

MAINE TURNPIKE AUTHORITY) NATURAL RESOURCES PROTECTION
YORK TOLL PLAZA) ACT PERMIT, WATER QUALITY
YORK, YORK COUNTY, MAINE) CERTIFICATION, AND SITE
L-27241-TG-A-N) LOCATION GENERAL PERMIT
L-27275-TP-A-N)
) FINDINGS OF FACT and ORDER

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

IN THE MATTER OF

MAINE TURNPIKE AUTHORITY) NATURAL RESOURCES PROTECTION
YORK TOLL PLAZA) ACT PERMIT, WATER QUALITY
YORK, YORK COUNTY, MAINE) CERTIFICATION, AND SITE
L-27241-TG-A-N) LOCATION GENERAL PERMIT
L-27275-TP-A-N)
) FINDINGS OF FACT and ORDER

Pursuant to the provisions of the *Natural Resources Protection Act*, 38 MRSA §480-A, *Water Quality Certification*, 38 MRSA §464, and *Site Location of Development Law* (“Site Law”), 38 MRSA §§481-490 as implemented in the State of Maine Department of Environmental Protection Site Location of Development Act General Permit for the Maine Turnpike Authority (“General Permit”), the Department of Environmental Protection (“Department”) has considered the application of the MAINE TURNPIKE AUTHORITY (“Applicant” or “Authority”) with the supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

1. PROJECT APPLICATION AND BACKGROUND:

A. Summary of Applications and Process: The Applicant proposes replacement of the barrier toll plaza at mile 7.3 of Interstate 95 in York, Maine with a new open road tolling (“ORT”) plaza at mile 8.8 of Interstate 95 in York, Maine. This project includes the following components: fifteen total lanes, electronic toll collection equipment gantries over six highway speed E-Z Pass center lanes, construction of nine cash toll booth lanes (four northbound and five southbound), highway reconstruction to accommodate approach and departure lanes, a service tunnel, an access road and utilities via Chases Pond Road, an administrative building and associated parking adjacent to the new toll plaza, and demolition and revegetation of the existing seventeen lane barrier plaza, administrative building and associated parking associated with the existing toll plaza at mile 7.3 (together, herein referred to as the “Project”). The Project entails approximately 58,086 sf of freshwater wetland impacts, twenty-four feet of stream impacts, and minimal impacts to habitat supporting two Threatened and Endangered Species.

On November 9, 2016 the Department accepted as complete Applicants’ Notice of Intent pursuant to the General Permit and its Natural Resources Protection Act (“NRPA”) permit application for the Project.

MAINE TURNPIKE AUTHORITY
YORK TOLL PLAZA
YORK, YORK COUNTY, MAINE
L-27241-TG-A-N
L-27275-TP-A-N

) NATURAL RESOURCES PROTECTION
) ACT PERMIT, WATER QUALITY
) CERTIFICATION, AND SITE
) LOCATION GENERAL PERMIT
)
) FINDINGS OF FACT and ORDER

Pursuant to the Department’s *Rule Concerning the Processing of Applications and other Administrative Matters* (Chapter 2 § 7(B)), on December 2, 2016 the Commissioner determined that a public hearing would be held on the NRPA permit application. The public hearing was limited to the licensing criteria relevant to the NRPA permit application. The hearing was held on Monday, May 22, 2017 at the Kittery Community Center’s Star Theater in Kittery.

B. Current Use of the Site: The linear portion of the Project follows the existing Maine Turnpike corridor. Widening of the existing roadway will be necessary to accommodate the new toll plaza and administrative building. The access road from Chases Pond Road will replace forested area.

2. PUBLIC PARTICIPATION:

A. Prefiling Requirements:

Applicant completed a pre-application meeting with the Department, the Maine Department of Inland Fisheries and Wildlife (“MDIFW”) and the United States Army Corps of Engineers (“USACOE”) on April 12, 2016 and a pre-submission meeting on September 13, 2016 with the Department, MDIFW and USACOE.

B. Public Informational Meeting:

A public informational meeting was held on October 5, 2016 in the Town of York as required by 06-096 C.M.R. ch. 2, § 13. The Applicant mailed notice of the public informational meeting to the abutters and the Town of York municipal offices. The notice was published in the York Weekly, Portsmouth Press Herald and the Portland Press Herald on September 28, 2016. A notice was also published in the York County Star on September 29, 2016.

C. Notice of Intent to File:

A Notice of Intent to File an application was published in the Portsmouth Press Herald, York Weekly and the Portland Press Herald on October 19, 2016 as well as the York County Star on October 20, 2016 in addition to being mailed to the abutters and the Town of York. This notice fulfilled the public notice requirements of 06-096 C.M.R. ch. 2, § 14.

