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

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PERMIT

AMENDMENT A TO
SUBDIVISION PERMIT SP 4095

The Maine Land Use Planning Commission, through its staff, after reviewing the application and supporting documents submitted by Stephen Phillips Memorial Scholarship Fund, LLC for Amendment A to Subdivision Permit SP 4095, finds the following facts:

1. Applicant: Stephen Phillips Memorial Scholarship Fund, LLC
   c/o Loring, Coolidge, and Wolcott Offices
   230 Congress Street
   Boston, MA 02110-2437

2. Date of Completed Application: July 2, 2014

3. Location of Proposal: Lincoln Plantation, Oxford County
   No Tax Maps Available
   Book 4915 Page 275 Oxford County Registry of Deeds

4. Parcel Size: 2566 Acres* (Owned)
   (*Includes 238 acres of flowed land)

5. Zoning: (P-GP2) Semi-Remote Lake Protection Subdistrict
   (M-GN) General Management Subdistrict
   (D-RS3) Residential Recreation Development Subdistrict
   (P-SG) Soil and Geology Protection Subdistrict
   (P-SL2) Shoreland Protection Subdistrict
   (P-WL1) Wetland Protection Subdistrict
   (P-WL2) Wetland Protection Subdistrict
   (P-WL3) Wetland Protection Subdistrict

6. Affected Water Body: Aziscohos Lake

Background

7. The applicant owns an approximately 2,566 acre parcel with frontage along State Route #16, Lincoln Pond Road, Beaver Brook Road, West Richardson Pond Road, Aziscohos Lake and West Richardson

Pond. Its parcel has 11,900 feet of frontage along Aziscohos Lake. The applicant's lot is a portion of a larger parcel in Lincoln Plantation formerly held by Six Rivers Limited Partnership [reference: Advisory Ruling AR 13-12, James W. Sewall Company].

8. Subdivision Permit SP 4095, issued to the petitioner in October of 2013, authorized the creation of two residential lots along West Richardson Pond in its ownership.

9. The Commission approved Zoning Petition ZP 747 in June of 2014, to rezone a 0.36 acre portion of the applicant's parcel from (M-GN) General Management Subdistrict to (P-GP2) Semi-Remote Lake Protection Subdistrict to allow for creation of an additional subdivision lot, Lot #R1, discussed under Finding of Fact #11 below.

Proposal

10. The applicant seeks approval for the creation of ten additional lots out of its parcel, in a location apart from the lots previously permitted under Subdivision Permit SP 4095. The currently proposed lots are to be located along Aziscohos Lake, and all would be within the (P-GP2) Semi-Remote Lake Protection Subdistrict around the lake. The proposed subdivision would be a Level 1 residential subdivision. The proposed lots and associated access roads are as shown on Preliminary Subdivision Plans (sheets 1 and 2) received by the Commission on July 2, 2014. The proposed subdivision would be called "Beaver Brook Cove Subdivision."

11. Five of the currently proposed lots, Lots #1- #5, would be for residential development, and located adjacent to one another in one group, with the other proposed lot for residential development, Lot #6, to be located separately on a peninsula approximately 1,000 feet north of the other five proposed residential development lots. The proposed subdivision plan depicts Lot #6 lying along the westerly shore of Black Brook Cove north of an existing cabin owned by Black Brook Cove Campground (BBCC) and available for rental to patrons of BBCC. The cabin is within a ¼ mile of the building envelope of proposed Lot #6.

    The applicant also proposes a 1.41 acre "Community Center Lot" adjacent to proposed residential Lots #2 and #3; a 1.40 acre lot, designated Lot #R1, to incorporate a portion of the" Mountain View Road," described in Finding of Fact #12 below; and two "Open Space" lots. Open Space Lot #1 would be located adjacent to, and south of, proposed Lot #1 and would be 11.0 acres with 1025 feet of shore frontage. Open Space Lot #2 would be located adjacent to, and north of, proposed Lot #5 and would 8.16 acres with 480 feet of shore frontage.

12. Access to the proposed residential subdivision would be via the existing Lincoln Pond Road and Beaver Brook Road. As part of its current subdivision proposal, the petitioner proposes to construct a 2,210 foot long access road from Lincoln Pond Road to the grouped Lots #1 - #5, and a separate 1,155 foot long road from Beaver Brook Road to proposed Lot #6. The proposed road to Lots #1 - #5 would be named "Mountain View Road," and the proposed road to Lot #6 would be called "Beaver Cove Road." Each road would have a 12-foot wide travel surface within a 50-foot wide right-of-way, and turnouts would be constructed along each road. An approximately 20 foot by 100 foot turnaround would be constructed on Lot #1 at the terminus of Mountain View Road. The applicant would retain ownership of the subdivision access roads, granting rights-of-way over these roads to the lot owners. The applicant would be responsible for maintaining the subdivision access roads, with maintenance costs covered by funds to be collected from lot owners as would be stipulated in the proposed restrictive covenants. The proposed subdivision access roads are as shown on road plans and profiles received by the Commission on July 2, 2014.

Proposed Lots #1, #2, #5 and #6 would be accessed by individual driveways to be constructed by the individual lot owners. An approximately 460 foot long shared driveway would be constructed off of Mountain View Road to access proposed Lots #3 and #4. The shared driveway would be constructed by the applicant. Once Lots #3 and #4 are sold maintenance of the shared driveway would be the responsibility of the owners of Lots #3 and #4.

Proposed Residential Development Lots

13. The proposed residential lots would range in size from 1.88 acres to 2.79 acres; shore frontage of each lot on Aziscohos Lake would range from 205.8 feet to 376.9 feet, and road frontage for each lot would range from 100 to 110 feet, except for Lot #6 which would be located at the terminus of proposed Beaver Cove Road.

    Building envelopes have been designated on each proposed residential development lot, and the Community Center Lot, as shown on the applicant's preliminary subdivision plans. Building envelopes for the proposed residential lots would maintain at least a 50 foot setback from road rights-of-way, at least 15 foot setbacks from property lines, 100 feet from Azischos Lake, 75 feet from streams and P-WL1 wetlands (located within 250 feet of the lake or within 25 feet of streams).

