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June 30, 2021

Via Electronic Mail  
Freeport Town Council  
c/o John Egan, Town Council Chair  
Town of Freeport  
30 Main Street  
Freeport, ME 04032

**Re: Resolution of 250 Wolfes Neck Road Shoreland Zoning Issues**

Dear Members of the Town Council,

I am writing on behalf of Jeff Davis, who owns and lives at 250 Wolfes Neck Road. Mr. Davis has been working in good faith with the Town and Maine DEP for over a year to resolve shoreland zoning issues at his property. Mr. Davis seeks the Council's help in finalizing a consent agreement to bring this matter to a fair conclusion.

Mr. Davis understood that an agreement had been reached in which he has taken or will take significant and costly steps to bring his property into compliance with shoreland zoning standards. That agreement includes Mr. Davis planting 20 trees and 45 saplings pursuant to a replanting plan developed by a licensed Maine forester. The replanting plan was revised three times to incorporate numerous requests made by the Town and the DEP. The cost of implementing the plan is estimated to be \$12,000 to \$15,000. A copy of the agreed-up plan is attached to this letter.

However, on May 5 Mr. Davis received a proposed consent agreement from the Town that, in addition to all the agreed-upon measures, imposed a \$10,000 fine on Mr. Davis. In the dozens of communications with the Town over the past year, no fine had ever been discussed.

I understand that the Town estimates its attorney's fees related to this matter at \$2,500. Mr. Davis offers to reimburse the town for its reasonable out-of-pocket attorney's fees (capped at \$2,500). However, any fine above that is purely punitive. Such punitive fine is not warranted as the violations on Mr. Davis' property were unknowing and accidental.

The principal issue in this matter stems from Mr. Davis cleaning up storm-damaged trees in the shoreland zone on his property. Mr. Davis unfortunately did not understand that he needed

June 30, 2021

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a permit from the Town prior to doing so. Mr. Davis' forester described the area of clearing as follows on page 5 of the attached replanting plan:

“In the untouched sections, many of the balsam fir are near life's end, and many have died and fallen over. Some of the trees that fell due to wind or decay landed on other trees, breaking them off or otherwise damaging them. One large dead white birch in area 13 and noted on the area map fell and destroyed seven trees in area 1, as witnessed by Mr. Davis. Parts of that White Birch remain below the highest annual tide, evidence that the tree did damage or break the seven smaller trees. Except that the owner failed to get a permit, many of the trees removed were done so with good reason.”

Lastly, Mr. Davis has serious financial concerns about his ability to pay the proposed punitive fine to the Town. Mr. Davis operates a sports and educational travel business that was completely shut down by the pandemic. In Mr. Davis' words: “I do not have \$10,000 to pay the Town and then also take on a replanting process. My employees and I have been on state workshare unemployment since June 2020 and I am having a hard time making my mortgage payments and bills each month. I paid my property taxes this year but it wasn't easy.”

As stated above, Mr. Davis offers to pay the Town \$2,500 to cover any attorney's fees it has incurred. Beyond that, Mr. Davis asks that the proposed fine be stayed so that he has funds to complete the replanting process.

Thank you very much for your attention. Mr. Davis and I look forward to discussing this matter with the Council.

Sincerely,



Gordon R. Smith

Cc: Town Manager Peter Joseph  
Code Enforcement Officer Nick Adams

## Replanting Plan

To address the removal of Trees

Within a shoreland zone, 75 foot buffer

On property owned by

Jeffrey Davis

Located at 250 Wolfe's Neck Road

Freeport, Maine

January 4, 2021

Prepared by Gregory E. Foster  
Licensed forester # 595  
Timberstate G. Inc.  
P. O. Box 157  
Gray, Maine 04039  
207-272-4270

On behalf of property owner Jeffrey Davis, I have examined the shoreland zoned property located at 250 Wolfe’s Neck Road. Owner Davis has been served with a Notice of Violation by the Freeport Code officer. The replanting plans addressed in this report are in response to the removal of trees and other vegetation within the 75 foot buffer of the shoreland zone.

To create a replanting plan that is based on the “well-distributed stand of trees” point system in the shoreland zoning ordinance, I have located twenty areas, 25 feet by 25 feet, and measured the retained points within each (see attached map). At completion of the work, the determination is that six areas had fewer than eight points. Following is a table of the findings by area.

Retained Points by area as measured on August 4, 2020:

Area #	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
Existing Points	13	8	10	4	8	11	17	10	0	0	8	14	26	8	10	4	4	0	8	8

In addition, it is determined that the open area created in the canopy is 590 square feet. The limit is 250 square feet.

The recommendation for repair is as follows.

1. Plant 20 trees with a minimum size of two inches in diameter at breast height (“trees”). These trees are to be placed in the areas with the lowest point numbers, which will reduce the canopy opening size to 250 square feet or less. All of the tree locations are marked on the ground using pink flags. The flags are marked, indicating the area number, and a letter designation (A, B, or C) indicating the tree species. Tree planting locations are identified on the attached map.

Planting instructions: Where feasible and appropriate, a small tracked excavator may be used to move each tree to the site, and excavate a hole of the proper size to accommodate the root ball. The root balls are approximately two feet in diameter and two feet in depth. Where use of an excavator is impractical and would cause damage due to the steepness of the slope and the presence of the existing root system, holes will be excavated and trees installed by hand. Upon completion of the planting, the excavated soil will be placed around the base of the planted tree, and graded. Otherwise, if Mr. Davis desires to remove the excess soil and place it outside of the buffer, he may do so.

At the completion of the planting, it will be necessary to secure the site with erosion control measures. Disturbed soil around each planted tree and where the excavator has traveled must be covered with either erosion control mats or raked leaves or other organic matter from areas outside the shoreland zone. Excavation for planting will avoid the removal of stumps and intact root systems to the maximum extent practical.

