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STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
LAND USE PLANNING COMMISSION
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PERMIT

DEVELOPMENT PERMIT DP 5039

The staff of the Maine Land Use Planning Commission (hereafter, the Commission), after reviewing the application and supporting documents submitted by Matagamom Lake Association, Inc. for Development Permit DP 5039, finds the following facts:

1. Applicant: Matagamom Lake Association, Inc.
PO Box 676
Patten, Maine 04765
2. Date of Completed Application: July 9, 2018
3. Location of Proposal: T 6 R 8 WELS, Penobscot County, Maine
Tax Lots #3.2 on Plan 01
4. Zoning: General Development Subdistrict (D-GN)
Wetland Protection Subdistrict (P-WL1)
5. Lot Size: 6 Acres (owned)
6. Development: Proposed Repairs to Matagamom Dam

Affected Waterbody: East Branch Penobscot River and Matagamom Lake

7. The East Branch Penobscot River is an approximately 75-mile-long tributary of the Penobscot River. Matagamom Lake is a reservoir on the East Branch impounded by Grand Lake Matagamom Dam and three dikes. The dam impounds 4200 acres and has a total drainage area of 496 square miles.

The historical average flows at the dam have ranged from approximately 280 to 1100 cubic feet per second for the months of July and August.

The Commission has identified Matagamom Lake as a management class 7, resource class 1A, accessible, undeveloped lake with the following resource ratings: significant fisheries resources, outstanding wildlife resources, significant scenic resources, significant shore character, outstanding cultural resources.

Background Information and Proposal:

8. The applicant owns and operates the Grand Lake Matagamon Dam. The concrete dam was constructed in 1941 and was built to replace a timber crib structure constructed in the 1880s. The dam structure is 218 feet long 35-50 feet wide, and 30 feet high. The dam benefits fisheries, wildlife, and recreational resources in the area.
9. In August of 1988, Hydro Power Permit HP 0014 was issued to East Branch Improvement Co. authorizing repairs to the three dikes on the southerly end of Grand Lake Matagamon. At the time the impoundments were used to generate power for Bangor Hydro Company. In 2001, the Federal Energy Regulatory Commission (FERC) determined that the dam was not a hydropower storage dam.
10. The applicant proposes to make repairs to the concrete on both the upstream and downstream sides of the dam. The repairs are being made as recommended in the January 2013 inspection report prepared by Kleinschmidt. The repairs would involve patching of the existing piers on the upstream side, the dividing wall between the vertical lift bay and the fish way, and the downstream sloped surfaces of the piers and concrete below the boiler room. The work would take place below the normal high water mark in the Wetland Protection Subdistrict (P-WL1), however, the lake level would be lowered below the work are in order to work upstream and the downstream flow would be reduced in order to complete the work downstream. The minimum flow would not be less than 150 cfs and any time. The timing and changes in water level would be coordinated with the Maine Department of Transportation's bridge project downstream and the repairs to Lock Dam by the Maine Bureau of Parks and Lands upstream. Both projects have been permitted by the Commission and are scheduled to take place in 2018.
11. The amount of wetland alteration would be minimal (less than 500 sq. ft.) with no increase the existing footprint of the structure.
12. The applicant has submitted financial and technical information demonstrating that they have sufficient funds to complete the project and that they have contracted with a company, BMB Construction LLC, that has experience with concrete work including working on the MDOT bridge project downstream.

Review Agency Comments:

13. The Maine Department of Environmental Protection (MDEP) has reviewed this proposal and states that the project would not be required to comply with Chapter 587. A minimum flow of 150 cfs seems reasonable in order to complete the work
14. The Maine Department of Inland Fisheries and Wildlife (MDIFW) has reviewed this proposal and states that minimal impacts to wildlife are anticipated. They do have some concerns about potential dewatering of the fishway, but realize the timing on this project is in coordination with repairs at Lock Dam and the Matagamon Road bridge, and are therefore, in favor of the project. They note that if they have staff available they may monitor the fishway and trap any salmon that may be attempting to get into the lake during the construction window and move them up into the lake.
15. The Maine Natural Areas Program (MNAP) has reviewed this proposal and states that according to current information there are no rare botanical features that will be disturbed within the project site.

16. The Maine Historic Preservation Commission has reviewed this proposal and they have no concerns or comments on this project.
17. The Army Corps of Engineers has reviewed this proposal and states that it meets the criteria for a Category One activity under the provisions of the Department of the Army permit, the Maine Programmatic General permit (MEPGP).