14. Dwellings built within the proposed subdivision would be served by individual sewage disposal systems and individual wells. Solid waste would be disposed of via the Lincoln Plantation Transfer Station. The applicant has submitted a letter from Lincoln Plantation indicating that its transfer station will accept and can accommodate solid waste generated from the proposed residential lots.

15. The applicant has submitted an analysis of projected phosphorus export from the proposed residential subdivision, dated March 26, 2014 and revised July 2, 2014, to demonstrate that the proposed residential subdivision will meet the overall project allocation for phosphorus export under the Commission's standards. Specifically, the applicant's analysis calculates the phosphorus allocation for its parcel to be 0.0141 pounds/acre/year, for a total phosphorus export allocation of 35.955 pounds per year. The applicant calculates that the proposed residential subdivision and access roads would export 3.7509 pounds of phosphorus per year.

16. The applicant has submitted a declaration of restrictive covenants that would apply to the proposed residential lots. These covenants would require that structures be located within the building envelopes shown on the subdivision plats, prohibit further division of the residential lots and require Commission approval of any reconfiguration of the residential lots, limit lots to one dwelling per lot, and require payment of fees to cover road maintenance costs.

Proposed Open Space Lots

17. The applicant has submitted a declaration of open space restrictions, received by the Commission on February 18, 2014, as Exhibit S of the original application. The applicant proposed the following revisions to the originally proposed declaration:

    A. Additional language in the declaration regarding lot owner access, as received by the Commission on March 26, 2014.

    B. A revision to Section 4 of the Declaration, received by the Commission on July 2, 2014. This revision specifies that written approval is required from the LUPC for any changes to the open

space declaration and any such written approval must be recorded at the Registry of Deeds.

C. Additional language regarding forestry management activities as discussed under Finding of Fact #49(d) below.

Under the open space declaration, the open space lots would remain in the ownership of the applicant or its assigns, and the applicant and its assigns would retain the rights to post the property against trespassers and control unauthorized access; practice forest management activities including timber harvesting; primitive recreational uses; maintain trails; conduct resource analysis and surveying; conduct fisheries and wildlife management activities; and hunt and trap. The open space covenants would prohibit further subdivision of the open space lots; structural development except for signs and other similar structures necessary or desirable for the permitted uses; ATV or snowmobile use except for emergency use; fires; and overnight camping. The covenants grant the Commission and the residential lot owners the authority to enforce the open space covenants.

Site Conditions

18. The applicant has submitted a Class B High Intensity Soil Survey of the project site, by Certified Soil Scientist Stephen Howell, last revised January 14, 2014. The survey identified the following soil types within the project area: Allagash-Borrow Pits complex, 1 to 30 percent slopes, bouldery; Berkshire stony fine sandy loam, 1 to 8 percent slopes; Chesuncook very bouldery loam, 1 to 30 percent slopes; Chesuncook-Telos complex, 0 to 6 percent slopes, extremely bouldery; Monarda stony loam, 0 to 8 percent slopes, extremely bouldery; Telos extremely bouldery loam, 1 to 8 percent slopes; Telos variant bouldery loam, 8 to 15 percent slopes; Telos variant-Chesuncook complex, 8 to 15 percent slopes, very bouldery; and Telos-Chesuncook complex, 1 to 8 percent slopes, bouldery.

    Soils identified within the footprint of the proposed subdivision access roads include Allagash-Borrow Pits complex, 1 to 8 percent slopes, bouldery; Allagash-Borrow Pits complex, 8 to 30 percent slopes, bouldery; Chesuncook very bouldery loam, 1 to 8 percent slopes; Chesuncook very bouldery loam, 8 to 15 percent slopes; and Chesuncook-Telos complex, 0 to 6 percent slopes, extremely bouldery. These soils have a medium to high Development Potential Rating for roads under the Natural Resources Conservation Service's soil potential ratings for low density development, except for Allagash-Borrow Pits complex, 8 to 30 percent slopes, bouldery where the limitation is due to steep slopes; and Chesuncook-Telos complex, 0 to 6 percent slopes where the limitation is due to wetness and frost action In order to address the limitations of these two soil types for road construction, the applicant has incorporated the recommendations of the Maine State Soil Scientist for road construction across wet areas so as to maintain the natural hydrology and facilitate road stability. Furthermore, regarding the slope limitations, the roads have been designed with drainage controls to manage storm water runoff, and the maximum sustained slope on the roads would be 7.5% which is well within the Commission's standards for a class 2 roadway discussed under Finding of Fact #36 below.

    Soils identified within the building envelopes of the proposed residential development lots include Berkshire stony fine sandy loam, 1 to 8 percent slopes; Chesuncook very bouldery loam, 1 to 8 percent slopes; Chesuncook very bouldery loam, 8 to 15 percent slopes; Chesuncook-Telos complex, 0 to 6 percent slopes, extremely bouldery; Telos extremely bouldery loam, 1 to 8 percent slopes; and Telos-Chesuncook complex, 1 to 8 percent slopes, bouldery. These soils have a medium to high Development Potential Rating for dwellings under the Natural Resources Conservation Service's soil potential ratings for low density development, except for Chesuncook-Telos complex, 0 to 6 percent slopes, extremely bouldery and Telos extremely bouldery loam, 1 to 8 percent slopes which are both rated Low-Medium for dwellings. These two soil types, however, constitute only very minimal

portions of two designated building envelopes.

On-site soils investigations submitted as part of the application indicate that a sufficient area of suitable soils exists on each of the proposed lots for installation of individual sewage disposal systems. All subsurface wastewater disposal systems would be designed and installed per the Maine State Plumbing Code.

19. Wetlands have been delineated at the project site by Wetland Scientist Timothy J. Hodgins. Mr. Hodgins findings are summarized in a report dated January 14, 2014 entitled "Revised Protected Natural Resources Report." The proposal would impact a total of 2,022 square feet of P-WL3 forested wetlands. The wetland alteration would be from filling for the proposed Mountain View Road from Lincoln Pond Road to proposed Lots #1 - #5; and from fill for the proposed shared driveway to Lots #3 and #4.

