



DEPARTMENT ORDER

IN THE MATTER OF

SUGARLOAF MOUNTAIN CORPORATION	) SITE LOCATION OF DEVELOPMENT ACT
Carrabassett Valley, Franklin County	) NATURAL RESOURCES PROTECTION ACT
WEST MOUNTAIN EXPANSION	) FRESHWATER WETLAND ALTERATION
L-217-26-JX-A (approval)	) FRAGILE MOUNTAIN AREA
L-217-TG-JY-N (approval)	) STREAM ALTERATION
L-217-2C-JZ-N (approval)	) WATER QUALITY CERTIFICATION
L-217-L6-KA-N (approval)	) AMENDMENT
	) FINDINGS OF FACT AND ORDER

Pursuant to the provisions of the Site Location of Development Act (38 M.R.S. §§ 481–489-E) (Site Law), the Natural Resources Protection Act (38 M.R.S. §§ 480-A–480-JJ) (NRPA), Section 401 of the Clean Water Act (33 U. S. C. § 1341), and Chapters 310, 315, 335, 373, 375, and 500 of Department of Environmental Protection (Department) rules, the Department has considered the application of SUGARLOAF MOUNTAIN CORPORATION (applicant) with the supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

1. PROJECT DESCRIPTION:

A. History of Project: In Environmental Improvement Commission Order #L-217-26-A-N, dated July 26, 1972, the Commission approved the expansion of housing units at the Sugarloaf ski resort to a total of 114. Subsequently, the Department and Board of Environmental Protection have approved numerous amendments and revisions to the development. In Department Order #L-217-26-KE-M/L-217-2C-KF-M, dated July 14, 2022, the Department approved the construction of a T-bar style ski lift for use by the Carrabassett Valley Academy alpine teams for training and competitions. The project included 29,451 square feet (0.68 acres) of tree clearing above elevation 2,700 feet above mean sea level (amsl). Special Condition #5 of Order #L-217-26-KE-M/L-217-2C-KF-M required that the applicant incorporate mitigation for the 0.68 acres of tree clearing into the next application that triggered mitigation for similar impacts. In Department Order #L-217-26-KH-M/L-217-2C-KI-M, dated July 14, 2022, the Department approved the creation of a mountain bike trail near the summit of Sugarloaf Mountain, which did not require mitigation. The development is located off Access Road in the Town of Carrabassett Valley.

Herein, the term “trail” means a ski and snowboard trail unless specifically noted as a hiking or biking trail.

B. Summary: The applicant proposes to expand the existing ski resort on Sugarloaf Mountain into an approximately 550-acre area located to the west of the existing development. Elements of the proposed project include approximately 140 acres of

additional ski and snowboard trails, a new ski lift, roads, parking lots, additional resort-based housing, and associated utilities. The applicant also proposes to construct a 2,400-square-foot skier services building, which will house a restaurant, lodge, and office. The proposed parking lots include Lot G (100 spaces) located near the base of a proposed ski trail (Timbers Trail); Lot H (173 spaces) located adjacent to the proposed skier services building; and a drop off parking lot (93 spaces) located near the lower terminal of the proposed ski lift. Additional parking areas are associated with the proposed housing developments, which consist of 52 single family lots (ranging in size from 0.63 acres to 5.55 acres), four condominium buildings (22-28 units each), and 36 duplex townhome buildings (72 units). Fourteen of the proposed duplex townhome buildings (28 units) are located off Bucksaw Drive. The remainder of the proposed housing lots and buildings will be connected by a system of six new roads with a common entrance point off West Mountain Road. The applicant also proposes to construct a network of hiking and biking trails throughout the proposed project site.

The proposed ski lift will provide access from the base of the proposed trail system to an area already occupied by the upper terminal of the existing West Mountain Quad ski lift. The applicant proposes to remove the upper 0.8-mile-long segment of the West Mountain Quad lift, establishing a new upper terminal of that lift at a lower elevation (2,260 feet amsl), and keeping the lower segment of the lift in service. In the area where the lift is removed, the applicant proposes to retain the corridor as a trail, except for the upper 450 linear feet (approximately one acre), which the applicant proposes to block off and allow to revegetate to natural conditions.

The proposed project will disturb approximately 290 acres of land and will result in approximately 50.9 acres of developed area, including approximately 31.8 acres of impervious area. The proposed project is shown on a set of plans titled "Site Plans," consisting of 63 sheets prepared by VHB, Inc., dated September 23, 2021, with the majority of plan sheets last revised April 29, 2022. A subset of the plan sheets was last revised August 8, 2022. The layout of the proposed housing lots is shown on a set of plans titled "Subdivision Plan of Land," Sheets SD-1 through SD-8, prepared by VHB, Inc. and dated April 20, 2022. The proposed roads and housing areas are shown in more detail on a set of plans titled "Boyne Resorts West Mountain Expansion," consisting of 45 sheets prepared by Main-Land Development Consultants, Inc., dated September 23, 2021, and last revised April 29, 2022. A full list of the plan sheets and latest revision dates are shown on a document titled "Plans Index," submitted by the applicant in correspondence dated December 19, 2022.

The applicant anticipates that construction of the proposed project will consist of three phases. Phase I includes the majority of the proposed ski trails, the proposed ski lift, the majority of the new proposed roads, the proposed skier services building, the proposed Parking Lots G and H, a portion of the proposed housing lots and buildings off West Mountain Road, and associated stormwater management structures and utility lines. Phase II is anticipated to consist of seven proposed townhomes off Bucksaw Drive and one of the proposed condominium buildings. Phase III is anticipated to consist of the remaining ski trails (identified as Trails 5 and 7 on the VHB plan set), the proposed drop

off parking lot, and the remaining roads and housing areas. The proposed phases are shown on Sheet LA-2.00 of the VHB plan set referenced above.

The applicant is also seeking approval under the NRPA to alter approximately 166,895 square feet (3.83 acres) of freshwater wetlands, including 164,409 square feet of fill and 2,486 square feet of vegetation clearing. Wetland impacts are discussed further in Finding 6.

The applicant proposes to temporarily clear 4.74 acres and to permanently clear 8.97 acres of forested areas located above elevation 2,700 feet amsl, which is considered Fragile Mountain Area (FMA) pursuant to the NRPA. Within the FMA, the applicant proposes to temporarily clear 2.65 acres and to permanently clear 3.98 acres of a Subalpine Fir Forest (SFF) community. These impacts are discussed further in Finding 7.

The applicant proposes to construct 19 stream crossings, including three by utility lines, five by roads, and 11 by trails. The proposed project will also result in approximately 41.39 acres of clearing within 250 feet of streams that provide habitat for Northern Spring Salamander and Roaring Brook Mayfly, two rare species associated with headwater streams. The proposed impacts to FMA coincide with impacts to land mapped as habitat for Bicknell's Thrush, a rare avian species. Stream and wildlife habitat impacts are discussed further in Finding 8.

The applicant submitted a Notice of Intent (NOI #76034) to comply with the requirements of the Maine Construction General Permit. The Department accepted NOI #76034 on September 20, 2022.

C. Current Use of Site: The project site is located at the Sugarloaf Mountain Ski Resort, which is developed with 1,240 acres of skiable terrain including trails and glade areas, 13 ski lifts, access roads, various skier services buildings and amenities, a golf course, and multiple housing developments. The site of the proposed expansion is an approximately 550-acre area of managed forest located south of West Mountain Road, west of the Sugarloaf Access Road, and east of the existing West Mountain Quad ski lift. The project site contains work roads, log landing areas, and an existing water main corridor. The upper extent of the project area is developed with Bullwinkle's Bistro and the upper terminal of the existing West Mountain Quad ski lift, as well as a small network of existing trails and an access road. The applicant's parcel of land consists of multiple lots. The proposed expansion site is part of Lot 1 on Map 1B of the Town of Carrabassett Valley's tax maps.

D. Public Comments: While the application was being reviewed, the Department received a request from three individuals for a copy of the application and project plans, which the Department provided. The Department did not receive any requests for a public hearing during the 20-day period specified in Chapter 2, § 7. The Department did not receive any written comments on the proposed project.

2. FINANCIAL CAPACITY:

The total cost of the project is estimated to be \$104.5 million. The applicant is a subsidiary of Boyne USA, Inc. The applicant proposes to fund the project with a combination of corporate revenue and financing through its parent company, as well as through the sale of the proposed single-family lots. The applicant submitted a letter from the Vice President and Corporate Controller of Boyne USA, Inc, dated September 1, 2021, indicating that the company is committed to funding the project and has sufficient cash and cash equivalents available in excess of the estimated project costs. The letter further stated that Boyne USA, Inc., in addition to its corporate assets, has more than \$89 million available under a line of credit, which is valid through April 2026, to further fund the proposed project.

The Department finds that the applicant has demonstrated adequate financial capacity to comply with Department standards.

3. TECHNICAL ABILITY:

The applicant has operated the existing Sugarloaf ski resort for many years. The applicant provided resume information for key persons involved with the project and a list of projects successfully completed by the applicant's agents. The applicant retained the services of two professional consulting firms, Main-Land Development Consultants, Inc. and VHB, Inc., to assist in design, engineering, natural resource assessments, and permitting for the proposed project.

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

4. NOISE:

The Town of Carrabassett Valley does not have a noise ordinance; therefore, the *No Adverse Effect Standards of the Site Location of Development Act*, Chapter 375, § 10(B) (last amended June 2, 2016) apply to the proposed project.

