

Saddleback Ridge Wind, LLC // natural Resource Protection Act (NRPA) and Site Location of Development Act applications

Additional Documents from DEP Licensing Record

- Guidelines / Regulations
 - Assessing Cumulative Impacts to Protected Natural Resources under the Natural Resources Protection Act
 - Chapter 375, No Adverse Environmental Effect Standard of the Site Location Law (Excerpt – Section 10, Control of Noise)
 - Chapter 375, No Adverse Environmental Effect Standard of the Site Location Law (Excerpt – Section 14, No Unreasonable Effect on Scenic Character)



**Bureau of Land and Water Quality
Division of Land Resource Regulation
Licensing Unit**

Guidelines for Assessing Cumulative Impacts to Protected Natural Resources
under the Natural Resources Protection Act

1. **APPLICABILITY.** This guidance applies to all licensing staff in the Bureau of Land and Water Quality's Division of Land Resource Regulation (Division). It applies to the processing of applications filed with the Department under the Natural Resources Protection Act (NRPA).
2. **PURPOSE.** This guidance is intended to establish consistent procedures for staff assessments of potential cumulative impacts resulting from activities proposed in NRPA applications processed by the Division of Land Resource Regulation.
3. **RESPONSIBILITIES.**
 - 3.1 **COMPLIANCE.** All licensing staff in the Division of Land Resource Regulation are responsible for becoming familiar, and complying with, the contents of this guidance prior to processing an application. The attached appendices are to serve as reference materials throughout the processing of applications. The appendices will be applied to the project as proposed prior to consideration of any proposed mitigation. Mitigation will be considered in terms of offsetting any potential cumulative impacts resulting from a proposed project following completion of the appendices. Supervisors are responsible for ensuring that licensing staff is familiar with and adhere to the procedures outlined in this guidance. Enforcement & Field Services staff Drafting Department Orders will also adhere to this guidance.
 - 3.2 **OTHER.** The Licensing Coordinator is responsible for initial development, approval, distribution, and maintenance of this guidance. Policy and Procedures staff in the Bureau of Land & Water Quality will track this guidance. The name of responsible individuals, document title, dates of last revision, and document numbers will be recorded.
4. **GUIDELINES AND PROCEDURES.**
 - 4.1 **ORIGINATION AND CONTENTS.** Division Licensing staff will be trained in the use of the Cumulative Impact Assessment (CIA) form (Appendix A) and Cumulative Impact Assessment Matrix (Matrix) (Appendix B) associated with this guidance. The appendices will be used by Division Licensing staff to identify potential cumulative adverse impacts on protected natural resources during the processing of an NRPA application. The CIA and matrix will be used as guidance for determining whether a proposed activity will have an unreasonable cumulative impact on a protected natural resource, as described in Chapter 310, the Wetland and Waterbodies Protection Rules, Section 5(D)(2). The completed CIA and matrix will be included in the project file. Associated definitions included in this guidance apply to the CIA and matrix.



4.2 GUIDANCE DEVELOPMENT AND APPROVAL PROCESS. Approval of this guidance follows the preliminary draft cycle and final approval cycle for Bureau-specific procedures described in SOP No. OC-PE-0001, Standard Operating Procedure Development, Format, Approval, and Distribution, dated June 15, 2001. The Director of the Bureau of Land and Water Quality and the Maine DEP's QAM approve the final guidance.

5. REFERENCES.

- 5.1 MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION QUALITY MANAGEMENT PLAN (JUNE 2001).
- 5.2 MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION STANDARD OPERATING PROCEDURE ON STANDARD OPERATING PROCEDURES (OC-PE-0001).
- 5.3 MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION, BUREAU OF LAND AND WATER QUALITY, STANDARD OPERATING PROCEDURE SUPPLEMENT TO OC-PE-0001 (DEPLW2001-22).
- 5.4 WETLAND AND WATERBODIES PROTECTION RULES, 38 M.R.S.A. 310.



APPENDIX A: Cumulative Impact* Assessment Form

PRIMARY FACTORS	DESCRIPTORS	INDICATORS	IMPACT RATINGS	IMPACT SCORES
TYPE & DEGREE OF HARM TO THE RESOURCE	TYPE OF IMPACT	NRPA standards affected; extent of potential direct effects* & indirect effects*	High 3 Moderate 2 Low 1 None 0	
	DEGREE OF IMPACT	Project type (fill, vegetation removal); significance of impact relative to resource	High 3 Moderate 2 Low 1 None 0	
FREQUENCY OF SIMILAR IMPACTS	PREVIOUS IMPACTS TO RESOURCE	The current condition of the resource (e.g. pristine, acceptable, impacted, degraded) <i>degraded</i>	High 3 Moderate 2 Low 1 None 0	
	THREAT TO RESOURCE	Number of similar activities existing or proposed in the vicinity of project involving that resource.	High 3 Moderate 2 Low 1 None 0	
DURATION* OF ACTIVITY	PERMANENCE	Temporary* v. permanent* alteration; recovery potential; habitat conversion	Permanent 2 Temporary 1 None 0	
PROXIMITY TO PROTECTED AREAS	LOCATION IN RELATION TO WOSS OR SWH	Type of protected area; type of impact	In resource 3 Within 75 ft 2 Within 250 ft 1 None present 0	
PROXIMITY TO DEVELOPED AREAS	GROWTH MANAGEMENT AREA	Compatible with growth area, comprehensive plan, or approved Growth Management Plan	Incompatible w/ comp plan 3 Incompatible w/o comp plan 2 Compatible w/o comp plan 1 Compatible w/ comp plan 0	
TRADITIONAL USES*	USE OF AREA & RESOURCE	Degree of compatibility with traditional use of area and resource in project vicinity.	None 3 Low 2 Moderate 1 High 0	
ABILITY TO PERFORM AS INTENDED	STABILITY; PERSISTENCE; DESIGN	Design and construction methods appropriate for site and project; likelihood of unintended impacts to resource minimized.	No 1 Yes 0	
PUBLIC HEALTH & SAFETY ADDRESSED	DEGREE OF PROTECTION OR SERVICE	Project provides some public service, such as fire protection, emergency access, travel safety	None/Low 2 Moderate 1 Substantial 0	
TYPE & DEGREE OF BENEFIT FROM ACTIVITY	GAIN IN BENEFIT	Project purpose identifies public need vs. private, private/shared or commercial need.	None/minimal 2 Moderate 1 Substantial 0	

TOTAL CUMULATIVE IMPACT SEVERITY

SCORE	
Severe	21-28
Strong	13-20
Moderate	7-12
Weak or Negligible	0-6

*See Definitions for Appendix A.



