

## 38 §480-B. DEFINITIONS

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As used in this article, unless the context otherwise indicates, the following terms have the following meanings. [1987, c. 809, §2 (NEW).]

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

[ 1997, c. 603, §1 (AMD) .]

**1-A. Community public water system.** "Community public water system" has the same meaning as "community water system" has in Title 22, section 2660-B, subsection 2.

[ 2007, c. 353, §6 (NEW) .]

**1-B. Community public water system primary protection area.** "Community public water system primary protection area" means:

A. The area within 250 feet, measured horizontally, of a great pond that is a source for a community public water system; [2007, c. 353, §7 (NEW) .]

B. The area within 250 feet, measured horizontally, of a river, stream or brook that is a source for a community public water system for a distance of 1/2 mile upstream from the intake of the public water supply; or [2007, c. 353, §7 (NEW) .]

C. A source water protection area identified and mapped by the Department of Health and Human Services as described under Title 30-A, section 2001, subsection 20-A. [2007, c. 353, §7 (NEW) .]

[ 2007, c. 353, §7 (NEW) .]

**2. Coastal wetlands.** "Coastal wetlands" means all tidal and subtidal lands; 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 that is subject to tidal action during the highest tide level for the year in which an activity is proposed as identified in tide tables published by the National Ocean Service. Coastal wetlands may include portions of coastal sand dunes.

[ 2005, c. 330, §13 (AMD) .]

**2-A. Dredge spoils.** "Dredge spoils" means sand, silt, mud, gravel, rock or other sediment or material that is moved from coastal wetlands.

[ 1989, c. 656, §2 (NEW) .]

**2-B. Forest management activities.** "Forest management activities" means timber stand improvement, timber harvesting activities, forest products harvesting and regeneration of forest stands. For the purposes of this definition, "timber harvesting activities" means timber harvesting, the construction and maintenance of roads used primarily for timber harvesting and other activities conducted to facilitate timber harvesting. For the purposes of this definition, "timber harvesting" means the cutting or removal of timber for the primary purpose of selling or processing forest products.

[ 2005, c. 116, §1 (AMD) .]

**2-C. Forested wetland.** "Forested wetland" means a freshwater wetland dominated by woody vegetation that is 6 meters tall, or taller.

[ 1989, c. 838, §3 (NEW) .]

**2-D. Floodplain wetland.** "Floodplain wetland" means lands adjacent to a river, stream or brook that are inundated with floodwater during a 100-year flood event and that under normal circumstances support a prevalence of wetland vegetation typically adapted for life in saturated soils.

[ 1991, c. 214, §1 (NEW) .]

**2-E. Footprint.** "Footprint" means the outline that would be created on the ground by extending the exterior walls of a building to the ground surface.

[ 2011, c. 64, §1 (NEW) .]

**3. Fragile mountain areas.** "Fragile mountain areas" means areas above 2,700 feet in elevation from mean sea level.

[ 1987, c. 809, §2 (NEW) .]

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

A. [1995, c. 460, §1 (RP); 1995, c. 460, §12 (AFF) .]

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 [1995, c. 460, §1 (AMD); 1995, c. 460, §12 (AFF) .]

C. Not considered part of a great pond, coastal wetland, river, stream or brook. [1987, c. 809, §2 (NEW) .]

[ 1995, c. 460, §1 (AMD); 1995, c. 460, §12 (AFF) .]

**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.

[ 1987, c. 809, §2 (NEW) .]

**5-A. Mooring.** "Mooring" means equipment, such as anchors, chains and lines, for holding fast a vessel, aircraft, floating dock or buoy.

[ 1993, c. 187, §1 (NEW) .]

**5-B. Impervious area.** "Impervious area" means an area that is a building, parking lot, roadway or similar constructed area. "Impervious area" does not mean a deck or patio.

[ 2011, c. 64, §2 (NEW) .]

**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.

[ 1987, c. 809, §2 (NEW) .]

**6-A. Offshore wind power project.** "Offshore wind power project" means a project that uses a windmill or wind turbine to convert wind energy to electrical energy and is located in whole or in part within coastal wetlands. "Offshore wind power project" includes both generating facilities as defined by Title 35-A, section 3451, subsection 5 and associated facilities as defined by Title 35-A, section 3451, subsection 1, without regard to whether the electrical energy is for sale or use by a person other than the generator.

[ 2009, c. 615, Pt. E, §6 (NEW) .]

**7. Permanent structure.** "Permanent structure" means any structure that is designed to remain at or that is constructed or erected with a fixed location or that is attached to a structure with a fixed location for a period exceeding 7 months within any 12-month period, including, but not limited to, causeways, piers, docks, concrete slabs, piles, marinas, retaining walls and buildings.

