



DEPARTMENT ORDER

IN THE MATTER OF

SHORELAND DEVELOPMENT, LLC) SITE LOCATION OF DEVELOPMENT ACT
Windham, Cumberland County)
MAJESTIC WOODS SUBDIVISION)
L-27866-L3-A-N (approval)) FINDINGS OF FACT AND ORDER

Pursuant to the provisions of 38 M.R.S. §§ 481–489-E and Chapters 373, 375, and 500 of Department rules, the Department of Environmental Protection has considered the application of SHORELAND DEVELOPMENT, LLC with the supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

1. PROJECT DESCRIPTION:

A. Summary: On September 28, 2015, the Town of Windham authorized the applicant's subdivision of an approximately 64-acre parcel of land into 12 residential lots, ranging in size from approximately 1.85 to 2.02 acres, totaling 22.94 acres. The applicant retained 39.1 acres of the original lot. The 12 lots were located along Chute Road and Swett Road in the Town of Windham. At the time of the subdivision, the scope of the project did not require permitting from the Department.

The applicant is seeking approval under the Site Location of Development Act (Site Law) to subdivide the previously retained 39.1-acre parcel of land into 22 new residential lots ranging in size from approximately 0.69 to 0.84 acres and one open space lot of 21.21 acres, all as shown on a set of plans the first of which is entitled "Amended Subdivision Plan, Majestic Woods Subdivision," prepared by DM Roma Consulting Engineers, and dated April 3, 2017, with a last revision date of October 17, 2018. The proposed project, together with the first 12 lots will meet the definition of a subdivision, as defined in § 482(5) of the Site Law, which requires that the applicant obtain a Site Law permit from the Department. The proposed project includes approximately 10.8 acres of developed area of which 2.63 acres are impervious area. At full build-out the proposed project will result in the creation of approximately 17.3 acres of developed area of which 3.93 acres are impervious area. The project site is located on the north side of Swett Road in the Town of Windham.

B. Current Use of Site: The initial 12 lots have been developed with single-family residences. The site of the proposed project is currently undeveloped fields, woodland, and forested wetlands. There is one abandoned structure on this parcel.

C. Public Comment: The Department received a letter, dated March 21, 2018, from an abutting property owner requesting that the Department hold a public hearing for the project and that the Board of Environmental Protection (the Board) assume jurisdiction of

the project. The abutter stated unspecified concerns that the proposed project would negatively impact wetlands and wildlife, and that stormwater runoff from the project would negatively affect downstream homeowners and the water quality of Coley Wright Brook. Finding 6 of this Order will examine potential impacts to wildlife and fisheries and Finding 10 will examine stormwater control.

In a letter to the abutter, dated May 24, 2018, the Department stated that the abutter's comments did not provide conflicting technical information regarding licensing criterion and that a public hearing would not be held. This letter further stated that the proposed project did not meet criteria set forth in the Department's Chapter 2, *Rules Concerning the Processing of Applications and Other Administrative Matters*, 06-096 CMR 2 § 7 for the Board to assume jurisdiction of the project. Subsequently, the Board decided not to assume jurisdiction of the project.

2. FINANCIAL CAPACITY:

The total cost of the project is estimated to be \$289,500. The applicant submitted a letter from Katahdin Trust Company, dated February 14, 2018 indicating that the applicant has the financial capacity for this project. Prior to the start of construction, the applicant must submit evidence that it has been granted a line of credit or a loan by a financial institution authorized to do business in this State or evidence of any other form of financial assurance determined by Department Rules, Chapter 373(1), to be adequate to the Bureau of Land Resources (BLR) for review and approval.

The Department finds that the applicant has demonstrated adequate financial capacity to comply with Department standards provided that prior to the start of construction, the applicant must submit evidence that it has been granted a line of credit or a loan by a financial institution authorized to do business in this State or evidence of any other form of financial assurance determined by Department Rules, Chapter 373(1), to be adequate to the BLR for review and approval.

3. TECHNICAL ABILITY:

The applicant provided resume information for key persons involved with the project and a list of projects successfully constructed by the applicant. The applicant also retained the services of DM Roma Consulting Engineers, a professional engineering firm, to assist in the design and engineering of the project.

The Department finds that the applicant has demonstrated adequate technical ability to comply with Department standards.

4. NOISE:

The Department finds that no regulated sources of noise have been identified. The applicant proposes to limit construction on the site to the hours between 7:00 A.M. and 7:00 P.M. Construction noise generated during these hours is not regulated pursuant to 38 M.R.S. § 484(3)(A).

