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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

NICHOLAS D. LIVESAY  
EXECUTIVE DIRECTOR

COMMISSION DECISION  
IN THE MATTER OF

Staff, Maine Land Use  
Planning Commission

Finding of Fact and Decision

**ZONING PETITION ZP 762**

The Maine Land Use Planning Commission (the LUPC or Commission), at a meeting of the Commission held June 8, 2016 at Brewer, Maine, after reviewing the petition and supporting documents submitted by the Land Use Planning Commission staff and Norvest LLC (the Petitioners) for Zoning Petition ZP 762, review agency and staff comments, and other related materials on file, and conducting a site visit, pursuant to 12 M.R.S. Sections 681 *et seq.* and the Commission's rules, finds the following facts:

1. Petitioner: Staff (Attn: Tim Beaucage)  
Maine Land Use Planning Commission  
22 State House Station  
Augusta, Maine 04333-0022
2. Co-Petitioner: Norvest LLC (Attn: Tom Scala)  
203 Stephens Road  
West Milford, NJ 07480
3. Completed Petition: May 4, 2016
4. Property Location: T 5 R 8 WELS, Penobscot County, Maine  
Maine Revenue Service Map FE025, Plan 01; Lot 3.11  
Penobscot County Registry of Deeds: Book 11765; Page 34  
  
T 4 R 8 WELS, Penobscot County, Maine  
Maine Revenue Service Map FE024, Plan 01; Lots 1.3 and 1.4  
Penobscot County Registry of Deeds: Book 11765; Page 34

5. Current Zoning: (P-RR) Recreation Protection Subdistrict  
(P-FP) Flood Prone Protection Subdistrict  
(P-SL1 & 2) Shoreland Protection Subdistrict  
(M-GN) General Management Subdistrict
6. Proposed Zoning: (D-PR) Planned Recreation Facility Development Subdistrict
7. Lot Size: 33 Acres
8. Area to be Rezoned: 32.8 Acres

**Project Summary:**

9. The Petitioners propose to rezone 32.8 acres of the 33 acre lot from General Management (M-GN) Subdistrict, Recreation Protection (P-RR) Subdistrict, Flood Prone Protection (P-FP) Subdistrict, and Shoreland Protection (P-SL1 & 2) Subdistrict to Planned Recreation Facility Development (D-PR) Subdistrict to rezone the three parcels associated with Bowlin Camps to a subdistrict that is more consistent with the historic and current use of the site and surrounding resources. In accordance with Section 10.21,H of the Commission's Land Use Districts and Standards, this proposal includes a preliminary development plan (Plan) that fully describes existing and proposed amenities, uses, and development.

The rezoning excludes the approximately 0.2 acres (75 foot diameter semi-circle) around the south side of the bridge crossing Bowlin Brook. This area will retain its current overlapping Recreation Protection (P-RR) Subdistrict, Flood Prone Protection (P-FP) Subdistrict, and Shoreland Protection (P-SL1 & 2) Subdistrict designations.

In accordance with Section 10.21,H,2, the Petitioners also request a reduction of the 400 foot property line setback for all uses. Specifically, the Petitioners request that the applicable setback requirements of Section 10.26, or as otherwise provided by Chapter 10 apply to all uses and structures, except the three ranges. The existing sporting clay range is located approximately 70 feet from the eastern property line; the existing pistol range is located approximately 15 feet from the eastern property line; and the existing rifle range is located approximately 150 feet from a property line/township boundary and approximately 130 feet from the eastern property line. As a result, the Petitioners are seeking a reduction in the required 400 foot property line setback for each of these ranges to their current setbacks.

In accordance with Section 10.21,H,8,d,(3), the Petitioners also request an extension of the deadline for filing a Site Law development application to the Maine Department of Environmental Protection, or a Final Development Plan to the Commission.

**Background:**

10. Bowlin Camps is a recreational lodging facility in that it primarily serves overnight guests and members of the public engaging in natural-resource based recreation activities. By virtue of three long-existing gun ranges, the existing facility is further distinguished as a Level E facility.
11. The owner is planning for modifications and minor expansions to the legally existing nonconforming facility. The underlying purpose of the Commission's rules regarding

nonconformities is to allow legally existing nonconformities to remain but to improve conformance over time. Further, the underlying purpose of the recreational lodging rule revisions is to improve conformance of these types of facilities and to provide appropriate opportunity for growth. Finally, all recreational lodging facilities now have the benefit of the new standards and opportunities; they each have the responsibility to adhere to those same rules as a matter of fairness. As a result and as a matter of policy, the Commission limits the expansion of such recreational lodging facilities that are nonconforming uses until they have been rezoned and again made a conforming use.

The D-PR is a customizable development zone that can be applied in a variety of different situations. It is intended to replace existing zoning with a plan for future development that is at least as protective of existing resources and represents a better management strategy for the site than is provided by pre-existing zoning. With the landowner's support, and because the facility is legally existing nonconforming, the Commission chose to initiate a zoning petition in order to make the facility conforming, and to prepare a model for future similar types of D-PR Subdistricts.