Relevant Review Criteria

18. Under provisions of 12 M.R.S.A. section 685-B(4) of the Commission's statutes, the Commission shall approve no application unless the applicant has demonstrated that adequate provision has been made for fitting the proposal harmoniously into the existing natural environment in order to assure that will be no undue adverse effect on existing uses, scenic character, and natural and historic resources in the area likely to be affected by the proposal.
19. Under provisions of Section 10.02,193 of the Commission's Land Use Districts and Standards, shoreland alteration is defined as any land use activity, which alters the shoreland area, either at, adjacent to or below the normal high water mark, of any surface water body, including but not limited to:
 - a. Dredging or removing materials from below the normal high water;
 - b. Construction or repairing any permanent structure below the normal high water mark.

For purposes of this subsection, permanent structure shall mean any structure, including but not limited to, causeways, wharfs, piers, docks, concrete, or similar slabs, bridges, hand-carry launches, utility cable and lines, permanent docking structure, mooring structures, and water lines. A structure which is not fixed in or over the water or below the normal high water mark for more than 7 months in a calendar year shall not be a permanent structure.

- c. Depositing any dredged spoil fill below the high water mark; and
- d. Depositing dredged spoil or fill, or bulldozing, scraping or grading, on land adjacent to a water body in such a manner that the material or soil may fall or be washed into the water body, except that filling and grading or water crossings which do not require a permit as specified in Section 10.27, or there provision of these rules shall not constitute shoreland alteration.

Activities which cause additional intrusion of an existing structure into or over the water body, are also considered shoreland alterations.

20. Under provisions of Section 10.23,N,3,c(11) of the Commission's Land Use Districts and Standards, shoreland alterations are allowed uses within a (P-WL) Wetland Protection Subdistrict upon issuance of a permit from the Commission.
21. According to Chapter 10, section 10.25,P,2,a,(2),(c), Tier 3 reviews apply to projects altering any area of P-WL1 wetlands except as otherwise provided in Section 10.25,P,2,a,(2),(a). 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 not have an unreasonable negative affect 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.

22. Avoidance. Under the provisions of Chapter 10, Section 10.25,P,2,b(1)(a) of the Commission's Land Use Districts and Standards, projects requiring Tier 1, Tier 2, or Tier 3 review must avoid alteration of wetland areas on the property to the extent feasible considering natural features, cost, existing technology and logistics based on the overall purpose of the project. Projects requiring a Tier 2 or Tier 3 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. The application must provide an analysis of alternatives in order to demonstrate that a practicable alternative does not exist. For any activity proposed in, on or over P-WL1 wetlands of special significance, a practicable alternative less damaging to the environment is deemed to exist and the impact is unreasonable, unless the activities is listed in Section 10.25,P,2,b(1),(b),(i) or (ii). One of the listed activities is a reconstruction or expansion of an existing developed area or related construction that cannot practicably be located elsewhere because of the relation to the existing developed area, if the existing developed area was created prior to August 18, 2005. (*Ch. 10.25,P,2,b,(1),(b),(i),dd*).
23. Minimal Alteration. Under the provisions of Chapter 10, Section 10.25,P,2,b(2) of the Commission's Land Use Districts and Standards, projects requiring Tier 1, Tier 2 or Tier 3 review must limit the amount of wetland to be altered to the minimum amount necessary to complete the project.
24. No Unreasonable Impact. Under the provisions of Chapter 10, Section 10.25,P,2,b(4)(a) of the Commission's Land Use Districts and Standards, even if a project has no practicable alternative and the applicant has minimized the proposed alteration as much as possible, the application will be denied if the activity will have an unreasonable impact on the wetland. "Unreasonable impact" means that one or more of the review standards of Section 10.25,P,1 will not be met. The following standards apply to permit applications affecting protected natural resources as listed in Section 10.25,P, 2 through 3 and requiring determinations of no unreasonable impacts (*Ch. 10.25,P,1*).
 - a) *Existing Uses*. The activity will not unreasonably interfere with existing scenic, aesthetic, recreational or navigational uses (*Ch. 10.25,P,1,a*).
 - b) *Soil Erosion*. The activity will not cause unreasonable erosion of soil or sediment or unreasonably inhibit the natural transfer of soil from the terrestrial to the marine or freshwater environment (*Ch. 10.25,P,1,b*).
 - c) *Harm to Habitats; Fisheries*. The activity will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic habitat, travel corridor, freshwater, estuarine, or marine fisheries or other aquatic life. In determining whether there is unreasonable harm to significant wildlife habitat, the Commission may consider proposed mitigation if that mitigation does not diminish the overall value of significant wildlife habitat and species utilization of the habitat in the vicinity of the proposed activity and if there is no specific biological or physical feature unique to the habitat that would be adversely affected by the proposed activity. For purposes of Section 10.25,P,1,c, "mitigation" means any action taken or not taken to avoid, minimize, rectify, reduce, eliminate or compensate for any actual or potential adverse impact on the significant wildlife habitat, including the following: (1) Avoiding an impact altogether by not taking a certain action or parts of an action; (2) Minimizing an impact by limiting the

magnitude, duration or location of an activity or by controlling the timing of an activity; (3) Rectifying an impact by repairing, rehabilitating or restoring the affected environment; (4) Reducing or eliminating an impact over time through preservation and maintenance operations during the life of the project; or (5) Compensating for an impact by replacing the affected significant wildlife habitat (*Ch. 10.25,P,1,c*).

