



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

DEPARTMENT ORDER

IN THE MATTER OF

MERCY HOSPITAL) SITE LOCATION OF DEVELOPMENT ACT
Portland, Cumberland County) NATURAL RESOURCES PROTECTION ACT
PHASE II RELOCATION PROJECT) TIER 3 WETLAND ALTERATION
L-20775-19-T-A (approval)) WATER QUALITY CERTIFICATION
L-20775-TG-U-N (approval)) FINDINGS OF FACT AND ORDER

Pursuant to the provisions of 38 M.R.S.A. Sections 481 et seq. and 480-A et seq., 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 MERCY HOSPITAL 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-20775-19-A-N/L-20775-TG-B-N, dated June 26, 2002, the Department approved the development of a new Mercy Hospital Campus on 85.5 acres off Congress Street, adjacent to the Fore River in Portland. In Department Orders #L-20775-19-C-T, #L-20775-19-D-M, and #L-20775-TG-E-M, the Department approved the partial transfer and modification of the original Orders by the Maine Department of Transportation for the construction of a connector road, the Fore River Parkway, across the property. Approximately three acres of land was transferred to the Maine Department of Transportation for the construction of the new Veteran's Bridge to South Portland. Subsequent Department Orders approved several minor modifications.

B. Summary: The applicant proposes to construct Phase II of the Mercy Hospital relocation project that consists of a 116,980-square foot hospital building expansion, a 15,000-square foot medical office building, a detached 40,000-square foot medical office building, a 51,800-square foot parking garage, a 33,800-square foot parking garage, an elevated parking deck and associated on-site traffic circulation renovations. The project includes utility service relocations and new stormwater management systems. The two existing site entrances will remain the same. The project is shown on a set of plans, the

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Mercy Hospital
175 Fore River
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first of which is titled "Site Development Plans for Mercy Hospital Fore River Hospital Relocation Project Amended Master Plan / Phase II Expansion," prepared by DeLuca-Hoffman Associates, and dated May 2012, with a last revision date of October 23, 2012. The project is located on the remaining approximately 33 acres of the parcel on the east side of the Fore River Parkway in the City of Portland.

The applicant is also seeking approval under the Natural Resources Protection Act to fill a 3.49-acre freshwater wetland.

C. Current Use of Site: The portion of the site that is east of the Fore River Parkway is completely developed except for the central portion of the site that is occupied by a pond and wetlands. The existing development includes a hospital building, a medical office building, a maintenance building, parking, utilities, and access roads.

2. FINANCIAL CAPACITY:

The total cost of the project is estimated to be \$5,378,880.00. The applicant submitted a letter from Eastern Maine Healthcare System, dated February 21, 2013, stating that Eastern Maine Healthcare System and Mercy Health System of Maine executed an affiliation agreement on January 14, 2013, pursuant to which Eastern Maine Healthcare System will become the sole corporate member of Mercy Health System of Maine. Pursuant to terms of the affiliation agreement and subject to the regulatory approval and closure of the transaction, as well as other contractual restrictions, Eastern Maine Healthcare System has committed to spending \$115 million in support of Mercy Health System of Maine. This financial support includes expanding the Fore River campus of Mercy Hospital to consolidate Mercy Hospital's State Street facility onto the Fore River campus. Prior to the start of construction, the applicant must submit evidence that it has been granted a line of credit or a loan by a financial institution authorized to do business in this State or evidence of any other form of financial assurance determined by Department Rules, Chapter 373(1), to be adequate to the Bureau of Land and Water Quality (BLWQ) for review and approval as a condition of compliance.

The Department finds that the applicant has demonstrated adequate financial capacity to comply with Department standards provided that the applicant submits evidence of financial capacity to the BLWQ for review and approval prior to the start of construction.

3. TECHNICAL ABILITY:

The applicant provided resume information for key consultants involved with the project and a list of projects successfully constructed by the applicant and the consultants. The applicant retained the services of DeLuca-Hoffman Associates, a professional engineering firm, to provide site design and engineering of the project. Haley and Aldrich provided geotechnical engineering, Normandeau Associates was the wetland consultant, Hoffman Engineering provided environmental engineering, Owen Haskell

provided land surveying services, SMRT provided architectural services and Tewhey Associates was the project manager.

The Department finds that the applicant has demonstrated adequate technical ability to comply with Department standards.

4. NOISE:

The proposed project is primarily the expansion of an existing hospital campus. A hospital is classified as a development producing a minor noise impact. The Department finds that no regulated sources of noise have been identified.

