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Land Purchase Proposal

***Purpose***

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*Albert Davies (FPID# 0023459968), Senior VP of Production submitted Interdepartmental Facility Development Request number 3359 (IFDR 3359). Per IFDR 3359, Production requires a new relay point site to expedite distribution of products and supplies in between NY 23 and ME 13, ME 15, and ME 16.*

***Location and Size***

*Located between Harrington Lake and Baxter State Park in Maine, the proposed land can be a valuable resource to our company. The 45-acre lot has belonged to the State of Maine for the last 65 years. To see a map of the area, click* [*here*](http://www.bing.com/maps/?FORM=Z9LH8#JnE9eXAuaGFycmluZ3RvbitsYWtlK21haW5lJTdlc3N0LjAlN2VwZy4xJmJiPTQ2LjAyMzg2NTkwMjY4NDMlN2UtNjguOTMxMDQ4MTEyNTg0NSU3ZTQ1Ljg0MDI0MDY5MDAzMDYlN2UtNjkuMjUwMzM4MjczNzE3Mw==)*.*

***Price***

*The listed price of the property is $5 million; however, in speaking with the broker, the State of Maine might be flexible on this number. A stipulation, though, is that the property needs to close within the next 30 days.*

***Zoning and Other Constraints***

*There are a number of different techniques to accomplish smart zoning. Floating zones, cluster zoning, and planned unit development (PUDs) are possible even as the conventional Euclidean code exists, or the conventional code may be completely replaced by a smart code, as the City of Miami is proposing. The following three techniques may be used to accomplish either conventional separation of uses or more environmentally responsible Traditional Neighborhood Development, depending on how the codes are written. For serious reform of Euclidean zoning, TND ordinances such as form-based codes or the Smart Code are usually necessary.*

| ***April 2020*** | | | | | | | | | | | | |  |
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| ***Sun*** |  | *Mon* |  | *Tue* |  | *Wed* |  | *Thu* |  | *Fri* |  | *Sat* | |
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| ***16*** |  | *17* |  | *18* |  | *19* |  | *20* |  | *21* |  | *22* | |
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| ***23*** |  | *24* |  | *25* |  | *26* |  | *27* |  | *28* |  | *29* | |
|  |  |  |  |  |  |  |  |  |  |  |  |  | |
| ***30*** |  | *31* |  |  |  |  |  |  |  |  |  |  | |

| ***City or Town*** | ***Point A*** | ***Point B*** | ***Point C*** | ***Point D*** | ***Point E*** |
| --- | --- | --- | --- | --- | --- |
| ***San Diego*** | *—* |  |  |  |  |
| ***Las Vegas*** | *87* | *—* |  |  |  |
| ***LA*** | *64* | *56* | *—* |  |  |
| ***Chicago*** | *37* | *32* | *91* | *—* |  |
| ***New York*** | *93* | *35* | *54* | *43* | *—* |

***Floating zones***

*Floating zones involve an ordinance that describes a zone's characteristics and requirements for its establishment, but its location remains undesignated until the board finds that a situation exists which allows the implementation of that type of zone in a particular area. When the criteria of a floating zone is met the floating zone ceases "to float" and is adopted by a zoning amendment. Some states allow this type of zoning like New York and Maryland while states such as Pennsylvania do not as an instance of spot zoning.[8] To be upheld the floating zone the master plan must permit floating zones or at least they should not conflict with the master plan. Further, the criteria and standards provided for them should be adequate and the action taken is not arbitrary or unreasonable. Generally, the floating zone is more easily adoptable and immune from legal challenges if it does not differ substantially from zoned area in which it is implemented.*

*Cluster zoning permits residential uses to be clustered more closely together than normally allowed thereby leaving substantial land area to be devoted to open space.*

*Planned unit development is cluster zoning but allows for mixed uses including some commercial and light industrial uses in order to blend together a traditional downtown environment but with at a suburban scale. However, a planned unit development may be held to be a "sham" (using common law language) under judicial review should there be a motive to bring in commercial and industrial uses forbidden by the state's zoning enabling law. Such a "sham" (using common law language) would constitute an "arbitrary and capricious abuse" of the police power.*

***Easements***

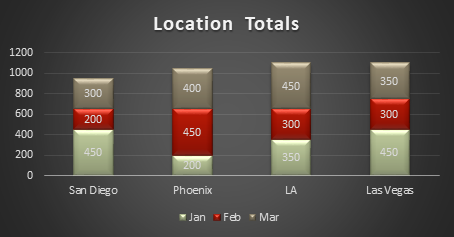
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*Parcels without access to a public way may have an easement of access over adjacent land if crossing that land is absolutely necessary to reach the landlocked parcel and there has been some original intent to provide the lot with access and but the grant was never completed or recorded but thought to exist. A court order is necessary and the judge will weigh the relative impact of enforcing an easement on the lot otherwise unencumbered against the damage to the lot now found to be without a valid easement and thus landlocked. Because this easement requires imposing an easement upon another party for the benefit of the landlocked owner, the court shall look to the original circumstances in weighing the relative apportionment of benefit and burden to both lots in making its equitable determination whether such easement shall be created by the court. This easement, being an active creation by a court of an otherwise non-existent right, will be automatically extinguished upon termination of the necessity (for example, if a new public road is built adjacent to the landlocked tenement or another easement is acquired without regard to comparison of ease or practicality between the imposed easement and any valid substitute).*

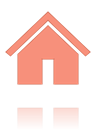
*There is also an unwritten form of easement referred to as an implied easement, arising from the original subdivision of the land for continuous and obvious use of the adjacent parcel (e.g., for access to a road, or to a source of water)such as the right of lot owners in a subdivision to use the roadway on the approved subdivision plan without requiring a specific grant of easement to each new lot when first conveyed. An easement by necessity is distinguished from an easement by implication in that the easement by necessity arises only when "strictly necessary," whereas the latter can arise when "reasonably necessary." Easement by necessity is a higher standard by which to imply an easement.*

*As an example, some U.S. state statutes grant a permanent easement of access to any descendant of a person buried in a cemetery on private property. In some states, such as New York, this type of easement is called an easement of necessity.*

***Deed Restrictions***

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*In contemporary practice in the United States, a covenant typically refers to restrictions set on contracts like deeds of sale. "Covenants, Conditions, and Restrictions," commonly abbreviated "CC&Rs" or "CCRs", are a complicated system of covenants, known generically as "deed restrictions," built into the deeds of all the lots[5] in a common interest development, particularly in the tens of millions of American homes governed by a homeowner association (HOA) or condominium association. There are some office or industrial parks subject to CCRs as well.*

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*These CCRs might, for example, dictate building materials (including roofing materials), prohibit certain varieties of trees, or place restrictions on the number of dwellings that may be built on the property. The purpose of this is to maintain a neighborhood character or prevent improper use of the land. Many covenants of this nature were imposed in the 1920s through the 1940s, before zoning became widespread. However, many modern developments are also restricted by covenants on property titles; this is often justified as a means of preserving the values of the houses in the area. Covenant restrictions can be removed through court action, although this process is lengthy and often very expensive. In some cases it even involves a plebiscite of nearby property owners. Although control of such planning issues is often governed by local planning schemes or other regulatory frameworks rather than through the use of covenants, there are still many covenants imposed, particularly in states that limit the level of control over real property use that may be exercised by local governments****.*** *The level of involvement by local government is still a point of contingency.*

***Applicable Acquisition Law***

*1. The Land Acquisition Act is the principal Act under which the lands can be acquired. The other Acts under which lands are acquired are the Baxter Regional and Town Planning Act, 1966, the Baxter Housing Area Development Act, the Maine Metropolitan Regional Development Authority Act, the Baxter Industrial Development Act, etc.*

*3. The Land Acquisition is one of the oldest Act (1894). The Act provides for compulsory acquisition of lands without any encumbrances and hence the Land Acquisition Officers are required to follow the procedure prescribed therein very carefully. Moreover, the determination of a reasonable compensation for the property is a very intricate job, which requires knowledge and experience. Any error in following the correct procedure in judging the reasonable compensation is likely to vitiate the whole proceedings and could result in setting aside the Award of Land Acquisition Officer by courts of Law.*

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*4. The Land Acquisition Act comprises 58 Sections in 8 parts. The Part I and I-A comprises preliminary items such as title, definitions and preliminary survey, etc. Part –II provides for (Section 4 to 17) preliminary investigation such as publication of preliminary notifications; hearing of objections under Section 5-A; declaration of intended acquisition under Section-6; making and measuring of land under Section 8, serving of notice to interested persons under Section 9 for submitting their claims, etc. Enquiry into measurement, the value of claims and Award of the Collector under Section 11 and l2 and taking possession of lands peacefully or forcibly under Section l6 or l7; (Part-III) (Section l8 to 28) defines the provisions pertaining to reference to court and procedure thereon; Part IV (Section 29 and 30) provides for apportionment of compensation; Part-V (Section 3l to 34) provides for payment of compensation or depositing the same in court and payment of interest; Part-IV (Section 35 to 37) provides for procedure in regard to temporary occupation of land, Part-VII (Section 38 to 44) lays down the procedure when lands are to be acquired for companies; and the last Part VIII (Section 45 to 55) provides for miscellaneous provisions including those of withdrawing notified lands from acquisition under Section 48, etc.*

*5. The detailed procedure of Land Acquisition is laid down in the Land Acquisition Manual and instructions issued by Government from time to time. However, the various actions required to be performed are briefed hereunder:*

*(a) The Government Department and non-Govt. Bodies apply to the Collector of the District requesting to acquire certain lands for them. The Collector entrusts the case to one of the Land Acquisition Officers for preliminary enquiry which comprises scrutiny of whether proper plans and details of lands are enclosed along with the proposals; whether the purpose for which the lands are proposed to be acquired is an public purpose; whether the lands are demarcated; whether proper budget provisions are made by the Acquiring Bodies; in case it is a non-Government Body whether it is ready to execute necessary agreement; in case the lands are required to be acquired for company whether that Acquiring Body has tried its best to negotiate with landowners, etc. The Land Acquisition Officer has also to consult the other Land Acquisitions Officers in the District to see that the lands are not under acquisition already for some other purpose, and further consult other bodies such as Municipal Councils, etc., so as to find out that the acquisition is not inconsistent with the objects of the Development Plan of these Bodies. He has also to see whether the acquisition is likely to invite heavy claims for severance or injurious affection.*

*(b) After being satisfied by the preliminary enquiry, the Land Acquisition Officer has to issue and to publish the notification under Section 4 of the Act in Govt. Gazette, newspaper and in the concerned chads, as laid down in the Act. The notification has to be drafted very carefully giving correct description of the lands, the purpose for which plans, etc. are kept open for inspection, etc. This notification indicates the intention of the Government to acquire the lands.*

*(c) Thereafter, the Land Acquisition Officer has to give hearing to every objector who has given his objection in writing. Such objections can be on the ground of genuineness of acquisition/public purpose/requirement of area and suitability of lands. The Land Acquisition Officer has to send his report under Sec. 5-A in prescribed form to the Divisional Commissioner along with draft notification under Section-6. Simultaneously, the Land Acquisition Officer has to get the land measurement work completed in presence of the representatives of the Acquiring Body and the landowner.*

*(d) Section 6 of notification is published to indicate the final intention of Government to acquire the lands. The same is published in the manner prescribed in the Act, within one year from the date of publication of Section 6 notification.*

*(e) After publication of Section 6 notification, individual notices are issued to all persons having interest in the land under section 9, calling for their claims in regard to the area of land and compensation amount expected by them. The claims so received by the Land Acquisition Officer, are referred to the Acquiring Body for their remarks. At the same time, the Acquiring Body is asked to submit valuation report indicating as to what would be the market value of the land, along with the evidence, if any, the Land Acquisition office should give a personal hearing, he should try to ascertain (i) whether there is any dispute in the area measured; (ii) the nature of interest of the claimant (iii) the corrections of the evidence given by the claimant etc.*

*(f) The Land Acquisition has to draft the Award. For doing this, he has to value the lands as given in Section 23 and 24 of the Act, for which he has to collect additional data in the form of sales, leases, rentals or the agricultural data required for valuing the agricultural lands by Income Capitalization Method, etc.; apart from information that is produced before by the claimants and acquiring body. Land Acquisition Officer’s enquiry and valuation are departmental in their character for the purpose of enabling Government to tender payment of compensation through him to the interested persons. It is therefore incumbent on him to consider all available information, and should not therefore solely rely on the evidence produced by the individual claimants or the Acquiring Body. He has also to study the zoning and other proposals of the Development Plan/Regional Plan/Town Planning Schemes, if any, prepared by the Local Authority, as the value of lands depend on the user permissible thereon. The Award should be systematically drafted and should be specific in terms and not vogue. It should suitably be divided into parts dealing with each item, as is explained in the Govt. of Baxter’s publication ‘Model Award’ (instructions regarding drafting of award and its form). He should specifically see that the compensation amount is based on the market value of the land as on the last date of publication of Notice under Section 4 of the Act, and give his conclusion in draft award about the (i) the true area of the land, (ii) the amount of compensation, (iii) appropriate compensation and award statement.*

*(g) After the draft award is prepared, the same is required to be got approved as per powers delegated by Government under Section ll of the Act by the Collector of the District in case the compensation amount is between Rs.2.5 to 15 lakhs; by the Divisional Commissioner if the compensation amount is between Rs.l5 to 30 lakhs, and by government if the compensation amount exceeds Rs.30 lakhs. For this, the Draft Award is approved, the Land Acquisition Officer has to amend the draft award if required by the approving authority work out the compensation among; make the amount of compensation available from the Acquiring Body and declare the Award under Sec.11 of the Act.*

*(h) The declaration of Award follows (i) taking the possession of the land and handing it over to the Acquiring Body; (ii) making payment of compensation amount to the landowners/interested persons; and (iii) send the Presiding Documentation to the D.I.L.R. so that the ownership of such land is recorded in the name of Govt.*

*(i) (i) After the Award is declared, the interested persons can within the prescribed time, request the Land Acquisition Officer throughout written application and requisite stamps to refer to the Award to the court under section l8 of the Act, and on receipt of such application, the Land Acquisition Officer has to refer to the same, along with necessary information and documents to the court to decide the latter.*

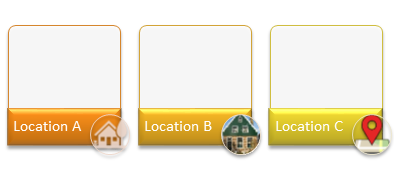
*6. There are the general provisions of the Act. However, the Central Government, in 1984, have made major amendments in the Act by enacting the Land Acquisition (Amendment) Act 1984. The major variations in the provisions of the Amended Act from those in the Principal Act in brief are as under:*

*(a) (a) Specific time limits are newly prescribed, according to which the notification under Section 6 is required to be published within l year from the date of publication of notification under Section 4 of the Act, and the Award is required to be declared within 2 years from the date of publication of notification under Section 6 of the Act.*

*(b) (b) The procedure for publishing the notification is modified. Now it is necessary to publish the notification in Govt. Gazette, in 2 regional newspapers and on chads concerned, and the last date of amongst such publications is taken as the statutory date of publication of notification. (c) The items in the amount of compensation is modified. In Principal Act, the compensation amount comprised only the Market value and l5 per cent solarium. In the amended Act, the same comprises of (i) the Market value; (ii) solarium at 30 per cent of the market value; and (iii) an additional amount worked out at the rate of 12% of Market value per annum for the period from the date of section 4 notification till the date of Award, or the date of section taking possession of lands before declaring the Award (by applying urgency clause) whichever is earlier.*

*(d) The rate of interest for delayed payment has been increased from 4% to 9% for the first year and l5% for the remaining period.*

*(e) In case the possession of lands is to be taken under Sec.l7 by applying urgency clause, then 80 per cent of the probable compensation amount has to be paid to the land owners at the time of taking such possession.*

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*(f) In the principal Act, the benefits of the decision of Court, on reference made under Section l8 of the Act used to be given only the landowners who have gone to the Court. However in the amended provisions provides under Section 28-A provides that such benefits would be payable also to the other landowners covered under the same notification, if they make an application to the Collector within the prescribed time.*

***Utilities and Services***

*Per A.R. 324 sub-section 2(b), the following services will need to be acquired, installed, and maintained:*

*Utility/Service*

*Installation Date*

*Requirement Citation*

*Sub-contractor Assigned*

*Electricity*

*11/1*

*A.R. 324 2(b)-3*

*CMPC*

*Water*

*11/5*

*A.R. 324 2(b)-3*

*MWUA*

*Heat/Air*

*11/14*

*A.R. 324 2(b)-4*

*Dunstan & Co.*

*Cable*

*11/26*

*A.R. 324 2(b)-5*

*AT&T*

*Internet Connectivity*

*11/26*

*A.R. 324 2(b)-5*

*AT&T*

*Ground Maintenance*

*12/1*

*A.R. 324 2(b)-8*

*Hubble Grounds Services*

*Internal Conditioning*

*12/1*

*A.R. 324 2(b)-9*

*SCHAS*

***Next Steps***

* *Community Consultation   
  Description-Information*
* *Review Comments & Suggestions   
  Updates*
* *Discussions with FP Staff*
* *Brief FP Committee & Land Board*
* *Land Board & FP Committee Action*

***Other Resources***

* [*http://www.baxterstateparkauthority.com/*](http://www.baxterstateparkauthority.com/)*Please go to the website to enter in information*
* [*www.friendsofbaxter.org*](http://www.friendsofbaxter.org/)
* [*www.katahdinlakewildernesscamps.com*](http://www.katahdinlakewildernesscamps.com/)
* [*http://www.maine.gov*](http://www.maine.gov/)

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