The Department finds that the applicant has made adequate provision for the control of excessive environmental noise from the proposed project.

5. SCENIC CHARACTER:

The project site is bounded on all sides by woodland and forested wetland. Single-family residences line Chute Road and Swett Road. Existing wooded buffers will be maintained between the development and abutting properties. The layout of the development provides a visual buffer of trees and shrubs along Swett Road. The proposed project consists solely of residential development and open space.

Based on the project's location and design, the Department finds that the proposed project will not have an unreasonable adverse effect on the scenic character of the surrounding area.

6. WILDLIFE AND FISHERIES:

The Maine Department of Inland Fisheries and Wildlife (MDIFW) reviewed the proposed project. In comments, dated September 26, 2018, MDIFW stated that it found no records of any Essential or Significant Wildlife Habitats, or other wildlife habitats of special concern associated with this site. No fisheries concerns were identified.

The application included a vernal pool assessment of the parcel, prepared by Longview Partners, LLC and dated December 21, 2017. The assessment identified five vernal pools on the property none of which were determined to be significant vernal pools, as defined in Chapter 335, *Significant Wildlife Habitat*. This was confirmed by MDIFW.

The Department finds that the applicant has made adequate provision for the protection of wildlife and fisheries.

7. HISTORIC SITES AND UNUSUAL NATURAL AREAS:

The Maine Historic Preservation Commission reviewed the proposed project and stated that it will have no effect upon any structure or site of historic, architectural, or archaeological significance as defined by the National Historic Preservation Act of 1966.

The Maine Natural Areas Program database does not contain any records documenting the existence of rare or unique botanical features on the project site and, as discussed in

Finding 6, MDIFW did not identify any unusual wildlife habitats located on the project site.

The Department finds that the proposed development will not have an adverse effect on the preservation of any historic sites or unusual natural areas either on or near the development site.

8. BUFFER STRIPS:

The applicant proposes to establish an undisturbed, forested stormwater buffer at the rear of lot 17, and to protect the stormwater buffer using the deed restriction language for forested, no-disturbance buffers contained in the Stormwater Rules, Chapter 500, Appendix G.

Prior to the start of construction, the location of the stormwater buffer must be permanently marked on the ground. The applicant must execute and record the required deed restrictions within 60 days of the date of this Order and must submit a copy of the recorded deed restriction, including the plot plan, to the BLR within 60 days of its recording.

Provided the stormwater buffer area is protected from future disturbance as outlined above, the Department finds that the applicant has made adequate provision for buffer strips.

9. SOILS:

The applicant submitted a Class A High Intensity soil survey map and report based on the soils found at the project site. This report was prepared by a certified soils scientist and reviewed by staff from the Division of Environmental Assessment (DEA) of the Bureau of Water Quality (BWQ).

The Department finds that, based on this report and DEA's review, the soils on the project site present no limitations to the proposed project that cannot be overcome through standard engineering practices.

10. STORMWATER MANAGEMENT:

The proposed project includes approximately 10.8 acres of developed area of which 2.63 acres are impervious area. At full build-out proposed project will result in the creation of approximately 17.3 acres of developed area of which 3.93 acres are impervious area. It lies within the watershed of an unnamed tributary to Colley Wright Brook. The applicant submitted a stormwater management plan based on the Basic, General, and Flooding Standards contained in Chapter 500 Stormwater Management rules (06-096 C.M.R. ch. 500, effective August 12, 2015). The proposed stormwater management system consists of grassed swales, subsurface drainage system, four underdrained soil filters, one

bioretention cell, one undisturbed forested buffer and roof-lined drip edge filters for the houses.

A. Basic Standards:

(1) Erosion and Sedimentation Control: The applicant submitted an Erosion and Sedimentation Control Plan (Section 14 of the application) that is based on the performance standards contained in Appendix A of Chapter 500 and the Best Management Practices outlined in the Maine Erosion and Sediment Control BMPs, which were developed by the Department. This plan and plan sheets containing erosion control details were reviewed by, and revised in response to the comments of, the BLR.

Erosion control details will be included on the final construction plans and the erosion control narrative will be included in the project specifications to be provided to the construction contractor.

(2) Inspection and Maintenance: The applicant submitted a maintenance plan that addresses both short and long-term maintenance requirements. The maintenance plan is based on the standards contained in Appendix B of Chapter 500. This plan was reviewed by, and revised in response to the comments of, BLR. A homeowners' association will be established that will be responsible for the maintenance of all common facilities including the stormwater management system. The Declaration of Covenants and Restrictions for the association was reviewed and found to meet Department requirements. Prior to the formation of the homeowners' association, the applicant will be responsible for all such maintenance. The applicant may not transfer responsibility for maintenance of the road and for the portion of the stormwater management system that is located in the road right-of-way to the Town of Windham, until a letter has been submitted from the Town to the BLR documenting the Town's agreement to maintain both in accordance with the terms of this Order.

