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STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
17 STATE HOUSE STATION AUGUSTA, MAINE 04333-0017

DEPARTMENT ORDER

IN THE MATTER OF

BIG BLACK DOG, LLC
Portland, Cumberland County
MARINA EXPANSION
L-9216-4E-B-N (approval)

) NATURAL RESOURCES PROTECTION ACT
) COASTAL WETLAND ALTERATION
) WATER QUALITY CERTIFICATION
) FINDINGS OF FACT AND ORDER

Pursuant to the provisions of 38 M.R.S.A. Sections 480-A et seq. and Section 401 of the Federal Water Pollution Control Act, the Department of Environmental Protection has considered the application of BIG BLACK DOG, LLC with the supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

1. PROJECT DESCRIPTION:

A. History of Project: In Department Order #L-9216-4E-A-X, dated February 22, 1984, the Department approved the addition of 20 pilings to secure seasonal floats and to construct other improvements at the former Jones Wharf on Peaks Island in Casco Bay.

B. Summary: The applicant proposes to construct an expansion of the existing marina facility to meet the demand for more boat tie-up slips for boaters visiting the island restaurant and for residents seeking seasonal boat berths. The proposed expansion includes a permanent 10-foot wide, 70-foot long addition to the North Pier. That floating pier will be secured with driven piles and will accommodate six new seasonal tie-up floats each measuring four feet in width by 36 feet in length. A new seasonal float measuring four feet by 20 feet will connect the easterly end of the North Pier to a new permanent float measuring eight feet by 50 feet. The applicant also proposes to extend the floating South Pier with an additional float measuring 20 feet in length and 10 feet in width to accommodate boats at low tide. The proposed expansion is shown on an untitled sketch submitted with the application. The marina is located on the north side of the Casco Bay public ferry terminal on Peaks Island in the City of Portland.

C. Current Use of the Site: The applicant operates the existing marina and a restaurant at the project site. The marina currently contains two piers with connected floats for short-term and seasonal boat berthing. The project site is shown on the City of Portland's Tax Map 84 as Lot #Q-003.

2. EXISTING SCENIC, AESTHETIC, RECREATIONAL OR NAVIGATIONAL USES:

In accordance with Chapter 315, Assessing and Mitigating Impacts to Scenic and Aesthetic Uses, the applicant submitted a copy of the Department's Visual Evaluation Field Survey Checklist as Appendix A to the application along with a description of the property and the proposed project. The applicant also submitted several photographs of the proposed project site including aerial photos and archival photos depicting waterfront activity at the site throughout the 20th century.

The proposed project is located on Casco Bay, which is a scenic resource visited by the general public, in part, for the use, observation, enjoyment and appreciation of its natural and cultural visual qualities. The applicant has designed the project to the minimum size required to meet the project need and to reduce the visibility of the facility from the scenic resource. As an expansion of an existing, historic facility, the proposed project design is compatible with the surrounding landscape and the traditional and current activities on the waterfront.

The proposed project was evaluated using the Department's Visual Impact Assessment Matrix and was found to have an acceptable potential visual impact rating. Based on the information submitted in the application and the visual impact rating, the Department determined that the location and scale of the proposed activity is compatible with the existing visual quality and landscape characteristics found within the viewshed of the scenic resource in the project area.

The Department did not identify any issues involving existing recreational and navigational uses.

The Department finds that the proposed activity will not unreasonably interfere with existing scenic, aesthetic, recreational or navigational uses of the protected natural resource.

3. SOIL EROSION:

The project includes driving piles to support the floating pier extensions and berthing floats which will be constructed off site and hauled by boat to the facility for installation, therefore no soil disturbance is anticipated other than for piling installation.

The Department finds that the activity will not cause unreasonable erosion of soil or sediment nor unreasonably inhibit the natural transfer of soil from the terrestrial to the marine or freshwater environment.

4. HABITAT CONSIDERATIONS:

According to the Department's Geographic Information System (GIS) database there are no mapped Essential or Significant Wildlife Habitats located at the site, although Tidal Waterfowl and Wading Bird Habitat is located near the project site.

