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LAND USE PLANNING COMMISSION  
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## Certification

### COMMISSION DETERMINATION IN THE MATTER OF

Department of Environmental Protection  
Request for Site Law Certification  
Maine Waterside Trails, LLC  
Site Law Certification #SLC-8

#### Findings of Fact and Determination

The Maine Land Use Planning Commission, through its staff, after reviewing the certification request and supporting documents submitted by Maine Waterside Trails, LLC for Site Law Certification SLC-8 and other related materials on file, pursuant to the Commission's Land Use Standards, finds the following facts:

1. *Person Requesting Certification:* Maine Waterside Trails, LLC  
60 Cuttermill Road, Suite 214  
Great Neck, NY 11021
2. *Accepted as Complete for Processing:* March 29, 2017
3. *Location of Proposal:* Soldiertown Twp. (T2 R7 WELS), Penobscot County
  - (1) Plan 01, Lot 4 (Part of) (Easement, Lease, landowner Open Space Institute Land Trust, Inc.)
  - (2) Plan 01, Lot 3 (Part of) (Easement, Lease, landowner Open Space Institute Land Trust, Inc.)
  - (3) Plan 01, Lot 9 (Lease, landowner Open Space Institute Land Trust, Inc.)
  - (4) Plan 01, Lot 10 (Lease, landowner Open Space Institute Land Trust, Inc.)
  - (5) Plan 01, Lot 26 (Lease, landowner Open Space Institute Land Trust, Inc.)
  - (6) Plan 01, Lot 4 (Part of) (Easement, landowner Maine Waterside Trails, LLC)

4. *Current Zoning:* (M-GN) General Management Subdistrict  
(P-WL) Wetland Protection Subdistrict  
(P-SL1) Shoreland Protection Subdistrict  
(P-FP) Flood Prone Protection Subdistrict  
(P-RR) Recreation Protection Subdistrict
5. *Permanent project area.* Construction of 9.67 acres of new impervious surface and a total developed area of 14.7 acres

## **INTRODUCTION**

6. Title 12, section 685-B(1-A)(B-1) establishes that except for projects that are located in a planned subdistrict that was approved or accepted by the Commission for processing prior to September 1, 2012, a permit from the Commission is not required for a development of state or regional significance that may substantially affect the environment as defined in Title 38, section 482. A development of state or regional significance that may substantially affect the environment is reviewed under Title 38, section 489-A-1 and subject to the Site Location of Development Law (“Site Law”) administered by the Department of Environmental Protection (“DEP”). The Commission must certify that development that is part of a Site Law project is an allowed use within the subdistrict or subdistricts in which it is proposed and that the development meets any of the Commission’s land use standards that would not be considered by DEP before DEP would issue any permit.

The following Findings, Conclusions and Conditions constitute the Commission’s certification that the Maine Waterside Trails, LLC project, as proposed, meets the applicable Land Use Standards that are not considered in the DEP review. By letter dated April 14, 2017, the Commission, through its staff, certified to the DEP that the Project is an allowed use in the subdistricts in which it is proposed (attached as Appendix A).

## **PROPOSAL**

7. On March 7, 2017, the Maine Department of Environmental Protection submitted to the Commission a Request for Certification for a DEP Site Law/ Natural Resources Protection Act (“NRPA”) application submitted by Maine Waterside Trails, LLC Project (the “Project”). This application included Exhibit 26, which addressed the Commission’s criteria for certification.
8. The proposed Project is the development of an outdoor education campus facility offering outdoor recreational opportunities to middle and high school aged children, together with an associated recreational trail system extending along the East Branch of the Penobscot River. The day-use programs will consist of kayaking, canoeing, and bicycling in the spring and fall

and cross country skiing and snow shoeing in the winter. The campus buildings and trail system also is proposed to be available for public use when not in use for educational programming.

9. *Project description.* The Project will consist of the following:

- A. *Campus Facility.* Buildings and facilities at the campus site include a 60 foot by 50 foot by 24 foot lodge building, 30 foot by 87 foot by 24.75 foot headquarters shed, a 30 foot by 76 foot by 16.5 foot equipment shed, a 24 foot by 28 foot by 20 foot bunkhouse cabin, a 10 foot by 10 foot by 15 foot ranger booth, and a 8 foot by 8 foot by 15 foot vault privy building. The proposed campus facility also includes a seasonal floating dock system that will be anchored to the land by use of helical piles. All components of the seasonal dock system will be removed from the watercourse and stored during the off-season. An approximately 150 foot by 60 foot parking area and an approximately 100 foot by 60 foot parking area, totaling approximately 50 parking spaces, are also proposed.
- B. *Roads.* The principal access to the campus site is along an existing land management road. Within the campus site, two new access drives are proposed. One provides access to the seasonal floating dock structure, and the other provides access from the existing land management road to the lodge and bunkhouse cabin buildings.
- C. *Utility Line.* Utility service (electric and telephone) will be supplied to the campus facility via a utility line approximately 2,000 feet in length. Single phase electric service will be provided via a 15KV rated 7200 volt electric cable. The utility line would extend overhead from State Route 11 to the south side of the existing bridge crossing of Mud Brook. The utility line will be buried from a utility pole on the south side of the brook, and then will cross the brook within PVC conduit attached to the framework of the existing bridge. The utility line will be buried from the north side of Mud Brook to the buildings within the campus facility. Excavation to bury the utility line will occur within 100 feet of the normal high water mark of Mud Brook.
- D. *Trail System.* A proposed multi-use trail system will be constructed along the east side of the East Branch of the Penobscot River. Approximately 10.5 miles of hardened earthen trail will be constructed with an approximate width of 8 feet. Where the trail crosses wetland areas, the trail will be constructed of wooden bridges and/or boardwalks.

