The State of New Hampshire

Department of Environmental Services

Michael P. Nolin
Commissioner

Shane Forest
11 Perry Rd
Bedford, NH 03110

Re: 136 Ridge Road, Barnstead, NH
Shoreland File #1999-1294

ADMINISTRATIVE ORDER
NO. WD 06-035

August 16, 2006

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Water Division to Shane Forest pursuant to RSA 482-A and pursuant to RSA 483-B. This Administrative Order is effective upon issuance.

B. PARTIES

1. The Department of Environmental Services, Water Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, in Concord, New Hampshire.

2. Shane Forest is an individual having a mailing address of 11 Perry Rd, Bedford, NH 03110.

C. STATEMENTS OF FACTS AND LAW

1. Pursuant to RSA 482-A, the Department of Environmental Services regulates dredging, filling, and construction in or on any bank, flat, marsh, wetland, or swamp in and adjacent to any waters of the state. Pursuant to RSA 482-A: 11, I, the Commissioner of DES has adopted Wt 100 *et seq.* to implement this program.

2. RSA 482-A:3, I, states that "[no] person shall excavate, remove, fill, dredge or construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state without a permit from [DES]."

3. RSA 482-A:14, III, provides that "(f)ailure, neglect or refusal to comply with [RSA 482-A] or rules adopted under [that] chapter, or an order or condition of a permit issued under [RSA 482-A], and the misrepresentation by any person of a material fact made in connection with any activities regulated or prohibited by [RSA 482-A] shall be deemed violations of RSA 482-A."

4. Pursuant to Env-Wt 101.06, a **bank** means "the transitional slope immediately adjacent to the edge of a surface water body, the upper limit of which is usually defined by a break in slope...".

5. Pursuant to Env-Wt 101.32, **dredge** "means to dig, excavate, or otherwise disturb the contour or integrity of sediments n the bank or bed of a wetland, surface water body, or other area within the department's jurisdiction."

6. Pursuant to Env-Wt 101.39, **fill** as a verb means "to place or deposit materials in or on a wetland, surface water body, bank or otherwise in or on an area within jurisdiction of department."

7. Pursuant to Env-Wt 402.02, (c) and Env-Wt 402.11, for any property with less than 75 feet of water frontage, docks or piers shall be no longer than 4 feet by 24 feet in accordance with Env-Wt 402.11.

8. Pursuant to RSA 483-B, the Comprehensive Shoreland Protection Act ("CSPA"), the Department of Environmental Services regulates development activities in the protected shoreland zone established under the CSPA. Pursuant to RSA 483-B: 17, the Commissioner of DES has adopted Env-Ws 1400 to implement this program.

9. Pursuant to RSA 483-B: 9,V, (a)(2)(A), not more than a maximum of 50 percent of the basal area of trees, and a maximum of 50 percent of the total number of saplings shall be removed for any purpose in a 20-year period. A healthy, well-distributed stand of trees, saplings, shrubs, ground cover, and their living, undamaged root systems shall be left in place.

10. Pursuant to RSA 483-B: 4, VII, **ground cover** means "any herbaceous plant which normally grows to a mature height of 4 feet or less."

11. Pursuant to RSA 483-B: 4, XXI, **shrub** means "any multi-stemmed, woody plant which normally grows to a mature height of less than 20 feet."

12. Shane Forest is the owner of land located on Ridge Road in Barnstead, more particularly described on the Town of Barnstead Tax Map 29 as Lot 24 (the "Property").

13. On September 4, 1998, DES received a complaint alleging that the Property had been cleared and some trees had been felled into the water.

14. On October 22, 1998, DES personnel conducted an inspection of the Property and found that the natural woodland buffer had not been maintained, temporary erosion control measures were not in place, and a foundation hole was approximately 32 feet from the reference line of Lower Suncook Lake.

15. On October 28, 1998, DES issued a Letter of Deficiency No. BB-1998-33 (the "LOD") to Mr. Forest requesting he perform the following:

a. Stabilize the soil within 48 hours of receipt of the LOD;

b. Provide DES with information regarding the Town of Barnstead Zoning Board of Adjustment's approval for reconstruction on the site.

c. Submit a detailed re-vegetation plan to DES within 30 days of receipt of the LOD.

16. The LOD was received November 2, 1998, as evidenced by the signed postal receipt.

17. On December 9, 1998, DES issued a Delinquency Notice to Mr. Forest informing him that the department had not yet received his compliance report pursuant to the LOD. Mr. Forest was requested to respond within 5 working days of receipt of the Notice.

