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STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
LAND USE PLANNING COMMISSION
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BANGOR, MAINE 04401

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EXECUTIVE DIRECTOR

CERTIFICATION

Department of Environmental Protection
Attn: Lynn A. Caron, Project Analyst
Eastern Maine Regional Office
106 Hogan Road, Suite 6
Bangor, Maine 04401

SITE LAW CERTIFICATION SLC 5

Findings of Fact and Determination

The Maine Land Use Planning Commission (the LUPC or Commission), after reviewing the certification request and supporting documents submitted by Fulghum Graanul Woodland, LLC (Fulghum) for Site Law Certification SLC 5 and other materials on file, and conducting a June 11, 2014 site visit, pursuant to the Commission's Land Use Standards, find the following facts:

1. Person Requesting Certification: Fulghum Graanul Woodland, LLC
Attn: Mr. Mark Seavey
P.O. Box 727
Baileyville, Maine 04694
2. Accepted as Complete for Processing: June 06, 2014
3. Location of Proposal: Baring Township, Washington County, Maine
Maine Revenue Service Map WAP01, Plan 03; Part of Lots 3 and 4
Washington County Registry of Deeds: Book 3771; Pages 87
Washington County Registry of Deeds: Book 629; Pages 115
4. Current Zoning: (D-CI) Commercial Industrial Development Subdistrict (effective July 24, 2014)
(M-GN) General Management Subdistrict
(P-SL) Shoreland Protection Subdistrict
(P-WL) Wetland Protection Subdistrict

Introduction:

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. 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 or Department). 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 in DEP's permit review.

The following Findings, Conclusions and Conditions constitute the Commission's certification that Fulghum Graanul Woodland, LLC's development, as proposed, is an allowed use within the subdistrict 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.

Project Summary:

Fulghum rezoned 22.6 acres of a newly created 29.2 acre lot from General Management (M-GN) Subdistrict to Commercial Industrial Development (D-CI) Subdistrict to facilitate the construction and operation of a wood pellet manufacturing facility (the Facility). The Facility would accept over 500,000 tons of chipped wood, and would be expected to manufacture between 200,000 to 250,000 metric tons of finished wood pellets, annually. The Facility would generally include a 75,000 square foot pellet mill, an adjacent 10,000 square foot chip mill, an access roadway, a utility line, parking areas, delivery areas, loading, material storage and handling areas, and other associated appurtenances.

Administrative History:

5. Existing WAP01, Plan 03, Lot 3.

- A. Lot 3 (approximately 26[±] acres) was originally developed with a 50 foot by 60 foot pre-Commission aircraft hangar, a paved apron fronting the aircraft hangar, and a gravel equipment storage yard with two entrances to U.S. Route 1. The hangar was accessed by utilizing the existing paved apron between the hangar and a pre-Commission air strip on abutting Lot 4.
- B. DiCenzo Realty, Inc. purchased the property on August 06, 1969.
- C. Development Permit DP 3840, issued to DiCenzo Realty, Inc. on October 14, 1987, authorized the reconstruction of the aircraft hangar into a 50 foot by 60 foot aircraft storage shed.
- D. Amendment A to Development Permit DP 3840, issued to DiCenzo Realty, Inc. on March 15, 1993, authorized the construction of a 30 foot by 36 foot storage building on a concrete slab foundation and the expansion of an existing gravel equipment storage yard.
- E. Thomas DiCenzo, Inc. purchased the property November 04, 2009, who then conveyed the property to Down East Disposal, LLC on November 04, 2009.
- F. Amendment B to Development Permit DP 3840, issued to Down East Disposal, LLC on February 19, 2010, authorized the change of use of the aircraft hangar to a truck and heavy equipment repair garage.

