



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
17 STATE HOUSE STATION AUGUSTA, MAINE 04333-0017

DEPARTMENT ORDER

IN THE MATTER OF

TOWN OF WINDHAM	) SITE LOCATION OF DEVELOPMENT ACT
Windham, Cumberland County	)
PUBLIC WORKS & SCHOOL BUS	)
MAINTENANCE FACILITY	)
L-27796-26-A-N (Approval)	) FINDINGS OF FACT AND ORDER

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

1. PROJECT DESCRIPTION:

B. Summary: The applicant proposes to construct a new 23,400 square foot maintenance garage and office building to serve the Town of Windham’s public works department and the Regional School Unit (RSU) 14 school buses on an approximately 21-acre parcel. The project includes a 2,280-square foot cold storage building, a concrete pad for “silver bullet” recycling dumpsters, a 3,360-square foot gravel pad for outdoor storage, a fueling station, a 170-foot by 66-foot gravel surfaced leaf and brush drop-off area, and parking for buses, public works vehicles, employees, and visitors. The maintenance garage includes a wash bay to wash buses and public works vehicles. The project includes a 5,000-gallon above ground gasoline tank and a 10,000-gallon above ground diesel tank. The project incorporates an existing sand and salt storage building into the site. The proposed redevelopment occurs mostly within the existing developed area and results in a total developed area of approximately 9 acres which is an increase of 2.39 acres. The proposed impervious area is 5.9 acres, which is an increase of 0.7 acres from the existing condition. The project is shown on a set of plans, plan C-5 is titled “Shared Maintenance Facility, Windham, Maine, Site Layout & Utility Plan,” prepared by Gorrill Palmer, and dated February 2018. The project site is located at 185 Windham Center Road in the Town of Windham (Tax map 12, lot 28).

The Department accepted a Natural Resources Protection Act (NRPA) Permit by Rule Notification Form (PBR #65221) on January 12, 2018 for activities adjacent to a protected natural resource associated with the project that will be constructed in accordance with the NRPA Chapter 305 Section 2 standards.

C. Current Use of Site: The proposed project redevelops the existing site of the Windham public works and school bus maintenance facility. This facility was constructed in the 1980’s in a gravel pit that dates back to the 1960’s. The existing facility has an 8,500-square foot building, an 1,820-square foot building, a 12,000-square

foot sand and salt storage building, shipping containers, temporary storage structures, a fueling island, concrete pads, gravel areas, and paved parking and circulation drives. Most of the site will be regraded with the exception of the sand and salt storage shed and one of the entrance driveways.

There are bands of forested areas of varying widths along the southeast, southwest, and northwest property lines. There is an RSU 14 cross country running trail along the southerly portion of the site. There is a stream on the southeast side of the property and the Pleasant River and a freshwater wetland are located on the west side of the property.

2. FINANCIAL CAPACITY:

The total site cost of the project is estimated to be \$2,400,000. The Town of Windham received voter approval to construct a new shared maintenance facility on the site of the existing facility in a referendum held on November 7, 2017. The town is now authorized to obtain a bond anticipation note to provide funding for design and construction costs. The applicant submitted a copy of the ballot and a certification of the ballot results from the Town of Windham.

The Department finds that the applicant has demonstrated adequate financial capacity to comply with Department standards.

3. TECHNICAL ABILITY:

The applicant retained the services of Gorrill Palmer for civil engineering services, Allied Engineers, and Grant Hays Associates as the lead structural, mechanical, and architectural design of the building, TRC for wetland and vernal pool identification, Titcomb Associates for professional land surveying services, Albert Frick Associates for subsurface wastewater disposal design services and Maintenance Technology, Inc. for design of the wash bay system.

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

4. NOISE:

Noise from this public works facility is generated from vehicles driving on the site, people unloading recyclables, leaves, and brush, and maintenance of vehicles in the garage. Noise generated by registered motor vehicles is exempt from regulation under the Site Location of Development Rules Chapter 375 section 10(C)(5)(c). The noise from unloading recyclables, brush, and leaves is unlikely to exceed the noise standards. The noise from vehicle maintenance activities in the garage is anticipated to have a minor sound impact.

