



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

DEPARTMENT ORDER

IN THE MATTER OF

COPART OF CONNECTICUT, LLC) SITE LOCATION OF DEVELOPMENT ACT
Windham, Cumberland County) NATURAL RESOURCES PROTECTION ACT
COPART VEHICLE AUCTION FACILITY) SIGNIFICANT VERNAL POOL
L-29113-26-A-N (approval)) INLAND WATERFOWL AND
L-29113-VP-B-N (approval)) WADING BIRD HABITAT
L-29113-IW-C-N (approval)) FINDINGS OF FACT AND ORDER

Pursuant to the provisions of 38 M.R.S. §§ 481–489-E and §§ 480-A–480-JJ, and Chapters 310, 315, 335, 371, 372, 373, 375, 376, 500, 501, and 502 of Department rules, the Department of Environmental Protection has considered the application of COPART OF CONNECTICUT, LLC with the supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

1. PROJECT DESCRIPTION:

A. History of Project Development: Quarry Ridge Subdivision is located in a portion of a gravel pit that was first approved under the Site Location of Development Act (Site Law) in Department Order #L-18029-80-A-N dated May 10, 1993. In Department Order #L-18029-NB-H-N/#L-18029-TA-I-N, corrected order issued September 30, 2003, the Department approved a stormwater management plan for Quarry Ridge Business Park, Phase 1A, a 4-lot commercial/light industrial subdivision, in a portion of the gravel pit. The remaining area of active gravel operations then became subject to Article 7, Performance Standards for Excavations.

In Department Order #L-18029-26-K-D, dated June 23, 2004, the Department acknowledged the Town of Windham's Site Law review. Under the town's delegated review authority (38 M.R.S. § 489-A) approval was granted for Lavalley Lumber's project on Lot 1 of Phase 1A. In Department Order #L-18029-39-L-N, dated November 16, 2005, the Department approved the commercial subdivision known as Quarry Ridge Business Park, Phases 1A and 1B under the Site Law. Subsequent Department Orders have approved revisions and modifications to the project under both the Site Law and the Natural Resources Protection Act (NRPA).

B. Summary: The applicant proposes to combine lots 5, 6, and 7 of the Quarry Ridge Business Park, together with approximately 40 acres from an abutting lot (known as lot 13 but not part of the Quarry Ridge Business Park subdivision), to create a 50.4-acre parcel that will be redeveloped as an auction facility for damaged and undamaged vehicles, trailers, watercraft, power sports crafts, and industrial and construction equipment. The new facility will consist of a 7,200-square foot office and warehouse building, an entry drive and parking area, a fueling station, and an automobile storage

area with perimeter fencing. Overall the proposed project will result in the redevelopment of approximately 40 acres of new developed area, of which approximately 27.3 acres will be impervious area. The proposed project is shown on a set of plans, the first of which is titled, "Copart of Connecticut, Inc., Windham Facility," drawn by Sebago Technics, Inc., and dated October 1, 2018, with a last revision date on any of the sheets of February 11, 2021. The project site is located on the south side of Bedrock Terrace in the Town of Windham.

The applicant is also seeking approval under the NRPA to alter approximately 1.66 acres (72,354 square feet) of critical terrestrial habitat (CTH) associated with a significant vernal pool which is discussed further in Finding 6.

C. Current Use of Site: The project site is currently undeveloped, grassy lots that have been reclaimed following sand and gravel mining ten years earlier. The parcel consists of Lots 15-5, 15-6, 15-7, and a portion of Lot 15 on Map 21 of the Town of Windham's tax maps.

2. FINANCIAL CAPACITY:

The total cost of the project is estimated to be \$6,500,000. The applicant submitted excerpts from its Third Quarter Fiscal 2020 Financial Report that indicates its assets and cash flow exceed the total cost of the proposed project and that funding is readily available to design, construct, operate, and maintain the proposed project.

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

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 Sebago Technics, Inc., 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:

No protected locations are within 500 feet of the project site. The project will have a minor sound impact from vehicle traffic moving through the site. The applicant stated that the project would not otherwise cause unusual noises.

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).