- G. Bell Enterprises, Inc. purchased the property on August 19, 2011.
6. Existing WAP01, Plan 03, Lot 4.
- A. Lot 4 (approximately 79.6[±] acres) was originally developed with a pre-Commission store and service station which also served as a permanent dwelling, and a pre-Commission air strip.
- B. Bridges Brothers, Inc. purchased Lot 4 on August 25, 1965.
- C. Development Permit DP 3470, issued to Bridges Brothers, Inc. on May 06, 1981, authorized the construction of a 64 foot by 120 foot agricultural storage building.
- D. Amendment A to Development Permit DP 3470, issued to Bridges Brothers, Inc. on November 18, 1991, authorized the construction of a 65 foot by 90 foot agricultural storage building, a 40 foot by 60 foot shop building and a subsurface wastewater disposal system to serve the existing dwelling and the proposed shop building.
- E. Amendment B to Development Permit DP 3470, issued to Bridges Brothers, Inc. on July 14, 1998, authorized the construction of a 60 foot by 78 foot loading dock.
- F. Amendment C to Development Permit DP 3470, issued to Bridges Brothers, Inc. on November 06, 2003, authorized the construction of a 40 foot by 40 foot storage building.
- G. Amendment D to Development Permit DP 3470, issued to Bridges Brothers, Inc. on July 12, 2005 authorized the conversion of the existing store and service station, which also served as a permanent dwelling, into a storage building, and approval to construct a 32 foot by 74 foot single family residential dwelling, a 40 foot by 40 foot garage and to install a subsurface wastewater disposal system for the new dwelling.
- H. Bridges Brothers, Inc. transferred a 4.4 acre portion of Lot 4 to Cole G. and Candy A. Bridges on October 20, 2005.
7. Certification Public Notice. Public notice of the request for certification was published in the Bangor Daily News on May 28, 2014 and certified mailed to abutters and Baring Plantation. No comments or requests for a public hearing were received by the public regarding the certification.
8. Zoning Petition ZP 746. Zoning Petition ZP 746, issued by the Commission at a meeting held in Brewer, Maine on July 09, 2014, authorized the rezoning of 22.6 acres from (M-GN) General Management Subdistrict to (D-CI) Commercial Industrial Development Subdistrict. This change in Subdistrict designation is effective on July 24, 2014.

Certification of Allowed Use:

9. Statutory Provision. 12 M.R.S. § 685-B(1-A)(B-1). "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, subsection 2. A project meeting that definition is reviewed under Title 38, section 489-A-1. A person submitting a development proposal to the Department of Environmental Protection under Title 38, section 489-A-1 shall file a notice of the intent to develop and a map indicating the location of the proposed development with the commission prior to or concurrently with submission of a development application to the Department of Environmental Protection. 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 and the proposed development meets any land use standard established by the Commission that is not considered in the Department's review under Title 38, section 489-A-1, subsection 1 before issuing a permit. Nothing in this subsection may be construed as prohibiting the commission from enforcing the land use standards certified to the Department of Environmental Protection under this paragraph."

10. The Access Roadway. The Facility's Level C access roadway, which includes two water crossings of minor flowing waters and a number of wetland crossings, is proposed to be constructed through the General Management (M-GN) Subdistrict, the Shoreland Protection (P-SL) Subdistrict and the Wetland Protection (P-WL) Subdistrict. A Level C road project is an allowed use, by permit, within the M-GN and P-SL Subdistricts; a Level C road project is an allowed use, by special exception, in a P-WL Subdistrict. (Chapter 10 of the Commission's *Land Use Districts and Standards* (the Commission's Standards), Sections 10.22,A,3,c,(15), 10.23,L,3,c,(15), and 10.23,N,3,d,(7)).

The special exception criteria requires the applicant to show by substantial evidence that: a) there is no alternative site which is both suitable to the proposed use and reasonably available to the applicant; b) the use can be buffered from those other uses or resources within the subdistrict with which it is incompatible; and c) such other conditions are met that the Commission may reasonably impose in accordance with the policies of the Comprehensive Land Use Plan. (10.23,N,3,d).

