

DEPARTMENT OF THE ARMY PERMIT

Permittee Portsmouth Naval Shipyard, PWD-Maine, Bldg. 59/2, Kittery, Maine 03804-5000

Permit No. NAE-2014-01178

Issuing Office New England District

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

Project Description:

Place permanent fill in 117,200 SF (2.69 acres) of waterway in conjunction with the construction of a king pile and concrete shutter panel bulkhead system at Berths 11, 12, and 13 and backfilling behind the bulkhead to increase the structural capacity of the existing steel piles. The work also includes maintenance and new dredging of approximately 10,660 cy's of material over a 52,600 SF (1.20 acres) area adjacent to the Dry Dock and Berths 11,12, and 13 to -41 ft. MLLW including over dredge. Dredged material that is suitable for reuse will be incorporated into the granular fill behind the bulkheads. Dredged material that is determined not suitable for reuse will be disposed of at an approved upland landfill.

This work is shown on the attached plans entitled, "Portsmouth Naval Shipyard, Kittery, Maine, Proposed Bert 11 & 12 Bulkhead and Proposed Berth 13 Bulkhead" in 4 sheets. Detailed plans entitled "Portsmouth Naval Shipyard, Kittery, Maine, Lifting and Handling Improvements: Structural Repairs at Berths 11 A, 11 B, and 11 C" on 36 sheets and Structural Repairs at Berths 12 and 13 on 33 sheets" are included in the administrative file.

Project Location:

In the Piscataqua River at Portsmouth Naval Shipyard Kittery, Maine

Permit Conditions:

General Conditions:

1. The time limit for completing the work authorized ends on December 31, 2021. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.
6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

Special Conditions:

1. The permittee shall ensure that a copy of this permit is at the work site whenever work is being performed and that all personnel performing work at the site of the work authorized by this permit are fully aware of the terms and conditions of the permit. This permit, including its drawings and any appendices and other attachments, shall be made a part of any and all contracts and sub-contracts for work which affects areas of Corps of Engineers jurisdiction at the site of the work authorized by this permit. This shall be done by including the entire permit in the specifications for work.

Special Conditions continued on Page 4

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

Section 404 of the Clean Water Act (33 U.S.C. 1344).

Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

2. Limits of this authorization.

- a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.
- b. This permit does not grant any property rights or exclusive privileges.
- c. This permit does not authorize any injury to the property or rights of others.
- d. This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

d. Design or construction deficiencies associated with the permitted work.

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. **Reliance on Applicant's Data:** The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. **Reevaluation of Permit Decision.** This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

a. You fail to comply with the terms and conditions of this permit.

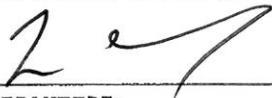
b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).

c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. **Extensions.** General condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.



(PERMITEE)

10/6/2016

(DATE)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.



Frank J. Del Giudice
Chief, Permits & Enforcement Branch
For District Engineer

9-19-2016

(DATE)

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

(TRANSFEREE)

(DATE)

Special Conditions continued from Page 2

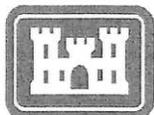
If the permit is issued after the construction specifications but before receipt of bids or quotes, the entire permit shall be included as an addendum to the specifications. If the permit is issued after receipt of bids or quotes, the entire permit shall be included in the contract or sub-contract as a change order. The term "entire permit" includes permit amendments. Although the permittee may assign various aspects of the work to different contractors or sub-contractors, all contractors and sub-contractors shall be obligated by contract to comply with all environmental protection provisions of the entire permit, and no contract or sub-contract shall require or allow unauthorized work in areas of Corps jurisdiction.

2. This authorization requires you to 1) notify us before beginning work so we may inspect the project, and 2) submit a Compliance Certification Form. You must complete and return the enclosed Work Start Notification Form(s) to this office at least two weeks before the anticipated starting date. The permittee shall complete and return the enclosed Compliance Certification Form within one month following the completion of the authorized work.
3. Adequate sedimentation and erosion control devices, such as geo-textile silt fences or other devices capable of filtering the fines involved, shall be installed and properly maintained to minimize impacts during construction. These devices must be removed upon completion of work and stabilization of disturbed areas. The sediment collected by these devices must also be removed and placed upland, in a manner that will prevent its later erosion and transport to a waterway or wetland.
4. Prior to construction, to mitigate for the possible loss of lobsters the Navy will implement a "Lobster Resource Mitigation Plan" that includes trapping and relocating lobsters.
5. Prior to dredging and filling activities the Navy will install floating siltation curtains where practicable.
6. The U.S. Coast Guard, Sector Northern New England, Waterways Management Section, (207) 347-5026, shall be notified at least ten working days in advance of the intended start date of the location and estimated duration of the dredging operations.

Special Conditions Continued on Page 5

Special Conditions Continued from Page 4

7. This permit authorizes disposal of dredged material at an upland site, therefore periodic maintenance dredging to the area and depth limits described herein is authorized until the expiration of this permit on December 31, 2021. Prior to the start of each dredging and disposal action, you shall complete and return the attached Dredging & Disposal Notification Form to this office at least 60 days, but no earlier than 120 days, before the intended date of any such dredging. Dredging shall not begin until obtaining written verification. Additional written authorization is required if material is to be dredged and disposed of at a site not specified on the attached plans. Send this form to: Marine Analysis Section, Regulatory Division, U.S. Army Corps of Engineers, New England District, 696 Virginia Road, Concord, Massachusetts 01742.
8. The scheduling of dredging and upland dewatering shall be such that the capacity of the dewatering area is not exceeded under any circumstances.
9. Mitigation will be as indicated in MEDEP Permit No. L-21179-26-BN-B Condition No. 5.
10. The permittee shall implement all terms and conditions contained in the attached water quality certification from the Maine Dept. of Environmental Protection L-21179-26-BN-B dated "May 25, 2016".



**US Army Corps
of Engineers** ®
New England District

DISPOSAL REQUEST FORM

Complete and send this form to: 978-318-8303 (fax), cenae-r@usace.army.mil, or:
 Policy and Technical Support Branch
 Regulatory Division
 U.S. Army Corps of Engineers, New England District
 696 Virginia Road
 Concord, MA 01742-2751

Submittal Date	
Corps File Number	

Permittee's Information

Name	
Street	
City/State/Zip	
Contact Person	
Phone Number	
Email	

Contractor's Information

Name	
Street	
City/State/Zip	
Contact Person	
Phone Number	
Email	

Dredge Information

Dredge site location	
Disposal area name	
Start and end dates	
List any Corps provided time of year restrictions	
Is this continuing work?	
Previous volume dredged	cu. yds.
Estimated volume remaining	cu. yds.
Permitted total volume	cu. yds.
Project dredge depth	

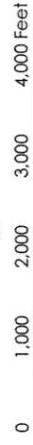
Disposal vessel name	Date vessel certified in DQM

