

January 18, 2022

VIA HAND DELIVERY

David Murch, Chair
Town of Raymond Zoning Board of Appeals
401 Webbs Mills Road
Raymond, ME 04071

RE: Administrative Appeal of Management Controls, LLC
December 16, 2021 Notice of Violation
18 Fernwood Road

Dear Chairman Murch and Fellow Zoning Board of Appeals Members:

Enclosed please find the eight (8) copies of administrative appeal of Management Controls, LLC of a Notice of Violation issued by the Raymond Code Enforcement Officer on December 16, 2021. In conjunction with said appeal, please find the following:

1. Management Control, LLC's Zoning Board of Appeals completed application form;
2. Notarized Authorization for Drummond Woodsum to represent Management Control, LLC in this matter;
3. Application fee in the amount of \$431.00;¹
4. Sketch plan of the property located at 18 Ferwood Road; and
5. Brief explanation of the basis for the appeal.

I have been communicating with Matt Manahan, Esquire, who is representing the Town with respect to this matter and who is copied here. Given that my client is in the process of developing a mitigation plan and negotiating a consent agreement with the Town relating to all issues raised in the NOV, counsel have agreed that this matter will be tabled until March 18, 2022. In the unlikely event that the matter cannot be resolved by that date, the matter will proceed to a hearing.

I thank you for your attention to this matter.

Sincerely,



Leah B. Rachin

¹ We have included two separate checks. One is for \$375.00 to cover the appeal application fee and the cost of publication of legal notices. The additional check in the amount of \$56.00 is to cover the cost of abutter notifications, as determined by Sandy Fredericks.

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cc: Donald Buteau
Alex Sirois, CEO
Sandy Fredericks, Administrative Assistant to ZBA
Matthew D. Manahan, Esq.



AUTHORIZATION

To Whom It May Concern:

Management Controls, LLC, hereby authorizes the law firm of Drummond Woodsum, including, but not limited to Leah B. Rachin, Esq., to represent Management Control, LLC's interests in its administrative appeal of a Notice of Violation issued to it by the Town of Raymond's Code Enforcement Officer on December 16, 2021, relating to property located at 18 Fernwood Road, Raymond Maine.

Management Controls, LLC

By: Donald Buteau, its Managing Director

State of Maine
County of Androscoggin

The foregoing instrument was signed and sworn before me this 18th day of January, 2022, by Donald Buteau, in his capacity as Manager Director of Management Controls, LLC, on behalf of said LLC.

Name of Notary Public/Attorney

Notary Public, State of Maine

My commission expires: October 19, 2026

Phone: 800-858-5818
Fax: 800-352-2409

Post Office Box 2030
101 Mellow Road
Auburn, ME 04211-2030



**TOWN OF RAYMOND
APPLICATION TO THE
ZONING BOARD OF APPEALS**

Staff Use Only:		Received Date
Application Fee	\$ 75.00	
Notice Fee \$8.00/abutter	\$ 56.00	
Publishing Fee	\$ 300.00	
Escrow-if required		
TOTAL	431.00	


Name of Applicant Leah B. Rachin c/o Drummond Woodsum
Mailing Address 84 Marginal Way, Suite 600, Portland, ME 04101
Primary Phone (207) 253-0578 C H W email LRachin@DWMLaw.com
Date property acquired: (month and year) April 2019
Name of Owner (if different than applicant) Management Controls, LLC/ Donald Buteau, Managing Director
Mailing Address P.O. Box 2085
Town: Auburn State ME Zip Code 04211
Primary Phone (305) 393-7762 C H W email DButeau@FutureGuard.net
Property Address (street number and name): 18 Fernwood Road, Raymond, ME
Town of Raymond Map 001 Lot 022 Zone LRR2
Deed Reference Book 35622 Page 143

The undersigned applies for the following:

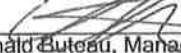
- 1. ADMINISTRATIVE APPEAL. Applicant requests relief from the decision, or lack of decision, of the Code Enforcement Officer. The undersigned believes that (check one)
 - An error was made in the denial of the permit
 - Denial of the permit was based on the misinterpretation of the ordinance
 - The permit was not approved or denied within a reasonable period of time
 - Other: Appeal from 12/16/2021 Notice of Violation from CEO (See attached letter outlining grounds for appeal)
- 2. VARIANCE (the information listed on page 3 must be submitted)
- 3. CONDITIONAL USE PERMIT For _____ (use) in _____ Zone
- 4. VARIANCE PROVISION(S) FOR NON-CONFORMING Lot Structure Use
- 5. SETBACK REDUCTION (do not complete Page 3)

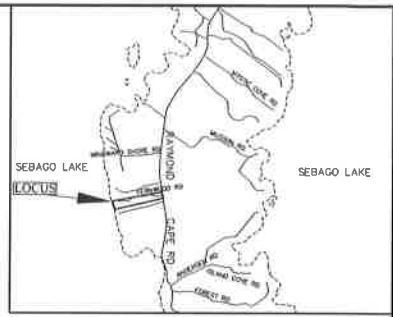
I have read, understand and agree to the above instructions and conditions. I also authorize any Board Member or other Town Officials to enter onto the site. I certify that the information contained in this application and its supplement is true and correct.

Date: 1-18-2022

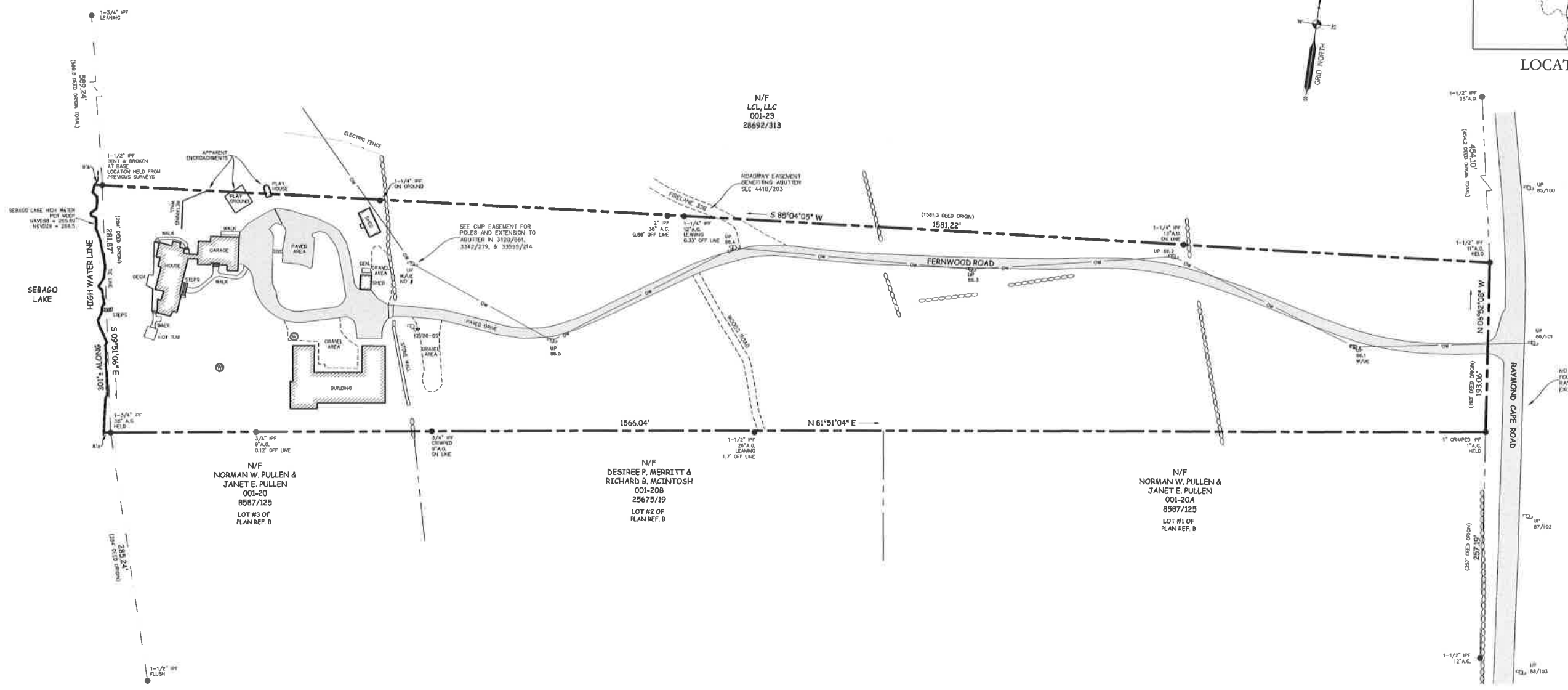
Appellant: 
Leah B. Rachin on behalf of Management Controls, LLC

