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STATE OF MAINE
DEPARTMENT OF
INLAND FISHERIES & WILDLIFE
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JUDITH CAMUSO
COMMISSIONER

July 7, 2022

Ms. Corinne Michaud-LeBlanc
ME Department of Agriculture, Conservation & Forestry
Land Use Planning Commission
191 Main Street
East Millinocket, Maine 04430

RE: Penobscot River Lower West Branch Resource Protection Plan (ZP 671 / PRP 011) Revision

Dear Corinne,

At the request of the Maine LUPC, received on June 21, 2022, MDIFW has reviewed the current proposal for zoning following elimination of the Penobscot River Lower West Branch Resource Protection Plan and associated Resource Protection subdistrict (ZP 671 / PRP 011). The "Lower West Branch Plan" (12/26/02-12/26/22) established a 500-foot wide buffer along each side of the Penobscot River as it traversed across 6 townships (T3 R11, Rainbow Twp., T2 R10, T2 R9, T1 R10, T1 R9), from ± 400 feet below Ripogenus Dam to where the West Branch enters Ambajejus Lake. Reportedly, the entirety of the Plan area is covered by a permanent conservation easement managed by the Maine Bureau of Parks and Lands (BPL). According to the Resource Protection Plan and Recreation Management Plan for the Lower West Branch of the Penobscot River (12/26/02), the landowners "*permanently gave up rights to develop the land within 500 feet of the Penobscot River for commercial or residential structures, except those related to the generation of hydroelectric power; timber harvesting; mineral extraction; and the development, in accordance with LURC requirements, of camps and campgrounds on existing lease lots within the easement areas. New roads within the corridor are limited by the conservation easements to those which provide access to roads existing within the corridor; those used in connection with hydropower projects; and realignments and reconstructions of roads and bridges*." It is our understanding that the expiration of the Lower West Branch Plan will not affect permanent conservation measures or uses that currently exist. With elimination of the Lower West Branch Plan, LUPC proposes to establish/reestablish the following zoning areas within the 1,000-foot wide corridor that surrounds the river:

1. Recreation Protection (P-RR) - from 0-250 feet on each side of the river, with limited exceptions for previous development zoning, existing recreational and residential uses, etc.
2. General Management (M-GN) - from 250-500 feet on each side of the river.
3. General Development (D-GN) – approximately 1.4 acres for the Abol Bridge Campground.
4. Recreation Facility Development (D-RF) – for 3 locations of existing recreational development.
5. Residential Development (D-RS) – for 1 location in T2 R10 for an existing cluster of 5 camps.
6. Protection subdistricts – existing resource protection zoning will remain or be applied where appropriate, including for Accessible Lake Protection (P-AL), Wetland Protection (P-WL), Shoreland Protection (P-SL2), and Fish and Wildlife Protection (P-FW) subdistricts.

MDIFW encourages practices that avoid, minimize, and mitigate adverse impacts to fisheries, wildlife, and critical habitats to the greatest extent practicable. Accordingly, MDIFW provides recommendations specific to known species and habitat occurrences, as well as general measures designed to provide appropriate

protections for natural resources. For this review, we have consulted current MDIFW data sources and maps for known locations of State Endangered, Threatened, and Special Concern species and habitats; designated Essential and Significant Wildlife Habitats; critical fisheries and aquatic resources; and other Protected Natural Resources concerns, within the vicinity of the proposed action.

1. Endangered, Threatened, and Special Concern (ETSC) Species and Habitats.
The Maine Endangered Species Act (MESA; 12 M.R.S, §12801 et. seq.) identifies all inland fish and wildlife species that are listed as Endangered or Threatened in Maine and provides the Commissioner of MDIFW with the authority to implement MESA. Pursuant to MESA, listed species are afforded protection against activities that may cause "take" (kill or cause death), "harassment" (create injury or significantly disrupt normal behavior patterns), and other adverse actions. Rare or "Special Concern" species are defined by MDIFW as species that do not meet the criteria as Endangered or Threatened, but are particularly vulnerable and could easily become Endangered, Threatened, or Extirpated due to restricted distribution, low or declining numbers, specialized habitat needs or limits, or other factors.