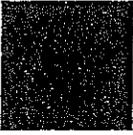
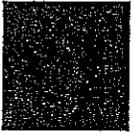
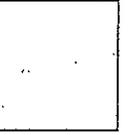
Definitions associated with Appendix A of the Guidance for Assessing Cumulative Impacts to Protected Natural Resources under the Natural Resources Protection Act.

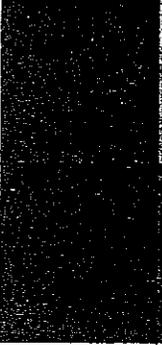
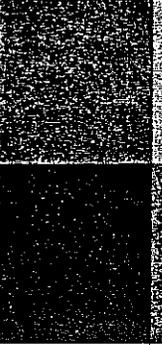
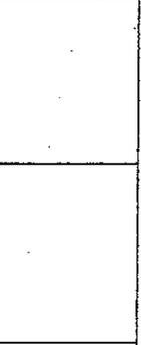
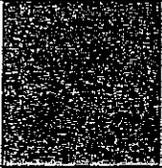
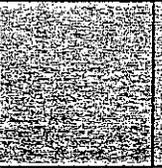
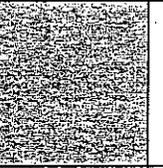
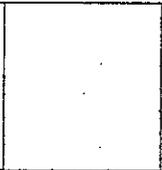
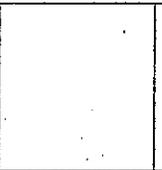
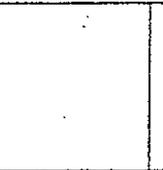
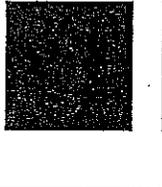
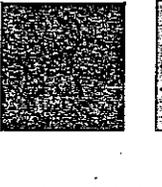
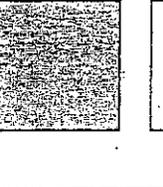
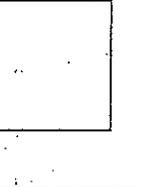
- A. Cumulative Impact.** The impact on the environment, which results from the incremental impact of the activity when added to other past, present, and reasonably foreseeable future activities regardless of what entity undertakes such other actions. Cumulative impacts can result from individually minor, but collectively significant activities taking place over a period of time.
- B. Direct Effects.** Those effects caused by the activity and occur at the same time and place. Direct effects are a subset of cumulative effects.
- C. Duration.** The period of time in which an effect on a resource may exist or remain detectable.
- D. Indirect Effects.** Those effects caused by the activity or use attributed to the activity and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects are a subset of cumulative effects.
- E. Permanent Impact.** The potential long-term effects on the characteristics, or functions and values of the resource that result from a regulated activity.
- F. Reasonably Foreseeable Future Activities.** The activity will proceed or there is a high probability that the activity will proceed, i.e., valid permits have been granted for projects in the vicinity of the proposed project; projects are constructed or under construction, or; applications for permits to construct projects in the vicinity of the proposed project are currently under consideration.
- G. Resource.** The individual protected natural resource specific to the activity proposed in an application.
- H. SWH.** Significant Wildlife Habitat as defined in Section 480-B(10) of the Natural Resources Protection Act.
- I. Temporary Impact.** The potential short-term effects on the characteristics, or functions and values of the resource that result from a regulated activity or the periodic use of a structure. Temporary effects are also those potential effects that can be overcome or avoided through implementation methods during an activity or restoration of the resource following completion of an activity.
- J. Traditional Uses.** The dominant cultural uses of the resource that have occurred in the recent, rather than historical, past.
- K. WOSS.** Wetlands of Special Significance as defined in Chapter 310, Section 4.



APPENDIX B: Potential Cumulative Impact of Development Matrix
(Relative to the 108/100/100 standard)

LEGEND

	UNACCEPTABLE. High degree of contribution to cumulative impacts in a sensitive or significant resource. May be grounds for project denial.
	MAJOR IMPACT. High degree of contribution to cumulative impacts in a resource of medium significance; moderate degree of cumulative impact on highly significant resource. May be subject to denial without project re-design or mitigation.
	MODERATE IMPACT. Some modification to project siting or design, or mitigation necessary to reduce contribution to cumulative impacts.
	MINIMAL IMPACT. Relatively minor adjustments to plan, siting, or mitigation may be necessary to reduce contributions to cumulative impacts.
	LOW/NO IMPACT. No perceptible addition to cumulative impacts. No mitigation required.

Impact severity Rating Resource significance	Severe 28-20	Strong 20-13	Moderate 12-7	Weak or Negligible 6-0
High				
Medium				
Low				
Unrated				

SIGNIFICANCE OF RESOURCE

Chart is recommended method for reviewing potential cumulative impacts and determining level of effort required for mitigation and/or reconsideration of project siting and design.

Appendix B
 Cumulative Impact Assessment Matrix
 DEPLW0613-A2003

10. Control of Noise

A. Preamble. The Board recognizes that the construction, operation and maintenance of developments may cause excessive noise that could degrade the health and welfare of nearby neighbors. It is the intent of the Board to require adequate provision for the control of excessive environmental noise from developments proposed after the effective date of this regulation.

