



DEPARTMENT ORDER

IN THE MATTER OF

SEACOAST LAND ACQUISITIONS, LLC ) STORMWATER MANAGEMENT LAW  
Wells, York County )  
RAMSELL ESTATES )  
L-28912-NJ-A-N (Approval) ) FINDINGS OF FACT AND ORDER

Pursuant to the provisions of 38 M.R.S. § 420-D, and Chapters 500 (06-096 C.M.R. ch.500, last amended August 12, 2015) of the Department’s Regulations, the Department of Environmental Protection has considered the application of SEACOAST LAND ACQUISITIONS, LLC with the supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

1. PROJECT DESCRIPTION:

A. Summary: The applicant proposes to construct a stormwater management system for a 12-lot residential subdivision with associated roadway, community garden, and trail system. The proposed project includes approximately 1.56 acres of impervious area and 9.67 acres of developed area. The project is indicated on a set of plans the first of which is entitled “Ramsell Estates, 1086 N. Berwick Rd, Wells, Maine,” prepared by Sebago Technics, Inc., and dated November 18, 2020 with a latest revision date on any of the sheets of February 26, 2021. The project site is located at 1086 North Berwick Road in the Town of Wells.

B. Current Use of the Site: The project parcel is approximately 27.6 acres in size and is identified as Lot 4A on Map 24 of the Town of Wells’ tax maps. The site of the proposed project is an existing golf driving range built on a reclaimed gravel pit with a gravel parking lot, paved paths, and a building.

2. STORMWATER STANDARDS:

The proposed project includes approximately 9.67 acres of developed area of which 1.56 acres is impervious area. It lies within the watershed of the Great Works River and Ogunquit River. The applicant submitted a stormwater management plan based on the Basic and General Standards contained in Department Rules, Chapter 500. The proposed stormwater management system consists of one wet pond and a forested stormwater treatment buffer.

A. Basic Standards:

(1) Erosion and Sedimentation Control: The applicant submitted an Erosion and Sedimentation Control Plan (Section 14 of the application) and Erosion and Sedimentation Control notes and details that are 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. This plan and plan sheets containing erosion control details were reviewed by, and revised in response to the comments of, the Bureau of Land Resources (BLR).

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.

(2) Inspection and Maintenance: The applicant submitted a maintenance plan that addresses both short and long-term maintenance requirements. The maintenance plan is based on the standards contained in Appendix B of Chapter 500. This plan was reviewed by, and revised in response to the comments of, BLR. The applicant will be responsible for the maintenance of all common facilities including the stormwater management system. The applicant may not transfer responsibility for maintenance of the road and for the portion of the stormwater management system that is located in the road right-of-way to the Town of Wells, until a letter has been submitted from the Town to the BLR documenting the Town's agreement to maintain both in accordance with the terms of this Order.

Storm sewer grit and sediment materials removed from stormwater control structures during maintenance activities must be disposed of in compliance with the Maine Solid Waste Management Rules.

(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 the Town of Wells submits a letter transferring the responsibility for maintenance of the portion of the stormwater management system and grit and sediment materials removed from the stormwater management structures during maintenance activities are disposed of in compliance with Maine Solid Waste Management Rules, as outlined above.

B. General Standards:

A portion of the proposed project is to be redeveloped pursuant to Chapter 500, § 4(C)(2)(d). Based on the instructions and tables found in Chapter 500, § 4(C)(2)(d), pollutant impact ranking calculations were completed for the existing and proposed developed areas within this redevelopment window. Results from these calculations

concluded that the pollution ranking for the proposed developed area was 1.92. As a result, the area subject to the redevelopment standard requires 70% treatment of the developed area in accordance with Table 3 of Chapter 500.

The applicant's stormwater management plan includes general treatment measures that will mitigate for the increased frequency and duration of channel erosive flows due to runoff from smaller storms, provide for effective treatment of pollutants in stormwater, and mitigate potential temperature impacts. This mitigation is being achieved by using Best Management Practices (BMPs) that will control runoff from 77.3% of the eligible redeveloped area.

For the remaining portion of the proposed project, the applicant is required to control runoff from no less than 95% of the impervious area and no less than 80% of the developed area. Treatment of the non-redevelopment portions of the proposed project will be 100% of the impervious area and 91.5% of the developed area.

The forested, no disturbance stormwater buffer in open space will be protected from alteration through the execution of a deed restriction. The applicant proposes to use the deed restriction language contained in Appendix G of Chapter 500 and submitted a draft deed restriction that meets Department standards.

Prior to the start of construction, the location of forested buffer must be permanently marked on the ground. The deed for the open space must contain deed restrictions relative to the buffer and have attached to it a plot plan, drawn to scale, that specifies the location of the buffer.

