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GOVERNOR

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

WALTER E. WHITCOMB
COMMISSIONER

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EXECUTIVE DIRECTOR

PERMIT

SUBDIVISION PERMIT SP 4096
BY SPECIAL EXCEPTION

The Maine Land Use Planning Commission, through its staff, after reviewing the application and supporting documents submitted by Phillips Article 8 LLC, Phillips 1973-APW LLC, Phillips 1973-JAP LLC and Phillips 1973-MPC LLC for Subdivision Permit SP 4096, finds the following facts:

1. Applicants: Phillips Article 8 LLC
Phillips 1973-APW LLC
Phillips 1973-JAP LLC
Phillips 1973-MPC LLC
c/o Loring, Coolidge, and Wolcott Offices
230 Congress Street
Boston, MA 02110-2437
2. Date of Completed Application: April 27, 2015
3. Location of Proposal: Lincoln Plantation, Oxford County
No Tax Maps Available
Book 4915 Page 301 Oxford County Registry of Deeds
4. Parcel Size: Approximately 4792 Acres* (Owned)
*Includes 1294 acres of flowed land
5. Zoning: (P-GP2) Semi-Remote Lake Protection Subdistrict
(M-GN) General Management 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 applicants own an approximately 4,792 acre parcel with frontage along Lincoln Pond Road, Beaver Brook Road, Aziscohos Lake and Beaver Brook. Their parcel has 17,800 feet of frontage along Aziscohos Lake. The applicants' 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].

Proposal

8. The applicants seek approval for the creation of ten lots out of its parcel. Nine of the proposed lots are to be located along Aziscohos Lake, and all lots 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 a preliminary subdivision plan received by the Commission on April 27, 2015. The proposed subdivision would be called "Island View Subdivision."
9. Five of the proposed lots, Lots #1- #5, would be for residential development and comprise a total of 7.18 acres. Four of the proposed lots, Lots #OS1 - #OS4, would be designated "Open Space Lots," as further discussed under Finding of Fact #15 below. Three of the four open space lots would have frontage along Aziscohos Lake. The four open space lots would have a combined total of 13.69 acres. The tenth lot would be a 1.01 acre "Community Center Lot."
10. Access to the proposed residential subdivision would be via the existing Lincoln Pond Road and Beaver Brook Road. As part of its subdivision proposal, the applicants propose to construct an approximately 3,378 foot long subdivision access road from Beaver Brook Road to proposed Lot #5 where the proposed road would terminate. Approximately 1,960 linear feet of the new road would be built upon an old tote road. The proposed road would cross three wetlands and two streams. Culverts for the stream crossings have been designed to accommodate a 25-year storm event. The proposed subdivision road would be named "Island View Road." The proposed road would have a 12-foot wide travel surface within a 50-foot wide right-of-way. Turnouts would be constructed along the road at less than every 500 feet on average. The applicants would retain ownership of the subdivision access road and would grant a right-of-way over the road to the lot owners. The applicants would be responsible for maintaining the subdivision access road, 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 road is shown on road plans and profiles received by the Commission on July 16, 2014 (Drawing #D-2, Sheets #C-5, and #C-6, with #C-6, only, being revised as received February 26, 2015) and the preliminary subdivision plan referenced under Finding of Fact #8 above.

Proposed Lots #1 and #5 would be accessed by individual driveways to be constructed by the individual lot owners. Lot #4 would be accessed by an approximately 200 foot long individual driveway to be constructed by the applicants. An approximately 150 foot long shared driveway would be constructed off of Island View Road to access proposed Lots #2 and #3, with an approximately 100' extension to Lot #2 and an approximately 150 foot extension to Lot #3. The shared driveway to Lots #2 and #3 would also be constructed by the applicants. Once Lots #2 and #3 are sold maintenance of the shared driveway would be the responsibility of the owners of Lots #2 and #3.

