STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW COURT DOCKET NO. BCD-21-257

RUSSELL BLACK, et al.
Appellees/Cross-Appellants

v.

BUREAU OF PARKS AND LANDS, et al.
Appellants/Cross-Appellees

ON APPEAL FROM THE BUSINESS AND CONSUMER COURT
DOCKET NO. BCDWB-CV-2020-00029

BRIEF OF AMICUS CURIAE MAINE FOREST PRODUCTS COUNCIL

TIMOTHY C. WOODCOCK, BAR NO. 1633
JONATHAN A. POTTLE, BAR NO. 4330

EATON PEABODY
80 Exchange Street
P.O. Box 1210
Bangor, Maine 04402-1210
(207) 947-0111

Attorneys for Maine Forest Products Council

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INTRODUCTION AND STATEMENT OF INTEREST

The Maine Forest Products Council ("MFPC") is a trade association for the forest products industry with members that include landowners, forest management firms, timber harvesters, forest products transporters and processors, and other related forest industry partners. MFPC serves as the voice of the Maine forest products industry, advocating for responsible and supportive public policies on forest management, economics, and stewardship. Collectively, the landowner members of MFPC own over eight million acres of forestland that abut and, in some cases, surround public reserved lands.

MFPC members have been involved in the management and productive use of Maine's forests for over 150 years. As a result, MFPC and its members possess a deep collective knowledge base on the historical and legal background of Maine's forests and the modern management practices at issue in this matter. Indeed, similar to the Bureau of Parks and Lands ("BPL"), many MFPC members follow principles of multiple use in their land management.

Moreover, MFPC's members have decades of experience with Maine's public reserved lands (also called, at various times, the reserved lands or the public lots), typically through contracts, licenses, leases and other agreements with BPL. Through this symbiotic partnership, MFPC and its members have long played a significant role in shaping the management of Maine's forestlands.

This appeal centers on a lease between BPL and NECEC Transmission LLC ("NECEC LLC") for the non-exclusive use of a portion of two public reserved lots, one in Johnson Mountain Township and the other in West Forks Planation. The lease authorizes the construction and operation of a transmission line across a small portion of these public reserved lots, which in turn represents a small segment of the overall New England Clean Energy Connect transmission corridor (the "NECEC Project"). These original public lots are, and have historically been, primarily managed for timber production. Other uses of these original public lots include another transmission line (established in 1963) and light recreational use such as fishing at Little Wilson Pond (accessed by traveling underneath the existing transmission line) and bear hunting.

The management of these original public lots exemplifies the multiple use principles that govern BPL's management of many public reserved lands that are primarily utilized for timber production but include other uses such as utility lines and hunting. This is typical in Maine's forestlands, where most of the acreage is used for timber management but other uses occur that have small footprints relative to the overall land base and/or involve recreational pursuits (e.g., utility lines, gravel pits, camp leases, non-timber forest products such as maple syrup, hunting, fishing, canoeing, etc.).

Although MFPC submits this brief in support of BPL's and NECEC LLC's positions on BPL's leasing authority and management of the public reserved lands, MFPC takes no position on the merits of the NECEC Project and this brief should not be construed as either favoring or opposing it. Instead, this brief addresses the unique historical and constitutional origins of the public reserved lots and requests that this Court, as it did nearly fifty years ago, recognize and reconfirm that the uses of such public lots are governed by the Articles of Separation (Article X of the Maine Constitution).

Accordingly, MFPC respectfully asks that this Court affirm the execution of the lease because BPL's actions were consistent with Article IX, Section 23, the statutory framework for management of the public reserved lands, and the origins and nature of these lands under the Articles of Separation. MFPC also respectfully requests that, as may be necessary to decide this appeal, this Court provide an authoritative interpretation of Article IX, Section 23 of the Maine Constitution and construe BPL's long-standing statutory lease authority—as set forth in 12 M.R.S. § 1852—as an essential and well-considered part of BPL's management responsibilities under Title 12, Chapter 220. In doing so, MFPC also respectfully requests that this Court provide 12 M.R.S. § 1852 with the strong presumption of constitutionality that all statutes enjoy and construe it as consistent with both

Article IX, Section 23 of the Maine Constitution and the Designated Lands Acts, 12 M.R.S §§ 598 to 598-B.

SUMMARY

At issue in this appeal are claims brought by several Plaintiffs challenging the validity of a lease entered into by BPL and Central Maine Power Company (and later assigned to NECEC LLC) in June 2020. In a predicate ruling, the trial court determined leases issued pursuant to 12 M.R.S. § 1852(4) are not "exempt" from the operation of Article IX, Section 23 of the Maine Constitution. A. 74-89. In reaching this conclusion, the trial court did not construe Article IX, Section 23 on its own terms, but instead relied on the statutory Designated Lands Act. *See* A. 80-81. The trial court also did not consider whether the absence of any reference to Article IX, Section 23 or the Designated Lands Act in 12 M.R.S. § 1852(4)—or indeed, 12 M.R.S. § 1852 in general—was by legislative design and, thereby, entitled to a strong presumption of constitutionality.

Relying on this ruling, the trial court ultimately found that, in issuing the lease, BPL had acted "ultra vires". A. 49-50, 56. In conjunction with this ruling, the trial court also stated that Article IX, Section 23, when construed in conjunction with 12 M.R.S. § 598(5), means that *any* lands designated by the Legislature are now held for the "essential purposes" of "conservation and recreation." A. 43-44. Based on this, the trial court found that, in order to issue a

valid lease with respect to public reserved lands, BPL must take the following steps: (1) provide public notice of the lease request; (2) make a specific factual finding of whether the lease would result in a substantial alteration of the use of the public reserved lands at issue; (3) make those findings generally public and specifically inform the Legislature; and (4) if BPL determined a substantial alteration of use would occur, submit the proposed lease to the Legislature for approval by two-thirds of the members elected to each House. The trial court also ruled that any citizen of Maine, or an individual legislator with standing, could seek judicial review of BPL's decision.

In reaching its various conclusions, the trial court made multiple errors, including by failing to address the unique legal status of the public reserved lots under the Articles of Separation (Article X, Section 5 of the Maine Constitution). As a result, the trial court transformed the essential purposes of public reserved lands—a unique type of land held and utilized for productive purposes for over 250 years—into something new. If allowed to stand, the trial court's decisions threaten to upend BPL's modern management regime for Maine's public reserved lands and puts the productive uses of those lands by one of Maine's oldest industries (in partnership with BPL) at risk.

STATEMENT OF THE FACTS

MFPC agrees in full with the statement of the facts and procedural posture of this matter as set forth in the briefs of CMP and BPL.[1] *See* CMP Brief at 1-17; BPL Brief at 3-16.

STATEMENT OF ISSUES

1. The public reserved lots are governed by the Articles of Separation and are subject to the public beneficial uses and purposes required thereby. Therefore, did the trial court err when it failed to place the public reserved lots and the uses thereof in the proper governing legal framework provided by the Articles of Separation?

2. The public reserved lots are held for beneficial public uses as required by the Articles of Separation. Therefore, did the trial court err when it determined that the public reserved lots are held for the "essential purposes" of "conservation and recreation"?

3. The Plaintiffs have no direct interest in the public reserved lots. Therefore, did the trial court err when it determined that the general public has the right to be involved in leasing decisions with respect to the public reserved lands?

4. When the Legislature enacted the Designated Lands Act, it specifically recognized that multiple uses and third party uses are among the long-standing beneficial uses of public reserved lands. Therefore, did the trial court err when it failed to construe Article IX, Section 23 and the Designated Lands Act consistent with that understanding?

[1] MFPC adds only the additional statement that the trial court, when ruling on BPL's and CMP's motions to dismiss, A. 74, 91-92, 102, adopted the allegations in the Amended Complaint as true. In reaching its final decision, the trial court adopted the same facts based on the initial allegations, *see, e.g.,* A. 28, many of which misconstrue the history and purposes of Maine's public reserved lands.

ARGUMENT

1. The Purposes and Uses of the Public Reserved Lots are Governed by the Articles of Separation.

When the District of Maine manifested its desire to separate from the Commonwealth of Massachusetts and become a state in its own right, the Commonwealth acquiesced—but with conditions. In 1819, the Massachusetts General Court approved the "Articles of Separation" (hereinafter, at times, the "Articles") setting the terms by which Maine would become an independent state. The District of Maine approved the Articles and ultimately incorporated them in Article X, Section 5 of the Maine Constitution.[2] *See* Marshall J. Tinkle, *The Maine State Constitution* 9, 179, 182-183 (2d ed. 2013).

The Articles of Separation constitute a compact between the Commonwealth of Massachusetts and the State of Maine. As a compact between states, and a predicate to Maine's admission to the Union, the Articles required the approval of the United States Congress. *See* U.S. Const. art. I, § 10, cl. 3; art. IV, § 3, cl. 1. The Articles recognized this requirement and expressly conditioned their effectiveness on congressional approval. *See* Me. Const. art. X, § 5 (Item First). The United States Congress approved the Articles and Maine's admission into the Union and, on March 3, 1820, President James Monroe signed "An Act for the

[2] "Article X, section 5 of the Maine Constitution provides and adopts the Massachusetts Act of Separation. That provision is omitted from printed copies of the Constitution but remains in full force." *Ross v. Acadian Seaplants, Ltd.*, 2019 ME 45, ¶ 11 n.6, 206 A.3d 283.

Admission of the State of Maine into the Union." (Attachment 1). At that time, pursuant to Article V of the United States Constitution, the Articles of Separation became the supreme law of the land. *See* U.S. Const. art. V; *see also Texas v. New Mexico*, ___ U.S. ____, 138 S. Ct. 954, 958 (2018). It is also recognized that such an interstate compact constitutes a contract within the meaning of the Contracts Clause of the United States Constitution. *See* U.S. Const. art. I, § 10, cl. 1; *see also Green v. Biddle*, 21 U.S. 1, 92 (1823) (articles of separation between Virginia and Kentucky); *see also United States Trust of New York v. New Jersey*, 431 U.S. 1, 19 n. 17 (1977) (citing *Green v. Biddle*); *see also Opinion of the Justices*, 308 A.2d 253, 269 n.1 (Me. 1973) (citing *Green v. Biddle*).

Because of the foregoing, Maine may not unilaterally change the Articles' terms or the implementation thereof. The Maine Legislature has manifested an understanding of this on at least two occasions. The first occurred in 1831, when the Maine Legislature conditioned legislation directing certain uses of funds earned from the public reserved lands on Massachusetts' approval. P.L. 1831, ch. 494; *see also* 1831 Mass. Laws, ch. 47 (consent from Massachusetts). The second occurred in 1973, when the Maine Senate sought guidance from the Justices of the Maine Supreme Judicial Court on whether draft legislation would violate the Articles and, if so, required consent from Massachusetts. *Opinion of the Justices*, 308 A.2d at 257.

A. Origins of the Public Reserved Lots.

The Articles of Separation provided Maine with a one-half ownership interest in all lands then owned by the Commonwealth and located within the borders of the District of Maine. Me. Const. art X, § 5 (Item First). Included in these lands were the public reserved lots previously established by the Commonwealth of Massachusetts. The Articles required that Maine protect these lots and, moving forward, make reservations and establish similar lots when selling or granting lands from the public domain. Me. Const. art. X, § 5 (Item Seventh).

This naturally raises the question of what the public reserved lots are and to what purposes they are to be put. A brief summary of the long-standing land development policy that led to the establishment of the public reserved lots is informative on this point.

Long before gaining independence from Great Britain, the Commonwealth of Massachusetts required upon the development of lands certain "reservations" be made to establish lots to benefit the ministry, the minister, schools, and the General Court of Massachusetts.[3] Following independence, Massachusetts continued this policy[4] and in a series of Resolves repeatedly applied it to the District of Maine.

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[3] *See, e.g. Inhabitants of Milton v. First Congregational Parish in Milton*, 10 Mass. (10 Pick.) 447, 455 (1830) (land reserved in 1659); *Inhabitants of the First Parish in Brunswick v. Dunning*, 7 Mass. 445 (1811) (land reserved in 1715).

[4] The policy of reserving lands for these and similar purposes as well as other features of Massachusetts land development policy became known as "the New England system" and were

At that time (the 1780s), the District of Maine was considered frontier land and Massachusetts sought to utilize such lands by both selling them—thereby gaining immediate revenue—and encouraging their development—thereby gaining taxable lands. *See* 1786 Mass. Acts ch. 40 (Attachment 2).

The Commonwealth did not attempt to develop these lands directly but instead sold them to "proprietors" who were required to develop them. *See*, *e.g.,* 1788 Mass, Act, ch. 80, 1786 Mass. Acts, ch. 40.[5] The goals and policies are aptly captured in the General Court Resolve of 1786, which promoted "a speedy sale of the eastern lands," the reduction of Massachusetts public debt, and the "settlement and improvement of vacant lands." 1786 Mass. Acts, ch. 40 (Attachment 2); *see also Report on Public Reserved Lots*, ME. STATE FORESTRY DEPT. at 10-12, 18 (1963).

