STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
LAND USE PLANNING COMMISSION
45 RADAR ROAD
ASHLAND, MAINE 04333-0022

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PERMIT

STREAM ALTERATION PERMIT SA 1090
and WATER QUALITY CERTIFICATION

The staff of the Maine Land Use Regulation Commission, after reviewing the application and supporting documents submitted by Victoria Burbank for Stream Alteration Permit SA 1090, finds the following facts:

1. Applicant: Victoria Burbank
   1868 Long Falls Dam Road
   Lexington Twp., ME 04961

2. Date of Completed Application: September 23, 2015

3. Location of Proposal: Lexington Twp., Somerset County
   Maine Revenue Services' Plan 01

4. Zoning: (P-SL2) Shoreland Protection Subdistrict
   (P-WL1) Wetland Protection Subdistrict
   (M-GN) General Manangement Subdistrict

5. Affected Water Body: Michael Stream

Background:

6. The applicant's lot has approximately 4,000 feet of frontage on Michael Stream and is developed with a pre-Commision dwelling, barn, and shed. The applicant is losing significant pasture and maple forest land on the southern portion of the property and severe bank erosion on the northern portion of the property due to stream erosion by high waters, high flow in the spring. While the property is contained within numerous land use districts, the proposed activity will take place entirely within the Shoreland Protection Subdistrict (P-SL1) and the Wetland Protection Subdistrict (P-WL1).

Proposal:

7. The applicant proposes to install riprap within three areas of eroding bank along the property on Michael Stream in Lexington Twp., Somerset County and remove a 57 linear ft. by 25 ft. wide gravel bar area above the normal high water mark of the stream. Approximately 250 linear feet of eroding bank will be riprapped on the southern end of the property along the existing pasture land and maple stand. An additional 12 linear feet will be riprapped along the middle pasture and 10 linear feet will be riprapped near Long Falls Dam Road, extending existing riprap installed by the Maine Department of Transportation (DOT), on the northern end of the property. The applicant also proposes to temporarily stabilize approximately 250 linear feet of eroding bank on Michael Stream along the southern end of the

property with trees and large woody debris placed along the stream bank to deflect the flow away from the bank and to prevent further loss of land until permanent rock riprap can be installed.

8. On the southern end of the property, the applicant proposes to remove the 57 linear foot by 25 foot wide gravel bar area adjacent to Michael Stream to a depth slightly above the low water line during low flow in order to convey the stream flow away from the highly eroding pasture and maple stand during high peak overflow events. The excavated gravel bar material would be pushed up into a higher mound along the existing shrub line and/or reused as fill on the opposite shoreline along the eroding pasture and maple grove area proposed to be stabilized. Any material to be reused will be stored within an upland area. Access to the site will be through a dry overflow stream bed, crossing Michael Stream during a period of low flow and at a narrow point in the stream to minimize impact to the stream. The stream bottom at the crossing area consists of cobblestones and rocks. No sedimentation into the stream is anticipated from removal of the gravel bar. Approximately 114 square feet of stream bottom wetland (P-WL1) would be altered. The applicant proposes to perform this work between October 2, 2015 and October 30, 2015. The applicant has submitted a Request for Approval of Timing from the Department of Inland Fisheries and Wildlife with approval to perform installation of the trees and large woody debris during this time period.

9. Riprap will be installed along the northern end of the property, within the 12 linear foot and 10 linear foot eroded areas, such that it is supported by a bottom row of large riprap stone approximately 3-4 ft. diameter to be anchored on the river bottom at the toe of the slope. Smaller riprap stone (approximately 2-3 ft. diameter) would then be extended above the base layer of riprap, to a height of approximately 6 and 5 feet respectively at a 1.5-2:1 slope. Geotextile fabric would be used under the rock riprap and equipment would be operated from the bank above the normal high water mark of Michael Stream. The project would be done during periods of low flow in late July, August, or September. Upon completion of the project, areas of exposed mineral soil above the normal high water mark will be seeded and mulched with hay. The existing vegetation above the riprap will be preserved to the greatest extent possible. Approximately 88 square feet of stream bottom wetland (P-WL1) would be altered.