The applicant identified potential sources of noise from the proposed expansion as the ski lift equipment at the lower terminal of the proposed lift, trail grooming, and snowmaking. The applicant proposes to relocate the upper terminal of the existing West Mountain Quad ski lift; however, both the proposed and existing lifts are bottom drive systems, which have noise generating equipment only at the lower lift terminal. The applicant does not propose any changes to the lower terminal of the West Mountain Quad lift.

The proposed lift will operate during the day, between 8:30 a.m. and 4:00 p.m. Trail grooming and snowmaking will occur at night. These activities are consistent with existing operations. The Department's noise standards require that the sound levels from the project do not exceed 75 dBA at the property line and do not exceed 55 dBA at

protected locations. Protected locations in the vicinity of the project site include residential properties and the Appalachian Trail (AT).

The applicant stated that ski lift equipment will generate approximately 78 to 81 dBA from one meter away. The nearest property line and protected location is an existing residential lot located approximately 1,100 feet from the lower lift terminal. The nearest residential lot that is part of the proposed project is located over 1,400 feet from the lower lift terminal. The AT is located approximately two miles from the lower lift terminal. The applicant concluded that over these distances, sound generated by the proposed equipment will attenuate to levels below the maximum levels allowed by the Department's noise standard. The applicant stated that noise from the proposed expansion will be consistent with noise from the existing resort.

The applicant stated that construction will take place only during the hours of 7:00 a.m. and 7:00 p.m. or during daylight hours, whichever is longer. During these times, noise from construction is not regulated under the Site Law pursuant to 38 M.R.S. § 484(3)(A).

The Department finds that the proposed project will have a minor sound impact.

5. SCENIC CHARACTER:

The Site Law, in 38 M.R.S. § 484(3), and the NRPA, in 38 M.R.S. § 480-D, both have standards pertaining to scenic impacts that must be satisfied in order to obtain a permit for development. The Site Law requires an applicant to demonstrate that the developer has made adequate provision for fitting the development harmoniously into the existing natural environment and that the proposed project will not adversely affect existing uses or scenic character. Pursuant to the NRPA, an applicant must demonstrate that a proposed project will not unreasonably interfere with existing scenic, aesthetic, or recreational uses of a protected natural resource. Department staff visited the project site on November 12, 2020.

The project site is located south of Route 27, adjacent to the existing ski resort, and may be viewed from public roadways. The site is an approximately 550-acre forested area bordered to the west by an existing 150-acre residential subdivision, which was originally developed by the applicant, and the existing West Mountain Quad ski lift; to the north by West Mountain Road and an 18-hole golf course with an associated housing development (the golf course and housing development together encompass approximately 300 acres); and to the southeast by the remainder of the existing resort, which is developed with a large network of ski trails, numerous townhomes, condominiums, single-family lots, a base lodge, hotel, administrative building, maintenance garage, various other buildings, several parking areas, and several ski lifts. These elements together encompass approximately 1,307 acres. Additional areas are developed as glade ski areas, which are largely forested and not a significant visual feature of the development. The project site generally faces north, as does the majority of the existing ski resort. Land uses in the surrounding area are predominantly timber management and conservation, with residential lots concentrated along Route 27.

The nearest scenic waterway is the south branch of the Carrabassett River, which flows into the Carrabassett River. The south branch is located approximately 0.3 miles from the western extent of the proposed project. The river flows north and then east approximately one mile from the northern extent of the proposed project. Pursuant to Chapter 315, § 10, *Assessing and Mitigating Impacts to Scenic and Aesthetic Uses* (06-096 C.M.R. ch. 315, effective June 29, 2003), the Carrabassett River (including the south branch) is a scenic resource visited by the general public, in part, for the use, observation, enjoyment, and appreciation of its natural and cultural visual qualities. The existing residential subdivision and golf course are located between the river and the project site. The river shoreline is generally forested except for short segments that run immediately adjacent to the existing golf course. The project will be minimally visible from the river due to elevation differences and intervening vegetation and development.

The AT is also a scenic resource. It approaches Sugarloaf Mountain from the southwest, turns west to Crocker Mountain, north to Mount Bigelow, then east along a high ridge through the Bigelow Preserve. The project site is not visible from the portions of the AT on the southern side of Sugarloaf Mountain due to topography and intervening vegetation, nor are there viewpoints from Crocker Mountain to the project site. The proposed project will be visible from some south-facing lookout points along the AT through the Bigelow Preserve, as is much of the existing ski resort. These points are located between four to eight miles from the project site.

To minimize the visibility of the proposed project, the applicant designed it as an “in-fill” project that makes use of undeveloped area surrounded by existing development, rather than expanding the ski resort beyond the outer perimeter of the existing development footprint. The applicant stated that the proposed project will be visually consistent with the existing adjacent trail network and housing complexes. The applicant also stated that the deeds for the proposed house lots will include covenants and restrictions that limit the maximum structure and developed area allowed for each lot and require the building style and color to be consistent with the character of existing housing areas on the mountain, as determined by the Sugarloaf Design Review Board. Lighting will be restricted to downcast, full cut-off fixtures to minimize light pollution at night. The larger proposed buildings will be located at lower elevations within the project site, where their visibility will be limited. The applicant proposes to maintain an informal 100-foot-wide forested buffer along the existing West Mountain Road to minimize the visual impact of the proposed project as seen from the road.

Department staff utilized the Department’s Visual Impact Assessment Matrix in its evaluation of the proposed project. The Matrix is used to assess the visual impact severity of a proposed project based on the distance and visibility of the project from a natural landmark or other outstanding natural or cultural feature, State, National, or locally designated park or trail, and on the approximate number of people likely to view the project from the resource or a public way per day. The severity rating is also based on the visual elements of landscape compatibility, scale contrast, and spatial dominance as defined in Chapter 315, § 9. Using the Matrix tool, the Department determined that

the visual impact of the proposed project was acceptable with minor mitigation. As discussed above, the applicant proposes restrictions on lighting, building style, and building color, and proposes to maintain a 100-foot forested buffer along West Mountain Road. Further, the proposed project is compatible with the existing landscape, considering that the Sugarloaf Ski Resort has been in place for decades and is an expected visual feature seen from viewpoints along the AT. The distance from the project site to the AT further mitigates the visual impact of the proposed project. Based on these considerations, the applicant's proposed mitigation measures, the visual impact rating, and the site visit, the Department determined that the nature, location, and scale of the proposed activity is compatible with the existing visual quality and landscape characteristics found within the viewshed of the scenic resources in the project area.

The project site is located on the applicant's property. Existing recreational uses of the area include hiking, biking, and skiing. The proposed project includes new trails that will increase opportunities for these activities. There are no navigable streams within the proposed expansion area. The Department determined that the proposed project will not cause any significant adverse impacts to navigation or recreation based on the nature of the project and its location.

Based on the project's location and design, the Department finds that the proposed project will not have an unreasonable adverse effect on the scenic character of the surrounding area, nor unreasonably interfere with the existing scenic, aesthetic, recreational or navigational uses of the Carrabassett River and AT.

6. WETLAND IMPACTS:

The applicant's agents surveyed the project site for natural resources during the spring, summer, and fall of 2020. The survey results were submitted in a report prepared by VHB and dated May 2021. The report described the study area as predominantly forested with a history of logging. The report identified 103 wetlands, including emergent and forested wetlands, and 34 streams within the study area. Stream impacts are discussed further in Finding 8.

The applicant proposes to alter a total of 166,895 square feet (3.83 acres) of freshwater wetlands to construct the proposed project. The proposed alterations include 79,796 square feet of direct impacts to emergent wetlands and 84,613 square feet of directly impacts to forested wetlands due to fill for the proposed roads, residential lots, and infrastructure, and due to grading of the proposed trails. The total proposed alterations also include 2,486 square feet of permanent vegetation removal in forested wetlands due to clearing for utility lines and the lift corridor.

The proposed impacts include approximately 4,143 square feet of permanent fill within wetland areas located within 25 feet of a stream. These alterations, which include 3,880 square feet of emergent wetlands and 263 square feet of forested wetlands, are associated with the proposed road, utility, and trail crossings. Pursuant to the Department's Chapter 310 rules, *Wetland and Waterbodies Protection*, 06-096 C.M.R.

ch. 310 (effective November 11, 2018), § 4(A)(8), wetlands located within 25 feet of a river, stream or brook are considered wetlands of special significance.

Chapter 310 interprets and elaborates on the NRPA criteria for obtaining a permit. The rules guide the Department in its determination of whether a project's impacts would be unreasonable. A proposed project would generally be found to be unreasonable if it would cause a loss in wetland area, functions and values and there is a practicable alternative to the project that would be less damaging to the environment. Each application for a NRPA permit that involves a freshwater wetland alteration must provide an analysis of alternatives in order to demonstrate that a practicable alternative does not exist.

A. Avoidance. An applicant must submit an analysis of whether there is a practicable alternative to the project that would be less damaging to the environment and this analysis is considered by the Department in its assessment of the reasonableness of any impacts. Additionally, for activities proposed in, on, or over wetlands of special significance the activity must be among the types listed in Chapter 310, § 5(A) or a practicable alternative less damaging to the environment is considered to exist and the impact is unreasonable. Crossings by road, rail, or utility lines are among the activities specifically provided for in Chapter 310, § 5(A)(1)(b).

The applicant submitted an alternatives analysis for the proposed project (Attachment 2 of the NRPA application) prepared by VHB and dated October 18, 2021. The purpose of the proposed project is to provide additional intermediate and beginner ski terrain; provide a ski lift and trails less susceptible to shutdowns due to excessive wind; increase parking capacity; provide lift access to the west mountain area for summer as well as winter activities; and address the perceived housing shortage on the mountain.

