



DEPARTMENT ORDER

IN THE MATTER OF

CENTRAL MAINE POWER COMPANY) SITE LOCATION OF DEVELOPMENT ACT
NECEC TRANSMISSION LLC) NATURAL RESOURCES PROTECTION ACT
See attached) WATER QUALITY CERTIFICATION
FIELD ADJUSTMENT REQUEST)
L-27625-26-AS-M (approval)) MINOR REVISION
L-27625-2C-AT-M (approval))
L-27625-IW-AU-M (approval))
L-27625-TB-AV-M (approval))
L-27625-VP-AW-M (approval)) FINDINGS OF FACT AND ORDER

Pursuant to the provisions of 38 M.R.S. §§ 481–489-E and §§ 480-A–480-JJ, and Section 401 of the Clean Water Act (33 U.S.C. § 1341), the Department of Environmental Protection (Department) has considered the application of CENTRAL MAINE POWER COMPANY (CMP) and NECEC TRANSMISSION LLC (NECEC) (collectively, Licensees) with the supportive data, and other related materials on file and FINDS THE FOLLOWING FACTS:

1. PROJECT DESCRIPTION:

A. Relevant Procedural History: In Department Order # L-27625-26-A-N/L-27625-TB-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 a Site Location of Development Act and Natural Resources Protection Act (NRPA) permit for the New England Clean Energy Connect project. The project involves the construction of 145 miles of high voltage direct current (HVDC) transmission line from Beattie Township to Lewiston, a new converter station in Lewiston, a new substation in Pownal, additions to several other substations, and upgrades to existing transmission lines. In Department Order #L-27625-26-Q-M/L-27625-TG-R-M/L-27625-2C-S-M/L-27625-VP-T-M/L-27625-IW-U-M, dated May 7, 2021 (FAR Order), the Department approved a Minor Revision to the Department Order to allow the Licensees to use a Field Adjustment Request (FAR) process to make changes to the approved plans which met certain criteria.

The changes made utilizing the approved FAR process satisfy the applicable permitting standards, including that they will not have an undue adverse impact on existing uses, scenic character, air quality, water quality, or other natural resources and will not unreasonably impact protected natural resources. The FAR process approved in FAR Order contains two levels of review. Category 1 FARs are in some cases approved for more minor field adjustments, and they require only the review of the Third-Party Inspector assigned to that segment of the corridor. Adjustments that were eligible in the FAR Order as Category 1 FARs included an allowance for refueling within the setback of a resource; movement of construction access roads in uplands to reduce or eliminate an

environmental or safety hazard; allowance for a clearing technique known as “Lop and Drop”; and adjustments in the number and location of guy or ground wires in uplands. Eligible changes for a Category 2 FAR in the FAR Order, which are reviewed by Department Staff as well as the Third-Party Inspector, included the refueling of equipment in a resource; adjustments to the location of permitted stream crossings within the corridor necessitated by changes in stream bank stability or channel location to minimize health, safety, or environmental risks; relocation of access roads from the 54-foot center line area; and adjustments to the number and location of guy or ground wires in protected natural resources. In the last category, in order to be eligible for approval, areas of temporary impacts of less than 4,300 square feet of wetland impact are required to be restored within one year and areas of between 4,300 square feet and 30,000 square feet of wetland impact are required to be restored within 3 months. Adjustments in excess of 30,000 square feet of temporary impacts are not eligible for approval under the FAR process and require additional permitting from the Department. The Department also approved FAR forms to be used for this process in its Order. The FAR process specifically excluded the relocation of structures either along the tangent or laterally.

There have been other Department and Board of Environmental Protection actions and proceedings for this project which are not at issue in this application.

B. Summary of Application: In this application, the Licensees request approval of three broad categories of changes to the FAR process including administrative changes to the FAR forms, changes to clarify existing language on the forms, and the creation of additional field adjustment categories.

The requested administrative changes include the addition of a reference number and an identification number for tracking purposes and the removal of the signature block for the US Army Corps of Engineers.

