



DEPARTMENT ORDER

IN THE MATTER OF

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KITTERY INDIAN LLC	)	STORMWATER MANAGEMENT LAW
York, York County	)	
HOTEL AND PARKING LOT	)	
L-27916-NJ-A-N (Approval)	)	FINDINGS OF FACT AND ORDER

Pursuant to the provisions of 38 M.R.S. § 420-D, and Chapter 500 (06-096 C.M.R. Chapter 500, last amended August 12, 2015) of the Department's Regulations, the Department of Environmental Protection has considered the application of KITTERY INDIAN LLC with the supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

1. PROJECT DESCRIPTION:

A. Summary: The applicant proposes to construct a stormwater management system for a 13,408-square foot hotel (a Comfort Inn or similar) and parking lot with 83 spaces on a 2.68-acre site. The proposed project will have 1.05 acres of impervious area and 2.07 acres of developed area. The project is shown on a set of plans; plan CG-10 of the set is titled "Kittery Indian, Grading and Drainage Plan, 317 US Route 1, York, ME 03909," prepared by Fuss & O'Neill, and dated April 18, 2018, with a latest revision date on any of the sheets of May 24, 2018. The project site is located off US Route 1 in the Town of York (Tax map 102 Lot 31).

The applicant also proposes to fill 2,098 square feet of freshwater wetland. This amount of wetland alteration is exempt pursuant to 38 M.R.S. §480(Q)(17) of the Natural Resources Protection Act (NRPA).

B. Current Use of the Site: The site of the proposed project is currently developed with a two-story motel, garage, in-ground pool, parking lot and lawn area that was known as the Micmac Motel. There are small wetland areas on the east and west sides of the lot.

2. STORMWATER STANDARDS:

The proposed project includes approximately 2.07 acres of developed area of which 1.05 acres is impervious area. It lies within the watershed of Cider Hill Creek which is a tributary to the York River. The applicant submitted a stormwater management plan based on the Basic and General Standards contained in Department Rules, Chapter 500. The applicant proposes a redevelopment project; the applicant submitted redevelopment impact rating calculations based on the instructions and tables in Chapter 500 section 4 (C)(d). The applicant proposes a building that does not have a flat asphalt roof and to

DEBRA L. ANDERSON, REGISTER OF DEEDS  
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revert 0.48 acres of the site into meadow. The use of a roof that is not a flat asphalt roof and the proposed meadow area reduced the proposed pollutant impact rating of the proposed project such that no treatment for any of the proposed developed area is required. However, the proposed meadow area must be maintained as defined below to continue to meet Chapter 500 General Standards.

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 Bureau of Land Resources (BLR).

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. The maintenance plan is based on the standards contained in Appendix B of Chapter 500. This plan was reviewed by, and revised in response to the comments of, BLR. The applicant will be responsible for the maintenance of all common facilities including the stormwater management system.

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

Based on BLR'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)(B).

B. General Standards:

The applicant proposes a redevelopment project to construct a hotel with a roof that is not a flat asphalt roof and to revert 0.48 acres of the site into meadow which will make the proposed project's pollutant impact rating below the pollutant impact rating for the existing developed site which in turn makes the ranked impact change due to development be 0.0 or less, therefore, the percentage of the proposed developed area that must be treated is zero in accordance with Table 3 of Chapter 500. This requires the applicant to construct the proposed hotel without a flat asphalt roof and to maintain the 0.48 acres that is shown as meadow on the Post-Development Pollutant Impact Rating Plan (Fig. 6) and on the Grading & Drainage Plan (Plan CG-101) as meadow or as forested area. To qualify as meadow, the area must only be mowed two times or less per year, or be allowed to revert to forested area. The Landscaping Plan for the project

shows some of the area that is to remain as meadow to be planted with trees and shrubs. Trees and shrubs can be planted in the area proposed to be maintained as meadow (or forested area) however, all the plantings are not allowed to be maintained as landscaped area; these plants should only be mulched with hay immediately after planting and no other normal landscaping maintenance such as raking and use of bark mulch is allowed. If any greater than 0.09 acres (3,920 square feet) of the meadow or forested area is maintained as lawn or landscaped area it will increase the pollutant impact rating to greater than 0.0 which will require stormwater runoff from at least 60% of the developed area to be treated to meet the Stormwater Management General Standards.

The applicant submitted plans and details for two underdrained soil filters that treat approximately 51% of the proposed developed area; the underdrained soil filter information was not reviewed by the Department because they are not required by the Stormwater Management Rules.

