



PORTLAND MAINE

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Planning & Urban Development Department

Jeff Levine, AICP, Director

Planning Division

Alexander Jaegerman, FAICP, Director

February 24, 2014

Stanley & Marsha Reich
5 Sunset Lane
Ridgefield, CT 06877

William R. Walsh, PE
Walsh Engineering Associates
918 Brighton Avenue
Portland, Maine 04102

Project Name: **Shoreline Stabilization Project**
Project ID: 2014-008
Address: 29 Oaklawn Road, Peaks Island
CBL: 090 H 002001
Applicant: Stanley & Marsha Reich
Planner: Philip DiPierro

Dear Mr. Reich and Mr. Walsh:

On February 13, 2014, the Planning Authority approved with conditions a Level II: Site Plan Application for the Shoreline Stabilization project along the waterfront at 29 Oaklawn Road, Peaks Island, including the installation of a rip-rap boulder revetment. The decision is based upon the plans and application as submitted by Stanley & Marsha Reich, and prepared by William R. Walsh, PE, of Walsh Engineering Associates and dated December 26, 2013, revision #2 dated January 20, 2014. The proposal was reviewed for conformance with the standards of Portland's site plan ordinance.

SITE PLAN REVIEW

The Planning Authority found the plan is in conformance with the Site Plan Standards of the Land Use Code subject to the following condition(s) of approval:

1. Evidence of project approval from the Maine Department of Environmental Protection (DEP), the Army Corps of Engineers (ACOE), and the Harbor Master must be submitted prior to the issuance of the building permit.
2. A building permit issued by the Inspections Office will be required for the work to be completed on the Reich property.

City Hall, 389 Congress Street . Portland, ME 04101-3509 . Ph (207) 874-8719 . Fx 756-8258 . TTY 874-8936

C:\Users\JMY\Desktop\Approval Letter with Letterhead - Jeff and Alex J 2-11-14.doc

3. A revised landscape plan shall be submitted, for review and approval, to address the review comments of the City Arborist, Jeff Tarling.

The approval is based on the submitted site plan. If you need to make any modifications to the approved site plan, you must submit a revised site plan for staff review and approval.

STANDARD CONDITIONS OF APPROVAL

Please note the following standard conditions of approval and requirements for all approved site plans:

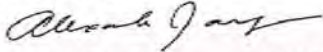
1. **Develop Site According to Plan** The site shall be developed and maintained as depicted on the site plan and in the written submission of the applicant. Modification of any approved site plan or alteration of a parcel which was the subject of site plan approval after May 20, 1974, shall require the prior approval of a revised site plan by the Planning Board or Planning Authority pursuant to the terms of Chapter 14, Land Use, of the Portland City Code.
2. **Separate Building Permits Are Required** This approval does not constitute approval of building plans, which must be reviewed and approved by the City of Portland's Inspection Division.
3. **Site Plan Expiration** The site plan approval will be deemed to have expired unless work has commenced within one (1) year of the approval or within a time period up to three (3) years from the approval date as agreed upon in writing by the City and the applicant. Requests to extend approvals must be received before the one (1) year expiration date.
4. **Performance Guarantee and Inspection Fees** A performance guarantee covering the site improvements, inspection fee payment of 2.0% of the guarantee amount and seven (7) final sets of plans must be submitted to and approved by the Planning Division and Public Services Department prior to the release of a building permit, street opening permit or certificate of occupancy for site plans. If you need to make any modifications to the approved plans, you must submit a revised site plan application for staff review and approval.
5. **Defect Guarantee** A defect guarantee, consisting of 10% of the performance guarantee, must be posted before the performance guarantee will be released.
6. **Preconstruction Meeting** Prior to the release of a building permit or site construction, a pre-construction meeting shall be held at the project site. This meeting will be held with the contractor, Development Review Coordinator, Public Service's representative and owner to review the construction schedule and critical aspects of the site work. At that time, the Development Review Coordinator will confirm that the contractor is working from the approved site plan. The site/building contractor shall provide three (3) copies of a detailed construction schedule to the attending City representatives. It shall be the contractor's responsibility to arrange a mutually agreeable time for the pre-construction meeting.
7. **Department of Public Services Permits** If work will occur within the public right-of-way such as utilities, curb, sidewalk and driveway construction, a street opening permit(s) is required for your site. Please contact Carol Merritt at 874-8300, ext. 8828. (Only excavators licensed by the City of Portland are eligible.)

