



JANET T. MILLS
GOVERNOR

STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
LAND USE PLANNING COMMISSION
45 RADAR ROAD
ASHLAND, MAINE 04732-3600

AMANDA E. BEAL
COMMISSIONER

STACIE R. BEYER
EXECUTIVE DIRECTOR

June 12, 2024

Sent via E-mail

Haley Ward, Inc.
c/o Jon Whitten Jr.
1 Merchants Plaza, Ste 701
Bangor, Maine 04401

Allagash Timberlands, LP
c/o Matthew Collin
300 Union Street
PO Box 5777
St. John, NB E2L 4M3

RE: SLC 19-A – Second Deficiency Letter. Allagash Timberlands, LP; Cross Lake Twp., Aroostook County, Maine

Dear Mr. Whitten and Mr. Collin:

Thank you for meeting with us on May 17, 2024 to discuss which standards still need to be addressed in order for the Land Use Planning Commission (LUPC) to certify to the Maine Department of Environmental Protection (MDEP) that the project complies with all applicable LUPC standards not otherwise addressed by the MDEP's review. This discussion was based on the Memo dated February 22, 2024 and signed by Ben Kaiman in response to our January 26, 2024 letter as well as a review of the revised SLODA application dated February 21, 2024 and three draft legal documents (Lease, Declarations and Bylaws) submitted on April 26, 2024.

Since that meeting you have also submitted a newly revised subdivision plan (submitted on June 3, 2024) and the Maine Attorney General's Office has completed a general review of the draft legal documents. This letter is intended to summarize many of the items discussed on May 17, and also provide a review of the recently revised plan. Comments from the Assistant Attorney General are also included in this letter.

First, here is a list of general comments and suggestions regarding the draft legal documents. Additional specific comments as they relate to the review standards are noted later on in this letter.

1. *The Project name should be consistent throughout all of the documents contained in the application. For example, the first page of the sample lease identifies the Subdivision Declaration by a different name than the name on the submitted Declarations of Rights, Covenants, Conditions, and Restrictions document (“West Cross Lake [A] Subdivision” instead of “Burnt Landing Campsites”).*
2. *In addition to the consistency note above, please note that using the name “Burnt Landing Campsites” may be misleading and confusing to the public. “Campsites”, defined in 12 M.R.S. Section 682 and in Chapter 2, are a specific use listing in Chapter 10 of the Commission’s rules, and are commonly thought of in Northern Maine in a certain context by the public. Under State Statute and Chapter 2 definitions, campsites are limited to transient occupancy with a camping device and only limited structural development is allowed. While the developer of a subdivision has the right to choose the name of their subdivision, it is suggested that the name be changed to “Burnt Landing Camp Lots” or a similar name to avoid any misunderstanding that these are individual lots for private residential use and not a campground or commercial campsites like what you would find in the North Maine Woods, for instance. Once you decide on a name, all documents should be checked for consistency.*
3. *The third paragraph of the Declarations of Rights, Covenants, Conditions, and Restrictions document is incorrect. The Maine Land Use Planning Commission is not the permitting authority for this subdivision. The subdivision will potentially be approved by the Maine Department of Environmental Protection with Certification from the Maine Land Use Planning Commission. The opening sentence of this paragraph should be corrected. Similarly, language on Page 3 should not refer to “LUPC permit”. It should be “LUPC Certification”.*
4. *Lastly, it was recommended by the Maine Attorney General’s office that language similar to that in Section 4(d) of the sample lease be added to Section 4(c), which regulates use of the property to make it clear that requirements will apply to “use” as well as construction of Tenant improvements. Specifically, the “use must be undertaken in compliance with the terms and provisions of the Declaration, all permits and approvals... Concept Plan....Subdivision... etc).*

Next, in reference to my original letter dated January 26, 2024 outlining the deficiencies in the application, the list below reflects the same numbering of the items from that letter, but only includes the items that still do not meet the identified Sections of Standards from Chapter 10 and the Fish River Chain of Lakes Concept Plan; or that more information is required in order to make a finding that the provision(s) have been met.

