

Date December 12, 2017  
To Town of Cumberland Planning Board  
From Carla Nixon, Planning Director  
Subject **Village Green Major Subdivision Amendment**

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**I. REQUEST:**

The applicants are Helen Marie G. Copley and Earnest I. Copley, III, 32 Bradbury Way, Cumberland, Maine. This is an application for an amendment to an approved 58 lot subdivision to adjust the lot lines of two parcels upon which homes have been constructed. The amended plan shows the revised stream setbacks being reduced from 100' to 75' as permitted by Maine DEP. The parcels are shown on Tax Assessor Map U-10, Lots 7 B 47 and 7 B 53. The applicant is represented by Stephen Bushey, P.E., of Stantec Consulting Services.

**THE FOLLOWING INFORMATION IS FROM THE ORIGINAL SUBDIVISION APPROVAL. NONE OF THE FINDINGS OF FACT HAVE BEEN MODIFIED AS THIS CHANGE IS IN COMPLIANCE WITH ALL LOCAL AND STATE REQUIREMENTS.**

**III. DESCRIPTION:**

Parcel size:	40.69 (includes 1.48 acres in Wyman Way right-of-way to Main Street)
Net Residential Density:	Contract Zoned for maximum of 58 lots. NRA calculation shows that 181 residential units (each @ 5,000 sq. ft.) would be allowed.
Number of Lots/Dwelling Units:	58
Zoning:	Village Mixed Use (VMU) with contract zoning overlay.
Development Type:	Residential (a mix of single and duplex units with each on their own lot)
Min. Lot Size:	5,000 sq. ft. per dwelling unit (attached or detached)
Lot frontage:	75' for residential; 150' for commercial.
Water	Portland Water District. Capacity to serve letter dated 3/30/11 on file.
Sewer:	Portland Water District. Capacity to serve letter dated 3/31/11 on file. 59 sewer user units have been reserved from the Town and will be purchased prior to final plan submission.
Open Space:	Lot 60: .66 acres; Lot 61: 9.93 acres; Lot 62: 2.76 acres. Total: 13.35 acres. Land and trails to be owned and maintained by Homeowners Association with public access easement.
Buffer:	A minimum 50' buffer shall be maintained along the exterior of the VGRMP parcel (excluding Wyman Way right of way) and abutting residential development. The 50' buffer shall not be required to adjacent land owned by the Town.

Utilities:	Public water and sewer. The Portland Water District will be responsible for all public sanitary sewer and water distribution utility infrastructure systems. All utilities will be underground.
Street Lighting:	Only light poles are proposed; they will be located at the intersection of the roads within the subdivision and will be energy efficient LED cut-off fixtures. No lights are proposed outside the subdivision boundaries on Wyman Way or Drowne Road.
Roads:	There will be 1 public road section, 3 private road sections and 1 private drive section. The public <u>road</u> will be 22' wide with curbing and a 6' grass esplanade and a 6' paved sidewalk on one side of the street. (No esplanade along existing Wyman Way section of road). The private <u>roads</u> will be 22' wide with curbing and a 4' grass esplanade and a 5' paved sidewalk on one side of the street.  The private <u>drive</u> (that serves Lots 7-14) will be 18' wide with no esplanade or sidewalk.  The Town of Cumberland will be responsible for all <u>public</u> roadways and associated storm drain systems upon acceptance of road. The future Homeowner's Association will be created for ownership and maintenance of all private roads, private utility infrastructure improvements, open space and trails.
Sidewalks:	6' wide sidewalk with 6' wide grass esplanade on one side of street
Trails:	Yes.
Wetland Impact:	Approximately 14,900 sq. ft. impact.
Vernal Pools:	None identified.
Site Prep:	No shallow bedrock was encountered in test pits or borings. Blasting is not anticipated.
Fire Protection:	Public water. Hydrants located by Fire Chief at 600' to 800' intervals along the roadways. As per the Fire Protection Ordinance, sprinklers are not required.

#### IV. WAIVER REQUESTS

Note: Section 15.1 of the Subdivision Ordinance allows for waivers when "an unnecessary hardship may result from strict compliance with these standards, or where there are special circumstances of a particular plan which the Board finds makes a particular standard inapplicable".

#### WAIVER REQUESTS:

- Appendix D:
- A. 1-4 Preliminary plan location maps.
  - B. 1-19 Preliminary Plan maps and information.
  - C. Final Plan Submissions 1a-i.

D. Section 2 a-b

**VI. PLANNING DIRECTOR'S COMMENTS/DISCUSSION ITEMS:** None

**VII. DEPARTMENT HEAD REVIEWS:** None

**VIII. Town Engineer Review:** A review by the Town Engineer was not required.

**VIII. MAJOR SUBDIVISION REVIEW:**

**PROPOSED FINDINGS OF FACT - Subdivision Ordinance, Section 1.1**

The purpose of these standards shall be to assure the comfort, convenience, safety, health and welfare of the people, to protect the environment and to promote the development of an economically sound and stable community. To this end, in approving subdivisions within the Town of Cumberland, Maine, the Board shall consider the following criteria and before granting approval shall determine that the proposed subdivision:

1. Pollution. The proposed subdivision will not result in undue water or air pollution. In making this determination, it shall at least consider:
  - A. The elevation of the land above sea level and its relation to the flood plains;
  - B. The nature of soils and subsoil and their ability to adequately support waste disposal;
  - C. The slope of the land and its effect on effluents;
  - D. The availability of streams for disposal of effluents; and
  - E. The applicable state and local health and water resource rules and regulations;

**The project will be on public sewer therefore the soils do not need to support waste disposal. The applicant has provided a soils report prepared by Albert Frick Associates, Inc. describing the soils as they relate to the design for the proposed drainage system. The MDEP has not yet issued a Site Location of Development permit which includes a review of the erosion control plans. Based on the information provided the standards of this section have been met.**

2. Sufficient Water. The proposed subdivision has sufficient water available for the reasonable foreseeable needs of the subdivision;

**The proposed subdivision will utilize public water. There is a letter on file from the Portland Water District dated 3/30/11 that states that there is an adequate supply of clean and healthful water to serve the needs of the proposed subdivision.**

**Based on the information provided the standards of this section have been met.**

3. Municipal Water Supply. The proposed subdivision will not cause an unreasonable burden on an existing water supply, if one is to be used;

**The proposed subdivision will utilize public water. There is a letter on file from the Portland Water District dated 3/30/11 that states that there is an adequate supply of water to serve the needs of the proposed 12 lot**

**mixed use subdivision without creating a burden on the existing water supply.**

**Based on the information provided the standards of this section have been met.**

4. Erosion. The proposed subdivision will not cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results;

**The erosion control plan has been reviewed by the Town Engineer who has made a recommendation that will be incorporated into the final plan. MDEP approval is still outstanding.**

**Based on the information provided, the standards of this section have been met.**

5. Traffic. The proposed subdivision will not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed;

**There is a traffic study on file dated April, 2011 which has been reviewed and approved by the MDOT and Tom Gorrill, the Town's peer review traffic engineer.**

**Based on the information provided, the standards of this section have been met.**

6. Sewage disposal. The proposed subdivision will provide for adequate sewage waste disposal and will not cause an unreasonable burden on municipal services, if they are utilized;

**The project will utilize public sewer. Al Palmer, P.E., the Town's sewer peer review engineer, has reviewed and approved the proposed sewer plans.**

**There is a letter on file dated 7/27/11 from the Town Manager, Bill Shane, stating that the town has agreed to accept the flow of at least 16,000 gallons per day to its municipal sewer system from this project.**

**Sewer user permits have not yet been purchased by the owner. This will be done prior to final submission.**

**Based on the information provided, the standards of this section have been met.**

7. Municipal solid waste disposal. The proposed subdivision will not cause an unreasonable burden on the municipality's ability to dispose of solid waste, if municipal services are to be utilized;

**The Town provides curbside pickup of household trash. The Town is currently under contract with Pine Tree Waste for the collection and hauling of residential solid waste with disposal at Eco-Maine. The amount of household trash estimated to be generated by the new homes is 183 cubic yards perm month.**

