



DEPARTMENT ORDER

IN THE MATTER OF

THREE RIVERS SOLAR, LLC) SITE LOCATION OF DEVELOPMENT ACT
T16 MD, Hancock County) NATURAL RESOURCES PROTECTION ACT
SOLAR POWER FACILITY) FRESHWATER WETLAND ALTERATION
L-28195-PS-A-N (approval)) WATER QUALITY CERTIFICATION
L-28195-TH-B-N (approval)) FINDINGS OF FACT AND ORDER

Pursuant to the provisions of 38 M.R.S. §§ 481–489-E and §§ 480-A–480-JJ, Section 401 of the Federal Water Pollution Control Act (33 U. S. C. § 1341), and Chapters 310, 315, 335, 373, 375 and 500 of Department rules, the Department of Environmental Protection has considered the application of THREE RIVERS SOLAR POWER, LLC with the supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

1. PROJECT DESCRIPTION:

A. Summary: The applicant proposes to construct a 100 megawatt (MW) solar facility with a substation, a main power transformer, inverters, and collector lines, all as shown on a set of plans the first of which is entitled “Site Location Map,” prepared by Acheron Engineering Services. The proposed project consists of approximately 300,000-400,000 solar panels in a 465-acre area plus a 480-foot by 250-foot substation located adjacent to an existing transmission line. Proposed new impervious area for the project totals 7.7 acres. The project site is located in T16 MD.

The applicant is also seeking approval under the Natural Resources Protection Act to clear 232,865 square feet of scrub shrub and emergent wetland vegetation under the solar panels.

B. Current Use of Site: The site of the proposed project is currently fields and woodland. Several existing roads will be utilized for the project and no new access roads are proposed.

2. FINANCIAL CAPACITY:

The total cost of the project is estimated to be \$146.5 million. The applicant submitted a letter from KeyBank, dated October 25, 2019 indicating that it is likely Three Rivers Solar, LLC will be able to obtain financing. Prior to the start of construction, the applicant must submit evidence that it has been granted a line of credit or a loan by a financial institution authorized to do business in this State or evidence of any other form of financial assurance consistent with Department Rules, Chapter 373, § 1, to the Department for review and approval.

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

3. TECHNICAL ABILITY:

The applicant provided resume information for key persons involved with the project and a list of projects successfully constructed by the applicant. The applicant also retained the services of Acheron Engineering Services, a professional engineering firm, to assist in the design and engineering of the project.

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

4. NOISE:

The applicant analyzed the predicted sound levels for the transformer and inverters and concluded that the proposed project would result in sound levels below the Department's noise standard.

The Department finds that the applicant has made adequate provision for the control of excessive environmental noise from the proposed project.

5. SCENIC CHARACTER:

The Site Law, 38 M.R.S. § 484(3), and the NRPA, 38 M.R.S. § 480-D, both have standards pertaining to scenic impacts that must be satisfied in order to obtain a permit for development. The Site Law requires an applicant to demonstrate that the developer has made adequate provision for fitting the development harmoniously into the existing natural environment and that the proposed project will not adversely affect existing uses or scenic character. Pursuant to the NRPA, an applicant must demonstrate that a proposed project will not unreasonably interfere with existing scenic, aesthetic or recreational uses of a protected natural resource.

To address the scenic impact criteria, the applicant submitted a Visual Impact Assessment (VIA) entitled "Visual Impact Assessment Report," prepared by Coplon Associates and Atlantic Resource Co, LLC. The VIA examined the potential scenic impact of the project on resources including State or federally designated trails, historic places, National or State parks, and public lands in the vicinity of the proposed project. The VIA concluded that the visual impacts would be negligible to nonexistent.

The Department hired Scenic Quality Consultants, an independent scenic consultant, to assist in its review of the evidence submitted on scenic character. Scenic Quality Consultants reviewed the VIA for adequacy and provided the Department with comments dated January 28, 2020.

In its comments, Scenic Quality Consultants stated that while the submitted VIA lacked some details, it did evaluate project visibility to approximately 20 miles from the panels. Within three miles of the proposed project, there is one scenic resource, but it is unlikely to have visibility of the project.

The scenic consultant considered the cumulative impacts of the proposed project when viewed in conjunction with two operational wind power facilities from Tunk Mountain, located approximately 5.75 miles from the proposed project. The consultant determined the proposed project would likely be relatively unnoticed and would have little effect on viewer experience.

