

LICENSE REVIEW ROUTING SHEET

PROJECT MANAGER: CALLAHAN, BETH

ORDER TYPE:

					DRAFT
X	ORIGINAL ORDER (N)		CONDITION COMPLIANCE (C)	X	3PI
	MINOR REVISION (M)		TRANSFER (T)	X	SEND TO REGISTRY
X	MAJOR AMENDMENT (A)		AFTER-THE-FACT		CORRECTED ORDER

All Site Orders **must** be sent to the registry.



APPLICANT NAME:	Coastal Maine Botanical Gardens, Inc. c/o William Cullina, Executive Director, & Adam Harkins, Director of Facilities				
APPLICANT ADDRESS:	132 Botanical Gardens Drive Boothbay, ME 04537				
E-MAIL ADDRESS:			wcullina@mainegardens.org aharkins@mainegardens.org		
PROJECT LOCATION:	Boothbay & Boothbay Harbor, Lincoln County	PROJECT #	L-21490-26-K-A L-21490-TG-L-N L-21490-VP-M-N L-21490-4P-N-N		
APPLICATION TYPE:		Site/NRPA	ATS#:	80204, 80205, 80208, 80209	
ISSUES/COMMENTS:	The applicant would appreciate a rushed review.				
ACCEPTANCE DATE:	March 3, 2016				
AGENT NAME:	Jan Wiegman & Stephanie Hubbard Wright-Pierce				
AGENT ADDRESS:	99 Main Street Topsham, ME 04086				
E-MAIL ADDRESS:			jan.wiegman@wright-perice.com stephanie.hubbard@wright-pierce.com		

A copy of the Order also goes to the **Registry**, the **Towns of Boothbay and Boothbay Harbor**, **Peter Tischbein of the USACOE (email below)**, **John MacLaine of MDIFW (email below)**, and **Steve Roberge, 3PI (email below)**.

Peter.Tischbein@usace.army.mil	John.Maclaine@maine.gov	steve@sjreng.com
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ABSTRACT

- Coastal Maine Botanical Gardens, Inc. (Boothbay, Boothbay Harbor) (approval):* In Department Order #L-21490-26-K-A/L-21490-TG-L-N/L-21490-VP-M-N/L-21490-4P-N-N, the Department approved an expansion of the facility, entitled "Phase I of the Coastal Maine Botanical Gardens' 2015-2035 Master Plan." Phase I consists of a 22,200-square foot Conservatory, a new entrance with a visitor center and gift shop, conversion of the Garden's existing visitor center to a restaurant, a 16,000-square foot Horticulture research and production facility, reconstruction of a 2,025-linear foot section of Botanical Gardens Drive, expansion of the Gardens' existing education center, and several expanded areas of parking, formal gardens, cart paths, and trails. The proposed project, at an estimated cost of \$29.7 million, is located off Botanical Gardens Drive in the Towns of Boothbay and Boothbay Harbor. (Callahan)

REVIEWED BY:	SIGNATURE	OK DATE
ENFORCEMENT STAFF	NONE	
REGIONAL SUPER:		10/20/16
Div. Director:		10/25/16



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



PAUL R. LEPAGE
GOVERNOR

PAUL MERCER
COMMISSIONER

October, 2016

Coastal Maine Botanical Gardens, Inc.
c/o William Cullina, Executive Director, & Adam Harkins, Director of Facilities
132 Botanical Gardens Drive
Boothbay, ME 04537

RE: Site Location of Development Act Amendment Application and Natural Resources
Protection Act Application, Boothbay and Boothbay Harbor, DEP #L-21490-26-K-A/L-
21490-TG-L-N/L-21490-VP-M-N/L-21490-4P-N-N

Dear Mr. Cullina and Mr. Harkins:

Please find enclosed a signed copy of your Department of Environmental Protection land use permit. You will note that the permit includes a description of your project, findings of fact that relate to the approval criteria the Department used in evaluating your project, and conditions that are based on those findings and the particulars of your project. Please take several moments to read your permit carefully, paying particular attention to the conditions of the approval. The Department reviews every application thoroughly and strives to formulate reasonable conditions of approval within the context of the Department's environmental laws. You will also find attached some materials that describe the Department's appeal procedures for your information.

If you have any questions about the permit or thoughts on how the Department processed this application please get in touch with me directly. I can be reached at (207) 446-1586 or at beth.callahan@maine.gov.

Sincerely,

Project Manager
Bureau of Land Resources

pc: File

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
(207) 287-7688 FAX: (207) 287-7826

BANGOR
106 HOGAN ROAD, SUITE 6
BANGOR, MAINE 04401
(207) 941-4570 FAX: (207) 941-4584

PORTLAND
312 CANCO ROAD
PORTLAND, MAINE 04103
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE
1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04769
(207) 764-0477 FAX: (207) 760-3143



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

DEPARTMENT ORDER

IN THE MATTER OF

COASTAL MAINE BOTANICAL
GARDENS, INC.

Boothbay and Boothbay Harbor,
Lincoln County

PHASE I EXPANSION

L-21490-26-K-A (approval)

L-21490-TG-L-N (approval)

L-21490-VP-M-N (approval)

L-21490-4P-N-N (approval)

) SITE LOCATION OF DEVELOPMENT ACT
) NATURAL RESOURCES PROTECTION ACT
) FRESHWATER WETLAND ALTERATION
) SIGNIFICANT VERNAL POOL
) COASTAL WETLAND ALTERATION
) WATER QUALITY CERTIFICATION
)
) AMENDMENT
) FINDINGS OF FACT AND ORDER

Pursuant to the provisions of 38 M.R.S.A. Sections 481 et seq. and 480-A et seq., and Section 401 of the Federal Water Pollution Control Act, the Department of Environmental Protection (Department) has considered the application of the COASTAL MAINE BOTANICAL GARDENS, INC. with the supportive data, agency review comments, public comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

1. PROJECT DESCRIPTION:

A. History of Project: In Department Order #L-21490-26-A-N/L-21490-TE-B-N, dated October 2, 2003, the Department approved the development of the Coastal Maine Botanical Gardens. The development consists of a visitor center, formal display gardens, a landing and observation deck, several small parking lots, an events pavilion, trails, and other associated features. The Department has approved several modifications subsequent to original issuance which include: an event lawn area with an associated parking area, improvements to the main access drive, two greenhouses, 5,575 linear feet of additional trails, a 5,000-square foot support building for offices and classrooms (Education Center), an expansion to the development's main parking area, a pile-supported permanent pier system, and other associated features. The development is located off Botanical Gardens Drive in the Town of Boothbay.

