Chapter 310: WETLANDS AND WATERBODIES PROTECTION

1. **Preamble.** The Legislature has found that the State's freshwater wetlands, great ponds, coastal wetlands, rivers, streams, and brooks are resources of state significance, that these resources have great scenic beauty and unique characteristics, unsurpassed recreational, cultural, historical, and environmental value of present and future benefit to the citizens of the State, and that uses are causing the rapid degradation and, in some cases, the destruction of these critical resources, producing significant adverse economic and environmental impacts and threatening the health, safety and general welfare of the citizens of the State. The Legislature has also found that the cumulative effect of frequent minor alterations and occasional major alterations of these resources poses a substantial threat to the environment and economy of the State and its quality of life. The terms "wetland", "wetlands", "waterbody", and "waterbodies" are used interchangeably and collectively in this rule to refer to freshwater wetlands, great ponds, rivers, streams, brooks, coastal wetlands, and the areas adjacent to them.

   In recognition of the important roles of wetlands in our natural environment, the Board of Environmental Protection supports the nation-wide goal of no net loss of wetland functions and values. In some cases, however, the level of mitigation necessary to achieve no net loss of wetland functions and values through construction of replacement wetlands will not be practicable, or will have an insignificant effect in protecting the State's wetlands resources. In other cases, the preservation of unprotected wetlands or adjacent uplands may achieve a greater level of protection to the environment than would be achieved by strict application of a no net loss standard through construction of replacement wetlands. Therefore, the Board recognizes that a loss in wetland functions and values may not be avoided in every instance.

   The purpose of this rule is to ensure that the standards set forth in Section 480-D of the Natural Resources Protection Act, Section 464, Classification of Maine Waters and Section 465, Standards for Classification of Fresh Surface Waters are met by applicants proposing regulated activities in, on, over or adjacent to a wetland or water body.

2. **Applicability**

   A. This rule applies to the alteration of a coastal wetland, great pond, freshwater wetland, river, stream, or brook, as defined in 38 M.R.S.A. Sec. 480-B of the Natural Resources Protection Act (NRPA), that requires an individual permit or is eligible for Tier 2 or Tier 3 review. In addition, Sections 3 and 4 apply to the alteration of a freshwater wetland eligible for Tier 1 review.

   B. For Tier 2 and 3 applications, wetland boundaries must be delineated using the methods described in the "Corps of Engineers Wetlands Delineation Manual" (1987).

   C. This rule does not apply to an activity that is exempt from permit requirements under the NRPA, or that qualifies for a general permit or permit by rule.

   D. This rule does not apply to any application accepted as complete by the department prior to the effective date of this rule.

3. **Definitions.** The following terms, as used in this rule, have the following meanings, unless the context indicates otherwise.

NOTE: The following terms are defined by statute: coastal sand dune systems; coastal wetlands; freshwater wetlands; great ponds; normal high water line; permanent structure; river, stream or brook; and significant wildlife habitat. A copy of these definitions will be included in a packet with this rule for informational purposes.

A. **Adjacent to a Protected Natural Resource.** The area within 75 feet, measured horizontally, of the normal high water line of a great pond, river, stream or brook or the upland edge of a coastal wetland or freshwater wetland.

B. **Alteration.** Dredging; bulldozing; removing or displacing soil, sand, vegetation or other materials; draining or dewatering; filling; or any construction, repair or alteration of any permanent structure.

On a case-by-case basis and as determined by the department, the term "alteration" may not include:

(1) An activity disturbing very little soil such as installing a fence post or planting shrubs by hand;

(2) The addition of a minor feature to an existing structure such as a bench or hand rail; and

(3) The construction, repair or alteration of a small structure with minimal impact such as a nesting box, pasture fence, or staff gauge.

C. **Aquatic Vegetation.** Plants that usually grow on or below the surface of the water for most of the growing season in most years.

D. **Compensation.** Replacement of a lost or degraded wetland function with a function of equal or greater value.

E. **Creation.** An activity bringing a wetland into existence at a site where it did not formerly occur for the purpose of compensation.

