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

Inspections Division
Date: 02/26/18

DEPARTMENT ORDER

IN THE MATTER OF

CANAL LANDING, LLC	) NATURAL RESOURCES PROTECTION ACT
Portland, Cumberland County	) COASTAL WETLAND ALTERATION
CANAL LANDING	) ADJACENT ACTIVITIES
L-25823-4E-D-N (approval)	) SIGNIFICANT WILDLIFE HABITAT
L-25823-TW-E-N (approval)	) WATER QUALITY CERTIFICATION
L-25823-2F-F-N (approval)	) FINDINGS OF FACT AND ORDER

Pursuant to the provisions of 38 M.R.S. §§ 480-A–480-JJ, Section 401 of the Federal Water Pollution Control Act (33 U.S.C. § 1341), and Chapters 310 and 315 of Department rules, the Department of Environmental Protection has considered the application of CANAL LANDING, LLC with the supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

1. PROJECT DESCRIPTION:

A. History of Project: In Natural Resources Protection Act (NRPA) Department Order # L-25823-4E-A-N dated March 1, 2013, the Department approved construction of several marine-related buildings and shorefront improvements to support a boat maintenance and retail operation along an approximately 23-acre parcel of land with waterfront on Commercial Street adjacent to the Casco Bay Bridge. The proposed project was subject to review under the Site Location of Development Act (Site Law). Pursuant to 38 M.R.S. § 489-A, the City of Portland reviewed and approved the proposed project under delegated review authority as a two-phased construction project. The proposed NRPA shorefront structures included two boat ramps, new/rehabilitated piers and floats, a travel lift basin and associated dredge for vessel birthing. Subsequent to approval of the Department Order # L-25823-4E-A-N and approval of the Site Law permit by the City of Portland, the Maine Department of Transportation (MDOT) acquired 18 of the approximately 23 acres by eminent domain taking for the International Marine Terminal (IMT) Expansion leaving a 5.03-acre parcel.

Construction of one of the two approved boat ramps, associated docks, and removing/replacing pilings and pier infrastructure occurred on the 5.03-acre parcel retained by the applicant approved by Department Order # L-25823-4E-A-N. Those activities and structures resulted in approximately 1,972 square feet of direct impacts and approximately 6,600 square feet of indirect impacts to coastal wetland. The co-applicant, Northern Utilities, dba Unitil, completed remediation actions including shorefront cleanup on land taken by MDOT in accordance with the Voluntary Remediation Action Plan (VRAP). Additional structures and activities approved by Department Order # L-25823-4E-A-N and the Site Law permit approved by the City of Portland, known as Phase I and II, included two buildings (48,000 square feet), utilities installment (sewer,

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water, power, communications), two new access drives onto West Commercial Street, and yard improvements including removal of rail infrastructure and placement of boatyard surface material for ground stabilization and handling runoff. Construction has been completed on the 5.03-acre parcel.

On June 29, 2016, Department Order #L-27017-4P-A-N/L-27017-2F-B-N approved a pier system and a 10-foot wide by 20-foot long boat storage building adjacent to the coastal resource on 0.19 acres at the west end of the parcel that resulted in 27 square feet of direct impacts from piles and 1,920 square feet of indirect impacts from shading of the pier, ramp and float. The pier system and boat storage have been constructed and is leased by the Waynflete School forrowing and other boating activities.

B. Summary: The applicant proposes to expand the existing 5.03-acre marine-related commercial maintenance and repair yard west to the adjacent 12.74-acre parcel with 1,540 linear feet of shorefront for relocating activities approved for the 18-acre parcel taken by MDOT in Department Order # L-25823-4E-A-N. The 12.74-acre parcel is bisected lengthwise by railroad tracks separating a triangular shaped 6.75 acres between the railroad tracks and West Commercial Street from the triangular shaped 5.99 acres along the shorefront. Together, the existing 5.03-acre parcel and the new 12.74-acre parcel will comprise a new 17.77-acre project area known as Canal Landing New Yard.

Proposed shorefront structures within 75 feet of the highest annual tide (HAT) line, or that will result in alteration adjacent to the coastal resource include temporary and permanent storage facilities including installation of portable toilets, trailers and storage buildings for sailboat masts and boat equipment, shoreline stabilization and revetment repair, construction of a 45-foot wide by 100-foot long travel lift basin with sheet pile walls and a concrete slab base, construction of a 20-foot wide precast and cast in place concrete panel boat ramp, and boatwash areas with water recycling systems. Other activities adjacent to the resource will include earthwork, utilities, grading, and overall site stabilization and landscaping.

