

**ADDENDUM NO. 2**  
**TO**  
**BIDDING AND CONTRACT**  
**REQUIREMENTS AND SPECIFICATIONS**  
**FOR THE**  
**UNDERWOOD ROAD DRAINAGE SYSTEM IMPROVEMENTS**  
**WP PROJECT NO. 13042A**

**10/8/2020**



**PREPARED BY:**  
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# UNDERWOOD ROAD DRAINAGE SYSTEM IMPROVEMENTS

## ADDENDUM NO. 2

### WP PROJECT NO. 13042A

As a point of clarification, it should be understood that the Contract Documents govern all aspects of the project. Discussions held during the Pre-Bid Conference or over phone or email are informal and informational only. All official changes to the Contract Documents are made only by addenda. The following changes and additional information are hereby made a part of the Contract Documents:

#### **SPECIFICATIONS**

1. Specification Section 00310 – Bid Form, **DELETE** Bid Form in its entirety, and **REPLACE** with the attached Bid Form.
2. Specification Section 01150 – Measurement and Payment, **DELETE** Bid Item 11T & 12T in its entirety, and **REPLACE** with the following items:

##### (11T) – Furnish & Install 8' Dia. Catch Basins

- A. Method of Measurement: 8' Dia. Catch Basins accepted for payment shall be the actual number of 8' Dia. Catch Basins installed and accepted as complete in place by the Owner and Engineer.
- B. Basis of Payment:
  1. The contract unit price per each shall be full compensation for all labor, materials, tools and equipment necessary to complete this work including excavation (excluding ledge excavation), bedding, backfill, compaction, furnishing and installing precast concrete sections, coordination with precast concrete supplier, connection of existing pipes, installation of frames, and grates, concrete and masonry materials, and all else incidental thereto for which payment is not provided under other items.
  2. Payment for this item shall be as follows:
    - a. 90 percent of the unit price upon installation of catch basins.
    - b. 10 percent of the unit price upon successful completion of cleaning and visual inspection.

##### (12T) – Furnish & Install 8' Dia. Drain Manhole

- A. Method of Measurement: 8' Dia. Drain Manholes accepted for payment shall be the actual number of 8' Dia. Drain Manholes installed and accepted as complete in place by the Owner and Engineer.
- B. Basis of Payment:
  3. The contract unit price per each shall be full compensation for all labor, materials, tools and equipment necessary to complete this work including excavation (excluding ledge excavation), bedding, backfill, compaction, furnishing and installing precast concrete sections, coordination with precast concrete supplier,

connection of existing pipes, installation of frames, and grates, concrete and masonry materials, and all else incidental thereto for which payment is not provided under other items.

4. Payment for this item shall be as follows:
  - a. 90 percent of the unit price upon installation of catch basins.
  - b. 10 percent of the unit price upon successful completion of cleaning and visual inspection.
3. APPENDIX A – Project Permits, **ADD** the attached Maine DEP permit conditions to Appendix A.

## **DRAWINGS**

1. Plan Sheet C-4 shall be **REVISED** as shown on the attached Plan Sheet C-4.

## **QUESTIONS**

*Q: Does the Town have a budget for this project?*

A: The Engineer's estimate of probable construction cost is \$500,000. Please note that this is not the Town's budget for this project and should only be used for comparison purposes while developing the bid.

END OF ADDENDUM NO. 2

SECTION 00310

BID FORM

PROJECT IDENTIFICATION: Underwood Road Drainage System Improvements

THIS BID IS SUBMITTED TO: Town of Falmouth  
Public Works Department  
101 Woods Road  
Falmouth, Maine 04105

**ARTICLE 1 – BID RECIPIENT**

- 1.01 This Bid is submitted to the Owner, as identified above.
- 1.02 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with Owner in the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

**ARTICLE 2 – BIDDER’S ACKNOWLEDGEMENTS**

- 2.01 Bidder accepts all of the terms and conditions of the Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for 60 days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner.