F. **Critically Imperiled Natural Community (S1).** An assemblage of plants, animals and their common environment that is extremely rare in Maine or vulnerable to extirpation from the state due to some aspect of its biology. An example of an S1 community that occurs in freshwater wetlands is the Outwash Plain Pondshore community.

G. **Emergent Marsh Vegetation.** Plants that: 1. are erect, rooted and herbaceous; 2. grow in saturated to permanently flooded areas; and 3. do not tolerate prolonged inundation of the entire plant. Examples of emergent marsh vegetation include cattails, burreed, tussock sedge, rice cut grass, pickerel weed, arrowhead and bulrush.

H. **Enhancement.** An activity increasing the net value of a wetland.

I. **Fill.** a. (verb) To put into or upon, supply to, or allow to enter a wetland or water body any earth, rock, gravel, sand, silt, clay, peat or debris; b. (noun) material, other than structures, placed adjacent to a wetland or water body; or material placed in a wetland or water body with the result of a change in the bottom elevation or character or boundaries of the wetland or water body. This term also includes roads, paths and other projects consisting of uncontained material regardless of how long the material remains in the wetland or water body.

J. **Functions.** The roles wetlands serve which are of value to society or the environment including, but not limited to, flood water storage, flood water conveyance, ground water recharge and discharge, erosion control, wave attenuation, water quality protection, scenic and aesthetic use, food chain support, fisheries, wetland plant habitat, aquatic habitat and wildlife habitat.

K. **Health or Safety Project.** An activity undertaken to protect or improve public health and safety, or to lessen the risk of injury in a public area through the modification of existing or potentially hazardous conditions. Public health projects and safety projects include, but are not limited to, measures taken to provide or enhance a potable public water supply, to provide fire protection, to control flooding, to provide for safe disposal of solid waste and waste water, and to construct, upgrade, or repair public roads, bridges, airports, railroads and other transportation facilities.

L. **Imperiled Natural Community (S2).** An assemblage of plants, animals and their common environment that is rare in Maine or vulnerable to further decline. Examples of S2 communities that occur in freshwater wetlands are Atlantic White Cedar Swamp, Alpine Bog-Meadow, Circumneutral Fen, Maritime Slope Bog and Coastal Plain Pocket Swamp.

M. **Maintenance.** Activities required to assure continuation of a wetland or the accomplishment of project goals after a restoration or creation project has been technically completed, including, but not limited to, water level manipulations and control of non-native plant species.

N. **Mitigation.** Actions taken to off-set potential adverse environmental impact. Such actions include the following:

(1) Avoiding an impact altogether by not taking a certain action or parts of an action;

(2) Minimizing an impact by limiting the magnitude or duration of an activity, or by controlling the timing of an activity;

(3) Rectifying an impact by repairing, rehabilitating, or restoring the affected environment;

(4) Reducing or eliminating an impact over time through preservation and maintenance operations during the life of the project; and

(5) Compensating for an impact by replacing affected resources or environments.

O. **Mitigation Banking.** Wetland restoration, enhancement, preservation or creation for the purpose of providing compensation credits in advance of future authorized impacts to similar resources.

P. **Peatland.** A freshwater wetland, typically called a bog or fen, dominated by ericaceous shrubs (heath family), sedges and sphagnum moss and usually having a saturated water regime.

Q. Persistence. The overall ability of a wetland to be self-sustaining, continue to exist, and to serve intended functions over an indefinite period of time, although its vegetation, soils, hydrologic characteristics and precise boundaries may change.

R. Practicable. Available and feasible considering cost, existing technology and logistics based on the overall purpose of the project .

S. Preservation. The maintenance of a wetland area or associated upland areas that contribute to the wetland's functions so that it remains in a natural or undeveloped condition. Preservation measures include, but are not limited to, conservation easements and land trusts.

T. Restoration. An activity returning a wetland from a disturbed or altered condition with lesser acreage or fewer functions to a previous condition with greater acreage or function.