B. Summary: The applicant proposes to expand the existing facility by constructing Phase I of its 2015-2035 Master Plan for the Coastal Maine Botanical Gardens. Phase I will include a 22,200-square foot Conservatory, re-construction of a 2,025-linear foot section of Botanical Gardens Drive from an existing 22-foot wide gravel road to a 24-foot wide paved road, conversion of an existing visitor center into a restaurant, creation of a new visitor entrance consisting of a visitor center and gift shop, a 16,000-square foot horticulture production and research facility, expansion of an existing education center, several permanent gravel parking areas and grassed overflow parking areas equating to 918 vehicle parking spaces and five bus parking spaces, two additional 12-foot wide by 24-foot long seasonal floats, several additional trails, formal gardens, and cart paths, and

associated appurtenant structures, utilities, and infrastructure. The proposed project is shown on a set of plans the first of which is entitled "Parcel Plan," prepared by Wright-Pierce and dated February 10, 2016, with a last revision date of September 27, 2016.

The applicant is also seeking approval under the Natural Resources Protection Act (NRPA) to permanently alter 62,621 square feet of freshwater wetlands, indirectly alter 12,124 square feet of freshwater and coastal wetlands due to shading effects of the wetlands, convert 3,211 square feet of forested freshwater wetland to emergent wetland, and permanently alter 262,935 square feet of critical terrestrial habitat of eight significant vernal pools (SVP). Wetland impacts are discussed in further detail in Finding 16. Wildlife habitat impacts are discussed in further detail in Findings 6 and 16.

In addition, the applicant submitted a Notice of Intent (NOI #61254) to comply with the requirements of the Maine Construction General Permit. NOI #61254 was approved by the Department on February 24, 2016.

C. Current Use of Site: The site of the proposed project is located within the Coastal Maine Botanical Gardens development which contains numerous trails, formal gardens, various structures, and parking areas.

D. Public Interest: While the application was being reviewed, the Department received comments from an interested person, who lives within the vicinity of the Coastal Maine Botanical Gardens property. The Department did not receive any requests for a public hearing during the 20-day period specified in the Department's Chapter 2 Rules governing the processing of applications.

The interested person expressed concern in regard to adverse effect to significant vernal pools from the proposed development. The Department reviewed the interested person's concerns and accepted all comments which were submitted into the Department's record.

2. FINANCIAL CAPACITY:

The total cost of the Phase I project is estimated to be \$27,500,000. The proposed project is anticipated to be constructed in several phases. At a cost of \$15,200,000, the applicant proposes to first construct the permanent and overflow parking areas, the visitor center, the reconstructed entrance drive, and associated utilities and landscaping .

In letters dated February 1, 2016 and October 12, 2016, the applicant stated that it has begun a capital fundraising campaign to fund all components of the proposed expansion project. The applicant further submitted audited financial statements, dated December 31, 2014. In the letter dated October 12, 2016, from its Executive Director, the applicant stated that it has raised funds in an amount which exceeds the cost of the parking areas, visitor center, reconstructed entrance drive, and all associated utilities and landscaping. The applicant stated that the remaining components of the proposed project, which include the Conservatory, gift shop, education center expansion, horticulture production and research facility, seasonal floats, trails, and formal gardens areas, are estimated to

cost \$12,300,000 and funds for these components of the project will be raised through fundraising and endowment efforts.

Prior to the start of construction of future components of the Phase I project including the Conservatory, gift shop, education center expansion, horticulture production and research facility, seasonal floats, trails, and formal gardens areas, the applicant must submit evidence that it has been granted a line of credit or a loan by a financial institution authorized to do business in this State or evidence of any other form of financial assurance determined by Department Rules, Chapter 373(1), to be adequate to the Department's Bureau of Land Resources (BLR) for review and approval.

The Department finds that the applicant has demonstrated adequate financial capacity to comply with Department standards provided that the applicant submits final evidence of financial capacity to the Department's BLR prior to the start of construction of future phases of the Phase I project as described above.

3. TECHNICAL ABILITY:

The applicant provided resume information for key persons involved with the project and a list of projects successfully constructed by the applicant. The applicant also retained the services of several consulting firms to assist in the design and engineering of the project. These firms, among others, and their involvement in the proposed project are as follows:

- Wright-Pierce. – site development, permitting
- Penobscot Environmental Consultants – natural resource assessment
- Albert Frick Associates, Inc. – soils assessment
- S.W. Cole Engineering – geotechnical services

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

4. NOISE:

The noise generated by the proposed project is anticipated to be minor in nature and consistent with applicable municipal ordinances and zoning. The applicant identified a generator associated with the proposed Conservatory as a potential source of noise. The applicant stated that this source of noise will be enclosed or screened by a sound attenuating enclosure. All other sound generated by the proposed project will be consistent with current operations. The applicant further stated that the proposed project has been designed to be in compliance with the Department's Chapter 375 (10) Noise Standards.

The Department finds that the proposed expansion will not generate excessive operational noise.

5. SCENIC CHARACTER:

The proposed project site is located on the south side of Barters Island Road at the end of Botanical Garden Drive. The proposed project site is primarily comprised of woodlands and formal gardens. The proposed additional seasonal floats are located in the Back River, which is a scenic resource visited by the general public, in part, for the use, observation, enjoyment and appreciation of its natural and cultural visual qualities.