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

6. WILDLIFE AND FISHERIES:

The Maine Department of Inland Fisheries and Wildlife (MDIFW) reviewed the proposed project. In its comments, MDIFW stated it had not mapped any Essential Habitats in the vicinity of the project. MDIFW further stated that blueberry barrens in Downeast Maine support large populations of breeding upland sandpiper, a State threatened species. The project is not proposed to be located in the blueberry barrens traditionally used by upland sandpipers for breeding. The project area, however, is in varying stages of conversion from a predominantly forested site to a site that would support blueberries. That conversion has been put on hold while the applicant pursues development of the proposed solar project. The applicant submitted a survey of the project completed by Biodiversity Research Institute (BRI) during the late nesting period in 2019. The survey report, entitled "A Survey of Upland Sandpipers at the Three Rivers Solar Project Proposed in T16 MDBPP" and dated July 31, 2019, indicated the presence of at least one pair of successfully breeding sandpipers and a likely maximum of five to six individuals using the site. All sightings were located within Solar Areas 1-7 at the north end of the project site, as shown on Figure 3, submitted with the report.¹

MDIFW commented that because the site was only recently being prepared for agricultural use it did not recommend mitigation for loss of upland sandpiper habitat. To protect against the unintended take or harassment of upland breeding sandpipers, including territorial, incubating, low-mobility fledgling birds and eggs, MDIFW recommended all site work be completed between September 1 and May 1 of any

¹ The project area naming convention varied in the submitted materials. Plan sheet C-2, Proposed Conditions Site plan, prepared by Acheron Engineering Services and dated October 2019, divides the project into six areas, labeled Solar Fields #1-6. The BRI report "A Survey of Upland Sandpipers at the Three Rivers Solar Project Proposed in T16 MDBPP" and dated July 31, 2019, references ten Solar Project Areas. Solar Project Areas 1-7 collectively correspond to Solar Field #1 on the Acheron plan. The Upland Sandpiper Construction Deterrence Plan, prepared by Western EcoSystems Technology, Inc., dated May 2020, divides the project into BRI Study Areas SA1-SA7, and Solar Fields SF1-SF6. SA1-SA7 correspond to Solar Project Areas 1-7 on the BRI report and Solar Field #1 on the Acheron plan. For consistency, all references within this Order correspond to the naming convention in the BRI report.

calendar year. If this work window could not be adhered to, MDIFW recommended the applicant obtain an Incidental Take Permit.

In response to MDIFW's initial comments, the applicant submitted a plan with protective measures for upland sandpipers if construction activity occurred outside of the work window. The plan, prepared by Western EcoSystems Technology, Inc. and dated February 2020, "Upland Sandpiper Avoidance and Minimization Before and During Construction," included, among other things, a proposal to mow the project area outside of the construction window to reduce the attractiveness of the project site for nesting sandpipers, to use biological spotters to identify upland sandpipers that might establish nests within the project area, and to prohibit construction activity within 100 meters of any nest.

MDIFW reviewed the February 2020 plan and reiterated its recommendation that all construction be limited to the work window and that the applicant obtain an Incidental Take Permit for work outside of this window. MDIFW commented that in its opinion the plan was unnecessarily complicated and did not fully address its concerns under the Maine Endangered Species Act. MDIFW stated the proposed 100-meter work buffer around any identified nest was not large enough.

The applicant developed a new plan, "Upland Sandpiper Construction Deterrence Plan," dated May 2020, in response to MDIFW's comments. This plan built on the prior plan and contains additional detail and measures to avoid and minimize the risk of impacts to upland sandpipers. The goal of the plan is to manage the site and construction activities to deter nesting within the project area so that arriving upland sandpipers elect to establish nests in the blueberry barrens in the region that nesting sandpipers traditionally have inhabited. If construction cannot be completed between September 1 and May 1 of any calendar year, the plan proposes a series of measures, focused on Areas 1 through 7, including the following:

- To commence construction activities prior to May 1 and maintain continuous activity at the site until September 1.
- To mow areas 1 and 2 during the work window and continue to mow these areas until posts for the panel rack systems are installed.
- After mobilization, begin land clearing in Areas 3 through 7, which includes rock and stump removal, and also begin the grinding or burning stumps on site within Areas 3 through 7.
- To spread stump grindings in Areas 1, 2, 6, and 7 to a depth of two inches, covering a total area of approximately 100 acres.
- To stage land leveling, stump grinding, and stump spreading activities so that they are spread throughout Areas 3 through 7, but no further than 600 feet apart.
- To begin installation of solar panel rack support posts as land leveling and spreading of grindings activities are complete. Post installation would begin in Areas 1 and 2 and progress south as Areas 3 through 7 are land leveled.

