



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

DEPARTMENT ORDER

IN THE MATTER OF

NECEC TRANSMISSION LLC) SITE LOCATION OF DEVELOPMENT ACT
Somerset and Franklin Counties)
CONSERVATION PLAN)
L-027625-0003 (approval)) CONDITION COMPLIANCE

Pursuant to the provisions of 38 M.R.S. §§ 481–489-E, the Department of Environmental Protection (Department) has considered the application of NECEC TRANSMISSION LLC (Applicant) with the supportive data, agency review comments, public comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

1. In Department Order #L-27625-26-A-N/L-27625-TG-B-N/L-27625-2C-C-N/L-27625-VP-D-N/L-27625-IW-E-N dated May 11, 2020 (Department Order), the Department approved applications for the New England Clean Energy Connect (NECEC) project under the Site Location of Development Law and Natural Resources Protection Act. In Department Order #L-27625-26-K-T, dated December 4, 2020, the Department approved a partial transfer of the permit from Central Maine Power (CMP) to NECEC Transmission LLC.

In Board Order #L-27625-26-F-Z/L-27625-TG-G-Z/L-27625-2C-H-Z/L-27625-VP-I-Z/L-27625-IW-J-Z/L-27625-26-AB-Z, dated July 21, 2022 (Board Order), the Board affirmed #L-27625-26-A-N/L-27625-TG-B-N/L-27625-2C-C-N/L-27625-VP-D-N/L-27625-IW-E-N, along with additional special conditions, and affirmed the partial transfer issued in Department Order #L-27625-26-K-T.

2. Special Condition #39 of the Department Order reads as follows: “Within 18 months of the date of this Order, the applicant shall develop and submit to the Department for review and approval a Conservation Plan, consistent with Section 7(D)(2)(a)(3), to permanently conserve 40,000 acres in the vicinity of Segment 1 [of the NECEC transmission line]. Prior to commercial operation of the project, the applicant must fully implement the approved Conservation Plan, unless, upon a showing by the applicant that it has made reasonable, good faith efforts to implement the Conservation Plan and addition[al] time, not more than four years from the date of this Order, is needed, the Department approves an extension of the implementation deadline. Prior to implementation, all forest management plans, and all conservation easements, deed restrictions, covenants, or other legal instruments designed to fulfill the objectives of the Conservation Plan, must be submitted to the Department for review and approval.”

Section 7(D)(2)(a)(3) of the Department Order reads, in relevant additive part, “The Conservation Plan must:

- Establish as its primary goal the compensation for the fragmenting effect of the transmission line on habitat in the region of Segment 1 and the related edge effect by promoting habitat connectivity and conservation of mature forest areas;
- Identify the area(s), with a focus on large habitat blocks, to be conserved and explain the conservation value of this land; any conservation area must be at least 5,000 acres unless the area is adjacent to existing conserved land or the applicant demonstrates that the conservation of any smaller block, based on its location and other characteristics, is uniquely appropriate to further the goals of the Conservation Plan;
- Include a draft forest management plan establishing how, consistent with the primary goal of the Conservation Plan, the conservation area(s) will be managed, including to provide blocks of habitat for species preferring mature forest habitat and wildlife travel corridors along riparian areas and between mature forest habitat;
- Explain the legal interest, such as fee ownership or a working forest conservation easement, that will be acquired in each area; the proposed owner or holder of this interest; and the qualifications of each proposed owner or holder;
- Include preliminary consent from any proposed owner or holder;
- Explain how the applicant will ensure the availability [of] stewardship funding (e.g., funding for monitoring and enforcement) needed to support achievement of the goals of the Conservation Plan; and
- Ensure the Department will have third party enforcement rights.”

Special Condition #10 of the Board Order reads as follows: “The Conservation Plan required by Special Condition 39 of the Department Order is amended to require permanent conservation of 50,000 acres in the vicinity of Segment 1.”

The Board Order also states, in Section 10(B)(8)(b): “While...commercial timber operations are not expressly precluded, standard sustainable forestry operations commonly allowed in areas subject to working forest easements would not be consistent with the primary goal of the Conservation Plan.”

3. On November 15, 2021, Applicant submitted a Conservation Plan to the Department pursuant to Special Condition #39 of the Department Order. This condition compliance application has remained pending since that time. On May 9, 2025, Applicant revised the application by replacing the November 15, 2021, submission with a revised proposed Conservation Plan to conserve 50,000 acres in the vicinity of Segment 1 (proposed Plan) pursuant to Special Condition #39 of the Department Order and Special Condition #10 of the Board Order. The revised application included an initial draft Conservation Easement to implement the proposed Plan. In response to comments, Applicant submitted a revised proposed Conservation Easement on October 7, 2025 (proposed CE). Applicant submitted an initial Forest Management Plan on July 16, 2025, and a revised Forest Management Plan on October 24, 2025 (proposed FMP).
4. The Department solicited comments on the application from state natural resource agencies, interested parties and the public. The Department requested initial comments on

the proposed Plan by June 13, 2025; however, the Department continued to accept comments on all application submissions throughout the application processing period. The Department received 285 comments from interested parties and the public. The Department received comments from the Department of Inland Fisheries and Wildlife (MDIFW), the Bureau of Parks and Lands (BPL), and the Maine Natural Areas Program (MNAP). Applicant provided a response to comments dated August 1, 2025. Comments pertinent to licensing criteria are addressed in this order.

5. The proposed Plan would permanently conserve 50,063 acres of land owned by Weyerhaeuser Company (proposed conservation area) in Bradstreet Township, Johnson Mountain Township, Parlin Pond Township, and West Forks Plantation, as depicted in Figure 1 of the proposed Plan. The proposed Plan would conserve the land by encumbering it with a permanent working forest conservation easement.

6. BPL provided preliminary consent to hold the conservation easement in a letter to the Department dated May 5, 2025.

7. **Permanent conservation of 50,000 acres in the vicinity of Segment 1.**

The Department Order and Board Order (collectively the Orders) require permanent conservation of 50,000 acres in the vicinity of Segment 1 of the NECEC transmission line, which bisects the 50,063-acre proposed conservation area.

In comments dated June 12, 2025, Natural Resources Council of Maine, Appalachian Mountain Club, Maine Council of Trout Unlimited, and Maine Audubon (Joint Commenters) noted that the NECEC transmission line, Route 201, and a smaller east-west transmission line cross the proposed conservation area. Joint Commenters stated that the edge effect created by these existing developments would result in the presence of approximately 1,909 acres of edge habitat within the proposed conservation area and argued that this edge habitat should not be counted toward the 50,000-acre requirement.

In comments dated June 13, 2025, The Nature Conservancy in Maine and Conservation Law Foundation (TNC and CLF) stated: “It is not appropriate to consider those portions of the proposed conservation area within 330’ of the NECEC line as adequate mitigation, given that those are the areas of impact from edge effects.”

