

135 River Road • Woolwich, ME 04579 207-837-2199 •tim@atlanticenviromaine.com www.atlanticenviromaine.com

April 23, 2019

Mr. Alex Jaegerman, Director of Planning & Development Town of Yarmouth 200 Main Street Yarmouth, ME 04096

Re: Shoreland Zoning Permit Application for Shoreline Stabilization, 112 Seaborne Drive, Yarmouth, Maine.

Dear Mr. Jaegerman,

On behalf of John and Shelley Linscott, Atlantic Environmental, LLC (AE) is pleased to submit a Shoreland Zoning Permit Application to stabilize a portion of the shoreline with riprap and plantings.

More specifically, the Applicant proposes to place riprap that consists of approximately two (2) to four (4) feet in diameter stones along two areas of the shoreline. Area One will begin near the existing pier and will extend to the northeast for approximately seventy (70) linear feet of the Applicant's shoreline. Area Two will begin near the northeasterly property line and will extend to the southwest for approximately thirty (30) linear feet of the Applicant's shoreline.

The Applicant's property is located in the Low Density Residential (LDR), the Shoreland Overlay District (SOD), and a portion is within the Resource Protection District (RPD). AE has reviewed the Town of Yarmouth's Zoning Ordinance and believes the project is in compliance with these standards. Please review the attached information demonstrating compliance with these Articles. The Applicant has submitted applications to the Maine Department of Environmental Protection (MDEP) and the Army Corps of Engineers (ACOW) and relevant sections of those applications are included in the attached application materials. Copies of those permits are included with the attached application materials.

In addition to these approvals, the Applicant recently received approval (Permit #19-12) from the Town to replant a portion of the property that was impacted during the installation of a sewer line. The Applicant will utilize this impacted area for construction access for the proposed shoreline stabilization. At the completion of the stabilization, the Applicant will restore the area as proposed in the previous approval. Given this, there will be no change to the canopy and basal area.

Thank you in advance for your consideration of this Application. If you require any additional information or clarifications, please feel free to contact me at 207 - 837 - 2199 or by email at tim@atlanticenviromaine.com.

Sincerely, Atlantic Environmental LLC.

Timitty A. Familit

Timothy A. Forrester, Owner



## **TOWN OF YARMOUTH**

200 Main Street

Yarmouth, Maine 04096

(207)846-2401

## WWW.YARMOUTH.ME.U8 Fax: (207)846-2438

## SHORELAND ZONING PERMIT APPLICATION

PERMIT #_		ISSUE DATE	FEE AMO	UNT	
Date: 4/23/2	2019 Zoning District	LDR/SZO/RP	_ Map23Lot15	Ext	
APPLICANT	NAME: Atlantic Environm	iental, LLC c/o Tim I	Forrester PHONE NO:	(207) 837 - 2199	
MAILING ADDRESS:	135 River Road Woolwic	h, ME 04579	e-mailtim@atlanticenvironmaine.com		
OWNER (othe NAME: Jo	er than applicant) ohn S. Lincscott IV and Sh	elly Linscott	PHONE NO:	(207) 799 - 8514	
MAILING	112 Seaborne Drive Yarı	mouth, ME 04096	e-mail_scotty@hbfleming.com		
CONTRACTO NAME: MAILING ADDRESS <sup>.</sup>	DR TBD		PHONE NO:		
PROPERTY LOCATION:	112 Seaborne Drive				

Applicant must also include a narrative of the project including a description of all proposed construction, (E.G. Land clearing, road building, septic systems and wells – Please note: A site plan sketch is required on a separate sheet of paper no less than 11" x 17" or greater than 24"x36"

Please note: Plan set must be bound (not rolled) with a cover sheet and index.

Proposed use of project: \_\_\_\_\_\_Residential

Estimated cost of construction

Lot area (sq. ft.) 46609.2

Frontage on Road (FT)+/- 100 ft.

SQ. FT. of lot to be covered by non-vegetated surfaces <sup>200 sq. ft.</sup>

Elevation above 100 YR Flood Plain N/A

Frontage on water body (FT.) +/- 240 ft.

Height of proposed structure N/A

Existing use of property Residential

Proposed use of property Residential

- *Note:* NEXT Questions apply only to expansions of portions of existing structures that are less than the required setback.