2. Plant 45 saplings that are three feet or more in height and under two inches in diameter at breast height (“saplings”). Forty one of these saplings are to be interspersed with the replanted trees in the areas with the lowest point numbers. Four of these saplings are to be planted along

the downhill edge of the established footpath. All of the sapling locations are marked on the ground using pink flags. The flags are marked, with an X indicating the “taller than three feet and under two inches” size category. Also marked on the flag is the area number, and a letter designation (A, B, or C) indicating the plant species. Tree planting locations are identified on the attached map.

Planting Instructions: Softwood saplings come in pots approximately 8 inches in diameter. Hardwood saplings come in five gallon pots, and may be available in bare root. When planted by hand, it is likely the top duff layer of 3 or 4 inches can be dug out and maintained intact. This duff should be placed to one side, and the soil below the duff layer excavated and placed in a separate pile. After completing the planting, the excess soil can be spread around the tree base, and the intact duff placed on top of the exposed soil. Difficulty will likely occur to be able to save the duff because of the existence of many roots. Where the duff is not able to be kept intact, the erosion control methods mentioned above will be employed.

Replanting Plan by Area:

Area	4	9	10	16	17	18	Path	Total
# of Trees	0	4	2	4	4	6	0	20
# of Saplings	8	12	12	3	3	3	4	45

The plan calls for the maximum number of trees that can practically be planted in the areas that are part of the canopy opening. There is an existing root system that is stabilizing the slope, which could be disturbed by excavation for tree planting. The existing root system will be maintained to the maximum extent practical. Shallow ledge in these sectors makes the feasibility of excavation uncertain.

The saplings, which require a much smaller hole than the larger trees, will be planted by hand in locations where the fewest roots exist, and the excavator cannot operate. Planting should be done to minimize disturbance of soil and root systems in order to prevent erosion and runoff problems.

In addition, there are many tree seedlings already established in the cleared areas. During the field examination, poplar, red oak, and soft maple seedlings were noted 2 to 12 inches tall, and are scattered throughout the site. Also noted were many balsam fir seedlings, which appear in a lot more frequency than the hardwood. The Balsam fir are typically an inch or shorter in height. Minimizing soil disturbance will help conserve existing regrowth by maintaining many of the already established seedlings.

Planting can occur anytime, however, a September or early October planting is advised, as potential drought conditions are less significant. These trees and saplings should be ordered or reserved as soon as possible to insure availability. Mr. Davis commits that replanting according to the plan will be complete by the end of October 2021.

The Key to the species of plant is as follows, and subject to change depending on availability. Any species selected will be native. The A, B, C designation will result in three different species by size class and no more than 50% of one species, as per the Freeport ordinance.

- A: Balsam Fir or White Pine
- B: Red Oak or White Oak
- C: Sugar Maple or Soft Maple

Alternative species may include Northern White Cedar, White Spruce, Red Spruce, Tamarack, Yellow Birch, Moose Maple, Sumac, Dogwood, or Basswood.

The mixture of trees, saplings and seedlings that will be present at the site following this replanting plan should be comparable to pre-existing forest density and should mitigate the visual impact of the clearing. After replanting and regrowth no openings in the forest canopy will exceed 250 square feet.

### **Maintenance Schedule**

At the time of planting, all trees shall be watered to the point where the soil is damp but not saturated. For the first week, water daily. The larger trees may require up to five gallons per day, and the saplings up to two gallons per day. Watering frequency can be adjusted based on rainfall. Mr. Davis or a qualified person will have to judge when the soil appears to be too dry, and water accordingly. On hot sunny summer days, when no rainfall occurs, the moisture of the soil should be checked daily and watered accordingly. Certainly when the leaves begin to wilt or needles begin to yellow, watering needs to be done immediately. Watering can be done any time of the day, but is most effective if done in the evening. Checking the moisture is done by scratching down into the soil with fingers as deep as one can go. The soil should feel moist like a damp sponge.

After the first year, the tree roots will have grown and adjusted to the new site, and the need to water will be significantly reduced. For the next four years, attention to soil moisture will be more critical during the hotter months of June, July and August, or when drought conditions occur between June and October.

Because of the slope, a watering system that utilizes a soaker hose may be the best method. Mr. Davis might consider looping a section of soaker hose around each tree, connected with standard hose between each soaker section.

If hardwoods, or northern white cedar are planted, they may be subject to deer browsing. Extensive browsing will kill these trees. There are methods of protecting them from deer, one being to encircle the planted area with electric fence.

Hardwoods are also susceptible to mice damage. Surrounding the hardwood sapling trees with a wire mesh tube should prevent mice from girdling the stem. Such a tube can be purchased or made using hardware cloth. These tubes should be at least 12 inches tall. The larger trees are less vulnerable. Protecting them in the same manner should be considered. The wire mesh should be retained until the tree stem fills out the diameter of the tube.

### **Other Considerations**

It is a fact that the limits of tree removal have been exceeded, triggering the ability of the town to enforce the replanting of the site. Although the shoreland zoning ordinance requires replacement trees,

it also recognizes environmental considerations. It is my professional opinion that planting 2 inch diameter trees is more detrimental to the site than any of the infractions caused by the owner. Following is my concern.

1. The planting site is very steep, limiting the area where large balled and burlap trees can be located. Trees that are 2 inches at breast height are heavy enough that each one will have to be transported by machine to the planting site. The repeated traveling to each of the 20 planting sites will cause scarification of the duff layer increasing the potential of erosion.
2. There exist many seedlings throughout the cut site. Digging holes to accommodate the 20 trees will destroy many of them. As per proper Silvicultural standards, the site is completely and adequately regenerated to trees. As per the law, this regeneration is not to be touched, until it is three feet tall.
3. There has been no soil disturbance as a result of the cutting of trees. Planting 20 trees will disturb quite a bit of soil. In addition, digging a hole with an excavator or by hand to accommodate a 2 inch Dbh tree will likely dig up many existing roots that currently are helping to hold the soil in place. This root damage also has the potential to kill or cause decay in trees that are currently healthy.
4. My August 4<sup>th</sup> visit occurred shortly after a very heavy rainfall. It was observed that nothing, (twigs, wood chips, or soil) moved downhill because of the rain.

