



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

DEPARTMENT ORDER

IN THE MATTER OF

FRHP LINCOLNSHIRE, LLC	) SITE LOCATION OF DEVELOPMENT ACT
Windham, Cumberland County	)
PARKING LOT EXPANSION	)
L-27551-26-C-N (approval, after-the-fact)	) FINDINGS OF FACT AND ORDER

Pursuant to the provisions of 38 M.R.S. §§ 481–489-E and Chapters 375, 500, 501, and 502 of Department rules, the Department of Environmental Protection has considered the application of FRHP LINCOLNSHIRE, 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: The Lee’s Family Trailer dealership was initially constructed in 1985 with a sales building and outdoor display area that utilized a building and parking lot that was constructed for a restaurant circa 1977; this included 1.1 acres of structure, as defined in the Site Location of Development Law (Site Law). In 1993, an expansion was constructed that included paved and gravel outdoor display areas, a service building and a vegetated winter storage area; this resulted in an additional 1.7 acres of structure (not including the vegetated winter storage area) for a total of 2.8 acres of structure. Since 1993, the business has grown and the winter storage area (1.6 acres) is no longer vegetated and qualifies as structure as under Site Law and qualifies as impervious area as defined in the Stormwater Management Law. The project is on Lot 1A and 2 on the Town of Windham’s Tax Map 15. The project is located at 480 Roosevelt Trail in Windham.

The west side of the land owned by the applicant was previously owned by Moose Landing North LLC. Moose Landing North received approval in Department Order #L-27551-NJ-A-N / L-27551-TC-B-N and Permit by Rule (PBR) #64088, dated October 3, 2017, for the extension of Danielle Drive and addition of a five lot commercial subdivision. The extension to Danielle Drive was not constructed. Lot 5 of that subdivision was developed by Lee’s Family Trailer Acquisitions LLC as overflow parking; this included the underdrained soil filter for this lot and some deviations from the approved design plans. The subdivision approval from the town lapsed and all the subdivision property was conveyed to Lee’s Family Trailer Acquisitions LLC on November 12, 2020. The applicant subsequently started construction of additional RV and trailer parking within the subdivision in the fall of 2020 without transferring or amending the Stormwater Management permit, or submitting an application for a Site Law permit. The town placed a stop work order on the project and the site was subsequently stabilized with temporary erosion control measures. Lee’s Family Trailer Acquisitions LLC submitted a Site Law Application on April 5, 2021. The property was

transferred to FRHP Lincolnshire, LLC with a deed filed in the Cumberland County Registry of Deeds on April 12, 2021 (Book 38058 Page 108).

B. Summary: The applicant seeks after-the-fact approval to expand its surface parking areas on its approximately 15.5-acre parcel for parking of motorhomes (RVs) and travel trailers (trailers). The site had 2.8 acres of impervious area and the applicant seeks approval to add 6.5 acres of impervious area for a total of 9.3 acres of impervious area. The site had 5.8 of developed area and the applicant proposes to add 10.0 acres of developed (including redeveloping 2.7 acres) for a total of 13.1 acres of developed area. The project is shown on a set of plans the first of which is titled "Lee's Family Trailer Sales & Service Surface Parking Facility, Roosevelt Trail & Danielle Drive, Windham, Maine," prepared by DM Roma Consulting Engineers, and dated April 1, 2021, with a last revision date on any of the plans of July 29, 2021.

The Department accepted a Natural Resources Protection Act (NRPA) Permit by Rule Notification Form (PBR #73302) on April 12, 2021, for activities adjacent to a natural resource and outfall pipes associated with the proposed project that will be constructed in accordance with Chapter 305, Sections 2 and 7 of Permit by Rule Standards. The Department accepted a Notice of Intent to Comply with Maine Construction General Permit (NOI #72101) on April 12, 2021 in the Pleasant River watershed pursuant to the Stormwater Management Law.

C. Current Use of Site: The site contains a business currently called Camping World of Windham that is housed in three buildings surrounded by parking for customers, employees, and display and storage of RVs and trailers.

2. FINANCIAL CAPACITY:

The total cost of the project is estimated to be \$375,000. The applicant is a subsidiary of Camping World Holdings LLC. The applicant submitted the condensed financial information of Camping World Holdings Inc. Camping World Holdings LLC's 2020 annual report shows a cash and cash equivalents in excess of the estimated cost to construct 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 retained the services of DM Roma Consulting Engineers to provide civil engineering and permitting assistance. Survey, Inc. provided professional land surveying for the project. Donald Murphy was retained to provide natural resources mapping for the project, and Albert Frick Associates was retained to provide soil mapping services for the project.

