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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

WALTER E. WHITCOMB  
COMMISSIONER

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EXECUTIVE DIRECTOR

SHORELAND ALTERATION PERMIT SA 1074  
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 Shoreland Alteration Permit SA 1074, finds the following facts:

1. Applicant: S&B Investments, L.L.C.  
1625 Ludlow Road  
Marco Island, FL 34145
2. Authorized Agent: Tim Brochu, P.E.  
CES Inc.  
P.O. Box 639  
Brewer, ME 04412
3. Date of Completed Application: April 9, 2014
4. Location of Proposal: T3 R2 NBBP  
Lot #1.21 on Plan 01
5. Zoning: (P-GP) Great Pond Protection Subdistrict  
(P-SL2) Shoreland Protection Subdistrict  
(P-WL1) Wetland Protection Subdistrict  
(P-FP) Flood prone Protection Subdistrict
6. Affected Water Bodies: Number 3 Pond, West Branch Passadumkeag River

The Commission has identified Number Three Pond as a management class 7, resource class 1B, accessible, undeveloped lake with the following resource ratings: significant fisheries resources, significant scenic resources, significant shore character. Number 3 Pond is rated GPA under the state water quality law, 38 M.R.S.A. §465.

The West Branch Passadumkeag River is rated Class A under the state water quality law, 38 M.R.S.A. §465.

Background

7. An approximately 100 year old water-control dam exists at the outlet of Number 3 Pond. The pond drains to the West Branch of the Passadumkeag River. The historic dam is comprised of approximately 40 cut stone blocks with a log-and-board weir structure. Over time, some of the cut stone blocks have become misaligned and the log-and-board weir structure has fallen in disrepair. Additionally, beaver activity at the outlet has caused damage to the structure. In its present condition, the dam is at substantial risk of failure. A failure of the dam would cause an approximately 4 foot drop in historic water levels in the pond.
8. The applicant proposes to repair and stabilize the outlet dam of Number 3 Pond in order to maintain the historic water level in the pond. Accumulated branches, mud, and debris deposited by beavers at and immediately below the dam would be removed by use of an excavator or backhoe and manual labor. Removed material would be disposed of off-site. Existing cut stone blocks will be realigned and restacked. This may require the addition of fill material and filter fabric to reestablish historic grades and lines. All repairs to the dam structure will be completed within the existing/historic footprint limits and grades.
9. Upon completion of repairs to the damaged structural components of the dam, the existing log-and-board weir will be stabilized and reinforced by setting and securing size 36 D50 rip rap stones within the existing stream channel below the weir with minimal disturbance. The completed installation of rip rap stone will be done in accordance with the detail shown on the site plan submitted as exhibit E of the application for Shoreland Alteration Permit SA 1074.
10. The historic existing dam provided no means for upstream fish passage to Number 3 Pond. No structural means for upstream fish passage is proposed as part of this proposal.
11. The applicant states that the proposed dam repairs will not result in any change to historic water levels in Number 3 Pond.
12. The applicant has submitted an Erosion Control Plan to control erosion and movement of soil material to the waterbody as well as final stabilization of affected areas upon completion of the repairs.
13. Commission Staff conducted a site visit on December 10, 2013, accompanied by the applicant's authorized representative, the applicant's engineer, and the State Soil Scientist.
14. Access to the dam site will be by a proposed access roadway authorized by the Commission on April 17, 2014 under Road Construction Permit RP 3277.
15. The proposal would result in approximately 133 square feet of alteration to a (P-WL1) Wetland Protection Subdistrict (of special significance). This alteration would be limited to the disturbance of the stream channel below the existing dam during periods of debris removal and to the placement of reinforcing rip rap stone.
16. Base flow from the pond to the stream would be maintained during construction. Work will be done during periods of lowest flow in late July or August. Diversion of flow around actively disturbed areas will be accomplished as needed in the event of sudden flow increases by using sheet-pile materials such as plywood, tarps, or similar materials.