**Based on the information provided, the standards of this section have been met.**

8. Aesthetic, cultural and natural values. The proposed subdivision will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the Department of inland Fisheries and Wildlife or the municipality, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline;

**Letters on file dated 10/25/05 and 4/14/11 from Department of Conservation states that there are no rare or botanical features documented specifically within the project area.**

**Letters on file dated 10/12/05 and 6/8/11 from the Department of Inland Fisheries and Wildlife states that there are no known significant wildlife habitat or threatened or endangered species in the vicinity of the project.**

**A letter on file dated 4/28/11 from the Maine Historic Preservation Commission states that this project will have no effect on historic resources.**

**Based on the information provided, the standards of this section have been met.**

9. Conformity with local ordinances and plans. The proposed subdivision conforms to a duly adopted subdivision regulation or ordinance, comprehensive plan, development plan or land use plan, if any. In making this determination, the municipal reviewing authority may interpret these ordinances and plans;

**The plans have been reviewed by the Town's peer review engineers and town staff. All outstanding comments will be addressed for final plan review.**

**Based on the information provided, the standards of this section have been met.**

10. Financial and technical capacity. The subdivider has adequate financial and technical capacity to meet the standards of this section;

**Technical capacity is evidenced by expert engineering, surveyors, soils evaluators, traffic engineers and landscape architects.**

**A letter dated 8/1/11 from Norway Savings Bank states that "the developers have the financial capacity, management skills, and marketing finesse to successfully develop this site and complete the project on time and on budget."**

**Based on the information provided, the standards of this section have been met.**

11. Surface waters; outstanding river segments. Whenever situated entirely or partially within the watershed of any pond or lake or within 250 feet of any wetland, great pond or river as defined in Title 38 chapter 3, subchapter I, article 2-B, the proposed

subdivision will not adversely affect the quality of that body of water or unreasonably affect the shoreline of the body of water;

**The man-made pond on the site is not by State definition a great pond or lake regulated by the State.**

**Based on the information provided, the standards of this section have been met.**

12. Ground water. The proposed subdivision will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water;

**The project will be served by public sewer. There are no proposed activities that would adversely affect the quality or quantity of ground water.**

**Based on the information provided, the standards of this section have been met.**

13. Flood areas. Based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, and information presented by the applicant whether the subdivision is in a flood-prone area. If the subdivision, or any part of it, is in such an area, the subdivider shall determine the 100-year flood elevation and flood hazard boundaries within the subdivision. The proposed subdivision plan must include a condition of plan approval requiring that principal structures in the subdivision will be constructed with their lowest floor, including the basement, at least one foot above the 100-year flood elevation;

**The parcel is located in Zone C- Areas of Minimal Flooding.**

**Based on the information provided, the standards of this section have been met.**

14. Storm water. The proposed subdivision will provide for adequate storm water management;

**A stormwater management plan dated May 11, 2011 prepared by Delucca-Hoffman Associates has been submitted and reviewed and approved by the Town Engineer.**

**Based on the information provided, the standards of this section have been met.**

15. Freshwater wetlands. All potential freshwater wetlands, as defined in 30-A M.R.S.A. §4401 (2-A), within the proposed subdivision have been identified on any maps submitted as part of the application, regardless of the size of these wetlands. Any mapping of freshwater wetlands may be done with the help of the local soil and water conservation district.

**Wetlands on the parcel were identified by Boyle associates. There are no natural vernal pools on the site. The project requires a NRPA permit from MDEP and the US Army**

**Corp of Engineers for the proposed wetland and stream impacts associated with construction. The applicant has designed the project so as to minimize the amount of impact to wetland areas.**

**Based on the information provided, the standards of this section have been met.**

16. River, stream or brook: Any river, stream, or brook within or abutting the proposed subdivision has been identified on any map submitted as a part of the application. For purposes of this section, "river, stream or brook" has the same meaning as in Title 38, Section 480-B, Subsection 9. [Amended; Effective. 11/27/89]

**One perennial and three intermittent MDEP jurisdictional streams are located within the westerly portion of the site. The 5,976 square feet of impacts associated with the stream crossings are permitted through the NRPA Permit-by-Rule process which has been undertaken.**

**Based on the information provided, the standards of this section have been met.**

***SECTION 300 – AQUIFER PROTECTION (if applicable)***

**The parcel is partially located in the Aquifer Protection District. A residential development on public sewer will not adversely affect the aquifer.**

**IX. STANDARD CONDITIONS OF APPROVAL:**

This approval 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 the plans, proposals and supporting documents, except minor changes as so determined by the Town Planner which do not affect approval standards, is subject to review and approval of the Planning Board prior to implementation.

**X. RECOMMENDED CONDITIONS OF APPROVAL:**

- ~~1. All outstanding outside agency approvals shall be submitted to the Town Planner prior to release of the plat for recording.~~
- ~~2. Legal documents to be reviewed and approved by Town Attorney prior to release of the plat for recording.~~
- ~~3. Statement of values for required improvements for all lots to be submitted prior to releasing the plat for recording.~~
- ~~4. A pre construction conference is required prior to the start of work.~~
- ~~5. A performance guarantee in a form acceptable to the Town Manager shall be provided prior to the pre construction conference.~~
- ~~6. That a note be added to the construction plans that states that part of any future building permit submittal for Lots 15,16, 18 through 22, 26 through 32, 44 and 45, that individual lot grading plans at a scale not to exceed 1"=20' be provided, along with site specific erosion control measures.~~
- ~~7. That the placement of the borrow material be required to be completed prior to paving of any roadway within this project to minimize damage to the pavement.~~
- ~~8. That a note be added to the plans that show the Borrow Specifications.~~
- ~~9. Prior to pre construction meeting, designs of the retaining wall shall be submitted, stamped by a Professional Engineer along with a Global Stability Analysis.~~

**The above conditions of approval do not pertain to this amendment.**



**Stantec Consulting Services Inc.**

482 Payne Road Scarborough Court, Scarborough ME 04074-8929

November 28, 2017

**Ms. Carla Nixon, Planner**

Town of Cumberland  
290 Tuttle Road  
Cumberland, ME 04021

**Subject: Buffer line amendments to Lot 53 and Lot 47  
Village Green, Cumberland, Maine  
Minor Revision Application (After-the-Fact)**

Dear Carla:

As a follow-up to our recent discussion, we are submitting the accompanying Amended Major Subdivision Application associated with the completed house lot construction on Lot 53 and Lot 47 of the development. As you are aware, each of the house lots involved minor encroachments into the previously approved buffers, during their construction.

The lot 53 owner and co-applicant is currently Helen Marie G. Copley and Ernest L. Copley, III, 32 Bradbury Way, Cumberland Maine 04021 (CCRD Book 34078, Page 305) and the Lot 47 owner and co-applicant is Kaylene R. Graham, Trustee of the Kaylene R. Graham Revocable Trust of 2004, property address 4 Tacoma Lane, Cumberland, ME 04021 (CCRD Book 34063, Page 61).

They, along with their respective builders, Harvey Klugman Construction and D.A. Brackett & Company, Inc., are seeking a stand-alone review and approval from the Cumberland Planning Department and/or Planning Board at their December 19, 2017 meeting, for the purpose of allowing the Town to issue Final Certificates of Occupancy for each home. Each home is currently occupied under the basis of a temporary Certificate of Occupancy, issued by the Town CEO.

The Lot 53 house construction activity resulted in an encroachment into the stream setback buffer originally established for the lot. As a result, the owners sought and were granted approval to adjust the buffer, from the Maine Department of Environmental Protection. The DEP approval was based on the owner's proposal to mitigate the buffer encroachment by installing additional new landscaping materials within the encroachment area. The Department issued the accompanying order #L-25376-L3-G-M. The attached figure depicts





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the planting scheme that was installed earlier this fall. The following is a breakdown of the plant material installed along the rear yard area:

Plant description	Quantity
A – Red Twig Dogwood	14
B – Swamp Azalea #2	10
C – Viburnum Dentatum #3	8
D – High Bush Blueberry	9
E – Sweet Fern	29

Similarly, the Lot 47 construction also involved a buffer encroachment for which the builder, D.A. Brackett & Company, Inc. applied for and was granted Maine DEP approval under the attached order #L-25376-L3-F-M. The accompanying figure depicts the house lot development and adjustments to the buffer limits.