5. SCENIC CHARACTER:

The Mercy Hospital Fore River Campus is located between the Fore River Parkway and an active railroad line. The Cumberland County Jail is across the railroad tracks to the north, commercial development on Saint John Street is across the railroad tracks to the east, the Veterans' Memorial Bridge is to the south and a mud flat and Interstate Route 295 is across the Fore River Parkway to the west. The areas of the proposed project that are not to be covered with structures, parking areas or vehicle circulation facilities will be landscaped and maintained consistent with the current landscaping features including providing landscaped strips within parking lots. The project will be in keeping with the existing buildings, grounds and surrounding scenic character.

Based on the project's location and design, the Department finds that the proposed project will not have an unreasonable adverse effect on the scenic character of the surrounding area.

6. WILDLIFE AND FISHERIES:

The Maine Department of Inland Fisheries and Wildlife (MDIFW) reviewed Phase 1 of the Mercy Hospital project at the Fore River site in 2002 and stated that it found no records of any Essential or Significant Wildlife Habitats, or other wildlife habitats of special concern associated with this site. But MDIFW noted that the wetlands on the site, particularly the pond, was used by several species of waterfowl and wading birds and recommended that impacts to the birds be minimized by maximizing the retention of the existing buffer around the pond and maintaining or elevating the water level of the pond. The 2002 project was constructed to eliminate direct impact to the pond by directing stormwater runoff to other locations and placing a buffer around the pond. Subsequent monitoring of the site since 2006 has documented use by waterfowl (mallards, black ducks), wading birds (green heron, great blue heron), a variety of passerine species (red-winged blackbird, mocking birds, common yellow throat, song sparrow), gulls and painted turtles. Fish have been observed in the pond and mammal signs include grey fox, chipmunks and woodchucks.

As part of the review for the currently proposed expansion project that includes filling of the pond and wetland used by the above noted wildlife, MDIFW visited the site to determine if additional buffering could be added on land owned by Mercy Hospital adjacent to the Fore River on the northwest portion of the site to compensate for the loss of habitat in the pond area. Due to several issues on the land adjacent to the Fore River, it was determined that a buffer that would provide roosting habitat along the Fore River was not feasible. The loss of wetlands as a result of the proposed Phase II will be compensated for through a contribution into the In-Lieu Fee (ILF) program of the Maine Natural Resource Conservation Fund (MNRCF), discussed further in Finding 13. It was determined that the loss of wildlife habitat from the wetland impacts could be compensated for by emphasizing on the ILF Project Data Worksheet that the habitat losses include waterfowl habitat so that the funds could be used towards replacement of the habitat. It was also determined that the resident turtle population in the pond should be relocated. The applicant has developed a Turtle Trapping and Removal plan that followed the recommendations made by MDIFW. The applicant must implement the relocation plan prior to the start of construction and release the turtles to Capisic Pond Park in Portland and/or Evergreen Cemetery on Stevens Avenue in Portland, or to another location with prior approval from MDIFW.

The Department finds that the applicant has made adequate provision for the protection of wildlife and fisheries provided the wildlife habitats are noted on the In Lieu Fee (ILF) Project Data Worksheet and that prior to the start of construction, the Turtle Trapping and Removal plan is implemented as recommended by MDIFW.

7. SOILS:

There are several locations on the site that have lead-contaminated ash from the former railroad operations that have been covered with clean soil or bituminous pavement to prevent direct exposure. The proposed project was reviewed by an Oil and Hazardous Materials Specialist in the Bureau of Remediation and Waste Management (BRWM) in regards to the existing Voluntary Response Action Plan for the site. BRWM concluded that they have no issues with the planned expansion provided that the appropriate precautions are followed during the project to insure that the contaminated ash is handled, placed on site and/or disposed as appropriate and that the necessary cover systems are in place once the project is completed. The current deed restrictions on the property that were placed during Phase 1 work are consistent with and adequate as future restrictions for the property, and will continue to be subject to the operation and maintenance program with annual inspections.

The applicant has previously submitted a geotechnical report based on the soils found at the project site which was previously reviewed by the Division of Environmental Assessment (DEA).

The Department finds that, based on the comments from the BRWM and DEA's previous review, the soils on the project site present no limitations to the proposed project that cannot be overcome through standard engineering practices.

8. STORMWATER MANAGEMENT:

The proposed project includes approximately 4.12 acres of new impervious area for a total of 19.80 acres of impervious area, and 4.89 acres of new developed area for a total of approximately 29.03 acres of developed area. It lies within the watershed of the tidal waters of the Fore River. The applicant submitted a stormwater management plan based on the Basic, General, and Flooding standards contained in Department Rules, Chapter 500. The proposed stormwater management system consists of an underdrained soil filter, an underdrained bioretention cell, an underdrained subsurface sand filter, and proprietary filters (Filterra® and StormFilter®).