In comments dated August 1, 2025, Applicant responded that “excluding from the Protected Property the areas immediately adjacent to the Project corridor would be inconsistent with the [Orders]. Not including that area would leave the strips of land bordering the Project corridor entirely unprotected, and open for development or unlimited forest harvest.” Applicant also responded that the Department “significantly reduced [edge effect] impact by ordering 35-foot minimum height vegetation, full height vegetation, reduced clearing, and tapering. These ordered mitigation measures expressly address the Joint Commenters’ concerns regarding “the creation of extensive permanent ‘hard’ edge along both sides of the new corridor.””

The Department finds that excluding the areas immediately adjacent to the NECEC transmission line, Route 201, and the east-west transmission line from the conservation

area would leave these areas eligible for development, which could exacerbate habitat fragmentation in the vicinity of Segment 1 in the future. The Department further finds that tapering and other measures designed to minimize habitat fragmentation from the NECEC transmission line will reduce the edge effects created by the corridor. The Department also finds that the Orders do not expressly preclude edge habitat from inclusion in the conservation area.

The Department finds that the proposed Plan and proposed CE, as conditioned by this order, will result in permanent conservation of at least 50,000 acres in the vicinity of Segment 1.

8. Focus on large habitat blocks.

The Orders require the proposed Plan to have “a focus on large habitat blocks” and require that “any conservation area must be at least 5,000 acres unless the area is adjacent to existing conserved land or the applicant demonstrates that the conservation of any smaller block, based on its location and other characteristics, is uniquely appropriate to further the goals of the Conservation Plan.”

The 50,063 acres in the proposed conservation area are nearly contiguous on the landscape, as depicted in Figure 1 of the proposed Plan. Two portions of the conservation area are separated from the remainder by the Cold Stream Conservation Easement, which is consistent with the Orders’ allowance for inclusion of areas “adjacent to existing conserved land.” As noted above, the NECEC transmission line, Route 201, and an east-west transmission line cross the proposed conservation area.

Joint Commenters stated that when the NECEC transmission line, Route 201, and east-west transmission line considered, the proposed conservation area is comprised of six separate habitat blocks, two of which are smaller than 5,000 acres, and these two smaller blocks should be removed from the proposed Plan. Joint Commenters refer to portions “E3” and “E4” of the proposed conservation area, as shown in Exhibit C of the June 12, 2025 joint comments.

The Department notes that “E3” and “E4” would be part of larger 5,000-acre blocks if not for the presence of the NECEC corridor. If the Department required “E3” and “E4” to be removed from the conservation area, this land adjacent to the corridor would not be conserved and could be developed in the future. Development adjacent to the corridor would exacerbate its fragmenting effect. Removing these portions of land from the conservation area may also work at cross purposes with the requirement to conserve land in the vicinity of Segment 1. Therefore, the Department finds that these portions of land within the proposed conservation area are uniquely appropriate to further the goals of the Conservation Plan.

The Department finds that, subject to the conditions of this order, the proposed Plan meets the requirement that “any conservation area must be at least 5,000 acres unless the area is adjacent to existing conserved land or the applicant demonstrates that the

conservation of any smaller block, based on its location and other characteristics, is uniquely appropriate to further the goals of the Conservation Plan.”

9. **Conservation value of the land.**

The Orders require Applicant to “explain the conservation value of this land.” The proposed Plan describes the conservation value of the proposed conservation area in Section 3.2.2, stating that the land has the following characteristics (among others):

- approximately 40% of the area contains trees currently 35 feet in height or taller and 13% of the proposed conservation area currently meets the proposed definition of mature forest;
- the area includes mapped Significant Wildlife Habitats, habitat for rare, threatened and endangered wildlife species, rare and exemplary natural communities, Maine Heritage Fish Waters, Wild Brook Trout Priority Conservation Areas, and extensive wetlands, streams, remote ponds and other water bodies; and
- the proposed conservation area “enhances and extends a large landscape of protected land due to its adjacency to existing conservation lands,” as depicted in Figure 3 of the Plan. The Plan states that the proposed conservation area, “fills a conspicuous gap between [adjacent conserved] areas, creating almost 450,000 contiguous acres in conservation.”

In a letter to Weyerhaeuser Company dated May 13, 2025, attached to comments from MNAP filed with the Department on June 12, 2025, MDFIW noted that the proposed conservation area contains confirmed habitat for several state-endangered and state-threatened (E&T) species and special concern species, such as Bicknell’s Thrush, Rusty Blackbird, and Roaring Brook Mayfly, as well as many other potential habitats for E&T species and special concern species. MDIFW’s letter also confirmed the presence of Significant Wildlife Habitats and State Heritage Fish Waters. MNAP’s comments stated, however, that “MNAP has not conducted targeted field inventories of” the proposed conservation area and was awaiting landowner permission to do so.

In comments dated June 13, 2025, BPL stated: “The proposed easement lies in a geography appropriate for the project: it is bisected by the transmission line, surrounds an existing Public Reserve Land (the Cold Stream Unit), and connects with adjacent landscape-scale conserved lands. As a result, the easement will promote habitat connections during NECEC operation and beyond the line's decommissioning.”

TNC and CLF stated that the organizations, “appreciate that the [Plan] represents an opportunity to secure permanent conservation of a block of over 50,000 acres in nearly contiguous parcels in the immediate vicinity of Segment 1, that also:

- Intends to secure permanent habitat connectivity between existing conserved lands around Attean Lake to the west and Cold Stream and Moosehead Lake to the east, substantially expanding upon and connecting these two large contiguous areas of conserved lands into a single expanse of almost 450,000 acres, and making an important contribution to maintaining large scale habitat connectivity;

- Establishes provisions for riparian habitat protection and wildlife travel corridors along perennial streams; and,
- Permanently conserves an area along the Route 201 corridor, preventing future development.”

The Sportsman’s Alliance of Maine (SAM) stated in comments supporting the proposed Plan, dated June 9, 2025, that “the largely contiguous 50,000 acres of conservation area proposed in the Plan and the property’s adjacency to another 400,000+ acres of conserved land amplify the plan’s forest and wildlife benefits...”

Dr. Paul Frederic stated in comments dated June 13, 2025, that the proposed conservation area “is contiguous to large existing blocks of conservation land in northwestern Maine” and “will enhance the historic ecological balance in the region to off-set negative impacts of the powerline construction.”

Joint Commenters stated that their analysis of existing LiDAR data found that only 22% of the conservation area is comprised of trees 35 feet in height or taller, rather than 40%. Joint Commenters also stated that “only 0.2% of the proposed conservation area contains [late-successional or old growth] forest whereas the average across the greater Unorganized Territories in Maine is 3%.” Joint Commenters further stated that “the proposed conservation area is one of the most heavily harvested landscapes in the last 20 years.”

Comments from Sen. Brenner, Sen. Ingwersen, Sen. Grohoski, Sen. Carney, Sen. Bennett, and Rep. Gramlich (Legislative Commenters), dated June 13, 2025, stated that the proposed conservation area, “lies in one of the most heavily harvested regions in the unorganized territories.”

Comments from 260 members of the public also stated that the land has been heavily logged and is fragmented by power lines and roads.