B. Road and Infrastructure Maintenance and Associations:

1. **Section 10.25,D,4,d,(4)** - Subdivision designs must include a plan for long-term maintenance of the subdivision access roads and common infrastructure, including but not limited to maintenance of drainage structures, water crossings, and road grading or resurfacing. The plan must include a list of inspection and maintenance tasks, recommended task frequency, and a responsible party.

The stormwater section of the February 21, 2024 SLODA application details the inspection and maintenance tasks for roads and infrastructure. In this section, it states that the “Owner or their assigns will be responsible for the inspection and maintenance of all stormwater management system components.” That section further states that “inspections shall be performed by an individual with experience and/or training....” The draft Declarations of Rights document states that “Common Areas” include the “drainage and stormwater management structures and buffers” and assigns rights and responsibilities regarding maintenance of the “Common Areas” to the Association members, but nothing regarding the inspections. Therefore, it is assumed that Allagash Timberlands will be responsible for carrying out the inspections in accordance with the details in the submitted application. Please confirm or clarify in the Declarations.

2. **Section 10.29-FRL** - Common infrastructure, such as roads, open space, water access sites, and stormwater management structures may be managed by a road association or an owner’s association. (see attached Section 10.29-FRL for more details).

The submitted SLODA application does not include a Water Access Lot and therefore, the LUPC did not Certify to the MDEP that this was an Allowed Use as part of the Certification issued on December 21, 2023. The submitted draft Declarations of Rights, Covenants, Conditions and Restrictions document references certain Association member’s rights to a Water Access Lot, however, no such lot has been proposed as part of this application. While there is no requirement to include a Water Access Lot, if the rights and responsibilities for Association members is to include a common water access site, the SLODA will need to be revised as follows in order to comply with the LUPC’s requirements:

- a) *Identify the Water Access Lot on the Site Plan(s). This lot will need to meet the dimensional requirements in Section 10.26-FRL. The site identified must be in one of the two areas indicated on Maps 5 and 5A of the Concept Plan (Part 1(I)).*
- b) *The common Water Access Lot can, but is not required to be, developed as part of this subdivision permit, however, when construction is proposed, it must comply with various provisions, including but not limited to: Part 2(C), Section 10.21,M-FRL,3,c,2,c; and Part2(D) of the Concept Plan and Sections 10.26-FRL and 10.27,L-FRL of Chapter 10. If developed after MDEP issues the original SLODA, then it is likely that an amendment to that SLODA will be required.*
- c) *The Phosphorus export for the proposed Water Access Lot needs to be included in the Phosphorus Control Plan. The MDEP may also require additional information regarding the Water Access Lot for the SLODA.*

C. Subdivision and Lot Creation:

1. **Section 10.25,Q,3,c – General Standards for Building Envelopes**
 - a) Building envelopes shall be identified on each lot, designating suitable areas where structural development and permanently maintained cleared

openings may occur. Activities not counted as permanently maintained cleared openings include a single driveway for access to the building envelope, cleared areas that are mowed less than twice a year, areas used for agricultural management activities, and trails for recreational access.

- b) Building envelopes shall be shown and labeled on the subdivision plat. In addition, building envelope requirements shall be included in deed covenants for each lot specifying that structural development and permanently maintained cleared openings shall be located within the building envelope as shown on the Commission approved subdivision plan, as it may be amended from time to time.
 - c) Building envelopes shall be located and sized to allow conformance with the Commission's dimensional requirements in terms of minimum water body, road, and property line setbacks, and maximum lot coverage requirements, as provided in Section 10.26; and vegetation clearing standards for shorelines and public roads, as provided in Section 10.27.
 - d) Where practicable, building envelopes shall be arranged:
 - i. In groups, allowing for larger open areas between groups of building envelopes;
 - ii. To avoid placement along ridgelines, on prime farmland soils, in wetlands or drainage areas, on sustained slopes greater than 20 percent, or over any other topographic or natural features important to the site; and
 - iii. To maximize privacy afforded to each dwelling unit, such as providing sufficient buffering vegetation and staggering building envelopes.
2. **Section 10.25,Q,4,a,1 - Basic Subdivision Layouts.** Building envelope size shall be limited to no greater than 40 percent of the size of each lot.

