STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
LAND USE PLANNING COMMISSION

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Certification

Department of Environmental Protection
and
Irving Forest Products, Inc.
Attn: Toby Pineo
1798 St. John Rd.
St. John Plt., ME 04743

SITE LAW CERTIFICATION SLC-4

Findings of Fact and Determination

The Maine Land Use Planning Commission, through its staff, after reviewing the certification request and supporting documents submitted by Irving Forest Products, Inc for Site Law Certification SLC-4 and other related materials on file, pursuant to the Commission's Land Use Standards, finds the following facts:

1. *Person Requesting Certification*: Irving Forest Products, Inc.
   Attn: Toby Pineo
   1798 St John Rd
   St. John Plt., Maine 04743

2. *Accepted as Complete for Processing*: August 29, 2013

3. *Location of Proposal*: Nashville Plt., Aroostook County
   Taxation Lots #12 and #14 on Plan 03

4. *Current Zoning*: (D-CI) Commercial Industrial Development Subdistrict

INTRODUCTION

5. Title 12, section 685-B(1-A)(B-1) establishes that except for projects that are located in a planned subdistrict that was approved or accepted by the Commission for processing prior to September 1, 2012, a permit from the Commission is not required for a development of state or regional significance that may substantially affect the environment as defined in Title 38, section 482. Development of state or regional significance that may substantially affect the environment is reviewed under Title 38, section 489-A-1 and subject to the Site Location of Development Law ("Site Law") administered by the Department of

Environmental Protection ("DEP"). The Commission must certify that development that is part of a "Site Law" project is an allowed use within the subdistrict or subdistricts in which it is proposed and that the development meets any of the Commission's land use standards that would not be considered by DEP before DEP would issue any permit.

The following Findings, Conclusions and Conditions constitute the Commission's certification that Irving Forest Products, Inc.'s development, as proposed, is an allowed use within the subdistrict in which it would be located and meets the applicable Land Use Standards that would not be considered by DEP as part of any review under the Site Law.

ADMINISTRATIVE HISTORY

6. The Pinkham Mill (the "Mill") was originally built in 1964 to manufacture lumber products. Starting in 1973, the Commission issued a number of Development Permits for improvements and new development at the Mill. The Board and Department of Environmental Protection also issued a number of Orders approving a nearby woodwaste disposal facility, but not the Mill site itself.

7. In 1995, DEP issued Site Law Permit L-18337-26-A-N, after-the-fact, for approximately 110,000 square feet (ground area) of improvements to the Mill site since 1973.

8. Between September 1995 and March of 1999, the Commission authorized 7 additional permits amendments to Development Permit DP 618 for various improvements at the Mill facility.

9. In February of 1999, Amendment O to Development Permit DP 618 was issued to the Irving Forest Products, Inc. authorizing a transfer of ownership for permits associated with the expansion and operation of the sawmill complex (a.k.a. Pinkham Lumber Mill) from Great Northern Paper, Inc.

10. In March of 1999, the Department of Environmental Protection transferred all permits and licenses to Irving Forest Products, Inc.

11. Between March of 1999 and June of 2008, the Commission authorized 9 additional permits amendments to Development Permit DP 618 for various improvements at the Mill facility.

12. In 2009, the Irving Forest Products, Inc. discontinued the sawmill operations at the Mill facility but continue to have offices for land management on their ownership. In June of 2011, Amendment Y to Development Permit DP 618 was issued to the applicant authorizing removal of the existing office building at the east entrance to the facility and replacement of it with a new 16 foot by 73 foot office building.

PROPOSAL

13. *Project.* Irving Forest Products, Inc proposes to reopen sawmill operations at the Mill (the "Project"). Specifically, the Project includes a proposal to make modifications and improvements to the existing saw mill building and convert it into a stud mill. The facility will be designed to employ approximately 30 people per shift with two shifts. In addition, the Project includes a proposal to install a 9,860 square foot boiler plant and an 8,866 square foot dry kiln structure with an attached 1,000 square foot mechanical building. The proposed Project will be located within the Commercial Industrial Development Subdistrict (D-CI). None of the proposed development will be located in a floodplain or flood prone area, as described in Section 10.23,C,2 of the Commission's Land Use Standards.