Storm sewer grit and sediment materials removed from stormwater control structures during maintenance activities must be disposed of in compliance with the Maine Solid Waste Management Rules.

(3) Housekeeping: The proposed project will comply with the performance standards outlined in Appendix C of Chapter 500.

Based on BLR's review of the erosion and sedimentation control plan and the maintenance plan, the Department finds that the proposed project meets the Basic Standards contained in Chapter 500(4)(B).

B. General Standards:

The applicant's stormwater management plan includes general treatment measures that will mitigate for the increased frequency and duration of channel erosive flows due to runoff from smaller storms, provide for effective treatment of pollutants in stormwater,

and mitigate potential temperature impacts. The road for the proposed project meets the definition of "a linear portion of a project" in Chapter 500 and the applicant is proposing to control runoff volume from no less than 75% of the impervious area and no less than 50% of the developed area.

The applicant will construct the access road for the subdivision and provide stormwater treatment for the developed area associated with the road. The applicant does not intend to develop the lots prior to sale to the general public. In accordance with 38 M.R.S. § 420-D(7)(E) of the Stormwater Management Law, impervious and disturbed areas associated with construction of a single-family, detached residence on a parcel do not require review. Pursuant to 38 M.R.S. § 484(4-A) of the Site Law, the applicant is not required to provide stormwater quality treatment on the individual lots; however, because the Town of Windham is requiring the applicant to provide stormwater treatment, the proposed project has been designed such that mitigation is being achieved by using Best Management Practices (BMPs) that will control runoff from no less than 95% of the impervious area and no less than 75% of the developed area.

The forested, no disturbance stormwater buffer on lot 17 will be protected from alteration through the execution of a deed restriction, as outlined in Finding 8. The applicant proposes to use the deed restriction language contained in Appendix G of Chapter 500 and submitted a draft deed restriction that meets Department standards.

The stormwater management system proposed by the applicant was reviewed by, and revised in response to comments from, BLR. After a final review, BLR commented that the proposed stormwater management system is designed in accordance with the General Standards contained in Chapter 500(4)(C) and recommended the applicant retain its design engineer or another professional engineer to oversee the construction of the stormwater management structures according to the details and notes specified on the approved plans. Within 30 days from completion of the entire system or at least once per year, the applicant must submit a log of inspection reports detailing the items inspected, photographs taken, and the dates of each inspection to the BLR for review.

Based on the stormwater system's design and BLR's review, the Department finds that the applicant has made adequate provision to ensure that the proposed project will meet the General Standards contained in Chapter 500(4)(C) provided that the applicant retains a professional engineer to inspect and document construction of the stormwater management system as outlined above.

C. Flooding Standard:

The applicant is proposing to utilize a stormwater management system based on estimates of pre- and post-development stormwater runoff flows obtained by using Hydrocad, a stormwater modeling software that utilizes the methodologies outlined in Technical Releases #55 and #20, U.S.D.A., Soil Conservation Service and detains stormwater from 24-hour storms of 2-, 10-, and 25-year frequency. The post-development peak flow from the site will be increased by an insignificant amount over the pre-development peak flow

from the site and the peak flow of the receiving water will not be increased as a result of stormwater runoff from the development site.

BLR commented that the proposed system is designed in accordance with the Flooding Standard contained in Chapter 500(4)(F).

Based on the system's design and BLR's review, the Department finds that the applicant has made adequate provision to ensure that the proposed project will meet the Flooding Standard contained in Chapter 500(4)(F) for peak flow from the project site, and channel limits and runoff areas.

11. GROUNDWATER:

The project site is not located over a mapped sand and gravel aquifer. Other than drinking water, the proposed project does not propose any withdrawal from the groundwater. Wastewater will be disposed of via onsite subsurface wastewater disposal systems on each lot as described in Finding 13.

Based on DEA's review of the information discussed in Findings 12 and 13, the Department finds that the proposed project will not unreasonably deplete ground water resources. Therefore, the Department further finds that the proposed project will not have an unreasonable adverse effect on ground water quality or quantity.

12. WATER SUPPLY:

Water for the development will be supplied by individual wells. The applicant submitted an assessment of groundwater supplies that are available on the project site and an analysis of potential impacts to on-site wells resulting from on-site wastewater disposal. These assessments were prepared by a certified geologist and were reviewed by, and revised in response to comments from, the DEA.