12. A detailed Administrative History is provided in the Plan.

**Commission Review Criteria:**

13. Pursuant to 12 M.R.S., Section 685-A(8-A) of the Commission's statutes, and Section 10.08,A of the Commission's Land Use Districts and Standards (the Standards), "A land use district boundary may not be adopted or amended unless there is substantial evidence that:

- A. The proposed land use district is consistent with the standards for district boundaries in effect at the time, the comprehensive land use plan and the purpose, intent and provisions of this chapter [Chapter 206-A]; and
- B. The proposed land use district has no undue adverse impact on existing uses or resources or a new district designation is more appropriate for the protection and management of existing uses and resources within the affected area."

Section 10.21,H of the Commission's Land Use Districts and Standards

14. Pursuant to Section 10.21,H,1 of the Commission's Land Use Districts and Standards, "The purpose of the D-PR subdistrict is to allow for well-planned recreation lodging and facility developments that otherwise do not meet the requirements of any of the subdistricts in Section 10.21."

15. Pursuant to Section 10.21,H,2 of the Commission's Land Use Districts and Standards, "No development, other than access roads, utility lines, trails, and waterfront structures shall be less than 400 feet from any property line. (This dimension may be increased or decreased, at the Commission's discretion, provided good cause can be shown.)"

16. Pursuant to Section 10.21,H,2 of the Commission's Land Use Districts and Standards, "Level E Recreational Lodging Facilities in existence as of (May 1, 2013) may also be a basis for rezoning to the D-PR subdistrict, provided that any proposed expansions or additions of the existing structures and uses can be shown to meet the criteria for approval."

17. Pursuant to Section 10.21,H,8,b of the Commission's Land Use Districts and Standards, the Commission shall ensure that the proposal:
- a. Conforms with 12 M.R.S.A. Chapter 206-A, including the objectives and policies of the Comprehensive Land Use Plan;
  - b. Incorporates, where the land proposed for inclusion in the D-PR subdistrict is in a protection subdistrict, a substantially equivalent level of environmental and resource protection as was afforded under such protection subdistrict;
  - c. Conserves productive forest and/or farm land;
  - d. Incorporates high quality site planning and design in accordance with accepted contemporary planning principles;
  - e. Envisions a project that does not substantially increase the public services required in the area; and
  - f. Provides for safe and efficient traffic circulation.
18. Pursuant to Section 10.21,H,8,d of the Commission's Land Use Districts and Standards,
- (1) "If, after weighing all the evidence, the Commission approves the Preliminary Development Plan application, the D-PR subdistrict shall be designated on the official district map and recorded in accordance with the provisions of Section 10.04. Simultaneously with such approval, a preliminary development permit will be issued. The preliminary development permit may contain such reasonable conditions as the Commission deems appropriate and will specify the conditions for approval of the Final Development Plan. The terms of the preliminary development permit will be in writing and shall be deemed to be incorporated in the D-PR subdistrict.
  - (3) Within a maximum of 18 months following a Commission decision to designate an area as a D-PR subdistrict, the applicant shall file with the Department of Environmental Protection a Site Law application for development, or to the Commission a Final Development Plan containing the information required in Section 10.21,H,9 below. At its discretion, and for good cause shown, the Commission may extend the deadline for filing of the Site Law development application to the Maine Department of Environmental Protection, or of the Final Development Plan to the Commission.

### **Comprehensive Land Use Plan**

19. Consistency with the Comprehensive Land Use Plan. According to 12 M.R.S., Section 685-A(8-A)(A) of the Commission's statute, a proposed rezoning must be consistent with the comprehensive land use plan.
- A. Chapter 1, Section 1.2,I,A of the Commission's 2010 *Comprehensive Land Use Plan* (the CLUP) states it is the Commission's goal to guide the location of new development in order to protect and conserve forest, recreational, plant or animal habitat and other natural resources. Further, it is the Commission's policy in communities or areas without

prospective development zones to encourage orderly growth within and proximate to existing, compatibly developed areas (the so-called adjacency principle) – i.e., existing development of similar type, use, occupancy, scale and intensity to that being proposed. As stated under this particular policy, “the Commission has generally interpreted it to mean that most rezoning for development should be no more than a mile by road from existing compatible development. In addition, the following CLUP goals and policies are particularly relevant.

- 1) Policy I,A,7 states: “In areas that are not appropriate as new development centers, allow for (a) planned developments which depend on a particular natural feature, subject to site plan review, and (b) other development, subject to concept plan review.”
  - 2) Goal I,B,4 states: “Encourage economic development that is connected to local economies, utilizes services and infrastructure efficiently, is compatible with natural resources and surrounding uses, particularly natural resource-based uses, and does not diminish the jurisdiction’s principal values.”
  - 3) Policy II,I,3 states: “Accommodate a range of recreational uses and facilities in appropriate locations, based on the level of use, size, scale and compatibility with existing recreational and non-recreational uses. Specifically:
    - a. Direct intensive recreational uses and facilities to areas most appropriate for growth, and near existing services and infrastructure.
    - b. Accommodate less intensive, nonexclusive recreational uses and facilities in other appropriate locations where such uses and facilities will not adversely affect existing uses and resources.
    - c. In more remote locations, accommodate low-impact, small-scale facilities that are most compatible with primitive recreational uses.”
- B. Policy I,C,5 states, “Provide incentives for lot owners to bring nonconforming uses and structures into compliance or closer to conformance with the Commission’s regulations” and policy I,C,6 states, “Limit expansions of nonconforming uses and structures.” By addressing compatibility of the facility with the surrounding resources, the Plan appropriately reestablishes the facility as a conforming use while ensuring equivalent resource protections; and therefore, allowing limited additional development.

