90 H 4
Shore Stabilization
8.11.13
34 Oak Lane

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

DEPARTMENT ORDER

IN THE MATTER OF

WALTER C. AND EMILY R. HORNADAY, II	) NATURAL RESOURCES PROTECTION ACT
Peaks Island, Cumberland County	) COASTAL WETLAND ALTERATION
COASTAL SHORELINE STABILIZATION	) WATER QUALITY CERTIFICATION
L-25638-4D-A-N (approval)	) SIGNIFICANT WILDLIFE HABITAT
L-25638-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 WALTER C. AND EMILY R. HORNADAY, II with the supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

1. PROJECT DESCRIPTION:

A. Summary: The applicants propose to stabilize 106 linear feet of coastal shoreline that has eroded due to wave action by installing a combination of riprap, large granite cobbles and granite blocks placed over a drainage layer of crushed stone and geotextile fabric. Common fill material will be installed in eroded voids around the proposed armor stones and subsequently stabilized with geotextile fabric, turf reinforcement mats, a four-inch surface layer of loam and vegetated with MDOT conservation seed mix and native salt tolerant plantings. The proposed slope stabilization will result in approximately 485 square feet of permanent direct impacts to the coastal wetland.

The proposed slope stabilization will take place in four contiguous sections which will be referred to in succession from the northeast to the southwest respectively as, "A-A", "B-B", "C-C" and "D-D".

Slope section A-A will be stabilized with an approximately 12.5-foot high by six-foot deep layer of three-foot to four-foot diameter granite cobbles and will include a four-foot wide built-in access stairway to the coastal wetland, all at a slope of 1.5H:1V. The base stone layer will be pinned to ledge or keyed-in to a depth of at least one-foot and placed over a 15-inch deep drainage layer of six-inch diameter stones and geotextile fabric. A three-foot wide vegetated buffer will be developed in an area between the proposed riprap location and the adjacent property boundary to the northeast. In lieu of riprap, the buffer will include a three-dimensional turf matting installed within the slope and several native salt tolerant plantings. Additional plantings are proposed to stabilize the top of the slope. The area of disturbance will be approximately 11 feet inland from the coastal wetland.

Slope section B-B will be stabilized with 18-inch to 24-inch tall, four-foot to eight-foot long granite blocks stacked six feet high at a slope of 0.25H:1V. The basement granite block layer will be pinned to ledge or keyed-in approximately three-feet deep and placed over a 15-inch deep drainage layer of six-inch diameter stones and geotextile fabric. A five-foot wide by three-foot deep layer of one-foot diameter riprap stone will be installed seaward of the proposed granite blocks for wave scour protection. The proposed riprap toe protection and granite blocks will extend approximately four feet below the elevation of the highest annual tide (HAT), which is considered a direct impact to the coastal wetland. A six-foot tall by six-foot deep layer of three-foot to four-foot diameter granite cobbles will be installed above the proposed granite blocks at a slope of 1.5H:1V. A one-foot wide drainage layer of eight-inch diameter riprap will be installed above the large granite cobbles and between a layer of common fill material which will be sloped to 2H: 1V. The common fill material will be stabilized with a three-dimensional turf matting below a four-inch layer of loam and vegetated with MDOT conservation seed mix and native salt tolerant plantings.

Slope section C-C will be stabilized with 18-inch to 24-inch tall, four-foot to eight-foot long granite blocks stacked nine feet high at a slope of 0.25H:1V. The basement granite block layer will be pinned to ledge or keyed-in approximately three-feet deep and placed over a 15-inch deep drainage layer of six-inch diameter stones and geotextile fabric. A five-foot wide by three-foot deep layer of one-foot diameter riprap stone will be installed seaward of the proposed granite blocks for wave scour protection. The proposed riprap toe protection and granite blocks will extent approximately four feet below the elevation of the highest annual tide (HAT), which is considered a direct impact to the coastal wetland. A layer of three-foot to four-foot diameter granite cobbles will be installed behind the proposed granite blocks and will extend approximately two feet above the granite blocks. An approximately two-foot wide drainage layer of eight-inch diameter riprap will be installed above the large granite cobbles and between a layer of common fill material to be placed in an eroded void and sloped to 2H:1V. The common fill material will be stabilized with a three-dimensional turf matting below a four-inch layer of loam and vegetated with MDOT conservation seed mix and native salt tolerant plantings.