No building envelope requirement language has been included in any of the submitted legal documents as required above. Typically, these are included in a sample lease and/or covenants. Please revise these documents.

The Building Envelope table added to the most recent Plan should fit within the margins of the plan and include a column for the size of the building envelope and a column for the percent of the envelope coverage or similar data (see an example in figure 1 below). While it is assumed to be the building envelope size of the sum of the "Structural Development Area" plus the "Permanently Maintained Cleared Area" for each lot, it is not clear. It is also not clear if the Applicant plans to effectively limit the development and clearing in accordance with the provided table. If so, it should be specified in the lease agreement and/or covenants.

Figure 1.

11. BUILDING ENVELOPE SUMMARY:

	<u>TOTAL AREA</u>	<u>BUILDING ENVELOPE</u>	<u>ENVELOPE COVERAGE</u>
LOT 1	1.18 AC	0.44 AC	37 %
LOT 2	1.21 AC	0.48 AC	40 %
LOT 3	0.93 AC	0.37 AC	40 %
LOT 4	1.06 AC	0.42 AC	40 %

While the revised site plan does have one reference on Lot 3 to “POTENTIAL LOCATION OF BUILDING ENVELOPE...”, and it is assumed that the similar feature depicted on each lot is intended to represent building envelopes, this feature has not been properly identified in the legend. Review of such a fundamental element of a subdivision plan must not be left to assumption. In addition, building envelopes should not be identified as “Potential”. These are actual building envelopes, therefore, the reference on Lot 3 should be removed or at least modified, and building envelopes identified by the legend. The legend should also be updated to match the features on the plan that have been modified to avoid grayscale, such as the Wetlands.

That said, in one case, the presumed building envelope extends slightly into setback requirements (Lots 8). This is not in compliance with the standards above. Furthermore, since building envelopes must meet the setback requirements, it is unnecessary, misleading, and confusing to illustrate separate setback requirements on the plan. We recommend removing the setback lines from the plan but keeping the note and just ensuring that the building envelopes meet the setbacks.

There are two driveway entrances depicted on the plan for Lot 1. This appears to be in error.

It appears that the soil test pits for several lots are very close to the building envelope boundary and it is uncertain whether the required clearing associated with the installation of a sewage disposal system could be entirely located within the building envelope (Lots 2, 3, 5, and 16 are a few potential examples). Please note that the LUPC will not be able to approve a subsequent application for a building permit for residential development should any clearing be proposed outside of the building envelope.

Finally, after some discussions about procedures with MDEP and the Municipal Planning Assistance Program (MPAP), we have modified our required signature block language for subdivision plats specifically for Site Law Certification Subdivisions. The version published on our website is for subdivisions entirely reviewed by LUPC. Please find attached the Specifications for Subdivision Plats with the revised language for the signature block. Please be advised, you are required to comply with these specifications.

E. Additional Standards:

1. Pursuant to Section 10.32-FRL – a Phosphorus allocation must be allocated to this development. While the Maine DEP is the lead permitting agency for this application regarding phosphorus control, the LUPC is responsible for tracking phosphorus allocations pursuant to the plan.

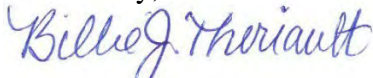
If a Water Access Site is to be included, please provide an updated annual phosphorus allocation.