10. The applicant further proposes to permanently armor approximately 250 linear feet of severely eroding bank on Michel Stream on the southern end of the property. For approximately 125 linear feet along the maple stand area, the proposed riprap would consist of geotextile filter, overlaid by gravel, then overlaid temporarily with large trees and woody debris until permanent riprap can be installed. The permanent riprap will consist of stone approximately 3-4 feet diameter to be anchored on the river bottom at the toe of the slope. Smaller riprap stone (approximately 2-3 ft. diameter) would then be extended above the base layer of riprap, to a height of approximately 8-9 feet at a 1.5:1 slope. Along approximately 125 linear feet of pasture area, the applicant proposes to install geotextile fabric followed by clean gravel fill to reestablish the slope, overlain temporarily by trees and large woody debris until permanent riprap can be installed. The permanent riprap will consist of 3-4 feet in diameter stone riprap in order to withstand the high water velocities in the spring time. The riprap would extend from approximately the low water line to a height of 9 feet up the grade at a slope of 1-1.5 foot horizontal to 1 foot vertical due to the height of the bank. Silt fence would be staked between the work area and water to prevent siltation and all equipment would operate from above the normal high water mark. The project would be done during periods of lowest flow in late July, August, or September. Approximately 500 square feet of stream bottom wetland (P-WL1) would be altered.

Review Criteria

12. Under the provisions of Section 10.23,L,3,c,(16) of the Commission's Land Use Districts and Standards, Shoreland alterations, including reconstruction of permanent docking structures, and permanent on-shore structures used to secure docks and moorings; but excluding marinas, new or expanded permanent docking structures, water-access ways, trailered ramps, hand-carry launches, and water crossings of

minor flowing waters are allowed within the (P-SL) Shoreland Protection Subdistrict upon issuance of a permit from the Commission.

13. Under the provisions of Section 10.23,N,3,c,(11) of the Commission's Land Use Districts and Standards, Shoreland alterations, including reconstruction of permanent docking structures; but excluding marinas, new or expanded permanent docking structures, water-access ways, trailered ramps, hand-carry launches, water crossings of minor flowing waters, and motorized recreational gold prospecting are allowed within the (P-WL) Wetland Protection Subdistrict upon issuance of a permit from the Commission.

14. Under the provisions of Section 10.25,P,2,a,(2),(c) of the Commission's Land Use Districts and Standards, projects altering any area of P-WL1 wetlands require a Tier 3 review. Alterations of P-WL1 wetlands may be eligible for Tier 1 or Tier 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,P,2, of the Commission's Land Use Districts and Standards, projects requiring a Tier 2 review will be considered to result in an unreasonable impact if the activity will cause a loss in wetland area, functions, or values, and there is a practicable alternative to the activity that would be less damaging to the environment. Each Tier 2 application must provide an analysis of alternatives in order to demonstrate that a practicable alternative does not exist. A practicable alternative less damaging to the environment is deemed to existing and the impact is unreasonable, unless the activity is necessary for shoreline stabilization. Projects requiring Tier 2 review must limit the amount of wetland to be altered to the minimum amount necessary to complete the project.

16. Under the provisions of Section 10.25,P,2,e (2) of the Commission's Land Use Districts and Standards, the Commission may waive the requirement for a functional assessment, compensation, or both. The Commission may waive the requirement for a functional assessment if it already possess 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

17. The U.S. Army Corps of Engineers has reviewed this proposal and found the project qualifies as a Category 1 project. No further action with the Corps is necessary.