**ARTICLE 3 – BIDDER’S REPRESENTATIONS**

- 3.01 In submitting this Bid, Bidder represents that:
- A. Bidder has examined and carefully studied the Bidding Documents, and any data and reference items identified in the Bidding Documents, and hereby acknowledges receipt of the following Addenda:

**Addendum No.**

**Addendum, Date**

_____	_____
_____	_____
_____	_____
_____	_____

- B. Bidder has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and satisfied itself as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Bidder is familiar with and has satisfied itself as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Bidder has considered the information known to Bidder itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and any Site-related reports and

drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder; and (3) Bidder's safety precautions and programs.

- E. Bidder agrees, based on the information and observations referred to in the preceding paragraph, that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents.
- F. Bidder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents.
- G. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and confirms that the written resolution thereof by Engineer is acceptable to Bidder.
- H. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance and furnishing of the Work.
- I. The submission of this Bid constitutes an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article, and that without exception the Bid and all prices in the Bid are premised upon performing and furnishing the Work required by the Bidding Documents.

#### **ARTICLE 4 – BIDDER'S CERTIFICATION**

##### **4.01 Bidder certifies that:**

- A. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation;
- B. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid;
- C. Bidder has not solicited or induced any individual or entity to refrain from bidding; and
- D. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph 4.01.D:
  - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process;
  - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of Owner, (b) to establish bid prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
  - 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish bid prices at artificial, non-competitive levels; and
  - 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

**ARTICLE 5 – BASIS OF BID**

5.01 Bidder will complete the Work in accordance with the Contract Documents for the following price(s):

**BASE BID 1 – TOWN UNIT PRICE SCHEDULE**

Item No.	Quantity	Brief Description of Item with Unit Bid Price in Words	Unit Bid In Figures	Amount In Figures
1T	Lump Sum	Mobilization/Demobilization (7.5% Max of Total Bid)  The Sum of \$ _____ _____  Per Lump Sum	\$ _____	\$ _____
2T	Lump Sum	Excavation of Embankment - Town  The Sum of \$ _____ _____  Per Lump Sum	\$ _____	\$ _____
3T	Lump Sum	Removal and Disposal of Brush, Vegetation, & Invasive Species  The Sum of \$ _____ _____  Per Lump Sum	\$ _____	\$ _____
4T	500 SF	Removal and Disposal of Pavement  The Sum of \$ _____ _____  Per Square Foot	\$ _____	\$ _____
5T	100 LF	Removal and Disposal of Existing 30" Transite Pipe  The Sum of \$ _____ _____  Per Linear Foot	\$ _____	\$ _____

Item No.	Quantity	Brief Description of Item with Unit Bid Price in Words	Unit Bid In Figures	Amount In Figures
6T	30 LF	Removal and Disposal of Existing 12" RCP Pipe  The Sum of \$ _____ _____	\$ _____	\$ _____
Per Linear Foot				
7T	Lump Sum	Site Grading  The Sum of \$ _____ _____	\$ _____	\$ _____
Per Lump Sum				
8T	Lump Sum	Bypass Pumping  The Sum of \$ _____ _____	\$ _____	\$ _____
Per Lump Sum				
9T	100 CY*	Removal & Replacement of Unsuitable Material Above Pipe Bedding and Initial Backfill  The Sum of \$ _____ _____	\$ _____	\$ _____
Per Cubic Yard				
10T	1 EA	Furnish & Install 4' Dia. Catch Basin  The Sum of \$ _____ _____	\$ _____	\$ _____
Per Each				
11T	1 EA	Furnish & Install 8' Dia. Catch Basin  The Sum of \$ _____ _____	\$ _____	\$ _____
Per Each				

Item No.	Quantity	Brief Description of Item with Unit Bid Price in Words	Unit Bid In Figures	Amount In Figures
12T	2 EA	Furnish & Install 8' Dia. Drain Manhole  The Sum of \$ _____ _____	\$ _____	\$ _____
Per Each				
13T	108 LF	Furnish & Install 48" Dia. HDPE Storm Drain  The Sum of \$ _____ _____	\$ _____	\$ _____
Per Linear Foot				
14T	25 LF	Furnish & Install 18" Dia. HDPE Storm Drain  The Sum of \$ _____ _____	\$ _____	\$ _____
Per Linear Foot				
15T	1,000 SF	Furnish & Install Revetment Mattress & Stone  The Sum of \$ _____ _____	\$ _____	\$ _____
Per Square Foot				
16T	60 CY	Furnish & Install 2" Leveling Stone  The Sum of \$ _____ _____	\$ _____	\$ _____
Per Cubic Yard				
17T	500 CY	Furnish & Place Rip-Rap (D50 = 24")  The Sum of \$ _____ _____	\$ _____	\$ _____
Per Cubic Yard				



