



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

DEPARTMENT ORDER

IN THE MATTER OF

NEW YARD, LLC AND NORTHERN UTILITIES INC. DBA UNTIL Portland, Cumberland County CANAL LANDING L-25823-4E-A-N (approval)) NATURAL RESOURCES PROTECTION ACT) COASTAL WETLAND ALTERATION) ADJACENT ACTIVITIES) WATER QUALITY CERTIFICATION) FINDINGS OF FACT AND ORDER
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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 NEW YARD, LLC AND NORTHERN UTILITIES INC. DBA UNTIL with the supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

1. PROJECT DESCRIPTION:

A. History of Project: The proposed project site consists of approximately 22 acres of land located along the West Commercial Street waterfront in Portland, adjacent to the Casco Bay Bridge. For over a century, and up until the 1970's, portions of the property contained facilities operated by the Portland Gas Light Company and Maine Central Railroad.

B. Summary: The applicants propose to construct a number of marine-related buildings and shorefront improvements to support a boat maintenance and retail operation. Proposed shorefront structures will include two boat ramps, new/rehabilitated piers, and a travel lift basin. Specific activities will include earthwork, grading, shoreline stabilization, dredging, revetment restoration, pier rehabilitation, utilities, and overall site stabilization. The proposed project is shown on a set of plans, the first of which is titled "Canal Landing – Overall Existing Conditions Plan," prepared by DeLuca-Hoffman Associates and dated April 2012, with a latest revision date on any sheet of February 1, 2013. The project site has frontage on Commercial Street and shore frontage along the Fore River/Casco Bay.

The project will be constructed in phases. Phase I will include partial site clearing, stabilization, and general cleanup, construction of a 19,200-square foot tension fabric building for boat storage and maintenance, construction of a 22,417-square foot building for operations, administrative space and storage, construction of boat wash areas with water recycling systems, a yard area, stormwater systems, landscaping, construction of two concrete boat ramps, rehabilitation of former pier pilings for use as part of a new float system, construction of a travel lift basin, and repair of an existing granite revetment and riprap installation.

Plans for Phase II have not been fully developed at this time but may include uses such as a building for boat repair, continued expansion of the yard area, ancillary facilities such as boat

wash areas, marine retail and warehouse space, parking areas, and other marine-related uses such as seafood processing and storage and large vessel berthing near the rehabilitated pier area on the westerly end of the site.

Only a portion of the activities planned on the site will occur within 75 feet of the highest annual tide (HAT) line, or will result in the alteration of coastal wetland. These activities include pier rehabilitation, construction of boat ramps and a travel lift basin, two closed-loop boat wash down areas, shoreline stabilization, landscaping, and installation of stormwater management structures. Work below the HAT will include the removal of existing piles and some replacement of pilings with 12- to 14-inch diameter steel piles; the installation of two 20-foot wide concrete plank boat ramps, one near the west end of the site and one near the east end of the site; the construction of a travel lift basin cut into the shoreline with sheet pile retaining walls; the dredging of approximately 8,966 of material in preparation for the installation of the travel lift basin and in conjunction with remedial cleanup measures discussed below; the installation of eight-foot wide floats oriented both parallel and perpendicular to the shoreline near both boat ramps; and the installation of six finger floats to be installed perpendicular to the shore near the western end of the site to provide berthing space.

The project site's historical use as a gas manufacturing facility has resulted in various levels of contamination of the shorefront. Gas purification processes occurred on the site during which gasoline product was filtered through wood material. The spent wood material, or "box waste," was buried and continues to leach through the subsoils. Other types of waste from other prior uses have also been documented. These areas have been identified in a Voluntary Remediation Action Plan (VRAP) for the site. The VRAP will be done in conjunction with the development of the site, and a majority of the VRAP-related activities will take place on land owned by Unutil. Project plans have been forwarded to the Department's VRAP Coordinator in the Bureau of Remediation and Waste Management.

The proposed project is subject to review under the Site Location of Development Act. Pursuant to M.R.S.A. Section 489-A, the City of Portland has delegated review authority. The Department acknowledged the City's authority to review this application in a letter dated November 16, 2012.

C. Current Use of the Site: The site contains multiple parcels of land. One of the applicants, New Yard, LLC, plans to purchase approximately 14 acres of land from Portland Terminal Company. These parcels currently contain active rail tracks that lead to the Northern Utilities facility, remnant rail tracks, a gangway that leads to a remnant pier line, dolphins, numerous dilapidated pilings, active rail tracks near Commercial Street, a granite revetment near the shoreline, and a remnant concrete foundation floor slab that previously served as the foundation for a clay storage silo for paper mills. An active combined sewer overflow (CSO) line runs generally along the easterly side of the site from Commercial Street to the shoreline.

The remaining parcels containing approximately eight acres are currently owned by the other co-applicant, Northern Utilities dba Unutil. This parcel currently contains an LP gas distribution facility that will continue to function under a long-term lease agreement.