Figure 1-1
Location Map
 Portsmouth Naval Shipyard
 York County, Maine

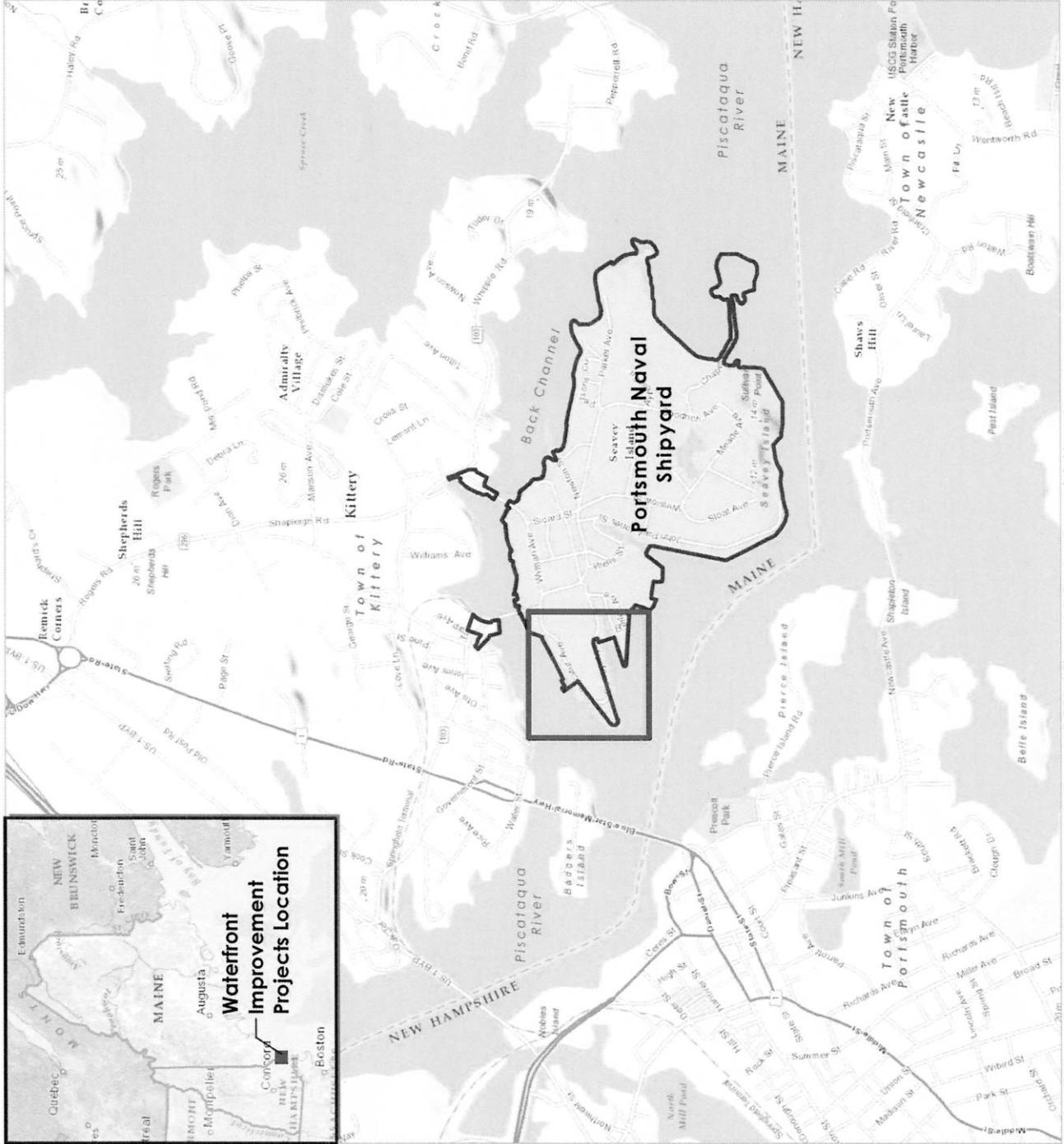
Legend



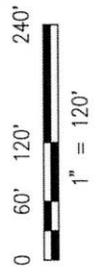
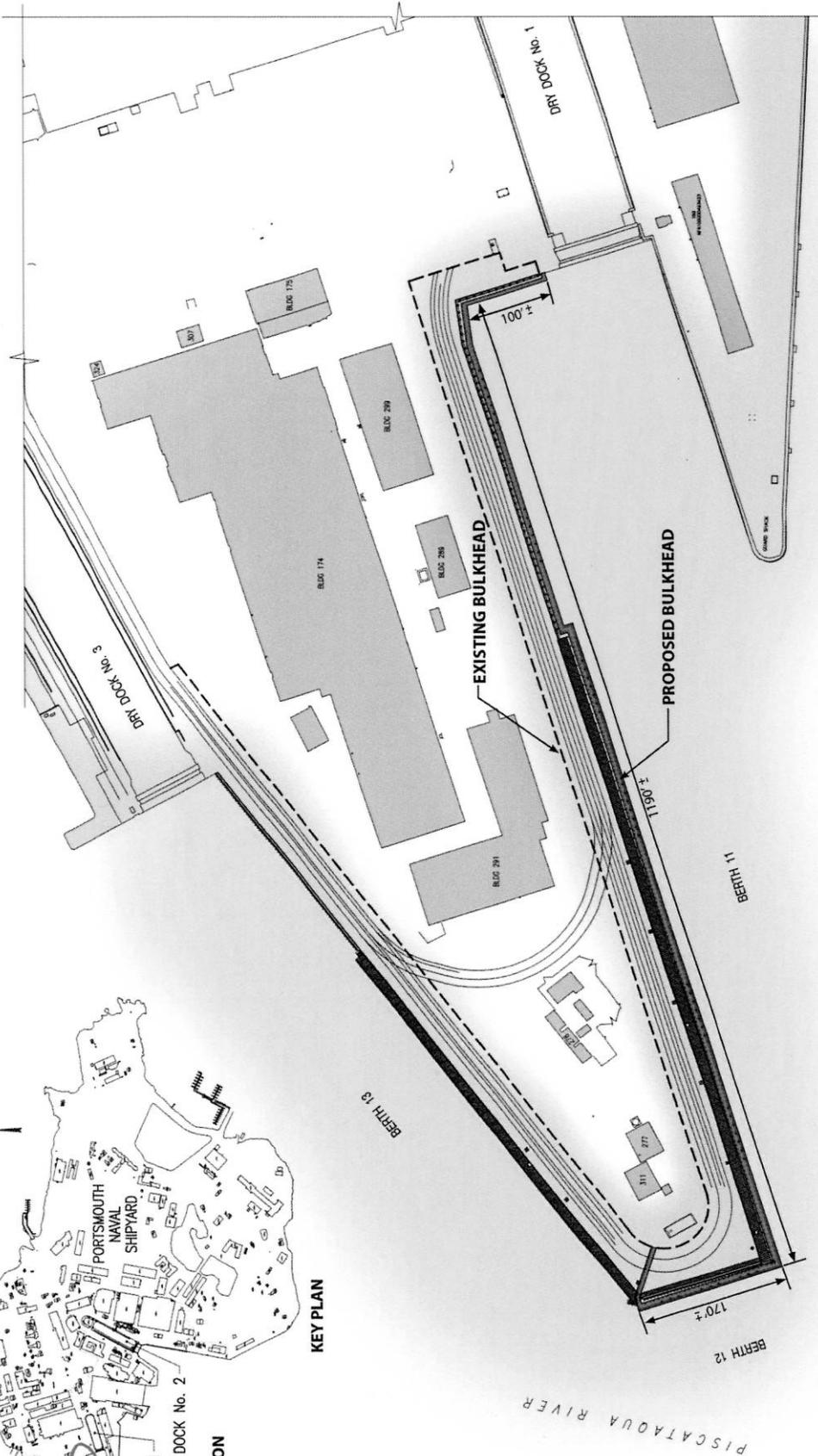
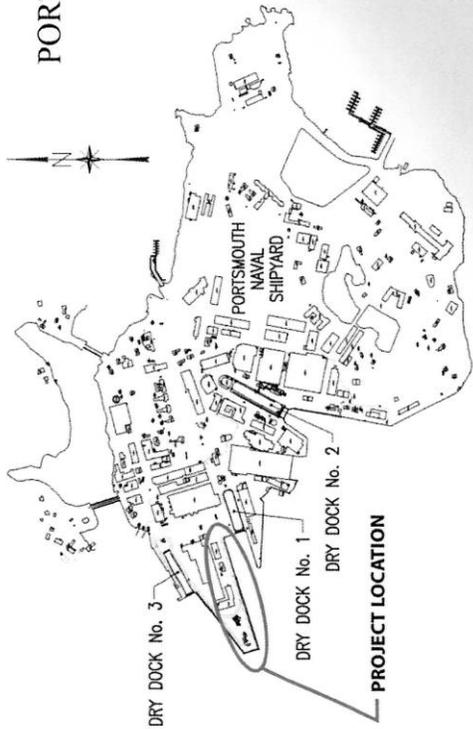
Installation Area