The requested changes to the language on the existing forms include, by way of example, to change the term “protected resources” to “protected natural resources,” a term defined in the underlying licensing statute, the NRPA. The Licensees also propose changing the term “vernal pool” on the forms to “significant vernal pool,” which is also defined in the NRPA.

The Licensees request the addition of three types of adjustments not previously eligible under the FAR process. Those include changes which result in temporary impacts in cultural resources, changes to structure locations which do not result in any additional impacts to protected natural resources, and an allowance for the replacement of culverts in accordance with “Stream Smart Principles” on the land controlled by the Licensees. Crossings constructed utilizing “Stream Smart Principles” allow for aquatic organism passage and typically have either an open bottom or a culvert which is large enough to allow stream substrate to accumulate in the bottom.

C. Current Use of Site: Segment 1 of the overall project is located in working forest between Beattie Township and West Forks Plantation. It has been mostly cleared by the

Licensees and is the only portion of the transmission line not co-located with another transmission line. Segments 2, 3, 4, and 5 are expansions of existing rights-of-way and have also been mostly cleared. The project is located in 27 municipalities, townships, or plantations.

2. ANALYSIS AND FINDINGS OF FACT:

The administrative changes proposed are all minor in nature and will allow for both the Licensees and the Department to better track FARs. The proposed changes to clarify the forms do not alter the original intent of the FAR process, but rather make it clear to the Licensees, their environmental inspector, the contractors, the Third-Party Inspector, and Department staff where each field adjustment may be allowed and under what circumstances. The Licensees also proposed the removal of the potential allowance of a FAR for overnight parking, refueling, or maintenance in a stream or brook. They stated that they never intend to park, refuel, or maintain equipment in a stream or brook. Other requested changes include clarifying that vernal pools means significant vernal pools and protected resources means protected natural resources as those terms are defined in the NRPA and accompanying rules. The Category 1 and Category 2 forms will be changed accordingly.

The Licensees propose three kinds of adjustments be added to the FAR process: temporary impacts to cultural resources, adjustments to pole locations, and culvert replacements on access roads controlled by the Licensees using Stream Smart Principles. With the exception of an adjustment to a pole location laterally up to 25 feet, which will be a Category 1 adjustment, all other adjustments will be Category 2 adjustments and will require the review and approval of Department staff. Adjustments to pole locations are limited to 75 feet along the tangent and 25 feet laterally. Culvert replacements must be done between July 15 and September 30, be done in the dry, and cannot be located in Atlantic Salmon streams nor any habitat for species appearing on the State's list of Threatened or Endangered Species. The new categories of adjustments proposed by the Licensees eliminate or reduce environmental impacts or eliminate a health or safety issue. The replacement of existing culverts which currently block aquatic organism passage with ones that do not block passage is an example. The Department routinely advises landowners who need to replace existing culverts that utilizing Stream Smart Principles is beneficial and, in fact, provides funds for such projects. Adjustments to pole locations can similarly reduce impacts. For example, if the permitted location of a pole is some distance down a steep slope that has a stream at the bottom, the potential for impacts to the stream are greatly reduced if the pole is relocated to the top of the bank. All Category 2 FARs are reviewed by Department staff to ensure that requested adjustment do not alter any Finding previously made by the Board or the Department or any statutory or regulatory standard.

The Department finds that the additional types of adjustments requested by the Licensees to be eligible for a FAR, as described in the application, are limited to those that will not result in any additional permanent impacts to protected natural resources, will not require additional compensation and must:

- avoid or minimize environmental impacts through the reduction of permanent, temporary, or secondary impacts;
- reduce the risk of adverse environmental effects associated with unfavorable environmental conditions; or
- address a significant health or safety issue encountered in the field.

Based on its review of the application, the Department finds the requested minor revision to be in accordance with all relevant Departmental standards. All other findings of fact, conclusions and conditions remain as approved in Department Order #L-27625-26-A-N/L-27625-TB-B-N/L-27625-2C-C-N/L-27625-VP-D-N/L-27625-IW-E-N, and subsequent Orders.

