Reviewed for Code Compliance
Inspections Division
Approved with Conditions

Date: 07/15/14

RE: 1 Long Wharf - 2014-01319 - 030-H-001
From: Nicholas Ray <nicholas@tecassoc.com>
To: Marge Schmuckal <MES@portlandmaine.gov>
Date: Tuesday - July 1, 2014 9:37 AM

Good Morning Marge,

Please see attached permits issued from the MDEP, Portland Board of Harbor Commissioners, and the Army Corps of Engineers. Please note that sheets 4 – 6 of the general permit issued by the Army Corps did not scan properly when the Army Corps issued the permit, but those three sheets are the three sheets included in the plan set that is included in all permit applications.

Please let me know if you have any questions or need anything else from me.

Thank you,

Nicholas J. Ray, EI
TEC Associates
46 Sawyer Street
South Portland, ME 04106
Office: (207) 767-6068 x 208
Cell: (207) 756-0961
Fax: (207) 767-7125

From: Marge Schmuckal [mailto:MES@portlandmaine.gov]
Sent: Monday, June 30, 2014 4:40 PM
To: Nicholas Ray
Subject: 1 Long Wharf - 2014-01319 - 030-H-001

Hi Nicholas,
Can I get copies of the approvals from DEP, Army Corps & the Harbor Master to complete this application?
Marge Schmuckal
Zoning Administrator
city of Portland, ME

Notice: Under Maine law, documents - including e-mails - in the possession of public officials or city employees about government business may be classified as public records. There are very few exceptions. As a result, please be advised that what is written in an e-mail could be released to the public and/or the media if requested.

DEPARTMENT OF THE ARMY
NEW ENGLAND DISTRICT, CORPS OF ENGINEERS
696 VIRGINIA ROAD
CONCORD, MASSACHUSETTS 01742-2751

REPLY TO ATTENTION OF

RESURGAM CITY OF PORTLAND, MAINE

Reviewed for Code Compliance
Inspections Division
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MAINE GENERAL PERMIT (GP)
AUTHORIZATION LETTER AND SCREENING SUMMARY

Date: 07/15/14

DIMILLO'S OLD PORT MARINA
ONE LONG WHARF
PORTLAND, MAINE 04101

CORPS PERMIT # NAE-2014-00948
CORPS PGP ID# 14-180
STATE ID# NRPA

DESCRIPTION OF WORK:
Install and maintain additional pile supported floats at an existing recreational marina in Portland Harbor at Portland, Maine. This work is shown on the attached plans entitled "DIMILLO'S FLOAT EXTENSION" in four sheets dated "1 MAY 2014".

LAT/LONG COORDINATES : 43.6538940° N -70.2510061° W USGS QUAD: PORTLAND WEST, ME

I. CORPS DETERMINATION:

Based on our review of the information you provided, we have determined that your project will have only minimal individual and cumulative impacts on waters and wetlands of the United States. **Your work is therefore authorized by the U.S. Army Corps of Engineers under the enclosed Federal Permit, the Maine General Permit (GP).** Accordingly, we do not plan to take any further action on this project.

You must perform the activity authorized herein in compliance with all the terms and conditions of the GP [including any attached Additional Conditions and any conditions placed on the State 401 Water Quality Certification including any required mitigation]. Please review the enclosed GP carefully, including the GP conditions beginning on page 5, to familiarize yourself with its contents. You are responsible for complying with all of the GP requirements; therefore you should be certain that whoever does the work fully understands all of the conditions. You may wish to discuss the conditions of this authorization with your contractor to ensure the contractor can accomplish the work in a manner that conforms to all requirements.

If you change the plans or construction methods for work within our jurisdiction, please contact us immediately to discuss modification of this authorization. This office must approve any changes before you undertake them.

Condition 41 of the GP (page 18) provides one year for completion of work that has commenced or is under contract to commence prior to the expiration of the GP on October 12, 2015. You will need to apply for reauthorization for any work within Corps jurisdiction that is not completed by October 12, 2016.

This authorization presumes the work shown on your plans noted above is in waters of the U.S. Should you desire to appeal our jurisdiction, please submit a request for an approved jurisdictional determination in writing to the undersigned.

No work may be started unless and until all other required local, State and Federal licenses and permits have been obtained. **This includes but is not limited to a Flood Hazard Development Permit issued by the town if necessary.**

II. STATE ACTIONS: PENDING [X], ISSUED[ ], DENIED [ ] DATE:

APPLICATION TYPE: PBR:__, TIER 1:__, TIER 2:__, TIER 3: X, LURC: __ DMR LEASE: __ NA: X

III. FEDERAL ACTIONS:

JOINT PROCESSING MEETING: 5/22/14 LEVEL OF REVIEW: CATEGORY 1:__ CATEGORY 2: X

AUTHORITY (Based on a review of plans and/or State/Federal applications): SEC 10 X, 404__, 10/404__, 103__.

EXCLUSIONS: The exclusionary criteria identified in the general permit do not apply to this project.

FEDERAL RESOURCE AGENCY OBJECTIONS: EPA NO, USF&WS NO, NMFS NO

If you have any questions on this matter, please contact my staff at 207-623-8367 at our Manchester, Maine Project Office. In order for us to better serve you, we would appreciate your completing our Customer Service Survey located at http://per2.nwp.usace.army.mil/survey.html

Jay L. Clement
JAY L. CLEMENT
SENIOR PROJECT MANAGER
MAINE PROJECT OFFICE

6-16-2014
FRANK J. DEL GIUDICE DATE
CHIEF, PERMITS & ENFORCEMENT BRANCH
REGULATORY DIVISION

US Army Corps
of Engineers
New England District

Reviewed for Code Compliance
Inspections Division
Approved with Conditions

Date: 07/15/14

PLEASE NOTE THE FOLLOWING GENERAL CONDITIONS FOR
DEPARTMENT OF THE ARMY
GENERAL PERMIT
NO. NAE-2014-00948

1. This authorization requires you to 1) notify us before beginning work so we may inspect the project, and 2) submit a Compliance Certification Form. You must complete and return the enclosed Work Start Notification Form(s) to this office at least two weeks before the anticipated starting date. You must complete and return the enclosed Compliance Certification Form within one month following the completion of the authorized work and any required mitigation (but not mitigation monitoring, which requires separate submittals).