### **Existing Conditions and Project Information:**

20. Current Conditions. The lot is developed with assorted principal and accessory structures, and a suspension bridge crossing the East Branch of the Penobscot River, that either pre-dated the Commission or were permitted under Development Permit DP 3976 and related amendments. The area proposed for rezoning is largely wooded with assorted, irregular clearings. The topography of the lot rises from the river, with areas that are nearly level or gently rolling with small knolls. The lots on the east side of the river include approximately 1,043 feet of frontage on the East Branch of the Penobscot River, and 616 feet of frontage on Bowlin Brook. The lot on the west side of the river includes approximately 200 feet of frontage on the East Branch of the Penobscot River.

Due to topography, existing vegetation, and the placement of structures, the facility is largely screened from the river.

21. Site Location and Access.

- A. The facility is located on the border of T 4 R 8 WELS and T 5 R 8 WELS, Penobscot County, Maine.
- B. *Vehicle Access.* Access to the site is provided by an existing right-of-way, and private way known as Bowlin Pond Road which is approximately 16 feet wide by 8 miles long. Bowlin Pond Road provides access between a public road (Grand Lake Mattagamom Road) and the site.

22. Soil Suitability and Mapping.

- A. Soil map unit data obtained from the U.S. Department of Agriculture's Natural Resource Conservation Service's Soils Survey Geographical database for Penobscot, County, Maine identified seven soil types at the site: (CcD) Colton cobbly sandy loam, dark materials, 15 to 25 percent slopes; (CnB) Colton gravelly sandy loam, dark materials, 2 to 8 percent slopes; (DyB) Dixmont very stony silt loam, 2 to 8 percent slopes; (Mn) Mixed alluvial land; (PgC) Plaisted gravelly loam, 8 to 15 percent slopes (PrC) Plaisted very stony loam, 5 to 15 percent slopes; (PrE) Plaisted very stony loam, 15 to 45 percent slopes; (RmD) Rockland, thorndike material, strongly sloping; and (SeA) Stetson fine sandy loam, 0 to 2 percent slopes.

However, proposed development would not be located within the CcD, DyB, Mn, PgC, or RmD soil types. Otherwise, the State Soil Scientist observed soil auger borings at areas proposed for structural development. All sites and soils were found to be suitable for the development proposed.

- B. Portions of the site were mapped as Mixed Alluvial Land (Mn) by the Natural Resources Conservation Service (NRCS) through general soils mapping. The State Soil Scientist observed a number of soil auger borings in the area, and used the borings and the terrain to identify a boundary of flood prone areas that is more precise than the NRCS data or the Commission's prior mapping.

23. Wastewater Disposal. The Facility is served by several subsurface wastewater disposal systems.

24. Streams and Wetlands.

- A. Two streams were identified in the development's vicinity during on-site review. The East Branch of the Penobscot River bisects the site and is zoned as P-SL1 Subdistrict, and Bowlin Brook borders the site to the north and is zoned as P-SL2 Subdistrict.

On July 6, 1982, the East Branch of the Penobscot River was designated as one of numerous river stretches meriting special protections. This designation responded to the unique recreational opportunities and the important salmon spawning habitat provided by the river.

- B. There are no wetlands delineated on the site.

25. Land Division History. The Petitioners submitted a 20-year land division history and indicated that no non-exempt divisions have occurred in the past 20 years.
26. Existing Development in the Area. Commercial forest management operations represent the primary use on the surrounding landscape. Other than specific features discussed below, recreation uses are somewhat dispersed, but include an assortment of trails (snowmobile (ITS85), jeep, International Appalachian Trail) adjacent to or traversing the site. The International Appalachian Trail, west of the river, includes a number of campsites located to be convenient to long-distance hikers that frequent the trail.
27. Notice of Filing. Notice of the proposed zoning petition was properly made to appropriate parties and the public as required under Chapter 4 of the Commission's rules. No comments or requests for a public hearing were received by the public regarding the petition.

### **Analysis and Discussion**

#### 28. Anticipated Impacts on Existing Uses and Resources.

- A. *Traffic*. The site is accessed over an eight mile dead end dirt road. Due to this type of access, size and capacity of the facility, and geographic location of the site in an area distant from sizable population centers, the facility is not expected to result in an unacceptable increase in the amount or type of traffic. As new elements of the facility go through the permitting process, traffic impacts can be evaluated based on the specific proposal.
- B. *Noise*. The facility includes separate shooting ranges for pistols, rifles, and sport clays, all of which produce routine noise and odor as described in Chapter 10, Section 10.02,172. However, each range is currently located outside the P-RR subdistrict. In-fact, the ranges are located as far from the river resource as possible on the site while maintaining appropriate setback from property lines. The Plan limits the location of these elements to only those portions of the property that are greater than 500 feet from the river, creating greater separation between the ranges and other active uses, structural development, and the recreation resource.

