STATE OF MAINE

SUPREME JUDICIAL COURT

SITTING AS THE LAW COURT

LAW DOCKET NO. Ken-25-465

BARBARA FRAUMENI and A. MICHAEL FRAUMENI
Petitioners-Appellants

v.

DEPARTMENT OF ENVIRONMENTAL PROTECTION and
MTN SAND & GRAVEL
Respondent/Party-in-Interest-Appellees

BRIEF OF RESPONDENT-APPELLEE DEPARTMENT OF ENVIRONMENTAL PROTECTION ON APPEAL FROM THE KENNEBEC COUNTY SUPERIOR COURT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

INTRODUCTION

In recognition of the nature and history of Maine's excavation and quarrying industries, in 1996 the Maine Legislature enacted an expedited regulatory program for such activities. Under this new framework, a regulated entity may submit to the Department of Environmental Protection (Department or DEP) a "notice of intent to comply" (NOITC) containing certain specified information, including a certification that the entity intends to comply with rigorous environmental performance standards for quarries that are set forth in statute. Once an entity submits an NOITC, thus agreeing to be bound by the statutory quarry standards, and receives confirmation of receipt of the NOITC by the Department, the entity may then commence quarry operation without further Department action, subject to the expansive enforcement powers granted to the Department by the statute.

The Appellants, Barbara and Michael Fraumeni (the Fraumenis), ask the Court to upend this carefully crafted and expedited quarry regulatory framework and read into the limited NOITC process provided by the Legislature expansive substantive review obligations involving the separate statutory quarry performance standards—something the Legislature consciously chose not to do. The structure and history of the quarry law show that the Legislature intended the NOITC process to be separate from the performance standards, which would be realized through the

Department's regulatory enforcement, not through the type of lengthy, up-front substantive application review process envisioned by the Fraumenis.

Pursuant to the plain language of the governing statute, the Department correctly determined that the NOITC filed by MTN Sand & Gravel (MTN) contained all required information and was complete. The Court need go no further. In any event, even if reached by this Court, and as the Superior Court correctly held, the Department's interpretation of one of the performance standards—although not required as part of the assessment of the completeness of MTN's NOITC—was also reasonable and entitled to great deference, and the alternative reading advanced by the Fraumenis is neither plausible nor supported by the text of the relevant statutes. Finally, the Fraumenis failed to preserve their argument that the Department's NOITC determination lacked sufficient findings, and in any event, that argument lacks merit. This Court should affirm the decision of the Superior Court upholding the Department's acceptance of MTN's NOITC as complete, and deny the Fraumenis' appeal.

STATUTORY BACKGROUND

In 1996, the Legislature enacted P.L. 1995, ch. 700 (the Quarry Act), which comprehensively restructured the rules then governing mining-related activities in the State. This legislation was the subject of much consideration, having stemmed from recommendations from a mining working group formed out of the Land and

Water Resources Council.[1] *See* Land and Water Resources Council Report, The 1996 Site Law Reform: Presented to the Joint Standing Committee on Natural Resources (Feb. 1, 1996). Prior to the Quarry Act, most mining-related activities in Maine were regulated by the Site Location of Development Act, 38 M.R.S. §§ 481—489-E (2025) (Site Law). *See* L.D. 1854, Summary (117 Legis. 1996).

Under the Site Law, an individual submits an application for Department review and approval pursuant to broad and flexible standards designed to ensure that the project will not unduly harm the environment, and an applicant may not begin construction or operation until receiving such approval. *See* 38 M.R.S. § 483-A(1) (2025). The Quarry Act, however, exempted most regulated mining-related activities, including quarrying, from the Site Law permitting process under a new exception similar to one that then existed for borrow pits,[2] which were regulated through what is often referred to as a "performance-based" approach.

Under such performance-based regulation, rather than submitting an application and awaiting a Department decision analyzing whether a proposed project meets governing standards, a prospective operator instead certifies, subject

[1] The Land and Water Resources Council was an advisory council whose membership included various executive branch agency commissioners; it was tasked with advising the branches of government in the formulation of policies for management of the State's land and water resources. *See* P.L. 1993, ch. 721, § 3331. It is now dissolved. P.L. 2011, ch. 655, Part EE, Sec. EE-2.

[2] A borrow pit is an excavated area where soil, gravel, sand, or clay is removed (or "borrowed") for use as fill material at another site. 38 M.R.S. § 482(1-A) (2025).

to DEP enforcement, that it will prospectively conduct its operations in compliance with activity-specific standards providing detailed instructions on how the operation may be conducted. *See* L.D. 1854, Summary (117 Legis. 1996). A performance-based regulatory program thus differs from a traditional permitting application-and-approval approach in that it relies on a regulated entity's agreement to be bound prospectively by established standards, and the Department then ensures compliance through ongoing monitoring and enforcement mechanisms—rather than utilizing a front-loaded permitting application-and-approval process like the Site Law program.

Department testimony on the underlying bill for the Quarry Act (LD 1854) illustrates the rationale of this approach:

> Borrow pits, quarries and similar activities are fundamentally different from the other types of development that [are] regulated under the site law … [R]eview of a proposed commercial development, such as a mall, primarily concerns a review of the environmental impacts in terms of the site itself and the construction of the facility. Once the project is built, the Department's work is largely finished, until additional work is proposed for the site. With mining activities, the environmental standards address ongoing operations. . . . This is why a different kind of program was established with standards specific to the activity, regular inspections, and an annual fee, rather than the one-time review process under the Site Law.

An Act to Implement the Recommendations of the Land and Water Resources Council Regarding Gravel Pits and Rock Quarries: Hearing on L.D. 1854 Before the Nat. Res. Comm., 117th Legis. (1996) (testimony of Martha Kirkpatrick, Bureau of Land and Water Quality, Department of Environmental Protection). As the

Department further explained, the "performance-based process [created by LD 1854] is simple, and emphasizes technical assistance and compliance review by the Department rather than an expensive and time-consuming application review process." *Id.*

The Quarry Act is now codified at 38 M.R.S. §§ 490-W—490-FF (2025), and its basic features remain effectively the same as when it was first enacted. The notice and certification provision, 38 M.R.S. § 490-Y (2025), requires anyone wishing to operate a quarry greater than one acre in size to file an NOITC with the Department. 38 M.R.S. § 490-Y. The statute provides that the NOITC must be "complete" and "submitted on forms approved by the [D]epartment." *Id.*

An NOITC must include:

1. The owner or operator's name, address, and phone number;

2. A map and site plan;

3. A parcel description;

4. A document showing legal interest in the property;

5. Information on abutters;

6. A certification that the quarry will be operated in compliance with the performance standards; and

7. The appropriate fee.

38 M.R.S. § 490-Y(1)-(7). An NOITC must be mailed to the municipality where the quarry is located, the Department, the Maine Historic Preservation Commission

