

Chapter 305: NATURAL RESOURCES PROTECTION ACT

PERMIT BY RULE



Section 2:

Activities Adjacent To Protected Natural Resources

NOTE: This Section-by Section version of Permit By Rule is re-formatted to increase usability and includes additional guidance, annotations, and notes. The entire rule, as published, is available below.

Official Chapter 305 Rule (all sections):

<http://www.maine.gov/sos/cec/rules/06/096/096c305.docx>

AMENDED:

May 25, 2005 – filing 2005-174 December 5, 2006 – filing 2006-496

February 25, 2008 – Section 20 only, filing 2008-88

July 15, 2009 – filing 2009-339

July 30, 2011 – Section 16 only, filing 2011-211 (Final adoption, major substantive)


June 8, 2012 – filing 2012-146 (Final adoption, major substantive)

December 27, 2022 – Section 16-A only, filing 2022-256


A. APPLICABILITY




- 1** This section applies to an activity adjacent to, but not in:
- (a) A coastal wetland, great pond, river, stream or brook or significant wildlife habitat contained within a freshwater wetland; or
 - (b) Freshwater wetlands consisting of or containing:
 - (i) Under normal circumstances, at least 20,000 square feet of aquatic vegetation, emergent marsh vegetation or open water, except for artificial ponds or impoundments; or
 - (ii) Peatlands dominated by shrubs, sedges and sphagnum moss.

- 2**  This section does not apply to an activity where sustained slopes are steeper than 3 horizontal feet: 1 vertical foot (approximately 33% slope) between the normal high water line or upland edge of the protected resource and the soil disturbance.

- 3** Activities that qualify for permit by rule under another section are not required to comply with this section unless expressly stated in that section.

- 4**  This section does not apply to an activity that does not conform to the local shoreland zoning ordinance.

- 5**  This section does not apply to an activity that is not or will not be in compliance with the terms and conditions of a permit issued under [the Site Location of Development Law, 38 M.R.S.A. Sections 481 to 490](#), the [Storm Water Management Law, 38 M.R.S.A. Section 420-D](#), or the [Natural Resources Protection Act, 38 M.R.S.A. Sections 480-A to 480-Z](#).

NOTE: Contact the local Code Enforcement Officer for information on local shoreland zoning requirements. In most shoreland areas, a 75 or 100 foot undisturbed buffer strip is required between the disturbed areas and the water or wetland.

B. SUBMISSIONS

Submissions for all sections:



PBR Notification Form



Location Map

Submissions for Section 2:

1



The applicant is required to submit photographs of the area which will be affected by the activity proposed.

2



Photographs showing the completed project and the affected area must be submitted within 20 days of the activity's completion. The photographs must be sent with a copy of the notification form or labeled with the applicant's name and the town in which the activity took place.

3



A brief narrative explaining why there is no practicable alternative to location of the activity within the 75 foot setback, and how the impact on the remaining buffer and the resource will be minimized. This narrative is not required for those activities presumed to have no practicable alternative as listed in paragraph C(1) of this section.

4



A scaled plan or drawing of the area affected, including information such as:

- (a) The entire property on which the activity will take place, including property lines, the 75 foot setback, and the boundaries or location of protected natural resources such as streams and wetlands;
- (b) Proposed and existing development on the parcel including buildings, parking areas, roads, fill areas, landscaped areas, etc.; and
- (c) Any site constraints limiting development beyond the 75 foot setback, such as steep slopes.

It is not necessary to have the plan professionally prepared. However, it must be legible and drawn to a scale that allows clear representation of distances and measurements on the plan.

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C. STANDARDS

1

No activity or portion of an activity may be located within the 75 foot setback if there is a practicable alternative location on the parcel that would cause or result in less impact on the environment. The following activities are presumed to have no practicable alternative location on the parcel.

- (a) The planting of vegetation for the purpose of controlling erosion or for establishing a vegetative buffer.
- (b) The removal or replacement of underground storage tanks when performed in accordance with [38 M.R.S.A. Section 566-A](#).
- (c) The replacement of a structure or the placement or replacement of a foundation or supports for a legally existing structure or addition that is not closer to a protected natural resource than the existing structure provided the municipality has approved the location of the replaced or modified structure. However, any fill, other than that required to maintain the integrity of the structure such as foundation backfill, must meet the 75 foot setback standard unless otherwise approved by the DEP pursuant to this section.