A. Basic Standards:

(1) Erosion and Sedimentation Control: The applicant submitted an Erosion and Sedimentation Control Plan that is based on the performance standards contained in Appendix A of Chapter 500 and the Best Management Practices (BMPs) outlined in the Maine Erosion and Sediment Control BMPs, which were developed by the Department. This plan and plan sheets containing erosion control details were reviewed by, and revised in response to the comments of, the Division of Land Resource Regulation (DLRR) of the BLWQ.

Erosion control details will be included on the final construction plans and the erosion control narrative will be included in the project specifications to be provided to the construction contractor.

(2) Inspection and Maintenance: The applicant submitted a maintenance plan that addresses both short and long-term maintenance requirements. This plan was reviewed by, and revised in response to the comments of, DLRR. The maintenance plan is based on the standards contained in Appendix B of Chapter 500. The applicant will be responsible for the maintenance of all common facilities including the stormwater management system.

Prior to occupancy of the new buildings, the applicant must submit a copy of an executed long-term maintenance contract (minimum of 5 years and renewable) for the on-going maintenance of the Filterra®, the underdrained subsurface sand filter, and the StormFilter® to the BLWQ. Storm sewer grit and sediment materials removed from any parts of the stormwater management system, including conveyance structures, during maintenance activities must be disposed of in compliance with the Maine Solid Waste Management Rules.

(3) Housekeeping: The proposed project will comply with the performance standards outlined in Appendix C of Chapter 500.

Based on DLRR's review of the erosion and sedimentation control plan and the maintenance plan, the Department finds that the proposed project meets the Basic Standards contained in Chapter 500(4)(A).

B. General Standards:

The applicant's stormwater management plan includes general treatment measures that will mitigate for the increased frequency and duration of channel erosive flows due to runoff from smaller storms, provide for effective treatment of pollutants in stormwater, and mitigate potential temperature impacts. This mitigation is being achieved by using Best Management Practices (BMPs) that will control runoff from 95% of the impervious area and 96% of the developed area.

The stormwater management system proposed by the applicant was reviewed by, and revised in response to comments from, DLRR. After a final review, DLRR commented that the proposed stormwater management system is designed in accordance with the General Standards contained in Chapter 500(4)(B) and recommended that the applicant retain the design engineer, or another qualified engineer, to oversee the construction of the stormwater management structures according to the details and notes specified on the approved plans. Within thirty days of completion of each stormwater management structure, the applicant must submit a log of inspection reports detailing the items inspected, photos taken, and the dates of each inspection to the BLWQ for review.

Based on the stormwater system's design and DLRR's review, the Department finds that the applicant has made adequate provision to ensure that the proposed project will meet the General Standards contained in Chapter 500(4)(B).

C. Flooding Standard:

The applicant is not proposing a formal stormwater management system to detain stormwater from 24-hour storms of 2-, 10-, and 25-year frequency. Instead, since the project site is located adjacent to a tidal section of the Fore River, the applicant requested a waiver from the flooding standard pursuant to Department Rules, Chapter 500(4)(E)(2)(a). DLRR reviewed the request for a waiver of the flooding standard and recommended that the waiver be granted.

The Department finds that the proposed project will meet the Chapter 500 standards for management of stormwater discharges and discharges to coastal wetlands.

9. WATER SUPPLY:

When completed, the proposed expanded project is anticipated to use 63,919 gallons of water per day. Water will be supplied by the Portland Water District. The applicant submitted a letter from the Portland Water District, dated January 2, 2013, indicating that it will be capable of servicing this project.

The Department finds that the applicant has made adequate provision for securing and maintaining a sufficient and healthful water supply.

10. WASTEWATER DISPOSAL:

When completed, the proposed project is anticipated to discharge up to 63,919 gallons of wastewater per day to the Portland Water District's East End wastewater treatment facility. This project was reviewed and approved by the Division of Water Quality Management (DWQM) of the BLWQ, which commented that the East End wastewater treatment facility has the capacity to treat these flows but has some non-compliance issues that are being addressed by the Portland Water District and scrutinized by the Department.

Based on DWQM's comments, the Department finds that the applicant has made adequate provision for wastewater disposal at a facility that has the capacity to ensure satisfactory treatment.

11. SOLID WASTE:

All municipal solid wastes from the proposed project will be disposed of at Ecomaine, which is currently in substantial compliance with the Maine Solid Waste Management Rules. All wood waste generated from site clearing, such as stumps and grubblings, will be ground and used on site. Any treated wood and mixed construction and demolition debris will be transported to Juniper Ridge Landfill in Old Town or Waste Management in Norridgewock. Untreated wood waste from construction will be sent to KTE Biofuels in Lewiston or to the City of Portland Riverside Recycling Facility. Any petroleum-contaminated soils will be transported to CPRC Group in Scarborough. Biomedical waste will be disposed of at Stericycle in Massachusetts. Any chemical waste will be sent to Clean Harbors Waste Disposal Services. Scrap metal will be sent to One Steel located in Arundel and Oakland, or to Schnitzer Steel in Portland. Any coal ash encountered will be handled in accordance with the Voluntary Response Action Plan. The BRWM reviewed this section of the application and found these facilities are in substantial compliance with the Maine Solid Waste Management Rules.

