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

PERMIT

DEVELOPMENT PERMIT DP 4967

The staff of the Maine Land Use Planning Commission, after reviewing the application and supporting documents submitted by EverPower Maine, LLC for Development Permit DP 4967, finds the following facts:

1. Applicant: EverPower Maine, LLC
   c/o EverPower Wind Holdings, Inc.
   Attn: Seth Wilmore, Agent
   1251 Waterfront Place, 3rd Floor
   Pittsburgh, PA 15222

2. Landowner: Andrew B. Benson, Fern Benson and Bliss M. Benson Trust
   c/o Andrew Benson
   25 Dore Hill Road
   Athens, ME 04912

3. Date of Completed Application: March 30, 2015

4. Location of Proposal: Milton Township, Oxford County
   Lot 36 on Plan 01 of Maine Revenue Services Property Tax Map
   Proposed Temporary MET Tower Coordinates: 44° 26.816′ N; 70° 37.877′ W

5. Zoning: (M-GN) General Management Subdistrict
   (P-SL2) Shoreland Protection Subdistrict
   (P-FW) Fish and Wildlife Protection Subdistrict

6. Lot Size: 350 acres (Option to Lease 20 Acres)

7. Proposed Development: One Meteorological Testing Equipment (MET) Tower

Proposal

8. The applicant proposes to construct one 60 meter (197 feet) tall, 10 inch diameter, temporary meteorological testing equipment (MET) tower within a 350 acre lot in Milton Township, Oxford County. The base of the tower would be installed approximately 5,652 feet from the nearest road, 6,797 feet from the nearest pond, 5,894 feet from Barkers Brook (P-SL2) and over 500 feet from the nearest unnamed minor flowing water,

5,871 feet from the nearest mapped wetland, and 977 feet from the nearest property line. According to the topographic location map submitted by the applicant, the base of the tower would be installed at a ground elevation of approximately 1,640 feet above mean sea level. According to the applicant, the nearest residential dwelling is located over 5,000 feet from the proposed MET tower. The site of the proposed MET tower is zoned (M-GN) General Management Subdistrict. The applicant proposes to erect and maintain the proposed temporary MET tower and collect wind data from the site for potential wind energy development purposes. Pursuant to Appendix F of the Commission's Land Use Districts and Standards, Milton Township is within the expedited permitting area for wind energy development.

9. *Vegetative Clearing:* The applicant proposes to clear approximately 1.94 acres surrounding the proposed tower site. The MET tower would be a temporary installation, and the vegetation would be allowed to regenerate after the tower is removed.

10. *Site Access:* Access to the proposed MET tower site would be via an existing ATV trail from a public road. No new access roads, trails or other improvements are proposed.

11. *Soils, Soil Disturbance and Erosion and Sedimentation Control Measures:* Soil map unit data were submitted from the U.S. Department of Agriculture's (USDA) Natural Resources Conservation Service's (NRCS) Soils Survey Geographical database for Oxford County (SSURGO). The soil unit is mapped as Lyman-Tunbridge-Monadnock complex, very hilly, very stony. According to the USDA Soil Conservation Service's Soil Survey of Oxford County Area, Maine, this unit consists of very hilly and very steep soils on bedrock-controlled mountains, hillsides, and ridges. Slopes range from 30 to 60 percent. The unit is about 40 percent a shallow, somewhat excessively drained Lyman soil; 20 percent a moderately deep, well drained Tunbridge soil; 20 percent a very deep, well drained Monadnock soil; and 20 percent other soils. The Lyman soil is on the crests of ridges and on the upper side of slopes. The Tunbridge soil is in the concave areas of till between bedrock knobs and on the lower side slopes. The Monadnock soil is on the upper side slopes and in saddles between ridges. The three soils occur in an intricate pattern and cannot be mapped separately. Most areas of this map unit are used as woodland. Soil disturbance would be limited to 100 square feet for small holes to be dug to anchor 3 to 4 guy wires designed to hold the tower in place. The applicant proposes to stabilize exposed soil by removing the organic duff layer before digging the holes and then placing it (or a suitable substitute such as brush or slash if no organic duff is present) back on top of the disturbed soil.

12. *Wetland Alteration:* No mapped wetlands would be altered by the proposed project and less than one acre of soil would be disturbed.

13. *Bird and bat strikes and ungulate entanglement:* In response to the comments of the Maine Department of Inland Fisheries and Wildlife (see finding #22 below), the proposed MET tower would be equipped with bird/bat diverters arranged on the guy wires at the manufacturer's suggested rate and spacing to prevent/reduce strikes. In addition, to prevent/minimize entanglement of mammalian wildlife, especially ungulates, plastic sleeves will be placed at the bottom of all guy wires to a vertical height of 12 to 15 feet of the ground/snowpack. Furthermore, the applicant will either remove all excess wire or secure loose ends of each guy wire 20 to 25 feet above the ground.

14. *Lighting:* The applicant has submitted an evaluation for the proposed tower by the Federal Administration Association (FAA) using the FAA's Online Notice Criteria Tool. Lighting is not required by the FAA and the proposed tower will not be lighted.

15. *Period of Use:* The proposed temporary MET tower would be installed for a maximum of 5 years. At the end of the data collection period, if no other project is proposed and permitted, the tower and associated appurtenances would be dismantled and removed from the site.

16. *Title, right and interest and land division history:* On January 26, 2015, the applicant entered into an Assignment and Assumption Agreement with Bryant Mountain Wind Power, LLC to acquire all of the right, title and interest in and to an Option Agreement (dated June 17, 2013) that Bryant Mountain Wind Power LLC had with the Benson Family LLC. Under that Option Agreement, Bryant Mountain Wind Power LLC has an option to sub-lease a 20 acre portion of the property from the current lessee, the Benson Family LLC, which leases it from the landowners Andrew B. Benson, Fern Benson and the Bliss M. Benson Trust. The applicant submitted an outlined 20-year land division history which indicated that no non-exempt divisions have occurred on the applicable parcel in the past 20 years.

