

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

Legislative Document

No. 1525

S.P. 502

In Senate, May 19, 1993

**Resolve, Authorizing the Conveyance of Certain Public Lands in
Newcastle.**

Reference to the Committee on Energy and Natural Resources suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator BEGLEY of Lincoln. (GOVERNOR'S BILL).
Cosponsored by Representative: KILKELLY of Wiscasset.

EXCHANGE AGREEMENT

THIS AGREEMENT made as of this TWELFTH day of APRIL, 1993, between the STATE OF MAINE, acting by and through its DEPARTMENT OF CONSERVATION, Bureau of Public Lands, with an address at State House Station 22, Augusta, Maine 04333 (the "First Party") and PAMELA J. SPERRY, of Newcastle, Maine, with an address of RR 2, Box 61A, Newcastle, Maine 04553, (the "Second Party").

WITNESSETH:

For valuable consideration received, the First Party and the Second Party hereto hereby covenant and agree as follows:

Section 1. Premises to be Exchanged.

1.1 First Party shall sell and convey to the Second Party, and Second Party agrees to accept, that certain property, with any buildings and improvements located thereon and all rights, hereditaments, easements and appurtenances thereunto belonging, located in the Town of Newcastle, Lincoln County, State of Maine, and being described in Exhibit 1 and shown on Exhibit 3, both of which are attached hereto and incorporated herein, in fee simple and on the terms and conditions set forth in this Agreement.

1.2 First Party agrees to restrict the right to build any and all footpaths and/or trails within a strip of land one hundred (100') feet along and adjacent to the real property currently held by the Second Party as of the date of this Agreement and along and adjacent to the real property to be conveyed to the Second Party by this Agreement. The parties herein expressly agree that all roads and paths, which currently exist within said one hundred (100') foot strip as of this date of this Agreement, shall continue to be used and maintained by the First Party.

1.3 Second Party shall sell and convey to the First Party, and First Party agrees to accept, that certain property, with any buildings and improvements located thereon and all rights, hereditaments, easements and appurtenances thereunto belonging, located in the Town of Newcastle, Lincoln County, State of Maine, and being described in Exhibit 2 and shown on Exhibit 3, both of which are attached hereto and incorporated herein, in fee simple and on the terms and conditions set forth in this Agreement.

1.4 The conveyance by the First Party shall be made by quitclaim deed, free and clear of all liens and encumbrances arising from March 30, 1989, to the present.

1.5 The conveyance by the Second Party shall be made by good clear record and marketable fee simple title to its premises conveyed by quitclaim deed with covenant, free and clear of any

and all liens, encumbrances, or other defects in title that would otherwise render it unmarketable and subject only to building and zoning restrictions.

1.6 The parties agree that for purposes of this Agreement, in addition to other interpretations of the term accorded by applicable law, a title shall not be considered "marketable" hereunder if there is significant variation between the total acreage a party is actually able to convey and the acreage contemplated under this Agreement, if the location of any of the boundaries of the Premises is substantially different than that contemplated by the parties and shown on Exhibit 3, or if the location of one or more boundaries of the Premises is not reasonably ascertainable without a survey. The parties agree that such matters shall constitute title defects.

Section 2. Purchase Price.

2.1 The parties agree that the value of the parcel to be conveyed by the First Party, described in Exhibit 1 is the same as the value of the parcel to be conveyed by the Second Party, described in Exhibit 2, and that each value constitutes a Purchase Price and as such is full and sufficient consideration. Each Purchase Price is based on conveyance of good, clear record and marketable fee simple title as required in Section 1 above.

2.2 In the event that, as a result of survey, title, or other work, any defects are found in the title to either property, and so reported, then if such defects are not cured within in accordance with the provisions of Section 1 and 4.1, or that the inspection pursuant to Section 5.1 was unsatisfactory, then the party so giving notice of the defect shall notify the other party and the parties shall negotiate in good faith to establish a reduced purchase price. If the parties are unable to reach an agreement upon such price within seven (7) days after such notice, then the party objecting to title shall have the right to elect to terminate this Agreement within seven (7) days thereafter. In the event that the price is adjusted under this provision, then such adjusted price thereafter shall constitute the Purchase Price under this Agreement. If the party objecting to title elects to terminate this Agreement, then upon notice thereof to the other party this Agreement shall be null and void.

