



DEPARTMENT ORDER

IN THE MATTER OF

THREE CORNERS SOLAR, LLC) SITE LOCATION OF DEVELOPMENT ACT
Unity Twp, Benton, & Clinton) SOLAR ENERGY DEVELOPMENT
Kennebec County) DECOMMISSIONING LAW
SOLAR POWER FACILITY) NATURAL RESOURCES PROTECTION ACT
L-29746-TH-A-N (approval)) FRESHWATER WETLAND ALTERATION
L-29746-PS-B-N (approval)) RIVER, STREAM, OR BROOK ALTERATION
L-29746-DP-C-N (approval)) SIGNIFICANT WILDLIFE HABITAT
L-29746-L6-D-N (approval)) WATER QUALITY CERTIFICATION
L-29746-VP-E-N (approval))
L-29746-IW-F-N (approval))
L-29746-DW-G-N (approval)) 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 Solar Energy Development Decommissioning Law (35-A M.R.S. §§ 3491–3496) (Decommissioning Law), and 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 the Department of Environmental Protection (Department) rules, the Department has considered the application of THREE CORNERS SOLAR, LLC (applicant) with the supportive data, agency review comments, public comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

1. PROJECT DESCRIPTION:

A. Summary: The applicant proposes to construct a 110-megawatt (MW, alternating current) utility scale solar energy facility occupying 926 acres of land. The proposed facility includes photovoltaic panels mounted on a steel racking system, access roads, equipment pads, collector lines, perimeter fencing, a collection substation, and an operations and maintenance (O&M) building. The applicant also proposes to construct a 5.2-mile-long, 115-kilovolt (kV) generator lead line (Genlead) to transmit power from the proposed solar facility to the existing Central Maine Power (CMP) Albion Road Substation. The proposed solar array fields are located north of Route 139, off Palmer Road in Unity Township and off Bessey Lane in the Town of Benton. The westernmost solar array field is partially located in the Town of Clinton. The proposed Genlead is located entirely within the Town of Benton.

The proposed project layout consists of eight irregularly-shaped, non-contiguous solar panel array fields connected by several miles of new and upgraded gravel access roads, ranging from 12 to 24 feet wide, and a combination of overhead and buried collector lines, including a 1.3-mile-long overhead collector line (Collector) connecting the easternmost solar array field to the central solar array fields. The proposed O&M building and collection substation are located off Bessey Lane, south of the southernmost solar array field. The proposed O&M area will consist of an approximately 25-foot-wide

by 45-foot-long building, two 10-foot-wide by 40-foot-long storage containers, a gravel pad, stormwater management structures, and a wastewater disposal field. The proposed collection substation will be located approximately 300 feet north of the O&M building and will have a footprint of approximately 190 feet by 190 feet.

The proposed 5.2-mile-long Genlead will extend south from the collection substation, cross Fifteen Mile Stream and East Benton Road and continue west to the Albion Road Substation. Both the Collector and Genlead corridors are proposed to be 100 feet wide, with poles ranging in height from 70 to 110 feet and spans ranging from 300 to 800 feet depending on topography and natural resources. Vegetation within the overhead utility corridors will generally be maintained at a height of eight to 10 feet or greater. The applicant proposes to use a combination of new and upgraded roads to access the Genlead corridor.

The proposed project will occupy approximately 926 acres of land, including 855 acres associated with the solar array portion of the project (681 acres within the fenced solar array fields) and 71 acres associated with the Genlead. The proposed project will result in approximately 22.79 acres of developed area, all of which is impervious area. The applicant proposes 14 temporary gravel laydown areas throughout the solar array portion of the project and seven temporary laydown areas along the Genlead, all of which will be removed and revegetated following construction. The proposed solar array fields and associated infrastructure, including the collection substation and O&M building, are shown on a set of plans titled, "Maine DEP Permit Set, Three Corners Solar Project," prepared by James W. Sewall Company, dated January 31, 2022, and last revised June 3, 2022, except for Sheet C32 which was last revised July 26, 2022, and Sheets C46, C47, C48, C49, and D2, which were last revised July 27, 2022. The proposed Genlead is shown on a set of plans titled, "Three Corners Solar Power Project, 115kV Generator Lead Line," prepared by SGC Engineering, LLC and Reed & Reed, dated May 11, 2022, and last revised June 3, 2022.

The applicant is also seeking approval under the NRPA for seven proposed overhead stream crossings within the Genlead corridor, as well as activities over and adjacent to significant wildlife habitat. Stream, wildlife, and overall habitat impacts are discussed further in Finding 6. The applicant proposes to directly alter 23,197 square feet (0.53 acres) of freshwater wetlands due to access roads, collector lines, transmission line poles, and grading within the panel array fields. The proposed project will result in 811,242 square feet (18.63 acres) of wetland conversion due to vegetation cutting within the Collector corridor, Genlead corridor, and shade management areas. Wetland impacts are discussed further in Finding 7.

The applicant submitted a Notice of Intent (NOI #74274) to comply with the requirements of the Maine Construction General Permit. The Department accepted NOI #74274 on February 14, 2022.

B. Current Use of Site: The project site is located on a 2,268-acre parcel of land comprised of several lots located in Unity Township, the Town of Benton, and the Town

of Clinton. The parcel is primarily forested and managed for commercial timber production. Approximately 15.4 acres of the parcel (off Palmer Road) are located on agricultural land. The Genlead corridor is located across several lots with an aggregate area of 1,359-acres. The corridor is primarily forested and crosses multiple public roads. The tax maps and lot numbers for the project site are listed in Table 2-1 of Section 2 of the Site Law application.

C. Title, Right, or Interest: Applicants for Site Law and NRPA permits are required by the Department's Chapter 2 *Rules Concerning the Processing of Applications and Other Administrative Matters* (06-096 C.M.R.), § 11(D), to submit evidence demonstrating that they have sufficient title, right, or interest (TRI) in the property proposed to be developed or used for the project sufficient for the nature and duration of the proposed development or use. This can be in the form of deeds, leases, or easements, among other forms. The applicant submitted a license agreement for the portions of the project on CMP land, and submitted deeds, lease option agreements, purchase option agreements, and easement option agreements for the remaining project area, as detailed in Section 2 of the Site Law application. Several of the agreements are held in the name of the applicant's sister company, Three Corners Land Holdings, LLC. During the review of the application, in response to Department comments, the applicant submitted supplemental TRI information, dated February 18, 2022, including documentation of extensions for the option agreements that would otherwise have expired.

The Department finds that the applicant has provided evidence of sufficient TRI in all of the property that is proposed for development or use.

D. Public Comments: While the application was being reviewed, the Department received comments from one interested person and one non-governmental organization, The Nature Conservancy (TNC). The Department did not receive any requests for a public hearing during the 20-day period specified in Chapter 2, § 7.

The interested person submitted brief comments expressing concern about the size of the proposed solar facility and the amount of tree clearing associated with its construction.

In its comments, TNC stated that it supports the development of solar energy projects to reduce greenhouse gas emissions and mitigate climate change, provided that such projects are designed with consideration for the potential effects of habitat conversion and fragmentation on biodiversity. TNC commented that the applicant's proposed project appears to have been designed to avoid and minimize impacts to natural resources, but the project will inherently impact one of the largest unfragmented forest blocks in the central Maine region. TNC requested that the Department consider requiring mitigation for this impact in the form of conservation of substantial parcels of unfragmented forest blocks in the vicinity of the area proposed for development.

Habitat conversion and fragmentation are discussed in Finding 6. The Department reviewed all comments from the interested persons and entered them into the Department's record.

2. FINANCIAL CAPACITY:

The total cost of the project is estimated to be \$195,502,500.00. The applicant has spent \$11,534,860.00 during the design and permitting phase, leaving \$183,967,640.00 of remaining costs. The applicant is a subsidiary of Longroad Energy Holdings, LLC (Longroad). The applicant submitted a letter from KeyBank National Association, dated July 6, 2022, indicating that the bank has executed a term sheet for construction loans for the project amounting to \$166,752,000.00. The applicant provided a letter from the Chief Financial Officer of Longroad, dated July 5, 2022, stating that Longroad will provide the remaining balance (approximately \$17 million) to construct and operate the project through equity. Longroad submitted a balance sheet showing its financial capital as of March 2021 amounted to over \$1 billion, including available cash assets in excess of \$17 million.

Within 60 days of the date of this Order, the applicant must submit evidence to the Department that the loan agreement described above has been finalized. Alternatively, the applicant may submit evidence of any other form of financial assurance consistent with Department Rules, Chapter 373, § 1, to the Department for review and approval.