The Department acknowledges that the proposed conservation area is a working forest that currently supports substantial timber harvesting and is also fragmented by two transmission lines and Route 201. However, the Department finds that the geography of the proposed conservation area confers substantial conservation value to the land, as it will provide habitat connections between approximately 400,000 acres of additional conservation land to the west and the east. Additionally, the land contains many other valuable natural resources and mapped habitats that will be protected from future development by the proposed CE. Moreover, the proposed conservation area contains the same type of forestland—working forest in the region of Segment 1—that the Department determined to have substantial enough value for habitat connectivity and mature forest species to require Applicant to compensate for impacts thereto with the proposed Plan.

The Department finds that, subject to the conditions of this order, Applicant has adequately explained the conservation value of the land.

10. **Primary goal of promoting habitat connectivity and conservation of mature forest areas.**

The Orders require that the Conservation Plan must “[e]stablish as its primary goal the compensation for the fragmenting effect of the transmission line on habitat in the region of Segment 1 and the related edge effect by promoting habitat connectivity and conservation of mature forest areas.” The conservation area must be managed “to provide blocks of habitat for species preferring mature forest habitat and wildlife travel corridors along riparian areas and between mature forest habitat.” Further, the Orders clarify that “[w]hile...commercial timber operations are not expressly precluded, standard sustainable forestry operations commonly allowed in areas subject to working forest easements would not be consistent with the primary goal of the Conservation Plan.”

A. Promoting conservation of mature forest areas.

a. Definition of mature forest.

The draft CE submitted on May 9, 2025, defined “Mature Forest” as “50 foot or taller trees with a minimum basal area of 60 square feet per-acre containing a mix of native species, accompanied by the presence of representative levels of well distributed standing dead and downed trees.”

MDIFW stated in comments dated June 13, 2025: “It is MDIFW’s position that 50 feet in height meets the minimum goals of mature forest, recognizing that over time, most of the acreage in mature forest on the Mitigation Parcel will exceed this minimum. Ultimately, it is also MDIFW’s position that if 50 feet is approved, it should be clear that 50 feet applies to this Plan only and should not be considered a precedent for future mitigation parcels requiring mature forests.”

Referring to agency consultations that preceded Applicant’s submission of the proposed Plan, BPL commented: “Following numerous negotiations among NECEC, Weyerhaeuser, [MDIFW], and [MNAP], discussions concluded with definitions of a minimum measurable and enforceable threshold for mature forest. The Bureau recognizes that most ‘mature’ forest stands in the easement will be taller than 50 feet and have a higher density than 60 square feet of basal area per acre. The Bureau also recognizes the unique circumstances associated with this conservation easement. The mature forest definition used here should not be considered a precedent in other regulatory proceedings requiring mature forest. In addition, other approaches to conserving mature forest and promoting habitat connectivity, including alternate definitions of mature forest, fee ownership by the Bureau or [M]DIFW, or the establishment of large set-aside reserves, are worthy of consideration.”

Joint Commenters stated that the proposed Plan’s definition of mature forest is flawed. They stated that the 50-foot height threshold is inadequate because several common tree species in the region can reach 60-100 feet at maturity. They stated that the basal area threshold is “severely inadequate” for several reasons,

including that the recommended basal area of live trees and snags for American marten (pine marten) habitat in New England is at least 80 square feet per acre. Joint Commenters further stated that “more accurate thresholds for ‘mature forest’ would be a canopy height of at least 75 feet and a basal area of at least 110 ft²/acre,” but they recommend “a more comprehensive ecological definition of ‘mature forest’ using commonly measured forestry metrics [that] would include a combination of minimum volume (cords/acre), total basal area (ft²/acre), and basal area or number of trees within specific DBH classes ranging from 12-16 inches (ft²/acre or total number),” with criteria for these metrics that should vary by forest type.

MNAP commented that there are varying definitions of mature forest, but stated, “mature forest is not typically defined by height or basal area alone.... Characteristics including tree diameter, age, basal area, understory structure, composition of dead trees or decaying wood, and evidence of disturbance are also typically incorporated into the definition and description of mature forest.” MNAP noted that the Society of American Foresters “defines trees or even aged stands as mature once the tree or stand has ... attained most of its potential height growth...”, which for spruce, hemlock, and northern hardwoods ranges from 60-90-plus feet...,” MNAP recommended that, “the definition of mature forest used in the Plan not be used as a precedent for working forest easements.”

Dr. John Hagan, President and CEO of Our Climate Common (Hagan), stated in comments dated June 13, 2025, that the proposed definition of mature forest describes “partially-cut mid-age forest,” not ecologically mature forest.

Robert Bryan, a licensed forester, stated in comments dated June 12, 2025, that the proposed definition of mature forest reflects “pole” or “mid-aged stands” that “are far from being mature.”

Dr. Robert Seymour, Professor Emeritus of Silviculture at the University of Maine (Seymour), stated in comments dated June 13, 2025: “The use of forest height as a gauge of forest maturity is novel but scientifically well grounded, as tree heights are closely related to their ages. On average to good sites in this area, trees could reach 50 feet tall in 40 years, so by itself this is not a particularly rigorous benchmark. However, for large areas to be over this height, many acres would need to be much taller by the time they are harvested under any sustainable management strategy.”

TNC and CLF stated that, “a minimum threshold [for defining mature forest] should be 55 foot or taller trees and 80 sq ft of basal area per acre.”

At the request of the Department, Applicant submitted a revised draft CE on October 7, 2025, replacing the prior version. The proposed CE amended the definition of “Mature Forest” to read as follows: “‘Mature Forest’ is defined as a forest stand consisting of a mix of native species with a minimum basal area of 80 square feet per acre of live trees at least 4.5 inches in diameter at breast height,

including a minimum basal area of 60 square feet per acre of live trees at least 50 feet tall, accompanied by the presence of representative levels of well-distributed standing dead and downed trees.”

The Department finds that, subject to the conditions of this order, this definition of mature forest is sufficient to satisfy the requirements of the Orders. The Orders, and the underlying record of the NECEC proceedings, focus primarily on the habitat requirements of pine marten as an “umbrella” species whose habitat needs are representative of a wide range of other interior forest-dwelling species in Maine. Joint Commenters acknowledge that a minimum basal area of 80 square feet per acre of live trees and snags is appropriate for pine marten habitat in New England. The research literature referenced by Joint Commenters also states that marten require a minimum tree canopy height of 30 feet.¹ Therefore, the Department finds that the combination of a minimum 80 square feet per acre basal area of trees at least 4.5 inches DBH, with a minimum basal area of 60 square feet per acre of trees at least 50 feet tall, together with additional standing and downed dead trees, would satisfy pine marten habitat requirements in most cases.

Pine marten habitat is not equivalent to late-successional or old growth forest, and future regulators considering mitigation for development of forest habitats are not obligated to focus on pine marten habitat. However, for the purposes of compliance with the Orders, the Department finds that habitat conditions suitable for pine marten are appropriately considered “mature forest” habitat conditions, and the Department finds that areas that meet the definition of “mature forest” in the proposed CE are likely to contain such conditions.

b. Mature forest goal.