The reservation of lands in each sold township was integral to Massachusetts' land development policy and Massachusetts consistently adhered to this policy. 1788 Mass. Acts, ch. 80; *see also* 1816 Mass. Acts, ch. 470; 1816

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adopted by the national government. *See* Paul W. Gates, *History of Public Land Law Development*, U.S. GOV. PRINTING OFF. 59-74 (1968). Gates' work has been cited as an authoritative source explaining the federal policy for the development and management of frontier lands. *See Papasan v. Allain*, 478 U.S. 265, 268 n. 2 & n. 4 (1986); *Andrus v. Utah*, 446 U.S. 500, 522 n. 1 (1980) (Powell, J., *dissenting*).

[5] The proprietors' obligation to develop these lands as townships could prove difficult to fulfill and, at times, the Massachusetts General Court had to extend the time by which the proprietors were to have done so. *See*, *e.g*. 1799 Mass. Acts, Resolve of February 3, 1799 on Petition of William Phipps; Resolve of February 16, 1799 on Petition of Charles Vaughn Esq.

Mass. Acts, ch. 470.[6] *Accord State v. Mullen*, 97 Me. 331, 54 A. 841, 843 (1903) (public lots were reserved for "the settling of inhabitants in sufficient numbers to require the expenditure of money for public schools"); Lee M. Schepps, *Maine's Public Lots: Emergence of a Public Trust*, 26 Me. L. Rev. 217, 219-20 (1974).

Seen in its broad legal and historical context, the Commonwealth's "insistence on the performance [by township proprietors] of settling duties—bringing a certain number of families on a given tract" coupled with "[t]he reservations in each township for education and religion, as well as generous tax-exemption [constituted] an enlightened policy which envisaged the establishment of typical New England communities in Maine." Frederick Allis, Jr., *A History of Maine: A Collection of Readings on the History of Maine 1600-1974* at 135 (4th ed. 1976).

The specific public reserved lots at issue in this appeal were established in accordance with Massachusetts' land development policy.

In 1793, William Bingham purchased what is known as the "One Million Acres" or "Bingham's Kennebec Purchase," centered on the Kennebec River in central Maine. *See* Moses Greenleaf, *Map of the State of Maine* (1822) (Attachment 3) (depicting the Kennebec Purchase). Bingham's purchase was laid

[6] Long after Maine had attained statehood, the laws of Massachusetts' pertaining to the reserved lands continued to be given legal effect. *See Union Parish v. Upton*, 74 Me. 545, 547 (1883) (Act of 1788); *Walker v. Lincoln*, 45 Me. 67, 70 (1858) (Act of 1786); *see also In re Ring, Land Agent*, 104 Me. 544, 549, 72 A. 548 (1908) (providing brief summary of pertinent Resolves of 1784 and 1788).

out into townships and, from each township, four lots of 320 acres each—comprising of a total of 1241 acres—were reserved by the Commonwealth: "one for the first settled minister one for the use of the ministry one for the use of schools and one for the future appropriation of the General Court. Said lots to [be] average in goodness and situation with the other lots of the respective townships." Deed to William Bingham (Jan. 1793) (being one of sixteen deeds, all with such reservation language) (Attachment 4); *see also* David White, *et al.*, Plan of Townships No. 1 in the 5th Range & No. 1 & 2 in the 6th Range West of the Kennebec River in Bingham's Million Acre Purchase (Oct. 1844) (Attachment 5) (depicting the reserved lots). Consistent with Massachusetts' requirements, these lots were "average in quality."[7] *See* Attachment 4 (requiring the lots be "average in goodness and situation"); *see also* A. 489.

B. Public Reserved Lands Policies Following Maine's Statehood.

When Maine became a separate state, the importance that Massachusetts attached to its reserved lands policy was reflected in the Articles of Separation. Item Seventh of the Articles required that any reservations previously made be continued in full force and, that "in all grants hereafter to be made, by either State, of unlocated land within the said District, the same reservations shall be made for

[7] The Johnson Mountain Township and West Forks Plantation public reserved lots reflect this average qualitative character by having land suitable for productive uses, but which are not "unique" in character and lack unique wildlife, ecological reserves or established recreational facilities. A. 489.

the benefit of Schools, and of the Ministry, as have heretofore been usual, in grants made by this Commonwealth." Me. Const. art X, § 5 (Item Seventh). Thus, even as Massachusetts was relinquishing jurisdiction over Maine and its citizens, it bound Maine to protect those lands already reserved and to continue the reserved lands policy as a permanent feature of Maine's own land development policy.

From the outset and to this day, Maine has continued to meet its constitutional commitments to Massachusetts with respect to the public reserved lots. The fulfillment of this commitment began in 1824, when the Maine Legislature enacted a law promoting the sale and development of its extensive frontier lands. *See* P.L. 1824, ch. 280. In accordance with the Articles, the 1824 Act required that a portion of each township be reserved for "public uses"[8] and this requirement has remained in full force and effect for nearly 200 years. *See, e.g.* 30 M.R.S. § 4151 (1964); R.S. c. 36, § 48 (1954); R.S. c. 32, § 33 (1944); R.S. c. 11, § 18 (1930); R.S. c. 8, § 15 (1916); R.S. c. 7, § 13 (1903); R.S. c. 5, § 12 (1883); R.S. c. 5, § 9 (1871); R.S. c. 5, § 8 (1857); R.S. c. 3, § 11 (1840). Indeed, the

[8] The 1824 Act reduced the amount of lands reserved from four lots totaling 1,280 acres to a single lot of 1,000 acres. P.L. 1824, ch. 280, § 8. However, unlike Massachusetts' policy of reserving lands for the General Court's use, the Articles did not require Maine to reserve (and Maine did not reserve) acreage for the Legislature's future appropriation. *Compare* P.L. 1824, ch. 280, § 8 *with* 1788 Mass. Act, ch. 80 (requiring reservation of one 320 lot "for the future Appropriation of the General Court").

reservation policy, as required by the Articles of Separation, remains the law of Maine today.[9] *See* 12 M.R.S. § 1858(1).

In 1853, Maine purchased Massachusetts' remaining one-half ownership interest in lands within Maine's boundary, including the public reserved lots. *See* Deed from Massachusetts to Maine (1853), at p. 10 (Attachment 6). Demonstrating Massachusetts' view on the importance of the reserved lands requirement, the deed of conveyance specifically required that Maine reconfirm its adherence to such requirement by including a covenant that all currently reserved lands would be held "in accordance with and subservient to the provisions and stipulations contained in [the Articles of Separation]" and that Maine would continue to reserve lands in the future in accordance with the Articles. *Id.* By accepting these terms, Maine became doubly bound to Massachusetts' reserved lands policy—first by the Articles; second by deed.[10]

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[9] In requiring the reservation of 320-acre lots for "the first settled minister, one for the ministry; one for the use of schools, and one for the future Appropriation of the General Court," the 1788 Resolve also directed that the lands so reserved should be "average in goodness" and "situation with the Lands in such Township." Mass. Act, ch. 80. The Maine Legislature has maintained this directive and it remains among the standards governing unlocated lands. 12 M.R.S. § 1858(1) (requiring reserved lands "be of average quality, situation and value as to timber and minerals as compared to other land in the township or planation").

[10] It bears emphasis that it is unlikely that Massachusetts included these terms in the deed out of apprehension that Maine's commitment to its pledge to the Commonwealth was waning. To the contrary, from the outset, Maine implemented and thereafter consistently adhered to the reserved lands policy. *See*, *e.g.,* 1824 Me. Laws ch. 280, § 1 (providing for surveys of land "suitable for settlement and cultivation" to be sold to "actual settlers"); § 8 (requiring the reservation of 1,000 acres of land "for public uses").

The foregoing discussion demonstrates two important points. First, Maine is bound to protect the legal status of the public reserved lands in existence at the time of separation—such as the Johnson Mountain Township and West Forks Plantation lots—and to continue the reserved lands policy for the undeveloped lands moving forward. Second, by operation of the Articles of Separation, the Maine Constitution and the federal Constitution, Maine cannot unilaterally change, whether intentionally or by inadvertence, the terms of the Articles of Separation.

C. Historical Management of Maine's Public Reserved Lands.

In the early years of Maine's statehood, the prospects for development of its vast frontier lands appeared bright. Schepps, *supra*, 26 ME. L. REV. at 224 ("Beginning even before its separation from Massachusetts and continuing at least until the Civil War, Maine enjoyed uninterrupted economic growth."). "It was widely felt that the key to continued economic growth and prosperity lay in the continued settlement of the state and this objective appears to have been universally held." *Id.* at 224-25. Early statutes enacted with respect to the public reserved lands reflect this concept. *See*, *e.g.,* P.L. 1824 (providing incentives for "actual settlers" of public lands).

To oversee and administer the vast and scattered public reserved lands, the Maine Legislature created the position of "Land Agent." P.L. 1824, ch. 280, § 10. Early on, the Land Agent was charged to "preserve [the reserved lands] from

pillage and trespass."[11] P.L. 1831, ch. 510, § 9; *see Cushing v. State*, 434 A.2d 486, 490 (Me. 1981) (noting that from 1830 to 1850, timber trespass was "a widespread problem"). As part of a solution to this issue, the Legislature enacted broad legislation that set forth the Land Agent's management of the public reserved lands including, among other things, the authority "to sell for cash, the right to cut and carry away timber and grass from off the reserved lands…excepting grass growing upon any improvements of any actual settler . . . ." P.L. 1850, ch. 196, § 2. The 1850 Act was seminal and "established the basic framework within which the state administered the public lots in the unincorporated areas, and the income from them, from 1850 to the present [*i.e.* 1974]." Schepps, *supra*, 26 ME. L. REV. at 228.

The "timber and grass deeds" authorized by the 1850 Act and executed by the Land Agent reflect an early recognition that, in order to best preserve and utilize the public reserved lands, the State would need the help of third parties.[12] *See* Schepps, *supra*, 24 ME. L REV. at 257 (noting "there is strong evidence that the

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[11] Over the following decades, this authority was shifted to the County Commissioners, various state agents, and ultimately back to the State Land Agent. *See* P.L. 1842, ch. 33; P.L. 1848, ch. 82; P.L. 1850, ch. 196, § 1; *see also Dudley v. Greene*, 35 Me. 14, 17 (1852).

[12] The Legislature's authorization of the timber and grass deed did not mark the end of aspirations that these lands might someday support settlers. This is evidenced by an 1850 deed for timber harvesting rights issued by the Commonwealth of Massachusetts which, among other things, provided "this sale of timber shall not operate to [slow] the settlement of the country. . . ." *Donworth v. Sawyer*, 94 Me. 242, 47 A. 521, 511 (1900).

dominant and immediate objective of the legislature in 1850 in authorizing the sale of timber and grass rights upon the public lots" was, in part, "to avoid the formidable enforcement problems involved in the prevention of trespasses."). This original approval of the sale of timber and grass rights provided the template for a variety of mutually beneficial agreements between the State and third parties that protected and benefited the reserved lands.

Even in authorizing these early third party uses, however, the Legislature was careful to adhere to the Articles of Separation. Accordingly, the Legislature ensured that the monies realized from these transactions would remain tied to the specific reserved lands from which they were derived.[13] P.L. 1850, ch. 196 §§ 5-6. The Land Agent continued to issue timber and grass deeds until 1876, when the Legislature directed the Land Agent to "terminate all unsettled business connected with the land office." P.L. 1876, ch. 119.

Over the following years, the Legislature of Maine continued to recognize that authorizing third party productive uses of the public reserved lands was in the State's best interest. Accordingly, in 1915, the Forest Commissioner's[14] authority was expanded to include the ability to enter into certain leases for campsites. *See*

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[13] In 1992, the Attorney General's Office issued an Opinion advising that monies realized from the public lots had to be segregated and used for the benefits of those lots. Op. Me. Att'y Gen. 92-7, 1992 WL 674558, at *4 (Dec. 15, 1992).

[14] The Land Agent was made Forest Commissioner, P.L. 1891, ch. 100, § 1, and the title of "Land Agent" was later abolished, P.L. 1923, ch. 196.

P.L. 1915, ch. 306, § 1. As Maine and technology developed, the Forest Commissioner's leasing authority was expanded to include additional actions such as "mill privileges, dam sites and flowage rights," *see* P.L. 1949, ch. 152, and, in 1951, the Legislature expanded the lease authority once again to include "the right to set poles and maintain utility service lines and the right to construct and maintain roads." P.L. 1951 c. 146 (codified at R.S. 1954, c. 36, § 12). A similar statute, though much more detailed, exists today and is at issue in this matter. *See* 12 M.R.S. § 1852.

D. The 1973 *Opinion of the Justices* and the Beneficial Public Purposes and Uses of the Public Reserved Lots.

In 1973, the Maine Senate sought guidance from the Justices of the Maine Supreme Judicial Court with respect to draft legislation intended to dramatically revise the legal framework and management of the public reserved lands—L.D. 1812. *Opinion of the Justices*, 308 A.2d at 253-268. The resulting *Opinion of the Justices* represented the first time that Maine's judiciary fully addressed the Articles' meaning and the obligations they imposed. *Cf.* Schepps, *supra*, 26 ME. L. REV at 236-37. In seeking an opinion on L.D. 1812, the Senate repeatedly posed the following questions in tandem as to various sections of the draft legislation:

> (1) Do the provisions of [the particular section] of the Act violate the Articles of Separation, the Distribution of Powers

provisions or the Due Process Clause of the Federal or State Constitutions?