  - B) Actual shore setback of existing structure proposed for expansion (measured as required in SOD, e.g.: Highest Annual Tide; Upland Edge of Coastal Wetland; Top of Bank (RP); Normal High Water Line of rivers and streams; as applicable): \_\_\_\_\_\_
  - C) Building footprint area of expansions of portion of structure that is less that required setback from 1/1/89 to present: \_\_\_\_\_\_SQ.FT.
  - D) Building footprint area of proposed expansion of portion of structure that is less than required setback: \_\_\_\_\_\_SQ.FT.
  - E) % Increase of building footprint of previous and proposed expansions of portion of structure that is less than required setback since 1/1/89: % increase =  $((\underline{C+D})x100)/A =$ \_\_\_\_%
  - F) Floor Area and Market Value of Structure prior to improvements: (a) <u>Area:</u> <u>Value:</u> Floor Area and Market Value of portions of Structure removed, damaged or destroyed: (b) <u>Area:</u> <u>Value:</u> If the floor area or market value of (b) exceeds 50% of the area or value of (a), then the Relocation provisions of Article IV.R.5.a.(3) and (4) shall apply. Note: A value appraisal may be required or submitted in close cases where the applicant asserts that that 50% trigger and relocation assessment provision is not met. Any plan revisions after initial approvals to replace rather than renovate building components (foundations, framing, etc.) shall be required to recalculate the extent of removal, damage or destruction relative to retained structure.
  - Please provide a site plan to include lot lines, area to be cleared of trees and other vegetation; the exact position of proposed structures, including decks, porches, and out buildings with accurate setback distances form the shoreline, side and rear property lines; the location of proposed wells, septic systems, and driveways; and areas and amounts to be filled or graded. If the proposal is for the expansion of an existing structure, please distinguish between the existing structure and the proposed expansion.
  - □ Note: For all projects involving filling, grading, or other soil disturbance you must provide a soil erosion control plan describing the measures to be taken to stabilize disturbed areas before, during and after construction.
  - □ Draw a simple sketch showing both the existing and proposed structures with dimensions.

## SHORELAND ZONING PERMIT CHECKLIST

Please note that this checklist is intended to help applicants identify major submittal components but it is the applicant's responsibility to review the SOD/RP provisions outlined in Chapter 701 of the Yarmouth Code and provide all required information as well as conform to all design components. Copies of Chapter 701 are available at the Yarmouth Town Hall or can be downloaded on the Town website which is <u>www.yarmouth.me.us</u>.

- Complete Shoreland Zoning Permit application including signatures of property owners and agents.
- ☑ Appropriate fee.
- ☑ Square footage of lot area within the 250' SOD
- ☑ Square footage and % of lot covered by non-vegetated surfaces within the SOD
- ☑ Square footage and % of cleared area within lot area within the SOD
- Delineation of 75' setback from upland edge of the coastal wetland
- Delineation of 250' SOD line from upland edge of the coastal wetland.
- Delineation of Resource Protection District
- □ Height of any proposed structures as measured between the mean original grade at the downhill side of the structure and the highest point of the structure
- □ Building elevations of any proposed structures as viewed from side and rear lot lines
- □ % Increase of expansions of portion of structure which is less than the required setback (if applicable)
- Floor Area and Market Value of Structure prior to improvements: (a) <u>Area:</u>
   <u>Value:</u>
   <u>Value:</u>
   Floor Area and Market Value of portions of Structure removed, damaged or destroyed: (b) <u>Area:</u>
   <u>Value:</u>
- □ Elevation of lowest finished floor to 100 year flood elevation
- Evidence of submission of the application to the Maine Historic Preservation Commission (MHPC) at least twenty (20) days prior to the Planning Board meeting as required in Article IV.R.O
- □ Copy of additional permit(s) if applicable:
  - Planning Board (e.g. Subdivision, Site Plan Review)
  - Board of Appeals
  - Flood Hazard
  - Exterior plumbing permit (Approved HHE 200 Application Form)
  - Interior plumbing permit
  - DEP permit (Site Location, Natural Resources Protection Act)
  - Army Corps of Engineers Permit (e.g. Sec. 404 of Clean Waters Act)
- ☑ Please circle all habitat types, marine organisms and shoreline elements present: (Sand beach) (boulder/cobble beach) (sand flat) (mixed coarse & fines) (salt marsh)
  - (ledge) (rocky shore) (mudflat) (sediment depth if known) (Bluff/bank) (Mussels) (clams) (marine worms) (rockweed) (eelgrass) (lobsters) (other\_\_\_\_\_)
- $\square$  Signs of intertidal erosion? (Yes) (no)
- ☑ Energy: (protected) (semi-protected) (partially exposed) (exposed)
- $\square$  Copy of deed
- ☑ Soil erosion control plan
- ☑ Photographs
- $\square$  Plan view

NOTE: Applicant is advised to consult with the CEO and appropriate state and federal agencies to determine whether additional permits, approvals, and reviews are required.

## **CONDITIONS OF APPROVAL**

The property shown on this plan may be developed and used only as depicted on this approved plan. All elements and features of the plan and all representations made by the applicant concerning the development and use of the property which appear in the record of the Planning Board proceedings are conditions of approval. No change from the conditions of approval is permitted unless an amended plan is first submitted to and approved by the Planning Board.