U. Utility Line. A pipe, cable or wire, along with appurtenant facilities, used to transmit or transport a commodity, service or waste product including, but not limited to, water, oil, natural gas, electricity, communications and sewage. Appurtenant facilities include, but are not limited to, supporting structures such a, poles, pump stations, storage tanks and cleared rights-of-way. Not included as part of a utility line are buildings, generating stations and transmission substations.

V. *[Repealed]*

W. Water Dependent Use. A use which cannot occur without access to surface water. Examples of uses which are water dependent include, but are not limited to, piers, boat ramps, marine railways, lobster pounds, marinas and peat mining. Examples of uses which are not water dependent include, but are not limited to, boat storage, residential dwellings, hotels, motels, restaurants, parking lots, retail facilities and offices.

X. Wetland Value. The importance of a wetland with respect to the individual or collective functions it provides.

NOTE: A wetland may have different values for different functions. For example, a wetland may have a high value for wildlife habitat, but little value for flood storage.

4. Wetlands of Special Significance. All coastal wetlands and great ponds are considered wetlands of special significance. In addition, certain freshwater wetlands are considered wetlands of special significance.

A. Freshwater Wetlands of Special Significance. A freshwater wetland of special significance has one or more of the following characteristics.

(1) Critically imperiled or imperiled community. The freshwater wetland contains a natural community that is critically imperiled (S1) or imperiled (S2) as defined by the Natural Areas Program.

(2) Significant wildlife habitat. The freshwater wetland contains significant wildlife habitat as defined by 38 M.R.S.A. § 480-B(10).

(3) Location near coastal wetland. The freshwater wetland area is located within 250 feet of a coastal wetland.

(4) Location near GPA great pond. The freshwater wetland area is located within 250 feet of the normal high water line, and within the same watershed, of any lake or pond classified as GPA under 38 M.R.S.A. § 465-A.

(5) Aquatic vegetation, emergent marsh vegetation or open water. The freshwater wetland contains under normal circumstances at least 20,000 square feet of aquatic vegetation, emergent marsh vegetation or open water, unless the 20,000 or more square foot area is the result of an artificial ponds or impoundment.

(6) Wetlands subject to flooding. The freshwater wetland area is inundated with floodwater during a 100-year flood event based on flood insurance maps produced by the Federal Emergency Management Agency or other site-specific information.

(7) Peatlands. The freshwater wetland is or contains peatlands, except that the department may determine that a previously mined peatland, or portion thereof, is not a wetland of special significance.

(8) River, stream or brook. The freshwater wetland area is located within 25 feet of a river, stream or brook.

B. Permit Process. Alterations of wetlands of special significance usually require an individual permit. However, some alterations of freshwater wetlands of special significance may be eligible for Tier 1 or 2 review if the department determines, at the applicant's request, that the activity will not negatively affect the freshwater wetlands or other protected natural resources present. In making this determination, the department considers such factors as the size of the alteration, functions of the impacted area, existing development or character of the area in and around the alteration site, elevation differences and hydrological connection to surface water or other protected natural resources, among other things.

C. Seasonal Factors. When determining the significance of a resource or impact from an activity, seasonal factors and events that temporarily reduce the numbers or visibility of plants or animals, or obscure the topography and characteristics of a wetland such as a period of high water, snow and ice cover, erosion event, or drought, are taken into account. Determinations may be deferred for an amount of time necessary to allow an assessment of the resource without such seasonal factors.

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.

(3) Certain activity on a pier, wharf, dock or other structure constructed before the effective date of this chapter. An activity is located on a pier, wharf, dock or other structure over a coastal wetland and;

(a) The commissioner has reviewed and approved an alternative set of standards pursuant to 38 M.R.S.A. § 438-A(2) that would potentially allow a non water-dependent use; and

(b) The pier, wharf, dock or other structure was constructed prior to June 30, 1990 and is still in existence on the date of the application.