2. The permittee shall assure that a copy of this permit is at the work site whenever work is being performed and that all personnel performing work at the site of the work authorized by this permit are fully aware of the terms and conditions of the permit. This permit, including its drawings and any appendices and other attachments, shall be made a part of any and all contracts and sub-contracts for work which affects areas of Corps of Engineers' jurisdiction at the site of the work authorized by this permit. This shall be done by including the entire permit in the specifications for the work. If the permit is issued after construction specifications but before receipt of bids or quotes, the entire permit shall be included as an addendum to the specifications. The term "entire permit" includes permit amendments. Although the permittee may assign various aspects of the work to different contractors or sub-contractors, all contractors and sub-contractors shall be obligated by contract to comply with all environmental protection provisions of the entire permit, and no contract or sub-contract shall require or allow unauthorized work in areas of Corps of Engineers jurisdiction.

3. Upon completion of the project, the permittee shall provide an as built drawing of the new float layout to include:

a. The structures' horizontal location relative to the closest FNP and the waterway, horizontal coordinates, the FNP limits, bar (graphic) scale, north arrow, and the dates of the survey and drawings.

b. The structures' horizontal state plane coordinates in U.S. survey feet based on the grid system for the State of Maine, Zone 1802, NAD 1983.

The as built drawing is to be sent to the following with notification provided to the Corps Maine Project Office, ATTN: Jay Clement:
ATTN: Edward O'Donnell, Navigation Branch
US Army Corps of Engineers, New England District
696 Virginia Road
Concord, Massachusetts 01742

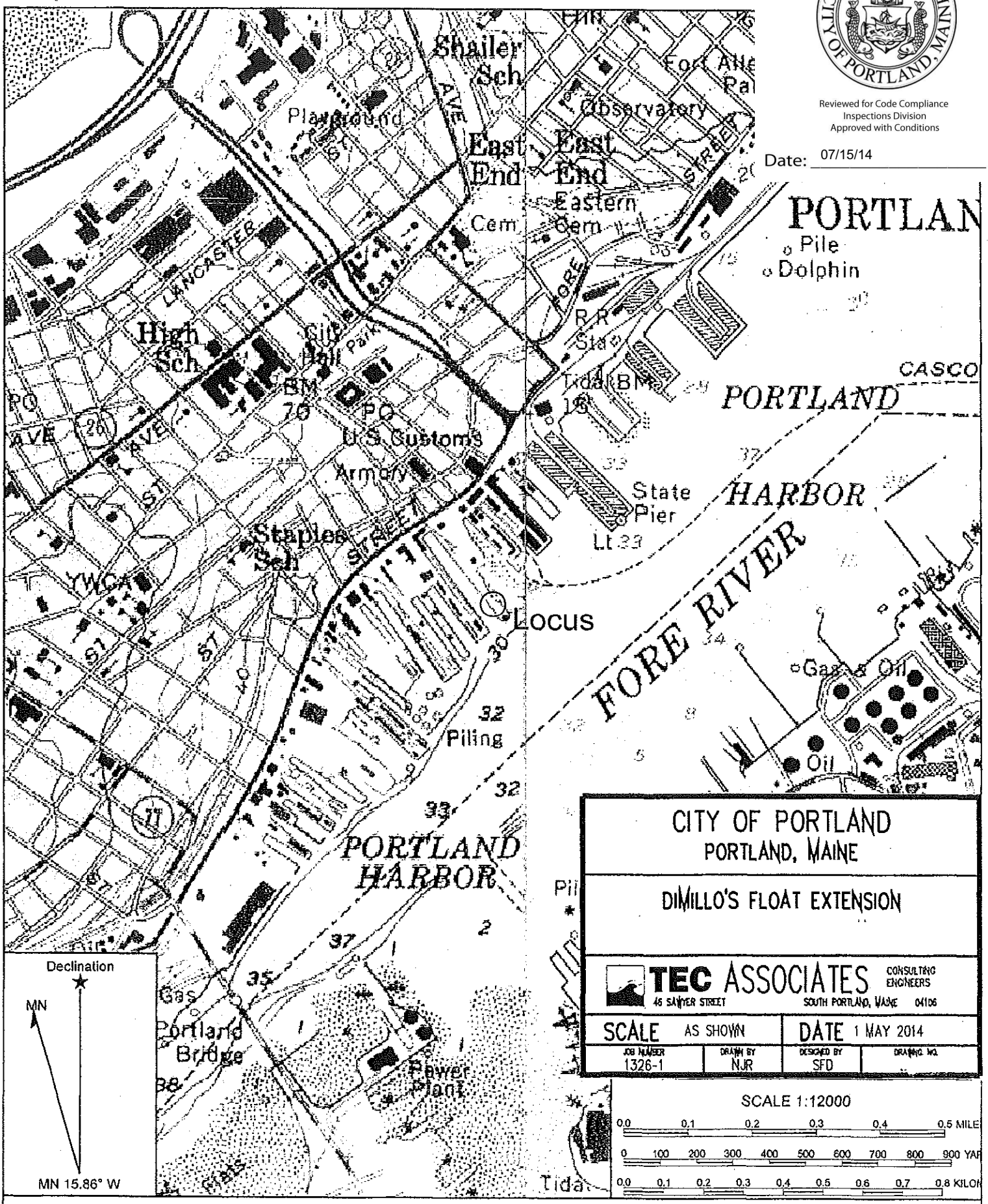
3. All permitted structures shall be located a minimum of 16' from the Federal Navigation Project (FNP) limits so neither the structures nor any vessel tied to them encroaches into the Portland Harbor Federal Navigation Project ("FNP") at any time.