Based on the above information, the Department finds that the applicant has made adequate provision for solid waste disposal.

12. FLOODING:

The project is adjacent to tidal mudflats of the Fore River. The one hundred year flood elevation of the Fore River and Atlantic Ocean is elevation 10.0 (NGVD 29). The pond and the surrounding wetlands in the old excavated gravel pit portion of the site are below elevation 10.0 and could possibly flood from backflow from the Fore River through the storm drain system. After the pond and surrounding wetlands are filled for the proposed project, all the elevations of the site east of the Fore River Parkway will be above the one hundred year flood elevation. This loss of flood plain area in the Fore River watershed is unlikely to cause an increase in the flood elevation of the Fore River and the surrounding areas because the amount of flood plain area loss from the proposed project is very small in comparison to the flood plain area of the Fore River and surrounding tidal areas.

The Department finds that the proposed project is unlikely to cause or increase flooding or cause an unreasonable flood hazard to any structure.

13. WETLAND IMPACTS:

The applicant proposes to alter 151,924 square feet (3.49 acres) of wetlands to construct the proposed project. The types of wetland proposed to be impacted are 63,446 square feet of open water, 51,236 square feet of emergent/open water wetland, 17,298 square feet of forested wetland, 10,895 square feet of shrub/emergent wetland, 6,458 square feet of shrub wetland, and 2,591 square feet of emergent wetland. These wetlands are the existing pond and the surrounding wetlands in the central part of the site that were originally created from gravel extraction below the groundwater table. The pond is considered artificial and is not considered a wetland of special significance. The purpose and need of the wetland impact is to consolidate the operations of the hospital from the existing two campuses, one on State Street and one on the Fore River Parkway, to a single hospital campus on the Fore River Parkway site, which will allow Mercy Hospital to increase the capacity of the hospital for outpatient care and to provide a facility that meets current hospital standards.

In Department Order #L-20775-19-A-N/L-20775-TG-B-N, dated June 26, 2002, the Department approved 39,835 square feet (0.91 acre) of mostly scrub shrub wetland impact for the initial development of the site by the applicant. The cumulative wetland impact for the existing project plus the proposed project is 191,301 square feet (4.40 acres).

The Wetland Protection Rules 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 Natural Resources Protection Act permit that involves a freshwater

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 alternative analysis for the proposed project completed by Normandeau Associates and dated July 2012.

The applicant evaluated using single and dual campus alternatives to bring the hospital up to appropriate standards of care, safety, efficiency, convenience, and cost effectiveness. The applicant examined moving all operations back to the State Street campus; however the existing facility on State Street has the deficiencies of an aging facility including: an internal power distribution system that is antiquated, at-load capacity and in need of replacement; piping systems that need replacement; the two primary chillers of the heating, ventilating and air conditioning system need replacement; and the lack of space for parking is a major issue that includes high costs and inconvenience for patients and employees. Therefore, moving back to a single campus on State Street is not a feasible alternative because it will not meet the project purpose based on the expense and the inability to create a state-of-the-art healthcare facility.

The applicant evaluated moving all operation to a third site. A search was conducted for alternative sites in 2001 and 2002 that found no other local site was feasible or appropriate. The relocation of all operations to a third location is considered not practicable because it would not meet the project purpose of having a facility in Portland and the \$90 million invested in the Fore River location could not be recouped which would jeopardize the long-term sustainability of the hospital.

The applicant evaluated maintaining a dual campus, but has found that two campuses perpetuates unfavorable conditions that would render the hospital unsustainable in the long term because of safety issues, operational difficulties, inconvenience, the expenses of duplicated services, bussing between facilities and renovating the State Street facility, and does not meet the project purpose of having a cost-effective, safe, and state-of-the-art healthcare facility.

The applicant evaluated consolidating operations onto the Fore River Campus with the proposed expansion. This would result in a state-of-the-art facility that would be best for healthcare delivery logistics, staff and patient access, reduction in operating costs, increases in staff efficiency, eliminating the need for duplicated services, and could lead to higher employee retention rates. This alternative meets the project purpose, is practicable in terms of cost effectiveness, and provides a state-of-the-art facility.

The applicant evaluated five alternative site layouts for the expanded Fore River campus, which included layouts that partially or completely filled the central wetland. Alternative ONS-3 shown in the project application avoided impacts to the wetland but did not

address current and anticipated future changes in the U.S. healthcare delivery system, including large increases in the amount of outpatient and ambulatory services provided by hospital campuses which would create a need for increased hospital size and more adjacent parking. Therefore, alternative ONS-3 was rejected.