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

4. NOISE:

The noise associated with the operation of the business is predominantly from operating engines of the vehicles and maintenance activities which are generally enclosed in a workshop area. Sound associated with registered and inspected vehicles which enter the development and are moving, starting, and stopping is exempt per Chapter 375, § 10(C)(5)(c). The sound from the maintenance activities and sound associated with moving trailers and RVs in and out of the new parking areas is not expected to exceed the hourly sound limits at the property line.

Noise from the construction of developments between the hours of 7:00 a.m. to 7:00 p.m. or during daylight hours, whichever is longer, is also not regulated pursuant to 38 M.R.S. § 484(3)(A). The applicant proposes to limit any construction to the hours of 7:00 a.m. and 7:00 p.m.

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 site of the proposed project is located in a section of Route 302 that is currently commercially developed. On the northwest side of the site is a Tractor Supply Company retail store and parking lot, and commercial development on Danielle Drive. Across Route 302, to the northeast, are two commercial buildings and a parking lot. To the southeast is a small commercial building and parking lot. To the southwest of the proposed development is forested area. The proposed project will be of the same scenic character as the surrounding commercial development.

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 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.

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:

There is a small stream that crosses the south corner of the site, adjacent to the vegetated winter storage area from the 1993 expansion. Two underdrained soil filter are proposed to be constructed on the edge of the previously vegetated winter storage area and will be located between 25 and 75 feet away from the stream. The area between the stream and the underdrained soil filters will remain in forested.

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

9. SOILS:

The applicant submitted a soil survey map and report based on the soils found at the project site. This report was prepared by a certified soils scientist from Albert Frick Associates and reviewed by staff from the Division of Environmental Assessment (DEA) of the Bureau of Water Quality (BWQ). The BWQ stated that several of the test pits, including those in or near proposed filter basins, show standing water at depths two-to-three feet below ground surface. In some cases this standing water appears to be perched on firm clay or silty loam or at the base of a coarser fill layer, but this shallow water table, where observed, is commonly near or above the elevation of proposed underdrain pipes and possibly the base of outlet structures. It should be expected that this water will be problematic for construction of these features. The explorations showing shallowest water depths to standing water were conducted in March, and work during a dry season might not present the same problems. However, the applicant should expect issues with sediment removal from water pumped from these areas and with construction and conditions within excavations, particularly with installation of the specified 30-mil liners. Dewatering during construction should be able to overcome these issues.

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

## 10. STORMWATER MANAGEMENT:

The proposed project includes approximately 10 acres of developed area, of which 6.5 acres is impervious area. It lies within the watershed of Ditch Brook and 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. Chap. 500, effective August 12, 2015). The proposed stormwater management system consists of a wet pond and two underdrained soil filters.

### 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 the BLR. The applicant will be responsible for the maintenance of the stormwater management system.

Grit, sediment, and other materials removed from stormwater 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) provided that grit, sediment, and other materials removed from stormwater structures during maintenance activities must be disposed of in compliance with the Maine Solid Waste Management Rules.

### B. General Standards:

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

and mitigate potential temperature impacts. This mitigation is being achieved by using Best Management Practices (BMPs) that will treat runoff from 99% of the impervious area and 92% of the developed area.

The stormwater management system proposed by the applicant was reviewed by and revised in response to comments from the BLR. After a final review the BLR commented that the proposed stormwater management system is designed in accordance with the General Standards contained in Chapter 500, § 4(C).

Based on the stormwater system's design and the 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).

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 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.

The 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, or discharge to, the groundwater.

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

12.      **WATER SUPPLY:**

The existing facility is currently supplied with water from the Portland Water District. Based on the water usage records of the existing facility for the past year, the average water usage is approximately 540 gallons of water per day and a peak daily usage of

1,013 gallons per day for the meter reading dated August 1, 2020. No additional water usage is anticipated to be required when the proposed gravel parking areas are completed.