The applicant proposes to construct the project between the hours of 7:00 a.m. and 7:00 p.m.; noise from construction 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:

On the northwest side of the project is Windham Center Road and across this road is forested area, two single family homes and a residential subdivision road called Hall Road. The applicant owns approximately 1,060 feet of frontage on Windham Center Road; approximately 390 feet of this frontage has trees that will remain after the project is redeveloped. A small stream runs parallel to and meanders 20 feet to 100 feet from the southeast property line; there is a forested buffer that will remain between the stream and the proposed developed area on the site that will vary from a minimum of 60 feet to greater than 100 feet wide. The adjacent parcel to the southwest is developed with athletic fields associated with the RSU 14 schools (Department Order #L-15060-22-A-N). The southwest side of the property is forested area and is adjacent to the Pleasant River; this side of the property is forested area that will remain. The narrowest forested buffer between the river and the project is approximately 75 feet; this is the current condition and will remain the same for the proposed project. To the north of the property is a single-family home that has frontage on Windham Center Road. There is an existing forested buffer approximately 30 feet wide at the narrowest point along this area of the property line; no changes to this existing buffer or the existing driveway in this area are proposed. The applicant states that the proposed project will improve the visual quality of the site partially due to the removal of the office trailers, the storage containers, etc. and the reorganization of the site and the new building.

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 its comments, 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 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 based on the information submitted there will be no historic properties affected by the proposed undertaking as defined by Section 106 of the National Historic Preservation Act.

The Maine Natural Areas Program database does not contain any records documenting the existence of rare or unique botanical features 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:

A majority of the proposed redevelopment will occur within the existing developed area with the exception of an approximately 6,650 square foot area on the southwesterly corner of the site that is greater than 100 feet from the stream and the Pleasant River. The existing forested areas along the river and stream are proposed to remain.

The Department finds that the applicant has made adequate provision for buffer strips.

9. SOILS:

The applicant submitted a Natural Resources Conservation Service medium intensity soil map and report, and supplemental soils information in a report titled "Explorations and Geotechnical Engineering Services," based on the soils found at the project site prepared by S.W. Cole and dated August 25, 2017. This report was prepared by a registered professional engineer 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 is a redevelopment project and includes approximately 9.0 acres of developed area of which 2.3 acres is new developed area. Included in the developed area is 5.9 acres of impervious area; 0.7 acres of this is new impervious area. It lies within the watershed of the Pleasant River. 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. Chapter 500, effective August 12, 2015). The proposed stormwater management system consists of two grassed underdrained soil

filters, and a Focal Point Filter® with a subsurface chamber system and two Stormtech isolator rows.

A. Basic Standards:

(1) Erosion and Sedimentation Control: The applicant submitted an Erosion and Sedimentation Control Plan 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 Bureau of Land Resources (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. The applicant will be responsible for the maintenance of all common facilities including the stormwater management system.

Prior to occupancy of the new building, the applicant must submit a copy of an executed long-term maintenance contract (minimum of 5 years and renewable) for the on-going maintenance of the Focal Point Filter® to the BLR. Grit and sediment materials removed from stormwater structures and storm drain lines 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) provided that the applicant submits a copy of an executed long-term maintenance contract to the Department prior to occupancy of the building and grit and sediment removed from the stormwater management structures and storm drains is disposed of properly.

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 thermal impacts. The proposed project is a redevelopment project; using the procedure in section 4(C)(d)(1) of Chapter 500, the applicant calculated that

proposed project is required to treat 60% of the developed area. The applicant designed the project using Best Management Practices (BMPs) that will treat runoff from 64% of the impervious area and 61% of the developed area.

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 that the design engineer or another qualified engineer oversees the construction on the grassed underdrained soil filters and the installation of the Focal Point® according to the details and notes specified on the approved plans. Within 30 days of completion of the grassed underdrained filters and installation of the Focal Point®, or at least once per year, the applicant must submit inspection reports detailing items inspected, photos, 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 construction of the grassed underdrained soil filters and the installation of the Focal Point® is overseen and documented as described 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 from the 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 waters 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. The proposed project does not propose any withdrawal from the groundwater. The applicant proposed a subsurface wastewater disposal system for gray water. The applicant proposed above

ground storage tanks for gasoline and diesel; these are potential sources of groundwater contamination. The applicant submitted a spill prevention control and countermeasures plan for the shared maintenance facility that was prepared by Gorrill Palmer, dated December 2017, that was reviewed by the DEA and found to meet the Department's standards.

The Department finds that the proposed project will not have an unreasonable adverse effect on ground water quality.

12. WATER SUPPLY:

When completed, the proposed project is anticipated to use approximately 750 gallons of water per day. The record of water usage for the past year for the existing facility was obtained from the Portland Water District; this information showed that the maximum daily usage was approximately 500 gallons per day. The proposed project is not expected to increase water usage from current levels but to anticipate any increase the proposed daily flow estimates are based on a 50% increase of the current maximum daily usage of 500 gallons a day to 750 gallons per day. Water will be supplied by the Portland Water District. The applicant submitted a letter from the Portland Water District, dated November 21, 2017, that states the district will be able to serve the proposed project.

The Department finds that the applicant has made adequate provision for securing and maintaining a sufficient and healthful water supply.