Slope section D-D will be stabilized with an approximately 10-foot high by six-foot deep layer of three-foot to four-foot diameter granite cobbles at a slope of 1.5H:1V. The base stone layer will be pinned to ledge or keyed-in to a depth of at least one-foot and placed over a 15-inch deep drainage layer of six-inch diameter stones and geotextile fabric. A layer of common fill material will be placed in an eroded void above the proposed armor stones and sloped to 1.5H: 1V. The common fill material will be stabilized with a three-dimensional turf matting below a four inch layer of loam and vegetated with MDOT conservation seed mix and native salt tolerant plantings. The applicants have included a second, four-foot wide access stairway over the proposed armor stone to provide beach access for the abutting property to the south. The applicants state that the proposed access stairway will be installed and maintained by the owners of 35 Oaklawn Road.

The proposed activities are shown on a set of plans, the first of which is entitled, "Existing Conditions Plan," prepared by Walsh Engineering Associates, Inc. and dated March 19, 2012 with a most recent revision date on any of the plans of January 2, 2013. The project site is located on two separate parcels at 39 Oaklawn Road and 35 Oaklawn Road.

B. Current Use of the Site: The project site is developed with two residential structures that are located on separate lots on the east side of Oaklawn Road. The applicants own property at 39 Oaklawn Road and have obtained a "Deed of Easement for Construction Access and Permanent

Maintenance" for the portion of the project taking place on the neighboring property to the south at 35 Oaklawn Road. Both residential lots include beach frontage on the west side of Oaklawn Road. The coastal portion of the applicants' property is lawn area with two mature oak trees at the top of the slope. The shoreline is a 14-foot to 17-foot high vertical eroded slope with exposed roots from the mature oak trees above, and a sand beach with cobble stones at the base of the slope that average one-foot in diameter. The existing land at the top of the slope is the applicants' intended septic system location to replace their existing 30+ year old system.

The property located at 39 Oaklawn Road is referenced in the City of Portland's tax maps as Lot #4 on Map #90-H. The deed for 39 Oaklawn Road can be seen at the Cumberland County Registry in Book #27396 on Page #338.

The property located at 35 Oaklawn Road is referenced in the City of Portland's tax maps as Lot #3 on Map #90-H. The construction easement at 35 Oaklawn Road is referenced in the Cumberland Country Registry of Deeds on Book #30141 on Page #331, "Exhibit A – Construction and Access Easement Areas" and "Exhibit B – Plan of Proposed Easement."

2. EXISTING SCENIC, AESTHETIC, RECREATIONAL OR NAVIGATIONAL USES:

In accordance with Chapter 315, Assessing and Mitigating Impacts to Scenic and Aesthetic Uses, the applicants 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 applicants also submitted several photographs of the proposed project site. Department staff visited the project site on November 9, 2011

The proposed project is located in and adjacent to Casco Bay, 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 applicants propose to minimize visual impacts from the proposed project by re-using beach cobbles and excavated sands currently located in the footprint of the project site for use as scour protection at the base of the proposed granite block wall. The applicants propose to stabilize their shoreline using similar designs as the nearby properties. Several properties within 300-500 feet of the project site have vertical retaining walls and/or riprap placed over the shoreline for erosion control. The applicants have included a planting plan for enhancing the vegetated buffer in the eroded areas above and adjacent to the proposed cobble stones. The applicants propose to stabilize the areas beneath existing mature oak trees with the intention of preserving the existing natural vegetated buffer. The details of the proposed plantings can be seen on a plan entitled; "Site Plan" prepared by Walsh Engineering and Associates, Inc., and dated March 19, 2012 with a most recent revision date of January 2, 2013. The applicants must monitor the plantings, and the plantings must be replaced or maintained as necessary to achieve 85% survival 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.

The Department finds that the proposed activity will not unreasonably interfere with existing scenic, aesthetic, recreational or navigational uses of the protected natural resource.

3. SOIL EROSION:

The applicants propose to construct the project in accordance with the erosion and sedimentation control measures outlined in the basic stabilization standards of Maine's Erosion and Sedimentation Control Law (38 M.R.S. Section 420-C). All work will be completed in sections small enough to be stabilized in one work session. The proposed stabilization work will begin at the bottom of the slope and work toward the top. Heavy equipment will likely access the project site overland from the subject property. If necessary, equipment and materials associated with the slope stabilization effort may access the site at high tide by barge. Material stockpiles and equipment use will be outside of tidal water. Any disturbed area outside the project area will be restored to the original condition and vegetated upon project completion.