The purpose of rezoning the facility as a D-PR is to make it a conforming Level E recreational lodging facility, but also to improve resource protection, particularly regarding the significant recreational resource related to the existing P-RR.<sup>1</sup> The anticipated noise impacts are expected to be characteristic of the setting in the north Maine woods, where primitive recreation such as hunting is common; and are separated and buffered from the river and other existing primitive recreation resources to the extent possible. On balance, even though the existing ranges do not meet property line setbacks within the subdistrict, increased separation from high value recreational resources achieves the purpose of the subdistrict, and it is desirable to keep the ranges as far from the river as possible.

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<sup>1</sup> Other purposes of the D-PR are described in the Plan, Section B,1 "Purpose and Description", and include: "...accounting for existing uses and resources"; and "...encouraging recreational businesses appropriate to the resources and setting...".

- C. *Economic*. The Petitioners indicate that no negative impacts have been identified; however, if approved, this rezoning will enable this facility to expand and adjust services to maintain or modestly increase its historic client base.
- D. *Wildlife*. The Maine Department of Inland Fisheries and Wildlife (DIF&W) reviewed a draft preliminary development plan and provided feedback regarding the horse ford, particularly given that the East Branch of the Penobscot River is classified as AA water and a mapped Atlantic Salmon habitat. As a result, the Plan proposes to limit the fording of horses to only twice a year and only for up to 8 resident horses; any guest horses are not allowed to ford. Limitation of this fording activity is for the purpose of protecting water quality and therefore the spawning habitat.

The petition and resulting Plan have been provided to the DIF&W and the U.S. Fish and Wildlife Service, but no new comments have been provided to the LUPC by either agency.

E. *Historic and Unusual Natural Areas*.

- 1) The Maine Historic Preservation Commission reviewed the proposal and commented that that they do not have any concerns regarding archaeological or architectural resources regarding the proposal.
  - 2) The Maine Natural Areas Program reviewed the proposal and searched the Natural Areas Program's Biological and Conservation Data System files for rare or unique botanical features in the vicinity of the proposed site and indicates that according to their current information there are no rare botanical features that would be disturbed within the project site.
- F. *Harmonious Fit*. The owner intends to continue operating the facility as a sporting camp characteristic of traditional facilities in the Maine woods, but with added flexibility to add new amenities over time to appropriately adjust to market demands.

While the Plan would allow dog-sled, foot, and bicycle races, all event aspects other than trails must be located in those portions of the site which are most appropriate and well suited to the concentrated use.

Due to the river and recreation resources, the Petitioners have proposed a specific requirement to demonstrate, at the permitting stage, that certain new development and clearings would not increase visual or noise impacts. In the event that there would be increased impacts, the petitioner would propose mitigation to on balance provide substantially equivalent or increased protection of existing resources. Otherwise, the uses contemplated by the Plan are consistent with the existing protection subdistricts, and therefore result in a harmonious fit.

- G. *Scenic Impacts*. Due to extensive existing vegetation, the topography, and the pattern of development at the site, the facility is largely screened from the surrounding landscape, including recreational enthusiasts on the East Branch of the Penobscot River.

Uses that produce routine noise (*i.e.*, the three gun ranges) have already been relocated to the extent possible away from, and out of sight of, the protected recreation resource. The Plan clearly restricts the location of these uses to this area (Area C1).

- H. *Impacts to Public and Community Services.* The Petitioners submitted notice to service providers, and no comments have been received. The Petitioners also state that there will be little or no impact to such services because the rezoning largely responds to an existing facility, and the expansions contemplated by the Plan are modest and consistent with existing development.
- I. *Soils and Flood Prone Areas.* The State Soil Scientist conducted a site investigation which included a number of soil auger borings, and determined an appropriate revision to the flood plain based on observed alluvial soils. Soil auger borings were also observed at the site of each future development location. The proposal includes a more accurate reflection of the flood plain than the existing zoning map or NRCS data.

Consequently the State Soil Scientist finds that the proposal has avoided the flood plain and, for the most part, soils are excellent for the intended purpose.

29. Consistency with the Comprehensive Land Use Plan.

- A. The Petitioners note that with regard to adjacency, the site is separated from existing development patterns, but represents a well-planned recreational lodging and facility development which otherwise does not meet the requirements of any subdistricts in Section 10.21.
- B. The Petitioners confirm that the facility predates both the 1982 Maine Rivers Policy that identified the East Branch of the Penobscot as a river meriting special protection, and the 1971 Commission inception. Further, all efforts have been taken in the past and as proposed by the Plan, to fit the development harmoniously into the natural and recreation environment.
- C. Generally, the Petitioners note in various sections of the application materials that there will not be significant impacts on natural resources in the area.

30. Substantially Equivalent Protections.

- A. The proposed Plan designates each portion of the site as one of four different plan areas each correlating to existing protection subdistrict designations. Specifically, Area A represents overlapping P-FP, P-RR, and P-SL Subdistricts; Area B represents overlapping P-RR and P-SL1 Subdistricts; Areas C and C1 include those portions of the site currently zoned as P-SL2 or M-GN Subdistricts.
- B. While the site currently contains three separate shooting ranges, the Commission's policies regarding ranges has been unclear, particularly at commercial sporting camps. The 2013 revisions to the Commission's rules regarding recreational lodging facilities includes ranges as an element in categorizing and therefore permitting the development or modification of facilities. Since then, the owner has relocated the ranges at the rear of the site, most

separated, screened, and oriented away from the protected recreation and river resources. The Plan restricts future expansions or relocations of these ranges.