Proposed Residential Development Lots

11. The proposed residential lots would range in size from 1.23 acres to 1.76 acres; shore frontage of each lot on Azischohos Lake would range from 201.1 feet to 226.2 feet, and road frontage for each lot would range from 213 to 224 feet, except for Lot #5 which would be located at the terminus of proposed Island View Road.

Building envelopes have been designated on each proposed residential development lot, as shown on the applicants' preliminary subdivision plan. Building envelopes for the proposed residential lots would maintain setbacks of at least 50 feet from road rights-of-way, at least 15 feet from property lines, 100 feet from Azischohos Lake, and 75 feet from streams and P-WL1 wetlands (located within 250 feet of the lake).

12. 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.
13. The applicants have submitted an analysis of projected phosphorus export from the proposed residential subdivision, last revised March 17, 2015, to demonstrate that the proposed residential subdivision will meet the overall project allocation for phosphorus export under the Commission's standards. Specifically, the applicants' analysis calculates the phosphorus allocation for its parcel to be 0.0141 pounds/acre/year, for a total phosphorus export allocation of 49.387 pounds per year. The applicant calculates that the proposed residential subdivision and access roads would export 1.2377 pounds of phosphorus per year.
14. The applicants have submitted a proposed declaration of restrictive covenants (as received by the Commission on April 17, 2015) that would apply to the proposed residential lots, and a sample deed (as received by the Commission on April 17, 2015) with covenants. The covenants in the declaration and sample deed require that structures be located within the building envelopes shown on the subdivision plat, prohibit further division of the residential lots, require Commission approval of any reconfiguration of the residential lots, limit lots to one seasonal dwelling per lot, and require payment of fees to cover road maintenance costs.

Proposed Open Space & Community Center Lots

15. The applicants have submitted a proposed declaration of restrictions for the proposed open space lots, received by the Commission on July 16, 2014, as Exhibit S of the original application, and revised as received on April 17, 2015. Under the open space declaration, the open space lots would remain in the ownership of the applicants or their assigns, and the applicants and their 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 declaration grants the Commission and the residential lot owners the authority to enforce the open space covenants.

16. The proposed community center lot would be 1.01 acres in size. The lot would be located across the road from proposed residential Lot #1. The lot would be used as a gathering place for the lot owners. The applicants propose to clear an area and place a 24 foot by 24 foot gravel pad on the community center lot for a future pavilion to be placed by the lot owners. The lot owners would be responsible for constructing any future structures or improvements on the lot. A lot owners' association would be formed prior to construction of any such buildings or improvements and the lot owners' association would own any buildings and improvements on the lot. In addition, the lot owners' association would be responsible for maintaining the community property. The applicant would retain ownership of the community center lot.

Site Conditions

17. The applicant has submitted a Class B High Intensity Soil Survey of the project site, by Certified Soil Scientist Stephen Howell, originally dated December 17, 2013, and revised January 14, 2014 and December 2, 2014. The survey identified the following soil types within the project area: Chesuncook very bouldery loam, 8 to 30 percent slopes; Chesuncook-Telos complex, 6 to 15 percent slopes, extremely bouldery; Monarda stony loam, 0 to 8 percent slopes, extremely bouldery; Madawaska very bouldery very fine sandy loam, 15 to 30 percent slopes; Telos extremely bouldery loam, 1 to 8 percent slopes; Telos variant bouldery loam, 8 to 15 percent slopes; and Telos variant-Chesuncook complex, 8 to 15 percent slopes, very bouldery.

Soils identified within the footprint of the proposed subdivision access road include Chesuncook very bouldery loam, 8 to 15 percent slopes; Chesuncook-Telos complex, 6 to 15 percent slopes, extremely bouldery; Monarda stony loam, 0 to 8 percent slopes, extremely boulder; Telos extremely bouldery loam, 1 to 8 percent slopes; and Telos variant-Chesuncook complex, 8 to 15 percent slopes, very bouldery. The Chesuncook soils have a medium Development Potential Rating for roads under the Natural Resources Conservation Service's soil potential ratings for low density development. The Telos soils have a low to medium Development Potential Rating for roads, and the Monarda soils have a very low Development Potential Rating for roads due to wetness and frost action. In order to address the limitations of these two soil types for road construction, the applicants have 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. The applicants also propose to build the road primarily above existing grade, and have provided road plans that incorporate drainage control measures.