(MHPC), and each abutting property owner. 38 M.R.S. § 490-Y. Section 490-Y further specifies that an NOITC must be mailed to the municipality and abutting property owners at least seven days before it is sent to the Department, and then sent to the Department by certified mail, return receipt requested. Upon receiving the return receipt, "the owner or operator may commence operation of the quarry." *Id.*

The municipality where the proposed quarry is located may submit comments to the Department, in which case the Department shall respond to such comments within 30 days. *Id*. Abutting property owners, the MHPC, and other interested persons may also submit comments, but Section 490-Y imposes no obligation on the Department to respond to those comments. *Id.*

In reviewing an NOITC, the Department determines only whether it is "complete"; if the Department determines that the NOITC is incomplete, it "must notify the owner or operator no later than 45 days after receiving the notice." *Id.* The actual performance standards for quarries—which a quarry owner or operator certifies it will follow by submitting an NOITC—are separately set forth in 38 M.R.S. § 490-Z and provide detailed instructions on how a quarry may be operated, addressing matters such as groundwater impacts, mandatory buffer strips, internal drainage requirements, and mandated control measures for noise, dust, and blasting. 38 M.R.S. §§ 490-Z(1)-(15) (2025).

To monitor quarry operations and compliance with the statutory quarry performance standards, the Quarry Act provides the Department with expansive enforcement authority, including the ability to inspect a site, examine records, take samples, and perform any tests necessary to ensure that a quarry is in compliance with the standards. 38 M.R.S. § 490-AA (2025). If the Department finds that an operation is not in compliance with the standards, the Department may issue a stop-work order directing the owner or operator to cease operation. 38 M.R.S. § 490-BB(l) (2025). The Department also has the authority to assess penalties for violations of the Quarry Act and, after an opportunity for hearing, enter the property and carry out necessary reclamation, with liability for reasonable reclamation expenses falling on those who "guarantee[] performance" at the site. 38 M.R.S. § 490-BB(3) (2025).

FACTUAL AND PROCEDURAL BACKGROUND

On April 5, 2023, MTN filed an initial NOITC with the Department for the construction and operation of a quarry in Dresden. Administrative Record (A.R.) Document 2, at 3.[3] On June 29, 2023, the Department determined that the NOITC was complete and issued a placard for display at the site. A.R. 3, at 6. After that completeness determination, the Department learned that MTN had not properly

[3] Citations to the administrative record in this matter are made both to the administrative record document number and the record page number, as follows A.R. Doc #, at A.R. page #.

notified all abutting property owners as required by statute, and MTN agreed to surrender its placard. A.R. 4, at 8.[4]

On February 12, 2024, MTN filed a second NOITC with the Department, which is the subject of this appeal. Appendix (A.) 30; A.R. 7, at 29. Pursuant to 38 M.R.S. § 490-Y, the NOITC certified MTN's intent to operate a 10-acre quarry in compliance with applicable performance standards and contained the information required by 38 M.R.S. § 490-Y(1)-(7). A. 59; A.R. 7, at 58.

Also on February 12, 2024, the Fraumenis, through counsel, submitted comments on MTN's NOITC filing. A. 168; A.R. 12, at 163. The Fraumenis raised concerns regarding the operation of the quarry, including an assertion that MTN could not operate the quarry as proposed consistent with applicable performance standards due to the quarry's location within a "Focus Area" designated by the Maine Natural Areas Program (MNAP). A. 173; A.R. 12, at 168; 38 M.R.S. § 490-Z(1) (prohibiting quarry operation without a permit "in an area listed pursuant to the Natural Areas Program").

Department staff provided the Fraumenis' comments to MNAP and requested that MNAP review the Fraumenis' contention that the site was within an area "listed"

[4] The Fraumenis filed an earlier Rule 80C Petition for Review of the Department's initial NOITC completeness determination and issuance of a placard to MTN. A.R. 4, at 9. That case was voluntarily dismissed after the Department was alerted to the notice oversight and MTN surrendered the placard. A.R. 5, at 11.

by MNAP. A. 210; A.R. 14, at 182. In a memorandum to the Department dated March 1, 2024, MNAP indicated that a search of its "Biological and Conservation Data System" revealed there were "no rare botanical features that will be disturbed within the project site." A. 212; A.R. 15, at 190. MNAP further noted that "Focus Areas are intended as a planning tool-they are not regulatory by themselves, though there may be features within a Focus Area that are regulated or otherwise commented on in our environmental review process." A. 209; A.R. 15, at 187.

By letter dated March 7, 2024, MTN responded to the comments from the Fraumenis, who in turn submitted a response to MTN reiterating their concerns about the quarry operation. A. 186, 203; A.R. 16, at 193; 17, at 210. Following review of the NOITC and related submissions, on March 28, 2024, the Department issued a written determination concluding that the NOITC at issue here was complete (the NOITC Determination) and issued an accompanying placard to MTN to be posted at the quarry. A. 26-27; A.R. 21, at 229-30. By letter dated April 2, 2024, the Department informed the Fraumenis of its completeness determination and addressed the Fraumenis' comments, including their concern that MTN's proposed quarry would violate the statutory performance standard set forth in 38 M.R.S. 490-Z(1). A. 227-29; A.R. 22, at 231-33.

On April 26, 2024, the Fraumenis filed an appeal of the Department's NOITC Determination to the Superior Court pursuant to M.R. Civ. P. 80(C). A. 3. The

Superior Court (*Murphy, J.*) denied the Fraumenis' Rule 80C appeal, concluding that the Department "neither erred in interpreting its laws nor acted arbitrarily in failing to conduct an on-site review . . ." A. 17.[5] This appeal followed.

STATEMENT OF THE ISSUES

I. Whether the Department's NOITC Determination complied with all statutory NOITC requirements.

II. If considered by the Court, whether the Department's interpretation that the quarry is not within an area listed by MNAP is reasonable and entitled to deference.

III. Whether the Fraumenis failed to preserve their argument that the Department's NOITC Determination is unsupported by sufficient findings, and whether the determination is sufficient for judicial review.

SUMMARY OF ARGUMENT

The Department's determination that MTN's NOITC was complete was consistent with the plain language of 38 M.R.S. § 490-Y and the Quarry Act and, in the alternative, is reasonable and entitled to great deference.

