



JANET T. MILLS
GOVERNER

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



MELANIE LOYZIM
COMMISSIONER

Via Email Only

November 17, 2021

Donald Buteau
265 Rodman Rd
Auburn, ME, 04210

Re: Notice of Violation, *Donald Buteau and Robert Durant*, Raymond – EIS #2021-082-L

Dear Mr. Buteau:

Enclosed is a Notice of Violation (“NOV”) alleging your failure to comply with Maine’s *Natural Resources Protection Act*. The NOV relates to violations documented during on-site investigations by Department staff on October 26, 2021 and November 3, 2021 at 18 Fernwood Rd in the Town of Raymond. These violations are more fully described in the attached NOV. The Department offers technical assistance which may assist you in returning to compliance and avoiding further enforcement action. If you require technical assistance concerning this NOV please contact the case manager identified below by email at alexis.sivovlos@maine.gov or by phone at (207) 441-3410.

A NOV is an administrative notice that is required by Maine law to be sent to parties the Department believes is responsible for violations of the State’s laws, Department’s rules, and/or orders prior to initiating civil enforcement actions. The nature and circumstances surrounding the violations discovered has led DEP to conclude that final resolution of this matter should include monetary penalties as part of a civil penalty action. The necessary next steps to finally resolving this matter will be discussed once you contact me within the timeframe provided for in the NOV. Thank you for your attention to this matter.

Respectfully,

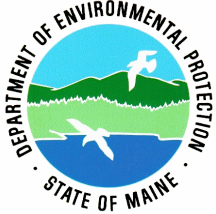
Alexis Sivovlos
Field Services and Enforcement
Bureau of Land Resources

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
 Bureau of Land Resources
 312 Canco Road
 Portland, Maine, 04103
 Telephone: (207) 822-6300

Notice of Violation

PART I: GENERAL INFORMATION

<u>ALLEGED VIOLATOR'S NAME:</u> Donald Buteau (Management Controls, LLC) & Robert Durant (d/b/a Big Lake Marine Construction)	<u>DOCKET NUMBER:</u> 2021-082-L
<u>ALLEGED VIOLATOR'S MAILING ADDRESS:</u> 265 Rodman Rd, Auburn, ME, 04210	<u>DATE ISSUED:</u> November 17, 2021
<u>PHYSICAL LOCATION OF VIOLATIONS:</u> 18 Fernwood Rd, Raymond, ME, 04071 & 297 Cape Rd, Raymond, ME, 04071	<u>CERTIFIED MAIL NUMBER:</u> Via Email Only
<u>POINT OF CONTACT (IF DIFFERENT FROM ALLEGED VIOLATOR):</u>	<u>TELEPHONE NUMBER:</u> 207-753-6844

PART II: INFORMATION CONCERNING THE ALLEGED VIOLATION

YOU OR YOUR COMPANY IS BELIEVED TO BE RESPONSIBLE FOR THE FOLLOWING VIOLATION(S) OF MAINE'S ENVIRONMENTAL LAWS, RULES, OR DEPARTMENT ORDERS.

SUMMARY OF FACTS ALLEGED AS BASIS FOR VIOLATION(S):

On August 8, 2021, on behalf of Donald Buteau, Robert Durant (d/b/a Big Lake Marine Construction) submitted a Permit by Rule (PBR) notification form to the Department, pursuant to *Permit by Rule*, 06-096 C.M.R. ch. 305, § 1(B), indicating the intent to engage in the activities allowed by Chapter 305, Section 8. Donald Buteau proposed to stabilize an eroding shoreline of a "great pond" as defined by the *Natural Resources Protection Act* (NRPA), 38 M.R.S. § 480-B(5). Great ponds are "protected natural resource[s]" pursuant to the NRPA, 38 M.R.S. § 480-B(8). By signing the PBR notification form, Donald Buteau represented that the activities would meet the applicability requirements and agreed to comply with all applicable standards set forth in Chapter 305, Section 8. After the PBR was submitted, the applicant agreed (via email) to decrease the length of proposed riprap from 185 linear feet to 100 linear feet in order to meet Chapter 305, Section 8 standards.

A Permit by Rule ("PBR") is a form of Department approval for activity requiring a permit under NRPA. *Permit by Rule Standards*, 06-096 C.M.R. ch. 305 establishes and governs this category of NRPA permit.

Chapter 305, Section 8, titled "Shoreline Stabilization," applies to the establishment of vegetation adjacent to a protected natural resource and the installation of up to 100 feet of riprap on an eroding shoreline of a great pond.