Item No.	Quantity	Brief Description of Item with Unit Bid Price in Words	Unit Bid In Figures	Amount In Figures
18T	10 CY	Furnish & Place Rip-Rap (D50 = 6")		
		The Sum of \$_____		
		_____	\$_____	\$_____
		Per Cubic Yard		
19T	30 CY	Furnish & Install Aggregate Subbase – Type D		
		The Sum of \$_____		
		_____	\$_____	\$_____
		Per Cubic Yard		
20T	15 CY	Furnish & Install Aggregate Subbase – Type A		
		The Sum of \$_____		
		_____	\$_____	\$_____
		Per Cubic Yard		
21T	60 SY	Furnish & Install Bituminous Paving – 19 mm Binder Course		
		The Sum of \$_____		
		_____	\$_____	\$_____
		Per Square Yard		
22T	60 SY	Furnish & Install Bituminous Paving – 12.5 mm Surface Course		
		The Sum of \$_____		
		_____	\$_____	\$_____
		Per Square Yard		
23T	Lump Sum	Loam, Seed & Mulch - Town		
		The Sum of \$_____		
		_____	\$_____	\$_____
		Per Lump Sum		

Item No.	Quantity	Brief Description of Item with Unit Bid Price in Words	Unit Bid In Figures	Amount In Figures
24T	Lump Sum	Furnish & Install Erosion & Sedimentation Control  The Sum of \$ _____ _____	\$ _____	\$ _____
		Per Lump Sum		
25T	Lump Sum	Dewatering  The Sum of \$ _____ _____	\$ _____	\$ _____
		Per Lump Sum		
26T	4,750 SF	Furnish & Install Geotextile Fabric - Town  The Sum of \$ _____ _____	\$ _____	\$ _____
		Per Square Foot		
27T	Lump Sum	Furnish & Install Structural Fill – Town  The Sum of \$ _____ _____	\$ _____	\$ _____
		Per Lump Sum		
28T	Lump Sum	Furnish & Install Plantings – Town  The Sum of \$ _____ _____	\$ _____	\$ _____
		Per Lump Sum		

\* Indeterminate quantities assumed for comparison of bids. Quantities are not guaranteed. Payment will be based on actual quantities constructed.

**SUBTOTAL BASE BID 1:** Total of Items 1T through 28T.

\_\_\_\_\_ (\$\_\_\_\_\_)

\_\_\_\_\_ (use figures)

\_\_\_\_\_ (use words)

**BASE BID 2 – COHEN UNIT PRICE SCHEDULE**

Item No.	Quantity	Brief Description of Item with Unit Bid Price in Words	Unit Bid In Figures	Amount In Figures
2C	Lump Sum	Excavation of Embankment – Cohen  The Sum of \$_____ _____ Per Lump Sum	\$_____ \$_____	\$_____ \$_____
23C	Lump Sum	Loam, Seed & Mulch – Cohen  The Sum of \$_____ _____ Per Lump Sum	\$_____ \$_____	\$_____ \$_____
26C	1,920 SF	Furnish & Install Geotextile Fabric – Cohen  The Sum of \$_____ _____ Per Square Foot	\$_____ \$_____	\$_____ \$_____
27C	Lump Sum	Furnish & Install Structural Fill – Cohen  The Sum of \$_____ _____ Per Lump Sum	\$_____ \$_____	\$_____ \$_____

Item No.	Quantity	Brief Description of Item with Unit Bid Price in Words	Unit Bid In Figures	Amount In Figures
28C	Lump Sum	Furnish & Install Plantings – Cohen		
		The Sum of \$_____		
		_____	\$_____	\$_____
		Per Lump Sum		

\* Indeterminate quantities assumed for comparison of bids. Quantities are not guaranteed. Payment will be based on actual quantities constructed.

