



STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
LAND USE PLANNING COMMISSION

JANET T. MILLS
GOVERNOR

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COMMISSIONER

STACIE R BEYER
ACTING EXECUTIVE DIRECTOR

CERTIFICATION

Maine Department of Environmental Protection
Request for Site Law Certification
Sunday River Skiway Corporation

AMENDMENT A TO SITE LAW CERTIFICATION SLC-15

Findings of Fact and Determination

The Maine Land Use Planning Commission (LUPC or Commission), through its staff, after reviewing the certification request and supporting documents submitted for Sunday River Skiway Corporation's Amendment A to Site Law Certification SLC-15, and other related materials on file, pursuant to the Commission's Land Use Standards, finds the following facts:

- Entity For Certification:* Sunday River Skiway Corporation
C/O: Peter Roberts
PO Box 4500
Newry, ME 04261
- Department Contact:* Maine Department of Environmental Protection
Attn.: Christine Woodruff, Environmental Specialist III
312 Canco Road, Portland, ME 04103
- Accepted as Complete for Processing:* September 12, 2022
- Location of Proposal:* Riley Township, Oxford County
Maine Revenue Service Map OX001, Plan 01, Lot 1.1
- Current Zoning:* General Management Subdistrict (M-GN)
Shoreland Protection Subdistrict (P-SL2)
Mountain Area Protection Subdistrict (P-MA)
General Development Subdistrict (D-GN)
Commercial Industrial Development Subdistrict (D-CI)
Residential Development Subdistrict (D-RS)
Wetland Protection Subdistrict (P-WL2/3)



INTRODUCTION

6. Title 12, § 685-B(1-A)(B-1) establishes that, except for projects that are located in a planned development 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, § 482. Development of state or regional significance that may substantially affect the environment is reviewed under Title 38, § 489-A-1 and subject to the Site Location of Development Law (“Site Law”) administered by the Department of Environmental Protection (DEP or Department). The Commission must certify that development that is part of a “Site Law” project in its service area 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 can issue any permit.

The following Findings, Conclusions and Conditions constitute the Commission’s certification that the portion of Sunday River Skiway Corporation’s development in Riley Twp., as proposed, is an allowed use within the subdistricts in which it would be located and meets the applicable Land Use Standards that would not be considered by DEP as part of any review under the Site Law.

ADMINISTRATIVE HISTORY

Maine Department of Environmental Protection

7. Sunday River Skiway Corporation has been developing the Sunday River Ski Resort since 1959. There have been approximately 200 DEP and Board Orders issued for this resort which have approved the construction of lifts, trails, condominiums, residential subdivisions, restaurants, a waterwater treatment plant, and various other structures and development associated with the operation of the ski area. The first DEP order, #L-2974-L3-A-A, dated July 21, 1976 for the Sunday River Village Development, was a single-family residential subdivision. DEP Order #L-2974-87-I-X, dated October 16, 1978, approved a new base lodge that would become the South Ridge Lodge. DEP Order #L-2974-28-A-A, dated May 5, 1984, approved a 3,200 square foot office and retail building adjacent to the South Ridge Lodge.

Land Use Planning Commission

8. Development Permit DP 4077 by Special Exception, issued by the Commission to the applicant on March 20, 1992, approved the construction of four chair lifts, 201 acres of new ski trails, 2,000 feet of mountain access utility roads and installation of snowmaking facilities within areas zoned as P-MA, P-SL, and M-GN subdistricts within Riley Township.
9. Zoning Petition ZP 442, issued to the applicant in September of 1992, rezoned approximately 239 acres within Riley Township from M-GN and P-SL Subdistricts to Commercial and Industrial Development Subdistrict (D-CI) and General Development Subdistrict (D-GN) for future development of a base lodge and condominiums.