The proposed CE requires that, “[a]t a minimum, Commercial Forest Management Activities must result in 50% of the Productive Forest Acres as identified in the Baseline Document and Forest Management Plan of the protected property [meeting the definition of Mature Forest] no later than December 31, 2065, and thereafter in perpetuity (the “Mature Forest Goal”). Progress toward the Mature Forest Goal will be made at the following rates: 13% in 2025, 20% in 2035, 30% in 2045, 40% in 2055, and 50% in 2065 (collectively, “Milestones”).” (Section VII(A)(6)). Section VII(E)(1) of the proposed CE allows existing plantations to be counted as mature forest but limits new plantations to a total of 4,000 acres at any one time and requires that new plantations may not count as mature forest.

Joint Commenters stated that the 50% target for Mature Forest is inadequate, arguing for a target of at least 75%. They also stated that the Mature Forest Goal does not propose to achieve 50% mature forest until 2065, and “from an

¹ High Branch Conservation Services and Plymouth State University, Guidelines for Managing American Marten Habitat in New York and Northern New England, <https://rcngrants.org/sites/default/files/datasets/Compiled%20Guidelines%20for%20Managing%20Habitat%20for%20Regional%20SGCN%20in%20Northeastern%20and%20Mid-Atlantic%20Forests%20-%202017.pdf>.

ecological perspective, this lag-time in compensation is ineffective as all the species impacted by this fragmentation have lifecycles shorter than 40 years.”

Sierra Club Maine, in comments dated June 13, 2025, also stated that the trajectory toward mature forest “may not align with the immediate and high-quality habitat compensation needed to truly offset the project’s impacts under the terms of the Orders.”

Ronald Joseph, in comments dated June 12, 2025, stated that plantation forestry should not be allowed in the conservation area.

Cathy Johnson (Johnson), in comments dated June 12, 2025, stated that existing plantations should not be considered mature forest.

The Department finds that the Orders do not require specific numerical targets for mature forest area or preclude counting existing plantations as mature forest. While the proposed CE allows 40 years to achieve the 50% Mature Forest Goal, this approach is consistent with compensatory mitigation programs for wetland impacts that allow wetland restoration projects to be implemented over a period of years after the impact is permitted. The Department finds that compensation for the NECEC project’s habitat connectivity impacts will be provided in an appropriate timeframe.

Based on the definition of “mature forest” and the Mature Forest Goal in the proposed CE, the Department finds that the proposed Plan, as conditioned by this order, will promote conservation of mature forest areas.

B. Providing blocks of habitat for species preferring mature forest habitat.

The proposed Plan intends to achieve the Mature Forest Goal through a “shifting mosaic” forest management strategy. Except for permanent 330-foot mature forest riparian buffers (see Finding 10(C) below), the proposed Plan allows for the location of mature forest in the proposed conservation area to shift over time, as long as at least 50% of the Productive Forest Acres are comprised of mature forest in 2065 and thereafter.

Joint Commenters oppose the shifting mosaic strategy. They note that 6,900 acres of mature forest would occur in the 330-foot riparian buffers, leaving approximately 18,100 acres of mature forest in the remaining approximately 43,100 acres of the conservation area, with those 18,100 acres shifting over time. Joint Commenters stated: “This means that no one area will necessarily be maintained and managed as a ‘mature forest’ in the long term, greatly reducing and disrupting the vast variety of habitat features and benefits that accompany unmanaged mature forests,” such as trees of varying age and size, large downed logs, large standing dead trees, pit-and-mound microtopography, and a well-developed leaf litter layer.

Legislative Commenters also stated that “almost no portion of the landscape will ever be allowed to grow to full maturity, which is essential for many species. This approach does not seem consistent with the Order’s directive to protect habitat for species that prefer mature forest habitat.”

TNC and CLF stated that “the shifting mosaic approach and 50% acreage requirement do not guarantee ‘large blocks’ of mature forest.”

Many commenters also advocated that blocks of habitat for species preferring mature forest habitat should be provided through permanent no-harvest areas or fee acquisition of land.

Joint Commenters stated that “we believe that it will be essential for NECEC [Transmission] LLC to include a significant amount of fee acquisition in its Plan in order to comply with the Orders,” specifically recommending at least 15,000 to 20,000 acres of fee acquisition. Joint Commenters also recommended that no harvesting of existing late-successional or old growth forest should occur in the proposed conservation area. In supplemental comments dated October 24, 2025, Joint Commenters stated: “The Department should Order NECEC to secure, at a minimum, 10,000 acres of forest with larger and older trees.”

Legislative Commenters stated: “The Plan should provide no-cut boundaries around all existing older age class forest stands within the Plan area, including forest stands that are transitioning toward late successional forests,” and that mature forest should be acquired through fee acquisition, specifically, “10,000 to 20,000 acres of fee acquisition elsewhere in the vicinity of Segment 1 that has a larger volume of existing mature forest stands, and would be managed for mature forest habitat.”

Hagan stated that the Plan should preclude harvesting of any existing late-successional or old-growth forest in the proposed conservation area.

Seymour stated that “a much better outcome would be fee ownership of land purchased for the Bureau of Parks and Lands.”

Sierra Club Maine called for the Plan to provide “intact, unharvested mature forest....”

Comments from 260 members of the public stated that the Plan should be revised to include no-harvest or fee acquisition areas, with almost all commenters specifically recommending the addition of 15,000 to 20,000 acres of such areas.

TNC and CLF stated: “Securing additional large blocks of future mature forest with no-cut areas would strengthen the Conservation Easement’s alignment and compliance with the Orders,” further stating that “we also urge that the Conservation Plan should include conservation of one or more additional ecologically significant parcels, preferably each of 5,000 acres or more and adjacent to existing conserved lands, that may include extensive mature forest now and that would have opportunity

to develop into late successional / old growth forest under conservation management.”

The Department agrees that the shifting mosaic forest management strategy will not guarantee “large blocks” of mature forest within the conservation area, as noted by TNC and CLF. However, the Department finds that the shifting mosaic strategy, in conjunction with the Mature Forest Goal, will guarantee blocks of habitat for species preferring mature forest habitat. This is consistent with the provisions of the Orders, which require the proposed conservation area(s) to be managed to “provide *blocks* of habitat for species preferring mature forest habitat and wildlife travel corridors along riparian areas and between mature forest habitat” (*emphasis added*). The Orders’ requirement to provide “large habitat blocks” is tied to the requirement that any conservation area must be at least 5,000 acres, requiring Applicant to “Identify the area(s), with a focus on large habitat blocks, to be conserved and explain the conservation value of this land; any conservation area must be at least 5,000 acres...” Compliance with this requirement is discussed above in Finding 8.

