



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

GREAT PONDS PERMIT GP 3544

The Maine Land Use Planning Commission (Commission), through its staff, after reviewing the application and supporting documents submitted by David L. Wheelock, for Great Ponds Permit GP 3544 and other related materials on file, finds the following facts:

1. Applicant: David L. Wheelock
17 Chase Ave.
Augusta, Maine 04330
2. Date of Completed Application: September 27, 2018
3. Location of Proposal: Plan 10, Lots 17.2 and 17.6
Rockwood Strip Twp. T1R1 NBKP, Somerset County
4. Zoning: (D-RS) Residential Development Subdistrict
(D-GN) General Development Subdistrict
(P-WL1) Wetland Protection Subdistrict
5. Affected Waterbody: Moosehead Lake
The Commission has identified Moosehead Lake as a management class 7, resource class 1A, developed lake with the following resource ratings: outstanding fisheries resources, outstanding wildlife resources, outstanding scenic resources, outstanding physical resources.

Background

6. David L. Wheelock owns abutting parcels of land in Rockwood Strip Twp. T1R1 NBKP as described in Somerset County Registry of Deeds Book 1508, Page 167 (Lot 17.2) and Book 1185, Page 128 (Lot 17.6). On October 26, 1992, the Commission issued Great Ponds Permit GP 563 to Dennis S. Wheelock and Robert E. Wheelock for activities on Lots 17.2 and 17.6. GP 563 describes Lot 17.2 as having 90 feet of shoreline frontage on Moosehead Lake and approximately 90 feet of frontage on Lake Street. GP 563 describes Lot 17.6 as having 97.1 feet of frontage on Moosehead Lake and approximately 97 feet of frontage on Lake Street. Each lot is developed with a pre-Commission dwelling.

7. Lots 17.2 and 17.6 are developed with a legally existing, a pre-Commission, permanent docking structure, and a wooden retaining wall. The applicant describes the existing permanent docking structure as being 19.5 feet wide by 57 feet long perpendicular to the shoreline with an 18.5-foot wide by 66-foot long section parallel to the shoreline (2,332.5 square feet). The entire docking structure is supported by a rock and timber crib. The surface of the docking structure is made of wooden decking boards; the sides of the docking structure are constructed with plywood that extends below the normal high water mark. The applicant describes the retaining wall as being 127 feet long and spanning both Lots 17.2 and 17.6. The retaining wall is constructed of wooden timbers.
8. GP 563 approved the reconstruction of a pre-Commission permanent docking structure located along the property line between Lots 17.2 and 17.6. The 12-foot wide by 60-foot long docking structure no longer exists and is not the same structure as the existing “L-shaped” docking structure subject of the current permit application.
9. The majority of the upland portion of the subject property is zoned as (D-GN) General Development Subdistrict with a minority portion zoned as Residential Development (D-RS) subdistrict. The portion of the applicant’s property submerged below Moosehead Lake is zoned as a Wetland Protection (P-WL1) subdistrict.

Proposal

10. The applicant proposes two main projects, reconstruction of the permanent docking structure; and reconstruction of the wooden retaining wall in the shoreline. The applicant stated that approximately 250 square feet of lake bottom will be affected by the proposed docking structure reconstruction project. This consists of the repositioning of rock making up the existing cribbing and replacement of timbers in the crib structure. No new wetland impacts are proposed.
 - a. Permanent docking structure. The existing permanent docking structure is 19.5 feet wide by 57 feet long perpendicular to the shoreline with an 18.5-foot wide by 66-foot long section parallel to the shoreline (2,332.5 square feet). The applicant proposes to reduce the dimensions of the docking structure to 19.5 feet wide by 48 feet long perpendicular to the shoreline with a 10-foot wide by 66-foot long section parallel to the shoreline (1,596 square feet). The proposed reconstruction is an approximately 31% reduction in the overall size of the existing permanent docking structure. The project is proposed for periods of low water or during frozen lake conditions. No machinery will be operated below the normal high water mark of Moosehead Lake.
 - b. The applicant proposes to remove the wooden decking surface from the entire existing docking structure. The section of the docking structure that is oriented parallel to the shoreline will be reduced in width from 18.5 feet to 10 feet by pulling in rocks used in the crib foundation to the center of the structure. The applicant proposes to use the existing rock to build up the docking structure so that a wooden deck surface is not needed. This would require the placement of new smaller rock and crushed stone to fill in gaps between the larger rocks and create a solid surface above the normal high water mark. Damaged or rotted wooden timbers used to contain the rock crib will be replaced with no expansion in the footprint beyond the

existing crib structure. The applicant stated that the completed docking structure would appear similar to the docking structure at the nearby Rockwood Pier¹.

