Dear Chairman Probert and Members of the Searsport Planning Board:

On October 8, 2012, the Searsport Planning Board is scheduled to consider the Applications submitted on May 4, 2012 by DCP Searsport LLC to determine if these applications are complete, i.e. if they contain all the information required by Searsport’s Land Use, Site Review, Shoreland and Floodplain Management ordinances. Although the previously over-looked Maine Fuel Board permit has now been acquired, DCP Searsport LLC’s applications still remain incomplete and fundamentally flawed. Details of several of the areas of incompleteness and fundamental defects are detailed below.

1. The Applications are Lacking Proof of the Financial Capacity of the Applicant, DCP Searsport LLC

DCP Searsport LLC, is the Applicant seeking permits from the Searsport Planning Board for the construction of a 22.7 million gallon LPG bulk storage tank facility and import terminal at Mack Point. DCP Searsport LLC is a foreign limited liability company, organized under the laws of the State of Delaware and registered to do business in the State of Maine. DCP Searsport LLC is a separate legal entity from DCP Midstream LLC, DCP Midstream LP, DCP Midstream Partners, LP and DCP Midstream Operating, LP. To date, no proof of financial capacity has been submitted to this Planning Board demonstrating adequate financial capacity of DCP Searsport LLC to meet the Performance Standards under Section VI of Searsport’s Site Plan Review Ordinance.

Under the laws of the State of Maine, as in most States, a limited liability company, is a hybrid business entity that combines characteristics of corporations and partnerships. An LLC, although a business entity, is a type of unincorporated association and is not a corporation. An LLC has the legal capacity to hold title to property. The primary characteristic an LLC shares with a corporation is limited liability. See, e.g. 31 M.R.S.A. §§ 1501, et seq.

The principle of limited liability is founded on the rule that members (shareholders) may not normally be called upon to use their own assets not invested in the business to pay business debts. Using limited liability as a tool, then, business entities (whether corporations or limited liability companies) are able to insulate shareholders from any personal responsibility for the corporation’s or entity’s actions.
In addition, the parent-subsidiary relationship is founded upon the power of corporations to be the sole shareholders of other corporations or limited liability companies. Because corporations can own complete equity in other corporations and limited liability companies, and because corporate shareholders are given the same rights as individual shareholders, the separation of each entity within a particular group of corporations and subsidiary limited liability companies is respected by the courts. It has become the rule rather than the exception for large corporations to put their risky product lines (i.e. those most susceptible to causing injury, and thus, creating corporate liability) in a subsidiary corporation or limited liability company so that the limited liability of the subsidiary might shield the parent firm (and its stockholders) from mass tort liability exposure.

While it might seem that, because of their intimate legal relationship, it should be relatively easy for a creditor even an “involuntary creditor” like the victim of a mass tort to pierce the veil of a subsidiary corporation, where the same employees, contractors and legal counsel represent different entities within the same corporate structure, the reality is that courts only rarely pierce the veil to reach parent corporations. Allowing limited liability at both the parent and the subsidiary level creates a situation whereby parents may deliberately undercapitalize the subsidiaries, or move assets around in such a complicated way that creditors (including “involuntary creditors” – a term often used to describe the victims of mass torts) cannot determine the creditworthiness of each corporation or subsidiary limited liability company.

The Searsport Site Plan Review Ordinance requires applicants to submit proof of the financial capacity of the Applicant, specifically requiring that the Applicant provide:

1. Statement of financial capacity which should include the names and sources of the financial parties, including banks, government agencies, private corporations, partnerships and limited partnerships, and whether these sources of financing are for construction loans or long term mortgages, or both.

Site Plan Review Ordinance, Section V.A.2.i.

In addition, § 17 of the Article VI Performance Standards in the Site Plan Review Ordinance requires applicants to demonstrate adequate financial and technical capacity to meet the remaining performance standards.

