



DEPARTMENT ORDER

IN THE MATTER OF

KINGFISH MAINE, INC.	) SITE LOCATION OF DEVELOPMENT ACT
Jonesport, Washington County	) NATURAL RESOURCES PROTECTION ACT
AQUACULTURE FACILITY	) COASTAL WETLAND IMPACT
L-28995-26-A-N (approval)	) FRESHWATER WETLAND IMPACT
L-28995-4C-B-N (approval)	) ADJACENT ACTIVITY
L-28995-TH-C-N (approval)	)
L-28995-2F-D-N (approval)	) WATER QUALITY CERTIFICATION
L-28995-2G-E-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 Clean Water Act (33 U. S. C. § 1341), and Chapters 310, 315, 373, 375, and 500 of Department rules, the Department of Environmental Protection has considered the application of KINGFISH MAINE, INC. 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 recirculating aquaculture facility including two primary buildings, access roads, housing, a store, and an informational center. Approximately 21.9 acres of impervious area are proposed for the facility that will raise fish from egg to market size. The proposed facility is shown on a set of plans the first of which is entitled “Overall Site Plan,” prepared by Gartley & Dorsky Engineering & Surveying, and dated March 2021. The project site is located on Mason Bay Road in the Town of Jonesport.

The applicant is also seeking approval under the Natural Resources Protection Act to construct two approximately 1,400-foot long intake pipes and two approximately 2,800-foot long outfall pipes with 7,136 square feet of direct impact to coastal wetland. The applicant proposes to impact 261,196 square feet of freshwater wetland, including 64,004 square feet of impact to wetland of special significance that contains a peatland.

C. Current Use of Site: The site of the proposed project is a 93-acre parcel that contains a home and an access road. The parcel is identified as Lot 23 on Map 8 on the Town of Jonesport’s tax maps.

2. FINANCIAL CAPACITY:

The total cost of the project is estimated to be \$110 million. The applicant submitted a letter from Rabobank Bank, dated March 10, 2021 indicating that it intends to provide financing for this project.

The applicant estimates the cost of site preparation and stabilization, including site control, erosion and sediment control, site clearing and grubbing, construction administration set-up, phased topsoil stripping and stockpiling, ledge removal, and rough excavation to building subgrade to be \$4.5 million. Prior to the start of any 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, in the amount of \$4.5 million to the Department for review and approval. Additionally, prior to the start of any construction, the applicant shall provide financial assurance for site stabilization/restoration in the amount of \$350,000 in the form of (i) a performance bond, (ii) a surety bond, (iii) an irrevocable letter of credit, (iv) escrow account, or other acceptable form of financial assurance to the Department for review and approval.

Prior to the start of any construction beyond the work listed above, 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 in the amount of \$105.5 million, to the Department for review and approval. Upon receiving Department approval for this portion of the financial assurance, the \$350,000 in site stabilization/restoration funds may be canceled or released to the applicant.

The Department finds that the applicant has demonstrated adequate financial capacity to comply with Department standards provided that final financing is provided to the Department for review and approval as outlined above.

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 Gartley & Dorsky Engineering & Surveying, Inc., 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:

Under No Adverse Environmental Effect Standards of the Site Location of Development Act, Chapter 375, § 10(C)(5)(i), aquacultural activities are exempt from Department noise regulations. Additionally, while the facility will have emergency, back-up generators, these will only be used in the case of power outages and not as a routine part of the operation of the facility. The testing of this equipment is exempt when done during the daytime and no more than once per week, consistent with Ch. 375, § 10(C)(5)(p). The Department finds that no regulated sources of noise have been identified.

5. SCENIC CHARACTER:

The applicant designed the proposed new structures to minimize visual impacts when seen from the Atlantic Ocean. Factors including shape, color, and texture were considered and addressed in the design. Vegetated buffers, including plantings oceanside of Building 4, are also proposed to minimize visual impacts.

