



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

DEPARTMENT ORDER

IN THE MATTER OF

<p>WATER LINE SOLAR, LLC North Yarmouth, Cumberland County SOLAR ARRAY L-29085-TF-A-N (approval) L-29085-DP-B-N (approval)</p>	<p>) NATURAL RESOURCES PROTECTION ACT) FRESHWATER WETLAND ALTERATION) SOLAR ENERGY DEVELOPMENT) DECOMMISSIONING LAW) FINDINGS OF FACT AND ORDER) WATER QUALITY CERTIFICATION</p>
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Pursuant to the provisions of 38 M.R.S. §§ 480-A–480-J and 35-A M.R.S. §§ 3491-3495, Section 401 of the Clean Water Act (33 U.S.C. § 1341) and Chapters 310 and 315 of Department rules, the Department of Environmental Protection (Department) has considered the application of WATER LINE SOLAR, LLC (applicant) with the supportive data and other related materials on file and FINDS THE FOLLOWING FACTS:

1. PROJECT DESCRIPTION:

A. Summary: The applicant proposes to construct a 1.99-megawatt (MW) solar energy development, occupying approximately 14.4 acres of land, none of which will be located on farmland, as defined in 35-A M.R.S. § 3491(3). The development consists of a solar array, the installation of perimeter fencing, associated racking, foundations, transformers, inverters, extending existing access roads and an electrical collection system.

The site contains forested and scrub-shrub freshwater wetland areas. None of the wetland areas are considered Wetlands of Special Significance (WOSS). The proposed project will result in 20 square feet of direct impacts from installing racking and fence posts; 16,335 square feet of wetland conversion from forested wetlands and scrub-shrub wetlands to wet meadow; and 6,100 square feet of shading due to solar panels.

The applicant submitted a Notice of Intent to comply with the standards and requirements of the Maine Construction General Permit which was accepted by the Department on March 28, 2022 and submitted a Permit by Rule Notification Form (PBR #74418) pursuant to the Stormwater Management Law which was accepted by the Department on March 28, 2022.

The applicant is also seeking Department approval of a decommissioning plan for the proposed project, which outlines the requirements set forth in the Solar Energy Development Decommissioning Law. The project is shown on a set of plans the first of which is titled “North Yarmouth Solar Single Axis Tracker Site Plan,” prepared by

Biodiversity Research Institute, and dated March 9, 2022. The project site is located on 238 Sweetser Road in the Town of North Yarmouth.

B. Current Use of the Site: The project site contains an access road and development related to the Yarmouth Water District. This development includes water quality testing wells and three producing wells with accompanying structures. The parcel is identified as Lot 2 on Map 5 of the Town of North Yarmouth's tax maps.

2. EXISTING SCENIC, AESTHETIC, RECREATIONAL OR NAVIGATIONAL USES:

The Natural Resources Protection Act (NRPA), in 38 M.R.S. § 480-D(1), requires the applicant to demonstrate that the proposed project will not unreasonably interfere with existing scenic, aesthetic, recreational and navigational uses.

In accordance with Chapter 315, *Assessing and Mitigating Impacts to Scenic and Aesthetic Uses* (06-096 C.M.R. ch. 315, effective June 29, 2003), the applicant submitted a copy of the Department's Visual Evaluation Field Survey Checklist as Appendix A to the application along with a description of the property and the proposed project. The applicant also submitted several photographs of the proposed project site and surroundings.

The proposed project is located on a parcel containing unnamed freshwater wetlands, which are not a scenic resource visited by the general public, in part, for the use, observation, enjoyment and appreciation of their natural and cultural visual qualities.

The Department determined that based on the nature of the proposed project and its location, there are no existing recreational or navigational uses of the resource that would be unreasonably impacted.

The Department finds that the proposed activity will not unreasonably interfere with existing scenic, aesthetic, recreational or navigational uses of the freshwater wetland.

3. SOIL EROSION:

The NRPA, in 38 M.R.S. § 480-D(2), requires the applicant to demonstrate that the proposed project will not cause unreasonable erosion of soil or sediment nor unreasonably inhibit the natural transfer of soil from the terrestrial to the marine or freshwater environment.

The applicant will utilize erosion and sediment controls as outlined in "Erosion & Sedimentation Control Inspection and Maintenance Plan" by Berry, Huff, McDonald, Milligan (BH2M) Inc., dated March 2022. These techniques include the use of sediment barriers, nonstructural erosion control measures, and site restoration after construction. Erosion control activities will be implemented in accordance with Maine's Erosion and Sediment Control Best Management Practices (BMPs). Construction of the project will be planned to occur incrementally in blocks of no more than five-acres. Sequencing of

construction will be structured so that the five-acre blocks will be stabilized prior to commencing construction of subsequent five-acre blocks.

