

BB DEVELOPMENT, LLC

Site Location of Development Act // Natural Resources Protection Act  
Phase I-Oxford Resort Casino – Oxford

ORDER UNDER APPEAL



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

DEPARTMENT ORDER

IN THE MATTER OF

BB DEVELOPMENT, LLC	) SITE LOCATION OF DEVELOPMENT ACT
Oxford, Oxford County	) NATURAL RESOURCES PROTECTION ACT
OXFORD RESORT CASINO – PHASE I	) FRESHWATER WETLAND ALTERATION
L-25203-28-A-N (approval)	) WATER QUALITY CERTIFICATION
L-25203-TE-B-N (approval)	) FINDINGS OF FACT AND ORDER

Pursuant to the provisions of 38 M.R.S.A. Sections 481 et seq. and 480-A et seq., and Section 401 of the Federal Water Pollution Control Act, the Department of Environmental Protection has considered the application of BB DEVELOPMENT, LLC with the supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

1. PROJECT DESCRIPTION:

A. Summary: The applicant proposes to construct Phase I of a four-season commercial and entertainment resort facility. Phase I consists of a 65,000 square foot building, one main entrance, one entrance for emergency use, two parking areas that will accommodate 1,050 parking spaces, and associated on-site utilities. The proposed project is shown on a set of plans the first of which is entitled "Oxford Resort Casino, Site Overview Plan," prepared by Main-Land Development, Inc., and dated December 20, 2010, with a last revision date of February 1, 2011. The project site is located on the west side of Route 26 and the north side of Rabbit Valley Road in the Town of Oxford.

The applicant is also seeking approval under the Natural Resources Protection Act (NRPA) to permanently fill 42,430 square feet of forested freshwater wetlands. Proposed wetland alterations are discussed further in Finding 16.

In addition, the applicant submitted a Notice of Intent (NOI #51672) to comply with the requirements of the Maine Construction General Permit. NOI #51672 was approved by the Department on December 28, 2010.

B. Current Use of Site: The site of the proposed project is undeveloped woodlands and agricultural fields. There are three existing structures on the property. Two of these structures are abandoned homes; the third structure is a mobile home. The site is referenced in the Town of Oxford's tax maps as Lot #36a, 37, and 38 on Map #R3. The deed for the proposed project is indicated in the Oxford County Registry of Deeds located in Book #4672 on Page #23.

C. Public Interest: While the application was being reviewed, the Department received comments from the general public within the vicinity of the proposed project site; these persons are “interested parties”, as defined in Department Rules, Chapter 2(1)(I), for the purposes of this application review.

The Department issued a draft licensing decision on March 4, 2011, and the Department received a number of additional letters of concern regarding specific aspects of the proposed project. Interested parties expressed concern in relation to potential adverse impact to a public water supply, private wells, groundwater quality, potential increase in erosion and stormwater to Rabbit Valley Road, Winter Brook, and Tripp Lake, and regulatory conflict of interest. The Department reviewed all of the interested parties’ concerns and accepted all information that was submitted into the record.

2. FINANCIAL CAPACITY:

The total cost of the project is estimated to be \$6,746,000. The applicant submitted a letter from Key Private Bank, dated December 17, 2010 indicating that the applicant has sufficient net liquid assets that are immediately available to construct the proposed project.

The Department finds that the applicant has demonstrated adequate financial capacity to comply with Department standards.

3. TECHNICAL ABILITY:

The applicant provided resume information for key persons involved with the project and a list of projects successfully constructed by the applicant. The applicant also retained the services of several consulting firms to assist in the design and engineering of the project. These firms, among others, and their involvement in the proposed project are as follows:

- Main-Land Development Consultants, Inc. – civil engineering design, natural resource assessment, surveying, permitting
- JCJ Architecture – site concept, building architecture
- Sweet Associates – hydrogeology services
- Summit Environmental Consultants, Inc. – geotechnical services
- Kenneth Stratton – natural resource assessment

The Department finds that the applicant has demonstrated adequate technical ability to comply with Department standards.

4. NOISE:

The noise generated by the proposed project is anticipated to be minor in nature and consistent with applicable municipal ordinances and zoning. The applicant has identified the following potential sources of noise from the development: traffic, music at entrance to the main facility, mechanical units, and an emergency generator. The applicant stated that these sources of noise will be sited more than 100 feet from the property boundary of the proposed project and that the proposed project has been designed to be in compliance with the Department's Chapter 375 (10) noise standards.