D. Public Hearing Requests and Board Jurisdiction:

MAINE TURNPIKE AUTHORITY
YORK TOLL PLAZA
YORK, YORK COUNTY, MAINE
L-27241-TG-A-N
L-27275-TP-A-N

) NATURAL RESOURCES PROTECTION
) ACT PERMIT, WATER QUALITY
) CERTIFICATION, AND SITE
) LOCATION GENERAL PERMIT
)
) FINDINGS OF FACT and ORDER

The Department received two timely requests in December 2016 for a public hearing. On December 2, 2016 the Department decided to convene a public hearing.

E. Public Hearing Process:

(1) Intervenor

Intervenor status was requested by two entities. On January 27, 2017, the Department received a petition to intervene from the Town of York. On January 30, 2017, the Department received a petition to intervene from Think Again, a local citizens group. Both petitioners met the requirements for Intervenor Status set forth in Chapter 3§11 (A)(1) and (2). The Department approved both petitions on February 14, 2017 and consolidated Intervenor as Concerned Citizens for Responsible Tolling.

(2) Procedural Orders

Prior to the public hearing, the Board issued four Procedural Orders:

- a. The First Procedural Order, issued on February 14, 2017, set a date for the pre-hearing conference and granted both motions to intervene.
- b. The Second Procedural Order, issued March 14, 2017, documented the pre-hearing conference held on March 2, 2017. The pre-hearing conference included a review of the procedural rules in preparation for, and during, the hearing; the roles and responsibilities of the Applicant, Intervenor, and Department staff; and the relevant licensing criteria. The Second Procedural Order established the deadlines for filing of pre-filed testimony and exhibits and for the order of presentation of evidence at the public hearing. The Second Procedural Order also set the date of April 5, 2017 for a site visit and the dates for the public hearing.
- c. The Third Procedural Order, issued May 12, 2017, restated the Commissioner decision that the public hearing would proceed, responded to objections on expert witnesses and requests for submission of additional evidence, and established submission deadlines for the Applicant's and intervenors' lists of witnesses, pre-filed direct testimony and exhibits, and pre-filed rebuttal testimony, as well as setting the dates and schedule for the public hearing.

MAINE TURNPIKE AUTHORITY
YORK TOLL PLAZA
YORK, YORK COUNTY, MAINE
L-27241-TG-A-N
L-27275-TP-A-N

) NATURAL RESOURCES PROTECTION
) ACT PERMIT, WATER QUALITY
) CERTIFICATION, AND SITE
) LOCATION GENERAL PERMIT
)
) FINDINGS OF FACT and ORDER

- d. The Fourth Procedural Order, issued June 16, 2017, specified that the Department would not require the Authority to conduct further or updated modeling and set a deadline of June 30, 2017 (later extended to July 15, 2017 by agreement of the parties) for filing of closing briefing.

(3) Site Visit

A site visit occurred on April 5, 2017 for the purpose of allowing the Department to view the physical features of the site and the nature of the area surrounding the Project and the turtle habitat compensation project. The Applicant and Intervenor were also present during the tour. Department Staff conducted the tour and answered questions from the Hearing Officer.

(4) Public Hearing

The Department held a public hearing on the Project application on May 22, 2017 in Kittery, Maine pursuant to the Maine Administrative Procedure Act, 5, §§ 9051-9064; 38 M.R.S. §§ 341-D(2) ; and the *Rules Governing the Conduct of Licensing Hearings*, 06-096 C.M.R. ch. 3 (last amended February 16, 2015). At the hearing, the witnesses for the parties summarized their pre-filed direct and rebuttal testimony, and were subject to cross-examination by the other parties and questioning by the Department Commissioner, Hearing Officer, staff, and counsel from the Attorney General’s Office.

The Department held an evening session on May 22, 2017 to receive testimony from members of the general public. Prior to the close of the evidentiary record, the Department received written comments from the general public. The testimony and written comments by the general public included opposition to, and support for, the Project.

Following the filing of post-hearing briefs by the parties on the sole issue of submission of additional modeling evidence, the Department determined no new modeling evidence was necessary.

The hearing transcript and hearing documents are included in the record on file. Additional discussion of testimony and comments are addressed in the Findings of Fact of this license, as appropriate.

F. Draft License Comment Period

MAINE TURNPIKE AUTHORITY
YORK TOLL PLAZA
YORK, YORK COUNTY, MAINE
L-27241-TG-A-N
L-27275-TP-A-N

) NATURAL RESOURCES PROTECTION
) ACT PERMIT, WATER QUALITY
) CERTIFICATION, AND SITE
) LOCATION GENERAL PERMIT
)
) FINDINGS OF FACT and ORDER

A draft license was made available for comments on _____ through notification to the Applicant, Intervenor, and interested persons. The draft license was posted on the Department’s website and the 15 working day comment period closed on _____. A total of _____ commenters submitted written comments on the draft license. All of the comments were reviewed and given consideration in relation to the relevant review criteria of State laws and rules.

