



# APPENDIX B.1

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

## DEPARTMENT ORDER

### IN THE MATTER OF

SHM ROCKLAND, LLC	)	MAINE HAZARDOUS
CUSHING, KNOX COUNTY, MAINE	)	WASTE, SEPTAGE AND
BENEFICIAL USE OF DREDGE MATERIAL	)	SOLID WASTE
S-022546-W3-A-N	)	MANAGEMENT ACT
(APPROVAL WITH CONDITIONS)	)	NEW LICENSE

Pursuant to the provisions of the *Maine Hazardous Waste, Septage and Solid Waste Management Act*, 38 M.R.S. §§1301 through 1319-Y; the *Rules Concerning the Processing of Applications and Other Administrative Matters*, 06-096 C.M.R. ch. 2, (last amended June 9, 2018), the *Solid Waste Management Rules: General Provisions*, 06-096 C.M.R. ch. 400 (last amended February 9, 2021), and the *Solid Waste Management Rules: Beneficial Use of Solid Waste*, 06-096 C.M.R. ch. 418 (last amended July 8, 2018), the Department of Environmental Protection ("Department") has considered the application of the SHM ROCKLAND, LLC ("SHM" or "the applicant") with its supportive data, staff review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

#### 1. APPLICATION SUMMARY

- A. Application: SHM has applied for a license for the one-time beneficial use of dredge material as part of a gravel pit reclamation project in Cushing, Maine.
- B. Summary of Proposal: SHM proposes to use approximately 16,000 cubic yards of dredge material generated by the applicant during the dredging of a marina owned and operated by SHM. The dredged material will be dewatered on site and transported approximately 12 miles to a gravel pit owned by John Barbour, located in Cushing, Maine. The dredge material will be used as subgrade fill to contour the excavated area of the gravel pit and then covered and seeded.

#### 2. BACKGROUND INFORMATION

The marina where the dredging will take place was owned by Rockland Harbor Park, LLC and operated by Yachting Solutions, LLC ("YS"), per a lease agreement, when the application was submitted. YS was the original applicant. The Department notified YS of several items that needed to be addressed by YS before the Department could complete its review of the application. These included title, right or interest for the area that will be dredged, an agreement between YS and the gravel pit owner that would allow for the beneficial use of the dredge material at the gravel pit, additional information on the financial and technical ability of YS and the gravel pit owner to carry out the proposed beneficial use, and information that was missing from the disclosure statement. In

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addition, during the course of the Department’s review of the application, staff determined that the marina was for sale and a purchase agreement was being executed between Rockland Harbor Park, LLC and SMH. In order to address the Department’s comments on the application and based on the change in ownership of the marina, YS and SHM became co-applicants for the beneficial use application on January 12, 2021. Both parties submitted information that addressed the Department’s comments, that reflected the current ownership of the marina and that allowed SHM to become a co-applicant. Subsequent to the completion of purchase of the marina by SHM, YS became a contracted agent and operator working on behalf of SHM. Based on this change in the contractual relationship, YS withdrew as co-applicant on March 30, 2021.

3. PROJECT DESCRIPTION

As part of the maintenance of the marina and to accommodate larger vessels, SHM has proposed dredging in two areas around the boat slips. The smaller area, identified as Area A, is expected to generate approximately 1,000 cubic yards of dredge material. The larger area, identified as Area B, is expected to generate approximately 11,000 cubic yards of dredge material. The dredge material will be partially dewatered on the dredge barge and again following off-loading at the Prock Marine Company yard located 1 mile from the dredge location via the barge haul route over water. Once dewatered, the dredge material will be transported to the gravel pit owned by John Barbour in Cushing and placed as subgrade fill to contour the excavated area of the gravel pit and then covered and seeded.

4. SCHEDULE

The applicant plans to begin the beneficial use of the dredge material from the marina in November of 2021 and complete the project by March of 2022.