(2) If the answer to the preceding question is that any of the provision of [the particular section] of the Act violate the Articles of Separation, would such provisions be constitutional upon the consent to such provisions by the Legislature of Massachusetts?

Id. at 257.

In addressing the Senate's questions, the Justices of this Court began by stating that "[t]he origins, and continuing creation, of the 'public lots' in Maine stem fundamentally . . . from the provisions of Item Seventh of the Articles of Separation." *Id.* at 268. As a result, the Justices recognized that "the Articles of Separation are the logical starting point of analysis." *Id.* at 268. Given the breadth and larger implications of the Senate's questions, the Justices also observed that it was "appropriate to present, preliminarily, a unified exposition of the meaning, and legal consequences, of Item Seventh of the 'Articles' which have material bearing on the 'public lots.'" *Id.*

Reviewing the reservation requirement set forth in the Articles, the Justices concluded that "the meaning and legal effect of a 'reservation' . . . is that thereby the sovereign removes the land 'reserved' from the public domain and must continue to hold and preserve them for the 'beneficial uses' intended." *Id.* at 269-70. This raised the related question of what those "beneficial uses" are.

Looking to history and the Articles of Separation, the Justices answered that

> [the] beneficial purposes [must be determined] according to the usages which prevailed in the Commonwealth of Massachusetts prior to separation, [and that], the Maine Constitution subjects the Legislature of Maine to the limitation that it treat all 'public lots'—*i.e*., those already in existence or to be created by 'reservations'—on the principle that the Constitution requires the 'public lots' to be held and preserved for the beneficial uses intended.[15]

Id. at 270 (emphases added). In the end, the Justices concluded that the "beneficial public uses" and "beneficial public purposes" intended for the public reserved lots were broad enough to encompass all of the terms and objectives set forth in L.D. 1812.[16] *Id.* at 271-73.

In posing its questions, the Senate also sought particular guidance with respect to the validity of Section 15 of L.D. 1812. *See Opinion of the Justices,* 308 A.2d at 272-73. Among other items, Section 15 included the "multiple use"[17] standard applied to the natural resources of the public reserved lots (which BPL

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[15] The Justices also addressed the very particular requirements that the public lots be reserved for the ministry, the minister, and schools without reference to any other particular purpose, reasoning that these specific references were not exclusive, but rather, "illustrative" of the "'public uses' for which 'reservations' are to be made." *Opinion of the Justices*, 308 A.2d at 271.

[16] Although not cited by the Justices in support of their conclusion, the reference to schools, by itself, justifies this broad interpretation. The Massachusetts Constitution of 1780 expressly recognized education's indispensable role in fostering a well-educated electorate and, in consequence, a healthy polity. *See* Mass. Const. ch. V, art. I to III; *see also* Me. Const. art. VIII.

[17] Maine adopted the "multiple use" standard in 1965. *See* P.L. 1965, ch. 226, § 13 (codified at 12 MRS § 501-A(7)), repealed by P.L. 1973, ch. 628, § 3). The multiple use standard was based on the federal Multiple-Use Sustained Yield Act of 1960 (P.L. 86-517). This Act has been described as "the first major restatement of purpose of the use of our national forests since the creation early in the [twentieth] century, under the guidance of Gifford Pinchot." Richard Barringer, *et al.*, *Maine's Public Reserved Lands: A Tale of Loss and Recovery*, 29 ME. POLICY REV. 71-72 (Vol. 2 2020).

manages) *and* the leasing authority (authorizing uses by third parties). *Id.* at 261-263. The multiple use standard was placed under subsection 2 of Section 15, the "care and custody" of the public reserved lands was vested in the Forest Commissioner in subsection 3 of Section 15, and subsection 4 set forth the "actions" that the Forest Commissioner could take. *Id.* at 261-62. These actions included the issuance of permits to cut timber, harvest grass and wild foods, tap maple trees, and cultivate and harvest crops, sell gravel, and issue leases for (a) poles and utility lines, (b) campsites, (c) mining, (d) road construction and maintenance, (e) mill privileges, (f) dam sites, and (g) flowage rights. *Id.* at 262.

As noted above, given the Legislature's experience in authorizing third party productive uses of the public reserved lands, it made perfect sense for the Legislature to combine the relatively new multiple use standard (governing BPL's management of the lands) with the long-standing authorization of productive uses of such lands by third parties because the productive uses by third parties served to support the effectuation of the multiple use standard.

Although the Justices did not expressly comment on the multiple use standard or the restatement of the existing leasing authority—and MFPC recognizes that inferences drawn from what the Justices did not say may or may not be correct—based on the breadth and gravity of the requested opinion from the

Senate, it appears reasonable to infer that the Justices viewed the leasing authority as compatible with the Articles of Separation and its requirements.

A short time later, the Justices' opinions with respect to the meaning of and limitation imposed by the Articles of Separation with respect to the public reserved lands was confirmed by the Law Court. There, the Law Court restated the principle that "the State holds title to the public reserved lots as trustee and is constrained to hold and preserve these lots **for the 'public uses' contemplated by the Articles of Separation**." *Cushing v. State,* 434 A.2d 486, 500 (Me. 1981) (emphasis added) (citing *Opinion of the Justices,* 308 A.2d at 271).

E. The Trial Court Erred When It Failed to Recognize That the Articles of Separation Govern the Purposes and Uses of the Public Reserved Lands.

In several decisions leading up to and culminating in the final August 10, 2021 decision, the trial court failed to acknowledge the unique legal status of the Johnson Mountain Township and West Forks Plantation public reserved lots—and the public reserved lands in general—under the Articles of Separation. The trial court's error on this point is all the more notable because, in a March 17, 2021 order, the trial court directly cited both the 1973 *Opinion of the Justices* and *Cushing v. State*. A. 79. Indeed, the trial court went so far as to quote *Cushing* for the principle that "[t]he State holds title to the public reserved lands as trustee and is constrained to hold and preserve these lands for the 'public uses' contemplated

by the Articles of Separation." *Id.*[18] Notwithstanding this acknowledgment, thereafter, the Articles of Separation and the more than two centuries of case law interpreting and applying legal standards governing the reserved lands[19] disappeared from the trial court's orders and decisions. *See* A. 27-56, 57-73.

This error was highlighted when the trial court noted the Articles in mere passing, observing instead that "the Court must take as its starting point the constitutional amendment [Article IX, Section 23], and it must accord appropriate weight to what the people of Maine enacted when they ratified this amendment." A. 88. This contrasts sharply with the 1973 *Opinion*, which began by recognizing that, when the public reserved lands are at issue, "the Articles of Separation are the logical starting point of analysis." *Opinion of the Justices*, 308 A.2d at 268.

Although the trial court did not explain why it omitted any mention of the unique constitutional origins and status of these reserved lots after the March 17, 2021 order, an exchange between the trial court and counsel for BPL during oral argument provides a cogent explanation. At the relevant point in the argument,

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[18] Although the trial court cited these seminal decisions, the March 17, 2021 order did not indicate that these authorities or the Articles of Separation played any role in the trial court's decision with respect to the relationship and intersection of the Articles of Separation, Article IX, Section 23 of the Maine Constitution, and BPL's lease authority under 12 M.R.S. § 1852(4). *See, passim,* A. 74-89.

[19] Case law interpreting the legal standards governing the reserved lands predates Maine's separation from Massachusetts because the Law Court has relied on pre-separation decisions by the Massachusetts Supreme Judicial Court to resolve disputes over the reserved lands. *See*, *e.g., Proprietors of the Town of Shapleigh v. Pilsbury,* 1 Me. (1 Greenl.) 271, 281 (1821) (citing *Brown v. Porter*, 10 Mass. 93 (1813)).

counsel for BPL was pointing out that the Articles of Separation constituted "a compact between Maine and Massachusetts," at which point the court interrupted to observe:

> which we're—we're not part of that anymore. I don't know that—in light of the amendment [Article IX, Section 23], I guess, I'm questioning whether those Articles of Separation mean a lot anymore if what has happened since is that the people of Maine have ratified (sic) the State Constitution to say, we're doing things different from this point forward.

Transcript of Oral Argument, July 16, 2021 at 76:12-17. In essence, the trial court opined, and ultimately, in effect, ruled, that Article IX, Section 23 had superseded the Articles of Separation and that Maine was "not part of that anymore." *Id.* at 76:12-13.

The trial court's error on this point is of the first magnitude. The Articles of Separation remain fully effective and binding and must be construed as such. *See Ross v. Acadian Seaplants, Ltd.,* 2019 ME 45, ¶ 11, 206 A.3d 283. Beyond that, as the 1973 *Opinion* carefully noted, the Articles might well have "independent legal effectiveness as limitations upon the sovereignty of the State of Maine imposed by the Commonwealth of Massachusetts." *Opinion of the Justices,* 308 A.2d at 269 n.1. This proposition is doubly reinforced by the status of the Articles as a contract protected by the Contract Clause of the United States Constitution, *see Biddle,* 21 U.S. (8 Wheat.) at 92, and its status as an interstate compact ratified by Congress, *see Texas v. New Mexico*, ___ U.S. ____, 138 S. Ct. at 958.

By failing to acknowledge, much less apply, the Articles of Separation when discussing BPL's authority to lease public reserved lands—especially with respect to the original public reserved lots of Johnson Mountain Township and West Forks Plantation Maine inherited from Massachusetts—the court erred. For this reason alone, the trial court's multiple decisions should be vacated.

2. The Trial Court Erred When It Determined That Public Reserved Lands Are Held For the Essential Purposes of Conservation and Recreation.

This Court has acknowledged that Maine's custody of the public reserved lots derives from the Articles of Separation. *See Opinion of the Justices,* 308 A.2d at 268-69; *Cushing*, 434 A.2d at 500. Because of this, the reservation process created "no vested rights in any private person" but "effectively subjected [the State of Maine] to a legal restriction" by removing "the 'public lots' from its dominion as an absolute proprietor." *Opinion of the Justices*, 308 A.2d at 269. The effect of this "restriction" is that, post-separation, Maine must continue to use the public reserved lots—whether then existing or later reserved—"for beneficial purposes according to the usages which had prevailed in the Commonwealth of Massachusetts prior to separation." *Id.*

In its final decision, the trial court failed to acknowledge this restriction. Instead, the court combined the constitutional and statutory standards stating that, "[w]ithout question, the Maine Constitution establishes that conservation and/or

recreation are as a fundamental matter the 'essential purposes' for which the land in question is held by the State." A. 42-43. This was error.

As detailed above, the public reserved lots *must* be held and used for beneficial purposes in accordance with the "usages" of the Commonwealth of Massachusetts prior to separation. On this point, the historical and legal record is clear. The reserved lots policy was part of Massachusetts' effort to sell and to prompt the speedy development its frontier lands to make them both productive and taxable. These lands were intended to assist in the development of whole communities, which at the time (as the Law Court has put it), resulted from "settling of inhabitants in sufficient numbers to require the expenditure of monies for public schools." *Mullen*, 97 Me. 331, 54 A. at 844. The Commonwealth intended, and the Articles require, that the public reserved lands be *productive*.[20] That is why, when it became apparent that much of Maine would not develop into full communities, the Legislature's authorization of third party uses—first by deed, then by lease, license, permit or other action—was fully consistent with the Articles' purposes and the uses flowing therefrom. *See Opinion of the Justices*, 308 A.2d at 271.

[20] By contrast, land policies directed at conserving public land did not arise until the latter part of the nineteenth century, prompted in part from "concern about the future supply and cost of timber [which] rose with the rapid depletion and anticipated early exhaustion of timber in the older states." Gates, *supra*, at 563. Thus, when Maine assented to the Articles of Separation, conservation and recreation purposes were not among the "usages" of the Commonwealth.

By stating that the essential purposes of *all* designated lands are conservation and recreation, the trial court, in effect, also appeared to limit the permissible uses of the public reserved lands to conservation and recreation absent *supermajority* approval of the Legislature. In construing Article IX, Section 23 and the Designated Lands Act in such a manner, the trial court effectively contravened the requirements of the Articles of Separation and overrode the long-standing productive uses and purposes of these lands.

3. The Trial Court Erred When It Determined That the General Public Has the Right To Be Involved in BPL Leasing Decisions With Respect to the Public Reserved Lands.

BPL, as the agent of the State of Maine vested with the care and custody of the public reserved lots, acts in the State's sovereign capacity when managing and authorizing third party productive uses of the public reserved lands. Nonparties to the transaction at issue do not have standing to seek judicial review of that action because they have no direct property interest at stake. It was error, then, when the trial court allowed the Plaintiffs—none of which have any property interest in the lease or lands at issue—to seek judicial review of the execution of the lease.

