



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



PAUL R. LEPAGE
GOVERNOR

PATRICIA W. AHO
COMMISSIONER

August 2015

City of Belfast
c/o Thomas Kittredge, Economic Development Director & Airport Manager
131 Church Street
Belfast, ME 04915

RE: Site Location of Development Act Minor Revision Application and Natural Resources
Protection Act Tier 3 Application, Belfast, DEP #L-21771-18-F-M/L-21771-TH-G-N

Dear Mr. Kittredge:

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) 446-1586 or at beth.callahan@maine.gov.

Sincerely,

Project Manager
Bureau of Land Resources

pc: File



DEPARTMENT ORDER

IN THE MATTER OF

CITY OF BELFAST) SITE LOCATION OF DEVELOPMENT ACT
Belfast, Waldo County) NATURAL RESOURCES PROTECTION ACT
AIRPORT OBSTRUCTION REMOVAL) FRESHWATER WETLAND ALTERATION
L-21771-18-F-M (approval)) WATER QUALITY CERTIFICATION
L-21771-TH-G-N (approval)) MINOR REVISION
) FINDINGS OF FACT AND ORDER

Pursuant to the provisions of 38 M.R.S. §§ 481 *et seq.* and § 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 BELFAST with the supportive data and other related materials on file and FINDS THE FOLLOWING FACTS:

1. PROJECT DESCRIPTION:

A. History: In Department Order #L-21771-TH-A-N/L-21771-NI-B-N dated May 24, 2006, the Department approved the reconstruction and relocation of Runway 15-33; the construction of a new airport access road; the removal of vegetative obstructions to navigable airspace; and the relocation of terminal facilities. Subsequent to original issuance, the Department approved several modifications to the airport including construction of additional hangar space and reconstruction and expansion of pavement and apron space, which cumulatively resulted in 3,993 square feet of freshwater wetland fill and 304,920 square feet (7.0 acres) of freshwater wetland alteration. The development is located at the Belfast Municipal Airport off Congress Street in the City of Belfast.

B. Summary: The applicant proposes to remove or top vegetative airspace obstructions from the Runway 15-33 approach and transitional surface at the Belfast Municipal Airport. Based upon results of an airspace obstruction analysis, the applicant identified vegetation within the airport's navigable airspace which is considered a safety threat to aircraft operation and, thus, needs to be removed. The applicant proposes to cut or top identified trees from several point locations that collectively total 17.36 acres. Of the total project area, 6.32 acres of area is freshwater wetlands and freshwater wetlands of special significance. The proposed project can be seen on a set of plans, the first of which is entitled "Airspace Obstruction Analysis", prepared by Airport Solutions Group, and dated March 2015.

C. Current Use of Site: The site of the development contains an existing, public aviation facility with a single paved runway, three taxiways, two stubs connecting the taxiway to the runway, 19 hangars, a terminal building, and a fueling apron.

D. Title, Right, or Interest: The cutting of vegetative obstructions is proposed within 19 properties. Of those properties, 7.11 acres of cutting will occur on airport property (one parcel) owned by the applicant, 5.44 acres of cutting will occur on property (seven parcels) with existing airport easements that allow tree removal activities, and 4.81 acres of cutting will occur on 11 properties that require easements to allow the cutting of vegetative obstructions. The applicant submitted documentation of title, right, or interest in all properties which includes a deed map, an inventory of parcels, signed deeds, agreements, and easements, and proof of the applicant's eminent domain authority pursuant to Title 30-A Section 3101. All title, right, or interest documentation can be seen in Block 16 and Attachment 5 of the application.

E. Public Interest: While the application was being reviewed, the Department received comments from five interested persons. The interested persons cited soil erosion, surface water runoff, wetland alteration, and loss of vegetative buffers, among others, as potential environmental impacts from the proposed project. The Department reviewed the interested persons' concerns and accepted the comments into the Department's record. The interested persons also requested that the Department conduct a public hearing and to have the Board of Environmental Protection (Board) take jurisdiction over review of the proposed project. Based upon the information submitted by the interested persons and pursuant to the Department's Chapter 2 *Rules Concerning the Processing of Applications and Other Administrative Matters*, Sections 7(B) and 17(C), the Department determined in a letter, dated May 29, 2015, that the Department would not hold a public hearing on the proposed project and that the Board would not assume jurisdiction over the processing of the application. Subsequently, the Department did not receive any additional comments from interested persons in regard to the proposed project.

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 and an aerial photograph of the project site. Department staff visited the project site on June 11, 2015.