The Maine Department of Inland Fisheries and Wildlife (MDIFW) reviewed the proposed project and stated that, due to existing development surrounding the site, no significant impacts are anticipated to the Significant Wildlife Habitat mapped nearby.

The Department finds that the activity will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic or adjacent upland habitat, travel corridor, freshwater, estuarine or marine fisheries or other aquatic life.

5. WATER QUALITY CONSIDERATIONS:

The applicant proposes to use lumber treated with chromated copper arsenate (CCA) to construct portions of the project. To protect water quality, all CCA-treated lumber must be

cured on dry land in a manner that exposes all surfaces to the air for 21 days prior to the start of construction.

Provided that CCA-treated lumber is cured as described above, the Department finds that the proposed project will not violate any state water quality law, including those governing the classification of the State's waters.

6. WETLANDS AND WATERBODIES PROTECTION RULES:

The applicant proposes to directly alter eight square feet of subtidal coastal wetland to install six new pilings and to relocate two pilings. Shading created by the new permanent floating piers will indirectly alter 1,380 square feet of subtidal coastal wetland. The six tie-up floats, shading 864 square feet of substrate, will be removed seasonally and stored in an upland area in the off-season.

The Wetland Protection Rules interpret and elaborate on the Natural Resources Protection Act (NRPA) criteria for obtaining a permit. The rules guide the Department in its determination of whether a project's impacts would be unreasonable. A proposed project would generally be found to be unreasonable if it would cause a loss in wetland area, functions and values and there is a practicable alternative to the project that would be less damaging to the environment. Each application for a NRPA permit that involves a coastal wetland alteration must provide an analysis of alternatives in order to demonstrate that a practicable alternative does not exist.

A. Avoidance. No activity may be permitted if there is a practicable alternative to the project that would be less damaging to the environment. The applicant submitted an alternatives analysis for the proposed project with the application. The applicant analyzed several alternatives to achieve the project purpose of providing additional docking area for temporary and seasonal storage of boats for visitors and residents, while reducing the vulnerability of the facility to storms and winds. Working in conjunction with an experienced dock and marina construction company, the applicant arrived at the selected alternative, which adds permanent and seasonal floating docks while maximizing the utility of the existing marina components to limit the footprint of the expansion in the resource. To meet the project purpose, some impact to the coastal wetland cannot be avoided.

B. Minimal Alteration. The amount of coastal wetland to be altered must be kept to the minimum amount necessary for meeting the overall purpose of the project. The applicant has designed the project to the minimum size required to meet the project need. The applicant proposes to remove the floats used for boat slips during the off-season to limit permanent impacts in the resource and to reduce the potential for winter storm damage.

C. Compensation. In accordance with Chapter 310 Section 5(C)(6)(b), compensation is not required to achieve the goal of no net loss of coastal wetland functions and values since the project will not result in over 500 square feet of fill in the resource, which is the threshold over which compensation is generally required. Further, the proposed project will not have an adverse impact on wildlife habitat as determined by MDIFW. For these reasons, the Department determined that compensation is not required.

The Department finds that the applicant has avoided and minimized coastal wetland impacts to the greatest extent practicable, and that the proposed project represents the least environmentally damaging alternative that meets the overall purpose of the project

7. OTHER CONSIDERATIONS:

The Department did not identify any other issues involving existing scenic, aesthetic, or navigational uses, soil erosion, habitat or fisheries, the natural transfer of soil, natural flow of water, water quality, or flooding.