5. TITLE, RIGHT, OR INTEREST

SHM submitted a Warranty Deed demonstrating John Barbour’s ownership of the property where the beneficial use will occur. SHM has also submitted a copy of an agreement executed between John Barbour and SHM for the beneficial use of the dredge material at the gravel pit owned by John Barbour and holding Mining ID # 485 from the Department. Finally, SHM submitted a Quitclaim Deed demonstrating ownership of the parcel where the marina is located and where the dredge material will be excavated. The deed also conveyed all right, title and interest in the land and any improvements located between the high and low water lines, as well as any land and improvements located below the low water line, as described in the deed, where the dredging will take place.

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The Department finds that the applicant has demonstrated sufficient title, right or interest in the property where the proposed beneficial use of the dredge material will occur and to the submerged lands where the dredge material will be excavated.

6. NOTICE OF INTENT TO FILE

The applicant has provided a copy of a notice of intent to file that was published in the *Kennebec Journal* on October 13, 2020 and sent by certified mail to the Town Manager and Planning Board Chair of the Town of Cushing, and to abutting property owners.

7. FINANCIAL ABILITY

SHM estimates that the total cost to make the planned improvements to the marina, including the dredging, will cost approximately \$1,784,701. Of that total, the dredging and beneficial use of the dredge material is estimated at \$763,000. SHM has secured a grant through the Federal Boating Infrastructure Grant (“BIG”) program in the amount of \$1,045,760. Per the grant agreement, SHM must provide a matching contribution of \$737,941.

SHM is a wholly owned subsidiary of Safe Harbor Marinas, LLC, which was acquired by Sun Communities, Inc. in September 2020. SHM submitted the most recent corporate annual report for Sun Communities, Inc., demonstrating the availability of sufficient funds to finance the proposed project.

The Department finds that the applicant has submitted accurate cost estimates for the proposed project and has provided evidence that funds are available to beneficially use the dredge material as proposed; thereby it has affirmatively demonstrated the financial capacity to beneficially use the dredge material in a manner consistent with all applicable requirements.

8. TECHNICAL ABILITY

SHM has retained Prock Marine Company to excavate and dewater the dredge material from the marina. Prock Marine Company has over 80 years of experience constructing waterfront projects including piers and marinas, as well as conducting dredge projects. The company has nine barges, three tugboats, twelve trucks and seven cranes available to perform the proposed project. However, the Department finds that Prock Marine Company does not currently hold a 06-096 C.M.R. ch. 402 license to store the dredge materials during the dewatering period, as described in Finding of Fact # 11.

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John Barbour will be responsible for the placement and covering of the dredge material once it is delivered to the gravel pit (Department Mining ID # 485). Mr. Barbour has a degree in civil engineering and has over 30 years of experience in large earthworks projects. Mr. Barbour has eight trucks, nine excavators, and two bulldozers available to perform the placement and covering of the dredge material. Landmark Corporation, an engineering firm with over 75 years of experience, prepared the design plans for the proposed project that were signed and stamped by a Maine Professional Engineer.

The Department finds that the applicant has affirmatively demonstrated the technical ability to beneficially use the dredge material in a manner constant with all applicable requirements, provided Prock Marine Company obtains the appropriate license under 06-096 prior to storage of the dredge material from this project at its facility during dewatering.

9. DISCLOSURE STATEMENT

The applicant has submitted a disclosure statement in accordance with the requirements of 06-096 C.M.R. ch. 400, § 12. The applicant has not been convicted of any criminal law and has not been adjudicated or otherwise found to have committed any civil violation of environmental laws or rules of the State, other states, the United States, or another country in the five years preceding this application. Based on the disclosure statement submitted by the applicant, the Department finds no reason to refuse to grant a license to the applicant.

10. BENEFICIAL USE DEMONSTRATION

The Department requires exhausted pit areas to be reclaimed with suitable materials, including soil, rocks and other permissible fill materials. The reclaimed areas should be graded to a slope of 2.5 horizontal to 1 vertical or less and at least 90% covered with vegetation. The dewatered dredge material from the SHM project, comprised of soil and rock, will be used as a subgrade material and placed to achieve the required slope specifications. Following placement and grading, the dredge material will be covered with a minimum of 6 inches of non-screened topsoil and permanently stabilized with seed, fertilizer and mulch or covered with a minimum of 6 inches of erosion control mix.