Water supply well casings must be set and grouted a minimum of 20 feet into the solid bedrock surface, if bedrock is encountered at a depth less than 10 feet. Wells must not be located in the exclusion areas identified on the Nitrate Analysis Plan, included in the set of plans referenced in Finding 1.

Provided individual wells areas are protected as discussed above, the Department finds that the applicant has made adequate provision for securing and maintaining a sufficient and healthful water supply.

13. WASTEWATER DISPOSAL:

Wastewater will be disposed of by an individual subsurface wastewater disposal system on each lot. The applicant submitted the soil survey map and report discussed in Finding 9 and an analysis of potential impacts to off-site groundwater quality resulting from on-site wastewater disposal prepared by a certified geologist. Each individual system must

be designed to meet the requirements of the Maine State Plumbing Code. This information was reviewed by DEA.

Individual wastewater disposal field locations were identified on the Nitrate Analysis Plan included in the set of plans referenced in Finding 1 and were determined based on the nitrate-nitrogen impact analysis. The nitrate-nitrogen impact assessment was based on wastewater flows generated by a 3-bedroom dwelling, and therefore, single-family residences for the proposed project must be limited to dwellings with 3 bedrooms or less.

Relocation of an individual subsurface wastewater disposal system on any lot will require review and approval from the BLR prior to installation of the system.

Based on DEA's comments, the Department finds that the proposed wastewater disposal systems will be built on suitable soil types and that Maine's Drinking Water Standard for nitrates will be met at the project's property lines.

14. SOLID WASTE:

When completed, the proposed project is anticipated to generate 220 cubic yards of household solid waste per year. All general solid wastes from the proposed project will be disposed of utilizing the Town's curbside pickup service. The Town contracts this service to Pine Tree Waste who hauls municipal solid waste to its transfer station in Westbrook and then on to the Juniper Ridge Landfill, which is currently in substantial compliance with the Maine Solid Waste Management Rules.

The proposed project will generate an indeterminate number of stumps and grubblings. All stumps, brush and other wood waste generated by the proposed project will be ground for use on site as erosion control mix or mulch, or transported to the Pine Tree Waste transfer station in Westbrook, which is in compliance with Solid Waste Management Regulations of the State of Maine.

The proposed project will generate approximately 15 cubic yards of construction debris and demolition debris for development of each lot. All construction and demolition debris generated will be disposed of at the Pine Tree Waste transfer station in Westbrook, which is currently in substantial compliance with the Maine Solid Waste Management Rules.

Based on the above information, the Department finds that the applicant has made adequate provision for solid waste disposal.

15. FLOODING:

The proposed project is not located within the 100-year flood plain of any river or stream.

The Department finds that the proposed project is unlikely to cause or increase flooding or cause an unreasonable flood hazard to any structure.

BASED on the above findings of fact, and subject to the conditions listed below, the Department makes the following conclusions pursuant to 38 M.R.S. §§ 481–489-E:

- A. The applicant has provided adequate evidence of financial capacity and technical ability to develop the project in a manner consistent with state environmental standards provided final financial evidence is submitted to the BLR for review and approval, as outlined in Finding 2.
- B. The applicant has made adequate provision for fitting the development harmoniously into the existing natural environment and the development will not adversely affect existing uses, scenic character, air quality, water quality or other natural resources in the municipality or in neighboring municipalities.
- C. The proposed development will be built on soil types which are suitable to the nature of the undertaking and will not cause unreasonable erosion of soil or sediment nor inhibit the natural transfer of soil.
- D. The proposed development meets the standards for storm water management in 38 M.R.S. § 420-D and the standard for erosion and sedimentation control in 38 M.R.S. § 420-C provided that sewer grit and sediment are disposed of properly, that the installation of stormwater components is overseen and documented as described in Finding 10, and prior to construction, the stormwater buffer on lot 17 is permanently marked on the ground and the deed restriction for the designated stormwater buffer is recorded as described in Finding 8.
- E. The proposed development will not pose an unreasonable risk that a discharge to a significant groundwater aquifer will occur.
- F. The applicant has made adequate provision of utilities, including water supplies, sewerage facilities and solid waste disposal required for the development and the development will not have an unreasonable adverse effect on the existing or proposed utilities in the municipality or area served by those services provided that drinking water wells and the subsurface wastewater disposal system are located, as shown on the set of plans referenced in Finding 1, and installed as described in Findings 12 and 13.
- G. The activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties nor create an unreasonable flood hazard to any structure.