Review Criteria

20. Under the provisions of Title 12, section 685-B(4) of the Commission's Statutes, the Commission shall approve no application unless:

    A. Adequate technical and financial provision has been made for complying with the requirements of the State's air and water pollution control and other environmental laws, including minimum lot size laws, site location of development laws, and natural resource protection laws, and those standards and regulations adopted with respect thereto;

    B. Adequate provision has been made for loading, parking and circulation of land, air and water traffic, in, on and from the site, and for assurance that the proposal will not cause congestion or unsafe conditions with respect to existing or proposed transportation arteries or methods;

    C. Adequate provision has been made for fitting the proposal harmoniously into the existing natural environment in order to assure 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;

    D. The proposal will not cause unreasonable soil erosion or reduction in the capacity of the land to absorb and hold water and suitable soils are available for a sewage disposal system if sewage is to be disposed on site; and

    E. The proposal is otherwise in conformance with this chapter and the regulations, standards and plans adopted pursuant thereto.

21. Under the provisions of Section 10.23,F,1 of the Commission's Land Use Districts and Standards, the purpose of the (P-GP2) Semi-Remote Lake Protection Subdistrict is to accommodate seasonal, recreational uses on lakes valued for their semi-remote character and determined to be suitable for limited development through a prospective planning process. This subdistrict is designed to site appropriate uses at a density and in a pattern of development that conserves the essential character of these lakes, and to accommodate traditional uses such as commercial sporting camps and public access. This subdistrict also provides a greater degree of certainty to both the landowners and the public as to the amount of development and conservation that will occur along certain lake shorelines.

22. Under the provisions of Section 10.23,F,2 of the Commission's Land Use Districts and Standards, the (P-GP2) Semi-Remote Lake Protection Subdistrict includes areas within 500 feet of the normal high

water mark of Aziscohos Lake.

23. Under the provisions of Section 10.23,F,3 of the Commission's Land Use Districts and Standards, development in the (P-GP2) Semi-Remote Lake Protection Subdistrict will be for seasonal and recreational uses designed to conserve the shoreline character of these lakes and other values such as fisheries and solitude. Except where already in place or in locations near an existing three-phase line, utility facilities and service drops are not an allowed use in order to maintain the existing character and semi-remote experience.

24. Under the provisions of Section 10.23,F,3,c(16) of the Commission's Land Use Districts and Standards, Level 1 subdivisions are an allowed use within the (P-GP2) Semi-Remote Lake Protection Subdistrict upon issuance of a permit from the Commission, provided that the subdivision is for uses permitted in the subdistrict.

25. Under the provisions of Section 10.23,F,3,c(11) of the Commission's Land Use Districts and Standards, single family seasonal dwellings without permanent foundations are an allowed use within the (P-GP2) Semi-Remote Lake Protection Subdistrict upon issuance of a permit from the Commission.

26. Section 10.23,F,3,g(1) of the Commission's Land Use Districts and Standards specifies maximum allowed density of residential development per parcel within the (P-GP2) Semi-Remote Lake Protection Subdistrict as one dwelling unit per 400 feet of shore frontage on the subject lake up to a maximum of 13 dwelling units permit mile of shoreline on the subject lake.

27. Section 10.23,F,3,g(5) of the Commission's Land Use Districts and Standards specifies a build out rate of no more than 20 individual units in any ten-year period per lot of record as of the date of adoption of these rules (January 1, 2001), except that credit for unbuilt units may be carried over to the following time period where a maximum of 40 building units in any 10-year period may be developed.

28. Section 10.23,F,3,g(6) of the Commission's Land Use Districts and Standards specifies that no structural development shall be allowed within a ¼ mile radius of any commercial sporting camp, campground, or group of rental cabins associated with a commercial sporting camp or campground. Individual campsites are excluded from this buffering requirement.

29. Under the provisions of Section 10.23,N,3,b(3) of the Commission's Land Use Districts and Standards, alterations of less than 4,300 square feet of P-WL2 and P-WL3 wetlands are an allowed use without a permit, subject to applicable standards.

30. Under the provisions of Section 10.26, A, 1, of the Commission's Land Use Districts and Standards, the minimum lot size for residential uses is 40,000 square feet per dwelling unit where the dwelling is to be served by an on-site subsurface waste water disposal system.

31. Section 10.26,D,1,a requires minimum setbacks for single family dwellings of 100 feet from the normal high water mark of Aziscohos Lake, 75 feet from the normal high water mark of streams and the upland edge of P-WL1 wetlands, 50 feet from the traveled portion of roadways and 15 feet from property boundary lines.

32. Under the provisions of Section 10.26,C,1,a, and 10.26,B,2,a of the Commission's Land Use Districts and Standards, the minimum road frontage is 100 feet and the minimum shoreline frontage is 200 feet per dwelling unit for residential uses.

33. Section 10.25, Q,3 of the Commission's Land Use Districts and Standards specifies standards for the layout and design of subdivisions. These standards include:

    a. Subdivisions shall be designed to harmoniously fit into the natural environment and shall cause no undue adverse impact on existing surrounding uses. When determining "harmonious fit", the Commission shall consider the existing character of the surrounding area, potential for conflict with surrounding uses, proposed driveway and roadway locations, and proposed lot sizes, among other factors.

    b. Subdivisions shall be designed to avoid the linear placement of lots and driveways along roadways or shorelines. To the extent practicable, subdivision lots shall be placed so as to create a distinct community center or expand an existing neighborhood, as long as the expansion is no further than 1,320 feet from the center of the existing neighborhood. Where such development is not practicable, lots shall be configured in such a manner so that groups of lots are separated by at least 500 feet of undeveloped land and the lots within a group do not extend more than 1,320 feet along any roadway or shoreline.

    c. To the extent practicable, subdivisions shall be designed to reduce the number of driveway access points onto roadways through the utilization of shared driveways and interior roads. Notwithstanding Section 10.26,C, the Commission may reduce the minimum road frontage for individual lots within subdivisions with shared driveways by up to 50 percent, as long as the Commission finds that reducing road frontage will not adversely affect resources or existing uses or that reducing road frontage will prevent the loss of important natural features.

    d. Building envelopes shall be marked and identified on the subdivision plat for each proposed lot in accordance with the following requirements:

        (1) Building envelopes shall identify all areas within each subdivision lot where structural development may occur;
        (2) Building envelopes shall be arranged to conform with the minimum water body, road and property line setback and maximum lot coverage requirements, as provided in Section 10.26; and
        (3) Where practicable, building envelopes shall be arranged so as to avoid the placement of structures and driveways along ridge lines, on agricultural land, wetlands, slopes greater than 15%, or any other important topographic and natural features.