Source: ESRI 2013; Department of Defense 2014.

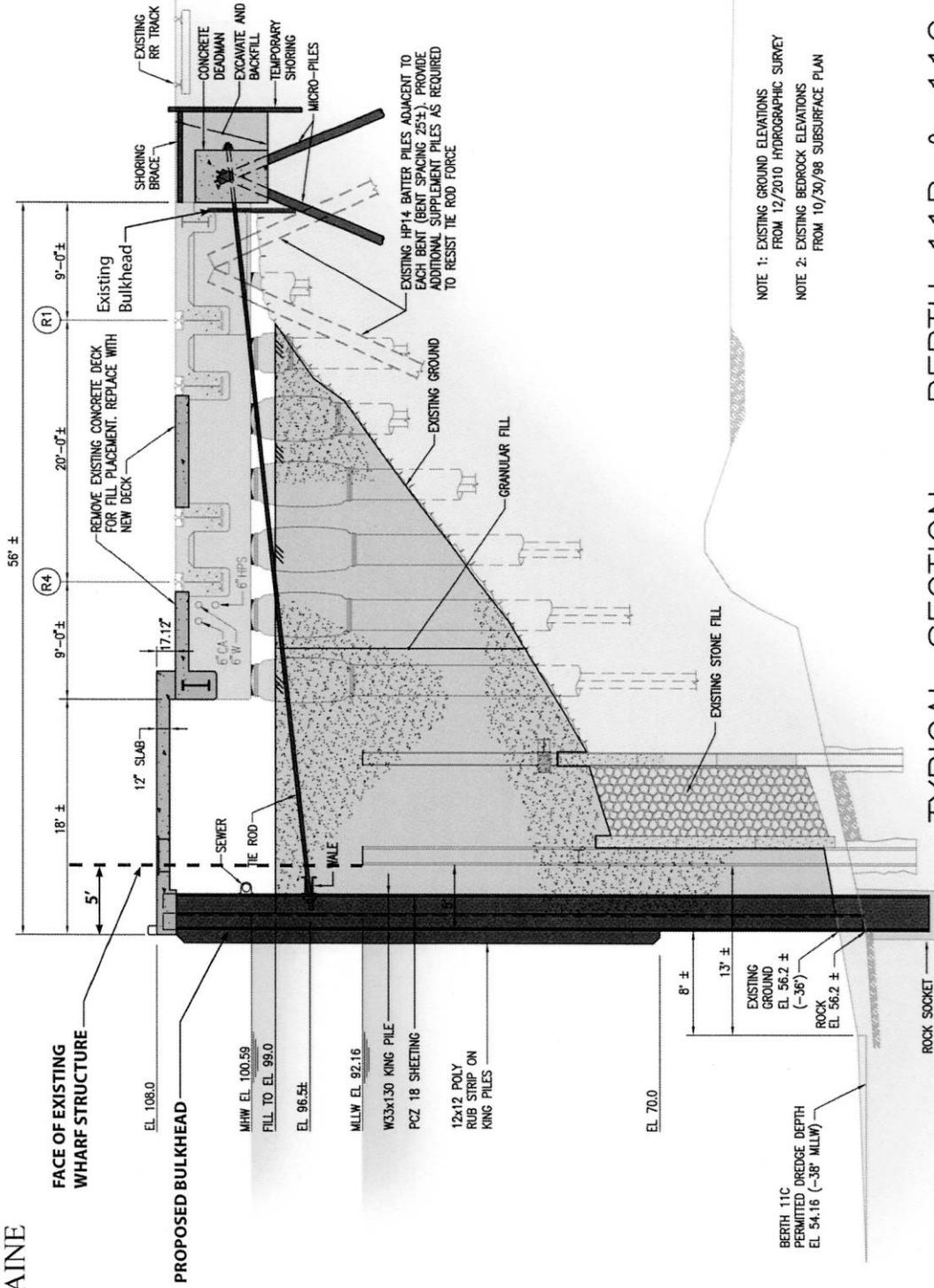


PORTSMOUTH NAVAL SHIPYARD
KITTERY, MAINE



PLAN - PROPOSED BERTH 11 & 12 BULKHEAD

PORTSMOUTH NAVAL SHIPYARD
KITTERY, MAINE

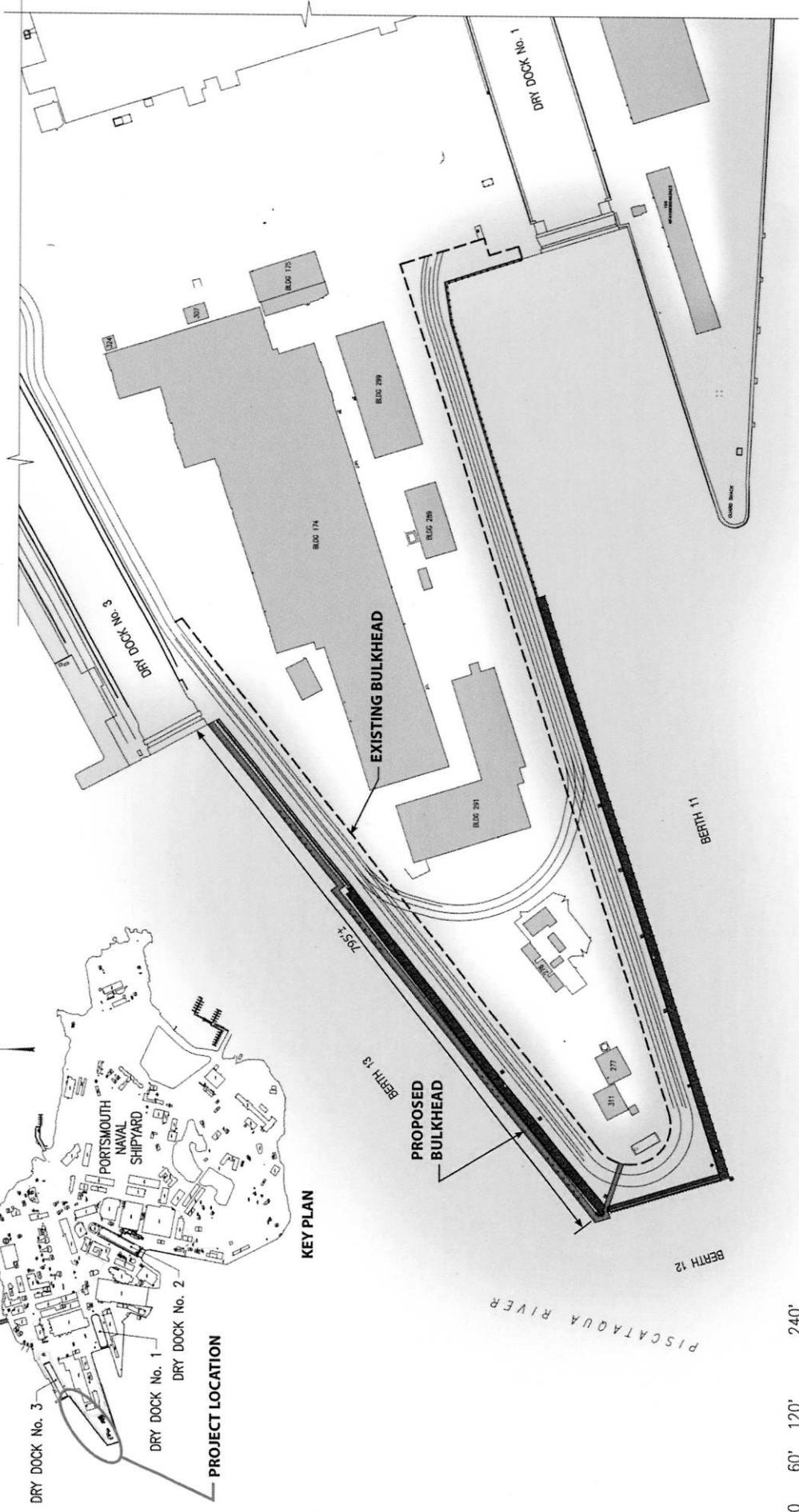
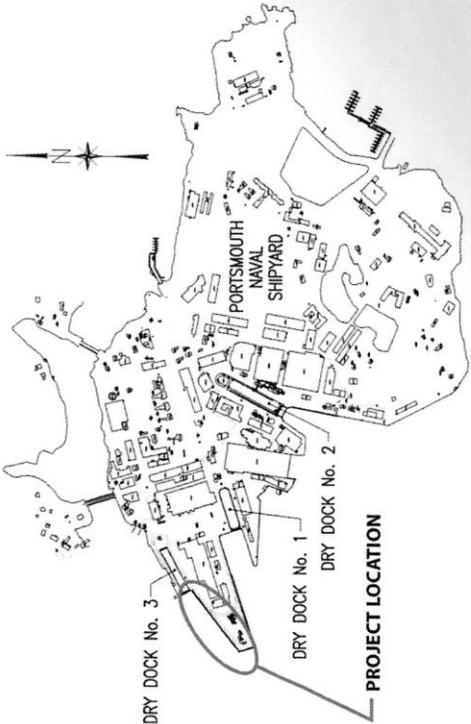


NOTE 1: EXISTING GROUND ELEVATIONS FROM 12/2010 HYDROGRAPHIC SURVEY
NOTE 2: EXISTING BEDROCK ELEVATIONS FROM 10/30/98 SUBSURFACE PLAN

TYPICAL SECTION - BERTH 11B & 11C

SCALE: 1/8"=1'-0"