[ 2007, c. 290, §2 (AMD) .]

**8. Protected natural resource.** "Protected natural resource" means coastal sand dune systems, coastal wetlands, significant wildlife habitat, fragile mountain areas, freshwater wetlands, community public water system primary protection areas, great ponds or rivers, streams or brooks, as these terms are defined in this article.

[ 2007, c. 1, §20 (COR) .]

**8-A. Transportation reconstruction or replacement project.** "Transportation reconstruction or replacement project" means the improvement of an existing transportation facility to modern design standards without expanding its function or creating any additional roadways, facilities or structures. These projects are limited to:

A. Highway or bridge alignment changes not exceeding a distance of 200 feet between the old and new center lines in any protected natural resource; [1989, c. 814, §1 (NEW) .]

B. Replacement or rehabilitation of the roadway base, pavement and drainage; [1989, c. 814, §1 (NEW) .]

C. Replacement or rehabilitation of bridges or piers; [1989, c. 814, §1 (NEW) .]

D. The addition of climbing lanes, and turning lanes of less than 1,000 feet in length in a protected natural resource; and [1989, c. 814, §1 (NEW) .]

E. Rehabilitation or repair of state-owned railroads. [1989, c. 814, §1 (NEW) .]

[ 1989, c. 814, §1 (NEW) .]

**9. 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. [1995, c. 92, §2 (NEW) .]

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. [2001, c. 618, §1 (AMD) .]

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. [1995, c. 92, §2 (NEW) .]

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. [1995, c. 92, §2 (NEW) .]

E. The channel contains aquatic vegetation and is essentially devoid of upland vegetation. [1995, c. 92, §2 (NEW) .]

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

[ 2001, c. 618, §1 (AMD) .]

**9-A. Significant groundwater well.** "Significant groundwater well" is defined as follows.

A. "Significant groundwater well" means any well, wellfield, excavation or other structure, device or method used to obtain groundwater that is:

(1) Withdrawing at least 75,000 gallons during any week or at least 50,000 gallons on any day and is located at a distance of 500 feet or less from a coastal or freshwater wetland, great pond, significant vernal pool habitat, water supply well not owned or controlled by the applicant or river, stream or brook; or

(2) Withdrawing at least 216,000 gallons during any week or at least 144,000 gallons on any day and is located at a distance of more than 500 feet from a coastal or freshwater wetland, great pond, significant vernal pool habitat, water supply well not owned or controlled by the applicant or river, stream or brook.

Withdrawals of water for firefighting or preoperational capacity testing are not applied toward these thresholds. [2009, c. 295, §1 (AMD) .]

B. "Significant groundwater well" does not include:

(1) A public water system as defined in Title 22, section 2601, subsection 8, except that "significant groundwater well" includes:

(a) A public water system used solely to bottle water for sale; and

(b) Any portion of a public water system that is:

(i) Constructed on or after January 1, 2009;

(ii) Used solely to bottle water for sale; and

(iii) Not connected to another portion of the public water system through pipes intended to convey water.

For purposes of this paragraph, a public water system that is used solely to bottle water for sale includes a public water system that bottles water for sale and may provide a de minimus amount of water for other purposes, such as employee or other use, as determined by the department;

(2) Individual home domestic supply;

(3) Agricultural use or storage;

(3-A) Dewatering of a mining operation;

(4) A development or part of a development requiring a permit pursuant to article 6, article 7 or article 8-A; or

(5) A structure or development requiring a permit from the Maine Land Use Regulation Commission. [2009, c. 295, §1 (AMD) .]

[ 2009, c. 295, §1 (AMD) .]

**10. 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 Department of Marine Resources; and [2009, c. 561, §37 (AMD).]

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. [2005, c. 116, §2 (NEW).]

[ 2009, c. 561, §37 (AMD) .]

## SECTION HISTORY

1987, c. 809, §2 (NEW). 1989, c. 430, §3 (AMD). 1989, c. 656, §2 (AMD).  
 1989, c. 814, §1 (AMD). 1989, c. 838, §3 (AMD). 1991, c. 214, §1 (AMD).  
 1991, c. 693, §1 (AMD). 1993, c. 187, §1 (AMD). 1993, c. 296, §1 (AMD).  
 1995, c. 92, §2 (AMD). 1995, c. 406, §13 (AMD). 1995, c. 460, §§1-3  
 (AMD). 1995, c. 460, §12 (AFF). 1995, c. 625, §A51 (AMD). 1997, c.  
 603, §1 (AMD). 1999, c. 243, §11 (AMD). 1999, c. 401, §BB17 (AMD).  
 2001, c. 618, §1 (AMD). 2005, c. 116, §§1,2 (AMD). 2005, c. 330, §13  
 (AMD). RR 2007, c. 1, §20 (COR). 2007, c. 290, §2 (AMD). 2007, c. 353,  
 §§6-8 (AMD). 2007, c. 399, §10 (AMD). 2009, c. 295, §1 (AMD). 2009,  
 c. 561, §37 (AMD). 2009, c. 615, Pt. E, §6 (AMD). 2011, c. 64, §§1, 2  
 (AMD).