The effect of a reservation within the meaning of the Articles of Separation "is that thereby the sovereign removes the lands 'reserved' from the public domain and must continue to hold and preserve them for the 'beneficial uses' intended." *Opinion of the Justices*, 308 A.2d at 270. As a result, "[t]he State holds title to the

public reserved lots as trustee and is constrained to hold and preserve these lots for the 'public uses' contemplated by the Articles of Separation." *Cushing*, 434 A.2d at 500; *see also Dillingham v. Smith*, 30 Me. 370, 381 (1849).

The trial court, continuing its failure to recognize the distinct origin of the public reserved lands, equated this to a general statutory "public trust." A. 29, 45-46, 48-49, 51. Continuing this flawed line of reasoning, the trial court found that *any citizen of Maine* has the right and the standing to insert themselves into BPL's leasing decisions and, if they are disappointed with the outcome, seek judicial redress. A. 47. This conclusion was generally based on a 1997 revision to BPL's authority, where the Legislature characterized the State of Maine's obligations with respect to the public reserved lands as a "public trust." P.L. 1997, ch. 678, § 13 (codified as 12 M.R.S. § 1846). *See* A. 29, 45.

Beyond violating existing precedent on standing, *see* BPL Brief at 42-45; CMP Brief at 24-31, the trial court's decision on this point also failed to acknowledge the substantial body of case law addressing that the State's trust responsibilities toward the reserved lands arise from the Articles of Separation. This line of authority dates back to 1839, *see State v. Cutler*, 16 Me. 349, 352 (1839), and represents an unbroken line of authority that Maine's trust obligation with respect to the public reserved lands arises from the requirements of the Articles of Separation and Maine's promises to Massachusetts contained therein.

See, e.g., Cushing, 420 A.2d at 923; *State v. Mullen*, 97 Me. 321, 54 A. 841, 843 (1903); *Dillingham v. Smith*, 30 Me. 370, 381 (1849); *see also* Op. Me. Att'y Gen., 92-7, 1992 WL 674558, at *4 (Dec. 15, 1992).

When properly recognized as originating from the Articles, it is plain that individual citizens of Maine are not "beneficiaries" of a "trust" with respect to the public reserved lands and, as Justices of this Court have noted, "no private rights [are] involved." *Opinion of the Justices*, 308 A.2d at 273. Having no private rights to the public reserved lots, individual citizens of Maine have no right or standing to interject themselves into the leasing decisions of BPL, whether before the agency itself or by seeking judicial redress of an action in which they have no protected property interest. *See also* BPL Brief at 43-44.

Aside from these points, the court's dramatic expansion of litigant standing based on Section 1846(1)'s indefinite reference to "public trust" also implicates much broader principles. As was observed in a different context, "[i]t seems to me inescapable that allowing unrestricted taxpayer or citizen standing would significantly alter the allocation of power at the national level, with a shift away from a democratic form of government." *United States v. Richardson*, 418 U.S. 166, 188 (1974) (Powell, J., concurring). In other words, the trial court's broad invitation for pre- and post-lease litigation implicates the separation of powers and should not be sustained.

4. The Trial Court Erred When It Failed to Place Article IX, Section 23 in its Proper Context as a Constitutional Amendment, Subordinated It to the Designated Lands Act, and Failed to Recognize That Appellees Were Challenging the Constitutionality of 12 M.R.S. § 1852(4).

Article IX, Section 23, by its plain terms, applies to "[s]tate park land, public lots, and other real estate held for conservation or recreation purposes," and purports to condition its reach and effectiveness on implementing legislation "designat[ing]" such lands.[21] Me. Const. art. IX, § 23. The same Legislature that reported the constitutional amendment out for approval then enacted the Designated Lands Act, 12 M.R.S. §§ 598 to 598-B. Two provisions of the Designated Lands Act are of particular pertinence in this appeal—Section 598-A, which "designates" lands as falling under Article IX, Section 23[22]—and Section

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[21] The trial court characterized Article IX, Section 23 as the "culmination" of a public attention to and legislation and courts concerning the reserved lands. A. 29. There does not appear to be any record support for this conclusion outside of the Plaintiffs' First Amended Complaint and briefs. *See* A. 155. Nothing in the legislative history of Article IX, Section 23 supports this conclusion. *See* L.D. 228 (116th Legis. 1993) (original resolve seeking to amend the Maine Constitution to prohibit "the sale or other transfer of state parks or memorials"); *Memorandum: Resolution, Proposing an Amendment to the Constitution of Maine to Protect State Parks*, OFFICE OF POLICY & LEGAL ANALYSIS (Feb. 19, 1993) (noting that the proponents of the proposed amendment believed that "[p]ublic reserve lots have been rules to be protected under the Constitution by the Law Court; State Parks should be too").

Further, when the amendment was presented to the voters of Maine for ratification, the question was presented as: "Do you favor amending the Constitution of Maine to protect state park or other designated conservation or recreation land by requiring a 2/3 vote of the Legislature to reduce it or change its purpose?" Const. Res. 1993, ch. 1, *passed in 1993*. No reference to the public reserved lands was included.

[22] Title 12, section 598-A(2-A)(D) lists "public reserved lands" as being designated, but ties that definition to 12 M.R.S. § 1801(1)(8)(A)-(D). That section provides for four separate broad categories of public reserved lands. As original public reserved lots inherited by Maine, the Johnson Mountain Township and West Forks Plantation public reserved lots fall within the

598(5) which legislatively defines the constitutional term of "substantially altered" and then applies it to each category of land designated by section 598-A. 12 M.R.S. §§ 598(5), 598-A.

In reviewing this statutory scheme, however, the trial court never answered the fundamental question of what the terms of Article IX, Section 23 mean *independent* of the Designated Lands Act. Instead, at every turn, the trial court treated both Article IX, Section 23 and the Designated Lands Act as parts of a comprehensive, undifferentiated whole with equal standing and stature. *See, e.g.,* A. 42. This failed to recognize that Article IX, Section 23 is a *constitutional amendment* and was error in itself.

The Maine Constitution is and must be construed as superior to statutory law. *See LaFleur ex rel. Anderson v. Frost,* 146 Me. 270, 280, 80 A.2d 407 (1951).[23] As Chief Justice John Marshall stated: "We must never forget that is a

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description of "ministerial and school lands in the unincorporated areas of the State." 12 M.R.S. § 1801(8)(A).

[23] "While the legislature may help in providing meaning to the constitution by defining undefined words and phrases, the definition provided by our legislature itself must be constitutional. The Legislature may not add to or subtract from the voter qualifications under the constitution. In the end, it is for the courts to interpret the constitution. This important principle has, more than any other, helped allow our democracy to advance with each passing generation with our constitutional beliefs intact." *Chiodo v. Section 43.24 Panel*, 846 N.W.2d 845, 852-53 (Iowa 2014) (internal citations omitted) (citing *Powell v. McCormick*, 395 U.S. 486, 549 (1969) ("Our system of government requires that federal courts on occasion interpret the Constitution in a manner at variance with the construction given the document by another branch.")).

constitution we are expounding." *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 407 (1819).

Although the Legislature may seek to implement—or define—a constitutional term, the courts, at a minimum, must first ascertain the meaning of the constitutional provision at issue and then, and only then, compare it to the statute defining or implementing it. If the statutory definition is inconsistent with the constitutional term, then the statutory definition must give way to the fundamental law. *See id.* at 412.

When seeking to interpret and apply the meaning of Article IX, Section 23 with respect to the public reserved lands, the trial court's error in failing to undertake this initial step—and the results flowing therefrom—become clear.

A. "Reduced or Uses Substantially Altered"

Article IX, Section 23 provides two prerequisites to the Legislature's two-thirds approval requirement—a "reduction" of the land in question or a "substantial alteration" of its "uses." Me. Const. art. IX, § 23. The meaning of "reduction" is fairly straightforward—it means to make smaller.[24] Thus, the term "reduced" would apply to the sale of some or all of a parcel of land protected by Article IX, Section 23. *Cf.* 12 M.R.S. § 598(4).

[24] "To lessen in extent, amount, number, degree, price or other quality; diminish." *Reduce*, Am. Heritage Dictionary, *supra*.

The term "uses substantially altered" requires more attention. The word "uses" has many meanings, but, as employed in Article IX, Section 23, it means "[t]o bring or put into service; employ for some purpose." *Uses,* Am. Heritage Dictionary of the English Language (1976); *see also Use*, Black's Law Dictionary (10th ed. 2014) ("The application or employment of something . . . ."). "Alter" is, like "reduced", fairly self-evident, meaning "[t]o change or make different; modify."[25] *Alter*, Am. Heritage Dictionary, *supra*. Finally, the term "substantial", as applied in this context, is likely to mean "considerable in importance, value, amount, degree or extent."[26] *Substantial*, Am. Heritage Dictionary, *supra*; *see also Substantial*, Black's Law Dictionary, *supra* ("Considerable in amount or value; large in volume or number.").

Read in light of what such words "would convey to an intelligent, careful voter," *Payne v. Sec'y of State*, 2020 ME 110, ¶ 18, 237 A.3d 870, Article IX, Section 23 would appear to condition the legislative approval requirement on whether a proposed use of designated land would be considerably different that the

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[25] This raises the question of what does "alteration", as used in Article IX, Section 23, mean as applied to these 2020 Lease and these reserved lands? For example, if the vegetation of a public lot is changed from forest habitat to shrub or early-successional habitat, both of which are naturally occurring types of habitat, is that an alteration? *Cf.* A. 481. The trial court did not address this question.

[26] This raises the question of what does "substantial", as used in Article IX, Section 23, mean as applied to the 2020 Lease and these reserved lands? For example, if it is assumed, *arguendo,* that a utility corridor is not already a pre-amendment "use", would a corridor that occupies only 2.6% of the total area of public lots be considered substantial? *Cf.* A. 482. The trial court did not address this question.

use of such lands existing at the time such lands were designated. So interpreted, in order for Article IX, Section 23 to have any meaning, there must be a *pre-existing* use (i.e., the use prior to 1993) against which the new proposed use can be measured.

When applied to the *public reserved lots* (and especially the original public reserved lots at issue here)—which have a unique history and constitutional framework that applies—special care must be taken in applying the term "use". For example, although the "use" of "state park lands" may mean one thing, when applied to the original "public lots", the term "use" *must* be construed in a manner consistent with the obligations imposed on the State of Maine by the Articles of Separation. *Opinion of the Justices*, 308 A.2d at 271, 272-73; *Cushing*, 434 A.2d at 500. Therefore, as applied to public reserved lots, any substantial alteration of use analysis required under Article IX, Section 23 *must* be measured against the spectrum of productive uses authorized by the then-existing management framework and required under the terms of the Articles of Separation.

As has been discussed in detail above, the purposes and uses of reserved lots originated with Massachusetts as a policy to realize monies from the sale of townships and to spur the development of new, productive, and taxable communities within those lands. Beginning as early as the 1850s, the Maine Legislature authorized third party uses to aid Maine in achieving these goals by

promoting the continued productive use of the public reserved lands, including by executing leases authorizing the use of such lands for certain third party uses. The Legislature's enactment and continued expansion of lease authority—including the lease authority set forth at 12 M.R.S. § 1852—is wholly consistent with the "beneficial public uses" which the Articles require the public reserved lands be put. *See* 308 A.2d at 272-73. Thus, the execution of a lease for third party uses that are consistent with these purposes and otherwise in accordance with 12 M.R.S. § 1852, cannot be considered an alteration of the pre-existing "uses" of these unique lands within the meaning of Article IX, Section 23, much less a *substantial* alteration of that use.

B. The Designated Lands Act.

Not only did the trial court fail to construe Article IX, Section 23 in its own right, but it effectively subordinated a constitutional amendment to the statutory definitions set forth in the Designated Lands Act. Although this conflation recurs throughout the trial court's various decision, it appears with particular force in the final August 10, 2021 decision. *See* A. 42. In essence, the trial court treated Article IX, Section 23 as nothing more than a foil for the application of the statutory standards set forth in the Designated Lands Act. Not only was the elevation of the statutory scheme above the constitutional amendment error, it also was an improper construction of the Designated Lands Act.

Title 12, section 598(5) begins with a blanket definition of "substantially altered", keying that definition to the physical characteristics of the lands, themselves—that is, "the use of designated lands, means changed so as to significantly alter the physical characteristics in a way that frustrates the essential purposes for which that land is held by the State." *Id*. With respect to the public reserved lands, the "essential purposes for which that land is held" is defined to mean the multiple use standard provided by 12 M.R.S. § 1847. *See* 12 M.R.S. § 598(5). Thus, the Legislature tied particular statutory designations and definitions to the then-existing statutory framework for BPL's management of Maine's public lands, including the public reserved lands. The current framework is substantially similar to the framework that existed in 1993 excepting various reorganization of statutory sections.

