



DEPARTMENT ORDER

IN THE MATTER OF

CENTRAL MAINE POWER CO.) SITE LOCATION OF DEVELOPMENT ACT
NECEC TRANSMISSION, LLC) NATURAL RESOURCES PROTECTION ACT
See Attached) FRESHWATER WETLAND ALTERATION
PROJECT NAME) SIGNIFICANT WILDLIFE HABITAT
L-27625-26-V-M (approval)) WATER QUALITY CERTIFICATION
L-27625-TB-W-M (approval))
L-27625-2C-X-M (approval))
L-27625-VP-Y-M (approval)) MINOR REVISION
L-27625-IW-Z-M (approval)) FINDINGS OF FACT AND ORDER

Pursuant to the provisions of 38 M.R.S. §§ 481–489-E and §§ 480-A–480-JJ, Section 401 of the Clean Water Act (33 U. S. C. § 1341), and Chapters 310, 315, 335, 373, 375, and 500, of Department rules, the Department of Environmental Protection has considered the application of CENTRAL MAINE POWER CO. (CMP) AND NECEC TRANSMISSION, LLC (NECEC, LLC) (collectively, licensees) with the supportive data, agency review comments, public and party comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

1. PROJECT DESCRIPTION:

A. History of Project: In Department Order # L-27625-26-A-N/L-27625-TB-B-N/L-27625-2C-C-N/L-27625-VP-D-N/L-27625-IW-E-N dated May 11, 2020 (Department Order), the Department approved the New England Clean Energy Connect project. 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. In Department Order #L-27625-26-K-T, dated December 4, 2020, the Department transferred a portion of the permit for the project from CMP to NECEC, LLC.

B. Summary: The licensees propose a package of minor changes to the approved project. The licensees proposal includes: renumbering of the high voltage direct current (HVDC) portion of the project; changes to pole locations; changes to access road locations, both on and off the right-of-way; changes due to survey and mapping discrepancies; a lateral adjustment of the corridor (a shift to the west on land owned by CMP around Bowman Airfield to comply with Federal Aviation Administration (FAA) requirements); vegetation clearing adjacent to a portion of Section 3007 in Lewiston; changes to the horizontal directional drill (HDD) termination stations in West Forks and Moxie Gore; and changes in the Merrill Road Converter Station. The proposed changes can be seen on a series of plans, the first of which is entitled, “New England Clean

Energy Connect Natural Resource Maps, Segment 1, Overview 8,” dated November 9, 2020, with the latest revision date of April 22, 2021, prepared by CMP. The proposed changes will result in:

- A reduction of permanent fill in wetlands of special significance of 0.505 acres,
- A reduction of forested wetland conversion of 41.872 acres,
- A reduction of permanent fill in significant vernal pool (SVP) habitat of 1.153 acres,
- A reduction of conversions in SVP habitat of 4.859 acres,
- A reduction of permanent fill in inland waterfowl and wading bird habitat (IWWH) of 0.006 acres,
- A reduction of permanent conversions in IWWH of 5.548 acres, and
- An increase of temporary impacts to freshwater wetlands of 2.030 acres.

Changes at the Merrill Road Converter Station will result in a reduction of 1.14 acres of developed area and 0.79 acres is impervious area. Proposed changes at the Moxie Gore Termination Station will result in an increase of 0.99 acres of developed area and 0.50 acres of impervious area. Proposed changes at the West Forks Termination Station will result in an increase of 3.61 acres of developed area and 0.85 acres of impervious area.

In conjunction with the proposed changes in pole locations, the licensees provided updated information on potential scenic impacts, historical and cultural impacts, impacts to rare plant communities, and impacts to rare or threatened endangered species. In conjunction with the proposed changes at the Merrill Road Converter Station and the HDD Termination Stations, the licensees provided an updated storm water management report for those three areas. The Department’s findings on these potential impacts are discussed below.