18. The Maine State Soil Scientist has reviewed the proposal and has the following comments:

    a. The applicant indicates that hay bales will be used for erosion and sediment control. In the streambed, hay bales will not be effective and should not be used. Most of the soil to be disturbed will be clean gravel which should not have sediment to be controlled. The only soil disturbance proposed that should be erodible is the temporary accesses to the streambed for the excavator. The surface of the accessways should be stabilized with gravel.

    b. The applicant could use material from the gravel bar that is to be removed as fill for the opposite shoreline that is to be temporarily stabilized with trees and slash. The soils in the eroding bank are fine sands and silts which are highly erodible so placing gravel fill against it before adding trees and slash will reduce likely siltation. The gravel fill will smooth out the curve, reducing

turbulence and protect the fine textured soils in the bank. It would also be helpful if filter fabric could be placed against the eroded banking before adding gravel fill.

c. The temporary accessways should be designed such that runoff from the field or woods cannot run straight to the stream (a diversion berm should be used). The temporary accessways should be removed and the stream banks repaired after work is done.

19. The Maine Department of Inland Fisheries and Wildlife has reviewed the proposal and commented that if the applicant follows the recommendations of the state soil scientist, MDIFW finds that the proposed project will not significantly alter fisheries resources in Michael Stream.

20. The Maine Natural Areas Program has reviewed the proposal and states that, according to its current information, there are no rare botanical features that will be disturbed within the project site.

21. The Maine Historic Preservation Commission has reviewed the proposal and concludes that there will be no historic properties affected by the proposal, as defined by Section 106 of the National Historic Preservation Act. Consequently, pursuant to 36 CFR 800.4(d)(1), no further Section 106 consultation is required unless additional resources are discovered during project implementation pursuant to 36 CFR 800.13.

22. The facts are otherwise as represented in Stream Alteration Permit Application SA 1090 and supporting documents.

Based upon the above Findings, the staff concludes that:

1. Pursuant to Sections 10.23,L,3,c,(16), and 10.23,N,3,c,(11) of the Commission's Land Use Districts and Standards, the applicant's proposed riprap and shoreland stabilization project constitutes a shoreland alteration that is an allowed use with a permit in the P-SL and P-WL Subdistricts respectively.

2. In accordance with the provisions of Section 10.25,P,2,a,(2),(c) of the Commission's Land Use Districts and Standards, the proposed riprap and shoreland stabilization project meets the requirements for reduction from a Tier 3 to a Tier 2 wetland review. Specifically, given the nature of the eroding area and the ongoing significant erosion and sedimentation being created by the unprotected, erodible bank, the proposed stabilization will not have an undue adverse impact on the freshwater wetlands or other protected natural resources present, but rather will protect the stream and surrounding land adjacent to the bank from actively eroding into Michael Stream.

3. The proposal would meet the requirements of Section 10.25,P,2,b of the Commission's Land Use Districts and Standards, in that the applicant has demonstrated that there is not a practicable alternative to permanently stabilizing the shoreline that would be less damaging to the environment. The applicant has minimized the amount of wetland alteration necessary to stop the ongoing erosion and protect the upland area adjacent to the stream and the water quality of Michael Stream. The applicant has proposed to utilize appropriate erosion and sedimentation measures to protect the water quality of the stream and has agreed to stabilize the temporary access way to the overflow streambed with gravel for the excavator during removal of gravel bar. The applicant has further agreed to use a diversion berm within the access way to control runoff into the stream bed. The project would comply with applicable water quality standards.

4. The proposal complies with the provisions of Section 10.25,P,2,e of the Commission's Land Use Districts and Standards, such that the Commission may waive the requirement for a functional assessment and compensation provided that the Commission determines that there will be only a minimal effect of freshwater wetland functions and values, significant wildlife habitat, or imperiled or critically imperiled communities due to the activity. The project would alter approximately 702 square

feet of P-WL1, freshwater wetland of special significance. The Maine Department of Inland Fisheries and Wildlife has not identified any significant wildlife habitat or Endangered/Threatened Species within the project area and finds that the proposed project will not significantly alter fisheries resources in Michael Stream. The impact to the wetland will be insignificant in comparison to the ongoing damage being caused by the active erosion of the stream bank.