DISTRIBUTION:	Case File	Enforcement Director	AG's Office	EPA	Other: _____
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On October 26, 2021, Department staff conducted an on-site inspection at the subject property (18 Fernwood Rd) after a complaint was received by the Department. The contractor, Robert Durant, was met on-site with Portland Water District and Town of Raymond officials.

On November 3, 2021, Department staff conducted a second on-site inspection at the subject property (18 Fernwood Rd) and was met onsite by Jeff Kalinich from the Department and the same Town of Raymond officials from the first visit.

After conducting the compliance investigations, Department staff discovered several violations of the NPRA and PBR. Department staff observed:

1. Approximately 400 linear feet of disturbed shoreline on two adjacent properties (18 Fernwood Rd & 297 Cape Rd), of which, approximately 385 linear feet was filled with stone and 15 linear feet was filled with the same stone to replace a previously existing boat ramp approximately 50 feet long leading into the resource (located on the shorefront of 297 Cape Rd).
2. A new permanent structure (hot tub stone area) was observed within 75 feet of the resource.
3. A newly expanded permanent structure (jetty) was observed below the normal highwater line (NHWL) of the resource (approximately 40 feet long and 15 feet wide).
4. Vegetation was removed and replaced with riprap on slopes less than 33%.
5. Riprap was installed in areas where there were no signs of erosion and where vegetation was present.
6. Riprap extended approximately 8 feet above the normal high water line and the riprap was installed at a slope ratio that is steeper than 1:1 in certain locations.
7. Riprap was not properly anchored at the base of the slope and additional fill material other than riprap was placed below the normal high-water line creating a beach area at the base of slope (approximately 120 feet long and 15 feet wide).
8. Riprap was not properly sized at the base of the slope.
9. A layer of filter fabric and crushed stone was not evident and/or properly placed under the riprap.
10. A second set of steps was installed within the new riprap, creating two accesses to the resource on a single property.
11. Cleared and removed vegetation was not replaced by similar species of vegetation at the time of the inspection.
12. Mr. Buteau's stabilization project, as accepted in PBR #72924, was not constructed in accordance with the permitted plans or drawings.

Pursuant to 06-096 C.M.R ch. 305, § 1, “[o]nly those activities described in this chapter may proceed under the PBR process.” This section further states, if a proposed activity is not described in Chapter 305 or “will not be conducted in accordance with the standards of [Chapter 305], the applicant must obtain an individual permit prior to beginning the activity.” Further, “[a] violation of law occurs when a person, or his or her agent, performs or causes to be performed any activity subject to the NRPA without first obtaining a permit from the DEP.” Chapter 305, § 1(E)(1).

In addition, for activities subject to the NRPA and not individually permitted, a violation of law occurs “when an activity occurs that is not allowed under PBR, whether or not a PBR notification form has been filed with and/or approved by DEP.” Chapter 305, § 1(E)(1).

As the activities described above are either not permissible under Chapter 305 or are activities in which Chapter 305 does not apply, Donald Buteau did not have a valid PBR or any other permit that authorized the activities described above.

The property is identified as Map #001, Lot #022 on the Town of Raymond tax maps and is more specifically

described in Book #35622, Page #143 of the Cumberland County Registry of Deeds, with the owner listed as Management Controls, LLC.

LIST SPECIFIC VIOLATIONS BY APPLYING FACTS TO SPECIFIC STATUTE(S), RULE(S), OR ORDER(S) VIOLATED:

06-096 C.M.R. ch. 305, § 8. Shoreline Stabilization, in relevant parts:

A. Applicability

- (1) This section applies to the establishment of vegetation adjacent to any protected natural resource and the installation of riprap along the shoreline of a great pond, freshwater wetland with over 20,000 square feet of open water, stream or brook...

C. Standards

- (1) Riprap may be utilized only where eroded slopes exceed 3 horizontal feet to 1 vertical foot (approximately 33% slope), or where riprap is used to stabilize an existing stormwater outfall. Where eroded slopes are shallower than 3 horizontal to 1 vertical, vegetation must be used to control erosion.
- (2) Riprap installed on the shoreline of a great pond or open water wetland may not extend higher than 2 feet above the normal high water line.
- (6) The slope of the riprap may not be steeper than 1 horizontal to 1 vertical, nor shallower than 3 horizontal to 1 vertical.
- (7) Riprap must be anchored at the base of the existing bank by placing the bottom row of rock in a trench excavated at least to a depth equal to the height of the largest rock, or the riprap must be pinned to underlying ledge.
- (8) A layer of filter fabric and crushed stone must be placed under the riprap to prevent the washing of soil particles into the water.
- (9) No fill material other than the riprap and crushed stone may be placed below the normal high water line.
- (20) Riprap projects must be constructed in accordance with the plans or drawings submitted pursuant to subsections B(3).

