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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

AMANDA E. BEAL
COMMISSIONER
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EXECUTIVE DIRECTOR

CERTIFICATION

COMMISSION DETERMINATION IN THE MATTER OF

Maine Department of Environmental Protection
Request for Site Law Certification
Maine Department of Defense, Veterans, and Emergency Management (DVEM)
SITE LAW CERTIFICATION SLC-11

Findings of Fact and Determination

The Maine Land Use Planning Commission (Commission), at a meeting of the Commission held on July 10, 2019, in Farmington, Maine, after reviewing the certification request and supporting documents submitted by Maine Department of Defense, Veterans, and Emergency Management (DVEM) for Site Law Certification SLC-11 and other related materials on file, pursuant to the Commission's Land Use Standards, finds the following facts:

- 1. Requestors/Landowners:** Maine Department of Defense, Veterans, and Emergency Management
Attn: Paul Lapoint
Bldg. 8, Camp Keyes
Augusta, Maine 04330
- 2. Department Contact:** Maine Department of Environmental Protection
Attn.: Jessica Damon, Environmental Specialist III
106 Hogan Road, Suite 6
Bangor, ME 04401
- 3. Agent:** CES, Inc.
Attn.: Alfred Haskell, PE
PO Box 639
Brewer, Maine 04412
- 4. Complete for Processing Date:** May 10, 2019
- 5. Location:** T2 R9 NWP, Penobscot County, Maine
Maine Revenue Service Map PE005, Plan 01, Lot 5.2 & Lot 5.3

6. **Current Zoning:** General Management Subdistrict (M-GN)
Flood Prone Protection Subdistrict (P-FP)
Shoreland Protection Subdistrict (P-SL2)
Wetland Protection Subdistrict (P-WL1,2, & 3)
7. **Permanent Project Area:** Construction of 35.55 acres of new impervious area and a total developed area of 58.95 acres

INTRODUCTION

8. 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 DVEM'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.

BACKGROUND INFORMATION

9. On March 29, 2017, the Commission issued Advisory Ruling AR 16-08 to Maine DVEM regarding whether a military training facility; timber harvesting/management; gravel extraction; road and facilities maintenance; environmental surveys/habitat management; and public access trails would be allowed uses within the M-GN (General Management) Subdistrict on the subject property (Plan 01, Lot 5.2). The Advisory ruling stated the government military facility is an allowed use provided that all applicable standards for non-residential development are met and the facility is designed and operated, particularly with regard to the sound it generates, in a manner that results in the facility being similar in type, scale and intensity and operated so that it qualifies as an allowed use in the M-GN Subdistrict. Information on the actual design and operation of the facility will be needed, specifically with regard to anticipated sound levels and frequencies, before the Commission may make a final determination that the proposed training facility is an allowed use under Section 10.22,A,3,c(27) of the Commission's rules. Timber management, non-commercial gravel extraction, land management roads, roads used primarily for purposes other than timber harvesting, environmental surveys/habitat management, and public access trails are allowed uses within the M-GN Subdistrict subject to the applicable standards set forth in Chapter 10, Subsection III.
10. On April 4, 2019, the Maine Department of Environmental Protection (MDEP) submitted to the Commission a Request for Certification for a DEP Site Law/Natural Resources Protection Act ("NRPA") application submitted by Maine Department of Defense, Veterans, and Emergency Management (DVEM). This application included Exhibit 26, which addressed the Commission's criteria

for certification and Section 5, which contained the noise study Produced by the U.S. Army The Request for Certification asked that the Commission determine if the Facility and appurtenances are allowed uses within the subdistricts in which it is proposed and if the Facility meets the applicable land use standards that are not considered in the MDEP review

11. Materials included in the MDEP site location of development permit application describe the parcel, Plan 01, Lot 5.2 and Lot 5.3, in T2 R9 NWP, as approximately 3,747 acres owned by the Maine DVEM. The majority of the parcel is within the M-GN (General Management) Subdistrict. Additional zoning on the parcel includes P-FP (Flood Prone Protection), P-SL2 (Shoreland Protection), and P-WL1, 2 & 3 (Wetland Protection) Subdistricts. The parcel is accessed by the Pea Ridge Road to the west and the Pelkey Road off Woodville Road/Rte 116 to the east. The parcel has has over 16,000 feet of shoreline frontage on East Branch Trout Brook and over 12,000 feet of frontage on Trout Brook. The site has historically been used for timber management. The site of the proposed development is currently undeveloped, with the exception of existing land management roads and trails for timber harvesting and a borrow pit of unknown size. A total of 5.97 acres of existing developed and impervious area.