Date: 1-18-2022

Property Owner: 
Donald Buteau, Managing Director
Management Controls, LLC



LOCATION PLAN

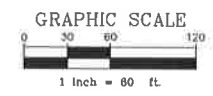


NOTES:

- RECORD OWNER: MANAGEMENT CONTROLS, LLC
- PARCEL DEED REFERENCE: SEE DEED FROM BRYN J. OWEN, TRUSTEE OF THE BRYN J. OWEN 2006 REVOCABLE TRUST TO MANAGEMENT CONTROLS, LLC DATED APRIL 29, RECORDED AT THE CUMBERLAND COUNTY REGISTRY OF DEEDS IN BOOK 35922, PAGE 144.
- ALL BOOK AND PAGE REFERENCES REFER TO THE CUMBERLAND COUNTY REGISTRY OF DEEDS.
- PARCEL TAX MAP REFERENCE: TOWN OF RAYMOND, MAP 001, LOT 022
- TOTAL AREA OF PARCEL 8.60± ACRES TO HIGH WATER OF SEBAGO LAKE.
- ALL BEARINGS ARE REFERENCED TO GRID NORTH, NAD83 MAINE WEST, US SURVEY FEET.
- ELEVATIONS SHOWN ARE TIED TO NAVD88 BY OPUS SOLUTION
- THE LOCATION, SIZE, AND DEPTH OF UNDERGROUND UTILITY LINES, TANKS, AND OR STRUCTURES NOT DETERMINED BY THIS SURVEY.
- PLAN REFERENCES:
 - PLAN OF LANDS LOCATED ON RAYMOND CAPE ROAD, MADE FOR ROBERT AND GRETCHEN WETZEL BY LEWIS AND WASINA, INC. DATED 9/22/98 RECORDED AT SAID REGISTRY OF DEEDS IN PLAN BOOK 199 PAGE 43
 - PLAN OF PULLEN PROPERTY, MADE FOR TERENCE J. DEWAN AND ASSOCIATES' LANDSCAPE ARCHITECTS AND PLANNERS BY SURVEY INC. ON 12/29/2006 RECORDED AT SAID REGISTRY PLAN BOOK 207 PAGE 217

LEGEND

- SUBJECT BOUNDARY LINE
- ABUTTEE OR RIGHT OF WAY LINE
- STONE WALL
- TREELINE
- OVERHEAD WIRES
- NOW OR FORMERLY DEED BOOK PAGE REFERENCE
- TAX MAP AND LOT NUMBER
- DECIDUOUS / CONIFEROUS TREE
- GRANITE MONUMENT FOUND
- IRON PIPE/ROD/REBAR FOUND
- DRILL HOLE FOUND
-
- IRRIGATION WATER VALVE
- WELL
- GAS VALVE



CERTIFICATION:
 I HEREBY CERTIFY THAT THIS BOUNDARY SURVEY CONFORMS TO THE STATE OF MAINE BOARD OF LICENSURE FOR PROFESSIONAL LAND SURVEYORS, STANDARDS OF PRACTICE (CHAPTER 90, SECTIONS 1 & 2)

Michael A. Hartman
 MICHAEL A. HARTMAN, P.L.S. #2433
 FOR JONES ASSOCIATES INC.