MDIFW submitted additional comments on June 18, 2020. In the comments, MDIFW reiterated its recommendation of the work window of September 1 to May 1. MDIFW also strongly encouraged that site work begin in the sensitive habitat areas during the recommended work window and continue uninterrupted until completed. MDIFW stated that in this way, it is expected that the area will no longer provide suitable habitat and avoid/minimize the opportunity for upland sandpipers to return and suffer take or harassment. If, for some reason, site work is not able to encompass the sensitive habitat areas before the close of the recommended work window, MDIFW recommended that the applicant engage BRI to conduct additional breeding surveys. If no breeding-related activity is observed (courtship, breeding, nesting behavior), work can continue. However, if breeding-related activity is observed, MDIFW recommended that site work cease within those areas until the next September 1 to May 1 work window.

After review and consideration of the information and plans presented by the applicant and the comments offered by MDIFW, the Department finds construction activity in Areas 1 through 7 has the potential to have an unreasonable adverse effect on upland sandpipers, a State-listed threatened species, unless steps are taken to avoid and minimize the potential impacts. While upland sandpipers were observed in the project area by BRI, the project area itself is not traditional upland sandpiper habitat. The birds are only believed to have been present in the area because the area was temporarily suitable as habitat because of the recent conversion of the property from timberland. Thus, the primary risk to upland sandpipers is not the loss of habitat. Rather, the primary risk is potential disturbance and related impacts associated with construction activity if upland sandpipers establish nests within the project area, as opposed to elsewhere in the region. Through construction sequencing, including completion of significant site work when upland sandpipers are not present and continuing already commenced construction activity into and through the spring and summer, the areas of the project that previously might have been attractive to upland sandpipers seeking nesting locations can be managed so that arriving upland sandpipers can be reasonably expected to select traditional, alternative nesting locations within the region but beyond the project area. Therefore, within Areas 1 through 7, the applicant must limit all construction activity to the recommended work window of September 1 to May 1 of any calendar year unless the applicant:

- Mows Areas 1 and 2 during the work window and maintains them as mowed areas until the work window reopens, the area is covered with stump grindings, or posts for the panel rack systems are installed;
- Stumps and grubs at least two-thirds of the combined Areas 3 through 7 during the work window;
- If all of Areas 3 through 7 are not stumped and grubbed during the work window, conducts a upland sandpiper breeding survey of Areas 1 through 7 and stops all construction activity within these areas if breeding-related activity is observed; a breeding survey plan must be submitted to the Department for review and approval prior to the survey being conducted and prior to conducting construction activity beyond closure of the work window on May 1;

- Continues construction activity previously begun during the work window into and through the spring and summer until September 1 or the completion of construction, whichever comes first; and
- Conducts all other construction activities in accordance with the “Upland Sandpiper Construction Deterrence Plan,” dated May 2020.

The Department of Marine Resources (DMR) reviewed the proposed project. In its comments, DMR stated little or no impact to salmon habitat is anticipated.

The Department finds that the activity will not unreasonably harm any wildlife or fisheries, 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 the applicant conducts construction activity in Areas 1 through 7 as required above.

7. HISTORIC SITES:

The Maine Historic Preservation Commission reviewed the proposed project and stated that it will have no effect upon any structure or site of historic, architectural, or archaeological significance as defined by the National Historic Preservation Act of 1966.

The Department finds that the proposed development will not have an adverse effect on the preservation of any historic sites either on or near the development site.

8. UNUSUAL NATURAL AREAS:

The applicant surveyed the proposed project site for rare or unique botanical features and identified Canada Mountain-rice Grass (*Piptatherum canadense*) on-site.

The Maine Natural Areas Program (MNAP) reviewed the submitted information and stated Canada Mountain-rice Grass is ranked S2 in Maine. Canada Mountain-rice Grass grows in dry, nutrient-poor soils with sparse vegetation, and disturbances that open the canopy and create bare soil conditions are also beneficial to the species. This perennial grass flowers mid-June to mid-July in Maine and sets seed starting a few weeks following flowering.

Seed production is imperative for the spread and/or recolonization of Canada Mountain-rice Grass, as this species is not thought to reproduce vegetatively. Any activities that directly impact Canada Mountain-rice Grass during the early summer months will likely adversely impact the ability of the species to spread pollen via wind and to produce or set seed, which will decrease the presence of this species in the seed bank and adversely impact potential for re-establishment from the seed bank. MNAP stated all ground disturbance activities in areas containing Canada Mountain-rice Grass should be completed from September 1 to May 1 of any calendar year. If construction activities cannot be avoided prior to that period, identification and avoidance measures must be implemented, as agreed upon by the applicant and MNAP.

