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April 28, 2021

Ms. Megan Norwood, City Planner II Planning, Permitting and Code Division City of Auburn 60 Court Street Auburn, ME 04210

Re: Western Maine Transportation Services, Inc. Maintenance Garage Expansion

Dear Ms. Norwood:

On behalf of Western Maine Transportation Services, Inc. (WMTS), please accept this letter and attachments to support their Maintenance Garage Expansion application. Specifically, this information is intended to address zoning, buffering and abutter questions raised at your last Planning Board meeting.

## Organization

WMTS is a 501(c) (3) non-profit organization and incorporated as a Regional Transportation Corporation (RTC). WMTS was formed, by statute, in May 1976 with the sole purpose of providing public transportation to Androscoggin, Franklin and Oxford Counties and surrounding communities within the State of Maine.

Based upon a 2018 comprehensive review of relevant statutory language, MaineDOT's Office of Legal Services has determined that private organizations designated by the State of Maine as RTCs are public entities when performing their duties as RTCs. The following Statutory analysis supports the determination.

30-A M.R.S. § 3501 states that a Regional Transportation Corporation (RTC) is a "private, nonprofit corporation formed for the express purpose of providing public transit services to more than one municipality, but which is not wholly or partly owned by the municipalities." Under this statute, Western Maine Transportation Services, Inc. has the necessary approval of more than five affected municipalities and has been certified by MaineDOT as a public entity incorporated for the purpose of providing public transportation services.

Additionally, 30-A M.R.S. § 3501 does describe a RTC as a "private nonprofit corporation" and goes on to designate an RTC as a "transit district". A "transit district" is further defined in 30-A M.R.S. §3502(2) as being a "body politic and corporate," a phrase that is generally defined as synonymous with a municipal corporation, school district, or other public, governmental entity.

## Expansion Background

WMTS started to review options for this building expansion back in 2014. At that time, they hired Stoneybrook Consultants, Inc. (Stoneybrook) to review their prior approvals for their properties and to prepare concepts that could meet their building and parking needs. They owned the property located at 76 Merrow Road and Unit #2 of the Nursery School Condominium project located at 50 Merrow Road. They were also in the process of purchasing Unit 3 of the Nursery School Condominium.

After reviewing the prior approvals for these properties and available plans, Stoneybrook prepared two schematic plans for the expansion. See attached plans. Both plans were presented to the WMTS Board of Directors in July of 2014. Concept #1 proposed to place a large parking area on the opposite side of the stream splitting the parcel. Concept #2 provided a parking layout entirely on the same side of the stream which would use portions of the Nursery School Units they had recently purchased.

After review of the environmental issues associated with impacts to wetlands of special significance and the cost to construct a bridge that would be required for the stream crossing shown on Concept #1, the Board of Directors decided to pursue an expansion similar to Concept #2. Before WMTS could proceed with those plans, they needed to dissolve the Nursery School Condominium with the owner of Unit #1 and create a stand-alone lot for the Toddle Inn nursery school so that the remaining land could be used by WMTS for their expansion project.

After numerous meetings and several plans for suggested lot layouts, the Nursery School Condominium was dissolved and lot lines that met City Zoning requirements were approved in 2016. A copy of the final plan approved by the City and recorded at the Registry is attached. Stoneybrook prepared Schematic #3 in May of 2018, so it could be used by the WMTS Building Committee to interview two local General Contractors, Hebert Construction and H. E. Callahan. Those meetings revealed that WMTS would need additional funding which they did not have and they would need to explore other avenues as funding sources to be able to construct their expansion.

Since WMTS qualifies as a public entity, they are eligible to receive federal Section 5307 funds or grants. WMTS applied for and has received federal grants through MDOT to fund this expansion. CHA Architecture was hired in May of 2020 to design and secure approvals for this expansion.

## Zoninq

We understand that the Planning Board was concerned about a requested waiver from Section 60-607 (8): Which reads as follows:

(8) In any residential district, off-street parking may include not more than one commercial vehicle per lot.