I certify that all information given in this application is accurate. All proposed uses shall be in conformance with this application and the Town of Yarmouth Shoreland Regulations in the Zoning Ordinance. I agree to future inspections by the Code Enforcement Officer / Planning Director / Planning Board members (as applicable) at reasonable hours and with advance notice.

"I authorize appropriate staff within the Yarmouth Planning Department to enter the property that is the subject of this application, at reasonable hours, including buildings, structures or conveyances on the property, to collect facts pertaining to my application."

Applicant Signature	Date		
Agent Signature <b>Vinitly A. Ferred</b> (if applicable)	Date4/23/2019		
Code Enforcement Officer			
DATE OF APPROVAL / DENIAL OF APPLICATION			

(by either staff or planning board)



135 River Road • Woolwich, ME 04579 207-837-2199 •tim@atlanticenviromaine.com www.atlanticenviromaine.com

January 31, 2019

To whom it may concern:

By this letter, I authorize Atlantic Environmental LLC to act on my behalf as my Agent for the preparation and submission of all federal, state, and local town or city permit applications and relevant documents and correspondence related to the stabilization of the shoreline located at 112 Seaborne Drive in Yarmouth, Maine. This authorization includes attending meetings and site visits, appearing before all boards, commissions, and/or committees, and providing other services as required for completing the aforementioned tasks.

Thank you for the opportunity to work with you on this project. Should you have any additional questions, please do not hesitate to contact me at 207-837-2199 or via email at tim@atlanticenviromaine.com.

)/our / NScon **Print Name** ignature

Sincerely, Atlantic Environmental LLC.

noting A. Younston

Timothy A. Forrester, Owner

Environmental Consultants, Wetland Scientists, Specializing in Federal, State and Local Permitting, Expert Witness

## **EXHIBIT 1.0: ACTIVITY DESCRIPTION**

The Applicant owns an approximate 1.07 acre parcel of land that includes approximately three hundred (300) linear feet of shoreline adjacent to Casco Bay in Yarmouth, Maine (see **Exhibit 3.0**). The lot is developed with a residential structure that is located less than seventy-five (75) feet from the top of the bank. As shown in the photographs in **Exhibit 4.0**, there are areas of active erosion occurring along portions of the shoreline. In order to protect the residential structure that is located at the top of the bank, maintain existing vegetation, and address the safety issues of the ongoing erosion, the Applicant proposes to stabilize portions of the shoreline with riprap and plantings.

Atlantic Environmental, LLC (AE) investigated the site and the surrounding area to determine the best approach for shoreline stabilization that would minimize impacts to the coastal wetland and adjacent upland. Based on the Applicant's needs, the existing conditions of the site, and the outcome of AE's investigations, the following design criteria is proposed.

The Applicant proposes to place riprap that consists of approximately two (2) to four (4) feet in diameter stones along two areas of the shoreline. Area One will begin near the existing pier and will extend to the northeast for approximately seventy (70) linear feet of the Applicant's shoreline. Area Two will begin near the northeasterly property line and will extend to the southwest for approximately thirty (30) linear feet of the Applicant's shoreline. In order to minimize impacts to the coastal wetland, the riprap will be constructed with a 1H: 1V slope and will extend two (2) feet below the Highest Annual Tide (HAT). The bank will be graded to achieve to 1H: 1V slope and a portion of the upland will be re-sculpted to achieve this. Filter fabric will be installed under the riprap. The riprap will extend approximately two (2) to three (3) feet above the HAT. The bottom row of riprap will be pinned to ledge. The overall direct



impacts to the coastal wetland as a result of the placement of the riprap below the HAT will be approximately two hundred (200) square feet. The Applicants propose to establish native plantings along the top of the riprap as further described in **Exhibit 6.0**.







# Notes: ATLANTIC ENVIRONMENTAL LLC. Maine Atlas & Gazetteer Map 6 (Section D1) 43.774047 -70.155411 Date: 9/26/2018 DwG Name: Linscott Site Location





# 112 Seaborne Drive Zoning



Public User Town of Yarmouth

# **EXHIBIT 4.0: PHOTOGRAPHS**

The following photographs are taken from the site of the project and represent the existing conditions of the site located at 112 Seaborne Drive in the Town of Yarmouth, ME.



Photograph One. Aerial View of Project Site. Red arrow indicates location of project. Source: Google Maps. Date: Unknown.



Photograph Two. Facing southerly - view of upland area showing close proximity of residential structure to top of bank. Photographer: Tim Forrester, Atlantic Environmental, LLC Date: September 24, 2018.