- C. Currently, the facility is only marginally visible from the river, thus minimizing its current potential for impacts upon the recreation resource.

Section II,F of the Plan requires either a specific demonstration or mitigation prior to the authorization of new or expanded structural development, uses, and additional vegetative clearing within those areas of the property currently zoned as P-RR. Specifically, the development proposal must demonstrate that the overall visual and noise impact of the facility, upon the river and its recreation users, will not increase as a result of the new or expanded structure(s), clearings, or use(s); or propose a mitigation plan for visual impacts that will provide substantially equivalent or increased protection of existing conditions.

- D. The horse ford is reported to have existed since the 1800s but no documentation has substantiated this point. While neither the P-RR or P-SL Subdistricts list a ford as an allowed use, the activity likely is consistent with the “Other structures, uses or services that are essential for the exercise of uses listed in [these subdistricts]”, specifically “Primitive Recreation.” However, the Plan limits the fording of horses to “Fording of up to eight horses twice annually and only by resident horses” in order to significantly limit potential impacts upon the river resource. Further, due to topography, the horse corral on the west side of the river must be located at the rear of the lot farthest from the river which provides visual and physical separation from the users of the river.
- E. While the Plan allows foot, bicycle, and dog-sled races, all event facilities and uses other than trails are required to be located in plan areas suited to the increased use; these facilities and uses are not allowed in areas currently zoned as protection subdistricts.
- F. Otherwise, the Plan allows uses within each area that match to uses allowed within the correlating existing subdistrict.

31. The facts are otherwise as represented in Zoning Petition ZP 762 and supporting documents.

**Based upon the above Findings and the following analysis, the Commission Concludes:**

1. Consistency with the Standards for District Boundaries. Pursuant to 12 M.R.S. § 685-A(8-A)(A) of the Commission’s statute, the rezoning is consistent with the Standards for district boundaries in effect at the time. Specifically, the rezoning is consistent with the D-PR subdistrict because it is a well-planned recreation lodging facility that otherwise does not meet the requirements of any of the subdistricts in Section 10.21, in-part because it is separated from existing development patterns, and the site constitutes a Level E Recreational Lodging Facilities in existence as of May 1, 2013.
2. Consistency with the Comprehensive Land Use Plan. Pursuant to 12 M.R.S., Section 685-A(8-A)(A) of the Commission’s statute, the proposed rezoning is consistent with the comprehensive land use plan. Specifically, the rezoning: i) employs creative alternatives to traditional regulatory approaches; ii) brings a nonconforming use closer to conformance with the Commission’s regulations; iii) protects and conserves forest, recreational, plant or animal

habitat and other natural resources; and iv) represents economic development that is connected to local economies, utilizes services and infrastructure efficiently, is compatible with natural resources and surrounding uses, particularly natural resource-based uses, and does not diminish the jurisdiction's principal values.

3. Consistency with Chapter 206-A. According to 12 M.R.S., Section 685-A(8-A)(A) of the Commission's statute, a land use district boundary may not be adopted or amended unless the proposed land use district is consistent with the purpose, intent and provisions of Chapter 206.

The Commission evaluated the petition with respect to consistency with Chapter 206-A and principles of sound planning, zoning, and development. Having considered the location of the Facility, the adjacency principle, the surrounding uses and resources, the type and intensity of the development the rezoning is intended to foster, the review of agency comments, and the record as a whole, the Commission concludes approval of the petition would be an act of sound land use planning. Therefore, the Commission concludes the proposed rezoning is consistent with the purpose, intent and provisions of Chapter 206-A, which cumulatively are designed to promote sound planning.

4. Impacts on Existing Uses and Resources. According to 12 M.R.S., Section 685-A(8-A)(B) of the Commission's statute, the proposed land use district can have no undue adverse impact on existing uses or resources.

- A. An overview of the Facility's estimated traffic, anticipated noise production and corresponding sound mitigation efforts, distance from other uses, screening, character and design of the facility, and measures to improve conformance, suggests that any impacts that the Facility may produce, particularly noise, or impacts to recreation or water quality, would effectively be avoided or mitigated by Plan requirements, or otherwise addressed during the permitting process.

Additionally, the Commission recognizes that if the property is rezoned as proposed, unlike other development subdistricts, a different commercial or industrial use could not be located at the site in the future without a modification to the preliminary development plan or a rezoning to another subdistrict.

Therefore, the Commission concludes that the proposed rezoning would have no undue adverse impact on uses or resources.

- B. Review by resource agencies confirm that either that resources of concern are not present at the site or that the project will not have an undue adverse impact on wildlife, fisheries, unusual natural areas, or archaeological or architectural resources.
- C. The State Soil Scientist has evaluated on-site soil conditions and indicates that the proposal is appropriate.
- D. Even though the existing ranges do not meet property line setbacks within the subdistrict, adjacent uses do not include development; on balance with all other aspects of the Plan, a reduction in setbacks for existing elements is appropriate.

5. Substantially Equivalent Protections.

Pursuant to the Commission's Land Use Districts and Standards, Section 10.21,H,8,b, the proposal "incorporates a substantially equivalent level of environmental and resource protection as was afforded under such protection subdistrict."

