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

DEPARTMENT ORDER

IN THE MATTER OF

WOODLAND PULP LLC	) MAINE WATERWAY DEVELOPMENT AND
Baileyville, Washington County	) CONSERVATION ACT
WOODLAND FISH PASSAGE	) WATER QUALITY CERTIFICATION
ENHANCEMENT PROJECT	)
L-031368-34-A-N (approval)	) MWDCA – MAINTENANCE & REPAIR

Pursuant to the provisions of the Water Classification Program, 38 M.R.S. §§ 464–470, the Maine Waterway Development and Conservation Act, 38 M.R.S. §§ 630–638, the Administrative Regulations For Hydropower Projects, 06-096 C.M.R. 450 (effective September 1, 1987), and Section 401 of the Clean Water Act, the Department of Environmental Protection (Department) has considered the application of WOODLAND PULP LLC (Woodland or Applicant) with the supportive data and other related materials on file and FINDS THE FOLLOWING FACTS:

1. APPLICATION SUMMARY

A. Application

On October 28, 2024, Woodland submitted an application to the Department pursuant to the Maine Waterway Development and Conservation Act (MWDCA) for the proposed upgrade and expansion of the fish passage system at the Woodland Dam located on the St. Croix River in the Town of Baileyville, Washington County, Maine. The Department accepted the application for processing on November 5, 2024. The Department requested further information, and the Applicant supplemented their application materials on November 8, 2024, and February 28, 2025.

B. History

The Woodland project is an existing generating facility located on the St. Croix River. The Woodland Dam was constructed in 1906, pre-dating the Federal Power Act. Fish passage was integrated at the dam in the 1960s. The Woodland Dam is licensed through Congressional Authorization and does not possess or require a license with the FERC. There is no current or expired Water Quality Certification (WQC) for the Woodland Project.

C. Existing Project Features and Operations

The Woodland Dam is a concrete gravity structure founded on bedrock, incorporating a powerhouse, headworks, emergency spillway, principal spillway, process water intake, and fish ladder. The dam and spillway span approximately 1,910 feet, with the dam measuring 730 feet in length and 48 feet in height.

The main spillway is a concrete gravity structure with five manually operated Tainter gates, each measuring 6 by 12.5 feet. The emergency spillway, also a concrete gravity structure, consists of two sections- Canadian and American. Both are equipped with flashboards supported by bolted brackets and are manually placed and removed. A low concrete retaining wall directs flow in the emergency spillway around an island in the downstream channel, located approximately 250 feet left of the corner pier dividing the Canadian and American Sections.

The non-overflow section on the right abutment (American side) is referred to as the hydraulic wall. The wall is 795 feet long, with a maximum height of 37 feet and a crest width of 5 at an elevation of 141 feet mean sea level (MSL). To the left of the hydraulic wall, the headworks and powerhouse contain seven turbine generator units with a combined flow of 3,200 cubic feet per second (cfs) at 48 feet of head.[1]

Operating in run-of-river mode, the dam creates a 1,200-acre impoundment with a maximum depth of 24 feet and storage capacity of 4,380 acre-feet. The drainage area at Woodland Dam covers 1,360 square miles.

A 730-foot Denil fish ladder was built in 1965 to provide upstream fish passage, primarily for Atlantic salmon. The fish ladder has a channel width of 4 feet and a wall height of 7 feet and is made of concrete. The exit flume is located between the powerhouse and Tainter gates, with the main section of the fish ladder wrapping around the island to the tailrace by the powerhouse.

2. SUMMARY OF PROJECT PROPOSAL

Woodland proposes to upgrade and expand the existing upstream and downstream fish passage systems, construct a new fish lift, and construct a permanent access bridge.

The main Project area is located on an island that is surrounded by the existing fish ladder. The Applicant proposes to remove most of the existing fish ladder to make room for the new one, leaving 130 feet of the existing fish ladder to remain in place. The exit flume will be kept in the same location and the entrance will be moved just south of the bypass reach. The proposed pool and chute style fish ladder will have 8-foot-wide by 8-foot-long pools, with 8-inch drops per pool. The remaining 130 feet of the existing fish ladder will be filled to support the embankment that wraps around the island to the proposed fish lift.

Based on the location of the current fish passage and other dam facilities, the Applicant proposes to construct the high-capacity fish lift on the island separating the powerhouse and spillway. The fish lift is to be constructed in the tailrace, next to the powerhouse, and connected to the fish ladder's exit flume.

[1] Head is the height of the water level at the headworks, or an upstream point, of a waterway, and the water surface at a given point downstream. NOAA https://forecast.weather.gov/glossary.php

The Applicant proposes to construct a permanent access bridge over the tailrace to the island to provide maintenance access to the island once the project is complete. Construction of the bridge requires building three land-based abutments.

Bedrock will be excavated to prepare for the construction of the bridge abutments, fish ladder, and fish lift. Additional soil excavation will be required for the new sections of the fish ladder. In total, approximately 6,000 square feet of bedrock will be excavated. To complete the structures, 2,210 square feet of permanent fill will be placed for the fish lift, 1,690 square feet for the fish ladder, and 685 square feet for the bridge abutments.

The Project proposal includes detailed plans to: install sediment and erosion control measures; construct the access bridge; excavate bedrock and soils; install earthfill cofferdams and turbidity curtains; dewater the work area; and construct the fish ladder and fish lift.

The Applicant will develop and implement measures to mitigate potential Project effects on water quality caused by erosion and sedimentation according to the Maine Erosion and Sedimentation Control Best Management Practices Manual for Designers and Engineers (October 2016) (BMPs) and the Maine Erosion and Sediment Control Practices Field Guide for Contractors (2014). These measures will be in place before work begins and will remain in use until the work area is stabilized.