17. *Visual Impact Assessment:* The applicant indicates that the proposed temporary MET tower would be only 60 meters (197 feet) in height and have a diameter of only 10 inches. The tower would be a tilt-up pole structure and painted a neutral color to minimize the visual impact on the scenic character of the surrounding area. The proposed tower would also not have any lighting. These factors greatly minimize the visibility of the proposed tower to the naked eye, especially at the distance at which the closest home to the proposed tower is to the nearest home, which is over 5,000 feet away. Currently, the leased area and surrounding parcel are utilized as timberland and such use would continue.

    Commission staff evaluated the potential for an undue adverse effect by the met tower on the scenic character of the project area, considering such factors as the extent of filling or grading, the cleared opening, the met tower's physical characteristics, and the distances and orientation to:
    - Residential dwellings – The closest residence is over 5,000 ft. away. At this distance, one unlit, pole-type met tower will not be likely to have an undue adverse effect on the scenic character of the area.
    - Lakes, ponds, or river segments with high scenic value -
        - Concord Pond in Woodstock – Any view of the proposed met tower from Concord Pond will likely be blocked by the Bryant Mountain ridgeline.
        - Androscoggin River – An approximately 20-mile stretch of the Androscoggin River from Bethel to Rumford is recommended for paddling. The take-out point in Rumford is approximately 3 to 4 miles to the north of the met tower site. At this distance, even if visible due to distance and forest canopy along the river, the one proposed met tower would not be likely to have an undue adverse effect on the overall scenic character of the area.
    - State or conservation properties, in particular those with hiking trails having higher elevation viewpoints
        - Bald Mountain Trail and Black Mountain Trail – The Bald Mountain Trail is approximately 3 miles to the southeast of the project site, and the Black Mountain Trail is several more miles further to the south. There is not likely to be an undue adverse effect on the trails because the view of the met tower will likely be blocked by the Bryant Mountain ridgeline.
        - Mt. Abram – Mt. Abram is approximately 4 to 5 miles to the southwest of the project area. Any view of the met tower will likely be blocked by the Bryant Mountain ridgeline.
    - Other development that may dominate the view -
        - The Spruce Mountain wind project, Patriot Renewables – This operating wind power facility, consisting of 10 wind turbines at elevations up to 2416 ft. msl, is located approximately 3 miles to the south of the met tower site. This development would likely be a more dominant feature in the viewsheds of most of the resources and high points noted above.

18. *Technical and Financial capacity, and estimated development costs:* The applicant, Ever Power Maine LLC, has managed MET tower installations at over 15 sites and will contract with Capital City Renewables

for this project. All funding for the project is being provided by the applicant. The cost for the proposed temporary MET tower, including installation, is estimated to be approximately $40,000.

Agency Review Comments

19. The Maine State Soil Scientist reviewed the application and has no objections to the proposal. He indicated that the MET tower is proposed to be located on a shallow to bedrock soil, which is well suited for anchoring MET towers. He further indicated that if the soil disturbance is limited to 3-4 small holes to attach guy wires, not much will be required for erosion/sediment control. He suggests removing the organic duff before digging the holes and then placing it back on top of the disturbed soil. Brush or slash can also be placed over any exposed soil to stabilize it.

20. The Maine Natural Areas Program reviewed the application and commented that, based upon research of its Biological and Conservation Data System; there are no rare botanical features that would be disturbed within the project site.

21. The Maine Historic Preservation Commission staff reviewed the application and commented that the project would not adversely affect historic properties.

22. The Maine Department of Inland Fisheries and Wildlife reviewed the application in consideration of the proposal's probable effect on the environment, and on the agency's programs and responsibilities, and provided the following comments:

    A. "Wildlife Considerations

    Bats

    The proposed MET tower in Milton Township would be located approximately 3.1 miles from a bat hibernaculum site, one of only three major cave hibernacula in Maine. Historically, this cave has supported *Myotis* and other bat species during the winter months, but in recent years the numbers of cave-dwelling bats have drastically declined due to white nose syndrome. An inherent feature of hibernacula is that they are areas of localized, focal bat activity as the animals move in and out of the cave, creating further risk of mortality. As overall bat numbers have drastically declined, the protection of the remaining individuals is critical if there is ever to be a chance at a recovery of the species. Because of catastrophic impacts on their populations, the three species of *Myotis* bats inhabiting Maine are currently being considered through the legislative process for protection under the Maine Endangered Species Act while one species, the northern long-eared bat, was recently listed as Threatened under the Federal Endangered Species Act.

    In our original comments in an email dated February 18, 2015, we recommended that LUPC coordinate a meeting to discuss our concerns with the applicant as soon as possible to discuss not only our Agency's concern with the proposed MET tower but also with the likelihood of subsequent wind power development at the area. We felt it was prudent that the applicant understand our concerns now rather than receive partial comments focused solely on a MET tower alone. Unfortunately, the applicant chose not to meet with us.

    Given its proximity to the hibernaculum, MDIFW has serious concerns with this MET tower proposal (and probable subsequent windpower development) as it could result in significant adverse impacts to the few remaining bats that utilize this area. Due to catastrophic declines of cave hibernating bats, including at this location which has experienced a >95% decline in species affected by white nose

syndrome, even a small number of mortalities will have significant impacts on the local population as well as the species as a whole. If bat populations are able to eventually recover from white nose syndrome, this hibernaculum is likely to be recolonized to former population levels, and any wind turbines and associated MET tower development in close proximity to the hibernaculum would continue to be potentially detrimental to recovering local bat populations.