The Department finds that the applicant has demonstrated adequate financial capacity to comply with Department standards provided that within 60 days of the date of this Order, the applicant submits evidence to the Department that the construction loans have been finalized, or other evidence of financial assurance to the Department for review and approval, as described above.

3. TECHNICAL ABILITY:

The applicant provided resume information for key persons involved with the project and a list of projects successfully constructed by the applicant's parent company. The applicant also retained the services of the following consulting firms to assist in the design and engineering of the project:

- Stantec Consulting Services, Inc. (Stantec) – natural resource assessments, soils, permitting
- Boyle Associates – wetland delineations
- Biodiversity Research Institute (BRI) – natural resource assessments, wildlife habitat assessments/consultation
- Kleinschmidt Associates – vernal pool surveys
- James W. Sewall Company – civil engineering, stormwater analysis
- SGC Engineering, LLC – electrical design
- Westwood Professional Services – solar array grading analysis
- T.J. Boyle Associates, LLC – visual impact assessment
- Reuter Associates – noise assessment
- SEARCH, Inc. (SEARCH) – architectural and archaeological assessments

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

4. NOISE:

As an unorganized territory, Unity Township does not have a noise ordinance, nor does the Town of Clinton. The Town of Benton has a duly enacted noise ordinance, which aligns with the standards of the *No Adverse Effect Standards of the Site Location of Development Act*, 06-096 C.M.R. ch. 375, § 10(B) (last amended June 2, 2016). The standards of Chapter 375, § 10(B) are therefore applicable to the entire project site.

The project site is located within a rural area with low-density residential development. Residential properties, which are considered protected locations, are located on Route 139 and on Palmer Road, in the vicinity of the proposed solar facility. The sound levels resulting from routine operation of the proposed development at property lines of the project parcel abutting non-protected locations must not exceed 75 dBA (A-weighted decibels) during the day or night. At protected locations, the sound levels from the development must not exceed 55 dBA during the day and 45 dBA during the night. The applicant identified the potential sources of noise from the proposed project as inverters with co-located transformers (39 through the solar array fields), a 115-kV transformer (located at the proposed collection substation), and a 100-kW standby generator (located at the proposed collection substation). The nearest protected location is approximately 500 feet from the proposed substation and over 1,000 feet from the nearest equipment pad with co-located inverter and transformer. The applicant analyzed the predicted sound levels of the proposed equipment and determined that based on the equipment specifications and locations within the development, sound levels will attenuate to 45 dBA prior to reaching the delineated project boundaries and nearest protected locations. The applicant concluded the proposed developed will comply with the most restrictive standards of the Chapter 375, § 10(B) noise level limits.

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

The Department finds that the applicant has made adequate provision for the control of excessive environmental noise from the proposed project.

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.

The proposed project includes eight non-contiguous solar panel array fields located on the north side of Route 139, an O&M building and collection substation located off Bessey Lane, and two overhead utility line corridors (1.3-mile-long Collector and 5.2-mile-long Genlead). The proposed Genlead will cross Route 139, Bog Road, East Benton Road, and Richards Road in Benton. The proposed Collector will not cross any roads. The surrounding land use is rural with low-density residential development, large tracts of managed forest, and occasional agricultural fields. Other existing visual features of the landscape include the existing CMP Albion Road Substation, an associated transmission corridor running north-south, another existing CMP transmission corridor running east-west in proximity to Route 139, and an existing cellular tower located on Palmer Road near the proposed project entrance.

The applicant submitted a visual assessment report prepared by T.J. Boyle Associates (TJBA) and dated February 24, 2022. The analysis encompassed a five-mile-radius area of potential effect (APE) and consisted of both a desktop analysis and field investigations at sites most likely to have views of the proposed project. Field investigations were conducted during leaf-off conditions. For sites with potential project visibility, TJBA created photographic simulations to further evaluate visual impacts.

In the report, TJBA identified the proposed project entrance off Bessey Lane and the road crossings of the proposed Genlead as the primary locations of potential visibility. At the Bessey Lane entrance, the proposed O&M building, collection substation, and Genlead will be visible to travelers proceeding east or west on Route 139. The proposed project entrance at the end of Palmer Road will be set back considerably from Route 139 and will be largely screened from views from Palmer Road and nearby residences by intervening vegetation. The proposed eastern solar array field will be briefly visible to travelers heading east on Route 139 for a distance of approximately 0.14 miles. TJBA identified several other potential viewpoints along roads farther from the project site, all at a distance of three miles or more. Based on a photographic simulation of the proposed project from the nearest of these viewpoints (Albion Road, 3.4 miles from the project site) TJBA stated that the proposed project will not be readily apparent on the landscape from this distance, due to the low profile of the proposed project components.

There are no known National, State, or municipal parks, trails, or designated open spaces with visibility of the proposed project. The proposed Genlead will cross Fifteenmile Stream. TJBA stated that the stream is potentially navigable, but visibility of the proposed project would be limited to a short segment of the stream at the proposed crossing. Visibility of the project from other points on the stream is highly unlikely based on vegetation along the stream and elevation differences. The proposed Genlead is consistent with existing powerline transmission corridors and is not anticipated to result in an unreasonable visual impact.

Based on the visual assessment report and the proposed project's location and design, the Department finds that the proposed project will not have an unreasonable adverse effect on the scenic character of the surrounding area.

6. WILDLIFE, FISHERIES, AND HABITAT CONSIDERATIONS:

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.

The applicant's agents surveyed the project site for natural resources in 2019, 2020, and 2022. The survey results were submitted in two reports (one for the solar array area and one for the Genlead) included in Section 7 of the Site Law application and Attachment 9 of the NRPA application. Both study areas are predominantly forested. The reports identified 57 wetlands and four streams within the solar array study area, and 62 wetlands and 10 streams within the Genlead study area. Wetland impacts are discussed in Finding 7. The reports identified 16 significant vernal pools (SVPs) within the delineated study area, as well as mapped deer wintering areas (DWA) and inland waterfowl and wading bird habitat (IWWH).

The Maine Department of Inland Fisheries and Wildlife (MDIFW) provided comments on impacts to wildlife and fisheries on September 7, 2018, and March 17, June 10, and July 22, 2022. MDIFW's comments include discussions of DWAs, SVPs, and IWWH. In addition to these protected habitats, MDIFW comments included concerns with species designated as Endangered or Threatened, or otherwise listed as a Species of Special Concern, with known or suspected occurrences of these species in the project area. MDIFW specifically addressed potential impacts to bats, freshwater mussels, great blue herons, and eastern ribbon snakes. The applicant coordinated with MDIFW during the design of the project on some of these topics and provided responses to MDIFW's comments during the review of the application on April 20, July 11, July 18, and July 26, 2022. The comments and responses are summarized below:

A. Bats:

MDIFW commented that of the eight bat species that occur in Maine, three are listed as Endangered or Threatened pursuant to Maine's Endangered Species Act (12 M.R.S. § 12801), and the remaining five are designated as Species of Special Concern. The applicant stated, and MDIFW concurred, that there are currently no designated maternity roost trees or known hibernacula within 0.25 miles of the project area. The applicant proposes that no tree clearing will take place during the bat pup-rearing period of June 1–July 31. Further, the applicant stated that no talus slopes or rocky features that could serve as bat hibernacula were observed during natural resource surveys of the project area. MDIFW recommended that if

any such features greater than 1,000 square feet in size are identified within 250 feet of the project area during construction, the applicant should contact MDIFW for further review of those areas. The applicant agreed to this recommendation. MDIFW stated that it does not otherwise anticipate the project will result in adverse impacts to bats.

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 bats.

B. Stream Impacts and Freshwater Mussels:

The proposed Genlead will result in overhead utility lines across seven streams, including Fifteenmile Stream, as well as temporary timber mat spans over four streams. No in-stream disturbance is proposed. Vegetation removal within the Genlead corridor will affect approximately 825 linear feet of streams. In its initial 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. MDIFW stated that three species of rare mussels, the yellow lamp mussel (*Lampsilis cariosa*, State Threatened), tidewater mucket (*Leptodea ochracea*, State Threatened), and brook floater (*Alasmidonta varicosa*, State Threatened) occur in the Sebasticook River and yellow lamp mussel occurs in Fifteenmile Stream. To protect water quality for these species, MDIFW recommended a 250-foot buffer of undisturbed vegetation adjacent to Fifteenmile Stream.