The project site was selected based on criteria such as proximity to the existing resort and associated infrastructure, engineering and design considerations, suitable topography (for structures and for beginner and intermediate ski terrain), available upland area, and land ownership. The east side of the resort is already developed as a glade ski area (Burnt Mountain). The applicant does not own the southern side of the mountain. The applicant determined that the only way to expand the resort and maintain operational efficiency is to expand on the western side of Sugarloaf Mountain. The applicant concluded that the selected site is already surrounded by some form of development, such that the proposed activities represent in-fill within the footprint of the existing resort.

In considering the necessity of new ski trails, the applicant determined that the mountain is lacking in beginner ski terrain, which may deter new skiers or cause them to ski on terrain over their ability level, which is a safety risk. The applicant also determined that the existing trails become congested during peak use, and that new intermediate and beginner trails would alleviate that congestion.

The applicant considered not installing a new lift and instead making use of the existing lifts on the mountain, including the existing West Mountain Quad ski lift. However, the



applicant determined that Sugarloaf currently experiences an average of seven “wind hold” days per season, during which ski terrain is inaccessible due to the impact of wind on existing ski lifts. The applicant stated that the proposed lift has been designed and sited to be less susceptible to wind holds, which would improve skier experience and operational efficiency. The applicant further stated that the lift will provide four-season access to the top of the west mountain area, including the existing Bullwinkle’s Bistro, which is used as an event venue.

The applicant considered continuing the use of the resort’s existing parking lots and shuttle system to meet visitor parking needs. However, the applicant determined that the existing lots are insufficient to support the current number of skier visits per year, and that skier visits are expected to increase in the future. The applicant noted that during several days in recent seasons, more than 250 cars were forced to park along the Access Road, interfering with the efficiency of the existing shuttle services. Based on these issues as well as concerns expressed by the Town of Carrabassett Valley about parking, the applicant determined the additional parking lots are necessary to alleviate congestion, improve driver and pedestrian safety, and provide more convenient access to trailheads, the proposed lift, and the proposed skier services building.

The applicant considered not constructing additional housing on the mountain but determined that the existing resort has too few residential units available for current and future demand. The applicant also stated that income from the sale of the proposed residential lots and units is a necessary component of the funding plan for the proposed ski trails and amenities.

The applicant considered multiple iterative site layouts and selected a design that avoids wetlands while still considering topographic, soil type, safety, and operational constraints for the design and location of trails, housing, roads, and utilities. During the project design phase, the applicant shifted trail locations away from streams and wetlands, narrowed trails where possible, and eliminated redundant connecting trails to avoid wetlands. The trail side slopes were designed with 2H:1V grades in sensitive areas to reduce impacts. The applicant proposes to make use of existing roads and trails where possible, and designed the proposed roads to circumvent the largest wetlands and wetland complexes. The proposed hiking and biking trails are either co-located with proposed and existing trails and roads, or are located in upland areas. After applying these strategies, the applicant determined that it was not possible to design the proposed project to completely avoid wetland impacts while still meeting the project purpose. In light of these considerations, the applicant stated that there was no practicable alternative to the project that would avoid impacts to freshwater wetlands.

**B. Minimal Alteration.** In support of an application and to address the analysis of the reasonableness of any impacts of a proposed project, an applicant must demonstrate that the amount of freshwater wetland to be altered will be kept to the minimum amount necessary for meeting the overall purpose of the project.

The applicant designed the proposed project to maximize the use of available upland areas to the extent possible while addressing ski trail design requirements related to slope, loading and unloading zones, sight lines, merges, and traffic. Through iterative designs and based on feedback from regulatory agencies, the applicant adjusted trail layout and eliminated redundant trail connectors to reduce impacts to wetland and streams. Similarly, the applicant adjusted the location of proposed parking lots and buildings to minimize wetland fill. The applicant limited the number of proposed residential structures and house lots to the extent possible while still addressing the current housing shortage on the mountain and providing for sufficient home sales to fund the proposed project. The applicant proposes to use existing access roads where possible and minimized the amount of proposed new roadway while still meeting the municipal requirements for road width and grades. The applicant stated that as it is currently designed, the proposed project minimizes impacts to freshwater wetlands to the maximum extent practicable.

The applicant designed the proposed house lots such that the future lot owners will not need to alter any additional wetland areas to develop their lot. The applicant must provide a copy of this Order, including the standard conditions, and a copy of the approved subdivision plan to each lot buyer at least 14 days prior to the date of closing on the sale of the lot. The applicant must maintain a file containing signed and dated statements by lot buyers acknowledging that they have received and read their copy of this Order and the subdivision plan prior to the closing on their lot. Further, to avoid accidental wetland alterations by individual lot owners, the applicant must ensure that the deed for each residential lot that contains any portion of a wetland has attached to it a plot plan for the lot, drawn to scale, that specifies the location of the wetland, makes specific reference to this Order, and includes a note that any additional wetland alterations will require review and approval by the Department.

C. Compensation. In accordance with Chapter 310, § 5(C)(1), compensation is required to achieve the goal of no net loss of wetland functions and values when alterations in a freshwater wetland exceed 15,000 square feet. The applicant proposes to permanently fill 164,409 square feet and to permanently clear vegetation from 2,486 square feet of freshwater wetlands to construct the proposed project.

The applicant submitted a wetland functions and values assessment, prepared by VHB and dated October 18, 2021, that identified the functions and values of the wetlands that would be impacted by the proposed project. The assessment indicated that the principal functions of the wetlands are groundwater recharge and discharge; nutrient removal, retention, and transformation; production export; sediment and streambank stabilization; and wildlife habitat. The assessment noted that the wetlands on site have been disturbed by timber management, which limits some of these functions.

The applicant proposes to compensate for the proposed wetland alteration through a contribution into the In-Lieu Fee (ILF) program of the Maine Natural Resource Conservation Program in the amount of \$708,928.00. Prior to the start of construction, the applicant must submit a payment in the amount of \$708,928.00 to “Treasurer, State of

Maine,” and directed to the attention of the ILF Program Administrator at 17 State House Station, Augusta, Maine 04333. A copy of this Order must be included or referenced with payment submittal.

The Department finds that the applicant has avoided and minimized freshwater wetland impacts to the greatest extent practicable, and that the proposed project represents the least environmentally damaging alternative that meets the overall purpose of the project provided that the applicant provides a copy of this Order and the subdivision plan to each lot buyer, the deed for each residential lot includes a plot plan showing any wetland areas as described above, and provided that prior to the start of construction, the applicant submits the ILF payment as described above.

7. UNUSUAL NATURAL AREAS:

All areas located above elevation 2,700 amsl are considered part of the Fragile Mountain Area (FMA), which is a protected natural resource under the NRPA. The extent of the FMA coincides with the extent of mapped habitat for Bicknell’s Thrush. Efforts to avoid and minimize impacts to FMA are the same as those used to minimize impacts to Bicknell’s Thrush habitat. These efforts and associated mitigation are discussed in Finding 8. The discussion in this section is therefore focused on subalpine fir forest (SFF), a rare forest type in Maine that is considered to be an unusual natural area.

The applicant consulted with the Maine Natural Areas Program (MNAP) during the design phase of the proposed project and received comments from MNAP, dated July 10, 2020, stating that the higher elevations of the project site include portions of a mapped SFF. In November of 2021, staff of MNAP visited the project site and based on that site visit, revised the boundaries of the SFF habitat resulting in a net reduction of approximately four acres. The applicant applied the updated polygon delineating the extent of the SFF habitat to the project plan sheets. The applicant’s impact numbers discussed below are based on this updated polygon. MNAP recommended that the applicant avoid tree clearing and development within and adjacent to the SFF.

The applicant proposes to alter a total of 6.63 acres of SFF to construct the upper portion of Trail 8. The proposed impacts consist of 2.65 acres of temporary clearing for the trail side slopes and 3.98 acres of permanent clearing for the trail travel way. The applicant originally proposed another trail within SFF but eliminated that trail during the design phase based on consultation with MNAP. The applicant considered relocating or eliminating Trail 8 but determined that the relatively shallow slopes of the SFF provide the only suitable topography for beginner trail terrain, which is essential to the project purpose. The majority of Trail 8 within the SFF is between 100 and 120 feet wide, reduced from the typical 125-foot width. The proposed lift terminal is located approximately 380 feet beyond the SFF boundary.

To mitigate for impacts to the SFF, the applicant originally proposed to preserve an approximately 36-acre parcel of land located in Mount Abram Township, approximately 2.3 miles south of the project site and adjacent to the AT corridor. This parcel is located

entirely above 2,700 feet amsl and contains SFF. As discussed further in Finding 8, the proposed parcel would also provide mitigation for impacts to Bicknell's Thrush habitat.

In comments dated February 2, 2022, MNAP commented that the proposed Trail 8 will fragment the SFF, separating several acres of the SFF from the remaining habitat. MNAP recommended that the applicant mitigate for the total SFF impact, including the fragmented section, at a ratio of 4:1. MNAP noted that the proposed 36-acre parcel only contained approximately 6.1 acres of mapped SFF.

In a response memorandum dated July 26, 2022, the applicant argued that although the 9.15-acre forested "island" would be separated from the remaining SFF polygon, it would remain undisturbed. The applicant stated that the proposed plan reflects avoidance and minimization of impacts to SFF to the greatest extent practicable. The applicant noted that the total size of the SFF habitat is approximately 1,342 acres, and that the proposed permanent trail clearing represents about 0.5% of the total SFF area. The applicant proposed to provide 4:1 mitigation for permanent clearing impacts and 1:1 mitigation for temporary clearing and fragmentation impacts, for a total SFF mitigation target of 27.66 acres.