4. The permittee shall not interfere with Corps of Engineers personnel or its contractors engaged in hydrographic surveys, maintenance or improvement of the existing FNP. If, in the opinion of the Corps, the permittee's structures or vessels attached to them must be moved to allow for the maintenance or improvement of the existing FNP, the permittee shall move or remove all floats and pilings and/or vessels as directed by the Corps to facilitate these activities.

5. The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

6. The permittee shall not hold the Government or its contractor responsible for damage(s) to these structures or any vessels tied to them during surveying or dredging operations. The permittee shall not hold the federal government or its contractors responsible for any damages they incur from the interruption of their operation or from any measures he has to take to comply with Special Conditions 4.

7. Pile Driving operations shall conform to the Category 1 provisions of the Maine General Permit.



RESURGAM CITY OF PORTLAND, MAINE

Reviewed for Code Compliance
Inspections Division
Approved with Conditions

Date: 07/15/14

CITY OF PORTLAND
PORTLAND, MAINE

DIMILLO'S FLOAT EXTENSION

TEC ASSOCIATES CONSULTING ENGINEERS
46 SAWYER STREET SOUTH PORTLAND, MAINE 04106

SCALE	AS SHOWN	DATE	1 MAY 2014
JOB NUMBER 1326-1	DRAWN BY NJR	DESIGNED BY SFD	DRAWING NO.

SCALE 1:12000

0.0 0.1 0.2 0.3 0.4 0.5 MILE

0 100 200 300 400 500 600 700 800 900 YAR

0.0 0.1 0.2 0.3 0.4 0.5 0.6 0.7 0.8 KILOM

Name: PORTLAND WEST (ME)
Date: 05/15/14
Scale: 1 inch = 1,000 ft.

Location: 043.6538940° N 070.2510061° W

Copyright (C) 2009 MyTopo

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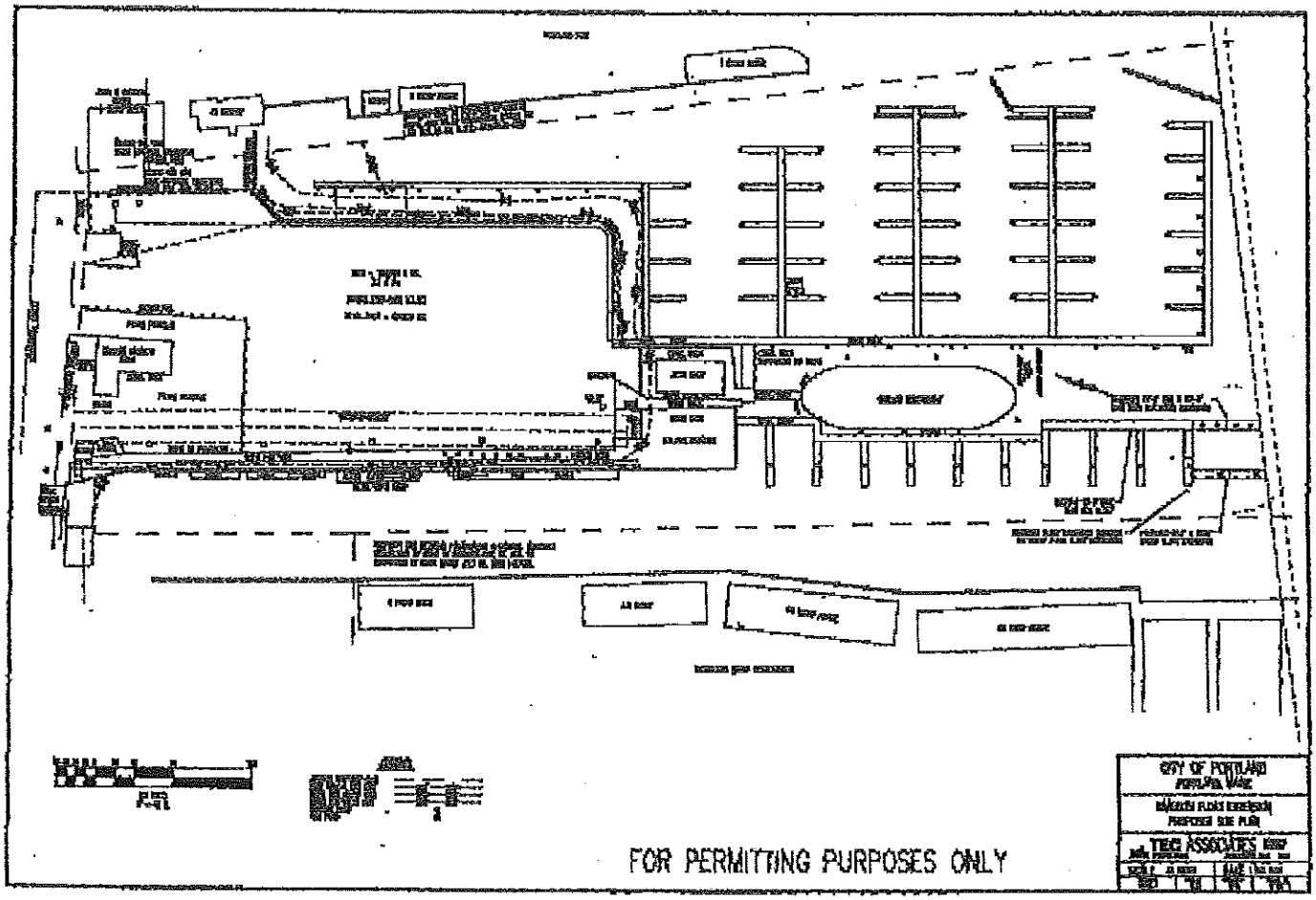