REVISIONS		
NO.	DATE	DESCRIPTION

**PLAN OF LAND OF
18 FERNWOOD ROAD
RAYMOND, MAINE**

PREPARED FOR: **MANAGEMENT CONTROLS LLC,
101 MERROW RD
AUBURN, MAINE**

PREPARED BY: **JONES ASSOCIATES INC.**
Foresters, Surveyors and Financial Consultants

RECORD OWNER: **MANAGEMENT CONTROLS LLC,
101 MERROW RD
AUBURN, MAINE**

PLAN DATE: **7/11/2019**
SCALE: **1"=60'**
PROJ. #: **19-030**

200 FORD AND SPRING ROAD, AUBURN, MAINE 04210
(857) 241-0255

January 18, 2022

VIA HAND DELIVERY

David Murch, Chair
Town of Raymond Zoning Board of Appeals
401 Webbs Mills Road
Raymond, ME 04071

RE: Administrative Appeal of Management Controls, LLC
December 16, 2021 Notice of Violation
18 Fernwood Road, Raymond, Maine (the "Property")

Dear Chairman Murch and Fellow Zoning Board of Appeals Members:

I represent Management Controls, LLC, owner of the above-referenced Property, in conjunction with the above-referenced administrative appeal relating to a Notice of Violation issued by the Code Enforcement Officer on December 16, 2022 (the "NOV"). The alleged violations cited in the NOV arise from a shoreline stabilization project conducted at the Property. To the extent that there are any violations, which is specifically denied, they were either pre-existing conditions at the Property,¹ or, a result of errors and/or oversights made by the contractor who Management Controls, LLC hired to do the work. Additionally, we ask the Board to bear in mind as it reviews this administrative appeal that the driving purpose of this project was to stabilize the shoreline area in order to prevent further erosion, consistent with the informing purposes of the Town's Shoreland Zoning Ordinance ("SZO").

As noted in my cover letter, given a sincere desire to have a positive relationship with the Town, my client is in the process of developing a mitigation/remediation plan with respect to the alleged violations cited in the NOV. Accordingly, the parties have agreed that this matter should be tabled until March 18, 2022 to allow the parties reasonable time to negotiate and finalize a consent agreement. Based on the timelines outlined on the Town's website, it appears that this matter would be heard (in the unlikely event that it becomes necessary) at the Board's April 26th meeting. Per the Board's practice, submissions for this meeting are due by March 25, 2022. If this appeal moves forward, Management Controls, LLC reserves the right to supplement its administrative appeal materials in advance of the March 25, 2022 submission deadline.

In broad terms, however, my client appeals the NOV for the following reasons.

¹For example, Violations #9 and #10 mention a hot tub that was built within the setback without a permit. The NOV leaves the impression that my client installed this hot tub. That is not the case. It was located on the Property when my client purchased it. Assuming that it is within the setback and an after-the-fact permit cannot be obtained, it will be removed.

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1. Management Controls, LLC Reasonably Relied on its Contractor to Obtain All Required Permits and to Conduct All Work in a Manner Consistent With Governing Ordinance Requirements

Ensuring that all required permits were secured for the shoreline stabilization project and that all work was conducted in a manner consistent with governing local and state law, was of critical importance to Mr. Buteau, Management Controls, LLC's principal. It was so important to him that it was the very first term enumerated in his contract with Robert Durant, d/b/a Big Lake Marine Construction ("BLMC"). Specifically, it imposes on BLMC the clear duty to "obtain all necessary permitting from then Town and DEP." The contract provides for a substantial sum (\$6,000) to compensate BLMC for obtaining said permits. Attached as Exhibit 1 is a copy of said contract. Given that the contract expressly requires BLMC to obtain all necessary permits, and compensates BLMC handsomely for doing so, it was more than reasonable for Management Controls, LLC to expect that Mr. Durant, who held himself out to be an expert in shoreline projects, to have acquired proper permits. Additionally, the contract also made clear that BLMC was to employ erosion control measures required by law.