The site was selected for a number of factors, including proximity to a major transportation corridor, direct access to electric transmission lines, and proximity to complementary uses. This area of Washington County has extensive wetlands, and it is unlikely that a different site with the combination of factors required for this project could be found that would not be similarly impacted by the presence of wetlands. Therefore, the Commission finds that there is no alternative site which is both suitable to the proposed use and reasonably available to the applicant.

In addition, the resource agencies indicate that there are no records of species of plants or animals that are of special concern on the property, indicating that the wetlands are of similar value as many other wetlands in the area. When the DEP applies wetland permitting standards, in compliance with the Natural Resources Protection Act, wetlands in the area will be adequately protected. Therefore, the Commission finds that the use can be buffered from those other uses and resources within the subdistrict with which it is incompatible and that no additional conditions are necessary.

Therefore, the LUPC certifies that the Facility's Level C access roadway, which includes two water crossings of minor flowing waters and a number of wetland crossings, is an allowed use in the subdistricts which it is proposed.

11. The Facility. The Facility, including all appurtenances except the Access Roadway and its erosion control devices and the service drop from Eastern Maine Electric Cooperative, is propose to be constructed in the Commercial Industrial Development (D-CI) Subdistrict. A commercial and industrial use such as the Facility is an allowed use with the D-CI subdistrict. (10.21,A,3,c,(2)). Therefore, the LUPC certifies that the Facility, including all appurtenances except the Access Roadway and its erosion control devices and the service drop from Eastern Maine Electric Cooperative, is an allowed use in the subdistrict which it is proposed.
12. The Service Drop. The Service Drop, which would connect directly to Eastern Maine Electric Cooperative power line and be approximately 575 feet in length, is proposed to be constructed in the M-GN subdistrict. A service drop is an allowed use without a permit subject to standards within the M-GN subdistrict. (10.22,A,3,b,(14)). Therefore, the LUPC certifies that the Service Drop is an allowed use in the subdistrict which is proposed.
13. The Entrance Sign. The Facility would have an entrance sign constructed in the M-GN subdistrict. A sign is an allowed use within the M-GN subdistrict. (10.22,A,3,b,(15) and 10.22,A,3,c,(17)). Therefore, the LUPC certifies that the Facility Entrance Sign is an allowed use in the subdistrict which is proposed.

Certification of Compliance with the Commission's Land Use Standards:

14. The Commission's land use standards that are relevant to certifying compliance of the proposed development are evaluated in Findings #14 through #21.
15. Land Division History.
 - A. *Review Criteria*. 12 MRS § 682(2-A) and § 685-B(1)(B); §§ 10.24,F (quoting 12 M.R.S. §685-B(4)(F)) and 10.25,Q,1 of the Commission's Standards.
 - B. *Land Division History*.
 - 1) *Lot 3*. Deed history indicates that Lot 3 was purchased in its entirety by DiCenzo Realty, Inc. on August 06, 1969, by Thomas DiCenzo, Inc. and then Down East Disposal, LLC on November 04, 2009, and by Bell Enterprises, Inc. on August 19, 2011. Fulghum will purchase Lot 3 in its entirety therefore, no division of the parcel has occurred in the last 20 years.
 - 2) *Lot 4*. Deed history indicates that Lot 4 was purchased by Bridges Brothers, Inc. on August 25, 1965. Bridges Brothers, Inc. transferred a 4.4 acre portion of Lot 4 to Cole G. and Candy A. Bridges on October 20, 2005; Bridges Brothers, Inc. kept the remainder of the parcel.
 - C. *Conclusions*. Fulghum has demonstrated that the divisions of lands associated with the proposed Facility would not create any divisions that are not in compliance with 12 MRS § 682(2-A) and § 685-B(1)(B); §§ 10.24,F (quoting 12 M.R.S. §685-B(4)(F)) and 10.25,Q,1 of the Commission's Standards.

16. Vehicular circulation and access, parking and road design.

- A. *Review Criteria.* § 10.24,B (quoting 12 M.R.S. § 685-B(4)(B)) and § 10.25,D of the Commission's Standards.
- B. *Vehicular circulation and access - §§ 10.25,D,1; and 2,a, b, and d.* The Facility would be accessed by one newly constructed paved private road constructed south off U.S. Highway 1. An entrance permit from the Maine Department of Transportation (MDOT) is required. The entrance, which would follow the Commission's Standards notated above, would additionally follow the MDOT rules on sight distance, grades, and turning radii.