2.3 All monies payable under this Agreement, unless otherwise specified in this Agreement, shall be paid by certified funds drawn on any bank, savings bank, trust company, or savings and loan association having a banking office in the State of Maine, payable to the order of Seller.

(Exhibit A)

Section 3. Closing of Title and Exchange of Deeds.

3.1 Except as otherwise provided in this Agreement, the deeds for the respective premises shall be delivered and exchanged upon the receipt of any payments required by this Agreement at closing of title (the "Closing"). The Closing shall take place within sixty (60) days of the execution of this Contract by all parties, as to which date time is of the essence. Execution is defined to include legislative approval as set forth in Section 8.1 hereinbelow. The Closing will be held in the offices of the Department of Conservation, Bureau of Public Lands, Augusta, Maine, or such other place as shall be mutually agreed upon by the parties.

Section 4. Objections to Title, Failure to Perform.

4.1. Each Party will be responsible for such party's examination of title. Notice of Defects in the title must be given at least ten (10) days prior to the Closing. The party receiving such Notice of Defects shall have a good faith obligation to use diligent efforts to cure any such title defects and shall give written return notice within seven (7) days of receiving the Notice of the steps it intends to take to cure the problems set forth in the Notice of Defects. The party receiving the Notice of Defects shall be entitled to a reasonable extension of the Closing Date to perform such work. In the event that the party objecting to title determines that said steps to cure are insufficient in part or as a whole, then it may elect to exercise the rights set forth under Section 2.2 hereof or to take steps to cure the problems itself and in such latter case it shall be entitled to an extension of the Closing Date for a reasonable period for the performance of such work, as well as to an adjustment of the Purchase Price to reflect the costs of such cure.

4.2 Second Party agrees that should the First Party in its sole discretion decide to acquire title to the premises of the Second Party by condemnation based upon unmarketable, questionable, or defective title or boundaries, the Second Party agrees to a friendly condemnation, so called, so long as the Second Party is paid the Purchase Price hereunder and, by the execution hereof, the Second Party waives and forever releases to the First Party any and all rights to a hearing on said taking, all rights to compensation except as provided in this Agreement, all rights of appeal and any and all rights to relocation benefits, if any. No condemnation shall occur before the Closing Date unless specifically agreed to by the Second Party. This provision shall constitute the consent required for acquisition by eminent domain under 5 M.R.S.A. §6207-A and under other applicable eminent domain laws.

(Exhibit A)

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Section 5. Access to the Premises.

5.1 The parties covenant that between the date of this Agreement and the Closing that each party shall allow the other party or its representatives access to the respective premises, and such persons or representatives shall have the right to perform water, soil, septic system and engineering tests (including, without limitation, tests for hazardous wastes, toxic substances and for the existence of any underground tanks) on the Premises and to conduct boundary, resource and topographical surveys. Provided, however, that (a) such access does not interfere with the conduct of any party's business, if any; (b) such persons enter onto the respective premises at their own risk of loss and harm; and (c) the entering party shall restore the Premises in the event of any significant disturbance as a result of such work. In the event that a party is not satisfied with the results of its tests, including without limitation those for water quality, hazardous wastes, underground tanks, or toxic substances, it may seek an adjustment or terminate this Agreement in accordance with Section 2.2.

Section 6. Apportionments.

6.1 The Second Party agrees to pay all real estate property taxes assessed with respect to its premises which taxes are based upon an assessment date prior to the Closing Date and also any penalties and interest. The Second Party shall be liable for the payment of all betterments pending or assessed against its premises as of the date of the Closing. The Second Party shall provide evidence to the First Party at the Closing that all tax bills and betterments have been paid. The Second Party represents that its premises are not subject to commercial forestry excise taxes.

6.2 Each party acknowledges that the transfer of title to the Premises is exempt from real estate transfer taxes pursuant to 36 M.R.S.A. §4641-C(1).

6.3 Except as provided in Section 6.4, the parties agree that all assessments, penalties, or other amounts made payable due to the removal of the Premises from open space or other forms of tax reduction, shelter, or protection shall be paid by the Second Party.