Soils identified within the building envelopes of the proposed residential development lots include Chesuncook very bouldery loam, 8 to 15 percent slopes and Chesuncook-Telos complex, 6 to 15 percent slopes, extremely bouldery. The Telos soils have a low-medium Development Potential Rating for dwellings, and the Chesuncook soils have a medium Development Potential Rating for dwellings under the Natural Resources Conservation Service's soil potential ratings for low density development. Limitations for both of these soil types for dwellings include wetness and frost action, primarily affecting permanent foundations under buildings. Accordingly, such limitations are likely to have little impact since permanent foundations would not be allowed for buildings as discussed under Finding of Fact #49.E(1) below.

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.

18. Wetlands and streams 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 "Protected Natural Resources Report, Proposed Residential Subdivision, Phillips Family Trust Parcel." Mr. Hodgins identified two streams and four wetlands at the project site. The proposed subdivision access road would cross three of the wetlands (two located on proposed Open Space Lot OS2 and one located on Open Space Lot OS3) and both streams (located on Open Space Lot OS4). The proposal would impact 6,335 square feet of P-WL1 wetlands of special significance and 2,408 square feet of P-WL3 forested wetlands for a total of 8,743 square feet of wetland impact. All of the wetland impacts would be from the proposed road construction. Impacts to P-WL1 wetlands would include 485 square feet of impact to stream bottom from stream crossings and the remaining 5,850 square feet of impact to forested wetlands within 250 feet of Aziscohos Lake.

Review Criteria

19. Under the provisions of 12 M.R.S. § 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.
20. 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.

21. 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.
22. 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.
23. 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.
24. 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.
25. 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.
26. 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.
27. 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.
28. Under the provisions of Section 10.02(101) of the Commission's Land Use Districts and Standards, Level C Road Projects are defined as the construction of new roads, and relocations or reconstruction of existing roads, other than that involved in level A or level B road projects; such roads shall include both public and private roadways excluding land management roads.
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 10.23,N,3,b(14) of the Commission's Land Use Districts and Standards, water crossings of minor flowing waters are an allowed use without a permit within a (P-WL) Wetland Protection Subdistrict, subject to applicable standards.

31. Under the provisions of Section 10.23,N,3,d(7) of the Commission's Land Use Districts and Standards, Level C road projects are allowed by special exception within a (P-WL) Wetland Protection Subdistrict upon issuance of a permit from the Commission provided that the applicant shows by substantial evidence that: (a) there is no alternative site which is both suitable to the proposed use and reasonably available to the applicant; (b) the use can be buffered from those other uses or resources within the subdistrict with which it is incompatible; and (c) such other conditions are met that the Commission may reasonably impose in accordance with the policies of the Comprehensive Land Use Plan.
32. Section 10.25,P of the Commission's Land Use Districts and Standards applies to wetland alterations requiring a permit. Under the provisions of Section 10.25,P,1,c(3) projects altering any area of P-WL1 wetlands are subject to a Tier 3 review. Alterations of P-WL1 wetlands may be eligible for Tier 1 or 2 review if the Commission determines, at the applicant's request, that the activity will have no undue adverse impact on the freshwater wetlands or other protected natural resources present.