Further, although ever-shifting mature forest areas may not foster the forest complexity found in late-successional or old growth forests as noted by Joint Commenters, the approximately 18,100 acres of mature forest that will exist within the conservation area in 2065 and thereafter should provide suitable habitat for pine marten, an umbrella species preferring mature forest habitat, as discussed above in Finding 10(a). The Department also notes that the existing working forestland in the region of Segment 1—which the Department determined to have substantial enough value to require Applicant to compensate for impacts thereto—is a shifting mosaic of forest types.

While no-harvest areas or fee-acquired parcels would support mature forest species, the Department finds that the Orders do not require Applicant to include such areas in the proposed Plan. The Orders allow flexibility in terms of the legal interest to be acquired in the proposed conservation area(s). The Orders require that the proposed conservation area(s) must be managed to provide blocks of habitat for species preferring mature forest habitat. As detailed above, and as conditioned by this order, the Department finds that the proposed definition of “mature forest,” the Mature Forest Goal, and the “shifting mosaic” management strategy will provide blocks of habitat for species preferring mature forest habitat and are appropriate in the context of the Orders.

The Department finds that, as conditioned by this order, the proposed Plan describes a conservation area that will be managed to provide blocks of habitat for species preferring mature forest habitat, thereby meeting the requirements of the Orders.

- C. Providing wildlife travel corridors along riparian areas and between mature forest habitat.

The proposed CE requires that “a 100-foot no-harvest buffer must be maintained around all perennial streams and associated open wetlands as depicted in the Baseline

Documentation beginning at the normal high-water line (up to no more than approximately 2,400 acres), and management must be maintained for continuous Mature Forest habitat from 100 feet to 330 feet from the normal high water line (up to no more than approximately 4,500 additional acres).” (Section VII(A)(6)). The proposed Plan notes: “Although the state regulations vary according to drainage classes, for the average perennial stream found in the parcel, current state law only requires maintaining vegetative shade of surface waters with no sediment discharge.”

The proposed CE allows roads and skid trails to cross perennial streams to facilitate forestry activities, but crossings must be “minimized and constructed to protect streambank integrity.” (Section VII(A)(6)).

Joint Commenters stated that “the 100-foot no-harvest buffer around all perennial streams will provide substantial habitat benefits, including protecting water quality, facilitating wildlife travel, and enabling the development of truly mature forests...” but they note several perceived shortcomings, including that “the Plan does not limit new stream crossings nor require any new or replacement crossings to follow Stream Smart standards.”

MNAP stated that the no-harvest stream buffer “is consistent with some habitat conservation programs. However, other standards put forward by wetland protection or habitat conservation programs are not fully met in the Plan. MNAP recommends that the standards in the Plan not be used as a precedent for working forest easements.” MNAP also recommends “use of temporary roads and bridges wherever possible” for stream crossings used to support harvesting.

MDIFW stated that “riparian habitat management standards will greatly exceed those required by law.”

TNC and CLF stated that “The riparian corridors are an important component of mature forest connectivity....”

SAM stated that “establishment of riparian corridors” along with extinguishment of development rights and management for mature forest, “would provide impressive protections for Maine’s forests and the species that rely upon them.”

The Department finds persuasive the comments of the Joint Commenters regarding the importance of requiring Stream Smart standards for new or replacement stream crossings. Allowing new or replacement stream crossings that do not meet such standards may harm the health and connectivity of streams in the proposed conservation area, thereby detracting from the value of the wildlife travel corridors along riparian areas. Therefore, the Department finds that Stream Smart standards for new or replacement stream crossings are necessary for Applicant to meet the requirements of the Orders.

The Department finds that the proposed conservation area will be managed to provide wildlife travel corridors along riparian areas and between mature forest habitat,

provided Section VII(C)(2) and Section VII(D)(2) of the proposed CE are revised to require any new or replacement stream crossings in the proposed conservation area to have a diameter of at least 1.2 times the bank full width of the stream, to be either open-bottomed or to have between one-quarter and one-half of the diameter of the culvert embedded below the stream substrate, and to adhere to other principles described in the 2017 Stream Smart Road Crossing Pocket Guide published by the Maine Department of Transportation.

D. Promoting habitat connectivity.

Section VII of the proposed CE prohibits “[r]esidential, industrial, and commercial activities and development, quarrying, mining, mineral development, alteration of watercourses and water bodies, and building development activities” in the proposed conservation area, “except as permitted for the authorized uses in this Conservation Easement, including but not limited to: Commercial Forest Management Activities (see Section VII.A.6), Permitted Excavation and Use of Gravel, Sand, and Rock, (see Section VII.D.3), Ecosystem Service Markets (see Section VII.A.4), Forest and Vegetation Management (see Section VII.E), Incidental Operations (see Section VII.E) and for the enhancement of Non-Intensive Outdoor Recreation as defined herein and other activities expressly permitted by this Conservation Easement or reserved by Grantor.” The proposed CE also states: “Any activities on or uses of the Protected Property that are inconsistent with the Conservation Purposes [described in Section IV] are prohibited.”

Joint Commenters stated that “the Conservation Easement falls short of the requirement to promote habitat connectivity” for multiple reasons. These reasons include a lack of restrictions on new logging roads and skid trails, particularly in riparian areas; allowance of commercial sale of gravel, sand, and rock; allowance for water extraction; and allowance for new rights-of-way and easements in the conservation area.

TNC and CLF also stated: “The proposed Conservation Easement would be strengthened by prohibition of the commercial sale of gravel, sand, and rock,” and that the proposed CE “should be revised to expressly prohibit new rights of way, easements, etc., rather than allowing them with the Holder’s prior written approval.”

Legislative Commenters stated similar concerns about new roads and rights of way and the commercial sale of gravel, sand and rock.

Comments from 260 members of the public also expressed concern about the potential for future development like new roads and gravel mining in the proposed conservation area.

Johnson stated: “Allowing gravel, sand and rock extraction (but not quarrying) for use on roads within the conservation area on the property is reasonable but commercial or industrial extraction or sale should be prohibited.”

Section VII(D)(3) of the proposed CE allows the excavation and use of gravel, sand, and rock. This section limits activities to no more than ten acres of exposed mineral surface per site at any time, no more than an aggregate area of 70 acres exposed at any one time, and no more than an aggregate area of 150 mined acres in perpetuity. Permitted uses of excavated materials include commercial sale of the materials.

The Department finds that the limited scale of excavation permitted under the proposed CE will not conflict with the promotion of habitat connectivity across the 50,063-acre conservation area. As Applicant notes in their August 1, 2025 comments, the proposed CE limits excavation to 150 acres in total in perpetuity despite no requirement in the Orders to do so. The Department notes that the Moosehead Region Conservation Easement, placed on 359,000 acres adjacent to the proposed conservation area in 2012,² allows the off-site use of sand, gravel, and rock excavated from the protected property and does not place any limit on the total acreage of excavation. The Department finds that the proposed CE's 150-acre cap on excavation in perpetuity is sufficient to ensure promotion of habitat connectivity regardless of whether excavated materials are sold commercially.