PORTSMOUTH NAVAL SHIPYARD
KITTERY, MAINE

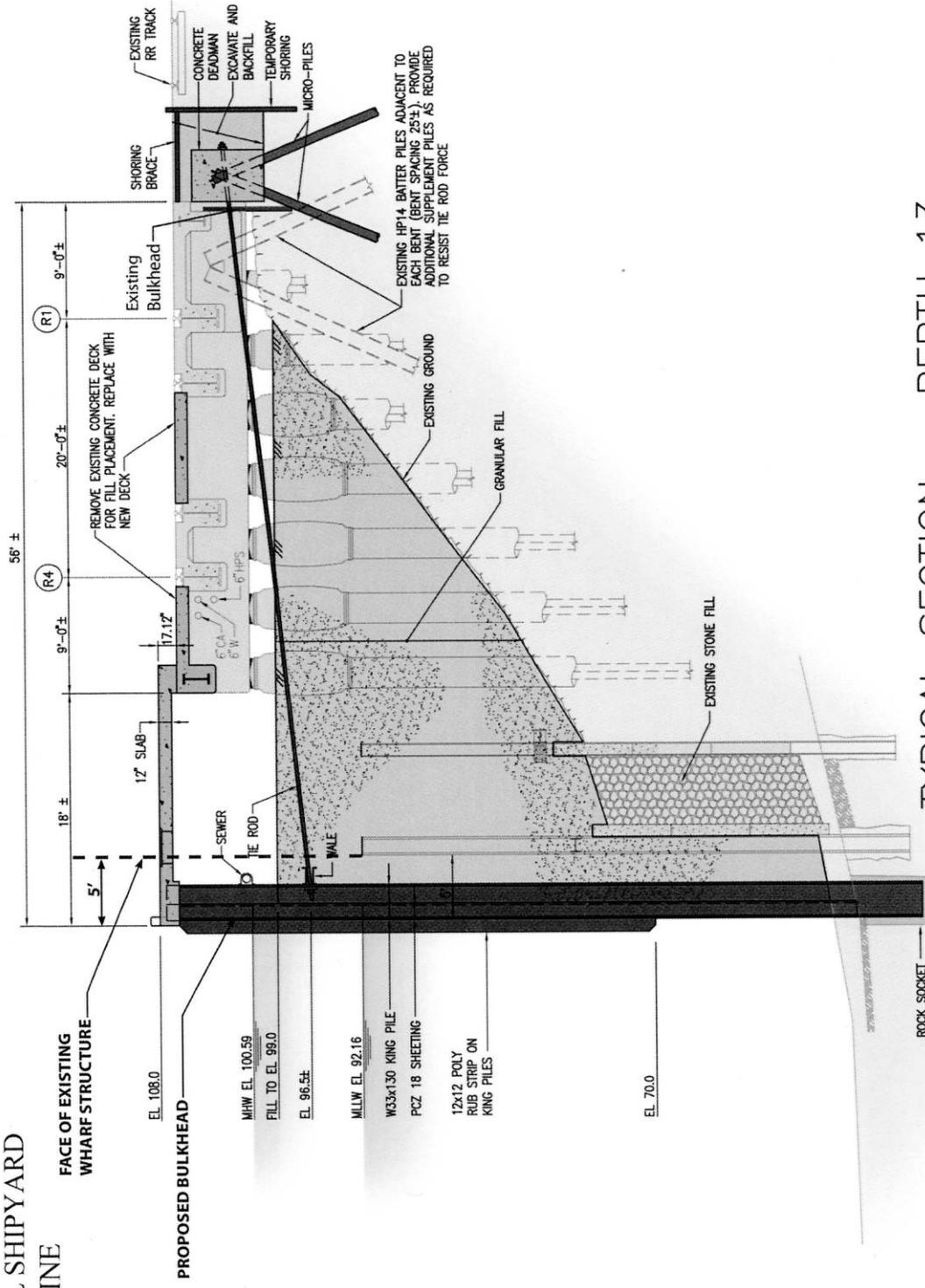


PLAN - PROPOSED BERTH 13 BULKHEAD



M/V/FST A. JOINT VENTURE
800 WORLD TRADE CENTER, NORFOLK, VA 23510

PORTSMOUTH NAVAL SHIPYARD
KITTERY, MAINE



56' ±

18' ±

5'

9'-0" ± (R4)

20'-0" ± (R1)

9'-0" ±

FACE OF EXISTING WHARF STRUCTURE

PROPOSED BULKHEAD

EXISTING BULKHEAD

EXISTING RR TRACK

SHORING BRACE

CONCRETE DEADMAN

EXCAVATE AND BACKFILL

TEMPORARY SHORING

MICRO-PILES

EXISTING HP14 BATTER PILES ADJACENT TO EACH BERTH (BETH SPACING 254') PROVIDE ADDITIONAL SUPPLEMENT PILES AS REQUIRED TO RESIST TIE ROD FORCE

EXISTING GROUND

GRANULAR FILL

EXISTING STONE FILL

ROCK SOCKET

EL. 108.0

MHW EL. 100.59

FILL TO EL. 99.0

EL. 96.5±

MLLW EL. 92.16

W33x130 KING PILE

PCZ 18 SHEETING

12x12 POLY RUB STRIP ON KING PILES

EL. 70.0

TYPICAL SECTION — BERTH 13

SCALE: 1/8" = 1'-0"



**US Army Corps
of Engineers**®
New England District

IN-LIEU-FEE (ILF) PROJECT COPY

FOR DEP

Applicant:

Please attach your check to this entire packet and forward it to the DEP as stated in Special condition # 8 of your permit.



**US Army Corps
of Engineers**®
New England District

**INDIVIDUAL PERMIT
WORK-START NOTIFICATION FORM**
(Minimum Notice: Two weeks before work begins)

* MAIL TO: U.S. Army Corps of Engineers, New England District *
* Permits and Enforcement Branch *
* Regulatory Division *
* 696 Virginia Road *
* Concord, Massachusetts 01742-2751 *

Corps of Engineers Permit No. NAE-2014-01178 was issued to the Portsmouth Naval Shipyard on . This work is located in the Piscataqua River at Portsmouth Naval Shipyard Kittery, Maine. The permit authorized the permittee to construct structural repairs to berths 11, 12, and 13 of the shipyards dry docks including placing fill in 117,200 SF (2.69 acres) of waterway in conjunction with the construction of a king pile and concrete shutter panel bulkhead system at Berths 11, 12, and 13 and backfilling behind the bulkhead to increase the structural capacity of the existing steel piles. The work also includes maintenance and new dredging of approximately 10,660 cy's of material over a 52,600 SF (1.20 acres) area adjacent to the Dry Dock and Berths 11,12, and 13. Dredged material that is suitable for reuse will be incorporated into the granular fill behind the bulkheads. Dredged material that is determined not suitable for reuse will be disposed of at an approved upland landfill.

The people (e.g., contractor) listed below will do the work, and they understand the permit's conditions and limitations.

PLEASE PRINT OR TYPE

Name of Person/Firm: _____

Business Address: _____

Telephone Numbers: () _____ () _____

Proposed Work Dates: Start: _____ Finish: _____

Permittee/Agent Signature: _____ **Date:** _____

Printed Name: _____ **Title:** _____

Date Permit Issued: _____ **Date Permit Expires:** _

FOR USE BY THE CORPS OF ENGINEERS

PM: Howe **Submittals Required:** Yes

Inspection Recommendation: Inspect as convenient



**US Army Corps
of Engineers**®
New England District