Photograph Three. Facing westerly - view of seaward portion of property – showing portion of upper intertidal. Photographer: Tim Forrester, Atlantic Environmental, LLC Date: September 24, 2018.



Photograph Four. Facing northerly – additional view of upland showing location of residential structure at top of bank. Photographer: Tim Forrester, Atlantic Environmental, LLC Date: September 24, 2018.





Photograph Five. View of eroding area proposed to be stabilized. Photographer: Tim Forrester, Atlantic Environmental, LLC Date: September 24, 2018.



Photograph Six. Additional view of eroding area proposed to be stabilized. Photographer: Tim Forrester, Atlantic Environmental, LLC Date: September 24, 2018.





Photograph Seven. Additional view of eroding area proposed to be stabilized. Note that riprap will be pinned existing ledge. Photographer: Tim Forrester, Atlantic Environmental, LLC Date: September 24, 2018.



Photograph Eight. Additional view of eroding area proposed to be stabilized. Photographer: Tim Forrester, Atlantic Environmental, LLC Date: September 24, 2018.









# **EXHIBIT 6.0: CONSTRUCTION PLAN**

Access will take place from the upland and banks will be graded to achieve a 1H : 1V slope and geotextile fabric will be placed behind the stone. Large diameter, irregular stones (approximately 2 - 4 feet) will be pinned to ledge at the base of the slope and placed at a height of approximately two (2) to three (3) feet (as measured from the HAT).

Upon completion of the riprap, the Applicant proposes to place plants at the top of the riprap in areas that are disturbed during construction or that require more dense vegetation. The plants will be spaced approximately three (3) feet on center, depending on the size and type of plant. Native plant species may include but not limited to the following: Creeping Juniper (*Juniperus horizontalis*), Northern Bayberry (*Myrica pensylvanica*), and Beach Plum (*Prunus maritima*). The final number of plants will be determined once the riprap is installed.

The contractor working on-site will have a Maine DEP Erosion Control Certified Individual certificate onsite during all construction activity.



# **EXHIBIT 7.0: EROSION CONTROL PLAN**

At the completion of construction, any areas of soil disturbance will be stabilized with vegetation and mulch in accordance with the Department's permanent soil stabilization BMPs published in the most recent version of the Maine Erosion and Sediment Control BMPs manual.



## APPENDIX B: MDEP COASTAL WETLAND CHARACTERIZATION: INTERTIDAL & SHALLOW SUBTIDAL FIELD SURVEY CHECKLIST

NAME OF APPLICANT: John S. and Sr APPLICATION TYPE: Individual NRPA ACTIVITY LOCATION: Yarmouth CC	elley Linsc )UNTY: Cur	ott PHONE: (20 nberland	07) 799 - 85	514	
ACTIVITY DESCRIPTION: " fill " pie	r <sup></sup> lobs	ter pound x	shoreline s	tabilization "dredge	<sup></sup> other:
DATE OF SURVEY: September 24, 20	18	OBSERVER:	Tim Forres	ter	
TIME OF SURVEY: 9:30 am	TID	E AT SURVEY:	Low-Tide		
SIZE OF DIRECT IMPACT OR FOOTPRI Intertidal area: 200 square feet	NT (square Subtidal a	e feet): rea: 0			
SIZE OF INDIRECT IMPACT, if known Intertidal area: 0 square feet	(square fee Subtidal a	et): rea: 0			
HABITAT TYPES PRESENT(check all th " sand beach " boulder/cobble bea × ledge " rocky shore " mudfla	nat apply): ach <sup>°°</sup> sar at (sedimer	nd flat x mixe nt depth, if knc	ed coarse & wn:)	k fines <sup>—</sup> salt marsh	I
ENERGY: " protected x semi-pr	otected	" partial	ly exposed	" exposed	
DRAINAGE: x drains completely	standing w	ater <sup>"</sup> po	ols "	stream or channel	
SLOPE: " >20% " 10-20%	<sup></sup> 5-10	)% x 0-	5%	" variable	
SHORELINE CHARACTER: " bluff/bank (height from sprin	g high tide	:) <sup></sup> bea	ach × roc	ky × vegetated	
FRESHWATER SOURCES: " stream	" river	" wetla	and	× stormwater	
MARINE ORGANISMS PRESENT:					
	absent	occasional	commo	n abundant	
mussels	х				
clams	х				
marine worms	х				
rockweed		х			
eelgrass	х				
lobsters	x				
other					
SIGNS OF SHORELINE OR INTERTIDA	LEROSION	?	× ye	es x no	
PREVIOUS ALTERATIONS? *Existing Dock			хy	ves* <sup></sup> no	
CURRENT USE OF SITE AND ADJACEN	IT UPLAND	:			
" undeveloped x residential	<sup>"</sup> comme	rcial "	degraded	x recreational	
PLEASE SUBMIT THE FOLLOWING:					

x Photographs x Overhead drawing

(pink)