2. PROCEDURAL HISTORY:

On January 15, 2021, the Natural Resources Council of Maine (NRCM), an intervenor in the original proceeding, submitted a request for Board of Environmental Protection (the Board or BEP) assumption of jurisdiction over the application, along with comments on the proposed changes, arguing that the changes do not qualify as minor revisions. The Sierra Club submitted comments, dated January 18, 2021, on the application and similarly requested that the Board take jurisdiction over the minor revision application. On February 10, 2021, the Commissioner sent a letter to NRCM and the Sierra Club that contained her determination that the application with the proposed changes did not qualify as a project of statewide significance and recommended the BEP not take jurisdiction. The Commissioner also noted the application remained under review and that part of that review would include evaluation of whether the proposed changes qualify the application as a minor revision. On March 11, 2021, the Department determined that two proposed changes included in licensees’ application were more appropriately categorized as minor amendments and would not be processed as part of the minor revision application. At its meeting on March 18, 2021, the BEP voted not to consider

assuming jurisdiction over the application, leaving the application pending before the Commissioner and Department.

3. PUBLIC COMMENTS:

In January 15 and February 1, 2021 comments (NRCM Comment Letter #1 and NRCM Comment Letter #2, respectively), NRCM argues the application does not qualify as a minor revision, in part because of the volume of material included in the application and because they say some of the proposed changes themselves or in aggregate are large enough to trigger the Site Location of Development Law (Site Law) if viewed on their own. They further argue that CMP must conduct new wetland and natural resource delineations because, they claim, CMP only used publicly available data. They also contend that the maps contain new information about impacts to rare, threatened, or endangered species and incorrectly label intermittent streams in Segment 1 as not containing brook trout habitat. Finally, because the licensees submitted updated resource maps, NRCM argues the Department must undertake a full technical review of the entire NECEC project.

In January 18, 2021 comments, the Sierra Club expresses in summary form the same concerns conveyed by NRCM in its January 15 submission. On February 1, 2021, the West Forks Plantation group, which intervened and participated as party in the underlying permit proceeding, also raised concerns about the project being submitted as a minor revision and the public notice given for the application.

Following the Commissioner's February 10, 2021 letter recommending the BEP not take jurisdiction over the application, the Department received numerous comments concerning Board jurisdiction and the New England Clean Energy Connect project. Most of these comments reflected concerns with the underlying project and were not specific to the minor revision application, except to state the application contained too much information to be considered a minor revision.

The licensees responded, stating that the proposed revisions significantly reduce project impacts, including a reduction of 0.714 acres of permanent fill in wetlands of special significance as a result of the changes at the Merrill Road Converter Station, a reduction of the scenic impact to Moxie Pond as a result of the changes in structure locations, and a reduction in the conversion of forested wetland by more than 40 acres. They contend that the Department Rules that define a minor revision do not turn on the amount of material submitted, but rather the nature of the proposed changes.

In a letter dated March 11, 2021, the Department determined that two portions of the application, both proposing changes in Segment 1, did not qualify as a minor revision:

- A. Moxie Gore, structures 432-543 through 432-547. At the end of Segment 1 the transmission line is proposed to be redesigned to move from the southern portion of the right-of-way to the northern portion of the right-of-way. The newly proposed structure locations would be approximately 220 feet from the previously

approved structure locations and the newly proposed access road would cross more wetland than the previously approved access road.

- B. Appleton Township, structures 432-739 through 432-744. In this area near Gold Brook a shift in the corridor, ranging from 105 to 119 feet, is proposed to correct for a survey error. This area contains Roaring Brook Mayfly, a species listed as threatened pursuant to Maine’s Endangered Species Act.

The Department stated that it would not process these changes as a minor revision. If the licensees wish to pursue either or both of these changes, the Department determined that must be done through filing an amendment application.

In a letter dated March 16, 2021, the licensees withdrew those portions of the minor revision application.

4. MINOR REVISION AND DISCUSSION:

The Department’s Chapter 2, *Rule Concerning the Processing of Applications and Other Administrative Matters*, § 1(N) establishes that a “minor revision” is:

[A]n application to modify a license previously granted by the Department, where the modification significantly decreases or eliminates an environmental impact, does not significantly expand the project, does not change the nature of the project, or does not modify any Department findings with respect to any licensing criteria.

NRCM argues the application does not qualify as a minor revision because the changes themselves are large enough to trigger Site Law if the changes were a stand-alone project, and because treating the application as minor revision would “void” Site Law. NRCM Comment Letter #1 at 2. These arguments misrepresent what defines a minor revision and draw an inaccurate conclusion. The overall project already is subject to Site Law and all subsequent modifications, including those in the present application will be subject to Site Law, as well. Site Law will be applied, not void, if the application is processed as a minor revision.