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 that a population of Crowberry Blue butterfly, a State Species of Special Concern, is documented in the peatland located in the northwest corner of this project parcel. MDIFW recommended that all of the bordering forested wetland remain undisturbed as it is both hydrologically contiguous with the peatland and may provide valuable secondary habitat value for the butterfly population (e.g., nectar habitat, buffer from open area avian predators, etc.) MDIFW also recommended no additional clearing or disturbance be permitted within 75 feet of the forested wetland edge, no project-related drainage or stormwater/runoff be directed toward the forested wetlands or peatland, no pesticides of any kind should be applied on the project parcel anywhere within 250 feet of the forested wetland edge, and that the parcel owner provide permanent access to the bog and all wetlands north of the (east-west) access road for biologists and staff from MDIFW and MNAP for purposes of mapping and monitoring the status of the maritime peatland natural community and associate populations of rare wildlife and plants.

In response, the applicant stated that, excepting the entrance road (116-foot setback) and the corner of Building 1 (110-foot setback), all buffers from the peatland are in excess of 250 feet. The applicant also confirmed that no stormwater from the project will be directed to the peatland. The applicant stated it was amenable to data collection with respect to the peatland.

The Maine Department of Marine Resources (DMR) reviewed the proposed project. DMR stated the construction of the pipeline and effluent discharge should have little or no long-term impact to the lobster industry landings or biology. The physical structure setting on the bottom should also have little impact to the movement of lobsters. However, there could be potential concerns with setting of fishing gear directly on or beside the pipeline. The diffusers, intakes and concrete anchoring collar structures could cause entanglement of traps and possible loss of gear. DMR recommends the accurate marking of the intakes and diffuser locations and the length of the exposed pipeline.

The scallop fishery in the proposed pipeline area is located within DMR Scallop Zone 2. Portions of this zone have closures of harvest during certain years. The effluent discharge for temperature and salinity does not appear to be of concern to juvenile or adult scallops.

This project, as proposed, should not result in significant adverse impacts to marine resources, recreation, navigation, or riparian access. DMR concurs with a construction time window of November to April. This work window may be extended into late April and early May for placement of the pipes and concrete collars, but not dredging/excavation activity.

Traditional fishing access could be a concern for lobster, crab, and scallop fishing due to intake and discharge structures. These structures will be between 2 – 10 feet above the sea floor and could entangle fishing gear. DMR recommends the structure be marked physically with buoys or other markings and the coordinates be submitted to the United States Coast Guard (USCG) and the National Oceanic and Atmospheric Administration (NOAA) for inclusion on marine charts. If the marking ultimately is not sufficient to prevent entanglement, DMR recommends the creation of an exclusion zone around the structures.

The Department finds that the applicant has made adequate provision for the protection of wildlife and fisheries provided all dredging is completed between November 8 and April 30, all placement of pipes and concrete collars is completed between November 8 and May 7, the intakes and diffuser locations and the length of the exposed pipeline are accurately marked, and the coordinates are submitted to USCG and NOAA, and provided no pesticides are applied within 250 feet of the forested wetland edge.

7. HISTORIC SITES AND UNUSUAL NATURAL AREAS:

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 Maine Natural Areas Program database does not contain any records documenting the existence of rare or unique botanical features on the project site.

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

8. BUFFER STRIPS:

The applicant is not proposing to utilize any formal buffer strips for the proposed project.

9. SOILS:

The applicant submitted a geotechnical report based on the soils found at the project site. This report was prepared by a registered professional engineer 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.

10. STORMWATER MANAGEMENT:

The proposed project includes approximately 28.1 acres of developed area of which 21.9 acres is impervious area. It lies within the watershed of the Atlantic Ocean. 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 two wet ponds and five underdrained soil filters.

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.

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 or third-party engineer oversee the construction of the Stormwater Best Management Practices. Within 30 days of completion of the entire system or at least once a year, 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 not proposing a formal stormwater management system to detain stormwater from 24-hour storms of 2-, 10-, and 25-year frequency. Instead, since the project site is located adjacent to the Atlantic Ocean, the applicant requested a waiver from the flooding standard pursuant to Department Rules, Chapter 500, § 4(F)(3)(b).