18. On December 15, 1998, Mr. Forest contacted DES by phone in regards to the LOD. He said he would call back the first week of January to arrange a meeting. DES staff did not receive a follow up call from Mr. Forest in January.

19. On June 29, 1999, DES personnel conducted an inspection of the Property and documented:

a. The lakeward side of the home had been graded and leveled;

b. There were no erosion controls installed on the property;

c. A dry laid stone wall was constructed along the shoreline and in Suncook Lake; and

d. Steps for access to the water were constructed in the bank and bed of Suncook Lake.

20. On July 1, 1999, DES received a complaint of alleged unauthorized filling of public waters, installation of a dock on Lower Suncook Lake, and construction of steps to the water's edge at the Property.

21. On July 6, 1999 DES personnel spoke with Mr. Forest regarding violations observed during the June 29, 1999 site inspection. Mr. Forest was informed that if a revegetation plan was sent to DES within 10 days, DES would withhold the Notice of Proposed Fine and that the other violations would be referred to the Wetlands Bureau. Mr. Forest agreed to put erosion controls/silt fence along the entire frontage of the property. Mrs. Jennifer Forest subsequently called with questions regarding the revegetation plan and information was sent to her by FAX.

22. On July 14, 1999, DES received a copy of the planting and revegetation plan for the Property.

23. On July 14, 1999, DES issued a letter to Mr. Forest notifying him of the complaints received on July 1, 1999, concerning his property, and requesting he file the enclosed after the fact application form or submit for approval a restoration plan addressing the issues specified. He was asked to respond within 30 days of the date of the letter.

24. On July 22, 1999, DES issued a letter notifying Mr. Forest that his proposed revegetation plan had been received. DES approved the plan on the condition that erosion control measures in areas adjacent to the shoreline would be implemented until soil was stabilized and that planting would take place after the NHDES Wetlands Bureau determined what course of action to take

regarding the fill placed at the shoreline. DES requested that Mr. Forest notify DES when the project had been completed.

25. On August 30, 1999, DES received a wetlands application from Mr. Forest requesting to retain the wall construction and to install a 4 foot by 20 foot dock.

26. On August 30, 1999, DES issued a letter informing Mr. Forest they had received his application materials and that the application was incomplete due to missing basic, required items.

27. On April 30, 2001, DES personnel conducted a site inspection of the Property and documented:

a. Approximately 24 feet of dry laid stone retaining wall was constructed on the north side and approximately 6 feet of dry laid stone retaining wall was constructed on the south side of the shoreline and lakebed of Suncook Lake;

b. Additional fill was placed behind the wall to create land within Suncook Lake and its bank;

c. Two of the previously documented steps constructed for access to the lake had been rebuilt using concrete terminating within Suncook Lake.

d. The house was approximately 37 feet from the dry laid retaining wall.

28. On May 16, 2001, DES issued a Letter of Deficiency No. WET 2001-10 (the "2nd LOD") to Mr. Forest requesting he perform the following:

a. Submit a restoration plan to DES within 30 days of receipt of the 2nd LOD. The plan should include provisions for removal of the walls, steps, and fill behind the walls, and for restoration of a natural shoreline contour and natural vegetation along Suncook Lake;

b. Implement the restoration plan after receiving written approval and as conditioned by DES.

29. The 2nd LOD was received by Mr. Forest on May 19, 2001, as evidenced by the signed postal receipt.

30. On July 31, 2001, and November 30, 2001, DES issued a letter to Mr. Forest informing him that to date, DES had no record of receiving a response to the 2nd , LOD and requesting him to advise as to the status of this matter.

31. On September 12, 2005, DES personnel conducted a site inspection of the Property and documented the following:

a. Two docks were installed on the property: the northern dock measured approximately 4 feet by 24 feet, 6 inches, and the southern dock measured approximately 4 feet by 21 feet, 6 inches;

b. Various shrubs had been planted along the top of the dry laid stone retaining wall at the shoreline;

c. A brick walkway measuring approximately 3 feet wide was constructed for access leading from the north side of the house to the northern dock;

32. On June 27, 2006, DES personnel conducted a site inspection of the Property and documented the following:

a. The unpermitted dry laid wall observed by DES on September 12, 2005 had been replaced with a mortared stone retaining wall described as follows: beginning at the north end of the property measuring approximately 33 feet long was connected to a set of concrete steps measuring approximately 5 feet 10 inches wide which was connected to a mortared stone retaining wall on the southern end of the property measuring approximately 8 feet long. The walls and stepped access were constructed on and in the bed and banks of Suncook Lake;

b. Two docks were installed on the property: the northern dock measuring approximately 4 feet by 31 feet, 6 inches, the southern dock measuring approximately 4 feet by 24 feet, 9 inches. Both docks were larger than the unpermitted docks documented during the September 12, 2005, inspection;

c. Drainage was coming down the northern side of the Property and running into the northern edge of the retaining wall.

d. The house was approximately 39 feet from the new wall on its northern side and approximately 36 feet on its southern side.