B. Applicability

- (1) This regulation applies to proposed developments within municipalities without a local quantifiable noise standard and in unorganized areas of the State. When a proposed development is located in a municipality which has duly enacted by ordinance an applicable quantifiable noise standard, which (1) contains limits that are not higher than the sound level limits contained in this regulation by more than 5 dBA, and (2) limits or addresses the various types of noises contained in this regulation or all the types of noises generated by the development, that local standard, rather than this regulation, shall be applied by the Board within that municipality for each of the types of sounds the ordinance regulates. This regulation applies to developments located within one municipality when the noise produced by the development is received in another municipality and, in these cases, the Board will also take into consideration the municipalities' quantifiable noise standards, if any.
- (2) This regulation applies to expansions and modifications of developments when such expansions and modifications are proposed after the effective date of this regulation and subject to site location approval, but only to the noise produced by the proposed expansion or modification of the development, unless (1) the existing development was constructed since 1-1-70 and (2) at the time of construction, the existing development was too small to require site location approval. In situations where conditions (1) and (2) above apply, then this regulation applies to the whole development (both existing facility and proposed expansion or modification). This regulation also applies to expansions and modifications of existing developments when such expansions and modifications require an amendment to the development's Site Law permit, but only to the noise produced by the expansion or modification.
- (3) This regulation does not apply to existing developments or portions of existing developments constructed prior to 1-1-70 or approved under the Site Law prior to the effective date of this regulation. This regulation does not apply to relicensing of existing solid waste facilities previously approved under the Site Law.
- (4) The sound level limits contained in this regulation apply only to areas that are defined as protected locations, and to property lines of the proposed development or contiguous property owned by the developer, whichever are farther from the proposed development's regulated sound sources.
- (5) The sound level limits contained in this regulation do not apply to noise received within the development boundary.

NOTE: The Board will reconsider the effect and operation of the regulation one year from its effective date.

C. Sound Level Limits

(1) Sound From Routine Operation of Developments.

(a) Except as noted in subsections (b) and (c) below, the hourly sound levels resulting from routine operation of the development and measured in accordance with the measurement procedures described in subsection H shall not exceed the following limits:

(i) At any property line of the development or contiguous property owned by the developer, whichever is farther from the proposed development's regulated sound sources:

75 dBA at any time of day.

(ii) At any protected location in an area for which the zoning, or, if unzoned, the existing use or use contemplated under a comprehensive plan, is not predominantly commercial, transportation, or industrial;

60 dBA between 7:00 a.m. and 7:00 p.m.
(the "daytime hourly limit"), and
50 dBA between 7:00 p.m. and 7:00 a.m.
(the "nighttime hourly limit").

(iii) At any protected location in an area for which the zoning, or, if unzoned, the existing use or use contemplated under a comprehensive plan, is predominantly commercial, transportation, or industrial:

70 dBA between 7:00 a.m. and 7:00 p.m.
(the "daytime hourly limit"), and
60 dBA between 7:00 p.m. and 7:00 a.m.
(the "nighttime hourly limit").

(iv) For the purpose of determining whether the use of an unzoned area is predominantly commercial, transportation, or industrial (e.g. non-residential in nature), the Department shall consider the municipality's comprehensive plan, if any. Furthermore, the usage of properties abutting each protected location shall be determined, and the limits applied for that protected location shall be based upon the usage occurring along the greater portion of the perimeter of that parcel; in the event the portions of the perimeter are equal in usage, the limits applied for that protected location shall be those for a protected location in an area for which the use is not predominantly commercial, transportation, or industrial.

(v) When a proposed development is to be located in an area where the daytime pre-development ambient hourly sound level at a protected location is equal to or less than 45 dBA and/or the nighttime pre-development ambient hourly sound level at a

protected location is equal to or less than 35 dBA, the hourly sound levels resulting from routine operation of the development and measured in accordance with the measurement procedures described in subsection H shall not exceed the following limits at that protected location:

55 dBA between 7:00 a.m. and 7:00 p.m.
 (the "daytime hourly limit"), and
 45 dBA between 7:00 p.m. and 7:00 a.m.
 (the "nighttime hourly limit").

For the purpose of determining whether a protected location has a daytime or nighttime pre-development ambient hourly sound level equal to or less than 45 dBA or 35 dBA, respectively, the developer may make sound level measurements in accordance with the procedures in subsection H or may estimate the sound-level based upon the population density and proximity to local highways. If the resident population within a circle of 3,000 feet radius around a protected location is greater than 300 persons, or the hourly sound level from highway traffic at a protected location is predicted to be greater than 45 dBA in the daytime or 35 dBA at night (as appropriate for the anticipated operating schedule of the development), then the developer may estimate the daytime or nighttime pre-development ambient hourly sound level to be greater than 45 dBA or 35 dBA, respectively.

NOTE: Highway traffic noise can be predicted using the nomograph method of FHWA Highway Traffic Noise Prediction Model, FHWA-RD-77-108, December, 1978.

- (vi) Notwithstanding the above, the developer need not measure or estimate the pre-development ambient hourly sound levels at a protected location if he demonstrates, by estimate or example, that the hourly sound levels resulting from routine operation of the development will not exceed 50 dBA in the daytime or 40 dBA at night.
- (b) If the developer chooses to demonstrate by measurement that the daytime and/or nighttime pre-development ambient sound environment at any protected location near the development site exceeds the daytime and/or nighttime limits in subsection 1(a)(ii) or 1(a)(iii) by at least 5 dBA, then the daytime and/or nighttime limits shall be 5 dBA less than the measured daytime and/or nighttime pre-development ambient hourly sound level at the location of the measurement for the corresponding time period.
- (c) For any protected location near an existing development, the hourly sound level limit for routine operation of the existing development and all future expansions of that development shall be the applicable hourly sound level limit of 1(a) or 1(b) above, or, at the developer's election, the existing hourly sound level from routine operation of the existing development plus 3 dBA.
- (d) For the purposes of determining compliance with the above sound level limits, 5 dBA shall be added to the observed levels of any tonal sounds that result from routine operation of the development.