8. **As-Built Final Plans** Final sets of as-built plans shall be submitted digitally to the Planning Division, on a CD or DVD, in AutoCAD format (*.dwg), release AutoCAD 2005 or greater.

The Development Review Coordinator must be notified five (5) working days prior to the date required for final site inspection. The Development Review Coordinator can be reached at the Planning Division at 874-8632. All site plan requirements must be completed and approved by the Development Review Coordinator prior to issuance of a Certificate of Occupancy. Please schedule any property closing with these requirements in mind.

If there are any questions, please contact Philip DiPierro at (207) 874-8632.

Sincerely,



Alexander Jaegerman FAICP
Planning Division Director

Attachments:

1. Performance Guarantee Packet

cc: Jeff Levine, AICP, Director of Planning and Urban Development
Alexander Jaegerman, FAICP Planning Division Director
Barbara Barhydt, Development Review Services Manager
Philip DiPierro, Planner/Development Review Coordinator, Planning
Marge Schmuckal, Zoning Administrator, Inspections Division
Tammy Munson, Inspection Division Director
Lannie Dobson, Administration, Inspections Division
Brad Saucier, Administration, Inspections Division
Michael Bobinsky, Public Services Director
Katherine Earley, Engineering Services Manager, Public Services
Bill Clark, Project Engineer, Public Services
David Margolis-Pineo, Deputy City Engineer, Public Services
Doug Roncarati, Stormwater Coordinator, Public Services
Greg Vining, Associate Engineer, Public Services
Michelle Sweeney, Associate Engineer
John Low, Associate Engineer, Public Services
Rhonda Zazzara, Field Inspection Coordinator, Public Services
Mike Farmer, Project Engineer, Public Services
Jane Ward, Administration, Public Services
Jeff Tarling, City Arborist, Public Services
Jeremiah Bartlett, Public Services
Captain Chris Pirone, Fire Department
Thomas Errico, P.E., TY Lin Associates
David Senus, P.E., Woodard and Curran
Rick Blackburn, Assessor's Department
Approval Letter File

From: Jeff Tarling
To: Philip DiPierro
CC: David Margolis-Pineo
Date: 2/6/2014 3:48 PM
Subject: 29 Oaklawn Road Project

Hi Phil -

I checked out the proposed plan.

They could use additional Bayberry plants... five per side minimum.
Perhaps a couple of groups of three up top. The plant cost
is pretty minimum and would be good to establish greenery
along the bank edge.

Thanks

Jeff Tarling



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



PAUL R. LEPAGE
GOVERNOR

PATRICIA W. AHO
COMMISSIONER

April 2014

Stanley Reich
5 Sunset Lane
Ridgefield, CT 06877

RE: Natural Resources Protection Act Application, Portland
DEP#L-26258-4D-A-N/L-26258-TW-B-N

Dear Mr. Reich:

Please find enclosed a signed copy of your Department of Environmental Protection land use permit. You will note that the permit includes a description of your project, findings of fact that relate to the approval criteria the Department used in evaluating your project, and conditions that are based on those findings and the particulars of your project. Please take several moments to read your permit carefully, paying particular attention to the conditions of the approval. The Department reviews every application thoroughly and strives to formulate reasonable conditions of approval within the context of the Department's environmental laws. You will also find attached some materials that describe the Department's appeal procedures for your information.

If you have any questions about the permit please contact me at (207) 615-6426 or at christine.woodruff@maine.gov.

Sincerely,

Christine Woodruff, Project Manager
Division of Land Resource Regulation
Bureau of Land and Water Quality

pc: File
Silas Canavan

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
(207) 287-7688 FAX: (207) 287-7826

BANGOR
106 HOGAN ROAD, SUITE 6
BANGOR, MAINE 04401
(207) 941-4570 FAX: (207) 941-4584

PORTLAND
312 CANCO ROAD
PORTLAND, MAINE 04103
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE
1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04769
(207) 764-0477 FAX: (207) 760-3143



