



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

DEPARTMENT ORDER

IN THE MATTER OF

NECEC TRANSMISSION LLC) SITE LOCATION OF DEVELOPMENT ACT
See Appendix)
NEW ENGLAND CLEAN)
ENERGY CONNECT) PARTIAL TRANSFER
L-27625-26-K-T (approval)) FINDINGS OF FACT AND ORDER

Pursuant to the provisions of 38 M.R.S. §§ 481–489-E and Chapter 2 of Department Rules Concerning the Processing of Applications (06-096 C.M.R. ch. 2, §21 (C)), the Department of Environmental Protection has considered the application of NECEC TRANSMISSION, LLC (NECEC LLC or applicant) for a partial transfer, with its supportive data, the comments received, and other related materials on file, and FINDS THE FOLLOWING FACTS:

1. In Department Order #L-27625-26-A-N/L-27625-TG-B-N/L-27625-2C-C-N/L-27625-VP-D-N/L-27625-IW-E-N, dated May 11, 2020, the Department approved the New England Clean Energy Connect project (CMP NECEC Order). The project involves 145 miles of high voltage direct current (HVDC) transmission line from Beattie Township to Lewiston, a converter station in Lewiston, a new substation in Pownal, additions to several other substations, and upgrades to existing transmission lines.
2. The applicant is applying to the Department to transfer a portion of Department Order #L27625-26-A-N/L-27625-TG-B-N/L-27625-2C-C-N/L-27625-VP-D-N/L-27625-IW-E-N, currently held by Central Maine Power Company (CMP), to NECEC LLC. The Public Utilities Commission, in its Certificate of Finding of Public Convenience and Necessity, required CMP to transfer a portion of the project and its associated development costs to a special purpose entity; NECEC LLC has been designated by CMP as that entity. The portions of the project subject to this transfer application include the new HVDC transmission line (Segments 1, 2, and 3 of the transmission line), the converter station in Lewiston, a 1.2-mile long 345 kilovolt transmission line from the converter station to the Larrabee Road Substation also in Lewiston, and the two termination stations for the horizontal directional drill on either side of the Kennebec River. The portions of the project that will remain in CMP's ownership include transmission line Segments 4 and 5, the new Fickett Road Substation, the Larrabee Road Substation, the Coopers Mills Substation, the Crowley's Substation, the Maine Yankee Substation, the Surowiec Substation, and the Raven Farm Substation.
3. The applicant also submitted a Permit by Rule notification form (PBR #71019) pursuant to Chapter 305 Permit by Rule Standards Section (06-096 Ch. 305, § 17) to transfer the Natural Resources Protection Act permits associated with the project. The Department accepted the PBR on October 13, 2020.

4. Comments on the transfer application were received from the Natural Resources Council of Maine (NRCM), an intervenor in the CMP NECEC licensing proceeding, and a group of intervenors from that proceeding that includes West Forks, the town of Carratunk, and several others (West Forks Group).
5. **Transfer of Property Rights:** The transfer application, dated September 25, 2020, was signed by Gerry J. Mirabile, NECEC Permitting Manager, on behalf of CMP and Thorn C. Dickinson, President and CEO of NECEC LLC. With the transfer application, NECEC LLC submitted a transfer agreement describing the transfers that will occur between NECEC LLC and CMP and the parcels of the land required to construct and operate the portions of the project to be transferred, including deed or lease references to the corridor from Beattie Township to Lewiston, the 20-acre parcel for the converter station, the land for the transmission line from the converter station to the Larrabee Road Substation, the conservation parcels, and a parcel in Bald Mountain Township for the relocation of the Appalachian Trail. The submissions included a lease between the State of Maine, Department of Agriculture, Conservation and Forestry, Bureau of Parks and Lands (BPL) and CMP, signed on June 23, 2020 (2020 Lease), for property located in West Forks Plantation and Johnson Mountain Township. The transfer agreement also provides for the transfer of the seven Transmission Service Agreements CMP entered into with the utility companies in Massachusetts and the agreement with H. Q. Energy Services, Inc. The Transmission Service Agreement requires CMP to assign and NECEC LLC to accept all third party vendor agreements and related assets related to the project at the time of closing.