The Facility expects to receive 40-50 truckloads of soft wood chips per day and ship 25 truckloads of pellets per day. The anticipated number of trips and frequency of delivery does not trigger a traffic movement permit from the MDOT. Trucks would deliver from various directions along U.S. Highway 1 and would ship from U.S. Highway 1 down to Perry and then from State Route 190 to the Port of Eastport.

- C. *Parking - §§ 10.25,D,3,a, d, and e.* Twenty-five (25) 9.5 foot by 18 foot vehicular parking spaces would be constructed at the rear of the principal structure to provide parking for the 24 full-time and 4 part-time employees. The parking area would not be directly accessible from a public roadway.
- D. *Roadway Design - §§ 10.25,D,4,a, b, e, and f.* The access road would be a paved Level C, 24 foot wide roadway. Fulghum stated that the access road would be constructed to meet the standards of either a Class 1 or 2 Roadway with the width and paving meeting the Class 1 roadway standards.
- E. *Conclusions.* Fulghum has demonstrated that the applicable criteria for vehicle circulation and access, parking, and roadway design in § 10.24,B and § 10.25,D would be met by the Facility.

17. Lighting.

- A. *Review Criteria.* § 10.25,F,2 of the Commissions Standards.
- B. *Permanent Lighting.* All Facility exterior light fixtures would be full cut-off. For safety, the exterior roadway, loading areas, and log yard would need to be lit; the lighting in these areas will be designed, located, installed and directed in such a manner as to illuminate only the target area and would be minimized to the extent practicable. The Facility would avoid "light spill" onto the Moosehorn National Wildlife Refuge.
- C. *Conclusions.* The Facility as proposed would meet the applicable provisions of § 10.25,F,2 of the Commission's Standards.

18. Minimum dimensional requirements.

A. *Review Criteria.* §§ 10.26,A-G of the Commission's Standards.

B. *Minimum Lot Size.*

- 1) *Review Criteria.* § 10.26,A,2. The minimum lot size for commercial or industrial development involving one or more buildings is 40,000 square feet.
- 2) *Project.* The Facility parcel contains approximately 29.2 acres.
- 3) *Conclusion.* As proposed, the Facility would meet the standard for minimum lot size in § 10.26,A,2 of the Commission's Standards.

C. *Minimum Shoreline Frontage.*

- 1) *Review Criteria.* § 10.26,B,1,b. The minimum shoreline frontage for commercial or industrial development fronting on a flowing water draining more than 2 square miles but less than 50 square miles is 200 feet.
- 2) *Project.* The Facility parcel contains approximately 515 feet of frontage on Barn Meadow Brook; Barn Meadow Brook is a minor flowing water.
- 3) *Conclusion.* As proposed, the Facility would meet the standard for minimum shoreline frontage in § 10.26,B,1,b of the Commission's Standards.

D. *Minimum Road Frontage.*

- 1) *Review Criteria.* § 10.26,C,3. Where the lot is located at the end of a road or on a circular turnaround with an outside diameter of less than 25 feet, the road frontage requirements shall not apply.
- 2) *Project.* The Facility is located at the end of a 24-foot by 2,694-foot Level C Road.
- 3) *Conclusion.* As proposed the Facility would meet the Commission's Standards.

E. *Minimum Setbacks.*

- 1) *Review Criteria.* §§10.26,D, 2,a, c and e, and 3. Any privately or publicly owned roads that is used for public access requires a minimum setback for commercial or industrial principal and accessory structures of 100 feet from the nearest shoreline of a flowing water draining less than 50 square miles and from the upland edge of wetlands designated as P-WL1 subdistricts, 75 feet from the traveled portion of the nearest roadway and 25 feet from side and rear property boundary lines.