Here, DCP Searsport LLC has submitted financial documents relating to a line of credit between certain creditor banks and DCP Midstream Partners, LP, a completely separate and distinct legal entity from the applicant, DCP Searsport LLC, or even DCP Midstream LLC (the entity that first approached the Searsport Planning Board about building an LPG bulk storage tank and import terminal).

The Searsport Planning Board was first approached by representatives of the legal entity DCP Midstream LLC about building a 22.7 million gallon LPG bulk storage tank and import terminal at the November 8, 2010 Planning Board meeting. At that meeting, DCP Midstream LLC’s representative, David Graham, and DCP Midstream LLC’s counsel, Kelly Boden, advised the
Planning Board that they required a change in the height ordinance applicable to the industrial zone in order to pursue their desire to build this unprecedented LPG facility in Searsport. Since then, the same individuals (Mr. Graham and Ms. Boden) have continued to make presentations to the Searsport Planning Board in support of the DCP project, however the underlying project ownership structure has changed.

Since DCP Searsport LLC’s application(s) for construction of the same LPG tank and terminal facility was first presented to the Planning Board in 2010, by these same DCP Midstream LLC’s representatives, it is certainly easy to see how one could confuse what legal entity is submitting the application(s) for permits now and what entity’s financial capacity information is required to be provided with the applications. However, the distinction in legal entities is a very real one with very real and significant legal consequences.

The use of subsidiaries and limited liability companies to insulate a parent company and its shareholders from legal liability is a device that has become routine in the United States, where corporations have been extended the legal rights of persons to own the stock of other corporations and companies. In the past, the creation of subsidiaries and limited liability companies to transfer an existing liability was used to shield shareholders and parent company assets from the consequences of an existing obligation (e.g. W.R. Grace’s spinning off of more than $4 billion in assets before the full scope of the injuries it had caused through its asbestos businesses were discovered by the injured workers or residents of the towns surrounding their mines [http://www.yiel.org/essays/roscoe03a.html]). Currently, the device of isolating or “ring fencing” liabilities for a risky or hazardous business enterprise into an LLC is routinely used at the outset of a potentially high-liability endeavor (enterprises that could result in costly environmental damage or personal and property damages).

Here, DCP Searsport LLC – the applicant before this Planning Board that is requesting these permits – did not even exist as a legal entity at the time the height ordinance amendments were requested or approved at the 2011 Town meeting. This distinct legal entity was created as a limited liability company, under the laws of Delaware, on May 4, 2011 (Delaware Secretary of State File No. 4977952).

In contrast, DCP Midstream LLC, another foreign limited liability company created under the laws of the State of Delaware, was formed in December 15, 1999, according to the files of the Delaware Secretary of State (File No. 3142795). DCP Midstream Partners, LP (the Borrower in the financial papers submitted with DCP Searsport LLC’s applications in Attachment O), is a limited partnership, formed under the laws of Delaware on August 5, 2005 (Delaware Secretary of State File No. 4003402). DCP Midstream Operating, LP, (mentioned in the financial papers submitted by DCP Searsport LLC in Attachment O to its application(s), is a Delaware limited partnership, formed on September 15, 2005 (Delaware Secretary of State File No. 4031187).

How all of these separate and distinct legal entities relate to each other is unknown and unrevealed by the materials submitted to the Searsport Planning Board with DCP Searsport LLC’s applications. What legal rights and obligations any of the DCP Midstream entities has toward funding the obligations and liabilities of DCP Searsport LLC is unknown and unrevealed.
What is clear is that the Applicant, DCP Searsport LLC, has failed to provide any proof, that it has adequate financial capacity to meet the performance standards in Section VI of the Site Plan Review Ordinance. DCP Searsport LLC has not provided any evidence that it has access any of the funds in the letters of credit extended to DCP Midstream Partners, LP from its creditors, let alone that it will be adequately capitalized to meet all requirements necessary to protect public health and safety and to compensate the Town and other injured parties in the event of an accident. In fact, DCP Searsport LLC has not submitted any evidence regarding the legal relationship between DCP Midstream Partners, LP or DCP Midstream Operating, LP and DCP Searsport LLC.