## **DEED OF TRUSTEE Maine Statutory Short Form**

DLN: 1001840036756

Know all Persons by these Presents, that I, Charles E. Garris, Trustee of the 112 Seaborne Drive Irrevocable Trust, under Agreement dated December 10, 2014, of Vero Beach, Florida, by the power conferred by law, and every other power, for consideration paid, grant to:

#### John S. Linscott, IV and Shelley S. Linscott

whose mailing address is: 112 Seaborne Drive, Yarmouth, Maine 04096, as joint tenants, the land

and buildings in Yarmouth, County of Cumberland, and State of Maine, described as follows:

A certain lot or parcel of land, together with any buildings and improvements thereon, situated in the Town of Yarmouth, County of Cumberland, and State of Maine being more particularly described in Exhibit A attached hereto and made a part hereof.

Witness my hand and seal this 23, day of August, 2018.

Signed, Sealed and Delivered In the presence of

112 Seaborne Drive Irrevocable Trust, under Agreement dated December 10, 2014

State of Florida County of 🏾 🛣

Charles E. Garris, Trustee

August 23, 2018

Then personally appeared before me the above-named Charles E. Garris and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said Trust.

Before me.



Attorney at Law/ Notary Public Printed Name: Diende

#### EXHIBIT A 112 Seaborne Drive, Yarmouth, Maine

The following described real property situated at 112 Seaborne Drive, Yarmouth, Cumberland, County Maine:

## PARCEL I

A certain lot or parcel of land, with the buildings thereon, situated in the Town of Yarmouth, County of Cumberland, and State of Maine, being Lot No. 19 as shown on "Plan of Seaborne of Yarmouth for Drinkwater Shores, Inc., Yarmouth, Maine," dated November 7, 1967 by C. R. Storer, Inc. and recorded in the Cumberland County Registry of Deeds, Plan Book 76, Page 27, and as revised by a plan entitled "Plan of Revision to Plan of Seaborne of Yarmouth for Drinkwater. Shores, Inc., Yarmouth, Maine," recorded in said Registry in Plan Book 76, Page 26.

## PARCEL II

Another certain lot or parcel of land located in said Yarmouth, bounded and described as follows:

Beginning at an iron marker on the southerly side line of Seaborne Drive locating the most northeasterly corner of Lot No. 19 as shown on "Plan of Seaborne of Yarmouth for Drinkwater Shores, Inc., Yarmouth, Maine," dated November 2, 1967 by C. R. Storer, Inc. and recorded in the Cumberland County Registry of Deeds, Plan Book 76, Page 27, and as revised by a plan entitled "Plan of Revision to Plan of Seaborne of Yarmouth for Drinkwater Shores, Inc., Yarmouth, Maine," recorded in said Registry in Plan Book 76, Page 26; thence S 23° 11<sup>1</sup>/<sub>2</sub>' E by said Lot No. 19, 42.63 feet to an iron rod; thence S 32° 02<sup>1</sup>/<sub>2</sub>' E by said Lot No. 19, 100.0 feet to an iron rod; thence S 44° 45<sup>1</sup>/<sub>2</sub>' E by said Lot No. 19, 80.40 feet to an iron rod; thence N 72° 03<sup>1</sup>/<sub>2</sub>' E 84.60 feet to an iron rod on Lot No. 20 as shown on the aforesaid plan; thence N 42° 51' W, more or less, 241.88 feet, more or less, to an iron rod on the southerly side line of Seaborne Drive, the last mentioned iron rod being N 62° 13<sup>1</sup>/<sub>2</sub>' E, more or less, from and 47.95 feet from the point of beginning; thence southwesterly by the southerly side line of Seaborne Drive 48.00 feet, more or less, to the point of beginning.

## PARCEL III

Another certain lot or parcel of land located in said Yarmouth, bounded and described as follows:

Beginning at the iron rod on the northeasterly side line of said Lot No. 19 locating the most southerly corner of the aforesaid Parcel II; thence N  $72^{\circ} 03\frac{1}{2}$  E by said Parcel II, 84.60' feet to an iron rod at the most easterly corner of said Parcel II; thence S  $42^{\circ} 51$ ' E, more or less, on an extension of the northeasterly side line of said Parcel II to Casco Bay; thence westerly by Casco Bay to Lot No. 19; thence N  $44^{\circ} 45\frac{1}{2}$  W by Lot No. 19 to the point of beginning.

Parcel II and Parcel III are contiguous portions of Lot No. 20 as shown on the aforesaid plans.

