



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



PAUL R. LEPAGE  
GOVERNOR

PATRICIA W. AHO  
COMMISSIONER

February 2015

John M. Woodhead  
1276 N Wayne Street #707  
Arlington, VA 22201

RE: Natural Resources Protection Act Application, Portland, DEP #L-26577-4D-A-N

Dear Mr. Woodhead:

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 or thoughts on how the Department processed this application please get in touch with me directly. I can be reached at (207) 615-3236 or at [audie.arbo@maine.gov](mailto:audie.arbo@maine.gov)

Sincerely,

Audie Arbo, Project Manager  
Division of Land Resource Regulation  
Bureau of Land and Water Quality

pc: File

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



DEPARTMENT ORDER

IN THE MATTER OF

JOHN M. WOODHEAD	) NATURAL RESOURCES PROTECTION ACT
Portland, Cumberland County	) COASTAL WETLAND ALTERATION
SHORELINE STABILIZATION	) WATER QUALITY CERTIFICATION
L-26577-4D-A-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 JOHN M. WOODHEAD 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 124 linear feet of coastal shoreline by installing a combination of riprap and vegetation. The shoreline in the project area has a steep bank with pockets of erosion. The applicant proposes to use a three-foot thick layer of riprap stones from the bottom elevation of 5.9 up to an elevation of 15.0. Six-inch granite curb pieces will be pinned to existing ledge to anchor the toe of the slope, and three-foot thick toe stones will be used to stabilize the base of the riprap behind the granite pieces. The highest annual tide (HAT) is 1.5 feet above the toe of the slope and the proposed project will result in 330 square feet of alteration of the coastal wetland. The finished slope face of the riprap will be one foot horizontal to one foot vertical (1:1). The grade from the top of the riprap to the crest of the slope will be a transitional grade of two feet horizontal to one foot vertical (2:1). In this transitional grade the existing pockets of erosion will be filled with topsoil, erosion control blanket will be installed, and a variety of native vegetation will be planted. Vegetation to be planted will include common juniper, bearberry, shrubby cinquefoil, and northern bayberry. A three-foot wide (140-square foot) strip of lowbush blueberry sod will be installed along the top of the bank between existing lawn and the vegetation on the embankment.

The project is shown on a set of plans titled "Slope Stabilization 60 Sullivan Street, Portland, Maine," prepared by Land Design Solutions and dated May 2014, with a most recent revision date of January 26, 2015. The project site is located on Sullivan Road in the City of Portland.

B. Current Use of the Site: The applicant owns a 0.122-acre lot that is developed with a residential dwelling including a deck and associated improvements. The lawn currently extends to the top of the shorefront bank. At the closest point, the deck is approximately eight feet from the top of the bank. The distance from the north corner of the house and the top of bank is 17 feet. A drain pipe outlet, connected to the roof gutter

system, currently extends out of the embankment and drains onto the slope. The parcel is identified as Lot A-6001 on Map 432A of the City of Portland's tax maps.

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 June 3, 2014 and on January 14, 2015.

The proposed project is located in and adjacent to 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 has minimized the total amount of riprap and is proposing to leave existing native, non-invasive vegetation where possible. Much of the slope is currently covered with invasive vegetation, including honeysuckle, bamboo and multiflora rose. Invasive vegetation will be removed, the area covered with erosion control blanket, and planted with native vegetation. The applicant 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 site is located in a section of the coastline that is developed with residential houses and other shoreline stabilization projects of varying construction types. The shoreline along the Route 1 embankment is currently stabilized with riprap. The proposed project will be compatible with the surrounding developed and stabilized shore frontages. The applicant proposes to use stone that is similar in color and to install vegetation to reduce the visibility of the proposed riprap from the scenic resource. These measures are expected to reduce the visibility of the project from the scenic resource.

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 visits, 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 provided that the applicant monitors and maintains the plantings as described above.