- (e) When routine operation of a development produces short duration repetitive sound, the following limits shall apply:
- (i) For short duration repetitive sounds, 5 dBA shall be added to the observed levels of the short duration repetitive sounds that result from routine operation of the development for the purposes of determining compliance with the above sound level limits.
 - (ii) For short duration repetitive sounds resulting from scrap metal, drop forge and metal fabrication operations or developments which the Board determines, due to their character and/or duration, are particularly annoying or pose a threat to the health and welfare of nearby neighbors, 5 dBA shall be added to the observed levels of the short duration repetitive sounds that result from routine operation of the development for the purposes of determining compliance with the above sound level limits, and the maximum sound level of the short duration repetitive sounds shall not exceed the following limits:
 - (a) At any protected location in an area for which the zoning, or, if unzoned, the existing use or use contemplated under a comprehensive plan, is not predominantly commercial, transportation, or industrial:

65 dBA between 7:00 a.m. and 7:00 p.m., and
55 dBA between 7:00 p.m. and 7:00 a.m.
 - (b) At any protected location in an area for which the zoning, or, if unzoned, the existing use or use contemplated under a comprehensive plan, is predominantly commercial, transportation, or industrial:

75 dBA between 7:00 a.m. and 7:00 p.m., and
65 dBA between 7:00 p.m. and 7:00 a.m.
- (c) The methodology described in subsection 1(a)(iv) shall be used to determine whether the use of an unzoned area is predominantly commercial, transportation, or industrial.
- (d) If the developer chooses to demonstrate by measurement that the pre-development ambient hourly sound level at any protected location near the development site exceeds 60 dBA between 7:00 a.m. and 7:00 p.m., and/or 50 dBA between 7:00 p.m. and 7:00 a.m., then the maximum sound level limit for short duration repetitive sound shall be 5 dBA greater than the measured pre-development ambient hourly sound level at the location of the measurement for the corresponding time period.
- (e) For any protected location near an existing development, the maximum sound level limit for short duration repetitive sound resulting from routine operation of the existing development and all future expansions and modifications of that development shall be the applicable maximum sound level limit of (e)(ii)(a) or (e)(ii)(b) above, or, at the developer's election, the existing maximum sound level of the short duration repetitive sound resulting from routine operation of the existing development plus 3 dBA.

NOTE: The maximum sound level of the short duration repetitive sound shall be measured using the fast response [L_{AFmax}]. See the definition of maximum sound level.

(2) Sound From Construction of Developments

- (a) The sound from construction activities between 7:00 p.m. and 7:00 a.m. is subject to the following limits:
- (i) Sound from nighttime construction activities shall be subject to the nighttime routine operation sound level limits contained in subsections 1(a) and 1(b).
 - (ii) If construction activities are conducted concurrently with routine operation, then the combined total of construction and routine operation sound shall be subject to the nighttime routine operation sound level limits contained in subsections 1(a) and 1(b).
 - (iii) Higher levels of nighttime construction sound are permitted when a duly issued permit authorizing nighttime construction sound in excess of these limits has been granted by:
 1. the local municipality when the duration of the nighttime construction activity is less than or equal to 90 days,
 2. the local municipality and the Board when the duration of the nighttime construction activity is greater than 90 days.
- (b) Sound from construction activities between 7:00 a.m. and 7:00 p.m. shall not exceed the following limits at any protected location:

Duration of Activity	Hourly Sound Level Limit
12 hours	87 dBA
8 hours	90 dBA
6 hours	92 dBA
4 hours	95 dBA
3 hours	97 dBA
2 hours	100 dBA
1 hour or less	105 dBA

- (c) All equipment used in construction on development sites shall comply with applicable federal noise regulations and shall include environmental noise control devices in proper working condition, as originally provided with the equipment by its manufacturer.

(3) Sound From Maintenance Activities

- (a) Sound from routine, ongoing maintenance activities shall be considered part of the routine operation of the development and the combined total of the routine maintenance and operation sound shall be subject to the routine operation sound level limits contained in subsection 1.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

- (b) Sound from occasional, major, scheduled overhaul activities shall be subject to the construction sound level limits contained in subsection 2. If overhaul activities are conducted concurrently with routine operation and/or construction activities, the combined total of the overhaul, routine operation and construction sound shall be subject to the construction sound level limits contained in subsection 2.

(4) Sound From Production Blasting

Sound exceeding the limits of subsection 1 and resulting from production blasting at a mine or quarry shall be limited as follows:

- (a) Blasting shall not occur in the period between sundown and sunrise the following day or in the period between the hours of 7:00 p.m. and 7:00 a.m., whichever is greater. In addition, no routine production blasting shall be allowed in the daytime on Sundays.
- (b) Blasting shall not occur more frequently than four times per day.
- (c) Sound from blasting shall not exceed the following limits at any protected location:

Number of Blasts Per Day	Sound Level Limit
1	129 dBL
2	126 dBL
3	124 dBL
4	123 dBL

Blast sound shall be measured in peak linear sound level (dBL) with a linear response down to 5 Hz.

NOTE: See Bureau of Mines Report of Investigations 8485 for information on airblast sound levels and pertinent scaled distances.

(5) Exemptions

Sound associated with the following shall be exempt from regulation by the Board:

- (a) Railroad equipment which is subject to federal noise regulations.
- (b) Aircraft operations which are subject to federal noise regulations.
- (c) Registered and inspected vehicles:
- (i) while operating on public ways, or
 - (ii) which enter the development to make a delivery or pickup and which are moving, starting or stopping, but not when they are parked for over 60 minutes in the development.