On behalf of the owners and their builders, this submission is made to allow a final sign off and close out of the Lot 47 and Lot 53 construction phase and to address any remaining Certificate of Occupancy issues and to amend the Subdivision plan based on the buffer line adjustments. The accompanying Third Amended Village Green Subdivision plan has been updated to include the adjustments to the buffers for Lots 47 and 53 and it also makes reference to the DEP orders allowing these adjustments. We are now seeking local Planning Board approval for this amended subdivision plan.

Please find the accompanying completed Appendix A form. In accordance with Appendix D we offer the following evidence:

#### **Appendix D –**

- A. 1-4 Preliminary Plan location maps** – We request a waiver of any further materials submission on the basis that the original Village Green submissions contained this information and no substantive changes are proposed as part of this current submission.
- B. 1-19 Preliminary Plan maps and information** – We request a waiver of any further materials submission on the basis that the original Village Green Subdivision submissions contained this information and no substantive changes are proposed as part of this current submission.
- C. Final Plan Submissions 1a-i.** The third amended Subdivision plan contains the previously approved information as well as the buffer line adjustments for Lots 47 and 53. No further substantive changes have been made to the



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plan, thus a waiver is requested for any further additional information submission.

**Section 2 a-b** A waiver is requested for any further submission of materials as the original Subdivision approval review included this information and no substantive changes have been made.

We look forward to your acceptance and processing of this application. If you have any questions with the submittal material or require any additional information, please contact this office.

Regards,

**STANTEC CONSULTING SERVICES INC.**

Stephen R. Bushey, P.E.  
Associate  
Phone: (207) 887-3478  
Fax: (207) 883-3376  
stephen.bushey@stantec.com

Attachments: Third Amended Subdivision plan  
DEP Permit orders and Supporting figures  
Appendix A Application form

c: Earnest Copley, III  
Harvey Klugman  
Dwight Brackett  
Kaylene Graham  
Nathan Bateman

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revision\_2017\_11\_27.docx

CUMBERLAND CODE

Appendix A  
Planning Board Application

Map: U10  
Lot: 47 & 53

1. APPLICANT:

Name: See Cover letter Telephone: agent 207-887-3478  
Address: \_\_\_\_\_ Cell: \_\_\_\_\_  
Fax: \_\_\_\_\_  
E-mail: Stephen.Bushay@stontec.com  
Interest in property: OWNERS  
Interest in abutting properties, if any: N/A

2. OWNER:

Name: SAME Telephone: \_\_\_\_\_  
Address: \_\_\_\_\_ Cell: \_\_\_\_\_  
Fax: \_\_\_\_\_  
E-mail: \_\_\_\_\_

3. APPLICANT'S ARCHITECT, LANDSCAPE ARCHITECT, ENGINEER, PLANNER OR SURVEYOR:

Name: Stephen Bushay Telephone: 207-887-3478  
Address: 482 Payne Road Cell: \_\_\_\_\_  
Scarborough ME 04074 Fax: 207-883-3376  
E-mail: Stephen.Bushay@stontec.com  
(If more than one, please attach name and contact information for each.)

4. PROJECT:

Name of project: Village Green - 10/3 53 & 47  
Address of site: BRADbury WAY  
Project data: Book: \_\_\_\_\_ Map: U10  
Page: \_\_\_\_\_ Lot: 47 / 53  
Zoning district: CONTRACT Number of dwellings: 1 / 1  
Overlay district: \_\_\_\_\_ Number of buildings: 1 / 1  
Size of site: 40.69 AC Number of lots: 1 / 1  
Minor subdivision \_\_\_\_\_ Minor site plan \_\_\_\_\_  
Major subdivision ✓ Major site plan \_\_\_\_\_  
Other: \_\_\_\_\_

5. OTHER INFORMATION:

- a) Is Board of Adjustment and Appeals approval required? NO  
b) Are any ordinance waivers requested? Yes X No  
(If 'Yes' attach a list of waivers and reasons for their request.)  
c) Application fee per Town ordinance: T80  
d) This application form and all accompanying materials must be submitted to the Town Planner at least 21 days prior to the meeting at which it is to be considered by the Planning Board.

The undersigned, being the applicant, owner or legally authorized representative, states that all information contained in this application is true and correct to the best of his/her knowledge and hereby does submit the information for review by the Town and in accordance with applicable ordinances, statutes and regulations of the Town, state and federal governments.

Stephen Bushay agent  
Signature of applicant/owner/representative

11/28/17  
Date



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



PAUL R. LEPAGE  
GOVERNOR

PAUL MERCER  
COMMISSIONER

May 2017

D.A. Brackett & Company, Inc.  
Attn: Dwight Brackett  
84 Country Lane  
Portland, ME 04103

RE: Site Location of Development Act Minor Revision Application, Cumberland  
DEP #L-25376-L3-F-M

Dear Mr. Brackett:

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) 523-9807 or at [david.cherry@maine.gov](mailto:david.cherry@maine.gov).

Sincerely,

David Cherry, Project Manager  
Bureau of Land Resources

pc: File



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

DEPARTMENT ORDER

IN THE MATTER OF

D.A. BRACKETT & COMPANY, INC. ) SITE LOCATION OF DEVELOPMENT ACT  
Cumberland, Cumberland County )  
LOT 47 - RESOURCE BUFFER ) MINOR REVISION  
L-25376-L3-F-M (after-the-fact approval) ) FINDINGS OF FACT AND ORDER

Pursuant to the provisions of 38 M.R.S. §§ 481–489-E, the Department of Environmental Protection has considered the application of D.A. BRACKETT & COMPANY, INC. with the supporting data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

1. PROJECT DESCRIPTION:

A. History: In Department Order #L-25376-L3-A-N/ L-25376-TE-B-N/L-25376-L6-C-N, dated November 10, 2011, the Department approved the development of a 58-unit residential housing project on a 40.7-acre parcel of land with 18,576 square feet of wetland alteration and a stream alteration. A 100-foot buffer was proposed along all streams, except on Lots 46, 50, 53, and 55 where the buffer was reduced to 90 feet. The project is located on the easterly side of Maine Street (Route 9) in the Town of Cumberland.

Prior to the purchase of the property, the building envelope on Lot 47 was cleared and resulted in encroachment into the 100-foot buffer. After purchasing the property, the applicant removed trees that were hazardous to the construction of the residential building that included some removal of trees into the 75-foot buffer.

B. Summary: The applicant seeks after-the-fact approval to reduce the stream buffer from the existing 100-foot buffer to 75 feet. The applicant states that the toe of the fill extension on the side of the building with the buffer ends 75 feet from the stream and has proposed to allow the disturbed area within the 75-foot buffer to regrow naturally. The proposed reduction is shown on a plan titled “Lot 47 Setbacks,” prepared by Stantec Consulting Services, Inc. and dated May 10, 2017.

C. Current Use of Site: The proposed project is located on a developed parcel with a residential building and approximately 29,172 square feet in size and is identified as Lot 47 on Map U10 in the Town of Cumberland’s tax maps.

2. FINDING:

The Department requested comments from the Maine Department of Inland Fisheries and Wildlife (MDIFW) as the 100-foot buffer was an original recommendation by the agency for all streams associated with the entire development. In their original comments,

MDIFW indicated that there were no specific fisheries concerns identified and recommended that the 100-foot buffer be incorporated into the development. The most recent comments from MDIFW state they have no objections to the reduction of setback on Lot 47 from 100 feet to 75 feet.

The proposed project is a minor change and will not significantly affect any issues identified during previous Department reviews of the project site.

Based on its review of the application, the Department finds the requested minor revision to be in accordance with all relevant Departmental standards. All other findings of fact, conclusions and conditions remain as approved in Department Order #L-25376-L3-A-N/L-25376-TE-B-N/L-25376-L6-C-N, and subsequent Orders.

