, unless repugnant to the context, the above named "Third Party Enforcer" and any successor governmental entity.

D. The term "Drainage Easement Holder" whenever used herein, and any pronouns used in place thereof, means and includes, unless repugnant to the content, the above named -----, and its representatives, agents, successors and assigns.

E. A "wetland" is any area saturated or inundated by surface or ground water at a frequency and duration sufficient to support, and which under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. The "upland edge" of a wetland is the boundary between upland and wetland, and not the edge of open water.

12. CONTROLLING LAW

The interpretation and performance of this Conservation Easement shall be governed by the laws of the State of Maine. This Conservation Easement shall be liberally construed in favor of the grant to effect the purpose of this Conservation Easement.

13. MISCELLANEOUS

A. If any provisions of this Conservation Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Conservation Easement and the application of such provisions to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.

B. Any notice, demand, request, consent, approval or any other communication that either party desires to give to the other regarding the Protected Property shall be in writing and shall be sent via certified mail addressed as follows:

To Grantor:

Robert Ray
President, Ray Builders, Inc.
52 Bayside Road

Ellsworth, Maine 04605

To Holder:

Frenchman Bay Conservancy, Inc.
P.O. Box 150
Hancock, ME 04640

To Third Party Enforcer:

U.S. Environmental Protection Agency, Region I
Wetlands Enforcement Section
One Congress Street
Boston, MA 02114

C. Should it be necessary in the future for the Holder to provide notice to the Grantor in connection with any matter relating to this Conservation Easement, notice to the record owner or owners, who are of full age and competent, of a majority interest in the Protected Property, or of a majority interest in each lot or parcel on the Protected Property if they are in separate ownership, shall be deemed notice to all the owners of the Protected Property. In the event that the Protected Property, or any portion is owned by a partnership, trust or corporate entity, notice to one general partner, the trustee or the registered agent, shall be deemed notice to all owners of the relevant portion. Any consent, agreement or approval made in writing by the person or persons to whom notice is required as aforesaid shall be deemed the consent, agreement or approval of Grantor and are binding on all owners of the Protected Property.

ATTACHMENTS:

Exhibit A - a perimeter map of the Protected Property
Exhibit B - a perimeter deed description of the Protected Property
Exhibit C - deed description of the Drainage Easement

To HAVE AND TO HOLD the said Conservation Easement unto said Holder, its successors and assigns forever.

AND WE DO COVENANT with the Holder and its successors and assigns that we shall and will WARRANT AND DEFEND the premises to the said Holder and its successors and assigns forever, against the lawful claims and demands of all persons claiming by, through or under us.

IN WITNESS WHEREOF, Grantor has executed and sealed this document this ____ day of _____, 2008.

Signed, Sealed & Delivered
In Presence of:

Robert Ray
Ray Builders, Inc.
Grantor

Witness

State of Maine
County of _____, ss. _____, 2008

Personally appeared Robert Ray and acknowledged the foregoing instrument to be his free act and deed, .

Before me, _____ (Notary Public)

(Type or print name of Notary)

this ____ day of _____, 2008.

The above and foregoing Conservation Easement was authorized to be accepted by the Frenchman Bay Conservancy, Inc., Holder as aforesaid, and the said Holder does hereby accept the foregoing Conservation Easement, by and through _____, its President, hereunto duly authorized, this ____ day of _____, 2008.

Frenchman Bay Conservancy, Inc.

_____,
By:
Title:

State of Maine, County of _____, _____, 2008

Personally appeared _____, the authorized representative of the above-named Holder, Frenchman Bay Conservancy, Inc., and acknowledged the foregoing instrument to be his free act and deed, and the free act and deed of the Frenchman Bay Conservancy, Inc.

Before me, _____ (Notary Public)

_____ (Type or print name of Notary)

this ____ day of _____, 2008.

The right of third party enforcement pursuant to the above and foregoing Conservation Easement was authorized to be accepted by the United States Environmental Protection Agency, Region I, as aforesaid, and the said Third Party Enforcer Holder does hereby accept the right of third party enforcement pursuant to foregoing Conservation Easement, by and through _____, hereunto duly authorized, this ____ day of _____, 2008.

United States Environmental Protection Agency, Region I

by: _____

Commonwealth of Massachusetts
County of Suffolk, ss. _____, 2008

Personally appeared, _____, the authorized representative of the above-named Third Party Enforcer, the United States Environmental Protection Agency.

Before me, _____ (Notary Public)

_____ (Type or print name of Notary)

this ____ day of _____, 2008.

The undersigned, the holder of an easement recorded in the Registry of Deeds, Hancock County, Maine in Book ---, Page ----, by execution hereof, agrees that the rights and easements reserved to it and to the portion of the property described therein and in Exhibit B of this Instrument, shall be subject and subordinate to the terms and provisions of this Instrument.

WITNESS:

[Name of Drainage Easement Holder]

By: _____

Its Authorized Representative

Address: _____

STATE OF _____

COUNTY OF _____

On this ____ day of ____, 2008, before me, the undersigned Notary Public in and for the State of _____, duly commissioned and sworn, personally appeared _____ of _____, known by me to be the party so executing the foregoing agreement for and on behalf of Frenchmans Bay Conservancy, Inc. and he acknowledged said Instrument, by him so executed, to be his free act and deed in said capacity and the free act and deed of _____.

(signature)

NOTARY PUBLIC

My Commission Expires: _____.

In the Matter of Robert Ray and Ray Builders, Inc.
Docket No. CWA-01-2008-0028

CERTIFICATE OF SERVICE

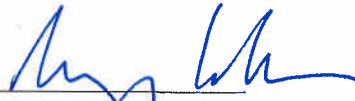
I certify that on the date listed below, I caused the attached copy of the Consent Agreement and Final Order to be sent to the following persons in the manner specified below.

Original hand-delivered: Ms. Wanda Rivera
Regional Hearing Clerk
US EPA, Region I
One Congress St. (RAA)
Boston, MA 02214

Copy by first class mail: Robert Ray
Ray Builders, Inc.
52 Bayside Road
Ellsworth, ME 04605

Dated:

*February 27,
2008*


Margery L. Adams
Counsel for Complainant