Based on comments received, revisions were made to the draft license that address the relevant review criteria and issues raised within the purview of the Department’s authority.

All comments received are part of the record and were made available on the Department’s website

3. COMPLIANCE WITH THE GENERAL PERMIT:

A. Title, Right or Interest:

Applicant presented documentation of fee ownership of the entirety of the Turnpike roadway and the parcel on which the administrative building and access road will be constructed a portion of which will be placed under conservation easement. The Applicant has purchase and sale agreements with the Town of York Water District for relocation of the water line and a private individual for additional area adjacent to the existing roadway that is necessary for the Project.

B. Financial Capacity and Technical Ability:

Applicant has documented financial capacity and technical ability consistent with state environmental standards and the Site Law. Consultants retained by Applicant have submitted credentials with their pre-filed sworn written testimony which indicate their technical ability. Authority funding commitments are authorized by the Board of Directors via the Authority’s Four Year Capital Investment Plan, Thirty Year Financial Plan and Annual Reserve Maintenance Deposit requirements.

C. No Adverse Effect on the Natural Environment:

The Authority demonstrated that there will be no adverse effects to existing uses, scenic character, air quality, water quality or other natural resources.

| | |
|--------------------------|--------------------------------|
| MAINE TURNPIKE AUTHORITY |) NATURAL RESOURCES PROTECTION |
| YORK TOLL PLAZA |) ACT PERMIT, WATER QUALITY |
| YORK, YORK COUNTY, MAINE |) CERTIFICATION, AND SITE |
| L-27241-TG-A-N |) LOCATION GENERAL PERMIT |
| L-27275-TP-A-N |) |
| |) FINDINGS OF FACT and ORDER |

Sebago Technics prepared a report describing the findings of the field evaluation of wetlands that was submitted as part of the NRPA application. The total direct wetland impacts are 1.46 acres which includes 1.16 acres of terrestrial vernal pool impacts.

Applicant submitted a report prepared by Stantec, dated September 22, 2015. The report stated that four sites were tested and there were no observations of Northern Long-eared Bats. The Applicant submitted an additional report prepared by Normandeau Associates dated July 2010, surveying New England Cottontail. The survey concluded there was no evidence of New England Cottontail. Impacts to 0.13 acres of habitat supporting two Threatened or Endangered Species (spotted turtle (*Clemmys guttata*) and eastern ribbon snake (*Thamnophis sauritus*)) were identified. No fisheries concerns were identified.

Based on coordination with the Department and MDIFW, the Authority has committed to the following mitigation for the proposed impacts:

- Provide \$170,000.00 to the Maine Department of Transportation to install a new wildlife passage on Route 236 in Eliot Maine.
- Install barrier fencing in the vicinity of the new toll plaza
- Place under conservation easement 22-acres of Authority property adjacent to the Project and including a significant vernal pool
- In-Lieu Fee payment of \$281,649.01

Though the Project is exempt from the noise standard in the General Permit, Applicant submitted a noise analysis report prepared by Jacobs Engineering on September 27, 2016. The analysis concluded that no considerable, long term construction related noise impacts are anticipated. A significant portion of the Project is located in the existing Turnpike corridor and implementation of highway speed lanes will reduce the noise and air pollution associated with deceleration and acceleration at the current barrier plaza. The Authority operates under a statewide noise policy identical in all important respects to the MaineDOT's noise policy that has been approved by the Federal Highway Administration ("FHWA"). In addition, the Project will meet the noise standards of 06-096 CMR 375 §10 Control of Noise.

As required by the General Permit, the Authority reviewed the Project for impacts to historic and cultural resources by consulting with the Maine State Historic Preservation Officer (SHPO) in compliance with the process that is described in Section 4 of the Programmatic Agreement between FHWA, Federal Transit Administration (FTA), Advisory Council on Historic Preservation (ACHP), Maine State Historic Preservation Office (SHPO), and MaineDOT. Because there is no federal funding for the Project, consultation for this project was with the USACOE which has issued authorization for the Project.

MAINE TURNPIKE AUTHORITY
YORK TOLL PLAZA
YORK, YORK COUNTY, MAINE
L-27241-TG-A-N
L-27275-TP-A-N

) NATURAL RESOURCES PROTECTION
) ACT PERMIT, WATER QUALITY
) CERTIFICATION, AND SITE
) LOCATION GENERAL PERMIT
)
) FINDINGS OF FACT and ORDER

As required by the General Permit, the Authority’s professional landscape architects reviewed site plans and design landscape plans for the Project and its surrounding areas, and any identified scenic resource. The Authority right of way department and planning staff identified all public parks, recreation areas, public wildlife and waterfowl refuges, and land of significant historic properties associated with the Project.

Based on the Project’s location and design, the Department finds that the Project will not have an unreasonable adverse effect on the natural environment.