2. Pursuant to Section 10.26-FRL – dimensional requirements and setbacks are in accordance with the Plan except that Section 10.26,G from Chapter 10 shall apply as supplemented by 10.26-FRL,G-1 of the Plan.

It is noted in the February 22, 2024 Haley Ward Memo that language regarding the setback requirements will be in the sample lease and/or covenants, however, no setback requirements have been included in the submitted draft lease or covenants. Please revise these documents.

If you have any questions, please let me know. It may be helpful to meet to go over these requirements. I can be contacted at (207) 435-7969 or billie.j.theriault@maine.gov. Thank you for your cooperation.

Sincerely,



Billie J. Theriault
Regional Supervisor
Permitting and Compliance Division

Enclosure(s):

cc: Anthony Hourihan, Irving Woodlands, LLC (via email)
Keegan Ferro, MDEP (via email)

SPECIFICATIONS FOR FINAL SITE LAW SUBDIVISION PLATS


Once you have been notified by the Commission's staff that your subdivision permit application is acceptable, you should then have a final subdivision plat prepared by a Licensed Architect, Professional Engineer, or Professional Land Surveyor, in accordance with the requirements listed below.

REQUIREMENTS FOR SUBDIVISION PLATS

The final plats must be drawn to the same scale as the site plans submitted with your subdivision permit application (generally, a scale of 1 inch = 100 feet (or less)). The plats must be at least 12 x 18 inches in size and no larger than 24 x 36 inches in size. If more than one sheet is required, match lines must be included on each sheet. The plats must be drawn on strong linen cloth, mylar or other polyester film with archival photographic image. You will need to prepare one mylar, polyester or linen plat and five paper copies of each sheet of your final subdivision plats.

The final plat must contain the following information:

- A magnetic north reference pointer and true north reference pointer.
- All boundaries of the land to be subdivided, including ownership of any abutting properties.
- Individual lot lines, including designated public or common use areas and any other areas that are to remain undeveloped. Each lot must be labeled with exact length and direction, a unique lot number, and total acreage.
- Individual building envelopes for any lots where structural development will be permitted.
- Existing and final proposed lines and widths of all roads, cul-de-sacs, right of ways, and easements for utilities. Each line must be labeled with exact length and direction.
- The location and identification of all permanent monuments marking lot boundaries, easements, etc., and boundaries of the tract to be subdivided.
- Location and identification (with names if applicable) of any lakes, ponds, rivers, streams, wetlands or other waters.
- If any lots have been sold from the parcel within the past five years, include those property boundary lines as you would other lots within the subdivision and identify present lot owners and dates of sales.
- A title block which identifies the subdivision. The title block must be located in the lower right corner of each page of the final plat and must include the following information:

Subdivision Name Town, Township or Plantation and County where the subdivision is located Street Name or Route Number where the subdivision is located Name of Subdivider (include name of Landowner, if different) Name of Registry of Deeds and book and page reference where title to land is recorded Total number of acres in subdivision Total number of subdivision lots Scale 1 inch = _____ feet (include scale bar) Name and Address of person preparing the plat Title and Registration Number of person preparing the plat Signature of person preparing the plat Date plat was prepared	
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- A signature block for signature by the Director of the Maine Land Use Planning Commission. The signature block must be located in the lower left corner of each page of the final plat and must include the following information:

<p>This plat has been approved with conditions by the Maine Land Use Planning Commission in accordance with 12 M.R.S.A. Section 685-B(6) and Section 685-B(1-A)(B) of the Commission's laws. Approved lots within this subdivision may be sold or leased only in accordance with terms and conditions of Site Law Certification (SLC) _____ as recorded in the _____ County Registry of Deeds in Book _____ on Page _____ and as authorized by the Maine Department of Environmental Protection under Department Order _____. Except for structures allowed without a permit in compliance with Maine Land Use Planning Commission standards, no structure or other such construction may be undertaken on any lot without first obtaining an approved building permit from the Maine Land Use Planning Commission.</p> <p>By: _____ Date: _____ <small style="margin-left: 150px;">Director, Maine Land Use Planning Commission</small></p> <p>This plat has been recorded in the _____ County Registry of Deeds in Book _____ on Page or File _____.</p> <p>Date: _____ Time: _____</p> <p>Attested by: _____ <small style="margin-left: 350px;">Registrar</small></p>
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** Please be sure to read the instructions on the next page for filing and recording the subdivision plat **