THEREFORE, the Department APPROVES the application of SHORELAND DEVELOPMENT, LLC to construct a 34-lot residential subdivision as described in Finding 1, SUBJECT TO THE FOLLOWING CONDITIONS and all applicable standards and regulations:

1. The Standard Conditions of Approval, a copy attached.

2. In addition to any specific erosion control measures described in this or previous orders, the applicant shall take all necessary actions to ensure that its activities or those of its agents do not result in noticeable erosion of soils or fugitive dust emissions on the site during the construction and operation of the project covered by this approval.
3. Severability. The invalidity or unenforceability of any provision, or part thereof, of this License shall not affect the remainder of the provision or any other provisions. This License shall be construed and enforced in all respects as if such invalid or unenforceable provision or part thereof had been omitted.
4. The applicant shall include in all conveyances of subdivision lots deed restrictions making the conveyance subject to all terms and conditions of this Department permit and any applicable municipal approval. These terms and conditions may be incorporated by specific and prominent reference to the permit in the deed. All conveyances required by this approval to contain restrictions shall include in the restrictions the requirement that any subsequent conveyance shall specifically include the same restrictions.
5. The applicant shall give a copy of this permit, including the standard conditions, and a copy of the approved subdivision plan to each lot buyer at least 14 days prior to the date of closing on the sale or lease of the lot. The applicant also shall maintain a file containing signed and dated statements by lot buyers or lessees acknowledging that they have received and read their copy of this permit and the subdivision plan prior to the closing on their lot. The file shall also contain a copy of the signed and dated deed or lease containing the restrictive covenants required under this approval. The applicant shall make this file available for inspection upon request by the Department.
6. Prior to starting construction, the applicant shall submit final cost estimates and evidence that it has been granted a line of credit or a loan by a financial institution authorized to do business in this State or evidence of any other form of financial assurance determined by Department Rules, Chapter 373(1), to be adequate to the BLR for review and approval.
7. Prior to the start of construction, the location of the forested undisturbed stormwater buffer lot 17 shall be permanently marked on the ground.
8. Prior the start of construction on lot 17, the applicant shall execute and record the required deed restrictions for the stormwater forested buffer on the lot. The applicant shall submit a copy of the recorded deed restriction, including the plot plan, to the BLR within 60 days of its recording.
9. The applicant shall retain its design engineer or another qualified engineer to oversee the construction of the stormwater management system according to the details and notes specified on the approved plans. Within 30 days of completion of the entire system or at least once per year, the applicant shall submit a log of inspection reports detailing the items inspected, photographs taken, and dates of each inspection to the BLR for review.

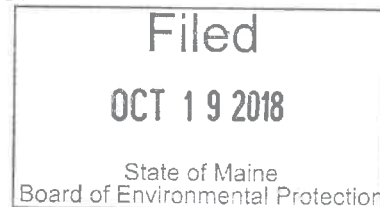
10. Individual water supply well casings shall be set and grouted a minimum of 20 feet into the solid bedrock surface, if bedrock is less than 10 feet in depth at well sites. Wells shall not be located in the exclusion areas identified on the Nitrate Analysis Plan included in the set of plans referenced in Finding 1.
11. Each individual subsurface wastewater disposal system shall not exceed the design flow for a 3-bedroom dwelling and shall be located as shown on the Nitrate Analysis Plan included in the set of plans referenced in Finding 1. Relocation of an individual subsurface wastewater disposal system shall require review and approval from the BLR prior to installation of the system.

THIS APPROVAL DOES NOT CONSTITUTE OR SUBSTITUTE FOR ANY OTHER REQUIRED STATE, FEDERAL OR LOCAL APPROVALS NOR DOES IT VERIFY COMPLIANCE WITH ANY APPLICABLE SHORELAND ZONING ORDINANCES.

DONE AND DATED IN AUGUSTA, MAINE, THIS 18TH DAY OF OCTOBER, 2018.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: 
For: Paul Mercer, Commissioner



PLEASE NOTE THE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES.