The applicant's shoreline is mostly undeveloped and contains an existing permanent pier system. Land uses across the resource consist of commercial and residential uses which are visible from the water. The proposed float site is located directly across from a commercial seafood processing facility and lobster pound. Knickerbocker/Barters Island Road Bridge, which carries Barters Island Road, is located approximately 1,000 feet north of the proposed float site. Due to the presence of these much larger existing structures, the applicant does not anticipate that the proposed floats will result in a change in the visual landscape nor in a visual or navigational obstruction of the resource. The applicant stated that that proposed project will be minimally visible from nearby and abutting residences. Existing vegetation will screen much of the proposed project and the proposed project will be consistent with the existing uses of the facility.

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

6. WILDLIFE AND FISHERIES:

The applicant proposes to alter 262,935 square feet of upland and forested freshwater wetland critical terrestrial habitat associated with eight SVPs, identified as VP-2, VP-5, VP-6, VP-7, VP-14, VP-16, VP-5A, and VP-31.

The Maine Department of Inland Fisheries and Wildlife (MDIFW) reviewed the proposed project, assessed the data for all on-site vernal pools, and visited the project site on May 6, 2016. Of the 18 vernal pools identified within the project boundary, MDIFW confirmed that eight of those pools at the project site are SVPs which are designated as Significant Wildlife Habitats pursuant to the Natural Resources Protection Act. MDIFW recommended that the applicant construct a small stature amphibian barrier along the edge of one of the proposed parking areas (Parking Lot B) within the critical terrestrial habitat of VP-14 and VP-16. The amphibian barrier is a permanent structure that is intended to guide amphibians toward intact habitat and reduce impacts to migrating amphibians from vehicular traffic.

The applicant acknowledged MDIFW's comments and revised the proposed project to include a small stature amphibian barrier along the toe of the slope of Parking Lot B. The amphibian barrier will run parallel to the eastern side of Parking Lot B from Gaecklein Road north to Botanical Gardens Drive. Details of the amphibian barrier, which includes an inspection and maintenance plan, can be seen on a set of plans, the first of which is

entitled “Small Stature Barrier Location Plan,” prepared by Wright-Pierce and dated September 2016. In comments dated October 13, 2016, MDIFW determined the applicant’s design of the barrier and its inspection and maintenance plan to be acceptable.

The applicant must submit an as-built plan and photographs of the proposed small stature amphibian barrier within 30 days of its installation to the BLR for review and approval.

The applicant submitted an alternatives analysis for the proposed project, which describes avoidance and minimization of impacts to significant wildlife habitat and freshwater wetlands, and a mitigation plan to compensate for the loss of significant wildlife habitat functions and values. The alternatives analysis and mitigation plan are further discussed in Finding 16.

Based upon the information in the record and MDIFW’s comments, the Department finds that the applicant has made adequate provision for the protection of wildlife and fisheries provided that the applicant submits an as-built plan and photographs of the amphibian barrier to the BLR for review and approval as described above.

7. HISTORIC SITES AND UNUSUAL NATURAL AREAS:

The Maine Historic Preservation Commission reviewed the proposed project and stated in comments, dated January 8, 2016, that it will have no effect upon any structure or site of historic, architectural, or archaeological significance as defined by the National Historic Preservation Act of 1966.

In comments, dated December 21, 2015, the Maine Natural Areas Program of the Department of Agriculture, Conservation, and Forestry stated that its database does not contain any records documenting the existence of rare or unique botanical features on the project site.

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

8. BUFFER STRIPS:

As part of its stormwater management system, the applicant proposes to utilize five existing forested stormwater buffers as part of its stormwater management system. The applicant stated that these buffers are currently protected by means of a deed restriction, are intact, and are functioning as intended.

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

9. SOILS:

The applicant submitted a Class A High Intensity soil survey map and report and a geotechnical report with soils testing logs. Based on results of the soil test borings, the geotechnical report analyzed the soils at the project site and evaluated various engineering and construction factors. The report indicates that the subsurface conditions at the project site can support the proposed project. The staff of the Department's Division of Environmental Assessment (DEA) reviewed the report and agreed with the results contained in the report.

The Department finds that based on the applicant's soils report and map, geotechnical report, and DEA's review, the soils on the proposed project site do not create limitations to the proposed project that cannot be overcome through standard engineering practices.

10. STORMWATER MANAGEMENT:

The proposed project includes approximately 24.8 acres of new developed area of which 12.9 acres are new impervious area. Previously permitted areas total approximately 6.67 acres of developed area, of which 2.32 acres are impervious area, and 5,575 linear feet (0.64 acres) of permeable-surfaced trails. It lies within the watershed of the Back River and Knickerbocker Lake, a lake most at risk from new development. The applicant submitted a stormwater management plan based on the Basic, General, Phosphorus and Flooding standards contained in the Department's Chapter 500 Stormwater Management Rules, pursuant to 38 M.R.S.A. § 420-D. For the portion of the project located within the watershed of Knickerbocker Lake, the applicant applied the phosphorous methodology outlined in "Phosphorous Control in Lake Watersheds: A Technical guide to Evaluating New Development". The proposed stormwater management system consists of five existing forested stormwater buffers, one stormwater wet pond, 13 Filterra units, 14 bioretention filters, four underdrained soil filters, seven drip-edge filters, four level lip spreaders, and 24 strips of permeable pavement in certain parking areas. In addition, the applicant proposes to collect and convey rainwater into a cistern at the proposed horticulture production and research facility for irrigation purposes.

A. Basic Standards:

(1) Erosion and Sedimentation Control: The applicant submitted an Erosion and Sedimentation Control Plan (Section 14 of the application) that is based on the performance standards contained in Appendix A of Chapter 500 and the Best Management Practices (BMPs) outlined in the Maine Erosion and Sediment Control BMPs, which were developed by the Department. The staff of the Department's Bureau of Land Resources (BLR) reviewed and commented on the plan and plan sheets containing the details regarding erosion control. The applicant revised its plans to address BLR's comments.