In comments dated August 9, 2022, MNAP noted that the mitigation ratio of 4:1 was already a concession from the typical required ratio of 8:1, and that MNAP would typically also require a 250-foot undisturbed buffer from the boundary of the SFF. Since the proposed alteration involves trails rather than structure, MNAP determined that a 250-foot buffer is not necessary in this case. MNAP acknowledged that the 9.15-acre fragmented area will remain forested but recommended a 2:1 mitigation ratio for this area to compensate for potential adverse "edge effects" (increased exposure to wind, sunlight, drying) on the fragmented area. MNAP also recommended that the proposed mitigation parcel be enlarged to include additional SFF area. MNAP further recommended that the side slopes of Trail 8 within SFF be stabilized with natural materials and an appropriate seed mix, and that these areas be roped off and marked with signs to prevent inadvertent mowing. MNAP recommended that tree clearing equipment be washed prior to use within SFF to prevent the introduction of invasive species.

In response, the applicant submitted an updated mitigation proposal, dated September 30, 2022. The applicant applied the recommended 2:1 mitigation ratio for fragmentation impacts and recalculated the mitigation target to be 36.81 acres. The applicant expanded and reshaped the proposed mitigation parcel to encompass approximately 70 acres, including 38.81 acres of SFF, which exceeds the target of 36.81 acres. The applicant submitted a draft declaration of covenants and restrictions for the mitigation parcel to protect it from future alteration.

The applicant also agreed to implement MNAP's recommendations regarding the use of clean equipment, natural materials, and an appropriate seed mix within the SFF. The applicant agreed to rope off and post signs in these areas until they have regenerated to a subalpine fir-dominated condition with an average tree height of at least six feet.

Based on the information in the record, the Department has determined that the applicant has adequately addressed MNAP's concerns. Prior to the start of construction within SFF habitat and within FMA, as discussed in Finding 8, the applicant must execute the declaration of covenants and restrictions for the mitigation parcel and record it in the Franklin County Registry of Deeds. Within 60 days of its recording, the applicant must submit a copy of the recorded declaration to the Department.

The Department finds that the applicant has avoided and minimized impacts to SFF habitat, and that together with the analysis of FMA impacts and mitigation discussed in Finding 8, the applicant has avoided and minimized impacts to unusual natural areas on the project site to the greatest extent practicable.

The Department further finds that the proposed development will not have an adverse effect on unusual natural areas on or near the development site provided that the applicant blocks off and posts signs around the temporary clearing areas within the SFF until trees have regenerated to an average height of six feet or more; and provided that the applicant executes and records the declaration of covenants and restrictions for the mitigation parcel and submits a copy to the Department, all as described above.

8. WILDLIFE AND FISHERIES:

The Site Law, in 38 M.R.S. § 484(3), requires the applicant to make adequate provision for fitting the development harmoniously into the existing natural environment. The NRPA, in 38 M.R.S. § 480-D(3), requires an applicant to demonstrate that the proposed activity will not unreasonably harm significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic or adjacent upland habitat, travel corridor, freshwater, estuarine or marine fisheries or other aquatic life.

During the spring of 2020, the applicant's agent identified six vernal pools within the delineated study area, none of which were found to meet the criteria for a significant vernal pool as defined in the Department's Chapter 335 rules for *Significant Wildlife Habitat* (06-096 C.M.R. ch. 335, last amended January 7, 2014). The Maine Department of Inland Fisheries and Wildlife (MDIFW) reviewed the vernal pool survey results and confirmed the status of all six pools as non-significant.

The applicant consulted with MDIFW during the design phase of the proposed project and received comments from MDIFW, dated November 3, 2020, which identified wildlife species and habitats that could potentially be adversely affected by the proposed project. These included streams and rare species with known or suspected occurrence within the project area, including Northern Spring Salamander (NSS), Roaring Brook Mayfly (RBM), and Bicknell's Thrush (BT). Pursuant to Maine's Endangered Species Act (12 M.R.S. § 12801), BT and NSS are Species of Special Concern and RBM is listed as Threatened. Since NSS and RBM are closely associated with streams, these topics are grouped together in the discussion below. Impacts to BT habitat are discussed separately.

A. Streams, Northern Spring Salamander, and Roaring Brook Mayfly

In initial review comments, MDIFW recommended that a 100-foot buffer of undisturbed vegetation be maintained along all streams to protect water quality for fisheries and other aquatic life, and that any new or replacement stream crossings be open-bottomed structures that span at least 1.2 times the bank-full width of the stream. MDIFW also stated that the streams within the project area may contain suitable habitat for both NSS and RBM, both of which occur in high-elevation streams in forested settings. To avoid adverse impacts to either species, MDIFW recommended that no development or land use conversion take place within 250 feet of any streams containing NSS or RBM.

The applicant proposes to install 19 stream crossings, including three for buried utility lines, five for roads, and 11 for ski trails. The proposed road and trail crossing structures consist of two open-bottomed box culverts and 14 open-bottomed arch culverts. The majority of the proposed crossings are over intermittent streams. In accordance with MDIFW's recommendations, the applicant designed the culverts to span at least 1.2 times the bank-full width of the streams. Two of the proposed structures will replace existing culverts. The proposed crossings represent approximately 3,855 linear feet of permanent stream alteration.

The applicant avoided and minimized stream impacts through an iterative design process that eliminated several additional stream crossings contemplated in preliminary plans. During the review, the applicant continued to refine the crossing locations and eliminate redundant trails based on feedback from MDIFW. The applicant stated that further minimization of the proposed crossings is not possible without severely compromising the operational efficiency of the expanded ski facility. The applicant designed the proposed stream crossings as open-bottomed structures to maintain a natural streambed where possible.

The applicant used similar strategies to avoid and minimize impacts to stream buffers. The applicant shifted trails and the proposed lift corridor, narrowed trails, and reduced the number of trail connections to minimize clearing adjacent to streams to the extent practicable. The applicant relocated and reduced the size of the proposed Parking Lot H and the skier services building, which reduced riparian buffer impacts substantially at a lower elevation stream. The applicant revised the layout of the proposed condominium buildings to a more clustered design than originally planned, which further reduced the proposed stream buffer impacts.

The applicant submitted a habitat assessment report prepared by Trevor Persons and dated November 24, 2020, which identified the streams and stream segments within the project area that contain suitable habitat for NSS and RBM (NSS/RBM streams). Based on the survey results, the applicant estimates that the proposed project will result in 10.19 acres of permanent forest canopy removal within 100 feet of NSS/RBM streams, and 31.19 acres of permanent forest canopy

removal between 100 feet and 250 feet from NSS/RBM streams. The majority (87%) of these proposed impacts are due to the construction of ski trails and the ski lift corridor, all of which will be maintained as meadow.

To mitigate for the proposed stream alterations, stream buffer impacts, and impacts to NSS and RBM habitat, the applicant proposes to remove four existing culverts located along an existing tote road near the northern extent of the project site. These culverts are undersized and perched above the streambed. The applicant proposes to remove the culverts and restore the natural stream channel to improve aquatic habitat connectivity. The applicant estimated that these removals will restore connectivity to over 13,500 linear feet of streams within the project site.

Additionally, the applicant proposes to replace and improve an existing undersized and perched culvert in the northeast portion of the project site, identified on the project plans as Stream Crossing #9. The applicant proposes to install a 103-foot-long by 12-foot-wide by 6.5-foot-tall open-bottomed arch culvert, which exceeds the minimum crossing standards recommended by MDIFW. Further, to protect water quality, the applicant proposes to use only hand-cutting for vegetation removal within 25 feet of any stream channel and to avoid the use of herbicides and pesticides within 250 feet of streams.

In comments dated January 24, 2022, MDIFW acknowledged the applicant's avoidance and minimization efforts but stated that any clearing adjacent to NSS/RBM streams may adversely affect these rare species. MDIFW recommended that the applicant mitigate for permanent canopy removal within 100 feet of NSS/RBM streams at a ratio of 8:1, and to mitigate for permanent canopy removal between 100 feet and 250 feet of NSS/RBM streams at a ratio of 4.8:1. MDIFW stated that any culvert removals and replacements that are necessary for the functionality of the proposed project may not be counted as mitigation.

In a memorandum dated July 1, 2022, the applicant applied the mitigation ratios recommended by MDIFW, but applied a 50% reduction to areas that would be converted to meadow rather than landscaped or impervious area. The applicant calculated a mitigation target of 129.18 acres. The applicant contended that the proposed culvert removals will restore connectivity not only to upstream channels but also to upstream riparian buffers and proposed to subtract the estimated restored access area from the mitigation target. The applicant proposed to compensate for the remaining mitigation target through a contribution to MDIFW's Endangered and Nongame Wildlife Fund in the amount of \$172,007.00.

In comments dated August 19, 2022, MDIFW stated that permanent removal of the forest canopy within the riparian buffer of NSS/RBM streams will have an adverse effect on NSS and RBM regardless of whether the resulting condition is

meadow or developed area. MDIFW therefore reiterated the recommended mitigation ratios and declined to accept a 50% reduction for forest to meadow conversion impacts. MDIFW commented that the four proposed culvert removals are acceptable as partial mitigation for the proposed stream impacts. However, MDIFW stated that the applicant's proposal to claim additional mitigation credit for restored NSS and RBM access to upstream riparian buffers, as a result of culvert removal, is not acceptable, since the culverts being removed are all relatively small and do not pose an absolute barrier to upstream migration by NSS and RBM during all life stages. MDIFW recommended that the applicant investigate opportunities to preserve an off-site stream that supports NSS and RBM habitat to meet the mitigation target.

