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

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PERMIT

SHORELAND ALTERATION PERMIT SA 1075
BY SPECIAL EXCEPTION
WATER QUALITY CERTIFICATION

The staff of the Maine Land Use Planning Commission, after reviewing the application and supporting documents submitted by Bangor Gas Company for Shoreland Alteration Permit SA 1075, finds the following facts:

1. Applicant: Bangor Gas Company
   498 Maine Avenue
   Bangor ME, 04401

2. Date of Completed Application: March 18, 2014

2. Location of Proposal: Mattamiscontis Twp., Penobscot Co.
   Plan 01 Lot 7.3 (owned)

4. Zoning: M-GN (General Management Subdistrict)
   P-SL (Shoreland Protection Protection Subdistrict)
   P-WL (Wetland Protection Subdistrict)
   P-FP (Flood Prone Protection Subdistrict

Background

5. The applicant proposes to install a six inch (6") buried natural gas pipeline extension to deliver natural gas from its existing pipeline in Chester to the town of Lincoln for the primary purpose of serving industrial and commercial customers at this time. The proposed pipeline extension would be installed within the Maine Department of Transportation (MDOT) right of way along the east side of State Route 116 (the Access Highway) on the northwesterly side of the Penobscot River, thence, via directional drilling method, underneath the river bed of the Penobscot River, to a point on the southeast side of the river in the town of Lincoln. The underground pipeline will be installed entirely within the MDOT right of way.

Proposal

6. In addition to the above described pipeline installation, the applicant proposes to construct a temporary gravel construction access roadway within the MDOT right of way to an area partially outside of the

right of way for the purpose of constructing a temporary equipment and operations staging area. The staging area is necessary for operation of the drilling equipment and the drill fluid recycling equipment. The staging area will be approximately 100 feet by 75 feet in area and would be located a minimum of 75 feet from the normal high water mark of an unnamed minor flowing waterbody (stream) and approximately 300 feet from the normal high water mark of the Penobscot River. Approximately 17,500 square feet of forested area would be cleared for construction of the temporary access road way and staging area. Approximately 2,000 cubic yards of common borrow fill material would be used in the construction of the staging area and the access roadway. The access roadway would be approximately 15 feet in width and 200 feet in length and would be constructed on a slope of approximately 10-20 percent. The limits of the down-gradient fill taper for the access roadway would be set back approximately 45 feet from the normal high water mark of the Penobscot River.

7. All fill material used in the construction of the proposed staging area and access roadway is proposed to be removed from the project site upon completion of the drilling operation and the site will be graded and permanently stabilized. Affected areas within 100 feet of the Penobscot River will be revegetated with native tree species.

8. The proposed directional drill launch site will be a minimum of 275 feet from the normal high water mark of the Penobscot River. With the exception of the temporary access roadway, no clearing or soil disturbance activities are proposed between the drill entry point and the river. A small excavation of approximately 6 feet by 14 feet by 5 feet in depth is proposed at the drill entry point to achieve proper drill-entry angle.

9. In areas below the normal high water mark of the Penobscot River, the proposed pipeline would extend approximately 1,060 feet in length at a depth of approximately 50 feet beneath the natural river bed.

10. While the underground drilling activity will take place within an area designated as a (P-WL1) Wetland Protection Subdistrict (of special significance), due to the depth of the boring and pipe installation, no actual wetland areas will be filled, drained, or otherwise altered as a result of this proposal.

Alternative Analysis

11. The applicant considered alternative options for installation of the pipeline across the Penobscot River, namely:

    a. Attaching the pipeline to the underside of the existing MDOT bridge over the Penobscot River on State Route 116. The MDOT deemed the bridge structure to be inadequate to support any additional dead load and would not permit this option.
    b. Conducting drilling operations downstream of the bridge. Existing electrical power distribution infrastructure would interfere with drilling operations.
    c. Conducting drilling operations upstream of the bridge, but on the southeast side of the river. This option was ultimately deemed to require greater vegetation removal and filling than the proposed option.