The proposed project is not located in, on, or over a waterbody used by the general public. It is located within freshwater wetlands contained on the applicant's property, over property with existing easements, or over property on which that applicant intends to obtain an easement. The nearest scenic resource that is visited by the general public, in part, for the use, observation, enjoyment and appreciation of its natural and cultural visual qualities, is the Belfast Reservoir Number Two. The proposed project at its closest point (Southeast Runway 33) is located approximately 2,000 feet from the Belfast Reservoir Number Two. Because of land topography and a number of structures between the project site and the scenic resource, the proposed project site is not visible from the Belfast Reservoir Number Two. Land uses surrounding the airport include residential

homes, commercial businesses, agricultural fields, and woodlands. The applicant proposes to remove only those trees identified in the airspace obstruction analysis as navigable obstructions to maintain as much vegetative screening between the airport and surrounding properties as practicable.

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 site visit, and the visual impact rating, 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 applicant proposes to use a number of erosion and sedimentation control structures and filtering techniques consistent with the *Maine Erosion and Sedimentation Control Handbook: Best Management Practices*. The applicant submitted a construction and erosion control plan (Attachment 7 and Attachment 8) for the proposed project that provides an overview of preparatory activities and construction activities, and a post-construction work plan.

Tree removal is anticipated to occur over several months. Tree removal within wetland areas will occur during the winter under frozen ground conditions. Hand equipment will be used to remove or top trees, and some downed portion of trees will be left in place to minimize soil disturbance and create wildlife habitat. No stumping, grading, or grubbing activities are anticipated.

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, there are no mapped Essential or Significant Wildlife Habitats located at the site. The proposed project area consists of mowed open areas at both ends of Runway 15-33 with a forested perimeter containing freshwater wetlands. The project area also contains five intermittent streams. The applicant does not propose to disturb these streams.

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:

As discussed in Finding 3, minimal soil erosion is anticipated based on the applicant's erosion control and construction plans.

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:

As a result of the proposed project, the applicant proposes to alter vegetation in approximately 6.32 acres (275,217 square feet) of freshwater wetland and freshwater wetland of special significance from five wetland areas, which are known as W7, W9, W10, W11, and W14. Wetland areas W7, W9, W11, and W14 are considered freshwater wetlands of special significance due to their proximity to a stream or are located within a 100-year floodplain. The applicant proposes to impact 0.22 acres of wetland area W7, a scrub shrub freshwater wetland that abuts a stream. Wetland area W9 consists of a forested freshwater wetland that abuts a stream and has a proposed impact of 2.20 acres. Wetland area W10 is a forested freshwater wetland with a proposed impact of 0.15 acres. The applicant proposes to impact 0.25 acres of wetland area W11, a forested freshwater wetland that abuts a stream. Lastly, the applicant proposes to impact 3.50 acres of wetland area W14, which contains forested, emergent, and scrub shrub freshwater wetland communities and is located within a 100-year floodplain.

Taken together with previous alterations for the overall development, cumulative freshwater wetland impacts total 3,993 square feet of freshwater wetland fill and 13.29 acres of freshwater wetland alteration.

The Wetland and Waterbodies Protection Rules, 06-096 CMR 310, 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 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 NewEarth Ecological

Consulting and dated April 16, 2015. The purpose of the proposed project is to ensure safe airport operation and to bring the airport into compliance with Federal Aviation Administration (FAA) airspace and safety guidelines. The applicant considered several alternatives to the proposed project including no-action, the installation of hazard warning lights, and reducing the length of Runway 15-33. Although a no-action approach would result in no wetland impact, this alternative would result in a reduction in airport safety and non-compliance with FAA safety guidelines. The applicant considered installing hazard warning lights in lieu of removing obstructions. However, the FAA determined that obstruction lighting would be ineffective and that it does not provide an equivalent level of safety and, therefore, rejected obstruction lighting as an alternative to the proposed project. Lastly, the applicant considered reducing the length of Runway 15-33, which is currently 4,000 feet long. The applicant determined that although a runway length reduction would eliminate the need to remove current identified airspace obstructions, a reduction to the length of Runway 15-33 would result in potential loss of future FAA funding, would not meet current demand, and would be contrary to the long-term goals of the airport. In light of these considerations, the applicant stated that there is no other practicable alternative to the proposed project.

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 has taken steps to minimize impact to the wetland areas by removing or topping only those trees identified as current or potential future safety threats within the 17.36-acre project area where obstructions were identified in the applicant's airspace obstruction analysis. The applicant states that the proposed project represents the safest measure for incoming and outgoing aircraft on Runway 15-33 while minimizing disturbance to the wetland areas.