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 Department of Marine Resources (DMR) stated that the proposed project should not cause any significant adverse impact to navigation, recreation, or riparian access. DMR indicated that there may be some adverse impact to a salt marsh located northerly and adjacent to the project site from wave energy reflected from the riprap. DMR advised that construction equipment should not operate from the salt marsh, particularly during the growing season, to avoid significant adverse impacts. DMR further indicated that there may be some impact to the adjacent salt marsh from wave energy reflected from the riprap. DMR recommended planting salt tolerant vegetation (shrubs and grasses) in the voids between the large riprap stone to soften the visual impact and provide forage and habitat for birds and small mammals.

William R. Walsh III, PE of Walsh Engineering Associates, Inc., responded to DMR's recommendations in a letter received by the Department on January 4, 2013. Mr. Walsh stated that the proposed construction plan was redesigned to include construction fencing around the salt marsh to provide a barrier between the construction activities and salt marsh vegetation. Mr. Walsh stated that vegetation impacts would be avoided by accessing the site using construction entrances located away from the salt marsh. Mr. Walsh further stated that if the salt marsh must be traversed during construction, the operations will be outside the growing season and would include the placement of blast mats over the salt marsh.

The Maine Department of Inland Fisheries and Wildlife (MDIFW) reviewed the proposed project and stated that the proposal would include impacts to a mapped Tidal Wading Bird and Waterfowl Habitat, a Significant Wildlife Habitat under NRPA. MDIFW recommended that tree and vegetation removal resulting from rip-rap installation and machinery access be minimized. No tree or shrub clearing should be permitted outside of the actual work area. MDIFW encouraged the applicants to include tree species within the proposed replanting plan to better achieve deep root penetration necessary to stabilize soils, and provide canopy protection to minimize rain velocity and runoff and to limit additional erosion. MDIFW recommended that

any rip-rap proposed landward of any fringing salt marsh be minimized to the extent possible. MDIFW stated that the fringing salt marsh communities, even small examples, are important in supporting invertebrate populations that contribute to the functioning of the designated habitat. Additionally, small marsh systems export important nutrients to adjacent mudflat systems. MDIFW stated that shoreline hardening above small marshes will cut off critical sources of sediment needed for marsh accretion. Last, foot traffic in the saltmarsh vegetation should be discouraged and the steps proposed for beach access redesigned so they do not land in or encourage people to walk through the saltmarsh vegetation.

William R. Walsh III, PE of Walsh Engineering Associates, Inc., responded to MDIFW' s recommendations in a letter received by the Department on January 4, 2013. Mr. Walsh stated that vegetation removal will be minimized during installation of the shoreline stabilization measures. Further, trees and shrubs will not be removed outside of the proposed work area. Mr. Walsh stated that the City of Portland has recommended planting bayberry and sweet fern shrubs because they will tolerate the shoreline conditions and will quickly stabilize soils. Additionally, the application of riprap for erosion control has been minimized with the use of three-dimensional turf matting to establish the slope above the armor stone. Last, Mr. Walsh stated that the proposed built-in access stairway was re-aligned in an effort to discourage foot traffic on the salt marsh and preserve existing vegetation.

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.

5. WATER QUALITY CONSIDERATIONS:

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 applicants propose to alter 486 square feet of coastal wetlands with the placement of armor stones along an eroded shoreline slope. The proposed coastal wetland impacts are to a sand and cobble beach below the elevation of the Highest Annual Tide (HAT). The proposed armor stone will be located adjacent to, but not within a fringing marsh.

