

LICENSE REVIEW ROUTING SHEET

PROJECT MANAGER: Jennifer Harris

ORDER TYPE:				DRAFT
X	ORIGINAL ORDER (N)		CONDITION COMPLIANCE (C)	3PI
	MINOR REVISION (M)		TRANSFER (T)	SEND TO REGISTRY
	AMENDMENT (A)		AFTER-THE-FACT	CORRECTED ORDER

Copies of **NRPA's** that need to be sent to the **Registry** must have box checked above.


APPLICANT NAME:	James Soley			
APPLICANT ADDRESS:	136 Island Avenue Peaks Island, Maine 04108	Phone#:	(207) 766 - 3333	
E-MAIL ADDRESS: (License will be e-mailed to this address when decision is made)				
PROJECT LOCATION: (town, county)	Peaks Island of the City of Portland, Cumberland County	PROJECT #	L-27157-4D-A-N L-27157-4P-B-N L-27157-TW-C-N	
APPLICATION TYPE:(Use Site/NRPA or NRPA/SW)	NRPA	ATS#:	80736 80793 80794	
ISSUES/COMMENTS:				
ACCEPTANCE DATE:	7/22/2016			
AGENT NAME:	C.R.M. Enterprises, Inc. : Robert Morin			
AGENT ADDRESS:	Robert Morin P.O. Box 1284 Auburn, ME 04211	Phone#:	(207) 650-7860	
E-MAIL ADDRESS: (License will be e-mailed to this address when decision is made)	crm@TractionAids.com			

Final copies of Variance orders go automatically to the **Town & IFW**. List others to receive a copy here:

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ABSTRACT (follow sample format below, then delete sample)

- James Soley (Peaks Island, Portland) (approval):* In Department Order #L-27157-4D-A-N/L-27157-4P-B-N/L-27157-TW-C-N, the Department approved a pier system and the repair of an existing sea wall. The new pier system will have a 230-foot long by six-foot wide pier, a permanent three-foot wide by 40-foot long ramp and two permanent 12-foot wide by 16-foot long floats. The project is located on Island Avenue on the southwestern side of Peaks Island in the City of Portland. *(Harris)*

REVIEWED BY	SIGNATURE	OK DATE
ENFORCEMENT STAFF (if enforcement involved):		
REGIONAL SUPER:		
Ret'd to PROJ. MGR:		
Div. Director:		10/17/16



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



PAUL R. LEPAGE
GOVERNOR

PAUL MERCER
COMMISSIONER

October 2016

James Soley
136 Peaks Island Avenue
Peaks Island ME, 04108

RE: Natural Resources Protection Act Application, Portland,
DEP # L-27157-4D-A-N/L-27157-4P-B-N/L-27157-TW-C-N

Dear Mr. Soley:

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

If you have any questions about the permit or thoughts on how the Department processed this application please get in touch with me directly. I can be reached at (207) 615-2875 or at jennifer.h.harris@maine.gov.

Sincerely,

Jennifer Harris, Project Manager
Bureau of Land Resources

pc: File



DEPARTMENT ORDER

IN THE MATTER OF

JAMES SOLEY) NATURAL RESOURCES PROTECTION ACT
Portland, Cumberland County) COASTAL WETLAND ALTERATION
PIER SYSTEM AND SEAWALL REPAIR) SIGNIFICANT WILDLIFE HABITAT
L-27157-4D-A-N (approval)) WATER QUALITY CERTIFICATION
L-27157-4P-B-N (approval))
L-27157-TW-C-N (approval)) FINDINGS OF FACT AND ORDER

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

1. PROJECT DESCRIPTION:

A. Summary: The applicant proposes to repair an existing retaining wall and construct a pier system. The concrete retaining wall is 55 feet long and is approximately five feet high. A portion of the wall will be refaced with concrete that is 10 inches thick and the northern side will be refaced with concrete 12 inches thick. The proposed pier system will consist of a 230-foot long and six-foot wide permanent pier supported by 13 batter pilings, each made from two one-foot square pilings. The permanent ramp will be 40 feet long and three feet wide. The two permanent floats, each 12 feet wide by 16 feet long, will be connected end to end and held in place by four pilings, each one-square foot. Total direct impact to the coastal wetland will be 72 square feet from the pilings and the sea wall repair. Indirect impact as a result of shading from the pier, ramp and float will be 1,884 square feet. The proposed project is shown on a set of revised plans, the first of which is not titled and is dated July 31, 2016. The project site is located on Island Avenue on the south western side of Peaks Island in the Town of Portland.

