

City of Portland
 Development Review Application
 Planning Division Transmittal form

Application Number: 10-79900029 **Application Date:**

Project Name: STABILIZING FAILED SLOPE

Address: 548 Island Ave **CBL:** 092 - A-001-001
 562 Island Ave **CBL:** 092 - A-019-001

Project Description: Island Ave Peaks Island; 548 And 562-Stabilize Existing Failed Slope,Eroded Shoreline

Zoning: I-B ISLAND BUS SHORELAND

Other Reviews Required:

Review Type: MINOR SITE PLAN

Applicant:
 STEVENSON, MONICA
 FREEMAN, JOHN
 548 ISLAND AVE
 Peaks Island Me 04108

Applicant:
 KAREN MURPHY
 JOHN MAKEY
 53 THOMAS PARK APT #3
 So Boston Ma 02127

Applicant:
 WILLIAM R. WALSH, PE
 WALSH ENGINEERING ASSOC., INC
 918 BRIGHTON AVE
 Portland Me 04102

Distribution List:

<input type="checkbox"/> Planner	Barbara Barhydt	<input type="checkbox"/> Parking	John Peverada
<input type="checkbox"/> Zoning Administrator	Marge Schmuckal	<input type="checkbox"/> Design Review	Alex Jaegerman
<input type="checkbox"/> Traffic	Tom Errico	<input type="checkbox"/> Corporation Counsel	Danielle West-Chuhta
<input type="checkbox"/> Stormwater	Dan Goyette	<input type="checkbox"/> Sanitary Sewer	John Emerson
<input type="checkbox"/> Fire Department	Keith Gautreau	<input type="checkbox"/> Inspections	Tammy Munson
<input type="checkbox"/> City Arborist	Jeff Tarling	<input type="checkbox"/> Historic Preservation	Deb Andrews

<input type="checkbox"/> Engineering	David Margolis-Pineo	<input type="checkbox"/> Outside Agency	
		<input type="checkbox"/> DRC Coordinator	Phil DiPierro

Preliminary Comments needed by:

Final Comments needed by:



918 Brighton Avenue | Portland, Maine 04102

September 29, 2010

Mr. William Bullard, Project Manager
Maine Department of Environmental Protection
312 Canco Road
Portland, Maine 04103

**RE: Natural Resources Protection Act (NRPA) Permit Application
548 and 562 Island Avenue, Peaks Island, Portland, Maine**

Dear Bill:

On behalf of John Freeman and Monica Stevenson of 548 Island Avenue and John Makey and Karen Murphy of 562 Island on Peaks Island, I am pleased to submit the attached supplemental information (revised drawing set dated September 29, 2010) regarding the pending NRPA Application for Shoreline Stabilization at 548 and 562 Island Avenue, Peaks Island, in Portland, Maine. These revisions result from your September 20th visit to the site and your meeting with Bill Walsh of Walsh Engineering Associates at that time.

The proposed revisions the shoreline stabilization project include the following:

- Added and identified 15-feet of shoreline boulder embankment stone on the east side of the stairs of 562 Island Avenue;
- Clearly identified the proposed 30-feet of shoreline boulder embankment stone on the west side of stairs of 548 Island Avenue;
- Increased the area of rip-rap slope stabilization on both 548 and 562 Island Avenue and increased the amount of planting pockets;
- Removed the cross-slope swale, which redirected the outflow from the existing culvert;
- Added new swale in order to capture additional driveway run-off;
- Added an additional row of granite block retaining wall at 562 Island Avenue;
- Revised the proposed shrub types to be native plants (beach plum and bayberry); and
- Added Sheet L4.0, which was inadvertently not included in some sets.

A copy of this letter and revised plans/details has been sent to Eric Giles at the City of Portland Planning Division, as part of the City's Level II Site Plan Application process.

Thank you for your ongoing review of this application. If you have any questions or if additional information is needed, please call me at 207-553-9898.

Sincerely,



Michael W. King
Walsh Engineering Associates, Inc.