We would like to offer the following to support approval of this project. Applicable definitions from your ordinance include the following:

Automobile means a passenger vehicle propelled by a self-contained motor. The term "automobile" also includes motorcycles, all-terrain vehicles, trucks and recreation vehicles (RVs).

*Automobile, commercial,* means a vehicle the primary use of which is commercial in character.

WMTS owns and/or operates seventy (70) vehicles at the present time. Of that number, only 5 are registered as commercial vehicles. These would be the WMTS service vehicles that keep the bus fleet operational. All buses and vehicles used for public transportation are registered under the Bus classification. The vehicles registered as commercial are three 10-passenger vans and two utility pickup trucks used for road calls, and employee transportation. The parking lot shown within the residential district will be used for vehicles registered as buses.

As noted above, WMTS is a private non-profit regional transportation corporation considered under State Statutes as a "body politic and corporate". They provide regional transportation services that the municipalities cannot afford to do alone. They are not a commercial business. Their vehicles best fit the definition of an automobile as defined above, not a commercial vehicle as defined under your ordinance.

Division 4. Low Density Rural Residence District, Section 60-229. (a) Permitted Uses, includes item (10) Municipal uses and buildings as permitted uses.

WMTS is by State Statute considered a "body politic and corporate", a phrase that is generally defined as being synonymous with a municipal corporation, school district, or other public, governmental entity. We believe that WMTS should be considered a municipal use and the parking shown can be approved without the need for a waiver, as they propose to park automobiles as defined in your ordinance and they are a permitted use which is allowed in the Rural Residence District.

### Parking Considerations

Given concerns about parking in the Rural Residence District, WMTS is prepared to limit the type of parking that will occur in this area. Site plans have been revised to show 20 seasonal storage spaces, 4 disposal spaces and 4 service spaces within this area. WMTS has 20 vehicles that provide seasonal service at Sunday River and Sugarloaf. Those 20 seasonal vehicles will be stored at this site only during the off-season periods when they are not parked at the ski resort they serve. WMTS always has vehicles that are waiting for disposal. Those vehicles will sit at this site for weeks while arrangements are made for proper transportation to a disposal site. The revised site plans show 4 spaces for storage of these vehicles. WMTS provides vehicle maintenance for other regional transportation agencies. The revised site plans also show 4 spaces for those vehicles which may sit on-site for several days.

This revised parking layout is intended to limit daily traffic flow in and out of the residential area where parking is proposed. These spaces are necessary to support WMTS continued operations but, out of respect for their neighbors, WMTS is willing to limit daily use in this residential area.

## Landscaping/Buffering

The Staff Report noted concerns with landscaping and buffering proposed for the site. We have included an aerial photo showing the existing buffering surrounding this property. We have also attached pictures taken from Google Earth showing the effective buffering that currently exists along Fletcher Road. CHA has also attached revised site plans showing additional landscaping details to support this application. These buffering improvements include the following:

• Additional landscaping has been shown along the front and side of the existing building to address Staff comments under Section 60-579(3)(g) Landscaping, item #2 listed in the Staff Report dated April 13, 2021.

- Additional spruce trees have been placed along Fletcher Road to match plantings installed at the Toddle Inn years ago. Those trees are shown as two rows separated by 6' with trees planted 12' apart in a staggered layout so trees are spaced every 6' along the Fletcher Road frontage.
- Spruce trees have been extended along the Wall property located at 87 Fletcher Road. Those trees have been set in a single row where they will not impact the proposed stormwater treatment area and along the Wall boundary where possible. After discussions with Mr. and Mrs. Wall, we have also shown a second row of spruce trees to be planted on the Wall property with their permission. These trees will also be planted in the staggered layout discussed above. Planting of trees at the northerly corner of the Wall property would be considered a wetland impact and, therefore, have not been proposed.

Some trees shown on the prior plans, between this project and the Toddle Inn parcel, have been removed and relocated to support these new landscape buffers. As shown on the aerial photo and our pictures provided, there are plantings along portions of the Toddle Inn boundaries already. Also, the Toddle Inn is not a residential use. While it is an allowed use in the Rural Residence District, buffering between their use and the WMTS use did not seem to be as important as providing an effective buffer along the residential uses on Fletcher Road.