34. Section 10.25,S of the Commission's Land Use Districts and Standards specifies standards for preservation and management of land area designated as open space, including the following provisions:

    A. *Preservation and Maintenance of Open Space.* Open space may be owned, preserved and maintained as required by this section, by any of the following mechanisms or combinations thereof, listed in order of preference, upon approval by the Commission:

        1. Conveyance of open space to a qualified holder, as defined under Section 10.25,S,2.
        2. Dedication of development rights of open space to a qualified holder, as defined under Section 10.25,S,2 with ownership and maintenance remaining with the property owner or a lot owners association.
        3. Common ownership of open space by a lot owners association which prevents future structural development and subsequent subdivision of open space and assumes full

responsibility for its maintenance.

4. Any other mechanism that fully provides for the permanent protection or conservation of open space and that is acceptable to the Commission.

B. *Qualified Holders.* The following entities are qualified to own, preserve and maintain open space:

1) "A governmental body empowered to hold an interest in real property under the laws of this State or the United States; or

2) A nonprofit corporation or charitable trust, the purposes or powers of which include retaining or protecting the natural, scenic or open space values of real property; assuring the availability of real property for agricultural, forest, recreational or open space use; protecting natural resources; or maintaining or enhancing air or water quality or preserving the historical, architectural, archaeological or cultural aspects of real property." 33 M.R.S.A.§476, sub-§2.

C. Open space may be usable for low-intensity non-commercial recreation or for purposes intended to conserve land and preserve important natural features of the site. Uses within the open space may be limited or controlled by the Commission at the time of approval, as necessary, to protect natural resources and adjacent land uses. Specifically, open space lots are subject to subdivision and other permit conditions prohibiting residential, commercial, industrial or other structures and uses.

D. If any or all of the open space is to be reserved for common ownership by the residents of the subdivision, the bylaws of the proposed lot owners association shall specify responsibilities and methods for maintaining the open space and shall prohibit all residential, commercial, industrial or other structures and uses.

E. Open space shall be dedicated as a separate lot of record with no further subdivision or conversion of use of that lot allowed. Such lot shall be shown on the subdivision plat with a notation thereof to indicate that no further subdivision or conversion of use is allowed.

35. Section 10.27,B of the Commission's Land Use Districts and Standards specifies standards for clearing of vegetation for development, including a requirement to maintain vegetated buffers within 100 feet of Great Ponds such as Aziscohos Lake.

36. Section 10.25,D of the Commission's Land Use Districts and Standards specifies standards for vehicular circulation, access and parking. Under the provisions of Section 10.25,D,4,a, "Class 2 Roadways" area generally appropriate for residential subdivisions with fewer than 15 lots surrounded by a relatively sparse development pattern. The specifications for a Class 2 roadway under Section 10.25,D,4,e include a minimum required roadway surface width of 14 feet, or 8 feet with turnouts every 500 feet on average; and a maximum sustained grade of 15%.

37. Section 10.25,M,3 of the Commission's Land Use Districts and Standards requires an erosion and sedimentation control plan for projects that would disturb more than one acre of land. This section specifies the requirements for an erosion and sedimentation control plan.

Site Visit

38. Commission staff visited the project site on June 9, 2014 with the Maine State Soil Scientist, the Maine

Department of Inland Fisheries and Wildlife's regional wildlife biologist, and the applicant's consultant. During the site visit the Maine State Soil Scientist made recommendations regarding the design and layout of the proposed subdivision access roads and shared driveways, as discussed under Finding of Fact #43 below. During the site visit the MDIFW biologist observed a bald eagle perched on a tree along the shoreline near the project site.

Review Agency Comments

39. The Maine Department of Inland Fisheries and Wildlife (MDIFW) comments that it anticipates minimal impacts to wildlife from the proposal. It states that a biological deer wintering area has been identified within the project area, but based on the regional wildlife biologist's observations during the June 2014 site visit, the Department determined that the proposal would not likely impact this resource. The Department notes that a bald eagle was observed near the project site during the site visit and thus the Department encourages the applicant to consult with the U.S. Fish and Wildlife Service to ensure that the proposal is compliant with the federal Guidelines for the Bald and Golden Eagle Act.

40. The Maine Natural Areas Program, in a November 2013 letter to the applicant's consultant, states that it has no records of any rare or exemplary botanical features within the project area.

41. The Maine Historic Preservation Commission comments that, based on information provided by the applicant, no historic properties, as defined by Section 106 of the National Historic Preservation Act, would be affected by the proposal.

42. The Maine Department of Environmental Protection has reviewed the phosphorus information submitted for the proposed subdivision and comments that the projected increase in phosphorus export to Aziscohos Lake from the proposed subdivision lots and associated access roads, even without any mitigation measures, would be well below the applicant's allocation of approximately 35 pounds per year. Thus, the Department indicates it has no concerns with the subdivision proposal.

43. The Maine State Soil Scientist recommends that the proposed subdivision access roads be built according to his recommendations as discussed on site: generally, build the roads above existing grade, and in bouldery areas use stone and boulders to infill the area, then overlay with filter fabric and the gravel travel surface, so as to maintain the natural hydrology and reduce the need for cross-drain culverts. He also recommends that Lots #1 and #2, originally proposed to have a shared driveway, have individual driveways since a shared driveway would require crossing steep slopes.