Proof of adequate financial and technical capacity to meet the Performance Standards in Article VI of the Site Plan Review Ordinance is the foundation upon which all other evaluations in this process will be built. In the absence of adequate resources and proof from DCP Searsport LLC that it, as a unique legal entity, is properly capitalized to safely operate this facility as a going concern and to pay damages to Searsport and its people – or the people of other communities – if a catastrophic incident were to occur at this facility, the application cannot be considered complete. When the DCP Searsport LLC tank and terminal have served their useful life and can no longer be safely operated – does DCP Searsport LLC have the resources to decommission and remove this tank? If not, who will bear the cost of removing an obsolete tank and accessory structures so that this valuable land on Mack Point can be used for a different purpose rather than remain as a blight on the coastal landscape?

In answering the threshold question of whether DCP Searsport LLC is adequately capitalized to meet lifetime permit requirements, the resources available to DCP Midstream Partners, LP or DCP Midstream Operating LP are only relevant if DCP Searsport LLC provides evidence that its parent companies DCP Midstream Partners, LP and DCP Midstream Operating, LP (if they are “parent” companies of DCP Searsport LLC – that is not clear) are legally obligated to fund the obligations and liabilities of DCP Searsport LLC. Does DCP Searsport LLC have any resources? We simply do not know, because DCP Searsport LLC has failed to submit the required proof of its financial capacity (as opposed to the financial capacity of a separate legal entity with a similar, familiar-sounding name). Here, one cannot use the short-hand reference “DCP” to describe the entity seeking to build and operate this proposed facility – the law will apply a far more sophisticated and precise view of what entity is liable for the consequences of this facility and so must we be more precise in our analysis of what entity is seeking a permit, what entity has received a permit, and what entity has the legal title, right and interest to even seek a permit.

In fact, there have been several troubling indications that DCP Searsport LLC and this project are under-capitalized – the push-back on the de minimis application fee attributable to the cement pads under the elevated pipeline; the push-back regarding the need for an additional $25,000 deposit to the escrow account for the cost of the Fannon Economic study (the cheapest alternative available to conduct this critical assessment); and the failure to timely deposit those additional funds – delaying the start of the Fannon evaluation. These are all indications that
DCP Searsport LLC is operating on a shoe-string budget – and may lack adequate financial capacity as a separate legal entity to handle a project of this magnitude and risk.

Until proof of DCP Searsport LLC’s financial resources and capacity (including insurance and its Operating Agreement with DCP Midstream Partners, LP, and DCP Midstream Operating, LP) is submitted, these applications cannot be considered complete due to failure to submit the financial capacity information required by Section V.A.2.i.

2. The Applicant has failed to demonstrate Title, Right and Interest in the property for which the Permit is sought – no further action on the Application(s) is permissible as a matter of law.

On June 11, 2012, the Planning Board’s attention was directed to the failure of the Applicant, DCP Searsport LLC, to demonstrate Title, Right and Interest in the property, because the Purchase and Sale Agreement, attached as Attachment L to the application(s), had expired on April 30, 2012 – prior to submission of the application(s) on May 4, 2012.

Subsequently, a “First Amendment” to the Purchase and Sale Agreement was submitted by DCP Searsport LLC’s counsel that purported to demonstrate that DCP Searsport LLC had the requisite Title, Right and Interest in the subject property. However, the document submitted again fails to demonstrate that the Applicant, DCP Searsport LLC, has the requisite Title, Right and Interest in this property. Indeed, as a matter of law, the document submitted demonstrates just the opposite – this document expressly and definitively proves that DCP Searsport LLC lacks the requisite Title, Right and Interest in this property and, thus, demonstrates that DCP Searsport LLC has no right to apply for the permit(s) requested.