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

DEPARTMENT ORDER

IN THE MATTER OF

STANLEY REICH) NATURAL RESOURCES PROTECTION ACT
Portland, Cumberland County) COASTAL WETLAND ALTERATION
SHORELINE STABILIZATION) SIGNIFICANT WILDLIFE HABITAT
L-26258-4D-A-N (approval)) WATER QUALITY CERTIFICATION
L-26258-TW-B-N (approval)) 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 STANLEY REICH 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 stabilize approximately 62 linear feet of coastal shoreline using riprap and turf reinforcement mat. The shoreline has a steep bank that consists of exposed glacial till that has experienced erosion from wave action. The applicant proposes to use a 52-foot long section of a 4-foot thick layer of 36 to 48-inch diameter angular stone over 18 inches of 12-inch mean diameter crushed stone and a layer of geotextile. Five-foot wide sections of the shore between the property lines and the ends of the riprap slope will be stabilized with turf reinforcement mat. Sweet Fern (*Comptonia Peregrine*) and Bayberry (*Myrica Pensylvanica*) will be planted in these sections of turf reinforcement mat and along the top of the riprap. All other disturbed slope areas will be loamed, seeded with "Roadside Mixture Number 3" from the Maine Department of Transportation Standard Specifications for Highways and Bridges, and covered with erosion control blanket. The finished slope face of the riprap will be 1.5 feet horizontal to one foot vertical.

The project is shown on a set of plans, the first of which is titled "Reich Residence Shoreline Stabilization," prepared by Walsh Engineering Associates, and dated December 26, 2013, with a most recent revision date of March 5, 2014. The project is located on Oaklawn Road on Peaks Island in the City of Portland.

B. Current Use of the Site: The applicant owns a 0.15-acre lot that is developed with a house, a driveway and lawn area that extends to the top of the shorefront bank. The house is approximately 85 feet from the top of the bank. The bank height varies from seven feet high to about 13 feet high and is either exposed glacial till or a sparse mix of grasses and saplings. There are a few mature hardwood trees remaining along the top of the bank. The toe of the slope is sand beach with some cobble collected near the toe of the slope. The cobble was either deposited from the eroded bank, was collected from the surrounding beach, or is a previous attempt at shoreline stabilization. This property is identified as Lot 2 on the City of Portland Tax Map 90-H.

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. Department staff visited the project site on February 3, 2014.

The proposed project is located in the Atlantic Ocean, 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 intends to plant shrubs and to utilize stone that will be light in color to reduce the visibility of the proposed riprap from the scenic resource. This section of coastline is developed with small cottages with lawns that extend to either the top of bank or the top of existing seawalls, and there is a sand beach all along the shore. The property to the northeast has existing riprap and properties starting approximately 70 feet to the southwest have retaining walls. The proposed project will be compatible with the surrounding developed and stabilized shore frontages. The applicant must monitor the plantings and the seeded areas, and the plantings must be replaced and the seeded areas reseeded as necessary to achieve a 100% survival rate of the plantings and an 85% survival rate of the seeded areas after one full growing season.

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, the visual impact rating, and the site visit, 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. DMR reviewed the project and stated that the proposed project should not cause any significant adverse impact to traditional fishing or riparian access to the marine environment.

The Department finds that the proposed activity will not unreasonably interfere with existing scenic, aesthetic, recreational or navigational uses of the protected natural resource provided that the applicant monitors and maintains the plantings as described above.

3. SOIL EROSION:

The applicant has submitted an Erosion and Sedimentation Control Plan in the application and has provided a plan with details. The proposed project will stabilize an existing eroding bank with riprap over geotextile fabric and erosion control mats with plantings according to the details submitted in the application. All materials for the project will be brought to the site and no materials will be sourced from the intertidal area. The work will be scheduled around the tides such that no work will be completed in

the water. The work will be constructed with heavy equipment that will access the beach from an access route down the bank near the southern property line where the height of the bank is lower. Any disturbed upland areas outside of the project area will be returned to the original grades, seeded and mulched with hay or straw matting.

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:

The Maine Department of Inland Fisheries and Wildlife (MDIFW) reviewed the proposed project and stated that the project is located in Tidal Waterfowl and Wading Bird Habitat, which is a Significant Wildlife Habitat (TWWH) as defined by the Natural Resources Protection Act (NRPA). The habitat consists of the intertidal area and the subtidal area. The intertidal area is approximately 60 feet wide along this lot frontage and consists of a fine-grained beach with a relatively flat profile with no salt marsh grasses or mudflat. The applicant has designed the project to limit the extent of the proposed riprap to within six to eight feet of the existing toe of the bank, depending on the location. MDIFW recommend a timing restriction to not allow construction of the project between June 15 and mid-September to protect the shorebirds using the TWWH.

DMR reviewed the project and stated that the proposed project should not cause any significant adverse impact to marine resources.

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 provided that the project is constructed between September 15 and June 14 in any calendar year.