In its comments NRCM argues that the 2020 BPL Lease is not valid because BPL lacked the authority to issue the lease and the scope of the lease is not broad enough to allow the construction of the project.

As was the case in the CMP NECEC Order, the Department accepts the decision of its sister agency to enter into the lease and the fully executed lease is sufficient title, right, or interest in that portion of the proposed corridor to apply for permits for the project. The initial demonstration of title, right or interest made by CMP for its permit application underlies the transfer agreement submitted with the transfer application, and the findings made in the CMP NECEC Order, are incorporated herein. Based on those findings, and the evidence described above, the Department finds the applicant has demonstrated sufficient title, right, or interest in the property.

6. **Financial Capacity:** The cost for the project as a whole is estimated to be \$950,000,000. including the cost associated with compliance with the conditions of approval. The cost estimate for the portions of the project being transferred to NECEC LLC is \$727,000,000. NECEC LLC's application for transfer states that NECEC LLC is a wholly owned subsidiary of Avangrid Networks, Inc., which is an indirect wholly owned subsidiary of Avangrid, Inc. The applicant submitted a letter from Howard Coon, Vice-President and Treasure of Avangrid Inc., stating that Avangrid, Inc. will make an equity contribution of \$1,000,000,000 to Avangrid Networks, which in turn will make these funds available to NECEC LLC. In addition, Avangrid and NECEC LLC will execute a \$500,000,000

revolving loan agreement to provide a source of debt financing to NECEC LLC during construction.

The funding mechanism and the overall project cost remain the same as described in the original CMP NECEC Order. However, this Order only transfers a portion of the project which is estimated to cost \$727,000,000.

NRCM argues that the applicant has not demonstrated that funds have been set aside for the project by NECEC LLC's parent companies. In addition, NRCM contends that the applicant failed to demonstrate a clear link between the parent company financing the project and the applicant.

The Department considers the information the applicant submitted as commitments by NECEC LLC's parent companies to provide funding for the project as allowed by Chapter 373, § 2(B)(3)(a). That funding is adequate to finance the project and there is a clear connection between the parent companies and NECEC LLC. The Department finds that the applicant has demonstrated adequate financial capacity to construct and operate the project.

7. **Technical Ability:** The applicant submitted a service agreement between CMP and NECEC LLC that stipulates CMP will provide certain services to NECEC LLC, including the use of CMP personnel and expertise to construct the project. The applicant also submitted resume information for key personnel involved with the project. As required by the transfer agreement, NECEC LLC will retain all of the third party contractors that originally designed and permitted the project and the remainder of the project team as described in the CMP NECEC Order remains in place.

The Department finds the applicant has demonstrated adequate technical ability to construct and operate the project.

8. NECEC LLC submitted a Certificate of Good Standing issued by the Delaware Secretary of State for NECEC LLC, dated December 18, 2018.
9. The West Forks group joins in the NRCM arguments and, in addition, requests that a decision on the transfer application be withheld until the pending appeals of the CMP NECEC Order are resolved, as the permit that was issued may be altered during the course of the appeals. While the Board may modify or vacate the permit issued, at this time the permit is in effect and, pursuant to 38 M.R.S. § 344(9) and Chapter 2, § 21(C), is subject to transfer.

BASED on the above findings of fact, the Department **CONCLUDES** that NECEC LLC has provided adequate evidence of the acquisition of title, right, or interest; financial capacity; and technical ability to comply with all conditions of Department Order and subsequent Orders, and to satisfy all applicable statutory and regulatory criteria.