Review Criteria

12. Under the provisions of 12 M.R.S.A. section 685-B,2,D of the Commission's statutes, an application for approval by the Commission must include evidence of sufficient right, title or interest in all of the

property that is proposed for development or use. For purposes of this subsection, the written permission of the record owner or owners of flowed land is deemed sufficient right, title or interest to confer standing for submission of a permit application, provided that the letter of permission specifically identifies the activities being performed and the area that may be used for that purpose.

13. Under the provisions of Section 10.07,F of the Commission's Land Use Districts and Standards, public utility facilities located within a public right-of-way do not require a permit from the Commission.

14. Under the provisions of Section 10.23,N,2,a (1) of the Commission's Land Use Districts and Standards, the area below the normal high water mark of the Penobscot River is designated a (P-WL1) Wetland Protection Subdistrict, reflecting that it is a wetland of special significance.

15. Under the provisions of Section 10.23,N,3,D(9) of the Commission's Land Use Districts and Standards, utility facilities are allowed uses by special exception in a (P-WL) Wetland Protection Subdistrict 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.

16. In accordance with Section I,C,1,a of the Commission's Wetland Compensation Guidelines, neither a functional assessment nor compensation is required for alteration of a freshwater wetland of special significance provided that the alteration is less than 500 square feet and the Commission determines that there will be only a minimal effect on the freshwater wetlands functions and values, or imperiled or critically imperiled communities due to the activity.

17. Under the provisions of Sections 10.23,C,3,c(7 and 15), of the Commission's Land Use Districts and Standards, Filling and Grading activities and Shoreland Alterations are an allowed use within the (P-FP) Flood Prone Protection Subdistrict upon issuance of a permit from the Commission.

18. 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 10.27,B of the Commission's Land Use Districts and Standards, Vegetation clearing activities not in conformance with the standards of this section may be allowed upon issuance of a permit from the Commission. An applicant for such permit shall show by a preponderance of the evidence that the proposed activity, which is not in conformance with the standards of this section, shall be conducted in a manner which produces no undue adverse impact upon the resources and uses in the area.

    The following requirements shall apply to vegetation clearing activities for any purpose other than road construction, road reconstruction and maintenance, wildlife or fishery management, forest management, agricultural management, public trailered ramps or hand-carry launches:

    1. A vegetative buffer strip shall be retained within:

        a. 50 feet of the right-of-way or similar boundary of any public roadway,

b. 75 feet of the normal high water mark of any body of standing water less than 10 acres in size, or any tidal water or flowing water draining less than 50 square miles, and

c. 100 feet of the normal high water mark of a body of standing water 10 acres or greater in size or flowing water draining 50 square miles or more.

2. Within this buffer strip, vegetation shall be maintained as follows:

a. There shall be no cleared opening greater than 250 square feet in the forest canopy as measured from the outer limits of the tree crown. However, a footpath is permitted, provided it does not exceed six (6) feet in width as measured between tree trunks, and, has at least one bend in its path to divert channelized runoff.

b. Selective cutting of trees within the buffer strip is permitted provided that a well distributed stand of trees and other natural vegetation is maintained.

In all subdistricts where natural vegetation is removed within the required vegetative buffer strip of a flowing water, body of standing water, tidal water, or public roadway, it shall be replaced by other vegetation (except where the area cleared is built upon) that is effective in preventing erosion and retaining natural beauty.

20. Under the provisions of Section 10.27,F of the Commission's Land Use Districts and Standards, filling and grading activities not in conformance with the standards of this section may be allowed upon issuance of a permit from the Commission provided that such types of activities are allowed in the subdistrict involved. An applicant for such permit shall show by a preponderance of the evidence that the proposed activity, which is not in conformance with the standards of this section, shall be conducted in a manner which produces no undue adverse impact upon the resources and uses in the area.