Like the original Purchase and Sale Agreement included in Attachment L, the “First Amendment to Purchase and Sale Agreement,” dated April 30, 2012, is between Sprague Energy and DCP Midstream LP. The Applicant, DCP Searsport LLC – a separate legal entity in the eyes of the law of both Delaware (where these entities were formed) and Maine – has no Title, Right and Interest in the subject property. Only DCP Midstream Partners, LP has the requisite Title, Right and Interest in the subject property – and they have not filed any Application(s) for permits with the Searsport Planning Board. Accordingly, in the absence of any Title, Right and Interest in DCP Searsport LLC in this property, any action by the Planning Board on the Application(s) filed by DCP Searsport LLC now is improper, as a matter of law, and must cease.

3. The Application(s) are incomplete because DCP Searsport LLC lacks the proper State permits for this project required before consideration of any Application can proceed

The Maine Department of Environmental Regulation (“DEP”) issued the Natural Resources Protection Act (“NRPA”) and Site Law of Development Act (“Site”) permits required for this project to DCP Midstream Partners, LP, because DCP Midstream Partners, LP is the only entity that has Title, Right and Interest in the subject property. The applicant before the Searsport Planning Board – DCP Searsport LLC – has made no showing that this permit has been
transferred from DCP Midstream Partners, LP to DCP Searsport LLC. Thus, the applicant has failed to demonstrate that it has a Site or NRPA permit. In the absence of these necessary State permits, DCP Searsport LLC does not and cannot have complete application(s) and consideration of the application(s) filed cannot proceed – all consideration of the DCP Searsport LLC applications must cease until and unless DCP Searsport LLC obtains the necessary State permits in its name – something DCP Searsport LLC cannot even attempt at this time since it lacks the necessary Title, Right and Interest to seek a State permit and has never submitted financial capacity information demonstrating its financial resources to the State of Maine.

4. The Application(s) Lack Proof of the Availability of Sufficient Public Water Resources for Proper Fire Protection of this Proposed Facility

The Searsport Site Plan Review Ordinance requires submission of proof regarding the “availability” of fire protection services (including fire hydrants and ponds) and public water. It specifically requires:

1. A statement from the Fire Chief as to the availability of fire hydrants and/or fire ponds, or other provisions for fire protection services.
   
   m. If public water is to be used, a statement from the water district as to the availability of public water.

Site Plan Review Ordinance, Section V.A.2 (I) & (m).

Although statements were submitted with the DCP Searsport LLC application from the former Fire Chief and the Water District Superintendent, these statements indicate that there is not sufficient water available to safely serve this facility, or the existing industrial uses at Mack Point, unless significant funds are expended to upgrade the existing water service to this industrial area.

Attached to the Applicant’s May 4, 2012 application(s) to the Planning Board, in Attachment H Town Correspondence, is an undated letter from former Fire Chief Dittmeier to the Army Corps of Engineers, faxed from the Searsport Fire Department on January 12, 2012. That letter states in relevant part that:

The Searsport fire department is well equipped and trained on propane gas to handle any emergency that might occur at the proposed DCP storage site in Searsport. We also have a County wide mutual aid agreement in place if more equipment or manpower were needed. My only requirements would be to have a complete walkthrough and training on site safety locations after it’s built and for the hydrant system to be upgraded to supply the needed water to the site. I have been told by the company that training on their site would not be a problem and by the Searsport Water District that they have plans to upgrade the water system....

Attachment H, p. 6 (emphasis supplied). Thus, the former Fire Chief acknowledges that, in the absence of an upgrade to the public water system serving Mack Point, there is not an adequate
supply of water to this site in the event of a fire. This is a fact well known in the Searsport community and the surrounding communities after the tank fire at Mack Point in June of 2011, where the inadequacies in the water supplies to Mack Point were revealed – complicating the response to an empty fuel oil tank fire there by 70 firemen from 7 different communities from around the region and State.