Based on the information contained in the application, the Department anticipates that the project will have a minor sound impact and will be in compliance with the Department's Noise Rules, Chapter 375(10).

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 located within a reclaimed portion of a sand and gravel pit. This area is within an Enterprise Zone established by the Town of Windham. The project site is bounded on three sides by undeveloped area that includes woodland and freshwater forested wetlands.

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:

A. Endangered Species:

The Maine Department of Inland Fisheries and Wildlife (MDIFW) reviewed the proposed project, and in its comments, dated July 17, 2018, stated that no records of any Essential Wildlife Habitats were found within the project site. MDIFW noted that the Maine Endangered Species Act lists several species of bats as endangered or threatened. Because bats are likely to be found on the project site during migration and/or breeding season, it is recommended that tree clearing be limited to the period when bats are not present. The applicant proposes to limit tree clearing during the fall and winter, outside of the months of June and July, the recognized pupping season for tree-roosting bats.

The Department finds that the applicant has made adequate provision for the protection of endangered species provided that no tree cutting is conducted during the period of June 1 and July 31.

B. Inland Waterfowl and Wading Bird Habitat:

In its comments, MDIFW noted that the wetland complex to the south of the project site includes two, moderate-valued Inland Waterfowl and Wading Bird Habitats (IWWH), which are significant wildlife habitats, as defined in *Significant Wildlife Habitat*, 06-096 C.M.R. ch. 335 (effective January 7, 2014). MDIFW also noted that the 250-foot upland zone that surrounds the IWWH, and is included as part of the habitat, extends on to the parcel.

In the set of plans referenced in Finding 1, the applicant identified approximately 8.87 acres of the upland buffer for IWWH #10963 (12.34 total acres) and #20211 (2.33 total

acres) on the parcel. Of the IWWH on the parcel, approximately 4.79 acres is presently cleared land that was previously disturbed during sand and gravel mining activity, which predated the establishment of IWWH as a significant wildlife habitat in Chapter 335 in 2006 and approximately 4.08 acres remains in a wooded condition. The proposed project includes redevelopment of the 4.79 acres, most of which will be within the footprint of the vegetated underdrained detention pond. No encroachment on the remaining wooded buffer area is proposed, which is consistent with MDIFW's recommendations for the project. MDIFW concluded that based on the scope of work proposed on previously cleared land, additional impacts to the resource are not anticipated.

To ensure the protection of this natural resource, the applicant must permanently mark the existing wooded IWWH on the ground as a no-cut area prior to the start of construction.

The Department finds that the applicant has made adequate provision for the protection of provided that the location of the IWWH is permanently marked on the ground prior to the start of construction.

C. Significant Vernal Pools:

The applicant conducted a vernal pool survey of two vernal pools on May 6, 2019. The survey documented the presence of fairy shrimp in both vernal pools. The Vernal Pool Assessment Forms have not been forwarded to MDIFW for confirmation. The applicant has presumed that each vernal pool meets the definition of significant vernal pool, as set forth in Chapter 335.

VP-1 is located near the southeast corner of the parcel, at the edge of the wetland complex and IWWH. Approximately 1.34 acres (58,474 square feet) along the northwestern portion of the CTH for this vernal pool was altered prior to the establishment of significant vernal pool rules in Chapter 335 in 2006. This area, together with approximately 1.66 acres (72,354 square feet) of forested area within the CTH along the northeastern portion of the vernal pool, are proposed for the construction of the vegetated underdrained detention pond and infiltration basin.

VP-2 is located near one of the unfinished stormwater wet ponds at the edge of the woodlands behind the former lot 7 of the Quarry Ridge Business Park. In the northern and western portion of the CTH for this vernal pool, approximately 2.5 acres (108,872 square feet) was altered prior to the establishment of significant vernal pool rules in Chapter 335 in 2006. A storm drain line that will discharge to the wetland complex to the south of the vernal pool is proposed for installation within this disturbed area. No other development is proposed within the CTH of vernal pool VP-2. Because of the proximity of the proposed storm drain line to VP-2, the applicant must place tree protection fencing or a similar barrier around the vernal pool depression to ensure protection of the pool depression during installation of the storm drain line.