Moreover, this proposed MET tower and probable subsequent windpower development create additional cumulative impacts concerns in association with the Spruce Mountain Wind Project in nearby Woodstock. The Spruce Mountain Wind Project was permitted in 2010 by the Maine Department of Environmental Protection prior to our Agency's full understanding of impacts to bats from both white nose syndrome and wind power projects, and prior to development of MDIFW's operational recommendations for such proposals. The nearest turbine of the Spruce Mountain Wind Project is located approximately 3.5 miles away and in the summer of 2014 a total 3 bat mortalities (a total of 7 estimated bat fatalities), including 1 little brown bat, were documented during post-construction monitoring at the site.

MDIFW's concerns from cumulative impacts to bats from any proposed wind power development in this area cannot be overemphasized.

Significant Wildlife Habitat

At this time, MDIFW Significant Wildlife Habitat (SWH) maps indicate no known presence of SWHs within the project area, which includes Waterfowl and Wading Bird Habitats, Deer Wintering Areas, Seabird Nesting Islands, Shorebird Areas, and Significant Vernal Pools. However, a comprehensive statewide inventory for Significant Vernal Pools has not been completed. Therefore, surveys for vernal pools will need to be conducted within the project boundary prior to final project design to determine whether there are Significant Vernal Pools, or the critical terrestrial habitat from any adjacent pools, present in the area. Once surveys are completed, our Department will need to verify vernal pool data sheets prior to final determination of significance.

Avian Collision and Wildlife Entanglement Concerns

As there is potential for increased bird collisions with the construction of tall meteorological towers, we recommend that bird diverters be installed on the guy wires. The diverters should be of the "flapper" variety, which research has shown to be effective at reducing avian collisions. The diverters should be placed at the manufacturer's suggested rate and spacing for each guy wire. During placement of these diverters, the technician should stagger them on the guy wires so they are not directly under the prior one. As diverters can be prone to damage or loss from ice build-up, as a condition of the permit MDIFW also recommends that the bird diverters are annually maintained for the life of the tower. The diverters should be installed and properly functioning during both the Spring (April 1 to June 7) and Fall (August 7 – November 7) migration periods. These dates capture approximately 90% of the annual avian migration volume.

MDIFW also recommends that the sleeves over the guy wires extend from the ground level up to approximately 12-15 feet in height. The intent is to make sure that there is plastic sleeve on the guy wire up to a vertical height of 12-15 feet from the ground/snowpack to help reduce entanglement. This height is to accommodate ungulates under variations in terrain and snow pack—depending on topography, average annual snow depth, and angle of the wires this could mean upwards of 30 feet or more of length of sleeve up the wire. All loops of excess wire should be eliminated, but if excess wire is required for future removal of the tower then loops of excess wire should be tied off at a height of 20-25 feet above

the ground (well above snowpack) instead of near ground level to isolate it from wildlife. These recommendations are made to aid wildlife in detection of wires and help to prevent or reduce entanglement of mammalian wildlife, especially ungulates (see photo below). Similarly, we recommend that all construction materials (i.e., cable, rope, loose fencing) is either cleaned up and removed from the site, or adequately stored and secured to prevent/reduce entanglement of wildlife.

Ultimately, the burden of securing the wire and preventing mortality belongs to the applicant, who is put on notice to ensure that the taking of a big game species or a listed species, such as Canada lynx (Special Concern in Maine and also federally-protected), does not occur."

Commission Review Criteria

23. Pursuant to Section 10.22,A,3,a,(6) of the Commission's Land Use Districts and Standards, surveying and other resource analysis are uses allowed without a permit from the Commission within a (M-GN) General Management Subdistrict.

24. Pursuant to Section 10.22,A,3,c,(26) of the Commission's Land Use Districts and Standards, other structures, uses, or services that are essential to the uses listed in Section 10.22,A,3,a through c may be allowed within a (M-GN) General Management Subdistrict upon issuance of a permit from the Commission pursuant to 12 M.R.S.A. §685-B, and subject to the applicable requirements set forth in Sub-Chapter III.

25. Pursuant to Sub-Chapter III, Section 10.26,F of the Commission's Land Use Districts and Standards, for a structure set back at least 500 feet from a great pond, the maximum building height shall be 100 feet for commercial, industrial, and other non-residential uses involving one or more structures Features of structures which contain no floor area such as chimneys, towers, ventilators and spires, and free standing towers and turbines may exceed the maximum height with the Commission's approval.

26. Pursuant to 12 M.R.S.A. §685-B,4,(C), the Commission may not approve an application, unless adequate provision has been made for fitting the proposal harmoniously into the existing natural environment in order to ensure there will be no undue adverse effect on existing uses, scenic character and natural and historic resources in the area likely to be affected by the proposal.

27. The facts are otherwise as represented in Development Permit Application DP 4967, and supporting documents.

Based upon the above Findings, the staff concludes that:

1. In accordance with Sections 10.22,A,3,a,(6) and 10.22,A,3,c,(26) of the Commission's Land Use Districts and Standards, the proposed temporary meteorological testing equipment tower is an allowed use within a (M-GN) General Management Subdistrict. The tower is necessary to support and elevate the wind resource collection and surveying equipment, and as such is a structure essential to an allowed use.

2. In accordance with Sub-Chapter III, Section 10.26F of the Commission's Land Use Districts and Standards, the proposed temporary meteorological testing equipment tower may exceed the Commission's maximum 100 foot height restriction for structures because the proposed tower does not contain floor area, is a free standing tower, and the 197 foot (60 meter) height is necessary for wind data collection.