(Minimum Notice: Permittee must sign and return notification
within one month of the completion of work.)

COMPLIANCE CERTIFICATION FORM

USACE Project Number: NAE-2014-01178

Name of Permittee: Portsmouth Naval Shipyard

Permit Issuance Date: _____

Please sign this certification and return it to the following address upon completion of the activity and any mitigation required by the permit. You must submit this after the mitigation is complete, but not the mitigation monitoring, which requires separate submittals.

 * MAIL TO: U.S. Army Corps of Engineers, New England District *
 * Policy Analysis/Technical Support Branch, ATTN: Marie Farese *
 * Regulatory Division *
 * 696 Virginia Road *
 * Concord, Massachusetts 01742-2751 *

Please note that your permitted activity is subject to a compliance inspection by an U.S. Army Corps of Engineers representative. If you fail to comply with this permit you are subject to permit suspension, modification, or revocation.

I hereby certify that the work authorized by the above referenced permit was completed in accordance with the terms and conditions of the above referenced permit, and any required mitigation was completed in accordance with the permit conditions.

Signature of Permittee

Date

Printed Name

Date of Work Completion

() _____

() _____

Telephone Number

Telephone Number



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



PAUL R. LEPAGE
GOVERNOR

PAUL MERCER
COMMISSIONER

May 2016

Department of the Navy
C/o CDR Jason Crosby, Deputy Public Works Officer
PWD – Maine Bldg 59/2
Kittery, ME 03804-5000

RE: Site Location of Development Act and Natural Resources Protection Act Applications
Kittery, DEP #L-21179-26-BN-B/L-21179-4E-BO-N

Dear CDR Crosby:

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- 822-6300 or at robert.green@maine.gov

Sincerely,

Robert L. Green, Jr., 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

DEPARTMENT OF THE NAVY) SITE LOCATION OF DEVELOPMENT ACT
Kittery, York County) NATURAL RESOURCES PROTECTION ACT
BERTHS 11, 12, AND 13 REPAIRS) COASTAL WETLAND ALTERATION
L-21179-26-BN-B (approval)) WATER QUALITY CERTIFICATION
L-21179-4E-BO-N (approval)) MINOR AMENDMENT
) FINDINGS OF FACT AND ORDER

Pursuant to the provisions of 38 M.R.S.A. Sections 481 et seq. and 480-A et seq., and Section 401 of the Federal Water Pollution Control Act, the Department of Environmental Protection has considered the application of the DEPARTMENT OF THE NAVY 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: In Department Order #L-21179-26-A-N, dated March 6, 2003, the Department approved the construction of a new Bachelors Enlisted Quarters and other existing facilities at the Portsmouth Naval Shipyard under the Site Location of Development Act (Site Law). Previous Department Orders had been issued approving various projects under the Natural Resources Protection Act (NRPA) and the Coastal Zone Management Act. Subsequent Department Orders have approved numerous new projects and modifications under both the Site Law and NRPA.