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. §§ 481–489-E:

- A. The applicant has provided adequate evidence of financial capacity and technical ability to develop the project in a manner consistent with state environmental standards.
- B. The applicant has made adequate provision for fitting the development harmoniously into the existing natural environment and the development will not adversely affect existing uses, scenic character, air quality, water quality or other natural resources in the municipality or in neighboring municipalities.
- C. The proposed development will be built on soil types which are suitable to the nature of the undertaking and will not cause unreasonable erosion of soil or sediment nor inhibit the natural transfer of soil.
- D. The proposed development meets the standards for storm water management in 38 M.R.S. § 420-D and the standard for erosion and sedimentation control in 38 M.R.S. § 420-C.
- E. The proposed development will not pose an unreasonable risk that a discharge to a significant groundwater aquifer will occur.
- F. The applicant has made adequate provision of utilities, including water supplies, sewerage facilities and solid waste disposal required for the development and the development will not have an unreasonable adverse effect on the existing or proposed utilities in the municipality or area served by those services.
- G. The activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties nor create an unreasonable flood hazard to any structure.

THEREFORE, the Department APPROVES the application of D.A. BRACKETT & COMPANY, INC. to reduce the resource buffer on Lot 47 to 75 feet as described in Finding 1, SUBJECT TO THE FOLLOWING CONDITIONS and all applicable standards and regulations:

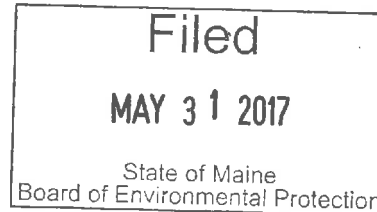
1. The Standard Conditions of Approval, a copy attached.
2. In addition to any specific erosion control measures described in this or previous orders, the applicant shall take all necessary actions to ensure that its activities or those of its agents do not result in noticeable erosion of soils or fugitive dust emissions on the site during the construction and operation 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 other Findings of Fact, Conclusions and Conditions remain as approved in Department Order #L-25376-L3-A-N/ L-25376-TE-B-N/L-25376-L6-C-N , and subsequent Orders, and are incorporated herein.

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 31<sup>ST</sup> DAY OF MAY, 2017.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY:   
For: Paul Mercer, Commissioner



PLEASE NOTE THE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES.

DC/L25376FM/ATS#81871

**DEP SITE LOCATION OF DEVELOPMENT (SITE) STANDARD CONDITIONS  
STRICT CONFORMANCE WITH THE STANDARD AND SPECIAL CONDITIONS OF THIS APPROVAL  
IS NECESSARY FOR THE PROJECT TO MEET THE STATUTORY CRITERIA FOR APPROVAL.**

- A. Approval of Variations from Plans.** The granting of this approval 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. Further subdivision of proposed lots by the applicant or future owners is specifically prohibited without prior approval of the Board, and the applicant shall include deed restrictions to that effect.
- 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. Compliance with All Terms and Conditions of Approval.** The applicant shall submit all reports and information requested by the Board or the Department demonstrating that the applicant has complied or will comply with all preconstruction terms and conditions of this approval. All preconstruction terms and conditions must be met before construction begins.
- D. Advertising.** Advertising relating to matters included in this application shall refer to this approval only if it notes that the approval has been granted WITH CONDITIONS, and indicates where copies of those conditions may be obtained.
- E. Transfer of Development.** Unless otherwise provided in this approval, the applicant shall not sell, lease, assign or otherwise transfer the development or any portion thereof without prior written approval of the Board where the purpose or consequence of the transfer is to transfer any of the obligations of the developer as incorporated in this approval. Such approval shall be granted only if the applicant or transferee demonstrates to the Board that the transferee has the technical capacity and financial ability to comply with conditions of this approval and the proposals and plans contained in the application and supporting documents submitted by the applicant.
- F. Time frame for approvals.** If the construction or operation of the activity is not begun within four years, this approval shall lapse and the applicant shall reapply to the Board for a new approval. The applicant may not begin construction or operation of the development until a new approval is granted. A reapplication for approval 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.
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# DEP INFORMATION SHEET

## Appealing a Department Licensing Decision

**Dated: March 2012**

**Contact: (207) 287-2811**

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### **SUMMARY**

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

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

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

### **I. ADMINISTRATIVE APPEALS TO THE BOARD**

#### **LEGAL REFERENCES**

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

#### **HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD**

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

#### **HOW TO SUBMIT AN APPEAL TO THE BOARD**

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

## **WHAT YOUR APPEAL PAPERWORK MUST CONTAIN**

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

1. *Aggrieved Status.* The appeal must explain how the person filing the appeal has standing to maintain an appeal. This requires an explanation of how the person filing the appeal may suffer a particularized injury as a result of the Commissioner's decision.
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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.
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6. *Request for hearing.* The Board will hear presentations on appeals at its regularly scheduled meetings, unless a public hearing on the appeal is requested and granted. A request for public hearing on an appeal must be filed as part of the notice of appeal.
7. *New or additional evidence to be offered.* The Board may allow new or additional evidence, referred to as supplemental evidence, to be considered by the Board in an appeal only when the evidence is relevant and material and that the person seeking to add information to the record can show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process or that the evidence itself is newly discovered and could not have been presented earlier in the process. Specific requirements for additional evidence are found in Chapter 2.

## **OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD**

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

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

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

## **II. JUDICIAL APPEALS**

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

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

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

### **ADDITIONAL INFORMATION**

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

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**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.**

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STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



PAUL R. LEPAGE  
GOVERNOR

PAUL MERCER  
COMMISSIONER

August 2017

Ernest and Helen Copley  
32 Bradbury Way  
Cumberland, ME 04021

RE: Site Location of Development Act Application, Cumberland, DEP #L-25376-L3-G-M

Dear Mr. and Mrs. Copley:

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) 523-9807 or at [david.cherry@maine.gov](mailto:david.cherry@maine.gov).

Sincerely,

David Cherry, Project Manager  
Bureau of Land Resources

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



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

DEPARTMENT ORDER

IN THE MATTER OF

ERNEST AND HELEN COPLEY ) SITE LOCATION OF DEVELOPMENT ACT  
Cumberland, Cumberland County )  
LOT 53 – RESOURCE BUFFER ) MINOR REVISION  
L-25376-L3-G-M (after-the-fact approval) ) FINDINGS OF FACT AND ORDER

Pursuant to the provisions of 38 M.R.S. §§ 481–489-E, the Department of Environmental Protection has considered the application of ERNEST AND HELEN COPLEY with the supporting data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

1. PROJECT DESCRIPTION:

A. History: In Department Order #L-25376-L3-A-N/L-25376-TE-B-N/L-25376-L6-C-N, dated November 10, 2011, the Department approved the development of a 58-unit residential housing project on a 40.7 acre parcel of land with 18,576 square feet of wetland alteration and a stream alteration. A 100-foot buffer was proposed along all streams except on Lots 46, 50, 53, and 55 where the buffer was reduced to 90 feet. The project is located on the easterly side of Maine Street (Route 9) in the Town of Cumberland.

Prior to the purchase of the property, the building envelope on Lot 53 was cleared and resulted in encroachment into the 90-foot buffer. After purchasing the property, the cleared area was loamed and seeded as lawn area.

B. Summary: The applicants seek after-the-fact approval to reduce the stream buffer from the existing 90-foot buffer to between 55 feet and 75 feet. The applicants state that the toe of the fill ends approximately 50 feet from the stream and have proposed to replant along the disturbed area to increase the vegetated buffer. The proposed reduction is shown on a plan titled “Lot 53 Plot Plan,” prepared by Stantec Consulting Services, Inc. and dated June 1, 2017 with a most recent revision date of August 11, 2017.

The applicants submitted an after-the-fact Permit by Rule Notification Form (PBR #64146) pursuant to Chapter 305 Permit by Rule Standards Section 2 (06-096 Ch. 305 § 2, last amended June 8, 2012) for activities adjacent to a natural resource which was accepted by the Department on August 16, 2017.

C. Current Use of Site: The proposed project is located on a developed parcel with a residential building and is approximately 24,949 square feet in size and is identified as Lot 53 on Map U10 in the Town of Cumberland’s tax maps.