The Department finds that the proposed improvements will not generate excessive operational noise.

5. SCENIC CHARACTER:

The proposed project site is located on the west side of Route 26 at the intersection with Rabbit Valley Road; the proposed project site is comprised of agricultural fields and woodlands. A cell phone tower is located directly to the north and south of the project site. Land uses in the area consist of rural development and agricultural activities. The applicant's property and the surrounding area are zoned by the municipality as Multi-Use to specifically attract commercial businesses.

The applicant submitted a visual quality study that summarizes the visibility of the proposed project from various locations within 8 miles of the project site. The selected locations include frequently traveled roads, cell phone towers, a railroad bed, and a school. The applicant did not identify any scenic resources within the viewshed of the proposed project. From the majority of the locations, the proposed project will be minimally visible. The existing vegetation screens much of the proposed project from the selected locations.

The applicant submitted a landscaping plan which incorporates several native shade trees, mid-level shrubs, and ground cover plantings in order to soften the immediate view of the proposed project. Further, the applicant proposes to utilize stone, wood siding, and exposed timber frame elements into the construction of the proposed building in order to create a natural appearance to the building.

Based on the project's location and design, the applicant's visual quality study, and the applicant's landscaping plan, the Department finds that the proposed project will not have an unreasonable adverse effect on the scenic character of the surrounding area.

6. WILDLIFE AND FISHERIES:

The Maine Department of Inland Fisheries & Wildlife (MDIFW) reviewed the proposed project. In its comments, dated January 26, 2011, MDIFW stated that it found no records

of any Essential or Significant Wildlife Habitats, or other wildlife habitats of special concern associated with this site.

There is one stream located near the southernmost property line and away from where the proposed project is sited. The Department observed this stream at a site visit on November 19, 2010. No fisheries concerns were identified by MDIFW.

The Department finds that the applicant has made adequate provision for the protection of wildlife and fisheries.

7. HISTORIC SITES AND UNUSUAL NATURAL AREAS:

The Maine Historic Preservation Commission reviewed the proposed project and stated in a letter dated January 3, 2011 that the proposed project will have no effect upon any structure or site of historic, architectural, or archaeological significance as defined by the National Historic Preservation Act of 1966.

In a letter, dated January 3, 2011, the Maine Natural Areas Program stated that its database does not contain any records documenting the existence of rare or unique botanical features on the project site. Further, as discussed in Finding 6, MDIFW did not identify any unusual wildlife habitats located on the project site.

The applicant surveyed the proposed project site for potential vernal pools. The applicant found no topographical features, such as depressions on the landscape or pools of standing water, which would indicate that vernal pools were present.

Therefore, the Department finds that the proposed development will not have an adverse effect on the preservation of any historic sites or unusual natural areas either on or near the development site.

8. BUFFER STRIPS:

The proposed project site contains one stream which is located near the southern property line. The applicant states that no disturbance to the stream will result from the proposed project; the stream and a 100-foot buffer adjacent to the stream will be maintained in its natural state. The forested, no disturbance stream buffer will be protected from alteration through the execution of a deed restriction. The applicant submitted a draft deed restriction that meets Department standards.

Within 90 days of issuance, the Declaration of Covenants and Restrictions that protects the 100-foot stream buffer in perpetuity must be recorded with the appropriate deed. The applicant must then submit a copy of the recorded restrictions to the Department within 30 days of execution of the deed.

The Department finds that the applicant has made adequate provision for buffer strips.

9. SOILS:

The applicant submitted a soil survey and map, prepared by Main-Land Development Consultants, Inc., and a geotechnical report, prepared by Summit Environmental Consultants, Inc. The survey, map, and geotechnical report are based on the soils found at the project site. This information was reviewed by staff from the Department's Division of Environmental Assessment (DEA). DEA recommended that spill equipment for any truck equipped with truck-mounted tanks for refueling equipment must carry a suitable shovel and container for excavation and temporary storage of any contaminated soils. Any contaminated soils should be stored in a manner that minimizes the potential for discharge and is consistent with applicable safety requirements. All contaminated materials should be removed from the site and disposed of properly as quickly as possible.