The Department's rules, 06-096 C.M.R. ch. 335, interpret and elaborate on the NRPA criteria for obtaining a permit. The rules guide the Department in its determination of whether a project's impacts would be unreasonable. A proposed project would generally be found to be unreasonable if it would degrade the significant wildlife habitat, disturb the subject wildlife, or affect the continued use of the significant wildlife habitat by the subject wildlife, either during or as a result of the activity, and there is a practicable alternative to the project that would be less damaging to the environment. Each application for a NRPA permit that involves a significant vernal pool alteration must provide an analysis of alternatives in order to demonstrate that a practicable alternative does not exist.

(1) Avoidance. An applicant must submit an analysis of whether there is a practicable alternative to the project that would be less damaging to the environment and this analysis is considered by the Department in its assessment of the reasonableness of any impacts. The applicant submitted an alternatives analysis for the proposed project completed by Sebago Technics and dated January 31, 2020. The purpose of the proposed project is to provide space for a large parking area to hold vehicles for an auction facility. The applicant drafted multiple design concepts to avoid impacts to the significant vernal pools and their surrounding CTH. After consultation with the Department, the selected alternative was determined to be the least damaging the habitat while meeting the project purpose. Given the size of the proposed project, the site constraints, and the location of the CTH on the project site, the applicant asserts, and the Department agrees, that impacts to the habitat are unavoidable.

(2) Minimal Alteration. The amount of habitat to be altered and disturbance of the subject wildlife must be kept to the minimum amount necessary for meeting the overall purpose of the project. As noted in the Alternatives Analysis, the applicant examined several layout designs to limit encroachment into the critical terrestrial habitat. Except for a storm drain line located in previously disturbed upland habitat, no development is proposed within 75 feet of the vernal pool depressions. The applicant has avoided and minimized wetland and CTH impacts to the greatest extent practicable by designing the proposed project to redevelop previously altered portions of the CTH.

(3) Compensation. In accordance with Chapter 335, § 3(D)(1), if an impact to significant wildlife habitat will cause habitat functions or values to be lost or degraded, compensation is required to achieve the goal of no net loss of significant wildlife habitat functions and values.

To mitigate for the post-2006 alteration of the CTH at VP-1 (72,354 square feet), the applicant proposes to make a contribution into the In-Lieu Fee (ILF) program of the Maine Natural Resource Conservation Program (MNRCP) in the amount of \$49,924.26. Prior to the start of construction, the applicant must submit a payment in the amount of \$49,924.26, payable to "Treasurer, State of Maine", and

directed to the attention of the ILF Program Administrator at 17 State House Station, Augusta, Maine 04333.

The Department finds that the applicant has avoided and minimized Significant Wildlife Habitat impacts to the greatest extent practicable, and that the proposed project represents the least environmentally damaging alternative that meets the overall purpose of the project provided that prior to project construction, the applicant submits the ILF payment as described above.

The Department further finds that the activity will not unreasonably harm any freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic or adjacent upland habitat, travel corridor, freshwater, estuarine or marine fisheries or other aquatic life provided that the applicant places tree protection fencing or a similar barrier around the vernal pool depression of VP-2 to ensure protection of the pool depression during installation of the storm drain line.

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 is not proposing to utilize any formal buffer strips for the proposed project.

9. SOILS:

The applicant submitted a Class B 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) and determined adequately address the standards of *Soil Types Standard of the Site Location Law*, 06-096 C.M.R. ch. 376 (effective May 4, 1996).

Although the applicant indicated that blasting associated with construction of the project is not likely, a generic blasting plan was included in the application. The applicant must submit a site-specific Blasting Plan for blasting that occurs within 500 feet of non-owned

off-site structures such as buildings and wells. Prior to the start of any blasting on the project site, the applicant must submit a site map showing blast areas and a blasting plan to the BLR for review and approval. The blasting plan must be prepared by a qualified blaster, include the blasting standards contained in 38 M.R.S. § 490-Z(14), and include an anticipated blast design/shot pattern specifically tailored to the project.

If a rock crusher is being utilized on site, the applicant must ensure that the crusher is licensed by the Department's Bureau of Air Quality and is being operated in accordance with that license.