The Department concurs that no new rights-of-way or easements should be allowed in the proposed conservation area. The primary concern with new rights-of-way or easements is that they may lead to the construction of new structures such as roads or utility infrastructure, which would detract from habitat connectivity. Sections VII(C) and (D) of the proposed CE prohibit new structures and surface alterations in the proposed conservation area, with limited exceptions, including land management roads necessary for commercial forestry operations. Section VII(A)(1) also prohibits specific developments, including transmission lines. Therefore, even if the proposed CE were to allow new easements and rights-of-way, such easements and rights-of-way could not be used for new roads (except logging roads), transmission lines, or other unauthorized structures or surface alterations.

In response to comments, Applicant removed language from the initial draft Conservation Easement that would have allowed new rights-of-way and easements in the conservation area with the prior written approval of BPL (Section VII(A)(3)(a) of the draft CE submitted May 9, 2025). The final proposed CE, submitted on October 7, 2025, appears to only allow new access and utility easements for Route 201, if such easement rights are necessary for the Maine Department of Transportation to comply with federal or state law or are necessary for public safety, as determined and approved by BPL.

However, the Department finds that additional changes to Section VII(A)(3) of the proposed CE are necessary to clarify that no new access or utility easements may be granted (except in relation to Route 201) and that any leases or licenses issued by the Grantor may not result in new rights-of-way, corridors, roads, or development. To ensure clarity, and as a condition necessary to meet the requirements of the Orders, Applicant must revise the proposed CE in Section VII(A)(3) as follows:

² Somerset County Registry of Deeds, Book 04523, Page 222, filed May 14, 2012.

- Section VII(A)(3)(a) must be revised to read: “Access and Utility Easements. No new access or utility easements may be placed on the Protected Property, except that Holder may provide its prior written approval for easements related to State Route 201 if such easement rights minimize adverse impacts to the Conservation Values and Holder determines that such easement rights are: (1) necessary for the Maine Department of Transportation to comply with federal or state law or (2) necessary for public safety.”
- Section VII(A)(3)(b) must be revised to read: “Leases and Licenses. No new leases, licenses, or other interests in the Protected Property that establish a right-of-way, corridor of ingress or egress, driveway, road, utility distribution or service line, or tower, or that otherwise conflict with the restrictions in this Conservation Easement, shall be granted. Prior written approval of the Holder must be provided for new leases or licenses, including sugar bush leases, except short-term and temporary leases or licenses across existing rights-of-way, so long as such leases or licenses do not include any land-clearing activities. For purposes of this Section VII.A.3(b), short-term and temporary means less than three years and non-renewable.”

While the proposed CE does not extinguish the landowner’s groundwater rights, the provisions of the proposed CE are clear that commercial groundwater extraction is prohibited. As noted above, Sections VII(C) and (D) of the proposed CE prohibit new structures and surface alterations, with limited exceptions, and such exceptions do not include structures and surface alterations for groundwater extraction. Section VII(D) reads, “No...alteration may be made to the surface or subsurface of the Protected Property or to its surface or ground waters...” except for a prescribed list of Grantor-reserved rights, which do not include groundwater extraction. Additionally, any commercial groundwater extraction would constitute a “commercial” activity, which is generally prohibited by Section VII(A)(1), except for certain specific authorized uses, which do not include groundwater extraction. Therefore, the Department finds that commercial groundwater extraction is prohibited by the proposed CE.

As noted in Finding 9 above, several commenters, including BPL, TNC and CLF, and SAM, indicated that the geographic location of the proposed conservation area—connecting approximately 400,000 acres of other conserved land—provides significant conservation value. The Department finds that, subject to the conditions of this order, the location of the proposed conservation area will promote habitat connectivity at a regional scale. The Department further finds that extinguishing development rights, promoting conservation of mature forest areas, providing blocks of habitat for species preferring mature forest habitat, and providing wildlife travel corridors along riparian areas and between mature forest habitat—as described in the Findings above and as condition by this order—will promote habitat connectivity within the proposed conservation area. Therefore, the Department finds that the proposed Plan, as conditioned by this order, will promote habitat connectivity, provided Applicant revises the proposed CE in Section VII(A)(3) as follows:

- Section VII(A)(3)(a) must be revised to read: “Access and Utility Easements. No new access or utility easements may be placed on the Protected Property, except that Holder may provide its prior written approval for easements

related to State Route 201 if such easement rights minimize adverse impacts to the Conservation Values and Holder determines that such easement rights are: (1) necessary for the Maine Department of Transportation to comply with federal or state law or (2) necessary for public safety.”

- Section VII(A)(3)(b) must be revised to read: “Leases and Licenses. No new leases, licenses, or other interests in the Protected Property that establish a right-of-way, corridor of ingress or egress, driveway, road, utility distribution or service line, or tower, or that otherwise conflict with the restrictions in this Conservation Easement, shall be granted. Prior written approval of the Holder must be provided for new leases or licenses, including sugar bush leases, except short-term and temporary leases or licenses across existing rights-of-way, so long as such leases or licenses do not include any land-clearing activities. For purposes of this Section VII.A.3(b), short-term and temporary means less than three years and non-renewable.”

- E. Standard sustainable forestry operations commonly allowed in areas subject to working forest easements.

As noted above, the Orders state that, “[w]hile...commercial timber operations are not expressly precluded, standard sustainable forestry operations commonly allowed in areas subject to working forest easements would not be consistent with the primary goal of the Conservation Plan.”

MDIFW stated in comments that the “Plan attempts to strike a balance between commercial forest management on the Mitigation Parcel while also maintaining suitable acreage of mature forest to mitigate for lost connectivity in the forests impacted by the NECEC corridor.... Over time, MDIFW believes the Mitigation Parcel will have significantly more mature forest than would have likely occurred under a typical industrial forest management regime, and riparian habitat management standards will greatly exceed those required by law. This will provide benefits to wildlife species that are reliant on mature forests.”

TNC and CLF stated that the Mature Forest Goal in the proposed CE, “does represent a meaningful change from the current commercial forest management on the property,” while also stating that the definition of mature forest should require taller trees and denser basal area than originally proposed, as discussed in Finding 10(a)(i) above.

Seymour stated that the proposed CE “is arguably much better than other similar easements that limit harvesting via minimum stocking levels and other less-effective methods.”

Stephen Robe, Maine Licensed Professional Forester, stated in comments dated June 13, 2025, that the proposed CE is “[not] business as usual and is a substantial change in typical forest management practices.”

Joint Commenters argue that other conservation easements in Maine include more protective provisions than those contained in the proposed CE. In supplemental comments dated October 24, 2025, Joint Commenters stated that “the State of Maine and multiple land trusts manage conservation easements with much stronger provisions for the conservation of mature forests than what is proposed by NECEC.” Joint Commenters point to several specific examples: Fourth Machias Lake Ecological Reserve, No. 5 Mountain Preserve, Leuthold Forest Reserve Addition (#6 Mountain), Grafton Forest Wilderness Preserve, Alder Stream, Debsconeag Lakes Wilderness Area, and Amazon-Musquash Reserve and Special Management Area.