This deficiency in the existing water service to Mack point was also confirmed in the letters attached to the application(s), in Attachment H, from Herbert Kronholm, Superintendent of the Water District. DCP Searsport LLC attached a letter from Sean Donohue of TRC (a company representing DCP Searsport LLC in preparation of their application and permit filings), with an unsigned acknowledgement that they sought to obtain from Herbert Kronholm – that would have represented that there are adequate water supplies to Mack Point. The unsigned acknowledgement stated:

**Searsport Water District Statement:**
The Searsport Water District has sufficient capacity to provide ongoing water supply for the proposed office building associated with the DCP Searsport, LLC LPG Facility. The Searsport Water district also has capacity to provide water for fire control purposes and hydrostatic testing, as described in this letter. The Searsport Water District would allow a service connection from the proposed project to the Searsport Water District supply system.

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Herbert Kronholm
Searsport Water District Superintendent

DCP Searsport LLC Applications, Attachment H, p. 2.

Mr. Kronholm, despite his fervent public support for the tank project being built at Mack Point, did not sign this acknowledgement. Instead he sent a letter detailing the upgrades to the water system that would need to be completed prior to having adequate water supplies at Mack Point to safely service the proposed LPG facility. His letter states in relevant part that:

With regards to DCP’s fire protection and hydrostatic testing requirements the District can meet those requirements providing that necessary upgrades within the Searsport Water District’s distribution system are made. Currently the District will be making some of those upgrades, as previously scheduled, beginning in July of 2011. *Additional upgrades will be necessary in order to meet all of DCP’s needs.* We can discuss what additional upgrades will be necessary and how DCP can provide assistance with making those upgrades as soon as DCP is ready to do so. I would strongly recommend that we begin these discussions as soon as possible so that we can adequately prepare for meeting all of DCP’s water demand needs.

DCP Searsport LLC Applications, Attachment H, p. 3 (emphasis supplied).
DCP Searsport LLC has presented no supplemental evidence to the materials attached to its application(s) indicating that it has taken the necessary steps outlined by either Chief Dittmeier or Superintendent Kronholm to have adequate water supplies for fire safety and fire protection needs for this proposed facility. The requirement in Section V.A.2 (l) & (m) to submit statements regarding the “availability” of fire protection services (including fire hydrants) and public water requires submission of proof that there is adequate fire protection services (including hydrants) and public water to service a proposed development. This requirement is not satisfied where the statements submitted indicate that the water supplies are NOT adequate. Statements indicating that, in the absence of significant upgrades, facilitated by the applicant, there are not sufficient or adequate public water or fire protection services on the site fail to satisfy this requirement in the Site Plan Review Ordinance.

Until DCP Searsport LLC has submitted statements from the current Fire Chief and the Superintendent of the Water District that the upgrades to water supplies and fire hydrants at Mack Point have been completed and adequate public water and fire protection services exist to meet the demands that the proposed facility would create, the DCP Searsport LLC application(s) is not complete.

Indeed, until completion of the Good Harbor All Hazards Risk Assessment, it is doubtful that the Searsport Fire Chief will have sufficient information needed to make an informed decision regarding the adequacy of fire protection services at Mack Point. Accordingly, a decision on completeness should be deferred until after the Good Harbor Study has been reviewed by the Searsport Fire Chief and DCP Searsport LLC has obtained an updated statement from the Fire Chief regarding fire protection availability (including hydrants) at Mack Point.

5. DCP Searsport LLC has failed to list all of the federal regulations applicable to this proposed facility — grossly understating the significant safety and security plans and standards it must meet, but has yet to satisfy

Section V.A.2.j requires an Applicant to list “all applicable local, state and federal ordinances, statutes, laws, codes, regulations and permits/licenses pertaining to the development of the site.” DCP Searsport LLC has failed to meet this burden or even to make a good faith effort to do so. Its omission of federal regulations and standards that it must satisfy is particularly glaring. In Attachment C to DCP Searsport LLC’s application(s), only 3 federal regulatory Parts are referenced: 33 C.F.R. Parts 127 and 105 and 29 C.F.R. 191.