PROJECT SUMMARY

12. *Project Description.* The DVEM intends to develop the subject parcel with a military training facility ("Facility") for the Maine Army National Guard (MEARNG). The proposed Facility would be located within the unorganized area of T2 R9 NWP in Penobscot County, Maine. The Facility would consist of the following development as shown on Sheet C-100 of the application entitled "Overall Site Plan" with detailed site plans shown on Sheets C-101 through C-110, prepared by CES, Inc.:
- A. *Bivouac & Unit Staging/Landing Area.* (4 Sites: Sites A, C, D, & G)
Each site includes the following structures:
 - i. Mess Hall (160 ft. by 85)
 - ii. Concrete Tent Pads (25 ft. by 15 ft.), *Total of 8*
 - iii. Gravel Pad Unit Staging Area/Rotary Wing Aircraft Landing (100 ft. by 200 ft.)
 - iv. Concrete Generator Pad (15 ft. by 25 ft.)
 - v. Concrete Latrine Pad (15 ft. by 25 ft.)
 - B. *Engineer Laydown Areas* (Sites B, F, & H)
 - i. Gravel Laydown areas (100 ft. by 200 ft.);
 - C. *25-meter Firing Range*
 - i. 25 m Range (82 ft. by 415 ft.)
 - ii. Control Tower (20 ft. by 20 ft.)
 - iii. Ammunition Loading Dock (15 ft. by 34 ft.)
 - D. *Range Operation and Control Area (ROCA)*
 - i. After Action Review Building (38 ft. by 56 ft.)
 - ii. Covered Mess (20 ft. by 40 ft.)
 - iii. Battery (15 ft. by 30 ft.)
 - iv. Operations/Storage Building (20 ft. by 40 ft.)
 - v. Covered Bleachers (30 ft. by 60 ft.)
 - vi. Control Tower (20 ft. by 20 ft.)
 - vii. Ammunition Loading Dock (15 ft. by 34 ft.)
 - viii. Latrine (16 ft. by 36 ft.)
 - E. *Light Demolition Range (LDR)*
 - i. Observation Bunkers (13 ft. by 18 ft.), *Total of 2*

- ii. Steel Cutting Chamber (40 ft. by 32 ft.)
- iii. Abatis/Wood Cutting Structure (40 ft. by 80 ft.)

F. *Light Demolition Staging Area*

- i. Ammunition Shed (10 ft. by 24 ft.)
- ii. Covered Work Area (10 ft. by 40 ft.)
- iii. Pole Barn (20 ft. by 40 ft.)
- iv. Lime Storage Shed (14 ft. by 22 ft.)
- v. Tent Pad (15 ft. by 15 ft.)

G. *Roads*

- i. Upgrade of approximately 5,000 linear feet of existing roads;
- ii. Expansion of approximately 1,140 linear feet of additional gravel roads.
- iii. Stream crossing upgrades;
- iv. Gravel Turn Around (100 ft. by 100 ft.)

13. *Public Notice.* On March 1, 2019, a Notice of Intent to Develop and Request for Certification was sent to project abutters and other parties by U.S. Postal Service mail. The public notice included information on filing comments and requesting a public hearing within 20 days of the Commission accepting the Request for Certification as complete for processing. LUPC staff deemed the certification request complete for processing on May 10, 2019. No public comments or requests for a public hearing were received by the LUPC.

14. The facility would otherwise be constructed and operated as proposed in the materials submitted to the Maine Department of Environmental Protection (MDEP) and the Commission.

TITLE, RIGHT OR INTEREST

15. The Maine DVEM elected to simultaneously apply to the MDEP for a Site Location of Development Permit for the training Facility and to the Land Use Planning Commission for certification. The MDEP application was accepted as complete for processing on April 11, 2019. Provided the MDEP finds in their review of the project that Maine DVEM has sufficient title, right or interest, the Commission concludes that Maine DVEM has administrative standing to request certification of the project.