The Department finds that the proposed beneficial use proposed by the applicant serves a legitimate beneficial purpose, does not constitute a means of disposal or discard, and that the dredge material will perform as an acceptable substitute for the common borrow or other fill that might be used for the reclamation of gravel pits as required by the Department.

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## 11. STORAGE AND HANDLING

The dredge material will be excavated using a crane located on a floating platform, loaded into a barge and partially dewatered on the barge. The barge will be transported a short distance through Rockland harbor to the Prock Marine Company waterfront marina, where the dredge material is proposed to be offloaded for further dewatering in an area constructed of concrete barriers and lined with geotextile and hay bales. The dewatering area will be designed to drain back into Rockland harbor. The dewatered dredge material will then be loaded onto trucks and delivered to John Barbour's gravel pit for placement and grading using trucks licensed by the Department to transport Category A non-hazardous wastes.

Fugitive dust will be controlled during transport by covering of loads as needed. Erosion and sedimentation will be controlled by measures such as construction exit and entrance best management practices, silt fence, hay bales, mulch, and seeding for final cover. Personnel will be available with shovels, brooms and mechanical sweepers to clean up any spills of the dredge material. The gravel pit has a dust minimization plan in place for the operation of the pit. Best management practices will be implemented in a manner consistent with the *Maine Erosion and Sediment Control Best Management Practices (BMPs) Manual for Designers and Engineers* (October 2016) and the *Maine Erosion and Sediment Control Practices Field Guide for Contractors* (March 2015). All BMPs will be inspected and maintained until the site is permanently stabilized.

The Department finds that the dewatering area described in the application requires a storage facility license under the provisions of 06-096 C.M.R. ch. 402. The Department therefore finds that the applicant has documented adequate procedures to control liquid discharge, fugitive dust, and erosion and sedimentation during storage and handling of the dredge material, provided the land area used to dewater the dredge material is licensed as a dredge material storage facility under 06-096 C.M.R. ch. 402.

## 12. TRAFFIC MOVEMENT

SHM has estimated that a maximum of 35 loads of the dredge material will be transported from the Prock Marine Company facility to the gravel pit per day. The haul route is approximately 12 miles one way over Maine state roads, with an estimated round-trip travel time of one hour per load. The excavation and hauling will occur when roads are not posted for heavy loads during the spring thaw. Hauling of the dredge material will begin in November of 2021 and be completed by March of 2022, within a period of less than one year.

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The Department finds that 06-096 C.M.R. ch. 418, § 4(C)(1) states that the traffic standards of 06-096 C.M.R. ch. 400, § 4(D) are presumed to be met if the beneficial use will occur no more than once in a calendar year; this project will be completed within a one year period. Therefore, the Department finds that the applicant has made adequate provisions for safe and uncongested traffic movement of all types into, out of, and within the area proposed for beneficial use of the dredge material.

13. AIR QUALITY

As described in Finding of Fact #11, SHM states that fugitive dust will be controlled during transport by covering of loads as needed. Any spills of the dredge material will be cleaned up immediately and the gravel pit operator has a dust minimization plan for the gravel pit. The dredge material is not putrescible and will not generate nuisance odors. The proposed beneficial use will not involve open burning of any solid wastes.

The Department finds that the proposed beneficial use of the dredge material will not unreasonably adversely affect air quality.

14. PROTECTED NATURAL RESOURCES

The proposed beneficial use will not occur in, on, over or adjacent to a protected natural resource that would require conformance with the standards of the Natural Resource Protection Act, 38 M.R.S. §§ 480-A through 480-Z or require a Federal Wetlands permit. The applicant is in the process of filing applications under the Natural Resource Protection Act and with the Army Corps of Engineers for the dredging of the marina and will secure those approvals prior to implementing the proposed beneficial use.