Bats – Of the eight species of bats that occur in Maine, the three *Myotis* species are protected under MESA. The three *Myotis* species include little brown bat (State Endangered), northern long-eared bat (State Endangered), and eastern small-footed bat (State Threatened). The five remaining bat species are listed as Special Concern: big brown bat, red bat, hoary bat, silver-haired bat, and tri-colored bat. While a comprehensive statewide inventory for bats has not been completed, based on historical evidence, it is likely that several of these species occur within the project area during the fall/spring migration, the summer breeding season, and/or for overwintering. However, our Agency does not anticipate significant impacts to any of the bat species as a result of this rezoning proposal. For specific project requests, we recommend that the applicant contact the U.S. Fish and Wildlife Service--Maine Fish and Wildlife Complex (Wende Mahaney, Wende_Mahaney@fws.gov, 207-902-1569) for further guidance on their perspective, as the northern long-eared bat is also listed as a Threatened Species under the Federal Endangered Species Act.

Freshwater Mussels – The yellow lampmussel (State Threatened), tidewater mucket (State Threatened), and brook floater (State Threatened) have been documented within the search area. These rare animals have experienced declines throughout their ranges, with some populations vulnerable to local extirpation from low population densities, fragmented distributions, and limited evidence of recruitment. Development projects adjacent to waterbodies containing Threatened mussels can result in detrimental impacts to the species. Freshwater mussels are especially vulnerable to impacts from pollution, sedimentation, dams, and surrounding land use practices that degrade or alter aquatic habitat. Appropriate riparian buffers are essential to maintaining stream integrity, cool water temperatures, and high water quality, which are all critical to the conservation of these species. MDIFW recommends that contiguous forested riparian buffers remain intact for a distance of at least 250-feet from each bank for waterbodies where one or more state-listed mussel species have been documented. For tributaries to these waters, MDIFW recommends maintaining 100-foot undisturbed vegetated buffers from the upland edge of all intermittent and perennial streams and any contiguous wetlands, consistent with Riparian Buffers described below.

Dragonflies - The pygmy snaketail dragonfly (Special Concern) has been documented in the Lower West Branch. The pygmy snaketail is one of the state's rarest dragonflies due to low population numbers and sensitivity to aquatic and riparian habitat degradation. MDIFW recommends a 250-foot wide forested riparian management zone for the protection of the riparian corridor. Where possible, for any sections where clearing/cutting is already present within this management zone, we recommend that no further clearing/cutting occurs and that the riparian corridor be reestablished in order to enhance shoreline habitat for this species.

Mayflies - The Roaring Brook mayfly (State Threatened) has been documented in tributaries to the Lower West Branch. Roaring Brook mayflies are restricted to clean, cold, high elevation headwater streams with coarse substrates (rocks, cobble, boulders) above 1,000 feet elevation (including unmapped streams) and bordered by relatively undisturbed mixed or hardwood forest. The currently documented range for the species is confined to the northern Appalachian Mountain Range, stretching from Mt. Katahdin to Maine's western border with New Hampshire and Quebec. Any instream work within or adjacent to suitable, high elevation perennial or intermittent streams in this area has the potential to impact this species. MDIFW recommends that contiguous forested riparian buffers remain intact for a distance of at least 250-feet from each bank for streams where this species has been documented to occur. Please also refer to Recommended Management Guidelines for Land Use in or Adjacent to Roaring Brook Mayfly and Northern Spring Salamander Habitat.

2. Essential Habitats.
Essential Habitats are designated as such based on physical or biological features deemed essential to the conservation of Endangered or Threatened species. MDIFW has not mapped any Essential Habitats (12 M.R.S, §12804.2) that would be directly affected by the proposed project. Essential Habitats are currently only designated for three Endangered coastal breeding bird species.