- 2) *Project.* All proposed development would be located in excess of the minimum setback requirements.
- 3) *Conclusion.* As proposed, the Facility would meet the standards of §§ 10.26,D, 2,a, c and e, and 3 of the Commission's Standards.

F. *Maximum Lot Coverage.*

- 1) *Review Criteria.* §§ 10.26,E, 2 and 4. "Coverage" shall be calculated by determining the percentage of lot area covered by all structures including driveways, sidewalks, parking lots and other impervious surfaces. For lots in a D-CI subdistrict that are not within 250 feet of a major flowing water or a body of standing water 10 acres or greater in size, the maximum lot coverage shall be 50% for all uses involving one or more buildings.
- 2) *Project.* The Facility parcel is not within 250 feet of a major flowing water or a body of standing water 10 acres or greater in size. As proposed, the maximum lot coverage would be less than 50%.
- 4) *Conclusion.* As proposed, the Facility would meet the standards of §§ 10.26,E, 2 and 4 of the Commission's Standards.

G. *Maximum Structure Height.*

- 1) *Review Criteria.* §§ 10.26,F,1,b and 3. The maximum height for a structure located further than 500 feet from a waterbody greater than 10 acres in size is 100 feet, except that the maximum structure height may be exceeded for structure with no floor areas such as chimneys, towers, ventilators, spires, and free-standing tower and turbines with the Commission's approval.
- 2) *Project.* All applicable structures would be located more than 500 feet from a waterbody greater than 10 acres in size and would not exceed the height of 100 feet.
- 3) *Conclusion.* As proposed and provided Fulghum complies with Condition #6, the Facility would meet the standards of §§ 10.26,F,1,b and 3 of the Commission's Standards.

19. Vegetation Clearing.

- A. *Review Criteria.* §§ 10.27,B,1,b and 2. A vegetative buffer strip shall be retained within 75 feet of the normal high water mark of any body of flowing water draining less than 50 square miles. Within the buffer strip, vegetation shall be maintained as described in 10.27,B,2.
- B. *Project.* The Facility proposed to maintain 125 foot undisturbed vegetative buffer strip to Barn Meadow Brook.
- C. *Conclusion.* As proposed, the Facility would meet the standards of §§ 10.27,B,1,b and 2 of the Commission's Standards.

20. Signs.

- A. *Review Criteria.* §10.27,J. This section specifies the standards for placement and sizing of signs used by the Facility.
- B. *Project.* Fulghum stated that the permanent entrance sign and any informational sign used onsite during construction, would be in compliance with § 10.27,J.
- C. *Conclusion.* As proposed, the Entrance Sign would meet the standards of § 10.27,J of the Commission's Standards.

21. General Criteria for Approval: When evaluating the Facility, the Commission considers and applied its land use standards (12 M.R.S. § 685-B(4) (incorporated into § 10.24 of the Commission's Standards)) not considered under the Site Law permit process.

- A. *Traffic and Transportation Arteries.* 12 M.R.S. § 685-B(4)(B) and 10.24,B of the Commissions Standards 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 #16 above, the Facility will meet the standards for loading, parking and circulation in 12 M.R.S. § 685-B(4)(B) and 10.24,B of the Commission's Standards.
- B. *Conformance with Statute, Regulations, Standards and Plans.* 12 M.R.S. § 685-B(4)(E) and 10.24,E of the Commissions Standards specify that the Facility must be in conformance with 12 M.R.S., Chapter 206-A and the regulations, standards and plans. Applicable statutory criteria for approval are discussed in this Finding #21. Additionally, the Commission has generally reviewed the project in reference to Title 12, Chapter 206-A and no Facility components or features are out of conformance with any applicable statutory standards. As explained in findings and conclusions above, the Commission has reviewed the Facility under applicable regulations and standards, specifically the Commission's Standards contained in Chapter 10 of its rules, and, as articulated in the findings and conclusion above, the Facility 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 in light of the Comprehensive Land Use Plan (the CLUP). *See* 12 M.R.S. § 685-C(1)(“the [C]ommission must use the [CLUP] as a guide in...generally fulfilling the purposes of this chapter.”)
 - 1) *Conclusion.* As proposed, the Facility satisfies the conformity requirements of 12 M.R.S. § 685-B(4)(E) and 10.24,E of the Commissions Standards.
- C. *Public Health, Safety, and General Welfare.* 12 M.R.S. § 685-B(4) and 10.24 of the Commissions Standards establish that a person requesting certification must demonstrate that the public's health, safety and general welfare will be adequately protected. The Commission's land use standards are designed to ensure this protection and Fulghum's satisfaction of these