10. *Public notice.* On January 24, 2017, a Notice of Intent to Develop and Request for Certification was sent to project abutters and other parties by U.S. Postal Service mail. The public notice included information on filing comments and requesting a public hearing within 20 days of the Commission accepting the Request for Certification as complete for processing. LUPC staff deemed the certification request complete for processing on March 29, 2017. No public comments or requests for a public hearing were received by the LUPC.

## **TITLE, RIGHT OR INTEREST**

11. Maine Waterside Trails, LLC elected to simultaneously apply to the DEP for a Site Location of Development permit for the Katahdin River Trails Project and to the Land Use Planning Commission for certification. The DEP application was accepted as complete for processing on March 10, 2017. Provided the DEP finds in their review of the project that Maine Waterside Trails LLC has sufficient title, right or interest, the Commission concludes that Maine Waterside Trails, LLC has administrative standing to request certification of the Project.

## **LUPC LAND USE STANDARDS**

12. The Commission's Land Use Standards that are relevant to certifying compliance of the proposed Project are evaluated in Findings #13 through #19.

13. *Land Division History.*

A. *Review Criteria.* 12 M.R.S.A. § 682(2-A) and § 685-B(1)(B); and §§10.24, F (quoting 12 M.R.S.A. § 685-B(4)(F)) and 10.25,Q,1 of the Commission's Land Use Standards.

B. *Land division histories.* Maine Waterside Trails, LLC provided land division histories for the six Project parcels in Soldiertown Township (T2 R7 WELS) in Penobscot County evaluating the land transfers for each parcel during the preceding twenty years, noting where a land division had formed a lot and whether that lot counted as a subdivision lot or was exempt. Reference is made to Section 2 of the Maine Waterside Trails, LLC application for Site Location of Development Permit. Maine Waterside Trails, LLC determined that no land divisions requiring a subdivision permit from the Commission had occurred for any of the Project parcels during the preceding 20 years.

(1) *Gore Lot (so-called).* This project parcel is identified as Taxation Plan 01, Lot 26. This lot was sold as a single parcel of land by Cassidy Timberlands, LLC to Maine River Trails, LLC (Now Maine Waterside Trails, LLC) on July 27, 2016. This was a conveyance of all of the grantor's interest in this lot. No division of land occurred.

(2) *Lots 36 and 48 (so-called).* This project parcel, which abuts the Gore Lot, is identified as Taxation Plan 01, Lots 9 and 10. These contiguous lots were co-owned by Huber Timber, LLC and Sylvan Timberlands, LLC. On February 4, 2010, Huber Timber, LLC sold its interest in these lots to Sylvan Timberlands, LLC. This was a conveyance of all of the grantor's interest in these lots. No division of land occurred. At that time, these lots became joined with other lands in Soldiertown Township owned by Sylvan Timberlands, LLC, namely a large parcel of land located between the East Branch of the Penobscot River and the easterly boundary line of Soldiertown Township identified as Taxation Plan 01, Lot 4. On July 28, 2016, Sylvan Timberlands LLC sold the so-called Lots 36 and 48 as a single parcel of land to Maine River Trails, LLC as a sale to an

abutting land owner. On December 6, 2016 Maine Paddling and Cycling Trails, LLC (formerly Maine River Trails, LLC) sold the now-combined single parcel of land to Open Space Institute Land Trust, Inc. as a sale to an abutting land owner.

(3) *Campus Lot East and Campus Lot West (so-called)*. On July 28, 2016, Sylvan Timberlands, LLC sold two non-contiguous lots in the southeastern portion of Soldiertown Township to Maine River Trails, LLC. These two parcels, formerly part of Taxation Plan 01, Lot 4, constitute two non-exempt land divisions from the larger parent parcel. The remainder of Sylvan Timberlands, LLC's contiguous landholdings on the east side of the East Branch of the Penobscot River is to be retained by the owner and used solely for forest management activities. Also on July 28, 2016, Sylvan Timberlands, LLC granted a conservation easement on these two lots to The Nature Conservancy. This was a conveyance of an easement interest only and not a division of land. The perpetual easement restricts use of the property for public outdoor recreation, including the development and maintenance of recreational trails and associated facilities.