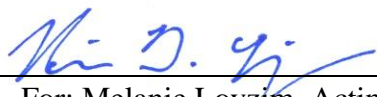
THEREFORE, the Department APPROVES the application of NECEC TRANSMISSION LLC, to partially transfer, as described above, Department Order #L27625-26-A-N/L-27625-TG-B-N/L-27625-2C-C-N/L-27625-VP-D-N/L-27625-IW-E-N, SUBJECT TO THE FOLLOWING CONDITIONS and all applicable standards:

1. The Standard Conditions of Approval, a copy attached.
2. This transfer Order shall not become effective until either CMP or NECEC LLC certifies in writing to the Department that the transaction contemplated by the NECEC Transfer Agreement between the parties has occurred.
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. All other Findings of Fact, Conclusions and Conditions remain as approved in Department Order #L-27625-26-A-N/L-27625-TG-B-N/L-27625-2C-C-N/L-27625-VP-D-N/L-27625-IW-E-N , and subsequent Orders, and are incorporated herein.

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 4TH DAY OF DECEMBER, 2020.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: 
For: Melanie Loyzim, Acting Commissioner

PLEASE NOTE THE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES.

JB/L27625KT/ATS#86584

FILED
December 4, 2020
State of Maine
Board of Environmental Protection

Appendix A
List of Municipal and County Governments

Town	County	Senate District	House District	Congressional District
City of Auburn 60 Court Street Auburn, Maine 04210 Phone (207) 333-6600 pcrichton@auburnmaine.gov	Androscoggin County Commissioners' Office 2 Turner Street, Unit 2 Auburn, Maine 04210 Phone (207) 753-2500, Ext 1801 lpost@androscoggincountymaine.gov	Senate District 20 Senator Eric L. Brakey 146 Pleasant Street Auburn, ME 04210 Phone (207) 406-0897 Eric.brakey@legislature.maine.gov	House District 62 Rep. Gina M. Melaragno 25 James Street, Apt. 3 Auburn, Maine 04210 Phone (207)740-8860 gina.melaragno@legislature.maine.gov House District 63 Rep. Bruce A. Bickford 64 Cameron Lane Auburn, Maine 04210 Cell Phone (207) 740-0328 bruce.bickford@legislature.maine.gov House District 64 Rep. Bettyann W. Sheats 32 Waterview Drive Auburn, Maine 04210 Cell Phone (207)740-2613 bettyann.sheats@legislature.maine.gov	Congressional District 2 Representative Bruce Poliquin 179 Lisbon Street Lewiston, ME 04240 Phone (207) 784-0768
City of Lewiston 27 Pine Street Lewiston, Maine 4240-7204 Phone (207) 513-3000 ebarrett@lewistonmaine.gov	Androscoggin County Commissioners' Office 2 Turner Street, Unit 2 Auburn, Maine 04210 Phone (207) 753-2500, Ext 1801 lpost@androscoggincountymaine.gov	Senate District 21 Senator Nate Libby 44 Robinson Gardens Lewiston, ME 04240 Phone (207)713-8449 nathan.libby@legislature.maine.gov	House District 58 Rep. James R. Handy 9 Maplewood Road Lewiston, Maine 04240 Phone (207) 784-5595 jim.handy@legislature.maine.gov	2

