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GOVERNOR

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



MELANIE LOYZIM
COMMISSIONER

MEMORANDUM

TO: Interested persons

FROM: Maine Department of Environmental Protection

DATE: June 4, 2025

RE: Hand-Planting Native Vegetation Adjacent to a Protected Natural Resource

The Maine Department of Environmental Protection (Department or DEP) regularly receives questions from shoreline property owners about whether a permit is required for hand planting vegetation on shorelines adjacent to protected natural resources. In pursuit of collective stewardship of Maine's natural resources, the Department is interested in enabling property owners to restore and enhance their shorelines through hand planting of native vegetation with the assurance that they are doing so in compliance with the State's natural resource protection laws. Under the Natural Resources Protection Act (NRPA), a permit is typically required by DEP for alterations in, on, or over any protected natural resource and within 75 feet of a great pond (lake), coastal wetland, river, stream or brook, certain freshwater wetlands, and significant wildlife habitat contained within freshwater wetlands (38 M.R.S. §480-C). NRPA and the Department's Chapter 310 Wetlands and Waterbodies Protection rules define an alteration to include dredging; bulldozing; removing or displacing soil, sand, vegetation or other materials; draining or dewatering; filling; or any construction, repair or alteration of any permanent structure. However, Chapter 310 §3(B)(1-3) of the Department's rules clarifies that the Department may determine that certain minor activities do not constitute an alteration and therefore do not require a permit, including activities such as planting shrubs by hand.

This memorandum clarifies that the Department interprets, in accordance with Chapter 310, that hand planting of native vegetation **adjacent to** certain protected natural resources is a *de minimis* activity and is not considered an alteration requiring a permit, if the following conditions are met.

This memo applies only to hand planting for the purpose of controlling erosion or for establishing or enhancing a vegetative buffer in areas adjacent to (within 75 feet of) great ponds (lakes), coastal wetlands, rivers, streams, or brooks, and freshwater wetlands.¹ NOTE: This memo does not apply to activities within any protected natural resource or adjacent to a significant wildlife habitat contained within a freshwater wetland.

¹ NRPA only requires a permit for activities adjacent to certain freshwater wetlands; specifically, those consisting of or containing under normal circumstances at least 20,000 square feet of aquatic vegetation, emergent marsh vegetation of open water, except for artificial ponds or impoundments; or peatlands dominated by shrubs, sedges and sphagnum moss.

Conditions for hand planting activity to be considered *de minimis*:

- Applies only to the use of native plants;
- Applies only to the hand planting of potted plants, bare root plants, and live stakes using hand tools;
- No machinery may be used;
- No clearing or removal of existing vegetation may occur, except for 1) removal of groundcover incidental to the hand planting, and 2) hand removal of invasive species;
- No more than 1 cubic yard of soil may be overturned (i.e., worked with a spade or shovel) *annually* to establish plants adjacent to the resource;*
- Addition of soil or soil amendments may not result in a change to the original ground topography;*
- Individual planting holes may not exceed 2 feet in diameter;
- All areas that have been hand-planted must be mulched immediately after planting to conserve moisture and prevent erosion. The Department encourages using Erosion Control Mix, but other straw, hay, and natural mulches (wood-based, duff, leaves, pine needles) may be used; and
- Please contact your municipality to ensure compliance with local regulations before starting any work. (DEP's Chapter 1000 Guidelines for Municipal Shoreland Zoning Ordinances allow the hand planting described in this memo, under the assumption that any digging for hand planting would only be to remove grass lawn to plant herbaceous and woody perennial buffer plant species.)

*The Department anticipates the addition of soil or soil amendments to accommodate filling holes for approximately 25 one-gallon potted plants. Additionally, slit planting (installing bare root plants, livestakes, or living brush into the soil by slitting the soil with a spade or similar hand tool without disturbing the soil structure) and live stake installation using a rebar pilot hole do not require overturning the soil and therefore do not count toward the 1 cubic yard overturning allowance and could be performed independent of, or in combination with, potted plants.

If the proposed activity is more substantial than the activities described in this memo, the activity will require a NRPA permit, likely a permit-by-rule (PBR) under Chapter 305, section 2 or section 8. If you have any questions, please contact the Bureau of Land Resources in the area where your project is located.

DEP regional office locations and regions: <https://www.maine.gov/dep/contact/mdepoffices.html>

DEP Bureau of Land Resources regional office numbers:
<https://www.maine.gov/dep/land/contacts/index.html>