Additionally, the question is not whether the proposed changes themselves would trigger Site Law – Site Law has already been triggered – but rather whether the changes from what previously was permitted qualify as a minor revision as that term is defined. The Department Order contains detailed review and analysis of the NECEC transmission line project, which takes into account the location of the project, the potential for habitat fragmentation and other landscape-scale impacts, as well as a wide range of potential site-specific impacts. While adjustments in pole location, shifts in corridor alignment, and other changes included in the application package by the licensees in aggregate involve more than 20 acres in land area and warrant Department review, the analysis of the proposed changes builds on the Department’s prior review of the underlying project. Thus, the Department does not re-review the entire project, but instead focuses on the

proposed changes and potential site-specific impacts. The landscape-scale impacts of the project, which the 20-acre Site Law threshold is intended to ensure do not go unreviewed, previously have been evaluated by the Department in the Department Order and the findings and conclusions in that order remain unchanged by the adjustments proposed by the licensees in the present application.

Finally, some of the factual underpinnings of NRCM's argument are inaccurate. For example, the proposed changes will not result in three or more additional acres of area that will be stripped, graded, and not revegetated. This three-acre threshold is one of the jurisdictional triggers for Site Law that NRCM argues will be exceeded by the changes proposed in the minor revision itself.

The volume of the licensees' application also was pointed to by commenters in support of their position that the application is not for a minor revision. See, e.g., Sierra Club Comment Letter (Jan. 18, 2021) at 1. The high page count of the application is the result of three components of the application: adjustments in pole locations, which were accompanied by revised photosimulations, scenic impact tables, waterbody crossing tables, and other resource tables; changes to the Merrill Road Converter Station, which were accompanied by stormwater calculation data; and a shift in the location of the corridor near Bowman Airfield in response to FAA requirements, which was accompanied by updated information showing CMP's title in the land adjacent to the existing transmission line corridor. Together, these three components accounted for over 600 pages of material. The Department reviewed this information.

As noted, in conjunction with adjusted pole locations, the licensees submitted visual impact assessment information that consisted of updated scenic impact tables and photosimulations based on the proposed structure locations. The overwhelming majority of the structures the licensees propose to relocate would only move a few feet along the previously permitted center line. Based on review of the application material, the Department finds the proposed shifts along previously permitted center line will either result in no change in the level of visual impact (e.g., minimal, moderate, or strong) or in improvement compared to the structure locations previously reviewed and permitted in the Department Order.

In some locations lateral adjustment of structure locations is proposed, meaning the structures would be moved from the previously approved center line. The largest such shift is proposed near Bowman Airfield, which is located in Livermore Falls along Segment 3 where the new transmission line would be co-located with an existing line. In this area, the relocated structures would be closer to the Androscoggin River. During the initial permitting of the project, the Department determined that due to existing vegetation and topography, there would be no project visibility in this area. With the proposed shift, intervening topography and vegetation would continue to screen the structures. The Department finds that with the proposed shift near Bowman Airfield the visual impact will remain minor, the same level of impact previously permitted in the Department Order.

Another proposed lateral adjustment is within Segment 2 near Moxie Pond. Here, the licensees propose to shift pole locations to be approximately five feet farther from the pond. As reflected in the application materials, the scenic impact from Moxie Pond will not change from most viewpoints; where a slight change is expected visibility of the project will be reduced. After reviewing all the proposed lateral adjustment and the associated visual impact assessment materials, the Department finds the proposed lateral adjustments will either result in no change in the level of visual impact (e.g., minimal, moderate, or strong) or in improvement compared to the structure locations previously reviewed and permitted in the Department Order.

With regard the updated resource maps included with the application, NRCM contends that the maps are entirely new, necessitating the entire project be reviewed anew, and that the licensees relied on generally available GIS data layers, such as National Wetland Inventory (NWI) data, in generating updated resources maps. NRCM Comment Letter #2 at 2.¹ The Department finds neither representation is accurate. In the updated resource maps submitted with the minor revision application, the resource data from the final maps previously used in the original permitting serve as the base layer.² All of this natural resource information was previously reviewed by the Department as part of the original permitting of the project. For the updated natural resource maps, the licensees included natural resource field survey information for any areas not mapped during the original permitting. This means, for example, if the licensees propose a shift in the corridor of five feet in a particular location, updated, field-based resource information was provided for the five-foot wide area. Only in the areas outside of the corridor and beyond the bounds of the project are generally available GIS data, such as roads, lakes, and ponds are shown. The updated resource maps also show the location of structures and other components of the transmission line project. As part of its examination of the application and the proposed changes, the Department overlaid the original resource maps with the updated resource maps and was able to efficiently review those places where the licensees provided new information or proposed changes from what was previously reviewed and approved. The new information was based on field surveys, not