			<p>House District 59 Rep. Roger Jason Fuller 36 Elliott Avenue Lewiston, ME 04240 Phone (207) 783-9091 roger.fuller@legislature.maine.gov</p> <p>House District 60 Rep. Jared F. Golden 3 Diamond Court Lewiston, ME 04240 Phone (207) 287-1430 jared.golden@legislature.maine.gov</p> <p>House District 61 Rep. Heidi E. Brooks 1 Pleasant Street, #2 Lewiston, Maine 04240 Cell Phone (207) 740-5229 heidi.brooks@legislature.maine.gov</p>	
<p>Town of Alna 1568 Alna Rd Alna, Maine 04535 PHONE: (207) 586-5313 mmaymcc@yahoo.com dcbaston@northatlanticenergy.com</p>	<p>Lincoln County Commissioners Office 32 High Street, P.O. Box 249 Wiscasset, Maine 04578 Phone (207) 882-6311 ckipfer@lincounty.me</p>	<p>Senate District 13 Senator Dana Dow 30 Kalers Pond Road Waldoboro, Maine 04572 Phone (207) 832-4658 dana.dow@legislature.maine.gov</p>	<p>House District 87 Rep. Jeffery P. Hanley 52 Turner Drive Pittston, Maine 04345 Phone (207) 582-1524 Cell Phone (207) 458-9009 jeff.hanley@legislature.maine.gov</p>	1
<p>Town of Anson 5 Kennebec Street, PO Box 297 Anson, Maine 04911-0297 Phone (207) 696-3979</p>	<p>Somerset County Commissioners Office 41 Court Street Skowhegan, ME 04976 Phone (207) 474-9861</p>	<p>Senate District 3 Senator Rod Whittemore PO Box 96 Skowhegan, Maine 04976 Phone (207) 474-6703</p>	<p>House District 112 Rep. Thomas H. Skolfield 349 Phillips Road Weld, Maine 04285 Phone (207) 585-2638</p>	2

	ddibiasi@SomersetCounty-ME.org	rodney.whittemore@legislature.maine.gov	thomas.skolfield@legislature.maine.gov	
Town of Caratunk Elizabeth Caruso - 1st Select PO Box 180 Caratunk, Maine 04925-0180 OFFICE PHONE: 672-3030	Somerset County Commissioners Office 41 Court Street Skowhegan, ME 04976 Phone (207) 474-9861 ddibiasi@SomersetCounty-ME.org	Senate District 3 Senator Rod Whittemore PO Box 96 Skowhegan, Maine 04976 Phone (207) 474-6703 rodney.whittemore@legislature.maine.gov	House District 118 Rep. Chad Wayne Grignon 181 Fox Hill Road Athens, Maine 04912 Phone (207) 654-2771 Cell Phone (207) 612-6499 chad.grignon@legislature.maine.gov	2
Town of Chesterville 409 Dutch Gap Road Chesterville, Maine 04938 Phone (207) 778-2433 chesterville.me@gmail.com	Franklin County Commissioner's Office 140 Main Street, Suite 3 Farmington, Maine 04938 Phone (207) 778-6614 jmagoon@franklincountymaine.gov	Senate District 17 Senator Thomas Saviello 60 Applegate Lane Wilton, ME 042924 Phone (207) 287-1505 thomas.saviello@legislature.maine.gov	House District 114 Rep. Russell J. Black 123 Black Road Wilton, Maine 04294 Phone (207) 491-4667 russell.black@legislature.maine.gov	2
Town of Cumberland William R. Shane, Town Manager 290 Tuttle Road Cumberland, Maine 04021 Phone (207) 829-5559	Cumberland County Commissioners Office James Gailey, County Manager 142 Federal Street Portland, ME 04101 Phone (207) 871-8380 gailey@cumberlandcounty.org	Senate District 25 Senator Catherine Breen 15 Falmouth Ridges Drive Falmouth, Maine 04105 Phone (207) 329-6142 Cathy.breen@legislature.maine.gov	House District 45 Rep. Dale J. Denno 275 Main Street Cumberland Center, Maine 04021 Cell Phone (207) 400-1123 dale.denno@legislature.maine.gov	1 Senator Susan Collins 55 Lisbon Street Lewison, ME 04240 Phone (207) 784-6969 Senator Angus King 4 Gabriel Drive, Suite 3 Augusta, ME 04330 Phone (207) 622-8292 Phone (800) 432-1599 Representative Chellie Pingree 2Portland Fish Pier, Suite 304 Portland, ME 04101 Phone (207) 774-5019 Phone (888) 862-6500
Town of Durham 630 Hallowell Road Durham, Maine 04222	Androscoggin County Commissioners' Office 2 Turner Street, Unit 2	Senate District 22 Senator Garrett Mason PO Box 395	House District 46 Rep. Paul B. Chace 31 Colonial Drive	2