**SUBTOTAL BASE BID 2:** Total of Items 2C through 28C.

\_\_\_\_\_ (\$\_\_\_\_\_)

(use figures)

\_\_\_\_\_

(use words)

**TOTAL BID: Base Bid 1 + Base Bid 2.**

\_\_\_\_\_ (\$\_\_\_\_\_)

(use figures)

\_\_\_\_\_

(use words)

#### ARTICLE 6 – TIME OF COMPLETION

6.01 Bidder agrees that the Work will be substantially complete and will be completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before the dates or within the number of calendar days indicated in the Agreement.

6.02 Bidder accepts the provisions of the Agreement as to liquidated damages.

#### ARTICLE 7 – ATTACHMENTS TO THIS BID

7.01 The following documents are submitted with and made a condition of this Bid:

- A. Required Bid security;
- B. List of Proposed Subcontractors;
- C. List of Proposed Suppliers;

- D. List of Project References;
- E. Evidence of authority to do business in the state of the Project; or a written covenant to obtain such license within the time for acceptance of Bids;

#### ARTICLE 8 – DEFINED TERMS

8.01 The terms used in this Bid with initial capital letters have the meanings stated in the Instructions to Bidders, the General Conditions, and the Supplementary Conditions.

#### ARTICLE 9 – BID SUBMITTAL

BIDDER: *[Indicate correct name of bidding entity]*

By:

*[Signature]* \_\_\_\_\_

*[Printed name]* \_\_\_\_\_

*(If Bidder is a corporation, a limited liability company, a partnership, or a joint venture, attach evidence of authority to sign.)*

Attest:

*[Signature]* \_\_\_\_\_

*[Printed name]* \_\_\_\_\_

Title: \_\_\_\_\_

Submittal Date: \_\_\_\_\_

Address for giving notices:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

Contact Name and e-mail address: \_\_\_\_\_

\_\_\_\_\_

Bidder's License No.: \_\_\_\_\_

*(where applicable)*

END OF SECTION



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

DEPARTMENT ORDER

IN THE MATTER OF

TOWN OF FALMOUTH	) NATURAL RESOURCES PROTECTION ACT
Falmouth, Cumberland County	) COASTAL WETLAND ALTERATION
OUTFALL REPLACEMENT AND	)
STABILIZATION	) WATER QUALITY CERTIFICATION
L-28608-4E-A-N (approval)	) FINDINGS OF FACT AND ORDER

Pursuant to the provisions of 38 M.R.S. §§ 480-A–480-JJ, Section 401 of the Federal Water Pollution Control Act (33 U.S.C. § 1341), and Chapters 310, 315, and 335 of Department rules, the Department of Environmental Protection has considered the application of TOWN OF FALMOUTH with the supportive data, and other related materials on file and FINDS THE FOLLOWING FACTS:

1. PROJECT DESCRIPTION:

A. Summary: Currently, an existing storm drain outfall located off Underwood Road, discharges via a 30-inch transit pipe to a gully that conveys the flow from the storm drain outfall into Casco Bay. Due to the velocity of the stormwater discharging from the outfall, over the years the slopes of the gully have eroded and caused the adjacent embankments to fail. The applicant proposes to replace the existing Underwood Road storm drain outfall. The proposed replacement includes the structures associated with the outfall, along with the installation of a stone revetment mattress and riprap. Additionally, the applicant proposes to reshape the slopes of the gully and stabilize them with geotextile fabric and native plantings. Lastly, the applicant proposes to remove the invasive species, Japanese Knotweed, that has overrun the project area and install native plantings in the area. The proposed project will directly impact approximately 50 square feet of coastal wetland. Details of the proposed project are identified on a set of plans, titled “Underwood Road Drainage Improvements,” prepared by Wright-Pierce, and dated April 2020. The project is located at the end of Underwood Road.

B. Current Use of the Site: The site of the proposed project is wooded. The bottom of the gully is eroded and the gully discharges into Casco Bay. The Town of Falmouth has a 30-foot wide paper street through the project area.

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

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

In accordance with Chapter 315, *Assessing and Mitigating Impacts to Scenic and Aesthetic Uses* (06-096 C.M.R. ch. 315, effective June 29, 2003), the applicant submitted a copy of the Department's Visual Evaluation Field Survey Checklist as Appendix A to the application along with a description of the property and the proposed project. The applicant also submitted several photographs of the proposed project site and surroundings. Department staff visited the project site on June 3, 2019.