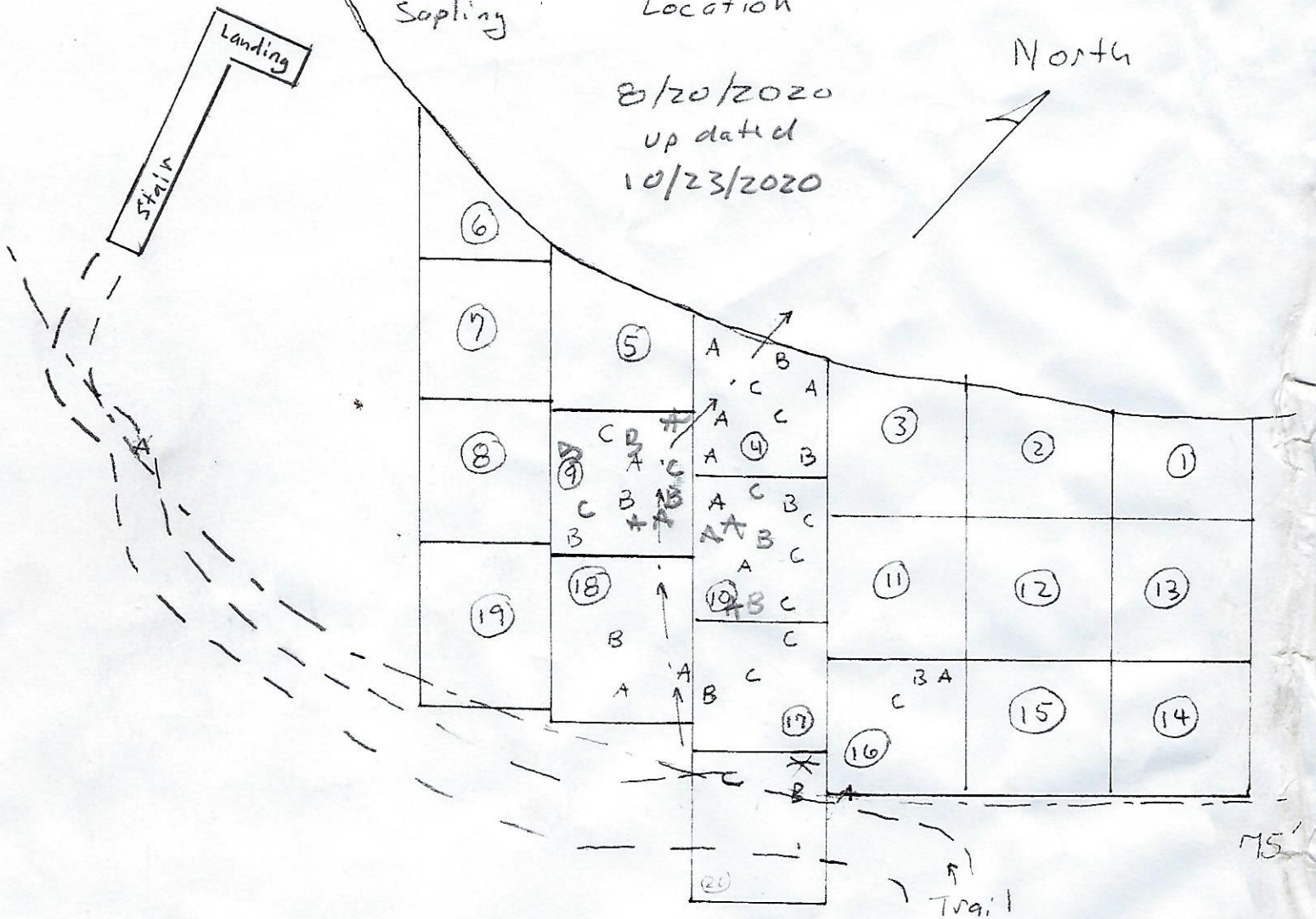
Prior to the cutting, I believe the site looked very similar to the untouched section on either side of the cut area. In the untouched sections, many of the balsam fir are near life's end, and many have died and fallen over. Some of the trees that fell due to wind or decay landed on other trees, breaking them off or otherwise damaging them. One large dead white birch in area 13 and noted on the area map fell and destroyed seven trees in area 1, as witnessed by Mr. Davis. Parts of that White Birch remain below the highest annual tide, evidence that the tree did damage or break the seven smaller trees. Except that the owner failed to get a permit, many of the trees removed were done so with good reason.

The most view obstructive trees are two large hemlock and a large White Pine which remain standing. Mr. Davis's motive was to deal with dead and broken trees.

Map of  
 25' x 25' Areas  
 in a buffer zone  
 @ 250 Wolf's Neck Road, Freeport  
 Jeffrey Davis, Owner  
 Sapling Location

8/20/2020  
 updated  
 10/23/2020

North



Approx. Scale 1"=30'

Fire Pit Area \*

Gully → →

Trail = = =

Area Number ②

A - Sapling Location

B - Sapling Location

C - Sapling Location

(Letter indicates species  
 to be planted - see narrative)

