

Notice of Agency Rule-making Proposal

AGENCY: Maine Department of Environmental Protection

RULE TITLE OR SUBJECT: Ch. 310, Wetlands and Waterbodies Protection – Section 5(A)

PROPOSED RULE NUMBER: 98-P

CONCISE SUMMARY: This rulemaking proposes amendment to Section 5(A) of Chapter 310. Subsection 5(A) is an “avoidance” standard that provides in part that “No activity shall be permitted if there is a practicable alternative to the project that would be less damaging to the environment”, and requires an analysis of alternatives to show that no practicable alternative exists. Additional language in Subsection 5(A) addresses wetlands of special significance. Activities that may be considered for approval in wetlands of special significance are limited to those within specified categories, such as health and safety, and water dependent uses. “Wetlands of special significance” are defined in the existing rule, and the definition is not proposed to be amended in this rulemaking.

The proposed rulemaking would amend Section 5(A) to clarify the provisions concerning wetlands of special significance, and add three additional categories of activities that may be considered for approval in wetlands of special significance.

- The first category is for activities to restore or enhance the wetlands of special significance.
- The second category concerns activities at least 250 feet from aquatic vegetation, emergent marsh vegetation, or open water that do not unreasonably adversely affect functions and values of the aquatic vegetation, emergent marsh vegetation, or open water, or of wetlands enhanced or served by those features.
- The third category concerns certain activity on a pier, wharf, dock or other structure in coastal wetlands, when (a) the structure was built before June 30, 1990 and is still in existence on the date of the application, and (b) the Commissioner of DEP has approved an alternative set of shoreland zoning standards pursuant to 38 MRSA §438-A(2).

THIS RULE WILL__ WILL NOT X HAVE A FISCAL IMPACT ON MUNICIPALITIES.

STATUTORY AUTHORITY: 38 M.R.S.A. §341-D(1-B), and 38 M.R.S.A. §§480-A et. seq.

PUBLIC HEARING): A public hearing is not planned. A request for a hearing must be in writing, directed to the agency contact person listed below, and received by the comment deadline below.

DEADLINE FOR COMMENTS: 5:00 pm, October 3, 2008. Comments may be submitted by mail, e-mail or fax. To ensure the comments are considered, they must include your name and the organization you represent, if any.

AGENCY CONTACT PERSON FOR INFORMATION ON THIS RULE, INCLUDING A STATEMENT OF IMPACT ON SMALL BUSINESS IF RELEVANT:

CONTACT PERSON’S NAME: Hetty Richardson
AGENCY NAME: Maine Department of Environmental Protection
ADDRESS: 17 State House Station, Augusta, Maine 04333-0017
TELEPHONE: 207-287-7799
FAX: 207-287-7826
E-MAIL: Hetty.L.Richardson@maine.gov

Web address where draft amendments will be located: <http://www.maine.gov/dep/blwq/rule.htm>

Please approve bottom portion of this form and assign appropriate MFASIS number.

APPROVED FOR PAYMENT _____ DATE: _____
Authorized signature

FUND	AGENCY	ORG	APP	JOB	OBJT	AMOUNT
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