The applicant stated that the proposed Genlead crossing of Fifteenmile Stream is unavoidable given the location of the proposed solar arrays and point of interconnection. To minimize impacts to stream quality and riparian buffers, the applicant proposes to apply more restrictive vegetation cutting and maintenance procedures within 25 feet of all streams and within 100 feet of Fifteenmile Stream. The restrictions are detailed in the applicant's Vegetation Maintenance Plan (VMP), prepared by Stantec and last revised July 29, 2022. These include cutting only species capable of growing taller than eight to 10 feet and retaining all other existing vegetation; using only hand-cutting or low ground pressure tree harvesting equipment; no use of herbicides; no refueling of equipment, including chainsaws; and no accumulation of slash. Maintenance cutting in these areas is expected to occur on a three- to four-year cycle.

MDIFW considered the applicant's proposed cutting practices within stream buffers and continued to recommend compensation for any tree cutting shorter than forest canopy height within 100 feet of all streams and within 250 feet of Fifteenmile Stream. The applicant's proposed mitigation plan, discussed further in Finding 7, includes the conservation of several thousand linear feet of shoreline along multiple streams, including Fifteenmile Stream, to compensate for the proposed project's impacts on streams and riparian buffers.

The Department agrees with MDIFW's assertion that vegetation removal within riparian buffers may result in adverse impacts to stream quality and the habitat they provide for various species. However, the Department acknowledges that the proposed stream crossings will affect a limited section of each stream and will not result in any direct stream disturbance. Based on the nature of the proposed project, the information in the record, and MDIFW's comments, the Department finds that the proposed project will not result in unreasonable impacts to riparian buffers, streams, or habitat for rare mussel species provided that the applicant complies with the VMP cutting restrictions for riparian buffers, as described above and executes the mitigation plan discussed in Finding 7.

C. Inland Waterfowl and Wading Bird Habitat and Great Blue Heron:

The applicant designed the proposed solar array fields and associated roads and infrastructure to avoid impacts to mapped IWWH. The proposed Genlead intersects with approximately 530 linear feet of the outer edge of one mapped IWWH, which also contains an active rookery for great blue herons (*Ardea herodias*, Special Concern). During the project design phase, the applicant adjusted the location of the proposed Genlead to reduce impacts within the IWWH, but stated it was unable to avoid the IWWH completely due to landowner constraints. The applicant proposes 0.63 acres of upland clearing and 0.03 acres of wetland clearing within the IWWH. An existing logging road which the applicant intends to use to access the Genlead crosses through the southern edge of the IWWH, affecting 0.45 acres of the IWWH polygon.

MDIFW commented that no new development should be located within 250 feet of any known heron nesting colony, and no construction or clearing should occur within 600 feet of a colony between April 1–August 15 (Sensitive Nesting Period). The applicant incorporated these recommendations into their project design. The proposed VMP states that no motorized clearing, operations, or maintenance activities will occur within the IWWH during the Sensitive Nesting Period, only capable species will be removed, and snags will be retained where possible to provide nesting habitat. After a review of the application, MDIFW commented that the proposed project meets the setback and timing recommendations for the great blue heron rookery. MDIFW commented that impacts within the IWWH should be avoided entirely if possible, and that any remaining impacts following avoidance and minimization efforts should be appropriately mitigated. As discussed in Finding 7, the applicant's mitigation plan includes conservation of over 280 acres of mapped IWWH, including 18 acres within close proximity to the project site.

Based on the nature of the proposed project, the information in the record, and on MDIFW's comments, the Department finds that the applicant has avoided and minimized impacts to the IWWH to the greatest extent practicable, and that the proposed project will not result in unreasonable adverse impacts to the IWWH

and related great blue heron rookery provided that the applicant complies with the VMP cutting restrictions for IWWH and that no motorized equipment is operated within IWWH during April 1–August 15 as described above; and provided that the applicant executes the mitigation plan discussed in Finding 7.

D. Significant Vernal Pools:

The applicant proposes to alter a portion of the 250-foot critical terrestrial habitat (CTH) buffer of six of the SVPs identified in the solar array study area. The proposed alterations include access roads, solar panels, and vegetation clearing to avoid shading of panels. The proposed alterations will be located 60 feet or more from the SVP depression. The proposed alterations will be limited to no more than 25% of the forest canopy within each CTH, in accordance with the SVP habitat management standards in the Department’s Chapter 335 rules for *Significant Wildlife Habitat* (06-096 C.M.R. ch. 335, last amended January 7, 2014), § 9(C).

One SVP (SAD-VP-3) is located within the Genlead right-of-way (ROW). The applicant considered re-routing the Genlead around the SVP but stated that it was unable to obtain landowner permission to shift the Genlead sufficiently to avoid the SVP. The applicant therefore proposes to span the CTH and SVP depression with overhead utility lines. The utility poles for this crossing will be located outside the CTH, and will be taller than typical poles within the Genlead, allowing for greater vegetation retention within the CTH. The proposed VMP requires that within 75 feet of any SVP depression, only selective, hand-cutting techniques will be used to top capable vegetation that may encroach within the 20-foot clearance required between electrical lines and the underlying vegetation. The proposed crossing will affect only 8% of the total CTH of SAD-VP-3. The applicant proposed that between April 1–June 30, no vegetation maintenance using tracked or wheeled equipment will be performed within 75 feet of any SVP depression. No herbicides will be used within 75 feet of any SVP depression.

MDIFW reviewed the datasheets for the vernal pool surveys and confirmed the status of the pools as significant or non-significant as indicated on the final revised plans referenced in Finding 1. In its comments, MDIFW requested a clarification on the minimum tree height to be maintained within the CTH of SAD-VP-3. The applicant responded that the minimum tree height maintained would be 45 feet. MDIFW recommended that the restriction for vegetation management using tracked and wheeled equipment be expanded to apply to the entire CTH rather than just within 75 feet of the SVP. MDIFW also recommended that the exclusion dates be changed to March 15–June 15 to reflect MDIFW’s *Recommended Performance Standards for Maine’s Significant Vernal Pools in Overhead Utility ROW Projects* (March 2012). The applicant incorporated these changes in the latest revised VMP, dated July 29, 2022.

Based on the nature of the proposed project, the applicant's efforts to limit alterations within the habitat, and MDIFW's comments, the Department finds that the applicant has avoided and minimized impacts to SVPs to the greatest extent practicable, and that the project will not result in unreasonable impacts to SVPs provided that the applicant complies with the VMP cutting restrictions for SVPs, and that no tracked or wheeled equipment is operated within the CTH of any SVP during March 15–June 15, as described above.

E. Deer Wintering Areas:

The project area intersects with three mapped DWAs, two within the proposed solar array area (DWA#21043 and DWA#20323) and one within the proposed Genlead (DWA #20322). The DWAs are mapped as indeterminate value and are therefore not considered significant wildlife habitat under the NRPA. However, they are still considered habitat resources subject to Site Law review. MDIFW, in coordination with the applicant, conducted field investigations in 2018 and 2019, and determined that the portion of DWA #20323 within the proposed solar array area did not provide conforming cover conditions necessary as DWA habitat, while the portions of DWA#21043 within the proposed solar array area and DWA #20322 within the proposed Genlead provide moderate-value conforming cover. MDIFW recommended avoiding development within the moderate-value DWAs.

The application states that the proposed project will result in 69.9 acres of disturbance within the moderate-value DWAs, including 64.7 acres of DWA #21043 (14% of the total DWA) and 5.2 acres of DWA #20322 (0.4% of the total DWA). In comments dated March 17, 2022, MDIFW requested clarification on why the proposed DWA impact area was larger (by approximately 30 acres) than indicated on preliminary plans during the field study investigations. MDIFW commented that the applicant did not demonstrate that DWA impacts had been avoided and minimized to the greatest extent practicable and recommended compensation for these impacts.

In its response dated April 20, 2022, the applicant stated that the preliminary impact numbers were lower because they did not include clearing areas between solar panels, shade management areas, and access roads. The applicant also stated that the solar array layout was adjusted during the design phase to avoid impacts to other protected natural resources such as wetlands of special significance and IWWH, which resulted in additional DWA disturbances. The applicant described its iterative design process and use of existing logging roads, which reduced DWA impacts by 18 acres compared to a 2019 version of the project plans. The applicant stated that it preferentially located project components within non-conforming DWA over the moderate-value DWA where possible. The applicant stated that it also preferentially located the proposed alterations within areas of secondary cover (softwood crown closure >70%), rather than primary cover (softwood crown closure 50-70%). The applicant's VMP includes cutting restrictions for the Genlead areas within the DWA,

including retention of non-capable vegetation, topping trees where possible rather than full removal, and favored retention of coniferous species within 50 feet of each pole location in the DWA. The applicant concluded that based on the location of other natural resources and parcel constraints, it was not possible to design the project to completely avoid impacts to DWA while still meeting its contractual requirements for solar energy generation capacity.