B. Summary: Berths 11, 12, and 13 provide support to the adjacent Dry Docks 1 and 3. The berths are comprised of pile-supported open wharves. Constructed in 1943 the wharves have been expanded, strengthened, and rehabilitated over time. Berths 11 and 13 support the use of a portal crane system that provide pier-side lifting necessary to the maintenance operations of the Shipyard. Deterioration of the berths has resulted in reducing the locations where the portal cranes can operate as well as limiting the load capacity of the cranes. To ensure the continued use of the berths, the applicant proposes to overhaul the wharves along Berths 11, 12, and 13. The proposed project includes the installation of three-foot diameter king piles seaward of the existing structure, placement of a concrete panel bulkhead between the king piles, and backfilling behind the bulkhead. The pile and panel structure will extend approximately five feet seaward of the existing berths, except for the length of Berth 11A which will extend approximately 15 feet seaward. This additional intrusion into the resource is required to maintain a flush face with the rest of the bulkhead (Berths 11B and C currently extend further into the river than Berth 11A). Given the size of the project, construction of the bulkhead will be performed in two phases. Phase I will include work along Berths 11A, 11B, and 11C, and Phase II will include work along Berths 12 and 13.

The king piles will be set into sockets drilled into underlying bedrock and concrete shutter panels will be stacked between the piles. A level trench will be dredged seaward of the panels to a depth of approximately one foot below the maintenance dredge depth of -38 feet mean low water (MLLW) as authorized in Department Order #L-21179-26-AZ-M/L-21179-4E-BA-N, dated June 20, 2013. Placement of the panels at this depth is intended to protect the bottom of the structure from damage during maintenance dredge operations along the berths. In those areas where bedrock is encountered above -38 feet MLLW, the panels will be set just above bedrock. The bottom of the panels will be grouted in place. Additional in-water work includes the installation of H-type sister piles at the location of the inboard portal crane rail system at Berths 11 and 13 to restore the load capacity of the wharves. Upon completion, the level trench will be backfilled with crushed stone.

Work behind the new bulkhead includes repair to the upper eight feet of existing concrete jackets at wharf foundation piles, relocation of utilities, demolition of existing timber pier deck, restoration and expansion of concrete superstructure elements and decking, and the placement of fill behind the bulkhead. Backfill will be comprised of pea stone from the bottom of the bulkhead to approximately one and one half feet above the mean low water line. The pea stone will be covered with geotextile fabric and overlain with approximately five feet of granular fill. Dredged sediments that are determined to be suitable for reuse will be incorporated into the granular fill.

The footprint of the entire project area is estimated at 3.9 acres. The new bulkhead and backfilling will fill approximately 1.52 acres (66,300 square feet) of coastal wetland along Berth 11 and 1.17 acres (50,900 square feet) along Berths 12 and 13. The footprint of dredging activities along the berths lies within the area previously permitted; however, the proposed project requires dredging be performed at depths deeper than were previously permitted and will generate approximately 10,660 cubic yards of material. The proposed project is shown on two sets of plans, the first of which is entitled "Lifting and Handling Improvements: Structural Repairs at Berths 11A, 11B, and 11C," prepared by the applicant and MN/FST (now Stantec) and dated February 2016, and the second of which is entitled "Lifting and Handling Improvements: Structural Repairs at Berths 12 and 13," prepared by the applicant and MN/FST (now Stantec) and dated February 2016. The project site is located in the Piscataqua River in the Town of Kittery.

C. Current Use of Site: The project site is located within the Controlled Industrial Area of the Portsmouth Naval Shipyard, which is completely developed with buildings and surrounding pavement.

2. FINANCIAL CAPACITY:

The total cost of the project is estimated to be \$55,000,000 to \$65,000,000. The project is fully funded under the U.S. Navy Budget through the federal budgeting process. Funding has been approved for this project.

The Department finds that the applicant has demonstrated adequate financial capacity to comply with Department standards.

3. TECHNICAL ABILITY:

The applicant provided resume information for key persons involved with the project and a list of projects successfully constructed by the applicant. The applicant also retained the services of Stantec and ESS Group, Inc., professional engineering firms, to assist in the design and engineering of the project.

The Department finds that the applicant has demonstrated adequate technical ability to comply with Department standards.

4. EXISTING SCENIC, AESTHETIC, RECREATIONAL OR NAVIGATIONAL USES:

In accordance with Chapter 315, Assessing and Mitigating Impacts to Scenic and Aesthetic Uses, the applicant submitted a copy of the Department's Visual Evaluation Field Survey Checklist as Appendix A to the application along with a description of the property and the proposed project. The applicant also submitted several photographs of the proposed project site including an aerial photograph of the project site.

The proposed project is located in the Piscataqua River, which is a scenic resource visited by the general public, in part, for the use, observation, enjoyment and appreciation of its natural and cultural visual qualities. There will be no permanent changes to the scenic and aesthetic values of the river, because dredging activities will take place in the subtidal area. Equipment will be in the water continuously until the project is completed. Phase I which includes Berths 11A, 11B, and 11C is estimated to take two to three years to complete, and Phase II which includes Berths 12 and 13 is estimated to take another two to three years to complete. Based on the information submitted in the application, the Department determined that the location and scale of the proposed activity is compatible with the existing visual quality and landscape characteristics found within the viewshed of the scenic resource in the project area.

The proposed project was evaluated using the Department's Visual Impact Assessment Matrix and was found to have an acceptable potential visual impact rating. Based on the information submitted in the application and the visual impact rating, the Department determined that the location and scale of the proposed activity is compatible with the existing visual quality and landscape characteristics found within the viewshed of the scenic resource in the project area.

The Department of Marine Resources (DMR) stated that the proposed project should not cause any significant adverse impact to navigation or recreation.

The Department finds that the proposed activity will not unreasonably interfere with existing scenic, aesthetic, recreational or navigational uses of the protected natural resource.

5. WILDLIFE AND FISHERIES:

The open intertidal area underneath the berths is overlain with riprap. The subtidal area adjacent to the wharves is characterized as ranging from soft mud, sand, and pebbles along Berths 11 and 13 to hard sand, pebbles, cobbles and riprap along Berth 12. Riprap was placed along Berth 12 because the swift downriver current strikes this portion of the wharf. The sampling by the applicant identified 54 different species of marine organisms within the project area, most of which were polychaetes or oligochaetes. Of the individuals found during sampling, the majority were determined to be opportunistic species that survive in stressed environments.

The Shipyard's facility dredge permit (Department Order #L-21179-26-AZ-M/L-21179-4E-BA-N, dated June 20, 2013) found that most of the benthic organisms utilizing the proposed dredge area habitats are common, ubiquitous species which will recolonize after dredging is completed. This Order also found that lobster densities in the project area meet or exceed the DMR guideline of 0.1 lobster/square meter. To mitigate for the possible loss of lobsters at these higher density locations, the Order required the applicant to implement the "Lobster Resource Mitigation Plan", originally prepared by MER Assessment Corporation, dated July 26, 2001, and to submit a report of the results of the lobster trapping and relocation effort.