The Department finds that the proposed beneficial use will not have an unreasonably adverse effect on other natural resources in the municipality or in neighboring municipalities.

15. WASTE CHARACTERIZATION and RISK EVALUATION

SHM collected and analyzed a total of five samples of the dredge material, two from Area A and three from Area B. The samples were analyzed for total metals, volatiles and semi-volatiles, PCBs, hexavalent chromium, and dioxins. With the exception of arsenic, all the constituent levels were below the levels necessary to beneficially use the dredge material in accordance with the reduced procedures provisions of 06-096 C.M.R. ch. 418, § 7(A)(3). Based on the low levels of constituents in the dredge material, it was determined that none of the samples would exceed the hazardous waste thresholds. The Department finds that the applicant has provided adequate characterization data for the

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dredge material and finds that the applicant’s proposed use of dredge material will not include the use of any hazardous wastes.

The arsenic levels ranged from 17 to 28 mg/kg. The allowable limit under 06-096 C.M.R. ch. 418, § 7(A) is 16 mg/kg, and the screening level in 06-096 C.M.R. ch. 418, Appendix A is 7.9 mg/kg. The applicant states that the beneficial use will occur at a facility where public access is strictly limited via fencing and a locked gate, that the closest residence is located 1,000 feet away from where the dredge material will be placed and that the dredge material will be placed and covered in an expeditious manner, thereby limiting exposure to the public and the environment. The Department finds that the risk management measures to be employed during the use of dredge material as proposed by the applicant are adequate to manage the arsenic level in the dredge material, and that beneficial use of the dredge material as proposed will not pollute any waters of the State, contaminate the ambient air, constitute a hazard to health or welfare, or create a nuisance.

16. EXISTING USES AND SCENIC CHARACTER

The gravel pit where the beneficial use will occur is not visible from any public roads or public viewsheds and is surrounded by wooded buffers. Within the property where the pit is located, the reclaimed area will be graded to blend in with the existing landscape and, once covered and vegetated, will look like a grassy knoll on the landscape. The proposed use of the dredge material will not present a bird hazard to aircraft as the nearest airport is over seven miles away. The proposed beneficial use will not impact historical sites or generate excessive noise at the property boundary or at protected locations.

The Department finds that the proposed beneficial use will not unreasonably adversely affect existing uses and scenic character.

BASED on the above Finding of Facts, the Department makes the following CONCLUSIONS:

1. The proposed beneficial use will not pollute any waters of the State, contaminate the ambient air, constitute a hazard to health or welfare, or create a nuisance.
2. The applicant has demonstrated sufficient title, right, or interest in the property where the beneficial use will occur.
3. The applicant has the financial capacity to beneficially use the dredge material, as described in this order, in a manner consistent with state environmental requirements.

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4. The applicant has adequate technical ability to beneficially use the dredge material described in this application in a manner consistent with state environmental requirements, provided Prock Marine Company, proposed as the land dewatering area, obtains a license under 06-096 C.M.R. ch. 402 prior to storage of the dredge material on land.
5. The applicant has provided a disclosure statement as required by 06-096 C.M.R. ch. 400, § 12, and the Department finds no reason to refuse to grant a license to the applicant.
6. The use of dredge material as proposed by the applicant serves a legitimate beneficial purpose, does not constitute disposal or a means of discard, and will perform as an acceptable substitute for the type of material typically used.
7. The proposed beneficial use of the dredge material will not include the use of hazardous wastes identified pursuant to Maine's *Identification of Hazardous Waste* rule, 06-096 C.M.R. ch. 850.
8. The applicant has made adequate provisions for safe and uncongested traffic movement of all types into, out of, and within the area proposed for beneficial use.
9. The proposed beneficial use will not unreasonably adversely affect air quality.
10. The proposed beneficial use of the dredge material will not have an unreasonably adverse effect on natural resources in the municipality or neighboring municipalities and will not cause unreasonable sedimentation or erosion of soil.
11. The applicant has provided adequate characterization data for the dredge material for use in the proposed project, has proposed acceptable risk management procedures for the elevated level of arsenic in the dredge material, and the dredge material is suitable for the proposed beneficial use.
12. The proposed beneficial use will not unreasonably adversely affect existing uses and scenic character of the area.