- (d) Watercraft while underway.
 - (e) Residential developments, except during construction of such developments.
 - (f) Bells, chimes and carillons.
 - (g) occasional sporting, cultural, religious or public events allowed by the local municipality where the only affected protected locations are contained within that municipality.
 - (h) The unamplified human voice and other sounds of natural origin.
 - (i) Firing, fishing and aquacultural activity.
 - (j) Forest management, harvesting and transportation activities.
 - (k) Making, maintaining and grooming snow where the only affected protected locations are contained within the general boundaries of a ski area development.
 - (l) Snow removal, landscaping and street sweeping activities.
 - (m) Emergency maintenance and repairs.
 - (n) Warning signals and alarms.
 - (o) Safety and protective devices installed in accordance with code requirements.
 - (p) Test operations of emergency equipment occurring in the daytime and no more frequently than once per week.
 - (q) Boiler start-up, testing and maintenance operations occurring no more frequently than once per month.
 - (r) Major concrete pours that must extend after 7:00 p.m., when started before 3:00 p.m.
 - (s) Sounds from a regulated development received at a protected location when the generator of the sound has been conveyed a noise easement for that location. This exemption shall only be for the specific noise, land and term covered by the easement.
 - (t) A force majeure event and other causes not reasonably within the control of the owners or operators of the development.
- (6) Noise Abatement Structures.

Noise abatement structures of a non-permanent nature in any one location for a duration of less than one year and erected for the sole purpose of noise control shall not be considered structures as defined in 38 MRSA subsection 482(6).

D. Submissions

(1) Developments with Minor Sound Impact.

An applicant for a proposed development with minor sound impact may choose to file as part of the site location application a statement attesting to the minor nature of the anticipated sound impact of their development. An applicant proposing an expansion or modification of an existing development with minor sound impact may follow the same procedure as described above. For the purpose of this regulation, a development or an expansion or modification of an existing development with minor sound impact means a development where the developer demonstrates, by estimate or example, that the regulated sound from routine operation of the development will not exceed 5 dBA less than the applicable limits established under subsection C. It is the intent of this subsection that an applicant need not conduct sound level measurements to demonstrate that the development or an expansion or modification of an existing development will have a minor sound impact.

NOTE: Examples include subdivisions without structures, office buildings, storage buildings which will not normally be accessed at night, and golf courses.

(2) Other Developments

Technical information shall be submitted describing the applicant's plan and intent to make adequate provision for the control of sound. The applicant's plan shall contain information such as the following, when appropriate:

- (a) Maps and descriptions of the land uses, local zoning and comprehensive plans for the area potentially affected by sounds from the development.
- (b) A description of major sound sources, including tonal sound sources and sources of short duration repetitive sounds, associated with the construction, operation and maintenance of the proposed development, including their locations within the proposed development.
- (c) A description of the daytime and nighttime hourly sound levels and, for short duration repetitive sounds, the maximum sound levels expected to be produced by these sound sources at protected locations near the proposed development.
- (d) A description of the protected locations near the proposed development.
- (e) A description of proposed major sound control measures, including their locations and expected performance.
- (f) A comparison of the expected sound levels from the proposed development with the sound level limits of this regulation.
- (g) A comparison of the expected sound levels from the proposed development with any quantifiable noise standards of the municipality in which the proposed development will be located and of any municipality which may be affected by the noise.

E. Terms and Conditions

The Board may, as a term or condition of approval, establish any reasonable requirement to ensure that the developer has made adequate provision for the control of noise from the development and to reduce the impact of noise on protected locations. Such conditions may include, but are not limited to, enclosing equipment or operations, imposing limits on hours of operation, or requiring the employment of specific design technologies, site design, modes of operation, or traffic patterns.

The sound level limits prescribed in this regulation shall not preclude the Board under Chapter 375.15 from requiring a developer to demonstrate that sound levels from a development will not unreasonably disturb wildlife or adversely affect wildlife populations. In addition, the sound level limits shall not preclude the Board, as a term or condition of approval, from requiring that lower sound level limits be met to ensure that the developer has made adequate provision for the protection of wildlife.

F. Variance From Sound Level Limits

The Board recognizes that there are certain developments or activities associated with development for which noise control measures are not reasonably available. Therefore, the Board or Commissioner may grant a variance from any of the sound level limits contained in this rule upon (1) a showing by the applicant that he or she has made a comprehensive assessment of the available technologies for the development and that the sound level limits cannot practicably be met with any of these available technologies, and (2) a finding by the Board that the proposed development will not have an unreasonable impact on protected locations. In addition, a variance may be granted by the Board or Commissioner if (1) a development is deemed necessary in the interest of national defense or public safety and the applicant has shown that the sound level limits cannot practicably be met without unduly limiting the development's intended function, and (2) a finding is made by the Board or Commissioner that the proposed development will not have an unreasonable impact on protected locations. The Board or Commissioner shall consider the request for a variance as part of the review of a completed Site Location of Development Law application. In granting a variance, the Board or Commissioner may, as a condition of approval, impose terms and conditions to ensure that no unreasonable sound impacts will occur.

G. Definitions

Terms used herein are defined below for the purpose of this noise regulation.

- (1) **AMBIENT SOUND:** At a specified time, the all-encompassing sound associated with a given environment, being usually a composite of sounds from many sources at many directions, near and far, including the specific development of interest.
- (2) **CONSTRUCTION:** Activity and operations associated with the development or expansion of a project or its site.
- (3) **EMERGENCY:** An unforeseen combination of circumstances which calls for immediate action.
- (4) **EMERGENCY MAINTENANCE AND REPAIRS:** Work done in response to an emergency.