- c. The section of the docking structure that is oriented perpendicular to the shoreline will be reduced in length from 57 feet to 48 feet and would be resurfaced with pressure-treated wooden boards.
- d. Retaining wall. The applicant proposes to replace the majority of the existing 127-foot long wooden timber retaining wall. The applicant proposes to excavate the soil behind the existing wall to access the existing deteriorated wooden timbers. Existing timbers below the normal high water mark that are not damaged or rotted will not be replaced. The timbers above the normal high water mark will be replaced with 8-inch by 8-inch wooden timbers and be tied back into the embankment. Filter fabric will be placed between the soil surface and timbers. The area behind the retaining wall will be back-filled with rock and soil to grade. The disturbed area will be loamed and seeded to reestablish the existing lawn. The reconstructed retaining wall will not extend further into the lake or below the normal high water mark than the existing retaining wall.

Review Criteria and Standards

11. Permit required. Pursuant to 12 M.R.S. § 685-B(1)(A), a structure or part of a structure may not be erected, changed, converted or wholly or partly altered or enlarged in its use or structural form without a permit issued by the Commission. Pursuant to 12 M.R.S. § 682(4), "structure" means anything constructed or erected with a fixed location on or in the ground, or attached to something having a fixed location on or in the ground, including, but not limited to, buildings, mobile homes, retaining walls, billboards, signs, piers and floats.
12. Docking structure. Pursuant to *Land Use Districts and Standards*, 01-672 C.M.R. 10 (last revised September 20, 2018) (herein after "Chapter 10"), section 10.02,54, a "docking structure" is a structure placed in or near water primarily for the purpose of securing and/or loading or unloading boats and float planes, including but not limited to docks, wharfs, piers, and associated anchoring devices, but excluding boathouses and floatplane hangers.
13. Permanent docking structures. Pursuant to Chapter 10, section 10.02,151, a permanent docking structure is a "docking structure in place for longer than seven months in any calendar year or which is so large or otherwise designed as to make it impracticable to be removed on an annual basis without alteration of the shoreline, and associated on-shore structures used to secure a permanent dock or mooring."

Pursuant to Chapter 10, sections 10.21,K,3,d,16, 10.21,C,3,c,19, and 10.23,N,3,c,11, shoreland alterations, including reconstruction of permanent docking structures, and permanent on-shore structures used to secure docks and moorings, may be allowed within D-RS, D-GN, and P-WL1 subdistricts, respectively, as upon issuance of a permit from the Commission pursuant to 12 M.R.S. § 685-B, and subject to the applicable land use standards set forth in Chapter 10, sections 10.25 through 10.27.

¹ See Development Permit DP 4151-C issued to the Maine Bureau of Parks and Lands on October 12, 2010.

Pursuant to Chapter 10, section 10.27,O, to be granted a permit, a proposal for a permanent docking structure must meet the general criteria for approval in Chapter 10, section 10.24 and the criteria for wetland alterations in Chapter 10, section 10.25,P, in addition to any applicable requirements set forth in Chapter 10, section 10.27,O. Section 10.27,O,1,a provides that:

A permit for reconstruction shall not be issued unless the permanent docking structure is legally existing. For docks larger than the size limitations for new or expanded docks in Section 10.27,O,2,b, the size of the reconstructed dock must be no more than 90 percent of the size of the original structure. The dock shall be reconstructed in the same location, except as provided for in Section 10.27,O,1,d. The reconstructed structure must not extend farther into the waterbody than the existing structure.

Pursuant to Chapter 10, section 10.27,O,2,b,2,a,i, and 10.27,O,2,b,2,b, a new or expanded private, non-commercial dock must extend no farther than 50 feet beyond the normal high water mark and must be no wider than 8 feet, respectively.

