



STATE OF MAINE  
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY  
LAND USE PLANNING COMMISSION  
191 MAIN STREET  
EAST MILLINOCKET, MAINE 04430

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EXECUTIVE DIRECTOR

## PERMIT

### ROAD CONSTRUCTION PERMIT RP 3277 WATER QUALITY CERTIFICATION

The staff of the Maine Land Use Planning Commission, after reviewing the application and supporting documents submitted by S&B Investments, L.L.C. for Road Construction Permit RP 3277, finds the following facts:

1. Applicant: S&B Investments, L.L.C.  
c/o Stuart H. Reese  
1625 Ludlow Road  
Marco Island, FL 34145
2. Date of Completed Application: February 20, 2014
3. Location of Proposal: T3 R1 NBPP, Penobscot County  
Maine Revenue Service Taxation Lot #1.21 on Plan 01
4. Zoning: (M-GN) General Management Subdistrict  
(P-WL1) Wetland Protection Subdistrict  
(P-WL3) Wetland Protection Subdistrict  
(P-SL2) Shoreland Protection Subdistrict  
(P-GP) Great Pond Protection Subdistrict  
(P-FP) Flood Prone Protection Subdistrict

#### Background Information

5. The applicant owns 810 acres of land surrounding much of the southern and eastern shoreline of Number 3 Pond, a Great Pond. An historic pre-Commission dam exists at the outlet of Number 3 Pond which is comprised of cut-granite blocks with a log-and-plank spillway. The dam has fallen into disrepair and partial failure due to lack of maintenance. The applicant proposes to conduct repairs and reinforcement to the dam [ref. Shoreland Alteration Permit SA 1074].

#### Proposal & Site Conditions:

6. In order to gain access to the dam site, the applicant proposes to construct a new private road for access by construction equipment and materials and for ongoing dam maintenance. Access to the road construction site will be via an existing private land management road on the applicant's property. The road would be

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650 feet in length and 14 feet to 16 feet wide with an 18 foot by 35 foot turn-around near the western end of the proposed road. The proposed road and turnaround are as shown on a site plan titled *Exhibit E-1 Proposed Site Plan* submitted by the applicants' agent, D. Gordon Mott, Maine Licensed Forester. Specifications for the road construction are as shown on *Exhibit E-2 X-Sections* and *Exhibit E-3 Road Profile*

7. Approximately 3,500 square feet of (P-WL1) would be altered by the proposed road construction. The wetland area to be altered is zoned as P-WL1 by virtue of it being forested wetland area located within 250 feet of the normal high water mark of a Great Pond. While a technical delineation of the wetland areas was not a requirement of the application, approximate wetland boundaries were located by GPS and plotted on *Exhibit E-1 Site Plan*.

The applicants state that the proposed route for the road is the only feasible location through a large field of glacial boulders and represents the least distance option.

8. Soils at the site at the site have been identified by the Natural Resources Conservation Service as Hermon extremely stony sandy loam and Charles silt loam. The average sustained grade along the proposed road is approximately 2.2% with a maximum sustained grade of 6% for a 10 foot length of the proposed road.
9. The applicant consulted with David Rocque, State Soil Scientist for his recommendation on the most appropriate road construction method. Mr. Rocque provided the applicant with recommendations in a memorandum dated December 13, 2013, which has been submitted by the applicant as part of the application for Road Construction Permit RP 3277. The applicant states that all of the recommendations of the State Soil Scientist will be implemented in construction of the road.
10. Construction would begin in mid-June or as soon as weather and ground conditions are favorable and will be conducted according to specifications contained in *Exhibit I – Drainage, Stabilization and Erosion Control Plan*.

#### Review Criteria

11. Section 10.02(101) of the Commission's Land Use Districts and Standards, defines level C road projects as the construction of new roads, and relocations or reconstruction of existing roads, other than that involved in level A or level B road projects; such roads shall include both public and private roadways excluding land management roads.
12. Under the provisions of Sections 10.22,A,3,c(15), 10.23,E,3,c(13), 10.23,C,3,c(14), and 10.23,L,3,c(15) of the Commission's Land Use Districts and Standards, Level C road projects are an allowed use within the (M-GN) General Management Subdistrict, (P-GP) Great Ponds Protection Subdistrict, (P-FP) Flood Prone Protection Subdistrict, and (P-SL) Shoreland Protection Subdistrict respectively upon issuance of a permit from the Commission.
13. Under the provisions of Sections 10.23,N,3,d(7) of the Commission's Land Use Districts and Standards, Level C road projects are an allowed use in the (P-WL) Wetland Protection Subdistricts upon issuance of a permit by special exception from the Commission provided that the applicant shows by substantial evidence that:
  - (a) there is no alternative site which is both suitable to the proposed use and reasonably available to the applicant;

- (b) the use can be buffered from those other uses or resources within the subdistrict with which it is incompatible; and
- (c) such other conditions are met that the Commission may reasonably impose in accordance with the policies of the Comprehensive Land Use Plan.