5. 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 Victoria Burbank, with the following conditions:

1. The Standard Conditions for Shoreland Alterations (ver. 04/04), a copy of which is attached.

2. **All excavation work must be done under the supervision of a contractor certified in erosion and sedimentation control or other qualified professional. Prior to the start of construction, the permittee shall submit to the Commission such documentation of the contractor's certification or qualifications.**

3. The approved riprap and shoreline stabilization measures must be installed according to the submitted plan. The riprap areas in the northern end of the property and along the maple grove area, in the southern end of the property, may extend no more than 4 feet out onto the stream bed in order to key in the base row of stone and be sloped no steeper than 1.5-2 foot horizontal to 1 foot vertical. The riprap and fill along the existing pasture, in the southern end of the property, may extend no more than to the low water line of the stream in order to key in the base row of stone and be sloped no steeper than 1 foot horizontal to 1 foot vertical in order to straighten out the severely eroding portion of the bank and protect the pasture at the top of the bank.

4. The temporary access from the pasture to the streambed for the excavator to access the gravel bar shall be stabilized with gravel and a temporary diversion berm shall be used between the pasture and streambed to prevent runoff from entering the streambed. Upon completion of the project, the temporary access way shall be removed and the stream bank repaired.

5. The temporary bank stabilization activities (installation of trees and large woody debris) authorized under this permit shall only be conducted at periods of low water between July 15 and October 1.

6. The permanent stream riprap activities authorized under this permit shall only be conducted at periods of low water between July 15 and October 1.

7. Rocks used for riprap must not be taken from the water body or the existing shoreline of any water body.

8. Notwithstanding the stream crossing for removal of the gravel bar approved under this permit, heavy equipment must remain above the water level and not be driven into the water of Michael Stream.

9. The gravel bar removal approved under this permit shall only be conducted between October 2, 2015 and October 30, 2015. Any removal of gravel material to be reused for bank stabilization shall be stored in an upland area a minimum of 75 feet from the normal high water mark of any stream or wetland. The applicant shall notify Commission staff at least one day prior to the start of the activity. If the applicant is unable to conduct the activity during this time period, the applicant shall notify the Commission that the activity did not occur and shall request in writing a specific time period at least two weeks in advance of when the activity will be conducted and shall only be at periods of low water between July 15 and October 1.

10. Temporary and permanent sedimentation control measures must be implemented to effectively stabilize all areas of disturbed soil and to catch sediment from runoff water before it leaves the construction site so that sediment does not enter water bodies, drainage systems, water crossings, wetlands or adjacent properties. 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.

11. Once installed, erosion control devices and measures must be maintained to ensure proper functioning. Should any erosion or sedimentation occur during construction, the permittee shall cease construction activities and contact the Commission immediately, notifying it of the problem and describing the proposed corrective measures to be implemented to stop the erosion or sedimentation of the water body.

12. Upon completion of the project within the terms of this permit, all solid waste and other debris must be properly disposed of in accordance with all applicable state and federal solid waste laws and rules.

13. Existing vegetation should be maintained as much as practicable. Trees and/or shrubs should be replanted to re-establish a vegetative buffer.

14. All areas of exposed mineral soil above the normal high water mark of Michael Stream disturbed by the authorized activity must be promptly seeded and mulched to avoid soil erosion and siltation.

This permit is approved upon the proposal as set forth in the application and supporting documents, except as modified by 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 5th DAY OF OCTOBER, 2015

By: Debra A. Kaczowski
for Nicholas Livesay, Executive Director

STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
LAND USE PLANNING COMMISSION
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 Planning Commission. Any variation from the application or the conditions of approval undertaken without approval of the Commission constitutes a violation of Land Use Planning Commission law.

3. Construction activities authorized in this permit must be substantially started within two (2) years of the effective date of this permit and substantially completed within five (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.

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.

Administrative Policy Revised 04/04