BLR commented that a waiver of the Flooding Standard is appropriate for the project.

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.

11. GROUNDWATER:

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

To ensure the on-site well does not impact protected natural resources or adjacent wells, the applicant proposes to monitor groundwater levels pre- and during production. The applicant must submit a copy of the monitoring to the Department for review and approval within 18 months of the start of project operation.

The applicant submitted a draft Spill Prevention and Countermeasure Control plan (SPCC) dated March 2021. The plan details protocol for preventing spills as well as response measures. A final SPCC must be submitted to the Department prior to operation of the facility.

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

12. WATER SUPPLY:

Water for the facility operations and product processing will be supplied by an on-site Public Water Supply Well. Daily water usage is estimated at 43,200 gpd and the applicant demonstrated a sufficient supply of water is available to meet this demand. Additionally, as noted above in Finding 11, ground water levels will be monitored to ensure the on-site well does not impact protected natural resources or adjacent wells. The Department of Health & Human Services (DHHS), Drinking Water Program states the project is currently being reviewed under the New Public Well approval process. DHHS states that the water quality results are satisfactory, and no water treatment is anticipated. Prior to occupancy of the proposed project, the applicant must submit proof of final DHHS approval to the Department for review. The applicant proposes to use treated seawater to minimize demands on groundwater. This information was reviewed by DEA.

The Department finds that the applicant has made adequate provision for securing and maintaining a sufficient and healthful water supply provided final DHHS approval is secured.

13. WASTEWATER DISPOSAL:

Wastewater will be disposed of by one individual and one engineered subsurface wastewater disposal systems. The applicant submitted the report discussed in Finding 9. Each individual system must be designed to meet the requirements of the Maine State Plumbing Code and the engineered wastewater disposal system, which receives more than 2,000 gallons of wastewater per day, must receive final approval from the Department of Health and Human Services, Division of Environmental Health Subsurface Wastewater Unit (DHHS-DEH) prior to occupancy of the facility. This information was reviewed by, and revised in response to comments from, DEA.

Department Order W009238-6F-A-N, dated June 25, 2021, approved a Maine Pollution Discharge Elimination System/Waste Discharge license for a daily maximum discharge of 28.7 million gallons per day of treated discharge from the facility.

Based on DEA's comments, the Department finds that the proposed wastewater disposal systems will be built on suitable soil types provided final DHHS approval is submitted to the Department for review prior to occupancy of the facility. The Department also finds waste will be discharged from the facility in a manner that will not impact water quality provided that the applicant adheres to the terms of the waste discharge license.

14. SOLID WASTE:

When completed, the proposed project is anticipated to generate 183 tons of general solid waste per year. All general solid wastes from the proposed project will be disposed of at

Penobscot Energy Recovery Company, which is currently in substantial compliance with the Maine Solid Waste Management Rules.

The proposed project will generate approximately 25 tons a day of waste from process water. The waste will be disposed of at Juniper Ridge Landfill, which will need a special waste license to accept the process water waste. If Juniper Ridge Landfill does not receive the special waste license prior to the generation of process water waste, the applicant must find an alternative disposal site and submit the new proposal to the Department for review and approval prior to any disposal.

The proposed project will generate approximately 5 tons a day of fish processing by-products. The waste will be disposed of at the Coast of Maine compost facility, which is currently in substantial compliance with the Maine Solid Waste Management Rules. The proposed project will generate approximately 980 tons of stumps and grubblings. All wood waste will be chipped and used on site as erosion control mix, in compliance with the Maine Solid Waste Management Rules.

The proposed project will generate approximately 990 cubic yards 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.

A portion of the intake and discharge pipes will be buried in a trench. The trench will be backfilled, and any excess fill will be disposed of under the provisions of a beneficial use permit or at Juniper Ridge Landfill.