The proposed project is located in Casco Bay, 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. Existing vegetation in the project area is sparse and consists of some mature trees, shrubs, and Japanese knotweed. The proposed project has been designed to blend in with the natural surroundings by utilizing native salt tolerant plantings. There will be no trees removed for the proposed project. The applicant must monitor the plantings and the plantings must be replaced or maintained as necessary to achieve 85% survival after one full growing season.

The Department staff utilized the Department's Visual Impact Assessment Matrix in its evaluation of the proposed project and the Matrix showed an acceptable potential visual impact rating for the proposed project. Based on the information submitted in the application, the visual impact rating and the site visit, the Department determined that the location and scale of the proposed activity is compatible with the existing visual quality and landscape characteristics found within the viewshed of the scenic resource in the project area.

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

3. SOIL EROSION:

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

The applicant submitted a construction plan and an erosion control plan that outlines specific construction guidelines for pre- and post-construction, the timing of work, and equipment access. All equipment and materials will be kept out of the water and stored in an upland area of the property, with work occurring from the top of slope. Construction will occur in sections that can be permanently stabilized at the end of each workday. Erosion and sedimentation control measures will be installed as outlined in the *Maine Erosion and Sediment Control Best Management Practices* manual. Details of the construction plan and erosion control plan are outlined in the application.

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

4. HABITAT CONSIDERATIONS:

The NRPA, in 38 M.R.S. §480-D(3), requires the applicant to demonstrate that the proposed project will not unreasonably harm significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic or adjacent upland habitat, travel corridor, freshwater, estuarine or marine fisheries or other aquatic life.

The project site is an approximately six-foot tall eroding embankment vegetated with lawn, shrubs, mature trees and invasive plants. The upper intertidal area consists of a boulder/cobble beach with mixed coarse and fine sediments grading to salt marsh.

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

The Department finds that the activity will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic or adjacent upland habitat, travel corridor, freshwater, estuarine or marine fisheries or other aquatic life.

5. WATER QUALITY CONSIDERATIONS:

As discussed in Finding 3, the applicant proposes to use erosion and sediment control during construction to minimize impacts to water quality from siltation.

The Department does not anticipate that the proposed project will violate any state water quality law, including those governing the classification of the State's waters.

6. WETLANDS AND WATERBODIES PROTECTION RULES:

The applicant proposes to replace the existing storm drain outfall and associated structures and will directly impact 50 square feet of coastal wetland. Coastal wetlands are wetlands of special significance.

The *Wetlands and Waterbodies Protection Rules*, 06-096 C.M.R. ch. 310 (last amended January 26, 2009), interpret and elaborate on the Natural Resources Protection Act (NRPA) criteria for obtaining a permit. The rules guide the Department in its determination of whether a project's impacts would be unreasonable. A proposed project would generally be found to be unreasonable if it would cause a loss in wetland area, functions and values and there is a practicable alternative to the project that would be less damaging to the environment. Each application for a NRPA permit that involves a coastal wetland alteration must provide an analysis of alternatives in order to demonstrate that a practicable alternative does not exist.

A. Avoidance. Applicants must submit an analysis of whether there is a practicable alternative to the project that would be less damaging to the environment and this analysis is considered by the Department in its assessment of the reasonableness of any



impacts. Additionally, for activities proposed in, on, or over wetlands of special significance the activity must be among the types listed in Chapter 310, § 5(A) or a practicable alternative less damaging to the environment is considered to exist and the impact is unreasonable. The proposed project is shoreline stabilization and its proposed construction is among the activities specifically provided for in Chapter 310, § 5(A)(1)(h). The applicant submitted an alternatives analysis for the proposed project dated April 17, 2020. The purpose of the proposed project is to replace the existing storm drain outfall located at the outlet of the Underwood Road drainage system and to stabilize the gully that delivers the water to the coastal wetland. The Underwood Road drainage system collects water from 82 acres of land and discharges it to Casco Bay. Due to the large amount of water draining to existing outfall, over the years, the outfall has eroded the gully and caused its embankments to fail. The applicant determined that if no action was taken, future erosion would jeopardize the safety and integrity of surrounding residential structures, as well as the longevity of the drainage outfall. Therefore, the proposed project is the only practicable solution to protect the shorefront and existing residential structures. There is no alternative that avoids coastal wetland impacts.

