



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



PAUL R. LEPAGE  
GOVERNOR

PATRICIA W. AHO  
COMMISSIONER

May 2014

City of Portland  
Attn: Nathaniel Smith  
55 Portland Street  
Portland, ME 04101

RE: Natural Resources Protection Act Application, Portland  
DEP #L-26292-TF-A-N/L-26292-IW-B-N

Dear Mr. Smith:

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) 523-9807 or at [david.cherry@maine.gov](mailto:david.cherry@maine.gov).

Sincerely,

David Cherry, Project Manager  
Division of Land Resource Regulation  
Bureau of Land and Water Quality

pc: File

AUGUSTA  
17 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0017  
(207) 287-7688 FAX: (207) 287-7826

BANGOR  
106 HOGAN ROAD, SUITE 6  
BANGOR, MAINE 04401  
(207) 941-4570 FAX: (207) 941-4584

PORTLAND  
312 CANCO ROAD  
PORTLAND, MAINE 04103  
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE  
1235 CENTRAL DRIVE, SKYWAY PARK  
PRESQUE ISLE, MAINE 04769  
(207) 764-0477 FAX: (207) 760-3143



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

DEPARTMENT ORDER

IN THE MATTER OF

|                             |                                    |
|-----------------------------|------------------------------------|
| CITY OF PORTLAND            | ) NATURAL RESOURCES PROTECTION ACT |
| Portland, Cumberland County | ) FRESHWATER WETLAND ALTERATION    |
| CAPISIC POND DREDGING       | ) SIGNIFICANT WILDLIFE HABITAT     |
| L-26292-TF-A-N (approval)   | ) WATER QUALITY CERTIFICATION      |
| L-26292-IW-B-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:

I. PROJECT DESCRIPTION:

A. History of Project: On January 29, 2014, the Department approved a Natural Resources Protection Act (NRPA) Permit By Rule (PBR #57471) for improvements to the Rockland Avenue Outfall. The PBR authorized several activities, including the installation of an outfall pipe, a wildlife enhancement or water quality improvement project, and activities within a high or moderate value inland waterfowl and wading bird habitat. The PBR indicated that these activities would be performed by the applicant in accordance with the standards of Chapter 305 of the NRPA, Sections 7, 13, and 20. The purpose of the project was to stabilize a channel from an outfall pipe that flows from Rockland Ave and drains into Capisic Pond.

B. Summary: The applicant proposes to increase the open water area of Capisic Pond from two acres to four and a half acres and to increase the depth from the current one foot to three feet. The dredge area, comprised mostly of cattails, will be limited to within the bounds of a coffer dam at the north end of the pond, along the eastern and western edge of the wetland, and south to Capisic Street. An area of sediment and cattails located above the Capisic Pond Dam south of Capisic Street on the western edge of the pond will be removed. These areas are depicted on the plan titled "Wetland Impact Figure – Existing Conditions" drawn by Woodard and Curran and dated February 2014.

The project will be accomplished by dredging 16,000 cubic yards of material from the pond. Once the pond has been drained, the applicant will use mechanical excavation with equipment on the pond floor and will bring the material to the dewatering site. The pond is mapped as moderate value Inland Waterfowl and Wading Bird Habitat (IWWH) as designated by the Maine Department of Inland Fisheries and Wildlife (MDIFW). Of the 16,000 cubic yards of material, 7,500 cubic yards will be used onsite to recreate a habitat transition zone along the pond edge. The remaining 8,500 cubic yards will be transported

to an offsite upland location. The access to the project site is located on Capisic Street and Macy Street in the City of Portland.

C. Current Use of the Site: Capisic Pond has historically been used as an impounded pond since the 1600's in connection with the operation of a grist mill and was most recently dredged in the 1950's. Since that time, the pond has experienced a reduction in open water from approximately 7.7 acres to the current two acres. The site is currently used as a city park. The project is located on several lots identified as Lot X001 on Map 224; Lot C001 on Map 192; and Lot X001 on Map 224A.