The applicant will need to provide evidence that the proposed meadow area continues to qualify as either a meadow or a forested area to meet the five-year stormwater recertification requirements. The location of the proposed meadow (or forested area) must be permanently marked on the ground with signs that note that the area is a required meadow area and maintenance of the area is limited to mowing two times or less per year and that no other maintenance such as weeding, mulching, raking, etc. is allowed. Photos of the meadow with signs must be sent to the Department within 30 days of substantial completion of the site work.

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

Based on the stormwater system's design and BLR's review, the Department finds that the applicant has made adequate provision to ensure that the proposed project will meet the General Standards provided that the proposed hotel is not constructed with a flat asphalt roof, the proposed meadow area is constructed and maintained as a meadow, signs are erected that mark the edge of the meadow, and photos of the meadow with signs are submitted to the Department as described above.

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. § 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 Standards provided that the hotel is not constructed with a flat asphalt roof, that the location of the proposed meadow (or forested) area is permanently marked on the ground with signs that note that the area is a required meadow area and maintenance of the area is limited to mowing two times or less per year, no other maintenance such as weeding, mulching, raking, etc. is evident, and photos of the meadow with signs must be sent to the Department within thirty days of substantial completion of the site work.

THEREFORE, the Department APPROVES the above noted application of KITTERY INDIAN LLC to construct a hotel and parking lot as described herein, 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 proposed hotel shall not be constructed with a flat asphalt roof.

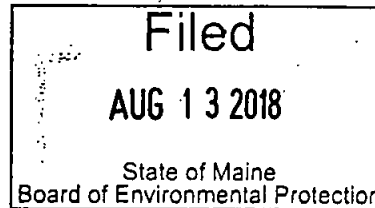
- 5. The applicant shall permanently mark the location of the proposed meadow (or forested area) with signs that note the area is a required meadow area with maintenance of the area limited to mowing two times or less per year and no other maintenance such as weeding, mulching, raking, etc. is allowed. Photos of the meadow with signs shall be sent to the Department within thirty days of substantial completion of the site work.

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 13<sup>TH</sup> DAY OF AUGUST, 2018.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

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



PLEASE NOTE THE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES.

CGW/L27916AN/ATS#83192

ATTEST:  
 A true copy

*Bethany Viera*  
 Bethany Viera

## 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 permittee. 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. §420-D(8) and is subject to penalties under 38 M.R.S. §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) 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 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. 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.
- (6) 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 permittee, and the permittee and each contractor and subcontractor has certified, on a form provided by the department, that the approval and conditions have been 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.

- (7) 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. If maintenance responsibility is to be transferred from the permittee to another entity, a transfer request must be filed with the Department which includes the name and contact information for the person or entity responsible for this maintenance. The form must be signed by the responsible person or agent of the responsible entity.
- (8) 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 are operating as approved, have been inspected for damage, wear, and malfunction, and appropriate steps have been taken to repair or replace the system, or portions of the system, as necessary.
  - (c) The stormwater maintenance plan for the site is being implemented as approved by the Department, and the maintenance log is being maintained.
  - (d) All proprietary systems have been maintained according to the manufacturer's recommendations. Where required by the Department, the permittee shall execute a 5-year maintenance contract with a qualified professional for the coming 5-year interval. The maintenance contract must include provisions for routine inspections, cleaning and general maintenance.
  - (e) The Department may waive some or all of these recertification requirements on a case-by-case basis for permittees subject to the Department's Multi-Sector General Permit ("MSGP") and/or Maine Pollutant Discharge Elimination System ("MEPDES") programs where it is demonstrated that these programs are providing stormwater control that is at least as effective as required pursuant to this Chapter.
- (9) Transfer of property subject to the license. If any portion of the property subject to the license containing areas of flow or areas that are flooded are transferred to a new property owner, restrictive covenants protecting these areas must be included in any deeds or leases, and recorded at the appropriate county registry of deeds. Also, in all transfers of such areas and areas containing parts of the stormwater management system, deed restrictions must be included making the property transfer subject to all applicable terms and conditions of the permit. These terms and conditions must be incorporated by specific and prominent reference to the permit in the deed. All transfers must include in the restrictions the requirement that any subsequent transfer must specifically include the same restrictions unless their removal or modification is approved by the Department. These restrictions must be written to be enforceable by the Department, and must reference the permit number.
- (10) Severability. The invalidity or unenforceability of any provision, or part thereof, of this permit shall not affect the remainder of the provision or any other provisions. This permit shall be construed and enforced in all respects as if such invalid or unenforceable provision or part thereof had been omitted.