6.4 Each party represents to the other that it has taken no action which would require the withdrawal of all or part of its premises from taxation under the Tree Growth Tax Law. Each party agrees to pay any penalty assessed for withdrawal as a result of its actions prior to the Closing (other than entering into this Contract and performing its obligations hereunder). After the

Closing, each party shall be liable for the payment of any penalty assessed for the withdrawal of its newly-acquired premises from the Tree Growth Tax Law as a result of the sale to it or as a result of its actions after the sale.

6.5 The Second Party represents that she is presently a resident of the State of Maine, and shall remain so through the time of Closing and exchange of deeds. Therefore pursuant to Title 36 M.R.S.A. §5250-A, the two and one-half (2-1/2%) per cent of any Purchase Price is not required to be withheld from the proceeds at Closing or subsequently forwarded to the State Tax Assessor. The Second Party shall furnish to the First Party a certificate by the Second Party stating, under penalty of perjury, that as of the date of transfer, the Second Party is a resident of the State of Maine.

Section 7. Representations.

7.1 Each party represents and warrants to the other party that, to the best of its knowledge, no hazardous substance or toxic waste has been generated, treated, or stored in or on its premises; there is no hazardous substance or toxic waste in or on its premises that may affect those premises or any use thereof or may support a claim or cause of action under the common law or under any federal, state, or local environmental statute, regulation, ordinance, or other environmental regulatory requirement; nor has any action been instituted for enforcement of same. Each party further represents and covenants to the other party that it shall maintain its premises in the natural condition in which the same now are until Closing.

7.2 Each party represents and warrants to the other that there are no claims for brokerage commissions or finder's fees incurred by reason of any action taken by that party with respect to this transaction. Each of the parties hereto will pay or discharge (a) any and all claims or liabilities for brokerage commissions or finder's fees incurred by reason of any action taken by that party with respect to this transaction, and (b) any and all claims and liabilities for brokerage commissions or finders fees arising from or through persons or entities claiming by or through that party with respect to this transaction.

7.3 The Second Party represents that the Premises to be conveyed currently comply with all state and local land use laws, including without limitation zoning and building laws. The Second Party represents that there has been no division of land affecting the Premises within five (5) years preceding the date of this Contract and that no such division shall occur prior to the Closing. The Second Party shall take no action prior to the Closing to render the above statements untrue.

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7.4 The parties recognize that the Second Party is presently occupying the Premises as described in Exhibit 2. Except for said occupation by the Second Party, each party represents to the other that its premises are not subject to any lease or to any other possession or estate or to any option, right of refusal or contract of sale. Each party represents to the other that it has the full power and authority to execute, deliver and perform this Agreement and all contracts and documents referred to in this Agreement.

7.5 Each party represents to the other that no portion of its premises shall be occupied by any person or entity under any oral or written lease, easement, license, other claim or contract or in any other manner at Closing.

7.6 The First Party makes no warranties or representations about the condition of its premises or about the condition or suitability of a particular purpose of any improvements thereon.

Section 8. Other Conditions.

8.1 This Agreement is subject to the approval of a two-thirds (2/3) majority of the Legislature of the State of Maine, and this Agreement shall take effect ninety (90) days from the adjournment of the first Regular Session of the 116th Maine Legislature. In the event that said Agreement is not approved, the First Party may terminate this Agreement by written notice to the Second Party.

8.2 In the event the First Party determines that acquisition of the Premises by it under applicable law requires the consent of the municipality in which the Premises are located due either to the size or value of the parcel, or to the use by the First Party of powers of eminent domain, then this Agreement shall be contingent upon the receipt by the First Party of such consent.

Section 9. Waiver.

9.1 No provision of this Agreement may be waived, changed, or modified orally, but only by an agreement in writing signed by the party against whom the enforcement of any waiver, change, or modification is sought.

Section 10. Notices.

