



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

Doc#: 51680 Bk:26331 Pg: 327

DEPARTMENT ORDER  
IN THE MATTER OF

RISBARA PROPERTIES, LLC ) STORMWATER MANAGEMENT LAW  
Scarborough, Cumberland County )  
TIMBER SANDS SUBDIVISION )  
L-24084-NJ-B-N (Approval) ) FINDINGS OF FACT AND ORDER

Pursuant to the provisions of 38 M.R.S.A. Section 420-D, and Chapters 500 and 502 of the Department's Regulations, the Department of Environmental Protection has considered the application of RISBARA PROPERTIES, LLC with the supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

1. PROJECT DESCRIPTION:

A. History of Project: The project was previously submitted as application #L-24084-NJ-A-N, but was subsequently withdrawn to make extensive revisions.

B. Summary: The applicant proposes to construct a stormwater management system for 10 house lots, an open space lot and an access road for an 11 lot subdivision on a 24 acre parcel of land. The project is shown on a set of plans the first of which is entitled "Timber Sands Subdivision," prepared by Northeast Civil Solutions, and dated January 28, 2008 with a latest revision date on any of the sheets of August 12, 2008. The project site is located off Holmes Road in the Town of Scarborough.

C. Current Use of the Site: The site of the proposed project is currently vacant woodland. There are no structures on the property.

2. STORMWATER STANDARDS:

The proposed project includes approximately 1.69 acres of impervious area and 10.28 acres of developed area. It lies within the watershed of Beaver Brook, which is a tributary to the Scarborough River. The applicant submitted a stormwater management plan based on the basic and general standards contained in Department Rules, Chapter 500. The proposed stormwater management system consists of buffers.

A. Basic Standards:

(1) Erosion and Sedimentation Control: The applicant submitted an Erosion and Sedimentation Control Plan that is based on the performance standards contained in

Appendix A of Chapter 500 and the Best Management Practices outlined in the Maine Erosion and Sediment Control BMPS, which were developed by the Department. This plan and plan sheets containing erosion control details were reviewed by, and revised in response to the comments of the Division of Watershed Management (DWM) of the Bureau of Land and Water Quality (BLWQ).

Erosion control details will be included on the final construction plans and the erosion control narrative will be included in the project specifications to be provided to the construction contractor.

(2) **Inspection and Maintenance:** The applicant submitted a maintenance plan that addresses both short and long-term maintenance requirements. This plan was reviewed by, and revised in response to the comments of DWM. The maintenance plan is based on the standards contained in Appendix B of Chapter 500. A homeowners' association will be established that will be responsible for the maintenance of all common facilities including the stormwater management system. The Declaration of Covenants and Restrictions for the association was reviewed and found to meet Department requirements. Prior to the formation of the homeowners' association, the applicant will be responsible for all such maintenance. The town intends to accept the road and the portion of the stormwater management system that is located in the road right-of-way upon completion. The applicant submitted a letter documenting the Town's agreement to maintain both in accordance with the terms of this Order.

(3) **Housekeeping:** The proposed project will comply with the performance standards outlined in Appendix C of Chapter 500.

Based on DWM's review of the erosion and sedimentation control plan and the maintenance plan, the Department finds that the proposed project meets the Basic Standards contained in Chapter 500(4)(A).

**B. General Standard:** The applicant's stormwater management plan includes general treatment measures that will mitigate for the increased frequency and duration of channel erosive flows due to runoff from smaller storms, provide for effective treatment of pollutants in stormwater, and mitigate potential temperature impacts. This mitigation is being achieved by using Best Management Practices that will control runoff from 100% of the impervious area and 90% of the developed area for the non-linear portions of the project. The proposed road meets the definition of "a linear portion of a project" in Chapter 500 and the applicant is proposing to control runoff from 82% of the impervious area and 79% of the developed area.

The Forested, no disturbance stormwater buffers on lots and in common open space will be protected from alteration through the execution of a deed restriction. The applicant submitted a draft deed restriction that meets Department standards. Prior to the start of construction, the location of forested buffers on individual lots must be permanently marked on the ground. The deed for each lot that contains any portion of the designated buffer and the deed for the open space must contain deed restrictions relative to the buffer

and have attached to it a plot plan for the lot, drawn to scale, that specifies the location of the buffer on the lot. Prior to the start of construction on individual lots, the applicant must submit a copy of the recorded deed restriction including the plot plans to the BLWQ. Deed restrictions for the common open space lot must be submitted within 60 days from the date of this order.

The stormwater management system proposed by the applicant was reviewed by, and revised in response to, comments from DWM. After a final review, DWM commented that the proposed stormwater management system is designed in accordance with the Chapter 500 General Standard.

Based on the stormwater system's design and DWM's review, the Department finds that the applicant has made adequate provision to ensure that the proposed project will meet the Chapter 500, Basic and General Standards. The Department further finds that the proposed project will meet the Chapter 500 standards for easements and covenants and management of stormwater discharges.

BASED on the above findings of fact, and subject to the conditions listed below, the Department makes the following conclusions pursuant to 38 M.R.S.A. Section 420-D, and Chapters 500 and 502 of the Department's Regulations:

- A. The applicant has made adequate provision to ensure that the proposed project will meet the Chapter 500 Basic Standards for: (1) erosion and sediment control; (2) inspection and maintenance; (3) housekeeping; and (4) grading and construction activity.
- B. The applicant has made adequate provision to ensure that the proposed project will meet the Chapter 500 General Standard provided deed restrictions and plot plans are submitted, and buffers are marked, as discussed in Finding 2B.
- C. The applicant has made adequate provision to ensure that the proposed project will meet the Chapter 500 standards for easements and covenants and management of stormwater discharges.