Flags on the ground

Blue - Corner of Area

Pink - Location of

Larger Trees to  
 be planted

Pink with X -

Location of

sapling to be  
 planted



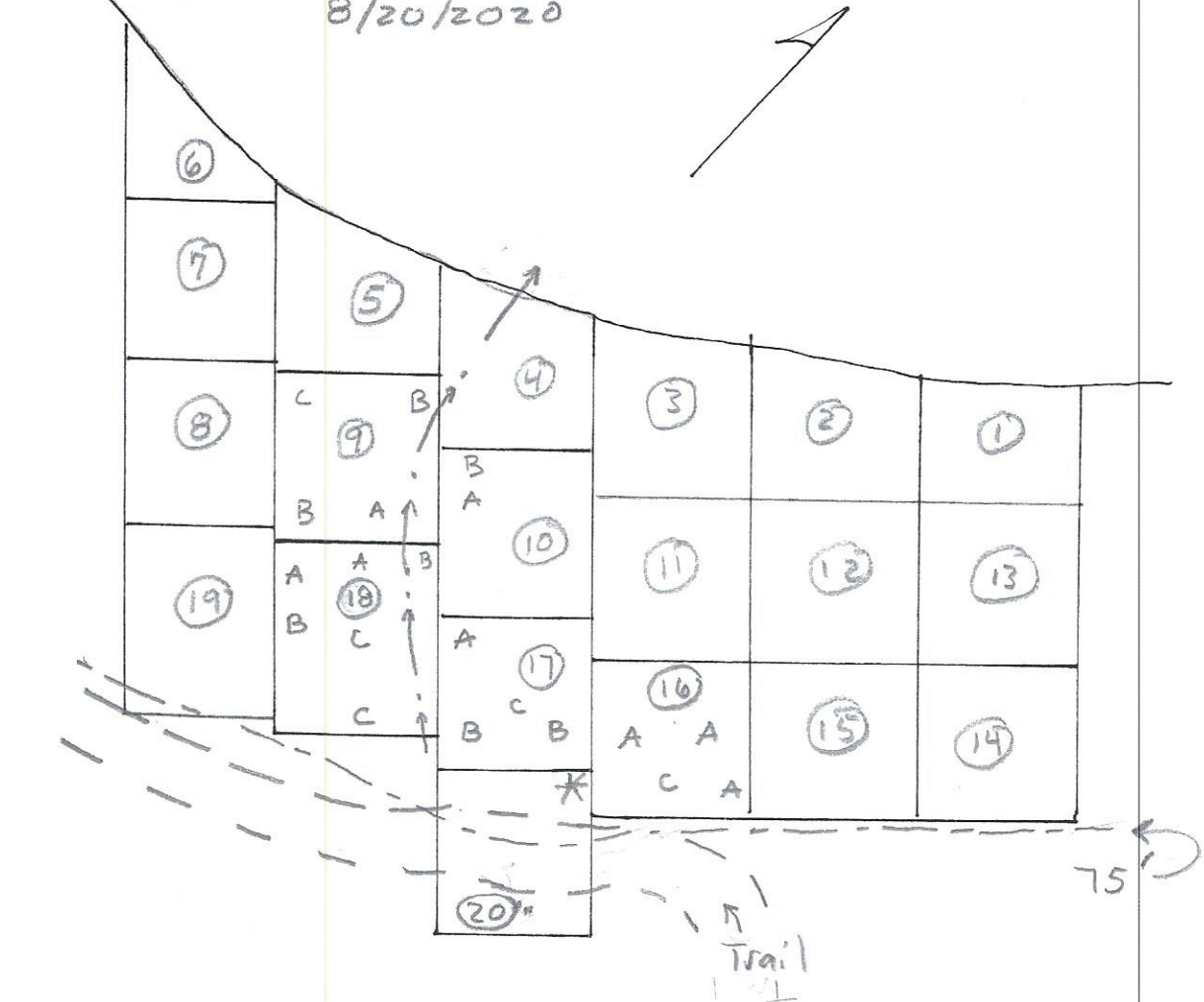
Map of  
25'x25' Areas  
in a buffer zone

@ 250 Wolf's Neck Road, Freeport

Jeffrey Davis, owner

Balled and Burlap Tree Location North

8/20/2020



Approx. Scale 1"=30'

Fire Pit Area \*

Gully →.→.

Trail ==

Area Number ②

A - Tree Location

B - Tree Location

C - Tree Location

(Letter indicates species  
to be planted - See narrative)