B. Current Use of the Site: The proposed project is located on a 7,870-square foot parcel of land with a residential home, existing access stair system and a retaining wall. The parcel is identified as Lot 23 on Map 87 of the Peaks Island, City of Portland, tax maps.

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

In accordance with Chapter 315, Assessing and Mitigating Impacts to Scenic and Aesthetic Uses (06-096 CMR 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 including an

aerial photograph of the project site. Department staff visited the project site on June 9, 2016.

The proposed project is located in the Atlantic Ocean, which is a scenic resource visited by the general public, in part, for the use, observation, enjoyment and appreciation of its natural and cultural visual qualities. The applicant has proposed a pier system similar in height to neighboring pier systems, and similar in total length to a private marina in the vicinity of the project, to reduce the visibility of the pier system from the scenic resource.

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

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

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

3. SOIL EROSION:

Repair work to the existing retaining wall will take place from the adjacent upland. Materials for the pier system will be brought to the site by barge and stored on the concrete sea wall during construction. Piles will be driven between November 1, 2016 and April 30, 2017. Repair to the seawall consists of constructing forms and pouring concrete. Based on these construction methods, the applicant anticipates the soil disturbance associated with the project construction will be minimal.

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

4. HABITAT CONSIDERATIONS:

A healthy eelgrass bed exists at the project site. The Department of Marine Resources (DMR) stated that the proposed project should not cause any significant adverse impact to marine resources because the proposed floats will not be over the eelgrass bed. DMR also commented that piles for the pier should be driven between October and April. The applicant reviewed this information and responded that piles would be driven between November 1, 2016 and April 30, 2017.

The Maine Department of Inland Fisheries and Wildlife (MDIFW) reviewed the proposed project and questioned if the pier could be angled away from the Tidal Waterfowl and Wading Bird Habitat (TWWH). The applicant responded stating that angling the pier would result in intrusion onto the abutter's property. Instead, the pier system design was revised to be at least six feet above the high water mark at all times (a 1:1 height to width ratio) for maximum light penetration to the significant wildlife habitat.

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

5. WATER QUALITY CONSIDERATIONS:

The applicant proposes to use lumber treated with chromated copper arsenate (CCA) to construct the pier. 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. The applicant proposes 5,000 lb. concrete for facing the retaining wall and will keep it in forms for two weeks after it has been poured.

Provided that CCA-treated lumber and concrete 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 directly alter 72 square feet of coastal wetland to repair the existing retaining wall and construct the proposed pier system. The applicant proposes to indirectly impact 1,884 square feet of coastal wetland as a result of shading from the pier, ramp and float.

The Wetlands and Waterbodies Protection Rules, 06-096 CMR 310 (effective January 26, 2009), interpret and elaborate on the Natural Resources Protection Act (NRPA) criteria for obtaining a permit. The rules guide the Department in its determination of whether a project's impacts would be unreasonable. A proposed project would generally be found to be unreasonable if it would cause a loss in wetland area, functions and values and there is a practicable alternative to the project that would be less damaging to the environment. Each application for a NRPA permit that involves a coastal wetland alteration must provide an analysis of alternatives in order to demonstrate that a practicable alternative does not exist.

A. Avoidance. No activity may be permitted if there is a practicable alternative to the project that would be less damaging to the environment. The applicant submitted an alternatives analysis for the proposed project completed by C.R.M. Enterprises, Inc. The

purpose of this project is to create year round, all tide access to navigable waters. The applicant considered a no action alternative to the proposed project but determined that travel to and from the applicant's moorings was not practicable. The applicant considered using a private marina that is 0.25 miles away but it does not have a private slip or mooring available. The applicant considered a different float system however this would not have been structurally stable enough on the south-west side of Peaks Island where floats have to withstand northwesterly winds and wave surges. The proposed float and pier system design is similar to other successful pier systems in the vicinity of the project. A shorter pier system was considered, however this would have resulted in more severe indirect shading impacts to the eel grass bed because the ramp and float would obstruct light penetration more than the pile-supported portion of the pier. The proposed height, width and length of the pile-supported portion of the pier system will partially span the eel grass bed, but will have less impact and provide more light penetration by design. Based on these considerations, the applicant has stated there is no other practicable alternative to the proposed project and alteration of the coastal wetland cannot be avoided.

