



PAUL R. LEPAGE
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

NICHOLAS D. LIVESAY
EXECUTIVE DIRECTOR

PERMIT

AMENDMENT A TO UTILITY LINE PERMIT ULP 178
BY SPECIAL EXCEPTION
Water Quality Certification

The staff of the Maine Land Use Planning Commission, after reviewing the application and supporting documents submitted by Thomas and Sandra Bowles for Amendment A to Utility Line Permit ULP 178, finds the following facts:

1. Applicant: Thomas and Sandra Bowles
5 Eastview Drive
Bow NH 03304

Authorized Agent: Terry McLaughlin (McLaughlin Electric)
1603 Woodville Road
Woodville, ME 04457
2. Date of Completed Application: March 10, 2015
3. Location of Proposal: T1 R9 WELS, Piscataquis County
Plan 01 Lot 1 (part of)
Lot SC 699 (Book 2013, Page 25 Piscataquis County registry of Deeds)
4. Zoning: D-RS (Residential Development Subdistrict)
P-GP (Great Pond Protection Subdistrict)
P-WL (Wetland Protection Subdistrict)

Background

5. The applicants' lot, commonly known as Plouds Island, was developed prior to the inception of the Commission with a seasonal camp and sheds. The seasonal camp is currently served by a primitive waste water disposal system with composting toilet. The applicants have a deeded access point on the mainland (Lot BL5) in T1 R9 WELS for the purpose of egress and ingress to their lot. The applicants also have an easement agreement with the owners of Lot SC 699 and SC 582 for the purpose of providing and maintaining electrical service to their Plouds island lot.
6. On July 23, 1980 Utility Line Permit ULP was issued to Douglas L. Farquhar authorizing the installation of an approximately 500 foot underwater electrical service cable from an existing terminal on an adjacent island lot to the applicants' island lot. Electrical service is provided to this adjacent island lot via existing overhead electrical transmission line from the mainland. Sometime during 2014 the existing underwater transmission line failed.

Proposal

7. The applicants propose to install approximately 500 feet of submerged utility line across the bottom of Ambajejus Lake in Spencer Cove to replace the failed existing line. The 500 feet of submerged utility line would serve one seasonal camp on Plouds Island currently owned by the applicants. The proposed submerged utility line would alter approximately 160 square feet of P-WL1 Wetland Protection Subdistrict below the normal high water mark of Ambajejus Lake.
8. The applicants have stated that the utility line would begin at an existing utility pole on the mainland and will extend over land and water within a utility line easement to an existing utility pole on the adjacent island lot. The line would then be buried from the existing pole to the normal high water line of the lake. The line would be buried in the lake bottom approximately 10 feet beyond the normal high water line, then will run along the surface of the lake bottom to a point approximately 10 feet beyond the normal high water line on the Bowles' island lot. The line would then be buried to the existing dwelling on the Bowles' island lot .
9. The applicants have proposed to install the submerged utility line using a mini-excavator to dig an approximately 1 foot wide by 2 foot deep by 50 foot long trench from the existing utility line pole to the shoreline of Ambajejus Lake on each of the mainland and island lot shore, and an additional 10 linear feet below the normal high water mark of the lake. The cable would be placed in the excavated trench and then back filled. Both above and below the normal high water mark of Ambajejus Lake, the trench would be filled with the previously removed material. Access for the mini-excavator will be over an existing historic road bed that exists between the two island lots and is exposed during periods of low water. The substrate of the old road bed is rock and gravel.
10. The cable would be held to the bottom of the lake by its weight and would not be a navigational hazard. Under average low water situations, the proposed utility line would be submerged in approximately 6 feet of water from the point where it is exposed on the lake bottom.
11. The applicants propose to control erosion and sedimentation during periods of excavation by placing hay bales around the perimeter of the proposed trenches prior to any excavation of shoreline and lake bottom. Additionally, the applicants state that trenching and backfilling will be conducted on the same day. The areas of exposed soil above the normal high water mark would be stabilized with native soil, seeded and mulched immediately upon backfilling, and native vegetation replanted. Large trees will be avoided and vegetation removal will be limited to only that necessary to install the buried cable.

Alternative Analysis

12. The only alternative to installing a submerged utility cable would be to install the cable overhead. This alternative would be considerably higher in cost of installation and would result in an unfavorable visual impact on the area. In addition, the 500 feet of cable would need to be supported approximately mid-length, necessitating installation of a utility pole in the lake bottom. Further, the overhead transmission cable would represent a hazard to aircraft that utilize an existing sea-plane base located in Spencer Cove.

Review Criteria

13. 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. The Commission may not refuse to accept, under this paragraph, a permit application for any prohibited activity if the owner or lessee of land adjoining a great pond has made a diligent effort to locate the record owner or owners of the flowed land in question and has been unable to do so.
14. Under provisions of Section 10.21,J,3,c(21) and 10.23,E,3,c(19)of the Commission's Land Use Districts and Standards, utility facilities are an allowed use with a permit in a (D-RS) Residential Development Subdistrict and a (P-GP) Great Pond Protection Subdistrict, respectively.
15. Under 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 Ambajejus Lake is designated a (P-WL1) Wetland Protection Subdistrict, reflecting that it is a wetland of special significance. Under provisions of Section 10.23,N,3,D(9), 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. Under provisions of Section 10.25,P,1,c(3) of the Commission's Land Use Districts and Standards, a Tier 3 review is required for projects altering any area of P-WL1 wetland. Alterations of P-WL1 wetland 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 hydrologic connection to surface water or other protected natural resources.
17. Pursuant to Section 10.25,P,2 of the Commission's Land Use Districts and Standards, projects requiring a 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 of 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 will not violate any state water quality law, including those governing the classification of the State's waters.