B. Minimal Alteration. In support of an application and to address the analysis of the reasonableness of any impacts of a proposed project, an applicant must demonstrate that the amount of coastal wetland to be altered will be kept to the minimum amount necessary for meeting the overall purpose of the project. The applicant considered several different options to stabilize the outfall and gully. The applicant's preferred alternative both meets the project purpose and minimizes impacts to the coastal wetland.

C. Compensation. In accordance with Chapter 310 Section 5(C)(6)(b), compensation is not required to achieve the goal of no net loss of coastal wetland functions and values since the project will not result in a direct impact greater than 500 square feet of fill in the resource, which is the threshold over which compensation is generally required. For this reason, the Department determined that compensation is not required.

The Department finds that the applicants has avoided and minimized coastal wetland impacts to the greatest extent practicable, and that the proposed project represents the least environmentally damaging alternative that meets the overall purpose of the project.

7. OTHER CONSIDERATIONS:

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

BASED on the above findings of fact, and subject to the conditions listed below, the Department makes the following conclusions pursuant to 38 M.R.S. §§ 480-A–480-JJ and Section 401 of the Federal Water Pollution Control Act (33 U.S.C. § 1341):

- A. The proposed activity will not unreasonably interfere with existing scenic, aesthetic, recreational, or navigational uses provided that the applicant monitors and maintains vegetation as described in Finding 2.
- B. The proposed activity will not cause unreasonable erosion of soil or sediment.
- C. The proposed activity will not unreasonably inhibit the natural transfer of soil from the terrestrial to the marine or freshwater environment.
- D. The proposed activity will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic or adjacent upland habitat, travel corridor, freshwater, estuarine, or marine fisheries or other aquatic life.
- E. The proposed activity will not unreasonably interfere with the natural flow of any surface or subsurface waters.
- F. The proposed activity will not violate any state water quality law including those governing the classifications of the State's waters.
- G. The proposed activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties.
- H. The proposed activity is not on or adjacent to a sand dune.
- I. The proposed activity is not on an outstanding river segment as noted in 38 M.R.S. § 480-P.

THEREFORE, the Department APPROVES the above noted application of TOWN OF FALMOUTH to replace the existing Underwood Road storm drain outfall as described in Finding 1, SUBJECT TO THE ATTACHED CONDITIONS, and all applicable standards and regulations:

- 1. Standard Conditions of Approval, a copy attached.
- 2. The applicants shall take all necessary measures to ensure that their activities or those of their agent do not result in measurable erosion of soil on the site during the construction of the project covered by this approval.
- 3. Severability. The invalidity or unenforceability of any provision, or part thereof, of this License shall not affect the remainder of the provision or any other provisions.

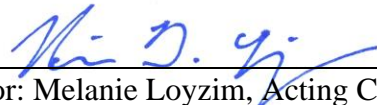
This License shall be construed and enforced in all respects as if such invalid or unenforceable provision or part thereof had been omitted.

4. The applicants shall monitor the plantings and the planting must be replaced or maintained as necessary to achieve 85% survival after one full growing season.

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 7<sup>TH</sup> DAY OF OCTOBER, 2020.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY:   
For: Melanie Loyzim, Acting Commissioner

PLEASE NOTE THE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES.

AJaS/L28608AN/ATS#85976

<p><b>FILED</b> October 7, 2020 State of Maine Board of Environmental Protection</p>
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## Natural Resources Protection Act (NRPA) Standard Conditions

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THE FOLLOWING STANDARD CONDITIONS SHALL APPLY TO ALL PERMITS GRANTED UNDER THE NATURAL RESOURCES PROTECTION ACT, 38 M.R.S. §§ 480-A ET SEQ., UNLESS OTHERWISE SPECIFICALLY STATED IN THE PERMIT.

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



# DEP INFORMATION SHEET

## Appealing a Department Licensing Decision

**Dated: November 2018**

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

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### **SUMMARY**

There are two methods available to an aggrieved person seeking to appeal a licensing decision made by the Department of Environmental Protection's (DEP) Commissioner: (1) an administrative process before the Board of Environmental Protection (Board); or (2) a judicial process before Maine's Superior Court. An aggrieved person seeking review of a licensing decision over which the Board had original jurisdiction may seek judicial review in Maine's Superior Court.