(4) *River Lot (so-called)*. This lot is comprised of part of Taxation Lot 01, Lot 4 (east side of the East Branch of the Penobscot River) and Taxation Plan 01, Lots 3 and 8 (west side of the East Branch of the Penobscot River). On July 27, 2016, Sylvan Timberlands, LLC granted a conservation easement on this lot to The Nature Conservancy. This was a conveyance of an easement interest only and not a division of land. The perpetual easement restricts use of the property for public outdoor recreation, including the development and maintenance of recreational trails. The River Lot was sold by Sylvan Timberlands, LLC to the Open Space Institute Land Trust, Inc. on July 28, 2016. The Open Space Institute Land Trust, Inc. is a 501(c)(3) nonprofit tax-exempt conservation organization. The remainder of Sylvan Timberlands LLCs land holdings located between the west side of the East Branch of the Penobscot River and the western boundary line of Soldiertown Township contains more than 5,000 acres and is intended to be managed solely for the purposes of forest management activities. On July 28, 2017, The Open Space Institute Land Trust, Inc. entered into a lease agreement with Maine River Trails, LLC (now Maine Waterside Trails, LLC) authorizing the use of the property for outdoor recreation, including development and maintenance of recreational trails and associated activities.

C. *Conclusions*. Based on the materials supplied by Maine Waterside Trails, LLC, no land divisions requiring subdivision approval from the Commission occurred during the preceding 20 years (since 1997) for any of the Project parcels.

(1) *Gore Lot (so-called)*. *Exemption for transfers to an abutter*. Pursuant to §10.25,Q,g(3) of the Commission's standards, a lot transferred to an abutting owner of land is not counted as a lot for the purposes of subdivision provided the transferred property and the

abutter's contiguous property is maintained as a single merged parcel of land for a period of 5 years. The Gore Lot meets this exemption.

- (2) *Exemption for lots used solely for forest management activities.* Pursuant to §10.25,Q,1,g(2) of the Commission's standards, when a parcel of land is exempt by virtue of being used solely for forest management purposes, that parcel is exempt for the purposes of counting lots for subdivision. The portion of Taxation Plan 01, Lot 4 retained by Sylvan Timberlands, LLC meets this exemption.
- (3) *Campus Lot East and Campus Lot West.* Pursuant to §10.02(202) of the Commission's standards, "subdivision" means a division of an existing parcel of land into 3 or more parcels or lots within any 5-year period, whether this division is accomplished by platting of the land for immediate or future sale, by sale of land or by leasing, if the division is not otherwise considered exempt pursuant to Section 10.25,Q,1.g. The Campus Lots East and West do not qualify as exempt lots under the Commission's standards and would be considered the creation of 2 lots within a 5-year period.
- (4) *Exemption for Conservation Lots.* Pursuant to §10.25,Q,1,g(5) of the Commission's standards, a lot or parcel transferred to a nonprofit, tax-exempt nature conservation organization qualifying under the United States Internal revenue Code, Section 501 (c)(3) is not considered a subdivision lot if the following conditions are met.
  - (a) For a period of at least 20 years following the transfer, the lot or parcel must be limited by deed restriction or conservation easement for the protection of wildlife habitat or ecologically sensitive areas or for public outdoor recreation; and
  - (b) The lot or parcel is not further divided or transferred except to another qualifying nonprofit, tax-exempt nature conservation organization or governmental entity. The River Lot meets this exemption.
- (5) *Exemption for Large Lots Managed for Agricultural Management Activities.* Pursuant to §10.25,Q,1,g(7) of the Commission's standards, A lot transferred or retained following transfer containing at least 5,000 acres is not counted as a lot for the purposes of this subsection, provided the lot is managed solely for the purposes of forest or agricultural management activities or conservation and the lot is not further divided for a period of at least 5 years. Nothing in this paragraph, however, shall be construed to prohibit public outdoor recreation on the lot. The portion of Taxation Plan 01, Lots 3 and 8 located between the west side of the East Branch of the Penobscot River and the western boundary line of Soldiertown Township, being retained by Sylvan Timberlands, LLC, meets this exemption.

13. *Vehicular circulation, access and parking.* (See Finding #8,B for the description of the Project roads)

A. *Review criteria.* §§ 10.24,B (quoting 12 M.R.S.A. § 685-B(4)(B)) and 10.25,D of the Commission's Land Use Standards.

B. *Vehicular circulation and access – §§10.25,D,1; and 2,a, b and d.*

(1) *Access management.* All access points for the proposed project are located at existing road intersections. The primary private access roadway intersects with State Route 11 (Grindstone Road) and is shared with other private landowners. The Easement and Land Lease Agreements with the owners of the Project parcels include access easement rights over the existing private roads. One permanent Project access point connects the Project to the shared private land management road. No new Project roads will require exit by backing onto a roadway.

(2) *Traffic estimate.* Because the Project will not generate a significant amount of traffic, no traffic analysis was conducted. Maine Waterside Trails, LLC estimated that during peak use times, less than 100 vehicle trips per hour. Maine Waterside Trails, LLC believes the increase in traffic constitutes a minor additional traffic demand on project roads and Route 11.

(3) *Intersection design.* One permanent Project access point connects the Project to the shared private land management road. This access intersects the shared land management at an angle of approximately 65-70 degrees.

C. *Parking - §§ 10.25,D,3,a and e.* Two new permanent parking areas for public use will be constructed on the Campus Lot West facility grounds. An approximately 150 foot by 60 foot parking area and an approximately 100 foot by 60 foot parking area, totaling approximately 50 parking spaces, are proposed. Parking areas are located more than 250 feet from the normal high water mark of the East Branch of the Penobscot River (including Long Logan), are designed such that runoff water is discharged to a vegetated stormwater buffer, and are visually screened from view from the river and property lines by existing forest vegetation.