BASED on the above findings of fact, and subject to the conditions listed below, the Department makes the following conclusions pursuant to 38 M.R.S. §§ 480-A–480-JJ and Section 401 of the Clean Water Act:

- A. The proposed activity will not unreasonably interfere with existing scenic, aesthetic, recreational, or navigational uses.
- B. The proposed activity will not cause unreasonable erosion of soil or sediment.
- C. The proposed activity will not unreasonably inhibit the natural transfer of soil from the terrestrial to the marine or freshwater environment.
- D. The proposed activity will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic habitat, travel corridor, freshwater, estuarine, or marine fisheries or other aquatic life.
- E. The proposed activity will not unreasonably interfere with the natural flow of any surface or subsurface waters.
- F. The proposed activity will not violate any state water quality law including those governing the classifications of the State's waters.
- G. The proposed activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties.
- H. The proposed activity is not on or adjacent to a sand dune.
- I. The proposed activity is not on an outstanding river segment as noted in 38 M.R.S. § 480-P.

BASED on the above findings of fact, and subject to the conditions listed below, the Department makes the following conclusions pursuant to 38 M.R.S. §§ 481–489-E:

- A. The applicant has provided adequate evidence of financial capacity and technical ability to develop the project in a manner consistent with state environmental standards.
- B. The applicant has made adequate provision for fitting the development harmoniously into the existing natural environment and the development will not adversely affect existing uses, scenic character, air quality, water quality or other natural resources in the municipality or in neighboring municipalities.
- C. The proposed development will be built on soil types which are suitable to the nature of the undertaking and will not cause unreasonable erosion of soil or sediment nor inhibit the natural transfer of soil.
- D. The proposed development meets the standards for storm water management in 38 M.R.S. § 420-D and the standard for erosion and sedimentation control in 38 M.R.S. § 420-C.
- E. The proposed development will not pose an unreasonable risk that a discharge to a significant groundwater aquifer will occur.
- F. The applicant has made adequate provision of utilities, including water supplies, sewerage facilities and solid waste disposal required for the development and the development will not have an unreasonable adverse effect on the existing or proposed utilities in the municipality or area served by those services.
- G. The activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties nor create an unreasonable flood hazard to any structure.

THEREFORE, the Department APPROVES the application of CENTRAL MAINE POWER COMPANY and NECEC TRANSMISSION LLC to modify the Field Adjustment Request procedures as described in Finding 1, SUBJECT TO THE FOLLOWING CONDITIONS and all applicable standards and regulations:

1. The Standard Conditions of Approval, a copy attached.
2. In addition to any specific erosion control measures described in this or previous orders, the applicant shall take all necessary actions to ensure that its activities or those of its agents do not result in noticeable erosion of soils or fugitive dust emissions on the site during the construction and operation of the project covered by this approval.
3. Severability. The invalidity or unenforceability of any provision, or part thereof, of this License shall not affect the remainder of the provision or any other provisions. This License shall be construed and enforced in all respects as if such invalid or unenforceable provision or part thereof had been omitted.

4. All other Findings of Fact, Conclusions and Conditions remain as approved in Department Order #L-27625-26-A-N/L-27625-TB-B-N/L-27625-2C-C-N/L-27625-VP-D-N/L-27625-IW-E-N, and subsequent Orders, and are incorporated herein.

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

DONE AND DATED IN AUGUSTA, MAINE, THIS 24TH DAY OF AUGUST, 2023.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: 
For: Melanie Loyzim, Commissioner

PLEASE NOTE THE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES.