- d) *Interference with Natural Water Flow*. The activity will not unreasonably interfere with the natural flow of any surface or subsurface water (*Ch. 10.25,P,1,d*).
- e) *Lower Water Quality*. The activity will not violate any state water quality law, including those governing the classification of the State's waters (*Ch. 10.25,P,1,e*).
- f) *Flooding*. The activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties (*Ch. 10.25,P,1,f*).

25. Functional Assessment. Under the provisions of Chapter 10, Section 10.25,P,2,b(3)(a) of the Commission's Land Use Districts and Standards, for projects requiring Tier 2 or Tier 3 review, the applicant must conduct a functional assessment unless exempt from this requirement under Section 10.25,P,2,b(3),(f) or granted a waiver under Section 10.25,P,2,b(3),(g). A functional assessment must be conducted in accordance with Section 10.25,P,2,f,(2) and be sufficient to allow the Commission to evaluate whether the proposed wetlands alteration will cause a loss or degradation of wetland functions.

26. Compensation. According to Chapter 10, section 10.25,P,2,b(3),(g), 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 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.

27. The facts are otherwise as represented in Development Permit Application DP 5039 and supporting documents.

Based upon the above Findings, the staff concludes that:

1. The proposal will meet the criteria in Section 10.23,N,3,c(11) of the Commission's standards for a permit within the P-WL Subdistrict. The proposed repairs to the existing dam structure are considered a shoreland alteration in that they would take place below the normal high water mark of the East Branch Penobscot River.
2. In accordance with the provisions of Section 10.25,P of the Commission's Land Use Districts and Standards, the repairs to the dam meet the requirements for a Tier 3 review. Specifically:
 - a. As stated in Conclusion #1 above, the applicant has demonstrated that it has no practicable alternative as the existing dam is essential for fisheries and recreational resources in the area.
 - b. The activity will not unreasonably interfere with existing scenic, aesthetic, recreational or navigational uses or unreasonably harm any significant wildlife or plant habitat.

- c. The activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties. the water withdrawal will not harm habitat or interfere with the natural flow of water; the proposal does not violate any state water quality laws; and the proposal will not increase the flooding of the area or adjacent properties.
 - d. The applicant has minimized the amount of wetland altered to the extent possible based on the overall purpose of the project conducting the repairs when the water level is lower than the work area.
3. The Commission waives the requirement for a functional assessment and compensation as the Commission already possesses the information necessary to determine the functions of the area proposed to be altered and has determined that any impact to wetland functions and values from the activity will be insignificant.
 4. 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.

Therefore, the staff approves the application of Rudolph Parent with the following conditions:

1. ***At least one week prior to commencing the permitted activities***, the permittee or the designated agent must contact the Commission staff and notify them of the estimated date construction work will start. Notice may be provided in writing, in person, by email, or by calling. If you leave or send a message, please include your full name, telephone number, permit number, and the date the work will start.
2. ***Prior to commencing the permitted activities***, the permittee, or the designated agent acting on behalf of the permittee, must provide a copy of the permit, including its attached conditions, to contractors that will be performing work or will be responsible for work at the site.
3. The enclosed permit certificate must be posted in a visible location on your property immediately after receipt and during development of the site and construction of the structures and activities approved by this permit.
4. 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.
5. The applicant must maintain a water flow of at least 150 cfs at the dam in order to protect fishery resources.
6. The permittee shall secure and comply with all other applicable licenses, permits, authorizations and monitoring requirements of all federal, state and local agencies including, but not limited to, the Maine Department of Health and Human Service's Division of Environmental Health's, Subsurface Wastewater Unit and Health Inspection Program.

7. 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.
8. Upon completion of the permitted structure(s) within the terms of this permit, all solid waste and other debris disposed of in a proper manner, in compliance with applicable state and federal solid waste laws and rules.

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(s) complies(y) 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 ASHLAND, MAINE, THIS 3RD DAY OF AUGUST, 2018.

By: Billie J. Magleam
for Nicholas Livesay, Executive Director