Other Comments

44. The Natural Resources Council of Maine (NRCM) comments that it believes the proposed subdivision is well-sited and meets the Commission's subdivision standards, except that it has concerns regarding the proposed open space lots. First, NRCM is concerned that the applicant's proposal to give the residential lot owners and the Commission the right to enforce the proposed restrictions for the open space lots is not sufficiently protective. NRCM expressed concern for the capacity and ability of the lot owners and the Commission to enforce the restrictions and suggested that the Maine Bureau of Parks and Lands (BPL) might better provide enforcement. NRCM believes that individual lot owners would likely be at their lots for only a few weeks out of a year, and thus unlikely to witness any potential violations regarding the open space lots or to pursue enforcement of the open lot provisions. Furthermore, NRCM believes that the Commission does not have sufficient staff resources to monitor the open space lots and to enforce the restrictions pertaining to those lots. As an alternative, NRCM recommends that the applicant contact BPL to see if it would be willing to have responsibility for

enforcing the open space restrictions, hold an easement on the open space lots, or take title to the open space lots. NRCM further states that it believes the proposed restrictions for the open space lots are not sufficiently protective. NRCM recommends modifying the language of the proposed declaration of open space restrictions as follows:

a) Insert additional language to further protect against future subdivision of the open space by inserting the language: "The Open Space shall remain in unified ownership, which may be joint or undivided, but without division, partition, subdivision or other legal or de facto creation of lots or parcels in separate ownership, leaseholds or use agreements."

b) Include a prohibition on mining and similar activities.

c) Insert additional language to protect against recreational use that would detract from the natural character of the resource and prohibit commercial uses. Specifically under Section 2 of the proposed open space restrictions, change "the right to primitive recreational uses," to "the right to non-intensive, primitive recreational uses," in order to protect against recreational use that would detract from the natural character of the area.

(d) Insert language prohibiting commercial use of the open space.

(e) Provide more specific restrictions on forest management activities that detract from the natural character of the land.

45. The U.S. Army Corps of Engineers comments that the proposed wetland alterations associated with the proposed subdivision access roads qualify for a Category 1 General Permit.

Applicant's response to review criteria and comments

46. The applicant provided the following regarding the Commission's statutory criteria for approval under the provisions of 12 M.R.S. section 685-B(4):

A. Regarding its technical and financial capacity to complete the project and comply with applicable laws and statutes, the applicant provided a budget for the project that estimates the total project cost at $104,600. The applicant has submitted a letter from a financial institution stating that it has sufficient funds in its account with that institution to cover the estimated project cost. Furthermore, the applicant states that it has hired a Professional Land Surveyor, Professional Engineer, and a consulting firm with qualified professionals with extensive experience in soil and wetland surveying.

B. The applicant states that Lincoln Pond Road is wide enough for two-way traffic and is sufficient to provide safe access to the project site. The proposed interior access roads have been designed in accordance with the Class 2 roadway standards, described under Finding of Fact #36 above. The roads have been designed with a 12 foot wide travel surface with 8 foot wide turnouts spaced at no more than 500 feet on average. The maximum sustained slope on the proposed roads is 7.5%. The applicant further states that the interior access roads would have low traffic volume and would have a speed limit of 10 mph, therefore, the proposed single lane interior roads with turnouts would be sufficient to provide safe access.

C. In regards to fitting the proposal harmoniously into the existing natural environment, the applicant states that it has designed the subdivision to avoid sensitive areas such as steep slopes and wetlands,

proposed vegetated buffers that would provide visual screening of the proposed development and treatment of storm water runoff, and provided for extensive areas of undeveloped shoreline through the proposed open space lots.

D. The applicant has submitted an erosion and sedimentation control plan, last revised March 26, 2014, for the proposed subdivision and associated access roads. The plan addresses measures to be employed before and during construction, and site stabilization after construction is completed. The plan also includes provisions for inspection and maintenance of erosion and sedimentation controls. The applicant has also submitted soils logs and test pit data showing that there are areas of suitable soils on each proposed residential lot for a sewage disposal system.

E. In addition to the items above, the applicant states the following regarding the proposal's conformance with the Commission's other regulations and standards:

1) The proposal is consistent with the purpose of the (P-GP2) Semi-Remote Lake Protection Subdistrict under the provisions of Section 10.23,F,1. Specifically, the proposed lots would be limited to seasonal residential use; the proposed six residential lots comprise a low density of development; and approximately 10,600 feet of shoreline would remain undeveloped. This proposed pattern of development is consistent with the existing pattern of development. Furthermore, the proposal complies with the residential development density limits and build out rates under Sections 10.23,F,3,g(1) and (5). Specifically, the applicant states that its pro-rated share of the development allowed under the build out rate provisions of 10.23,F,3,g(5) is six dwelling units at this time. The land which was originally in the Six Rivers Limited Partnership parcel as of January 1, 2001, as described under Finding of Fact #7 above, is allotted a total of 40 dwelling units but the development parcel is only a portion of the original Six Rivers parcel that was partitioned in 2011 and the total allotment is pro-rated among other land owners.

2) The proposed building envelopes provide for the minimum required setbacks for residential structures under Section 10.26,D of the Commission's Land Use Districts and Standards; and the proposed lots meet the minimum dimensional requirements for residential lots under Section 10.26,A.

3) The proposal is consistent with the Commission's standards for the layout and design of subdivisions under Section 10.25, Q,3 of the Commission's Land Use Districts and Standards. Specifically, the proposed subdivision has been designed to harmoniously fit into the natural environment as discussed under Finding of Fact #46.C above. Furthermore, the proposed subdivision layout is consistent with the pattern of existing development in the surrounding area, and would have minimal impact on the existing use of the surrounding area as a working forest.

4) The applicant's submissions include site plans and a discussion of how the subdivision layout and design meet the requirements of 10.25.Q.3.b. that subdivisions be designed to avoid the linear placement of lots along roadways or shorelines and, to the extent practicable, subdivision lots be placed to create a distinct community center and that the lots be within 1320 feet of the center. The applicant's submissions indicate that the Beaver Brook subdivision presents a scenario that may be unusual because the shape of the point, in combination with the small number of lots, naturally creates a community center lot design even though all the lots are along the shoreline. The lots wrap around, and are oriented toward, the area to be proposed as community center space (an area adjacent to proposed lots #2, #3 & #4). These submissions

identify limitations to back lot development at this site which include the restrictions on land that may be included in the subdivision due to the P-GP2 zoning, setback requirements, the presence of wetlands and associated setbacks, soil limitations for septic, road frontage requirements, steep slopes, and limits on space for driveways and storage.