The applicant agreed to revert to MDIFW's recommended mitigation ratios and recalculated the mitigation target as 231.30 acres. The applicant considered off-site stream preservation in the project vicinity but determined that the cost and logistics of identifying, surveying, and securing such a parcel was neither financially nor technically feasible given the applicant's funding and construction timeline. Based on comments from the Department and MDIFW, the applicant submitted an updated mitigation proposal for stream, NSS, and RBM impacts, which was last revised September 14, 2022. The proposed mitigation plan includes the four culvert removals; partial credit for a proposed culvert replacement and upgrade at Stream Crossing #9 (a ski trail crossing); and a contribution to MDIFW's Endangered and Nongame Wildlife Fund in the amount of \$342,618.00.

MDIFW reviewed the final mitigation proposal and stated that the proposal is acceptable to offset the anticipated adverse impacts to streams, NSS, and RBM due to the proposed project. Prior to the start of construction, the applicant must submit a payment of \$342,618.00, payable to "Treasurer, State of Maine," and directed to the attention of Wendy Parker, Maine Department of Inland Fisheries and Wildlife at 353 Water Street, 41 State House Station, Augusta, Maine 04333. A copy of this Order must be included or referenced with payment submittal.

Based on the information in the record and MDIFW's comments, the Department finds that the proposed project will not result in unreasonable adverse impacts to streams, NSS, and RBM provided that prior to the start of construction the applicant submits the payment to the Endangered and Nongame Wildlife Fund as described above.

**B. Bicknell's Thrush**

In initial comments, MDIFW stated that the portion of the project area located above elevation 2,700 feet amsl is mapped as suitable habitat for BT. BT habitat includes spruce and fir forests at high elevations with dense understory growth. MDIFW recommended avoiding impacts to suitable BT habitat. Furthermore, to avoid adverse impacts to BT during the breeding and nesting season, MDIFW



recommended that no tree clearing take place within or adjacent to BT habitat between May 1 and July 31. In its comments dated January 24, 2022, MDIFW recommended that any unavoidable impacts to BT habitat be mitigated at a ratio of 4:1.

The applicant proposes to alter a total of 13.71 acres of BT habitat to construct Trail 8, Trail 10, and the upper portion (1,450 linear feet) of the proposed lift. The proposed impacts consist of 4.74 acres of temporary clearing for trail side slopes and 8.97 acres of permanent clearing for trail travel ways. The applicant determined that extending the new lift to this elevation is necessary to provide reasonable access to Trails 8 and 10 as well as to the existing restaurant and event venue (Bullwinkle's Bistro). Trail 10 will be constructed by widening and slightly realigning an existing trail and access road. The applicant minimized clearing impacts above 2,700 feet amsl by minimizing trail width from the typical 125 feet to 100 feet and relocating the upper terminal of the existing West Mountain Quad lift, allowing one acre of the lift corridor to regenerate. The applicant agreed that no tree cutting would take place within suitable BT habitat between May 1 and July 31 of any calendar year.

In accordance with Special Condition #5 of Order #L-217-26-KE-M/L-217-2C-KF-M, the applicant proposes to incorporate 0.68 acres of previously approved clearing impacts to BT habitat, associated with the construction of a T-bar ski lift, into the current mitigation plan. Based on the recommended mitigation ratio of 4:1, the applicant calculated a total BT habitat mitigation target of 38.57 acres.

As discussed in Finding 7, the applicant originally proposed to preserve an approximately 36-acre parcel of land that contains both BT habitat and SFF habitat located in Mount Abram Township. During the review, and in response to comments from both MDIFW and MNAP, the applicant increased the size of the proposed mitigation parcel to approximately 57 acres, including 55.38 acres of suitable BT habitat. This represents 16.81 acres of additional preservation beyond what is required for the proposed project and T-bar lift project. Based on feedback from MDIFW, the applicant proposes to "bank" this additional preservation to offset future impacts to BT habitat.

In comments dated September 22, 2022, MDIFW commented that the applicant's updated mitigation plan is acceptable to offset the anticipated adverse impacts to BT habitat due to the proposed project, and that a mitigation credit of 16.81 acres may be applied to future alterations of BT habitat on the project parcel, at a mitigation to impact ratio of 4:1. MDIFW reviewed the applicant's draft declaration of covenants and restrictions for the mitigation parcel and recommended that the draft be revised to prohibit the construction of trails within the preservation area. The applicant submitted a revised draft that incorporated MDIFW's recommendations.

Prior to the start of construction in areas above 2,700 feet amsl, which coincides with FMA and the mapped BT habitat, the applicant must execute the declaration of covenants and restrictions for the mitigation parcel and record it in the Franklin County Registry of Deeds, as discussed in Finding 7.

Based on the information in the record and MDIFW's comments, the Department finds that the proposed project will not result in unreasonable adverse impacts to BT habitat provided that the applicant executes and records the declaration of covenants and restrictions for the mitigation parcel and submits a copy to the Department, as described in Finding 7.

The Department finds that the applicant has avoided and minimized wildlife and fisheries habitat impacts to the greatest extent practicable, and that the proposed project represents the least environmentally damaging alternative that meets the overall purpose of the project provided that prior to the start of construction, the applicant submits the payment to the Endangered and Nongame Wildlife Fund and provided that the applicant executes and records the declaration of covenants and restrictions for the mitigation parcel and submits a copy to the Department as described above.

9. HISTORIC SITES:

The Maine Historic Preservation Commission reviewed the proposed project and stated, in comments dated March 29, 2021, that it will have no effect upon any structure or site of historic, architectural, or archaeological significance as defined by the National Historic Preservation Act of 1966.

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

10. BUFFER STRIPS:

As discussed in Finding 5, the applicant proposes to retain a 100-foot-wide informal visual buffer of uncut forest on the south side of West Mountain Road, except for the parking lots and road entrance shown on the plans referenced in Finding 1. To the extent practicable and as discussed in Finding 8, the applicant designed the project to maintain a 100-foot undisturbed buffer adjacent to all streams and a 250-foot undisturbed buffer adjacent to NSS/RBM streams. The applicant does not propose any formal buffers for the proposed project.

The Department finds that the applicant has made adequate provision for buffer strips.

11. SOILS:

The applicant submitted a soil survey map and report based on the soils found at the project site. A medium intensity soil survey map was provided for the proposed ski trails and a high intensity soil survey map was provided for the proposed housing and other

structural development areas. This report was prepared by a certified soils scientist. The applicant stated that geotechnical investigations will be performed for specific portions of the proposed project, namely the ski lift foundations and multistory condominium buildings, during summer conditions prior to their construction.

The soil survey map and report were reviewed by the Department's Bureau of Land Resources (BLR). BLR recommended that prior to the start of construction of the proposed ski lift and multistory condominium buildings, the applicant must submit a report on the geotechnical findings for those respective building sites to the Department for review.

The applicant anticipates that blasting will be necessary for some portions of the proposed project, including a small area located within 500 feet of off-site structures not owned by the applicant. The applicant submitted a sample blasting plan, revised January 25, 2022, that conforms to the performance standards of 38 M.R.S. § 490-Z(14). After reviewing the blasting plan, BLR recommended that prior to any blasting within 500 feet of any off-site structure, the applicant must submit a blasting plan tailored to the project site and signed by a qualified blaster, as well as a map showing the anticipated blasting sites, to the Department for review and approval.

Based on BLR's review, the Department finds that the soils on the project site present no limitations to the proposed project that cannot be overcome through standard engineering practices, provided that prior to the start of construction of the ski lift foundations and multistory condominium buildings, the applicant submits a report on the geotechnical investigations for those sites; and provided that prior to blasting activities within 500 feet of an off-site structure, a site-specific blasting plan and map are submitted to the Department for review and approval as described above.

## 12. STORMWATER MANAGEMENT:

The proposed project includes approximately 50.9 acres of developed area, including 31.8 acres of impervious area. These estimates include the anticipated impervious and developed areas on the proposed single-family lots. The proposed ski trails and lift corridor will be vegetated and mowed no more than two times per year and are therefore considered undeveloped area for the purposes of stormwater treatment. The project site lies within the watershed of the Carrabassett River.

The applicant submitted a stormwater management plan based on the Basic, General, and Flooding Standards contained in the Department's Chapter 500 *Stormwater Management* rules (06-096 C.M.R. ch. 500, effective August 12, 2015). The applicant's stormwater management plan was last revised in an updated submittal dated August 8, 2022. The proposed stormwater management system consists of four wet ponds, six gravel wetlands, seven underdrained soil filters, and 52 rain gardens (one on each single-family lot).

### A. Basic Standards:

(1) Erosion and Sedimentation Control: The applicant submitted an Erosion and Sedimentation Control Plan (Section 14 of the Site Law application, revised April 29, 2022) that is based on the performance standards contained in Appendix A of Chapter 500 and the Maine Erosion and Sediment Control Best Management Practices (BMPs), which were developed by the Department. This plan was reviewed by BLR.

Erosion control details will be included on the final construction plans and the erosion control narrative will be included in the project specifications to be provided to the construction contractor. Due to the amount of clearing and in an effort to minimize the time of soil exposure between initial disturbance and final stabilization of the project site, the applicant must sequence its construction of the proposed project such that the amount of work that will be conducted will be limited to 10 acres of exposed soil at a time.