14. On August 16, 2013, Irving Forest Products, Inc. contacted the DEP requesting a determination be made as to whether a permit amendment would be required under the Site Law for their proposed Project. On

August 26, 2013, the DEP determined that because the Project received a permit under the Site Law (Permit #L-18337-26-A-N), the project will qualify for an exemption in the law which allows for expansions of up to 30,000 square feet in a calendar year and a total of 60,000 square feet. When and if those thresholds are exceeded, a permit amendment will be needed and at that time all development activity at the Mill since issuance of the original Site Law permit will be considered as part of an amendment process. In the interim, the Mill remains subject to compliance with the existing Site Law permit and, therefore, the Site Law. DEP noted it is important for Irving Forest Products, Inc. to design the Project in compliance with DEP standards. In its August 16, 2013 letter, DEP also noted that the Project, which modifies an existing development of state or regional significance that may substantially affect the environment, would require certification by the LUPC. As noted above, the LUPC's certification review consists of evaluating whether the Project is located in a subdistrict in which the proposed use is allowed and whether the Project complies with the Commission's land use standards that are not duplicative of the DEP's standards.

15. On August 29, 2013, Irving Forest Products, Inc. submitted a request to the LUPC for certification.

16. *Public Notice*. The Commission's current Chapter 4, *Rules of Practice* do not expressly address certification review by the Commission. Previously, the Commission issued amendments to Irving Product Inc.'s Development Permit for the type of development proposed as part of the Project. For development permits and development permit amendments, the Chapter 4 rules currently provide that if the Director deems an application to be of general public interest due to its nature, location, or size, public notice of the pending application shall be provided by regular mail to the individuals listed in the rule. Prior development at the Mill was not deemed to warrant public notice. The present certification review is most analogous to the prior permit amendments and applying the corresponding notice provisions as a guide, the Director deemed the present Project not to be of the nature, in the location, or of the size to warrant public notice.

CERTIFICATION OF ALLOWED USE

17. *Statutory Provision.* 12 M.R.S. § 685-B(1-A)(B-1). "Except for projects that are located in a planned subdistrict that was approved or accepted by the commission for processing prior to September 1, 2012, a permit from the commission is not required for a development of state or regional significance that may substantially affect the environment as defined in Title 38, section 482, subsection 2. A project meeting that definition is reviewed under Title 38, section 489-A-1. A person submitting a development proposal to the Department of Environmental Protection under Title 38, section 489-A-1 shall file a notice of the intent to develop and a map indicating the location of the proposed development with the commission prior to or concurrently with submission of a development application to the Department of Environmental Protection. The Department of Environmental Protection must receive certification from the commission that the proposed development is an allowed use within the subdistrict or subdistricts for which it is proposed and the proposed development meets any land use standard established by the Commission that is not considered in the Department's review under Title 38, section 489-A-1, subsection 1 before issuing a permit. Nothing in this subsection may be construed as prohibiting the commission from enforcing the land use standards certified to the Department of Environmental Protection under this paragraph."

18. In the subdistrict in which the Project is proposed to be located, the Commercial Industrial Development (D-CI) Subdistrict, commercial and industrial development is an allowed use. *(See* Chapter 10 of the LUPC's Land Use Districts and Standards, Sections 10.21,A,3,c(3)). Therefore, the LUPC certifies that

the Project is an allowed use in the subdistrict in which it is proposed. Neither special exception approval nor rezoning is required for the Project.

CERTIFICATION OF COMPLIANCE WITH THE COMMISSION'S LAND USE STANDARDS

19. The Commission's Land Use Standards that are relevant to certifying compliance of the proposed Project are evaluated in Findings #20 through #26.

20. *Land Division History.*

A. *Review Criteria.* 12 M.R.S. § 682(2-A) and § 685-B(1)(B); and §§10.24, F (quoting 12 M.R.S. § 685-B(4)(F)) and 10.25,Q,1 of the Commission's Land Use Standards.

B. *Land division histories.* Irving Forest Products, Inc. has owned the parcel since 1999. The previous owner, Great Northern Paper, Inc, had owned the parcel since at least 1964. No division of the parcel has occurred in the last 20 years.

21. *Vehicular circulation, access and parking.*

A. *Review criteria.* §§ 10.24,B (quoting 12 M.R.S. § 685-B(4)(B)) and 10.25,D of the Commission's Land Use Standards.

B. *Vehicular circulation and access – §§10.25,D,1; and 2,a, b and d.* Irving Forest Products, Inc. has not proposed any new access points. The existing access points off of Route 11 and the current vehicular circulation within the facility would continue to be used.

C. *Parking - §§ 10.25,D,3,a and e.* Irving Forest Products, Inc. proposes to establish two, 50 foot by 60 foot areas next to the Mill building as parking areas for the facility. These areas have already been cleared and distributed when the Mill was constructed in 1970's. All parking areas would be set back at least 100 feet from Skerry Brook, at least 75 feet from any roadways, and at least 25 feet from property boundary lines.

D. *Roadway Design – §§ 10.25,D,4,a, b, e and f.* Irving Forest Products, Inc. has not proposed any new roadways. The existing roadways to and from the mill and within the facility would continue to be used.