5) The applicant further states that it has created a community center lot, as described under Finding of Fact #11 above, to comply with the Commission's requirement to "create a distinct community center." The proposed plans depict such an area adjacent to proposed lots #2, #3 & #4. The 1.25 acre community center lot is proposed to have a cleared area for recreational use, a walking path, park benches, and room for a small structure for the lot owners. The applicant indicates that zoning restrictions, soil limitations, owner intent, and market demand all indicate that future lot development in the area immediately surrounding the subdivision is likely to be very limited if it occurs at all, and that the proposed community center is sufficient to serve any probable future development near the proposed subdivision.

6) Driveways to the proposed residential lots have been combined to the extent practicable. Adjacent lots #3 and #4 would share a driveway. The applicant had originally proposed a shared driveway to lots #1 and #2. However, during the June, 2014 site visit, it became apparent that the topography of the site would require that a shared driveway cross over a steep ravine. Accordingly, the applicant modified the proposed access for these two lots to individual driveways so as to avoid having to cross the ravine. Lot #5 is situated such that a shared driveway is not feasible, and Lot #6 has its own access as it is in a separate location from the other lots.

7) Building envelopes shall be marked and identified on the proposed subdivision plans, as discussed under Finding of Fact #13 above. The building envelopes identify areas where residential development may occur, include areas suitable for sewage disposal systems, and accommodate the Commission's minimum setback requirements for residential structures.

47. In response to the MDIFW's comments discussed under Finding of Fact #39, above, the applicant submitted a letter from consulting wildlife biologist Sarah Spencer, dated June 25, 2014, stating that she surveyed the project site both by boat from the water and by foot on shore, looking for eagles and potential nesting sites. While she observed two eagles during her survey, she concluded that they were not nesting in the area, and that the potential for suitable nesting habitat in the project is low, although the area is used by eagles for other activity such as foraging for fish.

48. The applicant has incorporated the Maine State Soil Scientist's recommendations discussed under Finding of Fact #43, above, in its subdivision plan and road plans and profiles received by the Commision on July 2, 2014. The applicant summarized the changes incorporating his recommendations in its' June 26, 2014 letter.

49. In response to the NRCM's comments discussed under Finding of Fact #44, above, the applicant states that it believes that the subdivision lot owners would be more likely to actively monitor activities on the Open Space Lots than the BPL. Further, the applicant believes that the NRCM's suggestions would make the Open Space Declaration unnecessarily complex and more restrictive than intended. The applicant provided specific responses to NRCM's suggestions as follows:

(a) NRCM's suggestion for additional language against further subdivision of the open space goes beyond owner intent and what is required under Section 10.25,S.5 of the Commission's standards for open space lots.

(b) The applicant may want to extract gravel for driveways and land management purposes and thus opposes NRCM's suggestion to specifically prohibit mining in the open space restrictions.
(c) NRCM's suggestion to add "non-intensive" to allowed primitive recreational uses introduces an undefined term that would be subjective. Commercial uses are already prohibited by 10.25,S.
(d) NRCM's suggestion to insert more specific restrictions on forest management activities that detract from the natural character of the land could result in unintended consequences. For example, such language could prohibit clear-cutting when silviculturally appropriate after a blowdown from a microburst. NRCM's proposal for more forest management restrictions is beyond what is required by the Commission's standards, and adherence to the Commission's standards would be sufficiently protective. If necessary, the applicant proposes to add the following to its Open Space Declaration to read as follows: "Forestry activities shall be performed in accordance with applicable local, state and federal laws and regulations at the time such activities occur."

50. The facts are otherwise as represented in Subdivision Permit Application SP 4095, Amendment Request A, and supporting documents.

Based upon the above Findings, the staff concludes that:

1. The applicant has demonstrated adequate technical and financial capacity to complete the proposal in compliance with the state's air and water pollution control laws and other applicable environmental laws. Specifically, the applicant has retained qualified professionals to design and implement the proposal. Based upon the letter from the applicant's financial institution it has sufficient financial capacity to construct and maintain the proposed subdivision in accordance applicable laws and standards.

2. Adequate provision has been made for vehicular access and traffic circulation in that the proposed subdivision access roads are designed in accordance with the Commission's standards for vehicular access under Section 10.25,D of the Commission's standards. In addition, turnarounds have been designed for the terminus of each proposed subdivision access road to provide for ingress and egress of both automobile and larger vehicles such as construction-related vehicles.

3. The applicant has made adequate provision for fitting the proposal harmoniously into the existing natural environment in order to assure there will be no undue adverse effect on existing uses, scenic character, and natural and historic resources in the area. Specifically, the proposed residential subdivision is modest in scope, provides for the preservation of open space, locates proposed building envelopes away from sensitive areas such as wetlands and steep slopes, provides for vegetative screening of proposed development to preserve the scenic character of the area, and would not significantly impact the traditional use of the surrounding area for forest management purposes.

4. The proposed residential subdivision will not cause unreasonable soil erosion or reduction in the capacity of the land to absorb and hold water. Specifically, the applicant's erosion and sedimentation control plan is in accordance with the Commission's standards; and the soils information submitted by the applicant demonstrates that areas to be developed have suitable soils, and that there are sufficient areas of suitable soils on each proposed residential lot to accommodate a sewage disposal system.

5. The proposed residential subdivision conforms with the Commission's relevant regulations and standards, as follows:

   A. The scope and design of the proposed subdivision is consistent with the purpose of the (P-GP2) Semi-Remote Lake Protection Subdistrict under Section 10.23,F of the Commission's Land Use

Districts and Standards. Furthermore, the proposal complies with the maximum allowed density of development and build out rates allowed for residential development in the (P-GP2) Semi-Remote Lake Protection Subdistrict under the provisions of Sections 10.23,F,3,g(1) and (5), as demonstrated by the applicant under Finding of Fact #46.E(1) above.