Review Criteria

17. Under provisions of Sections 10.23, C, 3,c (15), 10.23, E, 3, c, (14), 10.23, L, c, (16), and 10.23, N, 3, c, (11) of the Commission's Land Use Districts and Standards, shoreland alterations, excluding marinas, permanent docking facilities, water access ways, trailered ramps, hand-carry launches, and water crossings of minor flowing waters, are a use allowed with a permit in a (P-FP) Flood Prone Protection Subdistrict, (P-GP) Great Pond Protection Subdistrict, (P-SL) Shoreland Protection Subdistrict, and a (P-WL) Wetland Protection Subdistrict, respectively.
18. Under provisions of 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.
19. Under provisions of Section 10.25, P, 1, b, (2) of the Commission's Land Use Districts and Standards, if a proposed activity requires a permit and will alter 500 or more square feet of a P-WL1 wetland or 20,000 or more square feet of a P-WL2 or P-WL3 wetland, the Commission may require, as a condition of approval, mitigation, including compensation, as provided in the Commission's General Land Use Standards in Section 10.25, P, 2.
20. 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, 15,000 up to 43,560 square feet (one acre) of P-WL2 or P-WL3 wetlands containing critically imperiled (S1) or imperiled (S2) natural communities, or one acre or more of P-WL2 or P-WL3 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.

21. Under provisions of Section 10.25, P, 2 of the Commission's Land Use Districts and Standards, projects requiring Tier 2 review must:
  - A. Not cause a loss in wetland area, functions and values if there is a practicable alternative to the project that would be less damaging to the environment. Each Tier 2 application must provide an analysis to the alternatives in order to demonstrate that a practicable alternative does not exist;
  - B. Limit the amount of wetland to be altered to the minimum amount necessary to complete the project;
  - C. Comply with applicable water quality standards; i.e., the activity must not violate any state water quality law, including those governing the classification of the State's waters. Projects that would alter wetland hydrology and could also alter stream flows or other adjacent surface waters must comply with the water quality classification standards contained in 38 M.R.S.A. §465; and
  - D. Use erosion control measures to prevent sedimentation of surface waters.
  - E. For projects requiring Tier 2 review, the Commission may require compensation when it determines that a wetland alteration will cause a wetland function or functions to be lost or

degraded as identified by an assessment of wetlands functions and values in accordance with application requirements or by the Commission's evaluation of the project. The Commission may waive the requirement for a functional assessment if it already possesses the information necessary to determine the functions of the area proposed to be altered. The Commission may waive the requirement for compensation if it determines that any impact to wetland functions and values from the activity will be insignificant.

#### Review Comments

22. The Maine State Soil Scientist has reviewed the application and visited the site and recommended that some form of water diversion material on hand to serve as a coffer dam for when working around the abutments in the event that soil will be disturbed while flowing water is present. Sand bags or sheet piling are examples of such devices but piping or other measures can also be used. The applicant has agreed to this recommendation.
23. The U.S. Army Corps of Engineers was provided with a copy of the application and had no comment.
24. The Maine Department of Inland Fisheries and Wildlife (IF&W) regional fisheries biologist reviewed the application and commented that there are a number of fish species in the Passadumkeag River that presently are not found in Number 3 Pond, including smallmouth bass. At some point in the future Northern pike and other invasive species may become established downstream of the outlet in the Passadumkeag Watershed. Presently the dam is impassable to fish movement from below, and available survey information indicates that there is limited cold-water fish spawning/nursery habitat in the outlet stream. Based upon the above, the MDIFW recommends that the barrier to upstream fish movement be maintained.
25. The Maine Department of Inland Fisheries and Wildlife regional wildlife biologist reviewed the application and commented that MDIFW recommends delaying the start of construction until July 15<sup>th</sup> to reduce disturbance to nesting waterfowl, wading birds and other bird species. Care should be taken during construction to maintain the existing water level in the lake and prevent high flows in the stream below the project site. Effort should be made minimize noise levels during construction to avoid disturbance to nesting bald eagles on the island approximately one mile from the project site. The applicant has agreed to this recommendation.
26. The Maine Historical Preservation Commission has reviewed the application and indicates that there will be no historic properties affected by the proposal.
27. The Maine Natural Areas Program has reviewed the application and indicates that there are no rare botanical features documented specifically within the project area.
28. The Submerged Lands Program of the Maine Department of Agriculture, Conservation, and Forestry has reviewed the application and states that no state-owned submerged lands will be affected by the proposal.
29. The facts are otherwise as represented in the application for Shoreland Alteration Permit SA 1074 and supporting documents.