Erosion control details will be included on the final construction plans and the erosion control narrative will be included in the project specifications to be provided to the

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

(2) Inspection and Maintenance: The applicant submitted a maintenance plan that addresses both short- and long-term maintenance requirements. The maintenance plan is based on the standards contained in Appendix B of Chapter 500. BLR staff reviewed and commented on this plan and the applicant revised it to address those comments. The applicant will be responsible for the maintenance of the stormwater management system. Prior to the start of construction of the Filterra units and permeable pavement strips, the applicant must provide an executed 5-year inspection and maintenance contract for these systems to the BLR for review. The Filterra units and permeable pavement will provide stormwater treatment from Botanical Gardens Drive, the visitor center, and the expanded education center.

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

Based on BLR's review of the erosion and sedimentation control plan and the maintenance plan, the Department finds that the proposed project meets the Basic Standards contained in Chapter 500(4)(B) provided that the applicant submits an inspection and maintenance contract for the proposed Filterra units and permeable pavement to the BLR as described above.

B. General Standards:

The applicant's stormwater management plan includes general treatment measures that will mitigate for the increased frequency and duration of channel erosive flows due to runoff from smaller storms, provide for effective treatment of pollutants in stormwater, and mitigate potential temperature impacts for all areas of the proposed project that lie within the watershed of the Back River. This mitigation is being achieved by using BMPs that will control runoff from no less than 95% of the impervious area and no less than 80% of the developed area.

BLR reviewed and commented on the applicant's proposal to collect and treat stormwater runoff using the proposed stormwater management system. The applicant revised its plans to address BLR's comments. BLR concluded that the proposed stormwater management system is designed in accordance with the General Standard contained in Chapter 500(4)(C) and recommended that the design engineer or a third-party engineer oversee the construction of the stormwater structures according to the details and notes specified on the approved plans. Within 30 days of completion of the stormwater structures, the applicant must submit a log of inspection reports detailing the items

inspected, photographs taken, and the dates of each inspection to the Department's BLR for review.

Based on the stormwater system's design and BLR's review, the Department finds that the applicant has made adequate provision to ensure that the proposed project will meet the General Standard contained in Chapter 500(4)(C) provided that the applicant retains the services of a third-party inspector, conducts a pre-construction meeting, and that construction of the stormwater structures is overseen and documented as described above.

C. Phosphorous Standards:

Because a portion of the proposed project is located within the watershed of Knickerbocker Lake, stormwater runoff from this portion of the project site will be treated to meet the phosphorus standard outlined in Chapter 500(4)(D). The applicant's phosphorus control plan was developed using methodology developed by the Department and outlined in "Phosphorus Control in Lake Watersheds: A Technical Guide for Evaluating New Development." For this project, the Permitted Phosphorus Export is 1.87 pounds of phosphorus per year. The applicant proposes to remove phosphorus from the project's stormwater runoff by utilizing several treatment measures as shown on the set of plans referenced in Finding 1. The predicted phosphorus export for the project site based on the applicant's model is 1.87 pounds of phosphorus per year. After stormwater treatment, the amount of export of phosphorus in the stormwater runoff will equal the permitted amount of phosphorus export for the site.

Based on the stormwater system's design and BLR's review, the Department finds that the applicant has made adequate provision to ensure that the proposed project will meet the Phosphorous Standard contained in Chapter 500(4)(D).

D. Flooding Standards:

For the portion of the proposed project located in the watershed of Knickerbocker Lake, the applicant is proposing to utilize a stormwater management system which is based on estimates of pre- and post-development stormwater runoff flows obtained by using Hydrocad, a stormwater modeling software that utilizes the methodologies outlined in Technical Releases #55 and #20, U.S.D.A., Natural Resources Conservation Service (June 1986 and May 1982, respectively) and retains stormwater from 24-hour storms of 2-, 10-, and 25-year frequency. The post-development peak flow from the site will not exceed the pre-development peak flow from the site.

For the portion of the proposed project located in the watershed of the Back River, the applicant is not proposing a formal stormwater management system to detain stormwater from 24-hour storms of 2-, 10-, and 25-year frequency. Instead, since the project site is located adjacent to Back River, the applicant requested a waiver from the Flooding Standards pursuant to Department Rules, Chapter 500(4)(F)(3)(a).

BLR commented that the proposed system is designed in accordance with the Flooding Standards contained in Chapter 500(4)(F). BLR commented that flow from the proposed project will directly discharge across the applicant's property through a wetland complex and into a major river segment. BLR determined that the applicant's waiver request is acceptable.

Based on the system's design and BLR's review, the Department finds that the applicant has made adequate provision to ensure that the proposed project will meet the Flooding Standards contained in Chapter 500(4)(F) for peak flow from the project site, and channel limits and runoff areas due to the project's location proximate to a major river segment in accordance with the Department's Stormwater Management Rules.

The Department further finds that the proposed project will meet the Chapter 500 standards for discharge to freshwater wetlands.

11. GROUNDWATER:

The project site is not located over a mapped sand and gravel aquifer. The applicant proposes to install two water supply wells, and wastewater will be discharged to several subsurface wastewater disposal systems. Water supply and wastewater are discussed in further detail in Findings 12 and 13.

DEA reviewed the proposed project and did not identify any issues concerning groundwater quality or quantity.

The Department finds that the proposed project will not unreasonably deplete ground water resources. Therefore, the Department further finds that the proposed project will not have an unreasonable adverse effect on ground water quality or quantity.

12. WATER SUPPLY:

When completed, the proposed project at the primary facility site is anticipated to use two million gallons of water per year. Further, the proposed horticulture facility is anticipated to use 300,000 gallons of water per year for irrigation purposes. Currently, approximately two million gallons per year of potable water is supplied by a public water supply well (PSWID #94811), which is licensed by the Department of Health & Human Services, Drinking Water Program (DWP). The applicant proposes to utilize this well for the proposed project. Further, the Boothbay Water District (District) seasonally supplies 50,000 gallons of water per day to the facility from May through September. The District submitted a letter, dated February 9, 2016, stating that the District will continue to seasonally supply this amount of water. In addition, the applicant proposes to install two individual wells for irrigation purposes to supply an additional two million gallons of water per year to the facility and 300,000 gallons of water per year to the proposed horticulture facility. The wells will be constructed in conjunction with the proposed Conservatory and horticulture facility.