14. Water body and wetland impacts and level of permit review. Pursuant to Chapter 10, section 10.25,P,2,a,(2), the level of permit review required depends upon the size of the proposed wetland alteration and the P-WL subdistrict involved. Generally, a project altering any area of P-WL1 wetland requires Tier 3 review. However, alteration of P-WL1 wetlands may be eligible for Tier 1 or Tier 2 review if the Commission determines 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.

Pursuant to Chapter 10, section 10.25,P,1,for Tier 1 review the following standards apply.

- 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.
- 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.
- e. Lower water quality. The activity will not violate any State water quality law, including those governing the classification of the State's waters.

Pursuant to Chapter 10, section 10.25,P,2,b,(1), projects requiring Tier 1 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.

Pursuant to Chapter 10, section 10.25,P,2,b,(2), projects requiring Tier 1 review must limit the amount of wetland to be altered to the minimum amount necessary to complete the project.

Pursuant to Chapter 10, section 10.25,P,2,b,3,f,iii, neither a functional assessment nor compensation is required for an alteration of a body of standing water that does not place any fill below the normal high water mark, except as necessary for shoreline stabilization projects, and has no adverse effect on aquatic habitat as determined by the Department of Inland Fisheries and Wildlife or the Department of Environmental Protection.

15. General criteria for approval. Pursuant to 12 M.R.S. § 685-B(4), which has been incorporated into rule in Chapter 10, section 10.24, the Commission may not approve an application unless:
- a. Adequate technical and financial provision has been made for complying with the requirements of the State's air and water pollution control and other environmental laws, and those standards and regulations adopted with respect thereto.
 - b. Adequate provision has been made for loading, parking and circulation of land, air and water traffic, in, on and from the site, and for assurance that the proposal will not cause congestion or unsafe conditions with respect to existing or proposed transportation arteries or methods.
 - c. Adequate provision has been made for fitting the proposal harmoniously into the existing natural environment in order to ensure there 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.
 - d. The proposal will not cause unreasonable soil erosion or reduction in the capacity of the land to absorb and hold water and suitable soils are available for a sewage disposal system if sewage is to be disposed on-site.
 - e. The proposal is otherwise in conformance with 12 M.R.S. §§ 681 – 689 and the regulations, standards and plans adopted pursuant thereto.

Based upon the above Findings, the Commission staff concludes the following.

16. Permanent docking structure. The existing permanent docking structure extends into Moosehead Lake 57 feet from the shoreline. The existing dock exceeds both the length and width size limitations for new or expanded docks in Section 10.27,O,2,b, and must therefore be reduced in size so that it is not more than 90 percent of the size of the original structure. The applicant has proposed to reduce the length of the permanent docking structure to 48 feet to comply with Chapter 10, Section 10.27,O,1,a. The width of this section of the docking structure is 19.5 feet and the applicant does not propose to change this as part of the overall reconstruction project. This design change reduces the overall size of the docking structure by 175.5 square feet.

The width of the existing "L-shaped" section of the docking structure is 18.5 feet. The applicant proposes to reduce the width to 10 feet and to maintain the existing length of 66 feet. This design change reduces the overall size of the docking structure by 561 square feet.

The total proposed reduction in the size of the permanent docking structure is 736.5 square feet. This is a 31.6% reduction from the existing 2,332.5-square foot docking structure.

The proposed reconstructed permanent docking structure will not take place within significant wildlife habitat; will not interfere with, or reduce the opportunity for, existing navigation and recreational uses of the site; and will not alter the hydrology of the waterbody, permanently interfere with natural flow, or cause impoundment of the waterbody in excess of the existing structure; and will not block fish passage. Therefore, the Commission staff concludes that the proposal complies with the standards for permanent docking structures at Chapter 10, section 10.27,O.

17. Water body and wetland impacts, no unreasonable impact. Pursuant to Chapter 10, section 10.25,P, the Commission staff concludes that the reconstructed permanent docking structure will not have an unreasonable negative affect on Moosehead Lake. The overall size of the structure is being reduced by 31.6% and will occupy less lake bottom than the current docking structure.

