STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI
GOVERNOR

DAVID P. LITTELL
COMMISSIONER

MEMORANDUM

TO: The Board of Environmental Protection

FROM: Amy Lemelin, Bureau of Land & Water Quality, Augusta

RE: Consent Agreement for James Monroe

DATE: July 16, 2009
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Statute and Rule Reference: *The Storm Water Management Law*, 38 M.R.S.A. § 420-D, states, in pertinent part, that a person may not construct, or cause to be constructed, a project that includes one acre or more of disturbed area without prior approval from the Department.

The Natural Resources Protection Act, 38 M.R.S.A. § 480-C, prohibits soil disturbance in and adjacent to a stream without first obtaining a permit from the Department.

The Erosion and Sedimentation Control Law, 38 M.R.S.A. § 420-C, states, in pertinent part, that a person who conducts, or causes to be conducted, an activity that involves filling, displacing or exposing soil or other earthen materials shall take measures to prevent unreasonable erosion of soil or sediment beyond the project site or into a protected natural resource.

Location: Union, Maine

Description: On April 3, 2008, an inspection of James Monroe's property revealed that approximately 10–15 acres had been logged, stumped and grubbed and a road approximately 0.5 miles long and 20 feet wide was built on the property. Approximately 4,500 square feet of freshwater wetland impacts were also observed. In addition vegetation removal and soil disturbance occurred within 50 feet of an unnamed stream. James Monroe Jr. did not first obtain a permit from the Department for these activities. At the time of inspection, no erosion or sedimentation controls were in place and significant erosion and sedimentation beyond the project site was visible.

Environmental Issues: Water quality in a watershed can be affected by large disturbed, non-vegetated areas without properly engineered stromwater controls in place. These sites may discharge soil materials into a protected natural resource having a potentially detrimental effect on the aquatic life of that system. Riparian buffers and wetland areas help protect our water resource from the impacts of thermal pollution, provide wildlife corridors and nesting habitat for birds, and provide nutrient sinks for phosphorus and other pollutants which can degrade the water quality of these aquatic systems.

Department Recommendation: The Department recommends acceptance of this Consent Agreement stipulating that James Monroe pay a monetary penalty of $3,584.00, which has been paid. All work outlined in the restoration plan submitted to the Department has been completed. The penalty is based on the Department's penalty policy reflecting the size of the violation, knowledge of the violator, and the speed and quality of corrective actions taken.

STATE OF MAINE
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IN THE MATTER OF:

JAMES MONROE JR.	)	**ADMINISTRATIVE**
UNION, KNOX, MAINE	)	**CONSENT**
NRPA, E&S, STORMWATER	)	**AGREEMENT**
2008-038-L	)	**(38 M.R.S.A. § 347-A)**

This Agreement, by and among James Monroe Jr., the Maine Department of Environmental Protection ("Department"), and the Maine Office of the Attorney General is entered into pursuant to the laws concerning the Department's *Organization and Powers*, 38 M.R.S.A. § 347-A(1).

The parties agree as follows:

1. James Monroe Jr., 725 Commercial Street, Rockport, Maine, owns a parcel of land on Wottons Mill Road in Union, Maine as described and recorded in Book 3677 on Page 255 of the Knox County Registry of Deeds.

2. The property described in Paragraph 1 of this Agreement contains freshwater wetland as defined by the *Natural Resources Protection Act*, 38 M.R.S.A. § 480-B(4), and a portion of an unnamed stream which is a river, stream or brook as defined by 38 M.R.S.A. § 480-B(9).

3. On April 3, 2008, an inspection of the property described in Paragraph 1 of this Agreement by Department staff revealed that approximately 10–15 acres had been logged, stumped and grubbed and a road approximately 0.5 miles long and 20 feet wide was built on the property. Two wetland swales were diverted and a pond was constructed in the area resulting in approximately 4,500 square feet of freshwater wetland impacts. Staff observed vegetation removal and soil disturbance as close as 50 feet to an unnamed stream. James Monroe Jr. did not first obtain a permit from the Department for these activities. At the time of inspection, no erosion or sedimentation controls were in place and significant erosion and sedimentation beyond the project site was visible.

