

STATE OF MAINE  
YORK, ss.

SUPERIOR COURT  
CIVIL ACTION  
NO. ALFSC-AP-2025-32

CITY OF BIDDEFORD,

Petitioner

v.

SACO RIVER CORRIDOR  
COMMISSION,

Respondent

and

UNIVERSITY OF NEW ENGLAND,

Party in Interest

ORDER ON PENDING MOTIONS

Before the court is Respondent Saco River Corridor Commission's (the "Commission") Motion to Dismiss and Party in Interest University of New England's ("UNE") Motion to Dismiss, and Petitioner City of Biddeford's (the "City") Motion to Specify. For the following reasons, the court grants the motions to dismiss and dismisses as moot the Motion to Specify.

### BACKGROUND

Petitioner City of Biddeford (the "City") is a municipality located in York County, Maine, with a territory that encompasses the Saco River Corridor. Compl. ¶¶ 3-4. The Commission is a state agency created by 38 M.R.S. §§ 951-969, and its rules and orders have the force and effect of law. Compl. ¶¶ 5, 9; 38 M.R.S. § 967(1)

(2025). UNE is a university located in the City of Biddeford.

In August 2024, UNE applied for a permit to construct a pier within the Saco River Corridor, and the Commission granted the application and issued a permit for the proposed project, Permit #20-491 (the “2024 Permit”), on September 13, 2024. Compl. ¶¶ 7-8. The Commission previously issued a permit with conditions to UNE in 2001, Permit #20-209 (the “2001 Permit”), which included a requirement that UNE retain and maintain a 250-foot-wide vegetative buffer along the shoreline of the property. Compl. ¶¶ 10-11. Failure to maintain the specified buffer zone would result in the Commission revoking the permit. Compl. ¶ 11. Petitioner argues that by including no such conditional provision in the 2024 Permit, the Commission effectively granted UNE permission to construct a pier within the vegetative buffer zone in violation of the prior permit’s setback, location, and erosion control protections and the purpose of the Commission as outlined by its enabling statute. Compl. ¶¶ 12-13, 17, 19; *see* 38 M.R.S. § 951 (2024).

On November 20, 2025, the City filed a complaint seeking judicial review of the Commission’s final agency action granting the 2024 Permit (the “Decision”) to UNE, and the Commission’s alleged refusal to act, review, or reconsider its Decision. Petitioner argues that the residents of the City of Biddeford are entitled to relief, because the Decision exceeds the Commission’s statutory authority, and the Commission’s refusal to review or reassess its unlawful issuance of the 2024 Permit constitutes a failure to act that is arbitrary, capricious, and characterized by an abuse of discretion. Compl. ¶¶ 16, 19-23; *see* M.R. Civ. P. 80C(a); 5 M.R.S. § 11007(4)(C)

(2025).

In Count 1, Petitioner appeals, pursuant to Maine Rule of Civil Procedure 80C, the Commission's Decision and failure to review and reassess the 2024 Permit in light of the 2001 Permit and all other applicable statutes and regulations. Compl. ¶ 26. In Count 2, Petitioner seeks a declaratory judgment as to UNE that the Decision is "unlawful and invalid, and henceforth null and void." Compl. ¶ 29.

On December 5, 2025, Petitioner filed a Motion to Specify the Future Course of Proceedings pursuant to Maine Rule of Civil Procedure 80C(i). On December 22, 2025, UNE filed an Objection to the Motion to Specify the Future Course of Proceedings as well as a Motion to Dismiss. On December 23, 2025, the Commission filed a Response in Opposition to the Motion to Specify and a Motion to Dismiss. On January 2, 2026, Petitioner filed a Reply Memorandum to the Commission's Opposition to the Motion to Specify. On January 5, 2026, Petitioner filed a Reply Memorandum to UNE's Objection to the Motion to Specify. On January 9, 2026, Petitioner filed an Opposition to the Commission's Motion to Dismiss. On January 14, 2026, Petitioner filed an Opposition to UNE's Motion to Dismiss. On January 23, 2026, the Commission filed a Reply to Petitioner's Opposition to the Motion to Dismiss. On January 27, 2026, UNE filed a Reply to Petitioner's Objection to the Motion to Dismiss.

## DISCUSSION

UNE and the Commission separately move to dismiss both counts of Petitioner's complaint for lack of subject matter jurisdiction pursuant to Maine Rule

of Civil Procedure 12(b)(1).