D. *Roadway Design – §§ 10.25,D,4,a, b, and e.* No new primary roadways are proposed in the project. Only interior access drives within the campus facility lot are proposed that meet the characterization of a roadway appropriate for low-intensity, small-scale commercial projects surrounded by a relatively sparse development pattern. Access drives will be constructed to the facility buildings, parking areas, and to the temporary dock area. The proposed graveled access drives have a sustained grade of less than 15%. Interior access drives will be approximately 15 feet in width.

E. *Conclusions.* Based on information provided in Section 26 of the Site Location Application, and the overall site plan for the facility grounds, Maine Waterside Trails, LLC has demonstrated that the applicable criteria for vehicle circulation, access, parking, and roadway design in §10.24,B and §§10.25,D,1, 2, 3, and 4 of the Commission's Land Use Standards will be met by the Project. Specifically:

(1) *Vehicle circulation and access - §§ 10.25,D,1 and 2.* The proposed Project roadway system layout and design will meet the provisions of §§ 10.25,D,1 and D,2,a through e

in that existing roadways will be used where practicable limiting the number of new entrances and exits, the primary project road will be co-used with forestry operations, and intersections have been designed to meet the specific needs of the project.

- (2) *Parking* - § 10.25,D,3,a. Given the number of new permanent parking spaces being added, the Commission concludes that parking for project construction and operation will meet the needs of the development. All parking areas will be arranged such that vehicles entering and leaving the campus facility lot do not create traffic congestion or hazards on the Project roads.
- (3) *Roadway design* - §10.25,D,4,,a, b, e and f. The assignment of class to a roadway system is applicable to Level B and Level C road projects. For the proposed Project, the upgrading of the existing interior land management road, if it were done separately from the rest of the Project, would constitute a Level A or B road project. The new Project roads constitute a Level C road project. However, for the purpose of this assessment, the sections of the existing land management roads that will be upgraded and integrated into the permanent Project roadway system are considered to be a part of the Level C road project.

In accordance with §§10.25,D,4, a and b, the Project roads will create a Class 3 roadway system serving a low-intensity commercial project and is located in a low-density area with sparse development, typically associated with a Class 3 roadway system. The roadway design and specifications proposed are appropriate for this Project with regard to: (a) the nature and level of use, particularly with regard to the low traffic volume once the project is operational; (b) the nature of the roads accessing the site; location relative to the sparse surrounding development; (c) the type and intensity of the proposed use; and (d) services and utilities likely to need access to the Project area in the future. The Commission has determined that the Project's roadway system will meet the needs of the Project and will not cause safety problems, if constructed and managed as proposed.

#### 14. *Lighting.*

- A. *Review criteria.* §10.25,F,2 of the Commission's Land Use Standards.
- B. *Permanent lighting.* The proposed campus facility will be a day-use facility operating approximately 16 weeks per year between the hours of 10:00 a.m. and 3p.m. All non-essential lighting is proposed to be turned-off after operating hours. Proposed lighting will be limited to those affixed to individual buildings and will be small LED wall-mounted lights with full cut-off.
- C. *Conclusion.* The Project as proposed will meet the provisions of §10.25,F,2 of the Commission's Land Use Standards for permanent lighting.

#### 15. *Activities in flood prone areas.*

- A. *Review criteria.* §10.25,T of the Commission's Land Use Standards.



B. *Flood prone areas.* Maine Waterside Trails, LLC, in Section 19 of the DEP Site Location Application, noted that no structures, roadways, or parking areas are proposed within areas of special flood hazard. Portions of trails proposed to be constructed in areas of special flood hazard are designed to blend with the natural topography and will be separated from the river by wooded buffers.

C. *Conclusion.* Based on materials provided by Maine Waterside Trails, LLC, the Commission concludes the provisions of §10.25,T will be met.

16. *Dimensional requirements.*

A. *Review criteria.* §§10.26,A through G of the Commission's Land Use Standards.

B. *Minimum lot size.*

- (1) *Review criteria.* §10.26,A. §10.26,A,2 specifies that the minimum lot size for commercial, industrial, and other non-residential uses involving one or more buildings is 40,000 square feet.
- (2) *Project.* The parcel proposed to be developed with one or more buildings is approximately 71 acres in size.
- (3) *Conclusion.* As proposed, the Project will meet the standard for minimum lot size in §10.26,A,2 of the Commission's Land Use Standards.

C. *Minimum shoreline frontage.*

- (1) *Review criteria.* §10.26,B. §§10.26,B,1,b and 2,b specify that the minimum shoreline frontage for a commercial or industrial development is 200 feet for parcels bordering a minor flowing water or standing body of water less than 10 acres in size; and the frontage for a parcel located on a waterbody greater than 10 acres in size or a major flowing water is 300 feet.
- (2) *Project.* The parcel contains greater than 4,000 feet of frontage on the East Branch of the Penobscot River, a major flowing water, and 220 feet of frontage on Hay Brook, a minor flowing water.
- (3) *Conclusion.* As proposed, the Project will meet the requirements for minimum shoreline frontage in §§10.26,B,1,b and 2,b of the Commission's Land Use Standards.

