

June 12, 2024

Sent via E-mail

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

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

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

Dear Mr. Whitten and Mr. Collin:

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

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

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

1. *The Project name should be consistent throughout all of the documents contained in the application. For example, the first page of the sample lease identifies the Subdivision Declaration by a different name than the name on the submitted Declarations of Rights, Covenants, Conditions, and Restrictions document (“West Cross Lake [A] Subdivision” instead of “Burnt Landing Campsites”).*

Burnt Landing Camp Lots will be the Project name and it has been modified on the Subdivision Plan and in the Declaration, Bylaws and form of Lease.

2. *In addition to the consistency note above, please note that using the name “Burnt*

Landing Campsites” may be misleading and confusing to the public. “Campsites”, defined in 12 M.R.S. Section 682 and in Chapter 2, are a specific use listing in Chapter 10 of the Commission’s rules, and are commonly thought of in Northern Maine in a certain context by the public. Under State Statute and Chapter 2 definitions, campsites are limited to transient occupancy with a camping device and only limited structural development is allowed. While the developer of a subdivision has the right to choose the name of their subdivision, it is suggested that the name be changed to “Burnt Landing Camp Lots” or a similar name to avoid any misunderstanding that these are individual lots for private residential use and not a campground or commercial campsites like what you would find in the North Maine Woods, for instance. Once you decide on a name, all documents should be checked for consistency.

See comment above.

- 3. The third paragraph of the Declarations of Rights, Covenants, Conditions, and Restrictions document is incorrect. The Maine Land Use Planning Commission is not the permitting authority for this subdivision. The subdivision will potentially be approved by the Maine Department of Environmental Protection with Certification from the Maine Land Use Planning Commission. The opening sentence of this paragraph should be corrected. Similarly, language on Page 3 should not refer to “LUPC permit”. It should be “LUPC Certification”.*

This edit has been made in the Declaration.

- 4. Lastly, it was recommended by the Maine Attorney General’s office that language similar to that in Section 4(d) of the sample lease be added to Section 4(c), which regulates use of the property to make it clear that requirements will apply to “use” as well as construction of Tenant improvements. Specifically, the “use must be undertaken in compliance with the terms and provisions of the Declaration, all permits and approvals... Concept Plan.....Subdivision...etc).*

This edit has been made in the Lease.

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

B. Road and Infrastructure Maintenance and Associations:

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

The stormwater section of the February 21, 2024 SLODA application details the inspection and maintenance tasks for roads and infrastructure. In this section, it states that the “Owner or their assigns will be responsible for the inspection and

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

The Subdivision Declaration has been revised to make it clear that the Association shall generally be responsible for inspections and maintenance of the referenced items and that such inspections and maintenance shall be undertaken by the Association in accordance with the requirements of the Concept Plan and Permits (which includes the SLODA and LUPC Certification) and any other applicable laws and regulations (See Section 3.1 of the Declaration).

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

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

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

Section 2.1(c) of the Declaration has been revised to read as follows:

(c) Water Access Lot. Every Tenant shall have a nonexclusive right, in common with Declarant, its successors and assigns, and others, for access to, and for the use and enjoyment of, the Water Access Lot for non-commercial recreational purposes, including without limitation for access to Cross Lake for boating, swimming and other waterfront recreation, for the use of any docking structures or boat storage structures installed thereon by the Association in consultation with Declarant, and for parking in areas as may be initially established by Declarant or by the Association in consultation with Declarant, and as may be from time to time relocated or designated by the Association in consultation with Declarant, subject to the rights of the Declarant and the Association as set forth herein; *provided, however, that notwithstanding anything contained herein to the contrary, Tenant use of the Water Access Lot for anything other than pedestrian access to Cross Lake shall be contingent upon the application and issuance of permits and approvals for the specific use and development to the extent required under applicable law, including the construction and use of a parking area and the installation and use of boat storage and docking structures.* The Association shall be responsible for applying for and securing all permits and approvals for use of the Water Access Lot, including costs associated with the same, except to the extent the Declarant elects, in its discretion, to initially construct a parking area on the Water Access Lot, in which case the Declarant shall secure the permits and approvals for the same at its cost and expense.