5. WATER QUALITY CONSIDERATIONS:

The proposed project is intended to stabilize an eroding bank utilizing clean quarry stone, loam, and geotextile fabrics. These materials are not expected to have any adverse effect on water quality.

The Department does not anticipate that the proposed project will 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 alter 330 square feet of coastal wetland to construct the proposed shoreline stabilization project as a result of riprap being placed directly in the upper intertidal area. The upland adjacent to resource is a steep bank that is partly bare eroded soil and partly vegetated with sparse grasses and saplings. The intertidal area is

approximately 60 feet wide and consists of a fine-grained beach with a relatively flat profile. The wetland area that will be altered is fine sand with some small cobble.

The Wetland Protection Rules interpret and elaborate on the 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 completed by Walsh Engineering Associates and dated December 2013. The project purpose is to stabilize the shoreline to prevent the further degradation of the shoreline so that the remaining mature trees at the top of the bank that help stabilize the embankment are not undermined. The no action alternative was rejected because the bank would continue to erode and undermine the mature oak trees and lawn at the top of slope. Non-structural vegetative measures such as turf reinforcement matting and salt tolerant vegetation were considered as an alternative, but it was determined that there was a strong likelihood that the vegetation and matting would fail during large storm events. The proposed riprap stabilization was selected because it is expected to withstand forces of both normal tidal action and large storm events with limited effect on the remaining intertidal area.

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 minimized wetland impacts by using riprap with a steep slope face to reduce the area of wetland impacted, and by selecting a stabilization method that minimizes the potential for any additional erosion after the project is completed.

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 marine resources or wildlife habitat. 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 provided that the applicant monitors and maintains vegetation as described in Finding 2.
- 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 provided that the applicant constructs of the project within the time specified in Finding 4.
- 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 Title 38 M.R.S.A. Section 480-P.

THEREFORE, the Department APPROVES the above noted application of STANLEY REICH to alter coastal wetland to stabilize shoreline as described above, SUBJECT TO THE ATTACHED CONDITIONS, and all applicable standards and regulations:

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

2. The applicant shall take all necessary measures to ensure that his activities or those of his 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. The applicant shall monitor the plantings and the seeded areas, and the plantings shall be replaced and the seeded areas reseeded as necessary to achieve a 100% survival rate of the plantings and an 85% survival rate of the seeded areas after one full growing season.
5. The applicant shall construct the project between September 15 and June 14 in any calendar year.

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 8th DAY OF April, 2014.

DEPARTMENT OF ENVIRONMENTAL PROTECTION



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

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

CGW/L26258ANBN/ATS#77103, 77557



Natural Resources Protection Act (NRPA) Standard Conditions

THE FOLLOWING STANDARD CONDITIONS SHALL APPLY TO ALL PERMITS GRANTED UNDER THE NATURAL RESOURCE PROTECTION ACT, TITLE 38, M.R.S.A. SECTION 480-A ET. SEQ. UNLESS OTHERWISE SPECIFICALLY STATED IN THE PERMIT.

- A. Approval of Variations From Plans. The granting of this permit is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. Any variation from these plans, proposals, and supporting documents is subject to review and approval prior to implementation.
- B. Compliance With All Applicable Laws. The applicant shall secure and comply with all applicable federal, state, and local licenses, permits, authorizations, conditions, agreements, and orders prior to or during construction and operation, as appropriate.
- C. Erosion Control. The applicant shall take all necessary measures to ensure that his activities or those of his agents do not result in measurable erosion of soils on the site during the construction and operation of the project covered by this Approval.
- D. Compliance With Conditions. Should the project be found, at any time, not to be in compliance with any of the Conditions of this Approval, or should the applicant construct or operate this development in any way other the specified in the Application or Supporting Documents, as modified by the Conditions of this Approval, then the terms of this Approval shall be considered to have been violated.
- E. Time frame for approvals. If construction or operation of the activity is not begun within four years, this permit shall lapse and the applicant shall reapply to the Board for a new permit. The applicant may not begin construction or operation of the activity until a new permit is granted. Reapplications for permits may include information submitted in the initial application by reference. This approval, if construction is begun within the four-year time frame, is valid for seven years. If construction is not completed within the seven-year time frame, the applicant must reapply for, and receive, approval prior to continuing construction.
- F. No Construction Equipment Below High Water. No construction equipment used in the undertaking of an approved activity is allowed below the mean high water line unless otherwise specified by this permit.
- G. Permit Included In Contract Bids. A copy of this permit must be included in or attached to all contract bid specifications for the approved activity.
- H. Permit Shown To Contractor. Work done by a contractor pursuant to this permit shall not begin before the contractor has been shown by the applicant a copy of this permit.