D. *Minimum road frontage.*

- (1) *Review criteria.* §10.26,C. §10.26,C,1,b specifies that the minimum road frontage for commercial or industrial development is 200 feet for any road used for public access.
- (2) *Project.* The parcel proposed to be developed contains approximately 309 feet of frontage on Maine State Route 11 (AKA Grindstone Road).
- (3) *Conclusion.* As proposed, the Project will meet the standard for road frontage in §10.26,C,1,b of the Commission's Land Use Standards.

E. *Minimum setbacks.*

- (1) *Review criteria.* §§10.26,D,2 and 3; and §10.26,G,5. §10.26,D,2 specifies that the minimum setback for commercial or industrial development is 150 feet from

waterbodies greater than 10 acres in size; 100 feet from minor flowing waters, P-WL1 wetlands and waterbodies less than 10 acres in size; 75 feet from roads used by the public for access; and 25 feet from side and rear property boundary lines.

(2) *Project.* All proposed structural development is located in excess of the minimum setback requirements.

(3) *Conclusion.* As proposed, the Project will meet the standards for setbacks in §10.26,D,2.

F. *Maximum lot coverage - §§10.26,E,1 and 2.*

(1) *Review Criteria.* §10.26,E,1 specifies that the maximum lot coverage is 30% for all uses, including driveways, sidewalks, parking lots, and other impervious surfaces.

(2) *Project.* The maximum lot coverage for any of the Project parcels will be less than 1%.

(3) *Conclusion.* As proposed, the Project will meet the standards for maximum lot coverage.

G. *Maximum structure height - §10.26,F.*

(1) *Review Criteria.* §10.26,F,1,b specifies that, except as provided for in §10.26,F,2, the maximum structure height shall be 100 feet for commercial, industrial, and other non-residential uses involving one or more structures. §10.26,F,2 specifies that the maximum height for a structure located within 500 feet from a waterbody greater than 10 acres in size is 30 feet.

(2) *Project.* None of the structures proposed exceed 25 feet in height. The proposed project includes no structures that will be located within 500 feet of a waterbody greater than 10 acres in size.

(3) *Conclusion.* As proposed, the Project will meet the standards for maximum height.

H. *Conclusion.* As proposed, the Project complies with all applicable dimensional requirements in §10.26, A through G of the Commission's Land Use Standards, including minimum setbacks, maximum lot coverage and maximum structure height.

17. *Vegetation clearing – §10.27,B of the Commission's Land Use Standards.*

A. *Review criteria.* §10.27,B. Sections 10.27,B,1 and 2 of the Commission's Standards are applicable to this project. §10.27,B,1,d states that A vegetative buffer strip shall be retained within 100 feet of the normal high water mark of a body of standing water 10 acres or greater in size or flowing water draining 50 square miles or more §10.27,B,2,a states that within this buffer strip, there shall be no cleared opening greater than 250 square feet in the forest canopy as measured from the outer limits of the tree crown. §10.27 B states that vegetation clearing activities not in conformance with the standards of §10.27,B may be allowed upon issuance of a permit from the Commission provided that such types of activities are allowed in the subdistrict involved. An applicant for such permit shall show by a preponderance of the evidence that the proposed activity, which is not in conformance with the standards of §10.27,B, shall be conducted in a manner which produces no undue adverse impact upon the resources and uses in the area. §10.27,B,1,a states that a vegetated buffer strip shall be retained within 50 feet of the right of way or similar boundary of any public roadway, except as provided in §20.27,B,1,b.

B. *Project.* Of all of the proposed vegetation clearing on the project site, only portions of the

proposed clearing for the multi-use trail system will be located within 100 feet of a flowing water draining 50 square miles or more. Over the approximately 10.5 miles of trail system, when taken as a single project, the proposal may result in the creation of a cleared opening greater than 250 square feet in the forest canopy. In materials submitted, Maine Waterside Trails, LLC. has demonstrated that vegetation clearing will be limited to only that necessary to construct the trails as designed, and that the trails have been designed to minimize visual impacts and impacts to natural resources. The project does not include clearing within the 50 foot buffer of State Route 11 (Grindstone Road).

C. *Conclusion.* As proposed, the Project may not meet the provisions of §10.27,B,2,a of the Commission's Land Use Standards for vegetative clearing, however, the proposal complies with Section 10.27 generally in that it would be eligible for a permit issued by the Commission. Pursuant to Title 12 MRS, §685-B(1-A)(B-1), this permit-granting authority falls under the jurisdiction of the Maine Department of Environmental Protection for developments of state or regional significance that may substantially affect the environment as defined in Title 38 MRS, §482.

18. *Signs – §10.27, J of the Commission's Land Use Standards.* §10.27.J of the Commission's Standards provides the standards for placement and sizing of signs used by the Project.

A. Maine Waterside Trails, LLC, through materials submitted, have demonstrated that all proposed signs will be informational signs associated with site activities, as provided for in §10.27,J,1,d and e; and that any permanent signs will be in compliance with §10.27, J.

B. *Conclusion.* Provided that Maine Waterside Trails, LLC installs signs as proposed, all signs used for the Project will meet the provisions of §10.27,J of the Commission's Standards.