D. Use erosion control measures to prevent sedimentation of surface waters.

18. Pursuant to Section 10.25,P,1,b(2) of the Commission's Land Use Districts and Standards,
 - b. Area of Project Alteration.
 - i. If a proposed activity requires a permit and will alter 15,000 or more square feet of wetland area, or 1 acre or more of overall land area, the applicant must delineate on the ground and in a site plan all wetlands within the general project area using methods described in the "Corps of Engineers Wetlands Delineation Manual" (1987).
 - i. 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.
 - ii. In determining the area of wetland alteration or overall land alteration, all components of a proposed activity, including all phases of a multiphased project, are treated together as constituting one single and complete project.

Review Comments

19. The Maine Department of Inland Fisheries and Wildlife have reviewed the application and indicated that there are no wildlife or fishery concerns with the proposal.
20. The Maine Department of Agriculture, Conservation and Forestry Submerged Lands Program reviewed the project and advised that a Submerged Lands Lease is not required under state law as the area proposed for the installation is above the natural low water mark of the flowed land.
21. The Maine Historic Preservation Commission has reviewed the project and advised that there are no historic properties that would be affected by this project.

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 applicant has submitted copies of their Power Line Installation and Maintenance Easement with the adjacent land owners and a copy of their quitclaim deed with covenants for the island lot. Since a portion of this line will be located within the project boundary for the Penobscot Mills Project (FERC No. 2458), the applicants have also submitted evidence of authorization from Brookfield Renewable Energy Group to perform this installation.
2. The proposed submerged 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. Specifically, a potential overland route to bring electric power to the island is not a reasonable alternative for the applicants given cost and the adverse visual and safety impacts to the surrounding area. Furthermore the uses and resources of Ambajejus Lake will be adequately buffered from the proposed submerged cable provided that the applicants implements its proposed erosion and

sedimentation control plan, and the area of the buried submerged cable is permanently stabilized as proposed.

3. The proposal may be reduced from a Tier 3 review to a Tier 2 review because the activity would not have an undue adverse impact on the resources of Ambajejus Lake for the reasons described under Conclusion #5 below.
4. The proposal meets the criteria for a Tier 2 regarding avoidance and minimization of wetland impacts, water quality, and erosion control. Specifically, the applicant has demonstrated that there is no practicable alternative overland route for the electric cable and that the impacts to the lake bottom have been minimized by limiting the extent of submarine trenching as much as possible. The proposal will not violate state water quality laws, and the applicant has proposed appropriate erosion and sedimentation measures to minimize impacts to the lake.
5. The Commission may waive the requirements for a functional assessment and compensation under Section 10.25,P,1,c(3) of the Commission's Land Use Districts and Standards. Specifically, the total area of alteration to the lake bottom from buried cable would not exceed 500 square feet, and no high value fish or wildlife habitat, or significant plant communities would be affected by the proposal.
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 Thomas and Sandra Bowles 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. The project must be completed in accordance with the Standard Conditions for all Shoreland Alteration Permits (ver. 4/04), a copy of which is attached.
4. Excavation below the normal high water mark shall only be conducted during periods of low water and when the area of excavation is in a dewatered condition.

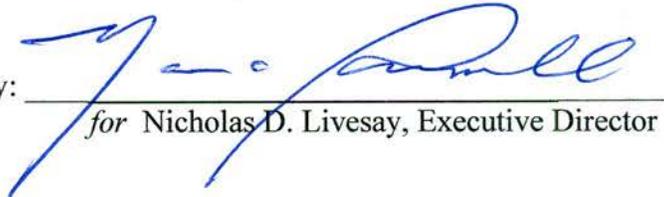
5. This permit does not obviate the need for any other federal, state or local approvals. The applicant shall comply with all applicable federal, state and local regulations.
6. Except as specifically allowed by this permit, the permittees shall comply with all applicable standards of the Commission's Land Use Districts and Standards.
7. All mechanical equipment must be operated from above the normal high water mark of the lake and must not be driven on the lake bottom, with the exception that the excavation equipment may be operated over the area of old historic road bed under dry conditions.
8. All temporary erosion and sedimentation control devices must be installed in accordance with the permittees' proposal. Once implemented the permittees shall maintain the erosion control devices and measures to ensure proper functioning. All temporary erosion control and sedimentation devices upon final site stabilization in accordance with the provisions of Condition #16 below.
9. During construction, the permittees, shall take reasonable precaution to minimize sedimentation of the lake including, but not limited to, the use of mulched to temporarily stabilize exposed mineral soil, cessation of construction activities during inclement weather, and any other measures which may prove necessary. In areas where the applicants intend working below the normal high water mark of Ambajejus Lake, sedimentation control device shall be utilize as described in paragraph #11 above, such as a floating silt boom, silt fence anchored down with rocks or staked hay bales if water levels are appropriate.
10. Trenches below the normal high water mark must be stabilized with native soil as proposed by the permittees.
11. The submerged utility cable shall be located on the bottom of the lake so that it does not become a navigational hazard.
12. There shall be no storage of stockpiled fill located within 500 feet of the normal high water mark of Ambajejus Lake, with exception of temporary excavation of trenches.
13. 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.
14. Once construction is complete, the permittees shall submit a self-certification form, notifying the Commission that all conditions of approval of this permit have been met. The permittees shall submit all information requested by the Commission demonstrating compliance with the terms of this permit.
15. 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.
16. All areas of disturbed soil must be 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

This permit is approved only upon the above stated conditions and remains valid only if the permittees comply 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 1st DAY OF APRIL, 2015.

By: _____

A handwritten signature in blue ink, appearing to read "J. D. Livesay", is written over a horizontal line. The signature is stylized and cursive.

for Nicholas D. Livesay, Executive Director



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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