NOTE: When making decisions pursuant to 38 M.R.S.A. §438-A(2) regarding alternative shoreland zoning standards, the department considers requests to allow non-water-dependent uses narrowly, consistent with coastal policies reflected in the Mandatory Shoreland Zoning Act (MSZA) and adopted guidelines. The department considers potential effects on existing, traditional working waterfront uses.

B. Minimal Alteration. The amount of wetland to be altered must be kept to the minimum amount necessary.

C. Compensation. Compensation is the off-setting of a lost wetland function with a function of equal or greater value. The goal of compensation is to achieve no net loss of wetland functions and values. Every case where compensation may be applied is unique due to differences in wetland type and geographic location. For this reason, the method, location and amount of compensation work necessary is variable.

In some instances, a specific impact may require compensation on-site or within very close proximity to the affected wetland. For example, altering a wetland that is providing stormwater retention which reduces the risk of flooding downstream will likely require compensation work to ensure no net increase in flooding potential. In other cases, it may not be necessary to compensate on-site in order to off-set project impacts. Where wetland priorities have been established at a local, regional or state level, these priorities should be considered in devising a compensation plan in the area to allow the applicant to look beyond on-site and in-kind compensation possibilities.

(1) When required. Compensation is required when the department determines that a wetland alteration will cause a wetland function or functions to be lost or degraded as identified by a functional assessment (see paragraph 2 below) or by the department's evaluation of the project. If a functional assessment is not required under this rule, no compensation will be required unless the department identifies wetland functions that will be lost or degraded.

(2) Functional assessment. Resource functions that will be lost or degraded are identified by the department based upon a functional assessment done by the applicant and by the department's evaluation of the project. The functional assessment must be conducted in accordance with Section 9(B)(3) for all activities except for those listed in Section 5(C)(6) below.

(3) Location of compensation projects. The compensation must take place in a location:

(a) On or close to a project site as necessary to off-set direct impacts to an aquatic ecosystem;

(b) Otherwise, compensation may occur in an off-site location where it will satisfy wetland priority needs as established at the local, regional or state level to achieve an equal or higher net benefit for wetland systems, if approved by the department.

(4) Types of compensation. Compensation may occur in the form of:

(a) Restoration of previously degraded wetlands;

(b) Enhancement of existing wetlands;

(c) Preservation of existing wetlands or adjacent uplands where the site to be preserved provides significant wetland functions and might otherwise be degraded by unregulated activity; or

(d) Creation of wetland from upland.

More than one method of compensation may be allowed on a single project. Preference is generally given to restoration projects that will off-set lost functions within, or in close proximity to, the affected wetland. However, other types of compensation may be allowed by the department if the result is an equal or higher overall net benefit for wetland systems.

(5) Compensation amounts. The amount of compensation required to replace lost functions depends on a number of factors including: the size of the alteration activity; the functions of the wetland to be altered; the type of compensation to be used; and the characteristics of the compensation site. Compensation shall be performed to meet the following ratios at a minimum, unless the department finds that a different ratio is appropriate to directly off-set wetland functions to achieve an equal or higher net benefit for wetlands:

(a) 1:1 for restoration, enhancement or creation to compensate for impacts in wetlands not of special significance;

(b) 2:1 for restoration, enhancement or creation to compensate for impacts in wetlands of special significance;

(c) 8:1 for preservation, including adjacent upland areas, to compensate for impacts in all wetlands.

(6) Exceptions. Neither a functional assessment nor compensation is required for the following single, complete projects:

(a) Freshwater wetlands

(i) Alterations of less than 500 square feet in a freshwater wetland of special significance provided that the department determines that there will be only a

minimal effect on freshwater wetland functions and values, significant wildlife habitat or imperiled or critically imperiled community due to the activity;

(ii) Alterations of less than 15,000 square feet in a freshwater wetland not of special significance, provided that the department determines that there will be only a minimal effect on freshwater wetland functions and values due to the activity;

(iii) Alterations in a freshwater wetland for a road, rail or utility line crossing of a river, stream or brook for a distance of up to 100 feet from the normal high water line on both sides, measured perpendicular to the thread of the river, stream or brook, provided:

a. Any affected freshwater wetland does not contain significant wildlife habitat or a critically imperiled or imperiled community; and

b. The total project affects 500 square feet or less of the channel.