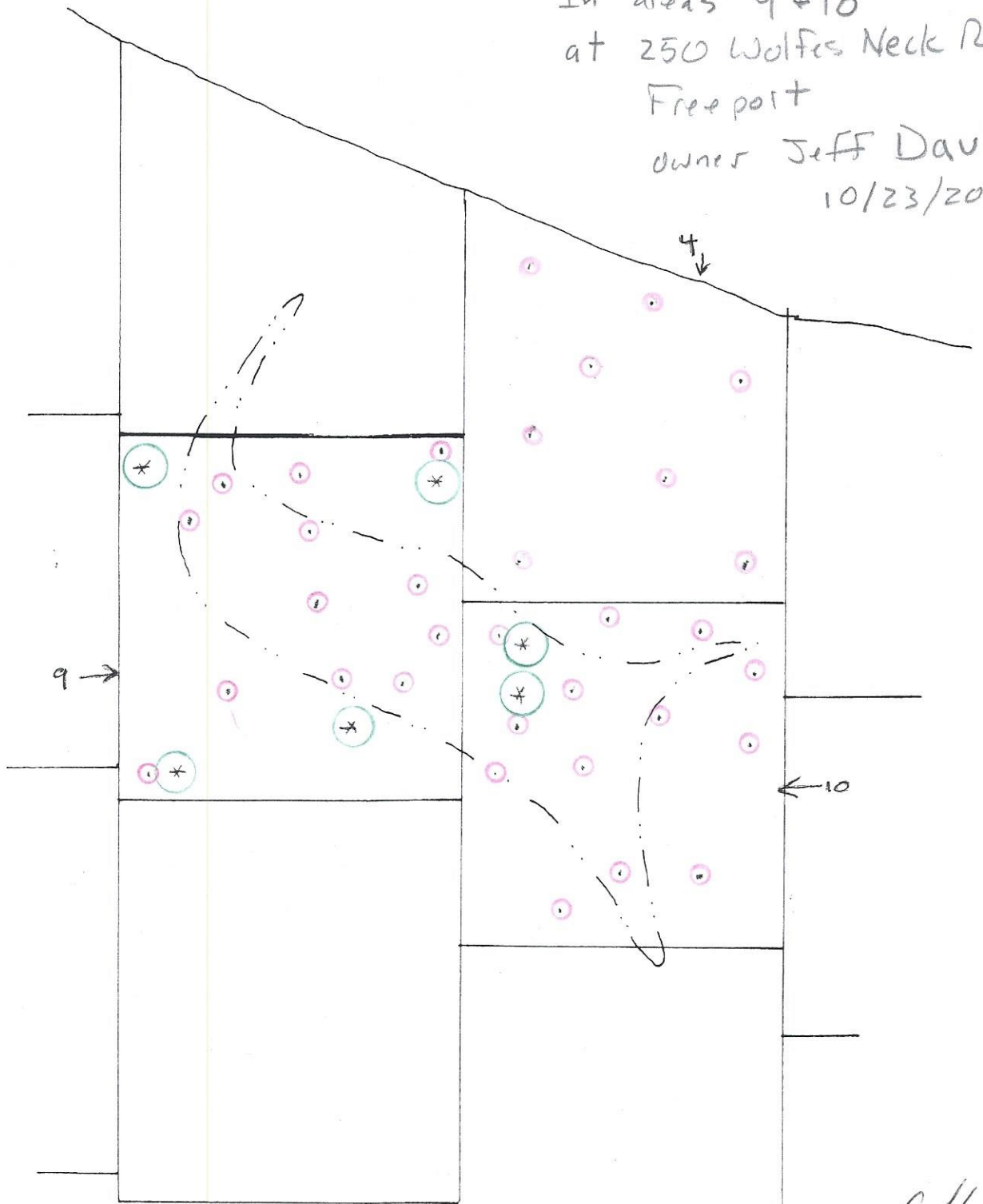
Flags on the ground

Blue - corner of areas

Pink - Location of  
Larger Trees

Pink with X - Location  
of Saplings

Crown Size of  
 Sapling and Larger Trees  
 In areas 9 + 10  
 at 250 Wolfes Neck Road  
 Freeport  
 owner Jeff Davis  
 10/23/2020



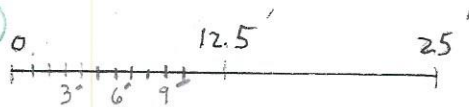
Estimated Crown Coverage After Planting

Open Area - - - - -

Saplings

B+B Trees \*

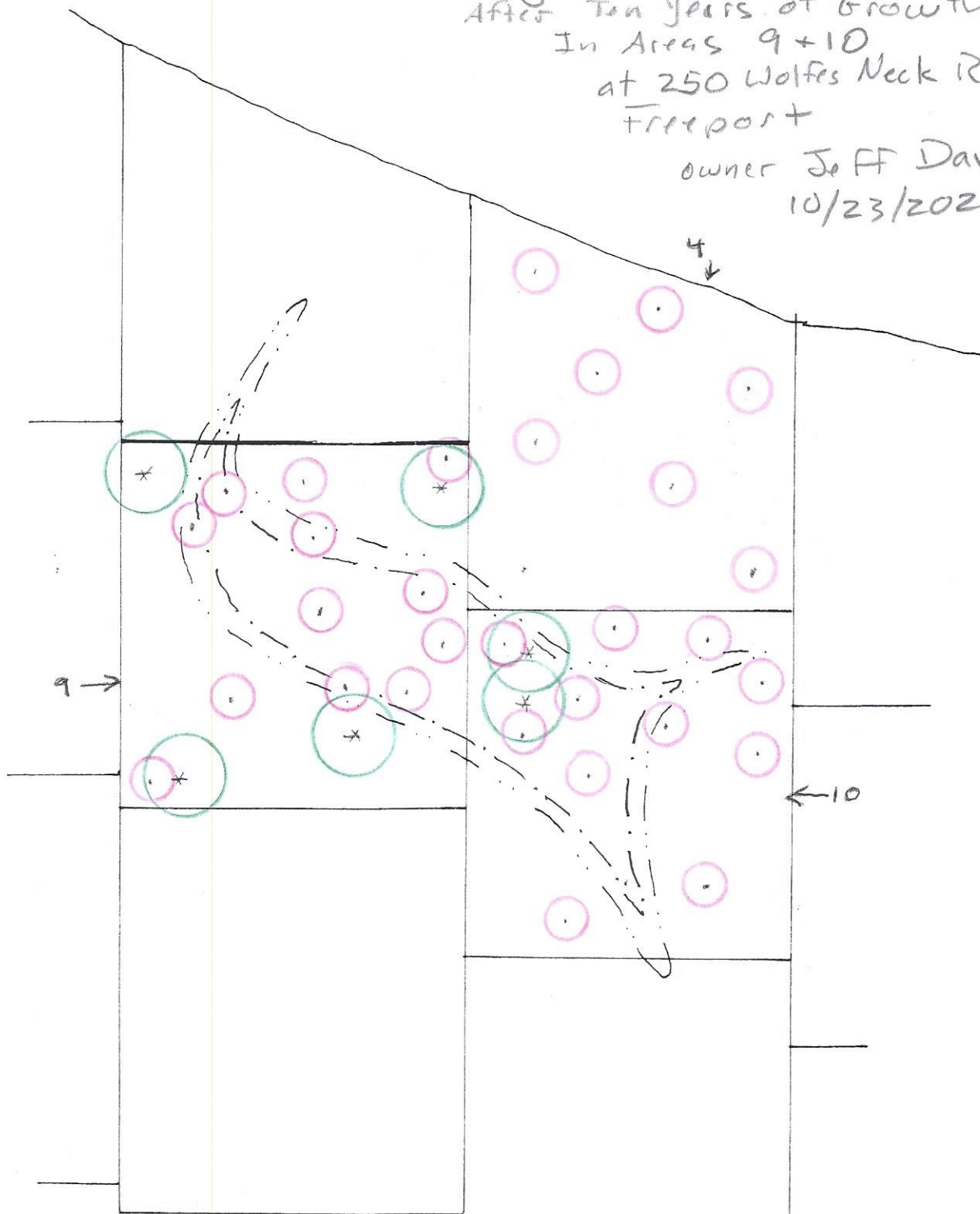
Approx. Scale



*Gregory E. Foster*  
**Timberstate G. Inc.**  
 P.O. Box 157  
 Gray, Maine 04039  
 207-657-4441  
 Gregory E. Foster  
 Professional Forester #895