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## 38 §480-D. STANDARDS

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The department shall grant a permit upon proper application and upon such terms as it considers necessary to fulfill the purposes of this article. The department shall grant a permit when it finds that the applicant has demonstrated that the proposed activity meets the standards set forth in subsections 1 to 11, except that when an activity requires a permit only because it is located in, on or over a community public water system primary protection area the department shall issue a permit when it finds that the applicant has demonstrated that the proposed activity meets the standards set forth in subsections 2 and 5. [2009, c. 615, Pt. E, §7 (AMD).]

**1. Existing uses.** The activity will not unreasonably interfere with existing scenic, aesthetic, recreational or navigational uses.

In making a determination under this subsection regarding an expedited wind energy development, as defined in Title 35-A, section 3451, subsection 4, or an offshore wind power project, the department shall consider the development's or project's effects on scenic character and existing uses related to scenic character in accordance with Title 35-A, section 3452. In making a decision under this subsection regarding an application for an offshore wind power project, the department may not consider whether the project meets the specific criteria designated in Title 12, section 1862, subsection 2, paragraph A, subparagraph (6), divisions (a) to (d). This limitation is not intended to restrict the department's review of related potential impacts of the project as determined by the department.

[ 2009, c. 615, Pt. E, §8 (AMD) .]

**2. Soil erosion.** The activity will not cause unreasonable erosion of soil or sediment nor unreasonably inhibit the natural transfer of soil from the terrestrial to the marine or freshwater environment.

[ 1989, c. 430, §5 (AMD) .]

**3. Harm to habitats; fisheries.** The activity will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic or adjacent upland habitat, travel corridor, freshwater, estuarine or marine fisheries or other aquatic life.

In determining whether there is unreasonable harm to significant wildlife habitat, the department may consider proposed mitigation if that mitigation does not diminish in the vicinity of the proposed activity the overall value of significant wildlife habitat and species utilization of the habitat and if there is no specific biological or physical feature unique to the habitat that would be adversely affected by the proposed activity. For purposes of this subsection, "mitigation" means any action taken or not taken to avoid, minimize, rectify, reduce, eliminate or compensate for any actual or potential adverse impact on the significant wildlife habitat, including the following:

A. Avoiding an impact altogether by not taking a certain action or parts of an action; [1987, c. 809, §2 (NEW).]

B. Minimizing an impact by limiting the magnitude, duration or location of an activity or by controlling the timing of an activity; [1987, c. 809, §2 (NEW).]

C. Rectifying an impact by repairing, rehabilitating or restoring the affected environment; [1987, c. 809, §2 (NEW).]

D. Reducing or eliminating an impact over time through preservation and maintenance operations during the life of the project; or [1987, c. 809, §2 (NEW).]

E. Compensating for an impact by replacing the affected significant wildlife habitat. [1987, c. 809, §2 (NEW).]

[ 2001, c. 618, §3 (AMD) .]

**4. Interfere with natural water flow.** The activity will not unreasonably interfere with the natural flow of any surface or subsurface waters.

[ 1987, c. 809, §2 (NEW) .]

**5. Lower water quality.** The activity will not violate any state water quality law, including those governing the classification of the State's waters.

[ 1987, c. 809, §2 (NEW) .]

**6. Flooding.** The activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties.

[ 1987, c. 809, §2 (NEW) .]

**7. Sand or gravel supply.** If the activity is on or adjacent to a sand dune, it will not unreasonably interfere with the natural supply or movement of sand or gravel within or to the sand dune system or unreasonably increase the erosion hazard to the sand dune system.

[ 2003, c. 551, §8 (AMD) .]

**8. Outstanding river segments.** If the proposed activity is a crossing of any outstanding river segment as identified in section 480-P, the applicant shall demonstrate that no reasonable alternative exists which would have less adverse effect upon the natural and recreational features of the river segment.

[ 1987, c. 809, §2 (NEW) .]