3. SOIL EROSION:

The applicant submitted an Erosion and Sediment Control Plan on Sheet C-102 of the set of plans referenced in Finding 1. The proposed project will stabilize an existing eroding bank with riprap over geotextile fabric at the bottom of the slope and vegetation over erosion control blanket above the stone. The erosion control blanket and plantings will extend to two feet above the top of the slope crest to secure all disturbed soil. The existing outflow pipe will be reset and extended over an apron of riprap, to prevent future erosion from the pipe discharge. 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 tide cycle, so that work occurs during the low tide and the work will be stabilized at the end of the tide cycle each day. No equipment will be operated in the water.

The work area will be accessed by a construction entrance on an abutting property, where a set of access stairs will be removed for the construction. The abutting property owner has provided written permission for this work to occur on his property, with the expectation that any damage to the property will be repaired.

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:

According to the Department's Geographic Information System (GIS) database there are no mapped Essential or Significant Wildlife Habitats located at the 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. WATER QUALITY CONSIDERATIONS:

The proposed project is intended to stabilize an eroding bank using angular stone, geotextile fabric, erosion control blanket, loam and native plantings. These materials and the construction techniques proposed are not expected to result in any significant soil erosion or have an 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:

A large tree has been uprooted at the site, leaving a sizable hole in the embankment that continues to erode. At the toe of the slope there is an approximately five-foot strip of sand and cobble beach. Coastal wetland vegetation exists on the other side of this strip and extends towards open water.

The applicant proposes to directly alter 330 square feet of coastal wetland to construct the proposed shoreline stabilization project as a result of riprap being placed below the HAT line. The total area disturbed above the HAT line will be approximately 1,402 square feet. The area to be riprapped directly above the HAT line will be 747 square feet and the area to be vegetated on the slope above the riprap will be 655 square feet.

The Wetland and Waterbodies Protection Rules, Chapter 310, 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 Peter Biegel of Land Design Solutions, dated November 28, 2014, and revised January 26, 2015. The project purpose is to stabilize the shoreline to prevent further erosion and slumping of the slope and to protect the house and deck, while also removing invasive plants and replacing them with native plantings. The existing uprooted tree along the bottom of the bank is at risk of being dislodged by wave action. If this occurs, there is a high likelihood that it could cause more erosion. The no-action alternative was rejected because the toe of the slope would continue to be eroded by tidal activity during storms and the potential exists for major bank erosion from loss of the uprooted tree. To meet the project purpose, some amount of coastal wetland alteration is unavoidable.

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 stone face to reduce the amount of wetland impact and by selecting a combination of stabilizing methods that minimizes the potential for additional erosion from coastal wave action and stormwater discharge after the project is complete. The contractor will utilize construction mats in the intertidal areas where equipment must traverse over existing wetland vegetation. The applicant has also minimized the amount of proposed riprap by using the elevation of the 100-year tide surge above the HAT as the minimum elevation needed for successful stabilization of the slope against future wave action and by utilizing vegetation where possible.

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 wildlife habitat as determined by the Department. 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.
- 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 JOHN M. WOODHEAD to alter coastal wetland to stabilize shoreline as described in Finding 1, SUBJECT TO THE ATTACHED CONDITIONS, and all applicable standards and regulations:

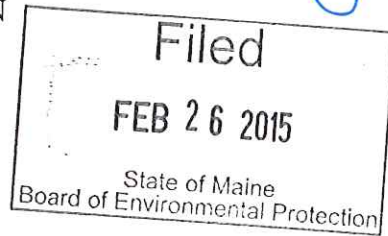
- 1. Standard Conditions of Approval, a copy attached.
- 2. The applicant shall take all necessary measures to ensure that his activities or those of his agents do not result in measurable erosion of soil on the site during the construction of the project covered by this approval.
- 3. Severability. 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 plantings must 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 25<sup>th</sup> DAY OF February, 2015.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

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



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

AA/L26577AN/ATS#78605



## Natural Resources Protection Act (NRPA) Standard Conditions

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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.