Enc.: Revised Drawing Set, dated September 29, 2010

Cc: John Freeman and Monica Stevenson
John Makey and Karen Murphy
Coley Mulkurn, Lionel Plante Associates, Inc.
Eric Giles, City of Portland



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

cc BBanmy
Please file
with project
RECEIVED

OCT 28 2010
PLANNING DEPARTMENT

DEPARTMENT ORDER

IN THE MATTER OF

MONICA STEVENSON, JOHN MAKEY and
KAREN MURPHY
Portland, Cumberland County
SHORELINE STABILIZATION
L-25057-4D-A-N (approval)

) NATURAL RESOURCES PROTECTION
) ADJACENT ACTIVITY
)
) WATER QUALITY CERTIFICATION
) 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 MONICA STEVENSON, JOHN MAKEY and KAREN MURPHY with the supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

1. PROJECT DESCRIPTION:

A. History: A wooden retaining wall was replaced at the 562 Island Avenue property (owned by John Makey and Karen Murphy) under a Natural Resources Protection Act Permit by Rule notification (PBR #42208), approved on December 12, 2006. Shoreline stabilization at the northerly end of that property was authorized under a Permit by Rule (DEP #44683), approved on April 24, 2008. Both the property at 562 Island Avenue and the property at 548 Island Avenue (owned by Monica Stevenson) are exhibiting signs of erosion in the embankment adjacent to the coastal wetland.

B. Summary: The applicants propose to stabilize a 540-linear foot section of shoreline spanning two properties located at 548 and 562 Island Avenue on the northwesterly side of Peaks Island in the City of Portland. The plan includes replacement of an existing wooden retaining wall at 562 Island Avenue with a stone structure of the same dimensions and location. After receiving the application, Department staff visited the site with the applicants. In response to staff comments, the applicants revised the plan to reduce the linear footage of riprap at the westerly end of the project site and to regrade and replant an area approximately 180 feet in width near the property line separating the parcels.

An existing 12-inch drainage pipe currently conveys surface runoff to the top of the embankment at 548 Island Avenue. The applicants propose to construct a riprapped swale from the pipe outfall down the embankment to the toe of slope to reduce erosion effects from the outlet. Minor grading improvements at the top of the embankment will help direct additional surface water runoff to the swale. In the areas proposed for regrading and stabilization, a series of 4-inch perforated underdrain pipes will be installed to convey surface runoff to the toe of the slope. The project is shown on a set of plans, the first of which is entitled, "548 and 562 Island Avenue, Peaks Island, Portland, Maine" prepared by Walsh Engineering and dated August 9, 2010, as last revised October 6, 2010.

C. Current Use of the Site: The abutting sites within the project area each contain a house, driveway and landscaping. A steep vegetated embankment separates the upland area from the coastal wetland, located approximately 15 to 25 feet below the upland areas. Marine clay layers are present in the embankment soils.

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 September 20, 2010.

The proposed project is located on 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. To minimize potential visual impacts of the riprap slope, the applicants propose to utilize riprap stone which matches the color of existing bedrock and boulders on the site and to install an array of 38 shrub plantings interspersed within the riprap to reduce the visibility of the project from the scenic resource. The plantings must be monitored to ensure an 85 percent survival rate after the first growing season. All dead or dying plants must be replaced. Regrowth of existing adjacent vegetation is expected to further reduce visibility of remaining areas to be riprapped.

Based on the information submitted in the application 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 submitted an acceptable erosion control plan with the application. All disturbed areas outside of the proposed armoring and swale locations will be restored to preexisting conditions upon completion of construction.

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 database (MDIFW) did not identify any Essential or Significant Wildlife Habitats at the project site.

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. WETLANDS AND WATERBODIES PROTECTION RULES:

According to information submitted by the applicants, all of the proposed riprap and grading work areas are located above the Highest Annual Tide elevation of 7.1 feet (NGVD29). No direct impacts to the coastal wetland are anticipated from the project.

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 permit to perform construction activity adjacent to a resource must provide an analysis of alternatives in order to demonstrate that a practicable alternative does not exist. The applicants submitted documentation of existing erosion at the project and considered alternative treatment measures in discussions with Department staff. The resulting design will provide stability to the eroding embankments at the site while minimizing impacts on the adjacent wetland.

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 proposed riprap will be installed without extending into the coastal wetland.

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 MDIFW. 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.

6. 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. All disturbed areas will be restored to preexisting conditions upon completion of construction.

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 plantings are monitored for survival and replaced if necessary as discussed 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.
- 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 MONICA STEVENSON, JOHN MAKEY and KAREN MURPHY to stabilize a section of shoreline, replace a retaining wall and construct drainage improvements as outlined 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. All plantings shall be monitored to ensure an 85 percent survival rate after the first 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.

DEPARTMENT OF ENVIRONMENTAL PROTECTION



This permit has been digitally signed by Jody Breton on behalf of Acting Commissioner Beth Nagusky. It is digitally signed pursuant to authority under 10 M.R.S.A. §9418. It has been filed with the Board of Environmental Protection as of the signature date. 2010.10.26 09:38:53 -04'00'

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

wb/ats#72433/125057an



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.