¹ NRCM states on page 2 of its February 1, 2021 comments on the minor revision application that “CMP’s analysis identified wetlands and water bodies (generally one acre and larger), as listed in the National Wetlands Inventory (NWI) maps developed by the United States Fish and Wildlife Service (USFWS). CMP NRPA Application, Section 23.2.1.6.” This language suggests that in the application on which NRCM is commenting – the minor revision application – the wetlands analysis was based on NWI maps. The supporting citation, however, is not to the pending application, but rather to CMP’s original, 2017 NRPA application that was subject to the Department Order. Additionally, the cited section of that prior application is not to a section that addresses CMP’s field evaluation of natural resources within the corridor.

² In questioning the resource maps submitted by the licensees with their minor revision application, NRCM states on page 2 of its February 1 comments that, “the original maps included many streams that CMP classified as ‘ephemeral.’ The new maps appear to eliminate nearly all of those streams. The basis for these apparent changes and compliance with NRPA is not clear in the CMP Application.” There is only a single set of resource maps associated with the licensees’ minor revision application. The “original maps” referred to by NRCM appear to be the maps first submitted by CMP in 2017 as part of its application reviewed and acted on by the Department in the Department Order. The Department notes that during that prior, separate proceeding CMP updated its resource maps for the underlying project. Among the prior updates was removal of ephemeral streams from the resource maps to the extent they were non-jurisdictional resources (i.e., did not fit within the definition of a stream and were not another protected natural resource) under NRPA. The modification of resource maps pointed to by NRCM occurred and were reviewed in a prior licensing proceeding.

publicly available GIS data layers.

Based on its review of the updated natural resource information, the Department finds the changes proposed by the licensees reduce permanent impacts to protected natural resources. The proposed changes will result in a reduction of permanent fill in wetlands of special significance of 0.505 acres, a reduction of forested wetland conversion of 41.872 acres, a reduction of permanent fill in SVP habitat of 1.153 acres, a reduction of conversions in SVP habitat of 4.859 acres, a reduction of permanent fill in IWWH of 0.006 acres, and a reduction of permanent conversions in IWWH of 5.548 acres. The proposed changes will result in an increase of 2.030 acres of temporary impacts to freshwater wetlands.

NRCM points to features shown on the updated resource maps, specifically a mapped rare community (Hardwood River Terrace Forest) and cold water streams, and argues this resource information is newly identified or different and, therefore, the application is not a minor revision. NRCM Comment Letter #2 at 3. In both instances, however, the Department considered these resources and the potential impact as part of the original permitting of the project. With regard to the mapped Hardwood River Terrace Forest, during the initial permitting of the project the Maine Natural Areas Program (MNAP) determined that this community did not meet the criteria to be listed due to previous alterations. With regard to cold water streams, which can serve as brook trout and Atlantic salmon habitat, the licensees appear to have submitted a list of streams based on information generally available from the Maine Department of Inland Fisheries and Wildlife (MDIFW). As part of the Department's review of the transmission line project in the Department Order, this list of streams was updated as reflected in the Waterbody Crossing Table contained in Appendix E of the Department Order. Appendix E of the Department Order is not altered by the minor revision, nor are the riparian filter area requirements (effectively buffering requirements) that apply to all coldwater streams throughout the project, as well as to all perennial streams in Segment 1.

In addition to the visual impact assessment materials and natural resource maps and related natural resource tables, updated stormwater information, particularly for changes proposed at the Merrill Road Converter Station in Lewiston, accounted for more than 200 pages of application material. With respect to the Merrill Road Converter Station, having acquired new access rights, the licensees propose to shorten the length of and adjust the location of the access road, resulting in the avoidance of 0.714 acres of permanent wetland impact (i.e., wetland fill). In conjunction with this change, the licensees also propose grade changes at the converter station to eliminate the need for a terraced yard and allow safer ingress and egress. Together, these changes will result in a reduction in developed area of 1.14 acres of developed area and 0.79 acres of impervious area. Proposed changes at the Moxie Gore Termination Station will result in an increase of 0.99 acres of developed area and 0.50 acres of impervious area. Proposed changes at the West Forks Termination Station will result in an increase of 3.61 acres of developed area and 0.85 acres of impervious area.