The applicant stated that blasting will not be required at the project site. The results from monitoring wells and test pits concluded that ledge is not present within the proposed area of development.

The Department finds that, based on the soil survey map and geotechnical report, and DEA's review, the soils on the project site present no limitations to the proposed project that cannot be overcome through standard engineering practices.

10. STORMWATER MANAGEMENT:

The proposed project includes approximately 12.9 acres of new impervious area and 27.6 acres of new developed area. It lies within the watershed of the Little Androscoggin River and Hogan Pond. Hogan Pond is designated as a lake most at risk from new development according to Appendix A of the Department's Direct Watersheds of Lakes Most at Risk from New Development and Urban Impaired Streams, Chapter 502. The applicant submitted a stormwater management plan based on the basic, general, and flooding standards contained in Department Rules, Chapter 500. Under the general standards, the applicant applied the phosphorous methodology outlined in "Phosphorous Control in Lake Watersheds: A Technical guide to Evaluating New Development" to address impacts to Hogan Pond. The proposed stormwater management system consists of four wet pond structures.

A. Basic Standard:

(1) Erosion and Sedimentation Control: The applicant submitted an Erosion and Sedimentation Control Plan (Section 14 of the application) that is based on the performance standards contained in Appendix A of Chapter 500 and the Best Management Practices outlined in the Maine Erosion and Sediment Control BMPs, which

were developed by the Department. This plan and plan sheets containing erosion control details were reviewed by the Department's Division of Watershed Management (DWM). DWM commented that, as stated in the erosion control plan, minimum erosion control measures will need to be implemented. However, based on site and weather conditions during construction, additional erosion and sedimentation control measures may be necessary. All areas of instability and erosion must be repaired and maintained immediately during construction until the site is completely stabilized or vegetation is established.

Erosion control details will be included on the final construction plans and the erosion control narrative will be included in the project specifications to be provided to the construction contractor. Given the size and nature of the project site, the applicant must retain the services of a third party inspector in accordance with the Special Condition for Third Party Inspection Program, which is attached to this Order. Prior the start of construction, the applicant must conduct a pre-construction meeting to discuss the construction schedule and the erosion and sediment control plan with the appropriate parties. This meeting must be attended by the applicant's representative, Department staff, the design engineer, the contractor, and the third-party inspector.

(2) Inspection and Maintenance: The applicant submitted a maintenance plan that addresses both short and long-term maintenance requirements. This plan was reviewed by DWM. The maintenance plan is based on the standards contained in Appendix B of Chapter 500. The applicant will be responsible for the maintenance of all common facilities including the stormwater management system.

(3) Housekeeping: The proposed project will comply with the performance standards outlined in Appendix C of Chapter 500.

Based on DWM's review of the erosion and sedimentation control plan and the maintenance plan, the Department finds that the proposed project meets the Basic Standards contained in Chapter 500(4)(A).

#### B. General Standards:

The applicant's stormwater management plan includes general treatment measures that will mitigate for the increased frequency and duration of channel erosive flows due to runoff from smaller storms, provide for effective treatment of pollutants in stormwater, and mitigate potential temperature impacts for all areas of the proposed project that lie within the watershed of the Little Androscoggin River. This mitigation is being achieved by using BMPs that will control runoff from no less than 95% of the impervious area and no less than 80% of the developed area.

Because a portion of the proposed project is located within in the watershed of Hogan Pond, stormwater runoff from this portion of the project site will be treated to meet the

phosphorus standard outlined in Chapter 500(4)(C). The applicant's phosphorus control plan was developed using methodology developed by the Department and outlined in "Phosphorus Control in Lake Watersheds: A Technical Guide for Evaluating New Development". For this project, the Permitted Phosphorus Export is 4.01 pounds of phosphorus per year. The applicant propose to remove phosphorus from the project's stormwater runoff by utilizing four wet ponds, shown on the set of plans referenced in Finding 1. The predicted phosphorus export for the project site based on the applicant's model is 2.64 pounds of phosphorus per year. The proposed stormwater treatment will reduce the export of phosphorus in the stormwater runoff below the maximum permitted phosphorus export for the site.