### **A. Legal Standard**

Whether subject matter jurisdiction exists is a question of law. *R.C. Moore, Inc. v. Les-Care Kitchens, Inc.*, 2007 ME 138, ¶ 18, 931 A.2d 1081. When a motion to dismiss is based on the court’s lack of subject matter jurisdiction, the court makes “no favorable inferences in favor of the plaintiff.” *Mutty v. Dep’t of Corr.*, 2017 ME 7, ¶ 8, 153 A.3d 775 (citing *Tomer v. Me. Hum. Rts. Comm’n*, 2008 ME 190, ¶ 9, 962 A.2d 335). Additionally, unlike on a motion to dismiss for failure to state a claim pursuant to Maine Rule of Civil Procedure 12(b)(6), the court may look beyond the four corners of the complaint when ruling on a motion to dismiss for lack of subject matter jurisdiction pursuant to Rule 12(b)(1). *Gutierrez v. Gutierrez*, 2007 ME 59, ¶ 10, 921 A.2d 153 (“Although M.R. Civ. P. 12(b) suggests that a motion pursuant to Rule 12(b)(6) should be treated as a summary judgment motion when the parties present materials outside of the pleadings, such is not true for motions pursuant to Rule 12(b)(1) . . .”).

### **B. The City’s Rule 80C Claim is Dismissed for Lack of Subject Matter Jurisdiction**

UNE and the Commission argue that this court lacks jurisdiction over the Rule 80C appeal because the City failed to exhaust administrative remedies. The Maine Administrative Procedure Act (the “APA”), 5 M.R.S. §§ 11001-11008, creates a right to judicial review for “any person who is aggrieved by final agency action.” 5 M.R.S. §

11001. Appeals of final agency action are governed by Maine Rule of Civil Procedure 80C.<sup>1</sup> See Compl. ¶¶ 1-2.

A “final” agency action is a prerequisite to filing an appeal in the Superior Court. *Tomer*, 2008 ME 190, ¶ 14, 962 A.2d 335. A final agency action is generally the result of exhausting the available administrative remedies. *Bryant v. Town of Camden*, 2016 ME 27, ¶ 10, 132 A.3d 1183 (“Pursuant to the doctrine of exhaustion of administrative remedies, a party must ‘proceed in the administrative/municipal arena until all possible administrative remedies are exhausted before initiating action in the courts.’” (quoting *Cushing v. Smith*, 457 A.2d 816, 821 (Me. 1983))); see 5 M.R.S. § 8002(4) (defining a final agency action as ““a decision by an agency which 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”).

The rules of the Commission provide as follows: “No appeal [to the Superior Court] pursuant to Section 968 of the Act shall be taken from a decision of the Commission which decision was made without a hearing, until the applicant or other aggrieved person has made a request for reconsideration and the Commission has made a final determination on the merits of the application.” 94-412 C.M.R. ch. 101, § 5(D) (2025). A timely petition for reconsideration must be filed by an aggrieved

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<sup>1</sup> While 38 M.R.S. § 968 provides that appeals of the Commission’s decisions shall be taken pursuant to Maine Rule of Civil Procedure 80B, this provision was enacted before the adoption of Rule 80C in 1983. *Ouellette v. Saco River Corridor Comm’n*, 2022 ME 42, ¶ 5 n.1, 278 A.3d 1183. Therefore, because the Commission is a state administrative agency, not a local government agency, judicial review under Rule 80C is the proper pathway for judicial review. See *id.*

person with the Commission within thirty days of the date a written decision without a hearing was issued by the Commission. *Id.* § 5(A). The Commission then has sixty (60) days to provide the petitioner an opportunity to appear before the Commission, after which time the Commission shall affirm its decision, approve or deny the petition in whole or in part, or set the petition for a public hearing. *Id.* § 5(C).

Here, the Commission approved the 2024 Permit without a hearing, and the City missed the thirty-day window to timely petition the Commission for reconsideration of the Permit. Based upon the record before the court, the Commission has received no petition for reconsideration of the Decision to date. This is supported by the letter from the Commission's Executive Director, dated October 20, 2025, which indicates that the 2024 Permit is not under review and no reconsideration petition was ever received. Letter ¶ 2. The court notes that the letter, written more than a year after the issuance of the 2024 Permit, does not, as the City argues, restart the clock for final agency action. *See Pet'r's Opp'n to UNE's Mot. to Dismiss at 5-8*. On the contrary, the court finds that no final agency decision was made, because without a petition for reconsideration, the Commission was never given the opportunity to review and reconsider its approval of the 2024 Permit and make a final decision that would be subject to judicial review. Because the City failed to exhaust administrative remedies, the court must dismiss the appeal for lack of subject matter jurisdiction.<sup>2</sup> *See Mutty*, 2017 ME 7, ¶ 8, 153 A.3d 775 ("If jurisdiction