Given the extreme currents of the Piscataqua River at the Shipyard and the additional safety and security requirements, scuba diving is no longer permitted at the Shipyard. The applicant has assumed that the project area contains lobster densities at levels greater than 0.1 lobsters/square meter and consequently, lobster mitigation efforts will be required prior to dredging the level trench and placement of piles and shutter panels. The applicant intends to comply with the "Portsmouth Naval Shipyard (PNSY) Lobster Mitigation Effort", dated December 16, 2008, which outlines the trapping and disposition of legal and sub-legal lobsters. This plan was approved in #L-21179-26-AZ-M/L-21179-4E-BA-N, dated June 20, 2013.

Department staff reviewed a Geographic Information System (GIS) database that contains information provided by both the DMR and the Department of Inland Fisheries and Wildlife (DIFW). The GIS database indicates there are no Essential Habitats or Significant Wildlife Habitats, as defined in the NRPA, located at the project site.

DMR stated that numerous fish species use the Piscataqua River as a migratory pathway. DMR commented that because the footprint of the proposed project is not habitat for the diadromous species that migrate through this portion of the river, the proposed project is not expected to cause any significant adverse impact to marine resources. DMR also stated that the installation of a silt curtain along Berths 11 and 13 as discussed in Finding 7 will further minimize impacts to fishing activities, lobsters, and shellfish habitat.

The Department finds that the activity will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic or adjacent upland habitat, travel corridor, freshwater, estuarine or marine fisheries or other aquatic life provided that lobster trapping operations are conducted in accordance with the previously approved Lobster Mitigation Plan.

6. HISTORIC SITES:

The Shipyard's Historic District was nominated to the National Register of Historic Places in 1977. The historic district's core includes the majority of residential buildings, the U.S. Marine Corps Reservation, and many old industrial buildings.

The applicant notified the Maine Historic Preservation Commission (MHPC) that the proposed project is not expected to have an adverse effect on the aboveground historic properties on the Shipyard and no effect on archaeological resources. In a letter dated March 1, 2016, the MHPC concurred with the applicant that the proposed project will not have an adverse effect on the historical properties.

The Department finds that the proposed project will not have an adverse effect on the preservation of any historic sites.

7. SOILS AND SOIL EROSION:

The project site is located within an area designated as an Installation Restoration Program site (IR). IR soils/sediment may be contaminated with poly-aromatic hydrocarbons, polychlorinated biphenyls, and metals. Contaminated soils at the Shipyard are regulated by the Department's Bureau of Remediation and Waste Management under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

The proposed project is expected to generate excavated soil resulting from the installation of king piles, H-piles, and rock anchors. This material will be reused as fill if it is found to be suitable. Excess soil not suitable for reuse will be tested to determine if the material is a hazardous waste. All excavated or dredged material must be disposed of in a manner consistent with contaminated materials, as discussed in Finding 9.

The applicant proposes to install a siltation curtain and boom approximately 18 feet from the end of the Berths 11 and 13 during the placement of fill (pea stone and granular fill) to contain resuspended debris or silt generated during this portion of the project. Because of the fast river currents affecting Berth 12, installation of the siltation curtain and boom is not practicable.

The Department finds that the soils on the project site present no limitations to the proposed project that cannot be overcome through standard engineering practices

provided that excavated material are tested and handled as described above, and disposed, as discussed in Finding 9.

8. WATER QUALITY CONSIDERATIONS:

The waters of the Piscataqua River are classified by the Department as SC. The standards for Class SC waters require that the waters be suitable as a habitat for fish and other estuarine and marine life, and that discharges to these waters may cause some changes to estuarine and marine life provided that the receiving waters are of sufficient quality to support all species of fish indigenous to the receiving waters and maintain the structure and function of the resident biological community.

The State's water quality standards include an antidegradation policy found at 38 M.R.S. § 464(4)(F). This policy provides that the existing uses and the level of water quality necessary to protect those existing uses must be maintained and protected. The State may not issue a Water Quality Certification for the discharge of dredged material unless the applicant demonstrates that the proposed activity will not have a significant impact on existing estuarine or marine life use and habitat. A significant impact is defined as a "significant impairment to growth and reproduction or an alteration of the habitat which impairs viability of the existing population." The applicant demonstrated that the proposed activity will not result in a significant degradation of recreational uses, fishing, and commercial harvesting of shellfish and other estuarine and marine species as discussed in Finding 5.

As discussed in Finding 5, the waters that would be affected by the proposed project have limited use by fish and other estuarine and marine life, but does provide habitat for lobsters. Based on the evidence presented in the application, the Department finds that the applicant has demonstrated that the proposed project will maintain and protect existing uses and the level of water quality necessary to protect those existing uses, will protect the existing water quality of affected SC waters, will not significantly impair the viability of existing estuarine and marine life, and will not result in a significant degradation of existing recreation, fishing and commercial harvesting of such estuarine and marine species.

9. SOLID WASTE:

The proposed project will generate approximately 5,000 cubic yards of construction and demolition debris. All construction and demolition debris generated will be disposed of at either Aggregate Recycling Corporation in Eliot, ME, Turnkey Recycling and Environmental Enterprises in Rochester NH, Environmental Resource Return Corporation in Epping NH, or New England Metal Recycling in Madbury NH. All of these facilities are acceptable methods of disposal.

The proposed project will generate an undetermined amount of excavated soil from the installation of piles and anchors. The project will also generate an additional 120 cubic yards of dredged material above the estimated 10,540 cubic yards of dredge material

previously approved for removal in the project area. The applicant will sample the excavated soil and dredge material to determine if it can be reused as fill under the wharf.

All material unsuitable for reuse will be analyzed to determine if it is a hazardous waste. Unsuitable excavated soil is expected to be dry enough to transport without the need to dewater, while unsuitable dredged material will be dewatered and mixed with cement on the barge scow. All unsuitable material determined to be a hazardous waste will be transported to the Shipyard's permitted solid waste handling facility, Building 357, for processing before its ultimate disposal at a licensed solid waste landfill facility.

Based on the above information, the Department finds that the applicant has made adequate provision for solid waste disposal provided that wastes generated by the proposed project are adequately characterized and disposed of accordingly.

10. WETLAND IMPACTS:

The applicant proposes to alter 2.69 acres (117,200 square feet) of coastal wetland to install the bulkhead, fill underneath the wharf, and dredge the area seaward of the bulkhead. The footprint of the entire project area is estimated at 3.9 acres.

The Wetlands and Waterbodies Protection Rules, 06-096 CMR 310 (effective January 26, 2009), interpret and elaborate on the Natural Resources Protection Act (NRPA) criteria for obtaining a permit. The rules guide the Department in its determination of whether a project's impacts would be unreasonable. A proposed project would generally be found to be unreasonable if it would cause a loss in wetland area, functions and values and there is a practicable alternative to the project that would be less damaging to the environment. Each application for a NRPA permit that involves a coastal wetland alteration must provide an analysis of alternatives in order to demonstrate that a practicable alternative does not exist.