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

13. WASTEWATER DISPOSAL:

The existing facility has an existing subsurface wastewater disposal system. Based on the past year's water usage records from the Portland Water District, the average daily flow for the year is 540 gallons per day with peak flows of approximately 1,013 gallons per day in July 2020. No additional wastewater flows are anticipated after completion of the proposed parking areas. It is common for a camping trailer and RV service center to provide a pumping service to empty the wastewater holding tanks prior to servicing the RV. The applicant does not have a dedicated wastewater disposal field for emptying the holding tanks of the trailers and RVs. The applicant currently contracts with a sewage pumping service to pump the holding tanks and dispose of the wastewater off-site at a licensed facility. The applicant submitted the HHE-200 form for the existing wastewater disposal system which was designed by site evaluator Clifford English on November 1, 1977. The design flow for the existing system was 1,540 gallons per day which was based on the building being used for a 44-seat restaurant using 35 gallons of water per day per seat.

This information was reviewed by the DEA. In its review comments, DEA stated that the existing wastewater disposal system appears to be adequately sized for the described use. DEA also stated that wastewater from the trailers and RVs, or any other wastewater source other than the normal sanitary wastewater from the facility, is not allowed to be disposed of in the existing wastewater disposal field. Such wastewaters must be disposed of off-site, consistent with contracting with a sewage pumping service to pump the sewage tank and dispose of the wastewater off-site at a licensed facility.

Based on the DEA's comments, the Department finds that the proposed use of the existing wastewater disposal system is adequately sized provided that only normal sanitary wastewater from the building is disposed of in the existing subsurface wastewater system, and that wastewater from holding tanks in the camping trailers and RVs and any other source of wastewater is collected and hauled for disposal by contracting with a sewage pumping service to dispose of the wastewater off-site at a licensed facility.

14. SOLID WASTE:

When completed, the proposed project is anticipated to generate 500 cubic yards of municipal solid waste per year. All municipal solid wastes from the proposed project will be hauled by Pine Tree Waste and the waste will be disposed of at the Juniper Ridge Landfill in Old Town, which is currently in substantial compliance with the Maine Solid Waste Management Rules.

Any stumps and grubbings remaining at the site will be either be ground on site for use as mulch or in erosion control mix for the site or transported to the O-Pit operated by Shaw Brothers in Windham. Any land clearing debris must be transported by a licensed non-hazardous waste transporter. This method of disposal is in compliance with the Maine Solid Waste Management Rules.

The proposed project does not propose any building construction so the proposed project will not generate any construction or demolition debris.

Based on the above information, the Department finds that the applicant has made adequate provision for solid waste disposal provided that any land clearing debris is transported by a licensed non-hazardous waste transporter.

15. FLOODING:

The applicant submitted excerpts from the Federal Emergency Management Agency Flood Insurance Rate Map Community Panels 230189 0015 B and 230189 0035 B with the project location on them. The proposed project is not located within the 100-year flood plain of any river or stream.

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

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

- A. The applicant has provided adequate evidence of financial capacity and technical ability to develop the project in a manner consistent with state environmental standards.
- 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 grit, sediment, and other materials removed from stormwater structures during maintenance activities are disposed of in compliance with the Maine Solid Waste Management Rules.
- 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.
- 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 only normal sanitary wastewater from the building is disposed of in the existing subsurface waste water system; and that wastewater from holding tanks in the camping trailers and RVs and any other source wastewater is collected and hauled for disposal by contracting with a sewage pumping service to dispose of the wastewater off-site at a licensed facility, and that any land clearing debris is transported by a licensed non-hazardous waste transporter.
- 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.

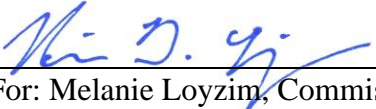
THEREFORE, the Department grants after-the-fact APPROVAL for the application of FRHP LINCOLNSHIRE, LLC to construct parking lots for storage of trailers and RVs as described herein, SUBJECT TO THE FOLLOWING CONDITIONS and all applicable standards and regulations:

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. The applicant shall dispose of all grit, sediment, and other materials removed from stormwater structures during maintenance activities must in compliance with the Maine Solid Waste Management Rules.
5. The applicant shall use the subsurface wastewater disposal system for the disposal of the normal sanitary wastewater from the building only and shall dispose of the wastewater from the camping trailers and RVs and any other sources of wastewater by contracting with a sewage pumping service to dispose of the wastewater off-site at a licensed facility.
6. Any land clearing debris shall be transported by a licensed non-hazardous waste transporter.

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 21<sup>ST</sup> DAY OF SEPTEMBER, 2021.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY:   
For: Melanie Loyzim, Commissioner

PLEASE NOTE THE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES.

CGW/L27551CN/ATS#87446

**FILED**  
September 22<sup>nd</sup>, 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.

## 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: August 2021**

**Contact: (207) 314-1458**

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### **SUMMARY**

This document provides information regarding a person's rights and obligations in filing an administrative or judicial appeal of a licensing decision made by the Department of Environmental Protection's (DEP) Commissioner.