- (5) **ENERGY SUM OF A SERIES OF LEVELS:** Ten times the logarithm of the arithmetic sum of the antilogarithms of one-tenth of the levels. [Note: See Section H(4.2).]
- (6) **EXISTING DEVELOPMENT:** A development constructed before 1-1-70 or a development approved under the Site Law prior to the effective date of this regulation or a proposed development for which the site location application is complete for processing on or before the effective date of this regulation. Any development with a site location approval which has been remanded to the Board by a court of competent jurisdiction for further proceedings relating to noise limits or noise levels prior to the effective date of these regulations shall not be deemed an existing development and these regulations shall apply to the existing noise sources at that development.
- (7) **EXISTING HOURLY SOUND LEVEL:** The hourly sound level resulting from routine operation of an existing development prior to the first expansion that is subject to this regulation.
- (8) **EQUIVALENT SOUND LEVEL:** The level of the mean-square A-weighted sound pressure during a stated time period, or equivalently the level of the sound exposure during a stated time period divided by the duration of the period.
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- NOTE: For convenience, a one hour equivalent sound level should begin approximately on the hour.
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- (9) **HISTORIC AREAS:** Historic sites administered by the Bureau of Parks and Recreation of the Maine Department of Conservation, with the exception of the Arnold Trail.
- (10) **HOURLY SOUND LEVEL:** The equivalent sound level for one hour measured or computed in accordance with this regulation.
- (11) **LOCALLY-DESIGNATED PASSIVE RECREATION AREA:** Any site or area designated by a municipality for passive recreation that is open and maintained for public use and which:
- (a) has fixed boundaries,
 - (b) is owned in fee simple by a municipality or is accessible by virtue of public easement,
 - (c) is identified and described in a local comprehensive plan, and
 - (d) has been identified and designated at least nine months prior to the filing of the applicant's Site Location of Development application.
- (12) **MAXIMUM SOUND LEVEL:** Ten times the common logarithm of the square of the ratio of the maximum sound to the reference sound of 20 micropascals. Symbol: L_{AFmax} .
- (13) **MAXIMUM SOUND:** Largest A-weighted and fast exponential-time-weighted sound during a specified time interval. Unit: pascal (Pa).

- (14)RESIDENCE: A building or structure, including manufactured housing, maintained for permanent or seasonal residential occupancy providing living, cooking and sleeping facilities and having permanent indoor or outdoor sanitary facilities, excluding recreational vehicles, tents and watercraft.
- (15)PRE-DEVELOPMENT AMBIENT: The ambient sound at a specified location in the vicinity of a development site prior to the construction and operation of the proposed development or expansion.
- (16)PROTECTED LOCATION: Any location, accessible by foot, on a parcel of land containing a residence or planned residence or approved residential subdivision, house of worship, academic school, college, library, duly licensed hospital or nursing home near the development site at the time a Site Location of Development application is submitted; or any location within a State Park, Baxter State Park, National Park, Historic Area, a nature preserve owned by the Maine or National Audubon Society or the Maine Chapter of the Nature Conservancy, The Appalachian Trail, the Moosehorn National Wildlife Refuge, federally-designated wilderness area, state wilderness area designated by statute (such as the Allagash Wilderness Waterway), or locally-designated passive recreation area; or any location within consolidated public reserve lands designated by rule by the Bureau of Public Lands as a protected location.

At protected locations more than 500 feet from living and sleeping quarters within the above noted buildings or areas, the daytime hourly sound level limits shall apply regardless of the time of day.

Houses of worship, academic schools, libraries, State and National Parks without camping areas, Historic Areas, nature preserves, the Moosehorn National Wildlife Refuge, federally-designated wilderness areas without camping areas, state wilderness areas designated by statute without camping areas, and locally-designated passive recreation areas without camping areas are considered protected locations only during their regular hours of operation and the daytime hourly sound level limits shall apply regardless of the time of day.

Transient living accommodations are generally not considered protected locations; however, in certain special situations where it is determined by the Board that the health and welfare of the guests and/or the economic viability of the establishment will be unreasonably impacted, the Board may designate certain hotels, motels, campsites and duly licensed campgrounds as protected locations.

This term does not include buildings and structures located on leased camp lots, owned by the applicant, used for seasonal purposes.

For purposes of this definition, (1) a residence is considered planned when the owner of the parcel of land on which the residence is to be located has received all applicable building and land use permits and the time for beginning construction under such permits has not expired, and (2) a residential subdivision is considered approved when the developer has received all applicable land use permits for the subdivision and the time for beginning construction under such permits has not expired.

- (17) **QUANTIFIABLE NOISE STANDARD:** A numerical limit governing noise from developments that has been duly enacted by ordinance by a local municipality.
- (18) **ROUTINE OPERATION:** Regular and recurrent operation of regulated sound sources associated with the purpose of the development and operating on the development site.
- (19) **SHORT DURATION REPETITIVE SOUNDS:** A sequence of repetitive sounds which occur more than once within an hour, each clearly discernible as an event and causing an increase in the sound level of at least 6 dBA on the fast meter response above the sound level observed immediately before and after the event, each typically less than ten seconds in duration, and which are inherent to the process or operation of the development and are foreseeable.
- (20) **SOUND COMPONENT:** The measurable sound from an audibly identifiable source or group of sources.
- (21) **SOUND LEVEL:** Ten times the common logarithm of the square of the ratio of the frequency-weighted and time-exponentially averaged sound pressure to the reference sound of 20 micropascals. For the purpose of this regulation, sound level measurements are obtained using the A-weighted frequency response and fast dynamic response of the measuring system, unless otherwise noted.
- (22) **SOUND PRESSURE:** Root-mean-square of the instantaneous sound pressures in a stated frequency band and during a specified time interval. Unit: pascal (Pa).
- (23) **SOUND PRESSURE LEVEL:** Ten times the common logarithm of the square of the ratio of the sound pressure to the reference sound pressure of 20 micropascals.
- (24) **TONAL SOUND:** for the purpose of this regulation, a tonal sound exists if, at a protected location, the one-third octave band sound pressure level in the band containing the tonal sound exceeds the arithmetic average of the sound pressure levels of the two contiguous one-third octave bands by 5 dB for center frequencies at or between 500 Hz and 10,000 Hz, by 8 dB for center frequencies at or between 160 and 400 Hz, and by 15 dB for center frequencies at or between 25 Hz and 125 Hz.

Additional acoustical terms used in work associated with this regulation shall be used in accordance with the following American National Standards Institute (ANSI) standards:

ANSI S12.9-1988 - American National Standard Quantities and Procedures for Description and Measurements of Environmental Sound, Part 1;

ANSI S3.20-1973 - American National Standard Psychoacoustical Terminology;

ANSI S1.1-1960 - American National Standard Acoustical Terminology.

H. Measurement Procedures

(1) Scope. These procedures specify measurement criteria and methodology for use, with applications, compliance testing and enforcement. They provide methods for measuring the ambient sound and the sound from routine operation of the development, and define the information to be reported. The same methods shall be used for measuring the sound of construction, maintenance and production blasting activities. For measurement of the sound of production blasting activities for comparison with the limits of subsection C(4)(c), these same methods shall be used with the substitution of the linear sound level for the A-weighted sound level.