A. Avoidance. No activity may be permitted if there is a practicable alternative to the project that would be less damaging to the environment. The applicant submitted an alternatives analysis for the proposed project. The purpose of the proposed project is to protect the pier structure and to restore the portal crane capacity along the entire length of the wharf. The no-action alternative and the alternative to only make repairs to the deteriorating wharf elements were dismissed as impracticable because they would not meet the project purpose. The applicant considered complete replacement of the wharf and determined this alternative to be impracticable because of cost and the loss of the berths during the several years of construction would significantly impact the Shipyard's ability to maintain and repair submarines for the Navy. The applicant considered placing king piles with a steel sheeting bulkhead. This alternative requires further encroachment into the coastal wetland, additional king piles and driving sheet piles all of which will result in additional wetland fill and sound impacts to marine mammals and fish. This alternative was determined to be impracticable. The applicant stated that the selected alternative is the least damaging practicable alternative that meets the project purpose

while allowing work at the Shipyard to continue during construction of the proposed project.

The Department concurs with the applicant's conclusions that the no-action alternative would not meet the stated project purpose and is not a practicable alternative. In addition, the Department concurs with the applicant's determination that the conditions at the wharf warrant repairs at the scale proposed. Due to the nature of the project purpose, some impact to the coastal wetland would be unavoidable. The Department finds that the selected alternative is the most practicable alternative that would have the least amount of environmental impact.

B. Minimal Alteration. The amount of coastal wetland to be altered must be kept to the minimum amount necessary for meeting the overall purpose of the project. The proposed project will fill approximately 103,600 square feet of highly impacted intertidal area under the wharf. The applicant determined that the five-foot encroachment into the resource is necessary to provide for the safe installation of the three-foot diameter king piles and concrete shutter panels. The applicant stated that removing bottom material will not permanently alter the characteristics of the existing bottom sediment and habitat characteristics and therefore minimizes the impact to marine fisheries.

Based on the conclusions of the alternatives analyses above, the Department finds that the applicant has adequately demonstrated that the amount of coastal wetland to be altered by the proposed project is the minimum amount necessary to meet the stated project need and purpose.

C. Compensation. Compensation is required to achieve the goal of no net loss of wetland functions and values. In accordance with Chapter 310, Section 5(C), compensation is required when the Department determines that a wetland alteration will cause a wetland function or functions to be lost or degraded as identified by a functional assessment or by the Department's evaluation of the project.

The applicant submitted a functional assessment, dated November 24, 2015, which described the wetlands to be altered by the proposed project and identified no primary functions and values underneath the existing wharf. Lesser wetland functions occurring in the subtidal area to be filled resulting from the expansion of the wharf into the resource included habitat for shellfish and smaller fish species. The Department has determined that this portion of the proposed project will result in a degradation of the wetlands at this location and that compensation for the loss of approximately 13,600 square feet of coastal wetlands is warranted.

The Department has determined that the loss of approximately 103,600 square feet of coastal wetlands underneath the wharf and the 52,600 square feet of subtidal area seaward of the berths proposed to be dredged will not result a wetland function or functions to be lost or degraded, and that compensation will not be required.

The applicant proposes to make a contribution into the In-Lieu Fee (ILF) program of the Maine Natural Resource Conservation Program (MNRCP) in the amount of \$110,976. Prior to the start of construction, the applicant must submit a payment in the amount of \$110,976, payable to "Treasurer, State of Maine", and directed to the attention of the ILF Program Administrator at 17 State House Station, Augusta, Maine 04333.

The Department finds that the applicant has avoided and minimized coastal wetland impacts to the greatest extent practicable, and that the proposed project represents the least environmentally damaging alternative that meets the overall purpose of the project provided that prior to project construction, the applicant submits the ILF payment as described above.

11. ALL OTHER:

All other Findings of Fact, Conclusions and Conditions remain as approved in Department Order #L-21179-26-A-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.A. Sections 480-A et seq. and Section 401 of the Federal Water Pollution Control Act:

- A. The proposed activity will not unreasonably interfere with existing scenic, aesthetic, recreational, or navigational uses.
- B. The proposed activity will not cause unreasonable erosion of soil or sediment.
- C. The proposed activity will not unreasonably inhibit the natural transfer of soil from the terrestrial to the marine or freshwater environment.
- D. The proposed activity will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic habitat, travel corridor, freshwater, estuarine, or marine fisheries or other aquatic life provided that prior to construction the applicant makes a contribution to the ILF program as described in Finding 10.
- E. The proposed activity will not unreasonably interfere with the natural flow of any surface or subsurface waters.
- F. The proposed activity will not violate any state water quality law including those governing the classifications of the State's waters.
- G. The proposed activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties.
- H. The proposed activity is not on or adjacent to a sand dune.

- I. The proposed activity is not on an outstanding river segment as noted in 38 M.R.S.A. Section 480-P.

BASED on the above findings of fact, and subject to the conditions listed below, the Department makes the following conclusions pursuant to 38 M.R.S.A. Sections 481 et seq.:

- 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 Section 420-D and the standard for erosion and sedimentation control in Section 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 provided that excavated materials not reused and to be disposed of off-site are tested, handled, and disposed, as discussed in Finding 9.
- 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 the DEPARTMENT OF THE NAVY to repair the pile-supported wharf along Berths 11, 12, and 13 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 it

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.

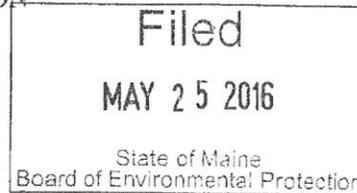
- 3. Severability. The invalidity or unenforceability of any provision, or part thereof, of this License shall not affect the remainder of the provision or any other provisions. This License shall be construed and enforced in all respects as if such invalid or unenforceable provision or part thereof had been omitted.
- 4. Excavated soil or dredged material determined to be unsuitable for reuse shall be analyzed to determine if it is a hazardous waste. All unsuitable material determined to be a hazardous waste shall be transported to the Shipyard's permitted solid waste handling facility, Building 357, for processing before its ultimate disposal at a licensed solid waste landfill facility.
- 5. Prior to the start of construction, the applicant shall submit a payment in the amount of \$110,976, payable to "Treasurer, State of Maine", to the attention of the ILF Program Administrator at 17 State House Station, Augusta, Maine 04333.
- 6. All other Findings of Fact, Conclusions and Conditions remain as approved in Department Order # L-21179-26-A-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 25TH DAY OF MAY, 2016.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: *Paul Mercer*
For: Paul Mercer, Commissioner



PLEASE NOTE THE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES.

RLG/L21179BNBBON/ATS#80302, 80303

Department of Environmental Protection
SITE LOCATION OF DEVELOPMENT (SITE)
STANDARD CONDITIONS

- 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.
- G. Approval Included in Contract Bids.** A copy of this approval must be included in or attached to all contract bid specifications for the development.
- H. Approval Shown to Contractors.** Work done by a contractor pursuant to this approval shall not begin before the contractor has been shown by the developer a copy of this approval.

(2/81)/Revised December 27, 2011



Natural Resources Protection Act (NRPA) Standard Conditions

THE FOLLOWING STANDARD CONDITIONS SHALL APPLY TO ALL PERMITS GRANTED UNDER THE NATURAL RESOURCES PROTECTION ACT, 38 M.R.S.A. § 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.