D. MaineDOT Statewide Transportation Improvement Program:

The proposed project is not included in the MaineDOT Statewide Transportation Improvement Program (STIP). The Applicant submitted a report titled Air Quality Report, prepared by Jacobs Engineering and dated September 28, 2016. The report concluded that the construction of the proposed ORT plaza (at mile 8.8) would result in substantial ambient air quality improvement at mile 7.3 and have near net-zero effect on pollutant emissions at mile 8.8.

E. Soils:

Applicant submitted a Natural Resources Conservation Service Soils Survey and a site specific geotechnical investigation completed by Jacobs Engineering. The Jacobs investigation included borings and test pits confirming soils properties for design purposes and for stormwater buffers and treatment systems.

The Department finds that, based on these reports, the soils on the Project site present no limitations to the Project.

F. Storm Water Management and Erosion Control:

The Project includes approximately 4.21 acres of new impervious area and 8 acres of new developed disturbed/vegetated area. The new impervious area created is offset in part by the removal of approximately 5 acres of existing impervious area at mile 7.3. The Project lies within the watershed of unnamed tributaries draining to the Little River and the Cape Neddick River. Applicant submitted documentation indicating that construction will comply with the Basic and General Standards as required by the General Permit. Upon selection of a contractor, the contractor will be required to prepare and submit for Department approval a Stormwater Management Plan and an Erosion Control Plan that implement the standards applicable via the General Permit, which requires treatment of a liner portion of a project within an existing corridor, to the greatest extent practicable. Both the linear and non-linear portions of the proposed project have been designed to meet the

MAINE TURNPIKE AUTHORITY
YORK TOLL PLAZA
YORK, YORK COUNTY, MAINE
L-27241-TG-A-N
L-27275-TP-A-N

) NATURAL RESOURCES PROTECTION
) ACT PERMIT, WATER QUALITY
) CERTIFICATION, AND SITE
) LOCATION GENERAL PERMIT
)
) FINDINGS OF FACT and ORDER

stormwater standards of Chapter 500, resulting in 75.3% treatment of impervious area of the linear portion within the existing corridor, 79% treatment of impervious area for linear portion of the project not within the existing corridor and 96.7% treatment of non-linear impervious area.

The Department finds that the Applicant has complied with the General Permit standards for stormwater management and erosion control.

G. Groundwater:

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

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

H. Infrastructure:

The Applicant has coordinated with the York Water District to include the relocation of a segment of water main and the installation of a domestic water service to the administration building. The project will be served by electric power provided by Central Maine Power Company from Chases Pond Road and telecommunications from Fairpoint or Time Warner Cable. A small wastewater disposal system (408 gpd) will be installed to serve Authority employees. The system will include a 1,000 gallon treatment tank and a 1,536 square foot disposal field. This system was designed by Gary M. Fullerton LSE and the General Permit NOI includes an HHE-2w Form. The Authority will contract with a commercial waste hauler for removal of office waste. Construction waste will be the responsibility of the contractors selected for the project.

The Department finds that the Project's infrastructure needs were appropriately addressed.

I. Flooding:

In compliance with the General Permit, the Authority, in consultation with the Department, designed the Project to avoid flooding the alteration area or adjacent properties nor create an unreasonable flood hazard to any structure. The stormwater analysis performed to address the Flooding Standard indicates an increase in peak runoff rates in the post development condition. Section II.D.5 of the General Permit requires the Applicant to apply engineering measures to the extent practicable such that the project drainage avoids adverse impacts to offsite property resulting from project related peak flows.

MAINE TURNPIKE AUTHORITY
YORK TOLL PLAZA
YORK, YORK COUNTY, MAINE
L-27241-TG-A-N
L-27275-TP-A-N

) NATURAL RESOURCES PROTECTION
) ACT PERMIT, WATER QUALITY
) CERTIFICATION, AND SITE
) LOCATION GENERAL PERMIT
)
) FINDINGS OF FACT and ORDER

The Department finds that the Project will not create adverse impacts to off-site property resulting from project related flows.

J. Blasting:

The Authority provided its Standard Specifications for contractors. Section 105.2.7 of the Standard Specifications provides detailed requirements for blasting which meet the statutory requirements for blasting. The Department finds that the Applicant has made adequate provision for blasting.

4. Natural Resource Protection Act:

In accordance with the Natural Resources Protection Act, 38 M.R.S. § 480-D, the Department shall grant a permit when it finds that the Applicant has demonstrated that the proposed activity meets the applicable standards including provisions pertaining to the following: existing scenic, aesthetic, recreational and navigational uses; soil erosion; harm to habitats and fisheries; interference with natural water flow; water quality; flooding; sand or gravel supply; and outstanding river segments. NRPA standards applicable to the proposed expansion are discussed in this Finding section.

To identify and assess impacts to protected natural resources, the Applicant submitted a natural resources assessment prepared by Jacobs Engineering, Sebago Technics, CDM Smith HNTB, Stantec and Normandeau.