Acknowledging that the contractor who conducted the work that gave rise to the alleged violations should share responsibility for rectifying them, the DEP served a notice of violation on Mr. Durant in conjunction with the work conducted at the Property. It is my client's position that the Town should do the same.

2. Substantive Disagreements With Allegations Contained in NOV

- With respect to the alleged Violation No. 1, much of the activity conducted was in the nature of "soil and water conservation" practices, which activity is allowed without a permit in the LRR2 zone. *See* Section 14 of the SZO, item #8 of the Land Use Table. Moreover, the NOV simply cites the language of section 15(U)(1) of the SZO, which requires that various activities in the shoreland zone "shall be conducted in such a manner to prevent erosion and sedimentation of surface waters." Yet, there was no explanation or evidence offered to support a conclusion that the work was not conducted in a manner that would prevent erosion and sedimentation. In fact, the overarching goal of the project was to prevent erosion of the shoreline.
- Violation No. 4 asserts that rocks and sand were added, and that a jetty was enlarged or expanded in violation of Section 14 of the Land Use Table, #17B, (which provides that "...structures and uses extending over or below the normal high water line...require approval from the Planning Board...") There is no violation of this provision. The jetty mentioned was pre-existing in the area at issue. The contractor simply picked up some stones that had slipped to the side and put them back in place. There was no new use established that would have required a permit, nor was there any expansion or enlargement of the existing use. Said work constitutes repair and maintenance, which does not require a permit.
- Violation No. 5 asserts that the shoreline has been enlarged or expanded without a permit. The shoreline was not enlarged or expanded. It was stabilized.

- Violation No. 6 alleges that there has been construction of a “beach” without providing any facts to support that contention or even to identify what is meant by a “beach,” which term is not defined in the SZO. A review of *Exhibit C* to the NOV, submitted to establish that a beach was constructed, does not show a “beach” as that term is customarily defined. *See Dictionary.com*, which defines this term as “an expanse of sand or pebbles along a shore.”² Rather, both the “before” and “after” photos show that access to the water is provided by stairs and that there is no expanse of “sand or pebbles” along the shore. Rather there are just large pieces of rip rap – there is no beach.
- With respect to Violations No. 7 and 8, existing vegetation less than 3’ in height was not “removed” it was simply trimmed down (leaving all root systems intact) and topped off with natural bark mulch.
- With respect to Violations Nos. 13, the CEO cites the property owner for not accessing the shoreline by barge in order to conduct stabilization activities. The CEO lacks authority to determine that any purported failure to access the shoreline by barge constitutes a violation of the SZO. Rather, pursuant to section 15(C)(12) of the SZO, the Planning Board (not the CEO) is tasked with determining whether access by barge is necessary, but only after deciding that such means of access is “feasible.” Because the Planning Board has not yet reviewed any stabilization application from the property owner, the CEO’s determination that it should have been conducted by barge is premature and exceeds his authority.³
- As the property owner’s consultants develop the remediation plan, additional facts may arise that rebut the factual allegations and conclusions contained in the NOV. Accordingly, we reserve the right to include any of these additional facts and related arguments in subsequent submissions.

3. Procedural Flaws in the NOV

- A number of the purported violations are unduly repetitive and do not enumerate violations that are truly separate and distinct. For example:
 - Alleged Violations #1 and #2 are really one in the same. Violation #1 is entitled, “Filling and Earthmoving of More than 10 Cubic Yards,” while Violation #2 is entitled, “Filling and Earthmoving of More than 10 Cubic Yards Without a Permit.”

² Pursuant to section 17 of the SZO, undefined terms shall “shall carry their customary dictionary meanings, unless specifically defined in these Shoreland Zoning provisions or in other provisions of the Raymond Land Use Ordinance.” The term, “beach” is not defined in either the SZO or the Town’s Land Use Ordinance.