Proposed structures and activities below the HAT line include the cleanup, removal or rehabilitation of approximately 2 to 3 acres of pier remnants or the rehabilitation or removal of approximately 400-500 piles within the coastal wetland; installation and fill for a boat ramp at the west end of the parcel; installation of sheet pile retaining walls and sheet pile wing walls for the travel lift basin; dredging intertidal and subtidal area for the installation of the travel lift basin and associated service floats; and installation of service floats, piles and dolphins along the length of shorefront.

The applicant proposes approximately 1,000 linear feet of eight-foot wide service floats to be tied into existing, replaced or salvaged wood and steel 12-inch to 14-inch diameter pilings and dolphins. The floats will be oriented parallel to and running along the shore. The proposed project also includes installation of approximately 13 finger floats, each approximately eight feet wide by 60 feet long that will be installed perpendicular and spaced along the parallel floats and one or more gangways to access the floats. The

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proposed float system will result in 17,090 square feet of new indirect impacts to the coastal resource due to shading.

The applicant proposes to dredge a 16,736-square foot area of coastal wetland seaward of the travel lift basin and along the shorefront under the proposed float system to accommodate birthing of large commercial vessels. The proposed project will remove 1,500-2,500 cubic yards of medium dense, clayey silt and trace fine sands using a long shaft excavating apparatus from shore. The dredge spoils will be placed in the far west section of the 6.75-acre parcel, stockpiled and spread to dry, and then combined with clean material for use on the parcel. The proposed project will dredge approximately 8,996 square feet of intertidal area and approximately 2,998 square feet of subtidal area, that which is necessary to acquire a minimum depth of 15 feet (-19 feet elevation) seaward of the travel lift basin and appropriate depths under the service floats for large vessels. The proposed dredge will resultin approximately 12,924 square feet of new direct impacts to the coastal wetland.

The proposed boat ramp will be similar in design to the boat ramp approved in Department Order #L-25823-4E-A-N and located east of the proposed travel lift basin. The boat ramp footprint will be lined with geotextile fabric and constructed with a gravel base below a six-inch thick precast and cast in place concrete panels with jersey barrier borders. Construction of the boat ramp and concrete panels will begin in the upland and continue to mean low water in the coastal wetland. The boat ramp will be 20 feet wide and 210 feet long and will include a three-foot wide elevated walkway along the upland side. The boat ramp will result in 4,850 square feet of fill inthe coastal wetlands.

The project is located in Tidal Waterfowl and Wading Bird Habitat (TWWH) which is considered a Significant Wildlife Habitat under NRPA. The proposed project will result in approximately 17,774 square feet of new direct impacts from the dredge and boat ramp fill and 17,090 of new indirect impacts due to shading from the float system and gangways. Together, Department Order # L-25823-4E-A-N, Department Order #L-27017-4P-A-N/L-27017-2F-B-N, and the proposed project known as Canal Landing New Yard, will result in 19,773 square feet of direct impacts due to dredging, two boat ramps, the existing pier and float structures. These combined projects will also result in 25,610 square feet of indirect impacts due to shading from new and existing floats. The proposed project is shown on a set of plans titled "Canal Landing – Amended Site Plan," prepared by Stantec Consulting Services, Inc and dated October 2017.

The proposed project is subject to review under the Site Location of Development Act. Pursuant to 38 M.R.S. §489-A, the City of Portland has reviewed Phase I, II and the proposed Phase III is currently under delegated review authority. The project site is located along the Fore River on West Commercial Street in the City of Portland.

C. Current Use of the Site: The 12.74 -acre parcel is largely unused with some disturbed and developed area. Railroad tracks divide the parcel into a 6.75-acre area adjacent to West Commercial Street that is used for access to the boat yard facilities and vessel parking and 5.99-acre shorefront area that contains unused, dilapidated remnants

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of piers/pilings and revetment wall over much of its length. There is an existing pier and boat storage building located at the west end of the parcel. The 5.99-acre shorefront area is identified as Lot 3 Map 60F and the 6.75-acre street front parcel is identified as Lot 1 Map 60F of the City of Portland's tax maps.

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

The Natural Resources Protection Act (NRPA), in 38 M.R.S. §480-D(1), requires the applicant to demonstrate that the proposed project will not unreasonably interfere with existing scenic, aesthetic, recreational and navigational uses.