MDIFW recommended that the applicant compensate for impacts to the moderate-value DWA at an 8:1 ratio, through either a payment into the Maine Deer Management Fund or acquisition and active management of 559.2 acres of DWA habitat in the vicinity of the proposed project. As discussed in Finding 7, the applicant proposed a mitigation plan that includes the conservation of land in the vicinity of the project site with 678 acres of DWA and a forest management plan that preferentially manages for DWA-conforming vegetation.

Based on the information in the record and MDIFW's comments, the Department finds that the project will not result in unreasonable adverse impacts to DWAs provided that the applicant complies with the VMP cutting restrictions for DWA as described above and executes the mitigation plan discussed in Finding 7.

F. Eastern Ribbon Snake:

In its comments, MDIFW stated that the project area contains potentially suitable habitat for eastern ribbon snakes (*Thamnophis sauritus*, Special Concern). The applicant's agent surveyed the project site for eastern ribbon snakes in May of 2022, in areas, identified in consultation with an MDIFW biologist, as potentially suitable habitat. The applicant submitted the results of the survey in a report titled, "Eastern Ribbon Snake Survey Report," prepared by Stantec and dated June 16, 2022. The report stated that 10 individual eastern ribbon snakes were observed within wetlands located within 250 feet of the project limits of work. The report included proposed best management practices (BMPs) to avoid harm to snakes to be implemented in work areas located within 250 feet of wetland habitats with confirmed eastern ribbon snake occurrences. The BMPs include measures such as, providing information and training for contractors, installing silt fence to deter snakes from entering work areas, use of biological monitors, and timing restrictions for vegetation cutting and site work.

MDIFW reviewed the proposed BMPs and made several recommendations. One of which was that the BMP measures should be applied to all suitable habitats, and areas within 250 feet of those habitats, for eastern ribbon snakes within the project parcel, and not limited those areas where snakes were observed. MDIFW also recommended that initial tree clearing and construction activities take place during the snake active season (April 15–October 15) rather than the inactive season, when snakes may be gathered in shared hibernacula and could be entombed by ground disturbance activities. MDIFW indicated that subsequent vegetation maintenance activities may take place during the snake inactive

season, but should be performed by hand, except that mowing after November 1 is acceptable, unless ambient temperatures are significantly higher than usual.

The applicant submitted a revised Eastern Ribbon Snake Survey Report, dated July 29, 2022, which incorporates most of MDIFW's recommendations. The applicant expanded the areas of BMP implementation, which are shown on a set of maps included as Appendix A of the report. In these areas, the applicant proposes that stumping, grubbing, grading and filling activities take place only during the snake active season. Due to other timing constraints such as avoidance of the bat pup rearing season of June 1–July 31, the applicant stated that it may not be possible to avoid all tree clearing during the snake inactive season, but any work during the inactive season will consist of cutting only, with no stumping or grubbing in snake BMP implementation areas.

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 eastern ribbon snakes provide that the applicant complies with the cutting restrictions, monitoring and reporting requirements, and other BMPs as described above and as more fully detailed in the Eastern Ribbon Snake Survey Report dated July 29, 2022.

G. Habitat Conversion and Fragmentation:

The proposed project will convert over 900 acres of forest land to meadow or shrub habitat, of which 681 acres, across eight solar array fields, will be surrounded by seven-foot-tall perimeter fencing. The fencing will restrict access and travel of large wildlife species. In its comments dated March 17, 2022, MDIFW recommended the use of wildlife permeable fencing with either 12-inch by 12-inch openings at regular intervals at the bottom of the fence, or 12-inch clearance along the bottom of the entire fence. The applicant responded that 12-inch openings or ground clearance could lead to potential human entry and contact with electrical equipment, which is a safety concern. The applicant instead proposed six inches of clearance along the entire perimeter bottom to allow small animal passage. Given the remote location of the project, MDIFW and the Department requested that the applicant provide larger openings in the fence. In a response dated July 18, 2022, the applicant agreed to provide seven inches of clearance along the bottom of the perimeter fence and stated that for safety reasons it cannot provide larger openings.

Based on recent reports MDIFW has received from other solar developments, MDIFW requested that the applicant develop a protocol to ensure timely release of deer that may become trapped within the fenced solar array fields. The applicant stated that the project will employ full-time staff for operations and maintenance, who will regularly monitor the project areas and respond to any occurrences of deer within the fenced array fields, first by monitoring the animal

to determine if it will leave on its own, and second (should the deer appear trapped or stressed) by notifying MDIFW biologists to consult on further action.

In its comments dated June 10, 2022, MDIFW described the region of the project area as containing one of the largest remaining unfragmented blocks of land in central Maine. MDIFW stated that the proposed solar facility will result in significant fragmentation of a nearly 15,000-acre forest block, potentially disrupting lifecycles and movement patterns of wildlife over previously contiguous habitat areas. MDIFW recommended that this landscape-scale impact to habitat be compensated through the conservation of equivalent suitable habitat at a 2:1 ratio of conservation area to impact area. During the review, the Department received comments from an interested entity, TNC, that are consistent with this recommendation.

The Department agrees with MDIFW's assessment that the proposed project will result in landscape-scale habitat fragmentation. The Department acknowledges the role of renewable energy projects in reducing greenhouse gas emissions; however, the Department is still in the process of assessing the impacts of such developments on Maine's natural landscape, especially for large-scale projects such as the applicant's proposed solar facility. To offset habitat fragmentation impacts, the Department agrees that the applicant must provide compensation at a 2:1 or similar ratio. The applicant's proposed mitigation plan is discussed in Finding 7.

The Department finds that the proposed project will not result in unreasonable adverse impacts to habitat connectivity provided that the perimeter fence around the solar array fields is installed with a minimum of seven inches of ground clearance, and provided that the applicant executes the mitigation plan discussed in Finding 7. The Department may continue to revise and adapt the compensation requirements for future projects of this scale and nature as it gains additional information and experience with the long-term effects of large solar projects on Maine's landscape.

Based on the information in the record and MDIFW's comments, the Department finds that the applicant has avoided and minimized significant wildlife 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 the applicant complies with the cutting restrictions described in the VMP dated July 29, 2022; complies with the cutting restrictions, monitoring and reporting requirements, and other BMPs described in the Eastern Ribbon Snake Survey Report dated July 29, 2022; meets the timing restrictions for operation of equipment in IWWH and SVP habitat; installs the perimeter fence with at least seven inches of ground clearance; and executes the mitigation plan, described more fully in Finding 7 below, to compensate for unavoidable impacts to riparian buffers, IWWH, DWA, and overall habitat conversion and fragmentation.

7. WETLAND IMPACTS:

The applicant proposes to permanently fill 23,197 square feet (0.53 acres) of forested wetlands for the construction of access roads, collector lines, transmission line poles, and for grading within the panel array areas. The applicant proposes to remove vegetation from an additional 811,242 square feet (18.63 acres) of wetlands, converting forested and forested/scrub-shrub wetlands to scrub-shrub or meadow wetlands for the creation of shade management areas for solar panels, and due to the proposed Collector and Genlead corridors. The applicant proposes to temporarily alter 60,548 square feet (1.39 acres) of forested wetlands due to the placement of timber mats for construction access.

The proposed permanent wetland alterations include 17,055 square feet (0.39 acres) of fill and 245,308 square feet (5.63 acres) of vegetation clearing within wetlands that are considered wetlands of special significance because they contain at least 20,000 square feet of open water or emergent vegetation, or are located within 25 feet of a river, stream, or brook. These alterations are due to proposed road crossings, utility line crossings, and utility poles. The proposed fill areas within the wetlands of special significance are not located within the areas of open water or emergent vegetation.

The Department's rules, *Wetland and Waterbodies Protection*, 06-096 C.M.R. ch. 310 (effective November 11, 2018), interpret and elaborate 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 Stantec and last updated June 7, 2022. The purpose of the proposed project is to develop a 110-MW solar energy facility to provide a source of renewable energy to the New England Independent System Operation electric market, as well as to help achieve the goals of the Maine Climate Council's *Climate Action Plan*, which include reducing greenhouse gas emissions and increasing the amount of renewable power generated in Maine. The applicant selected a project site based on several site selection criteria including proximity to transmission infrastructure,

compatibility with existing land uses, suitable topography, available upland area, and landowner interest and coordination. The applicant identified the existing CMP Albion Road Substation as the preferred point of interconnection (POI) to the electrical transmission system, as it has sufficient capacity to accept the anticipated power generated by the proposed project without extensive upgrades.