The Department's Division of Water Quality Management (DWQM) reviewed the proposed water demand and the District's existing service capacity. DWQM confirmed in comments, dated March 8, 2016, that the District has sufficient capacity to continue to serve the facility site.

The applicant submitted an assessment of groundwater supplies that are available on the project site. This assessment was prepared by a geotechnical engineering firm and was reviewed by DEA. DEA found no issues or concerns with the proposed wells and recommended that the applicant submit a well installation report for each proposed individual well to the BLR for review. The report must include the well depth, estimated yield, well logs (if available), and other relevant information for each water supply well proposed to serve the facility.

The Department finds that the applicant has made adequate provision for securing and maintaining a sufficient and healthful water supply provided that, prior to operation of the wells associated with the Conservatory and the horticulture production and research facility, the applicant submits a well installation report for each proposed individual well to the BLR for review as described above.

13. WASTEWATER DISPOSAL:

When completed, the overall facility site is anticipated to discharge 16,000 gallons of wastewater per day. Currently, wastewater is disposed of by two existing subsurface wastewater disposal systems, a 450-gallon per day system and a 6,000-gallon per day system.

The applicant proposes to utilize the two existing systems to dispose of wastewater from the proposed project and to construct three additional subsurface wastewater disposal systems which will consist of two 1,000-gallon per day individual systems associated with the horticulture production and research facility and a restroom and snack area at the northern side of the proposed project and a 10,000-gallon per day engineered system that will be located under the proposed parking area. Details and locations of each system can be seen on a plan titled "Class A High Intensity Soils Map and Potential Master On-Site Wastewater Disposal Plan," prepared by Albert Frick Associates, Inc. and dated January 26, 2016, with a last revision date of September 27, 2016.

The applicant submitted the soil survey map and report discussed in Finding 9. Each individual system must be designed to meet the requirements of the Maine State Plumbing Code. The engineered wastewater disposal systems must receive approval from the Department of Health and Human Services, Division of Environmental Health (DHHS-DEH) prior to the start of operation of the systems. The applicant submitted a copy of a Department of Health and Human Services' HHE-200 form for each proposed system. This information was reviewed by, and revised in response to comments from, DEA. DEA found no issues or concerns with the proposed systems and recommended that the applicant submits an approved HHE-200 Form for each proposed subsurface wastewater disposal system to the Department's BLR for review.

Based on DEA's comments, the Department finds that the proposed wastewater disposal systems will be built on suitable soil types provided that, prior to the start of operation of each proposed subsurface wastewater disposal system, the applicant submits an approved HHE-200 Form for each proposed subsurface wastewater disposal system to the BLR for review as described above.

14. SOLID WASTE:

Currently, the development seasonally generates approximately 624 cubic yards of general solid waste and 416 cubic yards of cardboard per year. These solid wastes are hauled by Giles Rubbish, Inc. and disposed at the Boothbay Region Refuse District in Boothbay. When completed, the proposed project is estimated to generate an additional 624 cubic yards of general solid waste and 416 cubic yards of cardboard per year. All solid wastes from the proposed project will continue to be hauled by Giles Rubbish, Inc. and disposed of at the Boothbay Region Refuse District, which is currently in substantial compliance with the Maine Solid Waste Management Rules.

The proposed project will generate approximately 4,950 cubic yards of stumps and grubbings. All stumps and grubbings generated will be disposed of on site, either chipped or mulched, with the remainder to be worked into the soil, in compliance with the Maine Solid Waste Management Rules.

The proposed project will generate approximately 125 tons of construction debris and demolition debris. All construction and demolition debris generated will be disposed of at the Boothbay Region Refuse Disposal District and the Pine Tree Waste Management facility in West Bath, which are currently in substantial compliance with the Maine Solid Waste Management Rules.

Based on the above information, the Department finds that the applicant has made adequate provision for solid waste disposal.

15. FLOODING:

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

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

16. WETLAND AND SIGNIFICANT WILDLIFE HABITAT IMPACTS:

In addition to the significant wildlife habitat impacts discussed in Finding 6, the applicant further proposes to directly alter 62,621 square feet of forested freshwater wetlands, of which approximately 960 square feet is forested wetland within the critical terrestrial habitat of SVPs (VP-5A and VP-16). The proposed project will indirectly alter 12,124 square feet of forested freshwater wetlands, of which 70 square feet is forested wetland

within the critical terrestrial habitat of an SVP (VP-6) through shading by bridges and boardwalks, and 576 square feet of coastal wetlands due to shading effects of the seasonal floats over the coastal wetland. The proposed project will also result in the permanent conversion of 3,211 square feet of forested wetland to emergent wetland.

The Department's Wetland and Waterbodies Protection Rules, 06-096 CMR 310, and the Department's Significant Wildlife Rules, 06-096 CMR 335, 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, degrade the subject wildlife habitat, disturb the subject wildlife habitat, or affect the continued use of the significant wildlife habitat, if there is a practicable alternative to the project that would be less damaging to the environment. Each application for a NRPA permit that involves an alteration to a freshwater wetland, a coastal wetland, and a significant wildlife habitat must provide an analysis of alternatives in order to demonstrate that a practicable alternative does not exist.

A. Avoidance. No activity may be permitted if there is a practicable alternative to the project that would be less damaging to the environment. The applicant submitted an alternative analysis for the proposed project completed by Wright-Pierce and dated February 10, 2016, with a last revision date of June 2016. In consideration of the applicant's 10-year projection of daily visitors, the purpose of the project is to expand the facility to create additional and new activities for visitors, to increase the amount of parking available to staff and visitors, and to provide reliable access to the facility. The applicant considered several alternative expansion designs and other potential on-site locations to construct the proposed Phase I expansion project. The applicant determined that all other alternative designs and locations would result in a greater amount of wetland impact or impact to significant wildlife habitat or would not achieve the overall purpose of the proposed project. In light of these considerations, the applicant stated that there was no other practicable alternative to the project that would avoid impacts to freshwater wetlands, coastal wetlands, and significant wildlife habitat.