The following standards under Section 10.25,P, 2 apply to projects requiring a Tier 2 review:

- a. Avoidance. The project must not cause a loss in wetland area, functions and values if there is a practicable alternative to the project that would be less damaging to the environment. The application must provide an analysis of alternatives in order to demonstrate that a practicable alternative does not exist.
 - b. Minimal Alteration. The project must limit the amount of wetland to be altered to the minimum amount necessary to complete the project.
 - c. Water Quality. The project must comply with applicable water quality standards.
 - d. Erosion Control. The project must use erosion control measures to prevent sedimentation of surface waters. A 25-foot buffer strip must be maintained between the activity and any surface waters.
33. 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.
 34. Section 10.26,D,1,a of the Commission's Land Use Districts and Standards, 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.
 35. 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.
 36. 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.
37. 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.
38. 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.
39. 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" are 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%.
40. 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 Visits

41. 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 applicants' consultant. During the site visit the Maine State Soil Scientist made recommendations regarding the design and layout of the proposed subdivision access road and shared driveway. Commission staff visited the project site again on November 13, 2014 with the applicants' consultant. The site

visit confirmed the presences of steep slopes, soil limitations including very rocky areas and large rock outcrops, drainage patterns, and wetlands and oriented Commission staff to the limitations those features present to site design.

Review Agency Comments

42. The Maine Department of Inland Fisheries and Wildlife (MDIFW) states that it has no comments regarding the proposal.
43. The Maine Natural Areas Program states that it has no records of any rare botanical features within the project area.
44. 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.
45. The Maine Department of Environmental Protection has reviewed the phosphorus information for the proposed subdivision as discussed under Finding of Fact #13 above. The Department comments that while the calculated export of phosphorus from the project may need to be adjusted slightly, the applicant's phosphorus allocation substantially exceeds the projected export and thus the Department indicates it has no concerns with the subdivision proposal.
46. The Maine State Soil Scientist states that he has no objections to the proposal as it appears the applicant intends to implement appropriate erosion and sedimentation control and hydrology measures as discussed during the June, 2014 site visit.
47. The Maine Bureau of Parks and Lands comments that the right-of-way for the portion of Lincoln Pond Road across public lands is 50 feet wide (25 from the center line) as stated in page 1 of the road easement granted by the Bureau and submitted as Exhibit K of the application. The Bureau notes that the applicant incorrectly stated the deeded easement width is 66 feet wide for this portion of Lincoln Pond Road under its response to item #18.C of its application.
48. The U.S. Army Corps of Engineers comments that the proposed wetland alterations associated with the proposed subdivision access road qualify for a Category 1 General Permit.

Applicant's response to review criteria and comments

49. 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 applicants provided a budget for the project that estimates the total project cost at \$147,600. The applicants have submitted a letter from a financial institution stating that they have sufficient funds in their account with that institution to cover the estimated project cost. Furthermore, the applicants state that they have hired a Professional Land Surveyor, Professional Engineer, a forester with extensive experience in road layout and construction, and a consulting firm with qualified professionals with extensive experience in soil and wetland surveying.

- B. The applicants state that Lincoln Pond Road is wide enough for two-way traffic and is sufficient to provide safe access to the project site. The applicants further state that Beaver Brook Road is wide enough to accommodate single lane traffic with road turnouts. There are several existing turnouts along Beaver Brook Road and one or two more turnouts will be added to the road between the intersection with Lincoln Pond Road and the Beaver Brook bridge to better accommodate traffic flow. The proposed interior access road (Island View Road) has been designed in accordance with the Class 2 roadway standards, described under Finding of Fact #39 above. The road has 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 road would be 10.5%. The applicant further states that the interior access road would have low traffic volume and would have a speed limit of 10 mph, therefore, the proposed single lane interior road with turnouts would be sufficient to provide safe access. Furthermore, the building envelopes on each proposed residential lot would be large enough to accommodate turn-around areas so that traffic entering the interior access road would not have to back onto the road.
- 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 along the shoreline, property lines and roadways would provide visual screening of the proposed development and treatment of storm water runoff; deed covenants would ensure that the type and color of building materials blend with the natural environment; and extensive areas of undeveloped shoreline would be provided by grouping the proposed residential development lots and providing for open space lots with shore frontage along Aziscohos Lake.
- D. The applicants have submitted an erosion and sedimentation control plan for the proposed subdivision and associated access roads, as Exhibit M of its application. 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, and specifies that soil disturbance would occur only during the dry part of the year from May 1 through October 30 of the calendar year unless prior approval is obtained from the Commission for winter construction. The plan does include provisions for stabilization measures for winter construction activities if needed.