13. WASTEWATER DISPOSAL:

When completed, the proposed project is anticipated to discharge 750 gallons per day of wastewater from the sanitary sewer system. Wastewater will be disposed of by an individual subsurface wastewater disposal system on the site near Windham Center Road. The applicant submitted a completed Subsurface Wastewater Disposal System Application (HHE-200 Form) completed by a site evaluator and sized for 750 gallons per day. This information was reviewed by, and revised in response to comments from, the DEA.

The proposed maintenance garage includes a wash bay with two wash bay stations for the ability to wash up to twenty vehicles per day, including school buses, for the public works department and the school department. The vehicle wash bay system has been designed based on recommendations from Maintenance Technology Incorporated. This system is estimated to use approximately 100 gallons per day of water. The system includes a series of three 1,000 gallon tanks for the settlement of sediments, the separation of hydrocarbons, and a reverse osmosis system for the recycling of the wash water back through the wash bay. Water not recycled through the system is discharged to a 5,000-gallon holding tank. All the wastewater from the vehicle washing system, whether it is from the 5,000-gallon holding tank, or any other tank or container in the system, must be hauled to a licensed wastewater disposal facility for disposal.

Based on DEA's comments, the Department finds that the proposed sanitary wastewater disposal systems will be built on suitable soil types. The Department further finds that the applicant has made adequate provision for wastewater disposal from the vehicle wash bays provided that all wastewater from the vehicle washing system must be hauled to a licensed wastewater disposal facility for disposal.

14. SOLID WASTE:

When completed, the proposed project is anticipated to generate 720 cubic yards of municipal solid waste per year. All municipal solid wastes from the proposed project will be hauled by Casella/Pine Tree Waste for disposal to Juniper Ridge land fill in Old Town, which is currently in substantial compliance with the Maine Solid Waste Management Rules.

The proposed project will generate approximately 230 cubic yards of stumps and grubblings. All stumps and grubblings generated will be ground on site and used in erosion control mix, in compliance with the Maine Solid Waste Management Rules.

The proposed project will generate approximately 160 cubic yards of construction debris and 110 cubic yards of demolition debris. All construction and demolition debris generated will be transported by Casella/Pine Tree Waste for disposal to Juniper Ridge land fill in Old Town, 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:

A portion of the applicant's parcel that is located adjacent to the Pleasant River is in a 100-year flood area with a Zone A designation according to the Federal Emergency Management Agency (FEMA) National Flood Insurance Program Flood Insurance Rate Map. The Zone A designation is for a flood area where the base flood elevation has not been determined. The proposed project is at the top of a bank at least 20 feet above a wetland area associated with the river. Based on the FEMA map and the topography of the site the proposed project is located outside the flood plain.

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.
- 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 grit and sediment removed from the stormwater management structures and storm drains is disposed of properly, that construction of the underdrained soil filters and the Focal Point® is overseen and documented, and that the applicant submits a copy of the long-term maintenance contract for the Focal Point® prior to occupancy of the new building.
- 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 wastewater from the vehicle washing system is hauled to a licensed wastewater disposal facility for disposal.
- 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 the TOWN OF WINDHAM to redevelop the Town's public works and bus maintenance facility as described herein, 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.

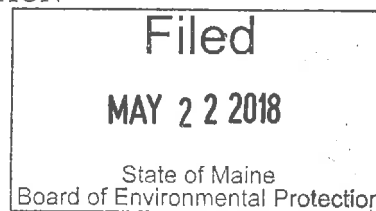
3. Severability. The invalidity or unenforceability of any provision, or part thereof, of this License shall not affect the remainder of the provision or any other provisions. This License shall be construed and enforced in all respects as if such invalid or unenforceable provision or part thereof had been omitted.
4. Prior to occupancy of the building, the applicant shall submit a copy of the executed maintenance agreement for the Focal Point® to the Bureau of Land Resources for review.
5. Grit and sediment removed from the stormwater management structures and storm drains shall be disposed of properly as described in Finding 2.
6. The applicant shall retain the design engineer or another qualified professional to oversee the construction on the grassed underdrained soil filters and the installation of the Focal Point® according to the details and notes specified on the approved plans. Within 30 days of completion of the grassed underdrained filters and installation of the Focal Point®, or at least once per year, the applicant must submit inspection reports detailing items inspected, photos, and the dates of each inspection to the BLR for review.
7. The applicant shall dispose of all wastewater from the vehicle washing system by hauling it to a licensed wastewater disposal facility.

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 22<sup>nd</sup> DAY OF MAY, 2018.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: *Paul Mercer*  
For: Paul Mercer, Commissioner



PLEASE NOTE THE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES.

CGW/L27796AN/ATS#82650

**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.

November 16, 2005 (revised August 15, 2015)



# DEP INFORMATION SHEET

## Appealing a Department Licensing Decision

**Dated: March 2012**

**Contact: (207) 287-2811**

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### **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.

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**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.**

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