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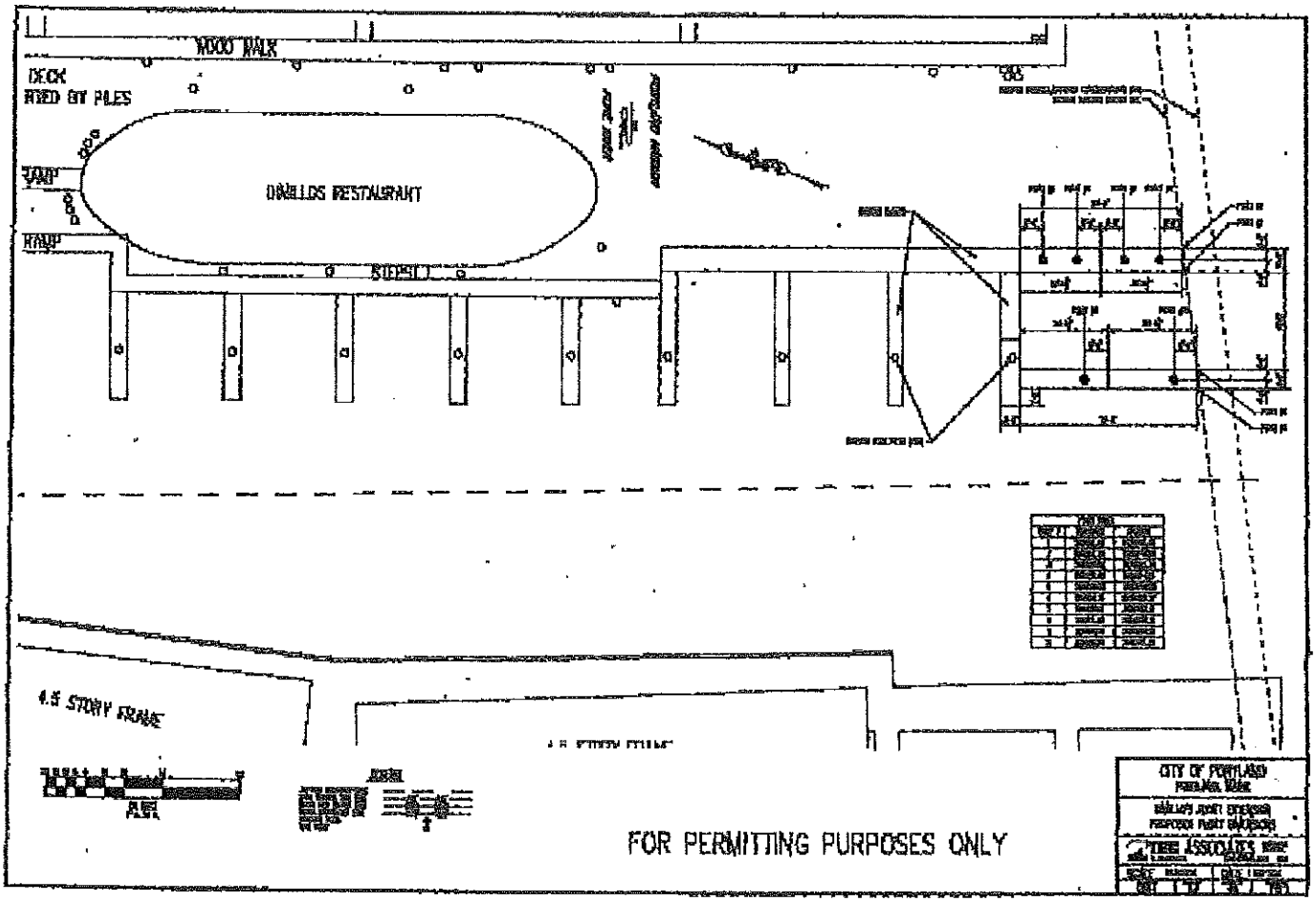

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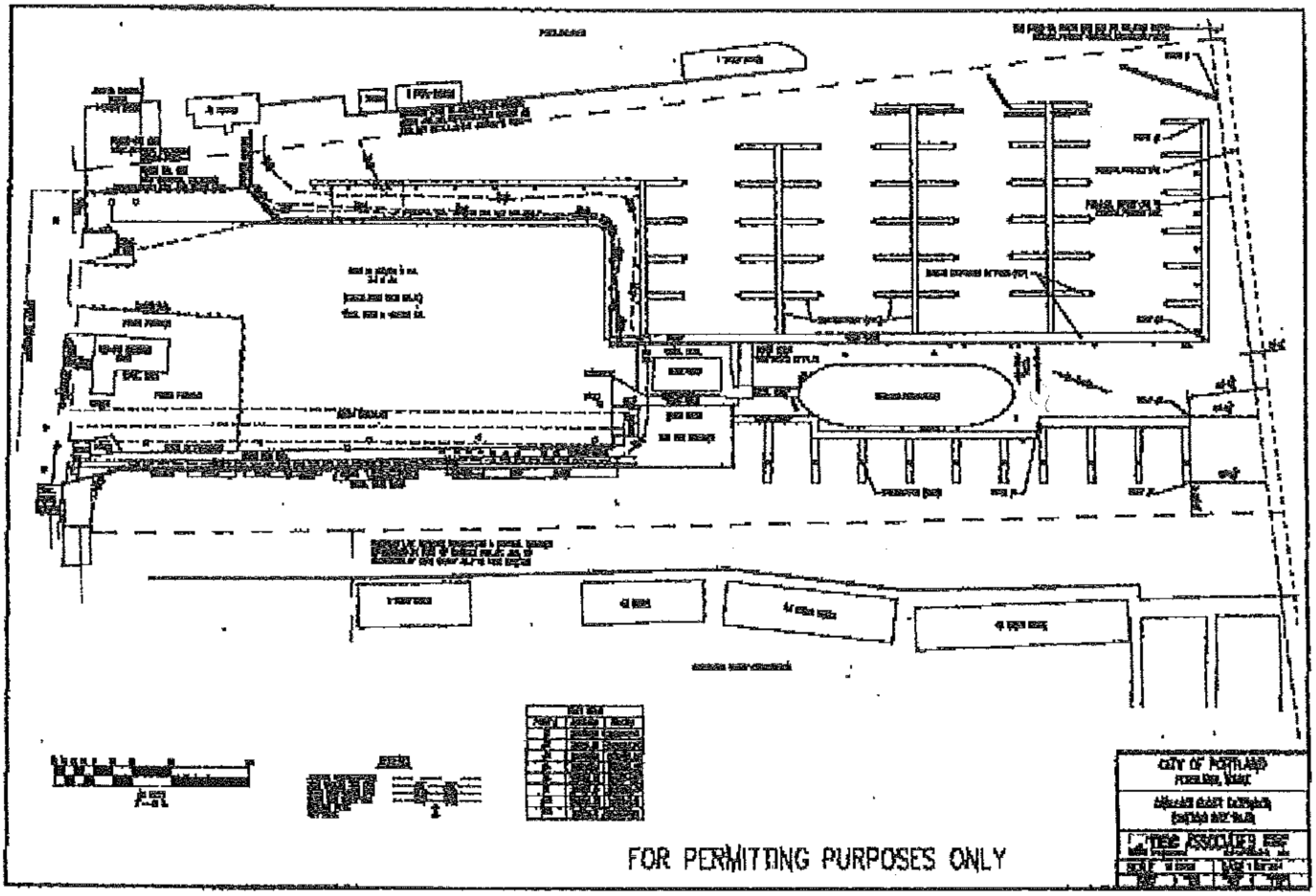