The stormwater management system proposed by the applicant was reviewed by, and revised in response to comments from, DWM. After a final review, DWM commented that the proposed stormwater management system is designed in accordance with the Chapter 500 General Standard. DWM commented that Pond i9W drains into Pond i8W. Both ponds hold the appropriate channel protection volume. Specific to the proposed project, DWM waives the requirement of a gravel outlet on wet pond i9W due to the nature of the receiving channel. Further, the pond discharges to a stormdrain and travels underground for several hundred feet prior to discharge.

DWM recommended that the applicant retain the services of a professional engineer to inspect the construction and stabilization of the four stormwater management ponds to be built on the site. Inspections must consist of weekly visits to the site to inspect the installation of each pond's embankment construction, stormwater inlet, underdrained gravel outlet, gravel outlet filter material makeup and placement, outlet control structure, clay liner, and emergency spillway construction from initial ground disturbance to final stabilization of the pond. If necessary, the inspecting engineer shall interpret the pond's construction plan for the contractor. Once the ponds are constructed and stabilized, the applicant must notify the Department in writing within 14 days to state that the ponds have been completed. Accompanying the notification must be a log of the engineer's inspections giving the date of each inspection, the time of each inspection, and the items inspected on each visit, and include any testing data or sieve analysis data of the gravel filter media. An inspection of each underdrained gravel outlet must also be performed by a professional engineer one year after the final stabilization of the ponds. Within 30 days of the one year inspection, the applicant must notify the Department as to the outlet's effectiveness and determine any maintenance items that are needed.

Based on the stormwater system's design and DWM's review, the Department finds that the applicant has made adequate provision to ensure that the proposed project will meet the Chapter 500 General Standards provided that the applicant retains the services of a third party inspector, conducts a pre-construction meeting, and retains the services of a professional engineer to inspect the construction and stabilization of the four wet ponds as described above.

C. Flooding Standard:

The applicant proposes to utilize a stormwater management system based on estimates of pre- and post-development stormwater runoff flows obtained by using Hydrocad, a stormwater modeling software that utilizes the methodologies outlined in Technical Releases #55 and #20, U.S.D.A., Soil Conservation Service and detains stormwater from 24-hour storms of 2-, 10-, and 25-year frequency. The post-development peak flow from the site will not exceed the pre-development peak flow from the site and the peak flow of the receiving waters will not be increased as a result of stormwater runoff from the development site.

DWM commented that the proposed system is designed in accordance with Chapter 500, Flooding Standards.

Based on the system's design and DWM's review, the Department finds that the applicant has made adequate provision to ensure that the proposed project will meet the Chapter 500 Flooding Standard for peak flow from the project site, channel limits and runoff areas.

11. WATER SUPPLY:

When Phase I is completed, the proposed project is anticipated to use 22,395 gallons of water per day. Water for the development will be supplied by individual wells and centralized drinking water supply systems. The applicant submitted an assessment of groundwater supplies that are available on the project site and an analysis of potential impacts to on-site wells resulting from on-site wastewater disposal. These assessments were prepared by Sweet Associates and were reviewed by, and revised in response to comments from, DEA.

DEA commented that an initial pump test of on-site wells on the applicant's property is necessary to determine whether adequate yield can be obtained without unreasonable adverse impact to off-site water supplies. DEA recommended that:

- a. Prior to the start of operation, the applicant must submit a report describing final drawdown results of an aquifer test using the on-site wells to the Department for review and approval. The procedure and monitoring requirements for the aquifer test must be developed in cooperation with the Department.
- b. Prior to the start of operation, the applicant must submit an On-Site Well Use and Monitoring Plan that includes well depth, estimated yield, well logs (if available), and other relevant information for each water supply well proposed to serve the facility, to the Department for review and approval. If necessary, the plan should also include a proposal to use select neighboring wells for

monitoring purposes. The proposal must include provisions for replacement, redevelopment, or modification of wells on off-site properties that show evidence of unreasonable adverse impact on drinking water quality or quantity.

The Department finds that the applicant has made adequate provision for securing and maintaining a sufficient and healthful water supply provided that prior to the start of operation, the applicant must submit the results of an aquifer test and the applicant must submit well monitoring information, including a proposal to use neighboring wells, if necessary, to the Department for review and approval as described above.

12. GROUNDWATER:

The project site is not located over a mapped sand and gravel aquifer. Water for the development will be supplied by individual wells. These wells are discussed in more detail in Finding 11. The applicant stated that irrigation is not anticipated, and that the on-site wells will not be used for this purpose.