A review of the redacted U.S. Coast Guard assessment of this proposed project attached to the Army Corps of Engineers’ permit reveals a significant number of regulatory obligations that DCP Searsport LLC would need to comply with, but has yet to satisfy, and which DCP Searsport LLC failed to include in Attachment C. Among the omitted, required federal regulatory obligations the U.S. Coast Guard identified that DCP Searsport LLC must meet, but failed to reveal in Attachment C, are: Regulations applicable to safety and security zones (33 C.F.R. Part 165; 33 C.F.R. 6.04-6; and 50 U.S.C. § 191); the U.S. Environmental Protection Agency’s Risk
Management Program Guidance for Propane Storage Facilities (EPA publication #550-B-00-001), 40 C.F.R. Part 68; a Transit Management Plan; and Emergency Manual containing the information detailed in 33 C.F.R. 127.1307; an Operations Manual prepared by DCP Searsport LLC containing the information mandated by 33 C.F.R. 127.019; and the DCP Searsport LLC terminal must prepare and submit an Operations Manual, as required by 33 C.F.R. § 127.305, an Emergency Manual, as required by 33 C.F.R. § 127.307, and a Facility Security Plan as required by 33 C.F.R. § 105.120 to the COTP Sector Northern New England for review and approval.

Section V.A.2.j requires a comprehensive list of all applicable local, state and federal ordinances, statutes, laws, codes, regulations and permits/licenses pertaining to the development of the site. Reference to a Part within the Code of Federal Regulation, when many separate provisions within that Part are applicable to the Applicant, fails to satisfy the requirements of Section V.A.2.j, because it fails to provide the Planning Board with an accurate picture of the scope of local, State and federal regulatory obligations that the facility must meet. How can the Planning Board determine whether the Applicant is capable of meeting these obligations – particularly those relating to health, safety and welfare of the public – if the applicant has failed to advise the Planning Board of the full scope of its obligations? The burden is on the Applicant to provide the Planning Board with thorough and accurate information. The Applicant should not be permitted to shift the burden for ferreting out such information to the Planning Board or to other individuals and entities that may be adversely impacted by the proposed development.

Until DCP Searsport LLC undertakes a good faith effort to fully and accurately comply with Section V.A.2.j by submitting a list that includes all applicable local, state and federal ordinances, statutes, laws, codes regulations and permits/licenses pertaining to the development of the site that DCP Searsport LLC is on notice it must comply with, this application is not complete.

6. DCP Searsport LLC has failed to supply the information required under Searsport’s Floodplain Management Ordinance and their application for this permit is incomplete as a result; Placement of a Pipeline for Liquefied Petroleum Gas in a Flood Zone would create an Impermissible Threat to Public Safety.

Beginning at page 65 of DCP Searsport LLC’s May 4, 2012 Application(s) is what purports to be an application for a permit to construct a portion of the “transfer pipeline” that is intended to carry liquefied petroleum gas from LPG tanker ships to the 22.7 million gallon cryogenic bulk storage tank within the FEMA designated AE and VE flood zones. This pipeline is almost a mile in length, and is proposed to meander through all of the many tanks filled with volatile petrochemicals operated by Sprague Energy and Irving on its way to the 22.7 million gallon cryogenic LPG bulk storage tank. This pipeline is elevated over a cement pad.

By DCP Searsport LLC’s own admission: “As determined from the Federal Emergency Management Agency (FEMA) flood insurance rate map (FIRM), approximately 820 feet of the
transfer pipe will be located within Flood Hazard Zone VE, 565 feet of which will be located along the pier above Long Cove, and an additional approximately 125 feet of the transfer pipe will be located within Flood Hazard Zone AE. As a result, this portion of the transfer pipe is subject to the Floodplain Management Ordinance, and a Flood Hazard Development Permit must be obtained.” DCP Searsport LLC Application(s), p. 66.