- A. Approximately 8.6 acres of overlapping Recreation Protection (P-RR) and Shoreland Protection (P-SL) Subdistricts along the East Branch of the Penobscot River would be rezoned to D-PR Subdistrict. While limited development and uses are proposed for this area, the Plan requires analysis or mitigation for any additional clearing or development within this area; the Plan refines the recreation resource protections provided by the P-RR Subdistrict into an appropriate assessment of applicable factors that will ensure continued compatibility between the facility and the recreation resource. Otherwise, uses allowed by standard and by permit are consistent with the P-RR Subdistrict.
- B. Approximately 3 acres of Flood Prone Area Protection (P-FP) Subdistrict along the site would be rezoned to D-PR Subdistrict, but as proposed by the Plan, would continue to be regulated consistent with the P-FP Subdistrict. In response to on-site analysis, the Plan identifies a more accurate boundary of the flood prone area, which results in an accurate representation of the areas prone to flooding which is a critical foundation to effective resource management and protection. Otherwise, uses allowed by standard and by permit are consistent with the P-FP Subdistrict.
- C. Approximately 21 acres of General Management (M-GN) Subdistrict would be rezoned to (D-PR) Subdistrict. The uses proposed for this area have been evaluated for impacts, and are compatible with the area; this area is suitable for the proposed development.
- D. Uses prone to produce routine noise (*i.e.*, the three gun ranges) have already been relocated to be most separated and screened from the protected recreation and river resources. The Plan clearly restricts these uses to this area (Area C1).

6. Final Conclusions. In summary, and for reasons explained above, the Commission concludes that the propose rezoning of 32.8 acres of the property:

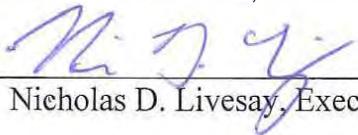
- A. Is consistent with the standards for district boundaries in effect at the time;
- B. Is consistent with the Commission's 2010 Comprehensive Land Use Plan;
- C. Is consistent with the purpose, intent and provision of 12 M.R.S., Chapter 206-A;
- D. Will not have an undue adverse impact on existing uses or resources; and
- E. Provides substantially equivalent level of protections.

**Therefore, the Commission approves the petition of the Staff of the Maine Land Use Planning Commission and Norvest LLC to rezone 32.8 acres from General Management (M-GN) Subdistrict, Recreation Protection (P-RR) Subdistrict, Flood Prone Protection (P-FP) Subdistrict, and Shoreland Protection (P-SL1 & 2) Subdistrict to Planned Recreation Facility Development (D-PR) Subdistrict, and the related Preliminary Development Plan, with the following conditions:**

1. All uses allowed by permit within this Preliminary Development Plan require approval under a Final Development Plan, in accordance with Section 10.21,H,9 of the Commission's Land Use Districts and Standards. Only those uses and structures approved in the Final Development Plan may be allowed in the D-PR Subdistrict, except that:
  - A. All principal and accessory structures, activities, services, and uses proposed by the Plan are granted preliminary plan approval at their present locations.
  - B. All uses allowed without a permit or by standard may be conducted without filing a final development plan.
  - C. Unless otherwise granted permit approval, all activities and uses proposed in the Final Development Plan must meet the standards of the Preliminary Development Plan and of Sections 10.25 through 10.27 of the Commission's Land Use Districts and Standards (as may be amended from time to time).
2. The permittees shall submit, with each Final Development Plan, all other site plans and information required for Commission review and approval of a Final Development Plan, pursuant to Section 10.21,H,9,a,(2) of the Commission's Land Use Districts and Standards, or as otherwise required by the conditions of Zoning Petition ZP 762.
3. This zoning petition and Preliminary Development Plan are approved only upon the above stated conditions and findings of fact, and remains valid only if the owners comply with all of these conditions and as otherwise provided in the Preliminary Development Plan.

In accordance with 5 M.R.S., Section 11002 and Maine Rules of Civil Procedure 80C, this decision by the Commission may be appealed to Superior Court within 30 days after receipt of notice of the decision by a party to this proceeding, or within 40 days from the date of the decision by any other aggrieved person. In addition, where this decision has been made without a public hearing, any aggrieved person may request a hearing by filing a request in writing with the Commission within 30 days of the date of the decision.

DONE AND DATED AT BREWER, MAINE, THIS 8<sup>th</sup> DAY OF JUNE, 2016.

By:   
\_\_\_\_\_  
Nicholas D. Livesay, Executive Director

This change in Subdistrict designation is effective on June 23, 2016.

# Land Use Guidance Map

T4 R8 WELS

Penobscot County



Maine Department of Agriculture, Conservation and Forestry  
 LAND USE PLANNING COMMISSION  
 Augusta, Maine 04333-0022  
 (207) 287-2631  
 TTY (888) 577-6690  
<http://www.maine.gov/doc/lupc>

## Legend

### Development Subdistricts

### Protection Subdistricts

- |  |              |                        |
|--|--------------|------------------------|
|  | P-FP         | Flood Prone            |
|  | P-GP         | Great Pond             |
|  | P-RR         | Recreation - Water     |
|  | P-SG         | Soils and Geology      |
|  | P-SL1 250 ft | Shoreland - Major      |
|  | P-SL2 75 ft  | Shoreland - Minor      |
|  | P-WL1        | Wetlands - Significant |
|  | P-WL2        | Wetlands - Scrub-shrub |
|  | P-WL3        | Wetlands - Forested    |