Given the size of the project and its proximity to protected natural resources, the applicant must retain the services of a third party inspector in accordance with the Special Condition for Third Party Inspection Program, which is attached to this Order. Prior the start of construction, the applicant must conduct a pre-construction meeting to discuss the construction schedule and the erosion and sediment control plan with the appropriate parties. This meeting must be attended by the applicant's representative, Department staff, the design engineer, the contractor, and the third-party inspector.

(2) Inspection and Maintenance: The applicant submitted a maintenance plan that addresses both short and long-term maintenance requirements. The maintenance plan is based on the standards contained in Appendix B of Chapter 500. This plan was reviewed by BLR. The applicant will be responsible for the maintenance of all common facilities including the stormwater management system. As each of the proposed single-family residential lots are sold, the new lot owner will be responsible for the maintenance of the raingarden on their lot. The deed for each single-family lot will include restrictive covenants related to maintenance of stormwater infrastructure.

Storm sewer grit and sediment materials removed from stormwater control structures during maintenance activities must be disposed of in compliance with the Maine Solid Waste Management Rules.

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

Based on BLR's review of the erosion and sedimentation control plan and the maintenance plan, the Department finds that the proposed project meets the Basic Standards contained in Chapter 500, § 4(B) provided that the applicant limits the amount of exposed soil during construction, retains the services of a third party inspector, conducts a pre-construction meeting, and properly disposes of storm sewer grit and sediment materials removed from stormwater control structures, all as described above.

B. General Standards:

The applicant's stormwater management plan includes general treatment measures that will mitigate for the increased frequency and duration of channel erosive flows due to runoff from smaller storms, provide for effective treatment of pollutants in stormwater, and mitigate potential temperature impacts. This mitigation is being achieved by using BMPs that will control runoff from 95% of the impervious area and 84% of the developed area for non-linear portions of the project. The proposed access roads meet the definition of "a linear portion of a project" in Chapter 500. For linear portions of the project, the applicant is proposing to control runoff volume from 100% of the impervious area and 50% of the developed area. The proposed mitigation includes treatment of runoff from 3.33 acres of existing untreated impervious areas (0.2 acres of West Mountain Road and 3.13 acres of Parking Lot E) to offset some of the new impervious areas where treatment was not feasible.

The stormwater management system proposed by the applicant was reviewed by, and revised in response to comments from, BLR. BLR recommended that the applicant retains the design engineer or other qualified professional to oversee construction of the proposed wet ponds, gravel wetlands, and underdrained soil filters to ensure they are installed in accordance with the notes and details specified on the approved plans. Within 30 days from completion of the entire system the applicant must submit as-built plans and a log of inspection reports detailing the items inspected, photographs taken, and the dates of each inspection for BLR to review. If the project takes more than one year to complete, the applicant must provide a log of inspection reports and photographs at least once per year for BLR to review.

Each proposed single-family lot will include a rain garden to treat stormwater runoff. The applicant stated that the precise layout of each lot will be designed by the lot buyer, and that covenants and restrictions will be placed on each lot to require that the site plan, including the location of the rain garden, must be prepared by a professional engineer and submitted to the Sugarloaf Design Review Board for review and approval. The covenants will also establish maximum impervious and developed area limits for each lot and require post-construction maintenance. The maximum developed area limits will vary by lot size and range from 0.23 to 0.55 acres, except for the largest lot, which will have a maximum developed area limit of 1.3 acres. By December 31 of each year, the applicant must submit a list of the lots it has reviewed and approved within the previous 12 months, as well as a location map and grading plan for each lot, to BLR for review. The deed for each lot must include restrictive covenants that require that the lot owner retain an engineer or other qualified professional to oversee construction of the rain garden to ensure it is installed in accordance with the notes and details on Sheet C-1.07 of the plan set referenced in Finding 1. Following completion of each rain garden, the applicant must submit an inspection report for the rain garden, including photographs, to BLR for review. The inspection reports may be submitted together with the annual list of approved lots.

After a final review, BLR commented that the proposed stormwater management system is designed in accordance with the General Standards contained in Chapter 500, § 4(C).

Based on the stormwater system's design and BLR's review, the Department finds that the applicant has made adequate provision to ensure that the proposed project will meet the General Standards contained in Chapter 500, § 4(C) provided that the applicant meets the construction oversight inspection and reporting requirements for the stormwater treatment structures; and provided that the applicant meets the inspection, reporting, and deed restriction requirements for the single-family lots, all as described above.

C. Flooding Standard:

The applicant is proposing to utilize a stormwater management system based on estimates of pre- and post-development stormwater runoff flows obtained by using Hydrocad, a stormwater modeling software that utilizes the methodologies outlined in Technical Releases #55 and #20, U.S.D.A., Soil Conservation Service and detains stormwater from 24-hour storms of 2-, 10-, and 25-year frequency. The effect of the proposed project on peak flows was assessed by the applicant at 24 analysis points (SP1 through SP24). The applicant's model indicates that the post-development peak flows at all analysis points will not exceed the pre-development peak flows except for analysis point SP20, at which the post-development peak flow will be slightly increased over the pre-development peak flow for 24-hour storms of 2-year frequency. Since the increase of peak flow rates at SP20 is anticipated to be insignificant, the applicant requested a waiver from the Flooding Standard for this analysis point pursuant to Department Rules, Chapter 500, § 4(F)(3)(b).

BLR reviewed the applicant's proposal to detain stormwater on the site. After a final review, BLR commented that the increase of peak flow from the project is an insignificant increase in flow. BLR commented that the applicant's proposed stormwater management system is otherwise designed in accordance with the Flooding Standard contained in Chapter 500, § 4(F) and recommended approval for the waiver.

Based on the system's design and BLR's review, the Department finds that the applicant has made adequate provision to ensure that the proposed project will meet the Flooding Standard contained in Chapter 500, § 4(F) for peak flow from the project site, and channel limits and runoff areas from all analysis points, except for analysis point SP20, for which the Department waives the Chapter 500 Flooding Standard for peak flow from the project site, and channel limits and runoff areas due to the project's insignificant increase of peak flow rates in accordance with the Department's Stormwater Management Rules.

13. GROUNDWATER:

The project site is not located over a mapped sand and gravel aquifer. The proposed project does not propose any withdrawal from, or discharge to, the groundwater. The applicant identified potential sources of contamination associated with the proposed expansion as fuel for a diesel backup generator and hydraulic and lubricating oils for the proposed ski lift. These materials will be kept in a covered storage area.

The applicant submitted a Spill Prevention Control & Countermeasures (SPCC) plan for the ski resort, last revised December 2, 2022. The applicant stated that the plan will be further updated to incorporate prevention measures specific to the proposed ski lift. BLR staff reviewed the SPCC plan and commented that the plan is acceptable for the existing facility. Prior to the start of operation of the proposed ski lift, the applicant must submit to the Department an updated SPCC plan that incorporates additional measures and notes specific to the fuel and oils associated with the proposed generator and lift.

The Department finds that the proposed project will not have an unreasonable adverse effect on ground water quality provided that prior to the start of operation of the new ski lift, the applicant submits an updated SPCC plan as described above.

14. WATER SUPPLY:

The applicant estimates that at full capacity, the proposed skier services building will use approximately 5,000 gallons of water per day, and that the proposed single-family homes, condominium units, and duplex units will use approximately 90 gallons of water per bedroom per day, for a total estimated usage of 65,160 gallons of water per day. The proposed expansion will therefore use approximately 70,160 gallons of water per day at periods of peak use. Water will be supplied by the Sugarloaf Water Association (SWA), which already services the majority of the existing ski resort. The applicant submitted a letter from SWA, dated April 29, 2022, indicating that it will be capable of servicing the proposed buildings.

The Department finds that the applicant has made adequate provision for securing and maintaining a sufficient and healthful water supply.

15. WASTEWATER DISPOSAL:

The applicant estimates that at full capacity, the proposed project will discharge approximately 70,160 gallons of wastewater per day to the Carrabassett Valley Sanitary District (CVSD)'s wastewater treatment facility. The applicant and CVSD agreed to extend the sewer lines to serve the proposed project. The applicant submitted a letter from CVSD dated June 15, 2022, stating that it has the capacity to transport and treat these flows.

In accordance with 38 M.R.S. § 412-B, the Department's Division of Water Quality Management (DWQM) reviewed the proposed sewer line extension. In comments dated December 13, 2022, DWQM recommended that the slope of the proposed sewer mains be minimized to 10% or less. DWQM identified two areas where the depth of the proposed drop manholes could be increased to achieve the recommended slope. The applicant responded that the drop manholes were designed according to guidance from CVSD, which is experienced with wastewater infrastructure on steep slopes, and that in some areas, deeper manholes may compromise slope stability. DWQM responded that it

still recommends a 10% slope, but CVSD may approve steeper slopes where it deems them appropriate.

The Department finds that the applicant has made adequate provision for wastewater disposal at a facility that has the capacity to ensure satisfactory treatment.

16. WATER QUALITY CONSIDERATIONS:

As discussed in Finding 12, the applicant submitted an Erosion and Sedimentation Control Plan based on the BMPs developed by the Department. During construction, the applicant will utilize these BMPs to minimize impacts to water quality from siltation.

The Department does not anticipate that the proposed project will violate any state water quality law, including those governing the classification of the State's waters.