ANALYSIS OF THE FACILITY AND APPURTENANCES AS ALLOWED USES

16. **Military Training Facility:**

The proposed military training and educational facility includes both structural and nonstructural development. The entire military training facility, will operate as a non-commercial facility with the sole purpose of providing education, including training, for military and/or government entities to improve the capabilities of personnel in their respective roles. Two of the Commission's M-GN use listings capture the range of development and activities proposed at the facility. These use listings are discussed below.

A. Under the provisions of Ch. 10, Section 10.22,A,3,c(19), non-commercial structures utilized for educational, scientific, or nature observation purposes may be allowed within the M-GN Subdistrict upon issuance of a permit from the Commission pursuant to 12 M.R.S. § 685-B, and subject to the applicable requirements set forth in Sub-Chapter III.

The following proposed structures fit within this use listing:

- 1) ROCA After Action Review & Operations Buildings
(classroom training for educational purposes)
- B. Under the provisions of Ch. 10, Section, 10.22,A,3,c(27), other structures, uses, or services which the Commission determines are consistent with the purpose of this subdistrict and of the Comprehensive Land Use Plan and are not detrimental to the resources or uses they protect, and are of similar type, scale and intensity as other allowed uses, may be allowed within the M-GN Subdistrict upon issuance of a permit from the Commission pursuant to 12 M.R.S. § 685-B, and subject to the applicable requirements set forth in Sub-Chapter III.

The military training facility, beyond just the ROCA After Action Review Building, is captured by this use listing. In addition to the ROCA After Action Review & Operations Buildings, the proposed military training facility includes:

- 1) Bivouac (Camping) Sites
- 2) Unit Staging/Helicopter Landing Sites
- 3) Engineer Laydown Areas
- 4) 25-meter Firing Range
- 5) Range Operation and Control Area (ROCA)
- 6) Light Demolition Range & Staging Area

Consistency with the Purpose of the Subdistrict.

Under the provisions of Section 10.22,A of the Commission's standards the purpose of the M-GN Subdistrict is to permit forestry and agricultural management activities to occur with minimal interferences from unrelated development in areas where the Commission finds that the resource protection afforded by protection subdistricts is not required.

The parcel size and the military training facility's design limit interaction with neighboring forestry activities by utilizing internal roadways and locating the training sites in a manner that provides significant buffering.

Consistency with the CLUP.

Consistency with the Commission's Comprehensive Land Use Plan (CLUP) also is a requirement of this use listing. The first goal listed in the CLUP pertains to the location of development: "Guide the location of new development in order to protect and conserve forest, recreational, plant or animal habitat and other natural resources, to ensure the compatibility of land uses with one another and to allow for a reasonable range of development opportunities important to the people of Maine, including property owners and residents of the unorganized and deorganized townships." (CLUP Goals and Policies I.A at pg. 6.)

The proposed facility is located in an area that is not remote and is proximate to public roads and economic centers. The facility would benefit from existing infrastructure, particularly for access. Located in T2 R9 NWP, a township identified in the CLUP as a minor civil division within one mile of a public road (CLUP, Map 7 at pg. 85), the subject parcel abuts two organized towns, Woodville and Chester. Medway shares a border with the town-ship and the service centers of Millinocket, East Millinocket, and Lincoln are nearby. The proposed facility is located between two major roads, Interstate 95 to the west and State Route 116 to the east. The nearest interchanges are in the neighboring town of Medway to the north and the neighboring township T2 R8 NWP (near Lincoln) to the south. Access to the site is provided by an existing right-of-way directly off a public road (Pelkey Road) that is approximately 1.1 miles from State Route 116.

There are no high value recreational/scenic lakes, rivers, or mountains identified on or near the parcel. Based on the review comments of the Maine Historic Preservation Commission, Maine Natural Areas Program, and Maine Inland Fisheries & Wildlife, no historic properties (architectural or archaeological), essential wildlife habitats, or rare or unique botanical features would be affected by the proposed Facility. No significant impacts to natural resources in the vicinity of the proposed training site are anticipated. Overall, the proposed location of the facility is consistent with the CLUP goal of guiding the location of development to promote compatibility with natural resources.

The training facility, in its proposed location in T2 R9 NWP, is consistent with the CLUP and would not be detrimental to the resources or uses the CLUP helps protect.

Similar Type, Scale and Intensity as Other Allowed Uses

The proposed training facility would have limited structural development, but would have multiple sites or areas for different activities. Some of these sites, such as the Firearms and Demolition Range, would involve the clearing of larger areas. The training facility also would contain sites that would produce noise, such as the Firearms Range, Light Demolition Range, Helicopter Landing Sites.