(2) Measurement Criteria

2.1 Measurement Personnel

Measurements shall be supervised by personnel who are well qualified by training and experience in measurement and evaluation of environmental sound, or by personnel trained to operate under a specific measurement plan approved by the Board or Commissioner.

2.2 Measurement Instrumentation

- (a) A sound level meter or alternative sound level measurement system used shall meet all of the Type 1 or 2 performance requirements of American National Standard Specifications for Sound Level Meters, ANSI S1.4-1983.
- (b) An integrating sound level meter (or measurement system) shall also meet the Type 1 or 2 performance requirements for integrating/averaging in the International Electrotechnical Commission Standard on Integrating-Averaging Sound Level Meters, IEC Publication 804 (1985).
- (c) A filter for determining the existence of tonal sounds shall meet all the requirements of American National Standard Specification for Octave-Band and Fractional Octave-Band Analog and Digital Filters, ANSI S1.11-1986 for Order 3, Type 3-D performance.
- (d) An acoustical calibrator shall be used of a type recommended by the manufacturer of the sound level meter and that meets the requirements of American National Standard Specification for Acoustical Calibrators, ANSI S1.40-1984.
- (e) A microphone windscreen shall be used of a type recommended by the manufacturer of the sound level meter.

2.3 Calibration

- (a) The sound level meter shall have been calibrated by a laboratory within 12 months of the measurement, and the microphone's response shall be traceable to the National Bureau of Standards.
- (b) Field calibrations shall be recorded before and after each measurement period and at shorter intervals if recommended by the manufacturer.

2.4 Measurement Location, Configuration and Environment

- (a) Except as noted in subsection (b) below, measurement locations shall be at nearby protected locations that are most likely affected by the sound from routine operation of the development.
- (b) For determining compliance with the 75 dBA property line hourly sound level limit described in subsection C(1)(a)(i), measurement locations shall be selected at the property lines of the proposed development or contiguous property owned by the developer, as appropriate.
- (c) The microphone shall be positioned at a height of approximately 4 to 5 feet above the ground, and oriented in accordance with the manufacturer's recommendations.
- (d) Measurement locations should be selected so that no vertical reflective surface exceeding the microphone height is located within 30 feet. When this is not possible, the measurement location may be closer than 30 feet to the reflective surface, but under no circumstances shall it be closer than 6 feet.
- (e) When possible, measurement locations should be at least 50 feet from any regulated sound source on the development.
- (f) Measurement periods shall be avoided when the local wind speed exceeds 12 mph and/or precipitation would affect the measurement results.

2.5 Measurement Plans. Plans for measurement of pre-development ambient sound or post-development sound may be discussed with the Department staff.

(3) Measurement of Ambient Sound

3.1 Pre-Development Ambient Sound

Measurements of the pre-development ambient sound are required only when the developer elects to establish the sound level limit in accordance with subsections C(1)(b) and C(1)(e)(ii)(d) for a development in an area with high ambient sound levels, such as near highways, airports, or pre-existing developments; or when the developer elects to establish that the daytime and nighttime ambient hourly sound levels at representative protected locations exceed 45 dBA and 35 dBA, respectively.

- (a) Measurements shall be made at representative protected locations for periods of time sufficient to adequately characterize the ambient sound. At a minimum, measurements shall be made on three different weekdays (Monday through Friday) during all hours that the development will operate. If the proposed development will operate on Saturdays and/or Sundays, measurements shall also be made during all hours that the development will operate.

- (b) Measurement periods with particularly high ambient sounds, such as during holiday traffic activity, significant insect activity or high coastline waves, should generally be avoided.
- (c) At any measurement location the daytime and nighttime ambient hourly sound level shall be computed by arithmetically averaging the daytime and nighttime values of the measured one hour equivalent sound levels. Multiple values, if they exist, for any specific hour on any specific day shall first be averaged before the computation described above.

3.2 Post-Development Ambient Sound

- (a) Measurements of the post-development ambient one hour equivalent sound levels and, if short duration repetitive sounds are produced by the development, the maximum sound levels made at nearby protected locations and during representative routine operation of the development that are not greater than the applicable limits of subsection C clearly indicate compliance with those limits.
 - (b) Compliance with the limits of subsection C(1)(b) may also be demonstrated by showing that the post-development ambient hourly sound level, measured in accordance with the procedures of subsection 3.1 above during routine operation of the development, does not exceed the pre-development ambient hourly sound level by more than one decibel, and that the sound from routine operation of the development is not characterized by either tonal sounds or short duration repetitive sounds.
 - (c) Compliance with the limits of subsection C(1)(e)(ii)(d) may also be demonstrated by showing that the post development maximum sound level of any short duration repetitive sound, measured in accordance with the procedures of subsection 3.1 above, during routine operation of the development, does not exceed the pre-development ambient hourly sound level by more than five decibels.
 - (d) If any of the conditions in (a), (b) or (c) above are not met, compliance with respect to the applicable limits must be determined by measuring the sound from routine operation of the development in accordance with the procedures described in subsection 4.
- (4) Measurement of the Sound from Routine Operation of Developments.

4.1 General

- (a) Measurements of the sound from routine operation of developments are generally necessary only for specific compliance testing purposes in the event that community complaints result from operation of the development, for validation of an applicant's calculated sound levels when requested by the Board or Commissioner, for determination of existing hourly sound levels for an existing development or for enforcement by the Department.
- (b) Measurements shall be obtained during representative weather conditions when the development sound is most clearly noticeable. Preferable weather conditions for sound

DEPARTMENT OF ENVIRONMENTAL PROTECTION

measurements at distances greater than about 500 feet from the sound source include overcast days when the measurement location is downwind of the development and inversion periods (which most commonly occur at night).

- (c) Measurements of the development sound shall be made so as to exclude the contribution of sound from development equipment that is exempt from this regulation.

