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SUBMERGED LANDS LEASE – FINAL FINDINGS AND DECISION

APPLICANT: Sunnyside Cottages, LLC

PROJECT LOCATION: Town of Waterboro

APPLICATION: Bureau of Parks and Lands Submerged Lands Application No. SL2282

PROJECT DESCRIPTION: The Applicant proposes to modify and expand its existing docks by constructing two floating dock structures which are approximately 100 feet long with four 14 ft. finger floats on each side of the main docks on submerged lands in Little Ossipee Pond. The project would be located in a small cove. The floats would extend approximately 80 feet beyond the natural low-water mark for commercial and recreational use. The Applicant also proposes to request “No Wake Zone” markers from the Department of Inland Fisheries and Wildlife which would be located 144 feet across the cove. These markers are not within the scope of the Submerged Lands review.

The Applicant’s application incorrectly stated that the finger floats would be 14 feet long; in actuality they would be 16 feet long. The Bureau considered this a minor change that would not have a significant impact on the Bureau’s considerations as described below.

The Applicant proposed a further amendment to the original plan in order to accommodate the shallow water on the shore end of the float systems. The applicant now proposes to eliminate the southeast corner finger float and the northeast corner finger float due to water depth, and to reduce the distance between the finger floats to 16 feet rather than 20 feet as in the original proposal. The two 16-foot finger floats would then be added at the end of the float system closest to Route 5. The total length of that float system would be 98 feet long. The length of the float system furthest from Route 5 would be reduced to 80 feet. Since the overall area of submerged lands has been reduced and the littoral sideline boundary requirement has been met the Bureau also considers this a minor change that would not have a significant impact on the Bureau’s considerations as described below.

REVIEW COMMENTS: Notification letters were sent to the municipality, shorefront abutters and the Department of Inland Fisheries and Wildlife. Comments were received from the Town, nearby residents and a representative for the northwesterly abutter. The abutter (“Campground”) operates a commercial campground on the west side of Route 5 just northwest of the cove on which the Applicant’s property is located. The comments included concern about the accuracy of the site plan drawing, potential impacts to navigation, fishing, recreation and the Campground’s own proposed float system. These issues are discussed below.

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The Town commented that the basic site plan originally submitted appeared to include the shorefront of the Campground as part of the applicant's property. The Town also commented that the applicant made no mention of the Campground's proposed dock system expansion which the Town Planning Board had recently approved.

Additional comments were received from nearby residents related to the potential impact to a local market located approximately 725 feet from a vessel landing site on the Campground's property. Potential impacts to local commerce that is not located on the water is not within the Bureau's purview. Comments were received by the northeasterly abutter supporting the applicant's proposal. Bureau staff conducted a site visit on April 27, 2018.

The Bureau's Preliminary Findings And Decision were sent on May 15, 2018 based on the original site plan with 14-foot finger floats. Comments were received by the Campground regarding the Applicant's reason for building the float systems and concerns that public use and boating access under the Route 5 "bridge" to the cove would be negatively impacted. The Rules do not direct the Bureau to consider an applicant's motivation. Potential impacts to recreation and navigation are discussed below.

An amendment to the Preliminary Findings And Decision was sent on June 18th, 2018 to correct the size of the finger floats from 14 feet to 16 feet. No comments were received.

An additional amendment to the Preliminary Findings and Decision was sent on July 11, 2018 to reduce the length of the float system furthest from Route 5, to remove two proposed finger floats that would have been located in shallow water near the shore and to place those two finger floats at the end of the float system closest to Route 5. The space between the finger floats would be reduced so that the overall length of the dock would remain within the realm of the original plan. No comments were received.

FINDINGS: Based upon its review of all information in the administrative record, the Bureau of Parks and Lands makes the following findings in accordance with Title 12 M.R.S.A. section 1862 and pertinent regulations.

INGRESS AND EGRESS OF RIPARIAN OWNERS:

Under the Submerged Lands Rules (Rules), a proposed use of submerged lands may not unreasonably interfere with the public use of these lands and waters or with a riparian owner's access to those waters. As part of the Bureau review, consideration is given to adjacent public and private uses including future access, the nature of those uses relative to the public interest, and reasonably available alternatives.

The Campground commented regarding potential impacts to the ability of the Campground to access the proposed expansion of its float systems and the proximity of the Applicant's proposal to its own proposal. The Campground also commented that the Applicant's proposal should not be considered valid because the float systems are entirely new rather than being a relocation, and because the Campground had recently received conditional approval from the Town of Waterboro Planning Board for an expansion of the Campground which included 34 additional slips. The Campground currently installs finger floats on the shoreline on the east side of Route 5. The Bureau received a Submerged Lands application from the Campground for its float expansion after the Applicant's proposal was submitted.