Non-commercial structures used for education are permitted in the M-GN. Although much of the proposed training facility does not involve structural development, its noncommercial, educational focus is similar in type to the allowed non-commercial, educational land use development. Commercial timber harvesting, along with its associated logging yards, equipment storage buildings, and processing equipment, also is a permitted use in the M-GN and potentially is similar in scale and intensity to the proposed training facility. Sawmills and chipping mills also are similar in that they are activities with noise generation potential

The Applicant submitted an Environmental Noise Consultation report (No.S.0058234c-18) completed by the U.S. Army Public Health Center for the proposed Facility. The noise impact on areas surrounding the Facility is translated into the following U.S. Army noise zones:

Noise Zone I is usually the furthest zone from the noise source and is compatible for most noise-sensitive land uses and includes all areas in which the PK15(met) decibels are less than 87 dB (for small arms), the ADNL is less than 65 (for aircraft), or the CDNL is less than 62 (for large arms and explosions).¹

Noise Zone II is normally incompatible for most noise sensitive land uses where the PK15(met) decibels are between 87 and 104, the ADNL is between 65 and 75, or the CDNL is between 62 and 70.

The Noise Zone III is the area closest to the source of the noise where the PK15(met) decibels are greater than 104, the ADNL is greater than 75, or the CDNL is greater than 70. The noise level in this area is incompatible for noise-sensitive land uses.

The Land Use Planning Zone (LUPZ) is compatible for noise sensitive land uses, such as housing, schools, and medical facilities, and is defined by a CDNL of 57-62 or an ADNL of 60-65.

¹ PK15(met)= single event peak level that is likely to be exceeded only 15% of the time; dB= decibel, ADNL= A-weighted Day-Night average sound Level; CDNL= C-weighted Day-Night average sound Level

Known Distance Firing Range and Light Demolition Range

The Known Distance (25-meter) Firing Range would include 5.56 mm rifle, 7.62 mm machine gun, and .50 caliber machine gun activity. The Firing Range would be used one weekend per month for drills during May through October and during a 15-day annual training period in June. The activities would include day and night fire between 0800-2200 hours (8am-10pm).

The Light Demolition Range would include C-4(1.25 lb.), 15 lb., 40 lb., and Bangalore (10 lb.) shot charges. The Demolition Range would be used during the 15-day annual training in June and/or during a 3-day drill weekend in May.

PROJECTED LIGHT DEMOLITION RANGE ACTIVITY

NOMENCLATURE	ANNUAL EXPENDITURE
Demolition, C-4 Block, 1.25 lb	324 (38/day x5 days in June & 43/day x3 days in May)
Demolition, Shaped Charge, 15 lb	6 (1-3 day period in June or 3 day drill period in May)
Demolition, Cratering Charge, 40 lb	6 (1-3 day period in June or 3 day drill period in May)
Demolition, Bangalore, M1A2/M1A2E	3 (1-3 day period in June or 3 day drill period in May)

The noise report found that the 25-meter Firing Range and Light Demolition Range are compatible with the surrounding land use. Specifically, Zone III (>104 dB Peak) for the Firing Range would remain within the training site boundary. Zone II (between 87 and 104 dB Peak) extends up to 1 mile beyond the boundary in all directions. The area within Zone II is wooded and does not contain any noise-sensitive land uses. For the Light Demolition Range, Zones II and III remain within the training site boundary. The LUPZ extends less than 0.25 mile beyond the western boundary.

Additionally, the report found under unfavorable weather conditions the 40 lb. shots may be noticeable and distinct to citizens within three miles of the training site. Under neutral weather conditions, noise impacts beyond the boundary are greatly reduced. The MEARNG are currently limited to training with six 40-pound cratering charges a year. Considering the low number of large charges, MEARNG anticipates these charges would be used during a single training event, either within a single day or weekend. The report recommends prior community notification for upcoming training events, particularly 40 lb. shots, to mitigate noise complaints. The report further states that the 1.25 lb. C-4 charges may be audible in the homes along Route 116. However, the predicted peak noise levels indicate a low risk of complaints.

The projected Helicopter activity was found to have the potential to generate annoyance. However, the projected number of flights to/from the Facility is not expected to exceed 100 annually (two times per week and one day during Drill weekend). The report further recommended flight paths be designed to avoid or minimize low level overflights of noise-

sensitive areas. This could be accomplished by following the Interstate I-95 corridor and maintaining cruise altitude (>500 feet) until over the training site.