FILING AND RECORDING YOUR SUBDIVISION PLAT

1. Submit one mylar, polyester or linen copy and five paper copies of each sheet of the subdivision plat to the Commission for approval and signature by the Director. Mail the copies to the regional office serving your area (see below for the office locations and contact information). After signature, two paper copies will be retained by the Commission as part of the subdivision permit file; one paper copy will be forwarded by the Commission to the Maine Revenue Service or the town or plantation assessor's office; and two paper copies along with the mylar, polyester or linen copy will be returned to you.
2. Upon receiving the signed copies of the subdivision plat from the Commission, you must immediately record the signed mylar, polyester or linen copy; one signed paper copy; and the original subdivision permit approval with the appropriate Registry of Deeds. You should retain the second signed paper copy and a copy of the subdivision permit approval to show to prospective subdivision lot buyers.
3. Within one week of the recording of the plat and subdivision permit, you must submit a copy of the recorded plat and recorded subdivision permit approval to the Commission. The recorded plat and permit must identify the date, book and page numbers and file reference of the recording.
4. Please note that all subdivisions must receive a Certificate of Compliance and that the filing and recording requirements described above must be met prior to any issuance of a Certificate of Compliance. See the Commission's website, at www.maine.gov/dacf/lupc/application_forms/index.shtml for the necessary application form.

WHERE CAN I GET HELP TO COMPLETE THIS REQUIREMENT?

Call the LUPC office that serves your area and ask to speak to one of our regional representatives (see below for office locations and contact information). Also, go to the LUPC website at www.maine.gov/dacf/lupc/ to browse through our rules and regulations, recent publications and newsletters, Commission meeting agendas, and other valuable information.

MAILING YOUR FINAL PLAT

Submit the necessary plats to the LUPC office serving your area.

<u>AUGUSTA OFFICE</u>	<u>ASHLAND OFFICE</u>
18 Elkins Lane - Harlow Bldg. 22 State House Station Augusta, ME 04333-0022	<i>Serving most of Aroostook County and northern Penobscot County</i> 45 Radar Road Ashland, ME 04732-3600
Tel. (207) 287-2631 TTY (888) 577-6690 FAX (207) 287-7439	Tel. (207) 435-7970 Tel. (207) 435-7969 FAX (207) 435-7184
<u>BANGOR OFFICE</u>	<u>EAST MILLINOCKET OFFICE</u>
<i>Serving Hancock, Knox, Lincoln, and Sagadahoc Counties, and portions of Washington, Kennebec, Penobscot and Piscataquis counties; and the coastal islands in the LUPC service area</i> 106 Hogan Rd, Suite 8 Bangor, ME 04401	<i>Serving southern Penobscot County, southern Aroostook County, and portions of Piscataquis County</i> 191 Main Street East Millinocket, ME 04430
Tel. (207) 215-4685 Tel. (207) 592-4448 FAX (207) 941-4222	Tel. (207) 485-8354 Tel. (207) 399-2176 FAX (207) 746-2243
<u>GREENVILLE OFFICE</u>	<u>WILTON OFFICE</u>
<i>Serving Somerset County and most of Piscataquis County</i> 43 Lakeview Street P.O. Box 1107 Greenville, ME 04441	<i>Serving Franklin County and Oxford County</i> 932 US Route 2 East Wilton, ME 04294
Tel. (207) 695-2466 Tel. (207) 731-4398 FAX (207) 695-2380	Tel. (207) 670-7492 OX Tel. (207) 670-7493 FR