Alternatives ONS-4 thru ONS-7 represented site layouts that minimize impacts to the central wetland, however they result in an unacceptable facility design that significantly limits the hospital's clinical operations. These unacceptable facility designs include congested and unsafe traffic circulation conditions where the Ambulatory Care Center and Emergency Department entrances are immediately adjacent to one another and other traffic circulation problems that result in confusion and congestion problems for incoming patients and visitors. These designs do not provide parking structures that are located in the critically essential location immediately adjacent to the ambulatory care center. These alternatives would also encroach on the wetland. One of the primary functions and values of the wetland is wildlife habitat, and it was recognized that direct encroachment on the wetland, shading of the wetland, and human activities associated with the building in closer proximity to the wetland would likely have a detrimental effect on this wetland function and value. Although these alternatives would have less direct wetland impact than the proposed project, these alternatives were deemed impracticable for the delivery of patient care services and would likely have detrimental effect on the wetland's wildlife functions and values.

Alternative ONS-8 is the basis of the proposed project. This alternative fills the entire central wetland and raises the grades of the site up such that the emergency department entrance and the building expansion entrance are at the same elevation as the entrance of the Phase 1 hospital. This feature is an important design element to the hospital because it reduces patient and visitor navigation issues inside the building. This alternative meets the current standards for hospital design with appropriate adjacencies and colocation of key services; allows physician and staff efficiency because it has inpatient and outpatient services at one facility; it provides parking for both patients and staff adjacent to the hospital; and, provides enough floor space to meet current program objectives. It is the connectedness of the existing and proposed facility and the future expansion potential that makes this alternative the preferred alternative and the applicant stated that this is the only practicable alternative of meeting the project purpose of a state-of-the-art facility.

B. Minimal Alteration. The amount of freshwater wetland to be altered must be kept to the minimum amount necessary for meeting the overall purpose of the project. The applicant examined alternative site layouts for the project and the only site layout that met the overall purpose of the project proposes to fill 3.49 acres of wetland. Other alternative site layouts that had less direct impact to the wetland were reviewed, but they did not meet the project purpose and need and the wetland alterations, although smaller, would most likely compromise the higher functions and values of the wetland. Given the chosen alternative described in Finding 13 A, the amount of alteration cannot be further minimized.

C. Compensation. Compensation is required to achieve the goal of no net loss of wetland functions and values because the project alters greater than 15,000 square feet of freshwater wetland, which is the threshold over which compensation is generally required. The applicant conducted a wetland mitigation site search and concluded that on-site mitigation was not possible due to space constraints. Although off-site parcels represented viable options for wetland compensation, none of the parcels meet the objectives of compensating for the lost wetland acreage and functions and values within the watershed. The applicant proposes to mitigate for the lost wetland functions and values by making a payment to the In-Lieu Fee (ILF) program of the Maine Natural Resource Conservation Fund (MNRCF).

The wetland that is proposed to be filled was originally formed as a gravel extraction area that was excavated below the groundwater table. This wetland was used as a wetland preservation area to partially compensate for the 0.91 acre of wetland losses approved in Department Order #L-20775-19-A-N/L-20775-TG-B-N. As part of the wetland compensation package for that permit and to enhance the wildlife habitat at the site, the pond and surrounding wetland was enhanced by the removal of solid wastes (such as trash, white goods, tires, metal, etc.), the water quality of the pond was protected by designing the stormwater management system such that only limited amounts of stormwater were directed to the wetland, and a narrow buffer around the wetland was maintained. The remaining wetland compensation for the 0.91 acre of impact from the initial project was 0.21 acre wetland creation in swales on the west side of the Fore River Parkway. The 0.21 acre of wetlands created as compensation for the initial project will not be affected by the proposed project.

The wetland proposed to be impacted is classified as a palustrine (freshwater) system with the following cover type classes: emergent (PEM1), open water (PUB3/4), forested (PFO1), and shrub wetland (PSS1). The pond is fed by a groundwater discharge that appears to flow year-round; therefore, groundwater recharge/discharge is considered a principle function of the wetland. Small fish have been observed in the pond in the past; this population is likely the remnant from birds or the previous hydrological connections to the Fore River and is supported by the groundwater flows; hence, fish and shellfish habitat is a principle function of the wetland. Sediment/toxicant retention is expected to be one of the principle functions of the wetland because any toxicants and sediments flowing into the wetland from the surrounding uplands would become trapped in the organic rich substrate observed in many areas around the pond. Nutrient removal/retention/transformation is expected to be another principle function of the wetland based on the observation of the density and type of vegetation thriving in the wetland and the presence of organic deposits in the wetland. Floodflow alteration is not a principle function of the wetland. Production export is not considered a principal function either. The wetland does provide food for wildlife. The wetland provides habitat for small fish, invertebrates and amphibian populations, which provides a forage base for secondary and tertiary consumers. Reptiles (turtles) have been observed basking