B. The proposal complies with the provisions of Section 10.23,F,3,g(6) since none of the building envelopes on the proposed residential development lots would be located within a ¼ mile radius of any commercial sporting camp, campground, or group of rental cabins associated with a commercial sporting camp or campground. The building envelope of Lot #6 is within ¼ mile of the existing cabin owned by Black Brook Cove Campground (BBCC) but 10.23,F,3,g(6) does not apply to a single cabin, such as is the case in this instance. The rule refers to a "group of rental cabins associated with a commercial sporting camp or campground." In this instance there is only one cabin associated with the campground. This does not constitute a "group of rental cabins" as specified in the rule, and thus would not be subject to the buffering provisions of 10.23,F.3.g(6). [1]

C. The proposed subdivision is consistent with the Commission's standards for subdivision layout and design under Section 10.26, Q,3 of the Commission's Land Use Districts and Standards. Specifically, the applicant has demonstrated that it is not practicable to reduce the linear placement of lots along the shoreline by creating back lots. The shape of the point of land on which the subdivision is proposed and other limiting factors such as restrictions on land that may be included in the subdivision due to the P-GP2 zoning, setback requirements, the presence of wetlands and associated setbacks, soil limitations for septic, road frontage requirements, steep slopes, and limits on space for driveways and storage, serve to significantly reduce the design alternatives with this small number of lots and to minimize any benefits that might be gained from some back lot development (such as reducing impacts and efficient use of land).

Though back lots do not appear to be practicable, a community center design is practicable, and the subdivision is still required to provide a community center space. The proposed community center lot, described under Finding of Fact #11 above, satisfies the requirement to create a distinct community center for the subdivision. Additionally the applicant's submissions demonstrate the proposed community center design is sufficient to serve any probable future development near the proposed subdivision. The P-GP2 build out and density limitations, soil limitations, owner intent, and market demand all indicate that future lot development in this area is likely to be very limited if it occurs at all.

D. The proposal is consistent with the Commission's standards regarding open space under Section 10.25,S of the Commission's Land Use Districts and Standards, provided that the proposed declaration of open space restrictions is amended to include a specific prohibition against residential, commercial and industrial uses, including mining and gravel extraction. Extracting gravel from the open space lots, as discussed under Finding of Fact #49(b) above, is not consistent with Section 10.25,S,3. The applicant's proposal to retain ownership of the open space, with the above described amended declaration of open space restrictions, sufficiently provides for protection and conservation of the open space under Section 10.25,S,1,d.

E. The proposed residential development lots and building envelopes conform with the Commission's minimum dimensional requirements under Section 10.26,D.

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[1] By contrast, a single cabin that is "associated" with a commercial sporting camp is by definition (10.02, 33) part of that commercial sporting camp, unless it is an "outpost cabin" (as defined by 10.02, 144), and thus would be subject to the buffering provisions of 10.23,F.3.g(6). Cabins are not, by definition (10.02, 20), part of a campground but they can be "associated" with a campground.

6. 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.

Therefore, the Commission, through its staff, approves the application of Steven Phillips Memorial Scholarship Fund, LLC subject to the following conditions:

1. The Standard Conditions (ver. 10/90), a copy of which is attached.

2. The permittee must submit, for Commission review and approval, a sample deed for the subdivision lots:

   A. Such sample deed must contain the following reference to Subdivision Permit approval:

      Lot #_____ is part of a Subdivision approved pursuant to Maine Land Use Planning Commission Subdivision Permit SP 4095, which is recorded in the Oxford County Registry of Deeds. Use of this lot is subject to applicable conditions of that Subdivision Permit approval.

   B. Such deed must also describe any restrictions to be imposed by the permittee, and must incorporate the following additional restrictions:

      (1) No building or other such construction may be undertaken on any lot without first obtaining an approved Building Permit from the Maine Land Use Planning Commission;

      (2) Use of the lot is restricted to seasonal single family residential use. Dwellings must not be constructed on permanent foundations such as slabs, frost walls, basements or full foundations.

      (3) All structures must be set back a minimum of 50 feet from all access roads and rights-of-way, a minimum of 75 feet from any streams and P-WL1 wetlands, and a minimum of 15 feet from all other property boundary lines. In addition, all structures and clearing for development must be located within the boundaries of building envelopes, as designated on the Subdivision plat authorized pursuant to Maine Land Use Planning Commission Amendment A to Subdivision Permit SP 4095; and

      (4) No lot shall be further divided. No lot shall be reconfigured without the written approval of the Maine Land Use Planning Commission in accordance with 12 M.R.S.A. §§ 681 et seq. and applicable requirements of the Commission.

3. Deeds conveying approved residential lots must incorporate the language of the sample deed as approved by the Commission. Furthermore, leases entered into for approved lots must incorporate the restrictions imposed by Condition #2 of this Permit.

4. The permittee must submit, for Commission review and approval, a revised "Declaration of Restrictive Covenants in Beaver Brook Cove Subdivision" for the residential lots. The revised declaration must contain the following provision: "Use of the Subdivision Lots is restricted to seasonal single family residential use. Dwellings must not be constructed on permanent foundations such as slabs, frost walls, basements or full foundations." Any additional changes to the Declaration of Restrictive Covenants in Beaver Brook Cove Subdivision in the future must also be approved by the Commission.

5. The permittee must submit, for Commission review and approval, a revised "Declaration of Open Space Restrictions" for the open space lots. The revised declaration must contain the following:

provisions:

A. Language regarding lot owner access, as submitted by the permittee and received by the Commission on March 26, 2014.

B. Revision to Section 4 of the Declaration, as submitted by the permittee and received by the Commission on July 2, 2014, specifying that written approval is required from the LUPC for any changes to the open space declaration and any such written approval must be recorded at the Registry of Deeds.

C. Insert language stating that open space may be usable for low-intensity, non-commercial recreation or for purposes intended to conserve land and preserve important natural features of the site and prohibiting residential, commercial, and industrial use of the open space, including mining, gravel extraction and similar activities.