2. FINDING:

The Department requested comments from the Maine Department of Inland Fisheries and Wildlife (MDIFW) as the 90-foot buffer was originally recommended by the agency for all streams on Lots 46, 50, 53, and 55. In their original comments, MDIFW indicated that there were no specific fisheries concerns identified and recommended the 90-foot buffer be incorporated into the development. The most recent comments from MDIFW recommended that any reduction in the original stream buffer be accompanied by appropriate mitigation and/ or restoration measures to adequately protect the stream and its resource values to the greatest practicable extent.

In response to the comment, the applicants proposed to replant the area along the edge of the existing wooded buffer with native trees, shrubs, and plants such as Red Twig Dogwood (*Cornus sericea*), Swamp Azalea #2 (*Rhododendron viscosum*), Viburnum Dentatum #3, High Bush Blueberry (*Vaccinium corymbosum*), and Sweet Fern (*Comptonia peregrina*). The applicants must monitor the plantings and the plantings must be replaced or maintained as necessary to achieve 85% survival after one full growing season.

The proposed project is a minor change and will not significantly affect any issues identified during previous Department reviews of the project site.

Based on its review of the application, the Department finds the requested minor revision to be in accordance with all relevant Departmental standards. All other findings of fact, conclusions and conditions remain as approved in Department Order #L-25376-L3-A-N/L-25376-TE-B-N/L-25376-L6-C-N, and subsequent Orders.

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. §§ 481–489-E:

- A. The applicants have provided adequate evidence of financial capacity and technical ability to develop the project in a manner consistent with state environmental standards.
- B. The applicants have made adequate provision for fitting the development harmoniously into the existing natural environment and the development will not adversely affect existing uses, scenic character, air quality, water quality or other natural resources in the municipality or in neighboring municipalities provided that the applicants monitor and maintain vegetation as described in Finding 2.

- C. The proposed development will be built on soil types which are suitable to the nature of the undertaking and will not cause unreasonable erosion of soil or sediment nor inhibit the natural transfer of soil.
- D. The proposed development meets the standards for storm water management in 38 M.R.S. § 420-D and the standard for erosion and sedimentation control in 38 M.R.S. § 420-C.
- E. The proposed development will not pose an unreasonable risk that a discharge to a significant groundwater aquifer will occur.
- F. The applicants have made adequate provision of utilities, including water supplies, sewerage facilities and solid waste disposal required for the development and the development will not have an unreasonable adverse effect on the existing or proposed utilities in the municipality or area served by those services.
- G. The activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties nor create an unreasonable flood hazard to any structure.

THEREFORE, the Department APPROVES the application of ERNEST AND HELEN COPLEY to modify the stream buffer as described in Finding 1, SUBJECT TO THE FOLLOWING CONDITIONS and all applicable standards and regulations:

- 1. The Standard Conditions of Approval, a copy attached.
- 2. In addition to any specific erosion control measures described in this or previous orders, the applicants shall take all necessary actions to ensure that its activities or those of its agents do not result in noticeable erosion of soils or fugitive dust emissions on the site during the construction and operation of the project covered by this approval.
- 3. Severability. The invalidity or unenforceability of any provision, or part thereof, of this License shall not affect the remainder of the provision or any other provisions. This License shall be construed and enforced in all respects as if such invalid or unenforceable provision or part thereof had been omitted.
- 4. The applicants shall monitor the plantings and the plantings shall be replaced or maintained as necessary to achieve 85% survival after one full growing season.



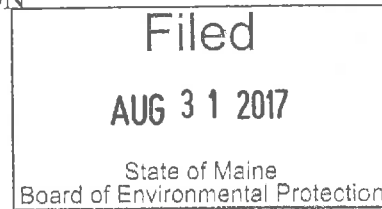
5. All other Findings of Fact, Conclusions and Conditions remain as approved in Department Order #L-25376-L3-A-N/L-25376-TE-B-N/L-25376-L6-C-N, and subsequent Orders, and are incorporated herein.

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 31<sup>ST</sup> DAY OF AUGUST, 2017.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY:   
For: Paul Mercer, Commissioner



PLEASE NOTE THE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES.

DC/L25376GM/ATS#81929

**DEP SITE LOCATION OF DEVELOPMENT (SITE) STANDARD CONDITIONS  
STRICT CONFORMANCE WITH THE STANDARD AND SPECIAL CONDITIONS OF THIS APPROVAL  
IS NECESSARY FOR THE PROJECT TO MEET THE STATUTORY CRITERIA FOR APPROVAL.**

- A. Approval of Variations from Plans.** The granting of this approval 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. Further subdivision of proposed lots by the applicant or future owners is specifically prohibited without prior approval of the Board, and the applicant shall include deed restrictions to that effect.
- 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. Compliance with All Terms and Conditions of Approval.** The applicant shall submit all reports and information requested by the Board or the Department demonstrating that the applicant has complied or will comply with all preconstruction terms and conditions of this approval. All preconstruction terms and conditions must be met before construction begins.
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- F. Time frame for approvals.** If the construction or operation of the activity is not begun within four years, this approval shall lapse and the applicant shall reapply to the Board for a new approval. The applicant may not begin construction or operation of the development until a new approval is granted. A reapplication for approval 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.
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## Natural Resource 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.

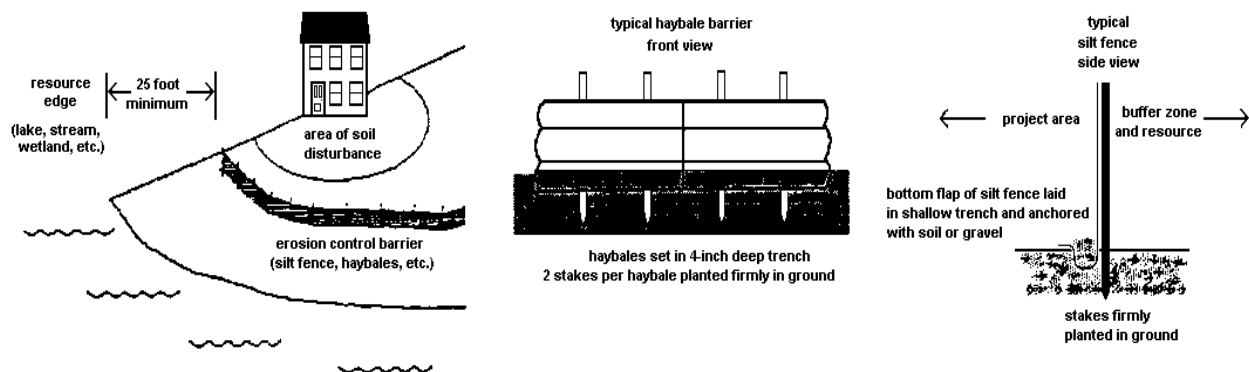


STATE OF MAINE  
**DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
 17 STATE HOUSE STATION, AUGUSTA, MAINE 04333

### Erosion Control for Homeowners

#### Before Construction

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



#### During Construction

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

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

### **After Construction**

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

### **Why Control Erosion?**

#### **To Protect Water Quality**

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

#### **To Protect the Soil**

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

#### **To Save Money (\$\$)**

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



# DEP INFORMATION SHEET

## Appealing a Department Licensing Decision

**Dated: March 2012**

**Contact: (207) 287-2811**

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### **SUMMARY**

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5. *All the matters to be contested.* The Board will limit its consideration to those arguments specifically raised in the written notice of appeal.
6. *Request for hearing.* The Board will hear presentations on appeals at its regularly scheduled meetings, unless a public hearing on the appeal is requested and granted. A request for public hearing on an appeal must be filed as part of the notice of appeal.
7. *New or additional evidence to be offered.* The Board may allow new or additional evidence, referred to as supplemental evidence, to be considered by the Board in an appeal only when the evidence is relevant and material and that the person seeking to add information to the record can show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process or that the evidence itself is newly discovered and could not have been presented earlier in the process. Specific requirements for additional evidence are found in Chapter 2.