## Neighborhood Meeting

These changes to the parking layout and buffering will be discussed at two neighborhood meetings scheduled on April 30<sup>th</sup> at the WMTS Office located at 76 Merrow Road. Invitations were sent to residential neighbors on April 21<sup>st</sup>. Meeting sessions are proposed for 3:00 PM and 6:00 PM. Information for abutters to contact us directly was also provided. A copy of the notice is attached. We will provide a summary about questions and concerns discussed by May 4<sup>th</sup>. We hope this will provide time for you to include the information in your package for the Planning Board's consideration.

We will plan to attend the Planning Board meeting to answer questions and address any remaining concerns.

Respectfully Yours

STONEYBROOK LAND USE, INC.

Wil

Michael F. Gotto



Paul R. LePage GOVERNOR State of maine Department of Transportation 16 State House Station Augusta, Maine 04333-0016

> David Bernhardt COMMISSIONER

### July 12, 2018

Charles J. Dyer Regional Counsel Federal Transit Administration, Region 1 Volpe Center 55 Broadway Suite 920 Cambridge, MA 02142-1093

Re: Regional Transportation Corporation Eligibility to Receive Section 5307 Funds

Dear Mr. Dyer:

This office is in receipt of your May 11, 2018 letter to Lori Bran, MaineDOT's Transit Program Coordinator, conveying FTA's position on the eligibility of a Regional Transportation Corporation ("RTC") to receive federal Section 5307 funds. In your letter, you have indicated that the eligibility question properly rests on MaineDOT's determination of whether or not the RTCs are legally considered "public entities" under Maine law; a determination that would qualify them as eligible recipients of the funds in question.

MaineDOT's Office of Legal Services has conducted a comprehensive review of relevant statutory language, and has determined that private organizations designated by the State of Maine as RTCs are public entities when performing their duties as RTCs. Our analysis and determination is explained below.

### Statutory Analysis:

30-A M.R.S. § 3501 states that a Regional Transportation Corporation is a "private, nonprofit corporation formed for the express purpose of providing public transportation services to more than one municipality, but which is not wholly or partly owned by the municipalities." Under this statute, MaineDOT shall certify the corporation as a "regional transportation corporation" upon at least five affected municipalities having approved the corporation for the purpose of providing public transportation services. Upon such certification, the RTC is subject to all applicable Public Utilities Commission rules governing charter and rates of fare.

While § 3501 does describe an RTC as a "private, nonprofit corporation," it also designates an RTC as a "transit district." A "transit district" is further defined in 30-A M.R.S. § 3502(2) as being a "body politic and corporate," a phrase that is generally defined as being synonymous with a municipal corporation, school district, or other public, governmental entity. In fact, there are numerous examples in Maine law where



public institutions such as the University of Maine System, community school districts, and regional school units are statutorily deemed to be bodies politic and corporate.

Maine law further acknowledges an RTC's status as a public entity through its inclusion in two significant laws impacting governmental entities:

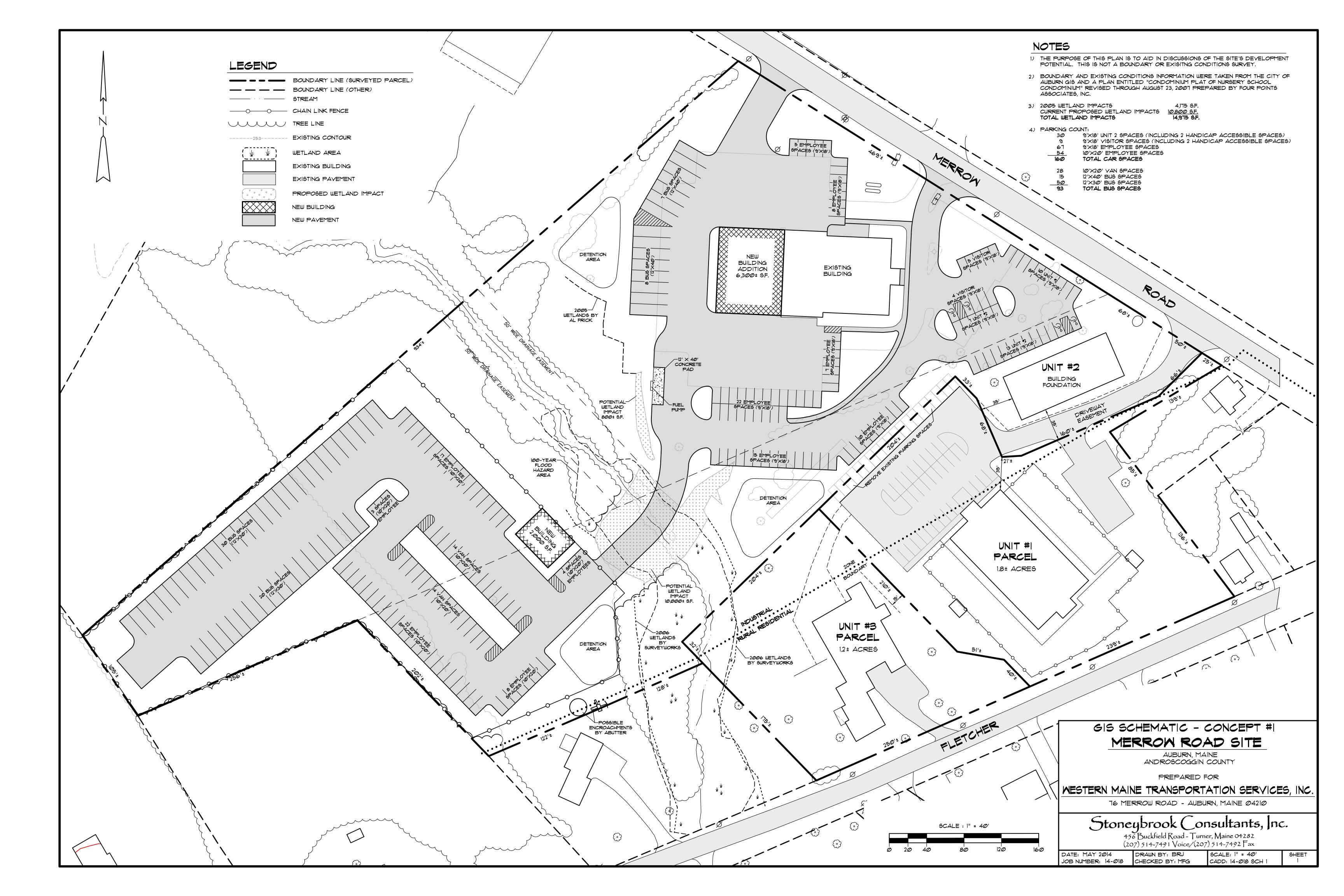
- 14 M.R.S. §8102(3) grants immunity to RTCs under the Maine Tort Claims Act through their specific inclusion under the Act's definition of a "political subdivision;"
- 1 M.R.S. § 412 mandates that the records of RTCs are public records subject to inspection and review under Maine's Freedom of Access Act.