B. Minimal Alteration. The amount of freshwater wetlands, coastal wetlands and significant wildlife habitat to be altered must be kept to the minimum amount necessary for meeting the overall purpose of the project. The applicant minimized the proposed project by limiting modification to the horizontal alignment and road width of Botanical Gardens Drive where needed, adjusting the design and size of the visitor center and gift shop, constructing cart paths in areas of existing paths and crossings, and modifying the design of the overflow parking to avoid and minimize impacts to wetlands and SVPs. During the Department's review of the proposed project, the applicant further minimized impacts to wetlands and significant wildlife habitats by eliminating a parking area (Parking Lot A) and eliminated its original proposal to widen Gaecklein Road from 12 feet to 18 feet. By implementing this strategy, the applicant removed all previously proposed impacts to SVP depressions. The scope of the proposed project has been designed to minimize impacts to the wetlands and SVPs to the extent practicable.

C. Compensation. In accordance with Chapter 310 Section 5(C)(6)(a) and Chapter 335 Section 3(D), compensation is required to achieve the goal of no net loss of freshwater wetland and significant wildlife habitat functions and values. The applicant submitted an evaluation of the proposed project site that identifies the areas of significant wildlife habitat and freshwater wetlands on a plan entitled “Wetland Impacts Plan for NRPA Review,” prepared by Wright-Pierce and dated February 9, 2016, with a last revision date of June 2016. The applicant also submitted a functions and values assessment of the significant wildlife habitats and the freshwater wetlands as Attachments 9 and 12 of the application. The assessment identified groundwater recharge/discharge, fish and shellfish habitat, production export, wildlife habitat, recreation, educational and scientific value, uniqueness and heritage value, and visual quality as the principal functions and values of the significant wildlife habitat and freshwater wetlands.

The applicant submitted a mitigation plan to compensate for lost functions and values to the significant wildlife habitat and freshwater wetlands that consists of a combination of on-site preservation, a contribution into the In-Lieu Fee (ILF) Program, and a wetland and vernal pool education and training program. The applicant proposes to preserve approximately 20.5-acres on the south side of Gaecklein Road by means of a deed restriction. The applicant submitted a draft Declaration of Covenants and Restrictions for the preservation area which meets Department standards. The preservation area contains 10.3 acres of upland area, a 10.2-acre forested freshwater wetland complex (Wetland 31), and a significant vernal pool (VP-31). The functions and values of the wetland areas to be preserved are groundwater recharge/discharge, wildlife habitat, educational and scientific value, and uniqueness and heritage value.

Within 60 days of issuance of this Order, the Declaration of Covenants and Restrictions that protects the 20.5-acre preservation area in perpetuity shall be placed on the appropriate deed and recorded in the registry of deeds. The applicant must then submit a recorded copy of the deed restriction to the BLR within 30 days of the execution of the deed.

The applicant made a contribution into the ILF program of the Maine Natural Resource Conservation Program (MNRCP) in the amount of \$139,423.

The applicant further proposes to implement a wetland and vernal pool education and training program. In consultation with MDIFW, the applicant intends to develop and operate a five-year (or more) public and professional program for children and adults with a specific focus on freshwater wetlands and vernal pools. The program will consist of digital and paper informational materials, interpretive signs, informal education, classroom programs, and professional training.

The applicant must implement the wetland and vernal pool education and training program over a period of five years, beginning within one year of issuance of this Order. Prior to December 31 of each year, the applicant shall submit an annual report to the BLR documenting the development and operation of the program. The reports shall

consist of a summary of the amount and details of the digital and paper materials, a summary of each program that has been held, and a summary of program improvements. Within 60 days following the end of the five-year monitoring period, the applicant must submit a full assessment of the program.

MDIFW reviewed the applicant's mitigation plan and recommended approval of the proposed project. Details of the applicant's mitigation plan in its entirety can be seen in a document entitled "Final Mitigation Plan," prepared by Wright-Pierce and dated September 28, 2016.

The entire compensatory plan meets the required ratios for enhancement, restoration, and preservation for freshwater wetland and significant wildlife habitat impacts outlined in Chapter 310 and Chapter 335. The Department finds that the applicant has adequately offset the loss of freshwater wetland and significant wildlife habitat functions and values from the proposed project. The Department also finds that the applicant has avoided and minimized wetland and significant wildlife habitat impacts to the greatest extent practicable, and that the proposed project represents the least environmentally damaging alternative that meets the overall purpose of the project. Based upon the information in the record and MDIFW's comments, the Department further 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 provided that the deed restriction which protects the preservation area in perpetuity is executed and recorded with the registry of deeds within 60 days of the date of the Order, that a copy of the recorded deed restriction is submitted to the BLR within 30 days of its recording, and that the applicant implements the wetland and vernal pool education and training program as described above.

17. ALL OTHER:

All other Findings of Fact, Conclusions and Conditions remain as approved in Department Order #L-21490-26-A-N/L-21490-TE-B-N, and subsequent Orders.

BASED on the above findings of fact, and subject to the conditions listed below, the Department makes the following conclusions pursuant to 38 M.R.S.A. Sections 480-A et seq. and Section 401 of the Federal Water Pollution Control Act:

- A. The proposed activity will not unreasonably interfere with existing scenic, aesthetic, recreational, or navigational uses.
- B. The proposed activity will not cause unreasonable erosion of soil or sediment.
- C. The proposed activity will not unreasonably inhibit the natural transfer of soil from the terrestrial to the marine or freshwater environment.

- D. The proposed activity will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic habitat, travel corridor, freshwater, estuarine, or marine fisheries or other aquatic life provided that the deed restriction is executed and recorded, a copy of the recorded deed restriction is submitted to the BLR, and that the applicant implements the wetland and vernal pool education and training program as described in Finding 16.
- 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.A. Section 480-P.