The Fraumenis' arguments to the contrary fail. Their contention that the Department erred in determining the NOITC was complete because the quarry will be in an area "listed" by MNAP in alleged violation of one of the quarry performance standards, (Blue Br. 13), is misplaced because that is not part of the statutory NOITC

[5] The Superior Court additionally dismissed the Fraumenis' request that the Court, pursuant to 14 M.R.S. § 5954 (2025), issue a declaration that the NOITC process in 38 M.R.S. § 490-Y does not pertain to quarries within an area listed by MNAP. A. 17. The Fraumenis do not challenge this dismissal in their appeal.

inquiry. Evaluation of whether a quarry will comply with the performance standards in 38 M.R.S. § 490-Z is separate from and outside the scope of the NOITC review process, which is limited by the statute's plain language to consideration of whether the NOITC includes certain information specified by statute. Even if it were not mandated by the plain language of the statute, the Department's interpretation of the NOITC provision as not requiring substantive evaluation of the quarry performance standards—which is a separate matter of DEP enforcement—is reasonable and entitled to great deference.

Even if the Court were to review the Fraumenis' assertion that MTN's quarry is "in an area listed pursuant to the Natural Areas Program" within the meaning of the prohibition contained in 38 M.R.S. § 490-Z(1), the Department's conclusion that the project did not fall within the scope of that statutory prohibition is reasonable, supported by the record, and entitled to great deference. A. 213, 216; A.R. 15, at 187, 190.

The Fraumenis also contend, in a new argument raised for the first time on appeal and thus waived, that the Department's NOITC Determination lacked sufficient factual findings. (Blue Br. 13.) Even if the Fraumenis had properly preserved this argument, it would be unavailing. The written completeness determination issued by the Department was more than sufficient to allow for judicial review, especially given the focused nature of the Department's statutory

review of an NOITC—which requires only that the Department determine if it is "complete." There is also ample evidence in the record to support that finding.

This Court should affirm the Superior Court's decision upholding the Department's NOITC Determination.

ARGUMENT

I. NOITC completeness review is separate from and does not consider compliance with quarry performance standards, and the Department correctly determined that MTN's NOITC included all required information and was complete.

In a Rule 80C appeal, the Court reviews the agency's decision directly for an "'abuse of discretion, error of law, or findings unsupported by substantial evidence on the record.'" *Greely v. Comm'r, Dep't of Hum. Servs.*, 2000 ME 56, ¶ 5, 748 A.2d 472 (quoting *Herrick v. Town of Mechanic Falls*, 673 A.2d. 1348, 1349 (Me. 1996)). The party challenging an agency decision bears the burden of persuasion on appeal. *Maquoit Bay, LLC v. Dep't of Marine Res*., 2022 ME 19, ¶ 5, 271 A.3d 1183.

A Court will "review issues of statutory interpretation de novo with the primary objective of giving effect to the Legislature's intent." *Searle v. Town of Bucksport*, 2010 ME 89, ¶ 8, 3 A.3d 390. In approaching this review, courts will "look first to the plain language of the statute," with words that are not expressly defined given "'their plain and natural meaning and . . . construed according to their natural import in common and approved usage.'" *Fortin v. Titcomb*, 2013 ME 14,

¶ 7, 60 A.3d 765 (quoting *Searle*, 2010 ME 89, ¶ 8, 3 A.3d 390). Although statutory construction is "a question of law, subject to de novo review, when a dispute involves an agency's interpretation of a statute it administers, the agency's interpretation, although not conclusive, is entitled to great deference and will be upheld unless the statute plainly compels a contrary result." *FPL Energy Me. Hydro LLC v. Dep't of Env't Prot*., 2007 ME 97, ¶ 11, 926 A.2d 1197 (alteration and internal quotation marks omitted). Generally speaking, prosecutorial decisions not to enforce are unreviewable by the Court. *See Salisbury v. Town of Bar Harbor*, 2002 ME 13, ¶ 11, 788 A.2d 598.

The NOITC requirements for quarries and the Department's limited NOITC review process were deliberately streamlined by the Legislature and eschew the more intensive type of front-loaded licensing review of projects provided under other laws, such as the Site Law or Natural Resource Protection Act (NRPA).[6] Instead, the Legislature, through the Quarry Act, crafted a performance-based regulatory approach that protects the environment through NOITC certification and ongoing DEP monitoring to ensure that the quarry is operated in accordance with activity-specific standards.

The nature of the NOITC review provided by statute is simple. It does not contemplate or provide for any substantive review or approval of the proposed

[6] Codified at 38 M.R.S. §§ 480-A—480-KK (2025).

activity by the Department, which is instead directed only to determine whether an NOITC is "complete" and on "forms approved by the [D]epartment." 38 M.R.S. § 490-Y. Section 490-Y, moreover, is specific about what such a Department completeness review entails, providing that an NOITC "is not complete unless it includes" a list of specific information. 38 M.R.S. § 490-Y(1)-(7); *see also* 38 M.R.S. § 344(1) (2025) (providing that an application is "complete" if it is "properly filled out and information is provided for each of the items included on the form.").

Nowhere in 38 M.R.S. § 490-Y did the Legislature deploy words like "review" or "approve," or otherwise suggest that the NOITC form should be treated like an application for the Department to substantively approve or deny.[7] The limited nature of the NOITC review process is further underscored by the fact that an owner or operator is expressly authorized to commence quarry operations "[u]pon receiving the postal receipt" confirming delivery of the NOITC to the Department,

[7] Compare 38 M.R.S. § 490-Y with NRPA's 38 M.R.S. § 480-C(1) (2025) (providing that a person "may not perform or cause to be performed any activity listed … without first obtaining a permit from the [D]epartment") and 38 M.R.S. § 480-D (2025) (providing that the Department "shall grant a permit upon proper application" where "it finds that the applicant has demonstrated that the proposed activity meets the standards set forth" in statute). *See also* 38 M.R.S. §§ 483-A(1), 484 (2025) (providing that under the Site Law "a person may not construct or cause to be constructed … any development … without first having obtained approval for this construction," and that the Department "shall approve a development proposal whenever it finds" that specific standards have been satisfied).

before the Department has even finalized its completeness review. 38 M.R.S. § 490-Y.[8]

Compliance with the actual quarry performance standards set forth in 38 M.R.S. 490-Z are not ensured through the NOITC process but rather through the Department's enforcement powers. To that end, the Department is vested with expansive investigatory powers and immediate stop-work authority. *See, e.g.*, 38 M.R.S. §§ 490-AA, 490-BB(1)-(3). Indeed, as MTN's signed NOITC in the record here acknowledges, compliance with Section 490-Z's statutory performance standards is prospectively ensured through operation of the Department's compliance and enforcement powers, not through its review of the ministerial notice requirement in 38 M.R.S. § 490-Y. That signed statement, provided on the forms prepared by the Department, states as follows:

> I am filing my notice of Intent to comply with the performance standards under 38 MRSA §490-Y. I fully understand that I can be subject to enforcement action, including a stop work order, on my failure to comply with the performance standards. I authorize staff of the Department of Environmental Protection and the municipality, if it has delegated authority, to access the project site for the purpose of determining compliance with the standards.