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 applicants state 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 with no permanent foundations allowed; the proposed five residential lots comprise a low density of development with a long segment of shoreline that would remain undeveloped. Approximately 16,500 feet of shoreline would remain undeveloped, with approximately 15,000 feet of undeveloped shoreline to be in one continuous section north of proposed residential Lot #5. This proposed pattern of development is consistent with the existing pattern of development comprised of disperse seasonal residences located within the shoreland zone of the lake. 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 11 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 applicants' 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 applicants request a reduction in the level of review for the P-WL1 wetland alteration that would result from the proposed road construction activities to a Tier 2 review. In support of their request, the applicants state that there is no practicable alternative location for the proposed access road that would avoid P-WL1 wetlands. In their alternative analysis, the applicants considered the possibility of relocating the proposed road upslope or downslope to avoid wetland impacts. Moving the proposed road upslope to go around the north end of the first P-WL1 wetland would create new wetland impacts since the alternate road would be off of the existing tote road, and would also require that the proposed road cross the next P-WL1 wetland at a wider point resulting in more wetland impacts at that location. In addition the area upslope of the currently proposed road location is very bouldery and would require the road to cross previously undisturbed ground. This would result in more soil disturbance and vegetation removal than the proposed location

Furthermore, impacts to P-WL1 wetlands have been minimized by locating the proposed road over the existing tote road. The applicant has submitted an erosion and sedimentation control plan to prevent sedimentation of Aziscohos Lake and streams. The proposed road construction techniques of utilizing rock sandwiches and drainage culverts at the wetland crossings would serve to buffer any potential road impacts to the affected wetlands.

- 3) 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.
- 4) 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 #49.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.
- 5) The applicants' 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 applicants' submissions identify limitations to back lot development at this site which include steep slopes, soil limitations including very rocky areas and large rock outcrops, drainage patterns, and wetlands. The slopes, immediately along the shoreline and approximately 250 to 350 feet inland, range from 5%

to 15%. Farther back from this area, slopes increase to greater than 20%. Commission staff confirmed the presence of these features, and the limitations they present to site design, during a site visit on November 13, 2014.

The submissions indicate these site characteristics limit the area available for development and that the only location that is suitable for a backlot has been designated as the community center lot. The applicant also indicates that setback requirements, restrictions on land that may be included in the subdivision due to the P-GP2 zoning, road frontage requirements, and the small number of lots proposed for the subdivision, also serve to constrain the subdivision lot layout and design options. The applicant states that the proposed community center lot is centrally located within the subdivision site and within walking distance of all the proposed residential development lots, and it complies with the Commission's requirement to "create a distinct community center."

- 6) Driveways to the proposed residential lots have been combined to the extent practicable. Adjacent lots #2 and #3 would share a driveway. Adjacent residential lot #4, being the third lot in the cluster of three, cannot be included in the shared driveway by definition, and thus would have its own driveway. Lots #1 and #5 are not adjacent to any other proposed residential lot and thus cannot be included on a shared driveway. Driveways have been located to follow topography to the extent practicable, thus keeping driveway slopes in accordance with the Commission's driveway standards under Section 10.27,H.
- 7) Building envelopes shall be marked and identified on the proposed subdivision plans, as discussed under Finding of Fact #11 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.