As discussed above in Finding 3(C), the natural resources assessment indicates that the Project will impact approximately 1.46 acres of primarily forested freshwater wetlands through direct filling and twenty-four feet of stream impacts. The application also includes minimal impacts to the habitat supporting two state Threatened and Endangered species- spotted turtle (*Clemmys guttata*) and eastern ribbon snake (*Thamnophis sauritus*).

Sebago Technics evaluated the functions and values of the impacted wetlands and prepared a Wetlands Compensation Plan which was submitted in support of the NRPA permit application at Section 13.

A. Existing Scenic, Aesthetic, Recreational, or Navigational Uses:

Pursuant to 38 M.R.S. § 480-D(1), the Applicant must demonstrate that the activity will not unreasonably interfere with the existing scenic, aesthetic, recreational or navigational uses of the protected natural resources. The Department's rule 06-096 C.M.R. ch. 315, guides the Department in its analysis of impacts to existing scenic and aesthetic uses resulting from activities in, on, over or adjacent to protected natural resources subject to NRPA.

MAINE TURNPIKE AUTHORITY
YORK TOLL PLAZA
YORK, YORK COUNTY, MAINE
L-27241-TG-A-N
L-27275-TP-A-N

) NATURAL RESOURCES PROTECTION
) ACT PERMIT, WATER QUALITY
) CERTIFICATION, AND SITE
) LOCATION GENERAL PERMIT
)
) FINDINGS OF FACT and ORDER

In support of its application and in accordance with 06-096 C.M.R. ch. 315, the Applicant submitted a copy of the Department's Visual Evaluation Field Survey Checklist as Appendix A to the MTA NRPA application along with a description of the property and the proposed project. The Applicant also submitted several photographs of the proposed project site including an aerial photograph. The Department visited the project site on May 13, 2015, August 28, 2015, December 17, 2015 and April 5, 2017 to view the physical features of the site, including portions of the wetlands that will be filled by the expansion, and the nature of the surrounding area.

An unreasonable adverse visual impact is defined in 06-096 C.M.R. ch. 315, § 4 as one that is “expected to unreasonably interfere with the general public’s visual enjoyment and appreciation of a scenic resource.” The forested wetland impacted by the Project does not meet the definition of a scenic resource as set forth in 06-096 C.M.R. ch. 315 § 10 in that it is not one of the listed scenic resources nor is it a wetland that is “visited by the general public, in part, for the use, observation, enjoyment and appreciation of its natural and cultural visual qualities.”

Finding 3(C) of this license analyzes and makes findings on the proposed expansion’s compliance with the scenic character criteria under the General Permit.

There is no evidence of any existing recreational or navigational uses of the impacted wetlands.

Based upon the information in the record including the Applicant’s scenic assessment, photographs of the site, and the site visits, the Department finds that the proposed activity will not unreasonably interfere with existing scenic, aesthetic, recreational or navigational uses of the protected natural resource.

B. Soil Erosion:

In accordance with 38 M.R.S. § 480-D(2), the Applicant must demonstrate that the activity will not cause unreasonable erosion of soil or sediment nor unreasonably inhibit the natural transfer of soil from the terrestrial to the marine or freshwater environment.

As discussed in Findings 3(E)-(F) of this license, the Applicant conducted an assessment of surficial soils at the site and will submit for Department approval a Stormwater Management Plan and an Erosion Control Plan prepared by the construction contractor for the Project in consultation with the Department and the Authority. The Applicant states that the design and implementation of all erosion control measures will comply with the General Permit.

| | |
|--------------------------|--------------------------------|
| MAINE TURNPIKE AUTHORITY |) NATURAL RESOURCES PROTECTION |
| YORK TOLL PLAZA |) ACT PERMIT, WATER QUALITY |
| YORK, YORK COUNTY, MAINE |) CERTIFICATION, AND SITE |
| L-27241-TG-A-N |) LOCATION GENERAL PERMIT |
| L-27275-TP-A-N |) |
| |) FINDINGS OF FACT and ORDER |

Based upon the information in the record including the construction plan, the Department finds that the Project will not cause unreasonable erosion of soil or sediment nor unreasonably inhibit the natural transfer of soil from the terrestrial to the marine or freshwater environment, as required by 38 M.R.S. § 480-D(2).

C. Habitat Considerations:

Pursuant to 38 M.R.S. § 480-D(3), the Applicant must demonstrate the activity will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic or adjacent upland habitat, travel corridor, freshwater, estuarine or marine fisheries or other aquatic life.

As discussed above in Finding 3(C), MDIFW reviewed the project and associated compensation. MDIFW, the Maine Department of Transportation and the Applicant signed an Memorandum of Understanding in October of 2016, committing the Authority to contributing \$170,000.00 to the installation of a wildlife passage on Route 236 in Eliot Maine (“MOU”). The MOU also requires that the Authority place a conservation easement on 22-acres adjacent to the Project, including a significant vernal pool.

