



STATE OF MAINE
Department of Environmental Protection

PAUL R. LEPAGE
GOVERNOR

PATRICIA W. AHO
COMMISSIONER

October 2012

Bradley Roland, P.E.
City of Portland
55 Portland Street
Portland, Maine 04101

RE: Natural Resources Protection Act Application, Portland
#L-24096-4E-D-N, L-24096-TW-E-N, and L-24096-FS-F-N

Dear Mr. Roland:

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 please contact me at (207) 615-6426 or at christine.woodruff@maine.gov.

Sincerely,

A handwritten signature in cursive script that reads "Chris Woodruff".

Christine Woodruff, Project Manager
Division of Land Resource Regulation
Bureau of Land and Water Quality

pc: File
Craig Burgess (at Sebago Technics via email)

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

DEPARTMENT ORDER

IN THE MATTER OF

CITY OF PORTLAND) NATURAL RESOURCES PROTECTION
Portland, Cumberland County) COASTAL WETLAND ALTERATION
BACK COVE TRAIL WIDENING) SIGNIFICANT WILDLIFE HABITAT
L-24096-4E-D-N (approval)) ADJACENT ACTIVITY
L-24096-TW-E-N (approval)) WATER QUALITY CERTIFICATION
L-24096-FS-F-N (approval)) FINDINGS OF FACT AND ORDER

Pursuant to the provisions of 38 M.R.S.A. Sections 480-A et seq. and Section 401 of the Federal Water Pollution Control Act, the Department of Environmental Protection has considered the application of the CITY OF PORTLAND 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 Orders # L-24096-4E-A-N, L-24096-TW-B-N, and L-24096-FS-C-N, dated August 13, 2008, the Department approved altering 300 square feet of coastal wetland impact to replace an existing retaining wall with riprap, and replace and extend a culvert in the same location. The project was not constructed and the permit has subsequently expired.

B. Summary: The applicant proposes to replace an existing failing retaining wall with riprap; remove an existing guard rail between Baxter Boulevard and Back Cove Trail and replace it with a ten foot wide grassed esplanade; widen the trail to ten feet; add a five foot wide vegetated area between the trail and the top of the riprap slope; and eliminate the outfall that was beneath the retaining wall. The applicants propose to use a 4.5-foot thick layer of 24-inch average diameter angular riprap with a surface slope of 1.5 horizontal to one vertical over geotextile. The project is shown on a plan titled "Baxter Boulevard North Storage Conduit" sheets 11 and 12, prepared for the City of Portland, Maine, prepared by Sebago Technics, and dated October 1, 2012. The project site is located on Baxter Boulevard near the southeast corner of Payson Park in the City of Portland.

C. Current Use of the Site: The project is located between Baxter Boulevard and the coastal wetland of Back Cove. There is an existing retaining wall that is 44-feet long, approximately eight-feet high, and has a handrail. There is riprapped shoreline on both ends of the retaining wall. There was piping that had an outfall at the base of the retaining wall that is believed to be collapsed and groundwater appears to be flowing out from beneath the wall. The handrail has been shored up with PVC piping and the riprap on the east side has been augmented up with slabs of granite curbing. There is an existing guardrail at the edge of Baxter Boulevard along this immediate area, and the Back Cove Trail width narrows down from about ten feet down to about five feet wide between the retaining wall and guardrail.

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

In accordance with Chapter 315, Assessing and Mitigating Impacts to Scenic and Aesthetic Uses, the applicant submitted a copy of the Department's Visual Evaluation Field Survey Checklist as Appendix A to the application along with a description of the property and the proposed project. The applicant also submitted several photographs of the proposed project site. Department staff visited the project site in 2008, 2010 and on September 20, 2012.

The proposed project is located in Back Cove, 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. This section of Back Cove is surrounded by development that includes the riprap in the upper intertidal area, lawn, the Back Cove Trail and Baxter Boulevard in the adjacent area. The applicant has designed the proposed project to have the same configuration of riprap, trail and esplanade to match the existing configuration in the immediate vicinity of the project which will reduce the visibility of the new riprapped slope from the scenic resource. The proposed riprap will weather to be visually compatible with the existing riprap.

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 visits, 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:

The existing trail adjacent to the retaining wall has developed holes in the surface from soil eroding out from behind the wall. Removing the wall and installing the proposed riprap over geotextile will stabilize the trail and prevent further erosion of material into the Back Cove.

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

4. HABITAT CONSIDERATIONS:

The Department of Marine Resources (DMR) reviewed the project and stated that the site of the proposed project is a low energy unconsolidated shore. DMR further stated that the project as proposed would not result in any significant adverse impact to marine resources, navigation, recreation, riparian access or traditional fishing activity.

The Maine Department of Inland Fisheries and Wildlife (MDIFW) reviewed the proposed project and stated that the area is mapped as both Shorebird Feeding Area and high value Wading Bird and Waterfowl Habitat, making it a Significant Wildlife Habitat as defined in the Natural Resources

Protection Act (NRPA). This area is crucial for both shorebirds and waterfowl; however, the overall direct impacts to either habitats are minimal once the reconstruction is completed.

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

6. WETLANDS AND WATERBODIES PROTECTION RULES:

The applicant proposes to alter 3,255 square feet of coastal wetland to replace a failing retaining wall with riprap, to replace a guardrail with a ten-foot wide esplanade, widen the existing trail and add a five-foot wide vegetated strip between the trail and the top of the riprap.

The coastal wetland intertidal zone is of indeterminate width with a variable slope. The supratidal is the base of an approximately eight feet high wall. The shore on either end of the wall is riprapped. The upper intertidal is concrete or riprap with some sand and gravel. The mid and lower intertidal is mud. There is occasional rockweed cover, barnacles and periwinkles present where there is hard substrate. Mud whelk and marine worms are present on and in the mud respectively, and there are scattered mussels. Approximately 1,000 square feet of the proposed wetland impact will be to mud flat area and the remaining impacts will be to coastal wetlands that have previously been altered with riprap.

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

A. Avoidance. No activity may be permitted if there is a practicable alternative to the project that would be less damaging to the environment. Each application for a coastal wetland alteration permit must provide an analysis of alternatives in order to demonstrate that a practicable alternative does not exist. The applicant submitted an alternatives analysis for the proposed project completed by Sebago Technics and dated September 2012. The existing wall is failing and requires replacement for the safety of the high volume of pedestrians and bicyclists that use the trail. The existing two-foot wide esplanade and guardrail adjacent to the failing retaining wall does not meet the American Association of State Highway and Transportation Officials (AASHTO) Guide for the Planning, Design and Operation of Bicycle Facilities. The proposed project meets the minimum AASHTO standards for bicycle facilities and will better protect trail users from the high volume of traffic along Baxter Boulevard. The applicant examined the alternative of stabilizing the existing wall, but field inspections concluded that the existing wall is beyond repair and does not meet the AASHTO standards for bicycle facilities. The alternative of a new concrete retaining wall would require wetland alterations in order to create a stabilized base for the new wall; this alternative was also rejected because it would eventually fail for the same reasons that the existing wall has failed. A driven sheet pile was considered as an alternative but this alternative was rejected because it would not be cost effective. The proposed riprap option was chosen because it has proven to be effective stabilization in this area of shoreline and is easy to maintain and repair.

Coastal wetlands are wetlands of special significance as defined by NRPA. For an activity proposed in, on or over a wetland of special significance, a practicable alternative less damaging to the environment is

considered to exist and the impact is unreasonable, unless the activity is one of those described in NRPA Chapter 310 § 5(A) paragraphs (1), (2) or (3). The proposed widening of the existing trail is considered an expansion of an existing facility that cannot practicably be located elsewhere because of its relation to the existing facility; it is a walkway and is for the safety of those who use the trail; these are activities as described in NRPA Chapter 310 § 5(A) paragraphs (1), (2) or (3). Therefore, these impacts are not considered unreasonable.

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 minimized coastal wetland impacts by reducing the slope of the proposed riprap from two horizontal to one vertical to 1.5 horizontal to one vertical, which reduced the amount of coastal wetland to be altered by approximately 1,000 square feet. The esplanade was widened the minimum amount required to meet the AASHTO standards for bicycle facilities.