(b) Coastal Wetlands. A coastal wetland alteration that does not cover, remove or destroy marsh vegetation, does not fill more than 500 square feet of intertidal or subtidal area, and has no adverse effect on marine resources or on wildlife habitat as determined by the Department of Marine Resources or the Department of Inland Fisheries & Wildlife as applicable.

(c) Great Ponds. A great pond alteration that does not place any fill below the normal high water line, except as necessary for shoreline stabilization projects, and has no adverse effect on aquatic habitat as determined by the Department of Inland Fisheries & Wildlife or the Department of Environmental Protection.

(d) Rivers, streams or brooks. A river, stream or brook alteration that does not affect more than 150 feet of shoreline for a private project or more than 300 feet of shoreline for a public project.

(e) Walkways/Access structures. A wetland alteration consisting of a walkway or access structure for public educational purposes or to comply with the Americans with Disabilities Act.

(7) Waiver. The department may waive the requirement for a functional assessment, compensation, or both. The department may waive the requirement for a functional assessment if it already possesses the information necessary to determine the functions of the area proposed to be altered. The department may waive the requirement for compensation if it determines that any impact to wetland functions and values from the activity will be insignificant.

D. No Unreasonable Impact

(1) Even if a project has no practicable alternative and the applicant has minimized the proposed alteration as much as possible, the application will be denied if the activity will have an unreasonable impact on the wetland. "Unreasonable impact" means that one or more of the

standards of the Natural Resources Protection Act, 38 M.R.S.A. § 480-D, will not be met. In making this determination, the department considers:

(a) The area of wetland that will be affected by the alteration and the degree to which the wetland is altered, including wetland beyond the physical boundaries of the project;

(b) The functions and values provided by the wetland;

(c) Any proposed compensation and the level of uncertainty regarding it; and

(d) Cumulative effects of frequent minor alterations on the wetland.

(2) Activities may not occur in, on or over any wetland of special significance containing threatened or endangered species unless the applicant demonstrates that:

(a) The wetland alteration will not disturb the threatened or endangered species; and

(b) The overall project will not affect the continued use or habitation of the site by the species.

When considering whether a single activity is reasonable in relation to the direct and cumulative impacts on the resource, the department considers factors such as the degree of harm or benefit to the resource; the frequency of similar impacts; the duration of the activity and ability of the resource to recover; the proximity of the activity to protected or highly developed areas; traditional uses; the ability of the activity to perform as intended; public health or safety concerns addressed by the activity; and the type and degree of benefit from the activity (public, commercial or personal).

6. **Wetland Compensation Standards.** Where compensation is required, the following standards apply:

NOTE: If the department's requirements for compensation are otherwise met, additional areas of compensation required by U.S. Army Corps of Engineers do not also have to meet the department's requirements for compensation.

A. Expertise. The applicant shall demonstrate sufficient scientific expertise to carry out the proposed compensation work.

B. Financial Resources. The applicant shall demonstrate sufficient financial resources to complete the proposed compensation work, including subsequent monitoring and corrective actions.

C. Persistence. For restoration, enhancement and creation projects, on the basis of an updated functional assessment, a minimum of 85% of the compensation area must successfully replace the altered wetland's functions after a period of three years unless otherwise approved by the department. If this level is not achieved, or if evidence exists that the compensation site is becoming less effective, the department may require additional monitoring and corrective action, or additional wetland restoration, enhancement or creation in order to achieve the compensation ratio as originally approved.

D. Monitoring. The applicant shall set forth a plan for interim reporting and remediation measures during monitoring of the restored or created wetland over a minimum of five years, which shall include contingency plans for replanting, contouring or other corrections if the project fails to meet project goals during that time.