[8] The substantive performance standards in 38 M.R.S. § 490-Z are self-executing and do not contemplate any formal process for intervention or hearing once an NOITC has been filed certifying compliance with them. If, however, an owner or operator wishes to exceed any of the performance standards, they must submit a variance application to the Department. 38 M.R.S. § 490-CC (2025). Unlike Section 490-Z, Section 490-CC establishes clear standards and a process for DEP's consideration of such variance applications. This difference underscores the limited nature of DEP's review in the regular NOITC process; if one opts to comply with the already established Section 490-Z standards, it is a streamlined, prospective certification process reviewed solely for "completeness."

A. 59; A.R. 7, at 58. As reflected in the plain language of Section 490-Y and this DEP form, the Department's role in reviewing an NOITC is statutorily confined to determining whether it is complete and contains all statutorily mandated information. There is no requirement in 38 M.R.S. § 490-Y that the Department engage in further review of the NOITC to independently assess whether the operation will in fact comply with the Section 490-Z performance standards before concluding it is complete. If MTN's operation of its quarry were to result in any violation of 38 M.R.S. § 490-Z, the regulatory mechanism for redress would be through Department enforcement, not appeal of the separate Section 490-Y NOITC completeness determination that includes no substantive evaluation of compliance with the Section 490-Z performance standards.[9]

This Department interpretation of the statutory NOITC requirements and review process reflects the plain language of Section 490-Y and the statutory framework that the Department administers. At the very least, the Department's interpretation is entitled to great deference and should be upheld because it is

[9] This is not to say that no challenge to an NOITC completeness determination could ever be brought. For instance, the failure of an owner or operator to include all information required by Section 490-Y in an NOITC, such as a parcel description or certification statement, or to follow the express mailing instructions could conceivably form the basis of a challenge to an NOITC completeness determination. Indeed, the Fraumenis previously raised such an issue related to the mailing and notice procedures with MTN's first NOITC submission, which prompted MTN to surrender its placard and restart the NOITC process anew. A.R. 5, at 11

reasonable and not contrary to statute. *FPL Energy*, 2007 ME 97, ¶ 11, 926 A.2d 1197.[10]

In contrast, the Fraumenis' position is inconsistent with the language of Section 490-Y and the greater Quarry Act regulatory framework and should be rejected. The Fraumenis argue that the Department erred in determining the NOITC was complete based on an alleged "facial" violation of 38 M.R.S. § 490-Z(1). (Blue Br. 22). But nowhere in 38 M.R.S. § 490-Y is the Department directed to conduct any up-front assessment of substantive compliance with the performance standards, including Section 490-Z(1) as part of its NOITC completeness review, and conducting such a review is inimical to the text and structure of the Quarry Act.

The Fraumenis' position, if accepted, would ignore Section 490-Y's express language limiting the Department's review of an NOITC to a consideration of its completeness only. *Cent. Me. Power Co. v. Devereux Marine*, *Inc.*, 2013 ME 37, ¶ 8, 68 A.3d 1262 ("All words in a statute are to be given meaning, and no words are to be treated as surplusage if they can be reasonably construed.") (internal quotation marks omitted). It would also read into Section 490-Y additional language not present in the statute, by creating an unwritten, up-front substantive assessment of

[10] The Department's interpretation is also consistent with the Legislative history of the Quarry Act described above, which reveals a deliberate intent to streamline review and adopt an approach that relies on enforcement and compliance rather than pre-screening regulatory review and approval for environmental protection, and thus should be upheld. *See Fortin*, 2013 ME 14, ¶ 7, 60 A.3d 765.

whether an operation will in fact comply with the separate Section 490-Z performance standards. *See Blue Yonder, LLC v. State Tax Assessor,* 2011 ME 49, ¶ 10, 17 A.3d 667 (courts "will not read additional language into a statute" that was not placed there by the Legislature); *see also Rich v. Dep't of Marine Res*., 2010 ME 41, ¶ 7, 994 A.2d 815 (a court will not construe a statute "beyond its express language and in contravention of the plain meaning of statutory terms") (internal quotation marks omitted). The Fraumenis' position would also be contrary to the overarching purpose of the Quarry Act. *See Enos v. Town of Stetson*, 665 A.2d 678, 680 (Me. 1995) (describing the "well-established policy of construing a statute to promote the ends sought by the Legislature and approv[ing] a construction which will not nullify the statute's purpose."); *see also* Statutory Background discussion *supra*. For these reasons, the Court should reject the Fraumenis' interpretation.

Here, MTN's filing was submitted on a form approved by the Department and included all the information set forth in 38 M.R.S. § 490-Y(1)-(7), a fact that the Fraumenis do not dispute. A. 28-162; A.R. 7-11, at 27-161. The Department reviewed this filing and appropriately determined that it was complete, as it contained all required information. A. 26-27; A.R. 21, at 229-30.[11] This Court need

[11] The Fraumenis' unsupported and unpreserved contention that this Court must disregard the completeness determination made by the Department is addressed below. *See* Argument, Section III.

go no further; it should affirm the Department's completeness determination as the claim raised by the Fraumenis—an enforcement consideration related to alleged noncompliance with a performance standard—is not part of the NOITC review conducted by the Department under 38 M.R.S. § 490-Y and is instead a matter subject to the Department's discretionary enforcement authority.[12] *See Salisbury*, 2002 ME 13, ¶ 11, 788 A.2d 598.

II. Even if considered by the Court, the Department's determination that MTN's proposed quarry is not within an area listed by MNAP is reasonable and entitled to great deference.

The Fraumenis contend that the Department erred in its NOITC Determination because, they assert, MTN's proposed quarry's operation will be contrary to a prohibition contained within the performance standards in 38 M.R.S. § 490-Z(1), which prohibits quarrying activity without a permit in areas "listed pursuant to" the Maine Natural Areas Program. (Blue Br. 22.) As explained above, compliance with the performance standards is not a part of NOITC completeness review, and therefore the Fraumenis' argument is not a matter that may properly be brought in this Rule 80C appeal of the Department's NOITC Determination. However, even if this issue is considered by the Court, the Department's conclusion that the proposed

[12] The Superior Court below affirmed on different grounds, concluding that MTN's proposed quarry would not be within an area listed by MNAP pursuant to its statutory authority. A. 17. This Court may affirm the judgment on grounds different from those stated by the trial court. *See Sears, Roebuck & Co. v. State Tax Assessor*, 2012 ME 110, ¶ 13, 52 A.3d 941.

quarry is not within an area listed by MNAP is supported by the record and is reasonable and entitled to great deference.