6. The permittee must submit for Commission review, approval, and signature, a final plat for this subdivision which meets the Commission's specifications for subdivision plats and is acceptable for recording in the Registry of Deeds. The final plat must accurately show all lot lines, roads, utilities, building envelopes, common driveways, wooded phosphorus buffers, and delineated wetlands.

7. At the time of application for a Maine Land Use Planning Commission Building Permit, each individual lot owner must submit a completed Form HHE-200 "Application for Subsurface Wastewater Disposal" with a system design and location in compliance with Maine State Plumbing Code Subsurface Wastewater Disposal Regulations in effect at the time that such Building Permit application is submitted.

8. The sites of the current test pits on each lot are conditionally approved pending submission and acceptance of an application for a Building Permit submitted by each individual lot owner. Other locations may be proposed as part of individual permit applications. However, such other locations, even those with suitable soil conditions, may not necessarily be approvable based on inter-lot dependencies, setback, or other requirements.

9. The permittee shall implement its erosion and sedimentation measures in accordance with its erosion and sedimentation control plan (last revised February 18, 2014) and as shown on its erosion control detail sheets (last revised July 2, 2014).

10. The permitted Mountain View Road and Beaver Cove Road must be constructed in accordance with the revised road plans received by the Commission on July 2, 2014. Once the construction areas are permanently stabilized, any temporary erosion and sedimentation control structures must be removed. The subdivision road must be maintained so that it will not erode.

11. A shared driveway shall be utilized for access to Lots #3 and #4, in accordance with the subdivision plat. Prior to the sale or lease of any subdivision lot, the permittee must construct the shared driveway. The driveway must be constructed so that (a) it will not erode or create any undue restriction or disruption of existing surface water drainage ways and (b) it will divert runoff to a vegetated buffer strip so as to prevent it from directly entering a water body, mapped P-WL1 wetland or roadway.

12. Future structural development and associated clearing must be limited to the building envelopes as located on the approved subdivision plat.

13. Prior to the sale or lease of any subdivision lot the permittee must:

    A. Record and cross- reference in the Oxford County Registry of Deeds this approved Amendment A to Subdivision Permit SP 4095 including Conditions of Approval, the final subdivision plat signed by the Director of the Commission, and the Declaration of Restrictive Covenants for the residential lots revised in accordance with Condition #4; and the Declaration of Open Space Restrictions revised in accordance with Condition #5. Upon such recording of the permit, plat, and declarations, the permittee must promptly submit to the Commission a copy of the recorded plat; the book, page, and file numbers for the permit, plat and declarations; and the date of such recordings.

    B. Obtain a Certificate of Compliance for this Amendment A to Subdivision Permit SP 4095 from the Commission.

14. The remainder of the permittee's lot must be retained for a period of at least five years from the date of this permit. For this five year period the retained lot must:

    A. retained and not be sold, platted, leased, conveyed or further divided, except for transfer to an abutter pursuant to Section 10.25,Q,1,g(3) of the Commission's Land Use Districts and Standards; and

    B. be used solely for forest or agricultural management activities and associated structures and development such as buildings to store equipment or materials used in forest or agricultural management activities, land management roads, driveways consistent with forest or agricultural management activities, or natural resource conservation purposes.

15. All conditions of Subdivision Permit SP 4095 shall remain in effect except Condition #10 of Subdivision Permit SP 4095 which is superseded by Condition #14 of this amendment.

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 AUGUSTA, MAINE, THIS 19TH DAY OF SEPTEMBER, 2014.

By: _____
Nicholas D. Livesay, Executive Director

STATE OF MAINE
County of Kennebec, ss, Date: 9/18/14

Personally appeared the above named Nicholas D. Livesay, in his capacity as Executive Director of the Land Use Planning Commission, and acknowledged the foregoing to be his free act and deed in his said capacity and the free act and deed of the Land Use Planning Commission.

Before me,

MARYLISA YORK
Notary Public • State of Maine
My Commission Expires September 11, 2018

Marylisa York
Mary York, Notary Public
My Commission expires: _____

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

STANDARD CONDITIONS OF APPROVAL FOR SUBDIVISION PERMITS

1. This permit is dependent upon and limited to the proposal as set forth in the application, plan 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 Regulation Commission. Any variation from the application or the conditions of approval undertaken without approval of the Commission constitutes a violation of Land Use Regulation Commission law.

2. 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 regulations of the Maine Department of Environmental Protection and the Maine Department of Human Services.

3. The permittee shall promptly submit all information requested by the Commission to demonstrate compliance with the terms and conditions of approval.

4. In the event the permittee should sell or lease this subdivision in its entirety, the buyer or lessee shall be provided a copy of the approved subdivision permit and advised of the conditions of approval. The new owner or lessee must contact the Land Use Regulation Commission to have the permit transferred into their name to reflect any changes they propose from the original application and permit approval.

5. The permittee may not advertise 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.

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

7. Before leasing, selling or entering into a contract for sale of any lot in the subdivision herein permitted, the permittee must provide a copy of this permit to the potential buyer or lessee and must indicate all of the conditions of approval. The permittee must also inform the potential buyer or lessee that no structure may be constructed or installed without first obtaining permit approval from the Maine Land Use Regulation Commission. Failure to give such notice is a violation of this approval and the Commission may initiate appropriate enforcement action.

8. Development and limited construction activities permitted in this permit must be completed within five (5) years from the date of issuance of the permit. If such activities are not 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.

9. This subdivision permit authorizes **development and specified limited construction only.** No lots or other interests in the subdivision herein permitted shall be transferred until a **CERTIFICATE OF COMPLIANCE**, stating that requirements and conditions of approval have been met, has been issued to the permittee. Once development and specified construction are complete, the permittee must notify the Commission so that the premises may be inspected and a **CERTIFICATE OF COMPLIANCE** issued.

Notwithstanding Condition #8 of the Standard conditions (ver.10/90), development and limited construction activities permitted in this permit must be substantially started within two years of date of issue and substantially completed within five years from date of issuance of this permit. If such activities are not begun 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 Commision. (4/04)

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