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

In accordance with Chapter 315, Assessing and Mitigating Impacts to Scenic and Aesthetic Uses, the applicant submitted a copy of the Department's Visual Evaluation Field Survey Checklist as Appendix A to the application along with a description of the property and the proposed project. The applicant also submitted several photographs of the proposed project site including an aerial photograph of the project site. Department staff visited the project site on April 18, 2014.

The proposed project is located in Capisic Pond, 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 proposed project will result in a larger expanse of open water area, but will not appreciably change the landscape of the area. The applicant proposes to implement an extensive planting plan for the transition zones between the open water and the upland. When finished, the plantings are expected to increase ecosystem diversity and the visibility of the open water from the scenic resource. The applicant must monitor the plantings and the plantings must be replaced or maintained as necessary to achieve 85% survival after one full growing season.

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 provided that the applicant monitors and maintains the plantings as described above.

3. SOIL EROSION:

The applicant proposes to minimize turbidity by installing a coffer dam at the northern end of the pond and diverting the water through the stormwater drain that runs through the park. The pond will be drained of water so that equipment can work in the dry. The applicant will install geotextile fabric and concrete barricades to form a stockpile and dewatering site. Water will be directed through an existing 120-inch stormwater drain and will rejoin Capisic Brook at the dam outfall. Dredging is planned to occur between the months of August and October.

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:

According to the Department's Geographic Information System (GIS) database, and as described in Finding 1, the project area contains moderate value IWWH, which is a Significant Wildlife Habitat pursuant to the Natural Resources Protection Act (NRPA).

MDIFW reviewed the proposed project and stated that it will be beneficial for waterfowl and other bird species using the pond. Removing sediment and other materials from the pond will create additional open water, resulting in greater diversity in the wetland complex. MDIFW further commented that Pan's Box and Snapping Turtles, which are not rare or endangered, are present on site and may be impacted by the dredging operations, and recommended that the applicant contact MDIFW staff to coordinate the trapping and relocation of turtles prior to the start of dredge activity. The proposed timing for the project, in which dewatering of the pond will occur in May and the work done during the summer, would facilitate the trapping of turtles for temporary relocation since they will be coming out of hibernation then. MDIFW also suggested finding a location near Capisic Pond where the turtles could be released and recaptured to return to the pond after construction has finished. The applicant agreed to work with the MDIFW to meet this request.

MDIFW had no inland fisheries concerns with the proposed project.

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 take measures to prevent erosion and avoid downstream siltation as described in Finding 3.

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

6. WETLANDS AND WATERBODIES PROTECTION RULES:

The applicant proposes to directly alter 197,100 square feet of freshwater wetland to a depth of 29.60 National Geodetic Vertical Datum (NGVD). As described in Finding 1, some of the dredge material will be utilized onsite to create a transition zone and some will be transported to an offsite upland location.

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 NRPA 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 alternatives analysis for the proposed project completed by Woodard & Curran and dated January, 2014. The purpose of the proposed project is to restore more open water area to enhance the wildlife function of Capisic Pond by providing higher quality habitat for IWWH and other birds and wildlife. The applicant states that Capisic Pond and the surrounding watershed have been the focus of several improvement projects including infrastructure improvements, maintenance programs, and community outreach and education. While these efforts have improved the overall quality of the pond, sediment accumulation and cattail growth still continue to be a problem. The continued growth of the cattails would eventually eliminate the entire open water portion of the wetland complex. To accomplish the project purpose, some impact to the open water wetland is unavoidable.

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 considered several options in addition to the current proposal. These included allowing the pond to mature into an emergent marsh, dredge the pond to the 1950's size, and create an enhancement plan. Allowing the marsh to continue to mature was rejected due to the loss of IWWH designation, and opening the pond to the 1950's size was rejected due to the cost of removing the materials and the amount of vegetation that would be lost.

Within the enhancement plan option, the applicant considered three different strategies. The first was to alter the weir structure at the dam and raise the pond depth. Alteration of the weir structure would be effective in reducing the amount of cattails by raising the water level, but would only partially meet the project goal of habitat enhancement. The

applicant previously altered the dam in 2001 to alleviate upstream flooding, and altering the weir again may re-introduce the possibility of flooding and would not meet the other project goals. Also among concerns is the difficulty to provide consistent water levels and the length of time to remove cattails through inundation with higher water levels. An alternative strategy was to implement a mechanical cattail control plan. This option would remove the cattails but would not provide more open water for habitat enhancement. In addition, this option would require annual cutting, take a longer time to improve habitat, and would not maintain consistent water levels.