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

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

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

#### **LEGAL REFERENCES**

The laws concerning the DEP's *Organization and Powers*, 38 M.R.S. §§ 341-D(4) & 346; the *Maine Administrative Procedure Act*, 5 M.R.S. § 11001; and the DEP's *Rules Concerning the Processing of Applications and Other Administrative Matters* ("Chapter 2"), 06-096 C.M.R. ch. 2.

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

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

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

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

## INFORMATION APPEAL PAPERWORK MUST CONTAIN

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

1. *Aggrieved Status.* The appeal must explain how the appellant has standing to maintain an appeal. This requires an explanation of how the appellant may suffer a particularized injury as a result of the Commissioner's decision.
2. *The findings, conclusions, or conditions objected to or believed to be in error.* The appeal must identify the specific findings of fact, conclusions regarding compliance with the law, license conditions, or other aspects of the written license decision or of the license review process that the appellant objects to or believes to be in error.
3. *The basis of the objections or challenge.* For the objections identified in Item #2, the appeal must state why the appellant believes that the license decision is incorrect and should be modified or reversed. If possible, the appeal should cite specific evidence in the record or specific licensing requirements that the appellant believes were not properly considered or fully addressed.
4. *The remedy sought.* This can range from reversal of the Commissioner's decision on the license or permit to changes in specific permit conditions.
5. *All the matters to be contested.* The Board will limit its consideration to those matters specifically raised in the written notice of appeal.
6. *Request for hearing.* If the appellant wishes the Board to hold a public hearing on the appeal, a request for public hearing must be filed as part of the notice of appeal, and must include an offer of proof in accordance with Chapter 2. The Board will hear the arguments in favor of and in opposition to a hearing on the appeal and the presentations on the merits of an appeal at a regularly scheduled meeting. If the Board decides to hold a public hearing on an appeal, that hearing will then be scheduled for a later date.
7. *New or additional evidence to be offered.* If an appellant wants to provide evidence not previously provided to DEP staff during the DEP's review of the application, the request and the proposed evidence must be submitted with the appeal. The Board may allow new or additional evidence, referred to as supplemental evidence, to be considered in an appeal only under very limited circumstances. The proposed evidence must be relevant and material, and (a) the person seeking to add information to the record must show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process; or (b) the evidence itself must be newly discovered and therefore unable to have been presented earlier in the process. Specific requirements for supplemental evidence are found in Chapter 2 § 24.

## OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

1. *Be familiar with all relevant material in the DEP record.* A license application file is public information, subject to any applicable statutory exceptions, and is made easily accessible by the DEP. Upon request, the DEP will make application materials available during normal working hours, provide space to review the file, and provide an opportunity for photocopying materials. There is a charge for copies or copying services.
2. *Be familiar with the regulations and laws under which the application was processed, and the procedural rules governing your appeal.* DEP staff will provide this information on request and answer general questions regarding the appeal process.
3. *The filing of an appeal does not operate as a stay to any decision.* If a license has been granted and it has been appealed, the license normally remains in effect pending the processing of the appeal. Unless a stay of the decision is requested and granted, a license holder may proceed with a project pending the outcome of an appeal, but the license holder runs the risk of the decision being reversed or modified as a result of the appeal.

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

The Board will formally acknowledge receipt of an appeal, and will provide the name of the DEP project manager assigned to the specific appeal. The notice of appeal, any materials accepted by the Board Chair as supplementary evidence, any materials submitted in response to the appeal, and relevant excerpts from the DEP's application review file will be sent to Board members with a recommended decision from DEP staff. The appellant, the license holder if different from the appellant, and any interested persons are notified in advance of the date set for Board consideration of an appeal or request for public hearing. The appellant and the license holder will have an opportunity to address the Board at the Board meeting. With or without holding a public hearing, the Board may affirm, amend, or reverse a Commissioner decision or remand the matter to the Commissioner for further proceedings. The Board will notify the appellant, the license holder, and interested persons of its decision.