The licensees submitted an updated stormwater management plan based on the Basic, General, and Flooding Standards contained in Chapter 500 Stormwater Management rules (06-096 C.M.R. ch. 500, effective August 12, 2015). The proposed stormwater management system for the termination stations consists of substation fill, stone bermed level lip spreaders discharging to buffers, and roadside buffers. The proposed stormwater management system for the Merrill Road converter station consists of two underdrained soil filters and substation fill. Updated stormwater calculations, which account for many pages of the application, show the proposed changes will decrease or result in no change to the stormwater runoff, either in quantity or quality from the project.

Having reviewed the application and related record material, including comments from parties to the underlying permitting proceeding and other individuals and organizations, the Department finds the proposed changes will not change the nature of the project. The same transmission line will carry the same power through the same parts of Maine. The proposed changes will result in generally equivalent or reduced impacts. For example, permanent impacts to protected natural resources will decrease, including to wetlands, SVP habitat, and IWWH, and the proposed modifications will either result in no change in the level of visual impact (e.g., minimal, moderate, or strong) or in improvement compared to the development previously reviewed and permitted in the Department Order. A significant decrease or elimination of environmental impact is required to qualify a proposal to modify an order as a minor revision in the absence of any of the other independent factor that characterize an application as a minor revision being satisfied. Here, however, all three of the other factors are satisfied. Even if the reduction in impacts is not large enough to be significant and therefore qualify the application as a minor revision, the equivalent or reduced impacts associated with the changes proposed in the present application are consistent with the minor nature of the package of proposed changes included in the licensees' application.

Additionally, the proposed changes do not significantly expand the project. For example, the proposed adjustments in structure location have not had an impact on the project size and the small shifts or adjustments in the corridor location do not affect project size either; if five feet is added to one side of the corridor it is subtracted from the other. Some changes slightly reduce the size of the project, such as the reduction in the length of the access road at the Merrill Road Converter Station and associated changes there, while other changes slightly increase the size of the project, such as the rerouting around Bowman Airfield or adjustments at the termination station on either side of the Kennebec River. With respect to all of the proposed changes, whether looked at individually or in aggregate, the Department finds they do not significantly expand the project.

Further, the Department finds the proposed changes will not modify or require modification of any Department finding with respect to any licensing criteria. In the Department Order, the Department found that all the licensing criteria were satisfied, however, in many instances the Department's findings were contingent on specific, special conditions being satisfied. None of the modification now proposed by the licensees involve changes to any of the special conditions in the Department Order. Nor

do any of the proposed modifications alter any of the Department's conclusions with respect to the licensing criteria.

Finally, a significant decrease or elimination of environmental impact is required to qualify a proposal to modify an order as a minor revision in the absence of any of the other independent factors that characterize an application as a minor revision being satisfied. Here all three of the other factors are satisfied. Even if the reduction in impacts associated with the licensees' application is not large enough to be significant and therefore qualify the application as a minor revision, the equivalent or reduced impacts associated with the changes proposed in the present application are consistent with the minor nature of the package of proposed changes included in the licensees' application.

Therefore, the Department finds the modifications, as presented in the licensees' application as amended by removal of two components pursuant to their March 16, 2021 letter, is appropriately categorized as a minor revision.

5. OTHER CONSIDERATIONS:

All other Findings of Fact, Conclusions and Conditions remain as approved in Department Order #L-27625-26-A-N/L-27625-TB-B-N/L-27625-2C-C-N/L-27625-VP-D-N/L-27625-IW-E-N, and subsequent orders.

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.
- 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.
- 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.
- 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 CENTRAL MAINE POWER COMPANY AND NECEC TRANSMISSION, LLC to modify the project 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.

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 7TH DAY OF MAY, 2021.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: 
For: Melanie Loyzim, Commissioner

PLEASE NOTE THE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES.

JB/L27625VMWMXMYMZM/ATS#86975/86976/86977/86978/86979

<p style="text-align: center;">FILED May 7th, 2021 State of Maine Board of Environmental Protection</p>

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.