A. Site Preparation

The site will be accessed through an existing road on the Applicant's property. A permanent access bridge will be installed over the tailrace, providing construction access to the island. Construction materials will be stored off-site or within the contractor staging area.

The Applicant proposes to take preliminary steps before work begins to mitigate erosion and sedimentation impacts. The applicant proposes to install sediment barriers surrounding the construction and staging areas. All erosion and sedimentation controls will be installed according to Maine Erosion and Sedimentation Control BMPs. To conduct work in the dry and mitigate for any excavation or work materials that may be discharged into the waterway during project activities, temporary cofferdams and turbidity curtains will be installed. The cofferdam to dewater the fish ladder work area will extend from the shoreline on the bypass reach side of the island, under the existing overhead transmission lines to the shoreline area where the bridge abutment project area is. The cofferdam for the bridge abutment project area will directly surround the excavation area between the fish ladder and fish lift project area. The cofferdam for the fish lift project area will extend from the wall of the powerhouse in the tailrace to the shoreline next to the bridge abutment project area. A turbidity curtain will follow the same paths surrounding each cofferdam and completely encompass the cofferdams on the outside. The Applicant will inspect the erosion control devices for damage or impediments that may damage or impair effectiveness.

The proposed fish passage improvements involve phased work. The mobilization phase will take place from June to July of 2025. The bridge construction project will take place

between June 2025 and January 2026. Fish ladder construction will take place between September 2025 and October 2026. Construction of the fish lift will take place between December 2025 and July 2027. Exit flume modifications to the fish ladder will take place between December 2025 and July 2027. Intake work will take place between October 2025 and July 2027. Project demobilization will occur by September of 2027.

B. Water Control

Project activities will not result in changes to water levels or flows in the St. Croix River. Headpond levels at the Project are affected by the use of the spillway and Tainter gates. Project work areas are secluded to the island between the bypass reach and tailrace, leaving flow from the dam and powerhouse unaffected.

The Applicant will follow BMPs to limit any temporary adverse impacts to water quality. Construction of the entrance, training walls, and bypass cast-in-place[2] concrete structures will be performed "in the dry" utilizing a two-sided sheet pile wall cofferdam. The Project will not alter the physical structure of the dam, hydro generation equipment, water levels, or flows. No significant impacts to water quality are expected as a result of the proposed construction activities, and the turbidity curtain and silt fence will prevent adverse environmental impacts.

C. Construction

As described above, erosion controls will be deployed before and during construction, to limit any temporary adverse impacts to water quality, soil stability, and water resources of the St. Croix River. This includes the installation of silt fences and turbidity curtains. A silt fence will be installed around staging areas, and the bridge abutment project area on the mainland side. Sedimentation settling basins or water filtering bags will be utilized onshore and will have a vegetative buffer.

Temporary cofferdams will be installed at each project work area so that excavation and construction activities can occur in the dry. 220 square feet of area will be dewatered in the headpond and 16,180 square feet of area will be dewatered in the tailrace for a total of 16,400 square feet of dewatered area in the Project boundary. 7,700 square feet of temporary fill is required to construct the earthfill cofferdams.

Through the removal of portions of the existing fish ladder, 1,580 square feet of concrete will be demolished and removed. Collectively, 6,000 square feet of bedrock will be excavated within the project boundary for the foundation of the fish lift, fish ladder, and bridge abutments. Further, 1,050 cubic yards of concrete will be needed to construct the fish lift, fish ladder, and bridge abutments. 2,210 square feet of permanent fill is required to construct the fish lift, 1,690 square feet for the fish ladder, and 685 square feet collectively for the bridge abutments.

[2] Cast-in-place concrete is a casting method where concrete is directly poured and cured on site in the concrete's finished position.

D. Stabilization and Closeout

Once construction of the fish passages and the bridge is complete, all construction-related debris, tools, equipment, and construction materials will be removed from the site. Excavated material and temporary fill will be removed from the dewatered work area. The temporary cofferdams will be removed, and water will be restored to the area. Throughout the Project, downstream flows will be maintained through the bypass reach and tailrace surrounding the island. New concrete will be cured for at least seven days before rewatering begins.

Disturbed areas of soil will be seeded or mulched to mitigate the potential for soil erosion. The staging area and work area will be returned to their original condition while silt fences remain in place. After all access road maintenance, staging area stabilization, and construction activities are completed, the silt fence or sediment barrier will be removed. The turbidity curtain surrounding the work area will be removed after all work is complete.

E. Testing and Operation Management

Project activities will not change operations and will remain in run-of-river mode during and after the Project. The existing fish ladder will remain in operation for the 2025 season. Fish passage during the 2026 season will be accommodated by a temporary facility on or off-site with a trap and haul program if the proposed fish ladder is not ready for Spring of 2026. A trap and haul program will be implemented until fish passage facilities are operational.

Head pond levels are affected by the operation of the spillways and Tainter gates. The Project will not affect or alter the flow volume, rate, or timing in the St. Croix River. Head pond water surface elevations average between 143.4-145.4 feet and the average tailwater surface elevation. The average annual dependable capacity is 5,250 kilowatts and the maximum generation capacity is just under 9,000 kilowatts. The average annual generation is 13,590 megawatt-hours.

After construction is complete, the fish lift enhancements will be tested to ensure that all components of the fish lift; including pumps, diffuser, associated gates, and conduits; are functioning properly. Hydrology and flow will be tested to simulate conditions for migrating fish. If problems with the newly installed fish passage facilities are observed, Woodland must consult with Maine Department of Marine Resources (MDMR), Maine Department of Inland Fisheries and Wildlife (MDIFW), relevant federal agencies, contractors, and engineers to ensure proper functioning of the fish passage facilities.