Based on the above information, the Department finds that the applicant has made adequate provision for solid waste disposal provided that the applicant meets the requirements for the disposal of process water waste.

15. FLOODING:

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

16. WETLAND IMPACTS:

The applicant proposes to directly alter 261,196 square feet of forested wetland, including 64,004 square feet of wetland of special significance that contains a peatland to construct the facility. The applicant also proposes 8,620 square feet of temporary impacts to coastal wetland for trenching to install the intake and outfall pipes. An additional 28,610 square feet of indirect impact due to shading for the pipelines, and 7,136 square feet of direct impact from the EConcrete block supports for the pipelines are proposed.

The Wetland and Waterbodies Protection Rules, 06-096 C.M.R. ch. 310 (effective November 11, 2018), 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 and coastal wetland alteration must provide an analysis of alternatives in order to demonstrate that a practicable alternative does not exist.

A. Avoidance. No activity may be permitted if there is a practicable alternative to the project that would be less damaging to the environment. Additionally, for activities proposed in, on, or over wetlands of special significance the activity must be among the types listed in Chapter 310, § 5(A) or a practicable alternative less damaging to the environment is considered to exist and the impact is unreasonable. Impacts to wetlands of special significance for water dependent uses are among the activities specifically provided for in Chapter 310, § 5(A)(1)(c). Aquaculture is a water dependent use. The applicant submitted an alternative analysis for the proposed project completed by Gartley & Dorsky Engineering and Surveying and dated March 2021. The applicant considered a total of 25 sites for the project. The selected site met criteria for access to deep water, water quality, and parcel size. The applicant designed the facility to avoid wetlands when possible while meeting the project purpose and avoided any direct impacts to the peatland on-site.

B. Minimal Alteration. The amount of freshwater and coastal 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 steep side slopes in wetland crossing areas and minimized road widths to lessen impacts. The applicant determined the optimal length for the intake and outfall pipes and then determined the placement to minimize habitat and traditional fishing impacts. The applicant proposes to use EConcrete blocks as supports for the pipeline. The blocks will colonize and serve as additional features to minimize habitat loss.

C. Compensation. Compensation is required to achieve the goal of no net loss of wetland functions and values. The primary functions and values for the impacted wetlands are wildlife habitat, production export, groundwater recharge/discharge, and floodflow alteration. For the impacts to freshwater wetland, the applicant proposes to make a contribution into the In-Lieu Fee program of the Maine Natural Resource Conservation Program in the amount of \$1,110,083. Prior to the start of construction, the applicant must submit a payment in the amount of \$1,110,083, payable to "Treasurer, State of Maine," and directed to the attention of the In-Lieu Fee Program Administrator at 17 State House Station, Augusta, Maine 04333. The applicant requests a waiver of the compensation requirement for the coastal wetland impacts as most will be restored after pipe installation. Additionally, the EConcrete blocks will mitigate for any habitat loss due to pipeline support installation. The applicant proposes to monitor the blocks to measure biological recruitment. The applicant must submit a report on the condition of the blocks and recruitment at two years and five years after the installation. In the event

the blocks are not successfully providing habitat, the Department may require further compensation.

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 provided that prior to project construction, the applicant submits the In-Lieu Fee payment and monitoring reports as described above.

17. WATER QUALITY CONSIDERATIONS:

Under Section 401(a)(1) of the Clean Water Act, applicants for Federal permits and licenses that may result in discharges into waters of the United States are required to obtain state water quality certifications (WQC). The WQC must determine that potential discharges will comply with applicable provisions of the CWA. During its review, the Department evaluated this project and determined that the discharge from the proposed project will comply with the applicable provisions of Sections 301, 302, 303, 306, and 307 of the Clean Water Act and applicable state regulatory requirements.

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.

18. AIR QUALITY:

The applicant has obtained an air emissions license from the Department, #A-1157-71-A-N, dated August 17, 2021. Accordingly, the Department finds the project will not have an unreasonable adverse effect on air quality, satisfying Ch. 375, § 1.