Having selected the POI, the applicant considered five potential parcels in the area, including the selected site, that could potentially tie into the POI. The applicant compared the five sites in terms four main selection criteria: 1) ease of parcel acquisition, 2) transmission line challenges, 3) natural resource impacts, and 4) potential visual impacts. Except for the selected site, each alternative site had a high level of challenges in at least one category of site selection criteria. Two of the alternatives would require coordination among five or more landowners for the solar array fields; two alternative sites would have required a transmission line at least nine miles long; three of the alternative parcels would have required the transmission line to cross the Kennebec River, Sebasticook River, and Interstate 95; two of the alternatives had more extensive wetlands or other natural resources on site; and one of the alternatives would have resulted in significant visual impacts due to existing open fields. In comparison, the applicant determined that the selected site would require coordination among only two landowners for the solar array fields, a relatively shorter transmission line with no major river crossings, relatively fewer or less extensive natural resources on site, and minimal visual impact due to topography and surrounding forest.

The applicant considered three main criteria in selecting the route for the proposed Genlead: 1) ease of ROW acquisition, 2) visual impacts on abutting landowners, and 3) environmental impacts, including natural resources, historic structures and cultural resources. The applicant compared these criteria among four possible routes for the Genlead. The applicant determined that all four routes would result in comparable natural resource impacts, but the selected route involved the lowest potential impacts to significant wildlife habitat and the second lowest potential impacts on mapped wetlands. The selected route also had a lower potential visual impact on landowners and nearby residences and involved fewer parcels.

Based on field studies of the project parcel, the applicant considered several iterative solar array layouts and selected a design that avoids the majority of natural resources present, particularly wetlands of special significance, in which solar panels and shade management activities are not allowed based on the standards of Chapter 310. However, the applicant determined that it was not possible to design the proposed project to completely avoid wetland impacts while still meeting the project purpose of developing a solar energy facility with a rated capacity of 110 MW. In light of these considerations, the applicant stated that there was no other 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 configured the proposed solar array fields in a non-contiguous layout to maximize the use of uplands, existing agricultural areas, and existing access roads. The applicant designed the proposed road and utility line wetland crossings to be located at narrow points in the wetlands and to be co-located with existing crossings where possible. The majority of proposed wetland impacts (97%) consist only of vegetation clearing, with no stumping or grubbing. These wetlands will experience a conversion in cover type but will continue to function as wetlands. After initial construction of the proposed Genlead and Collector, vegetation maintenance will be conducted primarily by selective hand-cutting. The applicant proposes to use timber mats within wetlands where temporary construction access is necessary in order to minimize disturbance of wetland soils and vegetation. The applicant stated that as it is currently designed, the proposed project minimizes impacts to freshwater wetlands to the maximum extent practicable.

C. Compensation. Pursuant to the NRPA, 38 M.R.S. § 480(Z), the Department may require compensation for impacts to certain types of protected natural resources due to a proposed activity. Compensation may include the restoration, enhancement, creation, or preservation of an area or areas that have functions and values similar to the area impacted by the activity, unless otherwise approved by the Department. Chapter 310, § (5)(C) allows the Department to require compensation to achieve the goal of no net loss of wetland functions and values. Title 38 M.R.S. § 480-D(3) and Chapter 335, § (3)(D) provide for compensation for impacts to significant wildlife habitat and allow the Department to require compensation to achieve the goal of no net loss of habitat functions and values. Every case where compensation may be applied is unique due to differences in resource type, habitat type, and geographic location. For this reason, the method, location, and amount of compensation required by Department through the permitting process is specific to each specific project.

The applicant proposes to permanently fill or grade 23,197 square feet of freshwater wetlands, including 17,055 square feet of wetlands of special significance. The applicant proposes to alter vegetation from 811,242 square feet of freshwater wetlands, including 245,308 square feet of freshwater wetlands of special significance. The degree of alteration for specific wildlife related aspects of the proposed project is discussed in Finding 6.

The applicant submitted a functions and values assessment (Attachment 12 of the NRPA application) for the wetlands that would be impacted by the proposed project. Overall, the assessment identified the principal functions of the majority of the wetlands evaluated to be wildlife habitat, nutrient removal, sediment/toxicant retention, and flood-flow alteration. A subset of the wetlands evaluated also exhibit groundwater recharge/discharge as a principal function. Wetlands that contain streams also function as shoreline stabilization. The applicant commented that based on the nature of the proposed impacts, which are primarily vegetation cutting, the functions of the wetlands will be largely retained.

As discussed in Finding 6, the proposed project will result in seven overhead utility stream crossings, affecting 825 linear feet of stream shoreline; 69.9 acres of clearing within moderate-value DWA; and over 900 acres of forest clearing. MDIFW recommended compensation for the proposed impacts to riparian buffers, DWA, and overall habitat conversion and fragmentation.

Based on consultation with the Department, the applicant submitted a mitigation plan that addresses compensation efforts for the lost functions and values of permanently altered freshwater wetlands, streams, significant wildlife habitat, and for overall habitat conversion and fragmentation. The mitigation plan consists of a combination of an In-Lieu Fee (ILF) payment and preservation of three conservation parcels.

1. In-Lieu Fee: The Maine Natural Resource Conservation Program (MNRCP) is a cooperative program between the Department and the US Army Corps of Engineers. The MNRCP compensates for impacts to protected natural resources in Maine by funding the restoration, enhancement, and preservation of similar resources with similar functions and values. Fees collected by the Department through the ILF program are allocated to compensation projects funded through the MNRCP.

The applicant proposes to compensate for the proposed direct wetland impacts (fill and grading) through a contribution to the ILF program of the MNRCP in the amount of \$210,517.96. The applicant submitted the payment during the review of the application, after finalizing the proposed mitigation plan based on discussions with the Department. The Department received the payment on July 12, 2022.

2. Conservation: The applicant proposes to compensate for impacts to freshwater wetlands (conversion), riparian buffers, IWWH, DWA, and overall habitat conversion and fragmentation through the conservation of three land parcels:
 - a. Bessey Mitigation Parcel: This is a 1,041-acre parcel of land, comprised of four lots located in Benton, Albion, and Unity Township, currently managed for timber production. It includes 7,470 linear feet of shoreline along Fifteenmile Stream, 678 acres of mapped DWA, 18 acres of mapped IWWH, and 269 acres of mapped wetlands. The applicant proposes to protect the parcel from development through the execution of a deed restriction. The deed restriction will allow for continued timber management in accordance with a plan titled, "Forest Management Plan," prepared by a licensed professional forester, which incorporates MDIFW's BMP guidelines for timber harvests within DWAs. The plan also includes BMPs for harvests near water bodies and wetlands to protect these resources. The proposed deed restriction will remain in effect through the life of the project and an additional 10 years after the date of completion of decommissioning of the proposed project.
 - b. Shirley Mitigation Parcel: This is a 526-acre parcel of land located in the Town of Shirley, approximately 51 miles north of the project site. It is

currently managed for timber production. The parcel includes 5,200 linear feet of shoreline along the West Branch of the Piscataquis River, 3,730 linear feet of shoreline along Stricklin Brook, 263 acres of mapped IWWH, and 217 acres of mapped wetlands, the majority of which are a part of West Shirley Bog. The applicant proposes to protect the parcel from development in perpetuity through the execution of a deed restriction. The deed restriction will allow for limited forest management activities consistent with a land management plan that is approved in writing by the Department. The applicant did not submit a land management plan for the parcel, but stated that the plan, if proposed, would require that any harvest activities take place in upland areas, at least 200 feet from any streams or wetlands, and in accordance with the Maine Forest Service's *Best Management Practices for Forestry: Protecting Maine's Water Quality*. The deed restriction will stipulate that if a land management plan is not approved by the Department, no timber harvesting or vegetation removal may occur on the parcel. The New England Forestry Foundation or a similar organization would hold the fee interest in the parcel.

- c. Readfield Mitigation Parcel: This is a 331-acre parcel of land located in the Town of Readfield, approximately 28 miles southwest of the project site. The parcel is located adjacent to existing conserved lands and would create a contiguous 982-acre block of protected land. The parcel includes 3,765 linear feet of shoreline along Gardner Brook, 2,875 linear feet of shoreline along an unnamed tributary to Gardner Brook, 170 acres of mapped DWA, 11 acres of mapped IWWH, and 48 acres of mapped wetlands. The applicant proposes to protect the parcel from development through the execution of a deed restriction or a conservation easement. The restriction or easement would allow limited timber harvesting with the same restrictions described for the Shirley parcel, with the addition that any cutting within the DWA would be consistent with MDIFW's BMP guidelines. Due to the uncertainty of acquiring this parcel, the applicant proposes that in the event the parcel cannot be acquired and protected as described above, the applicant will make an additional contribution to the ILF Program in the amount of \$544,611.23.
- d. Department Review of the Preservation Proposal: The Department reviewed the draft deed restriction and easement language and determined that it meets the Department's standards for conservation parcels. Within 90 days of the date of this Order, the applicant must submit a copy of the executed and recorded deed restrictions or conservation easements for the three mitigation parcels to the Department. In the event that the applicant is unable to acquire the Readfield Mitigation Parcel within 60 days of the date of this Order, the applicant must submit a payment in the amount of \$544,611.23 to "Treasurer, State of Maine," and directed to the attention of the In-Lieu Fee Program Administrator at 17 State House Station, Augusta, Maine 04333. If the ILF payment must be submitted within 10 days of the expiration of the 60-day acquisition period.