3. JURISDICTION

A. <u>Hydropower Project Permit</u>

The proposed construction of fish passage improvements at the Woodland Project qualifies as the structural alteration of a hydropower project under the terms of the Maine Waterway

Development and Conservation Act (MWDCA), 38 M.R.S. §§ 630–637. Section 633 of the MWDCA provides that no person may initiate construction or reconstruction of a hydropower project, or structurally alter a hydropower project in ways that change water levels or flows, without first obtaining a permit from the Department. Pursuant to Section 634-A, the Department administers the permit process for projects located wholly or partly within an organized municipality.

B. Water Quality Certification

The proposed fish passage improvement at the Woodland Project qualifies as an "activity…which may result in (a) discharge into the navigable water (of the United States)" under the Clean Water Act (CWA). Section 401 of the CWA requires that any Applicant for a federal license or permit to conduct such an activity obtain a certification from the State in which the discharge originates or will originate, and that the activity will comply with applicable State water quality standards. Therefore, Woodland requires water quality certification for the installation of additional fish passage. The Department issues water quality certification under Section 635-B of the MWDCA.

C. Terms and Conditions

Section 635 of the MWDCA provides that, upon receipt of a properly completed application, the Department shall either (1) approve the proposed project upon such terms and conditions as are appropriate and reasonable to protect and preserve the environment and the public's health, safety and general welfare, (2) disapprove the proposed project, or (3) schedule a hearing on the proposed project.

4. APPLICABLE WATER QUALITY STANDARDS

A. Classification

The St. Croix River meets the definition of a river, stream or brook pursuant to 38 M.R.S. § 480-B(9). The Woodland Lake impoundment and the Project area from the Woodland Dam to tidewater is classified as Class C. 38 M.R.S. §§ 467(13)(A)(3)-(4).

B. Designated Uses

Class C waters shall be of such quality that they are suitable for the designated uses of drinking water supply after treatment; fishing; agriculture; recreation in and on the water; industrial process and cooling water supply; hydroelectric power generation; navigation; and as habitat for fish and other aquatic life. 38 M.R.S. § 465(4)(A).

C. Numeric Criteria

The dissolved oxygen content of Class C waters may not be less than 5 parts per million or 60% saturation, whichever is higher, except that in identified salmonid spawning areas where water quality is sufficient to ensure spawning, egg incubation and survival of early

life stages, that water quality sufficient for these purposes must be maintained. In order to provide additional protection for the growth of indigenous fish, the following standards apply. 38 M.R.S. § 465(4)(B).

D. Narrative Standards

Discharges to Class C waters may cause some changes to aquatic life, except that the receiving waters must be of sufficient quality to support all species of fish indigenous to the receiving waters and maintain the structure and function of the resident biological community. For the purpose of allowing the discharge of aquatic pesticides or chemicals approved by the department and conducted by the department, the Department of Inland Fisheries and Wildlife or an agent of either agency to restore biological communities affected by an invasive species, the department may find that the discharged effluent will not cause unacceptable changes to aquatic life as long as the materials and methods used will ensure the support of all species of indigenous fish and the structure and function of the resident biological community and will allow restoration of nontarget species. 38 M.R.S. § 465(4)(C).

E. Antidegradation

The Department may only approve water quality certification if the standards of classification of the waterbody and the requirements of the State's antidegradation policy will be met. The Department may approve water quality certification for a project affecting a waterbody in which the standards of classification are not met if the project does not cause or contribute to the failure of the waterbody to meet the standards of classification. 38 M.R.S. § 464(4)(F).

5. BURDEN OF PROOF

The Department's Rules Concerning the Processing of Applications and Other Administrative Matters, 06-096 C.M.R. ch. 2 (repealed and replaced September 15, 2024) provide that an applicant for a license[3] has the burden of proof to affirmatively demonstrate to the Department that all applicable licensing criteria in statute or rule have been met. For those matters relating to licensing criteria that are disputed by evidence the Department determines is credible, the applicant has the burden of proving by a preponderance of the evidence that the licensing criteria are satisfied.[4]

6. DEPARTMENT ANALYSIS

The Department shall evaluate whether an applicant has demonstrated that the following criteria have been met, as set forth in 38 M.R.S. § 636:

[3] "License" means the whole or any part of a new license, amended license, renewal license, transfer, surrender, variance, certification, approval, or similar form of permission issued by the Department. 06-096 CMR 2(1)(O).
[4] 06-096 CMR 2(10)(F).

A. Financial Capability and Technical Ability

The total estimated cost of the Project is $41,000,000. Funds for this Project have been secured and awarded through the National Oceanic and Atmospheric Administration (NOAA) 2023 Fish Passage Opportunity, 2024 Fish Passage Opportunity, Passamaquoddy Tribe Award, National Fish and Wildlife Foundation, USFWS Fish Passage 2023, USFWS Fish Passage 2024, and Maine Jobs and Recovery Act.

The Maine Department of the Secretary of State, Bureau of Corporations, Elections and Commissions shows that Woodland Pulp LLC is a legally existing Limited Partnership in good standing under the laws of the State of Maine.

Woodland has approved the project and, through a partnership with the Maine Department of Marine Resources has secured the $41,000,000 necessary to complete this Project. The Department finds that the Applicant has provided sufficient evidence to demonstrate that it has the financial capability and technical ability to complete the Project.

B. Public Safety

Project activities will take place entirely on the Applicant's property, for which there is no public access. Recreational use is restricted due to the Project taking place on the Woodland Pulp Power Plant site. Contracted security services provide 24-hour security coverage for Woodland Pulp. If access to areas outside of the project boundary is necessary, a temporary 8-foot-high chain link fence will be installed.

The Department finds that the Applicant has provided evidence to demonstrate that public safety will not be adversely impacted during the repairs.

C. Public Benefits

1. Employment

The Applicant plans to use Maine-based subcontractors and to source materials for maintenance activities from local companies to the extent possible. The Applicant collaborated with MDMR to solicit contractor bids for the project. Workers from the Project will benefit the local economy of Baileyville through general purchases of food, gas, and other miscellaneous items.