Phone (207) 353-2561	Auburn, Maine 04210 Phone (207) 753-2500, Ext 1801 lpost@androscoggincounty.maine.gov	Lisbon Falls, Maine 04252 Phone (207) 557-1521 garret.mason@legislature.maine.gov	Durham, ME 04222 Cell Phone (207)240-9300 paul.chace@legislature.maine.gov	
Town of Embden 809 Embden Pond Road Embden, Maine 04958-3521 Phone (207) 566-5551 embden-clerk@roadrunner.com	Somerset County Commissioners Office 41 Court Street Skowhegan, ME 04976 Phone (207) 474-9861 ddibiasi@SomersetCounty-ME.org	Senate District 3 Senator Rod Whittemore PO Box 96 Skowhegan, Maine 04976 Phone (207) 474-6703 rodney.whittemore@legislature.maine.gov	House District 118 Rep. Chad Wayne Grignon 181 Fox Hill Road Athens, Maine 04912 Phone (207) 654-2771 Cell Phone (207) 612-6499 chad.grignon@legislature.maine.gov	2
Town of Farmington 153 Farmington Falls Road Farmington, Maine 04938 Phone (207) 778-5871 rdavis@farmington-maine.org	Franklin County Commissioner's Office 140 Main Street, Suite 3 Farmington, Maine 04938 Phone (207) 778-6614 jmagoon@franklincountymaine.gov	Senate District 17 Senator Thomas Saviello 60 Applegate Lane Wilton, ME 042924 Phone (207) 287-1505 thomas.saviello@legislature.maine.gov	House District 113 Rep. Lance Evans Harvell 398 Knowlton Corner Road Farmington, Maine 04938 Phone (207) 491-8971 lance.harvell@legislature.maine.gov	2
Town of Greene 220 Main St, PO Box 510 Greene, Maine 04236-0510 Phone (207) 946-5146 imgreene@fairpoint.net	Androscoggin County Commissioners' Office 2 Turner Street, Unit 2 Auburn, Maine 04210 Phone (207) 753-2500, Ext 1801 lpost@androscoggincounty.maine.gov	Senate District 22 Senator Garrett Mason PO Box 395 Lisbon Falls, Maine 04252 Phone (207) 557-1521 garret.mason@legislature.maine.gov	House District 57 Rep. Stephen J. Wood PO Box 927 Sabattus, Maine 04280 Cell Phone (207) 740-3723 stephen.wood@legislature.maine.gov	2
Town of Industry 1033 Industry Road Industry, Maine 04938 Phone (207) 778-5050	Franklin County Commissioner's Office 140 Main Street, Suite 3 Farmington, Maine 04938 Phone (207) 778-6614 jmagoon@franklincountymaine.gov	Senate District 17 Senator Thomas Saviello 60 Applegate Lane Wilton, ME 042924 Phone (207) 287-1505 thomas.saviello@legislature.maine.gov	House District 114 Rep. Russell J. Black 123 Black Road Wilton, Maine 04294 Phone (207) 491-4667 russell.black@legislature.maine.gov	2
Town of Jay 340 Main Street Jay, Maine 04239 Phone (207) 897-6785	Franklin County Commissioner's Office 140 Main Street, Suite 3 Farmington, Maine 04938	Senate District 17 Senator Thomas Saviello 60 Applegate Lane Wilton, ME 042924	House District 74 Rep. Christina Riley 437 Main Street Jay, Maine 04239	2