10. Amendment A to Development Permit DP 4077, issued to the applicant in April of 1996, granted amendment approval to develop a 40,000 gallon cistern and a 1,000 foot water pipeline in association with its proposed 300 room condominium hotel project located within the Town of Newry. The cistern and 1,000 feet of 6-inch diameter pipeline, located 2,160 feet above sea level on Jordan Mountain within Riley Township is for storage and delivery of potable water to the condominium complex.
11. Amendment B to Development Permit DP 4077, issued to the applicant in March of 1998, granted amendment approval for a time extension for development of ski lifts, trails, roads and other structures that had not been constructed and which were approved under Development Permit DP 4077. Amendment B granted further approval to construct a terminal station for a transfer lift and three additional quad ski lifts (BB, CC and EE) with 31 towers (within Riley Township) to serve the ski trails previously approved under Development Permit DP 4077.
12. Amendment C to Development Permit DP 4077, issued to the applicant in July of 1998, granted amendment approval to construct a 1.92 mile intermediary trail between the existing Excaliber Trail and an existing ski trail adjacent to the Jordan Bowl Hotel in Newry. The trail crosses two minor streams with 36 inch and 48 inch culverts.
13. Amendment D to Development Permit DP 4077, issued to the applicant in September of 2003, granted amendment approval to extend the permit expiration date of Amendment B to Development Permit DP 4077.
14. Maine Land Use Planning Commission Site Location Certification SLC 15, was incorporated as part of DEP's amendment to Site Location of Development Permit L-2974-2C-GW-N and L2974-2C-GW-N issued on April 7, 2022, granting approval for the replacement of the Jordan Bowl Express chairlift.

PROPOSAL

15. The applicant now proposes a 2-foot wide by 1.5-mile long hiking trail within Riley Twp. Two streams cross the proposed trail, bridges are not proposed, fill for the trail is not proposed. The trail would be wholly within the M-GN.

PROCEDURAL HISTORY

16. Sunday River Skiway Corporation submitted a Minor Revision Application dated May 10, 2022, to DEP.
17. On May 19, 2022, DEP and LUPC staff held a pre-application meeting to review the application requirements for the Site Law permit amendment and Site Law Certification.
18. On May 31, 2022, the LUPC received a letter via electronic mail from the DEP that requested the Commission review the application materials submitted by the applicant and make a Site Law certification determination.
19. On August 8, 2022, through September 12, 2022, application materials were submitted to LUPC by the applicant.

20. On August 25, 2022, a joint DEP and LUPC Notice of Intent to File was published in the Bethel Citizen newspaper. No comments, nor any requests for a public hearing were received from the public regarding the certification.
21. On September 12, 2022, the Commission issued a Certification of Allowed Use to the DEP, stating that the proposed development is located within the M-GN Subdistrict. The proposed development within the M-GN is an allowed use pursuant to Chapter 10 of the LUPC's Land Use Districts and Standards, § 10.22(A)(3)(a)(7). The LUPC certified that the Project is an allowed use within the M-GN, therefore, further rezoning would not be required.

REVIEW CRITERIA ANALYSIS AND FINDINGS

22. Title, Right, or Interest and Subdivision and Lot Creation

A. Review Criteria.

- (1) Pursuant to 12 M.R.S. § 685-B(2)(D), incorporated into Chapter 10, § 10.24,A,1; the applicant must demonstrate evidence of sufficient right, title or interest in all of the property proposed for development or use.
- (2) Pursuant to 12 M.R.S. § 682(2-A) and § 685-B(4)(F), incorporated into Chapter 10 §10.24,A,1,F, and 10.25,Q,1 of the Commission's Land Use Standards, the Commission may not approve an application unless, in the case of an application for a structure upon any lot in a subdivision, that subdivision has received the approval of the Commission. In considering the land use standards, the Commission evaluates, among other items, whether the proposal to place a structure upon any lot in a subdivision and whether any divisions of land comply with the Commission's laws and rules governing subdivisions.

B. Analysis

- (1) The applicant provided a deed history which confirms corporate ownership of the property proposed for development and demonstrates that there have been no divisions of land within the past 20 years within Plan 01, Lot 1.1 on Maine Revenue Service Map OX001.