C. Compensation. In accordance with Chapter 310 Section 5(C), compensation is generally required to achieve the goal of no net loss of freshwater wetland functions and values if a project will result in over 15,000 square feet of fill in the resource. The applicant submitted an evaluation of the proposed project site as Attachment 9 of the application that describes the areas of freshwater wetland to be impacted. The project site contains 17 wetland areas. Five of these wetland areas will be impacted as a result of the proposed project, affecting 6.32 acres in total. The applicant also submitted a functional assessment of the freshwater wetland areas (Attachment 10 of the application) which characterizes the project area as being comprised of mowed open area with a forested property perimeter containing areas of freshwater wetlands, freshwater wetlands of special significance, and small streams. The following principal functions of the freshwater wetlands that will be impacted as a result of the project are sediment retention, production export, wildlife habitat, and nutrient retention.

The Department may waive the requirement for compensation if it determines that any impact to wetland functions and values from the activity will be insignificant. The proposed project requires cutting of select vegetation within certain areas adjacent to Runway 15-33. Following project completion, the area shall be maintained in a low vegetated cover type, and the wetland is expected to maintain its existing functions and

values. For this reason and based on the information contained in the applicant's assessment, the Department finds that the proposed project will not significantly alter the existing functions and values of the freshwater wetlands and determined that compensation is not required.

The Department further finds that the applicant has avoided and minimized freshwater 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 proposed project is a minor change and will not significantly affect any other issues identified during previous Department reviews of the project site.

Based on its review of the application, the Department finds the requested minor revision to be in accordance with all relevant Departmental standards. All other findings of fact, conclusions and conditions remain as approved in Department Order #L-21771-TH-A-N/L-21771-NI-B-N, and subsequent Orders.

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

- A. The proposed activity will not unreasonably interfere with existing scenic, aesthetic, recreational, or navigational uses.
- B. The proposed activity will not cause unreasonable erosion of soil or sediment.
- C. The proposed activity will not unreasonably inhibit the natural transfer of soil from the terrestrial to the marine or freshwater environment.
- D. The proposed activity will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic habitat, travel corridor, freshwater, estuarine, or marine fisheries or other aquatic life.
- E. The proposed activity will not unreasonably interfere with the natural flow of any surface or subsurface waters.
- F. The proposed activity will not violate any state water quality law including those governing the classifications of the State's waters.
- G. The proposed activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties.
- H. The proposed activity is not on or adjacent to a sand dune.

- I. The proposed activity is not on an outstanding river segment as noted in 38 M.R.S. § 480-P.

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

- A. The applicant has provided adequate evidence of financial capacity and technical ability to develop the project in a manner consistent with state environmental standards.
- B. The applicant has made adequate provision for fitting the development harmoniously into the existing natural environment and the development will not adversely affect existing uses, scenic character, air quality, water quality or other natural resources in the municipality or in neighboring municipalities.
- C. The proposed development will be built on soil types which are suitable to the nature of the undertaking and will not cause unreasonable erosion of soil or sediment nor inhibit the natural transfer of soil.
- D. The proposed development meets the standards for storm water management in Section 420-D and the standard for erosion and sedimentation control in Section 420-C.
- E. The proposed development will not pose an unreasonable risk that a discharge to a significant groundwater aquifer will occur.
- F. The applicant has made adequate provision of utilities, including water supplies, sewerage facilities and solid waste disposal required for the development and the development will not have an unreasonable adverse effect on the existing or proposed utilities in the municipality or area served by those services.
- G. The activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties nor create an unreasonable flood hazard to any structure.

THEREFORE, the Department APPROVES the above-noted application of the CITY OF BELFAST to remove or top vegetation from select point locations at both ends of Runway 15-33 at the Belfast Municipal Airport as described in Finding 1, SUBJECT TO THE FOLLOWING CONDITIONS, and all applicable standards and regulations:

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

3. Severability. The invalidity or unenforceability of any provision, or part thereof, of this License shall not affect the remainder of the provision or any other provisions. This License shall be construed and enforced in all respects as if such invalid or unenforceable provision or part thereof had been omitted.
4. All other Findings of Fact, Conclusions and Conditions remain as approved in Department Order #L-21771-TH-A-N/L-21771-NI-B-N, and subsequent Orders, and are incorporated herein.

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

DONE AND DATED IN AUGUSTA, MAINE, THIS 12TH DAY OF AUGUST, 2015.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: 
For: Patricia W. Aho, Commissioner



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

BC/L21771FMGN/ATS#79150,79151

**DEP SITE LOCATION OF DEVELOPMENT (SITE) STANDARD CONDITIONS
STRICT CONFORMANCE WITH THE STANDARD AND SPECIAL CONDITIONS OF THIS APPROVAL
IS NECESSARY FOR THE PROJECT TO MEET THE STATUTORY CRITERIA FOR APPROVAL.**

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



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.



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.