The applicant shall execute and record all required deed restrictions, including the appropriate buffer deed restrictions, within 60 days of the date of this Order unless the deed restriction is to be placed on a subdivision lot. In that situation, the applicant shall execute and record the required deed restriction prior to the start of construction on the lot. The applicant shall submit a copy of the recorded deed restriction, including individual lot plot plans, to the BLR within 60 days of its recording.

The stormwater management system proposed by the applicant was reviewed by, and revised in response to comments from, BLR. After a final review, BLR commented that the proposed stormwater management system is designed in accordance with the Chapter 500 General Standards and recommended that the applicant's design engineer or other qualified professional oversee the construction of the wet pond to ensure that it is installed in accordance with the details and notes specified on the approved plans.

Within 30 days from completion of the entire system or if the project takes more than one year to complete, at least once per year, the applicant must submit a log of inspection reports detailing the items inspected, photographs taken, and the dates of each inspection to the BLR for review.

Within six months of completion of construction, the applicant must submit design engineer stamped, signed, and dated as-built (record) drawings for the retaining walls and stormwater control structures, including the stormwater BMPs, to the BLR.

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 Chapter 500 Basic and General Standards provided as-builts are sent to the BLR for review, and construction of the stormwater management structures is overseen, documented, recorded, and as-built are submitted as described above.

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. § 420-D, and Chapters 500 of the Department's Regulations:

A. The applicant has made adequate provision to ensure that the proposed project will meet the Chapter 500 Basic Standards for: (1) erosion and sediment control; (2) inspection and maintenance; (3) housekeeping; and (4) grading and construction activity provided the Town of Wells submits documentation transferring the responsibility for maintenance of the portion of the stormwater management system and grit and sediment materials removed from the stormwater management structures during maintenance activities are disposed of in compliance with Maine Solid Waste Management Rules as outlined in Finding 2A.

B. The applicant has made adequate provision to ensure that the proposed project will meet the Chapter 500 General Standards provided forested buffers are marked, deed restrictions are recorded and submitted, as-built drawings for the stormwater management system are submitted to the BLR, and construction of the stormwater management structures is overseen, documented, and recorded, as outlined in Finding 2B.

THEREFORE, the Department APPROVES the above noted application of SEACOAST LAND ACQUISITIONS, LLC to construct a stormwater management system as described above in Wells, Maine, SUBJECT TO THE FOLLOWING CONDITIONS, and all applicable standards and regulations:

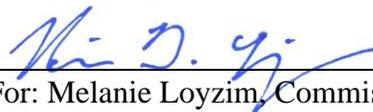
1. The Standard Conditions of Approval, a copy attached.
2. In addition to any specific erosion control measures described in this order, the applicant shall take all necessary actions to ensure that its activities or those of its agents do not result in noticeable erosion of soils or fugitive dust emissions on the site during the construction and operation of the project covered by this approval.
3. Severability. The invalidity or unenforceability of any provision, or part thereof, of this License shall not affect the remainder of the provision or any other provisions. This License shall be construed and enforced in all respects as if such invalid or unenforceable provision or part thereof had been omitted.

4. The applicant shall include in all conveyances of subdivision lots deed restrictions making the conveyance subject to all terms and conditions of this Department Order, particularly those conditions related to maintenance of the stormwater management system. These terms and conditions may be incorporated by specific and prominent reference to the permit in the deed. All conveyances required by this approval to contain restrictions shall include in the restrictions the requirement that any subsequent conveyance shall specifically include the same restrictions.
5. The applicant shall execute and record all required deed restrictions, including the appropriate buffer deed restrictions, within 60 days of the date of this Order unless the deed restriction is to be placed on a subdivision lot. In that situation, the applicant shall execute and record the required deed restriction prior to the start of construction on the lot. The applicant shall submit a copy of the recorded deed restriction, including individual lot plot plans, to the BLR within 60 days of its recording.
6. The applicant may not transfer responsibility for maintenance of the road and for the portion of the stormwater management system that is located in the road right-of-way to the Town of Wells, until a letter has been submitted from the Town to the BLR documenting the Town's agreement to maintain both in accordance with the terms of this Order.
7. Storm sewer grit and sediment materials removed from stormwater control structures shall be disposed of in compliance with the Maine Solid Waste Management Rules.
8. Prior to the start of construction, the location of forested buffers on individual lots shall be permanently marked on the ground.
9. The applicant shall retain the design engineer or other qualified professional to oversee the construction of the stormwater management structures according to the details and notes specified on the approved plans.
10. Within 30 days of completion of the entire system or if the project takes more than one year to complete, at least once per year, the applicant shall submit a log of inspection reports detailing the items inspected, photographs taken, and dates of each inspection to the BLR for review.
11. The applicant shall submit copies of as-built drawings for the stormwater management system and retaining walls within six months of completion of construction to the BLR for review.