F) Based on the evidence provided of this certification document, the military training facility meets the provisions of Ch. 10, Section 10.22,A,3,c(19) and Section, 10.22,A,3,c(27) provided that prior notification of upcoming training events is furnished to the surrounding communities, flight paths are designed to avoid or minimize low level overflights of noise-sensitive areas, and the Known Distance Range and Light Demolition discharges are limited to the annual expenditure amounts and levels as proposed. Additionally, the parcel size and the military training facility's design limit interaction with neighboring forestry activities and the proposed activities associated with the Firearms Range, Demolition Range, and Helicopter Landing Sites are short-term noise impacts limited to May through October. Therefore, the Facility is an allowed use in the affected subdistricts.

17. **Level A and B road project:** Pursuant to Ch. 10, sec. 10.22,A,3,b(13), a Level A and B road project may be allowed without a permit from the Commission within an M-GN subdistrict subject to the applicable requirements set forth in Sub-Chapter III. Pursuant to Ch. 10, secs. 10.23,L,3,b(8) and 10.23,N,3,b(9), a Level A road project may be allowed without a permit from the Commission within P-SL and P-WL subdistricts subject to the applicable requirements set forth in Sub-Chapter III. Pursuant to Ch. 10, secs. 10.23,L,3,c(15) and 10.23,N,3,c(10), Level B road projects, other than crossings of minor flowing waters as provided for in Section 10.23,L3,b, may be allowed within P-SL and P-WL subdistricts, respectively, upon issuance of a permit from the Commission pursuant to 12 M.R.S. § 685-B, and subject to the applicable requirements set forth in Sub-Chapter III; therefore, the proposed Level A and B road projects are an allowed use in the affected subdistricts.
18. **Level C road project:** Pursuant to Ch. 10, secs. 10.22,A,3,c,(16) and 10.32,L,3,c(15) a Level C road project may be allowed within an M-GN and P-SL subdistrict upon issuance of a permit from the Commission pursuant to 12 M.R.S. § 685-B, and subject to the applicable requirements set forth in Sub-Chapter III; therefore, the proposed Level C road project is an allowed use in the affected subdistricts.
19. **Filling and grading:** Pursuant to Ch. 10, secs. 10.22,A,3,b,(7) and 10.22,A,3,c,(6), filling and grading shall be allowed without a permit, and filling and grading which are not in conformance with the standards of Ch. 10, sec. 10.27,F may be allowed upon issuance of a permit from the Commission pursuant to 12 M.R.S. § 685-B, respectively, within an M-GN subdistrict, and subject to the applicable requirements set forth in Sub-Chapter III; therefore, the proposed filling and grading for the gravel turnaround is an allowed use in the affected subdistrict.
20. **Water crossings:** Pursuant to Ch. 10, secs. 10.23,L,3,b,(13) and 10.23,N,3,b,(14) water crossings of minor flowing waters, except for water crossings of minor flowing waters on/for land management roads² shall be allowed without a permit from the Commission within P-SL and P-WL subdistricts subject to the applicable requirements set forth in Sub-Chapter III; therefore, the proposed stream crossings are an allowed use in the affected subdistricts.

ANALYSIS OF COMPLIANCE WITH COMMISSION STANDARDS

² Pursuant to Statue, water crossings of minor flowing waters, major flowing rivers, bodies of standing water, and coastal wetlands on/for land management roads are not regulated by the Commission within P-SL subdistricts but are regulated by the Maine Forest Service.

The Commission's land use standards that are applicable to certifying compliance of the Facility, which are not considered in the MDEP's review under Title 38, section 489-A-1, subsection 1, are evaluated in findings of fact #21 through #31, below.

21. Title, right or interest:

- A. Review Criteria: Ch. 4, sec. 4.11(1)(e)(i).
- B. Proposal: The DVEM elected to simultaneously apply to the MDEP for a Site Location of Development permit for the Facility and to the Land Use Planning Commission for certification of the Facility. The MDEP application was accepted as complete for processing on April 11, 2019
- C. Conclusion: Provided the MDEP finds in their review of the proposal that the DVEM has sufficient title, right or interest, the Commission concludes that the DVEM has administrative standing to request certification of the Facility.