E. *Conclusions*. Irving Forest Products, Inc. has demonstrated that the applicable criteria for vehicle circulation, access, parking, and roadway design in §10.24,B and §§10.25,D,1, 2, 3, and 4 of the Commission's Land Use Standards will be met by the Project.

22. *Lighting.*

A. *Review criteria.* §10.25,F,2 of the Commission's Land Use Standards.

B. *Permanent lighting*. Irving Forest Products, Inc. stated that all proposed exterior lights will meet the requirements of §10.25, F, 2 or be motion sensor activated.

C. *Conclusion*. The Project as proposed will meet the provisions of §10.25,F,2 of the Commission's Land Use Standards for lighting. Motion sensor activated lighting is exempt from the requirements of §10.25,F,2.

23. *Minimum dimensional requirements - §§ 10.26,A-F of the Commission's Land Use Standards.*

A. *Minimum lot size.*

(1) *Review criteria*. §10.26, A. §10.26,A,2 specifies that the minimum lot size for commercial or industrial development involving one or more buildings is 40,000 square feet.

(2) *Project.* The parcel containing the Project is approximately 180 acres in size.

(3) *Conclusion.* As proposed, the Project will meet the standard for minimum lot size in §10.26,A,2 of the Commission's Land Use Standards.

B. *Minimum shoreline frontage.*

(1) *Review criteria*. *§10.26, B.* §§10.26,B,1,b and 2,b specify that the minimum shoreline frontage for a commercial or industrial development is 200 feet for parcels bordering a minor flowing water or standing body of water less than 10 acres in size; and the frontage for a parcel located on a waterbody greater than 10 acres in size or a major flowing water is 300 feet.

(2) *Project.* The parcel contains approximately 4,500 feet of frontage on Skerry Brook, a minor flowing water.

(3) *Conclusion.* As proposed, the Project will meet the requirements for minimum shoreline frontage in §§10.26,B,1,b and 2,b of the Commission's Land Use Standards.

C. *Minimum road frontage.*

(1) *Review criteria. §10.26, C.* §10.26,C,1,b specifies that the minimum road frontage for commercial or industrial development is 200 feet for any road used for public access.

(2) *Project.* The parcel contains approximately 3,000 feet of frontage on the Pinkham Road.

(3) *Conclusion*. As proposed, the Project will meet the standard for road frontage in §10.26,C,1,b of the Commission's Land Use Standards.

D. *Minimum setbacks.*

(1) *Review criteria*. *§§10.26,D,2 and 3; and §10.26,G,5.* §10.26,D,2 specifies that the minimum setback for commercial or industrial development is 150 feet from waterbodies greater than 10 acres in size; 100 feet from minor flowing waters, P-WL1 wetlands and waterbodies less than 10 acres is size; 75 feet from roads used by the public for access; and 25 feet from side and rear property boundary lines.

(2) *Project.* All proposed development is proposed to be located in excess of the minimum setback requirements.

(3) *Conclusion*. As proposed, the Project will meet the standards for setbacks in §10.26, D,2.

E. *Maximum lot coverage.*

(1) *Review criteria. §10.26, E,4.* §10.26,E,4 specifies that the maximum lot coverage for lots in a D-CI subdistrict that are not within 250 feet of a major flowing water or a body of standing water 10 acres or greater in size, the maximum lot coverage shall be 50% for all uses involving one or more buildings.

(2) *Project.* The parcel is not within 250 feet of a major flowing water or body of standing water 10 acres or greater in size. The maximum lot coverage will be less than 50%.

(3) *Conclusion.* As proposed, the Project complies with the maximum lot coverage requirements in §10.26, E,4 of the Commission's Land Use Standards.

F. *Maximum structure height.*

(1) *Review criteria. §10.26,F.* §§10.26,F,1,b and 3 specify that the maximum height for a structure located further than 500 feet from a waterbody greater than 10 acres in size is 100 feet; except that the maximum structure height may be exceeded for structures with no floor area such as chimneys, towers, ventilators, spires, and free-standing towers and turbines with the Commission's approval.

(2) *Project.* All proposed Project structures will be located more than 500 feet from a great pond. None of the proposed Project structures will exceed the maximum height of 100 feet.

(3) *Conclusion.* As proposed, the Project complies with the maximum height

24. *Vegetation clearing.*

A. *Review criteria. §10.27,B.* §§10.27,B,1 and 2 of the Commission's Standards are applicable to this Project.

B. *Project.* No clearing of Vegetation is proposed as part of the Project.

25. *Signs.*

A. *Review criteria. §10.27.J* . §10.27.J specifies the standards for placement and sizing of signs used by the Project.

B. *Project.* Irving Forest Products, Inc. has stated that any signs used on-site during construction will be informational signs associated with site activities, as provided for in §§10.27,J,1,d and e; and that any permanent signs will be in compliance with §10.27, J.