Looking to the multiple use standard provided by 12 M.R.S. § 1847, when read as a whole, that section provides the standards by which BPL is required to manage the natural resources of specific lots *and* the standards by which BPL is required to judge the authorization of third party uses. *See* 12 M.R.S. § 1847(2), (3). If a proposed action is "consistent with" the management plan for, and the multiple use management of, a specific lot, then BPL is entitled to take such action "upon any terms and conditions and for any consideration the director considers reasonable." 12 M.R.S. § 1847(3). If the proposed action is consistent with the

management plan and multiple use management of a specific public reserved lot, then, by the plain terms of the Designated Lands Act, the essential purposes for which the land is held cannot be considered frustrated and, therefore, no substantial alteration has occurred. This provides BPL—the agency with the knowledge and expertise with respect to these lands—with the discretion to determine whether a proposed use is consistent with the current and long-standing productive uses of the public reserved lands.

By failing to properly construe the Designated Lands Act and BPL's statutory authority in this manner, the trial court improperly determined that, even if a lease issued pursuant to 12 M.R.S. § 1852(4) was "consistent with BPL's plan, [it] could nevertheless frustrate the essential purposes for which the land is held by the State." *Id*. at 44. This was error.

C. The Trial Court Failed To Acknowledge That Appellees Had Challenged the Constitutionality of 12 M.R.S. § 1852(4).

In the First Amended Complaint, Appellees challenged the issuance of the 2020 Lease as "ultra vires" on the grounds that BPL had issued the lease without first submitting it to the Legislature for approval. A. 128, 129, 168, 171, 173. Properly framed, this raises the question of what authority was being challenged.

As the lease at issue makes clear, that authority is 12 M.R.S. § 1852(4). Therefore, the Plaintiffs necessarily had to assert that BPL had exceeded its authority pursuant to 12 M.R.S. § 1852(4) in this specific instance, or that 12

M.R.S. § 1852(4) itself was unconstitutional. Because 12 M.R.S. § 1852(4) makes no reference to Article IX, Section 23 or the Designated Lands Act on its face, the Plaintiffs were limited to, in effect, arguing the latter point. Despite this, the trial court never acknowledged that the challenge was, in effect, a challenge to the constitutionality of 12 M.R.S. § 1852(4) as written.[27]

In its predicate order, the trial court requested that the parties to address the question of "whether utility leases, pursuant to 12 M.R.S. § 1852(4) are exempt from Article IX, Section 23 of the Maine Constitution." A. 74. By framing the question in this manner, the trial court erroneously *assumed* that 12 M.R.S. § 1852(4) necessarily was governed by Article IX, Section 23 and that any interpretation of 12 M.R.S. § 1852(4) that did not read a two-thirds legislative approval requirement into the statute would serve to "exempt" the statute from application of Article IX, Section 23.

The error in this approach is striking when similar provisions governing BPL's management of lands, as provided in Title 12, Chapter 220, are reviewed. These provisions are put in full context in the briefs of CMP and BPL, and MFPC does not repeat that analysis except to emphasize that neither the leasing authority for the reserved lands nor the nonreserved lands—both being types of "designated

[27] In an oral argument, CMP raised the issue that Plaintiffs were challenging the constitutionality of 12 M.R.S. § 1852(4). The trial court responded only "[w]ell, they—that's not what [the Plaintiffs] said in their recent briefing." Transcript of Oral Argument at 83:2-3 (Feb. 12, 2021).

lands"—condition the issuance of a lease on Article IX, Section 23 or the Designated Lands Act. These leasing provisions are in stark contrast to provisions authorizing the sale of reserved and nonreserved public lands, both of which provide that sales are "subject to [Title 12] section 598-A." 12 M.R.S. §§ 1837, 1851. This conclusion is further reinforced by the text 12 M.R.S. § 1814, which sets out both the sale and leasing authority for state park lands. Recognizing that a wholesale absence of reference to the Designated Lands Act was improper, the Legislature provided that transactions pursuant to 12 M.R.S. § 1814 be "consistent with [Title 12] section 598-A."[28]

Given the consistency in structure, the absence of reference to the Designated Lands Act in 12 M.R.S. § 1852 should have been viewed as intentional. *See DaimlerChrysler Corp. v. Me. Revenue Servs.*, 2007 ME 62, ¶ 17, 922 A.2d 465; *Arsenault v. Sec'y of State*, 2006 ME 111, ¶ 17, 95 A.2d 285. The trial court erred when it failed to recognize the intentional structuring of BPL's statutory leasing authority and provide it the heavy presumption of

[28] The use of different modifiers—"consistent with" and "subject to"—when discussing the application of 12 M.R.S. § 598-A to specific transaction is also telling. When a transaction is clearly subject to two-thirds legislative approval, such as a reduction in the size of a parcel caused by a sale, the Legislature specifically provides that the transaction is "subject to" the requirements of 12 M.R.S. § 598-A. *See* 12 M.R.S. § 1851. Conversely, where a transaction may or may not be subject to the requirements of 12 M.R.S. § 598-A, such as a provision that includes *both* leasing and sale authority, the Legislature uses the modifier "consistent with" the requirements of 12 M.R.S. § 598-A. *See* 12 M.R.S. § 1814. This distinction should be viewed as intentional. *See DaimlerChrysler Corp.*, 2007 ME 62, ¶ 17, 922 A.2d 465; *Arsenault*, 2006 ME 111, ¶ 17, 95 A.2d 285; *see also State v. Standard Oil Co. of NY*, 131 Me. 63, 159 A. 116, 117 (1932) ("In construing statutes, courts expound the law; they cannot extend the application of the statute, nor amend it by an insertion of words.").

constitutionality it deserves. *See Jones v. Sec'y of State*, 2020 ME 113, ¶ 18, 238 A.3d 982 ("A person challenging the constitutionality of a legislative enactment bears a heavy burden of proving unconstitutionality, since all acts of the Legislature are presumed constitutional. To overcome the presumption of constitutionality, the party challenging a law must demonstrate convincingly that the law and the Constitution conflict." (quotation marks and internal citations omitted)). Instead, the trial court took it upon itself to, in effect, amend 12 M.R.S. § 1852 by reading in a "consistent with" or "subject to" 12 M.R.S. § 598-A requirement where none exists. This was error.

CONCLUSION

For all of the foregoing reasons, and all of the reasons set forth by CMP and BPL, MFPC respectfully requests that this Court vacate the decisions of the trial court, affirm BPL's authority to issue leases pursuant to 12 M.R.S. § 1852, and restore the Articles of Separation to their proper place in the hierarchy of law governing the public reserved lands.

Dated: December ___, 2021

Timothy C. Woodcock, Bar No. 001633
Jonathan A. Pottle, Bar No. 004330
EATON PEABODY
80 Exchange Street
P.O. Box 1210
Bangor, ME 04402
(207) 947-0111

Attorneys for Amicus Curiae
Maine Forest Products Council

ATTACHMENT 1

An Act for the Admission of the State of Maine into the Union.

Whereas, by an Act of the State of Massachusetts, passed on the Nineteenth day of June, in the Year One Thousand Eight Hundred and Nineteen, entitled "An Act relating to the Separation of the District of Maine from Massachusetts Proper, and forming the same into a separate and independent State; the People of that part of Massachusetts heretofore known as the District of Maine did, with the Consent of the Legislature of said State of Massachusetts, form themselves into an independent State, and did establish a Constitution for the Government of the same, agreeably to the Provisions of said Act— Therefore—

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, from and after the fifteenth day of March, in the year One Thousand Eight Hundred and Twenty, the State of Maine is hereby declared to be one of the United States of America, and admitted into the Union on an equal footing with the original States, in all respects whatever.

H. Clay, Speaker of the House of Representatives.
John Gaillard, President of the Senate pro tempore.

Washington, March 3d 1820.
Approved.
James Monroe.

Act for the Admission of the State of Maine into the Union. — 1 s 2

I certify that the within is a true Copy of "An Act for the Admission of the State of Maine into the Union," accurately transcribed from the original Roll deposited in the Office of the Department of State of the United States, according to Law, for safe-keeping

In testimony whereof I, John Quincy Adams, Secretary of the Department aforesaid, have hereunto subscribed my name, and caused the Seal of Office of said Department to be affixed, this third Day of March, in the Year of Our Lord One Thousand Eight Hundred and Twenty; and of the Independence of the United States the Forty-fourth.

John Quincy Adams.

ATTACHMENT 2

quantity of each article disposed of, and of the respective sums received on each, to the Governor and Council, if sitting, otherwise to the Governor, once in three months, at the least; and he is hereby further directed, to pay into the Treasury once in three months, at the least, all the monies and orders he has received for the said Articles, taking duplicate receipts therefor, one of which to be lodged in the Secretary's office.

And whereas the Treasurer has anticipated a part of the said specie Taxes, by drawing orders on the several Collectors, Constables and Sheriffs, to the amount of Sixty four thousand pounds:

Therefore, Be it further enacted by the authority aforesaid, That the several persons in whose favor the said orders have been drawn, be, and they hereby are allowed to receive any of the said enumerated articles, at the price at which the same are set in the place where they are deposited, in discharge of such orders; and in case the possessors of such orders, shall not chuse to receive their pay in specific articles, they are hereby respectively permitted, to return the said orders to the Treasurer; and the Treasurer is hereby directed, on receiving such orders, to pay the amount of the same from the proceeds of the several articles herein before enumerated, when sold by the Commissary General. *November 8, 1786.*

Persons in whose favor orders have been drawn, allowed to receive enumerated articles.

1786. — Chapter 40.

[September Session, ch. 12.]

AN ACT TO BRING INTO THE PUBLIC TREASURY, THE SUM OF *ONE HUNDRED AND SIXTY THREE THOUSAND, AND TWO HUNDRED POUNDS*, IN PUBLIC SECURITIES, BY A SALE OF A PART OF THE EASTERN LANDS; AND TO ESTABLISH A LOTTERY FOR THAT PURPOSE. *Chap.* 40.

Whereas by a speedy sale of the eastern lands belonging to this Commonwealth, for the public securities, the debt of this Commonwealth, may be reduced; the burden of the necessary taxes, diminished, and the settlement and improvement of the vacant lands greatly promoted: And whereas the sale of the said lands may be facilitated by establishing a public Lottery therefor: Wherefore, Preamble.

Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That a Lottery be, and hereby is granted

Lottery established, for the sale of 50 townships.

and established for the sale of the following fifty townships of land, in the County of *Lincoln*, each of the contents of six miles square, and laying between the rivers *Penobscot* and *Schuduc*, by Lottery Tickets of *sixty pounds* each, *to wit*. Townships number Seven, thirteen, fourteen, fifteen, sixteen seventeen, eighteen, nineteen, twenty, twenty one, twenty three, twenty four, twenty five, twenty six and twenty seven, being fifteen Townships in the east Division, so called; and Townships, numbered from fourteen inclusive to forty three inclusive, being thirty Townships in the middle Division so called; and Townships, Number two, three, four, five and six, in the northern Division, and southern range, so called. The

Boundaries.

whole Tract bounded as follows, *viz*. Beginning at the North West corner of Township Number eight, in the aforesaid middle Division; from thence running North, thirty miles; then East six miles; then North six miles; then East thirty miles; then South six miles; then East to *Schuduc River;* then down the middle of that River (through the *Schuduc Ponds*) to the South East corner of Township Number seven, in the East Division, being a heap of Stones by a Rock Maple tree on the West bank of *Schuduc River*, marked thus ∧ 1764; then south forty-five degrees West, two miles one hundred eighteen rod, to a heep of Stones and white Pine Tree marked, on the North East side of *Meddy-Bemps Lake* or *Pond*, so called; then southerly through said Pond to the out-let thereof, or beginning of *Denney's River;* then down the middle of *Denney's River*, to a white Pine Tree on the West bank thereof, marked for the North East corner of Number ten in said East Division; then south eighty one degrees West, one mile one hundred rod, to a spruce Tree the North West corner of Number ten; then south nine degrees East, seven miles, to the North line of Number twelve; then south eighty one degrees West, to the East line of *Machias;* then North ten degrees West, on *Machias* line, to the North East corner thereof; then south eighty degrees West, eight miles to the north West corner of *Machias;* then South ten degrees East, to the North East corner of Number twenty two in said East Division; then South eighty degrees West six miles one hundred and fifty rod to a Beach Tree, the North West corner of Number twenty two on the East line of Number thirteen, in the middle Division; then North to the North East cor-

ner of said number thirteen; then West on the North line of Number thirteen, twelve, eleven, ten, nine and eight, to the first mentioned bounds.

Provided nevertheless that there be reserved out of each Township, four lots of three hundred and twenty acres each, for public uses, *to wit*, one for the use of a public Grammar School forever one for the use of the Ministry, one for the first settled Minister, and one for the benefit of public Education in general, as the General Court shall hereafter direct. Proviso.