C. Compensation. In accordance with Chapter 310 Section 5(C)(6)(b), compensation is required to achieve the goal of no net loss of coastal wetland functions and values since the project will result in over 500 square feet of fill in the resource, which is the threshold over which compensation is generally required. Given that the highest function and value of the wetland is its value as both Shorebird Feeding Area and Wading Bird and Waterfowl Habitat, the applicant and the Department consulted with MDIFW for appropriate compensation projects within Back Cove. MDIFW found three areas along Back Cove Trail where plantings between the Back Cove Trail and the Shorebird Feeding Area and Wading Bird and Waterfowl Habitats would provide an enhanced buffer between the birds that use the habitats and the people that use the trail. The plantings are shown on Figure 11 of Attachment D Project Mitigation; Figure 11 was prepared by Sebago Technics, is titled Mitigation Planting Areas and is dated October 3, 2012. Planting areas 1 and 2 will have ninety *Rosa rugosa* in a 10-foot by 200-foot area and planting area 3 will have 45 *Rosa rugosa* in a 5-foot by 200-foot area. The planting are on City of Portland property and the City of Portland arborist will maintain the mitigation plantings as part of the maintenance of these areas. The applicant must monitor the plantings and plantings must be replaced or maintained as necessary to achieve 85% survival after one full growing season and for the life of the project. The proposed planting buffers would offset the impacts to the functions and values of the wetlands of the proposed project on the opposite side of Back Cove.

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.

7. OTHER CONSIDERATIONS:

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

BASED on the above findings of fact, and subject to the conditions listed below, the Department makes the following conclusions pursuant to 38 M.R.S.A. Sections 480-A et seq. and Section 401 of the Federal Water Pollution Control Act:

A. The proposed activity will not unreasonably interfere with existing scenic, aesthetic, recreational, or navigational uses.

- B. The proposed activity will not cause unreasonable erosion of soil or sediment.
- C. The proposed activity will not unreasonably inhibit the natural transfer of soil from the terrestrial to the marine or freshwater environment.
- D. The proposed activity will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic or adjacent upland habitat, travel corridor, freshwater, estuarine, or marine fisheries or other aquatic life provided that the plantings are installed and monitored for survival as outlined 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 Title 38 M.R.S.A. Section 480-P.

THEREFORE, the Department APPROVES the above noted application of the CITY OF PORTLAND to alter coastal wetlands to replace a retaining wall with riprap and make trail improvements as described above, 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 its activities or those of its agents do not result in measurable erosion of soil on the site during the construction of the project covered by this approval.
3. Severability. The invalidity or unenforceability of any provision, or part thereof, of this License shall not affect the remainder of the provision or any other provisions. This License shall be construed and enforced in all respects as if such invalid or unenforceable provision or part thereof had been omitted.

- 4. The applicant shall monitor the plantings, and the plantings shall be replaced or maintained as necessary to achieve 85% survival after one full growing season and for the life of the project.

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 26th DAY OF October, 2012.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: Michael Kuhns for
Patricia W. Aho, Commissioner



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

CGW/L24096DN&EN&FN/ATS#75098&75128&75129



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.

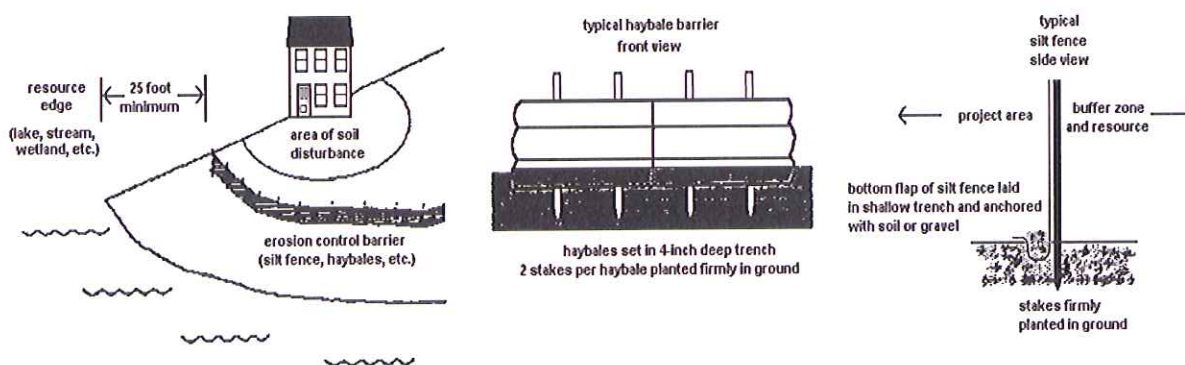


STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
 17 STATE HOUSE STATION, AUGUSTA, MAINE 04333

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.