D. DETERMINATION OF VIOLATIONS

1. Shane Forest has violated RSA 482-A:3, I, by constructing and expanding a wall and steps in the bed and banks of Suncook Lake without obtaining a permit from DES and following notice of a violation.

2. Shane Forest has violated RSA 482-A:3, I, by installing, maintaining, and expanding docking structures in Suncook Lake without obtaining a permit from DES and following notice of a violation.

3. Shane Forest has violated RSA 483-B: 9 V (a) (2) (A), I, by failing to maintain the natural woodland buffer.

E. ORDER

Based on the above findings, DES hereby orders Shane Forest as follows:

1. **Immediately** remove the two non-permitted docking structures from Suncook Lake and provide DES photo documentation within 10 days from the date of this Administrative Order that the docking structures have been removed from Suncook Lake

2. **Within 10 days from the date of this Administrative Order,** retain a certified wetland scientist to prepare a removal/restoration plan and to supervise implementation and monitoring of the restoration in accordance with Item E. 3. below. Submit a letter of retention from the certified wetland scientist to DES documenting compliance with this provision of the Order.

3. **Within 30 days of the date of this Order**, submit a restoration plan to DES for review and approval. The restoration plan should include provisions for removal of the retaining walls, the steps and the fill behind the walls, and restoration of a natural shoreline contour and natural vegetation along Suncook Lake. Please submit the following with the restoration plan:

   a. A plan with dimensions, drawn to scale, showing:
      1. existing conditions, with shoreline structures and the normal high water reference mark; and
      2. proposed conditions after reestablishing the jurisdictional areas;

   b. A detailed description of the proposed means of erosion and sediment control and stabilization of the restoration area;

   c. A detailed description of the proposed planting plan for the stabilization and revegetation of the restoration area. The proposed planting plan should also incorporate the revegetation plan approved in DES's letter of July 22, 1999.

   d. A description of the proposed construction sequence and methods for accomplishing the restoration and the anticipated restoration compliance date.

4. **Implement** the restoration plan only after receiving written approval and as conditioned by DES.

Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

Jeffrey D. Blecharczyk, Shoreland Compliance Coordinator
DES Water Division
P.O. Box 95
Concord, NH 03302-0095
Fax: (603) 271-6588
e-mail: jblecharczyk@des.state.nh.us

F. Appeal

Any person aggrieved by determinations D.1 or D.2 of this Order may request DES to reconsider that determination within 20 days of the date of the Order. The request for reconsideration must comply with Wt 203.01(d) (copy attached), and will be processed in accordance with Wt 203.01(e)-(j). Any party not satisfied with the decision on reconsideration may appeal to the Wetlands Council. Please note that under RSA 482-A:10, II, the Council may not consider any ground that is not set forth in the request for reconsideration.

Any person aggrieved by determination D.3 of this Order may appeal the Order to the New Hampshire Water Council in accordance with RSA 483-B:14 and NH Administrative Rules Env-WC 200. Such appeal must be filed with the Council within 30 days of the date of this Order and must be addressed to Chairman, Water Council, PO Box 95, Concord, NH 03302-0095. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at http://www.des.state.nh.us/desadmin.htm.

Filing an appeal or request for reconsideration of the Order will not automatically relieve Shane Forest of the obligation to comply with the Order.

G. Other Provisions

Please note that RSA 482-A and RSA 483-B provides for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. DES will continue to monitor Mr. Forest's compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Belknap County Registry of Deeds so as to run with the land.

COPY

Harry P. Stewart, P.E. Director
Water Division

COPY

Michael P. Nolin, Commissioner
Department of Environmental Services

Certified Mail: 7006 0100 0005 8153 5382

cc: Gretchen R. Hamel, Legal Unit Administrator
Public Information Officer, DES PIP Office
Jennifer J. Patterson, Sr. Asst. Attorney General, NHDOJ/EPB
Barnstead Conservation Commission
Barnstead Board of Selectmen
Barnstead Building Inspector
Christopher K. Danforth & Associates, LLC