The applicant selected the current proposal of dredging the pond to create open water and remove cattail stands while utilizing the dredge material to create wetland habitat. This strategy will remove the cattails to create open water, yet provide a diverse ecosystem along the edge of the pond. The proposed dredge, coupled with the previous actions by the city to reduce stormwater runoff into the pond, provide long-term solutions to the in-filling of the pond leading to continued proliferation of cattail growth while maintaining, and potentially improving, the current IWWH designation for the pond.

C. Compensation. In accordance with Chapter 310 Section 5(C)(1), compensation is required when the Department determines that a wetland alteration will cause a wetland function or functions to be lost or degraded as identified by a functional assessment or by the Department's evaluation of the project. The Department reviewed the applicant's functional assessment and the overall project goals and determined that, since the project is to maintain and improve current IWWH status and promote habitat diversity, there will be no loss of function and values with as a result of the proposed project. In addition, MDIFW raised no objections to the proposal, provided turtles are trapped and relocated as discussed in Finding 4. For these reasons, the Department determined that compensation is not required.

The Department finds that the applicant has avoided and minimized Capisic Pond 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:

Capisic Pond is classified as Class C. The upland use of the dredge material from a Class C waterbody is exempt from the Department's Solid Waste Management Rules, Chapter 418 Beneficial Use licensing requirements.

Dredge material will be stockpiled and dewatered on-site according to the plan titled "Construction Plan, C-101" dated April 1, 2014 and submitted with the application. Material will be dewatered and either utilized onsite or brought to an upland disposal site. The applicant submitted a letter dated May 9, 2014 from Woodard and Curran indicating that the 8,500 cubic yards of dredge material to be disposed of off-site will be transported to the Crossroads Landfill, operated by Waste Management in Norridgewock. This

location does not require additional review and permitting by the Department, although the accepting facility may require additional testing of the material prior to acceptance.

The applicant indicated that the contractor selected for the project would be given the option to find an alternative location for the material. The applicant must ensure that disposal of the material at a location other than Crossroads Landfill meets the Department's Solid Waste Management Rules.

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 provided that the applicant monitors and maintains vegetation as described in Finding 2.
- 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.
- 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 dredge Capisic Pond as described in Finding 1, SUBJECT TO THE ATTACHED CONDITIONS, and all applicable standards and regulations:

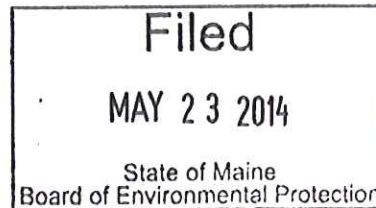
1. Standard Conditions of Approval, a copy attached.
2. The applicant shall take all necessary measures to ensure that its activities or those of its agents do not result in measurable erosion of soil on the site during the construction of the project covered by this approval.
3. Severability. The invalidity 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 for survival and replace and maintain plantings to achieve an 85% survival after one full growing season.

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 23<sup>RD</sup> DAY OF May, 2014.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: Michael Kuhn  
For: Patricia W. Aho, Commissioner



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

DC/L26292anbn/ATS#77368, 77421





## Natural Resources Protection Act (NRPA) Standard Conditions

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THE FOLLOWING STANDARD CONDITIONS SHALL APPLY TO ALL PERMITS GRANTED UNDER THE NATURAL RESOURCE PROTECTION ACT, TITLE 38, M.R.S.A. SECTION 480-A ET.SEQ. UNLESS OTHERWISE SPECIFICALLY STATED IN THE PERMIT.