Crown Size of  
 Sapling and Larger Trees  
 After Ten years of Growth  
 In Areas 9+10  
 at 250 Wolfes Neck Road  
 Freeport

owner Jeff Davis  
 10/23/2020



Estimated Crown covering in 2030

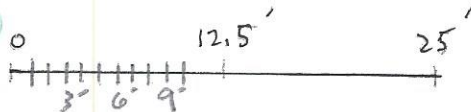
Estimated Open area 2030 - - - -

Open area 2020

Saplings ●

B+B Trees ⊗

Apex Scale



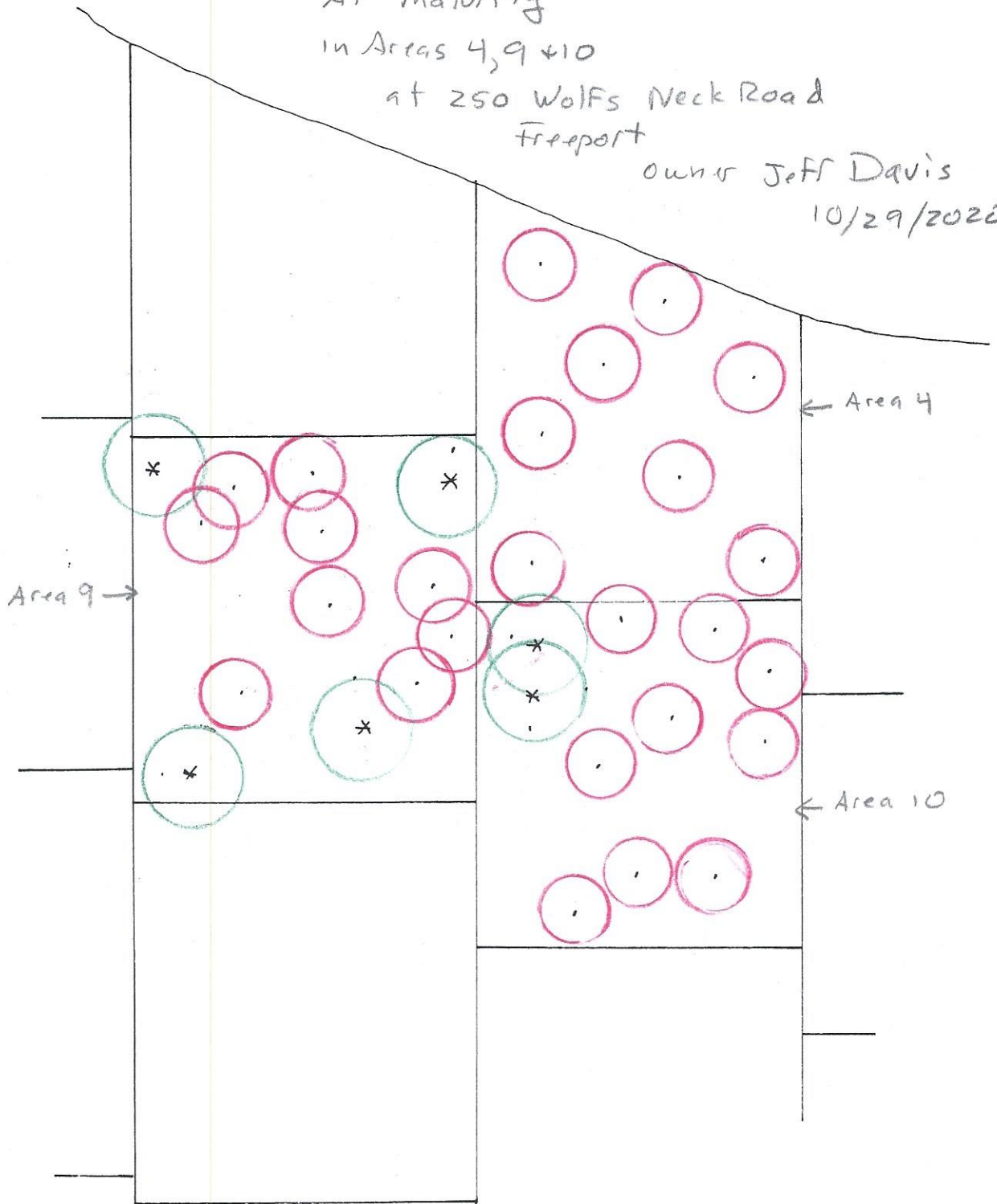
*Gregory E. Foster*  
 Timberstate G. Inc.  
 P.O. Box 157  
 Gray, Maine 04039  
 207-657-4441  
 Gregory E. Foster  
 Professional Forester #005