However, DCP attempts to evade the requirements of the Floodplain Management Ordinance by asserting that the transfer pipeline is not at “structure” within the meaning of the Floodplain Management Ordinance. Early in this process, DCP Searsport LLC objected to the Planning Board’s conclusion that an additional application fee was due from it because the cement pad and pipeline were “structures” under the meaning of the Land Use Ordinance and thus a fee was due for the square footage attributable to this improvement. While the transfer pipeline may or may not fall within the definition of “structure” in the Floodplain Management (which differs from the definition of “structure” in the Land Use ordinance), the transfer pipeline does fall within the meaning of “development” under the Floodplain Management Ordinance and, thus, DCP Searsport LLC’s attempt to evade the application of the Floodplain Management Ordinance to the pipeline must fail. Accordingly, as a result of repeated misinterpretations of the scope and application of the Floodplain Management Ordinance, and corresponding failures to provide information required by that Ordinance, DCP Searsport LLC’s application for a Flood Hazard Development permit for the transfer pipeline is incomplete.

The Floodplain Management Ordinance requires as follows:

**ARTICLE VI - DEVELOPMENT STANDARDS**

All developments in areas of special flood hazard shall meet the following applicable standards:

**A. All Development** - All development shall:

1. be designed or modified and adequately anchored to prevent flotation (excluding piers and docks), collapse or lateral movement of the development resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
2. use construction materials that are resistant to flood damage;
3. use construction methods and practices that will minimize flood damage; and
4. use electrical, heating, ventilation, plumbing, and air conditioning equipment, and other service facilities that are designed and/or located to prevent water from entering or accumulating within the components during flooding conditions.

Searsport Floodplain Management Ordinance, p. 6.

DCP Searsport LLC attempts to evade these requirements by asserting that the pipeline is not a “structure” within the meaning of the Floodplain Management Ordinance:

DCP Searsport LLC Application(s), p. 68.

However, the transfer pipeline unquestionably falls within the definitions of “Development” within the Floodplain Management Ordinance, and the definition of “structure” under the Searsport Land Use. Specifically, the relevant Definitions are:

**ARTICLE XIV - DEFINITIONS**

**Development** - a manmade change to improved or unimproved real estate. This includes, but is not limited to, buildings or other structures; mining, dredging, filling, grading, paving, excavation, drilling operations or storage of equipment or materials; and the storage, deposition, or extraction of materials.

**Structure** - means, for floodplain management purposes, a walled and roofed building. A gas or liquid storage tank that is principally above ground is also a structure.

Searsport Floodplain Management Ordinance, pp. 17, 18 and 21. There can be no question that the above ground pipeline and cement pads are developments within the meaning of the definition of that word in the Floodplain Management Ordinance. Indeed, a strong argument can be made that the pipeline also falls within the definition of “structure” since this definition expressly includes above ground tanks and the transfer pipeline is an integral and essential component of the above ground tank at issue here. Regardless, the transfer pipeline does squarely fall within the definition of “Development” under the Floodplain Management Ordinance. Accordingly, the performance standards A-D apply.

Similarly, when Article III.D of the Floodplain Management Ordinance states that an application for a permit must include: “A statement of the intended use of the structure and/or development,” DCP Searsport LLC failed to complete this requirement for a permit, asserting that this provision was not applicable. Specifically, DCP Searsport LLC stated that:

D. Statement of intended use of the structure. Not applicable. There are no structures, as defined in Article XIII of the Floodplain Management Ordinance, proposed within the special flood hazard area.

DCP Searsport LLC’s Application(s), p. 68. However, since the transfer pipeline does meet the definition of “Development” and this requirement in the permit applies equally to both “structures” and “developments,” DCP Searsport LLC’s omission of the required information renders this application incomplete.