3. In accordance with 12 M.R.S.A. §685-B,4,(C), the installation of the temporary meteorological equipment tower, as proposed, is not expected to have an undue adverse effect on existing uses, scenic character and natural and historic resources in the area likely to be affected by the proposal. Specifically:

   A. The parcel is currently utilized as timberland, and this use would continue.

   B. The potential undue adverse impacts to the scenic character have been minimized with: the rural setting; the vast surrounding forest management lands and mountainous topography; the limited opportunity for clear tower views; the setback from the nearest property lines; the setback from the nearest public road; and the diameter and neutral coloring of the proposed tower. Due to its size, the FAA does not require the tower to be lit, and the applicant does not propose to install lights on the tower. While some visibility is unavoidable, the meteorological tower will be temporary and is expected to be perceived as a subordinate element of the larger landscape against a background of trees, mountains, and forested areas that exhibit evidence of past logging activities.

   C. The potential for undue adverse impacts to natural resources have been minimized by limiting the amount of vegetation clearing to only that which is needed to complete the wind resource analysis, and by locating the tower so that no wetlands, rare or unique botanical features, inland wading bird and waterfowl habitat, deer wintering areas or inland fish habitat would be directly affected. Further, appropriate erosion control measures would be implemented to minimize the potential for undue adverse impacts to nearby streams and wetlands. Lastly, the proposal includes design elements that would help limit bird and bat strikes and ungulate entanglement. To further reduce the potential for undue adverse impacts to natural resources, the Commission strongly encourages the applicant to communicate and coordinate its future wind energy development plans with the Department of Inland Fisheries and Wildlife.

4. If carried out in compliance with the Conditions below, the proposal will meet the applicable requirements set forth in Sub-Chapter III of the Commission's Land Use Districts and Standards and the Criteria for Approval, §685-B(4) of the Commission's Statutes, 12 M.R.S.A.

Therefore, the staff approves the application for Development Permit DP 4967 submitted by EverPower Maine, LLC with the following Conditions:

1. The Standard Conditions for Development Permits, revised 04/2004, a copy of which is attached.

2. Notwithstanding Condition #3 of the Standard Conditions for Development (04/2004), prior to five years from the date of issuance of this permit (the permit expiration date), if the temporary meteorological testing equipment tower is proposed to remain on site, the permittee shall submit a new permit application and obtain approval from the Commission for continued use of the tower.

3. Upon completion of the data collection or upon the expiration date of this permit or upon expiration of the lease to the subject property, if no additional approval for the temporary meteorological testing equipment tower has been issued by the Commission, the permittee shall lower the temporary MET tower and remove it and all other associated equipment from the site. Any waste materials must be disposed of in accordance with Maine Solid Waste Disposal Rules.

4. Except as provided for in this permit, all activities shall be in conformance with the Standards for *Vegetation Clearing*, section 10.27,B of the Commission's Land Use Districts and Standards, revised September 01, 2013, a copy of which is attached.

5. Except as provided for in this permit, all activities shall be in conformance with the Standards for *Filling and Grading*, Section 10.27,F of the Commission's Land Use Districts and Standards, revised September 01, 2103, a copy of which is attached.

6. Except as provided for in this permit, all activities shall be in conformance with the *Guidelines for Vegetative Stabilization*, Appendix B of the Commission's Land Use Districts and Standards, revised September 01, 2013, a copy of which is attached.

7. The temporary meteorological testing equipment tower must be placed in the identified location. The base of the tower must be sited at least one tower height from any public road, any private road open for public use and any other property boundary line, 500 feet from all bodies of standing water 10 acres or greater in size, 150 feet from the nearest major flowing water, and 100 feet from the nearest minor flowing water and upland edge of wetlands designated as (P-WL) wetland of special significance.

8. The total area of fill and grade or disturbed soil for the project must not exceed 1 acre.

9. The total of new cleared area for the project must not exceed 2 acres. The cleared area must not impact any area meeting the description of a (P-GP) Great Pond Protection Subdistrict, a (P-SL) Shoreland Protection Subdistrict or (P-WL) Wetland Protection Subdistrict. The cleared area must be set back at least 75 feet from any public road and any private road open for public use, 150 feet from all bodies of standing water 10 acres or greater in size and the nearest major flowing water, 100 feet from the nearest minor flowing water and P-WL1 wetland of special significance, and 25 feet from the nearest property line.

10. Access to the temporary meteorological testing equipment tower must be via the existing ATV trail. No new access roads or ways are authorized by this permit.

11. Bird/bat diverters or similar products must be installed on the guy wires at the manufacturer's recommended rate and spacing, and a plan implemented to monitor and ensure that the devices remain visible, functional and in place for the life of the tower. The diverters should be of the "flapper" variety, and should be installed in a staggered fashion on each set of guy wires such that they are not located directly under each other. To prevent or reduce entanglement of mammalian wildlife, especially ungulates, plastic sleeves must be installed on the lower portion of all guy wires. The wildlife protection sleeves must cover the guy wires from the ground up to a height of 12 to 15 feet, measured vertically. All loops of excess wire should be eliminated, but if excess wire is required for future removal of the tower, then loops of excess wire should be tied off at a height of 20 to 25 feet above the ground (well above snowpack) instead of near ground level to isolate it from wildlife. Finally, all construction materials (i.e. cable, rope, loose fencing) must be cleaned up and removed from the site, or adequately stored and secured to prevent/reduce entanglement of wildlife.

12. The permittee shall secure and comply with all other applicable licenses, permits, and authorizations of all federal, state and local agencies.

13. All activities shall be in conformance with the Standards for *Erosion and Sedimentation Control,* Section 10.25,M of the Commission's Land Use Districts and Standards, revised September 01, 2013, a copy of which is attached.