around the pond. Piscivorous birds, including herons, were observed foraging in and along the pond habitat. Migratory waterfowl, including mallard ducks and black ducks, were observed using the wetland. Although the wetland provides food for the wildlife utilizing the wetland, it does not provide nutrients that are transported out of the wetland. Wildlife habitat is considered to be a principle function of the wetland because of the variety of resident and migratory species present. As noted above, the pond has populations of invertebrates, fish and amphibians that provide a forage base for higher trophic level consumers. The wetlands and adjacent forested upland also support small mammals such as voles, shrews, field mice, and potentially larger mammals such as fox and woodchucks. Uniqueness/heritage value is believed to be present because the central wetland is somewhat unique as the surrounding land is developed and freshwater wetlands are rare on the Portland peninsula.

The wetland compensation required in Department Order #L-20775-19-A-N/L-20775-TG-B-N for 0.70 acre of wetland impacts will be eliminated by the proposed project, plus an additional 3.49 acres of wetland impact requires compensation, therefore the total amount of wetland impact requiring compensation for the project is 4.19 acres. The applicant proposes to make a contribution into the ILF program of the MNRCF in the amount of \$834,156.00. Prior to the start of construction, a cashier's check or bank draft, payable to "Treasurer, State of Maine", with the permit number noted on the check, must be mailed to: ME DEP, Attn: ILF Program Administrator, State House Station 17, Augusta, ME 04333.

The Department finds that the applicant has 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 provided that prior to project construction, the applicant submits the ILF payment as described above.

14. AIR QUALITY:

The applicant has obtained an air emissions license from the Bureau of Air Quality, #A-912-71-A-N, for Phase I of the project. The applicant must amend its air emissions license from the Bureau of Air Quality prior to using any new equipment that requires an air emissions license.

15. ALL OTHER:

All other Findings of Fact, Conclusions and Conditions remain as approved in Department Order #L-20775-19-A-N and #L-20775-TG-B-N, and subsequent orders.

BASED on the above findings of fact, and subject to the conditions listed below, the Department makes the following conclusions pursuant to 38 M.R.S.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 habitat, travel corridor, freshwater, estuarine, or marine fisheries or other aquatic life provided that the applicant makes a contribution to the In-Lieu Fee (ILF) program, the wildlife habitat losses are noted on the In Lieu Fee (ILF) Project Data Worksheet as described in Findings 6 and 13, and the Turtle Trapping and Removal plan is implemented prior to construction as described in Finding 6.
- E. The proposed activity will not unreasonably interfere with the natural flow of any surface or subsurface waters.
- F. The proposed activity will not violate any state water quality law including those governing the classifications of the State's waters.
- G. The proposed activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties.
- H. The proposed activity is not on or adjacent to a sand dune.
- I. The proposed activity is not on an outstanding river segment as noted in 38 M.R.S.A. Section 480-P.

BASED on the above findings of fact, and subject to the conditions listed below, the Department makes the following conclusions pursuant to 38 M.R.S.A. Sections 481 et seq.:

- A. The applicant has provided adequate evidence of financial capacity and technical ability to develop the project in a manner consistent with state environmental standards provided that the applicant submits evidence of financial capacity to the BLWQ for review and approval prior to the start of construction as described in Finding 2.

- B. The applicant has made adequate provision for fitting the development harmoniously into the existing natural environment and the development will not adversely affect existing uses, scenic character, air quality, water quality or other natural resources in the municipality or in neighboring municipalities.
- C. The proposed development will be built on soil types which are suitable to the nature of the undertaking and will not cause unreasonable erosion of soil or sediment nor inhibit the natural transfer of soil.
- D. The proposed development meets the standards for storm water management in Section 420-D and the standard for erosion and sedimentation control in Section 420-C provided that the applicant retains the design engineer, or another qualified engineer, to oversee the construction of the stormwater management structures; submits a log of inspection reports to the BLWQ for review; submits a copy of an executed long-term maintenance contract for the on-going maintenance of the Filterra®, the underdrained subsurface sand filter, and the StormFilter®; and, disposes of materials removed from the stormwater management systems in compliance with the Maine Solid Waste Management Rules as described in Finding 8.
- E. The proposed development will not pose an unreasonable risk that a discharge to a significant groundwater aquifer will occur.
- F. The applicant has made adequate provision of utilities, including water supplies, sewerage facilities and solid waste disposal required for the development and the development will not have an unreasonable adverse effect on the existing or proposed utilities in the municipality or area served by those services.
- G. The activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties nor create an unreasonable flood hazard to any structure.