The standard of review set forth in Section I also applies here. Additionally, the Court will "look first to the plain language of the statute to determine its meaning if we can do so while avoiding absurd, illogical, or inconsistent results." *State v. Conroy*, 2020 ME 22, ¶ 19, 225 A.3d 1011. As part of the plain-language analysis, "we consider the [specific] language in the context of the whole statutory scheme," *Chadwick-BaRoss, Inc. v. City of Westbrook*, 2016 ME 62, ¶ 11, 137 A.3d 1020 (alteration and internal quotation marks omitted), and "examine the entirety of the statute, giving due weight to design, structure, and purpose as well as to aggregate language," *Dickau v. Vt. Mut. Ins. Co*., 2014 ME 158, ¶ 22, 107 A.3d 621 (internal quotation marks omitted). Undefined words and phrases in a statute "shall be construed according to the common meaning of the language." 1 M.R.S. § 72(3) (2025). "When construing an undefined statutory term, courts 'often rely on the definitions provided in dictionaries.'" *Minerich v. Boothbay-Boothbay Harbor Cmty. Sch. Dist*., 2026 ME 11, ¶ 18, --- A.3d ---, 2026 WL 371121 (quoting *Apex Custom Lease Corp. v. State Tax Assessor*, 677 A.2d 530, 533 (Me. 1996)).

When construing a statute administered by an agency, the Court will first determine "whether the statute is 'reasonably susceptible of different interpretations' and therefore ambiguous." *Cent. Me. Power Co. v. Pub. Utils. Comm'n*, 2014 ME

56, ¶ 18, 90 A.3d 451 (quoting *Competitive Energy Servs. LLC v. Pub. Utils. Comm'n*, 2003 ME 12, ¶ 15, 818 A.2d 1039). If the statute is ambiguous, the agency's interpretation is "reviewed with great deference and will be upheld unless the statute plainly compels a contrary result." *Id.* (internal quotation marks omitted).

Section 490-Z(1) of the quarry performance standards provides:

> Affected land may not be located in, on or over a significant wildlife habitat or other type of protected natural resource, as defined in [section 480-B of NRPA], or in an area listed pursuant to the Maine Natural Areas Program, Title 12, section 544. The [D]epartment may allow excavation to occur under this section as long as a permit is obtained pursuant to [NRPA.][13]

38 M.R.S. § 490-Z(1). The Fraumenis contend that the proposed quarry is in an area "listed pursuant to" MNAP for purposes of § 490-Z(1) because the quarry sits inside a large region designated as the Kennebec Estuary Focus Area of Statewide Significance.[14] *See* A. 177; A.R. 12, at 172. They are wrong.

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[13] NRPA, one of Maine's signature environmental protection laws, requires a permit be obtained by anyone seeking to undertake development in a "protected natural resource." 38 M.R.S. § 480-C(1). Protected natural resources include "coastal sand dune systems, coastal wetlands, significant wildlife habitat, fragile mountain areas, freshwater wetlands, community public water system primary protection areas, great ponds or rivers, streams or brooks, as these terms are defined in [NRPA]." 38 M.R.S. § 480-B(8) (2025).

[14] The Fraumenis' arguments relate only to the portion of section 490-Z(1) that refers to areas "listed" by MNAP; they do not contend that the quarry will be located within a protected natural resource. In the proceedings below, the Fraumenis also claimed that MTN's proposed quarry would impermissibly impact other protected resources such as federally protected critical habitat for the Atlantic salmon; a wetland within the National Wetlands Inventory; habitat for the Bald Eagle, a variety of migratory birds, including the Bobolink, Lesser Yellowlegs, and Wood Thrush, and the Northern Long-eared bat; and asserted that the proposal would violate the Endangered Species Act and the Site Law. A. 168-75; A.R. 12 at 163-70. The Fraumenis have abandoned these other arguments on appeal.

MNAP is a program currently administered by the Department of Agriculture, Conservation and Forestry and performs various functions related to documenting and inventorying Maine's natural features. 12 M.R.S. § 544 (2025). For example, MNAP compiles and maintains a variety of taxonomic information, including interactive maps, lists of at-risk plants and animals, digital data sets, and charts. A. 129-32, 177; A.R. 11, at 128-31; 12, at 172; *see also* 12 M.R.S. § 544(3).

Focus Areas of Statewide Significance (Focus Areas) are one component of the Beginning with Habitat program (BwH), a separate collaborative effort MNAP undertakes with cooperating state and federal agencies and conservation groups to provide comprehensive information on natural resources within Maine.[15] A key feature of the BwH program is its Map Viewer, a digital compilation of BwH's extensive collection of natural resource information that allows users to select different layers in order to view customized selections of a great variety of different natural resources such as conserved lands, water resources, significant wildlife habitats as defined by NRPA, undeveloped habitat blocks, or Focus Areas, in a given location. A. 129-32; A.R. 11, at 128-32, 149-52.

Focus Areas are broad geographic locations identified by the BwH program for their high concentrations of biodiversity and rare plants, species, and natural

[15] The maps and datasets compiled as part of this program are created by the Maine Department of Inland Fisheries and Wildlife (MDIFW), and involve input from MNAP, along with a host of federal and state agencies and nonprofits. A. 131; A.R. 11, at 130.

communities, A. 177, 209; A.R. 12, at 172; 15, at 187, and are described by MNAP as "non-regulatory areas [that] are intended as a planning tool for landowners, conservation entities, and towns." A.R. 26, at 253. The Kennebec Estuary Focus Area comprises a large swath of Sagadahoc County; it runs from the town of Pittston and just south of Gardiner, south through parts of Dresden, Bowdoinham, Topsham, Bath, Edgecomb, Westport Island, Arrowsic, Georgetown, and Phippsburg. A. 177; A.R. 12, at 172.

MNAP also classifies rare plants, animals, and natural communities in Maine and assigns to these features a State rarity rank of S1 (rare) through S5 (common), with an S1 ranking indicating that the status of the species or area is "critically imperiled" in Maine. A. 131, 185; A.R. 11, at 130; 12, at 180. This categorization and classification system provides a comprehensive itemized list of rare plants, animals, and natural communities in Maine.