The Commission staff also concludes the project will not cause soil erosion provided best management practices for erosion and sedimentation control are employed during and following construction of the retaining wall. No vegetation clearing is proposed. Additionally, the project will not cause violation of State water quality law. The reduction in the size of the existing docking structure is anticipated to have no unreasonable harm to fisheries or habitat. The Maine Department of Inland Fisheries and Wildlife, in their application review comments dated October 24, 2018, stated that the footprint is not being expanded and minimal impacts are anticipated. Thus, neither a functional assessment nor compensation is required for this project. The proposal complies with Chapter 10, section 10.25,P,1.

The Commission staff concludes, in accordance with Chapter 10, section 10.25,P,2,b,(1), that the proposed project avoids 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. The Commission staff concludes, in accordance with Chapter 10, section 10.25,P,2,b,(2), the proposed project limits the amount of wetland to be altered to the minimum amount necessary to complete the project. No new wetland impacts will result from the proposed reduction in size of the reconstructed permanent docking structure.

18. General criteria for approval. The general criteria for approval of a permit application are specified in Title 12, section 685-B(4) and have been incorporated into Chapter 10, section 10.24. The Commission staff concludes that these criteria have been met.

Therefore, the Commission staff approves the application of David L. Wheelock, subject to the following conditions:

1. The Standard Conditions for Shoreland Alterations (ver. 4/04), a copy of which is attached.
2. The reconstructed permanent docking structure must measure 19.5 feet wide by 48 feet long perpendicular to the shoreline with a 10-foot wide by 66-foot long section parallel to the shoreline (1,596 square feet), as illustrated on the sketch included as Attachment A of this permit.

3. Reconstruction of the approved permanent docking structure must be conducted during a period of low water, and when the lake bottom is exposed, if applicable.
4. The timber retaining wall must be constructed as described in paragraph 10.d of this permit and as illustrated on the sketch, entitled "Site Plan Cross-Section" included as Attachment B of this permit.
5. The reconstructed dock must not include other structures, such as sheds, floatplane hangers, boathouses, electric wiring, or fuel storage tanks attached to the dock.
6. Only untreated wood or pressure-treated wood or other material approved by the U.S. Environmental Protection Agency for inland waters must be used to reconstruct the dock. CCA pressure-treated wood may only be used if it is dried on land in such a manner as to expose all surfaces to the air for at least 21 days. PCP pressure-treated wood or wood treated with creosote must not be used.
7. All metal used below the normal high water mark must be rustproof.
8. Heavy machinery must not be driven below the normal high water mark, except where necessary and when the work area is above the level of the water, and only on rocky or gravelly substrate. Mats or platforms must be used as needed to protect the shoreline and lake bottom from damage.
9. All construction debris and residual materials must be removed from the water body and disposed of according to the Maine Solid Waste Disposal Rules.
10. Prior to construction, erosion and sedimentation control devices, such as staked hay bales or silt fencing, must be installed to prevent sediment from entering the water body.
11. All areas of disturbed mineral soils above the normal high water mark must be stabilized with mulch or erosion control mix upon completion of the project, or any time the project area will remain inactive for a period of one week or longer.
12. This permit is approved upon the proposal as set forth in the application and supporting documents, 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.