The Department finds that, based on the geotechnical report and Blasting Plan, 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 provided that a site-specific blasting plan is submitted for review and approval prior to commencement of blasting activities.

10. **STORMWATER MANAGEMENT:**

In previous Department Orders, outlined in Finding 1, stormwater runoff from lots 5, 6, and 7 was designed to drain to three wet ponds. One of the wet ponds has been completed and the other two are only partially constructed. The completed wet pond services lot 2 and a portion of lot 5. The project site will be graded such that the area from lot 5 draining to the completed wet pond, including 1.46 acres of impervious area, remains unchanged. In accordance with Chapter 500 *Stormwater Management*, (06-096 C.M.R. ch. 500, effective August 12, 2015), § 4(C)(5)(g), additional stormwater treatment or upgrades to the completed wet pond are not required. The two unfinished wet ponds will be abandoned in place, and stormwater runoff from lots 6 and 7 will be directed to the new stormwater management system as outlined below.

The proposed project includes approximately 40 acres of developed area of which 27.3 acres are impervious area. It lies within the watersheds of Pettingill Pond and Little Sebago Lake. Both lakes are classified as most at risk from new development. The applicant submitted a stormwater management plan based on the Basic, Phosphorus, and Flooding Standards contained in Chapter 500. The proposed stormwater management system consists of grassed swales, catch basins, a subsurface drainage system, a detention pond, and an infiltration pond.

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 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 facilities including the stormwater management system.

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. Phosphorus Standards:

Because of the proposed project's location in the watersheds of Pettingill Pond and Little Sebago Lake, stormwater runoff from the project site will be treated to meet the phosphorus standard outlined in Chapter 500, § 4(D). The applicant's phosphorus control plan was developed using methodology developed by the Department and outlined in "Phosphorus Control in Lake Watersheds: A Technical Guide for Evaluating New Development".

For stormwater discharges in the Pettingill Pond watershed, the applicant proposes to continue to direct runoff from the portion of lot 5 that drains to the existing wet pond. Department Orders #L-18029-39-P-B, dated May 8, 2006 and #L-18029-39-L-N, dated November 14, 2005 authorized this portion of the stormwater management system. Because the proposed project will not result in an increase in the area that drains to the existing wet pond, the proposed phosphorus export from the project site to Pettingill Pond will not increase. The remainder of the project site will be diverted out of the Pettingill Pond watershed through grading and the use of a large infiltration pond, into the watershed of Little Sebago Lake.

For stormwater discharges in the Little Sebago Lake watershed, the proposed stormwater management system is designed to detain and treat, by infiltration, the volume of runoff required to meet the Phosphorus Standards contained in Chapter 500, § 4(D) to the greatest extent practicable. The applicant proposes to grade the site to direct runoff into a large underdrained detention pond. This pond is designed to meter flow into the

infiltration basin and to provide storage capacity that will enable the proposed project to meet the Flooding Standard contained in Chapter 500, § 4(F).

The Permitted Phosphorus Export for Little Sebago Lake is 0.206 pounds of phosphorus per year. The predicted phosphorus export for the project site based on the applicant's model is 7.515 pounds of phosphorus per year. The proposed stormwater treatment will not be able to reduce the export of phosphorus in the stormwater runoff below the maximum permitted phosphorus export for the site.

The applicant indicated that it is unable to meet the phosphorus standard at a reasonable cost and because of site constraints by utilizing additional, conventional on-site phosphorus control measures. Therefore, the applicant is addressing the remaining phosphorus reduction requirements of Chapter 500 through the payment of a compensation fee. To utilize the compensation fee, the applicant must demonstrate that the stormwater management system provides a minimum of 50 percent removal of phosphorus. The proposed stormwater management system for this site will provide a phosphorus treatment and removal rate of approximately 77.39 percent. In order to compensate for the excess phosphorus export of 7.309 pounds per year, the applicant will submit a payment of \$82,610 to the Cumberland County Soil and Water Conservation District to be utilized at other sites in the Little Sebago Lake watershed to reduce phosphorus exports to the pond.