E. Maintenance. A compensation project that will naturally maintain itself without active intervention is preferred. However, the permittee may be required to conduct activities to assure continuation of the wetland, or the accomplishment of compensation goals, after a compensation project has been technically completed. Such activities may include, but are not limited to, water level manipulations and control of non-native plant species.

F. Protection

(1) A compensation project involving restoration, enhancement or creation must provide for covenant and restriction or a conservation easement conveyed to a qualified holder that requires maintenance of the area as a coastal wetland, freshwater wetland or great pond in perpetuity. The conservation easement must list the department as an enforcing agent. Regardless of the size of the compensation area, any future alterations in, on or over it must be approved by the department.

(2) A compensation project involving preservation must provide for a conservation easement conveyed to a qualified holder or covenant and restriction so that the parcel will remain undeveloped in perpetuity. The easement must list the department as an enforcing agent. Compensation areas may be deeded to local or state conservation groups or agencies, but any land management practices must be approved by the department.

G. Source of Water (Creation Only). For a creation project, the department prefers that the created wetland be located adjacent to an existing wetland or waterbody.

H. Implementation Schedule. A schedule for implementing the compensation plan must be submitted. Generally, compensation will be required to be completed prior to, or concurrent with, the permitted alteration. For on-going or long-term alterations, such as mining, compensation must be completed no later than within the first year of operation unless otherwise approved by the department.

7. **Mitigation Banking**

   A. **Purpose.** A public or private entity may apply to the department to undertake wetland compensation projects for the purposes of off-setting one or more alteration projects proposed at that time or in the future. The ratios set forth in Section 5(C)(5) above will be used as guidance to determine the amount of credit required for any proposed alteration.

   B. **Location.** Compensation work must take place in the same watershed, biophysical region or in the project vicinity of the future alteration work, if feasible. Otherwise, the work must occur as close to the wetland alteration site or sites as feasible.

   C. **Effectively Functioning.** A project to be used for compensation credit must be functioning as proposed in the mitigation banking application, as demonstrated by an updated functional assessment, in order to qualify as an offset to a proposed activity.

   D. **Limitation.** No person may use mitigation banking to compensate for more than 25 acres of wetland alteration in any one year period.

   E. **Expertise.** The applicant is required to show a combination of expertise, experience and resources sufficient to undertake and maintain land placed in mitigation banking.

8. **Terms and Conditions.** The department may, as a term or condition of approval, establish any reasonable requirement to ensure that the proposed development will meet the standards of Title 38 M.R.S.A. Sec. 480-D, such as:

   A. Design changes to help insure the success of the project;

   B. Buffer requirements;

   C. Project supervisory requirements;

   D. Monitoring requirements;

   E. Mid-course correction or maintenance capability;

   F. Bonding or other assurances of continued financial resources to complete compensation requirements; and

   G. Timing requirements for all or portions of a project.

9. **Application Requirements.** In addition to broader information required for a Natural Resources Protection Act permit and Water Quality Certification, an application for a wetland alteration activity must contain the following information, unless the department determines that more or less information is needed to evaluate a specific project, based on the nature of the alteration proposed.

   A. **Alternatives Analysis.** A report that analyzes whether a less environmentally damaging practicable alternative to the proposed alteration, which meets the project purpose, exists. Determining whether a practicable alternative exists includes:

(1) Utilizing, managing or expanding one or more other sites that would avoid the wetland impact;

(2) Reducing the size, scope, configuration or density of the project as proposed, thereby avoiding or reducing the wetland impact;

(3) Developing alternative project designs, such as cluster development, that avoid or lessen the wetland impact; and

(4) Demonstrating the need, whether public or private, for the proposed alteration.

B. Site Characteristics Report. A report that contains the following:

(1) A plan at a scale of a minimum of 1 inch equals 100 feet, that shows two-foot contour intervals, existing wetland boundaries, the area of wetland to be altered, and project dimensions. All components of the project impacting wetlands or other protected natural resources must be included;

(2) Existing wetland characteristics including water depths, vegetation and fauna;

(3) If required, a functional assessment of the wetland to be altered, conducted by a qualified professional, that analyzes the wetland's value based on the functions it serves and how the wetland will be affected by the proposed alteration. The functional assessment must be conducted by a qualified professional(s) using an acceptable methodology approved by the department. If other than an established methodology is proposed, the applicant must submit documentation describing how the methodology was developed, how the wetland functions and values are determined using the methodology, and how much field testing the technique has undergone.