The Department finds that while the conserved lands referenced by Joint Commenters are exemplary for their ecological management, they are not “working forest conservation easements” as commonly understood; they are ecological reserves. The Department finds that the Orders do not require the Conservation Plan to include ecological reserves; instead, the Orders only preclude “standard sustainable forestry operations.”

The Department finds that a more appropriate comparison in this context is the Moosehead Region Conservation Easement, placed on 359,000 acres adjacent to the proposed conservation area in 2012. The Moosehead Region Conservation Easement allows any forest management operations that comply with applicable laws. By contrast, the proposed CE would establish 330-foot mature forest riparian buffers and 100-foot no-harvest riparian buffers and would require 50% of the proposed conservation area to be managed to a definition of mature forest in perpetuity.

The Department finds that the proposed CE, on balance, does not represent “standard sustainable forestry operations.” The Department finds that the proposed CE represents an improvement upon standard sustainable forestry operations commonly allowed in areas subject to working forest easements, that it is therefore consistent with the primary goal of the proposed Plan, and that it, as conditioned by this order, meets the requirements of the Orders.

11. Forest Management Plan.

The Orders require that the Conservation Plan must “[i]nclude a draft forest management plan establishing how, consistent with the primary goal of the Conservation Plan, the conservation area(s) will be managed, including to provide blocks of habitat for species preferring mature forest habitat and wildlife travel corridors along riparian areas and between mature forest habitat.” As noted in Finding 3 above, on July 16, 2025, Applicant submitted a draft Forest Management Plan (FMP), and on October 24, 2025, Applicant submitted a revised FMP (proposed FMP). On October 27, 2025, BPL commented that the agency has reviewed the proposed FMP and “finds that the Forest Management Plan contains the required plan elements and is consistent with the terms of the easement submitted to the DEP by NECEC on October 7, 2025. The Bureau therefore approves the Forest Management Plan.”

The Department finds that, subject to the conditions of this order, the proposed Plan includes an adequate forest management plan establishing how, consistent with the primary goal of the Conservation Plan, the conservation area(s) will be managed, including to provide blocks of habitat for species preferring mature forest habitat and wildlife travel corridors along riparian areas and between mature forest habitat.

12. Stewardship funding.

The Plan must “[e]xplain how the applicant will ensure the availability [of] stewardship funding (e.g., funding for monitoring and enforcement) needed to support achievement of the goals of the Conservation Plan.” In its May 9, 2025 submission, Applicant stated that, “NECEC [Transmission] LLC has allocated funds for stewardship of the conservation lands for monitoring and enforcement of conservation plan requirements and to support achievement of CE goals. Appropriate stewardship funding amounts will be calculated, and funds disbursed, to the BPL along with conveyance of the CE for the Protected Property.” In its response to comments dated August 1, 2025, Applicant further stated: “With a stewardship fund of \$659,000 that the BPL proposed as sufficient to meet its ongoing monitoring and enforcement needs, the Conservation Easement will provide in perpetuity habitat connectivity and conservation of mature forest areas well beyond the life of the Project.”

The Department finds that the Plan explains how Applicant will ensure the availability of stewardship funding needed to support achievement of the goals of the Conservation Plan.

13. Third-party enforcement rights.

The Plan must “[e]nsure the Department will have third party enforcement rights.” Section X(E) of the proposed CE states: “Pursuant to the Order, MDEP shall have all of the enforcement rights granted to Holder pursuant to this Section X, and shall act as a third party enforcer of this Conservation Easement.”

The Department finds that the Plan adequately ensures the Department will have third-party enforcement rights.

14. Other considerations.

Several organizations and individuals that are not listed above expressed overall support for the proposed Conservation Plan, including the Maine Renewable Energy Association, EDP Renewables North America LLC, International Brotherhood of Electrical Workers (IBEW) Local 104, Industrial Energy Consumers Group, Maine State Chamber of Commerce, Richard B. Anderson, Matthew Scott, and Dr. Lloyd Irland.

15. 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.

Based on the above, the Department concludes that NECEC TRANSMISSION LLC has complied with Special Condition #39 of Department Order #L-27625-26-A-N/L-27625-TG-B-N/L-27625-2C-C-N/L-27625-VP-D-N/L-27625-IW-E-N and Special Condition #10 of Board Order #L-27625-26-F-Z/L-27625-TG-G-Z/L-27625-2C-H-Z/L-27625-VP-I-Z/ L-27625-IW-J-Z/L-27625-26-AB-Z, subject to each of the following conditions:

1. Applicant must revise the Conservation Easement as follows:
 - Section VII(C)(2) and Section VII(D)(2) must be revised to require any new or replacement stream crossings in the proposed conservation area to have a diameter of at least 1.2 times the bank full width of the stream, to be either open-bottomed or to have between one-quarter and one-half of the diameter of the culvert embedded below the stream substrate, and to adhere to other principles described in the 2017 Stream Smart Road Crossing Pocket Guide published by the Maine Department of Transportation;
 - Section VII(A)(3)(a) must be revised to read: “Access and Utility Easements. No new access or utility easements may be placed on the Protected Property, except that Holder may provide its prior written approval for easements related to State Route 201 if such easement rights minimize adverse impacts to the Conservation Values and Holder determines that such easement rights are: (1) necessary for the Maine Department of Transportation to comply with federal or state law or (2) necessary for public safety.”
 - Section VII(A)(3)(b) must be revised to read: “Leases and Licenses. No new leases, licenses, or other interests in the Protected Property that establish a right-of-way, corridor of ingress or egress, driveway, road, utility distribution or service line, or tower, or that otherwise conflict with the restrictions in this Conservation Easement, shall be granted. Prior written approval of the Holder must be provided for new leases or licenses, including sugar bush leases, except short-term and temporary leases or licenses across existing rights-of-way, so long as such leases or licenses do not include any land-clearing activities. For purposes of this Section VII.A.3(b), short-term and temporary means less than three years and non-renewable.”
2. The signed and recorded Conservation Easement, as revised by Special Condition #1, must be submitted to the Department for review before commercial operation of the project and no later than 45 days from the date of this order.
3. Any proposed modification to the terms of the signed and recorded Conservation Easement must be submitted to the Department for review and approval.
4. If the Conservation Easement is ever amended in a manner that materially detracts from its conservation values or reduces the number of acres encumbered by the easement, or if the easement is ever terminated, Applicant, in addition to complying with the requirements of 33 M.R.S §477-A(2)(B) and any other applicable statutory provisions,

must submit a new Conservation Plan to the Department within 30 days for the Department's review and approval.

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 _____, 2025.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: _____

For: Melanie Loyzim, Commissioner

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES.

DH/L-027625-0003



DEP INFORMATION SHEET

Appeals to the Board of Environmental Protection

Date: November 2024 Contact: Clerk.BEP@maine.gov or (207) 314-1458

SUMMARY

This document provides information regarding a person's rights and obligations in filing an administrative or judicial appeal of: (1) a final license decision made by the Commissioner of the Department of Environmental Protection ("DEP"); or (2) an insurance claim-related decision ("Clean-up and Response Fund decision") made by the Commissioner or the Office of State Fire Marshal pursuant to [38 M.R.S. § 568-A](#).