### Management Subdistricts

- |  |      |         |
|--|------|---------|
|  | M-GN | General |
|--|------|---------|

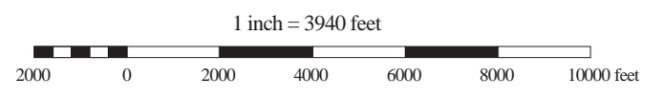
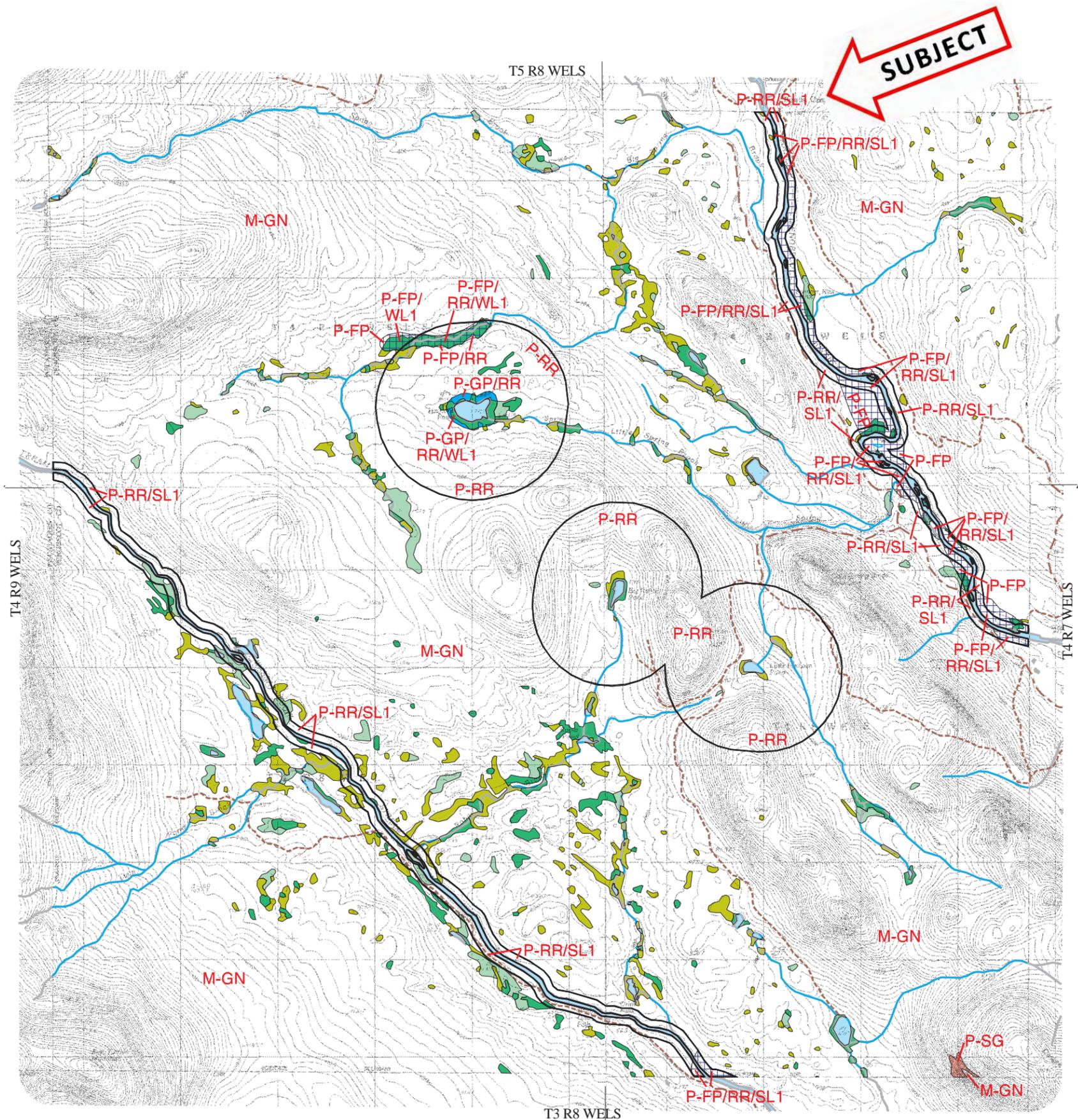
- |  |                 |
|--|-----------------|
|  | Water body      |
|  | Improved road   |
|  | Unimproved road |
|  | Trail           |

- Areas designated as two or more protection zones are annotated with each zone, e.g. P-FP/FW/WL1, P-FP/SL1, etc., where necessary
- or Subdistrict boundary
- Zoning amendment

Topographic base, roads and trails from U.S. Geological Survey 7.5-minute map series

For the purpose of simplicity, this map does not show the Wetland Protection Subdistricts for areas identified pursuant to Section 10.16.K.2 such as beds of rivers, lakes, and other water bodies, and freshwater wetlands within 25 feet of stream channels, which are nevertheless within P-WL Subdistricts.

This map is a reduced version of the official Land Use Guidance Map. It is not certified to be a true and correct copy. Full size official LUPC Land Use Guidance Maps are available from the Commission at its Augusta office. Potential applicants unsure of their zoning should request a full size map from the Augusta office.