22. Land Division History:

- A. Review Criteria: 12 M.R.S. § 682(2-A), 12 M.R.S. § 685-B(1)(B), Ch. 10, sec. 10.24,F (quoting 12 M.R.S. § 685-B(4)(F)), and Ch. 10, sec. 10.25,Q,1.
- B. Land Division Histories: The DVEM deed submission, and evaluation of the 20-year deed land division history registered in the Penobscot County Registry of Deeds, established that no land divisions requiring a subdivision permit from the Commission have occurred for the Facility parcel during the preceding 20 years.
- C. Conclusion: Based on evidence provided, the proposal meets the subdivision and lot creation requirements of 12 M.R.S. § 682(2-A), 12 M.R.S. § 685-B(1)(B), Ch. 10, sec. 10.24,F (quoting 12 M.R.S. § 685-B(4)(F)), and Ch. 10, sec. 10.25,Q,1 in that there have been no land divisions of the Facility parcel requiring subdivision approval from the Commission in the preceding 20 years.

23. Vehicular circulation, access and parking, and roadway design:

- A. Review Criteria: Chapter 10 § 10.24,B and § 10.25,D of the Commission's Land Use Standards.
- B. Vehicular circulation and access: Chapter 10 §§ 10.25,D,1; and 2,a, b and d. DVEM has not proposed any new access points. The existing access points by the Pea Ridge Road to the west and the Pelkey Road off Woodville Road/Rte 116 to the east and the current vehicular circulation within the Facility would continue to be used. No new Facility roads will require exits onto a roadway. New roads are being constructed as interior roads to serve as access into individual training locations. A Turn Around gravel pad is proposed near the intersection of two gravel roads, centrally located within the site to allow large vehicle to reverse direction. The proposed gravel pad staging areas can also be used for rotary wing aircraft. DVEM estimated that during peak use times less than 100 vehicle trips per hour and the site would not generate a significant regular volume of traffic.
- C. Parking:- Chapter 10 §§ 10.25,D,3,a and e. DVEM has proposed gravel Unit Staging Areas, Engineer Laydown Areas, and parking areas within the Bivouac Sites/MROCA sites for the facility. The parking/staging areas within the facility are located interiorly to park support vehicles and to stage training activities. The areas are designed such that runoff is discharged to a vegetated stormwater buffer, and are visually screened from view from property lines by existing forest vegetation.
- D. Roadway Design: Chapter 10 §§ 10.25,D,4,a, b, e and f. No new primary roadways are proposed in the project. Only interior access drives within the Facility lot are proposed and roads currently developed as land management roads will be improved to service the Facility. Interior access drives and upgraded roads will be approximately 24 feet wide.

E. Conclusion: Based on the evidence provided, vehicular circulation, access, parking and roadway design as proposed will meet the applicable provisions of Ch. 10, sec. 10.24,B and Ch. 10, secs. 10.25,D,1, 2,3 and 4 of the Commission's Land Use Standards will be met.

24. Lighting:

- A. Review criteria: §10.25,F,2 of the Commission's Land Use Standards.
- B. Proposal: No permanent lighting is proposed for this project.
- C. Conclusion: The provisions of Ch. 10, sec. 10.25,F,2 is not applicable to this project.

25. Activities in flood prone areas:

- A. Review criteria: §10.25,T of the Commission's Land Use Standards.
- B. Proposal: No development is proposed within a P-FP (Flood Prone Protection) Subdistrict
- C. Conclusion: Based on evidence provided, the development as proposed will meet the provisions of Ch. 10, sec. 10.25,T in that all proposed development is located outside any designated flood prone area as identified by P-FP subdistricts.