2. Taxes

Proposed Project activities affecting impoundments and changes to downstream flows are temporary in nature to facilitate project needs. Therefore, no impact to property values or property taxes are expected because of water level changes from this Project.

3. Other Costs and Public Benefits

Benefits of the Project include ensured safety for dam operation and increased recreational opportunities upstream once fish passage improvements are completed. Additional economic benefits will be generated through positive impacts on fishing, guiding, elvers[5], river herring harvests, and the Maine lobster industry.

Based on its review of the information provided by the Applicant, the Department determines that the Project will have little or no public costs. The Department finds that the Project will result in small economic benefits to the public including creation of employment opportunities for workers of the State and local economic benefits from general purchases by contracted personnel. The Department finds that the public will benefit from the increased recreational opportunities upstream and downstream of the Woodland Dam once fish passage improvements are implemented.

D. Traffic Movement

1. Applicant Proposals

The site will be accessed through the private roads on the Applicant's property. A permanent bridge will be constructed on the Applicant's property to access the island where work will be conducted. This bridge will not have public access. The main roads leading to the Applicant's property are frequented by loaded mill and logging trucks.

2. Discussion and Finding

There may be a temporary, minimal increase in truck traffic in Baileyville during portions of the project. Vehicle traffic will mostly occur on private land owned by the Applicant. No adverse impacts on existing traffic movement are expected from the proposed activity.

E. Maine Land Use Planning Commission

No part of the left spillway abutment repair is located within the jurisdiction of the Maine Land Use Planning Commission (LUPC). Therefore, consistency with LUPC zoning is not applicable.

[5] Juvenile eel harvest.

F. Environmental Mitigation

1. Review Standard

The MWDCA, at 38 M.R.S. § 636(6), establishes that an applicant must demonstrate that reasonable provisions have been made to realize the environmental benefits of the project, if any, and to mitigate its adverse environmental impacts. The Department's Administrative Regulations for Hydropower Projects, which implement the MWDCA, define "mitigation" to include any action taken or not taken in order to avoid, minimize, rectify, reduce, eliminate, or compensate for actual or potential adverse environmental impacts. Such actions include minimizing potential impacts by controlling the timing of an activity. 06-096 C.M.R. ch. 450 § 3(I). Whether an applicant's provisions to realize environmental benefits or to mitigate adverse environmental impacts are reasonable depends in part upon the significance of the resource(s) affected. 06-096 C.M.R. ch. 450 § 5(F).

2. Applicant's Proposals

The Applicant proposes fish passage improvements at Woodland Dam and indicates that the modifications should enhance fish passage for anadromous fish and other fish species. The new fish passage systems will contribute to the resilience of target populations by decreasing incidental and delayed mortality during travel between free-flowing and impounded sections of the St. Croix River. The Applicant proposes to reduce and mitigate the environmental impacts associated with the proposed Project by taking various actions related to the natural environment and water quality, as discussed elsewhere in this order.

Environmental impacts associated with the proposed work will be temporary in nature. Preliminary impacts are related to the establishment of cofferdams to dewater work areas. Additional impacts include the mobilization of construction equipment and construction activities. Construction impacts from the Project include the demolition of part of the existing fish ladder; excavation of bedrock and soils; pouring concrete for the bridge abutments, fish lift, and fish ladder; and the installation of various exit flume and intake modifications. Further impacts include the removal of excavated concrete material, ledge, and soils from the work site to the staging areas for disposal.

The Applicant proposes sufficient methods to mitigate adverse environmental impacts due to Project activities. The Woodland Dam will continue to operate as normal throughout the construction of the fish passages. Construction activities will be performed "in the dry" by installing cofferdams. The Applicant will implement Maine soil and erosion control BMPs and control construction material storage areas.

As a result, the Department finds that there are no long-term impacts anticipated with the project. Environmental impacts associated with the proposed work will be temporary in nature and are related to the installation of the cofferdam and associated dewatering. As needed water will be pumped out of work areas to settlement basins on

shore. Construction materials will be stored off-site or within the contractor staging area.

3. Impacts Associated with the Fish Passage Enhancements

Potential impacts include decreased water quality from shoreline erosion and sedimentation or work-related sediment, debris, or discharge. Sedimentation can elevate nitrogen and phosphorus concentrations in aquatic habitats and increase primary productivity. This can result in the proliferation of algae and aquatic plants, and eventually, harmful algal blooms which can cause anoxic conditions in the water column. Additionally, sedimentation can alter water clarity and change the characteristics of the riverbed. For example, large-scale sedimentation can convert a cobbled or rocky substrate to a sand or silt substrate which, over time, can alter the macroinvertebrate community structure. Ultimately sedimentation has detrimental impacts on aquatic habitat for fish and other aquatic organisms. Shoreline sedimentation may occur through the movement of equipment and construction materials from the laydown areas through the shoreline access areas to the work areas. Potential risks for concrete or ledge debris material, poured concrete, or disturbed soils to be discharged downstream during fish passage construction will be mitigated with silt fences, and performing work in the dry.

"Fresh" concrete can be toxic to aquatic life unless properly cured prior to coming into contact with surface water. Installation of the fish passage facilities requires concrete work which may have a detrimental impact on water quality. Flow diversion from the work area will be achieved by constructing cofferdams and dewatering the work area as described above to excavate materials and install fresh concrete in the dry.

To monitor and mitigate impacts from the new concrete, work will be performed in the dry, and the concrete will be cured for at least seven days before rewatering.

4. Cofferdam Alternative Analysis

The Department has found that the use of earthfill cofferdams can result in significant sedimentation into waterways, especially during cofferdam installation and removal. Sedimentation can result in a decline in water quality, damage to aquatic habitat, and injury to fish and other aquatic organisms, and can degrade scenic, aesthetic, and recreational uses and values.