Where filled or graded areas are in the vicinity of water bodies or wetlands such filled or graded areas shall not extend closer to the normal high water mark of a flowing water, a body of standing water, tidal water, or upland edge of wetlands identified as P-WL1 subdistrict than the distance indicated in the following table:

Average Slope of Land Between Exposed Mineral Soil and Normal High Water Mark or Upland Edge (Percent)	**Width of Strip Between Exposed Mineral Soil and Normal High Water Mark or Upland Edge** (Feet Along Surface of the Ground)
10 or less	100
20	130
30	170
40	210
50	250
60	290
70	330

All filled or graded areas shall be promptly stabilized to prevent erosion and sedimentation. Filled or graded areas, including all areas of disturbed soil, within 250 feet of water bodies and wetlands, shall be stabilized according to the Guidelines for Vegetative Stabilization contained in Appendix B of this chapter.

Review Comments

21. The Maine State Soil Scientist reviewed the application and expressed no objections to the proposal, however he suggested that measures be employed to assure that fill placed on the downhill slope of the proposed access roadway be secured to prevent movement of fill material downslope. The applicant responded that they will require that the contractor shall use a positive means of soil retention such as an excavator-placed berm, excavated keyway, riprap, or other method approved by the Bangor Gas Engineering Department to ensure that any fill dumped directly from trucks will not spill beyond the indicated limits of disturbance shown on the plans and permitting documents

22. The Maine State Historic Preservation Commission reviewed the application and concluded that since drilling and any related excavation activities will be confined to the existing MDOT right of way, that no archeological survey will be required for the project as proposed.

23. The Maine Natural Areas Program reviewed the application and searched the Natural Areas Program's Biological and Conservation Data System files for rare or botanical features in the vicinity of the proposal. No rare or botanical features were identified at the proposal site.

24. The Maine Department of Inland Fisheries and Wildlife, Fisheries Division has reviewed the application and indicated that there are no fishery concerns with the proposal.

25. The Maine Department of Inland Fisheries and Wildlife, Wildlife Division has reviewed the application and has determined that if the installation is conducted as proposed, it will have no unreasonable impact on wildlife resources.

26. The Maine Geological Survey has reviewed the application and had questions regarding monitoring for inadvertent drill fluid release and a plan for addressing a possible fluid release. The applicant has submitted an *Inadvertent Drill Fluid Return Plan* that addresses monitoring for inadvertent fluid release to the environment and a response plan in the unlikely event of a fluid discharge to the environment. Based on this plan, the Maine Geologic Survey has no objections to the proposal.

27. The U.S. Army Corps of Engineers USACOE reviewed the application and stated that a Category II permit is required from the USACOE.

28. The Maine Submerged Lands Program reviewed the project and stated that the State of Maine has no submerged lands jurisdiction in this area of the Penobscot River.

Based upon the above Findings, the staff concludes that:

1. The applicant has submitted sufficient evidence of right, title or interest in all the property for the purpose of 12 M.R.S.A section 685-B,2,D of the Commission's statutes. Specifically the applicants has submitted copies of their MDOT Location Permit (Permit No. 90297) authorizing installation of the pipeline within the existing MDOT right of way across the River, and MDOT Location Permit (permit No. 90317) for installation of the pipeline and equipment access roadway and staging area within the existing MDOT right of way along state route 116 (Access Road). The applicant also submitted a letter of authorization from G.E.Goding &Sons, Inc authorizing the construction of a portion of the staging area on their property adjacent to the MDOT right of way (Maine Revenue Service Tax Plan 01, Lot 7.3).

2. The proposed underground utility line conforms with the special exception provisions of Section 10.23,N,2,a (1) of the Commission's Land Use Districts and Standards, in that there is no alternative site which is both suitable to the proposed use and reasonably available to the applicant, and the use can be buffered from other uses. Furthermore the uses and resources of the Penobscot River will be adequately buffered from the proposed underground utility pipeline provided that the applicant conducts the installation as proposed.

3. The proposed activity would not conform to the standards of section 10.27 B of the Commission's Land Use Districts and Standards in that a vegetated buffer strip of 100 feet will not be maintained between the footprint area of the proposed access roadway and flowing water draining 50 square miles or more.