Anticipated Crown Size of  
 Sapling and larger Tree  
 At maturity  
 in Areas 4, 9 & 10



at 250 Wolfs Neck Road  
 Freeport

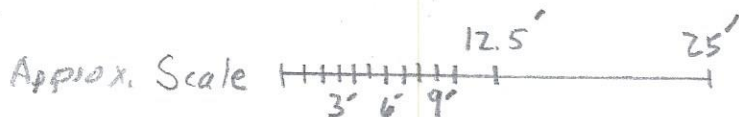
owner Jeff Davis

10/29/2020



Estimated Crow Cover at Maturity

Sapling in 2021   
 B+B Trees in 2021 





**Timberstate G. Inc.**  
 P.O. Box 157  
 Gray, Maine 04039  
 207-657-4441  
 Gregory E. Foster  
 Professional Forester #596

# Inventory of Vegetation Removal

Within a shoreland zone, 75 foot buffer

On property owned by

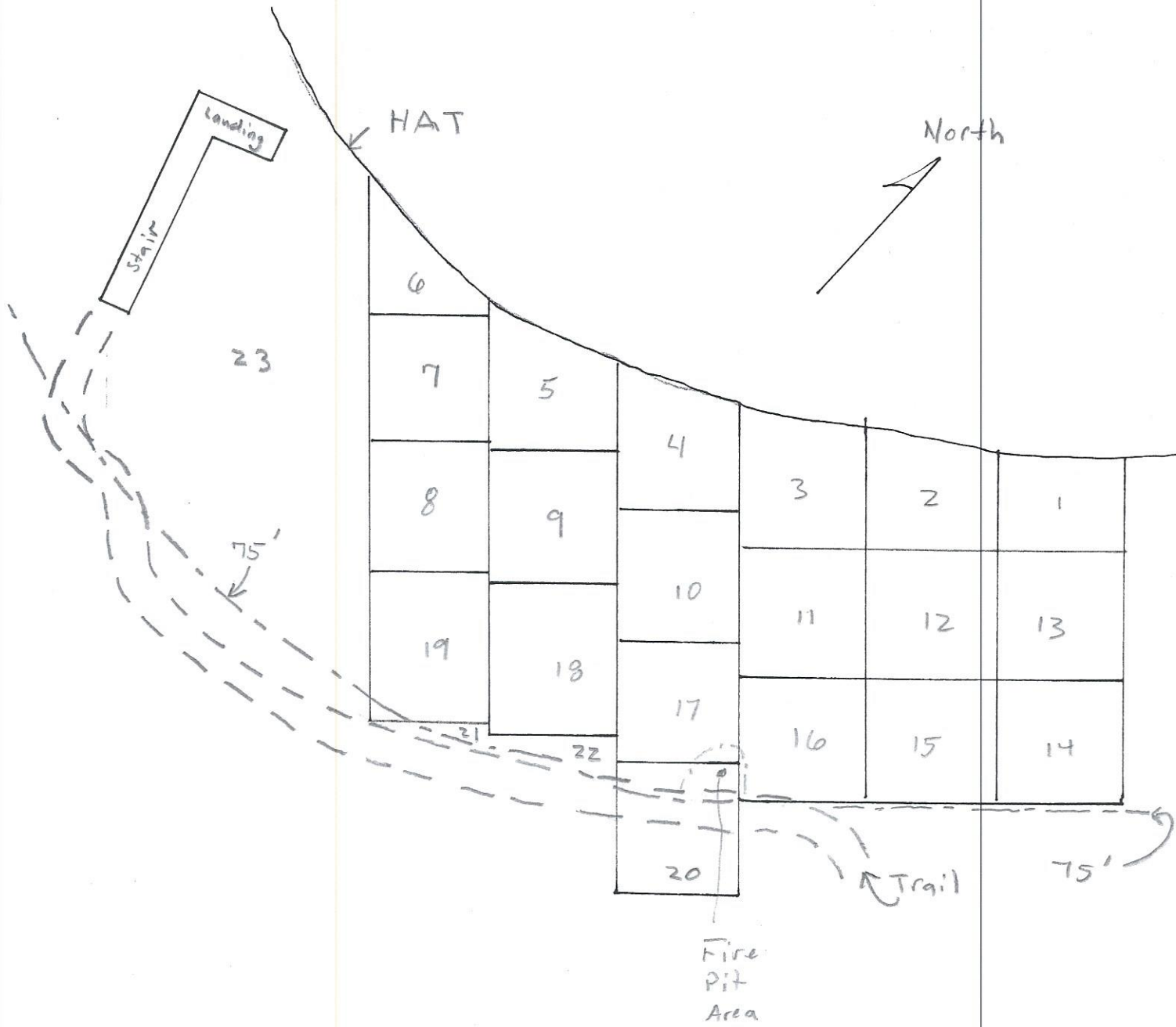
Jeffrey Davis

Located at 250 Wolfe's Neck Road

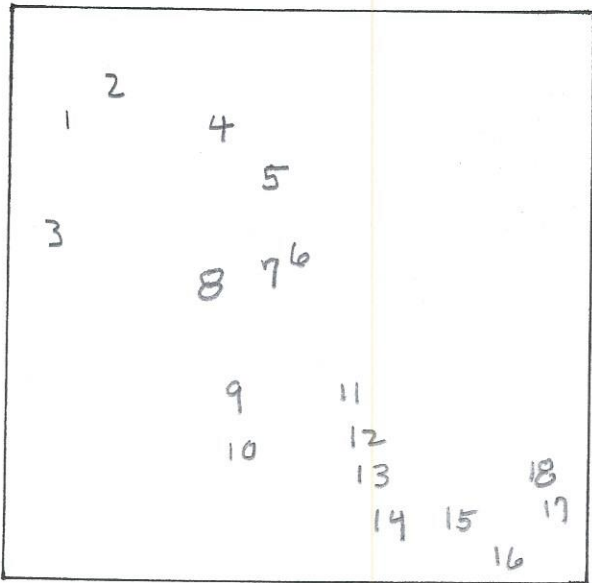
Freeport, Maine

August 27, 2020

Prepared by Gregory E. Foster  
Licensed forester # 595  
Timberstate G. Inc.  
P. O. Box 157  
Gray, Maine 04039  
207-272-4270