By installing riprap in areas where vegetation was already established, 8 feet above the normal high water line, on slopes that are less than 33% and on slopes that are steeper than 1:1, without first anchoring at the base of the existing bank or pinning to ledge, without first placing crushed stone over a layer of filter fabric, and by placing fill material other than riprap below the normal high water line, therefore, failing to construct this riprap project in accordance with the plans submitted pursuant to subsections B(3) of this subsection, Donald Buteau and Robert Durant violated *Permit By Rule Standards*, 06-096 C.M.R. ch. 305, § 8.

38 M.R.S § 480-C

1. Prohibition. A person may not perform or cause to be performed any activity listed in subsection 2 without first obtaining a permit from the Department if the activity is located in, on or over any protected natural resource or is located adjacent to any of the following:

A. A coastal wetland, great pond, river, stream or brook or significant wildlife habitat contained within a freshwater wetland; or

B. Freshwater wetlands consisting of or containing:

(1) Under normal circumstances, at least 20,000 square feet of aquatic vegetation, emergent marsh vegetation or open water, except for artificial ponds or impoundments; or

(2) Peatlands dominated by shrubs, sedges and sphagnum moss.

A person may not perform or cause to be performed any activity in violation of the terms or conditions of a permit.

2. Activities requiring a permit. The following activities require a permit:

A. Dredging, bulldozing, removing or displacing soil, sand, vegetation or other materials;

B. Draining or otherwise dewatering;

C. Filling, including adding sand or other material to a sand dune; or

D. Any construction, repair or alteration of any permanent structure.

As the activities described above are not permissible with a PBR notification form, by placing fill, constructing permanent structures, removing vegetation and disturbing soil, in and adjacent to a great pond without first obtaining a valid permit from the Department, Donald Buteau and Robert Durant violated the *Natural Resources Protection Act, 38 M.R.S. § 480-C.*

REQUESTED CORRECTIVE ACTION(S):

By December 8, 2021:

Submit a restoration plan to the Department to remove all unapproved structures and fill in and adjacent to the great pond in addition to re-establishing a vegetated buffer adjacent to the great pond. The restoration plan is subject to review and approval by Department staff and must include a specific time schedule for the completion of all phases of the restoration. Should the Department deny the restoration plan, submit an amended plan acceptable to the Department within 14 days of the Department's denial.

and;

In combination with the above referenced corrective action, or as a separate action, submit permit applications acceptable for processing to the Department for the activities described in the 'Summary of Facts Alleged' above that may be permissible under an Individual NRPA Permit. Any proposed activities must comply with all local and state statutes, regulations and ordinances, including shoreland zoning. Should the Department deny the Individual Natural Resources Protection Act permit, submit an amended plan acceptable to the

Department within 14 days of the Department's denial.

By June 1, 2022:

Complete all restoration for unpermitted activities to the Department's satisfaction.

TIMELY COOPERATION ON THE CORRECTIVE ACTIONS REQUESTED IN THIS NOV, AND CONTACTING THE CASE MANAGER BY PHONE OR IN WRITING **WITHIN 7 DAYS** OF RECEIVING THIS NOV ARE TWO SIGNIFICANT FACTORS THAT MAY AFFECT WHETHER, OR THE EXTENT TO WHICH, THE DEPARTMENT PURSUES FURTHER ENFORCEMENT ACTION. THE DEPARTMENT OFFERS TECHNICAL ASSISTANCE WHICH MAY ASSIST YOU IN RETURNING TO COMPLIANCE AND AVOIDING FURTHER ENFORCEMENT ACTION. IF YOU REQUIRE TECHNICAL ASSISTANCE CONCERNING THIS NOTICE OF VIOLATION PLEASE CONTACT THE CASE MANAGER IDENTIFIED BELOW.

PART III: DEPARTMENT ENFORCEMENT CONTACT

<u>ENFORCEMENT CASE MANAGER:</u> Alexis Sivovlos	<u>TELEPHONE NUMBER:</u> 207-441-3410 Alexis.Sivovlos@maine.gov
State of Maine, Department of Environmental Protection By: _____	