DEA reviewed the proposed project and confirmed that the proposed project will not impact groundwater provided that the applicant adheres to the well monitoring requirements outlined in Finding 11.

The Department finds that the proposed project will not have an unreasonable adverse effect on groundwater quality.

13. WASTEWATER DISPOSAL:

Wastewater will be disposed of by an engineered subsurface wastewater disposal system down gradient of the developed portion of the project site. This system will utilize an Advanced Wastewater Treatment System to reduce the amount of nitrates in order to maintain a concentration of 10mg/L or less of nitrates in the groundwater at the down gradient property line. The applicant submitted the soil survey map and report discussed in Finding 9 and an analysis of potential impacts to off-site groundwater quality resulting from on-site wastewater disposal prepared by a certified geologist. The engineered system must be designed to meet the requirements pursuant to Chapter 11 of the Subsurface Wastewater Disposal Rules, CMR 241. This information was reviewed DEA.

Moreover, the proposed wastewater disposal system was reviewed by the Department of Health and Human Services' Division of Environmental Health (DHHS-EH) pursuant to Chapter 11 of the Subsurface Wastewater Disposal Rules, CMR 241. By letter, dated February 16, 2011, the DHHS-EH granted approval for the applicant's subsurface wastewater disposal system.

Based on DEA's comments and DHHS-EH's approval of the wastewater disposal system, the Department finds that the proposed wastewater disposal system will be built on suitable soil types.

14. SOLID WASTE:

When completed, the proposed project is anticipated to generate 2,000 cubic yards of compacted solid waste per year. All general solid wastes from the proposed project will be disposed of at Pine Tree Waste, Inc. in Mechanic Falls, which is currently in substantial compliance with the Solid Waste Management Regulations of the State of Maine.

The proposed project will generate approximately 20,000 cubic yards of stumps and grubblings. All stumps and grubblings generated will be ground and used as a sediment barrier on the down gradient side of all earth moving activities. This practice is compliant with Solid Waste Management Regulations of the State of Maine.

The applicant submitted a Section 7, Chapter 409 Permit By Rule (#S-22356-WK-A-P) for processing bark and woodchips at the project site to the Department's Bureau of Remediation and Waste Management pursuant to the Maine Solid Waste Management Rules. Permit by Rule #S-022356-WK-A-P was approved by the Department on February 23, 2011.

The proposed project will generate approximately 2,000 cubic yards of construction debris and demolition debris. All construction and demolition debris generated will be disposed of at Almighty Waste Transfer Station in Auburn. This facility is licensed by the Department; however, it is not currently in compliance with the Solid Waste Management Regulations of the State of Maine. The Department's Bureau of Remediation and Waste Management reviewed the proposed project and stated that resolutions of violations at Almighty Waste Transfer Station are pending, and this facility can lawfully accept the proposed waste stream.

Based on the above information, the Department finds that the applicant has made adequate provision for solid waste disposal.

15. FLOODING:

The applicant submitted a Flood Insurance Rate Map issued by the Federal Emergency Management Agency. According to the map, the proposed project is not located within the 100-year floodway of any river or stream. On this basis, the applicant states that the proposed project will not cause or increase flooding.

The Department finds that the proposed project is unlikely to cause or increase flooding or cause an unreasonable flood hazard to any structure.

16. WETLAND IMPACTS:

In order to construct Phase I of the proposed four-season commercial and entertainment resort facility, the applicant proposes to alter three areas of forested freshwater wetland for a cumulative total of 42,430 square feet of wetland impact. The three wetland areas are known as Wetland A, Wetland B, and Wetland C. Details of these wetland areas are as follows:

Wetland A: The applicant proposes to impact 40,010 square feet of freshwater wetlands within Wetland A. The applicant states that the proposed impact to Wetland A is due to construction of a parking area and the main entrance to the proposed building. The applicant states that the majority of this wetland was created due to the previous property owner's land shaping efforts to enhance drainage from the agricultural fields. Due to the site work done by the previous property owner, the functions and values of this wetland were altered. The Department visited the project site on November 19, 2010. By first-hand observation, the Department confirmed the applicant's determination that although Wetland A presented wetland indicators, this wetland is an altered feature with minimal functions and values.