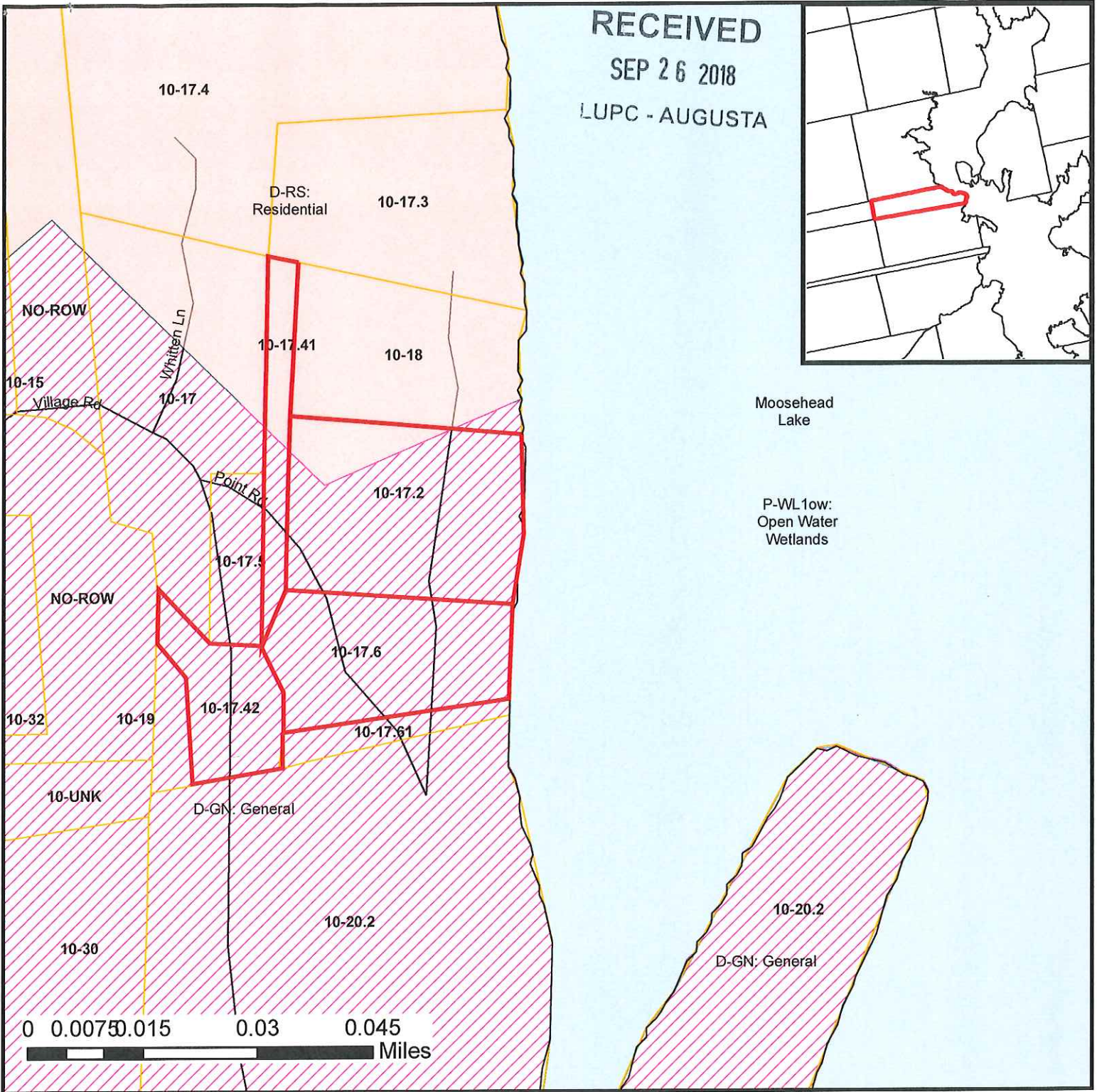
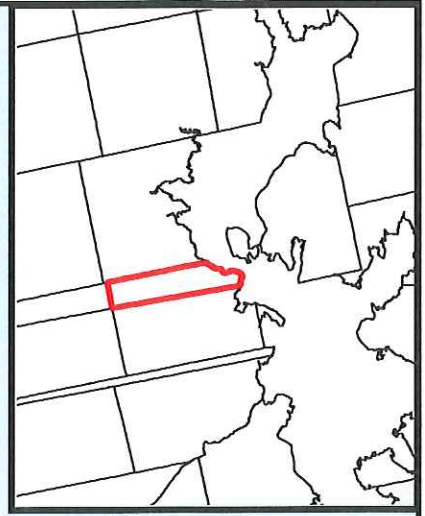
In addition, any person aggrieved by this decision of the staff may, within 30 days, request that the Commission review the decision.

DONE AND DATED AT AUGUSTA, MAINE, THIS 31ST DAY OF OCTOBER, 2018.






For: Nicholas D. Livesay, Director

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Rockwood Strip T1 R1 NBKP, Plan 10 Lots 17.2, 17.41, 17.42, 17.6; Somerset County



-  D-GN: General
-  Parcels UT
-  D-RS: Residential