## **OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD**

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

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

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

## **II. JUDICIAL APPEALS**

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

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

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

### **ADDITIONAL INFORMATION**

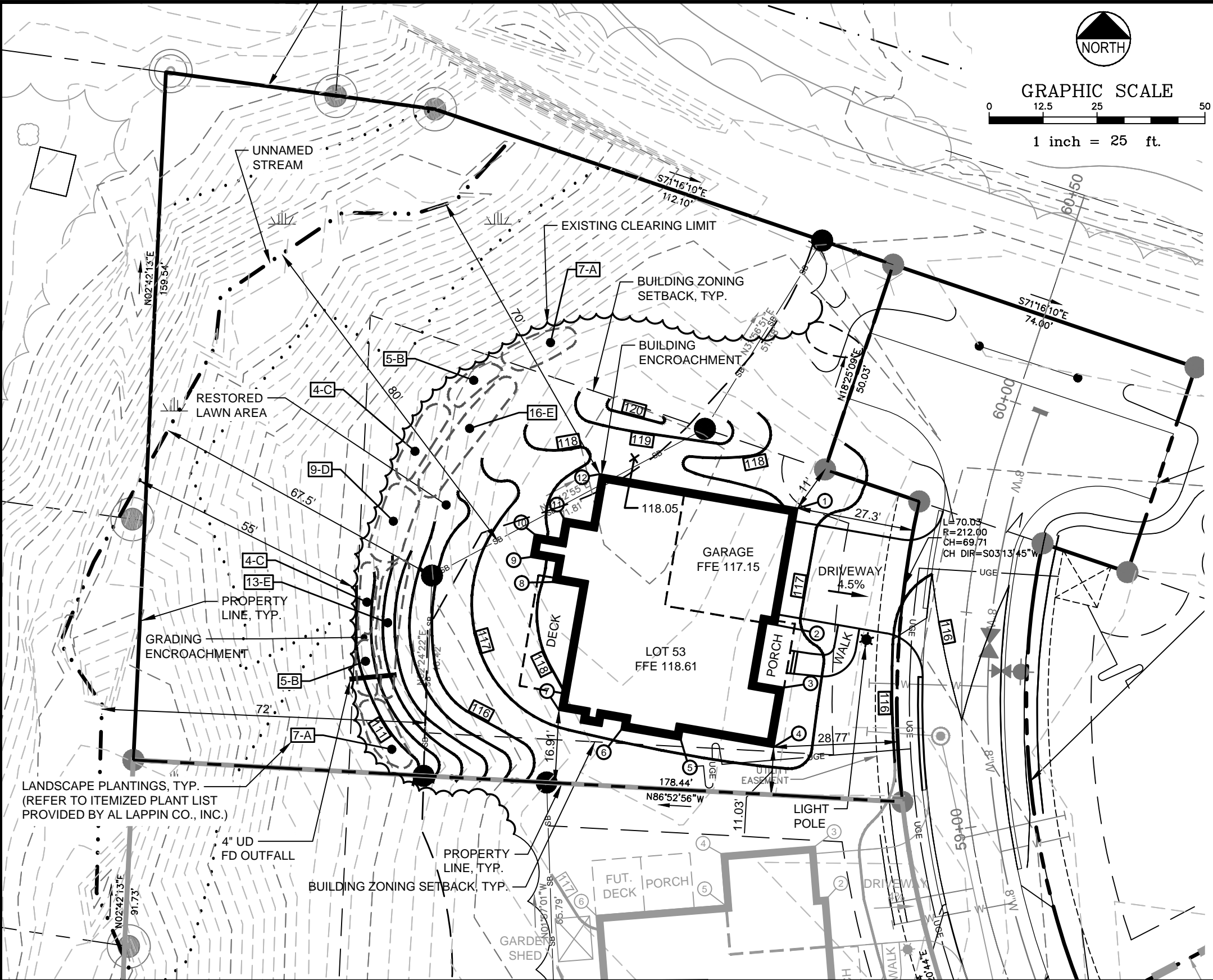
If you have questions or need additional information on the appeal process, for administrative appeals contact the Board's Executive Analyst at (207) 287-2452 or for judicial appeals contact the court clerk's office in which your appeal will be filed.

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**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.**

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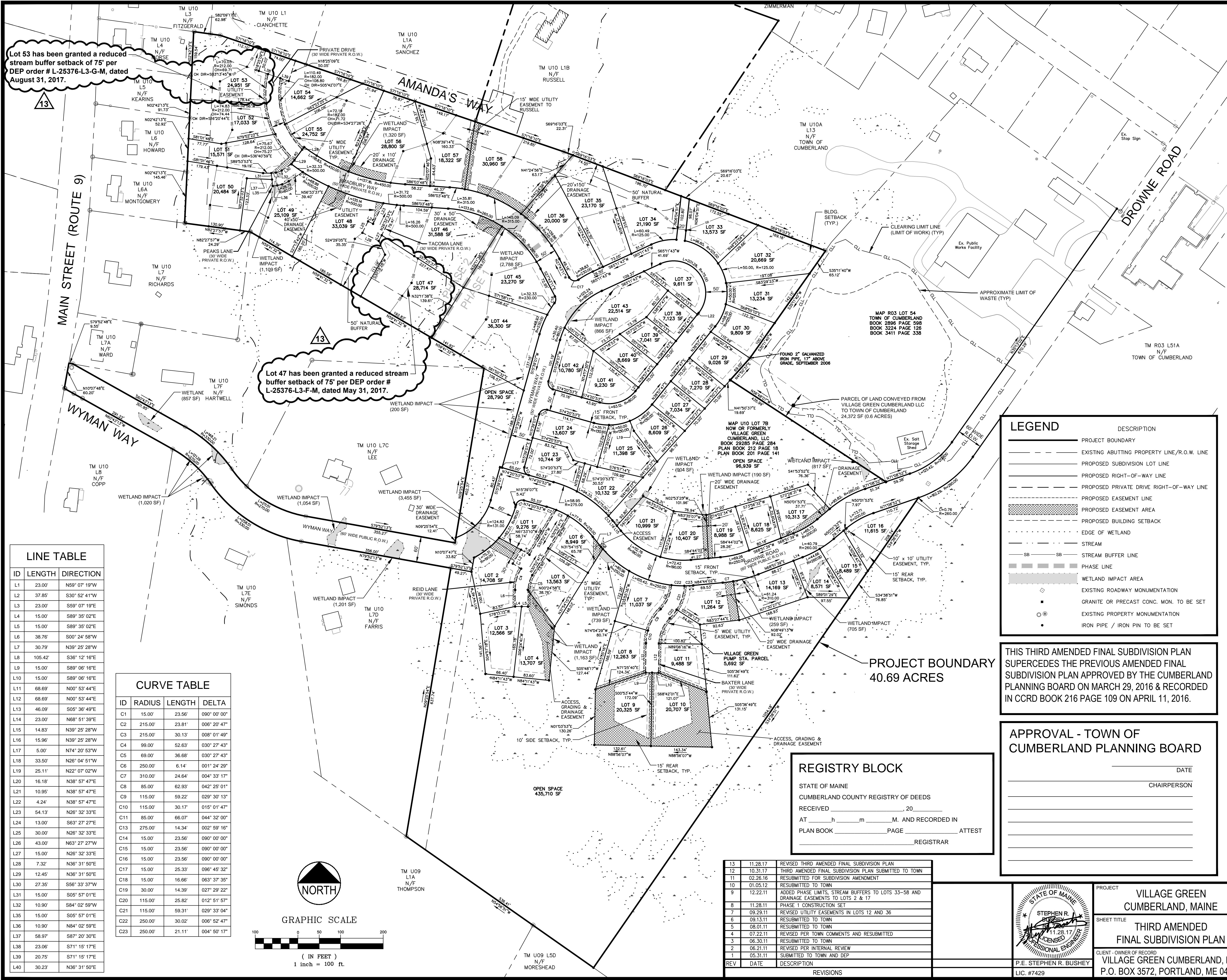




- NOTES:
- 1. PLAN DIMENSIONS INTENDED FOR DWELLING ORIENTATION ON PARCEL ONLY. REFER TO ARCHITECTURAL FOUNDATION PLANS FOR LAYOUT DIMENSIONS.
  - 2. VERIFY THAT DESIGN FINISH FLOOR ELEVATION (FFE) OF GARAGE SLAB IS 6-INCHES LOWER THAN THE FIRST FLOOR OF THE RESIDENTIAL HOUSE.
  - 3. INSTALL EROSION CONTROL FABRIC ON 2:1 SLOPES OR STEEPER PRIOR TO SEEDING. SEED AND MULCH SLOPES EXCEEDING 3:1 UPON COMPLETION OF FINISH GRADING.
  - 4. INSTALL SILTATION BARRIER (SILTATION FENCE OR EROSION CONTROL MIX BERM) ALONG DOWNGRADIENT EDGE OF ALL FILL SLOPES. WHERE SILT BARRIER MEETS LOT LINES, EXTEND MIN. 50' BEYOND LOT LINE OR CONNECT TO EXISTING SILTATION BARRIER WHERE ENCOUNTERED.
  - 5. INSTALL ROOF DRIP LINE FILTER IN ACCORDANCE WITH DETAIL B ON SHEET C-9.4 OF THE VILLAGE GREEN SUBDIVISION PLANS.