17. SOLID WASTE:

The applicant stated that all valuable timber generated by clearing for the proposed project will be sold to a registered logger. All stumps, brush, and non-valuable timber will be ground and reused as erosion control mix or disposed of on site, either chipped or burned, with the remainder worked into the soil, in compliance with Maine Solid Waste Management Rules.

The proposed project will generate approximately 70-90 tons of construction debris over an approximately three- to five-year construction period. During peak ski season, the proposed project is anticipated to generate approximately six tons of household and general solid waste per week. The applicant proposes to use the services of Waste Management or other licensed hauler to transport construction debris and operational solid waste to Waste Management's Crossroads Landfill located in Norridgewock, which is currently in compliance with the Maine Solid Waste Management Rules. The applicant submitted correspondence from Waste Management, dated August 24, 2021, stating that it has the capacity to transport and accept waste materials from the proposed project.

The project was reviewed by the Department's Bureau of Remediation and Waste Management (BRWM). In comments dated June 15, 2022, BRWM stated that the applicant's plan for disposal of solid waste is acceptable.

Based on BRWM's review, the Department finds that the applicant has made adequate provision for solid waste disposal.

18. FLOODING:

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



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

19. ALL OTHER:

All other Findings of Fact, Conclusions and Conditions remain as approved in Environmental Improvement Commission Order #L-217-26-A-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 provided that the applicant meets the requirements of Finding 7, Finding 8, and the corresponding special conditions below.
- 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 provided that the applicant meets the requirements of Finding 11 and the corresponding special conditions below.
- D. The proposed development meets the standards for storm water management in 38 M.R.S. § 420-D and the standard for erosion and sedimentation control in 38 M.R.S. § 420-C provided that the applicant meets the requirements of Finding 12 and the corresponding special conditions below.
- E. The proposed development will not pose an unreasonable risk that a discharge to a significant groundwater aquifer will occur provided that the applicant meets the requirement of Finding 13 and the corresponding special condition below.
- 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 the SUGARLOAF MOUNTAIN CORPORATION to expand the existing ski resort as described in Finding 1, SUBJECT TO THE FOLLOWING CONDITIONS and all applicable standards and regulations:

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

4. Prior to the start of construction, the applicant shall submit a payment to the Maine Natural Resource Conservation Program in the amount of \$708,928.00, payable to “Treasurer, State of Maine”, to the attention of the ILF Program Administrator at 17 State House Station, Augusta, Maine 04333. The submission of payment shall include a cover letter the references the Department license number associated with the project.
5. In the conveyance of all single-family lots, the applicant shall include deed restrictions making the conveyance subject to all applicable terms and conditions of this Department Order and any applicable municipal approval. These terms and conditions may be incorporated by specific and prominent reference to the Order in the deed. All conveyances required by this approval to contain restrictions shall include in the restrictions the requirement that any subsequent conveyance shall specifically include the same restrictions.
6. The applicant shall give a copy of this Order, including the standard conditions, and a copy of the approved subdivision plan to each lot buyer at least 14 days prior to the date of closing on the sale of the lot. The applicant also shall maintain a file containing signed and dated statements by lot buyers acknowledging that they have received and read their copy of this Order and the subdivision plan prior to the closing on their lot. The file shall also contain a copy of the signed and dated deed containing the restrictive covenants required under this approval. The applicant shall make this file available for inspection upon request by the Department.
7. The deed for each residential lot that contains any portion of a wetland shall have attached to it a plot plan for the lot, drawn to scale, that specifies the location of the wetland and includes a note that any additional wetland alterations will require review and approval by the Department.
8. The deed for each single-family lot shall include restrictive covenants that require the lot owner to retain an engineer or other qualified professional to oversee construction of the rain garden to ensure it is installed in accordance with the approved plans.
9. Following final grading and stabilization of the temporary clearing areas within SFF, the applicant shall rope off these areas and post them with signs to prevent inadvertent entry and disturbance until those areas have regenerated to an average tree height of at least six feet.
10. Prior to the start of construction within the FMA (above elevation 2,700 feet amsl) or the SFF, the applicant shall execute the declaration of covenants and restrictions for the mitigation parcel and record it in the Franklin County Registry of Deeds. Within 60 days of its recording, the applicant shall submit a copy of the recorded declaration to the Department.
11. Prior to the start of construction, the applicant shall submit a payment to Maine’s Endangered and Nongame Wildlife Fund in the amount of \$342,618.00, payable to

“Treasurer, State of Maine,” and directed to the attention of Wendy Parker, Maine Department of Inland Fisheries and Wildlife at 353 State Street, 41 State House Station, Augusta, Maine 04333. A copy of this Order shall be included or referenced with payment submittal.


12. The applicant shall retain the services of a third-party inspector in accordance with the Special Condition for Third-Party Inspection Program, which is attached to this Order.
13. Prior the start of construction, the applicant shall conduct a pre-construction meeting. This meeting shall be attended by the applicant's representative, Department staff, the design engineer, the contractor, and the third-party inspector.
14. The applicant shall sequence construction of the project such that the active work area is limited to 10 acres of exposed soil at a time.
15. Storm sewer grit and sediment materials removed from stormwater control structures during maintenance activities shall be disposed of in compliance with the Maine Solid Waste Management Rules.
16. The applicant shall retain the design engineer or other qualified professional to oversee construction of the wet ponds, gravel wetlands, and underdrained soil filters. Within 30 days from completion of the entire system the applicant shall submit as-built plans and a log of inspection reports detailing the items inspected, photographs taken, and the dates of each inspection to BLR for review. If the project takes more than one year to complete, the applicant shall provide a log of inspection reports and photographs at least once per year to BLR for review.
17. No later than December 31 of each year, the applicant shall submit a list of the single-family residential lots for which it has reviewed and approved a site plan within the previous 12 months, as well as a location map and grading plan for each lot, to BLR for review. The applicant shall also submit an inspection report, including photographs, of each rain garden constructed over the previous 12 months to BLR for review.
18. Prior to the start of operation of the proposed ski lift, the applicant shall submit an updated SPCC plan that incorporates additional measures and notes specific to the fuel and oils associated with the proposed generator and ski lift to the Department for review.
19. Prior to the start of construction of the ski lift foundations and multistory condominium buildings, the applicant shall submit a report on the geotechnical investigations for those sites to the Department for review. For any ski lift foundations that do not require geotechnical investigations, the applicant shall submit a statement from a professional engineer or other qualified professional certifying that a geotechnical investigation is not necessary.
20. Prior to any blasting activities within 500 feet of an off-site structure, the applicant shall submit a site-specific blasting plan and map to the Department for review and approval.

21. All other Findings of Fact, Conclusions and Conditions remain as approved in Environmental Improvement Commission Order #L-217-26-A-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.

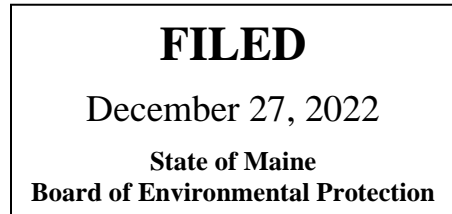
DONE AND DATED IN AUGUSTA, MAINE, THIS 27<sup>th</sup> DAY OF DECEMBER 2022.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY:   
\_\_\_\_\_  
For, Melanie Loyzim, Commissioner

PLEASE NOTE THE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES.

JEM/L217JXAJYNJZLNKAN/ATS88262,88276,88278,88294



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

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



## Natural Resources Protection Act (NRPA) Standard Conditions

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

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

## STORMWATER STANDARD CONDITIONS

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

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

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



(7) Maintenance. The components of the stormwater management system must be adequately maintained to ensure that the system operates as designed, and as approved by the Department. If maintenance responsibility is to be transferred from the permittee to another entity, a transfer request must be filed with the Department which includes the name and contact information for the person or entity responsible for this maintenance. The form must be signed by the responsible person or agent of the responsible entity.

(8) Recertification requirement. Within three months of the expiration of each five-year interval from the date of issuance of the permit, the permittee shall certify the following to the department.

(a) All areas of the project site have been inspected for areas of erosion, and appropriate steps have been taken to permanently stabilize these areas.

(b) All aspects of the stormwater control system are operating as approved, have been inspected for damage, wear, and malfunction, and appropriate steps have been taken to repair or replace the system, or portions of the system, as necessary.

(c) The stormwater maintenance plan for the site is being implemented as approved by the Department, and the maintenance log is being maintained.

(d) All proprietary systems have been maintained according to the manufacturer's recommendations. Where required by the Department, the permittee shall execute a 5-year maintenance contract with a qualified professional for the coming 5-year interval. The maintenance contract must include provisions for routine inspections, cleaning and general maintenance.

(e) The Department may waive some or all of these recertification requirements on a case-by-case basis for permittees subject to the Department's Multi-Sector General Permit ("MSGP") and/or Maine Pollutant Discharge Elimination System ("MEPDES") programs where it is demonstrated that these programs are providing stormwater control that is at least as effective as required pursuant to this Chapter.

(9) Transfer of property subject to the license. If any portion of the property subject to the license containing areas of flow or areas that are flooded are transferred to a new property owner, restrictive covenants protecting these areas must be included in any deeds or leases, and recorded at the appropriate county registry of deeds. Also, in all transfers of such areas and areas containing parts of the stormwater management system, deed restrictions must be included making the property transfer subject to all applicable terms and conditions of the permit. These terms and conditions must be incorporated by specific and prominent reference to the permit in the deed. All transfers must include in the restrictions the requirement that any subsequent transfer must specifically include the same restrictions unless their removal or modification is approved by the Department. These restrictions must be written to be enforceable by the Department and must reference the permit number.