joffice@jay-maine.org	Phone (207) 778-6614 jmagoon@franklincountymaine.gov	Phone (207) 287-1505 thomas.saviello@legislature.maine.gov	Phone (207)897-2288 tina.riley@legislature.maine.gov	
Town of Leeds 8 Community Drive Leeds, Maine 04263 Phone (207) 524-5171 townofleeds@fairpoint.net	Androscoggin County Commissioners' Office 2 Turner Street, Unit 2 Auburn, Maine 04210 Phone (207) 753-2500, Ext 1801 lpost@androscoggincountymaine.gov	Senate District 22 Senator Garrett Mason PO Box 395 Lisbon Falls, Maine 04252 Phone (207) 557-1521 garret.mason@legislature.maine.gov	House District 75 Rep. Jeffrey L. Timberlake 284 Ricker Hill Road Turner, Maine 07282 Cell Phone (207)754-6000 jeffrey.timberlake@legislature.maine.gov	2
Town of Livermore Falls 2 Main Street Livermore Falls, Maine 04254 Phone (207) 897-3321 townoffice@lfme.org	Androscoggin County Commissioners' Office 2 Turner Street, Unit 2 Auburn, Maine 04210 Phone (207) 753-2500, Ext 1801 lpost@androscoggincountymaine.gov	Senate District 18 Senator Lisa Keim 1505 Main Street Dixfield, ME 04224 Phone (207) 562-6023 Lisa.keim@legislature.maine.gov	House District 74 Rep. Christina Riley 437 Main Street Jay, Maine 04239 Phone (207)897-2288 tina.riley@legislature.maine.gov	2
Town of Moscow 110 Canada Road Moscow, Maine 04920 Phone (207) 672-4834 moscow@myfairpoint.net	Somerset County Commissioners Office 41 Court Street Skowhegan, ME 04976 Phone (207) 474-9861 ddiblasi@SomersetCounty-ME.org	Senate District 3 Senator Rod Whittemore PO Box 96 Skowhegan, Maine 04976 Phone (207) 474-6703 rodney.whittemore@legislature.maine.gov	House District 118 Rep. Chad Wayne Grignon 181 Fox Hill Road Athens, Maine 04912 Phone (207) 654-2771 Cell Phone (207) 612-6499 chad.grignon@legislature.maine.gov	2
Town of New Gloucester 385 Intervale Road New Gloucester, Maine 04260 Phone (207) 926-4126 ccastonguay@newgloucester.com	Cumberland County Commissioners Office James Gailey, County Manager 142 Federal Street Portland, ME 04101 Phone (207) 871-8380 gailey@cumberlandcounty.org	Senate District 20 Senator Eric L. Brakey 146 Pleasant Street Auburn, ME 04210 Phone (207) 406-0897 Eric.brakey@legislature.maine.gov	House District 65 Rep. Ellie Espling 12 Lewiston Rd New Gloucester, Maine 04260 Cell Phone (207) 891-8280 ellie.espling@legislature.maine.gov	1
Town of New Sharon 11 School Lane, PO Box 7 New Sharon, Maine 04955-0007 Phone (207) 778-4046	Franklin County Commissioner's Office 140 Main Street, Suite 3 Farmington, Maine 04938	Senate District 17 Senator Thomas Saviello 60 Applegate Lane Wilton, ME 042924	House District 113 Rep. Lance Evans Harvell 398 Knowlton Corner Road	2