14. Under provisions of Section 10.25, P, 1, c(3) of the Commission's Land Use Districts and Standards, Tier 3 reviews are for projects altering any area of P-WL1 wetlands. Alterations of P-WL1 wetlands may be eligible for Tier 1 or 2 review if the Commission determines, at the applicant's request, that the activity will have no undue adverse impact on the freshwater wetlands or other protected natural resources present. In making this determination, consideration shall include but not be limited to, such factors as the size of the alteration, functions of the impacted area, existing development or character of the area in and around the alteration site, elevation differences and hydrological connection to surface water or other protected natural resources.
15. Under the provisions of Section 10.25, D,4 of the Commission's Land Use Districts and Standards, the Commission shall classify Level B and Level C road projects based on the following general criteria:
- (1) Class 1 Roadway. Generally appropriate for most projects surrounded by a relatively compact development pattern, for high-intensity commercial or industrial projects, and for residential subdivisions with 15 or more lots.
  - (2) Class 2 Roadway. Generally appropriate for low-intensity commercial or industrial projects surrounded by a relatively sparse development pattern and for residential subdivisions with fewer than 15 lots surrounded by a relatively sparse development pattern.
  - (3) Class 3 Roadway. Generally appropriate for low-intensity, small-scale commercial projects surrounded by a relatively sparse development pattern or located on an island.

In making its determination on the appropriate roadway classification, the Commission shall consider the following factors:

- (1) The number of lots served by the roadway or projected level of use;
- (2) The nature of roadways accessing the project site;
- (3) Location in relation to surrounding patterns of development;
- (4) The level of development within the vicinity of the project;
- (5) Natural and imposed limits on future development;
- (6) The type and intensity of the proposed use; and
- (7) Service by utilities or likelihood of service in the future.

Section 10.25, D,4,c specifies that where practicable, roadways shall be designed to minimize the use of ditching, fit the natural topography of the land such that cuts and fills are minimized, and protect scenic vistas while preserving the scenic qualities of surrounding lands. Section 10.25, D,4,e specifies minimum roadway width, spacing of turnouts, minimum base and travel surface depths, and maximum sustained slopes for each roadway classification. The following are the specifications for a class 3 roadway: 8 foot travel width, minimum depth of base is as needed, a minimum 2 inch depth of travel surface, and sustained slopes no greater than 15 percent.

16. Section 10.27,D of the Commission's Land Use Districts and Standards specifies standards for the construction and maintenance of roads and water crossings within certain land use districts, including (P-

WL1,2) Wetland Protection Subdistricts, (P-SL) Shoreland Protection Subdistricts, (P-FP Flood prone Protection Subdistricts, and (P-GP) Great Pond Protection Subdistricts.

17. Section 10.25,T of the Commission's Land Use Districts and Standards specifies standards for development in flood prone areas, including areas of special flood hazard as identified by (P-FP) subdistricts.

#### Review Agency Comments

18. The Maine Natural Areas Program comments that it has no records of rare or unique botanical features in the vicinity of the project area.
19. The U.S. Army Corps of Engineers has reviewed the proposal and had no comments.
20. The Maine Department of Inland Fisheries and Wildlife has reviewed the proposal and states that there are no Essential or Significant Wildlife Habitats associated with the project, that minimal impacts to wildlife and wildlife habitats are anticipated, and that there are no fisheries concerns with the proposed project.
21. The facts are otherwise as represented in Road Construction Permit Application RP 3265 and supporting documents.

Based upon the above Findings, the staff concludes that:

1. The proposal is a Level C road project under the provisions of Section 10.02(101) of the Commission's Land Use Districts and Standards.
2. The proposal meets the criteria for a permit by special exception within the (P-WL) Wetland Protection Subdistrict. Specifically:
  - A. There is no alternative site which is both suitable to the proposed use and reasonably available to the applicants as discussed under Finding #7 above; and
  - B. The uses or resources and resources within the affected wetlands would be protected by the using road construction methods as proposed that would have minimal effect on the hydrology of the wetlands, and implementing erosion and sedimentation controls as proposed to prevent sedimentation of surface waters and wetlands.
3. The proposal qualifies as a class 3 roadway under provisions of Section 10.25, D,4 of the Commission's Land Use Districts and Standards. Specifically, while the roadway would serve neither a commercial nor a residential subdivision project, it is most equivalent to a class 3 roadway in that it would serve a very low-intensity, small-scale non-residential use surrounded by a relatively sparse development pattern. The proposal meets the standards for a class 3 roadway under provisions of Sections 10.25, D,4,c and 10.25, D,4,e.
4. The portion of the proposed road located within the (P-WL2) Wetland Protection Subdistrict complies with the applicable standards of Section 10.27,D of the Commission's Land Use Districts and Standards.
5. The proposal complies with the provisions of Section 10.25,T of the Commission's Land Use Districts and Standards regarding development in flood prone areas in that the applicant proposes to use construction

materials that are resistant to flood damage and construction methods and practices will minimize flood damage.

6. If carried out in compliance with the Conditions below, the proposal will meet the Criteria for Approval, Section 685-B(4) of the Commission's Statutes, 12 M.R.S.A.

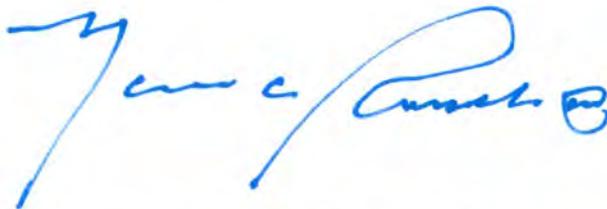
**Therefore, the staff approves the application of S&B Investments, L.L.C. with the following conditions:**

1. The Standard Conditions for Road Construction Permits (ver. 10/84), a copy of which is attached.
2. The permittee shall implement the erosion and sedimentation control plan as proposed in their application. Erosion control devices must be in place prior to commencement of construction. Once implemented or put in place, erosion control devices and measures shall be maintained to ensure proper functioning.
3. During construction, the permittee shall take reasonable precautions to avoid siltation and overland storm water flows. Methods used may include, but are not limited to, the use of mulch to temporarily stabilize exposed soil, cessation of construction activities during inclement weather and installation of water turnouts, water bars, and any other measures which may prove necessary.
4. The road shall be constructed in accordance with relevant exhibits submitted as part of the application for Road Construction Permit RP 3277 and the memorandum from David Rocque, State Soil Scientist dated December 13, 2013
4. All operations must be stopped where the continuation of such operations will cause or contribute to the occurrence of accelerated erosion or concentrated overland storm water flows, or the sedimentation of surface waters, whether such occurrence is precipitated by wet weather, the failure of water control measures, or other factors. Adequate steps must immediately be taken to stop any accelerated erosion or sedimentation of surface waters and to correct the situation which led to such occurrence.
5. If water control measures beyond those specified herein prove to be necessary in order to reasonably avoid accelerated erosion or sedimentation of surface waters, such additional measures must be employed.
6. All areas of disturbed soil, other than the traveled surface of the road, must be permanently stabilized with mulch and seeded. All soil stabilization measures must be completed during or immediately following construction to minimize the potential for soil erosion and sedimentation. If construction is completed between May 1 and September 15 of the calendar year, areas of disturbed soils shall be reseeded and mulched. If construction is completed outside this timeframe, areas of disturbed soils shall be sufficiently mulched or otherwise stabilized for over-winter protection and reseeded as soon as conditions allow in the following spring. In areas where revegetation is not initially successful, additional measures to control erosion and sedimentation and to permanently revegetate the site shall be undertaken as often as necessary to be effective.
7. All stumps, vegetative debris, solid waste and other debris shall be disposed of in a proper manner, in compliance with applicable state and federal solid waste laws and rules. Stockpiles of stumps and/or vegetative debris must be located at least 100 feet from all streams and must not encroach into identified P-WL2 or P-WL3 wetlands. If stumps and/or vegetative debris are burned, the permittee shall obtain any necessary fire permits.

8. Construction activities authorized in this permit must be substantially started within two years of date of issue and substantially completed within five years from date of issuance of this permit. If such construction activities are not begun and completed within this time limitation, this permit shall lapse and no activities shall then occur unless and until a new permit has been granted by the Commission.

This permit is approved only upon the above stated conditions and remains valid only if the permittee complies with all of these conditions. In addition, any person aggrieved by this decision of the staff may, within 30 days, request that the Commission review the decision.

DONE AND DATED AT EAST MILLINOCKET, MAINE, THIS 17th DAY OF APRIL, 2014.

A handwritten signature in blue ink, appearing to read "Nicholas D. Livesay", written over a horizontal line.

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