In accordance with Chapter 315, *Assessing and Mitigating Impacts to Scenic and Aesthetic Uses* (06-096 C.M.R. ch. 315, effective June 29, 2003), 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 and surroundings including an aerial photograph of the project site. Department staff visited the project site on December 14, 2017.

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 existing shorefront contains mostly granite block revetment and remnants of dilapidated pier structures including dolphins, pilings and pier infrastructure from previous development at the site. Immediately east on the 5.03-acre parcel owned by the applicant improvements include a boat ramp, floats and marina yard areas. The Casco Bay Bridge dominates the landscape east of the site, and the surrounding area contains bulk fuel storage and distribution facilities, Pan Am railway tracks, a MDOT maintenance building and other marine-related uses. There will be no permanent changes to the scenic and aesthetic values when viewed from the public resource because dredging will take place at or below the water surface. Dredging equipment will be along the shore for approximately three months in the winter for this work. The cleanup and rehabilitation of this area and the additional proposed structures will be compatible with other marine-related uses in the area.

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 by staff, 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 based on the nature of the project and its location.

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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 NRPA, in 38 M.R.S. §480-D(2), requires the applicant to demonstrate that the proposed project 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.

Temporary and permanent erosion control measures will be utilized during construction in accordance with the Department's Best Management Practices. The applicant submitted an Erosion and Sedimentation Control Report and supporting plans with the application. The report and plans were reviewed by an engineer with the Bureau of Land Resources. All shoreline and dredge work will be executed from the shore using a long shaft excavating apparatus. Pile removals, salvaging, and replacement will be performed by barge through vibratory method. Floating silt curtains will be placed around the perimeter of the work zoneduring in-water work.

The applicant proposes to stockpile dredge material in the far west corner of the 6.75-acre area away from boat yard activity and from the Fore River. The natural topography of this area is lower than Commercial Street by several feet. Jersey barriers will be used along the length of the railroad right of way to contain the stockpile material. The dredge material will be stockpiled and spread to allow drying after which clean material will be placed at least 12 inches thick over the top and the area will then be landscaped. The Department's Division of Solid Material Management (DSMM) staff stated that based on initial sediment analysis they expect toissue a Beneficial Use License for this application.

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 provided the applicant provides the Department with a copy of the DSMM Beneficial Use License and that the disposal of dredge material complies with the Department's Solid Waste Management Rules (Chapter 418).

4. HABITAT CONSIDERATIONS:

The NRPA, in 38 M.R.S. §480-D(3), requires the applicant to demonstrate that the proposed project will not unreasonably harm 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.

The shoreline is a semi-protected channel of the Fore River that is subject to wave action from passing ships and vessels. The upland is largely undeveloped and the shorefront is a

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mix of riprap and granite block revetment wall that runs the entire length of the shoreline. The intertidal zone is mixed coarse and fines mudflat with many dilapidated piles from deteriorating piers. The subtidal area also contains numerous derelict piles. There are two active Combined Sewer Outfalls (CSO) maintained by the City of Portland in the area; one is located on the east end of the parcel and another further west on adjacent parcel.

The Maine Department of Inland Fisheries and Wildlife (MDIFW) reviewed the proposed project and stated that the project site is located in TWWH. MDIFW commented that this area of Portland Harbor is heavily developed and no significant impacts would be expected relative to the proposed project.

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, and the fill associated with the boat ramp. DMR further commented that the proposed removal of greater than 50,000 square feet of existing dilapidated piles and pier infrastructure, and the cleanup of those remnants is expected to offset potential adverse impacts to marine resources. DMR recommended that installation of piles in the intertidal zone coincide with low tide conditions to further reduce potential adverse impacts to water quality and marine organisms. DMR also recommend that installation of all piles and all dredge work be completed at low tides and within the winter work window between November 8th and April 8th of any year. Removal of derelict piles can be completed at any time and all removed material should be stored above mean low water.

Based on DMR and MDIFW review, 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 provided installation of any piles in the intertidal zone coincide with low tide conditions and all dredging and installation of new piles is completed between November 8th and April 8th of any year.

5. <u>WATER QUALITY CONSIDERATIONS</u>:

The NRPA, in 38 M.R.S. §480-D(5), requires the applicant to demonstrate that the proposed project will not violate any state water quality law, including those governing the classification of the State's water.

The applicants propose to use lumber treated with chromated copper arsenate (CCA) and precast concrete panels to construct 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.