4. The proposed activity would not conform to the standards of section 10.27 F of the Commission's Land Use Districts and Standards in that the fill extension for the proposed access roadway will not be set back a minimum of 100 feet from the normal high water mark of the Penobscot River.

5. The applicant has demonstrated that the proposed filling and grading activities within 100 feet of the normal high water mark of the Penobscot River will be conducted in a manner which produces no undue adverse impact upon the resources and use in the area in that the filling will be limited to the construction of the temporary access roadway and equipment staging area, proper erosion control measures will be used and maintained during the activity, all fill material will be removed upon completion of the drilling activity, and the site will be permanently stabilized with vegetation and native tree species.

6. 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 and the proposed fill material will be removed from the project site upon completion of drilling activities.

7. If carried out in accordance with the proposal as submitted in the application for Shoreland Alteration Permit SA 1075 and 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 Bangor Gas Company with the following conditions:

1. Construction activities authorized in this permit must be substantially started within 2 years of the effective date of this permit and substantially completed within 5 years of the effective date of this permit. If such construction activities are not started 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.

2. Clearing and construction activities, except those necessary to establish sedimentation control devices, shall not begin until all erosion and sedimentation control devices (including ditches, culverts, sediment traps, settling basins, hay bales, silt fences, etc.) have been installed and stabilized. Once in place, such devices shall be maintained to ensure proper functioning. All temporary sedimentation and erosion control devices shall be removed after construction activity has ceased and a cover of healthy vegetation has established itself or other appropriate permanent control measures have been effectively implemented. Permanent soil stabilization shall be completed within one week of inactivity or

completion of construction and be in accordance with Appendix B, Guidelines for Vegetative Stabilization, of the Commission's Land Use Districts and Standards, a copy of which is attached.

3. During construction of the access roadway and the staging area, contractor shall use a positive means of soil retention such as an excavator-placed berm, excavated keyway, riprap, or other method approved by the Bangor Gas Engineering Department to ensure that any fill dumped directly from trucks will not spill beyond the indicated limits of disturbance shown on the plans and permitting documents.

4. All fill and soil disturbance associated with the temporary equipment staging area shall be set back a minimum of 75 feet from the unnamed tributary stream adjacent to the site. All fill and soil disturbance associated with the temporary access roadway shall be set back a minimum of 45 feet from the normal high water mark of the Penobscot River

5. All temporary erosion and sedimentation control devices must be installed in accordance with the pemittee's proposal. Once implemented the permitte shall maintain the erosion control devices and measures to ensure proper functioning.

6. During construction, the permitee, shall take reasonable precaution to minimize sedimentation of adjacent waterbodies, including, but not limited to, the use of mulch to temporarily stabilize exposed mineral soil, cessation of construction activities during inclement weather, and any other measures which may prove necessary.

7. There shall be no storage of stock-piled fill material located within 100 feet of the normal high water mark of the Penobscot River or within 75 feet of the unnamed tributary stream adjacent to the site.

8. If water control measures beyond those specified herein prove to be necessary in order to reasonably avoid accelerated erosion and sedimentation of surface waters, such addition measures must be employed.

9. All operations must be stopped where the continuation of such operations will cause or contribute to the occurrence of accelerated erosion 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.

10. Upon removal of fill material associated with the temporary access roadway and staging area, all areas of disturbed soil must be graded for proper drainage, promptly reseeded and stabilized with mulch, and maintained in a vegetated state to prevent soil erosion. In areas where revegetation is not initially successful, additional measures to control erosion and sedimentation shall be undertaken as often as necessary to be effective. All areas of disturbed soils which cannot be seeded prior to September 15 of any calendar year shall be stabilized in accordance with best management practices for over winter stabilization and reseeded in the following spring.

11. Affected areas located within 100 feet of the Penobscot River shall be restored to forested cover by the planting of native woody tree species. Trees shall be planted such that one sapling (minimum 3' tall for coniferous species and minimum 6' tall for deciduous species) per each 100 square feet of disturbed area is established.

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 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 29th DAY OF APRIL, 2014.

By: _____
for Nicholas D. Livesay, Executive Director