19. *General Criteria for Approval – 12 M.R.S.A § 685-B(4) (incorporated in § 10.24 of the Commission's Land Use Standards).* In evaluating the Project, the Commission considers and applies its land use standards not considered by the DEP in its review under 38 M.R.S.A. § 489-A-1(1).

A. *Loading, parking and circulation – 12 M.R.S.A. § 685-B(4)(B) and Land Use Standard §10.24, B* specify that adequate provision must be made for transportation, including loading, parking and circulation of traffic in, on and from the site.

(1) *Conclusion.* As proposed, and as discussed and concluded in Finding #13 above, the Project will meet the standards for loading, parking and circulation in 12 M.R.S.A. § 685-B(4)(B) and § 10.24, B of the Commission's Land Use Standards.

B. *Conformance with statute, regulations, standards and plans – 12 M.R.S.A. § 685-B(4)(E) and Land Use Standard §10.24, E* specify that the Project must be in conformance with 12 M.R.S.A., Chapter 206-A and the regulations, standards and plans adopted thereto. Applicable statutory criteria for approval are discussed in Finding #19. Additionally, the Commission has more generally reviewed Title 12, Chapter 206-A and no Project components or features are out of conformance with any applicable statutory standards; for example, no spaghetti-lots are proposed. *See, e.g.,* 12 M.R.S.A. § 682-A (prohibiting the creation of spaghetti-lots). As explained more fully in Findings #1 through #18 above, the

Commission has reviewed the Project under applicable regulations and standards, specifically the Commission's Land Use Standards contained in Chapter 10 of its rules, and, as articulated in the findings above, the Project conforms to these regulations and standards. Finally, in conducting its certification review and reviewing and applying the applicable statutory provisions in Chapter 206-A and the applicable regulations and standards, the Commission interpreted and applied the statutory provisions, regulations and standards in light of the CLUP. *See* 12 M.R.S.A. § 685-C(1) ("The Commission must use the [CLUP] as a guide in . . . generally fulfilling the purposes of this chapter.")

(1) *Conclusion.* As proposed, the Project satisfies the conformity requirement in 12 M.R.S.A. § 685-B(4)(E) and § 10.24, E of the Commission's Land Use Standards.

C. *Placement of structures on lots in a subdivision – 12 M.R.S.A. § 685-B(4)(F) and Land Use Standard §10.24,F* specify that placement of a structure on a lot in a subdivision only may be allowed after the subdivision has been approved by the Commission.

(1) *Conclusion.* As proposed, and as discussed and concluded in Finding #12 above, the Project will not involve development within a subdivision.

## FINAL CONCLUSION

Based on the findings set forth above, and in addition to the conclusions set forth above, the Commission concludes that, with respect to the proposal, Maine Waterside Trails, LLC has met its burden of demonstrating that the Project conforms with the applicable regulatory and statutory requirements, and plans adopted pursuant to 12 M.R.S.A., Chapter 206-A; and meets the Commission's Land Use Standards applicable to the Project that are not considered in the DEP review.

## CONDITIONS

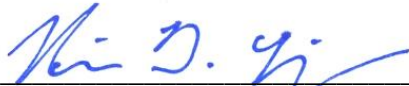
Therefore, the Commission CERTIFIES to the DEP that Site Law Certification SLC-8, submitted by Maine Waterside Trails, LLC, as proposed, complies with the relevant provisions of the Commission's Land Use Standards, subject to the findings of fact and conclusions contained herein, and the following conditions:

1. *Vehicle circulation, access, and parking.* All Project traffic, access roads and parking areas must meet the applicable provisions of §10.25,D of the Commission's Land Use Standards.
2. *Lighting.* All Project permanent exterior lighting not specifically exempted by LUPC regulation must meet the standards of §§10.25,F,2,a, b and c of the Commission's Land Use Standards. Outside permanent lighting at the campus facility must be turned off when not in use.
3. *Signs.* All Project signs must meet the provisions of §10.27,J of the Commission's Land Use Standards.
4. *Setbacks.* All Project structures, both temporary and permanent, must be located in accordance with §10.26 of the Commission's Land Use Standards.

5. *Structure Height.* The maximum height of all Project structures shall not exceed 100 feet as provided in § 10.26,F of the Commission's Land Use Standards.
6. *Clearing.* Vegetated buffers along streams and public roadways must be maintained in accordance with §10.27,B of the Commission's Land Use Standards, except as authorized by the Maine Department of Environmental Protection under the Site Location of Development Act and the Natural resources protection Act.
7. *Title, Right or Interest.* The Department of Environmental Protection finds in its Site Location of Development permitting decision that Maine Waterside Trails, LLC possesses sufficient title, right or interest to develop the Project.
8. The facility must continue to be non-commercial in nature.
9. Within 100 feet of the river, the road access to the waterfront must be constructed and vegetated as described in the detail drawing submitted by the applicant on March 29, 2017.
10. The road access to the lodge must be gated and used only for service vehicles and not for the general public.
11. The picnic area must be natural-appearing, and the picnic tables must be constructed of materials that will blend in with the surroundings.
12. The facility is otherwise constructed and operated as proposed in the materials submitted to the Commission.