B. Minimal Alteration. The amount of coastal wetland to be altered must be kept to the minimum amount necessary for meeting the overall purpose of the project. The applicant determined that the length of the pier is the minimum necessary to meet the project purpose, provide all-tide access and minimize impact to the healthy eel grass bed in the project area. The pier will be elevated so that it maintains a 1:1 height to width ratio above high tide to minimize shading impact to the eel grass and coastal wetland. The floats have been set at a location with a reasonable depth for all-tide access and will not ground out, also minimizing impact to the intertidal area.

C. Compensation. In accordance with Chapter 310 Section 5(C)(6)(b), compensation is not required to achieve the goal of no net loss of coastal wetland functions and values since the project will not result in over 500 square feet of fill in the resource, which is the threshold over which compensation is generally required. Further, the proposed project will not have an adverse impact on marine resources or wildlife habitat as determined by DMR and MDIFW. For these reasons, the Department determined that compensation is not required.

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

7. OTHER CONSIDERATIONS:

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

BASED on the above findings of fact, and subject to the conditions listed below, the Department makes the following conclusions pursuant to 38 M.R.S. Sections 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.
- E. The proposed activity will not unreasonably interfere with the natural flow of any surface or subsurface waters.
- F. The proposed activity will not violate any state water quality law including those governing the classifications of the State's waters provided that CCA- treated lumber and concrete are 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.A. § 480-P.

THEREFORE, the Department APPROVES the above noted application of James Soley to repair an existing sea wall and construct a new pier 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 his activities or those of his agents do not result in measurable erosion of soil on the site during the construction of the project covered by this approval.
- 3. Severability. The invalidity or unenforceability of any provision, or part thereof, of this License shall not affect the remainder of the provision or any other provisions. This

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

4. All CCA-treated lumber shall be cured on dry land in a manner that exposes all surfaces to the air for 21 days prior to the start of construction, and concrete shall be kept in forms for two weeks after it has been poured.

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.

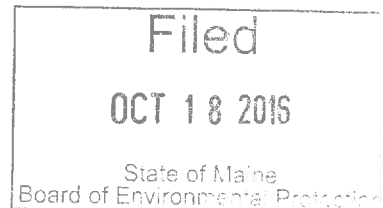
DONE AND DATED IN AUGUSTA, MAINE, THIS 18TH DAY OF OCTOBER, 2016.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: *Paul Mercer*
For: Paul Mercer, Commissioner

PLEASE NOTE THE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES.

Harris/L27157ANBNCN /ATS# 80736, 80793, 80794





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.A. § 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.

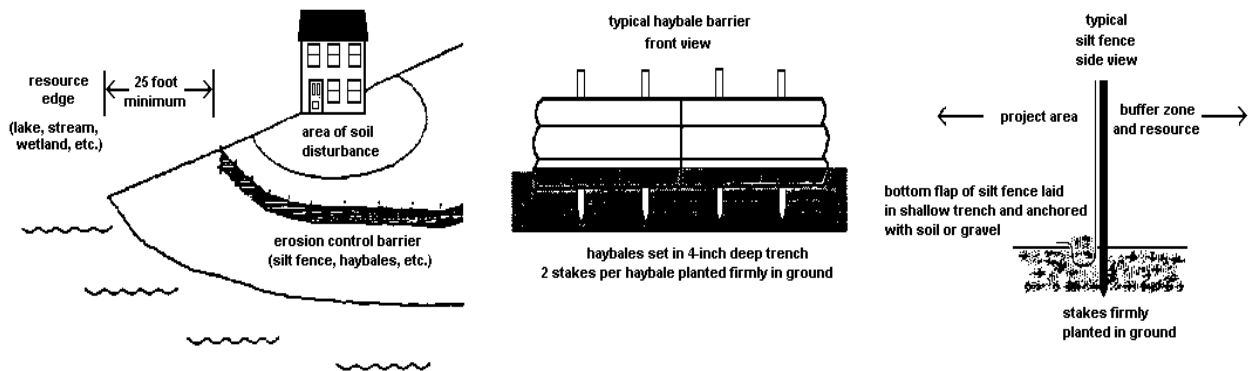


STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
 17 STATE HOUSE STATION, AUGUSTA, MAINE 04333

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.
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. Its 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.



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.