Based upon the above Findings, the staff concludes that:

30. In accordance with Section 10.25, P, 1, b, (2) of the Commission's Land Use Districts and Standards, because the area of P-WL1 wetland alteration would be less than 500 square feet, compensation will not be required.
31. In accordance with Section 10.25, P, 1, c, (3) of the Commission's Land Use Districts and Standards, the proposed dam reconstruction qualifies for reduction to a Tier 2 review. Specifically, there would be no adverse impact to the pond or the outlet stream in that the completion of the project would result in long term stabilization of the site and maintain historic base flows and water levels; the impacted area has been limited to the minimum amount necessary to complete the project; and the hydrologic connection between the pond and the outlet stream would be maintained during construction.
32. The proposed activity would meet the standards in Section 10.25, P, 2, for a Tier 2 review. Specifically, there is no practicable alternative that does not involve removal of the dam and consequent loss of habitat, and there would be no significant loss of wetland area; the impact to the (P-WL) Wetland Protection Subdistrict has been limited to the minimum amount necessary to complete the project; and the project would not violate the state's law or standards for the water quality classification for Number 3 Pond or the West Branch Passadumkeag River.
33. The proposal complies with the provisions of Section 10.25,T, 2, a 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.
34. 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 Shoreland Alterations (ver. 4/91), a copy of which is attached.
2. The repair and reinforcement of the existing dam must be limited to the proposal as submitted, including all proposed monitoring and erosion control measures. The repaired dam must be no longer or higher than the existing dam, and must not cause the water level of Number 3 Pond to be raised above the historic normal high water mark. Flow rates in the outlet stream shall be maintained at normal levels during and after construction.
3. All construction must be done during a period of low water between July 15 and October 1. Work shall be suspended during heavy rain events. No equipment may be driven below the normal low water mark.
4. To avoid soil erosion and sedimentation to Number 3 Pond and West Branch Passadumkeag River, all areas of exposed mineral soil above the normal high water mark must be stabilized and revegetated in accordance with the provisions of the applicant's Erosion Control Plan.
5. Upon completion of the project, all construction debris must be removed from the pond, stream and adjacent area and disposed of in a proper manner, in compliance with applicable state and federal solid

waste laws and rules. The applicant or authorized agent shall notify the Commission of the project's completion and allow staff access for inspection of the site.

This permit is approved upon the proposal as set forth in the application and supporting documents, except as modified in the above stated conditions, and remains valid only if the permittee complies with all of these conditions. Any variation from the application or the conditions of approval is subject to prior Commission review and approval. Any variation undertaken without Commission approval constitutes a violation of Land Use Planning Commission law. 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 14TH DAY OF MAY, 2014.



By:

\_\_\_\_\_ *for* Nicholas D. Livesay, Executive Director



STATE OF MAINE  
DEPARTMENT OF CONSERVATION  
22 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0022

STANDARD CONDITIONS OF APPROVAL FOR ALL SHORELAND ALTERATION PERMITS

1. The permit certificate must be posted in a visible location on your property during performance of the activities approved by this permit.
2. This permit is dependent upon and limited to the proposal as set forth in the application and supporting documents, except as modified by the Commission in granting this permit. Any variation therefrom is subject to the prior review and approval of the Maine Land Use Regulation Commission. Any variation from the application or the conditions of approval undertaken without approval of the Commission constitutes a violation of Land Use Regulation Commission law.
3. Activities permitted in this permit must be begun within two (2) years of date of issue and completed within three (3) years from date of issuance of this permit. If such 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.
4. The recipient of this permit ("permittee") shall secure and comply with all applicable licenses, permits, and authorizations of all federal, state and local agencies including, but not limited to, permits required under the Natural Resources Protection Act administered by the Maine Department of Environmental Protection.
5. The scenic character and healthful condition of the area covered under this permit must be maintained. The area must be kept free of litter, trash, junk cars and other vehicles, and any other materials that may constitute a hazardous or nuisance condition.
6. All areas of exposed mineral soil above the normal high water line or wetland boundary shall be promptly seeded and mulched so as to avoid soil erosion and lake sedimentation. Rocks and trees which are holding the shoreline and preventing erosion shall not be removed.
7. Unless otherwise specified in this permit, all work must be conducted at periods of low water when the water level is lower than the work area.
8. Unless otherwise specified in this permit, no mechanical equipment, machinery or vehicles shall be operated below the normal high water line or wetland boundary.
9. If pressure treated wood is to be used, such wood must be allowed to cure, away from the waterbody or wetland, for a minimum of three weeks prior to installation.
10. Once the activity is completed, the permittee shall notify the Commission that all requirements and conditions of approval have been met. The permittee shall submit all information requested by the Commission demonstrating compliance with the terms of the application and the conditions of approval. Following notification of completion, the Commission's staff may arrange and conduct a compliance inspection.