C. Findings

- (1) The applicant has simultaneously applied for the DEP's Site law permit and the Commission's Site Law Certification. Provided that the DEP finds in their review of the project that the applicant has sufficient right, title or interest, the Commission finds that the applicant has met the requirements of 12 M.R.S. § 685-B(2)(D) and Chapter 10, § 10.24(A)(1).
- (2) Based on the information provided, the Commission finds that the proposed project meets the requirements of 12 M.R.S. § 682(2-A) and § 685-B(4)(F), incorporated into Chapter 10 §10.24(A)(1)(F), and 10.25(Q)(1), of the Commission's Land Use Standards. There

have been no illegal divisions of land stemming from the parent parcel that would have required subdivision approval from the Commission in the preceding 20 years.

23. Consistency with the Comprehensive Land Use Plan

A. Review Criteria

- (1) Pursuant to 12 M.R.S. § 685-B(4), incorporated in Chapter 10 § 10.24(A)(1)(E), of the Commission's Land Use Standards, the Commission may impose such reasonable terms and conditions as the Commission may consider appropriate in order to demonstrate conformance with the Comprehensive Land Use Plan.

B. Analysis

- (1) The applicant states the hiking trail will not disturb or remove the existing forest tree canopy.
- (2) The applicant states the trail design avoided wetlands and minimized stream crossings. The trail crosses two streams in areas with exposed ledge and or boulders to provide a durable surface for hikers fording the stream. No in stream work is proposed to improve the crossings.

C. Findings

- (1) The trail minimizes impacts to existing scenic wetland and stream resources, while providing recreational opportunities for the public.

24. Hillside Development

A. Review Criteria

- (1) Pursuant to Chapter 10 § 10.25(E)(2) of the Commission's Land Use Standards, hillside resource development standards must be met for all commercial development.

B. Analysis

- (1) The location of the proposed trail is within a hillside resource subject to the standards contained within Chapter 10 § 10.25(E).
- (2) The trail would be 2-feet wide and would not disturb the existing tree canopy.

C. Findings

- (1) Adequate provisions have been made to satisfy the hillside development standards in Chapter 10 § 10.25(E)(2), of the Commission's Land Use Standards.

25. Fire Police, and Ambulance Protection

A. Review Criteria

- (1) Pursuant to 12 M.R.S. § 685-B(4), incorporated in Chapter 10, § 10.24(A) of the Commission's Land Use Standards, applicants must demonstrate that the public's health, safety and general welfare will be adequately protected. In considering that provision, the Commission requires that local fire and rescue services be available and have the capacity to provide services.

B. Analysis

- (1) In a letter dated August 29, 2022, Alan Fleet, Fire Chief, Newry Fire Department, stated that "...the Newry Fire Department has the ability and capacity to serve the proposed development".
- (2) In a letter dated August 29, 2022, Christopher Wainwright, Oxford County Sheriff, stated that "...the Sheriff's Office has the ability and capacity to serve the proposed development".
- (3) In a letter dated September 12, 2022, Josh Thompson, Resort Safety Manager, stated that "...Sunday River Ski Patrol has the ability and capacity to serve the proposed development through our in-house search and rescue staff..."

C. Findings

- (1) The applicant has demonstrated that Emergency service providers have the ability and capacity to provide services to protect the public's health, safety and general welfare and would be adequately protected. The standards contained in Chapter 10, § 10.24(A) have been met.

FINAL CONCLUSION FOR THE CERTIFICATION OF COMPLIANCE WITH THE COMMISSION'S LAND USE STANDARDS

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

Therefore, the Commission, through its staff, CERTIFIES that Amendment A to Site Law Certification SLC-15, submitted for the Sunday River Skiway Corporation's Project, 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:

CONDITIONS

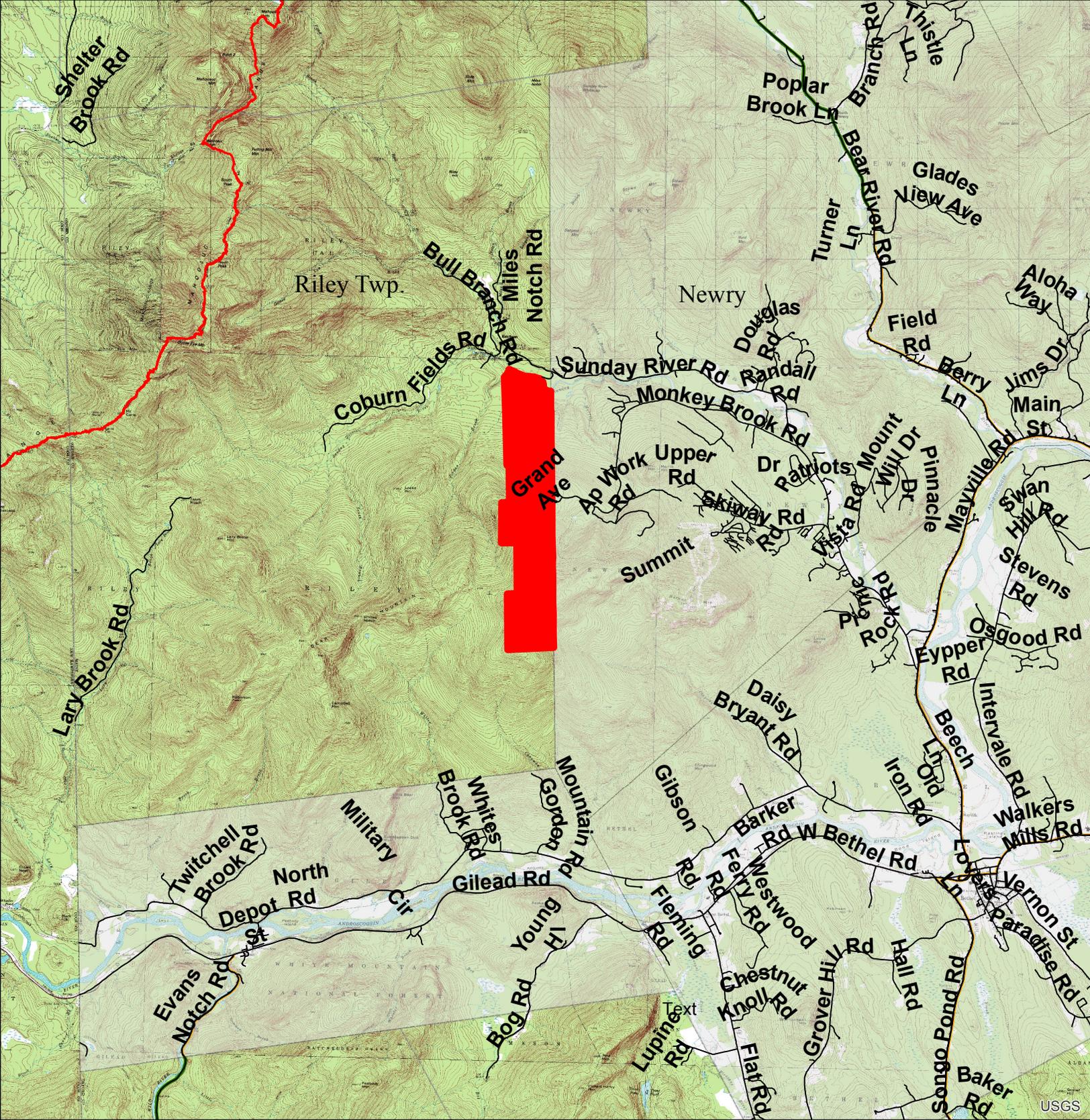
1. *Right, title or interest.* The DEP finds in its Site Law permitting decision that Sunday River Skiway Corporation possesses sufficient right, title or interest to develop the project.
2. The Project is otherwise designed, constructed, and operated as proposed in the materials submitted to the Commission.

Pursuant to Chapter 4 § 4.07(B)(2), any person aggrieved by this decision of the staff may, within 30 days, request that the Commission review the decision. Pursuant to Chapter 4 § 4.05(F)(1)(f), a Commission determination to approve or deny a request for certification of a Site Law application pending before the Maine Department of Environmental Protection (DEP) is not a final agency action and is not appealable except as part of the Department of Environmental Protection permitting decision.

DONE AND DATED AT WILTON, MAINE THIS 15th DAY OF SEPTEMBER 2022.



By: _____
Joshua Brown, Senior Regional Representative



Sunday River Skiway Corp.
SLC #15-A

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Legend

— Appalachian National Scenic Trail