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 within 90 days of the date of this Order the applicant submits a copy of the executed and recorded deed restrictions or easements for the three conservation parcels or in the event the Readfield parcel cannot be acquired, the application submits the additional ILF payment, all as described above.

8. UNUSUAL NATURAL AREAS:

The applicant consulted with the Maine Natural Areas Program (MNAP) during the design phase of the proposed project and received comments from MNAP, dated August 15, 2018, stating that the general project vicinity contains several mapped occurrences of rare plants or plant communities, including Silver Maple Floodplain Forest, Unpatterned Fen, Wild Garlic, MacGregor's Rye, Swamp White oak, and Barren Strawberry. The applicant designed the proposed project to avoid these features to the extent practicable. During the review of the application, MNAP commented that based on the refined project layout and the applicant's natural resource survey reports, the only rare botanical feature within the project footprint is Wild Garlic (*Allium canadense* L., Species of Special Concern), located in a small floodplain community on the northern edge of Fifteenmile Stream near the proposed Genlead crossing. MNAP recommended that direct impacts such as grubbing, grading, and rutting be avoided in this area, and that any heavy equipment in this area operate on mats or over frozen ground to minimize soil disturbance and compaction.

The applicant stated that the observed population of Wild Garlic is located outside the proposed Genlead limits of disturbance, and that clearing for the proposed Genlead is anticipated to occur over frozen ground conditions, will not include stumping or grubbing, and will utilize timber mats.

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

9. HISTORIC SITES:

Based on initial consultation with the Maine Historic Preservation Commission (MHPC), the applicant conducted Phase I architectural and archaeological surveys of the project area in 2021 and 2022 (Section 8 of the Site Law application). The survey report, prepared by SEARCH and dated January 2022, identified one site eligible for listing in the National Register of Historic Places (Maine Central Railroad, located 2.3 miles from the project site). The applicant stated that based on distance and topography, the proposed project will not result in any visual or other adverse impacts to the historic resource.

The survey also identified three mid-19th century homesteads within the proposed solar array fields that may qualify for historic resource protection. These areas are noted on the project plans as “cultural exclusion areas,” surrounded by an 82-foot archaeological monitoring zone. The applicant proposes to clear vegetation within these areas through hand-cutting or reach-in methods, with no direct ground disturbance. The applicant also proposes to have an archaeological monitor with stop work authority present when construction occurs within the 82-foot monitoring zone of these areas. The applicant proposes to maintain fencing around the cultural exclusion areas while the project is operational.

MHPC reviewed the proposed project and the applicant’s architectural and archaeological survey and report. In a letter dated April 25, 2022, MHPC acknowledged and agreed with the conclusions in the applicant’s survey. MHPC further determined that no historic or archaeological properties will be affected by the proposed project.

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

10. BUFFER STRIPS:

The applicant designed the proposed project to maintain forested buffers between the proposed solar array fields and abutting property boundaries. The applicant does not propose any formal visual or natural resource buffers other than those discussed in Finding 6 and otherwise built into the design. Buffers for stormwater management are discussed in Finding 12.

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

11. SOILS:

The applicant’s agent conducted a Class B high intensity soil survey of the proposed O&M building and collection substation sites; a Class C medium-high intensity soil survey of the proposed solar array areas and Collector; and a Class L linear survey for the proposed Genlead. The applicant submitted a map and report containing the survey results, including soil test pit logs, prepared by a certified soils scientist and dated March 21, 2022. The report identified potential limiting factors for construction of the proposed project, including a high water table, lateral surface flow in some non-wetland areas, areas with shallow bedrock, and surface and subsurface stoniness and boulders. The applicant stated that blasting may be necessary in areas of shallow bedrock to install the proposed solar panel racking foundations, the collection substation, and buried collector lines. The applicant provided a general blasting plan (Section 20 of the Site Law application) that conforms to the performance standards of 38 M.R.S. § 490-Z(14).

The soils map and report were reviewed by the Geology Unit of the Department’s Bureau of Land Resources. The Geology Unit recommended that if blasting for construction will occur within 500 feet of any off-site structure, then a blasting plan tailored to the project

site and signed by a qualified blaster, as well as a map showing the anticipated blasting sites, should be provided to the Department for review and approval.

Based on the Geology Unit'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 blasting activities within 500 feet of an off-site structure, a site-specific blasting plan is submitted to the Department for review and approval as described above.

12. STORMWATER MANAGEMENT:

The proposed project includes approximately 22.79 acres of developed area, all of which is impervious area. The proposed impervious area includes 19.60 acres of roads (including 0.18 acres within wetlands), 1.43 acres for the collection substation, 1.25 acres of inverter/transformer pads, 0.26 acres for the O&M building, and 0.25 acres due to solar panel racking posts. The project site lies within the watersheds of the Lower Sebasticook River and Fifteenmile Stream. 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 proposed stormwater management system consists of two underdrained soil filters for the O&M building, vegetated buffers for the access roads and equipment pads, level spreaders, and a self-treating gravel switchyard pad for the collection substation. The area under the solar panels, which must be revegetated to meadow conditions following initial site work, is considered self-treating and must not be mowed more than two times per year.

A. Basic Standards:

(1) Erosion and Sedimentation Control: The applicant submitted an Erosion and Sedimentation Control Plan, which is shown on Sheet C32 of the solar array plan set referenced in Finding 1. The plan is based on the performance standards contained in Appendix A of Chapter 500 and the Best Management Practices outlined in the Maine Erosion and Sediment Control BMPs, which were developed by the Department. This plan was reviewed by the Department's Bureau of Land Resources, Stormwater Engineering Team (SET).

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. The applicant requested that it be allowed to open multiple 10-acre work sites at one time to accommodate the developer's anticipated timeline. SET commented that a second work area with no more than 10 acres of exposed soil at a time may be opened up simultaneously, but only if the two work areas are located in separate major watersheds

and are attended by separate work crews, each with a dedicated supply of erosion and sedimentation control materials sufficient for the respective work areas.

The applicant submitted a construction phasing plan for the proposed project, dated July 22, 2022. SET recommended that once construction begins, the applicant must submit an updated phasing plan no less frequently than monthly, to SET, showing the current progress of work.

Given the size of the project and its proximity to protected natural resources, the applicant must retain the services of two, third party inspectors in accordance with the Special Condition for Third Party Inspection Program, which is attached to this Order. During the review of the application, and in response to feedback from the Department, the applicant retained the services of two third party inspectors which the Department had previously accepted as qualified candidates, and which the Department determined are appropriate for the proposed project. The applicant held a pre-construction meeting on July 14, 2022, to discuss the construction schedule and the erosion and sediment control plan. The meeting was attended by the applicant's representative, Department staff, the design engineer, the contractor, and one 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 SET. The applicant will be responsible for the maintenance of all facilities including the stormwater management system.

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

Based on SET'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 the applicant limits the amount of exposed soil during construction, submits monthly construction phasing plans, and retains the services of two third-party inspectors, 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 Best Management Practices (BMPs) that will control runoff from 95% of the impervious and 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 75% of the impervious and developed area.

The forested and meadow stormwater buffers will be protected from alteration through the execution of a deed restriction or memorandum of lease agreement. The applicant proposes to use the deed restriction language contained in Appendix G of Chapter 500. Prior to the start of construction, the location of any forested or meadow buffers outside of the limits of grading must be temporarily marked on the ground. Prior to the start of commercial operation of the solar facility, all stormwater buffers located outside the solar array fields must be permanently marked on the ground and the applicant must execute and record the deed restrictions or memoranda of lease agreement, including a plot plan identifying the location of each buffer on the project parcel. The applicant must submit a copy of each recorded agreement along with the plot plan to the Department within 60 days of its recording.