On May 18, 2017, the United States Department of the Army Corps of Engineers for the New England District issued an Authorization Letter and Screening Summary pursuant to the Maine General Permit which authorized the Project’s natural resource impacts contingent upon issuance of approval by the Department (“USACOE Authorization Letter for the Project”). The USACOE Authorization Letter for the Project requires mitigation consisting of payment of an In-Lieu- Fee (“ILF”) of \$281,649.01 to the ILF Administrator for Maine.

Based on the evidence supplied by the Applicant in its natural resources assessment, the MOU, and the USACOE Authorization Letter for the Project, the Department finds that the activity will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, aquatic or adjacent upland habitat, travel corridor, freshwater, estuarine or marine fisheries or other aquatic life pursuant to 38 M.R.S. § 480-D(3).

D. Water Quality Considerations:

Pursuant to 38 M.R.S. § 480-D(4), the Applicant must demonstrate that the activity will not unreasonably interfere with the natural flow of any surface or subsurface waters. Pursuant to 38 M.R.S. § 480-D(5) and Section 401 of the Federal Water Pollution Control Act, the Applicant must demonstrate that the activity will not violate any state water quality law, including those governing the classification of the State’s waters.

MAINE TURNPIKE AUTHORITY
YORK TOLL PLAZA
YORK, YORK COUNTY, MAINE
L-27241-TG-A-N
L-27275-TP-A-N

) NATURAL RESOURCES PROTECTION
) ACT PERMIT, WATER QUALITY
) CERTIFICATION, AND SITE
) LOCATION GENERAL PERMIT
)
) FINDINGS OF FACT and ORDER

As set forth above, the Project will require relocation of approximately 24 feet of an unnamed stream. As discussed more fully in Findings 3(E)-(F) of this license, the Applicant submitted a construction plan which requires the construction contractor to complete a phasing plan and a Stormwater Management Plan and Erosion Control Plan in consultation with the Authority and the Department. Those plans will comply with the General Permit.

Based on the construction plan in the record, the Department finds that the Project meets state water quality law, including those governing the classification of the State's waters based on the location of the Project relative to the protected natural resources.

E. Flooding:

In accordance with 38 M.R.S. § 480-D(6), the Applicant must demonstrate that the activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties.

As discussed above in Finding 3(I), the Project will not be located in a 100-year flood plain or restrict the flow of a 100-year flood.

Based upon the location of the Project outside the floodplain, the Department finds that the expansion will not unreasonably cause or increase the flooding of the alteration area or adjacent properties.

F. Wetlands and Waterbodies Protection Rules:

The Applicant proposes to alter approximately 1.46 acres of primarily forested freshwater wetlands to construct the Project.

The Department's rule at 06-096 C.M.R. ch. 310 elaborates on the NRPA criteria for obtaining a permit. The rules guide the Department in its determination of whether a project's impacts would be unreasonable. A proposed project would generally be found to be unreasonable if it would cause a loss in wetland area, functions and values and there is a practicable alternative to the project that would be less damaging to the environment. An alternative is practicable if it is "available and feasible considering cost, existing technology and logistics based on the overall purpose of the project. Each application for a NRPA permit that involves a freshwater wetland alteration must provide an analysis of alternatives.

(i) Alternatives Analysis

The Applicant provided an alternatives analysis which summarized the need for the project and examined alternatives to the selected project site and project design,

MAINE TURNPIKE AUTHORITY
YORK TOLL PLAZA
YORK, YORK COUNTY, MAINE
L-27241-TG-A-N
L-27275-TP-A-N

) NATURAL RESOURCES PROTECTION
) ACT PERMIT, WATER QUALITY
) CERTIFICATION, AND SITE
) LOCATION GENERAL PERMIT
)
) FINDINGS OF FACT and ORDER

including: development of four alternative sites, a “no build and rehabilitation” alternative, and an alternative technology that would impact less wetland area.

(a) The Project purpose is:

To replace the existing barrier toll plaza on the Maine Turnpike at York, Maine with highway speed electronic tolling lanes and cash (non-EZ pass) lanes to address safety deficiencies, settling/subsidence, facility deficiencies including substandard tolling equipment, existing and projected traffic volumes, and traveler impacts and expectations.

(b) The Applicant stated that the “no build and rehabilitation” at mile 7.3 option was not a practicable alternative given the project purpose and the following cost and logistical constraints. First, Applicant asserts a fundamental inability to correct deficiencies associated with the current location due to the subsiding soils underlying the entirety of the present site and its low lying location on a curve in the existing roadway. Applicant avers that these factors are inconsistent with building standards for modern toll plazas and negatively impact necessary sight distances, and the deceleration and acceleration necessary upon entering and exiting the existing plaza. Applicant states that this location makes the current structure unable to meet any of the toll plaza guidelines release in the past decade by the Federal Highway Administration or the American Association of State Highway and Transportation Officials. Further, Applicant testified that the more modern technology for electronic tolling installed in the tunnel under the existing site has made passage of persons through that tunnel problematic. Applicant concluded that implementation of an open road tolling facility at the current location was impracticable.