MNAP stated that mulch from stump grinding should not be placed in areas with Canada Mountain-rice Grass. The applicant must notify the Department if mulch spreading will occur in any areas not previously approved. MNAP also stated that mowing areas with Canada Mountain-rice Grass should only occur once per year, after August 31 of any calendar year.

The applicant submitted an herbicide application plan. The plan was reviewed by MNAP and found to be acceptable. Any change in herbicide application methods must be approved by the Department prior to any application.

Prior to the start of construction, the applicant must submit a Canada Mountain-rice Grass Management Plan to the Department for review and approval. The plan should detail identification and marking plans, and proposed construction procedures.

Additionally, MNAP recommended the applicant create a monitoring plan to be submitted to the Department prior to construction that will track Grass populations post-construction, evaluate the success of the management plan, and to detect whether the *Piptatherum canadense* is impacted by the development.

MNAP recommends that the monitoring plan should:

1. Include a monitoring schedule for August of year 3 and again at year 5 post-construction;
2. Be implemented by a qualified botanist (field survey);
3. Be submitted to DEP and MNAP for review and approval by the Department prior to construction;
4. Require that field survey results be submitted to DEP and MNAP for review, comment, and inclusion in MNAP's Biological Conservation Database; and
5. Include a methodology that mirrors the method used for the project application, as portrayed on Acheron map C-3 "Proposed Conditions without Solar Panels" dated 10/8/2019, and as described in the September 22, 2019 "Rare, Threatened, and Endangered Plan Survey at the Three Rivers Solar Project Site" report from ARC, and result in a similar report and map of High-Medium-Low- and 1-10 individual density estimates of plants.

The Department finds that the proposed development will not have an adverse effect on unusual natural areas at the development site provided a monitoring plan is developed and implemented consistent with the recommendations above.

9. BUFFER STRIPS:

Based on the VIA submitted by the applicant and the project's location, the Department determined no buffers are required for visual screening.

Aside from stormwater treatment buffers (discussed in Finding 11), the applicant is not proposing to utilize any formal buffer strips for the proposed project.

10. SOILS:

The applicant submitted a soil survey map and report based on the soils found at the project site. This report was prepared by a certified soils scientist and reviewed by staff from the Division of Environmental Assessment (DEA) of the Bureau of Water Quality (BWQ).

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

11. STORMWATER MANAGEMENT:

The proposed project includes approximately 11.6 acres of developed area of which 7.7 acres is impervious area. It lies within the watershed of the West Branch of the Narraguagus River. The applicant submitted a stormwater management plan based on the Basic, General, and Flooding Standards contained in Chapter 500 Stormwater Management rules (06-096 C.M.R. ch. 500, effective August 12, 2015). The proposed stormwater management system consists of a berm buffer and 43 roadside buffers. The area under the solar panels is considered self-treating and must not be mowed more than two times per year.

A. Basic Standards:

(1) Erosion and Sedimentation Control: The applicant submitted an Erosion and Sedimentation Control Plan (Section 14 of the application) that is based on the performance standards contained in Appendix A of Chapter 500 and the Best Management Practices outlined in the Maine Erosion and Sediment Control BMPs, which were developed by the Department. This plan and plan sheets containing erosion control details were reviewed by the Bureau of Land Resources (BLR).

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

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

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

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

B. General Standards:

The applicant's stormwater management plan includes general treatment measures that will mitigate for the increased frequency and duration of channel erosive flows due to runoff from smaller storms, provide for effective treatment of pollutants in stormwater, and mitigate potential temperature impacts. This mitigation is being achieved by using Best Management Practices (BMPs) that will control runoff from no less than 95% of the impervious area and no less than 80% of the developed area. For the linear portion of the project, the applicant is proposing to control runoff volume from no less than 75% of the impervious area and no less than 50% of the developed area.

The stormwater buffers will be protected from alteration through the execution of a deed restriction. The applicant proposes to use the deed restriction language contained in Appendix G of Chapter 500 and submitted a draft deed restriction that meets Department standards.

The applicant shall execute and record the required deed restrictions prior to the start of construction. The applicant shall submit a copy of the recorded deed restriction to the BLR within 60 days of its recording.

The stormwater management system proposed by the applicant was reviewed by, and revised in response to comments from, BLR. After a final review, BLR commented that the proposed stormwater management system is designed in accordance with the General Standards contained in Chapter 500, § 4(C) and recommended the design engineer oversee the installation of the Stormwater Best Management Practices. At least once per year or 30 days after completion, the applicant must submit an update or as-built plans for the completed project.