THEREFORE, the Department APPROVES the above noted application of RISBARA PROPERTIES, LLC to construct a stormwater management system for 10 house lots, an open space lot and an access road in Scarborough, Maine, 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 order, 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. The applicant or other responsible party shall, within three months of the expiration of each five-year interval from the date of this Order, submit a report certifying that the items listed in Department Rules, Chapter 500, Appendix B(4) have been completed in accordance with the approved plans.
5. The applicant shall include in all conveyances of subdivision lots deed restrictions making the conveyance subject to all terms and conditions of this Department permit, particularly those conditions related to maintenance of the stormwater management system. These terms and conditions may be incorporated by specific and prominent reference to the permit in the deed. All conveyances required by this approval to contain restrictions shall include in the restrictions the requirement that any subsequent conveyance shall specifically include the same restrictions.
6. The applicant shall execute and record all required deed restrictions, including the appropriate buffer deed restrictions, within 60 days of the date of this Order unless the deed restriction is to be placed on a subdivision lot. In that situation, the applicant shall execute and record the required deed restriction prior to the start of construction on the lot. The applicant shall submit a copy of the recorded deed restriction, including individual lot plot plans, if required, to the BLWQ within 60 days of its recording.
7. Prior to the start of construction, the location of forested buffers on individual lots and the open space shall be permanently marked on the ground.

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 20<sup>th</sup> DAY OF August, 2008.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

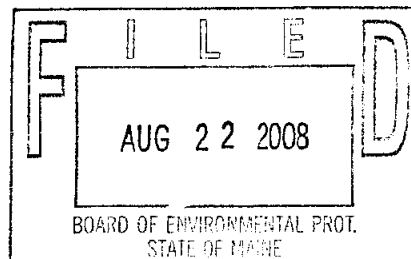
BY: *David P. Littell*  
 DAVID P. LITTELL, COMMISSIONER

A TRUE COPY -  
 ATTEST: *Lorraine C. Kelley*  
 Lorraine C. Kelley  
 Bureau of Land & Water Quality

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

Date filed with Board of Environmental Protection

CGW/68028/L24084BN



## STORMWATER 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

**Standard conditions of approval.** Unless otherwise specifically stated in the approval, a department approval is subject to the following standard conditions pursuant to Chapter 500 Stormwater Management Law.

- (1) 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 must be reviewed and approved by the department prior to implementation. Any variation undertaken without approval of the department is in violation of 38 M.R.S.A. § 420-D(8) and is subject to penalties under 38 M.R.S.A. § 349.
- (2) Compliance with all terms and conditions of approval. The applicant shall submit all reports and information requested by the department demonstrating that the applicant has complied or will comply with all terms and conditions of this approval. All preconstruction terms and conditions must be met before construction begins.
- (3) Advertising. Advertising relating to matters included in this application may not refer to this approval unless it notes that the approval has been granted WITH CONDITIONS, and indicates where copies of those conditions may be obtained.
- (4) Transfer of project. Unless otherwise provided in this approval, the applicant may not sell, lease, assign, or otherwise transfer the project or any portion thereof without written approval by the department 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 may only be granted if the applicant or transferee demonstrates to the department that the transferee agrees to comply with conditions of this approval and the proposals and plans contained in the application and supporting documents submitted by the applicant. Approval of a transfer of the permit must be applied for no later than two weeks after any transfer of property subject to the license.
- (5) Initiation of project within two years. If the construction or operation of the activity is not begun within two years, this approval shall lapse and the applicant shall reapply to the department for a new approval. The applicant may not begin construction or operation of the project until a new approval is granted. A reapplication for approval may include information submitted in the initial application by reference.
- (6) Reexamination after five years. If the project is not completed within five years from the date of the granting of approval, the department may reexamine its approval and impose additional terms or conditions or prescribe other necessary corrective action to respond to significant changes in circumstances or requirements which may have occurred during the five-year period.
- (7) Certification. Contracts must specify that "all work is to comply with the conditions of the Stormwater Permit." Work done by a contractor or subcontractor pursuant to this approval may not begin before the contractor and any subcontractors have been shown a copy of this approval with the

conditions by the developer, and the owner and each contractor and subcontractor has certified, on a form provided by the department, that the approval and conditions

received and read, and that the work will be carried out in accordance with the approval and conditions. Completed certification forms must be forwarded to the department.

- (8) Maintenance. The components of the stormwater management system must be adequately maintained to ensure that the system operates as designed, and as approved by the department.
- (9) Recertification requirement. Within three months of the expiration of each five-year interval from the date of issuance of the permit, the permittee shall certify the following to the department.
  - (a) All areas of the project site have been inspected for areas of erosion, and appropriate steps have been taken to permanently stabilize these areas.
  - (b) All aspects of the stormwater control system have been inspected for damage, wear, and malfunction, and appropriate steps have been taken to repair or replace the facilities.
  - (c) The erosion and stormwater maintenance plan for the site is being implemented as written, or modifications to the plan have been submitted to and approved by the department, and the maintenance log is being maintained

November 16, 2005

Received  
Recorded Register of Deeds  
Sep 11, 2008 09:19:42A  
Cumberland County  
Pamela E. Lovley