26. Dimensional requirements:

- A. Review criteria: §§ 10.26,A-F of the Commission's Land Use Standards.
- B. 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) Proposal: The parcel containing the Facility is approximately 3,747 acres in size..
 - 3) Conclusion: Based on evidence provided, the development as proposed will meet the minimum lot size provisions of Ch. 10, sec. 10.26,A.
- C. Minimum shoreline frontage:
 - 1) Review criteria: §10.26, B. §§10.26,B,1,b and 10.26,B,3 specifies that the minimum shoreline frontage for commercial, industrial, and other non-residential uses involving one or more buildings is 200 feet for lots fronting on a flowing water draining more than 2 square miles but less than 50 square miles or standing body of water less than 10 acres in size. In the case of a lot which borders more than one water body, the shoreline frontage requirement must be met on each water body bordered by the lot.
 - 2) Proposal: According to current mapping, the DVEM lot has over 16,000 feet of shoreline frontage on East Branch Trout Brook and over 12,000 feet of frontage on Trout Brook.
 - 3) Conclusion: Based on evidence provided, the development as proposed will meet the minimum shoreline frontage provision of Ch. 10, secs. 10.26,B,1,b and 10.26,B,3.
- D. Minimum road frontage:
 - 1) Review criteria: §10.26, C. §10.26,C,1,b specifies that the minimum road frontage for commercial, industrial, and other non-residential development is 200 feet for any road used for public access.
 - 2) Proposal: The parcel contains approximately 3,000 feet of frontage on the Pelkey Road
 - 3) Conclusion: Based on evidence provided, the development as proposed will meet the minimum road frontage provisions of Ch. 10, sec. 10.26,C.
- E. Minimum setbacks:
 - 1) Review criteria: §§10.26,D,2 and 3 specifies that the minimum setback for commercial, industrial, and other non-residential development is 100 feet from minor flowing waters, waterbodies less than 10 acres is size, and from the upland edge of non-forested wetlands located in P-WL1 subdistricts; 75 feet from roads used by the public for access; and 25 feet from side and rear property boundary lines.

- 2) *Proposal*: All proposed development is proposed to be located in excess of the minimum setback requirements.
- 3) *Conclusion*: Based on evidence provided, the development as proposed will meet the applicable minimum setbacks provisions of Ch. 10, sec. 10.26,D.

F. Maximum lot coverage:

- 1) *Review criteria*: §10.26, E,1 and 2 specifies that the maximum lot coverage is 30% for all uses, including driveways, sidewalks, parking lots, and other impervious surfaces.
- 2) Pursuant to Ch. 10, sec. 10.26,E, the maximum lot coverage for all uses involving one or more buildings is 30 percent, including all impervious surfaces, which includes but is not limited to, buildings, driveways, sidewalks, and parking lots.
- 3) *Proposal*: The proposed total amount of impervious area is 41.52 acres and 58.95 acres of developed area. Lot coverage would be less than 30% percent.
- 4) *Conclusion*: Based on evidence provided, the development as proposed will meet the maximum lot coverage provisions of Ch. 10, sec. 10.26,E.

G. Maximum structure height:

- 1) *Review criteria*: §10.26,F. specifies the maximum structure height shall be 100 feet for commercial, industrial, and other non-residential uses
- 2) *Proposal*: None of the structures proposed exceed 100 feet in height.
- 3) *Conclusion*: Based on evidence provided, the development as proposed will meet the maximum height provision of Ch. 10, sec. 10.26,F.

27. **Vegetation clearing**:

- A. *Review criteria*: §10.27,B. §§10.27,B,1 and 2 of the Commission's Standards are applicable to this project. §10.27,B,1 specifies that a vegetative buffer strip must be retained within: 50 feet of the right-of-way of any public roadway; 75 feet of the normal high water mark of any flowing water draining less than 50 square miles. §10.27,B,2 states that within these buffer strips there must be no cleared opening greater than 250 square feet in the forest canopy as measured from the outer limits of the tree crown and a well-distributed stand of trees with a defined rating score must be maintained. Additionally, a 6-foot path to the water is allowed, provided it has at least one bend to divert channelized runoff.
- B. *Proposal*: The project does not include vegetative clearing within the 50 foot buffer of the Pelkey Road or within 75 feet of the normal high water mark of East Branch Trout Brook or Trout Brook, with the exception of the two (2) stream crossing upgrades on East Branch Trout Brook, which will be constructed in conformance with the Commission's Roads & Water Crossings Standards, Ch. 10, Section 10.27,D.
- C. *Conclusion*: Based on evidence provided, the vegetation clearing will meet the vegetation clearing provisions of Ch. 10 sec. 10.27,B.