4.2 Measurement of the Sound Levels Resulting from Routine Operation of the Development.

- (a) When the ambient sound levels are greater than the sound level limits, additional measurements can be used to determine the hourly sound level that results from routine operation of the development. These additional measurements may include diagnostic measurements such as measurements made close to the development and extrapolated to the protected location, special checkmark measurement techniques that include the separate identification of audible sound sources, or the use of sound level meters with pause capabilities that allow the operator to exclude non-development sounds.
- (b) For the purposes of computing the hourly sound level resulting from routine operation of the development, sample diagnostic measurements may be made to obtain the one hour equivalent sound levels for each sound component.
- (c) Identification of tonal sounds produced by the routine operation of a development for the purpose of adding the 5 dBA penalty in accordance with subsection C(1)(d) requires aural perception by the measurer, followed by use of one-third octave band spectrum analysis instrumentation. If one or more of the sounds of routine operation of the development are found to be tonal sounds, the hourly sound level component for tonal sounds shall be computed by adding 5 dBA to the one hour equivalent sound level for those sounds.
- (d) Identification of short duration repetitive sounds produced by routine operation of a development requires careful observations. For the sound to be classified as short duration repetitive sound, the source(s) must be inherent to the process or operation of the development and not the result of an unforeseeable occurrence. If one or more of the sounds of routine operation of the development are found to be short duration repetitive sounds, the hourly sound level component for short duration repetitive sounds shall be computed by adding 5 dBA to the one hour equivalent sound level for those sounds. If required, the maximum sound levels of short duration repetitive sounds shall be measured using the fast response $[L_{AFmax}]$. The duration and the frequency of occurrence of the events shall also be measured. In some cases, the sound exposure levels of the events may be measured. The one hour equivalent sound level of a short duration repetitive sound may be determined from measurements of the maximum sound level during the events, the duration and frequency of occurrence of the events, and their sound exposure levels.
- (e) The daytime or nighttime hourly sound level resulting from routine operation of a development is the energy sum of the hourly sound level components from the development, including appropriate penalties, (see (c) and (d) above). If the energy sum

does not exceed the appropriate daytime or nighttime sound level limit, then the development is in compliance with that sound level limit at that protected location.

- (5) Reporting Sound Measurement Data. The sound measurement data report should include the following:
- (a) The dates, days of the week and hours of the day when measurements were made.
 - (b) The wind direction and speed, temperature, humidity and sky condition.
 - (c) Identification of all measurement equipment by make, model and serial number.
 - (d) The most recent dates of laboratory calibration of sound level measuring equipment.
 - (e) The dates, times and results of all field calibrations during the measurements.
 - (f) The applicable sound level limits, together with the appropriate hourly sound levels and the measurement data from which they were computed, including data relevant to either tonal or short duration repetitive sounds.
 - (g) A sketch of the site, not necessarily to scale, orienting the development, the measurement locations, topographic features and relevant distances, and containing sufficient information for another investigator to repeat the measurements under similar conditions.
 - (h) A description of the sound from the development and the existing environment by character and location.

14. No Unreasonable Effect on Scenic Character

- A. Preamble.** The Board considers scenic character to be one of Maine's most important assets. The Board also feels that visual surroundings strongly influence people's behavior.
- B. Scope of Review.** In determining whether the proposed development will have an unreasonable adverse effect on the scenic character of the surrounding area, the Board shall consider all relevant evidence to that effect, such as evidence that:
- (1) The design of the proposed development takes into account the scenic character of the surrounding area.
 - (2) A development which is not in keeping with the surrounding scenic character will be located, designed and landscaped to minimize its visual impact to the fullest extent possible.
 - (3) Structures will be designed and landscaped to minimize their visual impact on the surrounding area.

NOTE: The following are GUIDELINES for the landscaping of parking lots, which are structures pursuant to 38 M.R.S.A. Section 482(6) (B).

- (a) Lighting will be shielded from adjacent highways and residential areas.
- (b) Curbed planting strips will be utilized in parking areas of 2 acres or more. Planting strips will be a minimum of ten (10) feet wide and spaced between every second double bay parking aisle or 200 feet, whichever is less.
- (c) When the parking lots are adjacent to a residential use, landscaping and/or architectural screens will be utilized to provide an effective perimeter separation area between property lines and the edge of the pavement and/or structures. There will be a minimum setback of fifteen (15) feet from the property line. The Board may require a similar provision when the parking lot is adjacent to other land uses.
- (d) Planting and maintenance program specifications will be developed to provide the earliest establishment of landscape materials and their maintenance.
- (e) Planting specifications:
 - (i) Shrubs will be planted with a 24" minimum size for those specified by spread.
 - (ii) Shrubs will be planted with a 36" minimum size for those specified by height.
 - (iii) Shade trees will be highcrowned species with ascending or lateral branching habit indigenous to the area, tolerant to existing soils and urbanized conditions, two-inch minimum caliper measured six inches up from the base, and planted a maximum of 30' on center.

- (iv) Flowering and evergreen trees will be a minimum of 7' tall and planted a maximum of 20' on center.
 - (v) Selections for ground cover will reflect the project's function, expected foot traffic, exposure, and maintenance program.
 - (f) Provisions will be made to supply water to planted islands and other vegetated areas.
- (4) The plans for the proposed development provide for the preservation of existing elements of the development site which contribute to the maintenance of scenic character.
- C. Submissions.** Applications for approval of proposed developments shall include evidence that affirmatively demonstrates that there will be no unreasonable adverse effect on the scenic character of the surrounding area, including information such as the following, when appropriate:
- (1) Sketches of the proposed development indicating how the development fits into the scenic character of the area.
 - (2) Landscaping plans for minimizing the visual impact of the parking lots, mining operations and other types of developments.
- D. Terms and Conditions.** The Board may, as a term or condition of approval, establish any reasonable requirement to ensure that the proposed development will have no unreasonable adverse effect on scenic character, such as requiring that:
- (1) Illumination of the development be limited.
 - (2) Vegetative or architectural screens be established.

