

Draft proposed amendment to 06-096 CMR 310(5)(A). Text in italics is not part of the amendment text.

Amend Section 5(A) as follows:

- 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. ~~No activity shall be permitted if there is a practicable alternative to the project that would be less damaging to the environment. Each application must provide an analysis of alternatives (see Section 9(A)) in order to demonstrate that a practicable alternative does not exist~~

~~In wetlands of special significance, projects for which no practicable alternative may exist are limited to those necessary for:~~

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; ~~or~~

(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.