RLG/L27866AN/ATS#82956

Department of Environmental Protection
SITE LOCATION OF DEVELOPMENT (SITE)
STANDARD CONDITIONS

- A. Approval of Variations from Plans.** The granting of this approval is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. Any variation from these plans, proposals, and supporting documents is subject to review and approval prior to implementation. Further subdivision of proposed lots by the applicant or future owners is specifically prohibited without prior approval of the Board, and the applicant shall include deed restrictions to that effect.
- B. Compliance with All Applicable Laws.** The applicant shall secure and comply with all applicable federal, state, and local licenses, permits, authorizations, conditions, agreements, and orders prior to or during construction and operation, as appropriate.
- C. Compliance with All Terms and Conditions of Approval.** The applicant shall submit all reports and information requested by the Board or the Department demonstrating that the applicant has complied or will comply with all preconstruction terms and conditions of this approval. All preconstruction terms and conditions must be met before construction begins.
- D. Advertising.** Advertising relating to matters included in this application shall refer to this approval only if it notes that the approval has been granted WITH CONDITIONS, and indicates where copies of those conditions may be obtained.
- E. Transfer of Development.** Unless otherwise provided in this approval, the applicant shall not sell, lease, assign or otherwise transfer the development or any portion thereof without prior written approval of the Board where the purpose or consequence of the transfer is to transfer any of the obligations of the developer as incorporated in this approval. Such approval shall be granted only if the applicant or transferee demonstrates to the Board that the transferee has the technical capacity and financial ability to comply with conditions of this approval and the proposals and plans contained in the application and supporting documents submitted by the applicant.
- F. Time frame for approvals.** If the construction or operation of the activity is not begun within four years, this approval shall lapse and the applicant shall reapply to the Board for a new approval. The applicant may not begin construction or operation of the development until a new approval is granted. A reapplication for approval may include information submitted in the initial application by reference. This approval, if construction is begun within the four-year time frame, is valid for seven years. If construction is not completed within the seven-year time frame, the applicant must reapply for, and receive, approval prior to continuing construction.
- G. Approval Included in Contract Bids.** A copy of this approval must be included in or attached to all contract bid specifications for the development.
- H. Approval Shown to Contractors.** Work done by a contractor pursuant to this approval shall not begin before the contractor has been shown by the developer a copy of this approval.

(2/81)/Revised December 27, 2011

STORMWATER STANDARD CONDITIONS

STRICT CONFORMANCE WITH THE STANDARD AND SPECIAL CONDITIONS OF THIS APPROVAL IS NECESSARY FOR THE PROJECT TO MEET THE STATUTORY CRITERIA FOR APPROVAL

Standard conditions of approval. Unless otherwise specifically stated in the approval, a department approval is subject to the following standard conditions pursuant to Chapter 500 Stormwater Management Law.

- (1) Approval of variations from plans. The granting of this approval is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the permittee. Any variation from these plans, proposals, and supporting documents must be reviewed and approved by the department prior to implementation. Any variation undertaken without approval of the department is in violation of 38 M.R.S. §420-D(8) and is subject to penalties under 38 M.R.S. §349.
- (2) Compliance with all terms and conditions of approval. The applicant shall submit all reports and information requested by the department demonstrating that the applicant has complied or will comply with all terms and conditions of this approval. All preconstruction terms and conditions must be met before construction begins.
- (3) Advertising. Advertising relating to matters included in this application may not refer to this approval unless it notes that the approval has been granted WITH CONDITIONS, and indicates where copies of those conditions may be obtained.
- (4) Transfer of project. Unless otherwise provided in this approval, the applicant may not sell, lease, assign, or otherwise transfer the project or any portion thereof without written approval by the department where the purpose or consequence of the transfer is to transfer any of the obligations of the developer as incorporated in this approval. Such approval may only be granted if the applicant or transferee demonstrates to the department that the transferee agrees to comply with conditions of this approval and the proposals and plans contained in the application and supporting documents submitted by the applicant. Approval of a transfer of the permit must be applied for no later than two weeks after any transfer of property subject to the license.
- (5) Time frame for approvals. If the construction or operation of the activity is not begun within four years, this approval shall lapse and the applicant shall reapply to the department for a new approval. The applicant may not begin construction or operation of the project until a new approval is granted. A reapplication for approval may include information submitted in the initial application by reference. This approval, if construction is begun within the four-year time frame, is valid for seven years. If construction is not completed within the seven-year time frame, the applicant must reapply for, and receive, approval prior to continuing construction.
- (6) Certification. Contracts must specify that "all work is to comply with the conditions of the Stormwater Permit." Work done by a contractor or subcontractor pursuant to this approval may not begin before the contractor and any subcontractors have been shown a copy of this approval with the conditions by the permittee, and the permittee and each contractor and subcontractor has certified, on a form provided by the department, that the approval and conditions have been received and read, and that the work will be carried out in accordance with the approval and conditions. Completed certification forms must be forwarded to the department.