The Department finds that the activity will not cause unreasonable erosion of soil or sediment nor unreasonably inhibit the natural transfer of soil from the terrestrial to the marine or freshwater environment.

4. HABITAT CONSIDERATIONS:

The NRPA, in 38 M.R.S. § 480-D(3), requires the applicant to demonstrate that the proposed project 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.

According to the Department's Geographic Information System (GIS) database there are no mapped Essential or Significant Wildlife Habitats located at the site.

The Department finds that the activity will not unreasonably harm any 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.

5. WATER QUALITY CONSIDERATIONS:

As discussed in Finding 3, the applicant proposes to use erosion and sediment control measures during construction to minimize impacts to water quality from siltation. The Department does not anticipate that the proposed project will violate any state water quality law, including those governing the classification of the State's waters.

6. WETLANDS AND WATERBODIES PROTECTION RULES:

The applicant proposes to directly impact 20 square feet of freshwater wetlands for installation of racking and fence posts. The applicant also proposes to alter an additional 22,435 square feet of freshwater wetlands for the clearing of wetland vegetation and shade management. The project proposes to clear 16,335 square feet of wetland vegetation, which involves removing trees and shrubs. Another 6,110 square feet of impacts are proposed due to panel shading.

The *Wetlands and Waterbodies Protection Rules*, 06-096 C.M.R. ch. 310 (last amended November 11, 2018), interpret and elaborate on the Natural Resources Protection Act (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. The applicant submitted an alternatives analysis for the proposed project completed by Biodiversity Research Institute (BRI). The project purpose is to construct a solar energy generation facility to provide renewable energy to the local energy grid. The applicant considered moving the project further to the east of the parcel, however this would result in the removal of more mature trees. The current project plan limits wetland intrusion by proposing construction along the protruding fingers of a larger wetland complex east of the project site. If development was moved eastward, the project site would begin to overlap with the core wetland body of the complex, thus increasing impacts and negatively affecting functions and values. The applicant also considered extending the solar array south, however the project would overlap with a Well Protection Area maintained by the Yarmouth Water District. The current project site has been proposed as part of an agreement between the applicant and the Yarmouth Water District, which stated no construction related to the project can occur within the Well Protection Areas. The project site is abutted by a road to the west, not allowing for further shifting to avoid wetland areas. The preferred alternative avoids the eastern wetlands and the Well Protection Area. Additionally, the proposed project site was specifically chosen in order to take advantage of previously disturbed areas, is an out-of-sight location, and the presence of existing infrastructure. In order to meet the project's purpose, some impacts to freshwater wetlands are unavoidable.

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. Impacts to freshwater wetlands have been minimized to the greatest extent practicable while still meeting the project purpose. The applicant has minimized impacts by selecting an area on the parcel that will result in minimal wetland alteration on the parcel. The project will also be placed in an area previously impacted by a gravel pit and logging activities. The applicant stated that it minimized wetland impacts to the greatest practicable extent while still meeting the project purpose.

C. Compensation. Compensation is required to achieve the goal of no net loss of wetland functions and values. This project will result in over 15,000 square feet of alteration to the resource, which is the threshold over which compensation is generally required. In accordance with Chapter 310, § 5(C)(7), the Department may waive the requirement for compensation if it determines that any impact to wetland functions and values from the activity will be insignificant.

The applicant submitted an assessment of the functions and values for the wetlands to be impacted that document the project will not significantly alter wetland functions and values. The applicant also submitted a report titled "Natural Resources Report North

Yarmouth Solar Project,” prepared by Biodiversity Research Institute, and dated February 2022. The project site is encircled by residential development, a power line right-of-way, and a railroad. As stated in the report, due to the encirclement of development, the site exhibits limited use of typical wetland species and has shifted its use towards habitat generalists more likely found in urban settings. The applicant intends to install wildlife-permeable fencing to allow the continued use of the site by these generalists. Besides wildlife habitat, other functions were determined to be sediment and toxicant retention and nutrient removal; however, these functions should not be significantly altered as the project is designed with limited direct impacts and minimal conversion impacts to the exterior edges of the larger wetland system. The proposed project site also contains an out-of-use gravel pit and other previous disturbances, including clearing for a field, logging activity resulting in several cleared areas and a slash landing area, and a bisection of an existing transmission line. As a result of the previous disturbances, vegetation located on the site is currently young, short, and largely consists of scrub-shrub vegetation with sparse pockets of forested wetlands. Of the three wetlands located on the project site, two contain little vegetation and are located directly adjacent to a temporary logging road. The topology of the site has been drastically altered due to previous excavation and logging activities, with the presence of several berms and cleared areas located in the wetlands across the project site. The proposed project has been specifically designed only to impact the fragmented, exterior edges of the wetlands, thus preserving the functions and values of the larger wetland complex.