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

C. Flooding Standard:

The applicant is proposing to utilize a stormwater management system based on estimates of pre- and post-development stormwater runoff flows obtained by using Hydrocad, a stormwater modeling software that utilizes the methodologies outlined in Technical Releases #55 and #20, U.S.D.A., Soil Conservation Service and detains stormwater from 24-hour storms of 2-, 10-, and 25-year frequency. The post-development peak flow from the site will not exceed the pre-development peak flow from the site and the peak flow of the receiving water will not be increased as a result of stormwater runoff from the development site.

BLR commented that the proposed system is designed in accordance with the Flooding Standard contained in Chapter 500, § 4(F).

Based on the system's design and BLR's review, the Department finds that the applicant has made adequate provision to ensure that the proposed project will meet the Flooding Standard contained in Chapter 500, § 4(F) for peak flow from the project site, and channel limits and runoff areas.

The Department further finds that the proposed project will meet the Chapter 500 standards for easements and covenants.

12. GROUNDWATER:

The project site is not located over a mapped sand and gravel aquifer. The proposed project does not propose any withdrawal from, or discharge to, the groundwater.

The Department finds that the proposed project will not have an unreasonable adverse effect on ground water quality.

13. WATER SUPPLY:

No water usage is proposed for the project.

14. WASTEWATER DISPOSAL:

No wastewater will be discharged from the project.

15. SOLID WASTE:

The proposed project will generate approximately 390 tons of stumps and grubbings. All stumps and grubbings generated will be disposed of on site, either chipped or burned, with the remainder to be worked into the soil, in compliance with the Maine Solid Waste Management Rules.

The proposed project will generate approximately 123 tons of construction debris and demolition debris. All construction and demolition debris generated will be disposed of at Juniper Ridge Landfill, which is currently in substantial compliance with the Maine Solid Waste Management Rules.

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

16. FLOODING:

The proposed project is not located within the 100-year flood plain of any river or stream.

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

17. WETLAND IMPACTS:

The applicant proposes to clear 232,865 square feet of scrub shrub and emergent wetland for the installation of solar panels.

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

A. Avoidance. No activity may be permitted if there is a practicable alternative to the project that would be less damaging to the environment. The applicant submitted an alternative analysis for the proposed project completed by Atlantic Resource Co. LLC and dated November 2019. The purpose of the project is to construct a 100 MW solar facility. The applicant considered alternate parcels, but the sites were rejected as unsuitable or already being considered for other development. Some wetland impacts are unavoidable if the project is constructed at a viable size.

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 designed the project with no direct impacts to wetlands. The wetland areas near panels will be mowed annually or bi-annually to minimize shading of the solar panels, however, those areas will continue to function as wetlands.

C. Compensation. Compensation is required to achieve the goal of no net loss of wetland functions and values. In accordance with Chapter 310, § 5(C)(7), 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. Since no wetland fill is proposed, the Department finds a waiver of compensation is appropriate in this instance.

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.

18. DECOMMISSIONING PLAN:

In order to facilitate and ensure appropriate removal of the solar components when they reach the end of their useful life or if the applicant ceases operation of the facility, the Department requires applicants to demonstrate, in the form of a decommissioning plan, the means by which decommissioning will be accomplished. The applicant submitted a decommissioning plan which includes a description of the trigger for implementing the decommissioning, a description of the work required, an estimate of decommissioning costs, a schedule for contributions to its decommissioning fund, and a demonstration of financial assurance.

- A. Trigger for implementation of decommissioning. The solar panels have an expected operational life of 50 years. However, other factors may trigger the requirement for decommissioning before 50 years have passed. The solar facility would be decommissioned when it ceases to generate electricity for a continuous period of twelve months. In the case of a force majeure or other event which causes the project to fail to generate electricity for 12 months, the applicant can submit to the Department, for review and approval, reasonable evidence that the project can be operational within 12 months.

If reasonable evidence cannot be supplied, or if the applicant chooses to forgo this submission to the Department, decommissioning must begin within 18 months of the cessation of power generation at the facility.