This approval of a request for certification, issued to the Department of Environmental Protection, is not a final agency action. Pursuant to 5 M.R.S.A. §§ 11001 *et seq.*, a person aggrieved by a DEP Site Location of Development permit decision containing this certification determination may appeal the DEP's final agency action to Superior Court. As part of such an appeal, a person aggrieved may seek judicial review of the components of the DEP's final agency action, including the Commission's certification determination that is incorporated into the DEP's permitting decision.

DONE AND DATED AT AUGUSTA, MAINE THIS 30th DAY OF MAY, 2017.

By:   
\_\_\_\_\_  
Nicholas D. Livesay, Executive Director

APPENDIX A

Maine Waterside Trails, LLC  
Certification of Allowed Use



STATE OF MAINE  
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY  
LAND USE PLANNING COMMISSION  
22 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0022

PAUL R. LePAGE  
GOVERNOR

WALTER E. WHITCOMB  
COMMISSIONER

NICHOLAS D. LIVESAY  
EXECUTIVE DIRECTOR

Jessica Damon  
Maine Department of Environmental Protection  
106 Hogan Road, Suite 6  
Bangor, ME 04401

For: Katahdin River Trails (SLC-8)  
Maine Waterside Trails LLC  
Soldiertown Township T2 R7 WELS, Penobscot County

## Certification of Allowed Use

April 4, 2017

Dear Jessica:

On March 7, 2017, the Department submitted to the Land Use Planning Commission (LUPC) a Request for Certification for the Katahdin River Trails Project. The proposed Project is located within the unorganized township of Soldiertown Township (T2 R7 WELS) in Penobscot County. The Request for Certification asks the LUPC to determine if the Project (a) is an allowed use within the subdistricts in which it is proposed. The LUPC accepted the Request for Certification as complete for processing on March 29, 2017.

### Proposal and subdistricts proposed for development

Maine Waterside Trails, LLC proposes to construct an educational facility for “outdoor recreational opportunities for middle and high school aged children”. It would consist of a campus area with buildings, roads, utility services, a picnic area, and parking; a waterfront area with a temporary docking structure and a road; and a trail system extending along the East Branch of the Penobscot River. The subdistricts affected by the Project are the General Management (M-GN), Flood Prone Area Protection (P-FP), Recreation Protection (P-RR), Shoreland Protection (P-SL), and Wetland Protection (P-WL) subdistricts.

### Review criteria

The following statutory provision is relevant to the determination of whether the Project is an allowed use in the subdistricts in which it is proposed to be located:

1. *12 M.R.S.A. § 685-B, (1-A), (B-1)*. “...a permit from the commission is not required for a development of state or regional significance that may substantially affect the environment as defined in Title 38, section 482, subsection 2. A project meeting that definition is reviewed under Title 38, section 489-A-1...The Department of Environmental Protection must receive certification from the commission that the proposed development is an allowed use within the subdistrict or subdistricts for which it is proposed...before issuing a permit.”

## Assessment of the Project as an Allowed Use in the Subdistricts in Which Development is Proposed

Based on the materials submitted by Maine Waterside Trails, LLC, the LUPC, through its staff, determines that:

1. **Trails.** Trails are a use allowed without a permit in the M-GN subdistrict, and with a permit in the P-FP subdistrict; provided they are constructed and maintained so as to reasonably avoid sedimentation of water bodies. According to Chapter 10, section 10.23,L,3,c,(20) and section 10.23,N,3,c(14), trails which are not in conformance with the standards of Section 10.27,B,1, 2 and 4 and 10.27,F may be allowed within the P-SL and P-WL1 subdistricts upon issuance of a permit from the Commission pursuant to 12 M.R.S. § 685-B, and subject to the applicable requirements set forth in Sub-Chapter III.
2. **Campus.** The proposed buildings and parking areas are part of an educational facility which does not meet the definition of a “Commercial Use” (see definition at 10.02,36). Therefore, they are considered “Non-commercial structures utilized for educational, scientific, or nature observation purposes” and are a use requiring a permit, but not a special exception, in the M-GN subdistrict in which they are proposed to be located. (10.22,A,c,19) An important factor in reaching this determination is that the facility will not charge fees for most services, and has funding mechanisms in place to provide outdoor education at no cost to the students being served.

The only fee that is proposed is a nominal public parking fee, which will not exceed \$10 per vehicle, according to an email from the applicant’s agent, dated March 29, 2017. The purpose of the fee is to “encourage carpooling and good stewardship of the facility”, not to generate income for the facility. In limited circumstances, such as this one, a facility may charge a nominal fee and still fit within the definition of “non-commercial”.

The use of the bunkhouse does not constitute a commercial use because it will be occupied by staff and management of the facility, will not be available to the public, and will not be available for a fee.

