



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

PAUL R. LEPAGE
GOVERNOR

PATRICIA W. AHO
COMMISSIONER

MEMORANDUM

TO: Board of Environmental Protection
FROM: Mike Mullen, Bureau of Land & Water Quality, Augusta
DATE: May 3, 2012
RE: Amendment of Permit by Rule Standards, 06-096 CMR 305(20): final adoption

Statutory and Regulatory Reference: Amendments are proposed to Chapter 305 pursuant to general statutory authority at 38 M.R.S.A. §341-H(2). Chapter 305 is adopted pursuant to the Natural Resources Protection Act (NRPA), 38 M.R.S.A. §§480-A-480-FF. The Department was directed to make these amendments in Public Laws 2011 Chapter 359 and they are major substantive rules.

Description: The proposed amendments, which were provisionally adopted by the Board on January 5, 2012, allow new activities on previously undeveloped lots in moderate value inland waterfowl and wading bird habitats, which are significant wildlife habitats under the Natural Resources Protection Act (NRPA). New activities proposed to be allowed under the amendments, such as buildings, roads and driveways, must be located at least 150 feet back from the edge of the wetland that was used for rating the value of the habitat. Forested wetlands are not used for rating purposes. Also, no more than 20% of the lot beyond this 150-foot setback may be cleared for development purposes. In response to comments, a construction timing window was added to the rule and a provision which would allow work within that time frame if approval from the Maine Department of Inland Fisheries & Wildlife was obtained. Also as a result of comments, it was clarified that the rule applies to lots that contain no development area either inside or outside of the habitat and that the setback is measured from the upland edge or forested wetland edge of the inland wetland complex within the habitat.

To be consistent with other sections of Chapter 305, a new standard was added to limit work to the location and extent depicted in the plans required to be submitted with the PBR notification form. Also, the definition of "structure", which is used elsewhere in the Chapter, was included.

Discussion: The Legislature held a public hearing on the provisionally adopted rule on February 15, 2012. Similar comments were made to the committee as were made to the Board and those testifying generally supported the rule. The Legislature approved the rule as provisionally adopted in Resolve Chapter 140: no changes were made.

Department Recommendation: The Department recommends that the Board grant approval for final adoption of the proposed amendments to Chapter 305 Permit by Rule Standards.

Estimated Time of Presentation: Approximately 10 minutes.

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