In cases where the size of the wetland alteration or other factors make the use of an established assessment methodology impracticable or inappropriate, the department may instead accept the best professional judgment of a qualified professional. The applicant must notify the department if he or she intends to use best professional judgment; and

NOTE: For great ponds, a functional assessment is not usually required. Information requirements are determined by the department on a case-by-case basis.

(4) Current photographs of the wetland to be altered that show its characteristics. Photographs may be taken from the air or ground but should be taken during the growing season.

C. Activity Description. A description of the overall proposed activity with particular reference to its impact on the wetland, including the precise location of the project activity, its dimensions, the amount of fill (if any proposed), any proposed drainage, the timing and procedures proposed for the alteration, and any efforts proposed for reducing impacts.

D. Compensation Plan. A plan for the proposed compensation work, if any, including a topographic map at a scale of a minimum of 1 inch equals 100 feet showing two-foot contour intervals and proposed wetland boundaries. This plan must also include:

(1) Proposed boundaries and characteristics of the compensation site, including elevation, sources of water, and proposed vegetation;

(2) A narrative describing the specific goals of the compensation work in terms of particular wetland functions and values as related to those of the original wetland. This narrative must also identify the criteria by which to measure success of the compensation work (e.g. water level within tolerances as defined in the proposal, percent survival of plants, etc.);

(3) A narrative describing the available literature or experience to date (if any) for carrying out the compensation work;

(4) Proposed implementation and management procedures for the compensation work;

(5) A description of the short-term and long-term sources of water for the wetland, including the water quality of these sources;

(6) Plans for re-planting, including a description of plant species, sizes and sources of plant material, numbers of each species/size, proposed spacing of plants, and explanation of how, when and where seeding or planting will take place;

(7) Proposed buffers or protective measures such as sediment control methods;

(8) Plans for monitoring the compensation work, identifying criteria which require mid-course corrections (e.g. less than 75% plant survival after 2 years). A description of proposed remediation measures and a construction schedule for them shall be included unless otherwise approved by the department; and

(9) Plans, if any, for control of non-indigenous plant species.

E. Covenant and Restriction or Conservation Easement. For compensation projects involving a covenant and restriction or a conservation easement, the proposed deed or easement language, developed in accordance with Section 6(F) above, must be submitted. Additionally, any agreements or terms necessary to execute the restriction or easement, such as an agreement for the holder of the easement, must also be included.

NOTE: The applicant is strongly encouraged, but not required, to meet with the department staff in order to establish the wetland's classification and the overall adequacy of the proposal before drafting actual plans.

F. Additional Information. Because of the site-specific nature of activities and potential impacts, more or less information may be required by the department on a case-by-case basis, in order to determine whether the standards are met. If the Project Manager identifies particular information needed to review the project, that information must be included when the application is submitted to the department or the application will not be accepted as complete for processing. Also, additional information may be required by the department during the review process to determine whether the standards are met. Failure to provide any requested additional information necessary for the processing of the application may result in the denial of the application.

10. Severability. Should any provision of these rules be held invalid or ineffective by a court of law, the decision shall not invalidate any other provision of these rules.

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APPENDIX A

Additional Definitions. The following terms are defined under the Natural Resources Protection Act (NRPA), Section 480-B. They are included here for your reference and attention because the ability to perform activities under NRPA is dependent upon them. Any questions about these terms' meaning should be directed specifically to the Bureau of Land and Water Quality, Division of Land Resources Regulation staff.

(1) Coastal Sand Dune Systems. "Coastal sand dune systems" means sand deposits within a marine beach system, including, but not limited to, beach berms, frontal dunes, dune ridges, back dunes and other sand areas deposited by wave or wind action. Coastal sand dunes may extend into the coastal wetlands.