- A. Approval of Variations From Plans. The granting of this permit is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. Any variation from these plans, proposals, and supporting documents is subject to review and approval prior to implementation.
- B. Compliance With All Applicable Laws. The applicant shall secure and comply with all applicable federal, state, and local licenses, permits, authorizations, conditions, agreements, and orders prior to or during construction and operation, as appropriate.
- C. Erosion Control. The applicant shall take all necessary measures to ensure that his activities or those of his agents do not result in measurable erosion of soils on the site during the construction and operation of the project covered by this Approval.
- D. Compliance With Conditions. Should the project be found, at any time, not to be in compliance with any of the Conditions of this Approval, or should the applicant construct or operate this development in any way other the specified in the Application or Supporting Documents, as modified by the Conditions of this Approval, then the terms of this Approval shall be considered to have been violated.
- E. Time frame for approvals. If construction or operation of the activity is not begun within four years, this permit shall lapse and the applicant shall reapply to the Board for a new permit. The applicant may not begin construction or operation of the activity until a new permit is granted. Reapplications for permits may include information submitted in the initial application by reference. This approval, if construction is begun within the four-year time frame, is valid for seven years. If construction is not completed within the seven-year time frame, the applicant must reapply for, and receive, approval prior to continuing construction.
- F. No Construction Equipment Below High Water. No construction equipment used in the undertaking of an approved activity is allowed below the mean high water line unless otherwise specified by this permit.
- G. Permit Included In Contract Bids. A copy of this permit must be included in or attached to all contract bid specifications for the approved activity.
- H. Permit Shown To Contractor. Work done by a contractor pursuant to this permit shall not begin before the contractor has been shown by the applicant a copy of this permit.



# DEP INFORMATION SHEET

## Appealing a Department Licensing Decision

Dated: March 2012

Contact: (207) 287-2811

### SUMMARY

There are two methods available to an aggrieved person seeking to appeal a licensing decision made by the Department of Environmental Protection's ("DEP") Commissioner: (1) in an administrative process before the Board of Environmental Protection ("Board"); or (2) in a judicial process before Maine's Superior Court. An aggrieved person seeking review of a licensing decision over which the Board had original jurisdiction may seek judicial review in Maine's Superior Court.

A judicial appeal of final action by the Commissioner or the Board regarding an application for an expedited wind energy development (35-A M.R.S.A. § 3451(4)) or a general permit for an offshore wind energy demonstration project (38 M.R.S.A. § 480-HH(1)) or a general permit for a tidal energy demonstration project (38 M.R.S.A. § 636-A) must be taken to the Supreme Judicial Court sitting as the Law Court.

This INFORMATION SHEET, in conjunction with a review of the statutory and regulatory provisions referred to herein, can help a person to understand his or her rights and obligations in filing an administrative or judicial appeal.

### I. ADMINISTRATIVE APPEALS TO THE BOARD

#### **LEGAL REFERENCES**

The laws concerning the DEP's *Organization and Powers*, 38 M.R.S.A. §§ 341-D(4) & 346, the *Maine Administrative Procedure Act*, 5 M.R.S.A. § 11001, and the DEP's *Rules Concerning the Processing of Applications and Other Administrative Matters* ("Chapter 2"), 06-096 CMR 2 (April 1, 2003).

#### **HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD**

The Board must receive a written appeal within 30 days of the date on which the Commissioner's decision was filed with the Board. Appeals filed after 30 calendar days of the date on which the Commissioner's decision was filed with the Board will be rejected.

#### **HOW TO SUBMIT AN APPEAL TO THE BOARD**

Signed original appeal documents must be sent to: Chair, Board of Environmental Protection, c/o Department of Environmental Protection, 17 State House Station, Augusta, ME 04333-0017; faxes are acceptable for purposes of meeting the deadline when followed by the Board's receipt of mailed original documents within five (5) working days. Receipt on a particular day must be by 5:00 PM at DEP's offices in Augusta; materials received after 5:00 PM are not considered received until the following day. The person appealing a licensing decision must also send the DEP's Commissioner a copy of the appeal documents and if the person appealing is not the applicant in the license proceeding at issue the applicant must also be sent a copy of the appeal documents. All of the information listed in the next section must be submitted at the time the appeal is filed. Only the extraordinary circumstances described at the end of that section will justify evidence not in the DEP's record at the time of decision being added to the record for consideration by the Board as part of an appeal.