NOTE: In most cases when a structure is being replaced or a foundation is being put under an existing structure that does not meet the setback requirements of the Municipal Shoreland Zoning Ordinance, the applicant is required by the municipality to move the structure back from the natural resource to the Greatest Practical Extent .

- (d) The closure of a landfill in conformance with the DEP's solid waste management rules.
- (e) Access way consisting of a footpath, stairway, or steps to the resource.

2

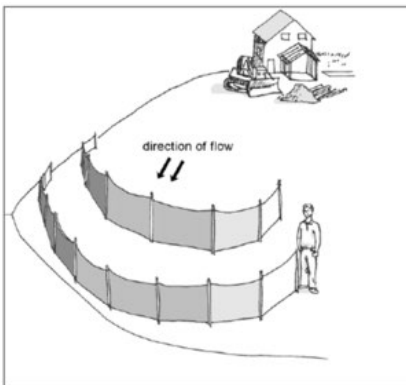
Except for those activities listed in Section 2(C)(1)(a)-(e) above, a 25 foot setback must be maintained between the normal high water line or upland edge of the protected natural resource and the activity. Areas that have slopes of 3 horizontal feet: 1 vertical foot (approximately 33% slope), or steeper, may not be counted when determining the 25 foot setback. Existing vegetation within the setback may not be disturbed except for cutting activity meeting the exemption requirements in [38 M.R.S.A. Section 480-Q\(23\)](#).

3

Disturbance within the setback must be minimized.

4

The following measures must be taken to prevent erosion of soil or fill material from disturbed areas into the resource:



- (a) Staked hay bales or silt fence must be properly installed between the area of soil disturbance and the resource before the activity begins;
- (b) Hay bales or silt fence barriers must be maintained until the disturbed area is permanently stabilized;
- (c) Within 7 calendar days following the completion of any soil disturbance, and prior to any storm event, mulch must be spread on any exposed soils;
- (d) All disturbed soils must be permanently stabilized; and
- (e) Within 30 days of final stabilization of the site, any silt fence must be removed.

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C. STANDARDS (CONT.)

- 5** A footpath to the resource is limited to 6 feet in width and stairs or steps are limited to 4 feet in width.



NOTE: Local Shoreland Zoning requires accessways to meander through the buffer. Check with local Code Enforcement for other limitations on pathways

- 6** All work is limited to the location and extent depicted on the plan or plans submitted pursuant to subsection B(4) of this section.

D. DEFINITIONS

The following terms, as used in this chapter, have the following meanings, unless the context indicates otherwise:

- 1** **Fill.** a. (verb) To put into or upon, supply to, or allow to enter a water body or wetland any earth, rock, gravel, sand, silt, clay, peat, or debris; b. (noun) Material, other than structures, placed in or adjacent to a water body or wetland.
- 2** **Land adjacent to a protected natural resource.** Any land 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.
- 2-A** **Practicable.** Available and feasible considering cost, existing technology and logistics based on the overall purpose of the project.
- 3** **Structure.** Anything built for the support, shelter or enclosure of persons, animals, goods or property of any kind, together with anything constructed or erected with a fixed location on or in the ground. Examples of structures include buildings, utility lines and roads.
- 4** **Upland edge.** The boundary between upland and wetland.

NOTE: [Section 480-Q\(15-A\)](#) of the NRPA exempts the installation, removal or repair of a septic system from permitting requirements as of March 1, 1995, as long as the system complies with all requirements of the subsurface wastewater disposal rules adopted by the Department of Human Services pursuant to [22 M.R.S.A. Section 42\(3\)](#).

GUIDANCE & RESOURCES



Maine DEP Erosion Control Best Management Practices Field Guide

www.maine.gov/dep/land/erosion/escbmps/esc_bmp_field.pdf



Additional Manuals and Guides to Reduce Water Pollution

www.maine.gov/dep/land/watershed/materials.html