- (7) Maintenance. The components of the stormwater management system must be adequately maintained to ensure that the system operates as designed, and as approved by the Department. If maintenance responsibility is to be transferred from the permittee to another entity, a transfer request must be filed with the Department which includes the name and contact information for the person or entity responsible for this maintenance. The form must be signed by the responsible person or agent of the responsible entity.
- (8) Recertification requirement. Within three months of the expiration of each five-year interval from the date of issuance of the permit, the permittee shall certify the following to the department.
- (a) All areas of the project site have been inspected for areas of erosion, and appropriate steps have been taken to permanently stabilize these areas.
 - (b) All aspects of the stormwater control system are operating as approved, have been inspected for damage, wear, and malfunction, and appropriate steps have been taken to repair or replace the system, or portions of the system, as necessary.
 - (c) The stormwater maintenance plan for the site is being implemented as approved by the Department, and the maintenance log is being maintained.
 - (d) All proprietary systems have been maintained according to the manufacturer's recommendations. Where required by the Department, the permittee shall execute a 5-year maintenance contract with a qualified professional for the coming 5-year interval. The maintenance contract must include provisions for routine inspections, cleaning and general maintenance.
 - (e) The Department may waive some or all of these recertification requirements on a case-by-case basis for permittees subject to the Department's Multi-Sector General Permit ("MSGP") and/or Maine Pollutant Discharge Elimination System ("MEPDES") programs where it is demonstrated that these programs are providing stormwater control that is at least as effective as required pursuant to this Chapter.
- (9) Transfer of property subject to the license. If any portion of the property subject to the license containing areas of flow or areas that are flooded are transferred to a new property owner, restrictive covenants protecting these areas must be included in any deeds or leases, and recorded at the appropriate county registry of deeds. Also, in all transfers of such areas and areas containing parts of the stormwater management system, deed restrictions must be included making the property transfer subject to all applicable terms and conditions of the permit. These terms and conditions must be incorporated by specific and prominent reference to the permit in the deed. All transfers must include in the restrictions the requirement that any subsequent transfer must specifically include the same restrictions unless their removal or modification is approved by the Department. These restrictions must be written to be enforceable by the Department, and must reference the permit number.
- (10) Severability. The invalidity or unenforceability of any provision, or part thereof, of this permit shall not affect the remainder of the provision or any other provisions. This permit shall be construed and enforced in all respects as if such invalid or unenforceable provision or part thereof had been omitted.



DEP INFORMATION SHEET

Appealing a Department Licensing Decision

Dated: March 2012

Contact: (207) 287-2811

SUMMARY

There are two methods available to an aggrieved person seeking to appeal a licensing decision made by the Department of Environmental Protection's ("DEP") Commissioner: (1) in an administrative process before the Board of Environmental Protection ("Board"); or (2) in a judicial process before Maine's Superior Court. An aggrieved person seeking review of a licensing decision over which the Board had original jurisdiction may seek judicial review in Maine's Superior Court.

A judicial appeal of final action by the Commissioner or the Board regarding an application for an expedited wind energy development (35-A M.R.S.A. § 3451(4)) or a general permit for an offshore wind energy demonstration project (38 M.R.S.A. § 480-HH(1)) or a general permit for a tidal energy demonstration project (38 M.R.S.A. § 636-A) must be taken to the Supreme Judicial Court sitting as the Law Court.

This INFORMATION SHEET, in conjunction with a review of the statutory and regulatory provisions referred to herein, can help a person to understand his or her rights and obligations in filing an administrative or judicial appeal.

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

The laws concerning the DEP's *Organization and Powers*, 38 M.R.S.A. §§ 341-D(4) & 346, the *Maine Administrative Procedure Act*, 5 M.R.S.A. § 11001, and the DEP's *Rules Concerning the Processing of Applications and Other Administrative Matters* ("Chapter 2"), 06-096 CMR 2 (April 1, 2003).

HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD

The Board must receive a written appeal within 30 days of the date on which the Commissioner's decision was filed with the Board. Appeals filed after 30 calendar days of the date on which the Commissioner's decision was filed with the Board will be rejected.

HOW TO SUBMIT AN APPEAL TO THE BOARD

Signed original appeal documents must be sent to: Chair, Board of Environmental Protection, c/o Department of Environmental Protection, 17 State House Station, Augusta, ME 04333-0017; faxes are acceptable for purposes of meeting the deadline when followed by the Board's receipt of mailed original documents within five (5) working days. Receipt on a particular day must be by 5:00 PM at DEP's offices in Augusta; materials received after 5:00 PM are not considered received until the following day. The person appealing a licensing decision must also send the DEP's Commissioner a copy of the appeal documents and if the person appealing is not the applicant in the license proceeding at issue the applicant must also be sent a copy of the appeal documents. All of the information listed in the next section must be submitted at the time the appeal is filed. Only the extraordinary circumstances described at the end of that section will justify evidence not in the DEP's record at the time of decision being added to the record for consideration by the Board as part of an appeal.