Approximately 50,000 square feet of existing pilings/pier infrastructure will be removed and/or replaced in preparation for the new float system. New pilings will be fewer and

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consist of 12-inch to 14-inch diameter salvaged wood piles and new steel piles installed into the river bottom by the vibratory method.

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 thatdoes not result in discharge to the sewer or to the river.

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

Provided that 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.

6. WETLANDS AND WATERBODIES PROTECTION RULES:

The applicant proposes to fill 4,850 square feet of coastal wetland (area below the HAT line) to install a boat ramp and proposes to dredge approximately 12,924 square feet of material in preparation for the travel lift basin and float system. Additionally, 17,090 square feet of coastal wetland will be subject to shading effects from the proposed float system. Together, Department Order # L-25823-4E-A-N, Department Order #L-27017-4P-A-N/L-27017-2F-B-N, and the proposed project known as Canal Landing New Yard, will result in 19,773 square feet of direct impacts due to dredging, two boat ramps, the existing pier and float structures. These combined projects will also result in 25,610 square feet of indirect impacts due to shading from new and existing floats.

The *Wetlands and Waterbodies Protection Rules*, 06-096 C.M.R. ch. 310 (last amended January 26, 2009), interpret and elaborate on the 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. An applicant must submit an analysis of whether there is a practicable alternative to theproject that would be less damaging to the environment and this analysis is considered by the Department in its assessment of the reasonableness of any impacts. The applicant submitted an alternatives analysis for the proposed project completed by Stantec and datedOctober 26, 2017. The applicant stated that the project site is currently underutilizedbut 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 applicant reviewed its existing boatyard facilities in Portland and

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determined that it is 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. Department Order #L-25823-4E-A-N approved plans for this expansion on the adjacent property before the MDOT taking. Based on these considerations, there is no other practicable alternative to the proposed project that would accomplish the project purpose and avoid impacts to the coastal wetland.

B. Minimal Alteration. In support of an application and to address the analysis of the reasonableness of any impacts of a proposed project, an applicant must demonstrate that the amount of coastal wetland to be altered will be kept to the minimum amount necessary for meeting the overall purpose of the project. The applicant considered several on-site alternatives for the project. On-site constraints include the proposed utilities, coordination of layout with existing boatyard operations, alternatives for meeting goals of the Department's Chapter 500 Stormwater Regulations, relocation of existing boatyard facilities, and driveway locations 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 piles to the extent possible. No shoreline stabilization work will be completed below the HAT line. When completed, the facility is anticipated to occupy a lesser amount of area below the HAT line than that which exists today. The proposed project minimizes coastal wetland impacts to the greatest practicable extent.

C. Compensation. In accordance with Chapter 310 §5(C)(6)(b), compensation may be required to achieve the goal of no net loss of coastal wetland functions and values. This project will result in over 500 square feet of fill in the resource, which is the threshold over which compensation is generally required. The proposed project includes the construction of a travel lift basin, a boat ramp, dredging, and a floating dock system in the coastal wetland. The applicant 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 granite revetment wall. The intertidal zone contains numerous old pilings that are exposed during low tide. The shorefront is in close proximity to the federal navigation 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 project area are compromised because of the site's historical uses and its location proximate to the federal navigation channel.

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The proposed project includes cleanup and rehabilitation activities of existing structures at the site. The presence of existing CSO discharges in the area and historically heavy industrial use in the area have resulted in various levels and types of contamination surrounding the site. The existing dilapidated pier occupies greater than 50,000 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 and 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 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 finds, based on the design, proposed construction methods, and location, the proposed project will not inhibit the natural transfer of soil from the terrestrial to the marine environment, will not interfere with the natural flow of any surface or subsurface waters, and will not cause or increase flooding. The proposed project is not located in a coastal sand dune system, is not a crossing of an outstanding river segment, and does not involve the transport of dredge spoils by water.

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 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 provided installation of any piles within the intertidal zone coincide with low tide conditions and all dredging and installation of new piles be completed between November 8th and April 8th of any year.

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E. The proposed activity will not unreasonably interfere with the natural flow of any surface or subsurface waters provided that the applicant provides the Department with a copy of the DSMM Beneficial Use License and that the disposal of dredge material complies with the Department's Solid Waste Management Rules (Chapter 418).

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 38 M.R.S. § 480-P.

THEREFORE, the Department APPROVES the above noted application of CANAL LANDING LLC to construct a travel lift basin, boat ramp and float system 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 activities or those of its, 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 ifsuch 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. All installation of piles within the intertidal zone coincide with low tide conditions and dredging and installation of new piles shall be completed between November 8th and April 8th of any year.