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 Clean Water 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 provided that the applicant meets the requirements of Findings 6 and 16.
- 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 requirements 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 Finding 6.
- 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 10.
- E. The proposed development will not pose an unreasonable risk that a discharge to a significant groundwater aquifer will occur provided that the applicant meets the requirement of Finding 11.
- 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 provided that the applicant meets the requirements of Findings 12, 13, and 14.
- 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 application of KINGFISH MAINE, INC. to construct an aquaculture 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 site preparation and stabilization, including site control, erosion and sediment control, site clearing and grubbing, construction administration set-up, phased topsoil stripping and stockpiling, ledge removal, rough excavation to building subgrade, 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, in the amount of \$4.5 million to the Department for review and approval.
5. Prior to the start of any construction, the applicant shall provide financial assurance for site stabilization/restoration in the amount of \$350,000 in the form of (i) a performance bond, (ii) a surety bond, or (iii) an irrevocable letter of credit, or other acceptable form of financial assurance to the Department for review and approval.
6. Prior to the start of any construction not listed in Special Condition #4, 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, in the amount of \$105.5 million to the Department for review and approval.
7. All dredging shall be completed between November 8 and April 30.
8. All placement of pipes and concrete collars shall be completed between November 8 and May 7.
9. The intakes and diffuser locations and the length of the exposed pipeline shall be accurately marked, and the coordinates shall be submitted to USCG and NOAA.
10. The applicant shall submit a report on the condition of the EConcrete blocks and recruitment at two years and five years after the installation to the Department for review.

- 11. No pesticides shall be applied within 250 feet of the forested wetland edge.
- 12. The applicant shall submit a copy of the groundwater monitoring to the Department for review and approval within 18 months of the start of project operation.
- 13. Prior to occupancy of the proposed project, the applicant shall submit proof of final DHHS approval for the public water supply to the Department for review.
- 14. The engineered wastewater disposal system shall receive final approval from the Department of Health and Human Services, Division of Environmental Health Subsurface Wastewater Unit (DHHS-DEH) prior to occupancy of the facility.
- 15. The design engineer or third-party engineer shall oversee the construction of the Stormwater Best Management Practices. Within 30 days of completion of the entire system or at least once a year, the applicant shall submit an update or as-built plans for the completed project.
- 16. In the event that Juniper Ridge Landfill does not receive a special waste license prior to the generation of process water waste, the applicant shall find an alternative disposal site and submit the new proposal to the Department for review and approval prior to any disposal.
- 17. A final SPCC shall be submitted to the Department prior to operation of the facility.
- 18. Prior to the start of construction, the applicant shall submit a payment in the amount of \$1,110,083, payable to "Treasurer, State of Maine," and directed to the attention of the In-Lieu Fee Program Administrator at 17 State House Station, Augusta, Maine 04333.

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 12<sup>TH</sup> DAY OF NOVEMBER, 2021.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY:   
For: Melanie Loyzim, Commissioner

<p><b>FILED</b> November 12<sup>th</sup>, 2021 State of Maine <b>Board of Environmental Protection</b></p>
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PLEASE NOTE THE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES.

ME/L28995ANBNCNDNEN/ATS#87418, 87419, 87420, 87447, 87448

**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.



## Natural Resources Protection Act (NRPA) Standard Conditions

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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 sub-contractor 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: August 2021**

**Contact: (207) 314-1458**

### **SUMMARY**

This document provides information regarding a person's rights and obligations in filing an administrative or judicial appeal of a licensing decision made by the Department of Environmental Protection's (DEP) Commissioner.

Except as provided below, there are two methods available to an aggrieved person seeking to appeal a licensing decision made by the 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.