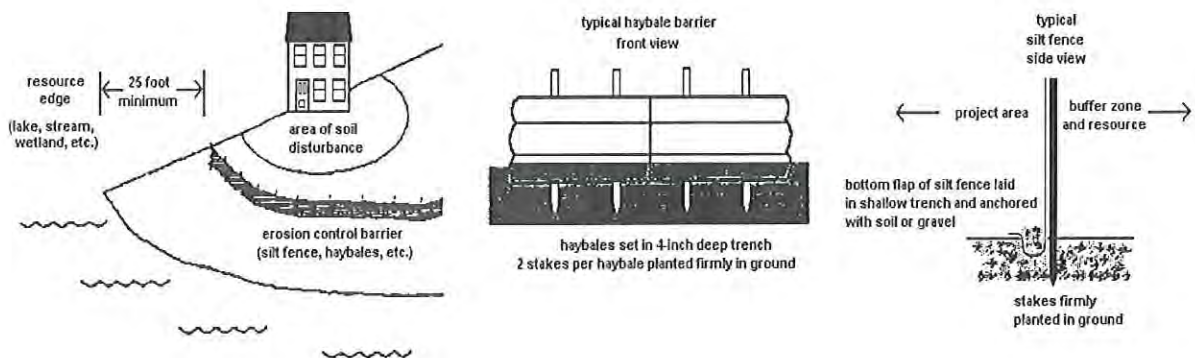


STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
 17 STATE HOUSE STATION, AUGUSTA, MAINE 04333

Erosion Control for Homeowners

Before Construction

1. If you have hired a contractor, make sure you discuss your permit with them. Talk about what measures they plan to take to control erosion. Everybody involved should understand what the resource is, and where it is located. Most people can identify the edge of a lake or river. However, the edges of wetlands are often not so obvious. Your contractor may be the person actually pushing dirt around, but you are both responsible for complying with the permit.
2. Call around to find where erosion control materials are available. Chances are your contractor has these materials already on hand. You probably will need silt fence, hay bales, wooden stakes, grass seed (or conservation mix), and perhaps filter fabric. Places to check for these items include farm & feed supply stores, garden & lawn suppliers, and landscaping companies. It is not always easy to find hay or straw during late winter and early spring. It also may be more expensive during those times of year. Plan ahead -- buy a supply early and keep it under a tarp.
3. Before any soil is disturbed, make sure an erosion control barrier has been installed. The barrier can be either a silt fence, a row of staked hay bales, or both. Use the drawings below as a guide for correct installation and placement. The barrier should be placed as close as possible to the soil-disturbance activity.
4. If a contractor is installing the erosion control barrier, double check it as a precaution. Erosion control barriers should be installed "on the contour", meaning at the same level or elevation across the land slope, whenever possible. This keeps stormwater from flowing to the lowest point along the barrier where it can build up and overflow or destroy the barrier.



During Construction

1. Use lots of hay or straw mulch on disturbed soil. The idea behind mulch is to prevent rain from striking the soil directly. It is the force of raindrops hitting the bare ground that makes the soil begin to move downslope with the runoff water, and cause erosion. More than 90% of erosion is prevented by keeping the soil covered.
2. Inspect your erosion control barriers frequently. This is especially important after a rainfall. If there is muddy water leaving the project site, then your erosion controls are not working as intended. You or your contractor then need to figure out what can be done to prevent more soil from getting past the barrier.

3. Keep your erosion control barrier up and maintained until you get a good and healthy growth of grass and the area is permanently stabilized.

After Construction

1. After your project is finished, seed the area. Note that all ground covers are not equal. For example, a mix of creeping red fescue and Kentucky bluegrass is a good choice for lawns and other high-maintenance areas. But this same seed mix is a poor selection for stabilizing a road shoulder or a cut bank that you don't intend to mow. Your contractor may have experience with different seed mixes, or you might contact a seed supplier for advice.
2. Do not spread grass seed after September 15. There is the likelihood that germinating seedlings could be killed by a frost before they have a chance to become established. Instead, mulch the area with a thick layer of hay or straw. In the spring, rake off the mulch and then seed the area. Don't forget to mulch again to hold in moisture and prevent the seed from washing away or being eaten by birds or other animals.
3. Keep your erosion control barrier up and maintained until you get a good and healthy growth of grass and the area is permanently stabilized.