³ It is noteworthy that the contract between the property owner and BLMC specifically contemplates use of a barge to complete the work. *See Exhibit 1.*

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- Violation #7 is entitled, "Removal of Vegetation Less than 3' in Height" while Violation #8 is entitled, "Removal of Vegetation Less than 3' in Height Without a Permit."
- Violation #11 is entitled, "Unpermitted Shoreline Stabilization - no permit" while Violation #12 is entitled, "Unpermitted Shoreline Stabilization - no barge". Both Violation #11 and 12 cite the exact same provision of the SZO verbatim (i.e., section 15(C)(12)), yet they are fashioned as two separate violations.
- Violation #14 is entitled, "Vegetation Removal in Excess of What is Allowed by the Point System," while Violation #15 is directly tied to Violation #14 and is entitled, "Removal of Vegetation Without a Permit."

Given that all of the above-referenced groupings of violations are inextricably linked and relate to the same land use activities, it is unnecessary to name them as separate violations. To do so unnecessarily and unfairly subjects the property owner to potentially duplicative fines given that 30-A M.R.S. section 4452 provides that fines for land use violations are calculated on a per day, *per violation* basis.

- Section 16(H) of SZO requires that any notice of violation issued by the CEO indicate not only the nature of the violation, but also an explanation of the "the action necessary to correct it." Here, little or no direction was provided with respect to what mitigation would be necessary to resolve the alleged violations. To the contrary, after outlining 15 alleged violation, the NOV simply concluded by stating that "these violations must be corrected within thirty days...". While the NOV did direct the property owner's attention to certain statutory mitigation requirements contained in 30-A M.R.S. section 4452(3)(C-2) relating to tree cutting and vegetation removal, alleged violations relating to such activities comprised only a limited portion of the NOV. The CEO provided no guidance as to what corrective action would be required for the remaining alleged violations, contrary to the requirements of section 16(H) of the SZO.

As noted above, my client is hopeful that the parties can reach resolution of this matter and that this administrative appeal need not be heard. In the event the parties are unable to finalize a consent agreement prior to March 18, 2022, we will ensure that any additional information we would like to present is submitted by March 25, 2022.

Thank you for your attention to this matter.

Sincerely,



Leah B. Rachin

cc: Donald Buteau

January 18, 2022
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Alex Sirois, CEO
Sandy Fredericks, Administrative Assistant to ZBA
Matthew D. Manahan, Esq.

Invoice

Big Lake Marine Construction

PO Box 741

ME 04062

Date	Invoice #
10/13/2021	267

Bill To
Management Controls, LLC PO Box 2058 Auburn, ME 04210

P.O. No.	Terms	Project

Quantity	Description	Rate	Amount
	Project located at Project Location #2 Raymond, ME will consist of the following:		
	Big Lake Marine will obtain all necessary permitting from town and DEP	0.00	0.00
	4 ft X 285 ft of Erosion control measures as required by the DEP.	0.00	0.00
	Any and all dead wood will be cut up and removed from project location as DEP allows	0.00	0.00
	Banking will be sloped at as required	0.00	0.00
	Build up 2.5 X 2" Berm	0.00	0.00
	Bark mulch over berm	0.00	0.00
	Install 3" rip rap in boat ramp area with 3/4" crushed stone / compacted	0.00	0.00
	Install filter fabric on entire 4 ft X 285 ft work area	0.00	0.00
	All cavities to be filled in with 3/4" stone at a 45 degree angle to prepare for installation of 6X12" rip rap	0.00	0.00
	Install approximately 2 ft X 285 ft of filter fabric and approximately 4" of bark mulch above rip rap	0.00	0.00
	Replace fallen rocks around deck area	0.00	0.00
	All work to be completed by land and by barge as necessary to complete project	0.00	0.00
	Loam, seed and hay all disturbed areas by Big Lake Marine equipment	0.00	0.00
	Permit fee	6,000.00	6,000.00
	Project total	68,500.00	68,500.00
	**Any and all overages will be approved by homeowner		
		Total	\$74,500.00