BASED on the above findings of fact, and subject to the conditions listed below, the Department makes the following conclusions pursuant to 38 M.R.S.A. Sections 481 et seq.:

- A. The applicant has provided adequate evidence of financial capacity and technical ability to develop the project in a manner consistent with state environmental standards provided that the applicant submits final evidence of financial capacity prior to the start of construction of future components of the Phase I project as described in Finding 2.
- B. The applicant has made adequate provision for fitting the development harmoniously into the existing natural environment and the development will not adversely affect existing uses, scenic character, air quality, water quality or other natural resources in the municipality or in neighboring municipalities provided that the applicant submits an as-built plan and photographs of the amphibian barrier to the BLR as described in Finding 6.
- C. The proposed development will be built on soil types which are suitable to the nature of the undertaking and will not cause unreasonable erosion of soil or sediment nor inhibit the natural transfer of soil.
- D. The proposed development meets the standards of the Stormwater Management Law, 38 M.R.S.A. § 420-C & D for stormwater management and for erosion and sedimentation control provided that the applicant submits an inspection and maintenance contract for the proposed Filterra units and permeable pavement, retains the services of a third-party

inspector, conducts a pre-construction meeting, and that construction of the stormwater structures is overseen and documented as described in Finding 10.

- E. The proposed development will not pose an unreasonable risk that a discharge to a significant groundwater aquifer will occur.
- F. The applicant has made adequate provision of utilities, including water supplies, sewerage facilities and solid waste disposal required for the development and the development will not have an unreasonable adverse effect on the existing or proposed utilities in the municipality or area served by those services provided that prior to operation of the wells associated with the Conservatory and the Horticulture production and research facility, the applicant submits a well installation report for each proposed individual well to the BLR for review as described in Finding 12 and that, prior to the start of operation of each subsurface wastewater disposal system, the applicant submits an approved HHE-200 Form for each proposed disposal system to the Department's BLR for review as described in Finding 13.
- G. The activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties nor create an unreasonable flood hazard to any structure.

THEREFORE, the Department APPROVES the application of the COASTAL MAINE BOTANICAL GARDENS to construct Phase I of its 2015-2035 Master Plan as described in Finding 1, SUBJECT TO THE FOLLOWING CONDITIONS and all applicable standards and regulations:

1. The Standard Conditions of Approval, a copy attached.
2. In addition to any specific erosion control measures described in this or previous orders, the applicant shall take all necessary actions to ensure that its activities or those of its agents do not result in noticeable erosion of soils or fugitive dust emissions on the site during the construction and operation of the project covered by this approval.
3. Severability. The invalidity or unenforceability of any provision, or part thereof, of this License shall not affect the remainder of the provision or any other provisions. This License shall be construed and enforced in all respects as if such invalid or unenforceable provision or part thereof had been omitted.
4. Prior to the start of construction of future components of the Phase I project including the Conservatory, gift shop, education center expansion, Horticulture production and research facility, seasonal floats, trails, and formal gardens areas, the applicant must submit evidence that it has been granted a line of credit or a loan by a financial institution authorized to do business in this State or evidence of any other form of financial assurance determined by Department Rules, Chapter 373(1), to be adequate to the BLR for review and approval.

5. The applicant shall submit an as-built plan and photographs of the small stature amphibian barrier within 30 days of its installation to the BLR for review and approval.
6. Prior the start of construction, the applicant shall conduct a pre-construction meeting. This meeting shall be attended by the applicant's representative, Department staff, the design engineer, the contractor, and the third-party inspector.
7. The applicant shall retain the services of a third-party inspector in accordance with the Special Condition for Third-Party Inspection Program, which is attached to this Order.
8. Prior to the start of construction of the Filterra units and permeable pavement strips, the applicants must provide an executed 5-year inspection and maintenance contract for these systems to the BLR for review.
9. The applicant shall retain its design engineer or a third-party engineer to oversee the construction of the stormwater structures according to the details and notes specified on the approved plans. Within 30 days of completion of the stormwater structures, the applicant shall submit a log of inspection reports detailing the items inspected, photographs taken, and the dates of each inspection to the BLR for review.
10. Prior to the start of operation of the Conservatory and the Horticulture production and research facility, the applicant shall submit a well installation report for each proposed individual well to the BLR for review. The report shall include the well depth, estimated yield, well logs (if available), and other relevant information for each water supply well proposed to serve the facility.
11. Prior to the start of operation of each subsurface wastewater disposal system, the applicant shall submit an approved HHE-200 Form from the Department of Health and Human Services for each of the proposed subsurface wastewater disposal system to the BLR for review.
12. Within 60 days of issuance of this Order, the Declaration of Covenants and Restrictions that protects the preservation area in perpetuity, as referenced in Finding 16, shall be placed on the appropriate deed and recorded with the registry of deeds. The applicant shall then submit a recorded copy to the BLR within 30 days of the execution of the deed.
13. Prior to December 31 of each year, the applicant shall submit an annual report to the BLR documenting the development and operation of the wetland and vernal pool education and training program. The reports shall consist of a summary of the amount and details of the interpretive signs and digital and paper materials developed, a summary of each program that has been held, and a summary of program improvements. Within 60 days following the end of the five-year monitoring period, the applicant must submit a full assessment of the program.

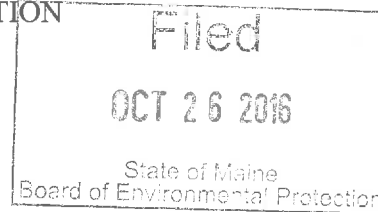
14. All other Findings of Fact, Conclusions and Conditions remain as approved in Department Order #L-21490-26-A-N/L-21490-TE-B-N, and subsequent Orders, and are incorporated herein.

THIS APPROVAL DOES NOT CONSTITUTE OR SUBSTITUTE FOR ANY OTHER REQUIRED STATE, FEDERAL OR LOCAL APPROVALS NOR DOES IT VERIFY COMPLIANCE WITH ANY APPLICABLE SHORELAND ZONING ORDINANCES.