And be it further enacted by the authority aforesaid, that two thousand seven hundred and twenty Tickets, be printed off, and sold for *sixty pounds* each; and that the said fifty Townships, be delineated and numbered on a plan or plans, to be made and entered in a Book for that purpose; and that the residue of the said Townships, after making the reservations before mentioned, be divided into as many lots, to be drawn as prizes, as there are Tickets, and be numbered accordingly: and that there shall be one lot or prize of a Township, two prizes of half a Township each; four prizes of a quarter of a Township each; six prizes of three miles by two miles each; twenty prizes of two miles by two miles each; forty prizes of three miles by one mile each; one hundred and twenty prizes of two miles by one mile each; four hundred prizes of one mile square each; seven hundred and sixty one prizes of one mile by half a mile each; and thirteen hundred and sixty six prizes of half a mile square each; reserving nevertheless, as is in this Act before mentioned; making in the whole, two thousand seven hundred and twenty lots or prizes. Number of tickets to be printed, &c. Number and value of prizes.

And be it further enacted by the authority aforesaid, That the several purchasers and proprietors of the Tickets in the same Lottery, shall be intitled to have and hold to themselves, their heirs and assigns, forever, such prize lots of the said fifty Townships, as may be drawn by their Tickets respectively, upon producing the same to the Secretary of the Commonwealth, within six months after drawing the said Lottery; and having the same registered by him as is herein after provided: and such registry shall enure and operate to all intents and purposes, as a grant of the same lots respectively, on behalf of this Commonwealth, to the Proprietor or proprietors of the Tickets so drawing the same, without any other or further deed or Proprietors of tickets, — their title secured.

writing whatever; and an attested copy of such registry shall be sufficient evidence of the Party's title to the same.

Managers appointed.

And be it further enacted by the authority aforesaid, that the Hon. *Samuel Phillips*, and *Nathaniel Wells*, Esquires, and *John Brooks*, *Leonard Jarvis* and *Rufus Putnam*, Esquires be and they hereby are appointed Managers of the said Lottery; and shall be sworn to the faithful performance of their trust; and that they procure the said Tickets to be printed on good paper, and number and check the same; and that they lay down in a book and number the townships and lots as aforesaid; and that they publish the foregoing scheme of this Lottery, in such of the public News Papers, as they may judge best, in order to promote a speedy sale of the Tickets. And that, immediately on drawing the said Lottery, they publish an account of the numbers and prizes in one of the public News Papers, and forthwith return to the Secretary the Book and plans aforesaid, of the said Townships and lots, together with an account and list of the numbers and prizes drawn by the respective numbers, in opposite columns, fairly entered therein, and sign the same Book, and annex their seals to their names respectively.

Managers to be sworn.

An account of prizes to be published, &c.

Secretary to register the names, &c. of proprietors.

And be it further enacted by the authority aforesaid, that when the proprietor of a ticket, shall produce the same to the Secretary, the said Secretary shall enter and register in the book, so to be returned to him by the Managers, against the number of such ticket and the prize lot it may have drawn, the name of such proprietor, with the place of his abode, and his addition, in three distinct columns, and certify the amount of the prize on the back of such ticket, and deliver the same to the proprietor thereof, if he shall request it, without demanding therefor, any fee or reward.

Drawing, when to commence.

And be it further enacted by the authority aforesaid, that the said Lottery shall commence drawing in the town of *Boston*, on the first Wednesday of *March* next, at furthest; and in case all the tickets shall be sold before the said first Wednesday of *March*, that then the said Managers may, and shall proceed forthwith to draw the same; and such Tickets as may remain unsold on the said first Wednesday of *March*, shall be the property of this Commonwealth. And the Managers aforesaid shall previous to their beginning to draw the said Lottery, then deposit

the tickets which remain so unsold, in the Treasurer's Office, with a list of their numbers respectively.

Tickets may be sold for public securities, or silver and gold.

And be it further enacted that the said Tickets may, and shall be sold, for the consolidated notes of this Commonwealth, or for the public Securities of the United States, called final Settlements, or for any other public securities on interest of the United States, or of this Commonwealth, or for silver and gold; and the said Managers are hereby directed accordingly. And in order to encourage the settlement and improvement of the said land,

Lands drawn, exempted from taxes, for fifteen years.

Be it further enacted by the authority aforesaid, that the said lots of land which shall be so drawn as prize, shall be exempted from every State or Continental land tax, from the date hereof, during the term of fifteen years;

Polls exempted.

and that no State or Continental tax on the polls of such persons as shall settle and reside on such lots as shall be so drawn as prize, or on their estates actually within the same, shall be levied or assessed for and during the term of fifteen years from the date of this act.

Penalty for forging or counterfeiting tickets.

And be it further enacted by the authority aforesaid, that if any person shall forge, counterfeit or alter, or knowingly and willfully act or assist in forging altering or counterfeiting any lottery ticket that shall be issued by virtue of this act: or shall pass, utter, exchange or barter any such altered, forged or counterfeited ticket, knowing the same to be so forged, counterfeited or altered; or shall forge and counterfeit, or procure to be forged and counterfeited, or knowingly and willfully act or assist, in forging, altering or counterfeiting any letter of attorney, or instrument, or the books of the said Managers, to receive the benefit and advantage of any prize that may be drawn in the said lottery, or to deprive the true and lawful owner thereof; or shall knowingly and fraudulently demand to have any prize ticket registered for his use, by virtue of such counterfeit or forged letter of attorney or instrument; or shall falsely or deceitfully personate any true and lawful proprietor of a ticket, thereby transfering, or endeavouring to transfer, and convey the same, or receiving, or endeavouring to receive, the benefit and advantage thereof, as if such offender were the true and lawful owner of the said ticket, in all or either of the foregoing cases, the person so offending, and being thereof convicted, before the Justices of the Supreme Judicial Court, shall be fined not exceeding *one thousand pounds*,

or less than *one hundred pounds*, or imprisoned not exceeding twelve months; or be sentenced to be publickly whipped, not exceeding thirty-nine stripes; or to set on the Gallows with a rope about his neck, for the space of one hour; or to be branded, or be sentenced to hard labor, pursuant to the act in such cases lately made and provided; or to suffer all or any of the said punishments, according to the discretion of the said Justices, and the nature and aggravation of the offence.

Managers to pay the money, &c. into the treasury.

And be it further enacted by the authority aforesaid, That the said Managers be and hereby are required, to pay into the treasury of this Commonwealth, as they receive the same, all such sums of money and securities, as may be paid to them for tickets as aforesaid.

November 9, 1786.

1786. — Chapter 41.

[September Session, ch. 10.]

Chap. 41. AN ACT FOR SUSPENDING THE PRIVILEGE OF THE WRIT OF HABEAS CORPUS.

Preamble.

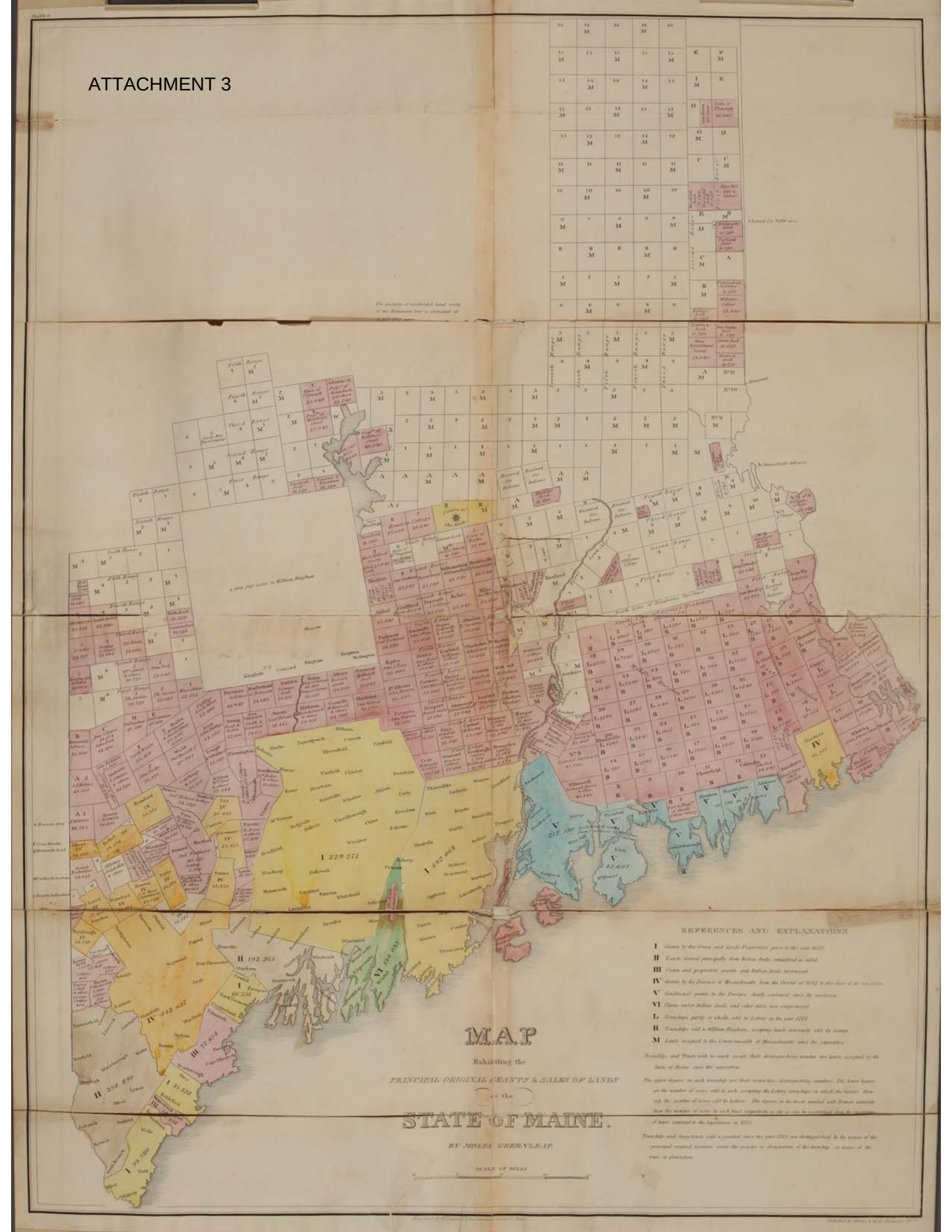
Whereas the violent and outrageous opposition, which hath lately been made by armed bodies of men, in several of the Counties of this Commonwealth, to the Constitutional Authority thereof, renders it expedient and necessary, that the benefit derived to the Citizens from the issuing of Writs of Habeas Corpus, should be suspended for a limited time, in certain cases:

Governour and Council authorized to cause persons to be apprehended.

Be it therefore enacted, by the Senate and House of Representatives, in General Court assembled, and by the Authority of the same, That the Governor, with the advice and consent of the Council, be and he hereby is authorised and empowered, by Warrant, under the Seal of the Commonwealth, by him subscribed, and directed to any Sheriff, Deputy Sheriff, or Constable, or to any other person, by name, to command, and cause to be apprehended, and committed in any Goal, or other safe place, within the Commonwealth, any person or persons whatsoever, whom the Governor and Council, shall deem the safety of the Commonwealth requires should be restrained of their personal liberty, or whose enlargement is dangerous thereto; any Law, Usage or Custom to the contrary notwithstanding.

And be it further enacted by the Authority aforesaid,

ATTACHMENT 3



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ATTACHMENT 4

Copy of Deed Number Ten

Whereas the General Court of the Commonwealth of Maſſachuſetts

hath appointed and authoriſed us the Underſigned a Committee to ſell and diſpoſe of the unappropriated Lands in the Counties of York Cumberland Lincoln Hancock and Waſhington being the Eſtate of the ſaid Commonwealth and within the ſame And WHEREAS the ſaid Commonwealth by us Samuel Phillips, Leonard Jarvis, and John Read, on the firſt day of July in the Year of our Lord one thouſand ſeven hundred and ninety one by certain covenants then by us made on the part of the ſaid Commonwealth did agree to ſell and convey certain of ſaid Lands to Henry Jackſon and Royal Flint or their legal Repreſentatives upon and for the performance of certain conditions by them on their part ſtipulated to be performed and the ſaid Jackſon and Flint having by their Contracts agreed that William Duer and Henry Knox and their Aſſigns ſhould become the Repreſentatives of the ſaid Jackſon and Flint in the ſame contracts and agreement And the ſaid Duer and Knox having by their contracts agreed that William Bingham of the city of Philadelphia and State of Pennſylvania ſhould become their Repreſentative in the ſame purchaſe And the Covenants made by the ſaid Committee on the part of the ſaid Commonwealth and by the ſaid Jackſon and Flint on their own part being given up and cancelled And the ſaid Bingham appearing to purchaſe the ſame land