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Town of Pownal 429 Hallowell Road Pownal, Maine 04069 Phone (207) 688-4611	Cumberland County Commissioners Office James Gailey, County Manager 142 Federal Street Portland, ME 04101 Phone (207) 871-8380 gailey@cumberlandcounty.org	Senate District 24 Senator Brownie Carson PO Box 68 Harpwell, Maine 04079 Phone (207) 751-9076 Brownie.carson@legislature.maine.gov	House District 46 Rep. Paul B. Chace 31 Colonial Drive Durham, Maine 04222 Phone (207) 240-9300 Paul.chace@legislature.maine.gov House District 48 Rep. Sara Gideon 37 South Freeport Road Freeport, Maine 40032 Phone (207) 287-1300 sara.gideon@legislature.maine.gov	2
Town of Starks 57 Anson Road Starks, Maine 04911 Phone (207) 696-8069 townofstarks@gmail.com	Somerset County Commissioners Office 41 Court Street Skowhegan, ME 04976 Phone (207) 474-9861 ddibiasi@SomersetCounty-ME.org	Senate District 3 Senator Rod Whittemore PO Box 96 Skowhegan, Maine 04976 Phone (207) 474-6703 Rodney.Whittemore@legislature.maine.gov	House District 112 Rep. Thomas H. Skolfield 349 Phillips Road Weld, Maine 04285 Phone (207) 585-2638 thomas.skolfield@legislature.maine.gov	2
Town of Whitefield 36 Townhouse Road Whitefield, Maine 04353 Phone (207) 549-5175 whitefield@roadrunner.com	Lincoln County Commissioners Office 32 High Street, P.O. Box 249 Wiscasset, Maine 04578 Phone (207) 882-6311 ckipfer@lincounty.me	Senate District 13 Senator Dana Dow 30 Kalers Pond Road Waldoboro, Maine 04572 Phone (207) 832-4658 dana.dow@legislature.maine.gov	House District 88 Rep. Deborah J. Sanderson 64 Whittier Drive Chelsea, Maine 04330 Phone (207) 376-7515 deborah.sanderson@legislature.maine.gov	1
Town of Wilton 158 Weld Road Wilton, Maine 04294 Phone (207) 645-4961 office@wiltonmaine.org	Franklin County Commissioner's Office 140 Main Street, Suite 3 Farmington, Maine 04938 Phone (207) 778-6614	Senate District 17 Senator Thomas Saviello 60 Applegate Lane Wilton, ME 042924 Phone (207) 287-1505	House District 114 Rep. Russell J. Black 123 Black Road Wilton, Maine 04294 Phone (207) 491-4667	2

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Town of Windsor 523 Ridge Road, PO Box 179 Windsor, Maine 04363-0179 Phone (207) 445-2998 FAX: 445-3762	Kennebec County Commissioner's Office 125 State Street, 2nd Floor Augusta, Maine 04330 Phone: (207) 622-0971	Senate District 13 Senator Dana Dow 30 Kalers Pond Road Waldoboro, Maine 04572 Phone (207) 832-4658 dana.dow@legislature.maine.gov	House District 80 Rep. Richard T. Bradstreet 44 Harmony Lane Vassalboro, Maine 04989 Cell Phone (207)861-1657 dick.bradstreet@legislature.maine.gov	1
Town of Wiscasset 51 Bath Road Wiscasset, Maine 04578-4108 Phone (207) 882-8200 admin@wiscasset.org	Lincoln County Commissioners Office 32 High Street, P.O. Box 249 Wiscasset, Maine 04578 Phone (207) 882-6311 ckipfer@lincounty.me	Senate District 13 Senator Dana Dow 30 Kalers Pond Road Waldoboro, Maine 04572 Phone (207) 832-4658 dana.dow@legislature.maine.gov	House District 87 Rep. Jeffery P. Hanley 52 Turner Drive Pittston, Maine 04345 Phone (207) 582-1524 Cell Phone (207) 458-9009 jeff.hanley@legislature.maine.gov	1
Town of Woolwich 13 Nequasset Road Woolwich, Maine 04579-9734 PHONE (207) 442-7094	Sagadahoc County Commissioner's Office 752 High Street Bath, Maine 04530 Phone (207) 443-8202	Senate District 23 Senator Eloise Vitelli 73 Newton Road Arrowsic, Maine 04530 Phone (207) 443-4660 eloise.Vitelli@legislature.maine.gov	House District 53 Rep. Jeffrey K. Pierce PO Box 51 Dresden, Maine 04342 Phone (207) 737-9051 Cell (207)441-3006 jeff.pierce@legislature.maine.gov	1

Department of Environmental Protection
SITE LOCATION OF DEVELOPMENT (SITE) 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.

- 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.



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.