The use of the word “relocation” was a word incorrectly used by the Bureau in the public Notice to describe the replacement of other docks on the Applicant’s site to be removed; the word “relocation” was not intended to hide the intention of new additional construction with the proposal. The site plan attached to the notice clearly showed the construction of a newly designed and configured float system.

The Applicant’s proposed structures would extend approximately 98 feet (the float system nearest to Route 5) and 80 feet (adjacent float system to the east) from the shoreline of the cove toward the open lake. The Campground commented that the proposal would be too close to its proposed floats. The Applicant and the Campground have both expressed concern that the ingress and egress at both properties would be negatively impacted if both proposals were to be constructed as shown on the original plans due to the proximity of the floats. As modified, the Applicant’s float system would be 25 feet or more from the Campground’s littoral sideline, the standard required by the Submerged Lands Rules.

The Bureau looks at the individual property owner’s right to wharf out and the impact to public trust rights of each proposal. The Bureau finds that the Campground’s application would not have excluded the Applicant from having the right to apply for a conveyance adjacent to their property. The Bureau further finds that there is adequate space for each float system to operate provided they meet the 25-foot setback from littoral sidelines described below. The Bureau finds that the Applicant’s project would not unreasonably interfere with ingress and egress of riparian owners.

LITTORAL ZONES AND SETBACK DISTANCES:

Under the Submerged Lands Rules, boundaries of littoral zones lying off-shore of upland properties are established by right angle projections from a baseline established along the shoreline at the intersection of the high-water line and the side boundary of each property. Setback standards are established from other existing structures, the Applicant’s littoral zone boundary, and the midpoint between divergent littoral boundaries. The Rules allow for exceptions to the setback standards when the project otherwise meets the terms, conditions, and standards of the Rules, and the Applicant has demonstrated that no reasonable alternative location is available. The littoral zones and setback standards are established to identify the submerged land area adjacent to the Applicant’s upland property and to maintain adequate separation between structures for navigation and access for both the public and riparian owners. The littoral zones are not intended to delineate areas of public submerged lands for the exclusive use of the Applicant or other riparian owners.

The Applicant’s littoral sidelines run such that the cove is contained within them. The Campground’s littoral sideline intersects with the Applicant’s and runs at an approximate right angle to the cove on which the Applicant’s property is located. After discussion with the Applicant regarding the Campground’s littoral sideline the Applicant has agreed to locate its proposed structures to be no closer than 25-feet from the Campground’s southeastern littoral sideline. The Campground’s proposal would also meet the 25-foot setback from its littoral sideline. The Bureau finds that the Applicant’s proposed structures are located entirely within the littoral zone of their property, and would meet the 25-foot setback littoral boundary standard for new structures.

PUBLIC ACCESS WAYS:

The project will be associated with the Applicant's private property and not on or adjacent to a public access point to the shore. As such, the project will not unreasonably interfere with public access ways to submerged lands.

PUBLIC TRUST RIGHTS:

Comments were received regarding access to fishing grounds within the cove where the Applicant's proposed floats would be placed. While fishing in the immediate vicinity of the Applicant's floats may be affected, the Bureau finds that there is adequate area around the project site for fishing.

Comments were received regarding navigation under a "bridge" near the Applicant's proposed float system. The Bureau observed that the two culverts under Route 5 which are located beyond the Applicant's dock systems are not navigable for swimming or boating. The Bureau finds that the project will not unreasonably interfere with fishing, fowling, navigation, or other existing marine uses of the area.

RECREATION:

The project will not unreasonably interfere with recreation.

SERVICES AND FACILITIES NECESSARY FOR COMMERCIAL MARINE ACTIVITIES:

The project will not unreasonably diminish the availability of services and facilities necessary for commercial marine activities.

CONCLUSIONS: Based upon its review of all information in the administrative record, the Bureau of Parks and Lands concludes that the project meets the requirements set forth in 12 M.R.S.A. section 1862 and in the Bureau's Chapter 53 Submerged Lands Rules.

DECISION: In accordance with Title 12 M.R.S.A. section 1862, the Director of the Bureau of Parks and Lands has determined that Submerged Lands Lease No. 2036-L-47 will be granted to Sunnyside Cottages, LLC.

APPEAL RIGHTS: In accordance with 5 M.R.S.A. section 11002 and Maine Rule of Civil Procedure 80C, this decision may be appealed to Superior Court within 30 days of receipt of notice of the decision by a party to this proceeding, or within 40 days from the date of the decision by any other aggrieved person.

Signed: _____

 (DIR. OPS.)

Thomas A. Desjardin, Director

Date: 8-1, 2018