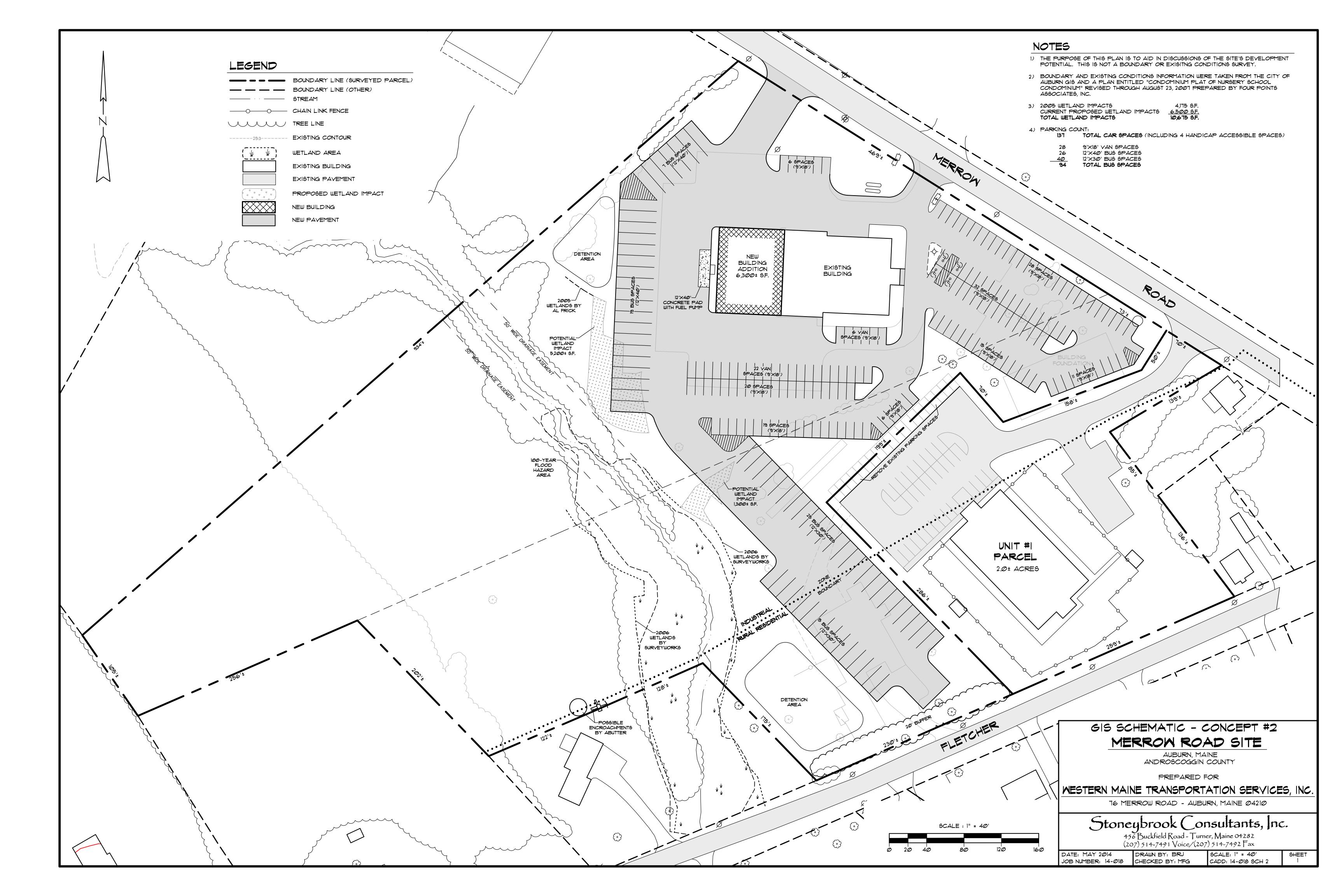
Based on this analysis, this Office concludes that a statutorily created Regional Transportation Corporation is properly considered to be a public entity when performing its role as an RTC, regardless of whether or not the underlying private corporation can clearly be considered as such on its own. Therefore, I am comfortable with the determination that MaineDOT can consider RTCs as qualifying public entities that can be authorized by MaineDOT as Direct Recipients and/or sub-recipients eligible to receive federal Section 5307 funds.

I trust that you will advise MaineDOT if you have concerns with this determination of eligibility. We will be happy to further discuss our position with you if necessary.