# Land Use Guidance Map

## T5 R8 WELS

Penobscot County



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### Legend

#### Development Subdistricts

#### Protection Subdistricts

- |  |              |                        |
|--|--------------|------------------------|
|  | P-FP         | Flood Prone            |
|  | P-FW         | Fish and Wildlife      |
|  | P-GP         | Great Pond             |
|  | P-RR         | Recreation - Water     |
|  | P-RP         | Resource Plan          |
|  | P-SG         | Soils and Geology      |
|  | P-SL1 250 ft | Shoreland - Major      |
|  | P-SL2 75 ft  | Shoreland - Minor      |
|  | P-WL1        | Wetlands - Significant |
|  | P-WL2        | Wetlands - Scrub-shrub |
|  | P-WL3        | Wetlands - Forested    |

#### Management Subdistricts

- M-GN General

- Water body
- Improved road
- Unimproved road
- Trail

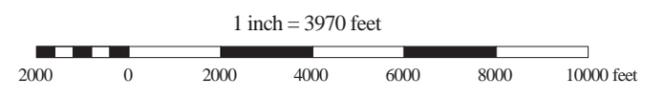
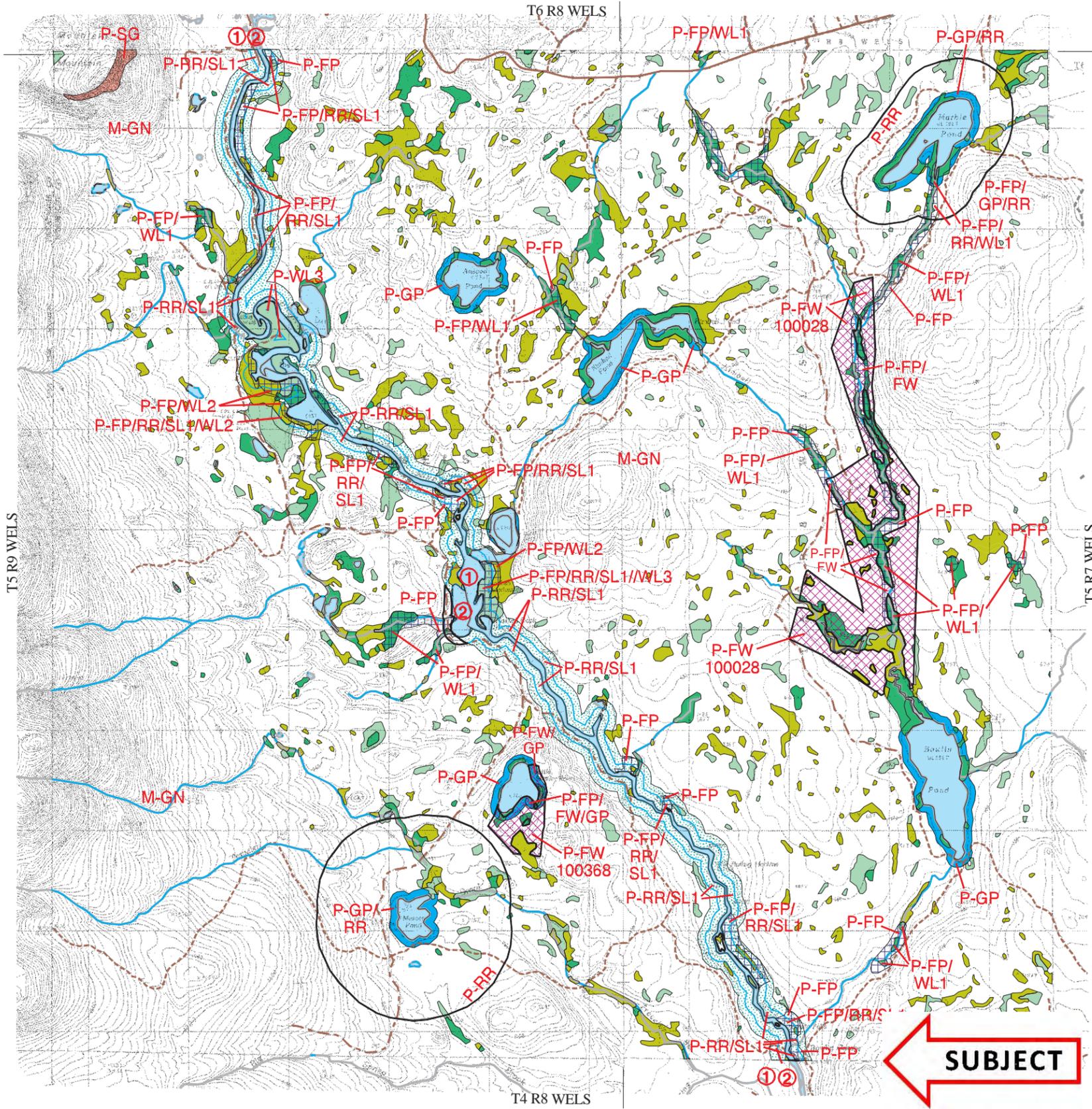
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Land Use Guidance Map last amended on June 16, 2012





# Zoning Petition ZP 762

Planned Recreation Facility Development (D-PR) Subdistrict

T 5 R 8 WELS and T 4 R 8 WELS

 Area to be Rezoned



T 5 R 8 WELS

T 4 R 8 WELS