



STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
BUREAU OF PARKS & LANDS

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SUBMERGED LANDS LEASE – PRELIMINARY FINDINGS AND DECISION AMENDED

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 16 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 whereas they would be 16 feet long. The Bureau 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 regarding potential impacts to the ability of the abutter to access the proposed expansion of its float systems and the proximity of the applicant’s proposal to its own proposal. 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 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 on May 4, 2018 to expand its floats and the Bureau is reviewing the site plan for compliance with the Submerged Lands Rules. Nearby residents expressed concern about the impact of the applicant’s proposal on fishing, navigation and recreation. The Campground 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 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 which would 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 Campground had not submitted a site plan proposal to the Submerged Lands Program prior to the applicant’s submission. An application from

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the Campground would not have excluded the applicant from also having the right to apply for a conveyance for their project. Additional comments were received from nearby residents related to the impact to local commerce. The Bureau has been charged with protecting the public trust rights only. Any potential impact to local commerce 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.

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.

LITTORAL ZONES AND SETBACK DISTANCES:

Under the Submerged Lands Rules (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 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. 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 southeasterly littoral sideline.

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 and therefore 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.

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 applicant's proposed structures would extend approximately 100 feet 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 Bureau finds that the applicant's proposed structures would not unreasonably impact the ability of the Campground to install a docking structure provided the floats are no closer than 25 feet from the Campground's southeasterly littoral sideline. 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 plans due to the proximity of the floats. As proposed the Bureau estimates that the distance between the floats would be approximately 20 feet. 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 finds that the applicant's project would not unreasonably interfere with ingress and egress of riparian owners because there is sufficient space for the abutting property owner to install a docking structure.

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.

Signed: _____
Thomas A. Desjardin, Director

Date: _____, 2018