Also conveying the right to use in common with Drinkwater Shores, Inc., its successors and

assigns, Lots No. 17, A, B and D as shown on the aforesaid "Plan of Seaborne of Yarmouth for Drinkwater Shores, Inc., Yarmouth, Maine," recorded in the Cumberland County Registry of Deeds in Plan Book 76, Page 27, in the manner and subject to the restrictions and covenants set forth in a deed from Drinkwater Shores, Inc. to Seaborne of Yarmouth Association dated July 5, 1968, recorded in said Registry of Deeds in Book 3047, Page 701.

The property hereby conveyed is conveyed subject to the restrictions and covenants recited in a deed from Drinkwater Shores, Inc. to Leslie R. Fenderson, Sr., et al. dated July 5, 1968, recorded in said Registry of Deeds in Book 3047, Page 705.

The Grantees herein accept membership in Seaborne of Yarmouth Association, and in consideration thereof, bind themselves to the covenants and conditions as set forth in the aforesaid deed from Drinkwater Shores, Inc. to Leslie R. Fenderson, Sr., et al.

Being the same premises conveyed to the Grantor herein by Quitclaim Deed with Covenant from Roberta Evelyn Larsson to Charles E. Garris, Trustee of the 112 Seaborne Drive Irrevocable Trust, under Agreement dated December 10, 2014, said deed dated December 31, 2014 and recorded in the Cumberland County Registry of Deeds in Book 32037, Page 235.

Received Recorded Resister of Deeds Aus 29,2018 09:52:20A Cumberland County Nancy A. Lane



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

#### DEPARTMENT ORDER

## IN THE MATTER OF

JOHN AND SHELLEY LINSCOTT Yarmouth, Cumberland County SHORELINE STABILIZATION L-23234-4D-B-N (approval) ) NATURAL RESOURCES PROTECTION ACT ) COASTAL WETLAND ALTERATION ) WATER QUALITY CERTIFICATION ) FINDINGS OF FACT AND ORDER

Pursuant to the provisions of 38 M.R.S. §§ 480-A–480-JJ, Section 401 of the Federal Water Pollution Control Act (33 U.S.C. § 1341), and Chapters 310 and 315 of Department rules, the Department of Environmental Protection has considered the application of JOHN AND SHELLEY LINSCOTT with the supportive data, and other related materials on file and FINDS THE FOLLOWING FACTS:

## 1. <u>PROJECT DESCRIPTION</u>:

A. History of Project: In Department Order #L-23234-4E-A-N, dated January 17, 2007, the Department approved a timber-framed float haulout leading from the upland lawn area into the intertidal area.

B. Summary: The applicants propose to install 100 linear feet of riprap to stabilize an eroding bank. The project will consist of two separate areas of riprap, one will be 70 linear feet and the other one will be 30 linear feet. The riprap will be installed at approximately a 1H:1V slope to a height of up to 5 feet. Approximately 200 square feet of direct impact to the coastal wetland is proposed. The site will be accessed, and work will be completed from the top of the bank. No equipment will be operated in the water. The proposed stabilization is shown on a plan entitled "Linscott, Yarmouth," prepared by Atlantic Environmental, LLC and dated February 1, 2019. The project site is located on Seaborne Drive in the Town of Yarmouth.

C. Current Use of the Site: The project site contains a residential property immediately adjacent to the eroding bank. The parcel is identified as Lot 15 on Map 23 of the Town of Yarmouth's tax maps.

## 2. <u>EXISTING SCENIC, AESTHETIC, RECREATIONAL OR NAVIGATIONAL USES:</u>

The Natural Resources Protection Act (NRPA), in 38 M.R.S. §480-D(1), requires the applicants to demonstrate that the proposed project will not unreasonably interfere with existing scenic, aesthetic, recreational and navigational uses.

In accordance with Chapter 315, *Assessing and Mitigating Impacts to Scenic and Aesthetic Uses* (06-096 C.M.R. ch. 315, effective June 29, 2003), 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 and surroundings.

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. The applicants propose to add supplemental vegetation within the riprap to provide visual screening from the resource. Additionally, stone used for the riprap will be similar in color to the existing beach material. 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 Department staff utilized the Department's Visual Impact Assessment Matrix in its evaluation of the proposed project and the Matrix showed an acceptable potential visual impact rating for the proposed project. Based on the information submitted in the application and the visual impact rating, 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 determined that based on the nature of the proposed project and its location, there are no existing recreational or navigational uses of the resource that would be unreasonably impacted.

The Department finds that the proposed activity will not unreasonably interfere with existing scenic, aesthetic, recreational or navigational uses provided that the applicants monitor and maintain the plantings as described above.

## 3. <u>SOIL EROSION</u>:

The NRPA, in 38 M.R.S. §480-D(2), requires the applicants to demonstrate that the proposed project 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.