The infiltration basin will be located at the eastern end of the parcel where native sandy soils are still present. Details of the basin construction and post-construction monitoring are discussed in Finding 11. The proposed infiltration system was reviewed by staff from DEA. The applicant must ensure that the discharge of soluble pollutants to the infiltration area is minimized and that the infiltration area is maintained to assure that its capacity is unimpaired. Based on DEA's review, the Department does not anticipate that the infiltration area will adversely impact groundwater quality.

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 Phosphorus Standards contained in Chapter 500, § 4(D) and recommended that the applicant's design engineer or other qualified professional oversee the construction of the stormwater treatment BMPs to ensure that they are installed in accordance with the details and notes specified on the approved plans. Within 30 days from completion of the entire system or if the project takes more than one year to complete, 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. BLR also recommended that the applicant submit to the Department as-built drawings, signed and stamped by a professional engineer licensed in Maine, for the stormwater treatment BMPs.

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 Phosphorus Standards contained in Chapter 500, § 4(D) provided that the applicant pays the phosphorus compensation fee prior to the start of construction; retains an engineer to oversee construction of the stormwater treatment BMPs; and submits to the BLR as-built drawings for the proposed project, 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, U.S.D.A., Soil Conservation Service and detains and results in the partial infiltration, of stormwater from 24-hour storms of 2-, 10-, and 25-year frequency. The post-development peak flow from the site will not exceed 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.

The Department further finds that the proposed project will meet the Chapter 500 standards for discharge to wetlands and threatened or endangered species.

11. GROUNDWATER:

The project site is located over a mapped aquifer, which is a significant sand and gravel aquifer as shown on the Aquifer Map provided in the application. The application states that approximately 31.4 acres of the project site was previously disturbed as part of a larger sand and gravel mining operations. As a result, some of the disturbed areas consist of a thin layer of gravel overlying bedrock or remain as exposed bedrock. The remaining undisturbed portions of the project site are characterized as glacial till material. The proposed project does not propose any withdrawal from groundwater.

The applicant proposes to infiltrate stormwater from the project site. The infiltration basin will be located at the eastern end of the parcel where native sandy soils are still present. Once graded, the infiltration basin will be constructed by placing 6 inches of loam on the bottom and sides of the infiltration basin to limit the infiltration rate to 2.41 inches per hour, as set forth in Appendix D(4)(a) of Chapter 500. The application included a draft Mounding Evaluation for the Proposed Infiltration Basin, prepared by S. W. Cole Engineering, Inc. and dated January 21, 2020. The Mounding Evaluation determined that the soils at the proposed location of the infiltration basin are expected to adequately infiltrate stormwater runoff volumes equivalent to a two-year storm event,

which is the volume necessary to meet the Phosphorus Standards contained in Chapter 500, § 4(D). For larger storm events, the infiltration basin is designed to allow runoff to spill over the top of the basin and discharge into the adjacent wetlands. The proposed infiltration system was reviewed by staff from DEA.

The Mounding Evaluation recommended, and DEA agreed, that the infiltration basin be monitored for evidence of groundwater mounding. With regards to monitoring wells, DEA commented on the potential use of existing monitoring wells, and that at least one background well must be installed in the vicinity of the proposed basin. DEA noted that the well near PZ-1 is not appropriate for a permanent monitoring well due to the potential for flooding within the proposed basin and recommended the well be abandoned prior to construction using methods described in Department Rules Chapter 405, § 5(H).

The applicant agreed with DEA's recommendations and proposes to submit to the BLR, for review and approval, a complete monitoring plan prior to accepting any vehicles on the project site. The Department recommends that in order to monitor the system performance for evidence of groundwater mounding, the applicant must record groundwater elevations in the observation wells at least once during each calendar quarter. Quarterly monitoring of groundwater elevations must be performed once the site becomes operational with monitoring results submitted to the BLR annually for review.

The applicant submitted a groundwater protection plan that included a *Program Manual for Hydrocarbon Spill Cleanup* (Spill Response Guide (FM-186-2)) and a *Drip Prevention and BMP's for Ground/Storm Water Protection Manual* to be used at the project site. These documents were reviewed by DEA. Following DEA's comments, the applicant submitted a revised Spill Response Plan on September 8, 2020 with specific responses to be implemented once the facility becomes operational. The self-contained aboveground fuel tank will be placed on a 20-foot by 20-foot concrete pad and protected on all sides with bollards.