(2) Coastal Wetlands. "Coastal wetlands" means all tidal and subtidal lands, including all areas below any identifiable debris line left by tidal action; all areas with vegetation present that is tolerant of salt water and occurs primarily in a salt water or estuarine habitat; and any swamp, marsh, bog, beach, flat or other contiguous lowland which is subject to tidal action during the maximum spring tide level as identified in tide tables published by the National Ocean Service. Coastal wetlands may include portions of coastal sand dunes.

(3) Forest Management Activities. "Forest management activities" means timber stand improvement, timber harvesting, forest products harvesting and regeneration of forest stands.

(4) Freshwater wetlands. "Freshwater wetlands" means freshwater swamps, marshes, bogs and similar areas that are:

a. Deleted. Laws 1995, ch. 460, § 1.[1]

b. Inundated or saturated by surface or groundwater at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils; and

c. Not considered part of a great pond, coastal wetland, river, stream or brook.

(5) Great Ponds. "Great ponds" means any inland bodies of water which in a natural state have a surface area in excess of 10 acres and any inland bodies of water artificially formed or increased which have a surface area in excess of 30 acres.

(6) Normal High Water Line. "Normal high water line" means that line along the shore of a great pond, river, stream, brook or other nontidal body of water which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or from changes in vegetation and which distinguishes between predominantly aquatic and predominantly terrestrial land. In the case of great ponds, all land below the normal high water line shall be considered the bottom of the great pond for the purposes of this article.

(7) Permanent Structure. "Permanent structure" means any structure constructed or erected with a fixed location, or attached to a structure with a fixed location, on or in the ground within a fragile mountain area, or having a fixed location in, on or over the water for a period

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[1]Repeal effective September 29, 1995.

exceeding 7 months each year, including, but not limited to, causeways, piers, docks, concrete slabs, piles, marinas, retaining walls and buildings.

(8) River, stream or brook. "River, stream or brook" means a channel between defined banks. A channel is created by the action of surface water and has 2 or more of the following characteristics.

a. It is depicted as a solid or broken blue line on the most recent edition of the U.S. Geological Survey 7.5-minute series topographic map or, if that is not available, a 15-minute series topographic map.

b. It contains or is known to contain flowing water continuously for a period of at least 6 months of the year in most years.

c. The channel bed is primarily composed of mineral material such as sand and gravel, parent material or bedrock that has been deposited or scoured by water.

d. The channel contains aquatic animals such as fish, aquatic insects or mollusks in the water or, if no surface water is present, within the stream bed.

e. The channel contains aquatic vegetation and is essentially devoid of upland vegetation.

"River, stream or brook" does not mean a ditch or other drainage way constructed and maintained solely for the purpose of draining storm water or a grassy swale.

(9) **Significant wildlife habitat.** "Significant wildlife habitat" means:

A. The following areas to the extent that they have been mapped by the Department of Inland Fisheries and Wildlife or are within any other protected natural resource: habitat, as defined by the Department of Inland Fisheries and Wildlife, for species appearing on the official state or federal list of endangered or threatened animal species; high and moderate value deer wintering areas and travel corridors as defined by the Department of Inland Fisheries and Wildlife; seabird nesting islands as defined by the Department of Inland Fisheries and Wildlife; and critical spawning and nursery areas for Atlantic salmon as defined by the Atlantic Salmon Commission; and

B. Except for solely forest management activities, for which "significant wildlife habitat" is as defined and mapped in accordance with section 480-I by the Department of Inland Fisheries and Wildlife, the following areas that are defined by the Department of Inland Fisheries and Wildlife and are in conformance with criteria adopted by the
Department of Environmental Protection or are within any other protected natural resource:

(1) Significant vernal pool habitat;

(2) High and moderate value waterfowl and wading bird habitat, including nesting and feeding areas; and

(3) Shorebird nesting, feeding and staging areas.