The applicants submitted an erosion control plan with the application. The applicants will utilize temporary erosion control measures, including silt fence, during construction as needed. All disturbed soil will be seeded and mulched immediately after completion of the project. There will be no equipment operated in the water.

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. <u>HABITAT CONSIDERATIONS</u>:

The NRPA, in 38 M.R.S. §480-D(3), requires the applicants to demonstrate that the proposed project will not unreasonably harm 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.

Habitat in the upper intertidal is ledge and cobble beach with moderate rockweed coverage. Shellfish harvesting is not allowed in the project footprint. No shellfish species have been documented in the area. Eelgrass resources have been mapped adjacent to the project area.

According to the Department's Geographic Information System (GIS) database there is Tidal Waterfowl and Wading Bird Habitat however, it is located further seaward than the proposed riprap project site. No impacts to the habitat are proposed.

The Department of Marine Resources (DMR) stated that the project as proposed would 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.

## 5. WATER QUALITY CONSIDERATIONS:

As discussed in Finding 3, the applicants propose to use erosion and sediment control during construction to minimize impacts to water quality from siltation.

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 directly alter 200 square feet of coastal wetland to stabilize an eroding shoreline.

The *Wetlands and Waterbodies Protection Rules*, 06-096 C.M.R. ch. 310 (last amended January 26, 2009), interpret and elaborate on the Natural Resources Protection Act (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. The applicants must submit an analysis of whether there is a practicable alternative to the project that would be less damaging to the environment and this analysis is considered by the Department in its assessment of the reasonableness of any impacts. The applicants submitted an alternatives analysis for the proposed project completed by Atlantic Environmental, LLC and dated February 4, 2019. The purpose of the project is to stabilize an eroding bank. The applicants determined that planting additional vegetation is not sufficient to control the erosion. If the applicants do nothing, the erosion will continue and potentially threaten the residence. In order to meet the stated project purpose, some impacts to the coastal wetland are unavoidable.

B. Minimal Alteration. In support of an application and to address the analysis of the reasonableness of any impacts of a proposed project, the applicants must demonstrate that the activity will be kept to the minimum amount necessary for meeting the overall purpose of the project. The applicants are only proposing to stabilize areas with active erosion. Due to the slope and location of the eroded shoreline the applicants are unable to install the riprap exclusively above the highest annual tide line. Supplemental vegetation will be incorporated into the riprap to minimize any visual impact.

C. Compensation. In accordance with Chapter 310 §5(C)(6)(b), compensation may be required to achieve the goal of no net loss of coastal wetland functions and values. This 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 the Department. For these reasons, the Department determined that compensation is not required.

The Department finds that the applicants have avoided and minimized wetland impacts to the greatest extent practicable, and that the proposed project represents the least environmentally damaging alternative that meets the overall purpose of the project.

## 7. <u>OTHER CONSIDERATIONS</u>:

The Department finds, based on the design, proposed construction methods, and location, the proposed project will not inhibit the natural transfer of soil from the terrestrial to the marine environment, will not interfere with the natural flow of any surface or subsurface waters, and will not cause or increase flooding. The proposed project is not located in a coastal sand dune system, is not a crossing of an outstanding river segment, and does not involve dredge spoils disposal or the transport of dredge spoils by water.

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. §§ 480-A–480-JJ 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 applicants monitor and maintain 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 38 M.R.S. § 480-P.

THEREFORE, the Department APPROVES the above noted application of JOHN AND SHELLEY LINSCOTT to stabilize an eroding 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 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.

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4. The applicants shall monitor the plantings and the 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 22ND DAY OF APPLL, 2019.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: For: Gerald D. Reid, Commissioner

Filed APR 2 2 2019 State of Maine Board of Environmental Protection

PLEASE NOTE THE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES.

SS/L23234BN/ATS#84083



# Natural Resources Protection Act (NRPA) Standard Conditions

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

- A. <u>Approval of Variations From Plans.</u> 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 applicants. Any variation from these plans, proposals, and supporting documents is subject to review and approval prior to implementation.
- B. <u>Compliance With All Applicable Laws.</u> The applicants 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. <u>Erosion Control.</u> The applicants 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. <u>Compliance With Conditions.</u> Should the project be found, at any time, not to be in compliance with any of the Conditions of this Approval, or should the applicants 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. <u>Time frame for approvals.</u> If construction or operation of the activity is not begun within four years, this permit shall lapse and the applicants shall reapply to the Board for a new permit. The applicants 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 applicants must reapply for, and receive, approval prior to continuing construction.
- F. <u>No Construction Equipment Below High Water</u>. 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. <u>Permit Included In Contract Bids.</u> A copy of this permit must be included in or attached to all contract bid specifications for the approved activity.
- H. <u>Permit Shown To Contractor</u>. Work done by a contractor pursuant to this permit shall not begin before the contractor has been shown by the applicants a copy of this permit.