Because of the potential for spills on the project site, DEA recommended that groundwater be monitored at least quarterly for chloride, zinc, and hydrocarbons. Laboratory testing for hydrocarbons must include analyses for both Extractable Petroleum Hydrocarbons (EPH) and Volatile Petroleum Hydrocarbons (VPH). The Department may require other parameters based on its review of the data. DEA further commented that analyses include the field parameters: dissolved oxygen, pH, specific conductance, temperature, and water level.

The applicant agreed to monitor the groundwater as DEA recommended, including one sample event to be performed prior to accepting any vehicles on the project site. Once the site becomes operational, the applicant must water quality sampling at least once during each calendar quarter and provide the sampling data results to the BLR from all monitoring wells on within ten business days of receipt.

Based on the spill response documents provided by the applicant, the Department finds that the proposed project will not pose an unreasonable risk that a discharge to a

significant groundwater aquifer will occur. Therefore, the Department further finds that the proposed project will not have an unreasonable adverse effect on ground water quality or quantity provided that the applicant submits a monitoring plan to the BLR for review and approval, as described above; conducts quarterly monitoring of the infiltration basin for evidence of groundwater mounding; conducts water quality sampling, as described above; and submits the monitoring and sampling results to the BLR annually once the site becomes operational.

12. WATER SUPPLY:

When completed, the proposed project is anticipated to use 240 gallons of water per day. Water will be supplied by the Portland Water District. The applicant submitted a letter from the District, dated December 4, 2019, indicating that it will be capable of servicing this project.

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 the project site. The applicant submitted the soil survey map and report discussed in Finding 9. The individual system must be designed to meet the requirements of the Maine State Plumbing Code. This information was reviewed by DEA and found to be acceptable.

Based on DEA's comments, the Department finds that the proposed wastewater disposal system 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 13 tons of municipal solid waste per year. All general solid wastes from the proposed project will be disposed of at ecomaine in Westbrook, which is currently in substantial compliance with the Maine Solid Waste Management Rules.

The proposed project will generate approximately 260 cubic yards of stumps and grubblings. All stumps and grubblings generated will be ground on site and the resulting material utilized for erosion control, in compliance with Solid Waste Management Regulations of the State of Maine.

The proposed project will generate approximately 15.6 cubic yards of construction debris and demolition debris. All construction and demolition debris generated will be collected by Casella/Pine Tree Waste and will be disposed of at the Juniper Ridge Landfill in Old Town or by Troiano Waste Services and will be disposed of at the Crossroads Landfill in

Norridgewock. Both landfill facilities are 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.

16. WETLAND IMPACTS:

The applicant does not propose any wetland alterations with this project.

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. §§ 480-A–480-JJ and Section 401 of the Clean Water Act:

- A. The proposed activity will not unreasonably interfere with existing scenic, aesthetic, recreational, or navigational uses.
- B. The proposed activity will not cause unreasonable erosion of soil or sediment.
- C. The proposed activity will not unreasonably inhibit the natural transfer of soil from the terrestrial to the marine or freshwater environment.
- D. The proposed activity will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic habitat, travel corridor, freshwater, estuarine, or marine fisheries or other aquatic life provided that:
 - No tree cutting is conducted during the period of June 1 and July 31;
 - The location of the IWWH is permanently marked on the ground prior to the start of construction;
 - Tree protection fencing or a similar barrier is placed around the vernal pool depression to ensure protection of the pool depression of VP-2 during installation of the storm drain line; and
 - The applicant makes a contribution to the In-Lieu Fee program as described in Finding 6.
- E. The proposed activity will not unreasonably interfere with the natural flow of any surface or subsurface waters.

- F. The proposed activity will not violate any state water quality law including those governing the classifications of the State's waters.
- G. The proposed activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties.
- H. The proposed activity is not on or adjacent to a sand dune.
- I. The proposed activity is not on an outstanding river segment as noted in 38 M.R.S. § 480-P.