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<sup>2</sup> Even if the City had first requested the Commission reconsider the 2024 Permit and waited for it to render a final agency action before appealing to this court, the deadline for judicial review is long expired under the Maine APA. See 5 M.R.S. § 11002(3) (requiring a non-party aggrieved by the decision, as the City claims to be in this case, to petition for judicial review within forty days from the

is lacking, the court must dismiss the petition.”); *Tomer*, 2008 ME 190, ¶¶ 14-15, 962 A.2d 335 (holding that the plaintiff’s Rule 80C “Superior Court complaint was properly dismissed for lack of subject matter jurisdiction” because there was no final agency action).

### **C. The City’s Declaratory Judgment Claim is Likewise Dismissed**

For similar reasons, the City’s independent declaratory judgment claim is not viable. The Uniform Declaratory Judgments Act, 14 M.R.S. §§ 5951-5963, does not create any new cause of action; rather, the purpose of the Act is to “provide a more adequate and flexible remedy in cases where jurisdiction already exists.” *Colquhoun v. Webber*, 684 A.2d 405, 411 (Me. 1996). In other words, “[a] declaratory judgment action may only be brought to resolve a justiciable controversy” and “cannot be used to revive a cause of action that is otherwise barred by the passage of time.” *Sold, Inc. v. Town of Gorham*, 2005 ME 24, ¶ 10, 868 A.2d 172. Rule 80C and the APA provide the exclusive process for judicial review of the Permit, *see Antler’s Inn & Restaurant, LLC v. Dep’t of Pub. Safety*, 2012 ME 143, ¶ 14, 60 A.3d 1248, and the City cannot circumvent the administrative process by styling the cause of action as an independent claim. Accordingly, Count II is also dismissed.

### **D. The City’s Motion to Specify is Dismissed as Moot**

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date the final decision was rendered, or, if seeking review for the agency’s failure to act, within six months of the expiration of the time within which the action should reasonably have occurred). Given that over 400 days elapsed between the Commission’s September 13, 2024, Order granting the 2024 Permit and the City filing its complaint on November 20, 2025, such a petition is untimely under any construction of time constraints for administrative appeals. The Maine APA’s time limits “are jurisdictional,” meaning that unless the petition is timely filed, the court lacks jurisdiction.” *Mutty*, 2017 ME 7, ¶ 8, 153 A.3d 775 (quoting *Persson v. Dep’t of Hum. Servs.*, 2001 ME 124, ¶ 9, 775 A.2d 363). In other words, even if the City had exhausted administrative remedies, the court would still lack jurisdiction because the appeal is untimely.

Maine Rule of Civil Procedure 80C(i) provides that when “a claim for review of governmental action under this rule is joined with a claim alleging an independent basis for relief from governmental action . . . [the party] asserting such an independent basis for relief shall file a motion no later than 10 days after the petition is filed, requesting the court to specify the future course of proceedings.” The City here accordingly filed a Motion to Specify the Future Course of Proceedings, because the City joined with its Rule 80C appeal an independent claim for declaratory judgment. In its Motion, Petitioner also asked the court to “[v]acate the Notice and Briefing Schedule dated November 25, 2025, as it erroneously states that the record was filed on November 20, 2025. No record has been filed yet in this matter.” Pl.’s Mot. To Specify ¶ 2. The court acknowledges this error and agrees that no record has yet been filed for the present case. However, Petitioner’s Motion is dismissed as moot, because, as explained above, this case does not survive the pending motions to dismiss.

**CONCLUSION**

For the reasons stated above, the complaint is dismissed for lack of subject matter jurisdiction. Because this action is dismissed in full, the pending motion to specify the future course of proceedings is moot.

The entry is:

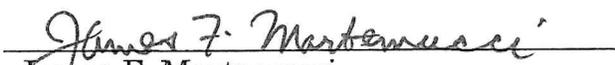
- a. Respondent Saco River Corridor Commission’s Motion to Dismiss is **GRANTED.**
- b. Party in Interest University of New England’s Motion to Dismiss is **GRANTED.**

- c. Petitioner City of Biddeford's complaint is **DISMISSED**.
- d. Petitioner City of Biddeford's Motion to Specify is **DISMISSED AS MOOT**.

The clerk is directed to incorporate this order into the docket by reference. M.R.

Civ. P. 79(a).

Dated: March 19, 2026

  
James F. Martemucci  
Justice, Maine Superior Court

ENTERED ON THE DOCKET ON: 3/20/26

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