C. *Conclusion*. Any signs used for the Project during construction and operation will meet the provisions of §10.27,J of the Commission's Standards.

26. *General Criteria for Approval – 12 M.R.S. § 685-B(4) (incorporated in § 10.24 of the Commission's Land Use Standards).* In evaluating the Project, the Commission considers and applies its land use standards not considered by the DEP.

A. *Loading, parking and circulation – 12 M.R.S. § 685-B(4)(B) and Land Use Standard §10.24, B* specify that adequate provision must be made for transportation, including loading, parking and circulation of traffic in, on and from the site.

(1) *Conclusion.* As proposed, and as discussed and concluded in Finding #21 above, the Project will meet the standard loading, parking and circulation in 12 M.R.S. § 685-B(4)(B) and § 10.24, B of the Commission's Land Use Standards.

B. *Conformance with statute, regulations, standards and plans – 12 M.R.S. § 685-B(4)(E) and Land Use Standard §10.24, E* specify that the Project must be in conformance with 12 M.R.S., Chapter 206-A and the regulations, standards and plans adopted thereto. Applicable statutory criteria for approval are discussed in this Finding #26. Additionally, the Commission has more generally reviewed Title 12, Chapter 206-A and no Project components or features are out of conformance with any applicable statutory standards; for example, no spaghetti-lots are proposed. *See, e.g.*, 12 M.R.S. § 682-A (prohibiting the creation of spaghetti-lots). As explained more fully in findings and conclusions above, the Commission has reviewed the Project under applicable regulations and standards, specifically the

Commission's Land Use Standards contained in Chapter 10 of its rules, and, as articulated in the findings and conclusions above, the Project conforms with these regulations and standards. Finally, in conducting its certification review and reviewing and applying the applicable statutory provisions in Chapter 206-A and the applicable regulations and standards, the Commission interpreted and applied the statutory provisions, regulations and standards in light of the CLUP. *See* 12 M.R.S. § 685-C(1) ("The [C]ommission must use the [CLUP] as a guide in . . . generally fulfilling the purposes of this chapter.")

(1) *Conclusion.* As proposed, the Project satisfies the conformity requirement in 12 M.R.S. § 685-B(4)(E) and § 10.24, E of the Commission's Land Use Standards.

C. *Placement of structures on lots in a subdivision – 12 M.R.S. § 685-B(4)(F) and Land Use Standard §10.24, F* specify that placement of a structure on a lot in a subdivision only may be allowed after the subdivision has been approved by the Commission.

(1) *Conclusion.* As proposed, and as discussed and concluded in Finding #20 above, the Project will not involve development within a subdivision.

FINAL CONCLUSION

Based on the findings set forth above, and in addition to the conclusions set forth above, the Commission concludes that, with respect to the Project proposal, Irving Forest Product, Inc. has met its burden of demonstrating that the Project conforms with the applicable regulatory and statutory requirements and plans adopted pursuant to 12 M.R.S., Chapter 206-A and meets the Commission's Land Use Standards applicable to the Project that are not considered in any DEP review.

CONDITIONS

Therefore, the Commission, through its staff, CERTIFIES that Site Law Certification SLC-4, submitted by Irving Forest Products, Inc. for the Project, as proposed, complies with the relevant provisions of the Commission's Land Use Standards, subject to the findings of fact and conclusions contained herein, and the following conditions:

1. *Vehicle circulation, access, and parking.* All Project traffic, roads and parking areas must meet the applicable provisions of §10.25,D of the Commission's Land Use Standards. In particular: All designated parking areas must be set back at least 100 feet from Sherry Brook, 75 feet from the traveled portion of roads used by the public and roads used for forest management activities and 25 feet from property boundary lines.

2. *Lighting.* All Project permanent exterior lighting must meet the standards of §§10.25,F,2,a, b and c of the Commission's Land Use Standards.

3. *Signs.* All Project signs must meet the provisions of §10.27,J of the Commission's Land Use Standards.

4. *Setbacks.* All Project structures, both temporary and permanent, must be located in accordance with §10.26 of the Commission's Land Use Standards.

This approval of a request for certification is limited to the Project as proposed, based on the above stated conditions, and remains valid only if Irving Forest Products, Inc. complies with these conditions. Any modifications to the Project, beyond de minimus changes that do not alter the nature of the Project or modify any findings upon which this certification is based, or future development activity at the Mill will require a new or amended certification. Within 30 days of this certification determination, issued by the Commission through its staff, any person aggrieved by this certification, may appeal to the full Commission, requesting review of this certification determination.

DONE AND DATED AT AUGUSTA, MAINE THIS 6th DAY OF SEPTEMBER, 2013.

By:_____
Nicholas D. Livesay, Executive Director