When the Fraumenis first asserted in February 2024, that MTN's quarry would be in "an area listed pursuant to the [MNAP]" within the meaning of the prohibition in Section 490-Z(1), Department staff—although not required to do so at the NOITC completeness stage, *see* Argument, Section I—requested input on that concern from MNAP directly. A. 210; A.R. 15, at 188. In response, MNAP notified the Department that MNAP staff "searched the [MNAP] Biological and Conservation Data System files for rare or unique botanical features in the vicinity

of the proposed site" and that, according to MNAP's databases, "there are no rare botanical features that will be disturbed within the project site." A. 212; A.R. 15, at 190. MNAP also emphasized that "focus areas" are a "planning tool" that are not intended to be regulatory in nature. A. 209; A.R. 15, at 187. From MNAP's response, Department staff reasonably concluded that MNAP interpreted "listed pursuant to the [MNAP]" to refer to MNAP's list of rare natural features, not the mapping of large Focus Areas. *See* A. 212; A.R. 15, at 190.

In its April 2, 2024 letter to the Fraumenis, the Department relied on MNAP's input in explaining that, in the Department's view, Focus Areas are not areas that MNAP "listed" for purposes of Section 490-Z(1):

> The [MNAP] reviewed the project location and did not identify any listed areas on the site. Specifically, MNAP stated that there are no rare and botanical features within the project site, and further commented that the nearest mapped botanical feature is a Freshwater Tidal Marsh located approximately 750-feet from Middle Road. MNAP, which performs many functions and collects and categorizes many types of data, clarified that the use of focus areas, such as the Kennebec Estuary Focus Area, is a planning tool that is not regulatory in nature. Therefore, a site that is within such a focus area is not considered listed and being in a focus area is not a disqualifying fact… [T]he Department did not identify any features presently at the project location that would violate 38 M.R.S. § 490-Z (1) ….

A. 227-28; A.R. 22, at 231-32. The Department's conclusion that in creating Focus Area maps intended for voluntary and non-regulatory conservation efforts MNAP did not "list" the broad geographic areas covered by those maps for the purposes of 38 M.R.S. § 490-Z(1), is reasonable and entitled to deference. *See FPL Energy,*

2007 ME 97, ¶ 11, 926 A.2d 1197. The Department's interpretation took into account MNAP's own guidance and makes good sense, given MNAP's creation and maintenance of a specific "list" of rare plants, species, and natural communities that is unrelated to the Focus Area designation.

Generally, a "list" refers to "[a]n item-by-item printed or written entry of persons or things, often arranged in a particular order, and usually of a specified nature or category." *List,* THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (1970). MNAP compiles just such an itemized list of things—its classification of rare and exemplary species and natural communities, which is arranged in a particular order—by ranking of rarity from common to imperiled. A. 131, 185; A.R. 11, at 130; 12, at 180.

By contrast, Focus Areas are broad, geographic designations intended to be utilized for voluntary planning purposes and are not part of an itemized catalog arranged or ranked in any particular order. Moreover, and critically, in assisting in designating and mapping focus areas such as the Kennebec Estuary through the BwH program, MNAP did not intend to create any official list, much less one within the ambit of 38 M.R.S. § 490-Z(1). A. 212; A.R. 15, at 187.

Indeed, when asked by DEP whether MTN's quarry was within an area "listed" pursuant to MNAP, MNAP responded that the proposed quarry site does not include any of the rare and unique botanical features contained on the list of such

features that MNAP compiles. A. 212; A.R. 15, at 190. In arguing to the contrary, the Fraumenis focus on the word "area" in § 490-Z(1), contending that because the Kennebec Estuary Focus Area is allegedly a "natural area" as defined by 12 M.R.S. § 544(2)(D) (2025),[16] and because it was mapped as part of the collaborative BwH program that included MNAP, it necessarily falls within the scope of Section 490-Z(1)'s prohibition. (Blue Br. 26-27.)

This argument, however, is not a plausible reading of the statute and gives short shrift to the word "listed" in the statutory text. As the Superior Court correctly observed, A. 7-8, not every area included on a map or within a database created by MNAP is encompassed by Section 490-Z(1), only those areas that are "listed" by MNAP—and the record shows that the Kennebec Estuary Focus Area is not such an area. A. 212; A.R. 15, at 190.

Furthermore, the Fraumenis' position—that whether MNAP intended to affirmatively create a list is irrelevant—and all areas located within any planning maps that MNAP creates or assists in creating for any purpose under 12 M.R.S. § 544 fall within the ambit of 38 M.R.S. § 490-Z(1), is entirely unmoored from any

[16] The definition of a Natural Area specifies that it includes "any area of land or water, or both land and water, whether publicly or privately owned, *that retains or has reestablished its natural character*, though it need not be completely natural and undisturbed . . . ." 12 M.R.S. § 544(2)(D) (emphasis added). Considering that the Kennebec Estuary Focus Area includes most of coastal Sagadahoc county, and large sections of heavily developed towns such as Bowdoinham, Topsham, Bath, and Georgetown, A. 177; A.R. 12, at 172, it is difficult to see how it could be viewed as an area that has retained its natural character as required by that definition.

limiting principle whatsoever and would lead to absurd results. *See Fortin*, 2013 ME 14, ¶ 7, 60 A.3d 765 ("We also interpret a statute to avoid absurd, illogical, or inconsistent results, and look to the context of the whole statutory scheme of which the section at issue forms a part to achieve a consistent and harmonious result.") MNAP performs a great variety of mapping and data collection functions, producing for example, coastal resiliency maps, maps of statewide geology features, and a division of Maine into different "eco-regions" that encompass the entire state.[17] Indeed, as part of the BwH program alone, of which the Focus Areas are a part, the Map Viewer program identifies and maps such diverse areas as conserved lands, riparian habitats, wetland characterizations, and undeveloped habitat blocks. A. 129-32, 152-54; A.R. 11, at 128-31, 151-53.

It is not a logical reading of the statute to conclude that all such areas fall within the prohibition contained in 38 M.R.S. § 490-Z(1) merely by being included on a map maintained by a collection of agencies that includes MNAP. The Fraumenis' reading would render the inclusion of the carefully delineated, protected natural resource definition taken from NRPA redundant because the BwH mapping program includes these resources. It would also result in great swaths of the State—

[17] *See* Maine Natural Areas Program, Maps, Data, and Technical Assistance https://www.maine.gov/dacf/mnap/assistance/index.htm (accessed March 18, 2026). While this website page is not contained within the record, "[c]ourts routinely take judicial notice of information on official government websites." *Seymour v. Seymour*, 2021 ME 60, ¶ 12, 263 A.3d 1079.

indeed, perhaps the entire State—being considered an area "listed" by MNAP and subject to § 490-Z's prohibition on quarry activity. This Court should avoid interpreting § 490-Z in a manner that would lead to such an absurd result.[18]

If the Court reaches this issue, it should uphold the Department's and MNAP's interpretation, which is logical and entitled to great deference.