JB/L27625AS-AWM/ATS 91292, 91293, 91294, 91295, 91296

<p>FILED August 25th, 2023 State of Maine Board of Environmental Protection</p>

DEP SITE LOCATION OF DEVELOPMENT (SITE) STANDARD CONDITIONS

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

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



Natural Resource Protection Act (NRPA) Standard Conditions

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

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

NECEC – Category I Field Adjustment Request Form

DEP #: L-27625-26-A-N, L-27625-TB-B-N, L-27625-2C-C-N, L-27625-VP-D-N, L-27625-IW-E-N

**Category I Field Adjustment Request
(reviewed and documented by 3PI in the field)****Adjustment Requested (check boxes that apply):**

1. Refueling, maintenance, or overnight parking within 100 feet of a wetland or waterbody; within 200 feet of a known private water supply well; within 400 feet of a known public water supply; within 25 feet of a MNAP mapped rare plant or natural community; within a mapped significant sand and gravel aquifer; or within 25 feet of any mapped RTE species identified by MDIFW, MDMR, or USFWS, when no practicable alternative exists.
2. Adjustment in permitted construction access road layout or location
 - a. in uplands (no identified protected natural resources), or
 - b. that results in reduction or elimination of wetland impact
3. Adjustment in permitted construction access road layout or location resulting in no change in wetland impact in order to:
 - a. minimize or mitigate a significant health or safety issue, or
 - b. reduce the risk of adverse environmental effects associated with unavoidable field conditions.
4. “Lop and drop” where access with heavy equipment is difficult and allowing cut vegetation to remain in place would minimize environmental impact by avoiding soil disturbance and damage to remaining live trees associated with winching or cable skidding logs.
5. Adjustment in the location or number of guy wire anchors or ground wires (e.g., ground grid), beyond the permitted structure preparation areas and access roads, due to soil conditions in uplands (no identified protected natural resources).
6. Adjustment of pole locations laterally up to 25 feet from the outer boundaries of the pole location icons depicted on the approved natural resource maps, resulting in the elimination, reduction, or no change in permanent impacts to protected natural resources, where no practicable alternative exists, in order to:
 - a. minimize or mitigate a health or safety issue, or
 - b. reduce the risk of adverse environmental effects associated with unavoidable field conditions.

Location and Description:

3PI Comments:

Project Representative Requesting Change:

_____	_____	_____
Printed Name	Signature	Date

3PI:

- Agree
- Disagree

_____	_____	_____
Printed Name	Signature	Date

DEP:

- Agree
- Disagree

<u>Not Required for CAT1 FAR</u>	_____	n/a
Printed Name	Signature	Date

NECEC – Category II Field Adjustment Request Form

DEP #: L-27625-26-A-N, L-27625-TB-B-N, L-27625-2C-C-N, L-27625-VP-D-N, L-27625-IW-E-N

**Category II Field
Adjustment Request
(reviewed by 3PI, as well as
MDEP)**

Adjustment Requested (check boxes that apply):

1. Refueling, maintenance, or overnight parking in a protected natural resource identified in the vegetation clearing plan (wetland; significant vernal pool habitat; IWWH; MNAP rare plant areas or natural communities; or an RTE species habitat identified by MDIFW, MDMR, or USFWS) when no practicable alternative exists.
2. Adjustment to location of permitted stream crossing necessitated by health or safety issues (e.g. stream bank stability) or to reduce the risk of adverse environmental effects (e.g., channel width or location); no identified threatened or endangered species.
3. Adjustment resulting in increased temporary impact to a protected natural (other than freshwater wetlands) or cultural resource, where a practicable alternative does not exist, in order to:
- a. Minimize or mitigate a significant health or safety issue, or
- b. Reduce risk of adverse environmental effects associated with unavoidable field conditions.
4. Relocation of access road or increase in the permitted structure preparation areas in the vegetation management areas required along the Segment 1 corridor (Appendix C of DEP's May 2020 Order), where no practicable alternative exists, in order to:
- a. Minimize or mitigate a significant health or safety issue, or
- b. Reduce risk of adverse environmental effects associated with unavoidable field conditions.
5. Adjustments in the location or number of guy wire anchors or ground grid wires beyond the permitted temporary structure impact area due to soil conditions in:
- a. freshwater wetlands, and involving
- i. Less than 4,300 sq. ft. of impact, to be restored w/in 12 months of initial impact, or
- ii. Between 4,300 and 30,000 sq. ft. of impact, to be restored w/in 3 months of initial impact.
- b. or, in the vegetation management areas required along the Segment 1 corridor (Appendix C of DEP's May 2020 Order).