Except as explained below, there are two methods available to an aggrieved person seeking to appeal a license decision made by the Commissioner or a Clean-up and Response Fund decision: (1) an administrative appeal before the Board of Environmental Protection ("Board"); or (2) a judicial appeal before Maine's Superior Court. An aggrieved person seeking review of a license decision or Clean-up and Response Fund decision made by the Board may seek judicial review in Maine's Superior Court.

An appeal of a license decision made by the DEP Commissioner or the Board regarding an application for an expedited wind energy development ([35-A M.R.S. § 3451\(4\)](#)), 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 the applicable rules and statutes, including the DEP's Chapter 2 rule, [Processing of Applications and Other Administrative Matters \(06-096 C.M.R. ch. 2\)](#); Organization and Powers, [38 M.R.S. §§ 341-D\(4\)](#) and [346](#); and the Maine Administrative Procedure Act, 5 M.R.S. § [11001](#).

DEADLINE TO SUBMIT AN APPEAL TO THE BOARD

Within 30 calendar days of the date of: (1) a final license decision of the Commissioner; or (2) a Clean-up and Response Fund decision, an aggrieved person may appeal to the Board for review of that decision. "Aggrieved person" means any person whom the Board determines may suffer a particularized injury as a result of a Commissioner's license decision or a Clean-up and Response Fund decision. A complete appeal must be received by the Board no later than 5:00 p.m. on the 30th calendar day of the decision being appealed. With limited exception, untimely appeals will be dismissed.

HOW TO SUBMIT AN APPEAL TO THE BOARD

An appeal to the Board may be submitted via postal mail or electronic mail (e-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
Clerk.BEP@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, if the appellant is not the licensee; and (3) if a hearing was held on the application, any intervenors in that hearing proceeding. For appeals of Clean-up and Response Fund decisions made by the State Fire Marshal, the appellant must also send a copy of the appeal to the State Fire Marshal. **Please contact the Board Clerk at clerk.bep@maine.gov or DEP staff at 207-287-7688 with questions or for contact information regarding a specific license or Clean-up and Response Fund decision.**

REQUIRED APPEAL CONTENTS

A written appeal must contain the information specified in Chapter 2, section 23(B) or section 24(B), as applicable, at the time the appeal is submitted. **Please carefully review these sections of Chapter 2**, which is available online at <https://www.maine.gov/sos/cec/rules/06/chaps06.htm>, or contact the Board Clerk to obtain a copy of the rule. Failure to comply with the content of appeal requirements may result in the appeal being dismissed pursuant to Chapter 2, section 23(C) or section 24(C).

OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

1. *Be familiar with the administrative record.* Generally, the record on which the Board decides an appeal is limited to the record prepared by the agency in its review of the application, any supplemental evidence admitted to the record by the Board Chair and, if a hearing is held on the appeal, additional evidence admitted during the hearing. A person who seeks to appeal a decision to the Board is encouraged to contact the DEP (or State Fire Marshal for Clean-up and Response Fund decisions made by that agency) to inspect the record before filing an appeal.
2. *Be familiar with the applicable rules and laws.* An appellant is required to identify the licensing criterion or standard the appellant believes was not satisfied in issuing the decision, the bases of the objections or challenges, and the remedy sought. Prior to filing an appeal, review the decision being appealed to identify the rules and laws that are applicable to the decision. An appellant may contact the DEP or Board staff with any questions regarding the applicable rules and laws or the appeal procedure generally.
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 separate stay of the decision is requested and granted (*see* Chapter 2, section 23(M)), the licensee may proceed with an approved project pending the outcome of the appeal. Any activity initiated in accordance with the approved license during the pendency of the appeal comes with the risk of not knowing the outcome of the appeal, including the possibility that the decision may be reversed or modified by the Board.
4. *Alternative dispute resolution.* If the appeal participants agree to use mediation or another form of alternative dispute resolution (“ADR”) to resolve the appeal and so notify the Board, the Board will not hear the matter until the conclusion of that effort, provided the participants engaged in the alternative dispute resolution demonstrate satisfactory progress toward resolving the issues. *See* Chapter 2, section 23(H) or contact the Board Executive Analyst (contact information below) for more information on the ADR provision.

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

The Board will acknowledge receipt of each appeal and develop a service list of appeal participants and any interested persons for use in the appeal proceeding. Electronic mail (e-mail) is the preferred method of communication during an appeal proceeding; however, the Board reserves the right to require paper copies of all filings. Once the Board Chair rules on the admissibility of all proposed supplemental evidence, the licensee (if the licensee is not the appellant) may respond to the merits of the appeal. Instructions specific to each appeal will be provided in correspondence from the Board Executive Analyst or Board Chair.

Generally, once all filings in an appeal proceeding are complete, the DEP staff will assemble a packet of materials for the Board (Board packet), including a staff recommendation in the form of a proposed Board Order. Once available, appeal participants will receive a copy of the Board packet and an agenda with the meeting location and start time. Once finalized, the meeting agenda will be posted on the Board's webpage <https://www.maine.gov/dep/bep/index.html>. Appeals will be considered based on the administrative record on appeal and oral argument at a regular meeting of the Board. *See* Chapter 2, Section 23(I). The Board may affirm all or part of the decision under appeal; affirm all or part of the decision under appeal with modifications, or new or additional conditions; order a hearing to be held as expeditiously as possible; reverse the decision under appeal; or remand the decision to the Commissioner or State Fire Marshal, as applicable, for further proceedings.

II. JUDICIAL APPEALS

The filing of an appeal with the Board is not a prerequisite for the filing of a judicial appeal. Maine law generally allows aggrieved persons to appeal final license decisions to Maine's Superior Court (*see* [38 M.R.S. § 346\(1\)](#); [Chapter 2](#); [5 M.R.S. § 11001](#); and [M.R. Civ. P. 80C](#)). A judicial appeal by a party to the underlying proceeding 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 aggrieved 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\(4\)](#), the Maine Administrative Procedure Act, statutes governing a particular license decision, and the Maine Rules of Civil Procedure for substantive and procedural details applicable to judicial appeals.

ADDITIONAL INFORMATION

If you have questions or need additional information on the appeal procedure, for administrative appeals contact the Board Clerk at clerk.bep@maine.gov or 207-287-2811 or the Board Executive Analyst at bill.hinkel@maine.gov or 207-314-1458, or for judicial appeals contact the court clerk's office in which the appeal will be filed.

Note: This information sheet, in conjunction with a review of the statutory and rule provisions referred to herein, is provided to help a person to understand their rights and obligations in filing an administrative or judicial appeal, and to comply with notice requirements of the Maine Administrative Procedure Act, 5 M.R.S. § 9061. This information sheet is not intended to supplant the parties' obligations to review and comply with all statutes and rules applicable to an appeal and insofar as there is any inconsistency between the information in this document and the applicable statutes and rules, the relevant statutes and rules apply.