The existing shorefront is partly reinforced with riprap and with a granite block revetment. Throughout the site there are several rubble/debris/wood piles and concrete pad and pavement remnants.

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 aerial photographs. Department staff visited the project site on July 25, 2012.

The proposed project is located in the Fore River/Casco Bay, 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 project site currently contains an active LP gas distribution facility, a granite revetment, and numerous dilapidated and remnant structures as described in Finding 1. The Casco Bay Bridge dominates the landscape immediately east of the site, and the surrounding area contains bulk fuel storage and distribution facilities and other marine-related uses.

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 did not identify any issues involving existing recreational and navigational uses.

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:

Temporary and permanent erosion control measures will be utilized during construction in accordance with the Department's Best Management Practices. The shoreline work will be executed from shore or by barge. No tracked or wheeled equipment will be operated or placed below the HAT. Floating boom curtains will be placed around the perimeter of the dredging zone. Dredge spoils will be dewatered in accordance with the VRAP and will be disposed of as discussed in Finding 7.

The applicants submitted an Erosion and Sedimentation Control Report and supporting plans with the application. The report and plans were reviewed by, and revised in response to comments from, an engineer with the Division of Land Resource Regulation. Based on a review of these materials, the Department finds that the proposed 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:

The Maine Department of Inland Fisheries and Wildlife (MDIFW) reviewed the proposed project and stated that there are no Essential or Significant Wildlife Habitats at the project site. MDIFW had no concerns relative to the project.

The Department of Marine Resources (DMR) reviewed the proposed project and stated that potential adverse impacts could result from potential shading from the floats, the dredging activity, the removal and replacement of piles, the fill associated with the boat ramps, and the fill associated with the shoreline stabilization activities. DMR further commented that the proposed removal of approximately 43,377 square feet of existing dilapidated pier decking, and the cleanup of a one- to two-acre area by the removal of remnant pier piles is expected to offset potential adverse impacts to marine resources. Finally, DMR recommended that the removal and installation of piles in the intertidal should coincide with low tide conditions to further reduce potential adverse impacts to water quality and marine organisms. DMR had no concerns relative to navigation or recreation.

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 applicants propose to use lumber treated with chromated copper arsenate (CCA) to construct portions of the in-water structures. 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. Provided any CCA-treated lumber is cured as described above, the Department finds that the proposed project will not violate any state water quality law, including those governing the classification of the State's waters.

Approximately 100 to 200 existing pilings will be removed and/or replaced in preparation for the new float systems. Pilings will consist of 12-inch to 14-inch steel pipe driven at least 40 feet into the river bottom.

The boat wash facility will be equipped with a collection system that flows to a mobile settling tank where solids are collected and disposed of at a licensed solid waste facility. The wash water will be recycled for reuse in washing operations, which will essentially render it a closed system that does not result in discharge to the sewer or to the river.

Erosion control measures will be implemented during construction as discussed in Finding 3.

The Department does not anticipate that the proposed project will violate any state water quality law, including those governing the classification of the State's waters.

6. WETLANDS AND WATERBODIES PROTECTION RULES:

The applicants propose to fill approximately 6,544 square feet of coastal wetland (area below the HAT elevation) to install the boat ramps and riprap, and propose to dredge approximately 8,966 of material in conjunction with VRAP cleanup efforts and in preparation for the installation of the

travel lift basin. The repair of the existing granite block revetment will result in approximately 7,647 square feet of area below the HAT line that will be restored with granular material and geosynthetic fabric behind the wall for stabilization. This area is currently eroded due to water that overtops or otherwise penetrates the existing revetment and drags sediments into the river. Additionally, approximately 12,892 square feet of coastal wetland will be subject to shading effects from the proposed floats.

The Department's Wetlands and Waterbodies Protection Rules, Chapter 310, require that the applicant meet the following standards:

A. Avoidance. No activity may be permitted if there is a practicable alternative to the project that would be less damaging to the environment. Each application for a coastal wetland alteration permit must provide an analysis of alternatives in order to demonstrate that a practicable alternative does not exist. The applicants stated that the project site is currently underutilized but in a prominent location on the City's waterfront. The project would result in community benefits such as the rehabilitation and cleanup of a deteriorated industrial property that would help revitalize this section of the Portland waterfront.

The applicants submitted an alternatives analysis for the proposed project completed by DeLuca-Hoffman Associates and dated October 31, 2012. One of the applicants, New Yard LLC, reviewed its existing boatyard facilities in Portland and determined that they are unsuitable for expansion to accommodate its growing business. There is little remaining available shorefront property within the City that is suitable for this type of development.