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 provided that a site-specific blasting plan is submitted for review and approval prior to commencement of blasting activities, as described in Finding 9.
- 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 the applicant pays the phosphorus compensation fee prior to the start of construction; retains an engineer to oversee construction of the stormwater treatment BMPs; and submits to the BLR as-built drawings for the proposed project, as described in Finding 10.
- E. The proposed development will not pose an unreasonable risk that a discharge to a significant groundwater aquifer will occur provided that the applicant submits a groundwater monitoring plan to the BLR for review and approval; conducts quarterly monitoring of the infiltration basin for evidence of groundwater mounding; conducts water quality sampling; and submits the monitoring and sampling results to the BLR annually once the site becomes operational, all as described in Finding 11.
- 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.

- 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 COPART OF CONNECTICUT, LLC to construct an auction facility 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. No tree cutting shall be conducted during the period of June 1 and July 31 in any calendar year.
5. Prior to the start of construction, the applicant shall permanently mark on the ground the location of the IWWH.
6. Prior to installation of the storm drain line, the applicant shall place tree protection fencing or a similar barrier around the vernal pool depression of VP-2 to ensure protection of the pool depression.
7. Prior to the start of construction, the applicant shall submit a payment in the amount of \$49,924.26, payable to "Treasurer, State of Maine", to the attention of the In-Lieu Fee Program Administrator at 17 State House Station, Augusta, Maine 04333 for impacts to the critical terrestrial habitat of VP-1.
8. Prior to the start of any blasting on the project site within 500 feet of non-owned off-site structures such as buildings and wells, the applicant shall submit a site-specific Blasting Plan to the BLR for review and approval.
9. Prior to the start of construction, the applicant shall submit a phosphorus compensation fee payment of \$82,610 to the Cumberland County Soil and Water Conservation District.
10. 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.

11. The applicant shall submit as-built drawings for the proposed project to the BLR for review.
12. Storm sewer grit and sediment materials removed from stormwater control structures during maintenance activities shall be disposed of in compliance with the Maine Solid Waste Management Rules.
13. Prior to the start of construction, the applicant shall submit a groundwater monitoring plan to the BLR for review and approval.
14. The applicant shall conduct groundwater monitoring of the infiltration basin for evidence of groundwater mounding and water quality sampling once per calendar quarter. One groundwater monitoring and water quality sampling event shall be performed prior to the acceptance of any vehicles on the project site. The applicant shall submit the monitoring and sampling results to the BLR annually once the site becomes operational.

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 25TH DAY OF FEBRUARY, 2021.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: _____


For: Melanie Loyzim, Acting Commissioner

PLEASE NOTE THE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES.

RLG/L29113ANBNCN/ATS#85678, 85679, 87149

FILED
February 25, 2021
State of Maine
Board of Environmental Protection

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.



Natural Resources Protection Act (NRPA) Standard Conditions

THE FOLLOWING STANDARD CONDITIONS SHALL APPLY TO ALL PERMITS GRANTED UNDER THE NATURAL RESOURCES PROTECTION ACT, 38 M.R.S. § 480-A ET SEQ., UNLESS OTHERWISE SPECIFICALLY STATED IN THE PERMIT.

- A. Approval of Variations From Plans. The granting of this permit 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.
- 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. Erosion Control. The applicant shall take all necessary measures to ensure that his activities or those of his agents do not result in measurable erosion of soils on the site during the construction and operation of the project covered by this Approval.
- D. Compliance With Conditions. Should the project be found, at any time, not to be in compliance with any of the Conditions of this Approval, or should the applicant construct or operate this development in any way other the specified in the Application or Supporting Documents, as modified by the Conditions of this Approval, then the terms of this Approval shall be considered to have been violated.
- E. Time frame for approvals. If construction or operation of the activity is not begun within four years, this permit shall lapse and the applicant shall reapply to the Board for a new permit. The applicant may not begin construction or operation of the activity until a new permit is granted. Reapplications for permits 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.
- F. No Construction Equipment Below High Water. No construction equipment used in the undertaking of an approved activity is allowed below the mean high water line unless otherwise specified by this permit.
- G. Permit Included In Contract Bids. A copy of this permit must be included in or attached to all contract bid specifications for the approved activity.
- H. Permit Shown To Contractor. Work done by a contractor pursuant to this permit shall not begin before the contractor has been shown by the applicant a copy of this permit.