BOARD OF HARBOR COMMISSIONERS
PORT OF PORTLAND, MAINE

Reviewed for Code Compliance
Inspections Division
Approved with Conditions

Date: 07/15/14

Application for a Marine Construction Permit

DECISION

Date of public hearing:
May 8th, 2014

Name and address of applicant:
DiMillo's Marina
One Long Wharf
Portland, ME 04101

Location of project for which permit is requested:
One Long Wharf
Portland, ME 04101

Description of project:
Construct and install 4 pile supported floats to the southern end of the western float system;

For the Record:

Names and addresses of witnesses (proponents, opponents and others):
Nicholas Ray, TEC Associates

Exhibits admitted (e.g. renderings, reports, etc.):
Marine Construction permit application packet prepared by TEC Associates

Summary of testimony presented:
Applicant outlined the proposed project and answered questions from the board.

Findings of Fact and Conclusions of Law:

1) Waiver of 25ft rule as defined in Rule 16.2(b):

The Board of Harbor Commissioners may grant a waiver of the 25 foot rule if it finds that it would be unfair, inappropriate or unnecessary to apply the rule in a particular situation.

Granted ___ Not Granted ____

Reason: N/A

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Inspections Division
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Date: 07/15/14

Factors to be considered by the Board:

a. Whether the particular marine structure or obstruction under consi if allowed to be constructed or placed within 25 feet of a sideline, will permit a channel that will adequately allow the passage of vessels;

b. Whether existing marine structures or obstructions make it impossible for a channel wide enough to allow the passage of vessels to exist, regardless of the placement or construction of the marine structure under consideration;

c. The intended use of the marine structure of obstruction;

d. Whether granting a waiver would significantly reduce an abutting property owner's use of that abutting property, including but not limited to the owner's ability in the future to attach a marine structure to that abutting property;

e. Any boundary lines between properties that extend into the harbor as described in deeds, maps or plans; and

f. Any other factor the Board believes is relevant to whether a waiver should be granted in a particular case.

2) The marine structure or obstruction will not substantially or unreasonably interfere with navigation, including its impact on convenient channels for the passage of vessels.

Satisfied __x__ Not Satisfied ____

Reason:

3) The marine structure or obstruction will not injure the rights of others.

Satisfied __x__ Not Satisfied ____

Reason:

4) The marine structure or obstruction will not threaten public safety.

Satisfied __x__ Not Satisfied ____

Reason:

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Conclusion: (check one)

___ Option 1: The Board finds that the standards described above have b
and therefore GRANTS the permit.

_x_ Option 2: The Board finds that while the standards described above have been satisfied, certain additional conditions must be imposed to minimize adverse effects on navigation and/or public safety, and therefore GRANTS the permit SUBJECT TO THE FOLLOWING CONDITIONS:

- Width of vessels moored on the western most float are limited to a maximum width of 14';
- No Rafting on the western most float at anytime;
- Pilings, floats, structures and ramps must be built and installed as shown on the application;
- Post construction survey to be completed and approved by the Harbor Master's office;

___ Option 3: The Board finds that the standards described have NOT all been satisfied and therefore DENIES the permit.

Dated: 5-13-14

Jeff C. Liick
Harbor Master
Port of Portland
By Direction

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Inspections Division
Approved with Conditions

BOARD OF HARBOR COMMISSIONERS
PORT OF PORTLAND

Date: 07/15/14

PERMIT-A

TO BE POSTED IN A CONSPICUOUS PLACE AT THE CONSTRUCTION SITE

To: DiMillo's Marina
One Long Wharf
Portland, ME 04101

The Board of Harbor Commissioners for the Port of Portland has carefully considered your application, dated the 11th day of March, 2014 for a permit authorizing:

Construct and install 4 pile supported floats to the southern end of the western float system

Having given public notice of this pending application, as required by law, and therein designated the 8th day of May 2014, at 5:00 o'clock in the afternoon prevailing time as the time when they would meet at Portland City Hall, to examine this issue and hear all interested parties, and having met at the time and place mentioned and examined the location of this proposed construction project and having heard all interested parties, the Board of Harbor Commissioners for the Port of Portland hereby issues this permit which authorizes you to proceed under all applicable local and federal regulations hereinafter stated, and to maintain within the limits mentioned in the permit application.

In addition, the construction project described above must be surrounded by a containment boom unless the Board of Harbor Commissioners for the Port of Portland has waived this requirement in writing, either as part of the above-listed conditions, or in a separate statement.

This permit is limited authorization, which contains a stated set of conditions with which the permit holder must comply. If a contractor performs the work for you, both you and the contractor are responsible for assuring that the work is done in conformance with the conditions and limitations of this authorization. Please be sure that the person who will be performing the work has read and understands these conditions.

Performing any work not specifically authorized by this permit, or that fails to comply with its conditions, may subject your to the enforcement provisions of Harbor Commission regulations. If any change in plans or construction methods is found necessary, please contact the Harbor Commission immediately to discuss modifications to your authorization. Any change must be approved by the Harbor Commission before it is undertaken.

Nothing in this permit shall be construed to justify or authorize any invasion to the private rights of others. Moreover, nothing in this permit shall limit or modify the authority of the Board of Harbor Commissioners for the Harbor of Portland with its applicable statute. Attested copies will be submitted to the U. S. Army Corps of Engineers, the Department of Environmental protection, the City of Portland, and the City of South Portland.

In Witness Whereof, of the Board of Harbor Commissioners for the Port of Portland hereunto affix their corporate seal on this 8th day of May, 2014. The work authorized to this permit must be completed on or before the 8th day of May 2015.

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

PAUL R. LEPAGE
GOVERNOR

Reviewed for Code Compliance
Inspections Division
Approved with Conditions

Date: 07/15/14

May 2014

DiMillo's Old Port Marina
Attn: Mark Caron
1 Long Wharf
Portland, ME 04101

RE: Natural Resources Protection Act Application, Portland, DEP #L-19653-4P-B-N

Dear Mr. Caron:

Please find enclosed a signed copy of your Department of Environmental Protection land use permit. You will note that the permit includes a description of your project, findings of fact that relate to the approval criteria the Department used in evaluating your project, and conditions that are based on those findings and the particulars of your project. Please take several moments to read your permit carefully, paying particular attention to the conditions of the approval. The Department reviews every application thoroughly and strives to formulate reasonable conditions of approval within the context of the Department's environmental laws. You will also find attached some materials that describe the Department's appeal procedures for your information.

If you have any questions about the permit or thoughts on how the Department processed this application please get in touch with me directly. I can be reached at (207) 523-9807 or at david.cherry@maine.gov.

Sincerely,

David Cherry, Project Manager
Division of Land Resource Regulation
Bureau of Land and Water Quality

pc: File

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

Reviewed for Code Compliance
Inspections Division
Approved with Conditions

DEPARTMENT ORDER

IN THE MATTER OF

Date: 07/15/14

DIMILLO'S OLD PORT MARINA	) NATURAL RESOURCES PROTECTION ACT
Portland, Cumberland County	) COASTAL WETLAND ALTERATION
ADD FLOATING DOCKS	) WATER QUALITY CERTIFICATION
L-19653-4P-B-N (approval)	) FINDINGS OF FACT AND ORDER

Pursuant to the provisions of 38 M.R.S.A. Sections 480-A et seq. and Section 401 of the Federal Water Pollution Control Act, the Department of Environmental Protection has considered the application of DIMILLO'S OLD PORT MARINA with the supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

1. PROJECT DESCRIPTION:

A. History of Project: In Department Order L-19653-4E-A-N, dated August 31, 1998, the applicant was authorized to dredge 2,500 cubic yards of material from the Fore River. The northern section of the marina would be brought to a depth of -8 feet at Mean Low Water (MLW) to allow deep draft vessels to use this section of the marina.

B. Summary: The applicant proposes to add two sections of float docks. One section would utilize two 34-foot long by 10-foot wide floating docks with four guide pilings. The other section would have an addition of two 36-foot long by eight-foot wide floating docks with two guide pilings. The proposed project is shown on a set of plans titled, "DiMillo's Float Extension, Proposed Float Dimensions" and dated May 1, 2014. The project site is located off Commercial Street on Long Wharf in the City of Portland.

C. Current Use of the Site: The project location is currently used as a marina and floating restaurant. The project site is located on a 3.1-acre parcel and is identified as Lot #031 H001 on Map E10NW in the City of Portland's tax maps.

2. EXISTING SCENIC, AESTHETIC, RECREATIONAL OR NAVIGATIONAL USES:

In accordance with Chapter 315, Assessing and Mitigating Impacts to Scenic and Aesthetic Uses, the applicant submitted a copy of the Department's Visual Evaluation Field Survey Checklist as Appendix A to the application along with a description of the property and the proposed project. The applicant also submitted several photographs of the proposed project site including an aerial photograph of the project site. Department staff visited the project site on March 14, 2014.

The proposed project is located in the Fore River, which is a scenic resource visited by the general public, in part, for the use, observation, enjoyment and appreciation of its natural and cultural visual qualities. The applicant reduced the size of the floats to the minimum length

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necessary to accommodate the boats to reduce the visibility of the additional flo from the scenic resource.

The proposed project was evaluated using the Department's Visual Impact Assessment Matrix and was found to have an acceptable potential visual impact rating. Based on the information submitted in the application, the visual impact rating, and the site visit, the Department determined that the location and scale of the proposed activity is compatible with the existing visual quality and landscape characteristics found within the viewshed of the scenic resource in the project area.

The Department of Marine Resources (DMR) stated that the proposed project should not cause any significant adverse impact to navigation or recreation.

The Department finds that the proposed activity will not unreasonably interfere with existing scenic, aesthetic, recreational or navigational uses of the protected natural resource.

3. SOIL EROSION:

The applicant states that a floating turbidity curtain will be utilized on site to minimize the spread of any debris and sedimentation during the installation of the pilings. Construction will be done by barge and no excavation or wheeled or tracked equipment will be operated in the resource.

The Department finds that the activity will not cause unreasonable erosion of soil or sediment nor unreasonably inhibit the natural transfer of soil from the terrestrial to the marine or freshwater environment.

4. HABITAT CONSIDERATIONS:

According to the Department's Geographic Information System (GIS) database there are no mapped Essential or Significant Wildlife Habitats located at the site.

The DMR finds the proposed project will have little to no long-term impact to marine resources.

The Maine Department of Inland Fisheries and Wildlife (MDIFW) reviewed the proposed project and stated that, since the project is located in a well-developed area, the project should not have any significant impacts to wildlife resources.

The Department finds that the activity will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic or adjacent upland habitat, travel corridor, freshwater, estuarine or marine fisheries or other aquatic life.