Why Control Erosion?

To Protect Water Quality

When soil erodes into protected resources such as streams, rivers, wetlands, and lakes, it has many bad effects. Eroding soil particles carry phosphorus to the water. An excess of phosphorus can lead to explosions of algae growth in lakes and ponds called blooms. The water will look green and can have green slime in it. If you are near a lake or pond, this is not pleasant for swimming, and when the soil settles out on the bottom, it smothers fish eggs and small animals eaten by fish. There many other effects as well, which are all bad.

To Protect the Soil

It has taken thousands of years for our soil to develop. Its usefulness is evident all around us, from sustaining forests and growing our garden vegetables, to even treating our septic wastewater! We cannot afford to waste this valuable resource.

To Save Money (\$\$)

Replacing topsoil or gravel washed off your property can be expensive. You end up paying twice because State and local governments wind up spending your tax dollars to dig out ditches and storm drains that have become choked with sediment from soil erosion.



DEP INFORMATION SHEET

Appealing a Department Licensing Decision

Dated: March 2012

Contact: (207) 287-2811

SUMMARY

There are two methods available to an aggrieved person seeking to appeal a licensing decision made by the Department of Environmental Protection's ("DEP") Commissioner: (1) in an administrative process before the Board of Environmental Protection ("Board"); or (2) in a judicial process before Maine's Superior Court. An aggrieved person seeking review of a licensing decision over which the Board had original jurisdiction may seek judicial review in Maine's Superior Court.

A judicial appeal of final action by the Commissioner or the Board regarding an application for an expedited wind energy development (35-A M.R.S.A. § 3451(4)) or a general permit for an offshore wind energy demonstration project (38 M.R.S.A. § 480-HH(1)) or a general permit for a tidal energy demonstration project (38 M.R.S.A. § 636-A) must be taken to the Supreme Judicial Court sitting as the Law Court.

This INFORMATION SHEET, in conjunction with a review of the statutory and regulatory provisions referred to herein, can help a person to understand his or her rights and obligations in filing an administrative or judicial appeal.

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

The laws concerning the DEP's *Organization and Powers*, 38 M.R.S.A. §§ 341-D(4) & 346, the *Maine Administrative Procedure Act*, 5 M.R.S.A. § 11001, and the DEP's *Rules Concerning the Processing of Applications and Other Administrative Matters* ("Chapter 2"), 06-096 CMR 2 (April 1, 2003).

HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD

The Board must receive a written appeal within 30 days of the date on which the Commissioner's decision was filed with the Board. Appeals filed after 30 calendar days of the date on which the Commissioner's decision was filed with the Board will be rejected.

HOW TO SUBMIT AN APPEAL TO THE BOARD

Signed original appeal documents must be sent to: Chair, Board of Environmental Protection, c/o Department of Environmental Protection, 17 State House Station, Augusta, ME 04333-0017; faxes are acceptable for purposes of meeting the deadline when followed by the Board's receipt of mailed original documents within five (5) working days. Receipt on a particular day must be by 5:00 PM at DEP's offices in Augusta; materials received after 5:00 PM are not considered received until the following day. The person appealing a licensing decision must also send the DEP's Commissioner a copy of the appeal documents and if the person appealing is not the applicant in the license proceeding at issue the applicant must also be sent a copy of the appeal documents. All of the information listed in the next section must be submitted at the time the appeal is filed. Only the extraordinary circumstances described at the end of that section will justify evidence not in the DEP's record at the time of decision being added to the record for consideration by the Board as part of an appeal.

WHAT YOUR APPEAL PAPERWORK MUST CONTAIN

Appeal materials must contain the following information at the time submitted:

1. *Aggrieved Status.* The appeal must explain how the person filing the appeal has standing to maintain an appeal. This requires an explanation of how the person filing the appeal may suffer a particularized injury as a result of the Commissioner's decision.
2. *The findings, conclusions or conditions objected to or believed to be in error.* Specific references and facts regarding the appellant's issues with the decision must be provided in the notice of appeal.
3. *The basis of the objections or challenge.* If possible, specific regulations, statutes or other facts should be referenced. This may include citing omissions of relevant requirements, and errors believed to have been made in interpretations, conclusions, and relevant requirements.
4. *The remedy sought.* This can range from reversal of the Commissioner's decision on the license or permit to changes in specific permit conditions.
5. *All the matters to be contested.* The Board will limit its consideration to those arguments specifically raised in the written notice of appeal.
6. *Request for hearing.* The Board will hear presentations on appeals at its regularly scheduled meetings, unless a public hearing on the appeal is requested and granted. A request for public hearing on an appeal must be filed as part of the notice of appeal.
7. *New or additional evidence to be offered.* The Board may allow new or additional evidence, referred to as supplemental evidence, to be considered by the Board in an appeal only when the evidence is relevant and material and that the person seeking to add information to the record can show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process or that the evidence itself is newly discovered and could not have been presented earlier in the process. Specific requirements for additional evidence are found in Chapter 2.

OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

1. *Be familiar with all relevant material in the DEP record.* A license application file is public information, subject to any applicable statutory exceptions, made easily accessible by DEP. Upon request, the DEP will make the material available during normal working hours, provide space to review the file, and provide opportunity for photocopying materials. There is a charge for copies or copying services.
2. *Be familiar with the regulations and laws under which the application was processed, and the procedural rules governing your appeal.* DEP staff will provide this information on request and answer questions regarding applicable requirements.
3. *The filing of an appeal does not operate as a stay to any decision.* If a license has been granted and it has been appealed the license normally remains in effect pending the processing of the appeal. A license holder may proceed with a project pending the outcome of an appeal but the license holder runs the risk of the decision being reversed or modified as a result of the appeal.

WHAT TO EXPECT ONCE YOU FILE A TIMELY APPEAL WITH THE BOARD

The Board will formally acknowledge receipt of an appeal, including the name of the DEP project manager assigned to the specific appeal. The notice of appeal, any materials accepted by the Board Chair as supplementary evidence, and any materials submitted in response to the appeal will be sent to Board members with a recommendation from DEP staff. Persons filing appeals and interested persons are notified in advance of the date set for Board consideration of an appeal or request for public hearing. With or without holding a public hearing, the Board may affirm, amend, or reverse a Commissioner decision or remand the matter to the Commissioner for further proceedings. The Board will notify the appellant, a license holder, and interested persons of its decision.

II. JUDICIAL APPEALS

Maine law generally allows aggrieved persons to appeal final Commissioner or Board licensing decisions to Maine's Superior Court, see 38 M.R.S.A. § 346(1); 06-096 CMR 2; 5 M.R.S.A. § 11001; & M.R. Civ. P 80C. A party's appeal must be filed with the Superior Court within 30 days of receipt of notice of the Board's or the Commissioner's decision. For any other person, an appeal must be filed within 40 days of the date the decision was rendered. Failure to file a timely appeal will result in the Board's or the Commissioner's decision becoming final.

An appeal to court of a license decision regarding an expedited wind energy development, a general permit for an offshore wind energy demonstration project, or a general permit for a tidal energy demonstration project may only be taken directly to the Maine Supreme Judicial Court. See 38 M.R.S.A. § 346(4).

Maine's Administrative Procedure Act, DEP statutes governing a particular matter, and the Maine Rules of Civil Procedure must be consulted for the substantive and procedural details applicable to judicial appeals.

ADDITIONAL INFORMATION

If you have questions or need additional information on the appeal process, for administrative appeals contact the Board's Executive Analyst at (207) 287-2452 or for judicial appeals contact the court clerk's office in which your appeal will be filed.

Note: The DEP provides this INFORMATION SHEET for general guidance only; it is not intended for use as a legal reference. Maine law governs an appellant's rights.

BOARD OF HARBOR COMMISSIONERS PORT OF PORTLAND, MAINE

Application for a Marine Construction Permit

DECISION

Date of public hearing:
March 13th, 2014

Name and address of applicant:
Stanley and Marsha Reich
29 Oak Lawn Road
Peaks Island, ME 04108

Location of project for which permit is requested:
29 Oak Lawn Road
Peaks Island, ME 04108

Description of project:
Construct a stone revetment at 29 Oaklawn Road, Peaks Island

For the Record:

Names and addresses of witnesses (proponents, opponents and others):
Silas Canavan, Walsh Engineering
Bill Walsh, Walsh Engineering

Exhibits admitted (e.g. renderings, reports, etc.):
Marine Construction permit application packet prepared by Walsh Engineering

Summary of testimony presented:
Applicant outlined the proposed project and answered questions from the board.

Findings of Fact and Conclusions of Law:

1) Waiver of 25ft rule as defined in Rule 16.2(b):

The Board of Harbor Commissioners may grant a waiver of the 25 foot rule if it finds that it would be unfair, inappropriate or unnecessary to apply the rule in a particular situation.