- B. Description of work. The description of work contained in the application outlines the applicant's proposal for the manner in which the arrays and other components of the proposed project would be dismantled and removed from the site. Subsurface components would be removed to a minimum of 24 inches below grade, and disturbed areas would be re-seeded. At the time of decommissioning, the applicant must submit a plan for continued beneficial use of any components proposed to be left on-site to the Department for review and approval.
- C. Financial Assurance. The applicant estimates that the current cost for decommissioning the project will be \$2,230,450. The applicant proposes to submit financial assurance for the decommissioning costs in the form of (i) performance bond, (ii) surety bond, or (iii) letter of credit, or other acceptable form of financial assurance for the total cost of decommissioning. The applicant proposes to have the financial assurance mechanism in place prior to construction. Financial assurance must be submitted to the Department for review and approval prior to the start of construction and must remain in place through the life of the project. At least every five years after the start of construction the applicant must re-evaluate the decommissioning cost and submit updated proof of acceptable financial assurance to the Department for review and approval.

Based on the applicant's proposal outlined above, the Department finds that the applicant's proposal would adequately provide for decommissioning, provided the

applicant submits evidence of financial assurance for decommissioning costs and at the time of decommissioning, submit a plan for continued beneficial use of any development components proposed to be left on-site all as described above.

19. MAINE LAND USE PLANNING COMMISSION CERTIFICATION:

The proposed project was reviewed by the LUPC to determine whether the project is an allowed use in the subdistricts affected and whether the project meets the LUPC's land use standards applicable to the project that are not considered in the Department's review. The LUPC standards applicable to this project include land division history; vehicular circulation, access and parking; lighting; minimal dimensional requirements; vegetation clearing; signs; activities in flood prone areas; and general criteria for approval.

In Commission Determination #SLC-12, dated February 12, 2020, the LUPC certified that the project conforms with the applicable regulatory and statutory requirements, and plans adopted pursuant to 12 M.R.S. Chapter 206-A, and meets the Commission's Land Use Standards applicable to the project that are not considered in the Department's review, subject to conditions of approval. The conditions of approval, detailed in the Commission Determination, may be enforced by either the LUPC or the Department.

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-480-JJ and Section 401 of the Federal Water Pollution Control Act:

- A. The proposed activity will not unreasonably interfere with existing scenic, aesthetic, recreational, or navigational uses.
- B. The proposed activity will not cause unreasonable erosion of soil or sediment.
- C. The proposed activity will not unreasonably inhibit the natural transfer of soil from the terrestrial to the marine or freshwater environment.
- D. The proposed activity will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic 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. §§ 481–489-E:

- A. The applicant has provided adequate evidence of financial capacity and technical ability to develop the project in a manner consistent with state environmental standards provided that the applicant meets the requirement of Finding 2.
- B. The applicant has made adequate provision for fitting the development harmoniously into the existing natural environment and the development will not adversely affect existing uses, scenic character, air quality, water quality or other natural resources in the municipality or in neighboring municipalities provided that the applicant meets the requirements of Findings 6 and 8.
- 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 38 M.R.S. § 420-D and the standard for erosion and sedimentation control in 38 M.R.S. § 420-C provided that the applicant meets the requirements of Finding 11.
- 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.
- F. 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.
- G. The applicant has made adequate provisions to achieve decommissioning of the solar power facility provided that the applicant meets the requirements of Finding 18.

THEREFORE, the Department APPROVES the application of THREE RIVERS SOLAR POWER, LLC to construct a solar facility 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.

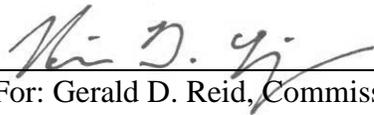
3. Severability. The invalidity or unenforceability of any provision, or part thereof, of this License shall not affect the remainder of the provision or any other provisions. This License shall be construed and enforced in all respects as if such invalid or unenforceable provision or part thereof had been omitted.
4. Prior to the start of construction, the applicant shall submit evidence that it has been granted a line of credit or a loan by a financial institution authorized to do business in this State or evidence of any other form of financial assurance consistent with Department Rules, Chapter 373, § 1, to the Department for review and approval.
5. The applicant shall execute and record all required deed restrictions prior to the start of construction. The applicant shall submit a copy of the recorded deed restriction to the BLR within 60 days of its recording.
6. The design engineer shall oversee the installation of the Stormwater Best Management Practices. At least once per year or 30 days after completion, the applicant shall submit an update or as-built plans for the completed project to the Department for review.
7. At the time of decommissioning, the applicant shall submit a plan for continued beneficial use of any components proposed to be left on-site to the Department for review and approval.
8. Proof of financial assurance for decommissioning shall be submitted to the Department for review and approval prior to the start of construction.
9. At least every five years after the start of construction, updated proof of acceptable financial assurance for decommissioning shall be submitted to the Department for review and approval.
10. Any mowing of the project areas containing Canada Mountain-rice Grass shall occur once per year, after August 31.
11. The applicant shall notify the Department if mulch spreading will occur in any areas not previously approved.
12. Prior to the start of construction, the applicant shall submit a Canada Mountain-rice Grass Management Plan to the Department for review and approval. The plan shall detail identification and marking plans, and proposed construction procedures.
13. All ground disturbance activities in areas containing Canada Mountain-rice Grass shall be completed from September 1 to May 1 of any calendar year. If construction activities cannot be avoided prior to that period, identification and avoidance measures shall be implemented for Canada Mountain-rice Grass.