B. Minimal Alteration. The amount of wetland to be altered must be kept to the minimum amount necessary for meeting the overall purpose of the project. The applicants considered several onsite alternatives for the project. On-site constraints include the existing LP and natural gas facility, proposed utilities, relocation of existing facilities, and driveway location on Commercial Street. Other factors taken into consideration were siting shorefront facilities to minimize impacts to the coastal wetland and utilizing some existing structures, such as dolphins and a gangway, to the extent possible. When completed, the facility is anticipated to occupy a lesser amount of area below the HAT than that which exists today.

C. Compensation. The proposed project includes the construction of a travel lift basin, two boat ramps, shorefront stabilization, dredging, and a floating dock system in the coastal wetland. The applicants completed a coastal wetland characterization of the project site. The Fore River shorefront at the site is a combination of mixed coarse and fine material and riprap. The intertidal zone contains numerous old pilings that are exposed during low tide. The shorefront is in close proximity to the federal channel, which experiences heavy traffic from large oil tankers and associated tugboats that create significant wave action. In all likelihood, this activity renders the shorefront less attractive for species that colonize these types of marine environments. The characterization concluded that the intertidal and subtidal zones in the area of the proposed project are compromised as a result of the site's historical uses and its location proximate to the federal channel, which accommodates the routine and frequent passage of large tankers and other vessels.

The project includes environmental remediation activities along the shorefront that will address long-standing contamination issues. The historical uses of the site, from rail yards to gas works, and the presence of an existing CSO discharge, have resulted in various levels and types of

contamination. The proposed project incorporates cleanup measures in accordance with the approved VRAP. These measures are expected to result in improved environmental conditions at the project site.

The existing dilapidated pier occupies 43,377 square feet of area. This area will be replaced by a substantially smaller pier system, thereby eliminating existing shading impacts. Additionally, the applicants intend to clean up a one- to two-acre area by removing existing remnant pilings.

Based on the coastal wetland characterization, the proposed remedial activities pursuant to the VRAP, the proposed cleanup measures that will be taken in redeveloping the site, and the finding of no significant adverse effect on marine resources or wildlife habitat as determined by DMR and MDIFW, the Department waives the requirement for compensation in accordance with Chapter 310 Section 5(C)(7).

The Department finds that the applicants have avoided and minimized 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:

As discussed in Finding 1, contamination has been documented on the project site as a result of past activities. One of the applicants, Unutil, is currently working with the Department through its Bureau of Remediation and Waste Management (BRWM) on a Voluntary Remedial Action Plan (VRAP) for a portion of the project site. BRWM reviewed the proposed project and commented that, while the proposal does not represent a detailed cleanup plan, it does relate the conceptual VRAP to the activities contemplated in the application, and is therefore acceptable. Specific details of the cleanup plan will be coordinated with BRWM.

The proposed project includes dredging an area of approximately 8,966 square feet (2,998 square feet of this total is located below mean low water). The volume of material to be dredged is estimated to be between 3,000 and 3,500 cubic yards. The dredged materials will not be disposed of offshore. Some of the proposed dredging is associated with the remedial activities to be undertaken as part of the VRAP and some of the material will be removed in preparation for the construction of the travel lift basin. Dredged materials will either be re-used on site in accordance with the VRAP, or will be transported to a solid waste facility that is licensed or otherwise approved by the Department to accept special waste, such as the Turnkey facility in New Hampshire. The cleanup work will be coordinated with the excavation and dredging activities associated with the travel lift basin construction.

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 provided the installation of piles occurs during low tide conditions as discussed in Finding 4.
- 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 any CCA-treated lumber is cured before construction 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 NEW YARD, LLC AND NORTHERN UTILITIES INC. DBA UNITIL to construct a vessel maintenance and repair facility with associated improvements as described in Finding 1, SUBJECT TO THE ATTACHED CONDITIONS, and all applicable standards and regulations:

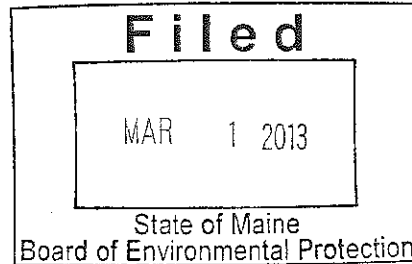
1. Standard Conditions of Approval, a copy attached.
2. The applicant shall take all necessary measures to ensure that their activities or those of their agents do not result in measurable erosion of soil on the site during the construction of the project covered by this approval.
3. Severability. The 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.

5. The removal and installation of piles in the intertidal shall be done during low tide conditions.

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 28th DAY OF February, 2013.

DEPARTMENT OF ENVIRONMENTAL PROTECTION



BY: Michael Kuhns for
Patricia W. Aho, Commissioner

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

MR/L25823AN/ATS#75467



Natural Resource Protection Act (NRPA) Standard Conditions

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.



DEP INFORMATION SHEET

Appealing a Department Licensing Decision

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.

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 standing to maintain an appeal. This requires an explanation of how the person filing the appeal 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.* 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.

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.A. § 346(1); 06-096 CMR 2; 5 M.R.S.A. § 11001; & 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. 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.