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 sub-contractor 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: November 2018

Contact: (207) 287-2452

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) an administrative process before the Board of Environmental Protection (Board); or (2) 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. § 3451(4)) or a general permit for an offshore wind energy demonstration project (38 M.R.S. § 480-HH(1)) or a general permit for a tidal energy demonstration project (38 M.R.S. § 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. §§ 341-D(4) & 346; the *Maine Administrative Procedure Act*, 5 M.R.S. § 11001; and the DEP's *Rules Concerning the Processing of Applications and Other Administrative Matters* ("Chapter 2"), 06-096 C.M.R. ch. 2.

DEADLINE 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 more than 30 calendar days after the date on which the Commissioner's decision was filed with the Board will be dismissed unless notice of the Commissioner's license decision was required to be given to the person filing an appeal (appellant) and the notice was not given as required.

HOW TO SUBMIT AN APPEAL TO THE BOARD

Signed original appeal documents must be sent to: Chair, Board of Environmental Protection, 17 State House Station, Augusta, ME 04333-0017. An appeal may be submitted by fax or e-mail if it contains a scanned original signature. It is recommended that a faxed or e-mailed appeal be followed by the submittal of mailed original paper documents. The complete appeal, including any attachments, must be received at DEP's offices in Augusta on or before 5:00 PM on the due date; materials received after 5:00 pm are not considered received until the following day. The risk of material not being received in a timely manner is on the sender, regardless of the method used. The appellant must also send a copy of the appeal documents to the Commissioner of the DEP; the applicant (if the appellant is not the applicant in the license proceeding at issue); and if a hearing was held on the application, any intervenor in that hearing process. All of the information listed in the next section of this information sheet must be submitted at the time the appeal is filed.

INFORMATION APPEAL PAPERWORK MUST CONTAIN

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

1. *Aggrieved Status.* The appeal must explain how the appellant has standing to maintain an appeal. This requires an explanation of how the appellant 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.* The appeal must identify the specific findings of fact, conclusions regarding compliance with the law, license conditions, or other aspects of the written license decision or of the license review process that the appellant objects to or believes to be in error.
3. *The basis of the objections or challenge.* For the objections identified in Item #2, the appeal must state why the appellant believes that the license decision is incorrect and should be modified or reversed. If possible, the appeal should cite specific evidence in the record or specific licensing requirements that the appellant believes were not properly considered or fully addressed.
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 matters specifically raised in the written notice of appeal.
6. *Request for hearing.* If the appellant wishes the Board to hold a public hearing on the appeal, a request for public hearing must be filed as part of the notice of appeal, and must include an offer of proof in accordance with Chapter 2. The Board will hear the arguments in favor of and in opposition to a hearing on the appeal and the presentations on the merits of an appeal at a regularly scheduled meeting. If the Board decides to hold a public hearing on an appeal, that hearing will then be scheduled for a later date.
7. *New or additional evidence to be offered.* If an appellant wants to provide evidence not previously provided to DEP staff during the DEP's review of the application, the request and the proposed evidence must be submitted with the appeal. The Board may allow new or additional evidence, referred to as supplemental evidence, to be considered in an appeal only under very limited circumstances. The proposed evidence must be relevant and material, and (a) the person seeking to add information to the record must show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process; or (b) the evidence itself must be newly discovered and therefore unable to have been presented earlier in the process. Specific requirements for supplemental evidence are found in Chapter 2 § 24.

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, and is made easily accessible by the DEP. Upon request, the DEP will make application materials available during normal working hours, provide space to review the file, and provide an 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 general questions regarding the appeal process.
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. Unless a stay of the decision is requested and granted, 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, and will provide 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, any materials submitted in response to the appeal, and relevant excerpts from the DEP's application review file will be sent to Board members with a recommended decision from DEP staff. The appellant, the license holder if different from the appellant, and any interested persons are notified in advance of the date set for Board consideration of an appeal or request for public hearing. The appellant and the license holder will have an opportunity to address the Board at the Board meeting. 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, the 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. § 346(1); 06-096 C.M.R. ch. 2; 5 M.R.S. § 11001; and 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. 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. § 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.