(10) Severability. The invalidity or unenforceability of any provision, or part thereof, of this permit shall not affect the remainder of the provision or any other provisions. This permit shall be construed and enforced in all respects as if such invalid or unenforceable provision or part thereof had been omitted.

Special Condition  
for  
Third Party Inspection Program

## THIRD-PARTY INSPECTION PROGRAM

### 1.0 THE PURPOSE OF THE THIRD-PARTY INSPECTION

As a condition of this permit, the Maine Department of Environmental Protection (MDEP) requires the permit applicant to retain the services of a third-party inspector to monitor compliance with MDEP permit conditions during construction. The objectives of this condition are as follows:

- 1) to ensure that all construction and stabilization activities comply with the permit conditions and the MDEP-approved drawings and specifications,
- 2) to ensure that field decisions regarding erosion control implementation, stormwater system installation, and natural resource protection are based on sound engineering and environmental considerations, and
- 3) to ensure communication between the contractor and MDEP regarding any changes to the development's erosion control plan, stormwater management plan, or final stabilization plan.

This document establishes the inspection program and outlines the responsibilities of the permit applicant, the MDEP, and the inspector.

### 2.0 SELECTING THE INSPECTOR

At least 30 days prior to starting any construction activity on the site, the applicant will submit the names of at least two inspector candidates to the MDEP. Each candidate must meet the minimum qualifications listed under section 3.0. The candidates may not be employees, partners, or contracted consultants involved with the permitting of the project or otherwise employed by the same company or agency except that the MDEP may accept subcontractors who worked for the project's primary consultant on some aspect of the project such as, but not limited to, completing wetland delineations, identifying significant wildlife habitats, or conducting geotechnical investigations, but who were not directly employed by the applicant, as Third Party inspectors on a case by case basis. The MDEP will have 15 days from receiving the names to select one of the candidates as the inspector or to reject both candidates. If the MDEP rejects both candidates, then the MDEP shall state the particular reasons for the rejections. In this case, the applicant may either dispute the rejection to the Director of the Bureau of Land Resources or start the selection process over by nominating two, new candidates.

### 3.0 THE INSPECTOR'S QUALIFICATIONS

Each inspector candidate nominated by the applicant shall have the following minimum qualifications:

- 1) a degree in an environmental science or civil engineering, or other demonstrated expertise,
- 2) a practical knowledge of erosion control practices and stormwater hydrology,
- 3) experience in management or supervision on large construction projects,
- 4) the ability to understand and articulate permit conditions to contractors concerning erosion control or stormwater management,
- 5) the ability to clearly document activities being inspected,
- 6) appropriate facilities and, if necessary, support staff to carry out the duties and responsibilities set forth in section 6.0 in a timely manner, and
- 7) no ownership or financial interest in the development other than that created by being retained as the third-party inspector.

#### 4.0 INITIATING THE INSPECTOR'S SERVICES

The applicant will not formally and finally engage for service any inspector under this permit condition prior to MDEP approval or waiver by omission under section 2.0. No clearing, grubbing, grading, filling, stockpiling, or other construction activity will take place on the development site until the applicant retains the MDEP-approved inspector for service.

#### 5.0 TERMINATING THE INSPECTOR'S SERVICES

The applicant will not terminate the services of the MDEP-approved inspector at any time between commencing construction and completing final site stabilization without first getting written approval to do so from the MDEP.

#### 6.0 THE INSPECTOR'S DUTIES AND RESPONSIBILITIES

The inspector's work shall consist of the duties and responsibilities outlined below.

- 1) Prior to construction, the inspector will become thoroughly familiar with the terms and conditions of the state-issued site permit, natural resources protection permit, or both.
- 2) Prior to construction, the inspector will become thoroughly familiar with the proposed construction schedule, including the timing for installing and removing erosion controls, the timing for constructing and stabilizing any basins or ponds, and the deadlines for completing stabilization of disturbed soils.
- 3) Prior to construction, the inspector will become thoroughly familiar with the project plans and specifications, including those for building detention basins, those for installing the erosion control measures to be used on the site, and those for temporarily or permanently stabilizing disturbed soils in a timely manner.
- 4) During construction, the inspector will monitor the contractor's installation and maintenance of the erosion control measures called for in the state permit(s) and any additional measures the inspector believes are necessary to prevent sediment discharge to off-site properties or natural resources. This direction will be based on the approved erosion control plan, field conditions at the time of construction, and the natural resources potentially impacted by construction activities.
- 5) During construction, the inspector will monitor the contractor's construction of the stormwater system, including the construction and stabilization of ditches, culverts, detention basins, water quality treatment measures, and storm sewers.
- 6) During construction, the inspector will monitor the contractor's installation of any stream or wetland crossings.
- 7) During construction, the inspector will monitor the contractor's final stabilization of the project site.
- 8) During construction, the inspector will keep logs recording any rain storms at the site, the contractor's activities on the site, discussions with the contractor(s), and possible violations of the permit conditions.
- 9) During construction, the inspector will inspect the project site at least once a week and before and after any significant rain event. The inspector will photograph all protected natural resources both before and after construction and will photograph all areas under construction. All photographs will be identified with, at a minimum the date the photo was taken, the location and the name of the individual taking the photograph.  
*Note: the frequency of these inspections as contained in this condition may be varied to best address particular project needs.*
- 10) During construction, the inspector will prepare and submit weekly (*or other frequency*) inspection reports to the MDEP.

- 11) During construction, the inspector will notify the designated person at the MDEP immediately of any sediment-laden discharges to a protected natural resource or other significant issues such as the improper construction of a stormwater control structure or the use of construction plans not approved by the MDEP.

## 7.0 INSPECTION REPORTS

The inspector will submit weekly written reports (*or at another designated frequency*), including photographs of areas that are under construction, on a form provided by the Department to the designated person at the MDEP. Each report will be due at the MDEP by the Friday (*or other designated day*) following the inspection week (Monday through Sunday).

The weekly report will summarize construction activities and events on the site for the previous week as outlined below.

- 1) The report will state the name of the development, its permit number(s), and the start and end dates for the inspection week (Monday through Sunday).
- 2) The report will state the date(s) and time(s) when the inspector was on the site making inspections.
- 3) The report will state the date(s) and approximate duration(s) of any rainfall events on the site for the week.
- 4) The report will identify and describe any erosion problems that resulted in sediment leaving the property or sediment being discharged into a wetland, brook, stream, river, lake, or public storm sewer system. The report will describe the contractor's actions to repair any damage to other properties or natural resources, actions to eliminate the erosion source, and actions to prevent future sediment discharges from the area.
- 5) The report will list the buildings, roads, parking lots, detention basins, stream crossings or other features open to construction for the week, including those features or areas actively worked and those left unworked (dormant).
- 6) For each area open to construction, the report will list the date of initial soil disturbance for the area.
- 7) For each area open to construction, the report will note which areas were actively worked that week and which were left dormant for the week. For those areas actively worked, the report will briefly state the work performed in the area that week and the progress toward final stabilization of the area – e.g. “grubbing in progress,” “grubbing complete,” “rough grading in progress,” “rough grading complete,” “finish grading in progress,” “finish grading complete,” “permanent seeding completed,” “area fully stable and temporary erosion controls removed,” etc.
- 8) For each area open to construction, the report will list the erosion and sedimentation control measures installed, maintained, or removed during the week.
- 9) For each erosion control measure in-place, the report will note the condition of the measure and any maintenance performed to bring it to standard.

## Third Party Inspection Form

This report is prepared by a Third Party Inspector to meet the requirements of the Third Party Inspector Condition attached as a Special Condition to the Department Order that was issued for the project identified below. The information in this report/form is not intended to serve as a determination of whether the project is in compliance with the Department permit or other applicable Department laws and rules. Only Department staff may make that determination.

TO: <i>PM, Maine DEP (@maine.gov)</i>	FROM:
PROJECT NAME & LOCATION:	DEP #:
DATE OF INSPECTION:	DATE OF REPORT:
WEATHER:	CONDITIONS:

CONTRACTOR:	
CONTACT NAME:	PHONE NUMBER:
LANDOWNER:	PHONE NUMBER:

**SITE CHARACTERISTICS:**

# ACRES OPEN:	# ACRES ACTIVE:	# ACRES INACTIVE:
LOCATION OF OPEN LAND:	LOCATION OF ACTIVE LAND:	LOCATION OF INACTIVE LAND:
OPEN SINCE:	OPEN SINCE:	OPEN SINCE:

**PROGRESS OF WORK:**

INSPECTION OF:	Satisfactory	Minor Deviation (corrective action required)	Unsatisfactory (include photos)
STORMWATER CONTROL (VEGETATIVE & STRUCTURAL BMP'S)			
EROSION & SEDIMENTATION CONTROL (TEMPORARY & PERMANENT BMP'S)			
OTHER: (PERMIT CONDITIONS, ENGINEERING DESIGN, ETC.)			

COMMENTS/CORRECTIVE ACTIONS TAKEN (attach additional sheets as necessary):

**Photos (must be labeled with date, photographer and location)**

cc:		
<i>Original and all copies were sent by email only.</i>		



# DEP INFORMATION SHEET

## Appealing a Department Licensing Decision

**Dated: August 2021**

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

### **SUMMARY**

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

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

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

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

#### **LEGAL REFERENCES**

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

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

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

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

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

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

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

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

### **REQUIRED APPEAL CONTENTS**

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

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

### **OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD**

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



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

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

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

## **II. JUDICIAL APPEALS**

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

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

## **ADDITIONAL INFORMATION**

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

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

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