THEREFORE, the Department APPROVES the application of MERCY HOSPITAL to construct Phase II of the Mercy Hospital Relocation project as described above, SUBJECT TO THE FOLLOWING CONDITIONS and all applicable standards and regulations:

1. The Standard Conditions of Approval, a copy attached.
2. In addition to any specific erosion control measures described in this or previous orders, the applicant shall take all necessary actions to ensure that its activities or those of its agents do not result in noticeable erosion of soils or fugitive dust emissions on the site during the construction and operation of the project covered by this approval.
3. Severability. The invalidity or unenforceability of any provision, or part thereof, of this License shall not affect the remainder of the provision or any other provisions. This

License shall be construed and enforced in all respects as if such invalid or unenforceable provision or part thereof had been omitted.

4. The applicant or other responsible party shall, within three months of the expiration of each five-year interval from the date of this Order, submit a report certifying that the items listed in Department Rules, Chapter 500, Appendix B(4) have been completed in accordance with the approved plans.
5. Prior to the start of construction, the applicant must submit evidence that it has been granted a line of credit or a loan by a financial institution authorized to do business in this State or evidence of any other form of financial assurance determined by Department Rules, Chapter 373(1), to be adequate to the BLWQ for review and approval.
6. Prior to occupancy of the new buildings, the applicant shall submit a copy of an executed long-term maintenance contract (minimum of 5 years and renewable) to the BLWQ for the on-going maintenance of the Filterra®, the underdrained subsurface sand filter, and the StormFilter®.
7. Storm sewer grit and sediment materials removed from any parts of the stormwater management system, including conveyance structures, during maintenance activities shall be disposed of in compliance with the Maine Solid Waste Management Rules.
8. The applicant shall retain the design engineer, or another qualified engineer, to oversee the construction of the stormwater management structures according to the details and notes specified on the approved plans. Within thirty days of completion of each stormwater management structure, the applicant shall submit a log of inspection reports detailing the items inspected, photos taken, and the dates of each inspection to the BLWQ for review.
9. Prior to the start of construction, the applicant shall mail or deliver a cashier's check or bank draft in the amount of \$834,156.00, payable to "Treasurer, State of Maine", with the permit number noted on the check, to: ME DEP, Attn: ILF Program Administrator, State House Station 17, Augusta, ME 04333.
10. Prior to the start of construction, the applicant shall implement the Turtle Trapping and Removal plan.

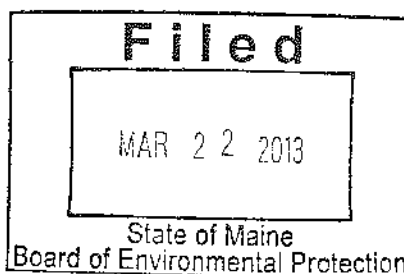
11. All other Findings of Fact, Conclusions and Conditions remain as approved in Department Order #L-20775-19-A-N and #L-20775-TG-B-N, and subsequent orders, and are incorporated herein.

THIS APPROVAL DOES NOT CONSTITUTE OR SUBSTITUTE FOR ANY OTHER REQUIRED STATE, FEDERAL OR LOCAL APPROVALS NOR DOES IT VERIFY COMPLIANCE WITH ANY APPLICABLE SHORELAND ZONING ORDINANCES.

DONE AND DATED IN AUGUSTA, MAINE, THIS 22 DAY OF March, 2013.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: Michael Kubus for
Patricia W. Aho, Commissioner



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

CGW/L20775TA&UN/ATS#74936&74937

Department of Environmental Protection
SITE LOCATION OF DEVELOPMENT (SITE)
STANDARD CONDITIONS