**9. Dredging.** If the proposed activity involves dredging, dredge spoils disposal or transporting dredge spoils by water, the applicant must demonstrate that the transportation route minimizes adverse impacts on the fishing industry and that the disposal site is geologically suitable. The Commissioner of Marine Resources shall provide the department with an assessment of the impacts on the fishing industry of a proposed dredging operation in the coastal wetlands. The assessment must consider impacts to the area to be dredged and impacts to the fishing industry of a proposed route to transport dredge spoils to an ocean disposal site. The Commissioner of Marine Resources may hold a public hearing on the proposed dredging operation. In determining if a hearing is to be held, the Commissioner of Marine Resources shall consider the potential impacts of the proposed dredging operation on fishing in the area to be dredged. If a hearing is held, it must be within at least one of the municipalities in which the dredging operation would take place. If the Commissioner of Marine Resources determines that a hearing is not to be held, the Commissioner of Marine Resources must publish a notice of that determination in a newspaper of general circulation in the area proposed for the dredging operation. The notice must state that the Commissioner of Marine Resources will accept verbal and written comments in lieu of a public hearing. The notice must also state that if 5 or more persons request a public hearing within 30 days of the notice publication, the Commissioner of Marine Resources will hold a hearing. If 5 or more persons request a public hearing within 30 days of the notice publication, the Commissioner of Marine Resources must hold a hearing. In making its determination under this subsection, the department must take into consideration the assessment provided by the Commissioner of Marine Resources. The permit must require the applicant to:

A. Clearly mark or designate the dredging area, the spoils disposal route and the transportation route;

[1997, c. 164, §1 (NEW); 1997, c. 164, §2 (AFF).]

B. Publish in a newspaper of general circulation in the area adjacent to the route the approved

transportation route of the dredge spoils; and [1997, c. 164, §1 (NEW); 1997, c. 164, §2 (AFF) .]

C. Publish in a newspaper of general circulation in the area adjacent to the route a procedure that the applicant will use to respond to inquiries regarding the loss of fishing gear during the dredging operation. [1997, c. 164, §1 (NEW); 1997, c. 164, §2 (AFF) .]

[ 2001, c. 248, §1 (AMD) .]

**10. Significant groundwater well.** If the proposed activity includes a significant groundwater well, the applicant must demonstrate that the activity will not have an undue unreasonable effect on waters of the State, as defined in section 361-A, subsection 7, water-related natural resources and existing uses, including, but not limited to, public or private wells within the anticipated zone of contribution to the withdrawal. In making findings under this subsection, the department shall consider both the direct effects of the proposed withdrawal and its effects in combination with existing water withdrawals.

[ 2007, c. 399, §12 (NEW) .]

**11. Offshore wind power project.** This subsection applies to an offshore wind power project.

A. If an offshore wind power project does not require a permit from the department pursuant to article 6, the applicant must demonstrate that the generating facilities:

- (1) Will meet the requirements of the noise control rules adopted by the board pursuant to article 6;
- (2) Will be designed and sited to avoid unreasonable adverse shadow flicker effects; and
- (3) Will be constructed with setbacks adequate to protect public safety, while maintaining existing uses to the extent practicable. In making a finding pursuant to this paragraph, the department shall consider the recommendation of a professional, licensed civil engineer as well as any applicable setback recommended by a manufacturer of the generating facilities. [2009, c. 615, Pt. E, §9 (NEW) .]

B. If an offshore wind power project does not require a permit from the department pursuant to article 6, the applicant must demonstrate adequate financial capacity to decommission the offshore wind power project. [2009, c. 615, Pt. E, §9 (NEW) .]

C. An applicant for an offshore wind power project is not required to demonstrate compliance with requirements of this article that the department determines are addressed by criteria specified in Title 12, section 1862, subsection 2, paragraph A, subparagraph (6). [2009, c. 615, Pt. E, §9 (NEW) .]

[ 2009, c. 615, Pt. E, §9 (NEW) .]

#### SECTION HISTORY

1987, c. 809, §2 (NEW). 1989, c. 430, §5 (AMD). 1989, c. 656, §3 (AMD). 1989, c. 890, §§A40, B71, 72 (AMD). 1993, c. 296, §2 (AMD). 1997, c. 164, §1 (AMD). 1997, c. 164, §2 (AFF). 2001, c. 248, §1 (AMD). 2001, c. 618, §3 (AMD). 2003, c. 551, §8 (AMD). 2007, c. 353, §9 (AMD). 2007, c. 399, §12 (AMD). 2007, c. 661, Pt. B, §10 (AMD). 2009, c. 615, Pt. E, §§7-9 (AMD) .

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