III. The Fraumenis failed to preserve their argument that the Department's decision is unsupported by sufficient findings, and, in any event, the Department's NOITC completeness determination is sufficient for review.

Court review of an agency decision "does not involve any weighing of the merits of evidence," but instead requires only a determination of whether there is "any competent evidence in the record to support a finding." *Friends of Lincoln Lakes v. Bd. of Env't Prot*., 2010 ME 18, ¶ 14, 989 A.2d 1128; 5 M.R.S. § 11007(3) (2025). Courts must affirm an agency's findings if they are supported by substantial evidence in the record "even if the record contains inconsistent evidence or evidence contrary to the result reached by the agency." *Friends of Lincoln Lakes,* 2010 ME 18, ¶ 13, 989 A.2d 1128.

[18] This is especially true considering that 38 M.R.S. § 490-Z(1) as initially enacted simply prohibited all quarrying activities within protected natural resources or areas listed pursuant to MNAP, without the option to instead obtain a NRPA permit for those activities. *See* P.L. 1995, ch. 700, § 490-Z(1); P.L. 2007, ch. 290, § 490-Z(1) (amending provision to allow for quarrying activities where a permit is obtained). It is doubtful that the Legislature would delegate the ability to impose the sweeping ban on quarrying activities implied by the Fraumenis' position in such a cavalier fashion. *See Whitman v. Am. Trucking Ass'n*, 531 U.S. 457, 468 (2001) ("Congress, we have held, does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions—it does not, one might say, hide elephants in mouseholes.").

Courts review only agency actions that are "final," meaning, an agency decision that affects the "legal rights, duties or privileges of specific persons, which is dispositive of all issues, legal and factual, and for which no further recourse, appeal or review is provided within the agency." 5 M.R.S. § 8002(4) (2025). As this Court has observed, such agency action need not include "specific fact-findings on the issues" where the issuance of the decision itself will "resolve 'all questions necessarily involved in the underlying subject matter.'" *Bailey v. Dep't of Marine Res*., 2015 ME 128, ¶ 5, 124 A.3d 1125 (quoting *Wheeler v. Me. Unemp. Ins. Comm'n,* 477 A.2d 1141, 1146 (Me.1984)).

A. The Fraumenis failed to preserve their argument that the Department's findings were insufficient.

Before the Superior Court, the Fraumenis argued only that the Department erred in interpreting the Quarry Act, and had acted arbitrarily by failing to conduct an on-site survey of the project site. (Petitioner's Rule 80C Brief, October 21, 2024, (Pet'rs' Br.) 7-15.) The Fraumenis did not argue below that the Department's NOITC Determination was insufficient to allow for review, and instead engaged substantively with the determination on the merits. (Pet'rs' Br. 6-7.) The Superior Court opinion, as a consequence, addressed only the two claims actually presented by the Fraumenis. In this appeal, the Fraumenis raise a new basis for vacating the Department's decision, contending that it lacks sufficient supporting factual findings to allow for judicial review. (Blue Br. 15.)

"No principle is better settled than that a party who raises an issue for the first time on appeal will be deemed to have waived the issue, even if the issue is one of constitutional law." *Kelly v. Univ. of Me.*, 623 A.2d 169, 171 (Me. 1993) (quoting *Cyr v. Cyr*, 432 A.2d 793, 797 (Me. 1981)). Because the Fraumenis did not present their argument that the NOITC Determination lacks sufficient findings to the Superior Court, and raise it now for the first time in this appeal, they have failed to properly preserve it for appellate review. *See Foster v. Oral Surgery Assocs., P.A.*, 2008 ME 21, ¶ 22, 940 A.2d 1102 ("An issue raised for the first time on appeal is not properly preserved for appellate review."); *E. Me. Cons. Initiative v. Bd. of Env't Prot.,* 2025 ME 35, ¶ 27 n.12, 334 A.3d 706 ("Because this argument was not raised before either the [agency] or the Superior Court, we decline to consider it."); *New Eng. Whitewater Ctr., Inc. v. Dep't of Inland Fisheries & Wildlife*, 550 A.2d 56, 59 (Me. 1988) (concluding that argument was not waived by the respondent only because a party-in-interest had raised it during Superior Court briefing in a Rule 80C appeal). Accordingly, this Court should decline to review this new argument.

B. Even if considered by the Court, the Department's NOITC completeness determination is sufficient for review.

If the Court does nonetheless consider the Fraumenis' new argument, it should conclude that the Department's NOITC Determination is sufficient for judicial review. As this Court has instructed, agency decisions must include "sufficient specificity to permit understanding and meaningful appellate review." *Hannum v.*

Bd. of Env't Prot., 2003 ME 123, ¶ 12, 832 A.2d 765. Because courts must not substitute their judgment for that of the agency, they "'need to know what an agency has really determined in order to know even what to review.'" *Sultan Corp. v. Dep't of Env't Prot*., 2022 ME 21, ¶ 9, 272 A.3d 296 (quoting *Gashgai v. Bd. of Reg. in Med*., 390 A.2d 1080, 1085 (Me. 1978)). Even where factual findings are required by law, however, a decision need not include "incident-by-incident fact-finding," and may be supported by implicit findings. *Cotton v. Me. Emp. Sec. Comm'n*, 431 A.2d 637, 639 (Me. 1981).

In this case, the Fraumenis seek judicial review of the Department's March 28, 2024 determination that the NOITC was complete. This determination was conveyed to MTN via a letter dated March 28, 2024 signed by Erich D. Kluck, Mining Specialist within DEP's Division of Land Resource Regulation, stating that the DEP "received and reviewed" the NOITC submitted by MTN and "determined that it's complete." A. 26; A.R. 21, at 229. This NOITC Determination is the final agency action that is subject to review here. Along with the NOITC Determination, the Department issued a placard, dated March 28, 2024, which indicates that the quarry operation is in compliance with the Quarry Act, and which is required to be posted visibly at the quarry site at all times. A. 27; A.R. 21, at 230. The Department also subsequently provided, on April 2, 2024, a separate response to the Fraumenis'

comments, explaining why, despite the concerns raised by the Fraumenis, the Department had accepted the NOITC as complete. A. 227-29; A.R. 22, at 231-33.

As an initial matter, the Fraumenis contend that the only document that the Court may consider in this Rule 80C appeal is the placard which accompanied the NOITC Determination, and not the written NOITC Determination itself, but they provide no citation or explanation as to why the Court should adhere to this artificially constrained review of the record. (Blue Br. 20.) The Fraumenis attempt to explain their curious position that this Court should decline to consider the NOITC Determination in an appeal of that decision by stating that "[a]ny statements individual agency officials made expressing their opinions on those subjects are legal nullities as they are not memorialized in written findings and conclusions authorized by MDEP as an agency." (Blue Br. 14.) This argument imposes a level of formality not required by Section 490-Y and that is nowhere apparent in the caselaw addressing the need for factual findings.[19] This Court should reject such an argument.