Wetland B: The applicant proposes to impact 1,300 square feet of forested freshwater wetlands within Wetland B. The applicant states that the proposed impact to Wetland B is due to the construction of an emergency entrance, and a drainage swale associated with a stormwater management structure.

Wetland C: The applicant proposes to impact 1,120 square feet of forested freshwater wetlands within Wetland C. The applicant states that the proposed impact to Wetland C is due to installation of a sewer line necessary to direct wastewater to the subsurface wastewater disposal system.

The Department's Wetlands and Waterbodies Protection Rules, Chapter 310, require the applicant to meet the following standards:

A. Avoidance. No activity may be permitted if there is a practicable alternative to the project that would be less damaging to the environment. Each application for a Natural Resources Protection Act permit must provide an analysis of alternatives in order to demonstrate that a practicable alternative does not exist. The applicant submitted an alternative analysis for the proposed project completed by Main-Land Development Consultants, Inc. and dated December 17, 2010 with the latest revision date being February 22, 2011. The applicant considered a number of alternative off-site locations and alternative on-site designs to the proposed project:

1. Intersection of Route 121 and Route 26. The applicant considered constructing the proposed project at the corner of Route 121 and Route 26 in the Town of Oxford. The

applicant stated that this site had sufficient frontage along Route 26 and along the Little Androscoggin River to construct the proposed project. Upon further examination, the applicant determined that this alternative site was not feasible because the site contained a significant amount of freshwater wetlands, freshwater wetlands of special significance, and a potential significant vernal pool.

2. West Side of Route 26. The applicant considered constructing the proposed project in a location on the west side of Route 26 in the Town of Oxford within close proximity to the current project site. The applicant determined that this alternative site was not feasible because soil conditions at this location presented considerable limitations to install a subsurface wastewater disposal system. Further, this alternative site is dominated by freshwater wetlands and freshwater wetlands of special significance.

3. On-site Designs. The applicant initially considered locating the proposed project in the center of the applicant's property. Following delineation of on-site resources, the applicant determined that locating the proposed project in the center of the property would result in a significant amount of impact to Wetland A. On this basis, the applicant determined that this alternative design was not feasible.

B. Minimal Alteration. The amount of wetland to be altered must be kept to the minimum amount necessary for meeting the overall purpose of the project. The applicant has utilized a number of methods to minimize wetland impacts at the project site. Minimization strategies employed by the applicant include incorporating an armored slope near the proposed building to keep the fill extension from the foundation of the proposed building out of the nearby wetland and designing the entrances to have a slope ratio of 2:1 to limit the size of the footprint of the entrances. The applicant also restructured and redesigned the stormwater management structures to eliminate or reduce wetland impacts; an employee parking area was removed from the west side of the development area in order to avoid further wetland impacts.

C. Compensation. Compensation is required to achieve the goal of no net loss of wetland functions and values. The applicant submitted an evaluation of the proposed project site that identifies the areas of wetlands as Attachment 12: "Wetland Impact and Compensation Area-Index" of the NRPA application. The report identified three areas of forested freshwater wetlands within the project area. The applicant also submitted a Functional Assessment of onsite wetlands as Attachment 10 of the NRPA application. The assessment identified the following principal wetland functions that will be impacted as a result of the project: nutrient removal and wildlife habitat.

The applicant submitted a mitigation plan to compensate for lost functions and values of impacted wetlands. After considering several compensation options, the applicant elected to make a contribution into the In-lieu-fee (ILF) program of \$147,656.00 for 42,430 square feet of permanent impact to freshwater wetlands at the project site.

The Department finds that the applicant has avoided and minimized 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.

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 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.
- 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 38 M.R.S.A. Section 480-P.

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 481 et seq.:

- A. The applicant has provided adequate evidence of financial capacity and technical ability to develop the project in a manner consistent with state environmental standards.
- B. The applicant has made adequate provision for fitting the development harmoniously into the existing natural environment and the development will not adversely affect existing

uses, scenic character, air quality, water quality or other natural resources in the municipality or in neighboring municipalities provided that the applicant protects the 100-foot stream buffer by placing the Declaration of Covenants and Restrictions on the appropriate deed as outlined in Finding 8.