The Department considered the submitted functions and values assessment and the applicant’s site characterization. The Department concurs with the assessment and the determination that the impacts to the functions and values of the wetlands will be insignificant. Therefore, the Department waives the requirement of wetland compensation.

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.

7. DECOMMISSIONING PLAN:

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 the means by which decommissioning will be accomplished, in the form of a decommissioning plan. The applicant submitted a decommissioning plan that includes a description of the trigger for implementing the decommissioning, a description of the work required, and an estimate of decommissioning costs.

A. Trigger for implementation of decommissioning. The solar panels have an expected operational life of 20 years, with the potential for approximately 40 years of operation with minor upgrades. However, other factors may trigger the requirement for decommissioning before 20 to 40 years have passed. The decommissioning plan states

that the solar facility will be decommissioned when it ceases to generate electricity for a period of 12 continuous months. In the case of a force majeure or other event which causes the project to fail to generate electricity for 12 continuous 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 must be decommissioned in accordance with the decommissioning plan.

B. Description of decommissioning 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. Subsurface components will be removed to a minimum of 24 inches below grade or the top of bedrock, whichever is less. No farmland is present on the project site.

The decommissioning plan identified all disturbed areas that will be regraded, as necessary, and then re-seeded following removal of subsurface components, and included an Erosion and Sedimentation Control Plan for decommissioning activities that is based on the Best Management Practices outlined in the Maine Erosion and Sediment Control BMPs, which were developed by the Department. This plan containing erosion control details were reviewed by the Bureau of Land Resources (BLR). 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 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 \$75,660. The applicant proposes to have the financial assurance mechanism in the form of a performance bond, surety bond, an irrevocable letter of credit, or other acceptable form of financial assurance in place prior to the start of construction.

D. Plan Update. The applicant will review the decommission plan and costs of decommissioning and update the financial assurance beginning 15 years after the date of this Order and every 5 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 evidence of financial assurance for decommissioning costs prior to the start of construction for review and approval.

8. OTHER CONSIDERATIONS:

The Department finds, based on the design, proposed construction methods, and location, the proposed project will not inhibit the natural transfer of soil from the terrestrial to the marine environment, will not interfere with the natural flow of any surface or subsurface waters, and will not cause or increase flooding. The proposed project is not located in a coastal sand dune system, is not a crossing of an outstanding river segment, and does not involve dredge spoils disposal or the transport of dredge spoils by water.

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 (33 U.S.C. § 1341):

- 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 or adjacent upland habitat, travel corridor, freshwater, estuarine, or marine fisheries or other aquatic life.
- E. The proposed activity will not unreasonably interfere with the natural flow of any surface or subsurface waters.
- F. The proposed activity will not violate any state water quality law including those governing the classifications of the State's waters.
- G. The proposed activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties.
- H. The proposed activity is not on or adjacent to a sand dune.
- I. The proposed activity is not on an outstanding river segment as noted in 38 M.R.S. § 480-P.

BASED on the above findings of fact, and subject to the conditions listed below, the Department makes the following conclusions pursuant to 35-A M.R.S. §§ 3491-3496:

- A. The applicant has provided an adequate decommissioning plan, provided the applicant meets the requirements in Finding 7 (C) above.
- B. The applicant has made adequate provisions for financial assurance, provided the applicant meets the requirements in Finding 7 (D) above.

THEREFORE, the Department APPROVES the decommissioning plan and the application of WATER LINE SOLAR, LLC 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. The applicant shall take all necessary measures to ensure that their activities or those of its agents do not result in measurable erosion of soil on the site during the construction 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. 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 must be decommissioned in accordance with the decommissioning plan.
5. Prior to the start of construction, the applicant shall submit evidence of financial assurance to cover the cost of decommissioning to the Department for review and approval.
6. The applicant shall maintain financial assurance sufficient to cover the cost of decommissioning throughout the life of the solar energy development, including through decommissioning.
7. The applicant shall review the decommission plan and cost of decommissioning and update the financial assurance 15 years after the date of this Order and every 5 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.
8. The applicant shall notify the Department at least 30 days prior to the initiation of

decommissioning.

9. At the time of decommissioning, the applicant shall submit a plan for continued beneficial use of any components proposed to be left on-site to the Department for review and approval.
10. 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.
11. 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 is 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 6th DAY OF MAY 2022. DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: 
For: Melanie Loyzim, Commissioner

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES.

KF/L29085ANBN/ATS#89230 & 89231

FILED
May 9th, 2022
State of Maine
Board of Environmental Protection



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.

Revised September 2016



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.