The Applicant has evaluated the availability, feasibility, and practicality of alternatives to the use of earthfill cofferdams as part of the proposed fish passage construction activities and submitted a Cofferdam Alternatives Analysis on February 28, 2025.

The Project requires access below the current water levels to complete work on the fish passage structures and bridge abutments. Four separate cofferdams will be installed, a 400-foot cofferdam in the bypass reach for the fish ladder project area; a 250-foot cofferdam in the tailrace for the fish lift project area; a 120-foot cofferdam for the

bridge abutment project area in the tailrace; and a 110-foot cofferdam for the bridge abutment project area on the mainland side of the tailrace. The two-sided, sheet pile wall cofferdams will be filled with bank run gravel with stones less than 6 inches in diameter, and well graded. The total dewatered area will be 14,740 square feet, 14,520 square feet in the tailrace, and 220 square feet in the headpond. 7,700 square feet of temporary fill will be required between all four cofferdams.

The Applicant proposes to install and remove all cofferdams at the same time in the mobilization and closeout process. Each of the dewatered Project areas will remain dewatered the entire duration of the Project, beginning in June of 2025 and ending in September of 2027. None of the four cofferdams will restrict flow in either the bypass reach or the tailrace, resulting in no changes to water levels or flows.

The geographical layout of the project boundary limits cofferdam alternatives. The uneven rock riverbed does not allow for steel sheets to be driven into the riverbed or safely installing PortaDam[6] structures. The depth required to reach the Project area is too deep for standard sandbags to withstand.

Based on the evidence in the record, the Department finds the Applicant has made reasonable provisions to avoid permanent impacts. An earthfill cofferdam is the safest, most cost-effective, and durable option for the Project.

G. Environmental and Energy Considerations

38 M.R.S. § 636(7) provides that the Department shall approve a project when it finds that the Applicant has demonstrated that, among other things, the advantages of the project are greater than the direct and cumulative adverse impacts over the life of the project based upon specified environmental and energy considerations. The Department's Administrative Rules for Hydropower Projects provide that this "balancing" criterion is satisfied if, in the Department's judgment, the Applicant has demonstrated that the weight of the advantages of the project is greater than the weight of the direct and cumulative impacts over the life of the project based on the specified environmental and energy considerations. The Department's Administrative Rules for Hydropower Projects further provide that determining whether the advantages of a project are greater than its adverse impacts require attaching value or weight to the project's various benefits and harms. See 06-096 C.M.R. ch. 450 § (5)(A)(7).

1. Soil Stability and Wetlands

a. Sedimentation and Soil Stability

The main Project area is located on an island that is surrounded by the existing fish ladder. During construction activities portions of the existing fish ladder will be

[6] PortaDam is a specific temporary cofferdam system that is designed to be a free-standing structure without penetrating the ground.

removed, then replaced with either sections of the fish lift or new fish ladder. Once the Project is completed the island will be entirely contained again.

Soil borings were performed at the Project site by New England Boring Contractors (NBEC) to visually confirm bedrock contact, quality, and assess rock quality designation. A Verdantas field geologist conducted oversight of subsurface explorations, measured groundwater levels, prepared field test pit and boring logs, and collected soil and rock samples.

The proposed Project will require the use of machinery, excavation and disturbance of soils as discussed in other sections of this Order. Cofferdams and turbidity curtains will be installed surrounding the fish lift construction area in the tailrace and fish ladder construction area in the bypass reach to prevent materials from entering the river. In areas where groundwork will be performed silt fences will be utilized. The Applicant proposes to remove excavated concrete and bedrock materials for off-site disposal. After completion of the Project, disturbed areas in the staging and access areas will be graded and seeded or mulched before the removal of silt fences. The Applicant will apply Maine Erosion and Sedimentation Control BMPs during Project construction to limit any temporary adverse impacts to water quality from sedimentation.

b. Wetlands

Habitat associated with the site is riverine in nature, associated with the St. Croix River. The waters surrounding the project are Classified as Class C. Wildlife resources at and in the vicinity of the Project are associated with wetland habitat to the extent it is present. The Applicant has proposed to install silt fences, earthfill cofferdams, and turbidity curtains to surround the cofferdams to prevent any wash of fill or installation materials from reaching downstream habitat. The Department finds that the Applicant has proposed to take appropriate steps to minimize potential negative impacts construction activities may have on any wetlands and the resources found there.

2. Fish and Wildlife Resources

a. Fish Resources

Historically, the rivers and lakes above the St. Croix River dams supported large runs of river herring (alewife and blueback herring), Atlantic salmon, American shad, sea lamprey, and American eel. The current upstream fish passage at the Project was completed in 1966 and is designed with a focus on Atlantic Salmon. The existing fish ladder passes river herring in limited numbers, recent studies[7] demonstrate the need for new fish ladders built to modern standards. It was

[7] Studies conducted by the St. Croix International Waterway Commission (SCIWC) in 2021, 2022, and 2023, a report commissioned by the International Joint Commission (IJC) for the St. Croix Watershed Board (2021), and a recent Passamaquoddy Tribe management plan (Peskotomuhkati 2022).

determined that a fish lift alone would not provide the necessary capacity to move river herring if future returns meet its potential for high production after the Project is completed, therefore the Applicant proposes to upgrade the existing fish ladder as well. The second fish passage is expected to add extra capacity during peak migration periods, provide passage across a wider range of flows, reduce delays in migration, and extend the area where passage is possible along the dam face.

The American eel is expected to benefit from improved upstream and downstream passage from the removal of the Milltown Dam and greater survival resulting from the improved passage at the Woodland and Grand Falls Dams. The Milltown Dam was removed in 2023 and restored 10 miles of mainstem river habitat to sea-run fish, setting the stage for improved fish passage at the Woodland Dam.