- C. The proposed development will be built on soil types which are suitable to the nature of the undertaking and will not cause unreasonable erosion of soil or sediment nor inhibit the natural transfer of soil.
- D. The proposed development meets the standards for storm water management in Section 420-D and the standard for erosion and sedimentation control in Section 420-C provided that the applicant retains the services of a third party inspector, conducts a pre-construction meeting, and retains the services of a professional engineer to inspect the construction and stabilization of the four wet ponds as described in Finding 10.
- E. The proposed development will not pose an unreasonable risk that a discharge to a significant groundwater aquifer will occur.
- F. The applicant has made adequate provision of utilities, including water supplies, sewerage facilities, solid waste disposal and roadways required for the development and the development will not have an unreasonable adverse effect on the existing or proposed utilities and roadways in the municipality or area served by those services provided that prior to the start of operation, the applicant submits results of an aquifer test and submits well monitoring information and a proposal to use neighboring wells to the Department for review and approval and as described in Finding 11.
- G. The activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties nor create an unreasonable flood hazard to any structure.

THEREFORE, the Department APPROVES the application of BB DEVELOPMENT, LLC to construct Phase I of a four-season commercial and entertainment resort facility as described in Finding 1, SUBJECT TO THE FOLLOWING CONDITIONS and all applicable standards and regulations:

1. The Standard Conditions of Approval, a copy attached.
2. In addition to any specific erosion control measures described in this or previous orders, the applicant shall take all necessary actions to ensure that its activities or those of its agent do not result in noticeable erosion of soils or fugitive dust emissions on the site during the construction and operation 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. The applicant or other responsible party shall, within three months of the expiration of each five-year interval from the date of this Order, submit a report certifying that the items listed in Department Rules, Chapter 500, Appendix B(4) have been completed in accordance with the approved plans.
5. Within 90 days of issuance of this Order, the Declaration of Covenants and Restrictions that protects the 100-foot stream buffer, as referenced in Finding 8, in perpetuity shall be placed on the appropriate deed. The applicant shall then submit a recorded copy to the Department within 30 days of execution of the deed.
6. Prior to the start of construction, the applicant shall conduct a pre-construction meeting. This meeting shall be attended by the applicant's representative, Department staff, the design engineer, the contractor, and the third-party inspector.
7. The applicant shall retain the services of a third party inspector in accordance with the Special Condition for Third Party Inspection Program, which is attached to this Order.
8. The applicant shall retain the services of a professional engineer to inspect the construction and stabilization of the four stormwater management ponds to be built on the site. Inspections must consist of weekly visits to the site to inspect the installation of each pond's embankment construction, stormwater inlet, underdrained gravel outlet, gravel outlet filter material makeup and placement, outlet control structure, clay liner, and emergency spillway construction from initial ground disturbance to final stabilization of the pond. If necessary, the inspecting engineer shall interpret the pond's construction plan for the contractor. Once the ponds are constructed and stabilized, the inspecting applicant shall notify the Department in writing, within 14 days, to state that the ponds have been completed. Accompanying the notification must be a log of the engineer's inspections giving the date of each inspection, the time of each inspection, and the items inspected on each visit, and include any testing data or sieve analysis data of the gravel filter media. An inspection of each underdrained gravel outlet shall also be performed by a professional engineer one year after the final stabilization of the pond. Within 30 days of the one year inspection, the engineer shall notify the Department as to the outlet's effectiveness and determine any maintenance items that are needed.
9. Prior to the start of operation, the applicant shall submit a report describing final drawdown results of an aquifer test using the on-site wells to the Department for review and approval. The procedure and monitoring requirements for the aquifer test must be developed in cooperation with the Department.
10. Prior to the start of operation, the applicant shall submit an On-Site Well Use and Monitoring Plan that includes well depth, estimated yield, well logs (if available), and

other relevant information for each water supply well proposed to serve the facility to the Department for review and approval. If necessary, the plan must also include a proposal to use select neighboring wells for monitoring purposes. The proposal must include provisions for replacement, redevelopment, or modification of wells on off-site properties that show evidence of unreasonable adverse impact on drinking water quality or quantity.

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 17<sup>th</sup> DAY OF March, 2011.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: Bryce J. Sprout for  
Darryl N. Brown, Commissioner

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

bc/ats#72927&72928/125203an&bn