C. Subdivision and Lot Creation:

1. Section 10.25,Q,3,c – General Standards for Building Envelopes

- a) Building envelopes shall be identified on each lot, designating suitable areas where structural development and permanently maintained cleared openings may occur. Activities not counted as permanently maintained cleared openings include a single driveway for access to the building envelope, cleared areas that are mowed less than twice a year, areas used for agricultural management activities, and trails for recreational access.
- b) Building envelopes shall be shown and labeled on the subdivision plat. In addition, building envelope requirements shall be included in deed covenants for each lot specifying that structural development and permanently maintained cleared openings shall be located within the building envelope as shown on the Commission approved subdivision plan, as it may be amended from time to time.
- c) Building envelopes shall be located and sized to allow conformance with the Commission's dimensional requirements in terms of minimum water body, road, and property line setbacks, and maximum lot coverage requirements, as provided in Section 10.26; and vegetation clearing standards for shorelines and public roads, as provided in Section 10.27.
- d) Where practicable, building envelopes shall be arranged:
 - i. In groups, allowing for larger open areas between groups of building envelopes;
 - ii. To avoid placement along ridgelines, on prime farmland soils, in wetlands or drainage areas, on sustained slopes greater than 20 percent, or over any other topographic or natural features important to the site; and
 - iii. To maximize privacy afforded to each dwelling unit, such as providing sufficient buffering vegetation and staggering building

envelopes.

The location/identification/size of building envelopes have been updated on the Subdivision Plan for each lot. Additionally, Section 6.1(a) of the Declaration has been revised to read as follows:

(a) Land Use and Building Type; Number of Dwellings. All dwellings, structures, improvements and associated utility services located on the Property, whether by Tenant or by the Association, shall be located, constructed, maintained, repaired and replaced from time to time in accordance with this Declaration, the Subdivision Plan (including design standards set forth thereon regarding setbacks) , the Permits, the Concept Plan, and all other applicable laws, regulations, rules and building codes and permits and approvals issued pursuant thereto. Each Lot shall be used only for a single-family residence and for no more than one dwelling. Dwellings and any other structural development and permanently maintained cleared openings on a Lot shall be located within the building envelope specified for such Lot as depicted on the Subdivision Plan; provided that a single driveway for access to a building envelope and cleared areas that are mowed less than twice a year are not considered permanently maintained cleared openings and therefore not subject the foregoing.

2. **Section 10.25,Q,4,a,1 - Basic Subdivision Layouts.** Building envelope size shall be limited to no greater than 40 percent of the size of each lot.

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

See comment immediately above.

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

Figure 1.

11. BUILDING ENVELOPE SUMMARY:

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

See comment above (addressed on revised Subdivision Plan)

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

See comment above (addressed on revised Subdivision Plan)

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

Addressed on revised Subdivision Plan. We elected to keep setbacks depicted on the Plan given the comment in E(2) regarding referencing of setbacks in the Declaration. The Declaration identifies setbacks by referencing the details provided on the Subdivision Plan with respect to the same.

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

Corrected on revised Subdivision Plan.

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

Revised Subdivision Plan clarifies locations of building envelopes.

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

Addressed on Subdivision Plan.

E. Additional Standards:

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

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

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

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

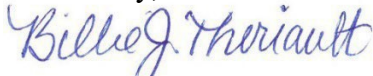
Setback requirements are set forth in the “Design Standards” table of the Subdivision Plan.

We revised Section 6.1 of the Declaration to make specific reference to the stated setback requirement as follows:

- (a) Land Use and Building Type; Number of Dwellings. All dwellings, structures, improvements and associated utility services located on the Property, whether by Tenant or by the Association, shall be located, constructed, maintained, repaired and replaced from time to time in accordance with this Declaration, the Subdivision Plan (including design standards set forth thereon regarding setbacks) , the Permits, the Concept Plan, and all other applicable laws, regulations, rules and building codes and permits and approvals issued pursuant thereto. Each Lot shall be used only for a single-family residence and for no more than one dwelling. Dwellings and any other structural development and permanently maintained cleared openings on a Lot shall be located within the building envelope specified for such Lot as depicted on the Subdivision Plan; provided that a single driveway for access to a building envelope and cleared areas that are mowed less than twice a year are not considered permanently maintained cleared openings and therefore not subject the foregoing.

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

Sincerely,



Billie J. Theriault
Regional Supervisor
Permitting and Compliance Division

Enclosure(s):

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