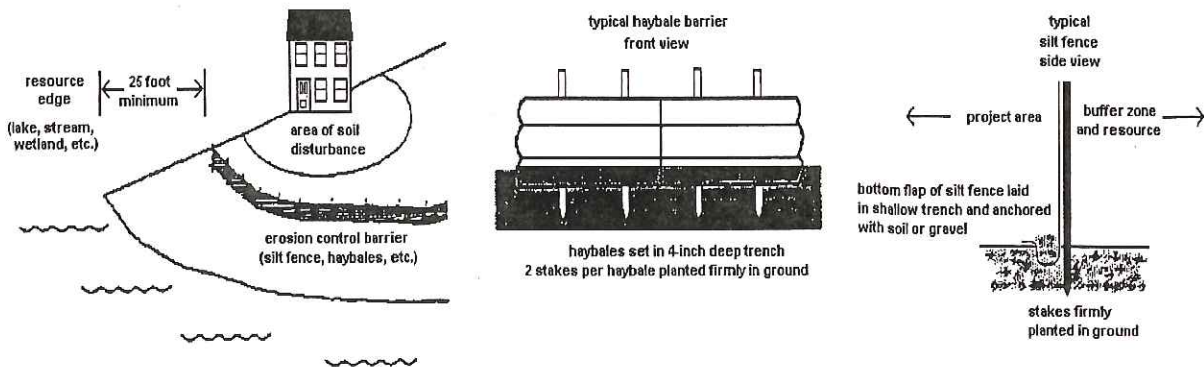
- A. Approval of Variations From Plans. The granting of this permit is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. Any variation from these plans, proposals, and supporting documents is subject 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. Initiation of Activity Within Two Years. If construction or operation of the activity is not begun within two 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 shall state the reasons why the applicant will be able to begin the activity within two years form the granting of a new permit, if so granted. Reapplications for permits may include information submitted in the initial application by reference.
- F. Reexamination After Five Years. If the approved activity is not completed within five years from the date of the granting of a permit, the Board may reexamine its permit approval and impose additional terms or conditions to respond to significant changes in circumstances which may have occurred during the five-year period.
- G. 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.
- H. 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.
- I. 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.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Erosion Control for Homeowners

Before Construction

1. If you have hired a contractor, make sure you discuss your permit-by-rule 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-by-rule.
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.



DEP INFORMATION SHEET

Appealing a Commissioner's Licensing Decision

Dated: May 2004

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. This INFORMATION SHEET, in conjunction with consulting statutory and regulatory provisions referred to herein, can help aggrieved persons with understanding their rights and obligations in filing an administrative or judicial appeal.

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

DEP's General Laws, 38 M.R.S.A. § 341-D(4), and its Rules Concerning the Processing of Applications and Other Administrative Matters (Chapter 2), 06-096 CMR 2.24 (April 1, 2003).

HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD

The Board must receive a written notice of appeal within 30 calendar days of the date on which the Commissioner's decision was filed with the Board. Appeals filed after 30 calendar days 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 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 and the applicant a copy of the documents. All 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

The materials constituting an appeal must contain the following information at the time submitted:

1. *Aggrieved Status.* Standing to maintain an appeal requires the appellant to show they are particularly injured by 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 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 as part of an appeal only when 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 show 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, Section 24(B)(5)

OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

1. *Be familiar with all relevant material in the DEP record.* A license file is public information 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.* An applicant proceeding with a project pending the outcome of an appeal 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 initiation of the appeals procedure, including the name of the DEP project manager assigned to the specific appeal, within 15 days of receiving a timely filing. The notice of appeal, all materials accepted by the Board Chair as additional evidence, and any materials submitted in response to the appeal will be sent to Board members along with a briefing and recommendation from DEP staff. Parties filing appeals and interested persons are notified in advance of the final 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. The Board will notify parties to an appeal and interested persons of its decision.

II APPEALS TO MAINE SUPERIOR COURT

Maine law allows aggrieved persons to appeal final Commissioner licensing decisions to Maine's Superior Court, see 38 M.R.S.A. § 346(1); 06-096 CMR 2.26; 5 M.R.S.A. § 11001; & MRCivP 80C. Parties to the licensing decision must file a petition for review within 30 days after receipt of notice of the Commissioner's written decision. A petition for review by any other person aggrieved must be filed within 40-days from the date the written decision is rendered. The laws cited in this paragraph and other legal procedures govern the contents and processing of a Superior Court appeal.

ADDITIONAL INFORMATION: If you have questions or need additional information on the appeal process, contact the DEP's Director of Procedures and Enforcement at (207) 287-2811.

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.
