

STATUTORY REFERENCES

§ 480-D. Standards

The department shall grant a permit upon proper application and upon such terms as it considers necessary to fulfill the purposes of this article. The department shall grant a permit when it finds that the applicant has demonstrated that the proposed activity meets the following standards set forth in subsections 1 to 9, except that when an activity requires a permit only because it is located in, on or over a community public water system primary protection area the department shall issue a permit when it finds that the applicant has demonstrated that the proposed activity meets the standards set forth in subsections 2 and 5.⁵

1. Existing uses. The activity will not unreasonably interfere with existing scenic, aesthetic, recreational or navigational uses.

In making a determination under this subsection regarding an expedited wind energy development, as defined in Title 35-A, section 3451, subsection 4, the department shall consider the development's effects on scenic character and existing uses related to scenic character in accordance with Title 35-A, section 3452.⁶

2. Soil erosion. 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.

3. Harm to habitats; fisheries. 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.

In determining whether there is unreasonable harm to significant wildlife habitat, the department may consider proposed mitigation if that mitigation does not diminish in the vicinity of the proposed activity the overall value of significant wildlife habitat and species utilization of the habitat and if there is no specific biological or physical feature unique to the habitat that would be adversely affected by the proposed activity. For purposes of this subsection, "mitigation" means any action taken or not taken to avoid, minimize, rectify, reduce, eliminate or compensate for any actual or potential adverse impact on the significant wildlife habitat, including the following:

- A. Avoiding an impact altogether by not taking a certain action or parts of an action;
- B. Minimizing an impact by limiting the magnitude, duration or location of an activity or by controlling the timing of an activity;
- C. Rectifying an impact by repairing, rehabilitating or restoring the affected environment;
- D. Reducing or eliminating an impact over time through preservation and maintenance operations during the life of the project; or

section 2660-A on the effective date of this Act and applies for a permit for establishment or operation of the significant groundwater well prior to expiration of the water transport authorization, the person may continue to withdraw water until final agency action on the permit application."

⁵ A permit is not required under the Maine Revised Statutes, Title 38, chapter 3, article 5-A for an activity located in, on or over a community public water system primary protection area until the effective date of the rules provided for PL 2007, ch. 353(14), unless a permit is otherwise required under the Maine Revised Statutes, Title 38, section 480-C. PL 2007, ch. 353(14).

⁶ This paragraph beginning "In making a determination..." is effective April 18, 2008. See PL 2007, c. 661. For text of Title 35-A, section 3552, see Appendix B of this handout.

E. Compensating for an impact by replacing the affected significant wildlife habitat.

4. Interfere with natural water flow. The activity will not unreasonably interfere with the natural flow of any surface or subsurface waters.

5. Lower water quality. The activity will not violate any state water quality law, including those governing the classification of the State's waters.

6. Flooding. The activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties.

7. Sand supply. If the activity is on or adjacent to a sand dune, it will not unreasonably interfere with the natural supply or movement of sand or gravel within or to the sand dune system or unreasonably increase the erosion hazard to the sand dune system.

8. Outstanding river segments. If the proposed activity is a crossing of any outstanding river segment as identified in section 480-P, the applicant shall demonstrate that no reasonable alternative exists which would have less adverse effect upon the natural and recreational features of the river segment.

9. Dredging.⁷ If the proposed activity involves dredging, dredge spoils disposal or transporting dredge spoils by water, the applicant must demonstrate that the transportation route minimizes adverse impacts on the fishing industry and that the disposal site is geologically suitable. The Commissioner of Marine Resources shall provide the department with an assessment of the impacts on the fishing industry of a proposed dredging operation in the coastal wetlands. The assessment must consider impacts to the area to be dredged and impacts to the fishing industry of a proposed route to transport dredge spoils to an ocean disposal site. The Commissioner of Marine Resources may hold a public hearing on the proposed dredging operation. In determining if a hearing is to be held, the Commissioner of Marine Resources shall consider the potential impacts of the proposed dredging operation on fishing in the area to be dredged. If a hearing is held, it must be within at least one of the municipalities in which the dredging operation would take place. If the Commissioner of Marine Resources determines that a hearing is not to be held, the Commissioner of Marine Resources must publish a notice of that determination in a newspaper of general circulation in the area proposed for the dredging operation. The notice must state that the Commissioner of Marine Resources will accept verbal and written comments in lieu of a public hearing. The notice must also state that if 5 or more persons request a public hearing within 30 days of the notice publication, the Commissioner of Marine Resources will hold a hearing. If 5 or more persons request a public hearing within 30 days of the notice publication, the Commissioner of Marine Resources must hold a hearing. In making its determination under this subsection, the department must take into consideration the assessment provided by the Commissioner of Marine Resources. The permit must require the applicant to:

A. Clearly mark or designate the dredging area, the spoils disposal route and the transportation route;

B. Publish in a newspaper of general circulation in the area adjacent to the route the approved transportation route of the dredge spoils; and

⁷Amendments to this section effective September 19, 1997 are affected by an application provision (PL 1997, c. 164, § 2) that provides:

Sec. 2. Application. This Act applies to permit applications filed with the Department of Environmental Protection on or after the effective date of this Act.

This section was later amended by Laws 1999, ch. 248, § 1.

5. General Standards. The following standards apply to all projects as described in Section 2.

- A. Avoidance.** The activity will be considered to result in an unreasonable impact if the activity will cause a loss in wetland area, functions, or values, and there is a practicable alternative to the activity that would be less damaging to the environment. The applicant shall provide an analysis of alternatives (see Section 9(A)) in order to demonstrate that a practicable alternative does not exist.

For an activity proposed in, on or over wetlands of special significance, a practicable alternative less damaging to the environment is considered to exist and the impact is unreasonable, unless the activity is described in paragraph (1), (2) or (3) below. An applicant proposing an activity described in paragraph (1), (2) or (3) below shall provide an analysis of alternatives (see Section 9(A)).

- (1) Certain types of projects. The activity is necessary for one or more of the purposes specified in subparagraphs (a) – (g).
 - (a) Health and safety;
 - (b) Crossings by road, rail or utility lines;
 - (c) Water dependent uses;
 - (d) Expansion of a facility or construction of a related facility that cannot practicably be located elsewhere because of the relation to the existing facility, if the existing facility was constructed prior to September 1, 1996;
 - (e) Mineral excavation and appurtenant facilities;
 - (f) Walkways; or
 - (g) Restoration or enhancement of the functions and values of the wetlands of special significance.
- (2) Wetlands with aquatic vegetation, emergent marsh vegetation or open water (Section 4(A)(5) wetlands of special significance). The activity is for a purpose other than specified in Section 5(A)(1)(a) – (g), is located in, on or over a wetlands of special significance having those characteristics described in Section 4(A)(5); and
 - (a) The activity is located at least 250 feet from aquatic vegetation, emergent marsh vegetation, or open water as described in Section 4(A)(5); and
 - (b) The activity does not unreasonably adversely affect the functions and values of the aquatic vegetation, emergent marsh vegetation, or open water, as described in Section 4(A)(5), or the functions and values of the freshwater wetlands that are enhanced or served by the aquatic vegetation, emergent marsh vegetation or open water.