14. Any change in herbicide application methods shall be submitted to the Department for review and approval prior to any application.
15. Prior to the start of construction, the applicant shall submit a plan for post-construction monitoring of Canada Mountain-rice Grass on-site to the Department for review.
16. By December 31 of the third year of project operation, the applicant shall submit a report on the post-construction monitoring of Canada Mountain-rice Grass to the Department for review.
17. By December 31 of the fifth year of project operation, the applicant shall submit a report on the post-construction monitoring of Canada Mountain-rice Grass to the Department for review.
18. Within Areas 1 through 7, the applicant shall limit all construction activity to the work window of September 1 to May 1 of any calendar year unless the applicant:
 - a. Mows Areas 1 and 2 during the work window and maintains them as mowed areas until the work window reopens, the area is covered with stump grindings, or posts for the panel rack systems are installed;
 - b. Stumps and grubs at least two-thirds of the combined Areas 3 through 7 during the work window;
 - c. If all of Areas 3 through 7 are not stumped and grubbed during the work window, conducts a upland sandpiper breeding survey of Areas 1 through 7 and stops all construction activity within these areas if breeding-related activity is observed; a breeding survey plan must be submitted to the Department for review and approval prior to the survey being conducted and prior to conducting construction activity beyond closure of the work window on May 1;
 - d. Continues construction activity previously begun during the work window into and through the spring and summer until September 1 or the completion of construction, whichever comes first; and
 - e. Conducts all other construction activities in accordance with the “Upland Sandpiper Construction Deterrence Plan,” dated May 2020.

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 10TH DAY OF JULY, 2020.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: 
For: Gerald D. Reid, Commissioner

PLEASE NOTE THE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES.

ME/L28195ANBN/ATS#85278, 85280

FILED
July 10, 2020
State of Maine
Board of Environmental Protection

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

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

(2/81)/Revised December 27, 2011



Natural Resources Protection Act (NRPA) Standard Conditions

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

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

STORMWATER STANDARD CONDITIONS

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

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

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

- (7) Maintenance. The components of the stormwater management system must be adequately maintained to ensure that the system operates as designed, and as approved by the Department. If maintenance responsibility is to be transferred from the permittee to another entity, a transfer request must be filed with the Department which includes the name and contact information for the person or entity responsible for this maintenance. The form must be signed by the responsible person or agent of the responsible entity.
- (8) Recertification requirement. Within three months of the expiration of each five-year interval from the date of issuance of the permit, the permittee shall certify the following to the department.
- (a) All areas of the project site have been inspected for areas of erosion, and appropriate steps have been taken to permanently stabilize these areas.
 - (b) All aspects of the stormwater control system are operating as approved, have been inspected for damage, wear, and malfunction, and appropriate steps have been taken to repair or replace the system, or portions of the system, as necessary.
 - (c) The stormwater maintenance plan for the site is being implemented as approved by the Department, and the maintenance log is being maintained.
 - (d) All proprietary systems have been maintained according to the manufacturer's recommendations. Where required by the Department, the permittee shall execute a 5-year maintenance contract with a qualified professional for the coming 5-year interval. The maintenance contract must include provisions for routine inspections, cleaning and general maintenance.
 - (e) The Department may waive some or all of these recertification requirements on a case-by-case basis for permittees subject to the Department's Multi-Sector General Permit ("MSGP") and/or Maine Pollutant Discharge Elimination System ("MEPDES") programs where it is demonstrated that these programs are providing stormwater control that is at least as effective as required pursuant to this Chapter.
- (9) Transfer of property subject to the license. If any portion of the property subject to the license containing areas of flow or areas that are flooded are transferred to a new property owner, restrictive covenants protecting these areas must be included in any deeds or leases, and recorded at the appropriate county registry of deeds. Also, in all transfers of such areas and areas containing parts of the stormwater management system, deed restrictions must be included making the property transfer subject to all applicable terms and conditions of the permit. These terms and conditions must be incorporated by specific and prominent reference to the permit in the deed. All transfers must include in the restrictions the requirement that any subsequent transfer must specifically include the same restrictions unless their removal or modification is approved by the Department. These restrictions must be written to be enforceable by the Department, and must reference the permit number.
- (10) Severability. The invalidity or unenforceability of any provision, or part thereof, of this permit shall not affect the remainder of the provision or any other provisions. This permit shall be construed and enforced in all respects as if such invalid or unenforceable provision or part thereof had been omitted.