Throughout this purported “application” for a Flood Hazard Development permit, critical information is omitted due to the failure of DCP Searsport LLC to properly define the transfer pipeline as a “development” within the meaning of this Ordinance. Accordingly, their
application for a Flood Hazard Development permit is incomplete. In addition, as discussed in more detail above, because DCP Searport LLC lacks essential State permits and Title, Right and Interest in the subject property, they are not entitled to seek any Flood Hazard Permit at this time.

More importantly, it should be stressed that placing a pipeline of this nature within a flood zone is grossly irresponsible and would place the public at grave risk. This transfer pipeline is a particularly vulnerable and hazardous component of this – or any – LPG facility. The cause for the 1984 PEMEX disaster has been attributed to a leak of propane from a pipeline leading to a bulk storage LPG tank. [Link to article about San Juanico Disaster] (“Origin: The disaster was initiated by a gas leak on the site, likely caused by a pipe rupture during transfer operations, which caused a plume of LPG to concentrate at ground level for 10 minutes. The plume eventually grew large enough to drift on the wind towards the west end of the site, where the facility's waste-gas flare pit was located.”). Similarly, the deadly explosion and fire that occurred this August at a refinery in Venezuela that killed dozens of people, was sparked by a propane gas leak. [Link to article about Amuay explosion] (“Investigators are looking into several theories about the cause of the accident, including mechanical failure or corrosion of valves or pipes.”)

To seek a permit to place hundreds of feet of this vulnerable pipeline in a known flood zone is irresponsible. Placement of any portion of this pipeline, which runs between millions of gallons of highly flammable petroleum products, in a flood zone, would pose an unreasonable threat to the health, safety and welfare of the employees at Mack Point, as well as to the residents, property owners, businesses, patrons and visitors to Searport and the surrounding communities. Accordingly, no Flood Hazard Development permit should ever be issued for such a dangerous structure within the VE or AE flood zones – even if DCP Searport LLC ever submits a completed Application for such a permit.

Conclusions:

1. The Applicant DCP Searport LLC does not have Title, Right and Interest in this property as demonstrated by the documentation that DCP Searport LLC itself has submitted. Instead, that documentation reveals that DCP Midstream Partners, LP, a separate legal entity which has not filed any application with this Planning Board, has Title, Right and Interest to the subject property. Accordingly, no further consideration of the May 4, 2012, Application(s) submitted by DCP Searport LLC should be undertaken by the Searport Planning Board.

2. The Applicant DCP Searport LLC does not have the requisite State permits (NRPA or Site Permits from DEP) and cannot apply for or acquire those permit because it lacks the Title, Right and Interest required to do so. Accordingly, no further consideration of the May 4, 2012, Application(s) submitted by DCP Searport LLC should be undertaken by the Searport Planning Board.

3. The Application(s) submitted by DCP Searport LLC are incomplete because they have failed to:
a. provide proof of DCP Searsport LLC's adequate financial capacity to meet the Performance Standards within the Searsport Site Plan Review Ordinance, as required by Section V.A.2.i of the Site Plan Review Ordinance;

b. provide proof of adequate available public water and fire protection, including fire hydrants, as required by Section V.A.2.l and m of the Site Plan Review Ordinance;

c. provide a list of all the federal regulations applicable to this proposed facility, as required by Section V.A.2.j of the Site Plan Review Ordinance; and

d. submit the information required under the Flood Zone Ordinance.

For the foregoing reasons consideration of this application should cease until the identified defects and omissions are corrected.

Thank you for your attention to the matters raised in this letter. Please contact me at 207.837.8637 or by email at SteveHinchman@gmail.com should you have any questions.

Sincerely,

Stephen F. Hinchman, Esq., counsel for TBNT and IIT

Kim Ervin Tucker, of counsel

CC: Kristin Collins, Esq.