The stormwater management system proposed by the applicant was reviewed by, and revised in response to comments from, SET. SET recommended that the applicant retain the design engineer or other qualified professional to oversee construction of the underdrained soil filters, substation pad, and level spreaders 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 or if the project takes more than one year to complete, at least once per year, the applicant must submit a log of inspection reports detailing the items inspected, photographs taken, and the dates of each inspection for SET to review. After a final review, SET 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 SET'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 buffers are marked on the ground, the buffer deed restrictions or memoranda of lease agreement are recorded, a copy of each recorded agreement is submitted to the Department, and the applicant meets the inspection and reporting requirements, 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 four analysis points (identified as East, South, Southeast, and West). 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 East, at which the post-development peak flow will be slightly increased over the pre-development peak flow for one of the four subcatchments that drain to the analysis point. Since the increase of peak flow rates at analysis point East 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).

SET reviewed the applicant's proposal to detain stormwater on the site. After a final review, SET commented that the increase of peak flow from the project is an insignificant increase in flow. SET 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 SET'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 East, 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 fuel and hydraulic and lubricating oils for vehicles and construction equipment as potential sources of contamination during project construction. Oils and lubricants within the project electrical equipment are sources of potential contamination during project operations. The applicant developed a Groundwater Protection Plan for the proposed project (Exhibit 15-1 of the Site Law application, last revised March 2022), which describes spill prevention, response, and notification procedures for the project. Sufficient supplies of spill cleanup and containment supplies will be maintained on site. Any herbicide use in the proposed vegetation management areas will be applied in accordance with the standards and regulations of the Maine Board of Pesticide Controls.

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

14. WATER SUPPLY:

The only component of the proposed project that will require water usage during operation is the proposed O&M building. The applicant estimates that the O&M building will use between 120 and 200 gallons of water per day, based on use by approximately 10 employees. The applicant proposes to install a private well near the O&M building. The applicant submitted a letter dated March 17, 2022, from Weeks and Sons Well Drilling stating that the proposed well location is anticipated to provide an adequate water supply for the anticipated use.

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 the proposed O&M building will discharge approximately 150 gallons of wastewater per day. The applicant proposes to construct a subsurface wastewater disposal system to handle the anticipated discharge. The proposed disposal system is shown on Sheet C-1 of the solar array plan set referenced in Finding 1. The applicant submitted soils information and an HHE-200 Form for the proposed disposal system. This information was reviewed by, and revised in response to the comments of, the Geology Unit of the Department's Bureau of Land Resources.

Based on the Geology Unit's comments, the Department finds that the proposed wastewater disposal systems will be built on suitable soil types.

16. SOLID WASTE:

The proposed project will generate approximately 325,000 cubic yards of tree clearing debris. Valuable timber will be sold, while all stumps, brush, and non-valuable timber generated from the project 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 4,615 cubic yards of construction debris, primarily in the form of carboard debris and wood pallets from solar panel shipping materials. The applicant proposes to use a licensed hauler to transport the waste materials to Waste Management's Crossroads Landfill located in Norridgewock. The applicant provided a list of several licensed non-hazardous waste transporters it may engage to transport the waste materials, and submitted a letter from Waste Management dated December 20, 2021, stating that the Crossroads Landfill has the capacity to accept the proposed materials.

The project was reviewed by the Department's Division of Materials Management (DMM). In comments dated May 19, 2022, DMM stated that the proposed waste haulers and receiving facility are currently in compliance with the Maine Solid Waste Management Rules and that the applicant's plan for disposal of solid waste is acceptable.

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

17. FLOODING:

The proposed solar array fields, collector lines, collector substation, and O&M building are not located within the 100-year flood plain of any river or stream. The proposed Genlead will cross through the 100-year flood plain of Fifteenmile Stream and a wetland complex located west of East Benton Road. Based on the small footprint of electrical poles, the applicant stated that the Genlead will not affect the flood storage capacity of these areas. The applicant stated that the proposed conversion of forest to scrub-shrub or

early successional vegetation within these flood zones to construct the Genlead corridor will improve runoff infiltration due to increased density of low vegetation cover and associated root systems.

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

18. DECOMMISSIONING PLAN:

Effective October 18, 2021, all solar energy developments which occupy three or more acres are subject to the decommissioning requirements contained in 35-A M.R.S. §§ 3491-3496. These requirements apply to solar energy developments previously permitted by the Department if construction has not begun after October 1, 2021 or if the project undergoes a transfer of ownership after October 1, 2021.

In order to facilitate and ensure appropriate removal of the solar components when they reach the end of their useful life or if the applicant ceases operation of the facility, the Department requires applicants to demonstrate, in the form of a decommissioning plan, the means by which decommissioning will be accomplished. The applicant submitted a decommissioning plan (Section 27 of the Site Law application, last revised March 25, 2022), which includes a description of the trigger for implementing decommissioning activities, a description of the work required, an estimate of decommissioning costs, and a discussion of financial assurance.

A. Trigger for implementation of decommissioning. The solar panels have an expected operational life of 25 to 30 years, with the potential for extended operation with maintenance and upgrades. However, other factors may trigger the requirement for decommissioning before 25 to 30 years have passed. The applicant's proposal is that the solar facility would be decommissioned when the lease is terminated or when the facility ceases to generate electricity for a continuous period of twelve months. In the case of a force majeure or other event which causes the project to fail to generate electricity for 12 months, the applicant can submit to the Department, for review and approval, reasonable evidence that the project can be operational within 12 months.

If reasonable evidence cannot be supplied, or if the applicant chooses to forgo this submission to the Department, decommissioning must begin within 18 months of the cessation of power generation at the facility.

B. Description of work. The decommissioning plan outlines the applicant's proposal for how the arrays and other components of the proposed project will be dismantled and removed from the site. Portions of the proposed project (approximately 15.4 acres located off Palmer Road in Unity Township) are located on land defined as "farmland" in 35-A M.R.S. § 3491(3). For this reason, subsurface components will be removed to a minimum of 48 inches below grade or the top of bedrock, whichever is less, in all areas identified as farmland, and to a minimum of 24 inches below grade or the top of bedrock in all other areas. The portions of the project located on farmland are shown on a figure

titled, “Farmland Areas,” prepared by Stantec and dated July 22, 2022. All designated farmland will be restored to conditions sufficient to support resumption of farming or agricultural activities.

Upon decommissioning, all disturbed areas will be regraded, as necessary, and then reseeded following removal of subsurface components. As applicable, the erosion control notes and details shown on Sheets C-32 and D-1 of the plan set referenced in Finding 1 will be implemented during decommissioning activities as well as during construction of the project. Erosion control details will be included on the final decommissioning plans and the erosion control narrative will be included in the project specifications to be provided to the contractor.

At the time of decommissioning, the applicant must submit a plan for continued beneficial use of any project components proposed to be left on-site to the Department for review and approval.

Any solid waste generated as a result of decommissioning must be either recycled or disposed of at a facility that holds a license issued pursuant to the Solid Waste Management Rules and is in compliance with that license.

C. Financial Assurance. The applicant estimates that the current cost for decommissioning the project will be \$7,873,900.00. The applicant submitted a surety bond (Bond #PB02230800215), issued by The Philadelphia Indemnity Insurance Company and dated July 7, 2022, to cover the estimated cost of decommissioning. The Department reviewed the bond and determined that it meets the requirement for financial assurance for decommissioning.

D. Plan Update. The applicant will review the decommissioning plan and costs of decommissioning and update the financial assurance beginning 15 years after the date of this Order and every five years thereafter. Each update to the financial assurance must be submitted to the Department for review and approval by December 31st of the year in which the update is due.

The Department finds that the applicant’s proposal adequately provides for decommissioning, grading and revegetation, and financial capacity, provided that the applicant submits periodic updates of the decommissioning cost and financial assurance; submits a plan for continued beneficial use of any development components proposed to be left on site at the time of decommissioning; and recycles or disposes of solid waste generated by decommissioning activities at a licensed facility; all as described above.

19. MAINE LAND USE PLANNING COMMISSION CERTIFICATION:

Portions of the project site are located in Unity Township, which is an unorganized territory of the State. The proposed project was reviewed by the Maine Land Use Planning Commission (LUPC) to determine whether the project is an allowed use in the subdistricts affected and whether the project meets the LUPC’s land use standards

applicable to the project that are not considered in the Department's review. The LUPC standards applicable to this project include public health, safety, and general welfare; land division history; vehicular circulation, access and parking; lighting; dimensional requirements (lot size, road frontage, setbacks, and structure height); and vegetation clearing.

In Commission Determination #SLC-16, dated February 18, 2022, the LUPC certified that the project conforms with the applicable regulatory and statutory requirements, and plans adopted pursuant to 12 M.R.S. Chapter 206-A, and meets the Commission's Land Use Standards applicable to the project that are not considered in the Department's review, subject to conditions of approval. The conditions of approval, detailed in the Commission Determination, may be enforced by either the LUPC or the Department.