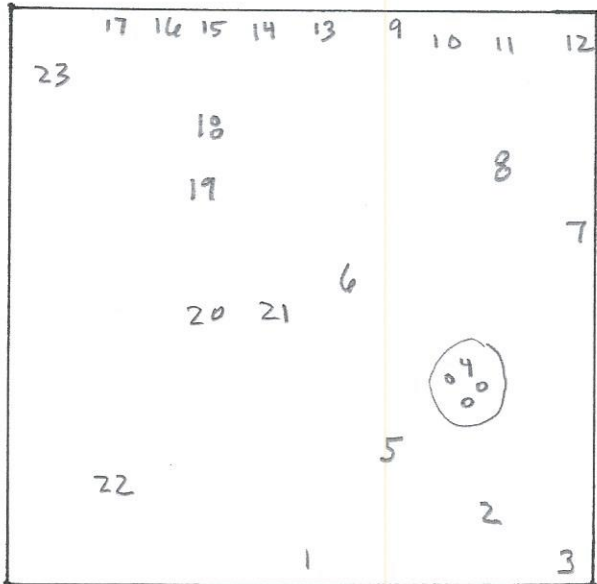
Area 1



Stump #	Diameter	Species	Notes
1	4.5	He	
2	4.0	He	
3	3.5	Fir	
4*	6	Spruce	
5*	3.0	Spruce	
6*	2.5	He	
7*	4.0	He	
8*	2.5	Fir	Dead
9*	4.0	He	
10*	2.5	Fir	Dead
11	2.0	He	
12	1.0	He	Dead
13	2.5	He	
14	3.0	He	
15	1.5	He	Dead
16	3.0	He	
17	2.5	He	Dead
18	1.5	He	

\* Trees broken off by large dead white birch in area three (tree # 3) when it fell this spring

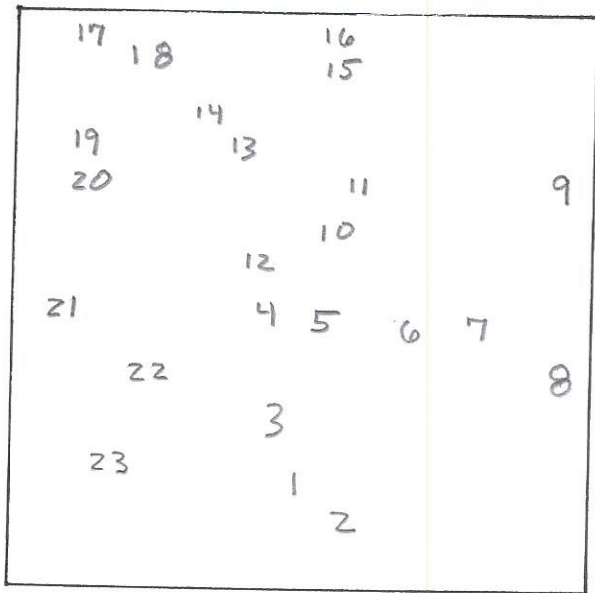
Area 2



Stump #	Diameter	Species	Notes
1	3.0	He	
2	8.0	He	
3	1.5	He	
4**	12.0	He	
5	8.0	He	
6	3.0	He	Dead
7	6.0	He	
8	5.0	He	
9	4.0	He	
10	4.0	He	Dead
11	1.5	He	
12	7.0	Spruce	
13	4.0	Fir	
14	4.0	Fir	
15	6.5	He	
16	1.0	Fir	
17	1.0	Fir	Dead
18	1.0	Fir	Dead
19	4.5	He	
20	8.0	He	
21	2.0	Fir	Dead
22	2.5	Fir	Dead
23	2.5	Fir	Dead

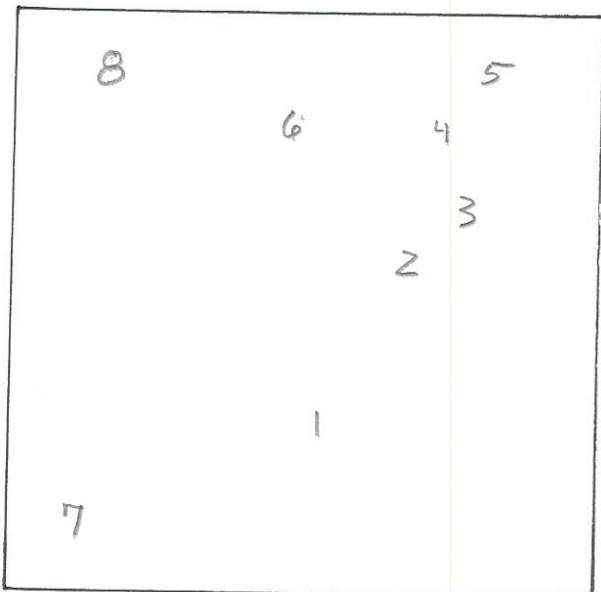
\*\* Three stumps, however, this was one tree, as per Jeff Davis. Diameter is estimated.

Area 3



Stump #	Diameter	Species	Notes
1	3.0	He	
2	2.5	He	
3	5.0	He	
4	1.5	He	
5	2.0	He	
6	3.0	He	
7	2.0	He	
8	8.5	Spruce	
9	2.5	He	
10	4.0	He	
11	1.5	He	
12	3.0	He	
13	4.0	He	
14	2.0	He	
15	3.0	He	
16	3.0	He	
17	2.0	He	
18	2.5	He	
19	2.5	He	
20	3.0	He	
21	7.0	He	
22	3.0	He	
23	2.5	He	

Area 4



Stump #	Diameter	Species	Notes
1	7.5	He	
2	6.0	He	
3	9.0	He	
4	2.0	He	Dead
5	3.0	He	
6	5.0	Fir	
7	6.0	Fir	
8	5.0	He	