## WHAT YOUR APPEAL PAPERWORK MUST CONTAIN

Appeal materials must contain the following information at the time submitted:

1. *Aggrieved Status.* The appeal must explain how the person filing the appeal has standing to maintain an appeal. This requires an explanation of how the person filing the appeal may suffer a particularized injury as a result of the Commissioner's decision.
2. *The findings, conclusions or conditions objected to or believed to be in error.* Specific references and facts regarding the appellant's issues with the decision must be provided in the notice of appeal.
3. *The basis of the objections or challenge.* If possible, specific regulations, statutes or other facts should be referenced. This may include citing omissions of relevant requirements, and errors believed to have been made in interpretations, conclusions, and relevant requirements.
4. *The remedy sought.* This can range from reversal of the Commissioner's decision on the license or permit to changes in specific permit conditions.
5. *All the matters to be contested.* The Board will limit its consideration to those arguments specifically raised in the written notice of appeal.
6. *Request for hearing.* The Board will hear presentations on appeals at its regularly scheduled meetings, unless a public hearing on the appeal is requested and granted. A request for public hearing on an appeal must be filed as part of the notice of appeal.
7. *New or additional evidence to be offered.* The Board may allow new or additional evidence, referred to as supplemental evidence, to be considered by the Board in an appeal only when the evidence is relevant and material and that the person seeking to add information to the record can show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process or that the evidence itself is newly discovered and could not have been presented earlier in the process. Specific requirements for additional evidence are found in Chapter 2.

## OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

1. *Be familiar with all relevant material in the DEP record.* A license application file is public information, subject to any applicable statutory exceptions, made easily accessible by DEP. Upon request, the DEP will make the material available during normal working hours, provide space to review the file, and provide opportunity for photocopying materials. There is a charge for copies or copying services.
2. *Be familiar with the regulations and laws under which the application was processed, and the procedural rules governing your appeal.* DEP staff will provide this information on request and answer questions regarding applicable requirements.
3. *The filing of an appeal does not operate as a stay to any decision.* If a license has been granted and it has been appealed the license normally remains in effect pending the processing of the appeal. A license holder may proceed with a project pending the outcome of an appeal but the license holder runs the risk of the decision being reversed or modified as a result of the appeal.

## WHAT TO EXPECT ONCE YOU FILE A TIMELY APPEAL WITH THE BOARD

The Board will formally acknowledge receipt of an appeal, including the name of the DEP project manager assigned to the specific appeal. The notice of appeal, any materials accepted by the Board Chair as supplementary evidence, and any materials submitted in response to the appeal will be sent to Board members with a recommendation from DEP staff. Persons filing appeals and interested persons are notified in advance of the date set for Board consideration of an appeal or request for public hearing. With or without holding a public hearing, the Board may affirm, amend, or reverse a Commissioner decision or remand the matter to the Commissioner for further proceedings. The Board will notify the appellant, a license holder, and interested persons of its decision.

## II. JUDICIAL APPEALS

Maine law generally allows aggrieved persons to appeal final Commissioner or Board licensing decisions to Maine's Superior Court, see 38 M.R.S.A. § 346(1); 06-096 CMR 2; 5 M.R.S.A. § 11001; & M.R. Civ. P 80C. A party's appeal must be filed with the Superior Court within 30 days of receipt of notice of the Board's or the Commissioner's decision. For any other person, an appeal must be filed within 40 days of the date the decision was rendered. Failure to file a timely appeal will result in the Board's or the Commissioner's decision becoming final.

An appeal to court of a license decision regarding an expedited wind energy development, a general permit for an offshore wind energy demonstration project, or a general permit for a tidal energy demonstration project may only be taken directly to the Maine Supreme Judicial Court. See 38 M.R.S.A. § 346(4).

Maine's Administrative Procedure Act, DEP statutes governing a particular matter, and the Maine Rules of Civil Procedure must be consulted for the substantive and procedural details applicable to judicial appeals.

### ADDITIONAL INFORMATION

If you have questions or need additional information on the appeal process, for administrative appeals contact the Board's Executive Analyst at (207) 287-2452 or for judicial appeals contact the court clerk's office in which your appeal will be filed.

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**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.**

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