(c) Applicant considered two technologies: all electronic tolling (“AET”) and open road tolling (“ORT”). This investigation concluded that AET was not a practicable alternative given the project purpose and the following cost and logistical constraints as well as the nature of the AET technology.

MAINE TURNPIKE AUTHORITY
YORK TOLL PLAZA
YORK, YORK COUNTY, MAINE
L-27241-TG-A-N
L-27275-TP-A-N

) NATURAL RESOURCES PROTECTION
) ACT PERMIT, WATER QUALITY
) CERTIFICATION, AND SITE
) LOCATION GENERAL PERMIT
)
) FINDINGS OF FACT and ORDER

Intervenor posited that AET presents a practicable alternative to ORT because it would require no impacts to wetland area, function or values and would generate additional revenue.

Applicant responded that AET was not a practicable alternative because: the termination of collection of cash tolls would result in significant financial losses, impacts to bond holders and the ability to operate the Turnpike, would cause diversion of traffic away from the Turnpike in contravention of its statutory mandate, and because it would require conversion of all Authority toll plazas to AET. Applicant explained that ORT, on the other hand would allow the Authority the ability to convert to AET at a later date as it becomes more practicable while allowing Applicant to continue collection of cash which currently represents a significant portion of the Authority's revenue stream. Applicant also concluded that ORT will divert traffic away from smaller roads to the Turnpike consistent with the Authority's statutory mandate.

- (d) The Applicant considered four alternative site locations (mile 8.1, mile 8.8, mile 10.0, and mile 13.2). Applicant concluded that these four locations were not practicable alternatives given the project purpose and the following cost and logistical constraints. The site at mile 8.1 was not a practicable alternative because it was rated a high range impact for horizontal alignment and mid-range for vertical alignment and would have required additional right of way and wetland impacts. The site at mile 10.0 was not a practicable alternative because of its significant impacts to right of way (including requiring a retaining wall to avoid impacts to Wetlands of Special Significance and high range impacts to abutters (within 1,000 feet of 46 abutters). The site at mile 13.2 was not a practicable alternative because of its safety and engineering ratings, impacts to abutters (41 abutters within 1,000 feet), and because it would require the relocation of a home.
- (e) The Applicant concluded that the preferred alternative is a new ORT plaza at mile 8.8. Applicant demonstrated that this alternative met the project purpose with an available technology that imposed the least cost and logistical constraints. The linear portion of the project is within the existing Turnpike corridor and minimizes impacts to abutters (4 homes within 1,000 feet) and requires no relocation of homes. The toll plaza approach transitions, number of lanes, and limits of grading activities will meet safe highway design practices and FHWA design guidelines. The overall cost of the Project is expected to be 40.8 million- lower than all

MAINE TURNPIKE AUTHORITY
YORK TOLL PLAZA
YORK, YORK COUNTY, MAINE
L-27241-TG-A-N
L-27275-TP-A-N

) NATURAL RESOURCES PROTECTION
) ACT PERMIT, WATER QUALITY
) CERTIFICATION, AND SITE
) LOCATION GENERAL PERMIT
)
) FINDINGS OF FACT and ORDER

but the mile 8.1 alternative (which cost approximately 1 million less but had significantly greater safety/logistical and environmental impacts. The environmental impacts associated with the Project consist primarily of pocketed forested wetlands along the fringe of the existing Turnpike corridor. As discussed above and below, Applicant is obligated to undertake minimization and compensation of these impacts to the greatest practicable extent.

(ii) Minimization of On-Site Impacts

In accordance with 06-096 C.M.R. ch. 310, § 5(B), 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 Department finds that the Applicant's design minimizes impacts to wetlands to the greatest extent practicable.

(iii) Compensation

In accordance with 06-096 C.M.R. ch. 310, § 5(C), compensation is the off-setting of a lost wetland function with a function of equal or greater value. The goal of compensation is to achieve no net loss of freshwater wetland functions and values. The amount of compensation required to replace lost functions depends on a number of factors including: the size of the alteration activity, the functions of the wetlands to be altered, the type of compensation to be used, and the characteristics of the compensation site. When wetland preservation is the type of compensation proposed, Department rules generally require a ratio of 8:1 (area preserved to area impacted). As stated previously, the Applicant's Wetlands Compensation Plan was designed to address both NRPA and Corps requirements.