Sincerely yours, James Billings lef Counsel

### cc: Lori Brann, MaineDOT Transit Program Coordinator



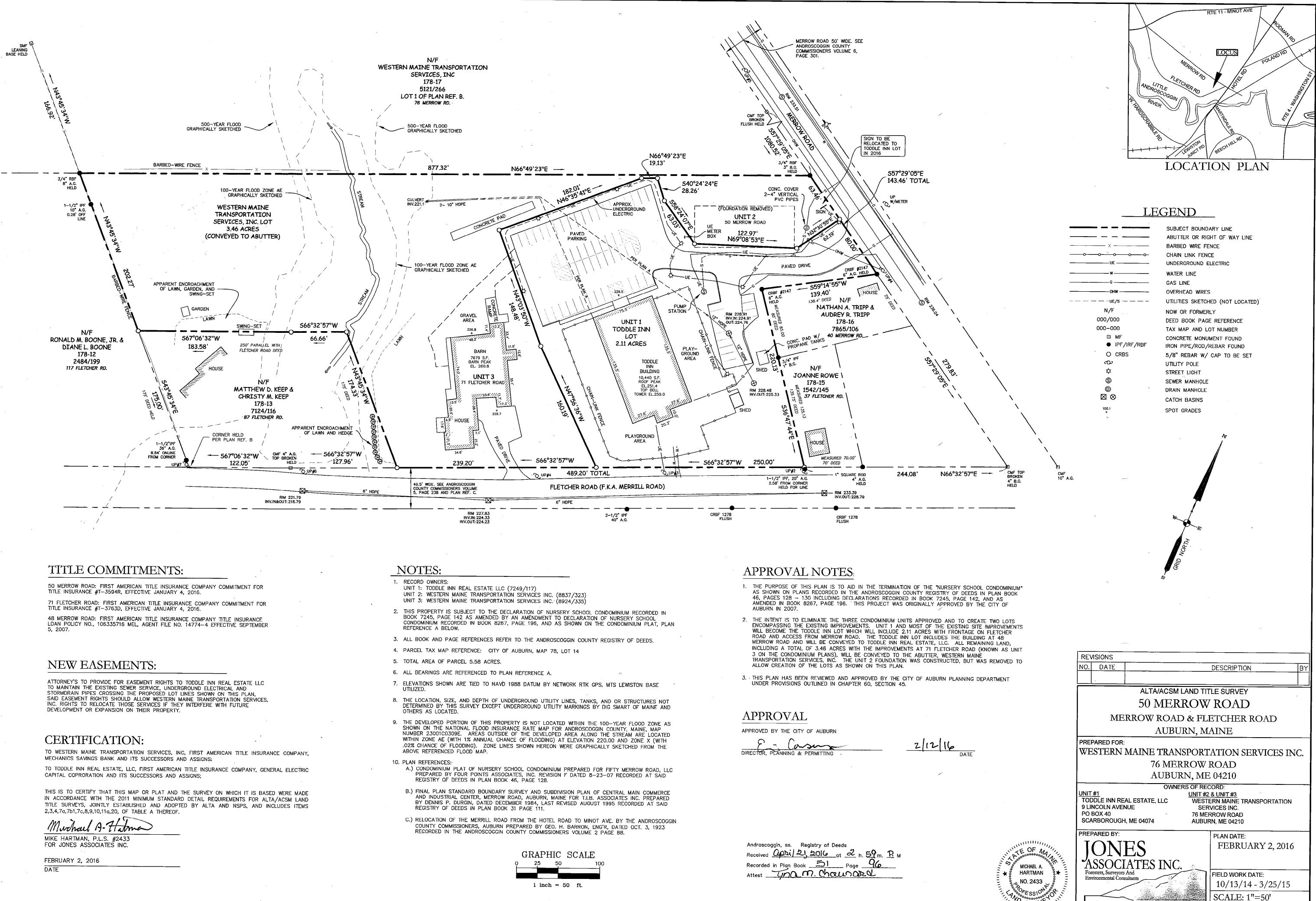


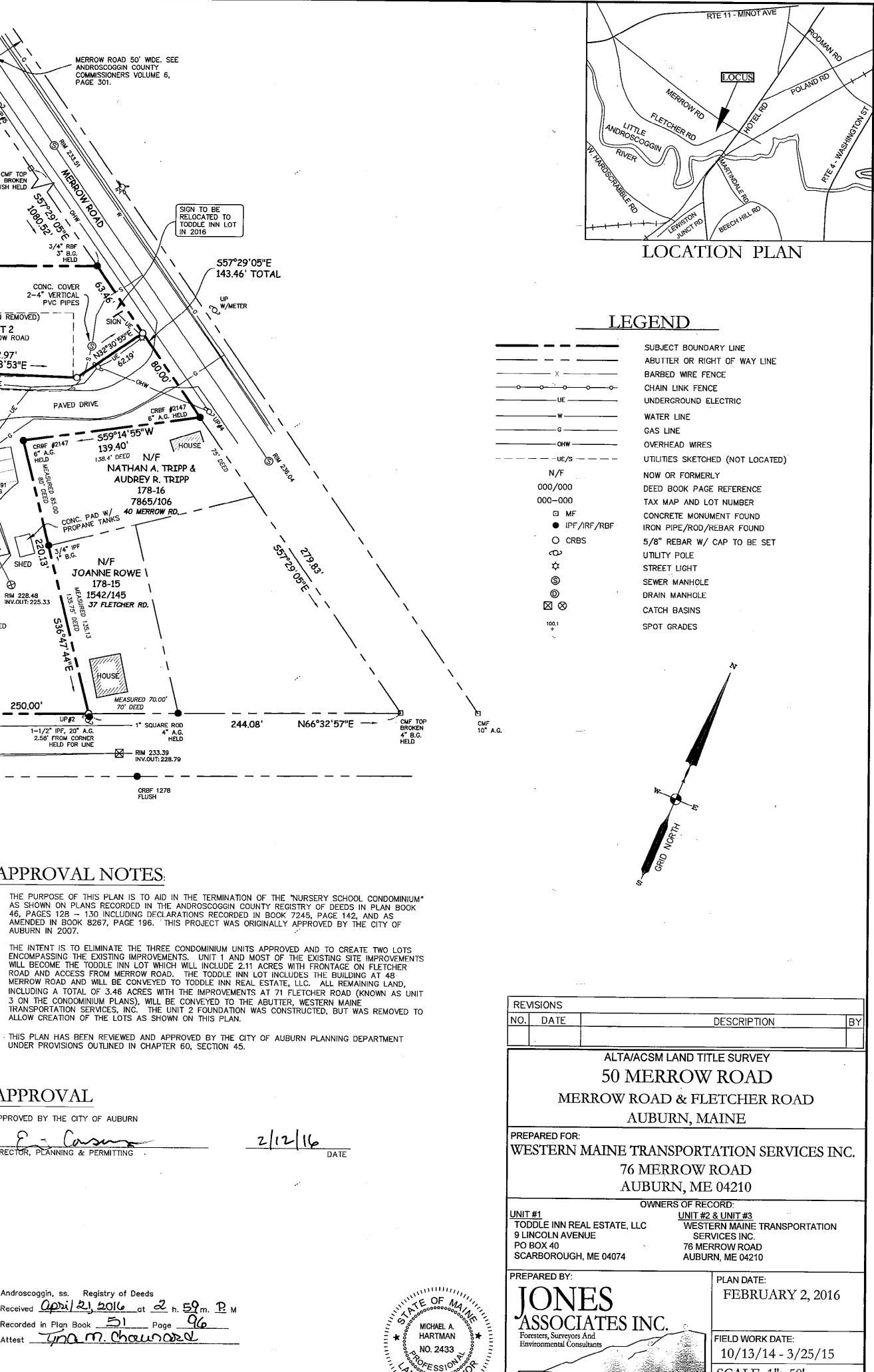
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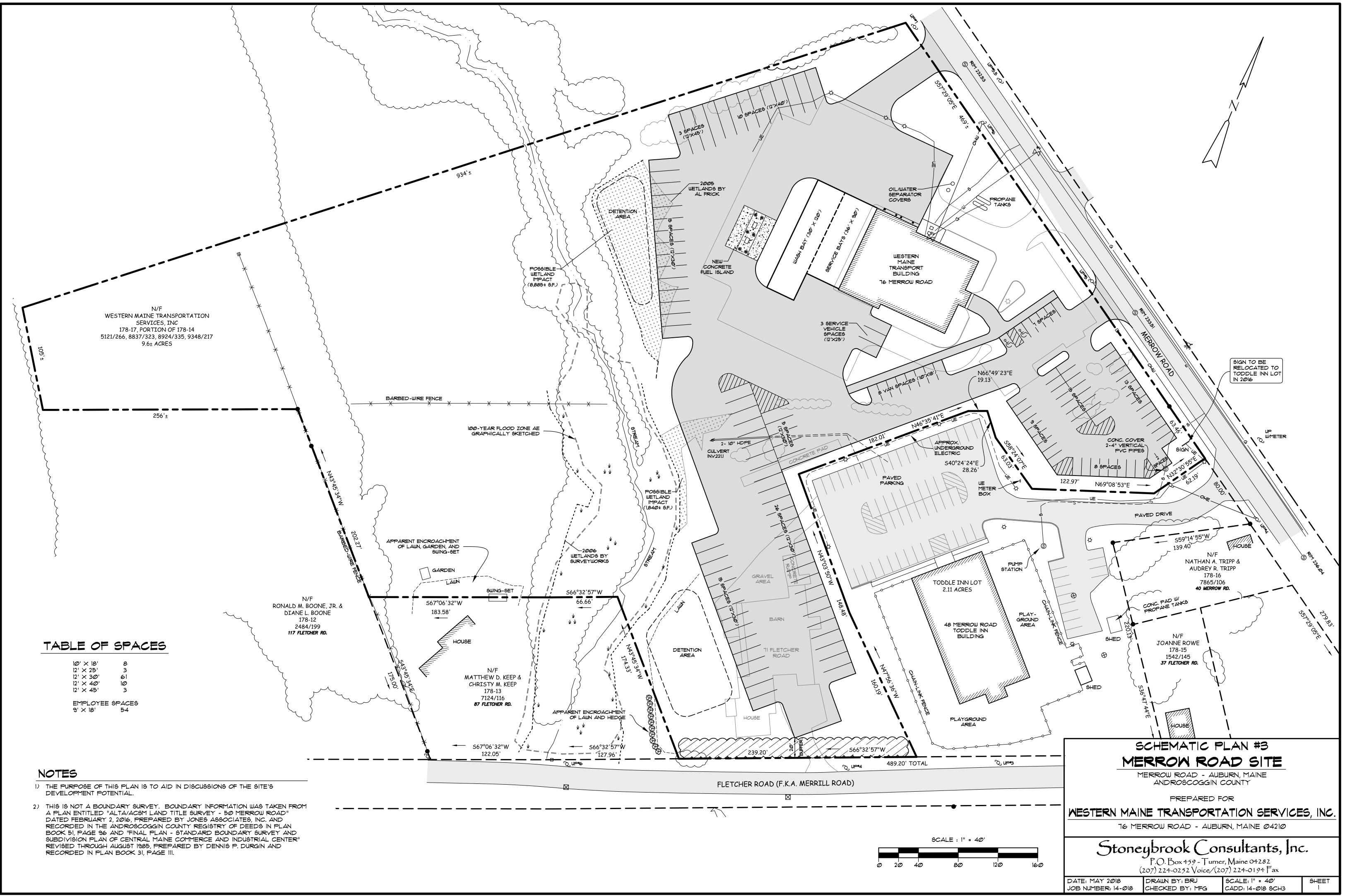




280 POLAND SPRING ROAD, AUBURN, MAINE 0421

(207) 241-0235

PROJ. #: 14-058AU



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1. Looking along Fletcher Road from approximately 37 Fletcher Road.



## 2. Looking along Fletcher Road From approximately 50 Fletcher Road.

# SITE PHOTOS





3. Looking into Toddle Inn site from approximately 50 Fletcher Road.



4. Looking along Toddle Inn frontage from approximately 62 Fletcher Road.

# SITE PHOTOS





5. Looking at Existing Farmhouse from approximately 62 Fletcher Road.



6. Looking across Fletcher Road at 62 Fletcher Road frontage.

# SITE PHOTOS





7. Looking along Farmhouse frontage from approximately 72 Fletcher Road.



8. Looking toward Farmhouse from approximately 86 Fletcher Road.

## SITE PHOTOS





9. Looking across Fletcher Road at 86 Fletcher Road frontage.



10. Looking toward 87 Fletcher Road from approximately 86 Fletcher Road.

# SITE PHOTOS