50. The facts are otherwise as represented in Subdivision Permit Application SP 4096 and supporting documents.

Based upon the above Findings, the staff concludes that:

1. The applicants have 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 road and driveways are designed in accordance with the Commission's standards for vehicular access and driveways under Sections 10.25,D and 10.27,H, respectively, of the Commission's standards.
3. The applicants have 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 applicants' 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 #49.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.
 - C. The proposed subdivision is consistent with the Commission's standards for subdivision layout and design under Section 10.25, 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 submissions identify features of the subdivision site that limit the lot layout and design options and constrain the area available for development within the subdivision. Analysis of surrounding lands in the same ownership indicates it is unlikely lot layout and design options would be less constrained on other nearby sites. The submissions also identify that there is an area upslope from Lot #1, and off the shoreline, that is "suitable for a backlot." That area has been proposed as the community center lot.

Section 10.25.Q.3.b. requires that subdivisions be designed to avoid linear placement of lots along shorelines and that lots be placed so as to create a distinct community center to the extent practicable. To meet these criteria, shoreline subdivisions often must have one or more backlots and a community center when practicable. "Practicable" is defined in Section 10.02 of the Commission's Land Use Districts and Standards as "Available and feasible considering cost, existing technology and logistics based on the overall purpose of the project." Here, because of the limited design alternatives and site conditions, the backlot area upslope from Lot #1 does not appear to be practicable for residential purposes but is a good location for a community center lot.

The topography of the land is such that there is little upslope area suitable for any development. The area identified for the community center lot is suitable for some development but has soils that will create greater challenges for a septic design than would the lot locations proposed in the applicants' submission. The presence of large rock outcrops, in conjunction with the need to avoid and minimize wetland impacts, drives the proposed the road alignment. The road alignment in turn

dictates where lots may be located and meet road frontage, setbacks and lot size requirements. The lands lying between the 100 foot waterline setback and approximately 300 foot upslope present the best opportunity for lot development. These areas have slopes ranging from 8-15% slope and have soils suitable for septic design. The area proposed for the community center lot is very constrained for residential development. The two areas within the lot cluster proposed as open space were not considered for development to limit impacts to drainage patterns and wetlands.

Whether a backlot is practicable here must be considered in conjunction with “the overall purpose of the project” and the objectives of the subdivision layout and design standards. Among the purposes those standards seek to meet is the efficient use of land, the creation of a neighborhood or a focal point, and minimization of impacts to the principal values of the jurisdiction. However this project is intended to be a small subdivision with only 5 lots sized to be consistent with development patterns in the area. The opportunities to find efficiencies in the use of land by including a backlot in such a small subdivision are few. Any improvement to the neighborhood design from moving the location of a residential lot to the location of the community center lot would be minimal and, given the constraints from natural features in the area, would result in negative impacts due to road alignment.

Each determination as to whether a backlot is practicable is based on the specific features of the proposal and the site. In this instance, on balance, the design which better meets the overall purposes of the subdivision lot layout and design standards is the site design as proposed rather than one requiring a backlot where the community center lot is proposed.

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 #16 above, satisfies the requirement to create a distinct community center for the subdivision. Additionally the applicants’ 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 in that the proposed declaration of open space restrictions would prohibit activities not allowed in the designated open space under Section 10.25,S,3. Furthermore, the applicant’s proposal to retain ownership of the open space, and manage it in accordance with the proposed declaration of open space restrictions sufficiently provides for protection and conservation of the open space under Section 10.25,S,1,d.
- E. The impacts to forested wetlands more than 250 feet from Azischohos Lake and impacts to stream bottom from water crossings are exempt from the requirements for a permit within a (P-WL) Wetland Protection Subdistrict under the provisions of Sections 10.23,N,3,b(3) and 10.23,N,3,b(14), respectively. Thus these activities are not subject to the Tier review standard under Section 10.25,P.
- F. The level of review for the proposed impacts to P-WL1 wetlands other than stream bottom impacted by water crossings may be reduced to a Tier 2 review under the provisions of Section 10.25,P,1,c(3) of the Commission’s Land Use Districts and Standards in that the proposed road construction would have no undue adverse impact on the P-WL1 wetlands. Specifically, the applicants’ alternative analysis demonstrates that there is no practicable alternative for the proposed

road that would be less damaging to the environment as discussed under Finding of Fact #49.E(2) above. The wetland impacts from road construction have been minimized by locating the proposed wetland crossings over the old tote road and utilizing road construction measures (rock sandwich construction and cross drainage culverts) to maintain wetland hydrology. The applicant has proposed erosion and sedimentation control plan would prevent sedimentation of Aziscohos Lake and other surface waters, and thus the proposed road construction would not impact water quality standards of the lake.

