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GOVERNOR

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

AMANDA E. BEAL
COMMISSIONER

STACIE R. BEYER
EXECUTIVE DIRECTOR

January 26, 2024

Sent via E-mail

Haley Ward, Inc.
c/o Ben Kaiman
1 Merchants Plaza, Ste 701
Bangor, Maine 04401

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

Dear Mr. Kaiman:

The Land Use Planning Commission is reviewing the application submitted for the Site Law Project reference above for compliance with the applicable standards in Chapter 10 of the Commission's rules, which are not reviewed by the Maine Department of Environmental Protection (DEP). These are outlined in the electronically attached table. In addition, the Fish River Chain of Lakes Concept Plan has additional standards that must be met for the Commission to issue a Site Law Certification to the DEP and/or for DEP to issue the Site Law of Development Permit.

After an initial review of the project, Commission staff finds that the proposal either: does not currently meet the following Sections of Standards from Chapter 10 and the Concept Plan; or that more information is required in order to make a finding that the provision(s) have been met:

A. Emergency Egress:

1. **Section 10.25,D,4,d,(1)** – All subdivisions that include a new interior road exceeding one-quarter mile in length must include provisions for all lot owners to have at least two ways of emergency egress from the development. Emergency egress may include: (i) egress by water for subdivisions on water bodies, provided there is a legally enforceable right of egress off the water body such as a public boat ramp or dock, and (ii) may include existing motorized trails maintained for public access, provided all lot owners have a legally enforceable right to access the trail.

In order to fully address this provision, please provide information to support that the proposed 10-foot wide "Reinforced Turf" ROW is sufficient for all emergency egress from the development and how lessees will have legal access. Include information on who is constructing and maintaining it for year-round use, lease or by-law language

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providing legal access for all lots, etc. In addition, details about the use, improvement, and maintenance of the short cross road that would be accessed by the emergency egress should also be provided to ensure it is suitable and accessible year-round. Finally, should any of the new emergency access be located on the lands under the Conservation easement, written permission from the Forest Society of Maine will be required.

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.

If an association is proposed for maintenance of roads and common infrastructure, documents necessary for establishing the association must be created. The documents must require lot owner or lessee membership, lot owner or lot lessee rights and privileges, association responsibilities and authority, operating procedures, proper capitalization to cover operating costs, and the subdivision developer's responsibilities until development sufficient to support the association has taken place. Responsibilities of the association must include the maintenance of common property, infrastructure, or facilities; assessing annual charges to all owners or lessees to cover expenses; and the power to place liens on property of members who fail to pay assessments. The following governmental entities are not required to be members of road associations: the State; executive branch agencies of the State; counties; municipalities, townships, or plantations; or the federal government. Those governmental entities, however, should work with associations to create an agreement through which, subject to allocation by the Maine Legislature or applicable budgetary authority, the governmental entity would contribute a fair percentage of the minimum maintenance and repair costs through financial contributions or in-kind services.

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).

Please provide a detailed plan for long-term maintenance of the subdivision access roads and other common infrastructure in accordance with these provisions. Explain how associations would be formed or expanded and provide a draft of the Proposed Bylaws and Authority for the Association(s).

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 farm land 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. Currently, the plans do not identify the building envelopes and the "Permitting Setback" feature on the plans exceeds 40 percent for each lot.

In order to meet these provisions, please identify the Building Envelopes on the Plans, referring to them as "Building Envelope", reduce them to no greater than 40 percent of the size of each lot and arranging them as required above. It is common for a Building Envelope Summary table to be included on the plan with the Lot Size, Building Envelope size and percent for each lot. Attach a sample lease or covenants with required language for leaseholders.

D. Supplemental Subdivision Standards:

1. **Section 10.25,Q-FRL,1 – Access to Subdivision.** As part of any subdivision review, the applicant must demonstrate that roads will provide adequate access for emergency services, as appropriate given the character of the specific development area. The analysis will include access roads from the subdivision out to an existing public roadway, even if this extended beyond the boundaries of the subdivision being proposed. The level of such service shall be appropriate to the setting, and thus may vary throughout the Plan Area.