St. Croix river herring and other species of anadromous fish will benefit by accessing available spawning habitat upstream of the Woodland and Grand Falls Dams. The installation and operation of modernized fish passage systems will contribute to the resilience of target populations by decreasing incidental and delayed mortality during travel between free-flowing and impounded sections of the St. Croix River System. The proposed fish passage configuration at Woodland will also allow managers to implement selective passage to prevent the spread of invasive species if desired.

Run-of-river operations will continue during and after the Project. The Applicant proposes no changes in water levels or flows. The existing Denil fish ladder will be utilized during the 2025 season. An alternative fish passage (trap and haul) will be utilized during construction until the new fish ladder is opened. Anticipated impacts and activities will be short-term and temporary in duration.

b. Wildlife Resources

The wildlife habitat in the Project vicinity on the Woodland side of the St. Croix River is composed of urban development. Habitat on the Canadian side of the St. Croix River is mostly forested. The main project area located on the island is developed and self-contained.

The Information for Planning and Consultation (IPaC) resource list from the U.S. Fish and Wildlife Service was utilized to assess wildlife resources. It is a generated list of fish and wildlife species and critical habitats in the Project area that could be affected by activities. The list includes additional areas of influence, which are areas outside of the species range if the species could be indirectly affected by activities in the Project area.

Species potentially affected by activities in the Project area include the Canada Lynx, Northern Long-eared Bat, Tricolored Bat, Monarch Butterfly, Bald Eagle, Black-billed cuckoo, and Veery.

The Northern Long-eared Bat is listed as endangered under the Endangered Species Act, but no critical habitat, bat hibernacula, or maternity roost trees are identified within the Project area, and no vegetation removal has been proposed that may impact the species. The Monarch Butterfly is listed as a candidate under the ESA, but no critical habitat has been identified within the Project area.

The Bald Eagle is protected under the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act but is not a Bird of Conservation Concern in the Project area. The Black-billed Cuckoo is a Bird of Conservation Concern (BCC) throughout their range in the continental United States and Alaska. The Veery is a Bird of Conservation Concern only, in particular, Bird Conservation Regions in the continental United States. The IPaC resource list did not identify any critical habitats in the Project boundaries. Minimal negative impacts to wildlife are expected.

c. Discussion and Finding

MDMR and MDIFW had an opportunity to review the Project construction plans. Both agencies provided no objections to the proposed Project. The Department finds that Project activities will have positive impacts to fish resources, and minimal impacts to wildlife resources, provided that the Applicant utilizes adequate erosion and sedimentation controls.

3. Historic and Archaeological Resources

The Applicant consulted with the State Historic Preservation Officer (SHPO) on the Project in accordance with section 106 of the National Historic Preservation Act of 1966 (NHPA). On October 28, 2024, the SHPO found that no historic properties (architectural or archaeological) will be affected. The Department finds that the Project is expected to have no anticipated impact on historic or archaeological resources.

4. Public Rights of Access

Currently, there is no direct public access to the Project area, which is located on private property owned by the Applicant. The Department finds that the proposed repair will not result in any significant harm to public rights of access to and use of the surface waters of the State.

5. Flood Control

The proposed Project has no long-term impacts on flood control. No change in water levels or flows are proposed. The Department finds that proposed construction activities will not result in a significant impact on the flood control benefits or hazards of the Woodland Pulp project.

6. Hydroelectric Energy Benefits

The existing Woodland Pulp Project houses seven turbine generators with an average annual dependable capacity of 5,250 kilowatts (kW) and an average annual generation of 13,590 megawatt-hours. The Applicant proposes no changes to power generation. Construction activities will not permanently change the generating capacity of the dam. Based on the Applicant's proposal and information in the record, the Department determines the proposed Project will not affect hydroelectric energy benefits.

7. Analysis of Project Advantages and Impacts

After consideration of the benefits and harms of the project, as discussed above, the Department finds that the advantages of the project are greater than the direct and cumulative adverse impacts over the life of the project. Specifically, the advantages of the improved fish passage outweigh the adverse, short-term impacts of construction activities necessary to complete the Project.

H. Water Quality

Pursuant to Section 635-B of the MWDCA, the Department must determine whether there is a reasonable assurance that the proposed activity associated with an MWDCA permit will not violate applicable water quality standards.

The section of the St. Croix River within the Project boundary is classified as Class C. The Applicant's proposed measures related to erosion and sedimentation control outline how the Applicant will mitigate potential degradation of water quality throughout the construction activities. The Applicant will be performing work in the dry by utilizing cofferdams and turbidity curtains, installing silt fences, and ensuring Maine Erosion and Sedimentation Control BMPs will be implemented during Project construction.

Based on the Applicant's proposals and the Department's review, the Department finds that there is a reasonable assurance that the proposed project will not violate applicable state water quality standards provided the Applicant implements the proposed erosion and sedimentation controls and adheres to Maine Erosion and Sedimentation Control BMPs.

5. REVIEW PROCESS

The Department requested Project review from the Department's Division of Environmental Assessment, the Maine Department of Marine Resources, the Maine Department of Agriculture Conservation and Forestry, MDIFW, MHPC, and Department of Transportation (DOT). Woodland Pulp LLC's application for a MWDCA permit and water quality certification for the construction and expansion of fish passage was accepted as complete for processing by the Department on November 5, 2024.

6. DRAFT PERMIT

   The draft permit was sent to the Agent on March 24, 2025. The Agent had minor edits on the draft permit.