BASED on the above findings of fact, and subject to the conditions listed below, the Department makes the following conclusions pursuant to 38 M.R.S.A. Sections 480-A et seq. and Section 401 of the Federal Water Pollution Control Act:

- A. The proposed activity will not unreasonably interfere with existing scenic, aesthetic, recreational, or navigational uses.
- B. The proposed activity will not cause unreasonable erosion of soil or sediment.
- C. The proposed activity will not unreasonably inhibit the natural transfer of soil from the terrestrial to the marine or freshwater environment.
- D. The proposed activity will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic or adjacent upland habitat, travel corridor, freshwater, estuarine, or marine fisheries or other aquatic life.
- E. The proposed activity will not unreasonably interfere with the natural flow of any surface or subsurface waters.
- F. The proposed activity will not violate any state water quality law including those governing the classifications of the State's waters provided that CCA-treated lumber is cured as described in Finding 5.
- G. The proposed activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties.
- H. The proposed activity is not on or adjacent to a sand dune.
- I. The proposed activity is not on an outstanding river segment as noted in Title 38 M.R.S.A. Section 480-P.

THEREFORE, the Department APPROVES the above noted application of BIG BLACK DOG, LLC to expand a marina on Peaks Island in the City of Portland as described in Finding 1, SUBJECT TO THE ATTACHED CONDITIONS, and all applicable standards and regulations:

- I. Standard Conditions of Approval, a copy attached.

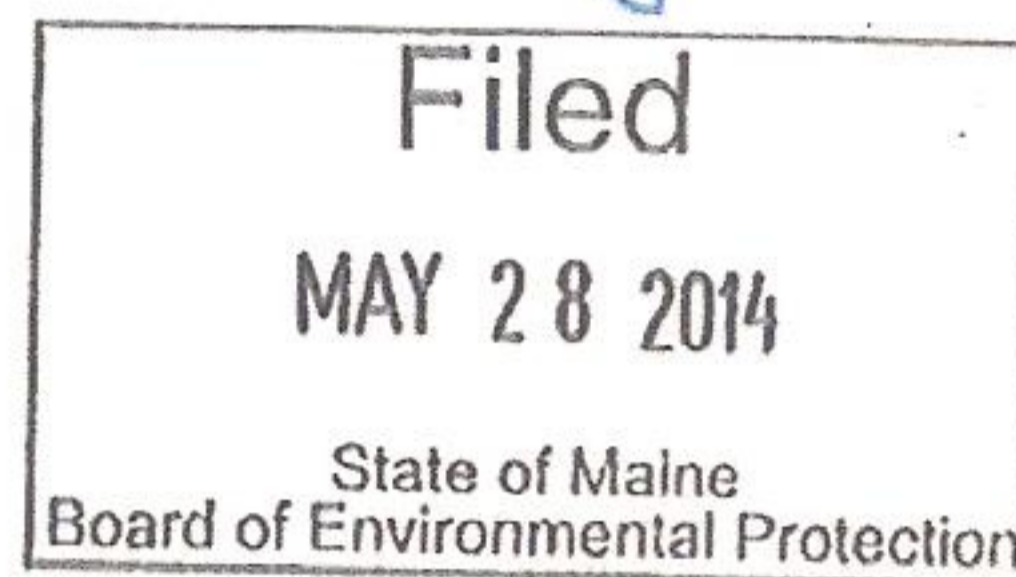
- 2. The applicant shall take all necessary measures to ensure that its activities or those of its agents do not result in measurable erosion of soil on the site during the construction of the project covered by this approval.
- 3. Severability. The invalidity or unenforceability of any provision, or part thereof, of this License shall not affect the remainder of the provision or any other provisions. This License shall be construed and enforced in all respects as if such invalid or unenforceable provision or part thereof had been omitted.
- 4. All CCA-treated lumber shall be cured on dry land in a manner that exposes all surfaces to the air for 21 days prior to the start of construction.

THIS APPROVAL DOES NOT CONSTITUTE OR SUBSTITUTE FOR ANY OTHER REQUIRED STATE, FEDERAL OR LOCAL APPROVALS NOR DOES IT VERIFY COMPLIANCE WITH ANY APPLICABLE SHORELAND ZONING ORDINANCES.

DONE AND DATED IN AUGUSTA, MAINE, THIS 28th DAY OF May, 2014.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: Michael Keenan
For: Patricia W. Aho, Commissioner



PLEASE NOTE THE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES...

WB/L9216BN/ATS#77411