5. WATER QUALITY CONSIDERATIONS:

The applicant proposes to use lumber treated with chromated copper arsenate (CCA) for the floats. To protect water quality, all CCA-treated lumber must be cured on dry land in a manner that exposes all surfaces to the air for 21 days prior to the start of construction.

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Provided that CCA-treated lumber is cured as described above, the Department proposed project will not violate any state water quality law, including those go classification of the State's waters.

6. WETLANDS AND WATERBODIES PROTECTION RULES:

The applicant proposes to directly alter six square feet of coastal wetland to install the guide pilings for the docks. The applicant proposes to indirectly alter 1,247 square feet as a result of shading from the proposed floats.

The Wetland Protection Rules interpret and elaborate on the Natural Resources Protection Act (NRPA) criteria for obtaining a permit. The rules guide the Department in its determination of whether a project's impacts would be unreasonable. A proposed project would generally be found to be unreasonable if it would cause a loss in wetland area, functions and values and there is a practicable alternative to the project that would be less damaging to the environment. Each application for a NRPA permit that involves a coastal wetland alteration must provide an analysis of alternatives in order to demonstrate that a practicable alternative does not exist.

A. Avoidance. No activity may be permitted if there is a practicable alternative to the project that would be less damaging to the environment. The applicant submitted an alternatives analysis for the proposed project completed by TEC Associates. The applicant indicates the project is necessary to lengthen the berthing space to provide more space for "mega" yachts. The applicant currently provides docking space at its fueling station.

Several options were considered by the applicant, such as using the existing dock space as is or installing one of three floating dock options. The first additional float option is a combination of using a 10-foot wide by 86-foot long float in conjunction with two eight-foot wide by 27-foot long floats and two six-foot wide by 27-foot long floats. The second option was to use an eight-foot wide by 86-foot long float with four six-foot wide by 27-foot long finger floats. The last option, and the current proposal, is to install a 10-foot wide by 68-foot long float and an eight-foot wide by 72-foot long float. The applicant determined that the marina must have additional dock space, thus moving to one of the three additional float options. The first option was rejected since it was unnecessary for the size requirements, would require more materials, and having the greatest amount of indirect impact. The second option was rejected since the docks were determined to be too narrow. The third option was chosen by the applicant since it would meet the size requirements needed for the marina yet minimize the indirect impact.

B. Minimal Alteration. The amount of coastal wetland to be altered must be kept to the minimum amount necessary for meeting the overall purpose of the project. The applicant proposes to install six pilings to guide the new floating docks. Due to the size of the floats, the pilings are necessary to provide safe and reasonable access to the docked boats. The significant portion of the project will be the floating docks. The applicant was required to amend the original proposal by the US Army Corps of Engineers due to the proximity of the project to the Federal Navigation Channel in Portland Harbor, which resulted in further minimization.

C. Compensation. In accordance with Chapter 310 Section 5(C)(6)(b), compensation is not required to achieve the goal of no net loss of coastal wetland functions and values since the project will not result in over 500 square feet of fill in the resource, which is the threshold over which compensation is generally required. Further, the proposed project will not have an

RESURGAM CITY OF PORTLAND, MAINE
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adverse impact on marine resources or wildlife habitat as determined by DMR a
For these reasons, the Department determined that compensation is not required

The Department finds that the applicant has avoided and minimized coastal wetland impacts to the greatest extent practicable, and that the proposed project represents the least environmentally damaging alternative that meets the overall purpose of the project.

7. OTHER CONSIDERATIONS:

The Department did not identify any other issues involving existing scenic, aesthetic, or navigational uses, soil erosion, habitat or fisheries, the natural transfer of soil, natural flow of water, water quality, or flooding.

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.A. Sections 480-A et seq. and Section 401 of the Federal Water Pollution Control 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 or adjacent upland 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 provided that CCA-treated lumber is cured as described in Finding 5.

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 Title 38 M.R.S.A. Section 480-P.

THEREFORE, the Department APPROVES the above noted application of DIMILLO'S OLD PORT MARINA to construct additional float docks as described in Finding 1, SUBJECT TO THE ATTACHED CONDITIONS, and all applicable standards and regulations:

L-19653-4P-B-N

Reviewed for Code Compliance
Inspections Division
Approved with Conditions
Date: 07/15/14

1. Standard Conditions of Approval, a copy attached.

2. The applicant shall take all necessary measures to ensure that its activities or the do not result in measurable erosion of soil on the site during the construction of the project covered by this approval.

3. Severability. The invalidity or unenforceability of any provision, or part thereof, of this License shall not affect the remainder of the provision or any other provisions. This License shall be construed and enforced in all respects as if such invalid or unenforceable provision or part thereof had been omitted.

4. All CCA-treated lumber shall be cured on dry land in a manner that exposes all surfaces to the air for 21 days prior to the start of construction.

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 12th DAY OF May, 2014.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Filed
MAY 12 2014
State of Maine
Board of Environmental Protection

BY: Michael Kuhn
For: Patricia W. Aho, Commissioner

PLEASE NOTE THE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES...

DC/L19653bn/ATS#77471

L-19653-4P-B-N

Reviewed for Code Compliance
Inspections Division
Approved with Conditions

Natural Resources Protection Act (NRPA)
Standard Conditions

Date: 07/15/14

THE FOLLOWING STANDARD CONDITIONS SHALL APPLY TO ALL PERMITS GRANTED UNDER THE NATURAL RESOURCE PROTECTION ACT, TITLE 38, M.R.S.A. SECTION 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.

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DEP INFORMATION SHEE

Appealing a Department Licensing Decisio

Date: 07/15/14

Dated: March 2012 Contact: (207) 287-2811

SUMMARY

There are two methods available to an aggrieved person seeking to appeal a licensing decision made by the Department of Environmental Protection's ("DEP") Commissioner: (1) in an administrative process before the Board of Environmental Protection ("Board"); or (2) in a judicial process before Maine's Superior Court. An aggrieved person seeking review of a licensing decision over which the Board had original jurisdiction may seek judicial review in Maine's Superior Court.