2. **Section 10.25,Q-FRL,2 – Subdivision Buffers.** Where the residential development areas in the D-FRL-RS zone are adjacent to lands in the M-FRL-GN zone, subdivisions shall be designed to provide the opportunity to incorporate sufficient buffers to provide visual separation and some sound attenuation from the forest management operations that may occur on the abutting land. The subdivision plan shall demonstrate that a sufficient buffer is being provided for the subdivision overall (e.g., incorporating buffers into open space or requiring vegetated buffers) or that individual building lots have suitable vegetation and area to allow homeowners the opportunity to preserve a sufficient buffer to provide separation between homes and potential forest management activities.

Please provide narrative descriptions and supporting information that will enable the Commission to determine compliance with the provisions listed above.

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.

Please identify the specific annual phosphorus allocation for this development.

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.

The applicable setback requirements from Section 10.26-FRL should be included the in the sample lease language, on plans and/or in other covenants.

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: Matthew Collin, Irving Woodlands, LLC (via email)
Keegan Ferro, MDEP (via email)
Tim Beaucage, Planning Division, LUPC (via email)

10.29-FRL ASSOCIATIONS

Common infrastructure (*e.g.*, roads and common facilities, such as roads, open space, water access sites, and stormwater management structures) may be managed by a road association or an owners association.

A. Joining Associations.

1. All lot owners or lessees with deeded rights to use common infrastructure are required to be members of the association managing the common infrastructure.
2. Notwithstanding Section 10.29-FRL,A,1, owners or lessees of lots accessed directly from a public road, and public entities, shall not be required to be a member of a road association.

Associations and public entities are encouraged to work out an agreement through which, subject to allocation by the Maine Legislature or applicable budgetary authority, the public entity would contribute a fair percentage of the minimum maintenance and repair costs through financial contributions or in-kind services.

B. Process.

1. Road associations shall be formed or expanded pursuant either to the Private Way law, 23 M.R.S. §§3101 *et seq.*, or the Nonprofit Corporation Act, 13-B M.R.S. §§101 *et seq.*, as either may be amended from time to time.
2. Owners associations shall be formed or expanded pursuant to the Nonprofit Corporation Act, 13-B M.R.S. §§101 *et seq.*, as may be amended from time to time, and must be approved as part of the subdivision approval process.
3. In the absence of an existing formal association:
 - a. The Petitioner shall notify all property owners or lessees benefitting from the road, lot, or infrastructure in writing at least 30 days in advance of formation of the association; and
 - b. Each owner or lessee shall be given an opportunity to participate in the process of creating the association.
4. Where an existing formal association will serve the intent of Section 10.29-FRL:
 - a. The Petitioner and association shall jointly notify current members and all additional property owners or lessees benefitting from the road, lot, or infrastructure in writing at least 30 days in advance of expanding the association (*i.e.*, adding the additional members and new infrastructure).

- b. Additional notice or procedural requirements may also be required by the association's bylaws;
- 5. The Petitioner shall provide written notice of the created or expanded association, in accordance with Section 10.33-FRL.
- 6. Documentation for the association shall be recorded at the Northern Aroostook County Registry of Deeds prior to sale, lease, or transfer of the first lot to be a member of that association.

C. Association Bylaws and Authority

- 1. Associations shall establish, maintain, and implement bylaws or similar legal arrangements that address, at a minimum:
 - a. Who is required or eligible to be a member, including how membership shall be determined for individual landowners and the developer, and shall address the specifics of the developer's control of the owners association while it continues to own property within the development;
 - b. How the association will be governed;
 - c. How often the association will meet;
 - d. The rights and responsibilities of the members;
 - e. The relationship to other associations, if any; and
 - f. Management and maintenance of specific roads, lots, and infrastructure, as may be necessary and appropriate.
- 2. Associations shall assess fees in a fair and equitable manner.
- 3. Associations shall have the authority to share maintenance responsibilities with other entities, such as other road associations or property owners, where roads, lots, or infrastructure benefit non-association members.