28. **Public health, safety and general welfare**:

- A. *Review criteria*: Pursuant to Ch. 10, sec. 10.24 (quoting 12 M.R.S. § 685-B(4)), the burden is upon the applicant to demonstrate by substantial evidence that the public's health, safety and general welfare will be adequately protected.
- B. *Proposal*: Public services for the Facility would be provided by: the Penobscot County Sheriff's Office and the Maine State Police for police service; the Towns of East Millinocket, Medway, and Lincoln for fire protections and ambulance service.
- C. *Conclusion*: Many of the standards considered by MDEP in its permit review and many of the standards considered by the Commission in its certification review and discussed above are intended to ensure adequate protection of the public's health, safety and general welfare. Based on

evidence provided, the development will meet the provisions of Ch. 10, sec. 10.24 (quoting 12 M.R.S. § 685-B(4)).

29. **General criteria for approval for applications:** *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. As explained more fully in findings and conclusions above, the Commission reviewed the proposal in reference to any land use standard established by the Commission that are not considered in the MDEP's review under Title 38, section 489-A-1, subsection 1. In conducting its certification review, the Commission additionally interpreted and applied the statutory provisions, regulations and standards considering the Commission's *Comprehensive Land Use Plan*. Based on the evidence provided, the proposal satisfies the conformity requirement in 12 M.R.S. § 685-B(4)(E) and § 10.24, E of the Commission's Land Use Standards.

FINAL CERTIFICATION OF ALLOWED USES AND COMPLIANCE WITH THE COMMISSION'S STANDARDS

Based on the findings of fact, analysis, and conclusions set forth above, the Commission concludes that, with respect to the proposed Facility and associated appurtenances, Maine DVEM has met the burden of demonstrating that the Facility and associated appurtenances are allowed uses in the subdistricts in which they are proposed and that those uses will conform 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 Facility that are not considered in the Maine Department of Environmental Protection review.

Therefore, the Commission CERTIFIES to the Maine Department of Environmental Protection that Site Law Certification SLC-11, submitted by Maine Department of Defense, Veterans, and Emergency Management for a military training facility, is an allowed use in the subdistricts in which it is proposed and complies with the applicable provisions of the Commission's Land Use Standards, subject to the findings of fact and conclusions contained herein, and the following conditions:


CONDITIONS

1. **Title, right or interest:** The Maine Department of Environmental Protection finds in its Site Location of Development permitting decision that the DVEM possesses sufficient title, right or interest to develop the Facility.
2. **Vehicular circulation, access and parking, and roadway design:** All Facility traffic, access, roadways, and parking areas shall be constructed in accordance with the design standards in Ch. 10, secs. 10.25,D and 10.27,D,1.
3. **Dimensional requirements:** All Facility structures, both temporary and permanent, shall be designed and located in accordance with Ch. 10, sec. 10.26.
4. **Vegetation clearing:** Existing vegetation clearing may be maintained provided it is in accordance with Ch. 10, sec. 10.27,B and any applicable MDEP standards or permit conditions.
7. **General criteria for approval for applications** (*12 M.R.S. § 685-B(4)(E) and Land Use Standard §10.24, E*):

- A. Prior notification of upcoming training events must be furnished to the surrounding communities.
 - B. Flight paths must be designed to avoid or minimize low level overflights of noise-sensitive areas. The number of flights to/from the Facility shall not exceed 100 annually and limited to 2 times per week.
 - C. The Known Distance (25-meter) Firing Range shall be limited to 5.56 mm rifle, 7.62 mm machine gun, and .50 caliber machine gun activity or weapons that have comparable noise generation characteristics. The Firing Range shall be used one weekend per month for drills during May through October and during a 15-day annual training period in June between 0800-2200 hours (8am-10pm).
 - D. The Light Demolition Range shall be limited to the discharge levels specified in Table 3 *Projected Light Demolition Range Activity* of the Environmental Noise Consultation No. S.0058234c-18 during the 15-day annual training in June and/or during a 3-day drill training in May as proposed. The 40 lb. discharges shall be limited to a single training event of up to three days.
8. The Facility is otherwise constructed and operated as proposed in the materials submitted to the Commission.

This approval of a request for certification, issued to the Department of Environmental Protection, is not a final agency action. Pursuant to 5 M.R.S.A. §§ 11001 *et seq.*, a person aggrieved by a MDEP Site Location of Development permit decision containing this certification determination may appeal the MDEP's final agency action to Superior Court. As part of such an appeal, a person aggrieved may seek judicial review of the components of the MDEP's final agency action, including the Commission's certification determination that is incorporated into the MDEP's permitting decision.

DONE AND DATED AT FARMINGTON, MAINE, THIS 10TH DAY OF JULY, 2019.

By: 
Samantha Horn, Acting Executive Director