POINT TABLE		
RAW DESCRIPTION	NORTHING	EASTING
HSE 53 PT 1	348985.7216	2928847.5416
HSE 53 PT 2	348958.6236	2928842.8568
HSE 53 PT 3	348944.1468	2928844.4133
HSE 53 PT 4	348930.3514	2928842.0283
HSE 53 PT 5	348932.0433	2928820.5019
HSE 53 PT 6	348934.4284	2928806.7065
HSE 53 PT 7	348938.9545	2928792.2665
HSE 53 PT 8	348968.6379	2928790.8019
HSE 53 PT 9	348974.4227	2928785.7130
HSE 53 PT 10	348979.6781	2928786.6216
HSE 53 PT 11	348983.4186	2928793.3572
HSE 53 PT 12	348993.6432	2928801.7213

LOT 53 - 24,949 S.F.



REFER TO SHEET C-4.1 FOR  
ADDITIONAL INFORMATION  
PERTAINING TO STREAM  
BUFFERS AND EASEMENTS  
AS SHOWN ON THIS PLAN.

GENERAL NOTES

- 1. OWNER OF RECORD: TOWN OF CUMBERLAND, 290 TUTTLE ROAD, CUMBERLAND, MAINE 04021
- 2. PROJECT NAME / MUNICIPALITY: VILLAGE GREEN CUMBERLAND, MAINE
- 3. APPLICANT / DEVELOPER: VILLAGE GREEN CUMBERLAND, LLC, P.O. BOX 3572, PORTLAND, MAINE 04104
- 4. ENGINEER / DESIGNER: DELUCA-HOFFMAN ASSOCIATES, INC., 133 GRAY ROAD, FALMOUTH, MAINE 04105
- 5. BOUNDARY AND TOPOGRAPHIC SURVEY: TITCOMB ASSOCIATES, INC., 133 GRAY ROAD, FALMOUTH, MAINE 04105
- 6. WETLANDS DELINEATION: BOYLE ASSOCIATES, 25 DUNDEE ROAD, GORHAM, ME 04038
- 7. PARCEL SIZE AND TAX ASSESSOR DATA: PROJECT SITE IS IDENTIFIED BY THE CUMBERLAND ASSESSOR'S OFFICE AS LOT 78 ON TAX MAP L10 CONTAINING 40.69 ACRES OF LAND, INCLUDING 1.48 ACRES IN WYMAN WAY RIGHT-OF-WAY TO MAIN STREET.
- 8. ZONING: VILLAGE MIXED USE (VMI) WITH CONTRACT ZONING OVERLAY
- 9. USE: SINGLE FAMILY RESIDENTIAL USES (ATTACHED AND DETACHED) ARE PERMITTED USES WITHIN THE CONTRACT OVERLAY ZONE.
- 10. CONTRACT OVERLAY ZONE DIMENSIONAL REQUIREMENTS: THE FOLLOWING MINIMUM LOT SIZES ARE REQUIRED:

USE	MIN LOT SIZE (S.F.)	MIN LOT AREA PER UNIT (S.F.)	MIN LOT FRONTAGE (FT)	PRIVATE DRIVE R.O.W.	PRIVATE ROAD R.O.W.	PUBLIC ROAD R.O.W.
DETACHED SINGLE FAMILY RESIDENTIAL STRUCTURE	5,000	5,000	15'	50'	50'	50'
ATTACHED SINGLE FAMILY RESIDENTIAL STRUCTURE	5,000	5,000	15'	50'	50'	50'

MAXIMUM NUMBER OF RESIDENTIAL UNITS ACCESSED FROM PRIVATE DRIVE IS LIMITED TO 6.

THE FOLLOWING MINIMUM SETBACKS ARE REQUIRED FOR ALL STRUCTURES:

STRUCTURE TYPE	FRONT	SIDE	REAR
DETACHED SINGLE FAMILY RESIDENTIAL STRUCTURE AND GARAGE	15' *	10'	15'
ATTACHED SINGLE FAMILY RESIDENTIAL STRUCTURE AND GARAGE	15' *	10' **	15'
DETACHED SHED	15'	8'	8'
DRIVEWAYS	0'	8' **	8'

\* SETBACK BETWEEN FACE OF GARAGE AND SIDEWALK SHALL BE MINIMUM DISTANCE OF 20'.

\*\* SIDE SETBACK REQUIRED TO 0' ALONG COMMON SIDELINE BETWEEN ADJACENT RESIDENTIAL STRUCTURES AND GARAGES.

11. NET RESIDENTIAL DENSITY CALCULATIONS:	
TOTAL PARCEL AREA	40.69 ACRES
MINUS:	
15% FOR ROADS AND PARKING	6.10 ACRES
ISOLATED LAND AREAS	0.00 ACRES
OTHER UNDEVELOPABLE AREAS	0.00 ACRES
SLOPES > 20%	6.53 ACRES
WETLANDS	6.30 ACRES
100-YEAR FLOODPLAIN	0.00 ACRES
LAND WITH ROW OR EASEMENT	1.11 ACRES
RESOURCE PROTECTION DISTRICT	0.00 ACRES
NET RESIDENTIAL ACREAGE	20.75 ACRES
RESIDENTIAL DENSITY (5,000 S.F. / Acre)	180 RES. UNITS

- 12. A PRECONSTRUCTION MEETING BETWEEN THE TOWN OF CUMBERLAND AND THE DEVELOPER'S CONTRACTOR IS REQUIRED PRIOR TO THE START OF ANY WORK.
- 13. THE PERFORMANCE GUARANTEE REQUIRED BY SECTION 4.4.0.7 OF THE TOWN OF CUMBERLAND SUBDIVISION ORDINANCE SHALL BE FURNISHED IN AN AMOUNT AND IN A FORM ACCEPTABLE TO AND APPROVED BY THE TOWN PRIOR TO START OF ANY WORK.
- 14. THE WETLAND AREAS SHOWN ON THE INDIVIDUAL LOTS SHALL NOT BE DISTURBED BEYOND THE LIMITS IDENTIFIED ON THE PLANS AND APPROVED BY THE MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION AND THE ARMY CORPS OF ENGINEERS. NO ADDITIONAL WETLAND IMPACTS MAY OCCUR ON THE INDIVIDUAL LOTS BEYOND THAT SHOWN ON THE PLANS, UNLESS THE REQUIRED PERMITS ARE FIRST OBTAINED. THE INDIVIDUAL LOTS ARE NOT ELIGIBLE FOR THE 4,000 S.F. WETLAND IMPACT EXEMPTION.
- 15. ALL LOT OWNERS SHALL BE MEMBERS OF AN ASSOCIATION THAT WILL BE RESPONSIBLE FOR MAINTAINING ALL STORMWATER MANAGEMENT AND TREATMENT MEASURES AND ASSOCIATED PIPES AND STRUCTURES, PRIVATE ROADS, PRIVATE DRIVES, AND PUBLIC WALKING TRAILS WITHIN THE DESIGNATED OPEN SPACE AREAS.
- 16. DESIGNATED OPEN SPACE AREAS SHALL BE OPEN TO THE GENERAL PUBLIC.
- 17. FURTHER LOT DIVISION SHALL BE PROHIBITED WITHOUT FURTHER PLANNING BOARD APPROVAL.
- 18. ALL LOTS ARE SUBJECT TO THE CONDITIONS OF THE FOLLOWING PERMITS:

SITE LOCATION OF DEVELOPMENT ACT: PERMIT # L-25376-L3-A-N

NATURAL RESOURCE PROTECTION ACT: PERMIT # L-25376-L3-B-N

U.S. ACCESSION LOCATION 404 WETLAND: PERMIT # NAE-2011-01168

**LEGEND**

DESCRIPTION	
PROJECT BOUNDARY	—
EXISTING ABUTTING PROPERTY LINE/R.O.W. LINE	---
PROPOSED SUBDIVISION LOT LINE	---
PROPOSED RIGHT-OF-WAY LINE	---
PROPOSED PRIVATE DRIVE RIGHT-OF-WAY LINE	---
PROPOSED EASEMENT LINE	---
PROPOSED EASEMENT AREA	▨
PROPOSED BUILDING SETBACK	---
EDGE OF WETLAND	---
STREAM	—
STREAM BUFFER LINE	---
PHASE LINE	---
WETLAND IMPACT AREA	▨
EXISTING ROADWAY MONUMENTATION	□
GRANITE OR PRECAST CONC. MON. TO BE SET	□
EXISTING PROPERTY MONUMENTATION	○
IRON PIPE / IRON PIN TO BE SET	•

THIS THIRD AMENDED FINAL SUBDIVISION PLAN  
SUPERCEDES THE PREVIOUS AMENDED FINAL  
SUBDIVISION PLAN APPROVED BY THE CUMBERLAND  
PLANNING BOARD ON MARCH 29, 2016 & RECORDED  
IN CCRD BOOK 216 PAGE 109 ON APRIL 11, 2016.

APPROVAL - TOWN OF  
CUMBERLAND PLANNING BOARD

STATE OF MAINE  
CUMBERLAND COUNTY REGISTRY OF DEEDS

RECEIVED \_\_\_\_\_, 20\_\_\_\_

AT \_\_\_\_\_ h \_\_\_\_\_ m \_\_\_\_\_ M. AND RECORDED IN \_\_\_\_\_

PLAN BOOK \_\_\_\_\_ PAGE \_\_\_\_\_ ATTEST \_\_\_\_\_

REGISTRAR

**REGISTRY BLOCK**

STATE OF MAINE  
CUMBERLAND COUNTY REGISTRY OF DEEDS

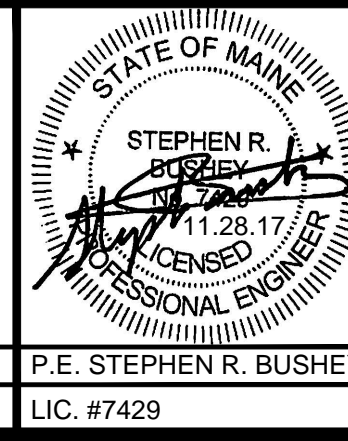
RECEIVED \_\_\_\_\_, 20\_\_\_\_

AT \_\_\_\_\_ h \_\_\_\_\_ m \_\_\_\_\_ M. AND RECORDED IN \_\_\_\_\_

PLAN BOOK \_\_\_\_\_ PAGE \_\_\_\_\_ ATTEST \_\_\_\_\_

REGISTRAR

REV	DATE	DESCRIPTION
13	11.28.17	REVISED THIRD AMENDED FINAL SUBDIVISION PLAN
12	10.31.17	THIRD AMENDED FINAL SUBDIVISION PLAN SUBMITTED TO TOWN
11	02.26.16	RESUBMITTED FOR SUBDIVISION AMENDMENT
10	01.05.12	RESUBMITTED TO TOWN
9	12.22.11	ADDED PHASE LIMITS, STREAM BUFFERS TO LOTS 33-58 AND DRAINAGE EASEMENTS TO LOTS 2 & 17
8	11.28.11	PHASE 1 CONSTRUCTION SET
7	09.29.11	REVISED UTILITY EASEMENTS IN LOTS 12 AND 36
6	09.13.11	RESUBMITTED TO TOWN
5	08.01.11	RESUBMITTED TO TOWN
4	07.22.11	REVISED PER TOWN COMMENTS AND RESUBMITTED
3	06.30.11	RESUBMITTED TO TOWN
2	06.21.11	REVISED PER INTERNAL REVIEW
1	05.31.11	SUBMITTED TO TOWN AND DEP
REV	DATE	DESCRIPTION



PROJECT  
VILLAGE GREEN  
CUMBERLAND, MAINE

SHEET TITLE  
THIRD AMENDED  
FINAL SUBDIVISION PLAN

CLIENT - OWNER OF RECORD  
VILLAGE GREEN CUMBERLAND, LLC  
P.O. BOX 3572, PORTLAND, ME 04104

**STANTEC CONSULTING SERVICES INC.**

482 PATEY ROAD  
SCARBOROUGH, ME 04074  
WWW.STANTEC.COM

**Stantec**

DRAWN: CDD  
DESIGNED: SRB  
CHECKED: SRB  
FILE NAME: vg\_amended\_sub\_plan  
SHEET

DATE: OCTOBER 2017  
SCALE: 1" = 100'  
JOB NO.: 195350072  
C-4.0

ID	LENGTH	DIRECTION
L1	23.00'	N59° 07' 19"W
L2	37.85'	S30° 52' 41"W
L3	23.00'	S59° 07' 19"E
L4	15.00'	S89° 35' 02"E
L5	15.00'	S89° 35' 02"E
L6	38.76'	S00° 24' 58"W
L7	30.79'	N39° 25' 28"W
L8	105.42'	S36° 12' 16"E
L9	15.00'	S89° 06' 16"E
L10	15.00'	S89° 06' 16"E
L11	68.69'	N00° 53' 44"E
L12	68.69'	N00° 53' 44"E
L13	46.09'	S05° 36' 49"E
L14	23.00'	N68° 51' 39"E
L15	14.83'	N39° 25' 28"W
L16	15.96'	N39° 25' 28"W
L17	5.00'	N74° 20' 53"W
L18	33.50'	N26° 04' 51"W
L19	25.11'	N22° 07' 02"W
L20	16.18'	N38° 57' 47"E
L21	10.95'	N38° 57' 47"E
L22	4.24'	N38° 57' 47"E
L23	54.13'	N26° 32' 33"E
L24	13.00'	S63° 27' 27"E
L25	30.00'	N26° 32' 33"E
L26	43.00'	N63° 27' 27"W
L27	15.00'	N26° 32' 33"E
L28	7.32'	N36° 31' 50"E
L29	12.45'	N36° 31' 50"E
L30	27.35'	S56° 33' 37"W
L31	15.00'	S65° 57' 01"E
L32	10.90'	S84° 02' 59"W
L35	15.00'	S05° 57' 01"E
L36	10.90'	N84° 02' 59"E
L37	58.97'	S87° 20' 30"E
L38	23.06'	S71° 15' 17"E
L39	20.75'	S71° 15' 17"E
L40	30.23'	N36° 31' 50"E

ID	RADIUS	LENGTH	DELTA
C1	15.00'	23.56'	090° 00' 00"
C2	215.00'	23.81'	006° 20' 47"
C3	215.00'	30.13'	008° 01' 49"
C4	99.00'	52.63'	030° 27' 43"
C5	69.00'	36.68'	030° 27' 43"
C6	250.00'	6.14'	001° 24' 29"
C7	310.00'	24.64'	004° 33' 17"
C8	85.00'	62.93'	042° 25' 01"
C9	115.00'	59.22'	029° 30' 13"
C10	115.00'	30.17'	015° 01' 47"
C11	85.00'	66.07'	044° 32' 00"
C13	275.00'	14.34'	002° 59' 16"
C14	15.00'	23.56'	090° 00' 00"
C15	15.00'	23.56'	090° 00' 00"
C16	15.00'	23.56'	090° 00' 00"
C17	15.00'	25.33'	096° 45' 32"
C18	15.00'	16.66'	063° 37' 35"
C19	30.00'	14.39'	027° 29' 22"
C20	115.00'	25.82'	012° 51' 57"
C21	115.00'	59.31'	029° 30' 13"
C22	250.00'	30.02'	006° 52' 47"
C23	250.00'	21.11'	004° 50' 17"