10.1 Any communications, requests, or notices required or appropriate to be given under this Agreement shall be in writing and mailed via U. S. Mail Certified or Registered Mail, Return

Receipt Requested, or sent via a recognized commercial carrier, such as but not limited to Federal Express, which requires a return receipt delivered to the sending party. Said communications, requests or notices shall be sent to the other party and its attorney as follows:

First Party:

State of Maine
Dept. of Conservation
Bureau of Public Lands
State House Station #22
Augusta, Maine 04333
Attn: Thomas Morrison,
Director

With a Copy to:

Legal Division
Maine Dept. of Transportation
State House Station #16
Augusta, Maine 04333
Attn: J. Surran Pyne
Legal Consultant

Second Party:

Pamela J. Sperry
RR2, Box 61A
Newcastle, Maine 04553

With a Copy to:

These addresses may be changed by notice as provided herein. Notices shall be deemed given when mailed as aforesaid, postage prepaid.

Section 11. Capacity.

11.1 Each party represents to the other that: Such party has full power and authority to perform its obligations hereunder and that any person or entity executing this Agreement by or on behalf of the representing party has the authority to act on behalf of and bind the representing party, and that any person or entity executing any closing documents by or on behalf of the representing party has been and will be duly authorized to act on behalf of the representing party, and that the performance of this Agreement will not be in violation of the representing party's charter or any law, ordinance, rule, regulation or order of any governmental body having jurisdiction, or the provisions of any agreements to which the representing party is a party or by the

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terms of which is bound and, at the Closing, each party shall furnish to the other party and to First Party's title insurance company, if any, reasonably satisfactory evidence of such authority and approval.

Section 12. Governing Law.

12.1 This Agreement is made pursuant to and shall be governed by and construed in accordance with the laws of the State of Maine.

Section 13. Expenses.

13.1 Regardless of whether the transactions contemplated pursuant to this Agreement are consummated, each party hereto, unless this Agreement expressly provides otherwise, shall pay all costs and expenses incurred by it and incident to the preparation and performance of this Agreement, and matters relating thereto, and such costs and expenses shall not be reimbursable by the other party hereto.

Section 14. Successors and Assigns.

14.1 This Agreement shall be binding upon and inure to the benefit of the legal representatives, successors and assigns of the parties hereto.


Section 15. Entire Agreement and Survival.

15.1 All understandings and agreements heretofore had between the parties hereto are merged into this Agreement. The covenants, agreements and representations made by the parties and contained in this Agreement shall survive the Closing.

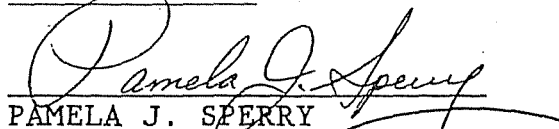
Section 16. Counterparts.

16.1 This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year first above written.


Witness

SECOND PARTY:


PAMELA J. SPERRY

FIRST PARTY:
State of Maine
Department of Conservation
Bureau of Public Lands

Henry Z. Whittemore
Witness

By Thomas Morrison
Thomas Morrison
Director

Exchange Agreement
BPL and Sperry

EXHIBIT 1

Beginning at a capped rebar set on the easterly side of a brook as shown on a survey dated April 1992 of Property of Pamela Sperry conducted for State of Maine, Department of Conservation, Bureau of Public Lands, by Lincoln Surveying Company to be recorded, which point of beginning marks the northwesterly corner of the parcel to be conveyed herein and the southwesterly corner of land now or formerly of Pamela Sperry; thence S 57° E 110'± to an old iron fence rod found, thence continuing on the same course 35'± to a corner, thence N 70° 53' E 95'± to a corner, thence N 19° E 148'± to a corner on the westerly sideline of a right of way shown on said plan, thence S 70° 53' W 275'± to the point of beginning.

EXHIBIT 2

Beginning at a pipe which marks the southerly limit of the right of way of River Road and the northwest corner of land now or formerly of James and Helen L. Dimarco, which point of beginning marks the northeasterly corner of the parcel to be conveyed herein; thence S 44° 01' 20" E a distance of 376.03 feet to a pipe; thence S 70° 53' 00" W about 160 feet to the westerly sideline of a right of way shown on a survey dated April 1992 of Property of Pamela Sperry conducted for State of Maine, Department of Conservation, Bureau of Public Lands by Lincoln Surveying Company to be recorded; thence in a generally northerly direction along the westerly sideline of said right of way to the southerly limit of the right of way of said River Road; thence S 70° 53' 00" W about 15 feet to the point of beginning.

1" = 100 FT