### **I. ADMINISTRATIVE APPEALS TO THE BOARD**

#### **LEGAL REFERENCES**

A person filing an appeal with the Board should review Organization and Powers, [38 M.R.S. §§ 341-D\(4\)](#) and [346](#); the Maine Administrative Procedure Act, 5 M.R.S. § [11001](#); and the DEP's [Rule 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**

Not more than 30 days following the filing of a license decision by the Commissioner with the Board, an aggrieved person may appeal to the Board for review of the Commissioner's decision. The filing of an appeal with the Board, in care of the Board Clerk, is complete when the Board receives the submission by the close of business on the due date (5:00 p.m. on the 30<sup>th</sup> calendar day from which the Commissioner's decision was filed with the Board, as determined by the received time stamp on the document or electronic mail). Appeals filed after 5:00 p.m. on the 30<sup>th</sup> calendar day from which the Commissioner's decision was filed with the Board will be dismissed as untimely, absent a showing of good cause.

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

An appeal to the Board may be submitted via postal mail or electronic mail and must contain all signatures and required appeal contents. An electronic filing must contain the scanned original signature of the appellant(s). The appeal documents must be sent to the following address.

Chair, Board of Environmental Protection  
c/o Board Clerk  
17 State House Station  
Augusta, ME 04333-0017  
[ruth.a.burke@maine.gov](mailto:ruth.a.burke@maine.gov)

The DEP may also request the submittal of the original signed paper appeal documents when the appeal is filed electronically. The risk of material not being received in a timely manner is on the sender, regardless of the method used.

At the time an appeal is filed with the Board, the appellant must send a copy of the appeal to: (1) the Commissioner of the DEP (Maine Department of Environmental Protection, 17 State House Station, Augusta, Maine 04333-0017); (2) the licensee; and if a hearing was held on the application, (3) any intervenors in that hearing proceeding. **Please contact the DEP at 207-287-7688 with questions or for contact information regarding a specific licensing decision.**

### **REQUIRED APPEAL CONTENTS**

A complete appeal 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 bring the 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 of 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 criteria 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 to changes in specific license 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 hearing must be filed as part of the notice of appeal, and it must include an offer of proof regarding the testimony and other evidence that would be presented at the hearing. The offer of proof must consist of a statement of the substance of the evidence, its relevance to the issues on appeal, and whether any witnesses would testify. 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 supplemental evidence must be submitted with the appeal. The Board may allow new or additional evidence to be considered in an appeal only under limited circumstances. The proposed supplemental 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. Requirements for supplemental evidence are set forth 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 accessible by the DEP. Upon request, the DEP will make application materials available to review and photocopy during normal working hours. There may be 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 the appeal.* DEP staff will provide this information upon 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 licensee may proceed with a project pending the outcome of an appeal, but the licensee 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 acknowledge receipt of an appeal, and it will provide the name of the DEP project manager assigned to the specific appeal. The notice of appeal, any materials admitted by the Board as supplementary evidence, any materials admitted in response to the appeal, relevant excerpts from the DEP's administrative record for the application, and the DEP staff's recommendation, in the form of a proposed Board Order, will be provided to Board members. The appellant, the licensee, and parties of record are notified in advance of the date set for the Board's consideration of an appeal or request for a hearing. The appellant and the licensee will have an opportunity to address the Board at the Board meeting. The Board will decide whether to hold a hearing on appeal when one is requested before deciding the merits of the appeal. The Board's decision on appeal may be to affirm all or part, affirm with conditions, order a hearing to be held as expeditiously as possible, reverse all or part of the decision of the Commissioner, or remand the matter to the Commissioner for further proceedings. The Board will notify the appellant, the licensee, and parties of record of its decision on appeal.

## **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 Clerk at 207-287-2811 or the Board Executive Analyst at 207-314-1458 [bill.hinkel@maine.gov](mailto:bill.hinkel@maine.gov), or for judicial appeals contact the court clerk's office in which the appeal will be filed.

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**Note: This information sheet, in conjunction with a review of the statutory and regulatory provisions referred to herein, is provided to help a person to understand their rights and obligations in filing an administrative or judicial appeal. The DEP provides this information sheet for general guidance only; it is not intended for use as a legal reference. Maine law governs an appellant's rights.**

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