3. **Dock anchors.** Four helical piles are proposed to anchor temporary docking structures in the waterfront area. Because of the substantial nature of the anchoring system, it is considered a shoreland alteration, and is allowed with a permit, but not a special exception, in the affected subdistricts;
4. **Docks.** Temporary docking structures for non-commercial use are allowed without a permit in the affected subdistricts;
5. **Waterfront.** The proposed area for carrying canoes and kayaks to and from the dock does not constitute a hand-carry launch, and therefore does not need a permit;
6. **Road to Waterfront.** The road leading to the waterfront area is a level C road project, which is a use allowed by special exception in the P-RR subdistrict. The special exception criteria at 10.23,I,3,d are:
  - a) “There is no alternative site which is both suitable to the proposed use and reasonably available to the applicant.” The temporary dock has been located at the most accessible point on the shore, in a Logan as opposed to on the main part of the river, and there is no obvious better alternative location. The road leads directly to the docking area by the most efficient route.
  - b) “The use can be buffered from those other uses and resources within the subdistrict with which it is incompatible.” The applicant has proposed to create a vegetated surface on the road within 100 feet of the



water. This will minimize visibility of the road surface, and cause it to blend in when viewed through the shoreline vegetation.

c) "such other conditions are met that the Commission may reasonably impose in accordance with the policies of the Comprehensive Land Use Plan." No other specific conditions are necessary for this element of the proposal;

7. **Road to Lodge.** The road leading to the lodge is a level C road project, which is a use allowed by special exception in the P-RR subdistrict. The special exception criteria at 10.23,I,3,d are:
  - a) "There is no alternative site which is both suitable to the proposed use and reasonably available to the applicant." The applicant could have accessed the lodge from the existing land management road that travels outside the P-RR. However, the Commission accepts the applicant's assertion that the proposed location of the road through the P-RR is the only suitable location in order to achieve the goals of separating the facility's educational use from the land management uses of the main road, and ensuring safety for visitors to the facility.
  - b) "The use can be buffered from those other uses and resources within the subdistrict with which it is incompatible." The road will be located in an existing cleared area and will be visually screened from the water by existing vegetation and supplemental plantings.
  - c) "such other conditions are met that the Commission may reasonably impose in accordance with the policies of the Comprehensive Land Use Plan." The applicant proposes to gate the road and use it only for service vehicles and not for the public.
  
8. **Picnic Area.** The proposed picnic area involves filling and grading, which is a use allowed by special exception in the P-RR subdistrict. The special exception criteria at 10.23,I,3,d are:
  - a) "There is no alternative site which is both suitable to the proposed use and reasonably available to the applicant." The proposed picnic area is currently a borrow pit, and use of this area would allow for beneficial re-use.
  - b) "The use can be buffered from those other uses and resources within the subdistrict with which it is incompatible." The borrow pit will be revegetated and some trees will be added. There will be no structures placed in this area. Picnic tables that are not fastened to the ground are not considered structures, and are proposed for this area. The picnic area, although potentially somewhat visible from the water due to a relatively narrow band of screening vegetation, will be mostly natural-appearing and is farther down the Logan than the docking structure, thereby minimizing the impact to public users of the river.
  - c) "Such other conditions are met that the Commission may reasonably impose in accordance with the policies of the Comprehensive Land Use Plan." In order to have minimal impact, the picnic area must remain natural-appearing and any picnic tables must be constructed of materials that will blend in with the surroundings; and
  
9. **Utility Line.** The proposed utility line is a use allowed with a permit in the subdistricts in which it is proposed, including as a shoreland alteration where it is buried in the P-SL1 subdistrict, except that it is a use allowed by special exception in the P-RR subdistrict. The special exception criteria at 10.23,I,3,d are:
  - a) "There is no alternative site which is both suitable to the proposed use and reasonably available to the applicant." The utility line is proposed to be buried within the campus area, and takes advantage of roadways and existing clearings. There does not appear to be a less disruptive location in which to place it.
  - b) "The use can be buffered from those other uses and resources within the subdistrict with which it is incompatible." It will be underground within the P-RR, with the possible exception of a transformer that will be located on the outer edge of the P-RR subdistrict. Therefore, there should be minimal disruption for the users of the river, which is the basis for the subdistrict designation.

c) "Such other conditions are met that the Commission may reasonably impose in accordance with the policies of the Comprehensive Land Use Plan." There are no other conditions that are necessary.

Therefore, the LUPC certifies to the DEP that the Project is an allowed use in the subdistricts in which it is proposed, subject to the following conditions:

1. The facility must continue to be non-commercial in nature;
2. Within 100 feet of the river, the road to the waterfront must be constructed and vegetated as described in the detail drawing submitted by the applicant on March 29, 2017;
3. The road to the lodge must be gated and used only for service vehicles and not for the general public;
4. The picnic area must be natural-appearing, and the picnic tables must be constructed of materials that will blend in with the surroundings; and
5. The facility is otherwise constructed and operated as proposed in the materials submitted to the Commission.

Please note that this certification is not final agency action and pertains only to the staff's determination of the use proposed by Maine Waterside Trails, LLC. The LUPC will conduct a further review of the Request for Certification, including all application and administrative record materials to determine whether to certify to the DEP that the Project meets the land use standards established by the LUPC that are not considered in the DEP's permit review.

If you have any questions or would like to further discuss this matter, please contact Marcus Russell at the East Millinocket office by email ([marcus.russell@maine.gov](mailto:marcus.russell@maine.gov)) or at (207) 746-2244.

Sincerely,



Samantha Horn Olsen, Planning Manager  
Maine Land Use Planning Commission

cc: Chip Haskell, CES  
Marcus Russell, LUPC  
Naomi Kirk-Lawlor, LUPC