14. For areas where soil is to be disturbed, erosion and sedimentation control structures, including but not limited to silt fences, must be installed prior to commencement of construction, and measures to control erosion, including but not limited to hay mulch, re-seeding and water bars, must be employed during and after construction. Once implemented or put in place, erosion control devices and measures must be maintained to ensure proper functioning.

15. Installation of the temporary meteorological testing equipment tower must be avoided when the soil is saturated; or if unavoidable, slash, wood chips, or mats must be used to drive heavy equipment over where the soil is soft enough to rut. However, work that will disturb soils must not be conducted if conditions are such that significant erosion and sedimentation with the potential to damage a stream, vernal pool or wetland will occur. For the development proposed, no clearing or other disturbance may occur within any wetland areas, vernal pools, or streams.

16. Excluding areas actively used for forest management activities or existing roads or skidder trails, all areas of disturbed soil associated with the installation of the proposed MET tower must be promptly reseeded and stabilized with mulch until 85% vegetative cover is achieved, and maintained in a vegetated state to prevent soil erosion. In areas where re-vegetation is not initially successful, additional measures to control erosion and sedimentation must be undertaken as often as necessary to be effective.

17. Should any erosion or sedimentation impacting a wetland or stream occur during construction, the permittee shall contact the Land Use Planning Commission staff immediately, or as soon as possible if the event occurs outside of regular business hours, notifying staff of the problem and describing all proposed corrective measures.

18. Once installation of the tower is complete, the permittee shall submit to Commission staff photos of the site showing the completed work, including the wildlife protection measures and tower site.

This permit is approved upon the proposal as set forth in the application and supporting documents, except as modified in the above stated conditions, and remains valid only if the permittee complies with all of those conditions. Any variation from the application or the conditions of approval is subject to prior Commission review and approval. Any variation undertaken without Commission approval constitutes a violation of Land Use Planning Commission law. In addition, any person aggrieved by this decision of the staff may, within 30 days, request that the Commission review the decision.

DONE AND DATED AT AUGUSTA, MAINE, THIS 7th DAY OF MAY, 2015

By: William J. Galbraith

for Nicholas D. Livesay, Executive Director

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

STANDARD CONDITIONS OF APPROVAL FOR ALL DEVELOPMENT PERMITS

1. The permit certificate must be posted in a visible location on your property during development of the site and construction of all structures approved by this permit.

2. This permit is dependent upon and limited to the proposal as set forth in the application and supporting documents, except as modified by the Commission in granting this permit. Any variation therefrom is subject to the prior review and approval of the Maine Land Use Planning Commission. Any variation from the application or the conditions of approval undertaken without approval of the Commission constitutes a violation of Land Use Planning Commission law.

3. Construction activities authorized in this permit must be substantially started within two (2) years of the effective date of this permit and substantially completed within five (5) years of the effective date of this permit. If such construction activities are not started and completed within this time limitation, this permit shall lapse and no activities shall then occur unless and until a new permit has been granted by the Commission.

4. The recipient of this permit ("permittee") shall secure and comply with all applicable licenses, permits, and authorizations of all federal, state and local agencies including, but not limited to, natural resources protection and air and water pollution control regulations and the Subsurface Wastewater Disposal Rules of the Maine Department of Environmental Protection and the Maine Department of Human Services.

5. Setbacks of all structures, including accessory structures, from waterbodies, roads and property boundary lines must be as specified in conditions of the permit approval.

6. In the event the permittee should sell or lease this property, the buyer or lessee shall be provided a copy of the approved permit and advised of the conditions of approval. The new owner or lessee must contact the Land Use Planning Commission to have the permit transferred into his/her name and to reflect any changes proposed from the original application and permit approval.

7. The scenic character and healthful condition of the area covered under this permit must be maintained. The area must be kept free of litter, trash, junk cars and other vehicles, and any other materials that may constitute a hazardous or nuisance condition.

8. The permittee shall not advertise Land Use Planning Commission approval without first obtaining Commission approval for such advertising. Any such advertising shall refer to this permit only if it also notes that the permit is subject to conditions of approval.

9. Once construction is complete, the permittee shall notify the Commission that all requirements and conditions of approval have been met. The permittee shall submit all information requested by the Commission demonstrating compliance with the terms of the application and the conditions of approval. Following notification of completion, the Commission's staff may arrange and conduct a compliance inspection.

Administrative Policy Revised 04/04

B. VEGETATION CLEARING

Vegetation clearing activities not in conformance with the standards of this section 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 this section, shall be conducted in a manner which produces no undue adverse impact upon the resources and uses in the area.

The following requirements shall apply to vegetation clearing activities for any purpose other than road construction, road reconstruction and maintenance, wildlife or fishery management, forest management, agricultural management, public trailered ramps or hand-carry launches:

1. A vegetative buffer strip shall be retained within:

   a. 50 feet of the right-of-way or similar boundary of any public roadway,

   b. 75 feet of the normal high water mark of any body of standing water less than 10 acres in size, or any tidal water or flowing water draining less than 50 square miles, and

   c. 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.

2. Within this buffer strip, vegetation shall be maintained as follows:

   a. 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. However, a footpath is permitted, provided it does not exceed six (6) feet in width as measured between tree trunks, and, has at least one bend in its path to divert channelized runoff.

   b. Selective cutting of trees within the buffer strip is permitted provided that a well-distributed stand of trees and other natural vegetation is maintained.

      For the purposes of this section a "well-distributed stand of trees" adjacent to a body of standing water 10 acres or greater in size shall be defined as maintaining a rating score of 24 or more in a 25-foot by 50-foot rectangular area as determined by the following rating system.

      Near other water bodies, tributary streams and public roadways a "well-distributed stand of trees" shall be defined as maintaining a rating score of 16 or more per 25-foot by 50-foot (1250 square feet) rectangular area as determined by the following rating system.

Diameter of Tree at 4-1/2 feet Above Ground Level (inches)	**Points**
2.0 to < 4.0	1
4.0 to < 8.0	2
8.0 to < 12.0	4
12.0 +	8

Table 10.27,B-1. Rating system for a well-distributed stand of trees.

The following shall govern in applying this rating system:

(1) The 25-foot x 50-foot rectangular plots shall be established where the landowner or lessee proposes clearing within the required buffer;

(2) Each successive plot shall be adjacent to but not overlap a previous plot;

(3) Any plot not containing the required points shall have no vegetation removed except as otherwise allowed by these rules;

(4) Any plot containing the required points may have vegetation removed down to the minimum points required or as otherwise allowed by these rules; and

(5) Where conditions permit, no more than 50% of the points on any 25-foot by 50-foot rectangular area may consist of trees greater than 12 inches in diameter.

For the purposes of this section, "other natural vegetation" is defined as retaining existing vegetation under 3 feet in height and other ground cover and retaining at least 5 saplings less than 2 inches in diameter at 4½ feet above ground level for each 25-foot by 50-foot rectangular area. If 5 saplings do not exist, the landowner or lessee may not remove any woody stems less than 2 inches in diameter until 5 saplings have been recruited into the plot. In addition, the soil shall not be disturbed, except to provide for a footpath or other permitted use.

c. In addition to Section 10.27,B,2,b above, no more than 40% of the total basal area of trees 4.0 inches or more in diameter, measured at 4½ feet above ground level, may be removed in any ten (10) year period.

d. Pruning of live tree branches is prohibited, except on the bottom 1/3 of the tree provided that tree vitality will not be adversely affected.

e. In order to maintain a buffer strip of vegetation, when the removal of storm-damaged, diseased, unsafe, or dead trees results in the creation of cleared openings in excess of 250 square feet, these openings shall be established with native tree species.

3. At distances greater than one hundred (100) feet, horizontal distance, from the normal high water mark of a body of standing water greater than 10 acres, no more than 40% of the total basal area of trees four inches or more in diameter, measured at 4½ feet above ground level, may be removed in any ten (10) year period. In no instance shall cleared openings exceed, in the aggregate, 10,000 square feet, including land previously cleared. These provisions apply to areas within 250 feet of all bodies of standing water greater than ten (10) acres, and to the full depth of the P-AL zone. This requirement does not apply to the development of uses allowed by permit.

4. Cleared openings legally in existence as of June 7, 1990 may be maintained, but shall not be enlarged except as permitted by these regulations.

In all subdistricts where natural vegetation is removed within the required vegetative buffer strip of a flowing water, body of standing water, tidal water, or public roadway, it shall be replaced by other vegetation (except where the area cleared is built upon) that is effective in preventing erosion and retaining natural beauty.

F. FILLING AND GRADING

The following requirements for filling and grading shall apply in all subdistricts except as otherwise provided herein.

Filling and grading activities not in conformance with the standards of this section 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 this section, shall be conducted in a manner which produces no undue adverse impact upon the resources and uses in the area.

These standards do not apply to filling or grading activities which constitute forest or agricultural management activities, the construction, reconstruction and maintenance of roads, or the construction of public trailered ramps, hand-carry launches, or driveways. Such activities are separately regulated.

1. Within 250 feet of water bodies and wetlands, the maximum size of a filled or graded area, on any single lot or parcel, shall be 5,000 square feet. This shall include all areas of mineral soil disturbed by the filling or grading activity; and

2. Beyond 250 feet from water bodies, the maximum size of filled or graded areas, as described above, shall be 20,000 square feet, except that there shall be no limit to the size of filled or graded areas in M-GN subdistricts which are greater than 250 feet from water bodies and wetlands. In such M-GN subdistrict areas, the provisions of Section 10.27,F,4 and 6 shall apply; and

3. Clearing of areas to be filled or graded is subject to the clearing standards of Section 10.27,B; and

4. Imported fill material to be placed within 250 feet of water bodies shall not contain debris, trash, rubbish or hazardous or toxic materials. All fill, regardless of where placed, shall be free of hazardous or toxic materials; and

5. Where filled or graded areas are in the vicinity of water bodies or wetlands such filled or graded areas shall not extend closer to the normal high water mark of a flowing water, a body of standing water, tidal water, or upland edge of wetlands identified as P-WL1 subdistrict than the distance indicated in the following table:

Average Slope of Land Between Exposed Mineral Soil and Normal High Water Mark or Upland Edge (Percent)	**Width of Strip Between Exposed Mineral Soil and Normal High Water Mark or Upland Edge** (Feet Along Surface of the Ground)
10 or less	100
20	130
30	170
40	210
50	250
60	290
70	330

Table 10.27,F-1. Unscarified filter strip width requirements for exposed mineral soil created by filling and grading.

6. All filled or graded areas shall be promptly stabilized to prevent erosion and sedimentation.

Filled or graded areas, including all areas of disturbed soil, within 250 feet of water bodies and wetlands, shall be stabilized according to the Guidelines for Vegetative Stabilization contained in Appendix B of this chapter.

APPENDIX B GUIDELINES FOR VEGETATIVE STABILIZATION

Areas of disturbed soil, including but not limited to areas that are filled, graded or otherwise disturbed during construction projects, should be stabilized according to the following guidelines. These guidelines do not apply to forest management activities and are not strict regulations, and therefore alternative methods of stabilizing soil may be used. However, whenever soil stabilization or stabilization of disturbed areas is required by regulation or by the terms of individual permits, individuals must assure that either these guidelines, or measures equally effective in stabilizing disturbed areas of soil are employed.

The goals to be achieved by proper stabilization are the avoidance of accelerated soil erosion and the avoidance of sedimentation or pollution of water bodies. All stabilization measures must be maintained so that grass or other vegetation remains intact and healthy, otherwise these measures will be ineffective.

In general:

1. Sterile soils such as sands and gravels should be covered with 2 to 4 inches of soil medium that will support vegetative growth.

2. Disturbed soil areas should be graded such that runoff water is either minimized or eliminated from running over the site.

3. Disturbed areas which can be seeded between May 1 and September 15 should be prepared and seeded during that period.

4. Disturbed areas which cannot be seeded between May 1 and September 15 should be mulched with hay, straw or some other suitable material to keep them as stable as possible over the winter, and particularly during spring runoff the following year. For over-wintering, mulch must be tacked down, as it is easily blown around on frozen ground, leaving areas of soil exposed. Mulch hay should be applied at a depth of 4 inches, or between 150 to 200 lbs. per 1,000 square feet, over the disturbed site. Mulched over-wintered areas should be prepared and seeded the following spring as soon as conditions allow.

   It is not recommended that disturbed areas be seeded after September 15th ("dormant seeding") for a number of reasons. Among the reasons, seeding rates are doubled, which is more expensive; timing is critical to ensure that germination does not occur before the following spring; there is an increased risk of sedimentation because sites are generally wetter in the fall; the thicker mulch must be removed in the spring in order to allow the germinating seed to survive; and the application of fertilizer during this time increases the risk of leaching or runoff loss of nutrients into water bodies.

5. Seeding preparation, in addition to providing a soil medium that will support vegetative growth if the site is sterile, includes the application of lime and fertilizer, which should be lightly raked prior to seeding. After the area is seeded, it should be lightly watered and then mulched with 70 to 90 lbs. (2 standard bales) per 1,000 square feet of weed free hay or straw to protect the seed. Keep the site stable and moist, and allow the seed to germinate and grow.

6. For accurate liming as well as fertilization, it is recommended that you have the soil analyzed to determine the specific nutrient requirements of your site.

   Lime should be applied at a rate of approximately 140 pounds to 1,000 square feet of area. This rate may vary depending on the natural conditions of the soil on the site. 10-5-20 fertilizer should be applied at a rate of 18.5 lbs. per 1,000 square feet of area. Following the establishment of vegetation, non-phosphorous fertilizer should be used in accordance with the Department of Environmental Protection's recommendations.

7. In shoreland areas in particular, fertilizers should be of the "quick release" low phosphorus type, such as 12-4-8 mixtures applied at a rate of 8 pounds per 1,000 square feet of area. If you are near water bodies, it is important not to apply more than approximately this amount of fertilizer, as excess may be washed into streams or lakes and contribute to lowering water quality and such things as algae blooms in lakes.

   Following the establishment of vegetation, non-phosphorous fertilizer should be used in accordance with the Department of Environmental Protection's recommendations.

   Fertilizers should never be applied right before thunder storms or before spring runoff, because the great amounts of water running over the land will wash the fertilizer, particularly phosphorus, into water bodies. However, a light watering after the fertilizer is applied will help bind the phosphorus to the soil.

8. There are many combinations of grasses that can be used. One combination particularly good for providing soil stability, generally referred to as the Soil Conservation Mixture, consists of: (Proportions, by weight)

Creeping Red Fescue	35%	Kentucky Bluegrass	25%
Annual Rye Grass	15%	Perennial Rye Grass	10%
Red Top	10%	White Dutch Clover	5%
* Oats - See Below			

   This seed would be applied at a rate of 1 pound per 1,000 square feet. These particular grasses do best if mowed no closer than 2-1/2 to 3 inches from the ground. Of course, other seed mixtures are available.

   It is important, in choosing a mixture, to choose one suitable for the site being stabilized. There are many different types of seeding mixtures designed for particular site conditions such as shade, sun, and drainage. Any mix should contain some seed which germinates rapidly to provide the quickest stabilization possible while awaiting the germination of the remaining types.

(*) For quick germination, oats are very good. They germinate in 7 to 10 days. They should be planted at a rate of approximately 1 to 1-1/2 bushels per acre, in addition to the basic grass mixture. Oats should be mowed when they reach knee height to allow the germinating grasses to receive sunlight.

Alternatives:

As indicated above, other stabilization programs may be used, provided they are equivalently effective in stabilizing disturbed areas and preventing accelerated soil erosion and sedimentation of water bodies. Further assistance may be obtained, including in some cases site-specific recommendations, as follows:

- Local Soil and Water Conservation Districts
- The USDA Natural Resource Conservation Service
- Maine Department of Environmental Protection, Lakes Program
- Landscaping Professionals
- Reputable Lawn and Garden Supply Dealers

The following documents may provide valuable assistance to those developing a soil stabilization plan:

Maine Erosion and Sediment Control Handbook for Construction: Best Management Practices (Cumberland County Soil & Water Conservation District and Maine Department of Environmental Protection, 1991)

Strategy for Managing Nonpoint Source Pollution From Agricultural Sources and Best Management Guidelines (NPS Agricultural Task Force, 1991)

Erosion and Sediment Control Handbook for Maine Timber Harvesting Operations, Best Management Practices (Maine Forest Service, 1991)

M. EROSION AND SEDIMENTATION CONTROL

The standards set forth below must be met for all development that involves filling, grading, excavation or other similar activities which result in unstabilized soil conditions.

1. General Standards.

a. Soil disturbance shall be kept to a practicable minimum. Development shall be accomplished in such a manner that the smallest area of soil is exposed for the shortest amount of time possible. Operations that result in soil disturbance shall be avoided or minimized in sensitive areas such as slopes exceeding 15% and areas that drain directly into water bodies, drainage systems, water crossings, or wetlands. If soil disturbance is unavoidable, it shall occur only if best management practices or other soil stabilization practices equally effective in overcoming the limitations of the site are implemented.

b. Whenever sedimentation is caused by stripping of vegetation, regrading, or other construction-related activities, sediment shall be removed from runoff water before it leaves the site so that sediment does not enter water bodies, drainage systems, water crossings, wetlands, or adjacent properties.

c. Soil disturbance shall be avoided or minimized when the ground is frozen or saturated. If soil disturbance during such times is unavoidable, additional measures shall be implemented to effectively stabilize disturbed areas, in accordance with an approved erosion and sedimentation control plan.

2. Design Standards.

a. Permanent and temporary erosion and sedimentation control measures shall meet the standards and specifications of the "Maine Erosion and Sediment Control BMPs" (Maine Department of Environmental Protection, March 2003) or other equally effective practices. Areas of disturbed soil shall be stabilized according to the "Guidelines for Vegetative Stabilization" (Appendix B of this chapter) or by alternative measures that are equally effective in stabilizing disturbed areas.

b. Clearing and construction activities, except those necessary to establish sedimentation control devices, shall not begin until all sedimentation control devices have been installed and stabilized.

c. Existing catch basins and culverts on or adjacent to the site shall be protected from sediment by the use of hay bale check dams, silt fences or other effective sedimentation control measures.

d. If streams will be crossed, special measures shall be undertaken to protect the stream, as set forth in Section 10.27,D.

e. Topsoil shall not be removed from the site except for that necessary for the construction of roads, parking areas, building excavations and other construction-related activities. Topsoil shall be stockpiled at least 100 feet from any water body.

f. Effective, temporary stabilization of all disturbed and stockpiled soil shall be completed at the end of each workday.

g. Permanent soil stabilization shall be completed within one week of inactivity or completion of construction.

h. All temporary sedimentation and erosion control measures shall be removed after construction activity has ceased and a cover of healthy vegetation has established itself or other appropriate permanent control measures have been implemented.

3. Erosion and Sedimentation Control Plan.

a. For development that occurs when the ground is frozen or saturated or that creates a disturbed area of one acre or more, the applicant must submit an erosion and sedimentation control plan for Commission approval in accordance with the requirements of Section 10.25,M,3,b,(2).

b. A Commission approved erosion and sedimentation control plan in conformance with these standards shall be implemented throughout the course of the project, including site preparation, construction, cleanup, and final site stabilization. The erosion and sedimentation control plan shall include the following:

(1) For activities that create a disturbed area of less than one acre:

(a) A drawing illustrating general land cover, general slope and other important natural features such as drainage ditches and water bodies.

(b) A sequence of construction of the development site, including clearing, grading, construction, and landscaping.

(c) A general description of all temporary and permanent control measures.

(d) Provisions for the continued maintenance of all control devices or measures.

(2) For activities that create a disturbed area of one acre or more:

(a) A site plan identifying vegetation type and location, slopes, and other natural features such as streams, gullies, berms, and drainage ditches. Depending on the type of disturbance and the size and location of the disturbed area, the Commission may require a high intensity soil survey covering all or portions of the disturbed area.

(b) A sequence of construction of the development site, including stripping and clearing; rough grading; construction of utilities, infrastructure, and buildings; and final grading and landscaping. Sequencing shall identify the expected date on which clearing will begin, the estimated duration of exposure of cleared areas, areas of clearing, installation of temporary erosion and sediment control measures, and establishment of permanent vegetation.

(c) A detailed description of all temporary and permanent erosion and sedimentation control measures, including, without limitation, seeding mixtures and rates, types of sod, method of seedbed preparation, expected seeding dates, type and rate of lime and fertilizer application, and kind and quantity of mulching for both temporary and permanent vegetative control measures.

(d) Provisions for the continued maintenance and inspection of erosion and sedimentation control devices or measures, including estimates of the cost of maintenance and plans for meeting those expenses, and inspection schedules.

4. Inspection.

a. For subdivisions and commercial, industrial or other non-residential development that occurs when the ground is frozen or saturated or that creates a disturbed area of one acre or more, provision shall be made for the inspection of project facilities, in accordance with Section 10.25,M,4,a,(1) or (2) below:

(1) The applicant shall hire a contractor certified in erosion control practices by the Maine Department of Environmental Protection to install all control measures and conduct follow-up inspections; or

(2) The applicant shall hire a Maine Registered Professional Engineer to conduct follow-up inspections.

b. The purpose of such inspections shall be to determine the effectiveness of the erosion and sedimentation control plan and the need for additional control measures.

c. Inspections shall be conducted in accordance with a Commission approved erosion and sedimentation control plan and the following requirements.

(1) Inspections shall be conducted at least once a week and after each rainfall event accumulating more than ½ inch of precipitation, until all permanent control measures have been effectively implemented. Inspections shall also be conducted (a) at the start of construction or land-disturbing activity, (b) during the installation of sedimentation and erosion control measures, and (c) at the completion of final grading or close of the construction season.

(2) All inspections shall be documented in writing and made available to the Commission upon request. Such documentation shall be retained by the applicant for at least six months after all permanent control measures have been effectively implemented.

d. Notwithstanding Section 10.25,M,4,a, development may be exempt from inspection if the Commission finds that an alternative, equally effective method will be used to determine the overall effectiveness of the erosion and sedimentation control measures.