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 24<sup>TH</sup> DAY OF MARCH, 2021.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY:  \_\_\_\_\_  
For: Melanie Loyzim, Commissioner

<p><b>FILED</b> March 25, 2021 State of Maine Board of Environmental Protection</p>
---

PLEASE NOTE THE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES.

AAS/L28912AN/ATS#86808

## STORMWATER STANDARD CONDITIONS

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

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

- (1) Approval of variations from plans. The granting of this approval is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the permittee. Any variation from these plans, proposals, and supporting documents must be reviewed and approved by the department prior to implementation. Any variation undertaken without approval of the department is in violation of 38 M.R.S. §420-D(8) and is subject to penalties under 38 M.R.S. §349.
- (2) Compliance with all terms and conditions of approval. The applicant shall submit all reports and information requested by the department demonstrating that the applicant has complied or will comply with all terms and conditions of this approval. All preconstruction terms and conditions must be met before construction begins.
- (3) Advertising. Advertising relating to matters included in this application may not refer to this approval unless it notes that the approval has been granted WITH CONDITIONS, and indicates where copies of those conditions may be obtained.
- (4) Transfer of project. Unless otherwise provided in this approval, the applicant may not sell, lease, assign, or otherwise transfer the project or any portion thereof without written approval by the department where the purpose or consequence of the transfer is to transfer any of the obligations of the developer as incorporated in this approval. Such approval may only be granted if the applicant or transferee demonstrates to the department that the transferee agrees to comply with conditions of this approval and the proposals and plans contained in the application and supporting documents submitted by the applicant. Approval of a transfer of the permit must be applied for no later than two weeks after any transfer of property subject to the license.
- (5) Time frame for approvals. If the construction or operation of the activity is not begun within four years, this approval shall lapse and the applicant shall reapply to the department for a new approval. The applicant may not begin construction or operation of the project until a new approval is granted. A reapplication for approval may include information submitted in the initial application by reference. This approval, if construction is begun within the four-year time frame, is valid for seven years. If construction is not completed within the seven-year time frame, the applicant must reapply for, and receive, approval prior to continuing construction.
- (6) Certification. Contracts must specify that "all work is to comply with the conditions of the Stormwater Permit." Work done by a contractor or subcontractor pursuant to this approval may not begin before the contractor and any subcontractors have been shown a copy of this approval with the conditions by the permittee, and the permittee and each contractor and 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. If maintenance responsibility is to be transferred from the permittee to another entity, a transfer request must be filed with the Department which includes the name and contact information for the person or entity responsible for this maintenance. The form must be signed by the responsible person or agent of the responsible entity.
- (8) Recertification requirement. Within three months of the expiration of each five-year interval from the date of issuance of the permit, the permittee shall certify the following to the department.
- (a) All areas of the project site have been inspected for areas of erosion, and appropriate steps have been taken to permanently stabilize these areas.
  - (b) All aspects of the stormwater control system are operating as approved, have been inspected for damage, wear, and malfunction, and appropriate steps have been taken to repair or replace the system, or portions of the system, as necessary.
  - (c) The stormwater maintenance plan for the site is being implemented as approved by the Department, and the maintenance log is being maintained.
  - (d) All proprietary systems have been maintained according to the manufacturer's recommendations. Where required by the Department, the permittee shall execute a 5-year maintenance contract with a qualified professional for the coming 5-year interval. The maintenance contract must include provisions for routine inspections, cleaning and general maintenance.
  - (e) The Department may waive some or all of these recertification requirements on a case-by-case basis for permittees subject to the Department's Multi-Sector General Permit ("MSGP") and/or Maine Pollutant Discharge Elimination System ("MEPDES") programs where it is demonstrated that these programs are providing stormwater control that is at least as effective as required pursuant to this Chapter.
- (9) Transfer of property subject to the license. If any portion of the property subject to the license containing areas of flow or areas that are flooded are transferred to a new property owner, restrictive covenants protecting these areas must be included in any deeds or leases, and recorded at the appropriate county registry of deeds. Also, in all transfers of such areas and areas containing parts of the stormwater management system, deed restrictions must be included making the property transfer subject to all applicable terms and conditions of the permit. These terms and conditions must be incorporated by specific and prominent reference to the permit in the deed. All transfers must include in the restrictions the requirement that any subsequent transfer must specifically include the same restrictions unless their removal or modification is approved by the Department. These restrictions must be written to be enforceable by the Department, and must reference the permit number.
- (10) Severability. The invalidity or unenforceability of any provision, or part thereof, of this permit shall not affect the remainder of the provision or any other provisions. This permit shall be construed and enforced in all respects as if such invalid or unenforceable provision or part thereof had been omitted.



# 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.

---

**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.**

---