BASED on the above findings of fact and the evidence contained in the application and supporting documents, and subject to the Conditions listed below, which are appropriate and reasonable to protect and preserve the environment and the public's health, safety and general welfare, the Department makes the following CONCLUSIONS:

1. The Applicant has the financial capacity and technical ability to undertake the project.

2. The Applicant has made adequate provision for the protection of public safety.

3. The project will result in some economic benefit to the community.

4. The Applicant has made adequate provisions for traffic movement out of and into the development area.

5. The project is not located within the jurisdiction of the Land Use Regulation Commission.

6. The Applicant has made reasonable provisions to realize the environmental benefits of the project, if any, and to mitigate the adverse environmental impacts of the project, provided the Applicant complies with the requirements above and the corresponding conditions below.

7. The advantages of the project are greater than the direct and cumulative adverse impacts over the life of the project, provided that the Applicant complies with the requirements above and the corresponding conditions below.

8. There is a reasonable assurance that the project will not violate applicable State water quality standards.

THEREFORE, the Department APPROVES the above noted application of WOODLAND PULP LLC to construct improved fish passage facilities as described in Finding 1, SUBJECT TO THE ATTACHED CONDITIONS, and all applicable standards and regulations:

1. Standard Conditions of Approval for projects under the Maine Waterway Development and Conservation Act, a copy attached.

2. The Applicant shall acquire all other necessary permits from municipalities or the federal government to conduct this project.

3. The Applicant shall implement the proposed erosion and sedimentation controls and the Maine Erosion and Sedimentation Control BMPs, including the following:

   a. Silt fences shall be installed before the start of work and must be removed after completion of work when the work area is stabilized;

b. Seed and mulch any disturbed area of the access road or shoreline where appropriate after construction activities are complete prior to removing erosion and sedimentation controls.

4. The Applicant shall implement the Maine Erosion and Sedimentation Control BMPs and Maine Erosion and Sediment Control Practices Field Guide for Contractors, including the following that pertain to concrete:

   a. Install silt fences and a turbidity curtain downstream or surrounding the work area prior to installing fresh concrete;

   b. Install all concrete within the cofferdam and silt curtain;

   c. Not wash tools, forms, etc. in or adjacent to the waterbody and not discharge concrete wash water to the resource;

   d. Cure fresh concrete in forms for a minimum of seven days; and

   e. Ensure flows over the cured concrete equal or exceed 15 gallons per square foot.

5. Any cofferdam fill placed in the waterway or within the 100-year floodway boundaries of the waterway shall consist of clean granular fill free from plant matter, lumps or balls of clay and other deleterious substances. That portion passing a No. 200 sieve shall not exceed 10% fines, by weight. All cofferdam fill shall be removed following completion of fish ladder enhancement activities.

6. In addition to any specific erosion and sedimentation control measures included in the Department reviewed plan, the Applicant and its agents shall take all necessary measures to ensure that project activities do not result in erosion or sedimentation during or following the approved activities.

7. All removed vegetation, debris and construction spoils shall be reused, recycled, or otherwise disposed of in accordance with the Maine Solid Waste Management Regulations.

8. In the event that any provision, or part thereof, of this permit and/or certification is declared to be unlawful by a reviewing court, the remainder of the permit and/or certification will remain in full force and effect and will be construed and enforced in all respects as if such unlawful provision, or part thereof, has been omitted, unless otherwise ordered by the court.

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 10TH DAY OF APRIL, 2025.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY:_____
For: Melanie Loyzim, Commissioner

PLEASE NOTE THE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES.

CB/L-031368-34-A-N /ATS93329

Maine Waterway Development and Conservation Act (MWDCA) Standard Conditions

Unless otherwise specifically stated in the approval, all Administering Agency, Commissioner, and Director approvals are subject to the following standard conditions:

(1) **Limits of Approval**. Project approval is limited to and includes the proposals and plans contained in the application and supporting documents submitted and affirmed to by the Applicant. All variances from the plans and proposals contained in said documents are subject to the review and approval of the Administering Agency prior to implementation.

(2) **Noncompliance**. Should the project be found, at any time, not to be in compliance with any of the conditions of approval or should the permittee construct or operate the project in any way other than as specified in the application or supporting documents, as modified by the conditions of approval, then the terms of approval will be considered to have been violated.

(3) **Compliance with all Applicable Laws**. The permittee shall secure and appropriately comply with all applicable federal, state and local licenses, permits, authorizations, conditions, agreements, and orders prior to or during construction and operation of the permitted project.

(4) **Inspection and Compliance**. Authorized representatives of the Administering Agency or the Attorney General must be granted access to the premises of the permittee at any reasonable time for the purpose of inspecting the construction or operation of the project and assuring compliance by the permittee with the conditions of approval.

(5) **Initiation and Completion of Construction**. If construction is not commenced within 3 years and completed within 7 years from the date of issuance of the Authorizing Agency's permit, the approval will lapse, unless a request for an extension of these deadlines has been approved by the Administering Agency.

(6) **Construction Schedule**. Prior to the start of construction, the permittee shall submit a final construction schedule for the project to the Administering Agency.

(7) **Approval Included in Contract Bids**. A copy of the project's approval must be included in or attached to contract bid specifications for the project.

(8) **Approval Provided to Contractor**. Work done by a contractor pursuant to the project's approval may not begin before a copy of the approval has been provided to the contractor by the permittee.

(9) **Notification of Project Operation**. The permittee shall notify the Commissioner or Director of the commencement of commercial operation of the project within 10 days prior to such commencement.

(10) **Assignment or Transfer of Approval**. Written consent to transfer an approval must be applied for no later than two weeks after the assignment or transfer of ownership of property covered by an approval under these Rules. Pending Administering Agency determination on the application

for a transfer or assignment of ownership of an existing approval, the person(s) to whom such property is assigned or transferred shall abide by all of the terms and conditions of that approval and is jointly and severally liable with the original permittee for any violation of the terms and conditions thereof. To obtain the Administering Agency's approval of transfer, the proposed assignee or transferee must demonstrate the financial capability and technical ability to (1) comply with all terms and conditions of the approval and (2) satisfy all other applicable statutory criteria. As used in this paragraph, "transfer of ownership" means a change in the legal entity that owns a project that is the subject of a permit issued pursuant to this chapter. A sale or exchange of stock (or in the case of a limited liability corporation, of membership interests), or a merger, is not a transfer of ownership for the purposes of this rule provided the legal entity that owns the project remains the same.