DEP INFORMATION SHEET

Appealing a Department Licensing Decision

Dated: November 2018

Contact: (207) 287-2452

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) an administrative process before the Board of Environmental Protection (Board); or (2) 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. § 3451(4)) or a general permit for an offshore wind energy demonstration project (38 M.R.S. § 480-HH(1)) or a general permit for a tidal energy demonstration project (38 M.R.S. § 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. §§ 341-D(4) & 346; the *Maine Administrative Procedure Act*, 5 M.R.S. § 11001; and the DEP's *Rules Concerning the Processing of Applications and Other Administrative Matters* ("Chapter 2"), 06-096 C.M.R. ch. 2.

DEADLINE 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 more than 30 calendar days after the date on which the Commissioner's decision was filed with the Board will be dismissed unless notice of the Commissioner's license decision was required to be given to the person filing an appeal (appellant) and the notice was not given as required.

HOW TO SUBMIT AN APPEAL TO THE BOARD

Signed original appeal documents must be sent to: Chair, Board of Environmental Protection, 17 State House Station, Augusta, ME 04333-0017. An appeal may be submitted by fax or e-mail if it contains a scanned original signature. It is recommended that a faxed or e-mailed appeal be followed by the submittal of mailed original paper documents. The complete appeal, including any attachments, must be received at DEP's offices in Augusta on or before 5:00 PM on the due date; materials received after 5:00 pm are not considered received until the following day. The risk of material not being received in a timely manner is on the sender, regardless of the method used. The appellant must also send a copy of the appeal documents to the Commissioner of the DEP; the applicant (if the appellant is not the applicant in the license proceeding at issue); and if a hearing was held on the application, any intervenor in that hearing process. All of the information listed in the next section of this information sheet must be submitted at the time the appeal is filed.

INFORMATION APPEAL PAPERWORK MUST CONTAIN

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

1. *Aggrieved Status.* The appeal must explain how the appellant has standing to maintain an appeal. This requires an explanation of how the appellant 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.* The appeal must identify the specific findings of fact, conclusions regarding compliance with the law, license conditions, or other aspects of the written license decision or of the license review process that the appellant objects to or believes to be in error.
3. *The basis of the objections or challenge.* For the objections identified in Item #2, the appeal must state why the appellant believes that the license decision is incorrect and should be modified or reversed. If possible, the appeal should cite specific evidence in the record or specific licensing requirements that the appellant believes were not properly considered or fully addressed.
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 matters specifically raised in the written notice of appeal.
6. *Request for hearing.* If the appellant wishes the Board to hold a public hearing on the appeal, a request for public hearing must be filed as part of the notice of appeal, and must include an offer of proof in accordance with Chapter 2. The Board will hear the arguments in favor of and in opposition to a hearing on the appeal and the presentations on the merits of an appeal at a regularly scheduled meeting. If the Board decides to hold a public hearing on an appeal, that hearing will then be scheduled for a later date.
7. *New or additional evidence to be offered.* If an appellant wants to provide evidence not previously provided to DEP staff during the DEP's review of the application, the request and the proposed evidence must be submitted with the appeal. The Board may allow new or additional evidence, referred to as supplemental evidence, to be considered in an appeal only under very limited circumstances. The proposed evidence must be relevant and material, and (a) the person seeking to add information to the record must show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process; or (b) the evidence itself must be newly discovered and therefore unable to have been presented earlier in the process. Specific requirements for supplemental evidence are found in Chapter 2 § 24.

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, and is made easily accessible by the DEP. Upon request, the DEP will make application materials available during normal working hours, provide space to review the file, and provide an 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 general questions regarding the appeal process.
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. Unless a stay of the decision is requested and granted, 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, and will provide 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, any materials submitted in response to the appeal, and relevant excerpts from the DEP's application review file will be sent to Board members with a recommended decision from DEP staff. The appellant, the license holder if different from the appellant, and any interested persons are notified in advance of the date set for Board consideration of an appeal or request for public hearing. The appellant and the license holder will have an opportunity to address the Board at the Board meeting. 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, the 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. § 346(1); 06-096 C.M.R. ch. 2; 5 M.R.S. § 11001; and 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. 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. § 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.