- A. Approval of Variations from Plans.** The granting of this approval is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. Any variation from these plans, proposals, and supporting documents is subject to review and approval prior to implementation. Further subdivision of proposed lots by the applicant or future owners is specifically prohibited without prior approval of the Board, and the applicant shall include deed restrictions to that effect.
- B. Compliance with All Applicable Laws.** The applicant shall secure and comply with all applicable federal, state, and local licenses, permits, authorizations, conditions, agreements, and orders prior to or during construction and operation, as appropriate.
- C. Compliance with All Terms and Conditions of Approval.** The applicant shall submit all reports and information requested by the Board or the Department demonstrating that the applicant has complied or will comply with all preconstruction terms and conditions of this approval. All preconstruction terms and conditions must be met before construction begins.
- D. Advertising.** Advertising relating to matters included in this application shall refer to this approval only if it notes that the approval has been granted WITH CONDITIONS, and indicates where copies of those conditions may be obtained.
- E. Transfer of Development.** Unless otherwise provided in this approval, the applicant shall not sell, lease, assign or otherwise transfer the development or any portion thereof without prior written approval of the Board where the purpose or consequence of the transfer is to transfer any of the obligations of the developer as incorporated in this approval. Such approval shall be granted only if the applicant or transferee demonstrates to the Board that the transferee has the technical capacity and financial ability to comply with conditions of this approval and the proposals and plans contained in the application and supporting documents submitted by the applicant.
- F. Time frame for approvals.** If the construction or operation of the activity is not begun within four years, this approval shall lapse and the applicant shall reapply to the Board for a new approval. The applicant may not begin construction or operation of the development until a new approval is granted. A reapplication for approval may include information submitted in the initial application by reference. This approval, if construction is begun within the four-year time frame, is valid for seven years. If construction is not completed within the seven-year time frame, the applicant must reapply for, and receive, approval prior to continuing construction.
- G. Approval Included in Contract Bids.** A copy of this approval must be included in or attached to all contract bid specifications for the development.
- H. Approval Shown to Contractors.** Work done by a contractor pursuant to this approval shall not begin before the contractor has been shown by the developer a copy of this approval.

(2/81)/Revised December 27, 2011



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.

STORMWATER STANDARD CONDITIONS

STRICT CONFORMANCE WITH THE STANDARD AND SPECIAL CONDITIONS OF THIS APPROVAL IS NECESSARY FOR THE PROJECT TO MEET THE STATUTORY CRITERIA FOR APPROVAL

Standard conditions of approval. Unless otherwise specifically stated in the approval, a department approval is subject to the following standard conditions pursuant to Chapter 500 Stormwater Management Law.

- (1) Approval of variations from plans. The granting of this approval is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. Any variation from these plans, proposals, and supporting documents must be reviewed and approved by the department prior to implementation. Any variation undertaken without approval of the department is in violation of 38 M.R.S.A. §420-D(8) and is subject to penalties under 38 M.R.S.A. §349.
- (2) Compliance with all terms and conditions of approval. The applicant shall submit all reports and information requested by the department demonstrating that the applicant has complied or will comply with all terms and conditions of this approval. All preconstruction terms and conditions must be met before construction begins.
- (3) Advertising. Advertising relating to matters included in this application may not refer to this approval unless it notes that the approval has been granted WITH CONDITIONS, and indicates where copies of those conditions may be obtained.
- (4) Transfer of project. Unless otherwise provided in this approval, the applicant may not sell, lease, assign, or otherwise transfer the project or any portion thereof without written approval by the department where the purpose or consequence of the transfer is to transfer any of the obligations of the developer as incorporated in this approval. Such approval may only be granted if the applicant or transferee demonstrates to the department that the transferee agrees to comply with conditions of this approval and the proposals and plans contained in the application and supporting documents submitted by the applicant. Approval of a transfer of the permit must be applied for no later than two weeks after any transfer of property subject to the license.
- (5) Time frame for approvals. If the construction or operation of the activity is not begun within four years, this approval shall lapse and the applicant shall reapply to the department for a new approval. The applicant may not begin construction or operation of the project until a new approval is granted. A reapplication for approval may include information submitted in the initial application by reference. This approval, if construction is begun within the four-year time frame, is valid for seven years. If construction is not completed within the seven-year time frame, the applicant must reapply for, and receive, approval prior to continuing construction.
- (6) Certification. Contracts must specify that "all work is to comply with the conditions of the Stormwater Permit." Work done by a contractor or subcontractor pursuant to this approval may not begin before the contractor and any subcontractors have been shown a copy of this

approval with the conditions by the developer, and the owner and each contractor and subcontractor has certified, on a form provided by the department, that the approval and conditions have been received and read, and that the work will be carried out in accordance with the approval and conditions. Completed certification forms must be forwarded to the department.

- (7) Maintenance. The components of the stormwater management system must be adequately maintained to ensure that the system operates as designed, and as approved by the department.
- (8) Recertification requirement. Within three months of the expiration of each five-year interval from the date of issuance of the permit, the permittee shall certify the following to the department.
 - (a) All areas of the project site have been inspected for areas of erosion, and appropriate steps have been taken to permanently stabilize these areas.
 - (b) All aspects of the stormwater control system have been inspected for damage, wear, and malfunction, and appropriate steps have been taken to repair or replace the facilities.
 - (c) The erosion and stormwater maintenance plan for the site is being implemented as written, or modifications to the plan have been submitted to and approved by the department, and the maintenance log is being maintained.
- (9) Severability. The invalidity or unenforceability of any provision, or part thereof, of this permit shall not affect the remainder of the provision or any other provisions. This permit shall be construed and enforced in all respects as if such invalid or unenforceable provision or part thereof had been omitted.

November 16, 2005 (revised December 27, 2011)



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.