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THEREFORE, the Department APPROVES the above noted application of SHM ROCKLAND, LLC, SUBJECT TO THE ATTACHED CONDITIONS and all applicable standards and regulations:

1. The Standard Conditions of Approval, a copy attached as Appendix A.
2. 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.
3. SHM shall ensure that any land dewatering of the dredge material from its project occurs only at a storage facility licensed under the applicable provisions of 06-096 C.M.R. ch. 402, and shall notify the Department of the location to be used prior to the placement of any dredge material on land.

DONE AND DATED AT AUGUSTA, MAINE, THIS 12<sup>th</sup> DAY

OF May, 2021.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY:   
Melanie Loyzim, Commissioner

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES.

Date of initial receipt of application: October 20, 2020

Date of application acceptance: November 10, 2020

Date filed with Board of Environmental Protection:

XMP86686/mtp

**FILED**  
May 12, 2021  
State of Maine  
Board of Environmental  
Protection

## Appendix A

### STANDARD CONDITIONS TO ALL SOLID WASTE FACILITY LICENSES

STRICT CONFORMANCE WITH THE STANDARD AND SPECIAL CONDITIONS OF THIS APPROVAL IS NECESSARY FOR THE PROJECT TO MEET THE STATUTORY CRITERIA FOR APPROVAL. VIOLATIONS OF THE CONDITIONS UNDER WHICH A LICENSE IS ISSUED SHALL CONSTITUTE A VIOLATION OF THAT LICENSE AGAINST WHICH ENFORCEMENT ACTION MAY BE TAKEN, INCLUDING REVOCATION.

1. **Approval of Variations from Plans.** The granting of this approval is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed by the licensee. Any consequential variation from these plans, proposals, and supporting documents is subject to review and approval prior to implementation.
2. **Compliance with All Applicable Laws.** The licensee 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.
3. **Compliance with All Terms and Conditions of Approval.** The licensee shall submit all reports and information requested by the Department demonstrating that the licensee has complied or will comply with all terms and conditions of this approval. All preconstruction terms and conditions must be met before construction begins.
4. **Transfer of License.** The licensee may not transfer the solid waste facility license or any portion thereof without approval of the Department.
5. **Initiation of Construction or Development Within Two Years.** If the construction or operation of the solid waste facility is not begun within two years of issuance or within 2 years after any administrative and judicial appeals have been resolved, the license lapses and the licensee must reapply to the Department for a new license unless otherwise approved by the Department.
6. **Approval Included in Contract Bids.** A copy of the approval must be included in or attached to all contract bid specifications for the solid waste facility.
7. **Approval Shown to Contractors.** Contractors must be shown the license by the licensee before commencing work on the solid waste facility.
8. **Background of key individuals.** A licensee may not knowingly hire as an officer, director or key solid waste facility employee, or knowingly acquire an equity interest or debt interest in, any person convicted of a felony or found to have violated a State or federal environmental law or rule without first obtaining the approval of the Department.
9. **Fees.** The licensee must comply with annual license and annual reporting fee requirements of the Department's rules.
10. **Recycling and Source Reduction Determination for Solid Waste Disposal Facilities.** This condition does not apply to the expansion of a commercial solid waste disposal facility that accepts only special waste for landfilling.

STANDARD CONDITIONS TO ALL SOLID WASTE FACILITY LICENSES

The solid waste disposal facility shall only accept solid waste that is subject to recycling and source reduction programs, voluntary or otherwise, at least as effective as those imposed by 38 M.R.S. Chapter 13.