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6. The applicant shall provide the Department with a copy of the Beneficial Use License from the DSMM for dredge spoils on site and that the disposal of dredge material complies with the Department's Solid Waste Management Rules (Chapter 418).

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 16TH DAY OF FEBRUARY, 2018.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Filed
FEB 16 2018
State of Maine
Board of Environmental Protection

BY: Mark Bergeron
For: Paul Mercer, Commissioner

PLEASE NOTE THE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES.

AS/ L258234EDN/L2582TWEN/L258232FFN ATS# 82452, 82782

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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.

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Erosion Control for Homeowners

Before Construction

1. If you have hired a contractor, make sure you discuss your permit with them.Talk about what measures they plan to take to control erosion. Everybody involved should understand what the resource is, and where it is located. Most people can identify the edge of a lake or river. However, the edges of wetlands are often not so obvious. Your contractor may be the person actually pushing dirt around, but you are both responsible for complying with the permit.

2. Call around to find where erosion control materials are available.Chances are your contractor has these materials already on hand. You probably will need silt fence, hay bales, wooden stakes, grass seed (or conservation mix), and perhaps filter fabric. Places to check for these items include farm & feed supply stores, garden & lawn suppliers, and landscaping companies. It is not always easy to find hay or straw during late winter and early spring. It also may be more expensive during those times of year. Plan ahead -- buy a supply early and keep it under a tarp.

3. Before any soil is disturbed, make sure an erosion control barrier has been installed. The barrier can be either a silt fence, a row of staked hay bales, or both. Use the drawings below as a guide for correct installation and placement. The barrier should be placed as close as possible to the soil-disturbance activity.

4. If a contractor is installing the erosion control barrier, double check it as a precaution. Erosion control barriers should be installed "on the contour", meaning at the same level or elevation across the land slope, whenever possible. This keeps stormwater from flowing to the lowest point along the barrier where it can build up and overflow or destroy the barrier.

During Construction

1. Use lots of hay or straw mulch on disturbed soil. The idea behind mulch is to prevent rain from striking the soil directly. It is the force of raindrops hitting the bare ground that makes the soil begin to move downslope with the runoff water, and cause erosion. More than 90% of erosion is prevented by keeping the soil covered.

2. Inspect your erosion control barriers frequently. This is especially important after a rainfall. If there is muddy water leaving the project site, then your erosion controls are not working as intended. You or your contractor then need to figure out what can be done to prevent more soil from getting past the barrier.

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3. Keep your erosion control barrier up and maintained until you get a good and healthy growth of grass and the area is permanently stabilized.

After Construction

1. After your project is finished, seed the area. Note that all ground covers are not equal. For example, a mix of creeping red fescue and Kentucky bluegrass is a good choice for lawns and other high-maintenance areas. But this same seed mix is a poor selection for stabilizing a road shoulder or a cut bank that you don't intend to mow. Your contractor may have experience with different seed mixes, or you might contact a seed supplier for advice.

2. Do not spread grass seed after September 15. There is the likelihood that germinating seedlings could be killed by a frost before they have a chance to become established. Instead, mulch the area with a thick layer of hay or straw. In the spring, rake off the mulch and then seed the area. Don't forget to mulch again to hold in moisture and prevent the seed from washing away or being eaten by birds or other animals.

3. Keep your erosion control barrier up and maintained until you get a good and healthy growth of grass and the area is permanently stabilized.

Why Control Erosion?

To Protect Water Quality

When soil erodes into protected resources such as streams, rivers, wetlands, and lakes, it has many bad effects. Eroding soil particles carry phosphorus to the water. An excess of phosphorus can lead to explosions of algae growth in lakes and ponds called blooms. The water will look green and can have green slime in it. If you are near a lake or pond, this is not pleasant for swimming, and when the soil settles out on the bottom, it smothers fish eggs and small animals eaten by fish. There many other effects as well, which are all bad.

To Protect the Soil

It has taken thousands of years for our soil to develop. It usefulness is evident all around us, from sustaining forests and growing our garden vegetables, to even treating our septic wastewater! We cannot afford to waste this valuable resource.

To Save Money ($$)

Replacing topsoil or gravel washed off your property can be expensive. You end up paying twice because State and local governments wind up spending your tax dollars to dig out ditches and storm drains that have become choked with sediment from soil erosion.

Inspections Division
Date: 02/26/18

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.

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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 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.

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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.