A judicial appeal of final action by the Commissioner or the Board regarding an application for an expedited wind energy development (35-A M.R.S.A. § 3451(4)) or a general permit for an offshore wind energy demonstration project (38 M.R.S.A. § 480-HH(1)) or a general permit for a tidal energy demonstration project (38 M.R.S.A. § 636-A) must be taken to the Supreme Judicial Court sitting as the Law Court.

This INFORMATION SHEET, in conjunction with a review of the statutory and regulatory provisions referred to herein, can help a person to understand his or her rights and obligations in filing an administrative or judicial appeal.

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

The laws concerning the DEP's *Organization and Powers*, 38 M.R.S.A. §§ 341-D(4) & 346, the *Maine Administrative Procedure Act*, 5 M.R.S.A. § 11001, and the DEP's *Rules Concerning the Processing of Applications and Other Administrative Matters* ("Chapter 2"), 06-096 CMR 2 (April 1, 2003).

HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD

The Board must receive a written appeal within 30 days of the date on which the Commissioner's decision was filed with the Board. Appeals filed after 30 calendar days of the date on which the Commissioner's decision was filed with the Board will be rejected.

HOW TO SUBMIT AN APPEAL TO THE BOARD

Signed original appeal documents must be sent to: Chair, Board of Environmental Protection, c/o Department of Environmental Protection, 17 State House Station, Augusta, ME 04333-0017; faxes are acceptable for purposes of meeting the deadline when followed by the Board's receipt of mailed original documents within five (5) working days. Receipt on a particular day must be by 5:00 PM at DEP's offices in Augusta; materials received after 5:00 PM are not considered received until the following day. The person appealing a licensing decision must also send the DEP's Commissioner a copy of the appeal documents and if the person appealing is not the applicant in the license proceeding at issue the applicant must also be sent a copy of the appeal documents. All of the information listed in the next section must be submitted at the time the appeal is filed. Only the extraordinary circumstances described at the end of that section will justify evidence not in the DEP's record at the time of decision being added to the record for consideration by the Board as part of an appeal.

RESURGAM CITY OF PORTLAND, MAINE
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WHAT YOUR APPEAL PAPERWORK MUST CONTAIN

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

1. *Aggrieved Status.* The appeal must explain how the person filing the appeal has standi appeal. This requires an explanation of how the person filing the appeal may suffer a p injury as a result of the Commissioner's decision.
2. *The findings, conclusions or conditions objected to or believed to be in error.* Specific references and facts regarding the appellant's issues with the decision must be provided in the notice of appeal.
3. *The basis of the objections or challenge.* If possible, specific regulations, statutes or other facts should be referenced. This may include citing omissions of relevant requirements, and errors believed to have been made in interpretations, conclusions, and relevant requirements.
4. *The remedy sought.* This can range from reversal of the Commissioner's decision on the license or permit to changes in specific permit conditions.
5. *All the matters to be contested.* The Board will limit its consideration to those arguments specifically raised in the written notice of appeal.
6. *Request for hearing.* The Board will hear presentations on appeals at its regularly scheduled meetings, unless a public hearing on the appeal is requested and granted. A request for public hearing on an appeal must be filed as part of the notice of appeal.
7. *New or additional evidence to be offered.* The Board may allow new or additional evidence, referred to as supplemental evidence, to be considered by the Board in an appeal only when the evidence is relevant and material and that the person seeking to add information to the record can show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process or that the evidence itself is newly discovered and could not have been presented earlier in the process. Specific requirements for additional evidence are found in Chapter 2.

OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

1. *Be familiar with all relevant material in the DEP record.* A license application file is public information, subject to any applicable statutory exceptions, made easily accessible by DEP. Upon request, the DEP will make the material available during normal working hours, provide space to review the file, and provide opportunity for photocopying materials. There is a charge for copies or copying services.
2. *Be familiar with the regulations and laws under which the application was processed, and the procedural rules governing your appeal.* DEP staff will provide this information on request and answer questions regarding applicable requirements.
3. *The filing of an appeal does not operate as a stay to any decision.* If a license has been granted and it has been appealed the license normally remains in effect pending the processing of the appeal. A license holder may proceed with a project pending the outcome of an appeal but the license holder runs the risk of the decision being reversed or modified as a result of the appeal.

WHAT TO EXPECT ONCE YOU FILE A TIMELY APPEAL WITH THE BOARD

The Board will formally acknowledge receipt of an appeal, including the name of the DEP project manager assigned to the specific appeal. The notice of appeal, any materials accepted by the Board Chair as supplementary evidence, and any materials submitted in response to the appeal will be sent to Board members with a recommendation from DEP staff. Persons filing appeals and interested persons are notified in advance of the date set for Board consideration of an appeal or request for public hearing. With or without holding a public hearing, the Board may affirm, amend, or reverse a Commissioner decision or remand the matter to the Commissioner for further proceedings. The Board will notify the appellant, a license holder, and interested persons of its decision.

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II. JUDICIAL APPEALS

Maine law generally allows aggrieved persons to appeal final Commissioner or Board licen Maine's Superior Court, see 38 M.R.S.A. § 346(1); 06-096 CMR 2; 5 M.R.S.A. § 11001; & 80C. A party's appeal must be filed with the Superior Court within 30 days of receipt of notice of the Board's or the Commissioner's decision. For any other person, an appeal must be filed within 40 days of the date the decision was rendered. Failure to file a timely appeal will result in the Board's or the Commissioner's decision becoming final.

An appeal to court of a license decision regarding an expedited wind energy development, a general permit for an offshore wind energy demonstration project, or a general permit for a tidal energy demonstration project may only be taken directly to the Maine Supreme Judicial Court. See 38 M.R.S.A. § 346(4).

Maine's Administrative Procedure Act, DEP statutes governing a particular matter, and the Maine Rules of Civil Procedure must be consulted for the substantive and procedural details applicable to judicial appeals.

ADDITIONAL INFORMATION

If you have questions or need additional information on the appeal process, for administrative appeals contact the Board's Executive Analyst at (207) 287-2452 or for judicial appeals contact the court clerk's office in which your appeal will be filed.

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.