Now know all Men by theſe Preſents

That the ſaid *Commonwealth* by Us the ſaid SAMUEL PHILLIPS, LEONARD JARVIS and JOHN READ, the Committee of the ſame as aforeſaid appointed and authoriſed thereunto as aforeſaid for and in conſideration of a large and valuable ſum of money paid into the *Treaſury* of the ſaid Commonwealth by the ſaid WILLIAM BINGHAM the receipt whereof is hereby acknowledged *hath granted bargained and ſold releaſed and confirmed* to the ſaid WILLIAM BINGHAM his Heirs and Aſſigns forever AND BY THESE PRESENTS doth give grant bargain and ſell releaſe and confirm unto the ſaid WILLIAM BINGHAM his Heirs and Aſſigns forever

a certain tract or parcel of land containing one hundred & thirty two thouſand five hundred and forty one acres lying in the County of Lincoln & Commonwealth of Maſſachuſetts and on both ſides of the River Kennebec. beginning upon the weſt line of a million of acres, ſurveyed by Samuel Weston & Samuel Titcomb in the Year one thouſand ſeven hundred & ninety two. five miles and nine rods North of the ſouth weſt Corner of ſaid tract. thence North by the ſaid weſt. line five miles and nine rods thence ~~East~~ forty one miles and ſixty rods to the East. line of ſaid tract. thence ſouth by ſaid east. line five miles and nine rods to the North line of a tract of one hundred & thirty two thouſand five hundred & forty one acres being part of the ſaid million this day conveyed to ſaid Bingham thence by ſaid North line to the place of beginning ſo as to comprehend within the ſaid boundaries the quantity of one hundred & thirty two thouſand five hundred & forty one acres

reſerving four Lots of three hundred and twenty acres each in every Townſhip or Tract of ſix miles ſquare for the following purpoſes *to wit* One for the firſt ſettled Miniſter one for the uſe of the Miniſtry one for the uſe of Schools and one for the future appropriation of the *General Court* Said lots to average in goodneſs and ſituation with the other lots of the reſpective Townſhips And alſo reſerving to each of the ſettlers who ſettled on the premiſes before the firſt day of *July* one thouſand ſeven hundred and ninety one his Heirs and Aſſigns forever one hundred acres of Land to be laid out in one lot ſo as to include ſuch improvements of the ſaid ſettlers as were made previous to the ſaid firſt day of *July* one thouſand ſeven hundred and ninety one and be leaſt injurious to the adjoining Lands And each of the ſaid ſettlers who ſettled before the firſt day of *January* one thouſand ſeven hundred and eighty four upon paying to the ſaid WILLIAM BINGHAM his Heirs or Aſſigns twenty Spaniſh milled Dollars And every other of ſaid ſettlers upon paying to the ſaid WILLIAM BINGHAM his Heirs or Aſſigns five Spaniſh milled Dollars And every of ſaid ſettlers ſhall receive from him the ſaid WILLIAM BINGHAM his Heirs or Aſſigns a Deed of one hundred acres of the ſaid Land laid out as aforeſaid to hold the ſame in fee The ſaid Deeds to be given in two years from the date hereof provided the ſettlers ſhall make payment as aforeſaid within that period ~~Reſerving alſo to the ſaid Committee the right to appropriate a Tract or Tracts for the uſe of the Commonwealth in ſuch part or parts as the ſaid Committee ſhall judge beſt adapted for furniſhing Maſts in caſe ſuch Tract or Tracts ſhall be found as in the opinion of the Committee ſhall be ſuitable for that purpoſe and not otherwiſe~~ Provided that not more than five ~~Tracts~~ equal in the whole to one hundred and eighty ~~ſquare~~ miles ſhall be reſerved in the whole quantity including the million of acres lying upon the *Kennebeck* and the Tract lying north of the *Lottery Townſhips* eaſt of *Penobſcot River* this day conveyed to the ſaid BINGHAM And provided that ſuch Tract or Tracts ſhall not be laid out within ſix miles of any boundary line except the north line Provided alſo that the ſaid Tract or Tracts ſhall be located previous to the firſt day of *July* one thouſand ſeven hundred and ninety three Provided always that a quantity of Land equal to that which ſhall be ſo reſerved ſhall be laid out adjoining to the northern part of the aforeſaid Tract the northern line of which ſhall be parallel to the northern line of the Tract already ſurveyed and a good Deed of the Land ſo laid out ſhall be made to the ſaid WILLIAM BINGHAM his Heirs or Aſſigns with the ſame immunities and under the ſame reſervations as are herein expreſſed TO HAVE AND TO HOLD the ſame with all and ſingular the privileges appurtenances and immunities thereof to him the ſaid WILLIAM BINGHAM his Heirs and Aſſigns forever to his and their only uſe and benefit And the ſaid Commonwealth doth hereby grant and agree to and with the ſaid WILLIAM BINGHAM his Heirs and Aſſigns that the foregoing Premiſes are free of every Incumbrance ſaving always the reſervations herein before expreſſed and that the ſame ſhall be warranted and defended by the ſaid *Commonwealth* to him the ſaid WILLIAM BINGHAM his Heirs and Aſſigns forever ſaving always the reſervations aforeſaid with the immunity of being free from State Taxes until the firſt day of *July* in the year of our Lord one thouſand eight hundred and one conformably to a Reſolution of the General Court of the ſaid Commonwealth of the twenty-ſixth day of March one thouſand ſeven hundred and eighty-eight for that purpoſe made and provided

In Teſtimony

of all which We the ſaid SAMUEL PHILLIPS, LEONARD JARVIS and JOHN READ the Committee aforeſaid have hereunto ſet our Hands and Seals the twenty eighth Day of *January* in the Year of our Lord one thouſand ſeven hundred and ninety three

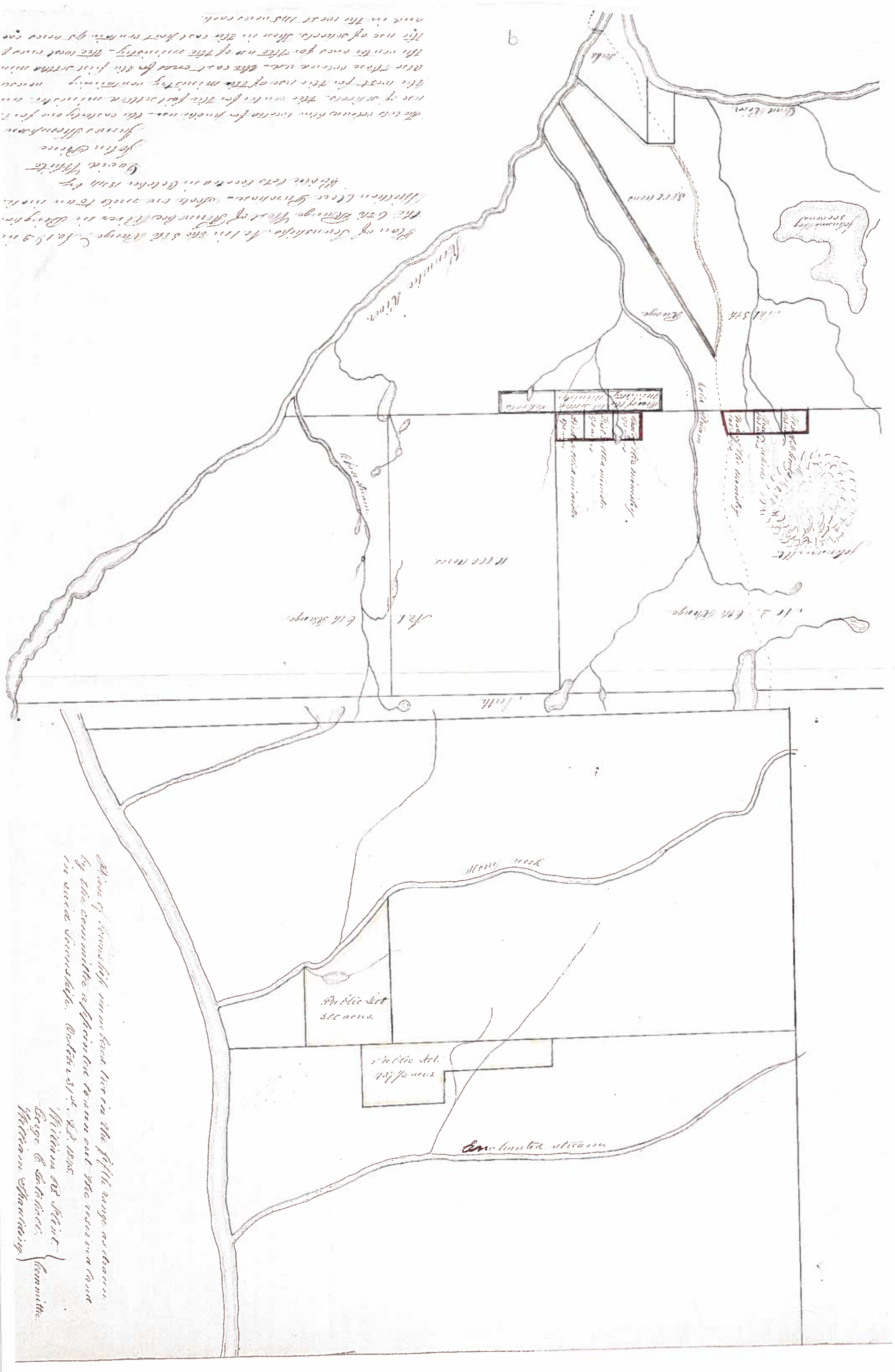
Signed Sealed and Delivered in the Preſence of

Sam'l Phillips Seal

Leo Jarvis Seal

John Read Seal

ATTACHMENT 5



ATTACHMENT 6

DEED OF CONVEYANCE.

To all men to whom these presents shall come:

I, Samuel Warner, jr., land agent of the Commonwealth of Massachusetts, with the concurrence of Ephraim M. Wright, Jacob H. Loud and David Wilder, jr., commissioners of the public lands belonging to said commonwealth in the State of Maine, whose names are hereunder signed and seals hereto affixed, pursuant to a certain act of the legislature of said commonwealth passed the twenty-fifth day of May, in the year one thousand eight hundred and fifty-three, entitled "An act for the sale of the public lands in Maine," and by virtue of the powers vested in said agent and commissioners by said act—

In consideration of the sum of one hundred and twelve thousand and five hundred dollars to us paid by Samuel Cony, esquire, treasurer of the State of Maine, being thereto authorized by certain resolves of the said state, passed on the twenty-eighth day of September, in the year of our Lord one thousand eight hundred and fifty-three, for the use of said commonwealth, (the receipt whereof, to the use aforesaid, is hereby acknowledged) and of the delivery of certain certificates of the stock of said State of Maine, as follows, to wit:

Ten certificates for twenty-five thousand dollars each, amounting in all to the sum of two hundred and fifty thousand dollars, numbered from one to ten inclusive, dated October fifth, one thousand eight hundred and fifty-three, and payable annually from said date, as follows, viz:

Number one in ten years, number two in eleven years, number three in twelve years, number four in thirteen years, number five in fourteen years, number six in fifteen years, number seven in sixteen years, number eight in seventeen years, number nine in eighteen years, number ten in nineteen years—

Each certificate is signed by Samuel Cony, treasurer, countersigned by Wm. G. Crosby, governor, and attested by John G. Sawyer, secretary, and has interest warrants attached for payment of annual interest at five per cent. per annum from said fifth day of October, 1853—the receipt whereof is hereby acknowledged—have given, granted, sold and conveyed, and by these presents in behalf of said commonwealth do give, grant, sell and convey unto the said State of Maine, and their assigns forever, all the right, title and interest of the said commonwealth in and unto the following described land, to wit:

One undivided half of townships and tracts lying within the said State of Maine, and west from the east line thereof, in numbers and ranges as follows, viz:—Township G, of the first range, containing six thousand two hundred and ninety-seven hundredths acres, exclusive of settlers' lots. Township L, of the second range, containing, exclusive of settlers' lots, eleven thousand seven hundred ninety-eight and thirty-nine hundredths acres. Township M, of the second range, containing, exclusive of settlers' lots, five thousand one hundred and ninety-seven acres and seventy-six hundredths, more or less. The north part of township numbered seventeen, in the fourth range, containing three thousand four hundred and forty-six acres. The southeast quarter of township numbered seven, of the eighth range, containing two thousand eight hundred and five acres. Township numbered seventeen, in the ninth range, containing five thousand seven hundred and sixty acres. Township numbered twelve, in the tenth range, containing twelve thousand three hundred and sixteen acres. Township numbered thirteen, in the tenth range, containing eleven thousand nine hundred and ninety-seven acres. Township numbered seventeen, in the tenth range, containing five thousand seven hundred and sixty acres. Township numbered twelve, in the eleventh range, containing eleven thousand six hundred and thirty-four acres. Southeast quarter of township numbered eighteen, in

the twelfth range, containing two thousand eight hundred and ninety-one acres. North half of township numbered four, in the thirteenth range, containing six thousand two hundred and forty-five acres. Northwest quarter of township numbered ten, in the thirteenth range, containing two thousand nine hundred and seven acres. Township numbered five, in the thirteenth range, containing, exclusive of settlers' lots, eleven thousand one hundred and nine acres, more or less. Township numbered eleven, in the thirteenth range, containing eleven thousand six hundred and nine acres. Township numbered ten, in the fourteenth range, containing eleven thousand five hundred and sixty acres. West half of township numbered seven, in the fifteenth range, containing six thousand one hundred and thirty-nine acres. Township numbered eight, in the fifteenth range, containing eleven thousand eight hundred and eighty-six acres. Township numbered nine, in the fifteenth range, containing eleven thousand nine hundred and seventy-five acres. West half and northeast quarter of township numbered five, in the sixteenth range, containing nine thousand nine hundred and fourteen and a half acres. Township numbered six, in the sixteenth range, containing eleven thousand nine hundred and forty-seven acres. Township numbered seven in the sixteenth range, containing twelve thousand three hundred and seventy-three acres. Township numbered eight, in the sixteenth range, containing twelve thousand and fifty-nine acres. Township numbered nine, in the sixteenth range, containing twelve thousand two hundred and seventy-one acres. Township numbered eleven, in the sixteenth range, containing eleven thousand five hundred and seventy-one acres. Township numbered four, in the seventeenth range, containing eleven thousand five hundred and twenty acres. Township numbered five, in the seventeenth range, containing eleven thousand and twenty-eight acres. Township numbered six, in the seventeenth range, containing eleven thousand seven hundred and forty acres. Township numbered eight, in the seventeenth range, containing eleven