3. Significant Wildlife Habitats.
Significant Wildlife Habitats (SWHs) are defined and protected pursuant to the Natural Resources Protection Act (38 M.R.S., §480-B.10) and SWH Rules (06-096 CMR 335; 09-137 CMR 10). Subject to the requirements of the Rules, SWHs include habitats for state and federal endangered and threatened animal species; high and moderate value deer wintering areas and travel corridors; seabird nesting islands; critical Atlantic salmon spawning and nursery areas; significant vernal pool habitat; high and moderate value waterfowl and wading bird habitat; and shorebird nesting, feeding, and staging areas.

Deer wintering areas (DWAs) - DWAs contain habitat cover components that provide conditions for protection from deep snow and cold wind, which is important for overwinter survival of white-tailed deer. DWA Travel Corridors contain similar habitat qualities and provide the means for DWA ingress and egress. The need and value of DWAs vary across the state according to factors such as the population of deer in relation to species management objectives, habitat quality and quantity, and the severity of winter conditions. MDIFW generally recommends that development projects be designed to avoid impacts to the continued availability of coniferous winter shelter within important DWAs and Travel Corridors. Any removal of vegetation should be conducted in such a way that improves the quality and vigor of the coniferous species providing this winter shelter. Areas of conforming softwood cover are important to deer as critical wintering habitat. As indicated on the attached habitat map, several P-FW zoned areas are located within the project search area. MDIFW Regional Wildlife staff note that, under current conditions, wintering deer in this area primarily utilize the riparian area in the vicinity of the river corridor.

Inland Waterfowl Wading Bird Habitat (IWWH) – IWWHs provide important breeding, feeding, migration, staging, and wintering habitat for waterfowl and wading bird species. IWWHs include both the wetland complex and a 250-foot upland zone. Both High and Moderate valued IWWHs are located within the project search area. MDIFW generally recommends that these resources be avoided entirely, including no clearing within the 250-foot upland zone extending from the wetland edge. As with other resources, we recommend that impacts be avoided and minimized to the extent practicable and that remaining impacts be appropriately mitigated.

Significant Vernal Pools (SVPs) - Vernal pools are shallow depressions that usually contain water for only part of the year and typically dry out by mid to late summer. Despite their relatively short hydroperiod, vernal pools serve as unique breeding habitat for certain species of wildlife, including specialized amphibians and

invertebrates. The regulatory "significance" of vernal pools and their associated buffers (Critical Terrestrial Habitats or CTHs) is dependent upon several factors, including the use by state ETSC Species or the presence and productivity of certain pool-breeding amphibians. MDIFW typically recommends Best Management Practices for forestry (available from MDIFW or the Maine Forest Service) and minimum development impacts within the 250-foot wide Critical Terrestrial Habitat bordering an SVP, where possible. It should be noted, a comprehensive statewide inventory for SVPs has not been conducted. And, since vernal pools dry out on a seasonal basis, they can be missed during dry conditions. Therefore, for future proposed activities, we recommend that surveys for vernal pools be conducted by qualified wetland scientists prior to final project design to determine whether there are SVPs present in the project area.

4. Protected Natural Resources.

Protected Natural Resources (PNRs) are defined and protected by the Natural Resources Protection Act (38 M.R.S., §480-B.8). PNRs include coastal sand dune systems; coastal wetlands; significant wildlife habitats; fragile mountain areas; freshwater wetlands; great ponds; rivers, streams, and brooks. Some of these resources are specifically managed by MDIFW based on the presence of, and unique habitat value for, certain species of fish or wildlife. Valuable aquatic habitats and coldwater fisheries resources are plentiful in this area.