Revised September 2016

DEP INFORMATION SHEET

Appeals to the Board of Environmental Protection

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

SUMMARY

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

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

An appeal of a license decision made by the DEP Commissioner or the Board regarding an application for an expedited wind energy development (35-A M.R.S. § 3451(4)), a general permit for an offshore wind energy demonstration project (38 M.R.S. § 480-HH(1)), or a general permit for a tidal energy demonstration project (38 M.R.S. § 636-A) must be taken to the Supreme Judicial Court sitting as the Law Court.

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

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

DEADLINE TO SUBMIT AN APPEAL TO THE BOARD

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

HOW TO SUBMIT AN APPEAL TO THE BOARD

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

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

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

At the time an appeal is filed with the Board, the appellant must send a copy of the appeal to: (1) the Commissioner of the DEP (Maine Department of Environmental Protection, 17 State House Station, Augusta, Maine 04333-0017); (2) the licensee, if the appellant is not the licensee; and (3) if a hearing was held on the application, any intervenors in that hearing proceeding. For appeals of Clean-up and Response Fund decisions made by the State Fire Marshal, the appellant must also send a copy of the appeal to the State Fire Marshal. **Please contact the Board Clerk at clerk.bep@maine.gov or DEP staff at 207-287-7688 with questions or for contact information regarding a specific license or Clean-up and Response Fund decision.**

REQUIRED APPEAL CONTENTS

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

OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

1. *Be familiar with the administrative record.* Generally, the record on which the Board decides an appeal is limited to the record prepared by the agency in its review of the application, any supplemental evidence admitted to the record by the Board Chair and, if a hearing is held on the appeal, additional evidence admitted during the hearing. A person who seeks to appeal a decision to the Board is encouraged to contact the DEP (or State Fire Marshal for Clean-up and Response Fund decisions made by that agency) to inspect the record before filing an appeal.

2. *Be familiar with the applicable rules and laws.* An appellant is required to identify the licensing criterion or standard the appellant believes was not satisfied in issuing the decision, the bases of the objections or challenges, and the remedy sought. Prior to filing an appeal, review the decision being appealed to identify the rules and laws that are applicable to the decision. An appellant may contact the DEP or Board staff with any questions regarding the applicable rules and laws or the appeal procedure generally.

3. *The filing of an appeal does not operate as a stay to any decision.* If a license has been granted and it has been appealed, the license normally remains in effect pending the processing of the appeal. Unless a separate stay of the decision is requested and granted (*see* Chapter 2, section 23(M)), the licensee may proceed with an approved project pending the outcome of the appeal. Any activity initiated in accordance with the approved license during the pendency of the appeal comes with the risk of not knowing the outcome of the appeal, including the possibility that the decision may be reversed or modified by the Board.

4. *Alternative dispute resolution.* If the appeal participants agree to use mediation or another form of alternative dispute resolution ("ADR") to resolve the appeal and so notify the Board, the Board will not hear the matter until the conclusion of that effort, provided the participants engaged in the alternative dispute resolution demonstrate satisfactory progress toward resolving the issues. *See* Chapter 2, section 23(H) or contact the Board Executive Analyst (contact information below) for more information on the ADR provision.

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

The Board will acknowledge receipt of each appeal and develop a service list of appeal participants and any interested persons for use in the appeal proceeding. Electronic mail (e-mail) is the preferred method of communication during an appeal proceeding; however, the Board reserves the right to require paper copies of all filings. Once the Board Chair rules on the admissibility of all proposed supplemental evidence, the licensee (if the licensee is not the appellant) may respond to the merits of the appeal. Instructions specific to each appeal will be provided in correspondence from the Board Executive Analyst or Board Chair. Generally, once all filings in an appeal proceeding are complete, the DEP staff will assemble a packet of materials for the Board (Board packet), including a staff recommendation in the form of a proposed Board Order. Once available, appeal participants will receive a copy of the Board packet and an agenda with the meeting location and start time. Once finalized, the meeting agenda will be posted on the Board's webpage https://www.maine.gov/dep/bep/index.html. Appeals will be considered based on the administrative record on appeal and oral argument at a regular meeting of the Board. *See* Chapter 2, Section 23(I). The Board may affirm all or part of the decision under appeal; affirm all or part of the decision under appeal with modifications, or new or additional conditions; order a hearing to be held as expeditiously as possible; reverse the decision under appeal; or remand the decision to the Commissioner or State Fire Marshal, as applicable, for further proceedings.

II. JUDICIAL APPEALS

The filing of an appeal with the Board is not a prerequisite for the filing of a judicial appeal. Maine law generally allows aggrieved persons to appeal final license decisions to Maine's Superior Court (*see* 38 M.R.S. § 346(1); Chapter 2; 5 M.R.S. § 11001; and M.R. Civ. P. 80C). A judicial appeal by a party to the underlying proceeding must be filed with the Superior Court within 30 days of receipt of notice of the Board's or the Commissioner's decision. For any other aggrieved person, an appeal must be filed within 40 days of the date the decision was rendered. An appeal to court of a license decision regarding an expedited wind energy development, a general permit for an offshore wind energy demonstration project, or a general permit for a tidal energy demonstration project may only be taken directly to the Maine Supreme Judicial Court. *See* 38 M.R.S. § 346(4), the Maine Administrative Procedure Act, statutes governing a particular license decision, and the Maine Rules of Civil Procedure for substantive and procedural details applicable to judicial appeals.

ADDITIONAL INFORMATION

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

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