Except as provided below, there are two methods available to an aggrieved person seeking to appeal a licensing decision made by the 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.

### **I. ADMINISTRATIVE APPEALS TO THE BOARD**

#### **LEGAL REFERENCES**

A person filing an appeal with the Board should review Organization and Powers, [38 M.R.S. §§ 341-D\(4\)](#) and [346](#); the Maine Administrative Procedure Act, 5 M.R.S. § [11001](#); and the DEP's [Rule 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**

Not more than 30 days following the filing of a license decision by the Commissioner with the Board, an aggrieved person may appeal to the Board for review of the Commissioner's decision. The filing of an appeal with the Board, in care of the Board Clerk, is complete when the Board receives the submission by the close of business on the due date (5:00 p.m. on the 30<sup>th</sup> calendar day from which the Commissioner's decision was filed with the Board, as determined by the received time stamp on the document or electronic mail). Appeals filed after 5:00 p.m. on the 30<sup>th</sup> calendar day from which the Commissioner's decision was filed with the Board will be dismissed as untimely, absent a showing of good cause.

#### **HOW TO SUBMIT AN APPEAL TO THE BOARD**

An appeal to the Board may be submitted via postal mail or electronic mail and must contain all signatures and required appeal contents. An electronic filing must contain the scanned original signature of the appellant(s). The appeal documents must be sent to the following address.

Chair, Board of Environmental Protection  
c/o Board Clerk  
17 State House Station  
Augusta, ME 04333-0017  
[ruth.a.burke@maine.gov](mailto:ruth.a.burke@maine.gov)

The DEP may also request the submittal of the original signed paper appeal documents when the appeal is filed electronically. The risk of material not being received in a timely manner is on the sender, regardless of the method used.

At the time an appeal is filed with the Board, the appellant must send a copy of the appeal to: (1) the Commissioner of the DEP (Maine Department of Environmental Protection, 17 State House Station, Augusta, Maine 04333-0017); (2) the licensee; and if a hearing was held on the application, (3) any intervenors in that hearing proceeding. **Please contact the DEP at 207-287-7688 with questions or for contact information regarding a specific licensing decision.**

### **REQUIRED APPEAL CONTENTS**

A complete appeal 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 bring the 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 of 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 criteria 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 to changes in specific license 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 hearing must be filed as part of the notice of appeal, and it must include an offer of proof regarding the testimony and other evidence that would be presented at the hearing. The offer of proof must consist of a statement of the substance of the evidence, its relevance to the issues on appeal, and whether any witnesses would testify. 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 supplemental evidence must be submitted with the appeal. The Board may allow new or additional evidence to be considered in an appeal only under limited circumstances. The proposed supplemental 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. Requirements for supplemental evidence are set forth 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 accessible by the DEP. Upon request, the DEP will make application materials available to review and photocopy during normal working hours. There may be 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 the appeal.* DEP staff will provide this information upon 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 licensee may proceed with a project pending the outcome of an appeal, but the licensee 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 acknowledge receipt of an appeal, and it will provide the name of the DEP project manager assigned to the specific appeal. The notice of appeal, any materials admitted by the Board as supplementary evidence, any materials admitted in response to the appeal, relevant excerpts from the DEP's administrative record for the application, and the DEP staff's recommendation, in the form of a proposed Board Order, will be provided to Board members. The appellant, the licensee, and parties of record are notified in advance of the date set for the Board's consideration of an appeal or request for a hearing. The appellant and the licensee will have an opportunity to address the Board at the Board meeting. The Board will decide whether to hold a hearing on appeal when one is requested before deciding the merits of the appeal. The Board's decision on appeal may be to affirm all or part, affirm with conditions, order a hearing to be held as expeditiously as possible, reverse all or part of the decision of the Commissioner, or remand the matter to the Commissioner for further proceedings. The Board will notify the appellant, the licensee, and parties of record of its decision on appeal.

## **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 Clerk at 207-287-2811 or the Board Executive Analyst at 207-314-1458 [bill.hinkel@maine.gov](mailto:bill.hinkel@maine.gov), or for judicial appeals contact the court clerk's office in which the appeal will be filed.

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**Note:** This information sheet, in conjunction with a review of the statutory and regulatory provisions referred to herein, is provided to help a person to understand their rights and obligations in filing an administrative or judicial appeal. 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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