

**IN THE MATTER. OF
SAMOROCK LLC
Rockland, Knox County
SAMOSET YACHT CLUB
L-14246-4E-I-N)
DENIAL**

**SITE LOCATION OF DEVELOPMENT
MODIFICATION
NATURAL RESOURCES PROTECTION ACT
WATER QUALITY CERTIFICATION
FINDINGS OF FACT & ORDER**

Pursuant to the provisions of 38 M.R.S.A. Sections 480-A and Section 401 of the Federal Water Pollution Control Act, the Department of Environmental Protection has considered the application of SAMOROCK LLC, with the supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS

PROJECT DESCRIPTION:

A. Application: The applicant proposes to construct an 860-foot, 40- slip yacht club marina. A concrete abutment is proposed to anchor a permanent 12-foot by 430-foot long timber pier supported by nine granite crib-style piles. A 50-foot long aluminum ramp will connect the permanent pier to an additional 10-foot by 380-foot long series of floats. Ten fingers are proposed off the main run along with a 10-foot by 300-foot long section attached to the end as a 'T'. Also attached to the main run is a 8 foot by 135-foot long run with three fingers. Five, three-pile dolphins along with 26 permanent piles are proposed to hold the floats in place. Ten moorings and a boat house are also proposed as part of. this application, but the size and location of the boat house is currently unknown to the Department. The project site is located in the Town of Rockland.

B. Site Description: The site is located at the end of Samoset Road in the Town of Rockland. The proposed project site is between the Rockland Breakwater and the Mary Reed Memorial Park. The site is currently used as a public beach area accessed through a public park (Mary Reed Memorial Park), with a footpath that leads across the beach to the Rockland Breakwater.

2. WATER QUALITY CONSIDERATIONS: The Department and National Marine Fisheries Service (NMFS) have review the proposed project and find that the creation of the 860 foot yacht club will potentially impact water quality as a result of discharge from boat sanitary and fuel tanks. Projects for marinas with a capacity to provide any combination of slip space or mooring for 18 or more vessels that exceed 24 feet in length are required, by 38 M.R.S.A. § 423-B, to include plans for a sanitary pump-out

station. **The applicant's proposal does not include plans for such a pump-out facility. Therefore, the Department finds that the proposed project may result in the degradation of water quality.**

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3 HABITAT CONSIDERATIONS:

The Department's Division of Environmental Assessment (DEA), the Department of Marine Resources (DMR), and the National Marine Fisheries Service (NMFS) have reviewed the project and have commented that the proposed project will impact the marine habitat from several aspects. DEA and DMR comment that the proposed project will result in some displacement of lobster fishing activity and that characteristics of the habitat impacted are typical for juvenile and young lobster habitat.

The Department has also received documents prepared by **local lobster fisherman stating that the subtidal project area provides significant opportunities for lobster fishing.** Lobster fishermen state that the area is a prime inshore lobster fishing ground that is safe from storms and boating activities. Lobsters are abundant in the area because of crevices in the breakwater, kelp beds and eelgrass beds. NMFS has stated that eelgrass beds are considered Special Aquatic Sites under the Clean Water Act 404(b) (1) guidelines. DMR has indicated generally that impacts to eelgrass habitat can result through prop turbulence or through continued species disturbance from turbulence. **Therefore, the Department finds that the proposed project will result in unreasonable harm to marine fisheries and habitat through potential impacts to eelgrass beds and lobster habitats adjacent to the breakwater.**

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4. WETLAND CONSIDERATIONS: Approximately 1,300 square feet of intertidal and subtidal habitat will be impacted by nine granite crib pier supports which are proposed. Approximately 16,190 square feet of subtidal and intertidal area will be impacted due to shading. Additional impacts will occur from the 26 permanent subtidal piles proposed to hold the marina floats in place.