As discussed in Finding 3(C) above, the Applicant proposes to preserve a 22-acre area adjacent to the Project, provide \$170,000 for wildlife crossing for habitat, and pay an in lieu fee to address NRPA compensation requirements as well as Corps compensation requirements. The functions and values of the freshwater wetlands on the parcel were evaluated by the Applicant using the U. S. Army Corps of Engineers Highway Methodology (September, 1999). The functions and values of the freshwater wetlands proposed to be impacted by the project include flood flow alteration, nutrient removal, sediment and toxics removal, and wildlife habitat or other significant wildlife habitats in the wetlands to be impacted.

Based on the Applicant's alternatives analysis, the project's design, and the land preservation proposal, the Department finds that the Applicant has avoided and minimized freshwater wetland impacts to the greatest extent practicable, and has

MAINE TURNPIKE AUTHORITY
YORK TOLL PLAZA
YORK, YORK COUNTY, MAINE
L-27241-TG-A-N
L-27275-TP-A-N

) NATURAL RESOURCES PROTECTION
) ACT PERMIT, WATER QUALITY
) CERTIFICATION, AND SITE
) LOCATION GENERAL PERMIT
)
) FINDINGS OF FACT and ORDER

provided compensation for wetland impacts in accordance with Department rules and in exceedance of NRPA requirements. The Department further finds that the proposed project represents the least environmentally damaging alternative that meets the overall purpose of the Project.

BASED on the above Findings of Fact, and subject to the Conditions listed below, the Board makes the following CONCLUSIONS pursuant to the General Permit, 38 M.R.S. §§ 480-A through 480-JJ and 484, Section 401 of the Federal Water Pollution Control Act, and the applicable Department rules:

- A. The Applicant has provided adequate evidence of financial capacity and technical ability to develop the project in a manner consistent with state environmental standards.
- B. The Applicant has made adequate provisions for air quality, water quality, control of noise and other natural resources in the municipality or in neighboring municipalities.
- C. The Project will be sited to adequately protect public safety and the activity will not present an unreasonable safety hazard to adjacent properties or adjacent property uses.
- D. 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.
- E. 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.
- F. The proposed development meets the standards for stormwater management and the standard for erosion and sediment control.
- G. The proposed development will not pose an unreasonable risk that a discharge to a significant groundwater aquifer will occur.
- H. 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.
- I. The Project will not unreasonably cause or increase the flooding of the alteration area or adjacent properties nor create an unreasonable flood hazard to any structure.

MAINE TURNPIKE AUTHORITY
YORK TOLL PLAZA
YORK, YORK COUNTY, MAINE
L-27241-TG-A-N
L-27275-TP-A-N

) NATURAL RESOURCES PROTECTION
) ACT PERMIT, WATER QUALITY
) CERTIFICATION, AND SITE
) LOCATION GENERAL PERMIT
)
) FINDINGS OF FACT and ORDER

- J. The Applicant has sufficiently demonstrated that the Project will not unreasonably interfere with existing scenic, aesthetic, recreational or navigational uses pursuant to 38 M.R.S. § 480-D(1).
- K. The Applicant has sufficiently demonstrated that the proposed expansion will not cause unreasonable erosion of soil or sediment nor unreasonably inhibit the natural transfer of soil from the terrestrial to the marine or freshwater environment pursuant to 38 M.R.S. § 480-D(2).
- L. The Applicant has sufficiently demonstrated that the proposed expansion will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic or adjacent upland habitat, travel corridor, freshwater, estuarine or marine fisheries or other aquatic life pursuant to 38 M.R.S. § 480-D(3).
- M. The Applicant has sufficiently demonstrated that the proposed expansion will not unreasonably interfere with the natural flow of any surface or subsurface waters pursuant to 38 M.R.S. § 480-D(4).
- N. The Applicant has sufficiently demonstrated that the proposed expansion will not violate any State water quality law, including those governing the classification of the State's waters pursuant to 38 M.R.S. § 480-D(5) and Section 401 of the Federal Water Pollution Control Act.
- O. The Applicant has sufficiently demonstrated that the proposed expansion will not unreasonably cause or increase the flooding of the alteration area or adjacent properties pursuant to 38 M.R.S. § 480-D(6).

THEREFORE, the Department APPROVES the application of MAINE TURNPIKE AUTHORITY for a replacement toll plaza at Mile 8.8 of the Maine Turnpike 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. 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.

MAINE TURNPIKE AUTHORITY
YORK TOLL PLAZA
YORK, YORK COUNTY, MAINE
L-27241-TG-A-N
L-27275-TP-A-N

) NATURAL RESOURCES PROTECTION
) ACT PERMIT, WATER QUALITY
) CERTIFICATION, AND SITE
) LOCATION GENERAL PERMIT
)
) FINDINGS OF FACT and ORDER

3. The Specific Conditions set forth in Section II of the General Permit.
4. The Applicant shall retain its design engineer or other qualified engineer to oversee the construction of the stormwater management structures according to the details and notes specified on the approved plans.

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 ___ DAY OF _____, 2017

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: _____
Paul Mercer, Commissioner

PLEASE NOTE THE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES