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GOVERNOR

STATE OF MAINE  
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY  
MAINE LAND USE PLANNING COMMISSION  
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WEST FARMINGTON, MAINE  
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WALTER E. WHITCOMB  
COMMISSIONER

# PERMIT

## FORESTRY OPERATIONS PERMIT FOP 937

The staff of the Maine Land Use Planning Commission, after reviewing the application and supporting documents submitted by Rapid River, LLC for Forestry Operations Permit FOP 937, finds the following facts:

1. Applicant: Rapid River, LLC  
c/o Randall Martin  
10 Stonegate Farm Road  
Temple, NH 03084
2. Date of Completed Application: November 12, 2013
3. Location of Proposal: Magalloway Plantation, Oxford County
4. Zoning: (D-RS3) Residential Recreation Development Subdistrict
5. Waterbody: Umbagog Lake

The Commission has identified Umbagog Lake as a resources class 1B, accessible, undeveloped lake with significant fisheries and cultural resources, and outstanding wildlife resources.

6. Approximate Time Period of Operations: Date of Permit Approval – September 30, 2014

### Proposal & Site Conditions

7. The applicant proposes to harvest timber on four residential subdivision lots (Lots #1 - #4) approved under Subdivision Permit SP 4094, issued to the applicant in September of 2013. All of the lots are owned by the applicant, and are located entirely within a (D-RS3) Residential Recreation Development Subdistrict. The applicant does not propose to construct any land management roads or water crossings within the (D-RS3) Residential Recreation Development Subdistrict.

8. The approved subdivision plat for Subdivision Permit SP 4094 establishes building envelopes for each approved lot. In addition, there is an "Archaeological Sensitive Area" identified on Lot #1 as shown on the approved plat. The approved lots are subject to certain deed restrictions and the conditions of Subdivision Permit SP 4094.
9. The harvest would be conducted with feller bunchers, grapple skidders, cable skidders and chainsaw crews. No machinery would be operated within 100 feet of the normal high water mark of Umbagog Lake. Within 100 feet of the lake, harvested trees would be felled by chainsaw crews, and then twitched with a cable from skidders operating from more than 100 feet from the lake.
10. Licensed Professional Forester John Starrett has identified the stand to be harvested as being comprised of 19% spruce/fir, 5% cedar, 2% hemlock, 74% hardwood (yellow birch and red maple) and less than 1% striped maple. The age of the stand is estimated at 80 to 100 years for the overstory, and the understory (where present) at 40 years. Mr. Starrett states that there is virtually no regeneration present within the (D-RS3) Residential Recreation Development Subdistrict. He estimates the stand volume at 115 square feet of basal area/acre or 30 cords per acre.
11. As part of its application for Subdivision Permit SP 4904, the applicant submitted a soils survey by Certified Soil Scientist Kenneth Stratton that identifies the soils within the proposed harvest area as Brayton, Colonel, Monadnock, Skerry and Waumbek, with most areas being 0 to 15 percent slopes, with a few areas of slopes greater than 15 percent.
12. The applicant proposes to harvest timber both within and outside of the building envelopes on each approved lot. Prior to the proposed timber harvest, the perimeter of the building envelope would be flagged on each lot and trees to be harvested would be marked by a licensed forester. Within the building envelopes within 250 feet of the lake, up to 40 percent of the total basal area of trees four inches or more in diameter as measured at 4 ½ feet above ground level would be removed, in accordance with the provisions of Section 10.27,b,3 of the Commission's standards for vegetation clearing, as discussed under Finding of Fact #16, below.

Outside of the building envelopes and within 100 feet of the normal high water mark of Umbagog Lake, harvested trees would be felled by chainsaw crews, and then twitched with a cable from skidders operating from more than 100 feet from the lake. No machinery would be operated within 100 feet of the lake. Harvesting within 100 feet of the lake would be conducted in accordance with the provisions of Sections 10.27,b,1 & 2 of the Commission's standards for vegetation clearing.

Areas within 15 feet of the approved lot lines would be harvested in accordance with the provisions of Section 10.25,B,2 of the Commission's standards for vegetative buffering, as discussed under Finding of Fact #17 below.

13. The applicant states that it anticipates minimal impact to scenic values or recreational uses of the area since there are no public roadways or trails in the vicinity of the proposed harvest, the duration of the harvest operation is expected to be only two weeks if site conditions are favorable, and the harvest would not be very visible from the lake, if at all.

### Review Criteria

14. Under the provisions of Section 10.21,L,3,c(17) of the Commission's Land Use Districts and Standards, timber harvesting is an allowed use within the (D-RS3) Residential Recreation Development Subdistrict upon issuance of a permit from the Commission.
15. Section 10.27,E of the Commission's Land Use Districts and Standards specifies standards for timber harvesting, including within 250 feet of great ponds such as Umbagog Lake.
16. Section 10.27,B of the Commission's Land Use Districts and Standards specifies standards for clearing of development, including within 250 feet of great ponds such as Umbagog Lake. Among other requirements, this section requires that a vegetative buffer strip be maintained within 100 feet of a great pond. Within this buffer strip there is to be no cleared opening greater than 250 square feet in the forest canopy as measured from the outer limits of the tree crown, except that a maximum 6 foot wide footpath is permitted. Selective cutting of trees within the buffer strip is permitted provided that a well-distributed stand of trees and other natural vegetation is maintained, as defined under Section 10.27,B,2. Furthermore, 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.

Under the provisions of Section 10.27,B,3, in those areas between 100 feet and 250 feet from the normal high water mark of a great pond 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. Furthermore, cleared openings may not exceed, in the aggregate, 10,000 square feet, including land previously cleared.

17. Section 10.25,B,2 of the Commission's Land Use Districts and Standards specifies standards for vegetative buffering of development in prospectively zoned areas, including Magalloway Plantation. This section requires that all principal and accessory buildings in a (D-RS3) Residential Recreation Subdistrict be visually screened by a vegetative buffer made up of native trees and shrubs, and comprised of both under- and overstory material that can be either maintained using existing vegetation or established where no such buffer exists. This standard applies to within 15 feet of property boundary lines.

### Review Comments

18. The Maine Historic Preservation Commission comments that the proposed timber harvest would not have an effect on significant historic or archaeological sites provided that machinery is not operated within the designated Archaeological Sensitive Area on Lot #1, and that any timber harvested in this area is felled by chainsaw crews, and then twitched with a cable from skidders operating from outside the Archaeological Sensitive Area.
19. The facts are otherwise represented in Forestry Operations Permit Application FOP 937 and supporting documents.

Based upon the above Findings, the staff concludes that:

1. Given that the proposed harvest would be within lots specifically approved for residential development under Subdivision Permit SP 4094, it is appropriate to apply the standards for vegetation clearing and buffering for development, as discussed under Findings of Fact #16 and #17 above, rather than the timber harvesting standards under Section 10.27,E.
2. If carried out in compliance with the Conditions below, the proposal will meet the Criteria for Approval, Section 685-B(4) of the Commission's Statutes, 12 M.R.S.A.

**Therefore, the staff approves the application of Rapid River, LLC with the following conditions:**

1. The Standard Conditions (ver. 9/84), a copy of which is attached.
2. The permittee shall comply with the Standards for Vegetation Clearing, Sections 10.27,B, f the Commission's Land Use Districts and Standards , a copy of which is attached.
3. The permittee shall comply with the Standards for Buffering of Development, Section 10.25,B,2 of the Commission's Land Use Districts and Standards , a copy of which is attached, for areas of the permitted harvest within 15 feet of subdivision lot lines.
4. In order to insure that Section 10.27,B,2,c and Section 10.27,B,3 are not exceeded by future owners of Lots #1 - #4, the permittee shall file an application to amend Subdivision Permit SP 4094 for each of these lots to include the restrictions in Condition 4.A and 4.B below:
  - A. Prohibit removal of trees 4.0 inches or more in diameter, measured at 4½ feet above ground level, within 100 feet of the normal high water mark of Umbagog Lake until September 30, 2024; *and*
  - B. Prohibit removal of trees 4.0 inches or more in diameter, measured at 4½ feet above ground level, between 100 and 250 feet from the normal high water mark of Umbagog Lake until September 30, 2024, *or*

Limit removal of trees 4.0 inches or more in diameter, measured at 4½ feet above ground level, from areas between 100 feet and 250 feet from the normal high water mark of Umbagog Lake until September 30, 2024 such that the total volume of trees in this size class removed from the date of this permit until September 30, 2024 does not exceed 40 percent of the basal area of this size class on each lot prior to the permitted harvest. If the permittee proposes this deed restriction it shall provide sufficient information to the Commission regarding the basal area of this size class in the stand on each lot prior to and after the permitted harvest so as to be able to calculate the percentage of volume removed.

The permittee shall file such an application to amend Subdivision Permit SP 4094 prior to seeking a Certificate of Compliance for Subdivision Permit SP 4094.

5. No machinery may be operated within the Archaeological Sensitive Site delineated on Lot #1, as shown on the approved plat dated January 30, 2013 for Subdivision Permit SP 4094, or within 100 feet of the normal high water mark of Umbagog Lake. All timber harvesting in these areas must be conducted by using chainsaw crews to fell trees, and twitching the harvested trees outside of these areas using cables operating from skidders outside of these areas.
6. All operations shall be stopped where the continuation of such operations will cause or contribute to the occurrence of erosion or the sedimentation of surface waters, whether such occurrence is precipitated by exceptionally wet weather, the failure of water control measures, or other factors. Adequate steps must be taken immediately to stop any erosion or sedimentation of surface waters and to correct the situation which led to such occurrence. For the purposes of this action erosion is defined as evidence of rill or gully erosion.
7. In all cases where twitch trails or skid trails become skid roads (where the trail is used enough to expose significant areas of mineral soil) all practicable water control measures shall be immediately implemented.
8. If water control measures beyond those specified herein prove to be necessary in order to reasonably avoid accelerated erosion or sedimentation of surface waters, such additional measures must be employed.
9. All conditions of Subdivision Permit SP 4094 as they pertain to the subject lots shall remain in effect.
10. The period of operation shall be from the date of issuance of this permit until September 30, 2014.

This permit is approved only upon the above stated conditions and remains valid only if the permittee complies with all of these conditions. 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 WEST FARMINGTON, MAINE, THIS 22<sup>nd</sup> DAY OF NOVEMBER, 2013.

By:   
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For Nicholas Livesay, Director



STATE OF MAINE  
DEPARTMENT OF CONSERVATION  
22 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0022

**ADMINISTRATIVE POLICY:**

STANDARD CONDITIONS OF APPROVAL TO BE ATTACHED TO ALL FORESTRY OPERATIONS PERMITS:

1. This permit is limited to the proposal as set forth in the application and as modified by the conditions of approval. All changes must be reviewed and approved by the Commission. Any variance from the application or the conditions of approval undertaken without review and approval of the Commission constitutes a violation of the Land Use Regulation Commission law.
2. The recipient of this permit must secure and comply with all applicable licenses, permits and authorizations of all federal, state and local agencies, with particular regard to the water pollution regulations of the Maine Department of Environmental Protection, the Maine Department of Inland Fisheries and Wildlife and the Maine Forest Service.
3. The Commission or its authorized representatives may inspect the operation during and upon completion of activities to assure compliance with the provisions of this permit.
4. The recipient of this permit shall designate a person experienced in Forestry who is responsible for seeing that the operation is properly conducted according to these conditions of approval, and who may be contacted by the Commission with regard to inspection of the operation.
5. The area of the project covered by this permit must be kept free of litter, trash, junk cars, and any other obvious eyesores or unsanitary deposits.

Revised 9/84



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## B. VEGETATION CLEARING

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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.

<b>Diameter of Tree at 4-1/2 feet Above Ground Level (inches)</b>	<b>Points</b>
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.

## B. REVIEW STANDARDS FOR SUBDISTRICTS IN PROSPECTIVELY ZONED AREAS

These standards apply only in areas that have been prospectively zoned and for all the subdistricts listed. Prospectively zoned areas are identified in Section 10.08 of these rules.

### 1. Dimensional Standards.

- a. Road frontage requirements: See Section 10.26,C.
- b. Building setbacks from roads: See Section 10.26,D.
- c. Lot coverage requirements: See Section 10.26,E.
- d. Structure height: See Section 10.26,F.

### 2. Buffering Standards. These standards complement the existing standards for clearing contained in Section 10.27,B.

- a. All principal and accessory buildings in the D-GN, D-GN2, D-GN3, D-RS, D-RS2, D-RS3, D-ES, and D-CI subdistricts shall be visually screened by a vegetative buffer made up of native trees and shrubs, except as provided in Section 10.25,B,2,c below. Wooded buffers shall be comprised of both under- and overstory material that can be either maintained using existing vegetation or established where no such buffer exists.
- b. Minimum widths for the vegetated buffer are as follows:

	Width of Vegetative Buffer (feet)							
	D-GN	D-GN2	D-GN3	D-RS	D-RS2	D-RS3	D-ES	D-CI
Roadway	25	25	25	50	50	50	75	75
Side & rear property lines	15	15	15	15	15	15	15	15
Subdistrict boundary	NA	NA	NA	NA	NA	NA	50	50

Table 10.25,B-1. Width of vegetative buffers.

The Commission may require buffer widths exceeding the minimum width, along with other screening as necessary, in order to ensure that unsightly uses such as junkyards and automobile graveyards are completely screened from view.

### c. Exceptions to the buffering requirements are allowed under the following circumstances:

- (1) Property line buffer from adjacent development that is of a similar type, use, and intensity where adjacent landowners provide written agreement that a property line buffer is not needed;
- (2) Existing development where extensive clearing already exists at the time of adoption of these rules January 1, 2001;
- (3) New development where the establishment of buffers would eliminate or interfere with existing scenic views;
- (4) In a “Main Street” setting, that is defined as an area where 80% of a street is developed with buildings, where side and rear property line buffers would interfere with pedestrian circulation or access; and