Riparian Buffers, Stream Crossings - MDIFW generally recommends maintaining 100-foot undisturbed vegetated buffers from the upland edge of all intermittent and perennial streams and any contiguous wetlands. Maintaining and enhancing buffers along these resources is critical to the protection of water temperatures, water quality, natural inputs of coarse woody debris, and various forms of aquatic life necessary to support fish and other aquatic species. Riparian buffers also provide critical habitat and important travel corridors for a variety of wildlife species. Project related alterations within the recommended buffer are considered as impacts to be avoided or minimized to the extent practicable and, if reasonable, appropriately mitigated. Stream crossings should be avoided, but if a stream crossing is necessary, or an existing crossing needs to be modified, it should be designed to provide for full aquatic passage. Small streams, including intermittent streams, can provide crucial rearing habitat, cold water for thermal refugia, and abundant food for juvenile salmonids on a seasonal basis. Undersized crossings may inhibit these functions and become a frequent maintenance problem that causes reoccurring damage to the resource. Generally, MDIFW recommends that all new, modified, and replacement stream crossings be sized to span at least 1.2 times the bankfull width of the stream. In addition, we generally recommend that stream crossings be open bottomed (i.e., natural bottom), although embedded structures which are backfilled with representative streambed material have been shown to be effective in providing habitat connectivity for fish and other aquatic organisms. Construction Best Management Practices should be closely followed to avoid erosion, sedimentation, alteration of stream flow, and other impacts as eroding soils can travel significant distances as well as transport other pollutants resulting in direct impacts to fish, other aquatic life, and their habitats. In addition, we recommend that any necessary instream work occur between July 15 and October 1.

Freshwater Wetlands - Freshwater wetlands are valuable natural resources that serve important functions to help preserve, protect, and enhance adjacent aquatic and terrestrial habitats, as well as provide important habitats themselves for a high diversity of fish and wildlife species. Pursuant to the Natural Resource Protection Act's Wetlands and Waterbodies Protection Rules (06-096 CMR Ch. 310), certain wetlands are designated as Wetlands of Special Significance in part or entirety, and afforded additional protections based on their characteristics. MDIFW recommends that wetland impacts be avoided or minimized to the maximum extent practicable, and remaining reasonable impacts be appropriately mitigated.

It should be noted that there is no comprehensive statewide inventory that includes all species and habitats of concern. Though many important resources are included on data layers and resource maps, the completeness of such varies by habitat type, location, and previous survey efforts. Thus, such tools should be considered preliminary information until otherwise noted by the appropriate resource agency. Resource surveys, project siting, facility design/layout, and operational practices are all important aspects in this process. MDIFW provides recommendations based on known, reported, and potential resource information but, it is the applicant's ultimate responsibility to ensure that its activities do not result in detrimental impacts to resources.

MDIFW notes that, to the extent discussed above, the recommended vegetative buffers and forest management zones for the species and habitats described largely fall within the 1,000-foot wide corridor (500 feet along each side) surrounding the Lower West Branch of the Penobscot River that equates to the permanent conservation easement managed by the Maine BPL. Upon initial review of the information provided and the known and mapped resources in the vicinity, it appears that the zoning proposed to be established/reestablished along this corridor and related regulatory processes for any future development activities, are likely to provide for adequate and appropriate protections for these resources.

This consultation review has been conducted specifically for known MDIFW jurisdictional features and should not be interpreted as a comprehensive review for the presence of other regulated features that may occur in this area. Prior to the start of any future site disturbance, we recommend additional consultation with the municipality, other state resource agencies including the Maine Natural Areas Program, and the state environmental regulatory authority, in order to avoid unintended protected resource disturbance. This review provided a general analysis of known, mapped resources in the area as well as information on select common habitats for consideration in the effort to establish/reestablish appropriate zoning along the Lower West Branch. In the future, if development activities are proposed in the vicinity, we recommend that more in-depth resource reviews be conducted. At which time, species and habitat-specific recommendations may be provided.

If you have any questions or concerns related to any of this information, please feel free to contact me at robert.d.stratton@maine.gov or (207) 287-5659. Thank you very much.

Sincerely,

Bob Stratton, IFW

Robert D. Stratton
Environmental Program Manager
Maine Department of Inland Fisheries & Wildlife

cc: Doug Kane, Scott McLellan, Mark Caron, Connor White, Tim Obrey, Kevin Dunham, John Perry (MDIFW)

encl: MDIFW Habitat Resource Map