The Department's Wetlands and Waterbodies Protection Rules, Chapter 310, require that the applicants 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 applicants' project goal is to stabilize the shoreline and areas on the slope that are exhibiting erosion due to wave energy in order to preserve the only available location for their replacement septic system. The applicants submitted an alternatives analysis which included a variety of alternative project designs. The applicants considered the no-action alternative but determined that it would not meet the project goal because a geotechnical report entitled, "Slope Evaluation Hornaday Residence Oaklawn Road Peaks Island, Maine" prepared by Summit Geoengineering Services and dated October 2011

found that the potential for surficial slope failure due to slumping, scouring or progressive slide activity is considered possible. The report states that in the event of a slope failure, exposed portions of the bluff may contribute to additional slide activity potentially jeopardizing the proposed septic system location and portions of Oaklawn Road. The applicants also considered installing only riprap on the slope instead of installing a combination of riprap and granite blocks. The geotechnical report states that "riprap stabilization should be sloped to a maximum inclination of 1.5 horizon to 1 vertical in accordance with the Maine erosion and sediment control best management and practices manual". Thus, the applicants concluded that in order to install riprap at the necessary 1.5H: 1V the slope would extend 30 feet seaward from the base of the existing embankment and into the intertidal zone, creating 1,372 square feet of direct impacts to the coastal wetland. The applicants further stated that the seaward slope expansion associated with riprap stabilization would reduce the amount of traversable beach area. The applicants determined that the combination of direct coastal wetland impacts and adjacent beach alterations would be unnecessary. Therefore, the applicants stated that the proposed project is their preferred alternative.

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 applicants designed the project to minimize impacts to coastal wetlands by installing armor stones at the steepest slopes practicable. Further, foot traffic in an adjacent fringing salt marsh will be deterred with the proposed access way to the beach. The proposed project has been designed with a seaward armor layer of stacked granite blocks at a stable slope of 0.25H: 1V rather than riprap on a stable 1.5H: 1V slope. The applicants state that the proposed use of stacked granite blocks results in an 887 square feet reduction in proposed coastal wetland impacts. Visual impacts from the proposed project will be minimized by reusing cobble stones within the footprint of the project area as scour protection at the seaward base of the granite blocks and by installing new plantings above and adjacent to the proposed armor stones.

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 as determined by DMR and MDIFW. For these reasons, the Department determined that compensation is not required.

The Department finds that the applicants have 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.

B. The proposed activity will not cause unreasonable erosion of soil or sediment provided that the applicants monitor the plantings, and that the plantings shall be replaced or maintained as necessary to achieve 85% survival after one full growing season.

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 plantings are replaced or maintained as described in Finding 2.

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 WALTER C. AND EMILY R. HORNADAY, II to stabilize their shoreline and alter coastal wetland as described above, SUBJECT TO THE ATTACHED CONDITIONS, and all applicable standards and regulations:

1. Standard Conditions of Approval, a copy attached.

2. The applicants shall take all necessary measures to ensure that their activities or those of their 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 applicants shall monitor the plantings, and plantings shall be replaced or maintained as necessary to achieve 85% survival after one full growing season.

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 February, 2013.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Filed
FEB 11 2013
State of Maine
Board of Environmental Protection

BY: Michael Kuhns for
Patricia W. Aho, Commissioner

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

JW/L25638ANBN/ATS74524&75733

Natural Resource 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

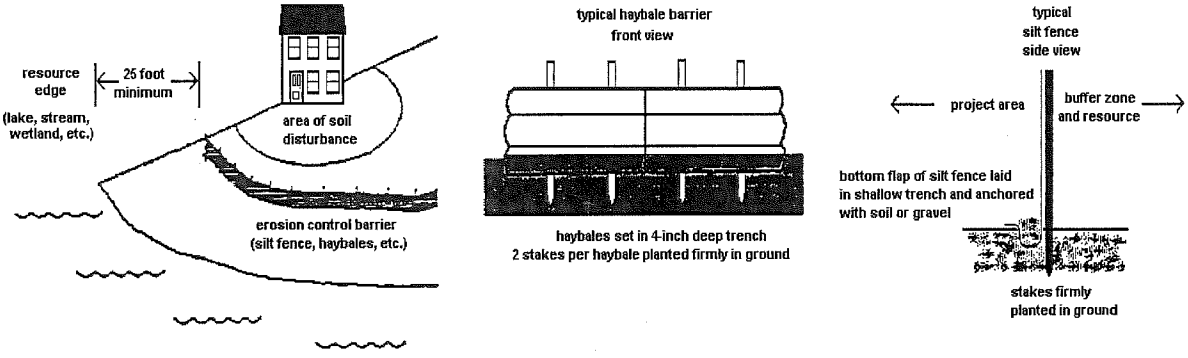
Before Construction

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. It 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.