G. The proposed subdivision road within the delineated wetlands may be allowed by special exception under the provisions of Section 10.23,N,3,b(3) of the Commission's Land Use Districts and Standards. Specifically, the applicant's alternative analysis as discussed under Finding of Fact #49.E(2) above demonstrates that there is no alternative site to locate the proposed road outside of the wetlands; and the wetland resources would be buffered from the proposed road through the use of appropriate wetland construction techniques and the applicant's erosion and sedimentation control plan.

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

6. If carried out in compliance with the Conditions below, the proposal will meet the Criteria for Approval, §685-B(4) of the Commission's Statutes, 12 M.R.S.

Therefore, the Commission, through its staff, approves the application of Phillips Article 8 LLC, Phillips 1973-APW LLC, Phillips 1973-JAP LLC and Phillips 1973-MPC LLC subject to the following conditions:

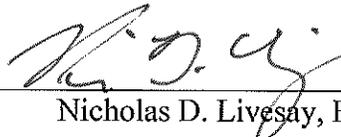
1. The Standard Conditions (ver. 04/04), a copy of which is attached.
2. Deeds conveying approved residential lots must incorporate the language of the sample deed as approved by the Commission, and described under Finding of Fact #14 of this permit. Furthermore, leases entered into for approved lots must incorporate the restrictions of the approved sample deed.
3. Any changes to the approved Declaration of Restrictive Covenants in Island View Subdivision, as described under Finding of Fact #14 of this permit, must be approved by the Commission.
4. The permittees 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.
5. 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.
6. 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.

7. The permittees shall implement their erosion and sedimentation measures in accordance with its erosion and sedimentation control plan and erosion control detail sheets (as received July 16, 2014).
8. The permitted Island View Road must be constructed in accordance with the revised road plans received by the Commission on July 16, 2014 and February 26, 2015. 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.
9. Prior to the sale or lease of any subdivision lot, the permittees must construct the gravel pad for the future pavilion on the community center lot in accordance with the subdivision plat. The gravel pad must be set back a minimum of 75 feet from Island View Road and 25 feet from property boundary lines.
10. A shared driveway shall be utilized for access to Lots #2 and #3, in accordance with the subdivision plat. Prior to the sale or lease of any subdivision lot, the permittee must construct the shared driveway to Lots #2 and #3 and the driveway to Lot #4. The driveways must be constructed so that (a) they will not erode or create any undue restriction or disruption of existing surface water drainage ways and (b) they 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.
11. Future structural development and associated clearing must be limited to the building envelopes as located on the approved subdivision plat.
12. 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 Subdivision Permit SP 4096 including Conditions of Approval, the final subdivision plat signed by the Director of the Commission, the Declaration of Restrictive Covenants for the residential lots, as described under Finding of Fact #14 of this permit, and the Declaration of Open Space Restrictions as described under Finding of Fact #15 of this permit. Upon such recording of the permit, plat, and declarations, the permittees 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 Subdivision Permit SP 4096 from the Commission.
13. 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.

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 2ND DAY OF JUNE, 2015.

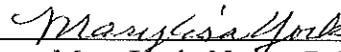
By: 
Nicholas D. Livesay, Executive Director

STATE OF MAINE
County of Kennebec, ss,

Date: 6/2/15

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,


Mary York, Notary Public
My Commission expires: _____

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



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 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 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.
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 Health and 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 Planning 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 Planning 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 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 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 the 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** issues.

Administrative Policy Revised 4/04