Revised September 2016



#### 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 <u>you are both responsible</u> 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.

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**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.

DEPLW0386 A2012



#### DEPARTMENT OF THE ARMY NEW ENGLAND DISTRICT, CORPS OF ENGINEERS 696 VIRGINIA ROAD CONCORD, MASSACHUSETTS 01742-2751

#### MAINE GENERAL PERMIT (GP) AUTHORIZATION LETTER AND SCREENING SUMMARY

JOHN AND SHELLEY LINSCOTT
112 SEABORNE DRIVE
YARMOUTH, MAINE 04096

CORPS PERMIT #	NAE-2019-00430
CORPS GP ID#	non-screen
STATE ID#	NRPA

#### **DESCRIPTION OF WORK:**

Place approximately 200 s.f. of stone riprap below the high tide line of Casco Bay off 112 Seaborne Drive at

Yarmouth, Maine in order to stabilize approximately 100 linear feet of eroding shoreline. This work is shown on the attached plans entitled "Site Location Map" and "Plan View" in two sheets dated "1/31/20109" and "Cross Section" in one sheet dated "2/1/2019".

LAT/LONG COORDINATES: 43.774072° N -70.155138° W USGS QUAD: YARMOUTH, ME

#### I. CORPS DETERMINATION:

ACTIONO DENDINO E VIA JOONED E

Based on our review of the information you provided, we have determined that your project will have only minimal individual and cumulative impacts on waters and wetlands of the United States. Your work is therefore authorized by the U.S. Army Corps of Engineers under the Federal Permit, the Maine General Permit which can be found at: <a href="https://www.nae.usace.army.mil/Missions/Regulatory/State-General-Permits/Maine-General-Permit/">https://www.nae.usace.army.mil/Missions/Regulatory/State-General-Permits/Maine-General-Permits/Maine-General-Permit/</a> Accordingly, we do not plan to take any further action on this project.

You must perform the activity authorized herein in compliance with all the terms and conditions of the GP [including any attached Additional Conditions and any conditions placed on the State 401 Water Quality Certification <u>including any required mitigation</u>]. Please review the enclosed GP carefully, including the GP conditions beginning on page 5, to familiarize yourself with its contents. You are responsible for complying with all of the GP requirements; therefore you should be certain that whoever does the work fully understands all of the conditions. You may wish to discuss the conditions of this authorization with your contractor to ensure the contractor can accomplish the work in a manner that conforms to all requirements.

If you change the plans or construction methods for work within our jurisdiction, please contact us immediately to discuss modification of this authorization. This office must approve any changes before you undertake them.

DENUED F

Condition 37 of the GP (page 16) provides one year for completion of work that has commenced or is under contract to commence prior to the expiration of the GP on October 13, 2020. You will need to apply for reauthorization for any work within Corps jurisdiction that is not completed by October 13, 2021.

This authorization presumes the work shown on your plans noted above is in waters of the U.S. Should you desire to appeal our jurisdiction, please submit a request for an approved jurisdictional determination in writing to the undersigned.

No work may be started unless and until all other required local, State and Federal licenses and permits have been obtained. This includes but is not limited to a Flood Hazard Development Permit issued by the town if necessary.

II. STATE ACTIONS: PENDING [ X ], ISSUED [ ], DENIED [ ] DATE		
APPLICATION TYPE:         PBR:, TIER 1:, TIER 2:, TIER 3: DMR LEASE: NA:		
III. FEDERAL ACTIONS:		
JOINT PROCESSING MEETING: <u>non-screen</u> LEVEL OF REVIEW: CATEGORY 1: X CATEGORY 2:		
AUTHORITY (Based on a review of plans and/or State/Federal applications): SEC 10, 404X 10/404, 103		
EXCLUSIONS: The exclusionary criteria identified in the general permit do not apply to this project.		
FEDERAL RESOURCE AGENCY OBJECTIONS: EPA_n/a_, USF&WS_n/a_, NMFS_n/a_		
If you have any questions on this matter, please contact my staff at 978-318-8676 at our Augusta, Maine Project Office. In order for us to better serve you, we would appreciate your completing our Customer Service Survey located at <a href="http://corpsmapu.usace.army.mil/cm_apex/f?p=136:4:0">http://corpsmapu.usace.army.mil/cm_apex/f?p=136:4:0</a>		

Cr-L

COLIN M. GREENAN PROJECT MANAGER MAINE PROJECT OFFICE

FRANK J. DEL GIUDICE

CHIEF, PERMITS & ENFORCEMENT BRANCH REGULATORY DIVISION