- 6. Adjustment that results in new temporary impacts to freshwater wetlands (must include justification and evaluation of alternative) and involves:
 - a. Less than 4,300 sq. ft. of impact, to be restored w/in 12 months of initial impact, or
 - b. Between 4,300 and 30,000 sq. ft. of impact, to be restored w/in 3 months of initial impact.
- 7. Adjustment of pole locations along the tangent up to 75 feet from the outer boundaries of the pole location icons depicted on the approved natural resource maps resulting in a reduction or no change in permanent impacts to protected natural resources, where no practicable alternative exists, in order to:
 - a. Minimize or mitigate a significant health or safety issue, or
 - b. Reduce risk of adverse environmental effects associated with unavoidable field conditions.
- 8. Culvert replacement or removals, to be conducted using Stream Smart principles, “in-the-dry,” and during the time-of-year work window (work allowed in non-tidal waters between July 15 and September 30). Candidate culverts must not be located in endangered Atlantic salmon streams or their critical terrestrial habitat, nor any habitat of State-protected species.



DEP INFORMATION SHEET

Appealing a Department Licensing Decision

Dated: August 2021

Contact: (207) 314-1458

SUMMARY

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

Except as provided below, there are two methods available to an aggrieved person seeking to appeal a licensing decision made by the DEP Commissioner: (1) an administrative process before the Board of Environmental Protection (Board); or (2) a judicial process before Maine's Superior Court. An aggrieved person seeking review of a licensing decision over which the Board had original jurisdiction may seek judicial review in Maine's Superior Court.

A judicial appeal of final action by the Commissioner or the Board regarding an application for an expedited wind energy development ([35-A M.R.S. § 3451\(4\)](#)) or a general permit for an offshore wind energy demonstration project ([38 M.R.S. § 480-HH\(1\)](#)) or a general permit for a tidal energy demonstration project ([38 M.R.S. § 636-A](#)) must be taken to the Supreme Judicial Court sitting as the Law Court.

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

A person filing an appeal with the Board should review Organization and Powers, [38 M.R.S. §§ 341-D\(4\)](#) and [346](#); the Maine Administrative Procedure Act, 5 M.R.S. § [11001](#); and the DEP's [Rule Concerning the Processing of Applications and Other Administrative Matters \(Chapter 2\)](#), 06-096 C.M.R. ch. 2.

DEADLINE TO SUBMIT AN APPEAL TO THE BOARD

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

HOW TO SUBMIT AN APPEAL TO THE BOARD

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

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

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

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

REQUIRED APPEAL CONTENTS

A complete appeal must contain the following information at the time the appeal is submitted.

1. *Aggrieved status.* The appeal must explain how the appellant has standing to bring the appeal. This requires an explanation of how the appellant may suffer a particularized injury as a result of the Commissioner's decision.
2. *The findings, conclusions, or conditions objected to or believed to be in error.* The appeal must identify the specific findings of fact, conclusions of law, license conditions, or other aspects of the written license decision or of the license review process that the appellant objects to or believes to be in error.
3. *The basis of the objections or challenge.* For the objections identified in Item #2, the appeal must state why the appellant believes that the license decision is incorrect and should be modified or reversed. If possible, the appeal should cite specific evidence in the record or specific licensing criteria that the appellant believes were not properly considered or fully addressed.
4. *The remedy sought.* This can range from reversal of the Commissioner's decision on the license to changes in specific license conditions.
5. *All the matters to be contested.* The Board will limit its consideration to those matters specifically raised in the written notice of appeal.
6. *Request for hearing.* If the appellant wishes the Board to hold a public hearing on the appeal, a request for hearing must be filed as part of the notice of appeal, and it must include an offer of proof regarding the testimony and other evidence that would be presented at the hearing. The offer of proof must consist of a statement of the substance of the evidence, its relevance to the issues on appeal, and whether any witnesses would testify. The Board will hear the arguments in favor of and in opposition to a hearing on the appeal and the presentations on the merits of an appeal at a regularly scheduled meeting. If the Board decides to hold a public hearing on an appeal, that hearing will then be scheduled for a later date.
7. *New or additional evidence to be offered.* If an appellant wants to provide evidence not previously provided to DEP staff during the DEP's review of the application, the request and the proposed supplemental evidence must be submitted with the appeal. The Board may allow new or additional evidence to be considered in an appeal only under limited circumstances. The proposed supplemental evidence must be relevant and material, and (a) the person seeking to add information to the record must show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process; or (b) the evidence itself must be newly discovered and therefore unable to have been presented earlier in the process. Requirements for supplemental evidence are set forth in [Chapter 2 § 24](#).

OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

1. *Be familiar with all relevant material in the DEP record.* A license application file is public information, subject to any applicable statutory exceptions, and is made accessible by the DEP. Upon request, the DEP will make application materials available to review and photocopy during normal working hours. There may be a charge for copies or copying services.

2. *Be familiar with the regulations and laws under which the application was processed, and the procedural rules governing the appeal.* DEP staff will provide this information upon request and answer general questions regarding the appeal process.
3. *The filing of an appeal does not operate as a stay to any decision.* If a license has been granted and it has been appealed, the license normally remains in effect pending the processing of the appeal. Unless a stay of the decision is requested and granted, a licensee may proceed with a project pending the outcome of an appeal, but the licensee runs the risk of the decision being reversed or modified as a result of the appeal.

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

The Board will acknowledge receipt of an appeal, and it will provide the name of the DEP project manager assigned to the specific appeal. The notice of appeal, any materials admitted by the Board as supplementary evidence, any materials admitted in response to the appeal, relevant excerpts from the DEP's administrative record for the application, and the DEP staff's recommendation, in the form of a proposed Board Order, will be provided to Board members. The appellant, the licensee, and parties of record are notified in advance of the date set for the Board's consideration of an appeal or request for a hearing. The appellant and the licensee will have an opportunity to address the Board at the Board meeting. The Board will decide whether to hold a hearing on appeal when one is requested before deciding the merits of the appeal. The Board's decision on appeal may be to affirm all or part, affirm with conditions, order a hearing to be held as expeditiously as possible, reverse all or part of the decision of the Commissioner, or remand the matter to the Commissioner for further proceedings. The Board will notify the appellant, the licensee, and parties of record of its decision on appeal.

II. JUDICIAL APPEALS

Maine law generally allows aggrieved persons to appeal final Commissioner or Board licensing decisions to Maine's Superior Court (see [38 M.R.S. § 346\(1\)](#); 06-096 C.M.R. ch. 2; [5 M.R.S. § 11001](#); and M.R. Civ. P. 80C). A party's appeal must be filed with the Superior Court within 30 days of receipt of notice of the Board's or the Commissioner's decision. For any other person, an appeal must be filed within 40 days of the date the decision was rendered. An appeal to court of a license decision regarding an expedited wind energy development, a general permit for an offshore wind energy demonstration project, or a general permit for a tidal energy demonstration project may only be taken directly to the Maine Supreme Judicial Court. See [38 M.R.S. § 346\(4\)](#).

Maine's Administrative Procedure Act, DEP statutes governing a particular matter, and the Maine Rules of Civil Procedure must be consulted for the substantive and procedural details applicable to judicial appeals.

ADDITIONAL INFORMATION

If you have questions or need additional information on the appeal process, for administrative appeals contact the Board Clerk at 207-287-2811 or the Board Executive Analyst at 207-314-1458 bill.hinkel@maine.gov, 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 regulatory provisions referred to herein, is provided to help a person to understand their rights and obligations in filing an administrative or judicial appeal. The DEP provides this information sheet for general guidance only; it is not intended for use as a legal reference. Maine law governs an appellant's rights.
