

§ 5.6(d)(3)(xii) Tribal Resources

The total perimeter around Half-Moon Cove is approximately 45,200 feet which does not include 1200 feet for the width of the entrance. The Passamaquoddy Pleasant Point Reservation is located approximately 5000 feet from the entrance to Half-Moon Cove in a northwesterly direction. Land on the perimeter of Half-Moon Cove under the control of the Passamaquoddy Tribe stretches continuously for approximately 10,500 feet which translates into 23.1% of the total perimeter.

Once again information from the Quoddy Bay LNG application has been excerpted to provide information on the region and Tribal involvement and impacts.

The Passamaquoddy Tribe will be affected in essentially the same manner as other property owners around the perimeter of Half-Moon Cove. High tide level will remain at the same level and provide some protection against prospects for rising sea level. The low tide level will be elevated by 2-3 feet on all tides and approximately 140 acres of sometimes intertidal land will be permanently transformed into submerged habitat. Shellfish harvesting should not be impacted substantially and might even improve in productivity due to a less energetic profile over intertidal areas.

As a notable footnote, the Passamaquoddy Tribe has previously requested the opening of the causeway on the Passamaquoddy Bay side as an ecological measure and has also supported reduced vehicular traffic through the Reservation. Depending on the level of community and institutional support, elements of the proposed Half-Moon Cove project would address these functional areas through the placement of a road across the dam and the installation of filling / emptying gates on the causeway.

The Passamaquoddy Tribal Council at the Pleasant Point Reservation supported a tidal power project at the entrance to Half-Moon Cove in the late 1970s and through the 1980s which had a drastically different mode of operation since the tidal range within the impoundment would have been reduced by more than 50% of the normal tidal range. Discussions have been held with Tribal representatives that are anticipated to continue after the submittal of the PAD and accompanying NOI.

<i>(xii) Tribal resources. A description of Indian tribes, tribal lands, and interests that may be affected by the project Components of this description include:</i>
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As previously noted above, land under the control of the Passamaquoddy Tribe at the Pleasant Point Reservation will not be impacted by the construction of the dam except for the increase of low tide level by 2-3 feet and by restricted passage into Half-Moon which will be compensated by an alternative method of access; e.g., parallel boat ramps with hydraulic translation capability. Aboriginal rights of the Passamaquoddy Tribe to fish and utilize Half-Moon Cove will not be affected by the proposal. For a legal interpretation, State of Maine will hold the right to execute a submerged lands lease.

8.1.3.4.1.1 Pleasant Point Passamaquoddy Tribe Reservation, Bureau of Indian Affairs

Pleasant Point Passamaquoddy Reservation sits on a peninsula, known by its residents as “Sipayik” (meaning “along the edge”). The reservation is located between the Town of Perry and City of Eastport. The reservation and trust lands include a large portion of the land from Perry at Maine Route 190, at the junction of U.S. Route 1, to the tip of the peninsula. The community has its own school, health center, housing authority, youth center, fire department, ambulance service, and police department. Tribal Government offices are situated along Route 190. There are approximately 2,000 tribal members currently on the Pleasant Point tribal census with about 1,100 residents at Sipayik.

The Reservation land extends to low water as expressed in the grant of land to the Passamaquoddy Tribe made in 1794 by the government of Massachusetts, which at that time controlled the Province of Maine. Therefore, all land between high tide and low water, including rock outcroppings on either side of Split Rock is covered by the Ground Lease. Pursuant to Maine common law, the upland owner has the right to “wharf out” over to the flats to low tide line or 100 rods (1,650 feet) which ever is the lesser. *State v. Wilson* 42 Me. 9, 26-27 (1856). On the Half Moon Cove side the right to lay the transfer lines may extend to that longer distance depending on the final lay out of the LNG transfer line.

At the end of the peninsula begins a causeway built by the Works Project Administration of the Federal Government for the never-completed Passamaquoddy Bay Tidal Power Project of the 1930s. The causeway filled in intertidal and submerged lands between the end of the Split Rock peninsula of the Pleasant Point Indian Reservation and Carlow Island in Eastport. The causeway now supports Route 190 on its way to, and across some of the islands that make up, the City of Eastport. The causeway located above high water line appears to be owned by the United States Government pursuant to 12 M.R.S.A Section 1865 (3), which grandfathered any submerged lands that had been filled as of October 1, 1975, and due to the ownership by the United States government as trustee of the upland area and intertidal lands of Split Rock. An easement owned by the State of Maine exists over part of the causeway for Route 190 and various utility right-of-ways exist over the causeway. The land between high tide and low tide around the causeway up to the Eastport town line is owned by the United States in Trust for the Passamaquoddy Tribe. The Ground Lease covers all property held by the United States Government in trust for the Passamaquoddy Tribe up to the Eastport town line, which would include the causeway land.

Dr. Warren Reiss also conducted a comprehensive underwater historic archaeology study of one study area in Western Passage and one study area in Half Moon Cove in the vicinity of the Project. These study areas address the geographical areas identified by the State Historic Preservation Officer (SHPO) as requiring survey (Appendix 4-E) and were based on a proposal for additional research (Appendix 4-F). The study included limited literature research and a comprehensive remote sensing survey, using state-of-the-art remote sensing instruments. Analysis of the data acquired from the literature research, local interviews, visual inspection of the intertidal zone, and remote sensing survey indicated that there are no known historic vessel remains in the study areas in Western Passage and Half Moon Cove. The report is provided in Appendix 4-G.

§ 5.6 (d)(3)(xii)(A): Resource Identification

(A) Identification of information on resources specified in paragraphs (d)(2)(ii)–(xi) of this section to the extent that existing project construction and operation affecting those resources may impact tribal cultural or economic interests, e.g., impacts of project-induced soil erosion on tribal cultural sites; and

In the historical section, a letter is referenced from the Maine State Historic Preservation Commission on the need to investigate at least one site near the entrance to Half-Moon Cove. This work will be included in the next phase of the study; however, the existence of any archaeological site is not expected to effect the construction and operation of the proposed tidal project since the impoundment will not be raised above natural highest high tide levels.

The impact on Tribal economic interests does not seem to exist based on preliminary discussions with Passamaquoddy officials. Soil-erosion will not occur on Tribal land bordering the project since the level of highest high tide elevations will not be exceeded by the project's operation.

Since the project is not an existing facility, the identification of any impacts as a historical observation is a moot point. Half-Moon Cove represents a new project which does not seem to impact Tribal lands and resources while offering economic opportunities associated with tourism, construction / operation work, and the availability of a renewable and predictable source of renewable energy.

§ 5.6 (d)(3)(xii)(B): Project Impacts

(B) Identification of impacts on Indian tribes of existing project construction and operation that may affect tribal interests not necessarily associated with resources specified in paragraphs (d)(3)(ii)–(xi) of this Section, e.g., tribal fishing practices or agreements between the Indian tribe and other entities other than the potential applicant that have a connection to project construction and operation.

Once again since the project is not an existing facility, the identification of any impacts as a historical observation is a moot point. The PAD has characterized the environment and potential impacts within the context of the proposed mode of operation while including potential construction related impacts. Passamaquoddy Tribe has invoked aboriginal fishing rights during different deliberations with the State of Maine and federal agencies on the harvesting of porpoise and Atlantic salmon. These decisions do not affect plans for this project.

8.1.3.4.1.2 Western Passage and Half Moon Cove, Submerged Lands Owned by the State of Maine

Portions of the LNG Terminal will be located in the Western Passage and Half Moon Cove on submerged lands owned by the State of Maine. These lands are publicly owned and the right to lease them has been vested in the State of Maine. See Submerged Land Act 43 USC § 1311; *U.S. v. Maine* 420 US 515, 524 (1975). The State has regulated the leasing of these lands pursuant to 12 MRSA § 1861 *et. seq.* Piers and other structures located on submerged lands may be privately owned; the land and water beneath them are not. The State of Maine defines publicly owned submerged lands as:

- **Coastal region (including islands):** All land from the mean low water mark out to the three-mile territorial limit. Where intertidal flats are extensive, the shoreward boundary begins 1,650 feet seaward from the mean high-water mark.
- **Tidal Rivers:** All land below the mean low-water mark of tidal rivers upstream to the farthest natural reaches of the tides.
- **Great Ponds:** All land below the natural low-water mark of ponds that are 10 or more acres in size in their natural state.
- **Boundary Rivers:** Land lying between the banks of rivers that form Maine's border with Canada.

Pursuant to the Submerged Lands Act 12 M.R.S.A. § 1801 *et. seq.* a lease or easement is required for the construction of new permanent structures. Leases or easements are also required for pipelines, utility cables, outfall/intake pipes, and dredging. To qualify for a lease or easement, the proposed use cannot have adverse impacts on access to or over the waters of the State; these include the following public trust rights: fishing, waterfowl hunting, navigation, recreation; and/or services and facilities for commercial marine activities.