- 11. Deed Requirements for Solid Waste Disposal Facilities.** Whenever any lot of land on which an active, inactive, or closed solid waste disposal facility is located is being transferred by deed, the following must be expressly stated in the deed:
- A. The type of facility located on the lot and the dates of its establishment and closure.
  - B. A description of the location and the composition, extent, and depth of the waste deposited.
  - C. The disposal location coordinates of asbestos wastes must be identified.



# DEP INFORMATION SHEET

## Appealing a Department Licensing Decision

**Dated: November 2018**

**Contact: (207) 287-2452**

### **SUMMARY**

There are two methods available to an aggrieved person seeking to appeal a licensing decision made by the Department of Environmental Protection's (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.

This information sheet, in conjunction with a review of the statutory and regulatory provisions referred to herein, can help a person to understand his or her rights and obligations in filing an administrative or judicial appeal.

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

#### **LEGAL REFERENCES**

The laws concerning the DEP's *Organization and Powers*, 38 M.R.S. §§ 341-D(4) & 346; the *Maine Administrative Procedure Act*, 5 M.R.S. § 11001; and the DEP's *Rules 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**

The Board must receive a written appeal within 30 days of the date on which the Commissioner's decision was filed with the Board. Appeals filed more than 30 calendar days after the date on which the Commissioner's decision was filed with the Board will be dismissed unless notice of the Commissioner's license decision was required to be given to the person filing an appeal (appellant) and the notice was not given as required.

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

Signed original appeal documents must be sent to: Chair, Board of Environmental Protection, 17 State House Station, Augusta, ME 04333-0017. An appeal may be submitted by fax or e-mail if it contains a scanned original signature. It is recommended that a faxed or e-mailed appeal be followed by the submittal of mailed original paper documents. The complete appeal, including any attachments, must be received at DEP's offices in Augusta on or before 5:00 PM on the due date; materials received after 5:00 pm are not considered received until the following day. The risk of material not being received in a timely manner is on the sender, regardless of the method used. The appellant must also send a copy of the appeal documents to the Commissioner of the DEP; the applicant (if the appellant is not the applicant in the license proceeding at issue); and if a hearing was held on the application, any intervenor in that hearing process. All of the information listed in the next section of this information sheet must be submitted at the time the appeal is filed.

### **INFORMATION APPEAL PAPERWORK MUST CONTAIN**

Appeal materials 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 maintain an 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 regarding compliance with the 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 requirements 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 or permit to changes in specific permit 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 public hearing must be filed as part of the notice of appeal, and must include an offer of proof in accordance with Chapter 2. 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 evidence must be submitted with the appeal. The Board may allow new or additional evidence, referred to as supplemental evidence, to be considered in an appeal only under very limited circumstances. The proposed 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. Specific requirements for supplemental evidence are found 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 easily accessible by the DEP. Upon request, the DEP will make application materials available during normal working hours, provide space to review the file, and provide an opportunity for photocopying materials. There is 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 your appeal.* DEP staff will provide this information on 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 license holder may proceed with a project pending the outcome of an appeal, but the license holder 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 formally acknowledge receipt of an appeal, and will provide the name of the DEP project manager assigned to the specific appeal. The notice of appeal, any materials accepted by the Board Chair as supplementary evidence, any materials submitted in response to the appeal, and relevant excerpts from the DEP's application review file will be sent to Board members with a recommended decision from DEP staff. The appellant, the license holder if different from the appellant, and any interested persons are notified in advance of the date set for Board consideration of an appeal or request for public hearing. The appellant and the license holder will have an opportunity to address the Board at the Board meeting. With or without holding a public hearing, the Board may affirm, amend, or reverse a Commissioner decision or remand the matter to the Commissioner for further proceedings. The Board will notify the appellant, the license holder, and interested persons of its decision.

## **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's Executive Analyst at (207) 287-2452, or for judicial appeals contact the court clerk's office in which your appeal will be filed.

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**Note: The DEP provides this INFORMATION SHEET for general guidance only; it is not intended for use as a legal reference. Maine law governs an appellant's rights.**

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