standards is discussed in this certification determination. Additionally, the Commission received letters in support of the proposal and indicating a capacity to serve the development from the following local service providers: the Baring Plantation's Board of Selectmen, the Washington County Sheriff's Office, the Penobscot Energy Recovery Company, the Eastport Port Authority, and Eastern Maine Electric Cooperative.

1) *Conclusion.* As proposed, the Facility satisfies the public health, safety, and general welfare requirements of 12 M.R.S. § 685-B(4) and 10.24 of the Commissions Standards.

D. *Placement of Structure on Lots in a Subdivision.* 12 M.R.S. § 685-B(4)(F) and 10.24,F of the Commission Standards specify that placement of a structure on a lot in a subdivision may only be allowed after a subdivision has been approved by the Commission.

1) *Conclusion.* As proposed, discussed and concluded in Finding #15 above, the Facility would not involve development within a subdivision.

Final Conclusion:

Therefore, the Commission CERTIFIES to the Department of Environmental Protection that the Facility and associated development, as proposed by Fulghum Graanul Woodland, LLC, is an allowed use within the subdistricts in which it is proposed and complies with the Commission's land use standards not considered by the Department in its Site Law review, subject to the findings of fact and the conclusions contained herein, and the following conditions.

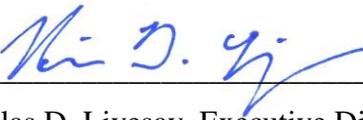
Conditions:

1. On July 09, 2014, the Commission approved Zoning Petition ZP 746, rezoning the property on which the Facility would be located from an M-GN subdistrict to a D-CI subdistrict. Fulghum may not commence any development activity within the area rezoned prior to the rezoning becoming effective.
2. Vehicular circulation, access and parking. All Facility traffic, roads and parking areas must meet the applicable provision of § 10.25,D of the Commission's Standards. Specifically, all designated parking areas must be set back at least 100 feet from Barn Meadow Brook; 75 feet from the traveled portion of all roadways, and 25 feet from side and rear property boundary lines.
3. Lighting. All Facility permanent exterior lighting must meet the applicable standards of § 10.27,F of the Commissions Standards.
4. Signs. All Facility signs must meet the applicable standards of § 10.27,J of the Commission's Standards.
5. Setbacks. All Facility structures, both temporary and permanent, must be located in accordance with § 10.26 of the Commission's Standards.

6. Height. The maximum height of all Facility structures shall not exceed 100 feet as provided in § 10.26,F, except that any emission stack required by a state or federal air emissions license to be higher than 100 feet may be built to the minimum height required by the air emissions license.

This approval of a request for certification is limited to the Facility and associated development as proposed, based on the above stated conditions, and remains valid only if Fulghum Graanul Woodland, LLC complies with these conditions. Any modification of the Facility and other development reviewed as part of this Certification, beyond de minimus change that do not alter the nature of the project or modify any findings upon which this certification is based, or future development activities at the Facility will require a new or amended certification. Within 30 days of this certification determination, a person may petition the Commission for a public hearing pursuant to Ch. 4.11(12)(c). This Certification, itself, is not final agency action and may only be appealed to court through an appeal of the Department's Site Law permitting decision into which this Certification will be incorporated.

DONE AND DATED AT BREWER, MAINE, THIS 9TH DAY OF JULY, 2014.

By:  _____
Nicholas D. Livesay, Executive Director