[19] Indeed, courts have expressly declined to impose stringent technical formatting requirements, or mandate that written findings be presented in particular ways. *See Bailey,* 2015 ME 128, ¶ 5, 124 A.3d 1125; *see also Cook v. Lisbon Sch. Comm.*, 682 A.2d 672, 677 (Me. 1996) (concluding that, in the context of review of the sufficiency of local government findings, despite the fact that the findings "were not set forth in the manner in which a court would typically make findings," the reasons presented in a letter "were sufficient to demonstrate that the [agency] had an adequate and rational basis for its decision").

Further, it is not clear why the placard—which does not bear the signature of any Department member, or otherwise purport to represent written findings and conclusions at all—would constitute "written findings and conclusions authorized by MDEP as an agency" (Blue Br. 14), while the NOITC Determination that expressly provides the completeness determination under review would not.[20] Here, the determination of completeness is vested within the Department, an agency which acts through the delegated authority of its staff, and the Fraumenis provide no support for their suggestion that the Department staff member who issued the NOITC Determination was not authorized to do so.[21]

Moreover, the Fraumenis' citations to 5 M.R.S. § 10005 (2025) and 1 M.R.S. § 407(1) (2025) in support of their contention that the Department's determination

[20] The decision cited by the Fraumenis in support of their contention is inapposite, as it involves an appeal under M.R. Civ. P. 80B of a decision issued by a municipal board, whose individual members may not speak for the body as a whole. *See* Blue Br. 20-21 (citing *Carroll v. Town of Rockport*, 2003 ME 135, ¶ 28, 837 A.2d 148).

[21] To the extent the Fraumenis' contend that, in order to constitute final agency action, the NOITC Determination needed to be signed by the Board of Environmental Protection, or the Commissioner of the Department herself, *see Utsch v. Dep't of Env't Prot.*, 2024 ME 10, ¶ 19, 314 A.3d 125, this argument would, if accepted, mean that the NOITC Determination here is not final agency action and the Fraumenis' appeal would be subject to dismissal for failure to meet the jurisdictional requirements imposed by the Maine Administrative Procedure Act. *See Tomer v. Me. Hum. Rts. Comm'n*, 2008 ME 190, ¶¶ 7-8, 14, 962 A.2d 335 (argument that agency action is not final agency action is challenge to the court's subject matter jurisdiction). This argument makes no sense in the context here. *Utsch* addressed an informal Department email, *see* 2024 ME 10, ¶ 19, 314 A.3d 125, not an NOITC determination, and the Department's position is that an NOITC determination made pursuant to Section 490-Y is final agency action pursuant to 5 M.R.S. § 8002(4) for the limited purpose of appealing a determination that an NOITC is complete and includes all required information.

was insufficient, (Blue Br. 18), are mistaken. The Department's NOITC Determination here is governed by the specific procedures set forth in 38 M.R.S. § 490-Y, and not the general requirements set forth in those statutes. *See Ziegler v. Am. Maize-Products Co*., 658 A.2d 219, 222 (Me. 1995) (applying principle that "specific statutory provisions take precedence over general provisions"). Even if these requirements were to apply to the completeness review of a notification form set forth in Section 490-Y, both statutes require written explanations of agency licensing decisions only where the decision results in either a denial, or an approval with conditions. *See* 5 M.R.S. § 10005 (requiring that licensing decisions be "in writing" and that only when "the requested license is denied, or only conditionally approved, the decision shall contain or reflect the agency's reasoning, in a manner sufficient to inform the applicant and the public of the basis for the agency's action."); 1 M.R.S. § 407(1) (imposing similar requirement). These requirements are thus facially inapplicable to the Department's decision here—a determination of completeness—that was neither a denial nor an approval with conditions.

In light of the Quarry Act's statutory framework, and the deliberately circumscribed role for the Department set forth in Section 490-Y as described above, a verbose and detailed written completeness decision is not necessary to allow for effective judicial review. The only action required of the Department is to determine whether an NOITC is "complete" or not, meaning that it was submitted on forms

provided by the Department and included the information specified in statute. 38 M.R.S. § 490-Y. The Department made such a finding here by accepting the NOITC as complete, A. 26; A.R. 21, at 229, and the record, which also contains MTN's NOITC with the accompanying information supplied by MTN, A. 28-162; A.R. 7-11, at 27-161, is sufficient to allow the Court to assess this determination. *See Bailey*, 2015 ME 128, ¶ 5, 124 A.3d 1125 (concluding in an appeal of the issuance of a transaction card setting an elver fishing quota that despite the lack of "specific fact-findings on the issues," the issuance of the card itself resolved "all questions necessarily involved in the underlying subject matter") (internal quotation marks omitted). This is not a case where the Court must impermissibly speculate about what the "agency has really determined," *Sultan Corp*., 2022 ME 21, ¶ 9, 272 A.3d 296, as it is both clear what the Department determined—that MTN's NOITC was complete—and why it did so—because it contained all the information required by 38 M.R.S. § 490-Y.

The Department accordingly provided a clear explanation, one that is well-supported by the record, for why it determined the NOITC was complete despite the concerns raised by the Fraumenis in their comments. A. 26; A.R. 21, at 229. Indeed, the Fraumenis' contention that the Department's consideration of the issues here was inadequate is difficult to credit where the Department went well above the bare statutory minimum, and provided the Fraumenis with a detailed written response to

their comments though none is statutorily required. A. 227-29; A.R. 22, at 231-33; *see* 38 M.R.S. § 490-Y (directing the Department to respond to comments by municipalities, but not including a similar requirement for comments submitted by abutters).

The Department's determination that MTN's NOITC was complete—supported by written conclusions by Department staff within the Mining Bureau tasked with this review—is more than sufficient for the purposes of judicial review given the specific nature of the review as provided by the Quarry Act. Moreover, even if the Court were to conclude that the Department's written conclusion is insufficient in some manner, there is ample evidence in the record to deem the Department's NOITC Determination supported by implicit findings. *Cotton*, 431 A.2d 637, 639 (Me. 1981); *Thacker v. Konover Dev. Corp*., 2003 ME 30, ¶ 10 n.4, 818 A.2d 1013 (remand unnecessary where the "facts underlying the [agency's] conclusions are easily identified from the record.")

CONCLUSION

For the reasons set forth above, the Department respectfully requests that the Court affirm the Superior Court judgment upholding its decision.

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Respectfully submitted,

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