4. The activities described in Paragraph 3 of this Agreement constitute the following violations:

   A. By filling, dredging and displacing soil and vegetation in a freshwater wetland without first obtaining a permit from the Department, James Monroe Jr. violated the *Natural Resources Protection Act*, 38 M.R.S.A. § 480-C.

   B. By constructing or causing to be constructed a project that includes one or more acres of disturbed area without first obtaining a permit from the Department, James Monroe Jr. violated the *Stormwater Management Law*, 38 M.R.S.A. § 420-D.

C. By conducting or causing to be conducted an activity that involves filling, displacing or exposing soil or other earthen materials without taking measures to prevent unreasonable erosion of soil or sediment beyond the project site or into a protected natural resource, James Monroe Jr. violated the *Erosion and Sedimentation Control Law*, 38 M.R.S.A. § 420-C.

5. On April 4, 2008, the Department issued a Notice of Violation to James Monroe Jr. regarding the violations described in Paragraphs 3 and 4 of this Agreement in accordance with 38 M.R.S.A. § 347-A(1)(B).

6. On May 28, 2008, James Monroe Jr. submitted a restoration plan to the Department to completely restore the disturbance on the property described in Paragraph 1 of this Agreement. The restoration plan, prepared by Rusty Brann of Jones Associates is entitled "Temporary Stabilization Plan & Soil Erosion and Sedimentation Control Plan" and is dated April 14, 2008. The plan was approved by the Department.

7. On June 23, 2008, James Monroe Jr. submitted an after-the-fact Stormwater permit by rule notification for the soil disturbance activities on site. The after-the-fact application has been assigned PBR # 46042 and was approved by the Department on June 25, 2008.

8. On August 6, 2008, Department staff inspected the property described in Paragraph 1 of this Agreement and determined that restoration was completed and permanent wetland impacts were reduced to 1,870 square feet and the site was stable. All restoration has been completed to the satisfaction of Department staff.

9. The Department has regulatory authority over the activities described herein.

10. Pursuant to 38 M.R.S.A. § 341-D(6)(C) and 347-A(1)(A)(1), administrative consent agreements must be approved by the Board of Environmental Protection (the "Board") which is part of the Department.

11. This Agreement shall become effective only if it is approved by the Board and the Office of the Attorney General.

12. To resolve the violations referred to in Paragraphs 3 and 4 of this Agreement, James Monroe Jr. agrees to pay the Treasurer, State of Maine, upon signing this Agreement, the sum of three thousand five hundred and eighty four dollars ($3,584.00) as a civil monetary penalty.

13. The Department and the Office of the Attorney General grant a release of their causes of action against James Monroe Jr. for the specific violations listed in Paragraphs 3 and 4 of this Agreement on the express condition that all actions listed in Paragraph 12 of this Agreement

IN THE MATTER OF:

JAMES MONROE JR.	)	**ADMINISTRATIVE**
UNION, KNOX, MAINE	)	**CONSENT**
NRPA, E&S, STORMWATER	)	**AGREEMENT**
2008-038-L	)	**(38 M.R.S.A. § 347-A)**

are completed in accordance with the express terms and conditions of this Agreement. The release shall not become effective until this condition is satisfied.

IN WITNESS WHEREOF the parties hereto have executed this Agreement consisting of three (3) pages.

JAMES MONROE JR.

_____ DATE: June 17, 2009
James Monroe Jr., Owner

BOARD OF ENVIRONMENTAL PROTECTION

BY: _____ DATE: _____
SUSAN M. LESSARD, CHAIR

MAINE OFFICE OF THE ATTORNEY GENERAL

BY: _____ DATE: _____
MARGARET A. BENSINGER, ASSISTANT ATTORNEY GENERAL