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

- A. The proposed activity will not unreasonably interfere with existing scenic, aesthetic, recreational, or navigational uses.
- B. The proposed activity will not cause unreasonable erosion of soil or sediment.
- C. The proposed activity will not unreasonably inhibit the natural transfer of soil from the terrestrial to the marine or freshwater environment.
- D. The proposed activity will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic habitat, travel corridor, freshwater, estuarine, or marine fisheries or other aquatic life provided that the applicant meets the requirements of Findings 6 and 7 and the corresponding 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 and 35-A §§ 3491-3496:

- A. The applicant has provided adequate evidence of financial capacity and technical ability to develop the project in a manner consistent with state environmental standards provided that the applicant meets the requirements of Finding 2 and the corresponding condition below.
- B. The applicant has made adequate provision for fitting the development harmoniously into the existing natural environment and the development will not adversely affect existing uses, scenic character, air quality, water quality or other natural resources in the municipality or in neighboring municipalities provided that the applicant meets the requirements of Findings 6 and 7 and the corresponding conditions below.
- 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 condition 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 conditions below.
- E. The proposed development will not pose an unreasonable risk that a discharge to a significant groundwater aquifer will occur.
- F. The applicant has made adequate provision of utilities, including water supplies, sewerage facilities and solid waste disposal required for the development and the development will not have an unreasonable adverse effect on the existing or proposed utilities in the municipality or area served by those services.
- G. The activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties nor create an unreasonable flood hazard to any structure.
- H. The applicant has made adequate provisions to achieve decommissioning of the solar power facility provided that the applicant meets the requirements of Finding 18 and the corresponding conditions below.

THEREFORE, the Department APPROVES the application of THREE CORNERS SOLAR, LLC to construct a solar energy facility, collection substation, overhead transmission lines, and other associated infrastructure, and to eventually decommission the solar facility, as described in Finding 1, SUBJECT TO THE FOLLOWING CONDITIONS and all applicable standards and regulations:

1. The Standard Conditions of Approval, a copy attached.
2. In addition to any specific erosion control measures described in this order, 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. Within 60 days of the date of this Order, the applicant shall submit evidence that the construction loans for the project have been finalized. Alternatively, the applicant may submit evidence of any other form of financial assurance consistent with Department Rules, Chapter 373, § 1, to the Department for review and approval.
5. The applicant and its agents shall conduct vegetation cutting and maintenance in accordance with the approved Vegetation Maintenance Plan, revised July 29, 2022, which includes restrictions on cutting practices within riparian buffers, IWWH, DWA, eastern ribbon snake BMP implementation areas, and within 250 feet of SVPs.
6. Where the Genlead intersects with IWWH, no motorized clearing, operations, or maintenance activities shall be conducted during the Sensitive Nesting Period of April 1–August 15.
7. No tracked or wheeled equipment shall be operated within 250 feet of an SVP during March 15–June 15.
8. The applicant and its agents shall follow the approved best management practices described in the Eastern Ribbon Snake Survey Report, revised July 29, 2022. The BMPs shall be applied in the snake BMP implementation areas indicated in Appendix A of the report.
9. No stumping, grubbing, or grading shall take place in designated snake BMP implementation areas during the snake inactive period of October 16–April 14.
10. The perimeter fence around the solar array fields shall be installed with a minimum of seven inches of ground clearance to allow for small wildlife passage.
11. The applicant shall retain at least one qualified and trained biological monitor to conduct initial sweep surveys of work areas prior to the start of stumping, grubbing, grading, or filling activities; regularly inspect eastern ribbon snake BMP measures; and report snake observations to MDIFW, all as described in the Eastern Ribbon Snake Survey Report. If

multiple work sites within snake BMP areas are active at once, the applicant shall retain a second biological monitor to assist in initial sweep surveys.

12. Within 90 days of the date of this Order, the applicant shall submit a copy of the executed and recorded deed restrictions for the Bessey Mitigation Parcel and the Shirley Mitigation parcel.
13. Within 60 days of the date of this Order, the applicant shall acquire the Readfield Mitigation Parcel, and shall submit an executed deed restriction or conservation easement within 30 days of parcel acquisition. If the applicant cannot acquire the parcel within 60 days of the date of this Order, the applicant shall submit a payment in the amount of \$544,611.23 to “Treasurer, State of Maine,” to the attention of the In-Lieu Fee Program Administrator at 17 State House Station, Augusta, Maine 04333. The ILF payment must be submitted within 10 days of the expiration of the 60-day acquisition period. A copy of this Order shall be included or referenced with payment submittal.
14. Prior to any blasting activities within 500 feet of an off-site structure, the applicant shall submit a site-specific blasting plan, signed by a qualified blaster, to the Department for review and approval.
15. The area under the solar panels shall be revegetated to meadow conditions following initial site work and shall not be mowed more than two times per year.
16. 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. A second work area may be opened up simultaneously, also with no more than 10 acres of exposed soil at a time, only if the two work areas are located in separate watersheds and are attended by separate work crews, each with a dedicated supply of erosion and sedimentation control materials sufficient for the respective work areas.
17. The applicant shall submit an updated phasing plan showing the progress of construction to SET no less frequently than once per month, until civil construction on the project is complete.
18. Prior to the start of construction, the applicant shall place temporary markers at the boundaries of all stormwater buffers located outside the limits of grading. Prior to the start of commercial operation of the solar facility, the applicant shall place permanent markers at the boundaries of all stormwater buffers that are located outside the solar array fields.
19. Prior to the start of commercial operation of the solar facility, the applicant shall execute and record the deed restrictions or memoranda of lease agreement containing the stormwater buffer restrictions and a plot plan identifying the location of each buffer. The applicant shall submit a copy of each recorded agreement to the Department within 60 days of its recording.

20. The applicant shall retain the design engineer or other qualified professional to oversee construction of the underdrained soil filters, the collection substation, and the level spreaders throughout the development. Within 30 days from completion of the entire system or if the project takes more than one year to complete, at least once per year, the applicant shall submit a log of inspection reports detailing the items inspected, photographs taken, and the dates of each inspection to SET for review.
21. The applicant shall retain the services of two, third-party inspectors in accordance with the Special Condition for Third-Party Inspection Program, which is attached to this Order.
22. The applicant shall decommission the project when it ceases to generate electricity for a continuous period of 12 months. In the case of a force majeure or other event that causes the project to fail to generate electricity for 12 months, the applicant may submit to the Department, for review and approval, reasonable evidence that the project can be operational within 12 months. Absent approval, or if the applicant chooses to forgo this submission to the Department, the solar energy development shall be decommissioned in accordance with the decommissioning plan.
23. The applicant shall maintain financial assurance sufficient to cover the cost of decommissioning throughout the life of the solar energy development, including through decommissioning.
24. The applicant shall review the decommissioning plan and costs of decommissioning the project and update the financial assurance 15 years after the date of this Order and every five years thereafter. Each update to the financial assurance shall be submitted to the Department for review and approval by December 31st of the year in which the update is due.
25. The applicant shall notify the Department at least 30 days prior to the initiation of decommissioning.
26. At the time of decommissioning, the applicant shall submit a plan for continued beneficial use of any project components proposed to be left on-site to the Department for review and approval.
27. Properly installed erosion control measures shall be installed prior to beginning decommissioning, and all disturbed soil shall be stabilized immediately upon project completion, in accordance with 38 M.R.S. § 420-C.
28. Any solid waste generated as a result of decommissioning shall be either recycled or disposed of at a facility that holds a license issued pursuant to the Solid Waste Management Rules and in compliance with that license.

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 29th DAY OF July, 2022.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: David R. Madore
For: Melanie Loyzim, Commissioner

PLEASE NOTE THE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES.

JEM / L29746ANBNCNDNENFNNGN / ATS# 89077, 89079, 89080, 89114, 89115, 89116, 89117

FILED
July 29th, 2022
State of Maine
Board of Environmental Protection

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

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

DEPLW078-B2001

November 2008

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 geo-technical 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 30th calendar day from which the Commissioner's decision was filed with the Board, as determined by the received time stamp on the document or electronic mail). Appeals filed after 5:00 p.m. on the 30th calendar day from which the Commissioner's decision was filed with the Board will be dismissed as untimely, absent a showing of good cause.

HOW TO SUBMIT AN APPEAL TO THE BOARD

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

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

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

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

REQUIRED APPEAL CONTENTS

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

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

OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

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

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

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

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

II. JUDICIAL APPEALS

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

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

ADDITIONAL INFORMATION

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

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