The Wetland Protection Rules, Chapter 310, require that compensation be provided for impacts to coastal wetlands exceeding 500 square feet. The proposed fill in the mud/cobble beach habitat will eliminate epifauna and infauna. To mitigate for the 1,300 square feet impacted by crib and pile installation, the applicant has suggested that the exposed surfaces of the granite blocks themselves and the attachment area they provide for rockweed and crustaceans, create habitat and therefore that can be considered compensation for the wetland fill. The Wetland protection Rules state that 'compensation is the off-setting of a lost wetland function with a function of equal or greater value.' 38 M.R.S.A. §480-Z further states that "compensation must include the restoration, enhancement, creation or preservation of wetlands that have functions or

values similar to the wetlands impacted by the activity." Impacting coastal wetlands through proposed fill does not constitute compensation by this definition. **The Department finds that the applicant's proposal for wetland compensation does not meet the requirements of Chapter 310, section 5(C).**

5. EXISTING USES AND SCENIC AND AESTHETICS

The Natural Resources Protection Act requires that an applicant demonstrate that the **"activity will not unreasonably interfere with existing scenic, aesthetic, recreational or navigational use."**

A. EXISTING USES: Although the beach area where the pier would be anchored is owned by the applicant, the public has had historical access and use of the nearshore and intertidal areas for an extensive period of time. Existing uses at the site include recreational access, tourism, navigation, and commercial fisheries. The Marie H. Reed Memorial Park is also located just to the west of the project site. This public park contains several benches and lawn area and constitutes the sole public access point to the breakwater. Just to the east of the project site is the century old breakwater, a public landmark. The seaward end of the breakwater houses one of just a few functional lighthouses. The current access to the breakwater is a footpath that leads from the Memorial Park through the nearshore area adjacent to the beach.

The marine area inside the breakwater is currently used as **a safe place for boats and schooners to moor during storms.** The Department received many letters from captains of schooners, indicating that the deepwater area toward Jameson Point is a critical mooring field that was placed there for the depth of water, so that schooners would not encroach on fishing activities, or the breakwater.

The area directly adjacent to the breakwater is a significant area in the harbor for lobster fisherman to set their traps. This area currently provides a typical habitat type for juvenile and young lobsters. The Department received documents prepared by local lobstermen as well as a petition opposing the proposed pier with 39 signatures of Rockland lobstermen with their lobstering license numbers. Letters from the lobstermen state that the area is a prime inshore lobster fishing ground that is safe from storms and boating activities. Lobsters are abundant in the area because of crevices in the breakwater, kelp beds and eelgrass beds. The construction of this pier would displace a significant amount of lobstering. **The Department finds that placement of permanent sections of the pier, dolphins and float pilings will interfere with lobster fishing activity as it currently exists.**

B. SCENIC & AESTHETICS. Upon the Department's request, the applicant submitted a scenic & aesthetic visual impact report, to demonstrate how the marina would be viewed from five different vistas: the Marie Reed Memorial Park, the public beach (at the base of the proposed marina), the lighthouse at the end of the breakwater, the harbor area (off Jameson Point), and outside of the breakwater coming into the harbor.

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After reviewing these submittals, the Department has determined that all scenic vistas examined will be adversely affected through construction of the proposed 860 foot pier and ancillary shore development. The most drastic scenic impact will occur to views from the Marie Reed Memorial Park, which serves as the primary access point for the public to proceed to the Rockland breakwater. The proposed pier will become the primary structure visible from this vantage point, obstructing views of the historic breakwater and harbor area.

Residents of the Rockland area have also submitted a visual impact report that demonstrated how important the breakwater is to the State of Maine and the City of Rockland. The public comments contend that the proposed project would unreasonably interfere with the scenic beauty of a relatively unspoiled area. They argue that the breakwater has aesthetic and recreational value to the citizens of Maine beyond the functions it was designed to serve one century ago. The Department concurs that the Memorial park, beach, and breakwater are components of the existing scenic and aesthetic uses of the Rockland harbor.

The Department finds that the proposed project will result in an unreasonable interference with existing scenic, aesthetic, and recreational uses of the area.

BASED on the above findings of fact and subject to the conditions listed below, the Department makes the following conclusions:

- A. The proposed activity will 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 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.
- 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 Title 38 M.R.S-A. Section 48D-P.

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THEREFORE, the Department **DENIES** the above noted application of SAMOROCK LLC to construct an 860-foot yacht club marina in the Town of Rockland:

DONE AND DATED AT AUGUSTA, MAINE, THIS ____ DAY OF _____ 2001

DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: _____

MARTHA G. KIRKPATRICK, COMMISSIONER

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