DONE AND DATED IN AUGUSTA, MAINE, THIS 25TH DAY OF OCTOBER, 2016.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: Maki Breen
For: Paul Mercer, Commissioner



PLEASE NOTE THE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES.

BC/L21490KALNMN&NN/ATS#80204,80205,80208,80209

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

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

(2/81)/Revised December 27, 2011



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.A. § 480-A ET SEQ., UNLESS OTHERWISE SPECIFICALLY STATED IN THE PERMIT.

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

STORMWATER STANDARD CONDITIONS

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

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

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

with the approval and conditions. Completed certification forms must be forwarded to the department.

- (7) Maintenance. The components of the stormwater management system must be adequately maintained to ensure that the system operates as designed, and as approved by the department.
- (8) Recertification requirement. Within three months of the expiration of each five-year interval from the date of issuance of the permit, the permittee shall certify the following to the department.
 - (a) All areas of the project site have been inspected for areas of erosion, and appropriate steps have been taken to permanently stabilize these areas.
 - (b) All aspects of the stormwater control system have been inspected for damage, wear, and malfunction, and appropriate steps have been taken to repair or replace the facilities.
 - (c) The erosion and stormwater maintenance plan for the site is being implemented as written, or modifications to the plan have been submitted to and approved by the department, and the maintenance log is being maintained.
- (9) Severability. The invalidity or unenforceability of any provision, or part thereof, of this permit shall not affect the remainder of the provision or any other provisions. This permit shall be construed and enforced in all respects as if such invalid or unenforceable provision or part thereof had been omitted.

November 16, 2005 (revised December 27, 2011)

Special Condition
for
Third-Party Inspection Program

THIRD-PARTY INSPECTION PROGRAM

1.0 THE PURPOSE OF THE THIRD-PARTY INSPECTION

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

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

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

2.0 SELECTING THE INSPECTOR

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

3.0 THE INSPECTOR'S QUALIFICATIONS

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

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

4.0 INITIATING THE INSPECTOR'S SERVICES

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

5.0 TERMINATING THE INSPECTOR'S SERVICES

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

6.0 THE INSPECTOR'S DUTIES AND RESPONSIBILITIES

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

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

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

7.0 INSPECTION REPORTS

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

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

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

Third Party Inspection Form

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

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

SITE CHARACTERISTICS:

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

PROGRESS OF WORK:

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

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

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

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



DEP INFORMATION SHEET

Appealing a Department Licensing Decision

Dated: March 2012

Contact: (207) 287-2811

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) in an administrative process before the Board of Environmental Protection ("Board"); or (2) in 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.A. § 3451(4)) or a general permit for an offshore wind energy demonstration project (38 M.R.S.A. § 480-HH(1)) or a general permit for a tidal energy demonstration project (38 M.R.S.A. § 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.A. §§ 341-D(4) & 346, the *Maine Administrative Procedure Act*, 5 M.R.S.A. § 11001, and the DEP's *Rules Concerning the Processing of Applications and Other Administrative Matters* ("Chapter 2"), 06-096 CMR 2 (April 1, 2003).

HOW LONG YOU HAVE 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 after 30 calendar days of the date on which the Commissioner's decision was filed with the Board will be rejected.

HOW TO SUBMIT AN APPEAL TO THE BOARD

Signed original appeal documents must be sent to: Chair, Board of Environmental Protection, c/o Department of Environmental Protection, 17 State House Station, Augusta, ME 04333-0017; faxes are acceptable for purposes of meeting the deadline when followed by the Board's receipt of mailed original documents within five (5) working days. Receipt on a particular day must be by 5:00 PM at DEP's offices in Augusta; materials received after 5:00 PM are not considered received until the following day. The person appealing a licensing decision must also send the DEP's Commissioner a copy of the appeal documents and if the person appealing is not the applicant in the license proceeding at issue the applicant must also be sent a copy of the appeal documents. All of the information listed in the next section must be submitted at the time the appeal is filed. Only the extraordinary circumstances described at the end of that section will justify evidence not in the DEP's record at the time of decision being added to the record for consideration by the Board as part of an appeal.

WHAT YOUR APPEAL PAPERWORK MUST CONTAIN

Appeal materials must contain the following information at the time submitted:

1. *Aggrieved Status.* The appeal must explain how the person filing the appeal has standing to maintain an appeal. This requires an explanation of how the person filing the appeal 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.* Specific references and facts regarding the appellant's issues with the decision must be provided in the notice of appeal.
3. *The basis of the objections or challenge.* If possible, specific regulations, statutes or other facts should be referenced. This may include citing omissions of relevant requirements, and errors believed to have been made in interpretations, conclusions, and relevant requirements.
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 arguments specifically raised in the written notice of appeal.
6. *Request for hearing.* The Board will hear presentations on appeals at its regularly scheduled meetings, unless a public hearing on the appeal is requested and granted. A request for public hearing on an appeal must be filed as part of the notice of appeal.
7. *New or additional evidence to be offered.* The Board may allow new or additional evidence, referred to as supplemental evidence, to be considered by the Board in an appeal only when the evidence is relevant and material and that the person seeking to add information to the record can show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process or that the evidence itself is newly discovered and could not have been presented earlier in the process. Specific requirements for additional evidence are found in Chapter 2.

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, made easily accessible by DEP. Upon request, the DEP will make the material available during normal working hours, provide space to review the file, and provide 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 questions regarding applicable requirements.
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. 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, including 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, and any materials submitted in response to the appeal will be sent to Board members with a recommendation from DEP staff. Persons filing appeals and interested persons are notified in advance of the date set for Board consideration of an appeal or request for public hearing. 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, a 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.A. § 346(1); 06-096 CMR 2; 5 M.R.S.A. § 11001; & 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. Failure to file a timely appeal will result in the Board's or the Commissioner's decision becoming final.

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.A. § 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.

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.