WHAT YOUR APPEAL PAPERWORK MUST CONTAIN

Appeal materials must contain the following information at the time submitted:

1. *Aggrieved Status.* The appeal must explain how the person filing the appeal has standing to maintain an appeal. This requires an explanation of how the person filing the appeal may suffer a particularized injury as a result of the Commissioner's decision.
2. *The findings, conclusions or conditions objected to or believed to be in error.* Specific references and facts regarding the appellant's issues with the decision must be provided in the notice of appeal.
3. *The basis of the objections or challenge.* If possible, specific regulations, statutes or other facts should be referenced. This may include citing omissions of relevant requirements, and errors believed to have been made in interpretations, conclusions, and relevant requirements.
4. *The remedy sought.* This can range from reversal of the Commissioner's decision on the license or permit to changes in specific permit conditions.
5. *All the matters to be contested.* The Board will limit its consideration to those arguments specifically raised in the written notice of appeal.
6. *Request for hearing.* The Board will hear presentations on appeals at its regularly scheduled meetings, unless a public hearing on the appeal is requested and granted. A request for public hearing on an appeal must be filed as part of the notice of appeal.
7. *New or additional evidence to be offered.* The Board may allow new or additional evidence, referred to as supplemental evidence, to be considered by the Board in an appeal only when the evidence is relevant and material and that the person seeking to add information to the record can show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process or that the evidence itself is newly discovered and could not have been presented earlier in the process. Specific requirements for additional evidence are found in Chapter 2.

OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

1. *Be familiar with all relevant material in the DEP record.* A license application file is public information, subject to any applicable statutory exceptions, made easily accessible by DEP. Upon request, the DEP will make the material available during normal working hours, provide space to review the file, and provide opportunity for photocopying materials. There is a charge for copies or copying services.
2. *Be familiar with the regulations and laws under which the application was processed, and the procedural rules governing your appeal.* DEP staff will provide this information on request and answer questions regarding applicable requirements.
3. *The filing of an appeal does not operate as a stay to any decision.* If a license has been granted and it has been appealed the license normally remains in effect pending the processing of the appeal. A license holder may proceed with a project pending the outcome of an appeal but the license holder runs the risk of the decision being reversed or modified as a result of the appeal.

WHAT TO EXPECT ONCE YOU FILE A TIMELY APPEAL WITH THE BOARD

The Board will formally acknowledge receipt of an appeal, including the name of the DEP project manager assigned to the specific appeal. The notice of appeal, any materials accepted by the Board Chair as supplementary evidence, and any materials submitted in response to the appeal will be sent to Board members with a recommendation from DEP staff. Persons filing appeals and interested persons are notified in advance of the date set for Board consideration of an appeal or request for public hearing. With or without holding a public hearing, the Board may affirm, amend, or reverse a Commissioner decision or remand the matter to the Commissioner for further proceedings. The Board will notify the appellant, a license holder, and interested persons of its decision.

II. JUDICIAL APPEALS

Maine law generally allows aggrieved persons to appeal final Commissioner or Board licensing decisions to Maine's Superior Court, see 38 M.R.S.A. § 346(1); 06-096 CMR 2; 5 M.R.S.A. § 11001; & M.R. Civ. P 80C. A party's appeal must be filed with the Superior Court within 30 days of receipt of notice of the Board's or the Commissioner's decision. For any other person, an appeal must be filed within 40 days of the date the decision was rendered. Failure to file a timely appeal will result in the Board's or the Commissioner's decision becoming final.

An appeal to court of a license decision regarding an expedited wind energy development, a general permit for an offshore wind energy demonstration project, or a general permit for a tidal energy demonstration project may only be taken directly to the Maine Supreme Judicial Court. See 38 M.R.S.A. § 346(4).

Maine's Administrative Procedure Act, DEP statutes governing a particular matter, and the Maine Rules of Civil Procedure must be consulted for the substantive and procedural details applicable to judicial appeals.

ADDITIONAL INFORMATION

If you have questions or need additional information on the appeal process, for administrative appeals contact the Board's Executive Analyst at (207) 287-2452 or for judicial appeals contact the court clerk's office in which your appeal will be filed.

Note: The DEP provides this INFORMATION SHEET for general guidance only; it is not intended for use as a legal reference. Maine law governs an appellant's rights.