## II. JUDICIAL APPEALS

Maine law generally allows aggrieved persons to appeal final Commissioner or Board licensing decisions to Maine's Superior Court (see 38 M.R.S. § 346(1); 06-096 C.M.R. ch. 2; 5 M.R.S. § 11001; and M.R. Civ. P. 80C). A party's appeal must be filed with the Superior Court within 30 days of receipt of notice of the Board's or the Commissioner's decision. For any other person, an appeal must be filed within 40 days of the date the decision was rendered. An appeal to court of a license decision regarding an expedited wind energy development, a general permit for an offshore wind energy demonstration project, or a general permit for a tidal energy demonstration project may only be taken directly to the Maine Supreme Judicial Court. See 38 M.R.S. § 346(4).

Maine's Administrative Procedure Act, DEP statutes governing a particular matter, and the Maine Rules of Civil Procedure must be consulted for the substantive and procedural details applicable to judicial appeals.

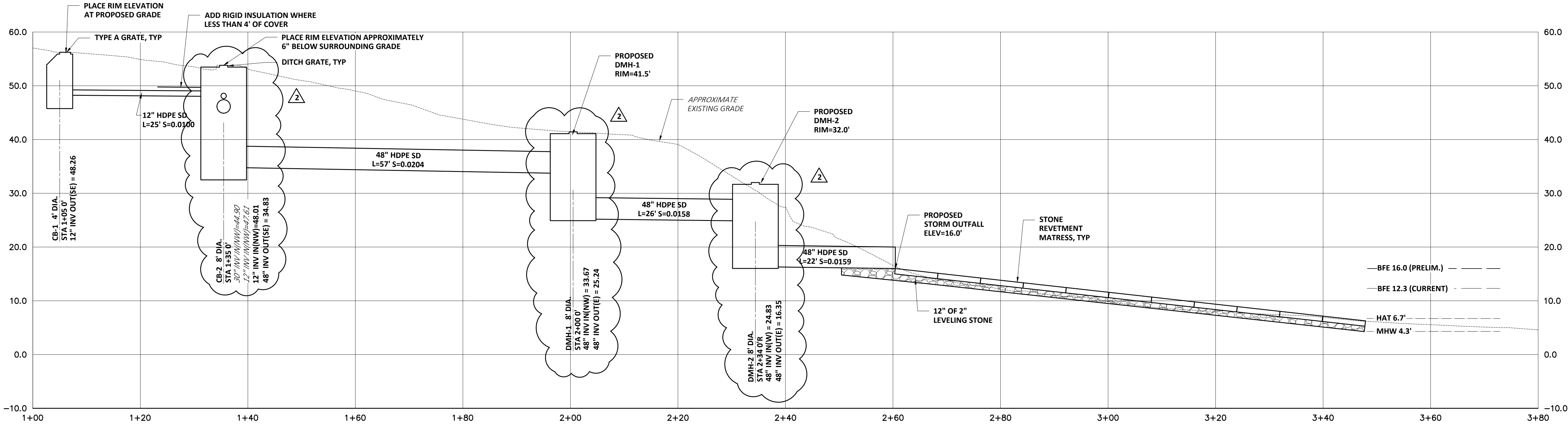
## ADDITIONAL INFORMATION

If you have questions or need additional information on the appeal process, for administrative appeals contact the Board's Executive Analyst at (207) 287-2452, or for judicial appeals contact the court clerk's office in which your appeal will be filed.

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

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OUTFALL  
PROFILE  
SCALE  
VERT: 1"=10'  
HORIZ: 1"=10'

TOWN OF FALMOUTH UNDERWOOD ROAD DRAINAGE IMPROVEMENTS FALMOUTH, MAINE	PROFILES	SUBMISSIONS/REVISIONS		APP'D	DATE
		ISSUED FOR BID		R. WIN	9-20
DRAWING C-4		ADDENDUM #2		J. WAL	10-20
WRIGHT-PIERCE Engineering a Better Environment 888.621.8156   www.wright-pierce.com		DESIGNED BY: J. WAL	CAD CORR: M. LAP		
		CHECKED BY: J. WAL	DATE: 9-23-2020		
		APPROVED BY: R. WIN	DATE: 9-23-2020		
		PROJECT NO: 13042			
		PROFESSIONAL SEAL			