Granted X Not Granted _____

Reason:

Factors to be considered by the Board:

- a. Whether the particular marine structure or obstruction under consideration, even if allowed to be constructed or placed within 25 feet of a sideline, will permit a channel that will adequately allow the passage of vessels;
- b. Whether existing marine structures or obstructions make it impossible for a channel wide enough to allow the passage of vessels to exist, regardless of the placement or construction of the marine structure under consideration;
- c. The intended use of the marine structure of obstruction;
- d. Whether granting a waiver would significantly reduce an abutting property owner's use of that abutting property, including but not limited to the owner's ability in the future to attach a marine structure to that abutting property;
- e. Any boundary lines between properties that extend into the harbor as described in deeds, maps or plans; and
- f. Any other factor the Board believes is relevant to whether a waiver should be granted in a particular case.

2) The marine structure or obstruction will not substantially or unreasonably interfere with navigation, including its impact on convenient channels for the passage of vessels.

Satisfied X Not Satisfied

Reason:

3) The marine structure or obstruction will not injure the rights of others.

Satisfied X Not Satisfied

Reason:

4) The marine structure or obstruction will not threaten public safety.

Satisfied X Not Satisfied

Reason:

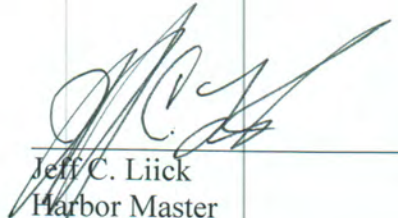
Conclusion: (check one)

Option 1: The Board finds that the standards described above have been satisfied and therefore GRANTS the permit.

Option 2: The Board finds that while the standards described above have been satisfied, certain additional conditions must be imposed to minimize adverse effects on navigation and/or public safety, and therefore GRANTS the permit SUBJECT TO THE FOLLOWING CONDITIONS:

Option 3: The Board finds that the standards described have NOT all been satisfied and therefore DENIES the permit.

Dated: 3-15-14



Jeff C. Liick
Harbor Master
Port of Portland
By Direction

**BOARD OF HARBOR COMMISSIONERS
PORT OF PORTLAND**

PERMIT-A

TO BE POSTED IN A CONSPICUOUS PLACE AT THE CONSTRUCTION SITE

To: Stanley and Marsha Reich
29 Oak Lawn Road
Peaks Island, ME 04108

The Board of Harbor Commissioners for the Port of Portland has carefully considered your application, dated the 20th day of January, 2014 for a permit authorizing:

Construct stone revetment at 29 Oak Lawn Road, Peaks Island

Having given public notice of this pending application, as required by law, and therein designated the 13th day of March 2014, at 5:00 o'clock in the afternoon prevailing time as the time when they would meet at Portland City Hall, to examine this issue and hear all interested parties, and having met at the time and place mentioned and examined the location of this proposed construction project and having heard all interested parties, the Board of Harbor Commissioners for the Port of Portland hereby issues this permit which authorizes you to proceed under all applicable local and federal regulations hereinafter stated, and to maintain within the limits mentioned in the permit application.

In addition, the construction project described above must be surrounded by a containment boom unless the Board of Harbor Commissioners for the Port of Portland has waived this requirement in writing, either as part of the above-listed conditions, or in a separate statement.

This permit is limited authorization, which contains a stated set of conditions with which the permit holder must comply. If a contractor performs the work for you, both you and the contractor are responsible for assuring that the work is done in conformance with the conditions and limitations of this authorization. Please be sure that the person who will be performing the work has read and understands these conditions.

Performing any work not specifically authorized by this permit, or that fails to comply with its conditions, may subject you to the enforcement provisions of Harbor Commission regulations. If any change in plans or construction methods is found necessary, please contact the Harbor Commission immediately to discuss modifications to your authorization. Any change must be approved by the Harbor Commission before it is undertaken.

Nothing in this permit shall be construed to justify or authorize any invasion to the private rights of others. Moreover, nothing in this permit shall limit or modify the authority of the Board of Harbor Commissioners for the Harbor of Portland with its applicable statute. Attested copies will be submitted to the U. S. Army Corps of Engineers, the Department of Environmental protection, the City of Portland, and the City of South Portland.

In Witness Whereof, of the Board of Harbor Commissioners for the Port of Portland hereunto affix their corporate seal on this 13th day of March, 2014. The work authorized to this permit must be completed on or before the 13th day of March 2015.