thousand six hundred and eighty acres. Township numbered nine, in the seventeenth range, containing twelve thousand one hundred and forty-eight acres. Township numbered ten, in the seventeenth range, containing sixteen thousand six hundred and seventy-eight acres. Township numbered eleven, in the seventeenth range, containing fourteen thousand nine hundred and seventy acres. Township numbered four, in the eighteenth range, containing fifteen thousand four hundred and thirteen acres. Township numbered six, in the eighteenth range, containing eleven thousand eight hundred and forty-six acres. Township numbered seven, in the eighteenth range, containing twelve thousand one hundred and seventy-one acres. Township numbered eight, in the eighteenth range, containing eleven thousand nine hundred and forty-two acres. Township numbered nine, in the eighteenth range, containing seven thousand nine hundred and seventy-six acres. Township numbered five, in the nineteenth range, containing eight thousand four hundred and eighty-seven acres. Township numbered seven, in the nineteenth range, containing twelve thousand and ninety-seven acres. Township numbered six, in the nineteenth range, containing thirteen thousand four hundred and thirty-eight acres. Township numbered five, in the twentieth range, containing ten thousand four hundred and eighty-two acres. Amounting in the whole to three hundred eighty-three thousand one hundred and fourteen acres, more or less; as the same were surveyed by John Webber, Zebulon Bradley and Joseph L. Kelsey, in the years eighteen hundred and thirty-two, and eighteen hundred and thirty-three; by Zebulon Bradley, Wm. P. Parrott, Isaac S. Small and Noah Barker, in the years eighteen hundred and forty and forty-one; by Wm. P. Parrott in the year eighteen hundred and forty-three; in the years eighteen hundred and forty-six, forty-seven and forty-eight, and eighteen hundred and fifty, by Small and Barker.

Also, the whole of the following townships and tracts of land owned by Massachusetts in severalty, viz:—Half township

(B) of the first range of townships, west from east line of the said State of Maine, containing ten thousand eight hundred and eighty acres, exclusive of settlers' lots. Township (C) of the first range, containing twenty-three thousand and forty acres. A part of township (A) of the second range, containing five thousand six hundred and forty-nine acres. Township (C) of the second range, containing twenty-three thousand and forty acres. Township (G) of the second range, containing nineteen thousand six hundred and sixty-five acres, exclusive of settlers' lots. Township (I) of the second range, containing twenty-three thousand and forty acres. Township numbered five, in the third range, containing twenty-three thousand and forty acres. The east half of township nine, of the third range, containing eleven thousand five hundred and twenty acres. The northeast quarter of township numbered ten, in the fourth range, containing five thousand seven hundred and sixty acres. The south half of township numbered six, of the sixth range, containing eleven thousand five hundred and twenty acres. The south half and northeast quarter of township numbered five, of the seventh range, containing seventeen thousand two hundred and eighty acres. The west half of township numbered three, of the eighth range, containing eleven thousand five hundred and twenty acres. Township (B) in the tenth range, containing seventeen thousand four hundred and twenty-four acres.

Also, the southwest quarter of township numbered three, in the third range, north of Bingham's Kennebec Purchase, containing five thousand seven hundred and sixty acres; and a part of township numbered six, in the third range, north of Bingham's Kennebec Purchase, containing five hundred acres, more or less. Also, the following townships and tracts west of Bingham's Kennebec Purchase, in the said State of Maine, viz:—The south half of township numbered two, in the fourth range, containing eleven thousand five hundred and twenty acres. Township numbered four, in the fifth range, containing

eleven thousand five hundred and twenty acres. Township numbered three, in the sixth range, containing eight thousand nine hundred and sixty acres. Township numbered four, in the sixth range, containing twenty-two thousand one hundred and eighty-five acres. Township numbered one, in the seventh range, containing twenty thousand two hundred acres. Township numbered two, in the seventh range, containing six thousand seven hundred and thirty-four acres; amounting in the whole to two hundred and sixty-eight thousand two hundred and ninety-seven acres, more or less.

Also, the following described townships and tracts of land lying within the said State of Maine, west from the east line thereof, viz:—West half of township numbered nine, in the third range, containing eleven thousand five hundred and twenty acres. The east half and southwest quarter of township numbered nine, of the fifth range, containing seventeen thousand two hundred and eighty acres. The south half of township numbered eight, of the sixth range, containing eleven thousand five hundred and twenty acres. Township numbered sixteen, of the sixth range, containing twenty-three thousand and forty acres. Township numbered nine, of the seventh range, containing twenty-three thousand and forty acres. A part of township numbered ten, in the seventh range, containing twenty thousand and forty acres. The east half of township numbered eleven, in the seventh range, containing nine thousand five hundred and twenty acres. The east half of township numbered fifteen, range seven, containing eleven thousand five hundred and twenty acres.

West half of township numbered eleven, of the seventh range, containing eleven thousand five hundred and twenty acres.

Township numbered fifteen, of the fifth range, containing twenty-three thousand and forty acres. North half of township numbered eight, in the sixth range, containing eleven thousand five hundred and twenty acres.

West half of township numbered fifteen, range seven, con-

taining eleven thousand five hundred and twenty acres. A part of township numbered thirteen, of the seventh range, containing nineteen thousand and forty acres.

Township (A) of ranges eight and nine, containing nineteen thousand and fifteen acres.

Township numbered fourteen, of the fourth range, containing twenty-three thousand and forty acres. Also, an undivided half of the east half of township numbered three, in the third range, north of Bingham's Kennebec Purchase, containing five thousand seven hundred and sixty acres.

Also, the following described townships and tracts of land lying within said State of Maine, and west of the east line thereof, viz:—Township F, of the first range, containing twenty-three thousand and forty acres.

An undivided half of the north half of township numbered seventeen, of the sixth range, containing five thousand three hundred and twenty-five acres.

The south half of township numbered two, of the third range, township numbered four, of the fourth range, and township numbered three, of the fifth range, exclusive of lots sold to settlers, amounting to fifty-six thousand five hundred and ninety-four acres.

The southeast quarter of township numbered eight, in the fourth range, containing five thousand seven hundred and sixty acres.

The east half of township numbered two, in the fifth range, containing eleven thousand three hundred and fifty-eight acres.

The northwest quarter of township numbered eight, of the fourth range, containing five thousand seven hundred and sixty acres.

The north half of township numbered six, of the sixth range, containing eleven thousand five hundred and twenty acres.

The southwest quarter of township numbered six, in the fourth range, exclusive of settlers' lots, containing five thousand and four acres.

Township numbered three, of the fifth range, north of Bingham's Kennebec Purchase, containing twenty-three thousand and forty acres.

Also, townships numbered eleven, thirteen and fifteen, in the third range, containing sixty-eight thousand one hundred and twelve acres; and township numbered twelve, in the fourth range, containing twenty-three thousand and forty acres.

Together with all the right, title and interest of said commonwealth to and in any other lands within the said State of Maine, whether described or not described in this deed, not heretofore granted or conveyed by said commonwealth.

Excepting, however, from this conveyance township numbered fourteen, in the sixth range, west of the east line of said state; and also said commonwealth's interest in township numbered seventeen, in the seventh range, west from said east line; and the fee of townships and tracts the timber of which was sold to Cyrus S. Clark and Wm. H. McCrillis on the twelfth day of March, A. D. 1853. And if any of the lands conditionally conveyed by said commonwealth prior to 23d July, 1853, shall revert to said commonwealth for or by reason of the non-payment of the notes given therefor, as a part of the consideration of said conveyance, then and in that case said lands are hereby excepted and reserved from this conveyance.

And whereas, the said commonwealth had, prior to the 23d day of July, A. D. 1853, made sales of timber and granted permits to cut and take off timber upon many of the townships and tracts hereinbefore described and conveyed, some for limited periods and others without limitation as to time, but all upon terms and conditions mentioned and agreed upon in the several instruments and writings given to the respective parties at the times when such sales and permits were made and given; therefore it is understood and agreed by the parties to this deed and conveyance that all such townships, parts of townships and tracts are hereby sold and conveyed by said commonwealth and purchased and taken by said State of Maine,

subject to the legal rights, claims, and interests of all parties claiming under such sales and permits to be held and enjoyed by them and their assigns respectively, as fully and to the same extent as they would have held, or been legally entitled to enjoy them, if this deed and conveyance had not been made; and with all the rights to the State of Maine in reference to such sales and permits as the said commonwealth had or now has.

And it is further agreed and understood by the parties to this conveyance that all lands reserved by said commonwealth in any townships or parts of townships for public uses are hereby conveyed to said State of Maine to be held in accordance with and subservient to the provisions and stipulations contained in the act relating to the separation of the District of Maine from Massachusetts proper and forming the same into a separate and independent State, passed June 19, 1819—

And that this conveyance is in no wise to impair or invalidate the obligation of the provisions in said act of separation, contained for setting apart and reserving lands to educational and religious uses.

And whereas said commonwealth has heretofore agreed to sell on certain conditions to settlers, tracts or lots of land lying within the townships and tracts which are by this deed conveyed to said State of Maine, it is agreed and understood both by grantors and grantees that upon performance to the State of Maine of the conditions agreed on by the several settlers or their assigns, the said State of Maine is to make the conveyance in the same manner and to the same extent as Massachusetts would have been obliged to do if this conveyance had not been made.

And it is further expressly understood that no recourse is to be had to said commonwealth for any deficiency in the number of acres above named or for any other matter or thing herein contained.

To have and to hold the aforegranted premises with all the privileges and apurtenances thereto belonging to the said State

of Maine and her assigns in fee simple to her and their use and behoof forever, subject to all the reservations and stipulations herein contained.

IN WITNESS WHEREOF, we, the said Samuel Warner, jr., Ephraim M. Wright, Jacob H. Loud and David Wilder, jr., being hereunto duly authorized as aforesaid, have hereunto set our hands and seals, at Boston, in Massachusetts, the fifth day of October, in the year of our Lord, one thousand eight hundred and fifty-three.

SAMUEL WARNER, JR., [L. S.]
E. M. WRIGHT, [L. S.]
JACOB H. LOUD, [L. S.]
DAVID WILDER, JR., [L. S.]

Signed, sealed and delivered in the presence of us,
A. G. FAY,
HENRY BLANEY,
D. H. ROGERS.

SUFFOLK SS.—November 23, A. D. 1853.

Then personally appeared the above named Samuel Warner, jr., and acknowledged the above written by him subscribed to be his free act and deed as land agent of the Commonwealth of Massachusetts.

Before me,

RUFUS CHOATE,

Justice of Peace.

We have examined the deed, Commonwealth of Massachusetts to the State of Maine, dated October 5, 1853, signed by Samuel Warner, jr., E. M. Wright, Jacob H. Loud, and David Wilder, jr., and acknowledged November 23, 1853, before Rufus Choate, and find the same to be in conformity with the agreement made July 23, 1853.

REUEL WILLIAMS,
ELIJAH L. HAMLIN,
W. P. FESSENDEN,
} *Commissioners.*

November 30, 1853.

CERTIFICATE OF SERVICE

I, Timothy C. Woodcock, Esq., hereby certify that on or before December 14, 2021, two copies of the brief of Amici Maine Forest Products Council, in the docketed Law Court Case No. BCD-21-257, Russell Black, et al. v. Bureau of Parks and Lands, et al. have been sent by first class U. S. mail, postage prepaid, to each of the attorneys (shown below) on the Notice of Service list promulgated by the Court. Additionally, a single copy of the brief has (at the same time) been sent electronically to Mathew Pollack, Clerk, Maine Supreme Judicial Court.

Nolan L. Reichl, Esq.
Jared S. des Rosiers, Esq.
Kyle M. Noonan, Esq.
Pierce Atwood LLP
Merrill's Wharf
254 Commercial Street
Portland, ME 04101

Aaron M. Frey, Esq.
Lauren E. Parker, Esq.
Scott W. Boak, Esq.
Office of the Attorney General
6 State Street
Augusta, ME 04333-0006

James T. Kilbreth, Esq.
David M. Kallin, Esq.
Adam Cote, Esq.
Jeana M. McCormick, Esq.
Drummond Woodsum
84 Marginal Way, Suite 600
Portland, ME 04101

Dated: December 14, 2021

By: _____
Timothy C. Woodcock